

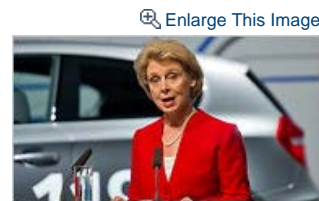


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New Federal Crackdown Confounds States That Allow Medical Marijuana

By WILLIAM YARDLEY
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SEATTLE — Marijuana remains illegal under federal law, but that has not stopped a fuzzy industry of [marijuana](#) farms and dispensaries from rising to serve the 15 states that allow the drug to be used for medical purposes. Under [President Obama](#), the federal government had seemed to make a point of paying little attention — until now.



Eckehard Schulz/Associated Press
Gov. Christine Gregoire of Washington reversed her stance on an expansive marijuana bill.

As some states seek to increase regulation but also further protect and institutionalize medical marijuana, federal prosecutors are suddenly asserting themselves, authorizing raids and sending strongly worded letters that have cast new uncertainty on an issue that has long brimmed with tension between federal and state law.

How can a drug that federal drug law says is criminal be considered medicine under state law?

“It’s weird,” said Kevin Griffin, co-founder of West Coast Wellness, a medical marijuana dispensary that opened here in February. “We’re not a pharmacy. We spent a lot of time gathering information, and this is what we came up with as the most responsible, legal way.”

Posters featuring [Pink Floyd](#) and [Tupac Shakur](#) lined the white walls of the office, in the back of a bland building just inside Seattle’s northern boundary. Glass pipes decorated a shelf. And then there was the medicine, available by “donation only,” which included less expensive “medibles” like lollipops and “pot” pies and the traditional smoked dosages at about \$280 an ounce. Questions? Just ask the “budtender” — while you still can.

“I’m worried,” Mr. Griffin said. “We might lose something we put a lot of money into.”

West Coast Wellness, one of scores of new dispensaries in the state, opened just as Washington appeared ready to approve one of the nation’s most expansive medical marijuana policies, broadening its original 1998 law to include licensing growers and dispensaries. The Legislature passed the measure last month. Yet while Gov. [Christine Gregoire](#) had initially expressed support, she instead vetoed most of the bill, specifically

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citing new concerns about federal opposition.

“The landscape has changed,” said the governor, a Democrat.

Letters so far have gone out to governors in Arizona, Colorado, Montana, Rhode Island, Vermont and Washington, prompting some states — including Rhode Island and Montana, in addition to Washington — to revise or back away from plans to make the medical marijuana industry more mainstream.

In Washington, Ms. Gregoire asked for guidance from the state’s two [United States attorneys](#), Mike Ormsby and Jenny Durkan. In a reply to the governor last month, they said the federal government would prosecute “vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law.”

The changes have angered supporters of medical marijuana, who say the federal government is sending mixed signals, even as they argue that it has not technically changed its position.

“How they’re obviously coming across is saber rattling,” said Alison Holcomb, director of drug policy for the [American Civil Liberties Union](#) of Washington. “If there has been a shift, then somebody needs to own up to that. We have a very clear memo from 2009.”

In October 2009, the Justice Department said in a memorandum drafted by David W. Ogden, then the deputy attorney general, that it would not focus on “individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.”

The memo did not allow farms and dispensaries or the buying and selling of marijuana. In many states that allow medical marijuana, state law does not specify that dispensaries are also legal. The Washington State Department of Health’s Web site specifically says that dispensaries are illegal, as is buying and selling marijuana. It says that people who qualify for medical marijuana are allowed to grow their own.

Yet with some states and even the federal government appearing to look the other way, farming collectives and dispensaries flourished. And law enforcement officials at various levels took notice. In Spokane, Wash., federal agents recently conducted searches of seven dispensaries, though no one was arrested.

“There didn’t seem to be a recognition that the use and sale of marijuana is against federal law,” said Mr. Ormsby, the United States attorney for the Eastern District of Washington.

When the Legislature was drafting the bill it passed in its most recent regular session, Mr. Ormsby said, “No one consulted with me about what I thought of what they were going to do and did I think it ran afoul of federal law.”

Of the state’s current medical marijuana law, he added, “We believe, of course, under federal law no part of the state law is legal.”

Mr. Ormsby and other prosecutors say they agree that the federal position has not changed, and they say they have been given no new directive from the Justice Department (Mr. Ormsby’s and Ms. Durkan’s letter to Ms. Gregoire said they had “consulted with the attorney general,” [Eric H. Holder Jr.](#)).

A spokeswoman for the Justice Department, Jessica Smith, said: “This is not a change in policy. It’s a reiteration of the guidance that was handed down in 2009 by the deputy attorney general.”

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Ms. Smith noted that the 2009 memo “says definitively that distribution continues to be a federal offense.”

Some federal prosecutors say states have simply let medical marijuana get out of hand. Many supporters of medical marijuana agree.

“Seeing storefront dispensaries advertise with neon pot leaves is inconsistent with the idea most people have of medical marijuana,” said Ms. Holcomb, of the A.C.L.U. “But until you let states regulate these dispensaries, you have no way to control that.”

Some people on each side say the issue could quickly be solved if the federal government reclassified marijuana from a Schedule 1 drug, a category that includes heroin and cocaine, to a Schedule 2 drug, which includes medicines that can be prescribed.


“I think the onus is on the federal government,” said State Senator Jeanne Kohl-Welles, a Democrat from Seattle who sponsored the bill that Ms. Gregoire vetoed. “Whether the Obama administration is signaling that it’s going to be more aggressive or back off from what’s in that Ogden memo, I don’t know.”


Noting that Ms. Gregoire cited concerns that state employees could face legal action for licensing growers and dispensaries, and that prosecutors had insisted that state employees “would not be immune” from prosecution, Ms. Kohl-Welles said: “I keep trying to visualize federal agents going into a state building, the Department of Health, and hauling people off.”


She continued, “I can’t conceptualize that.”

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