

**O-HIGH-O: A POLICY NOTE ON OHIO’S CURRENT
PUSH FOR RECREATIONAL MARIJUANA
LEGISLATION AND HOW OTHER STATES HAVE
CREATED SUCCESSFUL RECREATIONAL
MARIJUANA LAWS**

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ABSTRACT

Many states have gone on to pass comprehensive recreational marijuana laws that have greatly benefitted their economy, public health, and criminal justice system. Ohio currently allows for the use of marijuana for medicinal purposes, and there has been past attempts to enact legislation that would legalize the recreational use of marijuana, but the past proposals failed to gain the widespread support required to become law. This Note seeks to analyze and understand other states’ legislation in an attempt to understand what successful recreational marijuana legislation looks like. This Note concludes with a comprehensive proposal that contains all the essential elements of successful recreational marijuana laws to act as a guide for lawmakers and Ohio citizens alike for creating a successful recreational marijuana statute to ensure the greatest likelihood of garnishing the support required to become law.

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I. INTRODUCTION

“Marijuana! The burning weed with its roots in hell!”² In 1936, *Reefer Madness* was released with the intentions of warning teenagers about the ill effects of marijuana.³ It is unlikely anybody in 1936 would be able to fathom the idea that 60 years later, the “satanic” drug would be legalized for medicinal purposes.⁴ It would be even harder to convince somebody from the early 20th century that by 2022, 37 out of 50 states would go on to pass legislation allowing the use of marijuana for medicinal purposes, with 21 of those 36 states and the District of Columbia allowing the use of marijuana for recreational purposes.⁵ Yet, here we are 85 years after the release of *Reefer Madness*, and the number of states proposing recreational marijuana laws continues to grow.⁶

² Laura M. Holson, *Marijuana, Reefer, Weed: Language and the Devil’s Lettuce*, THE NEW YORK TIMES (July 4, 2019), <https://www.nytimes.com/2019/07/04/style/marijuana-weed-cannabis-pot.html>.

³ *Id.*

⁴ *Historical Timeline History of Marijuana as Medicine – 2900 BC to Present*, PROCON (June 16, 2021), <https://medicalmarijuana.procon.org/historical-timeline/>.

⁵ *State Medical Marijuana Laws*, NAT’L CONF. OF ST. LEGISLATURES (Aug. 23, 2021), <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>.

⁶ *See Group Seeks Legislation to Legalize Recreational Marijuana in Ohio*, FOX 19 (July 27, 2021), <https://www.fox19.com/2021/07/27/group-seeks-legislation-legalize-recreational->

Despite this growing number of states, Ohio has tried and failed to propose effective legislation regarding the legalization of recreational marijuana.⁷ However, lawmakers and citizens of Ohio are banding together once again to attempt to pass new legislation through the state legislature in the form of House Bill 210 (“Bill” or “H.B. 210”), sponsored by Terrence Upchurch and Sedrick Denson, and a ballot initiative proposed by the Coalition to Regulate Marijuana like Alcohol.⁸ Both proposals, if passed, would allow adults 21 and older to legally possess and consume marijuana and permit personal-use cultivation of marijuana.⁹ But how do the citizens of Ohio prevent the legislation from suffering the same fate the referendum that was Issue 3 saw in 2015?¹⁰ To garnish serious support, this Bill will have to provide information on how it will benefit Ohio’s criminal justice system, the public health of Ohio, and economies of local governments in the cardinal state.¹¹

This Note will analyze whether the potential laws, as proposed, benefit these areas, or whether they will create power imbalances and fail to address the reasons Ohio should become the 22nd state to legalize recreational marijuana.¹² This Note will achieve this by looking at the proposed bill and ballot initiative and comparing them to the marijuana laws of other states who have had favorable outcomes because of their legalization of recreational marijuana.

Part II of this Note will discuss the necessary facts and legal rules required to understand marijuana legislation in Ohio. It will discuss the structure of the past legislation that had been offered and what made it so unpopular.¹³ It will also discuss the reasons why a state such as Ohio should pass recreational marijuana legislation, mainly because of its positive effects on public health, the criminal justice system, and local economies.¹⁴ Lastly, this Note will look into the proposed legislation and provide the reader with information on what the effects of each proposal will be.

pot-ohio/; *see also Recreational Marijuana Bill is Back at Minnesota Capitol*, STARTRIBUNE (Feb. 2, 2021), <https://m.startribune.com/recreational-marijuana-bill-is-back-at-minnesota-capitol/600017615/>; *N.C. Lawmakers Propose Bill to Legalize Marijuana*, WBTV (Apr. 22, 2021), <https://www.wbtv.com/2021/04/21/nc-lawmakers-propose-bill-legalize-marijuana/>.

⁷ *See* John Hudak, *Ohio’s Failure to Legalize Marijuana Tells Us Little About Reform, and Less About the Future*, BROOKINGS (Nov. 3, 2015), <https://www.brookings.edu/blog/fixgov/2015/11/03/ohios-failure-to-legalize-marijuana-tells-us-little-about-reform-and-less-about-the-future/>.

⁸ H.B. 210, 134th Leg. (2021); *An Act to Control and Regulate Adult Use Cannabis*, COAL. TO REGULATE MARIJUANA LIKE ALCOHOL, <https://justlikealcohol.com/wp-content/uploads/2021/07/An-Act-to-Control-and-Regulate-Adult-Use-Cannabis-0726.pdf> (last visited Jan. 10, 2023).

⁹ *Id.*

¹⁰ *See, e.g.*, Memorandum from Att’y Gen. Mike Dewine on the Med. Marijuana and Pers. Use Amend. (Feb. 23, 2015) (on file with Ohio Attorney General).

¹¹ *See infra* Part II.A.

¹² *State Medical Marijuana Laws*, *supra* note 5.

¹³ *Ohio Marijuana Legalization Initiative, Issue 3 (2015)*, BALLOTEDIA, [https://ballotpedia.org/Ohio_Marijuana_Legalization_Initiative,_Issue_3_\(2015\)](https://ballotpedia.org/Ohio_Marijuana_Legalization_Initiative,_Issue_3_(2015)) (last visited Jan. 10, 2023).

¹⁴ Erin J. Farley & Stan Orchowsky, *Measuring the Criminal Justice System Impacts of Marijuana Legalization and Decriminalization Using State Data*, U.S. DEP’T OF JUST.,

Part III of this Note will analyze whether the proposals meet the goals described in Part II by looking at states that have seen positive results since passing their recreational marijuana laws and comparing Ohio's proposals to the laws in those states. This Note will also compare the current proposals to Ohio's past attempt at passing a recreational marijuana law and will analyze any similarities and differences. Finally, based on these findings, this Note will address the strengths and weaknesses of each proposal and make suggestions on where improvements should be made so they will have the highest chance of being passed. This Note will conclude in part IV, where these findings will be summed up and recommendations regarding what Ohio's recreational marijuana law should look like will be made.

II. A BRIEF OVERVIEW OF RECREATIONAL MARIJUANA LEGISLATION IN THE UNITED STATES

To understand how recreational marijuana can become legalized in Ohio, it is important to first be made aware of the reasons why a state would even consider recreational marijuana legislation. Furthermore, a discussion of the past legislation that Ohio has considered is important to discuss, so lawmakers can learn from past mistakes and see where the proponents of Ohio's past proposal went wrong.

A. *Reasons for Legalization*

At the federal level, marijuana is still considered a Schedule 1 drug.¹⁵ Therefore, in the eyes of the federal government, marijuana is considered a drug with no currently accepted medical use and a high potential for abuse.¹⁶ The Drug Enforcement Agency deems marijuana to be on the same level as heroin, LSD, and ecstasy in terms of medical benefit and potential for abuse.¹⁷ That being said, the question becomes, why on earth would a state consider making a drug of this kind legal to citizens of that state? What reasons could there possibly be for justifying that kind of legislation? For starters, marijuana has proven to be useful for purposes of public health, specifically its medical utility for some conditions.¹⁸ Furthermore, legalization of recreational marijuana could benefit minority groups by narrowing this country's racial divide, along with repairing the criminal justice system by imposing systems for retroactive

<https://www.ojp.gov/ncjrs/virtual-library/abstracts/measuring-criminal-justice-system-impacts-marijuana-legalization-0> (last visited Feb. 15, 2023).

¹⁵ *Drug Scheduling*, DEA, <https://www.dea.gov/drug-information/drug-scheduling> (last visited Jan. 10, 2023).

¹⁶ *Id.*

¹⁷ Interestingly enough, most forms of opiates are placed on the Schedule II drug list, below marijuana, because of their utility in the medical field, despite the fact that abuse of the prescription drugs has become bad enough in many areas to deem the problem an "epidemic." *Id.*; see also *What is the U.S. Opioid Epidemic?*, U.S. DEPT. H. HUMAN SERVS., <https://www.hhs.gov/opioids/about-the-epidemic/index.html> (last visited Jan. 10, 2023).

¹⁸ NAT'L ACADS. OF SCIS., ENG'G & MED., *THE HEALTH EFFECTS OF CANNABIS AND CANNABINOIDS* (2017).

legality.¹⁹ Finally, and perhaps the most obvious, the economic benefits to the state and local governments in the form of tax revenue.²⁰

The medicinal utility of marijuana dates back to before recorded history.²¹ However, states began legalizing marijuana for medicinal purposes in the United States in 1996, with California being the first state to do so.²² California passed into law Proposition 215 which gave Californians the right to obtain and use marijuana for the treatment of “cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.”²³ Since 1996, more research has been obtained and healthcare experts have since discovered that marijuana can have both therapeutic and physical health effects.²⁴ One of the most common conditions cited by patients for the medical use of marijuana is chronic pain.²⁵ In a 2016 survey conducted by the Centers for Disease Control and Prevention, one in five adults in the United States suffer from some form of chronic pain.²⁶ This report generated by the National Academy of Sciences concludes that there is substantial evidence that marijuana is an effective treatment for chronic pain in adults.²⁷ Therefore, with 20% of the adult population suffering from some form of chronic pain,²⁸ a substantial number of people could stand to gain the benefits of using marijuana for medicinal purposes.²⁹ In their report, the National Academy of Sciences

¹⁹ Gene Taras, *High Time for Change: How Legalizing Marijuana Could Help Narrow the Racial Divide in the United States*, 24 CARDOZO INT’L COMP. POL’Y & ETHICS L. REV. 565 (Spring 2016).

²⁰ See Angela Dills et al., *The Effect of State Marijuana Legalizations: 2021 Update*, CATO INST. (Feb. 2, 2021), <https://www.cato.org/policy-analysis/effect-state-marijuana-legalizations-2021-update>; see also Armikka R. Bryant, *Taxing Marijuana: Earmarking Tax Revenue from Legalized Marijuana*, 33 GA. ST. UNIV. L. REV. 659 (2017).

²¹ JULIE HOLLAND M.D. ET AL., *THE POT BOOK: A COMPLETE GUIDE TO CANNABIS* 6 (2010). Cannabis has been used as a medicine since at least 2800 BCE, and until the 1940’s, it was listed in America’s pharmacopeia. *Id.*

²² *Historical Timeline History of Marijuana as Medicine – 2900 BC to Present*, *supra* note 4.

²³ Cal. Proposition 215 (1996) (codified as The Compassionate Use Act of 1996, Cal. Health and Safety Code 11362.5 (Deering 2023)).

²⁴ *Health Effects of Marijuana and Cannabis-Derived Products Presented in New Report*, NAT’L ACADS. OF SCIS., ENG’G & MED. (Jan. 12, 2017), <https://www.nationalacademies.org/news/2017/01/health-effects-of-marijuana-and-cannabis-derived-products-presented-in-new-report>.

²⁵ Yvette C. Terrie, *Medical Cannabis for Chronic Pain*, U.S. PHARMACIST (Mar. 19, 2020), <https://www.uspharmacist.com/article/medical-cannabis-for-chronic-pain>.

²⁶ James Dalhammer et al., *Prevalence of Chronic Pain and High-Impact Chronic Pain Among Adults – United States, 2016*, CTR. FOR DISEASE CONTROL & PREVENTION (Sept. 14, 2018), <https://www.cdc.gov/mmwr/volumes/67/wr/mm6736a2.htm>.

²⁷ NAT’L ACADS. OF SCIS., ENG’G & MED., *supra* note 18, at 90.

²⁸ Dalhammer et al., *supra* note 26.

²⁹ Greg Miller, *Pot has Some Medical Benefits, U.S. Academies Say, but Obstacles to Research Loom*, SCI. (Jan. 12, 2017), <https://www.science.org/content/article/pot-has-some-medical-benefits-us-academies-say-obstacles-research-loom>.

would go on to conclude that marijuana can also be an effective treatment for chemotherapy-induced nausea and vomiting, AIDS/HIV related anorexia, multiple sclerosis spasticity symptoms, anxiety, sleep disorders, and post-traumatic stress disorder.³⁰

Another reason why a state might want to legalize recreational marijuana is for its effect on social justice; specifically, the effect it could have on racial minorities.³¹ According to a report conducted by the American Civil Liberties Union (“ACLU”), 43.2% of all drug arrests in 2018 were marijuana arrests.³² In the same year, the ACLU reported that African Americans were 3.64 times more likely to be arrested for marijuana possession than white people, despite white people accounting for over 8% more lifetime usage than African Americans.³³ In Ohio, specifically, the numbers are about the same with African Americans being over three times more likely to be arrested for marijuana possession than white people.³⁴ In the report’s conclusion, the ACLU determined that states that have legalized marijuana have enjoyed a reduction of marijuana possession arrests for African Americans and white people alike; however, such laws have not substantially reduced the significantly larger arrest rates of African Americans.³⁵ Law enforcement continues to make hundreds of thousands of marijuana possession arrests every year, accounting for almost half of all drug arrests nationwide.³⁶ In 2018, African Americans were nearly four times more likely than white people to get arrested for marijuana possession, despite similar usage rates.³⁷

In relation to the issue of social justice, recreational marijuana laws can also have a positive impact on the criminal justice system as a whole by imposing a system of retroactive legality.³⁸ In 2020, there were an estimated 40,000 people incarcerated for marijuana offenses, despite the drug being legal in numerous states.³⁹ As a result, many

³⁰ NAT’L ACADS. OF SCIS., ENG’G & MED., *supra* note 18, at 91–97, 101–03, 118–20, 121–24.

³¹ Deborah M. Ahrens, *Retroactive Legality: Marijuana Convictions and Restorative Justice in an Era of Criminal Justice Reform*, 110 J. CRIM. L. & CRIMINOLOGY 379 (2020).

³² A TALE OF TWO COUNTRIES, RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM, ACLU 22 (2020).

³³ *Id.* at 5.

³⁴ *Id.* at 82.

³⁵ *Id.* at 34.

³⁶ *Id.* at 5

³⁷ *Id.*

³⁸ Sophie Quinton, *Marijuana Bills Increasingly Focus on Social Justice*, PEW (July 19, 2018), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2018/07/19/marijuana-bills-increasingly-focus-on-social-justice>.

³⁹ Joan Oleck, *With 40,000 Americans Incarcerated for Marijuana Offenses, the Cannabis Industry Needs to Step Up, Activists Said This Week*, FORBES (June 26, 2020), <https://www.forbes.com/sites/joanoleck/2020/06/26/with-40000-americans-incarcerated-for-marijuana-offenses-the-cannabis-industry-needs-to-step-up-activists-said-this-week/>.

have found themselves precluded from opportunities later in life.⁴⁰ For example, people who have been convicted of felony offenses in some jurisdictions are either temporarily or permanently disenfranchised from voting, excluding them from participating in a basic and fundamental right of our democratic process.⁴¹ Drug convictions have also precluded people from accessing welfare support, affordable places to live, and support for educational and career advancement by hindering their ability to obtain income assistance,⁴² federal housing,⁴³ and federal financial aid.⁴⁴ Furthermore, convictions can bar people from serving on juries,⁴⁵ which precludes them from being a part of another process integral to the American judicial system.⁴⁶ Aside from participating in these types of processes that affect our society, convicted felons also struggle on an individual level with regards to employment and housing.⁴⁷ Employers and landlords have the right to look into a person's criminal history and oftentimes refuse a candidate solely on the basis of their criminal background, even if the crime charged was something as minor as possession.⁴⁸ In response to these issues, many states that have legalized recreational marijuana have also included, or began to create, retroactive legality provisions designed to rid a person's criminal record of convictions for conduct that is now legal, and open up more opportunities.⁴⁹

The final, and perhaps most persuasive, benefit of legalization of recreational marijuana is the positive effect it can have on the state's economy.⁵⁰ States that have

⁴⁰ See, e.g., John Washington, *He Was Arrested for Marijuana 17 Years Ago. Now It's Legal. So Why is He Still Guilty of a Crime?*, VOX (Dec. 10, 2020), <https://www.vox.com/the-highlight/21749376/marijuana-expungements-biden-harris-conviction-drug-war> (noting that Khalil was arrested, charged, convicted, and incarcerated for possession of less than a quarter ounce of marijuana, a charge that continues to follow him to this day).

⁴¹ See *Criminal Disenfranchisement Laws Across the United States*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/criminal-disenfranchisement-laws-across-united-states> (Jan. 1, 2022).

⁴² See 21 U.S.C. § 862.

⁴³ See 24 C.F.R. § 982.553.

⁴⁴ See 20 U.S.C. § 1091.

⁴⁵ See 28 U.S.C. § 1865.

⁴⁶ See, e.g., *Handbook for Trial Jurors Serving the United States District Court*, U.S. DIST. CT. S. DIST. OF N.Y., <https://www.nysd.uscourts.gov/jurors/jury-handbook> (last visited Jan. 10, 2023).

⁴⁷ Melissa Li, *From Prisons To Communities: Confronting Re-Entry Challenges and Social Inequality What Makes Re-Entry Into Communities Challenging?*, AM. PSYCH. ASS'N (Mar. 2018), <https://www.apa.org/pi/ses/resources/indicator/2018/03/prisons-to-communities>.

⁴⁸ See JEREMY TRAVIS ET AL., *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES* 258 (2014).

⁴⁹ See e.g., Sophie Quinton, *In These States, Past Marijuana Crimes Can Go Away*, PEW (Nov. 20, 2017), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/11/20/in-these-states-past-marijuana-crimes-can-go-away>.

⁵⁰ See, e.g., Mrinalini Krishna, *The Economic Benefits of Legalizing Marijuana*, INVESTOPEDIA, <https://www.investopedia.com/articles/insights/110916/economic-benefits-legalizing-weed.asp> (Nov. 16, 2022).

legalized recreational marijuana have enjoyed significant increases in their budgets.⁵¹ The increase in the states' budget comes from significant excise taxes on recreational marijuana, along with standard state sales tax, other local taxes, and licensing fees.⁵² For instance, in 2021, Colorado collected over \$30 million per month from marijuana taxes alone.⁵³ Furthermore, this figure has been steadily increasing since the state adopted recreational marijuana legislation in 2014.⁵⁴ To the surprise of many of the legislatures, these figures have exceeded some pre-legislation forecasts.⁵⁵ Even more attractive than how much money these states have made off of marijuana sales is how some states have decided to allocate the funds.⁵⁶ In states without laws specifically allocating revenue from marijuana sales to dedicated funds, taxes and fees collected are oftentimes earmarked to fund the state's medical marijuana program, law enforcement, or health services related to drug addiction.⁵⁷ Going back to Colorado, the marijuana tax revenue in this state has several earmarks.⁵⁸ 10% of the marijuana retail sales tax is used to cover the costs of the implementation and enforcement of regulating the marijuana industry.⁵⁹ Also, funds collected are also distributed based on sales to local taxing jurisdictions with retail marijuana stores within their boundaries.⁶⁰ The remaining revenue is distributed to the state's general fund.⁶¹ Colorado is just one example of a state that has seen positive economic impacts from the legalization of recreational marijuana.⁶²

B. Ohio's Past Attempt at Legalization

Before the lawmakers in Ohio can move forward with recreational marijuana legislation, it is important to consider the state's previous attempt at legalization. In 2015, Issue 3 was placed on the ballot and voters of Ohio finally had their opportunity to vote on a constitutional amendment to legalize recreational marijuana.⁶³ Key

⁵¹ Dills et al., *supra* note 20, at 10 (discussing legalization efforts in Colorado, Washington, Oregon, and California).

⁵² *Id.*

⁵³ Colorado Department of Revenue, *Marijuana Tax Reports*, <https://cdor.colorado.gov/data-and-reports/marijuana-data/marijuana-tax-reports>.

⁵⁴ Dills et al., *supra* note 20, at 10.

⁵⁵ *Id.*

⁵⁶ See, e.g., Richard Auxier & Nikhita Airi, *The Pros and Cons of Cannabis Taxes*, 2022 TAX POL'Y CTR. 27 <https://www.taxpolicycenter.org/publications/pros-and-cons-cannabis-taxes/full>.

⁵⁷ Bryant, *supra* note 20, at 682.

⁵⁸ *Id.* at 683.

⁵⁹ David Blake & Jack Finlaw, *Marijuana Legalization in Colorado: Learned Lessons*, 8 HARV. L. & POL'Y REV. 359, 373 (2014).

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² Dills et al., *supra* note 20, at 10.

⁶³ Hunter Overstreet, *Marijuana Legalization on Ohio's Ballot as Issue 3*, THE OBSERVER (Oct. 23, 2015), <https://observer.case.edu/marijuana-ohio-issue-three/>.

characteristics of Issue 3 included allowing persons over the age of 21 to purchase up to one ounce of marijuana, grow up to four marijuana plants, and obtain prescriptions for medical marijuana for medicinal purposes.⁶⁴ Issue 3 would have established a 15% flat tax for all revenue generated by marijuana growth and production facilities in the state, and the revenue from the tax was to be divided as follows: 55% to a municipal and township government stabilization fund to be distributed on a per capita basis to be used for public safety and health; 30% to a strong county fund to be distributed to all counties on a per capita basis to be used for public safety and health; and 15% to a marijuana control commission fund to be distributed to cover costs of the commission, mental health and addiction treatment and prevention programs, research, and a program to provide low-cost medical marijuana to qualifying patients unable to afford the full cost.⁶⁵

Despite the thoughtful provisions set forth in the proposed legislation, there was one major drawback that ultimately led to the demise of the amendment and caused 63.65% of Ohioans who voted to subsequently vote “no.”⁶⁶ This drawback was a provision in the proposed amendment that granted exclusive rights to ten “Marijuana Growth, Cultivation & Extraction (MGCE) facilities” to commercially produce marijuana.⁶⁷ This provision effectively created a monopoly of the would-be recreational marijuana market in Ohio, and the decision of the voters clearly showed there was “no place” for monopolies in the Ohio Constitution.⁶⁸ Thus, despite the promising effort, it became clear that if recreational marijuana laws were to be passed, rule makers would have to be more considerate about the impacts of the language of their proposals.⁶⁹

C. Ohio’s Current Marijuana Laws

In 1975, Ohio Governor James Rhodes signed a bill decriminalizing marijuana, making Ohio the sixth state to do so.⁷⁰ Currently, possession of up to 100 grams of

⁶⁴ Letter from Donald McTigue, Att’y, McTigue McGinnis & Colombo LLC, to Mike DeWine, Ohio Att’y Gen. (March 3, 2015), <https://www.ohioattorneygeneral.gov/getattachment/90dcc411-0fed-4942-a817-13437c331d0c/Marijuana-Legalization-Amendment.aspx>.

⁶⁵ *Id.*

⁶⁶ *Ohio Marijuana Legalization Initiative, Issue 3*, *supra* note 13; *see also* Overstreet, *supra* note 63.

⁶⁷ *See* Letter from Donald McTigue to Ohio Att’y Gen. Mike DeWine, *supra* note 64.

⁶⁸ Jackie Borchardt, *Ohio Marijuana Legalization Measure Fails*, CLEVELAND.COM (Nov. 4, 2015, 2:11 AM), https://www.cleveland.com/open/2015/11/ohio_marijuana_legalization_me.html. Curt Steiner, campaign director for the “no” on Issue 3 group Ohioans Against Marijuana Monopolies, said voters concluded Issue 3 was an unsavory abuse of the ballot issue process and nothing more than a business plan to seize control of the recreational marijuana market in Ohio. *Id.* “Never underestimate the wisdom of Ohio voters,” Steiner said. “They saw through the smokescreen of slick ads, fancy but deceptive mailings, phony claims about tax revenues and, of course, Buddie the marijuana mascot.” *Id.*

⁶⁹ *See generally id.*

⁷⁰ PATRICK ANDERSON, *HIGH IN AMERICA: THE TRUE STORY BEHIND NORML AND THE POLITICS OF MARIJUANA* (1981).

marijuana is a minor misdemeanor, which carries a maximum fine of \$150.⁷¹ However, the severity of the punishment increases depending on the amount possessed and for selling marijuana rather than merely possessing it.⁷² In 2016, state lawmakers in Ohio passed legislation that established a medical cannabis program for Ohioans.⁷³ The medical marijuana laws allow for patients who qualify and are over the age of 18 to purchase a 90-day supply of marijuana at a time.⁷⁴ For people who are not registered as medical marijuana patients, the law punishes those who knowingly or intentionally possess, cultivate, or traffic marijuana, with penalties varying according to the amount possessed, cultivated, or trafficked.⁷⁵ Punishments range from minor misdemeanors, which incur small fines, to second degree felonies, which include major fines and the possibility of prison time.⁷⁶

As it pertains to retroactive legality, Ohio has recently implemented and expanded laws for expungement.⁷⁷ In April of 2021, Ohio passed legislation that expanded the Ohio Record Sealing Law so that more people and more convictions are eligible for expungement, and the law offers a faster record sealing process for several types of offenses.⁷⁸ Under section 2953.31 of the Ohio Revised Code, anyone who is convicted of a fourth-degree felony, fifth-degree felony, or misdemeanor offense qualifies for an *unlimited* number of expungements, so long as all convictions on their criminal record are fourth-degree felonies, fifth-degree felonies, and misdemeanor offenses and none are violent crimes, felony sex crimes, DUI/OVI offenses, first-degree felonies, second-degree felonies, or third-degree felonies.⁷⁹

D. Ohio's Proposed Marijuana Laws

It is known that past attempts at passing recreational marijuana laws have failed,⁸⁰ and to be successful, Ohio lawmakers must learn from their mistakes if they want to have any chance of garnishing support for their proposed law. It has been six years since the attempt to legalize recreational marijuana failed,⁸¹ and Ohio is ready to give

⁷¹ *Ohio Laws and Penalties*, NORML, <https://norml.org/laws/ohio-penalties-2> (last visited Nov. 26, 2021).

⁷² *Id.*

⁷³ *Marijuana Laws in Ohio*, MPP (Sept. 14, 2021), <https://www.mpp.org/states/ohio/>.

⁷⁴ OHIO ADMIN. CODE 3796:7-2-04.

⁷⁵ See OHIO REV. CODE ANN. §§ 2925.03, 2925.04, 2925.11.

⁷⁶ *Id.*

⁷⁷ *New Expungement Law in Ohio Now in Effect*, THE MERANDA L. FIRM LTD (June 14, 2021), <https://www.columbusattorneycriminal.com/law-blog/2021/june/new-expungement-law-in-ohio-now-in-effect/>.

⁷⁸ *Id.*

⁷⁹ OHIO REV. CODE §§ 2953.31, 2953.32 (West 2021).

⁸⁰ *Ohio Marijuana Legalization Initiative, Issue 3*, *supra* note 13.

⁸¹ *Id.*

it another shot with H.B. 210 and the Coalition to Regulate Marijuana Like Alcohol's ballot initiative.⁸²

So, what do the new proposals seek to achieve, and how do they differ from the proposal from 2015? Currently, there are two proposals making their way through the legislative system.⁸³ The first piece of legislation is H.B. 210 sponsored by Terrence Upchurch and Sedrick Denson.⁸⁴ This bill would legalize possession of up to five ounces of cannabis for adults 21 and older and allow them to cultivate up to 12 plants for personal use.⁸⁵ It also contains provisions to expunge prior convictions for possession and cultivation activities that are being made legal under the language in the bill.⁸⁶ There are reports that the bill would impose a 10% excise tax on marijuana sales, and after covering administrative costs, the revenue would be divided among municipalities with at least one cannabis shop, counties with at least one shop, k-12 education, and infrastructure.⁸⁷

The other proposal making its way through the legislative process is a ballot initiative sponsored by the Coalition to Regulate Marijuana Like Alcohol.⁸⁸ In August of 2021, Ohio Attorney General Dave Yost certified the enacted statute proposal and, within a month's time, the Ballot board voted unanimously that the initiative would be one issue and ordered the Coalition to start gathering signatures immediately.⁸⁹ The Coalition needs to collect 132,887 signatures from registered voters, and the legislature will be forced to add the issue to the 2022 ballot.⁹⁰ The language of the proposal includes many provisions that touch upon all areas of recreational marijuana regulation.⁹¹ The proposal would make it legal for Ohioans aged 21 and older to

⁸² H.B. 210, 134th Gen. Assemb. (Ohio 2021); *An Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

⁸³ H.B. 210, 134th Gen. Assemb. (Ohio 2021); *see also An Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

⁸⁴ H.B. 210, 134th Gen. Assemb. (Ohio 2021).

⁸⁵ *Id.*; *see also* Jackie Borchardt, *Democratic lawmakers introduce bill to legalize marijuana in Ohio*, CINCINNATI ENQUIRER (July 15, 2021, 3:41 PM), <https://www.cincinnati.com/story/news/politics/2021/07/15/ohio-democrats-introduce-bill-legalize-marijuana/7892474002/>.

⁸⁶ H.B. 210, 134th Gen. Assemb. (Ohio 2021).

⁸⁷ Kyle Jaeger, *Ohio Marijuana Activists Cleared to Collect Signatures for 2022 Legalization Ballot Initiative*, MARIJUANA MOMENT (Aug. 30, 2021), <https://www.marijuanamoment.net/ohio-marijuana-activists-cleared-to-collect-signatures-for-2022-legalization-ballot-initiative/>.

⁸⁸ *An Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

⁸⁹ Letter from Dave Yost, Att'y Gen., Ohio, to John P. Gilligan, Trial Counsel, Ice Miller LLP (Aug. 20, 2021), [https://www.ohioattorneygeneral.gov/getattachment/86582080-91e8-4905-811d-d35c52ae7d75/An-Act-to-Control-and-Regulate-Adult-Use-Cannabis-\(Re-Submission\).aspx](https://www.ohioattorneygeneral.gov/getattachment/86582080-91e8-4905-811d-d35c52ae7d75/An-Act-to-Control-and-Regulate-Adult-Use-Cannabis-(Re-Submission).aspx); *see also* Andrew J. Tobias, *Ohio Gives Green Light for Marijuana Legalization Petitioners to Start Gathering Signatures*, CLEVELAND.COM (Sep. 06, 2021, 10:00 AM), <https://www.cleveland.com/open/2021/09/ohio-gives-green-light-for-marijuana-legalization-petitioners-to-start-gathering-signatures.html>.

⁹⁰ Tobias, *supra* note 89.

⁹¹ *An Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

consume marijuana, possess up to 2.5 ounces of marijuana, and cultivate up to 12 marijuana plants.⁹² As far as the funds go, a 10% sales tax would be imposed on cannabis sales, with 36% of the revenue being divided up to support social equity jobs and programs, 36% to support localities that allow adult-use marijuana enterprises to operate in their area, 25% towards education and substance misuse programs, and 3% to cover administrative costs of implementing the system.⁹³ The proposal also creates a Division of Cannabis Control under the Department of Commerce with authority to license, regulate, investigate, and penalize adult use cannabis operators, adult use testing laboratories, and individuals required to be licensed.⁹⁴ There are also provisions for integrating the medical cannabis businesses into the new market.⁹⁵ Moreover, the Division would be required to enter into an agreement with the Department of Mental Health and Addiction Services to provide cannabis addiction services, which would involve education and treatment for individuals with addiction issues related to cannabis or other controlled substances, such as opioids.⁹⁶ Another promising detail is that, unlike the 2015 legislation, this proposal shows no signs of allowing for a monopoly of any kind.⁹⁷ The only aspect missing that has some citizens of Ohio questioning the proposal is the lack of specific language on automatic expungements to clear the records of people with convictions for offenses that would be made legal under the legislation.⁹⁸ However, there is a provision requiring the Division to study and fund criminal justice reform initiatives, including expungements.⁹⁹

III. DISCUSSION

A. *Methods of Legalization Employed in Other States*

Today, states that do not consider marijuana flatly illegal fall into three main categories: decriminalized, medicinal, and fully legal, with some states having a combination of laws.¹⁰⁰ It is worthy of noting that there are currently only four states that have no laws legalizing any form of marijuana.¹⁰¹ All other states have some form of legalized marijuana or have at least decriminalized the drug.¹⁰²

Starting with states that have decriminalized marijuana, North Carolina and Nebraska have both removed jail time for possessing small amounts of marijuana, but

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Jaeger, *supra* note 87.

⁹⁹ *An Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

¹⁰⁰ *State Medical Marijuana Laws*, *supra* note 5.

¹⁰¹ *Map of Marijuana Legality by State*, DISA (Oct. 2021), <https://disa.com/map-of-marijuana-legality-by-state> (displaying South Carolina, Tennessee, Wyoming, and Idaho).

¹⁰² *Id.*

do not allow for legal use of the drug.¹⁰³ Other states have not legalized the drug for recreational purposes, but have created medical programs that allow people to qualify to use marijuana for medicinal purposes.¹⁰⁴ Examples of states that fall into this category include West Virginia, Florida, and Pennsylvania.¹⁰⁵ In these states, citizens can obtain a medical card that would permit them to use marijuana, but the drug is still criminalized, and possession and sale of the drug without a medical card can result in fines and or jail time.¹⁰⁶ In the final category, there are the states that have fully legalized recreational marijuana.¹⁰⁷ States like Illinois, California, Colorado, and Michigan are frequently discussed because the marijuana legislation in these states allow adults to purchase marijuana recreationally and permit the state to impose taxes on the sale of the drug.¹⁰⁸ As previously mentioned, there are states who impose a combination of the rules, and do not adopt one type of marijuana law exclusively.¹⁰⁹ For example, Ohio falls into this category by being a state with a medical marijuana program and legislation that has decriminalized marijuana.¹¹⁰ This means that the citizens of the state who qualify can obtain a permit to consume marijuana for medicinal purposes and, currently, citizens cannot be arrested for possession of small amounts of marijuana.¹¹¹

B. How Other States' Marijuana Laws Have Impacted Their Economy, Public Health, and Criminal Justice – State Laws That Have Worked Well

Starting this section with a discussion on decriminalization, what are some of the reasons a state would consider decriminalizing marijuana? Many people who criticize decriminalization argue that it sends the wrong message to citizens and will ultimately lead to higher usage rates among teens and adults.¹¹² Proponents of decriminalization,

¹⁰³ *North Carolina*, MARIJUANA POL'Y PROJECT (Aug. 24, 2021), <https://www.mpp.org/states/north-carolina/>; *Nebraska*, MARIJUANA POL'Y PROJECT (Sept. 14, 2021), <https://www.mpp.org/states/nebraska/>.

¹⁰⁴ *Map of Marijuana Legality by State*, *supra* note 101.

¹⁰⁵ *Id.*

¹⁰⁶ *Florida*, MARIJUANA POL'Y PROJECT (March 29, 2020), <https://www.mpp.org/states/florida/>; *West Virginia*, MARIJUANA POL'Y PROJECT (June 30, 2021), <https://www.mpp.org/states/west-virginia/>; *Pennsylvania*, MARIJUANA POL'Y PROJECT (Aug. 31, 2021), <https://www.mpp.org/states/pennsylvania/>.

¹⁰⁷ *Map of Marijuana Legality by State*, *supra* note 101.

¹⁰⁸ *California*, MARIJUANA POL'Y PROJECT (Apr. 23, 2020), <https://www.mpp.org/states/california/>; *Colorado*, MARIJUANA POL'Y PROJECT (May 30, 2019), <https://www.mpp.org/states/colorado/>; *Michigan*, MARIJUANA POL'Y PROJECT (Jan. 13, 2020), <https://www.mpp.org/states/michigan/>; *Illinois*, MARIJUANA POL'Y PROJECT (Jan. 21, 2020), <https://www.mpp.org/states/illinois/>.

¹⁰⁹ *Map of Marijuana Legality by State*, *supra* note 101.

¹¹⁰ *Ohio*, MARIJUANA POL'Y PROJECT (Sept. 14, 2021), <https://www.mpp.org/states/ohio/>.

¹¹¹ *Id.*

¹¹² David Mineta, *Decriminalization Would Increase the Use and the Economic and Social Costs of Drugs*, AMS. Q. (Oct. 21, 2010), <https://www.americasquarterly.org/fulltextarticle/decriminalization-would-increase-the-use-and-the-economic-and-social-costs-of-drugs/>.

on the other hand, argue that, generally, people will not start using marijuana as a result of it becoming decriminalized.¹¹³ They argue the same people who consume marijuana after the law is passed, will be the same people who were using it before the law was passed.¹¹⁴ In fact, studies have suggested the viewpoint of those proponents to be the more accurate perspective.¹¹⁵ In a 2011 study by Kerian Speranza, she points out that when Massachusetts adopted decriminalization legislation in 2008, they saw virtually no increase in usage rates from the year before, and no increase in the four years following the change in the law.¹¹⁶ Compare this to usage rates in Oklahoma over the same period of time, a state that had not adopted a decriminalization law, and one would see there was also no increase in usage rates.¹¹⁷ This suggests that regardless of whether a state has a decriminalization law in place or not, usage rates will not increase.¹¹⁸

Another reason why a state would consider decriminalization is that in states that have decriminalized marijuana, less tax-payer money was spent on marijuana possession enforcement.¹¹⁹ In 2019, Insider put out a report citing to a 2013 study conducted by the ACLU, which showed that from 2001 to 2010, police in the United States made more than 8.2 million marijuana arrests, costing taxpayers around \$3.6 billion each year.¹²⁰ The ACLU used Massachusetts' decriminalization efforts to demonstrate how the numbers mentioned above could be reduced by adopting decriminalization of marijuana.¹²¹ In 2009, Massachusetts decriminalized adult possession of an ounce or less of marijuana for personal use, and they imposed a maximum civil penalty of a \$100 fine, along with forfeiture of the marijuana.¹²² A year earlier, before decriminalization had taken effect, Massachusetts arrested 8,502 people

¹¹³ Andrew L. Scherf, *The Societal and Economic Impacts of Recent Dramatic Shifts in State Marijuana Law: How Should Minnesota Proceed in the Future?*, 36 *HAMLIN J. PUB. L. & POL'Y* 127 (2015).

¹¹⁴ *Id.*

¹¹⁵ See Kieran Speranza, *Effects of Massachusetts' Decriminalization of Marijuana Law on Use Patterns*, 7 *BRIDGEWATER ST. U. UNDERGRADUATE REV.* 101, 106 (2011).

¹¹⁶ *Id.*

¹¹⁷ Scherf, *supra* note 113; see also *Marijuana Use in the Past Month: 2011-2012 National Survey on Drug Use and Health*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS ADMIN. (2012), www.samhsa.gov/data/NSDUH/2k12State/Tables/NSDUHsaeTables2012.pdf.

¹¹⁸ Scherf, *supra* note 113; see also *Marijuana Use in the Past Month: 2011-2012 National Survey on Drug Use and Health*, SUBSTANCE ABUSE & MENTAL HEALTH SERVS ADMIN. (2012), www.samhsa.gov/data/NSDUH/2k12State/Tables/NSDUHsaeTables2012.pdf.

¹¹⁹ Scherf, *supra* note 113, at 129.

¹²⁰ Walt Hickey & Kelly McLaughlin, *Despite Legalizing Simple Possession, Marijuana Arrests Still Inflict Tens of Billions of Dollars in Economic Damage on Americans Annually*, INSIDER.COM (Jun. 25, 2019, 10:14 AM), <https://www.insider.com/marijuana-arrests-are-costing-the-us-billions-2019-6>; see also *The War on Marijuana in Black and White*, ACLU (2013), <https://www.aclu.org/files/assets/1114413-mj-report-rfs-rel1.pdf#77>.

¹²¹ *The War on Marijuana in Black and White*, *supra* note 120, at 113.

¹²² *Id.*

for marijuana possession, and in 2009, that number dropped 85% to 1,240.¹²³ In 2010, the figure dropped again to 1,181.¹²⁴ Although Massachusetts is only one state, there is no reason to believe this trend would not continue in other states that have not yet decriminalized marijuana.¹²⁵

A final reason why a state would consider decriminalization is that in states that have decriminalized marijuana, racial minorities have seen a reduction in crime rates.¹²⁶ As previously mentioned in the introduction of this Note, African Americans are over three times more likely to be arrested for marijuana possession, despite similar usage rates as the white population.¹²⁷ The 2020 report conducted by the ACLU determined that the total number of people arrested for marijuana possession, along with rates of arrests, have decreased in most states that have implemented decriminalization.¹²⁸ Unfortunately, racial disparities still exist, but the overall rate of arrests of African Americans for possession of marijuana have decreased.¹²⁹ For instance, in states that consider possession of marijuana to be fully illegal, African Americans were 3.41 times more likely to be arrested for possession of marijuana than white people in 2018.¹³⁰ Compare this to states that had decriminalized possession of marijuana, where African Americans were 3.02 times more likely to be arrested than white people in 2018.¹³¹ As aforementioned, significant disparities still do exist, but the data provided by the ACLU shows that in states that decriminalized marijuana, African Americans were less likely to be arrested than states that considered possession of marijuana to be fully illegal.¹³²

Moving away from the impact decriminalization has had, it is time to consider the impact a medical marijuana program can have on a state. Proponents of medicinal marijuana laws have argued that regulating medicinal marijuana is beneficial because it is effective in the treatment of a variety of medical conditions and is less harmful than alcohol or tobacco.¹³³ Furthermore, like decriminalization, medicinal marijuana programs can have a positive impact on social and racial issues in terms of marijuana arrests and job creation and they can alleviate costs related to enforcing marijuana laws, thereby increasing funds for states.¹³⁴

¹²³ *Id.* at 114.

¹²⁴ *Id.*

¹²⁵ A TALE OF TWO COUNTRIES, RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM, *supra* note 32, at 26.

¹²⁶ *Id.* at 34.

¹²⁷ *Id.* at 29.

¹²⁸ *Id.* at 35

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Florence Shu-Acquaye, *The Role of States in Shaping the Legal Debate on Medical Marijuana*, 42 MITCHELL HAMLINE L. REV. 697, 698 (2016).

¹³⁴ *Id.* at 730–32.

A major societal impact of medicinal marijuana is the number of jobs the industry has created.¹³⁵ According to a report conducted by Leafly, the cannabis industry has created a huge number of job opportunities in states that have either legalized the drug or created a medical program.¹³⁶ For instance, in Florida, after the state had legalized medicinal marijuana, the state created 1,290 full-time jobs in the medical marijuana industry by the end of 2017.¹³⁷ Only a year later, the number had grown to 10,358 full-time jobs.¹³⁸ This can be attributed to a near-tripling of Florida's medical marijuana patient population, which grew from 65,000 to 165,000 in just 12 months.¹³⁹ Similarly, Pennsylvania found themselves experiencing a high percentage of job growth over the course of a 12-month span after the passage of its legislation.¹⁴⁰ At the end of 2017, Pennsylvania had tallied an estimated 90 full-time jobs, and a year later, the number rose to 3,878.¹⁴¹

Allowing citizens to have access to medical marijuana is also beneficial for the impact on public health.¹⁴² As mentioned earlier, adults across the United States suffer from chronic pain and marijuana has been effective in reducing the severity of the pain.¹⁴³ It is also effective treating other common illnesses and ailments and scientists have widely agreed that marijuana does, in fact, have medical utility.¹⁴⁴ Another positive impact on public health comes from the role medical marijuana legislation has played in the battle against opiates.¹⁴⁵ In the study conducted by the National Bureau of Economic Research, the authors found relatively strong evidence that states providing legal access to marijuana through dispensaries experience lower treatment admissions for addiction to pain medications as well as evidence that dispensary provisions have also reduced deaths due to opioid overdoses.¹⁴⁶

¹³⁵ Kevin Murphy, *Cannabis is Becoming a Huge Job Creator*, FORBES (May 20, 2019, 9:00 AM), <https://www.forbes.com/sites/kevinmurphy/2019/05/20/cannabis-is-becoming-a-huge-job-creator/>.

¹³⁶ Bruce Barcott, *Special Report: Cannabis Jobs Count*, LEAFLY (March 2019), <https://www.leafly.com/news/industry/legal-cannabis-jobs-report-2019>.

¹³⁷ *Id.* at 5.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² NAT'L ACADS. OF SCIS., ENG'G & MED., *supra* note 18, at 13–14.

¹⁴³ *Id.* at 90.

¹⁴⁴ *Id.* at 127.

¹⁴⁵ David Powell et al., *Do Medical Marijuana Laws Reduce Addictions and Deaths Related to Pain Killers?* (Nat'l Bureau of Econ. Rsch., Working Paper No. 21345), <https://www.nber.org/papers/w21345>.

¹⁴⁶ *Id.* at 15; *see also* *Legalizing Marijuana Decreases Fatal Opiate Overdoses, Study Shows*, AM. ADDICTION CTRS. (Dec. 31, 2020), <https://drugabuse.com/blog/legalizing-marijuana-decreases-fatal-opiate-overdoses/>.

A shortcoming to the medical marijuana structure is the trouble some states have had in receiving tax revenue from the sale of medicinal marijuana.¹⁴⁷ Many patients believe medical cannabis should not be subject to taxation because of the hardship it could place on already struggling patients.¹⁴⁸ States that have decided to honor this ideal and not impose sales tax on medical marijuana include Connecticut, Maryland, Minnesota, New Hampshire, Oregon, South Dakota, Utah, Vermont and Virginia.¹⁴⁹ As for the other states that have legalized medicinal marijuana, they tax the sale of it based on the principle that because marijuana is recommended rather than prescribed, sales taxes can apply.¹⁵⁰ If a state were to legalize recreational marijuana, it would have to consider whether or not it would tax the sale of it, which could result in difficulties in trying to garnish the votes necessary to pass legislation.¹⁵¹

The final method of legalization to discuss is the full legalization of recreational marijuana. Full legalization encompasses all the same benefits that decriminalization and medicinal marijuana have to offer, with more benefits coming from its effect on the economy.¹⁵² As of May 2021, states have reported a combined “\$7.9 billion in tax revenue from legal, adult-use marijuana sales.”¹⁵³ Pertaining to all of the states that have legalized and began selling recreational marijuana, each one has seen tens, if not hundreds, of millions of dollars’ worth of tax revenue from the sale of recreational marijuana.¹⁵⁴

To provide a thorough analysis of the impact marijuana has had on states that have legalized the sale of cannabis, it is important to consider states who have adopted a program early on and compare that to states that have recently started allowing for the sale of marijuana. Starting with Colorado, it was the first state to legalize the sale of recreational marijuana in 2012 when it passed Constitutional Amendment 64.¹⁵⁵ Currently, Colorado imposes a 15% state wholesale tax and a 15% state retail tax on

¹⁴⁷ *Medical Marijuana Dispensary Laws: Fees and Taxes*, MPP, <https://www.mpp.org/issues/medical-marijuana/medical-marijuana-dispensary-laws-fees-and-taxes/> (last visited Nov. 7, 2021).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ Stefan Sykes, *Here’s how five states voted on the legalization of recreational marijuana*, CNBC (Nov. 9, 2022, 4:31 PM), <https://www.cnbc.com/2022/11/09/heres-how-five-states-voted-on-the-legalization-of-recreational-marijuana.html>.

¹⁵² *Top 10 Reasons to Legalize and Regulate Cannabis*, MPP, <https://www.mpp.org/issues/legalization/top-ten-reasons-to-end-marijuana-prohibition/> (last visited Nov. 8, 2021). “An estimate by the Congressional Research Service projected that replacing cannabis prohibition with taxation and regulation could yield \$6.8 billion in excise taxes alone.” *Id.* Other benefits of full legalization, aside from the economic ones, include relieving issues associated with criminal justice, a safer alternative to tobacco and alcohol, and even environmental issues as well. *Id.*

¹⁵³ *Marijuana Tax Revenue in States that Regulate Cannabis for Adult Use*, MPP, <https://www.marijuanamoment.net/legal-marijuana-states-have-generated-nearly-8-billion-in-tax-revenue-since-recreational-sales-launched-report-finds/> (last visited Jan. 25, 2023).

¹⁵⁴ *Id.*

¹⁵⁵ COLO. CONST. art. XVIII, § 16 (2012).

the sale of marijuana.¹⁵⁶ Since sales first began in 2014, Colorado has generated over \$1.5 billion in state tax revenue from the sale of marijuana.¹⁵⁷ This figure does not include local sales tax revenues, which have been significant; for example, Denver applies an additional 5.5% local sales tax on cannabis and has collected \$210.6 million as of April 2021.¹⁵⁸ What is even more attractive to states that have not legalized recreational marijuana yet is the trend in Colorado which shows an increase in revenue generated each year since sales began.¹⁵⁹ States might also want to take a look at Colorado's distribution of the revenue generated from marijuana taxes.¹⁶⁰ More information about Colorado's tax structure includes the fact that the state, in 2017, exempted marijuana sales from their 2.9% sales tax.¹⁶¹ Also, 90% of the state retail marijuana sales tax revenue goes to the state government, whereas the other 10% goes to local governments.¹⁶² Of the money retained by the state, funds are distributed to the Colorado public school fund, the marijuana cash tax fund, and the state's general fund.¹⁶³

Looking to a more recent adopter of recreational marijuana laws, California first legalized recreational marijuana in 2016 with Proposition 64, but the state did not start making sales until 2018.¹⁶⁴ The current state of the law includes a 15% excise tax and a 7.25% standard sales tax.¹⁶⁵ In 2020, California collected over \$1 billion in adult-use cannabis tax revenue, which was a 62% increase compared to 2019.¹⁶⁶ Although the population of California is significantly larger than that of Colorado, it is still worth

¹⁵⁶ *Marijuana Tax Reports*, COLO. DEPT. OF REVENUE, <https://cdor.colorado.gov/data-and-reports/marijuana-data/marijuana-tax-reports> (last visited Nov. 8, 2021).

¹⁵⁷ *Id.*

¹⁵⁸ *Marijuana Annual Report Data and Statistics*, CITY OF DENVER <https://www.denvergov.org/Government/Agencies-Departments-Offices/Marijuana-Information/Marijuana-Annual-Report-Data-and-Statistics> (last visited Nov. 8, 2021); *see also* Thomas Edward, *HIGH TIMES* (May 27, 2021), <https://hightimes.com/news/analysis-tax-revenue-frfom-cannabis/>.

¹⁵⁹ *Marijuana Tax Reports*, *supra* note 156.

¹⁶⁰ Legislative Council Staff, *Marijuana Taxes*, COLO. GEN. ASSEMB., <https://leg.colorado.gov/agencies/legislative-council-staff/marijuana-taxes%C2%A0> (last visited Jan. 25, 2022).

¹⁶¹ *Sales 93: Sales Tax on Marijuana*, COLO. DEP'T. OF REVENUE <https://tax.colorado.gov/sites/tax/files/Sales%2093.pdf> (last visited Jan. 25, 2022).

¹⁶² *Marijuana Tax Reports*, *supra* note 156.

¹⁶³ *Id.*

¹⁶⁴ *Prop 64: The Control, Regulate, and Tax Adult Use of Marijuana Act*, CAL. CTS. <https://www.courts.ca.gov/documents/BTB24-3I-1.pdf> (last visited Jan. 25, 2023); *see also* Thomas Fuller, *Recreational Pot is Officially Legal in California*, N.Y. TIMES (Jan. 1, 2018), <https://www.nytimes.com/2018/01/01/us/legal-pot-california.html>.

¹⁶⁵ *Marijuana Tax Revenue in States That Regulate Cannabis for Adult Use*, *supra* note 153.

¹⁶⁶ *Cannabis Tax Revenues*, CAL. DEP'T. OF TAX & FEE ADMIN., <https://www.cdtfa.ca.gov/dataportal/dataset.htm?url=CannabisTaxRevenues> (last visited Nov. 8, 2021).

noting that it took California only three years to reach the billion dollar mark.¹⁶⁷ California directs a significant portion of its cannabis tax revenues to local nonprofit programs that benefit people adversely impacted by punitive drug laws, child care services, and environmental programs.¹⁶⁸ California provides an solid example of how marijuana legalization can have a rapid impact on the local economy.

A final state to consider would be an even more recent adopter: Michigan. In 2018, Michigan approved Proposal 1, with sales beginning in December of 2019, meaning Michigan has only experienced two full years of making marijuana sales.¹⁶⁹ Currently, Michigan imposes a 10% excise tax on sales and a standard state sales tax of 6%.¹⁷⁰ In total, more than \$341 million in adult-use marijuana sales were reported for the fiscal year of 2020.¹⁷¹ The Michigan Department of Treasury is distributing nearly \$10 million to more than 100 municipalities and counties as a part of the Michigan Regulation and Taxation of Marijuana Act.¹⁷² For the state of Michigan's 2020 fiscal year, more than \$31 million was collected from the 10% adult-use marijuana excise tax and when combined with fees, there was a total of \$45.7 million available for distribution from the fund.¹⁷³ Approximately \$11.6 million will be sent to the School Aid Fund for K-12 education and another \$11.6 million to the Michigan Transportation Fund, upon appropriation.¹⁷⁴ The remaining \$12.5 million amount will be used toward start-up and administrative costs.¹⁷⁵ Michigan, although very new to

¹⁶⁷ *State Population Totals and Components of Change: 2010-2019*, U.S. CENSUS BUREAU (Nov. 4, 2021), <https://www.census.gov/data/tables/time-series/demo/popest/2010s-state-total.html>; *Cannabis Tax Revenues*, *supra* note 166.

¹⁶⁸ Jim Rendon, *Nonprofits gain funding from unusual source: Marijuana sales*, AP NEWS (Apr. 23, 2021), <https://apnews.com/article/marijuana-business-california-recreational-marijuana-ae20c17fc439570783d6be602e2e4e6f>; *see also California Department of Tax and Fee Administration Reports Cannabis Tax Revenues for the 3rd Quarter of 2020*, CAL. DEP'T. OF TAX & FEE ADMIN. (Nov. 23, 2020), <https://www.cdtfa.ca.gov/news/20-14.htm>.

¹⁶⁹ Michigan Regulation and Taxation of Marihuana Act of 2018, MICH. COMP. LAWS § 333.27951 (2022); *The Michigan Marijuana Law and U-M's International Community*, UNIV. OF MICH. INT'L CTR., <https://internationalcenter.umich.edu/michigan-marijuana-law-and-u-ms-international-community> (last visited Nov. 8, 2021).

¹⁷⁰ *Treasury: First Adult-Use Marijuana Payments Distributed to Michigan Municipalities, Counties*, MICH. DEP'T. OF TREASURY (Mar. 4, 2021), https://www.michigan.gov/treasury/0,4679,7-121-1755_1963-553542--,00.html; *see also What Are Sales and Use Taxes?*, SALES & USE TAX INFO. MICH. DEP'T OF TREASURY, <https://www.michigan.gov/taxes/business-taxes/sales-use-tax/information> (last visited Jan. 25, 2023).

¹⁷¹ *Treasury: First Adult-Use Marijuana Payments Distributed to Michigan Municipalities, Counties*, *supra* note 170.

¹⁷² *Id.*; *see also* Michigan Regulation and Taxation of Marihuana Act of 2018, MICH. COMP. LAWS § 333.27694 (2022).

¹⁷³ *Treasury: First Adult-Use Marijuana Payments Distributed to Michigan Municipalities, Counties*, *supra* note 170.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

the sale of recreational marijuana, is a prime example of an efficient allocation of costs and a promising model for Ohio to consider.¹⁷⁶

C. *Retroactive Legality in States with Fully Legalized Marijuana*

A major area in the realm of marijuana legislation that can have a massive impact on the criminal justice system, and society as a whole, is the idea of retroactive legality.¹⁷⁷ Black's Law Dictionary defines a retroactive law as "[a] legislative act that looks backward or contemplates the past, affecting acts or facts that existed before the act came into effect."¹⁷⁸ In other words, "[r]etroactive legality is a framework in which society seeks to restore citizens convicted of crimes to the rights and civic status they would have had if their conduct had never been illegal.¹⁷⁹ Minor marijuana convictions cause difficulties for many citizens and have the potential to limit their opportunities later in life.¹⁸⁰ In an effort to get a cannabis conviction expungement bill passed, Ohio republican representative Dave Joyce, who has served as both a prosecutor and a public defender, has openly stated that "cannabis law violations can foreclose a lifetime of opportunities ranging from employment to education to housing The collateral damage caused by these missed opportunities is woefully underestimated and has impacted entire families, communities, and regional economies."¹⁸¹ There are plenty of instances that back up Representative Joyce's claims, and stories such as the one told by Michael Diaz Rivera have caused legislatures to take a deeper look into this issue to open up the opportunities many have foregone by partaking in conduct that has since become legal.¹⁸²

As legalization efforts have continued to move across the country, more and more jurisdictions have had to come up with solutions for people with past convictions for what is now legal behavior.¹⁸³ Two major mechanisms by which jurisdictions could

¹⁷⁶ See generally *Treasury: First Adult-Use Marijuana Payments Distributed to Michigan Municipalities, Counties*, *supra* note 170.

¹⁷⁷ Ahrens, *supra* note 31, at 406.

¹⁷⁸ *Retroactive Law*, BLACK'S LAW DICTIONARY (Deluxe 9th ed. 2009).

¹⁷⁹ Ahrens, *supra* note 31, at 379.

¹⁸⁰ Sabrina Eaton, *Rep. Dave Joyce Introduces Cannabis Conviction Expungement Bill with Democrat Alexandria Ocasio-Cortez*, CLEVELAND.COM (Dec. 2, 2021), <https://www.cleveland.com/news/2021/12/rep-dave-joyce-introduces-cannabis-conviction-expungement-bill-with-democrat-alexandria-ocasio-cortez.html>.

¹⁸¹ *Id.*

¹⁸² Faith Miller, *Mass Pardons for Past Marijuana Crimes Offer Hope for Thousands*, COLO. NEWSLINE (Aug. 18, 2020, 6:01 AM), <https://coloradonewsline.com/2020/08/18/mass-pardons-for-past-marijuana-crimes-offer-hope-for-thousands/>. Rivera was pulled over and charged with felony possession with intent to distribute at age 19 for less than an ounce of marijuana. *Id.* He expresses the idea that the crime he committed happened when he was a teenager, yet it has followed him for decades to the point where he was turned away from housing and job opportunities. *Id.* All the while, he had to watch society evolve into one where the same conduct that precluded him from obtaining these opportunities became the norm. *Id.*

¹⁸³ See Gene Johnson, *Seattle Clears Pot Convictions, Following San Francisco Lead*, AP NEWS (Feb. 8, 2018), <https://apnews.com/article/north-america-us-news-wa-state-wire-ca-state-wire-san-francisco-dca0740b58de4ff4be6ec1af07df45ee>; Andrew Kenney, *Denver Will*

curtail the effects of past convictions include mass pardons and expungements.¹⁸⁴ States have varied in their approaches, with some offering one or the other, and some states offering a combination of both.¹⁸⁵

In comparing different states' solutions to this issue, California seems to have one of the most extensive conviction clearance systems in place.¹⁸⁶ The retroactive legality legislation in California was implemented at the same time the state legalized recreational marijuana.¹⁸⁷ As part of the legislation that legalized recreational marijuana in California, there was a provision that authorized individuals who had completed a sentence for a wide range of marijuana offenses to petition the court to either have the conviction dismissed and sealed, or redesignated, depending on the offense.¹⁸⁸ California has since updated the legislation by passing a law in 2018 which required the automatic expungement of certain marijuana convictions, meaning citizens themselves do not need to initiate the expungement process like they would for other crimes.¹⁸⁹ The California Department of Justice is required, by law, to review criminal records to identify and automatically expunge eligible convictions, such as misdemeanor possession convictions where the amount in possession would now be legal under California Law.¹⁹⁰ Felony convictions, on the other hand, can be reduced to misdemeanor convictions, and prisoners currently serving a prison sentence for their felony marijuana conviction could become eligible for release upon the state's review of the records.¹⁹¹

Similar to California, Colorado, which legalized recreational marijuana in 2012,¹⁹² began allowing old convictions for misdemeanor marijuana possession or use to be sealed, so long as the act would not be considered illegal today.¹⁹³ Colorado, like California, initially required people convicted of marijuana crimes to petition to have their record sealed if their conduct which resulted in a conviction was now legal under

Help Expunge Marijuana Convictions for 10,000-plus People, DENVER POST (Dec. 4, 2018, 4:30 PM), <https://www.denverpost.com/2018/12/04/denver-expunge-marijuana-records/>.

¹⁸⁴ Ahrens, *supra* note 31, at 425.

¹⁸⁵ *50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency*, RESTORATION OF RIGHTS PROJECT, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-marijuana-legalization-expungement/> (Jan. 2023).

¹⁸⁶ Ahrens, *supra* note 31, at 407.

¹⁸⁷ *Id.*

¹⁸⁸ *50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency*, *supra* note 185.

¹⁸⁹ CAL. HEALTH & SAFETY CODE § 11361.9 (West 2018).

¹⁹⁰ *Id.*

¹⁹¹ CAL. HEALTH & SAFETY CODE § 11361.8 (West 2018).

¹⁹² COLO. CONST. art. XVIII, § 16 (West 2019).

¹⁹³ Lee V. Gaines, *How Do You Clear a Pot Conviction from Your Record*, THE MARSHALL PROJECT (Nov. 27, 2017), <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-marijuana-legalization-expungement>.

their recreational marijuana law.¹⁹⁴ However, in 2021, convictions for marijuana possession were added to the offenses for which a mandatory relief process is available.¹⁹⁵ This requires the court to grant a motion to seal records without opportunity from the district attorney to object, if the person has not been convicted of a criminal offense since the final disposition of all criminal proceedings or release from supervision, whichever is later.¹⁹⁶ Unlike California, however, Colorado has taken extra measures to free up convicted persons from their marijuana-related crimes by passing a bill in 2020 that allows the governor to pardon classes of defendants convicted of possession of up to two ounces of marijuana.¹⁹⁷ Effectively, Colorado has created two avenues in which a person, convicted of conduct that has since become legal, can wipe their record clear of their minor marijuana charges.¹⁹⁸ With systems in place in many other states with recreational marijuana laws to expunge or pardon criminal convictions for conduct involving marijuana crimes that have since become legal,¹⁹⁹ Ohio has a blueprint for resolving this issue rooted in fundamental fairness and justice for all citizens who have had crimes on their records for conduct that is no longer illegal.

D. How Ohio's Legislation Compares – Does it Meet the Goals Established Above?

After looking at how other states have handled the sale of recreational marijuana, it is time to consider how Ohio's proposed legislation compares. As previously mentioned, Ohio currently has two pieces of legislation being considered, the ballot initiative and House Bill 210.²⁰⁰

Starting with House Bill 210, this legislation would legalize possession of up to five ounces of marijuana for adults 21 and older and allow them to cultivate up to 12 plants for personal use.²⁰¹ It also includes provisions to expunge prior convictions for possession and cultivation activities that are being made legal under the measure.²⁰² Under the proposed bill, a 10% excise tax would be imposed on marijuana sales and 15% of the revenue would be divided among municipalities with at least one cannabis shop, 35% to k-12 education, and 35% to infrastructure.²⁰³ The major upside to this

¹⁹⁴ *50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency*, *supra* note 185.

¹⁹⁵ COLO. REV. STAT. § 24-72-706 (West 2022).

¹⁹⁶ *Id.*

¹⁹⁷ COLO. REV. STAT. § 16-17-102 (West 2020).

¹⁹⁸ *50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency*, *supra* note 185.

¹⁹⁹ *Id.*

²⁰⁰ H.B. 210, 134th Cong. (Ohio 2021); *An Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

²⁰¹ H.B. 210.

²⁰² *Id.*

²⁰³ *Bill to Legalize Cannabis is Introduced for First Time in Ohio Legislature*, CUTODAY INFO (Aug. 3, 2021, 7:18 PM), <https://www.cutoday.info/Fresh-Today/Bill-to-Legalize-Cannabis-Is-Introduced-for-First-Time-in-Ohio-Legislature#featured-slider>.

bill is that it addresses both the financial and social goals of why a state would want to legalize recreational marijuana.²⁰⁴ Socially, it provides measures for rehabilitation of the criminal justice system by expunging the records of criminals convicted of crimes that would become legal under the bill.²⁰⁵ It also inherently creates jobs by creating a new market, and it sets aside funds that directly impact local communities in the form of providing financial stability to the education system and to infrastructure.²⁰⁶ Financially, the state will retain 85% of the revenue generated and it will give the other 15% to municipalities.²⁰⁷ A shortcoming of the bill is the lack of attention to public health.²⁰⁸ Although Ohio has implemented medicinal marijuana to address some public health issues, the bill could include a provision for allocating funds towards rehab and addiction treatment centers to help combat the opioid crisis currently sweeping across Ohio.²⁰⁹ Another issue, with the politics of the bill, is citizens' concern that Governor DeWine would likely strike the bill down given his past record, and many believe a ballot initiative would be a more likely method of getting recreational marijuana passed in Ohio.²¹⁰

Moving on to the ballot initiative from the Coalition to Regulate Marijuana Like Alcohol, the initiative has put together a much more comprehensive piece of proposed legislation.²¹¹ The Coalition's legislation, if passed, would legalize possession of up to 2.5 ounces of cannabis for adults 21 and older and allow for possession of up to 15 grams of marijuana concentrates.²¹² Individuals would be able to grow up to six plants for personal use, with a maximum twelve plants per household.²¹³ Regarding taxes, a 10% sales tax would be imposed on cannabis sales, with 36% of the revenue being divided up to support social equity and jobs programs, 36% of the revenue going to localities that allow adult-use marijuana enterprises to operate in their area, 25% of the revenue will be used for education and substance misuse programs, and 3% would be used to cover the administrative costs of implementing the system.²¹⁴ The proposal also establishes a Division of Cannabis Control to operate under the state Department

²⁰⁴ *Id.*

²⁰⁵ H.B. 210.

²⁰⁶ *Id.*

²⁰⁷ *Bill to Legalize Cannabis Is Introduced for First Time in Ohio Legislature*, *supra* note 203.

²⁰⁸ H.B. 210.

²⁰⁹ Jackie Borchardt, *Ohio Legalized Medical Marijuana: Here's What You Need to Know*, CLEVELAND.COM (Jan. 11, 2019), https://www.cleveland.com/open/2016/06/ohio_legalized_medical_marijua.html; *see also* Sen. Rob Portman, *A Comprehensive View of the Heroin Epidemic in Ohio*, MARYHAVEN, <https://maryhaven.com/news/events/> (last visited Nov. 8, 2021) (discussing how opiate usage and overdoses have increased in recent history enough to elevate the problem to the level of an epidemic).

²¹⁰ Jaeger, *supra* note 87.

²¹¹ *See generally An Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

²¹² *Id.*

²¹³ *Id.*

²¹⁴ *Id.*

of Commerce, and it would be given the authority to “license, regulate, investigate, and penalize adult use cannabis operators, adult use testing laboratories, and individuals required to be licensed.”²¹⁵ The division would also be required to issue 40 recreational cultivator licenses and 50 adult-use retailer licenses “with a preference to applications who are participants under the cannabis social equity and jobs program,” and it would authorize regulators to issue additional licenses for the recreational market two years after the first operator is approved.²¹⁶ Further, regulators would be required to “enter into an agreement with the Department of Mental Health and Addiction Services” to provide “cannabis addiction services,” which would involve “education and treatment for individuals with addiction issues related to cannabis or other controlled substances including opioids.”²¹⁷ With all of that being said, it seems as if the Coalition structured their bill with these three goals in mind. The ballot initiative satisfies the economic goal by establishing a clear plan on how tax revenue will be allocated and the public health goal by allocating funds to the Department of Mental Health and Addiction Services to provide education for those suffering from addiction.²¹⁸ Regarding the failed 2015 proposal, the ballot initiative creates a much higher required amount of licenses for cultivators and retailers and allows for the entrance of more cultivators and retailers as time passes; unlike the 2015 proposal which effectively created a monopoly for the cultivation of marijuana.²¹⁹ With regards to criminal justice, some advocates are concerned about the lack of specific language on automatic expungements to clear the records of people with convictions for offenses that would be made legal under the legislation;²²⁰ however, the ballot initiative does include a provision requiring regulators to “study and fund” criminal justice reform initiatives including expungements.²²¹

E. Recommendation for Ohio

As previously discussed, Ohio has already decriminalized marijuana and has even implemented a medical marijuana program.²²² The benefits of legalization are clear, and the question becomes whether recreational marijuana should be legal in Ohio. All the benefits of decriminalization and medicinal marijuana are captured with full legalization and the potential for high economic gains that recreational marijuana generates is simply not captured by the other modes of legalization.²²³ Ohio has a better

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.*; Borchardt, *supra* note 68.

²²⁰ Jaeger, *supra* note 87.

²²¹ *Act to Control and Regulate Adult Use Cannabis*, *supra* note 8.

²²² *Marijuana Laws in Ohio*, *supra* note 73.

²²³ Beau Kilmer, et al., *Cannabis Legalization and Social Equity: Some Opportunities, Puzzles, and Trade-Offs*, 101 BOS. L. REV. 1003, 1007–08 (2021).

chance of passing the ballot initiative because it is more thought-out than the House Bill, and because of the political history of the current governor.²²⁴

There are many areas of the ballot initiative Ohio could draw from to meet the reasons why a state would want to legalize recreational marijuana.²²⁵ For starters, the tax plan would not only generate a significant amount of revenue, the allocation of the funds towards social equity and jobs programs, local governments, and addiction treatments would help satisfy the social, economic, and public health needs of the public.²²⁶ Furthermore, the specific language that avoids the creation of monopolies is important, as it was a major factor in why Ohioans voted against legalization back in 2015.²²⁷

To critique the proposal a little further, if a desired outcome of the proposal is to benefit the criminal justice system, especially with respects to minorities, Ohio should include specific language referencing the retroactive legality of the bill, specifically provisions that would ensure people charged with crimes can have their record automatically expunged.²²⁸ Ohio should follow the lead of California with regards to expungement.²²⁹ Although Ohio already has expungement laws in place,²³⁰ Ohio should include language in their statute that would provide for automatic expungements for eligible convictions. Allowing for the automatic expungement of various marijuana convictions would quickly and efficiently open the door for many citizens to a wide range of opportunities they have not been able to take advantage of as a result of their criminal records.²³¹ Furthermore, Ohio should adopt legislation that would allow the governor to issue mass pardons, as seen in Colorado.²³² This would work in a similar manner to automatic expungements, as citizens would have their record wiped clean of designated marijuana convictions without having to go through an application process.²³³ In conclusion, if it is left up to the people to decide, rather than lawmakers, Ohio will have a better chance of seeing recreational marijuana get passed in the near future. Therefore, if Ohio were to adopt recreational marijuana laws, the Ballot Initiative provides a well-thought-out template for how the law should be governed.

²²⁴ Jaeger, *supra* note 87.

²²⁵ *Id.*

²²⁶ *Act to Control and Regulate Adult Use Cannabis, supra* note 8.

²²⁷ *Id.*; Borchardt, *supra* note 68.

²²⁸ Ahrens, *supra* note 31, at 379.

²²⁹ *50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency, supra* note 185.

²³⁰ OHIO REV. CODE ANN. §§ 2953.31, 2953.32 (West 2021).

²³¹ Caglar Onal, *Effects of Automatic Criminal Record Expungements on Employment*, SSRN (Jul. 31, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4192101.

²³² *50-State Comparison: Marijuana Legalization, Decriminalization, Expungement, and Clemency, supra* note 185.

²³³ *Onal, supra* note 231, at 2.

IV. CONCLUSION

This Note has analyzed Ohio's past legislation and its current laws. It looked at the different ways states have done away with outright prohibition of marijuana. It considered the goals of legalization of marijuana and looked at the laws of states that have found success in legalizing marijuana. In the end, Ohio will soon be left to decide on whether or not it will become the next state to legalize recreational marijuana. There are an overwhelming number of reasons why Ohio should become the next state to legalize recreational marijuana that outweigh the reasons for why it should not be.²³⁴ Ohio has already decriminalized marijuana, thereby reducing the social costs of overcrowding prisons and spending taxpayer money on arrests for possession of marijuana, and there have been no signs of an increased use or any other negative outcome.²³⁵ Ohio has already introduced medical marijuana, thereby alleviating pain and enhancing the public health of thousands of citizens in the state.²³⁶ Ohio should take the next step and allow for the legalization of recreational marijuana. The drug is already engrained in our society, and by not taking advantage of regulating and generating tax revenue from the sale of marijuana, the state is starting to fall behind.²³⁷ In conclusion, if Ohio plans to legalize recreational marijuana, the ballot initiative offers the best structure to accomplish the task.

²³⁴ See *infra* Part II.A.

²³⁵ Speranza, *supra* note 115, at 105–06.

²³⁶ *Marijuana Laws in Ohio*, *supra* note 73.

²³⁷ Jake Zuckerman, *Recreational Marijuana Could Mean \$375 Million Per Year in Ohio Taxes, Researchers Say*, 10 WBNS (Apr. 20, 2022), <https://www.10tv.com/article/news/politics/recreational-marijuana-could-mean-375-million-per-year-in-ohio-taxes/530-4eeb8b86-07b7-402f-88b7-978ae013e44c>.