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Report of the  
Community Oversight Committee  
on Implementation of  
MSLA2006-02 (Initiative 2)

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Report #1  
November 2007

Also available at [www.co.missoula.mt.us/initiative2](http://www.co.missoula.mt.us/initiative2)

## **EXECUTIVE SUMMARY**

In November 2006, Missoula County voters passed initiative MSLA2006-02 by a vote of 55%. The initiative recommends that county officials treat adult misdemeanor marijuana offenses as the lowest priority, and establishes a Community Oversight Committee charged with publishing a report evaluating implementation of the initiative. The reporting criteria may be summarized as follows:

- the number and nature of arrests, prosecutions, and consequences for adult misdemeanor marijuana offenses, including all costs associated with those actions,
- information regarding cooperation with state and federal agencies on marijuana cases,
- any other information deemed necessary by the committee

It should be noted that the only formal departmental acceptance of the low-priority policy recommended by voters came from the office of the county attorney, in October 2007, nearly one year after the Initiative's passage. The departmental policy requests that law enforcement officers stop arresting individuals for adult misdemeanor marijuana offenses, and directs that any such cases referred to the prosecutor's office be handled on a lowest priority basis.

While the Initiative targeted county officials, the committee gathered data from various data sources, so long as the data requested was relevant to the enforcement of marijuana prohibition within the geographic boundaries of Missoula County. Using only information provided by the Missoula County Sheriff's Department, we project that 82 adults will be arrested/cited by county law enforcement for marijuana offenses in 2007.

Combining annualized projections of partial-year data we received from county, city, and university officials who enforce marijuana prohibition in Missoula County, that number rises to approximately 300 people who will be cited or arrested for marijuana offenses in Missoula County in 2007, nearly one every day.

The precise financial costs associated with those enforcement actions is difficult to calculate because county software systems do not currently track time spent per case; anecdotal examples provided to the committee indicate that an incident can take anywhere from just a few minutes to hundreds of hours of staff time. The time-tracking challenge is similar for prosecution time, court staff time, probation, parole, and so on.

Our work to document, understand, and analyze the web of local, state, and federal agencies involved in enforcing marijuana laws is incomplete, and information on that topic contained herein is anecdotal.

Having engaged in our research to date, we have the following recommendations (each explained in greater detail in the body of our report) for government officials and future committee reports:

1. The lowest priority policy should be consistent throughout the county – including within the city limits (where initiative approval exceeded 80% in some precincts [29]) and on the university campus.
2. Future report data-gathering must be automated by computer software.
3. Besides fiscal savings, future reports should examine societal impacts including youth drug use rates, property crime rates, addiction treatment requests, etc.
4. Missoula County should report effects of the Initiative to the Montana legislature.
5. Future reports should explain the interagency relationships currently responsible for enforcing marijuana prohibition.
6. The county should provide the committee with a modest budget to cover administrative and data aggregation fees and/or access to county office equipment.

While the committee has been assured and believes that even before the initiative's passage, personal adult marijuana use was not a high priority for law enforcement and prosecution officials, hundreds of people in Missoula County will be arrested for marijuana offenses this year, and these enforcement actions have a real cost in time and resources to the taxpayers who fund local government. Whether the benefits of said enforcement is worth the costs is explored in the body of our report.

## A WORD OF THANKS

When appointed by the Missoula County Commissioners in February 2007 and subsequently elected chair of the Initiative #2 Community Oversight Committee, I had little idea of what to expect. The initiative required that the County Commissioners put nine strangers in a room with the mission of evaluating the initiative's implementation. Where to begin?

The committee is comprised of nine Missoula citizens who share common goals of a safe community and a just and cost-efficient government, and I'm proud to be a part of it. This first report is the fruit of our efforts. I'm hopeful that future committee reports will be handled with the care and attention we've afforded this one, and that future committee members will take seriously their obligation to the community in rigorously and honestly examining Missoula County marijuana policies.

Besides the dedicated team comprising the committee, this report could not have been completed were it not for the help of various public servants who assisted us throughout the process. I'm grateful to Commissioner Bill Carey for his early guidance of our efforts, and to County Attorney Fred Van Valkenburg and County Sheriff Mike McMeekin for an honest ongoing dialog, the occasional vigorous debate, and continuous work towards carrying out our mutual responsibilities to the citizens of Missoula County. Thanks also to Missoula Assistant Chief of Police Mark Muir for the frank conversations about our data-gathering challenges, and to University of Montana's Director of the Office of Public Safety Jim Lemcke for his prompt and thorough help in putting together UM data. And, thank you to the city and county and state government support staff who helped query, collate, aggregate, and collect various information used to prepare this report.

Finally, a thanks to the framers of state policy who ensured citizen initiatives are possible, and the voters who participated and continue to participate in this important conversation about marijuana policy in the city and county of Missoula.

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John Masterson  
Chair, Initiative 2 Community Oversight Committee  
November 14, 2007

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## PREFACE

In November 2006, Missoula County voters voted on Initiative MSLA-2006-02, commonly referred to as Initiative 2 or simply “the marijuana initiative”. The stated purpose of the Initiative is to “alter law enforcement priorities and make adult marijuana offenses the lowest law enforcement priority in Missoula County”. Almost 55% of county voters supported the Initiative, with support strongest in the city of Missoula, where several precincts reported over 80% voter support. [29]

Initiative 2 is substantially similar to Seattle's Initiative 75, which passed in 2003 with 58% of the vote. I-75's passage corresponded with a subsequent sharp reduction in marijuana arrests in Seattle, and no discernible increase in marijuana use. [31]

Though the Missoula County Commissioners later amended the Initiative 2 to apply only to misdemeanor possession and paraphernalia offenses (as opposed to the generalized “adult marijuana offenses”), the section that established a Community Oversight Committee remained intact as the voters approved it. This section defines the responsibilities of the committee and may be summarized as follows:

- Meet at least quarterly or more frequently as needed,
- Ensure timely implementation of the initiative,
- Collect grievances from individuals in the county who believe they were treated by government officials in a manner contrary to the spirit of the lowest law enforcement priority policy,
- Design a supplemental reporting form for law enforcement and prosecution authorities to use to report adult marijuana offense-related activities,
- Request the presence of any Missoula County Deputy who has engaged in adult marijuana offense enforcement activities,
- **Submit semi-annual reports to the Board of County Commissioners on implementation of the initiative.**

This document is the Committee's first report to the Board of County Commissioners and the public.

Because it is our first report, the Committee felt it was important to present a broader context in which the initiative resides by providing some historical and scientific information as well as briefly reviewing marijuana policies outside Missoula County. This report will conclude with recommendations for improving public policy and streamlining future data collection efforts and reports.

## MARIJUANA: AN INTRODUCTION

### Historical Context & Scientific Findings

Marijuana is the common name for the leaves and flowering tops of the hemp plant, *Cannabis sativa* and its variants. Marijuana may be smoked, ingested, or vaporized (heated to a temperature prior to combustion which releases active compounds without smoke).

Native to central Asia, marijuana is a hardy annual that can grow from the equator to the Arctic Circle, and has been used by humans for thousands of years as an intoxicant and medicine (leaves and flowers), food and fuel (seeds), as well as fiber (stalks). The fiber and seed-bearing variety of *Cannabis* (hemp) is currently grown commercially in dozens of countries worldwide, including Canada.

Marijuana appears in European medical texts from the 17<sup>th</sup> and 18<sup>th</sup> centuries, and it was widely used by 19<sup>th</sup> century American doctors to treat a variety of conditions, including migraine, sleeplessness, chronic pain, depression, dysmenoreah (painful menstruation), arthritis, and asthma. [1]

Marijuana's reputation as an intoxicant in America was on the rise in the 1920s and 1930s as its use became popular with various immigrant laborer groups. Many believe it was in part because of these demographics that marijuana was effectively outlawed by the federal government in 1937. Another influence on the political process that resulted in hemp/marijuana prohibition was the growing power of the petrochemical, cotton, and timber industries, each of which was threatened by a hardy multi-use annual agricultural crop.

Today, the federal government classifies marijuana as a Schedule 1 drug, which is reserved for drugs that the government claims have a high potential for abuse and no accepted medical value. Other Schedule 1 drugs include heroin, ecstasy, mescaline, and LSD. Schedule 2 drugs, which are acknowledged to have some therapeutic value but still considered dangerous, include methamphetamine, cocaine, opium, and morphine.

People who use marijuana often describe the effect as a “high”. As described by the Institute of Medicine (IOM) in 1999, the effect includes “a sense of well-being or euphoria and increased talkativeness and laughter alternating with periods of introspective dreaminess followed by lethargy and sleepiness.” [2]

Relative to other recreational substances, marijuana is remarkably non-toxic. A 2006 study

published in American Scientist magazine compared the ratio of effective dose to lethal dose of various substances. The most dangerous substances, which had a deadly dose 5-20 times their effective dose, included heroin, alcohol, and codeine. [3] There is no known lethal dose of marijuana; in the course of many millennia of known marijuana use by humans worldwide, there are no recorded cases in which a person's death was caused solely by a marijuana overdose.[1]

While psychological dependence on marijuana rarely occurs, marijuana poses a very low risk of dependence relative to other recreational substances. [1] In rating various psychoactive substances along addiction-relevant metrics of withdrawal, reinforcement, tolerance, dependence, and intoxication, a 1994 National Institute of Drug Abuse study rated nicotine, alcohol, and caffeine as being more addictive than marijuana. [4]

The 1999 IOM study also examined the so-called "gateway theory", which posits that marijuana use leads to use of "hard" drugs such as heroin and cocaine. Their conclusion flatly states, "There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other illicit drugs." The study further explains that marijuana's prohibition places it in a marketplace which includes other illegal drugs, and this marketplace may present individuals otherwise disinclined to try other drugs with the opportunity to do so. [2]

Marijuana is by far the most popular illegal substance. According to data collected in 2002-2004 by the federal Department of Health and Human Services for the region of Western Montana defined by Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, and Sanders Counties, 9.7% of the population admitted to using marijuana in the previous month, and 15.9% said they'd used marijuana in the past year. According to the National Survey on Drug Use and Health, in 2005, 40% of Americans, some 120 million people, admit to trying marijuana at least once. [5][6]

### **Recent Marijuana Policy in the United States**

Recreational marijuana use by college students in the 1960s gave rise in part to President Richard Nixon's "war on drugs". After Congress passed the Controlled Substances Act in 1970, which classified marijuana as a Schedule 1 drug with no legitimate uses, a presidential commission of prosecutors, police, doctors, and legislators was created to study the marijuana issue and offer a long-term strategy. This commission, the National Commission on Marihuana and Drug Abuse, concluded:

"Marihuana's relative potential for harm to the vast majority of individual users and its actual impact on society does not justify a social policy designed to seek out and firmly punish those who use it." [7]

In short, the presidential commission of experts recommended decriminalization of marijuana. However, President Nixon believed that marijuana use was symptomatic of societal disintegration caused by ethnic minorities. He rejected the report and escalated the enforcement of marijuana laws.

Since Nixon's presidency, total nationwide marijuana arrests have increased almost every year. As of 2006, an American is arrested for a marijuana crime every 38 seconds on average. According to FBI statistics, 829,625 people were arrested in 2006 for marijuana crimes, 89% for possession alone, and comprising 5.5% of all arrests, and far more than arrests for all violent crimes combined. [8] Twenty million Americans have been arrested for marijuana crimes since the 1970s.

In 1977, President Jimmy Carter reviewed the report created during Nixon's presidency and concluded:

Penalties against possession of a drug should not be more damaging to an individual than the use of the drug itself; and where they are, they should be changed. Nowhere is this more clear than in the laws against possession of marijuana in private for personal use. We can, and should, continue to discourage the use of marijuana, but this can be done without defining the smoker as a criminal. States which have already removed criminal penalties for marijuana use, like Oregon and California, have not noted any significant increase in marijuana smoking. The National Commission on Marijuana and Drug Abuse concluded five years ago that marijuana use should be decriminalized, and I believe it is time to implement those basic recommendations. [9]

President Carter's recommendation was not implemented.

In 1988, the Drug Enforcement Administration took up the issue of rescheduling marijuana; that is, to place it in a category where some medical uses would be recognized. Upon reviewing the scientific evidence, DEA administrative law judge Francis Young concluded:

In strict medical terms marijuana is far safer than many foods we commonly consume. For example, eating ten raw potatoes can result in a toxic response. By comparison, it is physically impossible to eat enough marijuana to induce death. Marijuana, in its natural form, is one of the safest therapeutically active substances known to man. By any measure of rational analysis marijuana can be safely used within a supervised routine of medical care. [10]

Judge Young's recommendation to reschedule marijuana to Schedule 2 was not implemented.

Most marijuana arrests are conducted by state and local authorities, and state penalties for marijuana crimes vary widely. In Nevada, for example, possession of *any* amount may be prosecuted as a felony, with a potential jail term of four years, while possession of one ounce inside a home in Alaska carries no penalty whatsoever. Under federal law, possession of marijuana is punishable by up to one year in jail and a minimum fine of \$1,000 for a first conviction.

### **Effects of Marijuana Policy in the United States**

Policies are born of a mix of ideology and evidence. For example, a moralistic ideology towards marijuana policy might conclude that because marijuana use is *wrong*, it must be prohibited, even if a high cost is required. A paternalistic ideology towards marijuana policy might be grounded in the assertion that the state's role is to protect citizens from the harms of marijuana, and hence it must be prohibited. A liberal (or libertarian) ideology would assert that the state has no business prohibiting any adult behavior, including marijuana use, unless and until a person violates another person's personal or property rights. To engage in productive policy debate on topics of contention, all sides must allow vigorous ideological defenses to take a back seat to analysis of evidence. One cannot leave their moral foundation and personal philosophy by the wayside, but honest analysis of evidence is a great start towards improving public policy. Otherwise the debate devolves into mere theater, in which facts are irrelevant.

Any public policy may be evaluated by the degree to which it meets its stated goals. For national marijuana policy, as implemented by the Office of National Drug Control Policy and DEA, the goal is a reduction in marijuana availability and use.

Marijuana use rates have fluctuated over the past 30 years with no apparent relation to government spending or policies. (The Office of National Drug Control Strategy notes that self-reports of teen marijuana use have declined 25% in the last 5 years, though use is up roughly 50% since 1992.) American policies on marijuana are among the most severe in the world, anti-drug funding the highest in the world, and usage rates among the highest in the world.

State and federal spending on marijuana enforcement has increased markedly year after year since the 1970s, while usage trends seem to fluctuate culturally and perceived availability remains steady. In a 2005 National Institute of Health publication, the government noted "In the case of marijuana, perceived availability has remained very high for 12th graders over the past 31 years, while use dropped substantially from 1979 through 1992 [at which point it began

rising again].” [11]

The federal government's Monitoring the Future Survey indicates that since 1992, at least 2 out of 5 eighth grade students, 2 out of 3 tenth grade students, and 4 out of 5 high school seniors find marijuana widely available. Whatever effects marijuana prohibition may have, eradicating marijuana, eliminating use, or reducing perceived availability are apparently not among them.

With regards to whom marijuana policy affects, a 2005 report by public policy analyst Dr. Jon Gettman concluded:

Marijuana possession arrests disproportionately affect blacks, youths, and males. Marijuana users who are white, over 30, and/or female, are disproportionately unaffected by marijuana possession arrests. [12]

Marijuana is now the top cash crop in the United States, at an annual market value of nearly **\$36 billion**, exceeding the combined value of corn (\$23.3 billion) and wheat (\$7.5 billion). [13]

### **Costs of Recent Marijuana Policy in the United States**

In 2005, Harvard University professor Jeffrey Miron attempted to calculate the costs of marijuana prohibition. While acknowledging that economic impacts are but one aspect of drug policy, he concluded that the police, legal, judiciary, and corrections expenditures cost American taxpayers some \$7.7 billion per year. If these costs are borne in relation to state population, \$25 million is spent annually to enforce marijuana laws in Montana. [14]

In addition to direct costs of enforcing marijuana prohibition, an honest economic analysis must also examine opportunity costs, i.e., if marijuana were taxed and regulated like vodka, for example, what government revenue could be generated?

In 2007, public policy analyst Dr. Jon Gettman concluded that an economic model for marijuana similar to the taxation and regulation system associated with hard liquor could generate \$31 billion annually, based on government estimates of plant counts, plot sizes, and price indexes. [15] If this tax revenue was allocated in proportion to state population, over \$100 million would flow into Montana coffers.

Additional costs of marijuana prohibition, for which figures are difficult to calculate, are the indirect economic costs associated with psychological effects of arrest, prosecution, and incarceration, etc.

### **Benefits of Marijuana Policy in the United States?**

Since by the federal government's own data it would be difficult to conclude that availability or use of marijuana has been reduced, one way to consider the possible benefits of current marijuana policy is to hypothesize what might occur if marijuana prohibition were relaxed or repealed.

One possibility is that if punishments were reduced or eliminated, use would skyrocket, causing new (and expensive) societal problems. This argument depends on the assertion that strict marijuana laws are effective in discouraging its use.

It is possible that harsh marijuana laws do deter some individuals from experimenting with marijuana. Examining marijuana usage trends in localities that have legalized or decriminalized its use is one way to predict the results of such a policy change elsewhere.

In 1982, a report by the National Academy of Science analyzed several states in which the threat of arrest had been removed and concluded on the topic:

It has been suggested that repeal of government prohibitions might change attitudes related to health or morals, perhaps symbolizing that health officials certify marijuana use to be safe. The absence of large increases in marijuana use in repeal states, however, indicates that either the change in policy has not had such a symbolic effect, or that, if it has, its causal significance is not appreciable--though it must be acknowledged that changes of this type might take generations to occur. [16]

In 2004, the United Kingdom reclassified marijuana such that law enforcement officers had the discretion to verbally warn, rather than arrest offenders. This represented a significant relaxing of marijuana penalties. Since then, marijuana use has dropped by 20%. [17]

The Netherlands are another example of a nation that has examined the alternatives and concluded that marijuana prohibition is destructive, expensive, and not a sensible use of government power and finite resources.

Since 1976, the Dutch have implemented a policy of marijuana decriminalization; that is, adults may possess personal amounts of marijuana without threat of criminal sanction, and may even purchase small amounts in "coffee shops", where sale of any drug besides marijuana is strictly

prohibited and grounds for immediate closure.

After three decades of this policy, marijuana use rates among Dutch adolescents is far below American averages, and overall marijuana use by adults is slightly less than American usage rates. [18]

Another possible defense of marijuana prohibition is that changing course now would send the wrong signal to children. All sides agree that childhood is not a time for recreational drug use, and reducing a drug's availability to children is a worthwhile goal.

Unfortunately, according to ONDCP, approximately 42% of high school students surveyed in Montana in 2005 reported using marijuana at least once, and 22% reported use in the last month. [19] In 2006, 40% of eighth graders nationwide rated marijuana “fairly easy” or “very easy” to get. For twelfth graders, the figure was 85%, and has remained fairly static for decades. [20]

So, while reducing marijuana's availability to children is a worthy goal, the strategy of criminal prohibition doesn't seem to be working very well. Is it possible that a strategy of regulation and control, as opposed to criminal prohibition, would be more effective?

### **Montana Marijuana Laws**

Initiative 2, after being amended in March 2007, only recommends a lowest priority policy for adult *misdemeanor* marijuana offenses. To appreciate the meaning of this legal distinction, a brief overview of some Montana laws is helpful.

**Misdemeanors** are generally punishable by up to 6 months in jail and/or a \$500 fine. These are the misdemeanors (along with their state title, chapter, and part) to which the low priority policy recommended in the amended initiative apply:

45-9-102. Criminal possession of dangerous drugs (for marijuana, up to 60 grams – for perspective, this is a volume roughly the size of a 1-lb bag of coffee beans.)

45-10-103. Criminal possession of drug paraphernalia

**Felonies** are punishable by up to life in prison, and include:

45-9-101. Criminal distribution of dangerous drugs.

45-9-103. Criminal possession with intent to distribute

45-9-109. Criminal distribution of dangerous drugs on or near school property

45-9-110. Criminal production or manufacture of dangerous drugs

Montana is one of few states in the U.S. which threatens the possibility of life imprisonment for marijuana crimes. Specifically, growing 31 marijuana plants, under state law 45-9-110, is punishable by up to life in prison. We assume that in practice, such a sentence is exceedingly rare, but it is worth noting that the possibility does exist. Growing a single plant carries a potential sentence of 10 years in state prison.

Under state law 45-9-101, a person who “sells, barter, exchanges, gives away, or offers to sell, barter, exchange” marijuana commits a felony and faces a potential sentence of one year to life in prison. This includes the small-scale non-profit transfer between consenting adults.

Under state law 45-9-109, selling, trading, or giving away even small amounts of marijuana within 1,000 feet of a school carries a potential sentence of three years to life in prison; it is an “affirmative defense” to this charge if the activity took place within a private residence between adults, meaning that after arrest, the accused may argue in court that the charge should be dropped under these circumstances.

Under state law 45-9-130, in addition to whatever other penalties the court applies upon a person's conviction, it may also fine the individual 35% of the market value of the seized contraband.

In addition to the direct statutory penalties noted above, a marijuana conviction can also result in the loss of financial aid, mandatory loss of federal housing eligibility, loss of drivers license, loss of veterans benefits, probation requirements, and other collateral consequences.

Finally, an arrest for marijuana – even when no charges are brought and/or no convictions obtained – can result in the seizure of a suspect's assets, which can then be sold or utilized by the government agencies involved.

Besides criminal penalties, Montana state law contains two other bodies of law that pertain to the *Cannabis sativa* plant.

In 2001, the Montana legislature authorized industrial hemp, the fiber and seed bearing variety of *Cannabis sativa*, as an agricultural crop in the state. Rule making authority was vested in the Department of Agriculture. Neighboring North Dakota has a similar law, and is pushing ahead with industrial hemp licensing, despite federal objections. [21]

In 2004, Montana voters passed the Montana Medical Marijuana Act with a vote of 62%

approval. This law creates a confidential database, administered by the Montana Department of Public Health and Human Services, of registered patients who have submitted statements from their physicians that medical use of marijuana is likely to provide more benefit than harm for the patient. Such registered patients, so long as they comply with strict limits on quantity, are protected from arrest for violation of state marijuana laws. Additionally, unregistered patients may, under the law's "affirmative defense" provision, argue in court that their use of marijuana was medical in nature.

However, because federal law does not recognize state medical marijuana laws, registered Montana patients face a somewhat perilous prospect of being a law-abiding citizen under state law and a criminal in the eyes of federal authorities. In fact, DEA officials seized medical marijuana en route to a state-legal patient in March of 2007. An understanding of local/state/federal interagency cooperation, particularly with regards to the DEA, is an important goal of future reports.

## MISSOULA COUNTY MARIJUANA POLICY

In Montana, a city or county may not establish penalties for a crime which are less than state penalties for that crime. Initiative 2 *recommends*, as the voice and conscience of people of the community, a policy in which nonviolent personal adult marijuana use is “off the radar” of government officials.

Originally, the Initiative applied to all “adult marijuana offenses”. In March 2007, the Commissioners were asked by the county attorney to consider amendments to the Initiative that would restrict the voters' recommendation to only apply to *misdemeanor* adult marijuana offenses. The Committee responded with a resolution [22] which asked the County Commissioners to delay amending the initiative for an evaluation period of not less than two years. Nevertheless, the amendments passed with a 2-1 vote.

Once the amendments passed, and the voters' recommendation was changed to apply only to misdemeanor marijuana offenses, implementation of marijuana policy in Missoula County was left to the sheriff and county attorney, both elected officials.

As a county referendum, Initiative 2 was not addressed to Missoula city officials. However, the city is the largest municipality in the county, and the initiative passed overwhelmingly within city limits. Therefore, city officials have the support of voters to implement the low priority recommendation as city policy as well.

Sheriff Mike McMeekin has stated on several occasions that the recommendation of voters as expressed in the initiative will not affect the Sheriff's Department operational policies. A draft memorandum provided to the committee on March 11<sup>th</sup>, 2007 by Sheriff McMeekin states that violations of the law should continue to be prioritized by circumstances at the time, including “issues of safety, seriousness of the offense, perceived immediacy requirements and any competing demands of the employee's attention.” [23]

Based on that policy statement, it might be inferred that county deputies continue to arrest people for adult misdemeanor possession at rates similar to previous years. It remains a possibility that professional discretion exercised by individual deputies in the field is now influenced by the voters' recommendation, resulting in an unofficial compliance with the Initiative's recommendations. On the other hand, if deputies were to feel undermined by the Initiative's recommendations or otherwise are discouraged by its implications, marijuana offenses might be more vigorously sought out, and arrest rates might have increased. Future reports from this committee should shed additional light on this question.

At the March 2007 amendment hearing, Missoula County Attorney Fred Van Valkenburg stated

[24] that he intended to develop a policy which would treat adult misdemeanor marijuana offenses as his office's lowest prosecution priority.

Mr. Van Valkenburg, previously a staunch opponent of the initiative, and the primary proponent of the amendments which altered the initiative's lowest priority recommendations, finally implemented such a policy within his department as of Oct 18<sup>th</sup>, 2007. The policy reads, in its entirety:

In the interest of compliance with the 2006 voter initiative on marijuana, the County Attorney's Office is adopting the following policy:

We are asking law enforcement officers to stop arresting individuals or writing and submitting tickets (with mandatory appearance dates) where the offense committed is solely possession of marijuana in misdemeanor amounts or possession of drug paraphernalia intended for use of marijuana. Those potential cases should be routed to our office like all other cases where the defendant is not in custody. Instead, we will treat them as uncharged cases that will be assigned to a prosecutor and charged on a lowest priority basis. If charged, we will seek the issuance of a summons with the complaint when they are charged. If an individual has no prior record of any consequence, prosecutors will be directed to offer, a defendant in such a case, the opportunity to enter into a deferred prosecution agreement as opposed to filing formal charges against the defendant. If the defendant declines such offer and charges are filed, the prosecutor shall re-assign the case to an unpaid clinical intern to handle the case from that point forward.

Finally, if someone is arrested on other charges (such as a DUI) and has marijuana or marijuana related paraphernalia in his/her possession, such person should only be taken into custody on the marijuana related charges where exigent circumstances demand. If the other charges are resolved prior to the resolution of the marijuana or marijuana related paraphernalia charges, the procedure set forth above regarding reassignment to a clinical intern shall apply.

It is the committee's evaluation of the policy statement that it represents substantial compliance with the lowest priority recommendation of voters as expressed in the Initiative.

## REPORT INFORMATION SOURCES

While Initiative 2 was a Missoula County initiative, the committee felt that it was important to generate as comprehensive a picture of marijuana policy in Missoula County as was feasible in the time available. Criminal justice policy casts a wide net, from law enforcement officers in the field, to prosecutors in the courthouse, to correctional officers in the jailhouse, to the post-release officials responsible for monitoring the accused's re-integration into society. A proper analysis of public policy should examine all these interrelated components, and more.

Therefore, we collected information from numerous sources, so long as the data collected were pertinent to marijuana policy within county boundaries. In addition to national and local research and reports aggregated from various government sources, we specifically requested data from the following government entities prior to publication of this first report:

- Missoula County Attorney
- Missoula Sheriff's Department
- Missoula City Attorney
- Missoula Police Department
- University of Montana Office of Public Safety
- Federal Bureau of Investigation
- Missoula Airport Police
- Montana Board of Crime Control
- Child & Family Services Division of DPHHS
- Montana Department of Corrections

Future committee reports may additionally collect information from the Montana Highway Patrol, the Drug Enforcement Administration, Justice Court, Municipal Court, District Court, Montana Public Defenders, Missoula Housing Authority, Missoula County Detention Facility, and any other sources of relevant data.

One final anticipated source of information was the system defined by the initiative for receiving grievances from individuals who feel they have been treated by government officials in a manner contrary to the spirit of the lowest priority recommendation. While the grievance process contains no direct possibility of remedial action or reparation, it should nevertheless be valuable as an anecdotal information source in evaluating initiative implementation. In June 2007, the committee deployed the grievance intake document to the committee's website at: <http://www.co.missoula.mt.us/initiative2/grievance-packet.pdf>

At the time of this writing, no grievances have yet been filed. However, in July 2007, one committee member spoke with an individual charged with misdemeanor paraphernalia who said the citing deputy insisted the crime would result in a \$585 fine, ignoring the fact that it was unlikely to be prosecuted. And, in late October 2007, we were contacted by an attorney with two clients considering filing grievances. Both were being prosecuted at the city level for misdemeanor possession of marijuana; one is concerned he'll lose his job, the other could lose his government-funded housing if convicted. If grievances are filed, they will be documented in the committee's next report.

We assume that the public is largely unaware of the existence of the grievance process, and more vigorous public outreach by the committee in 2008 and beyond will help resolve this.

## FINDINGS

While the Initiative made recommendations of public policy to county officials, the committee felt it was important to collect data from as many sources as seemed relevant to providing a comprehensive picture of the effects of marijuana prohibition within the geographic boundaries of the Missoula County. In this section, we will present the data available, such as it is, and then summarize projected annualized resource costs based on these data.

### Missoula County Data

As a county initiative, this is where we started. Missoula County Sheriff McMeekin provided the following narrative [25] covering Jan 1 through June 30 of 2007.

The Missoula County Sheriff’s Department has reported a total of 37 cases involving possession of marijuana or marijuana paraphernalia, or both, during the first six months of 2007. These cases resulted in 23 arrests, 18 citations and 6 warnings for the marijuana-related offenses. A breakdown of those offenses shows 28 misdemeanor possession of dangerous drugs, 26 misdemeanor possession of drug paraphernalia and 1 felony possession of dangerous drugs. 105.4 grams of marijuana were seized and there were 19 seizures of small amounts of marijuana or residue that were not weighed. Marijuana paraphernalia was seized in 26 of the cases....

18 of the cases resulted from observed or reported traffic offenses, 4 during response to domestic disturbances, 9 during response to other complaints, 3 during ongoing criminal investigations of activity other than marijuana offenses, 2 while investigating suspicious activity and 1 in which deputies observed behavior they believed to be a marijuana-related offense.

In summary:

### **Missoula County Sheriff’s Department Misdemeanor Marijuana Arrests/Citations**

<b>2006</b>	<b>2007 Jan-Jun</b>	<b>2007 Projected</b>
(not available)	41*	82

*\* using 23 arrests + 18 citations = 41*

While the Sheriff opted to not provide a per-case time estimate, it may be assumed that processing a county marijuana case is not dissimilar from processing a city marijuana case. Since

the city estimated two hours for a typical marijuana case, we are applying that estimate to the county as well. Therefore, for the 37 cases (which involved 47 persons) for the first half of 2007, 74 staff hours were required. At an average wage of \$21.21/hour, that is \$1,569.54 in direct wage costs for 6 months of county marijuana law enforcement.

The County Attorney’s office processed approximately 69 adult marijuana cases between November 7, 2006 and July 19, 2007. An average of 2 hours of prosecutorial time, where the average hourly wage of a county prosecutor is \$28 means that about \$3,864 in wages alone was spent to pursue and process adult marijuana incidents in the time frame reported.

**Missoula County Attorney Misdemeanor Marijuana Prosecutions**

<b>2006 total</b>	<b>Nov 2006-July 2007</b>	<b>2007 Projected</b>
(not available)	69	78*

*\*If 69 cases were prosecuted in the time period provided, a span of 254 days, that's 0.27 prosecutions per day. Since the non-prosecution policy was formally implemented on October 18<sup>th</sup>, 2007, we may infer that prosecutions for adult misdemeanor marijuana offenses stopped then, so for Jan 1-Oct 18<sup>th</sup> 2007, approximately 78 prosecutions took place. However, if the non-prosecution policy was informally implemented earlier, total prosecutions may be lower than projected.*

**City of Missoula Data**

Most of the population of Missoula County lives within the city of Missoula. While the city was not the target of the voters' recommendation as expressed in the initiative, we anticipated that the bulk of misdemeanor marijuana offenses would be cited by Missoula city law enforcement, and the numbers we received confirmed that theory:

**City Misdemeanor Marijuana Arrests/Citations**

<b>2006</b>	<b>2007 Jan-Aug</b>	<b>2007 Projected</b>
(not available)	108	174

For 2007, of the 108 misdemeanors, 21 were solely for marijuana. There were 98 men and 18

women involved in marijuana related incidents for the time period reported.

The average hourly wage of city personnel involved with law enforcement is approximately \$22.50. According to the city's estimate, each marijuana related incident consumes about 2 hours of staff time. Therefore, from January 1 to August 31, 2007, approximately \$5,220 in wages alone was spent on pursuing marijuana arrests.

**City Prosecutions for Misdemeanor Marijuana Offenses**

<b>2006</b>	<b>2007 Jan-Oct</b>	<b>2007 Projected</b>
74	51	74

We requested but did not receive any time estimates from the City Attorney's office. However, we could assume that a city prosecutor's time spent on an average misdemeanor marijuana case is similar to the county, from which we received an estimate of two hours per case. The average wage of a city prosecutor is approximately \$32.50 an hour. Hence, approximately \$3,300 in wages alone were devoted to misdemeanor marijuana prosecution for January 1 to October 1, 2007. This does not include administrative costs.

**University of Montana Data**

Marijuana arrests and citations on the University of Montana campus (with some 13,000 students) were of particular interest to us for several reasons. First, frequency of self-reports of marijuana use in the last month are highest among the 18-25 age group, so there is a theoretical concentration of adult marijuana activity on campus. [11] Second, consequences of a marijuana conviction for a college student can be particularly severe. The Aid Elimination Penalty of the federal Higher Education Act strips financial aid from students who are convicted of a drug offense, and since 1998, thousands of students have lost their financial aid as a result. It's worth noting that no such financial aid penalty exists for persons convicted of other types of crimes. Finally, University policy with regards to marijuana is strictly “zero tolerance”. The university campus is a place where marijuana use may be more prevalent and penalties are potentially harsher.

**University Misdemeanor Marijuana Offenses**

<b>2006</b>	<b>2007 Jan-Oct</b>	<b>2007 Projected</b>
75	39	52

While a single year's difference cannot define a trend, the preliminary numbers may indicate a reduction in marijuana citations on campus since the Initiative's passage. Future reports will examine this more closely.

The UM Office of Public Safety estimates that only 26 minutes of staff time are devoted to each incident on average. Based on that estimate, for 2006, there were an estimated 1,950 minutes or 32.5 hours of staff time devoted to marijuana related incidents. The average wage of associated staff was estimated by UM at \$18.50. Therefore, for 2006, approximately \$601.25 in wages was spent pursuing marijuana related incidents. For 2007 (January 1<sup>st</sup> to October 1<sup>st</sup>), there was approximately \$312.65 in wages spent on marijuana related incidents.

The UM Office of Public Safety works with other agencies when a felony drug case is generated. By memorandum of understanding those investigations are turned over to the drug enforcement group of city/county and federal agencies. Future reports will document and explore these relationships in more detail.

**Annualized Summary of County, City, and University Costs**

If we annualize the data received and estimate costs, a summary view of marijuana prohibition financial costs for 2007 would look like this:

Entity/Dept	# cases	Hours/case	Avg Wage	Cost
University	52	0.43	\$18.50	\$413.66
City Police	174	2	\$22.50	\$7830.00
City Attorney	74	2	\$32.50	\$4810.00
County Sheriff	82	2	\$21.21	\$3478.44
County Attorney	78	2	\$28.00	\$4368.00
Highway Patrol	?	?		
Airport Police	?	?		
Municipal Court	?	?		
Justice Court	?	?		
District Court	?	?		
Probation/Parole	?	?		
Public Defenders	?	?		
Drug Education/Treatment	?	?		
County Detention Center	?	?		
Other Undetermined Costs	?	?		
<b>TOTAL:</b>				<b>????</b>

It should be noted that the time estimates we received were just that, estimates, and the individuals who provided them also warned that some cases take dozens or even *hundreds* of hours of staff time; the estimates provided ignore those outliers and estimate for a “typical” case.

The data above reflect only the direct enforcement and prosecution costs associated with marijuana policy in Missoula County. Other obvious implementors of county marijuana policy (and sources of associated taxpayer expense) from which we were unable to collect data in time for the publication of this report include probation and parole, court proceedings, compulsory drug education/treatment, drug testing, public defenders, jail and prison costs, et al.. Future

reports will aim to gather more comprehensive data.

### **Interagency Cooperation**

As noted previously, our research into interagency cooperation is incomplete. However, the following anecdotal data points begin to hint at the web of relationships.

In March 2007, DEA officials seized a state-legal quantity of medical marijuana being shipped to a registered medical marijuana patient in Missoula. Published reports quoted DEA officials explaining, “We’re kind of protecting people from their own state laws.” [26]

The Rocky Mountain High Intensity Drug Trafficking Area (HIDTA) defined by the federal government includes Missoula County, and one participant in HIDTA enforcement actions is a multi-agency affiliation called the Missoula County Drug Task Force. According to the 2005 Annual Report for the Rocky Mountain region, the Missoula County Drug Task Force seized 536 pounds of marijuana, 1,140 marijuana plants, and \$658,000 in assets. [27]

In testimony before the Missoula Public Safety and Health Committee in October 2006, just prior to the initiative’s passage, Missoula Police Chief Rusty Wickman expressed concern that if the initiative were to pass, the HIDTA-related federal funding -- at the \$100,000-\$200,000 level -- could be lost, and explained that police “get in the door on marijuana investigations and find other drugs.” [28]

## LIMITATIONS AND CAVEATS

This initial report was intended to reflect upon a full year of initiative implementation and cite statistics demonstrating the extent to which government officials embraced the voters' recommendation and changed their policies and practices with regards to responsible adult marijuana use. Unfortunately, aside from the county attorney's new non-prosecution policy, we can currently say little on this matter for the reasons outlined below.

Besides the time and resource constraints often experienced by volunteer committees, we experienced numerous obstacles to developing a clear picture of either the current state of marijuana policy in Missoula County or the impacts of Initiative 2 on those policies. Some of these obstacles may be overcome in future reports with the application of additional time, resources, and/or technology, while others will be more difficult to surmount.

To analyze local historical trends, our primary source of county data should theoretically have been the county government itself. This proved problematic due to the 2006 installation of new records management software shared by the city and county law enforcement agencies. According to several government sources, data collected prior to the new system's installation was unavailable. Any year-by-year analysis of locally-collected arrest statistics was consequently impossible, and we cannot say whether the Initiative's passage corresponded with any reduction in people being arrested for marijuana offenses in Missoula County. Future reports (querying data from the new system) will be better able to examine these trends.

The County Attorney's office advised us of more obstacles in a letter dated July 19<sup>th</sup>, 2007. The office does not use a system which correlates directly with law enforcement records, and so any data they provide may not correspond with data from any other sources.

Additionally, some of the data that we were charged with collecting for this report (notably, time worked per case, interagency cooperation, multiple offense versus marijuana-only arrests) is not tracked in the new system in a manner readily accessible to the committee. City officials attempted to aggregate some this information for us by hand with limited success.

As a result, time estimates published herein are best guesses provided by department heads. A system sufficient to collect accurate estimates was not and still may not be in place. We received estimated averages of staff time per incident from the County Attorney (2 hours per case), Missoula Police Department (also 2 hours per case), and the University's Office of Public Safety (26 minutes per case). In the Findings section, we use these volunteered estimates as a guide where agency-specific estimates are lacking.

Individuals who provided time estimates to the committee additionally advised that not only is

time associated with a case not specifically tracked, but that it varies widely. A complex case, vigorously defended by the accused, might require *hundreds* of hours of staff time to prosecute, for example.

Additionally, none of the time estimates include time and money required for training, evidence room maintenance, or other incidental costs that would not exist if marijuana offenses were not within the purview of law enforcement.

Other potential sources of pertinent information, including the Missoula Airport Police and Montana Department of Corrections, said that the data we were looking for was either not tracked at all, or difficult or impossible to extract or aggregate. It is possible that a modest research and data aggregation budget would aid in collecting data from some sources for future reports.

The FBI produces an annual report of arrest statistics categorized by county and offense as part of its Uniform Crime Reporting Program. Upon reviewing the data we received, it appears that Missoula County either did not report or the FBI did not record non-violent drug arrest statistics for most of the last dozen years. There was not time to submit a follow up request to the FBI prior to publication of this first report to the community.

Finally, the data we did receive from various agencies was for different time periods, which makes trend analysis difficult and might not be appropriately projected out proportionally for a calendar year in the event that arrests fluctuate seasonally, for example. Future reports on the initiative's effects need not face this problem if the reporting agencies use the same time-frames for their data summaries and/or data export is automated.

## DISCUSSION

Recommending changes in elected officials' priorities via citizens' initiative may be an uncommon, even novel approach to effecting change, but the mandate inherent in the 2006 vote was clear, particularly within the Missoula city limits. We can infer from the Initiative's passage that Missoulians believe that personal adult marijuana use should not be a focus of law enforcement resources.

We are assured that even prior to the initiative's passage, combating personal, adult marijuana use has not been a high priority for law enforcement officials. Nevertheless, hundreds of arrests/citations for marijuana offenses occur within Missoula County every year, requiring substantial taxpayer dollars and causing potentially catastrophic disruptions in people's lives.

While marijuana enforcement and prosecution may not be a major part of the operations of government in Missoula County, the data we were able to gather begin to estimate the costs in time and money that would arguably have been better spent on other issues, incidents, and investigations. And, these data comprise a mere subset of the body of information that would fully illustrate the impacts of treating adult marijuana use as a criminal act. Since marijuana charges can result in probation, drug education/treatment, mandatory drug testing, separation of children from their parents, loss of government housing, denial of employment, loss of financial aid, and other various alternative sentencing consequences, the full range of costs spans multiple agencies, departments, and jurisdictions which the committee has only begun to explore.

Of course, some adult marijuana use can be problematic for individuals and society, and no one is suggesting that problematic use should be ignored. However, a more cost-efficient and effective policy may be to treat problematic marijuana use similarly to problematic alcohol and tobacco use: as a medical problem that requires medical treatment, rather than criminal sanction.

County government appears to have a slight conundrum on its hands. The County Attorney's office has implemented essentially a non-prosecution policy for adult misdemeanor marijuana offenses, but the Sheriff's Department has indicated it intends to continue citing and arresting citizens for misdemeanor possession. A county system which spends the time and money to arrest people for crimes that will not be prosecuted could seem to be waste of resources.

## RECOMMENDATIONS

Having collected a portion of the data required to draw conclusions about the effects that Initiative 2 has on Missoula County, we have a number of recommendations; some will aid drafting of future semi-annual reports, while others are directed at public officials.

1. **City and university policy integration.** Initiative 2 has no legal effect on city officials. This could be a confusing distinction to the average citizen who might rationally conclude that because the city and main UM campus are completely within the county, the low-priority recommendation must apply. Attributes of good law and policy include consistency and predictability; because they are both completely within the county boundaries, establishing substantially similar low priority policies on the university campus and within city limits is therefore desirable. One way to move in this direction would be for Mayor Engen to begin a dialog with City Council and University officials about how best to formally and consistently implement the goals of Initiative 2 as city and University policy. Given the levels of support for the initiative within city limits (80+% in some precincts [29]), this would even seem to be politically advisable.
2. **Automated data gathering.** One of the stated goals of the initiative is to help county government save scarce government resources and focus criminal justice resources appropriately. We anticipate that complying with some of the government information requests the committee made could have been viewed by some officials or the public as an unnecessary burden, and ironically contrary to the resource-saving goals of the initiative.

Therefore, we recommend that a simple software system be developed whereby anonymous marijuana incident data can be automatically exported on a monthly basis to a delimited format that may be tracked, analyzed, aggregated, and reported by the committee to the Board of County Commissioners and the public, such that all may have a clearer picture of the effects of public policy.

3. **Analysis of other societal effects of a low priority policy.** Several concerns were presented by opponents of Initiative 2 prior to its 2006 approval by voters, most prominent and alarming of which was the prospect of teen use increasing. If and when city and county law enforcement officials substantially comply with the recommendation of voters as expressed in Initiative 2 and stop arresting people for responsible personal marijuana use, comprehensive public policy analysis requires an examination of impacts beyond fiscal cost savings, including the concerns noted. Future reports could and should explore these concerns in greater detail. A lowest priority policy for marijuana offenses may not be worth the fiscal savings if negative causal impacts are detected in

important public health and economic metrics such as youth marijuana use, emergency room mentions of marijuana, property crime, unemployment, hard drug addiction, voluntary requests for marijuana dependence treatment, or various other societal measures.

4. **Report to legislature.** Presuming the Missoula County “experiment” of lowest priority for adult marijuana offenses saves money and resources and does not result in intolerable societal harms, the county's own cost/benefit analysis should be addressed to the Montana state legislature as part of the consideration of a state-wide policy.
5. **Better research on agency relationships.** In our research, we frequently encountered evidence of interagency cooperation, but we still lack a comprehensive structural understanding of the full range of participating agencies and their relationships. In the interest of transparency, we believe the public has both an interest and a right to better understand the web of law enforcement agencies that collaborate to enforce marijuana prohibition, and we hope to include an exploration of this topic in subsequent reports. Initiative 2 not only required the committee to report on these relationships, but also recommended that Missoula County reject interagency contracts, including federal contracts, if those contracts were contingent upon a requirement that adult marijuana crimes were investigated, cited, prosecuted, and so forth.
6. **Provide committee resources.** The Initiative did not provide the committee with any funds to cover basic administrative expenses such as photocopies for meetings, or research expenses associated with gathering data required by the Initiative but not readily accessible from government sources. These costs were borne by individual committee members. A modest budget for these basic needs would go a long way, and the committee intends to submit a budget enhancement request for consideration by the Board of County Commissioners.

## CONCLUSION

Initiative 2, passed by 55% of Missoula County voters in 2006, created a Community Oversight Committee that is required to evaluate implementation of the voters' recommendation that government officials treat adult marijuana offenses as their lowest priority.

While the data we were able to gather were incomplete, we estimate that roughly 300 people will be cited/arrested for marijuana offenses in Missoula County in 2007, and that these arrests require significant taxpayer-funded time and resources to execute. We estimate that of those 300, roughly 82 people (27%) will be arrested by county deputies, 174 (58%) by city police, and 52 (17%) by campus public safety officers.

Arrests that are referred to the county attorney's office for prosecution, as of October 2007, will be subject to a lowest-priority departmental policy, as recommended by voters.

Given these results, we advise that city and University policies be adopted to ensure some measure of enforcement consistency throughout the geographic area defined by Missoula County. The city government and University administration should begin a dialog to achieve this goal as soon as possible.

Multiple agencies collaborate to enforce marijuana prohibition in Missoula County, including various local and state agencies sometimes woven together by federal dollars. Future committee reports will examine this web of enforcement agencies in further detail.

Marijuana policy has been a controversial issue in America for more than four decades, during which marijuana use rates have ebbed and flowed in little apparent relation to government enforcement efforts. Twenty million Americans have been arrested for marijuana offenses in that same time period.

### **Is it a just and effective use of the criminal justice resources to arrest, prosecute, penalize, and/or imprison adults for possessing marijuana?**

This is a question that has been asked and analyzed by various national and international commissions and committees of experts throughout the debate. The vast majority of these studies have concluded that, on balance, enforcing strict marijuana prohibition is neither good public policy nor wise use of public funds. [30]

In future reports, this volunteer committee will further explore the question as it pertains to marijuana policy in Missoula County.

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First Report of the Community Oversight Committee on Implementation of Initiative 2

We, the undersigned, as appointed members to the Community Oversight Committee established by Missoula County Initiative MSLA2006-02 (Initiative 2) to oversee implementation of said voter initiative, do adhere our names and titles to this document entitled, "Report of the Community Oversight Committee on Implementation of MSLA2006-02 (Initiative 2), Report #1", dated November 2007;

Dated this 14<sup>th</sup> day of November, 2007.

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John Masterson, Chair and Civil Liberties Advocate

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Steve Zellmer, Vice Chair and Harm Reduction Advocate

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Angela Goodhope, Secretary and Missoula County Resident

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Michael Bailey, Esq., Criminal Defense Attorney

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Craig Shannon, Esq., Criminal Defense Attorney

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Steve Lohning, Drug Abuse and Prevention Counselor

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Donna Hamilton, Missoula County Resident

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John Kneedler, Medical Marijuana Patient

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Charles Tiernan, Missoula County Resident