

**HJR**

**21**

<TARGET><BILL>HJR 21</BILL><SUBJECT>HJR  
21</SUBJECT><COMM>SJUD30</COMM></TARGET>

# ALASKA LEGISLATURE

## *House Finance Committee*

**SESSION:**

Alaska State Capitol, Room 501  
Juneau, AK, 99801  
907.465.4457 Office  
907.465.3519 Fax  
800.928.4457 Toll Free



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Fairbanks, AK 99701  
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## Representative David Guttenberg

### **SPONSOR STATEMENT**

#### **HJR 21: Feds Respect State Reg of Marijuana**

SSHJR 21 urges the federal government to respect and not intervene in Alaska's current marijuana policy—doing so would be unnecessary federal overreach. President Trump stated on his campaign trail that legalization should be left to the states. Mr. Spicer recently said that despite President Trump's support of medical marijuana "there is a big difference between that and recreational marijuana" and he believed the public would see "greater enforcement" of federal marijuana laws.

There should not be a difference between recognizing state-implemented medical marijuana laws and recognizing state-implemented recreational marijuana laws. Both laws were implemented in accordance with the will of our citizens, established robust regulatory structures prioritizing public health and safety, reduced unnecessary incarceration, and expanded our economies.

Overhauling the Cole Memo and the Financial Crimes Enforcement Network will produce harmful unintended social and economic consequences. Hurting the regulated market moves existing marijuana activity to the black market. This will increase dangerous activity in our state and get rid of a source of tax revenue. It also diverts the Department of Justice's resources away from its current marijuana enforcement priorities of preventing distribution to minors, criminal enterprises, diversion of marijuana from states to where it is legal to states where it is not.

It is not in Alaska's, the federal government's or the people's best interest to interfere with current state regulations on marijuana which is why I ask you to join me in supporting the preservation of Alaska's current marijuana policy.



ALASKA



COLORADO



OREGON



WASHINGTON

April 3, 2017

Attorney General Jeff Sessions  
U.S. Department of Justice  
950 Pennsylvania Ave., NW  
Washington, DC 20530

Secretary Steve Mnuchin  
U.S. Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, DC 20220

Attorney General Sessions and Secretary Mnuchin:

As governors of states that have legalized marijuana in some form, we ask the Trump Administration to engage with us before embarking on any changes to regulatory and enforcement systems. The balance struck by the 2013 Department of Justice Cole Memorandum (Cole Memo) has been indispensable – providing the necessary framework for state regulatory programs centered on public safety and health protections.

We understand you and others in the administration have some concerns regarding marijuana. We sympathize, as many of us expressed apprehensions before our states adopted current laws. As governors, we have committed to implementing the will of our citizens and have worked cooperatively with our legislatures to establish robust regulatory structures that prioritize public health and public safety, reduce inequitable incarceration and expand our economies.

The Cole Memo and the related Financial Crimes Enforcement Network (FinCEN) guidance provide the foundation for state regulatory systems and are vital to maintaining control over marijuana in our states. Overhauling the Cole Memo is sure to produce unintended and harmful consequences. Changes that hurt the regulated market would divert existing marijuana product into the black market and increase dangerous activity in both our states and our neighboring states. Likewise, without the FinCEN guidance, financial institutions will be less willing to provide services to marijuana-related businesses. This would force industry participants to be even more cash reliant, posing safety risks both to the public and to state regulators conducting enforcement activity. The Cole Memo and FinCEN guidance strike a reasonable balance between allowing the states to enact reasonable regulations and the federal government's interest in controlling some of the collateral consequences of legalization.

Twenty-eight states, representing more than 60 percent of Americans, have authorized some form of marijuana-related conduct. As we face the reality of these legalizations, we stand eager to work with our federal partners to address implementation and enforcement concerns cooperatively. The Cole Memorandum and the associated FinCEN guidance are critical to the success of any collaboration.

We look forward to working with you and your administration. We stand ready to have further discussion on how these important federal policies work in our states.

Sincerely,



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Bill Walker  
Governor  
State of Alaska



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Kate Brown  
Governor  
State of Oregon



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John Hickenlooper  
Governor  
State of Colorado



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Jay Inslee  
Governor  
State of Washington

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## Representative David Guttenberg

### Explanation of Changes - SSHJR 21

“Urging the federal government to respect the authority of the state to regulate marijuana use, production, and distribution and to honor previous federal guidance on marijuana policy, and urging the federal government to reconsider its listing of marijuana as a schedule I controlled substance.”

#### Version A to version D – All page and line references are to version D

- Page 1, line 1-3: Identifying the authority of the state to regulate marijuana as well as the recognition of previous federal governments guidance on policy.
- Page 1, line 3,4: adding a request for the federal government to reconsider marijuana’s substance classification.
- Page 2, line 1-12: Additional ‘WHEREAS’ that sites the requests of the Cole memo and describes how the state of Alaska has aligned its policy and enforcement to respect the guidelines of the federal government as requested by the United States Department of Justice on August 29, 2013.
- Page 2, line 13-15: Altered ‘WHEREAS’ that no longer references the Cole Memo as did in version A.
- Page 2, line 16-20: Additional ‘WHEREAS’ that references the American Medical Association and its stance on marijuana and its classification, clinical research, and health-based strategies.
- Page 2, line 21-27: Additional ‘WHEREAS’ that references a letter to Attorney Jeff Sessions from Alaska Attorney General Jahna Lindemuth.
- Page 2, line 28-31: Additional ‘WHEREAS’ that references a letter from the Alaska Attorney General and Attorney Generals from 18 other states to the United States Congress.
- Page 3, line 1-24: Four additional ‘WHEREAS’ that further support the state of Alaska’s stance on its ability and compliance to self-regulate the recreational use of marijuana. This is outlined in support letters from Governor Bill Walker, United States Senator Lisa Murkowski and United States Representative Don Young.
- Page 3, line 22-24: Additional ‘WHEREAS’ that declares Jeff Sessions Memorandum a conflict to federal priorities.

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## Representative David Guttenberg

- Page 3, line 25-29: This 'BE IT RESOLVED' no longer references the Cole Memo or FIN-2014-G001 Memo in its argument.
- Page 3, line 30,31: Addition of a 'FURTHER RESOLVED' illustrating the rescheduling of marijuana.

### All page and line references are to version A

- Page 1, line 14-16: Deletion of this 'WHEREAS' as it references the Cole Memo which has been rescinded via the Attorney Jeff Sessions Memo.
- Page 2, line 1-19: Deletion of this 'WHEREAS' as it references the Cole Memo which has been rescinded via the Attorney Jeff Sessions Memo.
- Page 2, line 20,21: Deletes "delineated in the Cole Memo;" as it references the Cole Memo which has been rescinded via the Attorney Jeff Sessions Memo.
- Page 2, line 22-24: Deletion of this 'WHEREAS' as it references the Cole Memo which has been rescinded via the Attorney Jeff Sessions Memo.

# HOW DRUGS ARE CLASSIFIED IN THE US

SCHEDULE	DESCRIPTION	EXAMPLES
<b>Schedule 1</b>	Drugs with no currently accepted medical use and a high potential for abuse. They are the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence.	<ul style="list-style-type: none"> <li>- Heroin</li> <li>- Lysergic acid diethylamide (LSD)</li> <li>- Marijuana (Cannabis)</li> <li>- Methylenedioxymethamphetamine (Ecstasy)</li> <li>- Methaqualone</li> <li>- Peyote</li> </ul>
<b>Schedule 2</b>	Drugs with a high potential for abuse, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous.	<ul style="list-style-type: none"> <li>- Combination products with less than 15mg of hydrocodone per dosage unit (Vicodin)</li> <li>- Cocaine</li> <li>- methamphetamine</li> <li>- Methadone</li> <li>- Hydromorphone (Dilaudid)</li> <li>- Meperidine (Demerol)</li> <li>- Oxycodone (OxyContin)</li> <li>- Fentanyl</li> <li>- Dexedrine</li> <li>- Adderall</li> <li>- Ritalin</li> </ul>
<b>Schedule 3</b>	Drugs with a moderate to low potential for physical and psychological dependence. Schedule 3 drugs abuse potential is less than Schedule 1 and Schedule 2 drugs but more than Schedule 4.	<ul style="list-style-type: none"> <li>- Products containing less than 90mg of codeine per dosage unit (Tylenol and codeine)</li> <li>- Ketamine</li> <li>- Anabolic steroids</li> <li>- Testosterone</li> </ul>
<b>Schedule 4</b>	Drugs with a low potential for abuse and low risk of dependence.	<ul style="list-style-type: none"> <li style="width: 50%;">- Xanax</li> <li style="width: 50%;">- Ativan</li> <li style="width: 50%;">- Soma</li> <li style="width: 50%;">- Talwin</li> <li style="width: 50%;">- Darvon</li> <li style="width: 50%;">- Ambien</li> <li style="width: 50%;">- Darvocet</li> <li style="width: 50%;">- Tramadol</li> <li style="width: 50%;">- Valium</li> </ul>
<b>Schedule 5</b>	Drugs with lower potential for abuse than Schedule 4 and consist of preparations containing limited quantities of certain narcotics. Schedule 5 drugs are generally used for antidiarrheal, antitussive, and analgesic purposes.	<ul style="list-style-type: none"> <li>- Cough preparations with less than 200mg of codeine per 100ml (Robitussin AC)</li> <li>- Lomotil</li> <li>- Motofen</li> <li>- Lyrica</li> <li>- Parepectolin</li> </ul>

SOURCE: Drug Enforcement Administration

BUSINESS INSIDER



U.S. Department of Justice


Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

August 29, 2013

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole   
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Enforcement

In October 2009 and June 2011, the Department issued guidance to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). This memorandum updates that guidance in light of state ballot initiatives that legalize under state law the possession of small amounts of marijuana and provide for the regulation of marijuana production, processing, and sale. The guidance set forth herein applies to all federal enforcement activity, including civil enforcement and criminal investigations and prosecutions, concerning marijuana in all states.

As the Department noted in its previous guidance, Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. The Department of Justice is committed to enforcement of the CSA consistent with those determinations. The Department is also committed to using its limited investigative and prosecutorial resources to address the most significant threats in the most effective, consistent, and rational way. In furtherance of those objectives, as several states enacted laws relating to the use of marijuana for medical purposes, the Department in recent years has focused its efforts on certain enforcement priorities that are particularly important to the federal government:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- 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 violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

These priorities will continue to guide the Department's enforcement of the CSA against marijuana-related conduct. Thus, this memorandum serves as guidance to Department attorneys and law enforcement to focus their enforcement resources and efforts, including prosecution, on persons or organizations whose conduct interferes with any one or more of these priorities, regardless of state law.<sup>1</sup>

Outside of these enforcement priorities, the federal government has traditionally relied on states and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws. For example, the Department of Justice has not historically devoted resources to prosecuting individuals whose conduct is limited to possession of small amounts of marijuana for personal use on private property. Instead, the Department has left such lower-level or localized activity to state and local authorities and has stepped in to enforce the CSA only when the use, possession, cultivation, or distribution of marijuana has threatened to cause one of the harms identified above.

The enactment of state laws that endeavor to authorize marijuana production, distribution, and possession by establishing a regulatory scheme for these purposes affects this traditional joint federal-state approach to narcotics enforcement. The Department's guidance in this memorandum rests 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. Jurisdictions that have implemented systems that provide for regulation of marijuana activity

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<sup>1</sup> These enforcement priorities are listed in general terms; each encompasses a variety of conduct that may merit civil or criminal enforcement of the CSA. By way of example only, the Department's interest in preventing the distribution of marijuana to minors would call for enforcement not just when an individual or entity sells or transfers marijuana to a minor, but also when marijuana trafficking takes place near an area associated with minors; when marijuana or marijuana-infused products are marketed in a manner to appeal to minors; or when marijuana is being diverted, directly or indirectly, and purposefully or otherwise, to minors.

must provide 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.

In jurisdictions that have enacted laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten the federal priorities set forth above. Indeed, a robust system may affirmatively address those priorities by, for example, implementing effective measures to prevent diversion of marijuana outside of the regulated system and to other states, prohibiting access to marijuana by minors, and replacing an illicit marijuana trade that funds criminal enterprises with a tightly regulated market in which revenues are tracked and accounted for. In those circumstances, consistent with the traditional allocation of federal-state efforts in this area, enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity. If state enforcement efforts are not sufficiently robust to protect against the harms set forth above, the federal government may seek to challenge the regulatory structure itself in addition to continuing to bring individual enforcement actions, including criminal prosecutions, focused on those harms.

The Department's previous memoranda specifically addressed the exercise of prosecutorial discretion in states with laws authorizing marijuana cultivation and distribution for medical use. In those contexts, the Department advised that it likely was not an efficient use of federal resources to focus enforcement efforts on seriously ill individuals, or on their individual caregivers. In doing so, the previous guidance drew a distinction between the seriously ill and their caregivers, on the one hand, and large-scale, for-profit commercial enterprises, on the other, and advised that the latter continued to be appropriate targets for federal enforcement and prosecution. In drawing this distinction, the Department relied on the common-sense judgment that the size of a marijuana operation was a reasonable proxy for assessing whether marijuana trafficking implicates the federal enforcement priorities set forth above.

As explained above, however, both the existence of a strong and effective state regulatory system, and an operation's compliance with such a system, may allay the threat that an operation's size poses to federal enforcement interests. Accordingly, in exercising prosecutorial discretion, prosecutors should not consider the size or commercial nature of a marijuana operation alone as a proxy for assessing whether marijuana trafficking implicates the Department's enforcement priorities listed above. Rather, prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system. A marijuana operation's large scale or for-profit nature may be a relevant consideration for assessing the extent to which it undermines a particular federal enforcement priority. The primary question in all cases – and in all jurisdictions – should be whether the conduct at issue implicates one or more of the enforcement priorities listed above.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

cc: Mythili Raman  
Acting Assistant Attorney General, Criminal Division

Loretta E. Lynch  
United States Attorney  
Eastern District of New York  
Chair, Attorney General's Advisory Committee

Michele M. Leonhart  
Administrator  
Drug Enforcement Administration

H. Marshall Jarrett  
Director  
Executive Office for United States Attorneys

Ronald T. Hosko  
Assistant Director  
Criminal Investigative Division  
Federal Bureau of Investigation



THE STATE  
of **ALASKA**  
GOVERNOR BILL WALKER

**Department of Law**

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August 1, 2017

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

*RE: Task Force on Crime Reduction and Public Safety*

Dear Attorney General Sessions:

Thank you for bringing focus and energy to the important task of combating violent crime. The State of Alaska shares your concern over the numerous and growing threats to public safety and challenges faced by law enforcement agencies. As you and your Task Force on Crime Reduction and Public Safety undertake a review of various Department of Justice (DOJ) policies and following up on Governor Walker's April 5, 2017 letter, I want to offer some additional perspective on issues of particular concern to our state: the ongoing opioid epidemic and DOJ's marijuana policy.

**I. Opioid Epidemic**

As you know, opioid abuse continues to pose a grave danger throughout the nation. In Alaska, the opioid epidemic and the alarming rate of associated deaths led Governor Walker to declare a state of emergency. Battling the spread of this threat, the state administration organized a specific task force and disaster response team to orchestrate the efforts of state health and law enforcement officials. And, our legislature established additional controls on prescriptive authority for opiates. Despite these and other efforts, more is needed.

The transportation of opioids into and through the state has proven difficult to stem. We are faced with importation of opioids manufactured abroad through a sophisticated international trade network. Transport of opioids into rural communities, often through the U.S. postal service, is also of particular concern because off of the road system villages are frequently the least equipped to handle the public safety and medical challenges associated with the opioid epidemic. As it undertakes its work, we ask that the Task Force give focused thought to how DOJ can most effectively contribute to efforts to address this urgent problem.

## II. Marijuana Regulation

Given the diversity of public sentiment regarding marijuana throughout the country, marijuana regulation is an area where states should take the lead. In fact, our federal constitution presumes that traditional police powers remain with state governments precisely because of our ability to be responsive to this type of regional variation in citizens' policy preferences and priorities. In Alaska, in accordance with a successful citizens' ballot initiative, the State has implemented a comprehensive framework to regulate marijuana that we believe also protects federal interests.

Our regulatory framework strictly controls every aspect of the industry—with particular emphasis on neutralizing the involvement of criminal growers and traffickers, keeping marijuana away from children, and ensuring that our citizens are fully informed about the risks of using marijuana. Licensure requirements for growing and selling marijuana are among the strictest in the nation; only bona fide Alaskan residents can be licensed and every licensee must submit fingerprints for a national criminal background check each time they renew. Every ounce of marijuana that is grown under our laws is tracked from the time it is eight inches tall until it leaves the door of a retail establishment with a consumer. State law enforcement efforts continue to combat black market marijuana activity and we appreciate the ongoing support and collaboration of our federal counterparts in those efforts. While challenges remain, they are manageable and not dissimilar to the law enforcement efforts in other contexts.

In light of the citizens' ballot initiative and the existence of a robust regulatory framework that protects federal law enforcement interests, we ask DOJ to maintain a policy substantially similar to the guidance articulated in the 2013 Cole Memorandum. From our perspective, the existing policy is a pragmatic approach that effectively creates space for states to be responsive to our residents while also protecting federal priorities. Of course, we remain open to discussion about where improvements might be made as our experience with the regulated marijuana industry develops. Should the Task Force recommend a shift in DOJ policy, we ask that you engage directly with us to discuss potential approaches before reaching any final conclusions.

Sincerely,



Jahna Lindemuth  
Attorney General  
State of Alaska

cc: Governor Bill Walker  
Senator Lisa Murkowski  
Senator Dan Sullivan  
Representative Don Young  
Bryan Schroder, Acting U.S. Attorney for the District of Alaska  
U.S. Department of Justice Task Force on Crime Reduction and Public Safety

January 16, 2018

Hon. Paul Ryan  
Speaker of the House  
H-232, The Capitol  
Washington, DC 20515

Hon. Nancy Pelosi  
Minority Leader  
H-204, The Capitol  
Washington, DC 20515

Hon. Mitch McConnell  
Majority Leader  
317 Russell Bldg  
Washington, DC 20510

Hon. Charles E. Schumer  
Minority Leader  
322 Hart Bldg.  
Washington, DC 20510

Hon. Kevin McCarthy  
Majority Leader  
H-107, The Capitol  
Washington, DC 20515

Hon. Steny Hoyer  
Minority Whip  
1705 Longworth Office Building  
Washington, DC 20515

Hon. John Cornyn  
Majority Whip  
517 Hart Bldg.  
Washington, DC 20510

Hon. Richard J. Durbin  
Minority Whip  
711 Hart Bldg.  
Washington, DC 20510

Hon. Mike Crapo  
Chair  
Senate Committee on Banking,  
Housing & Urban Affairs  
534 Dirksen Senate Building  
Washington, DC 20510

Hon. Sherrod Brown  
Ranking Member  
Senate Committee on Banking,  
Housing & Urban Affairs  
534 Dirksen Senate Building  
Washington, DC 20510

Dear Congressional Leaders:

We are a bipartisan group of state attorneys general who recognize that the states and federal government share a strong interest in protecting public safety and bringing grey market activities into the regulated banking sector. To address these goals, we urge Congress to advance legislation that would allow states that have legalized medical or recreational use of marijuana to bring that commerce into the banking system.

Twenty-nine states and several U.S. territories have legalized the medical use of marijuana. Among those, eight states and the District of Columbia, also allow recreational use by adults over 21 years of age. However, because the federal government classifies marijuana as an illegal substance, banks providing services to state-licensed cannabis businesses could find themselves subject to criminal and civil liability under the Controlled Substances Act and certain federal banking statutes. This risk has significantly inhibited the willingness of financial institutions to provide services to these businesses.

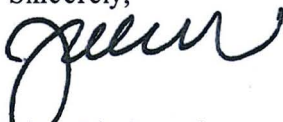
Despite the contradictions between federal and state law, the marijuana industry continues to grow rapidly. Industry analysts report that sales grew by 30% to \$6.7 billion in 2016 and expect those totals to exceed \$20 billion by 2021. Yet those revenues often exist outside of the regulated banking space. Businesses are forced to operate on a cash basis. The grey market makes it more difficult to track revenues for taxation purposes, contributes to a public safety threat as cash intensive businesses are often targets for criminal activity, and prevents proper tracking of large swaths of finances across the nation.

To address these challenges, we are requesting legislation that would provide a safe harbor for depository institutions that provide a financial product or service to a covered business in a state that has implemented laws and regulations that ensure accountability in the marijuana industry such as the SAFE Banking Act (S. 1152 and H.R. 2215) or similar legislation. This would bring billions of dollars into the banking sector, and give law enforcement the ability to monitor these transactions. Moreover, compliance with tax requirements would be simpler and easier to enforce with a better-defined tracking of funds. This would, in turn, result in higher tax revenue.

Prior Department of Justice guidance outlined how financial institutions could provide services to state-licensed marijuana businesses consistent with their obligations under federal law and created some space for the banking industry to work with those businesses, though challenges remained in many areas. The recent rescission of that guidance has made the need for Congressional action to get the cash generated by this industry into a regulated banking sector even more urgent.

Our banking system must be flexible enough to address the needs of businesses in the various states, with state input, while protecting the interests of the federal government. This includes a banking system for marijuana-related businesses that is both responsive and effective in meeting the demands of our economy. We look forward to working with you as you move forward in this process and lending our voice and expertise as you develop legislation.

Sincerely,



Jahna Lindemuth  
Alaska Attorney General



Karl A. Racine  
District of Columbia Attorney General



Doug Chin  
Hawaii Attorney General



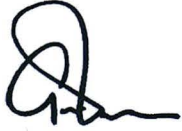
Wayne Stenehjem  
North Dakota Attorney General



Xavier Becerra  
California Attorney General



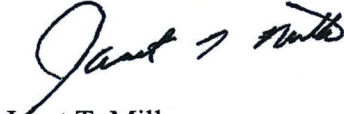
Cynthia Coffman  
Colorado Attorney General



George Jepsen  
Connecticut Attorney General



Lisa Madigan  
Illinois Attorney General



Janet T. Mills  
Maine Attorney General



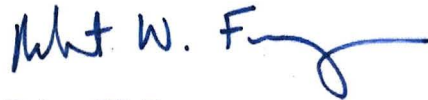
Maura Healey  
Massachusetts Attorney General



Eric T. Schneiderman  
New York Attorney General



Josh Shapiro  
Pennsylvania Attorney General



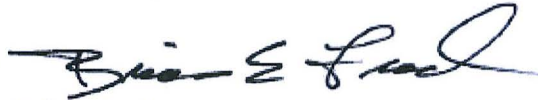
Robert W. Ferguson  
Washington Attorney General



Elizabeth Barrett-Anderson  
Guam Attorney General



Tom Miller  
Iowa Attorney General



Brian Frosh  
Maryland Attorney General



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Governor Bill Walker  
STATE OF ALASKA

August 14, 2017

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

RE: Marijuana Regulation and Criminal Prosecutions in Alaska

Dear Attorney General Sessions:

Thank you for your letter of July 24, 2017. The enclosed August 1 letter addresses some of the questions you raised, but because you did not receive that letter prior to the instant correspondence, we wanted to ensure that we fully respond to your inquiry. As stated earlier, the exercise of traditional police powers is an area where primary enforcement should be left to the individual states. The opioid crisis is Alaska's highest law enforcement priority. We appreciate President Trump's action on this front and look forward to partnering to address that challenge. With respect to marijuana, while we share your concern about the dangers of drug abuse, Alaskans voted to establish a regulated industry. We ask that the Department of Justice (DOJ) maintain its existing marijuana policies because the State relied on those assurances in shaping our regulatory framework and because existing policies appropriately focus federal efforts on federal interests.

Pointing to our 2015 Annual Drug Report, your July 24 letter questions whether our regulatory framework adequately protects federal interests. As an initial matter, the statistics in the 2015 report cannot be fairly attributed to the industry since sales from state-licensed businesses did not begin until 2016.<sup>1</sup> The report simply does not speak to the success or failure of the new regulatory framework. Also, while the number of minors that reported using marijuana in 2015 is concerning, the rate of marijuana use by Alaskan youth is lower than national averages, lower than reported

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<sup>1</sup> Marijuana FAQs, Alcohol & Marijuana Control Office, <https://www.commerce.alaska.gov/web/amco/MarijuanaFAQs.aspx> (last visited August 11, 2017); Laurel Andrews, "Marijuana milestone: Alaska's first pot shop opens to the public in Valdez," Alaska Dispatch News, October 29, 2016, available at <https://www.adn.com/alaska-marijuana/2016/10/29/anticipation-builds-as-alaskas-first-marijuana-store-set-to-open-to-the-public/> (last visited August 11, 2017).

alcohol use, and continues to decline.<sup>2</sup> We are taking meaningful steps to curb illegal marijuana use, especially by minors. While there are many competing priorities for State law enforcement resources – seizures, arrests, and prosecutions related to illegal marijuana will continue.

Further, the regulatory framework governing State-licensed marijuana businesses addresses federal interests. State law addresses risks of diversion by requiring all marijuana to be tracked from seed to sale, requiring all marijuana waste to be rendered unusable, and ensuring marijuana businesses do not have associations with criminal organizations.<sup>3</sup> We address public health and safety concerns by controlling advertising practices, encouraging responsible consumption, and working to ensure the public is aware of the risk of marijuana.<sup>4</sup> State law prohibits sales to persons under the age of 21, restricts access to retail establishments, prohibits retail stores from locating and advertising in proximity to child-centered facilities, and bans advertisements targeting youth.<sup>5</sup> State agencies are working hard to educate the public, combat the black market, and ensure state-licensed businesses comply with state law.<sup>6</sup>

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<sup>2</sup> Alaska Department of Health and Social Services, Division of Public Health, 2015 Youth Risk Behavior Survey Results, available at [http://dhss.alaska.gov/dph/Chronic/Documents/yrbs/2015AKTradHS\\_YRBS\\_TrendReport.pdf](http://dhss.alaska.gov/dph/Chronic/Documents/yrbs/2015AKTradHS_YRBS_TrendReport.pdf) (last visited August 11, 2017); Marny Rivera and Cory R. Lepage, “Youth Marijuana and Prescription Drug Abuse in Anchorage,” Alaska Justice Forum (Spring 2016).

<sup>3</sup> 3 AAC 306.730 – .750 (tagging and tracking of marijuana); AS 17.38.200(i) (licensees, as well as agents and officers of licensees, cannot have felony conviction within the last five years or be on parole or probation for a felony conviction); 3 AAC 306.015(b)(1) (licensees, including all partners in a partnership and members of a LLC and shareholders in a corporation, must be Alaska residents); 3 AAC 306.015(a) (only licensees can have direct or indirect financial interest in licensed business); 3 AAC 306.055 (applications for a license or annual license renewal must submit fingerprints for nationwide criminal justice background checks).

<sup>4</sup> See 3 AAC 306.360(b) (advertisements may not be false or misleading, promote excessive consumption, or represent that marijuana has any curative or therapeutic effects); 3 AAC 306.360(e) (advertisements must contain blunt warnings); 3 AAC 306.475(a) (all marijuana must be tested and labeled); 3 AAC 306.700 (training and certification requirements for handlers).

<sup>5</sup> 3 AAC 306.010; 3 AAC 306.360; 3 AAC 306.430; 3 AAC 306.710.

<sup>6</sup> The Department of Commerce Community and Economic Development website, <https://www.commerce.alaska.gov/web/amco/>, provides information about the work of the Marijuana Control Board and the Alcohol & Marijuana Control Office, including recent enforcement news. Also see AS 17.38.131 (empowering AMCO enforcement officers to enforce both criminal and civil laws relating to marijuana); Alaska Department of Health and Social Services, Division of Public Health, “Health and Safety Issues Related to Marijuana Use,” available at <http://dhss.alaska.gov/dph/> (providing educational information to Alaskans about the risks associated with marijuana use); Alaska State Troopers, 2016 Annual Drug Report, available at <http://www.dps.state.ak.us/ast/> (providing 2016 statistics regarding seizures of marijuana and marijuana related law enforcement activity of local, state, and federal law enforcement agencies).

The Honorable Jeff Sessions  
Re: Marijuana Regulation and Criminal Prosecutions in Alaska  
August 14, 2017  
Page 3

As the industry matures and new issues develop, we will continue to refine the regulatory framework and remain open to accommodating federal concerns. The Commissioner of the Department Public Safety can provide additional information about the annual drug reports if desired. We also invite you or your designee to sit down and discuss any concerns about the regulated industry with us and the Executive Director of the Alaska Marijuana Control Board. That said, given the direction from Alaskan voters to establish a regulated industry and our work to accommodate federal concerns in an area of traditional state authority, the existing federal marijuana policies should be maintained as we work together to protect and serve Alaskans.

Sincerely,



Bill Walker  
Governor



Jahna Lindemuth  
Attorney General

Enclosure

cc: The Honorable Lisa Murkowski, United States Senate  
The Honorable Dan Sullivan, United States Senate  
The Honorable Don Young, United States House of Representatives  
The Honorable Chris Hladick, Commissioner, Alaska Department of Commerce,  
Community, and Economic Development  
The Honorable Walt Monegan, Commissioner, Alaska Department of Public Safety  
Bryan Schroder, Acting U.S. Attorney for the District of Alaska  
U.S. Department of Justice Task Force on Crime Reduction and Public Safety  
Intergovernmental Affairs and Public Liaison, U.S. Department of Justice Office of  
Legislative Affairs



THE STATE  
*of* **ALASKA**  
GOVERNOR BILL WALKER

**Department of Law**

1031 WEST FOURTH AVENUE, SUITE 200  
ANCHORAGE, ALASKA 99501  
Main: (907) 269-5100  
Fax: (907) 269-5110

August 1, 2017

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

*RE: Task Force on Crime Reduction and Public Safety*

Dear Attorney General Sessions:

Thank you for bringing focus and energy to the important task of combating violent crime. The State of Alaska shares your concern over the numerous and growing threats to public safety and challenges faced by law enforcement agencies. As you and your Task Force on Crime Reduction and Public Safety undertake a review of various Department of Justice (DOJ) policies and following up on Governor Walker's April 5, 2017 letter, I want to offer some additional perspective on issues of particular concern to our state: the ongoing opioid epidemic and DOJ's marijuana policy.

**I. Opioid Epidemic**

As you know, opioid abuse continues to pose a grave danger throughout the nation. In Alaska, the opioid epidemic and the alarming rate of associated deaths led Governor Walker to declare a state of emergency. Battling the spread of this threat, the state administration organized a specific task force and disaster response team to orchestrate the efforts of state health and law enforcement officials. And, our legislature established additional controls on prescriptive authority for opiates. Despite these and other efforts, more is needed.

The transportation of opioids into and through the state has proven difficult to stem. We are faced with importation of opioids manufactured abroad through a sophisticated international trade network. Transport of opioids into rural communities, often through the U.S. postal service, is also of particular concern because off of the road system villages are frequently the least equipped to handle the public safety and medical challenges associated with the opioid epidemic. As it undertakes its work, we ask that the Task Force give focused thought to how DOJ can most effectively contribute to efforts to address this urgent problem.

## II. Marijuana Regulation

Given the diversity of public sentiment regarding marijuana throughout the country, marijuana regulation is an area where states should take the lead. In fact, our federal constitution presumes that traditional police powers remain with state governments precisely because of our ability to be responsive to this type of regional variation in citizens' policy preferences and priorities. In Alaska, in accordance with a successful citizens' ballot initiative, the State has implemented a comprehensive framework to regulate marijuana that we believe also protects federal interests.

Our regulatory framework strictly controls every aspect of the industry—with particular emphasis on neutralizing the involvement of criminal growers and traffickers, keeping marijuana away from children, and ensuring that our citizens are fully informed about the risks of using marijuana. Licensure requirements for growing and selling marijuana are among the strictest in the nation; only bona fide Alaskan residents can be licensed and every licensee must submit fingerprints for a national criminal background check each time they renew. Every ounce of marijuana that is grown under our laws is tracked from the time it is eight inches tall until it leaves the door of a retail establishment with a consumer. State law enforcement efforts continue to combat black market marijuana activity and we appreciate the ongoing support and collaboration of our federal counterparts in those efforts. While challenges remain, they are manageable and not dissimilar to the law enforcement efforts in other contexts.

In light of the citizens' ballot initiative and the existence of a robust regulatory framework that protects federal law enforcement interests, we ask DOJ to maintain a policy substantially similar to the guidance articulated in the 2013 Cole Memorandum. From our perspective, the existing policy is a pragmatic approach that effectively creates space for states to be responsive to our residents while also protecting federal priorities. Of course, we remain open to discussion about where improvements might be made as our experience with the regulated marijuana industry develops. Should the Task Force recommend a shift in DOJ policy, we ask that you engage directly with us to discuss potential approaches before reaching any final conclusions.

Sincerely,



Jahna Lindemuth  
Attorney General  
State of Alaska

cc: Governor Bill Walker  
Senator Lisa Murkowski  
Senator Dan Sullivan  
Representative Don Young  
Bryan Schroder, Acting U.S. Attorney for the District of Alaska  
U.S. Department of Justice Task Force on Crime Reduction and Public Safety



Office of the Attorney General  
Washington, D. C. 20530

January 4, 2018

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Jefferson B. Sessions, III  
Attorney General

A handwritten signature in blue ink, appearing to be "Jeff Sessions", is written over the printed name of Jefferson B. Sessions, III.

SUBJECT: Marijuana Enforcement

In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 *et seq.* It has established significant penalties for these crimes. 21 U.S.C. § 841 *et seq.* These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. §§ 1956-57, 1960; 31 U.S.C. § 5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. Attorney General Benjamin Civiletti originally set forth these principles in 1980, and they have been refined over time, as reflected in chapter 9-27.000 of the U.S. Attorneys' Manual. These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.

Given the Department's well-established general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately.<sup>1</sup> This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion in accordance with all applicable laws, regulations, and appropriations. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

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<sup>1</sup> Previous guidance includes: David W. Ogden, Deputy Att'y Gen., Memorandum for Selected United States Attorneys: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana (Oct. 19, 2009); James M. Cole, Deputy Att'y Gen., Memorandum for United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use (June 29, 2011); James M. Cole, Deputy Att'y Gen., Memorandum for All United States Attorneys: Guidance Regarding Marijuana Enforcement (Aug. 29, 2013); James M. Cole, Deputy Att'y Gen., Memorandum for All United States Attorneys: Guidance Regarding Marijuana Related Financial Crimes (Feb. 14, 2014); and Monty Wilkinson, Director of the Executive Office for U.S. Att'ys, Policy Statement Regarding Marijuana Issues in Indian Country (Oct. 28, 2014).

# United States Senate

WASHINGTON, DC 20510

March 2, 2017

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Sessions:

We write to express our concern regarding recent remarks by White House Press Secretary Sean Spicer suggesting the Department of Justice (DOJ) may begin enforcement against states that have legalized marijuana, and ask that you clarify DOJ's policy regarding state marijuana laws. To date, eight states (Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, and Washington) and the District of Columbia have passed laws allowing for the recreational use of marijuana, 28 states have medical marijuana laws, and 21 states have decriminalized the use of marijuana. These voter-approved laws have been evaluated by Governors and state Attorneys General, rigorously debated by state legislatures and the communities they serve, and implemented through thoughtful processes to ensure the proper regulated production and sale of marijuana.

In 2013, the DOJ issued a memorandum outlining federal marijuana enforcement priorities in light of state marijuana laws (the "Cole Memorandum").<sup>1</sup> The Cole Memorandum explains that where states have "strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and production of marijuana, . . . enforcement of state law by state and local law enforcement and regulatory bodies should remain the primary means of addressing marijuana-related activity."<sup>2</sup> This guidance has provided clarity to states and Americans on the interaction of state and federal laws regarding marijuana use and has allowed the DOJ to focus its law enforcement resources on the greatest threats to public safety and criminal justice, while allowing states to implement marijuana laws as they deem appropriate.

On the campaign trail, then-candidate Trump stated that despite his personal views regarding marijuana use, legalization should be left to the states.<sup>3</sup> Last week Mr. Spicer suggested that while President Trump supports medical marijuana, there is "a big difference between that and recreational marijuana," alleging that medical marijuana states "have set forth a process to administer and regulate" that usage. Mr. Spicer also stated that he believed the public would see "greater enforcement" of federal marijuana laws.<sup>4</sup> While we appreciate the

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<sup>1</sup> <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

<sup>2</sup> <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

<sup>3</sup> [https://www.washingtonpost.com/news/post-politics/wp/2015/10/29/trump-wants-marijuana-legalization-decided-at-the-state-level/?utm\\_term=.f4d49d23ea8f](https://www.washingtonpost.com/news/post-politics/wp/2015/10/29/trump-wants-marijuana-legalization-decided-at-the-state-level/?utm_term=.f4d49d23ea8f)

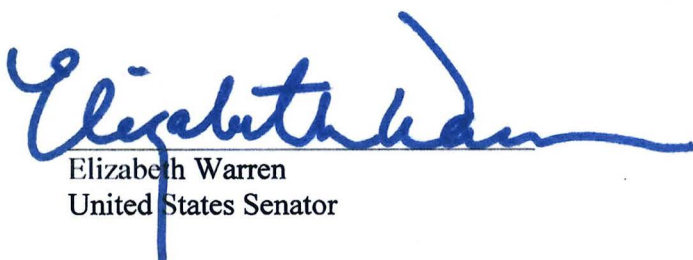
<sup>4</sup> <http://www.nbcnewyork.com/news/national-international/Expect-Enforcement-of-Marijuana-Laws-Under-Trump-Spicer-414659463.html>

Administration's apparent recognition that state-implemented medical marijuana laws are regulated effectively, we believe the same is true of states that regulate recreational marijuana use, and those that have decriminalized use.

It is essential that states that have implemented any type of practical, effective marijuana policy receive immediate assurance from the DOJ that it will respect the ability of states to enforce thoughtful, sensible drug policies in ways that do not threaten the public's health and safety. This ensures that state infrastructure, including tax revenue, small businesses, and jobs, can be protected; DOJ resources can be used most effectively; and most importantly, that marijuana can be properly regulated to improve public health and safety. We hope that you solicit input from state and local officials to learn about their ongoing efforts and gain their perspectives on this matter. As Attorney General, you have the power to determine the federal government's law enforcement priorities, including how agency resources can be best utilized. We believe that the Cole Memorandum provides a strong framework for effectively utilizing the DOJ's resources and balancing the law enforcement roles of the federal government and the states.

We respectfully request that you uphold the DOJ's existing policy regarding states that have implemented strong and effective regulations for recreational marijuana use and ask that the Cole Memorandum remain in place. It is critical that states can continue to implement these laws under the framework of the Cole Memorandum. In addition, we request that state and local elected officials, and public health and safety officials, be afforded an opportunity to comment on any shift in policy from that expressed in the Cole Memorandum, to avoid disruption of existing regulation and enforcement efforts. We appreciate your immediate attention to this request.


Thank you,



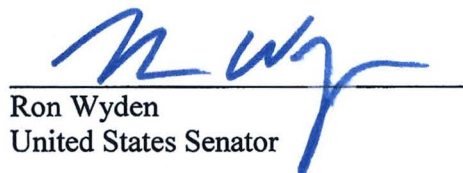
Elizabeth Warren  
United States Senator



Lisa Murkowski  
United States Senator



Patty Murray  
United States Senator



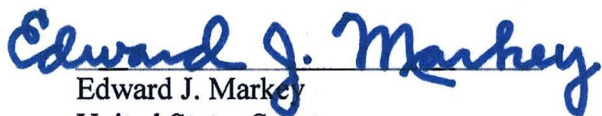
Ron Wyden  
United States Senator



Jeffrey A. Merkley  
United States Senator



Maria Cantwell  
United States Senator



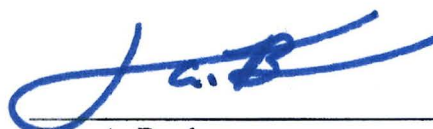
Edward J. Markey  
United States Senator



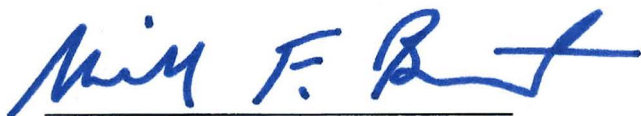
Brian Schatz  
United States Senator



Catherine Cortez Masto  
United States Senator



Cory A. Booker  
United States Senator



Michael F. Bennet  
United States Senator