



Social Equity Permitted Interaction Group Report - Act 169 (2021) Dual Use Cannabis Task Force

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Agenda

01. Background

02. How Legal?

03. Cannabis Justice Reform

04. Service Equity

05. Market Equity



Social Equity Group Mission



To identify Hawai'i communities and populations disproportionately impacted by cannabis criminalization and make recommendations for social equity and restorative justice policies that would help to reduce and remediate past and ongoing disparities, including equity in the market, community reinvestment, and expungement and resentencing.

Social Equity Group Goals



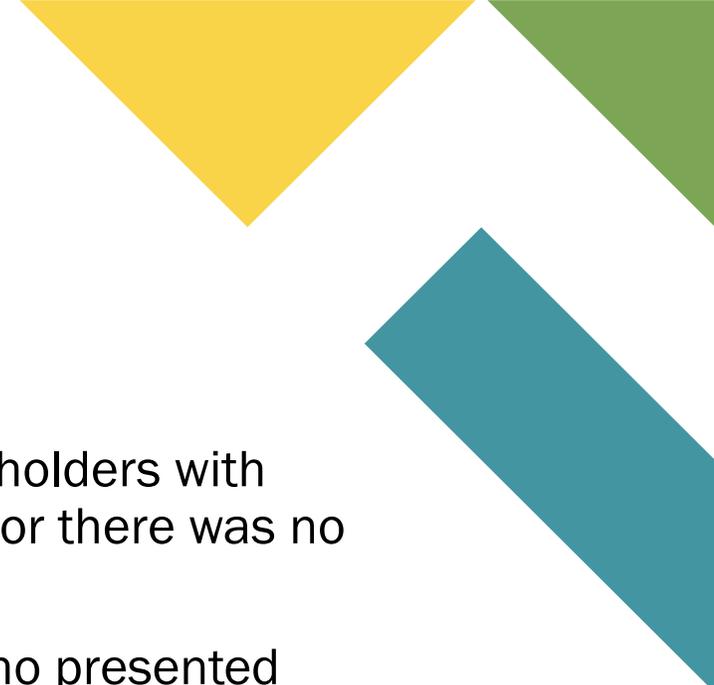
1. Recommend how Hawai'i can eliminate criminalization of cannabis in Hawai'i.
2. Recommend how Hawai'i can right the wrongs of the past war on drugs and those who have been convicted for nonviolent cannabis crimes in the past.
3. Define “social equity” in the context of Hawai'i and the possible Adult Use Cannabis Program
4. Recommend how an Adult Use Cannabis Program can not only include social equity individuals but policies to uplift and invest in these communities from the start of the program
5. Recommend a state agency/body that has significant power to continuously monitor and adjust, if needed, social equity policies in Hawaii's Adult Use Cannabis program
6. Reach out to the public to gain input on what social equity participation in the adult use market should look like and the benefits the social equity community should receive from an adult use program.

**If something's
worth doing...**

**Its worth doing
right.**



Social Equity Group Activities



1. Attempted to obtain data from all state and local government stakeholders with relevant data – but they either had no data, it was not disaggregated, or there was no time to provide
2. We did obtain data from PEW research, the Last Prisoner Project who presented extensively on social justice reform, the Minority Cannabis Business Association, OHA, Supernova Women, Boston University Law Review, and other places.
3. Social equity programs in other states have seen few successes to date. So we concluded that not only does Hawaii need a new direction, it should be tailored to Hawaii's on unique history, population, and circumstances.
4. Social equity is not obtainable without community input. The Social Equity Group of its own volition and individually funded visited each island to seek personal input from stakeholders, legacy market operators, community leaders, patients, advocates, and many more.

Cannabis History in Hawaii

Please see the report for Hawaii's long and difficult history with cannabis enforcement, including:

1. Green harvest in the 1970s
2. Expansion in the 1980s, including widespread application of civil asset forfeiture laws
3. Operation Wipe Out in the 1990s
4. Ongoing law enforcement 'compliance checks' of patients and hemp grow sites
5. Ongoing federally funded enforcement on some islands
6. All of which dramatically and inequitably affected minority populations, rural communities, and Native Hawaiians.



The Foundation

How Legal?

Level of Legalization

Cannabis in Hawai'i should be completely legalized and descheduled subject to the civil licensing restrictions for cultivation, production, sell, transport, consumption, and other plant-touching activities as recommended here-in and enforced by an independent regulatory authority.

Level of Legalization

What level of possession is legal and what level sends you to jail?

1. We could not find a non-arbitrary, morally justifiable way to make a brightline distinction.
2. Why should 1 oz of cannabis be legal and 1 oz + 1 gram send you to jail?
3. Artificial constraints create opportunities for diversion and illegality, not the other way around
4. Current statistics show that while the partial legalization in other states does decrease the number of cannabis arrests, it actually increases racial disparities

Level of Legalization

What level of possession is legal and what level sends you to jail?

5. Licensing and civil penalties for cannabis businesses and large amounts of cannabis intended for use in commerce should be enforced
6. The feds are concerned with giving cannabis to minors, other drug use, interstate transfers, guns, drugged driving, and growing cannabis on government lands.
7. Hawaii has a host of relevant laws to address these and other issues and appease the feds, they just need to be *enforced consistently*. Common law nuisance regulations, zoning and agriculture rules, consumer protection laws, billboard restrictions, financial reporting requirements, business registration laws, driving while intoxicated restrictions, workers compensation and labor laws, selling drugs directly to minors wrong, and Tax Department registration and payment.



The Walls
Transformational
Justice
&
Remediation

Transformative Justice

If cannabis is legal, people should not be in jail.

1. Current inmates should be resentenced and their records cleared
2. Past offenders should be identified and their records cleared
3. Remediation for lost time, assets, family, and community should be made
4. These processes should be automatic, despite current data issues, and a center should be immediately funded to do identify appropriate records, recommend outcomes to the judiciary, and assist individuals moving through the process
5. Law enforcement should be removed from oversight and control placed in the new regulatory body
6. Civil Asset Forfeiture should no longer apply to cannabis civil or criminal defenses

Transformative Justice

Resentencing

The Legislature should:

1. Create an automatic process to identify and review eligible cases,
2. Apply this process to all past, current, and future cases,
3. Include a presumption for release, presuming resentencing to time served or reduced terms when before the court,
4. Provide clear guidance on those presumptions to judicial decision makers and subject any opposition by law enforcement or prosecutors to a judicial process,
5. Create enforceable deadlines for the identification, review, processing, and release of adversely affected individuals, and
6. Monitor the process with transparent data and reporting

Transformative Justice

Record Clearance

The Legislature should:

1. Create an automatic process to identify and review eligible records and clear them with no action or fees required of the record holder,
2. Ensure the criteria for clearance are broad and clearly defined,
3. Ensure there is no waiting period between identification of the records and their clearance,
4. Disallow discretionary review of individual records by law enforcement to improve the efficiency of the process,
5. Monitor the process with transparent data and reporting, and
6. Conduct public advocacy campaigns and individual contact attempt to ensure affected individuals are aware they received relief

Transformative Justice

Funding the Identifying and Processing of Records

Identifying cannabis offense records and civil asset forfeiture records for clearance and remediation as applicable is complicated by the current statutory framework and record system.

The state should fund a new center at the William S. Richardson School of Law to hire supervisors and law students to review all past drug cases to identify individuals eligible for resentencing and record clearance; prepare the forms and administrative documentation to submit to the reviewing agency and the courts as applicable under the new record clearance process; attempt to locate and contact all benefitting individuals; and appear in court representing individuals seeking resentencing.

Transformative Justice

Removal of Law Enforcement Oversight

Regulation and enforcement of any dual-use system should be removed from any current agency, commission, or department and placed in an independent entity responsible for all regulations implementing the statutory requirements and enforcement of those requirements. See elsewhere in this report and the reports from other permitted interaction groups for the proposed details of this non-law enforcement agency.

Transformative Justice

Ending Civil Asset Forfeiture for Cannabis

If cannabis possession, cultivation, and distribution—even outside of the licensing scheme—is no longer a crime, just a civil enforcement action unrelated to law enforcement, then the civil asset forfeiture system would no longer apply. This avoids the need for the state to reconsider its civil asset forfeiture laws as a whole at this time.

Identifying prior cannabis convictions for action will take time and resources. Identifying instances of civil asset forfeiture can be a part of that same process, which already has to review each criminal case for cannabis charges, dramatically reducing the cost of implementation of this recommendation. An independently funded center at the William S. Richardson School of Law is a cost-efficient way to automate this process and reach the largest number of those affected by the War on Drugs.

Transformative Justice

Remediation

The Legislature should fund some combination of:

1. Direct payments
2. Educational scholarships
3. Job training and placement, and
4. Low interest home, vehicle, and business loans

to any person, and their immediate family, whose record was cleared of any cannabis offense and/or subject to a civil asset forfeiture action related to cannabis.

This provides one of the most targeted, direct methods for remediating some of the harms of Hawaii's prosecution of the War on Drugs.



The Roof

The Many Forms of Service Equity

Service Equity

Employment Equity

The Legislature should adopt provisions that:

1. Prohibit employers from discriminating against a person in hiring, termination, or any term or condition of employment, or otherwise penalize a person, if the discrimination is based upon either the person's possession of a valid medical cannabis 329 certification or the person's positive drug test for cannabis components or metabolites, unless the person used, possessed, or was impaired by medical cannabis on the premises of the place of employment, during the hours of employment, or the employment otherwise requires no drug use;
2. Treat off-duty cannabis use in the same manner as off-duty alcohol use. So long as off-duty use does not affect job performance, employers must refrain from terminating workers for recreational use and for a failed drug test.

Service Equity

Custody Equity

The Social Equity Group clearly does not support the consumption or growth of cannabis around anyone under the age of 21 in a dual-use system, however, consumption and possession of cannabis should be treated by the family courts in the same manner as alcohol consumption and alcohol abuse, rather than in the same way as cocaine and methamphetamine use. Like alcohol, cannabis use and possession must be shown on a case-by-case basis to adversely affect the child's physical or emotional well-being as a factor in determining custody, not the simple fact of cannabis use or possession as a *per se* bar to custody.

Service Equity

Housing Equity

The Legislature should extend the protections of Chapter 28, Section 521-39 of the Hawai‘i Revised Statutes to include all legal use, possession, and growing allowed under a dual-use system (subject to the limitations contained in those provisions).

Such protections should also apply to all housing administered by the Hawai‘i Public Housing Authority, similar to the language of SB 2870 (2022) (along with the other provisions of SB 2870 if extended to include legal use).

Legal cannabis use and possession should not be a bar to receiving any state services administered by the Statewide Office on Homelessness and Housing Solutions.

Service Equity

Insurance Equity

The Legislature should pass statutes making it illegal for insurance companies to deny any sort of policy, voluntarily entered into by the insurer, on any basis concerning a legal use of cannabis as defined under the dual-use system.

Service Equity

Real Estate Equity

- The state should develop programs to educate landlords on how best to safely interact with the legal cannabis industry; fund grants or the first few years of rent for new small business and equity licensees; provide property insurance to small business and equity licensees; and extend the current prohibition on counties creating zoning or safety code requirements that are more strict than the laws of the state with regards to cannabis licensees.
- The state should keep, but modify, its current restrictions on the locations of retail, manufacturing, and grow locations to also include new license types and protect children, but provide accessible locations for all license types across the islands.
- The state should remove restrictions that prevent small growers from using their land for cannabis cultivation, including, but not limited to, the restriction that all cultivation must take place at least 500 feet from a residence on agricultural land.

Service Equity

Banking Equity

The state should require the Department of Commerce and Consumer Affairs Department of Financial Institutions to fast track the approval of any state-chartered financial institution that presents a plan for providing services to the cannabis industry in Hawai'i. The state should pursue methods of incentivizing state-chartered financial institutions to submit such applications. The state should subsidize access to financial services for small businesses and social equity licensees in Hawai'i.

Service Equity

Professional Services Equity

The state should investigate which professional service providers are currently hindered in their provision of services to a dual-use cannabis industry, both licensed businesses and legal consumers, and enshrine in statute or administrative rules protections and incentives for those service providers to engage with legal participants in the dual-use system.

Service Equity – Community Reinvestment

Regulatory Authority

- The regulatory authority should have a Social Equity Board separate from its operating board and advisory board. This Social Equity Board should have specific authorities and powers such as:
- Authority to review and revise the social equity program, provisions, and implementations at any time.
- Hold veto power for any policy or rule that is adopted by the operating board
- Receive, review, award, and track compliance for grants to applicants of a Cannabis Community Reinvestment Fund. Applicants would come from communities identified as been having disproportionately harmed by the war on drugs (by zip code or other identifier) and recipients do not have to be affiliated with any cannabis operations. Grants can be awarded to any entity that meets the requirements set forth by the Social Equity Board.
- Issue no interest loans or grants to those who apply and can show direct impact from civil asset forfeiture relating to a cannabis crime and/or can show a direct impact from Green Harvest Operations.
- Verify that social equity applicants are indeed qualified for that designation

Service Equity – Community Reinvestment

Industry Participation in Social Equity

The State of Hawai'i should mandate that the regulatory authority require (or provide large incentives for) cannabis companies to have a triple bottom line and report on this to the authority.

The authority should then issue a bi-annual report card for each company on their impact and make strong considerations regarding this report card in the renewal of licenses.

Companies can add additional certifications such as LEED certified buildings, regenerative agricultural practice certifications, local organic inputs, and the like to achieve a higher report card score and more incentives.



The Finish

**Equity in the
Market**

Equity in the Market

Social Equity Licensing

We highly recommend that the rules and regulations to get licensed for any of the businesses operations in an adult use cannabis industry be limited and have low barriers to entry. This will allow the most individuals to participate which has been identified as the best intervention for social equity.

Applicants who qualify as a Social Equity Applicant (SEA) will get prioritized in the licensure process and in an initial inspection process which is required to initially operate.

The regulatory authority should have adequate dedicated staff who review and prioritize SEA applications specifically.

Equity in the Market

State Support for Social Equity Applicants

The regulatory authority should have a dedicated office within its structure that carries out functions like the Small Business Association catered toward SEAs, providing: technical assistance, trainings for compliance, information briefings for potential SEAs, assistance with business plans, mentorships, etc.

In addition to technical assistance this office should provide financial assistance to SEAs. This would include but not be limited to, administering no interest start up business loans to SEAs that qualify based on criteria set forth by the regulatory authority, subsidizing mandated technology for regulatory purposes that come at a significant financial burden to SEAs (e.g. seed to sale tracking system subscriptions and fees)

Equity in the Market

Transition Period

If the State of Hawai'i decided to legalize cannabis and start an Adult Use program, immediately after passage of the legislation, the Governor's Office should oversee, or designate an entity, to oversee this interim transitional period from when the law is passed and when the new regulatory authority can adopt new rules and start licensing new cannabis businesses.

The State of Hawai'i should immediately launch the Adult-Use market and allow sales of Adult Use cannabis only by the current medical cannabis license holders, if licensees so choose, until the new administering body is operational after the legislation is passed to deter grey market activity and provide tested regulated cannabis to the public for purchase.

Equity in the Market

Social Equity Licensee Product Sales During the Transition

The State of Hawai'i should also allow qualifying social equity individuals to produce, manufacture, and wholesale cannabis products that meet the current testing requirements to the current medical cannabis license holders in a new supply chain diversification during the transition to ensure the adult-use market has enough tested product.

This would provide social equity individuals first mover advantage and significantly reduce the proliferation of untested, and unregulated sales.

These interim solutions shall be a provisional allowance until the regulatory authority is fully operational.

Equity in the Market

Affirmative Action Type Protections

Implement race-specific language into labor practices in a new Adult Use cannabis program to promote diversity in the cannabis workforce.

There are specific considerations when implementing affirmative action type language and requirements for business ownership that should be considered.

Equity in the Market

Qualifying as a Social Equity Applicant

Any applicant for any license in an adult use cannabis program who is of Native Hawaiian descent shall qualify as a Social Equity Applicant.

Supported by the historical data above of the impact the war on drugs and law enforcement operations against cannabis in the State of Hawai'i; individuals who can show that they themselves and/or an immediate family member has been harmed by Hawai'i's policies on cannabis shall qualify as a Social Equity Applicant.

**Let's build
something awesome
together.**

