

Legalized Weed

Prop 64: "Control, Regulate and Tax Adult Use of Marijuana Act"

"The Adult Use of Marijuana Act"

What It Means for California

Beyond the Bench Conference

Uniting for a Better Future

December 18-20, 2017

San Diego, CA

*Hon. Amy Pellman, Superior Court of California, County of Los Angeles
Kathleen West, DrPH, Lecturer, Department of Social Welfare, UCLA*

"Legalized Weed":

What It Means for California

SESSION GOALS

- Explain the effects of the use of "weed" biologically and potential impact on parenting capacity and individual and family functioning;
- Describe Prop 64 changes to state law, allowing adults age 21 or older to possess and use marijuana for recreational use, effective January 1, 2018;
- Analyze the impact of the law on parents and families struggling with substance abuse issues; and
- Identify at least three protocols that will need to change in sentencing, case planning, enforcement, and treatment practices.

PROP 64: "Control, Regulate and Tax Adult Use of Marijuana Act" aka: "The Adult Use of Marijuana Act"

- Section 3: Purpose and Intent 27 items, 10 particularly relevant to minors well-being, public health & safety:

"It is the intent of the People in enacting this Act to accomplish the following:

(a) Take non-medical marijuana production and sales out of the hands of the illegal market and bring them under a regulatory structure that prevents access by minors and protects public safety, public health, and the environment.

(g) Require nonmedical marijuana sold by licensed businesses to be packaged in child-resistant containers and be labeled so that consumers are fully informed about potency and the effects of ingesting non-medical marijuana.

(i) Prohibit the sale of non-medical marijuana by businesses that also sell alcohol or tobacco.

(j) Prohibit the marketing and advertising of non-medical marijuana to persons younger than 21 years old or near schools or other places where children are present."

"Prop 64 Section 3: Purpose and Intent" continued...

"It is the intent of the People in enacting this Act to accomplish the following:

(n) Deny access to marijuana by persons younger than 21 years old who are not medical marijuana patients.

(o) Prohibit the consumption of marijuana in a public place unlicensed for such use, including near K-12 schools and other areas where children are present.

(p) Maintain existing laws making it unlawful to operate a car or other vehicle used for transportation while impaired by marijuana.

(t) Generate hundreds of millions of dollars in new state revenue annually for restoring and repairing the environment, youth treatment and prevention, community investment, and law enforcement.

(y) Require minors who commit marijuana-related offenses to complete drug prevention education or counseling and community service.

(z) Authorize courts to resentence persons who are currently serving a sentence for offenses for which the penalty is reduced by the Act, so long as the person does not pose a risk to public safety, and to redesignate or dismiss such offenses from the criminal records of persons who have completed their sentences as set forth in this Act.

The Child Protection System Mandate

“...protect the children’ s *current* and *future* safety and well-being, while strengthening and preserving the **family unit** - wherever possible...”

THINK INTERGENERATIONALLY

5

New Hazard from THC chemical extraction from cannabis

- “Honey oil”, a cannabis form with up to 99% concentration of THC, is resinous product obtained from marijuana plants
- “Positives”: very low odor & very intense effects with very small quantities
- Production of honey oil gaining in popularity, particularly in states permitting use of medical or legalized marijuana
- Manufactured by separating resin containing THC from the cannabis by solvent extraction; typically done by filling a glass or stainless steel canister with marijuana/remains & flooding with a solvent (such as butane, hexane, ethanol, etc.) which strips plant material of THC-containing oils

Marijuana Edibles

- Risks:
 - -- Legal Retail Store Sales for 21 y/o+ in CO, WA, AK, OR but transported to other states
 - -- One product may contain 4x THC “safe” dose
 - -- Takes up to 4 hours for effects to be felt (unlike smoking) so overdoses more likely
 - -- Variable quantity per product
 - -- No federal agency oversight because not legal
 - -- Increases likely use by children and teens

Teens & Marijuana Problems

-Adolescents who smoke marijuana **IN PAST** were at enhanced risk of adverse health/psychosocial consequences, including:

- sexually transmitted diseases and pregnancy,
- early school dropout,
- delinquency,
- legal problems,
- lowered educational & occupational aspirations & achievements.

-About 50% of those entering treatment for marijuana **were** under 25 y/o, have used on average for 10 years with daily use at time of entry, and an average of 6 cessation attempts.

-Cannabis dependence **has been** twice as prevalent as any other psychoactive substance in the US – about 4.3% in 1994 (because so many people use it)

Cannabis Effects

- *Has high addictive potential by over-activating endocannabinoid system, but not as high physical dependency effects. Can cause:*
- Immune system weakening
- Mental impairments; high association of mental health problems with chemical dependency
- Hallucinations/panic and anxiety attacks
- Depression and anxiety
- Nausea/Vomiting
- Dry mouth
- Dizziness
- Numbness

Cannabis Effects

- Passes through the placenta & causes fetal growth retardation
- Passes through breastmilk; causing sedating effect and hypotonia
- Second and thirdhand smoke can cause intoxication/"high" and positive toxicology screen
- Can be a direct trigger for schizophrenia onset among those already at risk for psychosis with family mental health history/genetic predisposition
- 17-26 y/o pop when de novo gene activation most triggered

Exposure & Public Safety Concerns- may disproportionately affect youth

- Driving a vehicle while intoxicated doubles the risk of being in a car crash; combining alcohol and cannabis use with driving greatly increases risk
- Second and third-hand smoke can cause intoxication, lack of coordination, and memory impairment in children and youth

ADDICTION

- NIDA/CSAT Definition -

**A DISEASE CONSISTING OF
A NUMBER OF BRAIN
CHEMISTRY DISORDERS**

Addiction *is related to pleasure/ reward
pathway activation by drugs of abuse
and
includes **maladaptive behavioral response to
neurological dependence***

CANNABIS 101: What is Marijuana?

- It is a green or grey mixture of dried flowers and leaves from the cannabis or hemp plant
- Used recreationally and medically



2 Main Cannabis Species

Sativa	vs	Indica
Mental stimulation		"In Da Couch:" Body-centered high

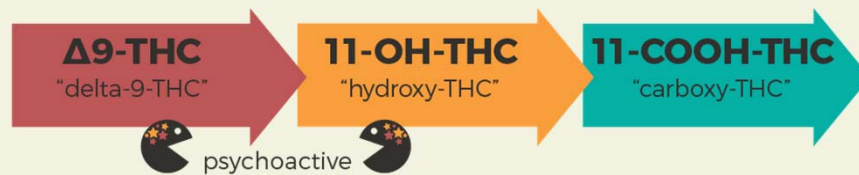
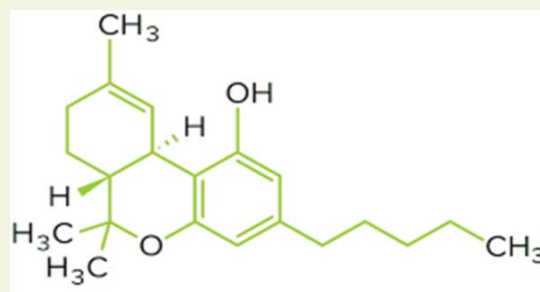


Cannabinoids: THC and CBD



- Cannabinoids cause the plant's primary effects.
- Main Cannabinoids are THC and CBD
- Bind to CB1 and CB2 neurological receptors
- Endocannabinoid system

THC



Marijuana Metabolites

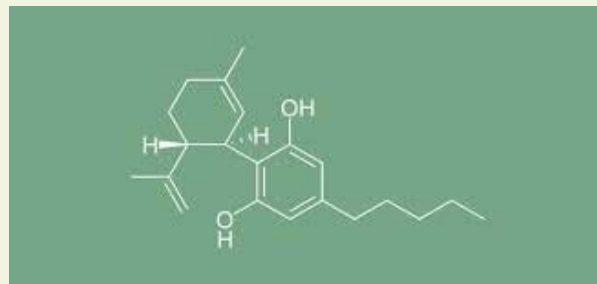
METABOLITE	APPROX LENGTH OF TIME IN PLASMA	CAUSES EUPHORIA
THC	2-3 HOURS	YES
OH-THC	4-6 HOURS	MILD, IF ANY
CARBOXY-THC	3-6 DAYS*	NO

* In urine, carboxy-THC may be found up to 45 days after last ingestion.



What is CBD?

- Cannabidiol: Also a Cannabinoid
 - Very Different Effect than THC: NOT Psychoactive



CANNABIS ROUTE OF ADMINISTRATION

- Inhaling Cannabis



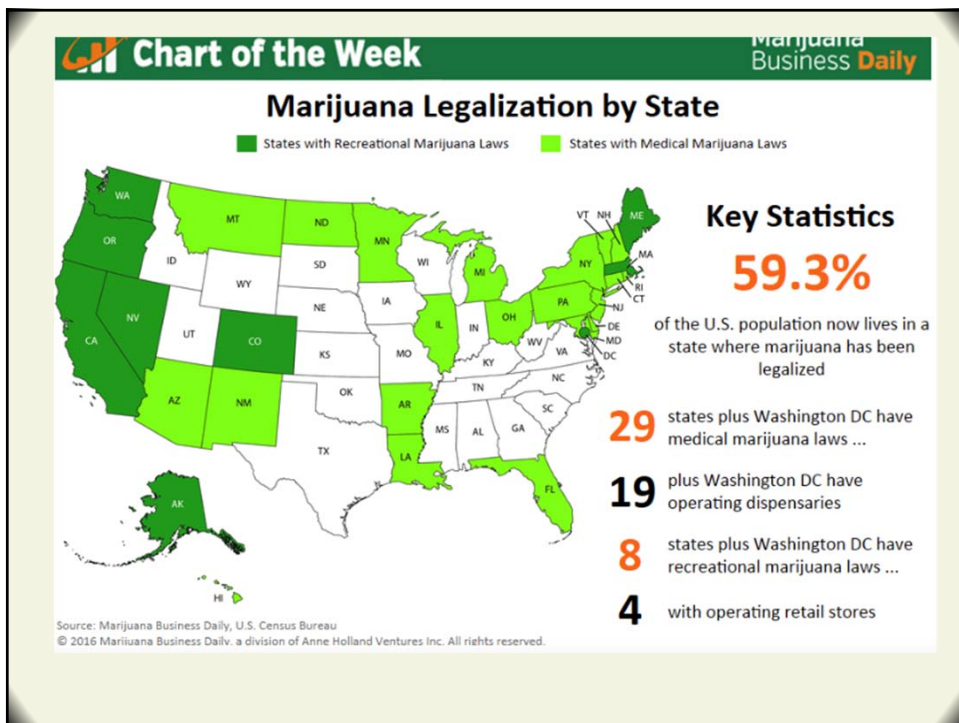
CANNABIS ROUTE OF ADMINISTRATION

- Ingesting Cannabis orally – Eating!

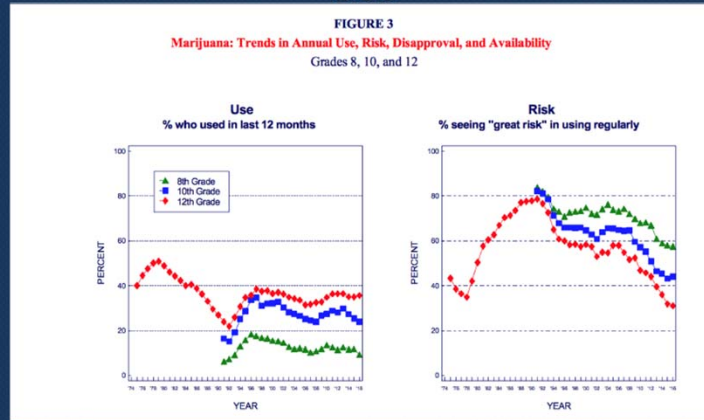


Marijuana Edibles: New Problem for Teens and Children





12th Graders' Past Year Cannabis Use vs. Perceived Risk of Occasional Cannabis Use



SOURCE: The Monitoring the Future study, the University of Michigan.



Prop 64 - PASSED 56% TO 44%



- 1.legalizes adult nonmedical use of marijuana;
- 2.creates a system for regulating nonmedical marijuana businesses;
- 3.imposes taxes on marijuana; and
- 4.changes penalties for marijuana-related crimes.

Dates:

- Nov 9, 2016: Legal use and growing of marijuana for personal use.
- Jan 1, 2018: Will allow for the sale and taxation of recreational marijuana.

<http://vig.cdn.sos.ca.gov/2016/general/en/pdf/prop64-title-sum-analysis.pdf>

Custodial or Parental Rights & Medical Marijuana Use

- Cal Health & Safety Code §11362.84
- Can custodial or parenting time be affected by those who act in accordance with the Compassionate Use Act?


✧ A parent who acts as a qualified patient under the CUA cannot have their parental/custodial rights restricted nor abridged due to their marijuana use.





Topics of concern

- Edibles appear to look like your every day treat.
- Children's access to marijuana in household.
- Marijuana use around children.
- Age of children.

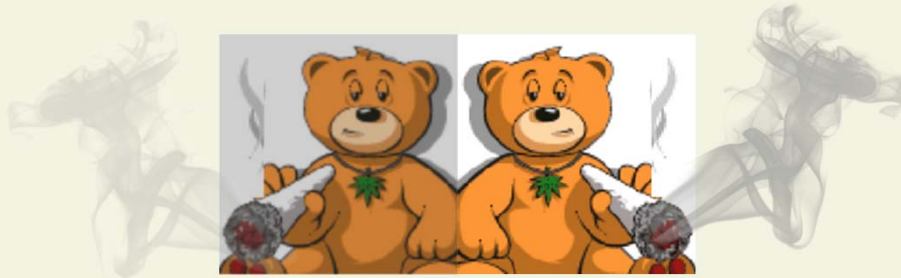


CHALLENGING THE COURTS WITH LEGAL DRUGS

Judge Amy M. Pellman

In re Alexis E.

- WIC 300 (b) petition filed: “Suffered serious physical harm or injury or at substantial risk due to parent’s failure to protect.”
- Father challenged dep. court’s finding that his current use of marijuana presented a risk to minors.



(2009) 171 Cal.App.4th 438

In re Alexis E.

Is mere use enough?

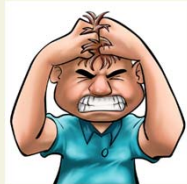
L → **NO**

COA held that there has to be a specific, defined risk of harm as a result of parent’s substance abuse. Mere use without more cannot support jurisdiction.



In re Alexis E.

Here, Father's use of marijuana affected his demeanor toward his children and others and met the "more" burden.



- He became irritable and yelled at children and mother.
- Used corporal punishment on his children.
- He became violent toward his girlfriends.
- Children ended up not wanting to visit with father.

(2009) 171 Cal.App.4th 438

In re Drake M.

Father used marijuana for pain in his knees; never smoked in front of his children; kept the marijuana in a locked box in garage; smoked at least four hours before he picked up kids from school.



(2012) 211 Cal.App.4th 754

Strong evidence that delaying first use (of any substance) dramatically decreases probability of drug dependence at any time in life


- Prevention programs should begin with families with elementary school children (behavioral problems as early as K correlate with later drug problems)
- Early intervention programs with families and communities show successful reduction and cessation of use and progression to dependence

35




In re Drake M.

Abuser? User?



(2012) 211 Cal.App.4th 754

In re Christopher R.



- Mother & Father had a long history of substance abuse.
- The child tested for positive for cocaine, amphetamine, and methamphetamines at birth.

(2014) 225 Cal. App. 4th 1210

In re Christopher R.

- COA affirmed that under the circumstances, the decision to not place Brianna with father was proper.
- Christopher R. clarified that although Drake M.'s definition of substance abuse is a good starting point, it is not the end of the inquiry.



See Also David v. Hernandez

Civil Negligence Case



- Expert testimony was properly excluded as speculative.
- No evidence that respondent was under the influence of marijuana *at the time of the accident*.
- **Must show connection between marijuana use and the bad effect (i.e. vehicle accidents, abuse in children).**

(2017) 13 Cal. App. 5th 692

Heidi S. v. David H.



- Family Code §3041.5.
- Habitual, frequent, or continual illegal use of controlled substances/alcohol.
- How can a positive drug test result affect child custody and child visitation?

(2016) 1 Cal. App. 5th 1150

Heidi S. v. David H.

ONE Positive Test will get you...

- A positive test result, shall not, by itself, constitute grounds for an adverse ***custody or guardianship*** decision.
- But, it may trigger a change in the ***visitation*** schedule.



(2016) 1 Cal. App. 5th 1150

People v. Mower



- The Compassionate Use Act (Health & Safety Code §11362.5).
- Medical defense for persons who are *qualified patients* or *primary caregivers*.
- The Compassionate Use Act does not grant complete immunity from prosecution.

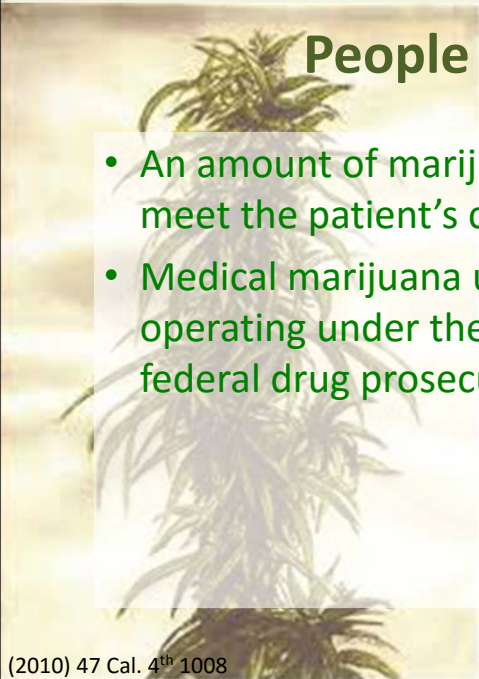
(2002) 28 Cal. 4th 457

People v. Kelly

- Are there limitations to the possession of medical marijuana?
- The Compassionate Use Act (CUA) versus the Cal Health & Safety Code §11362.77.



(2010) 47 Cal. 4th 1008



People v. Kelly

- An amount of marijuana reasonably related to meet the patient's current medical needs
- Medical marijuana users and cannabis clubs operating under the CUA remain subject to federal drug prosecution.

(2010) 47 Cal. 4th 1008

Changes Overall....

- More than 2500 requests filed through March 2017 to reduce sentences (felony to misdemeanor) or expunge convictions. Retroactive application of new law.
- No criminal penalties for under-18s; cannabis related issues will be directed to counseling and community service; records expunged at 19th birthday.

Questions, Comments??

Thank you for your attention and interest

Contact:

WestK@usc.edu

AMPellman@lacourt.org