

UNDERSTANDING ILLINOIS' SOCIAL EQUITY PROGRAM

How current social equity program in Illinois acquired the foundation upon which modern-day equity is built.



WHERE DO WE START?

THE WAR ON DRUGS

Yeah, we're taking it back to the 1970s.

Launched in 1970 by the Nixon Administration, Congress passed the Controlled Substances Act ("CSA") under the Drug Enforcement Administration ("DEA"), which provides the foundation for modern-day drug control.

WHAT CHANGED?

Running to the Fourth Amendment for protection against unreasonable searches and seizures seems reasonable. However, the War on Drugs ignited an internal attack on various constitutionally protected liberties. Under the Fourth Amendment, a police search is considered reasonable if it is supported by probable cause.



Mandatory drugs tests in workplace/school Random drug searches in schools



Pre-textual Stops: Using minor traffic violations as an excuse to search for drugs with probable cause.



Plain Smell Doctrine: In Illinois, this is a warrantless search based on the smell of marijuana. An officer may seize an object they smell if they are legally entitled to be there, and the scent indicates that the object is discriminating. *People v. Hill* established that the odor alone remains sufficient to establish probable cause.

AFTERMATH

The CSA was a direct consequence of the racially motivated War on Drugs. Subsequent administrations built upon this foundation, which was established during Nixon's presidency.

As a result, mass incarceration began to plague America.

In 1980, only 6.5% of people incarcerated were drug offenders; by 2008, drug offenders made up 20% of state prisoners and 50% of federal inmates. Black people made up over half of those incarcerated individuals despite making up 13% of the population at the time.

Between 1980 and 2000, the number of people incarcerated in America's prisons increased from 300,000 to more than 2 million.

Today, Latinx people face a rate of being twice as times more likely to face incarceration, while black people face a rate of being 8.5 times more likely.

The War on Drugs has undeniably shaped the legal landscape surrounding cannabis on both a federal and state level - with the CSA serving as a significant pillar. Despite efforts by current administrations to repair the effects left behind by the War on Drugs, there remain systemic biases embedded within the federal outlook on cannabis. The stigma and racial biases founded during the War are things that carry on into today's landscape of legalization and disproportionately affect people of color.

SOCIAL EQUITY:

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The promotion of an equitable industry to promote the inclusion and success of minorities through equal access to opportunities and resources through four pillars: (1) industry, (2) justice, (3) community, and (4) access.

Out of **36 states** that have legalized cannabis recreationally and/or medically, **only 15 states** have implemented some sort of social equity program. Out of those 15 states, not one has resulted in the implementation of all four pillars of equity.

Generally, what we see in most states with a social equity program in place are three common priorities: (1) increased access to the cannabis industry, (2) sealing or expungements to criminal records, and (3) using cannabis tax to help impacted communities from the War on Drugs.

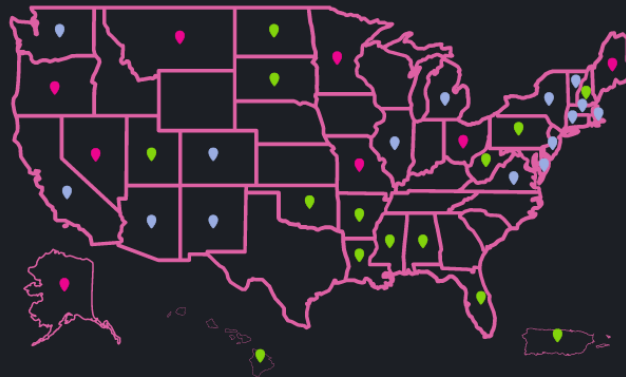
Which is great.

However, the War on Drugs continues within communities of color that expand beyond these three areas.

WHAT NOW?

A 2021 report found that while Black Americans represent 13% of the national population, they represent less than 2% of all cannabis company owners. In addition, they remain six times more likely to be incarcerated for drug offenses than their white counterparts despite the equal use among the two.

In Illinois, cannabis convictions are divided into three conviction types: (1) minor cannabis offenses, (2) minor cannabis offenses resulting in a cannabis misdemeanor conviction, and (3) cannabis offense that does not qualify as minor but is not a possession offense more than 500g or a distribution offense more than 30g.



- Has a social equity program
- Does not have a social equity program
- Medical Only

ILLINOIS TIMELINE

1978

The Cannabis Control Act was passed. This Act allowed State Police and the Department of Human Services to regulate medical marijuana.

2013

Illinois was the 21st state to legalize medicinal use. The Compassionate Use of Medical Cannabis Pilot Program Act was passed.

2019

The Cannabis Regulation and Tax Act ("CRTA") was passed. It legalized the sale and possession of cannabis to reduce harm to communities affected by the War.

2024

The DEA moved to reclassify cannabis from a Schedule I drug to a Schedule III. The proposal still has to undergo a public comment period and judge review before it becomes law.

This recognizes the medicinal effects of the plant, but leaves many questions open. This would not have an immediate impact on people already incarcerated.

ILLINOIS CANNABIS SOCIAL EQUITY PROGRAM

In Illinois, a social equity applicant must own at least 51% of the business by ownership and control and either (1) have been “arrested for, convicted of, or adjudicated delinquent for any offense that is eligible for expungement under the ICRTA, or (2) are members of an impacted family. An individual is considered a social equity applicant in Illinois if they own at least 51% of the business by ownership and control and have resided in a disproportionately impacted area for 5 of the past ten years.

The Illinois Department of Commerce (“IDOC”) maintains a map displaying disproportionately impacted areas on a neighborhood level. Finally, a social equity applicant qualifies if they have a minimum of 10 full-time employees, with at least 51% of those employees who (1) live in a disproportionately impacted area, (2) have been arrested for, convicted of, or adjudicated delinquent for any offense eligible for expungement under the ICRTA, or (3) are members of an impacted family.

Illinois provides an inclusive umbrella—including those who were family members of an affected individual. It explicitly acknowledges that multiple groups were affected by the War.

Here, Illinois hit on laws about the prohibition, decriminalization, medical, and legalization laws of cannabis – proactive, right?

The inclusion of people of color in the cannabis industry is something that remains limited in various states because entering the cannabis industry also requires several licenses and capital – all while combating increasing competition due to the limited licenses available.

Illinois requires proof of capital to secure a license, ranging from \$100k to \$2M. License caps limit the number of licenses issued within the state for medical, recreational, or both, artificially raising the value due to limited quantities.

Illinois has implemented various provisions relating to the funding; their social equity program has R3 provisions, funding, and “automatically expunging from criminal histories cannabis convictions for conduct not legal for adults. Illinois State Police are directed to automatically expunge group one’s records, but the process may not be completed until 2025.

A common misconception surrounds “automatic” expungements; they are not so automatic. Automatic does not mean immediate; Illinois still has the power to approve or deny.



Currently, Illinois’ social equity program favors the wealthy.

QUESTIONS IN CANNABIS: ILLINOIS

Who can purchase cannabis in Illinois?

For recreational cannabis use, adults 21 and over may purchase cannabis. For medical patients under 21, may use a prescription and purchase or have their caregiver/guardian purchase for them.

How much cannabis can I purchase?

Illinois Residents: 30g (1 oz) of flower; 500mg of cannabis-infused products; 5g of concentrate

Non-Illinois Residents: 15g (1/2 oz) of flower; 250mg of cannabis-infused products; 2.5g of concentrate

What are the rules for driving with cannabis?

While a motor vehicle is in operation, cannabis must be in a sealed, odor-proof, and child-proof container. Otherwise, it is a Class A misdemeanor. Don’t forget, smell of cannabis inside a motor vehicle is probable cause in Illinois.

Where can I use cannabis?

We think it’s easier to tell you where you **CANNOT** use cannabis:

- Any “public place” - defined as “any place where you could reasonably be expected to be seen by others and any place owned or leased by the State or local government, including parks or government buildings.”
- State/Government buildings or property
- Close to people under 21 who are not medical patients

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