

Justice Department's Resistance to State Laws Legalizing Marijuana Go Up in Smoke

By [Donald Scarinci](#)

While the federal government has no current plans to legalize marijuana, it will not go after states that do. The U.S. Department of Justice recently issued much-anticipated guidance stating that it will not challenge state laws authorizing small amounts of marijuana so long as there are robust controls and procedures in place.

In a [memorandum to federal prosecutors](#), United States Attorneys by Deputy Attorney General James M. Cole outlined the Justice Department's new position. For states like Colorado and Washington that have legalized the production, distribution and possession of marijuana, the DOJ makes it clear that it will defer its right to challenge the laws so long as states implement strong regulatory systems.

"These schemes must be tough in practice, not just on paper, and include strong, state-based enforcement efforts, backed by adequate funding," Cole explained. State and local governments must also allocate "the necessary resources and demonstrate the willingness to enforce their laws and regulations in a manner that ensures they do not undermine federal enforcement priorities."

The announcement is a sharp departure from the federal judgment's prior position on marijuana. Since the days of [Richard Nixon](#), marijuana has been labeled a Class I substance under the Controlled Substances Act, which is reserved for drugs with "high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment."

Marijuana is still illegal under federal law, which trumps any state law to the contrary. As confirmed by the Supreme Court in 2005, the Commerce Clause of the U.S. Constitution authorizes the federal government to enforce the Controlled Substances Act despite state laws legalizing various types of marijuana use. In this case, the Justice Department has simply elected to no longer do so in certain situations.

Following a successful ballot initiative to legalize recreational use of marijuana in November, Gov. John Hickenlooper expressed concern about how quickly the new law could be implemented. "Federal law still says marijuana is an illegal drug so don't break out the Cheetos or Goldfish too quickly," he cautioned. In the wake of the Justice Department's recent announcement, it may actually be that time.

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