



October 30, 2023

To: Senate Subcommittee on Cannabis and the Committee on Finance, Committee on Agriculture and the Committee on Investigations and Government Operations

From: Melissa Moore, Director of Civil Systems Reform, Drug Policy Alliance

Testimony for Joint Hearing to examine issues in the New York State market related to consumer accessibility and retail sale of legal adult-use cannabis

Thank you very much to the committee chairs and members of the Legislature for inviting the Drug Policy Alliance to testify at today's hearing.

The Drug Policy Alliance is the leading organization in the U.S. working to end the drug war, repair its harms, and build a non-punitive, equitable, and regulated drug market. We envision a world that embraces the full humanity of people, regardless of their relationship to drugs. We advocate that the regulation of drugs be grounded in evidence, health, equity, and human rights. In collaboration with other movements and at every policy level, we change laws, advance justice, and save lives.

The Vision of the MRTA

Our organization led the work to pass the expansive provisions in the Marijuana Regulation and Taxation Act (MRTA) that to provide much-needed relief to our community members through restitution for prior criminalization and community reinvestment, protections for New Yorkers across housing, employment, family policing, immigration, and education, as well as the framework for building a regulated market rooted in racial and economic justice. The vision of the MRTA and the decade-long campaign to pass this landmark legislation was to create equity, economic justice, and work to restore communities most damaged by this country's horrific war on drugs.

We have now had an opportunity to see how the MRTA is working in practice. Just because the road has been bumpy and there are hurdles does not mean this is the time to lose our resolve. This is the crucial moment to be able to redouble our efforts to really enact the vision and the transformative opportunity that is a fundamental part of the framework within the MRTA.

In the face of challenges and lawsuits that have waylaid the CAURD program and the initial licensing initiatives, now is not the time to jettison our equity efforts but to be clear on how we can strengthen and build to more effectively achieve our goals.

This is the time to determine and assess how the state of NY can mobilize resources to fulfill the letter of the law. Marijuana prohibition came at a steep price – it cost New Yorkers of color their homes, children, citizenship, and freedom. And while legalization is a welcome change – we

cannot allow New Yorkers of color and/or people from lower economic backgrounds to be locked out of progress or this new industry.

Legal Market Structure and Provisions in the MRTA

The MRTA contains specific guardrails in anticipation of large corporate entities' attempts to saturate and control the market.

When NY legalized medical marijuana in 2014, a campaign DPA also led with our allies, the state only allowed for 5 licenses – most of which went to white people backed by venture capitalists. Only one company was woman-run and NY-based, and all of them were and are white-led. In subsequent years, New York allowed 5 more registered organizations to obtain licenses and the demographics did not change significantly. The medical marijuana companies in New York, many funded by out-of-state interests and venture capitalists, demonstrated over the years of the MRTA campaign that they wished to corner the legal adult use market as well.

Due to this experience, the MRTA sponsors, Senator Krueger and Majority Leader Peoples-Stokes and their colleagues who voted for the MRTA, were clear that adult-use legalization in New York would not operate under a business-as-usual model and would certainly not mirror the oligopoly of the medical marijuana program.

In the MRTA, the Legislature codified and gave authority to the Office of Cannabis Management to establish regulations and enact policies that intentionally center diversity and inclusion. These efforts are vital to prevent the marijuana industry from propagating inequality. The MRTA also designated a licensing structure designed to create a favorable environment for small businesses and family-scale farmers creates space for entrepreneurial efforts to be launched in small towns and rural areas, as well as disproportionately impacted communities across the state.

For these reasons, the MRTA bans vertical integration (aside from micro-licenses for home-scale businesses) to provide the maximum amount of space for new companies to develop and contribute to a New York-focused market. Similar to New York's craft wine and beer industry, which has seen phenomenal growth, the MRTA also encourages small-scale production and sale via micro-license. For the Registered Organizations in the medical program who want to participate in adult-use, the MRTA requires that they pay a fee – which is substantial and to be invested into the social equity program – for an adult-use cultivator processor, distributor retail dispensary license. And the MRTA limits them to retail adult use cannabis at no more than three of their medical cannabis dispensing locations. Additionally, the MRTA lays out that “no registered organization adult-use cultivator processor distributor retail dispensary shall have a direct or indirect interest, including by stock ownership, interlocking directors, mortgage or lien, personal or real property, management agreement, share parent companies or affiliated organizations, or any other means, in any premises licensed as an adult-use cannabis retail dispensary or in any business licensed as an adult-use cannabis retail dispensary.”

And for the rest of the market, “No person may have a direct or indirect financial or controlling interest in more than three adult-use retail dispensary licenses issued.”

We know that legalizing marijuana won't and can't in and of itself transform our dominant market economy--but we have an opportunity to disrupt business as usual and work to center communities and build wealth in the neighborhoods that bore the brunt of criminalization as we build this new industry in New York.

Under the framework designated in the MRTA and given specificity by the OCM regulations, licenses will be awarded to produce, process, test, dispense, distribute, and deliver marijuana. Crucially, these license categories have tiers, so that there are entry points for small businesses and individuals to participate in the market and build ownership and wealth in communities that are traditionally sidelined.

However, due to a number of factors – the high risk associated with starting a marijuana business, the continued lack of broad access to financing options, the lack of access to insurance, and the cost-prohibitive nature of operating a regulation-compliant business – it is imperative that New York state continue to provide additional support to small-scale entrepreneurs, particularly those of color, in alignment with the MRTA’s goal of building a diverse and inclusive market.

Impacts of the MRTA in the Lives of New Yorkers

Additionally, this is a moment to reflect on how the MRTA has quietly but profoundly shaped how New Yorkers can access jobs, housing, education, and keep their families together with protections for parents and safeguards against deportation.

Dispensaries are the shiny focal point of much of the public and media attention in New York’s legalization process – but the Marijuana Regulation and Taxation Act (MRTA) that was passed into law in 2021 is a broad-reaching bill that addressed the myriad ways punitive responses to cannabis impact New Yorkers’ lives and set our state on a new course.

If we want to have a conversation about the implementation of the MRTA so far, let’s have a full assessment of all of its core components – not just the tip of the iceberg that’s business-facing.

With NYS now accepting and considering license applications for adult-use dispensaries, let’s balance the books on the MRTA thus far. In business accounting, the ledger includes gains and losses. While much of the frenzy has focused on retail licenses, over the past two-plus years the MRTA has quietly but profoundly reshaped how New Yorkers can access jobs, housing, education, and keep their families together with protections for parents who consume lawfully and safeguards against deportation.

Because of the MRTA, people aren’t facing roadblocks from a prior criminal record for cannabis as they did before. For decades, New Yorkers applying for thousands of types of jobs across the state had to disclose their prior marijuana arrest, often leading to doors to employment and higher education being slammed in their faces. Those seeking a wide variety of professional licenses were blocked from obtaining them because of a cannabis conviction, leaving them to operate in the shadows or not at all. But the marijuana justice campaign led to New York [establishing expungement for the first time in 2019](#), and in the wake of the MRTA’s expanded expungement and reclassification becoming law, hundreds of thousands of New Yorkers are now free from the burden and barriers of a record. These provisions in our landmark legalization bill provided [stepping stones for broader justice initiatives](#) dealing with expungement, like the [Clean Slate Act](#), which is now awaiting the Governor’s signature.

Because of the MRTA, people are [no longer drug tested for marijuana as a condition of employment](#) or as job candidates. For decades, New Yorkers applying for work and even those already in stable jobs were routinely required to submit to dehumanizing drug tests in order to

get or maintain work. Despite there being [no proof](#) that drug testing employees increases productivity or predicts impairment, millions of New Yorkers had their job opportunities blocked because of the widespread practice. The marijuana justice campaign worked with NYC Council to pass [groundbreaking legislation](#) limiting pre-employment cannabis testing for most positions in 2019, and the MRTA extended these protections for workers statewide and to existing employees who should not face penalties for lawful consumption off-the-clock. These protections now serve as a north star for other states and cities across the country like California and Washington D.C. that are adapting their labor laws in line with legal adult use.

Because of the MRTA, people are no longer being [separated from their families](#) through child protective services cases over solely marijuana and people with immigration status complications have an [avenue for record relief that will shield them from federal deportation](#) over a New York marijuana offense. Due to protections in the MRTA, a Black mother from the Bronx recently [sued](#) the NYC Administration for Children's Services for improperly sequestering her newborn from her at the hospital and subjecting her and her family to months of invasive investigations; [ACS settled with her for \\$75,000](#) – and now there is a template for any future lawsuits needed to hold this and other agencies accountable under the protections in the bill.

Because of the MRTA, police can no longer stop, search, question, or harass young people by using cannabis enforcement as the justification. In the year before statewide marijuana reform passed, a mob of police officers in Brooklyn swarmed a young Black teen outside of a park in Brooklyn and video shows them [viciously beating him](#) as he pleads for his mother -- all because officers claimed to smell marijuana. Lawmakers were very clear about provisions in the MRTA that removed the alleged odor of marijuana as probable cause for a police interaction. This had been one of the driving forces of the massive racial disparities in marijuana arrests and enforcement in the years prior to legalization and a [fundamental violation of New Yorkers' civil rights](#) – now that tool has been removed.

Because of the MRTA, students are not being strip-searched without their parents consent over suspicions of marijuana, as was the experience of [four 12-year-old Black girls in Binghamton in 2019](#). Young people now have educational resources that are factual and underscore the risks of use – and create space for them to speak with knowledgeable and trusted adults without the fear that they will get in trouble.

Because of the MRTA, people are not facing eviction or [permanent exclusion from housing over marijuana](#). Decade after decade, New York tenants were kicked out of housing or had to grapple with the gut-wrenching reality of not allowing family members who had a prior marijuana arrest from coming to even visit on public housing grounds – if they did, any family member resident could be evicted.

In our work to pass the MRTA we were clear that the remedies for the devastation caused by New York's marijuana arrest crusade needed to be just as comprehensive as the harms done to people and communities.

We can't snap our fingers and immediately undo the decades of damage wrought by punitive marijuana policies that have harmed people across nearly every aspect of daily life, but the MRTA set forth powerful retroactive justice provisions and forward-looking protections to build a foundation for New York rooted in personal and community safety and equitable access to necessities like housing, jobs, and education.

It's easier to focus on a single complicated aspect of a new system, like dispensaries, than it is to zoom out and look at the full picture of all the damage that has not happened because of the far-reaching protections in the MRTA. More work lies ahead in New York's new era post-prohibition and at the federal level to secure protection for public housing residents and immigrants, and we will continue centering justice, equity, and repairing the harms.

Federal Cannabis Reform Considerations

In 2021, President Biden promised to "[decriminalize the use of cannabis and automatically expunge all prior cannabis use convictions](#)," as well as eliminate mandatory minimums for all drug convictions. However, rescheduling marijuana to Schedule III fails to fulfill these promises. While this announcement has significant symbolic value, a move to Schedule III would do little to address the most serious harms impacting communities that have been disproportionately targeted by marijuana criminalization. To be clear, the continued placement and control of marijuana under the Controlled Substances Act (CSA) would mean that most marijuana conduct would remain illegal under federal law.

Unfortunately, rescheduling marijuana to Schedule III would allow the failures of criminalization to continue. State medical and adult-use marijuana programs will still remain federally illegal, meaning patients, consumers, and workers would remain subject to federal arrest; noncitizens would remain subject to deportation simply for possessing marijuana or working in the industry; and federal marijuana arrests and prosecutions will continue, previous arrests will not be expunged, and thousands will remain incarcerated in federal prison for marijuana violations. It also means that federal benefits, such as housing and nutritional assistance, will still be denied to certain people with previous marijuana convictions and the federal government will continue to be unable to foster a fair business environment that allows small and minority-owned marijuana businesses to compete with large corporate marijuana operators.

While we appreciate the historic nature of this announcement, rescheduling falls woefully short of President Biden's promise and the relief our communities need now. DPA continues to call on President Biden to actively work with Congress to pass comprehensive legislation such as the Cannabis Administration and Opportunity Act (CAOA, S.4591) that ends federal marijuana criminalization and repairs the harms caused by decades of racist enforcement of marijuana laws.

Additionally, even while marijuana remains in Schedule I, the President and his administrative agencies should work with advocates and those who have been directly impacted by marijuana criminalization to limit the harms of marijuana criminalization. These incremental actions could provide meaningful reform to those who have suffered the most under decades of racially discriminatory and class-based enforcement of marijuana criminalization.

Passage of SAFER Banking Act Out of Senate Banking Committee

This September, the Senate Banking Committee marked up and passed the [Secure and Fair Enforcement Regulation \(SAFER\) Banking Act \(S. 2860\)](#) out of committee in a 14-9 vote. This bill was introduced as an updated version of the Secure and Fair Enforcement of Banking (SAFE) Act (S.1323) – a bill that DPA and Cannabis Regulators of Color Coalition improved prior to its introduction and had been working to strengthen to promote fairness in marijuana banking. While it's encouraging to see some positive changes that promote fairness for small and minority businesses, important fixes are still needed to ensure small businesses and people with past marijuana criminal convictions aren't left behind.

My colleague Maritza Perez Medina, Director of the Office of Federal Affairs at the Drug Policy Alliance, commented: “Although DPA acknowledges minor and technical changes in the SAFER Banking Act that reflect our ongoing efforts to ensure marijuana banking legislation promotes fairness for small and minority businesses, we continue to take a position of neutrality on this bill. This is because SAFER fails to explicitly ensure that federal banking regulators will issue guidance that is fair for individuals with past marijuana criminal records. By failing to address the “red flag” issue, people with previous marijuana convictions may continue to be denied access to banking services. Despite leaving this issue unaddressed in the bill, Congressional leaders can still urge the Treasury Department to fix this problem when it updates its guidance for banks. We look forward to continuing our work with Congress and the administration to ensure fairness and equity remain at the center of federal marijuana policy reform.”

As originally identified by the [Cannabis Regulators of Color Coalition](#), existing guidance from federal banking regulators considers criminal records, including past marijuana criminal records to be “red flags” or an automatic indication that a business may be engaged in illegal activity. A banking customer with a red flag may be rejected for banking services, have their accounts shut down, or face greater fees compared to other customers. Since the federal guidance was issued in 2014, many states have laws that have sought to expunge records associated with past marijuana criminal records and/or allow individuals with past marijuana criminal records to participate in state regulated markets. Without this change to SAFER, past marijuana criminal records may continue to be viewed as “red flags,” preventing individuals lawfully participating in state regulated markets from having fair access to banking. Given the vast racial disparities in marijuana arrest rates, this type of policy both disproportionately impacts Black and brown business owners who already face disparities in access to traditional banking and thwarts state laws promoting criminal justice and regulatory reform.

To address this issue, DPA advocated for amending the SAFER Banking Act to ensure that updated guidance created an exception for expunged marijuana criminal records; criminal records for activity that is no longer illegal in the state; and criminal records for activity that no longer disqualifies an individual from obtaining a state marijuana business license. [DPA also sought additional amendments](#) to promote fairness and improve data collection and reporting. Although the SAFER Banking Act is moving forward without these improvements, [DPA and our allies will continue to advocate](#) for explicit protections for individuals with past marijuana criminal records in future reforms through legislative and executive action. Notably, the Treasury Department can update their guidance to resolve the red flag issue despite it not being explicitly required in the SAFER Banking Act.

Conclusion

We look forward to further conversations with the Legislature regarding the implementation of the MRTA and how New York state can support efforts that will set us on a course to achieving the ambitious justice and equity goals codified in the MRTA.

Thank you for your time,
Melissa Moore