

**RE: No. 15-0103 - The Control, Regulate, and Tax Adult Use of Marijuana Act, commonly referred to as the "Parker Initiative" Key Provisions**

On November 2, 2015, proponents for the legalization of marijuana, including Sean Parker, submitted a proposed state-wide ballot initiative with a request for title and summary. The proposed initiative was assigned number 15-0103, and was titled, "*The Control, Regulate, and Tax Adult Use of Marijuana Act.*" It is also known as the "Parker Initiative", and the "Adult Use of Marijuana Act" or the "AUMA." An amended version of the proposed initiative was submitted on December 7, 2015. Title and Summary were prepared on January 6, 2016.

If passed by the voters, the initiative would legalize the possession of one ounce of marijuana and the cultivation of six plants by adults, 21 years of age and over. Beginning in 2018, it would allow licenses and regulations for small and medium cultivators and for retail sales. It would also impose state sales taxes of 15% of the sales price and cultivation taxes per ounce of flowers and leaves.

The Office of the San Diego County District Attorney has not taken a position on this initiative. However, there are concerns that are worth noting. Numerous articles and studies on the recreational marijuana laws in other states, and the impact of those laws on communities have been published. One underlying reality facing states that have legalized marijuana is that the federal government still classifies it as a Schedule I drug under the Controlled Substances Abuse Act of 1970 (the "CSA"). It remains illegal at the federal level. All of the ramifications of this conflict in the laws is yet to be determined. What is clear is that the usual venture capitalists, and investors are steering clear of this risky business. This wild-west of an industry is unlike any we have ever known, and by studying what challenges the other states are facing, we can begin to understand the price we may pay from the legalization of marijuana, and from passage of this particular initiative.

**The Underground Black Market:**

Proponents of the initiative claim that "by bringing marijuana into a regulated and legitimate market, AUMA creates a transparent and accountable system. This will help police crackdown on the underground black market that currently benefits violent drug cartels and transnational gangs, which are making billions from marijuana trafficking and jeopardizing public safety." However, it is a mistake to infer that cartels and other criminals will quietly get out of the drug dealing business, and not infiltrate the burgeoning multi-billion dollar a year marijuana industry. Cartels and gangs don't play by normal business rules and don't obey regulations and laws. The cartels are notorious for their innovative smuggling strategies and their flagrant use of our public land to grow thousands and thousands of marijuana plants. "The competitive advantage of

criminal organizations stems from their proficiency in violence, intimidation and smuggling, none of which are essential to compete in legal markets," says Ethan Nadelmann, director of the Drug Policy Alliance. While the trafficking of cocaine, heroin and methamphetamine is the main focus of U.S. law enforcement, it is marijuana that has long provided most of the revenue for Mexican drug cartels. More than 60 percent of the cartels' revenue -- \$8.6 billion out of \$13.8 billion in 2006 -- came from U.S. marijuana sales, according to the White House Office of National Drug Control Policy. There are no indications that this will change; rather indications are that they will increase their land holdings in states where the cultivation and sales are legal.

In fact, there has been a spike in marijuana shipments out of the legalized region across state lines to supply users in neighboring states where marijuana remains illegal. "No one knows exactly how much pot leaves Colorado. When illegal shipments are seized, it's often impossible to prove where the marijuana was grown. But court documents and interviews with law enforcement officials indicate well-organized traffickers are seeking refuge in Colorado's flourishing pot industry," according to an Associated Press article in January 2016. The Rocky Mountain High Intensity Drug Trafficking Area (RMHIDTA) 2015 annual report shows that in one year after marijuana retail stores started operating, there was a 25% increase in the number of interstate seizures with most of the marijuana going to Kansas and Missouri. Interdiction experts estimate they seize 10% or less of what gets through undetected.

Although anecdotal evidence suggests the legalization of marijuana has reduced the cartels multi-billion dollar bottomline, what will prevent these dangerous organizations and other criminals from infiltrating the so-called "legal structure" offered under AUMA. Shortly before Colorado legalized commercial marijuana in 2013, agents served search warrants at 14 Denver dispensaries operated by individuals with alleged ties to Columbian cartels. These enterprises excel at money laundering. The criminal structures are extremely complex, with far-reaching financial tentacles that easily penetrate "legal" businesses, and especially those businesses where the operators are already entrenched. A recent article in the Los Angeles Times reported that Washington's State Liquor and Cannabis Board will now allow investors from around the U.S. to help finance the state's exploding legal marijuana industry. Oregon approved a similar practice, and Colorado is expected to follow suit, eliminating its two year residency requirement for financiers. This change comes with the risk that cartels will become the new breed of marijuana venture capitalists.

As far as the importation of marijuana from other countries, advocates argue the cartels are being pushed aside by the gradual legalization of marijuana in the U.S. A recent TIME Magazine article points out that despite several states legalizing marijuana, cartels are not going away, but simply shifting their business strategy. "Seizures of both heroin and crystal meth on the U.S.-Mexico border have gone up as those of marijuana have sunk, according to U.S. Department of Homeland Security (DHS). In 2015, DHS figures revealed an astounding 300% increase in California meth seizures coming from Mexico in the last few years.

### **Driving Under The Influence of Drugs (DUID):**

Legalization of marijuana in Colorado, Washington and Oregon has led to more motorists driving under the influence and there is no reason to believe this trend will not manifest in California if AUMA passes. Those who smoke today's highly potent marijuana and get behind the wheel are a risk to all drivers. The data already shows these individuals cause significant injury and financial loss to innocent motorists. Whether a driver is impaired due to alcohol or

marijuana or both, it is illegal. Driving under the influence of marijuana is already on the rise and much harder to prove in a court of law.

Colorado has seen a spike in driving fatalities in which marijuana alone was involved, according to Insurance.com. The trend started in 2009 — the year medical marijuana dispensaries were effectively legalized at the state level. In 2015, the RMHIDTA annual report shows that one year after commercial marijuana was legalized, Denver Police Department reported a 100% increase in DUIDs involving marijuana. Nearby counties, such as Larimer and Aurora, also reported significant increases of DUIDs involving marijuana. Newly released data from the Washington Traffic Safety Commission (WTSC) shows that marijuana is increasing as a factor in deadly crashes. The number of drivers involved in fatal crashes who tested positive for marijuana increased 48 percent from 2013 to 2014.

Considering how much taxable revenue AUMA anticipates will be generated by the legalization of marijuana, it offers a meager three-million dollars a year for four years to the California Highway Patrol (CHP) to develop and implement rigorous evidence-based DUID testing. In California there is currently no DUID *standard for testing the level of someone who may be Driving Under the Influence of marijuana, and creating an evidence based standard may be problematic.* States that have legalized medical marijuana, and more recently commercial marijuana, are still trying to develop a viable DUID test that is comparable to the DUI Blood Alcohol Content matrix.

In 2013, Colorado passed a law that put limits on blood levels while driving and created a legal presumption that at 5 nanograms or more of active THC per milliliter, a driver is impaired. While a blood draw is considered the gold standard to determine impairment for alcohol, there are issues when it comes to marijuana because it converts more quickly than alcohol. Marijuana impaired driving arrests are being successfully challenged due to the amount of time that passes between pulling over suspected impaired drivers, determining if they are under the influence of marijuana, finding a judge, obtaining a search warrant to perform a blood draw and then having that sample tested at the state toxicology laboratory. Law enforcement in California, which legalized medical marijuana in 1996, and states that have legalized recreational marijuana since and now have more impaired drivers on the road, continue to grapple with the marijuana DUID issue due to the lack of scientific advancements in this area.

### **Dangers to Teens and Children**

AUMA claims it will protect teens from marijuana by limiting marketing and regulating packaging and labeling. Unfortunately, current AUMA guidelines, which are similar to those in the other states, will not protect teens. It allows for the delivery of this gateway drug right to their doorstep.

Those under the age of 18 will have greater access to marijuana than ever before and the punishment for breaking the laws promulgated by AUMA are so lenient that they will not serve as a deterrent. Teenagers who grow their own marijuana, smoke or sell it and get caught will receive no meaningful punishment. If marijuana is legal for those 21 and older, it becomes “normalized,” and sends the wrong message to our teens. If the adults around them are using and growing marijuana, and eating marijuana products like gummy bears and lollipops, they may conclude that marijuana must be okay and safe.

AUMA states that "no licensee shall advertise or market" marijuana products in a manner to encourage persons under the age of 21 years to consume marijuana. Colorado has the same law, but enforcing it is another issue. Dispensaries in Colorado, which are held to similar anti-child labeling compliance regulations, package marijuana products with names such as "Girl Scout Cookies." According to the 2015 RMHIDTA report, marijuana medical centers currently outnumber Starbucks coffee shops and recreational marijuana stores outnumber McDonalds restaurants in Colorado. In Ohio, marijuana proponents have created a campaign "super-hero" mascot. The cartoonish marijuana budhead is named "Buddie." He is currently touring college campuses to drum up support for legalization of marijuana in that state. Teenagers under 18 years of age will have a tough time ignoring the marketing blitz in their neighborhoods, and those between 18 and 20 years of age will be faced with marijuana marketing on college campuses.

A New England Journal of Medicine article states, "Although the use of marijuana remains illegal everywhere for people under 21 years of age, today's edibles are likely to appeal to children and young people. Even if consumption by minors is not intended by manufacturers, the packaging of edibles brings to mind the tort-law concept of the "attractive nuisance": a hazardous condition that is foreseeably likely to attract children who are unable to appreciate the risk involved. It also evokes tobacco companies' use of advertising campaigns with youth appeal, such as the long-running campaign featuring Joe Camel."

There are real, significant dangers to children because of these slick marketing campaigns, packaging, and sadly, the tragedy of accessibility to toddlers in their home. Dozens of youngsters find the "edible" marijuana products, brightly packaged and adorned with cartoon characters, naturally appealing. In 2014, when marijuana retail businesses began operating, Colorado's Rocky Mountain Poison and Drug Control Center marijuana-related calls increased over 70 percent from 2013. During that same time, the Center reported 38 cases of marijuana related exposures for children 0 to 5 years of age.

In 2015, the Washington Poison Control received 272 calls regarding exposures to marijuana products. Of those 272 cases, nearly half were for youngsters 19 years of age and under. The majority of calls were regarding 13 – 19 year olds who had been exposed to some form of marijuana, and more than 20 calls were for toddlers three years of age and under also exposed to some form of marijuana.

Not only does the legalization of marijuana in general cause concern, but some of the provisions in the AUMA are problematic.

The following are some of the concerns surrounding its key provisions.

### **Cultivation**

A homeowner or a renter could grow, harvest, and process up to six plants in every home or apartment. (A landowner may, however, restrict the ability for a tenant to do so.)

While local jurisdictions could ban outdoor cultivation, indoor cultivation of six plants or less could not be banned. Enforcement of the latter provision is questionable.

### **License to Sell Marijuana**

The initiative allows persons convicted of dealing large amounts of controlled substances such as heroin, methamphetamine or cocaine to become “legal marijuana dealers.” There is nothing in the initiative that will prevent anyone with a prior conviction involving dealing any drug (Cocaine, PCP, Heroin, Methamphetamine, etc.) from getting a license except for those who fall into the following categories:

- Persons previously convicted of using a minor to commit a drug felony: i.e. the practice of using a child as a courier to sell drugs to other children, but not the more common practice of using a child to hold the dealer’s stash, serve as a lookout, or serve as a courier to adult buyers.
- Persons convicted of a drug felony involving quantities exceeding one kilogram of a controlled substance. Keep in mind, however, that an amount that is barely less than one kilogram represents a substantial level of drug dealing. For example, slightly less than one kilogram of Heroin can yield approximately 20-thousand doses, one kilogram of Meth yields 10-thousand doses, one kilogram of Cocaine yields 10-thousand doses.
- Persons convicted of manufacturing more than one pound of solid or three gallons of liquid drugs. Again, these are substantial quantities.

***The Parker Initiative is very explicit that a prior conviction for any trafficking or manufacture of a controlled substance may not, in itself, be the sole grounds for rejecting a license.***

Thus, those who were convicted of dealing very high quantities of drugs, thousands upon thousands of doses, cannot be denied a license on that basis alone. The end result may very well be that convicted drug dealers will continue to deal both legal drugs such as marijuana, in the same place and at the same time they continue to deal illegal drugs, jeopardizing public safety. Only once caught, does the illegal trafficking of drugs become grounds for license revocation.

### **Prior Marijuana Convictions**

An individual previously convicted of any marijuana offenses, no matter how recent, may petition to have his conviction expunged. This includes individuals who are currently serving time, as well as persons whose activities were used to advance the objectives of a criminal street gang. Prosecutors will no longer be able to allege one-year prison prior enhancements, if the underlying conviction involved marijuana, and the conviction has been expunged.

### **Penalties for Violations**

The penalties for possession for those 18 and younger suggest they may be at risk to become the users, growers and dealers of tomorrow. The penalty for a first time possession offense for those 18 years of age and under is an infraction (whether it’s possession of less than or more than an ounce of marijuana). Penalties for first time offenders 18 years of age and under who plant, cultivate or harvests ANY marijuana face an infraction. Every person under the age of 18 who possesses marijuana for sale also faces an infraction. This initiative provides no incentive for teenagers not to get into the business of using and selling marijuana.

The penalties for adults and juveniles are as follows:

Smoking marijuana in a public place is an infraction punishable by \$100; but if under 18, must complete 4 hours of drug education and up to 10 hours community service in lieu of the fine.

Smoking/Vaping in violation of no smoking signs is an infraction with \$250 fine. For juvenile, it is four hours of drug education and up to 20 hours of community service.

Possession of less than an ounce of marijuana by an individual 18 - 20 years of age would be an infraction with a maximum fine of \$100.

Possession of less than an ounce of marijuana (4 grams concentrated cannabis) by a person under the age of 18 is an infraction and is punishable by 4 hours of drug education and up to 10 hours community service in lieu of the fine for a first offense, and 6 hours of drug education and 20 hours of community service for each subsequent offense.

Possession of more than an ounce of marijuana (8 grams of concentrated cannabis if over 21 pursuant to HS 11362.1 (a) (2), otherwise 4 grams) by an individual over 18 would remain a violation of HS11357(b) and would be subject to imprisonment of not more than six months or by of fine of \$500, or by both fine and imprisonment; but if under 18, it is an infraction with 8 hours of drug education and 40 hours of community service for a first offense and 10 hours of drug education and up to 60 hours of community service for a second offense.

Use of marijuana within 1000 feet of a school or day care, if detectable and children are present, is punishable as an infraction with a \$250 fine, but if under 18, it is punishable by 4 hours drug education and 20 hours community service.

Possession or use of marijuana on a school or day care for anyone *over 18* is a misdemeanor, up to \$250 fine for a first offense, and a \$500 fine and up to 10 days in county jail for a second offense.

Possession or use of marijuana on a school or day care for anyone *under 18* is an infraction, with 8 hours of drug education and 40 hours of community service for a first offense and 10 hours of drug education and up to 60 hours of community service for a second offense.

Growing more than 6 plants or otherwise violating the cultivation rules for personal use would be an infraction with up to a \$250 fine, except that any underage growers, persons 18 - 20 who grow up to 6 plants thus violating the rules, would be guilty of an infraction with a fine of up to \$100. And those persons *under 18*, any cultivation would be an infraction, with 8 hours of drug education and 40 hours of community service for a first offense and 10 hours of drug education and up to 60 hours of community service for a second offense.

Except that anyone over 18 growing more than six plants may be punished by 16m, 2, 3 years in local prison if, they have a prior conviction of specified sex offenses with a child under 14, homicide or solicitation of homicide offenses, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, an offense requiring registration as a sex offender, two prior convictions for gift or sales, the offense involved the knowing sale to a person under the age of 18, importing or exporting marijuana in or out of State or any serious and/or violent felony offense punishable in California by life imprisonment or death; if they have two prior convictions for growing

more than 6 plants, or, if the offense results in the diversion of water, pollution, the discharge of hazardous waste, or environmental harm.

Possession of marijuana for sale would be a misdemeanor with a maximum penalty of \$500 fine and up to six months in county jail. Juvenile violators could get 8 hours of drug education and 10 hours of community service for a first offense or 6 hours and 20 hours of community service for subsequent offenses.

Except that individuals over 21 who possess marijuana for sales and the offense involves knowingly hiring or using a person younger than 21 to grow or sell marijuana is a felony punishable by 16m, 2, 3 years in local prison.

Felony prosecutions are also available for individuals over 18 who possess for sale, sell or transport marijuana for sales if they have a prior conviction of specified sex offenses with a child under 14, homicide or solicitation of homicide offenses, assault with a machine gun on a peace officer or firefighter, possession of a weapon of mass destruction, an offense requiring registration as a sex offender, two prior convictions for sales or transportation, the offense involved the knowing sale to a person under the age of 18, importing or exporting more than 1 ounce (4 grams concentrated) marijuana in or out of state or any serious and/or violent felony offense punishable in California by life imprisonment or death; in which case they will serve 16m, 2, or 3 years in local prison for possession for sales, and 2-3-4 years in local prison for sales or transportation for sales.

Manufacturing of Butane Hash Oil would be a felony, 3/5/7 years in State Prison and \$50,000 fine.

### **Marketing:**

Marijuana businesses would be banned from locating within 600 feet of schools. Consumption is prohibited within 1,000 feet of a school (K-12) or youth-center while children are present, except on residential property or on licensed premises and provided the smoking is not detectable by the children.

### **Conclusion:**

The legalization of marijuana in general raises concerns regarding the involvement of cartels who may buy up the land in California and monopolize the industry through violence and intimidation. Additionally, the AUMA will allow those persons who have been convicted of dealing large amounts of controlled substances such as heroin, methamphetamine or cocaine to become licensed marijuana dealers, allowing a greater criminal presence in the industry.

Rates of DUID will rise in California as they have in the other states that have legalized marijuana. AUMA allocates \$3 million annually to the CHP to establish and adopt DUID enforcement and identification standards and protocols. Currently, none exist in California. However, there is no clarification regarding THC remnant levels, especially if the person is a Medical Marijuana patient or a chronic user and evidence based standards will be difficult to develop. In the meantime, people will continue to drive under the influence, injuring and killing other innocent drivers on the road.

AUMA will allow those 21 and older to grow up to six indoor plants. How will anyone know if someone is growing six or 16 plants inside their home? More importantly, if the person doing the growing is a juvenile, the punishment is an infraction. **In fact, juveniles face only an infraction for possession, for growing, for selling or for transporting ANY amount of marijuana.** Thus, the AUMA actually encourages the entry of juveniles into the industry.

These issues are only some of the concerns that arise from the legalization of marijuana and the passage of the AUMA. These concerns must be considered before an intelligent decision is made on whether to support or oppose this measure.