

## Our American States | An NCSL Podcast



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### State Marijuana Policy | Episode 4 | Feb. 23, 2017

Gene: Welcome to Our American States, a podcast of meaningful conversations that tell the story of America’s state legislatures – the people in them, the politics that compel them, and the important work of democracy. For the National Conference of State Legislatures, I’m your host, Gene Rose.

Marijuana the word, when spoken, often elicits smiles, smirks, guffaws and goofy comments. But to policymakers responsible for writing rules and regulations, this serious subject matter is full of weeds and thickets. We’re going to do our best to take our tools and jump into the marijuana patch and look at the challenges and opportunities that it provides to our American states.

Our guest today has been tracking the issue for several years now, and is one of the nation’s foremost experts on the political, legal and economic aspects of this issue. Karmen Hanson is Program Director of the Health Program at the National Conference of State Legislatures.

Karmen, when did this issue first enter the state legislative arena? Was it medical marijuana that first caused legislatures to write some new laws?

Karmen: Thank you Gene. Marijuana does have a long history in the federal and state policy world going back to even the early 1900s with the Federal Marijuana Tax Act, which prohibited the use of cannabis and marijuana, and those are terms I’m going to be using interchangeably.

A few states banned marijuana back in the early 1900s, and by the 1930s over half of the states had a ban in place. Then in 1937, the Marijuana Tax Act prohibited the use at the federal level.

About 30 years after that, the Federal Controlled Substances Act made marijuana a Schedule One product and that just means that the Drug Enforcement Administration believes it has no medical benefits.

Fast forward a few years from there and the New Mexico legislature enacted a measure to allow for research on the use of cannabis for people with glaucoma and cancer. It wasn't until 1996 that voters in California passed a referendum to legalize medical use of marijuana, and a few states have ever since then come with ballot initiatives to legalize the use in those states. But more recently it is through the legislative process with the legislature.

G: I guess things really changed when the voters of Colorado and Washington approved recreational marijuana for adult use. Is that right?

K: Yes. Colorado and Washington definitely broke new ground. The state total is currently eight and D.C., and D.C. allows for adult use, but not for regulating the production and sale of marijuana like the other states do.

So right now the states in total are: Colorado, Washington, Alaska, Oregon, and then the newly approved states of California, Nevada, Massachusetts and Maine. And those last four were approved most recently and those have all happened in the last four years.

G: So the states that have medical marijuana, this is a much larger list?

K: Yes, that's a much larger list of 28 states and three territories.

G: So Karmen, what's the landscape look like now? How many states allow recreational marijuana to be used?

K: Well, it's dramatically changing from what was once seen as kind of this Wild West attitude about marijuana legalization west of the Mississippi. The latest states to approve include Maine and Massachusetts, which are obviously far on the East Coast. So legal states now appear all the way from Alaska to Maine, and it's a total of eight states and D.C. that currently allow for adult use. And so far in 2017, I've seen legislative measures to legalize adult use in at least 13 states, and that includes: Arizona, Connecticut, Hawaii, Kentucky, Maryland, Mississippi and Missouri, which would propose a constitutional amendment back onto the voters, and then New Hampshire, New Jersey, New Mexico, Pennsylvania, Vermont, and Wyoming.

This range of about a dozen bills is typically what I see each session and I'm anticipating even a few more states maybe to come out with proposals based on media reports and other sources.

G: Karmen, the interesting thing to me about this issue is that in all the states that have approved recreational marijuana, they've done it with citizens placing the issue on the ballot, and no legislature has really asked voters to approve any marijuana issue. This puts state legislatures in a very reactive position, don't you think?

K: It has and it can, but it doesn't mean that legislators are pinched out of the process. In nearly every situation the enabling ballot initiative allows a legislature or another state agency to

develop the details on how to actually regulate marijuana, from business licensing application, or product packaging in the retail environment.

Colorado, most notably, had the Amendment 64 task force that Governor Hickenlooper created, and that represented a wide variety of interest groups. It had people from industry, it had legislators, it had folks from enforcement divisions, and some of the groups that weren't supportive of the measure to begin with – they all came together and came up with these recommendations to be included in the enabling legislative measures that were then taken through the legislative process of the Colorado General Assembly. And that really helped the legislation move along because of all the hard work done in that drafting process by the Amendment 64 task force in Colorado.

G: What would you say the overall experience has been with the Colorado and Washington measures? What kinds of lessons have they learned?

K: That's a great question. I get asked that pretty regularly. Since NCSL is headquartered in Colorado, we have kind of a front-row seat of watching this in action every day. Colorado and Washington have both worked really hard to fine-tune the process. And people need to remember that back in 2012 when this first became legal, there was no playbook for regulating marijuana in the United States. So Colorado and Washington have really been those innovators and guinea pigs at the same time, which has greatly benefited the newer states to avoid some of the early potential pitfalls of Colorado and Washington.

Some of the most notable lessons learned are around the proper, most-appropriate levels for excise tax rates, and fine-tuning those to keep prices competitive, and ideally squash out those other illegal sales, sometimes called gray market or black market. In addition improving laws around product packaging and labeling including public information campaigns to educate the public about what is a legal purchase and how to talk to minors about cannabis use. Some other current state conversations that have been kind of the second generation of things that states are dealing with are how to test products and improving regulations for things like edibles and concentrates and other new products.

Like any industry, it's constantly evolving and creating policies for these new products and is something legislators are heavily involved in when they do come up.

G: So I know there have also been some unintended consequences regarding the recreational use of marijuana. There have been reports of adults, children and even pets that have had some serious problems having access to these marijuana products. Talk to us a little bit about these events and how states have reacted.

K: Sure, yes, we have seen some headlines like that. And those of us who work in policy have learned that any kind of new policy area can have unintended consequences because you can't necessarily account for every possible scenario. But accidental exposure is one of those concerns and it did not necessarily start with state legalization either. Accidental exposure has been around for as long as cannabis itself, but the key is that states are now tracking it more closely because sometimes it's part of the Health Department's interest and legislative requirement that they track potential health and social side effects.

So that's some of the new reporting that is going on in Colorado right now, and I believe it is happening in Washington, and it's just going to be a lag in getting that data back to seeing how much exposures are really changing, and then correlating that, doing the research to see how much of a correlation or if there is a correlation to the legalization timeline.

But tracking how exposures happen is something that can help policymakers make better policies about packaging, labeling and, again, how to educate the public about potential risks of consuming cannabis. And another point is that people may be more forthcoming now about an accidental exposure by a child or by another adult or by a pet because it is legal now, so there may be less of a fear of any kind of repercussions of reporting that someone had an accidental exposure.

And doctors are also now asking more about it to try to cut to the chase if someone comes in with some strange symptoms, they can just say oh, that's what this is caused from. The thing is that the plural of anecdote does not equal evidence in these situations, which is why states are trying to scientifically study social implications and other health implications so they can take steps to reduce the risks and address them as necessary.

And just last month the National Academies of Science, Engineering and Medicine released a report that looked at over 10,000 studies since 1999 about the health impacts of cannabis, and this report suggests that there are over 100 conclusions related to health that they can suggest to improve the quality of cannabis research. And I highly suggest that legislators and other policymakers review this report, which is linked on the NCSL medical marijuana webpage.

G: Can you talk a little bit about what the effect has been on the law enforcement agencies around the states that have adopted recreational use? Are they having to do new things to address the issue?

K: Well, for law enforcement in particular they aren't necessarily going to be writing as many tickets for cannabis-related issues if someone is just having some on the street. There aren't those public possession tickets anymore. But if someone is using in public, which is still illegal under every state's adult-use current law right now – Colorado, Washington, Alaska and Oregon – you can't just use out in public on the street; that would be illegal. So that's what law enforcement is now trying to make sure they are enforcing, and not just the simple possession of some product. If somebody just walks out of a dispensary that is legal, as long as they're under the legal threshold of quantity. But there are constantly changing laws and that's one thing that law enforcement has to keep up with, which can be tricky.

Another issue is driving while impaired and the idea that if someone has any THC in their system, that can be tricky to determine if that's maybe what was causing them to drive in an impaired manner, verses something like alcohol which you can detect roadside pretty quickly with a breathalyzer product or measurement, and that does not exist right now for THC. That is something that there are companies and universities doing a lot of research in Colorado, Washington and I also believe so in Oregon to try to come out with something that's very quick that law enforcement can use to help determine if that's a contributing factor to somebody's impairment.

G: And there's been some debate about what the limit is and how to measure it, isn't that right?

K: Yes, there is not currently an agreed-upon standard, although there is a standard in Colorado of 5 Nano grams per milliliter of blood, but that has been argued both successfully and unsuccessfully in court as being a real true measurement that would be something comparable to the .08 with blood alcohol content. It's one of those things, the science hasn't been there because of the federal prohibitions of cannabis-based research, so that's just one of the things that the states are trying to catch up on – let's get some data behind, you know: Is there an actual number that can be quantified? Is there an exposure that is not going to "impair" somebody if they're trying to drive? That's just one of those really touchy and tricky situations to determine right now.

G: So Karmen, tell us, in the states that have passed recreational marijuana laws, are they seeing any economic benefit now?

K: Yes, probably the second most common question I get from legislators and the media. People see the headlines of record marijuana sales in Colorado and Washington and they think of the associated collected tax revenues. They think we've found the Holy Grail for state budgets. But I can tell you, after three full years of sales, neither Colorado nor Washington are filling their overall state budget holes with cannabis revenues. But does it bring in tax dollars? Yes, of course, but it's supposed to.

Both states earmark cannabis business fees and a portion of those taxes for the regulatory and enforcement agencies, so it's kind of a self-funding system. But I have recently heard that the Director of Colorado's Department of Revenue, which houses the Marijuana Enforcement Division, told a group of legislators that regulation is generally harder than you think, it takes longer than you think, and it's more expensive than you think.

So, yes, while Colorado did bring in nearly 180 million dollars of combined revenue on over a billion dollars' worth of adult use in medical cannabis sales for 2016, that is just a drop in the bucket for the overall state budget.

G: There are several restrictions on companies such as not being allowed to make bank deposits. What types of laws or regulations are these businesses under?

K: Yeah, we could have a whole podcast on this topic alone. Nearly all banking and financial laws are made at the federal level, which makes this, again, very tricky because marijuana is still Schedule One, seen as an illicit substance. So federally it is against the law for financial institutions to handle funds made off of what they're considering illegal drugs. Those laws do make it tricky, however it is not impossible for marijuana-related businesses to operate.

Much of the industry is still kind of largely a cash-based system. Most of your purchases, things like that, in the dispensaries, you don't generally see a lot of credit cards, but it does happen. And I have to admit this area of federal law is very complicated and, luckily being a state policy person, I don't want to get too far out of my knowledge base, but because there are a lot of legal businesses on the state level, these marijuana businesses are required to pay taxes just like any other business, and they are extremely limited as to the type of business deductions that they are allowed to take compared to traditional businesses. If you ran a traditional bakery or a

florist shop, anything like that, those companies are able to take your traditional business expenses and the dispensaries are not.

So cannabis industry representatives have compared their tax rates to normal, traditional companies, and they claim that they're paying somewhere between 40 and 70 percent in taxes because of that ability for limited deductions because of the federal laws. And this newly formed cannabis caucus in Congress, which is a bipartisan group of members from marijuana-legal states, they hope to de-schedule marijuana and form a national level agency to regulate adult use and production and sales, probably housed under the Bureau of Alcohol, Tobacco, Firearms and Explosives, and that would really help open up the banking side to financial services restrictions for businesses.

But otherwise, the states regulate the businesses very, very closely, literally tracking cannabis production from seed to sale, and they're also regulating things like the location, inspections, the size of the operations, security details, other safety issues, and a handful of other areas as well. It's a very complicated, highly regulated system in the most evolved states of Colorado and Washington.

G: Well, and then they also have the issue of the federal government really hasn't blessed these types of operations and at any moment, technically they could say: we're going to enforce the laws and not allow any recreational marijuana to be sold. Is that a concern to businesses in the states that currently allow it?

K: You're absolutely right. It could change at a moment's notice and this may be the million or even billion-dollar question right now. I've heard a lot of opinions on this from folks in the industry and NCSL does not speak for industry at all, but these are just reports I've been hearing, especially in the media. The Congressional Cannabis Caucus that I mentioned, they're really hoping to move the ball federally on this policy area to alleviate the concerns in the states, but of course, you know, nothing is a given, and the federal government could enforce these federal laws in the legal states and there are a lot of talks within industry of how they would react to a change in the federal enforcement.

But that said, President Trump has historically stated that his support of states' rights as well as for medical marijuana... so it may be a low priority for his administration. It's really pretty early in the whole process to see where this is going to fall out with his party level. However, if I did have a crystal ball to answer this question, I could probably make a lot of money right now.

G: Do you see the approval of recreational marijuana continuing to be approved across the country? In some states citizens can't put the issue on the ballot. Do you ever see a legislature passing a law so they can get the structure that they want?

K: For sure. Twenty-six states and two territories currently allow for voter initiatives or referendums and of those 28 areas, most of them have already acted on medical marijuana, and all of the adult-use states were approved by voters at the ballot box. And state legislators as well as citizens do remain interested in this issue and, as Colorado and Washington have shown, it is an evolving topic – it needs adjustments over time, so you're never going to see a lull in marijuana-related bills in the legal states or in the states that haven't yet acted on this.

So far Vermont has been the closest to legalize adult use via the legislature and that was last year. And, again, the legislature always plays a role in the creating and regulation of these frameworks when the enabling language comes through like a ballot initiative process. So it is very important for legislators to be knowledgeable about the policies and what other states have already done, and learn on those and kind of keeping up with some of the new information as it becomes available.

And currently all but six states, which are Idaho, South Dakota, Nebraska, Kansas, Indiana and West Virginia, all but those states have some sort of legal medical or adult-use marijuana, and that also includes some of the limited, low THC cannabis programs that are out there, which are not considered fully medical programs and they're obviously not adult-use programs.

G: Any final thoughts?

K: This is a great topic for discussion among legislators and the federal government as well. I don't think it's going to be a boring moment within any of the states as they move forward with what works best for their states and waiting to see what happens at the federal level as well.

The National Conference of State Legislatures tracks activities in the states, both legislatively and at the ballot initiative level, and takes no position on any state policy within the states. We do take positions on federal issues that might impact the states, but NCSL just tracks the information and provides information to legislators as a service.

Gene:

Thank you, Karmen. We appreciate you sharing your expertise with us today. A reminder that the NCSL's health program staff tracks legislative action on these issues and customized assistance for state legislatures including technical assistance, testimony and briefings, in-depth research, publications, and other services. Just visit [www.ncsl.org/health](http://www.ncsl.org/health) to learn more.

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