

Commentary

Experimenting with Pot: The State of Colorado's Legalization of Marijuana

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ON NOVEMBER 6, 2012, VOTERS IN COLORADO AND Washington moved to legalize the use and sale of marijuana by adults 21 and older. The passage of Amendment 64, which amended the Colorado constitution, and Initiative 502, which amended the Revised Code of Washington, marked “an electoral first not only for America but the world.”¹ In response to the legalization of recreational marijuana, Colorado is taking a proactive approach. We are working as a convener for all interested parties and experts to shape public policy that utilizes the decades of public health lessons gained from regulating alcohol and tobacco. We have applied these lessons to marijuana and are making every effort in our laws, regulations, and revenue allocations to address public health and safety concerns, prevent young people's use of marijuana, and educate parents and children about the risks of its use.

While Colorado and Washington are the first states to legalize marijuana for recreational purposes, since the 1970s, the national trend has moved toward decriminalization, increased social acceptance, and legalization for medical use. Today, more than half the states in the United States have decriminalized the possession of small amounts of marijuana, approved it for medical use, or legalized it completely.² Numerous other states—both liberal and conservative—are considering legalization, indicating that the recreational use of marijuana is no longer a partisan issue. Colorado and Washington are at the forefront of these national trends, and the establishment of rules, regulations, and a policy framework that protects the public's health and safety and prevents underage use will set a baseline for other states' marijuana laws.

Colorado voters passed Amendment 64 with 55% of the vote. Although our administration opposed the legalization of adult-use marijuana, we are committed to fulfilling the will of the voters and directing the responsible regulation of this nascent industry. One of our first steps

was to establish a task force to “identify the legal, policy and procedural issues that need[ed] to be resolved, and to offer suggestions and proposals for legislative, regulatory and executive actions that need[ed] to be taken, for the effective and efficient implementation of Amendment 64.”³ This extensive stakeholder process included representatives from all areas affected by marijuana legalization, including health experts, law enforcement, the marijuana industry, the Colorado business community, and marijuana consumers, as well as representatives from state agencies and the Colorado legislature. All groups that might otherwise have had competing and conflicting viewpoints were invited to participate and work together. As a result, we were able to ensure that solutions and recommendations came from an equitable process that gave all interested groups an opportunity to share their positions. In order to guide the work of the task force, all recommendations were required to be based on the following principles:

- Promote the health, safety, and well-being of Colorado’s youth.
- Be responsive to consumer needs and issues.
- Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome.
- Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- Create a balanced regulatory scheme that is complementary, not duplicative, and clearly defined between state and local licensing authorities.
- Establish tools that are clear and practical, so that interactions between law enforcement, consumers, and licensees are predictable and understandable.
- Ensure that our streets, schools, and communities remain safe.
- Develop clear and transparent rules and guidance for certain relationships, such as between employers and employees, landlords and tenants, and students and educational institutions.
- Take action that is faithful to the text of Amendment 64.

When the federal government updated the guidance for marijuana regulation in August 2013, the US Department of Justice reconfirmed that it would not block any states’ laws legalizing marijuana (for recreational or medical purposes) so long as the states established regulations that adequately addressed the following priorities:

- 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.
- Preventing marijuana possession or use on federal property.

Regulatory Approach

Amendment 64 was pitched to voters as an effort to “regulate marijuana like alcohol,”⁴ and in many ways we have attempted to do just that, in the retail marijuana center licensing process, the establishment of a nanogram limit for THC in blood to be considered in driving under the influence (DUID), the passage of an excise tax to fund regulatory and preventive programs, and rules concerning public consumption. There also are significant differences, however, in its physical form, its effects on impairment, its production process, and its status in both federal law and international policy. It is these differences that make it necessary to look outside the realm of alcohol regulation to establish commonsense policy.

Given the lack of historic precedent for the legalization of adult-use marijuana, policymakers in Colorado have drawn parallels from other, comparable industries such as gaming and tobacco in addition to alcohol. As businesses seek to maximize profits through the sale of substances that can carry dependence and substance abuse risks, these industries offer useful frameworks, context, research, and promising practices for addressing many of the concerns related to areas like responsible regulation, public health, education, and public safety.

Employing lessons learned from other areas has been significant in the realms of public health and underage use. Drawing on the experience from the Big Tobacco trials of the 1990s, our regulations have placed strict requirements on advertisers, banning outright any ads targeting minors. Looking to the voluntary standards adopted by the alcohol industry, our rules establish that print, television, and radio advertising are not allowed if “more than 30 percent of the audience is reasonably expected to be under the age of 21.”⁵ We have closely coordinated all public awareness efforts to ensure consistent and effective messaging and have prioritized the distribution of surveillance data and research to promote effective prevention strategies.

Public Health

Owing to limited funding and study opportunities, marijuana and health professionals and policymakers do not yet know the full scope of the effects of marijuana use; however, the evidence demonstrates that the regular consumption of marijuana does increase the risk of physical and mental health problems.⁶ We are working to address these and a wide variety of other public health concerns, with particular emphasis on the developing brain, on which negative impacts are more significant and, in some cases, irreversible. The general consensus among substance abuse professionals is that underage marijuana use can be both dangerous and addictive. Studies show that teenagers’ use can lead to negative physical, psychological, and behavioral consequences, such as chronic cough and bronchitis,⁷ memory deficits,⁸ and a loss of up to 8 points in IQ.⁹

Additional public health issues that we are examining and monitoring as a result of legalization include patterns and prevalence of use, acute health effects from contaminated marijuana products, the safety of edible marijuana products, accidental poisonings of young children from edible products, use among pregnant and breast-feeding women, secondhand smoke, proper marijuana disposal, laboratory testing, substance abuse, potential impaired driving, and occupational health and safety—just to name a few.

We believe that marijuana use has many detrimental effects, and we are not viewing it in a vacuum. We recognize that some people struggle with dependency on multiple substances; as a result, we have an opportunity to proactively direct funding to prevention-focused interventions, which will allow us to avoid costs related to the effects in the long run.

Budgeting Marijuana Revenues

With revenue starting to come into the state from legal sales, which began on January 1, 2014, we have reinforced, in our proposed budget package, our commitment to the responsible regulation of adult-use marijuana and the effective allocation of resources to protect public health and safety and to prevent underage use. As of February 20, 2014, our budget office is projecting that the state will collect about \$134 million in taxes from medical and recreational marijuana sales in fiscal year 2014-2015.¹⁰ Two overall principles guided our recommendations: first, programming should have a direct or indirect relation to marijuana use, and second, we should not create any situations in which state or local governments have an incentive to promote marijuana use. In our proposed budget package we tried to use existing programs in order to minimize duplication, reduce start-up costs, avoid program delays, and build on programs using current research and the best and most promising practices. For many aspects of our proposal, we used a public health prevention framework—public awareness, intervention, treatment, and recovery—to ensure a holistic and responsible use of resources. This budget package represents an important first step toward establishing a broad-based platform, which we can then use to monitor the effects of our policies.

We have worked to strike a balance between creating a level playing field for a new industry and utilizing the most current research to uphold the priority we place on health and safety for all Coloradans. Countless questions have yet to be answered, however. Until the market finds an equilibrium, new policies are given time to settle, and we are able to collect and analyze data about emerging trends as a result of new rules and laws, we cannot presume to guess the net effect of legalizing marijuana use.

With that in mind, we encourage other states considering marijuana legalization not to act rashly or hastily. Legalization is not a panacea for revenue shortfalls. While some areas of government may experience cost reductions, other areas undoubtedly will take on new cost burdens as a result of legalization. At least 8 cabinet-level agencies have serious new responsibilities in this new environment, so states looking in this direction should proceed carefully.

We are attempting to balance myriad issues related to an unprecedented policy change not only for the United States but also for the

world. Colorado is a testing ground for this experiment in marijuana legalization, and how well we succeed in accomplishing our objectives will set the stage for other states and countries to examine their own policies regarding marijuana. We believe that we are asking the right questions, attempting to collect the right data, and bringing the right stakeholders to the table. We remain committed to upholding the will of Colorado voters while also creating a robust regulatory environment and focusing on the well-being of all Coloradans.

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