Making Cannabis Legal In New York State

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Introduction | Next year New York State lawmakers are expected to continue debating whether to legalize the most widely used illegal drug in the United States, marijuana, and how to do so responsibly. According to the 2015 National Survey on Drug Use and Health, 44 percent of the population over age 12 (nearly 118 million people) have tried marijuana in their lifetime. Twenty-two million used marijuana in the past month.¹

While legislation to legalize adult-use cannabis was not adopted during the 2019 Legislative Session, lawmakers did pass bills to decriminalize possession of small amounts of cannabis, expunge records for low-level convictions, and regulate industrial hemp. This report describes these measures and their potential impact on county governments.

As of the writing of this report, 32 states, including New York, have legalized medical marijuana. Ten states have legalized cannabis for recreational use. Thirteen have decriminalized — but not legalized — marijuana, meaning they have repealed or amended laws to make certain acts criminal but no longer subject to prosecution.² Decriminalization laws vary from state to state. In many states that have decriminalized marijuana, possession of small amounts is treated like a minor traffic violation.³

This report is not a discussion on whether marijuana should be legalized. Rather, it is a review of the challenges and opportunities that may be presented to counties if state lawmakers decide on legalization. Moving marijuana out of the unregulated black market will impact public health, public safety, criminal justice, the economy, and the environment in New York State’s counties.

Public Health | Researchers do not fully understand the health effects of marijuana. Federal regulations, including marijuana’s Schedule I classification by the Drug Enforcement Administration (DEA), make research difficult to conduct even in states where cannabis is legal to buy.⁴

With this in mind, this is an overview of the generally accepted benefits and harms of marijuana use.
Benefits
Cannabis is known to have therapeutic effects. It can be used to treat pain, seizures, nausea, anxiety, post-traumatic stress disorder, muscle spasms, multiple sclerosis, Parkinson’s disease, glaucoma, and other health and mental conditions.5

Proponents argue that marijuana legalization can help to stem the tide of the opioid epidemic by providing an alternative to opioids for pain management.

It is less risky to consume marijuana in a regulated market. In the black market, consumers cannot be sure about the potency or purity of cannabis products. Fentanyl-laced marijuana and synthetic cannabinoids are growing concerns. Product testing, which is becoming a standard requirement in legalized marijuana markets, makes consumers better informed about the products they use.

Risks
Marijuana use may impair learning, memory, and attention. Smoking marijuana damages the lungs and can lead to symptoms like chronic cough and acute bronchitis.6 Marijuana smokers tend to inhale more deeply and hold their breath longer than cigarette smokers, which leads to a greater exposure to tar per breath.7 Regulating marijuana under the NYS Clean Indoor Air Act can help to protect nonparticipants from the negative health effects of secondhand smoke.

Research shows the negative health consequences of marijuana are lower than those associated with alcohol, tobacco, and other illicit drugs.8 Cannabis should not be used during pregnancy because it can have negative effects, including lower birthweights. Children may be at increased risk for unintentional exposure if marijuana is legalized, which can lead to hospitalization.

Public Safety | Legalized marijuana brings new public safety challenges. Local law enforcement should be prepared to spend increased amounts of time on money and enforcing new laws surrounding legal marijuana.9 Public education and ongoing monitoring will be necessary to protect the public from risks associated with the sale, possession, and use of cannabis.
Traffic Safety

A primary concern with legal marijuana is the possibility of increased impaired driving and car crashes. Legalization will impact the DWI system and result in new costs, including those associated with increases in law enforcement, prosecution, court resources, toxicology lab tests, and testimony.10

Training and education for law enforcement, prosecutors, and consumers will be necessary to protect public safety. Counties should expand anti-DWI efforts to include education about the risks of driving under the influence of marijuana. Law enforcement will have to change its mindset from a focus on possession of marijuana to signs of impairment while driving. Officers should take detailed notes based on their observations rather than relying on THC levels to prove impairment. Toxicology tests can be used to corroborate their findings. Drug testing is moving away from urine and towards blood, oral fluid devices, and breathing tests.11

Youth Access

Another concern with legalization is that it will make marijuana easier for adolescents to access. Roughly 80% of 12th graders, 70% of 10th graders, and 40% of 8th graders in the United States report that marijuana is either “fairly easy” or “very easy” to obtain.12

Experts agree that there should be a minimum age for consumers to purchase and consume marijuana. Taxation can be used to price adolescents out of the market and prevent many from using marijuana. Advertising restrictions can also be used to control cannabis use and protect customers. These strategies have succeeded in reducing youth consumption of tobacco and alcohol.13 Warning labels and child-resistant packing should also be used to deter minors and protect children and infants from accidental ingestion.

Crime

Marijuana is a cash-only industry, even in states where it is legal. The DEA’s Schedule I classification of marijuana puts banks at risk of being charged with money laundering for handling cash used in marijuana transactions.14 This makes cannabis businesses a target for internal and external theft. Cash-only businesses can also make tax collection difficult and create challenges for law enforcement in conducting investigations.

Regulations that mandate stringent security protocols, such as extensive video surveillance, can help to protect employees and customers.15 Local law enforcement should be prepared to monitor and respond to crime around dispensaries.
Edible Marijuana Products

It can be a challenge to regulate edible marijuana products. Without packaging, edible marijuana may be indistinguishable from any other edible products and can be accidentally ingested by children. Serving sizes may not be clear and intuitive to consumers because product dosing and standard servings are different for marijuana edibles than ordinary foods. Regulations regarding marijuana production, including potency limits, quality standards, and product packaging and labeling, can help to protect consumers from accidental or over-consumption.16

Criminal Justice  |  While marijuana was not legalized this year, lawmakers decided to expunge the criminal records of individuals with certain low level marijuana-related convictions and decriminalized possession of small amounts of cannabis (See Page 12). In 2010, New York State’s marijuana arrest rate (535 per 100,000 people) was the highest of any state and double the national average.17

Marijuana is one of the biggest drivers of racial disparities in criminalization and incarceration.18 Though data show cannabis use among racial groups is equal, black individuals are nearly four times more likely to be arrested for possession than white individuals.19 Past convictions can make it difficult to get a job, find housing, obtain college loans, and acquire a professional license.

After California legalized marijuana, district attorneys in San Francisco and San Diego proactively expunged low-level marijuana convictions and downgraded higher-level offenses. Other California jurisdictions have either let people petition courts on their own or are working through past convictions on a case-by-case basis.20

Economy  |  Legal marijuana can be a boom for local economies. A 2018 study of Pueblo County, Colorado found that the regulated cannabis industry contributed more than $58 million to the local economy. After accounting for $23 million in added costs from legalization, including law enforcement and social services expenses, the county experienced a net positive impact of $35 million.21

Legalization is expected to reduce costs associated with illegal marijuana, including police time, court costs, jailing costs, and administrative fees.22
Taxation

Experts estimate the size of the current illegal market for marijuana in New York State ranges from $1.7 billion to $3.5 billion annually. The State Department of Taxation and Finance estimates that potential tax revenue in the first year of legalization could range from $248.1 million to $493.7 million with a 7% tax rate or from $340.6 million to $677.7 million with a 15% tax rate. Though other states have imposed higher taxes, it is important that the tax rate—not be so high as to prevent elimination of the illegal market. See the table below for a more detailed tax breakdown.23

### TABLE 1: RETAIL PRICE - RETAIL TAX

<table>
<thead>
<tr>
<th></th>
<th>$297 per ounce</th>
<th>$374 per ounce</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Sales and Tax Revenue</strong></td>
<td>7%</td>
<td>15%</td>
</tr>
<tr>
<td><strong>Retail Sales</strong></td>
<td>$1.6 Billion</td>
<td>$1.4 Billion</td>
</tr>
<tr>
<td><strong>Marijuana Retail Tax</strong></td>
<td>$100.3 Million</td>
<td>$215.2 Million</td>
</tr>
<tr>
<td><strong>State and Local Sales Tax</strong></td>
<td>$137.8 Million</td>
<td>$125.4 Million</td>
</tr>
<tr>
<td><strong>Total Tax Revenue</strong></td>
<td>$248.1 Million</td>
<td>$340.6 Million</td>
</tr>
</tbody>
</table>

**SOURCE** NYS Department of Health.

Tax revenues from cannabis sales can fund state and local programs. Colorado uses its Marijuana Tax Cash Fund to support school construction, expanded education, drug prevention efforts, and law enforcement. Marijuana sales in Washington State aid administrative costs, research projects, substance abuse programs, marijuana programs, health care, and the State’s general fund.24
Job Creation

Legalizing and regulating marijuana will create jobs and economic opportunities in the formal economy. In 2015, the legal marijuana industry in Colorado created more than 18,000 new full-time jobs and generated $2.4 billion in economic activity.25 This includes employees directly involved in the marijuana industry, such as in stores and dispensaries, cultivations, and manufacturing, and ancillary jobs, such as security guards, commercial real-estate agents, consultants, and construction.26

Tourism

Counties can work with small business owners to take advantage of the marijuana tourism industry. Travelers may be interested in marijuana shopping expeditions, visits to grows, lodging in marijuana-friendly hotels, marijuana cafes, social clubs, cannabis cooking classes, spa treatments, and other opportunities to consume marijuana.27

Keep in mind that out-of-state tourists may not be familiar with local laws related to public consumption and consumption while driving. Hotels, tourism outlets, and marijuana retail businesses should provide educational materials with legal and safety information for customers.28

Environment

Energy

Indoor marijuana production uses a lot of energy. Growing marijuana requires the use of heaters, carbon dioxide and ozone generators, carbon filters, dehumidifiers, fans, and high intensity lights. A typical indoor marijuana grow room has the same power density as a data center (200 watts per square foot). Counties may want to provide energy efficiency rebates to growers who use efficient lighting systems or renewable energy to help take pressure off the electrical grid.29

Water Quality

Many marijuana growers use chemicals during the cultivation process that can contaminate a water supply if not treated or disposed of properly.30 Wastewater from a production facility may have elevated concentrations of fertilizers, pesticides, and fungicides.31 Local water treatment plants should prepare for potential contamination issues. Environmental health departments will want to watch for impacts on downstream ecologies.32
FY 2020 Executive Budget Proposal

The Cannabis Regulation and Taxation Act, included in the FY 2020 Executive Budget proposal, would have created and amended existing laws to legalize adult-use cannabis; consolidate governance of all forms of cannabis; and create a regulatory structure to oversee the licensure, cultivation, production, distribution, sale and taxation of cannabis within New York State. Under this proposal, legal sales would not have begun until April 1, 2020, at the earliest. While this proposal was not adopted, it will likely be the basis of future negotiations.

Office of Cannabis Management (OCM)

The bill would create the Office of Cannabis Management (OCM) within the Division of Alcohol Beverage Control to regulate recreational marijuana, medical marijuana, and industrial hemp. Its powers would include but are not limited to: (1) establishing cultivation and processing standards; (2) issuing licenses to businesses in the production and distribution chain; (3) inspecting and enforcing program standards; (4) developing and insuring program regulations; (5) supervising the continued expansion of the medical cannabis program; and (6) promoting reforms that expand patient access to medical marijuana and product affordability.

Market Structure

The Governor proposes a three-tier market structure (similar to the alcohol model) for the adult-use (age 21+) cannabis industry. In general, the model prohibits vertical integration and would be coupled with licensing limits and supply management to control market concentration and encourage people who have been disproportionately affected by marijuana criminalization to join the industry.

Opt-Out

Possession of marijuana will be lawful statewide; however, county governments would have the opportunity to opt out of authorizing the cultivation, processing, distribution, and sale of adult-use cannabis with the passage of a local law, ordinance, or resolution by a majority vote of their governing body. If a county does not opt out, a city with a population over 100,000 in that county could elect to opt out. Counties, towns, cities, and villages may pass ordinances or regulations governing the time, place, and manner of licensed adult-use cannabis retail dispensaries, provided that such ordinances or regulations do not make the dispensary’s operation unreasonably impracticable, as determined by the Executive Director of the Office of Cannabis Management.

Restrictions on Retail Businesses

Retailers cannot sell adult-use cannabis to anyone under the age of 21 years, any visibly intoxicated person, or any habitually intoxicated person. Retailers cannot sell more than one ounce of cannabis per cannabis consumer per day or more than five grams of cannabis concentrate per consumer per day.
Cannabis retail businesses cannot sell alcoholic beverages or possess a license or permit to sell alcoholic beverages on the same premises where cannabis products are sold, nor can they allow or permit any gambling. They also cannot allow the premises to become disorderly or allow fireworks or other pyrotechnics.

Entertainers younger than 18-years-old are also not allowed on the premises. No advertisements for any brand name products are allowed on the exterior or interior of the premises unless it is allowed by the Office of Cannabis Management.

Employees have a duty to encourage a consumer suspected of abusing cannabis to seek the help of a registered practitioner. They cannot hire any person under the age of 18 in any capacity where the employee’s duties require or allow them to sell, dispense, or handle cannabis or hemp.

**Advertising Restrictions**

Advertising cannot be false, deceptive, or misleading; promote overconsumption; depict consumption by children or minors; be designed to appeal to children or minors; be within 200 feet of a school, playground, childcare center, public park, or library; be in public transit vehicles or stations; be in the form of an unsolicited internet pop-up; be on publicly owned or operated property; make medical claims or promote adult-use cannabis for a medical or wellness purpose. Marketing cannot be designed to appeal to people under 21-years-old or disseminate false or misleading information. Any broadcast, cable, radio, print or digital communication advertisements can be placed only where the audience is reasonably expected to be 21-years-old or older.

**Public Safety**

All cannabis-infused products will have separate packaging for each serving, and it must be child-resistant. Packages and labels cannot be made attractive to minors and must warn consumers of any potential impact on human health resulting from consumption of cannabis products. Nutritional fact panels must incorporate data regarding serving sizes and potency. Cannabis products must be tested by approved independent labs.

The use or integration of alcohol or nicotine in cannabis products is strictly prohibited. A person under parole, probation, or other state supervision, or released on bail awaiting trial, cannot be punished or otherwise penalized for the lawful use of marijuana.
Employers

Unless the lawful use of cannabis has impaired an employee’s ability to perform their job responsibilities, it will be unlawful to take any adverse employment action against an employee. This includes refusing to hire or employ a person, barring or discharging them from employment, requiring a person to retire, or discriminating against them in compensation or in terms, conditions, or privileges of employment.

Employers can prohibit or take adverse employment action for the possession or use of intoxicating substances during work hours. The State cannot require an employer to commit any act that would cause the employer to be in violation of federal law or result in the loss of a federal contract or federal funding.

Cultivation

It will be a class A misdemeanor to grow cannabis without a license or knowingly allow it to grow on your land. However, certified medical marijuana patients and designated caregivers (age 21+) may apply for a registration to grow, possess, or transport no more than four cannabis plants per certified patient and no more than eight plants per household. Medical cannabis cultivated at home must be grown in an enclosed, locked space that is not open or visible to the public, and it cannot be distributed, sold, or gifted. Cultivation and processing of adult-use cannabis also cannot be visible from a public place by normal unaided vision.

Transportation

Adult-use and medical cannabis cannot be imported to or exported out of New York State until it becomes legal to do so under federal law. Registered organizations and their agents cannot peddle any cannabis product – including medical marijuana and hemp – from house to house by means of a truck or otherwise where the sale is consummated and delivery made concurrently at the residence or place of business of a consumer. This does not apply to delivery to certified patients or their caregivers.

Hemp

The legislation provides a regulatory framework for industrial hemp. Hemp grown and used for industrial or food purposes (such as fiber or seed) will continue to be regulated by the Department of Agriculture and Markets.

Social Equity

The legislation would implement a social equity licensing and incubator program that provides technical assistance, education, small business coaching, loans, compliance assistance, and mentoring to social equity applicants. This includes people that are members of a community group that has been disproportionately impacted by the enforcement of cannabis prohibition,
have an income lower than 80% of the median income of the county, or who were convicted of a cannabis-related offense prior to the implementation of this new law. It also includes minority- and women-owned businesses and disadvantaged farmers. The Office of Cannabis Management must actively promote applicants that foster racial, ethnic, and gender diversity in their workplace. The legislation would also create a program to review and seal prior cannabis convictions.

Taxation

The Governor proposes to impose three taxes on recreational marijuana. The first tax is imposed on the cultivation of cannabis at the rate of $1 per dry weight gram of cannabis flower and $0.25 per dry weight gram of cannabis trim. The second tax is imposed on the sale by a wholesaler to a retail dispensary at the rate of 20 percent of the invoice price. The third tax is imposed on the same sale by a wholesaler to a retail dispensary at the rate of two percent of the invoice price, but it is collected in trust for and on account of the county in which the retail dispensary is located.

All wholesalers would be required to apply to the Commissioner of Taxation and Finance for a Certificate of Registration prior to commencing business and renew their registration every two years. The initial application and renewal would be subject to a $600 fee.

Revenue

Taxes and fees collected by the State would be deposited in the New York State Cannabis Revenue Fund. The Fund could be used for administration of the regulated cannabis program; data gathering; monitoring and reporting; the Governor’s Traffic Safety Committee; small business development and loans; substance abuse; harm reduction and mental health treatment and prevention; public health education and intervention; research on cannabis uses and applications; program evaluation and improvements; and any other identified purpose recommended by the Director of the Office of Cannabis Management and approved by the Director of the Division of Budget.

The legislation is expected to increase All Funds revenue by $83 million in FY 2021, $85 million in FY 2022, $141 million in FY 2023, and $184 million in FY 2024.
Enacted Budget and 2019 Legislative Session

The Executive Budget proposal described in the previous section was omitted from the enacted 2019-20 State Budget. During the remaining months of the 2019 Legislative Session, lawmakers discussed and amended a competing bill, sponsored Senator Liz Krueger and Assembly member Crystal Peoples-Stokes, known as the Cannabis Regulation and Taxation Act (CRTA). While legislation to legalize adult-use cannabis was ultimately not put to a vote, state lawmakers did move to decriminalize the possession of small amounts of cannabis, expunge low-level convictions, and regulate industrial hemp. The following section describes these measures in more detail.

Cannabis Decriminalization

Status: Signed by Governor

Senate Bill 6579-A (Bailey)/Assembly Bill 8420-A (Peoples-Stokes) decriminalizes possession of small amounts of marijuana. The legislation amends the penal law to remove criminal penalties for possession of any amount of marijuana under two ounces. Under the new law, possession of less than one ounce of marijuana is a violation subject to a $50 fine (previously $100) and possession of between one and two ounces is a violation subject to a $200 fine (previously a Class B misdemeanor). Possession of more than two ounces is still a crime.

The legislation also amends the penal law to remove language that makes smoking in public view a misdemeanor offense and amends public health law to ban the smoking of marijuana anywhere tobacco is prohibited.

Record Expungement

Status: Signed by Governor

Senate Bill 6579-A (Bailey)/Assembly Bill 8420-A (Peoples-Stokes) also provides for the expungement of certain low-level marijuana convictions. Senate Bill 6614 (Zebrowski)/Assembly Bill 8432 (Peoples-Stokes), passed as a chapter amendment, specifies that the chief administrator of the courts must notify the heads of all appropriate police departments, district attorney’s offices, and other law enforcement agencies of all convictions that have been vacated and dismissed.
The Drug Policy Alliance estimates that the measure will allow for the expungement of criminal records for approximately 900,000 low-level marijuana arrests in the past 20 years. While the vast majority of these files are kept in town and court records, some county offices may have relevant records or copies thereof. Please contact your county attorney for guidance related to whether these are to be included in those documents that are to be redacted.

**Hemp Regulations**

*Status: Passed Both Houses*

Senate Bill 6184-A (Metzger)/Assembly Bill 7680-A (Lupardo) would amend the agriculture and markets law, in relation to the growth of industrial hemp and the regulation of hemp extract. The legislation establishes a permitting process under the Department of Agriculture for growers, processors, and marketers and directs the Department to create regulations to address the process and enforcement of licensing provisions.

Manufactures and extractors would be required to have their products tested for quality. Product packaging would also be required to contain labels warning about the potential impact on human health, as well as information about serving sizes and potency.

The legislation would authorize the Commissioner of Agriculture to collect and publish data and research related to growth, cultivation, production, and processing methods. The Commissioner may also work with Cornell Cooperative Extension to promote best farming practices for industrial hemp that are compatible with state water quality and other environmental objectives.

As of the writing of this report, this legislation has not been delivered to the Governor.
Conclusion

During the 2019 Legislative Session, the Governor and Legislature put forward competing proposals to legalize adult-use cannabis in New York State. However, after months of debate, there was not enough consensus to put either proposal to a vote. In the final days of session, state lawmakers instead passed standalone bills to decriminalize cannabis, expunge low-level convictions, and regulate industrial hemp.

Many observers expect the issue of cannabis legalization to return during the 2020 Legislative Session. As outlined in this report, this measure would impact public health, public safety, criminal justice, the economy, and the environment in New York State’s counties. NYSAC will continue to research and communicate the impact to local services and urge state lawmakers to provide counties with sufficient resources for public education and technical assistance.
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28 The Police Foundation, et al.

29 Birch Horton Bittner & Cherot, et al.
