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Support for Social and Economic Equity in Adult-Use and Medical Cannabis in New York State

New York State Office of Addiction Services and Supports (OASAS) Medical Advisory Panel

On March 31, 2021, the Marijuana Regulation and Taxation Act (MRTA) was signed into law in New York State (NYS). Among its many provisions, the MRTA legalized the use of cannabis for adults 21 years of age and older, defined the amount of cannabis an adult can possess legally for personal use, expanded the existing medical cannabis and cannabinoid hemp programs, and established the Office of Cannabis Management (OCM) to regulate adult-use cannabis, medical cannabis, cannabinoid hemp, and hemp extracts.¹ The MRTA also established the NYS Cannabis Control Board that is responsible for authorizing the comprehensive regulatory framework for New York's cannabis industry and serves as the approval and oversight body of the OCM.²

The NYS OASAS Medical Advisory Panel (MAP) held a meeting on June 22, 2022, where representatives from the OCM presented a summary of the key provisions of the MRTA, including the law's emphasis on social and economic justice.¹ This document represents a summary of some of the information presented by the OCM during that meeting as well as a summary of certain provisions of the MRTA that emphasize social and economic justice for Black and Hispanic populations disproportionately affected by New York's prohibition on cannabis. Additionally, background information about the New York State laws about cannabis and cannabis use that contributed to the social and economic inequities for Black and Hispanic populations was added to provide a context for some of the provisions of the MRTA.

Historically, New York has enacted legislation about substance use that has affected Black and Hispanic individuals unduly and severely restricted their ability to achieve social equity in areas such as education, employment, health care, and housing. For example, the Rockefeller Drug Laws were enacted in 1973 as a response to public concern about increasing drug use, particularly the use of heroin among White, middle-class youth, and rising rates of crimes, such as property crime, that often were associated with heroin use.³ Although the concern about heroin use focused on White, middle-class youth, the focus of the enforcement of the Rockefeller Laws occurred disproportionately in Black and Hispanic communities.³ Prior to 1973, New York emphasized rehabilitating and reintegrating individuals who used substances into society, but the laws changed this emphasis to criminalizing them and removing them from society instead.³ Indeed, the Rockefeller Drug Laws imposed mandatory sentences of a minimum of 15 years in prison to a maximum of life imprisonment for the sale or possession of relatively small amounts of heroin, morphine, opium, cocaine, or cannabis.

Four years after enacting the Rockefeller Drug Laws, New York sought to lessen the severity of the penalties for cannabis possession by passing the Marijuana Reform Act of 1977. This law made personal possession of cannabis a violation punishable by a fine rather than a criminal offense but possession of cannabis in public view remained a misdemeanor that could result in arrest.⁴ Despite these changes, arrests for cannabis possession in New York continued and increased by 2,300 percent between 1990 and 2016.⁵ A 2017 report by the Drug Policy Alliance found that even though Blacks and Hispanics made up a little more than a third of New York's total population, more than 80% of people arrested annually for cannabis possession were Black or Hispanic.⁵ Similarly, a 2020 report by the American Civil Liberties Union (ACLU) found that Black individuals were 2.6 times more likely than White individuals to be arrested for cannabis possession,

and Black individuals in five New York counties were more than 16 times more likely to be arrested for cannabis possession than Whites.⁶ In addition to criminalizing Black and Hispanic populations, arrests and incarcerations for cannabis and other drug possession denied them their freedom as well as access to education, employment, economic opportunities, appropriate health care, housing, voting rights, and important familial and social relationships not only during the period of incarceration but for many years afterwards.⁷

In addition to the disparities in the criminalization and incarceration of Black and Hispanic individuals in New York who used cannabis recreationally, there is also evidence of racial disparities in access to medical cannabis products. Currently, New York State's Medical Cannabis Program allows residents to be certified to purchase approved medical cannabis products from one of 40 dispensing facilities operated by registered organizations in New York State for any medical condition that a certifying medical practitioner believes may be treated with medical cannabis.^{8,9} Certifying medical practitioners, including physicians, nurse practitioners, physician assistants, dentists, podiatrists, and midwives, must have a valid New York State license, a valid Drug Enforcement Agency (DEA) registration, and complete a minimum of a two-hour online course on medical cannabis before they can begin certifying patients in the online Medical Cannabis Data Management System (MCDMS). In a study by Cunningham and colleagues,¹⁰ the authors posited that the harms of the criminalization of cannabis use by Black and Hispanic populations who were using cannabis for medical purposes and their historical lack of access to innovative health care might be mitigated by access to certifying practitioners and medical cannabis dispensing facilities available through the Medical Cannabis Program. Their analysis of 2018 New York State census tract characteristics, however, found that certifying providers were most likely to be in census tracts with fewer Black residents and more highly educated residents. Independent associations about the location of cannabis dispensing facilities could not be made, however, due to the small number of these facilities (38) in the state when the study was conducted.¹⁰ The study concluded that it is critical and just to ensure equal access to certification for medical cannabis and medical cannabis products.

Provisions of the MRTA seek to end the disparate impact of criminalization and mass incarceration, complex generational trauma, and limitations placed on access to housing, employment, and other vital services on Black and Hispanic communities that existed for many years prior to its passage.¹ The provisions that emphasize social and economic justice include:

- Automatic expungement of certain cannabis-related convictions such as possessing up to 16 ounces or selling up to 25 grams of cannabis. Expunged convictions will not appear on a background check for employment, licensing, housing, or Administration for Child Services (ACS) proceedings, and job applicants can answer "no" when asked if they have a conviction record.
- Implementing a social and economic equity plan that actively promotes and prioritizes consideration for applicants for adult-cannabis use business licenses from communities disproportionately affected by cannabis prohibition, as well as for applicants who qualify as minority or women-owned businesses, distressed farmers, or service-disabled veterans.
 - The goal is for 50% of the adult use cannabis licenses to be issued to these social and economic equity applicants.
- Investing 40% of the tax revenue from adult-use cannabis businesses in a community grants reinvestment fund. Money from this fund will provide grants to qualified non-profit organizations and approved local government entities in communities disproportionately affected by past federal and state drug policies. Examples of what grant funds can be used for, include but are not limited to:
 - Adult education
 - Job skills services and job placement
 - Financial literacy
 - Afterschool and childcare services

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- Nutritional services
- Linkages to medical care, women’s health services, and other community-based supportive services
- Substance use and mental health disorder treatment
- Legal services to address barriers to reentry into society after cannabis-related convictions.

Although not a provision identified in the MRTA as addressing social and economic justice, 20% of the tax revenue from adult cannabis-use businesses will be deposited in a drug treatment and public education fund.¹ The money from this fund will be used to:

- Develop and implement a youth-focused public health education and prevention campaign including school-based prevention, early intervention, and health care services to reduce the risk of cannabis and other substance use by school-aged children
- Develop and implement a statewide public health campaign focused on the health effects of cannabis and legal use, including an ongoing education and prevention campaign for the public, including parents, consumers, and retailers, about the legal use of cannabis, the importance of preventing youth access, and the importance of safe storage and preventing second-hand smoke exposure.
 - Additionally, the campaign will provide information for those who are pregnant or breastfeeding, and information about the overconsumption of edible cannabis products.
- Provide substance use disorder treatment for youth and adults that is trauma-informed, evidence-based, and culturally and gender competent, and that provides a continuum of care including:
 - Screening and assessment for substance use and mental health disorders
 - Early intervention and active treatment
 - Medication for addiction treatment (MAT)
 - Medications for mental health disorders and psychotherapy
 - Case management and family involvement
 - Overdose prevention
 - Prevention of transmissible infections related to substance use
 - Prevention of the recurrence of substance use and co-occurring psychiatric disorders
 - Parenting classes, family therapy, and counseling services.

The NYS OASAS MAP supports the MRTA’s provisions for advancing social and economic equity in the establishment of adult-use cannabis businesses as well as the reinvestment of 40% of the tax funds derived from these businesses to improve communities unjustly affected by state cannabis and other drug laws. The OASAS MAP also supports the reinvestment of 20% of the tax funds into education about, prevention of, and treatment for substance use and mental health disorders. Lastly, the OASAS MAP encourages an equitable distribution of medical providers in New York State who can provide certifications for approved medical cannabis products and equitable access to medical cannabis dispensaries so Black and Hispanic individuals have access to this treatment when medically indicated.

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