



Testimony

of

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before the

New York City Council Committee on Health

on

**Accessing the State's Medical Marijuana Program and its Intersection with a Recreational
Marijuana Program**

April 10, 2019
City Hall, Council Chambers
New York, NY

Good morning, Chair Levine and members of the Health Committee. My name is Dr. Hillary Kunins, and I am the Acting Executive Deputy Commissioner for the Division of Mental Hygiene at the Department of Health and Mental Hygiene. On behalf of Commissioner Barbot, thank you for the opportunity to testify on medical and adult-use cannabis legalization. It is crucial that we maintain a strong public health approach to cannabis legalization as debates move forward here and in Albany, and I appreciate your time and support for these issues.

A public health approach to cannabis legalization must not overlook that cannabis use is associated with some health risks. While many people report feeling euphoric or relaxing effects from cannabis, we know that some people may experience harmful effects. Studies show that regular or heavy use, or use in adolescence, can lead to addiction in some cases. Additionally, smoking cannabis is associated with conditions like asthma and bronchitis, but there is no evidence to date that it increases an individual's risk of tobacco-related cancers, like lung and throat cancers. Importantly, some people experience cognitive impairment while using cannabis and for a short time after, but these effects are temporary—what people commonly describe as feeling 'high'. This can affect a person's ability to drive safely. In some rare cases, people may experience temporary psychotic symptoms like hallucinations or delusions. Whether cannabis use increases a person's risk of developing a chronic mental health disorder is still uncertain.

Much remains unknown about the health effects of cannabis use because research has been limited, in large part due to its federal classification as a Schedule I drug, which imposes barriers for researchers and funding. Cannabis should be removed from the federal drug schedule to allow for more research on the health effects of cannabis, as well as the potential benefits of cannabis for medicinal purposes.

These potential risks underscore the City's commitment to ensuring that cannabis use is only accessible to adults – those 21 years and older. However, equally important to address is that the prohibition of cannabis has caused great health and social harms, overwhelmingly to Black and Latino individuals and communities. Cannabis legalization must also address the harms of criminalization and prohibition that so many New Yorkers live with every day while reducing the potential health harms of cannabis use that I described. For example, we know that criminalization is linked to a range of adverse health and social outcomes at the individual and community levels. Having a drug record can limit access to public benefits, housing assistance, employment, and college aid, and may lead to family separation or deportation. We must acknowledge the long-term effects of criminalization on individuals and communities as we consider cannabis legalization.

Now let me turn to the City's efforts in regard to the legal cannabis debate. Last July, the Mayor convened the Mayor's Task Force on Cannabis Legalization (Task Force) to identify the goals and challenges that should guide the City's preparations for potential legalization. The Mayor's Office of Criminal Justice coordinated the Task Force which included representatives of relevant City agencies, including the Health Department. Five subcommittees comprised the Task Force: Licensing and Land Use; Economic Opportunity; Taxation and Finance; Law Enforcement and Social Justice; and Public Health, Social Services, and Education. These subcommittee met regularly to develop the recommendations reflected in the final report. Members consulted with community groups and subject experts and studied jurisdictions that

have legalized and regulated the adult use of cannabis. In December, the Task Force published its final report, which called for a strong, public health-focused regulatory framework and the empowerment of local government to prevent large corporate dominance, to foster small businesses, and to meet the demands of diverse New York City communities. The report also places great emphasis on the need to ensure that any cannabis industry in New York State redresses the impacts of past criminalization and drives economic opportunity to historically marginalized communities.

The Task Force ultimately developed a viable roadmap for legalization in New York City. We have taken lessons learned from other jurisdictions and adapted best practices to meet the unique needs of our city. Building the regulatory structure for legalized cannabis should be a long-term dialogue and partnership between City and State health, safety, economic, and community actors at all levels. We look forward to ensuring that the policies that emerge from this process are consistent with the City's commitment to health equity and protect the health, safety, and economic wellbeing of all New Yorkers.

Of course, much of the future of cannabis legalization and the way it takes shape in New York lies in the hands of the State and the legislation currently under debate in Albany. I want to briefly summarize our public health priorities and goals related to cannabis legalization and encourage the Council to review the Task Force's full report for greater detail and information. We hope the State legislation will allow the City to pursue these priorities. Representatives of the Administration are advocating for the City's positions in Albany, and we look forward to any opportunities for our partners in the City Council to join us in that effort.

First, we believe that a legal cannabis framework must allow both state and local government to protect New Yorkers from the adverse consequences of a newly legalized adult cannabis market through strong regulations that ensure the safety and health of New Yorkers, particularly youth. At the same time, new enforcement measures must be carefully tailored to avoid criminalization of the same communities of color that have already borne the brunt of cannabis criminalization and mass incarceration. Thus, it's critical that legalization in New York avoid perpetuating or creating punitive responses to cannabis violations. Government should impose civil rather than criminal penalties for violations of cannabis regulations to the greatest extent possible consistent with public safety. The Administration believes that the purchase and possession of cannabis should be limited to adults ages 21 and over, and that locally-regulated consumption sites be established where adults can use cannabis without fear of arrest or public disruption. Promoting public health and safety, impeding the unregulated market, and redressing the harms resulting from the disparate enforcement of cannabis criminalization, should all guide legislative and regulatory solutions.

While it is critical that localities have a meaningful role in regulation, there are certain aspects of legalization policy that must be implemented at a statewide level. Any legalization framework must include automatic expungement of all criminal records for past cannabis offenses that would be legalized. This is critical for repairing the harm experienced by individuals who have been disproportionately targeted by cannabis enforcement. Likewise, there must be a full decriminalization of individual cannabis use, possession, and sale to align regulation of this newly legal product with other adult-use consumables, such as alcohol and

tobacco. In other states that only partially decriminalized cannabis, total arrests have decreased but racial disparities have persisted and, in some cases, have widened. In addition, cannabis revenue should be directed to municipalities and reinvested in communities that have disproportionately borne the negative effects of cannabis prohibition.

Second, given that the harms of cannabis consumption are concentrated among younger users, access to cannabis must be limited to adults 21 years and older. Additionally, it is important that product packaging and labeling do not promote underage use or appeal to children. While this could take many different forms packaging should not mirror that of candy and all packaging should clearly label all products containing cannabis and detail the risks associated with use.

Third, in order to ensure product safety, the Task Force recommends a statewide “seed-to-sale” supply chain tracking system. Tracking cannabis products across the life cycle from growth to the point of sale will ensure that New Yorkers are obtaining cannabis that is inspected and meets safety standards, while preventing product spillover between the legal and illicit markets. This will help adults who choose to use cannabis to know what is in each product.

Fourth, the diversity of cities and towns throughout New York State demands unique and tailored regulations with regard to sales, consumption sites, and home cultivation. New York City’s population density raises special concerns about the siting of retail outlets and consumption spaces, as well as the safety of home cultivation procedures. As such, the Task Force has recommended that state cannabis laws and regulations incorporate local control.

Finally, the Health Department’s robust drug surveillance has played a key role in the City’s response to the current opioid epidemic. Building out this infrastructure to monitor and evaluate the effects of cannabis legalization in advance of and throughout the legalization process will help us fine tune our policies and adjust course when necessary, to keep New Yorkers healthy.

Briefly, I would like to touch on medical cannabis. Under New York State law the New York State Department of Health has regulatory control of medical cannabis and localities are pre-empted from further regulating the program. In recent years, the legislature has added new categories to the list of authorized conditions for which physicians may certify medical cannabis. For further questions on access to medical cannabis, we would encourage the Council to contact the State Department of Health.

As the cannabis legalization discussions move forward, I do want to make one critical point regarding the medical cannabis industry. From a public health and racial equity perspective, it is important to keep medical and recreational cannabis businesses separate to avoid vertical integration and dominance by these already established corporations in New York’s cannabis industry. Existing licensed medical cannabis purveyors should not be granted preferential treatment in recreational cannabis licensing, nor should they be allowed to maintain vertical integration of their supply chain if they choose to enter the recreational market. Based on the experiences of other jurisdictions, the Task Force is concerned about the anticipated negative consequences of vertically-integrated businesses, which require large amounts of startup capital

and are difficult to operate as small businesses. In particular, we are concerned that such vertically integrated businesses will edge out smaller, local businesses owned and operated by persons from communities of color and poor communities. Our efforts to safeguard and improve the health, social, and economic well-being of New Yorkers go hand in hand with addressing the structural impediments to our health equity aims, learning from how we regulate other adult-use products such as tobacco and alcohol, and examining the best practices and lessons learned from other jurisdictions who already have legal cannabis.

I want to thank Chairman Levine and the committee members here today for your dedication to public health in our city. Together we will build a framework for cannabis legalization that is grounded in racial justice, health equity, and public safety.

I am happy to take questions.



To: New York City Council Committee on Health

Date: April 10th, 2018

Re: Testimony regarding Oversight -- Accessing the State's Medical Marijuana Program and its Intersection with a Recreational Marijuana Program.

The Drug Policy Alliance appreciates the opportunity to submit testimony to the New York City Council's Committee on Health. The Drug Policy Alliance is the nation's leading organization working to advance policies and attitudes to best reduce the harms of both drug use and drug prohibition and to promote the sovereignty of individuals over their minds and bodies.

The Drug Policy Alliance and the statewide Start SMART campaign—Sensible Marijuana Access through Regulated Trade—support the Marijuana Regulation and Taxation Act (S.1527), because it will remove a tool that has been used to harm communities by effectively ending the ineffective, racially biased, and unjust enforcement of marijuana prohibition in New York and create a new, well-regulated, and inclusive marijuana industry that is rooted in racial and economic justice.

Ending marijuana prohibition and taxing and regulating marijuana for adult use in New York is smart for our communities, for racial justice, and for our state's economy.

The Drug Policy Alliance organized in support of New York's Compassionate Care Act. We are disappointed with the implementation of the medical program and did not set out to advance policy that would create a restrictive medical marijuana industry. The limitations of the medical program and the continued criminalization of New Yorker forced us to reassess our advocacy goals, we recognize that to end criminalization and promote equitable access, New York had to end marijuana prohibition.

The work to advance policy that creates an equitable and regulated marijuana industry is separate from our efforts to reform New York's medical program. Post-legalization, patients will still require medical guidance as it relates to medicinal marijuana use. We recognize that healthcare providers are best positioned to assess patients and administer appropriate doses. We also recognize the impracticality of the medical program and can predict that patients will bypass the onerous medical regulations and secure products on the legal market once it becomes established. If this is an area of concern for the state, then the correct course of action is to significantly reform the medical marijuana program.

The Marijuana Regulation and Taxation Act supported by the Drug Policy Alliance is in no way meant to interfere with the state's medical marijuana program. DPA recognizes that patients prescribed marijuana under the care of the licensed physician will continue to require physician guidance in order to effectively administer the medication. However, there are a number of flaws within the state's current medical program that need to be corrected so that the recreational use and

medical use can remain distinctive categories. New York's medical marijuana regulations are among the most restrictive in the country. A slate of regulations introduced after the Compassionate Care Act was signed severely constrained the program and patients who would benefit from the program were either geographically isolated from the few available dispensaries allowed to administer the product, or could not afford the marijuana at a regulated dispensary. The New York State Department of Health released a two-year report evaluating the implementation of the medical marijuana program found that patients purchased medical marijuana products at a licensed dispensary at a single visit and return visits were minimal; product cost, efficacy, and distance to the dispensing facility were listed as deterrents to repeat visits.¹ In order to remedy some of the programmatic inefficiencies, the DOH offered a slate of recommendations to improve the program.

The restrictiveness of the medical marijuana landscape has raised concerns regarding the potential for medical patients to rely on recreational marijuana to self-medicate. In order to avoid this unintended consequence, it is important to loosen the medical marijuana regulations to improve patient access. The New York State legislature continues to introduce bills to reform the Compassionate Care Act. Assemblymember Gottfried and Senator Savino introduced legislation that will expand the list of conditions that can be treated with medical marijuana and grant more discretion to healthcare providers; if passed patients with illnesses not included in the program requirement can enroll in the state's medical program. There is also legislation that will allow medical marijuana to be smoked instead of being restricted to oils, tinctures and other non-combustible forms of ingestion. If passed, this will significantly reduce the cost of products and benefit patients who do not get the medicinal effects from non-flora products.²

Through the effort of patients and caregivers, there are numerous corrective bills up for consideration in the legislature none of them interfere with the legislative effort to create a recreational market. DPA supports these measures, but we believe that it is unwise for the council to ask the legislature to pass legislation that will rectify conflicts between the state's medical program and the potential recreational market. Nor do we support further studies that can potentially slow down or otherwise derail the movement to legalize marijuana.

Conclusion

The stigma which led to prohibition has integrated into New York's attempt at a medical program, negatively impacting many of the patients who helped organize for the Compassionate Care Act. It is unrealistic to think that medical patients won't turn to recreational marijuana if and when it becomes available if there aren't significant program improvements. They are acting in their best interests.

In the interim, drug law enforcement continue to disproportionately impact Black and Latinx New Yorkers who were targeted for arrest. The failures of the medical marijuana program should not delay the end of prohibition policy.

¹ *Medical Use of Marijuana Under The Compassionate Care Act*. New York State Department Of Health, Two Year Report

² Related to the forms of marijuana authorized for medical use "New York State A01032/S00490 (2019)"

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(PLEASE PRINT)

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Address: Acting Exec. Deputy Commissioner

I represent: DOHMH

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Address: Drug Policy Alliance

I represent: _____

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I represent: HOBAN LAW GROUP

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