

The Marijuana Regulation and Taxation Act: Racial Justice Considerations

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The harms of marijuana prohibition have not been borne equally across New York. Communities of color have consistently been the most targeted and injured by the enforcement of marijuana laws.

The Marijuana Regulation and Taxation Act (MRTA) will greatly reduce – and in many cases, eliminate – criminal penalties for marijuana offenses, reduce barriers to entry to the legal market, and drive millions of dollars in investments to low-income communities that have been most negatively impacted by the drug war.

Overview of Regulating and Taxing Marijuana in New York

The MRTA will allow the responsible use of marijuana by adults 21 and over within a tightly regulated system. It will allow adults to legally possess, transport, purchase, consume, and share up to 2 pounds of marijuana. Adults 21 and over may also legally grow up to six plants in their homes.

The MRTA will establish the Bureau of Marijuana Policy within the New York State Liquor Authority, which will coordinate regulation and enforcement with several state agencies to protect consumers, the environment, and public health.

The Department of Health will continue to oversee regulation for the state medical marijuana program with no change to its existing structure.

MRTA Reduces Criminal Penalties and Makes Changes Retroactive

Marijuana possession is one of the top misdemeanor arrests in New York State—and has been for the last twenty years.¹ As a result, nearly one million New Yorkers have had contact with the criminal justice system – the overwhelming majority of whom—more

than 80 percent— are Black and Latino, despite similar rates of consumption across racial and ethnic groups.^{2,3,4} Since 1996, there have been more than 800,000 arrests for possession of small amounts of marijuana in New York State, with over 700,000 arrests by the NYPD alone.⁵ Nearly 70 percent of those arrested are under 30 years old, and more than a third are under 21 years old.⁶ On average, 60 people are arrested every day for marijuana possession in New York State, making marijuana possession one of the top arrests in the state.⁷

The MRTA eliminates or substantially reduces the justification for criminalization of communities of color and low-income communities by removing marijuana and marijuana products from the Controlled Substances Act and making it allowable by law for adults to possess, purchase, ingest or smoke, and even grow marijuana.

Many existing misdemeanors and felonies will no longer be in the criminal code. These sweeping reductions in criminal penalties will be retroactive—past convictions for crimes reduced or eliminated by the MRTA may be sealed or reduced on a criminal record.

Under the MRTA, youth under the age of 21 are not allowed to possess, sell, or use marijuana. But if minors are found in violation they can only be charged with infractions (similar to an underage drinking citation) for marijuana offenses—with no criminal record. They will not be threatened with incarceration; instead, youth will be required to attend drug awareness education or counseling, or to complete community service.

Law enforcement may continue to charge felonies for the most serious marijuana-related offenses, such as driving under the influence, transporting marijuana across state lines, and providing marijuana to minors.

MRTA Allows People Harmed By the War on Drugs to Fully Participate in the Legal Market

Unfortunately, the economic boon produced by the creation of a legal marijuana market in other states has not translated into opportunities for members of the communities that have been most impacted by the enforcement of prohibition. Despite the startling reality that people of color continue to bear the brunt of the war on drugs, it is estimated that individuals of color account for less than 1 percent of ownership in the rapidly developing legal marijuana market in states that have legalized.^{8, 9, 10}

This disparity has continued under New York's existing medical marijuana program, in which a marijuana conviction automatically disqualifies an individual from even working in a medical marijuana dispensary, much less owning and operating one.¹¹ That will not be the case with the MRTA.

While a well-regulated legal market is certainly necessary to reduce the illicit market, there must be opportunities for those who have operated in the illicit market to enter the legal market. Under the MRTA, a prior conviction for possession, possession for sale, sale, manufacturing, transportation, or cultivation of any controlled substance will not be the sole basis for the denial of a license. Only people with felonies relevant to owning and operating a business (such as tax evasion and fraud) would be barred from obtaining a license.

This provision is key because while many other industries continue to lose jobs,^{12, 13} the marijuana industry is estimated to create close to 300,000 positions nationally by 2020.^{14, 15} The communities disproportionately impacted by the enforcement of marijuana prohibition also have unemployment rates that are significantly higher than the statewide average of 4.9 percent—with Black and Hispanic New Yorkers experiencing rates of 6.8 percent and 6.5 percent, respectively.¹⁶ This makes it all the more important to establish regulations that intentionally center diversity and inclusion and will discourage the emerging marijuana industry in New York from developing into yet another unequal American frontier.

To increase gender diversity in ownership within the marijuana industry, MRTA also requires entities that receive a license to include a plan for ensuring diversity and inclusion, in line with New York's Minority and Women-Owned Businesses initiative.

MRTA Cultivates the Emergence of Small and Local Businesses

The costs associated with starting a legal marijuana business also serve as significant obstacles for people of color looking to enter the industry, regardless of their relationship with the criminal justice system.¹⁷

The MRTA restricts vertical integration to provide the maximum amount of space for new companies to develop and contribute to a New York-focused market. Similar to New York's craft wine and beer industry, which has seen phenomenal growth, the MRTA also encourages entry into the legal market through a micro-license structure that allows small-scale production and sale as well as delivery. The start-up costs associated with these activities are much lower, and reduce barriers to entry for people with less access to capital.

MRTA Directs Significant Revenue to Youth and Communities Harmed by Marijuana Prohibition

The MRTA tasks the Bureau of Marijuana Policy within the New York State Liquor Authority with defining a structure for taxing marijuana transactions. Municipalities are also allowed to impose an additional tax on marijuana sales. The revenue from statewide regulation is expected to be substantial: illicit sales are estimated at \$3 billion for New York,¹⁸ and an official study by the NYC comptroller in 2013 estimated potential tax *revenue* for a legal marijuana market in NYC alone would be more than \$400 million, acknowledging that the actual revenue could be much higher.¹⁹

Legalization presents a unique and much-needed opportunity to create equity, economic justice, and restore communities most damaged by this country's failed war on drugs.

After ensuring the new law is adequately funded and researched, 50 percent of the revenue will be used to establish the Community Grants Reinvestment Fund, which will serve as a source of funding for community-based projects including adult education services, job training, the expansion of afterschool programs, re-entry services, and other community-centered projects.

These investments will provide meaningful opportunities in low-income areas and communities disproportionately harmed by drug war policies.

Additionally, the MRTA directs 25 percent of the revenue from the regulated marijuana market to supporting the state department of education to keep public schools

open and provide a quality education to New York's children.

The final 25 percent of the revenue beyond program costs will be directed to funding drug treatment programs and public education campaigns geared toward preventing drug misuse, reducing opioid overdoses, and saving lives. Additionally, the MRTA directs significant resources to research institutions across the state to analyze the public health impacts of legalizing marijuana.

MRTA Addresses Collateral Consequences

The collateral consequences of a marijuana arrest under current New York law are significant. The MRTA seeks to address the intersection of marijuana use and family law, immigration, and discrimination in housing and employment.

Under the MRTA, employers are prohibited from requesting information relating to a current or prospective employee's personal marijuana use. Employers are also prohibited from using knowledge of marijuana use as the sole reason for an employee's termination.

Similarly, under the MRTA landlords are prohibited from requesting information relating to a potential tenant's personal marijuana use. Landlords would also be barred from denying access to housing on the sole basis of a person's reported personal marijuana use. However, smoking marijuana would still not be allowed at properties that are designated as smoke-free housing.

The MRTA would provide a measure of protection to noncitizen immigrants—who are at risk of deportation for any drug offense—to have their record for marijuana offenses (and direct appeals) vacated. The bill also creates a process to seal records for a previous marijuana arrest, which could help prevent immigration officials from meeting the legal burden of proof in deportation proceedings.

For people who are justice-involved, the MRTA would eliminate a failed marijuana drug test as justification for violation of parole or probation arrangement, keeping people who are otherwise abiding by the terms of their release from being returned to incarceration just for marijuana use.

The MRTA extends these crucial civil protections to also protect medical marijuana patients from collateral consequences related to housing, employment, family law, and access to state services.

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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¹ New York State Division of Criminal Justice Services (2017, April). *New York State Arrests for Marijuana Charges by year*, Computerized Criminal History System.

² American Civil Liberties Union. "The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests." June 2013. Retrieved from <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

³ New York State Division of Criminal Justice Services, New York City Arrests for PL 221.10 in 2012, Computerized Criminal History System, February 2013. See also: U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, 2005 National Survey on Drug Use and Health, (Washington D.C.: United States Government Office of Applied Studies, 2006) See: Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005, Accessed on January 26, 2011, <http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1p1eTabs67to132.htm#Tab1.80B>.

Also see: U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, 2007 National Survey on Drug Use and Health, (Washington D.C.: United States Government Office of Applied Studies, 2008) See: Table 1.26B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, 2006 and 2007, Accessed on January 26, 2011, <http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1p1eTabs1to46.htm#Tab1.26B>.

⁴ New York State Division of Criminal Justice Services (2017, April). *New York State Arrests for Marijuana Charges by year*, Computerized Criminal History System.

⁵ Ibid.

⁶ Ibid.

⁷ New York State Division of Criminal Justice Services, Adult Arrests in 2016, Computerized Criminal History System, January 2017.

⁸ Drug Policy Alliance (September 13, 2016), "Thursday: Congressional Briefing on Diversity and Inclusion in the Cannabis Industry." Retrieved from <http://www.drugpolicy.org/news/2016/09/thursday-congressional-briefing-diversity-and-inclusion-cannabis-industry>

⁹ Amanda Chicago Lewis, "The case for drug war 'reparations,'" March 10, 2017. Retrieved from <https://news.vice.com/story/heres-the-plan-to-make-legal-weed-lucrative-for-more-than-just-white-people>.

¹⁰ Amanda Chicago Lewis, "How Black People are Being Shut Out of America's Weed Boom: Whitewashing the Green Rush," *BuzzFeed*. March 16, 2016. Retrieved from <https://www.buzzfeed.com/amandachicagolewis/americas-white-only-weed-boom>.

¹¹ NY Pub Health L § 3364 (2014).

¹² Debra Borchardt, "Marijuana Industry Projected to Create More Than Manufacturing By 2020," *Forbes*. Retrieved from <https://www.forbes.com/sites/debraborchardt/2017/02/22/marijuana-industry-projected-to-create-more-jobs-than-manufacturing-by-2020/#33a0e1923fa9>

¹³ Paul Ratner, "Jobs of the Future Will Come From the Marijuana Industry, Not Manufacturing," *Big Think*. February 27, 2017. Retrieved from <http://bigthink.com/paul-ratner/the-jobs-of-the-future-will-come-from-the-marijuana-industry-not-manufacturing>.

¹⁴ New Frontier Data (2017), "The Cannabis Industry Annual Report: 2017 Legal Marijuana Outlook Executive Summary." Retrieved from <https://newfrontierdata.com/annualreport2017>.

¹⁵ Paul Ratner, "Jobs of the Future Will Come From the Marijuana Industry, Not Manufacturing," *Big Think*. February 27, 2017. Retrieved from <http://bigthink.com/paul-ratner/the-jobs-of-the-future-will-come-from-the-marijuana-industry-not-manufacturing>.

¹⁶ Janelle Jones, "State unemployment rates by race and ethnicity at the end of 2016 show progress but not yet full recovery," Economic Policy Institute. February 8, 2017. Retrieved from <http://www.epi.org/publication/state-unemployment-rates-by-race-and-ethnicity-at-the-end-of-2016-show-progress-but-not-yet-full-recovery>.

¹⁷ Amanda Chicago Lewis, "The case for drug war 'reparations,'" *VICE*. March 10, 2017. Retrieved from <https://news.vice.com/story/heres-the-plan-to-make-legal-weed-lucrative-for-more-than-just-white-people>.

¹⁸ *The State of Legal Marijuana Markets*, 5th ed. Arcview Market Research.

¹⁹ John Liu. *Regulating and Taxing Marijuana: The Fiscal Impact on NYC*. NYC Comptroller, 2013. Accessed from: https://comptroller.nyc.gov/wp-content/uploads/documents/NYC_RegulateMarijReport.pdf