

MEMO

To: NM Cannabis Control Division

From: NM Cannabis Regulatory Advisory Committee

Re: Social and Economic Equity Plan Recommendations

Date: December 16th, 2021

Introduction

New Mexico's Cannabis Regulation Act (CRA) legalizes the possession of cannabis and taxes and regulates the sale of cannabis for adults 21 and older. The CRA creates a comprehensive licensing, taxing, and enforcement regulatory structure administered by the Cannabis Control Division (CCD). The Act also establishes the Cannabis Regulatory Advisory Committee to advise the CCD in developing rules and procedures to implement this regulatory structure. The Advisory Committee is composed of 14 members from across New Mexico, representing a wide range of professional backgrounds.

In developing the regulatory structure, the CRA requires the CCD and the Advisory Committee to consider the impact of cannabis prohibition on communities, stating:

The division shall promulgate rules that...(7) promote and encourage full participation in the cannabis industry...by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibition in law and policy, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities. (CRA Section III, (7))

Further, the CRA requires “procedures that promote and encourage racial, ethnic, gender, and geographic diversity and New Mexico residency” across all aspects of the industry, as well as a certification process for micro-businesses that are “owned by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibitions in law and policy and underserved communities that include tribal, acequia, land grant-merced and other rural historic communities (CRA Section III, (8) and (9)).”

The CRA does not define the mechanism(s) for promoting full participation in the industry, instead tasking the Advisory Committee with providing recommendations to the CCD.

The Advisory Committee first convened in September 2021 and has prioritized gathering public input from across the state to inform its recommendations on promoting economic and cultural diversity in cannabis licensing and employment. A public-opinion survey commissioned by Drug Policy Action Fund of New Mexico and Weedmaps in November 2021 gathered feedback from over 600 registered voters (Appendix A). The Advisory Committee also invited the public to complete a “Social and Economic Equity” survey, which received more than 500 responses, and welcomed public comment at the November 4th meeting (Appendix B). Finally, the Advisory Committee contracted with Tellez-Humble LLC to gather detailed feedback (Appendix C) from community stakeholders through focus groups and one-on-one interviews.

This memo summarizes the Advisory Committee’s recommendations, reflective of public input and research, to the CCD to *“promote and encourage full participation in the cannabis industry...by representatives of communities that have been disproportionately harmed by rates of arrest through the enforcement of cannabis prohibition in law and policy, rural communities likely to be impacted by cannabis production and agricultural producers from economically disadvantaged communities.”*

Background

The War on Drugs—and specifically, cannabis prohibition—has had devastating impacts on Black, Indigenous, and Latinx communities in New Mexico. Low-income people and people of color have been disproportionately prosecuted for cannabis related crimes. While white and Black people use cannabis at similar levels, Black people have been nearly four times more likely to be arrested for marijuana possession. Criminalization and incarceration have trapped many individuals and families in cycles of poverty and discrimination, making people sick, limiting educational opportunities, and creating barriers to employment. Criminalization has been particularly damaging in the context of limited economic opportunity; New Mexico has the third-highest poverty rate in the nation at 18.2%, with significantly higher rates in many Black, Indigenous, Hispanic, and rural communities.

New Mexico has an opportunity to create successful equity initiatives. Several states have implemented equity programs. New Mexico can learn from those states’ experiences. New Mexico can also break new ground. Few states have considered rural equity.

The new industry will create challenges for Black, Indigenous, Latinx, rural, and low-income communities. Cannabis growing, processing, selling is complex. Large, out-of-state corporations have the knowledge and resources to navigate the process of starting a new cannabis business. They are moving quickly, sometimes without regard for water rights or workers’ rights, often leveraging capital that is not available to entrepreneurs from the communities most impacted by cannabis criminalization. Without solid equity programs, participants believe the communities harmed by cannabis criminalization will be left behind.

GROUNDING PRINCIPLES FOR LAUNCHING AN EQUITY PROGRAM

Below are a few principles in which policymakers and regulators should ground their social equity programs:

- A. Acknowledge government’s role** – Begin by acknowledging that government policies created the harms associated with the war on drugs and thus it is the responsibility of government to repair them. Legalization alone does not solve the problem and expecting private companies to address these harms is unrealistic and misplaced.
- B. Social equity is everyone’s responsibility** – Recognize the responsibility of people in government to educate themselves about the war on drugs and its lasting impacts on affected communities. Leaders who neglect to educate themselves on these issues, or who set aside racial justice for one department or one group (usually a group of people of color) to work on, create a recipe for failure.
- C. Listen to impacted communities** – Listen to people from the impacted communities. Center efforts around their priorities initially and respond to their feedback over time. Building effective social equity policies is an iterative process, not a onetime fix.
- D. Address continuing disparities in cannabis arrests** – Take steps to identify whether racial disparities in cannabis arrests continue after legalization and how to minimize them.
- E. Expunge records** – Make expungement of past cannabis offenses as effortless as possible, better yet, advocate for making it automatic. Expungement of criminal records is key to minimizing the collateral consequences of past convictions. (The Collateral Consequences Resource Center has an overview of marijuana expungement laws across the country and finds California’s program most notable.)
- F. Invest part of marijuana revenue in impacted communities** – Designate a percentage of marijuana tax revenue to the most impacted communities and develop a fair and transparent way to appropriate and distribute it regardless of their interest in becoming part of the cannabis industry. (Illinois, New York, and New Jersey have dedicated 25%, 40%, and 70%, respectively, of their marijuana tax revenue to harmed communities.)

Fair & Square: How to Effectively Incorporate Social Equity into Cannabis Laws & Regulations. Shaleen Title, Dec. 2021 (Appendix D)

Overarching Recommendations

1. **Create a clear definition of “equity applicant” that provides opportunities for New Mexicans who have been hurt by criminalization.** The public asked for a definition that includes specific indicators of equity, such as race, gender, and income, while being broad enough to include New Mexicans harmed by the war on drugs in their youth.
2. **“Take into account that participants [of an equity program] may be interested in different types of involvement with the cannabis industry beyond ownership and design benefits to address these different needs.”¹**
3. **Prioritize equity and adequately fund the programs:** Without a funding source in the CRA, people are pessimistic about New Mexico’s chances to achieve equity in the industry. Funding should be used to assist applicants navigate the complexity of the industry and the significant barriers businesses face and to provide access to seed capital, support culturally-competent technical assistance programs, and develop state-funded incubator and cooperative models.
4. **Assess the impact of licensing rules and equity program on rural communities.** Rural communities have unique needs and require provisions to support small producers and growers, or they may be “overrun” by large producers.
5. **Recognize Federal regulations create complexity.** Until the federal status of cannabis changes, some individuals and communities will face legal uncertainty, limiting participation.
6. **Assess how existing rules create barriers to entry and favor larger out-of-state producers.** The public is excited about the potential new industry but fear New Mexicans, particularly those from communities harmed by criminalization, are already a step behind.
7. **Ensure regulations protect workers.** Most people involved in the industry will be workers, not owners. Promote equity by requiring businesses—particularly large producers—to commit to worker protections.
8. **Assess the impact of the cannabis industry on groundwater.** The public sees water usage as an equity issue.

¹Title, Shaleen. *Fair and Square: How to Effectively Incorporate Social Equity into Cannabis Laws and Regulations*. Ohio State Legal Studies Research Paper No. 672. 7 Dec., 2021.
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3978766

Who should qualify as a social and economic equity applicant?

Social and economic equity applicants should include individuals who have been disproportionately impacted by the War on Drugs and other underrepresented groups including low-income, Indian Nations, Tribes, Pueblos, Acequia Parciante and Land Grant-mercedes, and distressed farmers.

Social and economic equity applicants must represent at least two of the following:

- Enrolled member of an Indian Nation, Tribe or Pueblo, Acequia Parciante in good standing, or qualified Land Grant-mercedes.
- Have a household income at or below the average median income (AMI) in NM for 2019
- Have been cited for, arrested for or convicted of a felony as defined in NM Stat 29-3A-5(G) (including as a juvenile). These are offenses currently available for expungement under state law.
- Black persons having origins in any of the Black African racial groups; Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American of either Indian or Hispanic origin, regardless of race; Native American or Alaskan native persons having origins in any of the original peoples of North America; or Asian and Pacific Islander persons having origins in any of the far east countries, south east Asia, the Indian subcontinent or the Pacific islands.
- Distressed Farmer:
 - A New Mexico state resident or business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, that meets the small farm classification developed by the Economic Research Service of the United States Department of Agriculture, has filed a schedule F with farm receipts for the last three years, qualifies for an agriculture assessment and meets other qualifications defined in regulation by the board to demonstrate that they operate a farm operation as defined in section three hundred one of the agriculture and markets law and has been disproportionately impacted, including but not limited to incurring operating losses, by low commodity prices and faces the loss of farmland through development or suburban sprawl and meets any other qualifications as defined in regulation by board; or
 - A New Mexico state resident or business enterprise, including a sole proprietorship, partnership, limited liability company or corporation, that is a small farm operator and a member of a group that has been historically underrepresented in farm ownership and meets any other qualifications as defined in regulation by CCD.

Extra priority shall be given to applications that demonstrate that an applicant meets the criteria of at least one of the following in addition to the criteria above:

- Person with a disability or service-disabled veteran.
- Have a parent, sibling, grandchild or child who was cited for, arrested for or convicted of a felony as defined in NM Stat 29-3A-5(G) (including as a juvenile). These are offenses currently available for expungement under state law.
- Live in or be a member of a NM designated traditional historic community for at least the past 5 years.
- Lost housing in New Mexico after 2008 through eviction, foreclosure or subsidy cancellation.

- Live in a New Mexico census tract for the past 5 years where at least 17% of the households have incomes at or below the federal poverty level.
- Have lost a job or housing as a direct result of being a registered New Mexico medical cannabis patient or have violated probation or parole as a direct result of being a registered NM medical cannabis patient.
- Experienced suspension or expulsion from a learning institution as a youth for a drug-related offense.
- Have primary residence in the County where the cannabis business will be located.

Social Equity Programming Recommendations²

- Only businesses controlled by and with majority ownership by people who qualify for the social and economic equity program should be eligible for program benefits.
- Create a dedicated equity office in RLD/CCD responsible for overseeing the social and economic equity initiatives of the Division, helping licensees develop the required equity plans and ensuring licensees are complying with their equity plans. Assist licensees to develop business structure, operations, employment practices that demonstrate a commitment to justice and equality. Create a community equity advisory group, including membership from those consulted with during the listening sessions (Appendix C).
- Create a navigator program in the CCD to assist those applying for a license. A navigator would be assigned to an applicant to provide information and assistance throughout the process from application to licensing.
- Waive or significantly reduce licensing fees for equity applicants.
- Offer priority or expedited review of licensing applications by equity program participants.
- Develop a legal assistance program to support start up issues such as finance; water, etc.
- Create a cannabis business incubation program to support startup microbusiness and equity applicants. Many equity applicants and microbusinesses will have similar needs, which can be addressed efficiently and cost-effectively through community-based models. With funding, CCD could support the development of an ecosystem of cannabis organizations by creating shared spaces, funded through state funds to avoid restrictions associated with federal funding, that meet the unique needs of the cannabis industry. These could include:
 - Shared manufacturing spaces. Commercial kitchens that receive federal funding are prohibited from working with cannabis products. Even those that do not receive federal funds are hesitant because of liability, insurance, public relations, and contamination concerns. Multiple interview participants advocated for the state to fund production spaces specific to the cannabis industry. These spaces would support microbusinesses and equity applicants by providing a place to produce products, and by sharing knowledge around intricacies of chemistry, dosing, strains, etc used in products.
 - Legal and training hubs, which could support equity applicants in completing applications and navigating regulations. These could provide deep legal training classes, one-on-ones with lawyers, support building pitch decks for fundraising, and other skill development that would support equity applicants in succeeding in the industry.

² See Appendix C for more detailed recommendations.

- Land, purchased by the city or state, and dedicated to cannabis production. A public body could allow equity applicants to use such land at no or low cost, which would decrease the start-up costs for equity applicants and would represent an investment by the state in the people most harmed by cannabis prohibition.
 - Publicly-supported shelf space, through either pop-up storefronts or prioritized shelf space at retailers, which could be incentivized by either state or local funds.
- Develop a mentorship program with non-microbusiness licensees that can be integrated into the incubator program.
 - Support the NMFA social equity fund for start-up capital costs.
 - Develop a partnership between the Regulation and Licensing Dept and Dept. of High Education to create a cannabis student education program. This would include developing a cannabis education fund, supported through state cannabis excise tax revenue, to support students enrolled in cannabis programs as Pell Grant funds are restricted for this purpose.
 - Provide legal aid to help with expungement.
 - Examine ways to alleviate the financial burden of testing requirements for equity licensees.
 - Assess and develop manufacturing opportunities that would offer a variance for community kitchens, church kitchens, etc. to be used for the purpose of cannabis manufacturing.
 - Incentivize non-equity licensees to hire individuals from impacted communities or formally incarcerated individuals.
 - Incentivize non-equity licensees to incubate or provide technical assistance to an equity applicant or licensee or by investing directly in communities harmed by cannabis prohibition through job training and placement, incubation, and technical assistance.
 - Explore requiring Community Benefit Agreements. This model is increasingly being explored in the cannabis sector.³
 - Provide guidance to local government to pass reasonable zoning requirements.
 - Incentivize local governments/municipalities to create their own, locally tailored social equity programs.
 - Regularly assess the program’s effectiveness and impact and adjust accordingly.

Legislative considerations:

- Create a co-op license type
- Allow for non-store front retail businesses
- Create a community reinvestment fund – reinvesting 40% of state cannabis excise tax revenue in communities disproportionately affected by past federal and state drug policies by supporting housing, job placement, mental health treatment, substance use disorder treatment and legal services to address barriers faced by formally incarcerated persons.
- Reassess impact on traditional historic communities, including water.

https://www.forworkingfamilies.org/sites/default/files/publications/1114%20PWF%20CBA%20Handout_web.pdf

³ <https://cannabisequityil.org/community-benefits-agreement/>