Marijuana Legalization in the United States

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Marijuana Law in the United States

The landscape of marijuana law in the United States is quickly evolving. Within the past five years, voters in eight states and the District of Columbia have elected to end prohibition and to instead legally regulate marijuana for adults 21 and over. Despite substantial scientific evidence to the contrary,[1] the federal government continues to define marijuana as a drug with "no currently accepted medical use and a high potential for abuse."[2] However, a federal directive outlining conditions for non-interference has allowed space for states that wish to legalize and regulate marijuana to implement reform.[3]

New York, the marijuana arrest capital of the world, is uniquely positioned as a potential tipping point in the national battle against prohibition and the profound harms that accompany it.

Prohibition: A Historical Anomaly

The current prohibition of marijuana is an anomaly within humans' relationship with the plant. Marijuana has been consumed by humans for at least 5,000 years and has a long history of traditional uses – both medicinal and recreational – throughout Asia, Africa, Europe and the Americas.[4] Marijuana was also widely used in the U.S. prior to its prohibition, and was considered a useful drug for the treatment of numerous afflictions until 1941.[5]

Marijuana began to be criminalized in the early 20th century. This process was initiated largely as a result of racial prejudice against an influx of immigrants arriving from Mexico rather than any evidence of risk to public health or safety.[6]

When the Marihuana Tax Act of 1937 – which had effectively banned marijuana use and sale – was ruled unconstitutional in 1969,[7] marijuana was placed in Schedule I of the 1970 Controlled Substances Act, the most restrictive category, where it has remained since.[8]

Today, there are more arrests for marijuana possession every year in the U.S. than for all violent crimes combined.[9] Marijuana prohibition is unique among U.S. criminal laws – no other law is both enforced so widely and harshly yet deemed unnecessary by such a substantial portion of the population.[10]

Changing Views on Prohibition

Marijuana is the most widely used illegal drug in the U.S. and the world.[11] More than 128 million adults in the U.S. – 50 percent of those surveyed – admit to having tried marijuana at least once in their lives, and more than 34 million to using it once or twice a month.[12]

Do you think the use of marijuana should be made legal or not?

Source: Gallup October 21 2015.[13]

Public support for making marijuana legal has shifted dramatically in the last two decades.[14] In 1996, when California passed their medical marijuana law, national support for marijuana legalization remained immaterial at 26%.[15] As prohibitition has come to a close in states across the country, support for continued reform has increased dramatically, now reaching 60% nationally.[16]

Momentum Building Against Prohibition

Twenty states – including New York (1977) – and the District of Columbia have decriminalized marijuana since the Controlled Substances Act.[17,18] Despite its benefits, however, decriminalization falls short in many ways – largely because it still operates within the framework of *prohibition.* Consequently, decriminalization perpetuates some of the most harmful aspects of prohibition including:

- An illegal, unregulated market
- The unequal application of the law toward certain groups, especially people of color
- Unregulated products of unknown potency and quality[19]

In 2012, residents of Colorado and Washington passed ballot initiatives that rejected the failed policy of prohibition and made them the first political jurisdictions in the world to legally regulate marijuana.[20] In doing so, they opened the possibility for implementation of measures that could curb youth use, increase public safety, boost their economies, and hopefully eliminate space for further racialized criminalization of marijuana.[21] Both states have completely eliminated all penalties for personal marijuana possession of up to 1 ounce of marijuana by adults,[22,23] and Colorado also allows adults to cultivate six marijuana plants.[24]

Voters in Oregon, Alaska and Washington, D.C. followed suit two years later in 2014.[25] And most recently, in 2016, residents of Maine, Nevada, Massachusetts, and California voted to legally regulate marijuana in their states.[26]

One in five Americans will now be able to safely access marijuana for recreational use once they reach twenty-one years of age.[27] Some states have also adopted measures that will help repair some of the harms caused by prohibition and the failed war on drugs. For example, in California $1 billion dollars of the annual tax revenue will be used to pay for community reinvestment, drug prevention and substance use disorder treatment, youth programming, road safety, environmental remediation, consumer protection, and other vitally needed services once licensing is fully implemented. [28]

With legalization, states have been able to draw on more than a century of experience in legally regulating thousands of different drugs in order to implement commonsense controls.

Each of these states has approached legalization differently and has distinct regulatory structures. Yet each state taxes and regulates marijuana in a manner similar to alcoholic beverages, with age limits, licensing requirements, quality controls, and other regulatory restrictions.[29]

Federal Directive and New Administration

In August of 2013, the Department of Justice (DOJ) announced that it would defer to the rights of states wanting to legally regulate the production, distribution, and sale of marijuana.[30] The DOJ issued a directive to U.S. Attorneys outlining federal priorities for enforcing marijuana laws in states that have legalized.[31] While reserving its right to challenge state laws and enforce federal marijuana laws under certain circumstances, the directive states that the federal government will coordinate with states, rather than seek to interfere, unless states fail to meet certain federal priorities, such as preventing access by minors, diversion of marijuana, increases in violence or drugged driving, or damage to public lands.[32]

It is still unclear whether this directive will remain in place during the term of a new presidential administration that has vowed to "crack down" on drugs. Regardless, it will be difficult to ignore the positive impact of legalization in both social and fiscal terms as momentum continues to build in favor of ending prohibition in more states across the country and in Congress.

Benefits of Ending Prohibition

Marijuana law affects multiple aspects of life for New Yorkers who use marijuana *and* those who don't. As a result, the consequences of ending – as well as continuing – prohibition demand careful consideration. Fortunately, research conducted on the enforcement of prohibition in New York and examples of marijuana reform in other states provide a great deal of information that can be used to determine the most constructive course of action for New York.

Youth Use

Youth use has not increased post-legalization.[33] The regulated marijuana market has made it possible for states to create age restrictions and other barriers to access for young people that could not exist during prohibition. Statewide surveys of junior high to high school age students living in states with a recreational market have shown no significant increase in marijuana use among young people.[34, 35, 36] Lifetime use has remained stable as well as recent use.[37, 38]

Adult Use

Marijuana use by adults has increased only slightly since legalization.[39] While some states have seen no apparent change in use,[40] other states have experienced marijuana use to be only 5% higher than the national average.[41]

Economic Benefits

Decriminalization is considered to be an effective measure for states and municipalities looking to reduce the enforcement costs of prohibition. However, allowing for the creation of legal markets goes a step further and has proven to be revenue generating. Each state has a different tax structure established for their newly formed markets. So far, each of the states currently operating those markets (Colorado, Washington,[42] and Oregon) has exceeded their initial estimates; the legal marijuana market has yielded a combined $550 million in tax revenue.[43,44] This revenue will be used to rebuild crumbling infrastructure,[45] support local governments,[46] and provide health care access, among other allocations.

Estimates of potential revenue from taxation of marijuana sales nationally range from $8.7 billion per year[47] to roughly $15 billion per year[48] – on top of billions in saved law enforcement resources. For example, enforcing marijuana possession laws is estimated to have cost New York $675 million in 2010 alone,[49] while the estimated value of the illicit market in NYC alone was valued at $1.65 billion in 2013.[50] Removing this cost burden while adding a new revenue stream could greatly benefit New York.

Collateral Consequences

New Yorkers who are arrested for simple marijuana possession can be saddled with a criminal conviction that can make it difficult to obtain educational loans, get a job, maintain a professional license, secure housing or even adopt a child.[51] For noncitizens, a conviction can trigger deportation, sometimes with almost no possibility of discretionary relief.[52]

Public Health

Legal marijuana access provides a safer alternative for chronic pain treatment that has significantly less potential for misuse.[53] States allowing the medical use of marijuana have seen lower rates of deaths from opioid overdoses than other states,[54] and studies are ongoing in states that have legalized marijuana. Furthermore, marijuana products are required to have labels that clearly inform consumers of things like product potency, dosage, and ingredients.[55]

Roads Remain Safe

Studies show that the roads are no less safe in states post-legalization, as traffic fatality rates have remained stable in Colorado, Washington, Alaska, and Oregon.[56, 57] The states that have legalized marijuana for adult use have been clear that driving while impaired is still prohibited in an effort to promote road safety that has shown to be effective overall.

SMART Choice for New York

Several states have realized prohibition is simply not sustainable, and it is time for New York to embrace the opportunity to begin repairing the harms caused by the war on drugs by becoming the first state to end prohibition through the legislative process.

If New York continues to fall behind on marijuana policy, the state will continue ruining lives, disrupting families, wasting taxpayer money, forfeiting billions in tax revenue to the illicit market and losing money to border states and rival tourism destinations. Additionally, youth will likely gain even more access to marijuana due to proximity to legal markets, and consumers will continue to be uninformed about the quality and potency of the products offered in the illicit market.

New York must also move beyond prohibition to address the damage being done to communities across the state that have suffered from marijuana prohibition and its collateral consequences. New Yorkers deserve a statewide solution to this statewide problem.

The *NY State Legislature* should make the SMART choice: End prohibition, create a system to tax and regulate marijuana, and repair and reinvest in communities most harmed by the war on marijuana by voting for the Marijuana Regulation and Taxation Act.

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