

DISCUSSION OF CANNABIS LEGALIZATION AND LOCAL IMPACTS

Scott County Association for Leadership & Efficiency

December 10, 2021

Discussion Points – Educational Presentation

- Land Use & Zoning
- Property Classification & Taxation
- Economic Development Incentives
- Employer Regulations
- Public Safety
- Policy Implications
- Colorado Experiences
- Questions

Land Use & Zoning

- Production/Cultivation
- Manufacture/Wholesale
- Retail



Production/Cultivation

- Plant, grow, cultivate and harvest
- Typically occurs in industrial buildings, sheds or greenhouses
- Production size limits
 - Current canopy sizes in the bill are:
 - Craft cultivator – no more than 10,000 sq ft
 - Bulk cultivator – no more than 30,000 sq ft
 - Microbusiness – no more than 2,000 sq ft
- If defined as a “crop” under state law, how will Right-to-Farm ordinances in many township interplay with regulations on cannabis cultivation?



Production/Cultivation

- Is this a "commercial" or "agricultural" use? (if producer holds multiple licenses, such as manufacturing and event organizer, this could be seen as a commercial use)
- Minimum parcel size to cultivate?
 - Local governments in Washington are specifically authorized to prohibit licensed marijuana cultivation on properties five acres or smaller.
- Can cultivation co-locate with residential or homestead use? Home-based business?
 - In Washington, the state will not issue licenses for marijuana producers, processors, and retailers on property used as a residence because law enforcement officials must have access to the premises for inspections without a warrant
 - Local governments in Washington are specifically authorized to prohibit licensed marijuana businesses on lands zoned for residential use

Production/Cultivation

- Allow only in certain zoning districts? (Again, what about the manufacturing & event licensing by growers)
- Permitted by right or by interim/conditional use?
- Create buffers and/or separation rules from certain places (i.e., schools, residential areas)?
- Set odor control measures? (State to set standards and requirements?)
- Waste management practices for water and solid waste?
 - regulate automated watering systems, require reuse of wastewater, require filtration systems
- Fencing and security alarm systems?
- Exterior lighting and surveillance systems?

Manufacture/Wholesale

Same Questions

- Is this a "manufacturing, processing, packaging or wholesaling" use as defined in zoning ordinance?
- Minimum parcel size to manufacture or wholesale cannabis?
- Allow only in industrial zoning classifications?
- Permitted by right or by interim/conditional use?
- Set light pollution, odor control measures?
- Buffers and/or separation rules for certain places?
- Security, surveillance, traffic, signage

Retail

- Establish buffers and/or separation rules?
 - HR600 - cannabis business cannot operate within 1,000 feet of any school, day care, nursing home, house of worship.
 - In Washington: not within 1,000 feet of playground, recreation center, child-care center, public park, public transit center, library, or game arcade that allows minors to enter.
- Security, traffic, signage
- Concentration of retail outlets?
 - Michigan, Washington communities can set a limit on the number of licenses issued in its jurisdiction
 - HF600 – State issues licenses, so zoning separations may be a solution to avoiding concentration of retail stores



Getting Prepared

- State could develop model ordinances
- HR600 – LGUs can adopt interim ordinance (i.e., moratorium) to prohibit cannabis uses for a set period to allow time to develop ordinances

	Land Use Designation					
	Agriculture	Commercial	Industrial	Industrial Park	Mixed Use	Service Commercial
Cannabis Activity	AG	C	I	IP	MU	SC
Nursery	Green	Grey X	Green	Green	Grey X	Grey X
Cultivation	Green	Grey X	Green	Green	Grey X	Grey X
Processing	Green	Grey X	Green	Green	Grey X	Green
Manufacturing N & P	*	Green	Green	Green	Green	Green
Manufacturing 6	*	Grey X	Green	Green	Grey X	Green
Manufacturing 7	Grey X	Grey X	Green	Green	Grey X	Grey X
Testing	Grey X	Green	Green	Green	Green	Green
Distribution	*	Green	Green	Green	Green	Green
Retail	*	Green	Green	Green	Green	Green
Microbusiness	*	Green	Green	Green	Green	Green

* Accessory to the main use only
 Only individual cannabis activities permitted in the land use designation shall be permitted in a Microbusiness.

Property Classification & Taxation

- Proposed Business Licenses & Classifications
- State & Local Taxes



Licensed Business Types

Property Classifications – all Commercial or Industrial

Cannabis Businesses needing State issued Licenses

- cannabis cultivator (can also hold manufacturing, medical cannabis, license to grow hemp, and cannabis event organizer licenses)
 - craft cultivator license includes a plant canopy of no more than 10,000'
 - bulk cultivator license includes a plant canopy of no more than 30,000'
- cannabis manufacturer (can also hold a cultivator, medical cannabis, and event organizer license)
- cannabis retailer (can also hold a delivery service, medical cannabis, and event organizer license)
- cannabis wholesaler (can also hold hemp, transporter, delivery service, and event organizer license)
- cannabis transporter (can hold wholesaler, delivery service and event organizer license)
- cannabis testing facility – (can hold no other licenses)
- cannabis microbusiness (can also hold an event organizer license)
- cannabis event organizer – events for only 4 days; (can hold all other business licenses except testing facility – may need a large assembly permit??)
- cannabis delivery service (can also hold retailer, wholesaler, transporter and event organizer license)
- medical cannabis business (can also hold cultivator, manufacturer, retailer and event organizer license)

Taxation of Cannabis

- State Excise tax is imposed equal to 10% of gross receipts from retail and on-site sales from Cannabis Retailer and Microbusiness (testimony on this low rate – will reduce the amount of illicit sales – which House Democrats feel causes trafficking in other states)
- State excise tax is imposed on use or storage of adult-use cannabis or its products and heat devices by a customer in MN provided that the tax has not been paid under the retail or on-site sales above; no other special tax is allowed
- Washington State = 37% Excise Tax
- Colorado State
 - = 15% Excise Tax + 10% special sales tax
- Denver City = 21.12% local tax
 - (in addition to state excise)



Economic Development Incentives

- CanGrow
- CanStartUp
- CanNavigate
- CanTrain



CanGrow Funding for Start Up

CanGrow Grants & Loans for:

- Eligible organizations (ie: educational institutions, private businesses, non-profits, community groups, local govts, or partnerships of the above) to help farmers navigate the regulations of the industry
- Nonprofits to fund loans to farmers to expand growth

Purpose of Grant:

- Technical assistance or navigation of regulations



CanStartUp & CanNavigate Funding for Start Up

Can StartUp Grants & Loans:

- For Non-profit organizations to subsidize loans to new cannabis businesses. Loans will be forgiven if business has been successful for at least 3 years
- To support job creation in communities where long-term residents are eligible to be social equity applicants

CanNavigate Grants:

- To organizations to provide technical assistance or navigation services for individuals facing barriers to employment or education.
- The Grants will be made available to a variety of cannabis businesses, including the processing and retail businesses

CanTrain



CanTrain Grants:

- For eligible organizations to train people who will work for a business in the cannabis industry and/or
- For individuals who need training in order to work for a business in the cannabis industry (particularly those individuals who face barriers to education and employment)
- The Grants will be made available to a variety of cannabis businesses, including the growing, processing and retail businesses

Public Safety

- Traffic Safety
- Illegal Sales Market
- Criminal Justice System



Public Safety Issues to Understand

- Does not include any additional dollars for compliance in cities (additional police, fire, etc.)
- Traffic safety considerations would need to be made; impairment lasts longer than THC levels in the blood
- Estimated that 12-15 million Americans are driving impaired on THC

* Beyond Smoke and Mirrors: Science-based Marijuana Prevention webinar April 29, 2021

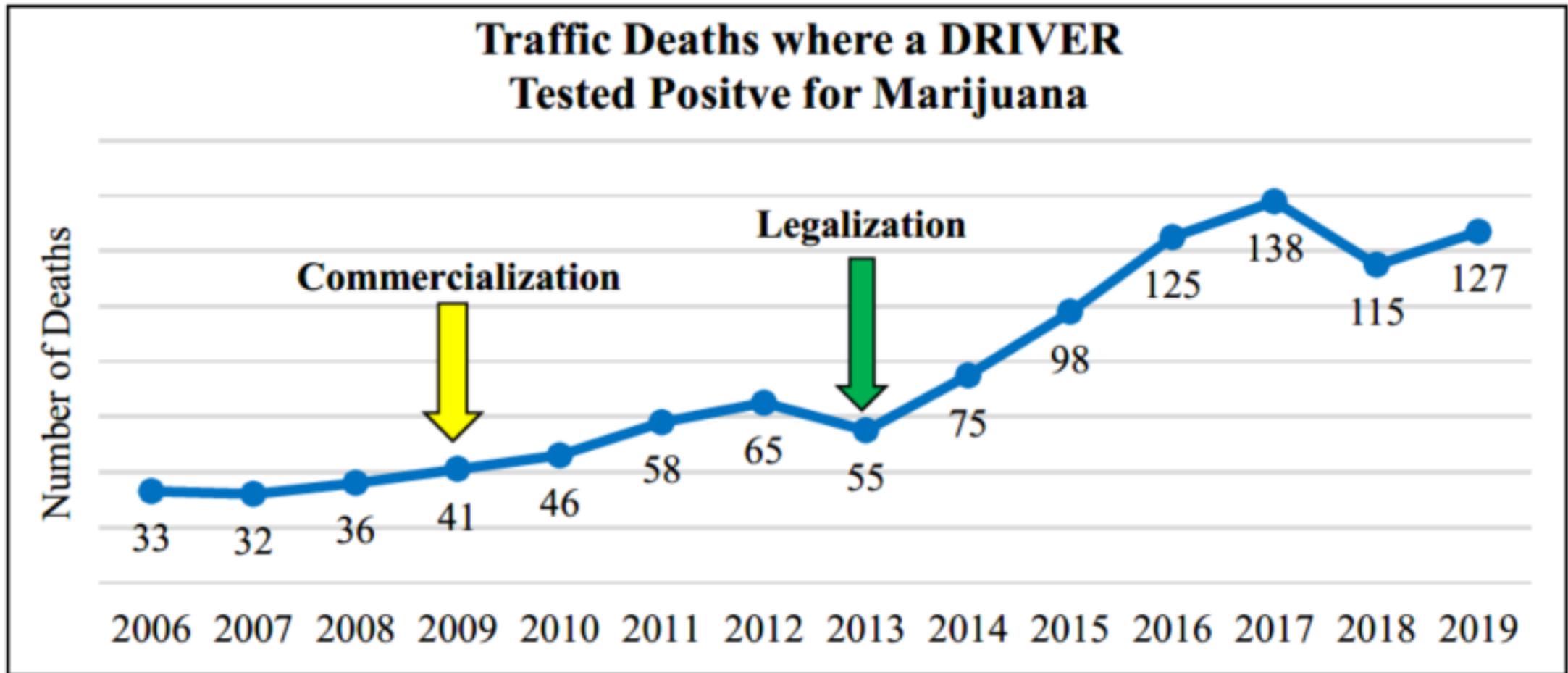
Traffic Safety - Lessons from Colorado (Driving)

- Culturally acceptable to drive high and 69% of consumers have driven high in one year
- 27% admit they drive high daily
- 40% admit they do not believe being under the influence affects their ability to drive safely
- 10% believe it makes them a better driver



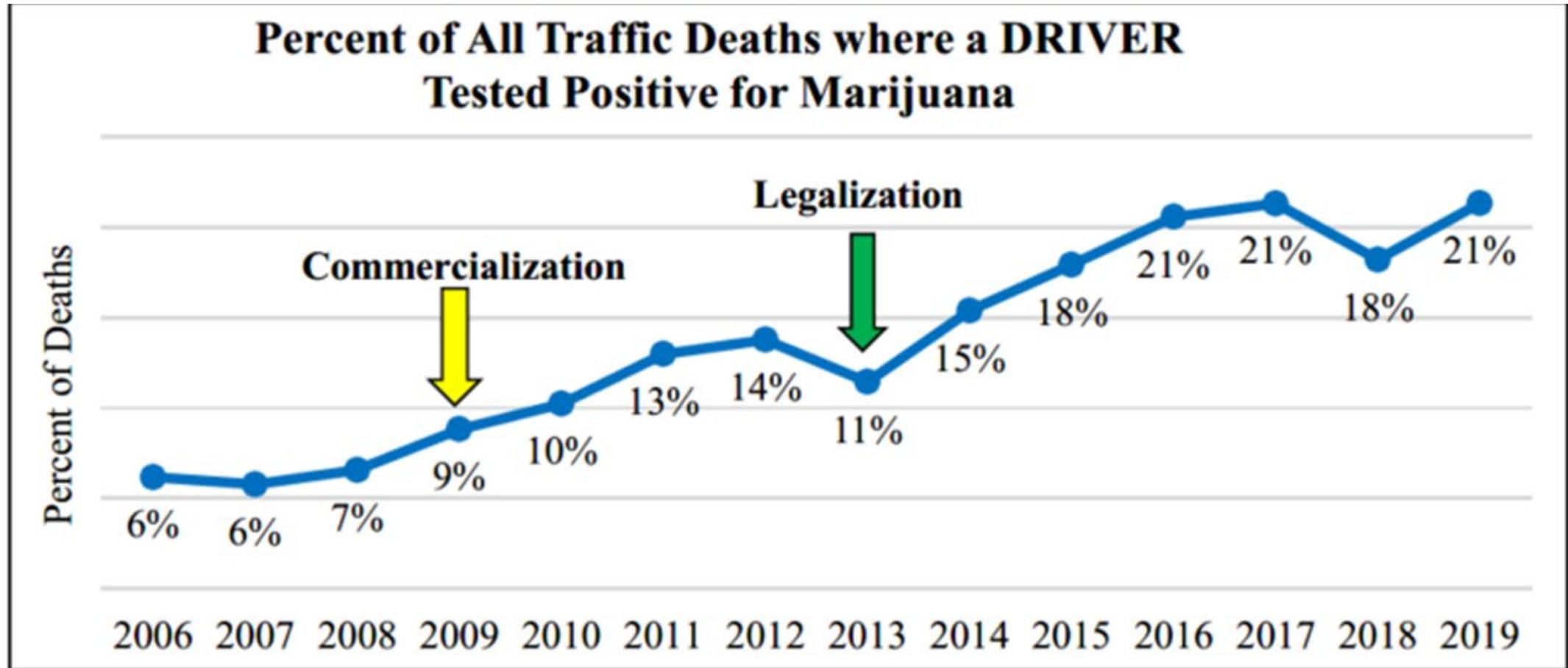
Office of the Surgeon General (2019, August 29). One <https://onechancetogrowup.org/wp-content/uploads/2020/10/One-Chance-Drugged-Drivers-Flyer.pdf>

Traffic Deaths - Colorado



SOURCE: NHTSA, FARS, 2006-2011 and CDOT 2012-2019

Traffic Deaths - Colorado



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Illegal Sales Market

- Illegal Sales Market increases in the states that legalize marijuana
- Secretary of State estimates that illegal production was 7X local production
- In 2018, California grew 13-15 million pounds and sold only 2.5 million legally (through dispensaries)
- Estimated that the illegal market out-sells the legal market at a rate of 3 to 1
- In 2018, 174 marijuana extraction labs (used to manufacture) were uncovered, with 57% found in CA, 26% in Oregon, and 35% were listed in residential locations- posing an enormous threat to public safety (DEA-2020a)
- Beyond Smoke and Mirrors: Science-based Marijuana Prevention webinar April 29, 2021

- According to the Washington State Statistical Analysis Center “Monitoring Impacts of Recreational Marijuana Legislation, 2019 Update Report” convictions resulting in a non-prison disposition for manufacturing, delivery, or possession with intent to deliver convictions decreased from 341 in 2012 to 92 in 2018.
- According to the 2018 Colorado Department of Public Safety report “Impacts of Marijuana Legalization in Colorado”, under Court Filings, the number of cases with a marijuana-related felony as the top charge declined initially (986 in 2012 to 418 in 2014) but rebounded to near pre-legalization levels (907 in 2017).

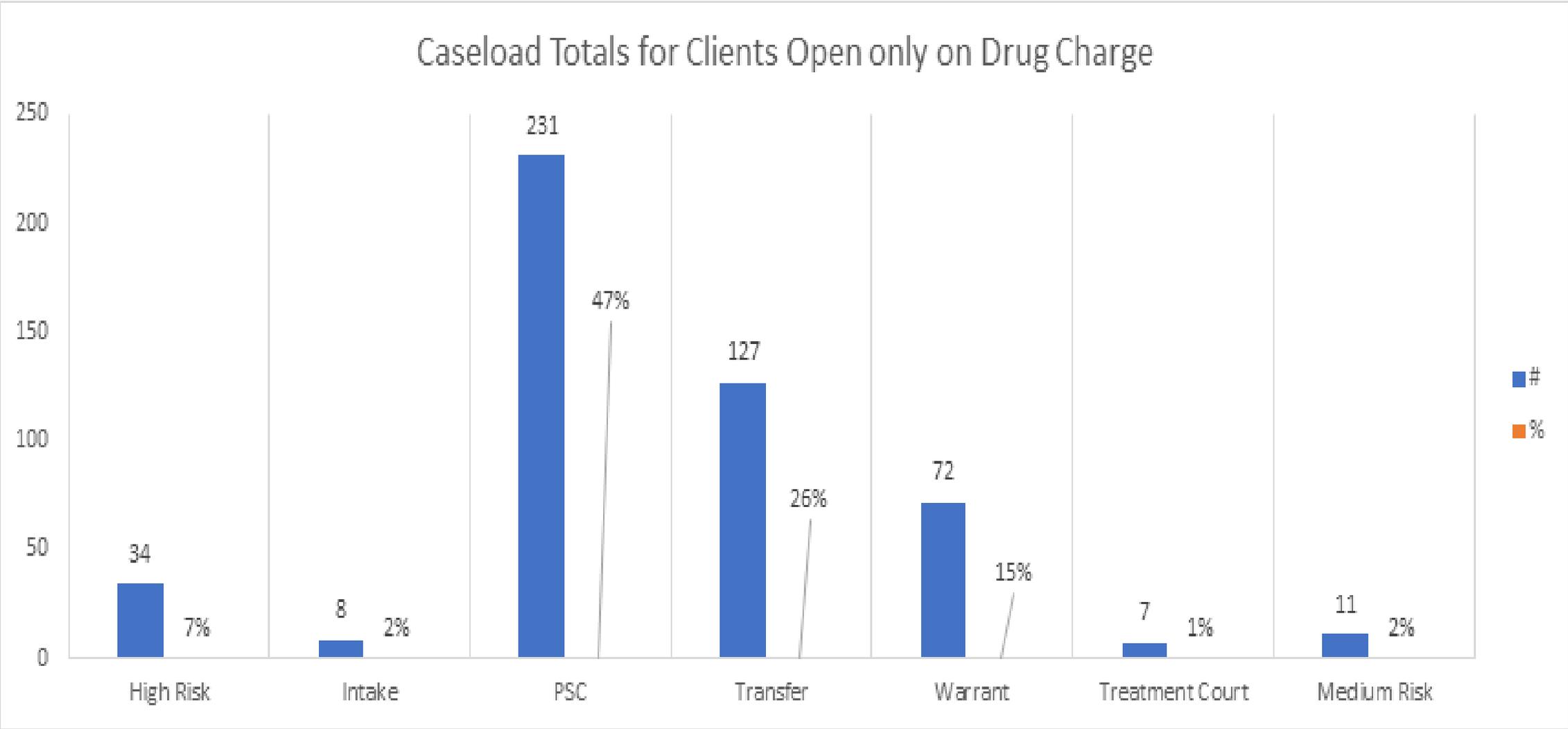
Public Safety

- Data indicates that legalization doesn't seem to substantially affect crime rates
 - A study by the Cato Institute finds, "Overall, **violent crime** has neither soared nor plummeted in the wake of marijuana legalization."
- This suggests that Scott County probation would see no change to higher-risk probation caseloads.

Public Safety

- Four in ten US drug arrests in 2018 were for possession, sale, or manufacture of marijuana - nine in ten of those were for possession - according to the PEW Research Center.
- According to the 2018 Colorado Department of Public Safety report “Impacts of Marijuana Legalization in Colorado”, between 2012 and 2017, total marijuana arrests decreased by 52%, from 12,709 to 6,153. Further, marijuana possession arrests - which make up the majority of all marijuana arrests - were cut in half (-54%).
- This data suggests that Scott County probation may see fewer low-risk adult clients, allowing resources to be focused on higher risk clients.

Public Safety



Currently on probation Scott County has 490 Clients with the drug charge of no small amount marijuana (152.025) and no other accompanying case or charge. Of those 490 Clients 47% or 231 of them are open to PSC low risk unit.

- Unless retroactive policies were implemented, it wouldn't affect current Scott County clients on supervision for marijuana charges.
- If retroactive policies are initiated,
 - Fee implications?
 - Expungements?
 - More clients on supervised release from prison?
- Drug Testing Technology
 - Eye Scans – new technology would need to be developed

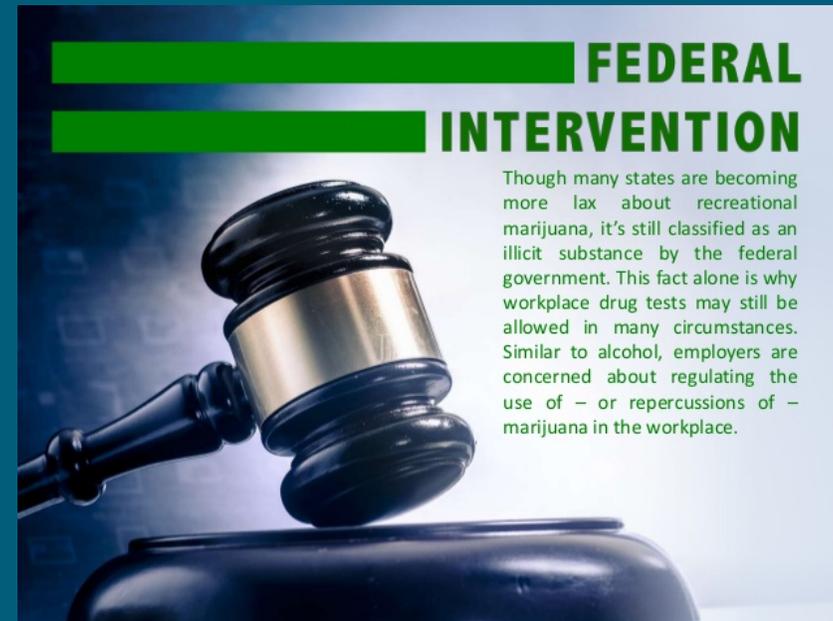
Public Safety

- Regarding relative growth rates in criminal justice expenditures around the time of legalization, according to Cato Institute Tax and Budget Bulletin no.83 (2018), “Most states show no clear increase or decrease relative to the US trend”.
- Collateral Consequence may be eliminated:
 - Barriers to housing and jobs, which is a problem for felony probationers, could be alleviated.

Public Safety

Employer Regulations

- Restrictions
- Exceptions
- Considerations



Employer Considerations

Primarily a Workplace Safety Issue

Impacts and May Require Changes to Existing Policies, Procedures, Programs

➤ Drug-Free Workplace

➤ Drug and Alcohol Programs

- May impact hiring and screening procedures
- May impact insurance, risk mitigation strategies, and training requirements
- Federal and State regs are/may differ – Marijuana currently illegal under Federal Law

Nothing in law allows use on the job, in workplace, or under the influence at work.

Employer Considerations

Also a Rights & Responsibilities Issue

- We'll need to understand employer obligations and employee protections
- Medical Marijuana is currently authorized under law
- Medical vs. Recreational may have different rules – May need different programs
- We'll need to watch for impacts specific to
 - Disability Discrimination
 - Worker's Compensation
 - Unemployment Insurance
 - State OSHA Guidelines

Workplace Safety - Employer Restrictions & Exceptions

➤ Cannabis Bill limits testing of employees

ONLY if:

- Is impaired on the job
- Has a work-related accident or personal injury
- Violated the County's written policy

➤ Testing for Cannabis mirrors testing protocols for alcohol

➤ Possible Exceptions to Testing Limits

- Is in a 'safety-sensitive' position (identified under MS §181.950-181.957)
- Is a peace officer
- Is a firefighter
- Works w/Children or the Vulnerable across a number of spectrums



Additional Employer Considerations

Disability Discrimination:

- Minnesota has statutory protections for employees who are registered with the State as user of medical marijuana. (Pursuant to section 181.953 employee may present verification of enrollment in the patient registry to explain)

Worker's Compensation:

- MN Employers are ***not obligated*** to pay for Medical Marijuana even if prescribed to treat a workplace injury. *Musta v. Mendota Heights Dental Center*, A20-1551 (Oct. 13, 2021).
- In MN testing positive for marijuana does not, in and of itself, invalidate an injured employee's Worker's Compensation claim if they are a registered medical marijuana user.
- The employee must have been *impaired* while on duty and therefore at fault or partially at fault for the injury.

More Employer Considerations

Unemployment Insurance

- Registered users of medical marijuana are subject of anti-disability discrimination laws. A positive test cannot be used against an applicant for unemployment insurance.
- Use of Medical Marijuana *may* be a disqualifying factor under MN Unemployment law, if the Commissioner determines that such usage would adversely impact an applicant's being "available for suitable employment" a criterion for receiving Unemployment Insurance.
- There remains uncertainty around these apparently conflicting rules, the County must continue to monitor developments in this area of the law.

MN OSHA

- Under the General Duty Clause employers can be liable for permitting employees to be impaired on the worksite as they are a "recognized hazard".
- Though employers may not discriminate against an employee for being a registered user of medical marijuana or for their serious medical condition of being addicted to the drug, employers are well within their rights to discipline any of the above for *use at work*, or *impairment* while on the job.

Questions For Employers

1. How do we maintain safe workplace amid marijuana-use enabling legislation?
2. How will we balance drug-free workplace obligations with employee rights?
3. What testing policy and possible ramifications will make sense?
4. How will Recreational and Medical Marijuana legislation co-exist and look on the operations side?
5. What internal teams will need to be assembled to think through and set-up programs in response to the legislation?
 - Administration, HR, Legal, Risk, Other?
 - Don't forget the obligation to negotiate impacts of policy that affect terms and conditions of employment.
6. How stay abreast of legislation and, as fitting, help influence language?

POLICY IMPLICATIONS

New Issues to Deal with

- **Regulation** - state but will they delegate? How coordinate?
- **Control** – define the local agencies control in this?
- **Investigation** – how will this change – for driving while high, growing amounts
- **Prosecution** – this changes the discussion for attorneys on prosecution, less or more ? To be determined.

Other Potential Impacts

- Would the Social host ordinance update to include marijuana ?
- Would municipalities need to adjust to a bi-annual review of ordinances (tobacco, vape and marijuana)?
- Would the Public Health Nuisance Ordinance need modification?
 - Some local ordinances declare it a violation if neighboring properties can see the plants, despite what the general public can see.
 - Some cities have also adopted nuisance laws declaring any marijuana odor (whether from the smoke or the plant itself) to be a nuisance.
 - Regulation of storage and amount of pesticides/and additional products (butane) to existing ordinances

Other Potential Impacts

- There is a clear lack of research into the impact of marijuana legalization has on probation departments. Studies on marijuana legalization are mainly focused on the impact on law enforcement, public health, and economics.
- The effect marijuana legalization would have on probation at this time would only be based on data related to probation adjacent activities (crime rates, criminal filings, etc.).

Reducing Exposure to Second-Hand Smoke

- **The Minnesota Clean Indoor Air Act (MCIAA) prohibits smoking in:**
 - Bill is specific to where it can be smoked
 - Modify current tobacco ordinances to include marijuana in rental properties – issues would be how to regulate and inspect these when access is not permissive?
 - Smoke-free government buildings
 - Add marijuana to smoke-free parks and youth activities