Committee on the Justice System

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**THE COUNCIL OF THE CITY OF NEW YORK**

**COMMITTEE REPORT OF THE**

**JUSTICE DIVISION**

*Jeffrey Baker, Legislative Director*

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**COMMITTEE ON PUBLIC SAFETY**

*Hon. Donovan Richards, Chair*

**March 26, 2019**

**PROP. RESO. 75-A:** By Council Members Levin, Brannan, Levine, Espinal, Torres, Cornegy, Ampry-Samuel, Reynoso, Cumbo, Richards, Lander and Kallos

**TITLE:**  Resolution calling on the New York State Legislature to pass the Marihuana Regulation and Taxation Act and the Governor to sign such legislation into law, which would legalize, regulate, and tax the sale of marijuana in New York State.

**RESO. 296**: By The Public Advocate (Mr. Williams) and Council Members Ampry-Samuel, Reynoso, Lander, and Kallos

**TITLE:** Resolution calling on the New York City Housing Authority (NYCHA) to add unlawful possession of marijuana and criminal possession of marijuana in the fourth and fifth degrees to its list of "overlooked offenses," and stop considering these offenses as grounds for termination of tenancy.

**PROP. RESO. 742-A**: By Council Members Richards, Holden, Lander, and Kallos

**TITLE:** Resolution calling upon the New York State legislature to pass, and the Governor to sign, legislation that grants localities the authority to regulate public consumption of marijuana within their jurisdictions, including the authority to determine whether to enact any penalties and how to enforce such penalties.

**RESO. 743**: By Council Members Miller, Adams, Moya, Lander, Ampry-Samuel, and Kallos

**TITLE:** Resolution calling on Congress to pass and the President to sign S.1689, known as the "Marijuana Justice Act of 2017," which would amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marijuana, and for other purposes.

**RESO. 745**: By Council Members Moya and Kallos

**TITLE:** Resolution calling upon the New York State Legislature to pass, and the Governor to sign, legislation related to the reclassifying of THC and all other marijuana based products from a controlled substance to the equivalent of flower marijuana.

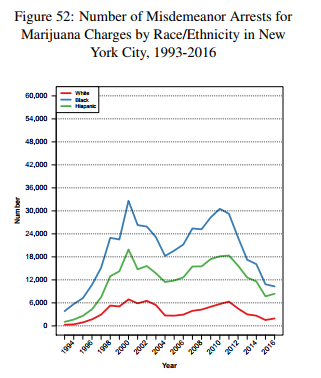
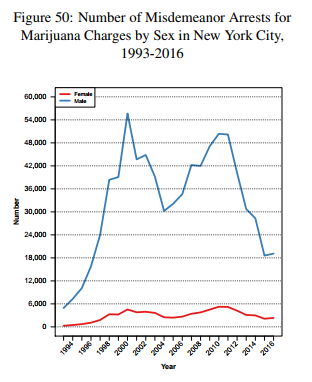
1. **INTRODUCTION**

On March 26, 2019, the Committee on Public Safety, chaired by Council Member Donovan Richards, will on vote on Propsoed Resolution 75-A, Resolution 296, Proposed Resolution 742-A, Resolution 743, and Resolution 745. The Committee previously heard the resolutions on February 27, 2019, at a joint hearing of the Committee on Public Safety, the Committee on the Justice System, the Committee on Consumer Affairs and Business Licensing, and the Committee on Civil and Human Rights. Representatives from the New York City Mayor’s Office of Criminal Justice (“MOCJ”), the New York City Commission on Human Rights (“CCHR”), District Attorney offices, as well as advocates and other members of the public testified at that hearing.

1. **HISTORY OF DISPARATE IMPACT IN ENFORCEMENT OF MARIJUANA PROHIBITION**

The possession and sale of recreational marijuana is currently illegal under New York State Penal Law Article 221. The racially disparate impact of the enforcement of that prohibition has been well documented. In February 2018, the Data Collaborative for Justice (“DCJ” formerly Misdemeanor Justice Project) at John Jay College of Criminal Justice issued a report entitled “Trends in Arrests for Misdemeanor Charges in New York City, 1993-2016,” which shows that over the past two decades, consistent racial disparities have remained despite extreme fluctuations in the number of arrests for marijuana misdemeanor charges.[[1]](#footnote-1) In 1993, just 5,221 arrests were made in New York City. That number skyrocketed to 60,190 in 2000, and then dropped to 32,745 in 2004.[[2]](#footnote-2) Arrests for marijuana charges rose again to 55,623 in 2010 under Police Commissioner Ray Kelly, and dropped to 21,457 in 2016,[[3]](#footnote-3) three years after a federal judge determined that the New York Police Department’s (“NYPD”) (“Department”) stop-and-frisk practices were unconstitutional and appointed a federal monitor to oversee changes to those practices.[[4]](#footnote-4)

According to the DCJ, over the same period, arrests for marijuana-related charges in New York City were overwhelmingly of Black and Latino men. In 1993, the arrest rate for marijuana charges for Blacks was 20.9 times higher than the arrest rate for Whites.[[5]](#footnote-5) That difference peaked at 23.3 times higher in 1994.[[6]](#footnote-6) In 2016, while the overall arrest rate had begun to decline, the arrest rate for Blacks was still 7.8 times higher than for Whites.[[7]](#footnote-7) The figures below, provided by the report, illustrate the total number of arrests made, between 1993 and 2016, by sex and race.[[8]](#footnote-8)



These disparities persist: from January to March of 2018, 93 percent of people arrested for marijuana possession were people of color.[[9]](#footnote-9) Several studies have indicated that despite higher arrest and incarceration rates for Blacks and Latinos, rates of drug use and sales are similar across racial and ethnic identities.[[10]](#footnote-10) Advocates have asserted that the enforcement of marijuana in New York City is a part of “broken windows” policing strategies where officers actively seek marijuana arrests.[[11]](#footnote-11)

The NYPD has maintained that it enforces marijuana laws in response to 911 and 311 calls and community complaints. However, data provided to the City Council suggested there was no correlation between these calls and the volume of marijuana arrests in the City and the racial disparities of arrestees.[[12]](#footnote-12) In addition, research has shown a lack of a connection between marijuana arrests and a reduction in more serious crime.[[13]](#footnote-13)

In June 2018, the Department announced that it would begin issuing criminal summonses in lieu of arrests for the majority of persons found smoking marijuana in public.[[14]](#footnote-14) The exceptions to the new policy include individuals who had been arrested for a violent crime within three years, individuals on probation or parole, and individuals with open arrest warrants.[[15]](#footnote-15) However, the eligibility criteria and decision to utilize a criminal summons instead of a civil penalty was met with considerable skepticism from advocates.[[16]](#footnote-16) In addition, two of the City’s District Attorney’s offices have stopped prosecuting marijuana possession cases in circumstances where the NYPD would continue making arrests. Kings County District Attorney Eric Gonzales stopped prosecuting low-level marijuana cases in 2014 and Manhattan District Attorney Cyrus Vance announced that his office would do the same beginning in May 2018.[[17]](#footnote-17)

The harshly disproportionate impact of marijuana enforcement has been notable for decades. Misdemeanor charges for the possession of marijuana could mean the loss of a job, suspension or termination of a professional license, inability to receive federal student loans, eviction from public housing, and child custody and adoption issues.[[18]](#footnote-18) While marijuana use is not the basis for Administration for Children’s Services to start a case against a parent,[[19]](#footnote-19) drug testing for marijuana, or subsequent discoveries of it in the home, can limit visitation privileges and delay eventual parent-child reunification.[[20]](#footnote-20) Studies find that mandated reporters are more likely to report a Black parent’s drug use to protective services, and that once a case is initiated those services are more likely to ultimately remove children from Black families than others.[[21]](#footnote-21)

Misdemeanor convictions for marijuana possession create criminal records that are easily found by credit agencies, financial institutions, schools, landlords, and employers.[[22]](#footnote-22) One study found that prospective renters with a criminal conviction lowered the probability of even being able to view, let alone rent an apartment in New York City.[[23]](#footnote-23) Even for cases that end without a conviction, attending multiple court appearances can jeopardize jobs, beds in shelters, and educational opportunities. An arrest itself can also endanger immigration status even if the person is otherwise here legally; even before the current administration’s immigration policies, in 2013, marijuana possession was the fourth most cited cause of deportation in the country.[[24]](#footnote-24)

One possible remedy to this legacy of racial disparity in marijuana enforcement is to expunge criminal convictions from criminal records. As referenced in the Mayor’s Task Force report, most states that have legalized cannabis use for adults have allowed resentencing of past convictions, petitions for expungement or sealing, or both.[[25]](#footnote-25) However, as the State’s recent sealing legislation has shown, requiring individuals to petition to have their records sealed or expunged creates a significant barrier.[[26]](#footnote-26) Another option is to expunge or seal these convictions automatically.

1. **RESOLUTIONS**

**Proposed Reso. No. 75-A**

This resolution calls on the State to pass the Marihuana Regulation and Taxation Act, which would legalize, regulate and tax the sale of marijuana in New York State. The resolution was amended since introduction to update the list of states that have legalized marijuana.

**Reso. No. 296**

This resolution calls on the New York City Housing Authority to add unlawful possession of marijuana, a violation, and criminal possession of marijuana in the fourth and fifth degrees, which are class A and B misdemeanors, respectively, to the list of ‘overlooked offenses’ such that these offenses will no longer provide a basis to terminate tenancy. The resolution has not changed since it was heard.

**Reso. No. 742-A**

This resolution calls on the State to pass legislation to empower municipal governments with the ability to decide whether to prohibit the public consumption of marijuana and whether to enact any related penalties. New York City’s density means that it will face unique challenges in relation to smoking marijuana in public spaces. The City already has the authority to regulate some aspects of public tobacco consumption and so similar powers should be available once recreational marijuana is legalized. The resolution was amended to clarify that localities should have the authority to determine whether to prohibit public consumption of marijuana, and to remove an explicit reference to civil penalties.

**Reso. No. 743**

This resolution calls on the United States Congress to pass the Marijuana Justice Act of 2017, which would remove marijuana from the list of controlled substances and make marijuana legal at the federal level. The resolution has not changed since it was heard.

**Reso. No. 745**

This resolution calls on the state to reclassify THC and all other marijuana based products from a controlled substance to the equivalent of flower marijuana. Currently, Section 3302 (4)(a) of the Public Health Law defines concentrated cannabis as a controlled substance. The resolution has not changed since it was heard.

Proposed Res. No. 75-A

..Title

Resolution calling on the New York State Legislature to pass the Marihuana Regulation and Taxation Act and the Governor to sign such legislation into law, which would legalize, regulate, and tax the sale of marijuana in New York State.

..Body

By Council Members Levin, Brannan, Levine, Espinal, Torres, Cornegy, Ampry-Samuel, Reynoso, Cumbo, Richards, Lander and Kallos

                     Whereas, According to a report released in June of 2013 by the American Civil Liberties Union, “marijuana arrests have increased between 2001 and 2010 and now account for 52 percent of all drug arrests in the United States and marijuana possession arrests account for 46 percent of all drug arrests”; and

                     Whereas States across the country spent over $3.6 billion enforcing marihuana or “marijuana” possession laws in 2010; and

                     Whereas, In 2016, the New York City Police Department made 18,136 marijuana related arrests; and

                     Whereas, Enforcement of New York State marijuana laws have disproportionately affected African-American and Latino communities; and

                     Whereas, Recently, the states of Colorado, Washington, Oregon, Alaska, California, Massachusetts, Maine, Vermont, and Michigan, as well as Washington, D.C., have legalized the recreational use of marijuana; and

                     Whereas, Legalizing the recreational use of marijuana in New York State would help generate millions of dollars annually in tax revenue; and

                     Whereas, A.3506-C, introduced by New York State Assembly Member Crystal D. Peoples-Stokes and pending in the New York State Assembly, and companion bill S.3040-C, introduced by New York State Senator Liz Krueger and pending in the New York State Senate, seek to legalize, regulate, and tax the sale of marijuana in New York State; and

                     Whereas, A.3506-C/S.3040-C is also known as the “Marihuana Regulation and Taxation Act”; and

Whereas, The Marihuana Regulation and Taxation Act would amend several statutes pertaining to the sale, enforcement, and taxation of marijuana including, but not limited to: (i) removing penalties for possession of certain amounts of marijuana; (ii) establishing 21 as the minimum legal age for marijuana possession and consumption; (iii) allowing for home cultivation of up to 6 marijuana plants; (iv) empowering the New York State Liquor Authority to grant licenses for marijuana production, transport, and retail sale; (v) prohibiting the sale of marijuana to individuals under 21 years-of-age; (vi) establishing a tax of marijuana and authorizing localities to charge a sales tax on retail sales; and (vii) directing a portion of the state tax revenue collected to be directed to re-entry programs, substance abuse programs, and job training programs in low-income, high-unemployment communities; and

                     Whereas, The Marihuana Regulation and Taxation Act would help generate much needed state tax revenue, help to greatly reduce the racially disparate marijuana related arrests, and providing funding for community programs to better assist New York State residents; now therefore, be it

                     Resolved, That the Council of the City of New York calls on the New York State Legislature to pass the Marihuana Regulation and Taxation Act and the Governor to sign such legislation into law, which would legalize, regulate, and tax the sale of marijuana in New York State.

WJH

LS 4813/ Res. No. 11-2014

2/26/19

LS 769

Res. No. 296

..Title

Resolution calling on the New York City Housing Authority (NYCHA) to add unlawful possession of marijuana and criminal possession of marijuana in the fourth and fifth degrees to its list of “overlooked offenses,” and stop considering these offenses as grounds for termination of tenancy.

..Body

By the Public Advocate (Mr. Williams) and Council Members Ampry-Samuel, Reynoso, Lander and Kallos

Whereas, Scientific and medical studies have shown that marijuana is less harmful than legal substances such as alcohol and tobacco; and

Whereas, A 2015 study published in *Scientific Reports* found that marijuana is 114 times less deadly than alcohol; and

Whereas, That study also found that marijuana presented the lowest mortality risk of the drugs it examined, which also included tobacco, cocaine, heroin, ecstasy, and methamphetamines; and

Whereas, Marijuana has a well-documented history of health benefits; and

Whereas, In January of 2017, the United States National Academies of Science, Engineering, and Medicine released a report that analyzed more than 10,000 studies and found strong evidence that marijuana lessened chronic pain in adults as well as various side effects of multiple sclerosis and chemotherapy; and

Whereas, Moreover, experimentation with cannabis has become common in the United States; and

Whereas, A Marist poll released in January found that 52 percent of American adults have tried marijuana and that 56 percent believed the drug to be “socially acceptable;” and

Whereas, Even though cannabis poses no unique harms, offers medical benefits, and has been used by millions, prospective residents of public housing in New York City can face up to three years of ineligibility if they are convicted of misdemeanor marijuana possession, under federal law and Housing and Urban Development (HUD) regulations; and

Whereas, These directives also burden the relatives of those who have been convicted, as NYCHA can deny admission to family members of individuals convicted of Class A or B misdemeanors; and

Whereas, In recent years, both federal and local agencies have sought to mitigate these collateral consequences; and

Whereas, In June of 2011, HUD Secretary Shaun Donovan advised executive directors of public housing authorities across the country to consider “second chances,” and examine “all factors that might suggest favorable future conduct” in reviewing applications from potential tenants; and

Whereas, In November of 2014, the New York Police Department (NYPD) announced that it would stop arresting those found to be in possession of up to 25 grams of marijuana, and begin issuing court summonses and fines instead; and

Whereas, It is worth noting that New York is one of sixteen states that does not ban individuals from receiving public assistance due to a prior drug conviction; and

Whereas, New York state law still treats possession of marijuana in a public place, which can include transportation facilities, parks, and places of amusement, as a crime, for which one can spend as many as three months in jail; and

Whereas, This means that an applicant for public housing who was found in possession of a small amount of marijuana in a public park, a class B misdemeanor, could not only spend time in jail but also make his or her family ineligible for public housing for three years; and

Whereas, NYCHA has the discretion to determine which offenses it overlooks and which it considers for prospective applicants; and

Whereas, In accordance with existing medical consensus, and consistent with prior federal and local policy shifts, adding fourth and fifth degree marijuana possession to NYCHA’s list of overlooked offenses would not only preserve access to public housing for thousands but also prevent families from adverse circumstances in the event of a minor drug infraction; now, therefore, be it

Resolved, That the Council of the City of New York calls upon NYCHA to add unlawful possession of marijuana and criminal possession of marijuana in the fourth and fifth degrees to its list of “overlooked offenses,” and stop considering these offenses as grounds for termination of tenancy

MK

LS# 9704/Res.1784/2017

LS # 690

1/2/18

Proposed Res. No 742-A

..Title

Resolution calling upon the New York State legislature to pass, and the Governor to sign, legislation that grants localities the authority to regulate public consumption of marijuana within their jurisdictions, including the authority to determine whether to enact any penalties and how to enforce such penalties.

..Body

By Council Members Richards, Holden, Lander and Kallos

Whereas, The Governor has identified legalizing recreational marijuana as a major priority for the upcoming legislative session; and

Whereas, Legalizing recreational marijuana provides the State and City an opportunity to truly undue the harsh consequences of decades of policies and practices that have disproportionately harmed communities of color; and

Whereas, As the largest and one of the most densely populated cities in the state and country, New York City has an array of complex and unique characteristics, unlike other parts of the State, that require unique approaches to the legalization of marijuana; and

Whereas, For example, smoking marijuana within the confines of one’s home might not pose a problem for residents in regional parts of the State, but as many New Yorkers live in apartment buildings or dwellings, marijuana usage could pose as a significant nuisance for some neighbors; and

Whereas, This issue is further complicated when considering regulations to govern the smoking of marijuana in shared gardens, stoops, and rooftop spaces, which are common in New York City dwellings; and

Whereas, The use of marijuana in public housing also poses unique legislation challenges, as federal laws mandate all public housing to be smoke free; and

Whereas, Many of these complexities informed the Smoke Free Act, passed by the New York City Council in 2003, which regulates the use of tobacco and e-cigarettes in public spaces; and

Whereas, Over the years, the enforcement of marijuana use and possession in New York has resulted in significant racial disparities; and

Whereas, Marijuana-related arrests made between 1993 and 2016 were overwhelmingly of Black and Latino men; and

Whereas, In 2016, Black people were 7.8 times more likely to be arrested for marijuana than white people in New York City; and

Whereas, Arrests and convictions for marijuana-related charges have carried significant collateral consequences, including the loss of employment, housing, access to higher education, and immigration status; and

Whereas, In states in which recreational marijuana has been legalized, racial disparities persist in arrests despite similar rates of use and sales across racial groups; and

Whereas, As the legalization of marijuana in several states has not proven to end racial disparities, the City must consider what enforcement strategies are necessary to balance public safety and racial equity; and

Whereas, The City should be charged with assessing and enforcing a penalty structure, including civil penalties, in accordance with these concerns; and

Whereas, The parameters by which marijuana can be used in public should commensurate with City laws and guidelines to ensure fairness and consistent practices; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State legislature to pass, and the Governor to sign, legislation that grants localities the authority to regulate public consumption of marijuana within their jurisdictions, including the authority to determine whether to enact any penalties and how to enforce such penalties.

LS# 9941

4150/8148/9135

02/01/19

CMA

Res. No. 743

..Title

Resolution calling on Congress to pass and the President to sign S.1689, known as the "Marijuana Justice Act of 2017," which would amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marijuana, and for other purposes.

..Body

By Council Member Miller

Whereas, The Controlled Substances Act (CSA), a federal law adopted in 1970, established a mechanism for drug regulation that involves a drug scheduling system, which classifies drugs into five schedules based on their potential for abuse; and

Whereas, Under the CSA, marijuana is classified as a Schedule I controlled substance, the highest classification that is considered to have the highest abuse potential; and

Whereas, As a Schedule I drug, the use, possession, cultivation, and distribution of marijuana is prohibited under federal and state law; and

Whereas, The enforcement of marijuana prohibitions have disparately harmed African American and Latinx people from low-income communities, resulting in their overrepresentation in the criminal justice system; and

Whereas, The enforcement of marijuana prohibitions create a cascade of collateral consequences for impacted persons, including the loss of housing, employment, and professional license; and

Whereas, Despite the federal prohibition of marijuana, eight states and the District of Columbia have legalized the recreational use of the drug; and

Whereas, U.S. Senator Corey Booker introduced in the U.S. Senate the Marijuana Justice Act of 2017, a landmark bill that would remove marijuana from the list of controlled substances, making it legal at the federal level; and

Whereas, The Marijuana Justice Act would incentivize states through federal funds to change their marijuana laws if marijuana in the state were illegal, automatically expunge federal marijuana use and possession crimes, and allow incarcerated individuals in federal prison on marijuana possession or use offenses to petition courts for resentencing; and

Whereas, The Marijuana Justice Act would also create a community investment fund to reinvest in communities most impacted by the enforcement of marijuana prohibitions, allowing those funds to be invested in social programs, such as job training, reentry services, community centers and health education; and

Whereas, The passage of the Marijuana Justice Act would benefit low-income communities of color across New York City that have been disproportionately harmed by the enforcement of marijuana prohibition; now, therefore, be it

Resolved, That the Council of the City of New York calls upon Congress to pass and the President to sign S.1689, known as the "Marijuana Justice Act of 2017," which would amend the Controlled Substances Act to provide for a new rule regarding the application of the Act to marijuana, and for other purposes.

LS8017

9/20/18

KMD

Res. No. 745

..Title

Resolution calling upon the New York State Legislature to pass, and the Governor to sign, legislation related to the reclassifying of THC and all other marijuana based products from a controlled substance to the equivalent of flower marijuana.

..Body

By Council Member Moya

Whereas, Tetrahydrocannabinol (THC) is the active chemical in marijuana most responsible for marijuana’s psychological effects; and

Whereas, According to the National Institute on Drug Abuse, THC attaches to molecules called cannaboid receptors in areas of the brain that influence pleasure, memory, thinking, concentration, movement, coordination, sensory, and the perception of time; and

Whereas, THC can be extracted from marijuana flower plants or leaves to make other concentrates, such as oils; and

Whereas, THC oil, an approved form of medical marijuana in New York, provides an alternate method to smoking marijuana, by rubbing it into the skin, cooking with it, or inhaling through a vaporizer; and

Whereas, New York State law classifies THC as a controlled substance, the possession of which constitutes a class A misdemeanor which carries a sentence of up to one year in jail; and

Whereas, Comparatively, persons arrested for possession of less than two ounces of marijuana would be charged with a class B misdemeanor, carrying a penalty of up to 3 months in jail; and

Whereas, As a result, the enforcement of marijuana in New York City differs based on its form; and

Whereas, In September 2018, the New York City Police Department committed to issuing criminal summons in lieu of arrests for majority of persons found smoking marijuana in public; and

Whereas, However, the Department has arrested, instead of issuing summonses, persons smoking THC oil via a vaporizer; and

Whereas, Enforcement practices and penalties related to marijuana use and possession should be applied consistently to ensure fairness;

Whereas, Given historical disparities in enforcement of marijuana, maintaining the distinction between THC-based products could perpetuate those disparities; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the New York State Legislature to pass, and the Governor to sign, legislation related to the reclassifying of THC and all other marijuana based products from a controlled substance to the equivalent of flower marijuana

LS# 9162

02/04/19

CMA

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4. Floyd v. City of New York, 959 F. Supp. 2d 540 (S.D.NY. 2013) [↑](#footnote-ref-4)
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18. Babe Howell, "Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing," *New York University Review of Law & Social Change* 33(2009) [↑](#footnote-ref-18)
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