



# The Facts on Marijuana Equity and Decriminalization

BY AKUA AMANING APRIL 20, 2021

Decriminalization refers to the elimination of criminal penalties for the use, possession, or sale of drugs. There are many legitimate reasons to support the decriminalization of marijuana, but the prime motivating factor for many is to redress the injustices caused by decades of harsh enforcement of marijuana crimes—particularly against people of color.

## Why it's time to end the federal criminalization of marijuana

For years, marijuana has been labeled a “gateway drug.” This is true only in that marijuana has become a gateway to the criminal justice system for far too many people of color. For the past 20 years, the United States has averaged more than 600,000 marijuana arrests each year, with Black individuals being nearly four times more likely than their white counterparts to be arrested, even though both use marijuana at similar rates. There are now millions of people with criminal convictions for possessing a substance that is decriminalized in 33 states and the District of Columbia—and that 7 in 10 American voters believe should be legal.

Especially in this COVID-19 era, the decriminalization of marijuana could have a significant impact on long-term economic recovery efforts and ensure that Black people and communities of color are no longer disproportionately affected by the war on drugs. Even still, while decriminalization can help reduce the harms of drug enforcement, it will not fully eliminate the current and subsequent impacts of punitive measures that have disproportionately affected marginalized groups. It is essential, therefore, not only to decriminalize marijuana but to do so in an equitable way.

## How to decriminalize marijuana through equitable means

An equitable approach to marijuana decriminalization must ensure an end to the harms inflicted on the communities most vulnerable to the war on drugs. The following policy measures can provide the most equitable path forward.

## The MORE Act

The Marijuana Opportunity Reinvestment and Expungement (MORE) Act is a comprehensive federal marijuana measure that would not only legalize marijuana but also clear marijuana records, ensure a right to public benefits regardless of a marijuana conviction, and use tax revenue to support communities affected by the war on drugs. The measure was passed by the House Judiciary Committee on November 20, 2019, and could receive a full House vote this year. If signed into law, this comprehensive measure would 1) legalize marijuana at the federal level by descheduling cannabis from the Controlled Substances Act; 2) require courts to clear prior marijuana-related convictions from an individual's criminal record and resentence individuals who are still completing their sentence for a marijuana-related offense; and 3) use tax revenue from marijuana businesses to fund employment programs, reentry services, and substance abuse programs for communities most affected by the war on drugs.

The MORE Act will secure the legalization of marijuana through equitable measures that put an end to racially disproportionate outcomes and the racial wealth gap.

- **Descheduling marijuana under the Controlled Substances**

**Act:** The Drug Enforcement Administration categorizes drugs, substances, and other chemicals under a five-category schedule system. Cannabis, along with other substances such as heroin and LSD, is listed under the Controlled Substances Act as a Schedule I substance—the most restrictive category of drugs, considered to have the highest potential for abuse with no medicinal value. However, since marijuana does have some medicinal value and there is no definitive evidence to suggest high rates of abuse among cannabis users, it should be removed as a Schedule I substance. Rescheduling would reclassify marijuana under a less restrictive schedule category; but even if reclassified, cannabis could still be prohibited at the federal level. For true equity, federal lawmakers must deschedule marijuana by completely removing it from any category of scheduled substance—effectively putting an end to federal prohibition and allowing the states to oversee their own marijuana policies.

- **Automatic retroactive expungement of past marijuana**

**convictions:** Roughly 70 to 100 million people are living in the United States with a criminal record, which can carry lasting effects and hinder employment, housing, and education opportunities. This is especially true for Black people, who are already disadvantaged by the racial wealth gap. Automatic record-clearing measures are a streamlined process to remove arrests or convictions from a criminal record without the onerous fees and legal costs required for expungement in other jurisdictions. Clearance of a record not only provides people of color the opportunity to participate in the marijuana industry but can also eliminate barriers to employment, education, and housing opportunities.

- **Social equity programs:** Even as states pass laws to decriminalize marijuana, communities of color are often left behind in the emerging and highly profitable cannabis industry, with revenues projected to balloon to \$50 billion by 2026. Social equity programs, however, can help rectify the damage caused to these communities after years of disparate marijuana enforcement measures. Specifically, by providing assistance for loans, grants, business trainings, and other resources, these equity programs can help individuals from disproportionately impacted communities enter the legal marijuana industry and sustain businesses.

- **Reinvestment of marijuana revenue:** The Center for American Progress has called for the use of marijuana-related revenue to fund the creation of public sector jobs for people in communities most affected by harsh marijuana enforcement. Billions of dollars have been made in the cannabis industry for the same activities


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## Read more

**“Using Marijuana Revenue to Create Jobs”** | A CAP issue brief on the use of marijuana tax revenue to help fuel job growth

**“A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform”** | An ACLU report on the racial disparities of marijuana enforcement

**National Organization for the Reform of Marijuana Laws** | A national organization dedicated to marijuana reform and the legalization of marijuana for responsible use

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For a full list of sources, please see the web version of this fact sheet, available at <https://www.americanprogress.org/?p=498304>.

that have sent millions of people of color to suffer in the criminal justice system. While states continue to profit from these gains, justice-involved individuals are forced to deal with the collateral consequences of their convictions. Reinvestment programs can help reverse these harms by providing an opportunity to address the needs of the communities most affected by marijuana enforcement and by implementing economic opportunities for future economic success.

## What decriminalization looks like at the state and local level

Despite federal prohibition, several states have already taken measures to decriminalize marijuana in their jurisdictions, starting with legalization. Legalization allows for the full use and possession of marijuana under regulatory guidelines without risk of penalty, while also allowing people to participate in an openly regulated cannabis industry, overseen by the states directly. Currently, there are 17 U.S. states and territories that have enacted marijuana legalization measures for adult use. Other states and localities have enacted decriminalization measures that treat marijuana use and possession similar to some traffic violations. These measures do not legalize marijuana, but rather consider it as a minor infraction with less severe punitive consequences.

**“Racially motivated enforcement of marijuana laws has disproportionately impacted communities of color. It’s past time to right this wrong nationwide and work to view marijuana use as an issue of personal choice and public health, not criminal behavior.”**

—REP. JERROLD NADLER (D-NY),  
CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE

Some states are already working to develop social equity programs and expungement measures to address the harms done by the war on drugs. In June 2019, Illinois became the 11th state to legalize recreational marijuana. The state’s law takes robust steps to ensure social equity in this initial legislation, including through the creation of an exclusive fund for low-interest loans and grants for qualified social equity applicants, social equity licenses set aside for individuals from disproportionately impacted communities, and a new process for automated expungement for an estimated 700,000 eligible cases. Meanwhile, in Massachusetts, state cannabis law provided

123 licenses for individuals certified as economic empowerment applicants as a part of the state's social equity program, as part of an effort to ensure inclusivity of the most impacted communities. In addition to a 50 percent reduction in licensing fees, applicants receive free training on core entrepreneurial, cultivation, and management skills.

Local governments have also developed equity programs of their own. Oakland launched one of the first and most ambitious equity programs the country has seen, requiring at least half of all permits to be awarded to equity applicants and incentivizing general partner applicants to "incubate" and mentor applicants with a minimum of three years' free rent on at least 1,000 square feet of space for cannabis businesses. Other cities, such as Los Angeles, San Francisco, San Diego, and Sacramento, are establishing similar programs. In addition to its own equity program, San Francisco developed technology last year to expunge more than 8,000 eligible marijuana convictions. In a statement announcing the new automatic record-clearance process, then-San Francisco District Attorney George Gascón noted that the new process "helps to address wrongs caused by the failed war on drugs, felt most strongly by communities of color."

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