

New York's New Marijuana Law

A Train the Trainer Experience



DAY 1 NY's New Marijuana Law TTT



01 Jose Chapa, Immigrant Defense Project
How we got here, in two days

02 Eli Northup, Bronx Defenders
Your Rights with Law Enforcement

03 Marie Mark, Immigrant Defense Project
Marijuana and Immigration Consequences

04 Question and Answer

Brought to you by:

**The Bronx
Defenders**

Redefining
public
defense

**We are
the Drug
Policy
Alliance.**

**THE
LEGAL AID
SOCIETY**

Justice in Every Borough.

IDP



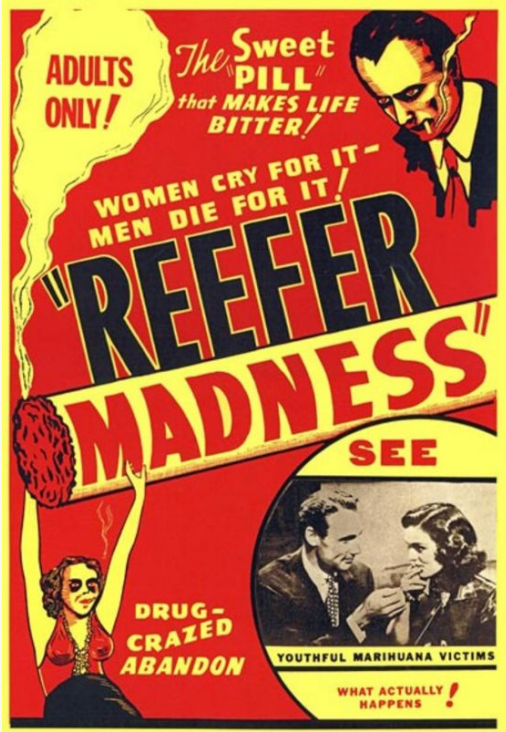
How did we get here:

Marijuana
Criminalization in
the US
start in the 1900s
In several states

By the 1920s
Prohibition in several states starts



Prohibition Propaganda



The Road to Prohibition

- Uniform State Narcotic Drug Act
- Marihuana Tax Act of 1937
- Controlled Substances Act



▶ HALF OF DRUG BUSTS ARE FOR POT

MOST OF THE PEOPLE POLICE ARE
ARRESTING AREN'T KINGPINS,

— BUT RATHER —

PEOPLE WITH SMALL
AMOUNTS OF POT.

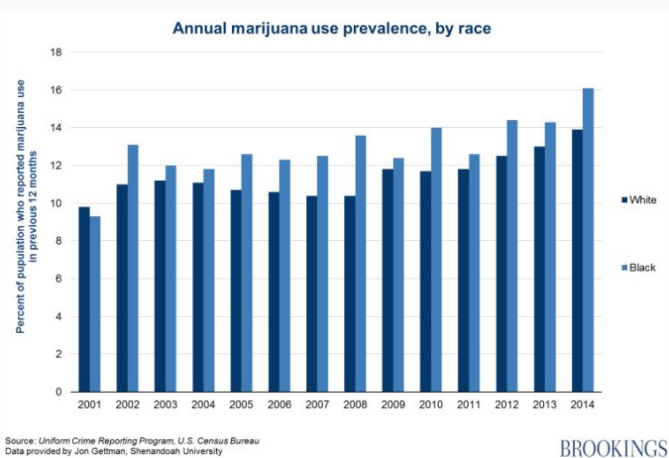


52% OF ALL DRUG ARRESTS
IN 2010 WERE FOR MARIJUANA



Arrests, Detentions and Deportations

According to a new analysis by the Legal Aid Society, 93% of those arrested for marijuana in NYC **last year** were Black or Hispanic. White people — who make up 45% of the city's population, and have been shown to use marijuana at equal rates as other racial groups — accounted for less than 5% of citywide arrests.



New York City as an Example

According to the Drug Policy Alliance in 2014,

- The two neighborhoods with the lowest rate of marijuana arrests are Forest Hills in Queens (pct 112) and the Upper East Side of Manhattan (pct 19). Forest Hills has a rate of **8 marijuana possession arrests per 100,000 residents**; the neighborhood's residents are 16% Black and Latino, 84% white
- The Upper East Side's rate is **10 marijuana arrests per 100,000 residents**. The precinct's residents are 10% blacks and Latinos, 90% white
- The two neighborhoods with the highest rate of marijuana arrests are Washington Heights, according to the 2010 census a neighborhood that is 70% Latino, (pct 33) and East Harlem North, according to the 2010 census a neighborhood that is 53% Latino and 36% Black (pct 25).
- Washington Heights has a rate of **882 marijuana possession arrests per 100,000 residents** (110 times higher than in Forest Hills). East Harlem's rate of marijuana possession arrests is an astonishing **1128 per 100,000 residents (110 times higher than in the Upper East Side)**.

Targeting Black and Brown Neighborhoods Leads to Black and Brown Deportations

- US immigration law began to dictate severe immigration consequences for non-citizens with drug offenses in the 1980s and 1990s, often as part of legislation passed in support of the US “War on Drugs.”
 - Once deported, non-citizens are permanently barred by their drug offenses from returning to live with their families in the US.
- According to data released by the US Immigration and Customs Enforcement (ICE) in response to a Human Rights Watch Freedom of Information Act (FOIA) request
 - deportations of non-citizens whose most serious conviction was for a drug offense increased 22 percent from 2007 to 2012, totaling more than 260,000 deportations over the same period.
 - Deportations of non-citizens with convictions for drug possession increased 43 percent



MRTA Passes in NYS!

- The passage of the Marihuana Regulation and Taxation Act (MRTA) will be life changing for New Yorkers, especially Black and Brown folks.
- MRTA became law in March 2021

More Tomorrow on

The Road to Legalization in
New York...





What does the MRTA actually say?

Understanding the scope of marijuana legalization and your rights with law enforcement.

"Existing laws have . . . resulted in devastating collateral consequences including mass incarceration and other complex generational trauma, that inhibit an otherwise law-abiding citizen's ability to access housing, employment opportunities, and other vital services."

-MRTA Legislative Findings

Changes to Criminal Penalties: Basics

The MRTA completely eliminates Penal Law Article 221 and replaces it with a new Article 222

Anyone 21 + can:

- Possess up to 3 oz cannabis inside or outside of home (PL § 222.05)
 - In the future, will be able to possess up to 5lbs in home (PL § 222.15)
 - Can possess higher amounts if prescribed by a doctor (CAN § 42)
- Smoke cannabis where one could otherwise smoke a cigarette (PL § 222.10(1))
- Give lawful amounts of cannabis to other people 21 + as long as no compensation is exchanged

Changes to Criminal Penalties: Basics

Possession if under 21 years of age:

- Subject to a civil penalty of not more than \$50; this penalty is prohibited from carrying any collateral consequences or resulting in any forfeiture of rights or privileges ([CAN § 132\(4\)](#))

Limits on probation, parole, supervised release:

- Expressly prohibits probation and parole from punishing individuals for cannabis use, unless the condition is made explicit in the terms of release, and must show by clear and convincing evidence that prohibiting an individual's cannabis use is reasonably related to their underlying crime of conviction ([CAN § 127\(6\)](#))

New Criminal Penalties: Possession Offenses

Amount	Penalty
More than 3oz	Violation (PL § 222.25) Fine up to \$125
More than 16 oz	Class A Misdemeanor (PL § 222.30)
More than 5 lbs	Class E Felony (PL § 222.35)
More than 10 lbs	Class D Felony (PL § 222.40)

New Criminal Penalties: Sale Offenses

Amount/Condition	Penalty
Buyer under 21	A Misdemeanor (PL § 222.50(2)) (full defense if buyer is less than 3 years younger than seller)
Any amount without a license	Violation (PL § 222.45) Fine up to \$250
More than 3 oz	Class A Misdemeanor (PL § 222.50(1)) <i>If buyer under 18</i> Class E Felony (PL § 222.55(2)) (full defense if buyer is less than 3 years younger than seller)
More than 16 oz	Class E Felony (PL § 222.55(1))
More than 5 lbs	Class D Felony (PL § 222.60)
More than 100 lbs	Class C Felony (PL § 222.65)

Cannabis Not Subject to Forfeiture

"Cannabis, concentrated cannabis, cannabis paraphernalia or concentrated cannabis paraphernalia involved in any way with conduct deemed lawful by this section are not contraband nor subject to seizure or forfeiture of assets . . . and no conduct deemed lawful by this section shall constitute the basis for approach, search, seizure, arrest or detention."

PEN § 222.05(2)

Changes to the Vehicle and Traffic Law

Cannabis still considered a “drug” under the Vehicle and Traffic Law

- Driving while “impaired” by cannabis or the combined influence of cannabis and alcohol remains a Class A Misdemeanor

Cannabis added to open container traffic infraction

- [VTL § 1227](#) now prohibits the consumption of cannabis inside of a car that is on the public highways, even if parked
- Cannot smoke cannabis in a car unless it is in a driveway/private space. But can probably smoke on the sidewalk right outside the car!

No threshold “levels” like for alcohol, because no reliable testing for current impairment. Bill provides money for a study to be conducted on technology to test.

Odor of Cannabis Does Not Provide Basis for Stop/Search

PEN § 222.05(3): Except as provided in subdivision four of this section, in any criminal proceeding including proceedings pursuant to section 710.20 of the criminal procedure law, no finding or determination of reasonable cause to believe a crime has been committed shall be based solely on evidence of the following facts and circumstances, either individually or in combination with each other:

- (a) the odor of cannabis;
- (b) the odor of burnt cannabis;
- (c) the possession of or the suspicion of possession of cannabis or concentrated cannabis in the amounts authorized in this article;
- (d) the possession of multiple containers of cannabis without evidence of concentrated cannabis in the amounts authorized in this article;
- (e) the presence of cash or currency in proximity to cannabis or concentrated cannabis; or
- (f) the planting, cultivating, harvesting, drying, processing or possessing cultivated cannabis in accordance with section 222.15 of this article

Can odor ever be a relevant factor?

Yes. If there is other evidence of criminal behavior outside of the odor, and any of the other factors listed in PEN § 222.05(3), odor can be used as part of the reasonable cause analysis. Provision says that standard cannot be met “solely” on basis of odor.

Narrow exception for “odor of burnt cannabis” when investigating DWIs

PEN § 222.05(4):

Paragraph (b) of subdivision three of this section shall not apply when a law enforcement officer is investigating whether a person is operating a motor vehicle, vessel or snowmobile while impaired by drugs or the combined influence of drugs or of alcohol and any drug or drugs in violation of subdivision four or subdivision four-a of section eleven hundred ninety-two of the vehicle and traffic law, or paragraph (e) of subdivision two of section forty-nine-a of the navigation law, or paragraph (d) of subdivision one of section 25.24 of the parks, recreation and historic preservation law. **During such investigations, the odor of burnt cannabis shall not provide probable cause to search any area of a vehicle that is not readily accessible to the driver and reasonably likely to contain evidence relevant to the driver's condition.**

NYPD Memo No. 39319402, issued March 31, 2021

EFFECTIVE IMMEDIATELY, THE SMELL OF MARIHUANA ALONE NO LONGER ESTABLISHES PROBABLE CAUSE OF A CRIME TO SEARCH A VEHICLE. THIS CHANGE APPLIES TO BOTH BURNT AND UNBURNT MARIHUANA. SEARCHES OF VEHICLES RELATED TO MARIHUANA ENFORCEMENT MAY ONLY BE CONDUCTED IN ACCORDANCE WITH THE FOLLOWING:

- * DRIVING WHILE IMPAIRED BY DRUGS VTL 1192(4): IF THE DRIVER APPEARS TO BE UNDER THE INFLUENCE OF MARIHUANA AND THERE IS PROBABLE CAUSE TO BELIEVE THAT THE VEHICLE CONTAINS EVIDENCE OF THE IMPAIRING MARIHUANA (E.G. SMELL OF BURNT MARIHUANA OR ADMISSION OF HAVING SMOKED RECENTLY), A SEARCH OF THE PASSENGER COMPARTMENT OF THE VEHICLE IS PERMISSIBLE. HOWEVER, THE TRUNK MAY NOT BE SEARCHED UNLESS THE OFFICER DEVELOPS SEPARATE PROBABLE CAUSE TO BELIEVE THE TRUNK CONTAINS EVIDENCE OF A CRIME (E.G. GUN RECOVERED FROM UNDER DRIVER SEAT) OR MOS MAY REQUEST CONSENT TO SEARCH THE TRUNK IN COMPLIANCE WITH THE RIGHT TO KNOW LAW UNDER PG 212-11. IF VOLUNTARY CONSENT IS GIVEN, MOS MAY SEARCH THE AREAS OF THE VEHICLE COVERED BY THE CONSENT. IF AN ARREST IS MADE, THE VEHICLE SHOULD BE VOUCHERED PURSUANT TO PG 218-19.

Does odor provision apply to searches that occurred before the law took effect?

Argument that it does, as long as the suppression hearing has not yet happened, as this is a “procedural change.” The broad principle applicable here is that statutes which are “procedural,” or curative in nature are generally applicable to pending cases. See People v. Ware, 148 Misc. 2d 943 (Supreme Court, Bronx County, 1990)(holding that “[a] procedural change made after conduct charged in an indictment was allegedly committed has generally been held applicable to the prosecution of that indictment.”)



Advising Immigrants

Considerations for immigrants: Marijuana
possession, consumption, and industry
employment





Advice for immigrants

You are the person who makes the ultimate decision about marijuana-related activity, based on the risks and benefits for you. This presentation helps identify the risks that possessing or consuming marijuana will result in negative immigration consequences. Please seek out the advice of a reputable immigration attorney for advice specific to your situation.

The background features several abstract geometric elements: a light green triangle in the top-left corner, a light orange triangle in the top-right corner, and a series of dark green diagonal lines in the top-right corner. A grid of small, light green dots is positioned on the left side. Two large teal circles with orange borders are the central focus, each containing text. Below each circle is a label. At the bottom, a title is displayed in a dark green font.

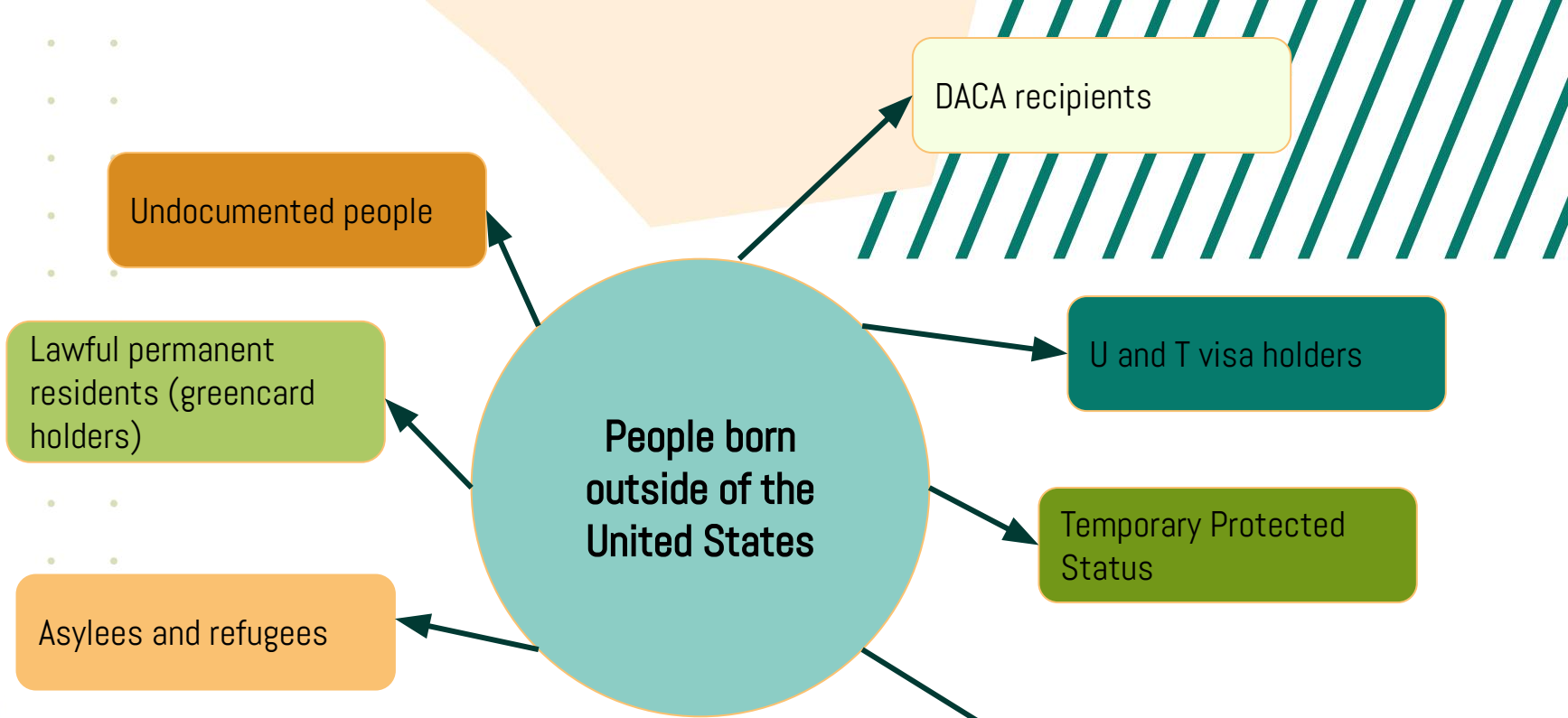
**People born in
the United
States**

United States Citizens

**People born
outside of the
United States**

Immigrants

Immigrant Communities: Who is at risk?



Immigrant Communities: Who is at risk?



Immigration Laws

Where is marijuana mentioned or referred to in
the immigration law?

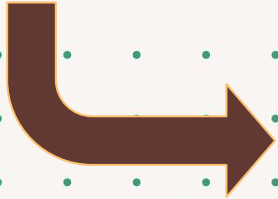
Even though medical and recreational marijuana is legal in New York, marijuana-related activity can still pose immigration risks because of the mismatch between federal and state law.



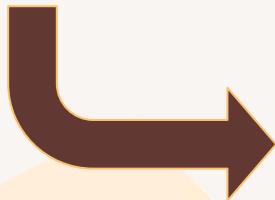
Which laws impact immigrants?



Immigration and
Nationality Act (INA) (8
USC 1101; INA 101)



Controlled Substances Act
(21 USC 802)



Schedules of Controlled
Substances (8 CFR 1308)

Immigration risks of marijuana-related activity

Under the immigration law, negative consequences may come from:

- Conviction for a controlled substance offense
- Legal admission under oath to violating *any* law related to controlled substances (as defined in the Controlled Substances Act), including federal laws
- Evidence that supports a reason to believe that the immigrant is or has been involved in illicit drug trafficking

Immigration risks of marijuana-related activity

When will you be questioned about drug-related activity?

- Applying for an immigration benefit, including lawful permanent residence or citizenship
- Returning from a trip abroad
- Testifying in Immigration Court proceedings

Examples of evidence of marijuana-related activity that are not convictions



- ❑ Your own testimony under oath
- ❑ A medical marijuana card
- ❑ An application for a medical marijuana card for a child or someone else you're taking care of
- ❑ Employment in a marijuana business
- ❑ Social media posts related to marijuana activity, including photos
- ❑ Cell phone photos or video
- ❑ Expunged convictions that have not been vacated by a court



Why would I tell an immigration officer about my marijuana-related activity?

You are required to provide information under oath in order to get an immigration benefit.

30. Have you **EVER**:

A. Been a habitual drunkard?

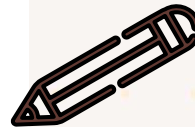
☐ Yes ☐ No

B. Been a prostitute, or procured anyone for prostitution?

☐ Yes ☐ No

C. Sold or smuggled controlled substances, illegal drugs, or narcotics?

☐ Yes ☐ No



32. Have you **EVER** illicitly (illegally) trafficked or benefited from the trafficking of any controlled substances, such as chemicals, illegal drugs, or narcotics? ☐ Yes ☐ No

33. Have you **EVER** knowingly aided, abetted, assisted, conspired, or colluded in the illicit trafficking of any illegal narcotic or other controlled substances?

☐ Yes ☐ No

28. Have you **EVER** been ordered punished by a judge or had conditions imposed on you that restrained your liberty (such as a prison sentence, suspended sentence, house arrest, parole, alternative sentencing, drug or alcohol treatment, rehabilitative programs or classes, probation, or community service)?

☐ Yes ☐ No

Marijuana-related disclosures that can result in immigration consequences



Martin is applying for residency based on marriage to his wife, who is a U.S. citizen. He uses marijuana recreationally at home after New York passed the MRTA, legalizing recreational marijuana use. During his interview, he is asked if he has ever sold drug and responds: “No, I use marijuana at home but I would never resell what I’ve bought because I know that isn’t allowed.”

Jenny is a lawful permanent resident. She is returning to New York from Mexico, where she attended a conference for people in the amrijauan industry. When coming in, the officer asks her about the nature of her trip and what she did. Jenny is proud of the work she’s done and answers truthfully that she presented about her long history of employment and knowledge of the marijuana industry.



Summary

- All immigrants can be at risk of negative immigration consequences. It is important for people with status to understand their risks also.
- The mismatch between New York, which now recognizes legal uses for marijuana, and the federal government, which does not, creates an issue for immigrants.
- Negative consequences can result from convictions, admissions under oath to marijuana-related activity, or when immigration obtains evidence that you are involved in a marijuana-related business.
- These can come up when applying for status or citizenship, or when re-entering the country after a trip abroad. Immigration can use your own statements, social media, a search of your cell phone or computer, or information you provide on an application against you.

Thanks!

Do you have any questions?

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