

About the Report

This report was coauthored by Start SMART NY (Sensible Marijuana Access through Regulated Trade) members Ivy Rosado and Doug Greene, Empire State NORML Legislative Director and Board member, with support from the New York office of the Drug Policy Alliance.

The arrest statistics presented in this report are based on an analysis of unpublished data compiled by the New York State Division of Criminal Justice Services of individuals arrested on the “Criminal possession of marihuana in the fifth degree” (PL 221.10) charge – which is applied for possession of more than 25 grams of marijuana or for possessing any amount of marijuana that is burning or in public view.

This research brief informs the work of Long Island-based organizations and community groups in support of the Marihuana Regulation and Taxation Act (MRTA) and Start SMART NY, a campaign to end marijuana prohibition and repair the harms to communities.



Marijuana Enforcement on Long Island

EXECUTIVE SUMMARY

Over the past decade, the American public has become increasingly aware of the systemic problems plaguing the nation’s criminal justice system, and of the disproportionate harm its most severe dysfunctions inflict upon people and communities of color. While the press provides a steady stream of statistics on the biases and inefficiencies of our law enforcement agencies, judicial system, and correctional institutions, social media has allowed Americans to observe catastrophic contacts between those entities and individuals – like Eric Garner or Philando Castile – at searingly close range.

And yet, precisely because the system’s collateral impacts are so unevenly distributed by geography and demographics, those who remain insulated from its most notorious injustices can, and often do, view maladies like racial profiling, wrongful imprisonment, and police brutality as remote problems that occur “somewhere else” and primarily impact criminals and other “bad actors.” In fact, these problematic stereotypes of suburbia, which is viewed as having predominantly law-abiding citizens residing under the protection of a benevolent police force, alongside its supposedly nefarious counterpart, the “urban ghetto,” have been foundational to U.S. law enforcement practices and drug policy over the past half-century.¹

Long Island’s arrest patterns for low-level marijuana possession (PL 221.10) offer a case in point. New York State nominally decriminalized marijuana in 1977, when the legislature acted to remove criminal penalties for possessing small quantities of the drug if it is not burning and is out of public view.² In this context, arrests on low-level marijuana possession charges occur primarily in the course of discretionary police stops of drivers or pedestrians, practices that allow police officers a great deal of latitude in deciding whom to stop and whether to issue a citation.

In Nassau and Suffolk Counties – despite an abundance of research showing that Black and Latino people use marijuana at similar or lower rates than White people³ – people of color are arrested on misdemeanor marijuana possession charges at dramatically higher rates

than their White neighbors, revealing a consistent pattern of racial bias that prevails in virtually every corner of the counties.

LEGALIZATION LANDSCAPE

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 more than doubled from 16—plus the District of Columbia—to 33.⁴

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

Support for marijuana legalization is steadily increasing—reaching an all-time high of 64 percent in 2017, compared to 26 percent in 1996. Polls strongly suggest that this momentum will continue to build.^{5, 6} In New York State, 59 percent of suburban voters support allowing adults to legally possess small amounts of marijuana for personal use.⁷

In July 2018, the Department of Health issued an assessment of the potential impact of regulated marijuana in New York State, which concluded that “[t]he positive effects of regulating an adult (21 and over) marijuana market in [New York State] outweigh the potential negative impacts.”⁸ And in January 2019, as part of his State of the State address and FY2020 executive budget proposal, Governor Cuomo introduced the Cannabis Regulation and Taxation Act (“CRTA”), a comprehensive proposal to tax and regulate adult-use marijuana.⁹

LONG ISLAND ENFORCEMENT DISPARITIES

Marijuana Arrest Rates

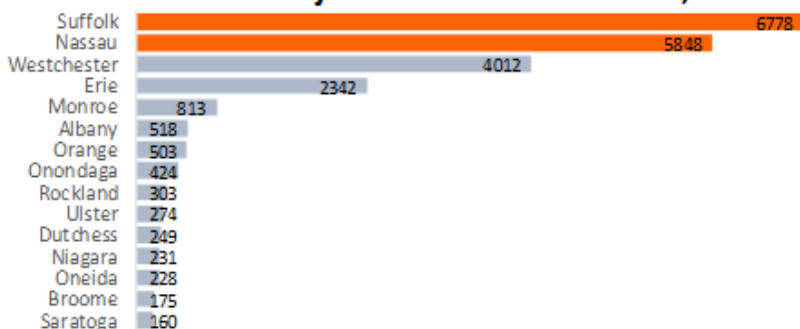
In 2017, 23,086 individuals were arrested in New York State for low-level marijuana possession,¹⁰ of which 81 percent were Black and Latino people – despite data showing similar rates of use across racial and ethnic groups.¹¹ This racial disparity is seen throughout the state, from Erie County, where Black and Latino people comprise 77 percent of those arrested for low-level marijuana possession, to New York City, where they comprise 86 percent of those arrested for low-level marijuana possession.¹²

Long Island is no different; recent analysis of police and court documentation shows similar racial disparities in arrest rates.¹³ From 2005 to 2016, the marijuana arrest rate for non-Whites was four times the arrest rate for Whites.¹⁴

Compared to other counties in New York State, excluding NYC, Suffolk and Nassau Counties have the highest rates of low-level marijuana possession arrests in the state.

For Suffolk County in 2017, the rate was 110 arrests per 100,000 residents, and for Nassau County in 2017, 130 arrests per 100,000 residents.¹

Top New York Counties Outside of New York City: Number of Low-Level Marijuana Possession Arrests, 2013-2017



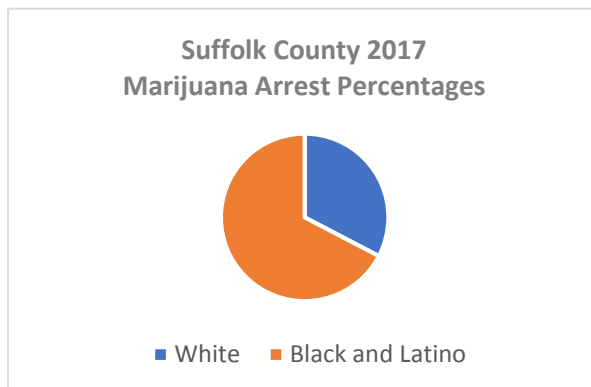
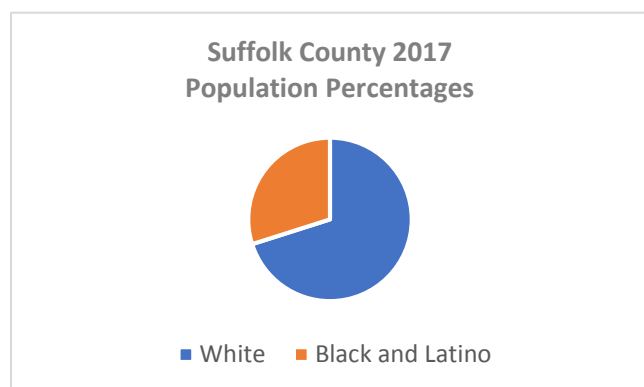
There have been over 19,000 arrests for marijuana possession on Long Island from 2010 to 2017, with arrests increasing every year. In Suffolk County, 11,998 people were arrested for low-level marijuana possession from 2010 to 2017.¹⁵ Similarly, in Nassau County, 7,506 people were arrested for low-level marijuana possession from 2010 to 2017.¹⁶

In 2017 alone, more than 3,000 people were arrested for marijuana in Long Island, of which 63 percent were Black or Latino people.¹⁷

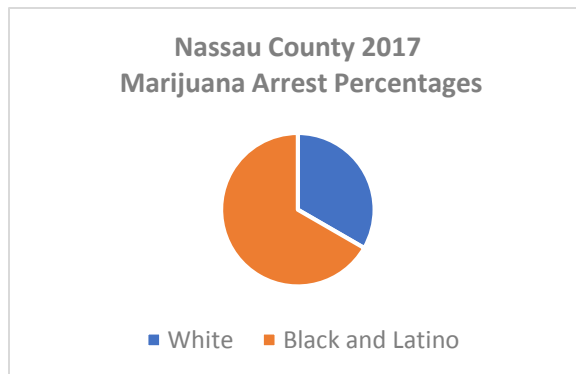
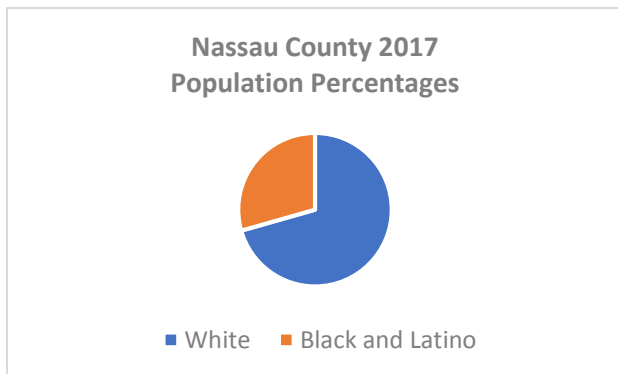
Suffolk and Nassau Counties and Racial Disparities by Arrest Rates

Since 2010, Suffolk County has arrested more than 1,000 individuals a year for marijuana possession.¹⁸ Between 2013 and 2017, the arrest rate among Black people for low-level marijuana possession was 391 per 100,000 residents in Suffolk County – this rate was higher than any other New York county outside of New York City.¹⁹ Latino people also face disparities, with a rate of arrest for low-level marijuana possession (147 per 100,000) in Suffolk County, which is the highest arrest rate for Latino people for marijuana possession across all New York counties outside of New York City.²⁰

In Suffolk County, where Black and Latino people are 29 percent of the total population, they accounted for 66 percent of marijuana arrests in 2017.²¹ White people comprise 68 percent of the population, but only 32 percent of marijuana arrests.^{22, 23}



Marijuana arrests in Nassau County have also increased since 2010. From 2010 to 2017, arrests for marijuana possession increased by 136 percent.²⁴ In 2017, Black and Latino people comprised 60 percent of those arrested, despite being 30 percent of the population,²⁵ while White people are only 30 percent of those arrested, but 60 percent of the population.^{26, 27}



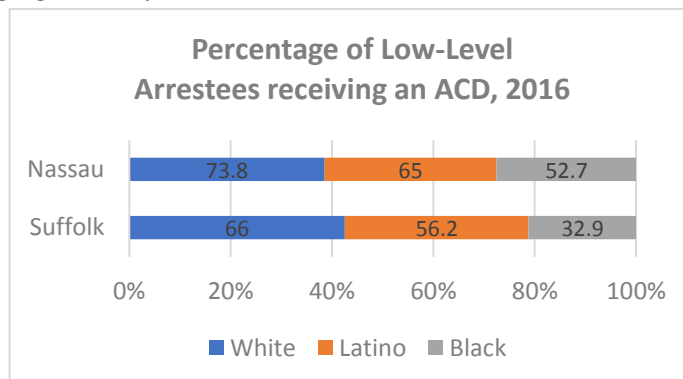
These racial disparities in marijuana arrests are particularly remarkable given that research studies consistently find little difference in the prevalence of marijuana use among Black, white, and Latino people. In 2016, the National Survey on Drug Use and Health (NSDUH) found that White people were significantly more likely to have used marijuana during their lifetime than Black and Latino people, whereas rates of marijuana use in the past month and past year are very similar across racial groups.²⁸

Case Disposition

Racial disparities are not just seen in arrests; they are also present in prosecutions and how cases are charged by district attorneys’ offices and carry over into the courtroom.

When an individual is arrested for marijuana possession, their case might result in a conviction, dismissal, or acquittal. An adjournment in contemplation of dismissal (ACD) is a court disposition that has been used more frequently with marijuana charges in recent years. An ACD acts as a dismissal of the pending charges against a defendant; if the defendant has no subsequent criminal charges filed against them in the following six to 12 months, the records relating to the misdemeanor proceedings are sealed. However, during that period, the case remains open and visible to prospective employers, landlords, and other entities that may do background checks. Because of the way that data is accessed by third parties, a case may be listed as open long after it has actually been resolved – causing significant problems for an individual.

In Suffolk County in 2016, 689 people arrested for low-level marijuana possession were dismissed with an ACD.²⁹ But who gets an ACD for marijuana on Long Island reveals stark disparities: 66 percent of White arrestees were dismissed with an ACD, 56.2 percent of Latino arrestees were dismissed with an ACD, while only 32.9 percent of Black arrestees were dismissed with an ACD.³⁰



In Nassau County in 2016, 724 people arrested for low-level marijuana possession were dismissed with an ACD. Disparities continue here: 73.8 percent of White arrestees were dismissed with an ACD, compared to 65 percent of Latino arrestees and 52.7 percent of Black arrestees.

Traffic Stops & Patrolling

Many of the arrests on Long Island are the result of “stop and frisk” traffic stops, where officers stop drivers if they have a “reasonable suspicion” of criminal activity, but racial bias appears to influence which motorists are stopped.³¹ In the first four months of 2015, Black people accounted for 15.4 percent of traffic stops, despite being 7.1 percent of the population. This disparity also occurs with Latino people. White people account for 59.2 percent of traffic stops, despite being 71 percent of the population.³²

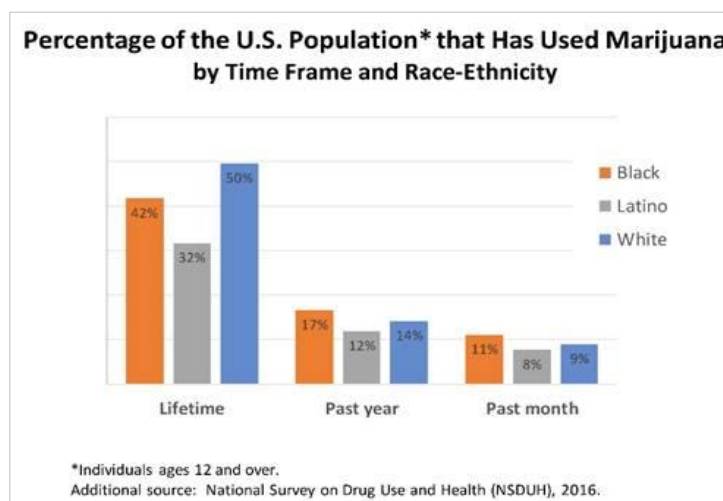
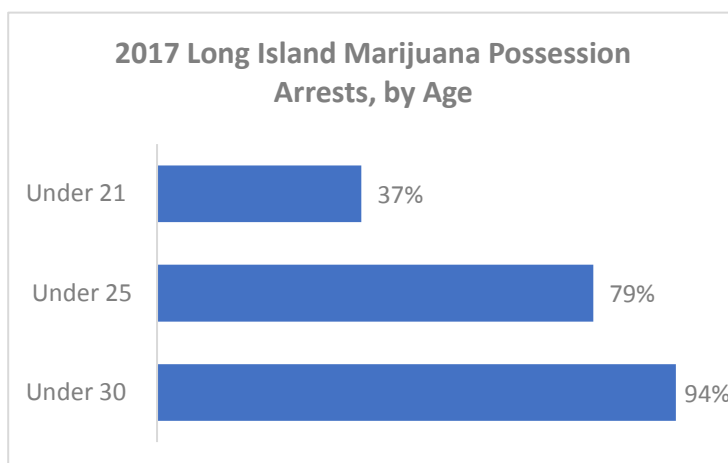
These racially biased stop and frisks are pervasive throughout New York State, even though the U.S. District Court for the Southern District of New York ruled the NYPD’s stop and frisk practices unconstitutional in 2013.³³ In addition, law enforcement focuses on patrolling “hot spots,” which include abandoned buildings or street corners that are often located in communities of color.³⁴

Youth and Young Adults Most Likely to Be Arrested

Young people are particularly impacted by marijuana arrests. In 2017, 94 percent of those arrested for marijuana possession on Long Island were under the age of 30, with 79 percent of those arrested under the age of 25, and about 37 percent of those arrested under the age of 21.³⁵

Many of these individuals are at prime stages in their lives where they are preparing for school or employment. A marijuana arrest and conviction can create barriers and collateral consequences that will prevent them from achieving these goals.


These disparities are especially concerning given that national government data show that young White people use marijuana at higher rates than young people of color.



COLLATERAL CONSEQUENCES OF MARIJUANA ENFORCEMENT

A marijuana arrest creates a permanent criminal record that can easily be found by employers, landlords, schools, credit agencies and banks. The processing and data collection that occurs after an individual is in custody can immediately impact a person's life. Fingerprints taken during booking are used to create records that are accessible by dozens of agencies.

The New York State Division of Criminal Justice Services (DCJS) automatically notifies many public employers and licensing agencies of an arrest, immediately impacting a person's employment status. Occupational licenses issued by these state agencies can be suspended or revoked following a marijuana conviction.³⁶



THE MARIJUANA REGULATION AND TAXATION ACT WOULD PROTECT YOUTH BY LIMITING ACCESS TO MARIJUANA AND REDUCING CRIMINAL JUSTICE INTERACTIONS THAT CAN HAVE LIFELONG CONSEQUENCES.

Buying a house is viewed as an opportunity to invest in better future by building equity and establishing a more secure financial foundation. However, not many people can purchase a home without financing, access to which can be impacted by having an arrest record. For renters, landlords might run third party background checks on potential tenants discriminate based on whether they have prior convictions.

On the national level, marijuana possession convictions are the fourth most common offenses among people who are deported.³⁷ Any immigrant who has lawful status (green card, refugees, asylees, and persons with non-immigrant temporary visas such as students, employees, and investors) can lose that status if they are convicted.³⁸

THE “WAR ON DRUGS,” DECRIMINALIZATION, AND THE MARIJUANA ARREST CRUSADE

Arrests for low-level marijuana possession increased during the 1970s with the initiation of the War on Drugs and the severe crackdown of the draconian Rockefeller Drug Laws, which mandated harsh minimum sentences for even low-level possession. In recognition of the myriad collateral consequences of an arrest, the New York legislature decriminalized low-level marijuana possession in 1977.

The *Marihuana Reform Act of 1977*, a bipartisan piece of legislation, removed criminal penalties for possession of marijuana for personal use.³⁹ This law decriminalized possession of 25 grams or less of marijuana (about 7/8 of an ounce) – that is, possession in private was made a *violation*; a first offense became punishable by a \$100 fine. Multiple possession offenses are punishable by a \$250 fine and up to 15 days in jail.⁴⁰ The legislature also established a *misdemeanor* penalty for burning marijuana or possessing it in public view – making it a criminal offense punishable by arrest, fine and/or a jail sentence of up to three months.

Despite decriminalization, low-level marijuana arrests continued to ramp up under broken windows policing.⁴¹ These ideologies attempted to prevent crime by targeting those who committed low level

offenses from primarily communities of color. Under broken windows policing, low-level marijuana possession and sale were among the most common offenses; in the last 20 years there have been 800,000 arrests for low-level marijuana possession in New York State – in spite of statewide decriminalization.⁴²

Despite its significant social costs and a lack of evidence linking broken windows policing to significant reductions in crime, the idea spread like wildfire, altering the culture of policing and fueling dramatic increases in arrests and imprisonment for low-level offenses literally from coast to coast.⁴³ Though these tactics were ineffective, law enforcement continues to arrest individuals for low-level marijuana possession.⁴⁴

The enforcement of marijuana prohibition causes significant economic and social harms. A 2013 ACLU report examining marijuana arrests found that in New York City, more than \$675 million was devoted to marijuana possession enforcement in 2010.⁴⁵ Marijuana arrests create barriers for individuals seeking or maintaining employment, housing, and higher education. Prohibition has led to over policing of communities of color, which criminalizes people of color while breeding mistrust between residents and police.

MISCONCEPTIONS ABOUT LEGALIZATION

It has been more than four years since Colorado was the first state to implement a legal adult-use marijuana market. Since then, multiple states have followed suit. Not only has the experience of these states shown that legalization can be successful, it has also dispelled many of the negative myths people have regarding legalization, including concerns about road safety and marijuana use among youth after marijuana is legalized.

Reports from legalized states show that legalization is not correlated to changes in DUI rates and road accidents. DUI arrest rates are down in Colorado and Washington, the first two states to regulate marijuana for adult use. There has been no correlation between marijuana legalization and crash rates. Crash rates in legalized states are statistically similar to comparable states without legal marijuana.⁴⁶ In addition, proposed legislation would use revenues collected from legalization to create public education campaigns to promote safer drug use.⁴⁷

A recent report could not find evidence for a relationship between DUI arrests for marijuana and legalization.⁴⁸ Since there is no method for detecting “marijuana impaired driving,” researchers analyze the number of DUIs before and after legalization. Colorado has witnessed decreases since legalization, even though one would expect increases. Washington State has seen some increases, but whether this is an effect of legalization cannot be confirmed. Overall, it is too early to determine whether there is a relationship between DUI arrests for marijuana and legalization.

In addition, marijuana use among high school students has stayed stable; there have not been increases to marijuana use in youth under 21 years of age after legalization. Legalized states such as Colorado, Washington State, and Alaska reported rates of marijuana use among high school students that were higher than the national average preceding legalization but have not increased after legalization.⁴⁹

Several studies suggest that youth marijuana consumption does not rise after states legalize adult-use marijuana.^{50, 51, 52} The Marijuana Regulation and Taxation Act would protect youth by limiting access to marijuana and reducing criminal justice interactions that can have lifelong consequences by removing any criminal penalties for youth use.

Recent studies also show that marijuana dispensaries are not linked to increased crime.⁵³ It's also important to note that research shows marijuana legalization in Colorado and Washington has “produced some demonstrable and persistent benefit”⁵⁴ to police departments’ abilities to solve other types of crime.

A study conducted by one of the country’s biggest drug testing labs found the rate of workers testing positive for drugs in states with legal marijuana is on par with the increase seen in the nationwide average.⁵⁵ Colorado’s positivity rate has gone up by 1 percent, while Washington State’s increased by 3 percent. Compared to the national average, which has increased by 4 percent, legalized states’ positivity rates parallel the national trend of an increase of positive drug tests.

Additionally, a forthcoming study found evidence that legalizing medical marijuana corresponded with a significant decline in workplace deaths in medical marijuana states.⁵⁶ The research analyzed data from the Bureau of Labor Statistics from 1992 to 2015 and found that workplace deaths declined by about 34 percent five years after a state legalized medical marijuana. The trend was most pronounced among workers between the ages of 25 and 44.

Another study found there is no correlation between legalization and increased problematic marijuana use.⁵⁷ Researchers examined the relationship between frequent marijuana use (use of marijuana once or more a week for 12 months) and impulsivity and also looked at the relationship between legalization and problematic marijuana use.

These outcomes in states with legal marijuana show that the sky hasn’t fallen post-legalization, and show that there are important lessons for New York. Marijuana legalization will allow for a regulated marijuana market with positive effects that will outweigh the negative impacts.⁵⁸ Legalization will create a surplus of tax revenue, increase employment opportunities, lower arrest rates, and could help address aspects of the opioid epidemic.

Legalization will create a surplus of tax revenue, increase employment opportunities, lower arrest rates, and could help address aspects of the opioid epidemic.

Legalization is smart for racial justice, smart for communities, and smart for the state’s economy.

MARIJUANA AND THE OPIOID CRISIS

Opioid overdose deaths have been on the rise since 2014.⁵⁹ Projections report as many as 600 people died due to opioid overdose in Long Island in 2017,⁶⁰ and Suffolk County has one of the highest opioid overdose death rates in New York State.⁶¹

Marijuana and Pain

Recent studies suggest that access to legal medical marijuana can reduce opioid prescriptions.^{62, 63}

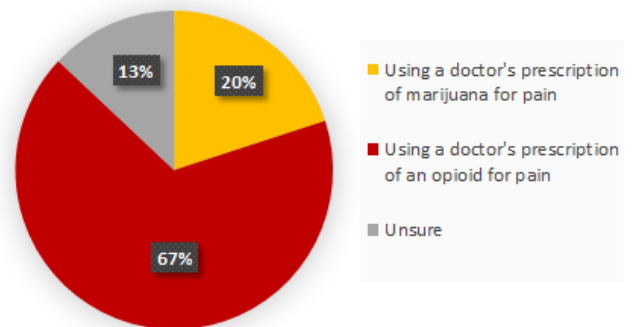
Marijuana can be used as a pain medication, providing an option for those who do not want to use opioids. A comprehensive 2017 study conducted by the National Academies of Sciences, Engineering and Medicine affirmed that there is conclusive or substantial evidence that marijuana or cannabinoids are effective for the treatment for chronic pain in adults.⁶⁴

A 2015 meta-analysis of 79 studies found a 30 percent or greater reduction of pain with the use of cannabinoids compared to placebos.⁶⁵

Additionally, two-thirds of Americans polled in 2017 view marijuana as being a safer alternative to opioids.⁶⁶

We have already begun to see a trend wherein states with legal access to medical marijuana have seen reductions in opioid prescriptions for Medicaid and Medicare Part D enrollees. A 2018 medical article compared opioid prescriptions under Medicare Part D and its association with state medical marijuana laws and found opioid prescriptions decreased when a state instituted a medical marijuana policy and when medical marijuana dispensaries opened.⁶⁷ A recent report by Castlight Health, an employee health benefits platform provider, found almost double the rate of opioid misuse in states that did not permit access to legal medical marijuana.⁶⁸

Which one do you think is more of a health risk?



Source: Associated Press poll. April 17, 2017

Marijuana and Reduced Opioid Use and Overdose

A growing body of evidence suggests that marijuana could be an important tool to help people to reduce their opioid use. Multiple studies with medical marijuana patients indicate that they find that it has helped them to reduce or stop their use of opioids for pain.^{69, 70, 71, 72} For example, 67 percent of the patients surveyed in a recently conducted study reported that gaining access to legal medical marijuana helped enable them to stop using their opioid medications altogether.⁷³

Legal medical marijuana access has the potential to decrease rates of opioid use and misuse, helping to prevent situations that can lead to overdose. A study published in the Journal of the American Medical Association found that states with medical marijuana laws are associated with a significant reduction in

mortality from opioid abuse; these states saw a 25 percent reduction in opioid overdose deaths compared to states without such laws, resulting in 1,700 fewer deaths in 2010 alone.⁷⁴

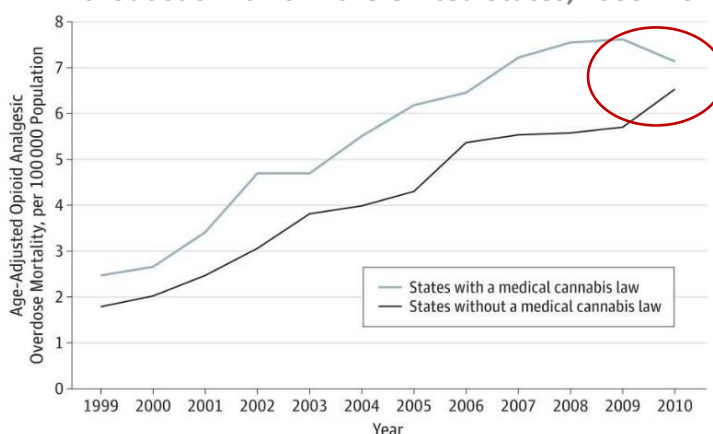
Marijuana and Treatment for Opioid Use Disorder

An increasing number of studies with individuals receiving medication-assisted treatment for opioid use disorder suggest that concurrent use of marijuana or cannabinoids does not lead to higher rates of drop-out.^{75, 76, 77}

There is also research suggesting that marijuana use can be an adjunct to medication-assisted treatment for opioid use disorder such that use is associated with higher levels of treatment retention.^{78, 79}

Recently the New York State Department of Health, which oversees the medical marijuana program, filed emergency regulations allowing any condition for which an opioid could be prescribed to be a qualifying condition for medical marijuana. In addition, opioid use disorder would also be a qualifying condition for medical marijuana.⁸⁰ The Department of Health recognizes the potential for marijuana to decrease opioid use disorders and serve as an adjunct therapy for opioid use disorder.

States with Medical Marijuana Laws Compared to States without such Laws in the United States, 1999–2010



Source: JAMA Intern Med. 2014 Nov;174(11):1875.

ECONOMIC BENEFITS

Legalization presents an opportunity to create jobs. Preliminary estimates suggest that the legal marijuana industry employs 165,000 to 230,000 full and part-time workers across the country. It is unknown how many jobs the legal marijuana will create indirectly, due to its impact on other industries.⁸¹ 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.^{82, 83, 84}

Additionally, legalization has provided an indirect boost to states 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.⁸⁵

For New York State, there is ample evidence to project the positive impact legalization could have on the state's economy. A 2018 study by the NYC Comptroller estimates a potential legal marijuana market could yield a total of \$1.3 billion in revenue at the state level, acknowledging that the actual revenue could be much higher.⁸⁶ In addition, about two-thirds of marijuana users reside outside of New York City, so revenues from a legal marijuana program for adult use will be spread throughout the state.

A 2018 study by the NYC Comptroller in 2018 estimates that a potential legal marijuana market could yield a total of \$1.3 billion in revenue at the state level, while acknowledging that the actual revenue could be much higher.

If New York follows other legalized states, tax revenues can be distributed to school improvements, substance use disorder treatment initiatives, health programs, and/or re-invested in communities, specifically those communities most adversely impacted by drug arrests.⁸⁷

Marijuana can provide an economic boost to Long Island farmers who have an opportunity to become major stakeholders in the marijuana market. Farmers looking to diversify their business can rely on growing marijuana as a viable source of income. Growing marijuana in less densely populated areas, which employ greenhouses and open fields, is less costly and has less of an environmental impact compared to indoor grow rooms on industrial and commercial land.⁸⁸

Long Island is home to many successful industries that have grown rapidly in the past few years, such as the craft beer and boutique wine industry. Long Island hosts a total of 131 alcoholic craft beverages manufacturers, making it the third largest manufacturer in New York.^{89,90} In Suffolk County, these industries annually produce \$340 million annually in economic activity and support close to 4,100 jobs.⁹¹

A legalized marijuana industry has the potential to be as successful as these industries, which will contribute to greater economic activity and create new jobs for residents.

SHOULD LONG ISLAND OPT-OUT OF RETAIL SALES? NO.

Although the CRTA is still a work in progress, as of the drafting of this report, it allows counties and cities with populations of 100,000 and greater to prohibit the establishment or operation of one or more adult-use license types.⁹² Several jurisdictions on Long Island have or are considering opting out of retail sales.⁹³

This is a mistake for two reasons:

- **Voters support legal marijuana sales in their communities.**
A January 2019 Quinnipiac University poll found that 56 percent of *suburban voters* support the sale of legal marijuana in their communities.⁹⁴
- **Local governments would forfeit their local share of marijuana taxes.**
The current draft of the CRTA imposes a two percent tax on the sale or transfer of marijuana from a wholesaler to a retail dispensary in trust for the county where the retail dispensary is located.⁹⁵ These funds would not be available to local governments that opt out of retail sales.

REDUCING ARRESTS PLUS SAVINGS AND REINVESTMENT

Marijuana prohibition has disproportionately impacted the lives of people of color. From over policing communities leading to higher arrest rates for Black and Latino people and the impact these arrests have on their ability to succeed, prohibition has harmed communities of color. Through legalization, low-level marijuana possession arrests can be dismissed and records sealed, effectively removing arrests from a person's record. More than two-thirds of the United States supports clearing records for low-level marijuana possession arrests.⁹⁶

Following legalization, New York State should see arrest rates for low-level marijuana possession plummet, as has been the case in other legalized states. This will save hundreds of millions of dollars and spare thousands of people from being branded with lifelong criminal records.⁹⁷

Instead of prohibition enforcement that tears communities apart, under legalization revenue will be directed toward efforts that will help provide restitution to individuals directly suffering from the collateral consequences of marijuana prohibition and reinvested in communities harmed by the war on drugs and mass incarceration through job training, economic empowerment, youth development programming and business services to social equity applicants for marijuana business licenses.

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, lower arrest rates, and help address aspects of the opioid overdose crisis.

As discussions about New York's framework for legalizing marijuana for adult use continue in Albany, local communities on Long Island can take action to address the myriad collateral consequences of marijuana enforcement and encourage elected officials in Nassau and Suffolk Counties to end biased enforcement of marijuana prohibition.

ENDNOTES

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- ²⁰ Ibid.
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