



THE STATE OF NEW JERSEY
OFFICE OF THE ATTORNEY GENERAL

July 22, 2024

Via Federal eRulemaking Portal

The Honorable Anne Milgram
Administrator, Drug Enforcement Administration
8701 Morrissette Drive
Springfield, Virginia 22152

Re: Notice of Proposed Rulemaking: “Schedules of Controlled Substances: Rescheduling of Marijuana”
Docket No. DEA-1362, A.G. Order No. 5931-2024
89 Fed. Reg. 44,597 (May 21, 2024)

Dear Administrator Milgram:

I write to express my strong support of the Drug Enforcement Administration’s (“DEA” or “Administration”) proposed rule regarding “Schedules of Controlled Substances: Rescheduling of Marijuana,” 89 Fed. Reg. 44,597 (the “Proposed Rule”), and commend the DEA for its efforts in addressing this issue. New Jersey’s experience reforming its own cannabis regulatory framework provides strong evidence that cannabis should not be scheduled as a Schedule I controlled substance under the Controlled Substance Act (“CSA”). The Administration’s proposed rescheduling of cannabis¹ is thus a welcome step toward a comprehensive legal framework that allows for common-sense regulation of a legal cannabis market for adults.

Focusing on responsible regulation of legal possession of cannabis for medical and adult recreational use undercuts and weakens the illicit cannabis market and many of the problems that come with it. As detailed below, the Administration’s much-needed action will help bolster the efforts New Jersey has undertaken at the state level to ensure that individuals and communities have access to comprehensive legal protections and benefits in connection with the State-sanctioned use of cannabis. Rescheduling cannabis to Schedule III will continue the process of building an equitable framework of common-sense legal protections for all affected people and communities.

I. New Jersey’s Cannabis Legalization and Social Justice Reform

New Jersey’s cannabis laws, like their federal counterparts, historically focused on criminal prohibition of cannabis in all forms and for all uses. For several decades, cannabis had been classified as a prohibited controlled dangerous substance subject to various legal restrictions,² and criminal arrest and

¹ Except when referring to marijuana-specific criminal offenses, this comment uses the term “cannabis” in place of “marijuana” in line with the term encouraged by the New Jersey Cannabis Regulatory Commission (“NJ-CRC”), which establishes and enforces the rules and regulations governing the licensing, cultivation, testing, selling, and purchasing of cannabis in New Jersey.

² See Comprehensive Drug Reform Act of 1987, N.J. Stat. Ann. §§ 2C:35-1 to -31 (“CDRA”).

prosecution was commonly used to enforce this prohibitive policy. The harmful consequences of the primarily criminal regulatory regime for cannabis possession or use fell disproportionately on New Jersey's Black communities.³ Racial disparities in our criminal justice system, in turn, have contributed to racial inequality in marginalized communities by creating social and legal barriers to employment, housing, healthcare, education, and wealth building.⁴ The call for action for criminal and social justice reforms was resounding.

New Jersey thus took a step towards introducing an equitable cannabis policy in 2010 with the passage of the Compassionate Use Medical Marijuana Act ("CUMMA"), which permitted dispensing of cannabis for medical use by adults. Notably, CUMMA created an affirmative defense for medical cannabis users charged with violations of the NJ Comprehensive Drug Reform Act ("CDRA"). As a matter of sound and efficient law enforcement policy, my predecessor, Attorney General Jeffrey Chiesa, subsequently issued enforcement guidelines directing police officers to assess the applicability of the CUMMA affirmative defense before making an arrest, filing criminal charges, or seizing cannabis or paraphernalia where CUMMA-authorized possession or use is invoked or reasonably suspected.⁵ In 2019, New Jersey took further steps to expand patient access to medical cannabis through passage of the Jake Honig Compassionate Use Medical Cannabis Act.⁶

Despite New Jersey's continued efforts to curb marijuana-related arrests and expand access to cannabis for medicinal purposes, arrests for marijuana possession increased from 2010 to 2018. By 2018, arrests for marijuana possession made up 55% of all drug-related arrests in New Jersey, and Black people were 3.5 times more likely to be arrested for marijuana possession than white people.⁷ To stop the most egregious aspects of prohibition and in anticipation of statewide legalization of adult recreational use, Attorney General Gurbir Grewal issued a guidance memo ("2018 Guidance") to all New Jersey municipal prosecutors, providing guidance on how to exercise their case-by-case discretion in marijuana-related cases to achieve fairer and more equitable outcomes for all parties.⁸ While the number of arrests for marijuana possession dropped by 7.8% in the subsequent year, the total number of arrests still remained high with no less than 28,865 arrests, which constituted about 65% of arrests for all drug-possession offenses in 2019.⁹

³ Between 2010 and 2018, Black individuals were arrested for marijuana possession at a rate 3.5 times higher than white individuals in New Jersey despite similar usage rates. See ACLU of New Jersey, *Racial Disparities in Marijuana Arrests Across New Jersey Worsen, Report Reveals, Making Legalization More Urgent*, <https://www.aclu-nj.org/en/press-releases/racial-disparities-marijuana-arrests-across-new-jersey-worsen-report-reveals-making> (Apr. 20, 2020).

⁴ See Center For American Progress Action Fund, *America's Broken Criminal Legal System Contributes to Wealth Inequality*, <https://www.americanprogress.org/article/americas-broken-criminal-legal-system-contributes-to-wealth-inequality/> (Dec. 13, 2022).

⁵ See New Jersey Office of the Attorney General, *Attorney General Medical Marijuana Enforcement Guidelines for Police*, https://www.nj.gov/oag/dcj/agguide/med_marijuana_enf_guide.pdf (Dec. 6, 2012).

⁶ See State of New Jersey, Office of the Governor, *Governor Murphy Signs Legislation to Dramatically Reform New Jersey's Medical Marijuana Program, Expand Patient Access*, <https://www.nj.gov/governor/news/news/562019/20190702d.shtml> (July 2, 2019).

⁷ See ACLU, *A Tale of Two Countries: Racially Targeted Arrests in the Era of Marijuana Reform*, https://assets.aclu.org/live/uploads/publications/marijuanareport_03232021.pdf (Apr. 20, 2020).

⁸ New Jersey Office of the Attorney General, *Guidance Regarding Municipal Prosecutors' Discretion in Prosecuting Marijuana and Other Criminal Offenses*, https://nj.gov/oag/newsreleases18/2018-0829_AG-Memorandum.pdf (Aug. 29, 2018).

⁹ See Federal Bureau of Investigation, Crime Data Explorer, <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest> (last visited on July 16, 2024) [hereinafter "FBI Crime Data Explorer"].

In 2020, New Jerseyans voted to amend the State Constitution to provide a pathway to legalization of cannabis for adult recreational use.¹⁰ New Jersey shortly thereafter enacted three bills related to cannabis regulation and marijuana decriminalization—the most prominent of them being the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (“CREAMMA”),¹¹ which creates a regulatory scheme governing the legalized recreational use of cannabis. Notably, CREAMMA includes a provision directing the expungement of prior criminal convictions for certain enumerated cannabis possession crimes.¹² Allowing expungement of convictions for conduct that is now lawful has been an equitable first step towards healing the wounds of decades of injustice for communities disproportionately affected by criminal prohibition policies and enforcement practices. CREAMMA also provides conditional discharge provisions, which permits access to pre-trial intervention (“PTI”) diversionary programs for certain cannabis-related offenses to render early rehabilitative services in lieu of the traditional criminal justice process of ordinary prosecution.

Alongside legislative action, this Office issued several law enforcement directives that furthered equitable cannabis legalization policies. In February 2021, an Attorney General Law Enforcement Directive instructed all prosecutors to dismiss certain pending cannabis-related charges¹³ and provided guidance to law enforcement officers regarding the treatment of cannabis under the new laws.¹⁴ The following chart provides an approximation of the annual number of arrests for marijuana possession in New Jersey from 2010 to 2022,¹⁵ which showcases the immediate impact of New Jersey’s legalization and decriminalization of cannabis possession by adults.

YEAR	Number of Arrests for Marijuana-Possession
2010	22,071
2011	22,031
2012	24,111
2013	24,548
2014	24,565

¹⁰ See New Jersey Department of State, Division of Elections, *2020 Election Information: Official General Election Results: Public Question #1*, <https://www.nj.gov/state/elections/assets/pdf/election-results/2020/2020-official-general-results-public-question-1.pdf> (Oct. 14, 2021).

¹¹ See *Botteon v. Borough of Highland Park*, 315 A.3d 816 (N.J. Super. Ct. App. Div. 2024) (holding that CREAMMA is not federally preempted by the CSA).

¹² See N.J. Stat. Ann. § 2C:52-6.1.

¹³ New Jersey Office of the Attorney General, *Attorney General Law Enforcement Directive No. 2021-1*, https://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2021-1_%20Dismissal-of-Marijuana-Cases.pdf (Feb. 22, 2021).

¹⁴ New Jersey Office of the Attorney General, *Interim Guidance Regarding Marijuana Decriminalization*, <https://www.nj.gov/oag/dcj/agguide/AG-Interim-Guidance-Marijuana-Decrim-2020-0326.pdf> (March 26, 2021).

¹⁵ See *supra* FBI Crime Data Explorer. Note that the FBI Crime Data Explorer’s New Jersey arrest data is derived from both National Incident-Based Reporting System (NIBRS) and Summary Reporting System (SRS) reports, which are voluntarily submitted to the FBI from 578 participating law enforcement agencies in New Jersey. Hence, data is subject to minor deviations and may reflect lags in reporting.

2015	24,866
2016	32,279
2017	34,979
2018	31,333
2019	28,865
2020	19,911
2021	975
2022	118

Criminal arrests and prosecution for cannabis possession or use had a detrimental effect on many New Jerseyans’ opportunities to access higher education, obtain gainful employment, receive housing support, and address child custody issues. New Jersey’s cannabis law reforms have directly led, and will continuously to lead, to improvements in the lives of New Jerseyans, especially those of color whose communities have long been plagued by the racial disparities and social inequities associated with the previous, less equitable system for cannabis prosecutions.

II. The Benefits of CREAMMA and Cannabis Regulation Policy in New Jersey

As the chief law enforcement officer in the State of New Jersey, I am charged with ensuring public safety, promoting business accountability, and protecting individual rights. I cannot emphasize enough the importance of CREAMMA and the NJ-CRC’s regulations, which have had immediate real-life impacts on the lives of New Jersey residents and brought equity and economic opportunity to our communities. CREAMMA and NJ-CRC’s regulations have brought a previously illicit, unregulated market into the light with transparency and proper oversight and established a regulated market for adult-use recreational cannabis. This new transparency helps protect consumers by maintaining quality controls for cannabis products and requiring licensing and standards for cannabis retailers. The recreational cannabis industry in New Jersey is still young, but the NJ-CRC’s licensing and regulatory scheme has cultivated the growth of a strong, transparent and responsible business sector that enjoys various legal protections generally afforded to businesses and workers in New Jersey.

Since the enactment of CREAMMA, New Jersey businesses and individuals have had access to various legal protections and processes from which they were previously excluded. Providing access to legal safeguards has been crucial for the equitable governance of the cannabis market since cannabis use can be stigmatized as deviant behavior due to the long history of nationwide marijuana prohibition. In New Jersey, it is currently unlawful to take any adverse employment action against an employee enrolled in medical cannabis programs solely on the employee’s status as a registrant with the NJ-CRC.¹⁶ Such protections co-exist with other state laws affording broader civil rights protections. The Division on Civil Rights (“DCR”) within my office, which oversees New Jersey’s anti-discrimination laws,¹⁷ is able to utilize its existing legal and regulatory tools to prohibit discriminatory actions against a person with a disability whose medical

¹⁶ See N.J. Stat. Ann. § 24:6I-6.1.

¹⁷ See New Jersey Law Against Discrimination, N.J. Stat. Ann. §§ 10:5-1 to -50.

conditions require use of cannabis to treat or alleviate medical symptoms.¹⁸ This new protection is life-changing for those people’s employment, housing, and use of places of public accommodation. For example, earlier this month, the New Jersey Office of the Attorney General and DCR found probable cause to take enforcement action against an employer for rescinding an offer of employment based on the applicant’s disability and failing to accommodate his disability, which he treated with prescription medical cannabis.¹⁹ Under a system that primarily focused on prohibition and prosecution of cannabis possession or use, such protections would not have been available to those who reside or choose to work in this State.

It is important to further note that the State itself has realized significant benefits from replacing the criminal prohibition scheme with the current cannabis legalization regime. The State Legislature found that, prior to the passage of CREAMMA, New Jersey spent “approximately \$127 million per year on marijuana possession enforcement costs,”²⁰ and that “[c]ontrolling and legalizing cannabis for adults in a similar fashion to alcohol will free up precious resources to allow our criminal justice system to focus on serious criminal activities and public safety issues.”²¹ N.J.S.A. 24:6I-32(g). New Jersey law enforcement agencies are now able to allocate millions of dollars annually to focus on other public safety matters. Local governments in New Jersey have seen benefits of a legal, regulated approach to cannabis under CREAMMA as well. CREAMMA empowers municipalities to bolster their revenue by allowing them to impose a local tax of up to two percent on the receipts of any cannabis transfer within the municipality,²² and enact ordinances governing the “number of cannabis establishments, distributors, or delivery services, as well as the location, manner, and times of operations of establishments and distributors,” as well as “establishing civil penalties for violation of” those ordinances.²³ Nothing in CREAMMA or NJ-CRC regulations prohibits municipalities from barring the consumption or use of cannabis products in public spaces. In fact, the NJ Smoke-Free Air Act already bars smoking, vaping, or aerosolizing cannabis in all the places tobacco smoking is prohibited.²⁴ Taken together, New Jersey laws allow local governments to craft cannabis policies that fit local needs and promote responsible consumption.

¹⁸ See N.J. Ann. Code §§ 13:13-2.1 to -4.13.

¹⁹ See New Jersey Office of the Attorney General, *AG Platkin, Division on Civil Rights Take Enforcement Action Against Telecommunications Company for Alleged Disability Discrimination*, <https://www.njoag.gov/ag-platkin-division-on-civil-rights-take-enforcement-action-against-telecommunications-company-for-alleged-disability-discrimination/> (July 2, 2024).

²⁰ See N.J. Stat. Ann. § 24:6I-32(f).

²¹ See *id.* at § 24:6I-32(g).

²² See N.J. Stat. Ann. § 40:48I-1.

²³ N.J. Stat. Ann. §§ 24:6I-45(a)(1)–(2).

²⁴ See N.J. Stat. Ann. § 26:3D-57 (defining “Smoking” to include “the burning of, inhaling from, exhaling smoke from, or the possession of a lighted cigar, cigarette, pipe, or any other matter or substance which contains tobacco *or any other matter that can be smoked*, or the inhaling or exhaling of *smoke or vapor from an electronic smoking device*.”) (emphasis added).

III. CONCLUSION

Given the needs of the State of New Jersey and its people, I support the DEA's proposal to promptly reschedule cannabis as Schedule III under the CSA.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "M. J. Platkin", with a long horizontal flourish extending to the right.

Matthew J. Platkin
Attorney General of New Jersey