



Legislative Affairs  
One Whitehall Street  
New York, NY 10004  
212-607-3300  
www.nyclu.org

## 2021-2022 Legislative Memorandum

**Subject: The Marijuana Regulation and Taxation Act (“MRTA”)  
S.854 (Krueger) / A.1248 (Peoples-Stokes)**

**Position: SUPPORT**

---

For decades, marijuana arrests have had a devastating and disproportionate impact on communities of color. Across the state, more than 80 percent of people arrested for marijuana possession are Black and Latinx. Even though New York decriminalized possession of small amounts of marijuana in 1977, it left in place loopholes that have allowed for hundreds of thousands of arrests to continue taking place. Low-level possession has remained one of the most frequently charged offenses in New York, generating more than 800,000 arrests since 1996.<sup>1</sup>

These arrests have a disastrous impact on New Yorkers, especially in communities of color who have long been the target in the racist war on drugs. Hundreds of thousands of people across the state have been funneled into the criminal legal system for behavior that most New Yorkers do not even believe should be a crime.<sup>2</sup> This entanglement with the legal system can have far-reaching consequences: people have lost their jobs, their homes, custody of their children, and their ability to remain in the country.

In 2019, New York took additional, but limited, steps to undo some of the harms of criminalization, including eliminating misdemeanors for smoking in public and public display of marijuana, lowering some penalty amounts, and expunging some low-level convictions from people’s criminal histories. These steps were important, but they did not undo the devastating consequences wrought by decades of enforced prohibition, nor did they stop racially disparate enforcement from continuing.

Even in the midst of an unprecedented global pandemic, police have continued to make arrests and issue criminal summonses for marijuana charges. In New York City, 93% of

---

<sup>1</sup> New York State Division of Criminal Justice Services (2017).

<sup>2</sup> Sienna College Research Institute, *Voters on End of Session Agenda: ‘Yes’ on Marijuana*, available at <https://scri.siena.edu/2019/06/10/voters-on-end-of-session-agenda-yes-on-marijuana-55-40>.

those arrested or ticketed for marijuana offenses in 2020 were Black and Latinx.<sup>3</sup> All the while, the medical marijuana industry continued to operate as an essential service<sup>4</sup> – an undeniably correct designation but one that lays bare the inequities in the state’s approach to marijuana.

New York has fallen behind as other states have recognized that the era of racist prohibition and criminalization must end. But while New York may not be the first to establish a legal cannabis industry, it can become the national model for the creation of a truly equitable industry by passing **S.854 (Krueger) / A.1248 (Peoples-Stokes), the Marijuana Regulation and Taxation Act (“MRTA”)**.

The MRTA would allow adults 21 and older to legally possess and purchase up to two pounds of cannabis for personal consumption. The legislation would remove cannabis and cannabis products from the state Controlled Substances Act and legalize limited at-home cultivation. And the law would build on past decriminalization efforts by providing a comprehensive mechanism to automatically expunge past convictions under the criminal laws that the bill would repeal. Expungement of these records is a necessary condition for removing the severe collateral consequences that would otherwise prevent countless New Yorkers from rebuilding their lives.

Crucially, the MRTA’s revenue provisions recognize that cannabis legalization is first and foremost a racial justice issue. The bill would generate hundreds of millions of dollars in revenue, half of which would go directly to a Community Grants Reinvestment Fund for job training, after-school programs, and community-centered projects in the communities that were hardest hit by the racist war on drugs. These are often the same communities that have experienced the highest rates of infection and death from the COVID-19 pandemic, so these reinvestment provisions also represent an essential component of the state’s recovery efforts. Another 25 percent of the revenue would be invested in drug treatment programs and public health education, with the remaining funds going toward public schools.

The MRTA also has critical provisions that guard against continued criminalization of Black and Latinx communities. By ensuring that New Yorkers will be able to purchase and possess up to two pounds of cannabis, the law sets an appropriately high threshold before police could ever take possession-based enforcement action. Proposals that set the legal cap at just one or two ounces and that provide for quickly escalating criminal penalties serve only as an invitation for continued stops, searches, and arrests of New Yorkers for low-level possession, much in the same way that this enforcement has continued under New York's current decriminalization regime. The bill would further

---

<sup>3</sup> Jake Offenhartz, *NYPD's Enforcement of Marijuana Laws Still Plagued by Extreme Racial Disparities*, Gothamist, March 10, 2021, <https://gothamist.com/news/nypds-enforcement-marijuana-laws-still-plagued-extreme-racial-disparities>.

<sup>4</sup> Dave Goldiner, *Marijuana Outlets Win “Essential” Status to Stay Open in Coronavirus Crisis*, N.Y. Daily News (Mar. 19, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirusmarijuana-cannabis-20200319-yd7iuhp4sngjhjah5m3dduxipu-story.html>.

end the practice of police officers citing the nebulous “odor of cannabis” as a pretext to stop, search, and harass New Yorkers. Police use of this pretext is so frequent that one New York judge went so far as to suggest that any police actions undertaken pursuant to its invocation should be subjected to a heightened degree of scrutiny and disbelief.<sup>5</sup> This excuse for continued criminalization must no longer have any place in New York law.

Similarly, the MRTA guards against unwarranted and scientifically baseless expansions of police powers in traffic encounters. While we all know that impaired driving – whether from prescription drugs, alcohol, sleep deprivation, phone use, cannabis, or countless other causes – poses a public safety hazard, the MRTA operates under the scientific reality that there is no consensus on how to test for a specific impairment threshold from a substance like cannabis, whose effects vary widely from person to person and that can stay in the body for days after use without producing any active effect.<sup>6</sup> What officers do already have in their toolkits are field sobriety tests, one-leg stand tests, and other long-established techniques for determining whether a person’s driving ability is actually impaired. Instead of rushing to embrace invasive and unproven new policing tactics or tacking on increased penalties for impaired driving, the MRTA allows continued enforcement of laws against driving while impaired in a manner that is grounded in reason, not scientifically-flawed fear-mongering.

Collateral consequences beyond the criminal legal systems are also thoughtfully addressed. The MRTA recognizes that many New Yorkers, including those in public housing, live in buildings that do not permit smoking on the premises. That is why the MRTA has a specific license category for businesses to permit on-site consumption. Under this law, New Yorkers who consume cannabis will not have to risk eviction or otherwise jeopardize their housing status. The law also includes robust protections to guard against loss of child custody or employment and to mitigate potential adverse immigration consequences.

The MRTA is a long-overdue initiative to right a grave, decades-long injustice. It is time for New York officials to step up, stop the harm, and start repairing the damage from the failed war on drugs. The NYCLU **strongly supports** this bill and urges the legislature to pass it immediately.

---

<sup>5</sup> Joseph Goldstein, *Officers Said They Smelled Pot. The Judge Called Them Liars*, N.Y. Times, Sept. 12, 2019 <https://www.nytimes.com/2019/09/12/nyregion/police-searches-smelling-marijuana.html>.

<sup>6</sup> Martha Bebinger, *No Widely Accepted Way To Test Marijuana Impairment In Drivers*, WBUR, Dec. 13, 2016, <https://www.wbur.org/morningedition/2016/12/13/marijuana-driver-impairment-testing>.