



Diversions of Marijuana from Nonlicensed Grows: State Response

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Challenges

Large-scale, nonlicensed grows emerged from loopholes in Amendment 20 and Amendment 64 allowing for large amounts of marijuana to be grown and distributed outside the intent of the law.

Patients and Caregivers

Amendment 20 to the Colorado Constitution and subsequent enacting and implementing legislation allow medical marijuana patients and caregivers to grow up to 99 plants in a residential setting.

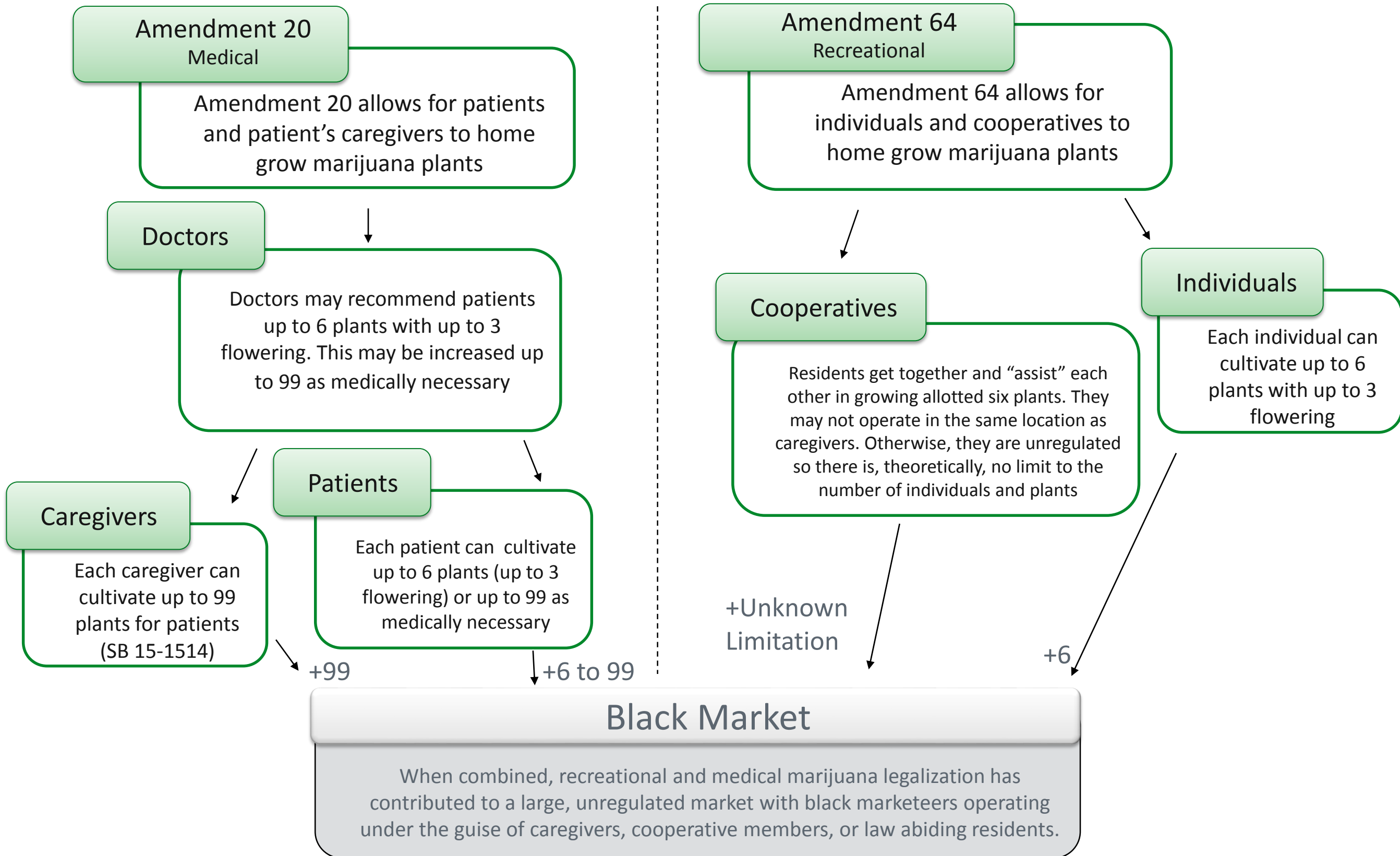
Beyond a statutory patient/caregiver registry system coming online in January 2017, state agencies do not have the authority to regulate these grows. While local, state, and federal law enforcement do have enforcement powers in this area, the laws governing such operations are murky. There are, in short, few ways to prevent black marketeers from operating under the guise of a residential caregiver grow in order to unlawfully ship marijuana out of state.

Home Grows and Cooperatives

Amendment 64 to the Colorado Constitution allows for personal home grows. A recent abuse, similar to the caregiver model, has developed pursuant to this ballot change: home grow marijuana cooperatives. Marijuana “cooperatives” develop when state residents get together and “assist” each other in growing their authorized six plants. These operations are entirely unregulated by state agencies, so theoretically, there is no limit to the number of individuals that could cooperate with each other. Again, law enforcement has the ability to intervene in illicit activity but determining legalities versus illegalities remains confusing.

Beyond exchanging marijuana for remuneration proscribed by law, home grow cooperatives are subject to few clear constitutional or statutory restraints. As with rogue caregivers, it is known that many cooperatives divert marijuana out of state and/or to recreational users in Colorado looking to pay less than the market value.

Routes to the Black Market Under the Guise of Legality



Plant Count Limits in Other States

Of all the states where recreational marijuana is legal, Colorado allows for the most plants to be grown in a nonlicensed, residential setting. As a result, people looking to divert marijuana to other states for a profit, including organized crime elements, come to Colorado—as opposed to other states—to grow marijuana under the guise of legality. Newly legal states, with the exception of Maine, also have lower plant count limits compared to Colorado.

Washington	Medical marijuana patients can grow up to 4 plants without registering with the state; up to 15 plants with state registration. Private recreational grows are not permitted.
Oregon	Residents may grow up to 4 plants per household.
Alaska	Residents may grow up to 6 plants per household.
California	Residents may grow up to 6 plants per household.
Colorado	A medical marijuana patient or caregiver may grow up to 99 plants per patient with an extended plant count recommendation from a doctor. An unlimited number can be grown in a co-op.
California (newly legalized)	Residents may grow up to 6 plants per household.
Massachusetts (newly legalized)	Residents may grow up to 12 plants per household.
Nevada (newly legalized)	Residents may grow up to 12 plants per household.
Maine (newly legalized)	No residential plant count limit.

Colorado Municipal Plant Count Limits

Municipalities differ in how they restrict home cultivation of marijuana. Varying plant count limits can make enforcement difficult, and municipal plant count limits do not carry criminal consequences, due to the constitutional right to grow 6 plants per person or up to 99 plants as medically necessary.

Arvada	No limit*	Denver	12 plants per residence; up to 99 with doctor's recommendation (but not in a residential zone)
Aurora	No limit*	Dillon	12 plants per residence
Avon	12 plants per residence	Fort Collins	12 plants per residence; no growing in multi-family or attached single family dwelling
Boulder	18 plants per residence between 3 adults	Golden	12 plants per residence
Breckenridge	12 plants per residence	Gunnison	6 plants per residence
Buena Vista	No limit	Lakewood	6 plants per residence
Castle Rock	No limit*	Lyons	12 plants per residence (with exceptions for medical necessity)
Centennial	30 plants per residence	Pueblo	18 plants per residence; 12 plants in apartments/duplexes; 36 plants on agricultural/industrial properties
Commerce City	No limit* Restricted to one- or two-family dwellings	Thornton	12 plants per residence

* While these municipalities do not have hard plant count limits, they do place limitations on the amount of space that can be dedicated to growing marijuana. This may act as a limit on the number of plants that can be grown.

The Evidence

From 2014 to 2016, the number of medical marijuana patients with physician recommendations for an extended plant count of 50 or more plants increased by 54%. Concurrently, the total number of medical marijuana card holders declined. As of January 2016, there were approximately 8,200 patients with a recommendation for 50 or more marijuana plants. Much of this marijuana is not being used by legitimate patients, but rather is being cultivated by criminal enterprises and then diverted to the black market in Colorado or, more commonly, outside of Colorado. This activity has been evidenced by numerous reports from local, state, and federal law enforcement. Recent examples of black market diversion include:

- Operation Gas Lamp, 2015 – Local law enforcement officials uncovered a coordinated network of grow houses, containing **45 firearms** and **\$1 million in assets**, with over **1,800 marijuana plants** and **100 pounds** of harvested marijuana destined for Chicago and Florida.
- Operation Mountain Grass Cotopaxi, 2015 – Police officers seized **1,002 marijuana plants** and **50 pounds** of marijuana grown across nine properties with **28 firearms** that was intended for shipment to East Coast markets.
- Steamboat Springs, 2015 – Law enforcement officials uncovered the remains of a medical marijuana patient in Steamboat Springs who had been violently murdered by a couple for his marijuana plants. The couple was found in possession of **100 pounds** of marijuana.
- U-haul and Tractor Trailer Transporters, 2016 – Police officers arrested two men on multiple occasions for attempting to transport over **150 pounds** of marijuana from Colorado to the East Coast. One of the men stated that he had been transporting marijuana from our state for at least four years.
- Aurora, 2016 - Law enforcement officials received information regarding a marijuana trafficker, who was brokering deals between Colorado-based marijuana growers and several different buyers/distributors. The marijuana traffickers were shipping large quantities of marijuana from Colorado to customers located throughout the United States. Based on this information, law enforcement officials executed a search warrants on residences in Aurora and Southern Colorado, seizing approximately **30 pounds** of marijuana, **22 firearms**, a small, active marijuana grow, 3 suppressors/silencers, and **\$273,507 cash**.
- Southern Colorado, 2016 – DEA and local law enforcement searched 12 properties in Southern Colorado, uncovering **22,400 pounds** of marijuana intended for transport out of state. All properties were tied to the same organization from Laos.

Numerous other cases have been and continue to be documented out of Colorado.

The Consequences

Colorado's communities are being negatively impacted by nonlicensed, illicit marijuana growing and distribution.

Continued black market activity in Colorado



- Diversion to youth
- Lack of public health and safety oversight
- Undercuts licensed, regulated marijuana system
- Risks federal preemption

Out-of-state diversion



- Risks federal preemption

Expansion of organized criminal enterprises



- Increased violence
- Diversification of other illicit activities
- Risks federal preemption

Property Destruction



- Decreased property values
- Increased danger for residents and first responders

Environmental Impacts



- Excessive water and power usage
- Improper chemical and pesticide storage/disposal

Approaches to Date

Approach	Outcome
House Bill 10-1284 <ul style="list-style-type: none"> Codified the five-patient limit for caregivers that had existed since Amendment 20 by way of rulemaking Provided for a waiver process to the five-patient limit by stating that “the state health agency” may allow a primary caregiver to serve more than five patients in exceptional circumstances” Established that a patient may only have one caregiver 	Partial Success <ul style="list-style-type: none"> Courts have found that Amendment 20 does not establish an unlimited constitutional right to use medical marijuana
Senate Bill 15-014 <ul style="list-style-type: none"> Established a 36-plant limit for most caregivers Set a hard limit of 99 plants for all caregivers Creates caregiver registry through the state licensing authority. A grower cannot be considered a caregiver until he or she registers. Establishes optional patient registration for personal grows Instructs the board (in consultation with CDPHE and physicians) to establish guidelines for physicians when making medical marijuana recommendations. 	Partial Success <ul style="list-style-type: none"> Imposed some of its changes immediately but delayed others until January 2017 Courts have not yet clearly defined the term “medically necessary” and, while some have recognized the validity of the defense, the Court of Appeals has placed limits on its use
Plant count limits (CDPHE) <ul style="list-style-type: none"> Plant count limits attempted through regulations and legislation 	Fail
Colorado Medical Board enforcement of practice standards <ul style="list-style-type: none"> Adoption of Policy 40-28 Regarding Recommendations for Marijuana as a Therapeutic Options (2015) 	Partial Success <ul style="list-style-type: none"> Law enforcement is an important partner to assist the Board with enforcement of medical marijuana practice standards. Law enforcement may 1) refer suspicious activity to the Board for investigation, 2) share investigative information by signing a nondisclosure agreement, and 3) collaborative with the Board to address concerning activity in the community. Guidance from law enforcement so far has been limited. The Board is complaint-driven, meaning information must come to the Board to initiate an investigation. The evidence and complaint process so far has also been limited.

Our Core Message and Mission Statement

Core Message

While licensed, commercial marijuana dispensaries are the most visible and highly reported aspect of marijuana legalization, Colorado voters have also provided the right to responsible and limited home-growing, both as caregivers and for personal use. However, in some cases the home grow provisions have been exploited by criminals, seemingly organized, to create a black market that threatens the safety of Coloradans and undermines our regulatory system. Illicit, unlicensed cultivation and distribution activities have emerged as a result of Constitutional loopholes and exist outside the intent of the law. To further protect our communities and ensure the public safety of the state's residents, while preserving their Constitutional rights, we should establish strong, common-sense guardrails on nonlicensed grows.

Mission Statement

To work within Colorado's current constitutional requirements to eliminate the marijuana black market, allowing for nonlicensed operations only to the extent that such operations align with the intentions of the voters as outlined in Amendment 20 and Amendment 64 and adhere to the established federal enforcement priorities concerning state-level marijuana legalization.

Approaches to Pursue

Approach	Challenges	Next Steps
<ul style="list-style-type: none"> Work to adopt modified definition of “assist” to limit home grows to a qualifying individual’s primary residence. 	<ul style="list-style-type: none"> Requires legislation 	<ul style="list-style-type: none"> Continue to have conversations with relevant stakeholders
<ul style="list-style-type: none"> Explore a residential hard plant count limit that brings us in line with other states OR tie legal ability to register as a caregiver or grow as a patient to compliance with local zoning restrictions. 	<ul style="list-style-type: none"> Requires legislation 	<ul style="list-style-type: none"> Continue to have conversations with relevant stakeholders
<ul style="list-style-type: none"> For extended plant count grows and caregivers over the residential hard plant count, require such grows to be in properly zoned areas and registered and open to inspection from local law enforcement, health officials, and local fire departments. Consider an accounting system to ensure plants are being used for intended purposes. 	<ul style="list-style-type: none"> Requires legislation Local law enforcement must monitor and regulate 	<ul style="list-style-type: none"> Flesh out a proof of concept
<ul style="list-style-type: none"> Increase funding and resources for state and local law enforcement. Provide resources for LLEs and DAs. Explore state-level expertise to help local efforts. 	<ul style="list-style-type: none"> Necessitates additional time, resources, and bandwidth from state agencies and partners. Legal ambiguities remain. Current law maintains the legality of most unlicensed grows until diversion occurs making law enforcement complex. 	<ul style="list-style-type: none"> CDPS and LLE estimate budget allocation



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