

Support for Marijuana Rescheduling Grows

April 01, 2024

Support for marijuana rescheduling has been pouring in as the Biden administration [considers moving marijuana from Schedule I to Schedule III of the Controlled Substances Act](#) (CSA). The Department of Health and Human Services (HHS) has [recommended](#) that the Department of Justice and Drug Enforcement Administration (DEA) reschedule marijuana from Schedule I (the most restrictive Schedule) to Schedule III. As the public [waits for the DEA to make a final decision on rescheduling](#), politicians and attorneys general are staying involved in the discussion.

The marijuana rescheduling petition is currently waiting on action from the DEA, which under the CSA may either (i) concur with the [HHS recommendation](#) and initiate rulemaking under the Administrative Procedures Act to reschedule to Schedule III, or (ii) request that HHS reevaluate its position based on additional data (as it did with the proposed rescheduling of Hydrocodone Combination Products). DEA may also conceivably suggest rescheduling marijuana to Schedule II. There is an important distinction between Schedule II and Schedule III, because business activities related to Schedule II substances are subject to IRC 280E, while Schedule III substances are not.

On March 15, Vice President Kamala Harris said the DEA must reschedule marijuana “as quickly as possible,” [as reported by Marijuana Moment](#): “I cannot emphasize enough that they need to get to it as quickly as possible. And we need to have a resolution based on their findings and their assessment.”

In February, the Law Enforcement Leaders to Reduce Crime and Incarceration (LEL) group wrote a letter to the Biden administration urging rescheduling. [The Hill reports](#) that the letter stated the following: “We are current and former police chiefs, sheriffs, federal and state prosecutors, and correctional officials from across the country dedicated to protecting public safety and reducing unnecessary arrests, prosecutions, and incarceration.”

LEL stated that marijuana’s status as a Schedule I substance has had a devastating impact on communities and is out of step with state law and public opinion.

On January 12, 2024, [a group of twelve current attorneys general issued a letter in support of rescheduling cannabis](#) from Schedule I to Schedule III. The letter was from Colorado Attorney General Phil Weiser, who was joined by attorneys general of California, Connecticut, Delaware, Illinois, Maryland, Massachusetts, Nevada, New Jersey, Pennsylvania, Oregon, and Rhode Island. In addition, in January a group of senators—including Elizabeth Warren, Chuck Schumer, and John Fetterman—wrote a [letter urging Biden to deschedule marijuana](#), which would remove it from the CSA entirely.

Although there has been significant support for rescheduling, some groups have voiced opposition. For example, former Attorney General William Barr has claimed that legalizing marijuana was a mistake, as reported by [Reason](#). In addition, in December 2023, [a group of twenty-nine former federal prosecutors wrote a letter](#) to Attorney General Merrick Garland and DEA Administrator Anne Milgram, pleading for the agencies not to reschedule marijuana.

Despite opposing viewpoints, support for marijuana reform continues to build. While this does not mean that marijuana is certain to be rescheduled to Schedule III, the move to reschedule has some powerful supporters. As noted above, the decision to reschedule at this point falls squarely on the DEA and Department of Justice, which have a history of opposing marijuana reform. For now, all the public can do is wait to see how things shake out.

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Daniel Shortt