



EXPLAINER

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Dismantling the War on Drugs with Federal Marijuana Decriminalization

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[Thirty-seven states](#) and the District of Columbia have decriminalized marijuana or authorized its medicinal use despite federal prohibition. State ballot initiatives to legalize marijuana across the country have successfully passed in thirteen states and D.C., often with bipartisan public support. Some opinion polls show [more than two in three](#) Americans support medical and recreational use nationwide.

Nevertheless, [hundreds of thousands](#) of people are still arrested and jailed for marijuana possession every year as a result of current federal marijuana policy. **Black people are four times as likely to be arrested for marijuana possession than white people** despite rates of marijuana use being roughly equal. This disparity perpetuates racist drug stereotypes and falsehoods about higher rates of marijuana usage and violence among non-whites. **In 2020, an estimated 350,150 arrests were made for marijuana-related violations, of which 91% (317,793) were possession-only offenses.**¹ Instead of re-examining current prohibitions on marijuana given the lengthy history of discrepancies in arrests, sentencing, and [inadequate treatment for drug addiction](#) within the carceral system, U.S drug policies continue to fuel a War on Drugs that has [cost Americans more than \\$1 trillion](#).

To respond to these challenges, **Members of Congress have introduced a number of proposed legislative reforms in the 117th Congress** that would change the current prohibition on marijuana at the federal level, with varying provisions. Some of these initiatives can be found below.

¹ NORML. Marijuana Arrests. 2021.

<https://norml.org/blog/2021/09/27/marijuana-arrests-fall-precipitously-nationwide-in-2020/>

Bill	Sponsor	Reform Description	Latest Legislative Action/Votes	Federal Declassification?	Cosponsors
Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act (H.R. 3617)	Rep. Jerrold Nadler (D-NY-10)	Removes marijuana from the federal list of controlled substances; establishes initial excise tax of 5% on marijuana sales; contains various equity provisions to assist economically and socially disadvantaged business owners; provides for expungement and resentencing of federal cannabis offenses; and prevents removal of public benefits and immigration-based consequences for the use of cannabis or minor cannabis-related infractions.	2022: Passed the House by a vote of 220-204	Yes	D: 113 R: 1 Total: 114
Secure and Fair Enforcement (SAFE) Banking Act* (H.R. 1996)	Rep. Ed Pearlmuter (D-CO-7)	Explicitly exempts financial institutions from penalties associated with providing banking services to a licensed cannabis-related business.	2021: Passed the House by a vote of 321-101	No	D: 154 R: 26 Total: 180
States Reform Act (H.R. 5977)	Rep. Nancy Mace (R-SC-1)	Amends the Controlled Substances Act to exclude marijuana; imposes a 3% fixed tax on marijuana sales; expressly defers regulation and oversight of cannabis	Referred to multiple Committees of jurisdiction	Yes	D: 0 R: 4 Total: 4

Bill	Sponsor	Reform Description	Latest Legislative Action/Votes	Federal Declassification?	Cosponsors
		to states; establishes regulatory framework similar to alcohol; contains equity provisions to assist small business owners, provides for expungement of certain cannabis offenses; and invests revenue in Department of Justice programs and law enforcement.			
Harnessing Opportunities by Pursuing Expungement (HOPE) Act (H.R. 6129)	Reps. David Joyce (R-OH-14) and Alexandria Ocasio- Cortez (D-NY-14)	Establishes a grant program under the DOJ, to be allocated to assist states and local governments in expunging convictions for cannabis-related offenses.	Referred to Judiciary Committee	No	D: 3 R: 2 Total: 5
Cannabis Administration and Opportunity Act (CAOA) (S. 4591)	Sen. Cory Booker (D-NJ)	Removes marijuana from the federal list of controlled substances; establishes initial excise tax of 10% on marijuana sales; contains various equity provisions; establishes a regulatory framework for cannabis similar to alcohol and tobacco.	Referred to Finance Committee	Yes	D: 4 R: 0 Total: 4

Bill	Sponsor	Reform Description	Latest Legislative Action/Votes	Federal Declassification?	Cosponsors
Cannabidiol and Marihuana Research Expansion Act (S. 253)	Sen. Dianne Feinstein (D-CA)	Expands the number of researchers allowed to study marijuana; expedites the process to boost the quantity of marijuana that is produced for research; streamlines the process for FDA approval of drugs using cannabis.	Passed Senate by unanimous consent	No	D: 5 R: 5 Total: 10
Common Sense Cannabis Reform for Veterans, Small Businesses, and Medical Professionals Act (H.R. 3105)	Reps. Dave Joyce (R-OH-14) and Don Young (R-AK-At Large)	Removes marijuana from the federal list of controlled substances; directs two federal agencies to issue rules regulating marijuana in a manner similar to alcohol; establishes safe harbor protections for banking institutions; protects veterans who use, possess, or transport medical marijuana.	Referred to multiple Committees of jurisdiction	Yes	D: 4 R: 4 Total: 8
The Preparing Regulators Effectively for a Post-Prohibition Adult Use Regulated Environment (PREPARE) Act (H.R. 7513)	Reps. Dave Joyce (R-OH-14), Hakeem Jeffries (D-NY-8), and Brian Mast (R-FL-18)	Establishes a Commission to study a pathway for the federal regulation of cannabis; directs the Commission to propose measures to eliminate the: impact of cannabis	Referred to multiple Committees of jurisdiction	No	D: 2 R: 2 Total: 4

Bill	Sponsor	Reform Description	Latest Legislative Action/Votes	Federal Declassification?	Cosponsors
		criminalization; lack of access to financial capital for cannabis industries; lack of cannabis research; and lack of protections for the hemp industry.			

*Note: SAFE Banking provisions also passed the House after inclusion in two coronavirus relief packages, the FY22 NDAA, and the America Competes Act. The measure has passed the House a total of six times.

AMERICA’S RACIST WAR ON DRUGS

In 1970, President Richard Nixon signed the Controlled Substances Act into law, which classified marijuana under [Schedule I](#)—drugs that are considered to be highly addictive and are not accepted for medical use. The Controlled Substances Act also created the Commission on Marijuana and Drug Abuse (also known as the Shafer Commission), to study the physical and psychological effects of marijuana. This Nixon-appointed Commission [recommended eliminating criminal penalties for the private use and possession](#) of marijuana. Despite these findings, the recommendation was ultimately rejected by Congress and the Nixon Administration. Instead, President Nixon maintained his declaration of a “[War on Drugs](#),” proposing increased federal funding for drug control agencies and mandatory prison sentences for drug crimes. He later created the Drug Enforcement Administration (DEA) to target criminalized drug use and smuggling.

Today, the DEA has a budget of [more than \\$2 billion](#). The drug war has torn apart communities across the country—particularly Black communities—while failing to reduce or address substance abuse. Since its inception, millions of Black, brown, and Indigenous people have been targeted by this unjust, racist system of drug criminalization. In 1994, [John Ehrlichman](#), President Nixon’s counsel and assistant for domestic affairs, revealed that the War on Drugs was an intentional effort to criminalize entire communities and a means of social control and surveillance of the Black community. By his own account, Ehrlichman stated that “The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people.” By criminalizing the use of drugs and associating it with a propensity for violence, the Administration could disrupt communities viewed as political threats.

The drug war has been a vehicle for mass incarceration, disenfranchisement, and a militarized police force and violence. It has created unnecessary and discriminatory barriers to housing and employment, and restricted needed access to public assistance. Over the past five decades, the War on Drugs has contributed to a 350 percent increase in the number of Americans behind bars, with **1 in 9 Black children having an incarcerated parent, as well as 1 in 28 Latino children.**² In 2017, [24 percent](#) of people who were arrested for drug law violations were Black, though Black people make up only 13 percent of the U.S. population. Among Indigenous populations, federal protections for state and territorial cannabis markets [don't apply to Native American tribes](#), thwarting their ability to cultivate marijuana and enter the cannabis industry to overcome poverty, in another example of discriminatory policies and persistent exclusion. According to the ACLU, as of 2018, there were more people arrested for marijuana possession than for all violent crimes combined. From 2010 to 2018, [more than 6.1 million people](#) were arrested for marijuana, with possession accounting for 9 out of 10 arrests.

Drug laws and sentencing laws are consistently used as a cudgel against Black and brown people — despite similar rates of marijuana use as white people. **Prosecutors are two times as likely to pursue a mandatory minimum sentence for Black people than for white people.** [Nearly 80 percent](#) of people in federal prison and almost 60 percent of people in state prison for drug offenses are Black or Latino.

Hence, advocates across the country are calling for marijuana legalization and drug decriminalization to dismantle the drug war as a critical step towards racial justice and reform of the criminal legal system. The decriminalization of marijuana could have a significant impact on reducing the long-term consequences of punitive drug war measures inflicted upon marginalized communities.

A CLOSER LOOK AT FEDERAL LEGISLATION

Federal prohibition remains incongruent with state laws permitting legal recreational and medicinal use of marijuana. After Colorado and Washington became the first states to legalize recreational marijuana in November 2012, the Obama Administration issued guidance on enforcement priorities, in what is commonly referred to as the "[Cole Memorandum](#)." This memo laid out clear directives for federal cannabis policing priorities, allowing states to implement their own marijuana laws with [few exceptions](#). Though this directive was [rescinded during the Trump Administration](#), there has been little change in practice regarding federal prosecutions for marijuana. In fact, federal prosecutions for marijuana continue to show a [steady decline](#).

² Pearl, B. & Perez, M. Center for American Progress. Ending the War on Drugs. June 27, 2018. <https://www.americanprogress.org/article/ending-war-drugs/>

There is bipartisan support in Congress for allowing states to define their own marijuana laws (additional details on state laws and initiatives are discussed in the 'State Reform Initiatives' section of this explainer). Contained within the “must pass” federal budget every year is the Joyce-Blumenauer amendment (previously referred to as the [Rohrabacher-Farr amendment](#)), which prevents the Department of Justice from intervening in states with medical marijuana programs. Detailed federal cannabis reform efforts being led via legislation and state ballot initiatives may also be found below.

MORE Act

Last year, House Judiciary Committee Chair Jerrold Nadler (NY-10) and Reps. Earl Blumenauer (OR-03), Barbara Lee (CA-13), Sheila Jackson Lee (TX-18), Hakeem Jeffries (NY-08), and Nydia Velázquez (NY-07) re-introduced the Marijuana Opportunity Reinvestment and Expungement (MORE) Act of 2021 ([H.R.3617](#)). The MORE Act decriminalizes marijuana at the federal level by removing marijuana from the [Controlled Substances Act \(CSA\)](#) list of scheduled substances, and eliminates all criminal penalties — including retroactive charges, arrests, and convictions — for anyone who manufactures, distributes, and possesses the drug. Records of previously convicted people will also be expunged. A new Office of Cannabis Justice would be tasked with advancing equity provisions and ensuring that public services, including housing assistance, could not be denied because of an individual's marijuana use, possession, or prior conviction for a marijuana offense. If signed into law, the MORE Act would also ensure that use, possession, or prior marijuana convictions could not be used against individuals in enforcement or prosecution of immigration laws.

Under the MORE Act, a [trust fund](#) would be established to provide funding for local communities through a five-percent tax on cannabis products at the manufacturer level. The tax would increase to eight percent over a five year period. Half of the trust fund would be used to support communities ravaged by the drug war through job training, health education, state-level expungements, and legal aid, while the other half would be used to support various programs and services for individuals and businesses. Additionally, the MORE Act would make Small Business Administration loans and services available to marijuana businesses or service providers, as well as provide supplemental support for individuals who have been targeted by the drug war to participate in the marijuana economy. This provision improves upon the previous version of the bill by expanding assistance to start small businesses to socially and economically disadvantaged entrepreneurs beyond the marijuana industry.

The initial version of the MORE Act in 2019 included a provision that barred people with federal marijuana convictions from receiving a federal permit to operate a marijuana business. Advocates strongly opposed this provision, and it was removed in the latest iteration of the House bill. However, the MORE Act of 2021 still allows for [continued marijuana testing](#) of federal workers, which many drug

policy advocates cite as an antiquated policy reliant upon negative beliefs and fearmongering about people who use drugs. Notwithstanding this concern, the legislation passed the House on April 1, 2022 by a vote of 220-204, and the bill now awaits consideration in the Senate.

SAFE Banking Act

The Secure and Fair Enforcement Banking (SAFE) Act 2021 ([H.R. 1996](#)), reintroduced by Rep. Ed Perlmutter (D-CO), allows state-licensed marijuana-related industries to engage in relationships with banks and companies that provide services to cannabis businesses. Currently, thousands of state-licensed cannabis businesses are unable to partner with the banking industry due to federal restrictions on banking services. This means that most cannabis businesses must rely on cash-only for any transactions. Some advocates have cited that the exclusion of cannabis businesses from the banking industry is a public safety issue, as dispensaries experience [armed robberies](#).

In April, the House passed the SAFE Banking Act with support from more than three-quarters of House members, including all Democrats and 106 Republicans. The legislation was incorporated into the National Defense Authorization Act (NDAA), but was ultimately not included in the final version of the NDAA amid [concerns from Senate leadership](#) and some marijuana reform advocates about the need for broader justice-focused cannabis reform.

Most recently, the bill was included as a part of the House's America COMPETES Act, marking the sixth time that the bill was advanced as either an amendment or stand-alone piece of legislation. Ultimately however, the final package that passed both the House and Senate in July 2022— the CHIPS and Science Act— excluded such provisions.

States Reform Act

Last November, Representative Nancy Mace (R-SC) introduced the States Reform Act of 2021 ([H.R. 5977](#)). The States Reform Act (SRA) amends the Controlled Substances Act to exclude marijuana and clarifies that states have the authority to determine how cannabis will be regulated and what level of cannabis reform, if any, will be implemented. The bill does generally require access to medical marijuana for the treatment of certain severe conditions like epilepsy and seizure disorders.

The measure aims to regulate cannabis in a similar manner to alcohol, and extends limited federal oversight of cannabis sales to the US Food and Drug Administration (FDA), Alcohol and Tobacco Tax and Trade Bureau (TTB), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and the Department of Agriculture (USDA). The bill

imposes a 3% excise tax on cannabis sales that would be capped for 10 years. Additionally, the measure prohibits advertisements directed to any person under the age of 21 and implements a nationwide 21-year age limit for cannabis consumption.

One of the most discernible differences between the SRA and other cannabis reform efforts like the MORE Act is the absence of restorative justice and social equity provisions. Revenue raised from the excise tax would be used to fund Small Business Administration (SBA) programs for small cannabis businesses, and programs dedicated to military veterans mental health, state opioid epidemic responses, and underage cannabis use. But the measure lacks any provisions offering direct support for minority cannabis business owners, despite the fact that [fewer than one-fifth of dispensary owners or stakeholders are people of color](#).

Additionally, revenue from cannabis sales would be used to support law enforcement initiatives like the Byrne Justice Assistance Grants (JAG program) and Community-Oriented Policing Services (COPS Office) program, which have a longstanding history of exacerbating [racially disproportionate levels of drug arrests](#) and over-policing of communities of color. The legislation does provide opportunities for reentry for people with non-violent cannabis offenses, with an explicit exception for expungement of offenders involved in drug cartels.

HOPE Act

Reps. Dave Joyce (R-OH) and Alexandria Ocasio-Cortez (D-NY) introduced the Harnessing Opportunities by Pursuing Expungement (HOPE) Act ([H.R. 6129](#)), which incentivizes state and local governments to expunge the criminal records of those who have previously been convicted of marijuana offenses. The legislation creates a \$20 million fund entitled the “State Expungement Opportunity Grant” program to provide cash assistance to states and localities to review and expunge cannabis convictions to end the stigmatization of past marijuana convictions. The HOPE Act focuses on cannabis-related charges handled by state and local law enforcement, a distinctive priority according to one of the bill sponsors, given that the federal government is only involved in [a fraction of cannabis offenses](#) charged in the US. According to the US Sentencing Commission, of the 16,829 drug offenses reported to the Commission in 2020, just [seven percent](#) involved marijuana offenses, and trends indicate that more states legalizing marijuana could be attributing to [lower enforcement priorities for federal prosecutors](#). Despite state-level legalization bills often encompassing procedures for expungement, many states struggle with outdated record systems and insufficient resources to facilitate expungements. One study found that in Michigan, among those legally eligible for expungement, just 6.5% obtained it within five years of eligibility.³

³ Prescott, J. & Starr, S. University of Michigan Law. *Expungement of Criminal Convictions: An Empirical Study*. September 2020. <https://repository.law.umich.edu/articles/2165/>

CAOA

On July 21, Senate Majority Leader Chuck Schumer (D-NY) and Senators Cory Booker (D-NJ) and Ron Wyden (D-OR) introduced the “[Cannabis Administration and Opportunity Act](#)” (CAOA). CAOA provides a framework for federal regulation of the cannabis industry with restorative justice provisions. The measure taxes cannabis at the highest rate among comparative measures— at 10% with increases to 25% over five years. Small cannabis businesses with less than \$20 million in annual sales would however be eligible for a 50% reduction in their tax rate via a tax credit. Oversight of cannabis would be transferred from the DEA to the FDA, who would be responsible for regulating the manufacturing and marketing of marijuana products.

Additionally, the Tobacco Tax and Trade Bureau (TTB) and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) would be responsible for collecting taxes, enforcing tax regulations, and tracking and tracing marijuana products. However, some groups, like the Drug Policy Alliance, have [expressed concerns over the use of a regulatory approach](#) that treats marijuana as a “vice” similar to alcohol and tobacco. Instead, they call for an entirely new regulatory model to be built for the cannabis industry given the distinct differences in the substances, namely that these substances have different histories and carry different health impacts and this should be accounted for in a regulatory framework.

Similar to the MORE Act, the CAOA uses tax revenue to establish Opportunity Trust Fund Programs to reinvest in communities harmed by the War on Drugs, including funding for job training, reentry services, legal aid, literacy programs, youth recreation/mentoring programs, and health education. The measure also similarly seeks to minimize barriers for small business owners of color with SBA grant funding for socially and economically disadvantaged applicants. The measure also contains the same prohibitions on immigration consequences or denial of public assistance for cannabis use or offenses as in the MORE Act.

STATE REFORM INITIATIVES

The following table lists the states that voted to legalize and decriminalize marijuana from 2018 to 2021 through ballot measures or through the state legislature. It also highlights which party had state control or which party took control of their state legislature when these initiatives passed. Regardless of political party in power, voters and legislators overwhelmingly supported ballot measures and legislation to decriminalize marijuana, as part of broader efforts to reform drug policy.

State	Year	Reform Description	Partisan Control or Vote Results⁴
Vermont	2018	Legalizes marijuana (first state to pass through legislature)	Governor: R Lt Governor: D State Senate: D State House: D
Indiana	2018	Legalizes CBD for any use	Governor: R State Senate: R State House: R
Kansas	2018	Legalizes CBD for any use	Governor: D State Senate: R State House: R
Oklahoma	2018	Legalizes medical marijuana	Support: 57% Oppose: 43%
Michigan	2018	Legalizes recreational marijuana	Support: 56% Oppose: 44%
Missouri	2018	Legalizes medical marijuana	Support: 66% Oppose: 34%

State	Year	Reform Description	Partisan Control¹ or Vote Results²
Utah	2018	Legalizes medical marijuana	Support: 53% Oppose: 47%
North Dakota	2019	Decriminalizes marijuana	Governor: R State Senate: R State House: R

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¹ Partisan control reflects the party affiliation of the Governor and majority party in chambers of the state legislature at the time the reform passed.

² Election results provided if the reform passed by ballot measure.

Illinois	2019	Legalizes recreational marijuana, including its commercial sale	Governor: D State Senate: D State House: D
Hawaii	2019	Decriminalizes marijuana	Governor: D State Senate: D State House: D
Vermont	2020	Legalizes commercial recreational marijuana	Governor: R State Senate: D State House: D
Arizona	2020	Legalizes recreational marijuana	Support: 60% Oppose: 40%
Montana	2020	Legalizes recreational marijuana	Support: 57% Oppose: 43%
New Jersey	2020	Legalizes recreational marijuana	Support: 67% Oppose: 33%
South Dakota	2020	Legalizes recreational marijuana (first state to legalize recreational use without legalizing medical use first)	Support: 54% Oppose: 46%
Mississippi	2020	Legalizes medical marijuana (overturned by Mississippi Supreme Court)	Support: 69% ⁵ Oppose: 31%

State	Year	Reform Description	Partisan Control¹ or Vote Results²
Oregon	2020	Decriminalizes drug possession and expands access to addiction services	Support: 58% Oppose: 42%

⁵ Mississippi voters chose between two competing medical marijuana legalization proposals and 74% opted for the less restrictive proposal.

Alabama	2021	Legalizes medical marijuana	Governor: R State Senate: R State House: R
New Mexico	2021	Legalizes recreational marijuana and its commercial sale	Governor: D State Senate: D State House: D
New York	2021	Legalizes recreational marijuana and its commercial sale	Governor: D State Senate: D State House: D
Virginia	2021	Legalizes recreational marijuana and its commercial sale	Governor: D State Senate: D State House: D
Connecticut	2021	Legalizes recreational marijuana and its commercial sale	Governor: D State Senate: D State House: D
Louisiana	2021	Decriminalizes marijuana	Governor: D State Senate: R State House: R

Widespread Support for Marijuana Decriminalization and Legalization

Bipartisan Support for the Marijuana Decriminalization

National polling indicates increased public support for marijuana decriminalization and legalization.

Public Opinion on Marijuana

- [Pew Research Center](#), April 2021: **More than 9 in 10 Americans** support some level of marijuana legalization: 60% support legalization for recreational and medical use, 31% support legalization for medical use only, and only 8% believe marijuana should not be legal at all.

Amongst Republican/Republican-leaning Independents: 47% favor legalizing marijuana for both medical and recreational use; 40% favor legalization for medical use only.

Amongst Democrats and Democratic leaners: 72% favor legalizing marijuana for both medical and recreational use; 23% favor legalization for medical use only.

- [Quinnipiac University](#), April 2021: “**Nearly 7 in 10 Americans** think the use of marijuana should be made legal in the United States.”
- [Bully Pulpit Interactive](#), May 2020: **66% of voters** support “eliminating criminal penalties for drug possession and reinvesting drug enforcement resources into treatment and addiction services. Support among political groups:
Democrats: 85%.
Independents: 72%
Republicans: 40%
- [Gallup](#), November 2021: **68% of voters** support legalizing marijuana, with the following breakdown based upon political affiliation:
Democrats: 83%
Independents: 71%
Republicans: 50%

CONCLUSION

Cannabis-related arrests and convictions can have lifelong consequences that exclude Americans, and particularly people of color, from equal access to jobs, housing, higher education, and other economic opportunities. Despite a long history of racialized criminalization and despite its potential benefit in treating [a wide-range of chronic illnesses](#), marijuana continues to be classified under the most restrictive category under federal law of controlled substances that offer no medical benefit. As discussions around marijuana decriminalization, legalization, and medical use continue, Members of Congress are now putting forth a variety of proposals to address the failures of the War on Drugs by re-examining current federal restriction and prohibition of marijuana.