

Legalization

24 states, two territories and the District of Columbia have legalized small amounts of cannabis (marijuana) for adult recreational use. Most recently, Delaware, Maryland, Minnesota, Missouri, Ohio and Rhode Island passed legislation allowing individuals 21 or older to possess certain amounts of cannabis. With the exception of Delaware, these new laws permit individuals to home-grow marijuana—however, the number of plants one can legally cultivate varies by state. In all six of these jurisdictions, medical use cannabis was legalized prior to adult recreational use.

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.

[V](#) Show Less

Decriminalization

A handful of states—Hawaii, Louisiana, Mississippi, Nebraska, New Hampshire, North Carolina and North Dakota —have decriminalized 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).

Recent Decriminalization Enactments:

- In 2021, the Louisiana Legislature enacted House Bill 652, which eliminated jail or prison time and reduced the fine to a maximum of \$100 for possession of up to 14 grams of marijuana.
- In 2019, Hawaii passed House Bill 1383. Under the law, possession of three grams or less of marijuana is punishable by a \$130 fine.
- In 2019, North Dakota's House Bill 1050 was signed into law. The bill 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 enacted House Bill 640, which reduced fines for possession of up to three-quarters of an ounce of marijuana from \$2,000 to \$100 for a first or second offense.

Record Clearing

With more states and territories legalizing cannabis for medical and/or recreational use, lawmakers and other justice system stakeholders are exploring ways to address the implications and collateral consequences of criminal records. Specifically, for those who have incurred criminal penalties and have criminal records for a marijuana-related offense that, after legalization, might be perfectly legal where they live.

A variety of [terms](#) are used to describe record clearance, including annulment, erasure, expungement, destruction, dismissal, sealing, set-aside and vacatur. In fact, some jurisdictions may use the same language, but the terms have drastically different meanings.

Expungement—or the removal of an offense from a criminal record—for cannabis offenses has been gaining traction over the past several years. And not just policy makers are taking notice. For example, while the American Medical Association opposes the legalization of cannabis, the organization has endorsed record expungement for certain crimes related to the use, possession or sale of the drug.

“This affects young people aspiring to careers in medicine as well as many others who are denied housing, education, loans and job opportunities. It simply isn’t fair to ruin a life based on actions that result in convictions but are subsequently legalized or decriminalized,” said AMA Trustee Scott Ferguson, M.D.

As of 2023, 45 states, two territories and Washington, D.C., have record clearing laws which may apply to cannabis. Of these jurisdictions, 28 have legislation that applies specifically to record clearance of certain cannabis-related offenses.

Many times when a person wants their record cleared, they must petition the court to have their record expunged— and in some instances, a processing fee must be paid. In [Arizona](#), certain cannabis offenses can be removed from a criminal record by submitting a request to the court. There is no fee to file a petition and if the request is denied, the individual has 14 days to appeal the decision. On the other hand, in Utah, application and filing fees ranging from [\\$65](#) to [\\$135](#) might be associated with the expungement process.

However, an increasing number of states and territories are making this process automatic by requiring the courts to identify and expunge eligible cannabis-related offenses without a petition and at no cost to the individual. In fact, 11 states, the District of Columbia and the U.S. Virgin Islands have codified mechanisms for the automatic expungement of certain cannabis offenses.

For example, in 2018, California enacted legislation requiring the state's justice department to identify records with qualifying cannabis convictions that took place before Nov. 9, 2016. Under the law, prosecutors had one year to challenge any case they did not agree met the criteria for sealing or presented an unreasonable risk to public safety if cleared. Records are automatically sealed if there is no prosecutorial opposition and individuals can check the status of their cannabis conviction(s) by contacting the court in which they were originally adjudicated.

As states move toward automated expunction, some have encountered challenges such as building the workforce needed to meet the volume of records eligible for clearance.

Missouri amended its constitution in 2022 creating a process for automatic record expungement for individuals convicted of misdemeanor or felony cannabis offenses who have completed their sentences and are no longer under supervision of the state's department of corrections. The amendment required the courts to expunge eligible records by the end of 2023, but the process has been slowed by non-digitized criminal records. The courts have also requested additional funds to pay employees overtime and hire temporary staff to help identify and expunge records entitled to clearance.

Informing the public of eligibility and establishing a system for alerting individuals that a qualifying cannabis offense has been removed from their records, are important pieces for jurisdictions implementing automatic record clearance laws to consider.

Following the enactment of [AB 5981](#) (2019) and [AB 1897](#) (2020), New Jersey's Administrative Director of the Courts was required to "develop and maintain a multilingual public awareness campaign to promote awareness of the expungement process, including an expedited expungement." The state's supreme court also issued a [directive](#) detailing how individuals can verify and obtain copies of expungement orders; the court specified that the orders are to be provided free of charge to the requestor.

As noted in a 2023 [report](#) examining the challenges and opportunities associated with record clearing, states and territories contemplating automated record clearance provisions might consider clearly defining the terms used to describe the removal of an offense or the destruction of a criminal record, centralizing case management systems, eliminating certain record relief eligibility requirements such as payment of legal financial obligations and establishing timelines that account for potential system demands related to workforce and technology.

In recent years, governors in Colorado, Illinois, Maryland, Massachusetts, Oregon and Pennsylvania have issued pardons for low-level marijuana convictions. Similarly, in 2020, Nevada Gov. Steve Sisolak proposed an amended resolution to pardon individuals convicted of minor cannabis-related offenses; the amendment was unanimously approved by the Nevada State Board of Pardons Commissioners.

[V](#) Show Less