

Transformation of Unlicensed Cannabis Cultivation Since Legalization

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A major goal of Proposition 64 was to transition cannabis cultivators into licensure. However, most cultivators were unable to acquire licenses, licensed and unlicensed cultivators are exiting the market, and those left cultivating are often socially marginalized and impoverished. This brief outlines the transformation of unlicensed cultivation since legalization. It is based on over 150 extended interviews with people involved with cannabis cultivation in three regions of California.

Policy Context

Proposition 64 allowed adult use of cannabis. It decriminalized cannabis and authorized regulatory oversight, taxation, licensure, testing, and supply chain monitoring. It intended to “take nonmedical production...out of the hands of the illegal market” and “ensure” a cultivation system based on “small and medium-sized businesses.” California undermined these intentions when it created a “stacking” loophole to combine unlimited cultivation licenses under one firm. Many farmers lost trust in the legal system and avoided licensure. Further, ‘local control’ categorically excluded many farmers from becoming legal by allowing bans and restrictive zoning.

Methods

- Ethnographic data collection involving qualitative interviews with government officials and cannabis cultivators and industry actors
- Visiting permitted and unpermitted cannabis production sites, distribution spaces, and retail locations in three regions: the Emerald Triangle, Sierra Foothills, and Inland Empire
- Developed a codebook to identify themes and analyze interview transcripts.

Findings on unlicensed cultivation

Legalization established regulations for the world’s largest legal cannabis market. However, barriers to licensure were steep, barring participation for many and eroding trust in regulation. Further, licenses were unlimited, leading to overproduction and a subsequent price crash. Unlicensed cultivation persisted, often among people with few other legal livelihood options. Meanwhile, licensed and unlicensed cultivators keep viable by operating across legal/illegal market lines.

1. Barriers to Licensure Discouraged Legal Market Participation:

Direct financial costs, administrative costs, and psychological costs are cumbersome for small legacy growers. Many could not muster resources to go legal.

2. Punitive Policies Made the Legal Market Undesirable:

Punitive fines, extraordinary inspection and permitting routines, and backlash from residents and environmentalists led many cultivators to conclude that prohibition biases have persisted. This led many cultivators to avoid licensure. They figured they were more secure staying unlicensed.



3. Legalization Transferred Wealth from Cultivators to the State and Consultants:

Through taxes, fees, fines, and consultant costs, legalization has required cultivators to transfer their accumulated wealth to the state. By 2022, few cultivators reported having any savings and little access to credit.

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4. Overproduction & Price Crash Caused Market Exit:

With no limits on cultivation licenses or amounts, the legal market was hit by a crisis of overproduction. Prices crashed in licensed and unlicensed markets. Many unlicensed growers could not make a living and left the market, often for low-paying or contingent work.

5. Increasingly Marginalized Profile of Cultivators

Some stayed unlicensed because they had few other legal job options. This particularly affected: 1) people in remote areas, where formal market job options were sparse; 2)immigrants and racially-marked people, who were excluded from legal markets and secured livelihoods through trusted family and community networks; and 3) differently-abled people, elderly people, or people with mental difficulties, who found formal workplaces challenging.



6. Licensed Actors Depend on the Unlicensed Market for Sales

Staying economically viable is a challenge in a legal sector that has high regulatory costs, plummeting prices, high taxes with limited deductions, and limited to no financing. When legal markets are oversaturated, unlicensed markets are essential to avoid farm and firm failure.

7. The Legal Market Captures the Accumulated Expertise of Unlicensed Actors

The legal market depends on the expertise built in the unlicensed market. Employers are able to capture and institute this expertise from employees. Once knowledge is transferred these employees become expendable.

Recommendations

Reform Enforcement Approaches for Licensed and Unlicensed Cultivators

Establish clear enforcement and prosecution priorities that reduce harms from cultivation *and* enforcement. Provide education to unlicensed cultivators. Allow unlicensed cultivators time to address violations without punishment. Provide education for enforcement officers to demystify cannabis users, growers, and industry actors.

Address the Fallout from Wholesale Cannabis Price Crash. Provide affected cultivators and communities with economic development assistance such as worker training, placement programs, commercial development, infrastructural support, and social services, including suicide hotlines and temporary state support such as emergency disaster relief.

Widen Pathways to Licensure. Reduce regulatory burdens that do not demonstrate clear public benefit. Support programs that support prices and cut costs for smaller scale cultivators, like cooperatives, appellation formation, and collective marketing agreements. Ensure that reporting, inspection, and regulatory guidelines display parity with other agricultural sectors.

Create Consistent, Bold Agricultural Policy toward Cannabis to Stabilize Markets and Prices. Market share allotment programs can ensure cultivators make a livelihood through price-stabilizing cannabis auctions. “Claw back” large and stacked licenses to support the maximum number of California cultivators.

Put Guardrails on Local Control & Protect Personal Cultivation

Disseminate low-cost, low-administration permit templates for localities or allow them to transfer permitting to the state. Create small-farmer carve outs for obtaining state licensure. Ensure the right, ability, and feasibility of personal cultivation indoors. Encourage outdoor personal cultivation in residential areas with other allowed land uses like gardening.

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Full Report: <https://crc.berkeley.edu/publication/transformation-of-unregulated-cannabis-cultivation-under-proposition-64/>