



NEW YORK
CITY BAR

**RECOMMENDATIONS RESPECTFULLY SUBMITTED TO
THE TRUMP ADMINISTRATION REGARDING A COMPREHENSIVE, EVIDENCE-
BASED FEDERAL DRUG POLICY**

For more than three decades, the New York City Bar Association’s Committee on Drugs and the Law (the Committee) has been studying our nation’s drug laws. The Committee includes individuals with expertise in public health, substance use disorders, and the laws and policies related to the use of substances and their impact on society. We respectfully submit this memo to share our views and recommendations with respect to our nation’s drug policy under the Trump Administration.

The Committee has published several reports and position statements, including a groundbreaking 1994 report titled *A Wiser Course: Ending Drug Prohibition*, in which the Committee concluded that decades of drug prohibition were “a failure that causes more harm than the drug use it is purportedly intended to control.”¹ The harm caused by drug prohibition continues to this day and includes disparate enforcement of the law, resulting in disproportionate arrests, sentencing, and incarceration of the poor and people of color. In 2016, for the United Nations General Assembly Special Session on the World Drug Problem, the Committee revisited these issues in a follow-up report titled *Charting a Wiser Course: Human Rights and the World Drug Problem*, which provided evidence-based recommendations for reducing the harms associated with substance use disorders and drug control.

Federal drug control has spanned more than a century, from the enactment of the Harrison Narcotics Tax Act in 1914, to the implementation of the Controlled Substances Act of 1970 (CSA), to the present.² Despite this long history of enforcement, however, federal drug control has failed to ameliorate the harms associated with drug abuse and instead has exacerbated those problems. Our federal drug policy and enforcement mechanisms have encouraged the creation of criminal markets, earned the United States the unwelcome distinction of being the global leader in the number of incarcerated citizens per capita, and led to the deaths of countless individuals, all while failing to achieve the goals of deterring drug production, trade, and consumption. In light of these failures, the United States must critically reevaluate its commitment to outdated and harmful drug laws.

The Committee respectfully makes the following 10 recommendations to the Trump Administration:

¹ Available at <http://www.nycbar.org/pdf/report/94087WiserCourse.pdf>.

² The CSA is the implementing legislation of the 1961 Single Convention on Narcotic Drugs (the Single Convention). The Single Convention, as amended by the 1972 Protocol, the 1971 Convention on Psychotropic Substances and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (collectively, the International Drug Control Treaties), are widely recognized to be outdated, overly restrictive, and generally ineffective in addressing current challenges around drugs.

1. Explicitly endorse and expand harm reduction-oriented approaches to drugs, including statutory reform to expressly permit and fund syringe exchange programs (SEPs), safe consumption rooms, and safe injection facilities, all of which increase access to drug treatment and social services and reduce health care costs and the spread of infectious diseases among intravenous drug users without increasing intravenous drug use. These policies are critical to reducing the harms associated with the current opioid crisis.³
2. Work to make quality, evidence-based and medication-assisted drug treatment available on demand. Such treatment should embrace multiple pathways to healing by allowing people with substance use disorders to choose harm reduction and moderation in addition to abstinence goals.
3. Remove marijuana from the Controlled Substances Act. In the alternative, (a) continue to reauthorize the Rohrabacher-Farr amendment, which prohibits the Department of Justice from prosecuting individuals and entities that are following their state medical marijuana laws, and expand its scope to include all state marijuana laws; (b) for marijuana businesses that are following state law, carve out an exception from § 280E of the Internal Revenue Code, which forbids businesses from recording tax deductions or credits for income associated with certain controlled substances; (c) provide a safe harbor for banks and other depository institutions providing services to marijuana businesses that are following state law; and (d) direct the Drug Enforcement Administration to hold evidentiary hearings on the question of the proper classification of marijuana under federal law.⁴

³ In 2015, as governor of Indiana, Vice President Pence instituted an emergency SEP to reduce the spread of HIV/AIDS and hepatitis C among intravenous drug users. Prior to the implementation of Indiana's SEP, there were 184 new HIV infections, the worst outbreak in the state's history. Implementing the emergency SEP significantly decreased new infections. Since Vice President Pence is already familiar with the importance and effectiveness of SEPs, we ask that the Trump Administration encourage the implementation of and federal funding for SEPs to curb the spread of infectious diseases among intravenous drug users. We also respectfully ask that the Administration implement policies to reduce opioid use disorders and provide treatment instead of criminal penalties for individuals with opioid use disorders. Furthermore, the Administration has already demonstrated its commitment to fighting the opioid crisis with an Executive Order on March 29, 2017, whereby the President established the Commission on Combating Drug Addiction and the Opioid Crisis. The Committee seeks to further its understanding of the special role of this Commission due to the apparent overlap between the new Commission and the work already being performed by the White House Office of National Drug Control Policy.

⁴ The Committee seeks clarification on comments made by Attorney General Sessions that implicate conflicts between state and federal marijuana laws. After announcing the formation of a new task force subcommittee – a subcommittee to the Task Force on Crime Reduction and Public Safety – that will partially focus on marijuana enforcement policies, Attorney General Sessions stated,

I realize this may be an unfashionable belief in a time of growing tolerance of drug use. But too many lives are at stake to worry about being fashionable. I reject the idea that America will be a better place if marijuana is sold in every corner store. And I am astonished to hear people suggest that we can solve our heroin crisis by legalizing marijuana – so people can trade one life-wrecking dependency for another that's only slightly less awful. Our nation needs to say clearly once again that using drugs will destroy your life.

4. Respect state sovereignty by allowing continued state taxation and regulation of marijuana within the guidelines set out in the memo from former Deputy Attorney General James M. Cole to United States Attorneys dated Aug. 29, 2013. We recommend that you accomplish this by elevating the memo to an executive order. To date, state reforms of marijuana law have not harmed public health and safety, and have generated substantial revenues (i.e., over \$1 billion for Colorado in 2016 and \$7 billion nationally).
5. Remove federal criminal sanctions for drug use and possession of drugs for personal consumption, a position which is also endorsed by the Global Commission on Drugs, the American Civil Liberties Union, and Human Rights Watch.
6. Increase funding for research and treatment of substance use disorders; specifically, support the development of medications (including medical marijuana) and alternative treatment programs.
7. Focus United States drug policy on promoting global public health and healing for people with substance use disorders, instead of criminalization and incarceration.
8. Support international efforts to ensure that all countries have access to controlled substances for medical use and scientific research.
9. Condemn Philippines President Rodrigo Duterte's mass extrajudicial killings, especially the killings of drug users and sellers, as a violation of human rights under international law. As a global leader on human rights, the United States has a moral obligation to condemn these horrific actions. The Administration's recent invitation of President Duterte to the White House appears to endorse extrajudicial killings and therefore should be retracted.
10. Conduct a thorough review of the demonstrably ineffective and outdated International Drug Control Treaty framework, and related UN institutions, and actively explore options for reform and modernization, such that evidence-based innovation is allowed and encouraged, and the health, human rights, development, and peace and security

Jeff Sessions, U.S. Att'y Gen., Remarks on Efforts to Combat Violent Crime and Restore Public Safety Before Federal, State and Local Law Enforcement (Mar. 15, 2017) (transcript available at <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-efforts-combat-violent-crime-and-restore>).

Attorney General Sessions' comments evince not an "unfashionable" position but, rather, a misunderstanding of substance use disorders and the significantly less harmful nature of marijuana as compared to opioids. To protect the lives of those impacted by the opioid crisis that our country faces, government officials involved in addressing this epidemic must educate themselves on the current science with respect to substance use disorders. Furthermore, the Department of Health and Human Services, through the Food and Drug Administration, has determined that the theory of marijuana as a "gateway" to the use of other illicit drugs is not supported by research (Denial of Petition to Initiate Proceedings to Reschedule Marijuana, 81 Fed. Reg. 53,687, 53,705 (Aug. 12, 2016))—and, pursuant to 21 U.S.C. § 811(b), the Attorney General is bound by this finding. The Committee respectfully urges the Administration to avail itself of the current literature on substance use disorders, as understanding these topics is critical to the public health of our nation.

goals of the United States, and other UN member states, can be more effectively delivered.

Drug policy reform is necessary because drug control is at the nexus of many issues, including international relations, criminal justice, fiscal policy, and public health. The best approach is for the United States to address the problems created by our current system proactively and responsibly.

The health of the American people is a primary concern for any presidential administration and is a bipartisan issue. In light of the decades-long failures of our federal drug policies, we urge the Trump Administration to discontinue the punitive criminal justice approach to drug control and people with substance use disorders. As we face the devastation associated with our ongoing opioid crisis and mass incarceration, it is imperative that our drug policies and laws move us forward as a society and as a nation. As the Administration pursues its agenda to “Make America Great Again,” we urge you to recognize that greatness encompasses drug policies that are grounded in science, public health, human rights, racial justice, and compassion.

We thank you for considering our recommendations and would be eager to assist the Administration with any questions regarding the policies described above.

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