

Marijuana Prohibition's Long Demise

By Paul Best

Bad federal policy is endangering state-authorized cannabis markets while hindering research.

PHOTOGRAPHY BY GREG KAHN

The first pre-rolled joints and THC-infused edibles started flying off marijuana dispensary shelves in Washington and Colorado one decade ago, sparking a wave of legalization across two dozen states. Public support has steadily risen at the same time, with 70 percent of Americans nationwide in favor of legalization last year, up from 48 percent in 2014, according to a recent Gallup poll. The budding industry is filling state coffers with tax revenue while supporting tens of thousands of jobs—all aboveground and out of the shadows of what was an unreliable and dangerous black market.

At the federal level, the Biden administration is expected to move marijuana from Schedule I to Schedule III in the coming months, a move that many

researchers see as a good sign, even if it falls short of removing the drug from the Controlled Substances Act altogether.

This widening acceptance reflects how many of the drug warriors' most misguided fears, from drug-crazed teens to rampant indolence, have simply not materialized.

But while the market for marijuana expands and its stigma recedes, the continued federal illegality of the drug has complicated entrepreneurs' efforts and hampered their ability to access banks,

RIGHT: Federal prohibition of marijuana has largely cut the industry off from financial services in state-authorized markets, forcing businesses to operate only in cash. The resulting public safety crisis has spurred costly investments in armed security, defensive bollards, and other measures.





TOP: Dockside Cannabis co-owner Oscar Velasco-Schmitz outside one of his company's retail locations in the greater Seattle area.

RIGHT: Many business owners have erected bollards outside dispensaries after a spate of robberies in which cars crashed through storefronts.



leading to what many industry leaders and elected officials are calling a very real public safety crisis.

Marijuana's Cash Conundrum

Financial institutions are largely unwilling to provide basic services to marijuana businesses, understandably fearful of running afoul of the Controlled Substances Act, Bank Secrecy Act, anti-money laundering laws, and other regulations. Congress's refusal to pass legislation clarifying federal law in this area, much less decriminalize or legalize marijuana, has created a dangerous environment for state-authorized businesses.

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Many entrepreneurs in the industry have been forced to essentially act as their own banks and deal only in cash, putting a target on their backs for opportunistic criminals.

“When I wake up in the morning, I look to see if I missed a text about a break-in, to

this day,” said Oscar Velasco-Schmitz, the owner of Seattle-based dispensary chain Dockside Cannabis, which has been targeted by criminals multiple times in recent years. “One of the burglaries that we had, it literally looked like a bomb went off in the storefront.”

The nature of these incidents varies, with some criminals crashing vehicles, usually stolen, through storefronts in the middle of the night before stealing products and trying to break into safes full of cash. Other robberies have happened while businesses are open, with ski mask-clad robbers terrifying dispensary workers and customers alike.

“We had a break-in in December of last year during an ice storm, around 11:45 right as we were closing, with five AR-15s coming in,” said Shannon Vetto, the CEO of Evergreen Market in Washington State. “They got less than \$1,000 in money, and the street value of product that they got might have been maybe five grand. And they terrified human beings with guns in their faces right before Christmas, people with children.”

These crimes resemble Wild West bank robberies more than the smash-and-grab thefts associated with other retail stores. During one robbery at a dispensary in Seattle last year, an employee told detectives that a man burst into the store with a gun and made his intentions clear by yelling, “Where’s the f----- safe! . . . What do you mean it won’t open,” according to a criminal complaint filed in the US District Court for the Western District of Washington.

In Denver, marijuana businesses are targeted in 6 percent of all business

TOP: Evergreen Herbal CEO Andy Brassington at his company's production facility in Washington State.

LEFT: Chocolate infused with THC moves along a production line at a manufacturing facility.

RIGHT: Consumers have their choice of a variety of marijuana products in state-authorized markets.

burglaries, even though they make up less than 1 percent of businesses in the city. All crime related to the legal marijuana industry in Denver involves theft of some kind, with 96 percent attributed to burglaries or attempted burglaries of dispensaries and 4 percent attributed to larceny in 2022, according to a report by the city government.

While cash may be the main goal, criminals also target these businesses to get after marijuana products that they can resell on black markets in states where the drug is still illegal, as well as locally where black markets have continued to flourish due to excessive sin taxes. Washington, for example, slaps an excise tax of 37 percent on all marijuana products.

"High cannabis-specific taxes drive up the overall costs at the point of retail transaction, and essentially act as a [price] floor for the black market to thrive and prosper," said Andy Brassington, the CEO of Evergreen Herbal, which manufactures products for dispensaries throughout Washington.

There have been nearly 300 robberies and burglaries of marijuana businesses in the Seattle area over the past seven years, according to an unofficial running list compiled by Uncle Ike's owner Ian Eisenberg, who also attributes the brazenness of the robberies to the prosecutorial lenience and decreased police

presence that has characterized the justice system in Seattle since 2020.

"It became a very hostile environment for police," Eisenberg said. "So we just don't have police anymore in Seattle for anything except a priority one call. Priority two or three—cops aren't coming, period. Cops weren't allowed to pursue cars that are dangerous, pursuit laws changed. Cash bail changed. And what changed the most in this state and this county is this desire to get rid of youth detention."

Dispensaries have adapted to their business environment, making costly investments in everything from state-of-the-art safes to security guards.

"People have had to spend a lot of money on all sorts of things—armed security, bollards, security improvements," Lux Pot Shop cofounder Shea Hynes said. "There's some other security things that people have started using for cash management, and they all have a cost associated with them."

While the federal criminalization of marijuana creates a safety hazard for state-authorized businesses, it has also affected the personal lives of workers in the industry, from business owners to budtenders.

One executive told *Free Society* that after making a career pivot to the marijuana industry, several of their retirement accounts were shut down by a brokerage firm that had been managing their





Evergreen Market CEO Shannon Vetto at one of the company's dispensaries in Washington State.

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investments for decades. Other employees have had trouble with everything from buying a house to opening lines of credit.

“We’ve had employees be turned down for credit cards, mortgages, home loans, auto loans, life insurance, just because their paycheck comes from Evergreen Herbal, signed by me,” Brassington said.

Under onerous Financial Crimes Enforcement Network guidelines issued in 2014, any bank that works with the marijuana industry must file suspicious activity reports for all transactions. Roughly 10 percent of banks and about 4 percent of credit unions reported doing business with marijuana companies last year, according to Treasury Department records, but the extent of the financial services offered is unclear. Some banks may be reporting transactions with entities only indirectly connected to the marijuana industry, such as a landlord leasing property to a dispensary, the Congressional Research Service notes.

Many of the banks that offer basic financial services are smaller and limited to checking accounts and direct deposit payroll. The lack of electronic payment processing has hit the industry especially hard, driving the cash-centric nature of the business. Washington State officials called these restrictions the “catalyst for a very real public safety crisis” in a letter to Congress in 2022.

Most industry veterans believe the only way to solve that public safety crisis is for Congress to pass legislation clarifying federal law, such as the Secure and Fair Enforcement Regulation (SAFER) Banking Act. That bill—which says that federal regulators cannot “prohibit, penalize,

or otherwise discourage a depository institution from providing financial services to” a state-sanctioned marijuana business—cleared the Senate Banking Committee for the first time last year but has never been considered on the Senate floor. The House of Representatives has passed the SAFER Banking Act or its predecessor seven times.

Senate Majority Leader Chuck Schumer (D-NY) said that the SAFER Banking Act is a top priority in 2024, and Senate Democrats introduced a separate bill in early May to legalize marijuana federally, but Republican opposition means that the chances of either piece of legislation passing are not high. The patience of industry leaders, meanwhile, is growing thin.

“Because they won’t pass SAFE Banking . . . we’re being discriminated against like we’re second-class citizens, and it’s just a travesty,” Brassington said. “Congress should be ashamed of themselves.”

Roadblocks to Research

Over three dozen states have authorized medical marijuana programs since California voters passed the Compassionate Use Act of 1996, though the drug has been used to treat various illnesses for thousands of years, with millennia-old records attesting to its use across China, Egypt, Greece, the Roman empire, and other ancient civilizations.

Marijuana’s classification as a Schedule I substance with “high potential for abuse” and “no currently accepted medical use in treatment in the United States” has made it extremely difficult for researchers to use randomized double-blind placebo-controlled trials, the gold standard in clinical research.

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Dr. Donald Abrams, professor emeritus of medicine at the University of California San Francisco, has tussled with regulators several times since the 1990s as he sought ways to study the drug’s potential for cancer and HIV/AIDS patients.

“When I used to study marijuana, I used to complain that I have eight different regulatory bodies that needed to approve my protocol,” Dr. Abrams said.

Researchers interested in marijuana must register with the Drug Enforcement Administration, submit their protocols to

federal regulators for approval, source the product through an inflexible bureaucracy, and jump through other hoops before beginning a study.

The Biden administration’s anticipated rescheduling of marijuana will likely lift some of those restrictions, but researchers stressed that much is still unknown about how regulators will respond.

“The problem is the FDA’s interpretation of how they review the protocol,” said Rick Doblin, the founder of the Multidisciplinary Association for Psychedelic Studies (MAPS). “I do think the rescheduling will be a helpful signal, but by itself, it’s not sufficient.”

Despite some promising results, federal officials have stymied many studies before they could get off the ground. Researchers at MAPS found preliminary evidence in a 2021 exploratory study that inhaled marijuana can effectively treat post-traumatic stress (PTSD) in military veterans.

These researchers aimed to expand their findings in a phase 2 study with a larger sample size, but the FDA has repeatedly blocked their proposal, arguing that smoking and vaping are not “safe drug delivery” methods.

“The FDA has this extremely unreasonable position, blocking research into the way cannabis is actually consumed, which is smoked or vaporized,” Doblin said of the study, which is one of many studies being funded by a grant program from the state of Michigan. “All of this research trying to study smoked or vaporized cannabis is being blocked by the FDA—it’s not just our study.”

Despite these impediments, countless people have attested to the therapeutic benefits of marijuana. Gary Hess, a Marine veteran who served multiple deployments in Iraq, returned to the United States with PTSD, a traumatic brain injury, chronic pain, insomnia, and other problems.

Raised in a conservative family in Louisiana, Hess steered clear of marijuana and other drugs his entire life, even going so far as to fire his brother from a construction job after finding out he was using the drug.

But after a few fellow Marine veterans suffering from similar ailments told him about the relief they experienced with marijuana, he decided to give it a shot.

“I’d integrate cannabis, and it would bring me back to a point of balance, where I would not turn catastrophic in the way that I would in the past, when I would be triggered to a very hyper-aroused state,” Hess said. “Within three months of integrating cannabis daily, I was off all pharmaceuticals that were prescribed by the VA and private practices, and I was able to live my life in a state of balance that I had not been able to for over a decade.”

Hess, who founded Veterans Alliance for Holistic Alternatives, testified about his experience before the Louisiana State Legislature and was among the first patients in his state to legally buy medical marijuana in 2019. The drug is now available for medicinal purposes in 38 states and Washington, DC.

An End to Prohibition

Legal markets for marijuana have alleviated

many of the worst symptoms of prohibition.

Cartels no longer have a monopoly on smuggling marijuana in violence-plagued black markets, ceding control to the entrepreneurs, retailers, growers, and other taxpaying citizens who operate aboveground where innovation and efficiency are rewarded instead of cruelty.

There were about a quarter-million arrests for marijuana offenses nationwide in 2022, a number that’s still disturbingly high but well below the nearly 800,000 arrests at the peak of prohibition in 2007.

Most Americans are happy with these trends, as evidenced by polls showing steadily increasing support for legalization over the past decade.

But as researchers, entrepreneurs, and citizens have attested, bad federal policy continues to cloud the legal marijuana industry by cutting off businesses from financial services and complicating research into the drug’s therapeutic potential. Rescheduling marijuana may relieve some of those restrictions, but clarifying legislation for financial services and an eventual end to prohibition altogether might be on the horizon. ✨

ABOUT THE AUTHOR

Paul Best is a senior writer and managing editor for *Free Society*. He previously worked as an investigative reporter covering economic issues at the Cato Institute. Before joining Cato, he was a television producer for *Stossel* and *Kennedy*, as well as a digital reporter at Fox News.