

Seton Hall University

eRepository @ Seton Hall

Student Works

Seton Hall Law

2022

New Jersey and the Journey to Recreational Use Cannabis

Michael Manning

Follow this and additional works at: https://scholarship.shu.edu/student_scholarship

 Part of the Law Commons

Michael Manning

New Jersey and the Journey to Recreational Use Cannabis

During his 2017 campaign, New Jersey Governor Phil Murphy promised voters that recreational cannabis would be legal in the state within the first one hundred days of his administration.¹ That promise was realized on Governor Murphy's 1,095 day in office when he signed three bills that finally legalized recreational cannabis in the state in 2021. More than a year later, however, the state has only just permitted New Jerseyans to purchase recreational cannabis.

The Jake Honig Compassionate Use Medical Cannabis Act created The New Jersey Cannabis Regulatory Commission (CRC), the organization at the center of New Jersey's recreational market woes. Plagued by a myriad of setbacks and missed deadlines, the Commission's failure to stand up a timely recreational cannabis market has led to a variety of issues ranging from missed economic opportunities to issues in social justice. Recreational cannabis had been legal to possess and use but not sell and purchase because the deadline

¹ Carl Golden, Murphy's Pledge to Legalize Marijuana in the First 100 Days Off by 1,060, The Asbury Park Press (Dec. 5, 2020, 5:00 AM), <https://www.app.com/story/opinion/columnists/2020/12/05/murphys-pledge-legalize-marijuana-new-jersey-off/3809949001/>

disaster caused by the Commission. This paper will explore the path to cannabis legalization in New Jersey, the current situation on the ground, and potential avenues forward to solve the Garden State's cannabis conundrum.

This Article proceeds into four parts. Part I gives a brief overview of New Jersey's experience with its medical marijuana program and how its regime informs the current debate surrounding recreational use. Part II chronicles the state's long road to decriminalization and legalization of recreational cannabis. This section highlights the setbacks faced by the state legislature as it failed for almost three years to pass a recreational cannabis bill, only to ultimately send the issue to voters.

Part III examines the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMM), the statute that legalized recreational cannabis in New Jersey. This section also explores the controversial Cannabis Regulatory Commission's (CRC) role in promulgating and administrating the state's recreational cannabis industry.

Part IV explores the potential avenues New Jersey might take to improve to its regulatory regime. This section argues that the Garden State should consider reforming the Cannabis Regulatory Commission by deliberating and voting on the Commissions members rather than allowing the Governor almost unilateral appointment power. This would hopefully provide for much more efficient administrative oversight and prevent similar deadline and transparency issues from coming up in the future. The failure of the Commission to meet legislative and self-imposed deadlines under the excuse of social equity concerns has exacerbated social equity

problems. The Commission’s inability start up recreational cannabis retailers until more than a year since the enactment of the CREAMM Act is inexcusable and has exposed flaws in the program that warrant change.

Part I: In the Beginning, Medical Marijuana

To understand the dynamics of recreational cannabis legalization in New Jersey, it is vital to discuss the state’s history of cannabis regulation. New Jersey’s dance with legal cannabis began under the administration of then-Governor John Corzine, who signed the New Jersey Compassionate Use Medical Marijuana Act (CUMMA) on January 18, 2010.² That statute legalized the sale and use of medical cannabis.³ Its self-described purpose is to “protect from arrest, prosecution, property forfeiture, and criminal and other penalties, those patients who use marijuana to alleviate suffering from debilitating medical conditions, as well as their physicians, primary caregivers, and those who are authorized to produce marijuana for medical purposes.”⁴ The state authorized a total of six “alternative treatment centers” to open under the law, the first of which began operation in December 2012 in the town of Montclair.⁵ As of June 2018, the state permitted eight medical dispensaries to open with locations in Bellmawr, Egg Harbor

² Claire Heinger, N.J. Medical Marijuana Law is Signed by Gov. Corzine, NJ.com (Jan. 19, 2010, 12:00A AM), https://www.nj.com/news/2010/01/medical_marijuana_law_to_take.html

³ Id

⁴ S. 119, 2010 Leg., 213th Sess. (N.J. 2010). https://pub.njleg.state.nj.us/Bills/2008/S0500/119_I1.PDF

⁵ Anemona Hartocollis, First Ounces of Marijuana Leave a New Jersey Dispensary, New York Times (Dec. 6, 2012), <https://www.nytimes.com/2012/12/07/nyregion/for-medical-marijuana-in-new-jersey-a-first-few-ounces.html>

Township, Secaucus, Cranbury, and Woodbridge.⁶ At the time of the Compassionate Use Act's passage, these were the sole locations that were authorized to sell cannabis in New Jersey.⁷

CUMMA, at first, permitted medical marijuana consumption for a very limited number of conditions: cancer, glaucoma, multiple sclerosis, HIV/AIDS, seizure disorder, Lou Gehrig's disease, severe muscle spasms, muscular dystrophy, inflammatory bowel disease, Crohn's disease and any terminal illness.⁸ Since that time however, the list of eligible conditions has been expanded by the New Jersey Department of Health to include migraines, Tourette syndrome, autism-related anxiety, and Alzheimer's disease-related anxiety, as well as chronic pain if "related to a broad range of ailments, including opioid use disorder, arthritis, back and neck pain, sciatica, diabetes, surgeries, injuries, neuropathy, Lyme disease, lupus, fibromyalgia, irritable bowel syndrome, pancreatitis, and others."⁹

CUMMA was not enacted without significant resistance, however. Then-Governor Chris Christie refused to support the law on the theory that it was a "front for legalization."¹⁰ While his suspicions may have been correct given the current status of cannabis in New Jersey, critics viewed CUMMA as one of the most stringent medical cannabis regimes in the nation due to its

⁶ Susan K. Livio, N.J.'s 5th Medical marijuana Dispensary to open Thursday, N.J.com (Oct. 14, 2015, 6:15 PM), https://www.nj.com/politics/2015/10/njs_5th_medical_marijuana_dispensary_to_open_thurs.html

⁷ Id

⁸ Claire Heinger, N.J. Medical Marijuana Law is Signed by Gov. Corzine, NJ.com (Jan. 19, 2010, 12:00A AM), https://www.nj.com/news/2010/01/medical_marijuana_law_to_take.html

⁹ Jan Hefler, Alzheimer's, autism, anxiety could be treated with marijuana in NJ by 2018, The Philadelphia Inquirer (May 12, 2017), <https://www.inquirer.com/philly/business/cannabis/alzheimers-autism-chronic-pain-opioid-medical-marijuana-new-jersey.html>

¹⁰ Brent Johnson, Christie says medical marijuana programs are 'a front for legalization', N.J.com (Jun. 17, 2014, 7:29 PM), https://www.nj.com/politics/2014/06/christie_says_medical_marijuana_programs_are_a_front_for_legalization.html

limits on coverage, and relatively sparse dispensaries locations.¹¹ Five years after its passage, New Jersey's medical cannabis program was only at 5,549 patients.¹² That number rose to 11,659 by 2017, likely due to the limited expansions in coverage made under the Christie Administration.¹³ Despite this executive branch pushback from the Christie Administration however, medical marijuana only expanded its presence in the state when Governor Phil Murphy was elected.

In 2018, Governor Murphy signed into law the Jake Honig Compassionate Use Medical Cannabis Act, which made major changes to New Jersey's medical marijuana law.¹⁴ In addition to expanding the number of locations that were authorized to sell cannabis to medical patients, the Honig Act transferred supervision of the medical program from the Department of Health to the now infamous Cannabis Regulatory Commission.¹⁵ The law also established a gradual phase out of the medical cannabis state sales tax.¹⁶ Because the act greatly expanded access to the program both in treatment and locations, by 2019 there were a total of 51,000 medical cannabis patients within the program.¹⁷

¹¹ Richard Perez-Pena, Marijuana for Patients May proceed, Christie Says, The New York Times (July 19, 2011), <https://www.nytimes.com/2011/07/20/nyregion/new-jerseys-medical-marijuana-program-to-proceed-christie-says.html>

¹² Susan K. Livio, N.J.'s 5th Medical marijuana Dispensary to open Thursday, N.J.com (Oct. 14, 2015, 6:15 PM), https://www.nj.com/politics/2015/10/njs_5th_medical_marijuana_dispensary_to_open_thurs.html

¹³ Jan Hefler, Alzheimer's, autism, anxiety could be treated with marijuana in NJ by 2018, The Philadelphia Inquirer (May 12, 2017), <https://www.inquirer.com/philly/business/cannabis/alzheimers-autism-chronic-pain-opioid-medical-marijuana-new-jersey.html>

¹⁴ New Jersey Gov. Phil Murphy signs 'Jake's Law' expanding medical marijuana program, ABC7 New York (July 2, 2019), <https://abc7ny.com/jakes-law-jake-honig-compassionate-use-medical-marijuana-act-new-jersey-freeport/5374834/>

¹⁵ Id

¹⁶ Id

¹⁷ NJ's Medicinal Marijuana Program Triples Patient Count Since Start of Murphy Administration, NJHealth (July 24, 2019), <https://www.nj.gov/health/news/2019/approved/20190724b.shtml> (last visited Apr 29, 2022). <https://www.nj.gov/health/news/2019/approved/20190724b.shtml>

In the end, the Compassionate Medical Marijuana Act and its subsequent amendments were not exactly the thing of dreams for legal cannabis advocates. At the time it was the only medical cannabis law that banned home grown sale¹⁸. The Act restricted use to private property, thus individuals could still be arrested and prosecuted for using in public¹⁹. It also initially set buying limits at two ounces per month²⁰. Those ounces also sold for around \$500 dollars per ounce, making them the most expensive in the nation²¹. However, even with its initial drawbacks, the Acts began the long road we now see coming to an end as recreational cannabis becomes available for sale in New Jersey.

Part II The Journey to Recreational Weed

While the state legislature and Health Department were preoccupied setting up the medical cannabis program, New Jerseyans began to shift their opinion regarding the legalization, taxation, and regulation of recreational cannabis. A Rutgers-Eagleton poll found that at least 49% of New Jerseyans “strongly supported” or “somewhat supported” the legalization of recreational cannabis by 2015²². It was, therefore, not surprising that Governor Murphy had made recreational cannabis legalization during his first 100 days in office a campaign promise.

¹⁸Kamika Dunlap, [NJ Set to Adopt Nation’s Strictest Medical Marijuana Laws](https://www.findlaw.com/legalblogs/criminal-defense/nj-set-to-adopt-nations-strictest-medical-marijuana-laws/), Find Law (Jan. 14, 2010, 9:11 AM), <https://www.findlaw.com/legalblogs/criminal-defense/nj-set-to-adopt-nations-strictest-medical-marijuana-laws/>

¹⁹ Id

²⁰ Id

²¹ Lindy Wasburn, [State gives OK to grow medical marijuana in Secaucus](https://www.northjersey.com/story/news/health/2017/07/31/state-okays-grow-medical-marijuana-secaucus/521657001/), NorthJersey.com (Jul. 31, 2017, 6:00 AM), <https://www.northjersey.com/story/news/health/2017/07/31/state-okays-grow-medical-marijuana-secaucus/521657001/>

²² Rutgers-Eagleton Poll, [MARIJUANA LEGALIZATION FOR ADULTS WITH TAXATION AND REGULATION SUPPORTED BY MOST NEW JERSEYANS: RUTGERS-EAGLETON POLL](https://web.archive.org/web/20200328214450/http://eagletonpoll.rutgers.edu/rep-marijuana-apr2015/), Eagleton Institute of Politics Center for Public Interest Polling (June 18, 2015, 12:00 PM), <https://web.archive.org/web/20200328214450/http://eagletonpoll.rutgers.edu/rep-marijuana-apr2015/>

The legislature's first attempt to legalize recreational cannabis began in May 2017 when State Senator Nicholas Scutari proposed legalization legislation.²³ Under that initial plan, New Jersey residents 21 and older could legally use and possess up to an ounce of flower cannabis, up to 16 ounces of edibles, 72 ounces of oils, and seven grams of cannabis concentrate.²⁴ In terms of revenue, the plan called for a 7% sales tax which would rise to 10% the second year, and progressively rise 5% a year until reaching a maximum 25% sales tax.²⁵ Much like the current law we see in place today, this plan did not permit home cultivation.²⁶ This bill, while ambitious was brought with little hope of success because it ultimately failed after outgoing Governor Christie vowed to veto it.²⁷

The state legislature decided to revisit recreational cannabis legalization again in 2018 when Governor Murphy took office following the November 2017 election. With support from the executive branch, a joint panel in the state legislature introduced and passed S-2703, which would have legalized the possession of up to a single ounce of cannabis and levied a 12% sales tax on cannabis sales.²⁸ The bill also extended to municipalities the option applying their own 2% tax to cannabis sales.²⁹ Notwithstanding the long-awaited support from the executive branch however, recreational cannabis legalization yet again failed in the state legislature.

²³ S.P. Sullivan, [Here's N.J. Lawmaker's Plan to Legalize Recreational Marijuana After Christie Leaves](https://www.nj.com/politics/2017/05/heres_one_nj_lawmakers_plan_to_legalize_recreation.html), N.J.com (May 15, 2017, 7:57 PM), https://www.nj.com/politics/2017/05/heres_one_nj_lawmakers_plan_to_legalize_recreation.html

²⁴ Id

²⁵ Id

²⁶ Id

²⁷ Id

²⁸ Mike Davis and Nicholas Pugilese, [NJ Marijuana legalization clears first hurdle after legal weed vote](https://www.app.com/story/news/local/new-jersey/marijuana/2018/11/26/new-jersey-marijuana-legalization-vote-legal-weed-phil-murphy/2091716002/), The Asbury Park Press (Nov. 26, 2018, 12:00 PM), <https://www.app.com/story/news/local/new-jersey/marijuana/2018/11/26/new-jersey-marijuana-legalization-vote-legal-weed-phil-murphy/2091716002/>

²⁹ Id

The bill died after a majority of senators refused to offer their support for it.³⁰ Notably, the bill's opposition came from a coalition of African American lawmakers led by Democratic Senator Ronald Rice, who split with the party on legalization due to the fear it would become a "public health menace" in urban communities.³¹ In a letter to colleagues ahead of the vote, Senator Rice detailed why he intended to vote no and urged others to do so as well.³² The Senator's fears centered around a lack of transparency with the public since they were "not being provided with the factual and foreseeable information regarding the negative impact that legalizing recreational marijuana will have on the lives, health, and welfare of our residents, black and brown people in particular, and on the quality of life in urban communities".³³ Additionally, the Senator raised concerns of not only the higher potency of cannabis compared to years ago, but highlighted how in Colorado not only had the drug use numbers increased but the number of black people being arrested for cannabis violations had increased as well despite its legalization.³⁴ The most stunning charge Senator Rice makes however that minority and low incomes peoples in the state are especially vulnerable from a health and economic standpoint to the negative effects of recreational cannabis as they keep money aside to "buy drugs".³⁵ The Senator claimed that these groups "that never use drugs will become homeless once they start to buy marijuana products from the retail stores,"³⁶

³⁰ Nick Corasaniti, [Effort to Legalize Marijuana in New Jersey Collapses](https://www.nytimes.com/2019/03/25/nyregion/new-jersey-marijuana.html), The New York Times (Mar. 25, 2019), <https://www.nytimes.com/2019/03/25/nyregion/new-jersey-marijuana.html>

³¹ Id

³² Ronald Rice, [A letter from Senator Ronald L. Rice to Legislative Colleagues Ahead of Monday Marijuana Vote](https://www.insidernj.com/letter-senator-ronald-l-rice-legislative-colleagues-ahead-monday-marijuana-vote/), Insider NJ (Mar. 22, 2019, 6:54 PM), <https://www.insidernj.com/letter-senator-ronald-l-rice-legislative-colleagues-ahead-monday-marijuana-vote/>

³³ Id

³⁴ Id

³⁵ Id

³⁶ Id

With state lawmakers unable to come up with any viable solution on an overwhelmingly popular issue with state voters, legislators turned their attention to ultimate “you deal with it” move by using a statewide referendum to legalize cannabis.³⁷ The legislature introduced New Jersey Public Question Number 1 by referral in 2019 to appear on the November 3, 2020 ballot.³⁸ In contrast to the legislative gridlock on the legalization question, New Jersey residents were *very* clear where they stood. With an astounding super majority of 67.43% of all voters in favor, Public Question No. 1 remains the single largest margin of victory for a recreational cannabis legalization ballot measure in the history of the U.S.³⁹

Voter approval, however, merely triggered the next chapter in the state’s ongoing recreational cannabis legalization debacle as lawmakers thereafter attempted to craft an interim decriminalization bill. Stunningly, New Jersey legislators were unable to pass a decriminalization bill until four months after the referendum—and it took three attempts to get that act into law. The primary issues concerning the law came from Governor Murphy and were centered on underage penalties for the possession and or use of cannabis and parental notification.⁴⁰

In December 2020, the legislature sent a recreational cannabis legalization bill, the “New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act”, to

³⁷ Ryan Hutchins, Katherine Landergan and Sam Sutton, Legal pot bill dead: New Jersey Lawmakers to move ahead with 2020 referendum, Politico (May 15, 2019, 11:57 AM), <https://www.politico.com/states/new-jersey/story/2019/05/15/marijuana-bill-dead-new-jersey-lawmakers-to-move-forward-with-referendum-1017330>

³⁸ Id

³⁹ Kyle Jager, New jersey Voters Approve Marijuana Legalization Referendum, Marijuana Moment (Nov. 3, 2020), <https://www.marijuanamoment.net/new-jersey-voters-approve-marijuana-legalization-referendum/>

⁴⁰ Sam Sutton, Murphy sets Frida deadline for deal on cannabis legalization, decriminalization, Politico (Jan. 27, 2021, 11:49 AM), <https://www.politico.com/states/new-jersey/story/2021/01/27/murphy-sets-friday-deadline-for-deal-on-cannabis-legalization-decriminalization-1360460>

Governor Murphy to sign.⁴¹ They also approved a separate decriminalization bill which, in conjunction with the recreational bill, removed criminal and civil penalties for possession.⁴² It also decriminalized possession of up to six ounces of cannabis for those 21 and up.⁴³ Additionally, the measure would allow for the virtual expungements of possession convictions and prevent police from using cannabis odor as a pretext for a search.⁴⁴ Although supported by the Murphy Administration, he refused to sign the bills together because it failed to include more specific language concerning underage penalties for those below the age of 21.⁴⁵

To address this issue, Senator Scutari introduced the first “cleanup” bill, which created a \$500 fine for underage cannabis possession as well as stationhouse adjustments, which is a “signed agreement between the child, their family and a local police department that call for some kind of restitution without the department filing juvenile delinquency changes”.⁴⁶ The cleanup bill nonetheless collapsed due to concerns from the legislative Black caucus members.⁴⁷ They were worried about the potential abuse of discretion by police officers directed minority committees when it came to juvenile fines and detainment.⁴⁸

Lawmakers went back to the table and introduced a revised cleanup bill in an attempt to address the Black Caucus’s concerns. This revised bill provided for a lower level of fines for

⁴¹ Ben Adlin, [New Jersey Lawmakers Send Marijuana And Psilocybin Bills To Governor](https://www.marijuanamoment.net/new-jersey-lawmakers-vote-to-send-marijuana-sales-bill-to-governor/), Marijuana Moment (Dec. 17, 2020), <https://www.marijuanamoment.net/new-jersey-lawmakers-vote-to-send-marijuana-sales-bill-to-governor/>

⁴² Id

⁴³ Mike Davis, [Will NJ Legal weed finally become law this week? Youth Marijuana Rules the Last Hurdle](https://archive.ph/20210216172235/https://www.app.com/story/news/local/new-jersey/marijuana/2021/02/16/nj-marijuana-legalization-legal-weed-phil-murphy-youth-rules/6755584002/), The Asbury Park Press, (Feb. 16, 2021, 4:20 PM), <https://archive.ph/20210216172235/https://www.app.com/story/news/local/new-jersey/marijuana/2021/02/16/nj-marijuana-legalization-legal-weed-phil-murphy-youth-rules/6755584002/>

⁴⁴ See Adlin *supra* at note 39

⁴⁵ See Davis, *supra* at note 41

⁴⁶ Id

⁴⁷ Id

⁴⁸ Id

individuals between the ages of 18-20 who were in possession of cannabis.⁴⁹ Fines were lowered from \$500 to \$50 and replaced the stationhouse adjustment provision with a written warning instead.⁵⁰ Even with these remedies, the cleanup bill initially failed when Senator Scutari canceled the Judiciary Committee hearing on the underage penalties bill citing an exhaustion of avenues to clarify the issue with the legislature and Governor's office.⁵¹

On February 22, 2021, A1897 and S3454, the second decriminalization bill and its "cleanup" companion on underage possession and consumption were brought to the floor of the State House.⁵² Signed into law alongside the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization (CREAMM) Act which legalized recreational adult use, the clean-up bill on decriminalization saw the elimination of the \$50 penalty and arrest for minors.⁵³ Instead, underage users for both Cannabis, and in a detour alcohol as well, saw an increasing level of warnings upon each violation.⁵⁴ The first violation was only a written warning to the individual minor, the second a written warning to the minor's parent or guardian, and a third violation resulting in a referral to community education and treatment programs.⁵⁵ Simply put, underage

⁴⁹ Id

⁵⁰ Id

⁵¹ Amanda Hoover, [Is N.J. legal weed effort dead again? Top lawmaker abandons compromise, hopes Murphy will sign bills on his desk](https://www.nj.com/marijuana/2021/02/is-nj-legal-weed-effort-dead-again-top-lawmaker-abandons-compromise-hopes-murphy-will-sign-bills-on-his-desk), N.J.com (Feb. 18, 2021, 11:32 PM), <https://web.archive.org/web/20210218033448/https://www.nj.com/marijuana/2021/02/is-nj-legal-weed-effort-dead-again-top-lawmaker-abandons-compromise-hopes-murphy-will-sign-bills-on-his-desk.html>

⁵² Kyle Jaeger, [New Jersey Governor Signs Marijuana Bills After Lawmakers Send Him Latest 'Clean Up' Measure](https://www.marijuanamoment.net/new-jersey-lawmakers-send-marijuana-compromise-bill-to-governors-desk-setting-stage-for-legal-sales/), Marijuana Moment (Feb. 22, 2021), <https://www.marijuanamoment.net/new-jersey-lawmakers-send-marijuana-compromise-bill-to-governors-desk-setting-stage-for-legal-sales/>

⁵³ See Davis, *supra* at note 41

⁵⁴ [New Jersey governor signs law to legalize marijuana use, decriminalize possession](https://www.cNBC.com/2021/02/22/new-jersey-governor-signs-laws-to-legalize-marijuana-use-decriminalize-possession.html), CNBC (Feb. 22, 2021, 2:36 PM), <https://www.cNBC.com/2021/02/22/new-jersey-governor-signs-laws-to-legalize-marijuana-use-decriminalize-possession.html>

⁵⁵ Id

violators found in possession of or using cannabis or alcohol would, on their first offense, only receive a written warning that is not forwarded on to their parents.

The enactment of the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (CREAMM) marked the supposed end of three-year journey to legalize recreational marijuana. The CREAMM Act effected the New Jersey Cannabis scheme in four major ways. First, it created license types and operations requirements for businesses that operate in any section of the cannabis supply chain.⁵⁶ Second, It directed the Cannabis Regulatory Commission to promulgate the new license program, including the license cap (discussed in the following section).⁵⁷ Third, It allows the CRC to levy an excise tax on cannabis in addition to allowing municipalities to issue a transfer tax on sales to the public and any transfers between the licensed businesses.⁵⁸ And fourth, creates employment protections for people who legally use cannabis.⁵⁹

In typical New Jersey fashion, however, lawmakers were immediately accused of overlooking the practical effects of the statute's language on minor possession.⁶⁰ As previously mentioned, the cleanup law not only prevented the police from informing a minor's parents or guardians about their cannabis usage/possession but expanded this regime to underage alcohol possession as well.⁶¹ Parental notification was originally opposed by Senator Rice because of the

⁵⁶ Barry Weisz and Michael Rosenblum, [A state-by-state ranking of cannabis regulations](https://www.thompsoncoburn.com/docs/default-source/blog-documents/ranking-of-state-cannabis-regulations.pdf#new_jersey), Thompson Coburn LLP (Oct. 4, 2018 updated Aug. 2021), https://www.thompsoncoburn.com/docs/default-source/blog-documents/ranking-of-state-cannabis-regulations.pdf#new_jersey

⁵⁷ Id

⁵⁸ Id

⁵⁹ Id

⁶⁰ Eric Scott, [NJ to remove ban on police telling parents about weed use](https://web.archive.org/web/20210309194215/https://nj1015.com/nj-to-remove-ban-on-police-telling-parents-about-weed-use-top-news-38/), New Jersey 101.5 (Mar. 9 2021), <https://web.archive.org/web/20210309194215/https://nj1015.com/nj-to-remove-ban-on-police-telling-parents-about-weed-use-top-news-38/>

⁶¹ Joe Hernandez, [N.J. lawmakers pass bill to notify parents of child's first marijuana, alcohol offense](https://whyy.org/articles/n-j-lawmakers-pass-bill-to-notify-parents-of-childs-first-marijuana-alcohol-offense/), WHYY PBS (Mar. 25, 2021), <https://whyy.org/articles/n-j-lawmakers-pass-bill-to-notify-parents-of-childs-first-marijuana-alcohol-offense/>

negative effects it may have on black and brown youth, but he later supported the notifications, so its inclusion in the first cleanup is considered somewhat of a mystery to political observers.⁶² This culminated into strong opposition to the new law from Republican lawmakers, police organizations, and parental groups.⁶³ Under pressure from these groups, the legislature quickly passed a “cleanup to the cleanup” bill that permitted parental notification of minors who ran afoul of the state’s underage cannabis and alcohol laws.⁶⁴

Despite its embarrassing struggle, New Jersey was the sixteenth state to legalize recreational cannabis. Unfortunately, the struggle continues. As explained in the following section of this paper, the state has only just opened open its recreational cannabis market to the public.

Part III The Cannabis Confusion Commission

It has been more than a year since New Jersey legalized recreational cannabis sales by enacting the Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization (CREAMM) Act in February 2021, but legal sales only just began on April 21, 2022.⁶⁵ Recreational cannabis is legal in New Jersey but New Jerseyans for over a year and half were unable to purchase those products because there were not yet any recreational or medical

⁶² Matt Friedman, Weed Clean-up bill to get a clean-up, Politico (Mar. 8, 2021, 7:30 AM), <https://www.politico.com/newsletters/new-jersey-playbook/2021/03/08/weed-clean-up-bill-to-get-a-clean-up-492023>

⁶³ Amanda Hoover, N.J. parents will be told first time their kids get caught with weed or booze under bill that just passed, N.J.com (Mar. 25, 2021), <https://web.archive.org/web/20210326162113/https://www.nj.com/marijuana/2021/03/nj-parents-will-be-told-first-time-their-kids-get-caught-with-weed-or-booze-under-bill-that-just-passed.html>

⁶⁴Id

⁶⁵Corey Kilgannon, Early Lines and Free Doughnuts: Legal Marijuana Sales Begin in New Jersey, The New York Times (Apr. 21, 2021), <https://www.nytimes.com/2022/04/21/nyregion/nj-marijuana-sales.html>

facilities approved for retail operation. To understand why this is the case, it is important to understand how recreational cannabis is regulated in New Jersey.

Prior to the creation of the New Jersey Cannabis Regulatory Commission (CRC), the New Jersey Department of Health and Human Services, through the Division of Medical Marijuana, had regulatory authority over the state's legal medical cannabis dispensaries.⁶⁶ After the passage of the Honig Act in July 2019 however, these powers were all transferred to the CRC which became the states Cannabis regulatory authority.⁶⁷ The CRC consists of five gubernatorially appointed commissioners, one of which is recommended by the Senate President, and another by the House Speaker.⁶⁸ Its current Chair is Dianna Houenou, who previously served with Governor Murphy and the American Civil Liberties Union.⁶⁹

The CREAMM Act tasked the CRC with creating a regulatory framework for the administration of a recreational cannabis industry in the state. On August 19, 2021, seven months after legislative legalization and nine months after voter approval of the cannabis legalization question, the CRC released its first list of rules and regulations and announced it would begin the licensing process.⁷⁰

⁶⁶ See ABC7, *supra* at note 14

⁶⁷ Id

⁶⁸ Id

⁶⁹ Id

⁷⁰ Kyle Jaeger, New Jersey Regulators Approve Rules For Adult-Use Marijuana Market Nearly One Year After Legalization Vote, Marijuana Moment (Aug. 19, 2021), <https://www.marijuanamoment.net/new-jersey-regulators-approve-rules-for-adult-use-marijuana-market-nearly-one-year-after-legalization-vote/>

The CREAMM Act created six, separate classes of licensure for recreational cannabis businesses.⁷¹ They are Class 1 Cannabis Cultivator to grow recreational use cannabis, Class 2 Cannabis Manufactures to produce recreational cannabis, Class 3 Cannabis Wholesaler to store, sell otherwise transfer recreational use cannabis items between the cultivators, wholesalers, or retailers, Class 4 Cannabis Distributors to transport cannabis items in bulk between cannabis cultivators, manufacturers, or retailers within the state, Class 5 Cannabis Retailers to purchase recreational use cannabis from licensed cultivators, manufacturers, or wholesalers and sell those items to consumers in a retail store, and Class 6 Cannabis Delivery to transport consumer purchases of recreational cannabis and related suppliers from the retailer to that customer.⁷² There further exists a conditional license for building out operations for the cultivation, manufacture, dispensing, wholesale, distribution, or delivery of recreational use cannabis while working towards meeting the requirements for a cannabis cultivator, manufacturer, dispensary, wholesaler, distributor, or delivery license.⁷³ As of April 28, 2022, the CRC is only accepting applications for Class 1, 2, and 5 licenses.⁷⁴

Regardless of which type of license an applicant applies for, the CRC established three different categories of businesses to receive priority review and approval.⁷⁵ The first of these business types is “Social Equity Businesses.”⁷⁶ These entities are owned by individuals in economically disadvantaged locations, specifically, individuals in zip codes with an average median household income less than 80% of the state average, an underinsured health rate of at

⁷¹ Recreational Cannabis Businesses, Cannabis Regulatory Commission, <https://www.nj.gov/cannabis/businesses/>

⁷² Id

⁷³ Id

⁷⁴ Id

⁷⁵ Id

⁷⁶ Id

least 150% of the state rate, and a poverty rate at least 150% of the statewide rate; or those who have had a previous conviction for a cannabis offense.⁷⁷

Another type of prior business is a “Diversly Owned Businesses” which consist of minority-owned, women-owned, disabled vet-owned enterprises.⁷⁸ Finally, the CRC has extended priority review to “Impact Zone Business,” which are entities operating in municipalities with a large population, high unemployment rate, or high numbers of crime or arrests for marijuana.⁷⁹

The CREAMM Act also allows for the creation of recreational cannabis microbusiness. The purpose of this provision is to permit smaller enterprises to take advantage of the new market.⁸⁰ Specifically, microbusinesses can be licensed as cannabis cultivators, manufacturers, distributors, retailers, or delivery services.⁸¹ To qualify for this type of license, microbusinesses must meet the following requirements: (1) have no more than 10 employees at one time and; (2) have a physical plant of no more than 2,500 square feet.⁸² In the case of a cannabis cultivator, the canopy height of the facility cannot be more than 24 feet.⁸³ These businesses can possess no more than 1,000 mature cannabis plants each month (cannabis distributors are exempt from this) and can also acquire no more than 1,000 pounds of usable cannabis (or the equivalent amount in other forms) each month.⁸⁴

⁷⁷ Id

⁷⁸ Id

⁷⁹Id

⁸⁰ Id

⁸¹Id

⁸² Id

⁸³ Id

⁸⁴ Id

Regardless of license category, of course, each of these entities must operate within one of the over 500 municipalities in New Jersey. The CREAMM Act authorizes municipalities to enact ordinances or regulations governing the number of cannabis establishments within their borders.⁸⁵ Municipalities may prohibit the operation of any one or more classes of cannabis licensee within its jurisdiction through the enactment of an ordinance.⁸⁶ CREAMMA gave municipalities until August 22, 2021 to determine whether they wanted to “opt-in” or “opt-out.”⁸⁷ Opt-in towns are thereafter locked into their decision for a certain amount of years before they can opt-out.⁸⁸ This local deference regime resulted in nearly 400, or 71%, of NJ towns banning the immediate operation of all cannabis businesses within their borders.⁸⁹

This stark number is significant because it conflicts with the overwhelming voter approval of recreational cannabis legalization. For example, in Monmouth County where the “Yes” vote on recreational cannabis legalization was the highest in the state, only 7 of the county’s 53 municipalities have opted to permit the operation of either retail or nonretail cannabis businesses.⁹⁰ Some have suggested this phenomenon is a classic situation of not in my own back yard-ism (or NIMBYism) based on “old stigmas rooted in fear, not reality.”⁹¹ Other legalization supporters recommended opting out as a strategic move for towns who were not ready to approve a specific type of dispensary.⁹² As mentioned previously, towns who opt-in are

⁸⁵ Id

⁸⁶ Id

⁸⁷ Kyle Jaeger, Why Most New Jersey Municipalities Are Banning Marijuana Shops Despite Overwhelming Public Support, Marijuana Moment, (Aug. 23, 2021), <https://www.marijuanamoment.net/why-most-new-jersey-municipalities-are-banning-marijuana-shops-despite-overwhelming-public-support/>

⁸⁸ Id

⁸⁹ Will your town allow NJ legal weed Dispensaries?, <https://infogram.com/municipal-marijuana-laws-1hd12yxnpplw6k>

⁹⁰ Id.

⁹¹ See Jaeger, *supra* at note 81

⁹² Id

locked in for a period of years. In Camden City, the local council opted out despite being classified as an Impact Zone in order to “give [the City] a chance to have a road map and put in best recommendations for policies and procedures.”⁹³

Although this locality prohibition problem may be temporarily problematic, it does not become a real issue until businesses have the opportunity to open and operate under the state regulatory scheme, something cannot yet do because of the CRC’s slow implementation of the law. While the CREAMM Act did not mandate a specific date by which residents would be able to buy recreational cannabis, it did specify that the CRC was to have sales ready to launch no longer than six months after promulgating the rules and regulations.⁹⁴ This means that legal cannabis should have been available for purchase by February 20, 2022, but that deadline has come and gone.⁹⁵

Facing criticism, government officials stressed that the delay was necessary to prevent local entrepreneurs, who lacked access to capital, from being cut out of the market because smaller applicants were not yet ready.⁹⁶ In other words, there was concern that multi-state operators, aka large corporations, would dominate the market if recreational sales were authorized quickly through the medical retailers.⁹⁷ Governor Murphy, who had predicted the process from rules to retail would only take only six months, also defended the delay stating, “we

⁹³ Id

⁹⁴ Marijuana Moment, [Top New Jersey Marijuana Regulator Says Rushing Adult-Use Licensing Will Imperil Small Businesses](https://www.marijuanamoment.net/top-new-jersey-marijuana-regulator-says-rushing-adult-use-licensing-will-imperil-small-businesses/), Marijuana Moment (Feb. 23, 2022), <https://www.marijuanamoment.net/top-new-jersey-marijuana-regulator-says-rushing-adult-use-licensing-will-imperil-small-businesses/>

⁹⁵ Id

⁹⁶ Id

⁹⁷ Id

want to get this thing right.”⁹⁸ With one deadline missed it, the Governor announced on February 24, 2022 that adult use cannabis sales would start “within weeks” by March 2022 at existing medical dispensaries.⁹⁹ While the CRC approved a the conditional license applications of a few dozen labs and growers during its March 24, 2022 meeting, it again failed to approve the commencement of any recreational sales.¹⁰⁰

Moreover, and in direct contrast to the Governors previous statements, the CRC announced that the existing eight medical dispensers were on pause for approval for recreational cannabis sales due to the fear of price increases and a lack of supply.¹⁰¹ The Governor, in turn, responded by restating that it would “be a matter of weeks —not . . . months” until the commencement of recreational sales.¹⁰² It was not until late April that the first approval for medical dispensaries to begin recreational sale was given, with sales officially having begun on April 21, 2022.¹⁰³

These ongoing delays are not the only criticism that has been levied at the CRC. Chief among many complaints has been the CRC’s handling of its social equity duties. Despite the plain text of the CREAMM Act and the CRC’s expansive business tiering to achieve social equity goals, U.S. Representative Donald Payne (D-NJ) alleged in January 2022 that not one of

⁹⁸ Id

⁹⁹ Kyle Jaeger, New Jersey Governor Says Adult-Use Marijuana Sales Will Start ‘Within Weeks’, Marijuana Moment (Feb. 24, 2022), <https://www.marijuanamoment.net/new-jersey-governor-says-adult-use-marijuana-sales-will-start-within-weeks/>

¹⁰⁰ Sophie Nieto-Munoz, N.J. commission says state isn’t ready to start sales of recreational weed, New Jersey Monitor (Mar. 24, 2022, 10:15 PM), <https://newjerseymonitor.com/2022/03/24/n-j-commission-said-state-isnt-ready-to-start-sales-of-recreational-weed/>

¹⁰¹ Id

¹⁰² Id

¹⁰³ See Kilgannon, *supra* at note 62

the 56 licenses that the CDC had awarded at that time had been given to African Americans.¹⁰⁴ The Governor quickly snapped back at this allegation claiming that minority owned businesses had in fact received licenses.¹⁰⁵ The CRC, however, has refused to release licensure data.¹⁰⁶ This lack of transparency has resulted in an erosion of trust between the communities the CREAMM Act prioritizes and the CRC.¹⁰⁷

These issues have also provoked a new legislative inquiry into the CRC's process. The New Jersey Senator who led the legislative fight for legalization, Senate President Nick Scutari, announced in late March 2022 that a "special legislative committee" would be formed to investigate the "unacceptable" delay in the state's recreational market roll out.¹⁰⁸ The aim of those are to take "an accounting" of regulators and hear "input from those operating cannabis businesses or waiting to get licensed, as well as others involved in the legal marijuana market."¹⁰⁹

Part IV: The Future of Legal Cannabis

New Jersey's recreational cannabis program rollout has been exasperatingly problematic given that over seventeen months have passed since the referendum. Yet, some analysis contends that Garden State's long delay from referendum to retail sales is not unique. Out of the eighteen

¹⁰⁴ Kyle Jaeger, Congressman Is 'Outraged' Over Lack Of Diversity In Marijuana License Approvals In New Jersey, Marijuana Moment (Jan. 31, 2022), <https://www.marijuanamoment.net/congressman-is-outraged-over-lack-of-diversity-in-marijuana-license-approvals-in-new-jersey/>

¹⁰⁵ Id.

¹⁰⁶ Jenlani Gibson, N.J.'s cannabis commission can't shake discrimination, fraud allegations, N.J.com (Feb. 28, 2022, 4:53 PM), <https://www.nj.com/marijuana/2022/02/njs-cannabis-commission-cant-shake-discrimination-fraud-allegations.html>

¹⁰⁷ Id.

¹⁰⁸ Kyle Jaeger, Top New Jersey Senator Plans Hearings On 'Totally Unacceptable' Marijuana Licensing Delays As Governor Urges Patience, Marijuana Moment (Mar. 29, 2022), <https://www.marijuanamoment.net/top-new-jersey-senator-plans-hearings-on-totally-unacceptable-marijuana-licensing-delays-as-governor-urges-patience/>

¹⁰⁹ Id.

states and D.C. that have legalized recreational cannabis, the average time to set up the market in the twelve states that have started sales was around sixteen-and-a-half months.¹¹⁰ The median time delay was fourteen months.¹¹¹ Within this group of states, New Jersey currently ranks as the fifth longest to start, surpassed only thus far by Washington, Massachusetts, Alaska, and Maine.¹¹²

The states that faced long delays also experience problems similar to New Jersey. Massachusetts was inundated with a slurry of license applications that held up the process by over four months and Maine and Washington both faced regulatory setbacks in their respective licensing processes.¹¹³ In contrast, Arizona and Illinois took just two months and seven months, respectively, to permit retail operations to go live.¹¹⁴

Even if a long delay between formal legalization and the operation of recreational cannabis sales has been the norm, it does not have to be. While New Jersey does not appear to be unique, it certainly demonstrates that government ineptitude plays a role in rollout delay. New Jersey's failure to meet its own self-imposed deadlines for the sale of recreational cannabis over and over again demands improvement. I propose that the state legislature amend its cannabis regulatory law to mandate that the CRC's members be deliberated and voted on by the state legislature to add oversight to the commissions administration. Better management of the

¹¹⁰ Marijuana Moment, [New Jersey Marijuana Sales Delay Isn't Unusual Among Legalized States, Analysis Shows](https://www.marijuanamoment.net/new-jersey-marijuana-sales-delay-isnt-unusual-among-legalized-states-analysis-shows/), Marijuana Moment (Mar. 31, 2022), <https://www.marijuanamoment.net/new-jersey-marijuana-sales-delay-isnt-unusual-among-legalized-states-analysis-shows/>

¹¹¹ Id.

¹¹² Id.

¹¹³ Id.

¹¹⁴ Id.

commission could have led to a better implementation of the market in the first place but will at least possibly allow for better management in the future now that recreational sales have begun. For instance, New Jersey’s refusal to allow medical facilities to provide recreational sales for as long as it did was arguably a mistake. The option to allow medical dispensary sales was the approach of Arizona and Illinois, states that set the record for sales numbers. To be just, however, this approach has been met with criticism from supports of legalization and social equity concerns.

Opponents of this approach contend that medical patients may run out of cannabis and that it is a fast track to corporate domination of the recreational market.¹¹⁵ These issues did, in fact, plague the Arizona market initially when the state allowed existing medical dispensaries to begin adult-use sale within two months of voter approval.¹¹⁶ This maneuver permitted a small number of corporations to dominate the market and led to short-term supply shortages.¹¹⁷ Illinois similarly suffered both corporate domination and severe shortages in its sales market.¹¹⁸

Even acknowledging these mostly temporary drawbacks, they are addressable. New Jersey should have learned from the potential mistakes of Arizona and Illinois in their implementation program and instead become an example of how to provide for a timely and responsibly

¹¹⁵ Id

¹¹⁶ Id

¹¹⁷ Id

¹¹⁸ Eric Schmid, The Illinois Cannabis Market Is Strong, But Shortages Will Persist For Months, St. Louis Public Radio (Apr. 5, 2020, 6:19 AM), <https://news.stlpublicradio.org/politics-issues/2020-04-05/the-illinois-cannabis-market-is-strong-but-shortages-will-persist-for-months>

administered cannabis regulatory market. Instead, now, New Jersey ranks among the jurisdictions that just couldn't get it right.

But New Jersey can serve as an example for future states that seek to legalize and create an adult use cannabis market. One of the hesitations cited by the CRC in not allowing recreational sales out of the already-licensed medical dispensaries was that the state was over short over 100,000 pounds of cannabis to meet demands in both the private and medical sectors.¹¹⁹ This, compounded with the anticipation of longer lines, created legitimate fears that licensed medical cannabis users would be unable to fill their prescriptions.¹²⁰ It had been same issue faced by both Arizona and Illinois in their early implementations programs as well. States looking at this can easily provide remedies to avoid these situations. By providing temporary lower weight limits and purchase time restrictions for recreational sales, medical patients could be spared the stress of being unable to fill a prescription. Additionally, separate servicing lines could be created to ensure that medical patients are being helped ahead of recreational sales.

In the end, New Jersey, and any states failure to create and launch a working adult-use cannabis market in a timely fashion not only leads to a loss in confidence for the Government, but also leads to a waste of taxpayer resources and loss of potential revenue.

As previously mentioned, the CRC's delays have now led to official inquiries from the state legislature which shows a lack of confidence in the organization from the very people have created it.¹²¹ In the almost four months it took the state legislature to craft a decriminalization bill, law enforcement was still arresting and prosecuting individuals for cannabis due to the legal

¹¹⁹ See Jaeger, *supra* at note 100

¹²⁰ Id

¹²¹ Id

limbo, which invariably meant the state and local governments were wasting time on crimes that sooner rather than later would be reformed.¹²² Since the sales tax on medical cannabis in the state is subject to a general phase out per the Compassionate Medical Use Act as previously mentioned, and recreational sales are subject to up to a 7% sales tax, each sale of medical cannabis rather than recreational is a loss in potential revenue if that individual would have otherwise bought recreational cannabis for whatever reason. While the State is projected to make at least \$2 Billion in sales over the next four years, with \$30 million coming in for this fiscal year 2022, this number could have been higher had the state had its act together regarding recreational sales earlier in the year.¹²³

In addition to serving as an example of how not to roll out an adult-use cannabis program, New Jersey can also be a model for how to not handle employment related issues regarding cannabis as the state faces a continuing problem regarding employers and cannabis in the workplace.¹²⁴ As mentioned in Part II of this paper, amongst the Cannabis Regulatory Commission responsibilities was promulgating employment protections for people who legal use cannabis. According to CREMM, employers are prohibited from refusing to hire applicants because they use cannabis or solely due to the presence of cannabis in their system following a test.¹²⁵ When first publishing its rules on the industry in August, the CRC failed to clarify to any extent what employers' responsibilities were regarding CREMM despite the law essentially making cannabis users, both medical and recreational, a protected class under the state's anti-

¹²² Amanda Hoover, [N.J. cops are still arresting people for weed. Police say they won't stop until legal marijuana is official](https://www.nj.com/marijuana/2021/02/nj-cops-are-still-arresting-people-for-weed-police-say-they-wont-stop-until-legal-marijuana-is-official.html), N.J.com (Feb. 21, 2021 6:30 AM), <https://www.nj.com/marijuana/2021/02/nj-cops-are-still-arresting-people-for-weed-police-say-they-wont-stop-until-legal-marijuana-is-official.html>

¹²³ See Kilgannon, *supra* at note 62

¹²⁴ Michelle L. Greenberg, Esq. and Sean E. Sanders, Esq., [Employment Law Alert: New Jersey Cannabis-Employment Laws Remain Unclear](https://www.frierlevitt.com/articles-publications/employment-law-alert-new-jersey-cannabis-employment-laws-remain-unclear/), Frier Levitt (Jan. 20, 2022), <https://www.frierlevitt.com/articles-publications/employment-law-alert-new-jersey-cannabis-employment-laws-remain-unclear/>

¹²⁵ Id

discrimination laws.¹²⁶ Rather employees have been left to deal with the law themselves, being put in difficult situations over the CRC's lack of guidance.¹²⁷

The lack of responsibility and competence in the implementation of the legal market, as well as the confusion in the employment space clearly shows that this paper's proposal: to provide more legislative oversight to the Cannabis Regulatory Commission by removing its current members and having those members deliberated and voted on by the legislature, is necessary. Coupled with the unprecedented refusal of the Commission to provide data regarding license is also a major problem. If there is to be any continued confidence in the CRC's ability to build up the cannabis industry in the state and further manage the ancillary issues of that industry, reforms like this proposal must be made. New Jersey is poised to stand as a fine example to the other remaining states who may consider legalization as what to do and not do to implement a timely and successful adult-use cannabis regime.

¹²⁶ Id

¹²⁷ Suzette Parmley, [A year after N.J. legalized weed, there's still confusion over random drug testing](https://www.nj.com/marijuana/2022/02/a-year-after-nj-legalized-weed-employers-are-still-confused-about-random-drug-testing.html), N.J.com (Feb. 23, 2022, 2:54 AM), <https://www.nj.com/marijuana/2022/02/a-year-after-nj-legalized-weed-employers-are-still-confused-about-random-drug-testing.html>