

## Quasi-legal cannabis in Colorado and Washington: local and national implications

*In November 2012, Washington state and Colorado took the unprecedented step of legalizing commercial production and sale of cannabis for adult use, but all cannabis-related activities remain prohibited under the federal Controlled Substances Act. The consequences will depend on still-to-be-determined policy details and on hard-to-predict consumer responses.*

In November 2012, ballot initiatives in Washington state and Colorado legalized large-scale production, commercial distribution and sale of cannabis for use by adults [1,2]. This is unprecedented; no jurisdiction—not even the Netherlands—has previously removed the prohibition on commercial production and wholesale distribution for non-medical use. The consequences will depend not only on state-level policies yet to be developed, but also on the responses of the federal government, which still prohibits cannabis.

Federal and state governments have overlapping jurisdictions. Colorado and Washington state have eliminated their cannabis prohibitions for licensed businesses, but all cannabis-related activities—even possession of a single joint by someone with a medical recommendation—remain prohibited under the federal Controlled Substances Act. Historically, the federal government has confined itself to enforcement abroad, at the border, and of larger cases (usually not bothering to prosecute cases below about 100 kg of cannabis), but it remains to be seen whether producers and perhaps even retail stores in Washington state and Colorado will be subject to federal arrest and prosecution.

Of the two states, Washington has higher taxes and stricter controls on production and sale. Colorado's regulations make it potentially more hospitable to an 'export' industry that could serve—and potentially depress prices in—other states. Besides lower taxes, Colorado's proposition allows any individual over the age of 21 years (no license necessary) to grow up to six cannabis plants and give away (but not sell) the product, and contains a 'smurf protection clause' that bans the state from requiring stores to ask for, or record, identification (beyond proof-of-age) from their customers.

Voters in Colorado and Washington state have presented the Obama administration with difficult choices. Large businesses that follow regulations and pay taxes are entirely vulnerable to federal intervention; shutting down a known and named list of producers and sellers presents an easy enforcement task. But shutting down

networks of unregulated 'grow-your-own' activity in Colorado might well prove beyond the limited capacity of federal drug-law enforcement.

Furthermore, other states are now introducing legislation to legalize cannabis, and the question will likely be on state ballots in future elections. If the federal government shuts down regulated production in Colorado and Washington, bill- and proposition-writers in other states might respond with less-stringent policies: in the extreme, simple repeal of state cannabis laws with no requirement that producers register or seek any license.

Another federal option is to allow the state-level regulatory schemes to go into effect. That would have hard-to-predict consequences. It is far from clear that acquiescence in state-level legalization would be consistent with the obligations of the USA under the Single Convention on Narcotic Drugs and its successor treaties, or whether other countries would perceive it as giving a green light to ending their own prohibitions, and perhaps not just for cannabis [3].

A third option would be for the federal government to exploit its considerable discretion to shape, but not eradicate, legal state markets by prioritizing enforcement against certain business practices (e.g. large producers that sell at low prices, passively facilitate interstate commerce, or market aggressively—particularly to youth or drug tourists from other states).

As both the extent of the price decreases and the responsiveness of consumption to price—as well as to increased availability and reduced stigma—remain unknown, no firm prediction can be offered as to the extent of the resulting consumption increase [4]. Based on current knowledge, we do not even know what the order of magnitude would be in the near term or over time; however, one would expect changes in prevalence and dependence, and harms to health, to be smaller than would result from legalizing heroin, cocaine or methamphetamine, both because cannabis is currently easier to obtain (making legalization a smaller change) and because the consequences of even heavy cannabis use are, on average, much less dire than the consequences of heavy use of those other drugs. This is not to suggest that cannabis dependence is not consequential: more than two million Americans report that their cannabis use is causing them significant life problems [5].

Another major uncertainty involves the interaction with alcohol: whether the two drugs, when both are legal, will prove to be substitutes or complements remains

unknown. As total social damage from alcohol abuse dwarfs that from cannabis abuse, that uncertainty looms large over any attempt to evaluate the net results of legalization [6].

Legalizing cannabis in Washington state and Colorado should reduce, but not eliminate, arrests for drug-law violations there; underage users, who would remain subject to arrest, constitute a sizable share of current arrestees [7], and arrests for selling to minors, driving impaired or public intoxication may continue. Although alcohol is legal, there are as many arrests per dependent user for alcohol as there are for cannabis [6]. Furthermore, Colorado and Washington state account for only 3–3.5% of US marijuana arrests; if legalization there stimulated increased use elsewhere, it is even conceivable that total arrests in the USA might go up, not down.

One would expect relatively little effect on drug-related imprisonment, as fewer than 10% of those serving sentences for drug-law violations were principally involved with cannabis. Similarly, effects on overdose, crime, and violence within US borders would be modest as marijuana contributes little to those problems today.

Will cannabis legalization in Washington state and Colorado dent the profits of international drug-trafficking organizations (DTOs)? Certainly not if the legally produced cannabis stays in Colorado and Washington state; those states account for just a few percent of the overall US market. Even if, over time, cannabis from Colorado and/or Washington state were to drive Mexican imports out of the national market—an outcome that cannot be ruled out given the relatively small costs of interstate smuggling—the effect on DTO revenues would be appreciable, but still limited. Cannabis accounts for approximately one-fifth to one-third of the Mexican DTOs' drug-export revenues [8,9], and they have other income streams as well, including extortion, kidnapping and theft of public property.

Thus, the future holds more unknowns than knowns. One argument for the federal government stepping back and allowing the two state-level programs to proceed would be the potential to learn more about the consequences of legalization; it is not clear that studies performed under illegality can shed much light on the currently open questions.

## Declaration of interests

The authors will be working as contractors for the Washington State Liquor Control Board in the process of creating regulations implementing the Washington marijuana-legalization initiative.

**Keywords** Cannabis, Controlled Substances Act, federal drug law, legalization, marijuana, prohibition.

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