



State Marijuana “Legalization” and Federal Drug Law: A Brief Overview for Congress

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On May 21, 2020, Virginia Governor Ralph Northam [signed legislation](#) decriminalizing the possession of marijuana under Virginia state law. Under the [new Virginia law](#), possession of up to an ounce of marijuana will be punishable by a civil penalty of no more than \$25. The new statute does not make marijuana possession legal; instead, individuals who possess small amounts of marijuana for personal use will no longer face jail time under state law. Another Virginia [statute](#) enacted in 2020 permits the possession of certain cannabis-derived products for medical purposes. Virginia is one of a number of states that in recent years have [relaxed criminal prohibitions](#) on the production, distribution, and possession of cannabis. Following these changes to state law, medical and recreational cannabis businesses have begun [operating openly](#) in some parts of the United States.

News outlets reporting recent changes to state marijuana laws often broadly refer to such efforts as either “[decriminalizing](#)” or “[legalizing](#)” marijuana, with some reports suggesting that cannabis businesses that comply with state law are “[legal](#).” However, news reports rarely define those terms or consider the interplay between state and federal law. In fact, many cannabis-related activities that comply with *state* law may nonetheless violate the *federal* [Controlled Substances Act](#) (CSA). In light of recent changes to state marijuana regulation, this Sidebar provides background on the primary legal regimes that apply to cannabis, with a focus on the divergence between federal and state controlled substances law. It then briefly discusses the legal consequences of the status of cannabis under the CSA and outlines certain related considerations for Congress.

Classifying Cannabis under Federal Law

The plant *Cannabis sativa* L. and products derived from that plant have a number of uses and may be subject to several overlapping legal regimes. Some of the chemicals found in cannabis, known as cannabinoids, produce a psychoactive effect. Thus, varieties of cannabis containing significant amounts of those chemicals, particularly the psychoactive cannabinoid [delta-9 tetrahydrocannabinol](#) (THC), may be used as a [recreational drug](#). Cannabis and cannabis derivatives—including the non-psychoactive cannabinoid [cannabidiol](#) (CBD)—may also be used for [medical purposes](#). In addition, low-THC varieties of cannabis, often called [hemp](#), have varied commercial and industrial applications including use in building materials, fibers, and personal care products.

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Cannabis generally falls within one of two categories under federal law: *marijuana* or *hemp*. Unless an exception applies, the CSA classifies the cannabis plant and its derivatives as “*marihuana*.” (The statute uses an archaic spelling that was more common when Congress enacted the CSA in 1970.) However, the CSA definition of *marijuana* excludes (1) products that meet the legal definition of *hemp* (discussed below) and (2) the mature stalks of the cannabis plant; the sterilized seeds of the plant; and fibers, oils, and other products made from the stalks and seeds.

Federal law defines *hemp* as the cannabis plant or any part of that plant with a THC concentration of no more than 0.3 percent. Cannabis that contains such low levels of THC is **not considered to be psychoactive** and does not produce the “high” associated with marijuana. Notwithstanding the lack of psychoactive effect, until late 2018 most cannabis, including hemp, was legally classified as marijuana regardless of THC content, making it subject to regulation under the CSA. However, in December 2018, Congress enacted the **2018 farm bill**, amending the CSA to provide that hemp that meets the foregoing legal definition is not a controlled substance. Although hemp is no longer a controlled substance under the CSA, it remains subject to federal regulation. For instance, the **Department of Agriculture regulates hemp production**, and the **Food and Drug Administration (FDA) regulates some hemp-derived consumer products**.

Previously, an additional category of cannabis-derived products existed under federal law: In a **September 2018 regulation**, the Drug Enforcement Administration (DEA) placed FDA-approved low-THC prescription drugs derived from cannabis in **Schedule V** of the CSA—the least restrictive classification. However, that regulation predated the 2018 farm bill, and following enactment of that law, any drug that falls under the regulation also fits the legal definition of *hemp*. In April 2020, the manufacturer of the only such drug, a seizure medication called Epidiolex, **announced** that DEA had confirmed that Epidiolex is no longer subject to the CSA.

Marijuana under the CSA

If a product falls within the CSA’s definition of *marijuana*, that product is a **Schedule I controlled substance** under the statute and is subject to the **most stringent federal substance controls**.

As background, the CSA imposes **comprehensive regulatory controls** on drugs and other substances that pose a risk of abuse and dependence. The CSA applies to both medical and recreational drugs and aims to protect public health from the dangers of controlled substances while also ensuring that patients have access to pharmaceutical controlled substances for legitimate medical purposes. Substances become subject to the CSA through placement in one of five lists, known as **Schedules I through V**. Either Congress or DEA can **alter the status** of a substance under the CSA by adding a substance to one of the schedules, moving it to a different schedule, or removing the substance from control altogether.

A lower schedule number carries greater restrictions, meaning that controlled substances in Schedule I are subject to the most stringent controls. **Placement in Schedule I** reflects a finding that a substance has a high potential for abuse, no currently accepted medical use, and “a lack of accepted safety for use ... under medical supervision.” Because Schedule I controlled substances have no accepted medical use, they may not be dispensed by prescription. By contrast, controlled substances in **Schedules II through V** have accepted medical uses and pose progressively lower risks of abuse and dependence. Unlike substances in Schedule I, those substances **may be dispensed by prescription** for medical purposes.

Although drugs such as marijuana may colloquially be called “illegal drugs,” the CSA does not fully ban any substances. It is legal to produce, distribute, and possess Schedule I substances in the context of **federally approved scientific studies**, subject to **CSA regulatory requirements** designed to prevent abuse and diversion. For example, DEA-registered researchers must maintain records of transactions involving controlled substances and establish security measures to prevent theft of such substances. **If a registrant**

contravenes the CSA's requirements, DEA may take administrative enforcement action. In the event of a knowing violation, DEA—through the Department of Justice (DOJ)—may bring criminal charges.

Activities involving Schedule I substances not authorized under the CSA are federal crimes that may give rise to large fines and significant jail time. Penalties vary according to the nature of the unauthorized activity and the type and amount of the controlled substance at issue. With regard to marijuana specifically, [unauthorized simple possession](#) may prompt a minimum fine of \$1,000 and a term of up to a year in prison. Illicit [distribution of large quantities of marijuana](#) carries a prison sentence of 10 years to life and a fine of up to \$10 million for an individual or a fine of up to \$50 million for an organization. Penalties increase for subsequent offenses or if use of the substance causes death or serious bodily injury.

Cannabis under State Law

In addition to the federal CSA, each state has its own controlled substance laws. State substance control laws often roughly mirror federal law, and such laws are relatively uniform across states because many states have adopted versions of a model statute called the [Uniform Controlled Substances Act](#). However, there is [not a complete overlap](#) between drugs subject to federal and state control. States have sometimes opted to impose state law controls that are either more or less strict than those of the CSA.

One area where federal and state controlled substance laws diverge significantly is marijuana regulation. While every state once broadly prohibited the production, distribution, and possession of marijuana, in the last few decades many states have repealed or limited such prohibitions. As of May 2020, all but three states have changed their laws to permit the use of [cannabis for medical purposes](#). In addition, 11 states and the District of Columbia have passed laws removing state prohibitions on [recreational marijuana](#) use by adults age 21 or older. State laws relaxing controls on cannabis vary in scope. Some states permit medical use of cannabis only for a [narrow range of medical conditions](#) or restrict the means of administration by, for example, [limiting THC content](#) or [forbidding the use of smokeable cannabis](#) for medical purposes. With respect to non-medical marijuana, some states have [broadly repealed criminal prohibitions](#) on adult use of marijuana and fostered a state-legal recreational cannabis industry. Other states (most recently Virginia) have more narrowly removed criminal prohibitions but maintained civil penalties for marijuana-related activities.

The Federal-State Divide and Its Legal Consequences

Notwithstanding the foregoing state laws, any activity involving marijuana that is not authorized under the CSA remains a [federal crime](#) anywhere in the United States, including in states that have purported to legalize medical or recreational marijuana. Under the Constitution's [Supremacy Clause](#), federal law takes precedence over conflicting state laws, and the Supreme Court has held that [states laws authorizing medical marijuana use do not affect the CSA's restrictions](#). Thus, when states "legalize" a federally controlled substance such as marijuana, the sole result is that the substance is no longer controlled *under state law*.

Activities that violate the CSA may give rise to federal criminal prosecution. As a practical matter, however, DEA and DOJ [lack the resources to prosecute all violations](#) of the CSA. [DOJ guidance memoranda](#) from the Obama Administration broadly affirmed federal authority to prosecute such activities but also indicated that DOJ would generally not prioritize prosecution of activities involving medical marijuana that complied with state law. Under the Trump Administration, DOJ [rescinded that guidance](#), instead reaffirming the authority of federal prosecutors to exercise prosecutorial discretion to target federal marijuana offenses "in accordance with all applicable laws, regulations, and appropriations." Notwithstanding the change in guidance, year-end reports on the federal judiciary indicate that federal marijuana prosecutions dropped in both [2018](#) and [2019](#), even as the total number of defendants charged with drug crimes increased.

The reference to appropriations in the DOJ guidance is significant, because in each budget cycle since FY2014, Congress has passed an [appropriations rider](#) barring DOJ from using taxpayer funds to prevent states from “implementing their own laws that authorize the use, distribution, possession, or cultivation of medical marijuana.” The appropriations rider thus prohibits federal prosecution of state-legal activities involving *medical marijuana*. However, it poses no bar to prosecution of activities involving *recreational marijuana*. Moreover, the rider does not remove criminal liability; it merely prevents enforcement of the CSA in certain circumstances. As the U.S. Court of Appeals for the Ninth Circuit has [explained](#), if Congress repealed the appropriations rider, DOJ would be able to prosecute violations of the CSA that occurred while the rider was in effect, subject to the applicable statute of limitations.

Even absent criminal prosecution or conviction, individuals and organizations engaged in marijuana-related activities in violation of the CSA—including participants in the state-legal cannabis industry—may face collateral consequences arising from the federal prohibition of marijuana. Other federal laws impose legal consequences based on criminal activity, including violations of the CSA. For example, a financial institution handling income from a marijuana business may violate federal [anti-money laundering laws](#). Likewise, marijuana businesses may be [ineligible for certain federal tax deductions](#). The presence of income from a marijuana-related business may also prevent a bankruptcy court from [confirming a bankruptcy plan](#) (though courts [have split](#) on the issue). For individuals, participation in the state-legal marijuana industry may have [adverse immigration consequences](#). Violations of the CSA may also affect individuals’ ability to receive [certain federal government benefits](#). In addition, federal law [prohibits gun ownership and possession](#) by any person who is an “unlawful user of or addicted to any controlled substance,” with no exception for users of state-legal medical marijuana.

Considerations for Congress

Congress possesses broad authority to change the status of cannabis under the CSA and related federal laws. If Congress seeks to regulate marijuana more stringently, it could, among other options, repeal the appropriations rider discussed above or increase DOJ funding to prosecute CSA violations. However, most [recent proposals](#) before Congress seek to relax federal restrictions on marijuana or mitigate the disparity between federal and state marijuana regulation. Some proposals would [remove marijuana from regulation under the CSA entirely](#) or [move it to a less restrictive schedule](#) so that it could be dispensed by prescription for medical purposes. Other proposed legislation would leave marijuana in Schedule I but [limit enforcement](#) of federal marijuana law in states that elect to legalize marijuana. Additional proposals would seek to address specific legal consequences of marijuana’s Schedule I status by, for example, enabling marijuana businesses to access [banking services](#), facilitating DEA-approved [clinical research](#) involving marijuana and other Schedule I substances, or removing collateral consequences for individuals in areas such as [immigration](#) and [gun ownership](#).

Changes to the status of marijuana under the CSA could raise additional legal questions. For instance, FDA regulates certain cannabis products under the [Federal Food, Drug, and Cosmetic Act](#), so Congress might also consider whether to alter that regulatory regime. In addition, it is possible that relaxing the CSA’s restrictions on marijuana could implicate the United States’ [international treaty obligations](#). For further information on proposed reforms and legal issues related to marijuana’s status under the CSA, see CRS Report R45948, [The Controlled Substances Act \(CSA\): A Legal Overview for the 116th Congress](#), by Joanna R. Lampe.

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