

THE IMPACT OF LEGALIZATING MARIJUANA  
ON OFFICER PERFORMANCE

Article

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Sacramento, California  
September 2004

## Introduction

Over the past thirty years, California has slowly been changing its political attitude regarding the usage of marijuana. What started out as a dangerous, addictive, narcotic drug, punishable as a felony in state prison, has dwindled down to a legalized use for medicinal purposes. Currently, California and nine other states have enacted laws recognizing the medicinal use of marijuana.<sup>1</sup> As marijuana laws continue to be chipped away, it seems likely that legalized use by general public is just around the corner. As law enforcement managers grapple with this paradigm shift, agencies will need to prepare their departments for the use of marijuana by its officers.

## Criminality

When California first became an official state of this nation in 1850, the commercial growing of hemp (marijuana) was a productive cash crop. Hemp was used primarily for the manufacture of clothing, rope, and paper. As California grew, immigrants from Asia and Mexico introduced the medicinal uses of marijuana to control pain, depression, and eating disorders.<sup>2</sup>

After the repeal of alcohol prohibition in 1933, the Federal Bureau of Narcotics (later renamed Drug Enforcement Administration) broke away from its partnership with the Treasury Department and the Alcohol, Tobacco, and Firearms division. They began to focus more on harder, addictive drugs that organized crime was now heavily involved in. In 1936, the commercial release of the movie, "Reefer Madness" sparked political interest in the dangers of marijuana usage. This docudrama showed how innocent citizens could go crazy and commit violent crimes like rape and murder after smoking marijuana.<sup>3</sup> In response to the excitement

caused by this media event, the Federal Marijuana Tax Act was enacted in 1937. This Act declared marijuana as having no medicinal purpose and thus was illegal to possess, use, or sell.<sup>4</sup>

After the end of World War II, marijuana usage began to increase. Believing that harsher punishments would deter the public from using marijuana and other illicit drugs, U.S. Senator Hale Boggs authored the Boggs Act in 1952 which mandated minimum federal sentences for drug related offenses. As drug usage continued to increase nationwide, the Narcotics Control Act of 1956 was enacted and doubled those prison sentences.<sup>5</sup>

Despite the serious sanctions imposed by the government for marijuana usage, teenagers and young adults across the nation continued to blatantly abuse the drug in the late 1960s. In response to this increase the federal government passed the Controlled Substances Act in 1970. This Act divided all drugs into "schedules." Marijuana was classified as a Schedule I drug and thus could not be dispensed by any physician because it served no useful purpose.<sup>6</sup> As the rates of arrest and imprisonment continued to rise, California passed the Moscone Act in 1976. This act "decriminalized" possession of small amounts of marijuana from a felony to a misdemeanor to ease prison overcrowding.<sup>7</sup>

Although the federal government refused to recognize any medicinal use for marijuana, in 1985 it approved dronabinol (marinol) for the treatment of nausea for cancer patients. This drug was a synthetic form of tetrahydrocannabinol (THC), the active intoxicant in marijuana.<sup>8</sup>

In 1996, the Marijuana Compassionate Use initiative (Proposition 215) was passed by a sizeable margin of California voters. The act allowed physicians to "recommend" the use of marijuana to patients as a form of medical treatment, and thus possession, usage, and cultivation by the patient was not considered criminal.<sup>9</sup> This new law was in direct conflict with the federal government's prohibition.

As California peace officers tried to cope with the ambiguity of the new law, the federal government continued to pursue and prosecute marijuana usage. In October 2003, the U.S. Supreme Court backed a decision by the U.S. 9<sup>th</sup> District Court of Appeals finding that doctors recommending the use of medical marijuana could not be prosecuted or have their licenses revoked.<sup>10</sup> This decision was followed up in December 2003, when the U.S. 9<sup>th</sup> District Court of Appeals ruled that the federal government had no jurisdiction to interfere with patients, and caregivers of medically "recommended" marijuana if the product was produced and distributed from within the state.<sup>11</sup>

Since there was no standard established to help peace officers identify patients using medicinal marijuana, California amended H&S 11362.7 (SB 420) in January 2004. The statute required the State Department of Health Services to develop and issue standardized identification cards for medical marijuana users. Further, the law allowed medical marijuana users to possess as much as 8 ounces of dried marijuana, and cultivate as many as 12 marijuana plants.<sup>12</sup>

As statutory amendments and case law decisions are helping to define the legalities of marijuana possession and usage, local leaders throughout California are drafting ordinances that allow medical marijuana sales outlets to operate.

#### Case Law

While the push continues throughout the nation to make some sort of marijuana usage legal, questions have arisen as to its usage in the workplace. Under the Americans with Disabilities Act (ADA), the Act states that the illegal use of drugs “does not include the use of a drug taken under supervision by a licensed health care professional.”<sup>13</sup> Since the idea of “medicinal marijuana” is still being defined by administrative agencies and the courts, these issues are not easy to answer.

There are a few cases proceeding through the court system that deal with being “under the influence” of marijuana at work. Although these cases are not California cases, they will have an impact on how the California court system might rule.

One of the first test cases of arguing marijuana as a medicinal drug was in 1995. In that case, a postal employee was discovered smoking marijuana on the job. He was fired for violating employment rules prohibiting the possession of marijuana on the job site. He objected to the firing, claiming he had smoked marijuana regularly on the job to relieve job stress, and it had not interfered with his job performance in his two years of his employment. In February 2002, the Equal Employment Opportunity Commission (EEOC) agreed with his termination (Castleman v. Postal Service, EEOC #01994009, Feb 6, 2002).<sup>14</sup>

The second case was Washburn v. Columbia Forest Products. This 1999 case stems from an employee who was discovered during a random drug test to have THC in his system. Washburn admitted to using marijuana for chronic back pain. After being ordered to stop using the drug and attended mandatory drug counseling, Washburn consulted a physician, got an official “recommendation” and continued to use marijuana. As a result of his continued usage, he failed two subsequent random drug tests. He was terminated from employment in March 2001 and appealed the firing to an Oregon superior court. In 2002, the judge agreed with his firing, stating medical marijuana was no excuse for violating employment rules. He is currently appealing that court ruling to the Oregon Court of Appeals.<sup>15</sup>

In another case, Freightliner v. Teamster Local 305, an employee was fired from his job as a forklift operator after running his forklift into a water pipe in December 2002. During the post-accident investigation, the employee was tested for drugs and found to have THC in his system. The employee claimed he smoked marijuana while off-duty during the weekend to

alleviate his back pain. He claimed he could not have been under the effects of marijuana since he consumed it two days earlier. After a labor arbitrator recommended he be hired back, the company refused. The case was sent to the U.S. District Court in August 2003 and is still pending a ruling.<sup>16</sup>

### Workplace Issues

The impact marijuana consumption will have on job performance is not fully known. There are several studies that forecast marijuana may have the same devastating effects that alcohol has had.

The major concern over the use of marijuana on the job site is how much consumption is deemed "being under the influence." One study has recommended 80 nanograms per milliliter (ng/ml) of THC, or more in the urine or blood should be considered "under the influence".<sup>17</sup> This figure was achieved by comparing physical coordination and mental concentration in completing tasks while sober, while under the influence of marijuana, and while under the influence of alcohol (0.08% by weight of alcohol in blood). Although the issue of how much THC in the system will adversely affect job safety has not been universally established, for pre-employment screening purposes, most employers use the federal standard of 50 ng/ml or less of THC to disqualify candidates.<sup>18</sup>

Even though the effects of smoking marijuana are generally felt up to four hours after consumption, some studies suggest the effects can last longer. In 1985, Stanford University conducted a study using airline pilots. The pilots were allowed to smoke marijuana and then were tested 24 hours later by flying and landing an airplane using a flight simulator. Although the pilots reported feeling no residual effects of marijuana intoxication, they were unable to safely land their simulated aircrafts.<sup>19</sup> In 1996, a study found that college students who used

marijuana daily had trouble focusing attention and had trouble recalling newly learned items, even though they had not used the product for at least 24 hours prior to participating in the study.<sup>20</sup>

Since marijuana affects complex behavioral and cognitive skills, accidents and injuries are more likely to occur. In January, 1987, a freight train improperly entered and stopped on a main track line in Chase, Maryland. An Amtrak passenger train traveling at 120 miles per hour slammed into the rear of the freight train, killing 16 people and injuring 174. The freight train engineer and brakeman were both found to be under the influence of marijuana (NTSB 1988b).<sup>21</sup> Not surprisingly, a study conducted in 1990 with U.S. Postal Service workers showed that candidates admitting to using marijuana during their pre-employment background interview were later found to be responsible for accidents 55% more than those candidates who did not admit to using marijuana. Additionally, those admitting to using marijuana previous to obtaining employment were 85% more likely to be injured on the job.<sup>22</sup>

In addition to affecting concentration, marijuana studies have indicated that chronic smokers have higher absenteeism and job turnover. The previously-mentioned 1990 study involving U.S. postal workers showed that candidates admitting to using marijuana during their pre-employment background interview were later found to be absent from work 78% more than those who did not admit to using marijuana. Further, the postal worker study found that involuntary turnover was 56% higher for persons who admitted to smoking marijuana prior to their employment.<sup>23</sup> The results of this study were reinforced in 1999 by a nationwide household survey.<sup>24</sup> School absenteeism was also studied using students aged 12 - 18 years old in the Netherlands. This 1999 study is of specific importance because marijuana is legal to

purchase and consume in the Netherlands. The ten-year study found that truancy increased 21% for those students who smoked marijuana.<sup>25</sup>

The fear cited by many employers is that marijuana is a "gateway" or "stepping stone" drug to harder, more addictive illicit drugs. If the use of marijuana doesn't affect their current job performance, certainly the use of other illicit drugs will. A Philadelphia study of arrestees in 1999 showed that the use of marijuana led 21% to graduate to methamphetamines, and 44% graduated to cocaine and/or heroin. However, the study also revealed that the real "gateway" drug was alcohol and/or tobacco.<sup>26</sup> The RAND Drug Policy Research Center released a contradictory study in 2002. The RAND study concluded that over 70 million Americans have tried marijuana, and yet less than 10% went on to use any other illicit drug.<sup>27</sup> This study, too, was contradicted in 2003 after researchers in Australia surveyed the drug usage of twin siblings. The researchers determined that those who used marijuana before the age of 17 years were two to five times more likely to experiment with harsher, illicit drugs.<sup>28</sup>

#### Implications for Leadership

The selection of qualified candidates for law enforcement positions has always been a difficult task. Due to the stringent background requirements, several candidates are disqualified for consideration due to their illicit drug use, including marijuana. Other potential candidates are dissuaded from applying due to their recent use of marijuana. By eliminating this disqualifier, law enforcement agencies might see a larger candidate pool to select officers from.

Although there is disagreement by health officials and researchers on the hazards of smoking marijuana, many feel that some damage to the respiratory system does occur.<sup>29</sup> Inhaling marijuana smoke deep into the lungs, and holding it in longer than is done with

traditional tobacco smoke, might lead to chronic lung infections and disease. This new health hazard will most likely lead to higher health care costs for agencies and employees.

As various scandals over the years have tarnished the image of the law enforcement profession, so too will the usage of marijuana by peace officers. Because the effects of marijuana are long lasting, and are not easily detected, agencies will need to deal with mandatory testing of officers who are involved in on-duty automobile accidents, shootings, and serious injuries. This will increase investigation time and expense. However, public confidence cannot be jeopardized by the perception that its law enforcement officers are under the influence of marijuana during their working hours.

### Conclusions

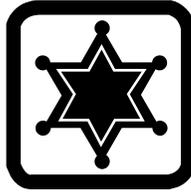
As California edges closer to the legalization of marijuana, statistical data should be collected now regarding employee tardiness, absenteeism, respiratory illnesses, citizen complaints against employees, and the prosecution of officers for using other illicit drugs. These statistics could be used as the starting point to determine if there is a connection between the legalization of marijuana and future employee issues.

The goal of law enforcement administrators should be to deter sworn and civilian personnel from performing law enforcement functions while under the influence of legalized marijuana. To see this goal come true, administrators must send a clear message to their employees that on-duty marijuana intoxication will not be tolerated. Law enforcement leaders must create a policy (see attached sample policy in appendix) through a coordinated effort with several key stakeholders regarding the use of marijuana by their workforce. Before implementing the policy, agency leaders must educate their employees on the long lasting effects of marijuana intoxication. Employees must be convinced that coordination and concentration

deficiencies will occur from the usage of marijuana and that these deficiencies will impact their delivery of services to the community.

Over the last three decades, society has experienced a political and philosophical shift on how marijuana should be viewed. As marijuana laws continue to be chipped away, law enforcement managers must prepare their agencies for the likelihood that their employees will consume marijuana for medicinal and recreational purposes.

APPENDIX



## GENERAL ORDER

### MARIJUANA POLICY

The purpose of this order is to control the impact that marijuana intoxication can have on job performance. Public confidence cannot be jeopardized by the perception that employees of the Department are under the influence of marijuana during their working hours.

- I. Employees shall not report to work following the consumption of marijuana when the product has not metabolized to a level of 50 nanograms per milliliter (ng/ml) or less of THC in urine or blood.
  - a. Employees are reminded that residual, adverse effects of marijuana can last longer than 24 hours after consumption.
- II. Employees shall not consume any amount of marijuana during their assigned shift.
- III. Employees shall not consume any amount of marijuana during any break period during their assigned shift.
- IV. Employees shall not possess marijuana at any department or county work site.
- V. Employees shall not bring marijuana into any department facility or vehicle.
- VI. Employees suspecting another employee of violating provisions of this policy shall immediately notify their supervisor.

## ENDNOTES

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