

#### **Economic Development and Marijuana**

#### Some Ongoing Challenges

#### House Committee on Economic Development

Wednesday, January 30, 2019, Hearing Room D, State Capitol, Salem, Oregon

Rob Bovett
AOC Legal Counsel

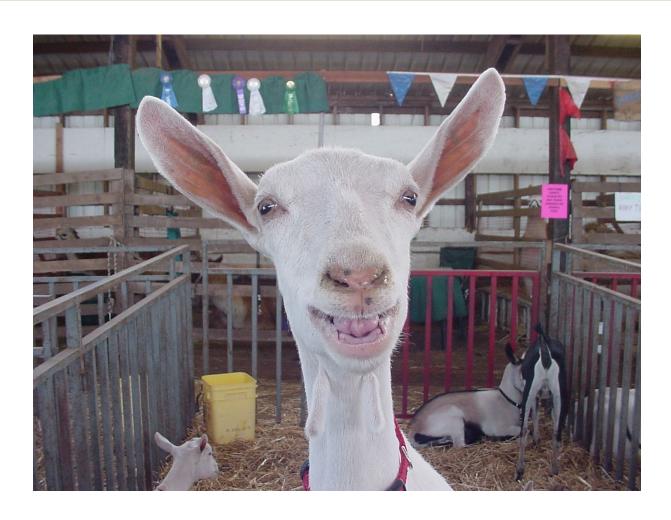


#### **Outline**

- A. Quick review of local regulation
- B. Some of the ongoing challenges



#### **But First**





#### **AOC** Position

- Neutral on legalization of marijuana
- Promote and defend
  - Local opt in or out of marijuana businesses
  - Local reasonable regulation of time, place, and manner of marijuana businesses
  - Local tax options





#### **Key Dates**

- 1973: Legislature decriminalized PCS < 1 oz</li>
- 1998: Voters approved M67 (OMMA)
- 2005: Legislature expanded OMMA
- 2013: Legislature authorized dispensaries
- 2014: Voters approved M91 (CRMA)
- 2015: Legislative rewrite of M91 and OMMA
- 2016: More legislative tune-up
- 2017: More legislative tune-up
- 2018: More legislative tune-up
- 2019: More legislative tune-up?



# A. Quick review of local regulation

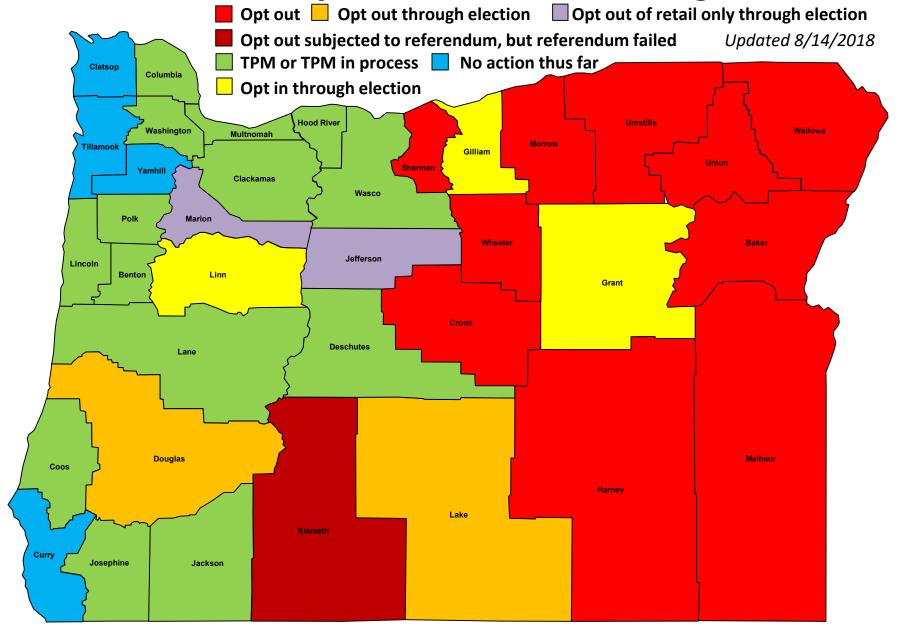


#### Three Issues

- 1. Opt in/out
- 2. Regulations
- 3. Taxation



#### Local Control of Marijuana Businesses in Oregon Counties



## 2. Local Regulations

#### Land use and zoning

- 36 counties with 36 different land use plans
- LUCS required for all OLCC producer, processor, wholesaler, and retailer licenses, except small canopy producers
- Local time, place and manner regulations
  - Supplement to state laws and rules



#### 3. Local Taxation

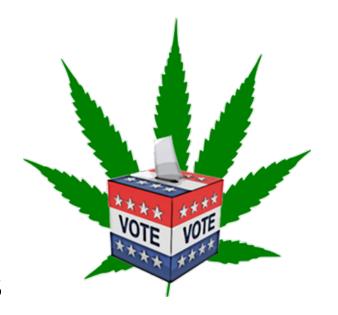
- Up to 3% supplemental local tax on sales
  - Medical products exempt
  - Must hold local election
    - General election
    - November of even-numbered year





## Local Retail Marijuana Tax

- Election on November 8, 2016
- 111 counties and cities
  - 11 counties
  - 100 cities
- All 111 passed
  - Most by significant margins





# B. Some of the ongoing challenges



## They are quite diverse



## Girl scout sells cookies outside Portland pot shop: 'It's not against the rules'









## Part of my own short list

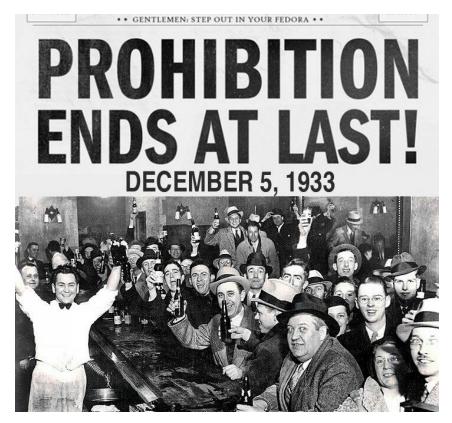
#### In no particular order:

- 1. Federal-State Conflict Prohibition v Legalization
  - Banking and income taxation
- 2. Local regulation and NIMBY
  - Smell, sound, light, water, etc
- 3. Leakage
  - Enforcement resources
- 4. Usage
- 5. Homemade BHO



#### 1. Federal-State Conflict

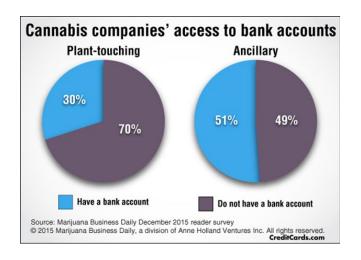
- A unique policy arena
  - As compared to post-prohibition





#### **Banking and Income Taxation**









#### 2. Local Regulation and NIMBY

- Local time, place and manner regulations
  - Supplement to state laws and rules
  - Land use and zoning
    - 241 cities
      - -241 different land use plans
    - 36 counties
      - -36 different land use plans



### **Common Complaints**

- Smell
- Sound
- Light
- Water







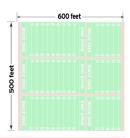


## 3. Leakage

- Black market
  - Intrastate and interstate
- Grows
  - Diversion
  - Illegal grows/illegal



A big harvest at Green Thumb Farm Federal agents at Brian's Green Thumb Farm, shown in this surveillance photo, found more than 1,000 pounds of marijuana, two processing machines and a money counter. Prosecutors say the operation – large enough to accommodate 4½ football fields – exemplifies the massive over-production achieved by people exploiting Oregon's medical marijuana program. Operator Brian Wayne Simmons has been charged with drug conspiracy and is awaiting trial.





Source: U.S. Drug Enforcement Administration.

DAN AGUAYO/THE OREGONIAN



#### **The Sessions Memo**

#### **January 4, 2018**

- Revoked the Cole, Ogden, and Wilkinson Memos
- Defaults to standard federal drug prosecution criteria
- Hence each US Attorney decides, within usual federal criteria



#### Office of the Attorney General Washington, D. C. 20530

January 4, 2018

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: Jefferson B. Sessions, Attorney General

SUBJECT: Marijuana Enforcement

In the Controlled Substances Act, Congress has generally prohibited the cultivation, distribution, and possession of marijuana. 21 U.S.C. § 801 et seq. It has established significant penalties for these crimes. 21 U.S.C. § 84 et seq. These activities also may serve as the basis for the prosecution of other crimes, such as those prohibited by the money laundering statutes, the unlicensed money transmitter statute, and the Bank Secrecy Act. 18 U.S.C. § 1956-57, 1960; 31 U.S.C. § 5318. These statutes reflect Congress's determination that marijuana is a dangerous drug and that marijuana activity is a serious crime.

In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions. Attorney General Benjamin Civiletti originally set forth these principles in 1980, and they have been refined over time, as reflected in chapter 9-27,000 of the U.S. Attorney's Manual. These principles require federal prosecutors deciding which cases to prosecute to weigh all relevant considerations, including federal law enforcement priorities set by the Attorney General, the seriousness of the crime, the deterrent effect of criminal prosecution, and the cumulative impact of particular crimes on the community.

Given the Department's well-testablished general principles, previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded, effective immediately.\(^1\) This memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion in accordance with all applicable laws, regulations, and appropriations. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.



Previous guidance includes: David W. Ogden, Deputy Alt'y Gen, Memorandum for Selected United States Autoropys, Investigations and Prosecutions in States Authorizing the Medical Use of Marijaman (Oct. 19, 2009); James M. Cole, Deputy Alt'y Gen, Memorandum for United States Autorneys: Guidance Regarding the Ogden Memo in Jurisdictions Secking to Authorize Marijaman for Medical Use (June 9. 20. 11); James M. Cole, Deputy Alt'y Gen, Memorandum for All United States Autorneys: Guidance Regarding Marijaman Enforcement (Aug. 20. 13); James M. Cole, Deputy Alt'y Gen, Memorandum for All United States Autorneys: Guidance Regarding Marijaman Related Financial Crimes (Feb. 14, 20.14); and Monty Wilkinson, Director of the Executive Office for U.S. Att'ys, Policy Statement Regarding Marijama susses in Indian Country (Oct. 28, 2016).

#### The Williams Memo

#### May 18, 2018

- Five priorities
  - 1. Overproduction and Interstate Trafficking
  - 2. Protecting Oregon's children
  - 3. Violence, Firearms, and Other Public Safety Threats
  - 4. Organized Crime
  - 5. Protecting Federal Lands,
     Natural Resources, and
     Oregon's Environment

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405 E 8th Avenue, Suite 2400

May 18, 2018

FROM: THE UNITED STATES ATTORNEY FOR THE DISTRICT OF OREGON

SUBJECT: PRIORITIES IN ENFORCEMENT OF FEDERAL LAWS INVOLVING MARIJUANA IN THE DISTRICT OF OREGON

On January 4, 2018, Attorney General Jefferson Sessions, III, rescinded previous Justice Department guidance related to enforcement of federal marijuana laws. U.S. Attorneys around the country were instructed to determine marijuana enforcement policy in light of the specific circumstances in their individual districts. Because Oregon, under state law, previously legalized marijuana, this change raised questions regarding how our District intended to exercise its discretion in marijuana enforcement under the federal Controlled Substances Act. That act prohibits the cultivation, possession, and distribution of marijuana.

In response, and to provide an opportunity to hear and learn from the diverse range of Oregonian viewpoints, I convened a Marijuana Summit on February 2, 2018. The summit was attended by more than 130 people from nearly 70 organizations and represented a wide cross-section of interests and perspectives bearing on federal marijuana enforcement in our state. Among those in attendance were the Governor of Oregon, representatives from 14 U.S. Attorney's Offices, and Oregon congressional delegation staff. The Summit featured presentations by State officials, including the Governor's Marijuana Policy Advisor and Criminal Justice Commission, as well as representatives of the Association of Oregon Counties, Oregon Idaho High-Intensity Drug Trafficking Area (HIDTA), Federal Bureau of Investigation, Drug Enforcement Administration, Oregon Cannabis Association, affected landowners, banking industry, medical community, and leadership from tribal nations.

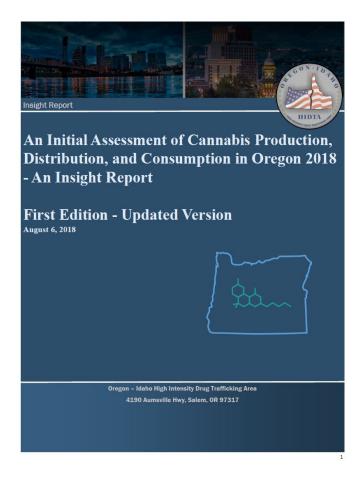
Although the views expressed at the Summit were often divergent, the group found consensus in three principal areas. First, there is urgent need for more comprehensive and accurate data on the scope and effect of marijuana production and distribution in Oregon. Second, too few resources are devoted to enforcement and oversight of the State's marijuana regulatory regime. Third, there can be no doubt that there is significant overproduction of marijuana in Oregon. As a result, a thriving black market is exporting marijuana across the country, including to states that have not legalized marijuana under their state laws.



## The Baseline Report

#### August 6, 2018

 Mostly told us what we already knew, with more details





#### Some of What We've Been Up To

- Medical grows over 12 mature plants added to cannabis tracking system
- Demonstration grants through the CJC to four counties to enforce against the black market

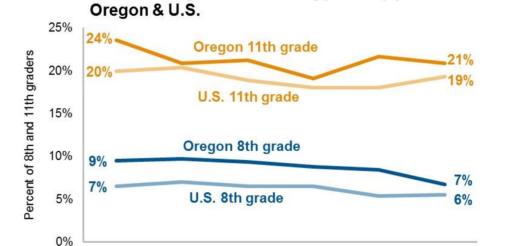


#### 4. Usage

2012

2013

- Things we need to monitor and prevent
  - 1. Youth usage
  - 2. Overall usage
    - 40; 80; ?
  - 3. Substance abuse



Current marijuana use among youth by year,

Source: Student Wellness Survey (2012, 2014 & 2016) and Oregon Healthy Teens Survey (2013, 2015 & 2017); Monitoring the Future Current Drug Use Trends

2015

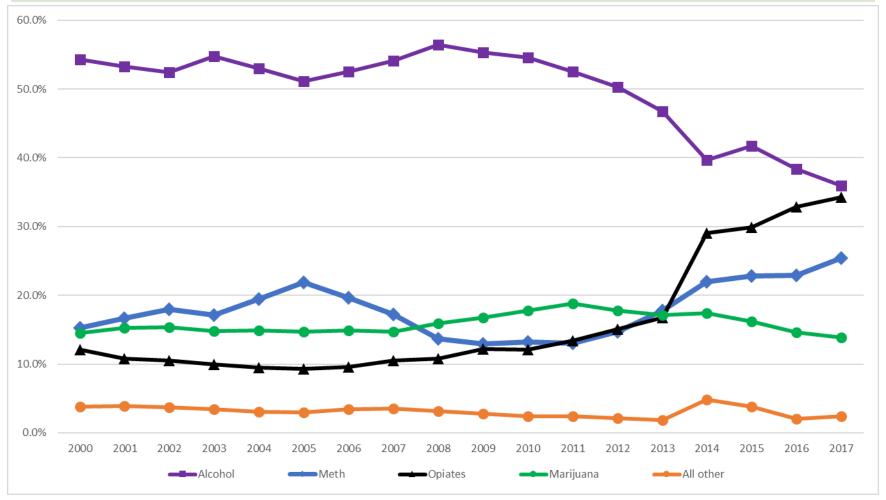
2016

2014



2017

## **Oregon Treatment Admissions**



Oregon substance abuse treatment admissions by primary drug of abuse (2000-2017)

Source: Oregon Health Authority (OHA)

Association of

#### 5. Homemade BHO

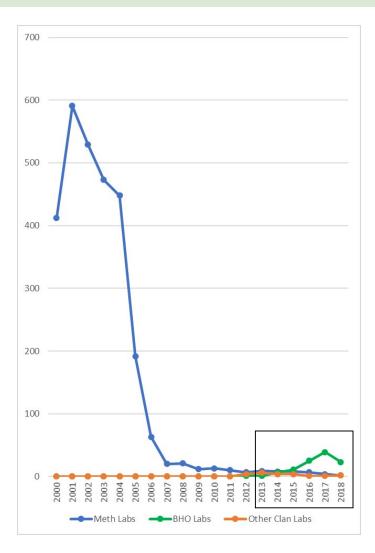


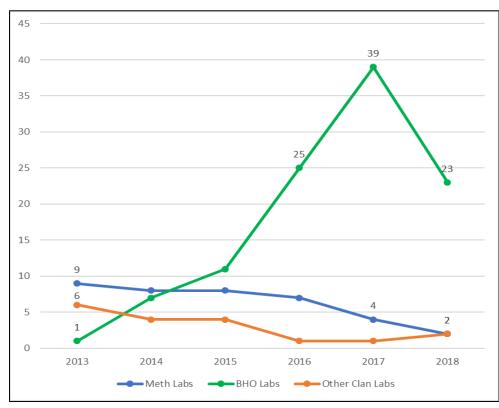






#### **Reported OR Clandestine Drug Labs**





Source: Oregon State Police (OSP).

Notes: (1) 2018 data not yet complete; mostly complete through October.

- (2) BHO lab data is incomplete; they are not required by law to be reported, but often are if they catch fire or explode
- (2) "Other" includes all other types, such as DMT, MDMA, etc.



## Where are things headed?

• Getting out my Dragon Ball . . . uh, I mean Crystal Ball . . .





#### 2019 Federal and Oregon Legislation

- Federal
  - Legalization?
  - Banking?
  - IRC § 280E?

- Oregon
  - OMMP redesign?
  - Social consumption?
  - Capping production?
  - Local control?
  - Employer rights?
  - Expunctions?
  - Interstate sales?



## A C Association of Oregon Counties

## Questions?



