

# The Implementation of Marijuana Legalization in New York

Souparno Mitra, M.D., and Sanya Virani, M.D.

In 2018, Governor Cuomo tasked the Department of Health (DOH) with studying the anticipated impact of legalizing recreational marijuana use in New York State. DOH concluded that the positive effects of a regulated marijuana market outweighed the potential negative impact but that implementation required close monitoring of usage, education of specific populations, and regular and rigorous evaluation. In states where cannabis is legal, studies

have shown associated decreases in crime rates and increases in financial resources. Conversely, accidental ingestion in children and accidents following ingestion had increased. The road ahead is fraught with challenges, especially because of the nonuniformity in federal and state laws.

*Psychiatric Services in Advance* (doi: 10.1176/appi.ps.201900030)

In January 2018, New York Governor Andrew Cuomo tasked the New York Department of Health with studying the anticipated impact of legalizing recreational marijuana use in the state (1). After exhaustive deliberation, the Department of Health published its report in July 2018, concluding that the positive effects of a regulated marijuana market in New York State (NYS) (regulation of consumer market, revenue generation, reduction in criminalization for illegal possession, and therapeutic benefits for some medical conditions) outweighed the potential negative impact (adverse mental health consequences and other health risks). The overall recommendation, however, also included close monitoring of usage, education of specific populations, and regular evaluations with rigorous metrics.

Marijuana is placed in Schedule I of the Controlled Substances Act, which was enacted in 1970 to enforce measures to combat the nation's narcotic and drug problem. In 2011, Governors Chafee of Rhode Island and Gregoire of Washington petitioned the Drug Enforcement Administration to remove marijuana from Schedule I, but per recommendations from the U.S. Department of Health and Human Services, it continues to remain there. In NYS, medical marijuana is permitted for the management of cancer, HIV and AIDS, amyotrophic lateral sclerosis, Parkinson's disease, multiple sclerosis, spinal cord injury with spasticity, epilepsy, inflammatory bowel disease, neuropathy, Huntington's disease, posttraumatic stress disorder, and chronic pain (2). It has also found application in the treatment of pain, nausea, cachexia, tremors in Parkinson's disease, and epilepsy. The affected individual must obtain a certificate from a practitioner registered with the medical marijuana program.

In 2016, Joseph Bishop-Henchman (3), executive vice president of the Tax Foundation, found that legalized cannabis had become the fastest growing industry in the United States, with the market tax revenue in Colorado expanding from \$56 million in 2014 to \$113 million in 2015. Thus far, 10 states (Alaska, California, Colorado, Maine, Massachusetts, Michigan, Nevada, Oregon, Vermont, and Washington) and the District of Columbia have legalized the use of cannabis for adults 21 years of age or older. Importantly though, use of cannabis continues to be prohibited under federal law. With Colorado and Washington having reached their 5-year mark of cannabis legalization in 2017, NYS is set to follow. We present an overview of the implementation of marijuana legalization in the states of Colorado and Washington and discuss the possible implications of its legalization in NYS.

## Current Marijuana Policies in NYS

According to current laws, possession of less than 100 kg of marijuana is punishable by 1 year in prison or a \$1,000 fine.

### HIGHLIGHTS

- In January 2018, the governor of New York put together a task force to make recommendations on the feasibility of establishing regulated marijuana use in the state.
- Discussed are the possible legal, financial, and medical advantages and disadvantages and the possible impact of legalization of regulated marijuana use in New York State.

The only exception is a valid prescription of medical marijuana prescribed by a registered medical practitioner.

The laws in NYS for the use of marijuana are also quite restrictive. There are only 20 licensed dispensaries available statewide. Registered organizations need to pay a \$200,000 fee, and although physicians prescribe marijuana, the dosing is decided by the dispensaries. The certificate provided by the practitioner is valid for 1 year (or until death) for an individual with a terminal illness. The federal laws apply to states that have no medical marijuana programs; therefore, possession of medical marijuana in these states, even if procured from dispensaries, is illegal.

### Advantages of Legalization

Studies have associated the establishment of medical marijuana laws in certain states with a reduction of 25% in opioid-related deaths nationwide. Medical marijuana is being used as a substitute for opioid prescriptions for pain relief (4). According to Nathan et al. (5), there are documented health risks caused by ingestion of molds and spores associated with illicit marijuana use. This is the result of unregulated production, which could be reduced by ensuring government monitoring of production, distribution, and quality control.

Arrests for marijuana possession in NYS occur in as many as 535 per 100,000 people; this is the highest in the United States (6). Legalization could decrease these rates and reduce overutilization of manpower, legal resources, and even jail space due to arrests related to cannabis. According to a report by the Federal Bureau of Investigation, crime rates have dropped in Washington and Colorado (from 289.1 per 100,000 people in 2013 to 285.2 per 100,000 people in 2014 for violent crimes and from 3,710.3 per 100,000 in 2013 to 3,706.1 per 100,000 in 2014 for property crimes in Washington). Marijuana use has also remained stable among adolescents since legalization according to the *Evaluation and Benefit-Cost Analysis: Second Required Report* by the Washington State Institute for Public Policy.

Given that about 1.27 million adult residents of NYS are consumers of an average of 5 ounces per year (7), the annual projected revenue after legalization is between \$248.1 and \$340.6 million, which could potentially be diverted to social welfare projects. Another major advantage is the growing interest in researching the use of components of cannabis to ascertain which ones have tangible medicinal effects. This could decrease the need for obtaining Schedule I permits prior to conducting research on these products, making the process less cumbersome and more effective.

From a public health perspective, legalization would allow consumers to make informed choices while purchasing because the masses would become more aware of various products and components. By extension, it could bring about a decrease in the consumption of synthetic and other potentially dangerous psychoactive substances.

### The Plan for Marijuana Legalization

Governor Cuomo presented his plan for legalization of marijuana in January 2019. The creation of a new Office of Cannabis Management to regulate the marijuana industry was proposed and this office would prohibit cultivation license holders from also operating retail outlets. Additionally, it would also create a process to review and seal prior marijuana conviction records. The governor is proposing to ban home cultivation of marijuana by recreational consumers, though the plan would allow medical cannabis patients and their caregivers to grow their own medicine.

Criminalization of adult cannabis has placed much economic burden on society, and this has especially affected communities of color. In 2017, approximately 1.6 million people were arrested in the United States for drug-related offenses, of which 40.4% were related to cannabis possession and sale (8). Close to 90% of those arrested in NYS were black or Hispanic. Once implemented, New York will become the 11th state to bring a complete end to cannabis prohibition. This plan places much emphasis on helping groups that have been disadvantaged because of cannabis-related criminal records. One of the basic tenets is the decriminalization of marijuana up to a certain level of possession and expungement of prior felonies.

The plan also emphasizes the need for consumer protection and information-tracking systems. It recommends the development of a flexible framework for licensing and permitting local government to have authority over land delegation and restriction of personal cultivation.

The overarching idea is to guard consumers against unregulated products by prohibiting unlicensed sale of cannabis. A new recommendation paper by Mayor de Blasio's task force, titled "A Fair Approach to Marijuana," summarizes the recommendations regarding legalization of marijuana in New York City. The proposal states that tax rates for the cannabis industry will be adjusted and that the city will retain the authority to allocate the revenues from taxes, licensing fees, and other sources of financing for reinvestment in the local community's cannabis business. The plan advocates for setting up a dual system like those in Massachusetts and California (San Francisco, Oakland, and Los Angeles) to regulate the structure for licensing, so that the minimum standards set by the state can be met and innovative economic opportunities can still be pursued.

Evidently, a coalition between the federal and state governments is absolutely vital, especially in NYS because of the specific needs and demands of its diverse population. The demographic makeup of NYS is very different from other states, and the sheer size of the state makes its challenges even more complicated. Regulations will need to determine how marijuana can be consumed in public places and will establish guidelines for licensing, production, cultivation, and consumer delivery services in order to balance public health with safety.

Special attention will also be directed to the adolescent and minor population that is particularly susceptible to

abuse. The plan recommends eliminating criminal penalties for underage consumption and allocating funds for development of education and preventive resources for youth, adults, and educators.

Notably, the following recommendations have been made: developing a seed-to-sale tracking system and an electronic licensing management system to enable proper accountability of the product, regulating the issue of permits for onsite consumption and delivery services, and setting up a feasibility study to delve into financing for this industry.

### Disadvantages of Legalization

The potential risks of marijuana use have been studied to a certain extent, and the negative impact of its legalization in Colorado was documented in a study that found a 30% increase in the annual number of emergency room visits by children and adolescents due to accidental marijuana exposure (9). More importantly, marijuana has long been associated with impaired judgement and concentration, and studies have documented a significant increase in motor vehicle accidents, including fatal events due to driving soon after use.

In addition to developing medical ailments such as bronchitis and lung cancer, the public health consequences of chronic marijuana use could encompass development of and increase in the prevalence of cannabis use disorder, a rising incidence in psychosis (with a documented twofold increase in relative risk for schizophrenia), and an overall impairment in concentration, attention, working memory, decision making, and executive function (10).

### Discussion and Conclusions

More recently, the governor of NYS stated that the question of legalization of recreational marijuana use was not one of “if” but “how.” If the state legislature approves the program, the government will have a huge task in drafting and enforcing a wide range of policies related to the legal age, quality control, maximum limit of purchase, pricing, registration of authorized manufacturers, taxation, regulation, monitoring of driving under the influence, expunging of prior marijuana violations, and education and outreach programs for the masses, as well as monitoring of the impact of the legalization on health, safety, criminality, and accidents to implement it.

It might be useful to consider conducting population-based surveys that include detailed marijuana-use questions prior to legalization. Ideally, more extensive social market research could precede legalization in NYS, where the consumer composition seems to be a lot more varied compared with the demographic characteristics of users in Colorado and Washington. Although some lessons of legalization in these states may certainly be applicable to NYS,

it must also be taken into consideration that legalization may not necessarily change the number of consumers dramatically. In fact, it might even attract more users who previously did not seem to find it easy enough to procure marijuana.

That said, it is still too early to see the full effects of legalized cannabis policies, even in states like Colorado and Washington. That is due to the restrictions on licensed producers and sellers and the conflicts between federal and state laws that have slowed down the speed and scale of commercialization in these states.

The road ahead is thus fraught with challenges, especially in NYS, because of the nonuniformity in laws at the federal and state levels. The eight federal enforcement priorities—which is referred to as the “Cole Memo” and was drafted by former Attorney General John Cole in 2013—listed rules for states to abide by while legalizing cannabis use. It was rescinded in January 2018, however. The rules included preventing the distribution of marijuana to minors and revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels. Importantly, it mandated the prevention of diversion, violence, and use of firearms; drugged driving; and growing of marijuana on public lands and marijuana possession or use on federal property. Although no longer existent, all these rules should be taken into consideration while enforcing state policies in NYS.

Simultaneously, this path can be viewed as one full of opportunities that could allow for application of lessons derived from legalization of cannabis in other states or alcohol on a nationwide basis. Alcohol, however, is unlike cannabis, especially when public health consequences of both are taken into account; therefore, policies to restrict and monitor alcohol use may not be directly applicable. The blood levels of marijuana’s active ingredient, tetrahydrocannabinol (THC), also poorly correlate to impairment in driving.

Washington State has stipulated that drivers with a level of 5 ng/mL or higher of THC in the bloodstream can face the same conviction as persons caught driving under the influence of alcohol or other drugs. In one of the latest drafts in Colorado, legislators stated that drivers who test over the legal THC limit could argue they were not impaired.

Given the divide in policies in these two states, NYS will be better off clearly defining the acceptable limits of consumption and operation of vehicles. Methodologies beyond measuring levels in blood and urine will have to be devised to allow for instant detection.

Although the advantages of legalization may seem to some to be obviously significant, caution should be exercised because of the potential consequences of providing unrestricted access. Rampant advertising similar to the tobacco industry may very well become the new normal for the legalized cannabis industry. A delicate balance needs to be maintained while drafting up the laws to clearly define the

exact criteria for obtaining access to marijuana while setting up appropriate monitoring protocols to curb unwarranted misuse.

# AUTHOR AND ARTICLE INFORMATION

Department of Psychiatry, BronxCare Hospital, New York (Mitra); Department of Psychiatry, Maimonides Medical Center, New York (Virani). Marvin S. Swartz, M.D., is editor of this column. Send correspondence to Dr. Mitra (mitrasouparnodr@gmail.com).

The authors report no financial relationships with commercial interests.

Received January 16, 2019; revisions received February 14 and February 27, 2019; accepted March 15, 2019; published online May 6, 2019.

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