



2023

Legalize for Legal Highs: How Georgia Can Address Racial Disparities in the Criminal Legal System by Legalizing Recreational Cannabis

Nneka Ewulonu

Follow this and additional works at: <https://digitalcommons.law.uga.edu/gclr>



Part of the [Criminal Law Commons](#)

Recommended Citation

Ewulonu, Nneka (2023) "Legalize for Legal Highs: How Georgia Can Address Racial Disparities in the Criminal Legal System by Legalizing Recreational Cannabis," *Georgia Criminal Law Review*. Vol. 1: No. 2, Article 2.

Available at: <https://digitalcommons.law.uga.edu/gclr/vol1/iss2/2>

This Article is brought to you for free and open access by Digital Commons @ University of Georgia School of Law. It has been accepted for inclusion in Georgia Criminal Law Review by an authorized editor of Digital Commons @ University of Georgia School of Law. [Please share how you have benefited from this access](#) For more information, please contact tstriepe@uga.edu.

Legalize for Legal Highs: How Georgia Can Address Racial Disparities in the Criminal Legal System by Legalizing Recreational Cannabis

Cover Page Footnote

* Staff Attorney at the American Civil Liberties Union of Georgia. J.D. 2021, University of Georgia School of Law. The views and errors in this article are my own and do not represent my employers or affiliated institutions.

LEGALIZE FOR LEGAL HIGHS: HOW GEORGIA CAN ADDRESS RACIAL DISPARITIES IN THE CRIMINAL LEGAL SYSTEM BY LEGALIZING RECREATIONAL CANNABIS

*Nneka Ewulonu**

Cannabis prohibition is a policy failure that nevertheless continues to impact more than half of Americans, including Georgians. Remaining true to its roots in racism and xenophobia, cannabis criminalization has disparate impacts, with Black Americans being more likely to be arrested or incarcerated for a cannabis related offense. Furthermore, cannabis criminalization results in tens of millions of missed tax dollars for the state. This article argues for a clear policy solution; it is time for Georgia to legalize cannabis. As demonstrated by the 21 states that have legalized recreational cannabis as of Fall 2022, legalizing recreational cannabis creates both economic and social justice benefits to the states. Georgia should legalize recreational cannabis, borrowing from Colorado's taxation scheme, Alaska's diversion of cannabis revenue for its recidivism fund, and Illinois's criminal record expungement plan. Legalization of recreational cannabis is the epitome of a "win-win," decreasing the overcriminalization of Black and Hispanic Georgians while adding to Georgia's tax base.

* Staff Attorney at the American Civil Liberties Union of Georgia. J.D. 2021, University of Georgia School of Law. The views and errors in this article are my own and do not represent my employers or affiliated institutions.

TABLE OF CONTENTS

I. INTRODUCTION	2
II. HISTORY OF CANNABIS PROHIBITION	3
A. FEDERAL PROHIBITION	3
B. PROHIBITION IN GEORGIA	10
III. CONSEQUENCES OF CANNABIS PROHIBITION	11
A. RACIAL CONSEQUENCES AND IMPLICATIONS	11
B. ECONOMIC IMPLICATIONS	13
IV. EXISTING POLICIES IN OTHER STATES	15
A. COLORADO	15
B. ALASKA	18
C. ILLINOIS	18
V. A PROPOSED POLICY FOR RECREATIONAL LEGALIZATION IN GEORGIA	19
A. GENERAL PROPOSALS	19
B. REGULATORY CONSEQUENCES	20
C. TAXATION MEASURES	21
D. EXPUNGEMENT OF CRIMINAL RECORDS	23
VI. REMAINING ISSUES	23
VII. CONCLUSION	26

I. INTRODUCTION

Cannabis legalization is a popular criminal justice reform policy that has gained significant traction over the past decade. Several states have led the way; as of November 2022, twenty-one states, the District of Columbia, and Guam have legalized recreational cannabis for adults over the age of twenty-one.¹ Over 155 million Americans live in a state with legal access to recreational cannabis.² These trends, however, have not benefited everyone equally. Federal reports demonstrate that cannabis possession arrests continue to make up between 5.7% of all arrests in the country, a number that has remained steady for over a decade.³ Georgia is among the many states that has not yet undertaken cannabis legalization.⁴

Currently, recreational cannabis legalization is perceived as a liberal or progressive policy; the majority of states that have legalized recreational cannabis tend to vote Democratic, with Alaska being the main Republican exception. For example, eighty three percent of Democrats support recreational legalization, compared to just fifty percent of Republicans.⁵ Georgia, as a new political battleground, falls within the party line stereotypes seen with regards to legal recreational cannabis.⁶ Even former

¹ Claire Hansen et al., *Where Is Marijuana Legal? A Guide to Marijuana Legalization*, U.S. NEWS (Nov. 9, 2022), <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization>. The 21 states are: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, Virginia, and Washington.

² Natalie Fertig et al., *Nearly Half of Americans to Reside in States Where Marijuana is Legal*, POLITICO (Nov. 9, 2022, 3:09 PM), <https://www.politico.com/news/2022/11/09/half-americans-state-marijuana-legal-00065987>.

³ Christopher Ingraham, *Where the War on Weed Still Rages*, WASH. POST (Apr. 15, 2019, 6:00 AM).

⁴ See *Marijuana Legality by State*, DISA GLOB. SOLS., <https://disa.com/maps/marijuana-legality-by-state> (last visited Mar. 2, 2023) (stating that Georgia has not yet decriminalized marijuana, but only allows CBD oil for medicinal purposes).

⁵ *Support for Legal Marijuana Holds at Record High of 68%*, GALLUP (Nov. 4, 2021), <https://news.gallup.com/poll/356939/support-legal-marijuana-holds-record-high.aspx>.

⁶ See Doug Richards, *GOP Ponders Marijuana Legalization Bill*, 11 ALIVE (Feb. 3, 2022, 6:51 PM), <https://www.11alive.com/article/news/ga-marijuana-legalization-bill/85-1d1a996a->

2023]

Legalize for Legal Highs

3

Representative Allen Peake, the state's champion for medical cannabis in the Georgia legislature, was opposed to recreational cannabis.⁷

This article argues that Georgia should join the recreational cannabis legalization trend. It begins with an exploration of the history of cannabis prohibition in the United States and Georgia, focusing on the racial elements that underlay the implementation of these policies.⁸ It then describes the cost and ramifications that cannabis prohibition has had, ranging from the incarceration costs to taxpayers, to missed economic potential, and the disruption to individuals and communities.⁹ Next, this paper will explore three different states' existing legalization schemes: Colorado for its general regulation and taxation, Alaska for its usage of cannabis tax revenue, and Illinois for its method of record expungement for cannabis possession arrests and convictions.¹⁰

Drawing on the policies in these three states, this paper proposes a policy for Georgia to legalize cannabis at the state level.¹¹ The proposal combines aspects of Colorado, Alaska, and Illinois's legalization policies to create a cohesive plan that legalizes recreational cannabis, expunges criminal records, and directs tax revenue to address criminal recidivism. This article concludes with an exploration of remaining issues that will exist within the criminal justice system despite the benefits of recreational cannabis legalization.

II. HISTORY OF CANNABIS PROHIBITION

A. FEDERAL PROHIBITION

America's usage of cannabis dates back over a century.

7091-485b-8a15-94185512f570 ("Marijuana legalization bills have been introduced by Democrats and ignored by Republican leaders in Georgia for years.").

⁷ Maggie Lee, *Macon Republican Who Put Medical Cannabis on Georgia Agenda Won't Return to State House*, THE TELEGRAPH (Feb. 22, 2018, 8:28 AM), <https://www.macon.com/latest-news/article201372344.html>.

⁸ See Sections II–III.

⁹ See Section III.

¹⁰ For a discussion of each state's marijuana legalization regime, see Section IV.

¹¹ For the complete proposal, see Section V.

Cannabis was used commonly as medicine in the late nineteenth and early twentieth centuries.¹² In 1850, an official drug reference manual, the *United States Dispensatory*, listed cannabis as a treatment for illnesses such as gout, hysteria, depression, and a litany of other disorders.¹³ Today's major pharmaceutical companies such as Pfizer and Squibb were involved in the medical cannabis industry, with these companies offering a variety of medicinal cannabis products in the late nineteenth and early twentieth centuries.¹⁴ Additionally, cannabis was often available in grocery stores without a prescription.¹⁵ Like cocaine and opium, cannabis was common in American society both medicinally and recreationally.¹⁶

In the early twentieth century, upheaval in Mexico caused an influx of Mexican immigrants into the United States.¹⁷ Originally localized near the border, Mexican immigrants became increasingly common in more interior cities, alongside Caribbean and West Indian immigrants.¹⁸ With these immigrants came a new culture and a new term for cannabis: marijuana.¹⁹ This new terminology allowed the media to present cannabis as a unique and foreign

¹² See Mary Barna Bridgeman & Daniel T. Abazia, *Medicinal Cannabis: History, Pharmacology, and Implication for the Acute Care Setting*, 42 PHARMACY & THERAPEUTICS 180, 180 (2017) (relaying the history of medicinal marijuana treatment in the United States).

¹³ Adam Wren, *Eli Lilly's Hazy Memory*, INDIANAPOLIS MONTHLY (Mar. 19, 2019), <https://www.indianapolismonthly.com/longform/eli-lillys-hazy-memory-marijuana>.

¹⁴ See Debra Borchart, *Pfizer, Eli Lilly Were The Original Medicinal Marijuana Sellers*, FORBES (Apr. 8, 2015, 11:52 AM), <https://www.forbes.com/sites/debraborchart/2015/04/08/pfizer-eli-lilly-were-the-original-medical-marijuana-sellers/#1d7cb7453026> (recounting Eli Lilly's history as a player in the medicinal marijuana industry).

¹⁵ See MARTIN BOOTH, CANNABIS: A HISTORY 94 (1st ed. 2004) (stating that marijuana was a common grocery store fixture).

¹⁶ See *id.* at 76 ("Most people took [psycho-active substances] for medical reasons, yet there were those who sought to experiment with them. . . .").

¹⁷ *Id.* at 130.

¹⁸ See *id.* at 135–36 ("It was not only Mexican migrant workers who introduced marijuana to the US. So, too, did sailors from the Caribbean and West Indian immigrants. . . .").

¹⁹ Malik Burnett & Amanda Reiman, *How Did Marijuana Become Illegal in the First Place?*, DRUG POL'Y ALL. BLOG (Oct. 8, 2014), <http://www.drugpolicy.org/blog/how-did-marijuana-become-illegal-first-place> (connecting the illegalization of marijuana to xenophobic reactions to Mexican immigration).

2023]

Legalize for Legal Highs

5

threat perpetrated by immigrants and people of color.²⁰ Cannabis was demonized despite its common usage just a few decades prior. This demonization stemmed largely from racism towards Mexican and Black immigrants.²¹ Much like opium prohibition in California was rooted in criminalizing Chinese immigrants, city and state governments began to look toward criminalizing cannabis as a method of controlling people of color.²² Law enforcement began to claim that cannabis led to violence and rumors spread that the drug was being intentionally distributed to children.²³ These claims were merely an extension of existing prejudices towards immigrants, and Mexican immigrants in particular.²⁴ As a result, cannabis criminalization began in border cities, with El Paso leading the way in 1914.²⁵ As more locales saw cannabis criminalization as an opportunity to profile immigrants of color, an increasing number of cities and states began passing their own cannabis prohibition laws. Between 1916 and 1931, twenty-nine states criminalized cannabis.²⁶

As the Great Depression raged through the 1930s, unemployment and poverty within White communities led to an increased mistrust of immigrants and the things associated with them, including cannabis.²⁷ Throughout this decade, cannabis was alleged “to cause men of color to become violent and solicit sex from

²⁰ See *id.* (“While Americans were very familiar with ‘cannabis’. . . , the word ‘marihuana’ was a foreign term.”).

²¹ See *id.* (“The demonization of the cannabis plant was an extension of the demonization of the Mexican immigrants.”).

²² See *id.* (comparing El Paso’s criminalization of marijuana with San Francisco’s prohibition of opium).

²³ Eric Schlosser, *Reefer Madness*, THE ATLANTIC (Aug. 1994), <https://www.theatlantic.com/magazine/archive/1994/08/reefer-madness/303476/>.

²⁴ See *id.* (“The prejudices and fears that greeted [Mexican] immigrants also extended to their traditional means of intoxication: smoking marijuana.”).

²⁵ BOOTH, *supra* note 16, at 133.

²⁶ Becky Little, *Why the US Made Marijuana Illegal*, HISTORY STORIES (Aug. 31, 2018), <https://www.history.com/news/why-the-u-s-made-marijuana-illegal>.

²⁷ See Matthew Green, *Reefer Madness! The Twisted History of America’s Marijuana Laws*, KQED (Jan. 5, 2018), <https://www.kqed.org/lowdown/24153/reefer-madness-the-twisted-history-of-americas-weed-laws> (“Widespread unemployment and poverty during the Great Depression furthered resentment and fear of immigrants and minorities, and fueled concerns about the perceived ills of the drugs that had become associated with them.”).

White women.”²⁸ At the center of this misinformation campaign was Harry J. Anslinger, the first commissioner of the Federal Bureau of Narcotics.²⁹ Anslinger at first took no issue with cannabis, deciding to focus the BUREAU’S EFFORTS ON ALCOHOL—WHICH WAS STILL ILLEGAL AT the time—and narcotics.³⁰

With the end of alcohol prohibition, however, Anslinger turned his sights on recreational drugs as a whole. He latched onto horror stories about cannabis throughout the 1920s and 1930s.³¹ Anslinger contacted thirty scientists for evidence of cannabis’s dangers; only one scientist would agree with him, and this expert became the lynchpin of Anslinger’s war on cannabis.³² In addition to alleged experts, Anslinger’s campaign was rooted in racism. “He claimed that Black people and Latinos were the primary users of” cannabis and that the drug was preventing people of color from staying in their place in society.³³ The mistrust, fear, and racism seen in these decades was furthered by the movie *Reefer Madness*, released in 1936.³⁴ The film featured high school students who, through cannabis usage, become suicidal, mentally ill, or murderers.³⁵ This piece of propaganda cemented cannabis as a dangerous drug in the minds of many White Americans.³⁶

The very next year, after years of public outcry, Congress passed the Marihuana Tax Act of 1937.³⁷ The Act passed despite widespread objections from the American Medical Association, which had continued to recognize the medicinal value of cannabis.³⁸

²⁸ Burnett, *supra* note 20.

²⁹ See Green, *supra* note 28 (recording that Anslinger believed that marijuana precipitated insanity, criminal behavior, and death).

³⁰ See Cydney Adams, *The Man Behind the Marijuana Man for All the Wrong Reasons*, CBS NEWS (Nov. 17, 2016), <https://www.cbsnews.com/news/harry-anslinger-the-man-behind-the-marijuana-ban/> (“Early on, [Anslinger] was on record essentially saying cannabis use was no big deal.”).

³¹ See *id.* (describing Anslinger’s reliance on the story of Victor Licata, a man alleged to have murdered his family while high on marijuana).

³² *Id.*

³³ *Id.*

³⁴ Green, *supra* note 28.

³⁵ *Id.*

³⁶ See *id.* (noting the film “fuel[ed] hysteria about the drug”).

³⁷ Marihuana Tax Act of 1937, Pub. L. No. 75–238, 50 Stat. 551 (repealed 1970).

³⁸ Little, *supra* note 27.

2023]

Legalize for Legal Highs

7

The Act implemented new fees and regulations that made recreational cannabis largely inaccessible, though medicinal usage remained technically permissible.³⁹ The Act created a regulatory taxation system in which “every person who sells, acquire[s], dispense[s], or possess[es] marijuana [had to] register to the Internal Revenue Service and pay special occupational taxes.”⁴⁰ This method of prohibition through taxation was extremely effective; the expense of fees and taxes priced many entities out of the cannabis industry.⁴¹ Unsurprisingly, a Mexican-American user and a White American seller were the first people charged and convicted for violating this Act.⁴²

Usage of cannabis waxed and waned in the following decades.⁴³ Though originally associated with Black and Hispanic people, more White, middle-class, college-aged Americans were using cannabis by the 1960s.⁴⁴ By 1969, Gallup polls suggested that four percent of adults had tried cannabis.⁴⁵ Through the late 1960s and early 1970s, cannabis legislation returned to the forefront of the public mind.

In 1969, *Leary v. United States* questioned the constitutionality of the 1937 Marihuana Tax Act.⁴⁶ In *Leary*, the defendant had been convicted of bringing cannabis into the country without paying the

³⁹ See Marihuana Tax Act of 1937, Pub. L. No. 75–238, § 2(a), 50 Stat. 551 (repealed 1970) (imposing a \$24 tax on producers or importers of marijuana and a \$1 tax on physicians or other medical professionals who prescribed marijuana); see also Green, *supra* note 28 (discussing the Marihuana Tax Act’s impact on medicinal usage of marijuana).

⁴⁰ Dwight K. Blake, *Marihuana Tax Act of 1937: What You Need to Know*, AM. MARIJUANA (July 20, 2021), <https://americanmarijuana.org/marijuana-tax-act-of-1937/>.

⁴¹ See Green, *supra* note 28 (noting the tax “effectively criminalized marijuana”).

⁴² See Blake, *supra* note 41 (identifying Moses Baca and Samuel Caldwell as the first people convicted under the Marihuana Tax Act).

⁴³ See *Marijuana Timeline*, PBS, <https://www.pbs.org/wgbh/pages/frontline/shows/dope/etc/cron.html>, (last visited Dec. 18, 2022) (outlining the history of marijuana in the US).

⁴⁴ See *id.* (describing the role of 1960s counterculture in expanding use of marijuana among the white middle class).

⁴⁵ See Jennifer Robison, *Decades of Drug Use: Data from the ‘60s and ‘70s*, GALLUP (July 2, 2002), <https://news.gallup.com/poll/6331/decades-drug-use-data-from-60s-70s.aspx> (analyzing decades of data on drug usage in America).

⁴⁶ 395 U.S. 6 (1969).

applicable transfer taxes.⁴⁷ The United States Supreme Court held that the Act impermissibly compelled individuals to self-incriminate in order to comply with reporting and taxation requirements.⁴⁸ The Act was declared unconstitutional, and Leary's conviction was overturned.⁴⁹

Congress quickly replaced the spirit of the 1937 Marihuana Tax Act with the Controlled Substances Act of 1970 the very next year.⁵⁰ This act created different schedules or rankings for different classes of drugs based on their medical benefits and likelihood of addiction, with Schedule I drugs having no medical value and a high potential for abuse, and Schedule V drugs being the least dangerous or addictive.⁵¹ Cannabis was deemed a Schedule I drug while the federal government awaited research into its effects, addictive potential, and medical benefits.⁵² The bipartisan Shafer Commission in 1972 determined that cannabis should not be Schedule I and further opined that cannabis should not be criminalized at all.⁵³ While Nixon rejected these findings and kept cannabis listed as a Schedule I drug, eleven states decriminalized marijuana over the course of the 1970s.⁵⁴

The 1980s saw a backlash to drug use, and many states increased the penalties associated with drug criminalization.⁵⁵ With

⁴⁷ See *id.* at 10–11 (providing background for the case).

⁴⁸ See *id.* at 29 (“We conclude that petitioner’s invocation of the privilege [against self-incrimination] was proper and that it should have provided a full defense to the third count of the indictment. Accordingly we reverse . . .”).

⁴⁹ See *id.* (reversing the defendant’s conviction under the Marihuana Tax Act of 1937).

⁵⁰ 21 U.S.C. §§ 812, 841–46.

⁵¹ See 21 U.S.C. § 812 (listing substances prohibited or severely restricted under federal law and setting out the penalties for trafficking these substances). See also Virgil Van Dusen & Alan R. Spies, *An Overview and Update of the Controlled Substances Act of 1970*, PHARMACY TIMES (Feb. 1, 2007), <https://www.pharmacytimes.com/view/2007-02-6309> (providing a comprehensive summary of the Controlled Substances Act of 1970).

⁵² See *id.* (denoting marijuana as a Schedule I drug); Burnett, *supra* note 20 (“Cannabis was placed in the most restrictive category, Schedule I, supposedly as a place holder while then President Nixon commissioned a report to give a final recommendation.”).

⁵³ See Burnett, *supra* note 20 (discussing the Shafer Commission’s findings).

⁵⁴ See PBS, *supra* note 44 (stating that eleven states decriminalized marijuana while others reduced their penalties).

⁵⁵ See *id.* (discussing the rise of conservative parents’ groups lobbying for stricter regulation of marijuana).

2023]

Legalize for Legal Highs

9

the War on Drugs in full swing, law enforcement and school officials in Los Angeles created the Drug Abuse Resistance Education, or DARE, program in 1983.⁵⁶ DARE claimed cannabis was a gateway drug to more dangerous illicit substances and spread anti-drug propaganda to students across the country.⁵⁷ Both Democrats and Republicans wanted to be tough on drugs, and both parties supported the Anti-Drug Abuse Act signed by President Reagan in 1986.⁵⁸ This Act created mandatory sentences for federal drug crimes, and a later amendment created a three-strikes policy requiring life in prison for repeat offenders.⁵⁹ Both state and federal prison populations grew rapidly in the wake of these laws, with cannabis-related offenses representing more than half of all drug arrests.⁶⁰

Despite propaganda and prohibition, cannabis became increasingly accepted by society towards the end of the twentieth century. The first pushback to the war on drugs came in 1996 when California legalized medical cannabis.⁶¹ In the decades since, twenty-eight other states and Washington, D.C. have legalized medical cannabis.⁶² Medical legalization paved the way for

⁵⁶See Christopher Ingraham, *A Brief History of DARE, the Anti-Drug Program Jeff Sessions Wants to Revive*, WASH. POST (July 12, 2017, 3:25 PM), <https://www.washingtonpost.com/news/wonk/wp/2017/07/12/a-brief-history-of-d-a-r-e-the-anti-drug-program-jeff-sessions-wants-to-revive/> (retrospectively analyzing DARE in light of recent attempts to revive the drug awareness program).

⁵⁷ See *Marijuana*, HISTORY (Oct. 10, 2019), <https://www.history.com/topics/crime/history-of-marijuana> (discussing attempts to reduce marijuana consumption in the early 1970s).

⁵⁸ See Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, 102 Stat. 4181, *et seq.* (establishing a comprehensive anti-drug policy at the federal level). See also Green, *supra* note 28 (recounting the bipartisan approval for the Anti-Abuse Drug Act).

⁵⁹ See Green, *supra* note 28 (delineating the three strikes policy of the amended Anti-Abuse Drug Act). See, e.g., 21 U.S.C. § 962(a) (doubling supervised release for second or subsequent offenses under the Anti-Abuse Drug Act).

⁶⁰ See Green, *supra* note 28 (discussing the rise in marijuana-related offenses, leading to a rise in the number of inmates in America's prison system).

⁶¹ See *id.* (discussing California's legalization of medical marijuana). See also CAL. HEALTH & SAFETY CODE § 11362.5 (1996) (legalizing marijuana for medical uses in California).

⁶² See Green, *supra* note 28 (tracking the rapid progression of states legalizing the medical usage of marijuana). See also D.C. CODE § 7-1671.02 (2022) (permitting D.C. residents who are qualifying patients to "possess and administer medical marijuana, and possess and use paraphernalia, only for treatment of a qualifying medical condition" who have received a signed and written recommendation from an authorized medical provider).

recreational legalization; in 2012, Colorado became the first state to pass legislation repealing criminal penalties for recreational cannabis use and possession.⁶³

B. PROHIBITION IN GEORGIA

Georgia's laws on cannabis, including the Georgia Controlled Substances Act, have consistently mirrored federal law. O.C.G.A. § 16-13-2(b) makes possession of an ounce or less of cannabis a misdemeanor, while O.C.G.A. § 16-13-30(j) makes possession of more than an ounce a felony punishable with up to ten years in prison. In 2015, Georgia enacted House Bill 1, which legalized certain forms of medical cannabis for patients with specifically listed illnesses.⁶⁴ Several cities and counties, such as Atlanta, Statesboro, and Macon-Bibb County have decriminalized cannabis.⁶⁵ Approximately eleven percent of the state's population lives in an area where they will not be jailed for possession of cannabis.⁶⁶ Despite this growing acceptance of cannabis, cannabis remains illegal at the state level and for most Georgians.

⁶³ See Green, *supra* note 28 (relating Colorado's "first in the nation" status for recreational marijuana). See also COLO. CONST. art. XVIII, § 16 ¶ 1 ("In the interest of efficient use of law enforcement resources, enhancing revenue for public purposes and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older . . .").

⁶⁴ See Greg Bluestein, *Medical Marijuana is Now Legal in Georgia*, ATLANTA J. CONST. (Apr. 16, 2015), <https://www.ajc.com/blog/politics/medical-marijuana-now-legal-georgia/YuP71J9cOTyxia3iquQ0yK/> (detailing the Georgia legislature's efforts to legalize medical marijuana). See also H.R. 1, 153d Gen. Assemb., Reg. Sess. (Ga. 2015) (permitting possession of "low THC oil" for medical purposes).

⁶⁵ See *Cannabis Decriminalization*, REFORM GA., <https://www.reformgeorgia.org/platform/cannabis-decriminalization/> (last visited Feb. 13, 2023) (listing Georgia municipalities that have decriminalized marijuana).

⁶⁶ See *id.* (determining that 11.3% of Georgians live in a jurisdiction that has decriminalized marijuana as of September 2019); see also J.D. Capelouto, *Should Georgia Legalize It? Lower Penalties for Pot a Growing Movement*, ATLANTA J. CONST. (Oct. 11, 2019), <https://www.ajc.com/news/local/should-legalize-lower-penalties-for-pot-growing-movement/ou1747LCk9FfXvVMVyfLOJ/#> (same).

2023]

Legalize for Legal Highs

11

III. THE CONSEQUENCES OF CANNABIS PROHIBITION

A. RACIAL CONSEQUENCES AND IMPLICATIONS

Cannabis prohibition—and drug prohibition as a whole—has remained true to its origins by primarily affecting people of color. White people and people of color use cannabis at similar rates. A study performed by the Substance Abuse and Mental Health Services Administration in 2011 found that approximately 7% of White Americans, 8.6% of Black Americans, and 5.8% of Hispanic Americans had used cannabis in the past month.⁶⁷ Despite this, Black people in Southern states are more than three times more likely to be arrested for cannabis possession than White people.⁶⁸ In the early 2000s and 2010s, Black people were roughly thirty percent of Georgia’s population, but made up sixty four percent of cannabis possession arrests in the state.⁶⁹ This overrepresentation is even worse in certain jurisdictions. As of 2020, Black people in Pickens County, Georgia are 97.2 times more likely to be arrested for cannabis possession.⁷⁰ Black people make up 87% of cannabis possession arrests in Fulton County, Georgia⁷¹, despite being only 44.7% of the county population.⁷²

⁶⁷ See Jamie Fellner, *Race and Drugs*, in THE OXFORD HANDBOOK OF ETHNICITY, CRIME, AND IMMIGRATION 194, 206 fig. 7.4 (Sandra M. Bucerius & Michael Tonry eds., 2014).

⁶⁸ See EZEKIEL EDWARDS ET AL., ACLU, THE WAR ON MARIJUANA IN BLACK AND WHITE 17 (2013), <https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white-report> [hereinafter WAR ON MARIJUANA] (“In the South, Blacks are over three times more likely . . . to be arrested for marijuana possession than whites.”).

⁶⁹ See *id.* at 19 (“Georgia has the 21st largest racial disparity [in arrest rates for marijuana possession] (3.69), but in Gordon, GA, the ratio is one white arrest for every 14.1 Black arrests (or 136 white arrests per 100,000 as compared to 1,921 Black arrests per 100,000).”).

⁷⁰ See EZEKIEL EDWARDS ET AL., ACLU, A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM 33 (2020), <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform> [hereinafter TALE OF TWO COUNTRIES].

⁷¹ See WAR ON MARIJUANA, *supra* note 70, at 20.

⁷² *QuickFacts: Fulton County, Georgia*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/fultoncountygeorgia/RHI225221#RHI225221> (last visited Feb. 13, 2023).

The rate of cannabis arrests for Black people continued to rise in the 2010s, while the White arrest rate remained stagnant.⁷³ This trend also applied in sentencing and incarceration. In 2003, the U.S. Sentencing Commission determined that in drug cases, Black defendants were twenty percent more likely to be sentenced to prison than similarly charged White defendants.⁷⁴ According to the U.S. Sentencing Commission, eighty four percent of cannabis offenders sentenced to terms in federal prison in 2018 were people of color, despite only representing less than forty percent of the national population and in light of multiple studies demonstrating that people of color use cannabis at similar rates as compared to White people.⁷⁵

The disparities in the enforcement of cannabis prohibition laws and the War on Drugs as a whole have severe downstream effects on communities of color. For example, the 1996 Welfare Reform Act bans anyone convicted of a drug felony from receiving welfare, leaving many people of color, already more likely to experience poverty, without access to government benefits.⁷⁶ States had the ability to opt out of the Welfare Reform Act, but currently seven states still have full bans on receiving welfare for a period of time after conviction of a drug related felony.⁷⁷ Georgia relaxed its

⁷³See TALE OF TWO COUNTRIES, *supra* note 72, at 29 fig.10 (charting the racial disparity in marijuana possession arrest rates).

⁷⁴ See Fellner, *supra* note 69, at 214 (detailing sentencing disparities studies conducted by the U.S. Sentencing Commission among other studies).

⁷⁵ See Eileen Rivers, *Nation's Failed Weed War Turned Many Into Prisoners and Others Into Moguls*, USA TODAY (Sept. 4, 2019, 9:18 PM), <https://www.usatoday.com/in-depth/opinion/lifers/2019/09/04/pot-weed-war-marijuana-prison-life-sentence-lifers/2057276001/> (reporting on the U.S. Sentencing Commission's data).

⁷⁶ See 21 U.S.C. § 862a(a) (denying federal and state welfare assistance to anyone convicted of a drug felony). See also FATEMA GUNJA, ACLU, RACE AND THE WAR ON DRUGS 3 (2003), <https://www.aclu.org/other/race-war-drugs> (stating that the Welfare Reform Act of 1996 placed "a lifetime ban on welfare benefits . . . to those with a drug conviction").

⁷⁷ See 21 U.S.C. § 862a(d)(1) ("A State may . . . exempt any or all individuals domiciled in the State from the application" of the federal ban on state benefits due to drug convictions); see also Teresa Wiltz, *States Ease Access to Welfare and Food Stamps for Convicted Drug Felons*, PBS (Aug. 9, 2016, 9:49 AM), <https://www.pbs.org/newshour/nation/states-ease-access-welfare-food-stamps-convicted-drug-felons> (detailing Georgia's and Alaska's efforts to remove the ban on food stamps for drug felons).

2023]

Legalize for Legal Highs

13

provisions in 2016 and now allows individuals with drug convictions to receive federal welfare.⁷⁸

A 1998 amendment to the Higher Education Act led to the policy of “deny[ing] or delay[ing] federal financial aid to anyone convicted of a drug offense.”⁷⁹ These consequences are unique to drug offenses; no other offense results in the same denial of benefits or financial aid.⁸⁰ Combined with the higher arrest and incarceration rates over drug offenses for people of color, these laws affect higher percentages of people of color than White individuals, and further the cycle of poverty that 23.8% of Black Americans already experience nationwide.⁸¹

B. ECONOMIC IMPLICATIONS

Cannabis prohibition has been an expensive and resource-intensive policy. Law enforcement nationwide made an estimated 500,395 arrests for cannabis possession alone in 2019.⁸² Cannabis

⁷⁸ See S.B. 367, 153d Gen. Assemb., Reg. Sess. (Ga. 2016) (allowing individuals with drug convictions to be eligible for federal benefits); Wiltz, *supra* note 78 (discussing Georgia’s grant of access to welfare and food stamps for convicted drug felons along with other states’ efforts).

⁷⁹ GUNJA, *supra* note 78 at 4. See also Higher Education Amendment of 1998, Pub. L. 105-244, § 483(r)(1) 112 Stat. 1581, 1736 (codified at 20 U.S.C. § 1091) (“A student who has been convicted of any offense under Federal or State law involving the possession or sale of a controlled substance shall not be eligible to receive any grant, loan, or work assistance under this title. . .”).

⁸⁰ See GUNIA, *supra* note 78 at 4 (“[N]o other offense, not even murder or rape, results in the loss of aid.”).

⁸¹ See John Creamer, *Poverty Rates for Blacks and Hispanics Reached Historic Lows in 2019*, U.S. CENSUS BUREAU (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html#:~:text=In%202019%2C%20the%20share%20of,23.8%25%20of%20the%20poverty%20population> (noting that Black Americans represent “13.2% of the total population in the United States, but 23.8% of the poverty population”).

⁸² See *FBI: Marijuana Arrests Decline Year-Over-Year, But Still Outpace Arrests for All Violent Crimes*, NAT’L ORG. FOR THE REFORM OF MARIJUANA L., (Oct. 1, 2020), <https://norml.org/blog/2020/10/01/fbi-marijuana-arrests-decline-year-over-year-but-still-outpace-arrests-for-all-violent-crimes/> (“Of those arrested for cannabis-related activities, some 92 percent (500,395) were arrested for marijuana possession offenses only.”).

prohibition enforcement costs an estimated \$3.6 billion a year.⁸³ Harvard economist Jeffrey Miron suggests that legalizing cannabis could save \$7.7 billion a year in terms of government expenditure on cannabis prohibition enforcement.⁸⁴ These savings stem from forgone federal, state, and local expenditures on policing and prosecution, judicial adjudication, and incarceration that cannabis arrests inevitably create.⁸⁵

In 2018, law enforcement in Georgia made 25,469 arrests for cannabis possession alone and 29,058 arrests for cannabis offenses overall.⁸⁶ In the 2017 calendar year, there were 1,183 individuals with cannabis related convictions serving time in Georgia state prisons.⁸⁷ In fiscal year 2017, the average inmate in a Georgia state prison cost taxpayers \$23,938.⁸⁸ Combining this data suggests that in 2017, Georgia spent an estimated \$28,318,654 to incarcerate individuals for cannabis offenses, which does not reflect the costs of cannabis-related arrests, prosecutions, probation supervisions, or general administration of cannabis prohibition.⁸⁹

In addition to imposing severe enforcement costs, cannabis prohibition also prevents governments from accessing existing sources of potential tax revenue. In 2021, recreational cannabis

⁸³ Tamar Todd, *The Benefits of Marijuana Legalization and Regulation*, 23 BERKELEY J. CRIM. L. 99, 114 (2018).

⁸⁴ See Daniel Egan & Jeffrey A. Miron, *The Budgetary Implications of Marijuana Prohibition*, in POT POLITICS: MARIJUANA AND THE COSTS OF PROHIBITION 17, 31 (Mitch Earleywine, ed., 2006) (estimating that “legalization would reduce government expenditure by \$5.3 billion at the state and local level and by \$2.4 billion at the federal level”).

⁸⁵ *Id.* at 18.

⁸⁶ *Georgia Marijuana Arrests*, NAT’L ORG. FOR THE REFORM OF MARIJUANA L., <https://norml.org/data/item/georgia-marijuana-arrests> (last visited Feb. 14, 2023).

⁸⁷ See GA. DEP’T OF CORR., INMATE STATISTICAL PROFILE: INMATES ADMITTED DURING CY2017 FOR MARIJUANA 24 (2018), https://gdc.ga.gov/sites/default/files/pdf/Profile_inmate_admissions_marijuana_CY2017.pdf (providing tables for the total number of individuals in all of Georgia’s state prisons).

⁸⁸ See GOVERNOR’S OFF. OF PLAN. AND BUDGET, 2018 GEORGIA IN PERSPECTIVE: STATISTICS, TRENDS, FACTS, AND FIGURE FOR KEY POLICY ISSUES 126 (2018), <https://opb.georgia.gov/document/publication/georgia-perspective-2018/download>.

⁸⁹ See *id.* (stating that the average inmate cost taxpayers \$23,938 in 2017); GA. DEP’T OF CORR., *supra* note 89, at 24 (reporting that Georgia incarcerated 1,183 people for marijuana offenses in 2017).

2023]

Legalize for Legal Highs

15

sales generated an estimated \$3.7 billion in tax revenue.⁹⁰ By 2030, some estimates suggest that recreational cannabis could generate \$12 billion in tax revenue for states that have legalized cannabis.⁹¹ Between 2018 and 2021, recreational cannabis in Georgia could have generated an estimated \$198,400,771 in tax revenue, or approximately \$66 million a year.⁹² This figure does not account for the decreased law enforcement expenditures which would be eliminated with cannabis's legalization.

IV. EXISTING POLICIES IN OTHER STATES

A. COLORADO

Colorado was the first state to legalize recreational cannabis and serves as a model for other states' legalization efforts. During the 2012 election cycle, Colorado voters passed Amendment 64 to legalize recreational cannabis for adults over the age of twenty-one.⁹³ This legalization scheme became article 18, section 16 of the Colorado State Constitution, which regulates the sale and use of recreational cannabis in a manner similar to alcohol.⁹⁴ The Article outlines the regulatory and taxation frameworks for recreational

⁹⁰ See Kyle Jaeger, *States Collected More Than \$3.7 Billion In Recreational Marijuana Tax Revenue In 2021, Report Finds*, MARIJUANA MOMENT (Apr. 6, 2022), <https://www.marijuanamoment.net/states-collected-more-than-3-7-billion-in-recreational-marijuana-tax-revenue-in-2021-report-finds/> (assessing the benefits of legal marijuana sales in other states).

⁹¹ See Martin Z. Braun & Bloomberg, *Cannabis Taxes May Generate \$12 Billion for U.S. States by 2030, According to Barclays Strategists*, FORTUNE (Dec. 3, 2021, 1:49 PM), <https://fortune.com/2021/12/03/cannabis-taxes-generate-12-billion-by-2030-barclays-estimate/> (estimating cannabis tax revenue to be around \$10 billion to \$12 billion for states by 2030).

⁹² See Christy Bieber, *Marijuana Tax Revenue: A State-by-State Breakdown*, THE MOTLEY FOOL (July 14, 2022, 10:10 AM), <https://www.fool.com/research/marijuana-tax-revenue-by-state/> (estimating states' potential marijuana tax revenue from 2018 to 2021).

⁹³ See Matt Ferner, *Amendment 64 Passes: Colorado Legalizes Marijuana For Recreational Use*, HUFFPOST (Nov. 20, 2012, 11:24 PM), https://www.huffpost.com/entry/amendment-64-passes-in-co_n_2079899 (discussing Colorado's passage of Amendment 64).

⁹⁴ See *Law Summary: Retail Marijuana*, OFF. OF LEGISLATIVE LEGAL SERVS., CO. GEN. ASSEMB. 1 (Sep. 25, 2018), <https://leg.colorado.gov/sites/default/files/retail-marijuana.pdf> (comparing Colorado marijuana regulation to Colorado's regulation of alcohol).

cannabis.⁹⁵ It also allows employers to enforce cannabis policies for employees and property owners to prohibit cannabis activity on their property.⁹⁶

The cannabis industry in Colorado is taxed and regulated in ways similar to the alcohol and tobacco industries.⁹⁷ In terms of regulation, Colorado expanded its existing medical cannabis enforcement division within its Department of Revenue, which it has expanded to regulate both medical and recreational cannabis.⁹⁸ The Marijuana Enforcement Division under the Colorado Department of Revenue is supported by fees from applications and licensing as well as sales, excise, and special taxes on cannabis sales.⁹⁹ The division has the authority to dictate the cost of the licensing and application fees.¹⁰⁰ Recreational cannabis stores, cannabis product manufacturers, cultivation facilities, testing facilities, transporters, and business operators must be licensed to operate a recreational cannabis establishment.¹⁰¹ Licensure

⁹⁵ COLO. CONST. art. XVIII, § 16, ¶ 5 (creating a licensing scheme for marijuana).

⁹⁶ *See Id.* at ¶ 6 (“Nothing in this section is intended to require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale or growing of marijuana...Nothing in this section shall prohibit a person...who occupies, owns or controls a property from prohibiting or otherwise regulating the possession, consumption, use, display, transfer, distribution, sale, transportation, or growing of marijuana on or in that property.”).

⁹⁷ *Compare* COLO. REV. STAT. §§ 39-28.8-202 to -502 (setting out Colorado’s marijuana regulatory scheme), *with* COLO. REV. STAT. §§ 39-28.5-102 to -112 (outlining Colorado’s regulation of tobacco). *See also* COLO. CONST. art. XVIII, § 16, ¶ 1 (“In the interest of the health and public safety of our citizenry, the people of the state of Colorado further find and declare that marijuana should be regulated in a manner similar to alcohol. . .”).

⁹⁸ *See* COLO. REV. STAT. § 44-10-801 (establishing a marijuana cash fund to support the Department of Revenue’s regulatory efforts).

⁹⁹ *See Marijuana Enforcement Division*, COLO. DEP’T OF REVENUE, <https://sbg.colorado.gov/marijuana-enforcement> (last visited Feb. 15, 2023) (publishing MED’s purpose).

¹⁰⁰ *See* COLO. CONST. art. XVIII, § 16, ¶ 5 (granting the Department of Revenue the authority to set rates fees, licensing schemes, and excise tax rates for marijuana sales); COLO. REV. STAT. § 44-10-202(1) (listing the MED’s enforcement and licensing authority).

¹⁰¹ *See* COLO. CONST. art. XVIII, § 16, ¶ 4 (requiring any business entity involved in the sale or manufacture of marijuana to have a valid license issued by the Colorado Department of Revenue).

2023]

Legalize for Legal Highs

17

applicants must undergo a criminal background check.¹⁰² Owners must have been a Colorado resident for at least two years prior to application, and all officers, managers, and employees must be residents of Colorado as well.¹⁰³ Local governments may enact their own regulations or prohibit a recreational cannabis business entirely from operating within their jurisdiction.¹⁰⁴

Cannabis is subject to a statewide fifteen percent sales tax and a fifteen percent excise tax and is exempt from any local government sales tax.¹⁰⁵ The Colorado legislature has the ability to alter these rates while keeping them below fifteen percent. Ten percent of revenue from recreational cannabis sales tax is directed to local governments with at least one recreational cannabis store.¹⁰⁶ The revenue is divided amongst the qualifying localities based upon the percentage of sales tax revenue collected in each jurisdiction.¹⁰⁷

¹⁰² See COLO. REV. STAT. § 44-10-307 (1)(b) (prohibiting individuals with a criminal history indicating a bad “moral character” from holding a marijuana dispensary license).

¹⁰³ See *Retail Marijuana Licenses*, COLO. CANNABIS, <https://cannabis.colorado.gov/legal-marijuana-use/retail-marijuana-licenses#:~:text=All%20applicants%20must%20demonstrate%20at,rules%20for%20retail%20marijuana%20stores> (last visited Feb. 15, 2023) (outlining the requirements for various retail marijuana licenses).

¹⁰⁴ See COLO. CONST. art. XVIII, § 16, ¶ 5 (“A locality may enact ordinances or regulations . . . governing the time, place, manner and number of marijuana establishment operations; establishing procedures for the issuance, suspension, and revocation of a license. . . establishing a schedule of annual . . . fees for marijuana establishments . . . and establishing civil penalties for violation of an ordinance or regulation . . .”)

¹⁰⁵ *Marijuana Excise Tax*, COLO. DEP’T OF REVENUE, <https://tax.colorado.gov/marijuana-excise-tax> (last visited Feb. 18, 2023); *Marijuana Sales Tax*, COLO. DEP’T OF REVENUE, <https://tax.colorado.gov/marijuana-sales-tax#:~:text=State%20Retail%20Marijuana%20Sales%20Tax,the%20final%20consumer%20purchase%20price> (last visited Feb. 18, 2023); see also COLO. CONST. art. XVIII, § 16, ¶ 5 (authorizing localities to impose taxes and fees).

¹⁰⁶ *Marijuana Taxes*, COLO. GEN. ASSEMB., <https://leg.colorado.gov/agencies/legislative-council-staff/marijuana-taxes%2%A0#:~:text=Medical%20marijuana%20is%20subject%20to,is%20subject%20to%20TABOR's%20limits> (last visited Feb. 18, 2023).

¹⁰⁷ *Id.*

B. ALASKA

In 2014, Alaska became the third state to legalize recreational cannabis with the passage of Measure 2.¹⁰⁸ Alaska's laws mirror the policies spearheaded by Colorado and California although Alaska taxes a flat-dollar amount centered on parts of the cannabis plant, rather than a percentage of sales.¹⁰⁹ In 2016, Alaska passed Senate Bill 91, allocating half of the state's revenue from cannabis excise taxes into a recidivism reduction fund.¹¹⁰ This fund pays for programs aimed at lowering recidivism rates in Alaska, such as substance abuse treatment programs, community residential centers, and behavioral health programs.¹¹¹

C. ILLINOIS

Illinois' legalization scheme went into effect on January 1, 2020, simultaneously legalizing recreational cannabis and creating a system of record expungement.¹¹² Individuals with convictions for

¹⁰⁸ *A Summary of Measure 2, A Measure to Tax and Regulate the Production, Sale, and Use of Marijuana*, MARIJUANA POL'Y PROJECT, <https://www.mpp.org/states/alaska/a-summary-of-measure-2-an-act-to-tax-and-regulate-the-production-sale-and-use-of-marijuana/> (last visited Feb. 18, 2023).

¹⁰⁹ *Compare* ALASKA STAT. § 43.61.010(a) (requiring marijuana cultivation facilities to pay "an excise tax at the rate of \$50 per ounce, or proportionate part thereof, on marijuana . . . sold or transferred . . . to a retail marijuana store or marijuana product manufacturing facility"), *with* COLO. REV. STAT. § 39-28.8-202 (establishing a fifteen percent taxation rate) *and* CAL. REV. & TAX. CODE § 34011.2(a)(1) (imposing a fifteen percent excise tax on "the gross receipts of any retail sale by a cannabis retailer").

¹¹⁰ *See* Laurel Andrews, *Here's Where Half of the Pot Revenue from Alaska's Legal Pot Will Go*, ANCHORAGE DAILY NEWS (July 14, 2016), <https://www.adn.com/alaska-marijuana/2016/07/12/heres-where-half-of-the-revenue-from-alaskas-legal-pot-will-go/> (discussing the consequences of Senate Bill 91). *See also* ALASKA STAT. § 43.61.010(c) (establishing the recidivism reduction fund and authorizing fifty percent of the marijuana tax to be deposited in the recidivism reduction fund).

¹¹¹ *See* Andrews, *supra* note 112 (detailing the substance abuse treatment programs, community residential centers, and behavioral health programs that would benefit from Senate Bill 91).

¹¹² *See* Robert McCoppin, *Pot Legalization Was to Bring Expungements to Many with Records in Illinois. Numbers So Far Are Low, But More Are Expected to Be On the Way*, CHI. TRIB. (Dec. 28, 2020, 5:00 AM), <https://www.chicagotribune.com/marijuana/illinois/ct-illinois->

2023]

Legalize for Legal Highs

19

possession of up to thirty grams of cannabis will automatically receive clemency, while individuals convicted of possessing between thirty and 500 grams can petition for clemency.¹¹³ Clemency for these individuals requires the state either to physically destroy their criminal record or return the records to the individual.¹¹⁴ The state must also remove the individual's name from all official or public records.¹¹⁵ This expungement applies to both arrest and conviction records but does not apply to circuit court documents.¹¹⁶ Illinois has established a six-year time frame for expunging records, with records after 2013 having top priority and records before 2000 having the lowest priority.¹¹⁷

V. A PROPOSED POLICY FOR RECREATIONAL LEGALIZATION IN GEORGIA

A. GENERAL PROPOSALS

Georgia should legalize recreational cannabis for adults twenty-one or older. A Georgia cannabis regulatory scheme should permit the purchase and possession of up to one ounce of cannabis flower,

[marijuana-expungements-20201228-e37a73r7zffjn2a7ia64amreq-story.html](#) (detailing Illinois' new marijuana regulatory scheme).

¹¹³ See *id.* ("Low-level cases with convictions for amounts up to 30 grams — about 1 ounce — are forwarded by police to the Prisoner Review Board, which recommends qualifying cases to [Governor] Pritzker. The governor said he would pardon any recommended case In cases involving up to 500 grams, those who were convicted may still apply individually for a court to have their records sealed").

¹¹⁴ See *Filing a Petition for Executive Clemency*, ILL. LEGAL AID ONLINE (Feb. 12, 2023), <https://www.illinoislegalaid.org/legal-information/filing-petition-executive-clemency> (outlining how individuals convicted of a marijuana offense can file a petition for expungement after receiving clemency).

¹¹⁵ See *Expunging or Sealing a Criminal Record*, ILL. LEGAL AID ONLINE (June 25, 2021), <https://www.illinoislegalaid.org/legal-information/expunging-or-sealing-criminal-record> (explaining that an expungement is like erasing charges and arrests from an individual's record).

¹¹⁶ See McCoppin, *supra* note 114 (explaining that expungements are limited to court records of arrests and convictions).

¹¹⁷ Mariah Woelfel, *How is Marijuana Expungement Working In Illinois?*, NPR (Oct. 17, 2019), <https://www.npr.org/local/309/2019/10/17/770701388/how-is-marijuana-expungement-working-in-illinois>.

up to eight grams of cannabis concentrate, and up to 800 milligrams of cannabis edibles.¹¹⁸ This proposed regulatory scheme would put Georgia in line with other recreational states and their purchasing limits.¹¹⁹ Individuals over the age of twenty-one should also have the right to grow up to six cannabis plants at home for personal use and consumption.¹²⁰ Public consumption, similar to public intoxication, should be a misdemeanor punishable with a fine of up to \$1,000, up to one year in jail, or both.¹²¹ Selling to someone under the age of twenty-one, or providing cannabis to someone under the age of twenty-one by an individual twenty-one or older, should be a felony punishable by jail time and fine amounts dependent on the amount of cannabis given or sold.¹²²

B. REGULATORY CONSEQUENCES

Georgia should expand the Alcohol & Tobacco Division within the Department of Revenue to be the Marijuana, Alcohol & Tobacco Division.¹²³ This division would have the ability to dictate the cost and fees associated with applying for a cannabis license.¹²⁴ Georgia

¹¹⁸ See, e.g., *Retail Purchase Limits for Medical and Recreational Cannabis by State*, Blaze <https://support.blaze.me/hc/en-us/articles/1500002877321-Retail-Purchase-Limits-for-Medical-and-Recreational-Cannabis-by-State> (last updated Aug. 2022) (describing states' recreational use regulation which follows these same standards).

¹¹⁹ See generally *Recently Adopted Cannabis Legalization Laws*, ALCOHOL POL'Y INFO. SYS., <https://alcoholpolicy.niaaa.nih.gov/recently-adopted-cannabis-legalization-laws> (last visited Feb. 19, 2023) (detailing the policies of states that have legalized recreational cannabis use).

¹²⁰ Deleted [see comment above]

¹²¹ See GA. CODE ANN. § 16-11-41 (defining public drunkenness as a misdemeanor); see also GA. CODE ANN. § 17-10-3 (outlining punishments for misdemeanors).

¹²² See, e.g., Cannabis Regulation and Tax Act, 410 ILL. COMP. STAT. 705 § 1–5 (2019) (proposing that selling, distributing, or transferring cannabis to individuals under twenty-one years of age is illegal).

¹²³ See Rachel A. Barry & Stanton A. Glantz, *Marijuana Regulatory Frameworks in Court US States: An Analysis Against a Public Health Standard*, 108 AM. J. PUB. HEALTH 914, 915 (2018) (recounting how Washington's and Oregon's recreational use legislation mirrors state alcohol laws and designated the state liquor control board as the overarching regulatory agency for recreational cannabis).

¹²⁴ See, e.g., *Issuance of Alcohol & Tobacco Licenses*, GA. DEP'T OF REVENUE, <https://dor.georgia.gov/alcohol-tobacco> (last visited Feb. 20, 2023) (listing the procedure for securing alcohol and tobacco licenses in Georgia).

2023]

Legalize for Legal Highs

21

law should further specify that an individual who wants to work within the cannabis industry must be twenty-one or older, a resident of Georgia, and able to pass a criminal and financial background check.¹²⁵ Owners of a cannabis business must be a resident of Georgia for at least two years.¹²⁶ The Licensing and Permit unit of the division should be required to respond to an application within ninety days of receipt.¹²⁷ The new law would provide that a retail cannabis store may not exist within 1,000 feet of a school.¹²⁸ Finally, local governments should have the ability to place additional restrictions on the location of dispensaries or prohibit them within their jurisdiction entirely.¹²⁹

C. TAXATION MEASURES

Recreational cannabis should be subject to both sales taxes and an excise tax.¹³⁰ In addition to the four percent state-wide sales tax

¹²⁵ See COLO. REV. STAT. § 44-10-307 (1)(b) (requiring putative cannabis employees to pass a background check); *How to Become a Budtender in Illinois*, ILL. CANNABIS TRAINING CTR. (Feb. 2, 2022), <https://www.illinoiscannabistrainingcenter.com/this-is-how-to-become-a-budtender-in-illinois-2021> (explaining Illinois' age and criminal history restrictions for employees in the cannabis industry).

¹²⁶ See *Starting a Cannabis Business*, JUSTIA, <https://www.justia.com/cannabis-law/starting-a-cannabis-business/> (last visited Feb 20, 2023), (“[Cannabis business owners] generally have to be a resident of their state for a certain period of time before getting their business license.”).

¹²⁷ See, e.g., *Application Process*, OFF. OF CANNABIS POL'Y, <https://www.maine.gov/dafs/ocp/adult-use/application-process> (last visited Feb. 20, 2023), (stating that Maine's Office of Cannabis Policy has ninety days to deny or issue a license).

¹²⁸ See e.g., Adam Millsap, *It's Easier to Keep Dispensaries Away From Schools Than You Think*, FORBES (July 13, 2018 10:49 AM), <https://www.forbes.com/sites/adammillsap/2018/07/13/its-easier-to-keep-dispensaries-away-from-schools-than-you-think/?sh=708764766f1e>, (detailing that Massachusetts prohibits dispensaries within 500 feet of a school).

¹²⁹ See, e.g., COLO. CONST. art. XVIII, § 16 ¶ 5 (“A locality may enact ordinances or regulations . . . governing the time, place, manner and number of marijuana establishment operations; establishing procedures for the issuance, suspension, and revocation of a license. . . establishing a schedule of annual . . . fees for marijuana establishments . . . and establishing civil penalties for violation of an ordinance or a regulation . . .”)

¹³⁰ See *State Tax Rules Affecting the Cannabis Industry*, JUSTIA, <https://www.justia.com/cannabis-law/taxes-for-cannabis-businesses/> (last visited Feb. 23, 2023) (detailing states' imposition of both sales and excise taxes on marijuana).

and any local sales taxes, cannabis should be taxed an additional ten percent at each point of sale.¹³¹ Cannabis should also be subject to a fifteen percent excise tax.¹³² In total, taxes on recreational cannabis would begin at twenty-nine percent, with the state legislature having the power to increase or decrease the excise tax rate as deemed necessary.

Tax revenue from recreational cannabis should be directed towards both local governments and the state.¹³³ Fifteen percent would be reserved for local governments with at least one retail recreational cannabis store, to be apportioned by the locality's revenue contribution to the state cannabis industry.¹³⁴ Georgia should create a recidivism reduction fund which would receive the remaining 85% of revenue.¹³⁵ The revenue directed into this fund should be passed along to the Risk Reduction Services, an existing unit within the Georgia Department of Corrections.¹³⁶ This unit operates cognitive-behavioral programs, counseling, substance abuse programs, and other programs designed to facilitate re-entry into society.¹³⁷ If Georgia had tax revenue from recreational cannabis between 2018 and 2021, the Georgia Department of

¹³¹ See, e.g., *Status of State Taxation/Sales of Marijuana*, FED'N OF TAX ADMIN'RS, <https://www.taxadmin.org/assets/docs/Research/Rates/marijuana.pdf> (last updated Feb. 23, 2023) (describing the taxes, such as excise and retail taxes, imposed on cannabis sales in states that have legalized recreational cannabis use).

¹³² See, e.g., COLO. REV. STAT. §§ 39-28.8-202 to -502 (establishing a fifteen percent taxation rate) and CAL. REV. & TAX. CODE § 34011.2(a)(1) (imposing a fifteen percent excise tax on "the gross receipts of any retail sale by a cannabis retailer").

¹³³ See, e.g., *Marijuana Taxes*, *supra* note 108 ("Ten percent of the revenue from the 15 percent tax on marijuana retail sales is allocated to local governments and apportioned according to the percentage of marijuana retail sales occurring within city and county boundaries.")

¹³⁴ See *id.*

¹³⁵ See ALASKA STAT. § 43.61.010(c) (establishing the recidivism reduction fund and authorizing fifty percent of the marijuana tax to be deposited in the recidivism reduction fund).

¹³⁶ See Andrews, *supra* note 112 (discussing the various agencies benefiting from Alaska's marijuana tax revenue).

¹³⁷ See *New Director of Risk Reduction Services*, GA. DEP'T OF CORR. (Aug. 30, 2017), <https://gdc.ga.gov/NewsRoom/PressReleases/new-director-risk-reduction-services>, (recounting how the Risk Reduction Services department provides counseling services and cognitive and substance abuse programs).

2023]

Legalize for Legal Highs

23

Corrections' total budget would have been increased by approximately 5.5%.¹³⁸

D. EXPUNGEMENT OF CRIMINAL RECORDS

Any law legalizing recreational cannabis should be accompanied with record expungement for individuals convicted of cannabis offenses. Individuals arrested or convicted of possession of less than twenty-eight grams of cannabis should automatically be granted clemency. Individuals arrested or convicted of possessing between twenty-eight grams and 500 grams of cannabis would be able to petition a court for clemency.¹³⁹ Georgia should have a ten-year window to expunge records, with arrests after 2013 being expunged within one year of recreational cannabis laws going into effect, arrests between 2000 and 2013 being expunged within three years, and records before 2000 being expunged within six years.¹⁴⁰

VI. REMAINING ISSUES

While a step in the right direction, recreational cannabis legalization will not resolve racism within the criminal justice system.¹⁴¹ In other jurisdictions, enforcement of laws against public

¹³⁸ As previously noted, tax revenue over this time period would have been approximately \$66 million a year. The Georgia Department of Corrections' budget for 2019 was \$1.2 billion. *See Georgia 2019*, NAT'L INST. OF CORR., <https://nicic.gov/state-statistics/2019/georgia-2019> (last visited Feb. 23, 2023) (stating that the Georgia Department of Corrections' budget for 2019 was \$1,205,012,739).

¹³⁹ Due to record expungement, previous marijuana convictions should not be a barrier to employment in the recreational marijuana industry. If a marijuana conviction is not yet expunged, it should be ignored for the purposes of a criminal background check for participation in the recreational marijuana industry. *Cf.* Courtney Vinopal, *As More States Legalize Marijuana, People with Drug Convictions Want Their Records Cleared*, PBS (May 5, 2021), <https://www.pbs.org/newshour/nation/as-more-states-legalize-marijuana-people-with-drug-convictions-want-their-records-cleared> (recounting the impact that the lack of expungement of marijuana convictions has on job prospects).

¹⁴⁰ This system would operate akin to Illinois' expungement model. *See* Woelfel *supra* note 119 (detailing Illinois' expungement priority scheme).

¹⁴¹ *See* John Hudak, *Marijuana's Racist History Shows the Need for Comprehensive Drug Reform*, Brookings (June 23, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/06/23/marijuanas-racist-history-shows-the-need-for-comprehensive-drug-reform/>

consumption of cannabis still disproportionately impacts people of color. In Washington, D.C., for example, a Black person is eleven times more likely to be arrested for public consumption than a White person, even though usage rates are similar.¹⁴² After Colorado legalized recreational cannabis, cannabis arrests rates for White people decreased by fifty-one percent, while the rate only decreased by thirty-three percent for Latino people and twenty-five percent for Black people.¹⁴³

These realities would likely be true in Georgia as well. The continued criminalization of people of color with regard to cannabis reflects deep-seated racial biases within policing and the criminal justice system as a whole.¹⁴⁴ Legalizing recreational cannabis will not negate a century of misinformation campaigns and racist fearmongering.¹⁴⁵

Additionally, the development of the legal cannabis industry has perpetuated racial inequality in many ways. Because creating a cannabis business involves a criminal background check, millions of Americans with criminal records, many of whom are people of color, are excluded from this growing industry.¹⁴⁶ In 2022, around eighty percent of cannabis business owners and founders were White, while only ten percent of cannabis business owners and founders identified as Hispanic or African American.¹⁴⁷ This results in

(emphasizing that the impact of marijuana criminalization has lasting effects that legalization and record expungement cannot overcome).

¹⁴² See *From Prohibition to Progress: A Status Report on Marijuana Legalization*, DRUG POLICY ALLIANCE (Jan. 22, 2018), <http://www.drugpolicy.org/legalization-status-report> (reporting marijuana arrest statistics by race).

¹⁴³ See *id.* (discussing marijuana arrest trends in Colorado).

¹⁴⁴ See generally WAR ON MARIJUANA, *supra* note 70.

¹⁴⁵ See Meredith Clark, *Marijuana or Cannabis? How Racism, Immigration Shaped History of Drug War in N.Y., U.S.*, DEMOCRAT & CHRON. (July 2, 2020, 5:00 AM), <https://www.democratandchronicle.com/story/news/2020/07/02/how-racism-and-immigration-shaped-history-marijuana-drug-war-ny/5320692002/> (outlining the misinformation and racially charged campaigns against marijuana usage over the last century).

¹⁴⁶ See, e.g., COLO. REV. STAT. § 44-10-307 (1)(b) (requiring criminal background checks for individuals applying for a marijuana dispensary license).

¹⁴⁷ See Eli McVey, *Chart: Percentage of Cannabis Business Owners and Founders by Race*, MARIJUANA BUS. DAILY (Sept. 9, 2022), <https://mjbizdaily.com/chart-19-cannabis-businesses->

2023]

Legalize for Legal Highs

25

predominantly White Americans generating wealth off of the very same substance that led to the disproportionate incarceration of many people of color.¹⁴⁸ Resolving these disparities will require a comprehensive change in our approaches to policing and incarceration, a task that cannot be achieved solely through cannabis legalization.¹⁴⁹ Nonetheless, cannabis legalization will remove one significant cause of the over incarceration of people of color while simultaneously providing significant economic and social benefits to Georgia.¹⁵⁰

Several political hurdles to recreational legalization exist in Georgia. Governor Brian Kemp, much like former Representative Allen Peake, has been a committed ally to medical cannabis while simultaneously remaining opposed to recreational cannabis legalization.¹⁵¹ Legalization is unlikely to come to Georgia until either a Democratic coalition is elected to state government or legalization becomes a bipartisan issue.¹⁵²

Cannabis legalization should, however, already be a bipartisan policy. Even if arguments concerning the racial and societal consequences of prohibition are unappealing, economic arguments

owned-founded-racial-minorities/ (publishing the annual results of a survey of marijuana business founders and owners).

¹⁴⁸ See WAR ON MARIJUANA, supra note 70 (exhaustively detailing racial disparities in marijuana enforcement across states, cities, and counties in the United States).

¹⁴⁹ Cf. *id.* at 115–22 (establishing a comprehensive plan changing to approaches in policing and incarceration to end racial disparities in marijuana enforcement).

¹⁵⁰ See *id.* at 110 (“Legalization would not only solve the arrest epidemic and its attendant racial disparities, it would save cash-strapped state and local governments millions of dollars.”).

¹⁵¹ Compare Henri Mattila, *Interview: Small Business Owner and Sec. of State Brian Kemp*, MERION WEST (Jan. 22, 2018), <https://merionwest.com/2018/01/22/interview-small-business-owner-and-sec-of-state-brian-kemp/> (quoting Governor Kemp who is “certainly not in the camp of being pro-recreational marijuana” but “from a medicinal standpoint, [he is] very open-minded about that . . . [because he] know[s] there are many parents in Georgia who are using that medicinal marijuana with good results”), with Max Blau, *Rep. Allen Peake on Medical Marijuana, Growing Pot in Georgia, and Civil Disobedience*, ATLANTA MAGAZINE (Feb. 1, 2016), <https://www.atlantamagazine.com/news-culture-articles/rep-allen-peake-on-medical-marijuana-growing-pot-in-georgia-and-civil-disobedience/> (relaying Representative Peake’s ardent support for medical marijuana).

¹⁵² See *Georgia Legislature Again Fails to Act on Cannabis Reforms*, MARIJUANA POL’Y PROJECT (Sept. 22, 2022), <https://www.mpp.org/states/georgia/> (discussing the struggles that the Georgia General Assembly has faced in addressing cannabis reform).

in favor of legal recreational cannabis should appeal to all political demographics. With greater advocacy and awareness about these economic and tax benefits, more of the public, and in turn the Georgia General Assembly, would support recreational cannabis legalization within the state.

VII. CONCLUSION

Cannabis prohibition in the United States has been a policy failure. Initial efforts to criminalize cannabis were rooted in racism and anti-immigrant sentiment directed towards Black Americans and Mexican immigrants.¹⁵³ Cannabis was intentionally and falsely associated with people of color, violent crime, and sexual misconduct, leading to a frenzy to criminalize the substance.¹⁵⁴ Despite a lack of evidence for these claims, cannabis has remained illegal at the federal level for decades.¹⁵⁵ Evidence shows that the racial associations made in the early era of prohibition have endured, with people of color being significantly more likely to be arrested and incarcerated for cannabis offenses despite equivalent usage rates across racial lines.¹⁵⁶ Cannabis prohibition is also a costly endeavor that prevents states from accessing a multibillion-dollar industry.¹⁵⁷

It is time for Georgia to correct course. Twenty-one states have now legalized recreational cannabis at the state level.¹⁵⁸ States such

¹⁵³ See Clark, *supra* note 147 (explaining how anti-marijuana campaigns initiated by Harry Anslinger relied on anti-Mexican immigrant sentiment).

¹⁵⁴ See, e.g., John Hudak, *Marijuana's Racist History Shows the Need for Comprehensive Drug Reform*, BROOKINGS (Jun. 23, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/06/23/marijuanas-racist-history-shows-the-need-for-comprehensive-drug-reform/> (discussing the “explicitly racist roots of cannabis policy in the United States”).

¹⁵⁵ See, e.g., Claire Hansen, et al., *Where is Marijuana Legal? A Guide to Marijuana Legalization*, U.S. NEWS (Jan. 20, 2023), <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization> (discussing where marijuana remains illegal).

¹⁵⁶ See, e.g., Fellner, *supra* note 68, at 214 (identifying the U.S. Sentencing Commission’s findings on racial disparities in marijuana convictions in the federal system).

¹⁵⁷ See Clark, *supra* note 147 (repeating projections that the legal marijuana industry will generate \$23 billion by 2022).

¹⁵⁸ See Hansen, et al., *supra* note 2 (listing the states which have legalized marijuana).

2023]

Legalize for Legal Highs

27

as Colorado, Illinois, and Alaska represent model legalization efforts and policy.¹⁵⁹ By drawing from each of these states' regimes, Georgia could and should legalize cannabis both to rectify the racial inequalities perpetuated by cannabis prohibition as well as to access millions of dollars of tax revenue.

¹⁵⁹ See Section IV.a–c.