



New York County District Attorney's Office

**Testimony before City Council Public Safety, Justice System, Civil and Human Rights, and
Consumer Affairs and Business Licensing Committees**

Oversight – Marijuana Legalization: Equity and Justice for NYC

February 27, 2019

Good Morning Chairmen Richards, Lancman, Eugene, and Espinal Jr., and members of the Committees on Public Safety, Justice System, Civil and Human Rights, and Consumer Affairs and Business Licensing. Thank you for the opportunity to speak today about my Office's decision to decline to prosecute most marijuana cases, vacate bench warrants for marijuana cases, dismiss open marijuana cases, and explain the detailed public safety study we recently conducted in anticipation of impending state legalization.

The dual mission of the Manhattan District Attorney's Office is a safer New York and a more equal justice system. The prosecution of predominantly black and brown New Yorkers for smoking marijuana serves neither goal. In 2017, for every three black New Yorkers arrested in Manhattan for marijuana, one white person was arrested. Nothing about this made our city safer. In fact, these prosecutions eroded public trust in law enforcement and frustrated our core mission. So, on August 1st of last year, we stopped prosecuting nearly all marijuana smoking and possession cases in Manhattan. My Office declines to prosecute marijuana possession and smoking cases under Penal Laws 221.10(1), a class B misdemeanor, or PL 221.05, a violation. What does this mean? It means my Office is essentially out of the business of marijuana prosecutions.

Between January 1st and February 26th of last year, we prosecuted 603 marijuana cases. Fast forward to this year and we have prosecuted just 13 cases year to date, meaning marijuana prosecutions have dropped by approximately 98% over the same time period (quarterly statistics can be found on the manhattanda.org website under the "[Reports](#)" tab).

Much has written about the demographics of these arrestees but that is just a part of what I'd like to focus on today. I want to talk about whether these are people who materially affect public safety in New York City. In 2017, we prosecuted a total of 5,453 marijuana cases.

- Of those 5,453 arrests, 315 people – less than 6% – had a violent conviction at any point in their lives.
- 55 of them – literally 1% - had a violent conviction within the past 5 years.

So this is not a particularly violent cohort. These aren't people whom we understand to be driving crime in their communities.

Next, we wanted to know what happened to those 5,423 arrests in 2017 once they went through the system. When the case came before a judge, less than 1% – 38 out of the 5,423 – were sentenced to

jail. After arrest, after fingerprinting, after court appearances, and after all the associated costs like police overtime, prosecutorial and judicial resources – after all of that, there was virtually never any punishment, except a lifelong criminal record.

To review, we had nearly 5,500 people arrested whose conduct did not materially affect public safety go through the criminal justice system. But for what purpose?

Next, we looked at the consequences in a person's life of an arrest versus some enforcement alternative outside the justice system, like summonses. We found that arrests were more disruptive to people's jobs, schooling, and families than summonses, and that once you disrupt those things, you actually end up with someone more likely to commit crimes that *do* affect public safety, because now they've lost their jobs, their schooling, or their families. In addition, these arrests carry collateral consequences relating to housing and even deportation.

We did not make the decision to cease prosecuting most marijuana cases casually or overnight. It was a major policy decision with potentially sweeping implications for public safety. For that reason, our office conducted a national review over the course of six months, meeting with and studying jurisdictions where marijuana is no longer criminally prosecuted. We spoke with law enforcement officials and other experts in seven different locations— California, Colorado, Massachusetts, Nevada, Oregon, Washington, D.C., and Washington state – and put out a comprehensive and thoughtful report, which you can read on our website, called [Marijuana, Fairness and Public Safety](#). I hope it can serve as a roadmap for New York lawmakers on how to safely legalize marijuana.

It is obvious to everyone that marijuana consumption is on the rise in New York, but a deregulated black market makes current usage unsafe. The average consumer in New York right now doesn't know what he or she is buying, what it could be laced with, or how potent it is. We are mindful of the effect that substance use has on individuals and their communities, which is why we created the Manhattan Hope program in 2018, a pre-arraignment drug diversion program modeled after Staten Island's pioneering HOPE program, but for a greater number of substances than opioids. It takes a harm reduction approach to substance usage, in keeping with emerging best practices in this area.

On top of valid concerns about drug quality and toxicity, black markets of all kinds obviously breed trafficking. The black market is also untaxed, meaning New York State is missing enormous tax revenue that is sorely needed and estimated to exceed \$300 million annually. Many different ideas have been floated on how this money could be best put to use, and there are many worthy funding priorities for this Council and our state legislators to consider.

According to a [Gallup poll](#) from October, two in three Americans now support legalizing marijuana. A [Quinnipiac University poll](#) from last May found that two in three New Yorkers support legalization. With so many states showing us that legalization can be achieved safely, I am recommending that New York State proceed thoughtfully, as Governor Cuomo has proposed. What does proceeding thoughtfully mean? It means thinking about issues like:

- marijuana and public health,
- marijuana-impaired driving,
- marijuana product packaging and labeling, in particular to discourage juvenile use, and
- the lingering black market following marijuana legalization.

While no two cities are alike – indeed, few have the density, verticality, and daytime population of Manhattan – there are valuable lessons to be learned from other cities relating to regulation and licensing.

Our goal in conducting in-depth interviews with practitioners around the country was to get a clear picture of how crime, in particular, has been affected as a result of legalization. In fact, while researching the report, a local representative from Colorado said, in essence, “Learn from our mistakes. Here’s your chance to get it right. There are things that we would have done differently at the outset if we could do it over again.”

Our research found virtually no public safety rationale for the criminal prosecution of pot smoking and certainly no justification for the racial disparities underlying enforcement. And the collateral consequences of a marijuana prosecution – it can ruin your job, your housing, your college application, or even get you deported – these consequences are simply not proportional to the offense. Especially when police officers could just as easily give someone a ticket instead, as they do for drinking in public. This is especially important at a time in U.S. history when convictions for low-level crimes carry the threat of deportation.

Mindful of those consequences, in September, I moved to dismiss and seal virtually every open marijuana case we had – more than 3,000, dating back to 1978. Of the defendants whose cases were dismissed:

- 79% are New Yorkers of color, and
- 46% were 25 years of age or younger at the time of their arrest.

Joined by our colleagues at New York County Defender Services and Neighborhood Defender Services of Harlem, this *en masse* dismissal helped prevent unnecessary future interactions with the criminal justice system for thousands of New Yorkers, removing collateral consequences and empowering these individuals to participate more fully in civic life.

Since our announcement last summer, several jurisdictions in New York and in other states have adopted aspects of our initiative, demonstrating that prosecutors can safely exercise their discretion and eliminate the needless collateral consequences associated with the criminalization of marijuana. But this shouldn’t be up to District Attorneys alone – only our legislature can do justice for all 62 counties in New York.

Looking ahead, I fully support expunging past marijuana convictions, and we are collaborating with public defender organizations on a project that would result in the automatic sealing of previous marijuana convictions. We expect to announce it in the coming weeks. The smartest and easiest way to expunge marijuana convictions, however, would be a permanent legislative fix, which is why I support statutory changes to achieve this.

Thank you for the opportunity to offer my perspective on this topic today. It is my view that marijuana legalization can be done safely, and it will bring us one step closer to right-sizing the criminal justice system.

Thank you for your continued support of my Office.

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