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COLORADO'S LEGALIZATION OF MARIJUANA AND THE IMPACT ON PUBLIC SAFETY:

A Practical Guide for Law Enforcement







POLICE FOUNDATION

COLORADO ASSOCIATION OF CHIEFS OF POLICE

COLORADO'S LEGALIZATION OF MARIJUANA AND THE IMPACT ON PUBLIC SAFETY:

A Practical Guide for Law Enforcement

This report was prepared by the Police Foundation and the Colorado Association of Chiefs of Police.

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Letter From President Jim Bueermann, Police Foundation



Dear Colleagues,

This past spring, I was contacted by Chief Marc Vasquez of the Erie Police Department in Colorado to discuss the issues and challenges that Colorado law enforcement was experiencing as the state underwent the task of implementing the recent laws legalizing marijuana. In January 2014, after 14 years with legal medical marijuana use, Colorado became the first state to allow those over the age of 21 to grow and use recreational marijuana. State and law enforcement officials feared that this would lead to a huge increase in criminal behavior. Others predicted that the elimination of arrests for marijuana would bring a huge savings for police and the justice system.

To date, these predictions have not been borne out. It is early to tell what effect legalized marijuana will have on crime and public safety overall. Nonetheless, Colorado law enforcement officials have observed some concerning trends in drug use, most notably with youth and young adults. Law enforcement officials also say they are spending increased amounts of time and funds on the challenges of enforcing the new laws surrounding legal marijuana.

Both nationally and in Colorado, there is almost no significant research or data collection to determine the impact of legalized marijuana on public safety. We at the Police Foundation believe Colorado's experience and subsequent knowledge as they implement legalized marijuana will be beneficial to share with law enforcement officials and policy makers across the nation. Understanding that there are lessons to be learned and shared with the larger law enforcement community, the Police Foundation partnered with the Colorado Association of Chiefs of Police in publishing this guide - "Colorado's Legalization of Marijuana and the Impact on Public Safety: A Practical Guide for Law Enforcement."

Eighteen years ago, California became the first state to approve legalized medical marijuana. Since that time 22 other states have approved medical marijuana measures – nearly half of the nation. Four states and the District of Columbia have approved the legalization of recreational marijuana use. We are moving rapidly to a new era in how we manage marijuana sales and the larger industry growing underfoot, and we hope this guidebook can illustrate the challenges for local law enforcement and help those about to engage in this type of policy to learn from Colorado. Law enforcement is charged with ensuring public safety while enforcing the new regulations, which includes both the limitations and definitions under a new law. This guide is not a discussion on whether marijuana should be legalized, but rather a review of the challenges presented to Colorado law enforcement in the wake of legalized marijuana.

Colorado law enforcement has been tasked to balance critical issues such as opposing state and federal marijuana laws; illegal trafficking of Colorado marijuana across state lines; ensuring public safety of growing operations and extraction businesses in residential areas; to name a few.

Resolving the issues resulting from legalized marijuana may benefit from a community policing approach – including partners from the medical, health, criminal justice, city and county government, and other marijuana stakeholders. The collective wisdom of these partnerships can potentially provide a consensus on policies and practices for ensuring safety.

The Police Foundation intends that this guide will assist not only Colorado police and sheriffs, but will contribute to the growing dialogue as law enforcement officials, state and local policy makers across the nation consider legalizing marijuana in their states and localities.

Sincerely,



Jim Bueermann
President

Letter From Chief Marc Vasquez, Erie Police Department



Dear Colleagues,

Colorado's journey down the path of legalized marijuana took many of us in law enforcement by surprise – we simply did not think that it would ever happen here. Our understanding of the complex issues around marijuana legalization changes almost weekly as we continue to advance solutions for public safety under the Colorado constitution. It does not matter if we are for or against marijuana legalization. As law enforcement professionals, we must be prepared to tackle the implementation of public policies as we are faced with marijuana legalization nationally.

Legalized marijuana brings new challenges. Increased use of marijuana by both adults and youth will occur in communities where marijuana is legalized. With increased use, we can expect to see more driving under the influence of marijuana cases and an increased number of accidental overdoses from highly potent THC concentrates. We anticipate increased diversion of marijuana to juveniles and states that currently prohibit marijuana.

One of our greatest challenges is educating our communities, policy-makers and elected officials as to the risks of adding marijuana to already legal substances, such as alcohol and tobacco. Our ability to collect and analyze data regarding the impact of marijuana legalization remains a challenge. Another challenge is the conflict between state and federal law. As peace officers, we have pledged to uphold both the Colorado and United State's constitutions, which conflict regarding marijuana laws.

Like you, I am a strong community-policing advocate. Using the community policing model, I believe that we need to partner and problem-solve with our communities around the issues of marijuana legalization. Working with stakeholders who have an interest in marijuana legalization, either pro or con, provides the best opportunity to develop public policies that will be fair and effective for our communities. What works in Colorado may not work in your community so solutions to this complex issue must be crafted for your community.

This technical assistance guide will be updated as our understanding of the complex issues around marijuana legalization continues to evolve. For any police chief or sheriff who may be facing marijuana legalization in your state, I hope this guide provides at least a starting point for you. Feel free to contact the Colorado Association of Chiefs of Police (http://www.colochiefs.org) or the Police Foundation in Washington D.C. (http://www.policefoundation.org) if we can be of any assistance. It is an honor to be involved in the development of this technical assistance guide on marijuana legalization published by the Police Foundation.

Sincerely,

Marc Vasquez, Chief
Erie Police Department
Erie, Colorado

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ABOUT THE POLICE FOUNDATION

The mission of the Police Foundation is "Advancing Policing Through Innovation & Science." The Foundation is a national non-profit bipartisan organization that, consistent with its commitment to improve policing, has been on the cutting edge of police innovation for over 40 years. The professional staff at the Police Foundation works closely with law enforcement, judges, prosecutors, defense attorneys, and community-based organizations to develop research, comprehensive reports, policy briefs, model policies, and innovative programs that will support strong community-police partnerships. The Police Foundation conducts innovative research and provides on-the-ground technical assistance to police and sheriffs, as well as engaging practitioners from multiple systems (corrections, mental health, housing, etc.), and local, state, and federal jurisdictions on topics related to police research, policy, and practice. The Police Foundation also manages the National Law Enforcement Officer Near Miss Reporting System found at www.LEOnearmiss.org, and a site dedicated to learning from critical incidents found at www.incidentreviews.org

ABOUT THE COLORADO ASSOCIATION OF CHIEFS OF POLICE

The Colorado Association of Chiefs of Police (CACP) is a professional organization committed to excellence in delivering quality service to our membership, the law enforcement community, and the citizens of Colorado. Through our leadership, we will provide education and training and promote the highest ethical standards. We are personally and professionally dedicated to preserving basic family values, which are essential for achieving a high quality of life.

INTRODUCTION

When voters made Colorado the first state in the nation to legalize recreational marijuana in 2012, law enforcement was presented with a new challenge: understanding and enforcing new laws that aim to regulate marijuana use, rather than enforcing laws that deem marijuana use to be illegal. Supporters of the new law claimed this would make things easier for police and save at least $12 million[1] in taxpayer dollars on reduced law enforcement costs. Agencies across the state argue that has not been the case[2]. The legislation to enact the new laws has been vague, and consequently difficult to enforce. Unforeseen problems have arisen, ranging from how to determine when a driver is legally under the influence of marijuana to how to deal with legal drug refining operations in residential neighborhoods. Some Colorado law enforcement agencies have at least one full-time officer dedicated to marijuana regulation and enforcement, but most agencies do not have this option and are struggling to deal with the additional workload brought by legalized marijuana. Many law enforcement leaders are frustrated by the conflict between enforcing the new law and upholding federal statutes that continue to view marijuana use as illegal. The neighboring states of Nebraska and Oklahoma have filed suit in the U.S. Supreme Court[3] to overturn Colorado's Constitutional amendment legalizing recreational marijuana, claiming that they have been flooded with illegal marijuana from Colorado. Additionally, school resource officers and other law enforcement leaders interviewed by the Police Foundation said they worry that illicit drug use by young people is on the rise because of easy access to marijuana through a continuing black market and a "gray market" of semi-legal marijuana sold through unauthorized channels.



The Police Foundation and Colorado Association of Chiefs of Police have developed this guide to illustrate the challenges for law enforcement in Colorado. This guide will introduce some of the solutions that have been put into effect and outline problems that still need to be addressed.

The Colorado Association of Chiefs of Police and almost every law enforcement leader in the state opposed the passage of Amendment 64, which legalized the recreational use of marijuana. Many chiefs still express strong opposition and some want to work to repeal the law because they believe it will lead to more crime and possible increased drug addiction, especially for the youth population. However, this guide is not intended to address the complex political elements of marijuana legalization. It is designed to summarize the numerous challenges faced by law enforcement when enforcing the laws surrounding legalization, to document solutions that have been proposed and put into effect, and outline problems that still need to be addressed.

Colorado is only a year into the legalization of recreational marijuana and Colorado law enforcement agencies have already faced many challenges in enforcement and management of the legalization process, which lawmakers did not anticipate. Law enforcement will continue to address circumstances as they arise, and the Police Foundation and the Colorado Association of Chiefs of Police will continue to partner in relaying information on policies, procedures, and best practices in addressing crime and disorder related to legalized marijuana to law enforcement agencies nationwide.

METHODOLOGY

The purpose of this review was to identify Colorado's public safety challenges, solutions, and unresolved issues with legalized medical marijuana and recreational marijuana. Very little hard data has been gathered on the effects of recreational marijuana sales in Colorado. There has been little rigorous, evidence-based research to draw any conclusions regarding the impact of legalized marijuana on law enforcement. Information gathered from interviews and focus groups with law enforcement officers and subject matter experts as well as official documents and news stories are presented in this guide to help all law enforcement who are facing the challenges of legalized marijuana.

PARTICIPANTS

The Police Foundation convened two focus groups to obtain the thoughts and opinions of Colorado law enforcement executives, detectives, and officers on enforcing the marijuana laws. Participants were selected based on their experience and knowledge of marijuana legalization, as well as agency location and size, to get a broad representation.

One focus group had nine participants, with six police chiefs, one sheriff, and three officers representing large, mid-size, and small agencies, along the Front Range and in the Rocky Mountains. The chiefs of police and sheriff have been in policing from 23-40 years and the officers have been in policing 15 years or more.

The second focus group session included six officers, detectives, and marijuana regulatory officers. These officers and detectives serve in the capacity of monitoring marijuana regulations in their community and investigating violations of the marijuana laws. Their tour of duty was anywhere from approximately five to 25 years. These officers represented Front Range agencies from large, mid-size, and small agencies, as well as the mountain towns and ski resorts.

In addition to the focus groups, the Police Foundation conducted 23 individual interviews with Colorado law enforcement leaders and officers. A snowball sample was used to obtain names of subject matter experts.

Whenever possible, the focus groups and interviews have been supplemented by official documents illustrating legislation, court decisions, and law enforcement studies. Hundreds of media articles were surveyed to gain background on the issue, and some are used to illustrate points or historical background.

PROCEDURES

Focus group participants were asked a series of questions on Amendment 20 (legalizing medical marijuana) and Amendment 64 (legalizing recreational marijuana) to determine how they worked with the community and municipal/county government to identify and address public safety concerns regarding: (1) crime and disorder, (2) youth related issues, (3) successful approaches to addressing crime or community issues, and (4) unanticipated consequences challenging public safety resources, strategies, policies, or procedures. Interviews were recorded whenever possible with the permission of the interviewee and then transcribed.

I. OVERVIEW OF COLORADO'S MARIJUANA LEGISLATION

The passage of Amendment 20 in November 2000 made Colorado the fifth state to legalize the medical use of marijuana. Twelve years later the state became one of the first two (along with Washington) to legalize recreational marijuana when Amendment 64 passed in November 2012. Because Colorado's law took effect immediately and Washington's was delayed until supporting legislation was passed, Colorado is considered the first state to have legal recreational marijuana.

From 2001 to 2008, there were a total of 4,819 approved patient licenses. In 2009, there were 41,039 approved medical marijuana registrations from CDPHE.

Source: CDPHE

The number of marijuana dispensaries went from zero in 2008 to 900 by mid-2010.

Source: Department of Revenue, Marijuana Enforcement Division

The amendments conflict with the federal Controlled Substance Act of 1970, which classifies marijuana as a Schedule I controlled substance and states that it is illegal to sell, use or transport marijuana across state lines. Federal officials eventually granted some leeway to the states that have legalized marijuana, but the conflicts between state and federal law remain a significant challenge for law enforcement.

Amendment 20, *The Medical Use of Marijuana Act*, passed in 2000 with 53.3 percent of the voters approving the use of marijuana for debilitating medical conditions.

Under the act, individuals requesting medical marijuana for conditions such as cancer, glaucoma, cachexia, severe nausea, seizures, multiple sclerosis and chronic pain associated with a debilitating or medical condition, may register with the Colorado Department of Public Health and Environment (CDPHE) and obtain a registered medical marijuana patient card. Patients may also obtain a physician's evaluation and official recommendation for the number of medical marijuana plants they are allowed to grow. The law allows individual patients the right to possess two ounces of marijuana and six marijuana plants – and they can have more upon a physician's recommendation. Physicians can recommend any amount they deem necessary for the patient's anticipated treatment. Patients can grow the marijuana themselves or designate a caregiver to cultivate the plants and distribute the yield. A caregiver could have up to five patients and theoretically cultivate plants for each of them; the law also requires the caregiver to register with the CDPHE.

The implementation of Amendment 20 was uneventful for the first five years; however, three significant events occurred between 2005 and 2010, which changed the medical marijuana industry. (See Appendix 1 for a detailed history of Colorado's marijuana laws).

- 2005: Denver voters approved the decriminalization of possession of small amounts of marijuana for recreational use. Voters in the town of Breckenridge approved a similar measure in 2009.

- 2009: Denver District Court Judge Naves threw out CDPHE's definition for caregivers and instructed CDPHE to hold an open meeting and revise the caregiver language.[4] The department was unable to set a new definition, and so there was no regulatory language on how many medical marijuana patients a caregiver could supply until the General Assembly created new laws the following year.

- 2009: The U.S. Department of Justice released the "Ogden Memo," providing guidance and clarification to the U.S. Attorneys in states with enacted medical marijuana laws. Deputy Attorney General David W. Ogden stated, among other things, the federal government would not prosecute anyone operating in clear and unambiguous compliance with the states' marijuana laws.[5]

The Growth of Medical Marijuana Centers

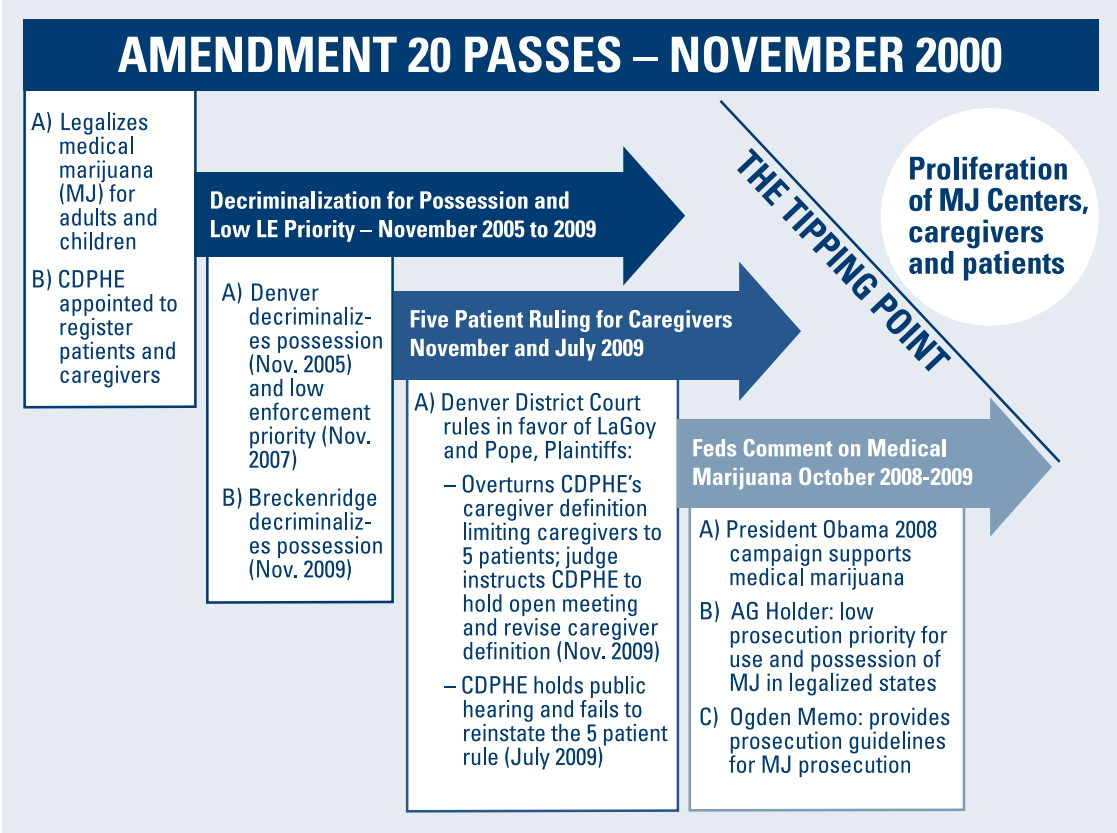
When CDPHE's caregiver definition was overturned in court in 2009, there was no limit on the number of patients caregivers could serve. At the same time, there was a boom in the number of medical marijuana patients registering with CDPHE.

Some medical marijuana proponents decided to test the boundaries of the caregiver model after the definition was thrown out. This resulted in a proliferation of medical marijuana centers throughout the state. These centers grew large quantities of marijuana plants because they could claim to be the "caregivers" for any registered medical marijuana patient.

This was one of the first major unanticipated problems for law enforcement, according to members of the Police Foundation focus groups. Since there were no statutes or regulations, the medical marijuana centers had no restrictions on the number of patients to whom they could provide marijuana. This also led to patients "shopping" their doctor's recommendation to as many medical marijuana centers as they wanted and as often as they wanted, focus group members said. As long as the patient had a "red card" and an authorized doctor's recommendation, then that patient could go to countless medical marijuana centers as long as the patient only carried two ounces or less out of each one.

Because so many medical marijuana centers opened so quickly, state and local officials found it difficult to regulate them. The General Assembly did not craft regulations until 2010 to govern licensing fees, inventory tracking requirements, production of marijuana infused products, packaging and labeling requirements, and disposal of waste water from the processing of medical marijuana.

Figure 1: Tipping Point for Opening Medical Marijuana Centers



Source: Adapted from Chief Marc Vasquez

From June 1, 2001, to December 31, 2008, a total of 5,993 patients applied for a medical marijuana registration card (also known as a red card due to its color). Of those applicants, 4,819 were approved. After the opening of the medical marijuana centers, by December 31, 2009, there were 43,769 applications of which 41,039 were approved. This is an increase of 751.61% in approved registrations in just one year's time. As of December 1, 2014, there were 116,287 medical marijuana patients registered with the state.

The Colorado legislature responded to these developments by passing legislation in the 2010 and 2011 sessions that created the Colorado Medical Marijuana Code. The primary bills creating the Code were HB 10-1284, SB 10-109 and HB 11-1043. They legalized medical marijuana centers and created a range of marijuana business-related regulations. Other parts of the code limited caregivers to provide for just five patients (although more could be approved under a waiver), and created a new regulatory body: the Medical Marijuana Enforcement Division under the state Department of Revenue. In addition to marijuana plants, the code allowed for "infused products" to be made and sold to patients.

The code requires centers to cultivate at least 70 percent of the marijuana they sell. The law created a "seed-to-sale" inventory tracking system which tracks all marijuana plants from cultivation to sale to the customer. The legislation allows local jurisdictions to set their own rules on whether to allow marijuana businesses to operate in their municipality or county, hours of operation and other rules – as long as the rules were stricter than state law. Of the state's 64 counties, 22 agreed to allow new marijuana businesses in their jurisdictions, while 37 banned them outright. Others grandfathered in existing operators, and still others set further limits on the businesses.

The update to the code that passed in 2011 - HB 11-1043 - set stricter requirements on doctors providing recommendations for medical marijuana and provided for licensing of businesses manufacturing infused products.

In 2012 with the passage of Amendment 64, Colorado voters approved the recreational use of marijuana. The new law allows anyone 21 years of age or older to possess one ounce of marijuana or to grow six plants for personal use. It is illegal to provide recreational marijuana to anyone under the age of 21. Amendment 64 prohibits the consumption of marijuana in public or open places and defines driving under the influence. Regulations were also established on infused products – edibles that include marijuana oil – that could now be sold for recreational use. The amendment provided provisions for local governing bodies (i.e., City Council or County Commission) to determine whether to permit recreational marijuana stores, marijuana infused product businesses, or cultivations in their area, similar to provisions for medical marijuana providers. If approved locally, medical marijuana centers were allowed to sell recreational quantities. The amendment requires, among other things, operators of marijuana cultivation and sales facilities to undergo a criminal background check. Anyone with a felony conviction is barred from operating a cultivation and sales facility or working in the industry.

Both medical marijuana and recreational marijuana is subject to the state's 2.9 percent sales tax, and recreational sales are also subject to a 10 percent excise tax. Local taxes may be added as well – in Denver, recreational marijuana is subject to a total 21.12 percent tax.

The Colorado legislature passed a series of bills (SB 13-283 and HB 13-1317) to implement the recreational marijuana provisions of Amendment 64. They limited non-Colorado residents to purchasing only one quarter of an ounce of marijuana after neighboring states expressed fears that marijuana "tourists" would transport large quantities home to sell illegally.

This history of overlapping medical and recreational marijuana laws has left law enforcement in Colorado with the challenge of both interpreting and enforcing the laws.

The Four Models for Regulating Medical and Recreational Marijuana

As a result of the passage of Amendments 20 and 64, four types of marijuana regulation and oversight models emerged – caregiver/patient, medical commercial, recreational home-grown and recreational commercial (see Figure 2). Having different models and regulatory agencies providing oversight has created challenges. The first model began with the passage of Amendment 20: the caregiver/patient model for medical marijuana.

With the proliferation of medical marijuana centers the second model, medical commercial, was established for licensing and regulating the medical marijuana industry. When Amendment 64 was passed, the recreational models were established. The Marijuana Enforcement Division regulates the Medical and Recreational Commercial models, and systems are in place for monitoring the commercial industry.

The regulation by local law enforcement of the caregiver/patient and the recreational home-grown models is more challenging.

Local law enforcement agencies are not authorized to perform home checks. They are bound by the law and cannot investigate a home grow unless a complaint has been filed. Even then, the officer must have probable cause to believe a crime is being committed by residents of the home or the resident would have to consent to allow the officers into the home. Thus, officers could conduct "knock & talks" at a caregiver location, but they would need to establish probable cause to execute a criminal search if they believe crimes are being committed. Some municipalities are enacting ordinances that prohibit noxious odors and the number of plants allowed to grow, and local law enforcement can use those ordinances to address neighborhood complaints.[6]

Figure 2 : Four Models Created through Amendments 20 and 64

Medical Commercial	Recreational Commercial
– Licensing for Businesses, Owners and Employees – Licensed by Department of Revenue, Marijuana Enforcement Division – Regulatory authority: Marijuana Enforcement Division	– Licensing for Businesses, Owners and Employees – Licensed by Department of Revenue, Marijuana Enforcement Division – Regulatory authority: Marijuana Enforcement Division
Caregiver/Patient	**Recreational Home Grows**
– Caregivers who can grow for up to 5 patients and themselves – Routinely see large grows – Patients are licensed by Colorado Department of Public Health and Environment – Caregiver Regulatory authority: Colorado Department of Public Health and Environment and local law enforcement	– Anyone 21 years of age or older can grow up to 6 plants. Law enforcement is seeing "Co-op" cultivations where a number of adults over 21 grow their marijuana at one location. This scenario is challenging for law enforcement because officers are uncertain which area of Amendment 20 or 64 may apply to the cultivation. – No licensing required – Regulatory authority: local law enforcement

Source: Adapted from Chief Marc Vasquez[7]

II. MEASURING LEGALIZED MARIJUANA'S IMPACT ON INVESTIGATIONS, CRIME, AND DISORDER

The legalization of marijuana in Colorado has created numerous challenges for law enforcement in conducting investigations, establishing probable cause, determining search and seizure procedures, and addressing public safety concerns with home growing operations.

In order to best assess the impact that the legalization of marijuana has had on crime, data must be gathered. Colorado authorities did not establish a data collection system when they began addressing the enforcement of the new laws; thus, law enforcement leaders who participated in the Police Foundation focus groups have urged that departments in other states facing laws on legalization move quickly to establish data collection systems and processes in preparation for the new challenges they will face.

Law enforcement leaders in focus groups convened by the Police Foundation warned that until there is a statewide data collection system, it will not be possible to fully understand the impact of legalized marijuana and related crime in the state of Colorado; however, they believe crime is increasing. Efforts are currently underway at the Colorado Department of Criminal Justice to develop statewide data collection systems. Given the time needed to create a statewide data system, it may be years before Colorado law enforcement can fully analyze the impacts of legalized marijuana.

"The absence and lack of data is absolutely a killer to demonstrate whether there is going to be adverse consequences of marijuana on your community or not. So what every law enforcement agency in the country should do right now, today, is start collecting data, not just on marijuana but on all controlled substances to establish a baseline. Colorado has missed their opportunity to collect baseline data, but other states could be establishing their baselines now."

– Sgt. Jim Gerhardt

In the meantime, local law enforcement and other related regulatory agencies and service providers are collecting data at the local level to understand the impact of marijuana-related crime. Collecting and analyzing this data is a challenge for smaller agencies including the majority of mountain towns, which are impacted by high volumes of out-of-state visitors.

Colorado law enforcement leaders in the Police Foundation focus groups have urged that departments in other states facing laws on legalization move quickly to establish data collection regarding the new challenges they face.

The Denver Police Department (DPD) has been one of the most active agencies in collecting data since legalization. Examining Denver's data provides some insight into the complexity of marijuana data collection at the local level.

Figure 3: Denver and State Comparisons for Marijuana Medical and Retail stores, Marijuana Cultivations, Marijuana Infused Product Producers and THC Inspection Laboratories

Denver Licensed Medical	Statewide Licensed Medical	Denver Licensed Retail	Statewide Licensed Retail
Centers = 198	Centers = 501	Stores = 126	Stores = 306
Marijuana Infused Product-Making Facilities = 78	Marijuana Infused Product-Making Facilities = 158	Marijuana Infused Product-Making Facilities = 44	Marijuana Infused Product-Making Facilities = 92
Cultivations = 376	Cultivations = 739	Cultivations = 190	Cultivations = 375
		Labs Checking for THC Levels = 9	Labs Checking for THC Levels = 15

Source: City of Denver data from Denver (CO) Police Department; state data from State of Colorado, Department of Revenue.

The Denver Police Department collects marijuana crime data specifically for industry-related crimes (defined as offenses directly related to licensed marijuana facilities) and non-industry crimes (defined as marijuana taken during the commission of a crime that did not involve a licensed marijuana facility). Data from 2012 through September 2014 shows burglary as the most prevalent industry-related crime. Burglaries at licensed marijuana facilities are much higher than other retail outlets like liquor stores. Burglaries occurred at 13 percent of Denver's licensed marijuana facilities in 2012 and 2013, compared with just 2 percent of liquor stores, according to Denver Police Department crime analyst, D. Kayser.

KEY ISSUES

Marijuana-Industry Related Homelessness Brings Challenges for Law Enforcement, Social Agencies

Denver officials say they are facing one unexpected result of legalization – a significant influx of homeless adults and juveniles are coming to Denver due to the availability of marijuana.[8] Although homelessness has been a persistent problem in Denver, police have seen an increase in the number of 18 to 26 year olds seeking homeless shelters because

they are hoping to find work in the cannabis industry. However, many have felony backgrounds and are ineligible to obtain work in the limited jobs in the industry. The St. Francis Center, a daytime homeless shelter, reported that "marijuana is the second most frequent volunteered reason for being in Colorado, after looking for work."[9]



http://www.click2houston.com/news/pot-draws-homeless-texans-to-colorado/28186888

The issue of homelessness has spread to suburban neighborhoods because of the location of growing operations, police said. The Golden City Council voted in June 2014[10] to ban recreational marijuana sales and restricted medical marijuana operations to manufacturing areas.[11] The council voted to only allow indoor marijuana cultivation. Any cultivation operation that attracts a high volume of foot or vehicular traffic can be shut down.

Marijuana businesses are keeping too much cash on hand because of federal banking restrictions, creating targets for burglaries and robberies

The U.S. Department of Justice and the U.S. Treasury Department's Financial Crimes Enforcement Network have issued guidelines[12] allowing banks to work with marijuana businesses that are in compliance with new state legalization laws. Even with the new Treasury guidelines, bank officials continue to be reluctant to do business with growers as they fear that they will still be subject to investigation[13] for accepting cash that drug-sniffing dogs can target as smelling of marijuana, according to news reports. Given that marijuana remains a Schedule I controlled substance under federal law, banks fear they could be prosecuted under money laundering laws for accepting funds from legalized businesses. To respond to the business need for financing, Colorado state regulators have approved the development of a credit union[14] to serve the industry, according to media reports. Nonetheless, most of the marijuana businesses remain cash-only, which will increase public safety risks and crime, Police Foundation focus group members said.

The dichotomy of federal and state law has led companies to turn to innovative strategies to resolve the cash problem. Entrepreneurs have developed armored car services for marijuana businesses[15] in which they collect the money, remove marijuana residue from the cash, and then transport the funds to the banks for deposit. Some law enforcement leaders believe this may be vulnerable to money laundering operations, while others say it is good policy.

This has resulted in many business owners choosing to operate solely using cash. Focus group members said that Colorado law enforcement officials have observed that criminals

are targeting centers, knowing they may have large sums of cash. According to focus group members, even couriers transporting marijuana from one location to another (e.g., transporting marijuana to an edible-infused business) are at risk and have been robbed.



The Armored Trucks Guarding Marijuana's Cash Flow in California
https://www.youtube.com/watch?v=2J41ZyYYFiI&feature=youtu.be>

A cash-only business also poses a challenge on the investigations side of enforcement. Criminal investigations can be hampered when there is no paper trail to determine cash flow. An all-cash business can potentially be used for money laundering activities, and it makes it more difficult to track the gray and black-market sales.

POINT FOR CONSIDERATION

- ***Law enforcement must develop policy, training and practices that take into account conflicting federal and state laws in relation to marijuana legalization in Colorado.***

  Marijuana remains a Schedule I controlled substance under federal law. Law enforcement officials at all levels should review and follow the rules laid out in the memorandum issued by Attorney General Holder in April 2013 entitled "Guidance Regarding Marijuana Enforcement"[16] to ensure that the federal guidelines are taken into account by local law enforcement.

III. IMPACT OF LEGALIZATION OF MARIJUANA ON LAW ENFORCEMENT PRACTICES

The laws surrounding commercial, recreational, and medical marijuana have established stringent reporting requirements, but medical marijuana caregivers were "grandfathered" under much less strict rules. The lack of clarity in the laws affecting medical and recreational marijuana has created significant challenges for Colorado law enforcement to investigate potential abuses and build a case for illegal marijuana growing operations.

According to HB 11-1043, a "primary caregiver" cultivating for medical marijuana patients must register the location of the cultivation operation with the Marijuana Enforcement Division and provide the registry ID for each patient. However, the law does not set a punishment for the caregiver who does not register. In addition, police cannot access patient information because of privacy laws, and so they cannot ascertain whether the "caregivers" are growing the amount specified in a doctor's recommendation or whether the caregiver is indeed still the caregiver for a given patient. Amendment 20 – which made medical marijuana legal in the state - mandates that patients must carry a medical marijuana registry card, whereas caregivers have no cards and no punitive sanctions from law enforcement if they have not registered.

"From the probable cause point of view, every situation has to be looked at from the totality of the circumstances that are present. Specifically, intelligence information, calls for service, neighborhood complaints, what you see, smell and hear, and any other information that would lead you to establish reasonable suspicion and/or probable cause."

– Lieutenant Ernie Martinez,
Director-at-large, National Narcotics Officers Association Coalition

Investigations and Probable Cause – How to Track Inventory

Colorado's laws established a "seed-to-sale" registry that has been praised for keeping track of every plant cultivated in the state. However, an audit by the Colorado State Auditor in 2013 found that the registry was failing in its mandate to monitor[17] medical marijuana dispensaries. Investigators for the Colorado Department of Revenue, Marijuana Enforcement Division, found in 2014 that some retail outlets they visited had discrepancies between the registry and the inventory on site. When queried, retailers could not articulate the reason for the discrepancies in inventory.

Members of the focus groups convened by the Police Foundation believe that the state registry officials are improving as funding increases to establish benchmarks for monitoring the supply. Law enforcement also noted that that the lack of coherent data and inventory information means that police must rely on standard investigative techniques to ascertain whether a grower or sales outlet is engaging in illegal underground activity on the side.

Searches and Seizures and Prosecution Under Legalization

Colorado police officials interviewed by the Police Foundation said one of the biggest concerns for law enforcement is attempting to establish probable cause for a search warrant under the conflicting laws regulating medical and recreational marijuana. "It is often difficult for law enforcement to develop probable cause because of vague language in the constitutional amendments and (that inhibits) the issuance of search warrants," said Chief Marc Vasquez of the Erie Police Department.

District attorneys have become cautious about warrants because juries have often found in favor of defendants who are medical marijuana users, said Matthew Durkin, Deputy Attorney General: "The same confusion and ambiguity in the legal landscape that hinders law enforcement, presents significant obstacles to a successful prosecution. The overly complex legal framework for marijuana not only makes developing evidence very challenging, but it also allows defendants to retroactively manipulate evidence."

Law enforcement is also caught in the middle when it comes to seizing and returning marijuana evidence because of conflicting state and federal laws. "We have changed our seizure policies several times over the past few years due to court findings," said Deputy Chief Vince Ninski of the Colorado Springs Police Department. "We received a legal opinion from our city attorney's office that since marijuana is still federally illegal, we would seize marijuana plants and harvested products when we believed the grower was violating state law. When a defendant was acquitted of his or her charges, the Colorado Springs P.D. was ordered to return the marijuana back to the defendant. The U.S. Attorney advises police that to return it would be in violation of federal law. Our hands are tied."

Even dealing with seized evidence has presented new challenges. Police departments confiscate marijuana plants but are challenged in securing the evidence and caring for the plants properly. Some departments have taken pictures of the plants but left the actual evidence with the person charged for operating illegally. Other agencies have confiscated the plants and let them die. In a case brought by a grower whose confiscated plants had died, the Colorado Court of Appeals upheld a ruling by District Court Judge Dave Williams that the Larimer County Sheriff's Office did not have to pay damages to the plaintiff in part because federal law did not recognize marijuana as property subject to search and seizure rules (see case at http://www.cobar.org/opinions/opinion.cfm?opinionid=9505&courtid=1).

KEY ISSUE

Drug-Sniffing Canines May Have To Be Retrained or Replaced

Canines trained to detect marijuana introduce a conundrum for officers in conducting drug searches. Drug dogs are usually trained to alert on all drug scents; therefore, it is not clear to an officer which drug a canine has detected. If a police dog detects drugs in a car, for example, it is not clear under the new laws if the officer has probable cause for a search since the officer does not know which drug the canine is detecting. If the driver has legal amounts of marijuana in the car, the search might be deemed inadmissible even if other drugs were found. Officers have been advised to ask whether there is marijuana in the car and can continue with the search if the suspect says there is none. The practices surrounding the use of drug-detecting canines will continue to evolve, with new training necessary both for officers and possibly for the dogs themselves.



http://www.thedenverchannel.com/news/local-news/marijuana/legalization-of-marijuana-presents-a-potential-problem-for-police-departments-using-drug-dogs

POINTS FOR CONSIDERATION

- ***New standards need to be established by law enforcement to be able to determine the difference between a legal and an illegal marijuana growing operation.***

  Law enforcement leaders, district and city attorneys and policymakers should form working groups to clarify the criteria for determining an illegal marijuana growing operation.

- ***Law enforcement, working with state level leadership, needs to revise and update search warrant procedures for conducting searches as they relate to the newly passed legalized marijuana statutes.***

  Officers and deputies need uniform guidance on how to establish probable cause to gain a warrant to search and seize illegal marijuana operations. A "Law Officer's Marijuana Handbook" – similar to the Colorado handbook created for liquor enforcement - should be available to inform patrol officers on policies, procedures, protection gear, and other important information regarding marijuana searches and seizures.

POINT FOR CONSIDERATION

- ***Law enforcement leaders, criminal justice officials, and policymakers should determine if there are any ramifications for using the current cadre of drug dogs for general drug searches.***

  Drug-sniffing dogs in Colorado (and in other states) are currently trained to target all drugs, including marijuana. Law enforcement leaders should assess the current practice of using drug dogs in the field and determine if new training and protocols need to be adopted as a result of legalized marijuana. Newly trained drug-sniffing dogs may be required in states where marijuana has been legalized.

IV. ILLEGAL MARIJUANA: BLACK AND GRAY MARKETS

When Colorado state regulators commissioned a look at the new legalized industry in mid-2014, the study[19] conducted by the Marijuana Policy Group for the Colorado Department of Revenue's Marijuana Enforcement Division, entitled "Market Size and Demand for Marijuana in Colorado," turned up some unexpected numbers: Demand for marijuana through 2014 was estimated at 130 metric tons but legal supplies could only account for 77 metric tons. The rest, according to a widely quoted Washington Post article,[20] was coming through continuing illegal sales – either by criminals in a black market, or by legal cultivators selling under the table in a growing "gray" market.

Colorado law enforcement officials interviewed by the Police Foundation are convinced that the black and the gray markets are thriving in Colorado primarily through unregulated grows, large quantities of marijuana stashed in homes, and by undercutting the price of legitimate marijuana sales. In fact, police have stated that legalized marijuana may have increased the illegal drug trade. Low-level drug dealers, looking to profit from access to an abundance of marijuana, have an open market to grow illegal amounts of marijuana and sell through the black market. Or they can purchase excess marijuana from caregivers growing marijuana for patients but divert their excess crop illegally – the gray market.

It is difficult for Colorado law enforcement to prove when a marijuana cultivation site is producing for the gray market. Medical marijuana growers may have a license, but ensuring that all of their plants are registered can be time-consuming and difficult to accomplish without a warrant and can be costly in staff time to check hundreds of plants. Focus group members said that recreational growers may also have an easy means of growing off-market plants. A resident might grow their limit of six marijuana plants, but could conceivably grow additional plants for family members, friends, and neighbors who are all over twenty-one. With the passage of Amendment 64, there is an increasing trend toward co-op growing, which state officials have suggested has created a shortage of warehouse space[21] in Denver. This practice has become popular as growers have found they can save on operating costs such as rent and utilities when they section off the warehouse for their cultivation space. The presence of multiple growers sharing one facility has created a time-consuming challenge to law enforcement agencies trying to track down illegal marijuana growers, focus group members said.



Colorado's commercial marijuana is grown indoors. The operation at LivWell in Denver, at 120,000 square feet, dwarfs the competition. Credit: Lawrence Downes

The challenge of locating and shutting down illegal growers has spread to residential neighborhoods as well, law enforcement officials said. Growers have rented homes solely



http://www.washingtonpost.com/news/storyline/wp/2014/07/30/inside-colorados-flourishing-segregated-black-market-for-pot/

to grow marijuana,[22] according to media reports, destroying the interior of the home as every room is converted to the growing operation.

Colorado law enforcement officials have also faced continuing challenges when trying to ensure that medical marijuana caregivers are not feeding the gray market, focus group members said. Caregivers are required by Amendment 20 to register their cultivation operations with the Marijuana Enforcement Division. Many do not register their operations; however, according to observations made by Colorado law enforcement officials. When police challenge the legality of the growing operation, it is difficult to file criminal charges. Media reports[23] have shown that caregivers can have numerous grow locations for the same five patients, leaving excess marijuana to be diverted through the gray market. A physician verifying a patient's medical needs for medical marijuana can recommend any number of plants for the patient. Regulators cracking down on shoddy prescribers discovered one doctor had given out thousands of medical marijuana recommendations[24] without even seeing the patients.



http://www.huffingtonpost.com/2013/11/07/how-many-joints_n_4236586.html

"A typical joint in the United States contains just under half a gram of marijuana, and a single intake of smoke, or "hit," is about 1/20th of a gram. A joint of commercial-grade cannabis might get a recreational user high for up to three hours; one-third as much premium-priced sinsemilla might produce the same effect. A heavy user might use upwards of three grams of marijuana a day. The development of tolerance means that frequent users need more of the drug to get to a given level of intoxication."

Source: Jonathan P. Caulkins, Marijuana Legalization: What Everyone Needs to Know.

Diverson of marijuana through the mail

According to Rocky Mountain High Intensity Drug Trafficking Area, the number of marijuana packages mailed out-of-state has increased from zero parcels in 2009 to 207 parcels in 2013. The poundage of marijuana seized increased annually beginning with zero pounds in 2009 and then increased to 57.20 pounds in 2010, 68.20 pounds in 2011, and 262 pounds in 2012, all during the time of legalized medical marijuana.

Then in 2013, when recreational marijuana became legal, the postal service seized 493.05 pounds and the top five states intercepting these marijuana parcels were Florida, Maryland, Illinois, Missouri, and Virginia. These numbers are most likely conservative since not all packages mailed are intercepted.

When officers try to verify a caregiver's quota of plants, they are often faced with growers who do not have documentation on hand, according to members of the Police Foundation focus groups. Due to privacy and confidentiality laws, officers cannot call CDPHE to verify the patient-caregiver information.

Taxation may be fueling gray and black markets

The state's tax structure mainly affects recreational marijuana. Medical marijuana buyers must only pay a 2.9 percent state sales tax. In addition to the sales tax, recreational marijuana faces a 15 percent excise tax plus a 10 percent special state sales tax. The proceeds of this are divided, with 85 percent going into the state marijuana tax cash fund and 15 percent to local governments that allow retail marijuana sales. Licensed cultivation centers pay the state excise sales tax of 15 percent on the average market wholesale price of recreational marijuana. Local taxes are also applied to the retail marijuana shops.

Denver's 2014 local retail marijuana tax is 7.12 percent, plus 1 percent for the Regional Transportation District (RTD) and .1 percent for the Cultural Facilities District. When this is added to the state retail marijuana tax of 12.9 percent, a marijuana consumer would be paying 21.2 percent in taxes.[25] Medical marijuana is taxed in Denver at a rate of 3.62 percent sales tax, 1 percent for RTD and .1 percent for Cultural Facilities District, which is added to the state tax of 2.9 percent.[26]

Police estimate that marijuana purchased on the street ranges from $160 to about $300 an ounce.[27] The average price per ounce for medical marijuana is $200 per ounce and average retail marijuana is $225/ounce and an average of $320/ounce in the mountain towns.[28] With taxes added in, a recreational consumer will pay a total of $242 for an ounce priced at $200 in Denver. Medical marijuana users will pay $215.24 for the same ounce. Regulators suggested this major tax burden might have caused an increase in the past year in patients seeking medical marijuana red cards, even as overall tax revenues fell short.[29]

KEY ISSUE

Bordering States Feel the Effects of Colorado's Legalization of Marijuana

Colorado's legalized marijuana laws are impacting[30] neighboring Nebraska, Arizona, Kansas, New Mexico, Oklahoma, Utah, and Wyoming. States bordering Colorado are concerned with the amount of time, resources, and expenses required in arresting and prosecuting offenders for the diversion of marijuana. In its report on the effects of legalized marijuana, the Rocky Mountain HIDTA[31] noted that cartel operations and other criminals may be using the thriving black market to stage illegal shipments to other states.

The states of Nebraska and Oklahoma in December 2014 filed suit in the U.S. Supreme Court,[32] asking that the court find Colorado's recreational marijuana law in violation of the U.S. Constitution. The states claim that Colorado has violated federal laws that criminalize marijuana use and sales and that it has caused significant crime and hardship for law enforcement in the two states because of criminals illegally transporting Colorado marijuana across state lines.

The Federal El Paso Intelligence Center reported that law enforcement agencies across the country seized three and a half tons of Colorado marijuana destined for other states in 2012.[33] That's up more than 300 percent from 2009 when there was slightly over three-quarters of a ton of Colorado marijuana seized.[34] In Kansas, there was a 61 percent increase in marijuana seizures from Colorado.[35]

In response to the additional law enforcement costs in bordering states, Colorado legislators introduced a bill to share surplus revenue with bordering states' law enforcement agencies to further prevent out-of-state marijuana diversion; however, the bill died in the 2014 legislative session.[36]



http://www.cbsnews.com/videos/colorados-neighbors-deal-with-marijuana-trafficking/

POINTS FOR CONSIDERATION

- ***Law enforcement should work with policymakers to bring clarity and transparency to the medical marijuana patient and caregiver identification system.***

  Current law is vague about the identification required for a medical marijuana caregiver and about the penalties for not producing the ID when requested by law enforcement. Law enforcement officials have called for registration of caregivers with pictured licensed cards, along with the necessary enforcement resources and penalties. They have also urged creation of a patient registration system that would ensure that a caregiver is growing the correct number of plants, and would stop patients from buying from more than one caregiver. Local jurisdictions should consider ordinances that require a business license for anyone growing more than six marijuana plants, which would provide law enforcement with a tool for inspecting growing operations.

- ***Increase cooperation with bordering states regarding the illegal transportation of Colorado marijuana across state lines.***

  Law enforcement agencies in neighboring states have reported arrests involving possession of marijuana that was produced in Colorado. Officials in the other states have raised alarms over their concerns of the potential for problems, and are currently attempting to track the data to identify trends. A regional working group should be established to follow up on any diversions of marijuana to other states with the aim of detecting the source of the marijuana and disrupting any further illegal transportation across state lines.

V. INCREASED PUBLIC HEALTH AND SAFETY IMPACTS

Marijuana connoisseurs are using enhanced science and technology to breed plants for various characteristics, especially plants that produce stronger compounds. Chemical extractions pose serious public safety risks. The chemical solvents, most often butane gas, create fumes that are highly flammable and can lead to explosions and fire that are similar to the extremely dangerous methamphetamine labs that have long plagued police and firefighters.

There are 483 compounds in a marijuana plant; the most well-known are tetrahydrocannabinol (THC) and cannabidiol (CBD).[37] THC is known to be a mild analgesic and is therefore used for medicinal purposes. It is also known to stimulate a person's appetite.[38] THC produces psychoactive chemical compounds and when extracted it becomes a resin used in hashish, tinctures, edibles, and ointments.[39]

A liquid process is used to extract THC.[40] Cannabinoids are not water soluble, which means the extraction businesses use a solvent to remove the resin from the plant. Chemical solvents, such as butane, hexane, isopropyl alcohol, or methanol are the most popular because higher levels of THC can be extracted and the process is much faster. Chemical extractions can obtain THC levels as high as 90 percent.

KEY ISSUES

Threat of Explosion and Fire

A hash oil explosion not only puts the lives of people inside the home at risk, it can quickly spread to nearby homes. While meth labs tend to be located in remote areas because of their illegal nature, hash oil operations are often conducted in residential neighborhoods by homeowners using legally grown marijuana. While consumers can purchase hash oil or by-products of hash oil from a marijuana retail store, many residents attempt to make their own hash oil because it is cheaper. Commercial extractions have the necessary equipment to safely extract hash oil. Denver experienced nine hash oil explosions from January 1 to September 15, 2014.

The City and County of Denver recently passed an ordinance that will restrict unlicensed hash oil extractions. One of the exceptions is that the extraction use alcohol, and not a fuel-fired or electrified source. The accepted process can use no more than 16 ounces of alcohol or ethanol for each extraction.[41]

Impact on Medical Facilities

The Burn-Trauma Intensive Care Unit at the University of Colorado Hospital is the primary burn center for Colorado. They report caring for only one patient from 2010 through 2012 from hash oil extraction burns. Since then it has significantly increased to 11 patients in 2013 and to 10 patients from January through May 2014.[42] Camy Boyle, associate nurse manager for CU's burn ICU, collected data on hash oil burn patients and found that the hash oil burn patients were almost always men in their 30s, on average had severe burns over 10 percent of their bodies (primarily hands and face), and stayed in the hospital an average of nine days.[43]

Lack of Regulations for Edibles Related to Increased Overdoses

The growing industry of injecting hash oil into candy, cookies and other "edibles" has raised concerns among health officials and police because it is unclear to most who ingest them what the potency levels are. Although there are legal limits to the total amount of THC allowed in individual edibles, the portions are not well regulated. Purchasers may not understand that eating several cookies or pieces of candy could result in toxic levels of THC. Due to the increased toxicity, medical and police professionals have seen an increase in adult psychotic episodes resulting in hospitalizations and deaths by suicide or homicide. For example, a student from Northwest College, in Wyoming, visiting Denver for vacation jumped over the railing of a hotel, falling to his death, after consuming an entire marijuana cookie. An autopsy revealed that there was no other drug, nor alcohol, in his body except marijuana.



http://denver.cbslocal.com/2014/09/15/ordinance-would-ban-denverites-from-making-hash-oil-at-home/



https://www.youtube.com/watch?v=3P_CEXRt010



http://kdvr.com/2014/04/02/student-fell-to-death-after-eating-marijuana-cookie-denver-coroner-says/

Often the marijuana edibles are packaged and look just like over-the-counter candy and food purchases. This is of particular concern when it comes to youth. According to the Children's Hospital Colorado,[44] children are at a significant risk when they ingest marijuana edibles, innocently believing it is candy.



http://www.mrctv.org/videos/cbs-wakes-dangers-edible-pot

The concerns over packaging and labeling have led the Department of Revenue, Marijuana Enforcement Division (MED), to call for a new panel [45] to determine how edibles can be made safer. Colorado law gives the MED powers to enforce packaging and sales practices by recreational marijuana operations similar to those granted over liquor products and stores.

Informational labeling requirements have been established by the MED.[46] The labels are required to list the batch number or marijuana plant or plants contained in the container that were harvested and a list of solvents and chemicals used in the creation of the medical marijuana concentrate. In addition, medical marijuana-infused products must be designed and constructed to be difficult for children under five years of age to open, as well as have print on the label saying, "Medicinal product – keep out of reach of children."



A marijuana-infused gummy bear next to a regular one. source: International Business Times - http://www.ibtimes.com/marijuana-edibles-colorado-officials-want-ban-some-strict-regulations-others-1707957

Marijuana Tourism: Impacts on Public Safety

Marijuana tourism began almost immediately after the passage of Amendment 64, and it has grown to become a significant factor in the administration of the law. Visitors from out of state can only buy ¼ of an ounce at a time (compared to an ounce at a time for residents). Nearly 90 percent of the recreational marijuana sold at ski resorts was to tourists.[47] The annualized marijuana demand for tourists visiting mountain communities is between 2.15 and 2.54 tons of marijuana, and it is expected to grow in 2014 to be between 4.3 and 5.1 metric tons of marijuana.[48]

Law enforcement agencies have found novice users, such as tourists, pose a particular problem because they often do not understand the potency of the marijuana and marijuana infused products, often resulting in overdoses. Hospitalizations related to marijuana have steadily increased[49] from 2000 to 2013 resulting in a 218% increase (see graph below taken from Rocky Mountain HIDTA report).[50] Many patients go to the emergency room reporting that they feel like they are dying because they feel their heart pounding in their chest.[51]

To deal with the problem of educating tourists, police departments have asked hotels and visitors' bureaus to include literature on marijuana safety. The Breckenridge Police Department has prepared literature for tourists and asked it to be distributed by recreational marijuana shops. The department has prepared a separate brochure warning hotel workers to be cautious of edibles left in the rooms by departing tourists.



SOURCE: Colorado Hospital Association, Emergency Department Visit Dataset. Statistics Prepared by the Health Statistics and Evaluation Branch, Colorado Department of Public Health and Environment (CDPHE). Reprinted from the Rocky Mountain High Intensity Drug Trafficking Area report on the "Legalization of Marijuana in Colorado, The Impact." August 2014.

Tourists are occasionally stopped at airports with marijuana "leftovers" in their bags. Others have left marijuana inside hotel rooms and rental cars. One hotel worker found marijuana edibles left in a room and thought it was candy. Upon returning home the worker innocently gave it to children.

Residential grows pose safety risks for first responders

There are many public safety hazards with homegrown marijuana. First responders entering a home growing operation need to be aware of the types of dangers and the importance of using personal protective equipment before entering. Just like methamphetamine houses, marijuana houses contain numerous health and safety hazards that require special practices.

Growing marijuana requires high-intensity lighting for the growing and flowering season, increased carbon dioxide levels, high humidity levels, and heat. Law enforcement officials working with National Jewish Health in Denver issued a checklist of potential hazards for officers entering a growing operation[52]:

- Toxic mold, which grows in constant wet conditions, can be dangerous even in small quantities for some people.
- When removing illegal growing operations, officers should be wary of THC levels in the air, on the surfaces of the home, and on the hands of the investigating officers. Therefore, officers should use gloves and possibly surgical masks when handling plants.
- Growers have been known to disconnect the vent system for the furnace and hot water heater, to enhance plant growth. This creates high carbon dioxide levels and a potential for carbon monoxide poisoning.



Denver Rental Grow
source: Chief Marc Vasquez

- Fertilizers and pesticides can pose a hazard if improperly handled.

Law enforcement officials said that one of the most dangerous factors for residents extracting their own THC is the potential for a hash oil explosion. Because growing operations can include a rudimentary THC hash oil refinery, officers are urged to take precautions similar to those used in a methamphetamine laboratory operation. When dealing with hash oil refineries, officers are recommended to follow PPE guidelines as provided by the American Industrial Hygiene Association in 2010:

- Chemical resident boots with slip and puncture protection;
- Eye and face protection;
- Tactical ballistic helmet;
- Tear and fire resistant outer garment;
- Chemical resistant gloves;
- Tyvek and/or chemical resistant coveralls;
- For unknown atmospheres – a self-contained breathing apparatus (SCBA);
- For known atmospheres – a Powered air purifying respirator (PAPR) or air purifying respirator with a P-100 cartridges.[53]

Residential growing operations can contain fire risks including overloaded electrical circuits and bypassed electrical meters. An additional hazard is the presence of carbon dioxide cylinders, which can explode due to electrical arcing.[54]

Beyond the risk to investigating officers, law enforcement officials in the Police Foundation focus groups said they are concerned about the potential danger for children living in homes with marijuana growing operations. The Colorado legislature had considered legislation to define drug endangerment, but no laws have passed. Officers asked to investigate child endangerment in growing operations must rely on current safety laws during the investigation.



Residential Electrical Rewiring
source: Chief Marc Vasquez.

KEY ISSUE

Legalization of Marijuana Will Bring Changes to Hiring Practices

The conflicts between drug-free workplace laws and patients' rights are currently being debated in Colorado's courts. The language of Amendment 64 stated that it did not require any employer to accommodate the use of medical marijuana in the workplace. But the Colorado Supreme Court is weighing an appeal by a worker[55] – left a quadriplegic in an auto crash - who was fired for having THC in his system, although he did not use marijuana at work.

Even without a legal requirement to allow officers to use medical marijuana when recommended, departments in states with legalized marijuana laws may soon be faced with the need to rethink hiring practices that ban any admitted use of marijuana. Public safety agencies are seeing more job applicants admitting to using marijuana just prior to applying. The pool of applicants is shrinking because of this, which has made it more difficult to fill openings in a timely manner.[56]

The Attorney General's Office has supported a zero tolerance stance for all employees, including peace officers and firefighters, for use of marijuana even when off duty.

POINTS FOR CONSIDERATION

- ***Co-ordinated planning and outreach are needed to ensure the safe operation of marijuana businesses.***

  Officers and deputies are called when citizens are concerned about potential nuisance and safety violations caused by marijuana operations in their neighborhoods. Law enforcement is often faced with the necessity of both interpreting and enforcing vague laws and regulations regarding marijuana cultivation and extraction operations. Law enforcement leaders should develop partnerships with city or county code inspectors, planners, city or county attorneys, district attorney's offices, and any other city or county agency that can play a role in establishing ordinances or inspecting, regulating, and prosecuting public safety violations.

- ***Law enforcement leaders should form a statewide working group to assess current challenges and practice on marijuana enforcement in order to inform state and local practices and policies.***

  Under Colorado law, every local jurisdiction can establish its own regulations on marijuana businesses, but many of the challenges facing law enforcement are similar throughout the state. Police Foundation focus group members called for statewide information sharing sessions to share best practices and emerging issues, as well as ensuring the dissemination of criminal intelligence and information on illegal marijuana trafficking.

- ***The state medical association should develop standardized physician criteria for writing medical marijuana recommendations and share the criteria with law enforcement and the public.***

  Law enforcement faces a challenge in determining whether medical marijuana growers are producing excess product that could be sold on the black market. Additionally, a physician has been sanctioned[57] for writing thousands of recommendations without even meeting patients. A standardized state system could provide guidance in planning enforcement efforts.

- ***Law enforcement leaders and state tourism officials should develop and distribute educational materials about Colorado's marijuana laws and safety information.***

  Tourists coming from out-of-state often do not know the basics of Colorado's marijuana laws, such as no public consumption or no consumption while driving. Medical center emergency rooms have also reported seeing an increasing number of out-of-state patients who overdosed because they were not aware of the potency of the product they ingested. Educational materials should be available in hotels, tourism outlets, and marijuana retail businesses to provide legal and safety information.

- ***Require hospitals and emergency care centers to collect data on the number and nature of emergency room visits involving marijuana.***

  The health care industry and law enforcement agencies should create a statewide database to inform practices and policies regarding marijuana overdose and what on-the-scene measures might help lessen the trauma.

VI. MARIJUANA'S EFFECT ON YOUTH – ISSUES FOR PUBLIC EDUCATION AND FUTURE LAW ENFORCEMENT CHALLENGES

A widely-cited article in the Lancet Psychiatry Journal[58] stated that studies have shown that those who use marijuana daily before age 17 are 60 percent less likely to finish high school or college, seven times more likely to commit suicide and eight times more likely to use addictive drugs later in life.

Amendment 64 clearly states that no one under the age of 21 can possess recreational marijuana. Legal marijuana retail stores face the same enforcement and oversight as liquor stores when it comes to selling to minors.

"We won't know the extent of the damage legalized marijuana has caused for our youth until 5 to 10 years down the road. Unfortunately, we've used our kids to understand the impacts in this great social experiment."

– Ben Cort,
Business Development Manager, University of Colorado

Ben Cort, Business Development Manager, University of Colorado Center for Dependency, Addiction and Rehabilitation, said that studies have shown that many young people with substance abuse problems have easy access to marijuana through patients with a medical marijuana card. In addition, many teenagers have followed the debate regarding legalized marijuana and have been swayed by the proponents' arguments that marijuana is much safer than alcohol, he said.

"I am very concerned about the effect of marijuana on the developing brains of our youth. I believe we can and must do a better job addressing this issue in Colorado… Our success with the student-led/adult-facilitated 'Drive Smart Campaign' has been highly successful in terms of reducing teen driving accidents and fatalities. I would like to see a similar approach to addressing the issue of teen drug use."

– Officer David Pratt,
School Resource Officer, Colorado Springs (CO) Police Department

Cort told the Colorado Juvenile Council meeting in November 2014 that the dangers to youth from marijuana have increased under legalization.

Colorado has seen the greatest percentage of youth marijuana use in 10 years, based on the latest National Survey on Drug Use and Health (2011-2012). Youth, ages 12-17, reported using marijuana in the past month at a rate almost 40 percent higher than the national average.

Marijuana use by homeless juveniles is a growing concern, according to Police Foundation focus group members.

As with the general homeless population, many turn to panhandling and theft to support themselves, focus group members said.

No studies are available to measure the effects of juvenile marijuana use on future criminal



https://www.youtube.com/watch?v=jtVJMJpavyw

behavior. Police Foundation focus group members expressed concern that the high dropout rate and emotional setbacks faced by such teens are common indicators of the potential for future criminal activity. They worry that the increased availability of high-potency marijuana and an increasingly positive public reaction to marijuana use will mean difficult challenges ahead for youth education on these dangers.

POINTS FOR CONSIDERATION

- ***Public education campaigns to prevent juvenile marijuana use should be revised to emphasize the health dangers of regular marijuana use by youth.***

  Colorado law restricts recreational marijuana possession to people over the age of 21, but law enforcement officials said they have observed an increase in marijuana use among teenagers since legalization. Public education campaigns must emphasize scientific studies that have raised health alarms over juvenile marijuana use to counter the public perception that marijuana is safer to use than alcohol.

- ***Increased training and tools should be provided to school resource officers to ensure that youth receive factual information on the dangers of marijuana use.***

  State health and research officials should intensify studies on the effects of marijuana on education, employment, health, and mental illness.

VII. FIELD TESTS ARE A CHALLENGE TO MEASURE DRIVING UNDER THE INFLUENCE OF MARIJUANA

As stated in Amendment 64, recreational marijuana use is subject to the same standards of public behavior as alcohol. Consumption of marijuana is prohibited in all public places, and standards of public intoxication can be similarly applied. Consumption of marijuana while driving is prohibited, and driving under the influence of marijuana is treated similarly to driving under the influence of alcohol.[59]

However, police have found that putting these new enforcement measures into effect is a major challenge.

Colorado has established a blood level of five or more nanograms per milliliter of THC as the limit for driving while impaired. One of the biggest challenges is determining the legal limit of driving while impaired when marijuana is combined with alcohol or other drugs. Using marijuana with alcohol will produce more impairment than if either drug was used alone.[60]

Detection of this level of impairment has required an entirely new testing system and complete retraining for law enforcement officers in Colorado.

The initial procedures for driving under the influence of alcohol or marijuana are the same, law enforcement officials said. The officer will look for inidicia of impairment like bloodshot eyes, slurred speech, and abnormal responses to questions. If the officer suspects that a driver is impaired, a field sobriety test can be performed to measure balance and other factors.

If the driver fails that test, or refuses it, the officer must decide whether to require a blood test to determine the level of THC. These tests require medical personnel, either a paramedic at the scene or a hospital emergency room to draw the blood sample. The test results can take from one day to six weeks.

Police Foundation focus group members said law enforcement is facing a tremendous cost increase for testing for driving under the influence of marijuana. A blood test for alcohol costs approximately $25 to $35, while the drug panel that includes marijuana can cost $250-$300.

There is emerging technology that allows for the testing of oral fluids for drugs, such as THC. The State of Colorado is currently examining this technology to see if it is effective. This alternative technology tests for the presence of drugs based on saliva, known as the Oral Fluid Test. Although the method is quicker and easier than taking blood samples, the evaluation period to show whether drugs are in the system is about the same.

There is currently no technology available to do a marijuana "breathalyzer" test, which has significantly shortened the time involved for DUI testing for alcohol. Researchers at Washington State University have reported progress in developing a portable breathalyzer that could provide an initial reading to aid in decision-making on driving under the influence. Testing on the device is expected to begin in spring 2015.

The additional law enforcement training for sobriety testing and drug detection will cost about $1.24 million in the coming year, according to the Colorado Association of Chiefs of Police (CACP). Those funds will include officer training on Advanced Roadside Impaired Driving Enforcement (ARIDE), legal updates, train-the-trainers, Drug Recognition Expert (DRE) trainings, and DUID classes.

There are a series of trainings offered which will assist law enforcement officers to better detect drivers who are impaired by substances, such as marijuana. As an example, officers can receive training on the basic Standardized Field Sobriety Test (SFTS). A more intense training course is called ARIDE, which is a sixteen-hour class to train law enforcement officers on how to detect drug-impaired drivers and is given after the SFST training. The National Highway Safety Administration (NHTSA) developed training materials for these courses. Finally, if an officer wishes to become an expert in roadside detection, then the officer would become a drug recognition expert (DRE). The DRE training, which has been in existence since the 1970s, trains law enforcement officers to detect and identify drivers who may be impaired on a variety of substances. This detection is very important because research has shown that drivers are often impaired by more than one substance.

Observing drug-impaired driving is not a new situation for most officers, but legal experts have warned that more training and better equipment is essential in order to provide adequate resources for prosecution under the new laws of marijuana legalization. While in the past simply having evidence of marijuana in the system could lead to conviction of drivers, many judges and juries will be more demanding of proof that the case meets the legal criteria of impairment.

POINT FOR CONSIDERATION

- ***Field Sobriety testing for marijuana users should be funded to ensure that all officers in Colorado are trained to recognize the difference between drivers who are under the influence of marijuana versus alcohol.***

  Marijuana is being ruled a factor in an increasing number of highway deaths[63] in Colorado according to data gathered by the Rocky Mountain High Intensity Drug Trafficking Area task force, and patrol officers must be given the tools to discern whether drivers are impaired by marijuana ingestion. Currently the state has not fully funded the training program for officers to determine if those stopped are driving under the influence of marijuana.

CONCLUSION

Legalization of marijuana is a complex issue and many unanticipated consequences have challenged Colorado law enforcement. Until there is more clarification and stiffer sanctions for law violations, law enforcement is working at a deficit in trying to reduce the black and gray markets. Law enforcement leaders are just beginning to understand the related crime and disorder issues associated with legalized marijuana, and how to reduce them through ordinances, codes, policies, and partnerships.

Establishing partnerships with city agencies, such as code enforcement, building inspectors, fire, and zoning is currently one of the best strategies in addressing the problems. Local ordinances addressing neighborhood complaints, such as noxious odors, building and code violations, and land use codes, have been found to be effective in regulating non-commercial marijuana cultivation. Marijuana odors emitted from households growing marijuana, child endangerment, THC distillation processes, dangerous electrical wiring, and furnace reconstruction to recover dangerous carbon monoxide fumes for plant growth are just a few examples of how law enforcement can work with city and county agencies to reduce these public risks.

Officer safety is paramount when going into marijuana cultivations, especially houses where toxic black mold is in the house growing marijuana. These homes may pose similar health dangers as methamphetamine homes. Policies should be established outlining procedures for officers using personal protective equipment when entering these homes or at any grow location where there is risk of toxic black mold.

The conflict between federal and state laws regarding the legalization of marijuana has put law enforcement in a difficult situation. This has impacted public safety regarding unavailability of banking services and the challenges to officer integrity for those who have taken an oath to uphold both federal and state constitutions, but are now trying to uphold conflicting laws.

The Police Foundation and the Colorado Association of Chiefs of Police believe sharing challenges, lessons learned, and points for consideration will provide a launching point for increased national discussions and will help identify strategies to resolve the conflicts and challenges for states passing legalized marijuana laws. As the states neighboring Colorado have discovered, marijuana has become a complicated and pressing issue, even where it has not been legalized.

The Colorado Association of Chiefs of Police and individual departments around the state worked tirelessly to ensure that legislation enacting the rules and regulations in Amendment 64 provided adequate enforcement measures. Those efforts were rushed, however, by the short period between the passage of the amendment and enactment of the legislation.[64] They remain concerned that state officials have not allocated adequate resources to meet the new challenges brought by the law. Their message to law enforcement officials in states where voters are considering legalization: Develop a legislative and statewide funding plan before the measure passes and be ready to make the case for proper enforcement in the name of public safety.

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APPENDIX 1: COLORADO'S LEGISLATIVE HISTORY REGARDING THE LEGALIZATION OF MARIJUANA

INTRODUCTION

Understanding Colorado's legislative and political history provides important perspective for appreciating Colorado law enforcement's experience with addressing the legalization of marijuana.

There were two notable elements of the legislation that legalized marijuana in the state of Colorado: first, marijuana became legal through an amendment to the Colorado's constitution; and second, the legislative language was ambiguous and broad. This has placed Colorado law enforcement in the position of both interpreting and enforcing the law. It is further complicated by the fact that, at the federal level, marijuana is still an illegal drug under the Controlled Substance Act of 1970[1], which classified marijuana as a Schedule I controlled substance.[2]

AMENDMENT 20: NOVEMBER 2000 MEDICAL MARIJUANA BALLOT MEASURE

Overview of Colorado Amendment 20

The shift toward legalized marijuana use began with the passage of Amendment 20, *The Medical Use of Marijuana Act*, which passed with the support of 53.3 percent of Colorado voters in November 2000.[3]

The amendment to the Colorado Constitution made the following legal under state law:

- Using marijuana with a physician's recommendation for debilitating medical conditions defined as chronic pain, severe nausea, persistent muscle spasms (i.e. multiple sclerosis), cancer, glaucoma, cachexia, seizures (e.g., epilepsy), and HIV;
- Possessing no more than two ounces and up to six marijuana plants, with no more than three being mature flowering plants that produce usable marijuana;
- An exemption from criminal prosecution and an eaffirmative defense for patients from some state criminal marijuana penalties;
- Tasking the Colorado Department of Public Health and Environment (CDPHE) with establishing a confidential registry for patients and primary caregivers;
- Allowing children access to medical marijuana with parents' permission; and,
- Making law enforcement economically liable for the value of marijuana should a criminal case not be filed, dismissed, or results in an acquittal.

2000 TO 2008: LEGISLATION AND NOTABLE EVENTS FOLLOWING THE PASSAGE OF AMENDMENT 20

Following the passage of Amendment 20, registrations for medical marijuana started on June 1, 2001. By December 31, 2008, there were 4,819 total medical marijuana patients registered with CDPHE and receiving marijuana drug treatment.[4] Registered caregivers with CDPHE cultivated marijuana plants and distributed the drug to their patients.

A series of events led to a massive number of people registering for medical marijuana cards and the proliferation of medical dispensaries opening in a very short period of time. By December 31, 2009, there were 41,039 patients who possessed a valid registration card from CDPHE.[5] The rapid increase created a concern among public safety and public health officials.

Decriminalization of Possession and Low Enforcement Priority for Marijuana

In November 2005, the City and County of Denver voters passed a ballot initiative decriminalizing possession of small amounts of marijuana. In 2007, Denver voters approved Ballot Question 100, which directed law enforcement to make arrest or citation of adult cannabis users the lowest priority.[6] The town of Breckenridge, a mountain town near ski resorts, also decriminalized marijuana possession and allowed citizens to carry small amounts in 2009.[7]

Lawsuit Against CDPHE's Five Patient Rule

The Colorado Court of Appeals ruled in October 2009 that caregivers must know the patients who use the marijuana they grow. The ruling upheld a verdict against Stacy Clendenin who had been found guilty of illegally growing marijuana in her home. Clendenin claimed that she was a caregiver who was growing marijuana for patients. However, the Court of Appeals ruled, "Simply knowing that the end user of marijuana is a patient is not enough." The court said, "A care-giver [sic] authorized to grow marijuana must actually know the patients who use it."[8]

Responding to the court's ruling, The Colorado Department of Public Health and Environment's Board of Health created a policy, during a closed meeting, called the "Five Patient Policy" limiting caregivers to providing medical marijuana to no more than five patients.[9]

The Board of Health's process for establishing the Five Patient Policy was challenged in a 2007 lawsuit filed on behalf of David "Damien" LaGoy, a registered marijuana patient with life-threatening symptoms resulting from HIV/AIDs and Hepatitis C. LaGoy's lawsuit claimed that CDPHE: (1) violated the Open Meetings Act,[10] (2) violated the Administrative Procedures Act[11] by deeming the meeting as an emergency, and (3) decreased LaGoy's access to medical marijuana, increased the confusion of his registered caregiver, Daniel, as to his responsibilities due to the policy defining the caregiver as one who is "significantly respon-

sible for the well-being of a patient," and therefore caused an "immediate and irreparable injury."[12] The plaintiffs requested that CDPHE hold a public meeting to define the term "caregiver" and to invalidate their current policy because it was adopted in an arbitrary manner. Additionally, they asked the courts for a temporary and permanent injunction ordering the defendants to cease and desist from the enforcement of the regulatory change.[13]

Denver District Court Judge Dave Naves granted a temporary injunction, and after further review, permanently overturned CDPHE's definition for caregivers. Naves required the CDPHE to hold an open meeting and revise the caregiver language.[14]

The CDPHE held public hearings according to Naves' ruling but did not reinstate the "Five Patient Policy."[15]

The Federal Government's Position on Marijuana Enforcement

The first national statement regarding legalizing medical marijuana came from President Barak Obama during his campaign in 2008.

Attorney General Eric Holder, in October 2009, laid out medical marijuana guidelines for federal prosecutors in accordance with the Controlled Substance Act (CSA).[16] A memorandum from Deputy Attorney General David W. Ogden provided guidance and clarification to U.S. Attorneys in those states that have enacted medical marijuana laws. This became known as "The Ogden Memo."[17]



https://www.youtube.com/watch?v=LvUziSfMwAw

The Ogden Memo provides uniform guidance but does not allow medical marijuana to be a legal defense to the violation of federal law, including the Controlled Substances Act. (http://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf).[18]

Specifically, the Ogden Memo directs that prosecutors should place a low priority on cases involving individuals with medical conditions and who are in "clear and unambiguous compliance" with state laws. The federal government continues to pursue illegal drug trafficking activity as well as the unauthorized production or distribution of medical marijuana by the state when the following situations are present:

- Unlawful possession or unlawful use of firearms;
- Violence;

- Sales to minors;
- Financial and marketing activities inconsistent with state law, including money laundering, financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- Illegal possession or sale of other controlled substances; or
- Ties to other criminal enterprises.

2009: THE GROWTH OF MEDICAL MARIJUANA CENTERS

When CDPHE's caregiver definition was overturned in 2009, there was no limit on the number of patients caregivers could serve. At the same time, there was a boom in the number of medical marijuana patients registering with CDPHE.[a]

Some medical marijuana proponents decided to test the boundaries of the caregiver model as a result of the LaGoy-Pope Case. This resulted in a proliferation of medical marijuana dispensaries opening in a relatively short time period of time throughout the state. These centers grew large quantities of marijuana plants because they could now claim to be the "caregivers" for an unlimited number of registered medical marijuana patients.

From 2001 to 2008, there were a total of 4,819 approved patient licenses. In 2009, there were 41,039 approved medical marijuana registrations from CDPHE.
Source: CDPHE

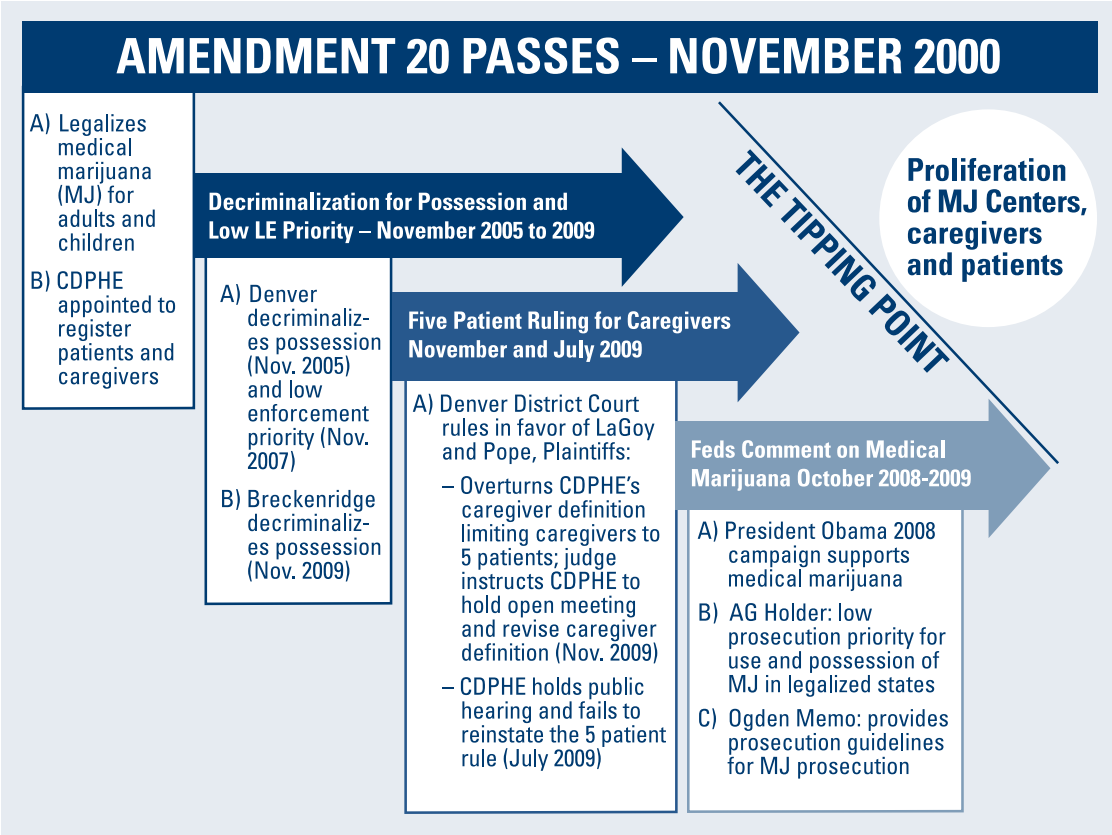
The number of marijuana dispensaries went from zero in 2008 to 900 by mid-2010.
Source: Department of Revenue, Marijuana Enforcement Division

This was one of the first major unanticipated problems for law enforcement, according to members of the Police Foundation focus groups. Since there were no statutes or regulations, the medical marijuana centers had no restrictions to the number of plants they could grow and the number of patients they served. This also led to patients "shopping" their doctor's recommendation to as many medical marijuana centers as they wanted and as often as they wanted, focus group members said. As long as the patient had a medical marijuana licence and an authorized doctor's certification, then that patient could go to many medical marijuana centers as long as they only carried two ounces out of each center.

a. This has led to another challenge in regulation. CDPHE registers medical marijuana patients and caregivers; however, they do not regulate or monitor the caregiver marijuana grows. Beginning in 2010 (?), the Colorado Department of Revenue, Medical Marijuana Enforcement Division (MMED), now entitled the Marijuana Enforcement Division (MED), is responsible for monitoring the caregiver grows. Caregivers are required to register their grow locations with the MED. However, there is no way to cross-verify if this is occurring since CDPHE cannot release the names of the patients and their caregivers due to the Health Insurance Portability and Accountability Act (HIPAA). As a result, enforcing caregiver cultivations is challenging on many different levels such as locations of cultivations, number of plants authorized to grow per patient, illegal cultivations in multiple locations for the same set of patients, and detecting gray market illegal sells to adults and minors.

Because so many medical marijuana centers opened so quickly, state and local officials found it difficult to regulate them. The Colorado General Assembly had not crafted regulations governing licensing fees, inventory tracking requirements, production of marijuana infused products, packaging and labeling requirements, and disposal of waste water produced during the processing of medical marijuana.

Figure 1: Tipping Point for Opening Medical Marijuana Centers



From June 1, 2001, to December 31, 2008, a total of 5,993 patients applied for a medical marijuana registration card (also known as a red card due to its color, shown in Figure 2). Of those applicants, 4,819 were approved. After the opening of the medical marijuana centers, by December 31, 2009, there were 43,769 applications, of which 41,039 were approved. This is an increase of 751.61% approved registrations in just one year's time. As of December 1, 2014, there were 116,287 medical marijuana patients registered with the state.[c]

c. Lower-than-projected revenues from recreational marijuana, combined with higher revenues from medical marijuana and a high proportion of out of state recreational marijuana customers provide a strong indication that many have elected to obtain red cards because it is less expensive to purchase medical marijuana because of the higher tax structure on recreational marijuana.

d. The number of medical conditions does not add to 100% because patients can have more than one debilitating condition.

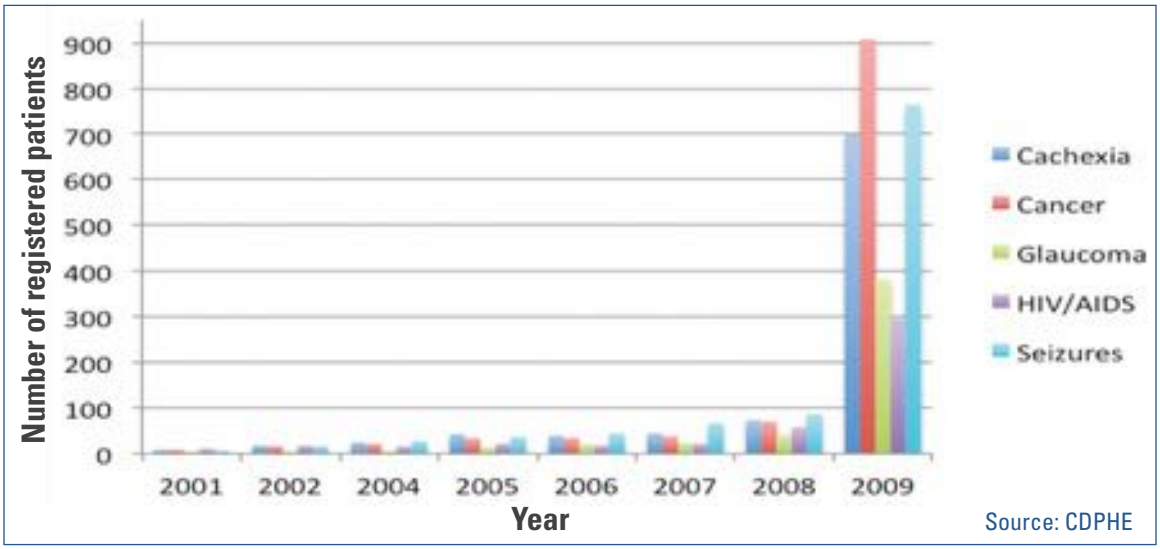
e. The number of medical conditions does not add to 100% because patients can have more than one debilitating condition.

Figure 2: Example of Colorado Medical Marijuana Patient Registry Card



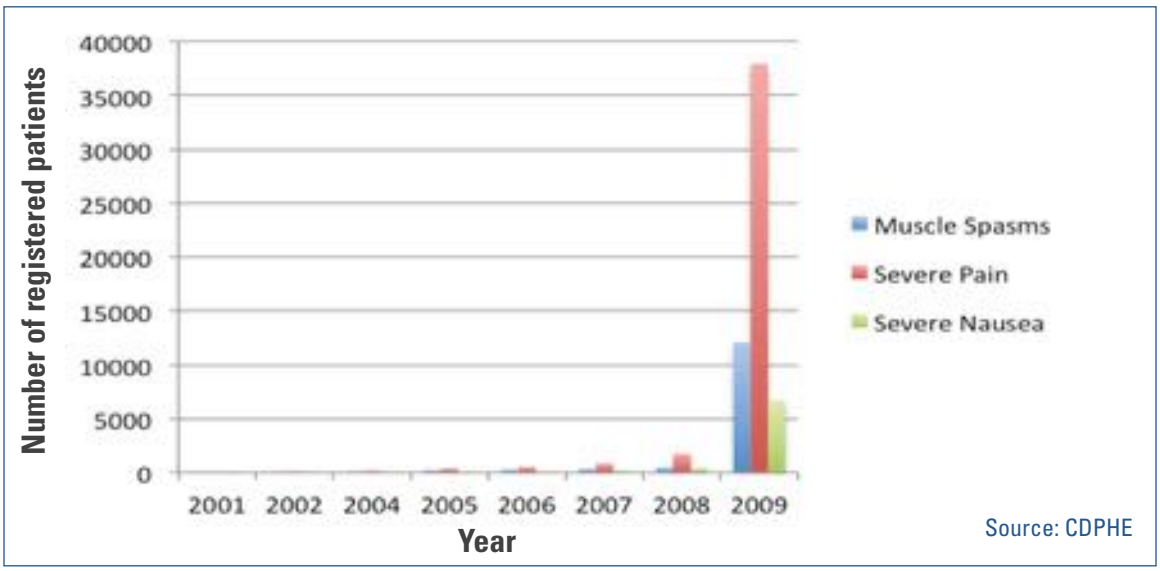
Source: Chief Marc Vasquez[19]

Figure 3: Number of Registered Patients and Five Illness Reasons from 2001-2009[d]



Source: CDPHE

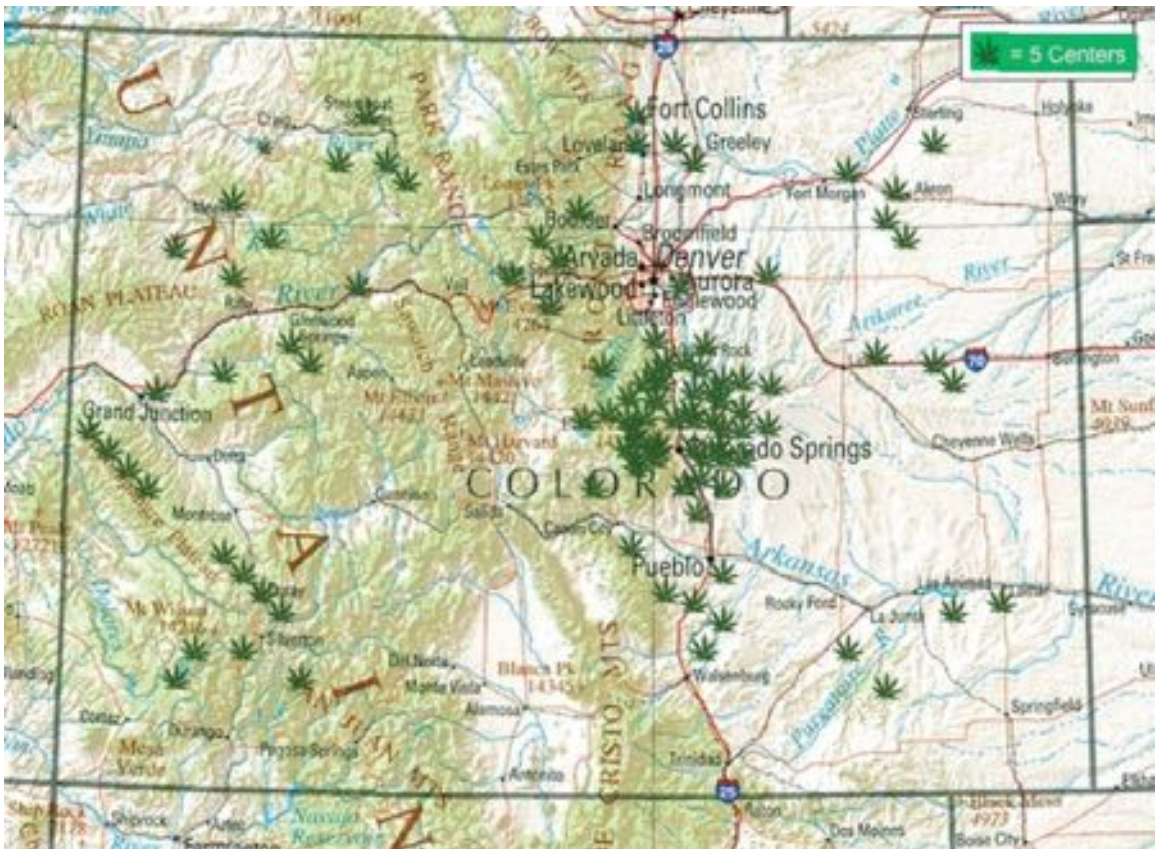
Figure 4: Number of Registered Patients and Three Illness Reasons from 2001-2009[e]



Source: CDPHE

There were no medical marijuana centers before 2009. In that year alone, 250 were opened. As of December 1, 2014, there were 501 state licensed medical marijuana centers with 23 pending applications (see Figure 5 for a map of dispensary locations).[22]

Figure 5: Colorado Map with Medical Marijuana Dispensary Locations



Source: Lt. Ernie Martinez, Director At-Large for the National Narcotics Officers Association Coalition[23], for illustration purposes

LEGISLATION SUPPORTING AMENDMENT 20 IN 2010 AND 2011

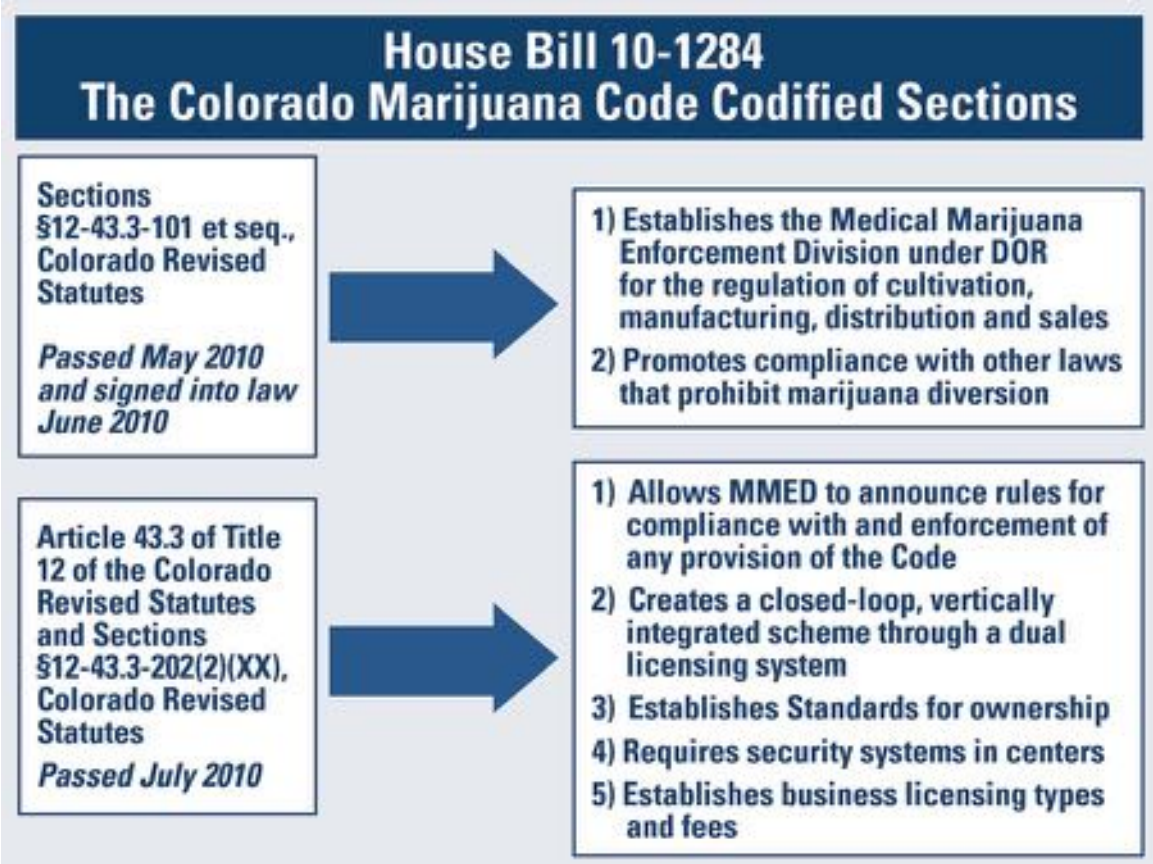
The Colorado Legislature in 2010 and 2011 passed a series of bills to address the unanticipated consequences of Amendment 20.

2010: Legislation Regulating Medical Marijuana Centers

During the 2010 legislative session, the issues of medical marijuana centers and the regulation of cultivation and sales of medical marijuana were addressed through two significant bills: House Bill (HB) 10-1284, establishing the medical marijuana code, and Senate Bill (SB) 10-109, establishing the physician-patient relationship.

HB 10-1284: Colorado Medical Marijuana Code

Figure 6: Overview of HB 10-1284



Source: Adapted from State of Colorado, Amendment 64 Legislation[27]

HB 10-1284, known as the Colorado Medical Marijuana Code, codifies sections §12-43.3-101 et seq., Colorado Revised Statutes (C.R.S.), and was passed in May 2010 and signed into law on June 2010. This bill established legalized medical marijuana centers and other business-related regulations. Additionally, it designated the Colorado Department of Revenue (DOR) as the state licensing authority as well as local licensing authorities throughout the state. This legislation also established the Medical Marijuana Enforcment Division (MMED) within the Department of Revenue to regulate the cultivation, manufacture, distribution and sale of medical marijuana and promote compliance with other laws that prohibit illegal trafficking. It also provided regulations for:

- Medical marijuana business owners;
- Local government;
- Physicians;
- Caregivers and patients; and
- The Colorado Department of Public Health and Environment (CDPHE).

According to HB 10-1284, an owner interested in opening a medical marijuana business was required to obtain approval first from their local licensing authorities. Once approved, the owner could apply to obtain a state license from the Department of Revenue. The law gave the MMED the authority to establish an application fee structure to cover the state and local licensing authorities' operating costs.

All existing center or manufacturer owners, or owners who had applied to a local government for operations by July 2010, were allowed to continue to operate as long as they registered with the Department Revenue and paid their license fee. They also had to certify that they were cultivating at least 70 percent of the marijuana necessary for their operations by September 2010.

Provisions were established for local licensing authorities which allowed local government to adopt a resolution or ordinance to license, regulate, or prohibit the cultivation and sale of medical marijuana. This needed to be completed by July 1, 2011. HB 10-1284 also allowed local licensing authorities to establish limitations on marijuana centers such as restricting the number and location of centers. If they did not establish local limitations, the ordinances defaulted to the requirements established in HB 10-1284 which are as follows:

- The center cannot be located within 1,000 feet of a school.
- Hours of operation must fall between 8:00 a.m. to 7:00 p.m. no matter which day(s) of the week.
- The cultivator may sell no more than six immature plants to a patient and cannot exceed more than half of the recommended plant count to a patient, primary caregiver, another medical marijuana cultivator, or to a marijuana infused products manufacturer. In other words, if patients grow their own medical marijuana, they can purchase up to six immature plants from a medical marijuana center. If a physician has recommended more than six plants, the patient can only receive half of the additional amount of immature plants at one time. So if a patient were allotted 20 plants, he or she could only purchase 10 of those immature plants at one time.
- The law prohibits physicians, minors, and law enforcement members from operating a dispensary. It prohibits certain individuals, including felons convicted of possession, distribution or use of a controlled substance, from obtaining medical marijuana center licenses.
- Licenses are valid for up to two years.
- Violations of the medical marijuana code are class 2 misdemeanors.[25]

The legislation required that physicians must have a "bona fide" relationship with a patient, keep records of all patients that are certified by the registry, cannot have an economic interest in marijuana centers, and are required to hold a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school, as well as meet certain educational and professional requirements.

It required caregivers to register with CDPHE for each patient they provide services up to five patients at any time. In addition, patients may only have one caregiver. Patients must

obtain registry cards and have them in their possession whenever they possess medical marijuana. CDPHE's responsibilities include keeping a confidential registry for caregivers and patients and issue medical marijuana registry cards.

HB 10-1284 created a vertically integrated, closed-loop commercial medical marijuana regulatory scheme. Cultivating, processing, and manufacturing marijuana as well as retail sales had to be a common enterprise under common ownership.[26]

The vertical integration model also requires that medical marijuana businesses must cultivate at least 70 percent of the medical marijuana needed for the operation of their business. The remaining 30 percent may be purchased from another licensed medical marijuana center. No more than 500 plants can be cultivated unless the Director of the Medical Marijuana Enforcement Division grants a waiver. If a facility cultivates more marijuana than it needs for its operation, it can sell the excess to other licensed facilities.

The vertical integration model also required that medical marijuana businesses must cultivate at least 70 percent of the medical marijuana needed for the operation of their business. The remaining 30 percent may be purchased from another licensed medical marijuana center. For Optional Premises Centers (OPC), no more than 500 plants may be cultivated unless the director of the Medical Marijuana Enforcement Division grants a waiver. If a facility cultivates more marijuana than it needs for its operation, it can sell the excess to other licensed facilities.

The legislation established rules for ownership including that the applicant must have been a Colorado resident for two years prior to filing the application. Applicants are fingerprinted, and the MMED investigates the qualifications of an applicant or licensee. The MMED checks character references, criminal histories, possible prior rehabilitation and educational achievements.[f]

Article 43.3 also establishes the types of licenses for the cultivation, manufacture, distribution and sale of medical marijuana. This article is the foundation for licensing requirements by the Marijuana Enforcement Division or Medical Marijuana Enforcement Division.

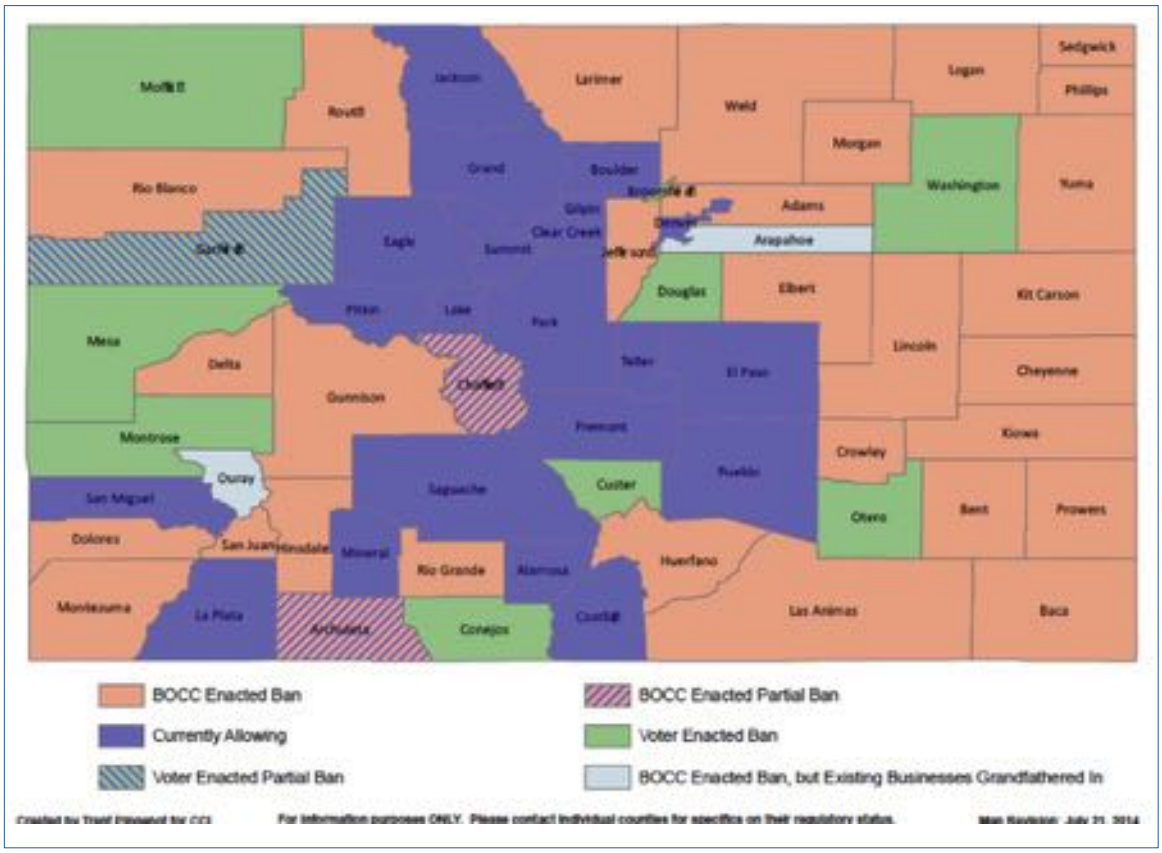
A significant provision in HB 10-1284 was the option for cities and counties to allow or prohibit any or all medical marijuana businesses such as medical marijuana centers and production of marijuana infused products. If a local municipality or county wished to exercise this option, it had to be done either by a special election or by a majority of the governing board (i.e., city council or county commissioners). A local governing board had until July 1, 2011, to vote to prohibit medical marijuana centers.

There are 64 counties in the state of Colorado. Denver and Broomfield have consolidated their city and county governments. In Figure 3, the counties' decisions for or against having medical marijuana centers is shown. Of those counties, 29 of the state's county board of commissioners voted to ban medical marijuana centers (peach shaded areas). Medical

f. If a person has a past felony drug conviction then that person cannot apply for medical marijuana center ownership. For all other felonies, a person can apply for an ownership license five years after the conviction. If someone with a past felony drug conviction applies for ownership of a retail marijuana store, then they must apply 10 years after all felonies. The Marijuana Enforcement Division also applies a moral character test when determining status of licensing.

marijuana centers are allowed by 22 counties (purple shaded areas). Voters enacted a ban in eight counties (green shaded areas). Two counties banned new centers but grandfathered in existing centers. In another two counties (pink and purple striped areas), the boards of county commissioners enacted a partial ban meaning they authorize only specific types of medical marijuana facilities within their jurisdiction, and in one county (grey and purple striped area), voters elected for a partial ban.

Figure 7: Medical Marijuana Centers – Regulatory Status



Source: Colorado Department of Revenue, Medical Marijuana Enforcement Division

The Colorado Medical Marijuana Code was amended in 2011 to provide for an "infused products manufacturing license."

As of December 1, 2014, statewide there were:

- 501 medical marijuana centers (dispensaries)
- 729 medical marijuana cultivation operations
- 149 medical marijuana infused product factories[28]

Patients must apply annually for a medical marijuana card. In January 2009, CDPHE registered 41,039 patients and in December 2014, there were 116,180 patients holding medical marijuana cards, resulting in a 183.1% increase in the number of registered marijuana patients.[29] As of January 31, 2014, the reported conditions for obtaining a medical marijuana card were:

- 94% for severe pain by 103,918 patients
- 13% for muscle spasms by 14,632 patients
- 10% for severe nausea by 10,904 patients
- 3% for cancer by 3,118 patients
- 2% for seizures by 2,111 patients
- 1% for glaucoma by 1,133 patients
- 1% for cachexia by 1,126 patients
- 1% for HIV/AIDS by 668 patients[30]

SB 10-209: Regulation of the Physician-Patient Relationships for Medical Marijuana Patients

SB 10-209 required CDPHE to establish new rules for issuing registry identification cards, documentation for physicians who prescribe medical marijuana, and sanctions for physicians who violate the law.[31] The law outlines the following requirements for a physician:

- Must have a bona fide physician-patient relationship;
- Must provide consultation with patient regarding patient's debilitating medical condition;
- Must provide follow-up care and treatment to the patient to establish efficacy of the use of medical marijuana;
- Must be licensed and in good standing with the Colorado Medical Board;
- Holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school; and
- Has not had his or her U.S. Department of Justice federal drug enforcement administration controlled substances registration suspended or revoked at any time.

A physician cannot:

- Offer a discount or any other thing of value to use as a particular primary caregiver, distributor, or other provider of medical marijuana to procure medical marijuana;
- Diagnose a debilitating condition at a location where medical marijuana is sold; or
- Hold an economic interest in an enterprise that provides or distributes medical marijuana.

The legislation established a marijuana review board and will review requests by patients under 21 years of age who are not veterans or military service and are seeking to be placed on the state's confidential registry for the use of medical marijuana.

2011: LEGISLATION REGULATING MEDICAL MARIJUANA CENTERS

HB11-1043 established rules for the purpose of cultivation, manufacture or sale of medical marijuana or medical marijuana-infused products. Within the law, it sets forth the powers and duties for MMED in reviewing marijuana industry applications and granting licenses.

This bill also requires primary caregivers who cultivate medical marijuana for their patients to register their cultivation location with the MMED.

2012: FEDERAL RESPONSE TO THE COLORADO MEDICAL MARIJUANA LAW

U.S. Attorney's Office Issues Warning Letters and Closes Businesses

John Walsh, the United States Attorney for the District of Colorado, issued three waves of letters to medical marijuana businesses who were deemed to be in violation of federal law. On January 12, 2012, 23 letters were issued to medical marijuana centers in Colorado advising them they were within 1,000 feet of schools and gave the businesses 45 days to close down before facing potential civil and criminal action.[33] By February 2012, all 23 businesses were shut down.

In March 23, 2012, the U.S. Attorney's Office issued a second wave of warning letters to another 25 medical marijuana centers and by May 8, 2012, they all were closed. The third and last wave of letters were sent on August 3, 2012, to another 10 businesses because they were operating within 1,000 feet of schools; these businesses subsequently closed.[34]

Medical Marijuana Enforcement Division Budget Shortfalls and Staff Reduction

The original Medical Marijuana Code licensing model was a "dual-licensing" model, which required that the local licensing authority issue the local license before the state licensing authority could issue the state license. There was a moratorium in place which would not allow any new applicants to apply for licenses until July 1st of 2011. It was decided by the state legislators (with the agreement of the DOR and other stakeholders such as the Colorado Municipal League) to extend the moratorium for another year to July 1, 2012. There were reasons why extending the moratorium made sense at that time such as the tremendous workload the MMED had with limited staff and infrastructure. The MMED was in the process of conducting background investigations (over 4,500 investigations) into the individuals and businesses seeking licenses from the state licensing authority with a limited staff. Also, many local licensing authorities had not adopted rules and had not issued local licenses by this time. It had been anticipated that once the moratorium had been lifted, a new round of applications and licenses would be issued. The MED was to obtain operating revenue from licensing and application fees as required through legislation. However, marijuana industries wanting to start up a business had to seek local

approval first. Local jurisdictions did not approve the applications as quickly as expected, and there was no "second wave" of renewal applications. Because of this delayed approval process, the revenue into MMED was significantly lower than anticipated.

The MMED created numerous positions in its first year. The MMED had been approved to hire approximately 55 full time employees (FTEs). During this time frame, the MMED had hired 38 FTEs only to discover they had to significantly reduce their staff due to the lack of income. As a result, many of the FTEs hired were either relocated to other agencies in the Department of Revenue or laid off. The impact of this staff reduction was not having the personnel needed to conduct the regulation oversight of a significant number of medical marijuana centers already in operation.

2012: RECREATIONAL MARIJUANA LEGISLATION PASSES

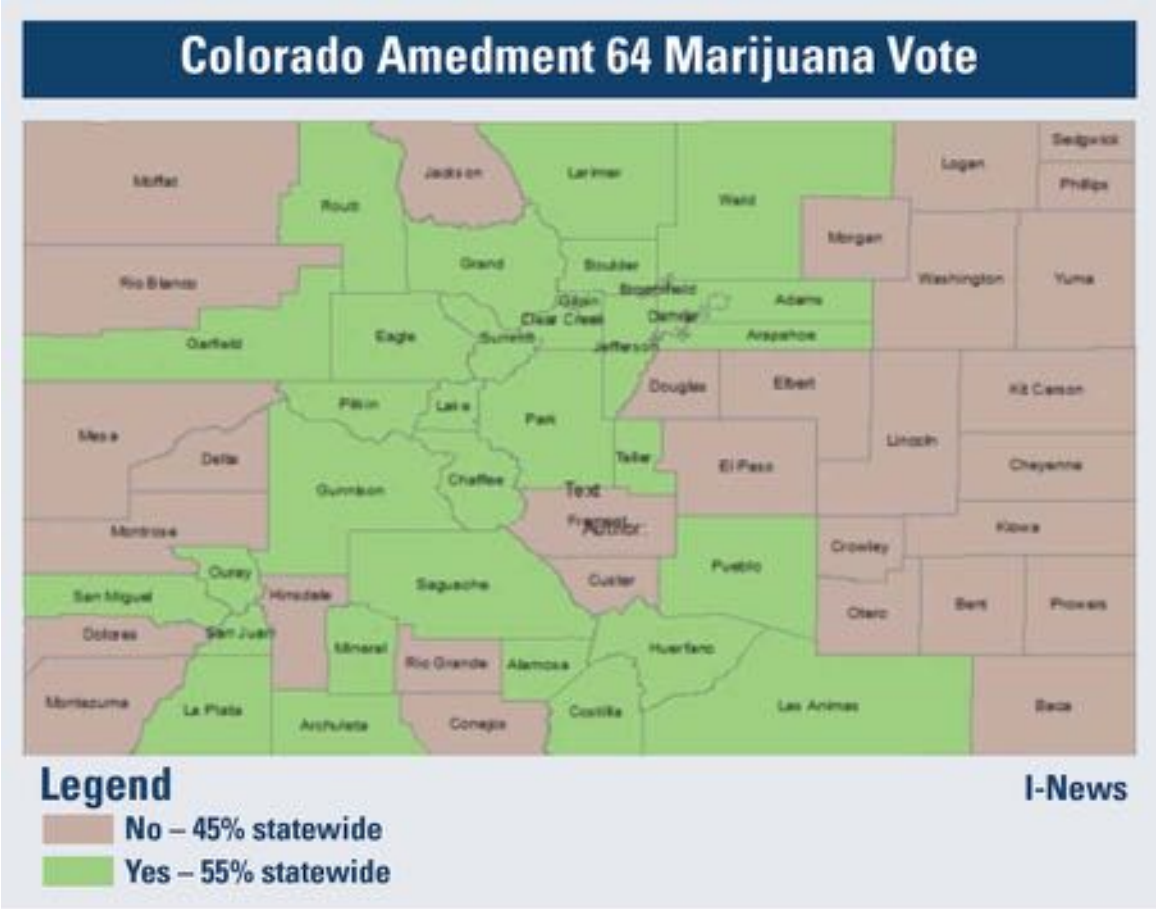
In February 2012, the initiative for the legalization of recreational marijuana was certified as having the more than 86,000 signatures required to be placed as an amendment on the November 2012 ballot, making Colorado the first in the nation to legalize recreational marijuana if passed.[35] The ballot measure read:

> "Shall there be an amendment to the Colorado constitution concerning marijuana, and, in connection therewith, providing for the regulation of marijuana; permitting a person twenty-one years of age or older to consume or possess limited amounts of marijuana; providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores; permitting local governments to regulate or prohibit such facilities; requiring the general assembly to enact an excise tax to be levied upon wholesale sales of marijuana; requiring that the first $40 million in revenue raised annually by such tax be credited to the public school capital construction assistance fund; and requiring the general assembly to enact legislation governing the cultivation, processing, and sale of industrial hemp?"[36]

Voter Turnout

The citizens of Colorado passed Amendment 64 on November 6, 2012, adding to the state constitution the legalization of marijuana for personal use.[37] With a voter turnout of 69%, the amendment passed with 55% of voters approving (see Figure 4).

Figure 8: Map of Counties Passing Amendment 64



Source: Rocky Mountain PBS News

Amendment 64: Use and Regulations of Marijuana

The law provides for regulation to be similar to that of alcohol regulation. Specifically, only individuals 21 years or older have the ability to:

- Possess, use, display, purchase, or transport marijuana accessories or one ounce or less of marijuana;
- Possess, grow, process, or transport no more than six marijuana plants, with three or fewer immature and three mature cannabis plants (i.e., flowering plants) on the premises where the plants are grown. These plants must be in an enclosed, locked space; and cultivation is not conducted openly or publicly, and is not made available for sale;
- Transfer one ounce or less of marijuana without payment to a person who is 21 years or older; and
- Assist another person, 21 years or older, in any of the above acts.
- Also, consumption of marijuana is prohibited in open and public areas or in a manner that endangers others.

It makes it lawful for people 21 years or older to:

- Manufacture, possess, or purchase marijuana accessories or sell marijuana accessories to a person 21 years or older;
- Possess, display, or transport marijuana or marijuana products;
- Purchase marijuana or marijuana products from a marijuana cultivation facility;
- Sell marijuana or marijuana products to consumers if the person has a current, valid license to operate a retail marijuana store or is acting in his or her capacity as an owner, employee or agent of a licensed marijuana store;
- Cultivate, harvest, process, package, transport, display, or possess marijuana;
- Deliver or transfer marijuana to a marijuana testing facility;
- Sell marijuana to a marijuana cultivation facility, a marijuana product manufacturing facility or a retail marijuana store if the person conducting the activities has obtained a current, valid license to operate a marijuana cultivation facility or is acting in his or her capacity as an owner, employee, or agent of a licensed marijuana cultivation facility;
- Package, process, transport, manufacture, display or possess marijuana or marijuana products, delivery to marijuana testing facility, purchase from a marijuana cultivation facility or manufacturing facility if they are acting as an owner, employee, or agency of a licensed marijuana product manufacturing facility; and
- Lease or allow the use of property owned, occupied, or controlled by any person, corporation or other entity for any of the activities conducted lawfully in accordance with the above regulations.

Marijuana legalization will be regulated by MED, which had to adopt regulations necessary for implementation of recreational marijuana no later than July 1, 2013. Additional requirements include

- Application, licensing, and renewal fees shall not exceed $5,000, with the upper limits adjusted for inflation;
- Licensure is for the operation of marijuana establishments;
- Security requirements for marijuana establishments;
- Requirements to prevent the sale or diversion of marijuana and marijuana products to individuals under the age of 21;
- Label requirements for marijuana and marijuana infused products;
- Health and safety regulations and standards for the manufacture of marijuana products and the cultivation of marijuana;
- Restrictions on the advertising and display of marijuana and marijuana products;
- Civil penalties for failure to comply with regulations established by DOR;

- Tax levy not to exceed 15 percent prior to January 1, 2017, at which time the General Assembly will determine a rate to apply thereafter; the first $40 million in revenue raised annually from excise tax will be credited to the Public School Capital Construction Assistance Fund; and a competitive application process which will consider whether the applicant has:
  - Prior experience producing or distributing marijuana or marijuana products in the locality in which the applicant seeks to operate a marijuana establishment, and
  - Complied consistently with the Colorado Medical Marijuana Code.

Local ordinances or regulations specifying the entity within the locality that is responsible for processing applications submitted for licenses to operate a marijuana establishment within the boundaries of the locality had to be enacted no later than October 1, 2013. Local government could enact ordinances or regulations that are not in conflict with the existing law that determine:

- Time, place, manner and number of marijuana establishments;
- Procedures for the issuance, suspension, and revocation of a license issues by the locality;
- Schedule of annual operating, licensing, and application fees for marijuana establishments;
- Civil penalties for violation of an ordinance or regulation government the time, place, and manner of marijuana establishment operations; and
- Opting in or out of allowing marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through ordinance by the local governing authority (i.e., city council or board of commissioners) or if through public vote, on a general election ballot during an even numbered year. Local governing authorities can remove or approve marijuana establishments any time or as many times as they deem is in the best interest of their community.

An employer is not required to permit or accommodate the use, consumption, possession, transfer, display, transportation sale or growing of marijuana in the workplace. Employers may have policies restricting the use of marijuana by employees. A person, employer, school, hospital, detention facility, corporation or any other entity who occupies, owns, or controls a property may prohibit or regulate the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.

In addition, the law addresses hemp[40] as follows:

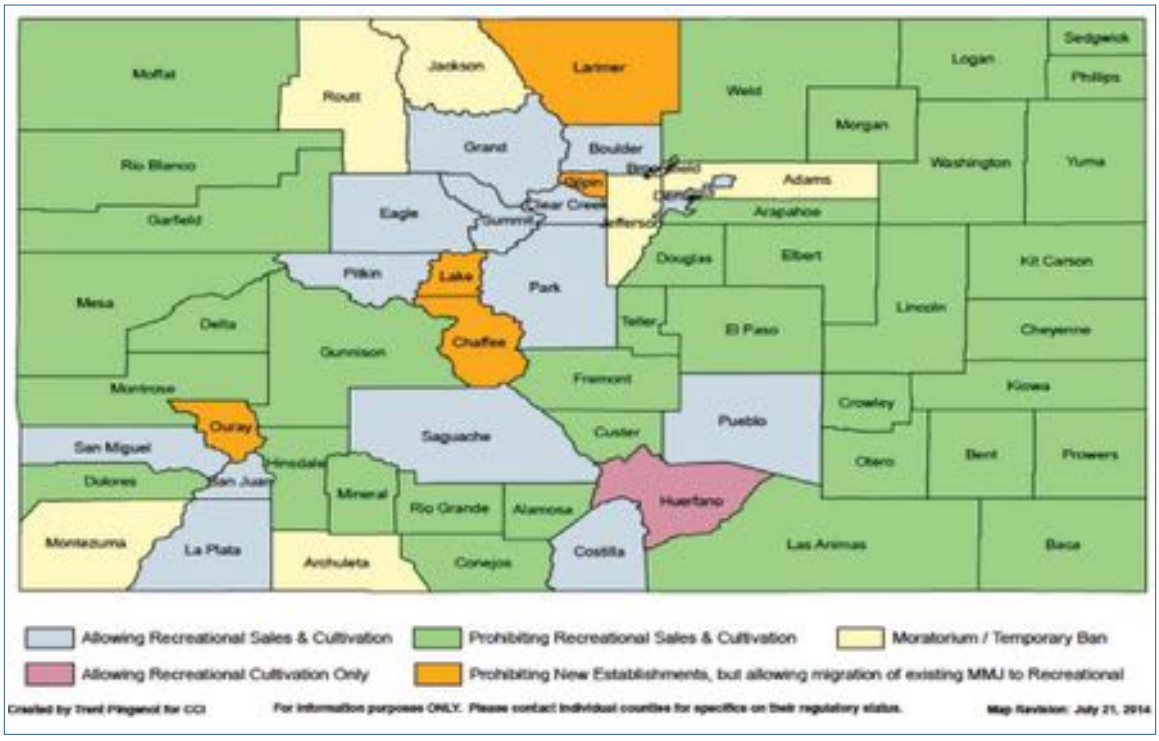
- Industrial hemp should be regulated separately from strains of cannabis with higher delta-9-tetrahydrocannabinol (THC) concentrations that do not exceed three-tenths percent on a dry weight basis; and
- Not later than July 1, 2014, the General Assembly will enact legislation governing the cultivation, processing and sale of industrial hemp.[g]

g. The Industrial Hemp Regulatory Program Act was passed through the Hemp Act of 2014, Title 35 Agriculture, Article 61, Industrial Hemp Regulatory Program, C.R.S. 35-61-109. The Colorado Department of Agriculture is responsible for oversight; rules pertaining to the administration and enforcement of this act is established through 8 CCR 1203-23.

2014: RECREATIONAL MARIJUANA STORES OPEN FOR BUSINESS

Recreational marijuana stores opened for business on January 1, 2014. Thirty-seven cities and towns have opted out of allowing recreational marijuana stores (see Figure 5), including Colorado Springs, the state's second largest city, and Greeley, the third largest city. Fifteen cities and towns have allowed the recreational sales and cultivation, including Denver, the largest city in Colorado. Six counties have a moratorium on allowing stores, five counties have allowed the existing medical marijuana centers to also sell for recreational purposes, and one county allows recreational cultivation only.

Figure 9: Locations for Towns and Cities Opting out of Recreational Retail Stores



Source: Colorado Department of Revenue, Marijuana Enforcement Division[41]

As of December 2014, there are:

- 300 Medical Marijuana Centers in Denver
- 496 Medical Marijuana Centers statewide
- 212 retail stores
- 279 cultivation operations
- 63 infused product factories
- 8 laboratory testing facilities[42]

BANKING CHALLENGES FOR COLORADO MARIJUANA INDUSTRY

The Cole Memorandum on Marijuana Related Financial Crimes

As medical marijuana centers began making money, opening a bank account was not possible since banks, which are federally regulated, cannot receive funds obtained illegally under federal law. According to law enforcement officials in the Police Foundation focus groups, these business owners pay for everything in cash and have to store their revenue in their own safes. This has posed a safety risk for the owner, employees, and patrons who are at risk of being robbed either at the business, in the parking lot, or while being followed to another location.

In response to the banking problem, Deputy U.S. Attorney General James M. Cole released a memorandum on February 14, 2014, titled "Guidance Regarding Marijuana Related Financial Crimes." Besides reiterating the enforcement of the Controlled Substance Act, Cole outlined the expectations of the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) for financial institutions providing services to marijuana-related businesses.[43] Cole's memo reiterated the eight federal priorities in enforcing the Controlled Substance Act Enforcement:

- Distribution of marijuana to minors;
- Revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Diversion of marijuana from states where it is legal under state law in some form to other states;
- State-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Violence and the use of firearms in the cultivation and distribution of marijuana;
- Drugged driving and the exacerbation of other adverse public health consequences associates with marijuana use;
- Growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Marijuana possession or use on federal property.

Cole further summarized statutes for prosecuting financial institutions that accept money from the marijuana industry, specifically related to:

- Money laundering statutes (18 U.S.C. §§ 1956 and 1957), making it unlawful to engage in financial and monetary transactions with the proceeds from, among other things, marijuana-related violations of the Controlled Substance Act.
- Unlicensed money transmitter statute (18 U.S.C. § 1960), which makes it illegal to engage in any transactions by or through a money transmitting business involving funds "derived from" marijuana-related conduct

- Record keeping in accordance to the Business Secrecy Act of 1970 so the U.S. government can detect and prevent money laundering, tax evasion, or other criminal activities.[44]

The U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN) released, on the same day as the Cole memo, their expectations regarding marijuana-related business.[45]

The Four Models for Regulating Medical and Recreational Marijuana

As a result of the passages of Amendments 20 and 64, four types of marijuana regulation and oversight models emerged (see Figure 6). Having different models and regulatory agencies providing oversight has created challenges. The first model began with the passage of Amendment 20: the caregiver/patient model for medical marijuana.

The first model began with the passage of Amendment 20: the caregiver/patient model for medical marijuana. W. Lewis Koski, Director of the Marijuana Enforcement Division, wrote that "the affirmative defense (in Amendment 20) was narrowly tailored to patients who were suffering from debilitating medical conditions provided they could prove that a doctor was recommending the use of cannabis to help treat the condition (Colorado Constitution, Art. XVII, § 14)….This model was not intended to take on the tone of a commercial market and it was my understanding that the fear of federal intervention kept most of the caregivers operating underground. Since this was relatively unique public policy at the time, it stands to reason that cultivators/caregivers were unwilling to come from out of the shadows and make themselves known to law enforcement since after all, the cultivating, manufacturing, distribution and possession of any marijuana was still criminal under federal law (Controlled Substances Act). It remains so today."[46]

With the proliferation of medical marijuana centers, the second model, Medical Commercial, was established for licensing and regulating the medical marijuana industry. When Amendment 64 was passed, the recreational models were established. The Medical and Recreational Commercial models are regulated by the MED and systems are in place for monitoring the commercial industry.

The regulation by local law enforcement of the Caregiver/Patient and the Recreational Home Grows models is more challenging. Local law enforcement agencies are not authorized to randomly perform home checks. They are bound by the law and cannot investigate a home grow unless a complaint has been filed or if the officer has some probable cause and the resident willingly allows the officer to enter the home. There is nothing that would allow or prohibit local law enforcement to conduct "knock & talks" at a caregiver location, but they would need to establish probable cause to execute a criminal search if they believe crimes are being committed. Some municipalities are enacting ordinances which prohibit noxious odors and the number of plants allowed to be grown residentially, and local law enforcement can use those ordinances to address neighborhood complaints.[47]

Figure 10: Four Models Created through Amendments 20 and 64

Medical Commercial	Recreational Commercial
– Licensing for businesses, owners and employees – Licensed by Department of Revenue, Marijuana Enforcement Division – Regulatory authority: Marijuana Enforcement Division	– Licensing for businesses, owners and employees – Licensed by Department of Revenue, Marijuana Enforcement Division – Regulatory authority: Marijuana Enforcement Division
Caregiver/Patient	**Recreational Home Grows**
– Caregivers who can grow for up to 5 patients and themselves – Routinely see large grows – Patients are licensed by Colorado Department of Public Health and Environment – Caregiver regulatory authority: Colorado Department of Health and Environment and local law enforcement	– Anyone 21 years of age or older can grow up to 6 plants – No licensing required – Regulatory authority: local law enforcement

Source: Adapted from Chief Marc Vasquez[48]

ENDNOTES FOR APPENDIX 1

[1] Comprehensive Drug Abuse Prevention and Control Act § Statute 84 (1970)

[2] Note: According to the Controlled Substances Act of 1970, a Schedule I controlled substance is defined as, (A) The drug or other substance has a high potential for abuse; (B) The drug or other substances has no currently accepted medical use in treatment in the United States; and (C) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

[3] A Guide to Drug-Related State Ballot Initiatives. (n.d.). *Colorado Amendment 20*. Retrieved January 1, 2015 from http://www.nationalfamilies.org/guide/colorado20.html; Vasquez, Marc, "Marijuana in Colorado," PowerPoint presentation to Metro State University, October 2014.

[4] "Medical Marijuana Registry Program Update (as of December 31, 2008)," Colorado Department of Public Health and Environment.

[5] "Medical Marijuana Registry Program Update (as of December 31, 2009), Colorado Department of Public Health and Environment.

[6] Denver Marijuana Initiative Winning Again: Question 100 Makes Pot Enforcement Low Priority. (2007, November 7). *The Denver Channel*. Retreived from http://www.thedenverchannel.com

[7] Colorado Ski Town Votes to Legalize Marijuana. (2009, November 4). *NBC NEWS*. Retrieved from www.nbcnews.com

[8] People v. Clendenin, No. 08CA0624, Col App 2009.; Colorado appeals court: "Caregiver" must do more than grow pot. (2009,October 29). *The Denver Post*. Retrieved from www.denverpost.com

[9] People v. Clendenin, No. 08CA0624, Col App 2009.

[10] The Open Meetings Act, C.R.S. § 24-6-402 http://www.rcfp.org/colorado-open-government-guide/i-statute-basic-application/d-what-constitutes-meeting-subject-law/2-.

[11] The Colorado State Administrative Procedures Act, C.R.S. § 24-4-101 et seq. http://www.sos.state.co.us/pubs/info_center/laws/Title24Article4.html#24-4-103

[12] People v. Clendenin, No. 08CA0624, Col App 2009.

[13] People v. Clendenin, No. 08CA0624, Col App 2009.

[14] Ingold, J. (2009, November 10). Judge Tosses Out Health Board Decision on Medical Pot. *The Denver Post*. Retrieved from www.denverpost.com

[15] Rocky Mountain High Intensity Drug Trafficking Area. (2014, August). The legalization of marijuana in Colorado: The Impact. Retrieved from www.rmhidta.org .

[16] Eric Holder Says DOJ will let Washington, Colorado Marijuana Laws Go into Effect. (2013, August 29). *Huffington Post*. Retrieved from http://www.huffingtonpost.com

[17] Ogden, D.W. (2009). Investigations and prosecutions in States authorizing the medical use of marijuana [Memorandum] Washington, DC: Department of Justice.

[18] Ogden, D.W. (2009). Investigations and prosecutions in States authorizing the medical use of marijuana [Memorandum] Washington, DC: Department of Justice.

[19] Chief Marc Vasquez, Chief of Police, Erie, CO.

[20] Colorado Department of Health and Environment, Medical Marijuana Registry Program Update reports for 2001, 2003, 2004, 2005, 2006, 2007, 2008 and 2009, https://www.colorado.gov/.

[21] Ibid., https://www.colorado.gov/.

[22] Department of Revenue, Marijuana Enforcement Division.

[23] Map created by Lt. Ernie Martinez, Director-At-Large for the National Narcotic Officers' Associations' Coalition.

[24] Regulation of Medical Marijuana Act § 10-0773.02.

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APPENDIX 2: GLOSSARY OF TERMS

This glossary contains terms frequently used in the discussion of the new medical marijuana and recreational marijuana laws approved by Colorado voters in Amendment 20 and Amendment 64. It also includes a number of terms frequently used by and about Colorado law enforcement and their involvement in the new legal marijuana laws. The intent of this glossary is to assist the reader with terms used in this report that may not be familiar to those outside of the field. These terms are frequently used in the marijuana industry and law enforcement when discussing marijuana.

Amendment 20 – Colorado voters passed "Medical Use of Marijuana 2000," allowing persons suffering from debilitating medical conditions to legally grow and use marijuana under strict registry guidelines. This amended Article XVIII of the Colorado Constitution.

Amendment 64 – Citizens of Colorado passed the "Use and Regulation of Marijuana" amendment in 2013, allowing the recreational use of marijuana and licensing for cultivation facilities, product manufacturing facilities, testing facilities, and retail stores. This amended Article XVIII of the Colorado Constitution.

Black Market – The sale or illegal trade of consumer goods that are scarce or heavily taxed. Black market marijuana is considered controlled by criminals and drug cartels. http://www.businessdictionary.com/definition/black-market.html

Caregiver – A person managing the well being of a patient with a debilitating health condition. This person cannot only deliver medical marijuana or marijuana paraphernalia, but must also provide other patient care (i.e., transportation, housekeeping, meal preparation, shopping, and arranging access to medical care). The person providing care must be 18 years of age or older; cannot be the patient or the patient's physician; and cannot have a primary caregiver of their own. https://www.colorado.gov/pacific/cdphe/medical-marijuana-caregiver-eligibility-and-responsibilities

Colorado Department of Public Health and Environment (CDPHE) – Legislative appointed agency that registers medical marijuana patients and caregivers.

Concentrates – Extracted from marijuana, it usually has higher levels of THC through a chemical solvent process (most widely using butane). Depending upon what is done during the extraction process, it can produce different forms of the THC product, such as oil, wax, and shatter. These concentrates are used in marijuana-infused products, such as food and drink products. These concentrates can also be smoked, dabbed, or used in oils or tinctures.

Diversion – Is delivering, distributing, or dispensing of a drug illegally. http://www.deadiversion.usdoj.gov

Drug Cartel – A criminal organization involved in drug trafficking operations.

Edibles – Marijuana infused products in the forms of food or drinks, such as butter, pizza, snacks, candies, soda pop, and cakes.

Extraction Processes – The distillation process to extract THC resin from the marijuana plant using a liquid-to-liquid process through water or chemical solvents. Chemical solvents are more popular for extractions (i.e., butane, hexane, isopropyl alcohol, or methanol) because a higher chemical extraction of THC can be obtained. Chemical extraction processes are more dangerous if not done in a professional and controlled environment because gas fumes from the process can ignite on fire and explode.

Gray Market – A market of semi-legal marijuana produced by caregivers and anybody over 21 who grows their own marijuana. The marijuana in the gray may be legal or grown in legal operations, but its sale circumvents authorized channels of distribution.

Hashish and Hash Oil – To obtain higher levels of THC, the flower from the Cannabis sativa is concentrated through distraction processes, which results in a resin called hashish or a sticky, black liquid called hash oil. Bubble hash is produced through a water process.

Industry-related Crime – Offenses directly related to licensed marijuana facilities.

Marijuana – This is the dried leaves, flowers, stems, and seeds from the cannabis plant. It is usually smoked in hand-rolled cigarettes (also called joints) or in pipes or water pipes (also known a bongs). It can also be mixed in food. When smoked or ingested, it alters perceptions and mood; impairs coordination; and creates difficulty with thinking and problem solving and disrupts learning and memory. http://www.drugabuse.gov/publications/drugfacts/marijuana). Long-term use can contribute to respiratory infection, impaired memory, and exposure to cancer-causing compounds (http://www.samhsa.gov/disorders/substance-use).

Marijuana Cultivations – This is the propagation of cannabis plants beginning with cuttings from other cannabis plants or from seed. In Colorado, all plants must be started from cuttings.

Marijuana Infused Products – Foods, oils, and tinctures containing THC available for consumer purchase.

Marijuana Product Manufacturers – A licensed business through the Department of Revenue, Medical Marijuana Division, that produces and sells concentrates, topicals (e.g., massage oils and lip balms), and edibles (e.g., cakes, cookies, candies, butters, meals, and beverages).

Medical Marijuana – The use of cannabis for the purposes of helping to alleviate symptoms of those persons suffering from chronic and debilitating medical conditions.

Medical Marijuana Center (Centers) and Medical Marijuana Dispensaries (Dispensaries) – The reference to medical marijuana businesses that sell to registered patients has interchangeably been called 'medical marijuana *dispensaries*' and 'medical marijuana *centers*.' Dispensaries connote a doctor's prescription to receive medication.

Colorado doctors do not prescribe medical marijuana, they simply make a certification that recommends the number of plants a patient needs. Since a prescription is associated with dispensaries, the reference to medical marijuana businesses as centers has become the preferable terminology. The medical marijuana businesses are the "center" of a financial transaction between patient and the grow facility.

Medical Marijuana Conditions – A person wanting to register for a medical marijuana card must have one of the following debilitating or chronic conditions: cancer, glaucoma, HIV or AIDS Positive, Cachexia (also known as wasting syndrome in which weight loss, muscle atrophy, fatigue, weakness and significant loss of appetite), persistent muscle spasms, seizures, severe nausea, and severe pain. https://www.colorado.gov/pacific/sites/default/files/CHEIS_MMJ_Debilitating-Medical-Conditions.pdf

Medical Marijuana Division (MED) – Located in the Colorado Department of Revenue, the MED licenses and regulates medical and retail marijuana industries. The MED implements legislation, develops rules, conducts background investigations, issues business licenses and enforces compliance mandates. https://www.colorado.gov/enforcement/marijuanaenforcement

Non-industry Crime – Marijuana taken during the commission of a crime that did not involve a licensed marijuana facility

Patient Medical Marijuana Registration Card – After a patient's application is submitted, reviewed, and approved by the Colorado Department of Public Health and Environment, the patient receives a red license card to be presented to registered Medical Marijuana Centers for purchasing marijuana. The patient must renew annually to remain with the registry. https://www.colorado.gov/pacific/cdphe/renew-your-medical-marijuana-registration-card

Physician's Recommendation – Physicians must qualify to write patient recommendations for medical marijuana. These qualifications include having a bona fide physician-patient relationship and a good standing with the medical licensing board. Physicians must certify annually with the Colorado Department of Public and Health Environment in order to assist people wanting to receive medical marijuana. Physicians do not *prescribe* marijuana, but rather provide a marijuana *plant count recommendation* for the patient based on the severity of the patient's condition. A physician is not limited in the number of plants recommended in a year for a patient. If a physician does not select a marijuana plant count option, then the patient will receive the standard 6-plants/2 ounces of useable marijuana as defined through legislation. https://www.colorado.gov/pacific/sites/default/files/Medical-Marijuana-Registry_Physician-Newsletter_Mar2012.pdf

Probable Cause – A reasonable and factual basis for believing a crime has been committed in order to make an arrest, conduct a search, or obtain a warrant.

Recreational marijuana – The use of cannabis as a pastime to alter a person's state of consciousness.

Red Card – This is slang for a patient medical marijuana registration card because the license color is red.

Registered Medical Marijuana Patient – Someone who has gone through the approval process and obtains a licensed medical marijuana patient card from the Colorado Department of Public Health and Environment.

Retail marijuana stores – Licensed stores that can sell marijuana, paraphernalia, and marijuana infused-products.

Seed-to-sale – The tracking process for medical marijuana from either the seed or immature plant stage until the medical marijuana or medical infused-product is sold to a customer at a medical marijuana center or is destroyed. This tracking system is used by the Department of Revenue, Marijuana Enforcement Division, to monitor licensed marijuana businesses inventory. https://www.colorado.gov/pacific/sites/default/files/Retail%20Marijuana%20Rules,%20Adopted%20090913,%20Effective%20101513%5B1%5D_0.pdf

Schedule I Controlled Substances – These drugs, substances or chemicals are not currently accepted for medical use and have a high potential for drug abuse as defined in the Substance Control Act of 1970. These are the most dangerous drugs that can potentially cause severe psychological or physical dependency. Drugs in this category include: heroin, LSD, marijuana, ecstasy, methaqualone, and peyote. http://www.dea.gov/druginfo/ds.shtml

Substance Control Act of 1970 – This law regulates the manufacturing and distribution of narcotics, stimulants, depressants, hallucinogens, anabolic steroids, and illicit production of controlled substances. These drugs are placed within one of the five schedules based on medicinal value, harmfulness, and potential for abuse or addiction.

THC (Tetrahydrocannabinol) – THC is the mind-altering chemical found in the Cannabis sativa plant (which is one species of the hemp), specifically in the leaves, flowers, stems, and seeds.

Vape Pens – A battery operated heating element that vaporizes liquid marijuana oils.

APPENDIX 3: COLORADO ASSOCIATION OF CHIEFS OF POLICE MARIJUANA POSITION PAPER

Colorado Association of Chiefs of Police, Inc.

Marijuana Position Paper
March 13, 2014

Philosophy and Position:

The Colorado Association of Chiefs of Police (CACP) recognizes that Amendment 20 and Amendment 64 of the Colorado Constitution were passed by voters in 2000 and 2012 respectively. The Colorado General Assembly has enacted legislation which legalized the cultivation, distribution, possession and non-public consumption of small amounts of medical and recreational marijuana. In 2013, the Colorado General Assembly enacted legislation which legalized and regulated the commercial, retail cultivation and sale of small amounts of marijuana. The statutes which address medical and recreational marijuana cultivation, sale and possession have been passed by the Colorado General Assembly and signed into law by the Governor. The CACP recognizes that society's views and norms are evolving on the use of marijuana yet we also believe that public safety is also of paramount concern to our residents, businesses and visitors.

- It is the position of the Colorado Association Chiefs of Police that a primary mission and focus of Colorado law enforcement officers represented by the CACP is the prevention and reduction of crime and disorder. Marijuana legalization will negatively impact traffic safety and safety in Colorado communities. The CACP is committed to research and the implementation of practices and strategies which will maintain safety in our communities.

- It is recognized that Colorado peace officers have a duty and responsibility to uphold the Colorado Constitution and amendments to that constitution as well as local, state and federal laws.

- The conflict between Federal law and State law with regard to marijuana remains a major obstacle and needs to be resolved as soon as possible.

- The Colorado Association of Chiefs of Police is concerned that widespread marijuana use has the potential to adversely affect the safety, health and welfare of Colorado residents, businesses and visitors. There are concerns that marijuana use will adversely affect traffic safety on our highways and roadways and that marijuana legalization will result in an increase in marijuana and overall drug use in our schools.

- The Colorado Association of Chiefs of Police supports community education to reduce the use of marijuana by our youth and to highlight the risks of marijuana use to our communities and individuals. The CACP requests that adequate funding be provided for the development and delivery of community and youth education.

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Colorado Association of Chiefs of Police, Inc.

- The Colorado Association of Chiefs of Police is concerned for the safety of the motoring public and passengers as it pertains to driving under the influence of drugs. Since the scientific evidence constituting impairment has not yet been clearly defined, the presumptive inference standard of impairment at 5 nanograms should be considered a starting point with additional concerns expressed for the combination of alcohol and marijuana in a person's system while operating a motor vehicle.
    - The CACP strongly supports Colorado peace officers being trained in Advanced Roadside Impaired Driving Enforcement (ARIDE) and as Drug Recognition Experts (DRE) and requests that adequate funding be provided to increase training for peace officers statewide.
    - The CACP requests that funding be provided for the purchase of oral fluid testing equipment for local agencies to explore the effectiveness of this technology in determining if drivers are under the influence of marijuana or other legal and illegal drugs. Training on use of such equipment should also be funded.
    - It has been recognized by experts in the field that being under the influence of both alcohol and marijuana is more dangerous than being under the influence of just alcohol or just marijuana. The CACP supports additional legislation or changes in current law to enhance the seriousness of offenses when drivers are found to be impaired by both alcohol and marijuana and/or other drugs.
- The Colorado Governor impaneled an Amendment 64 implementation task force. The Colorado Association Chiefs of Police were represented on this task force and numerous recommendations were ultimately made by the task force. The Amendment 64 Implementation Task Force had several Guiding Principles. Two of those Guiding Principles which focus on law enforcement include:
    - Establish tools that are clear and practical, so that the interactions between law enforcement, consumers, and licensees are predictable and understandable.
    - Ensure that our streets, schools, and communities remain safe.
- There were numerous recommendations, which received consensus approval by the Amendment 64 task force, which focus on the two outlined principles and it is the position of the CACP that those recommendations should be implemented without delay.

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- The CACP conducted a survey regarding funding priorities for law enforcement. This survey was sent to members of the CACP Legislative Subcommittee and the survey results identified seven priorities:
  - Priority One:
    - Funding for ARIDE (Advanced Roadside Impaired Driving Enforcement) and Drug Recognition Expert (DRE) training.
  - Priority Two:
    - Provide immediate funding for the purchase of oral fluid testing equipment for local agencies. Also provide funding for training on use of equipment, etc.
  - Priority Three:
    - Funding for patrol officer and investigator training development and implementation in Colorado Marijuana Code. Overtime funding for trainers and students (similar to POST regional training scholarships).
  - Priority Four (Four Programs/Initiatives Tied):
    - Funding to support the creation of a state-wide database on marijuana crimes
    - Funding to support Drug Task Force Operations if investigation is focused on criminal organizations involved in marijuana trafficking.
    - Provide funding for local agencies to fund marijuana compliance officers. Those officers would focus on the Colorado Marijuana Code and local ordinances, both commercial/retail and home cultivation. Would be somewhat like a municipal inspector who is well-versed in fire codes, health codes, etc.; may be sworn or non-sworn.
    - Funding to implement DUI/DUID check points and conduct presumptive testing on marijuana and other drugs.
- CACP is concerned with the conflicts which exist between Amendment 20 and Amendment 64. The CACP supports legislation which will clearly define and outline legal vs. illegal marijuana cultivation and distribution under both Colorado constitutional amendment 20 and 64.
- The CACP has concerns regarding the lack of oversight of plant count recommendations made by doctors for medical marijuana patients. As an example, the Colorado Department of Public Health and Environment (CDPHE) routinely receives recommendations for allowable plant counts far in excess of the six plant limit without any justification as to why additional plants are necessary.

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Colorado Association of Chiefs of Police, Inc.

- The CACP supports an effective and robust regulatory system, which can regulate the retail-commercial distribution of medical and recreational marijuana.

- The CACP is concerned with the lack of regulatory oversight of non-commercial caregiver and recreational cultivations, which are commonly referred to as "Home Grows". The CACP believes there is great potential for an increase in violent crime and the potential for diversion of marijuana produced in non-commercial, licensed cultivations.

- The CACP is concerned there is a lack of prosecution of marijuana-related cases which are outside the parameters of legal marijuana cultivation and distribution in Colorado. The CACP supports prosecution of behavior which is illegal under Colorado constitution, statutes and municipal & county ordinances. It is of paramount importance that what is legal vs. what is illegal be clearly defined and a bright line between legal and illegal behavior be established.

- Diversion of marijuana from non-commercial marijuana cultivations remains a major source of marijuana to youth and to buyers who live outside the State of Colorado.

- The CACP acknowledges great concern for the diversion of marijuana outside the state of Colorado and for the availability of marijuana to minors.

- It is the position of the Colorado Association Chiefs of Police that clear direction and guidance is essential for our officers, prosecutors and community. The Colorado Association of Chiefs of Police supports legislation, training and education which provide clear direction and guidance to our officers and the communities we serve.

- The Colorado Association of Chiefs of Police support development and analysis of accurate data to determine the impact to the communities we serve. The Colorado Association of Chiefs of Police will partner with all stakeholders, including all local, state and federal law enforcement partners to ensure safety in the communities we serve and will assist in the collection of data to determine the impact of marijuana legalization in Colorado.

The Colorado Association of Chiefs of Police is committed to working with all stakeholders to ensure that all Colorado communities remain safe and the legalization of marijuana does not adversely impact the communities in which we live and work.

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APPENDIX 4: FEDERAL GUIDANCE MEMOS ON STATE MARIJUANA LEGALIZATION LAWS

Marijuana remains a Schedule I controlled substance and is an illegal drug under the Federal Controlled Substance Act. Federal officials have made it clear on numerous occasions that federal law enforcement will continue to enforce the law when activities involving marijuana amount to a violation of federal statutes.

However, the U.S. Department of Justice has since 2009 set out parameters under which the federal law may be enforced within states, and has otherwise allowed states to enforce their own laws regarding medical marijuana, and now in Colorado, recreational use of marijuana.

The guidance regarding federal enforcement was first laid out in a 2009 memo from Deputy Attorney General David W. Ogden to federal prosecutors, attached below. Following this guidance, federal law enforcement in 2012 informed a total of 58 marijuana businesses in Colorado that they were in violation of the conditions the federal government has laid out under which it would consider a marijuana operation illegal. All of these businesses agreed to close without prosecution.

This guidance policy was reinforced by a second memo issued in 2014 by Deputy Attorney General James M. Cole, also attached below. This memo expanded the guidelines to inform financial institutions of how federal money laundering laws will be enforced with regards to accounts for marijuana businesses that are deemed legal at the state level.

This latter guidance was supported by a memo (also attached) from the Financial Crimes Enforcement Network of the U.S. Department of Treasury, also clarifying the laws on money laundering with regard to marijuana businesses deemed legal under state laws.

Federal policy continues to evolve as more states allow some form of legal marijuana. The U.S. Congress, in the 2015 Appropriations omnibus funding bill, approved language barring any federal agency from using funds to enforce laws against medical marijuana operations deemed legal under state laws; however, this provision will expire at the end of the fiscal year on September 30, 2015.

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.[1]

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests on its expectation that states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper; it must also be effective in practice. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

[1] These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch
United States Attorney
Eastern District of New York
Chair, Attorney General's Advisory Committee

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Ronald T. Hosko
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigation

Department of the Treasury
Financial Crimes Enforcement Network

Guidance

FIN-2014-G001
Issued: February 14, 2014
Subject: BSA Expectations Regarding Marijuana-Related Businesses

The Financial Crimes Enforcement Network ("FinCEN") is issuing guidance to clarify Bank Secrecy Act ("BSA") expectations for financial institutions seeking to provide services to marijuana-related businesses. FinCEN is issuing this guidance in light of recent state initiatives to legalize certain marijuana-related activity and related guidance by the U.S. Department of Justice ("DOJ") concerning marijuana-related enforcement priorities. This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations, and aligns the information provided by financial institutions in BSA reports with federal and state law enforcement priorities. This FinCEN guidance should enhance the availability of financial services for, and the financial transparency of, marijuana-related businesses.

Marijuana Laws and Law Enforcement Priorities

The Controlled Substances Act ("CSA") makes it illegal under federal law to manufacture, distribute, or dispense marijuana.[1] Many states impose and enforce similar prohibitions. Notwithstanding the federal ban, as of the date of this guidance, 20 states and the District of Columbia have legalized certain marijuana-related activity. In light of these developments, U.S. Department of Justice Deputy Attorney General James M. Cole issued a memorandum (the "Cole Memo") to all United States Attorneys providing updated guidance to federal prosecutors concerning marijuana enforcement under the CSA.[2] The Cole Memo guidance applies to all of DOJ's federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

The Cole Memo reiterates Congress's determination that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Cole Memo notes that DOJ is committed to enforcement of the CSA consistent with those determinations. It also notes that DOJ is committed to using its investigative and prosecutorial resources to address the most

[1] Controlled Substances Act, 21 U.S.C. § 801, *et seq.*
[2] James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement* (August 29, 2013), *available at* http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf.

significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, the Cole Memo provides guidance to DOJ attorneys and law enforcement to focus their enforcement resources on persons or organizations whose conduct interferes with any one or more of the following important priorities (the "Cole Memo priorities"):[3]

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Concurrently with this FinCEN guidance, Deputy Attorney General Cole is issuing supplemental guidance directing that prosecutors also consider these enforcement priorities with respect to federal money laundering, unlicensed money transmitter, and BSA offenses predicated on marijuana-related violations of the CSA.[4]

Providing Financial Services to Marijuana-Related Businesses

This FinCEN guidance clarifies how financial institutions can provide services to marijuana-related businesses consistent with their BSA obligations. In general, the decision to open, close, or refuse any particular account or relationship should be made by each financial institution based on a number of factors specific to that institution. These factors may include its particular business objectives, an evaluation of the risks associated with offering a particular product or service, and its capacity to manage those risks effectively. Thorough customer due diligence is a critical aspect of making this assessment.

In assessing the risk of providing services to a marijuana-related business, a financial institution should conduct customer due diligence that includes: (i) verifying with the appropriate state authorities whether the business is duly licensed and registered; (ii) reviewing the license application (and related documentation) submitted by the business for obtaining a state license to operate its marijuana-related business; (iii) requesting from state licensing and enforcement authorities available information about the business and related parties; (iv) developing an understanding of the normal and expected activity for the business, including the types of

[3] The Cole Memo notes that these enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA.
[4] James M. Cole, Deputy Attorney General, U.S. Department of Justice, *Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes* (February 14, 2014).

products to be sold and the type of customers to be served (e.g., medical versus recreational customers); (v) ongoing monitoring of publicly available sources for adverse information about the business and related parties; (vi) ongoing monitoring for suspicious activity, including for any of the red flags described in this guidance; and (vii) refreshing information obtained as part of customer due diligence on a periodic basis and commensurate with the risk. With respect to information regarding state licensure obtained in connection with such customer due diligence, a financial institution may reasonably rely on the accuracy of information provided by state licensing authorities, where states make such information available.

As part of its customer due diligence, a financial institution should consider whether a marijuana-related business implicates one of the Cole Memo priorities or violates state law. This is a particularly important factor for a financial institution to consider when assessing the risk of providing financial services to a marijuana-related business. Considering this factor also enables the financial institution to provide information in BSA reports pertinent to law enforcement's priorities. A financial institution that decides to provide financial services to a marijuana-related business would be required to file suspicious activity reports ("SARs") as described below.

Filing Suspicious Activity Reports on Marijuana-Related Businesses

The obligation to file a SAR is unaffected by any state law that legalizes marijuana-related activity. A financial institution is required to file a SAR if, consistent with FinCEN regulations, the financial institution knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the financial institution: (i) involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity; (ii) is designed to evade regulations promulgated under the BSA, or (iii) lacks a business or apparent lawful purpose.[5] Because federal law prohibits the distribution and sale of marijuana, financial transactions involving a marijuana-related business would generally involve funds derived from illegal activity. Therefore, a financial institution is required to file a SAR on activity involving a marijuana-related business (including those duly licensed under state law), in accordance with this guidance and FinCEN's suspicious activity reporting requirements and related thresholds.

One of the BSA's purposes is to require financial institutions to file reports that are highly useful in criminal investigations and proceedings. The guidance below furthers this objective by assisting financial institutions in determining how to file a SAR that facilitates law enforcement's access to information pertinent to a priority.

"Marijuana Limited" SAR Filings

A financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the Cole Memo priorities or violate state law should file a "Marijuana Limited" SAR. The content of this

[5] *See, e.g.*, 31 CFR § 1020.320. Financial institutions shall file with FinCEN, to the extent and in the manner required, a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a SAR with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations.

SAR should be limited to the following information: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) the fact that the filing institution is filing the SAR solely because the subject is engaged in a marijuana-related business; and (iv) the fact that no additional suspicious activity has been identified. Financial institutions should use the term "MARIJUANA LIMITED" in the narrative section.

A financial institution should follow FinCEN's existing guidance on the timing of filing continuing activity reports for the same activity initially reported on a "Marijuana Limited" SAR.[6] The continuing activity report may contain the same limited content as the initial SAR, plus details about the amount of deposits, withdrawals, and transfers in the account since the last SAR. However, if, in the course of conducting customer due diligence (including ongoing monitoring for red flags), the financial institution detects changes in activity that potentially implicate one of the Cole Memo priorities or violate state law, the financial institution should file a "Marijuana Priority" SAR.

"Marijuana Priority" SAR Filings

A financial institution filing a SAR on a marijuana-related business that it reasonably believes, based on its customer due diligence, implicates one of the Cole Memo priorities or violates state law should file a "Marijuana Priority" SAR. The content of this SAR should include comprehensive detail in accordance with existing regulations and guidance. Details particularly relevant to law enforcement in this context include: (i) identifying information of the subject and related parties; (ii) addresses of the subject and related parties; (iii) details regarding the enforcement priorities the financial institution believes have been implicated; and (iv) dates, amounts, and other relevant details of financial transactions involved in the suspicious activity. Financial institutions should use the term "MARIJUANA PRIORITY" in the narrative section to help law enforcement distinguish these SARs.[7]

"Marijuana Termination" SAR Filings

If a financial institution deems it necessary to terminate a relationship with a marijuana-related business in order to maintain an effective anti-money laundering compliance program, it should

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[6] Frequently Asked Questions Regarding the FinCEN Suspicious Activity Report (Question #16), *available at:* http://fincen.gov/whatsnew/html/sar_faqs.html (providing guidance on the filing timeframe for submitting a continuing activity report).

[7] FinCEN recognizes that a financial institution filing a SAR on a marijuana-related business may not always be well-positioned to determine whether the business implicates one of the Cole Memo priorities or violates state law, and thus which terms would be most appropriate to include (i.e., "Marijuana Limited" or "Marijuana Priority"). For example, a financial institution could be providing services to another domestic financial institution that, in turn, provides financial services to a marijuana-related business. Similarly, a financial institution could be providing services to a non-financial customer that provides goods or services to a marijuana-related business (e.g., a commercial landlord that leases property to a marijuana-related business). In such circumstances where services are being provided indirectly, the financial institution may file SARs based on existing regulations and guidance without distinguishing between "Marijuana Limited" and "Marijuana Priority." Whether the financial institution decides to provide indirect services to a marijuana-related business is a risk-based decision that depends on a number of factors specific to that institution and the relevant circumstances. In making this decision, the institution should consider the Cole Memo priorities, to the extent applicable.

file a SAR and note in the narrative the basis for the termination. Financial institutions should use the term "MARIJUANA TERMINATION" in the narrative section. To the extent the financial institution becomes aware that the marijuana-related business seeks to move to a second financial institution, FinCEN urges the first institution to use Section 314(b) voluntary information sharing (if it qualifies) to alert the second financial institution of potential illegal activity. See *Section 314(b) Fact Sheet* for more information.[8]

Red Flags to Distinguish Priority SARs

The following red flags indicate that a marijuana-related business may be engaged in activity that implicates one of the Cole Memo priorities or violates state law. These red flags indicate only possible signs of such activity, and also do not constitute an exhaustive list. It is thus important to view any red flag(s) in the context of other indicators and facts, such as the financial institution's knowledge about the underlying parties obtained through its customer due diligence. Further, the presence of any of these red flags in a given transaction or business arrangement may indicate a need for additional due diligence, which could include seeking information from other involved financial institutions under Section 314(b). These red flags are based primarily upon schemes and typologies described in SARs or identified by our law enforcement and regulatory partners, and may be updated in future guidance.

- A customer appears to be using a state-licensed marijuana-related business as a front or pretext to launder money derived from other criminal activity (i.e., not related to marijuana) or derived from marijuana-related activity not permitted under state law. Relevant indicia could include:
    - The business receives substantially more revenue than may reasonably be expected given the relevant limitations imposed by the state in which it operates.
    - The business receives substantially more revenue than its local competitors or than might be expected given the population demographics.
    - The business is depositing more cash than is commensurate with the amount of marijuana-related revenue it is reporting for federal and state tax purposes.
    - The business is unable to demonstrate that its revenue is derived exclusively from the sale of marijuana in compliance with state law, as opposed to revenue derived from (i) the sale of other illicit drugs, (ii) the sale of marijuana not in compliance with state law, or (iii) other illegal activity.
    - The business makes cash deposits or withdrawals over a short period of time that are excessive relative to local competitors or the expected activity of the business.

[8] Information Sharing Between Financial Institutions: Section 314(b) Fact Sheet, *available at: http://fincen.gov/statutes_regs/patriot/pdf/314bfactsheet.pdf.*

- Deposits apparently structured to avoid Currency Transaction Report ("CTR") requirements.
- Rapid movement of funds, such as cash deposits followed by immediate cash withdrawals.
- Deposits by third parties with no apparent connection to the accountholder.
- Excessive commingling of funds with the personal account of the business's owner(s) or manager(s), or with accounts of seemingly unrelated businesses.
- Individuals conducting transactions for the business appear to be acting on behalf of other, undisclosed parties of interest.
- Financial statements provided by the business to the financial institution are inconsistent with actual account activity.
- A surge in activity by third parties offering goods or services to marijuana-related businesses, such as equipment suppliers or shipping servicers.

- The business is unable to produce satisfactory documentation or evidence to demonstrate that it is duly licensed and operating consistently with state law.
- The business is unable to demonstrate the legitimate source of significant outside investments.
- A customer seeks to conceal or disguise involvement in marijuana-related business activity. For example, the customer may be using a business with a non-descript name (e.g., a "consulting," "holding," or "management" company) that purports to engage in commercial activity unrelated to marijuana, but is depositing cash that smells like marijuana.
- Review of publicly available sources and databases about the business, its owner(s), manager(s), or other related parties, reveal negative information, such as a criminal record, involvement in the illegal purchase or sale of drugs, violence, or other potential connections to illicit activity.
- The business, its owner(s), manager(s), or other related parties are, or have been, subject to an enforcement action by the state or local authorities responsible for administering or enforcing marijuana-related laws or regulations.
- A marijuana-related business engages in international or interstate activity, including by receiving cash deposits from locations outside the state in which the business operates, making or receiving frequent or large interstate transfers, or otherwise transacting with persons or entities located in different states or countries.

- The owner(s) or manager(s) of a marijuana-related business reside outside the state in which the business is located.

- A marijuana-related business is located on federal property or the marijuana sold by the business was grown on federal property.

- A marijuana-related business's proximity to a school is not compliant with state law.

- A marijuana-related business purporting to be a "non-profit" is engaged in commercial activity inconsistent with that classification, or is making excessive payments to its manager(s) or employee(s).

Currency Transaction Reports and Form 8300's

Financial institutions and other persons subject to FinCEN's regulations must report currency transactions in connection with marijuana-related businesses the same as they would in any other context, consistent with existing regulations and with the same thresholds that apply. For example, banks and money services businesses would need to file CTRs on the receipt or withdrawal by any person of more than $10,000 in cash per day. Similarly, any person or entity engaged in a non-financial trade or business would need to report transactions in which they receive more than $10,000 in cash and other monetary instruments for the purchase of goods or services on FinCEN Form 8300 (Report of Cash Payments Over $10,000 Received in a Trade or Business). A business engaged in marijuana-related activity may not be treated as a non-listed business under 31 C.F.R. § 1020.315(e)(8), and therefore, is not eligible for consideration for an exemption with respect to a bank's CTR obligations under 31 C.F.R. § 1020.315(b)(6).

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FinCEN's enforcement priorities in connection with this guidance will focus on matters of systemic or significant failures, and not isolated lapses in technical compliance. Financial institutions with questions about this guidance are encouraged to contact FinCEN's Resource Center at (800) 767-2825, where industry questions can be addressed and monitored for the purpose of providing any necessary additional guidance.

U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

October 19, 2009

MEMORANDUM FOR SELECTED UNITED STATES ATTORNEYS

FROM: David W. Ogden
Deputy Attorney General

SUBJECT: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana

This memorandum provides clarification and guidance to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana. These laws vary in their substantive provisions and in the extent of state regulatory oversight, both among the enacting States and among local jurisdictions within those States. Rather than developing different guidelines for every possible variant of state and local law, this memorandum provides uniform guidance to focus federal investigations and prosecutions in these States on core federal enforcement priorities.

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug, and the illegal distribution and sale of marijuana is a serious crime and provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. One timely example underscores the importance of our efforts to prosecute significant marijuana traffickers: marijuana distribution in the United States remains the single largest source of revenue for the Mexican cartels.

The Department is also committed to making efficient and rational use of its limited investigative and prosecutorial resources. In general, United States Attorneys are vested with "plenary authority with regard to federal criminal matters" within their districts. USAM 9-2.001. In exercising this authority, United States Attorneys are "invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority." *Id.* This authority should, of course, be exercised consistent with Department priorities and guidance.

The prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority in the Department's efforts against narcotics and dangerous drugs, and the Department's investigative and prosecutorial resources should be directed towards these objectives. As a general matter, pursuit of these priorities should not focus federal resources in your States on

individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana. For example, prosecution of individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or those caregivers in clear and unambiguous compliance with existing state law who provide such individuals with marijuana, is unlikely to be an efficient use of limited federal resources. On the other hand, prosecution of commercial enterprises that unlawfully market and sell marijuana for profit continues to be an enforcement priority of the Department. To be sure, claims of compliance with state or local law may mask operations inconsistent with the terms, conditions, or purposes of those laws, and federal law enforcement should not be deterred by such assertions when otherwise pursuing the Department's core enforcement priorities.

Typically, when any of the following characteristics is present, the conduct will not be in clear and unambiguous compliance with applicable state law and may indicate illegal drug trafficking activity of potential federal interest:

- unlawful possession or unlawful use of firearms;
- violence;
- sales to minors;
- financial and marketing activities inconsistent with the terms, conditions, or purposes of state law, including evidence of money laundering activity and/or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;
- amounts of marijuana inconsistent with purported compliance with state or local law;
- illegal possession or sale of other controlled substances; or
- ties to other criminal enterprises.

Of course, no State can authorize violations of federal law, and the list of factors above is not intended to describe exhaustively when a federal prosecution may be warranted. Accordingly, in prosecutions under the Controlled Substances Act, federal prosecutors are not expected to charge, prove, or otherwise establish any state law violations. Indeed, this memorandum does not alter in any way the Department's authority to enforce federal law, including laws prohibiting the manufacture, production, distribution, possession, or use of marijuana on federal property. This guidance regarding resource allocation does not "legalize" marijuana or provide a legal defense to a violation of federal law, nor is it intended to create any privileges, benefits, or rights, substantive or procedural, enforceable by any individual, party or witness in any administrative, civil, or criminal matter. Nor does clear and unambiguous compliance with state law or the absence of one or all of the above factors create a legal defense to a violation of the Controlled Substances Act. Rather, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion.

Finally, nothing herein precludes investigation or prosecution where there is a reasonable basis to believe that compliance with state law is being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law. Nor does this guidance preclude investigation or prosecution, even when there is clear and unambiguous compliance with existing state law, in particular circumstances where investigation or prosecution otherwise serves important federal interests.

Your offices should continue to review marijuana cases for prosecution on a case-by-case basis, consistent with the guidance on resource allocation and federal priorities set forth herein, the consideration of requests for federal assistance from state and local law enforcement authorities, and the Principles of Federal Prosecution.

cc: All United States Attorneys

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