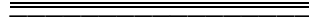


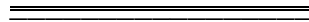
**The Bill Blackwood
Law Enforcement Management Institute of Texas**



Rational Reasons to Legalize Marijuana in Texas



**A Leadership White Paper
Submitted in Partial Fulfillment
Required for Graduation from the
Leadership Command College**



**By
Lance Telchik**

**Big Spring Police Department
Big Spring, Texas
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ABSTRACT

It is time for legalization and regulation of the marijuana industry to reduce the strain on the criminal justice community, reduce the violence along the Mexican border, and create a new source of tax revenue by learning from other states such as Colorado and Washington. While opponents argue legalization will cause an increase in users, easier drug access for youth, and availability of a dangerous and “gateway” drug, this is simply not the case. The regulation of a newly legitimized industry would include seed to sales tracking systems, elimination of “home grows”, vertical integration of product, limited quantity purchases for personal use, and mandatory video surveillance.

Legalization of marijuana would not only create a new source of revenue for government entities, it would provide substantial savings in manpower. Police officers’ time would be freed to concentrate on protecting the public rather than hours spent in clerical functions. The State of Texas should legalize the sale and distribution of marijuana.

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INTRODUCTION

Marijuana and its many different uses have been around for centuries. Marijuana has been used for everything from clothing to religious ceremonies. Worldwide, marijuana use was socially acceptable until the early 1900s. As a result of societal changes in the early 1900s, legislation regulating the use of numerous drugs (including marijuana) decreed a new idea of societal acceptability. The journey of marijuana's acceptance and use in Texas, as well as the rest of the United States, has been a roller coaster ride of acceptance and prohibition.

The swing of attitudes from complete prohibition to legalization of marijuana nationwide demonstrates the ups and downs of the roller coaster of public opinion. In a recent Gallup Poll, 58% of Americans think the use of marijuana should be made legal, with only 39% still in the dissent (Swift, 2013). Taking into account the swing in public opinion, the cost of enforcing current statutes, and the fact that the illicit marijuana demand in the United States supports the violent Mexican drug trafficking organizations (Caulkins, Hawken, Kilmer, & Kleiman, 2012), it is time for a change in strategies to combat the issue of marijuana being illegal in Texas.

The current "War on Drugs" game plan has done nothing to impede the mass flow of drugs into the country and has done a great amount to impair the criminal justice system. Current constitutional constraints on law enforcement work in favor of the drug smugglers. Legalization of marijuana would not only ease the burden on the criminal justice community, but it would help put power back into the hands of the state. Legalization would provide the state with taxing and administrative rules similar to that currently imposed on the alcohol and tobacco industries. The State of Texas should

legalize marijuana to ease the strain on the criminal justice system, to diminish the power of Mexican drug trafficking organizations, and to create a new stream of revenue for beneficial projects.

POSITION

Legalizing marijuana would reduce the strain on scarce law enforcement manpower and funding resources by allowing peace officers to shift their focus where it is needed. It is estimated that, nationwide, marijuana arrests cost state and local agencies \$7.6 billion, or approximately \$10,400 per arrest (St. Pierre, 2005). A goal of any criminal law is deterrence through the consequence of the act. The strategy of reducing demand through criminal enforcement is ineffective at best. Most of the arrests are made by street officers for possession of small quantities. The street officer will then spend several hours booking, packaging evidence, and writing the report for an arrest involving less than one ounce of marijuana. With over 20 million arrests for marijuana since 1965, it is obvious that the law's desired deterrent effect is not working. Ruschmann (2004) stated that "Despite the growing number of arrests, a black market in marijuana continues to thrive" (Ruschmann, 2004, p. 63). There has been and always will be a demand for marijuana, and likewise, there will always be a supply. It is time to shift supply from black markets and organized crime to a regulated, taxable industry.

Since the inception of illegalization, a non-stop stream of marijuana has flowed into the nation with no signs of stopping. Historians believe that marijuana came to the United States from ports along the Gulf of Mexico (Vitale, 2015). Mexico remains the primary source of marijuana in America today. The criminalization of marijuana has

created a huge demand by America's 30 million users who consume between 3,000 to 4,000 metric tons of marijuana in a year (Caulkins, Hawken, Kilmer, & Kleiman, 2012). This high demand has created a supply network through Mexican drug trafficking organizations (DTOs) and neighborhood black markets to meet the demand. Nancy Reagan's "War on Drugs" has been ineffective at best. Lucky finds of huge shipments by law enforcement do not even begin to put a dent in the massive amount of marijuana being brought into and grown domestically in America. Legalization and regulation of the marijuana industry will reduce the power of the DTO's and thereby violence along the Mexican border (Ruschmann, 2004).

Lastly, creating a regulatory structure would ensure a safer product while providing tax revenue to the state. Regulation similar to that of alcohol is a logical direction to travel in the legalization of marijuana. Alcohol was outlawed during prohibition, but due to its popularity with the citizenry, the prohibition had to be repealed. During prohibition, organized crime took advantage of the nation's thirst for alcohol. They flourished from the profits of their speak-easy underground establishments. Much like the DTOs of today, a network of smugglers, wholesalers, and distributors were established and immense profits were gained. Once prohibition was repealed and alcohol became a government regulated industry, the black markets for alcohol disappeared. If marijuana were to become a legally regulated industry, then the black market sales would cease to exist. Black market dealers would disappear. Users would purchase their "weed" legally from a licensed dealer, instead of risking arrest by obtaining it from an unlicensed source or risking overdose from a dangerous or tainted product.

An alarming trend since the 1970s has been the increase in delta-9-tetrahydrocannabinol (THC) concentration, as well as the decrease of cannabidiol (CBD) in a majority of the marijuana sold today. In just the past ten years, THC concentration has increased by 50% (Caulkins, Hawken, Kilmer, & Kleiman, 2012). This is attributed to improvements and information sharing of new horticultural techniques. Increased concentration is alarming due to the fact that THC is the major intoxicant in marijuana. The relationship between the two compounds is the higher the concentration of THC, the lower the concentration of CBD. High doses of THC can cause anxiety while CBD helps to counteract this anxiety (Caulkins, Hawken, Kilmer, & Kleiman, 2012). As stated above, the higher the THC concentration, the lower the CBD concentration, which would result in more anxiety-inducing “highs” without the benefit of the anxiety-relieving benefits of CBD. A major benefit in regulating marijuana would be the ability to control the THC concentration and thereby control the dosage of THC and CBD content of product sold in state licensed businesses. This would help with overdosing concerns as well as the anxiety suffered at higher doses of THC disproportionate to CBD intake.

A new stream of taxing revenue for the state is another positive result of regulating marijuana. In fiscal year 2014-2015, the State of Colorado collected \$52,570,081 in revenue for all marijuana taxes, license, and fees (Office of Research and Analysis, 2015). This is a drastic improvement from the FY 2013-14 number of \$5,487,783. Colorado’s current tax structure concerning marijuana is as follows: 2.9% retail and medical marijuana sales tax; 10% retail marijuana special tax; 15% marijuana excise tax; and applicable retail/medical marijuana application and license fees

according to the Colorado Department of Revenue's website (Office of Research and Analysis, 2015). Colorado has also instituted a seed-to-sale tracking of all marijuana produced for medical and retail sale. The system, called Marijuana Inventory Tracking System (metrctm), has tracked over a million seeds, 500,000 plants, and logged in over 5,000 users since its rollout in December 2013 (<http://www.metrc.com/>). The metrctm is considered an integral part of Colorado's regulatory structure concerning marijuana and the six important regulatory actions that are listed in a Center for Effective Public Management report (Hudak, 2014). This tracking system is critical in accountability as well as being able to recall an unsafe/tainted product.

COUNTER POSITION

Being a highly contentious topic, there are numerous oppositions to the notion of legalizing marijuana. The same reasons people use to object to legalizing marijuana, after intelligent thought, can be turned into a reason to support the proposition. Some common objections to the legalization of marijuana are an increase in users, easier access for youth, it is a dangerous drug, and it is a gateway to harder drugs.

A large point of contention is that if marijuana were legalized, there would be an increase in marijuana users. This is a valid concern. There are those individuals who refrain from using marijuana simply because it is illegal. Unfortunately, the individuals who fit into this category have more than likely already experienced marijuana earlier in life. They refrain from using marijuana for fear of the legal or life consequences of being caught. The truth of the matter is that there are surveys that put marijuana use at around 30 million Americans. If accurate, this puts marijuana as the most widely abused illicit substance, second only to alcohol (Caulkins, Hawken, Kilmer, & Kleiman,

2012). This is a staggering number, especially if one takes into account that all of the surveys agree this number is under reported. Under reporting occurs because people are hesitant to report illegal activity. They fear dire consequences if their activity was discovered by employers or law enforcement. It is estimated that an additional 20% of marijuana users deny their use on common household surveys (Caulkins, Hawken, Kilmer, & Kleiman, 2012). Colorado Governor John Hickenlooper was quoted as saying “It seems like the people that were smoking before are mainly the people that are smoking now” in a July 1, 2014 interview with Reuters (Reuters, 2014, para. 2). Although the number of users has not increased, the frequency of consumption has increased with those who are consuming. This illustrates that legalizing marijuana does not increase the number of users. Legalization allows current users easier access in a government regulated market place.

Another point of contention is that legalized marijuana creates an environment of easier youth access to the drug. Some citizens believe marijuana readily available at the corner store will correlate to easier access for minors. Regulating a legal marijuana market could actually be beneficial in keeping the substance out of the hands of minors. Being that marijuana is an intoxicant and can be compared to alcohol, a minimum age could be established with a regulated industry. This regulation would require approved retailers to “card” customers to verify age; this is simply something that a street level dealer will not do. Coupling the mandatory identification requirement with mandatory video surveillance from seed-to-sale, as required in Colorado law, ensures minors will not acquire legal marijuana. It should be noted that a 2009 survey from the Nation Center on Addiction and Substance Abuse states that teens can easily obtain

marijuana; 40% within a day and nearly a quarter can get it in an hour (National Center on Addiction and Substance Abuse, 2009). It has been noted that the decision to use illegal drugs has close ties to choice of peers and dysfunctional families (Crosnoe, Muller, & Frank, 2004). This fact gives credibility to the belief that there are numerous sociological factors involved in underage drug/alcohol use, such as lack of adequate parental supervision or involvement. The lack of supervision and where it is illicitly obtained is more dangerous than the drug itself.

The next argument addressed is that marijuana is a dangerous drug. If the drug is looked at objectively, it is no more dangerous than tobacco or alcohol. Both alcohol and tobacco come with mandated health warnings, which are a result of government regulation. According to the National Institute on Drug Abuse (2015), marijuana smokers can suffer the same breathing problems as smokers of tobacco. Marijuana is an intoxicant similar to alcohol, and there are already applicable laws in place concerning public intoxication and driving while intoxicated. Alcohol has caused deaths due to binge drinking. The Mayo Clinic defines binge drinking as “a pattern of heavy drinking when a male rapidly consumes five or more alcoholic drinks within two hours, or a female downs at least four drinks within two hours” (Mayo Clinic, 2014, para. 3). An alcohol overdose occurs when an individual ingests a large amount of alcohol in a short time frame, resulting in a toxic level of the central nervous system depressant. The toxicity causes respiratory arrest and then death. This usually occurs with higher concentration, or proof, alcohols such as Everclear. As reported in the Huffington Post, “According to one frequently cited study, a marijuana smoker would have to consume 20,000 to 40,000 times the amount of THC in a joint in order to be at risk of dying”

(Wing, 2013, para.1). The number of joints required to overdose depends on the concentration of THC in the marijuana. This concentration can be regulated, just as the alcohol content in beer is regulated by individual state laws.

The final argument opposing legalization to be addressed is that marijuana is a gateway drug to “harder” drugs. In the black market atmosphere created by the criminalization of marijuana, users are exposed to a wider variety of criminal elements. Marijuana users are exposed to dealers who sell “harder” drugs, such as cocaine and heroin, or the persons who partake in the “harder” drugs. It is this type of exposure to the criminal element which is the reason that some marijuana users progress into using other drugs. Ruschmann (2004) quotes the British organization DrugScope as stating “The evidence that most heroin users started with cannabis demonstrably fails to account for the overwhelmingly vast majority of users who do not progress into other drugs like crack and heroin” (Ruschmann, 2004, p. 44-45). Another contributing factor to consider for juveniles, as stated previously, is the lack of parental supervision and involvement. This lack of supervision leads to juveniles who exhibit risk taking behavior and run higher risks of drug use, gang membership, and criminal activity. A report from the National Criminal Justice Reference Service reported that family problems, negative peer associations, and no social controls were common factors with juvenile delinquency and drug abuse (National Criminal Justice Reference Service, 1997).

RECOMMENDATION

Based on the lessons learned from Colorado and the obvious benefits of a regulated marijuana industry, legislators should legalize marijuana. A regulated marijuana industry would help alleviate the strain and demand on the criminal justice

system, create a revenue producing industry, as well as weaken the drug cartels south of the border. Legalization of the industry would also hamper minors' access to the substance.

The State of Colorado has already laid the ground work for regulating marijuana in other states. The State of Texas should take advantage of the already established regulatory structure of the Colorado marijuana industry. Texas should tailor Colorado's current regulatory structure to improve upon what is currently in place so as not waste time on duplicated effort. The Center for Effective Public Management has written a detailed report concerning the rollout of marijuana regulation in Colorado and identified some must have elements in any similar effort (Hudak, 2014).

The first element is a seed-to-sale tracking system that is required for all marijuana grown for commercial consumption. This requirement calls for a plant-based radio frequency identification (RFID) tag system that allows the tracing of product from the time it is planted until the product is sold at a retail site. If Texas chooses to have a medical marijuana component to its law, then this market can be tracked separately using the same RFID tag system. The marijuana tracking system is an integral component of a regulated system because it allows the product to be tracked, limits diversion, and would help to discourage any illegal distribution of product.

One suggested improvement to the Colorado structure would be to disallow "home grows" or grows for personal or medical use. This prohibition would help to eliminate the possibility of a black market type of supply that could create several problems. First, home grown plants would not be tracked and the product strength (THC concentration) could not be determined or monitored. The home grown plants

would be a way for minors, defined as under the age of 21, to gain access to marijuana illegally. Additionally, any sales made would not be traceable or taxable. And finally, quality control and accountability issues abound.

The second key point to regulation is vertical integration. Simply stated, vertical integration would require marijuana retailers to be their own supply chain. Retailers would be required to grow, harvest, process, and package the product that they sell. This follows the logic and simplifies the seed-to-sale tracking in place in Colorado. Another part of the vertical integration is the 70/30 rule. A company must sell at 70% of what it produces in its retail outlets and can only purchase 30% of another company's product to sell in their retail outlets. This rule was implemented to help discourage illegal diversion of marijuana whether in Colorado or to other states (Hudak, 2014).

The next point is to place limits on quantities purchased. The current limits in Colorado are no more than one ounce for a resident of Colorado and no more than a quarter ounce for someone from outside the state. Along with mandatory photo-identification requirements, these purchase limits help to prevent diversion to others and transport to other states (Hudak, 2014). One suggested improvement to Colorado's Amendment 64 would be to require a purchaser registry similar to that required on pseudoephedrine to combat the production of methamphetamine. This registry would help to truly limit the amount of marijuana purchased to the statutorily approved amount and would prevent persons from going store to store to purchase more than the approved amount.

Another key component of marijuana regulation would be mandatory video surveillance. The video system should be implemented along the same lines as the

seed-to-store mentality. To aid law enforcement with illegal activities involved with the marijuana industry, quality video recording equipment would monitor from the time the seed is planted until it is purchased by the consumer. The video systems would help to deter criminal activity from theft to diversion involved with the marijuana industry. Even though a camera cannot stop a crime, it can provide an unbiased and accurate account of what occurred to aid law enforcement in the apprehension and prosecution of crimes related to the industry.

The final component will more than likely be a highly politically driven decision, which is what should be done with the tax and fee revenue from the regulation of marijuana. Obviously, a portion of the revenues would be used to monitor and regulate the industry by the appropriate or new state agency. Currently, Colorado's scheme is a 15% excise tax on unprocessed marijuana, a 10% sales tax at point of sale, and a 2.9% sales tax for medical marijuana (Hudak, 2014). Legislators should avoid over taxation of the marijuana industry, as it could foster black market conditions present during prohibition of marijuana. It is proposed that the revenues collected above and beyond the cost of regulation be utilized for key police, fire, and emergency medical service needs across the state. Education and transportation are not included because they were the advertised beneficiaries of the Texas Lottery, which started in 1991. Ironically, there was great opposition to the lottery due to the fact that it would cause the state to transform into a society full of gambling addicts, which simply did not happen.

Based on objective evaluation of the information currently available, the logical decision is to legalize and regulate marijuana in Texas. Citizens and legislators must all look beyond their personal beliefs on marijuana use and embrace the cold fact that

marijuana has been around for thousands of years. It is not going away. The best way to protect consumers is a well-regulated marijuana industry. The citizens of Texas will benefit from the taxable sale of marijuana while saving millions of taxpayer money on the detection, apprehension, and prosecution of marijuana violations.

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