

Public Forum on the Marijuana Regulation & Taxation Act

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Testimony of Douglas Greene, Empire State NORML

Senator Krueger and Assemblymember Peoples-Stokes, good afternoon and thank you for inviting Empire State NORML (the New York state chapter of the National Organization for the Reform of Marijuana Laws) to testify about “Creating a System for the Taxation and Regulation of Marijuana in New York State.”

Last year, there were about 36,000 people arrested in New York State whose most serious charge was for violating Penal Law § 221.10, which makes possession of more than 25 grams (but less than two ounces) of marijuana, or any amount of marijuana that is burning or in public view, a class B misdemeanor, punishable by up to three months in jail and a fine of up to \$500.

Based on the work of the Marijuana Arrest Research Project on the cost of marijuana arrests in New York City, we estimate that the cost of a low-level marijuana arrest is \$1,000 to \$2,000 per arrest. So last year alone, New York State spent \$36 million to \$72 million on arresting people for small amounts of marijuana. Over the past decade, we’ve spent \$418 million to \$836 million, to arrest mostly young men of color, mostly from New York City, for small amounts of a plant.

But the financial cost of these arrests is not the most egregious aspect of New York State’s marijuana arrest crusade. That dishonor goes to the collateral consequences on the housing, education and employment of those convicted of marijuana crimes. The over 12,000 people who were convicted last year of violating Penal Law § 221.10 now have permanent criminal records, which will limit their opportunities for the rest of their lives. In 1977, the same year that New York passed the Marijuana Reform Act, former President Jimmy Carter told Congress: “[p]enalties against possession of a drug should not be more damaging to an individual than the use of the drug itself; and where they are, they should be changed.” By passing the Marijuana Regulation and Taxation Act, New York State will finally take heed of President Carter’s advice and fully realize the promise of the Marijuana Reform Act.

Opponents of taxing and regulating marijuana claim that the potential financial benefits are outweighed by the potential costs of increased use and abuse of marijuana. We respectfully disagree. We believe that most adults who want to consume marijuana already do so, and that any potential increased use will represent consumers substituting marijuana for alcohol (which, as President Obama admitted last year, is less dangerous than alcohol “in terms of its impact on the individual consumer”) or other drugs. We would contend that marijuana is already also less dangerous than alcohol in terms of its impact on society, and will be even more so as more jurisdictions adopt taxation and regulation of marijuana and divert revenues away from the black market.

Let’s look at the potential revenues New York State could derive from regulating and taxing marijuana:

- A new forecast estimates that by 2018, national sales of marijuana for adult non–medical use will be approximately \$3.8 to \$4.2 billion.
- A 2010 report by the Cato Institute, “The Budgetary Impact of Drug Prohibition,” estimated that in 2008, New York State spent \$713 million (in 2014 dollars) on prohibiting marijuana and could earn between \$200 million and \$232 million annually (also in 2014 dollars) in tax revenue—so ending marijuana prohibition could net New York State over \$900 million annually.
- And “Regulating and Taxing Marijuana: The Fiscal Impact on NYC,” a report last year from former New York City Comptroller John Liu, estimated that the market for adult non–medical use of marijuana in New York City alone would be \$1.3 billion a year, and would yield approximately \$400 million per year in tax revenue. Applying the assumptions about the amount of marijuana consumption in the Liu report to the state as a whole, the market for marijuana in New York State is probably close to \$3 billion; therefore, adoption of the Marihuana Regulation and Taxation Act (which has a different tax structure than the assumptions of the Liu report) would generate excise taxes of about \$430 million annually (plus sales taxes for local governments that chose to authorize retail sales and impose a sales tax).

As I mentioned earlier though, the benefits of passing the Marihuana Regulation and Taxation Act won’t be primarily financial. We could expect a wide range of benefits, including:

- The ability to shift law enforcement resources from over 2 million past–year peaceful marijuana consumers to violent criminals that threaten our communities’ safety;
- The removal of a key source of income from continuing criminal enterprises, thereby depriving them of fuel for conflicts over market share from Troy to Tijuana;
- A gradual improvement in public health, if use and abuse of other, more toxic drugs, both licit and illicit, declines;
- A reinvigoration of the trust between law enforcement and the citizens they serve, especially in neighborhoods that have been impacted by racially discriminatory marijuana law enforcement;
- A new funding stream for substance abuse, prison reentry and job training programs; and
- A new era of openness regarding drugs and drug policy. Although NORML only takes positions on marijuana policy reform, we support science, reason, compassion and justice—all of which will be enhanced in a state where criminal law is no longer the fundament of our marijuana policies.

The consequences of the Marihuana Regulation and Taxation Act will play out very differently throughout the state. Urban neighborhoods will be free from the marijuana arrest crusade. Suburban areas will have heated debates over whether or not to permit retail sales for off–premises consumption. A few courageous communities will opt–in to experimenting with sales for on–premises consumption, which will be a boon for their hospitality businesses. And as for upstate, marijuana cultivation has the potential to provide jobs that will revitalize hard hit local economies from the soil on up. A colleague of mine from the Syracuse area has been lining up support for marijuana cultivation from local businesses and government officials for years, and is waiting for the Legislature to act.

We thank Senator Krueger for allowing us to have input in drafting the Marihuana Regulation and Taxation Act, and we’re generally quite satisfied with the bill as it was introduced. However, we realize that it will take a multi–year effort to enact the Marihuana Regulation and Taxation Act into law, and welcome the input of all stakeholders, especially that of parents’ groups and the treatment community. We would like to make two suggestions, though:

- Last year, Transform, a British drug policy research group, issued a report on “How to Regulate Cannabis: A Practical Guide.” The Marihuana Regulation and Taxation Act, as currently drafted, imposes an excise tax of \$50 per ounce. The section of the report on tax options suggests that this tax structure may incentivize the sale of more potent strains. Future versions of the Marihuana Regulation and Taxation Act may want to incorporate an alternate tax system, such as an excise tax as a percentage of the retail price, which was the model adopted by Colorado. In any event, we strongly urge policymakers to review this report for a comprehensive overview of the various models and options for regulating marijuana.
- Throughout the enactment of both medical marijuana laws in 21 states and the District of Columbia and Colorado and Washington State’s brave experiments with taxation and regulation for all adults, one constant has been the efforts of local governments to attempt to excessively regulate or ban cultivation or sale of marijuana. Although the Marihuana Regulation and Taxation Act allows towns to opt out of licensing marijuana retailers by referenda, language should be included that specifically prohibits local governments from using zoning and land use ordinances to unreasonably limit the establishment of retail marijuana businesses (i.e. prohibiting businesses that are illegally under federal law). Even more importantly, local governments should be prohibited from unreasonably restricting the rights granted under the Marihuana Regulation and Taxation Act to cultivate and possess marijuana. We would recommend the inclusion of language similar to Article XVIII, § 16(3) of the Colorado Constitution (with appropriate modifications).

Finally, we wanted to emphasize that only by taxing and regulating marijuana will we fully address the broad spectrum of issues related to marijuana that have been the subject of legislative debate here in Albany for decades. As I mentioned earlier, 37 years after the passage of the Marijuana Reform Act, New Yorkers are still going to jail for marijuana that is burning or in public view—while in New York City, having an open container of alcohol is almost always charged as a violation. And it’s been 17 years since Assemblyman Gottfried introduced a medical marijuana bill, but marijuana is medically beneficial for many New Yorkers who don’t suffer from “a severe debilitating or life-threatening condition,” which is the standard to be a certified patient under the Compassionate Care Act. It’s time for a serious conversation about a new approach to marijuana in New York.

Again, thank for you allowing Empire State NORML to testify here today, and I look forward to answering any questions you may have.