

The U.S. Department of Justice's Role in Monitoring the Effects of State Marijuana Legalization

**Mountain and Plains Intergovernmental Audit Forum
Friday, August 12, 2016**

**Tom Jessor
Assistant Director, Homeland Security and Justice Issues
U.S. Government Accountability Office**

Objectives for this Presentation

- Background on State Legalization Initiatives
- GAO's Congressional Request
- DOJ's Marijuana Enforcement Priorities
- DOJ's Monitoring of the Effects of State Legalization
- GAO's Recommendations and DOJ's Actions to Address Them

Federal and State Marijuana Laws

- It is a federal crime under the Controlled Substances Act of 1970 (CSA) to knowingly or intentionally manufacture, distribute, dispense, or possess marijuana.
- For many years all 50 states had uniform drug control laws or similar provisions that mirrored the CSA, making their violation a state criminal offense.

State Legalization Initiatives

- In 1996 California legalized possession and distribution of marijuana for medical purposes under state law; as of June 2015, 24 states and DC had passed medical marijuana laws.
- In November 2012, Colorado and Washington became the first states to pass ballot initiatives legalizing marijuana for recreational purposes under state law. As of June 2015, Alaska, Oregon and DC had also passed similar ballot initiatives.
- According to the National Conference of State Legislatures, measures to legalize marijuana for recreational purposes under state law have qualified for the November ballot in 4 states (CA, MA, ME, and NV).

Congressional Request

Senators Grassley and Feinstein asked GAO to review, among other things, the mechanisms the U.S. Department of Justice (DOJ) has established to monitor the effects of Colorado's and Washington's recreational marijuana laws.

- In December 2015, GAO issued ***State Marijuana Legalization: DOJ Should Document Its Approach to Monitoring the Effects of Legalization (GAO-16-1)***.
- On April 5, 2016, GAO testified before the U.S. Senate Caucus on International Narcotics Control at a hearing entitled "Is the Department of Justice Adequately Protecting the Public from the Impact of State Recreational Marijuana Legalization?" (See: GAO-16-419T).

Federal Marijuana Enforcement Responsibilities

- DOJ is responsible for enforcing the CSA and developing policies and strategies to do so.
 - The Drug Enforcement Administration (DEA) is the primary federal law enforcement agency responsible for conducting criminal investigations of potential violations of the CSA.
 - The U.S. Attorneys' Offices are responsible for prosecutions of criminal cases brought by the federal government and civil cases in which the U.S. is a party.
 - DOJ updated its marijuana enforcement policy in a series of Office of the Deputy Attorney General (ODAG) memos beginning in 2009.

GAO's Methodology

- Reviewed DOJ documentation related to its marijuana enforcement and monitoring efforts.
- Reviewed guidance describing DOJ case management systems used by DEA and U.S. Attorney's Offices.
- Interviewed DOJ officials and officials from the Office of National Drug Control Policy (ONDCP), with which DOJ reported coordinating on its monitoring efforts.
- Evaluated DOJ's reported efforts to monitor the effects of state marijuana legalization against standards in *Standards for Internal Control in the Federal Government*.

Elements of DOJ's Marijuana Enforcement Policy in Its Guidance Memos

- DOJ is committed to continuing to enforce federal marijuana laws.
- DOJ directed investigators and prosecutors to focus resources on the most significant threats to public health and safety.
- August 2013 (Cole memo): Clarified DOJ's priorities and the circumstances that may warrant DOJ to challenge a state's implementation of its marijuana legalization program.

DOJ's 2013 Marijuana Enforcement Priorities

DOJ's Marijuana Enforcement Priorities as Outlined in the August 2013 Marijuana Enforcement Guidance



Preventing the distribution of marijuana to minors



Preventing violence and the use of firearms in the cultivation and distribution of marijuana



Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels



Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use



Preventing the diversion of marijuana from states where it is legal under state law in some form to other states



Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands



Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity



Preventing marijuana possession or use on federal property

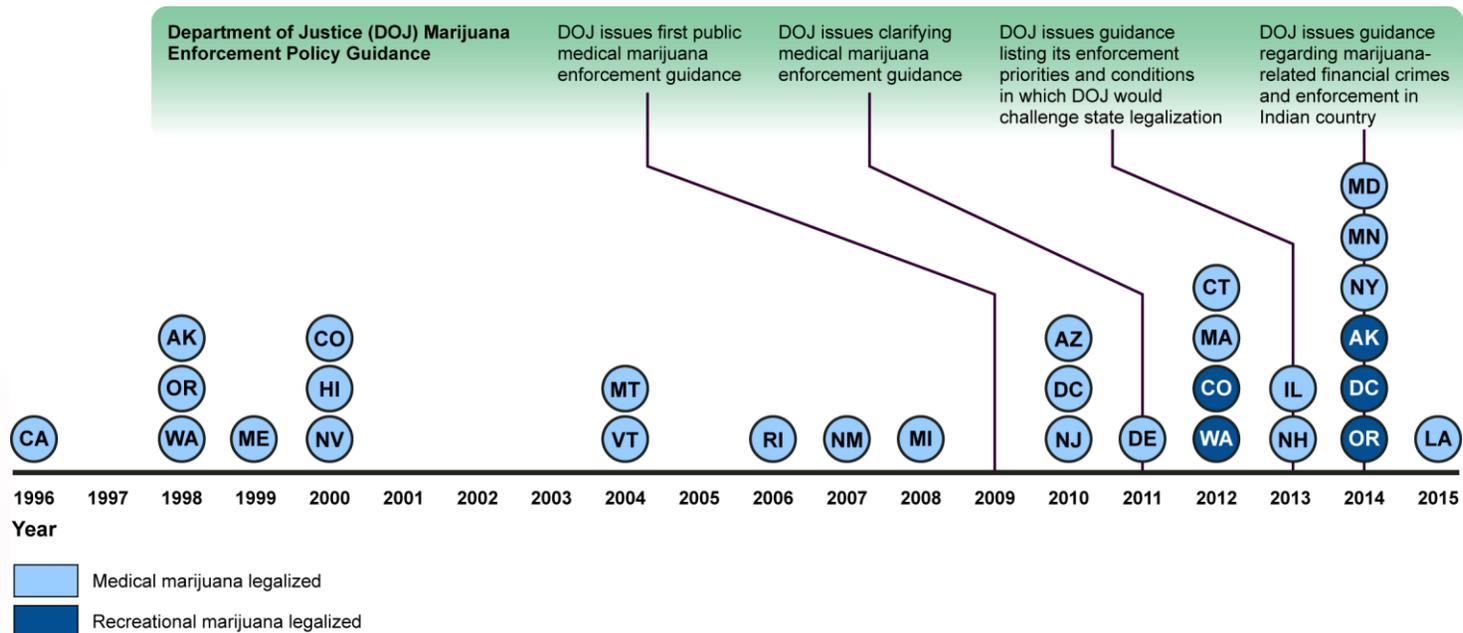
Source: Department of Justice; Department of the Interior (logo). | GAO-16-1

DOJ's 2013 Marijuana Enforcement Priorities

- States that have legalized marijuana must implement strong and effective regulatory and enforcement systems.
- These systems must be effective in practice, with jurisdictions providing necessary resources and demonstrating willingness to enforce laws and regulations in a manner that does not undermine federal priorities.
- If enforcement efforts are not sufficiently robust to protect federal priorities, DOJ may challenge the state regulatory structures themselves, in addition to conducting specific enforcement actions.

State Legalization Measures and DOJ's Marijuana Enforcement Policy Guidance

Timeline Showing the Years States and the District of Columbia Passed Measures Legalizing Medical and Recreational Marijuana under State Law and the Years DOJ Issued Marijuana Enforcement Policy Guidance



Source: GAO analysis of state laws and regulations; Department of Justice. | GAO-16-1

DOJ's Reported Actions to Monitor the Effects of Legalization

Mechanism 1: U.S. Attorneys conduct individual enforcement actions and consult with state and local agencies to address concerns regarding effects of marijuana legalization efforts.

- U.S. Attorneys were monitoring whether cases involve DOJ marijuana enforcement priorities and prosecuting those cases that do.
- U.S. Attorneys in Colorado and Washington reported working with state and local agencies to address federal concerns regarding the effect of state marijuana legalization systems relative to DOJ's marijuana enforcement priorities.

DOJ's Reported Actions to Monitor the Effects of Legalization

Mechanism 2: ODAG officials collaborate with and assess information from DOJ components and other federal agencies.

- ODAG officials reported assessing various data sources and information, including DEA's *National Drug Threat Assessments*, data from the U.S. Attorneys' case management system, and various public health and public safety data collected by federal agencies.
- ODAG officials reported participating in monthly meetings of U.S. Attorneys from states that had legalized some form of marijuana.
- ODAG officials reported participating in periodic Office of National Drug Control Policy-led interagency meetings to discuss the effects of state marijuana legalization.

DOJ Has Not Documented a Plan for Monitoring the Effects of State Legalization

- DOJ officials did not share details of how the Department would make use of various data sources to monitor the effects of legalization.
 - Officials did not describe the range of data DOJ would use.
 - Officials did not describe how the data would be used to monitor the effects of legalization and determine if states were sufficiently protecting federal priorities.
- DOJ had not prepared a formal written plan and, at the time of our work, did not see a benefit in doing so.

DOJ Should Document Its Monitoring Plan

- **Internal Control Standards:** GAO has found that clear documentation provides greater assurances that control activities—in this case, the ways DOJ is monitoring the effects of legalization relative to federal priorities—occur as intended.
- In December 2015, we recommended that DOJ should document its plan for monitoring the effects of legalization, including:
 - Which data sources will be used and potential limitations of data, so DOJ can be assured the data are reliable.
 - How the data and other information sources will be used for monitoring efforts.

DOJ Should Share Its Monitoring Plan With Its Components

- **Internal Control Standards:** Documentation provides a means to retain organizational knowledge as well as to communicate that knowledge as needed to external parties.
- Making a monitoring plan available to appropriate DOJ components can provide ODAG with an opportunity to gain information on the utility of the data ODAG is using, thus improving its overall monitoring effort.
- Thus, we further recommended that ODAG use existing mechanisms to share DOJ's monitoring plan with appropriate officials, and obtain and incorporate their feedback.

DOJ's Responses to GAO's Recommendations

- Recommendation 1: DOJ concurred and stated it is committed to creating and instituting a monitoring plan to document publicly available data about the effects of marijuana legalization in the states.
 - Various DOJ components will lead an effort to develop a repository of data and assessments, and maintain and update it regularly to assure information is comprehensive and timely.
 - The effort will identify sources of information from within DOJ, from other federal sources, and from state and local law enforcement and public health organizations.
 - DOJ will seek to publish publicly-available data and information on a public site.

DOJ's Responses to GAO's Recommendations

- Recommendation 2: DOJ stated it will make public and non-public information identified through this process available to DOJ's law enforcement agencies and U.S. Attorneys' Offices.
 - ODAG and individual DOJ components will collectively use this information as part of a process for making decisions about how best to utilize limited resources, as well as to continue to assess whether states are effectively protecting federal enforcement priorities.
- ***We will follow up regularly with DOJ regarding the Department's progress towards implementing our recommendations.***

Questions?

For further information:

- ***State Marijuana Legalization: DOJ Should Document Its Approach to Monitoring the Effects of Legalization*** is available online at: <http://www.gao.gov/products/GAO-16-1>.
- GAO Director Jennifer Grover's April 5, 2016 statement before the U.S. Senate Caucus on International Narcotics Control is available online at: <http://www.gao.gov/products/GAO-16-419T>.

GAO Contact

Tom Jessor, Assistant Director
Homeland Security and Justice Issues
Telephone: (213) 830-1157
E-mail: jessor@gao.gov





GAO on the Web

Web site: <http://www.gao.gov/>

Congressional Relations

Katherine Siggerud, Managing Director, siggerudk@gao.gov
(202) 512-4400, U.S. Government Accountability Office
441 G Street, NW, Room 7125, Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov
(202) 512-4800, U.S. Government Accountability Office
441 G Street, NW, Room 7149, Washington, DC 20548

Copyright

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.