

Will the movement to legalize psychedelics succeed?

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Interest in psychedelics like psilocybin, mescaline, and LSD is on the rise for the first time in 50 years, as influencers, scientists, and entrepreneurs promote their therapeutic potential. Some municipalities

have stopped enforcing criminal bans on their possession, and at least one state has legalized medicinal use of certain psychoactive substances.

In his review article titled "Observations on 25 Years of Cannabis Law Reforms and Their Implications for the Psychedelic Renaissance in the United States," drug law expert Robert Mikos, LaRoche Family Chair in Law at Vanderbilt Law School, draws lessons from the marijuana reform movement that proponents of psychedelic legalization should heed in their efforts to win public support.

The research is [published](#) in the journal *Annual Review of Law and Social Science*.

Federal legalization is not a short-term possibility

Mikos outlines three potential routes to legalizing psychedelics at the federal level, but he warns that each face "daunting obstacles that will be difficult to overcome in the short term."

Administrative action

Psychedelics are placed on Schedule I under the Controlled Substances Act of 1970 (CSA), defined as substances with the most potential for abuse and harm, with no recognized medical uses. The manufacture, distribution, and possession of psychedelics is a federal crime, outside of federally approved clinical research studies.

The Attorney General has some authority to reschedule drugs, with significant restrictions. A petitioner would first need to demonstrate that a particular psychedelic has a currently accepted medical use. The CSA offers a double-edged challenge for petitioners: It requires large-scale, well-controlled clinical trials to prove efficacy of Schedule I substances,

while simultaneously limiting the supply of such substances and requiring burdensome licensing and handling procedures.

Petitioners for marijuana (also a Schedule I substance) have been unable to meet the CSA's standards for proof; Mikos cautions that current research on psychedelics would suffer a similar fate. "No studies that would satisfy the CSA's lofty criteria for demonstrating medical efficacy have yet been completed," he writes.

The challenge of rescheduling doesn't end there. The Attorney General must comply with international law when making scheduling decisions, a long-time issue for advocates for marijuana, which is governed under the Single Convention on Narcotic Drugs. The 1971 Convention on Psychotropic Substances requires tight controls on psychedelics, likely making it impossible for an AG to reschedule them farther than Schedule II, which would do little to increase availability (for perspective, cocaine is a Schedule II drug).

An alternative to rescheduling exists for the AG: The Department of Justice (DOJ) could adopt a nonenforcement policy toward psychedelics akin to their posture with marijuana. This, as Mikos describes it, "is not a perfect substitute for legalization," as psychedelic suppliers would have to contend with the punitive tax rules, limited banking services, and other obstacles that marijuana suppliers face today. The DOJ has also indicated no willingness to consider such a policy for psychedelics or any other CSA-defined drugs besides marijuana.

Congressional legislation

While Congress could legalize psychedelics with no regard for the CSA—alcohol and tobacco, for example, have been exempted from the statute's scheduling and regulatory regime—successful legislation appears unlikely. Marijuana enjoys widespread support from Americans

for recreational and medical use, yet "proposals to reform federal marijuana laws have repeatedly stalled in Congress," Mikos writes. By some polling estimates, psychedelics enjoy less than half of the support that marijuana does among the public, and one study shows that only 2.2% of Americans aged 12 or older used any psychedelic in 2019, vs. 18% who used marijuana.

Constitutional challenges

Challenges to the federal ban on marijuana on constitutional or statutory grounds have failed several times over, casting doubt on similar potential efforts for psychedelics. Mikos notes that plaintiffs have find success challenging the federal psychedelics ban under the Religious Freedom Restoration Act, but "those victories have been quite narrow." Similarly, the 2018 Right to Try Act authorizes medical use of otherwise banned drugs that have completed Phase 1 clinical trials in case of life-threatening medical conditions. Right to Try Act lawsuits are working their way through the courts now.

"In sum, pursuing legalization at the federal level is unlikely to bear fruit in the short run," Mikos writes. "Proponents face formidable obstacles in the executive, legislative, and judicial branches."

States are an alternative pathway to legalization, with drawbacks

Nearly 40 states have legalized the possession, cultivation, and distribution of marijuana for medical or recreational use, increasing access to marijuana while reducing the legal exposure for growers, sellers, and users. State lawmaking procedures (like ballot initiative), combined with the variance in public opinion across states, could smooth the path to psychedelic reform, the way it did for marijuana.

Mikos warns that the state reform approach is not without challenges. The threat of federal crackdowns may compel states to prohibit private firms from selling psychedelics, allowing only users to supply their own needs (i.e., "personal cultivation"). Many states opted for this approach with marijuana before the DOJ announced its nonenforcement policy in 2009. While such reform comes with limitations, "personal cultivation was arguably the best supply option available while the federal government remained hostile to state marijuana reforms," he writes.

Reforming states might also forgo regulating psychedelics, to avoid federal prosecution for manufacturers and distributors.

"In the past, the [federal government](#) has used information gathered by state regulators (e.g., state medical marijuana registries) to assist its own criminal investigations and thereby bolster its limited law enforcement capacity," Mikos writes. This could negatively affect consumer safety for a set of drugs that many advocates say requires a knowledgeable guide and carefully crated environment.

"The experience of the marijuana reform movement suggests that proponents may need to take an incremental approach, pursuing narrow reforms at first, even if they fall short of a grand psychedelic renaissance," Mikos cautions.

Reform comes with many questions

Policymakers seeking to legalize psychedelics will need to make several critical decisions that may or may not come with [public support](#). Which psychedelics should be legalized (naturally occurring, lab-created, all), and for what uses (spiritual, medicinal, recreation, personal growth)? How will they be supplied? Marijuana reform suggests that narrowing the scope of legalization across all of these factors may be the best approach.

"A [psychedelics](#) renaissance may be afoot, but it remains a work in progress, and many of its key features will be determined only in the months and years to come," the paper concludes. "Policymakers interested in expanding access to psychedelic substances would be wise to heed lessons gleaned from the past 25 years of [marijuana](#) reforms."

More information: Robert A. Mikos, Observations on 25 Years of Cannabis Law Reforms and Their Implications for the Psychedelic Renaissance in the United States, *Annual Review of Law and Social Science* (2022). [DOI: 10.1146/annurev-lawsocsci-120621-012645](https://doi.org/10.1146/annurev-lawsocsci-120621-012645)

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