



# REGULATING RIGHT, REPAIRING WRONGS:

Exploring Equity and Social Justice Initiatives within UK Cannabis Reform



Illustration by Thomas Wimberly for Amplifier.org

**Release**  
Drugs, The Law & Your Rights

**Release** is the national centre of expertise on drugs and drugs law in the UK. The organisation, founded in 1967, is an independent and registered charity. Release provides free non-judgmental, specialist advice and information to the public and professionals on issues related to drug use and to drug laws. The organisation campaigns directly on issues that impact on its clients - it is their experiences that drive the policy work that Release does and why Release advocates for evidence-based drug policies that are founded on principles of social and racial justice, and those of public health, rather than a criminal justice approach. Release believes in a just and fair society where drug policies should reduce the harms associated with drugs, and where those who use drugs are treated based on principles of human rights, dignity, and equality.

**Authors:** Dr. Laura Garius & Amal Ali

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The present paper focuses on cannabis for non-medical ('recreational') use, with medical cannabis and associated regulation(s) falling outside of its scope. This paper endeavours to speak to experiences that impact the majority of those who have been harmed by drug law enforcement and drug prohibition in the UK, and seeks to find solutions centred on principles of racial and social justice. However, we recognise that there are a number of complex issues outside of the scope of the present paper which also require consideration - including land justice and environmental justice - which are relevant to the UK context and to the global debate on how we regulate cannabis in an equitable manner. A number of key publications<sup>1,2,3,4</sup> have focused on responsible regulation from a global perspective; exploring important international social justice issues and promoting the need for business models and international trade policies that advance economic inclusion, sustainable development, and climate justice throughout local, regional, and global supply chains.

## SUMMARY

There is much evidence to suggest that the UK is in desperate need of cannabis law reforms. Cannabis is currently a Class B controlled drug under the UK's Misuse of Drugs Act, 1971 and is illegal to possess, supply, or produce. Possession for personal use carries a maximum sentence of five years' imprisonment and an unlimited fine, with supply/trafficking offences carrying a maximum sentence of 14 years' imprisonment and an unlimited fine. Over half a million people are subject to police stop and search every year in England and Wales, with 63% of all searches under the main police powers in 2019/20 being searches for drugs.<sup>5</sup> Black and other ethnic minority groups are consistently more likely to be stopped and searched than White people. For all stop searches in 2019/20 in England and Wales, people self-defining as 'Black, Asian, and Minority Ethnic' were 4.1 times more likely to be searched than White people. The disparity is particularly pronounced for Black people, who were 8.9 times more likely to be stopped and searched than White people,<sup>6</sup> despite being no more likely than the White population to use controlled substances.<sup>7</sup> Whilst disparities in stop and search at the national level can mask differences in the size and make up of local populations within each police force area, in almost every police force area, Black people endure the highest recorded stop and search rate. In light of this inequity, alongside evidence that the majority of searches result in officers finding *nothing* - with only 20% of searches under the main police powers in 2019/20 resulting in an outcome linked to the reason for the search<sup>8</sup> - Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS), which examines police efficacy, has called for "an evidence-based national debate on the use of stop and search in the policing of controlled drugs".<sup>9</sup>

According to global research by the United Nations Office on Drugs and Crime - which examined reports from 69 countries over four years (between 2014 and 2018) - "**cannabis** is the drug that most brings people into contact with the criminal justice system, accounting for more than half of all drug law offences cases".<sup>10</sup> Cannabis prohibition is indeed the *key* driver of drug law enforcement inequity and the resulting overrepresentation of Black and other ethnic minority individuals in our criminal justice system.<sup>11</sup> Furthermore, it is *low-level* cannabis possession offences driving this disparity, with an estimated one in three of all police searches thought to be for cannabis possession alone.<sup>12</sup> Black and Asian people are then convicted of cannabis possession at 11.8 and 2.4 times the rate of White people respectively, despite lower rates of self-reported use, and more Black people are prosecuted for simple cannabis possession than for the supply of Class A and B drugs combined.<sup>13</sup>

Whilst it is rare for people to be *imprisoned* for possession of cannabis for personal use, in the last decade nearly 222,000 people have been prosecuted for this offence in England and Wales,<sup>14</sup> and hundreds of thousands more will have received a police caution. This creates criminal records that damage future education and employment opportunities,<sup>15,16</sup> visa applications, and potentially, access to housing and parental rights/access. Tens of thousands of others will have been convicted for supplying cannabis, with the majority of people involved in these types of offences being low-level suppliers who are driven to participate in the market because of their economic circumstances and lack of opportunities.<sup>17</sup>

Almost 8% of adults aged between 16 and 59 years old in England and Wales report having used cannabis in the last year<sup>18</sup> - with this figure increasing to almost 19% among 16 to 24-year-olds<sup>19</sup> - and in a recent survey of 16,017 UK University students, 44% described cannabis as their 'drug of choice'.<sup>20</sup> A punitive approach, centred in criminal justice responses, does not stop consumption, possession, or supply of the UK's (and the World's) most popular<sup>21</sup> illicit drug. Instead, vast numbers of the population are harassed, policed and criminalised because of our current legal framework, with a devastating impact on communities; most pointedly and unjustifiably, Black and Brown communities.

With a growing list of countries, and over a third of US states, having now legalised cannabis for recreational use, it is predicted that cannabis will be the first drug to be regulated in the UK for recreational purposes, and that this will occur well within the next decade,<sup>22</sup> despite our current Prime Minister's reluctance.<sup>23</sup> Organisations such as the Transform Drug Policy Foundation have long considered how to successfully regulate the UK cannabis market; publishing their guide to Cannabis Regulation in 2016.<sup>24</sup> The question to be carefully considered now is not whether cannabis laws will be reformed in the UK, but *how* we will ensure that those most vulnerable to the harms of prohibition are protected by changes to policy and prioritised in new licit markets. This paper highlights the need to make social equity and public health the primary goals of cannabis law reform in the UK - as supported by the experiences of jurisdictions across North America who have already established a legal market - and outlines a number of core social equity principles that we ask fellow organisations and policy makers to support:

# SOCIAL EQUITY PRINCIPLES



# SOCIAL EQUITY PRINCIPLES

14 PRINCIPLES TO ENSURE A JUST, FAIR, AND EQUITABLE CANNABIS MARKET IN THE UK

1. **Decriminalisation** should go hand in hand with regulation. There should be no criminal or civil sanctions for use or possession of cannabis (or for any personal use activity), regardless of whether cannabis comes from the licit or illicit economy. This should extend to *public* use of cannabis and supply without profit, that is, 'social supply'.
2. Use and/or possession of cannabis should no longer place people at risk of losing social and economic **rights**, such as housing or access to children - nor should it be a basis for prison recall or breach of probation.
3. Accumulated tax revenue should be **invested** in communities that have been over-policed and over-criminalised, and should support drug harm-reduction interventions and wider drug treatment initiatives.
4. **Automatic release** from prison should occur where the offence is cannabis-related only, as opposed to overturning judgements. Where cannabis offences are in coordination with other criminal offences, there should be a removal of the portion of any sentence added or directly attributed to a cannabis offence.
5. For those who have already been convicted of a cannabis offence, the government should adopt mass **automatic expungement** processes. That is, the complete destruction of prior cannabis-related convictions from government records in a streamlined process taking place without, or with the very minimum, participation of those convicted.
6. Whilst **awaiting** expungement processes, individuals with existing cannabis-related convictions should not be excluded from participation in any market or employment opportunity (within or outside of cannabis retail).
7. In developing a regulatory framework, ethnic minority communities and those with lived experience of drug law enforcement must be properly **involved** and **consulted** as those most impacted by cannabis prohibition. The legal cannabis retail market must adopt an anti-racist framework of policies and practices based on equity creation and must take steps to ensure diversity and inclusion among its actors.
8. Schemes should be in place to actively **support** people who have been criminalised for cannabis-related activities, and people from communities that have been over-policed and over-criminalised as a result of cannabis-focused law enforcement, *into* the legal industry. A minimum percentage of **licences** should be allocated to people from these communities, and should be accompanied by licence-application support.
9. Financial and technical expertise, access to grants and loans, and access to land, must be **robust** and made available immediately after new legislation comes into effect in order to minimise the transition period from an illicit to a licit market. Access to this support must be subject to **transparency** and ethnic minority and socio-economically disadvantaged groups should be connected to expert networks.
10. It is imperative that small-scale cultivators and those from lower socio-economic groups, whose main source of income has been the illicit cannabis trade, are **transitioned** into the legal market, if that is what they want, to ensure that economic harm is not perpetuated through reform.
11. **Cooperative** forms of distribution, namely, cannabis 'social club' models - which currently operate illicitly within the UK - should be incorporated into any new regulatory system, and consulted on how inclusion should be best executed.
12. Any new regulatory system should allow for non-commercial **domestic cultivation**. Policy should include individuals' right to grow cannabis at home for personal use, and gifting (without monetary reward), for example, in the same way that individuals are able to brew their own beer.
13. There should be **no specific (additional) criminalisation** of activity outside of the regulated market. Those involved in *illicit* market supply - who have either not been able to, or do not want to, operate in the licit market - should be treated in the same way as in other similar (alcohol/tobacco) markets. Selling alcohol without a licence, for example, is a summary offence in the UK. For those operating within the *licit* market, there should be no specific criminalisation, for example, if there is a failure to pay taxes, this should be dealt with through existing tax evasion legislation or if the end product is harmful, this should be dealt with through existing product liability laws.
14. A dedicated and diverse **board**, inclusive of those who have been subject to over-policing, should be established to ensure oversight and central monitoring. The board's role will be to promote equity and ensure that the legal industry is inclusive and economically empowering for those who have been disproportionately impacted by cannabis prohibition. Data should be collected and routinely published.

# INTRODUCTION

For nearly a century, the wealthy, the White, and the politically powerful have used cannabis with relative impunity<sup>25</sup> while demonising entire communities for the very same practice. Through racialised systems of oppression and social control, the skewed enforcement of drug laws has exacerbated racial profiling and the hyper-criminalisation of ethnic minority individuals. It has also unfavourably impacted those who are socio-economically deprived, and of other disadvantaged groups<sup>26</sup> - thereby creating a population who are not afforded basic civil and human rights. The harms produced by the prohibition of cannabis are primarily carceral - police stop and search, surveillance, criminalisation, incarceration - and are harmful to people *whether or not* they use cannabis.

Cannabis possession for personal use drives criminalisation and dominates the criminal justice system in relation to drug-related crime,<sup>27</sup> often at the expense of human rights, respect for autonomy, and public health - and at great financial cost, with the central government spend on drug law enforcement *alone* estimated to be £1.6 billion per annum in the UK.<sup>28</sup> Criminalisation, and its collateral consequences, has triggered wide-ranging “legal, social and economic debilities”<sup>29</sup> which infringe on all areas of an individual’s life, including housing security, healthcare access, immigration, property rights, parental and reproductive rights, and employment and educational inclusion.<sup>30</sup> Criminalisation also aggravates health, social, and economic harms among people who use drugs.<sup>31</sup>

Cannabis possession offences are an entry point into the criminal justice system for many, and in England and Wales, people can still be imprisoned for cannabis possession offences. Between 2007 and 2017, 3,861 people have been given a custodial sentence,<sup>32</sup> and of these 43% (1,663) were young people aged 12-24, and 18% (687) identified as Black - despite making up less than 4% of the population of England and Wales.<sup>33</sup> Imprisonment can have significant and harmful effects on all people; however, the pains of imprisonment are disproportionately impacting Black and other ethnic minority individuals, who are subject to significantly more searches, arrests, prosecutions, and harsher sentences, for the possession of cannabis.<sup>34</sup> The racial disparity that *begins* with stop and search<sup>35</sup> continues into outcome severity, with Black people found in possession of a controlled substance being much **less** likely to receive out of court disposals (many of which result in no criminal record) than their White counterparts.<sup>36</sup> The Sentencing Council’s analysis of sentences imposed at the Crown Court for supply, possession with intent to supply, and conspiracy to supply a controlled drug<sup>37</sup> found that an offender’s ethnicity was associated with a *significant* difference in the likelihood of receiving an immediate custodial sentence, even after controlling for other factors associated with the offence(s).<sup>38</sup> Ministry of Justice statistics confirm that the overall custody rates for those drug offences included in the Sentencing Council’s analysis are **higher** for Black and other ethnic minority offenders than for White offenders.<sup>39</sup>

Internationally evolving attitudes towards cannabis, including significant growth in public support for cannabis reform,<sup>40</sup> have seen a number of countries, and many parts of the US, no longer willing to be complicit in the status quo or in accepting cannabis prohibition as a feasible approach. Malta is set to become the first European country to legalise cannabis for recreational use,<sup>41</sup> joining Canada, Uruguay, Mexico,<sup>42</sup> and multiple US states. Whilst cannabis reform in Europe has been slower than the Americas, there are reforms underway in a number of European countries as part of the “race to become Europe’s first legal cannabis jurisdiction”.<sup>43</sup> In addition to the reforms in Malta, there have been local pilot trials of legal cannabis production and sale for recreational use in Switzerland,<sup>44</sup> and Governments in both Luxembourg<sup>45</sup> and Germany<sup>46</sup> have announced their intentions to legalise and regulate cannabis for recreational use. This is in addition to the quasi-legal markets of the Netherlands<sup>47</sup> and Spain,<sup>48</sup> which have been in operation for decades. In the UK, there have also been debates<sup>49,50</sup> regarding recreational

cannabis legislation and the possibility of reform - and it is telling that the current Mayor of London, Sadiq Khan, promised a review into cannabis reform as part of his successful May 2021 re-election campaign.<sup>51</sup> This shift reflects the growing public support for a different approach to cannabis use in the UK, with surveys demonstrating that more than half of Britons - and nearly two-thirds of those in the Capital - support the legalisation of cannabis for adult recreational use.<sup>52</sup> With this in mind, it is important to consider the impact that cannabis legalisation and regulation would have in the UK.

As a new industry, ripe for entrepreneurs with ample resources and power to exclude people from market participation, civil society input is essential to ensure that those who have been most harmed by cannabis prohibition will not be excluded in its legal renaissance. It is important that small-scale farmers and those from lower-socioeconomic groups whose main source of income has traditionally been the illicit cannabis trade have the opportunity to transition into the legal market to ensure that economic harm is not perpetuated through reform.

The foundations of cannabis prohibition and ethnicity are intertwined,<sup>53,54,55</sup> and without recognising this legacy of racial injustice and the profound impact this has had (and continues to have) on Black and Brown communities, cannabis reform remains unfinished business. This paper will go on to examine the types of equity, economic, and social justice initiatives being implemented across parts of North America - often referred to as 'drug war reparations' - which attempt to reverse the damage caused by prohibition. Through the exploration of such initiatives, this paper recommends best practice policies and principles that should be considered in the context of UK cannabis reform, in order to ensure that those who have endured decades of over-policing and over-criminalisation are not left behind in a regulated market. We must also recognise that providing opportunities within a new, licit cannabis market is not enough: we must invest in communities and ensure that a *range* of opportunities are provided.

## DECRIMINALISATION OF POSSESSION OFFENCES

The benefits of decriminalisation, as experienced by jurisdictions world-wide, have been well-documented.<sup>56</sup> Release proposes that decriminalisation is also required *in tandem* with cannabis legalisation and regulation as part of a more holistic approach to cannabis reform. Regulated cannabis markets can still result in criminalisation of activities outside of the market, leading to an increased risk or likelihood that those who have been subjected to the harms of enforcement outlined above *continue* to experience those harms. Canada is one example of this, and prior to the Cannabis Act becoming law in 2018 (legalising cannabis for recreational use), a number of Canadian-based drug policy researchers and advocates, including Toronto's then Medical Officer of Health, warned of the need for decriminalisation of cannabis possession to accompany cannabis legalisation, which did not occur.

In a May 2017 report to Toronto's Board of Health,<sup>57</sup> Dr Eileen de Villa stated that "given that cannabis possession will soon be lawful in Canada, it's recommended that the Board of Health urge the federal government to immediately decriminalize the possession of non-medical cannabis for personal use". The report highlighted the thousands of charges and convictions for simple cannabis possession that would occur before the legislation came into effect, and reiterated that the harms of cannabis prohibition - and the consequences associated with a criminal record in terms of individuals' access to employment, housing, and economic opportunities - would continue in the interim period (and beyond).

The multi-stage process of cannabis legalisation and the establishment of a legal retail market often requires a very long time until completion, with the transition period from illicit to licit market estimated to take up to four years in some instances.<sup>58</sup> There is much evidence, including from US jurisdictions,<sup>59</sup> that the contraband cannabis trade (illegal market) survives *post* legalisation,<sup>60,61</sup> albeit a diminished and less harmful market. Whilst research indicates that people who use cannabis consider legal cannabis to be the superior commodity,<sup>62</sup> there are reports in both the US and Canada of cannabis being cheaper on the illegal ‘street’ market compared to legal, dispensary cannabis<sup>63,64</sup> (in part, due to high dispensary start-up costs and high taxation). In addition, ‘sluggish’ rollouts of legally licensed retail stores<sup>65</sup> contribute to undersupply. Illegal market cannabis will therefore continue to be accessed by those who are *unable* to access legally-sourced cannabis and/or afford legally-sourced cannabis. Ultimately, this means that the harms of cannabis prohibition continue for those using cannabis outside of the new system’s boundaries. Canadian-based research, which determined that selling illicit cannabis was often a survival-driven strategy to support the basic needs and substance use for some people who use drugs, also recommended that jurisdictions with planned or impending cannabis legalisation and regulation should *reconsider* setting criminal penalties for those purchasing or selling cannabis outside of regulatory frameworks.<sup>66</sup> Whilst this has not been considered in Canada, US states with a recreational use regulatory framework (to date) have chosen not to sanction individuals procuring cannabis from the illicit market for personal use.<sup>67</sup> Within these regulatory frameworks, the possession of cannabis - regardless of where it has been sourced - is not subject to any sanctions (civil or criminal).<sup>68</sup> Canada, however, continues to criminalise possession of cannabis knowingly obtained from the unregulated market.<sup>69</sup>

There are additional concerns about displacement in policing activity *under* a regulatory model in relation to under-legal-age cannabis use and public cannabis consumption. The legalisation of adult recreational cannabis use should not lead to a situation where youth, and disproportionately Black youth, are still stopped, searched, and arrested by the police for the possession of cannabis. Cannabis legalisation should engender a *reduction* in opportunities for surveillance and punishment of Black and Brown communities. However, the majority of US states that have legalised recreational cannabis continue to criminalise the smoking of cannabis in a **public place**. Without protections for the use of cannabis in public (subject to the same protections for, and restrictions to, the smoking of tobacco in public), people who lack access to safe and private areas to smoke can still face police intervention and potentially harmful penalties, and it is likely to be disproportionately Black and other ethnic minority individuals who are arrested for public use.

In November 2012, **Colorado** legalised cannabis for recreational use among adults aged 21 years and older with the passing of Amendment 64 - with the first retail sales occurring in 2014. Whilst the arrest rate for cannabis-related offences for White youths aged 10 to 17 fell between 2012 and 2014 by 9%, arrests for Black youths over the same time period rose by 52%, and rose by 22% for Hispanic youths.<sup>70</sup> Another concern was the observed rise in racial disparities for the charge of *public* cannabis consumption, particularly in Denver, Colorado post-legalisation.<sup>71</sup> Disparities in public cannabis consumption arrests are also seen in other jurisdictions, for example, in 2016 in **Washington D.C.**, a year following the legalisation of cannabis for recreational use, Black people were 11 times more likely than a White person to be arrested for public consumption of cannabis, despite the fact that Black residents made up approximately 49% of Washington D.C.’s population, and used cannabis at similar rates to White residents.<sup>72</sup>



## WIPING THE SLATE CLEAN

Cannabis reform is not only about ensuring that the war on drugs is finally ended, but also about “directing the legislature and justice system to assist those *previously* convicted”.<sup>73</sup> Consideration must be given to how criminal records relating to cannabis offences are dealt with if we are to truly terminate the era of cannabis prohibition.

The mechanism for dealing with criminal records is fundamental to ensuring that people who have been previously convicted really do have the slate wiped clean. As cannabis legalisation is progressing through the US, different states have taken different approaches: some have sought to expunge and destroy criminal records, some have sealed records to ensure they are not disclosed or there is limited disclosure, and others have limited the reach and scale of the expungement process to those previously convicted of possession-*only* offences. It is important to note that US states can only expunge state-level criminal records, not federal records. Until reforms are achieved at a national (federal) level, those who have been convicted of federal cannabis-related offences will continue to suffer the injustice and deleterious effects of having a criminal record.<sup>74</sup>

The process of sealing records involves barring the release of past records to the general public. However, prospective employers *may* still have access to sealed felony charges,<sup>75</sup> thus continuing the debilitating effect of criminalisation. As such, many US legislators have called for, or are calling for, **expungement** - a complete destruction of criminal convictions from government records.<sup>76</sup> Expunging prior cannabis records has been described as “crucial to helping people get jobs and housing, restoring productive lives... and offsetting years of unfair enforcement of the war on drugs in communities of colour”.<sup>77</sup>

However, there is evidence to suggest that often expungement and record-sealing laws are *limited*; they require long waiting periods and an assortment of paperwork, many times limiting relief to the lowest level offences (often guided by the amount of cannabis seized), and sometimes requiring financial means to pursue such relief.<sup>78</sup> As commentators have noted, “even when states enact special status or modified expungement rules to address past marijuana offenses... only a small fraction of those who are eligible for relief seek to have their records sealed or set aside ... [ex-offenders] should not have to continue to bear a scarlet letter for engaging in what citizens have now decided is socially acceptable”.<sup>79</sup>

In California, they have started the process of **auto-expungement**, meaning that the process will take place without the participation of defendants.<sup>80</sup> Automatic procedures that streamline processes are *fundamental* to achieving justice as they mitigate potential deterrents associated with filing costs or the need to seek legal counsel.<sup>81</sup> Illinois opted for a similar process and planned to automatically expunge cannabis convictions from almost 800,000 criminal records following the Cannabis Regulation and Tax Act, 2020.<sup>82</sup> As of January 2021, Illinois had expunged almost half a million records for (‘low-level’<sup>83</sup>) cannabis offences.<sup>84</sup> The State’s Governor, J.B. Pritzker stated: “we will never be able to fully remedy the depth of the damage in communities of colour, who have disproportionately shouldered this burden ... but we can govern with the courage to admit the mistakes of our past - and the decency to set a better path forward”.<sup>85</sup>

The Canadian federal government passed<sup>86</sup> Bill C93<sup>87</sup> to permit those convicted of possessing under 30 grams of cannabis to apply for a pardon without a fee and to accelerate processing times. However, it has been argued that a pardon for simple possession is inadequate as most criminal records for cannabis are not for a single cannabis

possession charge.<sup>88</sup> Other issues include the complex and lengthy processes to initiate the pardon procedure, costs associated with collection of documents, and lack of technical support during the application process for those living in remote areas.<sup>89</sup>

Commenting on Canadian legislation, Professor Owusu-Bempah, Director of Research for Cannabis Amnesty,<sup>90</sup> said that “legalization happened so quickly that issues of equity and issues of sovereignty with respect to Indigenous people were not properly addressed... the legalization effort came with an amnesty program the government said would erase criminal records for possession, but there are barriers to access”. There are as many as six steps involved in the process of record expungement,<sup>91</sup> which is a barrier in and of itself. As of November 2020, just 341 Canadians had succeeded in erasing their records (of an estimated 500,000). There are no fees, but applicants must frequently spend money to travel to the place of their arrest to retrieve their records, and must additionally be fingerprinted.<sup>92</sup>

A number of the most recent US states to legalise recreational cannabis have included automatic record expungement as part of a ‘package’ alongside recreational cannabis legalisation, for example, the State of **New Mexico** via their ‘Cannabis Regulation Act (HB2/SB2)’.<sup>93</sup> However, expungement - including automatic expungement - is still often intentionally limited to only certain *types* of cannabis offence, and eligibility is often dependent on the weight of seizure(s) and the circumstances surrounding the offence. Eligibility criteria vary between US states, present procedural barriers, and may contribute to a system which is, again, marred by racial injustice. These issues highlight the importance of adopting an *automatic* expungement process which incorporates cannabis production, supply, and possession offences when modelling cannabis legalisation; reducing potential deterrents and assigning responsibility to the state.

In the UK, a process for automatic expungement is not yet in place. For example, the process of deleting criminal convictions for historic homosexual offences - namely, convictions, cautions, warnings or reprimands for consensual gay sex - requires an application to the Home Office for record deletion.<sup>94,95</sup> In terms of ‘wiping the slate clean’, *automatic* expungement of cannabis crimes, as well as other historic offences, is the advised model to replicate in the UK; ensuring that barriers to record expungement are as limited as possible (and thus not replicating barriers established by prohibition).

## REDISTRIBUTION OF TAX REVENUE

There is growing consensus that accumulated tax generated through the legal cannabis market ought to be reallocated for social good to low-income neighbourhoods as a form of economic empowerment and reparative justice. It is imperative that the revenue from cannabis legalisation does not go towards funding *law enforcement* in such neighbourhoods in the name of community safety and violence reduction.

The State of **Illinois** has dedicated 25% of the cannabis tax revenue raised to targeted community restoration projects designed to “address the impact of economic disinvestment, concentrated poverty, violence and the historical overuse of criminal justice responses in impacted communities through the use of targeted interventions”.<sup>96</sup> An additional 20% is also to be reinvested for the purpose of “substance abuse and mental health prevention and treatment programmes”.

The State of **California** included the ‘California Community Reinvestment Grants (CalCRG) program’ initiative as part of The Adult Use of Marijuana Act, 2016 (Proposition 64). The CalCRG program is funded by the tax revenue raised, and awards grants to local health departments and community-based non-profit organizations specifically to support activities in the areas of employment, substance use treatment, and mental health treatment, as well as access to legal services, “for communities disproportionately affected by past federal and state drug policies, also known as the War on Drugs”.<sup>97</sup> Contingent on sufficient tax proceeds generated, the funding for the grant program is expected to be \$40 million in the fiscal year 2021-22 alone.<sup>98</sup>

**Virginia**’s Bill (Senate Bill 1406, House Bill 2312)<sup>99</sup> to legalise cannabis for recreational use included the allocation of 30% of the generated tax revenue to a cannabis equity reinvestment fund, and a feature of **New York**’s recently passed Marijuana Regulation and Taxation Act<sup>100</sup> is that 40% of the generated tax revenue will be allocated to those communities who have experienced disproportionate cannabis arrests, as part of a community reinvestment scheme.

As part of plans for a fully regulated future cannabis market, Luxembourg<sup>101</sup> has pledged to reinvest revenue raised from taxation into drug education and drug treatment programmes.<sup>102</sup> At present, the UK’s tax system does not naturally align itself with this type of revenue reinvestment, and the adoption of this principle would require adaptation(s) to our current system. This is no reason to say that this should not be changed to accommodate reparations as a way to redress the harms caused by cannabis prohibition.

## INCREASING ETHNIC MINORITY PARTICIPATION

The introduction of social equity programmes has seen efforts concentrated on increasing participation among ethnic minority and historically disadvantaged groups by removing barriers and giving priority access to the legal cannabis market. This is in recognition of the disproportionate application of drug law enforcement and the imbalance this has bred.

In **Massachusetts**, the ‘Social Equity Programme’ aims to support people of Black, African American, Hispanic, or Latino descent in the cannabis industry through mentorship, employee training and start-up business grants.<sup>103</sup> Those that are eligible for the programme but who do not wish to apply for a licence to open a business can “instead receive training for management and entry-level positions in the industry”.<sup>104</sup> The Massachusetts model is distinct in that it recognises that not all those who are eligible for the programme may want to pursue business ownership in the legal cannabis industry, and provides alternative opportunities for those with different aspirations. It also recognises that the cannabis industry is not only about selling and growing but also includes a range of employment opportunities in complementary industries. For example, the state’s Cannabis Control Board recently permitted home delivery sales, with licences to deliver being initially restricted to participants of the social equity programme.<sup>105</sup>

In the last year, other US states including Arizona, New Jersey, and Connecticut have passed cannabis legalisation proposals that centre equity and racial justice. **Virginia** is the first *Southern* state<sup>106</sup> to legalise recreational cannabis use, and the Bill (Senate Bill 1406, House Bill 2312) specifies a category of ‘social equity’ cannabis licence applicants who will be given preference when the state grants licensing, which explicitly includes people who have previously

been charged with cannabis-related offences.<sup>107</sup> Applicants also stand to receive access to low or no-interest loans generated by cannabis retail sales and possibly also from existing medical cannabis licensees.<sup>108</sup> It is important to consider (in the context of automatic expungement) that for those initiatives directly connected to *prior* cannabis charges, a mechanism must be in place for individuals to prove their prior arrest or conviction, for example, via a certificate of record expungement.

A number of social equity programmes designed to directly benefit people who have been previously convicted of a cannabis-related offence extend *beyond* the individual to their immediate family members. One such example is the ‘Cannabis Opportunity Reinvestment and Equity’ (CORE) program in **Sacramento, California**.<sup>109</sup> Intergenerational justice initiatives like the CORE program recognise the secondary impacts of criminalisation on the communities and families of those who were formally prosecuted.<sup>110</sup> An intergenerational justice approach also recognises the gendered impact of drug law enforcement, which has incarcerated men in greater numbers and has relied mainly on women to bear the burden of familial responsibilities.<sup>111</sup>

Not all legislators have embraced cannabis reform as an opportunity to adopt a social equity model. Whilst **Canada** made history in 2018 as the first major industrialised country to legalise and regulate recreational cannabis (the second country only to Uruguay which was the first to fully legalise each element of the supply chain),<sup>112</sup> the social justice and equity components of Canada’s Cannabis Act have been described as “inadequate, and something of an *afterthought* in the legalization process”.<sup>113</sup> An example of this can be seen in the ‘allocation lotteries’ hosted by the licensing authority in **Ontario**, Canada for those wishing to obtain a cannabis retail licence. Applicants partaking in the lottery were required to have access to \$250,000 in cash and a further \$50,000 in reserves if needed.<sup>114</sup> Not only was the lottery system arbitrary, but such stringent criteria - which required access to large sums of money - limited the participation of smaller businesses, those who had been directly impacted by cannabis prohibition, and those who may have been directly involved in campaigning for cannabis legalisation in Canada to begin with. This system also led to undersupply.<sup>115</sup> Whilst the lottery system was abandoned in late 2019,<sup>116</sup> the requirements for obtaining a licence under the current system in Ontario are still rigorous.<sup>117</sup>

*Despite* efforts in parts of the US to ensure that the legal cannabis industry is equitable and fair towards those who were subject to the gravest forms of drug control, recent research indicates that to date, less than 20% of the US cannabis industry is owned or operated by ethnic minority individuals,<sup>118</sup> despite “Black and Latina people [carrying] the brunt of decades of marijuana criminalization”.<sup>119</sup> In addition to the structural barriers faced by Black and other ethnic minority groups in terms of lawful US industry participation - rooted in systemic racism and inequitable access to wealth - this cannabis industry ‘shut out’ is exacerbated by *two* specific factors. Firstly, some state laws do not permit those who have a cannabis-related criminal conviction to seek employment in the cannabis industry. For example, in Colorado those who have any controlled substance felonies “in the ten years preceding their application date or five years from May 28th, 2013 (whichever is longer)”<sup>120</sup> are barred from applying for a cannabis licence. Similarly, in Alaska and Nevada, any person convicted of a cannabis offence is also excluded from participating in the state’s legal industry.<sup>121</sup> Such restrictions are undeniably hypocritical in practice but also exacerbate racial disparities in dispensary ownership by excluding a higher percentage of Black and other ethnic minority individuals as they have been, and continue to be, disproportionately *more* likely to be searched, arrested, prosecuted, and imprisoned for drug offences.<sup>122</sup>

Secondly, the conflict between state and federal law in the US has been pivotal in aggravating practical challenges faced by equity programmes.<sup>123</sup> Whilst a growing number of individual US states have taken steps towards cannabis

reform, reform at the *federal* level in the US has been slower to manifest. Cannabis remains a Schedule I substance<sup>124</sup> under the Controlled Substances Act, and any bank found to be “aiding or abetting”<sup>125</sup> a cannabis business was faced with the possibility of criminal prosecution. While equity programmes provide start-up grants, a lack of access to banking is detrimental in terms of who can partake in the industry. Irrespective of cannabis offences being expunged, participants require additional funds from the bank to sustain their businesses. Promisingly, US House lawmakers have recently approved legislation that will allow “financial institutions and insurance companies to serve state-legal marijuana businesses without fear of federal reprisal”.<sup>126</sup> There are also growing calls for *federal* cannabis reform in the US in recognition of the potential benefits to health equity, social equity, justice, and accountability.<sup>127</sup> Chair of the House Judiciary Committee Jerrold Nadler, and (then Senator) Kamala Harris introduced the ‘Marijuana Opportunity Reinvestment and Expungement (MORE) Act’, which seeks to decriminalise cannabis at a federal level and “ensure reparative justice and equity in legalisation”.<sup>128</sup> On the 4<sup>th</sup> December, 2020, in a historic vote, the US House of Representatives passed the MORE Act, making it “the first piece of comprehensive marijuana reform legislation that actually de-schedules marijuana - and the only one centred in reparative justice - to pass either chamber of Congress”.<sup>129</sup> This historic progress was tempered, however, by language that was added to the working version of the Act which would have served to prohibit people with cannabis convictions from fully participating in the industry at the federal level,<sup>130</sup> and would have intentionally limited expungement relief to “nonviolent” cannabis offences.<sup>131</sup> However, this language has since been removed from the final version of the Act, released in May, 2021.<sup>132</sup>

It is encouraging to see legislators refusing to pass bills which do *not* necessitate the empowerment of those whose lives have been detrimentally affected by the war on drugs. In 2019, **New York** State failed to adopt the Marijuana Regulation and Taxation Act due to the *absence* of social equity provisions.<sup>133</sup> In 2021, however, New York successfully passed an amended version of the Act, in what has been described as the “most **ambitious** reform yet”<sup>134</sup>.



## ***NEW YORK: A CASE STUDY***

On the 31<sup>st</sup> March 2021, the Governor of New York signed legislation that officially legalised recreational cannabis possession and use in the State of New York - which has the potential to become one of the largest legal cannabis markets in the US. Numerous previous attempts to legalise cannabis in New York were thwarted over disagreements on how the tax revenue from sales would be distributed.<sup>135</sup> However, the *passed* Marijuana Regulation and Taxation Act,<sup>136,137</sup> is firmly centred around social justice and in reversing the harm done to minority communities through the war on drugs: “unlike any other state in America, this legislation is intentional about equity,” said Crystal D. Peoples-Stokes, the Democratic majority leader in the Assembly who sponsored the Bill, “equity is not a second thought, it’s the *first* one, and it needs to be, because the people who paid the price for this war on drugs have lost so much”.<sup>138</sup>

Under the Act,<sup>139</sup> adults aged 21 and older will be able to possess and purchase cannabis products from licensed retailers, which are expected to launch sometime in 2022. Effective immediately, there are no penalties for public possession of up to three ounces of cannabis for recreational purposes or 24 grams of concentrated forms of the drug. Most of the US states that have legalised recreational cannabis continue to prohibit the consumption of cannabis in a public place - which evidence suggests leads to racially discriminatory enforcement. New Yorkers, however, will be permitted to smoke cannabis in public wherever smoking tobacco is allowed, though localities and a new state agency could create regulations to more strictly control smoking cannabis in public.<sup>140</sup>

Adults will also be able to cultivate up to six plants for personal use, three of which could be mature. A maximum of 12 plants could be grown per household with more than one adult. However, this will not be permissible until the rules around homegrown cannabis are set by the regulating authority. The legislation states that these rules must be in place within six months of the first recreational retail sales for medical users/growers of the plant, and within 18 months for the wider population. Once home cultivation becomes legal, people could store up to five pounds of cannabis at home. Current medical cannabis businesses could participate in the recreational market in exchange for licensing fees that will help to fund the social equity program.<sup>141</sup>

Some of the Act's most notable features include:<sup>142</sup>

- **40%** of the tax revenue from cannabis sales will be steered to those communities that had disproportionate numbers of cannabis arrests, as part of a community reinvestment scheme
- People convicted of cannabis-related offences will have their records **automatically expunged**
- The law seeks to allow people with past convictions and those involved in the **illicit cannabis market** to participate in the new legal market
- Protections **against discrimination** in housing, educational access and parental rights would be instituted for people who consume cannabis or work in the cannabis industry
- The legislation sets a goal of having **50%** of cannabis business licences issued to social equity applicants, defined as people from “communities disproportionately impacted by the enforcement of cannabis prohibition” as well as minority, and women-owned, businesses, disabled veterans, and financially-distressed farmers

Melissa Moore, State Director of the Drug Policy Alliance, comments that “this law comprehensively addresses the harms of overcriminalization and establishes one of the most ambitious marijuana legalization programs in the nation”. She continues “through this sweeping legislation, New York is delivering reforms that place community reinvestment, social equity, and justice at the core of the law”.<sup>143</sup>



# CONCLUSION

The war on drugs has been a costly failure and despite the countless lives that have been devastated, it is estimated that globally \$100 billion<sup>144</sup> is devoted per annum to enforcement-led approaches. Despite the recent claims by current UK Prime Minister, Boris Johnson, that he has “absolutely no intention of legalising cannabis”,<sup>145</sup> it is clear that the legalisation and regulation of cannabis for adult recreational use is fast approaching the UK, as demonstrated by the plethora of cannabis advisory companies and think-tanks that have emerged in recent years - and the influence of the market and lobbyists cannot be ignored. When this occurs, civil society must be prepared to push for reforms grounded in principles of racial and social justice, and we must ensure that any new framework does not lock *out* the very people who are locked *up* by punitive and racially-biased policies.

Cannabis offences are an entry point into the criminal justice system for many,<sup>146</sup> and disproportionately so for young, Black men.<sup>147</sup> Cannabis legalisation will reduce the total number of arrests, and this is certainly positive. However, legalisation should not be considered a silver bullet for tackling disproportionate drugs policing in its entirety. A report by the Drug Policy Alliance confirmed that disparities still persist after legalisation and that despite reform, cannabis arrests remain disproportionate for Black and Latino people under the legal age of use.<sup>148</sup> Institutional racism, racial profiling, and discrimination are symptomatic of broader attitudes that cannot be alleviated with decriminalisation or legalisation alone.

Any model for regulation must be founded in evidence, ensure that equity is at the heart of the approach, and refuse to put industry interests at the forefront.<sup>149</sup> There is a responsibility to design a racially inclusive industry and a cannabis policy that prioritises the representation of those who have been dealt the severest injustices due to cannabis prohibition and the wider drug control regime. A number of people living in deprivation are dependent on the drugs trade as a primary source of income;<sup>150</sup> incorporating equity, social, and economic justice measures are fundamental in ensuring reform does not perpetuate the impoverishment of the impoverished. This is particularly important to consider now given the effects of austerity and rising poverty within the UK,<sup>151</sup> compounded by the 2020 drop in GDP linked to the Coronavirus restrictions.<sup>152</sup>

It is essential that we recognise that cannabis reform is not *progression* if the harms of cannabis prohibition still continue for some. Focusing on the participation of disadvantaged and disproportionately impacted groups in a new regulated cannabis market would begin the reversal of the devastation produced by the war on drugs.<sup>153</sup> We can adopt measures which seek to level the playing field by redistributing the power and wealth that will be gained by the legalisation and regulation of cannabis for recreational use. Whilst there are some injustices that cannot be undone, we can acknowledge the harms, learn from the experiences of North America and beyond, and take the steps necessary to ensure that cannabis reform is not contributing to existing trauma, but is instead assisting the healing.

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