



## Fostering Social Justice and Equity While Regulating Marijuana

Marijuana prohibition has a history of racism, and it continues to be enforced unequally. An ACLU study found African Americans are 3.64 times more likely than whites to be arrested for marijuana possession, despite similar rates of marijuana use. Ending marijuana prohibition dramatically reduces the number of harassing stops, searches, and arrests, but much more can be done to foster equity when legalizing marijuana, including by ensuring the legal marijuana industry creates opportunities for those who have been harmed the most by prohibition. However, equity provisions must be careful to avoid running afoul of constitutional restrictions.

Here are some provisions that should be considered:

### Criminal justice provisions

- Avoid perpetuating racial disparities in arrests by avoiding unnecessary criminal penalties.
  - Public consumption should be a civil — not criminal — offense.
  - Adults should be allowed to share cannabis with other adults.
  - Adults should be allowed to securely cultivate a limited amount of cannabis.
  - The law should decriminalize simple possession of cannabis for people under the age of 21.
  - Possession limits should be clear and include specific limits for infused products so adults don't accidentally exceed the limits.
  - Modestly exceeding possession limits should be a civil — not a criminal — offense.
  - Fines or fees for low-level offenses for activity that remains illegal — such as public smoking and underage possession — should be modest and reasonable.
  - Individuals should be allowed to choose community service in lieu of fines.
  - Other cannabis penalties should be downgraded.
  - Reporting on demographics of cannabis-related arrests and stops should be required.
  - Avoid criminalizing low-level, personal-use conduct such as having cannabis in one's car.
  - Avoid criminalizing sober driving (*per se* DUI laws).
- Parole, probation, and pre-trial release should not be able to be revoked for conduct allowed by the bill, including for testing positive for THC, unless there is a specific finding that the individual's use of marijuana could create a danger.
- Include automatic expungement and release from sentences for conduct that is legal, funded by some of the tax revenue.
- Retroactivity: Any individuals jailed or under supervision for personal-use amounts should be released.
- Allow for expungement and re-sentencing for other marijuana offenses, directing the courts to consider whether such relief would be in the interests of justice in light of marijuana becoming legal and past racial disparities. Sufficient revenue from marijuana taxes should be allocated to provide assistance with these petitions.
- Specify that the odor of cannabis is not grounds for a search.

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## Non-discrimination

- **Housing non-discrimination:** Prohibit discrimination in housing on the basis of past cannabis offenses, cannabis use, or lawful-cannabis related activities. (This can include a narrow exception for sober homes and similar therapeutic housing.)
  - Provide for licensed, regulated spaces with on-site consumption to ensure individuals who cannot consume cannabis at home — including residents of federally subsidized housing — are not shut out.
  - Landlords should not be allowed to prohibit tenants from possessing marijuana or using cannabis in a non-smoked form.
- **Employment non-discrimination.** Options include:
  - Prohibiting state and local agencies from taking actions against an employee for using cannabis outside of work.
  - Prohibiting employers from requiring prospective employees to submit to a marijuana test as a condition for employment.
  - Prohibiting employers from taking actions against an employee for using cannabis outside of work.
  - For all of these, an exception will be needed for instances where a negative action is required by a federal law, regulation, or federal contract. Some jurisdictions may also include exceptions for safety-sensitive positions.
- **Child custody non-discrimination:** Prohibit the use of cannabis or lawful cannabis-related activities as relevant factors or evidence in proceedings regarding parental rights, child welfare, guardian rights, or in foster care, as long as activities related to cannabis do not endanger the child.
- **Organ transplant and medical care non-discrimination:** For the purposes of medical care, including organ and tissue transplants, cannabis use does not qualify as an illicit substance or otherwise disqualify someone from needed medical care.
- **Non-discrimination in education:** Schools may not revoke student loans or other financial assistance due to cannabis-related activity.
- **Non-discrimination in licensing and social services:** The state may not deny driver's licenses and other professional licenses, housing assistance, social services, or other benefits based on cannabis use.

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## Funding community reinvestment, minority-owned businesses, and/or services to reduce mass incarceration and to assist those harmed by marijuana prohibition

- Taxes should be enough to generate significant revenue for reparative justice.
- **Allocate a significant portion of tax revenue to serving economically disadvantaged persons in communities disproportionately impacted by structural racism and/or by high rates of arrest and incarceration for marijuana offenses. Possibilities include:**
  - Governmental programs (such as affordable housing, community schools, expanded Head Start, and scholarship assistance) and/or grants to community groups to offer services in communities that have been disproportionately impacted

- Assistance for individuals involved in the criminal justice system, such as jail diversion services, expungement services, re-entry programs, and workforce development
  - Investment in an equitable, diverse cannabis industry, including grants and loan programs for businesses, workforce development, technical assistance, and/or mentoring services
  - Training and education in the cannabis industry: Some of the tax revenue could go to training for individuals for the cannabis industry, perhaps including both funding entire programs at community colleges and providing scholarships to re-entering citizens and others having trouble getting employment.
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## Promoting industry inclusion and equity in cannabis business licensing

- The regulatory agency should be required to establish reasonable application and licensing fees and process applications expeditiously.
- Regulators may not exclude applicants for past marijuana offenses (or any past drug convictions — at least minor or old convictions), with possible exceptions for sales to minors or violations of the cannabis regulation law.
- Local control should not include “host community agreements,” which favor those with deep pockets and connections and thwart equity.
- Regulators should be required to develop procedures and policies to promote and encourage full participation in the regulated marijuana industry by people from communities that have previously been disproportionately harmed by marijuana prohibition and enforcement and to positively impact those communities. These could include:
  - requiring outreach to diverse groups before licensing begins to encourage them to apply;
  - requiring a disparity study and any actions justified by it to ensure a diverse industry (the study is important to increase the chances of withstanding constitutional scrutiny if the program advances equity in a way that explicitly considers race);
  - setting aside a certain percent of licenses (or head start) for Black or Latino businesses (due to constitutional issues, this would likely need to be carefully crafted after a disparity study; even then it is uncertain that it would be upheld);
  - allowing a significant number of licenses to ensure opportunity;
    - At a minimum, there should be no numerical cap on processors, labs, and delivery services.
  - creating a social equity program to provide free education, skill-based training, start-up grants, interest-free loans, and/or additional tools for success in the **cannabis industry** (social equity applicants must be defined; one option is: those with a prior marijuana conviction, those with a parent with a prior conviction, and those who have lived for a certain time in a census tract area that has been disproportionately impacted by poverty, unemployment, violence, and/or marijuana enforcement);
  - if medical businesses get to sell to adult-use consumers first, they should pay hefty fees (in the hundreds of thousands) to a social equity development fund, as was done in Illinois;
    - A percent of the total contribution could be in-kind, such as by incubating a social equity business.
    - They also must be required to prioritize and maintain an adequate supply of medical cannabis during the head-start period. Early licensing should only apply to existing activities and locations.
  - if there are caps on licenses: establishing additional licensing points for social equity

- applicants in a scored, merit-based system, or a significant percent of all approved applicants could have to be social equity applicants;
- allowing a head-start in the licensing process for social equity applicants;
  - non-equity applicants must create and comply with approved plans to reinvest or provide employment and training opportunities in impacted areas;
  - possible “Race to the Top” if businesses want to expand to multiple locations;
    - Businesses could only be allowed to expand to multiple locations if they pass a scored process considering factors including diversity of ownership, management, and staff; employing ex-offenders; labor practices — good pay/benefits; investing in economically disadvantaged areas; and environmental stewardship.
  - creating a program to provide technical assistance, funding, and low and/or waived fees to equity applicants;
  - possibly promoting cooperative ownership (such as via technical assistance in setting up the co-ops);
  - avoiding unduly onerous financial regulations;
  - property must **not** be required at time of initial application;
  - application fees for social equity applicants must be reasonable;
  - allowing some business types (i.e., delivery, social consumption) to start as social equity only or be exclusive to social equity applicants;
  - allowing microbusiness and craft grower license categories — this could involve reserving a certain percent of the licenses for social equity applicants and/or giving social equity a head start;
  - establishing lower capital requirements, not requiring property for the initial application;
  - in existing adult-use states, establishing an accelerator program that pairs existing marijuana grower or manufacturers with new licensees to offer mentorship, technical, and capital /financial **support**;
  - requiring any larger cannabis business to retain a diversity officer;
  - requiring reporting by each cannabis business to regulators on the diversity of its workforce and management and requiring reporting from the state to the public on diversity in the cannabis industry;
  - creating a Social Equity Commission or Office charged with promoting the full participation in the industry by individuals from communities that have been disproportionately harmed by prohibition. Duties could include:
    - developing a definition of *social equity applicant*;
    - administering the funds to promote social equity and reinvest in communities, including by getting input from those communities;
    - advising on all regulation and enforcement related to social equity;
    - producing reports and recommendations on diversity and equity in the legal cannabis economy, including ownership, management, and employment; and
    - investigating whether businesses are adhering to approved plans for diversity and community investment and taking appropriate actions if they are not, such as revoking or suspending licenses; and
  - promoting investment in equity applicants by allowing investors to invest in more businesses if they meet criteria as equity applicants, which would include considerations of minority ownership and whether principals resided in communities that have been disproportionately harmed by drug prohibition and marijuana arrests for a significant amount of time.

