

# LEGALIZE OR CRIMINALIZE? THE EFFECT OF THE CANNABIS FIGHT ON THE CRIMINAL LAW

MUSC 2nd Annual Update on Medical Cannabis  
September 27, 2019 - The Medical University of  
South Carolina - Charleston, SC

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UNDER FEDERAL LAW, MARIJUANA  
IS 100% ILLEGAL.

Controlled Substance Act, 21 USC 812(b)(1)  
lists Marijuana as a Schedule I controlled  
substance, indicating:

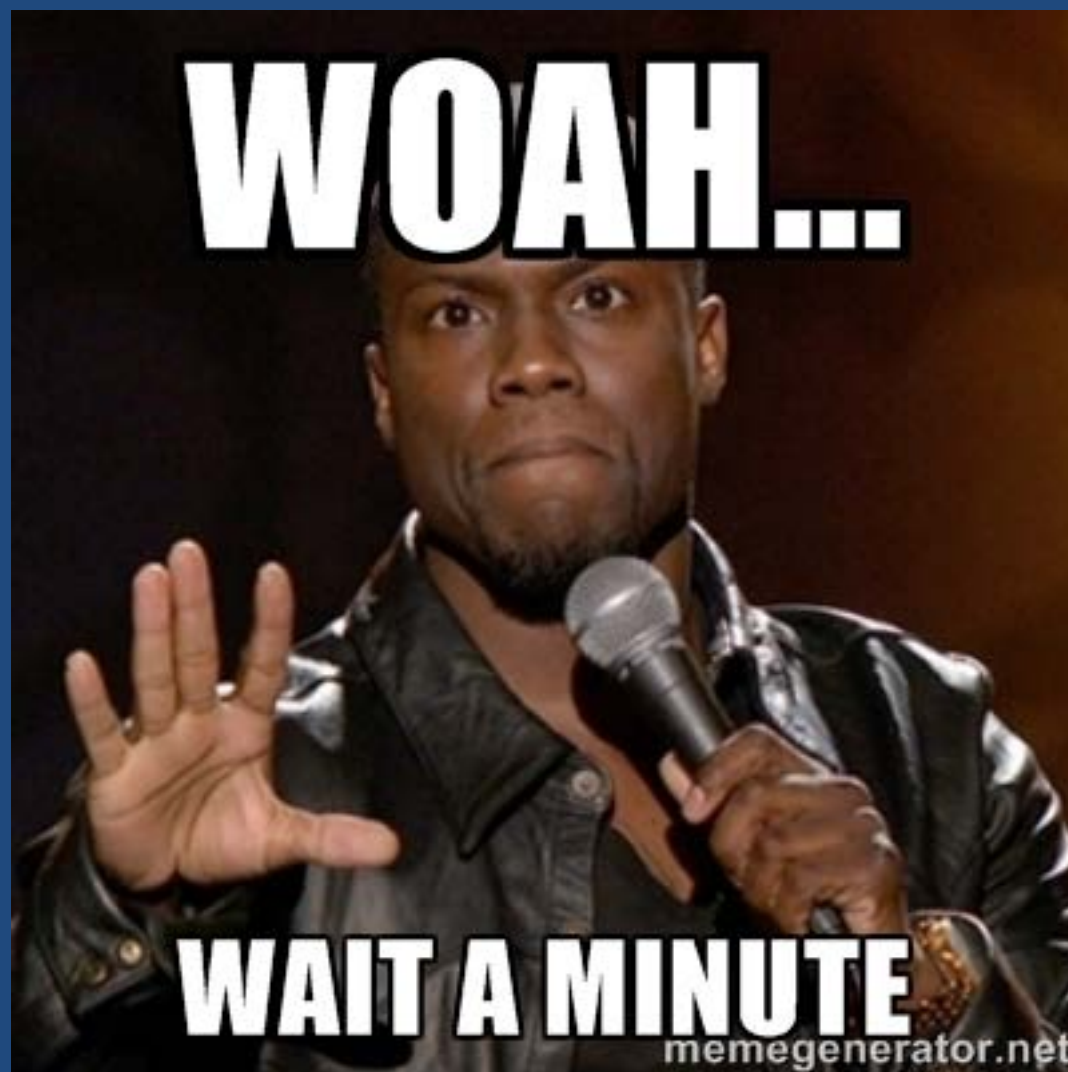
- It has a high potential for abuse;
- It has no currently accepted medical use in treatment in the United States;
- There is a lack of accepted safety for use under medical supervision.



- Marijuana has been in Schedule I since 1970
- Classified the same as Morphine, Heroin, LSD and Ecstasy
- Schedule II: Cocaine, Meth, Oxy and Fentanyl

# "Supremacy Clause" - U.S. Constitution, Art. VI, cl. 2

- State laws conflicting with Federal law are generally preempted and void.
- "No form of State activity can constitutionally thwart the regulatory power granted by the commerce clause to Congress." Wickard v. Filburn, 317 U.S. 111 (1942)



# Legalized Marijuana Jurisdictions

- 31 states, DC, Guam and Puerto Rico
- Alaska, Arizona, Arkansas, California, Colorado, Connecticut, District of Columbia, Delaware, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia

# The Cole Memo - 2013:

- 2012 - voters in WA and CO voted to legalize cannabis for adult use.
- Still illegal, but DOJ would focus resources on “most significant threats in the most effective, consistent, and rational way”



# DOJ's "8 Enforcement Priorities"

- Distribution of Marijuana to minors;
- Revenue from sales going to criminal enterprises, gangs and cartels;
- Diversion from "legal" states to others states;
- State-authorized marijuana activity being used as a cover/pretext for trafficking other illicit drugs or illegal activity;

- Violence and use of firearms in marijuana cultivation and distribution;
- Drugged driving and exacerbation of other adverse public health consequences associated with marijuana use;
- Growing marijuana on public lands and attendant public safety and environmental dangers posed by marijuana productions on public lands;
- Marijuana possession or use on Federal property.

# Rohrabacher-Blumenauer Amendment

- Passed as attachment to Commerce, Justice & Science (CJS) Appropriations bill for Fiscal Year 2014.
- Prohibits DOJ from using Fed Funds to prevent states "from implementing their own State laws" legalizing marijuana





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

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).



*So, what happens now?*

starz





I tried marijuana once or twice in  
England, but didn't like it. I didn't  
inhale.

— *William J. Clinton* —

AZ QUOTES



# Over the last decade or so, SC laws have changed in that:

- No longer DL suspensions for simple possession;
- PWID is now eligible for expungements;
- Simple Possession of Marijuana no longer able to enhance another drug offense.
- Drug Courts have been established throughout SC to allow defendants to plea guilty, proceed with a conditional discharge and if they successfully complete the program, charges are dismissed.

# Collateral Consequences

- Scholarships
- Financial Aid
- Foreign travel
- Immigration status

SC

## Laura Hudson: Exposing The Lies About Marijuana Legalization



Published 3 months ago on July 10, 2018  
By [FITSNews](#)



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SC

## SLED Chief Mark Keel: Medical Marijuana Bill A Poison Apple



Published 9 months ago on January 12, 2018  
By [Letters](#)





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**FORENSIC SERVICES LABORATORY  
CUSTOMER NOTICE 2018-04  
December 14, 2018**

**TERMINATION OF MARIJUANA ANALYST  
CERTIFICATION/TESTING PROGRAM**

Effective immediately, the SLED Forensic Services Laboratory is discontinuing the Marijuana Analyst Certification/Recertification and Testing programs. Subsequently, all law enforcement officers currently certified under the SLED Marijuana Analyst Program (Program) should discontinue testing plant material. Be advised that SLED has researched this issue extensively and has determined that due to the creation of the Industrial Hemp Program, the Marijuana Testing procedures covered in this Program (microscopic analysis and Duquenois-Levine chemical spot test) cannot differentiate between Industrial Hemp and Marijuana. In accordance with S.C. Code Ann. § 46-55-10, Industrial Hemp is defined as Cannabis that contains not more than 0.3 percent of delta-9-tetrahydrocannabinol (THC) on a dry weight basis, and S.C. Code Ann. § 46-55-50 states that Industrial Hemp is "excluded from the definition of marijuana in Section 44-53-110". However, all Cannabis plant material that contains greater than 0.3 percent of THC on a dry weight basis is still considered Marijuana and punishable accordingly. SLED's decision to discontinue the Program should not in any way be considered a change or alteration to the way that probable cause is determined in the State of South Carolina for any and all drug charges, including Marijuana.

However, in terms of confirmatory testing, in order to accurately analyze plant material and verify the THC level to distinguish between Industrial Hemp and Marijuana, cases will need to be submitted to the SLED Drug Analysis laboratory for quantitative analysis of THC. When submitting evidence through pre-log, please select the THC Quantitation (DC-THCQ) service. SLED has developed a quantitative analysis to address this issue as timely as resources allow; however, a minimum of four (4) weeks will be needed for testing.

In addition, the SLED Forensic Services Laboratory is prepared to provide regional, county, and municipal drug laboratories throughout the state with our testing procedures and training for semiquantitative analysis of THC in plant material. Several sessions with hands-on training will be offered during the month of January and continuing as needed to provide information regarding validation, testing procedures and instrumental methods.

For additional questions or concerns, please contact Captain Wendy Bell, Ph.D. with the SLED Forensic Services Laboratory (803-896-7277 or [wbell@sled.sc.gov](mailto:wbell@sled.sc.gov)).



*An Accredited Law Enforcement Agency*





# Standardized Field Sobriety Tests (SFST)

- Horizontal Gaze Nystagmus (HGN)
  - Walk-and-Turn (WAT)
  - One-Leg Stand (OLS)
- 
- NHTSA came up with them around 1975. SC CJA has taught them since 1990s.
  - Via their own validation studies, the HGN is the most “accurate” (77% on its own compared to 68% for WAT and 65% for OLS)
  - 2013 study showed classification accuracy rate for HGN with cannabis at 1%. WAT was 39.7%. OLS was 55.4%

Platt And Associates

## *Certificate of Completion*

*International Association of Chiefs of Police (IACP)/National Highway Traffic  
Safety Administration (NHTSA) 20 hour Drug Evaluation and Classification  
(DECP)/Drug Recognition Expert (DRE) overview course*

*Is Awarded To*

*Patrick McLaughlin*

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Greenville, South Carolina

June 24-26, 2011

*Lance A. Platt, Ph.D.*

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Lance A. Platt, Ph.D.

# Green tongue fallacy



Although we assume the officer's assertion to be true for purposes of this opinion, we are nevertheless skeptical as to its accuracy. *We find no case stating that recent marijuana usage leads to a green tongue.* *Washington v. Wheeler*, 100 Wash.App. 1062 (2000) (unpublished).

# Jury Nullification



**Catherine Bernard**  
about 3 months ago



Not guilty on all counts! After three days of trial and almost two hours of deliberation on Thursday, a Laurens County, Georgia jury acquitted Javonnie Mondrea McCoy of manufacturing marijuana and possession of drug related objects.

He was in fact growing marijuana for his personal use, as a home remedy for the severe headaches and other pain he has suffered since being beaten and spending two weeks in a coma in 2003. The jury appreciated his honesty throughout the case - including testimony at trial and statements to police - and recognized that a good, hard working man living a quiet life and not bothering anyone didn't deserve a felony conviction for his actions.

👍 2.7K 💬 290 ➦ 1.7K