

The Washington Post

Obama administration won't prosecute where medical marijuana is legal

By Carrie Johnson
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The Obama administration delivered new guidance on medical marijuana to federal prosecutors Monday, signaling a broad policy shift that will mean fewer crackdowns against dispensaries and the people who use them.

Attorney General Eric H. Holder Jr. instructed government lawyers that in 14 states where medical marijuana use is legal, federal prosecutors should focus only on cases involving higher level drug traffickers or people who use the state laws as a cover story.

"It will not be a priority to use federal resources to prosecute patients with serious illnesses or their caregivers who are complying with state laws on medical marijuana, but we will not tolerate drug traffickers who hide behind claims of compliance with state law to mask activities that are clearly illegal," Holder said. "This balanced policy formalizes a sensible approach that the Department has been following since January: effectively focus our resources on serious drug traffickers while taking into account state and local laws."

The Justice Department action is the latest in a series of developments in President

Obama's approach to drug policy. It follows by only a few days the introduction of a Senate bill that would eliminate the disparity between sentences for cocaine possession in powder versus rock form, a change long sought by drug reform advocates, judges and civil rights activists.

During last year's election campaign, Obama and his running mate, Joseph R. Biden Jr., backed an overhaul of the nation's treatment of drug offenders, supporting more education, treatment and drug courts for people caught in the throes of addiction. They handpicked former Seattle police chief R. Gil Kerlikowske, who shares many of those views, as their drug czar.

In Monday's memo, first reported by the Associated Press, authorities make clear that in states with medical marijuana laws, federal prosecutors should train their aim

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on bigger cases involving violence, money laundering, sales to juveniles and the unlawful use of firearms.

Deputy Attorney General David W. Ogden, who sent the policy directive to U.S. attorneys Monday morning, cautioned that marijuana distribution in the United States remains the highest profit source for powerful Mexican drug cartels whose violence increasingly spills over the Southwest border.

In the document, posted on the department Web site Ogden makes clear that the department is not "legalizing" marijuana or creating a new legal defense for people who may have violated the Controlled Substances Act. Instead, the memo is intended to guide prosecutors on where to train their scarce investigative resources.

The issue has flared in several states, particularly California, where drug-control agents raided dispensaries earlier this year.

Opponents of medical marijuana blasted the new policy.

"The administration's new guidelines directing federal prosecutors to ignore local medical marijuana dispensaries that allegedly operate in compliance with state laws fly in the face of Supreme Court precedent and undermine federal laws that prohibit the distribution and use of marijuana," said Rep. Lamar Smith (Tex.),

the top Republican on the House Judiciary Committee. He said in a statement that the Obama administration has repeatedly promised action against cartel-operated marijuana fields in U.S. national parks and against drug-related violence along the border with Mexico.

"But we cannot hope to eradicate the drug trade if we do not first address the cash cow for most drug trafficking organizations -- marijuana," Smith said. "Illegal marijuana sales in the U.S. help fund the illegal drug trade. By directing federal law enforcement officers to ignore federal drug laws, the administration is tacitly condoning the use of marijuana in the U.S. If we want to win the war on drugs, federal prosecutors have a responsibility to investigate and prosecute all medical marijuana dispensaries and not just those that are merely fronts for illegal marijuana distribution."

Advocacy groups supporting medical

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marijuana hailed the new Justice Department guidance, but some said it does not go far enough.

Tom Angell, a spokesman for Law Enforcement Against Prohibition, said in an e-mail message that the shift appears to be a "major step" in the right direction.

Ethan Nadelmann, executive director of the Drug Policy Alliance, which advocates decriminalizing drug use, cheered the announcement as introducing new collaboration between states and marijuana providers.

But Nadelmann pressed the White House to introduce federal legislation to legalize the drug and urged the Justice Department to monitor district attorneys in states that have continued to bring prosecutions despite local laws legalizing medical marijuana.

Tim Lynch, director of the Project on Criminal Justice at the libertarian Cato Institute, called the Justice Department guidance "a breakthrough for common sense."

He also urged the administration to go further. "The Obama administration should be taking much bolder steps to stop the criminalization of drug use more generally," he said. "More and more people have come to recognize that the drug war has been given a fair chance to work, but it has proved to

be a grand failure."

Americans for Safe Access, a group that promotes medical marijuana reform nationwide, said that during the Bush administration, more than 200 federal raids occurred in California alone.

Representatives of the group also raised questions about the Justice Department policy shift Monday, wondering, for instance, whether federal prosecutors might allow defendants to introduce medical evidence in criminal cases brought in federal courts. Federal prosecutors have more than two dozen active cases in which defendants have been barred from using evidence of their medical problems.

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