

RESPONSE REQUIRED BY K.S.A. 21-2504(a)

TO: Kansas County and District Attorneys
FROM: Derek Schmidt, Kansas Attorney General
RE: Request for Information on Colorado Marijuana
DATE: December 30, 2015

As you know, the State of Colorado in recent years has moved toward “legalizing” marijuana under state law including enacting in 2010 a statutory scheme for the distribution of “medical” marijuana and in 2012 a further expansion of state law to allow for the possession, use, and sale of certain amounts of marijuana for recreational purposes (collectively, “Colorado marijuana”). The first stores selling Colorado marijuana under the most recent expansion officially began operating on or about January 1, 2014. The possession, use, and sale of marijuana in Kansas remain a crime under both state law and federal law.

Numerous anecdotal reports, particularly from areas near the Colorado border, describe an increase in the amount of Colorado marijuana flowing into Kansas. These anecdotal reports describe negative effects of Colorado marijuana in Kansas including but not limited to increased possession in Kansas of Colorado marijuana, increased access by juveniles in Kansas to Colorado marijuana, increased incidents of persons driving in Kansas while under the influence of Colorado marijuana, and incidents of persons who have acquired significant amounts of Colorado marijuana and transported the same into Kansas for the purpose of selling or otherwise distributing it to others.

Unfortunately, our 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 and, therefore, does not add to our understanding of the amount or effects of Colorado marijuana in Kansas.

Therefore, in order to obtain reliable information that will assist in ascertaining the true condition of the crime situation involving Colorado marijuana in Kansas, I am exercising my authority under K.S.A. 21-2504(a) and calling upon you to provide the following information:

1. How many criminal prosecutions involving Colorado marijuana^{*} have been brought in the district court of your jurisdiction since January 1, 2014? If you are unable to determine the exact number of cases for this or the following questions, please provide your best estimate.

^{*} It may be difficult to determine with absolute certainty whether certain marijuana came from Colorado. When this survey refers to “Colorado marijuana,” it means marijuana that you believe more likely than not originated in Colorado based on the available evidence.

2. How many child in need of care cases in your jurisdiction have involved the possession of Colorado marijuana (in any form, including edibles, oils, and other by-products) since January 1, 2014?
3. How many asset forfeiture cases in your jurisdiction since January 1, 2014, have been related to Colorado marijuana?
4. Are you aware of any Colorado marijuana found in your jurisdiction since January 1, 2014, in the form of edibles, food additives, or other ingestible products? If "yes," please elaborate and provide as much information as possible to assist in understanding the nature and scope of this problem.
5. How many criminal prosecutions have involved the defendant raising a defense or an argument for a lesser penalty based on Colorado's laws regarding marijuana possession?
6. Have you seen a change in how judges treat the prosecution of marijuana possession based on Colorado's marijuana laws, for example by referencing Colorado's laws regarding marijuana possession to justify a lesser penalty than what is presumed under the sentencing guidelines? If 'yes,' please elaborate and provide as much information as possible to assist in understanding the nature and scope of this problem.
7. If you have provided any information in response to the questions above about incidents in your jurisdiction, please describe why you believe that the marijuana involved was, in fact, Colorado marijuana and did not come from another source.
8. Overall, how would you characterize the effect of Colorado marijuana "legalization" in your jurisdiction since January 1, 2014?
9. Please provide any other information you believe would assist the Office of the Attorney General in ascertaining the true condition of the Colorado marijuana situation in your jurisdiction and in Kansas.

I respectfully request you provide this information not later than February 1, 2016. The information can be submitted online at [REDACTED], or sent by U.S. mail to Kansas Attorney General's Office, Attn: Dwight Carswell, 120 SW 10th Ave., 2nd Floor, Topeka, KS 66612. Please be advised that all documents you send and all information you provide will be treated as a public record, so do NOT send information that is confidential in nature (i.e., non-public details of individual investigations, etc.). The Office of the Attorney General and the Kansas Bureau of Investigation will compile information from your responses into a report to assist Kansas authorities in developing proper responses to this situation.

Thank you for your assistance. If you have any questions, please contact Dwight Carswell at (785) 368-8410.