

**Written Testimony of The Bronx Defenders
By Ivan Bohorquez, Civil Legal Advocate, Civil Action Practice**

**New York City Council Committee on Justice System
Hearing Regarding T2019-5492, A Local Law to amend the NYC Charter, in relation to
mandating a citywide audit of collateral consequences for drug arrests and convictions**

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My name is Ivan Bohorquez and I am a civil legal advocate in the Civil Action Practice at The Bronx Defenders. Thank you for the opportunity to testify before you today on this important matter.

The Bronx Defenders is a public defender non-profit that is radically transforming how marginalized people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and

national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

I. Introduction

The Civil Action Practice, now in its 19th year, is designed to defend against the many enmeshed civil penalties that arise out of a person’s arrest. As a civil legal advocate in the Civil Action Practice, I provide direct representation, advocacy and support for clients who are entangled in multiple legal systems and at risk of losing their livelihood, important life-sustaining benefits, and other basic needs and rights. We regularly see how drug-related accusations and convictions can lead to a whole host of direct, devastating civil consequences, not only for the person who stands accused but for their entire family. These consequences are often hidden and invisible to the people accused of the crime, to practitioners, legislators and even to judges and the courts. They are scattered across sections of statutes, local laws, and state and local agency regulations and policies. They can touch every aspect of a person’s life and can occur any time after an arrest, leading to job loss, denial of benefits, deportation, loss of property or even eviction from one’s home. The American Bar Association, through its national inventory of collateral consequences of criminal convictions, catalogs at least 44,000 nationwide civil consequences.¹ In New York State, as of 2015, The Bronx Defenders has cataloged hundreds of enmeshed civil consequences in our guide on the “Consequences of Criminal Proceedings in New York State” and continue to research the multitude of ways our clients are impacted.²

¹ See the U.S. Commission on Civil Right, *Collateral Consequences: The Crossroads of Punishment, Redemption, and the Effects on Communities*, at 13 (June 2019), <https://www.usccr.gov/pubs/2019/06-13-Collateral-Consequences.pdf>

² The Bronx Defenders, *The Consequences of Criminal Proceedings in New York State* (Apr. 2015), <https://www.reentry.net/ny/search/attachment.265297>

II. The War on Drugs is Not Over

Hundreds and thousands of people are swept into the criminal legal system every year due to the criminalization of drugs. In fact, nationally, drug-related arrests are on the rise again.³ After experiencing an all-time low in 2015, drug-related arrests have increased every year since then.⁴ According to the F.B.I, there were 1,654,282 arrests for drugs in 2018, over 80% of which were for possession and involving small quantities.⁵ In New York State, there were 75,897 arrests for drug felonies and misdemeanors in 2018.⁶ In New York City, according to the Division of Criminal Justice Services, there were 34,611 drug felony and misdemeanor adult arrests in 2018 and in the Bronx, where the communities we serve reside, there were 9,298 drug felony and misdemeanor adult arrests.⁷ The racial disproportionality of these arrests at the federal, state and city levels are appalling; for example, in New York State, while Black people and Brown people make up about 18% and 19% of the population in 2018 respectively, they account for 37% and 25% of all drug-related arrests.⁸ This despite national research indicating that people of all races use drugs at the same rates.⁹ The people of color disproportionately targeted by drug-related arrests also often experience intersecting or compounding forms of

³ Susan Stellen, “Is the ‘War on Drugs’ Over? Arrests Statistics Say No” *New York Times*, Nov. 5, 2019 <https://www.nytimes.com/2019/11/05/upshot/is-the-war-on-drugs-over-arrest-statistics-say-no.html>

⁴ *Id.*

⁵ *Id.* (referring to the FBI’s Uniform Crime Reporting program). UCR is a “nationwide, cooperative statistical effort of nearly 18,000 city, university and college, county, state, tribal, and federal law enforcement agencies voluntarily reporting data on crimes brought to their attention.” Bureau of Justice Statistics, “About the Uniform Crime Reporting Program,” <https://www.bjs.gov/ucrdata/abouttheucr.cfm> (accessed Dec. 10, 2019).

⁶ Stellen, *supra* fn. 3.

⁷ Division of Criminal Justice Services, 2018 adult arrests, New York City, available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/nyc.pdf>; Bronx County, available at <https://www.criminaljustice.ny.gov/crimnet/ojsa/arrests/Bronx.pdf>

⁸ Stellen, *supra* fn. 3.

⁹ *Id.*

discrimination on the basis of their age, sex, health status, disability or vulnerability to ill health, sexual orientation or gender identity, and nationality, asylum or migration status.¹⁰

III. Consequences of Drug-Related Arrests and Convictions

In addition to the trauma and stigma connected to being prosecuted in criminal court for a drug-related arrest, a person may be saddled with court debt, in the way of fines and fees and the cost of rehabilitative programs, and then also will continue to suffer legal restrictions, forfeitures and disabilities that create numerous social and economic barriers lasting a lifetime. These “collateral” consequences are not limited to convictions; rather, a person begins to experience these punishments at the moment of arrest.

As holistic public defenders in the Bronx, we have seen how drug-related arrests have led to the loss or suspension of city-regulated occupational licenses or clearance (for example, by the NYC Taxi and Limousine Commission, the NYC Department of Consumer Affairs,¹¹ or the NYC Department of Education), the denial of an application to or termination from or permanent exclusion of family members in New York City Housing Authority public housing, and the seizure of cash and other important property by the New York City Police Department, just to name a few of the direct consequences of an arrest. When faced with such a consequence, we have seen how individuals stand to lose their income, homes, licenses and livelihoods without the right to counsel to represent them in the civil court or civil administrative proceeding and with less constitutional protections than are available in criminal court.

¹⁰ United Nations and World Health Organization, Joint United Nations statement on ending discrimination in health care settings (June 27, 2017), <https://www.who.int/en/news-room/detail/27-06-2017-joint-united-nations-statement-on-ending-discrimination-in-health-care-settings>

¹¹ DCA regulates over 50 business and professional licenses, ranging from horse drawn cab drivers, locksmiths, newsstands, and tow truck drivers. Dep’t of Consumer Affairs, “List of DCA License Industries,” (accessed Dec. 10, 2019), <https://www1.nyc.gov/site/dca/businesses/licenses-apply.page>

To illuminate the far-reaching effects, we highlight the following client stories.

Client BD – Clearance to work as a classroom paraprofessional was affected.

Mr. BD works as a paraprofessional in a District 75 school, helping provide specialized instructional support for students with significant challenges, including emotional special needs, cognitive disabilities, physical handicaps, and autism. One evening after work, he was conversing outside in his neighborhood with a friend who was smoking. Both he and his friend were arrested after an officer alleged that the friend passed him the cigarette – believed to be marijuana – which was dropped to the ground. The NYC Department of Education was notified through the Division of Criminal Justice Services at the time of arrest, and Mr. BD was immediately suspended from work without pay pending the outcome of his case. Two months after he was arraigned, at his next court date, he was offered an Adjournment in Contemplation of Dismissal. Because this allowed him to return to work, he accepted this outcome rather than continue to fight the case to full acquittal.

Client AW - clearance to work as an art teacher

Mr. AW worked as an art teacher in a New York City public school where he had been a founding faculty member. On morning he was making chalk drawings on the sidewalk in front of his building when police officers approached him. He was arrested after an officer alleged that he recovered a cigarette - believed to be marijuana - which had been dropped to the ground. The NYC Department of Education was notified through the Division of Criminal Justice Services at the time of arrest, and Mr. AW was immediately suspended from work pending the outcome of his case. Many months after he was arraigned, he was offered an Adjournment in Contemplation of Dismissal. Because this allowed him to return to work, he accepted this outcome rather than continue to fight the case to full acquittal. Mr. AW missed over a year of classes at the school he loved as a result of the arrest.

Client AS – Faced eviction from his NYCHA Apartment of 25 years.

AS lived with his elderly mother in their New York City Housing Authority apartment for over 25 years. When his mother passed away, AS had to fight for succession rights to his mother's tenancy and get a lease in his name. When he was younger, AS went undiagnosed with mental health impairments and had various interactions with the criminal legal system related to the use of drugs, which he used to self-medicate. AS, now in his 50's and clinically diagnosed, still struggled with substance use. One day he was arrested for buying a pill from an individual who turned out to be an undercover officer. While fighting his criminal court case, NYCHA stated this arrest was the reason he should not get a lease in his name. The criminal court diverted his case and he participated in mandated treatment; nevertheless, NYCHA sought to evict him and prevent him from getting a lease.

After AS connected with The Bronx Defenders, we were able to successfully challenge his lease denial and also successfully defend against his eviction. However, many public housing residents and their family members are not as lucky to obtain representation and

stand to lose their housing based on drug arrests—even those deemed related to a substance abuse problem.

Client JH – Monthly retirement benefits withdrawn from prepaid card presumed to be proceeds of a drug sale.

Mr. JH pled guilty to misdemeanor drug possession and agreed to a six-month sentence to run concurrently with a parole violation. But while he was incarcerated at Riker’s Island, he was unaware that a civil forfeiture lawsuit was filed against him to confiscate the approximately \$1,500 in cash that was seized at the time of his arrest. As is presumed of many unbanked people in NYC, including the Bronx where one in five people do not have access to a bank account, law enforcement believed that the money must be the proceeds of a drug sale. Before Mr. JH was released from Rikers, the government had already sought to obtain a default judgment to keep the money because he never responded to the lawsuit. After he was released, The Bronx Defenders represented him in the civil proceeding, and demonstrated that the seized cash represented the New York State retirement benefits he received as the beneficiary of his deceased father. At the time he was arrested, he had one month’s benefits in cash after withdrawing the sum from a prepaid ATM card where the money was deposited.

IV. We Support a City-Wide Audit

Given the vast number of civil consequences and punishments that exist, we very much support an amendment to the New York City Charter that would mandate a citywide audit of collateral consequences for drug arrests and convictions. This would allow for a full assessment of how the lives of individuals accused of drug crimes are impacted at the City level and would give a bigger picture of the scope of barriers that exist. Our hope is that such an audit would be comprehensive and far reaching. We hope that impacted communities will be consulted towards these ends. The results of any audit should be made publicly available and accessible on an annual basis. And once such data is collected, our hope is that the city will commit to eradicating these practices that unjustly and disproportionately harm marginalized communities of color and those who struggle with substance use – the spirit of which is antithetical to the important criminal justice reforms that have passed to improve the lives of impacted individuals.

V. Conclusion

The time is now to build the inventory of city-wide civil consequences of drug-related arrests and convictions. The Bronx Defenders would be happy to support this endeavor. Those who have been impacted, those who continue to be impacted, and those who will be impacted deserve this information, and hopefully, armed with this data, the City will be able to make changes to remove these barriers and hurdles. Thank you for your consideration of this matter.