Removing Marijuana from the Schedule of Controlled Substances

We are the Drug Policy Alliance.

January 2019

Marijuana should be removed from the Schedule of Controlled Substances because it has limited potential for abuse, established medical uses, and is safe relative to other substances. De-scheduling marijuana will facilitate medical research, ensure patient access, and remove federal prohibitions.

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The current system for classifying illegal (and most legal) drugs is flawed, outdated and unscientific.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, the Schedule of Controlled Substances 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."[1]

Despite onerous restrictions on marijuana research in the United States, numerous scientific studies demonstrate that marijuana has clear medicinal benefits – including its potential as a treatment for chronic pain, chemotherapy-induced nausea and vomiting, and improving multiple sclerosis spasticity symptoms[2] – and is safe to use.[3] Yet marijuana's Schedule I designation bars physicians from prescribing it. In states with medical marijuana, physicians may only recommend its use without providing patients with legal access.

Federal Controlled Substances Schedules

Schedule I (e.g. heroin, marijuana)

A) High potential for abuse
B) No currently accepted medical uses
C) Lack of accepted safety for medical use

Schedule II (e.g. cocaine, methamphetamine)

A) High potential for abuse
B) Currently accepted medical use
C) Potential for severe dependence

Schedule III (e.g. hydrocodone)

A) Lower potential for abuse than I and II
B) Currently accepted medical use
C) Potential for moderate or low dependence

Schedule IV (e.g. benzodiazepines)

A) Low potential for abuse relative to III
B) Currently accepted medical use
C) Potential for limited dependence relative to III

Schedule V (e.g. cough medicines w/ codeine)

A) Low potential for abuse relative to IV
B) Currently accepted medical use
C) Potential for limited dependence relative to IV

Scheduling Adversely Impacts Marijuana Research

The DEA justifies marijuana's Schedule I classification by the lack of U.S. research on the substance.[4] But scheduling itself prevents research which could show marijuana's medical efficacy and safety.[5]

The DEA and the NIDA have effectively blocked marijuana researchers from being able to follow the standard FDA development process for bringing a new drug to market as a prescription medicine. U.S. researchers face daunting regulatory 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.[6] They face additional, unique barriers when they attempt to research marijuana.

Currently, marijuana is the only Schedule I drug that the DEA prohibits from being produced by private laboratories for scientific research. Although the 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 National Institute on Drug Abuse (NIDA), holds a monopoly on the supply of marijuana available to scientists. Researchers seeking to conduct FDA-approved studies of marijuana's medical properties must procure the plant from a facility that contracts with NIDA, which mandated to study the harms of marijuana, not its potential medical benefits.[7] Accordingly, NIDA conducts research disproportionately focusing on the negative health effects, with only 16.5% of NIDA's spending on therapeutic properties of cannabis.[8]

In 2016, the DEA announced a new policy designed to increase the number of entities registered to grow marijuana for research purposes. Despite receiving 26 applications from producers in 2016, no further progress has been made toward ending the NIDA monopoly by licensing privately-funded, federally-approved research-grade marijuana production.[9] The Department of Justice has effectively blocked the DEA from taking any action on the applications[10] and DEA spokespeople have declined to comment on the status of the applications.[11]

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.

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.[12] Rescheduling can occur either by Congressional action (legislation) or through the 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. In 1988, 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."[13] Despite the court's finding, the petition was ultimately denied after more than two decades of court challenges.[14]

None of the subsequent attempts to reschedule marijuana have succeeded. In 2002, patient advocates petitioned DEA to move marijuana to Schedule III, IV or V, on the basis of a scientific evaluation.[15] DEA Administrator Michele Leonhart rejected this petition in 2011[16] – after eight years of delay and only after petitioners filed suit.[17]

More recently, the DEA denied two 2016 petitions to reclassify marijuana.[18] One denial cited case law from *Alliance for Cannabis Therapeutics v. DEA*, stating that marijuana failed to meet the five-part test for determining if a drug meets "currently accepted medical usage,"[19] despite evidence from doctors and researchers worldwide that has proven that the safety and efficacy of medical marijuana.[20]

Politicians from both parties have introduced legislation at the federal level to remove barriers resulting from marijuana's Schedule I status. The Rohrabacher-Farr amendment[21] (and its progeny, the Rohrabacher-Blumenauer amendment) – which prohibits the Department of Justice from spending federal money on actions that prevents states from implementing their medical marijuana laws – has been in place since 2014 and has been a bi-partisan effort.

In September 2017, Republican Senator Orrin Hatch introduced the Marijuana Effective Drug Study Act to streamline the research registration process and to provide sufficient marijuana for research. In June 2018, Senators Elizabeth Warren (Democrat) and Cory Gardner (Republican) introduced the STATES (Strengthening the Tenth Amendment Through Entrusting States Act)[22] – the Senate's first ever bipartisan bill protecting states' rights to legalize marijuana for adult and medical use. This was accompanied by a companion bill in the House of Representatives co-sponsored by Representatives David Joyce (Republican) and Earl Blumenauer (Democrat). Soon thereafter, Senator Chuck Schumer (Democrat) formally introduced the Marijuana Freedom and Opportunity Act, which would de-schedule marijuana.

De-scheduling is the Answer

Rescheduling marijuana would be a modest step in the right direction, because it would allow doctors to prescribe marijuana and possibly open the door for more 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. It would not prevent people from being arrested and punished for using marijuana. Nor would it remove obstacles to research or force the 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.

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 barriers unique to marijuana research must be eliminated; that marijuana is less harmful than other substances; that it can be effectively regulated by states; and that states that have decided to regulate marijuana for adult or medical use should be allowed to do so without federal interference.

DPA supports federal legislation like the Marijuana Justice Act,[23] which both legalizes marijuana and helps to repair the historic harms of racially-unjust marijuana enforcement.[24]

For the foregoing reasons, DPA advocates for removing marijuana from the Controlled Substances Act and regulating it in a manner similar to alcohol.

1 American Medical Association, "Clinical Implications and Policy Considerations of Cannabis Use," https://www.ama-assn.org/sites/default/files/media-browser/public/hod/i17-csaph05.pdf

2National Academies of Sciences, Engineering, and Medicine, "The Health Effects of Cannabis and Cannabinoids, Committee's Conclusions," January 2017, http://nationalacademies.org/hmd/~/media/Files/Report%20Files/2017/Cannabis-Health-Effects/Cannabis-conclusions.pdf.

3 Coalition for Rescheduling Cannabis, "Petition to Reschedule Cannabis (Marijuana)," http://www.drugscience.org/PDF/Petition_Final_2002.pdf

4 United States Drug Enforcement Administration, "DEA Announces Actions Related to Marijuana And Industrial Hemp," August 11, 2016, https://www.dea.gov/press-releases/2016/08/11/dea-announces-actions-related-marijuana-and-industrial-hemp

5 Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2019, https://www.appropriations.senate.gov/imo/media/doc/FY2019%20Labor-HHS%20Appropriations%20Act,%20Report%20115-289.pdf at 108; National Academies of Sciences, Engineering, and Medicine, "Challenges and Barriers in Conducting Cannabis Research," in "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research," at https://www.ncbi.nlm.nih.gov/books/NBK425757/.

6 U.S. Drug Enforcement Administration, Docket No. DEA-352N, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," (2011), https://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0708.htm.

7 National Academies of Sciences, Engineering, and Medicine, "Challenges and Barriers in Conducting Cannabis Research," in "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research," at https://www.ncbi.nlm.nih.gov/books/NBK425757/; National Institute of Drug Abuse, "2016-2020 Strategic Plan NIDA's Mission," https://www.drugabuse.gov/about-nida/strategic-plan/nidas-mission.

8 "Challenges and Barriers in Conducting Cannabis Research," in "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research," at https://www.ncbi.nlm.nih.gov/books/NBK425757/.

9 Jeffrey Miron, "Jeff Sessions Stonewalls Permission for Medical Marijuana Research," Cato, July 12, 2018, https://www.cato.org/blog/jeff-sessions-stonewalls-permission-medical-marijuana-research; Gene Markin, "Expanded Medical Marijuana Research Bill Approved," The National Law Review, October 11, 2018, https://www.natlawreview.com/article/expanded-medical-marijuana-research-bill-approved-congress; "Hatch, Harris Follow Up with Sessions, DOJ Regarding Medical Marijuana Research," Orrin Hatch United States Senator for Utah press release, August 30, 2018, https://www.hatch.senate.gov/public/index.cfm/releases?ID=F0DFA15E-8B65-4BB3-85C8-F90367352079; Sarah Owermohle, "Legal weed is everywhere – unless you're a scientist," Politico, December 25, 2018, https://www.politico.com/story/2018/12/25/legal-weed-scientists-1074188.

10 Matt Zapotosky and Devlin Barrett, "Justice Department at odds with DEA on marijuana research, MS-13," Washington Post, https://www.washingtonpost.com/world/national-security/justice-department-at-odds-with-dea-on-marijuana-research-ms-13/2017/08/15/ffa12cd4-7eb9-11e7-a669-b400c5c7e1cc_story.html?utm_term=.ac362b15a309; "AG Sessions blocks progress on medical cannabis research," at https://www.brookings.edu/blog/fixgov/2017/10/25/ag-sessions-blocks-progress-on-medical-cannabis-research/.

11 Drug Enforcement and Administration, Department of Justice, "Applications to Become Registered Under the Controlled Substances Act to Manufacture Marijuana to Supply Researchers in the United States," Federal Register, August 11, 2016, https://www.govinfo.gov/content/pkg/FR-2016-08-12/pdf/2016-17955.pdf; Gene Markin, "Expanded Medical Marijuana Research Bill Approved," The National Law Review, October 11, 2018, https://www.natlawreview.com/article/expanded-medical-marijuana-research-bill-approved-congress; "Hatch, Harris Follow Up with Sessions, DOJ Regarding Medical Marijuana Research," Orrin Hatch United States Senator for Utah press release, August 30, 2018, https://www.hatch.senate.gov/public/index.cfm/2018/8/hatch-harris-follow-up-with-sessions-doj-regarding-medical-marijuana-research; Sarah, Owermohle, "Legal weed is everywhere – unless you're a scientist," Politico, December 12, 2018, https://www.politico.com/story/2018/12/25/legal-weed-scientists-1074188.

12 D. I. Abrams, P. Couey, S.B. Shade, M.E. Kelly, & L.N. Benowitz, "Cannabinoid–Opioid Interaction in Chronic Pain," Clinical Pharmacology & Therapeutics, 90, 6 (2011) 844–851, https://doi.org/10.1038/clpt.2011.188; D. I. Abrams, "The therapeutic effects of Cannabis and cannabinoids: An update from the National Academies of Sciences, Engineering and Medicine report," European Journal of Internal Medicine, https://doi.org/10.1016/j.ejim.2018.01.003; L. Bar-Lev Schleider, et al "Prospective analysis of safety and efficacy of medical cannabis in large unselected population of patients with cancer," European Journal of Internal (2018); F. Grotenhermen, & K. Müller-Vahl, "The therapeutic potential of cannabis and cannabinoids," Deutsches Ärzteblatt International, 109(29–30), (2012) 495; A. Hazekamp, & F. Grotenhermen, "Review on clinical studies with cannabis and cannabinoids 2005-2009," Cannabinoids, 5 (2010),1–21; M. E. Lynch, & F. Campbell, F, "Cannabinoids for treatment of chronic non-cancer pain; a systematic review of randomized trials: Cannabinoids for pain," British Journal of Clinical Pharmacology, 72, 5 (2011) 735–744, https://doi.org/10.1111/j.1365-2125.2011.03970; S. K. Aggarwal, "Cannabinergic pain medicine: a concise clinical primer and survey of randomized-controlled trial results," The Clinical Journal of Pain, 29(2), (2013) 162–171; Jody Corey-Bloom et al., "Smoked cannabis for spasticity in multiple sclerosis: a randomized placebo-controlled trial." Canadian Medical Association Journal, no.10 (2012); Torsten Passie et. al, "Mitigation of post-traumatic stress symptoms by Cannabis resin: A review of the clinical and neurobiological evidence," Drug Testing and Analysis 4, no.7-8 (2012); Pablo Roitman et al., "Preliminary, Open-Label, Pilot Study of Add-On Oral Δ9-Tetrahydrocannabinol in Chronic Post Traumatic Stress Disorder," Clinical drug investigation 34, no.8 (2014); Igor Grant et al., "Report to the legislature and governor of the state of California presenting findings pursuant to SB847 which created the CMCR and provided state funding," San Diego, CA: University of California, San Diego (2010).

13 U.S. Drug Enforcement Administration, "In the Matter of Marijuana Rescheduling Petition," Docket No. 86-22, 6, 57–58, 68 (1988).

14 Paul Armentano, "25 Years Ago: DEA's Own Administrative Law Judge Ruled Cannabis Should be Reclassified Under Federal Law," NORML, September 5, 2013, https://blog.norml.org/2013/09/05/25-years-ago-deas-own-administrative-law-judge-ruled-cannabis-should-be-reclassified-under-federal-law/; Alliance for Cannabis Therapeutics v. Drug Enforcement Administration, 304 U.S.App.D.C. 400, 62 USLW 2563, https://law.resource.org/pub/us/case/reporter/F3/015/15.F3d.1131.92-1179.92-1168.html.

15 Coalition for Rescheduling Cannabis, "Petition to Reschedule Cannabis (Marijuana)," http://www.drugscience.org/PDF/Petition_Final_2002.pdf.

16 U.S. Drug Enforcement Administration, Docket No. DEA-352N, "Denial of Petition to Initiate Proceedings to Reschedule Marijuana," (2011), https://www.deadiversion.usdoj.gov/fed_regs/rules/2011/fr0708.htm.

17 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; DC Circuit Decision, http://AmericansForSafeAccess.org/downloads/DC_Circuit_Ruling_ASA_v_DEA.pdf; ASA Appeal Brief, http://AmericansForSafeAccess.org/downloads/CRC_Appeal.pdf; Petition for Writ of Mandamus, http://americansforsafeaccess.org/downloads/CRC_Writ.pdf; Governors Christine Gregoire & Lincoln Chafee, Rulemaking petition to reclassify cannabis for medical use (2011), http://www.digitalarchives.wa.gov/GovernorGregoire/priorities/healthcare/petition/c ombined_document.pdf.

18 Drug Enforcement Administration, Department of Justice, "Denial of Petition To Initiate Proceedings To Reschedule Marijuana," Federal Register § 81 FR 53767, December 8, 2016, https://www.federalregister.gov/documents/2016/08/12/2016-17960/denial-of-petition-to-initiate-proceedings-to-reschedule-marijuana.

19 Alliance for Cannabis Therapeutics v. DEA, 15 F.3d 1131, 1135 (D.C. Cir. 1994).

20 National Academies of Sciences, Engineering, and Medicine, "The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research," 2017, at http://nationalacademies.org/hmd/reports/2017/health-effects-of-cannabis-and-cannabinoids.aspx.

21 H.Amdt.332 to H.R.2578 – Commerce, Justice, Sciences and Related Agencies Appropriations Act, 2016, https://www.congress.gov/amendment/114th-congress/house-amendment/332.

22 Drug Policy Alliance, "U.S. Senators Elizabeth Warren and Cory Gardner Announce Landmark Bipartisan Bill to Protect States' Rights to Legalize Marijuana," http://www.drugpolicy.org/press-release/2018/06/us-senators-elizabeth-warren-and-cory-gardner-announce-landmark-bipartisan; S.3032 – STATES Act -115th Congress (2017-2018), https://www.congress.gov/bill/115th-congress/senate-bill/3032/text.

[23] S. 1689 – Marijuana Justice Act of 2017, https://www.congress.gov/bill/115th-congress/senate-bill/1689.

[24] Drug Policy Alliance, "Marijuana Justice Act: The Future of Marijuana Legalization," http://www.drugpolicy.org/mja.