



**Marijuana Policy: The State and Local Prosecutors' Perspective**

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## **I. Summary of Position on Marijuana**

Federal drug enforcement policy regarding the manufacture, importation, possession, use and distribution of marijuana should be applied consistently across the nation to maintain respect for the rule of law. The National District Attorneys Association (NDAA) supports ongoing research into medicinal uses of marijuana and its derivatives, carried out consistent with any other research regulated by the Food and Drug Administration (FDA). NDAA also supports research regarding the impact of marijuana use on driving, regulated by appropriate agencies.

## **II. Consistent Application of Federal Drug Enforcement Policy is Essential**

Federal drug enforcement policy regarding the manufacture, importation, possession, use and distribution of marijuana should be applied consistently across the nation to maintain respect for the rule of law. The manufacture, importation, possession, use and distribution of marijuana are illegal under federal law, and marijuana is currently a Schedule I drug under the Federal Controlled Substances Act (CSA). As a Schedule I drug, federal authorities have found that marijuana has a high potential for abuse, no accepted medical use, and lacks safety for use under medical supervision.

Despite these clear laws, beginning in 2009, the Department of Justice (DOJ) decided not to enforce federal laws regarding marijuana in some circumstances. Partly as a result of the DOJ's decision not to enforce federal laws, it is now permissible under some state laws to possess marijuana for purported medicinal reasons, and a handful of states permit possession of marijuana for recreational use.

While the DOJ has recently chosen not to enforce federal laws prohibiting the manufacture, importation, possession, use manufacture, cultivation, and distribution of marijuana, those laws remain in effect. The DOJ could change its enforcement policy at any time. To maintain respect for the rule of law, it is essential that federal drug enforcement policy regarding the manufacture, importation, possession, use and distribution of marijuana be applied consistently across the nation.

## **III. Federal Preemption of State Marijuana Legalization Laws**

Congress has created a comprehensive legal framework to regulate and control the production, distribution and use of all drugs in the United States. The federal drug control policy makes it unlawful to cultivate, distribute, sell, use, or possess marijuana for medical or recreational use except in connection with federally authorized research.

Congress codified this framework in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (CDAPCA). The CDAPCA includes the Food, Drug, and Cosmetic Act (FDCA)<sup>1</sup> and the Controlled Substances Act (CSA).<sup>2</sup> Together, they form a single integrated, closed and comprehensive system that requires the registration of all handlers of controlled substances, from new drug research and production to patient delivery, and criminally penalizes the distribution of controlled substances outside the closed system.

It is important to examine the legal status of state medical and recreational marijuana laws in light of the Supremacy Clause, the doctrine of preemption, and the national drug control policy. The Supremacy Clause of the United States Constitution dictates that federal law preempts state law when Congress explicitly preempts state law, when states pass laws in a field that Congress has occupied, or when state law conflicts with federal law.<sup>3</sup> As explained below, a state may choose to decriminalize possession of marijuana or otherwise step down as an enforcer of drug laws. However, state laws that *authorize, license and regulate* the possession, production, use and distribution of marijuana directly conflict with and are subject to preemption by the federal drug laws that *prohibit* those same activities.

### **A. Overview of Federal Drug Control Policy**

The FDCA regulates all drugs, while the CSA regulates a subset of those drugs which have a higher potential for abuse.<sup>4</sup> That determination, along with many others in the federal framework, is based on extensive scientific study.<sup>5</sup> The purpose of the FDCA is to ensure “the nation’s drug supply is safe and effective.”<sup>6</sup> The FDA implements the FDCA and similarly regulates all drugs.<sup>7</sup>

The CSA sets up a system to regulate controlled substances from production to distribution to possession.<sup>8</sup> Its primary purpose is to prevent drug abuse.<sup>9</sup> The Drug Enforcement Administration (DEA) is the primary agency that implements the CSA.<sup>10</sup> The CSA assigns each controlled substance to one of five schedules. The schedule of a particular substance is based on the substance’s medical uses, potential for abuse, and safety.<sup>11</sup> All persons who handle controlled substances must register with the DEA and must maintain detailed inventories.<sup>12</sup>

Schedule I drugs, such as marijuana, have “a high potential for abuse,” “no currently accepted medical use in treatment in the United States,” and lack “accepted safety for use of the drug under medical supervisions.”<sup>13</sup> Schedule II through V drugs have legitimate medical uses, but are subject to various levels of controls.<sup>14</sup>

The CSA includes a process to schedule a new substance, reschedule a substance, or remove a substance from the schedules.<sup>15</sup> The Attorney General has delegated final scheduling authority to the DEA.<sup>16</sup> The process includes a medical and scientific evaluation by the Secretary of the Department of Health and Human Services (HHS).<sup>17</sup> Following consideration of eight statutory factors, the Secretary of HHS makes findings and recommendations to the DEA regarding the substance.<sup>18</sup> The DEA then makes the final scheduling determination.<sup>19</sup>

Marijuana has been a Schedule I drug since Congress passed the CSA.<sup>20</sup> Multiple petitioners have argued many times over the intervening years that marijuana should be rescheduled.<sup>21</sup> However, the various federal agencies have repeatedly concluded that marijuana has a high potential for abuse, has no accepted medical uses, and lacks safety for use under medical supervision.<sup>22</sup>

Certain synthetic forms of THC<sup>23</sup> are controlled in Schedules II and III and are available to patients via prescription in the branded names of Marinol and Cesamet.<sup>24</sup> Sativex®, an oromucosal spray that contains cannabinoids from the marijuana plant, is already approved for use in Canada and across Europe, and is pending approval in the United States.<sup>25</sup> All other structurally related cannabinoids in marijuana are listed as Schedule I drugs under the CSA. At present, 354 individuals and institutions are registered with DEA to research marijuana, marijuana extracts, and tetrahydrocannabinols, including the effects of smoked marijuana on the human body.<sup>26</sup>

The courts have recognized the DEA's particular expertise in determining whether marijuana should be rescheduled and that they must defer to the DEA when its decisions are supported by substantial evidence.<sup>27</sup> The courts also acknowledge that no properly controlled studies have ever discredited the DEA's analyses.<sup>28</sup>

The final piece of the federal framework is the Single Convention on Narcotic Drugs,<sup>29</sup> an international treaty ratified by the United States in 1967. Many aspects of the CSA are necessary to fulfill obligations under the Single Convention.<sup>30</sup>

## **B. Preemption and State Marijuana Legalization**

The FDCA and CSA both provide that they only preempt state law if they are in positive conflict with state law.<sup>31</sup> Therefore, concepts of conflict preemption, both obstacle and impossibility, control the analysis.

“[W]hen the question is whether a Federal act overrides a state law, the *entire scheme of the statute must of course be considered*. . . .”<sup>32</sup> The United States Supreme Court has held that a state law that empowers persons or entities to do what federal law prohibits is preempted.<sup>33</sup> Finally, a state cannot avoid preemption by asserting that individuals may comply with state and federal laws by declining to engage in commercial activity.<sup>34</sup>

The comprehensive framework of the FDCA and the CSA regulate the safety of all drugs in the United States. In order for that system to work nationwide, the federal system must necessarily reach into some intrastate activities.<sup>35</sup> State marijuana legalization laws utilize the machinery of state government to do precisely what federal law prohibits—to license individuals and dispensaries to cultivate, manufacture, use, and sell marijuana, fundamentally creating an obstacle to the national drug control laws. They thwart the federal framework's reliance on science to ensure safety, substituting popular vote or legislative fiat.

Federal law imposes numerous requirements to handle, produce and distribute drugs. For example, the CSA mandates that all persons who manufacture, distribute, or dispense scheduled drugs, or those who propose to do so, obtain an annual registration issued by the DEA.<sup>36</sup> Yet it is impossible for state-licensed “legal” handlers of marijuana to register with the DEA because it violates federal law. Likewise, the FDCA prohibits the sale of any drug before it has been rigorously tested and subjected to the careful scrutiny of federal regulators.<sup>37</sup> No new drug may be marketed before it undergoes a pre-market determination that it is safe for its intended use.<sup>38</sup> The marketing of any new drug for an intended use not

approved by the FDA is also prohibited.<sup>39</sup> State marijuana legalization laws bypass these tests, studies, and research, and license the drug for consumption, in violation of federal law.

Finally, the CSA imposes manufacturing and procurement quotas to limit the quantities of Schedule I and Schedule II controlled substances that may be produced each calendar year.<sup>40</sup> State marijuana legalization laws undermine these quotas because state systems operate outside the federal framework.

Law enforcement officers are faced with particular challenges where state marijuana laws require them to return marijuana to its users. The CSA prohibits the improper distribution of controlled substances.<sup>41</sup> Accordingly, it is impossible for law enforcement officers to comply with both state and federal law in such situations.<sup>42</sup>

A state may undoubtedly choose not to criminalize or regulate marijuana. But a state law that affirmatively authorizes the production, distribution and use of marijuana stands as an obstacle to the comprehensive federal framework and is subject to preemption.

#### **IV. Support for Marijuana Research**

NDAA supports ongoing research into medicinal uses of marijuana and its derivatives, carried out in a consistent manner with federal law. NDAA notes that included in the individuals and institutions that are currently registered with DEA to research marijuana are 90 researchers who are conducting cannabidiol (“CBD”) research on human subjects.<sup>43</sup> NDAA supports the current program by the National Institute of Drug Abuse to increase the amount of research-grade marijuana to timely fill researchers’ needs, as well as the FDA waiver program for researchers conducting clinical trials on CBD.

As described below, NDAA supports research regarding the impact of marijuana use on driving. The adverse impact of marijuana use on driving is significant. Additional research is necessary to quantify those adverse effects and to set standards for driver impairment.

#### **V. Specific Issues Relating to Marijuana Use**

Two issues relating to marijuana use require special attention.

##### **A. Impaired Driving**

In 2015, over 35,000 people were killed in traffic crashes.<sup>44</sup> Nearly a third of those involved an impaired driver.<sup>45</sup> The National Roadside Survey conducted by the National Highway Traffic Safety Administration (NHTSA) demonstrates the increased use of marijuana by our nation’s drivers. In the 2013-2014 roadside survey of weekend nighttime drivers, 8.3 percent had some alcohol in their system and 12.6 tested positive for THC—up 48 percent from the number in 2007.<sup>46</sup> Since a majority of states have legalized marijuana for medical and/or recreational use,<sup>47</sup> marijuana-impaired driving cases will continue to present unique challenges for prosecutors.

Marijuana is the most commonly used illicit substance<sup>48</sup> and has become the most commonly detected non-alcohol substance among drivers in the United States.<sup>49</sup> Generally, impaired driving statutes allow for prosecution of a person who drives (1) while impaired by alcohol, drugs, or any combination thereof, (2) while having a specified level of alcohol in his or her system, or (3) while having any measurable amount of alcohol or drugs in his or her system (*e.g.*, zero tolerance). Numerous scientific studies demonstrate the relationship between alcohol and the impairment of driving function supporting these “per se” laws. There are challenges, however, to provide the same support for marijuana “per se” laws.

It is difficult to parse out statistical information about impaired driving prosecutions in which marijuana was the impairing substance or even the broader category of drugs in general. This is largely the result of how impaired driving laws are written. Generally, a prosecutor does not need to “prove” what the impairing substance is—only that it impaired the driver. This can be done with circumstantial evidence as well. For example, a driver who exhibits clues of impairment and is found to have an apparatus to smoke marijuana in his or her car as well as a bag containing a green leafy substance could be successfully prosecuted for impaired driving even without any chemical test to prove marijuana was in his or her system. To change current laws to add a separate charge for drug-impaired driving generally, or marijuana-impaired driving specifically, for purely statistical reasons would likely complicate prosecutions by requiring proof of the impairing substance. Prosecutors may be able to obtain this information from toxicology labs, but may not collect all data for other reasons (*e.g.*, private laboratory not subject to governmental rules or laws, suspect refusal to submit sample for chemical testing, etc.).

As mentioned, a suspect’s refusal to submit to chemical testing presents a significant challenge to data collection. Other limitations on data collection include the availability of resources for officer training to detect the signs and symptoms of drug or marijuana impairment, toxicology testing, and the lack of widely available roadside testing mechanisms for drugs or marijuana. Additionally, if an impaired driving suspect submits to a breath test and the results reveal a level of alcohol above the legal limit, there is frequently no further testing performed for drugs, resulting in the underreporting of drug or marijuana-impaired cases.

While marijuana use has been shown to impair cognitive or executive function, driving performance, and increase crash risk, scientific studies have not yet demonstrated support for marijuana “per se” levels similar to alcohol in impaired driving legislation. As described, marijuana contains tetrahydrocannabinol (THC), more specifically Delta 9 THC, which is the psychoactive component of marijuana that causes impairment. Delta 9 THC can only be detected in blood. 73-90 percent of this is eliminated in as little as 45 minutes to approximately an hour and a half.<sup>50</sup> On the other hand, marijuana metabolites, the byproducts in the blood as a result of the body metabolizing the marijuana, remain in the blood for a much longer period of time. Detection of the metabolites may be the result of marijuana consumption several days or weeks prior to the sample collection and may not scientifically equate to impairment. Some of the issues surrounding the challenges to studies that would scientifically support a marijuana “per se” level include:

- **Varying concentrations of THC in marijuana.** Generally, the concentrations used in studies are much lower than what is available in real-life settings. Additionally, concentrations vary depending on the form of marijuana ingested.
- **Differences between users of marijuana.** A chronic, frequent user may develop tolerance to some effects of marijuana but not all effects, including the impairing effect. The effect of THC consumption on impairment of driving performance may be higher for occasional, recreational users than for frequent users.
- **Differences in ingestion of marijuana.** Smoked marijuana leads to a different absorption rate and release rate of the psychoactive ingredient than does eating marijuana edibles.
- **Combined use of marijuana and alcohol or marijuana and other drugs.** Various studies have demonstrated that the combined use is associated with significantly greater cognitive impairment and crash risk than the use of one alone.<sup>51</sup>

In terms of marijuana-impaired driving, legislative change has occurred more quickly than the pace of the scientific research on the issue.<sup>52</sup> This leaves fundamental questions about a standard for determining whether an individual's ability to operate a vehicle safely is impaired by marijuana as well as the means by which the individual's present status may be measured. Some practical items to consider prior to setting a "per se" level for marijuana impairment:

- **Lack of scientific research.** There is little scientific research supporting marijuana "per se" levels similar to alcohol. Setting a limit for marijuana is strictly based on public policy and in no way means an individual testing below the level is not impaired at the time of driving.
- **Even a low "per se" level will miss significant numbers of impaired drivers.** If a marijuana "per se" level is set at 5 ng, some estimates suggest 50-70 percent of individuals displaying clues of impairment leading to arrest would test below the "per se" level because of how quickly THC metabolizes out of the blood.
- **Sample collection and toxicology testing.** Blood testing is the most effective testing method for marijuana, but is the most invasive and costly. Securing a blood sample requires a search warrant that may add a significant delay in specimen collection. This in turn may inhibit the ability to secure information about marijuana in the blood at the time of driving (and the inference of impairment at driving) because of how quickly marijuana transfers from blood to lipid soluble tissues in the body. Further, obtaining a search warrant in a routine impaired driving case takes valuable time from the necessary duties of a law enforcement officer.<sup>53</sup>
- **Standardized protocols needed.** Standardized testing protocols would need to be developed for each type of sample secured.

- **Required additional resources.** Dedicated resources would likely be needed to train law enforcement officers in the signs and symptoms of marijuana impairment and how to properly document it and train and certify officers as Drug Recognition Experts (DRE's). Most police officers that make traffic stops are not trained to become experts in drug recognition due to the costs involved and the requirement that officers respond to numerous types of crimes on any given shift. Also, additional resources would likely be needed for new and expensive laboratory equipment, training, technicians, and toxicologists since many state labs are not equipped or prepared to conduct THC blood testing. Funding may also be required for other experts to support the prosecution at trial.
- **“Per se” limit for marijuana when combined with alcohol or other drugs.** If a “per se” limit is to be established, consider legislative change establishing strict liability for an individual found to have any level of marijuana (THC) in his blood at the time of testing when combined with any level of alcohol or the presence of any other drug. Including “time of testing” language may help minimize the problem created by the quick dissipation of THC out of the blood as well as avoid attempts to relate amounts back to the time of driving.

## **B. Children’s Access**

One of the most significant concerns about legalizing marijuana for medical or recreational use is increasing its access to youth. As noted in the November 2016 report of the Surgeon General of the United States on Alcohol, Drugs, and Health: “Adolescence is a critical period in the vulnerability to substance use and use disorders, because a hallmark of this developmental period is risk taking and experimentation, which for some young people includes trying alcohol, marijuana, or other drugs.”<sup>54</sup> As further noted in this report, “the brain undergoes significant changes during this life stage, making it particularly vulnerable to substance exposure.”<sup>55</sup>

The science is clear that use of marijuana during adolescence adversely affects brain development,<sup>56</sup> particularly the part of the brain that regulates complex cognitive behavior, personality expression, decision making and social behavior.<sup>57</sup> Marijuana use makes it harder for teens to cope with social situations and the normal pressures of life.<sup>58</sup>

Legalization of marijuana for medical use and recreational use clearly sends a message to youth that marijuana is not dangerous and increases youth access to marijuana.<sup>59</sup> This is not like alcohol, which is also readily available to and a significant problem for youth, because alcohol use does not cause the same type of permanent changes to teens’ ability to concentrate and learn that marijuana does.<sup>60</sup>

Scientific studies have shown that 1 in 10 people who try marijuana become addicted to it, developing a level of dependence that produces withdrawal and cravings.<sup>61</sup> However, if marijuana use starts in adolescence, the chances of addiction are even higher: 1 in 6.<sup>62</sup> Another scientific study showed that persistent and heavy use of marijuana by adolescents reduces IQ by as much as eight points.<sup>63</sup> Other studies have found that marijuana is linked to dropping out of school, subsequent unemployment, social welfare dependence and a lower self-reported quality of life.<sup>64</sup> Another analysis, which examined 48 different studies on marijuana use, also found

“that marijuana use is consistently associated with reduced grades and a reduced chance of graduating from school.”<sup>65</sup>

It comes as no surprise to our nation’s prosecutors that youth who use marijuana are at greater risk of using other illegal drugs. According to the National Institute on Drug Abuse for Teens, while most people who use marijuana do not go on to use another or other drugs, those who use marijuana, alcohol or tobacco during their teen years are more likely to use illegal drugs.<sup>66</sup> A study by Columbia University’s National Center on Addiction and Substance Abuse offers further support for the fact that teens who use marijuana at least once a month are 13 times more likely than other teens to use another drug like cocaine, heroin, or methamphetamine and are almost 26 times more likely than those teens who have never used marijuana to use another illegal drug.<sup>67</sup> Another study showed that marijuana users during adolescence were twice as likely to use illicit drugs than non-users.<sup>68</sup>

There is evidence legalization of marijuana limited to medical dispensaries and/or adult recreational use has led to increased unintended exposure to marijuana among young children.<sup>69</sup> By 2011, rates of poison center calls for accidental pediatric marijuana ingestion more than tripled in states that decriminalized marijuana before 2005.<sup>70</sup> In states where legislation passed between 2005 and 2011, call rates increased nearly 11.5 percent per year and there was no similar increase in states that had not decriminalized marijuana as of December 31, 2011.<sup>71</sup> Secondhand exposure to marijuana smoke by children (and adults) is also a growing medical concern.<sup>72</sup> Prenatal marijuana exposure may also have long-term emotional and behavioral consequences.<sup>73</sup>

Legalization of marijuana for purported medicinal and recreational purposes has increased access by children. For all of these reasons, it is vitally important to do all we can to prevent access to marijuana by youth in America. Their health, safety and welfare demand no less.

## **VI. Conclusion**

Marijuana policy in the United States has evolved over the years, and enforcement of that policy has varied from administration to administration. What has not changed is the mission of prosecutors to protect the communities we serve. Part of that mission involves engaging in legal and policy discussions despite an ever-changing landscape, including on the subject of marijuana. NDAA takes the position that federal drug enforcement policy regarding the manufacture, importation, possession, use and distribution of marijuana should be applied consistently across the nation to maintain respect for the rule of law.

*The National District Attorneys Association is the largest and oldest prosecutor organization in the country, which was formed in 1950. The organization serves as the voice of America’s prosecutors and strives to support their efforts to protect the rights and safety of the people in their communities.*

**Appendix: Status of Marijuana by State (Current as of 4/1/17)**

<b>State</b>	<b>Medical Marijuana Legal?*</b>	<b>Date of Medical Legalization</b>	<b>Marijuana Decriminalized?</b>	<b>Recreational Marijuana Legal?*</b>	<b>Date of Recreational Legalization</b>	<b>Hemp Legal?</b>	<b>Date of Hemp Legalization</b>
Alabama	Limited	5/4/16	No	No	n/a	No	n/a
Alaska	Yes	11/3/98	Yes	Yes	11/4/14	No	n/a
Arizona	Yes	12/14/10	No	No	n/a	No	n/a
Arkansas	Yes	1/1/17	No	No	n/a	No	n/a
California	Yes	11/5/96	Yes	Yes	11/8/16	Yes	9/27/13
Colorado	Yes	1/1/00	Yes	Yes	1/1/12	Yes	1/1/2012
Connecticut	Yes	5/31/12	Yes	No	n/a	Yes	7/2/16
Delaware	Yes	5/11/11	Yes	No	n/a	Yes	7/29/14
Florida	Limited	1/3/17	No	No	n/a	No	n/a
Georgia	Limited	4/16/15	No	No	n/a	No	n/a
Hawaii	Yes	6/1/00	No	No	n/a	Yes	4/30/14
Idaho	No	n/a	No	No	n/a	No	n/a
Illinois	Yes	8/1/13	Yes	No	n/a	Yes	1/1/15
Indiana	No	n/a	No	No	n/a	No	n/a
Iowa	Limited	7/1/14	No	No	n/a	No	n/a
Kansas	No	n/a	No	No	n/a	No	n/a
Kentucky	Limited	4/10/14	No	No	n/a	No	n/a
Louisiana	Limited	5/19/16	No	No	n/a	No	n/a
Maine	Yes	11/2/99	Yes	Yes	1/30/17	Yes	6/15/15

Maryland	Yes	6/1/14	Yes	No	n/a	Yes	7/1/2015
Massachusetts	Yes	1/1/13	Yes	Yes	11/8/16	No	n/a
Michigan	Yes	3/1/09	No	No	n/a	No	n/a
Minnesota	Yes	7/1/15	Semi	No	n/a	No	n/a
Mississippi	No	n/a	Yes	No	n/a	No	n/a
Missouri	Limited	8/28/14	no	No	n/a	No	n/a
Montana	Yes	11/2/04	No	No	n/a	Yes	10/1/2001
Nebraska	No	n/a	Yes	No	n/a	No	n/a
Nevada	Yes	11/7/00	Yes	Yes	11/8/16	Yes	6/4/14
New Hampshire	Yes	7/4/13	No	No	n/a	No	n/a
New Jersey	Yes	1/18/10	No	No	n/a	No	n/a
New Mexico	Yes	1/1/07	No	No	n/a	No	n/a
New York	Yes	7/5/14	Yes	No	n/a	Yes	6/15/15
North Carolina	Limited	7/3/14	No	No	n/a	No	n/a
North Dakota	Yes	11/8/16	No	No	n/a	Yes	4/17/99
Ohio	Yes	9/8/16	No	No	n/a	No	n/a
Oklahoma	Limited	4/30/15	No	No	n/a	No	n/a
Oregon	Yes	11/3/98	Yes	Yes	11/4/14	Yes	8/4/09

Pennsylvania	Yes	5/17/16	No	No	n/a	Yes	7/20/16
Rhode Island	Yes	6/7/07	Yes	No	n/a	Yes	1/1/17
South Carolina	Limited	6/2/14	No	No	n/a	No	n/a
South Dakota	No	n/a	No	No	n/a	No	n/a
Tennessee	Limited	5/16/14	No	No	n/a	Yes	7/1/14
Texas	Limited	6/1/15	No	No	n/a	No	n/a
Utah	Limited	3/20/14	No	No	n/a	No	n/a
Vermont	Yes	1/1/04	Yes	No	n/a	Yes	6/10/13
Virginia	Limited	7/1/15	No	No	n/a	Yes	7/1/15
Washington	Yes	1/1/99	Yes	Yes	12/6/12	Yes	12/6/12
West Virginia	No	n/a	No	No	n/a	Yes	3/8/02
Wisconsin	Limited	4/16/14	No	No	n/a	No	n/a
Wyoming	Limited	7/1/15	No	No	n/a	No	n/a

\* As discussed in this paper, marijuana remains illegal under the federal Controlled Substances Act.

## Notes

<sup>1</sup> 21 U.S.C. § 301 et seq.

<sup>2</sup> 21 U.S.C. § 801 et seq.

<sup>3</sup> *Arizona v. United States*, 132 S. Ct. 2492, 2500–01 (2012).

<sup>4</sup> 21 U.S.C. §§ 811–12.

<sup>5</sup> *Id.*

<sup>6</sup> *United States v. Sage Pharmaceuticals, Inc.*, 210 F.3d 475, 479 (5th Cir. 2000) (citation omitted).

<sup>7</sup> 21 U.S.C. § 393(b).

<sup>8</sup> *Gonzales v. Raich*, 125 S. Ct. 2195, 2203-04 (2005).

<sup>9</sup> *Id.*

<sup>10</sup> 28 C.F.R. § 0.100(b).

<sup>11</sup> 21 U.S.C. § 811-812.

<sup>12</sup> 21 U.S.C. § 822; 21 C.F.R. § 1304.11(a).

<sup>13</sup> 21 U.S.C. § 812(b)(1).

<sup>14</sup> 21 U.S.C. § 829.

<sup>15</sup> 21 U.S.C. § 811.

<sup>16</sup> 28 C.F.R. § 0.100(b).

<sup>17</sup> 21 U.S.C. § 811(b).

<sup>18</sup> *Id.*

<sup>19</sup> 28 C.F.R. § 0.100(b).

<sup>20</sup> 21 U.S.C. § 812(c)(c)(17).

<sup>21</sup> *Alliance for Cannabis Therapeutics v. Drug Enforcement Admin.*, 930 F.2d 936, 937 n.1 (D.C. Cir. 1991)

<sup>22</sup> *Denial of Petition To Initiate Proceedings To Reschedule Marijuana*, 81 Fed. Reg. 53767 (Drug Enforcement Admin. Aug. 12, 2016).

<sup>23</sup> Marijuana contains tetrahydrocannabinol (THC), more specifically, Delta 9 Tetrahydrocannabinol, which is the psychoactive substance in marijuana.

<sup>24</sup> [https://www.dea.gov/divisions/sea/in\\_focus/marinol-cessmet.pdf](https://www.dea.gov/divisions/sea/in_focus/marinol-cessmet.pdf).

<sup>25</sup> <https://www.gwpharm.com/products-pipeline/sativex>.

<sup>26</sup> <https://www.deadiversion.usdoj.gov/schedules/marijuana/>.

Acting\_Administrator\_Rosenberg\_Response\_to\_Request\_Marijuana\_Rescheduling.pdf

<sup>27</sup> *Americans for Safe Access v. Drug Enforcement Admin.*, 706 F.3d 438, 449 (D.C. Cir. 2013).

<sup>28</sup> *Id.* at 452.

<sup>29</sup> March 30, 1961, 18 U.S.T. 1407.

<sup>30</sup> *Nat'l Org. for Reform of Marijuana Laws (NORML) v. Drug Enforcement Admin.*, 559 F.2d 735, 751 (D.C. Cir. 1977).

<sup>31</sup> 21 U.S.C. § 903; *Wyeth v. Levine*, 129 S. Ct. 1187, 1196 (2009).

<sup>32</sup> *Crosby v. Nat'l Foreign Trade Council*, 120 S. Ct. 2288, 2294 (2000) (emphasis added) (citations omitted).

<sup>33</sup> *Michigan Canners and Freezers Ass'n, Inc. v. Agric. Mktg. and Bargaining Bd.*, 104 S. Ct. 2518, 2527-28 (1984).

<sup>34</sup> *Mut. Pharm. Co. v. Bartlett*, 133 S. Ct. 2466, 2477 (2013) (citations omitted).

<sup>35</sup> See 21 U.S.C. § 801 et seq.

<sup>36</sup> 21 U.S.C. § 822.

<sup>37</sup> 21 U.S.C. § 355.

<sup>38</sup> 21 U.S.C. § 355(d)(1).

<sup>39</sup> 21 U.S.C. §§ 321(p), 331(d), 355(1)(a).

<sup>40</sup> 21 U.S.C. § 826.

<sup>41</sup> 21 U.S.C. § 841(a)(1).

<sup>42</sup> *People v. Crouse*, 388 P.3d 39, 43 (2017) (Colorado Supreme Court holding that the return provision in Colorado's medical marijuana law is preempted).

<sup>43</sup> <https://www.deadiversion.usdoj.gov/schedules/marijuana/>.

<sup>44</sup> NHTSA press release, "Traffic fatalities up sharply in 2015," <https://www.nhtsa.gov/press-releases/traffic-fatalities-sharply-2015>; See also Traffic Safety Facts: Research Note. 2015 Motor Vehicle Crashes: Overview, DOT HS 812 318, August 2016.

<sup>45</sup> Traffic Safety Facts: Research Note. 2015 Motor Vehicle Crashes: Overview, DOT HS 812 318, August 2016.

- <sup>46</sup> Traffic Safety Facts: Research Note. Results of the 2013-2014 National Roadside Survey of Alcohol and Drug Use by Drivers, by Amy Berning, Richard Compton, and Kathryn Wochinger, DOT HS 812 118, February 2015.
- <sup>47</sup> <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.
- <sup>48</sup> <https://www.drugabuse.gov/publications/media-guide/most-commonly-used-addictive-drugs>.
- <sup>49</sup> “Establishing legal limits for driving under the influence of marijuana,” *Injury Epidemiology* 1:26, Kristin Wong, Joanne E Brady and Guohua Li (2014).
- <sup>50</sup> “Effect of Blood Collection Time on Measured Delta-9-Tetrahydrocannabinol Concentrations: Implications for Driving Interpretation and Drug Policy,” *Clinical Chemistry* 62:2, Rebecca L. Hartman, Marilyn A. Huestis, et al. (2016).
- <sup>51</sup> See “Establishing legal limits for driving under the influence of marijuana,” *Injury Epidemiology* 1:26, Kristin Wong, Joanne E Brady and Guohua Li (2014).
- <sup>52</sup> “Cognitive and Clinical Neuroimaging Core,” Marijuana Investigations for Neuroscientific Discovery, Dr. Staci Gruber, <http://drstaci-gruber.com/mind/>.
- <sup>53</sup> A representative Michigan impaired driving case showed that the delay between a traffic stop and the blood draw pursuant to a search warrant was over three hours. The blood alcohol result was available four days after the sample was sent to the state lab, but THC results were not available for over two months.
- <sup>54</sup> FACING ADDICTION IN AMERICA, *The Surgeon General’s Report on Alcohol, Drugs, and Health*, 2016, p 2-21.
- <sup>55</sup> *Id.*, p 2-22.
- <sup>56</sup> Partnership for Drug Free Kids, *THE TEEN BRAIN*, <http://www.drugfree.org/why-do-teens-act-this-way/adolescent-brain-and-behavior>.
- <sup>57</sup> SAM Smart Approaches to Marijuana, *Quick Facts*, <https://learnaboutsam.org/the-issues/quick-facts>.
- <sup>58</sup> Partnership for Drug Free Kids, *THE TEEN BRAIN*, <http://www.drugfree.org/why-do-teens-act-this-way/adolescent-brain-and-behavior>.
- <sup>59</sup> Rethinking Access to Marijuana, Youth Marijuana Use “What’s the big deal? It’s just pot.”, p 1, <http://www.lacountyram.org/youth-marijuana-use.html>.
- <sup>60</sup> *Id.*, p 2.
- <sup>61</sup> SAM Smart Approaches to Marijuana, *Marijuana and Health*, p 1, <https://learnaboutsam.org/the-issues/marijuana-and-health/>.
- <sup>62</sup> *Id.*
- <sup>63</sup> *Id.*, p 3.
- <sup>64</sup> *Id.*
- <sup>65</sup> *Id.*
- <sup>66</sup> National Institute on Drug Abuse for Teens, Advancing Addiction Science, *Marijuana*, p 9, <https://teens.drugabuse.gov/drug-facts/marijuana>.
- <sup>67</sup> Non-Medical Marijuana II: Rite of Passage or Russian Roulette?” *CASA Reports*. April 2004. Chapter V, Page 15, <http://www.centeronaddiction.org/addiction-research/reports/non-medical-marijuana-ii-rite-passage-or-russian-roulette>.
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- <sup>69</sup> Marijuana Use: Detrimental to Youth, American College of Pediatricians, p 2, <https://www.acped.org/marijuana-use-detrimental-to-youth>.
- <sup>70</sup> *Id.*
- <sup>71</sup> *Id.*
- <sup>72</sup> American Heart Association NEWS, *Secondhand marijuana smoke damages blood vessels more than tobacco smoke*, <http://news.heart.org/secondhand-marijuana-smoke-damages-blood-vessels-more-than-tobacco-smoke/>.
- <sup>73</sup> *Addiction Science & Clinical Practice*, July 2011, *Prenatal Tobacco, Marijuana, Stimulant, and Opiate Exposure: Outcomes and Practice Implications*, p. 61 <https://case.edu/deputyprovost/media/caseedu/deputy-provost/documents/archive/publications/added2011/2011PrenatalDrugExpDevOutcomes.pdf>.