

Ending Marijuana Prohibition: Impact of Legalization on Border States and Implications for New York

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Creating a system to tax and regulate marijuana use by adults over the age of 21 is a sound economic investment for the state of New York. In the states with existing regulated marijuana markets, previously static economies have experienced a boom benefitting a variety of industries that has generated millions in tax revenue and created new jobs.

Legalization in the United States

The marijuana law landscape in the United States is quickly evolving. Within the past five years, the number of states that have adopted medical marijuana laws has ballooned from sixteen—plus the District of Columbia—to twenty-nine.¹

Additionally, voters in eight states and D.C. have elected allow legal access to marijuana for adults 21 and over.

Now, more than three-fifths of all Americans live in medical marijuana states and nearly one in five Americans live in a state where marijuana is legal.² Steady increases in support for marijuana legalization—which reached an all-time high of 64 percent in 2017, compared to 26 percent in 1996—strongly suggest that this momentum will continue to build.^{3, 4}

An Expanding Industry

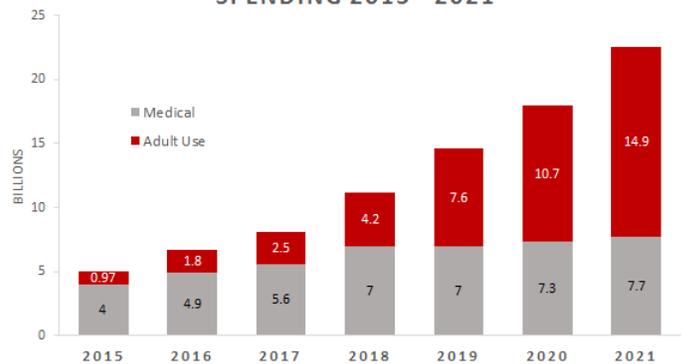
This evolving legislative landscape has paved the way for an emerging regulated marijuana market, valued at more than \$6.6 billion nationally.⁵ By 2025, annual adult use and medical marijuana sales are projected to exceed \$10.9 billion and \$13.2 billion, respectively.⁶

It is important to note that these estimates represent beliefs about the market's potential for growth *if no additional states legalize marijuana*. In anticipation of additional legislative shifts at both the state and federal level, some financial analysts have predicted that the industry could be valued as high as \$50 billion by 2026.^{7, 8, 9}

The economic growth experienced as a result of legalization has also spread beyond the marijuana industry into related sectors including legal services, financial services, tourism, real estate, construction, and security.^{10, 11, 12} Additionally, legalization has

provided an indirect boost to states' coffers through enforcement and criminal justice savings, income tax revenues from newly created jobs, and retail tax revenues from increased consumer spending by the newly employed.¹³

NORTH AMERICAN LEGAL CANNABIS SPENDING 2015 - 2021



Source: *The State of Legal Marijuana Markets, 5th Ed.*, Arcview Market Research/BDS Analytics.

Revenue Flowing Into States with Legal Marijuana

Residents of legal marijuana states are not the only marijuana consumers. Legalization has provided states the opportunity to welcome visitors who are 21 and older who can purchase marijuana products while minimally burdening state budgets.

For example, in 2016, Colorado collected \$1.2 billion in tax revenue from a record number of 82.4 million visitors.¹⁴ Although the ability to legally buy and consume marijuana was not the primary attraction for everyone who visited Colorado in 2015, a study commissioned by the state's Tourism Office indicated that marijuana laws influenced vacation decisions for nearly 49 percent of the people surveyed.¹⁵ More potential vacationers report legal marijuana as a motivating factor than a deterrent.¹⁶

States that do allow adult marijuana use have generally adopted a cautious approach to promoting it with tourists who are 21 and older.¹⁷ Incidentally, a significant spike in flight search demand to Denver occurred following legalization in Colorado, and the most irregular jump in demand came from states with the strictest marijuana laws.¹⁸ More recently, a study by

the University of California Agricultural Issues Center found legalization will likely boost California's tourism economy, which already generates more than \$122 billion annually from its more than 260 million visitors—who spend an estimated \$7.2 billion on wine alone.¹⁹

Movement Close to Home

As New York considers legally regulating marijuana for adult use, production, and sale, it is important to consider assessing the status of marijuana access in neighboring jurisdictions.

Before November of 2016, when voters in Massachusetts and Maine elected to end marijuana prohibition in their states, no states in the Northeast region were in a position to benefit from an adult-use marijuana market. With the decision to regulate and tax marijuana for adult use, Massachusetts became the first state in New York's backyard to officially welcome what is being called the "green rush"—the influx of revenue and significant economic investments that other states have experienced after embracing the regulated marijuana market and its ancillary industries.

An appraisal of marijuana reform in New York's remaining neighbor states suggests that Massachusetts—where retail shops will begin opening summer 2018—will not be the last. Vermont, New Hampshire, and New Jersey are now better positioned than New York to pioneer marijuana legalization through legislative action.²⁰ As revenue begins to flow into bordering states, pressure will continue to build for New York to establish its own foothold in the Northeast green rush.

Vermont

In January 2018, the Vermont Senate approved a bill allowing adults 21 and over to possess up to one ounce of marijuana and to cultivate up to two mature and four immature cannabis plants. However, the bill does not establish a legal market—similar to the framework established in Washington, D.C. The bill previously passed in the state's House and Vermont's Republican Governor, Phil Scott, has indicated he will sign the bill, which will take effect July 1, 2018.

New Hampshire

New Hampshire could be the next state to legalize marijuana through the state legislature. In early January 2018, the New Hampshire House of Representatives passed an amended bill that will allow adults 21 and over to legally possess three-quarters of an ounce of marijuana and grow up to three mature cannabis plants at home.²¹ Similar to Vermont's bill, retail locations would not be authorized under the legislation. The state's House Ways and Means Committee will now consider the bill before it moves to the Senate, where it faces opposition. This comes on the heels of New Hampshire decriminalizing low-level marijuana possession last year.

New Jersey

The timeline for marijuana legalization in New Jersey—where total marijuana arrests and racial disparities in marijuana enforcement are both at an all-time high—will

likely be influenced by the recent gubernatorial election.^{22, 23} Recently elected Governor Phil Murphy is an ardent legalization supporter, and major marijuana industry players are already gearing up and becoming more aggressive about establishing footing in the state.^{24, 25, 26}

Because Democrats control the state legislature and the Senate president is "1000 percent" in support of ending prohibition, the sponsor of the state's current legalization bill has expressed confidence in the possibility of it passing within the first 100 days of a Murphy administration.^{27, 28, 29} Some of the proposed amendments include adding a home cultivation provision in order to protect against monopolization and improving decriminalization measures persons under 18 years of age in order to end disproportionate arrests of Black and Latino youth.³⁰

The legal market in New Jersey is projected to reach a potential value as high as \$1.2 billion, and the state expects to take in \$300 million in tax revenue annually from spending by consumers in New Jersey as well as Delaware, Pennsylvania, and **New York**.^{31, 32}

Connecticut

Feeling the pressure from Massachusetts and the 63 percent of in-state voters who support making marijuana possession legal, lawmakers in Connecticut are expected to resume discussion around legalization during state budget negotiations next year. Last session marijuana legalization legislation failed to secure committee backing.³³ Marijuana legalization is being considered as part of a multi-pronged approach to increasing tax revenue needed to close a two-year deficit of \$3.5 billion.³⁴ The Connecticut Office of Fiscal Analysis estimates that establishing a legal marijuana market would eventually produce between \$45.4 million and \$104.6 million in tax revenue for the state.^{35, 36}

Pennsylvania

Although the state only recently announced its first batch of growing and processing permits for the medical marijuana program established by the state legislature in April 2016,³⁷ 56 percent of voters in Pennsylvania—up from 40 percent just two years ago—approve of legalizing marijuana for recreational use.³⁸ With voter support rising, lawmakers introduced a legalization bill that seeks to regulate marijuana like alcohol last session.³⁹

Canada

New York shares a border with two Canadian provinces—Quebec and Ontario. Because of this, the decision by Canadian Prime Minister Justin Trudeau to introduce legislation that would make Canada the first industrialized nation in the world with legal marijuana is extremely significant.⁴⁰ If the legislation passes, Canada's adult-use market will be functioning by July 2018, with each province passing its own regulatory structure. Nationally strict consequences will be established for people trying to transport marijuana from Canada to the United States.⁴¹

Once the provinces establish regulations for tourists,⁴² the flow of revenue from consumer spending on recreation and entertainment in New York will begin to leak across the border. State law enforcement will also likely expend more resources patrolling the border

regions more intensely, despite research suggesting this practice is unnecessary and can be harmful.⁴³

As New York's neighbors move closer to joining Massachusetts in legalizing marijuana, the state finds itself in an increasingly unfavorable position. For years, taxpayers and potential consumers have been leaving New York at a notable rate in favor of states with better employment prospects and costs of living, among other attractive qualities.^{44, 45, 46} Between April 2010 and July 2016, New York State experienced the largest population outflow in the country, losing 846,669 more people to migration than it gained.⁴⁷ Additionally, including expected spending by New York residents in projected marijuana revenue calculations by states like New Jersey make it clear they plan to absorb the demand that cannot be met by a state with no legal market.⁴⁸

This is not the first time that New York state was late to end a type of prohibition, despite changes in public perception and a tested industry model. The state finally approved commercial casinos in 2013, after years of maintaining laws that encouraged an outflow of gaming and entertainment revenue into nearby states.⁴⁹ Within weeks of opening in December 2016, the state's three commercial casino properties generated nearly \$40 million in revenue.⁵⁰ Without proactively taking steps to establish a legal market in-state, New York cannot expect to retain the revenue that could be used to better the lives of its residents. Instead, New Yorkers are poised to flow into Massachusetts and other neighboring states as they adopt their own legalization measures.

“We literally hemorrhage people from the borders who go to casinos. I think [approving casinos in NY] will keep the money in this state, and I think it's a major economic development vehicle for the Hudson Valley especially and for upstate New York.”
—Gov. Andrew Cuomo, 2013⁵¹

Nationally, legalization presents a unique and much-needed racial equity and economic justice opportunity, while restoring communities most damaged by the failed war on drugs. For New York—the marijuana arrest capital of the world,⁵²—legalization offers a chance to assume an active role in repairing the harms of the drug war, particularly for the state's most vulnerable communities.

Enforcement at the Border

The extreme racial disparities in marijuana arrests in New York have been well-publicized. Despite similar rates of marijuana consumption across racial and ethnic groups,^{53, 54} 80 percent of the nearly 23,000 people arrested for marijuana across New York state in 2016 were Black or Latino.⁵⁵ These disparities have persisted for the past two decades and lead to serious collateral consequences.⁵⁶ For example, Black and Latino unemployment rates in New York at the end of 2016 were 6.8 percent and 6.5 percent, respectively, compared to the state average of 4.9 percent. Diminished prospects for employment and the consequent reduction of resources within impacted

communities are among the many problems that follow a minor marijuana arrest.⁵⁷

States that lack a legal framework for adult marijuana use but share borders with states that do have such laws provide insight into how racially biased enforcement of prohibition can be exacerbated in the non-legalized state. This research is a cautionary tale for how biased enforcement has the potential to worsen in New York as we lag behind our neighbors in marijuana reform.

Following legalization in both Colorado and Washington, border counties in the neighboring states saw an overall increase in adult marijuana possession arrests, but the trend does not extend to youth in these regions.⁵⁸ The assumption that the increases in arrests are simply a result of increases in rates of possession is convenient. Yet, such an explanation does not account for shifts in attitude and tactical adjustments made on the part of law enforcement in these regions *in anticipation*—but without evidence—of increases in marijuana-related incidents.⁵⁹

For example, law enforcement resources in the states surrounding Colorado have been shown to be concentrated at the border in the years since Colorado legalized marijuana for adult use.⁶⁰ Traffic safety concerns have been used as a fear-inducing justification for increasing the presence and activity of marijuana enforcement in the border region.⁶¹ However, evidence does not show a correlation between marijuana legalization and increased driving impairment.⁶² In fact, DUI arrests (including both marijuana and alcohol) actually decreased in both border counties and non-border counties following legalization.⁶³ Along with traffic safety, unfounded concerns about youth traveling across state lines to purchase marijuana have been cited as a reason to be wary of legalization in nearby states. However, the available data directly contradicts the narrative that legalization in a neighboring state increases youth accessibility and incentivizes underage consumption.⁶⁴

First, youth marijuana possession arrests decreased in the border counties of states surrounding both Colorado and Washington following each state's decision to tax and regulate marijuana.⁶⁵ Researchers largely attribute this to a change in the relative risk of selling marijuana to minors once a legal, regulated market has been established.⁶⁶ Vendors are not likely to be willing to risk their difficult-to-obtain licenses to make a few sales when there is an entire market of adult consumers from whom they can generate a profit. Unfortunately, this relegates youth who are determined to gain access to marijuana to the illicit market, where there are no vendors checking identification cards to verify legal age of purchase. Further, youth marijuana use has not increased nationally, not even *within* states that have legalized.⁶⁷ Youth use has also *decreased* in counties bordering states with legal marijuana access.⁶⁸

These trends undermine the case for continuing marijuana prohibition in New York—as neighboring states establish strictly regulated marijuana markets, youth protection can no longer be the rationale for continued prohibition. In fact, the extreme racial disparities in youth marijuana possession arrest rates provide clear evidence that maintaining criminal prohibitions on marijuana could lead to further criminalization of young Black and Latino New Yorkers.^{69, 70} The legislation to legalize marijuana for adult use in New York stipulates that youth under the age of 21 cannot be charged with criminal offenses for marijuana; possession of marijuana by young people would be treated similar to underage drinking in New York, where youth may be charged with an infraction.

Unless New York reforms its marijuana laws, the combination of an increased law enforcement presence at the state border and the ongoing racial profiling that has characterized marijuana policing in the state for decades would likely prove disastrous. Legalizing marijuana for adult use and decriminalizing marijuana for youth is the most effective way for the state to avoid increasing the likelihood of further disparate and discriminatory policing practices that have inflicted tremendous harm on Black and Latino communities throughout the state.

An Opportunity for New York

There is ample evidence to project the positive impact legalization could have on New York's economy. For example, illicit marijuana sales in New York are estimated at \$3 billion.⁷¹ 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.⁷² Tax revenue for New York state will likely be even higher than the threshold predicted for NYC. It is also important to note that other states with legal markets have been dramatically outpacing their projected revenue estimates.^{73, 74} For example, Oregon collected \$60.2 million in revenue in 2016 compared to original projections as low as \$10.7 million.⁷⁵

In the border regions of upstate New York, marijuana legalization represents an opportunity for many communities to pivot from a failing prison economy to a more historically familiar agrarian economy.⁷⁶ Embracing the alternative of growing an extremely profitable and sustainable plant like marijuana would help disjoin the economic interests of these communities from a problematic industry.

Like the opening of commercial casinos—which has been celebrated as part of an “upstate revitalization initiative”—legalization would cater to the governors' expressed interest in creating new jobs, increasing economic activity, funding education, and attracting both visitors and other New Yorkers to the region.^{77, 78} Additionally, a licensing structure designed to create a favorable environment for small businesses creates space for entrepreneurial efforts to be launched in both small towns and disproportionately impacted communities across the state.

Outlook

In early January 2018, U.S. Attorney General Jeff Sessions rescinded the Cole memo,⁷⁹ which previously instructed the Department of Justice to allow states to implement their own marijuana laws with limited federal interference. This sets up a showdown with states that have legal marijuana markets and signals an attempted double down on the draconian war on drugs.

As a result, some potential participants in the legal marijuana industry are wary of federal crackdowns. However, the money being generated in states that have legalized makes such a crackdown increasingly unlikely.⁸⁰ Eliminating jobs and a tax revenue source would not be in the best interest of this administration—especially at a time when bipartisan support for marijuana legalization is at an all-time high compared to historically low approval rates for this presidential administration.⁸¹

Further, legalization in New York would add a significant amount of momentum to the national movement to end marijuana prohibition. If New York legalized marijuana, the combined GDP of states with adult use marijuana markets would make up nearly a third of the nation's entire GDP.⁸²

Additionally, New York's status as the nation's center of finance would likely place pressure on the federal government to allow banks to do business with marijuana companies. This could lead to growth in both the financial services sector and the marijuana industry as potential investors and entrepreneurs are likely to be less wary of an industry that is no longer cash-only.⁸³

The SMART Choice: Establishing a Well-Regulated, Inclusive Marijuana Industry

Establishing a legal market for adult marijuana use in New York and creating a system to tax and regulate marijuana will put state tax dollars to better use, create new jobs, and generate millions in tax revenue.

The Marijuana Taxation and Regulation Act (MRTA) will:

- Remove penalties for personal possession, preventing New Yorkers from being unnecessarily swept into the criminal justice system and left to deal with collateral consequences that diminish their employment prospects.
- Create a process to seal convicted persons' offense records for conduct that is no longer criminal, and vacate marijuana violations (summons) and public view possession misdemeanors.
- Create thousands of new jobs both directly and indirectly related to the new legal market.
- Improve industry accessibility by keeping licensing and application fees reasonable and avoiding limits on the number of licenses that may be issued.

- Establish a license structure that allows for a diverse array of businesses and entry points with low start-up costs.
- Restrict vertical integration to provide the maximum amount of space for new companies to develop and contribute to a New York focused market.
- Create a micro-licensing program that is similar to the micro-brew model that has allowed New York's boutique wine and craft beer industries to thrive.
- Limit felony restrictions for participating in the industry to those that are both recent *and* relevant to owning and operating a business.
- Direct revenue toward efforts that will help repair communities harmed by the war on drugs and mass incarceration through job training, economic empowerment, and youth development programming.
- Protect youth by preventing access to marijuana and reducing criminal justice interactions that can have lifelong consequences by removing any criminal penalties for youth use.

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

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