

## Attorney General Garland Reconfirms the DOJ's Hands-Off Approach Toward Federal Marijuana Prosecution

Article By:

Slates C. Veazey

---

Attorney General Merrick Garland has reiterated that the Department of Justice will not prioritize prosecuting marijuana use, a position that Garland expressed during his confirmation hearings. In remarks in front of a Senate Appropriations subcommittee hearing on April 26, 2022, Garland held firm in this position, stating that prosecuting the possession of marijuana is “not an efficient use” of federal resources, especially “given the ongoing opioid and methamphetamine epidemic[s]” facing the nation. Though perhaps more notable is what Garland *did not* say in his testimony.

Specifically, Garland did not comment on whether the Department of Justice intends to reinstate an official policy of prosecutorial discretion in states that have decriminalized or legalized marijuana. [This policy](#), commonly known as the “Cole Memo,” was issued in 2013 by former Deputy Attorney General James Cole. The Cole memo formally adopted a hands-off approach to federal marijuana prosecutions in states with marijuana-friendly policies, taking the position that, so long as other federal priorities were not implicated (such as combating gang and cartel activities or preventing the distribution of marijuana to minors), prosecutors should focus their limited resources elsewhere.

In 2018, however, former Attorney General Jeff Sessions rescinded the Cole Memo, instead advising that federal prosecutors should decide the circumstances under which to prosecute marijuana use based on their own individual priorities. The Sessions memo was issued days after marijuana became legal in California and months after Congress extended the so-called Rorhbacher-Blumenaur amendment, which blocks the Justice Department from using federal funds to impede the implementation of state medical marijuana laws. This reversal of course by the DOJ destabilized what had become a more reliable framework within which state-level cannabis industries could operate.

While Garland’s remarks fell short of reinstating the Cole memo, they do signal a formal return to the hands-off approach previously taken by the DOJ that could be around the corner. Since 2018 – the year of the Sessions memo – another 19 states have legalized recreational marijuana and 39 states have legalized medical marijuana. Just this month, the Congressional Research Service issued a 101-page report on the widening gap between state and federal marijuana policies; the House, yet

again, [passed the SAFE Act](#); and Sen. Chuck Schumer has promised to introduce a federal bill to legalize marijuana before the end of the 2022 Congressional recess in August. As the momentum and calls for federal reform continue to grow, time will tell if Garland will seek to reinstate the Cole memo or even, as some lawmakers have requested, decriminalize marijuana at the federal level. For now, however, state industries can breathe a little easier as the top law enforcement officer and lawyer for the federal government maintains the prior hands-off approach to prosecution.

© 2024 Bradley Arant Boult Cummings LLP

---

National Law Review, Volumess XII, Number 122

Source URL: <https://natlawreview.com/article/attorney-general-garland-reconfirms-doj-s-hands-approach-toward-federal-marijuana>