

MEMORANDUM OF CALIFORNIA CANNABIS SOCIAL EQUITY PROGRAMS

TO: Oregon State Legislature
FROM: Cannabis Law Society – McGeorge School of Law
DATE: March 19, 2021
RE: Written Testimony for Oregon Cannabis Equity Act – HB 3112

INTRODUCTION

In this project, the Cannabis Law Society at McGeorge School of Law researched California’s appellate districts in order to examine and return findings on their various cannabis equity and expungement programs. We have composed this memorandum in anticipation that it may aid the advancement of cannabis equity in the State of Oregon in an effort to help those populations most disparately impacted by the “war on drugs.” California’s Proposition-64 (Prop-64) was passed into law in November, 2016, and was done so with the intent of enacting statewide legalization of the consumption, possession, cultivation, and sale of marijuana to the general public.¹ However, despite its mission of statewide enactment, California has left it up to the individual counties and municipalities to implement the law and its related equity programs.² Examining the various ways California counties and municipalities have chosen to implement the dictates of Prop-64 has brought some concerns into focus.³ This paper outlines the ways in which many counties and municipalities have implemented Prop-64 and its related equity initiatives in order to best reach communities of color, and to reach those who have been directly impacted by the “war on drugs” and by the enforcement of California’s “Campaign Against Marijuana Planting” (CAMP).

Prop-64 was enacted in race-neutral terms, and used socioeconomic indicators and factors to reach those who have been disproportionately affected by the “war on drugs.”⁴ Because Prop-64 and its related cannabis equity programs have been leveled in race-neutral terms, the counties which have adopted and implemented it have also used race-neutral language.⁵ Instead, these counties have used other socioeconomic factors to identify those who were most disadvantaged and affected by the “war on drugs” and California’s “CAMP.” Cannabis equity programs have been used to try and make right some of those wrongs, and to restore and enfranchise those who were adversely affected by these decades-long policies. Nonetheless, Prop-64 and its related equity programs, including marijuana conviction expungement programs, have been implemented throughout the state in a haphazard, piecemeal fashion. With marijuana laws

¹ *The Control, Regulate and Tax Adult Use of Marijuana Act*, POST.CA.GOV, <https://post.ca.gov/proposition-64-the-control-regulate-and-tax-adult-use-of-marijuana-act>.

² *Id.*

³ Kaitlin Lewis, *California Cannabis Equity Grants Program Provides \$30 Million in Grant Funding for Local Jurisdictions*, Governor’s Office of Business and Economic Development (GO-Biz) (April 21, 2021), <https://business.ca.gov/california-cannabis-equity-grants-program-provides-30-million-in-grant-funding-for-local-jurisdictions>.

⁴ *Id.*

⁵ *Id.*

varying, sometimes drastically, by county and municipality, the lack of clear State oversight has led to confusion and inconsistent implementation of the program throughout the state.

This paper will discuss some of California's cannabis equity and record expungement initiatives that exist, but differ at the county, and sometimes city levels. The Cannabis Law Society at McGeorge School of Law sought to examine the various California programs and provide arguments and data which would support a race-based language approach in Oregon. However, as our research suggests, we believe that the most effective way of reaching the populations adversely affected by the "war on drugs" in Oregon would be to implement a strong, centralized, statewide program which relies on a number of socioeconomic indicators and factors. It is our belief that Prop-64's greatest weakness lies in its piecemeal implementation. By not requiring counties and municipalities to meet statewide dictates, this has left some counties, such as Kern County, to ignore the passage of the proposition and continue to outlaw marijuana sale and cultivation. What is more, because each county has its own equity and expungement programs, where a person was formerly convicted has a great bearing on whether, and how, their former conviction can be cleared.⁶ By leaving implementation of Prop-64 and its related equity and expungement programs up to the individual counties and municipalities, it has caused a great deal of confusion and uncertainty for those who have prior marijuana convictions. This haphazard implementation has also presented a substantial barrier for those who are trying to enter the cannabis market to better themselves and their local communities. This, in turn, translates into diminished opportunities and denial of access to funding for those who wish to overcome their prior criminal records but are unable to do so.

According to our research, because of the high correlation between low to extremely-low income households and the highest levels of cannabis enforcement, using a variety of targeted, socioeconomic factors would likely be the most effective way to reach those who have been disproportionately impacted. However, even if the State of Oregon determines that race-based language is the best way to target the communities in need, our research has shown us that the most important factors are uniformed, statewide implementation of the equity program, and by creating local equity policy initiatives.⁷ Statewide implementation and enforcement of the cannabis-related equity programs would help break down many of the barriers to true equity which California has been unable to overcome due to its haphazard, piecemeal implementation.

Finally, this research project will conclude with a number of suggestions about the best way to implement the cannabis-related equity legislation so it may best reach those communities which have been disproportionately impacted by the "war on drugs." These additional policy suggestions can be used to supplement Oregon's equity program and would be useful to target Black and Latinx communities, regardless of whether the final Oregon legislation relies on race-based or race-neutral language. Specifically, such programs should include incorporating social equity programs into public policy; community outreach; inclusive and priority licensing;

⁶ Interview with Ryan Raftery, Sacramento County Public Defender's Office (Dec. 15, 2020).

⁷ *Proposition 64 Implementation: Ten Recommendations for Prioritizing Social Justice & Equity in the California Marijuana Industry*, Drug Policy Alliance (last visited Mar. 20, 2021), https://drugpolicy.org/sites/default/files/california-marijuana-policy-equity-recommendations-final_2.pdf.

increased resources and financial assistance; and expanding equitable employment opportunities. We conclude that, by combining these policy and local governance suggestions with a strong equity program, the State of Oregon will be able to effectively reach its population which has been most adversely affected by the “war on drugs,” and which have historically been the target of disproportionate marijuana-prohibition enforcement.

DISCUSSION

On April 21, 2020, the Governor’s Office of Business and Economic Development (GO-Biz), partnered with the Bureau of Cannabis control, to create the “Cannabis Equity Grants Program for Local Jurisdictions.”⁸ GO-Biz announced it would provide \$30 million in grant funding in the form of low, to no-interest loans or grants.⁹ Through this program, at least \$23 million of the funding is directly allocated to applicants and licensees identified by local jurisdictions as being from communities most harmed by cannabis prohibition.¹⁰

I. 1st Appellate District

A. Mendocino County

In Mendocino County, CA, GO-Biz, in partnership with the Bureau of Cannabis Control, awarded the county \$2.2 million from the aforementioned program. In 2021, GO-Biz announced a \$15 million grant through the same program, allocating \$832,274.17 to the County of Mendocino.¹¹ The county’s Board of Supervisors also allocated at least \$100,000 in matching grant dollars to support the county’s Cannabis Equity Program.¹² This program provides funding and services to those who were hardest hit by the “war on drugs” by easing access to cannabis permitting and licensing.

To qualify for Mendocino’s Cannabis Equity Grant funding, amongst other requirements, applicants must demonstrate that they qualify as “very low income” or “extremely low income” for Mendocino County, and they must meet one of the following equity conditions: (1) Having lived within a 5-mile radius of locations where raids were carried-out pursuant to the California’s “CAMP” program; (2) having a parent, sibling, or child was arrested or convicted for the sale, possession, use, manufacturer, or cultivation of cannabis; (3) any individual who applied for or obtained a cannabis permit in Mendocino County or has worked in the cannabis industry, and also had been arrested for or convicted of a non-violent marijuana offense, or civil forfeiture arising from a cannabis-related event; (4) was a person who was a victim of sexual assault or similar violence or sex trafficking when working in the cannabis industry; and (5) those who

⁸ Lewis, *supra* note 3.

⁹ *Id.*

¹⁰ Kyle Jaeger, *California Announces \$30 Million Grant Program To Promote Marijuana Industry Social Equity*, Marijuana Movement (Apr. 21, 2020), <https://www.marijuanamoment.net/california-announces-30-million-grant-program-to-promote-marijuana-industry-social-equity>.

¹¹ *Mendocino County’s Cannabis Local Equity Grant Program*, County of Mendocino, (last visited Mar. 20, 2021), <https://www.mendocinocounty.org/government/planning-building-services/cannabis-cultivation/cannabis-equity-grant>.

¹² *Id.*

were made homeless as a result of cannabis enforcement.¹³ For those who qualify under Mendocino’s program, they will receive: (1) county cannabis-related fee waivers (grant paid fees); (2) direct technical assistance; and (3) direct grants.¹⁴

Mendocino’s program specifically leaves all mention of race-based language out of its equity language and focuses strictly on socioeconomic considerations to meet the target populations.¹⁵ Those who qualify for the program will be able access funds which will enable them to enter the cannabis industry by breaking down financial barriers.¹⁶ The Mendocino program applies to everyone interested in cultivation, nurseries, processing, manufacturing, distribution and retail sales.¹⁷

B. Humboldt County

Humboldt County, CA, has a long history of involvement in the cannabis industry and was “ground zero” for the war on California cannabis producers in the late 1970s.¹⁸ In the ensuing two decades, Humboldt County remained a top target of annual eradication efforts, according to the county’s “Cannabis Equity Assessment”.¹⁹ Based on the Humboldt County Cannabis Equity Assessment, the County has created the Local Equity Program (LEP) Manual, which provides the administration of their LEP.²⁰ The services the Cannabis Equity Program provides may include technical assistance, financial assistance, business planning & development assistance, and others.²¹ To qualify for funding and services provided, applicants must meet any of the following qualifications from the Humboldt LEP Manual: (1) obtain a business permit within Humboldt County for a location with a poverty rate of 17% or above; (2) have engaged in or currently engaged in small-scale cultivation of cannabis on property in Humboldt County owned, leased, or with the express permission of the owner, with a cultivation area less than 10,000 sq. ft; (3) be a woman, person of color, or LGBTQ individual who has or worked in, or currently works in the cannabis industry in Humboldt County; (4) any person who has obtained or applied for a cannabis permit in the County or has worked in the cannabis industry and was arrested and/or convicted of a non-violent cannabis-related offense or was subject to asset forfeiture arising from a cannabis-related event; (5) are a person who experienced sexual assault, exploitation, domestic violence, and/or human trafficking while participating in the cannabis industry; or (6) have become homeless or suffered a loss of housing as a result of marijuana enforcement.²²

¹³ Mendocino County’s Cannabis Local Equity Grant Program, *supra* note 11.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Humboldt County Cannabis Local Equity Program Manual*, Humboldtgov.org, (Revised Aug. 2019), <https://humboldtgov.org/DocumentCenter/View/78911/Local-Equity-Program-Manual>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

II. 2nd Appellate District

The counties in the Second Appellate District are San Luis Obispo County, Santa Barbara County, Ventura County, and Los Angeles County. First, within these four, only the city of Los Angeles has an equity program, meaning that the rest of Los Angeles County, Ventura county, San Luis Obispo County and Santa Barbara county do not. Those interested in expungements of cannabis related offenses all have the same options for trying to do so, which are either to contact their local public defender’s office or to use “Record Clear” and “Fresh Start” websites.

The Cannabis Equity Grants Program for Local Jurisdictions disbursed in the 2019-20 fiscal year: \$6,042,014.23 to the City of Los Angeles, \$149,397.90 to the City of Palm Springs and \$93,783.26 to the city of Coachella. In the 2020-21 fiscal year, the Program disbursed \$2,030,997.42 to the City of Los Angeles, \$1,267,044.26 to the City of Long Beach, and \$869,540.18 to the City of Palm Springs for Cannabis Equity applicants/Licensees.²³

A. Los Angeles

Los Angeles’s administration of commercial cannabis licensing and regulation is called the Department of Cannabis Regulation. They classify individuals as either Tier 1 or Tier 2 “Social Equity Individual Applicants” as defined in § 104.20(a) of the Los Angeles Municipal Code.²⁴ They conduct their vetting process in a series of “Rounds” and in Round 1, an “Applicant shall have an individual Owner that is a Tier 1 or Tier 2 Social Equity Individual Applicant and owns an Equity Share in the Applicant.”²⁵ Additionally, they only take 100 applicants, 75 of the Tier 1 category and 25 Tier 2 Applicants. In Round 2, the Social Equity Individual Applicant must participate in an Application lottery, which requires the applicant to have a prior California Cannabis Arrest or Conviction and also must either be (1) low-income; or (2) ten years’ cumulative residency in “Disproportionately Impacted Areas.”²⁶ The Code also provides a list of disqualifying offenses that will prevent potential applicants from applying for or holding a temporary approval or license status which includes various prior offenses relating to violent felonies, crimes involving minors, and violations of wage and labor laws.²⁷

Interestingly, § 104.20(b)(1)(ii)(3) provides that a “California Cannabis Arrest or Conviction” does not include any arrest, prosecution or conviction for a violation of Proposition D, as codified in former Article 5.1 of Chapter IV of the LA Municipal Code, which intended to reduce the number of illegal medical marijuana dispensaries in 2015.²⁸ The regulations also provide workforce requirements to include “social equity workers” and “transitional workers” (individuals who meet the criteria of “Social Equity” pursuant to § 104.20(a) and transitional

²³ Lewis, *supra* note 3.

²⁴ Los Angeles, Cal., Code art. 4, § 104.20 (2018).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

workers are individuals who reside in an economically disadvantaged area or extremely economically disadvantaged area and faces at least two qualifying barriers to employment.²⁹

Several local Los Angeles residents reported “slow” results from the city³⁰. According to an article from the Los Angeles Times, the resident applicants reported that new cannabis retailers through the social equity program implemented in Los Angeles have been “slower to get approval.”³¹ As a result, a substantial number of applicants have incurred expenses while waiting for approval from the Department of Cannabis Regulation, with some applicants paying for empty storefronts.³² The Department reports that progress has been slowed down by the financial strain of the COVID-19 crisis, which reportedly restricted city hiring and contracting and hindered departmental services and earlier disputes over applications.³³ The department’s executive director, Cat Packer, said “we are doing everything that we can” to administer the equity program in a timely manner, but acknowledges that “bureaucracy” is slowing them down.³⁴ Essentially, the article brings to the surface a series of complaints from entrepreneurs and local equity program applicants criticizing the lackluster efforts by the city department in rolling out the grant funds fast enough to be effective in such applicants and entrepreneurs’ business plans and timetables, and ultimately, they seem to deem the program ineffective.

III. 3rd Appellate District

The 3rd Appellate District is located in Sacramento and its jurisdiction stretches over 23 counties.

A. City of Sacramento

The City of Sacramento has taken part in the “Clear My Record” automatic marijuana conviction expungement program through the not-for-profit Code For America.³⁵ This program is based on an algorithmic program which automatically detects and expunges eligible marijuana convictions. This program has been implemented in Sacramento, San Francisco, Los Angeles, and several other cities in Northern California, and is a part of California’s Prop-64 program to expunge marijuana convictions.³⁶ Because of the piecemeal way in which Prop-64 has been

²⁹ *Los Angeles Marijuana: The Uphill Battle of Proposition D*, Harris Bricken Canna Law Blog (June 5, 2015), <https://harrisbricken.com/cannalawblog/los-angeles-marijuana-the-uphill-battle-of-proposition-d>.

³⁰ Emily A. Reyes, *Slow rollout of L.A.’s equity program is painful for cannabis entrepreneurs*, Los Angeles Times (March 20, 2021) <https://www.msn.com/en-us/news/us/slow-rollout-of-l-a-s-equity-program-is-painful-for-cannabis-entrepreneurs/ar-BB1eMwxr>.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Clear My Record*, Code for America (last visited Mar. 20, 2021) <https://www.codeforamerica.org/programs/clear-my-record>.

³⁶ *Marijuana Conviction Relief*, Sacramento County District Attorney’s Office (Mar. 19, 2021), <https://www.sacda.org/public-resources/marijuana-conviction-relief>.

implemented at the county and municipality level, only convictions in these cities are eligible for auto-expungement.³⁷

This program is comparable to other automatic expungement programs in states such as Pennsylvania, Utah, and Illinois, and operates to clear marijuana convictions that meet certain conditions in the court system's database.³⁸ Because this is an automatic program operating off of an algorithm, sometimes when a person has a probation violation or some other non-disqualifying court action after the time of their marijuana conviction, the software will detect that person as having been disqualified for expungement at that time.³⁹ This is the point when the Sacramento Public Defender's Office or District Attorney's Office will step in, upon request, to expunge the prior conviction.⁴⁰

In late 2017, The Sacramento City Council established the Cannabis Opportunity Reinvestment and Equity (CORE) Program and adopted a zero-dollar fee as well as appropriate funding for business permits for CORE Participants.⁴¹ The City inquired into the negative impacts of cannabis regulation prior to its legalization in the Cannabis Equity Study and found cannabis related arrest rates spiked in 2006 with 1,590 total arrest incidents where one charge was related to cannabis.⁴² After Governor Schwarzenegger signed Senate Bill 1449 in 2010, reducing the charge for possession for one ounce or less of cannabis from a misdemeanor to an infraction, cannabis arrest rates fell nearly 45% in the city of Sacramento.⁴³

The City found the CORE Program as a local equity program after they were able to receive \$1.2 million in state funding for local equity programs.⁴⁴ In order to be eligible for the CORE Program, applicants must qualify under at least one of five different classifications.⁴⁵ For individuals, the applicant must either: (1) live or have lived in a low-income household in Sacramento and (a) have been arrested in Sacramento for cannabis-related crime between 1980-2011 or (b) an immediate family member who meets the description above; or (2) lived in a low income household in the following zip codes for 5 consecutive years between 1980 and 2011: 95811, 95815, 95817, 95820, 95823, 95824, 95826, 95828, 95818, 95838, and 95832.⁴⁶ For businesses, they must, either: (3) have no less than 51% ownership by either Classifications 1 & 2 individuals; (4) be a CORE Program "Incubator"⁴⁷; or (5) be a Cannabis Social Enterprise with

³⁷ Clear My Record, *supra* note 23.

³⁸ *Id.*

³⁹ Raftery, *Supra* note 6.

⁴⁰ *Id.*

⁴¹ *Cannabis Information for Businesses*, City of Sacramento Office of Cannabis Policy & Enforcement (last visited Mar. 20, 2021), <https://www.cityofsacramento.org/Finance/Revenue/Sacramento-Marijuana-Information/Business-Information>.

⁴² Sac. Cnty. Res. 2018-0323 Exh. A (as passed August 9, 2018).

⁴³ *Id.*

⁴⁴ Davina Smith, *City Receives \$1.2 Million in State Funding to Increase Equity in Local Cannabis Industry*, Sacramento City Express (last visited Mar. 20, 2021), <https://sacramentocityexpress.com/2020/02/04/city-receives-1-2-million-in-state-funding-to-increase-equity-in-local-cannabis-industry>.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Core Incubator means a cannabis business which must meet equity-focused requirements for receiving priority processing, as prescribed by the City of Sacramento CORE Program.

no less than 51% ownership by Classifications 1 & 2 individuals.⁴⁸ Additionally, the CORE program is administered by the Sacramento Asian Chamber of Commerce (SACC) and the Greater Sacramento Urban League (GSUL).⁴⁹

As part of the \$30 million in grant funding authorized by Go-Biz through the Cannabis Equity Grants Program for Local Jurisdictions in 2020, which includes at least \$23 million of funding directly supplied to applicants and licensees identified as being from communities most harmed by cannabis prohibitions, \$3.8 million went to the City of Sacramento alone.⁵⁰ An additional \$60,000 was also allocated to the nearby City of Stockton in San Joaquin County.⁵¹ In 2021, GO-Biz announced another \$15 million in grant funding; this time awarding \$75,000 to the County of Trinity, \$75,000 to the City of Modesto, \$1.8 million to the City of Sacramento, and \$1.2 million to the City of Fresno.⁵²

B. San Joaquin County

According to the San Joaquin Public Defender's Office, they work with expungement clinics in conjunction with educational institutions and non-profit organizations.⁵³ They also utilize social media in order to transmit the information about marijuana conviction expungements to potential applicants.⁵⁴ They acknowledged that some do fall through the cracks. They also reported that resources and funding was low, at least for them.⁵⁵ They reported working with other counties to specifically "clean slate" across county lines, and are currently trying to get on "Clear My Record" website. They reached out late last year but never received any responses.⁵⁶

In 2019, the Board of Supervisors in San Joaquin County adopted new ordinances that allowed the city to provide cannabis business licenses to commercial cannabis businesses in the county.⁵⁷ The website addresses the question of whether old criminal records can change with the new law and acknowledges that it is possible, but there is little information or resources listed that would specify where or how a layman would be able to go about doing this.⁵⁸ However, because San Joaquin County has only recently changed their laws in order to allow commercial cannabis grows within its jurisdiction, the county has not developed local equity programs or funding.

⁴⁸ *Cannabis Opportunity Reinvestment and Equity (CORE) Program*, City of Sacramento Office of Cannabis Management (last visited Mar. 20, 2021), <http://www.cityofsacramento.org/Finance/Revenue/Sacramento-Marijuana-Information/Core-Program>.

⁴⁹ *CORE Capital Cannabis Loan Program Is Now Available!*, City of Sacramento CORE Capital Loan Program (last visited Mar. 20, 2021), <https://www.cityofsacramento.org/Finance/Revenue/Sacramento-Marijuana-Information/Core-Program/LoanProgram>.

⁵⁰ *Bureau of Cannabis Control Announces Grant Solicitation for Cannabis Equity Grants Program*, Bureau of Cannabis Control (December 16, 2020), <https://cannabis.ca.gov/2020/12/16/bureau-of-cannabis-control-announces-grant-solicitation-for-cannabis-equity-grants-program>.

⁵¹ *Id.*

⁵² Lewis, *supra* note 3.

⁵³ Interview with Rebecca Carroll, San Joaquin County Public Defender's Office (February 12, 2020, 10:00 AM).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Commercial Cannabis Businesses*, San Joaquin County Cannabis Policy Project (2017), <http://www.sjccannabis.org/commercial.aspx>.

⁵⁸ *Id.*

IV. 4th Appellate District

The Fourth Appellate District is made up of six southern California counties: San Diego, Imperial, Orange, San Bernardino, Riverside, and Inyo.⁵⁹

A. San Diego

For the 2020-21 fiscal year, the Program disbursed: \$75,000 to the County of San Diego and \$75,000 to the City of San Diego.⁶⁰ According to the news article, the City of San Diego’s Mayor Todd Garcia stated that the funds will be allocated to a cannabis equity assessment, intended to provide a data-informed look at the historical impacts of cannabis criminalization on San Diego and “evaluate policy recommendations to assure equity and diversity in the emerging cannabis industry.”⁶¹

V. 5th Appellate District

The Fifth Appellate District consists of nine counties: Fresno County, Kern County, Kings County, Madera County, Merced County, Mariposa County, Stanislaus County, Tulare County, and Tuolumne County.⁶² First, cannabis use, cultivation, and manufacture are prohibited within all of these counties except Fresno and Modesto. Like other municipalities and counties, citizens only have the options of contacting their local public defender’s office or using a standard expungement website such as “Fresh Start” and “Record Clear” if they desire to expunge their cannabis-related offenses from their records.

A. Fresno County

The Fresno City Council set up an equity fund to potentially help support cannabis businesses run by disadvantaged owners — or people who have previously been affected by outdated drug laws.⁶³ The program aims to help communities of color because these communities have historically been adversely affected by the “war on drugs.”⁶⁴ However, the formal requirements are not based on race and do not use race-based language. To qualify you have to have received a previous marijuana conviction or be low-income.⁶⁵

⁵⁹ *Courts of Appeal: About the 4th District*, California Courts (2021), <https://www.courts.ca.gov/2620.htm>

⁶⁰ *\$75,000 Grant Lead Way in San Diego Cannabis Equity Assessment and Program*, City News Service (March 16, 2021), <https://www.kpbs.org/news/2021/mar/16/san-diego-cannabis-equity-assessment-program>.

⁶¹ *\$75,000 Grant Lead Way*, *supra* note 59.

⁶² *Courts of Appeal: About the 5th District*, California Courts (2021), <https://www.courts.ca.gov/2989.htm>.

⁶³ *How to Clean Up Your Record: Proposition 64*, Fresno County Public Defender (last visited Mar. 20, 2021), <https://www.co.fresno.ca.us/departments/public-defender/proposition-64?locale=en>.

⁶⁴ County of Fresno, Cal., Ordinances, § 10.64 (Ord. No. 15-003, § 4, adopted February 24, 2015, amended Ch. 10.4 in its entirety, § § 10.64.010-10.60.080, in effect repealing and reenacting said chapter as set out herein).

⁶⁵ Thaddeus Miller, *Fresno green lights cannabis equity program for people with criminal records. Here’s why*, The Fresno Bee (January 28, 2021, 2:58 PM), <https://www.fresnobee.com/news/local/article248842089.html#storylink=cpy>.

In Fresno County, nonprofits have teamed up with the Fresno Public Defenders to hold free expungement clinics. Similar to Kern County, there does not seem to be a technologically-based auto expungement program like Sacramento and other counties have.⁶⁶ Furthermore, many people are not even aware of the free clinics, so many do not participate.⁶⁷

B. Kern County

Kern County has a much more restrictive approach to their expungement programs.⁶⁸ Similar to other counties in the Fifth Appellate District, if someone in Kern County wants their record expunged, they have to make the initial step by contacting an attorney or the Public Defender.⁶⁹ Despite Prop-64's statewide implementation, Kern County has entirely banned marijuana sale and cultivation, and provides no marijuana equity legislation or initiatives.⁷⁰ Unlike the rest of the state which has pushed cannabis-related equity programs and cannabis legalization, Kern County has gone backwards by banning marijuana sales, including medical marijuana, completely.⁷¹

C. Kings County

Kings County is a small county which has only recently begun to expand into cannabis sales and cultivation.⁷² Due to its limited resources, persons seeking to expunge former cannabis-related convictions must do so through a private attorney. As a small county with limited resources, Kings County has yet to enact any form of cannabis equity programs in order to foster and facilitate the growth of a local marijuana growing industry.⁷³

VI. 6th Appellate District

The Sixth Appellate District's jurisdiction covers Santa Clara, San Benito, Santa Cruz, and Monterey Counties.

A. City of Santa Cruz

According to the Santa Cruz Public Defender's Office, they use the clean slate program and "clearmyrecord.org" as well for all automatic expungements, thus, marijuana-related

⁶⁶ *How to Clean Up Your Record: Proposition 64*, Fresno County Public Defender, <https://www.co.fresno.ca.us/departments/public-defender/proposition-64?locale=en>.

⁶⁷ Kellie Helton, *Free clinic aims to help Fresno residents clear their records of cannabis-related crimes*, KMPH (June 29, 2019), <https://kmp.com/news/local/free-clinic-aims-to-help-fresno-residents-clear-their-records-of-cannabis-related-crimes>.

⁶⁸ *Self Help: How to Expunge Your Record*, Kern County Law Library (last visited Mar. 20, 2021), <https://kclawlib.org/how-to-expunge-your-record>.

⁶⁹ Jeff Platt, *Some want their pot-related criminal records to go up in smoke now with legal weed*, Bakersfield Now-Eyewitness News (February 27, 2018) <https://bakersfieldnow.com/news/local/wiped-clean-prop-64-clearing-criminal-records>.

⁷⁰ *Id.*

⁷¹ David Downs, *Kern County Just Became California's Worst Cannabis Desert*, Leafly (May 24, 2019), <https://www.leafly.com/news/politics/kern-county-just-became-californias-worst-cannabis-desert>.

⁷² Frank Lopez, *Kings County Economic Forecast: Cannabis, Industrial Demand Spark Optimism*, The Business Journal (December 4, 2020, 2:49 PM), <https://thebusinessjournal.com/kings-county-economic-forecast-cannabis-industrial-demand-spark-optimism>.

⁷³ Kings Cnty, Cal., Ordinances ch. 14, art. 5, § 1 (2015).

offenses would also fall under that category.⁷⁴ The Santa Cruz Community Action Board was able to secure a state grant which funded them one paralegal to assist with the expungement services, which are promoted through websites and probation.⁷⁵

In 2019, GO-Biz and the Bureau of Cannabis Control awarded \$560,082.30 to the County of Santa Cruz.⁷⁶ In 2020, the City of Santa Cruz received \$147,666.75 as funding for Cannabis Equity Assessment/Program Development⁷⁷. Currently, there is no further information available, which shows that the program is still under development. The City of Santa Cruz has provided information on the development of their cannabis regulations, including regulations on retail sales, cultivation, manufacturing, warehouse/distribution, but substantively, there is not much to gather⁷⁸.

VII. Suggestions to Advance Cannabis Equity

In addition to legislation which would ensure access to Oregon’s cannabis equity programs, there are a number of suggestions which could help ensure the program sufficiently reaches the communities most impacted by the “war on drugs.” Some of these recommendations seek to address social inequities through community outreach, but some are also aimed at providing funding and advancing licensing and equity opportunities to deserving applicants.

1. Social Equity, Public Policy, and Community Outreach

By examining the counties which have effectively enacted equity programs, it appears that one of the most effective means of reaching those who have been disproportionately affected by the “war on drugs” is by identifying felons who were previously incarcerated for marijuana-related offenses.⁷⁹ Such identification could also reveal family members who were also adversely affected, but would not require reliance on any race-identifying characteristics.⁸⁰ Some of the counties and municipalities in California which have implemented social equity programs have also used other socioeconomic indicators and factors, such as determination of household income compared to average mean income in the area.⁸¹

In Oakland, CA, the city has put forth public policy statements based on race and equity analysis aimed at increasing cannabis equity ownership, as well as promoting employment opportunities in the marijuana industry.⁸² These acknowledgments by the local governance have been seen as necessary to help combat past inequities through disparate enforcement. These public policy statements can also be important to increase community outreach. Some cities in

⁷⁴ *City of Santa Cruz: Regulations for Marijuana Related Commercial Activity*, CannaBusiness Law (June 29, 2020), <http://cannabusinesslaw.com/california-cannabis-laws-by-county/santa-cruz-county/city-of-santa-cruz>.

⁷⁵ *Id.*

⁷⁶ Lewis, *supra* note 3.

⁷⁷ *Id.*

⁷⁸ City of Santa Cruz, *supra* note 73.

⁷⁹ Proposition 63 Implementation, *supra* note 7.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

California have created marijuana commissions and advisory committees which are aimed at targeting low-income communities and communities of color.⁸³ These community outreach programs seek to ensure that the communities which have been disproportionately impacted by the “war on drugs” are included in the process of marijuana policy development and implementation.

2. Better Access to Licensing

One of the more effective ways of ensuring that those who have been most affected by the “war on drugs” receive access to the cannabis equity programs is by granting affordable, priority licensing to those who were formerly convicted of marijuana-related offenses.⁸⁴ To support this priority licensing, Prop-64 prohibits the denial of state marijuana licenses on the basis of a prior drug conviction.⁸⁵ Prioritizing licensing to equity applicants can help ensure ownership opportunities are not monopolized by larger, well-resourced marijuana business operators.⁸⁶ Using the example of Oakland again, the city issued permits according to Prop-64 in a two-phase process: first, by ensuring the number of initial permits issued to general applicants is not more than the number of licenses issued to equity applicants; and second, only after ensuring the Equity Assistance Program has been funded and implemented, opening the licensing to general applicants.⁸⁷

In addition to priority licensing to formerly convicted persons and other equity applicants, reducing financial barriers to licensing has proven to be an effective means of ensuring access to minority applicants. By making licensing and regulatory fees affordable to low-income applicants, this has helped ensure greater access to minority applicants and communities of color.⁸⁸ The City of Oakland has instituted a waiver for equity applicants who are seeking access to licensing and compliance.⁸⁹ The city will waive all application and permit fees to qualified applicants, as well as waiving all fees associated with fire and building exceptions.⁹⁰

3. Greater Access to Resources & Financial Assistance

Ensuring that equity applicants have priority access to licensing can be combined with greater access to funding in order to further reach the targeted communities of color. Breaking down barriers to funding by prohibiting applicants from being barred from funding for prior drug convictions can be combined with loan assistance programs specifically aimed at low-income

⁸³ Proposition 63 Implementation, *supra* note 7.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

applicants and communities of color.⁹¹ These funded loan programs can ensure these applicants have access to land and capitol, both of which can otherwise present insurmountable barriers to equal access.⁹² In Oakland, the city provides equity applicants with access to \$3 million in revolving loan programs which provide no-interest business start-up loans, and will also provide loan application preparation assistance in an effort to target these particular communities of color.⁹³ Equity applicants should also be provided with access to resources which would assist them in navigating regulation and the process of licensure and compliance.⁹⁴ Equity applicants in Oakland are provided resources to ensure access to technical assistance, such as licensing, plan preparation, and legal and business accounting.⁹⁵

4. Equitable Employment & Private Equity Initiatives

A final suggestion to expand equity access to communities of color is by providing equitable employment opportunities to those communities most harmed by the “war on drugs.” Local governments can create equity initiative programs which encourage well-sourced general applicants to partner with less-resourced equity applicants.⁹⁶ In Oakland, these well-sourced general applicants are considered “equity incubators” who receive priority in the processing of applicant licensing when they provide qualifying capital or real estate to equity applicants.⁹⁷ By independently incorporating and prioritizing equity, some marijuana operators can develop equity initiatives which operate within their corporate social responsibility programs to benefit communities of color through benefit agreements or through other private means.⁹⁸ These private marijuana operators should also prioritize employment opportunities to formerly incarcerated individuals and by providing living wages for those employed by the marijuana licensed business.⁹⁹

By incorporating some of these suggestions which have been implemented with success in some California municipalities, Oregon can ensure its equity program reaches those communities disproportionately impacted by the “war on drugs.” The creation and incorporation of new marijuana policies and regulations are necessary to provide opportunities to address the past harms and inequities of marijuana enforcement. Many of these suggestions provide the local government the opportunity to acknowledge these prior inequities, and can be used to address the damage the prior marijuana prohibitions caused to communities of color.¹⁰⁰ By devising a strategy to combat these inequities, it will create opportunities for low-income applicants, and

⁹¹ Proposition 63 Implementation, *supra* note 7.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

specifically may be used to target Black and Latinx people who wish to obtain an equitable stake in the legalized marijuana market.¹⁰¹

CONCLUSION

The funding for local equity programs is administered through the state agency, the Bureau of Cannabis Control, in conjunction with the Governor's Office of Business and Economic Development (GO-Biz) to applicants on an annual basis. Each fiscal year the funding is allocated to cities and counties based on program guidelines the Bureau of Cannabis Control provides up to the requested amount each applicant provides. After a city or county has secured funding, it is up to the municipality's discretion to create ordinances that allow for commercial regulation and for local equity programs to be created. What is interesting to note is the amount of funding an applicant receives in relation to how fully or partially developed each municipality or county's local equity programs are.

Ultimately, only a limited number of cities and counties in California have developed or are in the process of developing cannabis related equity programs. The cities in California that have already developed equity programs are as follows: Los Angeles, Oakland, Sacramento, Long Beach, San Jose, Coachella, and San Francisco. The counties in CA that already have developed equity programs are Humboldt, Santa Cruz, and San Francisco counties. However, a number of other California cities and counties are in the process of developing their equity programs, including: Lake County, Monterey County, Nevada County, and the Cities of Santa Cruz, Clearlake, and Palm Springs.

Historically, the "war on drugs" and "CAMP" have disproportionately impacted low-income communities and people of color. Despite the enactment of Prop-64 and the developments in cannabis equity intended to cure these past injustices, many counties still prohibit cannabis use, manufacture, cultivation and equity. Because of the piecemeal implementation of Prop-64, and its related equity programs, many CA citizens still struggle to get expungements for cannabis related offenses, are unaware of any equity programs, or are unaware of their options in their communities. Therefore, it is our conclusion that, regardless of whether Oregon intends to use race-based language in its equity program, it is essential that any equity programs be enacted in a uniformed, statewide manner. From our research it appears equally clear that Oregon would be able to implement the most effective equity programs by instituting social and economic initiatives and incentives to break down barriers to access. If Oregon were to follow some of the California counties and cities which have taken a proactive approach by prioritizing access to equity applicants to enter the marijuana industry, the state can ensure its communities of color who have been disproportionately impacted by past marijuana prohibitions will have access to the intended benefits of Oregon's cannabis equity legislation.

¹⁰¹ Proposition 63 Implementation, *supra* note 7.