

Senate Caucus on International Narcotics Control
Hearing on “Is the Department of Justice
Adequately Protecting the Public from the Impact of State Recreational Marijuana
Legalization?”
Tuesday, April 5, 2016
Prepared Statement of Chairman Chuck Grassley of Iowa

In 2013, the Department of Justice decided to all but abandon the enforcement of federal law relating to the possession, cultivation, and distribution of marijuana in states that were in the process of becoming the only jurisdictions in the world to legalize and regulate all these activities for recreational use.

To provide that decision the veneer of legitimacy, then-Deputy Attorney General James Cole issued a memorandum characterizing its new policy as an exercise of prosecutorial discretion.

But this policy doesn't reflect proper enforcement discretion, any more than the President's executive action on immigration did the following year. Legitimate enforcement discretion doesn't tolerate and incentivize ongoing, widespread, and unlawful conduct.

But a few years later, that's where the Department's policy has led. A number of states now authorize, oversee, and profit from sprawling recreational marijuana enterprises.

To flesh out its purported enforcement discretion, the Cole Memorandum also described eight federal priorities it claimed would guide the Department's efforts. These priorities included preventing the distribution of marijuana to minors and the diversion of marijuana to other states, as well as preventing drugged driving and other public health consequences.

And the memorandum made clear that its guidance was conditional. It rested on its expectation that states would “implement strong and effective regulatory and enforcement systems” to address the threat recreational legalization “could pose to public safety, public health, and other law enforcement interests.” According to the memorandum, these systems had to ensure that federal priorities weren't undermined.

In fact, the memorandum went on to warn that “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.”

So the Department effectively took responsibility to monitor the effect that recreational legalization would have on its enforcement priorities.

In addition, a bipartisan consensus developed that the memorandum **also** required the Department to develop **metrics** so the federal government would know when it needed to step in further.

I first raised this issue at a Judiciary Committee hearing soon after the memorandum was issued. Senator Whitehouse, a Democratic member of that Committee and this Caucus, echoed my concern, telling Deputy Attorney General Cole that:

“I think the Department would be well advised to listen to Senator Grassley’s advice about trying to establish as clear metrics as you comfortably can, because there can be a lot of unintended consequences from the broad zone of uncertainty that you can create, and that can frankly be quite harmful in and of itself.”

Even the *New York Times* agreed. Shortly thereafter, it editorialized that “Senator Charles Grassley, the ranking Republican on the Judiciary Committee rightly asked how, exactly, the Justice Department would evaluate whether the states were holding up their end of the bargain. . . . If it wants its ‘trust but verify’ approach to work, it will have to start filling in the details.”

Almost three years, later, however, the report that the Government Accountability Office completed at my and Senator Feinstein’s request makes clear that the Department hasn’t done so.

First, the report found that the Department isn’t adequately monitoring what is occurring in the states. As the report concluded, officials “have not documented their monitoring process or provided specificity about key aspects of it, including potential limitations of the data they report using.”

Second, according to the report, the Department hasn’t developed metrics to guide how it will use this data in relation to its policy. According to GAO, officials “did not identify how they would use the data from these various reports and studies to monitor the effects of marijuana legalization relative to each of the eight marijuana enforcement priorities.”

The report concluded, “officials also did not state how DOJ would use the information to determine whether the effects of state marijuana legalization necessitated federal action to challenge a state’s regulatory system.”

This is precisely what I warned about in 2013. The Department’s inability to answer these questions for GAO is inexcusable. So today I plan to explore them with our witnesses.

Indeed, the public health and safety data that’s widely available only underscores the need to fill in these blanks. In Colorado, for example, from 2012 to 2014, the number of hospitalizations related to marijuana increased **70%**, the number of traffic **deaths** related to

marijuana rose **20%**, and interdiction seizures of Colorado marijuana destined for other states jumped **31%**. This is all in just **two years**.

I'm not suggesting that the federal government use its limited resources to go around arresting anyone smoking marijuana. That's never been the federal role in this area, and it shouldn't be. And today's hearing doesn't have anything to do with the potential medical use of CBD oil, which I wholly support researching.

But our country is in the middle of an epidemic of addiction focused on heroin and prescription opioids. And just last year, the Centers for Disease Control found that people who are addicted to marijuana are three times more likely to be addicted to heroin.

So if the Obama Administration is serious about addressing this epidemic, it should stop burying its head in the sand about what's happening to its enforcement priorities on recreational marijuana. And it should use what it learns to develop a coherent enforcement approach that protects public health and safety, and is consistent with its obligation to take care that our laws are faithfully executed.

We'll try to make some progress toward those goals today.