

## Cannabis Legalization in RI: A Racist History Demands Equitable Reform

Three proposals to legalize cannabis for adult recreational use in Rhode Island were presented during the 2021 legislative session: Senate Bill 568, House Bill 6370, and Article 11 of Governor McKee’s proposed FY2022 budget. The proposals are estimated to yield around \$17M annually. Rhode Island legalized cannabis for medical use in 2006 and decriminalized possession of small amounts of cannabis beginning in 2013. Nineteen states, including MA and CT, have legalized cannabis for recreational use. Federal legislation to legalize use has also been introduced.

As RI considers legalization, to protect its share of the market and to raise revenue, it must implement a legislative framework that maximizes racial equity, since racism is the root cause of why cannabis is illegal today. Cannabis was legal and used for medicinal and other purposes throughout the U.S. until the early 1900s, when an increase in Mexican immigration occurred. Soon after, government leaders and media began to spread lies that smoking cannabis caused those from Latinx and Black communities to become violent and insane. Stoking this xenophobia and racism was a purposeful means of **targeting people of color rather than cannabis itself**. Since the 1930s, cannabis criminalization has acted as a catalyst for the incarceration of Black and Latinx individuals and contributed to mass incarceration after Nixon’s 1970s declaration of the War on Drugs. In 2010, **Black Rhode Islanders were 2.59 times more likely than White Rhode Islanders to be arrested for cannabis possession**. Even after partial decriminalization, evidence suggests citations were issued disproportionately to Rhode Islanders of color.

**This summary outlines, for the three proposals under consideration, four areas that yield racial equity concerns:** (1) Regulatory & Advisory Authority; (2) Expungement of Criminal Records; (3) Access to the Legal Market; and (4) Uses of Revenue. In addition, this summary reviews the proposals’ methods to tax cannabis.

### **(1) Regulatory & Advisory Authority: *Who develops and recommends rules, regulations, and expenditures?***

Governor’s Plan	Senate’s Plan	House’s Plan
Tasks the existing Office of Cannabis Regulation with regulatory functions. Creates the <i>Governor’s Cannabis Reinvestment Task Force</i> , an advisory board, including state and local governments, RI Commerce Corp., small business, & faith-based representatives.	Creates the <i>Cannabis Control Commission</i> (regulatory body) & the <i>Cannabis Advisory Board</i> . Both would include individuals with expertise in social & criminal justice. Advisory group would include people with <i>experience</i> , not only expertise, in areas of cultivation and criminal justice.	Tasks the existing Director of the Department of Business Regulation with all regulatory, administrative, and expenditure functions; designates advisory role for the Department of Administration’s Office of Diversity, Equity, and Opportunity.
<b>Analysis:</b> None of the proposals mandates the inclusion of individuals who suffered harm from arrest or incarceration for possession of cannabis.		
<b>Option to increase racial equity:</b> Require regulatory and advisory bodies to include those directly impacted by cannabis criminalization.		

### **(2) Expungement of Criminal Records: *Does plan remove arrests and convictions from criminal records?***

Governor’s Plan	Senate’s Plan	House’s Plan
Not included in proposal.	Individuals can seek to expunge their records, without fees, for convictions for possession, sale, or distribution of 2 oz. or less. Calls for expedited sealing of non-conviction arrest records.	Requires automatic expungement, with fees waived, for any now-decriminalized cannabis possession or cannabis-related misdemeanor or felony offenses.
<b>Analysis:</b> While the Senate plan waives fees for expungement and expedites the process, individuals would still be required to initiate the process and be burdened by having to navigate the court system, and possibly hire lawyers and pay legal fees. The House plan provides for automatic expungement of cannabis offenses. Neither proposal includes expungement of ancillary offenses (additional charges, such as disorderly conduct, resisting arrest, etc., that were filed only connected with a cannabis-related charge).		
<b>Option to increase racial equity:</b> Require <i>automatic</i> expungement for cannabis offenses <i>and</i> ancillary offenses and seal non-conviction records. This removes the burden of time & money from the person who has unjustly suffered.		

**(3) Access to the Legal Market: *What guidelines provide access to business ownership & employment?***

Governor's Plan	Senate's Plan	House's Plan
<ul style="list-style-type: none"> <li>▪ Makes persons with drug offenses ineligible for licenses.</li> <li>▪ Requires 20% of licenses be reserved for minority/women-owned businesses.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Persons with prior cannabis-related offenses are eligible for licenses unless offenses involved distribution to minors.</li> <li>▪ Reserves 1/3 of retail licenses for individuals convicted of non-violent cannabis offenses, family members, &amp; others from "disproportionately impacted areas."</li> <li>▪ Sets aside funds to create the Social Equity Assistance Fund, which could assist economically disadvantaged persons to gain entry into the cannabis business.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Persons with prior cannabis-related offenses are eligible for licenses unless offenses involved distribution to minors.</li> <li>▪ Reserves first 5 new retail licenses for "social equity applicants" and 1 for a worker cooperative.</li> <li>▪ Sets aside funds to create Social Equity Assistance Fund, which may include aid for social equity applicants.</li> </ul>
<p><b>Analysis:</b> Unlike the Governor's plan, the House plan takes measures to maximize access to the legal market for those directly harmed by cannabis criminalization, and the Senate plan guarantees some access. Both the House and Senate plans allow funds from a Social Equity Assistance Fund to help certain populations gain entry in the cannabis business. However, since the money is raised from application, licensure, and other fees, funding may not be enough or available in time for individuals from impacted communities to enter the market at the beginning.</p>		
<p><b>Option to increase racial equity:</b> For individuals impacted by cannabis criminalization, ensure criminal records do not prevent participation in the legal market, require a fair number of licenses to be reserved, and provide grants or no-interest loans for application, licensing, and annual fees.</p>		

**(4) Uses of Revenue: *Where does the revenue go and how are funds spent?***

Governor's Plan	Senate's Plan	House's Plan
<p>Revenue goes to <i>Marijuana Trust Fund</i>. Some funds would pay for: program administration; substance use disorder prevention; treatment/recovery support services; public health monitoring; research &amp; data collection; surveillance; law enforcement training; &amp; technology improvements.</p>	<p>Requires some revenue to go to the General Fund and local governments and some revenue to go to the Social Equity Assistance Fund which could assist persons who are economically disadvantaged gain entry into the cannabis business.</p>	<p>Requires all revenue to go to the General Fund and local governments and some revenue from the General Fund to go to the Social Equity Assistance Fund which could assist persons who are economically disadvantaged gain entry into the cannabis business.</p>
<p><b>Analysis:</b> Governor's plan does not direct funds to individuals/communities impacted by cannabis criminalization.</p>		
<p><b>Option to increase racial equity:</b> Require revenue be used to help individuals harmed by cannabis criminalization by covering the cost of expungement, providing technical support to help gain entry into the legal market, providing grants and/or loans for application and licensure fees, and providing job training/general education.</p>		

**Methods of Taxation**

Governor's Plan	Senate's Plan	House's Plan
<p>Taxes retail cannabis sales by price (regular state sales tax + 10% state excise tax) &amp; cultivation by weight (\$10/oz of dried flower, \$3/oz of dried trim).</p>	<p>Taxes retail cannabis sales by price (regular state sales tax + 10% state excise tax + 3% local excise tax).</p>	<p>Taxes retail cannabis sales by price (regular state sales tax + 8% state excise tax + 5% local excise tax).</p>
<p><b>Analysis:</b> All three plans tax by sales price, a simple method used by most other states that have legalized cannabis. A potential downside is that prices are likely to drop over time, while consumption will likely level off. This makes taxing price more volatile and less secure in the long run. The governor's proposal also taxes the cultivation of cannabis plants by weight. While this method is more complicated for retail sales, due to different tax rates for different products, it does secure a more stable revenue stream, as weight remains stable despite fluctuations in price. A similar option, taxing by the potency of the active ingredient in cannabis, would prove more stable while setting a single rate across products, though this would require reliable laboratory analysis.</p>		