

CRIMINAL LAW

Legal regime of cannabis in the United States of America

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Abstract

The Americas' cannabis policy environment is rapidly evolving. In the 1970s, several US states reduced or, started to liberalize their cannabis laws, eliminating criminal penalties for possessing small amounts of cannabis.

In contrast to European states, medical cannabis in the US was primarily approved by voters. For a wide variety of medical purposes, people cultivate and consume non-standardized cannabis herb.

Except for a specific group of patients, these early medical cannabis reforms keep in place the federal and state prohibitions.

Keywords: *United States of America, cannabis, drugs, medical use, recreational use*

Introduction

The legality of cannabis for medical and recreational use varies by country, in terms of its possession, distribution, and cultivation, and (in regards to medical) how it can be consumed and what medical conditions it can be used for.

At international level we have 3 United Nations treaties: the 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Since its descheduling in 2020, cannabis is classified as a Schedule I drug under the Single Convention treaty, meaning that signatories can allow medical use but that it is considered to be an addictive drug with a serious risk of abuse

1. Historical Aspects

After the majority of states outlawed cannabis, the US federal government started taxing the drug's production and sales by passing the Marihuana Tax Act of 1937.

This law was superseded in 1970 by the Controlled Substances Act.¹

¹ See R. Haffajee Health policy brief, p. 1.

Since state laws pertaining to cannabis vary widely among jurisdictions, they frequently clash with federal laws.

Prior to 1913, marijuana was accepted as a legal substance in every state and under federal law nationwide. But as states started to outlaw marijuana, starting with California in 1913 and Utah in 1914, 30 states had done so by the year 1930.²

These state-level bans on the drug were largely the result of anti-immigrant sentiments, particularly racial prejudice against Mexican migrant workers, who were frequently linked to drug use.

Marijuana use and the alleged "vices" that resulted from it were stigmatized by prohibition advocates who blamed terrible crimes on the drug and the Mexicans who smoked it.

Beginning in 1930, the Federal Bureau of Narcotics compelled states to enact their own laws to regulate the sale of marijuana in addition to the Uniform State Narcotic Drug Act.

Federal laws became stricter after Congress passed the Marihuana Tax Act in 1937, which effectively made marijuana illegal under federal law by enforcing a prohibitive tax. The 1956 Narcotics Control Act and the 1952 Boggs Act established mandatory sentences for drug-related offenses; a first offense for marijuana possession carried a minimum sentence of 2–10 years in prison and a fine of up to \$20,000.³

The Anti-Drug Abuse Act of 1986, signed by President Ronald Reagan, restored those mandatory sentences after they had been largely repealed in the early 1970s. The Controlled Substances Act, which was published in 1971 and designates marijuana as a Schedule I drug, is the current federal law that regulates marijuana possession, use, and distribution.

The Drug Enforcement Administration classifies drugs in this category if they "have no currently accepted medical use, a high potential for abuse, and/or a risk of creating severe psychological and/or physical dependence."⁴

States have been moving away from marijuana prohibition since the 1970s, despite a history of increasingly harsh federal action against marijuana (and other drugs).

Between 1973 and 1978, the possession or use of small amounts of marijuana was legalized in eleven states: Oregon, Alaska, California, Colorado, Maine, Minnesota, Ohio, Mississippi, New York, North Carolina, and Nevada, listed in chronological order.

Some states did not, however, take such an easy route to legalizing marijuana.

For instance, Alaska decriminalized home possession and use of marijuana in 1975, but a voter initiative in 1990 restored that decriminalization.

² See A. Dills S. Goffard, J. Miron, E. Partin, *op. cit.*, p. 3.

³ See A. Dills S. Goffard, J. Miron, E. Partin, *op. cit.*, p. 3.

⁴ See A. Dills S. Goffard, J. Miron, E. Partin, *op. cit.*, p. 3.

When Nevada decriminalized marijuana possession in 2001, the second wave of decriminalization got underway; since then, 19 additional states and the District of Columbia have followed suit.

By the middle of the 1990s, a number of states had begun to legalize medical marijuana but had placed strict restrictions on who could use it, limiting access to those who met certain requirements.

This was because growing scientific evidence suggested that marijuana may have medicinal benefits for treating chronic pain, glaucoma, Alzheimer's, Parkinson's, epilepsy, and other conditions. 33 states and the District of Columbia have legalized marijuana for medical use over the past 20 years.⁵

Since the turn of the century, marijuana has been made legal for medical use in 33 states and the District of Columbia, greatly increasing the pool of patients who can obtain prescriptions for the drug.

These medical regimes come close to de facto legalization in some states.

The states that have legalized marijuana for both recreational and medical use (Colorado, Washington, Oregon, Alaska, California, Nevada, Maine, Massachusetts, Illinois, Michigan, and Vermont) have experienced the most dramatic cases of states overturning previous prohibitions and deviating from federal law.

To date, ballot initiatives supported by citizens have been used in nearly every state to legalize marijuana.

State regulatory frameworks, licensing standards, and marijuana taxation typically take one to two years to establish following the formal legalization of marijuana; only then can the first dispensaries open.

More states had initiatives to relax their marijuana laws on their ballots in the 2020 elections.⁶

Cannabis use for recreational purposes is now legal in New Jersey, South Dakota, Arizona, and Montana thanks to ballot initiatives.

Voters also approved medical marijuana legalization initiatives in Mississippi and South Dakota.

While each state has its own unique path, most stick to the general pattern of first decriminalizing, then medicalizing, and finally legalizing.

One exception is Michigan, which, although many cities had already passed local decriminalization laws by that point, did not decriminalize marijuana on a national level before legalizing it for medical use.

Another example is Vermont, which legalized medical marijuana in 2004 and decriminalized it in 2013 after nine years.

Since these partial measures frequently serve as steps toward full legalization, states that follow the typical decriminalize-medicalize-legalize pattern can learn

⁵ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 4.

⁶ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 4.

from their experiences with decriminalization and medical legalization to better predict what effects full legalization will have.

California was the first state to modify its drug laws to permit the use of marijuana for medical purposes, back in 1996.

When March 1, 2023, comes around, 37 states, the Washington DC, Puerto Rico, Guam, have laws and policies allowing the medicinal use of marijuana

2. General Aspects

State laws pertaining to cannabis are quickly becoming more permissive, even though possession, cultivation, and distribution of the drug are all illegal under federal law.

State cannabis laws fall into four main categories: complete prohibition of supply, decriminalization, medical marijuana legalization, and recreational marijuana legalization.

By November 2020, thirty-six states had legalized cannabis for medical use, fifteen states had legalized cannabis for recreational use, and sixteen states had decriminalized cannabis possession and casual exchange.⁷

Policymakers should take a public health-informed approach to legalizing cannabis because there is little data on how cannabis liberalization affects population health. This approach should address legal loopholes between federal and state laws, provide regulatory oversight to ensure the safety of the cannabis supply, and address disparities in access to newly legal supply chains and the war on drugs.

Health policy briefs have no recognized medical use and a high potential for abuse

Cannabis production, distribution, possession, and sale are all illegal under federal law and may result in fines and jail time.⁸

The Department of Justice deprioritized prosecuting federal cannabis crimes in states where these activities were lawful and strictly regulated through a series of executive actions that culminated in the 2013 Cole memorandum.

The Rohrabacher-Farr Amendment was initially enacted in 2014 and forbade the use of federal funds for prosecutions pertaining to medical cannabis-related activities that were allowed by state law.

Additional recent federal initiatives have made it easier to obtain cannabis plant derivatives; however, these are not the same as the simple extracts and botanical products that typically rule state cannabis markets.

Between 1985 and 2016, multiple synthetic tetrahydrocannabinol (THC) products were approved by the Food and Drug Administration (FDA) and put on a different controlled substance schedule than cannabis.⁹

⁷ See R. Haffajee, *op. cit.*

⁸ See R. Haffajee, *op. cit.*, p. 2.

⁹ See R. Haffajee, *op. cit.*, p. 2.

Hemp, a material derived from the cannabis plant with a THC content of 0.3 percent, is now legal thanks to the 2018 Farm Bill.

FDA-approved cannabis-derived cannabidiol (CBD) products with a maximum THC content of 0, 3 percent were also recognized by the Drug Enforcement Administration in 2018

Because they are not thought to have comprehensive medical cannabis programs, the eleven states that allow the use of low-tetrahydrocannabinol, high-cannabidiol products are categorized as either decriminalization (North Carolina) or prohibition (Alabama, Georgia, Iowa, Indiana, Kentucky, South Carolina, Tennessee, Texas, Wisconsin, and Wyoming).

Public support for the legalization of cannabis use..increased from 12 percent to 66 percent between 1969 and 2019,.¹⁰

States liberalized their policies regarding cannabis markets at the same time.

The evolution of policy has been centered around four main categories: decriminalization, medical legalization, recreational (also called adult use) legalization, and prohibition.

Generally speaking, decriminalization policies were implemented first during the 1970s–1980s, with a resurgence in the 2010s.

3. Legalization and decriminalization

Decriminalization legislation were either replaced by recreational legalization or supplemented by medical legalization.

Decriminalization is the removal of criminal sanctions related to the possession of cannabis for individual use and non-commercial trade.¹¹

Decriminalization regimes do not include "depenalization" policies that only reduce these penalties rather than doing away with them. Decriminalization is distinct from nonenforcement policies that have been implemented in multiple US cities, where the enforcement of minor offenses involving cannabis is not given priority. Decriminalization is not the same as legalization because it keeps the civil penalties for cannabis possession in place and forbids and criminalizes the production, sale, and cultivation of cannabis.

States have enacted decriminalization laws at an increasing rate since the 1970s.¹²

By 2020, such a policy was in place in sixteen states. The levels of civil fines, repeat offense penalties, and the threshold amounts of cannabis that are exempt from criminal penalties are just a few of the dimensions along which the laws differ.

¹⁰ See R. Haffajee, *op. cit.*, p. 3.

¹¹ See R. Haffajee, *op. cit.*, p. 3.

¹² See R. Haffajee, *op. cit.*, p. 3.

The initial cannabis laws, enacted between 1996 and 2000, were imprecise and broadly defined for medical purposes.¹³

Laws enacted or amended in more recent years (2009–17) feature more extensive regulatory programs that prioritize product safety, even though laws passed between 2000 and 2009 provided more regulatory guidance over the legal supply chain.

The possession and distribution of cannabis by adults 21 years of age and older is no longer punishable by law, both criminally and civilly.

Most of these laws also impose at least a 10 percent retail excise tax on sales.

Generally speaking, these laws permit individuals to grow up to six cannabis plants and restrict possession and purchase to one to two ounces.

The majority of states that have legalized cannabis for recreational use forbid its use when operating a motor vehicle; however, four states have set per se THC limits for this purpose

The legalization of recreational use is a recent development

The world's first two states to legalize adult use and possession of cannabis were Colorado and Washington in 2012.¹⁴

All laws passed through 2020—aside from those pertaining to Illinois and Vermont—have been advanced through ballot measures as opposed to legislative action. States can choose which regulations they want to implement for recreational cannabis.

The majority of states have chosen a commercial approach, in which the private sector is permitted to cultivate, distribute, and market cannabis under state and occasionally local regulations. Washington, DC, permits only small amounts of cannabis for personal possession, use, and cultivation; it specifically forbids commercial production and retail sales.

Vermont allowed the opening of a commercial retail market in October 2020, despite the state's initial ban on sales for profit.¹⁵

Different commercial regimes may have different regulations for manufacturers and suppliers, different product categories that can be distributed, different taxes, different pricing structures, limitations on marketing, and different methods of using or cultivating products.

Adult cannabis-related arrests decreased in states that legalized the drug for recreational use.

Marijuana is classified as a psychoactive substance and is typically made up of the leaves and flowers of the cannabis sativa plant.

Under the federal Controlled Substances Act (CSA), marijuana is therefore subject to stringent federal regulations.

¹³ See R. Haffajee, *op. cit.*, p. 3.

¹⁴ See R. Haffajee, *op. cit.*, p. 3.

¹⁵ See R. Haffajee, *op. cit.*, p. 4.

However, over the past few decades, the majority of states and territories have moved away from outright banning marijuana and instead have implemented laws and policies that permit some amounts of the drug to be grown, sold, distributed, and owned.

In the US, marijuana is the most widely used illegal substance.¹⁶

Low-THC cannabis or cannabidiol (CBD) oil is referred to as "limited access medical cannabis" in ten more states.

Low-THC cannabis and medical marijuana are prohibited in Idaho, Kansas, Nebraska, and American Samoa. The CSA does not acknowledge the distinctions made by states between marijuana use for medical purposes and recreational purposes.

When the CSA was first passed by Congress in 1970, marijuana was initially classified as Schedule I.

Because of the Drug Enforcement Administration's (DEA) and Food and Drug Administration's (FDA) determination that marijuana has a high potential for abuse and no recognized medical use in the United States at this time, it is still classified as a controlled substance.

The recreational use of marijuana is legal as of March 1, 2023, in 21 states, Washington, DC, Puerto Rico, Guam, and the Northern Mariana Islands.¹⁷

Marijuana has been decriminalized in numerous states and towns over the past 50 years.

Decriminalizing marijuana is not the same as legalizing it.¹⁸

When an act is decriminalized in a state or municipality, the associated criminal penalties are either eliminated or reduced, , civil penalties might still apply.

Voters in Colorado and Washington approved ballot initiatives in November 2012, legalizing marijuana for recreational use in accordance with state laws.

Since then, nine more state, Alaska, Oregon, California, Nevada, Maine, Vermont, Massachusetts, Michigan, and Illinois, as well as the District of Columbia have adopted similar laws through legislative action or ballot initiatives.

In November 2020, state ballot measures legalizing marijuana for personal use were approved by voters in four other states: South Dakota, Montana, New Jersey, and Arizona. Both proponents and opponents of state-level marijuana legalizations make a lot of claims.

Proponents contend that legalization boosts tax receipts, decreases spending on the criminal justice system, enhances public health, boosts traffic safety, and boosts the economy.¹⁹

¹⁶ See L.N. Sacco, J.R. Lampe, H.Z. Sheikh, *The Federal Status of Marijuana and the Expanding Policy Gap with States*, p. 1.

¹⁷ See L.N. Sacco, J.R. Lampe, H.Z. Sheikh, *op. cit.*, p. 1.

¹⁸ See L.N. Sacco, J.R. Lampe, H.Z. Sheikh, *op. cit.*, p. 1.

¹⁹ See A. Dills S. Goffard, J. Miron, E. Partin, *The Effect of State Marijuana Legalizations*, p. 1.

Legalization, according to critics, encourages the use of marijuana and other drugs and alcohol, raises crime, reduces traffic safety, is bad for the public's health, and lowers adolescent academic achievement.²⁰

Since then, through ballot initiatives or legislative action, nine more states—Alaska, Oregon, California, Nevada, Maine, Vermont, Massachusetts, Michigan, and Illinois—as well as the District of Columbia, have adopted similar laws.

In the November 2020 elections, marijuana legalization was approved in four more states: Montana, South Dakota, Arizona, New Jersey, and South Dakota.

Both proponents and opponents of state-level marijuana legalization make a lot of claims.

The arguments for legalization include claims that it improves public health, boosts traffic safety, lowers criminal justice costs, increases tax revenue, and boosts the economy.

An examination of the most recent U.S. state legalizations are more restricted, but more extensive studies indicate that decriminalization has little to no impact on drug use.²¹

Previously, we evaluated these claims using data from states that by mid-2018 had legalized marijuana use for recreational purposes..

The assertions made by both supporters and detractors at the time were deemed to be significantly exaggerated, and in certain instances, completely devoid of empirical backing.

The legalization of marijuana at the state level had mostly insignificant consequences.

The increase in state tax revenue from legalized marijuana sales was one noteworthy exception; states with legal marijuana markets have received millions of dollars in state tax revenue.²²

4. The control of legal cannabis

Similar to taxes, regulations offer opportunities for influencing who consumes what, where they consume it, and how they consume it—and thus, a variety of consumption-related outcomes.

Prices, product variety, product consistency, product safety, and consumer information are all impacted by regulation.

Regulations can, however, be expensive to uphold, burden those who are subject to them, and open doors for evasion; the greater the incentive to break the rules, the greater the enforcement effort required to uphold them.

Regulations that are too onerous can slow down the process by which the legal market completely replaces the black market.

²⁰ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 1.

²¹ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 2.

²² See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 2.

As a result, finding the ideal balance between all of these competing factors presents numerous difficulties for policymakers.

Regulations can be difficult to implement and enforce, even when they are well-designed.²³

Product regulations are generally effective tools for enhancing product safety and enhancing consumer access to information about the products they are consuming

Since the 1970s, there has been discussion about the pros and cons of amending marijuana laws to allow the production and sale of marijuana by for-profit companies and other organizations. Indeed, both sides of the argument present a number of arguments.

Those who favor legalizing marijuana frequently argue that states should make money off of it rather than having it go to the black market.

They contend that a marijuana user shouldn't be detained for consuming a drug that is considered to be safer than alcohol.

The use of marijuana would increase due to legal availability, lower prices, and other negative health effects, according to opponents of legalization.

Additionally, they fear that marijuana will be promoted similarly to alcohol and that a strong lobby will be formed by the new industry to oppose regulation and taxation.²⁴

It will take years, if not decades, for industry structure and behavior to mature, and it will take just as long for consumer responses to emerge.

Although there is still much to learn from these experiences, the majority of the early realizations concern regulations and implementation rather than results. The literature does point to some distinct acute and long-term negative health effects of marijuana, particularly with regard to heavy, long-term marijuana use.²⁵

Accidents, intoxicated cognitive impairment, anxiety, dysphoria, and panic are examples of acute risks.

Bronchitis and dependence are longer-term risks of heavy marijuana use.

According to some evidence, heavy marijuana users run the risk of developing other serious conditions, such as testicular cancer, heart disease, and psychotic symptoms. Although there is a large body of research linking marijuana use to crime, there is little proof that use itself makes people more likely to commit crimes.

As a result, legalization is not likely to have a significant impact on non-drug-related crime.

The current state of the scientific literature in each of these fields is insufficient to determine the extent to which marijuana use is causally linked to

²³ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 8.

²⁴ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 9.

²⁵ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 10.

any of these outcomes, but we anticipate substantial gains in our understanding of the true nature of these effects.

Finally, the literature consistently identifies a negative association between marijuana use and school attendance and achievement, but it has not yet been conclusively determined whether this association is causal.

There is a sizable body of scientific literature on the effects of marijuana use, but it has important limitations.

For example, while marijuana use is correlated with many negative outcomes, it is much more difficult to determine whether marijuana use is the direct cause of those outcomes.

Additionally, the consequences of marijuana use in the past under the prohibition regime might not be a reliable indicator of the consequences of marijuana use in the future under a different legal system

Furthermore, no one can predict with certainty how legalization will impact use, particularly the extent to which heavy or harmful use will increase, which is directly relevant for comprehending the public-health and safety implications.

Furthermore, it is impossible to predict future changes to the product (e., potency, mode of use) or how these modifications might affect the connections between use and the harms mentioned in this article.

As a result, it is challenging to determine whether the associations identified in the past accurately predict those that will exist in the future.²⁶

Medical benefits, gains in personal liberties, and the advantages of fewer marijuana offenders being arrested and subjected to punishment are all advantages of marijuana use as well as some benefits of ceasing to enforce marijuana laws.

Alternative policies will come with risks, but the ones in place now cause measurable harm; being arrested and spending time in jail both negatively impact health and wellbeing. Although there is a strong correlation between marijuana use and a number of negative outcomes, it is much more difficult to prove that marijuana use is the direct cause of those outcomes

The importance of the results related to marijuana itself may be easily outweighed by the indirect effects that legalization may have on the use and abuse of other substances.

Sadly, there is more uncertainty regarding these indirect effects of alcohol and other drugs than there is regarding the impact of legalization on outcomes involving marijuana.

The degree to which predictions about whether legalization would be a net gain or loss for society should be believed is severely constrained by this ambiguity.

²⁶ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 10.

Particularly, proponents (and opponents) of legalization sometimes confidently predict that legalizing marijuana will decrease (or increase) alcohol abuse, but the evidence is conflicting.

Given the stronger evidence that marijuana and tobacco complement one another, we might anticipate that rising marijuana use will result in rising tobacco use.²⁷

Additionally, there is some evidence that suggests that making marijuana more accessible may help with the issue of diverted pharmaceutical opioid painkillers.

We stress that the pertinent policy question is not whether marijuana's current negative effects outweigh its positive ones, but rather whether and how legalization might alter both the negative effects and positive effects of marijuana and in what way.

Answering that question, at least for the time being, requires more judgment than calculation, and various readers will arrive at various conclusions.

5. Last evolutions

President Biden declared October 6, 2022, to be "a full, complete, and unconditional pardon to all current United States citizens and lawful permanent residents" who had committed or had been granted been found guilty of simple possession of marijuana in accordance with the CSA.²⁸

The pardon's extent is restricted by a number of factors.²⁹

First it only covers transgressions of DDOT and federal laws and has no bearing on other marijuana-related state laws violations.

Moreover, President Biden encouraged state governors to take similar steps.

Although some state governors have indicated a desire to act in a similar manner, others have not.

Governors are not able to dispense mercy on their own.

Second, other marijuana-related CSAs are not covered by the pardon; it only pertains to simple possession of marijuana-related offenses such as manufacture, distribution, or possession with intent to distribute or to other federal offenses.

Simple marijuana possession is rarely prosecuted at the federal level.

Around 7,700 persons who are eligible for a pardon were found guilty, according to the Sentencing Commission (USSC).

Thirdly, the pardon's terms state that it "does not apply to individuals who were non-citizens not legally present the time of their crime, in the United States.

Fourth, only offenses committed prior to the proclamation are covered by the pardon.

²⁷ See A. Dills S. Goffard, J. Miron, E. Partin, op. cit., p. 10.

²⁸ J.R. Lampe, Recent Developments in Marijuana, p. 2.

²⁹ J.R. Lampe, op. cit., p. 3.

Fifth, since the pardon does not absolve other legal effects of possession of marijuana of all legal ramifications, it might not.

Conclusion

We can identify 5 main aspects of US legal regime of cannabis.

Cannabis is not permitted by the federal law.

State laws can be passed by initiative or referendum, rather than parliamentary debate.

‘Medical’ cannabis had been legal and openly available for several years before recreational use was permitted.

Direct-to-consumer advertising of prescription medicines is permitted.

The right to ‘commercial freedom of speech’ limits the state’s ability to regulate advertising.

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