

LAW WEEK COLORADO

State Releases Latest Cornerstone Marijuana Study

Criminal defense attorneys say report's findings validate trends they have been seeing in law enforcement

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As the result of Tuesday's election, Michigan became the 10th state to allow the sale and possession of recreational marijuana, and voters in Missouri and Utah approved initiatives to allow medical marijuana.

Meanwhile in Colorado, the state's still-young recreational marijuana experiment has yielded new, wide-reaching research in the form of a study by the state's Division of Criminal Justice. Released Oct. 26, "Impacts on Marijuana Legalization in Colorado" compiled statistics from various state agencies regarding marijuana-related criminal filings, DUIs, black market indicators and other measurables.

The DCJ research is an ongoing effort to track the effects legalized marijuana has had on Colorado's public health and safety. While the data carries plenty of caveats by the researchers' own admission, criminal defense attorneys say the information points to larger trends in marijuana enforcement that they've observed in their own practices.

The DCJ cautioned readers that the report's data was still "baseline and preliminary." It also noted complicating factors that could have affected increases or decreases in different datapoints. For example, when cannabis-related criminal court filings increased from 2015 to 2017, it might have been due to a change in the legal plant count laws, according to the report.

Also, the diminished social stigma surrounding marijuana could make users more likely to tell law enforcement they've consumed it, which could give the impression that marijuana use has increased where it hasn't.

DUIs AND TRAFFIC FATALITIES

The study noted that the state has bolstered the number of law enforcement officers who are specially trained to detect drug use among drivers. Officers being more likely to recognize marijuana use might help explain what looks like a growing prevalence of marijuana involvement in traffic incidents, the study said.

Still, the portion of DUIs where marijuana was the impairing substance — either alone or combined with alcohol or another substance — increased slightly from 2014 to 2017, from 12 percent of DUIs to 15 percent.

In 2013, 11 percent of traffic deaths involved a driver who tested positive for a cannabinoid. In 2017, that share increased to 21 percent. The Colorado State Patrol's overall number of DUI cases decreased 15 percent from 2014 to 2017.

Denver-based DUI and criminal defense attorney Jay Tiftickjian said that DUI arrests and fatalities tend to have an inverse relationship, statistically speaking; when one figure goes up, the other often drops. The report seems to show that same relationship, he said.

"When recreational marijuana was legalized, there was a large push to focus on marijuana related DUI cases," Tiftickjian said in an email. "I believe that focus has moved elsewhere, which is why we see less marijuana-related driving offenses now as a few years ago. Also, as DUI arrests are down, fatalities seem to be up."

From 2014 to 2017, the percentage of state patrol citations for marijuana-only impairment has flatlined at around 7 percent of DUIs. The percentage of citations that involved any marijuana — including in combination with other substances — increased from 12 percent in 2012 to 17 percent

in 2016, before decreasing again last year to 15 percent.

Tiftickjian noted that the study acknowledges the challenge of trying to parse the number of DUI charges that involve only cannabis or a combination of the drug and alcohol. With no separate DUID charge in Colorado, everything falls under DUI regardless of which substance most heavily influenced the driver.

"This has always been an issue with trying to determine whether DUI cases are drug related, alcohol related or both," Tiftickjian said.

COCCA CHARGES

Colorado Organized Crime Control Act charges related to marijuana have surged since Amendment 64's enactment. COCCA charges dealing with marijuana manufacturing or products increased nearly eightfold from 25 in 2012 to 142 in 2017. COCCA charges for possession with intent to sell went from 32 to 124 during that time.

"That doesn't surprise me at all," said criminal defense attorney Josh Amos, who is an associate with McDermott Stuart & Ward in Denver. He and his firm have seen a proliferation of COCCA charges being applied to marijuana-related activity in Colorado in recent years, and the report validates that observation, he added.

COCCA, a racketeering statute often used to combat black market schemes, broadly defines what people or entities could be considered part of the criminal "enterprise." Amos said prosecutors can use the statute to ensnare a wide swath of people who have even loose associations to alleged black market operation. "I've worked on these indictments where you'll have everyone charged with a COCCA count regardless

of their role in the enterprise."

Amos said the data showing the jump in COCCA charges could be useful in his practice, such as for arguing to a judge during sentencing that those charges are too broadly applied to marijuana defendants. "You need to have the right case to make that argument of course," he noted; it would preferably be for a defendant who had a more tenuous connection to the cannabis operation.

HOW USEFUL ARE THE DATA?

When new research emerges from Colorado's Amendment 64 aftereffects, it's fair to ask whether any of the new data might inform new policy to improve public safety.

Sam Kamin, the Vicente Sederberg Professor of Marijuana Law and Policy at the University of Denver Sturm College of Law, said in an email the new study is unlikely to prompt any changes, at least in Colorado. But it should be useful, however, "to inform new jurisdictions thinking about adopting marijuana law reform and ... to help guide law enforcement resource allocation."

"There's nothing in here that makes me think there is a need for significant change in Colorado's laws or regulations," Kamin said.

Even if the DCJ's latest report doesn't offer many earthshaking revelations in how marijuana legalization has influenced the criminal justice system, that doesn't take away from the fact it's the most rigorous ongoing study Colorado has on the subject.

"This is a good and careful report," Kamin said. "It's done by people who understand statistics and don't have a horse in the race. Impartial data are crucial to understanding what works and what doesn't in this area." •

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