

“Legalization” of Marijuana in Colorado: The Impact on Kansas



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Published October 10, 2016

Updated October 18, 2016

www.ag.ks.gov

Introduction

In recent years, the State of Colorado has moved toward legalizing marijuana under state law, including enacting a statutory scheme in 2010 for the distribution of medical marijuana and by further expanding state law in 2012 to allow for the cultivation, sale, possession, and use of certain amounts of marijuana for recreational purposes. The first stores selling Colorado marijuana for recreational purposes began operating in January 2014.

The cultivation, sale, possession, and use of marijuana remain a crime under both Kansas and federal law. However, the United States Department of Justice has issued memoranda directing federal prosecutors to decline to enforce federal law in most circumstances involving marijuana offenses that are legal as a matter of state law. *See* Memorandum from David W. Ogden, Deputy Attorney General, U.S. Department of Justice, to Selected U.S. Attorneys (Oct. 19, 2009), *revised by* Memorandum from James M. Cole, Deputy Attorney General, U.S. Department of Justice (Aug. 29, 2013). These memoranda leave open the possibility that federal prosecutors may prosecute marijuana offenses in States like Colorado when a particularly important federal priority is at stake, including “preventing the diversion of marijuana from states where it is legal under state law in some form to other states.”

Numerous anecdotal reports, particularly from areas near the Colorado border, have described an increase in the amount of Colorado marijuana flowing into Kansas. Unfortunately, Kansas’s existing systems for tracking criminal justice information do not readily track this Colorado marijuana phenomenon. For example, the Kansas Incident Based Reporting System (KIBRS) generally does not identify the *source* of marijuana that results in a reported incident.

Therefore, in order to obtain reliable information about the true condition of the crime situation involving Colorado marijuana in Kansas, the Attorney General exercised his authority under K.S.A. 21-2504(a) and called upon law enforcement agencies and prosecutors to provide information regarding Colorado marijuana. Surveys were sent out on December 30, 2015, and over the following months responses were received from 320 law enforcement agencies and 79 County or District Attorneys.

Summary of Results

The survey responses demonstrate that Colorado marijuana is prevalent in Kansas. While some jurisdictions reported an increase in overall levels of marijuana crimes, the major effect of Colorado marijuana “legalization” appears to be that high grade marijuana from Colorado has to a large extent replaced lower grade marijuana from Mexico and home grown marijuana. Numerous jurisdictions also reported a significant rise in the availability of marijuana edibles and other marijuana products, such as waxes and oils, originating from Colorado.

Kansas Highway Patrol Data

The Kansas Highway Patrol (KHP) responded to the survey request by providing the following chart with data on KHP marijuana seizures from 2013 through 2015, with the caveat that while the information concerning the origin of drugs, including marijuana, cannot be considered definitive and conclusive, the information is based on indicators, clues, statements, trends and experience:

MARIJUANA SEIZURES	2013	2014	2015
TOTAL MJ SEIZURES	243	247	216
TOTAL MJ WEIGHT lbs	6187	3498	3769
TOTAL EDIBLE SEIZURES	0	25	32
MJ SEIZURES COLORADO ORIGIN	127	143	150
PERCENTAGE MJ COLORADO ORIGIN	52%	58%	69%
TOTAL MJ COLORADO WEIGHT lbs	1119	1846	1812
PERCENTAGE MJ WEIGHT COLORADO ORIGIN	18%	53%	48%
TOTAL EDIBLES COLORADO ORIGIN	**	21	30
TOTAL EDIBLES COLORADO WEIGHT lbs	**	47	56
PERCENTAGE EDIBLES COLORADO ORIGIN	**	84%	94%
TOTAL MJ SEIZURES KANSAS DESTINATION	15	33	9
PERCENTAGE MJ SEIZURES KANSAS DESTINATION	12%	23%	6%
TOTAL EDIBLES KANSAS DESTINATION	**	4	6
PERCENTAGE EDIBLES KANSAS DESTINATION	**	19.00%	20.00%

** Statistics are Reliable but Not Guaranteed**

This chart demonstrates that while the total number of KHP marijuana seizures remained roughly the same since Colorado’s “legalization” of recreational marijuana in January 2014, the percentage of seizures involving marijuana believed to have originated in Colorado has risen steadily to account for roughly 70% of KHP marijuana seizures in 2015. By weight, suspected Colorado marijuana accounted for roughly 50% of marijuana seized by the KHP in 2014 and 2015, up from 18% in 2013.

Notably, the number of seizures of marijuana edibles has dramatically increased. While there were no reported KHP seizures of marijuana edibles in 2013, there were 25 edibles seizures in 2014 and 32 in 2015. The seized edibles were believed to have overwhelmingly come from Colorado. As an example, in a single seizure in January of 2015, a KHP Trooper seized 17 pounds of THC laced edibles suspected to have come from Colorado including:

- 22 1 gram containers of “Shatter Hash”
- 7 bottles of “Star Barz” THC chocolates
- 6 containers of “Loves Oven” THC candies

- 8 packages of “Full Melt” THC chocolate bars
- 1 package of THC hard candy
- 11 “Flying Aces” THC chocolate bars
- 7 containers of “Puckers” hard THC candies
- 4 bottles of “Edipure” mixed THC candy drops
- 4 bottles of “Edipure” THC jellybeans
- 6 bottles of “Insta High” THC powder mix
- 5 bottles of Marijuana Bud
- 36 THC chocolate bars
- 2 bottles of Peanut Brittle THC bites
- 2 boxes of THC “Awakening” mints
- 2 containers of THC lemon drops
- 4 vapor pens

KHP has also seized marijuana waxes and other marijuana products.

Although the chart provided by KHP only contains data through 2015, reports of significant KHP interdiction seizures demonstrate that the trend is continuing into 2016. In the first six months of 2016, KHP conducted 102 significant seizures of marijuana believed to have an origin of Colorado and seized over 1,259 pounds of marijuana during those incidents. Because the available KHP reports only track significant seizures and not seizures involving smaller amounts, the total number of seizures of suspected Colorado marijuana is likely much higher. If seizures continue at this rate for the second half of 2016, the amount of suspected Colorado marijuana seized in 2016 will significantly exceed the amount seized in previous years.

KHP has also seized large amounts of marijuana-related cash headed to Colorado. In June 2016 alone, KHP conducted six seizures of cash with a Colorado destination. Five of those seizures involved amounts over \$10,000, including one seizure of \$81,000. KHP also sometimes finds and seizes firearms related to suspected Colorado marijuana trafficking.

Overall, the KHP data suggests that large amounts of Colorado marijuana are flowing into and through Kansas, with Colorado being by far the number one suspected source of marijuana seized by KHP.

Other Law Enforcement Survey Responses

Law enforcement agencies other than KHP provided varied responses on the number of seizures and arrests involving Colorado marijuana. In part, this appears to be due to difficulty in *conclusively* identifying the source of marijuana. For example, while the Dodge City Police Department was only able to report one confirmed case of Colorado marijuana, the best guess of its narcotics detectives is that approximately 90% of all marijuana seized in Dodge City comes from Colorado. The Topeka Police Department provided a similar response, reporting only seven confirmed cases but explaining that “most of our high grade marijuana is coming from the State of Colorado.” Likewise, the Lenexa Police Department, which listed seven confirmed cases of Colorado marijuana, wrote:

While these are just several documented cases, we are confident that the vast majority of the marijuana we are seizing is from Colorado. While our reporting system doesn't have any sort of tracking mechanism, our officers are reporting that their arrestees are frequently admitting their marijuana is from Colorado. Furthermore, since the Colorado law change in 2014 we are consistently seeing higher grade marijuana. Prior to 2014, it was somewhat uncommon to find a lot of "high grade" marijuana. We know from training and experience that the Colorado marijuana farms can create a marijuana bud with a much higher THC content, which is preferred by the users.

The high quality of Colorado marijuana was frequently mentioned by survey respondents. For example, the Augusta Department of Public Safety reported:

[O]fficers commonly note that the overall quality of marijuana seized has increased markedly from that we have seen in past years. There was a period of time early last summer when almost every case appeared to be of this quality. The timing of the quality change correlates to the "legalization" of marijuana in Colorado for recreational use.

High grade marijuana from Colorado appears to have largely replaced marijuana from other sources. The Garden City Police Department, which reported 552 marijuana arrests in 2014 and 2015, explained:

Prior to the influx of Colorado marijuana, virtually all of the marijuana seized in our jurisdiction was compressed marijuana referred to by locals as "reggie" with Mexican origins. This type of marijuana is rarely seen any longer in our jurisdiction and virtually all the marijuana seen here are from Colorado either legally from dispensaries or underground black market sources. From multiple interviews with persons arrested with marijuana, I have learned that few users desire "reggie" marijuana as Colorado marijuana is much more potent. One user in particular described how he could get a better and longer high from one cigarette of Colorado marijuana than from an entire "quarter sack" (7 grams) of "reggie". In the past two years, I have not heard of any marijuana suppliers obtaining marijuana from any other sources other than what originated in Colorado.

Homegrown marijuana also appears to have been widely supplanted by Colorado marijuana. As the WaKeeney Police Department observed, "[p]eople just don't want to grow their own [marijuana] when they can drive to Colorado and purchase much stronger marijuana, edibles and concentrates."

The replacement of homegrown and Mexican marijuana with high grade Colorado marijuana has had several apparent effects. According to the Garden City Police Department, distributing Colorado marijuana is easier and can be very profitable:

A legal purchase of marijuana from a dispensary in Colorado can be obtained for as little as \$100. Selling it by the gram in Garden City for \$20 each, a dealer can profit around \$460 for each ounce. Prior to the easy accessibility in Colorado, dealers would have to have a “connect” in the black market to obtain marijuana from Mexican origin sources thus the numbers of distributors were not nearly as high as they are now.

The amount of money involved in Colorado marijuana distribution also appears to be fueling violence. As the Shawnee County Sheriff’s Office explained:

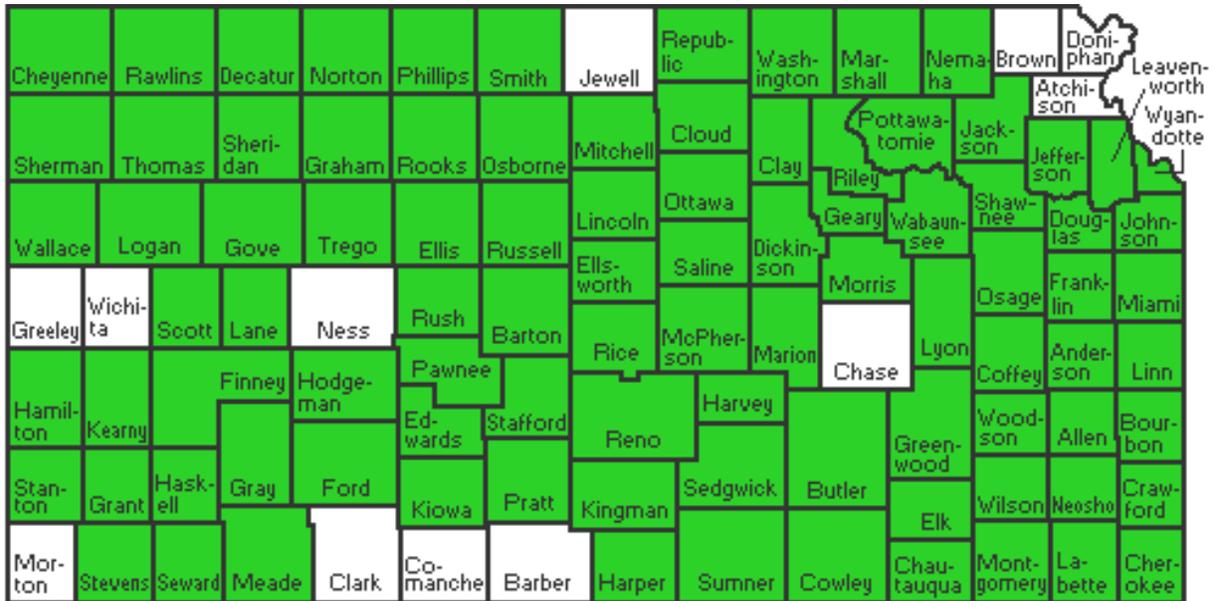
The THC content being higher brings more money to the drug dealer, in turn brings violence. . . . Our Drug Enforcement Unit has really seen a spike in subjects selling marijuana in Shawnee County due to the higher cost of it which in turn the dealer can make a larger profit. Subjects that we interview will tell us that the Colorado marijuana gets them higher than the “Mexican marijuana”. The Shawnee County Sheriff Office worked a homicide where the victim was selling large amounts of marijuana. The victim’s wife and two kids were in the house when the suspects entered the residence, shot and killed the drug dealer. Numerous pounds of marijuana and thousands of dollars in currency were discovered in the residence during the service of a search warrant at the homicide scene.

The Franklin County Sheriff’s Office reported that the higher cost of Colorado marijuana is also “driving up the burglary, thefts and financial crimes due to users trying to afford it.”

While the law enforcement survey did not specifically ask about asset forfeiture, several jurisdictions reported large amounts of money headed to Colorado. The Wichita Police Department, for instance, reported seizing \$294,700 in cash destined for Colorado, and in one case they missed seizing over \$680,000 which had already been sent.

Although some jurisdictions reported they had not seen Colorado marijuana due to their distance from Colorado, the presence of Colorado marijuana does not appear to be limited to western Kansas. As noted above, both the Topeka and Lenexa Police Departments reported that most of the marijuana they see is believed to come from Colorado. And in southeast Kansas, the Cherokee County Sheriff’s Office reported three cases involving Colorado marijuana, including one involving a 15 pounds shipment of marijuana from Colorado to Cherokee County and another where a local resident had a medical marijuana card and was frequently traveling to Colorado to obtain marijuana. The Cherokee County Sheriff’s Office wrote that these “cases are evidence that [Colorado marijuana] is not just an issue impacting western Kansas sheriffs, but is growing statewide.”

The following map depicts in green those counties where a survey respondent reported the presence of Colorado marijuana (the counties in white either did not respond to the survey or reported no verifiable Colorado marijuana):



A few jurisdictions reported arrests for driving under the influence of Colorado marijuana. The Cloud County Sheriff’s Office, for example, reported “a rising number of traffic stops where people are ingesting marijuana while traveling through our area. It is not always a large amount however after talking to the suspects, it is indicated that it originates from Colorado.” The WaKeeney Police Department estimated that in approximately 90% of the marijuana arrests at a 24/7 truck stop off I-70, the motorist admitted to smoking or consuming marijuana while leaving Colorado. And the Lyons Police Department reported that a woman with various marijuana candies from Colorado hit a gas pump while under the influence of meth and marijuana.

The survey responses indicate that marijuana edibles from Colorado are present in numerous jurisdictions. These edibles come in a wide variety of forms, including chocolates, cookies, brownies, gummy bears and gummy worms, snack bars, lollipops, and other candies. The proliferation of marijuana edibles raises concerns about possible unintentional consumption of marijuana and overdoses by individuals who are unaware of the edibles’ THC content.

Law enforcement agencies also reported the presence of other marijuana products, such as waxes and oils, coming from Colorado. According to the Douglas County Sheriff’s Office:

Marijuana wax is popular right now for several reasons. It’s easy to conceal and easy to use. Often times this is what is being used by the College, High School and Middle School kids. Additionally, this is very common with E-Cigs and is being smoked in public where unknowing citizens are being subjected to the use.

The McPherson County Sheriff's Office stated that they are "[c]ontinuously seizing THC Wax and E-Cig canisters containing Cannabis and THC."

The use of marijuana edibles and other marijuana products by juveniles is an area of concern. The Augusta Department of Public Safety explained that these products are particularly appealing to young people: "Instead of a stinky hand rolled cigarette they now can simply 'smoke' cherry flavored water vapor, eat a gummy worm, or a bowl of cereal." Several agencies reported that these products have been found in the possession of juveniles. The Emporia Police Department, for example, reported at least eight to ten cases in the local middle and high schools involving flavored marijuana fluids and vapor cigarettes.

Prosecutor Survey Responses

The survey responses of County and District Attorneys were mixed. Many prosecutors reported that the effect of Colorado marijuana legalization was minimal to nonexistent in their jurisdiction. For instance, the Hamilton County Attorney reported:

Since I serve in Hamilton County, which borders Colorado, I expected a significant increase in marijuana cases as a result of legalization in Colorado. Surprisingly, this is not the case. I do not believe that Colorado legalizing marijuana has impacted my county in any meaningful way.

A few jurisdictions did report increased caseloads, however, such as the Trego County Attorney's Office, which reported a 200% increase over the last two years. And even where the overall number of marijuana prosecutions has not increased, prosecutors report that high grade Colorado marijuana has replaced marijuana from other sources.

Prosecutors in a number of jurisdictions reported the presence of marijuana edibles from Colorado. The Johnson County District Attorney's Office, for instance, has "definitely seen an increase in edibles, which has led to overdoses," and stressed the need for partnership between law enforcement and the medical community to educate the public about the dangers of marijuana, including edibles.

Most prosecutors reported no change in how judges treat marijuana offenses, although a few responded that judges have become more lenient. For example, the Leavenworth County Attorney's Office explained that one of their judges routinely uses the legalization of marijuana in Colorado as a rationale for sentence mitigation and downward departure, and the Johnson County District Attorney's Office reported "a willingness of District Court judges to grant probation on border box cases." According to the Ellis County Attorney, the trend of increased leniency for marijuana offenses has been occurring for some time:

The erosion of marijuana sentencing has been occurring long before Colorado legalized certain marijuana. When I started prosecution in 1989, the standard sentence was thirty (30) days – which the defendant served – for possession of marijuana. Through the years it was decreased to ten (10) days, to five (5) days, to forty-eight (48) hours to one (1) day to probation to diversion. This was not a

result of the Colorado law, but simply the response to county jail overcrowding, due in greater part to the mandatory DUI sentencing laws rather than Colorado marijuana. It is apparent that the public tolerance of marijuana has drastically changed over the past twenty-five (25) years that has been reflected by judges' sentencings.

The "legalization" of marijuana in Colorado has also affected juries. Several jurisdictions reported that prospective jurors in voir dire are now more likely to express acceptance of marijuana use and to state an opinion that marijuana should be legalized. The Leavenworth County Attorney's Office has observed a decline in juror willingness to convict for marijuana related offenses:

Prosecutors in my office have reported to me that they have experienced a substantial decline in our jurors' willingness to convict for Marijuana-related offenses since January 1, 2014. It is now very common for jurors to either acquit or to convict of lesser-included Marijuana offenses even when the evidence is strong or overwhelming. These attitudes appear to be shared across the entire spectrum of race and age. Older jurors commonly explain that they oppose Marijuana prosecutions because they have friends or family members who use Marijuana to alleviate medical ailments as a cheap substitute for expensive pharmaceutical drugs. Younger jurors commonly explain that they view Marijuana as equivalent to or even less serious than tobacco or alcohol, and they oppose the use of tax funds to prosecute marijuana cases. The vast majority of jurors have expressed their support of legalization of Marijuana for medical purposes only, with heavy taxation used to support education and other public services. There appears to be less support for recreational use.

The survey responses detailed a number of other factors which affect prosecutors' ability to bring marijuana cases. For example, crimes involving small amounts of marijuana are sometimes never presented to the prosecutor. The Clark County Attorney's Office reported that local officers stop at least five cars a day with personal use amounts of marijuana, which they confiscate without issuing a citation. Similarly, the Sherman County Attorney explained:

I have had law enforcement officers in Sherman County tell me that they are not even bothering with small personal use marijuana now – they will simply have the individual dump the marijuana out and crush it into the ground. I was told that they do not want to waste their time on the small personal use amount when they know there is a constant stream of vehicles going through with much larger quantities.

Prosecutors also expressed difficulty in dealing with out-of-State defendants. As the Saline County Attorney's Office explained:

Most of our "Colorado marijuana" cases from the interstate are misdemeanor possession cases. KHP does not arrest and then I have to decide whether to charge. The difficulty is getting these people to appear when they live in another

state. Interstate extradition on misdemeanor cases is discouraged and is expensive. Some of those arrested, posted bond, and failed to appear. The case will remain open until the defendant happens to have contact with law enforcement in Kansas. This may be years. Most of our cases do not involve local residents.

It has also become more difficult to distinguish possession cases from distribution cases, with individuals claiming that they buy in bulk in Colorado for their personal use.

Conclusion

Overall, the survey results demonstrate that Colorado marijuana is widely present throughout Kansas. Although it is not clear that Colorado marijuana “legalization” has led to a significant overall increase in the number of marijuana crimes statewide, some jurisdictions reported an increase. One of the primary effects of Colorado marijuana “legalization” seems to be that high-grade Colorado marijuana has replaced lower quality marijuana from Mexico and homegrown marijuana. There has also been a significant increase in the amount of marijuana edibles and products such as waxes and oils in Kansas, which raises serious concerns, particularly with respect to juveniles.

Online Appendix

The survey responses are available in two spreadsheets (compiled from letters, emails, phone calls, and the survey webpage) at www.ag.ks.gov/survey-results.