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In February 2021, New Jersey became the 13<sup>th</sup> state to legalize cannabis for adult use. This shift in policy came after years of advocacy by community members and advocates who brought attention to the racially disparate enforcement of cannabis prohibition and the decades of harm caused to Black and brown communities in New Jersey. Community members, advocates, and an overwhelming majority of the public advocated to not only legalize cannabis, but to do so in a way that begins to repair past harms and builds an inclusive and equitable marketplace.

Lawmakers made significant strides towards cannabis justice in the bills passed earlier this year, and the next phase of work for New Jersey includes allocating funding toward social and racial justice needs and the creation of an equitable, inclusive cannabis industry. The New Jersey Cannabis Regulatory, Enforcement Assistance, and Marketplace Modernization Act (S21/A21) granted the Cannabis Regulatory Commission (CRC) the power to help fulfil the social justice promises of legalization by creating equity in the cannabis industry through regulatory and administrative processes. The CRC—charged with monitoring the development, regulation, and enforcement of the industry—is therefore empowered to position New Jersey as a leader in creating an inclusive, equitable, and diverse cannabis marketplace. We applaud the CRC for convening a public meeting to solicit input on this issue within the first month of its operation, as well as the promise to hold additional public meetings on equity in the future. In this moment, as the CRC shapes the New Jersey marketplace through regulation, its Commissioners must ensure that equitable access to opportunity is built into every facet of New Jersey’s cannabis market.

Data and reports from jurisdictions that have legalized cannabis before New Jersey illustrate the importance of prioritizing equity from the beginning of the regulatory process. In states that were among the earliest to legalize cannabis, the lack of intentionally built equity frameworks in the marketplace resulted in industries dominated by white business owners.<sup>1</sup> Regulators in those jurisdictions are now working to create initiatives aimed at strengthening fairness, but are doing so in already saturated markets, and face elevated start-up costs and limited real estate availability. New Jersey can build a more inclusive marketplace from the start, by creating a robust equity program that results in a cannabis industry reflective of the diversity of the Garden State.

ACLU-NJ offers the following recommendations to ensure that cannabis revenue is meaningfully invested in communities most harmed by the War on Drugs, and that the state conducts effective public education and outreach related to the new cannabis laws and processes and builds equity into New Jersey’s cannabis market. While these recommendations are a meaningful start, achieving true equity within New Jersey’s cannabis marketplace is an ongoing and iterative process that will require flexibility and innovation.

#### **Allocation of Revenue from the Social Equity Excise Fee**

S21/A21 created a social equity excise fee to be assessed on cannabis cultivators and charged the CRC with making recommendations to the New Jersey Legislature about how the money should be allocated for community reinvestment and creating equity within the industry. While S21/A21 requires the CRC to conduct three hearings with the public as part of this process, we urge the CRC to commit to a more

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<sup>1</sup> [Chart: Percentage of cannabis business owners and founders by race, MJBizDaily, Sept. 11, 2017.](#)

robust and participatory process, including convening at least three hearings in each region of the state and partnering with community organizations in impact zone municipalities to solicit community input on the development of these recommendations.

As part of this process, the CRC will also determine where revenue raised through the social equity excise fee should *not* be allocated. It is our position that revenue should not be allocated to support already robust budgets for policing, drug recognition experts (DREs), or other drug enforcement. Cannabis prohibition, and the drug war broadly, has resulted in decades of increases in funding for police and other criminal legal system actors, at the expense and disadvantage of communities across the state. In making recommendations to the Legislature, we urge the CRC to prioritize funding for services and programs that help communities thrive rather than perpetuating the injustices of our current system.

### **Create a Social Equity Excise Fee Advisory Board**

In addition to the participatory public input process detailed in the previous section, we urge the CRC to create a Social Equity Excise Fee Advisory Board to inform the CRC's recommendations to the Legislature regarding the allocation of the social equity excise fee revenue. We recommend that this advisory board include nine individuals from across the state who have directly experienced the harms of criminalization, either through the criminal legal system or through one of the many systems that are impacted by criminalization, including but not limited to child welfare, housing, immigration, education, and employment. It may also include advocacy organizations and experts in criminal legal system reform, tax and economic policy, and drug policy. Should the CRC decide to convene such an advisory board, the ACLU-NJ can provide recommendations on board structure, roles, and processes to ensure it is a just and effective one.

### **Data Collection and Reporting**

Per S21/A21, the CRC is required to share data on marijuana-related arrests, the diversity of the cannabis industry, and other related data with the Governor and Legislature on an annual basis. However, while the law does not explicitly call on the CRC to share the annual report with the public, we urge the CRC to make it available to members of the public on the CRC website at no cost.

We also urge the CRC to share data on marijuana-related policing on a quarterly basis, following the schedule for reporting laid out for the NJ State Police in S2535/A1897, the state's marijuana decriminalization bill. Moreover, we encourage the CRC to supplement its data collection and reporting on the composition of the cannabis industry with data on the participation of those with "equity applicant" designation, as described in a section below, and data on employee demographics within the industry.

### **Dedicated Funding and Support for the Office of Minority, Disabled Veterans, and Women Cannabis Business Development**

S21/A21 and the "Jake Honig Compassionate Use Medical Cannabis Act" signed into law in 2019, call for the creation of an Office of Minority, Disabled Veterans, and Women Cannabis Business Development within the CRC. This office is charged with increasing business ownership by groups that are typically underrepresented within the business industry. Specifically, the Office is meant to achieve fifteen percent ownership by minority business owners and fifteen percent ownership by disabled veterans and women. We urge the CRC to consider this percentage a floor – rather than a ceiling – for inclusivity within the industry.

In order to ensure that the Office is able to meet and surpass its goal, we recommend that the CRC ensures that the Office has an adequate budget for extensive programming and supports it with necessary staff. We also recommend that the CRC delays launching a new round of applications for cannabis licenses until the Office is fully staffed, funded, and has developed programs and other resources to support cannabis business applicants.

### **Create an Equity Applicant Designation**

We recommend that the CRC create an “equity applicant” designation as part of its commitment to creating an inclusive industry. Modeled on Illinois’ “social equity applicant” designation and Massachusetts’ social equity program, the “equity applicant” program is an opt-in program that would allow individuals to voluntarily identify as people who have been disproportionately harmed by the criminalization of cannabis and make them eligible to benefit from programming and policies to bolster their participation in the industry.<sup>2</sup> In order to qualify, an applicant would have to satisfy the following criteria: 1. live in an impact zone for at least five of the last ten years, 2. have a prior marijuana-related arrest or conviction, and/or 3. be the immediate family member (parent/child/spouse) of someone with a prior marijuana-related arrest or conviction.<sup>3</sup> In addition to these factors, equity applicants would also retain at least 51 percent ownership and control of the cannabis business.

Given the timeline for implementation laid out in S21/A21 – applications for licensure must be accepted within thirty days of when initial rules and regulations are adopted and the retail sale start date must be within 180 days – it is imperative that the CRC implements a strong equity program before any applications for licensure are accepted in order to ensure that the process is equitable and inclusive.

### **Access to Start-up Capital**

Access to start-up capital is vital to ensuring that applicants interested in entering the cannabis marketplace are able to successfully start a cannabis business.<sup>4</sup> Yet because the federal prohibition on cannabis makes bank loans even more difficult to access, the cannabis industry has favored people and corporations that are already wealthy or are able to access capital privately. Lack of access to capital is a significant barrier to entry into the industry, and studies show that communities of color and individuals who are impacted by the criminal legal system are routinely victims of discrimination when applying for loans and are more likely to have limited access to savings and other financial resources.<sup>5</sup>

Though revenue collected from the sales tax on cannabis retail purchases may be used to provide direct financial assistance, the revenue will be allocated at the discretion of the Legislature and Governor and will not be available until after the FY 2023 budget is finalized in July 2022. We recommend that the

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<sup>2</sup> [Illinois Department of Commerce & Economic Development. \(n.d.\). Illinois Adult-Use Cannabis Social Equity Program. Retrieved Apr. 26, 2021.](#) See also [Cannabis Control Commission, Equity Programs, Retrieved Aug. 12, 2021.](#) Though the CRC cannot require disclosure of prior marijuana-related records (expunged or otherwise), the CRC is able to set up a voluntary program through which individuals can self-identify as a person with a prior marijuana-related record or the immediate family member of a person with a prior marijuana-related record. In order to streamline this process for individuals with newly expunged marijuana-records, we encourage the CRC to work with the Administrative Office of the Courts to develop a tool through which individuals can provide verification that their record was expunged pursuant to the New Jersey’s marijuana decriminalization law (S2535/A1897). We also encourage the CRC to reach out to Illinois, Massachusetts, and other jurisdictions with “equity applicant” programs to access best practices for implementation.

<sup>3</sup> Various jurisdictions have included long-term (but not current) residency within their eligibility criteria for social equity programs. For example, Illinois requires residency in their version of an “impact zone” for five of the last ten years, while San Francisco requires residency within the city for ten of the last twenty years. Both of these jurisdictions do not require current residency in order to account for economic changes that could drive long-term residents out of their neighborhood, including gentrification and economic downturns. We recommend that New Jersey embraces a similar approach.

<sup>4</sup> [Irwin, Veronica, Cannabis Equity Applicants Still Face Barriers, SF Weekly, Sept. 14, 2020.](#)

<sup>5</sup> [Masunaga, Samantha and Avery, Taylor, Black-owned businesses face a system set up against them. COVID-19 makes it worse, Los Angeles Times, Jun. 20, 2020.](#) See also [Glantz, Aaron and Martinez, Emmanuel, For people of color, banks are shutting the door to homeownership, Reveal, Feb. 15 2018.](#)

Cannabis Regulatory Commission call on the Legislature to take two steps to make start-up capital available:

- Appropriate \$100 million for a social equity cannabis fund to be housed within the Cannabis Regulatory Commission to provide start-up capital to equity applicants in the form of grants, no-interest loans, or low-interest loans.<sup>6</sup>
- Pass legislation to allow cannabis businesses to qualify for state and local economic incentives, such as those administered by the New Jersey Economic Development Authority.<sup>7</sup>

In the interim, the CRC should dedicate eighty percent of all revenue collected through fees – application fees, licensing fees, and fees associated with the certification process that allows for medical cannabis Alternative Treatment Centers (ATCs) to begin selling cannabis for adult use – to provide start-up resources to equity applicants.

### **Fee Waivers and In-Kind Supports for Equity Applicant Cannabis Businesses**

Because access to capital is such a significant barrier for communities of color and criminal legal system impacted community members, application fees, licensing fees, and other fees imposed by the CRC should be waived for businesses with “equity applicant status.”

In addition to in-kind financial supports, the CRC must create a robust technical assistance program to provide training for equity applicants, and minorities, disabled veterans, and women interested in starting cannabis businesses. If the license application process requires an individual to demonstrate their experience/expertise in certain areas (such as quality assurance, packaging and labeling, and other areas detailed in S21/A21), technical assistance should include programming on those topics to ensure that individuals who are new to the cannabis industry have the opportunity to gain the knowledge necessary to garner points during the application review process. Without such programming, large operators, many of whom currently run cannabis businesses in other states, would have an advantage in the application review process, leaving others behind.

### **Prioritization within the Application Process**

We recommend that a quarter of the total points available in the application process are guaranteed in the licensing application rubric for all equity applicants. Illinois similarly granted their “social equity applicants” with a 20 percent point award during the review process.<sup>8</sup> In addition to the points, we recommend that the CRC implement the 1:1 priority review process that Massachusetts created to ensure that equity applicants’ applications were prioritized for review.<sup>9</sup> This system calls for one equity application to be reviewed for each non-equity applicant application that is reviewed by the CRC.

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<sup>6</sup> [California Department of Cannabis Control, California Cannabis Equity Grants Program Provides \\$30 Million in Grant Funding for Local Jurisdictions, Apr. 22, 2020.](#) In 2020, California announced \$30 million in funding for its Cannabis Equity Grants Program for Local Jurisdictions and followed up with an additional \$15 million in 2021. Of the \$45 million, almost \$35 million was earmarked for no/low-interest loans to applicants and licensees identified as being from communities most harmed by prohibition.

<sup>7</sup> S21/A21 contains language that prohibits cannabis businesses from accessing state and local incentives, such as those administered by the New Jersey Economic Development Authority, including, but not limited to, bonds, grants, loans, loan guarantees, matching funds, tax credits, or other tax expenditures. Please refer to C.24:61-49 in the [pamphlet law \(P.L. 2021, c. 16\)](#).

<sup>8</sup> [Illinois Department of Commerce & Economic Development. \(n.d.\). Illinois Adult-Use Cannabis Social Equity Program. Retrieved Apr. 26, 2021.](#) The Illinois framework provides “eligibility to receive 50 points (out of a possible total of 250 from IDFPR on their dispensary license application score or Receive 200 points (out of possible total 1000) from Illinois Department of Agriculture on their craft grower, infuser, or transporter license application score.”

<sup>9</sup> [Massachusetts Cannabis Control Commission, Summary of Equity Provisions. Retrieved Aug. 4, 2021.](#)

Creating this system will help to ensure that equity applicants – who may need more time to raise the required funds or complete the application materials – are not relegated to the back of the line.

### **Hiring Requirements**

In addition to supporting the ownership of cannabis businesses by equity applicants and minorities, disabled veterans, and women, the CRC should take steps to ensure that employment in the industry is accessible for individuals who live in impact zone municipalities. To that end, the CRC should require that at least 33 percent of employees at cannabis businesses with more than ten employees meet this criteria. While the 33 percent requirement may take time to achieve for cannabis businesses, the CRC should create a process through which businesses can show that a good faith effort was made to recruit employees and an accountability mechanism to ensure such an effort.

### **No Artificial Restriction of the Market**

Though S21/A21 created an artificial restriction on the market by capping Class 1 Cultivator licenses at 37 licenses, we urge the CRC to not place arbitrarily low limits on the number of licenses available in other classes.

### **Public Education and Outreach**

The emerging cannabis industry has the potential to provide new opportunities to people across New Jersey seeking to start a business in their community. However, as noted throughout this memo, creating an inclusive and diverse industry requires intentionality and a commitment to providing funding, technical assistance, and other resources. As a supplement to the other recommendations included in this memo, we encourage the CRC to provide public education and conduct outreach to state and local organizations, such as community groups and employment hubs, about opportunities for state revenue investment in local communities and opportunities within the cannabis industry. There must be a particular focus on outreach to organizations led by or working with individuals who have been most harmed by cannabis prohibition, and we urge the CRC to translate public education and application materials and provide interpretation for public events in the top ten languages most commonly spoken in New Jersey other than English.

### **Guidance for Local Municipalities**

In the absence of regulations or other guidance, at least one New Jersey municipality open to having cannabis businesses in its jurisdiction has introduced an ordinance that would require applicants to pay significant non-refundable fees as part of a local endorsement process.<sup>10</sup> Local ordinances that impose high costs on applicants undermine efforts to create equity in the industry, and essentially serve to ensure that only those with the most access to capital are able to compete.<sup>11</sup> The CRC should issue guidance on the role of municipalities within cannabis licensing and the importance of building equitable and inclusive opportunities for access when designing a local endorsement process.

In addition to the regulatory recommendations above, we encourage the Cannabis Regulatory Commission to ensure a public comment period on the initial rules and regulations for the cannabis industry prior to their adoption. While S21/A21 exempts these initial rules and regulations from the typically required public comment period, it is essential that New Jerseyans are given a meaningful opportunity to provide feedback, especially given the tremendous harms community members – particularly community members of color – have experienced due to the criminalization of cannabis. As New Jersey creates a new adult use industry, we call on the CRC to create a robust public comment process that includes multiple options for providing comment (e.g. e-mail, voicemail, and written

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<sup>10</sup> [O-21-13, Ordinance of the City of Bayonne regarding cannabis licensing, 3/17/21.](#)

<sup>11</sup> [Bedford, Toni and Beland, Amanda, Mass. Cities And Towns Demand Large Payouts From Marijuana Companies, WGBH, Feb. 27, 2020.](#)

submissions), extensive promotion of the public comment process on social media, at public events, and through other platforms, language access for the top ten most commonly spoken languages in New Jersey, and an emphasis on soliciting feedback from individuals harmed by cannabis criminalization.