

Vermonters Visit to Colorado to Study Legalized Marijuana



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VERMONTERS VISIT COLORADO AND LEGALIZED MARIJUANA

Introduction

In February, 2015, a group of Vermonters spent three days in Denver, Colorado, examining first-hand that State's experience with legalized recreational marijuana. The delegation consisted of Vermont's Commissioner of Public Safety; the Chittenden County State's Attorney; general counsel for the Champlain Valley [Medical Marijuana] Dispensary; the Chief of Police of Bennington; a lobbyist for the Marijuana Policy Project (a pro-marijuana advocacy group); the Executive Director of the Burlington Boys & Girls Club (and co-founder of Project SAM-VT, an anti-legalization advocacy group); the Sheriff of Rutland County; the Executive Director of the Maple Leaf Farm Treatment Center; and an Assistant United States Attorney. Members of the group variously opposed, supported, and were ambivalent about legalization, but all approached the experience with an open attitude of inquisitiveness. Several Colorado officials described the delegation as the "most diverse" in perspective they had seen. In this report, the group reports back to their fellow Vermonters.

The Vermont delegation met with a multitude of Coloradans, from State legislators and regulators, to the Governor's marijuana policy advisor, to Denver city officials, to growers, manufacturers, and retailers of marijuana, to police, local and federal prosecutors, leaders of the Denver Boys and Girls Club, and casual encounters with members of the general public. We listened to their views, and quizzed them at length. Generally, we were struck by the multitude of legalization issues to consider. Some in the group who left Vermont thinking that legalization was a straight-forward, yes or no policy decision, quickly learned how many moving parts are involved. Even those most conversant with legalization issues gained additional insights and perspectives. Most of the persons with whom we met, representing stakeholders on all sides of the issue, agreed on multiple points, and identified recurring themes.

Our group's familiarity and knowledge of marijuana legalization issues grew rapidly over the course of our visit. In this paper we present an overview of the Colorado system, followed by a summary of certain challenging issues. This paper offers no policy recommendations; our intent is to describe what we found in Colorado, not what individual members recommend. We hope to facilitate knowledgeable consideration of this issue in Vermont.

Legalizing Marijuana – Colorado’s Experience

The legalization of recreational marijuana in Colorado is a recent event: implementation of a November, 2012, referendum began in late 2013. Repeatedly, Coloradans with whom we met observed that the impact of the new laws will not be known for several years.

Colorado began a limited regime of legalized medical marijuana in 2000, and in 2009 significantly expanded that regime. During the one-year period from July, 2009 to July 2010 the number of Colorado medical registration cards increased ten-fold from about 11,000 to more than 100,000. We found a consensus that by mid-2010 the loosely regulated medical marijuana regime had devolved into broad access. We heard the same story from several persons with medical marijuana cards: they suffered no medical malady of significance, but easily obtained cards from doctors to whom they were referred by medical marijuana dispensaries. In addition, Colorado’s system of “personal caregivers” – persons who provide marijuana to card holders – presented significant avenues for misuse. The latter system remains a concern impacting the current closely regulated recreational regime.

In November, 2012, by popular referendum, Coloradans approved (by a 55% vote) “Amendment 64” (or “Proposition 64”), legalizing recreational marijuana. The referendum amended Colorado’s constitution with a statewide drug policy converting marijuana from an illegal drug under State law to a substance purchased in retail outlets. Amendment 64 and its associated “findings” laid-out a comprehensive scheme, providing for the regulation of marijuana; permitting a person 21 or older to consume or possess limited amounts of marijuana (including growing up to six plants); providing for the licensing of cultivation facilities, product manufacturing facilities, testing facilities, and retail stores; permitting local governments to regulate or prohibit such facilities; and requiring the General Assembly to enact an excise tax to be levied upon marijuana sales.

<http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application/pdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251834064719&ssbinary=true>

State officials worked hard to implement the new law responsibly. In December, 2012 Colorado’s governor created a task force to consider policy, legal and procedural issues. In March, 2013, the task force issued recommendations. In May, 2013, the General Assembly passed, and the governor signed, several bills implementing the task force’s recommendations. In September, 2013, the Colorado Department of Revenue adopted final regulations for recreational marijuana establishments, implementing the Colorado Retail Marijuana Code. That same month the Denver City Council adopted an ordinance regulating retail marijuana establishments and related issues.

As of the Fall of 2013, marijuana became legal in Colorado under State law. The State now has a “recreational marijuana” regime operating alongside the still existing (and still loosely regulated) “medical marijuana” regime. Public officials and other stakeholders routinely refer to “medical” products, rules, and usage, and “recreational” products, rules and usage. A

second consensus that we found among many Coloradans is that the precipitous “roll-out” of recreational marijuana laws, following the popular referendum’s amendment to the State constitution, has been very challenging. This appears to be in part because the referendum vote caught many stakeholders – particularly in government – by surprise.

[What is Colorado’s Recreational Marijuana Regime?](#)

Since late 2013, Coloradans over the age of 21 have been able to purchase up to an ounce of marijuana at a State regulated store, and grow up to six plants at home. Public consumption is barred. Visitors to Colorado rarely see smokers in the street. You may smell it occasionally, but consumption is behind closed doors (Denver police issue \$100 tickets for public use). Marijuana is not advertised in general media. It is advertised online and in marijuana magazines, such as “Culture – The #1 Cannabis Lifestyle Magazine,” “THC – The Hemp Connoisseur,” and the “Colorado Cannabis Directory.” A Colorado adult photo identification is required to buy marijuana at a dedicated “dispensary.” Adult visitors to the State are only permitted to buy a few grams from each dispensary visited. Persons under 21 are not allowed in dispensaries – customers are “carded” upon entry and again at purchase.

Recreational marijuana producers are closely regulated. They apply for and obtain a license, and are carefully and comprehensively monitored by the Colorado Department of Revenue. For purposes of security and transparency, video cameras monitor growing and production facilities, and owners and employees receive criminal background checks. “Sweet Leaf,” the cultivation facility we visited in an industrial-zoned section of Denver, was inside an old warehouse. State licenses were posted in the entry area, near multiple video surveillance screens. The forthright and polite owner showed us large rooms of thriving plants growing at different stages under artificial growing lights. From planting a seedling to harvesting a mature plant is about 100 days. Fertilizer and water use is controlled to limit/eliminate discharge to the city water system. A mature plant (thick and about 4-5 feet high) is “stripped” by employees, with bud and flower going to a dry room for sale to customers in dispensaries. Leaves (or “trim”) are separated for sale to businesses that extract THC-heavy oil for making other marijuana products (edibles, skin creams, etc.).

[The Government Structure Issue: What Government Components Regulate the Marijuana Industry?](#)

Colorado’s approach to marijuana is best analogized to its approach to alcohol. Alcohol is sold in state licensed and regulated retail outlets, limiting sales to adults. The Colorado Department of Revenue’s “Liquor Enforcement Division” oversees licensing and regulation of the liquor industry, and enforcement of liquor control laws.

In 2013 Colorado created a “Marijuana Enforcement Division” (MED) in the Department of Revenue, tasked with licensing and regulating the retail marijuana industry. The MED

implements legislation, conducts background investigations, ensures regulatory compliance, and generally monitors marijuana production and sales in Colorado. <https://www.colorado.gov/pacific/enforcement/marijuanaenforcement>. The Colorado General Assembly passed enabling legislation giving the MED authority to carry out its mission and issue implementing regulations. We met with the Director of the MED, as well as the Secretary of the Department of Revenue and her Deputy. The MED is staffed with 55 employees, including licensing and legal staff, compliance regulators, and police officers. The Division is funded with income from taxes on marijuana production and sale, as well as money from fines.

The Governor of Colorado has a dedicated “Director of Marijuana Coordination” (DMC) who works with the MED and various marijuana stakeholders. The DMC and the MED seek a collaborative but responsible process to regulate marijuana businesses in the State.

Municipalities such as Denver, that “opt-in” to legalization with local marijuana cultivators, producers, and dispensaries (many Colorado counties and towns have “opted-out”), adopt local codes regarding, for example, licensing, zoning, public use, and private cultivation. We met with the City of Denver’s Legal Counsel’s Office and its dedicated marijuana attorney. The City had 37 new employees regulating and monitoring the expanding marijuana industry. Denver has a population of about 600,000.

[The Problem of Federal Law](#)

In the 1970 Controlled Substances Act, Congress criminalized the cultivation and distribution of various drugs, including marijuana. Under the Supremacy Clause of the United States Constitution, federal drug laws are enforceable in the states. Traditionally the federal government has worked in partnership with the states enforcing federal drug laws.

Over the last decade, twenty-four states adopted laws relaxing restrictions on cannabis, particularly in the area of medicinal or therapeutic use. In response, the U.S. Department of Justice issued an August, 2014, “guidance” memorandum addressing the enforcement of federal drug laws in such states. The “Cole Memorandum” – familiar to state officials dealing with legalization issues – sets forth eight priorities, where federal authorities “will focus . . . limited investigative and prosecutorial resources in all states.” It appears that, if a legalization state designs and implements laws consistent with those federal priorities, it may expect limited intervention by the feds. Of course, federal marijuana policy may change in the wake of future national elections.

The eight federal priorities are: (1) preventing the distribution of marijuana to minors; (2) preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; (3) preventing the diversion of marijuana from states where it is legal

under state law in some form to other states; (4) preventing state-authorized marijuana activity from being used as cover or pretext for the trafficking of other illegal drugs or illegal activity; (5) preventing violence and the use of firearms in the cultivation and distribution of marijuana; (6) preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; (7) preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and (8) preventing marijuana possession or use on federal property.

Colorado officials told us that they shared the concerns articulated in the Cole Memorandum when they designed the State marijuana regime and wrote the MED regulations. In any event, Colorado marijuana laws are devised and implemented so as not to run afoul of those concerns.

The Colorado U.S. Attorney's Office (USAO) explained that it is guided by the "Cole Factors." Generally, the USAO has taken enforcement actions in Colorado arising from all of the Cole Memorandum priorities. For example, it ensured that no licensed marijuana dispensary was within 1,000 feet of a school (56 had to relocate), and brought enforcement assets to bear on Colorado marijuana businesses funded by undisclosed international interests. In addition, federal authorities have assisted state officials with problems such as black market "hash oil" producers using a highly volatile, liquid butane extraction method. <http://www.newsweek.com/hash-oil-linked-dozens-home-explosions-colorado-300549>.

One significant problem area where federal law impacts legalized marijuana – despite the terms of the détente expressed in the Cole Memorandum – is banking. Marijuana producers and retailers generate large volumes of cash. The owner of one marijuana business we visited stated that his company generated about \$1.4 million a month (another business refused to reveal its gross income). Because banks are federally regulated and insured, almost all refuse to accept cash deposits generated from marijuana for fear of federal enforcement action. Consequently, marijuana businesses pay (substantial) state tax revenues in cash, and struggle at times to find financial institutions with which to bank. We were told that some local financial institutions were working with the new businesses. Ironically, this situation makes efforts to promote the transparency of these businesses more difficult.

Restricting Distribution to Youth

Everyone we met with in Colorado agreed that marijuana should be kept away from youth and we believe that any thoughtful evaluation of the issue must result in the same conclusion. Further, federal policy explicitly requires legalization states to "prevent the distribution of marijuana to minors."

The most recent and comprehensive treatment of the health effects of cannabis is the January, 2015, report from the Colorado Department of Public Health & Environment (“CDPHE”), titled, “Monitoring Health Concerns Related to Marijuana in Colorado: 2014.” That report – considerably more in depth on health issues than Vermont’s RAND report, “Considering Marijuana Legalization” – merits review. It can be accessed at https://www.colorado.gov/pacific/sites/default/files/DC_MJ-Monitoring-Health-Concerns-Related-to-Marijuana-in-CO-2014.pdf.

The 2015 CDPHE report found evidence of “associations between adolescent and young adult marijuana use and at least short-term impairment of cognitive and academic abilities,” and evidence indicating that “adolescent marijuana users were less likely to graduate from high school and more likely to be addicted to marijuana, alcohol, and tobacco in adulthood.” The report also found “significant differences in use and age of first use” between minority high school students and white high school students, with a higher prevalence of use in the former group. Finally, the 2015 CDPHE report found that marijuana use presented health risks to pregnant women and their offspring.

Generally, it appeared that some adult Coloradans lacked knowledge of marijuana risks associated with pregnancy, driving, and addiction. At the very least, it was the impression of the group that effective public education campaigns are essential, both to reduce use by minors, and ensure responsible use by adults. Marijuana, like alcohol, carries particular health and safety risks for children as well as some adults, especially when abused.

We met with two representatives of the Boys and Girls Club of Colorado, which operates 16 service sites in Denver. The Vice President of that organization told us that the bulk of the adverse impact of recreational marijuana fell on minority and low-income, “at-risk” populations. She stated that legalization had “normalized” marijuana use, such that there was no “stigma” associated with it (in contrast to the use of harder drugs like crack or meth). She also noted that legalization had put an “increased burden” on their organization, and that six-week programs sometimes employed were insufficient to “build resiliency in children from at-risk families”. According to the VP of the Boys and Girls Club of Colorado she also observed that due to their efforts, Denver members do have a lower rate of teen marijuana use compared to Colorado’s statewide youth numbers (which are among the highest in the nation).

The Coloradan officials and stake-holders with whom we met did not quibble over the health risks to youth. The issue was how to inhibit and minimize teen marijuana use when adult recreational marijuana was legal. A fundamental and frequently discussed initiative is effective education; *i.e.*, how to convey to teenagers the real adverse health effects of early marijuana use? During the last couple decades, strong public health campaigns seem to have persuaded most teens that tobacco use is unhealthy, and that

seat belts should be used. Can we find a way to promote similar success as to marijuana? A state known both for caring for at-risk populations, and for being a safe place to raise a family, should consider this issue carefully.

In addition to educational initiatives, an oft-expressed concern is advertising and marketing directed to youth, either specifically or incidentally. Thus, just as the highly lucrative tobacco industry succeeded in marketing to the young for years (and continues to find ways to do so today), the concern is that the highly lucrative marijuana industry will do the same. One wonders if there is some alternative to the for-profit marijuana industry, to avoid uncertain outcomes driven by a lucrative, for-profit model.

The Diversion Problem.

Another principal concern for regulators and the public has been preventing the diversion of marijuana produced and distributed in Colorado, both legally and illegally, to other states. Colorado has a substantial tourist industry, based upon skiing and hiking, and now marijuana sampling. The State seeks to keep its marijuana inside its borders for several reasons, including avoiding the wrath of neighboring states (all of which outlaw marijuana), and preventing federal intervention.

In 2014 two neighboring states, Oklahoma and Nebraska, filed federal lawsuits against Colorado for legalizing marijuana. “Marijuana flows . . . into neighboring states,” it is alleged, undermining their marijuana bans, “draining their treasuries, and placing stress on their criminal justice systems.”

<http://www.nytimes.com/2014/12/19/us/politics/nebraska-and-oklahoma-sue-colorado-over-marijuana-law.html>

A significant regulatory response to the diversion problem, lauded by MED officials, is a high-tech tracking system allowing every legally grown plant to be tracked in the state through the growth cycle and subsequent sale. The “Marijuana Inventory Tracking System” relies upon a small tag associated with every commercially produced plant. The tag number can be scanned using radio-frequency identification (familiar in grocery stores). The “seed-to-sale” tracking system allows regulators to monitor the movement of legal marijuana produced in the state.

It is important to note that Colorado’s legalization of cannabis did not eliminate the illegal market. Some officials expressed concern that the comparative high-cost of legal, regulated and taxed recreational marijuana failed to deter user exploitation of the loose medical marijuana regime, and the black market in illegal, cheaper, marijuana. In some ways Colorado’s legalization scheme, particularly its looser medical marijuana system, has made it more difficult to take enforcement action against operations that operate illegally and thus outside the oversight of government regulators. One of the difficulties with the current “black” or “grey” market concerns the less regulated medical system, in which “caregivers” operate without significant regulation growing marijuana for many

patients, some setting up unregulated “co-ops” which produce large amounts of marijuana. The state is currently considering legislature to curtail this practice, and the group was struck by how different Vermont’s system was in this regard. Generally, because the elimination of criminal markets is a key issue in the legalization debate, Colorado’s practical experience on this front should be closely examined.

The “Edibles” Issue

When Colorado first made retail marijuana “edibles” (THC infused snacks, cookies, and candy) available to recreational buyers, it mirrored regulations applicable to medical marijuana edibles. In so doing, the State did not anticipate the difference between the two markets. Thus, although the average consumer of medical marijuana tends to be knowledgeable about the effects of THC and highly incentivized to become educated about the effects of a given dosage and its form, many recreational users were not at all knowledgeable about consuming marijuana edibles. Two high-profile overdose deaths (a suicide and a homicide) and an increase in hospitalizations related to overuse of marijuana, quickly illustrated the problem. As many state officials explained, they didn't anticipate the challenges of overconsumption of edibles on the recreational market.

<http://america.aljazeera.com/watch/shows/america-tonight/articles/2015/1/7/colorado-cannabisczarwedidntanticipateproblemswithpotedibles.html>.

The “edibles” problem involves marketing attractive snacks of uncertain dosage to consumers who are often naive. Take the example of an edible produced in the form of a cookie. A cookie may contain 10, or 60, or 100 milligrams of THC. Although a standard Colorado dose of edible THC is 10 milligrams, a retail user who doesn't know about the effects of THC ingestion views that cookie as a single serving. A complicating factor is that some medical marijuana patients evidently need significantly higher doses than most recreational users. One well-publicized overdose death involved a college student from Wyoming who ate a single brownie containing six doses and threw himself out of a three-story Denver hotel.

<http://www.usatoday.com/story/news/nation/2014/05/08/marijuana-pot-edibles-thc-legalized-recreational/8463787/>.

A related problem is THC candies and cookies that closely resemble non-THC candy and cookies, leading to accidental ingestions by children. This is referred to as the “Gummy Bear problem.”

One of the difficulties with marijuana edibles is that, in contrast to smoking marijuana (or drinking alcohol), the intoxicating effects of eating THC products are delayed by an hour or more. Thus, uninformed consumers expecting rapid intoxication may impatiently eat multiple doses. Just such a scenario became a cause célèbre when Maureen Dowd, of the *New York Times* did exactly that and wrote about the unwelcome

results. The piece begins, “The caramel-chocolate flavored candy bar looked so innocent, like the Sky Bars I used to love as a child. Sitting in my hotel room in Denver, I nibbled off the end and then, when nothing happened, nibbled some more. I figured if I was reporting on the social revolution rocking Colorado. . . . What could go wrong with a bite or two? Everything, as it turned out.”

<http://www.nytimes.com/2014/06/04/opinion/dowd-dont-harsh-our-mellow-dude.html>

Colorado’s Department of Revenue recently sought to address the edibles problem with new regulations designed to reduce overdose and accidental consumption. We understand that the marijuana industry participated in the drafting process, indicating some commonality of purpose. Regulations now require edibles to be marketed in single-doses, in child-resistant containers, with consumer information and warnings. The regulations require labeling stating that: (1) “This product is infused with marijuana,” (2) “The intoxicating effects of this product may be delayed by two or more hours”; (3) “There may be health risks associated with the consumption of this product”; (4) “There may be additional health risks associated with the consumption of this product for women who are pregnant, breastfeeding, or planning on becoming pregnant”; and (5) Do not drive a motor vehicle or operate heavy machinery while using marijuana.” Critics, however, contend the new regulations are insufficient to address the inherent risks arising from selling cookies and candy containing intoxicants.

<http://www.nytimes.com/2014/10/30/us/new-scrutiny-on-sweets-with-ascent-of-marijuana-in-colorado.html>. Further, there is now so much tiny print on edibles containers that it is easy to overlook it.

Art Schut, CEO of Arapahoe House drug treatment facility, explained to our group what he considered the underlying problem. The United States lacks a common social knowledge, or culture, informing responsible marijuana use. In contrast, Schut observed that there has long been a mature culture of responsible alcohol use. Children grow up seeing parents have a drink before dinner, a glass of wine or beer during dinner, and moderate adult alcohol consumption at parties. Young and old well know the hazards of driving while intoxicated with alcohol. By contrast, there is almost no culture of responsible marijuana use, and many fail to realize that driving while intoxicated with marijuana is also hazardous. Similarly, those working at rehabilitation treatment facilities urge that marijuana is addictive, while many – young and old – fail to recognize that fact. This lack of general knowledge about responsible marijuana use is an issue for any legalization scheme.

The Group did meet with some Denver residents to talk about their concerns. One of the individuals surveyed a “Mommies” online discussion forum about the topic and was struck with the fact that of the many responses to the posting the vast majority of those parents that responded indicated that they supported the law and that they would not

choose to repeal it. While a limited sample, the resident had thought that opinion would be more divided.

Additional Law Enforcement Concerns

Many of the concerns of law enforcement about marijuana legalization are reflected above. Authorities with whom we met expressed concerns about additional risks. Both the Denver District Attorney's Office and the Mayor's marijuana attorney spoke of crimes arising from the large sums of cash generated by cannabis businesses. The presence and movement of bulk cash resulted in robberies and burglaries (also producing dangers associated with firearms).

Another frequently discussed and difficult issue is the danger to the public of intoxicated drivers. As with other mind-altering substances – such as alcohol – marijuana consumption impairs the driving abilities of both private and commercial drivers. A complicating factor is that there is no known device for testing a driver's THC impairment (like an alco-sensor for alcohol impairment). Because THC remains in the bloodstream for 28 days after a marijuana high, and associated driving impairment, is over, a simple test of blood-THC content is insufficient.

State law enforcement officials with whom we met also expressed concern that the legalization of recreational marijuana in Colorado had attracted and expanded the black market as to both the cultivation and distribution of marijuana. Further, substantial black market players are unlikely to limit their drug wares and illicit conduct to marijuana.

Finally, officials told us that the "six plants per adult" recreational marijuana rule was a challenge in the context of group residences. In particular, the Denver's General Counsel's Office reported that they regularly dealt with persons in shared apartments and residences cultivating a multitude of plants, contending that there were six plants per occupant. The same Office also discussed the problem of "Bud and Breakfast" establishments opening, to serve marijuana tourists.

Conclusion

In sum, the Vermont delegation learned that there were a multitude of important issues relating to recreational marijuana legalization. Some of the more difficult ones are summarized above. Interested policy makers would be well-advised to familiarize themselves with those issues as they consider legalizing recreational marijuana in Vermont. Repeatedly interviewees urged that Vermont take the time to collect all possible information about this issue before making a decision, and if legalization is favored, develop a comprehensive implementation plan.

We would like to extend our sincere thanks to all the many Coloradans who generously spent their time helping us understand legalization issues. The regulators, activists, professionals, and business people we met were all extremely helpful and patient with our inquiries and

Vermonters owe a debt of gratitude to our friends in Colorado for their kind assistance. A copy of our Colorado agenda, including those with whom we met, will be provided upon request.