



Marijuana Grey Market

November 30, 2016



COLORADO
Office of the Governor

Marijuana Grey Market: Challenges

The grey market emerged from loopholes in Amendment 20 and Amendment 64 allowing for large amounts of marijuana to be grown and distributed outside the intent of the law.

Patients and Caregivers

Amendment 20 to the Colorado Constitution and subsequent enacting and implementing legislation allow medical marijuana patients and caregivers to grow up to 99 plants in a residential setting.

Beyond a statutory patient/caregiver registry system coming online in January 2017, state agencies do not have the authority to regulate these grows. While local, state, and federal law enforcement do have enforcement powers in this area, the laws governing such operations are murky. There are, in short, few ways to prevent grey marketeers from operating under the guise of a residential caregiver grow in order to unlawfully ship marijuana out of state.

Home Grows and Cooperatives

Amendment 64 to the Colorado Constitution allows for personal home grows. A recent abuse, similar to the caregiver model, has developed pursuant to this ballot change: home grow marijuana cooperatives. Marijuana “cooperatives” develop when state residents get together and “assist” each other in growing their authorized six plants. These operations are entirely unregulated by state agencies, so theoretically, there is no limit to the number of individuals that could cooperate with each other. Again, law enforcement has the ability to intervene in illicit activity but determining legalities versus illegalities remains confusing.

Beyond exchanging marijuana for remuneration proscribed by law, home grow cooperatives are subject to few clear constitutional or statutory restraints. As with rogue caregivers, it is known that many cooperatives divert marijuana out of state and/or to recreational users in Colorado looking to pay less than the market value.

Marijuana Grey Market: The Routes to the Grey Market

**Amendment 20
Medical**

Amendment 20 allows for patients and patient's caregivers to home grow marijuana plants

Doctors

Doctors may recommend patients up to 6 plants with up to 3 flowering. This may be increased up to 99 as medically necessary

Caregivers

Each caregiver can cultivate up to 99 plants for patients (SB 15-014)

Patients

Each patient can cultivate up to 6 plants (up to 3 flowering) or up to 99 as medically necessary

+99

+6 to 99

**Amendment 64
Recreational**

Amendment 64 allows for individuals and cooperatives to home grow marijuana plants

Cooperatives

Residents get together and "assist" each other in growing allotted six plants. They may not operate in the same location as caregivers. Otherwise, they are unregulated so there is, theoretically, no limit to the number of individuals and plants

+Unknown Limitation

Individuals

Each individual can cultivate up to 6 plants with up to 3 flowering

+6

Grey Market

When combined, recreational and medical marijuana legalization has contributed to a large, unregulated market with grey marketeers operating under the guise of caregivers, cooperative members, or law abiding residents.

Marijuana Grey Market: Plant Count Limits

Of all the states where marijuana is legal, Colorado allows for the most plants to be grown in a single household. As a result, organized crime and people looking to divert marijuana to other states for a profit come to Colorado, as opposed to other states, to grow marijuana under the guise of legality.

Washington: Medical marijuana patients can grow up to 4 plants without registering with the state; up to 15 plants with state registration. Private recreational grows are not permitted.

Oregon: Residents may grow up to 4 plants per household.

Alaska: Residents may grow up to 6 plants per household.

California: Residents may grow up to 6 plants per household.

Colorado: A medical marijuana patient or caregiver may grow up to 99 plants per patient with an extended plant count recommendation from a doctor. Some Colorado local ordinances limit residential grows to 12 plants per household (recreational or medical).

Marijuana Grey Market: The Evidence

From 2014 to 2016, the number of medical marijuana patients with physician recommendations for an extended plant count of 50 or more plants increased by 54%. Concurrently, the total number of medical marijuana card holders declined. As of January 2016, there were approximately 8,200 patients with a recommendation for 50 or more marijuana plants. Much of this marijuana is not being used by legitimate patients, but rather is being cultivated by criminal enterprises and then diverted directly to the grey market in and outside of Colorado. This grey market activity has been evidenced by numerous reports from local, state, and federal law enforcement. Recent examples of such diversion include:

- Operation Gas Lamp, 2015 – Local law enforcement officials uncovered a coordinated network of grow houses, containing 45 firearms and \$1 million in assets, with over 1,800 marijuana plants and 100 pounds of harvested marijuana destined for Chicago and Florida.
- Operation Mountain Grass Cotopaxi, 2015 – Police officers seized 1,002 marijuana plants and 50 pounds of marijuana grown across nine properties with 28 firearms that was intended for shipment to East Coast markets.
- Steamboat Springs, 2015 – Law enforcement officials uncovered the remains of a medical marijuana patient in Steamboat Springs who had been violently murdered by a couple for his marijuana plants. The couple was found in possession of 100 pounds of marijuana.
- U-haul and Tractor Trailer Transporters, 2016 – Police officers arrested two men on multiple occasions for attempting to transport over 150 pounds of marijuana from Colorado to the East Coast. One of the men stated that he had been transporting marijuana from our state for at least four years.
- Aurora, 2016 - Law enforcement officials received information regarding a marijuana trafficker, who was brokering deals between Colorado-based marijuana growers and several different buyers/distributors. The marijuana traffickers were shipping large quantities of marijuana from Colorado to customers located throughout the United States. Based on this information, law enforcement officials executed a search warrants on residences in Aurora and Southern Colorado, seizing approximately 30 pounds of marijuana, 22 firearms, a small, active marijuana grow, 3 suppressors/silencers, and \$273,507 cash.
- Southern Colorado, 2016 – DEA and local law enforcement searched 12 properties in Southern Colorado, uncovering 22,400 pounds of marijuana intended for transport out of state. All properties were tied to the same organization from Laos.

Numerous other grey market cases have been and continue to be documented out of Colorado.

Marijuana Grey Market: The Consequences

Colorado's communities are being negatively impacted by the growth of the grey market and consequent illicit activities

Growth of the marijuana grey market in Colorado



- Diversion to youth
- Lack of public health and safety oversight
- Undercuts licensed, regulated marijuana system
- Risks federal preemption

Out-of-state diversion



- Risks federal preemption

Expansion of organized criminal enterprises



- Increased violence
- Diversification of other illicit activities
- Risks federal preemption

Property Destruction



- Decreased property values
- Increased danger for residents and first responders

Environmental Impacts



- Excessive water and power usage
- Improper chemical and pesticide storage/disposal

Marijuana Grey Market: The Solution Approaches to Date

Approach	Outcome
<p>House Bill 10-1284</p> <ul style="list-style-type: none"> Codified the five-patient limit for caregivers that had existed since Amendment 20 by way of rulemaking Provided for a waiver process to the five-patient limit by stating that “the state health agency” may allow a primary caregiver to serve more than five patients in exceptional circumstances” Established that a patient may only have one caregiver 	<p>Partial Success</p> <ul style="list-style-type: none"> Courts have found that Amendment 20 does not establish an unlimited constitutional right to use medical marijuana
<p>Senate Bill 15-014</p> <ul style="list-style-type: none"> Established a 36-plant limit for most caregivers Set a hard limit of 99 plants for all caregivers Creates caregiver registry through the state licensing authority. A grower cannot be considered a caregiver until he or she registers. Establishes optional patient registration for personal grows Instructs the board (in consultation with CDPHE and physicians) to establish guidelines for physicians when making medical marijuana recommendations. 	<p>Partial Success</p> <ul style="list-style-type: none"> Imposed some of its changes immediately but delayed others until January 2017 Courts have not yet clearly defined the term “medically necessary” and, while some have recognized the validity of the defense, the Court of Appeals has placed limits on its use
<p>Plant count limits (CDPHE)</p> <ul style="list-style-type: none"> Plant count limits attempted through regulations and legislation 	<p>Fail</p>
<p>Colorado Medical Board enforcement of practice standards</p> <ul style="list-style-type: none"> Adoption of Policy 40-28 Regarding Recommendations for Marijuana as a Therapeutic Options (2015) 	<p>Partial Success</p> <ul style="list-style-type: none"> Law enforcement is an important partner to assist the Board with enforcement of medical marijuana practice standards. Law enforcement may 1) refer suspicious activity to the Board for investigation, 2) share investigative information by signing a nondisclosure agreement, and 3) collaborate with the Board to address concerning activity in the community. Guidance from law enforcement so far has been limited. The Board is complaint-driven, meaning information must come to the Board to initiate an investigation. The evidence and complaint process so far has also been limited.

Marijuana Grey Market: Our Core Message and Mission Statement

Core Message

While licensed, commercial marijuana dispensaries are the most visible and highly reported aspect of marijuana legalization, Colorado voters have also provided the right to responsible and limited home-growing, both as caregivers and for personal use. However, in some cases the home grow provisions have been exploited by criminals, seemingly organized, to create black and grey markets that threaten the safety of Coloradans and undermine our regulatory system. These markets have emerged from Constitutional loopholes and exist outside the intent of the law. To further protect our communities and ensure the public safety of the state's residents, while preserving their Constitutional rights, we should establish strong, common-sense guardrails on these home grows.

Mission Statement

To work within Colorado's current constitutional requirements to eliminate the marijuana grey market, allowing for unlicensed operations only to the extent that such grows align with the intentions of the voters as outlined in Amendment 20 and Amendment 64 and adhere to the established federal enforcement priorities concerning state-level marijuana legalization.

Marijuana Grey Market: The Approaches to Pursue

Approach	Challenges	Efficacy	Next Steps
<ul style="list-style-type: none"> Work to adopt modified definition of “assist” to limit home grows to a qualifying individual’s primary residence. 	<ul style="list-style-type: none"> Requires legislation 	HIGH	<ul style="list-style-type: none"> Continue to have conversations with relevant stakeholders
<ul style="list-style-type: none"> Explore hard plant count limit that brings us in line with other states OR tie legal ability to register as a caregiver or grow as a patient to compliance with local zoning restrictions. 	<ul style="list-style-type: none"> Requires legislation 	HIGH	<ul style="list-style-type: none"> Continue to have conversations with relevant stakeholders
<ul style="list-style-type: none"> Create a low-tech tagging system for plants that allows local law enforcement to check that plants are being delivered to patients. 	<ul style="list-style-type: none"> Requires legislation Local law enforcement must monitor and regulate 	HIGH	<ul style="list-style-type: none"> Flesh out a proof of concept
<ul style="list-style-type: none"> Increase funding and resources for state and local law enforcement. Provide resources for LLEs and DAs. Explore state-level expertise. 	<ul style="list-style-type: none"> Necessitates additional time, resources, and bandwidth from state agencies and partners. Legal ambiguities remain. Current law maintains the legality of most unlicensed grows until diversion occurs making law enforcement complex. 	MEDIUM	<ul style="list-style-type: none"> CDPS and LLE estimate budget allocation Determine centralized or decentralized approach



COLORADO
Office of the Governor