



Hudson Valley Cannabis Industry Association And The New York City Cannabis Industry Association

Concrete Social Equity Measures For New York's Adult- Use Cannabis Legislation

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Introduction

The New York City Cannabis Industry Association (NYCCIA) and Hudson Valley Cannabis Industry Association (HVCIA) are proud to submit this Report of their Joint Special Advisory Committee for Economic Justice and Social Equity, comprised of perspectives from unparalleled industry pioneers, legal experts, and well-regarded representatives from the advocacy arena.

The world's largest cannabis marketplace needs rules, guidance, and policy directives to ensure the continued prominence and success of the soon to be legalized adult use and medical cannabis industry in New York State. Of paramount importance to continuing New York's role as the leading marketplace, it must assure that there is social equity and economic justice from Day One. For this market to be successful across every sector of the entire industry, all decisions in the initiating and roll-out phases of the adult use program must embody concrete policy commitments and directives designed to promote the fundamental cornerstones of economic and social equity. Any legalization measure must protect the overcriminalized communities and persecuted victims of the fast receding prohibition era by giving them first priority and entry into the markets on Day One.

Painstaking care and exacting planning is necessary to ensure that meaningful action is taken with regard to these vital issues of social equity and economic justice so as to avoid the rampant mistakes of other states where policy pronouncements ultimately rung hollow and failed to achieve the very purposes and objectives for passing legalization measures in the first place. New York as a state, and New Yorkers as a population, cannot afford such missteps in the conception and inception of the rules, regulations, and objectives of the legalized cannabis marketplace. That would leave those to be prioritized in a disadvantaged position and thereby serve to perpetuate the very harms that we all are looking to avoid.

An egregious example of such a pitfall is where, after making strong pronouncements of a commitment to social equity and economic justice, other states nonetheless failed to actually grant licenses to social equity applicants until two years after the market had been established. The act of opening the market, but waiting for sufficient tax and other revenue to flow to the state before funding the equity programs and granting licenses to qualified equity applicants (the specific groups to benefit from priority entry into the legalized marketplace) harmed the legalized cannabis programs. States that followed this pattern provided an immeasurable and unsurpassable head start to wealthy and well-connected operators, all of whom did not need to be prioritized, and assured that the interests of the identifiable equity beneficiaries were negatively and permanently impacted, never being able to compete because they were denied entry into the legalized marketplace for years after the initial market rollout began.



Even in states which sincerely stressed the need for social equity and economic justice in their cannabis markets, there has been a disturbing outcome where equity licensing applicants were and are not appropriately prioritized. That is not equitable, it is not fair, and it is not economically just. Whether intended or not, the net result in many states of failed equity and justice policies and programs has been that people in poor communities of color continue to be left behind in the market in which they were to be prioritized while well-capitalized individuals and companies from socio-economic strata not reflective of either social equity or economic justice were unfairly bestowed with the benefit of being the first entrants into the market.

First-entrant opportunities in a legalized marketplace can potentially be worth billions of dollars in revenues to the fortunate few, which revenues delayed equity entrants will never be able to access or realize. A true commitment to social equity and economic justice must include assurances that the intended beneficiaries of the cannabis legalization program are a top priority and first and foremost in every political, strategic, and economic policy decision made from conception of the program to the inception of the rollout across our great state.

Prioritizing overly-policed communities and overly-prosecuted victims of the failed war on drugs as intended beneficiaries of opportunities in the legalized cannabis market is equitable, just, and fair. After all, the prohibition of cannabis starting in 1936 had much more to do with abject racism than it did with actual science. For example, America's first Drug Czar, Harry Anslinger, advocated cannabis prohibition in the 1930s through fear mongering propaganda statements like: "There are 100,000 total marijuana smokers in the US, and most are Negroes, Hispanics, Filipinos, and entertainers. Their Satanic music, jazz and swing, results from marijuana use. This marijuana causes white women to seek sexual relations with Negroes, entertainers, and others."¹

Such blatant racist propaganda, used to justify minority persecution though cloaked in the guise of public safety, became another means of oppression of communities of color. Decades later, President Nixon's senior advisor, John Erlichman, stated unequivocally that the reason cannabis became classified in 1970 as a Schedule I narcotic (the strictest category reserved for substances having "no currently accepted medical use and a high potential for abuse") had absolutely nothing to do with science or public safety. Rather, he called it out for what it was – racism. He stated:

We knew we couldn't make it illegal to be either against the war or black, but by getting the public to associate the hippies

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7173675/> (citing Smith L. How a racist hate-monger masterminded America's War on Drugs Timeline. 2018. Available at: <https://timeline.com/harry-anslinger-racist-war-on-drugs-prison-industrial-complex-fb5cbc281189> (last accessed October 29, 2019)).



with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.²

Erlichman's admission reinforced the findings of the Shafer Commission, President Nixon's Blue Ribbon Panel appointed to justify his decision to put cannabis in Schedule I. Contrary to Nixon's charge to find justifications for restricting the plant, the commission found that in fact cannabis was not dangerous and did not otherwise meet the criteria to be placed in that most restrictive designation under the federal Controlled Substances Act of 1970.

Despite the continued legalization of cannabis across the vast majority of the United States, the weaponization of it as a means of persecution, prosecution, and oppression through unequal enforcement of the law remains little changed. Just two years ago, a Vox headline read, "Black people in NYC are 8 times more likely to be arrested for cannabis than whites."³ That was *before* New York passed legislation further decriminalizing the plant in 2019. Despite that 2019 legislation designed to correct such gross disparities, these unequal enforcement trends persevere even today in the same exponential disproportion as before. In fact, despite the expansive decriminalization legislation of 2019, last year the arrest rate in Black and Latino communities comprised 94% of all cannabis-related arrests in New York City with 57% of those arrested being Black and 35.7% being Latino. There is no anthropologic, scientific, principled, or reasoned justification for such disparity in arrests and prosecutions of people from communities of color other than the continued persistence of institutionalized and ingrained racism in the enforcement of cannabis laws - all of which stems from the false propaganda justifying prohibition.

New York State is on the cusp of voting for adult use legalization. Both the Governor, with his budget-based Cannabis Regulation and Taxation Act ("CRTA"), and the Legislature, with its Marijuana Regulation and Taxation Act bill ("MRTA"), have proposed measures to effect legalization and promote social equity and economic justice in and through the marketplace. While neither bill is wholly up to the task, both proposals ensure, in some measure, that revenues generated from the new marketplace will be

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7173675/> (citing Lopez G. Nixon official: real reason for the drug war was to criminalize black people and hippies. 2016 Available at: <https://www.vox.com/2016/3/22/11278760/war-on-drugs-racism-nixon> (last accessed October 29, 2019)).

³ <https://www.vox.com/identities/2018/5/14/17353040/racial-disparity-marijuana-arrests-new-york-city-nypd>



utilized for community reinvestment and equity programs, which provides for a good starting foundation for positive change. But, unless and until the means and methods by which the cannabis laws are unequally enforced are more directly and definitively addressed, the continuing existence of disproportionate law enforcement practices will remain unfettered.

The elimination of the alleged odor of cannabis as a conjured means to create instant probable cause for stop, frisk, and arrest would greatly alter the lives of those who have been subjected to disproportionate encounters with law enforcement, many of which resulted in life altering arrests and the myriad of negative collateral consequences stemming from them. Policy commitments and targeted legislation to alleviate the impact of decades of such prohibition-based enforcement practices is critical to mitigate the ongoing and devastating impacts that the war on drugs wrought on poor communities of color.

To fully redress those wrongs, achieving social equity goals has to start with clearly delineated means to ensure that people from poor communities of color are prioritized for entry and placement into the legalized marketplace on Day One. This can only be achieved through:

- clemency and the expungement of criminal convictions,
- low cost entry points into the cannabis industry,
- providing for public and product safety through low cost legacy market operator and consumer laboratory testing fees,
- grants, fee waivers or low or no cost loans to equity licensees,
- business and other incubator programs to provide enhanced education and skills to new licensees,
- access to capital,
- creation of generational wealth, and
- significant investments in the infrastructure of the communities from which they hale.

Also critical is the creation of pathways and opportunities for legacy market operators to transition to the legal market. This group of past and present market operators too have been the victims of inordinate persecution and over-prosecution for participating in the existing informal and unlicensed marketplace. It is through these more clearly delineated objectives and policy commitments that social equity and economic justice will be best realized and will create an enduring marketplace that will permit the



participants to achieve financial stability and creation of generational wealth as part of their individual legacies.

A Starting Point: Prioritize Social Equity Licenses

It is essential that social equity applicants be the first entrants into the marketplace on Day One. This would provide an immediate benefit and would create a more realistic, level and competitive playing field for those candidates before the non-equity entrants receive licenses and enter the legalized cannabis market.

In order to create a successful legalized marketplace, there must be a plan from the outset that prevents displacement of the existing illicit operators of the legacy market and creates a fair, ascertainable, predictable, and incentivized pathway for those operators to transition into the new legalized cannabis marketplace. The failure to do so by means of short-sighted planning, misguided tax policy, and lack of appreciation for the breadth, depth, and cultural permanence of the existing illicit market will not only perpetuate the legacy marketplace in spite of legalization, but will also serve as the death knell to any prospects for the legalized marketplace before it even opens.

As witnessed in other adult use states, if the legacy market is not given opportunity for entry into the legal market, then both markets will co-exist, with the unregulated and untaxed legacy market continuing to drive consumers away from a more expensive legal market. In that scenario, the state continues to lose potential tax revenues from sales to the legacy market and it fails to achieve a sustainable legal market. It further fails to realize the social equity and economic justice goals were made a priority as part of the state's adult use legalization measures. Failure in the legalized cannabis industry is not an option for New York or its citizens.

It is critical to recognize that in large part the people who comprise the legacy market would qualify as social equity applicants. For the new marketplace to succeed there must be a clear and safe pathway for legacy operators to enter into the legalized space on Day One of the legalized marketplace. One incentive would be the prioritization of legacy operators receiving micro-business and craft cannabis cultivation licenses. Taking such bold action would effectively preserve the status quo for those who have helped build what already is the world's largest cannabis marketplace. This will also ensure that the threats to the new market through competition with the legacy market would rapidly dissipate as the equity and prioritized applicants are able to retain and gain significant footholds in the now regulated industry on Day One of the legalized market.

The existing underground cannabis market is extremely sophisticated and comprised of complex relationships built on trust, integrity, quality, and affordability. New York can immediately benefit from an incentivized legacy operator transition by having



already-established entrepreneurs with existing business models readily converted to legal and taxable revenue generating businesses.

In other words, rather than attempt to supplant the legacy market and build an entirely new market from scratch, New York has a “turn-key” market at the ready! Legalizing existing market operators on Day One will advance not only social equity and economic justice, but will also create market safety and stability, spawn tens of thousands of jobs, improve community infrastructure, and preserve New York as the largest marketplace from which ancillary markets may be created, namely, financial industries, access to capital markets, and stock exchanges in which New York is indisputably also the world leader.

Prioritizing and incentivizing the legacy operators would not work to the exclusion of other social equity applicants who did not participate in the legacy market. It is equally vital that non-market participants who have nonetheless been negatively impacted by the war on drugs should also have the opportunity to be a prioritized entrant into the legal market. This group would be able to partner with licensed operators and learn from those who created the largest global market in spite of the severe penalties derived from the misguided prohibition minded policies and penal laws.

If legacy operator and social equity licenses are not prioritized, then the unintended consequence of that policy failure will be that first time cannabis entrepreneurs with the wealth to invest in the substantial start-up costs of being an operator will be starting a new cannabis market from scratch which seeks to displace the legacy market and its operators rather than absorb it. That error would make the roll-out of the new market not only much slower, but unfair. In that scenario, non-qualified entrants would proverbially stand on the shoulders of legacy market operators, who have amassed and successfully run a multi-billion dollar untaxed and unregulated market, and force those existing operators to wait in line for years before they could be licensed to enter the legal market.

Such a policy failure would be anathema to the professed objectives of the Governor’s CRTA and Legislature’s MRTA to create a just and equitable market which, parenthetically, already exists in the legacy market. New York deserves and can do better by remaining steadfast to the commitment of Day One equity for those entrepreneurs already in the legacy market and those negatively impacted by the over persecution brought about by the unequal enforcement of the law during the war on drugs.

The Special Advisors of the NYCCIA and HVCIA urge that any legislation ensure both in drafting and implementation that social equity applicants be the first in line and the first to receive licenses to operate in the legalized cannabis marketplace. When considering various classes of licenses and how licenses are awarded, consider also that microbusiness licenses are an ideal vehicle to transition many legacy operators especially



if it means that they can operate legally on Day One. Doing so will jump-start the legal cannabis marketplace the moment it opens for business because those operators already have an infrastructure in place that can be converted to legal business status, have an established clientele, and a marketable book of business. The NYCCIA and HVCIA also encourage a licensing regime that favors infusion of diversity into the seed-to-sale chain so that the demography of the industry as a whole can be appropriately represented in each link of the market chain.

We Need True Decriminalization: Cannabis Consumers Are No Longer Criminals

It has been a cruel reality that the alleged smell of cannabis as a basis to create reasonable suspicion has caused pretextual and unreasonable stops and searches of IBPOC. For social equity policy to translate to concrete action it is imperative that cannabis be removed from several provisions of the Penal Law and Public Health Law. Concomitantly, law enforcement must institute a plan to not only re-train officers and recruits about cannabis and the devastating impact that unequal enforcement and arrest rates have had upon more than a million New Yorkers, but also devise significant penalties and legal remedies to prevent continued persecution and prosecution of communities and people of color who are engaging in lawful activity involving cannabis.⁴

With adult use being legalized across the nation, in Canada to our north and Mexico to our south, and in other countries around the globe, cannabis has been normalized as a part of everyday life. Cannabis operators and consumers can no longer be viewed as criminals, morally wanting, or deserving of demeaning treatment and second class status. It is no more logical or fair to shun someone for using cannabis than it would be to ostracize someone for having a drink, particularly given that cannabis is comparatively far safer than alcohol and cannabis has proven medical benefits and brought relief to millions of medical cannabis patients around the world.

Reversing the cannabis-consumer-as-criminal mindset (as well as the same mindset for legacy operators in the present decriminalized state) will not be a simple task. Cannabis, and those who have engaged with it over the past century, have been stigmatized for more than a century. Continued prohibition leads to the over-policing and criminalization of IBPOC communities and that would continue the harm caused by the war on drugs. Public education and law enforcement re-training and devising legal constraints and penalties for those that perpetuate past persecution are just two of the many ways in which society must be moved away from the long debunked prohibition

⁴ Substantial disagreement has been found amongst the Special Advisors of whether ingrained and institutionalized bias perpetuated by law enforcement can be adequately addressed and corrected by education and retraining alone without devising significant punitive remedies to deter officers from further persecution of communities and people of color. It is also important that funds not be diverted from social equity programs for this purpose.



laden myths and one-sided societal views about the alleged dangers of the cannabis plant. Honestly educating society about the cannabis plant and redressing law enforcement by methods designed to forego the prohibition lens when dealing with legalized cannabis will dramatically improve awareness and dialogue across all sectors of society that should promote sensitivity to those wrongly criminalized communities of color that bore the brunt of drug war persecution. Doing so will cause a dramatic corresponding plunge in arrests rates.

It is thus of paramount concern to the issues of social equity that any legalization measures avoid drafting legislation that simply repurposes and redesignates cannabis offenses rather than eliminates them altogether from the Penal Law and provisions of the Public Health Law.

Even with the passage of legalization under either the CRTA or MRTA, unregulated cannabis will continue to be illegal. But, illegality does not have to carry draconian criminal and civil penalty consequences as it has before. Any legislation should make possession of unregulated cannabis a civil violation subject to only an appropriate, reasonable, and affordable fine. Not only is this far more cost effective savings than effecting an actual criminal arrest, but revenue derived from those small fines will simultaneously benefit the state while avoiding the negative collateral consequences of arrest which legalization is supposed to avoid.

Full legalization where neither licensed operators nor consumers are engaged in unlawful activity will produce an indirect windfall through budget savings for state coffers and law enforcement budgets. Under the current decriminalized status of small amounts of cannabis, a defendant may still be arrested on the street and processed back at the precinct in order to be issued a desk appearance ticket for a future court date. Given the ubiquitous presence of cannabis everywhere in New York, this is nothing more than a tremendously costly waste of manpower and budget funds. The costs associated with a cannabis arrest, from cuffs to the conclusion of a court case, are staggering for an individual arrest, much less on a statewide scale.

With full legalization via the CRTA, MRTA, or some hybridized bill incorporating aspects of the two, not only would thousands of unnecessary arrests still occurring after passage of the 2019 decriminalization bill be avoided statewide, which will translate to immediate economic savings, but ancillary revenue would remain constant and/or grow as consumers no longer arrested for mere possession would continue to work, provide for families, pay mortgages, rent housing, run businesses, and continue to live a normal law abiding lifestyle just as others do, including those that indulge in alcohol – an indisputably more dangerous substance.



Policy guidance should be created to engage police departments to conduct internal audits to determine what percentage of their budget is consumed by training officers to effect cannabis arrests, which strain and drain of precinct manpower and financial resources, and the number of hours and cost per hour from cuffs to court to process a cannabis arrest that may in many circumstances be dismissed at arraignment. The calculation of those true costs of cannabis arrests and particularly those stemming from unequal enforcement of the law will translate to millions of dollars of instant savings statewide the moment that the legalization of cannabis passes in by way of any legislative measure or bill. Such savings could be redeployed in a number of different ways including community reinvestment, further funding of the equity programs and incubators, and job creation possibilities in those previously affected communities.

Incubators are a key component to a successful social equity program

Social Equity cannot be concretely implemented without providing disadvantaged applicants the tools and means necessary to compete in the marketplace even if that means that they get a head start. Support infrastructure and Day One equity is truly the only way to effectively level the playing field prior to the entry of additional competitive operators. The goals of social equity and economic justice are not achieved simply by granting licensing priority to specific groups of applicants. Training, business incubation programs, and access to sources of capital (with an emphasis on business development grant programs) are essential to ensuring that those who receive licenses can successfully launch, grow, and maintain their business. With such acumen and powerful tools as the seeds from which the licensees can cultivate successful businesses, the state will benefit from primary tax revenue as well as ancillary revenue derived from payroll taxes, consumerism, greater discretionary income in the hands of operators and employees, and countless other remote revenue streams all of which improve New York's bottom line.

The Importance Of Homegrow And On-Site Consumption

The New York City and Hudson Valley Cannabis Industry Associations have circulated separately a detailed policy statement on why personal cultivation of the cannabis plant ("Homegrow") is critical to both the success of the market as well as achieving social equity goals. The following excerpt from that report provides context:

The legalization of equal and affordable access to the cannabis plant for all adults is also an essential component to redressing the injustices caused by the war on drugs. Until such legalization, communities that have been disproportionately targeted by the war on drugs and cannabis prohibition are most likely to bear the brunt of future



enforcement of a ban on Personal Cultivation. In order to have an equitable program, New Yorkers should have the right to cultivate cannabis plants in homes, apartments, condos and cooperatives, without fear of criminal prosecution.

Advocates of the [MRTA], the State Legislature's adult use legalization plan, and the Governor's CRTA adult use proposal in the budget, recognize that equity at the inception of any legalization measure is the foundation of an inclusive cannabis industry. To achieve this goal, they must appreciate that equity cannot be achieved without equal and affordable access to the plant. Both the MRTA and the CRTA must be improved in this regard. The CRTA has no provision allowing for Personal Cultivation. The MRTA's allowance of six plants grown solely by Medical Marijuana patients and/or their caregivers is insufficient to ensure that all people can have access to the plant.

Additionally, neither proposal provides protection for New Yorkers living in NYCHA and/or HUD Housing who want to engage in Personal Cultivation either for medical or adult use purposes. The Legislature and Governor should work together to pass equitable regulations allowing all citizens to grow a limited number of cannabis plants at their own homes, apartments, condos, and cooperatives.

Also critical is not just allowing for the ability to grow (just as people can legally brew beer at home, which does not result in adverse impacts on the beer market or other societal ills), but to allow for places where on-site consumption is permitted. In many instances, renters and people living in regulated and subsidized housing may be prohibited from consuming the plant at home due to anti-smoking restrictions and state and federal clean air laws. Communities have legitimate interests in regulating the time, place and manner of cannabis consumption, but that cannot translate to restricting cannabis use to purely private residences rather than group or publicly rented housing because that will result in exactly the disproportionate impacts that social equity policy is intended to redress.

Another means to address those impacts beyond allowing for on-site consumption places is to amend existing regulations to allow for greater flexibility. Senator Kaplan has proposed a bill that protects tenants of New York City Housing Authority and Housing and Urban Development, who are medical cannabis patients, from eviction. The NYCCIA and HVCIA encourage measures like Senator Kaplan's that place all cannabis consumers on



equal footing and afford equal protections under the law. (Similar attention should be given to cannabis policy across the administrative spectrum – for example, it is essential that medical cannabis patients have access to that medicine without taking on risks, such as losing parole or probation status.)

It would be an unconscionable result if private property owners can freely consume cannabis in and around their homes while those who rent or live in premises that are subject to these restrictions have no place where they can legally consume cannabis. Too often those living under such aggressively enforced restrictions are disproportionately Black, BIPOC and LGBTQ people. Such unequal restrictions and enforcement against those consumers who are otherwise engaging in lawful activity with cannabis need to have some designated on-site consumption space that protects their rights as citizens and protects their leaseholds from enforcement actions brought about by engaging in lawful conduct. New York must get it right from the start and mitigate the unequal impact of public housing restrictions on those who want/or medically need to lawfully engage in cannabis consumption. This cannot solely be a matter of privilege for wealthy private property owners and it must be a matter of right, social equity, and economic justice to permit on-site consumption locations as a means to protect a public housing leasehold.

Conclusion

Good intentions lack meaning if they are not coupled with/actualized by concrete actions. Prioritizing applicants and legacy operators on Day One is the critical first step to realizing the social equity and economic justice goals that gird both the CRTA and MRTA proposals. By doing so, New York will distinguish itself by avoiding the quagmires and pitfalls that all other adult use states have floundered in by lacking an appreciable plan and implementing measures to achieve those goals on Day One. By doing so, New York will again prove itself to be a social and political national and global leader as well as the conceptualizing and implementing the optimal cannabis marketplace model.

The NYCCIA and HVCIA are grateful for your consideration of these important issues. The Associations recognize and appreciate the policy work that is reflected in the two proposed legislation bills – and the MRTA in particular – aimed at achieving social equity goals. The issues outlined herein represent cornerstones for New York to build a solid and lasting legalized cannabis marketplace that is fair, equitable, and assimilates the existing legacy market. The continuing administrative and regulatory process that must continue after passage of either legalization measure will require honing in on these topics at the administrative and local levels as implementing regulations are drafted. To that end, we hope that you will avail yourself of the knowledge and resources of the NYCCIA and HVCIA that can help advise all stakeholders as to critical perspectives of the cannabis industry to ensure that New York continues to safely, transparently, and equitably lead the global cannabis economy.