

CRS Insights

District of Columbia: Marijuana Decriminalization and Enforcement; Issues of Home Rule and Congressional Oversight

Eugene Boyd, Analyst in Federalism and Economic Development Policy (eboyd@crs.loc.gov, 7-8689)

July 17, 2014 (IN10108)

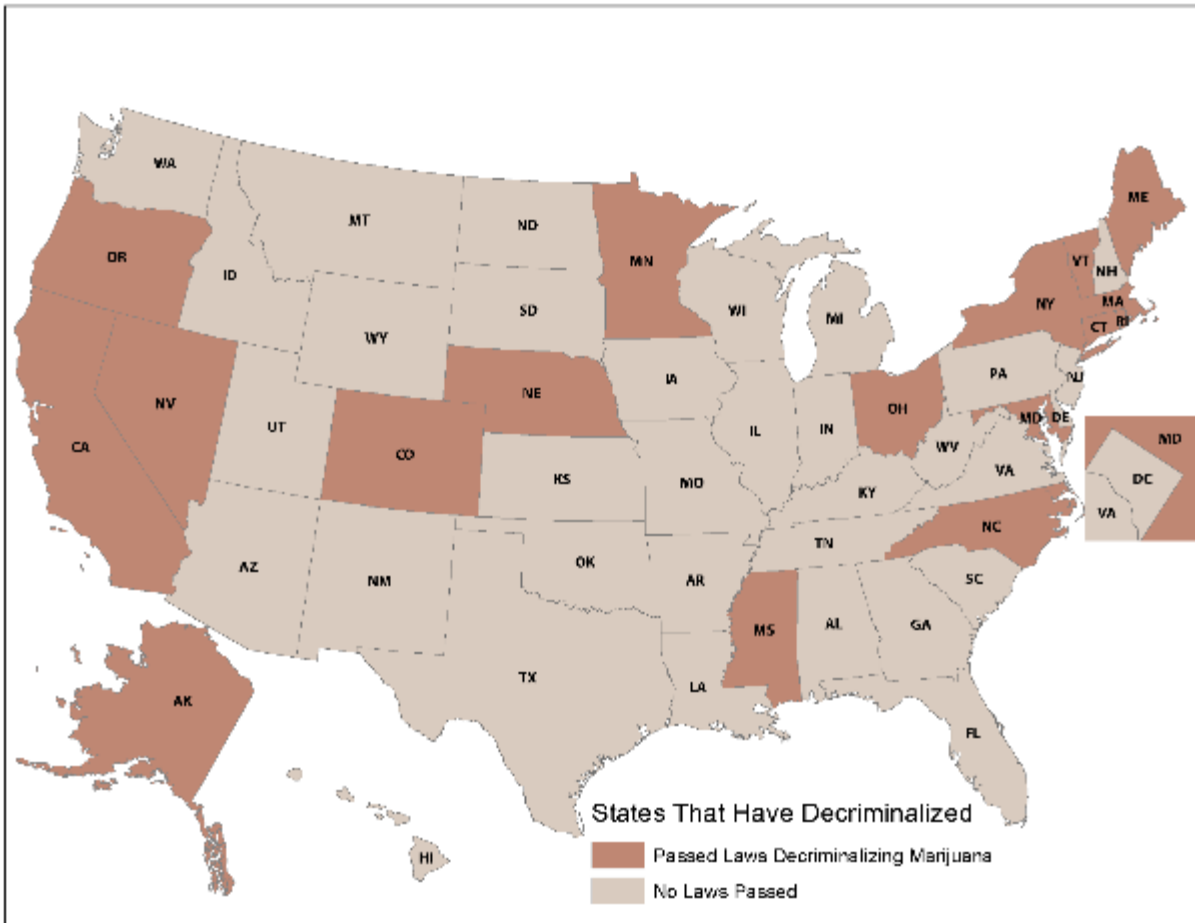
On March 31, 2014, the Mayor of the District of Columbia signed into law [A20-0305](#), Simple Possession of Small Quantities of Marijuana Decriminalization Amendment Act of 2013. The act would:

- decriminalize the possession of an ounce or less of marijuana, reducing the offense to a misdemeanor subject to a \$25 fine;
- make public consumption of marijuana or impairment an offense subject to a \$100 fine and up to 60 days in jail; and
- establish a substance abuse prevention and treatment fund.

Like all legislation approved by the District of Columbia elected officials, or by its citizens through the referendum or initiative process, A20-0305 is subject to congressional review and possible disapproval. The Constitution (Article I, Section 8, clause 17) gives Congress the power to "exercise exclusive Legislation in all Cases whatsoever" pertaining to the District of Columbia. In 1973, Congress granted the District limited home rule. However, Congress retained the authority to review all District laws, including changes in the District's criminal code. As detailed in the District's Home Rule Charter ([P.L. 93-198](#); 87 Stat. 777; DC Code §1-201 et seq.), before the District's new law can be implemented it faces a congressional review period of 60 legislative days and a potential veto by Congress. During this review period, which expired on July 17, 2014, Congress failed to pass a resolution of disapproval voiding the act.

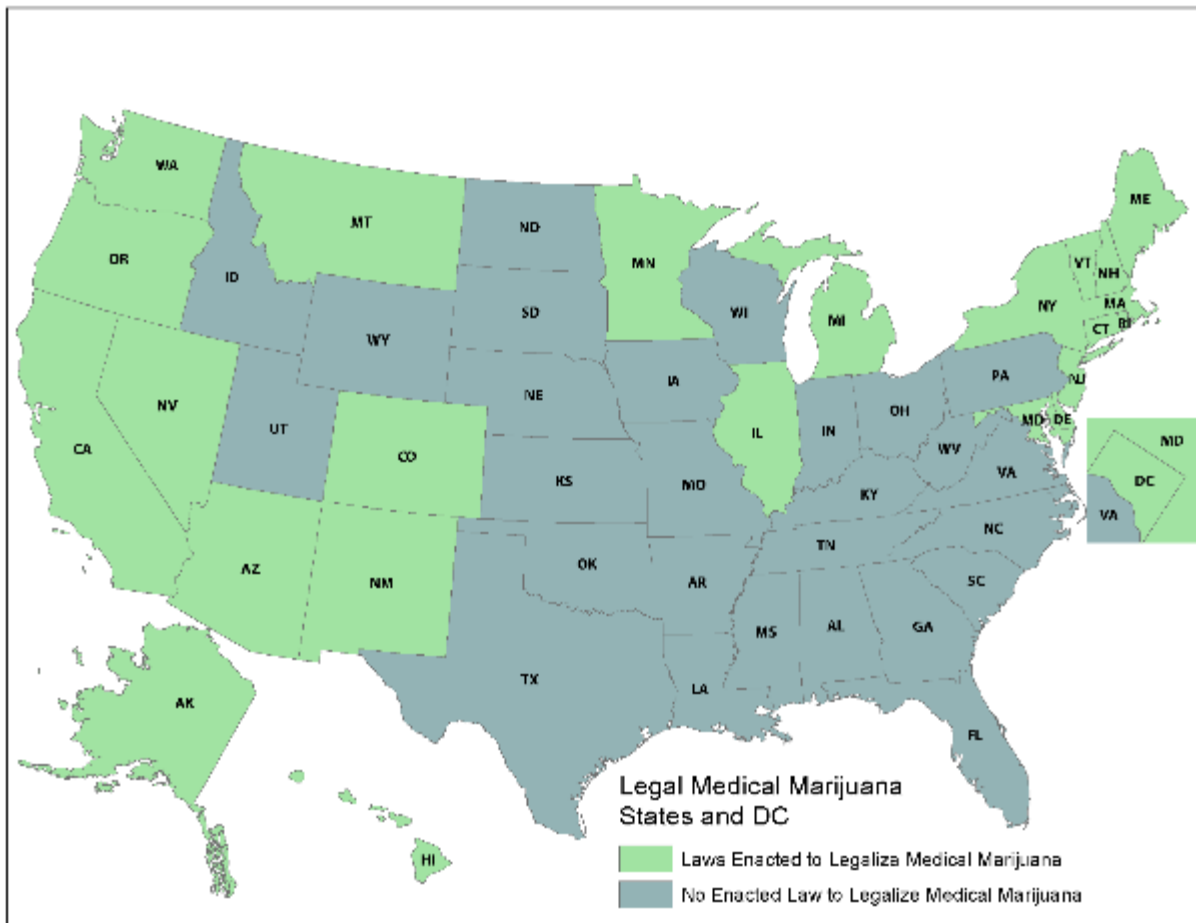
The District's effort to decriminalize possession of small quantities of marijuana is part of a larger national phenomenon. At least 17 states ([Figure 1](#)) have passed laws that decriminalize possession of marijuana for recreational use while an even larger number of states (23 and the District of Columbia, [Figure 2](#)) have passed legislation allowing for the dispensing of medical marijuana. Throughout the United States, however, possession of even a small amount of marijuana is a federal crime (21 U.S.C. 844).

Figure 1. Decriminalization of Marijuana



Source: CRS.

Figure 2. Medical Marijuana



Source: CRS.

Decriminalization of marijuana in the District is one of several issues that have engendered controversy and congressional intervention. Like the controversies surrounding the District's medical marijuana initiative, needle exchange, and abortion services, the District's marijuana decriminalization act pits the principle of home rule against Congress's constitutional authority and prerogative to intervene in District affairs.

Supporters of the law point to the shift in [public opinion](#) surrounding the legalization of marijuana use; noting that the majority of the country favors legalization. They also note that the act is intended to address the racial disparities in marijuana arrest rates in the District. According to a [committee report](#) accompanying the legislation, blacks accounted for 90% of the marijuana arrests in the District despite evidence that they use marijuana at a rate comparable to use by whites. Supporters note that a single arrest for marijuana possession has a significant impact on future employment and career prospects.

Opponents of the law argue that enforcement will be problematic given the unique status of the District as the Nation's Capital. On the one hand, possession of a small quantity of marijuana on non-federal lands would be reduced to a misdemeanor punishable by a small fine. On the other hand, possession of that same quantity of marijuana on federal lands, including the Mall, the National Zoo, and Rock Creek Park could be prosecuted, at the discretion of the Department of Justice, as a federal offense and subject the offender to six months in jail and up to a \$5,000 fine, given that marijuana is defined as a Schedule I drug under the Controlled Substances Act (21 U.S.C. §811). The matter of enforcement is further complicated by the presence of 32 federal law enforcement agencies that provide assistance to the District's Metropolitan Police Department (MPD) through [cooperative agreements](#) that expand the area of jurisdiction an agency's law enforcement personnel may patrol with the power to arrest. It is worth noting that the U.S. Park Police recorded 501 marijuana-related incidents in 2013 according to media reports, second only to arrests made by the MPD. In addition, according to [testimony](#) before the House Oversight and Government Reform Committee, between 2010 and 2012 arrest in the District accounted for 55% of marijuana possession arrests made by the U. S. Park Police in the Washington

metropolitan area.

Congress did not pass a resolution of disapproval before the 60-legislative-day congressional review period expired. Only three times in the District's home rule era has Congress successfully passed resolutions of disapproval voiding a District law.

- 1. [S.Con.Res. 63](#), Chanceries Amendment Act of 1979, which preempted the District's zoning laws governing foreign chanceries and embassies;
- 2. [H.Res. 208](#), Sexual Assault Reform Act of 1981, which repealed the District's liberalization of its sodomy laws; and
- 3. [S.J.Res. 84](#), Schedule of Heights Amendment Act of 1990, [P.L. 102-11](#), which restricted the height of buildings in the District.

An alternative strategy that Congress has employed in the past involved the inclusion of a provision in the District's annual appropriation, which must be approved by Congress, prohibiting the implementation of the act. Such a provision was approved by the House Appropriations Committee during full committee markup of the Financial Services and General Government Appropriations bill for FY2015, [H.R. 5016](#). The provision (Sec. 809) would prohibit use of District and federal funds to legalize or reduce penalties associated with the possession, use, or distribution of marijuana. The Administration, in a [Statement of Administration Policy](#), opposes the provision. It is unclear whether the provision will survive House and Senate FY2015 appropriations negotiations.

Whatever the fate of the provision included in the House bill, Congress and District officials may have to address the issue of legalized marijuana in the District should voters approve [Initiative 71](#), which would allow persons at least 21 years of age to possess and grow small quantities of marijuana for personal use. Initiative 71, which must be certified by the Board of Elections before it appears on the November 4 ballot, would be nonbinding and could be overturned by the Council, and would certainly trigger congressional review.