

History

[Colorado](#) and [Washington](#) approved adult-use recreational marijuana measures in 2012. [Alaska](#), [Oregon](#) and District of Columbia followed suit in fall of 2014. In 2015, Ohio voters defeated a ballot measure that addressed commercial production and sale of recreational marijuana. On Nov. 8, 2016, voters in four states, [California](#), [Maine](#), Massachusetts and Nevada, approved adult-use recreational marijuana, while voters in [Arizona](#) disapproved. In 2018, [Michigan](#) voters approved “Proposal 1” by a margin of 56 percent to 44 percent to legalize, regulate, and tax marijuana in the state. In 2018, [Vermont](#) became the first state to legalize marijuana for adult use through the legislative process (rather than a ballot initiative.) Vermont’s law went into effect July 1, 2018. In May 2019, the Illinois General Assembly passed the Cannabis Regulation and Tax Act, House Bill 1438 and the Governor signed the legislation in June. Recently, New Jersey (AB 21) legalized certain personal use, while removing marijuana as a schedule I drug.

Study Efforts

On March 16, 2021, NPR's Planet Money released a newsletter entitled [The Data On Legalizing Weed](#). The newsletter discusses studies on crime rates, traffic accidents, prices, jobs, state budgets, and state workers' comp programs.

In 2020, Virginia adopted SJR 67 - having Virginia begin it's journey to join the other states in legalizing cannabis for recreational use. The resolution begins a study requiring recommendations for implementing legalization by July 1, 2022.

In 2018, study bills were filed in Hawaii, Massachusetts, New Hampshire, New Mexico, North Dakota and Rhode Island. The measures in New Hampshire and Rhode Island were enacted and established commissions to study the legalization, regulation and taxation of marijuana.

Repeal Efforts

Bills to repeal voter initiatives approving adult-use legal marijuana were introduced in 2018 but did not pass in Washington. On February 8, 2021 Circuit Judge Christina Klinger ruled that South Dakota’s Constitutional Amendment A was unconstitutional.

Federalism

Recently, Michigan (HR 151) urged Congress of the United States to clarify its position on the legality of marijuana under the Federal Controlled Substances Act. Several bills before state legislatures in 2018 addressed the federal role in marijuana policies. California passed a resolution urging Congress to pass legislation that would allow financial institutions to provide services to the cannabis industry. Bills or resolutions were introduced in 2018 in Alaska, California, Georgia, Iowa, Massachusetts, Michigan, New Jersey, and Pennsylvania call on Congress to reschedule or otherwise allow state authority for marijuana policy. NCSL has [sent a letter](#) to Congress in 2018 in support of a recently introduced bill to protect state sovereignty with respect to marijuana regulation. NCSL also [sent a letter](#) in support of language prohibiting the DOJ from using justice funding for enforcement actions against states with legal medical marijuana laws. NCSL's Law, Criminal Justice and Public Safety committee also recently enacted a [policy resolution](#) on cannabis.

Under federal law, marijuana is still a Schedule I illegal substance.



Decriminalization

Twenty-seven states and the District of Columbia have decriminalized small amounts of marijuana. This generally means certain small, personal-consumption amounts are a civil or local infraction, not a state crime (or are a lowest misdemeanor with no possibility of jail time). In 2014 and preceding the successful legalization ballot measure, the District of Columbia enacted legislation, which passed congressional review, and made possession or transfer without remuneration of one ounce or less of marijuana a civil violation.

Decriminalization Enactments 2020

- Delaware (S 45) makes the possession, use, or consumption of a personal use quantity of marijuana a civil violation for juveniles.
- New Jersey (AB 5342) revises consequences for underage possession or consumption of various forms of cannabis.
- Virginia (HB 972) decriminalizes simple marijuana possession and provides a civil penalty, if such person is smoking, consuming, or otherwise ingesting marijuana in a public place at the time of the violation.

Decriminalization Enactments 2013 - 2019

- In 2019, Hawaii passed [House Bill 1383](#). When the bill goes into effect Jan. 11, 2020, possession of three grams or less of marijuana will be punishable by a \$130 fine.
- New Mexico also passed HB 323 in 2019 and it went into effect on July 1, 2019. The penalty for the possession of up to a half an ounce of marijuana is a \$50 civil fine, instead of potential jail time.
- In 2019, North Dakota passed House Bill 1050. The bill goes into effect August 1, 2019 and reclassifies possession of up to a half an ounce of marijuana as an infraction that carries a maximum fine of \$1000.
- In 2017, New Hampshire became the latest state to decriminalize (HB 640) small amounts of marijuana. Fines for possession of up to three-quarters of an ounce of marijuana were reduced from \$2,000 to just \$100 for a first or second offense. In 2016, New Hampshire passed legislation (SB 498) that made possession of one ounce or less of marijuana an unspecified misdemeanor, stopping short of decriminalization.
- In 2016, the Illinois General Assembly enacted and the governor signed legislation (SB 2228) to decriminalize 10 grams or less of marijuana, making it an infraction that does not result in a criminal record.
- In early 2016, the Maryland General Assembly overrode the governor's veto of a 2015 measure (SB 517) that decriminalized marijuana paraphernalia and imposes civil fines of \$500 for public cannabis use.
- In 2019, New York enacted Senate Bill 6589, which made possession of less than one ounce a violation punishable by a \$200.00 fine.

Penalties

Other state actions have reduced criminal penalties for marijuana convictions, generally following a trend to reduce adverse consequences of some marijuana crimes. In the past decade, legislation in at least 16 states have amended marijuana penalties.

Significant legislation in 2019 & 2020 affecting marijuana penalties included:

- Delaware (S 47) did an overhaul to its drug code with a goal of providing more fairness in its application; removing geographic based enhancements that disproportionately impact those living in urban areas as opposed to suburban and rural areas; reduces the number of weight tiers; enhanced penalties for delivering cannabis in a school or on school property while in session with enrolled students exempt from the violation.
- Illinois (H 160) enhanced penalties for delivering cannabis in a school or on school property.

Significant legislation in 2017 affecting marijuana penalties included:

- Kansas (SB 112) reduced the severity level for unlawful possession for drug paraphernalia from a class A to a class B non-person misdemeanor.
- Montana's sweeping sentencing bill (HB 133) includes provisions that reduced penalties for possession of marijuana under 60 grams to a misdemeanor with no jail time.
- North Dakota (HB 1041) reduced the drug possession (including marijuana) charge level from a Class C felony to a Class A misdemeanor for first-time offenders and establishes probation as the presumptive sentence for low-level, nonviolent felonies. Another bill (HB 1269) reduced mandatory minimum sentences for controlled substances including marijuana.
- To create consistency in state law in response to Measure 91, Oregon enacted (SB 302) which repealed some penalties related to unlawful possession of marijuana.
- West Virginia (HB 2579) increased the penalties for transporting controlled substances into the state but provided a differing, lesser penalty for an offense involving marijuana.

Significant legislation in 2016 affecting marijuana penalties included:

- Vermont (HB 858) raised to one ounce the amount of marijuana being unlawfully sold or dispensed for which an imprisonment penalty applies.
- Indiana lawmakers enacted a penalty measure (SB 290) that sets amounts of drugs for which a person may be convicted of possession with intent to deliver without additional evidence of trafficking. The marijuana amount is 10 pounds or more.
- A Maryland enactment (HB 565) made possession of 10 grams or more of marijuana a misdemeanor.
- In Minnesota, an act (SB 3481) modified threshold amounts for several drugs, including marijuana. The enactment also created new possession crimes for specified amounts of marijuana plants and a new gross misdemeanor offense for possession offenses involving trace amounts of drugs.
- Oklahoma (HB 2479) shortened sentences for many drug crimes, including marijuana possession.
- An enactment in Louisiana decreased criminal penalties for some drug paraphernalia offenses and also removed such offenses as a predicate conviction for sentence enhancement purposes.
- A justice reinvestment act in Maryland (HB 1312) addressed mandatory penalties for possession and distribution of 50 pounds or more of marijuana.
- A Delaware (HB 332) enactment allows probation before judgment for misdemeanor marijuana offenses.

Significant legislation in 2015 affecting marijuana penalties included:

- Utah lawmakers enacted broad sentencing and corrections reform legislation (HB 348) that included reduction of most marijuana penalties to misdemeanors.
- A Connecticut act (HB 7104) created a new penalty structure that makes half an ounce or more of marijuana a Class A misdemeanor instead of a felony. Other drug possession also became a misdemeanor rather than a felony, while courts have options for repeat offenses.
- An act in Wyoming in 2015 (SB 38) provided for deferred prosecution for first offenses of using or being under the influence of controlled substances, including marijuana.

- The North Dakota Legislative Assembly enacted a bill (HB 1394) that reduced from a Class A to a Class B misdemeanor the possession of less than one ounce of marijuana.
- Legislation approved in Louisiana (HB 149) created graduated penalties for marijuana possession based on amounts and number of convictions.
- And a 2015 Texas act (HB 642) allows judges to require that minors who possess marijuana participate in drug education programming.

Significant legislation in 2014 affecting marijuana penalties included:

- A Mississippi (HB 585) measure addressed drug courts and penalties for certain drug possession offenses, including marijuana.
- Utah (SB 205) provided that increased sentences for some drug possession crimes, including marijuana, may not result in an offense greater than a second-degree felony.
- Oklahoma legislation (SB 1875) allows a deferred sentence for certain drug offenders, including marijuana, and provides for no conviction record upon completion of conditions.

Record Clearing

Forty-one states, two territories, and the District of Columbia all have record clearing laws which may apply to cannabis. Of these, seven states record clearing laws specifically address cannabis offenses. For additional information see our [Cannabis Record Clearing](#) resource.

Significant legislation in 2020 related to expungement:

- Michigan (HB 4982) modifies the set-aside process for certain marijuana offenses.
- New Jersey (AB 1897) raises awareness for available expungement relief for cannabis offenses.

Significant legislation in 2019 related to expungement:

- Illinois' 2019 Cannabis Regulation and Tax Act allows the state to automatically grant clemency to residents who were convicted for possessing up to 30 grams of cannabis. A person can also petition a

court to get charges rescinded if they were convicted with between 30 and 500 grams of cannabis.

- New Hampshire enacted House Bill 399 in 2019, which provides an opportunity for those convicted of offenses involving the possession of three-quarters of one ounce of cannabis or less to petition the court to have their convictions annulled. If the prosecuting attorney does not object to the request within ten days, the petition will be granted.
- Nevada passed a broad decriminalization measure that included marijuana offenses. [Assembly Bill 192](#) allows those who have been convicted of misdemeanor cannabis possession charges to apply for expungement.
- In 2019, the Washington legislature passed [Senate Bill 5605](#) that vacates misdemeanor marijuana convictions.

Significant legislation in 2018 related to expungement:

- California (AB 1793) addresses expungement of records. Proposition 64, the ballot measure that legalized recreational marijuana use for people 21 and older also contained language for the “resentencing and destruction of records for prior marijuana convictions”. A process for the expungement of records was not specified in the ballot measure and AB 1793 established such a process. The Department of Justice must now search its state criminal history information for eligible cases from 1975 to 2016 and notify prosecutors of all eligible cases in their jurisdiction. Prosecutors across the state have one year to challenge any case they do not agree is eligible for resentencing, case dismissal or expungement.
- Massachusetts (M.G.L c276 § 100A and M. G.L. c. 94G, § 13) allows the sealing of records for offenses that are no longer crimes, therefore, a past criminal case for possession of marijuana under 2 ounces can be sealed without a waiting period.
- Delaware enacted 2017 Senate Bill 197, which provides for automatic expungement of both conviction and arrest records for those charged or convicted of certain marijuana offenses prior to December 18, 2015.

Significant legislation in 2017 related to expungement:

- Colorado (HB 1266) now allows defendants convicted of misdemeanor offense for use or possession of marijuana to petition to

seal criminal records if offense would not have been a crime if committed on or after Dec. 10, 2012.

- Maryland (SB 949) reduced the waiting period for expungement of a marijuana possession offense from 10 years to four years.
- The Nevada Assembly and Senate both passed a measure (AB 259) that would have permitted those with criminal convictions for offenses involving the possession of one ounce or less of marijuana prior to Jan. 1, 2017 to have their convictions vacated. The measure was vetoed by the governor.

Significant legislation in 2016 related to expungement:

- Missouri (SB 588) expanded eligibility for, reduces waiting periods, and creates presumption in favor of expungement if certain criteria are met, for all misdemeanors and many felonies, including but not limited to marijuana crimes.
- New Hampshire (SB 391) amended to 2 years the waiting period for petitioning for annulment of a misdemeanor marijuana or hashish offense.
- An Oregon enactment (SB1598) instructed courts with respect to expungement orders for marijuana convictions for offenses that no longer are a crime.

Significant legislation in 2015 related to expungement:

- Following the successful legalization ballot measure there, an act in Oregon (SB 364) now requires courts to consider set-aside of records of certain misdemeanor marijuana offenses when probation has been successfully completed; and another Oregon act (SB 844) made eligible for expunction an adjudication for marijuana possession crimes.
- Laws in Maryland (SB 651) and Vermont (SB 115) allow expungement of an offense for which the underlying conduct is no longer a criminal offense. Similarly, a Rhode Island act (SB 518) provided that records of marijuana violations are not open to the public.

Additional Resources

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