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5 on 45: On Cory Booker's marijuana bill

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(MUSIC)

PITA: You're listening to 5 on 45 from the Brookings Podcast Network, analysis and commentary from Brookings experts on today's news regarding the Trump Administration.

HUDAK: I'm John Hudak. I'm a senior fellow in governance studies and the deputy director of the Center for Effective Public Management here at Brookings. This week New Jersey Senator Cory Booker sponsored the marijuana Justice Act of 2017. Without question, this is the most progressive piece of marijuana related legislation ever filed in the United States Congress. It goes far beyond the popular Rohrabacher -Bloom in our legislation that protects medical marijuana users and producers from federal prosecution. It's broader than the Medical Marijuana Based Careers Act, which Booker is also a sponsor in that it extends to include adult use marijuana. It goes further than the scheduling legislation filed by Vermont Senator Bernie Sanders when he dramatically shifted his position on marijuana during his failed presidential bid last year. So let's go through what this bill seeks to do and then analyze it a bit. The bill has five key policy goals. First the bill removes marijuana from the list of controlled substances, effectively legalizing it at the national level. This move is often referred to as scheduling. And while others have proposed such a move in this Congress and in previous Congresses, it has not gained traction.

In fact, efforts to reschedule marijuana from the highest level of control schedule one to the next highest level of control schedule 2 has also failed to pass. Second, the

bill reduces prison construction and other law enforcement federal funding to states that show racial and economic bias in arrest and incarceration rates around marijuana. This bill starts from the understanding that marijuana use among races and economic groups are at about parity, but arrested incarceration rates for people of color in the economically disadvantaged are significantly higher. This effort seeks to use a carrot rather than a stick to change behavior in the States. Third, the bill expunges convictions for those with marijuana use and or possession charges at the federal level and allows those facing sentencing to be considered for lighter sentences. Here Booker seeks to help those with marijuana offenses have greater access to education economic opportunity and social mobility which are often limited for those with criminal records. Fourth the bill gives an individual a cause of action against states that have disproportionate marijuana arrest and incarceration rates for racial and economic minorities. So what does that mean? Under this bill, if a state has bias in its arrest and incarceration rates for marijuana offenses someone convicted of a marijuana offense at the state level can sue that state in federal court for relief.

In many ways this serves as a backup if the threat of federal funding losses does not change state level behavior. Finally, money withheld from the states under the second part of this bill is deposited into a community reinvestment fund to assist compliant states with job training, legal assistance, libraries, youth programs, and more. So let's analyze this bill a bit. The marijuana Justice Act of 2017 is a conversation starter and it will get the creative juices flowing at the federal level. It is not, however, a solution for the types of problems Senator Booker is engaging. The bill recognizes racial and economic injustice that exists in the criminal justice system and seeks to treat marijuana in the way a majority

of the general public wants it treated - as a legal substance. However, the legislation also leaves many questions unanswered. Will the federal government play a regulatory role? How will the federal government fill the interim void between federal legalization and states passing their own regulatory frameworks? Which marijuana offenses will qualify for expungement and under other conditions will expungement be considered? The bill offers the administration significant discretion, leeway, and authority to implement the law. For Senator Booker, the idea of allowing the Trump administration and the Sessions Justice Department wiggle room on legalizing marijuana or advancing racial justice may not be exactly what he's bargaining for in this legislation. All that said, Senator Booker knows this bill will not pass. What he's doing however is showing leadership on an issue that often lacks an authoritative national level voice. The marijuana Justice Act may not move senators in 2017, but I bet Senator Booker is hoping that it moves voters in 2020.

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