

Cannabis and Tribal Courts: The Changing Landscape

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Judge Kate Huffman

Learning Objectives

1. Understand the changing landscape of cannabis laws across Federal, State and Tribal jurisdictions
2. Explain the effect of cannabis use on the brain
3. State the differences inherent in impairment from alcohol and marijuana

Why the debate over cannabis?

Perceptions v. Reality

Opponents and Proponents of Legalization



PUBLIC HEALTH
AND SAFETY
RISK



NO MORE
DANGEROUS
THAN ALCOHOL



THERAPEUTIC
BENEFITS



A MONEYSMAKER
FOR STATES



SOCIAL JUSTICE
INITIATIVE

Judicial Involvement

Custody and
parenting
time

Terms and
conditions of
supervision

Probable
cause

Field sobriety
tests

Record
sealing and
expungement

Cannabis Basics

Prohibited under federal law

May be antisocial

Not regarded as criminogenic

Compare to: Heroin - committing crime to fund use

Cocaine and methamphetamines - may result in other offenses primarily related to increased violence

Evolving Marijuana Laws

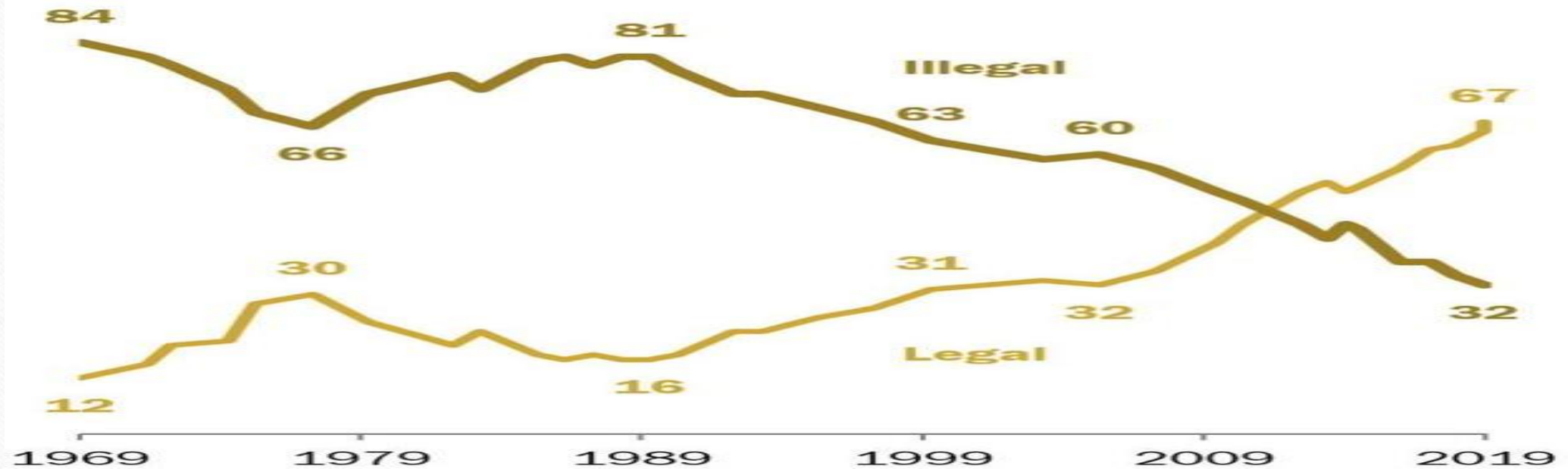
Remains strictly prohibited as a Schedule I substance under federal law

Rapidly changing national patchwork of laws

Reflects ongoing disagreement about potential harm and benefits, regulation, production, taxation, consumption

U.S. public opinion on legalizing marijuana, 1969-2019

Do you think the use of marijuana should be made legal, or not?



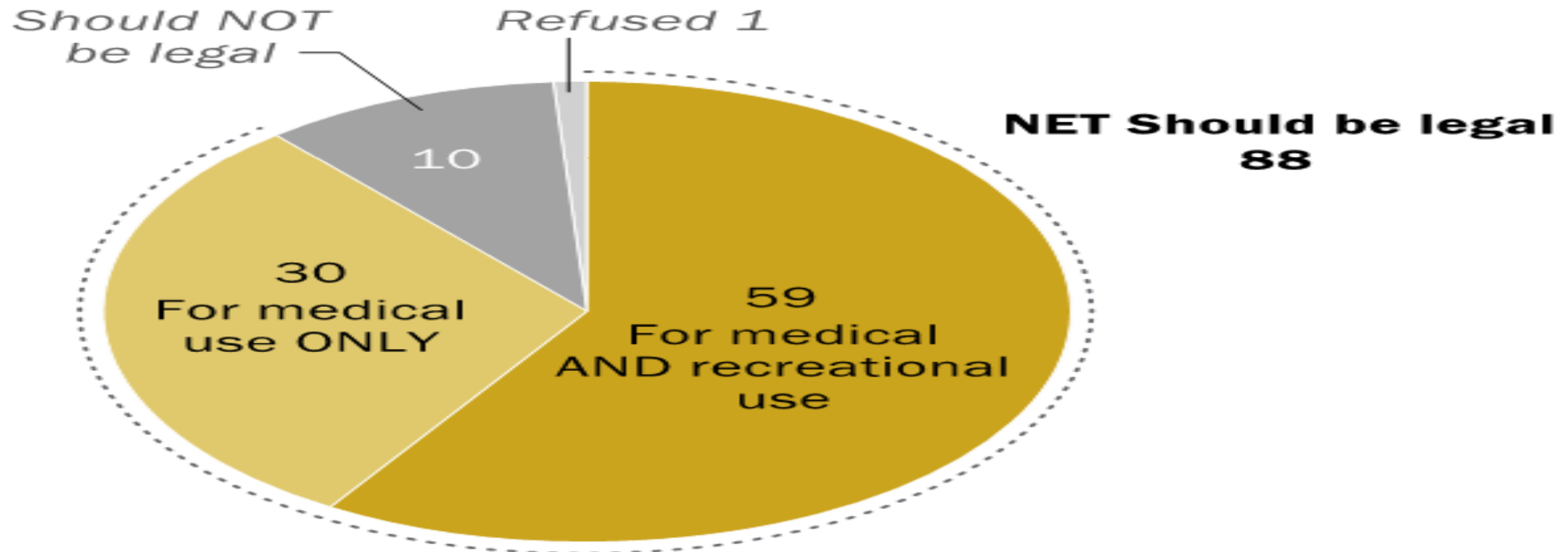
Note: No answer responses not shown. 2019 data from Pew Research Center's online American Trends Panel; prior data from telephone surveys. Data from 1969-1972 from Gallup; data from 1973-2008 from General Social Surveys.

Source: Survey of U.S. adults conducted Sept. 3-15, 2019.

PEW RESEARCH CENTER

Just one-in-ten U.S. adults say marijuana should not be legal at all

% of U.S. adults who say marijuana ...



Source: Survey of U.S. adults conducted Oct. 10-16, 2022.

PEW RESEARCH CENTER

The Evolution of Legalization



Colorado, 2012

Adults 21 and over can possess/give away up to an ounce, grow up to six plants per person or 12 plants per residence

Use in public prohibited

10% retail sales tax, 15% excise tax

Following Legalization in Colorado

Marijuana-related traffic deaths increased 151%, all traffic deaths increased 35%

Marijuana use increased 45% when comparing three years prior to legalization and three years post-legalization

Washington Legalization

November, 2012

Adults 21 or older may purchase up to one ounce of “useable” marijuana, 16 ounces of edibles, 72 ounces in liquid form

Sale at state-licensed retail store only

No public use

May not transport outside of the state

2019 Washington Study on Impact of Recreational Marijuana Legalization

4% increase in use by 12th graders, no difference among other juvenile age groups

Adult use:

| | |
|-------|--------------|
| 16-24 | 12% increase |
| 25-34 | 7% increase |
| 33-44 | 11% increase |
| 45-64 | 7% increase |
| +65 | 6% increase |

Montana Legalization

- Medical use legalized by ballot initiative in 2004
- Possession limited to one ounce
- Limited personal cultivation permitted
- Consumption and possession in public prohibited
- Individual counties voted in local referendum on sales within the jurisdiction

South Dakota

Voters passed a Constitutional Amendment (54%) permitting adults over 21 to possess and distribute up to one ounce; a second measure legalized medical marijuana (70%)

Nov. 2020

Voters rejected a new ballot initiative on recreational use

Nov. 2022

Nov. 2021

South Dakota Supreme Court nullified the voter initiative on recreational marijuana

The Missouri Example

- Medical use authorized by 2018 Constitutional Amendment
- 2022 Constitutional Amendment legalized recreational possession (up to 3 ounces) and limited cultivation by individuals with a registration card
- Creates a Constitutional *right* to possess and use
- Cultivation/sale by licensed entities
- Expungement of nonviolent marijuana-related offenses
- Amendment prevents courts from prohibiting a person on bond, probation or parole from using marijuana

Federal Cannabis Reactions

- In 2013 the Justice Department issued a memo indicating it would not challenge state legalization laws and raised expectations that states engage in robust enforcement efforts of their own laws
- In 2022 President Biden issued pardons to everyone convicted of the federal crime of simple marijuana possession (no one currently incarcerated for simple possessing at federal level)

Effect of State Legalization

The legalization of marijuana, either medical or recreational, and the lack of federal enforcement of some laws does not impact federal enforcement of other laws, including the tax code.

Standing Akimbo, LLC. v. United States, 594 U.S. ____ (2021)

Effect of Changing Laws on Use

Enactment of medical marijuana laws resulted in increased use among adults 21 and older; no effect on adolescent use

Enactment of recreational laws resulted in increased adolescent use and insignificant change among adults

2021 National Survey on Drug Use and Health

78% of respondents have ever consumed alcohol

57% have ever used tobacco products

46% have ever used marijuana

19% used marijuana in past year
(52.5m)

24% used marijuana in last month

Cannabinoids

Cannabis plant contains dozens of different cannabinoids

Cannabinoids represent a group of substances found in the cannabis plant - at least 144 known cannabinoids

Cannabidiol (CBD) and tetrahydrocannabinol (THC) - two of the most common cannabinoids, but act differently in the body

Strains of Cannabis

- Each has a different concentration of the cannabinoids THC and CBD, as well as other compounds
- Looks different, grown in different locations/regions/climates
- Cultivators and farmers breed different varieties or crossbreed with characteristics that create hybrids/specific strains (a variety of tastes and effects on the user)

Strains of Cannabis

Main subspecies of the genus - cannabis indica, cannabis sativa and cannabis ruderalis

Different THC and CBD content and thus effect

Cannabis indica - higher levels of CBD

Cannabis sativa - higher levels of THC

Cannabis ruderalis - naturally high in CBD and low in THC levels

Delta Differences

- Unique effect on the human body
- Delta 8, delta 9 and delta 10
- THC found in cannabis plants typically delta 9 - the psychoactive chemical responsible for intoxicating effects
- Delta 8 and 10 found in trace amounts in the cannabis plants
- Confusion created by the 2018 Farm Bill

THC and the Brain

THC structure similar to the brain chemical anandamide

The similar structure allows the drug to be recognized by the body and to alter normal brain communication

Because of the similarity, THC attaches to and activates cannabinoid receptors

Causes reactions in certain areas of the brain resulting from its role in the nervous system's normal functioning

THC activates the brain's reward system - which releases dopamine at levels higher than typically found

Possible Effects of Cannabis

THC attaches to cannabinoid receptors and affects the way those cells work

Cannabinoid receptors abundant in the parts of the brain that regulate movement, coordination, learning and memory, higher cognitive functions such as judgment, and pleasure

Sativa - stimulating

Indica - relaxing

Consequences of Marijuana Use

- Impaired functioning
- Vehicle crashes
- Emergency department visits
- Brain development
- Psychiatric symptoms
- Addiction/SUD

Adverse Health Effects of Cannabis Use

- Altered brain development
- Cognitive impairment
- Psychosis
- Chronic cough
- Decreased birth weight
- Addiction

Long- Term Effects on the Brain

Possibly permanent adverse changes in the brain affecting learning, memory, cognitive impairment, reward system

Significant decline in verbal ability

Hastens age-related loss of hippocampus neurons

The loss relates to decreased ability to learn new information - including learning from treatment

Increased risk for workplace injury or accidents

Marijuana Facts

Habitual users most commonly begin consuming during adolescence

Extremely low risk of fatal overdose, except when cannabis combined with other substances

Breeding of strains/hybrids has resulted in significantly higher THC levels in available cannabis products

It's Not the Marijuana of the 1970's

- Average THC potency of cannabis in 1995 was .72%
- Average THC potency in 2019 16.16%
- Average THC potency in concentrated marijuana in 1995 was 13.23%
- Average THC potency in concentrated marijuana in 2018 was 60.95%

CBD

- A non-intoxicating psychoactive compound
- May affect mood, mild physiological effects
- Advertised to provide relief from anxiety, depression and PTSD, promote sleep
- Approved by FDA to treat a rare seizure disorder in children
- Real effect uncertain
- CBD level limited to .03% THC by federal law
- Use will *not* result in +THC test

Medical Marijuana

As of April, 2023, 38 states permit the medical use of cannabis products

Limited medicinal effect

Blood/urine/saliva tests incapable of distinguishing between recreational and medical marijuana

Medical Marijuana Basics

Physician
recommendation

Age restrictions

Specific
conditions

Cultivated and
sold by licensed
entities

Packaging
requirements

Limited THC
content

Restricted
means of
ingestion

Children and Marijuana

- Adolescence represents a time of major biological, neurobiological, social and personal transitions - the “fine-tuning” and reorganization of the brain
- Changes in capacity to reason, regulate emotions, negotiation of major social transitions, opportunities for independent decision-making, preparation for entering the adult world of work
- And... a high-risk time period

The Adolescent Brain

- Because the endocannabinoid system performs a key regulatory and homeostatic role that undergoes developmental changes during adolescence, brain development critically susceptible to the effects of exposure to cannabis
- Adolescent use found to impair cognition across a number of domains, including executive functioning, processing speed, attention and memory
- Can lead to lethargy syndrome
- Impaired functioning greater than in adult use

What's the difference?

- Onset of use in *adulthood* post-brain maturity does not result in changes in brain *development*
- Adolescent use significantly increases later risk of schizophrenia
- Results in lower grades and exam scores, enrollment in college less likely, lower high school graduation rates, lower satisfaction with life, lower lifetime income, decrease in IQ by up to 8 points

Cannabis Use Disorder

A problematic pattern of cannabis use leading to clinically significant impairment or distress, manifested by two or more concerns within a twelve-month period

- Using marijuana more than intended
- Using more/higher concentrations of THC in order to get the same effect
- Trying but failing to quit using
- Spending significant time using marijuana
- Craving marijuana/withdrawal symptoms when ceasing use
- Using marijuana even though it causes problems at home, school, work, socially or in relationships

Cannabis Use Disorder

Men 1.5 times more likely to be diagnosed with a lifetime CUD

81.8% of individuals diagnosed with CUD eventually achieve recovery

19.1% of individuals diagnosed with lifetime CUD

20-30% of users experience CUD according to a recent study

What makes cannabis and alcohol use different?

- Distinct chemical composition
- The drugs distribute and metabolize differently in the body
 - Alcohol is water soluble and prefers to remain in the blood stream
 - THC is lipophilic and prefers to reside in the fat (including the brain)

What makes cannabis and alcohol use different?

- Alcohol eliminated at a fairly constant rate of 0.01%-0.03% per hour
- Peak effects of alcohol occur at peak blood concentration
- Dose can be extrapolated from concentration

What makes cannabis and alcohol use different?

THC concentration cannot be correlated to specific impairment

THC dissolves in fatty tissue, which acts like a sponge to reduce measurable amounts in blood, saliva or breath

THC rapidly moves from the blood stream to the brain, yet has a long half-life to metabolize

As a result, impairment does not uniformly rise and fall based upon how much THC is present in bodily fluids

Frequency of use impacts blood drug concentration over time

Peak effects occur *after* peak blood concentration

Method of consumption matters

Cannabis and Recovery Courts

>30% of recovery court participants report cannabis as their primary substance of choice

29-38% of recovery court participants report alcohol as their primary substance of abuse

50-60% of adult recovery court participants report secondary or tertiary abuse of cannabis

Cannabis and the Ten Key Components of Healing to Wellness Courts

Bring together community-healing resources using a team approach

Participants enter the wellness court program through various referral points and legal procedures

Eligible offenders identified early through legal and clinical screening

Provide access to holistic, structured and phased substance abuse treatment and services, incorporating culture and tradition

Participants monitored through intensive supervision, including frequent and random testing for alcohol and other substance use

Cannabis and the Ten Key Components of Healing to Wellness Courts

Progressive consequences and rewards used to encourage participant compliance with program requirements

Ongoing judicial interaction with each participant, including judicial involvement in team staffing

Monitoring and evaluation to measure the achievement of program goals and gauge program effectiveness

Continuing interdisciplinary education to promote effective wellness court planning, implementation and operation

The development of ongoing communication, coordination, and cooperation among team members, the community and relevant organizations

Cannabis and Federal Funding

Impact of cannabis
on federal funding

Caution for federally-
funded courts

Sources of federal
funding

Questions?