



## The Issue: Discord between state, federal marijuana laws just crazy

By: Nicole Debevec – April 21, 2013

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Is the grass turning greener for marijuana laws in the United States?

In 21 states, consumers can legally buy marijuana for legal or recreational use even though the substance still is illegal under federal law.

New laws legalizing recreational marijuana use in Washington and Colorado last fall likely are under the states' "power to decide what is criminal and what is not," a report from the Congressional Research Service said.

The report analyzed court precedent and presented what can be done to enforce federal law now that several states have marijuana laws that contradict it.

In so many words, the options are not appetizing and really not appetizing.

The Justice Department could challenge the laws in federal court, the report said. But researchers say they doubt the success of making the argument either that the states pre-empted federal authority or that states are in direct violation of the intent of the federal Controlled Substances Act, which classifies marijuana as a Schedule I drug, the same category as heroin and LSD.

"[The] current legal status of marijuana appears to be both contradictory and in a state of flux: As a matter of federal law, activities related to marijuana are generally prohibited and punishable by criminal penalties, whereas at the state level, certain marijuana usage is increasingly being permitted," the report said. "Individuals and businesses engaging in marijuana-related activities that are authorized by state law nonetheless remain subject to federal criminal prosecution or other consequences under federal law."

If a legal victory is a stretch, the feds trying to enforce their laws without a win would be a bigger stretch, the study said.

The study noted federal agents don't have the resources to arrest and prosecute every person who violates the federal Controlled Substances Act by growing, selling or using marijuana. Yet declining to enforce the federal law could "pose a threat to federal supremacy by acknowledging that states are free to make policy decisions in direct conflict with those made at the federal level."

Since voters OK'd recreational marijuana use in November, state officials in Washington and Colorado have been working on regulations that wouldn't run counter to federal authorities, who haven't really addressed the issue.

U.S. Attorney General Eric Holder has been silent since testifying at before Senate hearing in March that "we've had good communication [with Colorado and Washington] ... I expect that we will have an ability to announce what our policy is going to be relatively soon."

In a Dec. 5 letter to Holder, Senate Judiciary Chairman Patrick Leahy, D-Vt., proffered it could be possible "to amend the Federal Controlled Substances Act to allow possession of up to one ounce of marijuana at least in jurisdictions where it is legal under state law," Rolling Stone reported.

Even President Obama weighed in, sort of, during an interview in December with ABC News. He said recreational marijuana users in states that have legalized it should not be a "top priority" of federal law enforcement officials involved in the war on drugs.

"We've got bigger fish to fry," Obama said.

Stateline.org reported despite the lack of harmony, states are still moving on changing their marijuana laws. Maryland lawmakers recently approved a bill that would allow medical use of marijuana and New Hampshire lawmakers seem headed down a similar path. Nevada lawmakers are debating a medical marijuana bill as well as a measure that would legalize and regulate marijuana similar to laws passed in Colorado and Washington. Vermont also appears ready to decriminalize the possession of small amounts of marijuana.

Public opinion about marijuana is changing, too. A Pew Research Center poll indicated 52 percent of Americans say marijuana should be legal while 45 percent said its use should remain illegal. Pew said it is the first time a majority of Americans favor legalizing marijuana since polling began on marijuana legalization in the 1960s.

The Pew survey, conducted in March, also found a major shift in attitudes on whether it is immoral to smoke marijuana. Currently, 32 percent said smoking marijuana is morally wrong, an 18-point drop since 2006. In this same period, the percentage that said smoking marijuana is not a moral issue rose 15 points, from 35 percent then to 50 percent today.

Responding to the crazy quilt of state laws conflicting with federal laws, a bipartisan group of congressional members propose a laid-back approach.

Rep. Dana Rohrabacher, R-Calif., introduced earlier this month the "Respect State Marijuana Laws Act of 2013," which would prevent the federal government from prosecuting state residents whose possession of marijuana are in accord with state law.

The bill would legalize marijuana at the federal level to the extent it is legal at the state level.

"This bipartisan bill represents a commonsense approach that establishes federal government respect for all states' marijuana laws," Rohrabacher said on his website. "It does so by keeping the federal government out of the business of criminalizing marijuana activities in states that don't want it to be criminal."

So far, 18 states, as well as the District of Columbia, have legalized the use of marijuana to some extent and it is likely that several other states will legalize marijuana to some degree in the future.

Joining Rohrabacher as co-sponsors of the bill are Republican Reps. Justin Amash of Michigan and Don Young of Alaska and Democratic Reps. Earl Blumenauer of Oregon, Steve Cohen of Tennessee and Jared Polis of Colorado.

Steve Fox, national political director of the Marijuana Policy Project, praised the effort, Rolling Stone magazine reported.

"Marijuana prohibition is on its last legs because most Americans no longer support it," Fox said. "This legislation presents a perfect opportunity for members to embrace the notion that states should be able to devise systems for regulating marijuana without their citizens having to worry about breaking federal law."

That March Pew survey also found 72 percent of Americans said government efforts to enforce marijuana laws cost more than they're worth. Sixty percent said the federal government should not enforce federal laws prohibiting the use of marijuana in states where it is legal.

Advocates of legalizing marijuana say taxing the weed could pump much needed funds into cash-strapped state coffers while skeptics say they're blowing smoke.

"I've seen some estimates in the high tens of millions, as much as \$100 million for" Colorado, Polis, who's pushing for federal legalization of marijuana in Congress, told Politico.

If the projections are correct, Colorado could make a "substantial dent" in areas such as school improvements, he said.

Skeptics' comments, however, are more sobering, Politico said.

"This is not a cash cow that can solve anyone's fiscal problems," said Harvard economics professor Jeffrey Miron, a pro-legalization scholar at the Cato Institute. "There is a lot of exaggeration about how big the revenue can be."

Besides being a signatory on the "Respect State Marijuana Laws" bill, Polis introduced the "End Federal Marijuana Prohibition Act of 2013," which would remove marijuana from Schedule I of the Controlled Substances Act, placing its regulation under a revamped Bureau of Alcohol, Tobacco, Marijuana, Firearms and Explosives. Growers in states where marijuana is legal would have to receive a federal permit and transporting marijuana to states where it is still prohibited would remain a crime under provisions of the bill.

Blumenauer, meanwhile, introduced the "Marijuana Tax Equity Act," which would establish a federal excise tax for marijuana sales, similar to the so-called sin tax on alcohol. Among other things, it would impose a 50 percent excise tax on wholesale marijuana, and tax growers \$1,000 a year, and tax retailers and distributors \$500.

"Regulating and taxing marijuana like alcohol will take marijuana sales away from cartels and the criminal market and put them in the hands of legitimate, tax-paying businesses," Marijuana Policy Project's Fox told Rolling Stone. "Voters and elected officials nationwide are fed up with laws that criminalize adults simply for using a product that is objectively less harmful than alcohol."