Impact of Legalized and Medical Marijuana on the Selection of Police Officer Applicants

Richard C. Wihera, PsyD, ABPP
Police Psychological Services Section
IACP – Orlando, FL
October 26, 2014
Disclaimers and Disclosures

In addition to his private practice as a consulting police psychologist, Dr. Wihera is employed as the Director of Addiction Disorder Services at the Grand Junction VA Medical Center. However, he is here today in his capacity as a private practitioner, and the views and opinions expressed are his own and he is **not** here as a representative of the Grand Junction VA Medical Center, Veterans Health Administration, or the Federal Government.
Financial Disclosure #1

All three of the presenters derive a portion of their income by providing professional psychological consulting services to law enforcement agencies.
Financial Disclosure #2

None of the presenters derive any income from the cultivation, distribution or sale of marijuana.
Learning Objectives

1. Gain an understanding of how quickly marijuana is becoming “mainstream”

2. Be able to identify at least three pre-hire behavioral correlates with the use of marijuana

3. Be able to explain the impact of the ADA on inquiries of applicants on the use of marijuana

4. Be better equipped to establish policy and practices for the assessment of applicants who have engaged in the use of medical or recreational marijuana.
Brief History of Marijuana

• Marijuana found in tomb of Chinese shaman dating to 2700 BC

• First written reference to marijuana in China in 1500 BC
Early Medicinal Use

- 1200 BC Egyptians use cannabis for glaucoma, inflammation and enemas
- 1000 BC a drink of milk and cannabis is used in India as anesthetic
- 200 BC medical cannabis is used in Ancient Greece
• 1 AD Chinese medical text recommends marijuana for more than 100 ailments
• 70 AD Roman medical text lists cannabis to treat earaches and to suppress sexual longing
• 1500 Muslim doctors use marijuana to reduce sexuality
Marijuana Moves West for Hemp

• Settlers in Jamestown are required by the Crown to grow cannabis for hemp

• Napoleon’s forces bring marijuana back from Egypt
But more than just hemp, by the 1840’s Marijuana has become well-accepted medicine in US and UK
In 1850
Marijuana is added to US Pharmacopeia
But Attitudes Turn with the Turn of the Century

- Prohibition
- Various social concerns associated with marijuana
- 1906 – “Pure Food and Drugs Act” requires labeling of medicine including marijuana
- 1911 – Massachusetts becomes first state to outlaw cannabis, many states soon follow
By 1930’s it’s Reefer Madness

Beware! Young and Old—People in All Walks of Life!

This may be handed you by the friendly stranger. It contains the Killer Drug “Marihuana” -- a powerful narcotic in which lurks Murder! Insanity! Death!

WARNING!
Dope peddlers are shrewd! They may put some of this drug in the or in the or in the tobacco cigarette.

Address: THE INTER-STATE NARCOTIC ASSOCIATION
53 W. Jackson Blvd.
Chicago, Illinois, U. S. A.
Illegal in all States by 1937

But sales continue for hemp and medicinal use, but the Feds get their share through the “Marihuana Tax Act”
Marijuana Debate Continues for Decades

<table>
<thead>
<tr>
<th>Medical World</th>
<th>Law Makers</th>
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<tr>
<td>• American Medical Assn opposes the “Marihuana Tax Act” and support research on medical cannabis (1937)</td>
<td>• “Boggs Act” establishes minimum prison sentence of 2-5 years for possession of marijuana (1951)</td>
</tr>
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<td>• New York Academy of Medicine “LaGuardia Report” concludes marijuana less dangerous than believed (1944)</td>
<td>• Marijuana is included in Narcotics Control Act which increases penalties for marijuana possession to 2-10 years and $20,000 fine (1956)</td>
</tr>
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</table>
US Controlled Substances Act classifies marijuana as Schedule I drug with “No Accepted Medical Use” (1970)

National Commission on Marijuana and Drug Abuse recommends decriminalizing marijuana (1972)

President Nixon ignores his own commission and declares “War on Drugs” (1972)

Federal Court recognizes use of medical marijuana as a “medical necessity” (1976)
First Legalization

- California becomes first state to legalize medical marijuana in 1996 followed by three other states in 1998 (Colorado in 2000)

- Federal agents execute widespread raids on medical marijuana dispensaries in California
Major Changes in Last 5 Years

• 2009 – US Attorney General says raids on medical marijuana clinics will not continue, and that DOJ will not prioritize prosecution of medical marijuana patients

• 2010 – US Department of Veteran Affairs relaxes marijuana rules for Veterans

• 2012 – Colorado passes Amendment 64

• 2013 – US Justice Department announces they will not challenge state marijuana laws

• 1/20/14 President Obama is quoted as saying “I don’t think it’s any more dangerous than alcohol”
Colorado Amendment 64 - Recreational Marijuana Becomes Legal in Colorado 1/1/14

• “Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana in the workplace or to affect the ability of employers to have policies restricting the use of marijuana by employees.”

_Colo. Const. art. XVIII, § 16(6)(a)_
With Recreational Marijuana Legal in Colorado Things Move Really Fast!

• Jan 16 – Colorado Springs airport becomes first to install marijuana drop boxes
• Feb 14 – Guidance issued by US Justice Dept and Treasury Dept allow for banking for legal marijuana transactions
• Feb 14 – Colorado legislators debate if marijuana should be taxed as agricultural or commercial property

• Feb 22 – Girl Scouts sell cookies outside pot shop in Denver

• Feb 25 – Pueblo County reports its two pot shops had $1 million in revenue in January
  – To finance new judicial center the County Budget Director quips “We’re going to have to sell more weed.”
• March 6 – Colorado DOT spends $1 Million on “Drive High, Get a DUI” campaign
• March 10 – Colorado earned over $2 million in tax revenue from marijuana in January
• March 13 – Colorado Court of Appeals rules some marijuana convictions may be overturned
• April 1 – Colorado jumps to #3 most popular destination for college spring break

• April 15 – The first “B&B” (“Bud and Breakfast”) opens in Denver, many more follow

• April 19 – Colorado Symphony announces cannabis friendly series called “Classical Cannabis – The High Notes” – Concert is BYOC – “Bring your own cannabis”
• June 6 – Hershey Candy Company files suit against Colorado marijuana edible company

• July 17 – Marijuana edibles recalled due to possible contamination
• July 27 – Homeless shelters in Denver report 25% increase in homeless 15-18 y.o. and cite marijuana as major cause

• Aug 1 – Denver County Fair includes a “Pot Pavilion”
• Sep 21 – Free marijuana give-away for Veterans

• Sep 26 – Colorado Marijuana Enforcement Division shuts down recreational mj shop for failing to test the potency of its marijuana
• Sep 26 – Denver hosts the Marijuana Tech Startup Competition

• Oct 27 – Cannabis Business Summit in Denver – “Where Commerce Meets a Revolution”
October 10 – Latest mj sales numbers released
- June 2014 = $24.7 million
- July 2014 = $29.7 million
- August 2014 = $33.0 million

Over 250 marijuana shops in Colorado –
- Find them by Google or on your smartphone
- Get an app on your smartphone to compare shops
After a Century of Controversy, Marijuana Becomes Mainstream in Most All Aspects of the Community in 10 Months

- Legislative
- Taxation
- State & local budgets
- Judiciary
- Government oversight for quality control
- Hospitality
- Business
- Arts
- Social organizations
- Give-aways to “needy”
It’s Not Quite Reefer Madness, But it’s Still a Drug and the Adverse Effects Are Well Documented

• Short Term Effects
  – Impaired short-term memory
  – Impaired motor coordination
  – Altered judgment
  – In high doses, paranoia and psychosis

New England Journal of Medicine, June 2014
“Adverse Health Effects of Marijuana Use”
• Long-term Effects
  – Addiction (greater risk the younger started)
  – Altered brain development
  – Poor educational outcome
  – Cognitive impairment with lower IQ
  – Diminished life satisfaction
  – Chronic bronchitis
  – Increased risk of psychotic disorders

New England Journal of Medicine, June 2014
“Adverse Health Effects of Marijuana Use”
Marijuana Use By Police and Public Safety Applicants: Negative Background Correlates of Frequency and Recency of Use

Presenter: Mike Roberts, Ph.D., ABPP
Researcher: Ryan Roberts, J.D., M.A.

mikeroberts@lepsinc.com (408) 356-9696
Research Sample Characteristics

- 66,479 applicants to police, fire, corrections, probation, communications dispatch positions
- Administered the JR&A PsyQ as part of their pre-employment psychological screening process (2000-current)
- Positions Applied For/Proportion of total sample:
  - Police/deputy/trooper: 53%
  - Corrections: 35%
  - Firefighter: 5%
  - Communications: 3%
  - Probation: 2%
  - Reserve Officer: 1%
PsyQ Question: “During your entire life, how often have you tried, used, or experimented with marijuana other than as a prescription drug or treatment legally prescribed to you?”

Never: 52%
Less than 20 times: 43%
21-50 times: 3%
51-100 times: 1%
101-500 times: 1%
More than 500 times: <1%
# Lifetime Frequency Of Marijuana Use By Ethnic Group: No Adverse Impact

<table>
<thead>
<tr>
<th>Lifetime Marijuana Use</th>
<th>White</th>
<th>Black</th>
<th>Hispanic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Never</td>
<td>48%</td>
<td>62%</td>
<td>54%</td>
</tr>
<tr>
<td>Less than 20x</td>
<td>44%</td>
<td>32%</td>
<td>42%</td>
</tr>
<tr>
<td>21-50x</td>
<td>3%</td>
<td>2%</td>
<td>2%</td>
</tr>
<tr>
<td>51 or more times</td>
<td>4%</td>
<td>3%</td>
<td>2%</td>
</tr>
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Factors to Consider Before Changing Lifetime Marijuana Use Screening Standard

1. Fewer than 5% of applicants have used marijuana more than 20 times
2. There is no negative impact on protected class applicants regardless of the cutoff standard used
3. There is a clear pattern of greater likelihood of a pre-hire history of negative background behavior among the 5% of applicants who have used marijuana more than 20 times
## Lifetime Use of Marijuana by Negative Behavioral Admissions

<table>
<thead>
<tr>
<th>Negative Behavioral Admissions</th>
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<th>Used Marijuana ( 21-50 \times )</th>
<th>Used Marijuana ( 51+\times )</th>
</tr>
</thead>
<tbody>
<tr>
<td>Blackouts after drinking</td>
<td>12%</td>
<td>25%</td>
<td>31%</td>
</tr>
<tr>
<td>Used Cocaine</td>
<td>3%</td>
<td>21%</td>
<td>35%</td>
</tr>
<tr>
<td>Used Hallucinogens</td>
<td>2%</td>
<td>21%</td>
<td>34%</td>
</tr>
<tr>
<td>Education Level: GED</td>
<td>5%</td>
<td>6%</td>
<td>12%</td>
</tr>
<tr>
<td>Considered Suicide</td>
<td>1%</td>
<td>3%</td>
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<tr>
<td>Fired 2 or more times</td>
<td>4%</td>
<td>6%</td>
<td>10%</td>
</tr>
<tr>
<td>Reprimanded 3 or more times</td>
<td>5%</td>
<td>7%</td>
<td>9%</td>
</tr>
<tr>
<td>2+ arguments at work (e.g., voice raised, swearing)</td>
<td>5%</td>
<td>9%</td>
<td>13%</td>
</tr>
<tr>
<td>2+ personality conflicts at work</td>
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<td>14%</td>
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<td>8%</td>
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<td>2+ disciplinary actions in military</td>
<td>4%</td>
<td>10%</td>
<td>14%</td>
</tr>
<tr>
<td>8+ traffic citations</td>
<td>4%</td>
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<tr>
<td>Arrested 2 or more times</td>
<td>9%</td>
<td>20%</td>
<td>29%</td>
</tr>
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<td>2+ Misdemeanor convictions</td>
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<td>16%</td>
<td>20%</td>
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<tr>
<td>Has driven under influence of illegal drugs</td>
<td>5%</td>
<td>43%</td>
<td>62%</td>
</tr>
<tr>
<td>2 + fights since age 18</td>
<td>8%</td>
<td>17%</td>
<td>23%</td>
</tr>
<tr>
<td>Hit mate (DV)</td>
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<td>Is or was a smoker</td>
<td>34%</td>
<td>60%</td>
<td>73%</td>
</tr>
<tr>
<td>Consulted MHP 2+ times</td>
<td>6%</td>
<td>10%</td>
<td>14%</td>
</tr>
<tr>
<td>Used prostitute</td>
<td>3%</td>
<td>6%</td>
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<tr>
<td>Commit DUI</td>
<td>20%</td>
<td>30%</td>
<td>28%</td>
</tr>
<tr>
<td>Blackouts after consuming alcohol</td>
<td>12%</td>
<td>26%</td>
<td>28%</td>
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Conclusions

1. Even if legalized, the use of marijuana will continue to be a high risk behavior just like other legal, but high risk activities, e.g., using alcohol to excess

2. Many agencies set standards for high risk behaviors such as domestic violence, and the use/abuse of legal drugs like alcohol (e.g., 6 plus drinks at one sitting once a month or more is an automatic DQ for some agencies), so maintaining cutoffs for marijuana use - even if it legalized – seems appropriate.
Conclusions

3. Eliminating cutoffs for lifetime marijuana use is just “kicking the can down the road.” The 5% of applicants who benefit from relaxed marijuana standards present more problems at the background, polygraph and psychological screening, resulting in increased cost to the agency and an increased risk of hiring applicants who exhibit counterproductive workplace behavior.

4. Hiring applicants with higher lifetime marijuana use rates, or recent use of marijuana, is a high-risk-low-reward decision with potential long term consequences (see US Post Office study)
US Post Office Study of Applicants Who Tested Positive For Use of Illegal Drugs

• In 1987, 4,396 job applicants who tested positive for drugs were hired at 21 postal facilities. Supervisors were not told about test results.

• Drugs for which tests were positive were:
  • Marijuana, 65%
  • Cocaine, 24%
  • Other drugs, 11%
After three years, job performance was evaluated for these employers and for employees who had tested negative. Employees testing positive:

- Were 2.4 times more likely to be formally disciplined
- Had a 66% higher absenteeism rate
- Were 1.9 times more likely to file high amounts of medical claims
- Were 3.4 times more likely to file alcohol or drug-related medical claims
- Were 60% more likely to be heavy users of leave allowance
- Had an involuntary discharge rate of 70%

Drugs in The Workplace

• Compared to non-abusers, substance abusing workers are:
  • 1/3 less productive
  • 3 times more likely to be absent from work
  • 5 times more likely to file a workers compensation claim
  • Users of 10 times as many sick days (General Motors study)
• Compared to non-users, workers who use cocaine are:
  • 1.5 times more likely to have an accident
  • Twice as likely to be injured
  • More than twice as likely to be absent from work
Drugs in The Workplace

• Pinkerton Security has reported that 86% of corporate thefts they investigate are related to substance abuse3

Legal Issues Involving Marijuana Use As a Factor In the Psychological Screening of Police Candidates

Dave Corey, Ph.D., ABPP
Corey & Stewart, Portland, Oregon
October 26, 2014
IACP Police Psychological Services Section
Orlando, Florida
Acknowledgments

James M. Shore, Esq., Stoel Rives, LLP, and Terry Weiner, City Attorney, City of Ellensburg, Washington, provided much of the legal research underlying this presentation.
U.S. Jurisdictions Permitting the Medical Use of Marijuana

1. Alaska  
2. Arizona  
3. California  
4. **Colorado**  
5. Connecticut  
6. Delaware  
7. District of Columbia  
8. Hawaii  
9. Illinois  
10. Maine  
11. Maryland  
12. Massachusetts  
13. Michigan  
14. Minnesota  
15. Montana  
16. New Hampshire  
17. Nevada  
18. New Jersey  
19. New Mexico  
20. New York  
21. Oregon  
22. Rhode Island  
23. Vermont  
24. **Washington**

**Also permits recreational use**
Marijuana and Employment Litigation

• Despite the rapidly growing national trend involving the loosening of marijuana laws, employers have been largely unaffected in employment litigation

• 21 U.S.C. § 801, *et seq.*, federal Controlled Substances Act
  – *Cuff v. Washington County* (Oregon Court of Appeals, 2002)
  – *Gonzales v. Raich* (545 U.S. 1, 2005)
Marijuana and Employment Litigation

- Supreme courts of Washington, Oregon, Montana, and California; other state courts; and the federal courts agree:
  1. Employees may be disciplined or terminated for marijuana use, and
  2. Employers need not accommodate medical marijuana use for a disability-related condition, regardless of the facts

- Arbitrators mostly have taken a different approach
On the Horizon: Coats v. Dish Network

• Brandon Coats, quadriplegic employee at Dish Network, lost his job for off-duty use of medical marijuana

• Colorado Supreme Court to decide whether:
  1. Colorado’s Lawful Activities Statute protects employees from discretionary discharge for lawful use of medical marijuana not affecting job performance
  2. Colorado’s Medical Marijuana Amendment makes the use of medical marijuana “lawful” and confers a right to use medical marijuana to personal lawfully registered with the state
Marijuana Use As a Disqualifying Factor In Psychological Screening

• Currently employers are free to establish zero-tolerance drug policies and policies against hiring or retaining employees who violate federal law
• Disqualification thresholds for past marijuana use are being lowered by some employers, including police agencies, and are being considered by many others
• Caution should be used when basing a disqualification decision on a candidate’s past use of marijuana within the employer’s threshold for permissible use, especially if used for medicinal purposes
Disqualifying Factors In Psychological Screening: Current Non-Medicinal Use, Loss of Self-Control

18 U.S. Code § 922(g)(3):
"It shall be unlawful for any person who is an unlawful user of or addicted to any controlled substance (as defined in section 102 of the Controlled Substances Act, 21 USC 802) to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce."
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