



New York Marijuana Legalization Explainer

What Does the Marijuana Regulation and Taxation Act (S.854-a/A.1248-a) Do?

- Allows the use of marijuana by adults over 21; automatically expunges records for prior criminalization
- Improves the medical marijuana program and expands hemp/CBD farming program
- Establishes the Office of Cannabis Management and Cannabis Control Board to regulate all aspects of cannabis in New York

New York's legalization centers racial and economic justice by:

- **Addressing devastating impacts of marijuana prohibition** in the fields of immigration, housing, employment, child welfare, and other consequences of criminalization.
- Establishing an **equitable and diverse industry**, including having a social equity licensing program supporting directly impacted people, farmers, and small businesses, plus an incubator program to provide low- and zero-interest loans, technical assistance, and legal counsel
- Using **revenue from marijuana legalization** for restitution to communities that have been most impacted by criminalization

IMMEDIATE PROVISIONS

It is now legal for adults 21 and over in New York to:

- Possess 3 ounces or less of marijuana in a public place
- Possess higher amounts of marijuana if prescribed by a doctor
- Give lawful amounts of marijuana to other people 21 and over as long as no compensation is exchanged

Public consumption and odor of marijuana:

- Smoking marijuana and the odor of marijuana is not a basis for law enforcement to approach, stop, issue summons, arrest, or search an individual
- Smoking is permitted in most places where smoking tobacco is allowed (aside from a moving car); must follow Clean Air Act guidelines
- It's a civil infraction to smoke cannabis where smoking cigarettes is otherwise prohibited, with a fine of up to \$25 pursuant to PL 222.10(1); there is no criminal penalty

Expungement for prior criminal legal records (free and automatic):

- *Automatic, free expungement* for offenses that are repealed/decriminalized under legalization:
 - Includes convictions for these offenses: 221.05, 221.10, 221.15, 221.20, 221.35, or 221.40
 - The Office of Court Administration has a period of 2 years for the expungement process
- For people facing immigration consequences, the law provides for vacatur upon application; this is necessary because automatic expungement is not sufficient to provide relief in immigration cases
 - Because marijuana remains a controlled substance under federal law, people with immigration concerns need to understand that there continue to be risks when disclosing marijuana-related activity to immigration officers
- People incarcerated for offenses that are no longer crimes will be released
- Application process for reduced sentencing for situations where some criminal charges still stand to bring in line with new parameters in current law

Decriminalizes possession for people under 21:

- Any person under 21 in possession of an amount of cannabis lawful for a person over 21 is subject to a civil penalty of not more than \$50; this penalty is prohibited from carrying any collateral consequences or resulting in any forfeiture of rights or privileges
- Possession is not allowed for people under 21, but there is no mechanism for law enforcement to take action against a person under 21 who possesses 3 ounces or less because it is a civil matter; officers cannot use possession under 3 ounces by a person under 21 as the basis for an approach, stop, summons, juvenile report, or arrest

Driving while impaired and odor of cannabis in vehicles:

- Driving while impaired as defined in VTL 1192(4) remains a misdemeanor
- The odor of cannabis in a vehicle *does not* provide probable cause for a stop, search, or arrest.
- Only in instances when police are investigating driving while impaired by cannabis can the odor of burnt cannabis be considered relevant, and areas subject to search in such circumstances are limited to areas of a vehicle that are "readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition."
- There will be a study will be run by an academic institution – not law enforcement – into technology to detect actual current impairment by cannabis

PROTECTIONS FOR PEOPLE WHO CONSUME CANNABIS

The legalization bill prohibits discrimination for lawful cannabis use in the following contexts:

- Housing (unless the landlord would lose a federal benefit or as part of a general no-smoking policy)
- Education (unless school would lose federal benefit or as part of a religious-based no-cannabis policy)
- Employment (THC drug testing no longer allowed as grounds for denying a job in most cases)
- Parole, probation, or supervised release (only exception is if non using cannabis was specifically made a condition after a showing by clear and convincing evidence that the restriction is related to the underlying offense)
- Lawful cannabis consumption cannot be reason for child welfare case; prior restrictions for child welfare and foster care amended so that expungement-eligible convictions can't be used to deny
- Professional licensing
- Medical care

Protects parents and guardians:

- A report of maltreatment of child cannot be based solely on lawful cannabis-related conduct unless there is a showing of actual risk of harm to the child by a preponderance of the evidence.
- Use of cannabis cannot be the sole basis for a *prima facie* finding of child neglect without a separate showing of actual risk of harm to the child
- No denial of custody, visitation, or loss parenting time based solely on lawful cannabis-related conduct unless there is a showing of actual risk of harm to the child
- People can request immediate sealing from the State Central Registry for a previous report of maltreatment based solely on the purchase, possession, or consumption of cannabis, without a showing that the child's physical, mental or emotional condition was impaired or was in imminent danger of becoming impaired

Improvements for the medical marijuana program:

- Allowing patients access to whole flower
- Expanding qualifying conditions and increase patient supply allowance from 30-days to 60-days
- Granting healthcare practitioners ultimate discretion to recommend cannabis as a treatment for any ailment they deem it to have palliative value

FORWARD-LOOKING PROVISIONS

Community investment and tax revenue allocation

- Dedicates 40% of tax revenue from marijuana sales to reinvestment in communities disproportionately impacted by the drug war
- 40% to public schools and public education
- 20% to drug treatment, prevention and education

Social equity and incubator program

- Creates social equity licensing as priority and funded incubator program that can provide loans, grants, and technical assistance to ensure broad opportunities for participation in the new legal industry by people from disproportionately impacted communities as well as by small farmers
- Establishes a goal of 50% of cannabis business licenses for social equity applicants in New York
- Creates license categories for co-operatives, on-site consumption, delivery, and microbusiness that are geared for people who do not necessarily have access to large amounts of capital.

When does home cultivation begin?

- Patients will be able to start cultivating at home 6 months after the enactment date
- Home cultivation for other adults 21 and over in New York will require regulations; the law sets 18 months from the first authorized retail sale as the *latest* home cultivation can begin

When are sales anticipated to launch?

- It will take some time for the Office of Cannabis Management and the Cannabis Control Board and Advisory Board to be established, then there will be a rulemaking/regulatory period when the actual process for license applications, etc. will be delineated
- Sales are not expected before 2022