

John W Hickenlooper, Governor  
State of Colorado  
136 State Capitol  
Denver, CO  
80203-1792

Re: A plea to collect, analyze and publish DUID data  
Re: A plea to redirect the \$7.1 million marijuana "research" funds

Dear Governor Hickenlooper;

**Colorado does not collect DUID data**

Marijuana legalization was predicted to increase DUID (driving under the influence of drugs). Has it? The answer is we don't know. Because **we do not measure, analyze, and publish DUID statistics in Colorado!**

During the legislative debate last year over HB13-1114, some claimed that a 5 ng permissible limit for THC was too low. They claimed that unimpaired drivers would be "trapped" by such a limit. Has that happened? The answer is that we don't know. Because **we do not measure, analyze, and publish DUID statistics in Colorado!**

Others claimed (including this author) that a 5 ng permissible limit for THC was too high. We claimed that impaired drivers would be given a "get out of jail free card" by such a limit. Has that happened? The answer is that we don't know. Because **we do not measure, analyze, and publish DUID statistics in Colorado!**

The fact is that Colorado does an abysmal job of trying to understand the impact of Colorado's widespread use of marijuana on DUID. This, in spite of clear directions from SB13-283 (24-33.5-516 (1)(d)).

Yes, I know that CDOT publishes FARS (Fatal Accident Reporting System) statistics annually. Those data are often quoted, because they are the only DUID data routinely available in the state. Yet the FARS report suffers from, among other things, timeliness, incompleteness, and it confuses THC with its inactive metabolite, THC-COOH.

**What DUID data are needed?**

If Colorado did a responsible job of measuring DUID, and understanding the impact of marijuana legalization and DUID in general, it would be able to answer the following questions:

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1. How many DUID arrests are made each year? Has marijuana legalization changed that rate? What proportion of DUID arrests are due to marijuana? What is the conviction rate of DUID charges?
2. How common is poly-drug DUI? Combined DUI-alcohol and DUID?
3. How many DUID marijuana charges are made for defendants who test below 5 ng THC? What is the conviction rate?
4. How many DUID marijuana charges are made for defendants who test at 5 ng THC or above? What is the conviction rate?
5. How many charges of DUID have been made against defendants who test at 5 ng THC or above, yet are not impaired?
6. When a driver is stopped for suspicion of DUI, yet tests below .05 gm/dl of alcohol, is a drug test routinely performed?<sup>1</sup> Is a DRE summoned? What were the results?
7. What is the THC histogram for drivers who have been arrested for suspicion of driving under the influence of marijuana?<sup>2</sup> Has this changed? Has it changed by age or other population subgroup?
8. THC metabolizes rapidly in the body.<sup>3</sup> Therefore if a driver is suspected of driving under the influence of marijuana, a rapid blood draw is essential. What is the histogram of times between traffic stops and blood draws?
9. How many vehicular homicides (VH) are due to DUID? How many vehicular assaults (VA) are due to DUID?<sup>4</sup>
10. How much DUID is caused by the illicit use of prescription drugs?

### **The impact of poor DUID data**

As Peter Drucker and so many others have observed, “If you can’t measure it, you can’t manage it.”

But the problem of lack of good data about DUID is worse than simply not being able to manage DUID in Colorado. The lack of good data invites others to create folklore that substitutes for the missing data.

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<sup>1</sup> For example, between May 2013 and October 2013, 32% (8/25) of drivers arrested for DUI in Woodland Park tested below .05 BAC.

<sup>2</sup> According to unpublished CDPHE 2011 data, 72% of cannabinoid-positive drivers arrested on suspicion of DUI-marijuana tested below 5 ng/ml THC.

<sup>3</sup> THC levels in blood drop over 80% within the first hour after smoking.

<sup>4</sup> We have studied State Judicial data and now know that in 2012, 83% of vehicular homicide and vehicular assault defendants were also charged with DUI. We are now attempting to learn how many of those cases involved impairing drugs. Early indications are that drugs may be a substantial contributor to DUI in such cases.

A classic example of this is the often repeated comment that, "Since DUI conviction rates are 90%, we don't need stronger DUID laws." The fact is that although the annual DUI conviction rate is typically between 70% and 90%, nearly all of that is due to DUI-alcohol convictions. DUI-alcohol convictions are aided by strong alcohol *per se* laws; laws that do not exist for drugs. We do not know the DUID conviction rate, because we have never measured it. Anecdotal evidence suggests that DUID conviction rates may be below 50%.

### **The cause(s) of poor DUID data**

Why does Colorado do such a poor job of measuring, analyzing, and publishing DUID data? After spending several years trying to capture good DUID data and discussing the data dearth with experts, I find that most people recognize the problem, and suggest that a lack of funding is the cause.

Others have suggested to me that Colorado does a similarly poor job of measuring the impact of marijuana legalization on youth consumption, graduation rates, student IQ, student grades, acceptances to four-year universities, suitability for employment and many other economic, social and community growth issues. These may be fair charges, but I will not dwell upon them since my expertise lies in the field of DUID.

Although a lack of funding may be a cause of Colorado's poor response to the need for data collection and analysis, I believe that to be an intermediate cause. The root causes appears to me to be a lack of political will.

### **Misuse of marijuana research dollars**

How else can one make sense of the news that state officials now want to offer \$7.1 million in research grants to promote the beneficial uses of marijuana?

The *Denver Post*, an active supporter of the widespread use of marijuana, and not known for its concern with accuracy or responsible reporting, writes in the January 11, 2014 issue that, "Most cannabis research has been blocked by federal laws that largely prohibits scientists from obtaining or handling marijuana products." This is demonstrably false by simply observing the profusion of articles in scientific journals that have been published about the effects of marijuana and its constituent components. Many of these articles have been published by federal government researchers or by researchers under contract to the federal government. The *Denver Post* claim is simply one more example of folklore promulgated by the pot community.

Statements by Dr. Larry Wolk, quoted in the *Post* supporting the use of these funds for this purpose, lends a veneer of respectability to a program that promises to be both a waste of resources and an embarrassment to the integrity of Colorado.

The *Denver Post* and Dr. Wolk confuse marijuana with a drug. It's not. It's a plant that contains scores of different compounds, some of which are legitimate drugs. The same is true of foxglove (digoxin), poppy (morphine), Pacific yew (Taxol), and willow trees (salicin, the precursor of aspirin).

No drug is prescribed to be smoked. The reason marijuana is classified as a schedule I substance is not because of the minimal danger posed to adult users, but because its contents are so variable from one strain to the next that it defies scientifically controlled testing to confirm its safety and efficacy. That's one reason that many of the tests that have been performed show mixed or no clinical utility. But that's not true of some of marijuana's components, some of which have proven medical utility.

THC for example, has analgesic, anti-spasmodic, anti-tremor, anti-inflammatory, appetite stimulant, and anti-emetic properties and is available as *Marinol*. Another cannabinoid, CBD, has anti-inflammatory, anti-convulsant, anti-psychotic, anti-oxidant, neuro-protective, and immunomodulatory effects. CBD is noted for providing relief to some forms of childhood epilepsy. It is not psychoactive and it is available as a legitimate drug, *Epidiolex*.

### **Recommendations**

I encourage you to veer away from this wasteful and embarrassing proposed \$7.1 million expenditure and instead, put those funds to use in accomplishing the following:

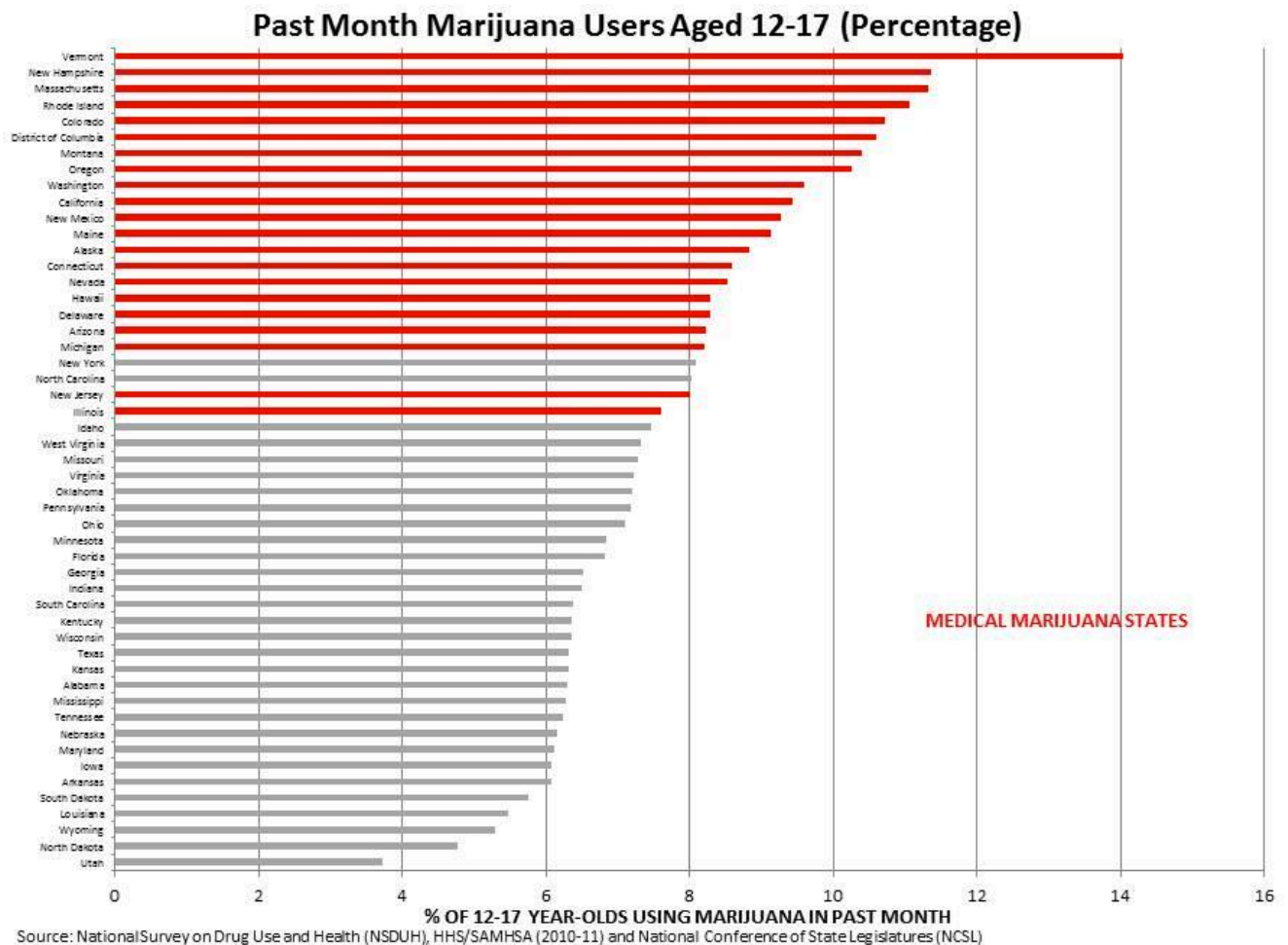
1. Change CRS 42-4-1301. DUI alcohol and DUID should be two separate charges, as is done in states such as Pennsylvania, and most recently, California. Having two separate charge numbers would enable the proper tracking of DUID charges and convictions by Colorado State Judicial.
2. Enable an agency, by statute and with funding, to collect, analyze, and publish laboratory data from drug-impaired driving suspects.
3. Enable an agency, by statute and with funding, to collect, analyze, and publish law enforcement and judicial data to understand the status and trends of drug-impaired driving, including driving under the influence of marijuana and prescription drugs.

4. Empanel a task force to annually review and advise on the completeness, accuracy, and relevancy of DUID data. Alternatively, this charge could be given to an existing task force.

### **Colorado's future**

January 10, 2014, Vermont Gov. Peter Shumlim gave a stirring State of the State address that highlighted what he referred to as Vermont's drug "addiction crisis" from heroin and prescription opioids. He provided staggering statistics about heroin and opioid use, treatments, and deaths. It is worth noting that Vermont approved medical marijuana in 2004, and currently holds the distinction of having the highest percentage of marijuana use among 12 to 17-year-olds in the nation. See below.

Note that Colorado is number five in the nation.



### **Request for leadership**

I ask for responsible leadership from you in the name of DUID victims across the state and the nation. Victims such as:

Sharon Moore, killed by repeat offender Makia Milton in 2011. Milton tested for 11 ng THC after admitting, "Well I had some marijuana, but I have a card for it." The presiding judge would not admit the laboratory data, citing lack of a *per se* standard. Milton was sentenced in 2012 for VH-Reckless driving.

Tanya and Adrian Guevarra, killed by Stephen Ryan 2010. Ryan's blood had 4 ng THC. He was sentenced for VH-DUID in 2012 – before the 5 ng permissible limit was established.

Peter Deutz, killed by John Spence in 2009. Deutz's blood had 6 ng THC. He was sentenced in 2011 after being found guilty of VH - Reckless driving.

Frank Hines, killed by Joshua Wittig in 2010. Wittig was self-medicating on multiple drugs, including marijuana, oxycodone, and diazepam. He was sentenced in 2012 for VH-DUID.

Very truly yours.

Ed Wood

[www.duidvictimvoices.org](http://www.duidvictimvoices.org)

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