

Marijuana Reform in New York: Diversity and Inclusion in the Marijuana Industry

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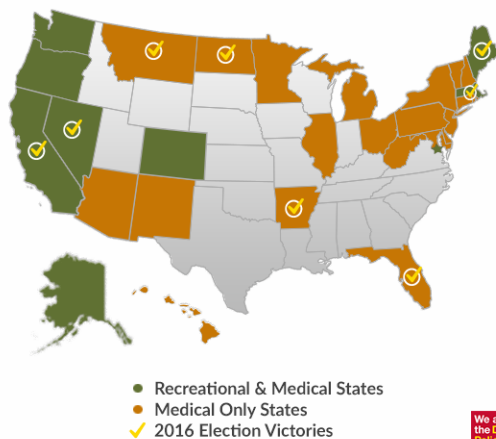
September 2017

Legalization in the United States

The landscape of marijuana law 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.

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

The New State of Marijuana Reform



Now 200 million Americans live in medical marijuana states and over 60 million live in states where marijuana prohibition is a thing of the past.¹ Dramatic shifts in public opinion on marijuana legalization—with national support reaching an all-time high of 61 percent in 2017 compared to 26 percent in 1996—strongly suggest that momentum will only continue to build.^{2, 3}

An Exploding Industry

This rapidly changing legislative landscape has paved the way for the emergence of a regulated marijuana market with an estimated value of more than \$6.6 billion nationally, with recreational sales expected to exceed \$10.9 billion and projected medical sales of more than \$13.2 billion by 2025.⁴

It is important to note that these estimates represent beliefs about the market's potential for growth *if no additional states adopt legalization measures*—which is unlikely considering recent movement in states like Vermont.^{5, 6} In anticipation of additional legislative shifts at both the state and federal level, some financial research analysts have predicted an industry value 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, construction, and security services.^{10, 11}

Illicit marijuana sales in New York are estimated at \$3 billion,¹² 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.¹³

The Cruel Irony of Legalization

Unfortunately, the economic boon produced by the creation of a legal marijuana market has not translated into opportunities for members of the communities that have been most impacted by prohibition.

“Here are white men poised to run big marijuana businesses, dreaming of cashing in big—big money, big businesses selling weed—after 40 years of impoverished black kids getting prison time for selling weed, and their families and futures destroyed. Now, white men are planning to get rich doing precisely the same thing?”

—Michelle Alexander, Drug Policy Alliance Teleconference¹⁴

People of color continue to bear the brunt of the war on drugs—with people of color comprising nearly 80 percent of the country's annual marijuana possession arrests, despite similar rates of consumption *and* sale across racial and ethnic groups.¹⁵ Yet, individuals of color account for less than 1 percent of ownership in the rapidly developing legal marijuana market.^{16, 17, 18} The process by which people of color have been largely

excluded from this growing industry has been multifaceted.

Exclusionary Practices

In several states, laws barring individuals with criminal records from participating in the industry have prevented thousands of qualified people of color from capitalizing on the prospects presented by legalization.¹⁹

Of the states that have adopted legal marijuana measures, only California and Massachusetts allow people with prior marijuana-related felonies to participate in the recreational industry; however both states still restrict these individuals from working in the medical marijuana industry.²⁰ In New York, a marijuana conviction automatically disqualifies an individual from even working in a medical marijuana dispensary, much less owning and operating one.²¹

As a result of racially-biased enforcement of marijuana prohibition, Black and Latino people are much more likely to have a criminal record and are much more likely to be excluded from new opportunities for economic mobility in the legal marijuana industry.^{22, 23, 24}

of capital unlikely for many people of color.^{27, 28} Further, business loans can't be obtained because banks are insured by federal agencies – and at the federal level marijuana is still classified as an illegal substance.²⁹

Additionally, many of the states with legal marijuana markets have placed restrictions on the number of licenses that may be granted.³⁰ With priority for licensing in several states being given to entities already operating within the medical industry, this creates artificial monopolies for the wealthy, well-connected and overwhelmingly white “first-movers.”³¹

Disparate Perception of Risk Factors

Relative to exclusionary practices and financial barriers, the impact of community-specific perception of risk factors associated with entering the marijuana industry do not receive much attention. However, the disparate perception of risk factors influences the likelihood of people of color entering the industry.³²

Given how marijuana prohibition has been used as a justification for the actions of law enforcement, particularly in communities of color, many people of color are wary about investing precious resources into an industry that could leave them vulnerable to significant criminal and financial repercussions at the federal level.³³

Larger Implications

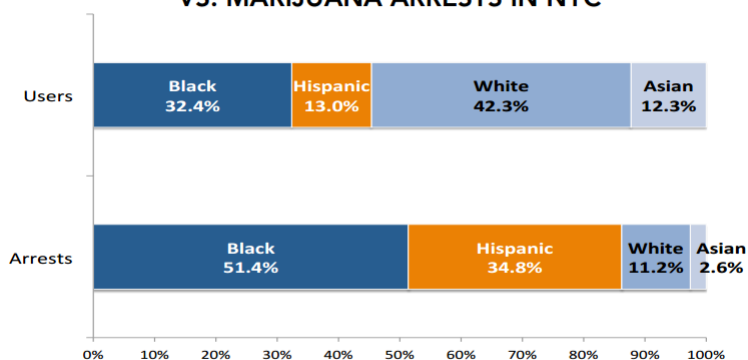
Legalization presents a unique and much-needed opportunity to create equity, economic justice, and restore communities most damaged by this country's failed war on drugs.

While many other industries—like manufacturing—continue to lose jobs,^{34, 35} the national marijuana industry is estimated to create nearly 300,000 positions by 2020.^{36, 37} The communities disproportionately impacted by the enforcement of prohibition also have unemployment rates that are significantly higher than other communities; in New York, Black and Hispanic unemployment rates—6.8 percent and 6.5 percent, respectively—are significantly higher than both the state average of 4.9 percent, and that of white New Yorkers, 4.2 percent.³⁸ Establishing regulations that intentionally center diversity and inclusion is vital to prevent the marijuana industry from propagating inequality.

An Opportunity for New York

The state of New York is well positioned to make a significant impact on the developmental trajectory of the nascent legal industry in a way that strongly favors diversity and inclusion. Furthermore, the history of marijuana prohibition in New York and lessons learned from other states have produced a wealth of information that can be used to preemptively address potential barriers to progress as the state transitions away from the failed experiment of prohibition. The extreme racial disparities in marijuana arrests in New York are no secret. Despite similar rates of

RACIAL AND ETHNIC BREAKOUTS OF MARIJUANA USERS VS. MARIJUANA ARRESTS IN NYC



Sources: SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002; American Community Survey 2011; and New York State Division of Criminal Justice Services.

Financial Barriers and Limited Licensing Restrictions

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.²⁵

Considering the high licensing fees that have been imposed by most states, in addition to the money that must be spent to successfully launch one's business, starting a legal marijuana business is estimated to require at least a quarter of a million dollars.²⁶

However, the factors that have contributed to the enormous racial wealth gap in the United States—among them centuries of discrimination in housing, employment and education—make access to this type

marijuana consumption across racial and ethnic groups,^{39,40} 80 percent of the nearly 23,000 people arrested for marijuana in New York State in 2016 were Black or Latino,⁴¹ and this disparity has persisted for the past two decades.⁴² Many of the problems that stem from the collateral consequences of these arrests—particularly diminished prospects for employment and the consequent reduction of resources within impacted communities—could be addressed by an approach to legalization that creates avenues for participation by people of color and actively avoids establishing additional barriers to access.

A more accessible medical marijuana industry in New York could provide economic opportunities for people of color, but the state's current stringent restrictions on the program are keeping it from legitimately being seen as sustainable and profitable.^{43, 44} In 2016, the state Department of Health made several recommendations to improve the state's medical marijuana program including increasing the number of licensees and increasing patient demand by improving accessibility.⁴⁵ However, the pace at which these issues are being addressed and the fierce opposition to expansion from the small group of current licensees do not help assuage concerns about the program's long-term viability.^{46, 47}

In this moment, the problems plaguing the state's fledgling medical program suggest that a shift in focus to establishing a diverse and inclusive recreational industry is likely the more effective approach to repairing communities harmed by the drug war. The state's commitment to the mission of its Division of Minority and Women's Business Development is indicative of a vested interest in ensuring diversity throughout New York's various industries and promoting equality of economic opportunities.⁴⁸ The state's approach to the burgeoning marijuana industry should be no different. Although a commitment to diversity has not been apparent in the regulation of the state's medical program,^{49, 50} legalization presents an opportunity for a fresh start.

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

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 records of offenses no longer criminalized for those who have been previously convicted, and vacate marijuana violations (summonses) 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 for New York's craft wine and beer industry 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 into 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 eliminating a common reason for premature introduction to the criminal justice system that can have lifelong consequences.

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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