

The Cole Memo: 4 Years Later

Status Report on State Compliance of Federal Marijuana Enforcement Policy



SAM Smart
Approaches to
Marijuana
preventing another big tobacco

www.learnaboutsam.org

August 30, 2017

Background

On August 29, 2013, the U.S. Department of Justice (DOJ) issued guidelines to Federal prosecutors and law enforcement officials regarding where to focus their drug enforcement efforts in states that have passed laws legalizing the retail sales of marijuana. The so-called "[Cole Memo](#)" directs enforcement officials to focus resources, including prosecutions, "on persons and organizations whose conduct interferes with any one or more of [eight] priorities, regardless of state law." Per the memorandum, the eight DOJ priorities are:

- **Preventing distribution of marijuana to minors**
- **Preventing marijuana revenue from funding criminal enterprises, gangs or cartels**
- **Preventing marijuana from moving out of states where it is legal**
- **Preventing use of state-legal marijuana sales as a cover for illegal activity**
- **Preventing violence and use of firearms in growing or distributing marijuana**
- **Preventing drugged driving or exacerbation of other adverse public health consequences associated with marijuana use**
- **Preventing growing marijuana on public lands**
- **Preventing marijuana possession or use on federal property**

According to the Department of Justice, the Federal "hands-off" approach to marijuana enforcement enumerated in the Cole Memo is contingent on its expectation that "states and local governments that have enacted laws authorizing marijuana-related conduct will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests. A system adequate to that task must not only contain robust controls and procedures on paper, it must also be effective in practice."

Unfortunately, since Colorado and Washington became the first states to legalize the recreational sale of marijuana in 2012, evidence has emerged that regulations intended to control the sale and use of marijuana have failed to meet the promises made by advocates for legalization. For example, states with legal marijuana are seeing an increase in [drugged driving crashes](#) and [youth marijuana use](#). States that have legalized marijuana are also [failing to shore up state budget shortfalls](#) with marijuana taxes, continuing to see a thriving illegal [black market](#),

and are experiencing an [unabated sales of alcohol](#), despite campaign promises from advocates promising that marijuana would be used as a “safer” alternative instead.

Moreover, state regulatory frameworks established post-legalization have failed to meet each of the specific DOJ requirements on controlling recreational marijuana production, distribution, and use. While long-term studies and research on the public health and safety impacts of marijuana legalization are ongoing, this report provides a partial census of readily available information that demonstrates how Colorado, Oregon, and Washington State - the jurisdictions with the most mature regulatory markets and schemes - have not fulfilled the requirements of the Cole Memo.

DOJ Guideline 1: “Preventing distribution of marijuana to minors”

- According to the nation's largest and most comprehensive [survey of drug use trends in the nation](#), past-month use of marijuana among 12 to 17-year-olds in Colorado [increased significantly - from 9.82% to 12.56%](#) after marijuana retail sales began (Colorado legalized marijuana in 2012 and implemented legal marijuana stores in 2014). The same study notes that teens and adults in Colorado now use marijuana at a higher rate than the rest of the country. No other representative sample of drug users in Colorado has contradicted this sample.
- A 2017 study from the University of Colorado found that marijuana-related emergency room visits and visits to its satellite urgent care centers by teens in Colorado [more than quadrupled](#) after the state legalized marijuana.
- In Colorado, [a new report from the state’s public safety agency](#) reveals that after the state legalized the drug, marijuana-related arrests for black and Hispanic youth [rose by 58% and 29% respectively](#), while arrest rates for white kids dropped by eight percent. School Resource Officers in Colorado have reported a substantial [increase in marijuana-related offenses](#) in Colorado schools after the state commercialized the drug.
- According to data from the State of Washington, there have been over [240 violations](#) of legal marijuana sales to minors and of minors frequenting restricted marijuana sales areas as of July 2017.
- Youth use – among 8th and 10th graders at least – is increasing in Washington State. According to a special analysis of teenage drug use published in the peer-reviewed, highly regarded [Journal of American Medical Association Pediatrics](#), the perceived

harmfulness of marijuana in Washington declined 14.2% and 16.1% among eighth and 10th graders, respectively, while marijuana use increased 2.0% and 4.1% from 2010-2012 to 2013-2015.

- According to the Washington State Office of the Superintendent of Public Instruction during 2013-2014, 48 percent of statewide student expulsions were for marijuana in comparison to alcohol, tobacco, and other illicit drugs. During the 2014-2015 school year, statewide student expulsions for marijuana increased to 60 percent. Marijuana related suspensions for the 2013-2014 school year reported 42 percent and for the 2014-2015 school year, suspensions increased to 49 percent.¹
- In Washington State, youth (12-17) accounted for 64.9% of all state marijuana seizures in 2015 as compared to 29.9% in 2010, according to data from the National Incident Based Reporting System (NIBRS).
- From 2012 to 2016, reported exposure calls for marijuana increased 105 percent in Washington. According to the 2016 Annual Cannabis Toxic Trends Report, of exposures related to children under the age of five, 73 percent occurred in those one to three years of age. The counties with the highest reported exposures for both 2015 and 2016 were: King, Spokane, Snohomish, and Pierce.²

DOJ Guideline 2: “Preventing revenue of the sale of marijuana from going to criminal enterprises, gangs, and cartels”

- In June 2017, Colorado Attorney General Cynthia Coffman [announced](#) a takedown of a massive illegal marijuana trafficking ring in Colorado. The bust is the largest since legalization and indicted 62 individuals and 12 businesses in Colorado. The operation stretched into other states including Kansas, Texas, Nebraska, Ohio and Oklahoma.
- In March 2017, a [leaked](#) report from the Oregon State Police uncovered evidence from state officials that the black market for [marijuana continues to thrive in the state](#). The 39-page report noted that, “The illicit exportation of cannabis must be stemmed as it undermines the spirit of the law and the integrity of the legal market...it steals economic power from the market, the government, and the citizens of Oregon, and furnishes it to criminals, thereby tarnishing state compliance efforts.”

¹ Washington State Office of the Superintendent of Instruction. (2016, Jan. 26). Behavior Report. <http://www.k12.wa.us/SafetyCenter/Behavior/default.aspx>

² Washington State Poison Center – Toxic Trends Report: 2016 Annual Cannabis Report

-
- In 2016, Seattle Police spokesman Sean Whitcomb [noted that](#) “large-scale illegal grow operations... are still prevalent in Seattle, and we do come across those with a degree of frequency.”

DOJ Guideline 3: “Preventing the diversion of marijuana from states where it is legal under state law in some form to other states”

- In 2014, two states - Nebraska and Oklahoma - sued their neighbor state of Colorado by [citing evidence of increased marijuana flowing into those states](#). Law enforcement officials [have reported a substantial increase](#) in marijuana flow across state borders into neighboring states.
- In 2016, there were multiple raids conducted by state law enforcement in Colorado, leading authorities to seize [more than 22,0000 pounds of marijuana intended for sales outside of Colorado](#).
- According to the Oregon State Police, the state has an [“expansive geographic footprint”](#) on marijuana exports across the U.S. Several counties in Oregon including Jackson, Multnomah, Josephine, Lane, Deschutes and Washington “lead the way” in supplying marijuana to states where it is not legal.
- [According to the Rocky Mountain High Intensity Drug Trafficking Area task force](#), “there were 360 seizures of marijuana in Colorado destined for other states. This is [nearly a 600% increase](#) in the number of individual stops in a decade, seizing about 3,671 pounds in 2014. Of the 360 seizures reported in 2014, 36 different states were identified as destinations, the most common being Kansas, Missouri, Illinois, Oklahoma and Florida.”
- Law enforcement officials report that since legalization in 2012, Washington State marijuana has been found to be destined for 38 different states throughout the United States. Between 2012 and 2017, 8,242.39 kilograms (18,171.35 pounds) have been seized in 733 individual seizure events across 38 states. From 2012 to 2016, 470 pounds of marijuana have been seized on Washington State highways and interstates. Since 2012, [320 pounds](#) of Washington State-origin marijuana have been seized during attempted parcel diversions.

DOJ Guideline 4: “Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity”

- [According to Jorge Duque](#) from the Colorado Department of Law, cartels operating in Colorado are now “trading drugs like heroin for marijuana,” and the trade has since opened the door to drug and human trafficking. Duque also explains that money

laundering is a growing problem as “cartels are often disguising their money through legally purchasing marijuana or buying houses and growing marijuana in it.”

- In June 2017, a former Colorado marijuana enforcement officer and a Denver-based marijuana entrepreneur [were indicted](#) for running a statewide marijuana trafficking ring that illegally produced and sold “millions of dollars worth of marijuana across state lines.” This trafficking organization [obtained 14 marijuana licenses](#) in order to present their activities as protected business endeavors, despite “[never ma\[king\] a single legal sale of cannabis](#) in their two years of operation.”
- In Oregon, State Police officials [report](#) that criminals are exploiting Oregon’s legal marijuana industry for financial crimes and fraud. In one example, according to the Oregon State Police report, “Tisha Silver of Cannacea Medical Marijuana Dispensary falsified licensing to solicit investors and worked with Green Rush Consulting to locate unwitting investors. Silver exploited the burgeoning cannabis industry in the state to entice investors to back an illegitimate company, securing a quarter of a million dollars in fraudulent gains. According to some analysts, cannabis investors fell prey to ‘pump and dump’ schemes and lost up to \$23.3 billion in 2014 alone.”³
- Officials in Oregon note that the U.S. Postal Service is being exploited to ship marijuana products and revenue. [According to former Attorney General Eric Holder](#), “The Postal Service is being used to facilitate drug dealing,” a clear violation of federal law and a violation of the sanctity of the U.S. mailing system.

DOJ Guideline 5: “Preventing violence and the use of firearms in the cultivation and distribution of marijuana”

- While crime rates dropped or remained stable in many of the nation’s largest cities, Colorado’s crime rate [increased. There has been an increase in](#) rape, murder, robbery and auto thefts. While it is not possible to link legalization to a direct change in crime rates, officials in Colorado [cited marijuana legalization](#) as one of the reasons behind the rise.
- In Colorado, [prosecutors are reporting an increase in marijuana-related homicides](#) since the state legalized the drug.

³ This situation is detailed here: http://www.oregonlive.com/marijuana/index.ssf/2016/07/state_slaps_portland_dispensar.html. Other instances of fraud have been discussed here: Sapient Investigations Newsletters (2015, Feb. 10) “High Times for Fraud,” available online at <https://sapientinvestigations.com/spi-news/high-times-for-fraud/>

-
- In Oregon, state police [report](#) that, “Cannabis is a lucrative target for robbery. As recently as December 2016, a state-licensed cannabis producer was targeted for a violent armed robbery. In the aforementioned case, a well-known cannabis grower in Jackson County was assaulted, bound, and his harvest was taken by armed assailants.”
 - In Prince George's County Maryland, Police Chief Henry Stawinski noted [a significant rise in marijuana-related homicides since neighboring D.C. legalized the drug](#). Stawinski said 19 homicides in 2016 were related to marijuana.

DOJ Guideline 6: “Preventing drugged driving and the exacerbation of other public health consequences associated with marijuana use”

- Drugged driving has increased in states with legal marijuana sales. According to a study published by the American Automobile Association, [fatal drugged driving crashes doubled in Washington State after the state legalized marijuana](#). The Governors Highway Safety Association also [notes a disturbing rise in drugged driving crashes](#) even as alcohol-related crashes are declining.
- A Denver Post analysis found the number of marijuana-impaired drivers involved in fatal crashes in Colorado [more than doubled since 2013](#), the year after the state voted to legalize recreational marijuana use. Colorado saw a [145 percent increase](#) in the number of marijuana-impaired drivers involved in fatal crashes between 2013 and 2016. Marijuana is also figuring into more of Colorado's fatal crashes overall: in 2013, marijuana-impaired drivers accounted for 10 percent of all fatal crashes, but by 2016 [it reached 20 percent](#).
- According to [a study](#) published in the *Annals of Emergency Medicine*, poison control calls for children more than tripled after marijuana legalization. [Much of this is linked to a boom in the sale of marijuana “edibles.”](#) THC concentrate is mixed into almost any type of food or drink, including gummy candy, soda, and lollipops. Today, these edibles comprise at least half of Colorado's marijuana market.
- In Washington State, the number of marijuana-involved DUIs are increasing with 38 percent of total cases submitted in 2016 testing above the five nanogram per milliliter of blood legal limit for those over the age of twenty-one. In addition, 10 percent of drivers involved in a fatal accident from 2010 to 2014 were THC-positive.⁴
- A study by the [Highway Loss Data Institute](#) reveals that Colorado, Oregon, and Washington have experienced three percent more collision claims overall than would

⁴ NWHIDTA Drug Threat Assessment For Program Year 2018

have been expected without legalization. [Colorado witnessed the largest jump in claims](#). The state experienced a rate 14 percent higher than neighboring states.

- In Washington State, from 2012 to 2016, calls to poison control centers increased by 79.48%. Exposures increased 19.65% from the time of marijuana commercialization in 2014 to 2016. Of the marijuana calls answered by the Poison Center in 2016, youth under the age of 20 accounted for almost 40% of all calls. According to the 2016 Annual Cannabis Toxic Trends Report, 42% of the calls reported were for persons aged 13 to 29. Additionally, among exposures related to children under the age of five, [73% involved](#) children one to three years of age. The counties with the highest reported number of exposures for 2015 [remained in the top four for 2016](#): King, Spokane, Snohomish, and Pierce.

DOJ Guideline 7: “Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana on public lands”

- In Washington State, [373,778 marijuana plants](#) were found growing illegally on public and private lands between 2012 and 2016. Of the illegal marijuana plants eradicated in 2016, 60% were being cultivated on state land, and the 58,604 illegal marijuana plants eradicated in [2016 consumed an estimated 43.2 million gallons of water](#) over a full growing season (120-day cycle). More than 400 pounds of fertilizers, chemicals, and pesticides were removed from illegal marijuana growing operations in 2016, and Furadan, a neurotoxin that is extremely dangerous to humans, [was found in an illegal marijuana growing operation](#) the same year.
- In June 2017, [Colorado officials found more than 7,000 illegal plants](#) on federal land in the state’s San Isabel National Forest. This was the fifth illegal grow found in that area alone since the year marijuana legalization passed, demonstrating legalization has not curbed the problem of grows exploiting public lands.
- In Oregon, the legalization of marijuana in the state has [failed to eliminate illegal growing operations](#) and public lands continue to be exploited despite a legal market. According [to a report](#) from state officials, “To date in Oregon, cannabis legalization has not had a noticeable influence on Mexican National [Drug Trafficking Organizations] illicit cannabis cultivation operations on public lands... leaving a lasting scar on Oregon’s unique ecosystems. Illicit cannabis grows employ excessive amounts of pesticides, rodenticides, and herbicides, thereby threatening local wildlife habitats. Additionally, many illicit grow sites clear-cut timber, furthering soil erosion and water contamination. Research on the environmental impact of illicit cannabis grows indicates that grows tend to be bunched near water sources, resulting in disproportionate impacts on ecologically important areas... Oregon is robbed of roughly 122 Olympic swimming pools

worth of water annually, or roughly 442,200 gallons of water daily during the growth season.”

DOJ Guideline 8: “Preventing marijuana possession or use on federal property”

- Advocates for legal marijuana frequently flout federal laws by possessing and using marijuana on federal properties purportedly in acts of civil disobedience. In January 2017, one group gave away free marijuana in Washington, D.C. [to smoke on the National Mall](#) during the inauguration of President Trump. On April 24, 2017, four activists were arrested after [purposely flouting federal law and publicly using marijuana on U.S. Capitol grounds](#).

Conclusion and Key Recommendations

Federal resources should target the big players in the marijuana industry. Individual marijuana users should not be targeted or arrested, but large-scale marijuana businesses, several of which now boast of having raised over \$100 million in capital, and their financial backers, should be a priority. These large businesses are pocketing millions by flouting federal law, deceiving Americans about the risks of their products, and targeting the most vulnerable. They should not have access to banks, where their financial prowess would be expanded significantly, nor should they be able to advertise or commercialize marijuana.

These businesses target many of the marijuana products they sell toward kids, such as pot candies, cookies, and ice cream. And despite state regulations, these products continue to have problems with contamination. Recently, one of the largest, most sophisticated manufacturers of these pot “edibles” was [forced to recall a number of products](#) because they contained non-food-grade ingredients.⁵

Additionally, the black market continues unabated in legalized states. A [leaked report](#) from Oregon police showed that at least 70 percent of that state’s marijuana market is illegal, despite legalization. In June 2017, Colorado [Attorney General Cynthia Coffman said](#), “The black market for marijuana has not gone away since recreational marijuana was legalized in our state, and in fact continues to flourish.” Further, state-legal businesses have acted as top cover for these illegal operations, as recent large-scale arrests in Colorado have shown.

These large marijuana operations, which combine the tactics of Big Tobacco with black marketeering, should form the focus of federal law enforcement, not individual users. At the

⁵ Recalls are becoming more commonplace because of pesticides, molds, and other issues. See *The Denver Post* for news stories related to these recalls in legalized states: <http://www.thecannabist.co/tag/marijuana-recall/>

same time, the federal government along with non-government partners should implement a strong, evidence-based marijuana information campaign, similar to the *truth*[®] campaign for tobacco, which alerts all Americans about the harms of marijuana and the deceitful practices of the marijuana industry.