

**WRITTEN TESTIMONY OF THE  
DRUGS AND THE LAW COMMITTEE**

**ASSEMBLY STANDING COMMITTEE ON CODES  
ASSEMBLY STANDING COMMITTEE ON HEALTH  
ASSEMBLY STANDING COMMITTEE ON GOVERNMENTAL OPERATIONS  
ASSEMBLY STANDING COMMITTEE ON ALCOHOLISM AND DRUG ABUSE**

**HEARING ON THE  
MARIHUANA REGULATION AND TAXATION ACT (A.3506-B)**

**October 16, 2018**

*Updated and Resubmitted October 18, 2018*

Good morning, distinguished Committee Chairs and Members, my name is Hanna Liebman Dershowitz. I am an attorney in New York and I am here this morning representing the New York City Bar Association (“City Bar”), in my capacity as a Member of the Drugs and the Law Committee. The City Bar has adopted a formal position, initiated by our Committee, supporting both the policy of taxing and regulating marijuana and the adoption of the well-crafted bill being considered here, Assembly Bill 3506-B, the Marihuana Regulation and Taxation Act (“MRTA”), introduced by Assembly Member Peoples-Stokes et al.<sup>1</sup>

While many states have legalized recreational marijuana, no state has adopted a cannabis legalization scheme by means of legislation.<sup>2</sup> This allows New York to still demonstrate significant leadership by crafting a law through the legislative process that offers a thoughtful model for reform, bringing in best practices and adding innovations. Moreover, given the effect on our state of the elimination of the state and local tax exemptions, there is an additional opportunity to marshal the state’s resources toward better uses through a new revenue stream that also brings good jobs.

By implementing a legal, regulated framework, New York State can avoid the enormously wasteful current scheme that deprives the state of significant resources in terms of

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<sup>1</sup> The City Bar’s report in support of the legislation can be found at <https://s3.amazonaws.com/documents.nycbar.org/files/20072987-MarijuanaRegulationTaxationAct.pdf>.

<sup>2</sup> Editor’s Note issued Oct. 18, 2018: The Committee has determined a clarifying note on this point is needed. While Vermont legalized marijuana use through legislation, the enacting legislation did not include a regulatory structure for sales and the market as New York’s proposed legislation does. New York has the opportunity to use the legislative process to adopt a truly regulated marijuana market.

prosecution costs, court time, jail space, public defense, lab costs, overtime for testimony, etc., Moreover, as I will discuss further, new taxes would create a boon that could be directed to drug prevention, education, and treatment.

The most frequent concern I have found among legislators struggling with this issue is the effect on kids, especially what message regulation sends versus prohibition. To these people I usually point out marijuana's ubiquitousness and availability to our youth, even in a non-legal environment. Having marijuana on the same footing as alcohol and tobacco offers increased opportunities to succeed at effective education and prevention. We do not believe a youthful indiscretion with marijuana (or any drug) should subject any young people to the derailment that comes with a criminal conviction. The criminal justice system is, to say the least, not the optimal treatment environment for people with substance vulnerability.

Moreover, the Committee has examined the extant data on underage use of non-medical marijuana, which preliminary analysis suggests *decreases* with relaxation of punitive measures (although there are some indications of increased use among adults). One seminal study in 2014 by Dr. Esther K. Choo at Brown University's Medical School found decreases in youth consumption of marijuana in all states with relaxed marijuana laws.<sup>3</sup> Other studies have debunked concerns that legalization would increase the availability of marijuana to youth.<sup>4</sup> If this sounds counterintuitive, consider that rates of use have been uncorrelated with stringency of laws or enforcement across decades of previous research, which ultimately failed to establish credibility for a cognizable deterrence effect. In 2017, Colorado reported its lowest rates of teen marijuana use since 2007 and 2008, according to state-level numbers from the National Survey on Drug Use and Health, a longstanding resource for tracking use rates. And rates of teen alcohol, tobacco, and heroin use are down sharply in the state, as well.<sup>5</sup> These same data showed that adolescent marijuana use fell nationwide in 2016.

Another issue that is often raised is that legalization of marijuana could affect roadway safety. However, early data suggests that there have been positive effects from legalization, including drops in traffic fatalities, drops in fatalities due to overdoses on other illicit substances, and overall decreases in crime.<sup>6</sup> According to one study, "The 22 states that legalized medical marijuana... had '1,729 fewer overdose deaths in 2010'—a trend which has continued into 2014... states with medical marijuana have had 24.8% fewer prescription drug overdose deaths

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<sup>3</sup> Esther K. Choo, et al., *The Impact of State Medical Marijuana Legislation on Adolescent Marijuana Use*, 55 J. OF ADOLESCENT HEALTH 160-66 [http://www.jahonline.org/article/S1054-139X\(14\)00107-4/pdf](http://www.jahonline.org/article/S1054-139X(14)00107-4/pdf) (2014), cited in Professor Robert T. Hoban, Esq. and Raushanah A. Patterson, *Sprung From Night Into the Sun: An Examination of Colorado's Marijuana Regulatory Framework Since Legalization*, 226 KY. J. EQUINE, AGRIC. & NAT. RESOURCES L., 260 et seq. (2015-2016)(all websites last visited Oct. 15, 2018).

<sup>4</sup> Douglas A. Berman, *As Colorado Loosened Its Marijuana Laws, Underage Consumption and Traffic Fatalities Fell*, LAW PROFESSOR BLOGS NETWORK (Aug. 11, 2014), [http://lawprofessors.typepad.com/marijuana\\_law/2014/08/as-colorado-loosened-its-marijuana-laws-underage-consumption-and-traffic-fatalities-fell.html](http://lawprofessors.typepad.com/marijuana_law/2014/08/as-colorado-loosened-its-marijuana-laws-underage-consumption-and-traffic-fatalities-fell.html). In 2016, the Drug Policy Alliance released a report concluding again that there was no significant change in marijuana use among youth in Colorado and Washington.

<sup>5</sup> Christopher Ingraham, *Washington Post*, "Following marijuana legalization, teen drug use is down in Colorado," December 11, 2017.

<sup>6</sup> *Supra* n. 2.

during the course of the study.”<sup>7</sup> In Colorado, homicide, rape, and robbery all have decreased in the period following the legalization, and in the same period, burglaries in Denver decreased by 9.5% and overall property crime in the state went down by 7.9%.<sup>8</sup> A recent *American Journal of Public Health* article, in 2017, concluded the following: “Three years after recreational marijuana legalization, changes in motor vehicle crash fatality rates for Washington and Colorado were not statistically different from those in similar states without recreational marijuana legalization. Future studies over a longer time remain warranted.”<sup>9</sup>

While of course New York State would have to pay attention to accident rates in our state, we can expect that they likewise would not be materially affected by the change, unless use rates spiked drastically (contrary to indications in other states). Indeed, despite prevalent use today, our law enforcement officers do an excellent job keeping our roadways safe from impaired drivers. There is no reason to worry that they cannot handle this change. The findings on the comparative danger of alcohol versus marijuana are legion: drunk drivers are the cause of fully one-quarter of all roadway fatalities, while marijuana is barely associated. According to a recent meta-study, “Epidemiological studies have been inconclusive regarding whether cannabis use causes an increased risk of accidents; in contrast, unanimity exists that alcohol use increases crash risk.”<sup>10</sup>

It cannot be denied that a major advantage to legalization is the realization of tax and licensing revenues. In Colorado, the state directed marijuana funds to the school system, and in the March 2016 report by the Colorado Department of Public Safety, the state tallied a 77 percent increase in revenue and spending allocated to schools.<sup>11</sup> In 2015, the state’s schools received new funds of more than \$35 million for capital construction alone.<sup>12</sup> The MRTA currently provides for operational funding and (importantly) research funds to examine the impacts of the legal transition. Then the legislation directs the bulk of the revenues to education, treatment, and community reinvestment grants. The City Bar supports generally and consistently the shifting of funds away from enforcement to treatment and prevention, and we support building strong, healthy, and safe communities across New York State. Thus, we applaud the MRTA’s adherence to these best practices.

A central reason for the City Bar’s support for the State’s shift in approach away from prohibition is that we have significant concerns about the way the laws have been applied disproportionately in communities of color throughout the history of New York’s experiment

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<sup>7</sup> *Id.* at 261, citing Marco Torres, *Marijuana Decreases Death Rates From Pain Killers By Over 30 Percent*, PREVENTDISEASE.COM (Dec. 5, 2014), [http://preventdisease.com/news/14/120514\\_Marijuana-Decreases-Death-Rates-By-Pain-Killers-By-Over-30-Percent.shtml](http://preventdisease.com/news/14/120514_Marijuana-Decreases-Death-Rates-By-Pain-Killers-By-Over-30-Percent.shtml).

<sup>8</sup> *Id.* at 263; see also CDPS Report, *supra* n. 14, at 3-7.

<sup>9</sup> Dr. Jayson D. Aydelotte et al., “Crash Fatality Rates After Recreational Marijuana Legalization in Washington and Colorado,” *American Journal of Public Health*, August 2017.

<sup>10</sup> Sewell, R. Andrew, James Poling, and Mehmet Sofuoglu, “The Effect Of Cannabis Compared With Alcohol on Driving.” *The American journal on addictions / American Academy of Psychiatrists in Alcoholism and Addictions* 18.3 (2009): 185–193. PMC. Web. 15 Oct. 2018.

<sup>11</sup> *Supra* n. 2, at 9.

<sup>12</sup> *Id.*

with banning marijuana. The targeting of black and Latino New Yorkers was not ameliorated by the decriminalization in the 1970s, and it was not corrected even after extensive attention to highly disproportionate police practices that were producing outsize harm on minority communities.

Accordingly, the City Bar supports any feasible attempts to correct for improper impacts of the current policies as we design new ones. Indeed, the bill under consideration has commendable provisions that allocate revenues from the legalized market to bolster communities that have been harmed by historical policies; to shore up our state's public education system, which is a key to drug abuse prevention; and to provide treatment and drug education to youth in our state.

In addition to these important social justice concerns, the City Bar also supports the proposed changes in the law to continue to model a policy of sensible regulation of marijuana.

To that end, the current legislation includes some prohibitions on vertical integration of the market and limits the number of licenses held by individuals in various categories. These types of limitations are designed to allow entry into the market of a variety of license holders, including small businesses, and to avoid undue domination by big players in the industry. The City Bar supports these important aspects of the proposed law.

In keeping with the concerns raised above about helping to reverse, not exacerbate, inequities, the City Bar notes with approval the provisions in the current version of the bill that intend to ensure that individuals who have been charged with crimes in the past, especially drug possession crimes, are not unfairly barred from potentially participating in the legal marijuana economy. We included these concerns in our Report on this topic, in which we also noted that changes from an earlier iteration of the MRTA have made restrictive provisions on licensees less pernicious. It should be noted that if the Bureau of Marijuana Policy interprets this provision broadly or if the provision is made more stringent in the legislative process, it could have the effect of placing a substantial and unnecessary burden on certain individuals by preventing them from entering the legal marketplace for marijuana. The City Bar would urge the Members to retain the improved provisions while ensuring as much access as possible to individuals who have histories of criminal justice involvement.

The City Bar would like to call attention to some additional sensible and thoughtful provisions:

First of all, age: The bill prudently sets New York's legal age for marijuana cultivation, purchase, and use at 21.

In addition, the bill sensibly provides for a broad grant of regulatory powers to the State Liquor Authority to further develop regulations applicable to marijuana producers. This is absolutely in keeping with what experience in other jurisdictions in this and other regulatory practices has shown to be necessary. This approach is particularly warranted in the context of regulating the marijuana industry which, as experience in other states has shown, is dynamic.

The City Bar has examined the issue of federal preemption relating to marijuana's legal status and believes that, as best we can establish in the current environment, it is unlikely that there would be a pronounced or successful challenge to New York taking this action. Based on the available legal precedents and existing practices in medical and general marijuana states, the City Bar holds the position that neither the Controlled Substances Act of 1970 nor other federal law unquestionably preempts state licensure and regulation of marijuana businesses, but we recognize that this is a developing area of law and that the federal political environment plays a role. We rely in our Report on the history of preemption law in this arena, the doctrine of positive conflict, and the current state of the law to reach this conclusion. If you have additional questions, I am happy to elaborate.

In conclusion, the New York City Bar Association supports this Legislation to create a legal, regulated market for adult general use of marijuana in New York State. New York was the first state to turn away from alcohol Prohibition in 1923, helping to turn the tide, and we hope this body will show similar leadership on this analogous issue.

Marijuana prohibition is a costly and ineffective policy that has not succeeded in eliminating marijuana use. The failed policy has devastated families and communities, eroded respect for the law, and strained police-citizen relations. Accordingly, we applaud this body for considering this important policy reform, and urges you to pass this landmark legislation. The City Bar stands behind this position and stands ready to assist the Legislature in any way we can.

Thank you, and I appreciate the opportunity to speak with you this morning. I am happy to take any questions you may have.