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POLICY DESIGNS FOR SOCIAL EQUITY IN THE CONTEXT OF
LEGAL CANNABIS
Lessons from the U.S. states

Dissertation submitted by
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Abstract

This Master's dissertation gives an overview of efforts to further social equity through cannabis policies in the United States. Cannabis policy has shifted dramatically in recent decades in the U.S., with states being the primary drivers of change, in direct defiance of federal policy. These policy changes have largely responded to racial injustices perpetrated through prohibitionist policies in the name of the War on Drugs. However, despite recreational legalization in many jurisdictions, racial disparities in arrests have not abated and minority participation in the legal market has not been achieved. In response to this, and concurrent with societal shifts which call for social equity, states have begun to enact their own programs to address these concerns. Österle's model for the systematic comparison of policy is applied to four case studies, from Massachusetts, New York, Illinois and Michigan, in order to understand how they address social equity. Policy recommendations are made with the aim of supporting public policy practitioners involved in this area.

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Introduction

Policy change concerning cannabis has evolved rapidly over the past two decades, moving from complete prohibition with criminal penalties in nearly all jurisdictions to a situation wherein 44% of the U.S. population lives in a state where the substance is legal for adult recreational use.¹ In the middle of this process came, in most cases, legal medicalization, wherein cannabis was available to medical patients for therapeutic purposes.² Most of the early liberalizations of cannabis policy used voter initiatives, relying on popular grassroots support, rather than passing laws through state legislatures.³

One of the primary arguments for liberalizing cannabis policy, as can be seen in the rhetoric surrounding these changes, was to respond to and undo the injustices perpetrated in the name of prohibition.⁴ Prohibitionist policies and tactics related to cannabis, part of the War on Drugs, have caused incredible harm in society, in particular due to policing and incarceration. This harm has fallen primarily on people of color and low-income communities.⁵ Following decades of policy liberalization and even legalization, these communities have not reaped the economic benefits of the legal cannabis market,⁶ and in fact, they are still disproportionately targeted for cannabis-related policing and arrests. Due to increasing awareness of and rejection of these ongoing inequities, policymaking surrounding cannabis has recently shifted to focus on social equity.

The purpose of this thesis is to outline and examine efforts to further social equity through cannabis policies. Four primary case studies are utilized, which are the social equity policies in place in the states of Michigan, Massachusetts, Illinois and New York. There are a range of efforts to further

¹ Sullum, J. (2021). Although 44% of Americans live in states that have legalized pot, federal prohibition is not likely to end anytime soon. Retrieved from <https://reason.com/2021/06/29/although-44-of-americans-live-in-states-that-have-legalized-pot-federal-prohibition-is-not-likely-to-end-anytime-soon/>.

² Kilmer, B., & MacCoun, R. J. (2017). How medical marijuana smoothed the transition to marijuana legalization in the United States. *Annual Review of Law and Social Science*, 13, 181-202.

³ Mallinson, D. J., & Hannah, A. L. (2020). Policy and political learning: The development of medical marijuana policies in the states. *Publius: The Journal of Federalism*, 50(3), 344-369.

⁴ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁵ Pearl, B. (2018). Ending the War on Drugs: By the Numbers. Retrieved from: <https://www.americanprogress.org/issues/criminal-justice/reports/2018/06/27/452819/ending-war-drugs-numbers/>.

⁶ Pryor, M. (2021). What will it take to build an equitable cannabis industry? Retrieved from: <https://www.self.com/story/equity-cannabis-industry-op-ed>.

social equity in cannabis policies and programs nationwide, at local and state levels, but these four are chosen given that they are state-wide, based on recreational legalization, and considered to be robust models of social equity policy design.

I employ the definition of social equity employed by the National Academy of Public Administration: “the fair, just, and equitable management of all institutions serving the public directly or by contract, and the fair and equitable distribution of public services, and implementation of public policy, and the commitment to promote fairness, justice, and equity in the formation of public policy.”⁷ Social equity related to cannabis is defined by Jeffrey Moyer in his doctoral dissertation as, “programmatic efforts to provide fairness of opportunity in the legalized cannabis market.”⁸ Different state policies and programs have their own definitions. To evaluate these policies, I utilize August Österle’s (2002) three dimensions of social equity, which were originally developed for goal-focused evaluation of social policy. This requires zooming in on the resources, recipients and principles present in these state’s social equity policy efforts. Based on both the experiences of different models of liberalization and recent efforts specifically targeting social equity, policy recommendations will be made in the aim of supporting state policymakers interested in investing in such policies and programs

The research question guiding this investigation is: What policies support a socially equitable distribution of the benefits and burdens of cannabis legalization in the U.S.? In order to answer this question, the following structure is followed: first, I define social equity and introduce the framework and methodology. Then, I give a background on U.S. drug policy, especially cannabis policy, and its effects on social equity. Next, I focus on the policy and political processes at play in evolving cannabis policy. After that, I focus on cannabis policy designs for social equity, utilizing the case studies to highlight important considerations. Finally, I explain my primary findings and the strengths and weaknesses of this research effort, and offer policy recommendations.

⁷ Norman-Major, K. (2011). Balancing the four E s; or can we achieve equity for social equity in public administration? *Journal of Public Affairs Education*, 17(2), 233-252.

⁸ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston. p. 10.

1. Defining social equity

The inclusion of social equity as a primary concern in public administration in the 1960s came as part of the New Public Administration movement and was enshrined in the discipline at the 1968 Minnowbrook conference.⁹ Practitioners and students at the time were ready to dismiss the notion that public administration was, could be, or should be, a neutral discipline. This meant accepting the normative stance that they had the duty to further social equity through their work. Racial justice and social equity as related to race was, and remains, one of the primary aspects of social equity that concerns public administrators and public policy practitioners.¹⁰ Equity was, through this process, granted equal standing as the fourth pillar of public administration, alongside economy, efficiency, and effectiveness. Norman-Major explains that while the other three pillars of public administration consider how the government operates, the equity pillar rather asks *for whom* the government operates. The most commonly-accepted of social equity came from the 2000 National Academy of Public Administration's newly-created Standing Panel on Social Equity.

“The fair, just, and equitable management of all institutions serving the public directly or by contract, and the fair and equitable distribution of public services, and implementation of public policy, and the commitment to promote fairness, justice, and equity in the formation of public policy.”

Kristen Norman-Major explains that the three primary operationalizations of social equity for public administrators are:

1. Simple fairness and equal treatment.
2. Distribution of resources to reduce inequalities in universal programs and services.
3. Redistribution of resources to level the playing field through targeted programs.

⁹ Norman-Major, K. (2011). Balancing the four E s; or can we achieve equity for social equity in public administration? *Journal of Public Affairs Education*, 17(2), 233-252.

¹⁰ Gooden, S. T. (2010). Social equity in public administration. *The Future of Public Administration Around the World: The Minnowbrook Perspective*, 53-58.

A more detailed definition of social equity is offered by Johnson and Svara (2015).¹¹

“Social equity is the active commitment to fairness, justice, and equality in the formulation of public policy, distribution of public services, implementation of public policy, and management of all institutions serving the public directly or by contract. Public administrators, including all persons involved in public governance, should seek to prevent and reduce inequality, unfairness, and injustice based on significant social characteristics and to promote greater equality in access to services, procedural fairness, quality of services, and social outcomes. Public administrators should empower the participation of all persons in the political process and support the exercise of constructive personal choice.”

Most public administration scholars begin with a definition of social equity which derives from John Rawls’ conception of justice put forward in *A Theory of Justice* (1971). Rawls advocates that justice, or fairness, arises when, “each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for all.” The government serves to equalize the distribution of resources, both social and economic. Rawls develops this idea of justice utilizing the thought experiment of the veil of ignorance, and stating that, if each person did not know their relative strengths, weaknesses, advantages or disadvantages, they would want a government that furthered equality for everyone, because they could potentially be in a weaker position. At the same time, Rawls acknowledges that each person aims to maximize their own utility, which is their share of the available resources. In the case of the benefits of the legal cannabis market, this is, indeed, a central concern. Each individual moves to maximize their individual benefit, but some individuals are better positioned to do so. While Rawls accepts that inequality can naturally exist in society, his idea of justice posits that institutions should not allow those who possess advantages to institutionalize them via law.¹²

¹¹ Johnson, N. J., & Svara, J. H. (2015). *Justice for all: Promoting social equity in public administration*. Routledge.

¹² Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

Equity and justice tend to be difficult to separate, as both concern themselves with how benefits and burdens are distributed in society, the fairness of such allocative procedures and respect for rights and entitlements of individuals.¹³ However, equity is generally utilized when in reference to specific aspects of justice, which is a broader guiding principle. Similarly, equity and equality are sometimes conflated. The difference between equity and equality lies in the moral judgment applied to equity. While equality is something that can be measured, generally by quantitative metrics such as income, equity adds the moral facet of fairness to the distribution of resources or burdens.¹⁴

It can be hard to balance justice and equity concerns against other policy concerns, like liberty and efficiency.¹⁵ Despite its prioritization and efforts to define it, social equity often fails to reach equal importance as one of the “Four Es” of public administration. Among the weaknesses of this pillar is that it suffers from vague definition at the outset, and that there is a difficulty of quantifying social equity outcomes following policy implementation. In addition, this area, when compared to the others, can be prone to an abundance of research and a lack of action. Susan Gooden (2002) highlights the importance of public policy research in addressing social inequities. To this end, she posits a need for public administration to address social equity concerns by moving from a pattern of “ready, aim, study more” to “ready, aim, fire.” Studies related to equity concerns also tend to lack a coherent theoretical framework, and especially lack a connection of theory and practice.¹⁶ Research and its outcomes should, therefore, be actionable.

2. Methodology

Österle (2002) puts forward a framework for the systematic comparison of policy design for social equity. This framework was originally intended for application to social policy, and employing it allows for policies to be evaluated in relation to their goals. It is relevant to policy designs for social equity in cannabis, given that they entail distributing the harms and benefits related to

¹³ Rafael H. M. Pereira, Tim Schwanen & David Banister (2017) Distributive justice and equity in transportation, *Transport Reviews*, 37:2, 170-191.

¹⁴ Bronfenbrenner, M. (1973). Equality and equity. *The Annals of the American Academy of Political and Social Science*, 409(1), 9-23.

¹⁵ Ibid.

¹⁶ Österle, A. (2002). Evaluating equity in social policy: A framework for comparative analysis. *Evaluation*, 8(1), 46-59.

cannabis liberalization, in a similar way to how a welfare state utilizes social policy. There are three dimensions that Österle defines as constituting equity: resources, recipients, and principles. These can also be understood as *what*, *whom* and *how*. Cannabis policy is regulatory in nature rather than distributive, but the social equity programs at the state levels made explicit efforts to distribute the harms, and especially benefits, of liberalization. Therefore, this model is applicable to this case.

Dimension	Explanation	Examples relevant to social equity
What	<p>The resources or burdens that will be shared, like goods, money, rights, and responsibilities.</p> <p>This can be accomplished by payments, services, regulation, or giving of goods.</p> <p>Then, it can be measured by outcome, use, access, or choice.</p>	<ul style="list-style-type: none"> - The objective or subjective quality of goods shared or services rendered. - Quantities and types of goods. - Which resources or services individuals have access to. - The range of choices that individuals have in relation to available goods or services.
Whom	<p>The recipients of said resources or burdens, which could be individuals, families, households, areas, or institutions.</p>	<ul style="list-style-type: none"> - A threshold of access across varying geographical areas. - Quality levels across varying providers of a good or service. - Uptake of goods or services across individuals or families.
How	<p>The principles on which said resources or burdens will be shared, which can be needs-based, economic, merit, or based on some measure of status.</p> <p>Often, principles are combined to determine</p>	<ul style="list-style-type: none"> - Need-related principles: access for individuals who demonstrate a need for a good or service, like literacy training for illiterate people. - Egalitarian principles: each person has access to the same thing, regardless of their

	<p>beneficiaries (mixed principles).</p> <p>The principles can also be non-explicit in the decision making regarding resource allocation which affect uptake rates between different populations.</p>	<p>characteristics.</p> <ul style="list-style-type: none"> - Time-related principles: access related to time spent on waiting lists, or in a queue. - Status-related principles: preferential access based on age, residence status, occupation, gender, race. - Economics-related principles: services or goods distributed to those below a certain income level, or who demonstrate particular economic assets. - Mixed principles: If individuals over a certain age (status) and below a certain income (economic) have access. - Implicit principles: Differential access to information regarding a program, for example if only provided in one language, which lessens uptake among speakers of another language.
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This thesis relies on an iterative and focused review.¹⁷ Given the relatively recent nature of policy change responding to social equity, I relied on academic papers focusing on this topic as well as government documents and lay publications for information. A qualitative rather than quantitative approach is favored, given that quantitative analyses which utilize policy changes as a binary variable can erase the rich nuance of policy designs and political processes, which differ vastly between states.¹⁸ Policy considerations and responses which focus on social equity are detailed,

¹⁷ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

¹⁸ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

and the four case studies are analyzed using Österle's model for social equity policy designs. The cases of Michigan, Massachusetts, Illinois and New York were chosen because they are state-wide social equity programs which are based on recreational legalization. Furthermore, they are considered to be among the best models for social equity programs, and all are recent, and based on legalization legislation that passed between 2016 and 2021. The conclusions of this analysis are policy recommendations for the intended audience of decision makers who are considering socially equitable alternatives to prohibition, other researchers working on these questions, and members of civil society who are advocating for such policies.

3. United States drug policy

In the United States, drug criminalization began in the 1970's with the stated purpose of reducing the harms of using drugs.¹⁹ Prohibitionist movements and policies have a long history of being racist and xenophobic in the U.S. Opium was associated with Chinese immigrants, cocaine with African-Americans, and cannabis with Mexicans.²⁰ Beginning in the 1980's, criminal enforcement of the War on Drugs, which ranges from violent police interactions to the incarceration and disenfranchisement, has negatively impacted communities of people of color.²¹

In addition to the social harms, it became clear that prohibition was not stopping people from doing drugs.²² To explain this phenomenon, Savona, Kleiman and Calderoni (2017) offer the dual markets concept, explaining that prohibition of a good or service does not necessarily lessen either the supply or the demand of that good or service.²³ The harm reduction movement, which emerged from Europe and has found stronger footing in European countries' policies, acknowledges that people do not stop using drugs just because they are illegal. Harm reduction accepts drug use can be harmful but favors a pragmatic approach that accepts that individuals will choose to use drugs, but adopts policies that aim to lessen the associated harms of those drugs. This can extend to

¹⁹ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

²⁰ Scuro, J., & Apud, I. (2015). Aportes para un debate sobre la regulación de la ayahuasca en Uruguay. *Antropología Social y Cultural Del Uruguay*, 13, 35-49.

²¹ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

²² Ibid.

²³ Ibid.

criminal justice system reform.²⁴ Tobacco follows a similar logic, as does gambling. Governments, local and national, accept that some harm to the public comes from allowing these goods and services to exist, and balances trying to limit access to those services and relying on their tax revenue in order to function.²⁵ In Massachusetts, for example, revenue from so-called ‘sin taxes’ adds up to almost 5% of the state budget.²⁶

In the United States, the Food and Drug Administration (FDA) petitions the Drug Enforcement Agency (DEA) to place drugs on the list of controlled substances when it considers a drug to have significant addiction-causing potential.²⁷ First, a scientific review of the substance is conducted by the FDA and the National Institute on Drug Abuse (NIDA). These two agencies are part of the Department of Health and Human Services (DHHS), and NIDA is part of the National Institutes of Health (NIH). DHHS makes a recommendation about scheduling based on the scientific review, and if the recommendation is to schedule the substance, it is scheduled by the DEA. The level at which the substance is scheduled is based on the following factors: whether there is a ‘currently accepted medical use’ in the United States, the safety of the drug under medical supervision, the potential for addiction, the potential for it to be diverted for illicit use, whether people use it only when a physician prescribes it, and if it shares pharmacological principles of other controlled substances.²⁸ Cannabis is classified as a Schedule 1 drug by the DEA, the highest scheduling which asserts that the substance holds high addiction potential, and no known medical use.²⁹

Policymakers have tended to create and maintain the War on Drugs baseline treatment with little feedback or public participation, leading to policy stasis.³⁰ At the federal level, drug policy making faces considerably more constraints than at the state level. For example, when it comes to scientific review by the FDA, the federal agency’s actions are characterized by high political stakes,

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

²⁷ Cohen, P. J. (2009). Medical marijuana: The conflict between scientific evidence and political ideology. part one of two. *Journal of Pain & Palliative Care Pharmacotherapy*, 23(1), 4-25.

²⁸ Ibid.

²⁹ Harrison, R. (2020). How the 2020 Election Reshaped US Drug Policy. Retrieved from: <https://www.nyu.edu/about/news-publications/news/2020/december/2020-election-drug-policy.html>.

³⁰ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

practically irreversible decisions and uncertainty that makes decision making difficult and deviation from prior decisions extremely unlikely. Furthermore, political pressures via lobbying affect decision making at least as much as the merits versus drawbacks of a particular substance.³¹ However, when the public is given the chance to participate in the drug policy making process via ballot initiatives, liberalization is usually achieved.³² Due to, and in direct challenge of, federal prohibition, drug policy change happens primarily at the state level in the United States. In November 2020, the United States elected a new president. On the ballot across many states was the question of drug policy reform. In each state where a liberalization measure was voted on, it won.³³ Mississippi and South Dakota legalized medical cannabis. Montana, Arizona, New Jersey and South Dakota voted to legalize recreational cannabis. The District of Columbia decriminalized psychedelic plants, including psilocybin, the active ingredient in psychedelic mushrooms. Oregon legalized the use of psychedelics in medical treatment. As of 2021, 36 states, Washington D.C. and four U.S. territories allow medical cannabis use.³⁴ 19 states have legalized recreational use.³⁵ More than 20 states have passed expungement policies, which make it so that past cannabis-related convictions can be removed, sealed from public view, or otherwise lessened.³⁶

State cannabis policy has evolved significantly over time in direct violation of federal prohibition, but with markedly little federal intervention. At the time that Colorado's cannabis legalization passed, fear of federal prosecution was rampant. Criminal charges could fall on the state and local governments for licensing cannabis businesses for aiding a criminal act. Or, the property of cannabis businesses and their profits could be seized.³⁷ However, these fears were alleviated in 2009 when the U.S. Department of Justice issued the Ogden Memo which deprioritized

³¹ Carpenter, D. P. (2004). The political economy of FDA drug review: processing, politics, and lessons for policy. *Health affairs*, 23(1), 52-63.

³² Ibid.

³³ Harrison, R. (2020). How the 2020 Election Reshaped US Drug Policy. Retrieved from: <https://www.nyu.edu/about/news-publications/news/2020/december/2020-election-drug-policy.html>.

³⁴ State Medical Marijuana Laws. (2021). Retrieved from: <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx#:~:text=A%20total%20of%2036%20states,available%20medical%20marijuana%2Fcannabis%20programs>.

³⁵ Hansen, C. (2021). Where is Marijuana Legal? A Guide to Marijuana Legalization. Retrieved from: <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization#:~:text=Is%20Marijuana%20Legal%3F-,A%20Guide%20to%20Marijuana%20Legalization,Washington%2C%20D.C.%2C%20and%20Guam.&text=June%2030%2C%202021%2C%20at%2012%3A12%20p.m>.

³⁶ Vinopal, C. (2021). As more states legalize marijuana, people with drug convictions want their records cleared. Retrieved from: <https://www.pbs.org/newshour/nation/as-more-states-legalize-marijuana-people-with-drug-convictions-want-their-records-cleared#:~:text=More%20than%2020%20states%20have,a%20narrower%20set%20of%20charges>.

³⁷ Blake, D., & Finlaw, J. (2014). Marijuana legalization in colorado: Learned lessons. *Harvard Law & Policy Review*, 8, 359.

prosecution of cannabis cases when the individual was acting in compliance with state law.³⁸ Again, when rolling out recreational cannabis, however, the fear of federal intervention arose. Perhaps the government was willing to look the other way for medical cannabis, but would not be willing to do so for recreational cannabis. However, in 2013, Deputy Attorney General Cole released a memo which said that the Obama administration would not interfere in state taxation and regulation of cannabis as long as the regulatory systems in place were sufficient.³⁹

Due to limited scope and space, this research effort fails to account for federal movement on social-equity related cannabis policy. Though limited, there are recent efforts towards federal decriminalization, with built-in social equity provisions, such as a road to expungement. Expungement refers to the clearing of criminal backgrounds for offenses that no longer constitute crimes. The MORE act would federally deschedule cannabis, leaving it up to states how to legislate the substance, but making it clear that states, individuals and entities would not face federal persecution related to cannabis.⁴⁰ An additional bill called the SAFE banking act which would make it legal for banks to assist cannabis businesses in their financial needs. Both bills have passed in the House of Representatives but await unlikely approval in the Senate.⁴¹

3.1. Effects of cannabis prohibition

One of the driving forces for legalization of cannabis for adult use has been the negative impacts of prohibition at the levels of individuals and communities. Strict sentencing for cannabis related offenses, such as high fines and time in jail, cause hardships for those sentenced even beyond the direct punishment itself. Having a criminal record can jeopardize employment, bank loans, financing education, or access to public services like housing.⁴² According to FBI data, there were over 8 million cannabis-related arrests between 2001 and 2010, 90% of which were for

³⁸ Ibid.

³⁹ Kilmer, B., & MacCoun, R. J. (2017). How medical marijuana smoothed the transition to marijuana legalization in the United States. *Annual Review of Law and Social Science*, 13, 181-202.

⁴⁰ Jaeger, K. (2021). House Approves Federal Marijuana Legalization Bill In Historic Vote. Retrieved from: <https://www.marijuanamoment.net/house-approves-federal-marijuana-legalization-bill-in-historic-vote/>.

⁴¹ Pippin, C. (2021). The SAFE Banking Act Passes in the House, but its Fate in the Senate Remains Unclear. Retrieved from: <https://www.jdsupra.com/legalnews/the-safe-banking-act-passes-in-the-1984992/>.

⁴² Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

possession.⁴³ According to the American Civil Liberties Union, in 2010, cannabis-related law enforcement costs amounted to about \$4 billion.⁴⁴

Furthermore, it is well documented that the negative effects of prohibition have disproportionately fallen upon minorities and those who were already disadvantaged in society.⁴⁵ As Moyer posits, “Cannabis prohibition is a symptom of larger structural inequalities in the criminal justice system.”⁴⁶ There is strong evidence for racial disparities across the policing and criminal justice systems, from arrest to prosecution, sentencing, and treatment after release.⁴⁷ For example, there are systemically high rates of policing in neighborhoods where there are more people of color. Additionally, due to racial profiling, people of color are more often stopped and searched at checkpoints like on highways or at airports for drugs than their White counterparts.⁴⁸ These dynamics lead people of color to have far more contact with the criminal justice system. In a similar trend to what can be seen in other countries, Black and White Americans tend to use cannabis at similar rates, but Black people were far more likely to be arrested for their cannabis use.⁴⁹ This disparity ranged from about four times more likely to 30 times more likely, depending on geographic location and time period.⁵⁰ In California, 2014 data showed that 24% of all people incarcerated for cannabis-only offenses were Black, despite only comprising 6% of the state population.⁵¹

The high levels of enforcement against people of color compared to relative tolerance of cannabis use among White people degrades social relations between these communities. It is expressly unfair and the images and ideas associated with policing in communities of color contribute to

⁴³ Ibid.

⁴⁴ Bunting, W., Garcia, L., & Edwards, E. (2013). The war on marijuana in Black and White. *American Civil Liberties Union*.

⁴⁵ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁴⁶ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston. P. 86.

⁴⁷ Ibid.

⁴⁸ Persico, N. (2002). Racial profiling, fairness, and effectiveness of policing. *American Economic Review*, 92(5), 1472-1497.

⁴⁹ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

⁵⁰ Bunting, W., Garcia, L., & Edwards, E. (2013). The war on marijuana in Black and White. *American Civil Liberties Union*.

⁵¹ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

racist myths surrounding high levels of drug use and crime.⁵² Such myths and stereotypes further a self-perpetuating cycle, where these unjustified practices of profiling and over-policing beget more of the same.

3.2. Cannabis policy liberalization

There are several models available for regulating cannabis, with varying degrees of policy liberalization. Liberalization is any policy which gets rid of penalties for engaging in a particular behavior.⁵³ The baseline policy stance in the U.S. is criminalization, which involves active enforcement against the sale, possession and transfer of cannabis. Taking part in these activities constitutes either a misdemeanor or a felony offense.⁵⁴

Cannabis policy change in the U.S. tends to be incremental, starting with partial liberalization before moving towards full liberalization. Incremental reforms depend on path dependency, as past policies and choices tend to constrain future directions, making them self-reinforcing. In incremental reform, policy change is the cumulative sum of many minor adjustments.⁵⁵ The first step on the road towards policy liberalization is decriminalization, which means removing criminal penalties for possession up to a certain threshold but keeps sale and supply as a criminal offense.⁵⁶ Another option is legalization for medical use, which can take different forms. It can mean, for example, creating a defense against possession charges, or allowing establishment and regulation of dispensaries. This liberalization often coexists with decriminalization.⁵⁷ The final method of liberalization, and the method under investigation in this thesis, is adult use or recreational legalization, which will be referred to as recreational legalization from this point onwards. This policy allows adults over the age of 21 to consume cannabis legally. All states that have passed recreational legalization first had medical use legalization. It is important to consider that states

⁵² Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Michael T. Hayes, *Incrementalism and Public Policy*. Vol. 25 (Longman New York, 1992).

⁵⁶ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

⁵⁷ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

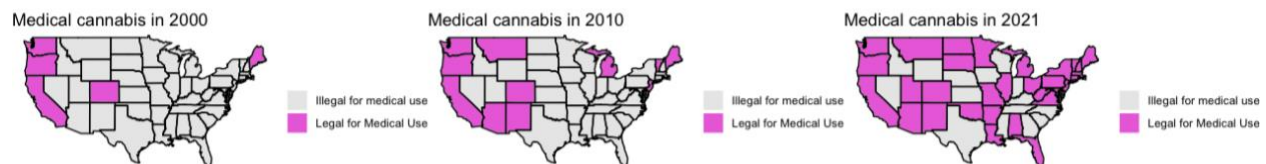
that have recreational legalization still retain criminal charges for, for example, diversion outside of the regulated market, for example selling or buying on the Black market.⁵⁸

Figure A: State decriminalization over time



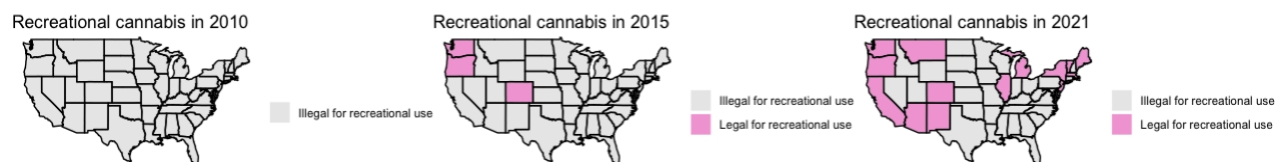
Source: NORML, Marijuana Policy Project, Rolling Stone, Collateral Consequences Research Center, Wikipedia.⁵⁹

Figure B: State medical legalization over time



Source: NORML, Marijuana Policy Project, Rolling Stone, Collateral Consequences Research Center, Wikipedia.

Figure C: State recreational legalization over time



Source: NORML, Marijuana Policy Project, Rolling Stone, Collateral Consequences Research Center, Wikipedia.

⁵⁸ Ibid.

⁵⁹ For all of the maps included in this thesis, data was collected from the following sources: NORML, the Marijuana Policy Project, Rolling Stone, the Collateral Consequences Research Center, and Wikipedia. A dataset of each type of policy and the year it was enacted using these sources. Each data point was cross-referenced, whenever possible, with the other sources and when data from Wikipedia was used, another source was sought to corroborate the data.

3.3. Cannabis liberalization and social equity

Given that the injustices perpetrated, and inequalities furthered, in the name of prohibition have been one of the primary motivations for reform, it is necessary to evaluate whether policy liberalization in this area has stopped the harms of the War on Drugs and furthered social equity. Following cannabis legalization, arrest rates in Oregon, Washington D.C. and Alaska fell by at least 90%. The arrests that remain tend to be for underage and public consumption.⁶⁰ However, while arrest rates decreased, the racial disparities in arrests did not.⁶¹ This can be seen in many states. In Washington state, for example, despite a 87% decrease in arrests for cannabis possession following legalization, the racial disparity in arrests between Black and White citizens increased from 2.5 to 5.⁶²

Following many years of reform, a 2018 Drug Policy Alliance report found that racial arrest disparities remain.⁶³ In Washington D.C., Black Americans were still arrested 11 times more than White citizens for cannabis offenses. In Alaska, they only arrested 17 people for cannabis offenses in 2016, with 1/3 of those arrested being African American, despite comprising under 4% of the state's population.⁶⁴ In fact, the racial disparity in arrests increased in Washington state post-legalization. Potential reasons that racial disparities in arrests have remained or increased are subject to debate and are still being studied.⁶⁵ However, the persistence of the illicit cannabis market and the difficulty of accessing the legal market may be one explanation, as is the fact that the racial disparities in policing persist.⁶⁶

Responding to injustices via liberalization must be considered from two sides, with the first being in enforcement, and the second being more complex, in terms of ensuring equal access to legal markets, addressing prior criminal records, and finding concrete ways to benefit the communities

⁶⁰ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

⁶⁴ Alaska: Quick Facts. *U.S. Census Bureau*. Retrieved from: <https://www.census.gov/quickfacts/AK>.

⁶⁵ Doonan, S. M., Hamilton, J. R., & Johnson, J. K. (2020). Using the national incident-based reporting system (NIBRS) to examine racial and ethnic disparities in cannabis incidents. *The American Journal of Drug and Alcohol Abuse*, 46(5), 513-519.

⁶⁶ Firth, C. L., Maher, J. E., Dilley, J. A., Darnell, A., & Lovrich, N. P. (2019). Did marijuana legalization in Washington state reduce racial disparities in adult marijuana arrests? *Substance use & Misuse*, 54(9), 1582-1587.

most impacted by criminalization.⁶⁷ Deborah Stone outlines the distribution challenge which occurs for goods, which comprises three parts (2002). The first are the recipients, which means deciding who will get something. The second is the item, or what is being distributed. The third entailed the process of how the distribution is carried out.⁶⁸ Applied to this case, in instances where the War on Drugs ends, decision makers are tasked with deciding what the benefits of liberalization are and deciding how they should be distributed to the relevant recipients.⁶⁹ Given that it is well known that the War on Drugs has disproportionately impacted people and communities of color, including, and even centering, these communities when distributing the benefits of liberalization is necessary.⁷⁰

Different models of liberalization matter in terms of the risks and potential harms that they address. Decriminalization tends not to address racial disparities in arrests despite driving down arrests overall.⁷¹ Sometimes, when personal use is decriminalized but there remains a lack of legal methods for obtaining cannabis, risks to consumers persist. This can be the case despite state legalization, for example in California where two thirds of jurisdictions do not allow cannabis businesses.⁷² Risk, therefore, is transferred to the seller. Generally, the person selling cannabis is a more socially disadvantaged individual than the buyer.⁷³

Adinoff and Reiman assess whether cannabis legalization has corrected injustices as related to five areas: expungement, the consequences of cannabis-related offenses within the new landscape of legality, whether or cannabis legalization negatively impacts the groups who have traditionally suffered most under prohibition, the funding of restorative justice and equity programs for those same communities, and diversity within the legal cannabis industry. The authors find evidence of progress as related to expungements, especially misdemeanors. Additionally, there is evidence that

⁶⁷ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

⁶⁸ Stone, D. (2002). *The art of political decision making*.

⁶⁹ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁷³ Ibid.

cannabis-related arrests have lessened. Equity within the legal cannabis industry and equity program funding fall short. Finally, they do not find evidence that those populations who were most negatively affected by cannabis prohibition have increased risk related to legalization.⁷⁴

There is a marked lack of representation from the communities most impacted by the War on Drugs — Black and Latino communities — in the legal cannabis industry. According to the Minority Cannabis Business Association, less than 20% of cannabis business owners identify as minorities, and about 4% of cannabis business owners are Black.⁷⁵ 81% of cannabis business owners in the legal industry are White.⁷⁶ In Nevada, about 30% of the state population is Latino, and 10% are Black, but only about 2% of cannabis business board members are Black, and 7% Latino.⁷⁷ A similar proportion of the City of Denver is Latino, but only 12.7% of business owners are Latino and 12.1% of employees, as of 2020.⁷⁸ Across the country, the group who was least affected by the war on drugs — White males — are disproportionately benefitting from the legal market.

Additionally, production costs plummet with legalization because there is less risk of law enforcement for producers, and go down even further if the government allows industrial-sized farming. There were cannabis price declines of 60% in Colorado between 2015 and 2018, and similar metrics from Oregon.⁷⁹ Given the start-up costs of entering the legal market, a collapse in prices would disproportionately affect the producers with less resources and capital. There is some evidence of this happening in Washington.⁸⁰

As previously mentioned, in addition to the benefits of liberalization, there are burdens to bear. Cannabis use can interact with psychological disorders such as depression and anxiety, in addition

⁷⁴ Ibid.

⁷⁵ What is Equity: Equity in the Cannabis Industry. *Minority Cannabis Business Association*. Retrieved from: <https://minoritycannabis.org/wp-content/uploads/2019/08/What-is-Equity.pdf>.

⁷⁶ McMillan, K.D. (2020). A Matter of Equity: Addressing Diversity in the Cannabis Industry. Retrieved from: <https://mgretailer.com/business/a-matter-of-equity-addressing-diversity-in-the-cannabis-industry/>.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

⁸⁰ Ibid.

to other substance use disorders, although causal relationships remain unclear.⁸¹ Similar to alcohol and tobacco shops, cannabis dispensaries may be more likely to open in neighborhoods where the residents are at increased risk for psychiatric illness and substance use disorders, namely, low-income areas. There is some evidence from California of an increased prevalence of medical cannabis dispensaries and hospitalizations for cannabis use disorder.⁸² So, poorer residents, who are often people of color in the United States, may be those most likely to suffer negative consequences of legalization, as they were the ones to suffer under prohibition. Unlike wealthier citizens, they may not have the financial resources needed to access mental health services.⁸³ Given the general lack of mental health resources widely available in the United States, access to legal cannabis may result in health needs that cannot be met, ultimately contributing to criminal justice involvement and, potentially, incarceration.⁸⁴ Therefore, building up education and prevention efforts and mental health resources should be a process that co-occurs with cannabis legalization. Harm reduction is a useful approach given these realities.⁸⁵

3.4. Cannabis and social factors

Cannabis had traditionally been used by some Mexican and Native American populations in the Southwest U.S.⁸⁶ In the early 20th century, White U.S. Americans began associating cannabis use with Mexicans, who they were largely racist towards.⁸⁷ Cannabis was also used by social activists, especially during the 1960's by activists on the left side of the political spectrum who protested the war in Vietnam and racism.⁸⁸ Then-president Nixon used vilified cannabis and used cannabis as an excuse to target Black political activists and anti-war protesters as criminals.⁸⁹ Cannabis remains associated with left-wing protest politics today.⁹⁰

⁸¹ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁸² Mair C, Freisthler B, Ponicki WR, Gaidus A. (2015). The impacts of marijuana dispensary density and neighborhood ecology on marijuana abuse and dependence. *Drug and Alcohol Dependence*, 154:111–16.

⁸³ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

⁸⁷ Ibid.

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

Cannabis use has largely been accepted in the United States since the 1970's, and cannabis is the most popular prohibited substance in the United States.⁹¹ By 2021, 60% of polled U.S. Americans supported recreational legalization.⁹² In the U.S., social attitudes towards legalization have climbed consistently since the 1990's, with majorities of both republicans and democrats in favor.⁹³ Cannabis liberalization is partially due to widespread change in societal attitudes shifting from viewing cannabis as a dangerous substance, comparable to heroin, as a substance of lesser potential harm that may be more appropriately treated and regulated like other substances including alcohol.⁹⁴

There has been a decades-long fight from activists, academics and public servants for legalization as one of the ways to lessen, or eliminate, the societal harms associated with prohibition. A 2013 survey showed that 72% of U.S. Americans believed that cannabis criminalization was costing more than it was worth.⁹⁵ Furthermore, using the tax revenue generated from the legal market was espoused as a route to fund projects and resources for the communities most harmed by prohibition.⁹⁶

Furthermore, there are vested financial interests in the legal cannabis market. As the medical cannabis industry grew, its stakeholders began looking for the next opportunity, with recreational cannabis being the logical next market.⁹⁷ Billions of dollars have been invested into the legal markets in both the U.S. and Canada, a figure which quadrupled between 2017 and 2018.⁹⁸

⁹¹ Ibid.

⁹² Schaeffer, K. (2021). 6 facts about Americans and Marijuana. Retrieved from: <https://www.pewresearch.org/fact-tank/2021/04/26/facts-about-marijuana/>.

⁹³ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁹⁴ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

⁹⁵ Galston, W. A., & Dionne Jr, E. (2013). The new politics of marijuana legalization: Why opinion is changing. *The Brookings Institution*.

⁹⁶ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

⁹⁷ Kilmer, B., & MacCoun, R. J. (2017). How medical marijuana smoothed the transition to marijuana legalization in the United States. *Annual Review of Law and Social Science*, 13, 181-202.

⁹⁸ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

Ambivalence about cannabis legislation is natural, given that values and goals of health and safety and freedom can be seen in potential conflict in its regulation. Medical legalization makes sense as a first step in this context of ambivalence, given that it grants priority to health and freedom, but it does not go as far in compromising safety as many believe that full legalization would. Therefore, such a change can ease but not eliminate ambivalence.⁹⁹ As the medical cannabis industry developed, the average consumer gained exposure to the idea of a store selling cannabis products. In states where medical cannabis was allowed, they may have seen the stores in person, but no matter where they lived, advertisements and media coverage of the outlets allowed citizens to gain familiarity with them.¹⁰⁰ Additionally, the opioid addiction and overdose crisis which the U.S. has been facing for the past decade furthered support for medical cannabis as a substitute for opiate painkillers.¹⁰¹

Both popular and political support for, or at least acceptance of, liberalization were strengthened by accumulating evidence that when cannabis became more available to the public, harms to the public did not vastly increase, and were perhaps even lessened. Evidence about the effects of medical cannabis laws and public health and safety demonstrate that it likely increases the prevalence of adult use of the substance, but not youth use. However, the picture is complicated by distinctions between the prevalence of use and quantity of use.¹⁰²

Adding impetus to liberalization and social equity have been recent societal shifts in the United States. The Black Lives Matter movement grew in response to police brutality and systemic racism. This movement's momentum was given new force in 2020 and 2021 as murders of Black individuals at the hands of police. U.S. Americans have become more aware of the connection between the War on Drugs, police brutality, incarceration and lost opportunities for people of color over time. Generally, those convicted of cannabis-related offenses have been very disempowered in the policy process and had their voices silenced, with little power to alter the status quo. Policy

⁹⁹ Kilmer, B., & MacCoun, R. J. (2017). How medical marijuana smoothed the transition to marijuana legalization in the United States. *Annual Review of Law and Social Science*, 13, 181-202.

¹⁰⁰ Ibid.

¹⁰¹ Lieber, M. (2018). Marijuana legalization could help offset opioid epidemic, studies find. Retrieved from: <https://edition.cnn.com/2018/04/02/health/medical-cannabis-law-opioid-prescription-study/index.html>.

¹⁰² Kilmer, B., & MacCoun, R. J. (2017). How medical marijuana smoothed the transition to marijuana legalization in the United States. *Annual Review of Law and Social Science*, 13, 181-202.

entrepreneurs, however, can use activism under the right circumstances to create a policy window, which is an opportunity for a significant policy change.¹⁰³ In this area, awareness, activism and the Black Lives Matter movement may have created a policy window for atypical reforms. This movement, by calling attention to widespread racism at all levels of society, also furthered the impetus for social equity and diversity in the legal cannabis market. Such a call to action occurred in the context of path dependency, where policy liberalizations were already occurring across the country, and gave these trends even more force. Therefore, the Black Lives Matter movement allowed for a critical juncture, a moment of political openness towards new policy solutions.¹⁰⁴

Additionally, as of 2021, there is more political will for policy change surrounding cannabis and social equity. In 2020 a democratic president came into power and democratic majorities were created in the U.S. Senate and House of Representatives. The Democratic party, in addition to being more diverse than the Republican party, also tends to be more liberal on issues of race and social equity, lending new support to the reform movement.

4. Policy learning in cannabis policy

One of the often-reported benefits of federalism in the U.S. is that states can act as laboratories for policy. States can learn from each others' policy models and experiences, and can also wait as political dynamics play out in other states in order to extrapolate what type of political reception such a policy move could meet in their context.¹⁰⁵

The process of cannabis policy development over the past several decades in the United States is widely characterized as interstate learning. Broadly speaking, policy diffusion is “the process through which policy choices in one [jurisdiction] affect those made in a second.”¹⁰⁶ Policy learning, as defined by Sabatier (1987) is, “relatively enduring alterations of thought or behavioral intentions which result from experience, and which are concerned with the attainment or revision

¹⁰³ Zahariadis, N. (2019). The Multiple Streams Framework: Structure, Limitations, Prospects. *Theories of the Policy Process, Second Edition*, Routledge: 65-92.

¹⁰⁴ Hogan, J. (2019). The Critical Juncture Concept's Evolving Capacity to Explain Policy Change. *European Policy Analysis*, 5(2): 170–189.

¹⁰⁵ Kilmer, B., & MacCoun, R. J. (2017). How medical marijuana smoothed the transition to marijuana legalization in the United States. *Annual Review of Law and Social Science*, 13, 181-202.

¹⁰⁶ Marsh, D., & Sharman, J. C. (2009). Policy diffusion and policy transfer. *Policy Studies*, 30(3), 269-288. P. 270.

of the precepts of one's belief system."¹⁰⁷ An additional definition by Meseguer (2005) holds that, "learning is taken to imply a change of beliefs (by some, also as a change of choices) in the light of the experience of others."¹⁰⁸

The primary actors relevant for the diffusion of policies can be considered policy entrepreneurs and are actors who "specialize in identifying problems and finding solutions." Kingdon (1984) adds that they are, "willing to invest their resources in return for future policies they favor... [though policy adoption] depends heavily on the appearance of the right entrepreneur at the right time."¹⁰⁹ There are two relevant levels of policy entrepreneurs in the cannabis case. The first are policy elites. The elite level is generally where the literature considers policy learning to take place, and policy elites are elected officials or lobbyists: those with institutional and social power.¹¹⁰ Activists, on the other hand, are those who are not elected officials who work to challenge the status quo. Activists in this space also collaborate intentionally, sharing lessons, advocacy materials, and visions for policy reform in this area. An advocacy coalition is a group of interconnected activists. The main groups in drug liberalization in the U.S. are the Marijuana Policy Project (MPP), SSDP, the National Organization for Marijuana Legalization (NORML) and Drug Policy Alliance (DPA).¹¹¹ These groups have shared resources, information and have collaborated for reform efforts.¹¹²

Different types of policy diffusion occur at the state level in the United States. These can be considered instrumental, social and political. The instrumental part of policy diffusion is rational, and occurs when states look to other states' experiments in policy as a guide for their own context. After such learning, the outcomes in terms of policy are to adopt the policy, to abandon it, or to

¹⁰⁷ Sabatier, P. A. (1987). Knowledge, policy-oriented learning, and policy change: An advocacy coalition framework. *Knowledge*, 8(4), 649-692. P. 665.

¹⁰⁸ Meseguer, C. (2005). Policy learning, policy diffusion, and the making of a new order. *The Annals of the American Academy of Political and Social Science*, 598(1), 67-82. P. 72.

¹⁰⁹ Kingdon, J. W., & Stano, E. (1984). *Agendas, alternatives, and public policies*. P. 197.

¹¹⁰ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

¹¹¹ Mallinson, D. J., & Hannah, A. L. (2020). Policy and political learning: The development of medical marijuana policies in the states. *Publius: The Journal of Federalism*, 50(3), 344-369.

¹¹² Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

adjust it.¹¹³ Social learning occurs in how policy issues are socially constructed, and whether or not that works to further the aims of the actors involved in that construction.¹¹⁴ Political learning involves learning about the policy process and political prospects of a certain policy.¹¹⁵

Kilmer and MacCoun posit that the passing and implementation of medical cannabis legislation smoothed the transition to cannabis legalization. This happened because the former process showed that voter initiatives were an effective way to enact legal change, psychological change occurred which interrupted the reproduction of the policies of the War on Drugs, evidence accumulated against concerns about the harms of cannabis, a cannabis industry developed and became visible, and it was made clear that the federal government would not prevent states and local jurisdictions from collecting cannabis tax revenue.¹¹⁶

4.1. Political learning in cannabis policy: the ballot initiative

Political learning is defined by Jordan (2019) as, “Learning about how to maneuver within and manipulate the policy process to advance an idea or policy.”¹¹⁷ This type of learning can be seen in the case of the diffusion of cannabis policy because those advocating for and advancing cannabis liberalization did not only learn from one another about what types of policies should be enacted, but also how to do so. The ballot initiative has played a primary role in passing cannabis liberalization and social equity reform, in an example of venue diffusion. According to Jordan (2019), venue diffusion occurs “choice of venue to pursue a policy is influenced by prior venue choices of governments [or activists] pursuing the policy.”¹¹⁸ Generally policy learning focuses on content and political learning focuses on process. Venue diffusion, however, holds that for ballot initiatives these processes can be considered together.¹¹⁹

¹¹³ Mallinson, D. J., & Hannah, A. L. (2020). Policy and political learning: The development of medical marijuana policies in the states. *Publius: The Journal of Federalism*, 50(3), 344-369.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Kilmer, B., & MacCoun, R. J. (2017). How medical marijuana smoothed the transition to marijuana legalization in the United states. *Annual Review of Law and Social Science*, 13, 181-202.

¹¹⁷ Jordan, M. P. (2019). What happens in your state doesn't stay in your state: Omissions and opportunities in policy diffusion. *Michigan State University*. P. 15.

¹¹⁸ Ibid.

¹¹⁹ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

In the United States, voter initiatives allow citizens in states to collect a sufficient amount of votes in order to either force the legislature to pass legislation or to directly pass legislation.¹²⁰ Hundreds of cannabis-related voter initiatives have come on state and local ballots since the 1970's. Some states do not have this process, however.¹²¹ Medical cannabis use policy spread quickly between 1996 and 2012, with 18 states adopting medical cannabis measures either via state legislature or popular initiatives.¹²²

While policy diffusion is usually studied at a high, political level, when occurring through ballot initiative it follows unique dynamics.¹²³ Ballot initiative literature focused on a process that is precisely the opposite, with grassroots policy entrepreneurs leading the push for policy and its adoption. Typically, such learning happens between these grassroots actors via organizing and activism. However, policy diffusion literature tends to fail to account for non-elite driven dynamics.¹²⁴ First of all, drafting of initiatives and mobilizing support from activists and the average voter relies on political learning and networking.¹²⁵ National groups such as MPP created and executed larger strategies to shape public opinion, and ran successful campaigns for medical cannabis in several states.

In Massachusetts, policy learning was driven by ballot initiatives.¹²⁶ Activists chose the ballot initiative as their way to further reform given that it allowed them to control the agenda and because past ballot initiatives showed success.¹²⁷ In 2008, there was Question 2 on the Massachusetts ballot, which proposed to lessen criminal penalties for cannabis offenses. This ballot initiative passed with over 65% support.¹²⁸ In 2012, Question 3 appeared on the Massachusetts ballot, which proposed legalizing medical cannabis. This measure won with 63%

¹²⁰ Initiative Process 101. *NCSL*. Retrieved from: <https://www.ncsl.org/research/elections-and-campaigns/initiative-process-101.aspx>.

¹²¹ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ *Ibid.*

¹²⁸ *Ibid.*

of the population in favor.¹²⁹ Again, due to their prior success in liberalization as well as other states' successes, reform advocates introduced Question 4 in 2016, which proposed recreational legalization.¹³⁰ Policy elites in Massachusetts tended to resist cannabis liberalization in each of these cases, arguing that ballot initiatives would not be able to sufficiently regulate cannabis. The state's legislature, however, refused to engage with this issue and deferred the issue to voters repeatedly.¹³¹

4.2. Policy learning for social equity

Policy learning happens constantly between policy actors regarding social equity and cannabis. Following legalization, it became clear that work was still needed to, "maximize the benefits and limit the detriments to society."¹³² For example, in Colorado quickly after legalization, there were limited venues for people with prior cannabis convictions to expunge them. Furthermore, those who wanted to be legally employed in the new market had to demonstrate 'good behavior,' which included testing for prior cannabis convictions.¹³³ Later, seeing this as a mistake, ballot initiatives in states including California explicitly created a model for expungement.¹³⁴

There is evidence of learning in, and from, the Massachusetts case. Cannabis Commission meetings are public, and highlight learning from other states, especially Colorado and California.¹³⁵ Massachusetts' Cannabis Control Mission reviewed three California city-based licensing programs and a statewide diversity program for medical cannabis in Pennsylvania when considering how to approach equity.¹³⁶ They learned, for instance, Californian cities utilized arrest data for cannabis possession and sales as well as economic measures in order to decide which place-based jurisdictions would receive benefits under the equity programs.¹³⁷ After looking at

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston. P. 2.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

the other programs more closely, the Massachusetts Cannabis Control Commission hired a cannabis researcher to identify which areas in Massachusetts was disproportionately-affected¹³⁸

In the ensuing work of the Cannabis Commission, Massachusetts has been seen as a model in centering equity issues in its legalization effort.¹³⁹ Their example stalled efforts in New York and New Jersey by arming activists with demands for policy provisions that addressed the harms of criminalization.¹⁴⁰ Interviewees in Moyer's research who were involved in the social equity process in Massachusetts referenced a 'model bill' that the MPP used in the initiative drafting phase, and looked to other states' policy efforts to make decisions.¹⁴¹ On their website, the Minority Cannabis Business Association offers sample bills and press releases for state social equity programs. There is strong evidence using text-matching techniques from different states' initiatives that show that activists re-use language between states, in line with the key role of professional lobbying groups in policy diffusion in this policy area.¹⁴²

4.3. Weaknesses of ballot initiatives

Ballot initiatives have proven to be an especially effective way to pass legislation in cannabis policy, both for liberalization and for social equity programs. However, this form of democratic decision making has some weaknesses when compared to policy change through the state legislature. First of all, complex policies tend to have lower salience for voters, so initiatives need to be simplified for public palatability.¹⁴³ Additionally, there is a single subject rule which is in 43 state constitutions and prevents drafters of initiatives from including multiple efforts in one ballot initiative, for example mixing liberalization and expungement efforts or creating equity programs.¹⁴⁴ In Massachusetts, for example, there is an additional limitation that ballot initiatives could not allocate funding.¹⁴⁵

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Ibid.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

The committees who participate in drafting legislation and organizing often have a very narrow information base, being experts on drug policy and criminal justice but lacking expertise in regulation in terms of licensing, profit generation, food safety, public health, and the law. These are issues that regulators would inherently face when passing such legislation but through state legislature, and legislatures have more processes and opportunities for gaining such information through hearings or other mechanisms.¹⁴⁶ Therefore, legislation passed through ballot initiatives often had gaps that regulators would later have to grapple with.¹⁴⁷ Additionally, in the public view, these committees can appear to be more serving of private industry interests than the public good.¹⁴⁸

5. Policy considerations for social equity

There are several ways that policies can be designed in order to distribute the benefits and burdens of cannabis liberalization. The primary ways to distribute the benefits of liberalization are through regulating cannabis business licenses, through provision of business and financial assistance, and through expungement policies. Policies to equitably distribute the burdens of liberalization are less common, but still merit consideration.

There has been a push in some jurisdictions to preferentially grant licenses to those who were more harmed by cannabis prohibition, based on location, race or ethnicity, or their criminal record. This means giving an advantage in licensing to those in communities where there were disproportionate numbers of cannabis-related arrests, giving priority to minority applicants, or giving licenses to those who had prior cannabis convictions.¹⁴⁹ As a baseline, it is often established that prior cannabis convictions should not be a barrier to licensing. Given widespread knowledge concerning racial bias in policing and drug-related convictions, predicated access to the legal market on a clear criminal record discriminates against those who suffered most under prohibition.¹⁵⁰ In Washington, for example, prior drug convictions do not necessarily pose a barrier for employment

¹⁴⁶ Ibid.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

¹⁵⁰ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

in the industry.¹⁵¹ However, this is not the case everywhere. In Colorado, applicants for cannabis business licenses cannot have felony convictions in the past 5 years, or 10 years if the felony conviction was cannabis related.¹⁵² Licensing fees can also be prohibitively expensive. In California, depending on the projected revenue, they can range from \$10,000 to \$300,000.¹⁵³

Additionally, beyond licensing, it can be difficult for those selected for licenses to have the resources needed, in terms of capital, legal assistance, and business skills, to enter the legal market.¹⁵⁴ High business startup costs exist in the context of entrenched racial disparities in wealth and access to capital.¹⁵⁵ It can also be prohibitively costly to reach state requirements for security, monitoring and product testing.¹⁵⁶ Grants are a common way to address this. California's legal cannabis program grants up to \$10 million to equity applicants, offering grants for starting and maintaining their businesses.¹⁵⁷

It is an internationally-accepted principle that when a law changes to make a previously illegal offense legal, the punishments or criminal records associated with that act should be undone.¹⁵⁸ Expungement is a process in which legal records of an arrest or conviction are 'sealed,' meaning erased in legal terms. This process must be ordered by a court.¹⁵⁹ Generally, conditions for expungement include that the conviction was related to possession limited to 1 or 2 ounces, that the defendant have no other criminal record, and there can also be a waiting period stipulated before a defendant can request expungement.¹⁶⁰ Expungement can be automatic, with the onus falling on the state, or it can be left to the individual to be aware of and follow the process.¹⁶¹

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

¹⁵⁴ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

¹⁵⁵ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

¹⁵⁶ Ibid.

¹⁵⁷ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

¹⁵⁸ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

Early legalization measures in the U.S. failed to address the issue of criminal records for past cannabis offenses.¹⁶² In 2014, Oregon made a shift when they passed a ballot initiative that facilitated sealing prior cannabis convictions.¹⁶³ Now, expungement for prior cannabis offenses tends to be included in cannabis legalization efforts through ballot initiative or state legislation.¹⁶⁴ Some states, however, have dealt with the issue of expungement only after legalization, which Adinoff and Reiman posit could be done in order to lessen voter resistance to legalization efforts. Some voters consider it only fair that those who have been convicted of breaking the law are punished for doing so, and furthermore, expungement can be a lengthy and costly process.¹⁶⁵ As of 2019, there were three states that legalized cannabis but did not provide an option for expungement.¹⁶⁶

Given that there is a bureaucratic process associated with expungement in most cases, which falls on the applicant, and that the outcome is always uncertain, many who are eligible forgo the opportunity to apply for expungement.¹⁶⁷ Naturally, given these barriers, it is eligible applicants who possess more resources in terms of time, money and information that are more likely to undergo this process. Furthermore, given a racial bias in the policing and justice systems, minority applicants are more likely to have additional criminal records and therefore to be ineligible.¹⁶⁸ In Oregon, for example, out of 78,000 eligible applicants, less than 1,000 applications were made between 2015 and 2016. In California, similarly, despite having almost 500,000 eligible applicants, less than 5,200 applications were received by March 2018.¹⁶⁹ Washington passed a law in 2018 which allowed expungement of prior state cannabis possession convictions, on the conditions that the conviction occurred between 1998 and 2012 and that the conviction be their only one. Only 3,500 people were eligible for expungement under those conditions. In 2019, however,

¹⁶² Ibid.

¹⁶³ Ibid.

¹⁶⁴ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

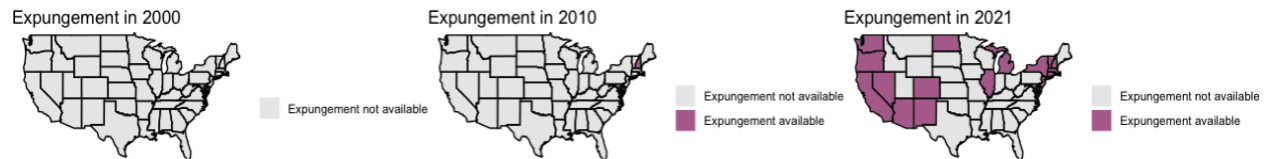
¹⁶⁷ Ibid.

¹⁶⁸ Ibid.

¹⁶⁹ Ibid.

Washington passed another expungement bill which became inclusive of cannabis misdemeanor convictions at both the state and municipal level.¹⁷⁰

Figure D: State expungement policies over time



Source: NORML, Marijuana Policy Project, Rolling Stone, Collateral Consequences Research Center, Wikipedia.

One often-proposed mechanism to respond to the fact that the negative costs of prohibition is to use cannabis-related revenues at the state level to fund programs.¹⁷¹ California has a “Community Reinvestment Fund” which aims to fund community programs which focus on jail diversion, economic development and mental health treatment to rebuild “communities disproportionately affected by past federal and state drug policies.”¹⁷² Funding can be provided to local health departments and nonprofits. Politically, however, it is generally easier to propose diverting cannabis revenue to education and law enforcement.¹⁷³ While revenue from the cannabis industry is typically the source of funding for new programs, what must also be considered is the complex system of enforcement which has been built up to support cannabis prohibition. When considering the police force, courts, and prisons, this amounts to billions of dollars.¹⁷⁴ The federal government and many states continue to allocate incredible sums of money to this system, money that could be redirected towards social justice aims.

Finally, it is necessary to consider how to lessen the harms associated with liberalized cannabis policies. To lessen harms, jurisdictions where cannabis use is legal should reconsider supply

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

¹⁷² Revenue and Taxation Code - RTC. *California Legislative Information*. Retrieved from: https://leginfo.ca.gov/faces/codes_displaySection.xhtml?sectionNum=34019.&lawCode=RTC.

¹⁷³ Bryon Adinoff & Amanda Reiman (2019) Implementing social justice in the transition from illicit to legal cannabis, *The American Journal of Drug and Alcohol Abuse*, 45:6, 673-688, DOI: 10.1080/00952990.2019.1674862

¹⁷⁴ Ibid.

prohibition.¹⁷⁵ Even in a legal market, there will still be interactions between law enforcement and citizens as related to cannabis, however. Given that legalization does not immediately displace or undo the illicit market, and in order to keep the illicit market at bay, it can even be necessary to ramp up police intervention in order to suppress the illicit market.¹⁷⁶ Arrests can be related to underage possession, driving under the influence, consuming in public and illegal cultivation.¹⁷⁷ In general, the penalties that are applied for public and underage consumption are proportional.¹⁷⁸ Even small fines can have large negative consequences on individuals in the long term given that unpaid fines can result in broader legal action, such as being considered a parole violation or leading to an arrest.¹⁷⁹

The next section will introduce the case studies of four states where recreational legalization has been achieved and where comprehensive social equity programs have been put in place. These case studies provide an opportunity to examine how such programs aim to distribute the benefits and burdens of legalization, an examination which is supported by applying Österle's model for social equity.

5.1. Case studies

Case 1: Massachusetts

The Massachusetts social equity program came from the 2016 Legalization, Regulation and Taxation of Marijuana Initiative (Question 4) Massachusetts ballot initiative,¹⁸⁰ which legalized recreational cannabis when it passed with 54% of votes.¹⁸¹ It was then signed into law by Republican Governor Charlie Baker. It created two advisory bodies, the Cannabis Control Commission and the Cannabis Advisory Board. According to the Massachusetts Cannabis Control Commission, "equity is the recognition and accommodation of differences through fairness in

¹⁷⁵ Ibid.

¹⁷⁶ Kilmer, B. (2019). How will cannabis legalization affect health, safety, and social equity outcomes? it largely depends on the 14 ps. *The American Journal of Drug and Alcohol Abuse*, 45(6), 664-672.

¹⁷⁷ Ibid.

¹⁷⁸ Bryon Adinoff & Amanda Reiman (2019) Implementing social justice in the transition from illicit to legal cannabis, *The American Journal of Drug and Alcohol Abuse*, 45:6, 673-688, DOI: 10.1080/00952990.2019.1674862

¹⁷⁹ Ibid.

¹⁸⁰ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

¹⁸¹ Massachusetts Marijuana Legalization, Question 4 (2016). *Ballotpedia*. Retrieved from: [https://ballotpedia.org/Massachusetts_Marijuana_Legalization,_Question_4_\(2016\)](https://ballotpedia.org/Massachusetts_Marijuana_Legalization,_Question_4_(2016)).

process and result to prevent the continuation of an inequitable status quo.”¹⁸² In Massachusetts, 71.1% of the state population is White, 12.4% are Hispanic or Latino, 9% are Black or African American, and 7.2% are Asian.¹⁸³ The Social Equity Program and the Economic Empowerment Program (EE) are the primary ways that the Cannabis Control Commission addresses disparities due to prior criminalization.

Case 2: Illinois

In Illinois, legislators were pushed by the governor to create an equitable legalization system from the ground up, rather than being forced by a voter initiative.¹⁸⁴ The Illinois cannabis legalization bill passed in the state’s senate with a vote of 38 to 17, with only 3 Republicans voting in favor.¹⁸⁵ Then, in the state’s senate, it passed by a margin of 66 to 47.¹⁸⁶ Finally, the state’s Democratic Governor JB Pritzker signed it into law as of 2020.¹⁸⁷ The rhetoric surrounding the bill’s passing focused on social equity for minority communities in the state as well as Illinois’ opportunity to become a leader in social equity. In Illinois, 60.8% of the state population is White, 17.5% of the population is Hispanic or Latino, 14.6% are Black or African American, and 5.9% are Asian.¹⁸⁸ The program is codified into law, unlike in MA and MI, with specific requirements for social equity applicants.¹⁸⁹ Illinois does not have a designated regulatory agency for cannabis, but rather has a Cannabis Regulation Oversight Officer under the state’s Department of Financial and Professional Regulation.¹⁹⁰

¹⁸² Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

¹⁸³ Massachusetts: Quick Facts. *U.S. Census Bureau*. Retrieved from: <https://www.census.gov/quickfacts/MA>.

¹⁸⁴ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

¹⁸⁵ Pearson, R., Petrella, D., and Munks, J. (2019). Legal recreational marijuana in Illinois a step closer after Senate vote; bill heads to House next. Retrieved from: <https://www.chicagotribune.com/politics/ct-met-illinois-marijuana-legislation-senate-20190529-story.html>.

¹⁸⁶ Ibid.

¹⁸⁷ Jaeger, K. (2019). Illinois lawmakers send marijuana legalization bill to governor’s desk. Retrieved from: <https://www.marijuanamoment.net/illinois-lawmakers-send-marijuana-legalization-bill-to-governors-desk/>.

¹⁸⁸ Illinois: Quick Facts. *U.S. Census Bureau*. Retrieved from: <https://www.census.gov/quickfacts/IL>.

¹⁸⁹ Sheppard, B. (2020). Going for the Green: Social Equity in the Recreational Cannabis Industry, *Lincoln Mem’l U. L. Rev.* 8. 280.

¹⁹⁰ Illinois governor appoints Danielle Perry as cannabis czar. (2020). *MJ Biz Daily*. Retrieved from: <https://mjbizdaily.com/illinois-governor-appoints-danielle-perry-as-marijuana-czar/>.

Case 3: Michigan

Legalization passed in 2018 via voter initiative, with 56% approval, in Michigan.¹⁹¹ In the same electoral race, a Democratic candidate won a state senate seat and 8 Democratic candidates and 7 Republican candidates won seats in the House of Representatives.¹⁹² The ensuing law requires the state cannabis regulatory agency, the Marijuana Regulatory Agency, to develop a plan to promote and encourage participation in the cannabis industry for individuals disproportionately impacted by prohibition and enforcement. Under this agency exists the Racial Equity Advisory Workgroup.¹⁹³ In Michigan, 74.1% of the state's population is White, 14.5% of the population is Black or African American, 5.3% are Hispanic or Latino and 3.4% are Asian.¹⁹⁴

Case 4: New York

New York's social equity plan represents a comprehensive effort which was passed using the state legislature, rather than via voting initiative, under New York's Marijuana Regulation and Taxation Act (2021). Different versions of the same law have been submitted to the New York Legislature by its Democratic sponsors since 2013.¹⁹⁵ In New York, 55.3% of residents are White, 19.3% are Hispanic or Latino, 17.6% are Black or African American, and 9% are Asian.¹⁹⁶ In 2020, people of color constituted 94% of arrests and summons for cannabis.¹⁹⁷ In the end, the legislation passed on party lines: only Democrats voted for it, and no Republicans did.¹⁹⁸ Democratic governor Andrew Cuomo then signed it into law. New York is the 15th state to legalize cannabis, and the 4th through the legislature.¹⁹⁹ New York's adult use law is considered by many to be the industry leader in terms of social equity provisions.²⁰⁰ There is a goal set to issue 50% of adult-use licenses to social and economic equity applicants. In order to accomplish these goals, the legislation created

¹⁹¹ Michigan Proposal 1, Marijuana Legalization Initiative (2018). *Ballotpedia*. Retrieved from: [https://ballotpedia.org/Michigan_Proposal_1,_Marijuana_Legalization_Initiative_\(2018\)](https://ballotpedia.org/Michigan_Proposal_1,_Marijuana_Legalization_Initiative_(2018)).

¹⁹² Michigan Elections 2018. (2018). *Ballotpedia*. Retrieved from: https://ballotpedia.org/Michigan_elections,_2018.

¹⁹³ Sheppard, B. (2020). Going for the Green: Social Equity in the Recreational Cannabis Industry, *Lincoln Mem'l U. L. Rev.* 8. 280.

¹⁹⁴ Michigan: Quick Facts. *U.S. Census Bureau*. Retrieved from: <https://www.census.gov/quickfacts/MI>.

¹⁹⁵ Burgio, A. (2021). New York Cannabis Law Prioritizes Social, Economic Equity. Retrieved from: <https://news.bloomberglaw.com/cannabis/new-york-cannabis-law-prioritizes-social-economic-equity>.

¹⁹⁶ New York: Quick Facts. *U.S. Census Bureau*. Retrieved from: <https://www.census.gov/quickfacts/NY>.

¹⁹⁷ *Ibid*.

¹⁹⁸ Marijuana regulation in NY didn't have to be partisan. (2021). Retrieved from: <https://www.syracuse.com/state/2021/05/marijuana-regulation-in-ny-didnt-have-to-be-partisan-your-letters.html>.

¹⁹⁹ Burgio, A. (2021). New York Cannabis Law Prioritizes Social, Economic Equity. Retrieved from: <https://news.bloomberglaw.com/cannabis/new-york-cannabis-law-prioritizes-social-economic-equity>.

²⁰⁰ <https://mjbizdaily.com/new-yorks-marijuana-social-equity-program-a-possible-game-changer/>

an Office of Cannabis Management which is governed by a Cannabis Control Board tasked with oversight and implementation of the law. The Office of Cannabis Management handles business licensing.²⁰¹

5.2. Experiences of these programs thus far

The social equity programs detailed here are relatively new, and robust evaluations of their impacts are either not yet conducted or not yet publicly available. What tends to be available are critiques of their effectiveness, which are detailed below. Highlighting areas where these social equity models have fallen short of their goals is important for gradually bettering the design of their programs and for informing the design of other state programs.

Furthering racial diversity

Early experiences of social equity plans in the legal cannabis market highlight that these plans are unable to directly further racial equity. As of May 2019, 2.2% of cannabis business applications in Massachusetts came from self-reported minority individuals, despite the fact that Black and Hispanic people comprise about 20% of the state population.²⁰² In Illinois, where the social equity plan was considered the most robust in the country at the time of its passing, 15 months after the law went into effect, there were no dispensaries in the state owned by people of color.²⁰³ Barriers to entry are somewhat lowered by the provisions in the plan, but it does not address the lack of capital needed to get these businesses off the ground, such as loans, or assistance in setting up businesses.

In Michigan, data collected in December 2020 by the state's Marijuana Regulatory Agency reflected that only 3.8% of owners in recreational cannabis businesses are Black, and 1.5% are Hispanic and Latino.²⁰⁴ Following this report, there are proposals to raise taxes on cannabis to work on social equity programming, including providing loans and grants to social equity license

²⁰¹ Marijuana Regulation and Taxation Act. (2021). *New York State*. Retrieved from: <https://cannabis.ny.gov/laws-regulations>.

²⁰² A Baseline Review and Assessment of the Massachusetts Adult-Use Cannabis Industry: Market Data and Industry Participation. (2020). *Massachusetts Cannabis Control Commission*. Retrieved from: https://mass-cannabis-control.com/wp-content/uploads/2020/02/Market_Data_and_Industry_Participation_February_2020.pdf.

²⁰³ Burgio, A. (2021). New York Cannabis Law Prioritizes Social, Economic Equity. Retrieved from: <https://news.bloomberglaw.com/cannabis/new-york-cannabis-law-prioritizes-social-economic-equity>.

²⁰⁴ Egan, P., Dixon, J. Report calls for new marijuana taxes to promote minority ownership. Retrieved from: <https://eu.freep.com/story/news/local/michigan/2021/01/19/michigan-marijuana-taxes-boost-minority-ownership/4198528001/>.

applicants to help with startup and operational costs. New worker training and technical assistance programs are also planned, as well as programs for social equity applicants to work in existing large cannabis businesses for some time to gain the skills needed to start their own. Additionally, the agency would host a platform which would allow local businesses to invest in cannabis businesses in economically disadvantaged communities. Finally, the microbusiness license would be altered to allow 300 plants, rather than the prior 150, to applicants who wish to grow, process and sell independently. It would also, however, allow these licensees to buy plants from licensed growers and to utilize the services of licensed processors, making them less vulnerable to crop failures and reduce start up costs as they would no longer be required to fund equipment and staff for all parts of the production process.²⁰⁵ These represent concrete steps to further the existing social equity plan, furthering diversity in the legal market by lowering barriers to entry and facilitating entry.

Business social equity plans

In Massachusetts, applicants were free in how they could propose fulfilling the requirements for the Positive Impact Plan (PIP), which led to a lot of variation in terms of the plans specificity and actionability. Further guidance has become available through the Cannabis Commission website,²⁰⁶ and this alongside more stringent requirements would be a potential way to maximize these requirements' impact. While perhaps the effectiveness of these criteria is not maximized, the state has rejected some applications based on failure to meet them. Holding companies responsible for not living up to their PIPs is an important, and unresolved, question.

As of February 2021, cannabis businesses licensed in Michigan could choose whether or not to share their Social Equity Plans on the Marijuana Regulatory Agency website. Making this information publicly available furthers accountability for the businesses to live up to their plans. Only 37 of 259 businesses choose to share these plans.²⁰⁷

²⁰⁵ Ibid.

²⁰⁶ Model Diversity and Positive Impact Plans. *Cannabis Control Commission*. Retrieved from: <https://masscannabiscontrol.com/applicants-licensees/model-diversity-and-positive-impact-plans/>.

²⁰⁷ Dozens of cannabis retailers reveal social equity plans. (2021). *Michigan Cannabis Industry Association*. Retrieved from: <https://micia.org/2021/02/05/dozens-of-cannabis-retailers-reveal-social-equity-plans/>.

Burdens to social equity applicants

In general, there is an issue wherein while social equity applicants jump through several hoops in order to apply for, receive, and capitalize on their license, wealthier applicants and business owners have an advantage. In Massachusetts, social equity applicants had to wait long times, at least several months, for approval from local and state levels. In the first year, no Economic Equity applicants were approved. This is an additional barrier for applicants to the Economic Empowerment program. They had already invested and were paying expenses, like rent, as they waited for their applications to be approved.²⁰⁸ By 2017, wealthy investors comprised an elite group pretty much monopolizing the Massachusetts industry. They are largely White and were not directly impacted by criminalization.²⁰⁹ Facing the gap in resources is a difficult task: the Massachusetts Cannabis Commission worked with small and medium sized banks to assist applicants in gaining capital, but given federal illegality of cannabis causing a threat for persecution, banks tend not to.²¹⁰

5.3. Applying Österle's Model

Österle's model for social equity in policy design is useful for zooming in on the specific provisions of each state's social equity programs and understanding the goals that underlie them. This means breaking down each aspect into the, 'what', 'for whom' and 'how,' or into the resources, recipients, and principles. The breakdown of each state's program using the model can be found in the Annexes.

Resources

- 1) Expungement: All states have a road to expungement as a way to alleviate past harms of prohibition. In Michigan and Massachusetts, individuals must apply, placing the impetus on them. In New York and Illinois, prior cannabis convictions are automatically expunged.
- 2) Licensing: In Massachusetts, the way that advantages are given in licensing is by offering priority review and assistance. In Illinois, in addition to application assistance, extra points on licensing applications are available for social equity applicants, in addition to lesser

²⁰⁸ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

²⁰⁹ Ibid.

²¹⁰ Ibid.

licensing fees. New York also offers application assistance in addition to reduced or completely waived licensing fees, as does Michigan. Given that social equity applicants tend to have lesser financial resources, reducing and eliminating application fees is an important measure, as is application assistance, given lesser access to counsel regarding legal and business matters. Massachusetts' priority review system for eligible applicants could be important in helping social equity applicants gain access to the market earlier, but seems to have been largely ineffective, given the lack of diversity in the market.

- 3) Technical assistance: All states other than New York offer business assistance to eligible individuals and entities. Massachusetts' Social Equity Program does this via training, technical assistance, and monitoring. Illinois offers technical assistance and support through their state Department of Commerce and Economic Opportunity. Michigan takes a more hands-off approach, offering educational sessions, regional presentations, and to connect social equity applicants with business resources. While this approach has the potential to reach more individuals, it might also have less impact than direct assistance and the quality of the outside resources that the program directs applicants to could vary. The Illinois program is the most focused, given that one state agency is providing assistance. This could be a particularly strong approach, given the potential for that agency to give unified and qualified advice on business operations.
- 4) Grants and loans: Massachusetts and Michigan do not offer grants or other financial assistance for cannabis businesses. In Illinois, low-interest loans and grants are available to support business operations, with the explicit goal of giving social equity applicants a competitive edge over wealthier businesspeople. New York does not offer grants but does offer low- or zero-interest loans to social equity applicants. Given the lack of financial resources that social equity applicants tend to have, and the costs of starting a cannabis business, assisting eligible businesses via financial resources is an important way to further their potential for success.
- 5) Tax revenue: In all states except Michigan, the social equity program details how some tax revenue from cannabis will be channeled. The Massachusetts plan for utilizing tax revenue is relatively vague, and does not set how much will be diverted up front, nor what programs constitute 'restorative justice.' In Illinois, 25% of revenue will be used to create grants aimed at investing in disproportionately-impacted communities. New York offers the most

detailed plan, explaining how 100% of tax revenue will be directed, and it is divided between schools, drug treatment, public education, and the New York state community grants reinvestment fund. Both Illinois and New York aim in their granting to invest in communities in need, showing a commitment to and plan to further social equity. In addition, the New York plan to invest a significant amount (40%) of tax revenues in drug treatment and public education, including campaigns about cannabis and health, represents the only part of any of the state's social equity programs that addresses the burdens of cannabis legalization.

- 6) Social equity plans: In Michigan and Massachusetts, all applicants need to propose a plan for social equity in their business, whether they are social equity applicants or not. However, inclusion of social equity applicants in the cannabis market furthers social equity in itself. Given that social equity applicants already face a longer application process and generally face it with less financial and human capital resources available, these plans can pose an unnecessary additional burden for them.

Recipients

- 1) Expungement: Massachusetts, Michigan and New York allow it for all now-legal conduct, while Illinois limits expungement for those with prior arrests and convictions related to up to 1 ounce of cannabis. This is likely done to exclude those who had trafficking charges for cannabis, despite the fact that in the legal market, selling 1 ounce of cannabis is not illegal.
- 2) Social equity applicants: All states directly target those who have been disproportionately affected by the War on Drugs in their definitions of social equity applicants, based on experiences with criminal justice and living in a disproportionately affected community. Michigan additionally includes individuals who were a registered primary caregiver as part of the state medical cannabis program for at least two years. New York has the most expansive definition of social equity applicants and includes not only the residence of the applicant, but also women and minority-owned businesses, veterans with disabilities, and financially disadvantaged farmers. New York's definition is strong in that it directly mentions minority-owned businesses, targeting racial equity in the market. While New York's expansive definition has the potential to help several disadvantaged groups, it

breaks with the status quo in that it does not solely prioritize the groups most affected by the War on Drugs. Whether or not this expansive definition lessens potential for social equity amongst the most affected groups will be important to evaluate.

- 3) Disproportionately-impacted individuals: Massachusetts, in addition to defining social equity applicants, also defines disproportionately-impacted applicants for the purpose of offering them faster licensing, and focuses on the owners and employees of the business. Individuals are considered given their places of residence, prior business experiences serving disadvantaged groups, prior cannabis convictions, and whether they are Latino or African American. This definition is strong in that it directly mentions race, one of the most important aspects for furthering social equity, but these applicants are only eligible for priority review, not for other types of business assistance.
- 4) Disproportionately-impacted communities: All states' definitions for disproportionately-impacted communities combine prior cannabis law-enforcement involvement and economic need.
- 5) Competitive advantages: In Massachusetts, Illinois and Michigan, businesses are given licensing advantages or additional support if they have a plan to further economic development in an disproportionately-impacted community, and in Illinois also if they have a plan to further diversity. Again, this may favor businesses which have more resources at their disposal in terms of planning and execution of such plans.
- 6) Tax revenue: In all states other than Michigan, tax funding will be diverted to programs targeting disproportionately-impacted or underserved communities, and in New York it will also be channeled to other uses.

Principles

- 1) The most common principles used to determine how to spread the benefits and burdens of legalization are need-related, status-related and economic. Need-related and status-related principles tend to target those who were affected by criminalization of cannabis. This is directly in line with social equity in that it aims to counter the effects of preexisting disadvantages or injustices.

- 2) Merit based principles in these cases aim to favor applicants who have more potential to further social equity through their own work, either in terms of economic empowerment of communities or individuals.
- 3) Economic principles, relying on income level, are also widely used to identify who is economically disadvantaged and heighten their potential for economic empowerment.
- 4) Egalitarian principles are utilized when all applicants need to do a certain thing, such as in the case of providing their own social equity plans, and the relative burdens of this requirement should be considered. Applicants who are already at a disadvantage in terms of social equity may find this planning and the commitment it entails to be more of a burden than other applicants.

6. Discussion

The social equity programs detailed in these case studies represent ambitious and comprehensive efforts to further social equity through cannabis policy. They share many aspects in common, especially in terms of their target groups and the types of programs they offer to those groups. These definitions are in line with what is known about which communities have been impacted by criminalization. The plans share the features of social equity plans that are considered important, namely expungement, assistance with licensing, and in most cases financial and business support for qualifying applicants. Additional requirements placed on social equity applicants, such as is the case in Massachusetts and Michigan, may represent unnecessary burdens on applicants who already lack resources. New York's diversion of tax funding towards public education and public health campaigns stands out as the only effort to respond to the burdens of liberalization. Initial data showing that these plans have not achieved minority representation in the legal market are cause for concern, and for policymakers to be open to adjusting their methods. Given the relative novelty of these plans, it will be necessary to continue to monitor them for key metrics, and to adjust the policies accordingly.

Due to limitations on space, this thesis fails to analyze federal policy design and federal policy changes which may occur concerning cannabis. However, the proposed federal de-scheduling of cannabis would allow states to regulate the substance as they wish. Therefore, it is likely that states would remain the primary sources of policy in this area. Both in this thesis and in existing policies,

there is a marked lack of attention to the burdens of liberalization. There has been no attention in any of these plans, for example, to how to lessen disparities in policing. Therefore, policing in the legal market, even in states with comprehensive social equity plans, runs the risk of continuing to further inequity. There is a need for further research that focuses on this aspect of social equity and provides actionable solutions.

6.1. Strengths and weaknesses of the model

Österle's model, originally developed for social policy, works well to break cannabis social equity programs into their components, especially given the overlaps between the resources, recipients and principles present across the plans. Therefore, a side-by-side comparison of nuances in definitions and methods was facilitated by this model.

Some principles did not perform as well when applied to these case studies. Need and economics can be inseparable when it is business help or financial assistance offered, so these categorizations for principles did not prove useful in all cases. Additionally, with some groups in New York's program, like women and disabled veterans, it is not clear why they are targeted. I assumed that it was need: that they need help to enter the industry.

Finally, given that Österle's model was designed for social policy and, specifically welfare, one principle was missing: one of merit. Given that applicants had to submit detailed plans and proposals to receive support and funding, the strength of the application determined by those plans also became an important factor, for example in the case of Massachusetts where applicants were asked to have a plan for economic empowerment. The merit principle, in this case, relates to the strength of the applicants' potential to further social equity.

6.2. Political conclusions

In line with prior literature about the weaknesses of ballot initiatives, limitations of ballot initiatives in terms of designing comprehensive policy are reflected here. Due to Massachusetts' rule against dedicating budgets via ballot initiative, the decision for how to fund restorative justice programs was left vague and up to the political will of the state legislature. The Illinois and New

York models, passed through the legislatures, have been considered the two gold standards²¹¹ for comprehensive social equity plans. They are the only two states which offer loans and grants to social equity applicants, which are undoubtedly important given the barriers that such applicants have to the legal market.

Given the track record of cannabis policy, wherein states imitate and learn from each other to respond to social pressures, and given that the current social climate favors social equity, policy elites should stop shying away from cannabis reform. Social equity policies have not been in place for long, and states will continue to learn from one another. The question is whether that learning will happen between activists and reformers, who may accomplish their aims via ballot initiatives, or whether policy elites will take the opportunity to learn from one another and legislate themselves. This may affect the social equity outcomes achieved given that state legislatures, compared to ballot initiatives, seem to be a preferable venue for passing comprehensive and effective social equity legislation.

6.3. Policy recommendations

- 1) Expungement should be automatic for all now-legal cannabis offenses. The burden of accomplishing this should be placed on a state agency, to be accomplished during a certain period of time.
- 2) As is already being practiced, applicants for cannabis licenses who fall within the state's definition of social equity applicants should be given preferential licensing and reduced, if not waived, application fees. Explicitly defining race as one of the characteristics making individuals eligible for these funds is one way to further diversity in market participation.
- 3) Financial assistance must be made available for businesses that fall within the state's definition of social equity applicants to address the prohibitively high start up and operational costs associated with entering the cannabis market. This assistance should be provided through grants or zero-interest loans. The provision of these funds should be given based on criteria, and wherever possible competition should be avoided given that

²¹¹ Burgio, A. (2021). New York Cannabis Law Prioritizes Social, Economic Equity. Retrieved from: <https://news.bloomberglaw.com/cannabis/new-york-cannabis-law-prioritizes-social-economic-equity>.

competition can undermine social equity when disadvantaged groups are asked to compete.²¹²

- 4) Community development and economic empowerment should continue to target communities disproportionately affected by the War on Drugs. Funding for these programs could be diverted from criminal justice costs, instead of only from taxes on cannabis revenue.
- 5) As is the case in New York, legalization and social equity efforts should include public information campaigns and education which aims to prevent vulnerable individuals from being negatively affected from increased access to, and access to stronger, cannabis.
- 6) States agencies should be required to collect and publish data related to social equity in their legal cannabis market, as well as to evaluate their social equity programs. This would include data collection and analysis about racial disparities in market participation and in arrests, and evaluations of programs aimed at social and economic empowerment. Carrying out these evaluations could be done with the assistance of independent researchers or academics.
- 7) A national network of policymakers should be formed to share ideas and experiences related to social equity in cannabis. Senators or representatives from the four states detailed here could spearhead this effort, which would facilitate policy learning and help shape more effective social equity programs.
- 8) Public participation should be prioritized in future policy design for social equity, given that individuals from communities most impacted by the War on Drugs are those best positioned to share their own needs, priorities, and how social equity programs could best serve them.

²¹² Collins, B. K., & Gerber, B. J. (2008). Taken for granted? managing for social equity in grant programs. *Public Administration Review*, 68(6), 1128-1141.

Annexes

Table 1: Facets of Massachusetts' Social Equity Program

What	For Whom	How
Expungement: Individuals must apply for expungement themselves. Some background checks will still reflect prior cannabis offenses. ²¹³	Those with prior convictions for cannabis-related offenses that are now legal.	Need-related principle
Licenses: Applicants from certain communities would be able to apply early for a priority review of their license application, and also become eligible for additional assistance in the licensing process. ²¹⁴	Communities disproportionately impacted by the war on drugs. 29 communities were identified. This is defined by a six-variable index including: the number of arrests for cannabis possession and sales, overall arrest numbers, population size, number of families living in poverty, and the unemployment rate.	Status-related principle
Economic Empowerment Program: This program aims to certify licensee applicants who met at least 3 of 6 criteria earlier and faster. ²¹⁵	Individuals disproportionately impacted by the war on drugs. Criteria: <ul style="list-style-type: none"> - The majority owners have lived in a disproportionately-affected area for 5 of the last 10 years. - Majority ownership has held positions in businesses which 	Mixed principles: status-related, need-related, merit-based

²¹³ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

²¹⁴ Ibid.

²¹⁵ Ibid.

	<p>serve disempowered groups.</p> <ul style="list-style-type: none"> - 51% of more of employees and contractors reside in disproportionately-affected areas, which should increase to 75% when the business is open. - 51% or more of employees and contractors have a prior cannabis conviction. - The majority of ownership is Latino or African American. - Owners have previous experience in economic empowerment work. <p>It's important to note that applicants for cannabis business licenses in Massachusetts should not have felony offenses, unless the felony offense involved cannabis but not minors.</p>	
Economic Empowerment Priority Review Program: Prioritizes review and licensing decisions for certain applicants who want licenses for retail, manufacturing and licensing. ²¹⁶	Review is prioritized for applications whose business practices promote economic empowerment in communities that have been disproportionately impacted by high rates of arrest and jail for cannabis possession offenses due to state and federal laws.	Merit-based, status-related

²¹⁶ Ibid.

<p>Social Equity Program: Provides business assistance to certain individuals in the forms of professional training, technical assistance, and mentoring.²¹⁷</p>	<p>The individual must meet one of the following criteria:</p> <ul style="list-style-type: none"> - Reside in an area of disproportionate impact for at least 5 of the past 10 years. - Current income may not exceed 400% of the federal poverty level. - Have a prior drug conviction. - Have been married to or the child of a person with a drug conviction. 	<p>Mixed principles: status-related, economics-related, need-related</p>
<p>License applicants must provide a Positive Impact Plan which proposes how the business will reduce barriers to entry into the market, train those who face barriers and utilize socially-responsible industry practices.²¹⁸</p>	<p>All licensee applicants.</p>	<p>Egalitarian</p>
<p>Massachusetts earmarks a proportion of tax revenues from its Marijuana Regulation Fund for, “programming for restorative justice.”²¹⁹</p> <p>However, how much funding will be available is uncertain given other funding priorities and allocations, as determined by the state’s legislature.</p>	<p>Programs are set to benefit economically disadvantaged persons in communities disproportionately impacted by high rates of arrest and incarceration for marijuana offenses.</p>	<p>Mixed principles: economics-related, status-related</p>

²¹⁷ Sheppard, B. (2020). Going for the Green: Social Equity in the Recreational Cannabis Industry, *Lincoln Mem’l U. L. Rev.* 8. 280.

²¹⁸ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

²¹⁹ Adinoff, B., & Reiman, A. (2019). Implementing social justice in the transition from illicit to legal cannabis. *The American Journal of Drug and Alcohol Abuse*, 45(6), 673-688.

Social Justice Leader designation is granted to certain cannabis businesses. ²²⁰	Cannabis businesses that donate 1% or more of their profits to the state Social Equity Training and Technical Assistance Fund and that carry out 50 hours or more of educational seminars for residents in areas which were disproportionately affected by cannabis-related law enforcement.	Merit-based
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Table 2: Facets of Illinois' Social Equity Program

What	For Whom	How
Expungement: State police must actively search their databases for cannabis arrests and convictions and eliminate them. ²²¹	Those with prior cannabis arrests and convictions related to up to 1 ounce of cannabis.	Mixed principles: need-related, status-related
Cannabis Business Development Fund: Provides low-interest loans or grants for the application process and business operations. ²²²	<p>Social equity applicants are defined as:</p> <ul style="list-style-type: none"> - 51% of ownership and control is by individuals previously convicted of an offense eligible for expungement - OR applicants who live in a disproportionately affected area for at least 5 of the last 10 years - OR if 51% of the employees reside in a disproportionately 	Mixed principles: need-related, status-related

²²⁰ Ibid.

²²¹ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

²²² Sheppard, B. (2020). Going for the Green: Social Equity in the Recreational Cannabis Industry, *Lincoln Mem'l U. L. Rev.* 8. 280.

	affected area or have a family member who has been convicted or arrested for an offense eligible for expungement.	
Technical assistance and support is available for social equity applicants, given by the Illinois Department of Commerce and Economic Opportunity. ²²³	<p>Social equity applicants are defined as:</p> <ul style="list-style-type: none"> - 51% of ownership and control is by individuals previously convicted of an offense eligible for expungement - OR applicants who live in a disproportionately affected area for at least 5 of the last 10 years - OR if 51% of the employees reside in a disproportionately affected area or have a family member who has been convicted or arrested for an offense eligible for expungement. 	Mixed principles: need-related, status-related
Extra points on licensing applications: Social equity applicants get up to 20% extra points for grower, processor and transporter licenses and up to 25% of the total possible for dispensary licenses. ²²⁴	<p>Among social equity applicants:</p> <ul style="list-style-type: none"> - If applicants are from negatively impacted communities, 50 of the possible 250 points are given automatically. - Extra points are afforded if they have a 	Mixed principles: status-related, merit-based

²²³ Burgio, A. (2020). Cannabis Legalization: Social Equity Provisions Are a Sticking Point and a Selling Point. Retrieved from: <https://nysba.org/cannabis-legalization-social-equity-provisions-are-a-sticking-point-and-a-selling-point/>.

²²⁴ Smith, J. (2021). New York's Marijuana Social Equity Program Eyed as Possible Game Changer. Retrieved from: <https://mjbizdaily.com/new-yorks-marijuana-social-equity-program-a-possible-game-changer/>.

	<p>plan for diversity, a plan to engage the community (examples of this would be an incubator program or collaborating with local treatment centers).</p> <ul style="list-style-type: none"> - Additional points are awarded for applicants who meet more than one of these criteria. 	
<p>Lessened application fees are available to social equity applicants.²²⁵</p>	<p>Social equity applicants are defined as:</p> <ul style="list-style-type: none"> - 51% of ownership and control is by individuals previously convicted of an offense eligible for expungement - OR applicants who live in a disproportionately affected area for at least 5 of the last 10 years - OR if 51% of the employees reside in a disproportionately affected area or have a family member who has been convicted or arrested for an offense eligible for expungement. 	<p>Mixed principles: need-related, status-related</p>
<p>25% of tax revenue from cannabis is devoted to grants aimed to “restore, reinvest and renew”</p>	<p>Disproportionately-impacted communities are those with high rates of cannabis arrests and convictions, poverty, and unemployment.</p>	<p>Mixed principles: need-related, economics-related</p>

²²⁵ Burgio, A. (2020). Cannabis Legalization: Social Equity Provisions Are a Sticking Point and a Selling Point. Retrieved from: <https://nysba.org/cannabis-legalization-social-equity-provisions-are-a-sticking-point-and-a-selling-point/>.

disproportionately-impacted communities. ²²⁶		
Statewide grant and loan programs aimed to give social equity applicants an edge over wealthy investors. ²²⁷	Social equity applicants. However, this program was only available at the beginning of legalization.	Status-related, time-related

Table 3: Facets of Michigan’s Social Equity Program

What	For Whom	How
Application and business support for social equity applicants: regional presentations, one-on-one application assistance, education on rules and regulations concerning cannabis, and connecting participants to resources that may help them. ²²⁸	<p>Social equity applicants are those who:</p> <ul style="list-style-type: none"> - Have lived in a ‘disproportionately impacted community’ for at least 5 of the past 10 years. - and/or have a prior cannabis conviction. - and/or if they are registered as a primary caregiver under the Michigan Medical Marihuana Act (MMMA) for at least 2 years between 2008 and 2017. <p>A disproportionately impacted community is defined as a community where the rate of convictions related to cannabis are greater than the state median, and</p>	Mixed principles: status-related, need-related, merit-based.

²²⁶ Moyer, J. (2020). *Innovation through Popular Diffusion: Seeking Social Equity through Cannabis Legalization in Massachusetts*. University of Massachusetts Boston.

²²⁷ Ibid.

²²⁸ Burgio, A. (2020). Cannabis Legalization: Social Equity Provisions Are a Sticking Point and a Selling Point. Retrieved from: <https://nysba.org/cannabis-legalization-social-equity-provisions-are-a-sticking-point-and-a-selling-point/>.

	20% or more of the population is living below the federal poverty level. Given this definition, there are approximately 184 such communities in the state. ²²⁹	
Fee reductions for cannabis businesses. ²³⁰	<p>A cannabis establishment qualifies for the social equity program if:</p> <ul style="list-style-type: none"> - They plan to operate a cannabis business in a disproportionately-impacted community. They get a fee reduction on all adult-use licensing fees. - Or, if they operate outside of the community, they will receive a fee reduction for 2 years following their adult-use licensing. <p>A disproportionately impacted community is defined as a community where the rate of convictions related to cannabis are greater than the state median, and 20% or more of the population is living below the federal poverty level. Given this definition, there are approximately 184 such</p>	Mixed principles: merit-based, egalitarian

²²⁹ Schaneman, B. (2020). Michigan Social Equity Regulations Help Cannabis Applicants Get Started but Lack Continued Support. Retrieved from: <https://mjbizdaily.com/michigan-social-equity-regulations-help-cannabis-applicants-get-started-but-lack-continued-support/>.

²³⁰ Burgio, A. (2020). Cannabis Legalization: Social Equity Provisions Are a Sticking Point and a Selling Point. Retrieved from: <https://nysba.org/cannabis-legalization-social-equity-provisions-are-a-sticking-point-and-a-selling-point/>.

	communities in the state. ²³¹	
License applicants must provide a Social Equity Plan which proposes how the business will promote and encourage participation of people from disproportionately-impacted communities and positively impact said communities. ²³²	All applicants for cannabis business licenses.	Egalitarian
Fee reductions for individual social equity applicants. ²³³	<ul style="list-style-type: none"> - If the applicant has lived in a 'disproportionately impacted community' for at least 5 of the past 10 years, they receive a 25% fee reduction. - and/or if they have a prior cannabis conviction, they receive a 25% fee reduction if it was a misdemeanor offense, and 40% if it was a felony offense. - and/or if they are registered as a primary caregiver under the Michigan Medical Marihuana Act (MMMA) for at least 2 years between 2008 and 2017, they receive a 10% fee reduction. 	Mixed principles: status-related, need-related, merit-based

²³¹ Schaneman, B. (2020). Michigan Social Equity Regulations Help Cannabis Applicants Get Started but Lack Continued Support. Retrieved from: <https://mjbizdaily.com/michigan-social-equity-regulations-help-cannabis-applicants-get-started-but-lack-continued-support/>.

²³² Dozens of cannabis retailers reveal social equity plans. (2021). *Michigan Cannabis Industry Association*. Retrieved from: <https://micia.org/2021/02/05/dozens-of-cannabis-retailers-reveal-social-equity-plans/>.

²³³ Schaneman, B. (2020). Michigan Social Equity Regulations Help Cannabis Applicants Get Started but Lack Continued Support. Retrieved from: <https://mjbizdaily.com/michigan-social-equity-regulations-help-cannabis-applicants-get-started-but-lack-continued-support/>.

	These fee reductions are cumulative up to 75% of application and license fees. ²³⁴	
Expungement: Those with prior cannabis convictions must apply for expungement. ²³⁵	Individuals with criminal records for cannabis-related conduct that is now legal.	Need-related

Table 4: Facets of New York’s Social Equity Program

What	For Whom	How
Social equity program: provides low and zero-interest loans, reduced and waived fees, and assistance with application preparation. ²³⁶	Social equity applicants, defined as people from: <ul style="list-style-type: none"> - “communities disproportionately impacted by the enforcement of cannabis prohibition” - minority and women-owned businesses - veterans with disabilities - farmers who are in financial trouble. 	Mixed principles: status-related, need-related, economics-related
Geographically-targeted licensing. ²³⁷	This is not yet clearly defined. The definition for disproportionately-impacted communities: “shall mean, but not be limited to, a history of arrests, convictions, and other law enforcement	Mixed principles: need-related, status-related

²³⁴ Ibid.

²³⁵ Lekhtman, Alexander. (2020). Michigan’s new marijuana expungement law: pros and cons. Retrieved from: <https://filtermag.org/michigan-marijuana-expungement/>.

²³⁶ New York’s Marijuana Regulation and Taxation Act (2021). (2021). Retrieved from: [https://www.mpp.org/states/new-york/new-yorks-marijuana-regulation-and-taxation-act-\(2021\)/](https://www.mpp.org/states/new-york/new-yorks-marijuana-regulation-and-taxation-act-(2021)/).

²³⁷ Burgio, A. (2021). New York Cannabis Law Prioritizes Social, Economic Equity. Retrieved from: <https://news.bloomberglaw.com/cannabis/new-york-cannabis-law-prioritizes-social-economic-equity>.

	<p>practices in a certain geographic area, such as, but not limited to, precincts, zip codes, neighborhoods, and political subdivisions, reflecting a disparate enforcement of cannabis prohibition during a certain time period, when compared to the rest of the state.”</p> <p>The cannabis board will utilize recommendations from the state’s cannabis advisory board and the chief equity officer and executive director to eventually determine which communities meet this definition and whether individuals are a part of the defined communities.</p>	
<p>Expungement: Now-legal conduct is automatically expunged. The Office of Cannabis Management will take care of this, and are given up to two years to accomplish it.²³⁸</p>	<p>Anyone arrested or convicted for now-legal conduct.</p>	<p>Need-related</p>
<p>Funding for social and economic equity programs and cannabis business incubators.²³⁹</p>	<p>Existing medical cannabis businesses are allowed to change no more than three of their existing storefronts for dual use with the recreational market if they pay a special</p>	<p>Egalitarian</p>

²³⁸ Ibid.

²³⁹ New York’s Marijuana Regulation and Taxation Act (2021). (2021). Retrieved from: [https://www.mpp.org/states/new-york/new-yorks-marijuana-regulation-and-taxation-act-\(2021\)/](https://www.mpp.org/states/new-york/new-yorks-marijuana-regulation-and-taxation-act-(2021)/).

	licensing fee to fund these programs.	
Funding for schools: Following regulatory and administrative costs, 20% of tax revenue will go to schools. ²⁴⁰	Students	Egalitarian
Funding for drug treatment and public education: Following regulatory and administrative costs, 40% of tax revenue will go to facilities for drug treatment and public education. This education includes a youth-focused prevention and public health campaign, a statewide public health campaign explaining the health effects of cannabis, and also for treatment of substance use disorders. ²⁴¹	Drug-dependent individuals, students, the public.	Mixed principles: Need-based, egalitarian
Community funds: Following regulatory and administrative costs, 40% of the tax revenues will go to the New York state community grants reinvestment fund. ²⁴²	Communities.	Egalitarian? Not totally clear.
Lessened restrictions on medical access: Longer supply provision and smoked products are available for the	Medical cannabis patients.	Need-related

²⁴⁰ Ibid.

²⁴¹ Ibid.

²⁴² Smith, J. (2021). New York's Marijuana Social Equity Program Eyed as Possible Game Changer. Retrieved from: <https://mjbizdaily.com/new-yorks-marijuana-social-equity-program-a-possible-game-changer/>.

first time. ²⁴³		
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²⁴³ New York's Marijuana Regulation and Taxation Act (2021). (2021). Retrieved from: [https://www.mpp.org/states/new-york/new-yorks-marijuana-regulation-and-taxation-act-\(2021\)/](https://www.mpp.org/states/new-york/new-yorks-marijuana-regulation-and-taxation-act-(2021)/).