

Colorado: Cannabis Legalization and the Challenge of Organized Crime

Michel Gandhilon

Graduate of the Institute of Criminology (Panthéon-Assas), researcher at the French Monitoring Center for Drugs and Drug Addiction (Observatoire français des drogues et des toxicomanies, OFDT) within the Recent Trends and New Drugs (Tendances récentes et nouvelles drogues, TREND) cluster and coordinator of the publication Drogues, enjeux internationaux.

ABSTRACT

Despite rising production power and the decline in prices that it has caused, a significant parallel market for cannabis in plant form still exists in Colorado. When it comes to small-scale crime, another phenomenon appears to be a significant shift in activities, as is attested to by the increasing figures for robberies, burglaries, and dealing in stolen vehicles.

However, it seems that Colorado's public authorities have become aware of this deteriorating situation. The governor of the state, has decided to revisit aspects of regulation that are likely too liberal, including those that have favored the emergence of very significant gray and black markets for marijuana.

Keywords: Cannabis, Legalization, Marijuana, Colorado, Side Effects, Black Market

Colorado: la legalización del cannabis y el desafío del crimen organizado

RESUMEN

A pesar del aumento de la capacidad de producción y la disminución de los precios que ha causado, en Colorado todavía existe un importante mercado paralelo para el cannabis en forma de planta. Cuando se trata de delitos de pequeña escala, otro fenómeno parece ser un cambio significativo en las actividades, como lo demuestra el aumento de las cifras de robos, robos y trata de vehículos robados.

Sin embargo, parece que las autoridades públicas de Colorado se han dado cuenta de este deterioro de la situación. El gobernador del estado ha decidido revisar aspectos de la regulación que probablemente son demasiado liberales, incluidos aquellos que han favorecido la aparición de mercados grises y negros muy importantes para la marihuana.

Palabras clave: Cannabis, legalización, marihuana, Colorado, Efectos Secundarios, Mercado Negro

科罗拉多州：大麻合法化和有组织犯罪带来的挑战

摘要

尽管大麻生产力持续上涨，市场价格也因此降低，但在科罗拉多州依旧存在一个庞大的大麻植物平行市场。当论及小范围犯罪时，另一种现象似乎是犯罪活动中的一个显著转变，即抢劫、入室行窃和交通工具失窃等案例的不断攀升。然而，科罗拉多州公共权威机构似乎已经留意到了这一现象的恶化。该州州长已决定再次讨论相关法规中可能过于自由的那部分内容，包括有助于大麻灰色市场和黑色市场大量出现的那些部分。

关键词：大麻，合法化，大麻制品，科罗拉多州，副作用，黑市

Cannabis legalization was expected to have the following two effects on crime:

- to weaken the parts of criminal organizations that are most involved in this sector of illegal activities
- to free the police and the justice system from what has been deemed an ineffective attempt at drug enforcement (given the increased prevalence of cannabis among the general population of the United States)

in the past twenty years), thus allowing these institutions to focus on tackling other criminal activities.

During the political campaigns that were launched before the organization of various referenda on cannabis in 2012, a number of NGOs (such as Open Society Foundations and Drug Policy Alliance) highlighted the “deadlock” of the so-called “war on drugs” policy, which, forty years after Richard Nixon’s declaration that drugs were “public enemy number one,” had failed to prevent very strong growth in the market for illegal substances and in the criminal circles that profited from it.

For example, in 2016 almost twenty-nine million Americans had used an illegal drug during the past month, and twenty-four million were current users of cannabis. And as demand for drugs went up, Mexican organized crime groups increased their control over the wholesale market for the main illegal substances (marijuana, cocaine, methamphetamine, and heroin) in several hundred American cities, from Atlanta, Georgia, to Anchorage, Alaska—and not forgetting Denver, Colorado. In 2017, according to a report by the Drug Enforcement Administration (DEA), “Mexican transnational criminal organizations (TCOs) pose the greatest criminal drug threat to the United States; no other group is currently positioned to challenge them.”¹

With regard to cannabis more specifically, a number of estimates made prior to legalization put the proportion of the market controlled by Mexican organized crime groups at between 40 and 70 percent, with revenues of two billion dollars,² making this the second-largest illegal drug market behind that for cocaine. Accordingly, some researchers believed that the implementation of new public policies, described as “cannabis regulation,” could lead the Sinaloa cartel, the largest organization operating on either side of the border, to lose half of its revenue.³ In addition to such organizations, there are also the tens of thousands of local gangs of varying degrees of power that are involved in the retail trade.

As we will see, the issue of the impact of legalization on organized crime is key when it comes to evaluating the effectiveness of new policies for regulating cannabis. The organized crime we are dealing with here is powerful, features highly robust organizational structures and offshoots, and is also at the heart of today’s opioids epidemic, the largest in the history of the United States.

1 *2017 National Drug Threat Assessment—October 2017*, (US Justice Department Drug Enforcement Administration), vi. Available at: https://www.dea.gov/sites/default/files/docs/DIR-040-17_2017-NDTA.pdf.

2 Jonathan P. Caulkins, Angela Hawken, Beau Kilmer, and Mark A. R. Kleiman, *Marijuana Legalization: What Everyone Needs to Know* (Oxford: Oxford University Press, 2012).

3 Alejandro Hope and Eduardo Clark, *Si los vecinos legalizan, Reporte técnico*, IMCO (Mexico City: Instituto Mexicano para la Competitividad A.C., 2012). Available at: http://imco.org.mx/wp-content/uploads/2012/10/reportes_tecnico_legalizacion_marihuana.pdf

Before 2012: A Strong Criminal Presence

In keeping with the rest of the United States, Colorado is affected by this crime situation, especially because its geographical location makes it a transit zone for the flow of drugs, in particular toward the Canadian market. It is therefore not surprising to find a strong presence of specialized drug-trafficking organizations there. In 2015, a mapping of their presence and areas of influence in the United States conducted by the DEA and the Organized Crime Drug Enforcement Task Force (OCDETF) highlighted the presence of Mexican cartels.⁴ The Sinaloa cartel, Mexico's most powerful criminal organization, was present in the state's two largest cities, Denver and Colorado Springs. US experts also identified the presence of the Beltrán-Leyva cartel.

Along with Salt Lake City, Utah, these two cities are distribution centers that supply the regional drugs market for an area that includes the states of Montana and Wyoming. It should be noted that Colorado is also a major highway hub that many trucks use to reach Mexico. Crossing the state is Interstate 25 (I-25), which passes through New Mexico and is one of the main highway routes toward the Rio Grande. The I-25 also connects with two of the country's other major highways, the I-70 and the I-80.

Besides Mexican organized crime, the second most important actor is gangs, in particular ones of Hispanic and African-American origin. For example, the Crips⁵ are well established in northeastern Denver.

As can be seen, this strong criminal presence in Colorado was (and still is) a challenge for the public authorities, as the more powerful and diversified organizations are in terms of criminal activities, the better cushioned they are against the inevitable financial impact of legalization policies. In this regard, the country's rich criminal history provides an illustration of this: the relegalization of alcohol in 1931 had little impact on the Italian-American mafia, despite its heavy involvement in alcohol production and smuggling.⁶

Organized Crime's Anticipating and Reorganizing

The data on the impact that cannabis legalization has on criminal organizations is still very patchy. Nevertheless, the two organizations in charge of combating drug trafficking that I encountered during field visits carried

4 DEA, *Areas of Influence of Major Mexican Transnational Criminal Organizations* (Springfield, VA: DEA, 2015).

5 The Crips have been established in Colorado since the 1980s. They are an offshoot of the Crips and Blood from the Watts neighborhood in Los Angeles, which is one of the biggest gangs in the United States, with several tens of thousands of members.

6 Jean-François Gayraud, *Le Monde des mafias. Géopolitique du crime organisé* (Paris: Odile Jacob, 2008).

out for this research study, namely the DEA and the RMHIDTA⁷ (Rocky Mountain High Intensity Drug Trafficking Area), were skeptical about any weakening of organized crime potentially caused by changes in public policies. Although their findings must be taken with a pinch of salt given the two organizations' hostility to the legalization of cannabis, a number of indisputable trends point toward the impact having been limited.

Persistence of a Significant Black Market

The first of these is that to a significant extent the marijuana black market has persisted, accounting for as much as approximately 30 percent of the total cannabis market, which equates to around 40 tons out of a total market size of 130 tons.⁸ This phenomenon is explained in particular by the existence of demand not only from minors, who are still banned from using cannabis, but also the poorest sectors of the population, which do not have the financial means to access cannabis from retail stores, which is heavily taxed (at around 25 percent) and expensive. The retail stores are very popular among the middle and upper classes, which are central to the sociology behind the legalization.⁹ Criminal organizations therefore exploit this situation by providing cannabis flower (generally of a lower quality and known as ditch weed) at very low prices. It is either imported from Mexico or produced locally in circumvention of the law, as was pointed out in Canadian magazine *L'Actualité* by Mark Kleiman, who advised Washington state on its legalization policy: "In Colorado, where the permitted limit is six plants per household, criminal enterprises go through rural areas and pay residents or farmers to obtain permission to grow the permitted limit of plants somewhere on their land. This practice is illegal, but there is no way of detecting it."¹⁰

In addition, stories of money from organized crime being invested in the legal sector have hit the headlines. Operation Toker Poker, which was carried out in 2017 after three years of investigation by state police, led to the arrest of a group of some sixty people and the closure of twelve companies operating in the market, and particularly in the medical marijuana sector. Part of the production was destined for Texas, Kansas, Ohio, and Nebraska.

7 An organization that serves as an interface between the federal level, represented by the DEA, and the local level (police forces under the authority of sheriffs) in the fight against drug trafficking.

8 Miles K. Light et al., *Market Size and Demand for Marijuana in Colorado* (Denver, CO: Colorado Department of Revenue, 2015).

9 The ballot in favor of cannabis legalization revealed a clear divide between the state capital, Denver, which overwhelmingly voted "Yes" in 2012, and rural and suburban areas of Colorado that voted "No." More broadly, this situation is virtually identical to that described by the geographer Christophe Guilluy about France.

10 Mark Kleiman, interview by Richard Hetu, "Cannabis: Éviter le piège américain," *L'Actualité*, July 17, 2017. Available at: <https://lactualite.com/societe/2017/07/17/cannabis-eviter-le-piege-americaain/>. Our translation.

However, the spectacular drop in prices in the legal sector that can be seen today should contribute to absorbing part of the black market in the years to come. Another consideration is the part of the black market that caters in particular to exports to states that have maintained bans on cannabis in one form or another. In Colorado, this “booming” situation, according to the US Forest Service, has involved heavy investment by Mexican criminal organizations in outdoor growing on Colorado’s large expanses of public lands governed by federal legislation. The Forest Service assessed the value of the marijuana annually produced in this fashion at 250 million dollars.

In 2016, John Walsh, the United States Attorney for the District of Colorado, expressed concern about the increase in the number of illegal plantations in the western part of the state, where there is a large amount of public lands. The cannabis grown here is targeted at the Chicago and Florida markets in particular, and many other actors that have no links to organized crime are engaging in this practice. Getting a handle on this situation is crucial when it comes to the future of legalization policy, especially since in 2016, with the support of the DEA, the prohibitionist of states Nebraska and Oklahoma filed a complaint (that was ultimately unsuccessful) with the Supreme Court with the aim of suspending, based on the supremacy of federal legislation over state law, the experiments in progress.

However, the prospect of a challenge seems more likely following the election of Donald Trump, who is much less in favor of cannabis legalization than Barack Obama was. The new administration’s attorney general, Jeff Sessions, recently rescinded the infamous Cole Memorandum, which recommended that federal judges across the states did not apply federal law against the cannabis industry where it complied with local laws.

Nevertheless, in a similar vein to what is happening with the segment of trafficking destined for the domestic market, the phenomenon should gradually subside as regulation progresses in an ever-growing number of American states. Today, the effect of *insularity* is not playing out in the same manner in, for example, Washington State, which legalized cannabis at the same time as Colorado. Washington State is in close proximity to Canada, Oregon, and California, which are following or preparing to follow the same policy as Washington, whereas Colorado is literally “surrounded” by prohibitionist and relatively hostile states.

The “Balloon Effect”

The second factor that has curbed the impact of legalization is the classic “balloon effect”¹¹ of criminal organizations moving to other activity sectors or turning to other drugs. It seems that the cartels, whose activities are already

11 A piece of police jargon that describes a criminal organization’s shift from one activity to another or from one geographical area to another. It is a phenomenon similar to the waterbed effect, and

highly diversified (and include people smuggling, money laundering, and weapons), may well have forestalled the unfavorable impact of cannabis legalization on their revenue by becoming involved on a massive scale in trafficking opioids, the consumption of which killed more than fifty-seven thousand Americans in 2016.

This is what writer and journalist Don Winslow, a specialist in Mexican cartels who also supports cannabis legalization, calls the “pot paradox,” which he cuttingly and a little perfunctorily summarizes in the following striking pronouncement: “The heroin epidemic was caused by the legalization of marijuana.”¹² In fact, it would be fairer to say that the criminal organizations successfully responded opportunistically to the Oxycontin^{®13} epidemic—which was caused by the careless prescribing of painkillers by American family doctors who were pressured by pharmaceutical companies—by selling heroin imported from Mexico. Therefore, as figures from SAMHSA (Substance Abuse and Mental Health Services Administration) show, between 2007 and 2016, monthly heroin use in the United States tripled from around 150,000 users to 450,000 users out of a million yearly users.

Colorado has been affected by this epidemic at a level higher than the national average, as is attested to by rocketing levels of seizures and fatal overdoses.¹⁴ In addition to heroin, which is imported directly from Sinaloa, Mexican criminal organizations are involved in the black market for Fentanyl,¹⁵ an opioid that is often misappropriated and counterfeited and has become the leading cause, even above heroin, of fatal overdoses. It caused more than twenty thousand deaths in 2016, a figure that increased almost sixfold in three years. Furthermore, although the phenomenon has existed for decades, cartels are at the center of trafficking in methamphetamine and, especially, in cocaine, use of which in American society is once again on the increase after about six years of steady decline between 2005 and 2011.¹⁶

often makes the history of the fight against organized crime look like a zero-sum game. See Michel Gandilhon, “La Guerre à la cocaïne à l’épreuve de l’effet ballon,” *Swaps* 76-77 (2014).

- 12 Don Winslow, “El Chapo and the Secret History of the Heroin Crisis,” *Esquire*, August 9, 2016. Available at: <http://www.esquire.com/news-politics/a46918/heroin-mexico-el-chapo-cartels-don-winslow/>
- 13 Oxycontin, which was placed on the market in 1996 by Purdue Pharma, is an opioid painkiller for which prescription rates have exploded via an improper expansion of its use in the treatment of chronic pain not related to cancers. Between 1997 and 2002, boosted by massive marketing campaigns, the number of prescriptions increased tenfold from 670,000 to 6.2 million. Today, the United States, which accounts for 4.6 percent of the world’s population, represents 80 percent of the global legal opioids market. See the investigation that appeared in *Newsweek*: Mike Mariani, “The Junkie with the White Picket Fence,” *Newsweek*, January 1, 2016.
- 14 Heroin Response Work Group Staff, *Heroin in Colorado, Preliminary Assessment*, (Aurora, CO: Heroin Response Work Group Staff, 2017).
- 15 Fentanyl is a synthetic derivative of opium. It is legally used as an analgesic, especially for terminal cancer patients. According to the INCB (International Narcotics Control Board), it is forty times more powerful than heroin.
- 16 Rebecca Ahrnsbrak et al., *Key Substance Use and Mental Health Indicators in the United States: Re-*

Impact on Lower-Level Crime

What is true for criminal organizations is also true for groups at the bottom of the criminal world's hierarchy, including small resale networks for cannabis that operate more at the semi-wholesale or retail levels. Many law enforcement professionals feared that there would be a switch to other illegal activities to compensate for the losses caused by legal sector's seizing of a large part of the market. Although it is difficult to establish causal links between cannabis regulation and changes in criminal activity, police statistics show a rise in crime in Colorado, and in particular in its capital, Denver.¹⁷

In fact, the latest data, which covers 2016, show a significant increase in homicides (+ 10 percent), robberies (+ 6 percent), burglaries, rapes (+7.2 percent), and vehicle thefts (+ 22 percent).¹⁸ In addition to shifts in the acts committed by small criminal groups, notably in dealing in stolen cars (figures for which exploded between 2016 and 2017), to explain this trend some specialists cite an increase in the number of heroin addicts financing their consumption by illegal means and the post-legalization influx into Colorado of a marginalized population (veterans and homeless people) that is seeking consumption opportunities.¹⁹

In addition, legalization has brought about sui generis criminal activity such as burglarizing of marijuana plantations, which according to the DEA has led many growers to arm themselves, and robberies from retailers and businesses in the sector. This latter phenomenon could nevertheless subside as this sector begins to make greater use of banking facilities. In fact, because of banks' reluctance to provide accounts to an industry that has always been regarded as illegal by the federal government and to expose themselves to money laundering judicial proceedings, businesses in the sector hold considerable cash sums that create predatory envy.

In any event, this increase in small- and large-scale crime is feeding a growing sense of insecurity among the population (see box below).

INCREASES IN FEELINGS OF INSECURITY IN COLORADO

Although increases in feelings of insecurity have been fed by objective elements such as the increase since 2012 in violent crimes,

sults from the 2016 National Survey on Drug Use and Health (Rockville, MD: SAMHSA, 2017).

17 This makes Denver an exception in the United States, according to a study carried out in the thirty largest US cities that shows a stability in crime levels (*Denver Post*, July 2017).

18 Colorado Bureau of Investigation, 2016, *Crime in Colorado* (Denver, CO: Colorado Bureau of Investigation 2017).

19 Kirk Mitchell, "Crime Rate in Colorado Increases Much Faster than Rest of the Country," *Denver Post*, July 11, 2017.

other factors that are more difficult to assess also form part of the equation. According to the DEA, the migration of veterans (from the Vietnam War) from other states has been observed since cannabis was legalized. Veterans, who are often marginalized and frequently affected by PTSD symptoms, seem to appreciate the effects of cannabis and are apparently clustering in Colorado.

In the United States, part of this population comes from the hobo world²⁰ of itinerant beggars who go across the country, living off seasonal casual jobs and sometimes, it is true, stealing. Although it is difficult to assess the true extent of the phenomenon, the increase in this marginalized population in Colorado since 2012 has accentuated feelings of insecurity among part of the state's population. On top of this, cases of burglaries targeting plants grown by individuals, as well as the problematic coexistence of (large-scale) growers and worried neighbors, have made families concerned about preserving the integrity of their environment. These difficulties with "living together" are not exclusive to Colorado. Violent burglaries committed against individuals or "cooperatives" have been reported in Washington State since 2009. These phenomena could explain the diminished enthusiasm expressed in some surveys for the legalization of cannabis.

The Inevitable Fall in Cannabis-Related Crimes

The legalization of cannabis has logically resulted in a sharp decline in crimes associated with cannabis (by around 50 percent on average). This has contributed to reducing the burdens placed on the police, judiciary, and prison systems, allowing Colorado to save approximately thirty million dollars. However, it is necessary to subtract from this sum costs linked to enforcing the new legislation, which is directed at young people under the age of twenty-one, for whom cannabis possession and use continue to be prohibited. This group has logically become the central target of police activity. Between 2012 and 2014, cannabis-related arrests increased by 5 percent among this population, from 3,235 to 3,400 people.²¹

20 Hobos were made famous through Mark Twain's *The Adventures of Huckleberry Finn* (1884) and were the subject of sociological study in Nels Anderson, *The Hobo: The Sociology of the Homeless Man* (Chicago: University of Chicago Press, 1923).

21 Colorado Department of Public Safety, *Crime and Justice in Colorado* (Denver, CO: Office of Research and Statistics, 2016).

LEGALIZATION AND RACE

Many groups in the United States have highlighted the racial dimension of the “war on drugs,” noting the overrepresentation of the black community in the prison system and an arrest rate for cannabis possession that is nearly four times higher than the rate for white people. The decrease in arrests for cannabis possession following legalization is therefore an objective improvement for the black community, though before 2012 in Colorado arrest rates were significantly lower than the national average. However, today, among the segment of users who continue to be arrested, in particular minors, significant disparities continue to be found.

In the case of Colorado, the data relating to arrests of juveniles (10-17-year-olds) for marijuana-related crimes covering the year 2015 show that the number of Caucasians arrested decreased by 8 percent, while it increased by 58 percent among African-Americans and 29 percent among Hispanics (CDPS 2016). A report by the Drug Policy Alliance that looked at all population segments estimated that in Colorado in 2014—that is, the beginning of the regulation process—African-Americans were still five times more likely to be arrested for dealing than Caucasians were and 2.4 times more likely to be arrested for possession and growing.²² Moreover, with respect to investment in the flourishing legal industry, a number of African-American groups have complained about the underrepresentation of the black community in this sector, highlighting the discriminatory nature of the requirement of a clean criminal record to obtain a license to open a production unit or a store.

Conclusion

Although it is probably still too early to make definitive statements about the impact that cannabis legalization has had on crime (including organized crime) in Colorado, the first available data shows that the hopes placed in new regulation policies aimed at significantly weakening criminal organizations, and in particular Mexican cartels and gangs, have been partly dashed. Drawing on the considerable financial strength that they have developed over the decades, and

22 Drug Policy Alliance, *Marijuana Legalization in Colorado after One Year of Retail Sales and Two Years of Decriminalization* (New York: Drug Policy Alliance, 2015).

having become sufficiently diversified, they have been able to forestall legislative changes and have taken opportunistic advantage of the opioids epidemic that is currently raging across the whole of the United States for the purposes of reviving the heroin market. Doing so has largely offset the losses caused by the legal cannabis sector's capture of a market share.

This is all the more so given that, despite rising production power and the decline in prices that it has caused, a significant parallel market for cannabis in plant form still exists that caters to internal demand (poor people and young people under twenty-one years of age) and external demand (prohibitionist states), and also given that the cocaine market—the biggest illegal market in the United States—is beginning to grow once more. When it comes to small-scale crime, another phenomenon appears to be a significant shift in activities, as is attested to by the increasing figures for robberies, burglaries, and dealing in stolen vehicles.

However, it seems that Colorado's public authorities have become aware of this deteriorating situation. The Democratic governor of the state, John Hickenlooper, has decided to revisit aspects of regulation that are likely too liberal, including those that have favored the emergence of very significant gray and black markets for marijuana. For example, Colorado recently repealed provisions that allowed medical cannabis users, of which there are approximately ninety thousand, to cultivate up to ninety-nine plants, setting the limit at twelve instead. And more and more municipalities, most recently the capital, Denver, have made the decision to limit the number of plants that can be grown to twelve per household, whereas before the law authorized six plants for each adult over the age of twenty-one. This desire to rein things in conveys the limitations and contradictions of a regulatory policy that probably underestimated the resilience of criminal organizations.