

By Paul Demko

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The incoming Biden administration should undertake a wide range of executive branch actions to end arrests for marijuana possession and other penalties for using the drug, according to a [memo](#) drafted by a group of pro-legalization policy experts.

The document, obtained by POLITICO, was written by the Brookings Institution's John Hudak, author of "Marijuana: A Short History," attorneys Becky Dansky and Jack Jacobson and Sheri Orlowitz, chair of the Council for Federal Cannabis Regulation.

Orlowitz said that it was shared with a "high-ranking" transition official on Thursday, although she declined to say who.

Hudak pointed out that a narrowly divided Congress and the [possibility of split partisan control](#) of the two chambers will heighten the importance of executive branch action in addressing cannabis policy.

"There's a lot of issues that are getting elevated, and I think cannabis is one that could easily fall through the cracks, given its historical minimization by presidents of both parties," Hudak said. "We figured this would be an opportunity to continue to elevate the conversation around cannabis policy."

The policy blueprint calls for the Justice Department to issue a memo directing U.S. attorneys not to take enforcement actions against state-legal marijuana markets, similar to the [Cole Memo](#), which was issued during the Obama administration but rescinded under the Trump administration. It also lays out a series of additional steps the Biden administration could take to overhaul federal cannabis policies without any action by Congress.

**What other actions does it recommend?** More than 20 proposals are outlined. Some of the highlights:

- Identify a class of nonviolent cannabis offenses and issue pardons to people convicted of those crimes.
- Extend federal workforce protections so that people won't be denied employment or fired from their jobs for using marijuana in compliance with state laws.
- Direct the DHS to stop immigration enforcement actions against people for using or possessing marijuana.
- Issue an executive order directing HUD to halt evictions from public housing for marijuana use.

**Personnel will be key:** More broadly, the memo makes the case that key administration appointments should be vetted to ensure that their stances on cannabis policy are in line with Biden's positions. Biden's pick for attorney general, which has yet to be announced, will likely have the most influence on cannabis policy. But Hudak pointed to the choice of California Attorney General Xavier Becerra to lead HHS as unprecedented in terms of his support for the cannabis industry.

"It shows that that is not disqualifying for the president-elect," Hudak said. "In previous administrations, Becerra's record on cannabis would have excluded him from consideration as the HHS secretary."

Another key role that remains to be filled will be the head of the Office of National Drug Control Policy, often referred to as the "drug czar." Former congressman Patrick Kennedy, who co-founded the anti-legalization advocacy group Smart Approaches to Marijuana, has been [lobbying to get that job](#). If he is the pick, it would seem like a clear signal that the Biden administration does not intend to embrace legalization.

**What about spending?** The memo also makes the case that the Biden administration will have a lot of authority to redirect federal spending in a way that can begin to redress the damages from [racially disparate criminal enforcement of marijuana crimes](#). For example, they call for cutting funding for the DEA's Domestic Cannabis Suppression/Eradication Program and to redirect those dollars toward efforts to combat racial injustice.

"There are pockets of money that in my opinion are misdirected to an old policy that has no further purpose," said Orlowitz, a former federal prosecutor.

**What's is Biden's stance?** The president-elect has a long track record of supporting tough criminal penalties for drug crimes, but his stance has [evolved significantly](#). Biden has said that he supports ending criminal penalties for marijuana possession and expanding marijuana research. He's also endorsed allowing states to continue operating medical and recreational markets without fear of federal punishment.

However, Biden has stopped short of endorsing full legalization. In addition, the [unity platform](#) put forth by supporters of Biden and liberal stalwart Sen. [Bernie Sanders](#) (I-Vt.) hued closely to Biden's stance on the issue.

But Orlowitz, who serves on the board of legalization advocacy group the Marijuana Policy Project, argued that Biden's views are continuing to evolve.

"I think he understands the will of the American people," Orlowitz said, "and is setting aside some biases that he might have from the way we all grew up in the '60s, '70s and '80s."

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