

The Impact of Marijuana Legalization on Youth & the Need for State Legislation on Marijuana-Specific Instruction in K–12 Schools

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Abstract

State legalization of marijuana is a divisive and polarizing issue that has resulted in fragmentation between governments and citizens. Contrary to federal law, voters in Colorado and Washington in 2012 and in Alaska and Oregon in 2014 approved ballot initiatives that legalized the state-regulated sale of marijuana to adults for their recreational use and possession. This Article argues that any state that legalizes marijuana has a concomitant duty to amend its K–12 public school drug and alcohol instructional statutes to include marijuana education. Although none of these four states have enacted such legislation, this Article provides two statutory alternatives to do so. These statutes would provide the predicate for correlative marijuana-specific educational regulations and academic content standards in these states. This legislation is necessary as current attempts in these states to provide education about marijuana do not provide sufficient safeguards for their youth. Additionally, this legislation will ease the fracturing between federal and state governments, because it would expressly comply with the federal funding conditions of the 2015 reauthorization of the Elementary and Secondary Education Act of 1965.

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Due to the Rawlsian overlapping consensus about the need to prohibit non-adult access to marijuana, this statutory amendment could be a bridge between the partisan opponents on the issue of marijuana reforms and provide a model for future states that may legalize marijuana. Finally, by enacting these statutes, these states will take strides to cure a legal deficiency that has the potential to cause irreparable harm to their children and greater populaces.

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“[W]hile there is a lot of disagreement about these laws, there is one thing that all of us can agree on: As legal decisions are made about marijuana, we need to think about the health and well-being of our youth.”¹

I. INTRODUCTION

The legal status of marijuana is in flux in the United States, causing a fragmentation between the states and between state governments and the federal government.² Twenty-nine states have either legalized or decriminalized certain marijuana possession and use.³ Specifically, twenty-five states and the District of Columbia have legalized medical marijuana.⁴ Twenty-one states and the District of Columbia have decriminalized the possession of small amounts of marijuana.⁵ The District of Columbia has also legalized recreational growth and use of marijuana by adults but not its retail sale.⁶ Most expansively, Colorado, Washington, Alaska, and Oregon have created a legal marketplace for the state-regulated sale of marijuana to adults for their recreational possession and use through voter ballot initiatives.⁷ Despite their prevalence, all of these state laws are “in

1. Claire McCarthy, *Legalizing Marijuana Not Good for Kids: AAP Policy Explained*, AM. ACAD. PEDIATRICS (Nov. 21, 2015), <https://www.healthychildren.org/English/ages-stages/teen/substance-abuse/Pages/legalizing-marijuana.aspx>.

2. See Mary D. Fan, *Legalization Conflicts and Reliance Defenses*, 92 WASH. U. L. REV. 907, 925 (2015) (discussing the “fracturing of societal consensus over marijuana” and states diverging from adherence to federal treatment of marijuana as a controlled substance).

3. See *State Policy*, MARIJUANA POL’Y PROJECT, <https://www.mpp.org/states/> (last visited Oct. 15, 2016) (identifying states with medical marijuana laws, states that have decriminalized possession of small amounts of marijuana, states that have legalized recreational marijuana use for adults, and states with combinations of these laws).

4. See *State Medical Marijuana Laws*, NAT’L CONF. ST. LEGIS. (July 20, 2016), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

5. See *Marijuana Overview*, NAT’L CONF. ST. LEGIS. (Sept. 2, 2016), <http://www.ncsl.org/research/civil-and-criminal-justice/marijuana-overview.aspx>.

6. See D.C. CODE ANN. §§ 48-904.01(a), 48-1103(a)–(b) (West 2016) (providing for the lawful possession, use, production, processing, and transfer without payment of small amounts of marijuana for personal use for people twenty-one years of age and older).

7. See ALASKA STAT. ANN. §§ 17.38.010–17.38.900 (West 2016); COLO. CONST. art. XVIII, § 16; OR. REV. STAT. ANN. §§ 475B.005–475B.395 (West 2016); WASH. REV. CODE ANN. chs. 46.04, 46.20, 46.61, 69.50 (West 2016). These states’ actions will be classified as full marijuana legalization throughout this Article.

contravention of federal law.”⁸

Congress has deemed “the illegal distribution and sale of marijuana [to be] a serious crime.”⁹ Marijuana is a Schedule I controlled substance under the Federal Controlled Substances Act.¹⁰ Consequently, Congress has determined that marijuana is a substance with “a high potential for abuse” that has “no currently accepted medical use in treatment in the United States” and that lacks “accepted safety for use . . . under medical supervision.”¹¹ As a controlled substance, the production, distribution, and possession of marijuana remain unlawful under federal law.¹²

The Obama Administration has articulated steadfast opposition to the legalization of marijuana because it “would increase the availability and use of illicit drugs, and pose significant health and safety risks to all Americans, particularly young people.”¹³ However, the most recent guidance regarding marijuana enforcement from the United States Department of Justice, which was issued by Deputy Attorney General James M. Cole on August 29, 2013, provided that the Department would focus its enforcement efforts on eight significant federal priorities.¹⁴ The Cole Memorandum further stated that

8. See Michael M. O’Hear, *Federalism and Drug Control*, 57 VAND. L. REV. 783, 829–30 (2004) (discussing how medical marijuana state ballot initiatives conflict with federal law); Ernest A. Young, *Modern-Day Nullification: Marijuana and the Persistence of Federalism in an Age of Overlapping Regulatory Jurisdiction*, 65 CASE W. RES. L. REV. 769, 771 (2015) (noting how states’ marijuana legalization contravenes federal law).

9. *Answers to Frequently Asked Questions About Marijuana*, OFF. NAT’L DRUG CONTROL POL’Y, <https://www.whitehouse.gov/ondcp/frequently-asked-questions-and-facts-about-marijuana> (last visited Oct. 20, 2016).

10. Controlled Substances Act, 21 U.S.C. § 812(c)(Schedule I)(c)(10) (2012).

11. *Id.* § 812(b)(1).

12. See *id.* § 841(a)(1) (making it unlawful to distribute or “possess with intent to manufacture, distribute, or dispense, a controlled substance”); *id.* § 844(a) (making it unlawful “to possess a controlled substance unless such substance was obtained directly, or pursuant to a valid prescription or order, from a practitioner, while acting in the course of his professional practice”).

13. *Marijuana*, OFF. NAT’L DRUG CONTROL POL’Y, <https://www.whitehouse.gov/ondcp/marijuana> (last visited Oct. 15, 2016).

14. See Memorandum from James M. Cole, Deputy Attorney Gen., U.S. Dep’t of Justice on Guidance Regarding Marijuana Enforcement 1–3 (Aug. 29, 2013), <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> [hereinafter 2013 Cole Memorandum] (listing the eight federal priorities as “[p]reventing the distribution of marijuana to minors; [p]reventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels; [p]reventing the diversion of marijuana from states where it is legal under state law in some form to other states;

conduct in compliance with state “laws legalizing marijuana in some form and that have also implemented strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana . . . is less likely to threaten” those priorities.¹⁵ Despite the widespread interpretation that this advisory memorandum signified that the federal government would not preemptively enforce the Controlled Substances Act against actions that complied with state legalization laws and did not implicate the enumerated federal priorities,¹⁶ the conflict between federal and state marijuana legislation continues to create instability and uncertainty.¹⁷

Like the federalism–states’ rights division, there is no national consensus on the legal status of marijuana.¹⁸ It remains a flashpoint of controversy for the public¹⁹ and for policymakers.²⁰ The states’ divergent

[p]reventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity; [p]reventing violence and the use of firearms in the cultivation and distribution of marijuana; [p]reventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use; [p]reventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and [p]reventing marijuana possession or use on federal property”).

15. *Id.*

16. *See, e.g.,* Rachel E. Barkow, *Clemency and Presidential Administration of Criminal Law*, 90 N.Y.U. L. REV. 802, 804 (2015) (highlighting the DOJ’s suggestion in the 2013 Cole Memorandum that it would not prosecute marijuana cases that violated the Controlled Substances Act if these cases did not implicate the memorandum’s articulated priorities as an example of the Obama Administration’s enforcement discretion in criminal policymaking); Zachary S. Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671, 758 (2014) (quoting 2013 Cole Memorandum, *supra* note 14, at 3) (characterizing the Memorandum’s suggestion “that federal officials would decline prosecution of even large-scale growers if those growers complied with state law” as being reflective of a “strong and effective state regulatory system”).

17. *See* Erwin Chemerinsky et al., *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. REV. 74, 77–78 (2015) (discussing the “debilitating instability and uncertainty” that is created by the variance in federal and state drug laws despite the 2013 Cole Memorandum).

18. *See, e.g.,* Allison Orr Larsen, *Do Laws Have a Constitutional Shelf Life?*, 94 TEX. L. REV. 59, 108 (2015) (analyzing criticism of the U.S. Drug Enforcement Administration’s “refusal to . . . liberalize laws on marijuana”); Alexandra Natapoff, *Misdemeanor Decriminalization*, 68 VAND. L. REV. 1055, 1077 (2015) (discussing the opponents of “marijuana decriminalization”).

19. *See, e.g.,* Clarissa Cooper, *Colorado Profits, but Still Divided on Legal Weed*, CTR. PUB. INTEGRITY (Aug. 16, 2015, 5:00 AM), <http://www.publicintegrity.org/2015/08/16/17841/colorado-profits-still-divided-legal-weed> (discussing the continued dissension among Colorado constituents

approaches to the decriminalization and legalization of marijuana, as opposed to the continuation of federal prohibitions on marijuana possession and distribution, have led to significant “public health and jurisprudential dilemma[s] for state officials.”²¹ Given how recently the state legislatures in Colorado, Washington, Alaska, and Oregon have legalized the sale, possession, and use of recreational marijuana by adults, the complete impact of the enactment and implementation of these laws remains unclear.²²

More specifically, the complete impact of these states’ laws on their youth is not yet known.²³ The Obama Administration asserted that marijuana legalization “perpetuate[s] the false notion that marijuana is harmless”²⁴ and decreases youth perceptions of harm, which is predictive of increases in use.²⁵ The December 2015 National Institute on Drug Abuse’s Monitoring the Future survey confirmed continued significant decreases in the perception of the risk of smoking marijuana among American high school students.²⁶ Despite this softening of the perceived risks regarding marijuana consumption, the survey also found steady rates of student

regarding their state’s legalization of marijuana).

20. See, e.g., Michael S. Greve & Ashley C. Parrish, *Administrative Law Without Congress*, 22 GEO. MASON L. REV. 501, 534 (2015) (characterizing the Obama Administration’s marijuana enforcement decisions as a catalyst for “intense partisan controversy” among politicians).

21. Andrea Roth, *The Uneasy Case for Marijuana as Chemical Impairment Under a Science-Based Jurisprudence of Dangerousness*, 103 CALIF. L. REV. 841, 892 (2015).

22. See Jonathan P. Caulkins et al., *Considering Marijuana Legalization: Insights for Vermont and Other Jurisdictions*, RAND CORP., http://www.rand.org/content/dam/rand/pubs/research_reports/RR800/RR864/RAND_RR864.pdf (last visited Sept. 26, 2016) (asserting that a “more comprehensive multivariate analysis is needed” to understand any correlation between criminal activity and the legalization of marijuana, which “will require a longer postchange period”).

23. See, e.g., Justin R. Pidot, *Governance and Uncertainty*, 37 CARDOZO L. REV. 113, 130 (2015) (noting legislators’ uncertainty with respect to whether “legalization of marijuana [will] increase childhood use of the drug”).

24. *Marijuana*, *supra* note 13.

25. See *Answers to Frequently Asked Questions about Marijuana*, *supra* note 9.

26. See *Monitoring the Future Survey, Overview of Findings 2015*, NAT’L INST. ON DRUG ABUSE (Dec. 2015), <http://www.drugabuse.gov/related-topics/trends-statistics/monitoring-future/monitoring-future-survey-overview-findings-2015> (noting a survey area of continuing concern as a “softening of attitudes around some types of drug use, particularly a continued decrease in perceived harm of marijuana use” and providing that “[t]he majority of high school seniors do not think occasional marijuana smoking is harmful, with only 31.9 percent saying that regular use puts the user at great risk compared to 78.6 percent in 1991”).

marijuana use over the past five years.²⁷ The Marijuana Policy Project, the largest American organization “focused solely on ending marijuana prohibition,”²⁸ categorized these findings as a negation of “the theory that softening perceptions of harm will result in more teens using marijuana.”²⁹ Reflective of this divergent interpretation of the Monitoring the Future data, other public health and policy organizations have articulated concerns about the unknowns related to the impact of legalization of adult recreational marijuana use on non-adult use.³⁰ However, there have been significant anecdotal claims from public school administrators and teachers in fully legalized states of an increased presence of marijuana on public elementary and secondary school campuses.³¹ These anecdotal reports have been

27. *See id.* (“Marijuana use remained steady . . . over the past 5 years despite softening of perceived risks. Past-month use of smoked marijuana . . . among 8th graders [is] at 6.5 percent, 10th graders at 14.8 percent, and 12th graders at 21.3 percent.”).

28. *Overview*, MARIJUANA POL’Y PROJECT, <https://www.mpp.org/about/overview/> (last visited Sept. 26, 2016).

29. *NIDA-Sponsored Survey Debunks Myth that Marijuana Policy Reform Leads to Increased Teen Use*, MARIJUANA POL’Y PROJECT (Dec. 16, 2015), <https://www.mpp.org/news/press/ntl-survey-on-teen-marijuana-use-debunks-anti-legalization-theories/>.

30. *See, e.g.*, Seth Ammerman et al., *The Impact of Marijuana Policies on Youth: Clinical, Research, and Legal Update*, 135 PEDIATRICS e769, e779 (2015), <http://pediatrics.aappublications.org/content/pediatrics/135/3/e769.full.pdf> (noting that because “[t]he impact of outright legalization of adult recreational use of marijuana on youth use is unknown, . . . it cannot be recommended” by the American Academy of Pediatrics); Katherine A. Neill & William Martin, *Marijuana Reform: Fears and Facts*, RICE U. BAKER INST. FOR PUB. POL’Y 3 (Feb. 4, 2015), http://bakerinstitute.org/media/files/research_document/1886afae/BI-Brief-020415-MJlegalization.pdf (acknowledging varying results on studies that examine correlations between state marijuana legalization and teenage drug use and noting the relative lack of data “on the effects of full legalization”).

31. *See, e.g.*, Bente Birkeland, *When Pot Goes from Illegal to Recreational, Schools Face a Dilemma*, NPR (Feb. 24, 2015, 11:21 AM), <http://www.npr.org/sections/health-shots/2015/02/22/388156660/when-pot-goes-from-illegal-to-recreational-schools-face-a-dilemma> (noting that many Colorado public schools “ha[ve] seen an increase in overall drug incidents since recreational marijuana became legal”); Jack Healy, *After 5 Months of Sales, Colorado Sees the Downside of a Legal High*, N.Y. TIMES (May 31, 2014), http://www.nytimes.com/2014/06/01/us/after-5-months-of-sales-colorado-sees-the-downside-of-a-legal-high.html?_r=0 (characterizing incidents of marijuana, especially marijuana edibles, at Colorado elementary schools as “an unintended consequence of Colorado’s new law”); Eric Owens, *Colorado School Officials: Marijuana Is ‘The No. 1 Problem in Schools Right Now,’* DAILY CALLER (Oct. 16, 2015, 9:03 AM), <http://dailycaller.com/2015/10/16/colorado-school-officials-marijuana-is-the-no-1-problem-inschool-s-right-now/>.

confirmed by the highest state educational officials³² and by at least one fully legalized state legislature.³³ Like other areas related to marijuana laws, it seems unlikely that the divergence in positions on marijuana legalization and its relationship to youth use of marijuana will be resolved in the near future.³⁴

Despite the widely variant legal, policy, and personal perspectives on the lawful status of marijuana and its relationship to increased use among individuals under age twenty-one, the one significant point of agreement among the diverse stakeholders is that minors should not have complete legalized access to marijuana.³⁵ Congress has enhanced the criminal penalties for the distribution of controlled substances, including marijuana, to individuals under age twenty-one.³⁶ The federal executive branch has classified “preventing the distribution of marijuana to minors” as its first priority in its enumerated priorities of the federal enforcement of marijuana regulation laws.³⁷ The United States Supreme Court has consistently held in

32. In 2012, the Washington State Superintendent of Public Instruction issued a statement about marijuana and the law’s impact on Washington public schools in light of “[r]ecent anecdotal reports from school districts [that] suggest an increase in marijuana possession and consumption among young people, especially after the passage of Initiative 502.” *Statement from State Superintendent Randy Dorn About Marijuana*, WASH. OFF. SUPERINTENDENT PUB. INSTRUCTION, <http://www.k12.wa.us/Communications/PressReleases2012/Statement-OnMarijuana.aspx> (last updated Apr. 23, 2013).

33. See COLO. REV. STAT. ANN. § 22-96-101(1)(g) (West 2016) (“School health professionals have already started to experience the results of marijuana as a newly legalized substance in increased visits to the health office and referrals from school staff.”).

34. Compare, e.g., Yu-Wei Luke Chu, *Do Medical Marijuana Laws Increase Hard-Drug Use?*, 58 J.L. & ECON. 481, 487 (2015) (discussing how “almost all of the existing studies [regarding marijuana use and medical marijuana legalization] focus on juveniles and do not find any change in juvenile marijuana usage”), with Steven Davenport, *Controlling Underage Access to Legal Cannabis*, 65 CASE W. RES. L. REV. 541, 565 (2015) (citing concerns “that easier access to cannabis could increase use by youth”).

35. See, e.g., Ammerman et al., *supra* note 30; Healy, *supra* note 31; Davenport, *supra* note 34, at 543. Many of these individuals or organizations do not provide explicit definitions of the term “minor” as part of these perspectives. Utilizing the lens of the state laws that fully legalize marijuana for adults twenty-one years of age and older, the terms “non-adults,” “minors,” “youth,” and “children and adolescents” will be deemed to mean individuals under the age of twenty-one in this Article.

36. See Controlled Substances Act, 21 U.S.C. § 859 (2012).

37. See 2013 Cole Memorandum, *supra* note 14, at 1.

a restrictive way when evaluating student First and Fourth Amendment speech and privacy cases based on a justification that children should not have access to drugs like marijuana.³⁸ Each of the state governments that have fully legalized marijuana use has provided that such use is for adults age twenty-one and over.³⁹ Public health organizations, including the American Academy of Pediatrics and the National Institute of Health, oppose child and adolescent marijuana use.⁴⁰ Even partisan groups that take diametrically opposite positions as to the propriety of the legalization of marijuana, from D.A.R.E. to the Marijuana Policy Project, also agree that marijuana should not be fully and legally accessible to minors.⁴¹

This one point of Rawlsian overlapping consensus,⁴² among so many

38. *See, e.g.*, *Morse v. Frederick*, 551 U.S. 393, 407 (2007) (quoting *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 661 (1995)) (categorizing the deterrence of “drug use by schoolchildren” as an “important—indeed, perhaps compelling” interest”); *see generally* Amanda Harmon Cooley, *Controlling Students and Teachers: The Increasing Constriction of Constitutional Rights in Public Education*, 66 BAYLOR L. REV. 235, 289 (2014) (linking the Supreme Court’s rights-constrictive “decisions of *Earls* and *Morse*” and noting “their far-reaching implementations of the control discourse to the public school environment”).

39. *See* ALASKA STAT. ANN. § 17.38.020 (West 2016) (limiting legalized marijuana to adults age twenty-one and over); COLO. CONST. art. XVIII, § 16(3) (West 2015) (same); OR. REV. STAT. ANN. §§ 475B.005 (West 2016) (same); WASH. REV. CODE ANN. chs. 46.61.503, 69.50.4013 (West 2016) (same).

40. *See* Seth Ammerman, *Updated AAP Policy Opposes Marijuana Use, Citing Potential Harms, Lack of Research*, AAP NEWS (Jan. 26, 2015), <http://www.aapublications.org/content/early/2015/01/26/aapnews.20150126-1>; *Drug Use Trends Remain Stable or Decline Among Teens*, NAT’L INST. ON DRUG ABUSE (Dec. 16, 2015), <http://www.drugabuse.gov/news-events/news-releases/2015/12/drug-use-trends-remain-stable-or-decline-among-teens> (identifying the National Institute of Health’s continuing concern after the 2015 Monitoring the Future Survey of “the high rate of daily marijuana smoking seen among high school students, because of marijuana’s potential deleterious effects on the developing brains of teenagers”).

41. *Compare* Tammy Strickling, *Legalization of Marijuana: Our Children Really Are at Stake*, D.A.R.E. (Aug. 4, 2014), <http://www.dare.org/legalization-marijuana-children-really-stake/> (vigorously opposing legalization of marijuana due to its harm on children), *with* NIDA-Sponsored Survey Debunks Myth that Marijuana Policy Reform Leads to Increased Teen Use, *supra* note 29 (quoting Mason Tvert, Director of Communications, Marijuana Policy Project) (“Many young people recognize that marijuana is less harmful than alcohol and other drugs. But they also understand that it is not okay for them to use it.”).

42. *See* John Rawls, *The Idea of an Overlapping Consensus*, 7 OXFORD J. LEGAL STUD. 1, 9 (1987) (“[A]n overlapping consensus . . . [is] a consensus including the opposing religious, philosophical and moral doctrines likely to thrive over generations in the society effectively regulated by that conception of justice.”).

fractured perspectives, is reflective of the shared understanding of the substantial and sometimes enduring harms that can occur when youth use or are exposed to marijuana.⁴³ Marijuana use has a negative impact on the health of children.⁴⁴ Beyond these health consequences, there are considerable legal harms that still exist for non-adults who access marijuana, which are often enforced with a disparate impact on minorities, the poor, and other disenfranchised populations.⁴⁵ The use, possession, transfer, and production of marijuana by individuals under the age of twenty-one continues to have criminal penalties, at both the federal level and all of the states' levels, including those states that have fully legalized marijuana for adults.⁴⁶ Youth possession of marijuana can result in the revocation of driving privileges, which can curtail economic opportunities.⁴⁷ Children and adolescents who access marijuana can also suffer punitive school disciplinary actions, which result in education privation.⁴⁸ Further, youth who do not have sufficient education regarding marijuana can take actions that can impede future college access.⁴⁹ All of these harms, if effectuated, can have a significant and sometimes permanent detrimental impact on children.⁵⁰

43. See, e.g., Chad DeVeaux & Anne Mostad-Jensen, *Fear and Loathing in Colorado: Invoking the Supreme Court's State-Controversy Jurisdiction to Challenge the Marijuana-Legalization Experiment*, 56 B.C. L. REV. 1829, 1879 (2015) (discussing the range of health and sociological harm on children who use or are exposed to marijuana).

44. See Itai Danovitch, *Sorting Through the Science on Marijuana: Facts, Fallacies, and Implications for Legalization*, 43 MCGEORGE L. REV. 91, 104–05 (2012) (discussing how marijuana exposure negatively impacts adolescent brain development).

45. See Jordan Blair Woods, *Decriminalization, Police Authority, and Routine Traffic Stops*, 62 UCLA L. REV. 672, 695 n.103 (2015) (discussing the disparate impact of enforcement of marijuana laws on marginalized populations).

46. See *infra* Section II.B.1.

47. See *infra* Section II.B.2.

48. See Eric Blumenson & Eva S. Nilsen, *How to Construct an Underclass, or How the War on Drugs Became a War on Education*, 6 J. GENDER RACE & JUST. 61, 76 (2002) (discussing how educational privation punishments that result from school disciplinary policies enforced for drug possession contribute to the construction of an underclass).

49. See Nekima Levy-Pounds, *From the Frying Pan into the Fire: How Poor Women of Color and Children Are Affected by Sentencing Guidelines and Mandatory Minimums*, 47 SANTA CLARA L. REV. 285, 338 (2007) (noting that convicted drug offenders for marijuana-related crimes do not have access to federal financial aid for higher education).

50. See DeVeaux & Mostad-Jensen, *supra* note 43, at 1879 (linking adolescent marijuana use

Given the diverse range of harms and the limited data regarding the complete impact of the full legalization of marijuana on children and adolescents, comprehensive education regarding these marijuana reforms has become a necessity for these states' schools.⁵¹ However, despite state articulations of commitments to keeping marijuana out of the possession of individuals under the age of twenty-one, none of the four fully legalized states have enacted legislation that incorporates compulsory marijuana-specific education, which includes an explicit discussion of the state's full marijuana legalization, into their statutory provisions that require or encourage drug and alcohol instruction in their public schools.⁵² None of these states' educational agencies have promulgated any regulations that require such marijuana-specific instruction either.⁵³ Consequently, it is unsurprising that, as of the 2016–2017 school year, none of these states have marijuana-specific instruction in their existing learning or academic content standards.⁵⁴ This failure to enact marijuana-specific instructional statutes reveals that state lawmakers have not contemplated all of the ramifications that full legalization of marijuana has had, and will continue to have, on these states' schoolchildren and public educational institutions.⁵⁵

Using the four states that have taken the most expansive steps of enacting the full legalization of recreational and retail marijuana as the focal

with permanent decreases in cognitive function, increased high school dropout rates, lower incomes, higher rates of unemployment and criminal behavior, and lower life satisfaction).

51. See, e.g., Brendan Saloner, et al., *Policy Strategies to Reduce Youth Recreational Marijuana Use*, 135 PEDIATRICS 955, 955 (June 2015) (arguing that comprehensive state regulation in states that have fully legalized marijuana use for adults is necessary to “protect children and adolescents”).

52. See *infra* note 67 and accompanying text. Oregon is the only state of the four fully legalized states that has provided for the development of any school-related marijuana-specific curricula via state statute. See OR. REV. STAT. ANN. § 336.241(1) (West 2016). However, these curricula are not articulated as components of the state's required instruction on alcohol, drugs, and controlled substances. See *id.* § 336.067(1)(e). Rather, the supplemental marijuana abuse prevention curricula are being developed for optional incorporation into state schools' comprehensive alcohol and drug abuse policy and implementation plans. See *id.* § 336.222.

53. See *infra* Section III.A.

54. See *infra* notes 356, 389–90, 405, 428–39 and accompanying text.

55. See, e.g., Mystica M. Alexander & William P. Wiggins, *The Lure of Tax Revenue from Recreational Marijuana: At What Price?*, 15 U.C. DAVIS BUS. L.J. 131, 157 (2015) (discussing the range of negative legal and social consequences that still result from the tensions between federal and state marijuana laws).

point of the discussion,⁵⁶ this Article argues that any state that enacts this type of legislation has a concomitant duty to amend its K–12 public school drug and alcohol instructional statutes to explicitly require marijuana-specific education, with coverage of the significance of the state’s full marijuana legalization.⁵⁷ Current statutory efforts in these states to provide marijuana-specific education to youth are not sufficient to protect against the myriad of harms that result from non-adult access to marijuana.⁵⁸ Globalized drug and alcohol educational statutes enacted prior to full legalization do not satisfactorily address these issues, because they require instruction that can lump marijuana in with hundreds of other controlled substances, drugs, or their immediate precursors.⁵⁹ Current alternative attempts in these states’ codes to provide information about marijuana—such as grant programs for drug or marijuana education outside of mandated instruction, the development of optional school-based marijuana curricula, and public health campaigns—are not sufficient to guard against these harms, because they do not ensure this education is being delivered to the state’s youth in a uniform manner as an express articulation of the state’s core educational goals.⁶⁰

Given the tensions between these states’ laws and federal law on marijuana regulation and enforcement,⁶¹ and the asserted primacy of state control over their educational systems,⁶² this legislative area is incumbent

56. In order to provide controls on the prescriptive approach of this Article, its primary focus is on the full legalization of retail marijuana for the recreational use of adults in Colorado, Washington, Alaska, and Oregon. It does not provide an application of the argument to those states with medical marijuana legislation or to the separate medical marijuana regulations in these four states. This separability approach is consistent with the states’ full legalization statutory limitations. *See, e.g.,* OR. REV. STAT. ANN. § 475B.020(7) (providing that the Oregon Control and Regulation of Marijuana Act “may not be construed: . . . [t]o amend or affect the Oregon Medical Marijuana Act”).

57. *See infra* Part III.

58. *See infra* Section III.A.

59. *See infra* notes 321, 346–51, 382–83, 401–05, 416–18 and accompanying text.

60. *See infra* note 322 and accompanying text.

61. *See, e.g.,* Benjamin Moses Leff, *Tax Planning for Marijuana Dealers*, 99 IOWA L. REV. 523, 555–56 (2014) (discussing the various tensions that arise between governments with the full legalization of marijuana).

62. *See, e.g.,* Kimberly Jenkins Robinson, *The High Cost of Education Federalism*, 48 WAKE FOREST L. REV. 287, 287 (2013) (discussing the dominant perspective in the United States that “traditionally embraces state and local authority over education and a restricted federal role”).

upon these states to develop.⁶³ Despite potential concerns about financial issues, such state educational mandates would not run afoul of any federal laws that allocate federal funds to state schools for alcohol, drug, and controlled-substance instruction.⁶⁴ In fact, the 2015 reauthorization of the Elementary and Secondary Education Act of 1965 provides these state schools with much more flexibility in the delivery of federally financed drug-education instruction.⁶⁵ Therefore, requiring instruction to schoolchildren about the divergent marijuana laws should be at the forefronts of the fully legalized state legislatures' priorities in order to protect their youth from present and future harms.⁶⁶ It is a grave and significant issue that none of the states with the full legalization of marijuana have included any express addition of marijuana-specific education to the states' existing drug and alcohol instructional statutes, despite comprehensive regulation of lawful marijuana in almost all other aspects.⁶⁷

Fortunately, this problem has a simple and straightforward legislative solution, which could be accomplished via two statutory alternatives.⁶⁸ The foundation for both statutory schemes is already present among those states that have legalized marijuana in some form.⁶⁹ Using such guidance, the fully legalized states should amend their codes to require marijuana-specific education as part of their schools' drug and alcohol instruction at every level, from elementary to high school. These statutory additions would

63. See Robert A. Mikos, *On the Limits of Supremacy: Medical Marijuana and the States' Overlooked Power to Legalize Federal Crime*, 62 VAND. L. REV. 1421, 1471–72 (2009) (discussing the increased ability of state lawmakers over their federal counterparts to influence their citizens' perspectives on marijuana use).

64. See *infra* Section III.B.

65. See Every Student Succeeds Act, Pub. L. No. 114-95, § 4108, 129 Stat. 1802, 1978–79 (2015).

66. See, e.g., J. David Hawkins et al., *Preventing Substance Abuse*, 19 CRIME & JUST. 343, 400–01 (1995) (discussing the efficacy of normative and comparative school prevention curricula in the consistent reduction of marijuana use).

67. See, e.g., Sam Kamin, *Lessons Learned from the Governor's Task Force to Implement Amendment 64*, 91 OR. L. REV. 1337, 1343 (2013) (describing Colorado's massive task force that "covered everything" in terms of the legislative and executive implementation of the full marijuana legalization provided for by Colorado Constitutional Amendment 64).

68. See Douglas G. Baird & M. Todd Henderson, *Other People's Money*, 60 STAN. L. REV. 1309, 1331 n.102 ("[S]imple solutions sometimes work best.").

69. See *infra* notes 493–95 and accompanying text.

allow for the necessary development of consistent marijuana-specific educational regulations and academic-content standards within each state.⁷⁰ Because of the global consensus about the need to prohibit non-adult access to marijuana, this statutory amendment would not require a herculean political effort⁷¹ and could be a bridge between the vociferously partisan opponents on the issue of marijuana reforms.⁷² Further, these legislative actions could provide a model for states that may choose to fully legalize marijuana in the future.⁷³ Finally, by enacting or amending marijuana-specific educational statutes, these states will take strides to cure a significant legal deficiency that has the potential to cause irreparable harm to their children and greater populaces.⁷⁴

70. See, e.g., Derek Black, *Unlocking the Power of State Constitutions with Equal Protection: The First Step Toward Education as a Federally Protected Right*, 51 WM. & MARY L. REV. 1343, 1400–01 (2010) (demonstrating the interconnections between state educational statutes, administrative regulations, and academic content standards).

71. See, e.g., Andrew E. Taslitz, *Fourth Amendment Federalism and the Silencing of the American Poor*, 85 CHI.-KENT L. REV. 277, 286 (2010) (“Legislators also tend to look for fairly simple, specific, concrete solutions to readily-identifiable problems, and solutions that can be touted to the electorate.”).

72. See Laura L. Hirschfeld, *Legal Drugs? Not Without Legal Reform: The Impact of Drug Legalization on Employers Under Current Theories of Enterprise Liability*, 7 CORNELL J.L. & PUB. POL’Y 757, 779 (1998) (discussing how most legalization advocates hope that education will produce “social awareness and reduced or responsible consumption of marijuana”).

73. See, e.g., Jessica Bulman-Pozen, *Unbundling Federalism: Colorado’s Legalization of Marijuana and Federalism’s Many Forms*, 85 U. COLO. L. REV. 1067, 1082 (2014) (characterizing Colorado’s full legalization of marijuana as a model for other states in a “states-as-laboratories sense”).

74. See Kevin A. Sabet, *A New Direction? Yes. Legalization? No. Drawing on Evidence to Determine Where to Go in Drug Policy*, 91 OR. L. REV. 1153, 1174 (2013) (arguing that current education about “marijuana harms need[s] to be amplified”).

II. STATES' FULL LEGALIZATION OF MARIJUANA FOR ADULTS AND ITS IMPACT ON YOUTH

A. *States' Full Legalization of Marijuana for Adults*

Colorado, Washington, Alaska, and Oregon are the four states that have enacted the most expansive legislation on marijuana in the United States.⁷⁵ Colorado and Washington's voter initiatives for the full legalization of recreational marijuana for adults were approved in 2012.⁷⁶ Two years later, in 2014, Alaska and Oregon also approved voter ballot initiatives for the full legalization of marijuana for adults.⁷⁷ Because these states have created a complete, regulated legal marketplace for marijuana within their state boundaries, they should be at the forefront in enacting legislation on marijuana-specific education within their public schools.⁷⁸ However, despite this necessity, these states have failed to enact such legislation, putting their youth in peril of not understanding the full legal and health landscape of marijuana.⁷⁹ The potential for harm resulting from this lack of education mandate should not be ignored and must be remedied.⁸⁰ To provide the foundation for a complete understanding of the legal harms and educational remedies for these harms, this section of the Article provides a comprehensive examination of the full legalization of marijuana statutory and constitutional provisions that have been enacted in these states.⁸¹

75. See William Baude, *State Regulation and the Necessary and Proper Clause*, 65 CASE W. RES. L. REV. 513, 514–15 (2015) (labeling full legalization as the most dramatic state change regarding marijuana laws in twenty years).

76. See COLO. CONST. art. XVIII, § 16 (West 2016); WASH. REV. CODE ANN. chs. 46.04, 46.61, 69.50 (West 2016).

77. See ALASKA STAT. ANN. §§ 17.38.010–17.38.900 (West 2016); OR. REV. STAT. ANN. §§ 475B.005–475B.395 (West 2016).

78. See Chemerinsky et al., *supra* note 17, at 119 (“The relative successes and failures of the various marijuana legalization models would help inform other states—and possibly the federal government—about the best practices for legalizing marijuana for adults while maintaining public safety.”).

79. See *infra* Section II.B.

80. See *infra* Section II.B, Part III.

81. See *infra* Section II.A.

1. Colorado

On November 6, 2012, 55.33% of voters approved Colorado Amendment 64, an initiated constitutional amendment that legalized the consumption, possession, production, and retail sale of limited amounts of marijuana for adults twenty-one years of age and older and required “the first \$40 million in revenue raised annually by [the marijuana excise tax to] be credited to the public school capital construction assistance fund.”⁸² Colorado’s full legalization created lawful personal possession, use, display, purchase, transport, production, processing, and transfer without remuneration of marijuana for adults twenty-one years of age and older.⁸³ Colorado’s constitutional amendment regarding the personal use and regulation of marijuana also legalized the regulated and licensed production, processing, transport, display, possession, purchase, and retail sale of marijuana and marijuana accessories by lawful marijuana facilities.⁸⁴ It remains unlawful criminal activity to grow, cultivate, process, manufacture, sell, distribute, possess, display, or transfer marijuana outside of the regulated state system and the Colorado constitutional provisions.⁸⁵ Consequently, Colorado’s constitutional amendment clearly provides that it does not “permit the transfer of marijuana, with or without remuneration, to a person under the age of twenty-one or . . . allow a person under the age of twenty-one to purchase, possess, use, transport, grow, or consume marijuana.”⁸⁶ The bulk of these constitutional provisions became effective on December 10, 2012.⁸⁷

Reflective of the intent of the new state constitutional provisions, Colorado has enacted a range of laws to block juvenile access to

82. See Scott Gessler et al., *2012 Abstract of Votes Cast*, OFF. SECRETARY ST., ST. COLO. 145, <http://www.sos.state.co.us/pubs/elections/Results/Abstract/pdf/2000-2099/2012AbstractBook.pdf> (last visited Oct. 17, 2016).

83. See COLO. CONST. art. XVIII, § 16(3) (West 2016).

84. See *id.* § 16(4).

85. See COLO. REV. STAT. ANN. § 18-18-406 (West 2016) (providing the criminal offenses related to marijuana and marijuana concentrate).

86. COLO. CONST. art. XVIII, § 16(6)(c).

87. *Id.* § 16(9).

marijuana.⁸⁸ Sales and transfers of marijuana to a minor by an adult who is two years older than the minor is felonious conduct.⁸⁹ Public consumption of marijuana is not lawful,⁹⁰ and marijuana smoke is not allowed in public.⁹¹ Schools, individuals, and other entities have the right to prohibit the presence of marijuana on their properties.⁹² People who lawfully cultivate marijuana in their residences must do so in an enclosed and locked cultivation area if they reside with anyone under the age of twenty-one.⁹³ “If a person under twenty-one years of age enters the residence, the person must ensure that access to the cultivation site is reasonably restricted for the duration of that person’s presence in the residence.”⁹⁴ Marijuana and marijuana paraphernalia are not allowed on the premises of a childcare center during operating hours.⁹⁵ Childcare facilities can be denied or lose state licensing if the licensee, affiliate, employee, or facility resident uses retail marijuana or is under the influence of it during the facility’s operating hours,⁹⁶ if any of these individuals is convicted of marijuana-related criminal offenses,⁹⁷ or if the entity cultivates marijuana.⁹⁸ An applicant for state certification of a foster care home may be denied or an existing foster care certification may be revoked if the applicant, an affiliate, or “any person living with or employed by the applicant has” been convicted of a marijuana criminal offense.⁹⁹

There are also a considerable number of code restrictions regarding full legalization that are aimed to deter children’s access to marijuana. State-licensed marijuana financial services cooperatives must “[c]onduct due

88. See *infra* notes 89–99 and accompanying text.

89. COLO. REV. STAT. ANN. § 18-18-406(1).

90. *Id.* § 18-18-406(5)(b).

91. *Id.* § 25-14-204.

92. See COLO. CONST. art. XVIII, § 16(6)(d) (noting that full legalization does not bar individuals and entities from prohibiting the presence of marijuana in any form on their properties).

93. COLO. REV. STAT. ANN. § 18-18-406(3)(b)(II)(A).

94. *Id.* § 18-18-406(3)(b)(II)(B).

95. COLO. CODE REGS. § 2509-8:7.702.4II (2016).

96. See COLO. REV. STAT. ANN. § 26-6-108(2)I.

97. See *id.* § 26-6-108(2)(c.5).

98. See *id.* § 26-6-108(2.6).

99. COLO. CODE REGS. § 2509-8:7.701.33(F)(4) (providing for denial, revocation, suspension, or probation of a foster care certification based on marijuana-related convictions).

diligence with regard to the activities of its members so as to prevent: The distribution of marijuana to minors.”¹⁰⁰ The Colorado state licensing authority for marijuana, the Department of Revenue Marijuana Enforcement Division (MED),¹⁰¹ cannot issue licenses to people under the age of twenty-one.¹⁰² It is unlawful for licensed marijuana entities to sell marijuana to anyone under twenty-one years of age.¹⁰³ Consequently, marijuana retail store employees must require customer age verification prior to initiating a marijuana sale.¹⁰⁴ Licensees or employees with reasonable cause to believe that the attempted purchaser “is under twenty-one years of age and is exhibiting fraudulent proof of age in an attempt to obtain any retail marijuana or marijuana-infused product, . . . [are] authorized to confiscate” the fraudulent identification to “remit to a state or local law enforcement agency.”¹⁰⁵ They are also authorized to “detain and question such person in a reasonable manner” to determine “whether the person is guilty of any unlawful act regarding the purchase of retail marijuana.”¹⁰⁶ Internet sales of marijuana or other sales where the person is not physically present in the retail store premises are not permitted.¹⁰⁷

The Colorado General Assembly has also charged MED with the promulgation of a multitude of regulations to limit youth access to marijuana.¹⁰⁸ MED must create marketing and advertising rules prohibiting “mass-market campaigns that have a high likelihood of reaching persons under twenty-one years of age,”¹⁰⁹ because it is unlawful for any marijuana licensee to advertise in a way “that is designed to appeal to minors.”¹¹⁰ MED also has the responsibility to create rules on the “[p]rohibition or

100. COLO. REV. STAT. ANN. § 11-33-126(2)(a)(I).

101. See *Marijuana Enforcement*, COLO. DEP’T REVENUE, <https://www.colorado.gov/pacific/enforcement/marijuanaenforcement> (last visited Oct. 18, 2016) (noting that MED is the state licensing authority for retail marijuana).

102. COLO. REV. STAT. ANN. § 12-43.4-306(1)(e).

103. *Id.* § 12-43.4-901(4)(e).

104. *Id.* § 12-43.4-402(3)(b)(I).

105. *Id.* § 12-43.4-402(3)(b)(II)(A).

106. *Id.* § 12-43.4-402(3)(b)(II)(B).

107. *Id.* § 12-43.4-402(7)I.

108. *Id.* § 12-43.4-202.

109. *Id.* § 12-43.4-202(3)I(I).

110. *Id.* § 12-43.4-901(4)(b).

regulation of additives to any retail marijuana product” that are “designed to make the product more appealing to children,”¹¹¹ and rules that require the labeling of edible retail marijuana products to indicate they are not for children’s consumption.¹¹²

2. Washington

On November 6, 2012, 55.7% of Washington voters approved Washington Initiative Measure No. 502,¹¹³ which legalized the production, delivery, sale, possession, and use of limited amounts of marijuana for adults twenty-one years of age and older.¹¹⁴ Washington’s full legalization created lawful licensed production, processing, packaging, delivery, distribution, sale, and possession of marijuana for adults aged twenty-one and over.¹¹⁵ The Code explicitly provides that “[n]o person under twenty-one years of age may possess, manufacture, sell, or distribute marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration.”¹¹⁶ Public recreational marijuana sales began on July 8, 2014.¹¹⁷

Washington retains a number of statutes designed to keep marijuana out of the possession and use of the state’s youth.¹¹⁸ Public consumption of

111. *Id.* § 12-43.4-202(3)I(VII).

112. *Id.* § 12-43.4-202(3)(c.5)(I).

113. *November 06, 2012 General Election Results*, WASH. SECRETARY ST. (Nov. 27, 2012, 4:55 PM), <http://results.vote.wa.gov/results/20121106/Measures-All.html>.

114. *See Initiative Measure No. 502*, WASH. ST. LIQUOR & CANNABIS BOARD (July 8, 2011), <http://lcb.wa.gov/publications/Marijuana/I-502/i502.pdf>.

115. *See* WASH. REV. CODE ANN. § 69.50.354 (West 2016) (providing that lawful acts of licensed marijuana retail outlets are not state criminal or civil offenses); *see also id.* § 69.50.401(3) (providing for the lawful production, manufacture, processing, packaging, delivery, distribution, sale, or possession of marijuana for adults twenty-one years of age and older); *id.* § 69.50.360 (providing lawful acts for marijuana retailers and their employees); *id.* § 69.50.363 (providing lawful acts for marijuana processors and their employees); *id.* § 69.50.366 (providing lawful acts for marijuana producers and their employees); *id.* § 69.50.4013(3)(a) (providing that possession of marijuana within legal quantity limits by a person twenty-one years of age or older is lawful).

116. *Id.* § 69.50.4013(4).

117. *See FAQs on I-502*, WASH. ST. LIQUOR & CANNABIS BOARD, http://www.liq.wa.gov/mj2015/faqs_i-502 (last visited Oct. 19, 2016).

118. *See infra* notes 119–33 and accompanying text.

marijuana and opening a package that contains marijuana in public are not permitted.¹¹⁹ Enhanced criminal penalties remain in place for the unlawful manufacture, sale, delivery, or possession of illegal marijuana¹²⁰ if it takes place on school property or “within one thousand feet of a school bus route stop [or] . . . the perimeter of the school grounds.”¹²¹ Marijuana licenses may not be issued to anyone under twenty-one years of age.¹²² Nor may they be issued for any regulated marijuana premises within one thousand feet of any elementary or secondary school grounds.¹²³ Licensees may not employ any person under the age of twenty-one.¹²⁴ Licensed marijuana retailers must not allow the entry of people under age twenty-one on their premises.¹²⁵ Additionally, licensed retailers are required to provide employee training regarding age identification.¹²⁶ Further, the State Liquor and Cannabis Board (SLCB) has the power to “conduct controlled purchase programs to determine whether . . . [a] marijuana retailer is unlawfully selling marijuana to persons under the age of twenty-one.”¹²⁷ Licensed marijuana retailers’ business signs and advertisements may not be placed within one thousand feet of any elementary or secondary school grounds.¹²⁸ These advertisement restrictions dovetail with the SLCB’s statutory charge to adopt reasonable restrictions on advertising to minimize the “exposure of people under twenty-one years of age to the advertising.”¹²⁹ As another measure to control access to lawful marijuana, licensed retailers are prohibited from selling marijuana products through a vending machine or a

119. WASH. REV. CODE ANN. § 69.50.445(1) (West 2016).

120. *See id.* § 69.50.204(c)(22) (classifying nonlegalized marijuana as a Schedule I controlled substance); *id.* § 69.50.401(1) (making marijuana-related actions outside of those in compliance with the marijuana legalization statutory scheme unlawful).

121. WASH. REV. CODE ANN. § 69.50.435(1)(a)–(d) (West 2016).

122. *Id.* § 69.50.331(1)(c)(i).

123. *Id.* § 69.50.331(8)(a).

124. *Id.* § 69.50.331(6).

125. *Id.* § 69.50.357(2) (providing the general rules regarding entry of individuals under the age of twenty-one who are not qualifying medical marijuana patients).

126. *Id.* § 69.50.357(3)(a).

127. *Id.* § 69.50.560(1)(a).

128. *See id.* § 69.50.357(4) (regulating the postage of licensed retailer business signs); *id.* § 69.50.369(1)(a) (regulating marijuana advertisements).

129. *Id.* § 69.50.345(9)(b).

drive-through retail facility.¹³⁰

3. Alaska

On November 4, 2014, 53.23% of Alaskan voters approved Alaska Ballot Measure 2,¹³¹ which legalized the production, sale, possession, and use of limited amounts of marijuana by adults twenty-one years of age and older.¹³² Under the new laws, Alaska legalized the personal production, possession, transport, transfer, use, and consumption of marijuana for persons aged twenty-one and older.¹³³ Multiple aspects of the ballot initiative and resulting legislation focused on the intent to extend these privileges only to adults and to keep legalized marijuana out of the possession of children and adolescents.¹³⁴ Explicitly, these Alaska laws provide that “[n]othing . . . is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of 21.”¹³⁵ Legalization became effective on February 24, 2015.¹³⁶

Similar to Colorado and Washington, Alaska has statutes that are intended to restrict youth access to marijuana.¹³⁷ Public consumption of marijuana remains illegal.¹³⁸ Personal cultivators of marijuana must ensure their marijuana is not in public view and is “secure from unauthorized

130. *See id.* § 69.50.390(1).

131. *2014 General Election November 4, 2014 Official Results*, ST. ALASKA DIVISION ELECTIONS (Nov. 25, 2014, 2:55 PM), <http://www.elections.alaska.gov/results/14GENR/data/results.htm>.

132. *See* ALASKA STAT. ANN. §§ 17.38.010–17.38.900 (West 2016).

133. *See id.* § 17.38.020.

134. *See, e.g., id.* § 17.38.010(a), (b)(1) (“[T]he people of the state of Alaska find and declare that the use of marijuana should be legal for persons 21 years of age or older. . . . In the interest of the health and public safety of our citizenry, the people of the state of Alaska further find and declare that the production and sale of marijuana should be regulated so that . . . individuals will have to show proof of age before purchasing marijuana”); *id.* § 17.38.060 (authorizing possession, purchase, manufacture, and sale of marijuana accessories only for persons twenty-one or older).

135. *Id.* § 17.38.220(c).

136. *See* Suzanna Caldwell, *As Alaska Marijuana Legalization Nears, Concern Arises over Possible Delay in Sales Rule*, ALASKA DISPATCH NEWS (Feb. 3, 2015), <http://www.adn.com/article/20150203/alaska-marijuana-legalization-nears-concern-arises-over-possible-delay-sales-rules>.

137. *See infra* notes 138–41 and accompanying text; *see supra* Sections II.A.1–2.

138. ALASKA STAT. ANN. § 17.38.040.

access.”¹³⁹ It remains lawful for schools or any other entities to prohibit the presence of marijuana in any form on their properties.¹⁴⁰ These statutes align with the Alaska Supreme Court’s 1975 *Ravin v. State* decision, which found the “possession of marijuana by adults at home for personal use,” was constitutionally protected despite the acknowledgment of a legitimate state “concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently.”¹⁴¹

Alaska’s full legalization also provides statutory restrictions on regulated marijuana entities.¹⁴² Public display of marijuana products by retailers is prohibited.¹⁴³ Individuals under twenty-one are barred from presenting false identification to attempt to purchase marijuana or gain access to a lawful marijuana establishment.¹⁴⁴ The Marijuana Control Board is charged with implementing regulations to prevent the sale or diversion of marijuana to anyone under the age of twenty-one as well.¹⁴⁵

4. Oregon

On November 4, 2014, 56.11% of Oregon voters approved Oregon Measure 91,¹⁴⁶ a statewide ballot initiative, which legalized the production, manufacture, sale, possession, and use of limited amounts of marijuana by adults twenty-one years of age and older.¹⁴⁷ The measure expressly articulated its intent to “[p]revent the distribution of marijuana to persons

139. *Id.* § 17.38.030(a)(1), (2).

140. *See id.* § 17.38.220(d).

141. *Ravin v. State*, 537 P.2d 494, 511 (Alaska 1975). Alaska’s full legalization measures explicitly state that they do not diminish the rights established in *Ravin*. *See* ALASKA STAT. ANN. § 17.38.010(c).

142. *See infra* notes 143–45 and accompanying text.

143. *See* ALASKA STAT. ANN. § 17.38.070(a)(1).

144. *Id.* § 17.38.050.

145. *Id.* § 17.38.190(a)(5).

146. *See November 4, 2014, General Election, Official Abstract of Votes*, OR. SECRETARY ST., <http://sos.oregon.gov/elections/Documents/results/results-2014-general-election.pdf> (last visited Oct. 18, 2016).

147. *See Measure 91, Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act*, OREGON.GOV, <http://www.oregon.gov/olcc/marijuana/documents/measure91.pdf> (last visited Oct 18, 2016).

under 21 years of age.”¹⁴⁸ Oregon’s full legalization created lawful licensed production, processing, packaging, delivery, distribution, sale, and possession of marijuana for adults age twenty-one and over.¹⁴⁹ The legalization statutes expressly limit these rights to adults and expressly prohibit the acquisition of marijuana by anyone under age twenty-one.¹⁵⁰ The majority of the amended statutory language that resulted from the passage of Measure 91, the Control and Regulation of Marijuana Act, became operative on January 1, 2016.¹⁵¹

Like the three other fully legalized states, Oregon has a host of statutes and regulations that exist in an effort to prevent marijuana use and possession by non-adults.¹⁵² It is unlawful to use marijuana in a public place¹⁵³ and to have homegrown marijuana in public view.¹⁵⁴ Legalized marijuana retailers may not be located within one thousand feet of an existing elementary or secondary school.¹⁵⁵ Private property owners “may not knowingly allow a person under the age of 21 years to consume marijuana items on the property, or allow” anyone under twenty-one “to remain on the property if [that] person . . . consumes marijuana items on the property.”¹⁵⁶ Further, a landlord can terminate a rental agreement and take possession of a rental property if anyone in the tenant’s control, regardless of age, manufactures, delivers, or possesses more than one ounce of illegal marijuana.¹⁵⁷ Oregon registered and certified family childcare facilities are required to ensure there is no contact between children and adults under the influence of marijuana; are required to secure storage of all marijuana and marijuana paraphernalia under child safety locks; and are not allowed to

148. *Id.* at Section 1(2)(a).

149. *See* Control and Regulation of Marijuana Act, OR. REV. STAT. ANN. §§ 475B.005–475B.395 (West 2016).

150. *See id.* § 475B.005(1)(c), (2)(a) (outlining the age parameters for legalization); *id.* § 475B.260(1)(a) (prohibiting individuals under twenty-one from attempting to purchase, purchasing, or acquiring marijuana).

151. *Id.* §§ 475B.005–475B.395.

152. *See infra* notes 153–58 and accompanying text.

153. *See* OR. REV. STAT. ANN. § 475B.280.

154. *See id.* § 475B.250(1).

155. *Id.* § 475B.110(2)(d).

156. *Id.* § 475B.270(2)(a).

157. *See id.* § 90.396(1)(f)(B).

grow or possess marijuana plants on the premises.¹⁵⁸

Other aspects of the laws that aim to keep marijuana out of the possession and use of individuals under age twenty-one focus on the requirements for the regulated entities under full legalization.¹⁵⁹ These laws include a comprehensive requirement that marijuana producers,¹⁶⁰ processors,¹⁶¹ wholesalers,¹⁶² and retailers¹⁶³ be licensed by the state and be twenty-one years of age or older.¹⁶⁴ “A licensee or licensee representative may not sell or deliver a marijuana item to a person under 21 years of age.”¹⁶⁵ Licensees may not employ anyone under twenty-one years of age in legalized marijuana premises.¹⁶⁶ Prior to the sale or provision of legalized marijuana, age-identification verification is required.¹⁶⁷ The provision of false age identification to a licensee or licensee representative is unlawful;¹⁶⁸ accordingly, the purchase, attempt to purchase, or acquisition of marijuana by any person under age twenty-one is illegal.¹⁶⁹

Additional regulatory aspects of Oregon’s full legalization circumscribe the labeling and advertising of marijuana to limit non-adult use and possession.¹⁷⁰ The Control and Regulation of Marijuana Act delegates rulemaking authority to the Oregon Liquor Control Commission (OLCC) to prohibit “advertising marijuana items in a manner . . . [t]hat is appealing to minors.”¹⁷¹ The OLCC must also adopt rules to ensure that marijuana is “[p]ackaged in child-resistant safety packaging” and “[n]ot marketed in a

158. See OR. ADMIN. R. 414-205-0100(1)(c)–(h) (2016) (providing registered family childcare homes’ requirements); *id.* 414-350-0090(10)–(12) (providing certified family childcare homes’ requirements).

159. See *infra* notes 160–69 and accompanying text.

160. See OR. REV. STAT. ANN. § 475B.070(2).

161. See *id.* § 475B.090(2)(b).

162. See *id.* § 475B.100(2)(b).

163. See *id.* § 475B.110(2)(b).

164. See *id.* § 475B.045(1).

165. *Id.* § 475B.165.

166. See *id.* § 475B.180(1).

167. See *id.* § 475B.170(1).

168. See *id.* § 475B.265(1).

169. See *id.* § 475B.260(1)(a).

170. See *id.* § 475B.005(1)(c)–(d).

171. *Id.* § 475B.025(2)(f)(A).

manner that . . . [i]s attractive to minors.”¹⁷² Finally, the OLCC is tasked with adopting standards to ensure “that cannabinoid edibles and other cannabinoid products are not packaged in a manner that is attractive to minors.”¹⁷³

B. The Impact of States’ Full Legalization of Marijuana for Adults on Youth

In the four states that have fully legalized marijuana for adults, the absence of marijuana-specific education statutes is a significant problem for those states’ youth and schools. While longitudinal studies on the complete impact of legalization on these individuals and entities will not be available for some time,¹⁷⁴ educators report they are seeing an increased incidence in youth access to marijuana and an increased presence of marijuana on school campuses since full legalization for adults.¹⁷⁵ This increased access to marijuana forecasts the significant potential harm of not having state-mandated K–12, marijuana-specific instruction in each state that adopts full legalization.¹⁷⁶

In plain terms, there are long-lasting legal harms that will occur while there is this vacuum of explicit, statutorily required marijuana education in fully legalized states.¹⁷⁷ Without sufficient, specific education, children in

172. *Id.* § 475B.615(1)(a)(A)–(B)(ii).

173. *Id.* § 475B.615(1)(b).

174. *See, e.g.*, Cristina M. Rodríguez, *Negotiating Conflict Through Federalism: Institutional and Popular Perspectives*, 123 *YALE L.J.* 2094, 2128 (2014) (noting that it is still unclear if full legalization will result in diversion to juveniles).

175. *See, e.g.*, Elizabeth Hernandez, *Colorado Educators Concerned About Pot in Public Schools*, *DENVER POST* (Oct. 14, 2015, 5:41 PM), http://www.denverpost.com/news/ci_28970592/colorado-educators-concerned-about-pot-public-schools (“While data on marijuana-related incidents in Colorado public schools remains contested and scarce, many educators said they are seeing the problem escalate.”).

176. *Id.* Christine Harms, director of the Colorado School Safety Resource Center, has voiced similar concerns, arguing that there is a need for change in school “marijuana prevention programs” and “a need to educate our parents about [marijuana] so they can be vigilant.” *Id.*

177. The legal harms that are outlined in this article are in addition to the significant health consequences related to the use of marijuana by children and adolescents. *See* Ronald Holmes, *The Health Risks to Infants and Children Exposed to Marijuana*, 33 *AAP GRAND ROUNDS* No. 3, 36 (Mar. 2015) (discussing the physical and cognitive impairments that result when infants and children

these states may not fully understand the health and legal ramifications of their access to or use of marijuana.¹⁷⁸ Marijuana is still illegal in fully legalized states for individuals under the age of twenty-one.¹⁷⁹ Consequently, youth who cultivate, manufacture, process, transfer, possess, or use marijuana, or attempt to do any of these actions, can face criminal penalties that range from felonious misconduct sanctions to criminal infraction fines.¹⁸⁰ They can also have their mobility curtailed through the suspension of driving privileges.¹⁸¹ In addition, they face significant—and sometimes permanent—disciplinary actions if they engage in marijuana-related activities on school grounds or property.¹⁸² Finally, without comprehensive marijuana education in the K–12 environment, these adolescents could be so misinformed about the meaning of full legalization that they could take actions that would result in future ineligibility for higher

are exposed to marijuana); Trisha Koriath, *Despite Relaxed Regulations, Marijuana Harms Developing Brain*, 36 AAP NEWS No. 3, 4 (Mar. 2015) (outlining the negative health consequences of children’s use of marijuana or proximity to adult use of marijuana); Madeline H. Meier et al., *Persistent Cannabis Users Show Neuropsychological Decline from Childhood to Midlife*, 109 PROC. NAT’L ACAD. SCI., E2657, E2657 (2012), <http://www.pnas.org/content/109/40/E2657.full.pdf> (“Impairment was concentrated among adolescent-onset cannabis users, with more persistent use associated with greater decline. Further, cessation of cannabis use did not fully restore neuropsychological functioning among adolescent-onset cannabis users. Findings are suggestive of a neurotoxic effect of cannabis on the adolescent brain and highlight the importance of prevention and policy efforts targeting adolescents.”).

178. See, e.g., Brigid Schulte, *Even Where It’s Legal for Parents to Smoke Pot: What About the Kids?*, WASH. POST (June 6, 2015), https://www.washingtonpost.com/local/even-where-its-legal-for-parents-to-smoke-pot-what-about-the-kids/2015/06/06/dd4549c8-f977-11e4-9030-b4732caefe81_story.html (discussing common misconceptions by kids that marijuana legalization also extends to non-adults or that its use will not result in negative consequences).

179. See ALASKA STAT. ANN. § 17.38.220(c) (West 2016) (“Nothing . . . is intended to permit the transfer of marijuana, with or without remuneration, to a person under the age of 21.”); COLO. REV. STAT. ANN. § 18-18-406(3)(a)(III)(B)(II)(A) (West 2016) (providing that marijuana-related actions that are not expressly regulated as rights for adults age twenty-one and over are still unlawful); OR. REV. STAT. ANN. § 475B.260(1)(a) (West 2016) (prohibiting individuals under twenty-one from attempting to purchase, purchasing, or acquiring marijuana); WASH. REV. CODE ANN. § 69.50.4013(4) (West 2016) (“No person under twenty-one years of age may possess, manufacture, sell, or distribute marijuana, marijuana-infused products, or marijuana concentrates, regardless of THC concentration.”).

180. See *infra* Section II.B.1.

181. See *infra* Section II.B.2.

182. See *infra* Section II.B.3.

education student aid.¹⁸³

1. Criminal Penalties and Infractions

Children and youth can suffer from a range of harms when they enter the criminal or juvenile justice system for an alleged violation of a criminal marijuana statute.¹⁸⁴ Legal rights are often waived during custodial detentions due to a lack of knowledge on the part of the detained youth.¹⁸⁵ Additional damages can occur depending on whether the ultimate adjudication or disposition is in juvenile or criminal court.¹⁸⁶ Individually, youth criminal convictions, criminal infractions, penalized infractions, and juvenile dispositions can be penalized by incarceration or detention,¹⁸⁷ as well as monetary losses.¹⁸⁸ This can result in greater anti-social behaviors¹⁸⁹ and lifelong economic, social, physical, and civil setbacks.¹⁹⁰ Globally, the

183. *See infra* Section II.B.4.

184. *See, e.g.*, Franklin E. Zimring, *The Common Thread: Diversion in Juvenile Justice*, 88 CAL. L. REV. 2477, 2487–88 (2000) (discussing the harms that are inflicted on kids by the criminal process).

185. *See* Rhonda Gay Hartman, *Adolescent Autonomy: Clarifying an Ageless Conundrum*, 51 HASTINGS L.J. 1265, 1299–1300 (2000) (noting that “many minor suspects whose waiver of rights [in law enforcement custody] have resulted in delinquent adjudications and convictions have neither fully understood the logistics nor the import of the very rights they were purportedly surrendering”).

186. *See* Barry C. Feld, *The Juvenile Court Meets the Principle of Offense: Punishment, Treatment, and the Difference It Makes*, 68 B.U. L. REV. 821, 914 (1988) (arguing that juvenile courts provide “a procedurally inferior justice system”); Katayoon Majd, *Students of the Mass Incarceration Nation*, 54 HOW. L.J. 343, 359 (2011) (“Youth convicted in adult courts receive virtually no appropriate rehabilitative and education services and suffer the consequences of having a criminal record.”).

187. *See* Kate Weisburd, *Monitoring Youth: The Collision of Rights and Rehabilitation*, 101 IOWA L. REV. 297, 301 (2015) (discussing the non-deterrent and harmful effects of incarceration and juvenile detention of youth).

188. *See* Neelum Arya, *Family-Driven Justice*, 56 ARIZ. L. REV. 623, 628 (2014) (discussing how “the justice system exacerbates the economic vulnerability of families through the use of a variety of court- and incarceration-related fees and costs”).

189. *See, e.g.*, Terry A. Maroney, *The False Promise of Adolescent Brain Science in Juvenile Justice*, 85 NOTRE DAME L. REV. 89, 173 (2009) (linking youth transfers to the adult criminal system to recidivism).

190. *See generally* Christopher Uggen & Robert Stewart, *Piling on: Collateral Consequences and Community Supervision*, 99 MINN. L. REV. 1871 (2015) (discussing the many consequences that can result from a criminal conviction or juvenile adjudication).

“racial disparities [that] pervade the contemporary American juvenile justice system”¹⁹¹ can exacerbate young racial minorities’ negative impressions of law enforcement and the judicial system, placing greater strain on the relationships between entities of state power and communities as a whole.¹⁹² All of these harms have particular resonance in an environment where marijuana is fully legalized for adults and criminalized for youth.¹⁹³ Consequently, it is important to examine the range of criminal penalties and infractions that can result when non-adults access marijuana in the fully legalized states.¹⁹⁴

In Colorado, non-adults who engage in marijuana transactions remain subject to criminal laws, which may be adjudicated in either juvenile court or criminal court, depending on the offense and the age of the individual.¹⁹⁵ Youth between the ages of eighteen and twenty-one who knowingly process or manufacture marijuana on “land owned, occupied, or controlled” by them commit a felony.¹⁹⁶ These non-adults who knowingly dispense, sell, or distribute marijuana, or attempt to do so, engage in unlawful conduct that constitutes a felony or a misdemeanor, depending on the amount of marijuana.¹⁹⁷ Individuals between eighteen and twenty-one who “knowingly

191. Kristin Henning, *Criminalizing Normal Adolescent Behavior in Communities of Color: The Role of Prosecutors in Juvenile Justice Reform*, 98 CORNELL L. REV. 383, 386 (2013).

192. See K. Babe Howell, *Prosecutorial Discretion and the Duty to Seek Justice in an Overburdened Criminal Justice System*, 27 GEO. J. LEGAL ETHICS 285, 322 (2014) (“Despite similar rates of marijuana use, blacks are eight times more likely and Latinos four times more likely to be arrested for marijuana than whites. Unlike some minor offenses where base offending rates are unknown, there is no doubt that blacks and Latinos are far more likely to be arrested for marijuana possession than whites.”); L. Song Richardson, *Police Racial Violence: Lessons from Social Psychology*, 83 FORDHAM L. REV. 2961, 2972–73 (2015) (discussing how disparate police enforcement of criminal statutes has resulted in an escalation of tense situations in communities of color).

193. See, e.g., Drew Atkins, *Weed is Legal in Washington—But a Felony for Minors?*, CROSSCUT (Sept. 24, 2015), <http://crosscut.com/2015/09/smoking-weed-is-legal-for-adults-but-a-felony-for-juvenies> (noting that the legal penalties for juvenile marijuana use in states where it has been legalized for adults cause confusion).

194. See *infra* notes 195–242 and accompanying text.

195. See COLO. REV. STAT. ANN. § 19-2-103(10) (West 2016) (citing § 19-1-103(68)) (defining a juvenile who is subject to the juvenile court’s jurisdiction as a child under the age of eighteen).

196. *Id.* § 18-18-406(2)(a).

197. See *id.* § 18-18-406(2)(b).

cultivate, grow, or produce marijuana . . . on land that the person owns, occupies, or controls” violate the state’s criminal laws and commit a felony or a misdemeanor, depending on the number of plants involved.¹⁹⁸ Possession of unlawful marijuana by non-adults remains criminal behavior as well, with penalties ranging from a felony to a petty offense, depending upon the amount of marijuana.¹⁹⁹ Public display, consumption, use, and gratuitous transfer of marijuana also remains criminalized for juveniles, with a similar range of penalties based on the amount of marijuana at issue.²⁰⁰

Following Colorado’s full legalization, the General Assembly repealed and then reenacted the state’s criminal statute regarding the illegal possession of small amounts of marijuana or marijuana paraphernalia by people under age twenty-one.²⁰¹ Specifically, this statute provides that “a person under twenty-one years of age who possesses one ounce or less of marijuana or consumes marijuana anywhere in the State of Colorado commits illegal possession or consumption of marijuana by an underage person,” which is a “strict liability offense.”²⁰² Similarly, the possession of marijuana paraphernalia by anyone under twenty-one who “knows or reasonably should know” that the use of the item could violate Colorado law is a “strict liability offense.”²⁰³ Prima facie evidence of these strict liability offenses includes “[e]vidence that the defendant was under twenty-one years of age and possessed or consumed . . . marijuana or possessed marijuana paraphernalia anywhere in this state,” or “[e]vidence that the defendant was under the age of twenty-one years and manifested any of the characteristics commonly associated with . . . marijuana impairment while present anywhere in this state.”²⁰⁴

These strict liability offenses fall under the concurrent jurisdiction of the juvenile court and the county court if the individual “is under eighteen years

198. *Id.* § 18-18-406(3)(a).

199. *See id.* § 18-18-406(4), (5).

200. *See id.* § 18-18-406(5)(b).

201. *See id.* § 18-13-122.

202. *Id.* § 18-13-122(3)(b).

203. *Id.* § 18-13-122(3)(c).

204. *Id.* § 18-13-122(8).

of age.”²⁰⁵ These offenses are “unclassified petty offense[s].”²⁰⁶ A first conviction for such an offense shall be penalized by a fine of \$100 or less, court-ordered completion of a state-approved substance abuse education program, or both.²⁰⁷ A second conviction shall be penalized by a fine of \$100 or less; court-ordered completion of a state-approved substance abuse education program; possible submission to a substance abuse assessment and completion of recommended treatment from that assessment; and up to twenty-four hours of public service.²⁰⁸ Third or subsequent convictions shall be penalized by a fine of up to \$250, submission to a substance abuse assessment and completion of recommended treatment from that assessment, and performance of up to thirty-six hours of public service.²⁰⁹ An additional penalty of twenty-five dollars, absent a court finding of indigence, is assessed for any of these underage individual marijuana convictions.²¹⁰ This penalty surcharge amount is transferred to the state’s “adolescent substance abuse prevention and treatment fund.”²¹¹

Like in Colorado, it remains unlawful in Washington for any person under twenty-one to “possess, manufacture, sell, or distribute marijuana.”²¹² “Every person under the age of twenty-one years who purchases or attempts to purchase marijuana” engages in an unlawful act.²¹³ If convicted of purchasing or attempting to purchase marijuana, “[e]very person between the ages of eighteen and twenty-one . . . is guilty of a misdemeanor,”²¹⁴ which “shall be punished by imprisonment . . . of not more than ninety days,” a fine of \$1000 or less, or both.²¹⁵ Individuals over the age of eighteen who distribute marijuana to a “person under eighteen years of age

205. *Id.* § 19-2-104(5).

206. *Id.* § 18-13-122(3)(d).

207. *Id.* § 18-13-122(4)(a).

208. *Id.* § 18-13-122(4)(b).

209. *Id.* § 18-13-122(4)(c).

210. *Id.* § 18-13-122(4)(e).

211. *See id.* § 18-13-122(4)(e).

212. WASH. REV. CODE ANN. § 69.50.4013(4) (West 2016).

213. *Id.* § 69.50.560(2).

214. *Id.* § 69.50.560(5).

215. *Id.* § 9A.20.021(3).

who is at least three years” younger are guilty of felonious conduct.²¹⁶ It is unlawful for any person “to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance,”²¹⁷ which is punishable as a felony.²¹⁸ If a person under the age of twenty-one has any THC concentration over 0.00 but under 5.00 via blood analysis “within two hours after operating or being in physical control of the motor vehicle,” he or she is guilty of the misdemeanor “of driving or being in physical control of a motor vehicle after consuming . . . marijuana.”²¹⁹ If a juvenile “has, within two hours after driving, a THC concentration of 5.00 or higher,” then he or she will be guilty of a gross misdemeanor or felony of driving under the influence of marijuana.²²⁰

In Alaska, the possession of marijuana by minors remains unlawful.²²¹ The manufacture or delivery of one ounce or more of unregulated marijuana,²²² the possession of over four ounces of marijuana,²²³ or the possession of marijuana “on or within five hundred feet of school grounds” or “on a school bus”²²⁴ is felonious misconduct under the criminal code.²²⁵ The manufacture or delivery “of less than one ounce” of marijuana²²⁶ or the possession of one to four ounces of marijuana²²⁷ by a non-adult is a criminal misdemeanor.²²⁸ The use or display of any amount of marijuana²²⁹ or the

216. *Id.* § 69.50.406(2).

217. *Id.* § 69.50.4015(1).

218. *Id.* § 69.50.4015(2).

219. *Id.* § 46.61.503(1)–(5).

220. *Id.* § 46.61.502(1)(b), (5), (6).

221. *See* ALASKA STAT. ANN. §§ 17.38.020, 17.38.900(2) (West 2016) (defining consumers who are entitled to full legalization as being individuals age twenty-one and over).

222. *See id.* § 11.71.040(a)(2) (2016) (classifying these schedule VIA actions as misconduct involving a controlled substance in the third degree); *id.* § 11.71.190(b) (classifying marijuana as a schedule VIA controlled substance).

223. *See id.* § 11.71.040(a)(3)(F).

224. *See id.* § 11.71.040(a)(4).

225. *See id.* § 11.71.040(d).

226. *See id.* § 11.71.050(a)(1).

227. *See id.* § 11.71.050(a)(2)(E).

228. *Id.* § 11.71.050(b).

229. *Id.* § 11.71.060(a)(1).

possession of less than one ounce of marijuana²³⁰ by anyone under the age of twenty-one is also a criminal misdemeanor.²³¹ Finally, it is unlawful for an individual under twenty-one to present false age identification to a regulated marijuana establishment, and such an individual may be fined up to \$400.²³²

Oregon continues to criminally penalize the unlawful manufacture, delivery, transfer, or possession of marijuana by an individual under twenty-one years of age.²³³ Delivery of marijuana to a minor by a person between the ages of eighteen and twenty-one is felonious misconduct.²³⁴ The intentional application of marijuana to another person under age eighteen, which includes inhalation, is also a felony if the criminal actor is at least three years older than the victim.²³⁵ Further, it is unlawful for anyone under twenty-one to knowingly or intentionally possess “[m]ore than one ounce of usable marijuana in a public place.”²³⁶

Oregon’s full legalization explicitly incorporates penalties for people under twenty-one who attempt to acquire marijuana.²³⁷ Under the new laws, “a person under 21 years of age may not attempt to purchase, purchase or acquire a marijuana item”²³⁸ and “may not enter or attempt to enter” a licensed marijuana retail premises.²³⁹ These violations can be penalized by a fine of up to \$1,000 but not imprisonment.²⁴⁰ The court may require any

230. *Id.* § 11.71.060(a)(2)(A).

231. *Id.* § 11.71.060(b).

232. *See id.* § 17.38.050.

233. OR. REV. STAT. ANN. § 475B.005(2)(a) (West 2016) (confirming that the intent of Oregon’s regulatory provisions is to “[p]revent the distribution of marijuana to persons under 21 years of age”).

234. *See id.* § 475.906(1) (making it unlawful for a person of any age to deliver a Schedule II controlled substance “to a person under 18 years of age”); OR. ADMIN. R. 855-080-0022(1) (2016) (classifying marijuana as a Schedule II controlled substance).

235. OR. REV. STAT. ANN. § 475.910(1)(a) (making the intentional application of marijuana to “the body of another person by injection, inhalation, ingestion or any other means if the other person is under 18 years of age” a felony); *id.* § 475.910(2) (providing a defense to the crime of marijuana application if the actor “was less than three years older than the victim at the time of the alleged offense”).

236. *Id.* § 475.864(1)(b).

237. *Id.* § 475B.260.

238. *Id.* § 475B.260(1)(a).

239. *Id.* § 475B.260(2).

240. *See id.* § 475B.260(3) (classifying these violations as Class B violations); *id.* § 153.018(1),

non-adult who attempts to purchase, purchases, or acquires marijuana through age misrepresentation to perform community service, and the court may also order the suspension of that person's driving privileges for up to one year.²⁴¹ Repeat violators are subject to a court order for assessment and treatment.²⁴²

2. Driving Penalties

There are provisions that require or allow for the suspension or revocation of non-adult driving privileges when youth access marijuana in three of the four fully legalized states.²⁴³ These types of transportation penalties can reduce individuals' abilities to control their movement to and from school and work, thereby negatively impacting useful, if not vital, economic and social functions.²⁴⁴ This is especially the case in rural communities, which are common in these states, where public transportation is limited if existent at all.²⁴⁵ Such limitations can cause economic instabilities and reduce incentives to succeed in a work or school setting, thereby facilitating possible withdrawals from both of these important social spheres.²⁴⁶ These withdrawals greatly increase the risk of continued malignant behaviors.²⁴⁷ Consequently, it is important to examine this

(2)(b) (providing Class B violation penalties).

241. *Id.* § 475B.260(4).

242. *See id.* § 475B.260(6).

243. *See infra* notes 249–62 and accompanying text.

244. *See* Vivian E. Hamilton, *Liberty Without Capacity: Why States Should Ban Adolescent Driving*, 48 GA. L. REV. 1019, 1074 (2014) (discussing how the driving privilege “has taken on considerable cultural significance and serves useful (some would argue, vital) economic and social functions”).

245. *See* Riya Saha Shah & Lisa S. Campbell, *Ineffective Assistance and Drastic Punishments: The Duty to Inform Juveniles of Collateral Consequences in a Post-Padilla Court*, 3 DUKE F.L. & SOC. CHANGE 163, 164–65 (2011) (discussing how “juvenile adjudications can also restrict a youth's current livelihood” and highlighting the significant impact the revocation of driving privileges can have on non-adults in rural communities given the paucity of public transportation).

246. *See* David Zaring & Elena Baylis, *Sending the Bureaucracy to War*, 92 IOWA L. REV. 1359, 1384 (2007) (equating the loss or denial of the driving privilege with the “loss of the opportunity to work, attend school, and otherwise lead a responsible, self-sustaining existence”).

247. *See* Gabriel J. Chin & Richard W. Holmes, Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 700 (2002) (discussing the significant

collateral consequence of the lack of complete marijuana education for these states' youth.²⁴⁸

In Colorado, individuals under the age of twenty-one can suffer transportation penalties as a result of their involvement with marijuana.²⁴⁹ The Department of Revenue "shall immediately revoke the license or permit of any . . . minor driver upon receiving a record showing that such driver has . . . [b]een convicted of driving a motor vehicle while under the influence of a controlled substance,"²⁵⁰ which includes marijuana.²⁵¹ Revocation of driving privileges is also mandated for drivers under twenty-one who are convicted of "driving while ability impaired."²⁵²

In Washington, a juvenile's driving privileges are revoked by the Department of Licensing if that individual is found by a criminal court or a juvenile court to have violated any provision of the State Uniform Controlled Substances Act, which includes unlawful activity with marijuana.²⁵³ The first notice to the Department of Licensing results in a year-long revocation "or [a revocation] until the juvenile reaches seventeen years of age, whichever is longer."²⁵⁴ Subsequent notices result in a two-year revocation "or [a revocation] until the juvenile reaches eighteen years of age, whichever is longer,"²⁵⁵ with consecutive periods of revocation "not extend[ing] beyond the juvenile's twenty-first birthday."²⁵⁶

Finally, in Oregon, anyone convicted of an offense involving

impact of collateral consequences for criminal violations even in instances where "traditional sanctions such as fine or imprisonment are comparatively insignificant").

248. See Hamilton, *supra* note 244, at 1040 (discussing the socio-cultural benefits of adolescent driving which "provide significant benefits to both adolescents and their families").

249. COLO. REV. STAT. ANN. § 42-2-125(1)(b) (West 2016).

250. *Id.*

251. See *id.* § 18-18-102(5).

252. *Id.* § 42-2-125(1)(g)(II).

253. See WASH. REV. CODE ANN. § 46.20.265(1) (West 2016) (mandating the revocation of juvenile driving privileges by the department of licensing upon receipt of notice of juvenile violations of marijuana laws by adult or juvenile courts); *id.* § 69.50.420(1) (providing for notification to the department of licensing when a "juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of" the state's Uniform Controlled Substances Act).

254. *Id.* § 46.20.265(2)(a).

255. *Id.* § 46.20.265(2)(b).

256. *Id.* § 46.20.265(2)(c).

manufacture, possession, or delivery of illegal marijuana must have his or her driving privileges suspended.²⁵⁷ Courts may also order the suspension of driving privileges for any individuals under age twenty-one who unlawfully attempt to purchase, purchase, or acquire marijuana.²⁵⁸ This suspension cannot exceed one year.²⁵⁹ Oregon school boards have the right to establish a policy to request that the Department of Transportation suspend a student's driving privileges for up to one year²⁶⁰ when "[t]he student has been suspended or expelled at least twice for possessing, using or delivering any controlled substance or for being under the influence of any controlled substance at a school or on school property or at a school sponsored activity, function or event."²⁶¹ This request for suspended driving privileges can be extended until the student's twenty-first birthday upon a second written request to the Department of Transportation.²⁶²

3. School Disciplinary Actions

In the four fully legalized states, possession and use of marijuana on K–12 school grounds remain unlawful and are subject to school disciplinary actions.²⁶³ Such disciplinary actions are primarily exclusionary.²⁶⁴ These actions are often delegated to on-campus law enforcement officers²⁶⁵ or can be the result of information-sharing statutes that require courts to inform schools about drug-related convictions or adjudications of their students,²⁶⁶

257. See OR. REV. STAT. ANN. § 809.265(1)(a) (West 2016).

258. See *id.* § 475B.260(1)(a), (4).

259. *Id.* § 475B.260(4).

260. See *id.* § 339.254(1)(c).

261. *Id.* § 339.254(1)(a)(C).

262. *Id.* § 339.254(1)(d).

263. See *supra* Section II.A.

264. See Damon T. Hewitt, *Reauthorize, Revise, and Remember: Refocusing the No Child Left Behind Act to Fulfill Brown's Promise*, 30 YALE L. & POL'Y REV. 169, 193 (2011) (classifying exclusionary school discipline as a barrier to learning).

265. See Henning, *supra* note 191, at 386 (noting the routine reliance of school officials "on police officers to manage student discipline," rather than addressing conduct through "counseling and other in-school interventions").

266. See Kristin Henning, *Eroding Confidentiality in Delinquency Proceedings: Should Schools and Public Housing Authorities Be Notified?*, 79 N.Y.U. L. REV. 520, 593 (2004) (weighing

which intensifies the punitive and stigmatizing nature of such discipline.²⁶⁷ Indeed, the vast majority of public schools in these states maintain zero-tolerance drug policies that would require mandatory expulsion of students in possession of marijuana.²⁶⁸ School enforcement of exclusionary policies based on youth access to marijuana can inflict a substantial present harm²⁶⁹ and can have a permanent impact on a child's educational access and attainment.²⁷⁰ These expulsions curtail the present opportunity for vulnerable youth to have healthy interactions with adults and to engage in positive social interactions with peers in a school setting.²⁷¹ Further, the exclusion of students as a result of marijuana-related school disciplinary policies significantly reduces those students' likelihood of high school graduation, pursuit of higher education, and sustained future employment.²⁷²

“competing concerns about the enduring impact of stigma on offending students, the need for teacher and student safety in schools, and the need to include schools in the rehabilitation of delinquent children” with respect to information-sharing statutes that require courts inform schools of student drug-related convictions or adjudications).

267. See Zachary W. Best, Note, *Derailing the Schoolhouse-to-Jailhouse Track: Title VI and a New Approach to Disparate Impact Analysis in Public Education*, 99 GEO. L.J. 1671, 1677 (2011) (“The ubiquitous presence of law enforcement, combined with the increased use of suspension and expulsion, has, in effect, created a culture of punishment and exclusion in many public schools.”).

268. See Eric Blumenson & Eva Nilsen, *Liberty Lost: The Moral Case for Marijuana Law Reform*, 85 IND. L.J. 279, 290–91 (2010) (providing that the vast majority of public schools maintain zero-tolerance drug policies that would require mandatory expulsion of students who possess marijuana).

269. See Eric Blumenson & Eva S. Nilsen, *One Strike and You're Out? Constitutional Constraints on Zero Tolerance in Public Education*, 81 WASH. U. L.Q. 65, 86–87 (2003) (arguing that exclusionary school discipline policies constitute an educational deprivation).

270. See Derek W. Black, *The Constitutional Limit of Zero Tolerance in Schools*, 99 MINN. L. REV. 823, 833–34 (2015) (“A single suspension, similarly, places students at high risk of long-term expulsion, drop-out, unemployment, and ultimately prison.”).

271. See Cara H. Drinan, *Graham on the Ground*, 87 WASH. L. REV. 51, 80–81 (2012) (quoting Elizabeth S. Scott & Laurence Steinberg, *Social Welfare and Fairness in Juvenile Crime Regulation*, 71 LA. L. REV. 35, 65 (2010)) (noting the importance of “healthy social contexts,” which “entail positive authority figures, socialization with peers, and participation in education” for juvenile offenders); S. David Mitchell, *Zero Tolerance Policies: Criminalizing Childhood and Disenfranchising the Next Generation of Citizens*, 92 WASH. U. L. REV. 271, 283–84 (2014) (noting how students who are subject to exclusionary school discipline policies “are deprived of valuable classroom instruction time [and, u]pon their return, . . . these students fall even further behind.”).

272. See Mitchell, *supra* note 271, at 283–84 (“[S]tudents who face the harsh penalties associated with zero tolerance policies are not only more likely to drop out but are also at an increased risk for

Similar to the enforcement of criminal laws, these exclusionary discipline practices are disproportionately imposed upon students of color.²⁷³ Finally, the overbreadth in the imposition and enforcement of these zero-tolerance policies can actually cause an inverse result of the schools' desired outcomes: it can lead to diminished student perceptions about the schools' authority.²⁷⁴ All of these negative individual outcomes can have significant negative societal outcomes.²⁷⁵ Consequently, an examination of the marijuana-related school discipline policies in Colorado, Washington, Alaska, and Oregon is particularly relevant in analyzing the harms that persist when students are not thoroughly educated about marijuana in fully legalized states.²⁷⁶

In Colorado, marijuana-related activities can be the basis for significant school discipline.²⁷⁷ The use, possession, sharing, or sale of marijuana, like any other controlled substance, on school grounds, in a school vehicle, at a school activity, or at a school-sanctioned event "may be grounds for suspension or expulsion of a child from a public school during a school year."²⁷⁸ Expulsion within the past year from any school district can be the

contact with the juvenile justice system. And with each successive contact with the juvenile justice system, these [students] are at an increased risk of future contacts with the criminal justice system. As a consequence, the severity of punishment increases with each successive contact. While some students will recover from the educational disruption and will avoid future contacts with the criminal justice system, others will not. These students will face lifetime consequences of a disciplinary system that removes discretion.").

273. See Maureen Carroll, *Racialized Assumptions and Constitutional Harm: Claims of Injury Based on Public School Assignment*, 83 TEMP. L. REV. 903, 932 (2011) (noting the disproportionate impact of exclusionary school discipline on African-American and Latino students).

274. See, e.g., Steven J. Mulroy, *Sunlight's Glare: How Overbroad Open Government Laws Chill Free Speech and Hamper Effective Democracy*, 78 TENN. L. REV. 309, 367 (2011) (noting how the overbreadth of zero tolerance behaviors leads to diminished student perceptions about "both the dangers of marijuana and the authority of the school").

275. See Black, *supra* note 270, at 834 ("A significant percentage of drop outs, for predictable reasons, are subsequently incarcerated. The path from suspension to prison is not happenstance. Various studies document how the school discipline system has become a pipeline into the prison system, increasing students' risk of contact with the criminal justice system and directly referring students to the juvenile justice system.").

276. See *infra* notes 278–95 and accompanying text.

277. See *infra* notes 278–95 and accompanying text.

278. COLO. REV. STAT. ANN. § 22-33-106(1)(d)(II) (West 2016); COLO. CODE REGS. § 301-68:6.05 (2016) (making the "sale or sharing of any drug or controlled substance . . . grounds for

basis for denial of admission to another public school.²⁷⁹ If a person under age eighteen is adjudicated or convicted of use, possession, or sale of marijuana on school premises, the court must “notify the school district in which the person is enrolled that the person is subject to mandatory expulsion.”²⁸⁰ School districts also must be informed by the court of an adjudication or conviction for any marijuana-related criminal offense by a person under the age of eighteen.²⁸¹ Additionally, the district attorney is required to report to the division of criminal justice “the name of any student who was granted pre-file juvenile or adult diversion for a ticket, summons, or offense that occurred” on school premises, on school property, or during a school activity.²⁸²

Under the Washington Code, students can be subject to long-term suspension or expulsion from public school if “a minor enrolled in any common school is convicted in adult criminal court, or adjudicated or entered into a diversion agreement with the juvenile court”²⁸³ of a marijuana violation under the State Uniform Controlled Substances Act.²⁸⁴ Long-term suspensions or expulsions are also permissible sanctions for multiple instances of willfully disobeying an order to leave school grounds when under the influence of drugs.²⁸⁵ Further, it is a gross misdemeanor for a person under the influence of drugs to disobey a school chief administrative officer’s order to leave school premises.²⁸⁶

Children may be suspended from or denied admission to Alaska public schools for “behavior that is inimicable to the welfare, safety, or morals of other pupils or a person employed or volunteering at the school”²⁸⁷ or for a “conviction of a felony that the governing body of the district determines will cause the attendance of the child to be inimicable to the welfare or

suspension or expulsion”).

279. *See* COLO. REV. STAT. ANN. § 22-33-106(3)(c).

280. *Id.* § 22-33-106.5(1).

281. *See id.* § 22-33-106.5(2).

282. *Id.* § 20-1-113(4).

283. WASH. REV. CODE ANN. § 13.04.155(1)(d) (West 2016).

284. *See id.* § 28A.600.020(5)(a)(ii).

285. *See id.* § 28A.600.020(5)(a)(i) (citing § 28A.635.020).

286. *Id.* § 28A.635.020(1), (4).

287. ALASKA STAT. ANN. § 14.30.045(2) (West 2016).

education of other pupils.”²⁸⁸ Although there are no reported cases regarding the enforcement of this statute, it seems that its breadth could apply to possession or use of marijuana on school premises or to a marijuana-related juvenile adjudication or criminal conviction.²⁸⁹

Oregon district school boards are charged with the adoption and “widest possible distribution” of their written policies of pupil conduct and discipline, in accordance with minimum regulatory standards of the State Board of Education,²⁹⁰ which include coverage of “[a]lcohol, drugs, and tobacco.”²⁹¹ These policies must require student discipline, suspension, or expulsion for misconduct, which includes “[u]nlawful use of drugs, narcotics, or alcoholic beverages.”²⁹² Such policies may more broadly allow for disciplinary conduct, including suspension and expulsion, for student “[p]ossession or distribution of tobacco, alcohol, drugs or other controlled substances.”²⁹³ In addition to these enumerated disciplinary actions under the statute, these policies grant school officials “residual disciplinary authority” to penalize refractory students who violate the rules regarding such possession.²⁹⁴ Specifically, this residual disciplinary authority has been construed to allow for the lawful permanent removal of a high school student body president from his student government office who was found in possession of marijuana on school property.²⁹⁵

4. Impediments to Future Higher Educational Opportunities

In addition to avoiding the harms that result from criminal, transportation, and school-exclusionary penalties, K–12 marijuana-specific

288. *Id.* § 14.30.045(5).

289. *Cf.* Brent E. Troyan, Note, *The Silent Treatment: Perpetual in-School Suspension and the Education Rights of Students*, 81 TEX. L. REV. 1637, 1640–42 (2003) (emphasizing the broad discretion school administrators have “to define the offenses for which a student may be expelled [or suspended] from school,” and that such a punishment could be warranted for drug-related problems).

290. OR. REV. STAT. ANN. § 339.240(2) (West 2016).

291. OR. ADMIN. R. 581-021-0050(1)(g) (2016).

292. *Id.* 581-021-0055(2)(g).

293. OR. REV. STAT. ANN. § 339.250(2)(a)(C).

294. *Ferguson v. Phx.-Talent Sch. Dist.* No. 4, 19 P.3d 943, 948 (Or. Ct. App. 2001).

295. *Id.* at 944, 948.

education in fully legalized states is necessary to ensure that youth do not engage in activities that will impede future higher educational opportunities.²⁹⁶ These barriers to higher education can have a legitimate and significant impact on the individual, in terms of diminution in societal membership status,²⁹⁷ and on society as a whole.²⁹⁸ Without Title IV support, higher education is often not a possibility, and the stigma attached to this deprivation can lead youth to engage in alternative harmful behaviors.²⁹⁹ Also, given the racial disparities in terms of criminal enforcement of marijuana laws, these bars to higher education access will have the largest impact on minorities.³⁰⁰ Consequently, K–12 marijuana-specific instruction should be a state priority in fully legalized states to deter against the garnering of these negative societal collateral consequences.³⁰¹

296. See MARSHA ROSENBAUM, *SAFETY FIRST: A REALITY-BASED APPROACH TO TEENS AND DRUGS* 21–25 (Drug Policy All. ed., 2014) (advocating for a comprehensive education program that will enable students to understand “the consequences of violating school rules and local, state, and federal laws against the use, possession and sale of . . . marijuana,” such as the denial of college loans).

297. See Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367, 405 (2006) (discussing how collateral consequences, like student loan ineligibility for a drug conviction, “diminish the societal membership status of the individual convicted”).

298. See, e.g., Youngjae Lee, *Recidivism as Omission: A Relational Account*, 87 TEX. L. REV. 571, 618–19 (2009) (using the drug-conviction student loan ineligibility statute as an example of “the increasing punitiveness of the American criminal justice system in the past few decades [that] has had the perverse effect of driving up the rate of recidivism”); David A. Super, *A New New Property*, 113 COLUM. L. REV. 1773, 1796 (2013) (discussing the link between access to higher education and the accumulation of assets by low-income families and how barriers to such access will result in wealth disparities that “may exacerbate racial differences”).

299. See Eva S. Nilsen, *Decency, Dignity, and Desert: Restoring Ideals of Humane Punishment to Constitutional Discourse*, 41 U.C. DAVIS L. REV. 111, 138 (2007) (characterizing criminal conviction collateral consequences, including Title IV student aid ineligibility, as “disabilities [that] ensure further stigma, deprivation, and despair”).

300. See Aliza Cover, *Cruel and Invisible Punishment: Redeeming the Counter-Majoritarian Eighth Amendment*, 79 BROOK. L. REV. 1141, 1186–87 (2014) (discussing how despite uniform rates of use, marijuana possession laws are disproportionately enforced against minorities, and how this type of discretionary enforcement would likely be effectuated on college and university campuses).

301. See Omari Scott Simmons, *Class Dismissed: Rethinking Socio-Economic Status and Higher Education Attainment*, 46 ARIZ. ST. L.J. 231, 298 (2014) (“A decline in higher education access and affordability for low-[socio-economic status] students will spur a concomitant decline in the societal and individual benefits produced by the nation’s higher education system, bringing on adverse

With respect to postsecondary school access, a collateral consequence of a marijuana conviction can be federal student aid ineligibility.³⁰² Currently enrolled students in receipt of Title IV funds who are convicted of any federal or state offense involving the possession of a controlled substance,³⁰³ which includes marijuana,³⁰⁴ are not eligible for Title IV federal student aid—which includes grants, loans, or work assistance—for one year from the conviction.³⁰⁵ A second conviction results in a two-year ineligibility period, and a third offense results in indefinite ineligibility to federal student aid.³⁰⁶ Currently enrolled students receiving Title IV funds who are convicted of a criminal offense under federal or state law for the sale of a controlled substance, including marijuana, are ineligible for two years from the conviction.³⁰⁷ A second conviction for the sale of marijuana would result in indefinite ineligibility with respect to federal student aid.³⁰⁸

Providing K–12 marijuana-specific education in fully legalized states would help deter youth actions that might lead to the incurrence of these impediments to higher education.³⁰⁹ It would also alleviate the pressing necessity for increased marijuana education that now must be conducted at the college and university levels in these states to ensure these institutions' compliance with federal laws.³¹⁰ As a condition of eligibility for federal

consequences: reduced tax revenues, high incarceration rates, poor health outcomes, poverty, social polarization, and a decline in democratic participation.”).

302. See Jenny Roberts, *Crashing the Misdemeanor System*, 70 WASH. & LEE L. REV. 1089, 1126 (2013) (discussing federal student aid ineligibility as a significant collateral consequence even for a relatively minor criminal charge).

303. See Higher Education Act, 20 U.S.C. § 1091(r)(1) (2012).

304. See *id.* § 1091(r)(3) (defining controlled substance as the Federal Controlled Substances Act definition). Under the Federal Controlled Substances Act, marijuana is a controlled substance. See 21 U.S.C. § 812(c)(Schedule D)(c)(10) (2012).

305. 20 U.S.C. § 1091(r)(1).

306. *Id.*

307. *Id.*

308. *Id.*

309. Cf. Rosenbaum, *supra* note 296, at 25 (explaining that “support is now growing for ‘restorative practices’ that attempt to bring students closer to their communities and schools” to prevent them from falling victim to drug-related penalties that lead to decreased future opportunities).

310. See Hawkins, *supra* note 66, at 400–02 (discussing the benefits and importance of an early drug education for children and adolescents).

financial assistance, “including participation in any federally funded or guaranteed student loan program,” institutions of higher education must certify to the Secretary of the Department of Education that “the institution has adopted and has implemented a program to prevent the use of illicit drugs and the abuse of alcohol by students and employees.”³¹¹ This Higher Education Act program requires annual, campus-wide distribution to all students and employees of the:

standards of conduct that clearly prohibit . . . the unlawful possession, use, or distribution of illicit drugs and alcohol by students and employees on the institution’s property or as part of any of the institution’s activities; a description of the applicable legal sanctions under local, State, or Federal law for the unlawful possession or distribution of illicit drugs and alcohol; a description of the health-risks associated with the use of illicit drugs and the abuse of alcohol; a description of any drug or alcohol counseling, treatment, or rehabilitation or re-entry programs that are available to employees or students; and a clear statement that the institution will impose sanctions on students and employees (consistent with local, State, and Federal law), and a description of those sanctions, up to and including expulsion or termination of employment and referral for prosecution, for violations of the standards of conduct.³¹²

The illicit drugs in these programs include marijuana.³¹³

In each of the fully legalized states, colleges and universities have struggled with the presence of marijuana on campus and the “disconnect between the new state laws and existing federal laws.”³¹⁴ In order to comply with the conditions for eligibility for federal financial assistance, institutions of higher education in these states are maintaining drug-free campus policies and programs that prohibit the on-campus presence of marijuana that is

311. 20 U.S.C. § 1011i(a).

312. *Id.* § 1011i(a)(1).

313. *See* 21 U.S.C. § 812(c)(Schedule I)(c)(10) (2012) (defining marijuana as a controlled substance under the Federal Controlled Substances Act).

314. Libby Sander, *Colorado and Washington Legalize Pot, Putting Colleges in a Bind*, CHRON. HIGHER EDUC. (Nov. 7, 2012), <http://chronicle.com/article/ColoradoWashington/135618>.

lawful for adults who are twenty-one and older in the state.³¹⁵ Student confusion regarding these school regulations continues to be an issue years after passage of the initial ballot initiatives that legalized marijuana in these states.³¹⁶ The sanctions for marijuana possession on campus are equivalent to those at the K–12 level, including exclusionary disciplinary actions or referrals for criminal prosecution.³¹⁷ Enforcement of such sanctions at the college level can have similar negative individual and societal outcomes akin to the enforcement of such policies at the K–12 level.³¹⁸ Consequently, requiring increased educational opportunities at the elementary and secondary levels to discuss the full ramifications of marijuana use would assist institutions of higher education in these states, as well as the youth of the state who plan to attend or are attending college or university there.³¹⁹ This type of foundational education would certainly be more effective than the current need for more intensive regulation and enforcement that results from the confusion engendered by this lack of education.³²⁰

III. THE NEED FOR STATE LEGISLATION ON MARIJUANA-SPECIFIC INSTRUCTION FOR K–12 SCHOOLS

Given the significant and substantial harms that can result from the lack of sufficient, specific marijuana education in schools, it is incumbent upon

315. *See id.* (discussing the maintenance of federally regulated alcohol and drug policies in state institutions of higher education in Colorado and Washington post-legalization in order to obtain federal funds).

316. *See* Taylor Harvey, *Even in Colorado and Washington, Pot on Campus Is 'Not OK,'* CHRON. HIGHER EDUC. (Jan. 24, 2014), <http://www.chronicle.com/article/Even-in-Colorado-and/144091> (discussing how colleges are still attempting to clarify that marijuana remains illegal on campus two years after the ballot initiatives in Colorado and Washington).

317. *See id.* (outlining the student disciplinary action that can result from violating campus codes-of-conduct provisions regarding drug possession and use).

318. *See, e.g.,* Douglas Husak, *Predicting the Future: A Bad Reason to Criminalize Drug Use*, 2009 UTAH L. REV. 105, 113 (2009) (“Removing drug-using kids from schools . . . is bound to increase their consumption.”).

319. *See* Hawkins, *supra* note 66, at 400–02.

320. *See, e.g.,* Kristal Otto Stanley, *The Fourth Amendment and Dormitory Searches—A New Truce*, 65 U. CHI. L. REV. 1403, 1403–04 (1998) (discussing the costs of stricter drug and alcohol regulatory enforcements on college and university campuses).

these fully legalized states to prevent these harms through the amendment of their K–12 public school drug and alcohol instructional statutes to explicitly require marijuana education.³²¹ Current attempts to provide more globalized marijuana education in these states—such as pre-legalization general alcohol and drug instructional statutory requirements, school grant programs for drug or marijuana education outside of mandated instruction, the development of optional marijuana abuse prevention curricula, and public health campaigns—do not wholly remediate these harms.³²² These piecemeal approaches do not provide the uniform instructional delivery of marijuana-specific education that is necessary to guard against the negative consequences that may befall youth in a fully legalized state.³²³

Instead, to thoroughly educate fully legalized states' children about marijuana, state legislation on marijuana-specific instruction for all K–12 schools is needed.³²⁴ In an environment of intense fiscal concerns regarding state education budgets,³²⁵ such state statutes would not contravene any federal laws that allocate federal funding for drug education in state schools.³²⁶ In fact, the recent reauthorization of the Elementary and Secondary Education Act, now the Every Student Succeeds Act of 2015,³²⁷ provides considerably fewer content constrictions on federally funded drug education than the former Safe and Drug-Free Schools and Communities Act.³²⁸ The conducive environment created by this reauthorization indicates

321. See, e.g., Matthew A. Christiansen, *A Great Schism: Social Norms and Marijuana Prohibition*, 4 HARV. L. & POL'Y REV. 229, 247 (2010) ("If marijuana laws are changed, there is good reason to believe that honest education will help children understand the potential health risks of using marijuana.").

322. See *infra* Section III.A.

323. See, e.g., Stephen Shie-Wei Fan, Note, *Immigration Law and the Promise of Critical Race Theory: Opening the Academy to the Voices of Aliens and Immigrants*, 97 COLUM. L. REV. 1202, 1217 n.77 (1997) (discussing the inefficiency of piecemeal change in education).

324. See *infra* Section III.A.

325. See Barry Friedman & Sara Solow, *The Federal Right to an Adequate Education*, 81 GEO. WASH. L. REV. 92, 154 (2013) (discussing the difficult legal and political choices state legislatures encounter with respect to state education budgets during challenging economic times).

326. See *infra* Section III.B.

327. See Every Student Succeeds Act of 2015, Pub. L. No. 114-95, 129 Stat. 1802 (2015).

328. See Safe and Drug-Free Schools and Communities Act, Pub. L. 89-10, Title IV, § 4152 (repealed 2015).

that these enhanced instructional state statutes are ripe for enactment.³²⁹ These marijuana-specific statutes would dovetail with federally stated National Education Goals³³⁰ and Congressional declarations regarding schools' responsibility.³³¹ Concurrently, such statutes would situate these educational priorities within state control, the appropriate situs for this localized instructional content.³³²

Explicit marijuana instructional statutes are not without precedent among statutes in states that have legalized marijuana in some form.³³³ In fact, Oregon already has express drug identification as a focal point of mandated K–12 education in a statute regarding another classified controlled substance: anabolic steroids.³³⁴ These existing state statutes can provide guidance for the necessary K–12 marijuana instructional state legislation.³³⁵ The enactment of these statutes would facilitate the one point of consensus among all perspectives on marijuana legalization: the need for comprehensive education to ensure prohibitions on youth marijuana access

329. See Jody Freeman & David B. Spence, *Old Statutes, New Problems*, 163 U. PA. L. REV. 1, 13 (2014) (“[L]egislation (rather than inaction) is the likely outcome when (i) people perceive the problem as important, (ii) the policy community has identified the apparent solution, and (iii) *the partisan political environment is conducive* to the formation of a legislative majority.”).

330. See 20 U.S.C. § 5812(7)(B)(iv) (2012) (stating an objective for “every local education agency [is to] develop and implement a sequential, comprehensive kindergarten through twelfth grade drug and alcohol prevention education program”).

331. See *infra* Section III.B; see also, e.g., 20 U.S.C. § 3402 (2016) (recognizing the efforts of “the local school systems and other instrumentalities of the States . . . to improve the quality of education”); see also S. REP. NO. 114-231, at 2 (2016) (stating that a major purpose of the Every Student Succeeds Act of 2015 is to “restore[] to States, school districts, classroom teachers, and parents the responsibility for making important decisions about how to raise academic standards, improve the quality of assessments, evaluate and reward educators, identify and improve low-performing schools, and ultimately improve student achievement”).

332. See Steven G. Calabresi, “*A Government of Limited and Enumerated Powers*”: *In Defense of United States v. Lopez*, 94 MICH. L. REV. 752, 803 (1995) (highlighting “the peculiar value of state control over the content of education, both as a vehicle for reflecting cultural diversity and for fear of what a national power might do with education”).

333. See *infra* Section III.C.

334. See OR. REV. STAT. ANN. § 342.726(1) (West 2016) (“School districts shall include information on anabolic steroids and performance-enhancing substances, including prevention strategies, strength-building alternatives and the understanding of health food labels, in health and physical education curricula for kindergarten through grade 12 students.”).

335. See *infra* Section III.C.

and to avoid harms that result from that access.³³⁶ Further, the enactment of this legislation could serve as a model for states that embrace full legalization in the future,³³⁷ which would avoid the legislative lag that fully legalized states are currently experiencing.³³⁸ Indeed, the inclusion of these educational provisions—which reflect the emphasis of keeping marijuana out of the possession of minors—within marijuana legalization ballot initiatives themselves would act as preliminary safeguards for those states’ children.³³⁹

A. *Current Approaches to Marijuana Education in Fully Legalized States Do Not Sufficiently Protect Youth Against Harms*

The current approaches to providing marijuana education in Colorado, Washington, Alaska, and Oregon are not sufficient to ensure that the youth in these states are completely aware of the deleterious consequences of accessing marijuana.³⁴⁰ The existing pre-legalization drug and alcohol instructional statutes do not provide adequate safeguards for educating children about marijuana, because the statutes’ drug components encompass hundreds of substances under federal and state law.³⁴¹ Marijuana is just one of the hundreds of drugs, controlled substances, and their immediate precursors included within current statutory definitions of drugs in these pre-legalization statutes.³⁴² It is unsurprising then that none of these states have educational regulations that expressly require marijuana instruction in their schools, and none of these states have incorporated compulsory marijuana

336. See *supra* Section II.B.

337. See David Adam Friedman, *Public Health Regulation and the Limits of Paternalism*, 46 CONN. L. REV. 1687, 1755 (2014) (discussing the likelihood of multiple states pursuing full legalization initiatives, especially after the issuance of the 2013 Cole Memorandum).

338. See Brienne J. Gorod, *The Collateral Consequences of Ex Post Judicial Review*, 88 WASH. L. REV. 903, 924 (2013) (noting that legislative lag can have significant effects, “especially depending on the nature of the democratic disruptions and the length of the lag”).

339. See *infra* Section III.C (discussing the positive effects of including such provisions in new state legislation and ballot initiatives).

340. See *infra* Section III.A.

341. See *infra* notes 354–56, 389–90, 409–13, 418–22 and accompanying text.

342. See *infra* notes 351–52, 386–88, 407–08, 420–22 and accompanying text.

education into their existing academic or learning standards.³⁴³

Other current attempts to provide marijuana education do not adequately cure the harms of a lack of specific K–12 instruction on this issue. These alternative attempts include: school grant programs for drug or marijuana education outside of mandated classroom instruction; the development of marijuana abuse prevention curricula that is available, but optional, for schools to use; and statewide public health education campaigns.³⁴⁴ Because these measures are voluntary and contingent upon external constraints,³⁴⁵ they do not have the same efficacy as a statutory requirement that would reach all of the students in the state’s K–12 school systems. Further, these piecemeal approaches—without a direct state legislative mandate and instructional guidance—can result in a duplication of efforts that waste efficiencies in already stretched state government resources and budgets.³⁴⁶ Therefore, to focus on the better way forward, it is important to provide a comprehensive examination of the educational and legal deficiencies in the current approaches of the four fully legalized states.³⁴⁷

1. Colorado’s Attempts to Provide Marijuana-Related Education

Colorado has not enacted mandatory K–12 marijuana-specific education legislation in light of the full legalization of the drug for adults in the state.³⁴⁸ Instead, a pre-legalization statute still requires generalized alcohol and drug instruction in elementary and secondary schools.³⁴⁹ Under this statute,

343. *See infra* notes 358–69, 389–90, 409–13, 427–39 and accompanying text.

344. *See infra* notes 358–79, 397–401, 415–16, 450–53 and accompanying text.

345. *See* Richard B. Stewart, *Reconstitutive Law*, 46 MD. L. REV. 86, 99 (1986) (discussing how conditional grant programs often contain a complex set of prescriptive rules that tend to be “excessively burdensome”).

346. Fully legalized states enacting marijuana instructional laws should avoid the type of duplicative efforts that other states with other forms of marijuana legalization have contemplated. *See* CAL. EDUC. CODE § 51268 (West 2016) (“The State Department of Education shall encourage school districts and county offices of education to avoid duplication of efforts with regard to education programs for the prevention of drug, alcohol, and tobacco abuse.”).

347. *See infra* Sections III.A.1–4.

348. *Cf.* COLO. REV. STAT. ANN. § 22-1-110 (West 2016).

349. *See id.*

The nature of alcoholic drinks and controlled substances, . . . and special instruction as to their effects upon the human system in connection with the several divisions of the subject of physiology and hygiene, as to the physical, emotional, psychological, and social dangers of their use with an emphasis upon the nonuse of such substances by school-age children, and as to the illegal aspects of their use shall be included in the branches of study taught to school-age children during grades kindergarten through twelve in the public schools of the state.³⁵⁰

The statute's definition of a controlled substance is "a drug, substance, or immediate precursor included in schedules I through V . . . , including cocaine, marijuana, marijuana concentrate, cathinones, any synthetic cannabinoid, and salvia divinorum."³⁵¹ Included within Schedules I through V are over two hundred drugs, substances, or immediate precursors.³⁵² Consequently, Colorado's current drug and educational statute provides an overly expansive definition of controlled substances that does not adequately focus upon marijuana-specific education.³⁵³

Given that the Colorado General Assembly has enacted a post-legalization statutory requirement that school district boards adopt rules that prohibit the use and possession of retail marijuana and retail-marijuana products on all school property,³⁵⁴ it is problematic that the state legislature has not also amended its educational code to expressly include instruction on the very marijuana that it has charged school district boards to regulate for property restrictions. Like the paucity of marijuana-specific instructional statutes, Colorado does not maintain any state educational regulations regarding marijuana-specific instruction either.³⁵⁵ Colorado's Comprehensive Health Academic Standards, which were adopted prior to the full legalization of marijuana in the state, also make no express mention

350. *Id.*

351. *Id.* § 18-18-102(5).

352. *See id.* §§ 18-18-203 to 18-18-207.

353. *See generally id.*

354. *See id.* § 25-14-103.5(3)(a)(I).

355. *See infra* note 356 and accompanying text.

of marijuana.³⁵⁶

Instead, Colorado has two funding mechanisms to support voluntary basic drug awareness programs in schools, both of which were created prior to full legalization.³⁵⁷ Under the Colorado Comprehensive Health Education Act,³⁵⁸ schools can obtain state funding³⁵⁹ by establishing “a planned, sequential health program of learning experiences in preschool, kindergarten, and grades one through twelve which shall include . . . [coverage of t]obacco, alcohol, and other drug use.”³⁶⁰ The Colorado law-related education program was created to promote “behavior which will reduce through education the incidence of gang or other antisocial behavior and substance abuse by students in the public school system.”³⁶¹ Under this voluntary program, the schools provide law-related instruction on citizenship, constitutional democracy, and the role of law in society to develop resistance to substance abuse.³⁶² However, while both of these grant programs target general drug awareness, they do not specifically identify marijuana education as a required component.³⁶³ Thus, these pre-legalization grant programs suffer from the same definitional deficiencies as the pre-legalization globalized drug and alcohol instructional statutes.³⁶⁴ Additionally, these grant programs do not ensure instruction to all K–12 students given their conditional and voluntary nature.³⁶⁵

Since full legalization, Colorado has attempted two other voluntary

356. See *Colorado Academic Standards: Comprehensive Health & Physical Education*, COLO. DEP’T EDUC. (Dec. 10, 2009), https://www.cde.state.co.us/sites/default/files/documents/cohealthpe/documents/health_pe_standards_adopted_12.10.09.pdf (providing no express reference to marijuana in any of the K–12 academic standards).

357. See *infra* notes 358–65 and accompanying text.

358. COLO. REV. STAT. ANN. § 22-25-101.

359. See *id.* § 22-25-105 (providing the allocation of funds for the comprehensive health education program participation by the State Board of Education); *id.* § 22-25-106(1)(a) (encouraging the establishment of local comprehensive health education programs).

360. *Id.* § 22-25-103(3)(e).

361. *Id.* § 22-25-104.5(1)(a).

362. *Id.* § 22-25-104.5(1)(b), (2)(b).

363. See generally *id.* §§ 22-25-103, 22-25-104.5.

364. See *supra* notes 348–53 and accompanying text.

365. See, e.g., COLO. REV. STAT. ANN. § 22-25-104(1) (outlining the voluntary nature of the comprehensive health education program); *id.* § 22-25-110(2) (noting that school districts can offer health education programs that do not operate under the grant program).

educational provider grant initiatives, outside of a statutory K–12 school instructional framework, to prevent youth marijuana use.³⁶⁶ The Colorado Department of Health Care Policy and Financing oversees the School-Based Substance Abuse Prevention and Intervention Grant Program, which awards grants to schools and nonprofit entities for the provision of “school-based prevention and intervention programs for youth twelve to nineteen years of age primarily focused on reducing marijuana use, but including strategies and efforts to reduce alcohol use and prescription drug misuse.”³⁶⁷ The Colorado General Assembly also established a behavioral health care professional matching grant program in 2014 to provide funding to education providers:

(I) To increase the presence of school health professionals in secondary schools to provide substance abuse and behavioral health care to students who are enrolled in secondary schools and have substance abuse or other behavioral health needs; (II) To provide training and resources for school staff on the implementation of evidence-based programming on substance abuse prevention education for all students who are enrolled in secondary schools; and (III) To allow school health professionals to connect students who are enrolled in secondary schools with services that are provided by community-based organizations for treatment and counseling for students who are at risk for substance abuse.³⁶⁸

Priority criteria for the school behavioral grant program include the secondary schools’ need for additional health professionals based on “data regarding marijuana and the number of marijuana establishments located within the boundaries of a school district.”³⁶⁹

While these post-legalization, school-based grant programs explicitly reference marijuana, they are still not sufficient on their own to safeguard

366. *See infra* notes 367–68 and accompanying text.

367. COLO. REV. STAT. ANN. § 25.5-1-206(3)(a).

368. *Id.* § 22-96-103(1)(a). Secondary schools under the grant program are public schools with “any of grades seven through twelve.” *Id.* § 22-96-102(4).

369. COLO. CODE REGS. § 301-97:2.01(3)(a) (2016).

the state's youth, because they are contingent upon the individual school's choices to participate in the grant program, the school's compliance with the criteria and priorities of the grant application process, and the state's competitive selection of such schools.³⁷⁰ Also, many of these grant programs provide funds for marijuana-specific education or support that takes place outside of the classroom.³⁷¹ These aspects of self-selectivity, grant criteria and priority compliance, competitive grant allocations, and broad-based instruction outside of the classroom limit the student populations that will receive this important education.³⁷² Therefore, these grant programs are not sufficient measures to ensure that marijuana-specific instruction is being provided to the bulk of Colorado's children.

Post-legalization, the major thrust of Colorado's educational efforts regarding marijuana has been general public health campaigns.³⁷³ In January 2015, the Department of Public Health and Environment (DPHE) began the Good to Know campaign, "an eighteen-month public awareness campaign to address the immediate educational needs of the public in response to the legalization of retail marijuana in the state."³⁷⁴ In August 2015, DPHE launched a youth marijuana education and prevention campaign as part of the Good to Know campaign.³⁷⁵ There is also an official Colorado website for retail marijuana information and resources,³⁷⁶ which includes fact sheets

370. *Id.* § 301-97:2.01(1)–(5); *see generally* COLO. REV. STAT. ANN. § 25.5-1-206.

371. *See Effective Policies & Programs to Restrict Youth Access & Exposure to Drugs/Alcohol*, COLO. DEP'T PUB. HEALTH & ENV'T 5–6, https://www.colorado.gov/pacific/sites/default/files/CHEIS-ALI-MAFFEY-PRESENTATION_updated.pdf (last visited Oct. 19, 2016) (listing state community outreach and education programs with funding).

372. COLO. CODE REGS. § 301-97:2.01(1)–(7).

373. *See Birkeland, supra* note 31 ("The Colorado Department of Education has not changed its statewide health curriculum guidelines since voters legalized marijuana. Up to this point, it has used money from marijuana taxes to put out a series of public service announcements on pot's negative effects.").

374. COLO. REV. STAT. ANN. § 25-3.5-1003(1). This section was repealed with an effective date of July 1, 2016. *See id.* § 25-3.5-1003(3).

375. *See* David Brendsel, *State Health Department Launches Youth Marijuana Education and Prevention Campaign*, COLO. (Aug. 19, 2015), <https://www.colorado.gov/pacific/marijuana/news/youth-marijuana-education-campaign>.

376. *Colorado Marijuana*, COLO., <https://www.colorado.gov/marijuana> (last visited Sept. 30, 2016).

geared towards parents, youth, teachers, and health care providers.³⁷⁷ While these types of public health campaigns can convey positive messaging to their state constituents, they, like the grant programs, do not provide sufficient coverage in terms of extending to the state's youth.³⁷⁸ Consequently, these public health campaigns are not an adequate mechanism to provide complete marijuana-specific instruction to the state's children and adolescents.³⁷⁹

2. Washington's Attempts to Provide Marijuana-Related Education

Washington has not enacted mandatory K–12 marijuana-specific education legislation in light of the full legalization of the drug for adults in the state.³⁸⁰ Instead, Washington's K–12 public schools are required by a pre-legalization statute to give instruction in “physiology and hygiene with special reference to the effects of alcohol and drug abuse on the human system.”³⁸¹ Although this instructional statute was amended in 2013—after marijuana legalization—to require instruction in handwriting rather than instruction in penmanship,³⁸² the Washington State Legislature did not provide the necessary statutory enhancements to the requirements for drug abuse instruction.³⁸³ Washington's instructional statute, unlike the Colorado analogue, does not expressly define the term drug.³⁸⁴ Therefore, Washington's statute suffers from even greater generalization deficiencies than Colorado's with respect to the lack of specific inclusion of instruction on marijuana.³⁸⁵ Under the Washington Controlled Substances Act, a drug is

377. *Shareable Resources*, COLO., <https://www.colorado.gov/pacific/marijuana/shareable-resources> (last visited Oct. 19, 2016).

378. Cf. Jonathan Todres, *Moving Upstream: The Merits of a Public Health Law Approach to Human Trafficking*, 89 N.C. L. REV. 447, 492 (2011) (arguing that in order for public health interventions to be effective, they must be multifaceted).

379. *Id.* at 499.

380. *See infra* notes 389–95 and accompanying text.

381. WASH. REV. CODE ANN. § 28A.230.020 (West 2016).

382. *See* S.S.B. 5077, 63d Leg., Reg. Sess. (Wash. 2013).

383. *See id.*

384. *See* WASH. REV. CODE ANN. § 28A.230.020.

385. Cf. *supra* notes 348–53 and accompanying text.

defined as a controlled substance,³⁸⁶ which includes any drug, substance, or immediate precursors on the federal or state schedules.³⁸⁷ Such a definition would extend to hundreds of items, including marijuana.³⁸⁸ The overinclusivity of the education required by this statute needs to be amended to expressly mandate coverage of marijuana to guard against youth access to it.

Washington maintains no educational regulations regarding marijuana-specific instruction in its public schools.³⁸⁹ Further, up until and including the 2016–2017 school year, Washington state schools followed Washington State Health and Fitness Learning Standards that had not been amended since December 1, 2008, prior to the passage of the state’s full legalization initiative, which did not require marijuana-specific instruction.³⁹⁰ This lack of statutorily required, uniform, marijuana-specific education, promulgated through regulation and then articulated in complete learning standards, is a legal deficiency that needs a remedy to provide protection from the previously mentioned harms to the youth of the state.³⁹¹

386. WASH. REV. CODE ANN. § 69.50.101(n).

387. *Id.* § 69.50.101(e).

388. *See id.* §§ 69.50.204–69.50.212 (providing the Washington controlled substances schedules); Controlled Substances Act, 21 U.S.C. § 812 (2012) (providing the federal controlled substances schedules).

389. *See* WASH. ADMIN. CODE, tit. 170 (2016) (providing Department of Early Learning’s regulations); *id.* tit. 180 (providing the State Board of Education’s regulations); *id.* tit. 392 (providing Office of the Superintendent of Public Instruction’s regulations).

390. *Health & Physical Education K–12 Learning Standards Revision Process*, ST. WASH. OFF. SUPERINTENDENT PUB. INSTRUCTION, <http://www.k12.wa.us/HealthFitness/StandardsReview.aspx> (last visited Oct. 19, 2016). However, on March 25, 2016, State Superintendent Dorn adopted the 2016 Health and Physical Education K–12 Learning Standards, which will govern Washington Schools starting with the 2017–2018 school year. *See Washington State K–12 Learning Standards*, ST. WASH. OFF. SUPERINTENDENT PUB. INSTRUCTION, <http://www.k12.wa.us/CurriculumInstruct/learningstandards.aspx> (last visited Oct. 19, 2016). As a very positive measure, these learning standards incorporate marijuana-specific education into some grades of the state curriculum. *See Health & Physical Education*, WASH. ST. LEARNING STANDARDS 41–42 (2016), <http://www.k12.wa.us/HealthFitness/Standards/HPE-Standards.pdf>. To ensure the complete education of the state’s youth, however, this educational requirement needs to extend to all grades in the learning standards, and it needs to flow from a legislative dictate as implemented via regulation. *Id.* at 43 (showing that the learning standards do not continue to incorporate marijuana-specific education into middle or high school).

391. *See supra* Section II.B.

Outside of classroom instruction, the Washington Legislature has found “that the provision of drug and alcohol counseling and related prevention and intervention services in schools will enhance the classroom environment for students and teachers, and better enable students to realize their academic and personal potentials.”³⁹² However, these substance abuse awareness programs are not classified within the State Constitution’s educational provisions and the state’s constitutional funding duty³⁹³ to provide “ample provision for the education of all children residing within its borders”³⁹⁴ within the “general and uniform system of public schools.”³⁹⁵ Because there are no instructional requirements tied to these broad legislative findings, there are no assurances that Washington’s students are currently educated about the complete status of marijuana.³⁹⁶

Washington’s Code does not have as many directives as Colorado’s regarding marijuana public health campaigns, and the actualization of any campaigns has been delayed.³⁹⁷ In June 2014, the Washington State Department of Health launched a marijuana public education campaign targeted at parents of teens and preteens to encourage parental talks about the full legalization of marijuana in the state and the risks of marijuana use.³⁹⁸ The campaign consisted of media and advertising outreach efforts.³⁹⁹ Washington state agencies have also developed a marijuana website⁴⁰⁰ in an

392. WASH. REV. CODE ANN. § 28A.170.075(1) (West 2016).

393. *See id.* § 28A.170.075(3) (“Substance abuse awareness programs funded under this chapter do not fall within the definition of basic education for purposes of Article IX of the State Constitution and the state’s funding duty thereunder.”).

394. WASH. CONST. art. IX, § 1.

395. WASH. CONST. art. IX, § 2.

396. *See* WASH. REV. CODE ANN. § 28A.170.075 (showing, despite an explicit approval of drug education programs, a lack of any mandated instruction on marijuana for public school children).

397. *See* Roger Roffman, *Unkept Promises of Public-Health Education on Marijuana*, SEATTLE TIMES (Apr. 2, 2015, 5:09 PM), <http://www.seattletimes.com/opinion/unkept-promises-of-public-health-education-on-marijuana/> (noting that in the “29 months [that] have passed since voters approved I-502 . . . , almost no attention has been given to public-health education about the drug”).

398. *See Marijuana Public Education Campaign Overview*, WASH. ST. DEP’T HEALTH, <http://www.doh.wa.gov/Portals/1/Documents/8380/MarijuanaPublicEducationCampaignOverview.pdf> (last visited Nov. 7, 2016).

399. *See id.* (discussing the campaign’s radio, digital, and print advertising).

400. *Learn About Marijuana*, U. WASH. ALCOHOL & DRUG ABUSE INST., <http://learnaboutmarijuanawa.org/> (last visited Oct. 19, 2016).

effort to “encourage all parents to make sure they talk with their kids about making healthy choices.”⁴⁰¹ This public health campaign, while possibly beneficial, does not provide the necessary protections in terms of youth education, because it does not have the same guaranteed reach as a state school instructional mandate from the Washington State Legislature.⁴⁰²

3. Alaska’s Attempts to Provide Marijuana-Related Education

Alaska has not enacted mandatory K–12 marijuana-specific education legislation in light of the full legalization of the drug for adults in the state.⁴⁰³ Unlike the other fully legalized states, Alaska merely encourages, and does not require, any type of alcohol and drug education in its elementary and secondary schools.⁴⁰⁴ Alaska’s current code provides that “[e]ach district in the state public school system shall be encouraged to initiate and conduct a program in health education for kindergarten through grade 12,” which “should include instruction in . . . alcohol and drug abuse education.”⁴⁰⁵ This instructional statute predates the state’s full legalization, and, like Washington’s statute, does not define or provide any context for the meaning of the term drug.⁴⁰⁶ Under the Alaska Controlled Substances Act, hundreds of items, including marijuana,⁴⁰⁷ are classified as a drug,

401. Marijuana, CLARK COUNTY WASH. PUB. HEALTH, <https://www.clark.wa.gov/public-health/marijuana> (last visited Oct. 19, 2016); see also *Recreational Marijuana*, WASH. ST. DEP’T HEALTH, <http://www.doh.wa.gov/YouandYourFamily/Marijuana/RetailMarijuana> (last visited Sept. 19, 2016); *About Us*, STARTTALKINGNOW.ORG (last visited Oct. 19, 2016) (“We also implement statewide media campaigns to encourage parents to talk with their children and teens about the risks of alcohol and marijuana use, provide educational resources and support to community groups around the state, and support changes to state policies and laws to support healthy youth and communities.”).

402. See *Our Strategic Plan*, STARTTALKINGNOW.ORG (last visited Oct. 19, 2016) (explaining the public health campaign’s plan, which does not include any legislative or rulemaking actions).

403. See *infra* notes 404–08 and accompanying text.

404. Compare *infra* notes 405–08 and accompanying text, with *supra* Section III.A.1 (explaining Colorado’s current drug and alcohol education statutes), *supra* Section III.A.2 (explaining Washington’s current drug and alcohol education statutes), and *infra* Section III.A.4 (explaining Oregon’s current drug and alcohol education statutes).

405. ALASKA STAT. ANN. §14.30.360(a) (West 2016).

406. See *id.*

407. *Id.* § 11.71.190(b).

substance, or immediate precursor.⁴⁰⁸ Similar to its fully legalized state counterparts, Alaska's overbreadth in terms of drug education in its instructional statute needs to be cured to properly instruct students regarding marijuana.

Although the Alaska State Board of Education is tasked with "establish[ing] guidelines for a health and personal safety education program,"⁴⁰⁹ neither it nor the Alaska Department of Education and Early Development has provided any regulations for marijuana-specific instruction in state schools.⁴¹⁰ Further, the Alaska content standards for "skills for a healthy life" that are in the Department of Education's 2006 publication, Alaska Standards, which predates full legalization,⁴¹¹ make no express mention of marijuana, drugs, or alcohol.⁴¹² Instead, there is a "skills for a healthy life" content standard providing that the student should "understand how the human body is affected by behaviors related to . . . harmful substances" and should "understand and identify the causes, preventions, and treatments for . . . addictions."⁴¹³

Since full legalization, Alaska has not initiated any grant programs that provide marijuana-specific education support inside or outside of classrooms.⁴¹⁴ Instead, the Alaska Department of Health and Social Services announced its marijuana public health education campaign in April 2015, which, like Washington's campaign, largely consisted of media and digital advertising.⁴¹⁵ Another aspect of this campaign was the release of a marijuana informational website.⁴¹⁶ These efforts, like their fully legalized

408. *See id.* §§ 11.71.140–11.71.190 (providing the definitional schedules of controlled substances).

409. *Id.* § 14.30.360(b).

410. *See id.*

411. ALASKA ADMIN. CODE tit. 4, § 04.140 (2016).

412. *See* ALASKA DEP'T EDUC. & EARLY DEV., ALASKA STANDARDS (4th ed. 2006), <https://www.eed.state.ak.us/AKStandards/standards/standards.pdf>.

413. *Id.* at 17.

414. *See supra* notes 409–13 and accompanying text.

415. *See* Suzanna Caldwell, *New Campaign Addresses Public Health Aspects of Alaska's Legal Pot*, ALASKA DISPATCH NEWS (Apr. 29, 2015), <http://www.adn.com/article/20150429/new-campaign-addresses-public-health-aspects-alaskas-legal-pot>.

416. *See Get the Facts About Marijuana*, ALASKA DEP'T HEALTH & SOC. SERVS. DIVISION PUB. HEALTH, <http://www.dhss.alaska.gov/dph/Director/Pages/marijuana/default.aspx> (last visited Oct.

state counterparts' public health campaigns and websites, are not sufficient mechanisms to ensure the instruction of students about the complete ramifications of marijuana access in Alaska.

4. Oregon's Attempts to Provide Marijuana-Related Education

Oregon has not enacted mandatory K–12 marijuana-specific education legislation in light of the full legalization of the drug for adults in the state.⁴¹⁷ In Oregon, as part of the state's statutorily required courses of study, the public schools shall provide special emphasis in instruction to the "effects of tobacco, alcohol, drugs and controlled substances upon the human system" per its pre-legalization instructional statute.⁴¹⁸ Neither this provision nor any other provision in the Oregon Education and Culture Code articulates explicit definitions of drugs or controlled substances.⁴¹⁹ Oregon's Controlled Substances Act defines a controlled substance as any substance that appears on the Federal Controlled Substances Act schedules,⁴²⁰ which include marijuana⁴²¹ and over one hundred other substances.⁴²² Consequently, like the undefined natures of the instructional statutes in Washington and Alaska, Oregon's current tobacco, alcohol, drug, and controlled substances instructional statute does not provide a sufficient safeguard for the purposes of youth marijuana avoidance.⁴²³

In addition to this globalized instruction, each district school board in Oregon is required to adopt a comprehensive alcohol and drug abuse policy and implementation plan.⁴²⁴ This policy and plan shall include

19, 2016).

417. *See infra* notes 418–22 and accompanying text.

418. OR. REV. STAT. ANN. § 336.067(1)(e) (West 2016).

419. *See id.*

420. *See id.* § 475.005(6)(a) (citing Controlled Substances Act, 21 U.S.C. §§ 811–812 (2012)); *see also How 420 Became Code for Marijuana*, BBC NEWS (Apr. 18, 2014), <http://www.bbc.com/news/blogs-magazine-monitor-27039192> (explaining the irony of this footnote).

421. *See* Controlled Substances Act, 21 U.S.C. § 812(c)(Schedule I)(c)(10) (2012) (classifying marijuana as a Schedule I controlled substance).

422. *Id.* § 812 (classifying over one hundred substances on Schedules I–V as controlled substances).

423. *Cf. supra* Sections II.A.2, II.A.3.

424. OR. REV. STAT. ANN. § 336.222.

(1) Alcohol and drug abuse prevention curriculum and public information programs addressing students, parents, teachers, administrators and school board members; (2) The nature and extent of the district's expectation of intervention with students who appear to have drug or alcohol abuse problems; (3) The extent of the district's alcohol and other drug prevention and intervention programs; and (4) The district's strategy to gain access to federal funds available for drug abuse prevention programs.⁴²⁵

However, like the state's instructional statute, this plan does not require marijuana-specific instruction in K-12 classrooms.⁴²⁶

Per legislative mandate,⁴²⁷ the State Board of Education has adopted a regulation that describes the minimum content for inclusion in these comprehensive alcohol and drug abuse policy and implementation plans and the required public school emphasis.⁴²⁸ This minimum content does not specifically include marijuana.⁴²⁹ Instead, the plans must include “[i]nstruction in the effects of tobacco, alcohol, drugs, including anabolic steroids, performance-enhancing and controlled substances as an integral part of the district’s K–12 comprehensive health education program.”⁴³⁰ Further, “at least annually, all high school students, grades 9–12 shall receive age-appropriate instruction about drug and alcohol prevention.”⁴³¹ The curriculum must comply with the Oregon Health Education Academic Content Standards⁴³² and include activities to help students “[u]nderstand the consequences of consuming alcohol and other drugs.”⁴³³ “Basic information shall include: (i) The effects of alcohol, tobacco and other drug use, including anabolic steroids, performance-enhancing and controlled substances [and] (ii) [a]ll laws relating to the use, especially by minors, of

425. *Id.*

426. *See generally id.*

427. *Id.* § 336.235.

428. OR. ADMIN. R. 581-022-0413 (2016).

429. *See id.*

430. *Id.* 581-022-0413(1)(a).

431. *Id.*

432. *Id.* 581-022-0413(1)(a)(A)(iii).

433. *Id.* 581-022-0413(1)(a)(C)(ii).

alcohol and other illegal drugs⁴³⁴ The comprehensive program also must include:

Policies, rules, and procedures which: [i]nclude a philosophy statement relating to drug-free schools and the established tobacco-free policies and procedures for students, staff and visitors[;] [d]efine the nature and extent of the district's program, including a plan to access and use federal funds; [s]tate that alcohol, tobacco, and other drug use by student is illegal and harmful; . . . [and] indicate the consequences for using and/or selling alcohol and other drugs, including the specific rule of the school as it relates to law enforcement agencies.⁴³⁵

The current Oregon Health Education Standards and Benchmarks (OHES) for K–12 include standards for alcohol, tobacco, and other drug prevention at each level.⁴³⁶ These State Board of Education standards have been adopted to guide school districts and public charter schools in their statutorily mandated health instruction.⁴³⁷ However, the OHES “were adopted by the State Board of Education on October 11[,] 2012,”⁴³⁸ and none of these standards explicitly mention marijuana-specific education.⁴³⁹

Unlike Alaska, Washington, and Colorado, Oregon has actually provided for the development of some optional marijuana-specific curricula for schools that are not attached to grant programs.⁴⁴⁰ While this is a positive measure, Oregon's approach could certainly be stronger if these curricula were a component of required K–12 marijuana-specific instruction.⁴⁴¹ Specifically, the 2016 Enacted Amendments of the Control

434. *Id.* 581-022-0413(1)(a)(B)(i)–(ii).

435. *Id.* 581-022-0413(1)(c)(A)–(D).

436. *Oregon Health Education Standards and Benchmarks*, OR. DEP'T EDUC., <http://www.ode.state.or.us/search/page/?=3813> (last visited Oct. 19, 2016) [hereinafter *OHES*].

437. *See* OR. REV. STAT. ANN. § 329.045 (West 2016) (mandating student instruction in health that meets Oregon's academic content standards).

438. *OHES*, *supra* note 436.

439. *Id.*

440. *See infra* note 442 and accompanying text.

441. *See, e.g.*, Hawkins, *supra* note 66, at 400.

and Regulation of Marijuana Act provide that

[a]s part of the comprehensive alcohol and drug abuse policy and implementation plan[s] . . . , the Oregon Health Authority [(OHA)], State Board of Education [(SBE)] and Alcohol and Drug Policy Commission [(ADPC)] shall collaborate on developing supplemental curricula for marijuana abuse prevention and public information programs for students, parents, teachers, administrators and school board members.⁴⁴²

The OHA is charged with reporting on these efforts “each odd-numbered year,”⁴⁴³ but with an initial report due by February 1, 2016.⁴⁴⁴

In this initial report, the OHA affirmed its continued collaboration with the SBE and ADPC “to identify ways to deliver evidence-based education and information to students, parents, teachers, administrators, and school board members.”⁴⁴⁵ These state agencies “identified opportunities to enhance school-based education and messaging,” which include to:

[d]evelop and share a curriculum supplement that reflects legalization of marijuana that school districts may use with current drug education curricula[;] [s]pecifically include marijuana in the alcohol and other drug portion of the Oregon Health Education Standards[;] [d]isseminate, through the Oregon Department of Education, evidence-based youth marijuana prevention messages to parents, teachers, school administrators, and school board members[; and] [d]isseminate information about how to effectively provide health education to support youth to make healthy decisions.⁴⁴⁶

442. OR. REV. STAT. ANN. § 336.241(1) (West 2016).

443. *Id.* § 336.241(2).

444. *See* Or. Laws, Ch. 844, § 118 (2015).

445. OR. HEALTH AUTHORITY, PUBLIC HEALTH’S APPROACH TO YOUTH MARIJUANA PREVENTION, HB 3400 Leg. Rep., at 7 (Feb. 2016), <http://public.health.oregon.gov/PreventionWellness/marijuana/Documents/HB3400-Legislative-Report-Youth-Prevention-2016.pdf>.

446. *Id.*

The OHA also acknowledged the importance of school-based marijuana prevention activities, “[b]ecause schools touch the lives of almost all of Oregon’s children and youth.”⁴⁴⁷ Despite these provisions, the report does not make any recommendations for legislation regarding an express inclusion of marijuana as part of Oregon’s required statutory drug and alcohol school instruction⁴⁴⁸ or any other school-specific legislation.⁴⁴⁹ Consequently, while the development in Oregon of marijuana-specific curricula for schools is an important step forward, its existence outside of a state-supported mandate for marijuana-specific K–12 instruction does not provide the complete protections that are necessary to prevent Oregon youth from accessing marijuana.

In June 2015, Oregon, like Colorado, Washington, and Alaska, also launched a marijuana education public health campaign after legalization.⁴⁵⁰ The campaign “targets people between the ages of [eighteen] and [thirty-five].”⁴⁵¹ The campaign involves the state website,⁴⁵² and it relies heavily upon social media to disseminate its message.⁴⁵³ Given this target audience for the initial public health campaign, it is not an adequate way to ensure that children under the age of twenty-one are not accessing or attempting to access marijuana in the state.

447. *Id.* at 8.

448. OR. REV. STAT. ANN. § 336.067(1)(e).

449. OR. HEALTH AUTHORITY, *supra* note 445, at 8–9 (providing only two legislative recommendations: “1. Decrease the volume of marijuana advertising and marketing” and “2. Protect young people in every community in Oregon from starting to use marijuana by funding a comprehensive, statewide, long-term marijuana prevention program” that does not expressly identify schools).

450. See Noelle Crombie, *Oregon Launches ‘Educate Before You Recreate’ Marijuana Public Education Campaign*, OREGONLIVE (June 16, 2015, 3:00 PM), http://www.oregonlive.com/marijuana/index.ssf/2015/06/oregon_launches_educate_before.html (last visited Sept. 5, 2016).

451. *Id.* (providing the campaign designers’ target audience).

452. See EDUCATE BEFORE YOU RECREATE, <http://whatslegaloregon.com/> (last visited Oct. 19, 2016).

453. See Crombie, *supra* note 450 (noting this reliance by the campaign agency’s executive vice president).

*B. State Legislation on Marijuana-Specific Education for K–12 Schools
Will Not Conflict with Federal School Funding Provisions*

In order to provide adequate protection of their children and youth with a complete education about marijuana, the Colorado, Washington, Alaska, and Oregon legislatures should amend their drug and alcohol instructional statutes for K–12 schools to include marijuana-specific instruction. These amendments would not conflict with any federal laws that allocate federal funding for drug and alcohol education in state elementary and secondary schools—an important funding stream given depreciated state educational budgets.⁴⁵⁴ In fact, the December 2015 Congressional reauthorization of the Elementary and Secondary Education Act as the Every Student Succeeds Act provides states and their schools with increased flexibility for drug awareness education that may be supported by federal funds.⁴⁵⁵ In addition to compliance with the new federal funding criteria, these types of marijuana-specific state instructional statutes would also be consistent with federally stated National Education Goals and congressional expectations regarding drug education in schools.⁴⁵⁶ Concurrently, amendments to the state codes to provide this instruction will solidify the states’ commitment to safeguarding their youth through their own educational focal points, appropriately situating control over instructional content within the states themselves.⁴⁵⁷

The four fully legalized states, like many states, have encountered difficult financial decisions given recent downturns in the economy and have either reduced funding or provided inadequate levels of funding to their state educational systems.⁴⁵⁸ In 2010, the Colorado General Assembly

454. See Mae C. Quinn, *The Other “Missouri Model”: Systemic Juvenile Injustice in the Show-Me State*, 78 MO. L. REV. 1193, 1205–06 (2013) (discussing how federal grant programs, such as the Safe and Drug-Free Schools and Communities Act, “entice states to ramp up anti-drug and school policing efforts” in their schools in exchange for federal funds).

455. See Every Student Succeeds Act, Pub. L. No. 114-95, §4205(a)(12), 129 Stat. 1802, 1992 (2015).

456. See National Education Goals, 20 U.S.C. §5812(7) (2012).

457. See Calabresi, *supra* note 332, at 803 (noting the value in leaving control over education to the states).

458. See Emily Buss, *The Gap in Law Between Developmental Expectations and Educational*

determined that state educational funding reductions were necessary to stabilize the state budget.⁴⁵⁹ Consequently, the Colorado legislature implemented a negative factor,⁴⁶⁰ which resulted in funding cuts to Colorado education of approximately one billion dollars.⁴⁶¹ These cuts were the subject of an unsuccessful constitutional challenge in a 2015 State Supreme Court case.⁴⁶² Conversely, in 2012, the Washington Supreme Court declared that inadequate educational funding for its K–12 schools resulted in the State violating its constitutional “duty to make ample provision for the education of all children in Washington.”⁴⁶³ The 2016 Alaska budget reflected a multibillion dollar deficit, and the expectation is that education funding will continue to be decreased in the state.⁴⁶⁴ Despite an increase to the K–12 education budget in 2015,⁴⁶⁵ Oregon’s state budget over the last ten years has reduced education expenditures by hundreds of millions of dollars.⁴⁶⁶

Obligations, 79 U. CHI. L. REV. 59, 70 (2012) (discussing the mixed success among the states to enforce state constitutional affirmative obligations in the context of educational funding); G. Alan Tarr, *No Exit: The Financial Crisis Facing State Courts*, 100 KY. L.J. 785, 785 (2012) (“The Great Recession has produced a severe decline in state revenues leading to massive budget shortfalls, which in fiscal years 2009, 2010, and 2011 totaled over \$530 billion.”).

459. See COLO. REV. STAT. ANN. § 22-54-104(5)(g)(I) (West 2016).

460. See *id.*

461. See Yesenia Robles & John Frank, *Colorado’s Education Formula that Cuts Funding Ruled Constitutional*, DENVER POST (Sept. 21, 2015, 3:48 AM), http://www.denverpost.com/news/ci_28851256/colorados-education-formula-that-cuts-funding-ruled-constitutional (discussing the nature of the education budget cuts).

462. See *Dwyer v. State*, 357 P.3d 185, 187 (Colo. 2015) (upholding the constitutionality of the negative factor that annually reduced overall appropriations to state educational funding).

463. *McCleary v. State*, 269 P.3d 227, 258 (Wash. 2012).

464. See Governor Bill Walker, *2016 State of the Budget*, ST. ALASKA OFF. GOVERNOR (Apr. 14, 2016), <http://gov.alaska.gov/newsroom/2016/04/2016-state-of-the-budget/> (“Two years ago the deficit was \$1.6 billion. Now it is \$4 billion.”); see also Press Release, State of Alaska Office of the Governor, Governor Walker Vetoes \$1.29 Billion to Preserve State Savings (June 29, 2016), <http://gov.alaska.gov/newsroom/2016/06/governor-walker-vetoes-1-29-billion-to-preserve-state-savings/> (announcing “reduced education funding by an additional \$58.3 million”).

465. See Joce Johnson & Hannah Hoffman, *House Passes \$7.255 Billion K–12 Education Budget*, STATESMAN J. (Apr. 1, 2015, 9:16 AM), <http://www.statesmanjournal.com/story/news/politics/2015/03/31/house-passes-billion-education-budget/70737178/> (discussing the minor increase in the state budget for K–12 funding).

466. See *K–12 Funding*, OR. EDUC. ASS’N, <https://www.oregoned.org/stay-informed/school-funding/k-12-funding> (last visited Oct. 1, 2016) (discussing the budget cuts to Oregon’s K–12 educational system over the last decade).

Given these financial constraints, conditional federal funding for school programs is an important component of state educational planning and financing.⁴⁶⁷

An amendment to fully legalized states' current drug and alcohol instructional statutes for K–12 schools to include marijuana-specific instruction would not contravene any federal laws that provide funding for drug and alcohol education in state elementary and secondary schools. The newly enacted Every Student Succeeds Act⁴⁶⁸ provides states and their schools with much more latitude in the delivery of drug and alcohol education that may be supported by federal funds than was allocated under its statutory predecessor, the Safe and Drug-Free Schools and Communities Act.⁴⁶⁹ The Safe and Drug-Free Schools and Communities Act was enacted in 2002 to provide federal financial assistance in the form of state grants “to local educational agencies . . . to establish, operate, and improve local programs of school drug and violence prevention and early intervention.”⁴⁷⁰ Under the Act, drugs were defined to include “controlled substances [listed in the schedules of the Federal Controlled Substances Act]; the illegal use of alcohol and tobacco; and the harmful, abusive, or addictive use of substances, including inhalants and anabolic steroids.”⁴⁷¹ All federally supported drug and violence prevention programs under this Act were required to “convey a clear and consistent message that the illegal use of drugs and acts of violence are wrong and harmful.”⁴⁷²

These restrictive messaging conditions for federal funding of school alcohol and drug programs under the Safe and Drug-Free Schools and

467. See, e.g., McCleary, 269 P.3d at 253 (“Still, the State maintains that, to the extent federal funding defrays the cost of certain offerings in the basic education program, the State may rely on that funding in discharging its duty under article IX, section 1. This argument is tenable, though we emphasize that the State retains the ultimate responsibility for fully funding its basic education program.”); Jenna Bednar & William N. Eskridge, Jr., *Steadying the Court’s “Unsteady Path”: A Theory of Judicial Enforcement of Federalism*, 68 S. CAL. L. REV. 1447, 1478 (1995) (“State budgets for education, highways, and other fundamental areas depend upon federal grants.”).

468. See Every Student Succeeds Act, Pub. L. No. 114-95, 129 Stat. 1802 (2015).

469. See Safe and Drug-Free Schools and Communities Act, Pub. L. 89-10, Title IV, § 4152 (repealed 2015).

470. See 20 U.S.C. § 7102(1) (repealed 2015).

471. See 20 U.S.C. § 7161(1), (2) (repealed 2015).

472. See 20 U.S.C. § 7162(a) (repealed 2015).

Communities Act have been acknowledged by the legislatures and education officials in the fully legalized states as constraints upon their instructional and educational programs.⁴⁷³ Colorado schools prioritized as schools that need extra support for dropout prevention and student re-engagement are specifically tasked to review possible federal monies under the Safe and Drug-Free Schools and Communities Act as a way to leverage support for their student graduation and completion plans.⁴⁷⁴ After the passage of Initiative 502, the Washington State Superintendent of Public Instruction issued a statement stressing that to be eligible for federal funds, Washington school districts must comply with the Federal Safe and Drug-Free Schools and Communities Act.⁴⁷⁵ A major foundational point in the Supreme Court's decision in *Morse v. Frederick* was that the Alaskan high school that disciplined a student for his display of a banner with the phrase "BONG HiTS 4 JESUS" at the 2002 Olympic Torch Relay in Juneau had adopted a policy with the goal of effectuating the "wrong and harmful" message, a condition for federal funding under the Safe and Drug-Free Schools and Communities Act.⁴⁷⁶ Reflective of the wrong and harmful messaging requirement of the Act, Oregon's educational administrative regulations provide that "[e]ach school district shall develop a comprehensive plan for [an] alcohol and drug abuse prevention program which shall include . . . [p]olicies, rules, and procedures which: . . . [s]tate that alcohol, tobacco, and other drug use by student[s] is *illegal and harmful*."⁴⁷⁷

Given these legalized states' references to the constrictive content requirements of the Safe and Drug-Free Schools and Communities Act, it stands to reason that there might be concerns with amending current drug and alcohol instructional requirements to include marijuana-specific instruction as it could potentially violate these constrictions and thereby negatively impact the potential receipt of federal monies for their state

473. See *infra* notes 474–77 and accompanying text.

474. See COLO. REV. STAT. ANN. § 22-14-107(3)(b) (West 2016).

475. *Statement from State Superintendent Randy Dorn About Marijuana*, *supra* note 32.

476. See *Morse v. Frederick*, 551 U.S. 393, 397, 408 (2007) (emphasizing this point in support of its holding finding no First Amendment student speech violation).

477. OR. ADMIN. R. 581-022-0413(1)(c)(C) (2016) (emphasis added).

schools.⁴⁷⁸ Essentially, requiring comprehensive marijuana education as part of the overall drug and alcohol instructional statutes in states that have now legalized recreational marijuana for adults could be perceived as conflicting with the “clear and consistent message that the illegal use of drugs and acts of violence are wrong and harmful” that was required by the Safe and Drug-Free Schools and Communities Act.⁴⁷⁹ However, this concern is no longer a valid one given the Act’s repeal in December 2015.⁴⁸⁰

Under the 2015 Every Student Succeeds Act, states and their schools are no longer restrained by the “wrong and harmful” messaging requirements for federally funded drug and alcohol education that was required under the Safe and Drug-Free Schools and Communities Act.⁴⁸¹ Pursuant to the reauthorization, the Safe and Drug-Free Schools and Communities Act has been replaced by provisions for Student Support and Academic Enrichment Grants.⁴⁸² The reauthorization expressly strikes the content requirements that federally funded drug and alcohol education clearly convey the message that illegal drug use is “wrong and harmful.”⁴⁸³ Under the new Student Support and Academic Enrichment Grants provisions, federal grants are available for state programs and activities that support “local educational agencies in providing programs and activities that . . . foster safe, healthy, supportive, and drug-free environments that support student academic achievement.”⁴⁸⁴ These comprehensive programs may include “drug and violence prevention activities and programs that are evidence-based (to the extent . . . such evidence is reasonably available) including—programs to educate students against the use of alcohol, tobacco, *marijuana*, smokeless

478. See Ilya Somin, *Closing the Pandora’s Box of Federalism: The Case for Judicial Restriction of Federal Subsidies to State Governments*, 90 GEO. L.J. 461, 461–62 (2002) (highlighting the significant share of state revenue that comes from federal grants to state governments, virtually all of which “are conditioned on changes in state policies to meet federal specifications”).

479. See Safe and Drug-Free Schools and Communities Act, Pub. L. No. 89-10, Title IV, § 4152 (repealed 2015).

480. See *id.*

481. See Every Student Succeeds Act, Pub. L. No. 114-95, § 4001(a)(5)(B), 129 Stat. 1802, 1966 (2015).

482. See *id.* § 4001(a)(5)(A).

483. See *id.* § 4001(a)(5)(B).

484. *Id.* § 4104(b)(3)(B).

tobacco products, and electronic cigarettes.”⁴⁸⁵ Given this express allowance of marijuana education as a component of a grant eligible program under the new Every Student Succeeds Act, fully legalized state legislation that requires marijuana-specific instruction will reflect, rather than conflict with, the priorities of federal conditional funding for K–12 drug and alcohol education, and thereby comply with the entitlement conditions of these federal allocations.⁴⁸⁶ Further, the greater neutrality that is afforded by the expansions of the Every Student Succeeds Act will allow these fully legalized states to create more innovative, diverse, and effective antidrug programs.⁴⁸⁷

In addition to not contravening current federal funding conditions, the marijuana-specific instructional statutory amendments that fully legalized states should adopt would also reflect the Congressional National Education Goal of “safe, disciplined, and alcohol- and drug-free schools.”⁴⁸⁸ The objectives for this goal include firm and fair school alcohol and drug policies, drug-free school environments, comprehensive K–12 drug and alcohol prevention education programs, and drug and alcohol curricula “as an integral part of [this] sequential comprehensive health education.”⁴⁸⁹ The goal is reflective of the broader Congressional intent to ensure that public schools provide education to students “about the dangers of illegal drug use.”⁴⁹⁰ An inclusion of marijuana-specific education as part of Colorado, Washington, Alaska, and Oregon’s drug and alcohol instructional statutes would be reflective of these federal perspectives on the role of public

485. *Id.* § 4108(5)(A)(i) (emphasis added).

486. See Bridget A. Fahey, *Consent Procedures and American Federalism*, 128 HARV. L. REV. 1561, 1564 (2015) (“Cooperative federalism programs and conditional spending grants are like contracts between the states and federal government. There is a federal offer and a state acceptance; there are terms and conditions, obligations and penalties. And there is a ‘meeting of the minds,’ a moment when the states consent to a federal offer and the deal is done.”).

487. See O’Hear, *supra* note 8, at 876 (noting that antidrug grant programs would be more innovative, diverse, and effective if there was greater neutrality among policy approaches in grant selection criteria and awards).

488. 20 U.S.C. § 5812(7) (2012).

489. *Id.* § 5812(7)(B)(i), (ii), (iv), (v).

490. See *Morse v. Frederick*, 551 U.S. 393, 408 (2007) (“Congress has declared that part of a school’s job is educating students about the dangers of illegal drug use. It has provided billions of dollars to support state and local drug-prevention programs.”).

schools in drug and alcohol education, creating one point of agreement between federal and fully legalized states' decision-making about the treatment of marijuana.⁴⁹¹

Concurrently, however, amendments to the state codes to provide such instruction will appropriately place marijuana-specific education as a state priority, especially in light of full legalization, and reflect state control over their students' instructional content. Given these states' comprehensive regulation of lawful marijuana in myriad other aspects, it is an appropriate and necessary step for them to now provide for complete educational instruction about marijuana in their schools.⁴⁹² Fortunately, the legislative approach to mandate this education is a simple one that can generate the basic public good of Rawlsian overlapping consensus on intergovernmental, intragovernmental, and interpersonal levels.⁴⁹³

C. *Model State Legislation on Marijuana-Specific Education for K–12 Schools*

Direct education regarding marijuana to all students is now a necessity in the four states that have fully legalized marijuana.⁴⁹⁴ Pre-legalization, globalized alcohol and drug instructional statutes do not ensure a concentrated focus on marijuana instruction.⁴⁹⁵ Other current approaches in Colorado, Washington, Alaska, and Oregon are not sufficient to provide complete instruction about marijuana to the children and youth who reside in

491. See Eric Lane et al., *Too Big a Canon in the President's Arsenal: Another Look at United States v. Nixon*, 17 GEO. MASON L. REV. 737, 753 (2010) (characterizing "better" governmental decision-making as that which "incorporate[s] some broad sense of the public good, of contributing to . . . consensus-building").

492. See Every Student Succeeds Act, Pub. L. No. 114-95, § 4108(a)(5)(A)(i), 129 Stat. 1802, 1966 (2015).

493. See John Rawls, *The Domain of the Political and Overlapping Consensus*, 64 N.Y.U. L. REV. 233, 246 (1989) (defining overlapping consensus as "a consensus in which a diversity of conflicting comprehensive doctrines endorse the same political conception").

494. See Doug Bandow, *War on Drugs or War on America?*, 3 STAN. L. & POL'Y REV. 242, 246 (1991) (citing the correlation between student education and decreases in student drug use).

495. See generally Mark H. Moore, *Drugs: Getting a Fix on the Problem and the Solution*, 8 YALE L. & POL'Y REV. 8, 14–15 (1990) (discussing how legal circumstances change after the legalization of drugs).

these states that have a regulated, legal marijuana market for adults.⁴⁹⁶ By making statutory amendments to ensure more comprehensive coverage about marijuana in their public schools, these state legislatures need not fear a denial of federal funding based on its content and messaging, because the 2015 Every Student Succeeds Act provides federal funding for state marijuana-specific education.⁴⁹⁷ Consequently, it is time for the fully legalized states to amend their pre-legalization drug and alcohol instructional statutes to include specific marijuana instruction.⁴⁹⁸ Such statutory amendments will provide the predicate for filling the correlative gaps in these states' education regulations and academic content standards.⁴⁹⁹

After making this type of amendment, the Colorado statute would read:

[t]he nature of alcoholic drinks and controlled substances, *including marijuana*, . . . and special instruction as to their effects upon the human system in connection with the several divisions of the subject of physiology and hygiene, as to the physical, emotional, psychological, and social dangers of their use with an emphasis upon the nonuse of such substances by school-age children, and as to the illegal aspects of their use shall be included in the branches of study taught to school-age children during grades kindergarten through twelve in the public schools of the state.⁵⁰⁰

The amended Washington statute would require its K–12 public schools to give instruction in “physiology and hygiene with special reference to the effects of alcohol and drug abuse, *including marijuana use*, on the human system.”⁵⁰¹ Alaska's Code provisions would be amended to read: “[e]ach district in the state public school system shall ~~be encouraged to~~ initiate and

496. *See supra* Section III.A.

497. *See* Every Student Succeeds Act, Pub. L. No. 114-95, § 4108(5)(A)(i), 129 Stat. 1802, 1979 (2015).

498. *See* Bandow, *supra* note 494 and accompanying text.

499. *See, e.g.*, Danielle Holley-Walker, *The Importance of Negotiated Rulemaking to the No Child Left Behind Act*, 85 NEB. L. REV. 1015, 1031–32 (2007) (discussing the interconnections between educational statutes, regulations, and academic standards and assessments).

500. *Cf.* COLO. REV. STAT. ANN. § 22-1-110 (West 2016) (suggested additions italicized).

501. *Cf.* WASH. REV. CODE ANN. § 28A.230.020 (West 2016) (suggested additions italicized).

conduct a program in health education for kindergarten through grade 12,” which “should include instruction in . . . alcohol and drug abuse education, *which includes education on marijuana.*”⁵⁰² Finally, after such amendment, Oregon’s statutorily required courses of study for its public schools would include special emphasis in instruction to the “effects of tobacco, alcohol, drugs, *including marijuana*, and controlled substances upon the human system.”⁵⁰³

This express identification of marijuana as an area of instructional study is not without precedent among states that have legalized marijuana in some form.⁵⁰⁴ Arizona, a state that has only legalized medical (and not recreational) marijuana,⁵⁰⁵ is one state that specifically enumerates marijuana in addition to a generalized reference to drugs in the state K–12 public schools’ instructional statute.⁵⁰⁶ The Arizona instructional statute provides:

Instruction on the nature and harmful effects of alcohol, tobacco, narcotic drugs, *marijuana*, date rape drugs and other dangerous drugs on the human system and instruction on the laws related to the control of these substances and the nonuse and prevention of use and abuse of alcohol, tobacco, narcotic drugs, *marijuana*, date rape drugs and other dangerous drugs may be included in the courses of study in common and high schools, with emphasis on grades four through nine. Instruction on the nature and harmful effects of alcohol, tobacco, narcotic drugs, *marijuana*, date rape drugs and other dangerous drugs on a human fetus may be included in the courses of study in grades six through twelve. The instruction may be integrated into existing health, science, citizenship or similar

502. *Cf.* ALASKA STAT. ANN. § 14.30.360(a) (West 2016) (suggested additions italicized, suggested deletions crossed out). Because Alaska does not mandate health and safety education instruction in its schools, this proposed statutory amendment reflects the elimination of the permissive approach. *Id.* A mandatory statutory instruction would be more effective in ensuring that Alaska’s students receive the necessary education about marijuana in the state’s public schools.

503. *Cf.* OR. REV. STAT. ANN. § 336.067(1)(e) (West 2016) (suggested additions italicized).

504. *See infra* notes 505–09 and accompanying text.

505. *See* Arizona Medical Marijuana Act, ARIZ. REV. STAT. ANN. § 36-2802 (West 2016) (providing the framework for the legalization of medical marijuana in Arizona).

506. *See id.* § 15-712(A).

studies.⁵⁰⁷

The specific inclusion of marijuana within the statute actually predates the state's medical marijuana legalization initiative,⁵⁰⁸ which was approved in 2010.⁵⁰⁹ Fully legalized states should adopt Arizona's approach in the specific enumeration of marijuana education for their schools; however, unlike Arizona, they should require rather than encourage this marijuana-specific instruction to protect their children against the harms that result from an absence of such education.⁵¹⁰ Consequently, while this statute is an important predecessor for needed statutory change, because it specifically includes marijuana education as part of K–12 drug and alcohol instruction, it is not completely a model statute, because it makes such instruction permissive rather than mandatory.⁵¹¹

As an alternative statutory approach, Colorado, Washington, Alaska, and Oregon could look to the Oregon Code's requirements of anabolic steroid instruction for a model in formulating and adopting a standalone statutory mandate to require K–12 comprehensive marijuana education in their schools.⁵¹² Like marijuana, anabolic steroids are defined as controlled substances in Oregon.⁵¹³ Currently, an Oregon state statute provides: "School districts shall include information on anabolic steroids and performance-enhancing substances . . . in health and physical education

507. *Id.* (emphasis added).

508. The 1990 amendments to the statute noted that the marijuana language was in existence at that time. See H.B. 2359, Legis. Serv. 128 (Ariz. 1990).

509. See *State of Arizona Official Canvass: 2010 General Election*, ARIZ. SECRETARY ST. (NOV. 29, 2010 11:00 AM), <http://apps.azsos.gov/election/2010/General/Canvass2010GE.pdf> (showing passage of Proposition 203 legalizing medical marijuana by 50.1% of Arizona voters on November 2, 2010).

510. Originally, the Arizona statute was a mandatory one, with the permissive amendment passed in 1995. See S.B. 1348, 1995 Leg., 1st Sess. (Ariz. 1995) (changing the instructional phrase from "shall be included" to "may be included").

511. See ARIZ. REV. STAT. ANN. § 15-712A (providing that schools *may* provide this instruction).

512. See *infra* notes 513–15 and accompanying text.

513. See OR. REV. STAT. ANN. § 475.005(6)(a) (West 2016). Oregon's Controlled Substances Act defines a controlled substance as any substance that appears on the Federal Controlled Substances Act schedules. *Id.* Marijuana is classified as a Federal Schedule I controlled substance. See Controlled Substances Act, 21 U.S.C. § 812(c)(Schedule I)(c)(10) (2012). Anabolic steroids are classified as a Federal Schedule III controlled substance. See *id.* § 812(c)(Schedule III)(e).

curricula for kindergarten through grade 12 students.”⁵¹⁴ As originally enacted in 2007, this statute provided:

(1) The Department of Education shall work in conjunction with voluntary organizations approved to administer interscholastic activities under ORS 339.430 to develop and implement a program for kindergarten through grade 12 students of evidence-based education to prevent the use of anabolic steroids and performance-enhancing substances. (2) The department and school districts shall include information on anabolic steroids and performance-enhancing substances, including prevention strategies, strength-building alternatives and the understanding of health food labels, in health and physical education curricula.⁵¹⁵

The legislative history of the statute clearly identifies Oregon’s concern with the 2003 Monitoring the Future Study results “that approximately 3.5[%] of American high school students have used illegal anabolic steroids at least once by grade [12]” and “that 45[%] of all 12th graders did not believe taking steroids posed a great risk.”⁵¹⁶ In 2008, the statute was amended to delete the directive of agency conjunction to develop programs of evidence-based education and to require such information as part of the K–12 health and physical education curricula.⁵¹⁷

As a result, per this current legislative mandate, the State Board of

514. OR. REV. STAT. ANN. § 342.726(1).

515. S.B. 517, 2007 Leg., § 3 (Or. 2007).

516. S.B. 74-517, Reg. Sess., at 42 (Or. Dec., 2007), https://www.oregonlegislature.gov/citizen_engagement/Reports/2007SummaryOfLegislation.pdf.

517. See S.B. 1066, 2008 Leg., 1st Spec. Sess. Ch. 39 (Or. 2008). The following amendments were made:

~~(1) The Department of Education shall work in conjunction with voluntary organizations approved to administer interscholastic activities under ORS 339.430 to develop and implement a program for kindergarten through grade 12 students of evidence-based education to prevent the use of anabolic steroids and performance-enhancing substances.~~

~~(2) (1) The department and School districts shall include information on anabolic steroids and performance-enhancing substances, including prevention strategies, strength-building alternatives and the understanding of health food labels, in health and physical education curricula for kindergarten through grade 12 students.~~

Id.

Education adopted a regulation that describes the minimum content for inclusion in Oregon’s comprehensive alcohol and drug abuse policy and implementation plans, and the required public school emphasis.⁵¹⁸ These plans must include “[i]nstruction in the effects of tobacco, alcohol, drugs, including *anabolic steroids*, performance-enhancing and controlled substances as an integral part of the district’s K–12 comprehensive health education program.”⁵¹⁹ The curriculum “shall: [e]mphasize prevention strategies . . . and [b]e consistent with State Board adopted Health Education Academic Content Standards.”⁵²⁰ “Basic information shall include: (i) The effects of alcohol, tobacco and other drug use, including *anabolic steroids*, performance-enhancing and controlled substances [and] (ii) All laws relating to the use, especially by minors, of alcohol and other illegal drugs.”⁵²¹ Under the current OHES for K–12 standards for alcohol, tobacco, and other drug prevention, anabolic steroids are specifically mentioned as a type of drug that requires specific content instruction in the Grades 4–5, Grades 6–8, and High School OHES.⁵²²

The standalone statutory approach for instruction on anabolic steroids in Oregon lays the foundation for a symmetrical approach for marijuana-specific instruction in that state and the three other fully legalized states. Under the 2016 Enacted Amendments of the Control and Regulation of Marijuana Act,

[a]s part of the comprehensive alcohol and drug abuse policy and implementation plan described in ORS 336.222, the Oregon Health Authority, State Board of Education and Alcohol and Drug Policy Commission shall collaborate on developing supplemental curricula

518. See OR. REV. STAT. ANN. § 336.235 (instructing the State Board of Education to adopt a comprehensive alcohol and drug abuse policy and implementation plan); OR. ADMIN. R. 581-022-0413 (2016).

519. OR. ADMIN. R. 581-022-0413(1)(a) (2016) (emphasis added).

520. *Id.* 581-022-0413(1)(a)(A)(i), (iii).

521. *Id.* 581-022-0413(1)(a)(B)(i)–(ii) (emphasis added).

522. See *OHES*, *supra* note 436 (discussing Grades 4–5 Health Skills and Concepts Instructions aligned with Oregon Health Education Standards, at 1; Grades 6–8 Health Skills and Concepts Instructions aligned with Oregon Health Education Standards, at 1–2, 8; Grades 9–12 Health Skills and Concepts Instructions Aligned with Oregon Health Education Standards, at 1, 3, 9).

for marijuana abuse prevention and public information programs for students, parents, teachers, administrators and school board members.⁵²³

This type of statutory directive for agency conjunction to create supplemental curricula for marijuana-abuse prevention mirrors the originally enacted version of the state’s anabolic steroid instructional statute.⁵²⁴ The most recent 2015 Monitoring the Future Survey had much higher results of marijuana usage and more diminished perceptions of risk—with 23.6% of twelfth graders reporting past-year use of marijuana,⁵²⁵ and only 39.1% of twelfth graders believing that smoking marijuana regularly puts the user at a great risk⁵²⁶—than the Oregon legislative areas of concern that provided support for the enactment of the anabolic steroid statute.⁵²⁷ Oregon officials are concerned about these statistics: the Oregon Health Authority explicitly included data on youth use of marijuana and perceptions of risk in smoking marijuana in its statutorily required first report to the Oregon Legislative Assembly on recommendations for youth marijuana prevention.⁵²⁸ Consequently, Oregon could easily amend its existing agency collaboration directive to produce optional curricula to instead require marijuana instruction as part of its schools’ health and physical education curricula for K–12 students, just as it did with its anabolic steroids statute.⁵²⁹

Colorado, Washington, and Alaska could also emulate Oregon’s state statute that requires instruction regarding anabolic steroids in its K–12 schools.⁵³⁰ As a base, each of these states could adopt a relatively straightforward, yet comprehensive, marijuana-specific instructional statute

523. OR. REV. STAT. ANN. § 336.241(1).

524. See *supra* notes 513–22 and accompanying text.

525. See *Monitoring the Future Survey*, *supra* note 26.

526. See *id.* (noting one area of continuing concern as the “softening of attitudes around some types of drug use, particularly a continued decrease in perceived harm of marijuana use” and providing that “[t]he majority of high school seniors do not think occasional marijuana smoking is harmful, with only 31.9 percent saying that regular use puts the user at great risk compared to 78.6 percent in 1991”).

527. See *supra* note 516 and accompanying text.

528. See OR. HEALTH AUTHORITY, *supra* note 445, at 2–5.

529. See OR. HEALTH AUTHORITY, *supra* note 445 and accompanying text.

530. See OR. REV. STAT. ANN. § 342.726 (West 2016).

for its public schools that could read: “School districts are required to include information on marijuana in health and physical education for kindergarten through grade 12 students.” As a result of this legislative mandate, the various State Boards of Education would have a statutory foundation upon which to adopt a regulation, similar to Oregon’s regulation on anabolic steroid coverage, which describes the minimum content for inclusion in this marijuana instruction.⁵³¹ Under these proposed regulations, “[i]nstruction in the effects of tobacco, alcohol, drugs, including marijuana, and other controlled substances must be included as an integral part of the K–12 health education program.”⁵³² Further regulations could provide that this instruction “shall include information regarding: (i) The effects of alcohol, tobacco and other drug and controlled substance use, including marijuana, and (ii) [a]ll laws relating to the use, especially by minors, of alcohol and other drugs and controlled substances, including marijuana.”⁵³³ The fully legalized states could then update their academic content or learning standards to reflect this required instruction.⁵³⁴

Either of these statutory approaches—whether an amendment to existing pre-legalization drug and alcohol instructional statutes to expressly include marijuana education, or the enactment of a marijuana-specific instructional standalone statute—would provide a comprehensive safeguard for a full education of their states’ students. Both approaches would be completely consistent with the federal conditions for school funding of drug education within state schools under the new Every Student Succeeds Act.⁵³⁵ Neither approach would require these states to choose between federal financial support and control over instructional content.⁵³⁶ Further, both approaches would properly keep the control of the state schools’ instruction with the

531. *Cf. supra* notes 514–21 and accompanying text.

532. *Cf. supra* note 530 and accompanying text.

533. *Cf. supra* note 521 and accompanying text.

534. *Cf. supra* note 522 and accompanying text.

535. *See* Every Student Succeeds Act, Pub. L. No. 114-95, § 4108(5)(A)(i), 129 Stat. 1802, 1979 (2015) (allowing for federal financial support of marijuana-specific instruction in state K–12 schools).

536. *See* Young, *supra* note 8, at 782–83 (“If a state legislature is willing to sacrifice federal funding and other inducements in order to opt out of a federal regulatory program, state officials have little choice but to walk away.”).

states themselves⁵³⁷ rather than the federal government and would allow for uniformity in the vital education of its children now that marijuana is fully legalized for adults.⁵³⁸

Additionally, the adoption of these statutes can provide a balm for the continued fractures in these states due to marijuana.⁵³⁹ The one seeming point of consensus among all of the opponents and proponents of the full legalization of marijuana for adults is just that: it should be for adults only.⁵⁴⁰ Because the significant majority of constituencies support the propositions that access to and use of marijuana by non-adults should be illegal and that children in these states should be educated about marijuana,⁵⁴¹ amendment or enactment of such a relatively straightforward yet incredibly valuable statute that mandates the inclusion of marijuana-specific instruction in K–12 schools seems like a paradigmatic example of legislation produced by deliberative democracy.⁵⁴²

Given the revolutionary steps these states have taken in the full legalization of marijuana,⁵⁴³ they have a moral duty to enact protective

537. See Mikos, *supra* note 63, at 1471–72 (“State lawmakers, by contrast, arguably have more influence over public beliefs and preferences. Owing to a variety of factors, citizens on average deem state and local governments far more trustworthy than the national government. Consequently, state lawmakers may have an advantage vis-à-vis their federal counterparts when it comes to manipulating citizens’ views of marijuana use or other behaviors.”).

538. See *supra* note 323 and accompanying text.

539. See, e.g., John Shepard Wiley Jr., *Not Guilty by Reason of Blamelessness: Culpability in Federal Criminal Interpretation*, 85 VA. L. REV. 1021, 1087 (1999) (outlining the sharp moral, philosophical, ethical, and legal disputes regarding perspectives on the use of drugs, like marijuana).

540. See *supra* notes 43–51 and accompanying text.

541. See, e.g., Scott Gagnon, *Smart Approaches to Public Health: Big Tobacco 2.0*, SMART APPROACHES TO MARIJUANA (Apr. 10, 2015), <https://learnaboutsam.org/smart-approaches-to-public-health-big-tobacco-2-0/> (discussing the important protections that are needed with respect to youth and marijuana); *NIDA-Sponsored Survey Debunks Myth that Marijuana Policy Reform Leads to Increased Teen Use*, *supra* note 29, (quoting Mason Tvert, Director of Communications, Marijuana Policy Project) (“The goal of marijuana education should not be to increase teens’ perception of risk. It should be to increase teens’ understanding of marijuana.”).

542. See Dawn C. Nunziato, *Freedom of Expression, Democratic Norms, and Internet Governance*, 52 EMORY L.J. 187, 218–19 (2003) (emphasizing the logical deliberation within and the logical outputs of the collective decision-making process); Meghan J. Ryan, *Juries and the Criminal Constitution*, 65 ALA. L. REV. 849, 882 (2014) (discussing how the deliberative democratic process requires dialogue and consensus-building).

543. See Daniel G. Orenstein, *Voter Madness? Voter Intent and the Arizona Medical Marijuana*

instructional legislation in line with the comprehensive regulation that has been enacted by these states in other marijuana-related areas⁵⁴⁴ and to set a precedent for states that may legalize marijuana in the future.⁵⁴⁵ Essentially, the adoption of these statutes can serve as models for future states, if the trend of full legalization continues, and for states that only legalize medical marijuana.⁵⁴⁶ Further, statutory language that requires marijuana-specific instruction could be incorporated into future states' high-profile ballot initiatives that have provided the predicate for full legalization.⁵⁴⁷ This would allow those states to avoid the harms that have been suffered in Colorado, Washington, Alaska, and Oregon due to their legislative inertia in this area.⁵⁴⁸ By incorporating such statutory requirements into their codes, these states can start to build bridges among marginalized populations and ensure the safety and knowledge of their youth.

IV. CONCLUSION

A major factor in the passage of most of the states' full legalization initiatives⁵⁴⁹ was the promise that the taxes generated in the legal marijuana

Act, 47 ARIZ. ST. L.J. 391, 391 (2015) (characterizing states' full legalization and taxation of adult recreational use of marijuana as "revolutionary").

544. See, e.g., Sam Kamin, *Marijuana at the Crossroads: Keynote Address*, 89 DENV. U. L. REV. 977, 993–94 (2012) (characterizing Colorado's full legalization as a transition "from a place where anyone could sell marijuana anywhere without oversight or supervision to a regulatory regime with over seventy pages of meticulous regulations").

545. See Elizabeth G. Patterson, *The Spending Power After NFIB: New Direction, or Medicaid Exception?*, 68 SMU L. REV. 385, 397 (2015) (using marijuana legalization as an example of "the legal diversity that results from state control of laws affecting individuals . . . [i]n a heterogeneous society such as ours").

546. See Lauren M. Ouziel, *Legitimacy and Federal Criminal Enforcement Power*, 123 YALE L.J. 2236, 2301 n.228, 2310 n.265 (2014) (characterizing the series of ballot initiatives and state referenda that have resulted in the legalization of medical or recreational marijuana in these states as a "marijuana-legalization trend").

547. See Kirk J. Stark, *The Right to Vote on Taxes*, 96 NW. U. L. REV. 191, 201–02 n.57 (2001) (characterizing marijuana legalization initiatives as "high-profile" ballot initiatives).

548. See *supra* Section II.A.

549. See COLO. REV. STAT. ANN. § 39-28.8-305 (West 2016) (providing that the first \$40 million of moneys collected annually by the retail marijuana excise tax shall be allocated to the public school capital construction assistance fund and the remainder shall be transferred to the public school fund); Control, Regulation, and Taxation of Marijuana and Industrial Hemp Act, 2015 OR.

marketplace would be used to “supplement depleted education budgets.”⁵⁵⁰ Voters were informed by proponents of these state initiatives that full legalization had significant potential to create tax revenues for public schools.⁵⁵¹ After these successful voter initiatives, the state legislatures in Colorado, Washington, and Oregon enacted statutes that provided for marijuana excise and retail taxes with allocations to school construction, maintenance, and support.⁵⁵² It is a significant irony, then, that these states have not also amended their codes or enacted new legislative provisions to require explicit marijuana instruction within these public schools.

Unironically, much is still in flux in the states that have fully legalized marijuana. It is still unresolved whether the promises for marijuana-revenue-funded public school construction will be fully actualized.⁵⁵³ As was apparent in Ohio, it is also unclear whether other states will enact full legalization in the future.⁵⁵⁴ Consequently, the preemptive federal–state

LAWS 9 § 44(3)(a) (designating forty percent of the Oregon Marijuana Account tax revenue funds to the Common School Fund); WASH. REV. CODE ANN. § 69.50.540(2)(f)(ii) (West 2016) (providing a minimum annual appropriation from the state dedicated marijuana account of \$511,000 to the office of the superintendent of public instruction); *id.* § 69.50.530 (providing that “all marijuana excise taxes[,] . . . license fees, penalties, and forfeitures . . . must be deposited in the [state marijuana] account”).

550. David Blake & Jack Finlaw, *Marijuana Legalization in Colorado: Learned Lessons*, 8 HARV. L. & POL’Y REV. 359, 361 (2014).

551. See Steven W. Bender, *Joint Reform?: The Interplay of State, Federal, and Hemispheric Regulation of Recreational Marijuana and the Failed War on Drugs*, 6 ALB. GOV’T L. REV. 359, 393 (2013) (outlining arguments for full legalization).

552. See *supra* note 549 and accompanying text.

553. See Alia Wong, *The False Promise of Marijuana Money in Education*, ATLANTIC (May 4, 2015), <http://www.theatlantic.com/education/archive/2015/05/the-false-promise-of-marijuana-money-in-education/392165/> (discussing the potentially illusory aspects of state earmarks tied to public school construction based on these states’ full legalization revenues). Some studies have indicated that promised tax revenues may not be achieved due to high tax rates, the potential creation of black markets, or the incentivizing of gray medical-marijuana markets. See Holly Yettick, *High Tax Rates Blunt Efforts to Use Marijuana Revenue for Schools*, EDUC. WEEK (Apr. 20, 2015, 2:05 PM), http://blogs.edweek.org/edweek/inside-school-research/2015/04/marijuana_420_school_construct.html?qs=marijuana (summarizing initial studies’ findings on the efficacy of state promises to use marijuana revenues to fund schools).

554. See David A. Graham, *Why Did Ohio’s Marijuana-Legalization Push Fail?*, ATLANTIC (Nov. 3, 2015), <http://www.theatlantic.com/politics/archive/2015/11/where-did-ohios-marijuana-legalizers-go-wrong/414061/> (discussing Ohio’s failed full legalization initiative).

conflicts regarding marijuana legalization are far from resolved.⁵⁵⁵ Finally, the complete impact of states' full legalization of marijuana on their children and youth will be unknown until more expansive longitudinal studies can be completed.⁵⁵⁶ In a legal, policy, and public health area of so many unknowns,⁵⁵⁷ the one known aspect is this: fully legalized states need to provide a complete education to their schoolchildren about marijuana through their state instructional statutes that is not being provided by current, alternative approaches.⁵⁵⁸ By taking this straightforward measure, these states can demonstrate a full commitment to the one point of consensus in this contested legal area: a proactive approach to marijuana-specific instruction as a way to guard against non-adult access to it.⁵⁵⁹ The consequences of not providing this marijuana-specific education have become too detrimental for these legislatures to ignore.⁵⁶⁰

555. See Todd Garvey & Charles Doyle, *Marijuana: Medical and Retail—An Abbreviated View of Selected Legal Issues*, CONG. RES. SERV. (Mar. 25, 2014), <http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R43437.pdf> (discussing the myriad issues related to federal and state conflicts regarding marijuana).

556. See *supra* note 30 and accompanying text.

557. See Brannon P. Denning, *One Toke over the (State) Line: Constitutional Limits on "Pot Tourism" Restrictions*, 66 FLA. L. REV. 2279, 2279–80, 2299 (2014) (asserting that states that are experimenting with the legalization of marijuana are experiencing a multitude of legal issues—the quantum of which is not yet known).

558. See *supra* Part III.

559. See generally McCarthy, *supra* note 1.

560. See, e.g., Jason P. Nance, *School Surveillance and the Fourth Amendment*, 2014 WIS. L. REV. 79, 103 (2014) (detailing the extensive educational and social harms that result from the arrest for an alleged criminal violation or the enforcement of exclusionary school policies for the individual child and for society); Melanie Reid, *The Quagmire that Nobody in the Federal Government Wants to Talk About: Marijuana*, 44 N.M. L. REV. 169, 206 (2014) (arguing that governmental inaction on marijuana issues damages all stakeholders).