



2015

Sprung from Night into the Sun: An Examination of Colorado's Marijuana Regulatory Framework Since Legalization

Robert T. Hoban
Hoban & Feola, LLC

Raushanah A. Patterson

Follow this and additional works at: <https://uknowledge.uky.edu/kjeanrl>



Part of the [Administrative Law Commons](#), and the [Food and Drug Law Commons](#)

[Right click to open a feedback form in a new tab to let us know how this document benefits you.](#)

Recommended Citation

Hoban, Robert T. and Patterson, Raushanah A. (2015) "Sprung from Night into the Sun: An Examination of Colorado's Marijuana Regulatory Framework Since Legalization," *Kentucky Journal of Equine, Agriculture, & Natural Resources Law*. Vol. 8 : Iss. 2 , Article 3.

Available at: <https://uknowledge.uky.edu/kjeanrl/vol8/iss2/3>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in *Kentucky Journal of Equine, Agriculture, & Natural Resources Law* by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

SPRUNG FROM NIGHT INTO THE SUN:
AN EXAMINATION OF COLORADO'S MARIJUANA
REGULATORY FRAMEWORK
SINCE LEGALIZATION

*Professor Robert T. Hoban, Esq.**
*Raushanah A. Patterson**

ABSTRACT

Since the legalization of Medical Marijuana (“MMJ”) and, most recently, Recreational Marijuana (“RMJ”) in Colorado, many question if the State’s regulatory policy and practices are effective. As a way to draw a parallel connection to its effectiveness, data was analyzed surrounding the State’s economic impact with a nexus from the legalization of RMJ in November 2012. This article will highlight the correlation between Colorado, ranked as having the number one fastest growing economy according to the Business Insider’s rating report,¹ and subsequently, the

*Robert T. Hoban is one of the nation’s leading cannabis industry legal practitioners and the Managing Partner at Hoban & Feola, LLC, a Denver-based law firm specializing in cannabis (marijuana and hemp) business law with clients and offices in numerous states, as well as abroad. He is also a faculty member at the University of Denver in the Law and Society Program, and regularly instructs regarding cannabis and hemp related legal and policy topics. He also teaches government regulations, public policy, and research-based policy courses. In 2014, Mr. Hoban led a University-sanctioned research practicum concerning the efficacy of marijuana regulation; the first of its kind in the U.S. In August 2015, he taught an international travel course in Uruguay concerning that country’s landmark cannabis regulatory framework. In September 2015, the University College of Professional and Continuing Studies at D.U. hired Mr. Hoban, in part, to develop and instruct medical marijuana and related regulatory courses in its Healthcare Leadership graduate program. He will instruct a multi student research practicum in the Spring of 2016 concerning the legal, policy, and regulatory framework surrounding the rebirth of industrial hemp. Because of this work, Mr. Hoban has worked with numerous state, local and international governments in developing both marijuana and industrial hemp regulations.

* Raushanah A. Patterson is a 2015 graduate of the Colorado Women’s College at the University of Denver, where she earned a Bachelor of Arts in Law and Society with a minor in Communication. While at the CWC, Raushanah was awarded the 2015 Law and Society Senior of the Year and chosen to speak at the 2015 Graduation Commencement. Following graduation, Raushanah was offered her first position in the legal field at an Intellectual Property law firm located in Denver, Colorado, where

regulation of recreational marijuana. John Hudak, research writer for the Center for Effective Public Management at the Brookings Institution, explains how imperative it is for a successful rollout of any new management policy.² Since Colorado is at the forefront of the controversial policy decision to legalize the possession and distribution of recreational marijuana for profit, Hudak notes, the federal government's expectation that "endeavor[s] to authorize medical and recreational marijuana production, distribution, and possession" will "implement strong and effective regulatory and enforcement systems."³ Finally, this paper will utilize established methods to successfully gauge regulatory effectiveness.

Considering the conflicting regulations of State and Federal governments, the legalization of RMJ is sparking more concern. The basis of this concern comes into play when the State authorizes the sale of public goods and services; the State secures the generation of finances, quality, and tracking of product sold, and the improvement of effective and safe distribution of the product.⁴ Based on these infrastructure models of regulatory effectiveness from previous scholars, this study will outline measurable qualitative data through literature, as well as quantitative data as set forth in various reports.

I. THE LEGISLATIVE HISTORY OF MARIJUANA IN COLORADO

The history of legislation in Colorado shows a pattern towards acceptance, decriminalization, and legalization of marijuana. It begins with Colorado legislators making the use and cultivation of cannabis a misdemeanor.⁵ Those found guilty of breaking the law received punishments ranging from up to one month in jail to a fine of between \$10 and \$100.⁶ Despite the efforts of bill supporter Andres Lucero of Las Animas to regulate marijuana on a state level, Colorado became part of the

she specializes in United States Patent Prosecution. Raushanah remains dedicated to academic and policy-based cannabis research.

¹ Andy Kiersz & Elena Holodny, *Here's How All 50 State Economies Are Doing, Ranked From Slowest To Fastest*, BUS. INSIDER (Aug. 4, 2014, 10:16 AM), <http://www.businessinsider.com/state-economic-growth-rankings-2014-8?op=1>.

² JOHN HUDAK, COLORADO'S ROLLOUT OF LEGAL MARIJUANA IS SUCCEEDING 2 (2014), available at <http://www.brookings.edu/~media/research/files/papers/2014/07/colorado-marijuana-legalization-succeeding/cepmjcov2.pdf>.

³ *Id.* at 3.

⁴ See Michelle Meadows, *Promoting Safe and Effective Drugs for 100 Years*, FDA (Jan. 2006), <http://www.fda.gov/AboutFDA/WhatWeDo/History/ProductRegulation/PromotingSafeandEffectiveDrugsfor100Years/>.

⁵ Kylie Horner, *Marijuana Criminalized in Colorado 95 Years Ago Today: Unhappy Anniversary?*, WESTWORD (Mar. 30, 2012), www.westword.com/news/marijuana-criminalized-in-colorado-95-years-ago-today-unhappy-anniversary-5845807.

⁶ *Id.*

national temperance movement that led to prohibition in 1920.⁷ Less than ten years later, Colorado legislators passed a law making the sale, possession, and distribution of marijuana a felony.⁸ During the 1930's, the perception of marijuana users changed from college and university students to minorities.⁹

Many attributed the increase in marijuana use to stories of Mexican immigrants murdering family members while under the influence, or selling marijuana to high school students.¹⁰ As a result, lawmakers felt stricter legislation was necessary to control the growing population of Mexicans that were migrating north to Colorado for agricultural work, and who were bringing marijuana with them.¹¹ Not long after, the rest of the country began to adopt the same racist perceptions and the federal government passed the Marijuana Tax Act of 1937.¹² The Act made marijuana use and cultivation without a license a crime.¹³ This law varied from the 1932 Uniform State Narcotic Drug Act, which sought to regulate medical narcotics and included cannabis as an illegal drug, but it did not contain specific penalties for its violations; rather, the matter of supplying the appropriate penalties was left to each state.¹⁴

The negative association of marijuana and immigrants lasted until the 1960's when hippies began to arrive in the state.¹⁵ In the 1960's, Colorado saw a shift in public opinion and the image of marijuana users shifted back to college students.¹⁶ More than 60% of students surveyed in 1968 favored the legalization of marijuana.¹⁷ This resulted in the labeling of some universities, like the University of Colorado, as "stoner-friendly schools."¹⁸ By 1970, legislators in Colorado responded to the cannabis friendly climate

⁷ See *id.*

⁸ William Breathes, *The History of Cannabis in Colorado... Or How the State Went to Pot*, WESTWORD (Nov. 1, 2012), <http://www.westword.com/news/the-history-of-cannabis-in-colorado-or-how-the-state-went-to-pot-5118475> ("But in 1929, when the Colorado Legislature passed a law making the sale, possession and distribution of marijuana a felony in Colorado, minorities were clearly the focus of the measure.")

⁹ *Id.*

¹⁰ See *id.*

¹¹ *Id.*

¹² *Marijuana Timeline*, PBS, <http://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html> (last visited Feb. 16, 2016).

¹³ Breathes, *supra* note 8.

¹⁴ See RICHARD J. BONNIE & CHARLES H. WHITEBREAD II, *THE MARIJUANA CONVICTION: A HISTORY OF MARIJUANA PROHIBITION IN THE UNITED STATES* 31-52, 79-91 (1974).

¹⁵ See Breathes, *supra* note 8.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

by arguing to lower the penalties for cannabis possession and use.¹⁹ As views on cannabis became more liberalized, attempts to decriminalize the drug became a national trend.²⁰ Those who favored decriminalization argued that legalizing cannabis would free a substantial amount of law enforcement resources, generate significant tax revenue, free up significant dollars annually spent on prosecuting users, and reduce the income of street gangs who grow and sell cannabis.²¹ At this time, Colorado even took legislative steps to experiment with decriminalizing the possession, transportation and private use of marijuana.²²

In 1975 Colorado decided to reduce penalties for marijuana use and possession.²³ Preceding that decision, the National Commission on Marijuana and Drug Abuse made a recommendation that Congress reduce penalties for marijuana use and possession.²⁴ Consistent with the National Commission on Marijuana and Drug Abuse approach, the new Colorado law made possessing less than one ounce of marijuana a petty offense with a \$100 fine.²⁵ Harsher penalties, however, were still given to those in possession of greater amounts, as well as for distribution and cultivation.²⁶

In the United States, legalizing marijuana and legalizing hard drugs are very different choices, with significantly different stakes outcomes.²⁷ Hence, it is important to always analyze the substance and its potential effects on society. In *Understanding Drug Legalization*, the authors cited four reasons why marijuana is special.²⁸ First, marijuana markets are associated with much less violence, and (since marijuana rarely dominates the budgets of its users) its consumption is much less associated with income generating crime.²⁹ Second, there is no chance of the federal government legalizing cocaine/crack, methamphetamine, or heroin in the near future.³⁰ Thus, the federal government appears to be aware of the

¹⁹ *Id.*

²⁰ See BONNIE & WHITEBREAD, *supra* note 14, at 92-97.

²¹ See *id.*

²² Breathes, *supra* note 8 (“By 1970, legislators and a few progressive lawmen were arguing for lowering the penalties on cannabis possession and use, and that August, recreational possession was downgraded from a felony to a misdemeanor.”).

²³ Jeffery Miron, *Marijuana Policy in Colorado* 5 (CATO Inst., Working Paper No. 24, 2014), available at http://object.cato.org/sites/cato.org/files/pubs/pdf/working-paper-24_2.pdf.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Jonathan P. Caulkins et al., *Understanding Drug Legalization*, 6 INT’L PUB. HEALTH J. 283, 285 (2014).

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

serious side effects of consuming these dangerous drugs, such as interfering with the way the brain processes chemicals, intense depression, and higher risks of heart attack, stroke, seizure, or respiratory failure. Third, 17 million Americans use marijuana in any given month; such a figure far exceeds the use of all other illegal drugs combined (except diverted pharmaceuticals).³¹ Finally, according to Caulkins, Kasunic and Kleiman (2014), marijuana use is simply much less dangerous in terms of risk of overdose, disastrous intoxicated behavior, or risk of dominating one's life.³² For these listed reasons, plus numerous more, states like Colorado have looked at the issue of marijuana legalization and considered the range of policy and social effects. Ultimately, these states have created regulatory systems for both medical and recreational marijuana use for adults over the age of 21.

A. Colorado Statutes and Regulations

When Colorado became a state in 1876, hemp and cannabis were legal.³³ Due to the popularity reception of cannabis oil, it was used in hashish dens and medical tinctures.³⁴ In 1906, however, the government became concerned and imposed the first regulations on cannabis intended for consumption.³⁵ In March 1917, Colorado legislators passed a law that made cannabis use and cultivation a misdemeanor.³⁶ Violators received penalties ranging from fines of \$10 to \$100, or up to a month in jail.³⁷ Three years later, a national movement led to the prohibition of marijuana.³⁸ In 1929, legislatures in Colorado passed a law making the distribution, sale, and possession of marijuana a felony in the state of Colorado.³⁹ Some would argue that minorities were the focus of the measure.⁴⁰ For that reason, supporters called for stricter legislation to control the Mexican population.⁴¹ In 1937, the federal government passed the Marijuana Tax Act, making marijuana distribution a crime.⁴²

³¹ *Id.*

³² *Id.*

³³ *The Road To Legalization*, GAZETTE.COM, <http://gazette.com/news/marijuana/road-to-legalization> (last visited Feb. 16, 2016).

³⁴ *Id.*

³⁵ *Id.*

³⁶ Horner, *supra* note 5.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Breathes, *supra* note 8.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Marijuana Timeline*, *supra* note 12.

The sixties brought new concerns and shifted the focus of marijuana consumption from minorities to hippies.⁴³ In 1968, 67% of Colorado's college students favored legalizing marijuana.⁴⁴ Shortly after, Michael Strang, a Colorado legislator, introduced Colorado's first re-legalization effort.⁴⁵ His proposal, however, never passed.⁴⁶ Although there were stricter punishments implemented for possession, sale, cultivation, or use or display in public, Colorado legislators reduced the penalties for possession of smaller amounts, prescribing a \$100 fine for possession of cannabis under one ounce.⁴⁷

In November 2000, Colorado voters amended the States' Constitution and passed Amendment 20, allowing qualified patients and/or the caregiver of a patient to possess up to 2 ounces of marijuana and grow six marijuana plants for medical purposes.⁴⁸ In March of 2001, the State of Colorado Board of Health approved the Rules and Regulations pertaining to the administration of the program.⁴⁹ On November 1, 2005, by a vote of 54-46%, Denver passed the Denver Alcohol-Marijuana Equalization Initiative.⁵⁰ This new initiative repealed older municipal penalties for possession of one ounce of cannabis.⁵¹ This conflicted, however, with state law. Police still had the authority to arrest for possession of cannabis under Colorado and federal law.⁵²

The medical marijuana industry exploded in 2009, and substantially changed the dynamics for two reasons. First, in 2007, a Denver District Judge overturned a rule stating the CDPHE violated the state's requirement when setting a five-patient-to-one-caregiver ratio allowing caregivers to claim an indefinite number of patients for whom they were providing and growing marijuana.⁵³ Second, in July 2009 the Colorado

⁴³ Breathes, *supra* note 8.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Medical Marijuana Laws by State*, FINDLAW, <http://healthcare.findlaw.com/patient-rights/medical-marijuana-laws-by-state.html>.<http://healthcare.findlaw.com/patient-rights/medical-marijuana-laws-by-state.html> (last visited Feb. 16, 2016).

⁴⁹ *See id.*

⁵⁰ *Alcohol-Marijuana Equalization Initiative*, DRUGSENSE.ORG, <http://www.drugsense.org/cms/node/51> (last visited Feb. 16, 2016).

⁵¹ *Id.*

⁵² *Id.*

⁵³ *See* Howard Pankratz, *Judge Suspends Pot-Patient Policy: Limits for Caregivers*, DENVER POST (July 4, 2007, 1:00 AM), http://www.denverpost.com/headlines/ci_6293080.

Board of Health failed to reinstate the five-patients-to-one-caregiver rule.⁵⁴

U.S. Deputy Attorney General David Ogden stepped in and provided guidelines for U.S. Attorneys in Colorado and other states that enacted medical marijuana laws.⁵⁵ The memo advised states to not focus federal resources on individuals whose actions are in clear and unambiguous compliance with existing state law providing for the medical use of marijuana.⁵⁶ Beginning in early spring, Colorado received over 20,000 new medical marijuana patient applications.⁵⁷ In addition, 250 dispensaries emerged around the state.⁵⁸ At the end of 2009, Colorado received more than 38,000 applications, an increase from 4,000 to 41,000 card holders.⁵⁹

In 2010, Colorado's legislature passed HB-1284, which legalized medical marijuana centers (dispensaries), marijuana cultivation operations, and the manufacture of edible marijuana products.⁶⁰ The system, managed by the Colorado Department of Public Health and Environment (CDPHE), began taking applications for patients in June 2011.⁶¹ Under Amendment 20, individuals with a doctor's recommendation to use marijuana for medical purposes received an identification card.⁶² From 2001 to 2008, there were only 5,993 patient applications received, and only 55% of those designated a primary caregiver.⁶³ Although CDPHE regulations limited a caregiver to no more than five patients, caregivers during this time averaged three patients and there were no dispensaries selling medical marijuana.⁶⁴

By the middle of 2010, there were over 1,100 dispensaries operating in the state.⁶⁵ Eventually, law enforcement moved to implement legislation

⁵⁴ *History of Colorado's Medical Marijuana Laws*, SENSIBLE COLORADO, <http://sensiblecolorado.org/history-of-co-medical-marijuana-laws/> (last visited Feb. 16, 2016).

⁵⁵ David W. Ogden, *Memorandum for Selected United State Attorneys On Investigations and Prosecutions In States Authorizing the Medical Use Of Marijuana*, U.S. DEP'T OF JUST. (Oct. 19, 2009), available at <http://www.justice.gov/opa/blog/memorandum-selected-united-state-attorneys-investigations-and-prosecutions-states>.

⁵⁶ *Id.*

⁵⁷ Miron, *supra* note 23, at 5.

⁵⁸ *Id.* at 6.

⁵⁹ *Id.* at 7.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 5.

⁶³ *Id.* at 6.

⁶⁴ *Id.*

⁶⁵ See John Ingold, *Colorado Medical-Marijuana Businesses have declined by 40 Percent*, DENVER POST (Mar. 3, 2013, 12:01 AM), http://www.denverpost.com/ci_22706453/colorado-medical-marijuana-businesses-have-declined ("In the summer of 2010, after legislators passed a law legitimizing dispensaries, there were 1,117 medical-marijuana businesses in Colorado, according to the lists provided by the state's Medical Marijuana Enforcement Division and Talled by The Denver Post.

that would reinstate the original one-to-five ratio of caregiver to patient model.⁶⁶ The purpose was to limit the number of illegal caregivers in the state and ban dispensaries. By October 2012, there were 266 licensed dispensaries in Colorado; with that number possibly doubling by the time the state Medical Marijuana Enforcement Division completed its licensing process.⁶⁷ There were 108,000 registered patients, 94% of which qualified for a card due to severe pain.⁶⁸

In November 2012, Colorado voters decided to experiment with marijuana, passing a constitutional amendment legalizing retail (recreational) marijuana.⁶⁹ Colorado and Washington, were the only states to make such a daring move, and did so in hopes of proving that recreational marijuana rules and regulations could work. To everyone's surprise, Colorado's Amendment 64 passed, legalizing marijuana for recreational purposes for adults over the age of 21.⁷⁰ It was a bold move, but it also required quick, decisive, and unprecedented action on the part of the state government to implement the policy.⁷¹ On May 28, 2013, Governor Hickenlooper implemented the Task Force for Amendment 64 by signing several bills into law.⁷² Months later, the Colorado Department of Revenue adopted the final recreational marijuana regulations and implemented the Colorado Retail Marijuana Code.⁷³ The Denver Council, shortly after, adopted an ordinance for retail establishments.⁷⁴

In order to be prepared, Colorado needed to set up a legal, regulatory, and tax system to ensure the product would be available in dispensaries by

(The number includes both dispensaries and makers of marijuana-infused products.) By the end of that year, as a 'green rush' of cannabis entrepreneurs reached its apex, the total ticked up to 1,131.”)

⁶⁶ See Miron, *supra* note 23, at 6.

⁶⁷ William Breathes, *Medical Marijuana Dispensaries: 266 Licensed MMCS in Colorado*, 272 *Pending*, WESTWORD (Oct. 31, 2012), <http://www.westword.com/news/medical-marijuana-dispensaries-266-licensed-mmcs-in-colorado-272-pending-5885864> [hereinafter Breathes, *Dispensaries*].

⁶⁸ William Breathes, *Medical Marijuana Registry Hits Highest Number Since 2011: Retail Pot Taxes the Reason?*, WESTWORD (June 25, 2014), <http://www.westword.com/news/medical-marijuana-registry-hits-highest-number-since-2011-retail-pot-taxes-the-reason-5840379> [hereinafter Breathes, *Registry*].

⁶⁹ HUDAK, *supra* note 2, at 1.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Eli Stokols, *Hickenlooper Signs Bills Regulating, Taxing Legal Marijuana In Colorado*, FOX 31 DENVER, (May 28, 2013, 9:02 AM), <http://kdvr.com/2013/05/28/hickenlooper-set-to-sign-bills-regulating-taxing-legal-marijuana-in-colorado/>.

⁷³ See COLO. DEP'T OF REVENUE, PERMANENT RULES RELATED TO THE COLORADO RETAIL MARIJUANA CODE 1-41 (2013), *available at* https://www.colorado.gov/pacific/sites/default/files/Retail%20Marijuana%20Rules%2C%20Adopted%20090913%2C%20Effective%20101513%5B1%5D_0.pdf.

⁷⁴ DENVER, COLO., RETAIL MARIJUANA CODE ch. 6, art. V (2013), *available at* http://www.denvergov.org/content/dam/denvergov/Portals/723/documents/Am%2064%20CB13-0570_Bill_MarijuanaLicensing_AMENDMENTS2_09-16-13.pdf.

January 1, 2014.⁷⁵ To prepare for the influx of tourists and potential purchasers, Denver placed extra police officers around the city.⁷⁶ Regulations address the issues of market size, safety, consumer access, producer access, growing conditions, security, and taxation, to name a few.⁷⁷ Under Amendment 64, adults over twenty-one years can grow up to six cannabis plants in a private and secured place, as well as possess all the plants that grow as long as it is kept where it is grown.⁷⁸ In addition, the law allows a traveling adult to possess up to one ounce and to give a gift of up to one ounce to another American citizen over the age of twenty-one.⁷⁹ However, consumption in public still remains illegal.⁸⁰ Amendment 64 manages marijuana consumption similar to the consumption of alcohol.⁸¹ Visitors to Colorado can purchase and consume marijuana, but are prohibited from taking it out of state.⁸² Thus far, Colorado has largely succeeded in rolling out a legal marijuana system, and its early implementation efforts have been impressive.⁸³

The roll-out of RMJ regulations in the state of Colorado, along with MMJ regulations, are successful because of key regulatory elements that helped to build efficient policies and procedures. These regulatory elements are the answer to a mandate from the legislature upon the implementation of Amendment 64. To answer that mandate, the Colorado Department of Revenue created the (ITF) Implementation Task Force.⁸⁴ This task force was charged with discovering a way to identify several issues such as: how the State will know what is being sold; who will sell the product; and how to control the amount of product being produced, sold, and purchased.⁸⁵

⁷⁵ HUDAK, *supra* note 2, at 20.

⁷⁶ Kristen Wyatt, *Colorado Braces for High New World as Pot Becomes Legal*, DALLAS MORNING NEWS, (Dec. 31, 2013, 11:55PM), <http://www.dallasnews.com/news/local-news/20131231-colorado-braces-for-high-new-world-as-pot-becomes-legal.ece>.

⁷⁷ HUDAK, *supra* note 2.

⁷⁸ Matt Ferner, *Amendment 64 Passes: Colorado Legalizes Marijuana for Recreational Use*, HUFFINGTON POST, http://www.huffingtonpost.com/2012/11/06/amendment-64-passes-in-co_n_2079899.html, (last updated Nov. 20, 2012).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Steven Rodemer, *An Out-Of-State Visitors Guide To Marijuana In Colorado*, THE LAW OFFICES OF STEVEN T. RODEMER, <http://www.coloradospringscriminaldefense.net/state-visitors-guide-marijuana-colorado/> (last visited Feb. 16, 2016).

⁸³ HUDAK, *supra* note 2, at 2.

⁸⁴ *Id.* at 5.

⁸⁵ *Id.*

B. Colorado Medical Marijuana Regulations

As marijuana in Colorado grew more prominent, lawmakers became inundated with the constant changes in Colorado's legislature. Historically, campaigners have pursued a state-by-state strategy, but many view medical marijuana as a tool to pave the way for legalization, rather than as a way of helping the sick.⁸⁶ Colorado voters took this election as an opportunity to do more than advocate for patients, choosing to protect those who follow with the terms, conditions, and limitations of the law. Amendment 20 of the constitution allowed the use of cannabis in the state for patients with approved and written consent from a Colorado doctor.⁸⁷ Patients may possess up to two ounces of medical cannabis, and can cultivate up to six cannabis plants with no more than three flowering mature plants at a time.⁸⁸ However, if a patient is caught with more than six plants in their possession, although it's not protected under state law, the patient can argue "affirmative defense of medical necessity."⁸⁹ Furthermore, a doctor can recommend to the state that the patient possess additional medicine and grow additional plants due to specific medical needs.⁹⁰

The enactment of the Colorado Medical Marijuana Code ("CMMC") reflects the national trend of states and local jurisdictions entering the field of medical cannabis regulation.⁹¹ With a combination of reporting requirements, surveillance, and comprehensive security systems, regulators and law enforcement had a clear eye on compliance. In the oversight of the state-administered medical program, regulations were established that minimized access and availability to unauthorized users, particularly adolescents.⁹² First, the modified section of the state constitution addressing Colorado's Medical Marijuana industry is contained within Article XVII: Section 14 entitled "Medical Use of Marijuana for Persons Suffering from Debilitation Medical Conditions."⁹³ Second, the Marijuana Enforcement Division is vested with the authority from the General Assembly to carry out its mission through the Colorado Revised Statutes

⁸⁶ *The Great Pot Experiment*, ECONOMIST (July 12, 2014), <http://www.economist.com/news/united-states/21606851-legalising-drug-harder-it-looks-great-pot-experiment>.

⁸⁷ COLO. CONST. art. XVIII, § 14(2)(a)-(c).

⁸⁸ *Id.* § 14(4)(a).

⁸⁹ *Id.* § 14(4)(b).

⁹⁰ *Id.*

⁹¹ Norton Arbelaez, *Regulatory and Criminal Options in Medical Cannabis Control*, COMPLIANCE CORNER (May 13, 2013), <https://riverrockcompliancecorner.wordpress.com/>.

⁹² *Id.*

⁹³ *Id.*

(“C.R.S”).⁹⁴ Under this section, the Medical Marijuana Code is comprised of C.R.S. 12-43.3-101 et seq.⁹⁵ Finally, the C.R.S provides that the Division promulgates regulations under which Colorado’s Medical and Retail Marijuana Industries are expected to operate.⁹⁶ In accordance with the Colorado Administrative Procedures Act (C.R.S. 24-4-101 et seq.), these regulations are implemented only after public hearings.⁹⁷

C. Colorado Recreational Marijuana Regulations

The ballot initiative, known as Amendment 64, made the historic move to modify the Colorado State Constitution legalizing the production, distribution, and sale of cannabis. Under the new law, Colorado citizens at least twenty-one years old, with a government issued identification could legally possess up to one ounce of cannabis while traveling, grow up to six plants in a locked space, and give as a gift up to one ounce to other citizens twenty-one years of age or older.⁹⁸ In addition, Colorado residents were permitted to purchase up to one ounce of marijuana in a single transaction.⁹⁹ Out-of-state residents visiting the state of Colorado were limited to purchasing 0.25 ounces.¹⁰⁰ Amendment 64 also legalized retail stores, cultivation sites, edible factories, and testing sites for recreational marijuana in December 2012.¹⁰¹ In regard to consumption, marijuana can be consumed similar to alcohol but still remains illegal to consume in public.¹⁰²

In light of the passing of Amendment 64, Colorado had to prepare for legalized marijuana use. Colorado used the success of their state’s medical system to argue for recreational use.¹⁰³ These changes came despite Colorado’s governor and state attorney general’s opposition and the existing federal prohibition of marijuana. The goal was to tax the sale of substance, similar to tobacco and alcohol. However, there was close attention made to the differences of tobacco and alcohol from marijuana. Although it is valuable to look to the tobacco and alcohol control models,

⁹⁴ *Laws: Constitution, Statutes and Regulations—Marijuana Enforcement*, COLORADO.GOV, <https://www.colorado.gov/pacific/enforcement/laws-constitution-statutes-and-regulations-marijuana-enforcement> (last visited Feb. 16, 2016).

⁹⁵ COLO. REV. STAT. § 12-43.3-101 (2015).

⁹⁶ *Id.* § 12-43.3-202.

⁹⁷ *Id.* § 24-4-103.

⁹⁸ Miron, *supra* note 23, at 9.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *See id.*

¹⁰³ *The Great Pot Experiment*, *supra* note 86.

one must be mindful of how the substances' markets differ in terms of the behavior of users and the behavior of suppliers.¹⁰⁴ The regulatory administrative changes that were expected following the legalization of marijuana needed to rely on intelligent decisions in order to implement a structure for distribution and prevent illegal diversion. With that in mind, a strong leadership team was successfully developed to deliver the voters' wishes.¹⁰⁵ Thus, advocates from the civil society and the business community, including the medical cannabis industry, championed Amendment 64 in Colorado.¹⁰⁶

D. Politicians Perspective on Legalization

When Colorado passed Amendment 64, both Democrats and Republicans took a stance on the legalization of the new law. It was the Justice Department and the Obama administration, however, who could have chosen to challenge the marijuana laws in federal court. Although the President did remind citizens that marijuana remains illegal under federal law, President Obama stated that he would not pursue Colorado after voters legalized the recreational use of marijuana in the November election.¹⁰⁷ According to President Obama, "[i]t does not make sense, from a prioritization point of view, for us to focus on recreational drug users in a state that has already said that under state law, that's legal."¹⁰⁸ Since 2009, the Justice Department has made prosecuting marijuana users a low-priority.¹⁰⁹ This has therefore made states more comfortable with loosening marijuana laws.

When Amendment 64 was proposed, not everyone was excited about the change in direction regarding marijuana legalization. Colorado's governor, John Hickenlooper, formerly opposed the amendment.¹¹⁰ In a September 2012 statement, Governor Hickenlooper said "Colorado is

¹⁰⁴ Rosalie Pacula et al., *Developing Public Health Regulations for Marijuana: Lessons from Alcohol and Tobacco*, 104 AM. J. PUB. HEALTH 1021, 1026 (2014).

¹⁰⁵ Bryce Pardo, *Cannabis Policy Reforms in the Americas: A Comparative Analysis of Colorado, Washington, and Uruguay*, 25 INT'L J. ON DRUG POL'Y 727, 728 (2014).

¹⁰⁶ *Id.*

¹⁰⁷ David Ingram, *U.S. Allows States to Legalize Recreational Marijuana Within Limits*, REUTERS (Aug. 29, 2013), <http://www.reuters.com/article/2013/08/29/us-usa-crime-marijuana-idUSBRE97S0YW20130829>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ Matt Ferner, *Gov. John Hickenlooper Opposes Legal Weed: 'Colorado is Known for Many Great Things, Marijuana Should Not be One of Them'*, HUFFINGTON POST (Sept. 13, 2012), http://www.huffingtonpost.com/2012/09/12/gov-john-hickenlooper-opp_n_1879248.html.

known for many great things—marijuana should not be one of them.”¹¹¹ As a result, legalization proponents built very strict deadlines into the amendment to force state government’s hand.¹¹² For example, the Colorado Department of Revenue was required to adopt regulations by July 1, 2013, and state and local licensing procedures had to be established by October 1, 2013.¹¹³ Following the passage of Amendment 64, Hickenlooper announced that his personal opposition would not stand in the way of the law’s implementation.¹¹⁴ In a November 2012 statement he noted, “[t]he voters have spoken, and we have to respect their will. This will be a complicated process, but we intend to follow through.”¹¹⁵ He also spoke publicly about maintaining public health and public safety, and preventing underage use.¹¹⁶

E. Federal Stance on Colorado’s Amendment 64

In late August 2013, approximately ten months after the passage of the state initiatives, the Department of Justice issued a policy memorandum (known as the Cole Memorandum) allowing states to carry out initiatives without federal interference or the enforcement of federal law that conflicts with the new state laws.¹¹⁷ In other words, the federal government would entrust the states with marijuana law enforcement and not intervene. After Colorado and Washington legalized recreational marijuana, it was made clear that the federal government would ostensibly permit these initiatives, but reserved the right to preempt and nullify state law at any moment.¹¹⁸ In August 2013, Attorney General Eric Holder informed both Colorado and Washington that the Department of Justice would take a trust-by-verify approach.¹¹⁹ However, Holder added that they would still intervene to protect federal policy interest and public health.¹²⁰ Federal law supersedes state law under the U.S. Constitution, and any state law in conflict with federal law can be preempted in a federal court at the behest of the

¹¹¹ *Id.*

¹¹² HUDAK, *supra* note 2, at 5.

¹¹³ *Id.*

¹¹⁴ Pardo, *supra* note 105, at 729.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

Department of Justice.¹²¹ Under U.S. jurisdiction, however, the federal government cannot force a state to criminalize an act under state law.¹²²

Under federal laws, marijuana is regulated as a controlled substance similar to cocaine and heroin.¹²³ Generally, these laws that exclude medical and recreational use are applied to individuals who have been found guilty of possessing, cultivating, or distributing large quantities of marijuana. Under the CSA, marijuana is a Schedule 1 drug.¹²⁴ This means that marijuana is considered to be highly addictive with no medical value.

With marijuana still classified as a Schedule 1 drug, the federal government is mainly concerned with public safety. As Colorado legislators were vigorously working to successfully implement a state level recreational marijuana regulatory system following the passing of Amendment 64, officials made several statements. Around the same time, Deputy Attorney General James Cole issued a memo to U.S. attorneys across the country.¹²⁵ The memo addressed when the federal government would and would not get involved in marijuana enforcement.¹²⁶ Included in the Department of Justice's memo were the eight top priorities focusing on prevention, as listed below:

- The distribution of marijuana to minors.
- Marijuana revenue going to criminal enterprises, gangs, and cartel.
- The transportation or diversion of marijuana from states where it is legal to states where it is illegal.
- State-authorized marijuana activity being used as a “cover up” for trafficking of other illegal drugs or activity.
- Violence and the use of firearms in the cultivation and the distribution of marijuana.
- Drugged driving and adverse effects in public health.
- The cultivation of marijuana on public lands.
- The possession or use of marijuana on federal property.¹²⁷

¹²¹ *Id.*

¹²² Sam Kamin, *Marijuana Regulation and the State-Federal Balance*, COUNCIL OF STATE GOVERNMENTS (October 15, 2014), available at http://knowledgecenter.csg.org/kc/system/files/Marijuana_0.pdf.

¹²³ See 21 U.S.C. §§ 811-814 (2014).

¹²⁴ *Id.*

¹²⁵ Miron, *supra* note 23.

¹²⁶ *Id.*

¹²⁷ *Id.*

Anything beyond those given priorities would be left mostly to state authorities to prosecute for marijuana offenses. Hence, although the federal government's power is extensive, it cannot eliminate the authority of states to independently make laws. In the August 2013 memo, however, the federal government clearly explained the expectation for states to implement strong and effective enforcement and regulatory systems that address the potential dangers state laws could pose.¹²⁸ The legalization of marijuana, specifically recreational, shows how the overlapping power of state and federal government promotes plurality, dialogue, and a myriad of criminal and regulatory options.

II. IMPLEMENTATION

In any policy area, the implementation of laws and regulations is essential for administration and governance.¹²⁹ Furthermore, creating Colorado's legalized marijuana system was critical in preventing another government failure. High profile implementation failures such as the rollout of the Affordable Care Act's federal exchange website, the Federal Emergency Management Agency's response to Hurricane Katrina, or the management of the Vietnam War are ingrained in the minds of many Americans.¹³⁰ As expected, the launch of a new program is always risky, therefore, Colorado was cautious about how the program was initially executed and designed because the cultivation, distribution, possession, and use of marijuana violates federal laws and regulations.¹³¹ Shoddy implementation poses a risk that the federal government can step in, in a variety of ways, and shut down legalized marijuana in the state.¹³² In addition, Colorado's implementation efforts can pose consequences to other states as public opinion continues to change and states move towards legalization. If the Colorado model is a success, other states that consider retail legalization measures may well model their own legal and regulatory systems on Colorado's.¹³³ Therefore, the failure of Colorado's regulator system could either deter states from marijuana legalization, or cause them to take a different approach in legalization policy.

¹²⁸ *Id.*

¹²⁹ HUDAK, *supra* note 2, at 2.

¹³⁰ *Id.* at 3.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

In a 2014 Center for Effective Public Management at Brookings report, John Hudak provides a definition for successful implementation.¹³⁴ According to Hudak, success occurs when institutions, rules, and processes produce a system consistent with the goals of the policy.¹³⁵ In the case of Colorado's Amendment 64, the policy would be considered successful if it stayed within the parameters of a legalized, regulated system for individuals over the age of twenty-one to cultivate and purchase marijuana.¹³⁶

Among the administrative actions taken, the implementation of legalized marijuana was the most important creation in the process. Governor John Hickenlooper formed a task force to study requisite legal changes and the processes for developing effective laws and regulations that would allow adult access to cannabis, while also monitoring the impacts of cannabis sales and designing new methodologies for cannabis-specific prevention programs.¹³⁷ Jack Finlaw, Hickenlooper's chief legal counsel, and Barbara Brohl, the executive director of the Department of Revenue, were responsible for implementation, regulation, and enforcement.¹³⁸ The Task Force comprised about thirty stakeholders, including district attorneys, staff from the Department of Public Health, legislators, business members, and civil society members.¹³⁹ Made up of a diverse and broad-based group of individuals, members of the task force ranged from those proponents who were passionate about legalization to opponents from both the law enforcement and medical communities.¹⁴⁰

Though some task forces during the implementation process have historically been delayed, the implementation of Amendment 64 was motivated with an ambiguous deadline.¹⁴¹ With the importance also centered on the scope of the mission, Hickenlooper gave the task force less than three months to complete the job.¹⁴² In March 2013, the task force completed its work and issued a nearly 200-page report on how the state of Colorado should implement Amendment 64.¹⁴³ The state legislature, and Hickenlooper, approved many of the recommendations by that spring.¹⁴⁴ Following the approval of these recommendations came a series of

¹³⁴ *Id.* at 2.

¹³⁵ *Id.* at 3.

¹³⁶ *Id.*

¹³⁷ Pardo, *supra* note 105, at 728.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ HUDAK, *supra* note 2, at 6.

¹⁴⁴ *Id.*

administrative changes.¹⁴⁵ The Colorado Department of Revenue (CDR) drafted initial rules in July 2013 using three years of prior experience regulating the medical cannabis industry.¹⁴⁶ Beginning in November 2013, the CDR began accepting licensing applications for producers, processors, and distributors.¹⁴⁷ Licenses were issued and their legal, non-medical cannabis system began distribution in January 2014.¹⁴⁸

A. Improved Coordination and Leadership

Administrative change cannot succeed without leadership determined to make such changes happen.¹⁴⁹ To Hickenlooper, leadership was critical in preventing issues such as corner-cutting and bureaucratic resistance.¹⁵⁰ Therefore, to avoid establishing weak leadership, Hickenlooper set a tone for state officials to do like he did; set aside personal opinions on marijuana and realize there was a job that had to be done.¹⁵¹ Hickenlooper's constituents, as well as his colleagues within government, "commended him for accept[ing] public will, uphold[ing] the constitution, and be[ing] supportive of the process."¹⁵² When interviewed, Brohl, the executive director of the Department of Revenue, commended Hickenlooper's leadership for impacting the business of government.¹⁵³ Historically, leadership has been contagious within government and leaders have proven that by making good decisions governance is effective.¹⁵⁴ Politicians have often taken an egocentric approach towards leadership by making decisions based solely on personal opinion, therefore losing sight of the voters' wishes following a law's passing. However, that was not the case when it came to Hickenlooper's leadership with Amendment 64.

Although he was credited for his tone, approach, and support while constructing a task force, Hickenlooper saw the need for increased coordination and strong leadership on the oversight and implementation of Colorado's first recreational marijuana structure.¹⁵⁵ To begin with the reframing of the leaders, in February 2014, Hickenlooper hired Andrew

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 7.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 21.

¹⁵² *Id.* at 6.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 7.

Freedman as Colorado's first Director of Marijuana Coordination.¹⁵⁶ Freedman's responsibilities included, but were not limited to, working closely with private stakeholders and the government, organizing two policy meetings monthly, identifying problem areas, and improving the communication between policy staff members.¹⁵⁷ Although common in the private sector, these kinds of measures to improve internal coordination are not necessarily common in state government.¹⁵⁸ Hickenlooper understood the important advantages that internal coordination has on the implementation process. Therefore, he placed an emphasis on collaboration between stakeholders.¹⁵⁹ His emphasis on coordination reflects the idea that marijuana legalization affects more than just the Department of Revenue.¹⁶⁰ As a result, Hickenlooper understood that bringing leaders together welcomes diverse viewpoints, increases morale, and decreases the likelihood of policy breakdowns.¹⁶¹

To avoid such breakdown, one of the first responsibilities for the leaders of the implementation task force was to redesign the Department of Revenues Medical Marijuana Enforcement Division ("MMED"), which experienced problems ranging from inefficient leadership to funding.¹⁶² In order to overcome the problems at MMES, HB13-1317 was passed, creating the new Marijuana Enforcement Division ("MED").¹⁶³ The leadership reform began with the promotion of two new individuals; Ron Kammerzell, Senior Director of Enforcement for the Department of Revenue, and Lewis Koski, Director of Marijuana Enforcement.¹⁶⁴ Kammerzell and Koski took steps to include a diverse set of opponents and proponents within the task force.¹⁶⁵ Together, they relied on a "contemporary approach to regulation," which lends itself to non-governmental stakeholders to gain information on a product that had been illegal for recreational purposes until the passing of Amendment 64.¹⁶⁶ Within the issue of marijuana policy, one thing task force leaders have proved is especially important when implementing policy changes is

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* at 8.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

inclusiveness when it comes to not only reforming an institution, but also creating political compromise.¹⁶⁷

B. Policy Changes: Colorado's New Recreational Regulatory System

With Colorado, Washington, and most recently Alaska making history and legalizing marijuana for recreational use, it is evident that America's view on the drug has drastically changed. The debate over marijuana policy is changing from "should society legalize marijuana [to] how should society regulate a legal market."¹⁶⁸ Collaborative efforts were made, specifically in Colorado, to respond to voters' wishes and to work with government officials during the implementation process. As stated, Colorado's implementation process was the result of many groups all working hard to responsibly respond to the changes brought about by Amendment 64.

Outright legalization of the use and commercial trade in marijuana has joined decriminalization, prosecutorial discretion, conditional discharge, and medical marijuana exemptions in the catalogue of state tactics to opt out of the federal criminalization of marijuana sales and possession and the classification of marijuana as a drug similar to heroin in terms of individual and social harm.¹⁶⁹

Since its passing, there have been numerous regulatory changes that have gone into effect statewide in response to Amendment 64. A full and complete list of each individual change could have been written within this section. However, for the purposes of this article, the six most drastic and significant regulatory actions will be discussed. First, the seed-to-sale tracking system is a system in the state of Colorado requiring a Marijuana Inventory Tracking Solution ("MITS").¹⁷⁰ It was created in an effort to track and monitor the supply in every cultivation facility by utilizing a barcode-tagging system that is computerized and accessible to MED regulators.¹⁷¹ The concept behind the Seed-to-Sale tracking structure is a new highly developed and engineered system called Autospense™, a

¹⁶⁷ *Id.* at 9.

¹⁶⁸ Jon Gettman & Michael Kennedy, *Let it Grow – The Open Market Solution to Marijuana Control*, HARM REDUCTION J. (Nov. 18, 2014), <http://www.harmreductionjournal.com/content/11/1/32>.

¹⁶⁹ *Id.*

¹⁷⁰ HUDAK, *supra* note 2, at 24.

¹⁷¹ *Id.* at 9.

platform designed to secure, track, control, and manage marijuana on a multipoint scale.¹⁷² The CEO of Endexx, who recently purchased Dispense Labs LLC, and owner of Autosense™, explained, “Autosense™ is needed to help standardized solid operating systems in the management of medical marijuana and cannabis based products in general.”¹⁷³ This new technological infrastructure provides an immeasurable amount of consistency to the mandated management and tracking of marijuana production and sales. In Colorado, the Implementation Task Force (“ITF”) uses a structure base called the Marijuana Inventory Tracking Solutions (“MITS”) system.¹⁷⁴ This system aids the agency in monitoring the supply of products being produced and sold.¹⁷⁵ It can also be used to deter any divisive means to thwart authorities through a barcoding process that tracks every plant in every marijuana refinery.¹⁷⁶

The second change, vertical integration, is a structure created for the marijuana market to limit the complexity in size, scope, and activities of participants.¹⁷⁷ Vertical integration was also designed to prevent diversion.¹⁷⁸ Vertical integration occurs when “the supply chain for a given retail enterprise is maintained entirely within that same business.”¹⁷⁹ The main goal of vertical integration is to maintain the tracking and sales of cannabis to potentially eliminate the black market.¹⁸⁰ Vertical integration of recreational marijuana will allow cultivation and manufacturing in retail sales to become a common procedure. The system of the Implementation Task Force, “initially limits the complexity of the market - in size, scope, and activities of participants in ways that reduce the early regulatory challenges.”¹⁸¹ Vertical integration and inventory tracking work in concert to limit diversion and to increase the enforcement capacity of regulators during the critical incubation period of implementation.¹⁸²

In regulating recreational marijuana dispensaries, Colorado uses the 70/30 rule, which requires the business to sell at least 70% of its product in their retail stores.¹⁸³ Vertical integration ensures that dispensaries create

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 24.

¹⁷⁵ *Id.* at 9.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 25.

¹⁷⁸ *Id.* at 25-26.

¹⁷⁹ *Id.* at 25.

¹⁸⁰ *Id.* at 25-26.

¹⁸¹ *Id.* at 9.

¹⁸² *Id.* at 9-10.

¹⁸³ *Id.* at 25.

their own regulated recreational product.¹⁸⁴ Newcomers will not have to become vertically integrated businesses immediately.¹⁸⁵ Colorado's marijuana industry goes into ties and connections between growers and sellers. New businesses can initially become stand-alone stores or wholesale growers.¹⁸⁶ This will create a new model for the young industry if the state legislature doesn't create new regulations against it in the future.

The third regulatory change, instituting temporary barriers to new entry and creating preferences for existing producers, were barriers created for new marijuana firms.¹⁸⁷ For a short period of time, the new legislature required that new retail marijuana enterprises originate from existing medical marijuana enterprises.¹⁸⁸ The fourth regulatory change placed limits on quantities purchased.¹⁸⁹ Under Amendment 64 Coloradans may possess up to an ounce and visitors a quarter ounce.¹⁹⁰ These types of limits were implemented in order to make hoarding more difficult, discourage resale in the black market, and prevent trafficking to other states.¹⁹¹ In an article published in *Addiction*, a critic notes, "[f]rom a public health perspective, the emphasis should be on holding down consumption with regulatory measures."¹⁹² Because public health and safety are valid concerns, Colorado has enacted regulatory limits regarding the purchase of RMJ. These limits are dependent on the consumer's residency.¹⁹³ For example, in-state residents can purchase one ounce of 'flower', whereas, out-of-state tourists can only purchase a quarter ounce of 'flower'. This policy is designed to minimize hoarding and consumer diversion.¹⁹⁴

Other important examples in which public health perspectives are taken into consideration is Rule R 402(D) and rules from the Marijuana Enforcement Division ("MED") of Colorado. MED established a preventative method to control the amount of allowable RMJ that can be sold in a single retail transaction.¹⁹⁵ Similarly, Rule R 402(D) prevents

¹⁸⁴ *Id.*

¹⁸⁵ *Id.* at 10.

¹⁸⁶ John Ingold, *New Medical-Marijuana Reg now Law in Colorado*, DENVER POST (June 7, 2010, 11:11 AM), http://www.denverpost.com/news/ci_15244688.

¹⁸⁷ HUDAK, *supra* note 2, at 10.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² Robin Room, *Legalizing a Market for Cannabis for Pleasure: Colorado, Washington, Uruguay and Beyond*, 109 ADDICTION 345, 345 (2013).

¹⁹³ HUDAK, *supra* note 2, at 10.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.* at 28.

RMJ stores from selling more than an ounce to any resident of Colorado.¹⁹⁶ State law requires that Colorado state identification be provided in every RMJ and MMJ transaction.¹⁹⁷ Consequently, Rule R 402(D) does not take into account that consumers can go to multiple dispensaries in a single day.¹⁹⁸ Furthermore, it is unlawful under Amendment 64 Section 5(c) to track or keep record of any RMJ consumers.¹⁹⁹ Although there are a few drawbacks with the regulations for the sale of RMJ, ultimately these rules and regulations are designed to maintain order, control consumer consumptions, divert illegal activities, and minimize diversion.²⁰⁰

Within the fifth regulatory change, MED regulators required extensive monitoring with video surveillance of the cultivation, processing, and retail facilities.²⁰¹ The benefits of the change included preventing theft and diversion, while also reducing the risk of cash dependent enterprises.²⁰²

There are many stringent rules and regulations that mandate meeting safety and security guidelines, which marijuana retailers and state-licensed marijuana cultivators must comply with at all times.²⁰³ It is imperative that growers and dispensers use video surveillance, so that they can monitor their crops and discourage potential thieves.²⁰⁴ Video monitoring also has the added benefit of allowing employers to monitor their employees, thus helping to curtail employee theft, while also assuring facility owners that their product has been grown in compliance with quality standards.²⁰⁵ Colorado has led the charge by legalizing the dispensing and growing of recreational marijuana, demonstrating to other states that it is possible, and in fact lucrative, to regulate marijuana like alcohol.²⁰⁶ Facilities that cultivate, process or sell marijuana are required by the MED to be heavily monitored via video surveillance.²⁰⁷ There are two main benefits of security regulations. The first benefit is that they help to assist the police with their investigations. The second benefit is that video surveillance could help to

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ See Lauren Laing, *Colorado Governor Signs Bills Regulating Recreational Marijuana*, JURIST (May 29, 2013, 11:56 AM), <http://jurist.org/paperchase/2013/05/colorado-governor-signs-bills-regulating-recreational-marijuana.php>.

²⁰² See *id.*

²⁰³ *Security Solutions for State Licensed Marijuana Growers*, SUPER CIRCUITS, <http://www.supercircuits.com/resources/learn/buying-guides/video-security-systems-for-marijuana-growers> (last visited Sept. 13, 2015).

²⁰⁴ See *id.*

²⁰⁵ *Id.*

²⁰⁶ *Id.*

²⁰⁷ HUDAK, *supra* note 2, at 10.

protect sellers from the dangers that cash-dependent industries, such as the current legal marijuana industry, face.²⁰⁸

The oversight of the growth and dispensing of marijuana belongs to the Colorado Medical Marijuana Enforcement Division, which promulgates rules and regulations overseeing the sale of recreational marijuana and the requirements surrounding video security equipment.²⁰⁹ Included in Chapter Four are the requirements for security alarm systems, lock standards in medical marijuana licensed premises, and the specifications for video surveillance and recording of medical marijuana licensed premises. First, each facility must have an IP-compatible video surveillance system installed with security cameras that produce a minimum resolution of 640x470 pixels.²¹⁰ Unlike typical video surveillance cameras, IP video allows owners to view their facility from a smart phone or tablet. Second, there must be a security camera installed in every room of the facility where marijuana is growing.²¹¹ Third, all security camera video must record the facilities continuously for 24 hours a day.²¹² Fourth, facility owners and growers must store all recorded surveillance video for a minimum of 45 days on the video recording device.²¹³ The rules also state a copy of the video must be provided upon request for inspection by any liquor control board employee or law enforcement officer.²¹⁴

The final change in the system was in the way the marijuana revenue was used to fund the MED, and how to distribute the excess revenue. Under the new system, marijuana tax revenue provides funding to MED, public safety, education, public health, and school construction.²¹⁵ Amendment 64, which was adopted via referendum in November 2012, legalized the ability to grow, possess, and use marijuana recreationally in a personal residence by a person over the age of twenty-one.²¹⁶ A study by the Colorado Center on Law and Policy estimates that nearly 13% of Colorado residents aged twenty-one and older (between 500,000 and 600,000 individuals) use marijuana, of which nearly 100,000 are medical marijuana

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 8.

²¹⁰ *Security Solutions for State Licensed Marijuana Growers*, *supra* note 203.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ John Ingold, *Colorado Voters Overwhelmingly Approve State Marijuana Tax*, THE DENVER POST (Nov. 5, 2013, 5:33 PM), http://www.denverpost.com/breakingnews/ci_24461038/colorado-voters-decide-how-heavily-tax-marijuana-sales.

²¹⁶ COLO. CONST. Art. XVIII, Section 16(1).

card holders.²¹⁷ The Amendment also creates a scheme that regulates and taxes marijuana in a way similar to how alcohol is taxed and regulated.²¹⁸ Following the implementation of the amendment legislators were left wondering how best to regulate and tax the substance.²¹⁹ The Colorado Center on Law and Policy found that the passage of Amendment 64 could produce more than \$120 million annually in new revenue and savings within the first five years.²²⁰ It was agreed that “the first \$40 million of revenue raised annually will be directed to the Public School Capital Construction Assistance Fund.”²²¹

C. *Who is Selling? Preferred Producers*

As a way to control the market in the Recreational Marijuana (“RMJ”) industry, the legislature placed prerequisites on those who wished to become “authorized distributors” of RMJ.²²² That prerequisite only allowed current Medical Marijuana (“MMJ”) businesses and their affiliates to enter into the RMJ production and sales market.²²³ This rule temporarily blocked any new businesses from entering into the RMJ market and in effect controlled the production of marijuana, but also allowed for a more manageable enforcement process.²²⁴

The preferential treatment for existing businesses allowed a more cohesive stepping stone into the RMJ field through the provisional references in Amendment 64. One of Amendment 64’s provisions allows a reduction of the licensing application fee for current MMJ businesses.²²⁵ Additionally, the ITF task force suggested a probationary period of one year for current MMJ license holders who are in good standing with the State.²²⁶ In short, when RMJ became legal, the State worked with current MMJ businesses and essentially used them to open the market up to new entrepreneurs.²²⁷

²¹⁷ Audrey Farber, *Amendment 64 in Colorado: Marijuana Legalization Will Create Jobs and Raise Revenue*, MIC.COM (Nov. 9, 2012), <http://mic.com/articles/18854/amendment-64-in-colorado-marijuana-legalization-will-create-jobs-and-raise-revenue>.

²¹⁸ *Overview of Amendment 64*, CAMPAIGN TO REGULATE MARIJUANA LIKE ALCOHOL, <http://www.regulatemarijuana.org/about> (last visited Sept. 14, 2015).

²¹⁹ Farber, *supra* note 217.

²²⁰ *Overview of Amendment 64*, *supra* note 218.

²²¹ *Id.*

²²² HUDAK, *supra* note 2, at 10.

²²³ *Id.* at 26.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

Another reason to limit the RMJ market to existing MMJ business owners stemmed from the financial banking market because “credit unions and banking regulators faced pressure to bring RMJ merchants into the financial mainstream.”²²⁸ Utilizing already established MMJ business as a gateway for the RMJ, commercial sales would appear to have allowed the State and the financial market to better prepare for the onslaught in demand. Scott Jarvis, the director of the Department of Financial Institutions in Washington, acknowledged the view of Washington voters by saying, “[t]he people of our state have spoken.”²²⁹ It is fair to ascertain that the voters of Colorado have made clear their expectations as well.

The dispensaries must be owned and operated by Colorado residents.²³⁰ The state defines a “resident” as a person who has lived in Colorado for two years.²³¹ If the person has been “convicted of a felony, they have to wait five years before applying to open a store. If that felony was drug-related, they must wait ten years.”²³² A legal resident must have a valid state issued ID.²³³ To get a valid state ID, one must go down to the local DMV and show a birth certificate, or social security card, along with an already existing ID.²³⁴ Proof of identification and proof of address are both needed.²³⁵ A resident can obtain proof of address by showing a rent/utility bill that came in the mail with the resident's name.²³⁶ After establishing proof of residency, one becomes eligible to open a dispensary.²³⁷

D. Odor Mitigation

Denver’s Department of Environmental Health (“DEH”) is responsible for regulating “nuisance odors,” which are defined under

²²⁸ Kevin Wack, *Financial Regulators Pressed to Act on Marijuana Businesses*, CREDIT UNION J. (Dec. 11, 2013), <http://www.cujournal.com/news/generalnews/financial-regulators-pressed-to-act-on-marijuana-businesses-1021781-1.html>.

²²⁹ *Id.*

²³⁰ John Ingold, *A Colorado Marijuana Guide: 64 Answers to Commonly Asked Questions*, THE DENVER POST (Dec. 31, 2013), http://www.denverpost.com/marijuana/ci_24823785/colorado-marijuana-guide-64-answers-commonly-asked-questions?source=infinite.

²³¹ *Id.*

²³² *Id.*

²³³ COLO. REV. STAT. ANN. § 12-43.4-309(5) (2013); MED Retail Rule 202.5(c)(1); MED Medical Rule 202.5(c)(1).

²³⁴ *Identification Requirements*, COLO. DEPT. OF REVENUE (May 14, 2013), <https://www.colorado.gov/pacific/sites/default/files/DR2300.pdf>.

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ COLO. REV. STAT. ANN. § 12-43.4-309(5) (2013); MED Retail Rule 202.5(c)(1); MED Medical Rule 202.5(c)(1).

Denver Revised Municipal Code, Chapter 4 – Air Pollution Control, Section 4-10.²³⁸ Under the city of Denver’s ordinance, odor is specified as a nuisance issue rather than a health issue.²³⁹ The city’s ordinance is based on Colorado state law, and is very detailed with regard to defining odor, as well as those instances that constitute a violation, affirmative defenses to a violation, and exemptions.²⁴⁰ The State’s Odor Control Regulation “sets standards for allowable odor contaminants for different land-use areas in the state and outlines control measures that can be taken to bring violators into compliance.”²⁴¹ Upon receiving an odor complaint involving a “questionable odor,” the city conducts an investigation.²⁴² This investigation involves “identifying the source, independently verifying the odor, responding to the complainant and the source, and issuing a citation if necessary.”²⁴³ In order to determine whether or not a person is in violation of city ordinance, the investigator may first identify the odor’s intensity by using an odor-measuring device, called the Nasal Ranger.²⁴⁴ The Nasal Ranger gives investigators a device that provides “a scientific method of quantifying odor strength in what is known as dilution to threshold (D/T) ratios.”²⁴⁵

In 2008, the ordinance was amended with an additional provision that required “five complaints from separate households to offer an additional mechanism for dealing with odors that are a significant source of complaints, but do not exceed the intensity threshold.”²⁴⁶ When one odor source has received multiple complaints, but all complaints are within the intensity threshold, the investigator will reach out to the owner of the source and speak with them about mitigating the odor.²⁴⁷ If the threshold is met, a citation is issued with penalties ranging from \$150 – \$2,000.²⁴⁸

Since Colorado has legalized the recreational use of marijuana, odor regulation has remained a complex issue and has left legislators discussing how to develop appropriate measures. The city’s ordinance on regulating odors is based on the state’s odor ordinance that regulates industrial odor

²³⁸ *Guide to DEH’s Odor Regulations*, CITY & COUNTY OF DENVER (2014), <https://www.denvergov.org/Portals/771/documents/Odor%20RegulationFinal%20website.pdf>.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

sources, such as manufacturing odors.²⁴⁹ A majority of Denver's odor complaints are reactions to varying types of manufacturing industries.²⁵⁰ A large portion of marijuana-related complaints to the city are for grow facilities because the odor from these facilities "tends to linger due to being more pungent."²⁵¹ Prior to issuing a citation for an odor from a manufacturing source, the source must be clearly identified in order to prevent implicating other near-by sources.²⁵² It is expected that because Colorado has legalized marijuana, there will be an increase in odor complaints related to marijuana.²⁵³ The city's facility to properly address odor complaints from already existing sources and also new complaints from marijuana is limited.²⁵⁴

In terms of environmental protection, odors are a main concern to the Denver Department of Environmental Health. Currently, Denver has over 300 grow facilities.²⁵⁵ When asked about marijuana growers and owners during a recent visit to the Medicine Man grow facility, investigator Ben Stiller said, "[s]ome of the things we've already talked to them about is odor; asking them to voluntarily mitigate odors, and we're also looking at their light bulb disposal [and] how they're handling their waste."²⁵⁶ According to Stiller, no facilities have violated the Denver Department of Environmental Health odor standard for intensity.²⁵⁷ As of March 2014, Denver had received a total of eight marijuana odor complaints from grow facilities.²⁵⁸ Upon the completion of each investigation, none of the complaints had odors that warranted a citation.²⁵⁹ Elan Nelson, spokesperson for Medicine Man stated, "[w]e can't cure the odor problem of marijuana, but we're doing our best to be a good neighbor to those in our area."²⁶⁰

In order to stay neighbor friendly, Medicine Man utilizes a very expensive carbon filtration system.²⁶¹ Despite the fact that it is currently

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ Marshall Zelinger & Jennifer Kovalski, *With Retail Pot Legal, Denver Grow Facilities Must Inspected for Odor and Environmental Impacts*, CHANNEL 7 NEWS DENVER, (Mar. 31, 2014, 11:09 PM), <http://www.thedenverchannel.com/news/local-news/marijuana/with-retail-pot-legal-denver-grow-facilities-must-be-inspected-for-odor-and-environmental-impacts>.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

not mandated or required at this point by law, Medicine Man is ahead of their competition in the evolving industry.²⁶² Grow facilities like Medicine Man understand the importance in following the strict and rigid regulatory standards. A representative of theirs stated, “[w]e want to make sure that everything that the state and local officials are telling us to do [that] we remain absolutely in compliance so that we can remain in business.”²⁶³

E. Dual Licensing Scheme

When speaking about the history of Colorado’s marijuana regulation it is necessary to look at the dual licensing scheme that introduced both medical and recreational marijuana to the world of legalization. The residents of Colorado passed amendment 20 in late 2000.²⁶⁴ The Amendment allowed ailing individuals to register for a medical marijuana identification card given to patients based upon medical condition and necessity.²⁶⁵ Once a patient had ownership of this ID card, the individual or their caregiver could purchase medical marijuana.²⁶⁶ A caregiver is defined by the state of Colorado as a person, over eighteen years of age, who has significant responsibility for managing the wellbeing of a patient with a debilitating condition, but is not the patient’s physician.²⁶⁷ Additionally, the caregiver must do more than just provide medical marijuana to the patient, i.e. housekeeping, meal preparation, shopping, and providing transportation for the patient.²⁶⁸ The legal and approved amount of medical marijuana allotted per patient was as follows: up to two ounces of consumable marijuana, and no more than six marijuana plants with less than three of which can be classified as mature.²⁶⁹

In 2010 the Colorado Medical Marijuana Code, which allowed each county to decide if they wanted to authorize medical marijuana establishments within that city, was passed.²⁷⁰ The term “opt out” is used when a county decides not to allow medical marijuana establishments

²⁶² *Id.*

²⁶³ Jennifer Kovaleski, *Colorado Expands Mandatory Potency Testing for Retail Marijuana Products at Newly-Licensed Labs*, CHANNEL 7 NEWS DENVER, (June 12, 2014, 10:46 PM), <http://www.thedenverchannel.com/news/local-news/marijuana/colorado-expands-mandatory-potency-testing-for-retail-marijuana-products-at-newly-licensed-labs>.

²⁶⁴ COLO. CONST. of 1876, art. XVIII, § 14.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ COLO. REV. STAT. ANN. § 12-433-106 (2010).

within that city. Along with the opt out option, the Colorado Medical Marijuana Code added more provisions applicable to the caregivers, patients, and physicians.²⁷¹ Some of the added provisions are as follows: caregivers are limited to 5 patients, caregivers have to register with the State Health Department, and patients must have only one caregiver at a time, while also complying with local zoning and signage for dispensaries.²⁷² Although there are many more, these are just a few examples of how regulation began to mold the medical marijuana enterprise in Colorado.

After the passage of Amendment 64 in 2012, the term “dual licensing” became applicable. Dual licensing is defined as a license that permits a business to provide both medical and recreational marijuana to both patients and consumers.²⁷³ Additionally, a business can provide retail marijuana and cultivate plants.²⁷⁴ The exception is that the cultivation business and the retail business must stay separate in all ways, i.e. inventory, facilities, and marijuana plants.²⁷⁵ Furthermore, both consumers and patients must be at least twenty-one years of age, and public use of marijuana is prohibited.²⁷⁶

F. Marijuana Enforcement Division

The Marijuana Enforcement Division (“MED”) is headed by the Department of Revenue (“DOR”) in Colorado.²⁷⁷ According to the DOR’s website “the mission of the Enforcement Division is to uniformly enforce Colorado laws in a fair, consistent, and equitable manner through education, compliance, administration, and criminal enforcement.”²⁷⁸ The Marijuana Enforcement Division is responsible for implementing several regulations and licenses for both the medical marijuana industry as well as the recreational marijuana industry.²⁷⁹ The list of items the MED oversees ranges from alarm installation to employee hand washing procedures.²⁸⁰

²⁷¹ *Id.*

²⁷² See *What Patients and Caregivers Need to Know About HB 1284*, SENSIBLE COLORADO, www.sensiblecolorado.org/wp-content/uploads/HB-1284-Hand-out.pdf (last visited Feb. 14, 2015).

²⁷³ COLO. CODE REGS. § 212-1:1.304 (2013).

²⁷⁴ *Id.*

²⁷⁵ *Id.*

²⁷⁶ *Id.*

²⁷⁷ *Enforcement Division*, COLO. DEPT. OF REVENUE, <https://www.colorado.gov/enforcement> (last visited Sept. 20, 2014).

²⁷⁸ *Id.*

²⁷⁹ See *id.*

²⁸⁰ *Id.*

Furthermore, the MED is accountable for mandating penalties for violators of the regulations.²⁸¹

The MED is also responsible for ensuring that the licensing fee schedule and requirements are met once a business proprietor applies for a license.²⁸² Requirements a business owner must meet in order to apply for a license include, *inter alia*: must be twenty-one years old, must be a Colorado resident for two years, must not have any felony convictions, and must not employ any person who has a criminal history.²⁸³ Moreover, a business owner must renew his or her license if there is a change of location, or if the existing business has changed owners.²⁸⁴

A great feature the MED arranged is the Marijuana Inventory Tracking System. This is a database that requires all certified retail and medical marijuana facilities to inventory all plants the facility houses.²⁸⁵ Furthermore, each medical marijuana facility is required to keep an up to date list of patients who have chosen the business as their elected primary center.²⁸⁶ Some other issues the MED undertakes include: health and safety concerns, employee standards, and child-resistant packaging for products.²⁸⁷ Because the cultivation and retail sales of marijuana are new to Colorado, the MED will continue to adjust and evolve regulations to ensure that this endeavor continues to prosper.

G. Task Force

Upon the mandate of Amendment 64, Colorado State Governor, John Hickenlooper, organized the marijuana task force.²⁸⁸ This task force operates to safeguard the legality and functionality of the implementation of Amendment 64.²⁸⁹ According to Colorado.gov, this task force is comprised of 24 members.²⁹⁰ Each member has a different background.²⁹¹ This diversity allows the task force to work together and fully represent every aspect of Amendment 64's stakeholders.

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ COLO. REV. STAT. ANN. § 12-43.4-306 (2014).

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Task Force Report on the Implementation of Amendment 64: The Regulation of Marijuana in Colorado*, COLORADO.GOV (Mar. 13, 2013), <http://www.colorado.gov/cms/forms/dor-tax/A64TaskForceFinalReport.pdf>.

²⁸⁹ *See id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

These members are from the Colorado General Assembly, the Attorney General's office, different state agencies, office and commissions, municipal and county government organizations, and persons with expertise in the treatment of marijuana addiction and legal issues related to marijuana legalization. Also included are representatives of employers, employees, the amendment 64 campaign, the medical marijuana industry, and consumers.²⁹²

With such a large and assorted group, the task force has no choice but to share opinions and work together to resolve issues.

There are various topics the task force originally discussed, such as deciding if marijuana vending machines are allowed within marijuana stores, cultivation and handling practices, determination of punishable criminal offences, and banking solutions for marijuana businesses.²⁹³ All topics are classified in one of five categories:

- 1) Regulatory Framework
- 2) Local Authority and Control
- 3) Tax, Funding, and Civil Law
- 4) Consumer Safety and Social Issues
- 5) Criminal Law²⁹⁴

Once an issue has been categorized, the task force then concentrates on resolving it. In order for a resolution to be reached, there must be standards to ensure that the resolution will be safe, equal, and effective for all stakeholders.²⁹⁵ Additionally, those same standards can be used as measurements to gauge future progression or regression. The task force has 9 well-defined principles:

- 1) Promote the health, safety, and well-being of Colorado's youth.
- 2) Be responsive to consumer needs and issues.

²⁹² *Id.*

²⁹³ *Enforcement Division, supra* note 277.

²⁹⁴ *Id.*

²⁹⁵ *Id.*

- 3) Propose efficient and effective regulation that is clear and reasonable and not unduly burdensome.
- 4) Create sufficient and predictable funding mechanisms to support the regulatory and enforcement scheme.
- 5) Create a balanced regulatory scheme that is complementary, not duplicative, and clearly defined between state and local licensing authorities.
- 6) Establish tools that are clear and practical, so that interactions between law enforcement, consumers, and licensees are predictable and understandable.
- 7) Ensure that our streets, schools, and communities remain safe.
- 8) Develop clear and transparent rules and guidance for certain relationships, such as between employers and employees, landlords and tenants, and students and educational institutions.
- 9) Take action that is faithful to the text of Amendment 64.²⁹⁶

With these chosen principles, it seems that each of the task force's decisions are well thought out. Thus, well thought out decisions are an essential part of maintaining and advancing the recreational marijuana industry. As of September 2014, the Colorado Department of Revenue is considering the following changes to Amendment 64:

- 1) An edible product is limited to 100mg of THC per package; said product must be packaged in sections containing no more than 10 mg of THC per section.
- 2) Furthermore, the product must be labeled to indicate a single serving size.
- 3) All products should be placed in containers prior to being sold; if the vessel is not child proof then the retail store must place the product in resealable packaging.²⁹⁷

²⁹⁶ *Id.*

²⁹⁷ John Gettman & Michael Kennedy, *Let It Grow—the Open Market Solution to Marijuana Control*, 11 HARM REDUCTION J., 1-9 (2014), available at <http://www.harmreductionjournal.com/content/pdf/1477-7517-11-32.pdf>.

III. REGULATORY EFFICIENCY: DEFINED AND MEASURED

Prior to analyzing Colorado's new recreational marijuana regulatory system, regulatory efficiency and measurement needs to be defined. This will include a review of the regulatory framework with a renewed focus on how Colorado and its citizens have been affected since legalization. The question to at hand is what does the new recreational marijuana regulatory system look like for Colorado? With respect to public policy, the purpose of regulation should be to enhance protective factors and mitigate risk factors.²⁹⁸ Thus, regulatory efficiency for the sake of this paper will be defined as a regulatory framework for recreational marijuana that, since legalization in Colorado, the total benefits have exceeded the total costs. Interestingly enough, Colorado's recreational marijuana system is an agency that is self-funded.²⁹⁹ Early on, one main function to the system was to provide clarity to Colorado's current marijuana laws, which are complex and counterproductive. In addition to clarity, another goal was to build and maintain public safety to achieve regulatory stability. In a perfect world, a successful system will display the cooperation between government and regulated industry. Hence, successful implementation would reflect this collaborative effort to ensure regulations remain stable and maintain the safety of Colorado citizens.

Witnessing Colorado make history as the first state to legalize marijuana continues to be a joy for Colorado citizen advocates and supporters of marijuana legalization because legalization decreases arrests for minor marijuana crimes, reduces wasted resources from cannabis prohibition, and marks an end to the senseless war on drugs. To supporters of Amendment 64, the efforts of legislators, supporters, and advocates, like Hickenlooper, to answer voter's requests to legalize recreational marijuana has been key in the successful implementation and efficiency of Colorado's regulatory system. It is a great time to analyze recreational regulations and the effect on Colorado thus far when considering that it has been over two years since Amendment 64 was passed, and over one year since recreational marijuana stores opened up around the state.

Therefore, in order to be successfully measured, major areas of regulation were analyzed to understand the impact Amendment 64 has had on the state of Colorado. When considering how to accurately measure the system's effectiveness, the chosen measures reflected the federal government's requirements, the impact to Colorado's economy and

²⁹⁸ *Id.*

²⁹⁹ HUDAK, *supra* note 2, at 10.

culture, as well as the safety of citizens since legalization. At this point, it is too early to predict social trends, however, research and in depth analysis detect encouraging and promising trends that show Colorado's new regulatory structure is one that can be modeled.

A. School Data: Possession and Consumption

Since the passage of Amendment 64 in November 2012, many politicians and Colorado residents have expressed their concerns with the possibility of increased marijuana consumption amongst teenagers and young children. Supporters of marijuana legalization argue underage use among teens will decrease as states control its sale and impose strict age limits on those that purchase the substance.³⁰⁰ A common fear among opponents of legalization is that adults with the ability to purchase marijuana around the state will lead to an increase in teen use.³⁰¹ According to Dr. Mireya Nadal-Vicens, a child and adolescent psychiatrist at Massachusetts General Hospital's MGH Center for Addiction Medicine, "legalizing medical use of marijuana is only going to increase accessibility to medical marijuana and decrease the seriousness to which it's taken."³⁰² Many spoke out of fear on the potential impacts legalizing marijuana would have on children and teens without considering the implementation of regulatory policies to prevent Colorado's youth from being affected.

Unfortunately, reports of teen possession cases have been in newspapers and on television since marijuana stores opened up around the state. One in particular occurred on September 18, 2014 at Salida High School.³⁰³ While conducting a drug search, the Chaffee County Drug Task Force found marijuana.³⁰⁴ Specifically, a K-9 unit found marijuana and marijuana oil concentrate.³⁰⁵ In spite of this reported matter, officers at Salida Middle School, Buena Vista High School, and Horizons Academy

³⁰⁰ Steven Nelson, *Pot Use Among Colorado Teens Appears to Drop After Legalization*, U.S. NEWS, (Aug. 7, 2014), <http://www.usnews.com/news/articles/2014/08/07/pot-use-among-colorado-teens-appears-to-drop-after-legalization>.

³⁰¹ *Id.*

³⁰² Heather Unruh, *Concerns Grow about Medical Marijuana's Impact on Teens*, WCVB NEWS CENTER, (June 9, 2014), <http://www.wcvb.com/health/concerns-grow-about-medical-marijuanas-impact-on-teens/26400024>.

³⁰³ J.D. Thomas, *Salida High School Was Not Out of the Ordinary and Went On to Praise the Districts for Their Part In Preventing Drugs From Getting On Their Campuses*, MOUNTAIN MAIL (Sept. 22, 2014), http://www.themountainmail.com/free_content/article_d34a793e-4266-11e4-9355-0017a43b2370.html.

³⁰⁴ *Id.*

³⁰⁵ *Id.*

also conducted searches in which no drugs were recovered.³⁰⁶ Salida Police Chief Terry Clark said the department has participated in the program for many years and drugs have been found in schools in the past.³⁰⁷ He said the finding at Salida High School was not out of the ordinary, and went on to praise the districts for their part in preventing drugs from getting on their campuses.³⁰⁸

Schools are beginning to see (and benefit from) revenue from marijuana sales despite that, just one month post-legalization, opponents expressed their disappointment in the decrease of revenue collected from the amount promised after passing Amendment 64.³⁰⁹ During an interview, Kathy Gebhardt, member of the Public School Capital Construction Assistance Board, expressed she knew numbers would be lower than projected.³¹⁰ Nonetheless, there are some schools across Colorado that have received state funds from sales.³¹¹ In May, Building Excellent Schools Today (also known as BEST), received over \$1.1 million from marijuana taxes.³¹² In addition, another \$2.5 million from taxes has been invested in hiring health professionals.³¹³ From January to June 30, 2014, the marijuana excise tax, a 15% tax on legal recreational sales, netted about \$3 million.³¹⁴ Finally, although Colorado did not contribute as much as originally expected, some districts, such as Aurora Public Schools, have been awarded grants.³¹⁵ The grants have assisted with building repairs, mechanical work, and programs for students that show signs of mental health issues or substance abuse.³¹⁶

To keep up with the introduction of marijuana laws, and to provide those who plan to consume the substance with education about responsible consumption, the Marijuana Policy Project (“MPP”) launched a campaign

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ Ysenia Robles, *Pot Revenues Starting to Help Select Schools on Pricey Projects*, DENVER POST (July 31, 2014), http://www.denverpost.com/marijuana/ci_26247743/pot-revenues-starting-help-select-schools-pricey-projects.

³¹⁰ Jeremy P. Meyer, *Meyer: Colorado Schools Out Millions Due to Marijuana Excise Tax Loophole*, DENVER POST (Sept. 20, 2014), http://www.denverpost.com/ci_26568262/schools-out-millions-due-loop-hole.

³¹¹ Robles, *supra* note 309.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*

³¹⁶ *Id.*

called “Consume Responsibly.”³¹⁷ Rather than attempt to inflict fear and scare adults away from using marijuana, MPP decided to urge adults to “consume responsibly.”³¹⁸ Following a highly publicized overdose experience with marijuana edibles, the campaign wanted to inform adults how to “start low and go slow” when it comes to consuming edibles.³¹⁹

Conversely, in Colorado, extra revenue generated from marijuana sales contributes to marijuana education for children.³²⁰ The approved tax contribution in the amount of \$33 million finances child drug use prevention and outreach.³²¹ The funds provide money for school nurses and, similar to the MPP campaign’s approach, public education for responsible consumption.³²² With Colorado’s efforts to provide education and awareness on responsible marijuana consumption, other states around the country may see the large amount of revenue contributing to helping adults understand the importance of using marijuana responsibly.³²³ As Colorado continues to work hard to stray from the negative images associated with marijuana and its users by contributing marijuana sales revenue to schools, original opponents to Amendment 64 may appreciate how the Amendment has contributed, and will continue to contribute, to school districts across Colorado.³²⁴

B. Narcotics Abuse Down

As medical marijuana becomes more widely accepted in the nation, JAMA Internal Medicine found that deaths associated with the use of opiate drugs fell in 13 states.³²⁵ “The studies have shown a 20% decrease in opiate overdoses in the first year of the study, to a 33% decrease in

³¹⁷ Matt Ferner, *New Marijuana Ad Campaign Asks Users To Learn From Maureen Dowd And ‘Consume Responsibly’*, HUFFPOST POLITICS (Sept. 17, 2014), http://www.huffingtonpost.com/2014/09/17/marijuana-consume-responsibly_n_5832918.html.

³¹⁸ *Id.*

³¹⁹ *Id.*

³²⁰ Mitchell Byars, *Nearly \$160K in Sales Tax Collected Off Retail Marijuana Sales in Boulder County in March, Marijuana*, DAILYCAMERA (May 9, 2014, 8:05 AM), http://www.dailycamera.com/marijuana/ci_25727333/nearly-160k-sales-tax-collected-off-retail-marijuana.

³²¹ *Id.*

³²² *Id.*; Ferner, *supra* note 317.

³²³ Byars, *supra* note 320.

³²⁴ See Tom McKay, *3 Months Since Legalizing Marijuana, Here’s What Colorado Looks Like*, NEWS.MIC (May 10, 2014), <http://mic.com/articles/89165/3-months-since-legalizing-marijuana-here-s-what-colorado-looks-like>.

³²⁵ Niraj Chokshi, *US States Allowing Medical Marijuana Report Prescription-Drug Overdose Deaths*, WASH. POST (Aug. 27, 2014), <http://www.ticotimes.net/2014/08/27/us-states-allowing-medical-marijuana-report-fewer-prescription-drug-overdose-deaths>.

overdoses in the sixth year.³²⁶ Marijuana can also be used by patients in place of benzodiazepine drugs.³²⁷ Current research suggests the psychoactive ingredients in marijuana may enhance the pain killing effects of opiates.³²⁸ Thus, patients may use marijuana for pain and take lower, less dangerous, doses of opiates.³²⁹ Doctors proudly support the use of medical marijuana for pain management.³³⁰ Dr. Donald Abrams says “[i]t’s so apparent that our patients can decrease, diminish or wean themselves completely off of opiates”³³¹ Dr. Mark S. Brown and Marie J. Hayes also published, “[t]he striking implication is that medical marijuana laws, when implemented, may represent a promising approach for stemming runaway rates of non-intentional opioid-analgesic-related deaths.”³³²

The 22 states that legalized medical marijuana have had “1,729 fewer overdose deaths in 2010”—a trend which has continued into 2014.³³³ The study’s results show states with medical marijuana have had 24.8% fewer prescription drug overdose deaths during the course of the study.³³⁴ In other words, medical marijuana has saved 1 in 4 patients in Colorado.³³⁵ “As our awareness of the addiction and overdose risks associated with the use of opioid painkillers such as OxyContin and Vicodin grows, Colleen L. Barry, PhD says ‘individuals with chronic pain and their medical providers may be opting to treat pain entirely or in part with medical marijuana.’”³³⁶ If further related studies can support those from JAMA Internal Medicine, policies aimed at reducing painkiller abuse could promote enacting marijuana laws and regulations.³³⁷

C. Colorado Arrests Down

When Amendment 64 was enacted in November 2012, many people assumed crime in Colorado would skyrocket. However, since it was

³²⁶ Marco Torres, *Marijuana Decreases Death Rates From Pain Killers By Over 30 Percent*, PREVENTDISEASE.COM (Dec. 5, 2014), http://preventdisease.com/news/14/120514_Marijuana-Decreases-Death-Rates-By-Pain-Killers-By-Over-30-Percent.shtml.

³²⁷ *See id.*

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *See id.*

³³¹ Melissa Healy, *Medical Marijuana Could Reduce Painkiller Abuse, Study Suggests*, L.A. TIMES (Aug. 25, 2014), <http://www.latimes.com/science/la-sci-medical-marijuana-20140826-story.html>.

³³² *Id.*

³³³ Chokshi, *supra* note 325.

³³⁴ *Id.*

³³⁵ *See id.*

³³⁶ *Id.*

³³⁷ *Id.*

enacted, crime rates in the state's capital of Denver have decreased.³³⁸ Moreover, since legalization, arrests have decreased.³³⁹ According to data from the Colorado Court System, marijuana possession arrests have dropped 84% since 2010.³⁴⁰ In 2010, a total of 8,600 people were arrested for marijuana possession.³⁴¹ 2014 data show 1,464 arrests for possession.³⁴² In a recent interview, Art Way, Colorado's Director of the Drug Policy Alliance, said, "[t]he most important impact we've seen is that thousands of people are no longer being arrested for simple possession of marijuana in our state."³⁴³ Way went on to say, "[a]ll marijuana offenses have declined by about 50%, and law enforcement resources have been freed up to fight violent crime. The state is saving millions of dollars a year in criminal justice system expenses."³⁴⁴ Over the same period, arrests for cultivating and distributing marijuana have also dropped by roughly 94%.³⁴⁵

D. Decrease in Crime Rates

Proponents of continued prohibition hoped for the "doomsday vision"—characterized by an increase in crime.³⁴⁶ However, as we approach the second-year mark in which adults in Colorado could possess and privately use an ounce of marijuana, one could argue that legalization in Colorado has produced results that are nothing but the opposite.³⁴⁷ Unlike the expected "doomsday vision," crime activity, such as marijuana possession and arrests, have plummeted since the legalization of recreational marijuana.³⁴⁸ According to state data, marijuana possession charges in Colorado for 2014 were expected to fall below 2,500.³⁴⁹ 2,500 possession charges in 2014 pales in comparison to the nearly 30,000 in

³³⁸ Jon Gettman, *Marijuana Arrests in Colorado After the Passage of Amendment 64*, DRUG POL'Y ALLIANCE (Mar. 25, 2015), http://www.drugpolicy.org/sites/default/files/Colorado_Marijuana_Arrests_After_Amendment_64.pdf.

³³⁹ *See id.*

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ *Colorado and Washington Help Make the Case for Oregon's Measure 91*, STOPTHEDRUGWAR.ORG (Sept. 30, 2014, 6:57 PM),

http://stopthedrugwar.org/chronicle/2014/sep/30/colorado_and_washington_help_mak.

³⁴⁴ *Id.*

³⁴⁵ *See Gettman & Kennedy, supra* note 168.

³⁴⁶ *See Art Way, Colorado and Marijuana Legalization One Year Later: What Has Changed?*, HUFFINGTON POST (Mar. 1, 2015, 5:59 AM), http://www.huffingtonpost.com/art-way/colorado-and-marijuana-le_b_6397664.html.

³⁴⁷ *See id.*

³⁴⁸ *See id.*

³⁴⁹ *Id.*

2010.³⁵⁰ Nevertheless, as possession arrests have decreased in Colorado, crime rates have dipped around the state.³⁵¹ According to the 2014 Uniform Crime Reporting data from the FBI, overall crime has decreased by 10.1%, and violent crime has decreased by 5.2% from 2013.³⁵² According to the Preliminary Part 1 Crime in the City and County of Denver Report Based on UCR Standards, violent crimes decreased from 2013 to 2014 as follows:

- Homicide: down from 41 to 31 (24.4 % change)
- Rape: down from 444 to 433 (2.5 % change)
- Robbery: down from 1,133 to 1,096 (3.3% change)³⁵³

In the same period, burglaries in Denver decreased by 9.5% and overall property crime decreased by 7.9%.³⁵⁴ The UCR Report utilized five offenses to measure the decrease in property crimes beginning January 1, 2013 and ending December 31, 2014.³⁵⁵ Three of those specific offenses follow:

- Burglary: down from 4,975 to 4,500 (9.5% change)
- Theft from Motor Vehicle: down from 6,572 to 5,139 (21. 8% change)
- Auto Theft: down from 3,410 to 3,373 (1.1% change)³⁵⁶

Despite the original resistance, and continued fight from Colorado officials to prevent legalization, per the listed statistics, Colorado's regulatory system has not negatively impacted the state's crime rate.³⁵⁷ Although this data only reflects a short period of time for criminal offenses, this trend continues to prove that legalizing marijuana has not negatively

³⁵⁰ *See id.*

³⁵¹ *See Status Report: Marijuana Regulation in Colorado After Six Months of Retail Sales and 18 Months of Decriminalization*, DRUG POL'Y ALLIANCE (June 24, 2014), http://www.drugpolicy.org/sites/default/files/DPA_Status_Report_Colorado_Marijuana_Regulation.pdf.

³⁵² *Id.*

³⁵³ *Part 1 Crime in the City and County of Denver Based on UCR Standards*, DENVER THE MILE HIGH CITY (2014), https://www.denvergov.org/Portals/720/documents/statistics/2014/UCR_Citywide_Reported%20Offenses_2014.pdf.

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

³⁵⁷ *See id.*

affected public safety, as legalization opponents first expected.³⁵⁸ Decreases in both violent and property crimes suggest the continued efforts of marijuana prohibition might have contributed to increased crime rates.³⁵⁹ Thus, legalization disproves perceptions of marijuana users as violent threats to society.³⁶⁰ This early crime data stands in contrast to concerns of a potential skyrocket in crime after legalization of marijuana.³⁶¹

In addition to the expectation that legalization would increase crime rates, an assumption existed that legalization would contribute to the Mexican drug cartels' lucrative marijuana business.³⁶² However, new studies have found that states that have legalized marijuana have in fact crippled the cartels' business.³⁶³ In recent interviews, cartel members and farmers expressed that marijuana legalization in the U.S. has tremendously impacted their marijuana sales.³⁶⁴ In a Washington Post article, marijuana farmer Rodrigo Silla stated, "I wish the Americans would stop with this legalization."³⁶⁵ While members of the violent gang are known for selling a variety of drugs and committing a wide variety of illegal crimes, marijuana is a major revenue stream for drug cartels. Therefore, by U.S. states legalizing marijuana, the cartels have felt the crushing of the market by cutting off one of its main sources of revenue. According to a 2012 study released by the Mexican Institute of Competitiveness, if ballot initiatives on marijuana pass, Mexican cartels could see sales drop in these states by up to 30%.³⁶⁶ This is evident as many drug cartels and their pot farmers have reportedly stopped planting and harvesting marijuana, and have placed their focus in the illegal drug trade on other drugs and criminal activity.³⁶⁷

As proven in the media, with the thousands of violent murders and drug seizures we see, one of the main goals of the federal government over the past few decades has been to defeat drug cartels.³⁶⁸ If you analyze the

³⁵⁸ See *id.*

³⁵⁹ See *id.*

³⁶⁰ See *id.*

³⁶¹ See *id.*

³⁶² See *id.*

³⁶³ Nick Miroff, *Tracing the U.S. Heroin Surge Back South of the Border as Mexican Cannabis Output Falls*, WASH. POST (Apr. 6, 2014), https://www.washingtonpost.com/world/tracing-the-us-heroin-surge-back-south-of-the-border-as-mexican-cannabis-output-falls/2014/04/06/58dfc590-2123-4cc6-b664-1e5948960576_story.html.

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ Geoffrey Ramsey, *Study: US Marijuana Legalization Could Cut Cartel Profits by 30%*, INSIGHT CRIME (Nov. 5, 2012), <http://www.insightcrime.org/news-analysis/study-legalization-cut-cartel-profits-by-30>.

³⁶⁷ *Id.*

³⁶⁸ *Id.*

past twenty years, marijuana arrests have accounted for nearly half of drug arrests in the U.S.³⁶⁹ Based on these trends, it would appear that, since the legalization and regulation of cannabis, cartels are not able to move as much cannabis inside the U.S., resulting in a decrease in marijuana arrests. Considering that most Americans now favor legalization, it would make sense at this point for the federal government to remove it from the Schedule I category of substances.³⁷⁰ It would be more effective in the fight against the cartels if Congress could legalize the sale of marijuana nationally, and states where marijuana is already legal could open up dispensaries where marijuana was not as heavily taxed. Even though drug trafficking continues to be a concern for government officials, legalization has proven that the regulated and responsible cultivation and sale of marijuana has decreased the cartels involvement in the U.S. drug trade.³⁷¹ One cannot expect that legalization would end drug cartels involvement with the U.S.; however, due to the black market nature of distribution, exact sales numbers on illegal drug trafficking are unobtainable.

E. Underage Possession and Consumption

Ever since the passing of Amendment 64 in November 2012, many politicians and Colorado residents have expressed their concerns with marijuana consumption among teenagers and young children. Those who debate the issue have taken drastically different positions on Colorado's decision to legalize marijuana. On one side, there are the supporters of marijuana legalization who argue underage use among teens will decrease as states control its sale and impose strict age limits on those that purchase the substance.³⁷² Conversely, opponents of legalization fear that adults having the ability to purchase marijuana in stores located around the state will lead to an increase in teen use.³⁷³ Dr. Mireya Nadal-Vicens, a child and adolescent psychiatrist at the Massachusetts General Center for Addiction Medicine said, "[l]egalizing medical use of marijuana is only going to increase accessibility to medical marijuana and decrease the

³⁶⁹ *Marijuana*, DRUGWARFACTS.ORG, <http://www.drugwarfacts.org/cms/Marijuana#Total>; (last visited Feb. 14, 2016).

³⁷⁰ Matt Ferner, *Americans' Support for Marijuana Legalization Reaches All-Time High in CBS Poll*, HUFFPOST POLITICS (Apr. 23, 2015), http://www.huffingtonpost.com/2015/04/20/americans-support-legaliz_n_7101132.html.

³⁷¹ See Ramsey, *supra* note 366.

³⁷² Heather Unruh, *Concerns Grow about Medical Marijuana's Impact on Teens*, WCVB (June 9, 2014), <http://www.wcvb.com/health/concerns-grow-about-medical-marijuanas-impact-on-teens/26400024>.

³⁷³ *Id.*

seriousness to which it's taken."³⁷⁴ Many people with concerns like Dr. Nadal-Vicens were speaking out of fear of the potential impact legalizing marijuana would have on children and teens. However, they failed to take into consideration the regulatory policies that would be implemented to prevent Colorado's youth from being negatively affected.

Despite the assumptions opponents have made about Colorado's legalization of marijuana leading to an increase in marijuana consumption among teens due to the accessibility of the drug, research has proven that consumption and possession among teens has decreased since Amendment 64.³⁷⁵ Hence, proving advocates' argument that bringing the substance onto the legal market does not necessarily make it more attractive for children, as many prohibitionists suggested. Recently, the Colorado Department of Public Health and Environment (CDPHE) released new data that proves marijuana use among teens continues to decrease since its legalization.³⁷⁶ The newly released CDPHE data shows that from 2011 to 2013 the rate of current marijuana use among Colorado high school students has decreased from 22% to 20%.³⁷⁷ The report also found that during that same time frame, marijuana use among teens remained unchanged.³⁷⁸ In addition, during the same two years, the lifetime use of marijuana among high school students decreased from 39% to 37%.³⁷⁹

Furthermore, opponents of the legalization of marijuana for adults over the age of twenty-one suggested that legalizing marijuana would make it more accessible, meaning it would find its way into the hands of young people across Colorado, subsequently encouraging them to use the drug. However, a new study by Esther K. Choo of Brown University's Medical School, proves that as Colorado begins to normalize cannabis in its culture,

³⁷⁴ *Id.*

³⁷⁵ *Legalizing Medical Marijuana Doesn't Increase Use Among Adolescents, Study Says*, SCIENCE DAILY (Apr. 23rd, 2014), <http://www.forbes.com/sites/jacobsullum/2014/08/11/as-colorado-loosened-its-marijuana-laws-underage-consumption-and-traffic-fatalities-fell/>; Steven Nelson, *Teen Marijuana Use Hasn't Exploded Amid Boom In Legalization Support, Drug Survey Finds*, U.S. NEWS & WORLD REP. (Dec. 18, 2013), <http://www.forbes.com/sites/debraborhardt/2015/06/15/legalized-medical-marijuana-doesnt-increase-teen-usage/>.

³⁷⁶ Douglas A. Berman, *As Colorado Loosened Its Marijuana Laws, Underage Consumption and Traffic Fatalities Fell*, L. PROFESSOR BLOGS NETWORK (Aug. 11, 2014), http://lawprofessors.typepad.com/marijuana_law/2014/08/as-colorado-loosened-its-marijuana-laws-underage-consumption-and-traffic-fatalities-fell.html.

³⁷⁷ *Id.*

³⁷⁸ *Id.*

³⁷⁹ *Id.*

adults are setting a good example when it comes to cannabis use.³⁸⁰ Choo's study, published in *A Journal of Adolescent Health*, will certainly figure into the debate about recreational legalization.³⁸¹ Data for the study was retrieved from a survey administered by the Centers for Disease Control and Prevention to high school student's grades 9 through 12.³⁸² Results found that marijuana laws and regulations had not increased marijuana use among teens in any state.³⁸³ Similarly, another study released by CDC revealed data showing that from 2011 to 2013, the years when the states of Washington and Colorado both legalized marijuana, teen marijuana usage remained virtually unchanged in the United States.³⁸⁴

Likewise, data from a new study from the *National Bureau of Economic Research* contradicts opponent's theory that the sale of marijuana would have a negative impact on teens, specifically those that are in high school.³⁸⁵ Lawmakers and prohibitionists around Colorado argued that legalizing marijuana would increase underage use amongst high school students, causing them to pick up bad habits due to the newfound availability of the drug.³⁸⁶ Yet, the study found no results linking the implementation of marijuana laws to greater drug usage among teens.³⁸⁷ Data compared from the CDC found no significant increase in the probability that a high school student in a state where marijuana is legal had used marijuana in the past 30 days when compared to the usage of a student in a state where marijuana is not legal.³⁸⁸ These reports clearly demonstrate that adults having the ability to responsibly consume marijuana do not contribute to an increase in high school students getting high on cannabis and flunking tests in record numbers. It is normal for people to be afraid for the safety of our children when new laws and policies are implemented, especially like Amendment 64. What states like Colorado are proving is that a tightly regulated recreational marijuana system can prevent the dangers posed by prohibitionists.

³⁸⁰ Esther K. Choo et al., *The Impact of State Medical Marijuana Legislation on Adolescent Marijuana Use*, 55 J. ADOLESCENT HEALTH 160-66 (2014), [http://www.jahonline.org/article/S1054-139X\(14\)00107-4/pdf](http://www.jahonline.org/article/S1054-139X(14)00107-4/pdf).

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

³⁸⁴ HUDAK, *supra* note 2, at 28.

³⁸⁵ D. Mark Anderson, et al., *Medical Marijuana Laws and Teen Marijuana Use* (Inst. for the Study of Labor, Discussion Paper No. 6592, 2012), available at <http://ftp.iza.org/dp6592.pdf>.

³⁸⁶ *Cannabis in the Clinic: The Medical Marijuana Debate*, LEARN.GENETICS, <http://learn.genetics.utah.edu/content/addiction/cannabis/> (last visited Feb. 15, 2016).

³⁸⁷ Anderson, *supra* note 385.

³⁸⁸ *Id.*

As a result of the unexpected decrease in the amount of teens who use marijuana post-legalization, the spotlight for regulators has turned to the recreational marijuana stores. In what was referenced to as “underage compliance stings” that were conducted across the state, regulators wanted to verify whether or not marijuana businesses were complying with laws, policies, and regulations.³⁸⁹ The purpose of the stings was to see whether store owners would sell to a person under the age of twenty-one.³⁹⁰ Authorities from the Colorado Marijuana Enforcement Division conducted over twenty undercover stings on recreational marijuana stores in Pueblo and Denver.³⁹¹ Surprisingly, just six months following Colorado making the landmark decision to legalize recreational marijuana for adults, so far police have not had to sanction any recreational marijuana stores for selling to underage customers.³⁹² According to an article released in the Denver Post, Barbara Brohl, the executive director of the Department of Revenue, said, “It is imperative that we keep marijuana out of the hands of kids.”³⁹³ So far, with the authority’s findings, marijuana business owners are ensuring they are doing just that. Unlike the black market, owners of retail marijuana dispensaries cannot sell to those under twenty-one.³⁹⁴ Placing marijuana behind counters, requiring proof of age, and controlling its sale has proven it is making it harder for teens to access the drug, contradicting original expectations.

IV. LAW ENFORCEMENT

In order to accurately measure the effectiveness of Colorado’s new regulatory system, only one year after the law’s passage, it was only right to understand the experiences and perspective of law enforcement in the state. For decades now, officers have fought long and hard to put an end to marijuana use, which has resulted in thousands of arrests, lives lost, and wasted time spent trying to win a war that has continued on without an obtainable or realistic end. Nowadays, law enforcement officers have begun to take a different approach towards tackling the drug problem in our country. In recent years, officers, judges, and other law enforcement officials have shifted their focus away from fighting to win the war on drugs

³⁸⁹ John Ingold, *No Colorado Marijuana Stores Found Selling to Minors in Police Checks*, DENVER POST (June 26, 2014, 10:20 AM), http://www.denverpost.com/news/ci_26038300/no-colorado-marijuana-stores-found-selling-minors-police.

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

³⁹³ *Id.*

³⁹⁴ COLO. CONST. art. XVIII, § 16(1).

and for a drug free country. Instead of focusing on minor marijuana arrests, officers have now shifted their focus and resources to crimes and criminals that are a threat to society.³⁹⁵

Although it is hard to place into perspective exactly how long the U.S. has been fighting the war on drugs, it has been at least forty years since the battle began. Within that time, our country has spent an estimated trillion dollars in total, spending over \$39 million arresting, prosecuting, and imprisoning at ever-increasing levels.³⁹⁶ With the new change in attitude, both law enforcement officials and politicians have publicly stated how they feel about legalization and the need to end the purposeless war on drugs. The criminal justice system is designed, and motivated, to protect public safety while risking the lives of law enforcement to bring those who violate criminal laws to justice. For officers who were asked to analyze their own participation in the war on drugs and evaluate the newly implemented policies and regulations in Colorado, they had to consider the public's safety and whether or not current policies are fair towards those populations who have historically had less power and wealth. In an interview, retired Denver police officer Tony publicly gave his opinion on legalization:

Chasing marijuana smokers was not at the top of my list because I needed my officers to handle calls for service. We didn't have enough officers to cover calls, in part because of the distraction of doing narcotics enforcement, and when you're enforcing narcotics laws, you're mostly enforcing marijuana laws. This frees up police officers to do what they're supposed to do – answer calls for service and work on solving crimes.³⁹⁷

Momentum for marijuana legalization has gained popularity across the country as more states are considering putting an end to prohibition and, rather, have started addressing the personal liberty issues of U.S. citizens. For years, law enforcement agencies have focused on marijuana, further

³⁹⁵ Al Baker, *Concerns in Criminal Justice System as New York City Eases Marijuana Policy*, N.Y. TIMES (Nov. 10, 2014), http://www.nytimes.com/2014/11/11/nyregion/concerns-in-criminal-justice-system-as-new-york-city-eases-marijuana-policy.html?_r=0.

³⁹⁶ Matt Sledge, *The Drug War and Mass Incarceration by the Numbers*, HUFFINGTON POST (Apr. 8, 2013, 7:34 AM), http://www.huffingtonpost.com/2013/04/08/drug-war-mass-incarceration_n_3034310.html.

³⁹⁷ P. Smith, *Colorado and Washington Help Make the Case for Oregon's Measure 91*, STOPTHEDRUGWAR.ORG (Sept. 30, 2014, 5:57 PM), http://stopthedrugwar.org/chronicle/2014/sep/30/colorado_and_washington_help_mak.

proving that the trillion-dollar war on drugs has failed. Although now, over the past few years, we have seen a drastic shift in focus as states, like Kentucky, have moved to overcome barriers to drug reform, remaining committed to the main goals of regulations such as protecting children, protecting public safety, and preventing and treating drug abuse and addiction. In Colorado, to ensure that those goals are met and are at the main focus of marijuana regulations, regulatory agencies and officers around the state are taking the necessary steps to ensure marijuana businesses are adhering to, and are compliant with, state and local marijuana laws. According to a 2014 article written by Gettman and Kennedy, drug control efforts need to be evaluated by looking at market participation—meaning looking at producers and sellers, not the users.³⁹⁸

A. Agencies are Conducting Fewer Audits and Raids Since Legalization

Since legalization, Colorado law enforcement officials are making fewer busts, and are seizing less illegally grown plants, but there are no official numbers that have been released yet.³⁹⁹ Some would argue that this decrease is result of fewer illegal grow operations, while others would say the decline comes from the gray area that lies between illegal and legal marijuana cultivation. Law enforcements officers around Colorado, since legalization, have expressed hesitance to seize marijuana.⁴⁰⁰ If discovered that the marijuana seized is in fact legal, officers could possibly be sued for damages.⁴⁰¹ Amongst the confusion surrounding what operations are legal lies in law enforcement's understanding of marijuana laws. This is far from the typical marijuana bust of old—it's come to show that police now have a more difficult time trying to investigate illegal marijuana growing in the state.⁴⁰² Hence, now that marijuana is legal for recreational use, officers who were once targeting people for growing marijuana illegally have become cautious when searching for unlicensed grow shops.⁴⁰³

With fewer illegal marijuana drug raids in Colorado since legalization, law enforcement officers have placed resources in areas other than marijuana enforcement. Cannabis advocates believe this is a victory over

³⁹⁸ Gettman & Kennedy, *supra* note 168.

³⁹⁹ John Ingold, *Legalization Complicates Police Marijuana Investigations in Colorado*, DENVER POST (July 14, 2014, 5:10 PM), http://www.denverpost.com/news/ci_26147592/legalization-complicates-police-marijuana-investigations-Colorado.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² *Id.*

⁴⁰³ *Id.*

police, because when police interfere it can be a big hindrance,⁴⁰⁴ specifically in a state that has legalized the drug for personal use. However, this could also hurt recreational retailers, who have to compete against the black market for sales.⁴⁰⁵ Police have now had to remove marijuana from their “playbook of self-serving, ineffectual drug war tactics.”⁴⁰⁶ Such tactics include behaviors that fulfilled some officers’ personal egos, and the escalation of physical tactics for minor drug offenses. Before, police used the criminalization of marijuana as a way to intrude into the lives of law abiding citizens.⁴⁰⁷ Now that marijuana is legal in Colorado, law enforcement officials need to be weary of intruding on personal property. Thus far, in regard to home grows, law enforcement raids have begun to change their approach on the war on drugs and the use of unlawful tactics.

Furthermore, most marijuana businesses across the state of Colorado are successfully complying with the new marijuana regulatory system. With over 2,200 licenses out in the state, only twenty recreational and medical shops have been suspended or closed since legalization.⁴⁰⁸ In order to deem a regulatory system efficient and successful, compliance is essential to evaluation. Adherence Colorado is a regulatory compliance company that launched operations after legalization and has created software to ensure that those selling marijuana legally follow the law.⁴⁰⁹ If a business is found to be not in compliance, the Marijuana Enforcement Division can impose citations, violations, fines and administrative hearings, and license closure.⁴¹⁰ During regulatory compliance audits, the proprietary software from Adherence Colorado is used to check that retailers with licenses follow the hundreds of regulations imposed on them so they are continually in good standing with the Marijuana Enforcement Division.⁴¹¹ One thing that is certain is that legalization has put a spotlight on those in the marijuana industry. As a result, owners and employees are complying with

⁴⁰⁴ *Colorado Cops Busting Fewer Illegal Grows*, MARIJUANA BUS. DAILY (July 16, 2014), <http://mjbizdaily.com/illegal-grows-no-longer-busted-by-colorado-cops/>.

⁴⁰⁵ *Id.*

⁴⁰⁶ Way, *supra* note 346.

⁴⁰⁷ *Id.*

⁴⁰⁸ Steve Elliott, *Colorado: New Company Offers Compliance and Inventory Tracking For Marijuana Industry*, HEMP NEWS (Jan. 8, 2015, 6:43 PM), <http://crrh.org/news/category/cannabis/departement-revenue>.

⁴⁰⁹ *Id.*

⁴¹⁰ *Marijuana Enforcement Division 1 CCR 212-2 Permanent Rules Related to the Colorado Retail Marijuana Code*, COLO. DEPT OF REVENUE (Sept. 9, 2013), https://www.colorado.gov/pacific/sites/default/files/Retail%20Marijuana%20Rules,%20Adopted%2090913,%20Effective%20101513%5B1%5D_0.pdf.

⁴¹¹ *Id.*

the vast number of regulations by doing whatever is necessary to avoid that light shining brighter on regulatory violations.

In September 2014, the state Marijuana Enforcement Division released new rules for the medical and recreational industry. In total, 30 regulatory changes were made that impacted almost every function in medical and retail marijuana dispensaries.⁴¹² The rules included changes such as product testing, production, employee training, and edibles. Mark Slauch, CEO of iComply, a cannabis industry compliance and consulting firm, agreed with the new rules and said, “[w]e’re putting our consumer education and teaching business owners and workers how to be responsible vendors, from a business decision, it’s a no-brainer.”⁴¹³ Among the educational requirements for businesses is responsible vendor training and, for anyone who manufactures edible products, there are public safety requirements. In support of voters’ wishes to legalize marijuana, Colorado has implemented these new rules as a way to hold dispensary owners accountable for the health and safety of customers, patients, and employees.

B. Colorado has Set Up Anti-Abuse Campaigns to Keep Users Aware of the Safety and Legal Risks That Remain

Ever since legalization, public health officials and lawmakers around Colorado have come up with ways to contribute revenue from marijuana sales into providing education for adults about responsible marijuana use and why it is not safe for teens to consume the substance. In response to Colorado’s new marijuana industry, campaigns were broadcasted on television channels and set up around the state. The first campaign was targeted towards teen consumption and prevention.⁴¹⁴ Colorado’s campaign, known as “Don’t be a Lab Rat,” attempts to deter teens from marijuana use by using the fact that it can affect brain development in young adults.⁴¹⁵ The campaign is targeted for kids between the ages of twelve and fifteen.⁴¹⁶ To help spread the campaign’s message, they installed

⁴¹² Katie Kuntz, *Colorado’s Marijuana Enforcement Division Releases New Rules For Medical, Retail Marijuana Businesses*, POSTINDEPENDENT | CITIZEN TELEGRAM (Sept. 29, 2014), <http://www.postindependent.com/News/GrandJunction/13219883-113/marijuana-rules-testing-medical>.

⁴¹³ *Id.*

⁴¹⁴ *Colorado Launches “Don’t Be a Lab Rat” Youth Marijuana Education Campaign*, BUS. WIRE (Aug. 11, 2014, 9:19 AM), <http://www.businesswire.com/news/home/20140811005556/en/Colorado-Launches-%E2%80%9CDon%E2%80%99t-Lab-Rat%E2%80%9D-Youth-Marijuana>.

⁴¹⁵ *Id.*

⁴¹⁶ *Id.*

human size cages near skate parks, libraries, and concert venues.⁴¹⁷ The overall point of the campaign was to highlight that at this point in time there has not been enough information derived from research to know exactly how marijuana affects a teen's brain.⁴¹⁸ Therefore, this campaign provided teens that considered using the substance a chance to think twice about consumption in order to protect their brain from the negative effects of early consumption.

The second campaign was educational and was launched by the Colorado Department of Transportation ("CDOT") on marijuana impaired driving. Following Gov. Hickenlooper signing into law a marijuana DUI bill, CDOT launched the public awareness campaign called "Drive High, Get a DUI," and provided funding for youth prevention programs around the state.⁴¹⁹ To spread the campaign's message, which was the first of its kind for Colorado citizens and tourists, organizers used smoking cars and video games to inform adults that there are negative risks associated with driving while impaired.⁴²⁰ The video games were designed to display messages about what marijuana users should not do while getting high, like driving a motor vehicle.⁴²¹ In addition to the video games and smoking cars, CDOT spent \$1 million on television advertisements that attempted to make fun of marijuana users.⁴²² Despite the comical stance taken in the ads, the real message conveyed was that driving under the influence of marijuana, for some, could have similar side effects like alcohol. As a way to stay on top of targeting stoned drivers, Colorado law enforcement agencies are now trained in detecting when a person is driving while impaired looking for indicators such as enlarged pupils and constant body tremors.⁴²³

To keep up with the introduction of marijuana laws, and to provide those who consume the substance with education about responsible consumption, the Marijuana Policy Project ("MPP") launched a campaign

⁴¹⁷ *Id.*

⁴¹⁸ *Id.*

⁴¹⁹ Jolie Lee, *Colorado Aims 'Drive High, Get a DUI' Marijuana Ads*, USA TODAY (Mar. 10, 2014, 3:25 PM), <http://www.usatoday.com/story/news/nation-now/2014/03/10/colorado-marijuana-driving-high-ads/6252513/>.

⁴²⁰ *Id.*

⁴²¹ *Id.*

⁴²² *See id.*

⁴²³ Erin Holmes, *Identifying Drivers Under the Influence of Drugs at the Roadside*, FOUND. FOR ADVANCING ALCOHOL RESPONSIBILITY (Sept. 28, 2015), <http://responsibility.org/blog/identifying-drivers-under-the-influence-of-drugs-on-the-roadside/>.

called “Consume Responsibly”.⁴²⁴ Rather than attempt to inflict fear and scare adults away from using marijuana, MPP decided to urge adults how to consume responsibly.⁴²⁵ Following an overdose experience with edibles, New York Times Columnist Maureen Dowd wanted to organize a campaign to inform adults how to start low and go slow when it comes to consuming edibles.⁴²⁶ The campaign consisted of advertisements in print and online, as well as the distribution of literature.⁴²⁷ Intentionally targeted towards tourists, the campaign launched in Colorado’s capital in front of a billboard that read, “Don’t let a candy bar ruin your vacation.”⁴²⁸ Unlike most marijuana campaigns created to educate the public that includes misinformation and exaggerated potential harms, Consume Responsibly is preparing people for the new acceptance of marijuana users. The purpose of the campaign is to educate marijuana users about the importance in responsible consumption and the laws.⁴²⁹

C. Road Safety Since Legalization: DUI’s and Hit & Runs

Since legalization, prohibitionists have voiced their concerns that the roads will now be filled with stoned drivers, putting everyone at risk.⁴³⁰ Proponents cite the 2001 example of the increase in Colorado drivers driving while high shortly after legalizing medical marijuana to support their argument.⁴³¹ However, thus far, that has not been the case. While some studies have shown that the number of drivers involved in fatal collisions who test positive for marijuana has steadily increased as pot has become more available, other studies have shown that overall traffic fatalities in those states have dropped.⁴³² With the ongoing debate surrounding how to accurately measure marijuana intoxication, some feel the number of people who are truly driving impaired cannot be

⁴²⁴ Rebeka Silva, *Marijuana Activists Launch ‘Consume Responsibly’ Campaign*, HNGN (Sept. 17, 2014, 10:18 PM), <http://www.hngn.com/articles/42791/20140917/marijuana-activist-launch-consume-responsible-campaign.htm>.

⁴²⁵ *Id.*

⁴²⁶ *Id.*

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *See Know the Law, CONSUME RESPONSIBLY*, <http://www.consumerresponsibly.org/law/> (last visited Feb. 14, 2016).

⁴³⁰ M. Caulfield, *Colorado Seeing Safer Roads Since Legalization*, EXPOSING THE TRUTH (Aug. 19, 2014), <http://www.exposingtruth.com/colorado-sees-safer-roads-legalization-far/>.

⁴³¹ *Id.*

⁴³² Radley Balko, *Since Marijuana Legalization, Highway Fatalities in Colorado Are at Near-Historic Lows*, WASH. POST (Aug. 5, 2014), <https://www.washingtonpost.com/news/the-watch/wp/2014/08/05/since-marijuana-legalization-highway-fatalities-in-colorado-are-at-near-historic-lows/>.

measured.⁴³³ Roadside tests only detect the presence of marijuana metabolites, not for inebriation.⁴³⁴ However, if a blood test is taken at a hospital, it can measure THC, the psychoactive ingredient in marijuana.⁴³⁵ Therefore, this is why officers only rely on the blood test should they determine, by observations, if someone is under the influence.⁴³⁶ The law in Colorado says that a THC level of five nanograms or more results in a presumptive DUI charge.⁴³⁷

In the state of Colorado, recreational marijuana is legal for adults; yet, the law does not permit those who consume the substance to drive behind the wheel.⁴³⁸ Since the infamous Amendment 64 was passed in Colorado, making sure the roads are safe has remained a top priority for law enforcement officers.⁴³⁹ Therefore, it seems that the best way to gauge the effectiveness of Colorado's recreational marijuana regulations is to analyze the roads since legalization. First, we look at the citations handed out in Colorado (DUI's) for driving under the influence of marijuana. The first year-long statistics released by the state of Colorado provided data on stoned drivers and added substance to the ongoing debate surrounding legalization.⁴⁴⁰ According to new statistics from the agency, approximately one in every eight citations issued by the Colorado State Patrol last year for impaired driving involved suspected marijuana use.⁴⁴¹ That is far less than was expected from prohibitionists. The 2014 data released by the State Patrol reported that troopers issued 5,546 citations for driving under the influence of drugs or alcohol.⁴⁴² "Of those, 674—about 12.2%—involved suspected marijuana use, either alone or in combination with other intoxicants.⁴⁴³ For 354 of those citations—about 6.4% of the total, or one in every sixteen—marijuana was believed to be the only substance involved."⁴⁴⁴ Since last year was officially the first year the state started to track this type of data, it is evident that as the years of legalization continue on, more data

⁴³³ See Caulfield, *supra* note 430.

⁴³⁴ *Id.*

⁴³⁵ *Id.*

⁴³⁶ See *id.*

⁴³⁷ *Id.*

⁴³⁸ John Ingold, *Marijuana Involved in 12 Percent of Colorado State Patrol DUI Cases*, DENVER POST (Jan. 29, 2015, 6:31 PM), http://www.denverpost.com/news/ci_27421987/marijuana-involved-12-percent-colorado-state-patrol-dui.

⁴³⁹ See generally *id.* (stating the State Highway Patrol launched campaigns specifically targeted at marijuana users).

⁴⁴⁰ *Id.*

⁴⁴¹ *Id.*

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.*

will be provided in order to compare the state's marijuana DUI's citations. As a way to combat violators, the agency now has 61 troopers who are trained as drug recognition experts.⁴⁴⁵

The argument regarding the legalization of marijuana in Washington and Colorado has its fair share of both supporters and detractors.⁴⁴⁶ With both parties finding themselves at opposite ends on the ongoing debate, there are additional pros to legalization in Colorado.⁴⁴⁷ Since marijuana legalization, Colorado has seen the number of highway fatalities on the state's roads drop to nearly their lowest point in history.⁴⁴⁸ According to raw data from the Colorado Dept. of Transportation, roadway fatalities this year are down from last year, and are also down from the thirteen year average.⁴⁴⁹ The data once again contradicts the predictions that Colorado streets would become more dangerous following legalization. Also notable here is that the totals so far in 2014 are closer to the safest composite year since 2002.⁴⁵⁰ This also refutes prohibitionists' argument that legalizing marijuana for recreational purposes would have the same results the state saw following medical marijuana legalization in 2001.⁴⁵¹

Given the current findings in Colorado, other states who feared legalization can see that people are not driving while high in large numbers, and are not causing accidents and fatalities as predicted by the opposition in the media.⁴⁵² Some who support legalization argue that legalization has led people to consume a substance that has less severe impairment consequences than alcohol.⁴⁵³ "According to WebMD, a recent Yale University study found that both marijuana and alcohol impair driving-related skills, but the impairment effects of weed versus alcohol vary depending on the person."⁴⁵⁴ At this early stage, one cannot accurately prove that legalization is what has contributed to the low number of DUI

⁴⁴⁵ *Id.*

⁴⁴⁶ Brandon Turkus, *Colorado Motorist Fatalities Near Historic Lows Since Marijuana Legalization Passed*, AUTOBLOG (Aug. 6, 2014, 4:31 PM), <http://www.autoblog.com/2014/08/06/weed-marijuana-highway-death-drop-report/>.

⁴⁴⁷ *See id.*

⁴⁴⁸ *Id.*

⁴⁴⁹ Balko, *supra* note 432.

⁴⁵⁰ *Id.*

⁴⁵¹ *See id.*

⁴⁵² *See id.*

⁴⁵³ *Id.*

⁴⁵⁴ Graham Winch, *Don't Puff & Drive? Expect DUIs for Pot in Colorado*, HLN (Jan. 3, 2014, 5:02 PM), <http://www.hlnv.com/article/2014/01/03/what-happens-weed-related-dui-traffic-stop-colorado> (citing Kathleen Doheny, *Recreational Marijuana: Are There Health Effects?*, WEBMD (Dec. 11, 2012), <http://www.webmd.com/smoking-cessation/news/20121207/recreational-marijuana-health-effects>).

citations and highway fatalities.⁴⁵⁵ That being said, some researchers *have* gone so far as to suggest that better access to pot is making the roads safer, at least marginally.⁴⁵⁶ Thus, Colorado's current trend, in combination with recent data, reflect a regulatory system that has prevented the worst case scenarios.⁴⁵⁷ The data is far more supportive of the claim that roads are safer, than of the claims that "stoned drivers are menacing Colorado's roadways."⁴⁵⁸ At this point it is too early to predict the next ten years, or to determine what has impacted Colorado's streets. Whatever the reason for the drop in highway fatalities, even if it isn't directly related to pot legalization, is certainly something that all sides can agree is a positive development.⁴⁵⁹

V. ECONOMIC OPPORTUNITIES FROM COLORADO'S NEW INDUSTRY

A. *Employment Opportunities*

Since marijuana was legalized for recreational use, the new industry has grown the state of Colorado into one of the most prosperous places in the country.⁴⁶⁰ When Colorado voters made the historic decision to bring marijuana to the legal realm, one of the major selling points was the influx in jobs the state would see by opening up a marijuana industry for sale.⁴⁶¹ In the short amount of time since ending prohibition, Colorado has already witnessed major economic benefits like the growth in employment opportunities.⁴⁶² Such growth, in return, has shown other states that legalizing recreational marijuana can be a profitable move to follow.⁴⁶³ Beginning in January of last year, the entire country—including the federal government—watched carefully as entrepreneurs, growers, and consumers worked their way out of the black markets and medical markets to gravitate toward the new industry.⁴⁶⁴ By opening up an entire new industry for

⁴⁵⁵ See Caulfield, *supra* note 430.

⁴⁵⁶ Balko, *supra* note 432.

⁴⁵⁷ See generally *id.* (arguing that a worst case scenario would include an increased amount of overall accidents for the state).

⁴⁵⁸ *Id.*

⁴⁵⁹ Turkus, *supra* note 446.

⁴⁶⁰ Christina Sarich, *Colorado's Marijuana Legalization Creates 10,000 New Jobs*, NAT. SOC'Y (May 23, 2014), <http://naturalsociety.com/colorados-marijuana-legalization-creates-10000-new-jobs/>.

⁴⁶¹ See Sam Becker, *Need a Career Change? 16 Jobs in Marijuana Industry*, CHEAT SHEET (Jan. 30, 2016), <http://www.cheatsheet.com/personal-finance/16-jobs-being-created-by-the-marijuana-industry.html/?a=viewall#ixzz3YICCWraz>.

⁴⁶² *Id.*

⁴⁶³ See *id.*

⁴⁶⁴ See *id.*

recreational marijuana, the illegal industry, known as the black market, is now feeling the effects of the booming industry.⁴⁶⁵ Colorado's marijuana legalization is quickly turning the state into one of the most prosperous places in the country.⁴⁶⁶ As a result, opportunities for unemployed individuals have contributed to the state's record breaking economic advancement since taking the historic step towards legalizing marijuana.⁴⁶⁷

In order to effectively analyze the success of Colorado's growing recreational marijuana industry, the state's heavily regulated approach to legalization would have to be taken into account against how the economy has been impacted. At this point, it is safe to say that Colorado's new industry is lucrative and has many functions that continue to open up doors for those looking to invest or enter into the market.⁴⁶⁸ Conversely, for states that have not moved towards legalizing marijuana, the costs of marijuana prohibition have proved to be much greater than the benefits.⁴⁶⁹ Unlike Colorado, there are a large number of states that are experiencing dismal unemployment figures.⁴⁷⁰ In the state of Colorado, hundreds of new marijuana businesses have sprouted up and, as a result, have employed thousands of people.⁴⁷¹ The state is now enjoying one of the lowest unemployment rates in the nation at 6%, which is the lowest it has been since the recession started.⁴⁷² Colorado's legal marijuana market has employed thousands of people, contributing to Colorado's economic improvement since legalization.⁴⁷³

Thus, the recreational marijuana industry has generated millions of dollars in profits and created tens of thousands of jobs.⁴⁷⁴ Those unfamiliar with the booming industry often assume that the jobs in the retail marijuana industry stem around growing and selling, but there is also a high demand within the market for support staff.⁴⁷⁵ The availability of career options in Colorado's market is attractive, which that contributes to the interest in joining the state's marijuana experiment.⁴⁷⁶ More enticing is the fact that many of the jobs are paying higher than the national minimum

⁴⁶⁵ See *id.*

⁴⁶⁶ See Sarich, *supra* note 460.

⁴⁶⁷ See *id.*

⁴⁶⁸ See Becker, *supra* note 461.

⁴⁶⁹ See Christopher Eutaw, *Colorado's Legalization Plan Going Well*, WALL ST. DAILY (July 11, 2014), <http://www.wallstreetdaily.com/2014/07/11/colorado-marijuana-legalization/>.

⁴⁷⁰ See Sarich, *supra* note 460.

⁴⁷¹ *Id.*

⁴⁷² *Id.*

⁴⁷³ *Id.*

⁴⁷⁴ See Eutaw, *supra* note 469.

⁴⁷⁵ See Becker, *supra* note 461.

⁴⁷⁶ See *id.*

wage.⁴⁷⁷ Also, thanks to a system that is heavily regulated, the role of regulators has opened up a vast number of employment opportunities.⁴⁷⁸

Furthermore, the newly implemented recreational industry made jobs available that once only existed in the black market or the medical industry.⁴⁷⁹ The Marijuana Industry Group (MIG) estimates that more than 10,000 workers in the state are directly involved with cannabis.⁴⁸⁰ Since legalization, thousands of people from around the state have found employment in a once struggling economy.⁴⁸¹ Today, the industry is still in its infancy stage. As it continues to grow and more functions within the market begin to open up, the economic benefits of Colorado's recreational regulatory system will only increase.⁴⁸² The state continues to contradict opponent's predictions of disaster and prove that by lifting marijuana prohibitions the economic impact of legalization on an economy can be effective and progressive.⁴⁸³

B. Real Estate

Because MMJ/RMJ reaches a diverse community, its expansion has become essential in attracting younger people and families to the state of Colorado. Furthermore, there are a growing number of medical marijuana refugees who move to Colorado specifically for treatment alternatives revolving around cannabis.⁴⁸⁴ Of the top 25 metropolitan areas in the country, Denver has experienced the third-largest increase in its draw of 25 to 34 year old new residents from 2008 to 2012.⁴⁸⁵ The surge of young families relocating to Denver in search of a lower cost of living and

⁴⁷⁷ Sarich, *supra* note 460.

⁴⁷⁸ See Becker, *supra* note 461.

⁴⁷⁹ *Id.*

⁴⁸⁰ See Eutaw, *supra* note 469.

⁴⁸¹ Sarich, *supra* note 460.

⁴⁸² Eutaw, *supra* note 469.

⁴⁸³ See *id.*

⁴⁸⁴ Saundra Young, *Medical Marijuana Refugees: This Was Our Only Hope*, CNN (Mar. 10, 2014, 1:54 PM), <http://www.cnn.com/2014/03/10/health/medical-marijuana-refugees/>; see also Tom Jackman, *Medical Marijuana Refugees Flock to Colorado*, HT HEALTH (Apr. 28, 2014), <http://health.heraldtribune.com/2014/04/28/medical-marijuana-refugees-flock-colorado/>; *As Marijuana Refugees Flock to Colorado, Will Medical Community Force Rewriting of U.S. Drug Laws?*, DEMOCRACY NOW! (May 9, 2014), http://www.democracynow.org/2014/5/9/as_marijuana_refugees_flock_to_colorado; Dave Phillips, *Colorado's New Pot Laws Draw Marijuana Refugees*, DENVER POST (October 27, 2013, 2:03 PM), http://www.denverpost.com/ci_24397402/colorados-new-pot-laws-draw-marijuana-refugees.

⁴⁸⁵ *Id.*

employment growth is becoming a key catalyst to the city's real estate market.⁴⁸⁶ The increase in the production of more buildings is estimated to be up 26% from 2012.⁴⁸⁷ Consequently, formerly abandoned and inexpensive warehouse space is now being utilized for the production of approximately 800 – 900 legal growers of RMJ/MMJ.⁴⁸⁸

During a tour to learn more about the legalization and regulation of Colorado's RMJ/MMJ market, Pennsylvania Senator Daylin Leach visited "two facilities where marijuana is grown, one lab where it is processed, one where it is tested for potency and impurities, and two dispensaries" and credited legalization with creating new businesses.⁴⁸⁹ The larger grow facility employs approximately "65 high-paying horticulture jobs" in Denver.⁴⁹⁰ Senator Leach further acknowledged Denver's apparent economic growth due to the legalization and regulation of RMJ/MMJ.⁴⁹¹ Moreover, properties are now transforming into 'cannabis-friendly' vacation rentals, a new investment concept.⁴⁹² Colorado's State Governor, John Hickenlooper, stated through an official response "Colorado's economy continues to expand at a pace that is among the best in the nation."⁴⁹³ Richard Grant, communications director for Visit Denver, believes the rumors of the "green rush" come from those who will profit the most.⁴⁹⁴ While there may be some validity to critic's claims, it is hard to ignore the taxes and revenue generated by the sale of RMJ and MMJ.

C. Research and Grants

In Colorado, when voters legalized the sale of recreational marijuana, the amendment to the Constitution promised millions of dollars each year

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

⁴⁸⁸ Dan Roberts, *Colorado's Unregulated Marijuana Grow Sites Persist Despite Legal 'Green Rush'*, GUARDIAN (May 23, 2014, 8:37 AM), <http://www.theguardian.com/world/2014/may/23/colorado-unregulated-marijuana-green-rush>.

⁴⁸⁹ *Id.*

⁴⁹⁰ Diane Fombacher, *PA Senator Daylin Leach: What I Learned about Legal Marijuana in Denver*, LADYBUD (July 29, 2014), <http://www.ladybud.com/2014/07/29/pa-senator-daylin-leach-what-i-learned-about-legal-marijuana-in-denver/>.

⁴⁹¹ *Id.*

⁴⁹² See Joanna Prisco, *Pot-Friendly Vacation Rentals Ramp Up in Colorado*, ABC NEWS (Apr. 28, 2014), <http://abcnews.go.com/Travel/pot-friendly-vacation-rentals-ramp-colorado/story?id=23502235>.

⁴⁹³ John Hickenlooper, *Colorado Revenue Forecast Shows Continued Growth*, COLORADO.GOV (Sept. 22, 2014), <https://www.colorado.gov/pacific/governor/news/colorado-revenue-forecast-shows-continued-growth>.

⁴⁹⁴ Leah Sottile, *Legal Pot Entrepreneurs in Denver and Seattle Face Some Complications*, ALJAZEERA AM. (Sept. 18, 2014, 5:00 AM), <http://america.aljazeera.com/articles/2014/9/18/legal-pot-entrepreneursindenverandseattlefacesomecomplications.html>.

would go towards school construction around the state. As previously mentioned, Colorado's recreational marijuana industry has currently raked in an estimated \$700 million in revenue in its first year, and much of that tax money goes directly into the state's general fund, not into the specific school-construction account.⁴⁹⁵ The remaining tax money is dedicated towards a variety of initiatives including drug-abuse education, research, and substance abuse treatment.⁴⁹⁶ After witnessing the first millions generated from sales towards marijuana education for children, Governor Hickenlooper acknowledged the monetary contribution legalization was supplying to schools and public programs, "The people who were smoking marijuana before legalization still are. Now, they're paying taxes."⁴⁹⁷ The school-construction money comes from a 15% tax levied on wholesale sales from growers to recreational marijuana retailers.⁴⁹⁸ The tax contribution equates to a \$33 million dollar plan lawmakers approved for child drug use prevention and outreach.⁴⁹⁹ The funds are also providing money for school nurses and public education for responsible consumption.⁵⁰⁰

Colorado has since started to distribute the revenue collected from the sale of legalized marijuana and is now funneling it back into programs aimed at "preventing, treating, and regulating pot use."⁵⁰¹ Aside from school construction, a majority of the remaining revenue generated from sales goes to equipment and training for law enforcement to provide them with the tools needed to handle marijuana-related offenses.⁵⁰² One thing opponents feared would occur following legalization was a flood of criminal behavior with law enforcement agencies unprepared to handle the consequences. However, the state's allocated revenue ensured law enforcement agencies were prepared for Colorado's new regulatory system and the ways in which it would impact the state. According to Democratic State Senator Pat Steadman, "[w]e could foresee specific consequences of marijuana legalization and knew that first and foremost,

⁴⁹⁵ Trevor Hughes, *Colo. Pot Users Helping Build Schools with Tax Dollars*, USA TODAY (Feb. 17, 2015, 5:25 PM), <http://www.usatoday.com/story/news/nation/2015/02/17/colorado-marijuana-revenues/23565543/>.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.*

⁴⁹⁹ Kristen Wyatt, *Colorado Marijuana Taxes Boomed in March*, GAZETTE (May 9, 2014, 6:51 AM), <http://gazette.com/colorado-marijuana-taxes-boomed-in-march/article/1519705>.

⁵⁰⁰ *Id.*

⁵⁰¹ Colleen Curry, *Colorado Is Using Tax Revenue from Marijuana Sales to Fund Substance Abuse Programs in Schools*, VICE NEWS (Nov. 19, 2014, 5:07 PM), <https://news.vice.com/article/colorado-is-using-tax-revenue-from-marijuana-sales-to-fund-substance-abuse-programs-in-schools>.

⁵⁰² *Id.*

the revenue should be used to mitigate those impacts.⁵⁰³ Thus, even those who may have been against legalization collaborated to effectively determine how to distribute revenue from marijuana sales. With Colorado's efforts to provide education and awareness on responsible marijuana consumption, the state is contributing a significant amount of funds towards helping adults understand the importance of using marijuana sensibly. As Colorado continues to strive to stray from the negative images associated with marijuana use, hopefully soon those who originally opposed Amendment 64 will appreciate what it can do for school districts across Colorado.⁵⁰⁴

VI. EVOLVING REGULATORY CONCERNS

Even with the success Colorado is seeing since the legalization of recreational marijuana, there are still evolving areas of regulatory concern. One of the most sensitive areas is the effect recreational marijuana legalization has had on Colorado families. Many parents who consume marijuana are still finding themselves caught up in the legal system, or face having their children removed from the home.⁵⁰⁵ Although Amendment 64 legalized responsible cultivation, consumption, and possession of marijuana, there is still a grey area when it comes to parenting and marijuana use in the state of Colorado.⁵⁰⁶ The intersection of marijuana law and society, specifically children and families, is an area of great concern for legislators and communities.

In 2013, Colorado passed the nation's first recreational marijuana regulatory program.⁵⁰⁷ Despite the legalization of marijuana in the state of Colorado, there are still harsh penalties for parents in a state where it is legal to consume and grow.⁵⁰⁸ The term "drug-endangered children" is often used by the media, those who oppose marijuana, child welfare agencies, and police task forces.⁵⁰⁹ Much of the debate focuses on whether

⁵⁰³ *Id.*

⁵⁰⁴ McKay, *supra* note 324.

⁵⁰⁵ Kristen Gwynne, *You Can Have Your Kids Taken Away for Smoking Legal Pot*, ALTERNET (May 16, 2014), <http://www.alternet.org/gender/how-marijuana-legalization-leaves-mothers-and-pregnant-women-behind>.

⁵⁰⁶ See Matt Ferner, *Marijuana Legalization: Colo. Gov. Hickenlooper Signs First Bills in History to Establish a Legal, Regulated Pot Market for Adults*, HUFFINGTON POST (June 4, 2013), http://www.huffingtonpost.com/2013/05/28/hickenlooper-signs-colora_n_3346798.html.

⁵⁰⁷ John Ingold, *Colorado Legislature Gives Final Approval to Historic Marijuana Bills*, DENVER POST (May 9, 2013, 8:17 AM), http://www.denverpost.com/ci_23198163/colorado-senate-gives-final-approval-historic-marijuana-bills.

⁵⁰⁸ Gwynne, *supra* note 505.

⁵⁰⁹ *Id.*

marijuana is a substance that places children in danger, the relationship between federal and state child abuse laws, and how those laws obscure parents' protections under legalization. Although cannabis is legal for adults over the age of twenty-one, it is still classified as a scheduled controlled substance under federal law.⁵¹⁰ According to state law, while smoking a joint and growing a plant or two in your basement may not be illegal, such actions can still be used as evidence in court.⁵¹¹ Unfortunately, child abuse agencies have been slow to catch up with current marijuana regulations.⁵¹²

With the economy booming from recreational marijuana sales, little focus has been placed on the ways in which families have been affected across the state. The growing acceptance of marijuana has complicated state welfare agencies' method of determining if children are in danger.⁵¹³ Over the past year and a half, Colorado has experienced a tremendous cultural change impacted by marijuana regulations, causing some to fear that this new direction is normalizing dangerous behaviors for younger generations. While legislators' main concern has always been child safety, the new laws in Colorado have created an ambiguous area in child welfare and custody issues.⁵¹⁴ An attempt to update current law that classifies marijuana as a harm or risk to children failed in the Colorado legislature, and the effort led to a significant amount of backlash and opposition.⁵¹⁵ Since then, lawmakers have abandoned efforts to update or clarify the law leaving parents around the state wondering whether or not they are criminals.⁵¹⁶

There are obvious disparities in how local child-protection officers and law enforcement agencies handle parental marijuana use, and the need for less ambiguous definitions about medical and recreational marijuana. The problem in the vague legislation is leading to a number of children being removed from their homes and placed in foster care.⁵¹⁷ In recent months, cases in the media showed situations where Child Protective Services intervened and made the decision to take custody from parents who used or

⁵¹⁰ *Colorado's Marijuana Law Puts Children and Parents in Legal Limbo*, GUARDIAN (June 16, 2014, 10:32 AM), <http://www.theguardian.com/society/2014/jun/16/colorado-legal-marijuana-children-parents-danger-issues>.

⁵¹¹ *See id.*

⁵¹² *Id.*

⁵¹³ *Id.*

⁵¹⁴ *Id.*

⁵¹⁵ *Id.*

⁵¹⁶ *Id.*

⁵¹⁷ *Id.*

grew marijuana in the home.⁵¹⁸ Child welfare agencies and officers can employ aggressive tactics when responding to calls, making crucial decisions to remove children from their homes that may be safe. Joshua Hill's two-year-old daughter was taken from him and placed in foster care after Child Protective Services cited him for "neglectful supervision."⁵¹⁹ While at two foster homes, Hill began to notice bruises on his daughter's body and found mold growing in her bag.⁵²⁰ He immediately notified CPS, however, nothing was done.⁵²¹ His daughter passed away at a hospital some time later, and her foster mom was charged with criminal homicide after an autopsy report revealed blunt-force trauma to the head was the cause of the girl's death.⁵²² In another case, where the courts had to decide whether a child was in danger from pot use, a Colorado man was forbidden to have unsupervised visits with his daughter until he passed a drug test.⁵²³ However, the state Court of Appeals in 2010 sided with the dad after finding that he never used the drug around his daughter; therefore, the parent's marijuana use when away from his child did not suggest or pose any danger.⁵²⁴

Since the legalization of marijuana, government agencies across Colorado have removed minors and infants from their homes based on a parent using cannabis and the presumption that the presence of marijuana poses a danger in the home.⁵²⁵ Even though the state has an existing legal medical marijuana program, parents who depend on the substance for serious health reasons can still find themselves facing criminal charges.⁵²⁶ Not only does placing children into foster care impact parents adversely, but it can also be tremendously traumatic for the children.

The second regulatory concern for Colorado is how to accurately measure driving while under the influence of marijuana. Currently, there is no comprehensive way to track instances of marijuana-impaired driving. A major part of the problem of measuring impairment relates to the substance itself and how it is metabolized in the body.⁵²⁷ A major

⁵¹⁸ *Id.*

⁵¹⁹ *Toddler Killed After Taken by Child Protective Services from Her Parents*, RT (Aug. 6, 2013, 6:01 PM), <http://www.rt.com/usa/alexandria-hill-texas-toddler-125/>.

⁵²⁰ *Id.*

⁵²¹ *Id.*

⁵²² *Id.*

⁵²³ *Colorado's Marijuana Law Puts Children and Parents in Legal Limbo*, *supra* note 510.

⁵²⁴ *Id.*

⁵²⁵ *See id.*

⁵²⁶ *See id.*

⁵²⁷ Clay Dillow, *How Will Police Regulate Stoned Driving?* POPULAR SCI. (June 4, 2013), <http://www.popsci.com/science/article/2013-05/now-recreational-marijuana-now-legal-two-states-how-will-police-regulate-stoned-driving>.

conversation occurring at the state house between legislators is about what constitutes driving under the influence of marijuana. If a blood test comes back that a person has more than five nanograms of THC in their system, they are deemed legally under the influence of marijuana.⁵²⁸ The problem lies within the ability to accurately determine if a person is intoxicated and too high to drive. For chronic smokers who consume marijuana on a daily basis, the current form of measurement utilizes blood samples, which does not provide law enforcement with an accurate way to determine a person's impairment at the time of a traffic stop.⁵²⁹ Therefore, detecting marijuana use can occur well outside the window of impairment.⁵³⁰

In addition, there is difficulty determining what level of THC concentration in the blood is a reasonable level at which to say that someone is impaired.⁵³¹ As a result, Colorado is looking for a new way to test individuals that provide immediate results. THC is fat-soluble, meaning it is absorbed by the body's fat cells and can remain there for extended periods of time.⁵³² Thus, it is difficult to connect the amount of THC in someone's bloodstream with his or her current state of impairment. Essentially, detecting the presence of THC in the bloodstream does not necessarily correlate to impairment; there is presently no vast body of evidence that supports drawing a connection between a specific amount of THC in the blood and the degree of impairment.⁵³³ With this grey area, the need for a portable and reliable THC testing device is more crucial now with marijuana legalization in Colorado. One device showing lots of promise is oral fluid testing.⁵³⁴ Whether or not this device becomes available to law enforcement to provide more immediate and accurate testing, it is positive that Colorado is working towards improving current policy.

Edibles, which is the third regulatory concern, has been a point of interest for legislators and regulators since legalization in Colorado, especially surrounding labeling and packaging requirements. Given the success in sales, it is evident that Colorado has seen prosperous results from allowing adults to purchase marijuana for recreational use. However, more than 4.8 million units of marijuana-infused edible products, such as

⁵²⁸ *Id.*

⁵²⁹ *See id.*

⁵³⁰ *Retail Marijuana and Place-Based Public Health: A Status Update*, COUNTER TOOLS, http://countertools.org/s/Counter-Tools_Retail-Marijuana-Update-r98t.pdf (last visited Feb. 14, 2016).

⁵³¹ Dillow, *supra* note 527.

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.*

candies, cookies, and granola bars, were sold last year.⁵³⁵ In March of 2015, Colorado released its first annual report on the status of the marijuana market a year after legalization in the state. The report states that recreational buyers bought 2.85 million pot edibles compared to the 1.96 million units bought by medical users.⁵³⁶ Within the retail marijuana industry, edibles are clearly a viable product to consumers.⁵³⁷ As a result of so many customers in the market for edibles, the attention surrounding their safety is currently a revolving issue.

Around the country, as marijuana legalization makes its way into state governments, safe edible consumption has not only been among the main concerns of opponents, but is a concern for lawmakers as well. The call to create safer and consistent regulations for this form of marijuana product has also led scholars and researchers getting involved in the discussion on edible regulations. Two Stanford law professors believe that stronger restrictions should be placed on edible marijuana products.⁵³⁸ Stanford's Robert MacCoun and Michelle Mello, in a recent article, recognized edibles' popularity in retail sales and argued for the need to improve current regulations.⁵³⁹ Unbeknownst to some customers, marijuana can have different side effects depending on consumption.⁵⁴⁰ MacCoun and Mello argue that when marijuana is ingested and not smoked there are differences in the pharmacokinetic and metabolic effects.⁵⁴¹ When marijuana is smoked or vaporized, the side effects generally come on stronger and diminish faster than consuming edibles. As a result of how marijuana edibles are metabolized by the liver when consumed, the high can take up to two hours to kick in and can result in side effects that last for hours. MacCoun and Mello, through their research, conclude that it is up to the states to regulate edibles, keeping public safety as the top priority.⁵⁴² MacCoun and Mello believe marijuana has a history of "public misinformation" concerning the effects that the drug has on users.⁵⁴³

⁵³⁵ Nicole Arce, *State of Pot in Colorado a Year After Marijuana Legalization*, TECH TIMES (Mar. 1, 2015, 4:35 AM), <http://www.techtimes.com/articles/36274/20150301/state-of-pot-in-colorado-a-year-after-marijuana-legalization.htm>.

⁵³⁶ *Id.*

⁵³⁷ *Id.*

⁵³⁸ Clifton B. Parker, *Marijuana Edible Products Need Stronger Regulation, Stanford Experts Say*, STANFORD NEWS (Mar. 11, 2015), <http://news.stanford.edu/news/2015/march/halfbaked-pot-edibles-031115.html>.

⁵³⁹ *Id.*

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ *Id.*

Therefore, there has been an increase in the number of reports involving adults who have overdosed on edibles.

Unfortunately, when Colorado is regulating a new substance there are bound to be holes in the beginning. There is a current problem concerning children's safety with marijuana products.⁵⁴⁴ Edibles are being blamed for an increased number of pot-related emergency room visits.⁵⁴⁵ Half-dozen children who unknowingly ate pot-laced treats have become headline news.⁵⁴⁶ The baked treats were also front-page news when a college student visiting from Wyoming jumped to his death from a hotel balcony in Denver in March after the student consumed six times the recommended dose of a pot-infused cookie.⁵⁴⁷ The next month, a Denver man shot and killed his wife, and is also believed to have killed her, after eating a pot-laced candy. Police said the man "may have had other drugs in his system."⁵⁴⁸

Another problem with current marijuana laws and public health concerns is the association with house explosions caused by making THC-rich hash oil in homes.⁵⁴⁹ Hash oil is made by using large amounts of butane, which is a highly flammable gas that can linger and ignite.⁵⁵⁰ In a Colorado Springs suburb, firefighters responded to a hash oil explosion at an apartment and found two adults and a three-year-old child trapped in the apartment.⁵⁵¹ Though no one was hurt, the adults faced reckless endangerment charges, as well as charges for child abuse and arson.⁵⁵² In Jefferson County, outside of Denver, it is believed that hash oil making caused an explosion that destroyed a townhouse.⁵⁵³ In 2014, firefighters responded to more than thirty house explosions and, according to the Rocky Mountain High Intensity Drug Trafficking Area agency, that number is three times more than last year.⁵⁵⁴ The problems with public safety have regulators currently pursuing solutions.⁵⁵⁵

⁵⁴⁴ Josh Voorhees, *Going to Pot?*, SLATE (May 21, 2014 3:58 PM), http://www.slate.com/articles/news_and_politics/politics/2014/05/colorado_s_pot_experiment_the_unintended_consequences_of_marijuana_legalization.html.

⁵⁴⁵ *Id.*

⁵⁴⁶ *Id.*

⁵⁴⁷ *Id.*

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.*

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ *Id.*

⁵⁵⁵ Theresa Marchetta & Catherine Shelley, *Greater Access to Edible Marijuana Leads to Increase of Children Admitted to Hospital*, THE DENVER CHANNEL.COM (May 5, 2014 10:26 PM),

Doctors are having trouble diagnosing problems spanning from marijuana exposure in children.⁵⁵⁶ Adults need to initially disclose if a child has been exposed to marijuana to the hospital, but not all of them do so, either because they are afraid of facing charges or because they are unaware of what their child ate.⁵⁵⁷ Some children were admitted to the intensive care unit and got procedures that they did not necessarily need because the parents did not admit that the children had gotten into marijuana that was in the home.⁵⁵⁸ Legislators are considering requiring edibles to be individually wrapped and labeled.⁵⁵⁹ Officials limited the amount of THC in edibles to “10 milligrams per serving.”⁵⁶⁰ Regulators are also cracking down on the bulk sale of butane, in the same way that pharmacies have been cracking down on the sale of over-the-counter cold medicine because it is known to make methamphetamine.⁵⁶¹

Comparing children’s hospital visits for exposure to marijuana with hospital visits for children who have been exposed to other drugs is helpful in determining how bad the effects of marijuana have been. During the first four months of 2014, the Rocky Mountain Poison Control Call Center (RMPC) received 25 calls concerning alcohol and 3,770 about pharmaceutical products.⁵⁶² As hospital visits for children exposed to marijuana have risen, calls to the RMPC for alcohol and pharmaceutical products during the same time period are both down from last year.⁵⁶³ In 2014, “there were ten less calls for alcohol and 317 fewer calls regarding pharmaceutical products compared to 2013.”⁵⁶⁴

As a result of the growing concerns regarding edibles, in October 2014, Colorado Health authorities considered banning many forms of edibles.⁵⁶⁵ Examples of those considered banning were brownies, candy, and most cookies.⁵⁶⁶ Following law enforcements warning to parents to be careful with their children’s candy consumption around Halloween Jeff Lawrence,

<http://www.thedenverchannel.com/news/call7-investigators/greater-access-to-edible-marijuana-leads-to-increase-of-children-admitted-to-hospital>.

⁵⁵⁶ *Id.*

⁵⁵⁷ *Id.*

⁵⁵⁸ Bonnie Rochman, *More Kids Accidentally Ingesting Marijuana Following New Drug Policies*, TIME (May 28, 2013), <http://healthland.time.com/2013/05/28/more-kids-accidentally-ingesting-marijuana-following-new-drug-policies/>.

⁵⁵⁹ Voorhees, *supra* note 544.

⁵⁶⁰ Marchetta & Shelley, *supra* note 555.

⁵⁶¹ *Id.*

⁵⁶² *Id.*

⁵⁶³ *Id.*

⁵⁶⁴ *Id.*

⁵⁶⁵ Brandon Rittiman, *Colo. Health Official Recommends Marijuana Edibles Ban*, KUSA (Oct. 20, 2014 5:32 PM), <http://www.9news.com/story/new/local/2014/10/20/edible-marijuana-ban-brownies-cookies-candy-colorado/17612351>.

⁵⁶⁶ *Id.*

from the Colorado Department of Public Health and Environment, made a recommendation to limit the types of marijuana edibles sold to lozenges and tinctures.⁵⁶⁷ Edible regulators have the challenge to make sure products do not contain more than 100 mg of THC, which is the substance attributable to marijuana's psychological effects.⁵⁶⁸ Therefore, Lawrence's recommendation would make it easier to monitor the THC levels in these types of products. As a Schedule I controlled substance—which means it has a high potential for abuse—marijuana is not recognized by the federal government for sales or usage.⁵⁶⁹ Hence, it is up to each individual state to create a regulatory system that is effective.⁵⁷⁰ While some argue that putting limits on edibles would betray voters' wishes in passing Amendment 64, at this stage in regulation, there is definitely a need to implement new regulations surrounding edibles. However, despite the controversy surrounding edibles, the direction Colorado is taking by addressing public safety concerns and attempting to prevent child consumption, proves Colorado's marijuana industry's interest and consistency with improving and following current regulations. This also shows that the state is headed in the right direction. According to the first annual report on the status of the marijuana market a year after legalization in the state, "98% of retail marijuana facilities passed the 100 mg test, while 99% passed a test that made sure the THC is spread evenly throughout the product."⁵⁷¹ Although this data reveals Colorado businesses are remaining compliant with state laws, there is always room for improvement.

Finally, another area of great concern within the cannabis industry is consumer protection. While the Colorado Department of Public Health and Environment has outlined regulations regarding retail shops and growers, in the midst of the growing industry, large issues remain surrounding the quality of product the consumer may purchase. Companies such as Verda Bio are necessary because they can examine marijuana buds and discover if they have been handled in an unclean manner, or if the product has been tainted in some way. This adds to the safety of the consumer, possibly preventing illness, and creates more strenuous sanitary standards within this quickly developing industry. In parallel with quality control, there also needs to be a fair and ethical market. No different than any other business industry, the marijuana industry is going to need organizations similar to the Better Business

⁵⁶⁷ *Id.*

⁵⁶⁸ Arce, *supra* note 535.

⁵⁶⁹ Parker, *supra* note 538.

⁵⁷⁰ *Id.*

⁵⁷¹ Arce, *supra* note 535.

Bureau. The Better Business Bureau provides a platform for buyers to voice concerns with businesses and their products, and consequently allows businesses to rebutt and resolve these issues. One such group in the marijuana industry is the Cannabis Consumers Union, which has just initiated a campaign in Colorado to ensure that ethical behavior towards consumers is overseen. With the legal marijuana industry growing there may be many additional advances and modifications on the horizon. As for now, it is safe to say that there are many creative and consumer friendly concepts that will ensure the protection and safety of not only the consumer, but also the recreational cannabis business.

A. Future Regulatory Changes

Within the research conducted for this paper, there were areas identified for further research and regulatory changes that should be visited by upcoming legislation. First, marijuana businesses and the state government need to have more discussions and tips on how to safely consume marijuana edibles with customers and medical marijuana patients. By bringing awareness and education to consumers, they can gain the knowledge needed to be responsible users. Second, new regulations need to be implemented to require that specific labels be placed on edibles packaging that contain warnings about the different effects that ingested marijuana can have versus smoked marijuana. This would provide first time edible users with a warning prior to consumption so they would become aware of the potential dangerous side effects. Finally, current regulations prohibit packaging and advertisements that target children, so regulators should develop regulations for edible manufacturing companies to package their products in a manner that clearly distinguishes them from regular food. Current packaging rules allow some edibles to be packaged identical to their name brand counterparts.⁵⁷² By making these mentioned regulatory changes, the sale of marijuana edibles would pose less of a risk, while also informing customers of the possible negative effects associated with edible consumption.

B. Research Limitations

Marijuana legalization in Colorado is still new and is an industry that is evolving and changing every day. As new regulations and laws are

⁵⁷² Rittiman, *supra* note 565.

implemented, and new markets continue to blossom around the state, it is evident that Colorado still has room to grow, and will do this through continued research. For that reason, the recreational marijuana regulatory system is still developing, which places restrictions on looking into the future of regulations in Colorado. Within the argument presented in this paper, that Colorado marijuana regulations are proving effective, some important aspects of regulation were covered, creating limitations. Culturally, Coloradans have all been impacted in one way or another now that marijuana is legal for adults to possess and grow. One example is the retail stores that are located around the Denver Metro area that are legally allowed to grow and sell marijuana. The original goal was to tax and sell marijuana like alcohol, and so far millions of dollars have been generated in revenue, proving in Colorado that marijuana has become a part of an everyday normal behavior for most citizens. Thus, with the economy booming from sales, the aspects of regulation that were not included in this paper can and will serve as future ways to measure exactly how effective regulations in Colorado are.

The first limitation to this paper is that there was nothing mentioned about the banking industry and the problems that were posed for banks when marijuana became legal to sell. The original issue involved banks being hesitant to make loans to, and take deposits from, pot dispensaries.⁵⁷³ This therefore caused problems and contradictions between federal and state regulators, as well as with banks, as they decide whether or not they will engage in business with customers in the marijuana industry. However, in February 2014 the Treasury and Justice department provided guidance to help address these concerns.⁵⁷⁴ Even with the positive results received from federal officials giving banks permission to provide services to dealers, there are still problems in accessing the banking system.⁵⁷⁵ As a limitation, this area of marijuana regulation is still changing. Frank Keating, president of the American Bankers Association, a lobbying group, stated, “while we appreciate the efforts by the Department of Justice and FinCEN, guidance or regulation doesn’t alter the underlying challenge for banks.”⁵⁷⁶

The second limitation to this paper is there was nothing mentioned regarding the role of doctors in recreational marijuana regulations, as

⁵⁷³ Serge F. Kovalski, *Banks Say No to Marijuana Money, Legal or Not*, N.Y. TIMES (Jan. 11, 2014) <http://www.nytimes.com/2014/01/12/us/banks-say-no-to-marijuana-money-legal-or-not.html>.

⁵⁷⁴ Andrew Grossman, *Banks to be Allowed to do Business with Marijuana Dispensaries*, WALL ST. J. (Feb. 14, 2014, 8:34 PM), <http://online.wsj.com/articles/SB10001424052702304434104579383150782034282>.

⁵⁷⁵ *Id.*

⁵⁷⁶ *Id.*

doctors do not play a prevalent role in this specific form of regulation. However, it is still important to examine exactly how effective this form of regulation is by knowing whether or not regulation has helped to lower the amount of patients doctors see in terms of marijuana related incidents, and whether or not their number of patients has decreased since recreational stores have opened up for business. In addition, although medical marijuana regulations are different from the recreational marijuana regulations, the scrutiny of doctors is still prominent and deserves to be further looked into. In terms of medical regulations, a current proposal would scrutinize doctors who recommend marijuana for the most common cited reason, which is pain. With the legalization of marijuana in Colorado, the future of the state's medical marijuana industry and how it will be regulated is in question. As a result, the role of doctors and the requirements for prescribing the substance for medical purposes, as well as the patients they treat for recreational marijuana consumption will be an area for future regulatory policy change.

VII. RECOMMENDATIONS AND AREAS FOR FUTURE RESEARCH

For this research paper, there were areas of regulation that were not discussed as a result of the evolving legislation surrounding these regulatory areas. For that reason, it is necessary to bring up recommendations for future research, and to make suggestions for regulatory clarity in existing policies. The first recommendation is to create universally accepted and used standards for mandatory testing on both medical and non-medical-grade cannabis products. Currently, Colorado's testing requirements only pertain to products sold in the recreational marijuana industry.⁵⁷⁷ The only rule is that no marijuana product can contain more than 100 milligrams of THC, and those that contain more than the allotted amount cannot be sold.⁵⁷⁸ Since Colorado is currently in the early stages of the marijuana testing program, there will need to be new uniform rules created for testing things other than THC levels, such as pesticides and fungus. Aside from potency levels, the state is also concerned about preventing citizens from consuming products that can seriously harm a person's health. It is apparent at this stage of the regulations that creating more testing requirements not only creates safer

⁵⁷⁷ Jennifer Kovaleski, *Colorado Expands Mandatory Potency Testing for Retail Marijuana Products at Newly-Licensed Labs*, THE DENVER CHANNEL.COM (June 12, 2014, 10:46 PM), <http://www.thedenverchannel.com/news/local-news/marijuana/colorado-expands-mandatory-potency-testing-for-retail-marijuana-products-at-newly-licensed-labs>.

⁵⁷⁸ *Id.*

and consistent products, but also provides consumers with the peace of mind that the products they are purchasing have been tested for homogeneity and contaminants.

In addition to universal testing requirements, the second recommendation for future research is to find and develop an accurate way for law enforcement agencies to determine when a person is driving while high on marijuana.⁵⁷⁹ At this time, Colorado law enforcement has no comprehensive way to track instances of marijuana-impaired driving. In a scenario where a law enforcement agency pulls over a suspected drunk driver, they are able to utilize a breathalyzer to determine the driver's impairment. However, in cases of marijuana consumption, the process becomes more complicated. "Police, academics and companies are working to reduce that risk, but it can be a difficult task when the existing methods for testing if people have smoked marijuana recently are fallible or fairly easy to undermine in court."⁵⁸⁰ Some would argue that the current measures used by law enforcement are either too invasive or not able to accurately determine a person's impairment. For example, an officer can assume that a person is intoxicated because their clothing smells like marijuana, or because smoked several hours before the stop. However, this assumption makes it difficult to say if they are truly impaired or not. Police officials currently use blood, saliva, and urine tests to test drivers for marijuana consumption, but these methods detect marijuana use days prior to testing, and are not able to clarify if a person is currently impaired.⁵⁸¹ As marijuana becomes more acceptable in society, law enforcement agencies need to have a tool that allows them to accurately determine a person's impairment at the time of the traffic stop.

Finally, for future research, I recommend that the federal government consider removing marijuana as a Schedule I drug of the Controlled Substances Act. Drugs that are classified as Schedule I are drugs that the DEA believes have a high potential for abuse and are not accepted for medical use as well.⁵⁸² In the U.S, there are twenty three states that have legalized medical marijuana, and five states that have legalized marijuana

⁵⁷⁹ Connor Adam Sheets, *Driving While High: Marijuana Breathalyzer on Horizon as Police Struggle to Stop Stoned Drivers*, INT'L BUS. TIMES (Dec. 4, 2014, 3:13 PM), <http://www.ibtimes.com/driving-while-high-marijuana-breathalyzer-horizon-police-struggle-stop-stoned-drivers-1734400>.

⁵⁸⁰ *Id.*

⁵⁸¹ *Id.*

⁵⁸² Matt Ferner, *FDA to Evaluate Marijuana for Potential Reclassification as Less Dangerous Drug*, HUFFINGTON POST (June 25, 2014), http://www.huffingtonpost.com/2014/06/24/fda-marijuana_n_5526634.html.

for recreational use.⁵⁸³ In upcoming elections, efforts should be made to ask the federal Food and Drug Administration and law makers to remove marijuana from its list of the most dangerous and harmful drugs. Changing marijuana from a Schedule I drug would not make it legal, but rescheduling could possibly ease restrictions on marijuana research and make banks more willing to offer services to legal marijuana businesses.⁵⁸⁴ Medical marijuana businesses across the country have shown the immense benefits cannabis can have for the sick and by rescheduling the substance, states could benefit from the additional research into cannabis use for medical purposes.⁵⁸⁵ Additionally, rescheduling could also allow businesses to utilize traditional tax deductions.⁵⁸⁶

CONCLUSION

In conclusion, although it has just been a little over two years since legalization, Colorado's decision to legalize marijuana is quickly turning the state into one of the most prosperous places in the country. Recent data demonstrates that Colorado is on an upward trend, and also reflects a regulatory system that has prevented the worst-case scenarios. So far, Colorado has disproven the claims that legalizing marijuana would lead to stoned drivers menacing Colorado's roadways and that an increase of crime and child consumption would occur.⁵⁸⁷ As the state's marijuana industry continues to grow, and more functions within the market begin to open up, the economic benefits of Colorado's recreational regulatory system will only increase as the state continues to contradict opponents' predictions of disaster and prove that by lifting pot prohibitions an economy can be effective and progressive.

Since 1933, the United States has recognized the right of adults to consume alcohol and tobacco because we live in a society founded on individual rights and free choice. Therefore, we should all respect the right of adults who choose to use these recreational drugs with the expectation that they be used in a manner that does not harm others. After conducting this in-depth analysis on Colorado's recreational marijuana industry, we

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

⁵⁸⁷ David Downs, *Colorado Legalization Report Card: No Impact on Crime or Teen Use; \$84 Million in Taxes*, EAST BAY EXPRESS (Oct. 28, 2014), <http://www.eastbayexpress.com/LegalizationNation/archives/2014/10/28/colorado-legalization-report-card-no-impact-on-crime-or-teen-use-84-million-in-taxes>.

are proud of how our state is managing not only a new regulatory system, but also one that was implemented and rolled out in such a short amount of time. Moreover, through our research for this project, we have concluded that in Colorado regulation is more effective than prohibition.

APPENDIX

Recreational Legalization Models - *Washington vs. Colorado*

The Brookings Report was published July 2014. This report breaks down the differences in regulation between the two legal states of Washington and Colorado in the United States. The table reflow presents data from the laws being voted into action to government control. The regulation models between Colorado and Washington have varied greatly. Colorado put a series of efforts into regulating the medical marijuana system since 2001. The medical marijuana system came several years before the state approached legalization/regulation methods. Colorado has chosen to build on an existing system, which allows cultivation of up to six marijuana plants, and possession of up to one ounce.⁵⁸⁸ Washington, on the other hand, never had a chance for the regulation of the medical marijuana system to get off the ground to be properly regulated. After Initiative 502 was passed, the state had to begin building their recreational system from the ground.⁵⁸⁹ Washington also allows possession of up to one ounce, but does not allow any cultivation of cannabis.⁵⁹⁰ The states do have common regulation methods in place.⁵⁹¹ Both states agree that a user has to be over the age of twenty-one to follow the regulation of alcohol method.⁵⁹²

If successful regulation methods are implemented in these two leading states, federal regulation can become a possibility in the future. The next states that are putting recreational cannabis on the ballot are California, Washington DC, Alaska, and Oregon. All the initiatives are similar to Colorado and Washington, as they all by set the legal age at twenty-one years old.⁵⁹³ All of the initiatives allow for retail stores.⁵⁹⁴ The main differences in initiatives for proposing recreational marijuana among states are possession and cultivation limits. Since Colorado currently has the most efficient regulation model in the country, when other states regulate

⁵⁸⁸ *Know the Law*, *supra* note 429.

⁵⁸⁹ Jason Toon, *Legal Weed in Washington State Has Been Completely Screwed Up*, VICE NEWS (Mar. 10, 2014, 12:15 PM), <https://www.news.vice.com/article/legal-weed-in-washington-state-has-been-completely-screwed-up.html>.

⁵⁹⁰ *Id.*

⁵⁹¹ *Id.*

⁵⁹² *Id.*

⁵⁹³ Steven Nelson, *Marijuana Legalization May Win the West (and D.C.) in 2014*, U.S. NEWS (Jan. 10, 2014, 11:14 AM), <http://www.usnews.com/news/articles/2014/01/10/marijuana-legalization-may-win-the-west-and-dc-in-2014>.

⁵⁹⁴ *Id.*

marijuana, they will implement models that have proven effective for other states.

Comparing Legal Marijuana Systems in Colorado and Washington ⁵⁹⁵		
	Colorado	Washington
Legalization Vehicle	Amendment 64	Initiative 502
Passed	55.3 – 44.7, November 6, 2012	55.7 – 44.3, November 6, 2012
Timing	Rules required by July 2013, delivered on time (Emergency rules promulgated on June 28, 2013; Permanent rules promulgated Sept. 9, 2014), first stores opened January 2014.	Rules due december 2013, promulgated october 2013, but licensing process slower than anticipated; first grower licenses issued in March 2014, first stores licensed and opening in July 2014.
Means of legal Change	Only by another constitutional amendment.	Can be amended by normal legislative action.
Administering Agency	Department of Revenue, Marijuana Enforcement division (MED)	Liquor Control Board
Age requirement for legal possession	21 and over	21 and over
Home grows permitted?	Up to 6 plants, with 3 flowering at any time	Prohibited
DUI	5 nanogram per milliliter limit for driving.	5 nanogram per milliliter limit for driving
Tax Structure	15% excise tax on cultivator; 10% special sales tax; 2.9% standard sales tax; additional	25% excise tax on sales from grower to processor, processor to retailer, and

⁵⁹⁵ John Hudak, *Colorado's Rollout of Legal Marijuana Is Succeeding*, BROOKINGS (July 31, 2014), <http://www.brookings.edu/research/reports/2014/07/colorado-marijuana-legalization-succeeding>.

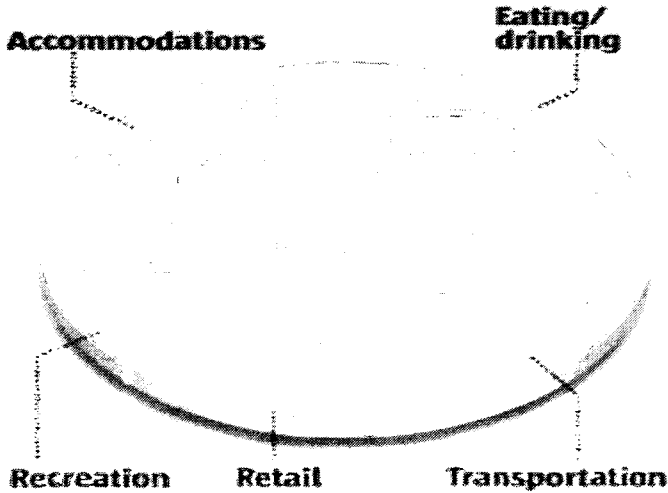
	local taxes can be levied.	retailer to customer; plus normal local taxes apply.
After-tax price of legal marijuana?	Average market rate for Flower: \$1,876/ pound. After tax cost depends on the locality.	Yet to be seen, expected to be much higher than still-unregulated medical marijuana prices in the state.
Where does tax revenue go?	Marijuana tax Cash Fund; Marijuana Cash Fund. Monies used to fund MEd, school construction, expanded education and prevention efforts, law enforcement. revenue sharing with local governments that allow marijuana sales.	Complicated allocation: first money goes to fund administrative costs, various research projects and prevention or substance abuse programs; later money split between more marijuana-specific programs, general healthcare spending, and the state's general fund.
Licensing Regime	Vertical Integration for first 9 mos.-2 yrs (depending on locality). grower/processor/retailer licensed by MEd. Medical users must register through department of Public health and Environment.	Growers, processors, and retailers must be licensed. No vertical integration allowed: growers and processors cannot be retailers, though joint grower-processor licensed issued.
Treatment of Pre-existing Medical MJ system	Builds on top of existing system, which began to be regulated beginning in 2009 and which remains in place; privileges incumbents of the old system, who get first access to new recreational market.	Unregulated, largely untaxed medical dispensaries remain in unresolved legal limbo, for now enjoy non-enforcement; legislature expected to provide some resolution or merger with i-502 system in coming months.
Diversion Prevention	Seed to sale tracking system; limits on quantities purchased/possessed,	Has same measures as Co., and high hopes that tight control over licensing and

	education campaigns, video surveillance requirements.	rather deliberate (i.e., slow) roll-out will allow more effective prevention of cross-state diversion.
Local Control	Counties, municipalities can opt out. Local governments can regulate the number of grow operations and dispensaries. Local governments can assess additional taxes. Local governments can issue zoning and other ordinances regulating production and consumption.	Controversial: preemption of local drug laws, but some localities seeking to use zoning laws to effectively exclude stores were encouraged by non-binding state attorney-general opinion. Legal battle to follow. As of now, there is no revenue-sharing with local governments, so many cities may feel incentives are to opt out.
Regulatory Features	Extensive criminal background checks for all licensees, seed to sale tracking system, Vertical integration (initially), increasing product & potency testing	Extensive criminal background checks of all licensees; extensive product safety testing.
Total size of legal market.	As of 1/1/2014, there were licenses distributed for 178 marijuana cultivation facilities and 136 retail dispensaries.	Yet to be seen, but only projected to be about a quarter of the total market for marijuana in Washington after a year of full-scale operation
Official Analysis	State commissioned a survey of market demand. Separate revenue analyses/ projections conducted by the department of Revenue, Governor's Office of State Planning and Budgeting, and the Colorado Legislative Council.	502 mandates cost-benefit analysis conducted by Washington state institute for Public Policy (WsiPP), with preliminary report in 2015 and subsequent reports in 2017, 2022, and 2032.

<p>Common Complaints</p>	<p>Public use rules vague; homegrows creating additional local problems; paperwork delays at MEd.</p>	<p>Slow implementation; low projected legal supply when stores do open; frustration that medical dispensaries get no ability to make transition to legal recreational system; continued legal ambiguity for medical marijuana.</p>
------------------------------	---	--

Spending by overnight visitors

Total spending equals \$4.089 billion



Source: Longwoods

The Denver Post

**State of Colorado
Marijuana Taxes, Licenses, and Fees Transfers and Distributions
April 2014 Sales Reported in May**

Line	May 2014 Reported	May 2013 Reported	Change		FY2014-14	FY2013-13	Change	
			\$	%			\$	%
TAXES								
1 Sales Tax Transfer to Marijuana Cech Fund (2.5% rate) (1+3)	\$ 1,539,714	\$ -	\$ 1,539,714	N/A	\$ 11,699,423	\$ -	\$ 11,699,423	N/A
2 Medical Marijuana	619,383	-	619,383	N/A	9,611,247	-	9,611,247	N/A
3 Retail Marijuana	639,728	-	639,728	N/A	2,069,176	-	2,069,176	N/A
4 Retail Marijuana Sales Tax (3.5% rate) (1+6+7)	\$ 1,213,697	\$ -	\$ 1,213,697	N/A	\$ 4,951,775	\$ -	\$ 4,951,775	N/A
5 Local Government Distributions (1% of Total)	132,037	-	132,037	N/A	1,033,213	-	1,033,213	N/A
6 Marijuana Cech Fund Transfer (25% of Total)	1,864,829	-	1,864,829	N/A	3,331,510	-	3,331,510	N/A
7 Collections Not Yet Allocated*	31,723	-	31,723	N/A	13,530	-	31,530	N/A
8 Retail Marijuana Excise Tax (15% rate) (2+10+11)	\$ 734,351	\$ -	\$ 734,351	N/A	\$ 1,879,191	\$ -	\$ 1,879,191	N/A
9 Public School Capital Construction Assistance Fund Transfer	732,426	-	732,426	N/A	1,877,142	-	1,877,142	N/A
10 Marijuana Cech Fund Transfer	-	-	-	N/A	-	-	-	N/A
11 Collections Not Yet Allocated*	1,943	-	1,943	N/A	2,049	-	2,049	N/A
12 Total Marijuana Tax Transfers and Distributions (1+4+5)	\$ 4,511,608	\$ -	\$ 4,511,608	N/A	\$ 29,531,389	\$ -	\$ 29,531,389	N/A
LICENSES AND FEES								
13 License and Application Fees Transfer to Marijuana Cech Fund (1+4+5)	\$ 781,897	\$ 374,963	\$ 406,934	181.1%	\$ 6,611,741	\$ 1,769,978	\$ 4,841,763	129.9%
14 Medical Marijuana	621,387	374,963	246,424	66.0%	6,361,391	1,769,978	2,350,413	68.3%
15 Retail Marijuana	139,100	-	139,100	N/A	2,250,350	-	2,337,350	N/A
TAXES, LICENSES, AND FEES TOTALS								
16 Total Marijuana Cech Fund Transfers (1+6+10+13)	\$ 4,186,225	\$ 374,963	\$ 3,811,262	101.6%	\$ 25,184,174	\$ 1,769,978	\$ 23,414,196	596.5%
17 Total All Marijuana Taxes, Licenses, and Fees (12+13)	\$ 5,273,253	\$ 374,963	\$ 4,898,290	130.6%	\$ 29,145,139	\$ 1,769,978	\$ 25,375,161	674.9%

* Indicate those receipts that have passed to the accounting system but have not yet been reconciled to the relevant substance tax return. These receipts may affect the precision of the calculations to transfer or distribute the substance taxes to their proper destination.

Source: Colorado Department of Revenue

Prepared by: Office of Research and Analysis, (303) 866-3777 or ora_colorado.com

Publish date: June 2014