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Education and promoting effective laws to reduce Driving Under the Influence of Drugs (DUID) – A scientifically - based perspective from DUID Victims.

November 15, 2017

The Honorable Jefferson B. Sessions III
Attorney General
US Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530

Dear Mr. Attorney General,

Legalization of marijuana in Colorado is having adverse effects on its citizens that are not understood or recognized by Colorado officials. We request that the Federal Government enforce the Controlled Substances Act for the protection of citizens now being harmed by Colorado's illegal activities.

In support of this request we append the following:

1. Critique of Governor Hickenlooper and Colorado Attorney General Coffman's letter of August 24, 2017, defending the state against the findings you listed in your letter to the Governor July 24, 2017. Pp 1-6
2. Additional problems with Colorado's marijuana legalization – corruption of the body politic by Big Marijuana. Pp 7-8
3. Case report – deficiency in Colorado's DUID enforcement mechanism. P 9
4. Case report – marijuana-induced suicide note. P 10

Sincerely,

A handwritten signature in black ink that reads "Ed Wood".

Ed Wood
President, DUID Victim Voices

Attached: Brief in support of enforcing CSA

Brief in support of enforcing CSA

The AG's office identified multiple concerns with Colorado's marijuana legalization in its July 24, 2017 letter to Gov. Hickenlooper, which referenced some findings in the 2016 RMHIDTA report. Colorado's official response one month later contained denials, obfuscation and deception which are documented below. At least eight paragraphs in the Hickenlooper/Coffman letter described efforts the state has taken or is taking to deal with the Sessions-identified problems, which is confirmation that the problems are real. It's now time for the next step – enforce the federal CSA.

Building upon the 2009 Ogden memo and the 2013 Cole memo, AG Sessions listed 8 specific issues with marijuana legalization which Governor Hickenlooper grouped into four areas in his August 24, 2017 response:

- 1 Black market diversion to other states
- 2 Distribution to minors
- 3 Drug-impaired driving
- 4 Other health issues – ER & childhood exposure

Let's compare Colorado's official response with the facts:

[This table is intended to be used in conjunction with the narrative thru page 6.]

Issue	Colorado's position	The facts
Diversion	Spoke of efforts, not results	Issue is results, not efforts, seize <1T→3.5T
Minors	Denied allegation HKCS: n.s. Δ post legal, ≈Nat'l avg Monitoring the Future: no ↑ post legal NSDUH: n.s. Δ since 2007, 12%↓13-15	AG data are correct HKCS: Study is flawed. MTF: No state data, just nat'l NSDUH: Not true; no 15 state report yet
DUID	Denied allegation Spoke of efforts, not results CSP MJ dropped 21% 1Q17 vs 1Q16 RMHIDTA data dropped in March '17 Pre-2012 data incomplete FARS reports do not prove impairment	AG data are correct The issue is results, not efforts. CSP ≈20%, ARIDE delay '17 RMHIDTA Mar '17 was interim; data in Oct RMHIDTA fixed the problem in 2013 FARS system is inferential
ER & HD	Denied allegation – trends reversing	AG data are correct – State figures are wrong

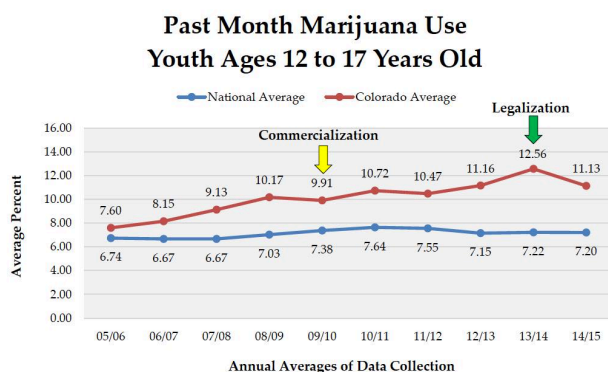
Diversion

Colorado did not deny the AG's claims, but simply referred to Colorado's efforts to stamp out diversion. The issue is not the level of effort; the issue is results. The results are that marijuana seizures increased from 425 pounds in 2014 to 3.5 tons in 2016. The conclusion is that legalization has not stopped the black market; it has enabled its expansion.

Minors

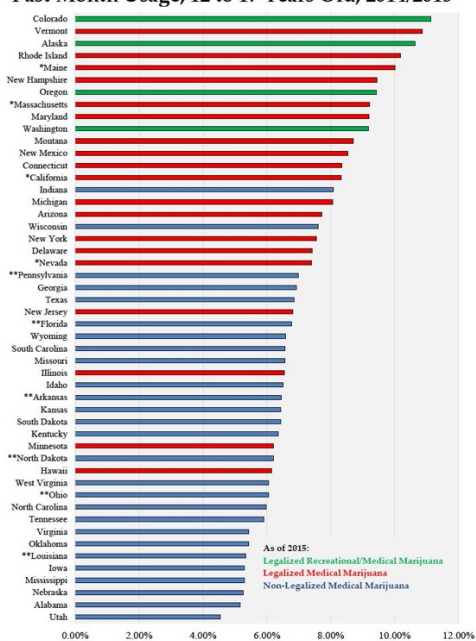
Colorado denied the AG's claims, citing carefully selected data from Colorado's own *Healthy Kids Colorado Survey*, the *Monitoring the Future* survey, and the *National Survey on Drug Use and Health*. The facts are different:

1. The *Healthy Kids Colorado Survey*, far from being robust as claimed, is very limited. It is a voluntary self-administered survey of school students. Because of its low participation rate, the HKCS data is considered unweighted by the CDC's YRBSS. In 2015, four counties consisting of 34% of the state population entered no data in HKCS. Survey results of the prevalence of current marijuana use by high school age adolescents from HKCS have been significantly different from SAMHSA's NSDUH survey results in most past years, although they were not statistically different in 2013.
2. The *Monitoring the Future* study is a national study, and does not publish state data. It cannot be used to support the state's position.
3. SAMHSA's *NSDUH* is a random face-to-face survey in homes including those with youth not attending school. SAMHSA reports a large increase in past-month usage by youth aged 12-17 since commercialization. This increase was not statistically significant, in part due to the small sample size. However, Colorado leads the nation in this measure.



SOURCE: SAMHSA.gov, National Survey on Drug Use and Health 2014 and 2015

Past Month Usage, 12 to 17 Years Old, 2014/2015



SOURCE: SAMHSA.gov, National Survey on Drug Use and Health 2014 and 2015

NOTE: *California, Massachusetts, Maine and Nevada voted to legalize recreational marijuana in November 2016

**States that had legislation for medical marijuana signed into effect during 2015

4. Contrary to the state's assertion, *NSDUH* data did not show a 12% drop in past month marijuana use by Colorado youth age 12-17 from 2013 to 2015. The 2015 state data have not even been released. The state likely meant to compare 2013 data with 2014 data, not 2015.

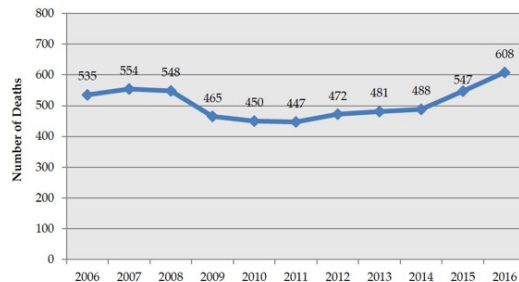
DUID

Colorado denied the AG's claims, citing a drop in State Patrol notations for marijuana being the cause of a DUI citation the first half of 2017. The State Patrol typically issues <20% of the

state's DUI citations. The state further described its efforts to combat drugged driving, even bragging about its infamous 5 ng/ml THC permissible inference law.

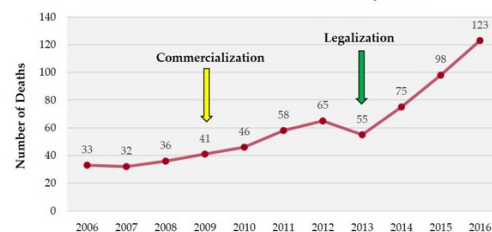
1. Short term data swings such as those quoted by the Governor do not indicate long term trends. Unfortunately, there are no long term data, since the State Patrol began collecting data in 2014 and is still tweaking its processes. Colorado does not issue any DUID citations or DUI-marijuana citations. There is only one DUI statute number, irrespective of cause – alcohol, drugs, or a combination of the two. CSP notations did drop the first half of 2017, but so did total DUI citations. The percentage of DUI citations noted as being caused by marijuana will likely decline in the future since beginning 2017, the State Patrol no longer requires Troopers to receive ARIDE training prior to service.
2. Colorado's 5 ng/ml permissible inference law described by the Governor makes successful prosecution of stoned drivers more difficult, not easier. The 5 ng/ml THC permissible inference law is the weakest DUID law in the nation. A 5 ng/ml *per se* level or permissible inference level has been called "a license to drive stoned." See points 8-11 below.
3. Training 5,000 peace officers on marijuana-related laws is a significant achievement. But there are an estimated 13,000 peace officers charged with implementing Colorado DUI laws.
4. Additional DREs is also a significant achievement. It is unfortunate that Colorado's courts do not automatically admit DREs to testify as experts in court.
5. The Governor pointed out that RMHIDTA abandoned reporting of FARS data in its latest March 2017 report, perhaps implying that the FARS data were not meaningful. FARS data have been included in all annual RMHIDTA reports, including the latest, Oct 2017. FARS data are not included in interim reports if there is nothing new to report.
6. RMHIDTA accurately reports FARS data and it is through the efforts of RMHIDTA that coroners have reported 100% of cases to CDOT since 2012. The FARS limitations noted by the state are correct and NHTSA is aware that FARS was never constructed to inform DUID data as it does for DUI-alcohol data and other causes of traffic fatalities, even cautioning researchers about the risk of inferring DUID trends and state-by-state comparisons from FARS reports. Nevertheless, the state and other researchers continue to rely upon FARS reports since no other reliable state-wide data are available.

Total Number of Statewide Traffic Deaths



SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS) and Colorado Department of Transportation

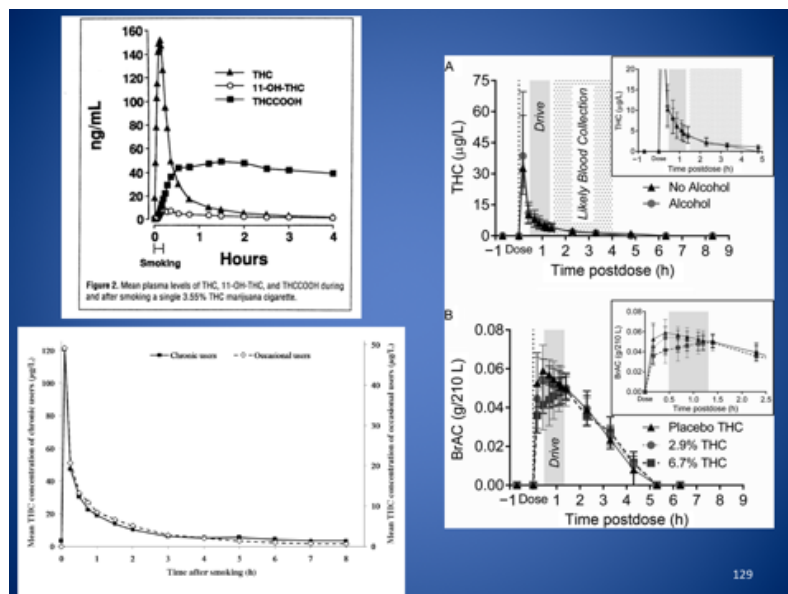
Traffic Deaths Related to Marijuana when a Driver Tested Positive for Marijuana



SOURCE: National Highway Traffic Safety Administration, Fatality Analysis Reporting System (FARS), 2006-2011 and Colorado Department of Transportation 2012-2016

A 2017 law requires the state's Division of Criminal Justice to match laboratory tests and pre-sentence evaluation reports with DUI judicial reports. This was to enable an estimate of DUID prevalence and causes. The legislature neglected to allocate the \$10,000 needed to fund acquisition of most laboratory data.

7. With widespread and increasing use of marijuana in Colorado, the FARS trends shown above could be caused by simply more unimpaired drivers testing positive for marijuana's inactive metabolite, an increasing number of marijuana-impaired drivers, or a combination of these two factors. This is why FARS data are considered inferential rather than conclusive.
8. Since marijuana's THC is fat soluble, it is quickly removed from blood as it is absorbed by highly-perfused fatty tissues like the brain. Therefore, a forensically-determined blood THC level provides no information about either the THC level at the time of the incident, or the THC level in the brain, which is the only place that really matters. The following clearance curves of THC from blood demonstrate the point.



Hartman reports a 73% drop in THC level from peak levels within the first 25 minutes after beginning to smoke a joint. Typical times from a crash to blood collection are two hours.

9. Colorado's politicians do not understand the science behind drug-impaired driving and therefore persist in making incorrect statements like the following from the Governor's letter, page 3:

"Unlike active THC, inactive metabolites are detectable in blood for a significant period of time after consumption, meaning an individual may test positive for THC weeks after consuming marijuana."

That's not true. A person may test positive for the *inactive metabolite (carboxy-THC)* for weeks after consuming marijuana. Only heavy marijuana users can test positive for *THC* weeks after consuming marijuana. The state seems to be trying

- to make it easier for drug addicts to drive in the state. The governor signed HB1325 in 2013 which allowed addicts the right to drive in Colorado.
10. The Denver Post reported August 25, 2017 that in 2016 there were 115 cannabinoid-positive drivers involved in fatal crashes, 71 of whom were THC positive, 45 of whom were above Colorado's 5 ng/ml limit (63%). Lack of THC in the blood of the remaining drivers does not indicate those drivers were not impaired for the following reasons:
 - a. FARS data included cases of immediate death (when metabolization and THC redistribution cease), as well as drivers who survived for hours or days before death, enabling THC levels to drop below reporting levels.
 - b. Dr. Mura autopsied 12 subjects where cannabinoids were detected in blood. Brain levels of THC were higher than blood levels of THC in 100% of the subjects, including three for whom no THC could be detected in blood.
 - c. And finally, since marijuana's inactive metabolite is soluble in both blood and urine and is therefore quickly eliminated, its presence indicates that active THC is still being metabolized somewhere in the body.
 11. The Denver Post further reported that in 2016 there were 22 *surviving* drivers involved in fatal collisions, all of whom tested positive for THC, but only 7 (31.8%) were above 5 ng/ml THC. To date, we have been unable to confirm the judicial outcomes of those cases. Assuming all 22 were charged with vehicular homicide due to DUI, it is likely that no more than 7 were convicted of that charge due to Colorado's 5 ng/ml permissible inference law. Melanie Brinegar was acquitted of DUI after testing 19 ng/ml of THC in 2014, so the number of convictions could be even less than 7.

The bottom line for DUID in Colorado:

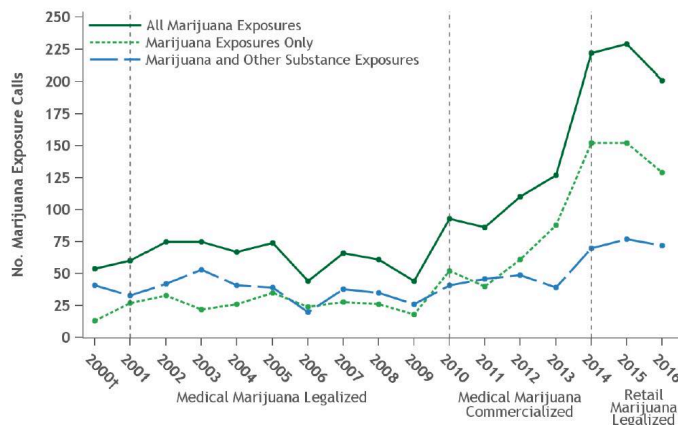
- 1. The state does not collect data to accurately understand the impact of marijuana on drugged driving, forcing the state to rely upon inferential data.**
- 2. Inferential data from FARS indicate that marijuana-impaired driving has risen substantially since legalization.**
- 3. Colorado's infamous 5 ng/ml permissible inference law is designed to prevent successful prosecution of most marijuana-impaired drivers.**

ER and HD admissions

Colorado denied the AG's claims, saying the cited trends are now reversing, then pointing out the efforts being undertaken to further solve the problem.

Again, the problem is not the efforts being undertaken, but the results which unequivocally show an increase in exposure calls to both Colorado ERs and to Colorado's poison center. Yes, the trend is down from 2015 to 2016 for the poison center, but from a substantially higher base than it was pre-legalization or pre-commercialization. Selective presentation of the data does not make inconvenient data disappear.

Figure 1. Number of marijuana exposure calls to poison center by marijuana only and marijuana with other substances in Colorado

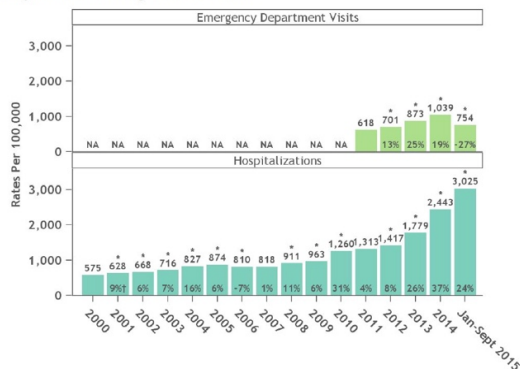


Produced by: EEOHT, CDPHE 2016.
 *Counts significantly increased from previous year with a p value <0.003.
 †Prior to legalized medical marijuana.
 ‡Data Source: National Poison Data System (NPDS) closed, human, marijuana exposure calls in Colorado from 2000 to 2016, n=1,688.

The Governor stated (page 4) that an analysis done by the Colorado Department of Public Health and Environment (CDPHE) found that ER visits fell from 1,309/100,000 in 2014 to 704/100,000 in 2015. No references were provided for such an analysis. In the past, CDPHE and others have determined causes of ER visits from ICD-9 codes entered into hospital databases upon admission. The ~13,600 codes were changed October 1, 2015 to ~69,000 codes in ICD-10, so that method can no longer be used. Therefore, the validity of the CDPHE's claim is suspect. A more honest way of presenting the data is shown by comparing CDPHE and RMHIDTA reports:

CDPHE

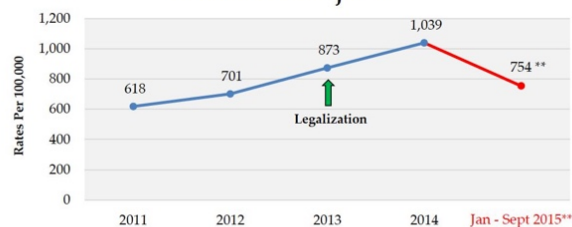
Figure 2. Rates of hospitalizations (HD) and emergency department (ED) visits with marijuana-related billing codes in Colorado.



Produced by: EEOHT, CDPHE 2016.
 *Rate significantly increased from previous time period with a p-value <0.001.
 †The percent change in rates of HD and ED visits compared to the previous year.
 ‡ICD-9-CM codes 302.30-302.33, 304.30-304.33, 969.6, and E854.1 were used to determine HD and ED visits with marijuana-related billing codes.
 §Data Source: Colorado Hospital Association 2000-Sept 2015 (2011-Sept 2015 for ED visits).

RMHIDTA

Emergency Department Rates Related to Marijuana*



*Rates of Emergency Department (ED) Visits with Possible Marijuana Exposures, Diagnoses, or Billing Codes per 100,000 ED Visits by Year in Colorado

**Only 9 months of comparable 2015 data, see ICD definition on page 68

SOURCE: Colorado Department of Public Health and Environment, Monitoring Health Concerns Related to Marijuana in Colorado: 2016

NOTE: DATA NOT AVAILABLE PRE-2011. EMERGENCY DEPARTMENT DATA FROM 2011 AND 2012 REFLECTS INCOMPLETE STATEWIDE REPORTING. INFERENCES CONCERNING TRENDS, INCLUDING 2011 AND 2012, SHOULD NOT BE MADE.

If we assume CDPHE's numbers in the Governor's memo are simply typographical errors (1,309 instead of 1,039 and 704 instead of 754), we can only conclude that the CDPHE "analysis" compared full year 2014 data with 9-month 2015 data. **This makes the Governor's claim not only deceptive like previous claims, but entirely inaccurate.**

As seen below, we may choose to attribute the inaccuracy not to the Governor, but to a key appointed advisor.

Additional problems with Colorado's Marijuana Legalization

Aside from marijuana addiction, marijuana-caused suicides and other health problems documented below, the above discussion demonstrates one major problem with marijuana legalization: corruption of the body politic by Big Marijuana.

It should be clear that the Attorney General should not trust any marijuana-related conclusions that come from Colorado's Governor's office. The Governor's August 24th letter demonstrates that any such information is colored by a bias intended to support the fiction that Colorado's "robust marijuana regulatory and enforcement system" is working. There is no political benefit for the Governor to admit that it is not working.

The Governor supported his Aug 24, 2017 defense of Colorado's marijuana industry by using studies from CDPHE, led by Dr. Larry Wolk, who was appointed Chief Medical Officer by Governor Hickenlooper August 27, 2013.

Dr. Wolk has contradicted himself, based on his following quotes published by CBC October 23, 2017:

- 1 "We haven't experienced any significant issues as a result of legalization."

This statement is proven false not only by the above disclosures, but by CDPHE's own report published January 30, 2017 which cites "substantial evidence" that marijuana use leads to:

- 1) Less high school graduation,
- 2) Psychotic symptoms in adulthood,
- 3) Can develop marijuana addiction,
- 4) Other illicit drug use and addiction,
- 5) Impaired memory for daily users,
- 6) Acute psychotic effects during intoxication.

Wolk knew this information. The first page of his CDPHE report says, "This report has been reviewed by Larry Wolk, MD, MSPH."

- 2 " 'Somewhat' regular use by adults and youth hasn't changed since legalization."

Wolk did not specify what he meant by "somewhat" regular, but it is hard to square any interpretation of that with Colorado's marijuana tax revenue increases:

2014	\$ 67,594,323
2015	\$130,411,173
2016	\$193,604,810

CDPHE's report page 14 documents significant increased adult usage since commercialization (when the Ogden memo ushered in marijuana "dispensaries.")

RMHIDTA's Volume 5 report, page 37 documents the increased usage by youth since commercialization, compared with Denver metro area and the US average, based on SAMHSA's NSDUH survey.

- 3 "Although there have been a few more visits to the ER, most of those were visitors, not residents."

Wolk presents no evidence for this statement.

The Colorado Department of Revenue estimated that less than 6% of 2014's marijuana was consumed by visitors. ER visits have increased far more than than.

- 4 "There has been no increase in recorded impaired driving but the numbers are difficult to track."

This is actually true, since, as noted above, Colorado doesn't record *any* drugged driving citations. But it is misleading because inferential evidence clearly supports a contrary statement.

Wolk's own CDPHE 2016 report cited "substantial evidence" that crash risk increases with recent use of marijuana.

- 5 There is no clear evidence either way on whether or not marijuana is a gateway drug.

Wolk's own CDPHE 2016 report cited "substantial evidence" that marijuana can lead to other illicit drug use and addiction both for adolescents and adults.

Case report : Colorado DUID enforcement



Peyton Knowlton, age 8, was killed May 20, 2016 by Kyle Couch, a student at the University of Colorado. Officers at the scene found Couch to be impaired and charged him with vehicular homicide due to DUI, a Class 3 felony in Colorado with a recommended sentencing range of 4 to 12 years.

Couch's blood was collected two hours after the crash. The blood test revealed 1.5 ng/ml THC and an alcohol level below Colorado's legal limit. After the blood test results were made public, District Attorney Alex Hunter told the news media that he would prosecute Couch for vehicular homicide due to DUI based on evidence at the scene of the crash.

The Class 3 felony charge was dropped when Couch pled guilty to careless driving resulting in death which resulted in a 60-day jail sentence. He also pled guilty to using a false identity for purchase of alcohol and marijuana, resulting in an additional sequential 90-day sentence. That makes a total of 150 days in jail for killing an 8-year old girl who just celebrated her 2nd grade graduation.

Case report: Marijuana-induced suicide

I barely ever do what
I want. I want to die. I am
quitting while I am ahead. I don't
want anyone to worry about me. I
am setting my parents free. Otherwise
I will only get worse. My soul is
already dead. Marijuana killed my
soul & ruined my brain. I am
doing everyone a favor.

200
- 39
161

- SUICIDE NOTE OF
ANDY ZORN FOUND IN
HIS BEDROOM IN PEORIA
3-1-2014
- PROVIDED BY HIS MOTHER,
SALLY SCHINDEL
602-565-5360
- HELP STOP THIS MADNESS OF
PROMOTING MARIJUANA USE! PLEASE