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MEMORANDUM

DATE: November 29, 2012

TO: Dave Stolier, Education Division Chief

FROM: H. Bruce Marvin, Assistant Attorney General

SUBJECT: **Initiative 502—Impact on College Campuses**

How does passage of Initiative 502¹ (I-502) impact prohibitions against the possession and use of marijuana on college campuses?

Policies prohibiting the possession and use of marijuana on college campuses are unaffected by passage of I-502. Initiative 502 repeals state laws that criminalized the possession and use of small quantities of marijuana, and directs the State Liquor Control Board to create and enforce a licensing system for the manufacture and distribution of marijuana, similar in many respects to the regulatory system currently in place for hard liquor. Similar to Washington's liquor laws, I-502 prohibits the consumption of marijuana in public spaces, limits use of marijuana to persons aged twenty-one years or older, and prohibits driving under the influence of marijuana. Initiative 502 does not repeal regulations prohibiting the use of marijuana and other controlled substances on college campuses. Federal laws criminalizing the manufacture, sale, and use of marijuana remain in place, as do federal regulations that require institutions of higher education to maintain drug-free campuses to qualify to receive federal financial aid.

Initiative 502, which was adopted during the November 2012 general election, applies a licensing model similar to that applied to hard liquor to decriminalize and regulate the manufacture, sale, possession and use of marijuana and marijuana enhanced products. Effective on December 6, 2012, persons within Washington State, twenty-one years of age or older, will be able to possess small quantities of marijuana for personal use in a private setting. Public

¹ The full text of I-502 is available at http://sos.wa.gov/_assets/elections/initiatives/i502.pdf.

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consumption of marijuana or marijuana enhanced products, however, is illegal and punishable as a civil infraction.²

In addition to decriminalizing possession and use of small amounts of marijuana, I-502 directs the Washington State Liquor Control Board (the LCB) to develop a regulatory framework for licensing the manufacture and sale of marijuana. The unlicensed production and sale of marijuana continues to be subject to state criminal sanctions. The LCB anticipates that this licensing scheme will take approximately a year to develop and implement.

While I-502 decriminalizes marijuana under state law, federal criminal law continues to prohibit the licensed or unlicensed production and sale of marijuana, as well as simple possession and use. In addition to risking criminal sanctions, institutions of higher education that fail to impose drug-free policies on campus risk losing federally funded financial aid, grant programs, and contracts. The Safe & Drug-Free Schools & Communities Act (Drug-Free Schools Act), 20 U.S.C. § 7101 *et seq.*, conditions receipt of federal funding for financial aid upon maintenance of drug-free campuses. The Drug-Free Workplace Act, 41 U.S.C. § 701 *et seq.*, also requires governmental entities, including public institutions of higher education, seeking federal grants of any amount, or federal contracts of \$25,000 or more, to certify that they will keep drugs out of the workplace. Accordingly, despite the passage of I-502, federal funding for institutions of higher education continues to be contingent upon maintaining drug-free campuses.

Initiative 502 does not amend or repeal policies prohibiting students and employees from possessing or using marijuana on college campuses. Colleges are advised, however, to review their student conduct codes and employment policies to ensure that prohibitions against the use of marijuana and other controlled substances are up-to-date, accurate, and provide students and employees with adequate notice.

Policies that prohibit the use, possession and sale of “controlled substances” as that term is defined under Washington’s Uniform Controlled Substances Act (WUCSA) continue to be effective after passage of I-502. WUCSA defines “controlled substances” as substances that appear on either the State or Federal controlled substance schedules. RCW 69.50.101(d)³. The

² Section 21 of the I-502 provides:

It is unlawful to open a package containing marijuana, useable marijuana, or a marijuana-infused product, or consume marijuana, useable marijuana, or a marijuana-infused product, in view of the general public. A person who violates this section is guilty of a class 3 civil infraction under chapter 7.80 RCW.

³ RCW 69.50.101 provides in relevant part:

Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(d) “Controlled substance” means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or [state] board [of pharmacy] rules.

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federal Controlled Substances Act (CSA) categorizes marijuana as a Schedule I drug.⁴ 21 U.S.C. § 812. Under WUCSA, marijuana also continues to be listed as a Schedule I drug after passage of I-502. RCW 69.50.204(c)(22). Because marijuana remains a Schedule I drug under both federal and state law, student conduct codes and employment manuals prohibiting the use, possession, or sale of “controlled substances” as that term is defined by WUCSA continue to include marijuana within their scope. Nonetheless, with the passage of I-502, colleges should consider revising their employment policies and student conduct codes to expressly state that the sale, use, or possession of marijuana is prohibited, so as to avoid any confusion.

Initiative 502 does not affect Washington’s medical marijuana law. *See* Chapter 69.51A RCW. Because possession and use of marijuana continues to be a criminal offense under federal law, colleges are not legally required to “accommodate” any student’s or employee’s use of medical marijuana on campus. In addition to potential criminal liability, authorizing the use of medical marijuana on campus would violate the Drug-Free Schools and Drug-Free Workplace Acts discussed above, thereby jeopardizing an institution’s federal funding. In the past, the Washington State Human Rights Commission has indicated that it would decline to investigate claims of discrimination based upon use of medical marijuana because possession of marijuana violates federal criminal law. We have no indication at this time that the Human Rights Commission plans to deviate from this position, since possession of marijuana remains a criminal offense under federal law. However, it is still quite early in the process of implementing the new law.

Additional information regarding I-502 and its implementation can be accessed through the following hyperlinks.

Initiative 502 text: <http://sos.wa.gov/assets/elections/initiatives/i502.pdf>.

Washington State Liquor Control Board Fact Sheet: <http://www.liq.wa.gov/publications/Marijuana/I-502/Fact-Sheet-I502-11-7-12.pdf>.

Washington State Human Rights Commission Medical Marijuana Guidance: www.hum.wa.gov/documents/guidance/medical%20marijuana.doc

⁴ Both the CSA and WUCSA contain schedules for drugs based on the substance’s medical use, potential for abuse and safety or dependence liability. Under both federal and state law, Schedule I drugs are deemed to have “a high potential for abuse” and “no currently accepted medical use in treatment in the United States,” and lack “accepted safety for use of the drug [] under medical supervision. 21 U.S.C. §812(b)(1); RCW 69.50.203.