

MRTA Legislation Breakdown

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Introduction

The recently passed MRTA is New York’s legislation dedicated to legalizing the cultivation, processing, distribution, sale, delivery, and personal use of recreational marijuana in New York State. Although the law consists of different aspects, like establishing the regulatory arm and earmarking the expected tax revenues, the overall intent of the bill is to “end the racially disparate impact of existing marijuana policies and their enforcement.”¹ The legislation goes further to state that: “A goal shall be established to award fifty percent of adult-use cannabis licenses to social and economic equity applicants...”²

To accomplish this goal, MRTA establishes various funds and programs intended to aid communities and individuals historically most effected by the war on drugs. Specifically, MRTA establishes (1) priority consideration for those qualifying as “equity” applicants and other priority categories (2) a community reinvestment fund, (3) parameters for “social-equity” programming and (4) a pathway to marijuana-specific, criminal conviction expungement. Although there are many questions and concerns that have not yet been answered, MRTA, as it stands, is a good foundational cannabis law that may be able to address the collateral consequences of New York’s war on drugs. MRTA is a good foundational bill as it already has mechanisms in place intended to give those individuals effected by the war on drugs an opportunity to flourish in the marketplace. In fact, New York’s MRTA is one of the nation’s most socially equitable marijuana legislation.³ However, the legislation still does not answer questions regarding capital investing, banking issues, security related questions and various other day-to-day questions that both users and retailers need to know, including but not limited to, security, tracking and tracing.

The cannabis law also requires that the Cannabis Control Board (“CCB”), “in consultation with the chief equity officer and executive director, and after receiving public input, shall create and implement a social and economic equity plan and actively promote applicants from communities disproportionately impacted by cannabis prohibition, and promote racial, ethnic, and gender diversity when issuing licenses for adult-use cannabis related activities, including mentoring potential applicants, by prioritizing consideration of applications by applicants who are disproportionately impacted by cannabis prohibition or who qualify as minority or women-owned business, or distressed farmers, or

¹ 2021 Legis. Bill Hist. NY S.B. 854

² Hist. NY S.B. 854, Chapter 7-A, Article 4, §87 (2)

³ Weisz, B. A State-By-State Ranking of Cannabis Regulations. Thompson Coburn LLP. October 10, 2021.

service-disabled veterans.” (87.1) In this way, MRTA mandates the board create and implement a strategic plan of sorts to attain the equity goals embedded in the MRTA. designates specific categories of priority applicants. Detailed qualifications for such categories will be determined by the Office of Cannabis Management (“OCM”) in regulation.

The MRTA establishes the Cannabis Control Board, the legislative body tasked with creating the New York recreational marijuana industry from the bottom up. The Cannabis Control Board was tasked with establishing and staffing the Office of Cannabis Management (“OCM”). Although both groups exist to create and proliferate the New York cannabis industry, the difference in duties between the CCB and the OCM are significant.

The OCM is effectively responsible for the administration of New York’s cannabis industry. For example, the OCM will be responsible for prescribing the actual application forms for licenses and permits and will submit completed applications (and recommendations) to the CCB for a final determination on the respective application. Whereas the CCB is tasked with implementing and regulating New York’s cannabis industry through determining the amount of license the State will give out, creating the standards for those licenses, establishing the minimum criteria for certifying employees to work in the cannabis industry in positions requiring advanced training and lastly, approving the OCM’s social equity plan.

In other words, the CCB is charged with **developing** rules and regulations for New York State’s adult-use cannabis market, including determining the number of licenses available in New York State and issuing cannabis licenses. The CCB will oversee the Office of Cannabis Management. Furthermore, the MRTA directs the CCB to implement rules and regulations designed to: (i) prevent the sale of adult-use cannabis to underage persons, including modification of tobacco vaping products for use with cannabis; (ii) prevent diversions of cannabis from New York into other states and vice versa; and (iii) prevent cannabis products that are legal under the MRTA from being used as cover for trafficking illegal drugs or other illegal activities. Whereas the OCM is an independent office within the New York State Division of Alcoholic Beverage Control and is tasked with **administering** the Marijuana Regulation and Taxation Act. Nonetheless, the two entities need each other; the CCB needs the OCM to help administer the rules and regulations they create and the OCM needs the CCB to give guidance on the rules and regulations during their implementation.⁴ The CCB/OCM relationship

⁴ 2021 Legis. Bill Hist. NY S.B. 854 Section 7-a

mimics many other regulatory/administrative agency relationships found in the New York State government.

Social & Economic Equity Programming

As the NY legislation puts it, “The MRTA establishes a robust social and economic equity program to prioritize and provide resources to members of communities who have been disproportionately impacted by the policies of cannabis prohibition, to participate in the new industry through the implementation of a social and economic equity plan.” As part of this plan, New York named certain groups of individuals who will be specifically targeted as part of this social equity opportunity. These groups are (1) individuals from communities disproportionately impacted by the enforcement of cannabis prohibition, (2) minority-owned business, including businesses owned by at least 51% women, (3) distressed farmers and (4) service-disabled veterans.

The social and economic equity plan must promote diversity in commerce, ownership, and employment, as well as opportunities for social and economic equity in the adult-use cannabis industry. There will be a goal of awarding 50% of adult-use cannabis licenses to social and economic equity applicants and ensuring the inclusion of the following groups: communities disproportionately impacted by the enforcement of cannabis prohibition; minority-owned businesses; women-owned businesses; distressed farmers; and service-disabled veterans. Extra priority must be given to applicants who demonstrate that they are a member of a community disproportionately impacted by the enforcement of cannabis prohibition; have an income lower than 80% of the median income of the county in which they reside; or were convicted of a cannabis-related offense prior to the effective date of this legislation or had a parent, guardian, child, spouse, or dependent, or were the dependent of an individual who, prior to the effective date of the legislation, was convicted of a cannabis-related offense.

New York attempts to combat the equity imbalance with both short-term and long-term objectives. Some examples of the short-term objectives are to award 50% of all adult-use licenses to social and economic equity applicants. However, unlike other states, New York added mechanisms to control the cannabis market. For example, MRTA establishes a two-tier market structure which generally prohibits licenses from being vertically integrated⁵ and limits the percentage of the market a license can own. By controlling who gets the license and what the market looks like, New York has more oversight over where the cannabis revenue is going.

⁵ There are two exceptions to this general rule against vertical integration. The two specific licenses that are allowed to vertically integrate are “microbusinesses” and specific registered organizations that convert to a hybrid adult-use license.

New York also creates long term requirements to aid in the social-equity programming by requiring that all non-equity licensees, as part of the application selection process, develop and implement a “...plan for benefiting communities and people disproportionately impacted by the enforcement of cannabis laws”, which is designed to contribute to communities disproportionately harmed by cannabis prohibition.⁶ Adherence to this requirement, is a condition of license renewal.⁷ A licensee’s failure to uphold this requirement could get their license revoked.

As of now, the social-equity application and non-social-equity applications are not open. However, the CCB and OCM have extended 162 conditional cultivation licenses, as of June 2022, as a result of recent legislation allowing for already-existing hemp cultivators to pivot their crop yield to allow for cannabis growth. The approved licenses came from a pool of more than 200 applications that have been submitted to the Office of Cannabis Management following the March 15 opening of the online application portal.

Other States Social Equity Programing

Other states have adopted similar social-equity programs, with varying degrees of success. Massachusetts was the first state to adopt a state-wide social equity plan for licensing and has two programs to provide guidance and prioritize license review for those most impacted by the war on drugs; Michigan followed suit, followed by Arizona and now, New York.⁸

Massachusetts, which legalized adult-use recreational marijuana usage through a constitutional amendment, has seen incredible success in their implementation of the social-equity programming.⁹ Massachusetts has a few regulations that could potentially aid New York in their efforts. For example, the Commonwealth outlines specific areas that have been disparately impacted by the war on drugs and begins from that vantage point. Massachusetts, alongside their adult-use licensing program also created a specific social-equity training and support program. The Social Equity Program (“SEP”) is a free, statewide, technical assistance and training program that provides education, skill-based training, tools, and licensing benefits for success in the cannabis industry for those most impacted by the War on Drugs, marijuana prohibition, and disproportionate arrests and incarceration. On top of the Social Equity Program, which focuses on business training, the Economic Empowerment¹⁰ (“EE”)

⁶ MRTA § 64.1(f). A)

⁷ NY State Government. (n.d.). What is in the Law Social and Economic Equity? Office of Cannabis Management.

⁸ Morris, S., Hudak, J., Stenglein, C. (2021, April 16). State Cannabis Reform is putting Social Justice Front and Center. Brookings.

⁹ Pinzón, D. (2021, July 30). The growth of the marijuana industry in Massachusetts. WCVB.

¹⁰ Commonwealth of Massachusetts. (n.d.). Final Social Provisions Guidance - Cannabis Control Commission. Cannabis Control Commission.

program allows applicants who live and work in areas disproportionately impacted by the Drug War to have their applications expedited. As of April 16, 2021, 856 applications have been approved to various stages in the licensing process by the commission, with 91 of the applications involving those who took part in the program.¹¹ In other words, the social equity programing acts as a feeder towards licensing.

To begin, Massachusetts looked at prior arrest records and designated 29 cities as areas of disproportionate impact¹². Cities with a population of more than 100,000 people (Boston, Lowell, Springfield, and Worcester) were subdivided to reflect that only certain neighborhoods qualify as areas of disproportionate impact. Applicants would need to either be living or have lived in those areas. In fact, Massachusetts operates on a sort of point criteria in which an applicant must meet a minimum number of requirements to be considered for the program. For instance, an applicant in Massachusetts need only hit one of these requirements¹³; (1) The applicant has resided in an area of disproportionate impact for at least 5 of the past 10 years; (2) the applicant has a past drug conviction and has been a resident of the Commonwealth for at least the preceding 12 months; or (3) the applicant has been married to or are the child of a person with a drug conviction and they have been residents of Massachusetts for at least the preceding 12 months.

By expanding the guidelines for who can apply, Massachusetts's legislature is allowing those who are truly the victims of the war on drugs to benefit from the program. Massachusetts also adds a residence requirement for applicants which ensures that the success of the industry and/or the license is passively returned into the community by having those applicants live in the community. These small integrations between the social-equity training and the licensing aspect creates more equity and distributes that wealth more equitably. In other words, the social-equity programming and training teaches and trains those applicants on how to best integrate into the community. For example, in Massachusetts, the social-equity training allows participants to seek courses based on their preference to own, manage, work within, or alongside cannabis businesses. The programming also aids those applicants in getting their license fees waived and expedited. In fact, participants also benefit from a

¹¹ Paleologopoulos, J. (2021, May 10). Cannabis Commission Eyes Enhancements to Social Equity Program, Mentorships as It Prepares for New Wave of Participants. *Telegram & Gazette*.

¹² Commonwealth of Massachusetts. (n.d.). Guidance For Identifying Areas of Disproportionate Impact. Cannabis Control Commission.

¹³ Final Social Provisions Guidance. Cannabis Control Commission. (2021).

pre-certification process that enables the Commission to assist with obtaining lease agreements, other local level approvals, and investment opportunities before they even apply for a license.¹⁴

Under the MRTA, an applicant need not be an actual resident of New York to apply.¹⁵ New York has tried to make up for this shortcoming by requiring the CCB create and implement a social and economic equity plan that must be developed with the chief equity officer and OCM executive director, with public input. Furthermore, under Article 4, section 87 of the MRTA, New York requires that there be a social equity fund that is utilized as an incubator fund. The incubator program is intended to provide loans, grants, and technical assistance to ensure broad opportunities for participation in the new legal industry by people from disproportionately impacted communities as well as by small farmers. This incubator fund is intended to give no interest funds to help aid in the physical space requirement that each license requires.¹⁶

The Economic Aspect of Social Equity Programming

As of 2021, the biggest financial impediments to getting involved in the cannabis industry is, (1) the capital needed to start up and, (2) the time delays in getting a license.¹⁷ When a cannabis company is attempting to enter the cannabis space, the start-up cost for them is generally around \$1 million, on the very low end of the spectrum. For social equity applicants, finding the means to generate this amount just to start their business is nearly impossible. One of the main reasons why it's next to impossible for social equity applicants to obtain their start-up cost is due to the illegality of cannabis on a federal level. Currently, banks are not allowed to disperse loans to cannabis companies as it interferes with the federal law.

Many states are trying to combat this aspect of the legalization stagnation, by publicly supporting “cannabis specific credit unions”¹⁸ which are organization aimed at giving working venture capital to those interested in getting involved in the business. These credit unions have slightly different regulatory oversight than typical banks, however, are still subject to similar federal rules and regulations. To date, New York has yet to propose any regulations or bills seeking to support credit unions looking to enter the state-legal marijuana related businesses.¹⁹

¹⁴ Application for cohort three of the commission's Social Equity Program opens June 21. Cannabis Control Commission Massachusetts. (2021, September 16).

¹⁵ While the MRTA does have a residency requirement on paper, in practice, the residency requirement can be met by out of state principles incorporating their business under New York State's laws.

¹⁶ Rieger, J. (2021, August 9). Social equity: The driver behind New York's Cannabis Program. New York Law Journal.

¹⁷ How much does it cost to open a dispensary? Peace of Mind Cannabis. (2021, June 28).

¹⁸ Credit Union National Association. (n.d.). CUNA. Credit Union National Association – Our Priorities.

¹⁹ National Association of Federally Insured Credit Unions. (2019, November). FAQs: Marijuana Banking for Credit Unions. NAFCU.

Take for example, California, which is considering legislation that would help the marijuana industry in the state access financial services through the creation of “cannabis limited charter banks and credit unions” which would be able to provide financial services to those cannabis businesses. Because these institutions would be regulated only by the state and not the federal government, they are able to provide some services that would help the fledgling legal marijuana industry in the state. However, this bill is unlikely to make it easier for marijuana businesses to get access to loans since the banks would still be subject to potential prosecution under federal law.

Simply put, the working capital barrier is a huge obstacle that cannot be overcome unless the federal law is lifted, which in turn, would allow banks to treat the marijuana industry as just another market. Until there is a shift in the federal regulations, this hurdle will forever affect those members the law is specifically intended to aid by not allowing them to enter the market because of financial issues.

Community Reinvestment Plan

The Community Grants Reinvestment Fund is established to provide a mechanism to invest in communities that have been disproportionately impacted by the war on drugs. It will be accessible to community-based organizations for job training and placement, re-entry services, adult education programming, and other services.

In New York, the fund will first address the administrative costs of regulating the marijuana market, tax revenue will be used to conduct studies analyzing the impacts of marijuana legalization on public health, public safety, youth use, the state economy, the environment, and on the criminal justice system. Additional funds will be distributed to study the efficacy of New York’s regulations and their success in ensuring diversity and inclusion in licensing. The remaining funds are allocated as such: 40% to the State Lottery Fund for Education. 20% to the Drug Treatment and Public Education Fund, which would finance additional drug treatment programs, school-based prevention, early intervention, and health care services and programs, as well as public health campaigns to teach the public about responsible cannabis use, and 40% to the Community Grants Reinvestment Fund, which would be used to further support the social and economic equity program as established by the Board.²⁰

²⁰ Burgio, A. (2021, April 29). New York Cannabis Law Prioritizes Social, Economic Equity. news.bloomberglaw.com.

New York's legal cannabis industry is expected to capture \$1.2 billion in sales by 2023 and \$4.2 billion by 2027.²¹ New York State expects to eventually collect \$350 million in annual tax revenue, according to estimates by Governor Andrew Cuomo's administration. In other words, this fund is expected to be anywhere from 100 million to 125 million dollars a year. There are numerous services that community reinvestment funds could support. The Legislature's bill listed several goals of the funds. These services include job skills and placement, mental health and substance use disorder treatments, system navigation services, legal services to address barriers to reentry and linkages to medical care. Many advocates argue that these funds should also be used for the restoration and expansion of community spaces such as parks, libraries, and community centers.

A good example of responsible investment and re-allocation of funding is Nevada, which legalized adult-use, recreational marijuana through a constitutional amendment. Nevada has taken the approach of identifying eligible neighborhoods and providing incentives for businesses that work directly with those neighborhoods to fund reinvestment efforts that target specific community concerns. Two specific areas that Nevada has chosen to tackle are juvenile marijuana possession cases and education.²² These are just two examples of where the community reinvestment money could potentially go in New York. In fact, New York was once the leader in juvenile marijuana possession arrests.²³ Clearly, there is a place, and a need, for a program like this in New York to remedy past issues.

The Cannabis Fund will first use revenue from adult-use cannabis to pay operating expenses for the Office of Cannabis Management and public safety training for law enforcement agencies. The remaining funds are split, with 40% directed to a Community Reinvestment Fund, which goes back to communities that have been disproportionately impacted by the prohibition; another 40% is

²¹ Heckman, C., Lee Redeye, & Friedman, W. (n.d.). Tribal Regulation of marijuana is a public health imperative. JD Supra.

²² Torres-Cortez, R. (2021, March 31). Nevada Proposal Would Give Second Chance to Juveniles Facing Marijuana Charges. Las Vegas Sun.

²³ Bond, E. (2020). Research brief - Data Collaborative for Justice at John Jay College of Criminal Justice.

directed to Public Education; and the remaining 20% is targeted for drug treatment.

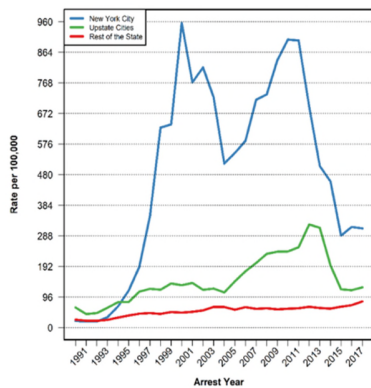
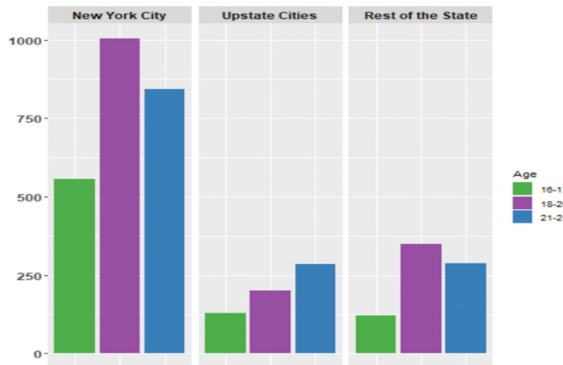


Figure 3: Rate of Misdemeanor Marijuana Possession by Age in New York State in 2017



Other states have taken different investment approaches; in Colorado²⁴, for example, the first \$40 million received from the excise tax on retail marijuana in fiscal year 2017–2018 was used for public school construction, while the remaining \$27.8 million was transferred to a fund for public schools. In Washington, marijuana sales surpassed \$1 billion in FY 2017, and the state collected \$314.8 million in excise tax revenue. The revenue was primarily used to fund Medicaid which secured health insurance for many low-income Washington residents. Both Colorado and Washington legalized their recreational, adult-use marijuana through constitutional amendments which required their funding be clearly earmarked prior to the passing of the constitutional amendment.

Although different states have utilized their community reinvestment funding in different ways, they share one major similarity; all the money was directly reinvested in specific communities directly affected by the war on drugs by either subsidizing infrastructure, education, or legal counsel. New York has earmarked much of the expected funding but has not put any of the money towards these kinds of projects. In fact, New York legislation is beginning to face public backlash for their choices of where they are earmarking the cannabis money.²⁵

Expungement

“Forgiveness is part and parcel of rehabilitation, whether of criminals or anyone else who has erred, or who has, in fact, what all of us have—the defects of being human.”²⁶ – Dr. Sol Rubin

²⁴ State of Colorado. (2020). Disposition Of Marijuana Tax Revenue. Department of Revenue.

²⁵ Cusaac-Smith, T. (2021, February 22). Legalizing Marijuana In NY: Concerns Persist Over Funds to Communities of Color. The Journal News.

²⁶ 38 New. Eng. L. Rev. 331 (2003-2004) Rethinking Expungement of Juvenile Records in Massachusetts: The Case of Commonwealth v. Gavin G

Although the expungement process is different in every state that has legalized adult-use recreational marijuana²⁷, every single state that has legalized recreational adult-use marijuana has included an expungement-specific amendment or bill. The only state that has included the expungement process in the original bill is New York.²⁸ The MRTA creates the first ever automatic expungement process in the country. The legislation allows for the automatic expungement of records for the two lowest marijuana offenses in the state: unlawful possession, a violation, and fifth-degree criminal possession, a class B misdemeanor that included smoking marijuana in public or possessing more than 25 grams.

In other words, New York is in the process of expunging thousands of marijuana convictions. Expungement means that the arrest, the court case, and the conviction are now treated as if they never happened. This was a drastic move because prior to the automatic expungement caveat, New York “sealed” criminal marijuana convictions which still effected individuals.

Sealing vs. Expunging Records

Sealed criminal records remain available to law enforcement, prosecutors, and courts. When a criminal record is sealed, hard copies of pictures and fingerprints of a defendant are destroyed. Other documents are kept in the file. Legally, that record remains and can be accessed in certain circumstances.²⁹ Expunged criminal records will be available only to the person whose record it is. An expunged record is not a barrier to employment, including for jobs that require state-issued licenses, such as being a lawyer, doctor, business owner, etc. A person with an expunged record will never have to disclose that they were convicted. This difference is critical because it allows those that were priorly convicted of marijuana related crimes to benefit from the bill by allowing them to participate in state licensing and work. The expungement of specific records has long lasting effects. For example, those convictions that have been expunged, (1) will not appear or show up on a criminal history background check, (2) cannot be used against an individual when applying for housing, student loans, or a job, (3) will not be found by law enforcement unless you are applying for a gun license or a job in law enforcement and (4) do not have to be listed on a job or school application that asks if the individual has been convicted of or arrested.

²⁷ Rosen, Alana, High Time for Criminal Justice Reform: Marijuana Expungement Statutes in States with Legalized or Decriminalized Marijuana Laws (February 1, 2019).

²⁸ Puggio, M. (2021, April 29). Ny Cannabis Law is national blueprint for pot expungement. Law360.

²⁹ Expungement and Sealing of Criminal Records. Justia. (2021, September 27).

As a result of the MRTA, about 107,639 convictions are eligible for expungement. The Office of Court Administration (“OCA”) and the New York State Division of Criminal Justice Services (“NYDCJS”) have until March 2023 to expunge those records.³⁰

Expungement Issues

Although this may sound like an easy process, there are some potential pitfalls that legal scholars are already beginning to encounter, namely, marijuana-related convictions that are mixed with other drugs. Legal scholars have stated, “expunging convictions for violations of the old marijuana law is a pretty straightforward process. But those involving seventh degree and fifth-degree criminal possession of a controlled substance where the substance involved cannabis will require much more work, some of which cannot be automated.”³¹ The reason these cases are so complex is not because of the nature of the crime but rather because of the antiquity of the state’s record keeping process and court processing systems. New York State has more than 340,000 convictions for controlled substance possession where there is no indication in the electronic records what drug was involved. Courts estimate thousands of those may be for cannabis. "For the vast majority of these convictions, we do not have any information in our electronic case management systems as to what the controlled substance is" OCA spokesman Lucian Chalfen said. "The only way to determine if the controlled substance is marijuana right now is to pull the hard copy court file. These would need to be addressed manually."³²

For those convicted of federal marijuana convictions, this expungement process does not exist.³³ Although there has been some recent movement to legalize marijuana and remove it from the federal controlled substance list³⁴, marijuana is still federally illegal. The bills, specifically H.R.3884, gaining traction in Congress mimic many of the same goals as MRTA by requiring federal courts to expunge prior cannabis-related convictions and provide for resentencing; provide grants and funding to communities most harmed by the war on cannabis; lift barriers to licensing and employment in the cannabis industry; block federal agencies from denying public benefits or security clearances due to cannabis use; protect immigrants from being denied citizenship over cannabis; and allow VA physicians to recommend medical cannabis to veterans.³⁵

³⁰ Puggio, M. (2021, June 18). Ny Cannabis Law Is National Blueprint for Pot Expungement. Law360.

³¹ Dowty, D. (2021, May 11). Will Your New York Marijuana Conviction Be Expunged? The Simple Numbers to Know. Syracuse.com.

³² Id.

³³ Ferry, S. (2021, April 1). New Marijuana Law Expunges Convictions for Many. Spectrum News NY1.

³⁴ Nadler, J. (n.d.). H.R.3884 - MORE Act of 2020. Congress.gov.

³⁵ Marijuana Policy Project. (n.d.). Federal Policy. MPP.

Overcoming Operational Expungement Issues

Although there has been no movement on filling these MRTA gaps, the court system proposed an amendment to the cannabis law to overcome these operational pitfalls. This amendment was passed and created the “Motion for resentencing; persons convicted of certain marihuana offenses”. Under the amendment, an individual convicted of an eligible controlled substance would submit a one-page form notifying the court that they believe the controlled substance at issue in their conviction was cannabis-related. This motion would make its way through the court.³⁶ The court would then pull that specific hard copy file for review. If the individual is in fact eligible for clearing, the court would then expunge the conviction. Eligible individuals would not need to hire an attorney or appear in court.³⁷ The form, which is the first of its kind, can be found [here](#).

However, as the court works through the various sealing or expungement processes, **ALL** eligible convictions for violations of Article 221 of the NYS Penal Law (the old Marijuana statutes) have been suppressed. Suppression means these convictions are no longer showing up in criminal background check searches run through the Courts or the Division of Criminal Justice Services. The Courts will be working through all the eligible convictions on a rolling basis to expunge as soon as possible.³⁸

Other States Expungement Processes

New York is leading the way when it comes to marijuana conviction expungement. In fact, many states have turned to the MRTA to rectify some of the mistakes in their own expungement legislation.³⁹ In many other states, the work of sealing and expungement mostly falls to nonprofit legal groups and private attorneys because there is no automatic expungement process.⁴⁰ For example, Indiana not only does not have an automatic expungement process but additionally, the process can vary from county to county depending on cooperation from local prosecutors. In other words, because of the lack of uniformity, the process of criminal expungement can vary from state to state and jurisdiction to jurisdiction. Out of 20 states that have some form of criminal conviction expungement

³⁶ Criminal Procedure (“CPL”) Chapter 11-A, Part 2, Title M, Article 440

³⁷ New York State Unified Court System. (n.d.). Cannabis (Marihuana) And Expungement Under New York State law. Cannabis (Marihuana) and Expungement.

³⁸ New York State Unified Court System. (n.d.). Cannabis (Marihuana) And Expungement Under New York State Law. Cannabis (Marihuana) and Expungement, NY Court Help.

³⁹ Westervelt, E., & Brosher, B. (2019, February 19). Scrubbing The Past to Give Those with a Criminal Record a Second Chance. NPR.

⁴⁰ Id.

process, the 11 states that have had the most success are those with automatic expungement programs.⁴¹

New York's process is leading the way for criminal conviction expungement; however, the process can always be improved. One good example, is Pennsylvania which has aided the expungement process and increased its efficacy by creating an Expedited Review Program ("ERP"), specifically for non-violent marijuana-specific convictions.⁴² In fact, Pennsylvania has reduced their expungement process by over 25% by implementing the ERP.⁴³ This drastic decrease has increased both tax revenue for the state and the amount of income for applicants.⁴⁴ Pennsylvania, which legalized recreational If New York can implement a specific expungement review board, the time between application and granting of expungement could be reduced. This reduction would not only benefit the applicant but would benefit the state by increasing the pool of tax paying individuals. The quicker a state can expunge the records of marijuana specific crimes, the quicker individuals can leave prison, begin their lives, giving back to the community, paying taxes and apply for government loans.⁴⁵

Conclusion

As it stands right now, New York's cannabis law can be improved by replicating the successes of Massachusetts, Colorado and California whilst staying away from the failures of states such as Arizona. The states that have created efficient methods for expungement, expanded eligibility for social equity programming and have created methods for understanding which communities were most effected by the war on drugs have seen the most amount of progress with regards to their legalization mechanisms. The states that have not progressed as far are states that have legalized recreational, adult-use marijuana without first understanding which communities were to be specifically targeted with social equity programming and have not created frameworks for ensuring that criminal conviction expungements happen speedily and efficiently. New York's legislation can utilize other states legalization programs to fix similar holes in the MRTA bill and can improve other areas in a similar fashion.

New York can specifically learn from Massachusetts and Colorado that the social-equity programming needs to be specifically tailored to aid those participating in the program. In other words,

⁴¹ Expungement. NORML. (2021, June 29).

⁴² State of Pennsylvania. (n.d.). Expedited Review Program. Board of Pardons.

⁴³ Bivens, J. (n.d.). The Impact of Pardons. Economy League.

⁴⁴ Prescott, J.J. and Starr, Sonja B., Expungement of Criminal Convictions: An Empirical Study (March 16, 2019). Harvard Law.

⁴⁵ McKinley, E. (2021, April 6). Some Are Waiting in State Prisons for Marijuana Convictions to Be Expunged. Times Union.

these social-equity programs must be directed towards specific communities. The first step to directing the programming is to identify the neighborhoods most in need. Although the social-equity programming and funding allotments are comprehensive there is still a lot of work that can be done to strengthen the law. As for the expungement process of MRTA, although it will take quite some time to expunge many of these records the only additional step that could be taken to strengthen this aspect of MRTA is to create a rapid response unit that deals with expungement specific issues.

In conclusion, MRTA is one of the foremost marijuana legalization bills that contains provisions for the automatic expungement of marijuana related convictions, earmarked tax allotments, social-equity programming, and state specific funding programs. However, MRTA also contains major holes that other states have already attempted to remedy. New York can utilize other states' successes and failures to improve the existing MRTA framework and create a marijuana legalization program that leads in the country in "end[ing] the racially disparate impact of existing marihuana policies and their enforcement."⁴⁶

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⁴⁶ 2021 Legis. Bill Hist. NY S.B. 854 – Legislative Intent Description