Cannabis Reform as Criminal Justice Reform

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DRUG ENFORCEMENT AND POLICY CENTER

- Founded in November 2017 with grant from Charles Koch Foundation, housed at the Moritz College of Law at The Ohio State University.
- The Center focuses on the impact of modern drug prohibitions, policies and enforcement on personal freedoms and human well-being.
- The Center is giving particular attention to the rapid evolution of cannabis laws and the impacts of state-level reform efforts.
- Ever interested in forging research and educational partnerships.
Harms of cannabis prohibition propel reforms, but are reforms redressing these harms?

Unpacking This Question Requires:

I. Understanding the Harms of Cannabis Prohibition
II. Reviewing How Cannabis Reforms Address Prohibition’s Harms
III. Envisioning How Reforms Can Better Redress Harms
I. Harms of Cannabis Prohibition

- In 2017, roughly 1.65 million people were arrested for a drug offense. Of these, 85% were for possession. (FBI Uniform Crime Report)

- Marijuana arrests peaked at nearly 850,000 in 2007; despite many jurisdictions legalizing or decriminalizing marijuana use, 2017 still had 660,000 marijuana arrests. (FBI Uniform Crime Report)

- Most marijuana arrests do not result in a conviction, most convictions do not result in incarceration, but still plenty do. (King & Mauer 2005)

- Comprehensive conviction/sentencing/revocation data lacking.
Significant racial disparities in marijuana arrests, convictions, sentences repeatedly identified across the country

- Rates of disparity can change over time and vary across jurisdictions but are perniciously persistent. (E.g., Virginia Daily Press 2018; Simms, Minnesota 2014; Alabama Appleseed 2018)

- ACLU report concluded African-Americans nationwide were 3.73 times more likely than whites to be arrested for marijuana possession in 2010. (*The War on Marijuana in Black and White*, ACLU, June 2013)
I. Harms of Cannabis Prohibition

Convictions and arrests carry profound formal and informal collateral consequences.

- US GAO found 641 collateral consequences in federal law triggered by a non-violent drug conviction, nearly 500 of which can last a lifetime.

- State laws and private actors often impose particular hardships for education, employment and housing.
Marijuana arrests, convictions and incarceration have tangible and intangible impacts on persons, families and communities:

- Employment prospects
- Family rights and cohesiveness
- Educational attainment, health outcomes of children
- Family financial insecurity, housing issues and homelessness
- Community relations and trust with law and its enforcement
Data from states that have *legalized* adult use of marijuana show drug arrests and convictions decreasing significantly.

*Decriminalization* states sometimes showing similar patterns.

II. How Reforms Address Harms, But…

However, disparities persist even with legalization and decriminalization

- **Colorado:** Arrests of white people decreased by 51%, compared to 33% decrease for Hispanics and 25% decrease for African-Americans (2012-2014). The marijuana arrest rate for African-Americans was nearly triple that of whites. (Colorado Department of Public Safety March 2016)

- **New York City:** “Across the city, black people were arrested on low-level marijuana charges at eight times the rate of white people over the past three years. Hispanic people were arrested at five times the rate of white people. In Manhattan, the gap is even starker: Black people there were arrested at 15 times the rate of white people.” (“Surest Way to Face Marijuana Charges in New York: Be Black or Hispanic”, New York Times, May 13, 2018)
II. How Reforms Address Harms, But...

- Modern state-level cannabis reforms began in 1996.
- Only in recent years have policy discussions begun regularly emphasizing efforts to address past harms of prohibition. (California, Massachusetts as recent trend-setters.)
- Some cannabis reforms perpetuate past harms by prohibiting persons with prior drug convictions from holding cannabis licenses or even working in the industry.
II. How Reforms Address Harms

- Recent proposals increase emphasis on expungement opportunities, social equity programs, effective reinvestment of new revenues in initial cannabis reforms.
  (See, e.g., Senator Booker’s Marijuana Justice Act; debate in NJ; De Blasio proposal in NYC)

- Few programs have been formally adopted, fewer still have been implemented effectively at state and local level.

- Lawmakers and advocates need better resources mapping terrain and assessing effectiveness of emerging programs.
III. Envisioning Better Redress

Criminal record expungement (and resentencing)
Resentencing for persons still enduring formal punishment terms, and record expungement efforts for all with records of arrest or conviction, can have significant impact on the quality of life for many people and their families.

- Automatic record expungement helps ensure everyone can benefit from changes.
- Record expungement can require critical follow-up with both impacted individuals and private actors.

Preferential industry considerations
Giving preference to persons and communities most affected by previous policies – formerly incarcerated people, their families, people in regions deemed disproportionately affected – many have many direct and indirect societal benefits.

- Varied “social equity” efforts, e.g., preferential licensing, preferential employment, preferential funding/business support.
- Effective formal structures combined with dynamic implementation efforts seem essential to success.

Investment of cannabis tax revenue for social good
Funding of programs above, as well as substance use and abuse education, research and treatment, community residential centers, health programs, and others. Creating infrastructure to work on redress (e.g., Redress Commission) may be critical.
III. Envisioning Better Redress

Prioritizing criminal record expungement

- The most frequently adopted initiative to date.
- Expungement efforts not unique to marijuana reform – broader criminal justice movement (Berman 2018)
- Problematically, record expungement initiatives can be ineffective without serious investment in implementation.
- California is a leader in this space with its automatic record expungement mandate passed in 2018.

Number of petitions received by the San Francisco DA office out of 8000+ eligible records.
III. Envisioning Better Redress

Preferential industry considerations

Beginning in 2014, states began adopting provisions designed to encourage greater participation in the legal cannabis industry of minorities, women and people affected by the war on drugs.

2014
- **Maryland** (minority and women owned businesses)

2016
- **California** (communities disproportionately harmed by cannabis prohibition)
- **Ohio** (minority and women owned businesses)
- **Massachusetts** (communities disproportionately harmed by cannabis prohibition)
- **Pennsylvania** (participation of diverse groups)

2017
- **West Virginia** (geographic diversity and minority-owned business)
III. Envisioning Better Redress

Preferential industry considerations

In addition to preferential treatment, California passed a law in 2018 which would authorize the Bureau of Cannabis Control to provide technical assistance to a local equity program that helps local equity applicants or licensees.

Some localities have also been very progressive when it comes to creating opportunities for communities disproportionately affected by past cannabis prohibition:

- San Francisco
- Oakland
- Los Angeles
- Sacramento
III. Envisioning Better Redress, but...

Preferential industry considerations

- **Legal challenges to racial priorities**
  - Maryland avoid big problems
  - Ohio has big problems

- **Implementation challenges**
  - Predatory investors
  - Red-tape, delays, need to be nimble and persistent
### III. Envisioning Better Redress

#### Designing Better Social Equity Programs Framework

Preliminary framework developed by Chris Nani, law student at the Moritz College of Law, The Ohio State University.

<table>
<thead>
<tr>
<th>Accessibility factors</th>
<th>Environmental factors</th>
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<tbody>
<tr>
<td><strong>Application process</strong></td>
<td><strong>Incubator program</strong></td>
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<tr>
<td>The degree of difficulty of the application process and the length of the process should be minimized.</td>
<td>Availability of incubator programs for social equity applicants designed to assist them with the initial stages of building their business.</td>
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<tr>
<td><strong>Expungements</strong></td>
<td><strong>Real estate/ zoning rules &amp; regulations</strong></td>
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<tr>
<td>Ease and ability to have a criminal record amended or expunged.</td>
<td>The degree to which a municipality supports the presence of a cannabis business and the extent of limitations put on such businesses.</td>
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<tr>
<td><strong>Outreach programs</strong></td>
<td><strong>Government responsiveness</strong></td>
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<tr>
<td>Existence of outreach programs to create public awareness of social equity programs.</td>
<td>The degree to which government agencies respond to feedback from social equity participants to improve conditions.</td>
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<tr>
<td><strong>Preferential licensing/ employment</strong></td>
<td><strong>Community reinvestment fund</strong></td>
</tr>
<tr>
<td>Preferential licensing and/or employment for people affected by cannabis prohibition.</td>
<td>Extent of investments into communities disproportionately affected by cannabis prohibition, whether it focuses on health, education, community building, etc.</td>
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<td><strong>Shareholder/ ownership requirements</strong></td>
<td><strong>Educational services</strong></td>
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<tr>
<td>Protections for social equity applicants designed to prevent loss of controlling state in their business via their investor.</td>
<td>Availability of educational programs for possible beneficiaries, including financial literacy, business management, business law basics, overview of regulations and others.</td>
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<tr>
<td><strong>Waivers/loans</strong></td>
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<tr>
<td>Availability of waivers, reduced licensing fees or loans for social equity applicants.</td>
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<tr>
<td><strong>Eligibility</strong></td>
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<tr>
<td>The definition of who is eligible for the status of social equity applicant.</td>
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### III. Envisioning Better Redress

#### Allocating Tax Revenue

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<th>State</th>
<th>Allocation</th>
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| California  | Off-the-top disbursements to research, California Highway Patrol and community reinvestment  
60%: youth treatment fund  
20%: environmental restoration |
| Colorado    | $40 million to school construction  
Remainder to Public School Fund  
Marijuana Tax Cash Fund, which funds health care, monitoring health effects of marijuana, substance abuse prevention, treatment, etc. |
| Washington  | 25% Substance use treatment, education and prevention  
1%: Marijuana-related research at the University of Washington and Washington State University  
50%: State basic health plan trust account  
5%: Community health centers for primary health/dental care services  
Remainder: General fund |
| Oregon      | 40%: State School Fund  
20%: Mental health, alcohol and drug treatment  
15%: State police  
10%: Cities, based on population and number of licenses  
10%: Counties, based on canopy size + #licensees  
5%: State health authority |
| Alaska      | 50%: Programs aimed at reducing recidivism |
| Nevada      | Administrative costs reimbursed  
Wholesale tax revenue goes to schools  
Excise tax revenue goes to rainy day fund |
| Massachusetts | Administrative costs reimbursed; Remaining funds expended for (1) public and behavioral health, including substance use prevention and treatment; (2) public safety; (3) municipal police training; (4) Prevention and Wellness Trust Fund; (5) programming for restorative justice, jail diversion, workforce development, and mentoring services. |

Corporate Social Responsibility & Cannabis Reform

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Law and Policy Intern, Health in Justice Action Lab
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Cannabis: What’s CSR Got To Do With It?

Project Objective, Framework, & Methodology

2019 North American Cannabis Summit
Roadmap to Smart Business

Developing Targeted Interventions:

- I. Defining the Gaps
- II. Application of the CSR Framework
- III. Approaching CSR in the Future
The Cannabis Market in 2018

- The Major Investors in Cannabis Were:
  - CBD/Therapeutics
  - Consulting & Private Investment Firms
  - Biotechnology (Cultivation)
  - Retail/Distribution & Manufacturing

- Few, if any, Displayed Corporate Social Responsibility (CSR)
  - Smart Farming, Priority Hiring, & Partnering for CSR
  - Government Attempts at Accountability

- Corporate Presence Increased in the United States
Both a domestic and global movement responding to the profound growth of corporations, specifically multi-national corporations

- United States: focus on internal governance, rise of law and economics movement, eventual refocus
- Global: MNC's, far ranging effects of global value chains, and the mitigation of worsening global inequality

Close ties and correlation with problems surrounding gender and racial inequality as well as other increasingly present social issues

Resulting Focus: social, ecological, & economic responsibility
Likely Barriers to CSR

- Due to a number of factors ranging from banking issues to general stigma, investors are hesitant to deviate from “traditional” business practices.
- The effects of prohibition are wide-ranging and deeply pervasive; addressing those harms will likely be complex and require ample resources.
- The federal status of cannabis prevents Bcorp accreditation, traditional sources of small business funding, and encourages operation of a predominantly cash business.
Critiques & The Business Case

- Too Little, Too Late
- In Direct Conflict With Corporate Duty
- Proactive v. Retroactive
- Collective Industry Action
Philanthropy (Short Term)

- Investors should follow the lead of their government and non-profit counterparts by participating in or aiding criminal justice reform:
  - Funding expungement initiatives or participating in community reach out
  - Prioritized hiring: community members from disproportionately policed areas, people formerly incarcerated, and support through childcare, health benefits, and other individualized needs
  - Provide funding or business development services to equity participants
  - Fund research concerning related public health initiatives
In The Long Run

- Corporations Should Focus on Systemic Outcomes
  - Center the Support of Disproportionately Policed Communities
  - Support Better Drug Policy

- Collective Action is Most Effective
  - CSR Coalitions
  - Support of Regulated Industry Standards for Social, Economic, & Environmental Responsibility
Northeastern University

Mission: Criminal justice reform through a public health lens

Twitter: @HiJAction

Website: HealthinJustice.org

Funding: Drug Enforcement and Policy Center, OSU Moritz College of Law
Thank You

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