Legalizing Marijuana
See the Chronology
March 25, 2014
Is marijuana prohibition coming to an end?

Legalizing marijuana for medicinal or recreational use is rapidly gaining favor among the American public, driven by demographic changes and shifting attitudes. Nearly 40 percent of Americans live in states where medical marijuana is legal, and 16 states have decriminalized possession of small amounts of the drug. Colorado and Washington just legalized the recreational use of marijuana, and legalization advocates around the country are collecting signatures to get marijuana legalization proposals on the ballot. But despite changing opinions and the flurry of legislative efforts, marijuana is still illegal under federal law, and the discrepancy between state and federal laws creates a murky legal area for states, marijuana dispensaries, patients and recreational users.

Colorado revenue officials announced in March that the state collected about $2 million in taxes on $14 million in marijuana sales in January — the world’s first accounting of state revenues available to states from legalizing recreational marijuana. Colorado legalized nonmedicinal marijuana sales in 2012, but the first marijuana dispensary did not open until Jan. 1 of this year. Sales will begin in Washington state — the only other state that has legalized recreational pot — in the coming months. On March 14, the Maryland Senate voted to decriminalize possession of small amounts of marijuana and sent the measure to the House of Delegates.

In all, 16 states have decriminalized possession of small amounts of the drug. In January, the New Hampshire House became the first state legislative body to approve the retail sale of recreational marijuana. (Colorado and Washington legalized it through ballot initiatives, not legislative action.) The New Hampshire measure then went to the House Ways and Means Committee, which approved it on March 18. The measure now goes back to the full House for approval again. The Senate will take up the measure next, but Gov. Maggie Hassan has promised to veto the measure if it reaches her desk.

Meanwhile, on the medical marijuana front, Maryland and New York have decided to allow medical centers to run medical marijuana programs. And last summer Illinois and New
Hampshire became the latest states — of 20 plus the District of Columbia — to legalize medical marijuana. Altogether, lawmakers in 31 states, the District of Columbia, Puerto Rico and Guam proposed bills in 2013 aimed at legalizing medical or adult recreational use of the drug or to decriminalize possession of small amounts.

Petitions to allow referendums this year on legalizing medical marijuana are circulating in Arkansas, Florida, Idaho, Nebraska, Oregon, Utah and Wyoming. Advocates in four other states — California, Arizona, Oregon and Alaska — are seeking enough signatures to put legalization of the drug for recreational purposes on the ballot.

Despite the state-level activities, marijuana is still banned by federal law, though the Obama administration has eased some enforcement (see below). However, a growing movement is pushing the government to abandon the longstanding classification of marijuana as a Schedule 1 controlled substance, or an addictive drug with no known medical benefits on a par with such drugs as heroin and LSD.

“Our federal marijuana laws are broken, and rather than working around them, we need to fix them,” says Mason Tvert, communications director for the Marijuana Policy Project, a Washington, D.C.-based organization that advocates ending marijuana prohibition.

But opponents of legalizing marijuana — including medical marijuana — say lifting the prohibition would lead to higher rates of drug abuse, particularly among adolescents.

While illicit drug use among American youth has declined from its peak in the 1970s, nearly 24 million Americans reported using drugs in 2012. Marijuana was the most popular, with 7.6 million people reporting using it on a daily basis, up from 5.1 million in 2007. Use among adolescents, however, was down to 7.2 percent from 8.2 percent in 2002.

“Tobacco and alcohol are far more widely used among adolescents than marijuana, yet all three are illegal for teens,” says Eric Voth, chairman of the Institute on Global Drug Policy, in St. Petersburg, Fla., which opposes marijuana legalization. And in the run-up to implementation of Colorado’s new law, schools there reported a rise in drug-related incidents, he says.
Since 2010, support for legalizing marijuana has increased in every major demographic and political group, even among older adults. In October 2013, for example, 58 percent of respondents to a Gallup poll thought marijuana should be made legal for all adults — 10 percentage points higher than the year before, and nearly five times greater than in 1969. Support for legalizing marijuana for both medicinal and recreational use is highest among young Americans, according to the poll. But even among respondents 65 and older, the group most likely to disapprove, support for legalization grew by 14 percentage points from 2011. Gallup said a main reason for the change may be the growing acceptance of marijuana as having medical benefits. In a CBS News poll released in January, 86 percent of respondents said they believe a doctor should be able to prescribe marijuana to patients with serious illnesses.

“I’m surprised by the long-term increase in support for marijuana legalization in the last six or seven years,” said Peter Reuter, a University of Maryland public policy professor who researches drug policy. Medical marijuana, he said, has been a big factor in reducing the stigma associated with the drug.

Given the shift in public opinion and the continuing legalization efforts, many advocates of legalization believe the nation’s decades-long prohibition on marijuana could be nearing an end. “The train’s out of the station now, and it’s not just going to be Washington and Colorado,” says Neill Franklin, a retired Maryland State Police major and the executive director of Law Enforcement Against Prohibition, which supports legalization. “Our policymakers aren’t leaders, they follow. Wherever the people are leaning, that’s where they’re obviously going to go.”

**Legal Confusion**

States have the right to regulate marijuana as they see fit, but because it is banned under federal law, the discrepancy has created a murky legal area for states, marijuana dispensaries, patients and individuals.

The Obama administration’s marijuana enforcement policy has evolved over the last few years. In 2009, Attorney General Eric Holder said the Drug Enforcement Administration would “go after those people who violate both federal and state law.” At the same time, the Justice Department told federal prosecutors not to focus federal resources “on individuals whose actions are in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana.”

But in 2010, prosecutors in several states — including California, Colorado, Montana and Nevada — carried out dozens of raids on state-licensed marijuana growers and dispensaries, prompting calls from states and marijuana advocates for greater clarity on the Obama administration’s stance. In an attempt to clarify its position, the Justice Department said in 2011 that only medical marijuana patients and their caregivers would be protected from
prosecution, but it also suggested that state employees could be prosecuted for their role in licensing and regulating marijuana dispensaries, Franklin says.

Last August legalization advocates welcomed the news that the Justice Department would not interfere with efforts to implement the legal framework for selling marijuana in Colorado and Washington state. Moreover, the department directed federal prosecutors not to go after individual users but to focus on eight areas of enforcement, including keeping marijuana out of the hands of minors and criminals, preventing it from being resold in states where it remains illegal and preventing it from being grown on federal land.

Even without clear legal standing, the medical marijuana industry has grown into a $2 billion industry with an annual growth of 13.8 percent between 2008 and 2013.

The Justice Department announced on Jan. 23 that it will issue new rules allowing banks to do business with state-sanctioned marijuana businesses, even though cannabis is still illegal under federal law. Not having access to banking services has been a big hurdle for marijuana growers and retailers.

**Latest Research**

By classifying marijuana as a Schedule 1 drug in the 1970 Controlled Substance Act, Congress put it in the same class of drugs as heroin and LSD. Last year the American Medical Association (AMA) reaffirmed its call for a review of marijuana’s classification, a stance the association’s policy-making body originally made in 2009.

Federally funded research in the 1980s and ’90s found that the human body’s endocannabinoid system helps to regulate body functions such as temperature, sleep, appetite and inflammation, says Dr. Jeffrey Hergenrather, president of the Society of Cannabis Clinicians in Sebastopol, Calif. Marijuana binds to the body’s cannabinoid receptors and mimics the effects of the body’s naturally occurring cannabinoids. Marijuana’s two main cannabinoids are delta-9 tetrahydrocannabinol, or THC, which makes people high, and CBD, cannabidiol, which doesn’t.

Research has shown that THC and CBD can help to control pain in cancer patients and muscle spasms in people with multiple sclerosis. And Hergenrather has been researching marijuana’s possible role in shrinking brain tumors.

“We are interested in researching CBD, but not without looking at the role that THC can play,” says Hergenrather. “To throw out THC is a mistake. We don’t want to throw it out because it’s so effective in so many ways. A lot of it is about dosing. You can use THC in small quantities. To act like there’s no medicinal properties of this plant is ludicrous.”

Voth acknowledges that cannabinoids may help control pain, but he says the current medical marijuana industry lacks adequate controls for patient safety because it largely bypasses the Food and Drug Administration (FDA) process for bringing new drugs to the market. “You have this
highly impure, highly variable substance on the market and really don’t know if you’re getting 3 percent THC or 25 percent THC, and that makes a huge difference in terms of side effects and addiction processes,” he says. “It really creates, I think, a huge issue for customer safety and citizen safety,” he says.

The FDA has approved two synthetic THC drugs — Marinol and Cesamet — to treat nausea suffered by cancer patients undergoing chemotherapy. The British company GW Pharmaceuticals is seeking FDA approval to market a drug made from the marijuana plant, Sativex, as a treatment for cancer pain. It is already being used in Europe to control muscle spasms in multiple sclerosis patients. GW Pharma also has received FDA approval to study a CBD extract to treat children with a rare form of epilepsy.

“We’re happy to see anything happening,” Hergenrather says. “This is a trickle of recognition that plant-based extracts will be found to have anti-seizure properties.”

**Robust Sales**

Colorado’s 37 retail marijuana stores reported more than $1 million in sales on New Year’s Day, although official sales figures won’t be available until late February. Retailers estimated $5 million in sales statewide in the first week alone.

“Every day that we’ve been in business since Jan. 1 has been better than my best day of business ever,” Andy Williams, owner of Denver’s Medicine Man dispensary, told The Huffington Post. Medical marijuana dispensaries in Colorado sold more than $219 million worth of pot in 2012.

In November, Colorado voters approved statewide excise and sales taxes on marijuana, which are expected to raise about $67 million a year to cover the cost of regulating marijuana sales and help fund school construction. In Washington state, the first recreational marijuana stores could be open by May or June. State officials estimated that a “fully functioning” marijuana market could raise a total of $1.9 billion in tax revenue in five years.

Colorado and Washington are widely seen as laboratories for testing the regulated sale of marijuana. Advocates believe that if things go well there, it would spell the end of marijuana prohibition in the rest of the nation. And in California, where marijuana advocates are collecting signatures for a proposed ballot initiative legalizing the recreational sale of marijuana, the state attorney general expects net tax revenues “in the low hundreds of millions of dollars” from legalization of the drug.

But opponents also are watching Colorado and Washington closely, and predict that public health problems — such as increased addiction and drugged driving — will rise and that projected tax revenues will fall short.
“I don’t accept that marijuana legalization is inevitable,” said David Evans, a lawyer who is an adviser to the Drug Free America Foundation. “The states that have legalized it are going to serve as an example of what not to do.”

Chronology

2010
July
Department of Veterans Affairs (VA) decides to allow patients at VA hospitals to use medical marijuana in states where it is legal.
November
Arizona, New Jersey and the District of Columbia pass medical marijuana legislation. California voters defeat an initiative to legalize and tax marijuana, 53 percent to 47 percent.
December
U.S. Senate confirms Michele Leonhart, a foe of medical marijuana, as administrator of the Drug Enforcement Agency (DEA).

2011
February
Melinda Haag, U.S. attorney for the Northern District of California, warns officials in Oakland, Calif., that the federal government may pursue criminal prosecution of proposed high-tech indoor medical marijuana facilities.
April
Democratic Washington Gov. Christine Gregoire vetoes parts of a bill that would regulate medical marijuana use and establish a licensing system after the state’s two U.S. attorneys warn they could prosecute state workers who license pot-growing facilities.
May
Delaware legislature approves medical marijuana use.
June
Deputy Attorney General James Cole advises states that growers and distributors of medical marijuana may be prosecuted under federal law.
October
Oakland’s Harborside Health Center, a medical marijuana dispensary, is hit with a $2.5 million federal tax bill after the Internal Revenue Service determines that marijuana dispensaries cannot deduct payroll, rent and other expenses on their tax returns.

2012
November
Voters in Washington and Colorado approve referendums legalizing the sale of marijuana to adults for recreational use. Massachusetts becomes 18th state to pass medical marijuana law when voters approve it in a referendum.

2013
February
Oregon Democratic Rep. Earl Blumenauer and California Republican Rep. Dana Rohrabacher are among those backing a bill in the U.S. House that would block the federal government from interfering in states where medical marijuana is legal. The measure, which is unlikely to pass the Republican-controlled chamber, would also create a process for the Food and Drug Administration to approve the medical use of pot.
March
July
Vermont decriminalizes possession of small amounts of marijuana. . . . New Hampshire becomes 18th state to allow the use of medical marijuana.
August
Democratic Illinois Gov. Pat Quinn signs medical marijuana bill. The new law is
among the strictest in the country, limiting legal use of marijuana to patients with at least one of 33 medical conditions. . . . Justice Department tells officials in Washington and Colorado that the federal government won’t block state plans to sell marijuana legally, and it directs federal prosecutors to focus on eight areas of drug enforcement rather than targeting individual marijuana users.

November

Colorado voters approve a ballot measure to impose statewide taxes on marijuana sales. . . . Portland, Maine, becomes first East Coast city to legalize marijuana. . . . Officials in Washington state begin taking applications for legal marijuana growing and retail stores.

2014

January

Retailers in Colorado begin selling recreational marijuana on Jan. 1, generating an estimated $5 million in sales in the first week alone. . . . Justice Department announces on Jan. 23 it will issue rules enabling banks to do business with state-sanctioned marijuana businesses, even though cannabis is still illegal under federal law.

Footnotes


Ibid., p. 37.


About the Author

**Michelle Johnson** is a journalist based in Indianapolis.