

Marijuana Justice in New York: The Path to Reform

A report by

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Dear Friends:

The imminent legalization of recreational marijuana in New York State must be accompanied by an action plan that fosters economic opportunity and restorative justice in traditionally marginalized communities.

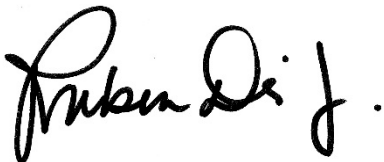
The recent announcement by Governor Andrew M. Cuomo that he would seek to strike deals with our neighbors in New Jersey and Connecticut to address the legal and health issues surrounding the sale and use of recreational marijuana shows us that this is a regional issue at its core. Right now it is a matter of when, not if, marijuana will be legalized in New York State, and many observers including myself expect that will occur in the 2020 New York State Legislative Session.

However, we cannot simply legalize recreational marijuana and walk away from the new world we have created. The unequal treatment of marijuana consumers—largely broken down by race and zip code—has put black and brown communities at a significant disadvantage within the criminal justice system. The legalization of recreational marijuana must be met with substantial criminal justice reform and a significant influx of resources to those communities that have been most affected by decades of unequal enforcement of the law.

In this report, I outline a path for marijuana justice that uses legalization as a tool not just to raise revenue but to also make communities whole, create new employment opportunities and begin to erase the negative effects of past policies and the war on drugs.

I look forward to your comments and feedback on this important issue.

Sincerely,



Ensuring Equity and Access under Marijuana Legalization

Executive Summary

Marijuana legalization failed to pass in the New York State Legislature during the 2019 Legislative Session, with only a narrower decriminalization bill enacted instead. None-the-less, the legalization debate has continued among elected officials, advocates, law enforcement and New Yorkers of all stripes throughout the state. Despite this year's results in Albany, the need for reform has not changed. Current marijuana laws have resulted in a thriving marijuana black market, and the statistically unjust enforcement of these laws has disproportionately harmed racial minorities and low-income communities for decades. While the decriminalization bill passed last session is a strong step forward, there is much more work that needs to be done.

The legalization bill sponsored by Assembly Member Crystal Peoples-Stokes and Senator Liz Krueger considered in the Legislature this year was a strong effort that would have improved the lives of millions of New Yorkers. Before the bill is reconsidered next year, several improvements should be made and several provisions under reconsideration should be maintained in order to best promote equity, access and economic well-being for all New Yorkers.

Proposal 1: *Community Reinvestment.* Low-income and minority communities across the state that have been disproportionately affected by past marijuana criminalization should see the benefits of legalization. Some of the revenue from legalization should be returned to these communities in the form of grants and other opportunities.

Proposal 2: *Second Chances for Job Applicants who Fail Drug Tests for Marijuana.* Many New Yorkers have failed drug tests for marijuana in the past, which has prevented them from getting a job. Employers should be encouraged to call these job-seekers back for future openings, and services should be available to help these individuals find employment.

Proposal 3: *Equity in Licensing.* The marijuana industry in New York State should reflect the population of New York State. The state should ensure that licenses are granted to qualified equity applicants so that those harmed by marijuana criminalization will be able to benefit from its legalization. The licensing system should ensure that small and minority-owned businesses are able to participate in the industry so that large, out-of-state companies cannot box them out.

Proposal 4: *Access to Capital and Banking Services.* Currently, banks are reluctant to engage with the marijuana industry. The state should ensure access to funds for small marijuana businesses so that the industry is not dominated by larger businesses that do not reflect the diversity of the state. New York State should advocate for Congress to pass a law protecting financial institutions from prosecution for legal cannabis-related activities.

Proposal 5: *Automatic Expungement.* The decriminalization bill introduced an expungement mechanism in New York State for the first time and provided that low-level marijuana offenses could be expunged. A legalization bill must make more former marijuana offenses subject to expungement as well. Past criminal convictions limit opportunities, and the enforcement of marijuana laws has fallen disproportionately against minorities and low-income communities.

Proposal 6: *Ending Family Separations because of Marijuana.* Currently, a positive drug test for marijuana is sufficient to start a child neglect investigation. No families should be broken apart because a parent, particularly a new parent, tests positive for marijuana.

Introduction

By the end of 2019, marijuana will be legal in at least 11 states.¹ As New York considers whether to join them, state leaders must ensure that the legalization system that they enact best serves all New Yorkers, particularly those in marginalized communities. Across the country, the marijuana industry is growing rapidly, and as New York moves to tap into that growth, communities that have been disproportionately affected by marijuana prohibition must not be left behind. The state would derive tax revenue from legal marijuana that could be put to use for the benefit of communities across the state. Legalizing marijuana would also help eliminate the racial disparities that have resulted from unequal enforcement of existing drug laws.

New York has a long history of marijuana regulation, beginning with its first move to regulate marijuana in 1914. The state passed full prohibition in 1927, and the federal government followed suit in 1937. Marijuana possession was treated harshly under the law until the first decriminalization effort was enacted in 1977. Between 1980 and 1994, marijuana was not a priority for enforcement for the New York City Police Department (NYPD), as they focused more heavily on heroin and violent crime.²

However, after Rudy Giuliani was elected Mayor of New York in 1993, the NYPD began to crack down on marijuana users and dealers as part of his “tough on crime” and “take back the streets” initiatives. This resulted in an increase in “marijuana in public view” arrests from about 3,000 in 1994 to 50,000 in 2000.³ This higher level of marijuana enforcement was sustained throughout the administration of Mayor Michael Bloomberg until it declined under current Mayor Bill de Blasio. Public view and public burning arrests fell from over 50,000 in 2010 to about 17,000 in 2017.⁴ In 2018, Mayor de Blasio pushed forward a new policy that further slashed the number of marijuana arrests, with the aim of replacing arrests with summonses and desk appearance tickets instead.⁵

Today, marijuana arrests and summons in New York City are overwhelmingly against black and Latino New Yorkers. In the first six months of 2019, there were 1,061 marijuana arrests for unlawful or misdemeanor possession, of which 93 percent were of black or Latino people. Over the same period, there were 7,759 criminal court summons for marijuana possession, of which 88 percent were issued to black or Latino people.⁶ This disproportionate level of enforcement

¹ Norwood, Candice, “Why Illinois’ Marijuana Legalization Law is Different from All Others,” *Governing*, June 11, 2019. <https://www.governing.com/topics/public-justice-safety/gov-illinois-marijuana-legalization-legislature.html>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2519880/>

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2519880/>

⁴ <https://www1.nyc.gov/assets/home/downloads/pdf/press-releases/2018/marijuana-report-20180619.pdf>

⁵ Mueller, Benjamin, “New York City will End Marijuana Arrests for Most People,” *New York Times*, June 19, 2018. <https://www.nytimes.com/2018/06/19/nyregion/nypd-marijuana-arrests-new-york-city.html>

⁶ This includes unlawful possession of marijuana, criminal possession of marijuana in the fifth degree, and criminal possession of marijuana in the fourth degree. NYPD data accessed here: <https://www1.nyc.gov/site/nypd/stats/reports-analysis/marijuana.page>. Criminal possession of marijuana in the fifth degree has since been re-designated as unlawful possession of marijuana in the first degree under the decriminalization bill passed earlier this year.

has resulted in numerous negative effects for the affected populations including loss of jobs, loss of opportunity and loss of freedom.

These arrest and summons figures stand in contrast to the population of New Yorkers who use marijuana as a whole. In 2015–2016, 16 percent of New York City residents said that they used marijuana at least once in the past year. Among white New Yorkers, that number was 24 percent compared with 14 percent for black New Yorkers and 12 percent for Latino New Yorkers.⁷ Based on this and other data, it is clear that the enforcement of the marijuana laws in New York is not equitable or just.

Below are several proposals that should be included as part of any renewed push to enact marijuana legalization and would reinforce and strengthen the efforts that New York leaders have undertaken to try to achieve an equitable and just system of legalization in New York. While legalizing marijuana would provide a regulated system going forward, New York must not forget those that were harmed by marijuana criminalization in the past. When New York legalizes marijuana, the system established must contain a strong social equity component that makes up for the damage caused by the decades of criminalization and unequal enforcement.

⁷ <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief117.pdf> – data is from the National Survey on Drug Use and Health conducted by the federal Department of Health and Human Services

Policy Proposal 1: Community Reinvestment

Because of the disproportionate effect of marijuana prohibition on certain demographics, particularly black and brown people, some of the benefits of marijuana legalization should be redirected towards those communities. Under legalization schemes throughout the country, some of the revenue gained from the licensing and sale of cannabis products is earmarked for services that would benefit these communities.

New York should follow this pattern when the state enacts legalization. The bill that was considered in the Legislature provided for a “Community Grants Reinvestment Fund” directing some of the funds derived from marijuana-related revenue to community-based organizations who provide services in “communities disproportionately affected by past federal and state drug policies.”⁸

This plan of specifically directing some of the revenues from legalization into community reinvestment is superior to simply depositing all of the revenue into the General Fund or earmarking the money for other projects because it ensures that the communities most harmed by past policies will see the benefits of legalization. Having these funds be simply treated as general revenues would allow for these funds to be directed away from these marginalized communities on political whims. Other proposals such as Governor Andrew Cuomo’s original plan to send proceeds from marijuana legalization to the Metropolitan Transportation Authority (MTA) for repairs and improvement⁹ are important priorities but not an appropriate way to spend revenues from marijuana taxes. Black and brown communities have faced unjust and inequitable enforcement of marijuana laws for too long so they should be the ones who see the most benefit from these funds. Guaranteeing in law that these funds will be used for the benefit of these communities is a strong step towards addressing the harms caused by past marijuana policies and the war on drugs.

There are numerous services that community reinvestment funds could support. The Legislature’s bill listed several goals of the funds, which are similar to those enacted in California’s legalization law. These services include job skills and placement, mental health and substance use disorder treatments, system navigation services, legal services to address barriers to reentry and linkages to medical care.¹⁰ New York should also use these funds for the restoration and expansion of community spaces such as parks, libraries and community centers.¹¹

⁸ A01617B §2: §99-jj paragraph 4. Additional funding will go to addiction and mental health treatment as well as education: https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A01617&term=2019

⁹ Deffenbaugh, Ryan, “Cuomo Drops Recreational Marijuana from Budget,” Crain’s New York Business, March 20, 2019. <https://www.craigslist.com/politics/cuomo-drops-recreational-marijuana-budget>

¹⁰ Ibid for New York. California: <https://cannabis.ca.gov/2018/09/26/california-community-reinvestment-grants-program/>

¹¹ A proposal to do this was floated in Connecticut as their Legislature discussed legalization: “Connecticut Lawmakers Discuss Using Marijuana Tax Revenue for Community Reinvestment,” Boston Globe, April 29, 2019. <https://www.bostonglobe.com/news/marijuana/2019/04/29/connecticut-lawmakers-discuss-using-marijuana-tax-revenue-for-community-reinvestment/imC8SjoBoiQXicHigojsbj/story.html>

The Legislature's proposal would have levied a tax of \$1 per gram on the cannabis flower and \$0.25 per gram on trim to be paid by the cultivator and a 22 percent excise tax on the sale of product by the wholesaler to the dispensary. The law also would have exempted marijuana products from the general sales tax.¹² Governor Cuomo had suggested estimated revenues of up to \$300 million to the state per year based on his proposal.¹³ These funds will provide a large revenue base for directing funding towards marginalized communities.

However, New York must ensure that the tax rates and fees are appropriate to encourage the growth of the legal industry and to help eliminate the black market for marijuana products. For example, in California, the revenues expected from legal marijuana are coming in under estimates. Legislators there are considering lowering the excise taxes on cannabis sales to help drive people from the black market into the legal one.¹⁴ This problem might occur in New York. While the taxes levied in the Legislature's bill are comparable to many other states' rates, New Yorkers may choose to still purchase marijuana from the black market or marijuana smuggled from Massachusetts where the taxes are lower than New York's proposal. This could result in a situation similar to the cigarette market, in which over half of cigarettes in New York are smuggled from out of state.¹⁵

The tax rate must be appropriate to eliminate the black market and incentivize consumers who want to purchase marijuana to use the legal market instead. There cannot truly be a benefit to the community if the black market persists and there is no legal community-based industry taking its place. Marijuana justice will only occur if the legal marijuana industry is both reflective of the diversity of the community and the only source of marijuana in the state.

The bill provides for these community reinvestment funds to be disbursed through a state committee made up of appointees from state elected officials. This panel must be independent and distribute the funds in ways that best serve these affected communities. The committee must include representation from the black and brown communities that have dealt with these issues in the past. Experts working within these communities will know how to put the community reinvestment funding to the best use. But the state must also ensure that the communities benefitting from these funds have direct input into how these funds are spent and to what end. The state should establish a mechanism by which some of the funds are directed to local governments to be spent by these communities for their benefit.

The state should also expand educational opportunities in these communities to help some community members gain more skills that could be used to start legal marijuana businesses. For example, there could be help with business plans, financial literacy and other skills to help these individuals find their way in this emerging market. Large marijuana businesses from out of state or who have engaged in New York's medical marijuana market will have a head start, but the

¹² A01617B §2: §39, §40 – https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A01617&term=2019

¹³ "Cuomo Estimates \$300 Million in Tax Revenue from Legalized Marijuana," Crain's New York Business, January 15, 2019. <https://www.crainsnewyork.com/politics/cuomo-estimates-300-million-tax-revenue-legalized-marijuana>

¹⁴ Daniels, Jeff, "California Lawmakers Consider Bill to Create State-Chartered Cannabis banks," CNBC, May 14, 2019.

<https://www.cnbc.com/2019/05/14/ca-lawmakers-considering-bill-to-create-state-chartered-cannabis-banks.html>

¹⁵ <https://comptroller.nyc.gov/reports/estimated-tax-revenues-from-marijuana-legalization-in-new-york/>

state must ensure that the communities are not left behind when it comes to these opportunities.

Additionally, SUNY Morrisville upstate has pioneered a “cannabis studies” minor that will help individuals gain skills to operate in the cannabis industry.¹⁶ A CUNY school in the city should follow Morrisville’s lead and begin a similar program. However, whereas the Morrisville program has a focus on the agricultural aspects of cannabis cultivation, the CUNY program should focus more on the business end of the industry, helping individuals gain skills that could be applied both to the cannabis industry and to business as a whole.

¹⁶ <https://www.morrisville.edu/cannabis>

Policy Proposal 2: Second Chances for Job Applicants who Fail Drug Tests for Marijuana

Earlier this year, New York City banned many employers from testing prospective employees for marijuana as a condition for employment.¹⁷ While this will benefit job-seekers going forward, many New Yorkers have already lost job opportunities due to a failed drug test. According to Quest Diagnostics, 2.1 percent of people they drug tested in 2017 failed the test for marijuana.¹⁸

Under current New York State law, legal users of medical marijuana are protected from discrimination. The law treats medical marijuana users as having a disability and thus they enjoy all protections that status provides. This includes protections in employment, but employers retain the right to have policies that prevent employees from working while impaired by marijuana.¹⁹

When Governor Cuomo proposed legalizing marijuana in his executive budget earlier this year, he included language that protected the jobs of users of legal marijuana. The language would have required the employer to show that the employee's marijuana use would have impaired the performance of their jobs in order to fire that employee. The language would have also prevented pay and hiring discrimination by employers based on a positive marijuana test.²⁰

When an employer has turned someone away for the sole reason that they failed a drug test for marijuana, the state and city should give those individuals a helping hand to ensure that they have a job and are able to support themselves and their families.

The state should set up a program creating employment advocates that would work with individuals turned away from a job because of a failed marijuana test. Those individuals would be able to come to this service and receive help finding and applying to jobs. This could include matching these individuals to prospective employers, helping them set up résumés and practice for interviews and connecting them with ancillary services such as childcare, transportation and appropriate work attire providers.

The state should consider establishing this program through a public-private partnership. The state should fund non-profits who can reach out to these individuals and help them apply for jobs through the provision of these services. These non-profits are already on the ground working with the affected populations, and the state should help fund their work to help the people they serve find employment. These services could be funded through the community

¹⁷ The law goes into effect in 2020:

<https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3860393&GUID=7040463F-8170-471C-97EC-A61AE7B1AA2F>

¹⁸ McGregor, Jena, "Why drug testing at work 'is the new don't ask, don't tell,'" Washington Post, Dec. 21, 2018, https://www.washingtonpost.com/business/2018/12/22/why-drug-testing-work-is-new-dont-ask-dont-tell/?noredirect=on&utm_term=.a00475797366

¹⁹ Public Health Law Article 33, Title V-A §3369 <https://www.nysenate.gov/legislation/laws/PBH/3369>

²⁰ 2019 Executive Budget Part VV §127 paragraphs 4-7

<https://www.budget.ny.gov/pubs/archive/fy20/exec/artvii/revenue-artvii.pdf>

reinvestment part of the cannabis legalization law which specifically mentions job placement as a goal of the community reinvestment fund.

The state should also work with businesses who would be willing to hire these people and help connect them with potential applicants who qualify. Finding businesses willing to take these individuals on can help make sure that these individuals find employment as quickly as possible.

The state should also consider identifying these individuals and helping to get them job training or internships. If the state were to fund these opportunities and connect these individuals with businesses who can hire them as interns or trainees, then they could gain the experience that they missed out on when they lost job opportunities due to marijuana use.

The state would have to plan to attract individuals to this program. Since there is no list of people who have been turned away from a job because of a failed marijuana test available, the program would have to rely on voluntary participation. The state would have to consider whether individuals would have to prove their failed job application or simply rely on individuals' statements.

Because of the new law passed this year, the city should also engage in a public education campaign to let people know that they will no longer be subject to marijuana testing prior to employment. If a person has lost an opportunity because of a failed test, then it is possible that this person would have been discouraged and stopped looking for a job. Informing them of this change in the law and encouraging them to apply can spur them back into the job market and hopefully into employment.

This public education campaign should be conducted broadly. The campaign should also specifically focus on the communities that have faced disproportionate impact from the criminalization of marijuana. The city should consider placing ads at bus stops and on public transportation as well as in public buildings and New York City Housing Authority (NYCHA) buildings. The city should also work within the healthcare and criminal justice systems to reach a broader population.

Furthermore, the city should expand its recently-passed marijuana testing law to include testing during employment. The law currently only protects pre-employment testing but should be expanded to cover more circumstances. The Council should ensure that employers do not regularly test their employees for marijuana, but only when they have a compelling reason to believe that the employee is working while impaired by marijuana. Because people can test positive for marijuana even long after they have stopped using marijuana, a post-hiring drug test can still result in someone testing positive and consequently losing their job.²¹

However, the city must remain cognizant of marijuana's continued illegality under both state and federal law. The city's recent legislation exempted employers who must drug test as part of the terms of federal contracts, and the city must ensure that those employers are not put in a situation where they have to violate the law. Additionally, any expansion of this law should

²¹ Robinson, David, "New York marijuana: What to know about legal cannabis and employment and getting fired," Lohud, April 15, 2019. <https://www.lohud.com/story/news/investigations/2019/04/15/new-york-marijuana-job-cannabis-drug-testing-new-york-city-deblasio/3446538002/>

maintain the exceptions for jobs requiring a commercial driver's license and other potentially dangerous fields. However, it is possible to protect both businesses and job seekers who have used marijuana.²²

When the state does legalize marijuana, the language that would protect users of marijuana from losing their jobs because of their off-the-clock use should be included in the law. Marijuana should be treated similarly to alcohol in terms of job status, and no one should lose their jobs solely for this off-the-job conduct after it is legalized.

²² Collins, Dave, "New rulings on medical marijuana use go against employers," AP, October 2, 2018. <https://www.apnews.com/c6d48e10070645e7bc1e5eb5e58ca54e>

Policy Proposal 3: Equity in Licensing

Building a legal marijuana industry in New York will not be a success if it ends up dominated by large companies which are often based out-of-state and are rarely owned and run by women and people of color. The industry must reflect the diversity of the population of the state as a whole and must not simply result in a few big business driving out smaller companies that are based in the communities harmed by past criminalization policies.

The bill before the New York State Legislature last session would have created the Office of Cannabis Management to regulate the cannabis industry in the state. One of the powers of the office would be to issue loans to social equity applicants at low or zero interest rates. The office would also have the power to waive or reduce fees for social equity applicants.²³ The Office must have lower or no fees for such equity applicants to help ensure that all potential marijuana licensees have a fair shot in gaining access to the industry. Additionally, the Office should stagger fees based on the size of the company to ensure that small and emerging businesses get a fair shake.

This office would also be required to establish a social and economic equity plan which would help ensure that the cannabis industry is as diverse as New York State. The plan must ensure that minorities, women and communities and individuals that have suffered under marijuana criminalization can more easily get access to licenses to participate in the cannabis industry.

Giving equity applications extra weight for license consideration and granting equity licensees support through an incubator program will help ensure that the legal marijuana industry will be open to those individuals who belong to communities which have been disproportionately hurt by marijuana criminalization. A final plan should spend some of the revenue accrued under marijuana legalization to support such an incubator program, to provide loans for social equity applicants and to help support fee reductions for small and minority-owned businesses.

The state should also grant priority review of the license applications to equity applicants. This will help those applicants get established in the legal marijuana business as soon as possible.

Policy Proposal 4: Access to Capital and Banking Services

Should marijuana be legalized in New York State, there would still be many barriers to entry into the marijuana market. Because of federal laws criminalizing marijuana, federally-regulated banks face potential prosecution if they provide banking services to businesses that sell

²³ A01617B §2: §11, §63 – https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A01617&term=2019

marijuana – even if those companies are legal under state law.²⁴ Because of this, marijuana businesses often operate only with cash, which is inefficient and dangerous for the business and its employees, and could potentially lead to a loss in tax revenue due to underreporting.

The federal government should act to protect financial institutions from prosecution deriving from provision of services to marijuana business operating legally within state law. Congress is considering the SAFE Banking Act which would allow financial institutions and some other related businesses to provide their services to marijuana businesses. The bill is co-sponsored by a bipartisan group of legislators in both houses and has support from a large group of state Attorneys-General of both parties.²⁵ The House of Representatives passed their version of the bill in September,²⁶ and the Senate should swiftly follow suit.

In addition to protecting banks from adverse federal government action due to interacting with cannabis businesses, the bill would also result in the generation of information that would help with equity concerns. One of the provisions of the bill would be to require federal banking regulators to collect and report data about minority and women owned cannabis businesses' access to financial services and to make recommendations to improve that access. Additionally, the federal government would be required to carry out a study on the barriers to entry into the cannabis market for minority and women owned businesses.²⁷ Congress should pass this bill to help ensure that small and minority or women-owned businesses have access to the new cannabis market.

The New York State Department of Financial Services has already announced guidance to banks that the state will not take regulatory action against financial institutions for working with businesses in the legal medical marijuana and industrial hemp industries.²⁸ This should be extended to legal recreational marijuana after it is legalized.

California is considering legislation that would help the marijuana industry in the state access financial services through the creation of “cannabis limited charter banks and credit unions” which would be able to provide financial services to those cannabis businesses.²⁹ Because these institutions would be regulated only by the state and not the federal government, they are able to provide some services that would help the fledgling legal marijuana industry in the state. However, this bill is unlikely to make it easier for marijuana businesses to get access to loans since the banks would still be subject to potential prosecution under federal law.³⁰

²⁴ Kovacevich, Nick, “California’s Cannabis Banking Moves Forward,” Forbes, June 11, 2019. <https://www.forbes.com/sites/nickkovacevich/2019/06/11/californias-cannabis-banking-moves-forward/#78c4487fbbab>

²⁵ <https://www.congress.gov/bill/116th-congress/house-bill/1595/>

<https://oag.ca.gov/system/files/attachments/press-docs/naag-letter-safe-banking-act-2019.pdf>

²⁶ Stracqualursi, Veronica, “House Passes Cannabis Banking Bill, but It Faces Uncertainty in Senate,” CNN, September 26, 2019. <https://www.cnn.com/2019/09/26/politics/cannabis-banking-bill-house-vote/index.html>

²⁷ <https://www.congress.gov/bill/116th-congress/house-bill/1595/>

²⁸ <https://www.dfs.ny.gov/about/press/pr1807031.htm>

<https://www.dfs.ny.gov/docs/legal/industry/il180703.pdf>

²⁹ http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB51

³⁰ Daniels, Jeff, “California Senate Passes Legislation to Create State-Chartered Cannabis Banks,” CNBC, May 21, 2019. <https://www.cnbc.com/2019/05/21/california-senate-passes-bill-to-create-state-chartered-cannabis-banks.html>

After legalization, New York State should directly support marijuana small businesses and startups to ensure that the marijuana remains equitable and accessible to all people – not just large companies which are often owned and controlled out-of-state corporations. The state should allocate money to set up loan funds through economic development corporations earmarked for helping small marijuana businesses. The state should also consider a grant program for small business equity applicants to help them get off the ground. These funds should support those small businesses to break into the nascent marijuana market – particularly if those businesses are owned and operated by equity applicants. This funding would be a strong way for the state to reinvest in communities that have been disproportionately harmed by marijuana criminalization.

These funds would have to be set up carefully to avoid running afoul of the federal laws which will continue to criminalize cannabis. Loans to help these small and minority-owned businesses to purchase equipment to get them off the ground would be more acceptable than directly funding operations, which may be illegal under federal law.

Additionally, the Legislature should consider a proposal to require large or out-of-state marijuana businesses who want a license to put aside a certain amount of money – \$1 million for example – into a privately managed fund that would be used to support these smaller and minority-owned businesses. In this way, the larger industry players would be supporting the emerging businesses, providing room for both to operate. Because such a fund would be privately-operated, there is less risk to the state government of running afoul of federal law.

Policy Proposal 5: Automatic Expungement

Marijuana criminalization has had myriad negative effects on individuals who have been targets for enforcement of marijuana-related offenses. Individuals with past convictions face numerous challenges with regards to employment, inter-personal relationships and government benefits among many others. Going forward, any legalization plan must include a way for those individuals with past convictions to be able to have those convictions removed from their records.

Eliminating convictions from a person's records comes in two forms – sealing and expungement. When records are sealed, they are no longer public but still exist and can be accessed through a subpoena or a court order. When records are expunged, they are either voided and can only be accessed by the individual who they are about or destroyed and no longer exist to be examined in the future.

New York has a process for both expungement and sealing. The expungement process was newly established in the marijuana decriminalization bill passed in Albany this past June. This law allows for convictions of low-level marijuana possession offenses to be expunged.³¹ The decriminalization bill will result in approximately 160,000 convictions being removed from people's records statewide.³² When a full legalization bill is passed, it must include the expungement provisions in the final version of this year's failed bill. The bill would have automatically expunged any convictions under several of the marijuana control provisions under the Penal Law.³³

That this is done automatically is essential to ensure that it benefits as many people as possible. Data from California and Oregon shows that putting the onus on the individuals to apply to have their records expunged or sealed will result in very few people taking advantage of the opportunity.³⁴ The criminal justice system is much better equipped to review the convictions and expunge their records, with District Attorneys able to make objections through the courts when they feel that justice will not be served if the records are expunged.

Furthermore, legalizing marijuana will have numerous other criminal justice benefits. After marijuana is legalized, a police officer smelling the odor of cannabis will no longer be legitimate grounds for a search in most circumstances.³⁵ There has been significant pushback from

³¹ Convictions under NYS Penal Law §221.05 and 221.10 would be expunged unless the individual was charged with other crimes at the same time. https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A08420&term=2019

³² Paybarah, Azi, "About 160,000 People in New York to See Their Marijuana Convictions Disappear," New York Times, August 28, 2019. <https://www.nytimes.com/2019/08/28/nyregion/marijuana-records-new-york-city.html>

³³ It would have expunged prior convictions under §221.05 through 221.40 of the Penal Law. This would have included all convictions for possession of marijuana and some convictions for sale of small amounts of marijuana - A01617B §2: §21 - https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A01617&term=2019

³⁴ Quinton, Sophie, "In These States, Past Marijuana Crimes can Go Away," Pew, November 20, 2017. <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/11/20/in-these-states-past-marijuana-crimes-can-go-away>.

³⁵ A01617B §16: §222.05 - https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A08420&term=2019

communities, judges and even other police officers that there have been abuses of the power of the police to justify searches with the smell of marijuana.³⁶

An additional benefit of enacting criminal justice reform regarding marijuana is the cost savings associated with the end of the need to enforce the marijuana laws. The NYPD and other police agencies would no longer have to make arrests or issue summons for most instances of marijuana possession. The court system and jails would no longer have to deal with individuals arrested for these crimes. According to the Drug Policy Alliance, as of 2010, New York spent between \$50 and \$100 million per year arresting people on misdemeanor marijuana charges.³⁷ This is a substantial cost savings that the city could put to better use for the benefit of marginalized communities.

³⁶ Goldstein, Joseph, "Officers Said They Smelled Pot. The Judge Called Them Liars," New York Times, Sept. 12, 2019. <https://www.nytimes.com/2019/09/12/nyregion/police-searches-smelling-marijuana.html>

³⁷ <http://www.drugpolicy.org/sites/default/files/%2475%20Million%20A%20Year.pdf>

Policy Proposal 6: Ending Family Separations because of Marijuana

Under current law, a parent testing positive for marijuana can result in the Administration for Children's Services (ACS), launching an investigation into the child's welfare. While marijuana use alone cannot result in a parent losing custody of a child, marijuana can play an important role in these investigations. ACS can support allegations of neglect if there is "misuse" of marijuana and family reunification can be withheld due to failure to complete drug treatment or failing a drug test.³⁸ Additionally, investigations launched because of marijuana use can result in parental probation or sanctions stemming from other complaints including living with someone previously accused of domestic abuse.³⁹

Furthermore, public hospitals in the city often test new mothers for marijuana and other drugs and a positive test can be reported to ACS. However, private hospitals rarely do these tests so the women who are affected by this practice are disproportionately low-income and minorities.⁴⁰

The City Council has begun to investigate this issue,⁴¹ but more should be done. When marijuana is legalized, ACS should be restricted from beginning an investigation based solely on a positive drug test for marijuana. So long as it is not being misused or abused, marijuana should not cause families to be broken apart and children sent to foster care. Additionally, public hospitals should be banned from testing new mothers for marijuana without their explicit written consent. The hospitals should also have to inform these women that they will not face consequences if they do not consent.⁴²

Conclusion

When New York State legalizes marijuana, lawmakers should include the above proposals to promote justice, equity and economic well-being. Black and brown communities have faced disproportionate enforcement of marijuana laws, and when New York legalizes marijuana, the state and city must ensure that those communities are able to benefit from its new legal status.

³⁸ Khan, Yasmeen, "City Council Asks Why NYC is 'Tearing Families Apart' for Marijuana Use," Gothamist, April 11, 2019. https://gothamist.com/2019/04/11/marijuana_child_welfare.php

³⁹ Yaniv, Oren, "Weed Out: More than a Dozen City Maternity Wards Regularly Test New Moms for Marijuana and Other Drugs," New York Daily News, December 29, 2012. <https://www.nydailynews.com/new-york/weed-dozen-city-maternity-wards-regularly-test-new-mothers-marijuana-drugs-article-1.1227292>

⁴⁰ Yaniv, Oren, "Weed Out: More than a Dozen City Maternity Wards Regularly Test New Moms for Marijuana and Other Drugs," New York Daily News, December 29, 2012. <https://www.nydailynews.com/new-york/weed-dozen-city-maternity-wards-regularly-test-new-mothers-marijuana-drugs-article-1.1227292>

⁴¹ <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=684838&GUID=8588C279-C87B-4CF6-BF63-03F964CD1787&Options=info&Search=>

⁴² <http://bds.org/bds-testifies-before-nyc-council-committee-on-general-welfare-and-committee-on-hospitals-joint-oversight-hearing-on-the-impact-of-marijuana-policies-on-child-welfare/>