

# Removing Marijuana From the Controlled Substances Act



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**Marijuana should be reclassified in order to facilitate research, ensure patient access and permit its legal regulation.**

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## Marijuana Is Inappropriately Scheduled

The current system for classifying illegal (and most legal) drugs is flawed, outdated and unscientific. Established by the federal Controlled Substances Act (CSA) of 1970, this system erroneously places marijuana in the most restrictive class, Schedule I, reserved for drugs with a "high potential for abuse", "no currently accepted medical use" and a "lack of accepted safety".<sup>1</sup>

Despite unique restrictions on conducting marijuana research, a plethora of scientific evidence has nevertheless emerged that not only confirms marijuana's medicinal benefits<sup>2</sup> but also its wide margin of safety.<sup>3</sup> Yet because of marijuana's Schedule I designation, physicians cannot prescribe it and instead can only recommend its use without legal access or protection for their patients.

Researchers face daunting hurdles to studying any Schedule I drug, including a rigorous approval process by both the Drug Enforcement Administration (DEA) and Food and Drug Administration (FDA) for every trial.<sup>4</sup> But that is only part of the problem. DEA and the National Institute on Drug Abuse (NIDA) have effectively blocked the standard FDA development process that would allow for the marijuana plant to be brought to market as a prescription medicine.

Currently, marijuana is the only Schedule I drug that DEA prohibits from being produced by private laboratories for scientific research. Although DEA has licensed multiple, privately-funded manufacturers of all other Schedule I drugs (such as heroin and LSD), it

permits just one facility at the University of Mississippi to produce marijuana for federally-approved research. This facility, under contract with NIDA, holds a monopoly on the supply of marijuana available to scientists, including researchers seeking to conduct FDA-approved studies of the plant's medical properties – which often squarely conflict with NIDA's mission to study the harms of drug consumption.

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## Existing Federal Schedules

- Schedule I** (e.g. heroin, marijuana)
  - High potential for abuse
  - No currently accepted medical uses
  - Lack of accepted safety for medical use
- Schedule II** (e.g. cocaine, methamphetamine)
  - High potential for abuse
  - Currently accepted medical use
  - Potential for severe dependence
- Schedule III** (e.g. hydrocodone)
  - Lower potential for abuse than I and II
  - Currently accepted medical use
  - Potential for moderate or low dependence
- Schedule IV** (e.g. benzodiazepines)
  - Low potential for abuse relative to III
  - Currently accepted medical use
  - Potential for limited dependence relative to III
- Schedule V** (e.g. cough medicines w/ codeine)
  - Low potential for abuse relative to IV
  - Currently accepted medical use
  - Potential for limited dependence relative to IV

NIDA has refused to provide marijuana for three FDA-approved studies, including a study approved in 2012 to examine medical marijuana for veterans suffering from post-traumatic stress disorder (PTSD). DEA and NIDA have successfully created a Catch-22 for patients, doctors and scientists by denying that marijuana is a medicine because it is not FDA-approved, while simultaneously obstructing the very

research that would be required for FDA approval. However, these types of clinical trials have been completed in the private sector by companies like GW Pharmaceutical, which are developing cannabinoid based medications using the cannabis plant.

### **Rescheduling Efforts Have Not Succeeded to Date**

Many patients, advocates, health professionals and elected officials have sought to reschedule marijuana to reflect its accepted medical value, low abuse potential and relative safety. Rescheduling can occur either by Congressional action (legislation) or through DEA's administrative rulemaking process (petition).

In 1972, NORML launched the first petition to reschedule marijuana from Schedule I to II. The petition was not given a federal hearing until 1986 and was ultimately denied after over two decades of court challenges – despite the fact that DEA Administrative Law Judge Francis L. Young concluded that marijuana is “one of the safest therapeutically active substances . . . In strict medical terms, marijuana is far safer than many foods we commonly consume.”<sup>5</sup>

None of the multiple attempts at rescheduling since then have succeeded. In 2002, patient advocates petitioned DEA to move marijuana to Schedule III, IV or V, on the basis of a scientific evaluation.<sup>6</sup> DEA Administrator Michele Leonhart rejected this petition in 2011<sup>7</sup> – after eight years of delay and only after petitioners filed suit.<sup>8</sup> Even a 2011 petition from a group of sitting governors has gone unanswered.<sup>9</sup>

Federal legislators have introduced a bill to reclassify marijuana like most other prescription drugs.<sup>10</sup> In 2010, Oregon reclassified marijuana at the state level. Meanwhile, federal legislation has also been introduced to *de-schedule* marijuana by removing it from the list of controlled substances entirely.<sup>11</sup>

### **De-Scheduling – Not Rescheduling – Is the Answer**

Rescheduling would be a modest step in the right direction, allowing doctors to prescribe marijuana and possibly opening the door for limited research. Symbolically, it would be a victory for commonsense drug policy, acknowledging the weight of the scientific evidence and popular support for medical marijuana.

However, simply moving marijuana to a less restrictive schedule would not protect existing state medical

marijuana programs or change federal penalties for possessing, cultivating, and distributing marijuana. Nor would it remove all obstacles to research or force DEA and NIDA to allow research to move forward. Even if vital research were permitted, the FDA approval process would take several years, perhaps decades. It would also not prevent people from being arrested and punished for using marijuana recreationally.

DPA believes that patients must have safe and immediate access to medical marijuana, including the ability to cultivate it in their own homes; that existing state medical marijuana programs, including those with functioning dispensaries, must be protected; that all barriers to marijuana research must be eliminated; that marijuana is of acceptable safety to be regulated more or less like alcohol; and that states like Colorado and Washington, which have decided to regulate marijuana for adult recreational use, should be allowed to do so without federal interference.

*To these ends, DPA supports the de-scheduling, or complete removal, of marijuana from the federal Controlled Substances Act of 1970 and its regulation for adult consumption in a manner similar to alcohol. De-scheduling can only occur through Congressional action.*

<sup>1</sup> Controlled Substances Act (21 U.S.C. 811 et seq.); 21 CFR 1308.11(d)(23); and 21 CFR 1308.11(d)(31). This designation was intended to be temporary until the completion of the 1972 Report of the National Commission on Marihuana and Drug Abuse, which recommended decriminalizing marijuana and removing it from the federal schedules. President Richard Nixon rejected the Commission's recommendations. See "Historical Timeline," [http://medicalmarijuana.procon.org/view\\_resource.php?resourceID=000143#1970](http://medicalmarijuana.procon.org/view_resource.php?resourceID=000143#1970).

<sup>2</sup> See e.g., University of California, Center for Medicinal Cannabis Research, *Report to the Legislature & Governor of the State of California* (2010), [http://www.cmcr.ucsd.edu/images/pdfs/CMCR\\_REPORT\\_FEB17.pdf](http://www.cmcr.ucsd.edu/images/pdfs/CMCR_REPORT_FEB17.pdf).

<sup>3</sup> See e.g., David Nutt et al., "Development of a Rational Scale to Assess the Harm of Drugs of Potential Misuse," *The Lancet* 369, no. 9566 (2007).

<sup>4</sup> American Medical Association, <http://www.ama-assn.org/resources/doc/csaph/i09csaph3ft.pdf>.

<sup>5</sup> U.S. Drug Enforcement Administration, "In the Matter of Marijuana Rescheduling Petition," Docket No. 86-22, 6, 57–58, 68 (1988) <http://www.iowamedicalmarijuana.org/pdfs/young.pdf>.

<sup>6</sup> Coalition for Rescheduling Cannabis, "Petition to Reschedule Cannabis (Marijuana)," [http://www.drugscience.org/PDF/Petition\\_Final\\_2002.pdf](http://www.drugscience.org/PDF/Petition_Final_2002.pdf)

<sup>7</sup> U.S. Drug Enforcement Administration, Docket No. DEA-352N, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," (2011), [http://www.deadiversion.usdoj.gov/fed\\_regs/rules/2011/fr0708.htm](http://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0708.htm).

<sup>8</sup> Advocates appealed DEA's ruling and lost in federal court. See *Americans for Safe Access (ASA) et al. v. Drug Enforcement Administration*, U.S. Court of Appeals, DC Circuit: Petition for rehearing and en banc review, [http://AmericansForSafeAccess.org/downloads/DC\\_Circuit\\_Petition\\_En\\_Banc.pdf](http://AmericansForSafeAccess.org/downloads/DC_Circuit_Petition_En_Banc.pdf); DC Circuit Decision, [http://AmericansForSafeAccess.org/downloads/DC\\_Circuit\\_Ruling\\_ASA\\_v\\_DEA.pdf](http://AmericansForSafeAccess.org/downloads/DC_Circuit_Ruling_ASA_v_DEA.pdf); ASA Appeal Brief, [http://AmericansForSafeAccess.org/downloads/CRC\\_Appeal.pdf](http://AmericansForSafeAccess.org/downloads/CRC_Appeal.pdf); Petition for Writ of Mandamus, [http://americansforsafeaccess.org/downloads/CRC\\_Writ.pdf](http://americansforsafeaccess.org/downloads/CRC_Writ.pdf).

<sup>9</sup> Governors Christine Gregoire & Lincoln Chafee, Rulemaking petition to reclassify cannabis for medical use (2011), [http://www.digitalarchives.wa.gov/GovernorGregoire/priorities/healthcare/petition/combined\\_document.pdf](http://www.digitalarchives.wa.gov/GovernorGregoire/priorities/healthcare/petition/combined_document.pdf).

<sup>10</sup> U.S. House of Representatives, House Resolution 689, "States' Medical Marijuana Patient Protection Act," (2013), <http://www.govtrack.us/congress/bills/113/hr689/text>.

<sup>11</sup> U.S. House of Representatives, House Resolution 499, "The Ending Marijuana Prohibition Act of 2013," (2013), <http://www.govtrack.us/congress/bills/113/hr499/text>.