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**New York State Senate  
Senate Subcommittee on Cannabis; Standing Committees on Agriculture,  
Finance, and Investigations and Government Operations**

**Subject: To examine issues in the New York State market related to  
consumer accessibility and retail sale of legal adult-use cannabis**

**October 30, 2023**

**Written Testimony of The Bronx Defenders  
By Eli Northrup, Policy Director, Criminal Defense Practice & Director of  
The Bronx Cannabis Hub, The Bronx Defenders**

Chairs Cooney, Krueger, Hinchey, and Skoufis, thank you for holding this hearing today to address this critical issue. In 2022, The Bronx Defenders<sup>1</sup> (BxD) launched The Bronx Cannabis Hub (the Hub). The Hub’s mission is to support the social equity promise of the Marijuana Regulation and Taxation Action (MRTA) by offering free legal support to those navigating the State’s newly created legal cannabis market and connecting them to vetted and non-predatory resources. As public defenders who represented tens of thousands of New Yorkers in court for decades when cannabis was criminalized, we knew that legalization would not automatically transform the State’s relationship vis-a-vis its residents overnight. The history of legalization in other states made it plain that bad actors would be waiting in the wings to corner the market or attempt to take advantage of system-involved individuals who were to be

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<sup>1</sup> The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 400 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.

prioritized. Legal assistance would be vital to delivering on any social equity promises the State might devise, no matter how progressive or seemingly airtight legally.

Unfortunately, as this hearing itself demonstrates, that assumption has proven true. The State's commitment to delivering the social equity promises contained in MRTA—which this Legislature so admirably and wisely passed in 2021—is not only being challenged vigorously from without, but is also being silently undermined from within. I present this testimony on behalf of BxD and the Hub to address concerns we had witnessed first-hand over the course of the past year.

### **New York's Troubled History of Marijuana Policing**

From 2002 to 2012, misdemeanor marijuana possession was the single most common charge in New York City criminal court.<sup>2</sup> In 2011 alone, over 50,000 people—overwhelmingly and disproportionately young Black and brown men—were arrested for low-level marijuana possession. In the years immediately leading up to legalization, roughly 90 percent of people arrested in New York City for marijuana were Black or brown, despite usage being consistent across races.<sup>3</sup> In 2017 alone, Black people in New York City were over 8 times more likely to be arrested compared to their white counterparts, while upstate, the disparities were even greater.<sup>4</sup>

The Bronx suffered acutely.<sup>5</sup> A 2018 report by then New York City Comptroller Scott Stringer found that nearly half of the New York City neighborhoods with the ten highest marijuana-related arrest rates were in the borough.<sup>6</sup> In the decade from 2009 through 2018, BxD represented approximately 29,000 clients in Bronx Criminal Court in cases where the top charge was a marijuana-related offense, the overwhelming majority of which were low-level misdemeanors or non-criminal violations. These disparate arrests changed lives and whole communities for generations. Beyond incarceration, marijuana policing led to thousands of lost jobs, evictions, and families separated by the Administration of Children's Services. People we represented were deported for being found with a single joint. The financial and social ruin caused by the War on Drugs is hard to fathom.

Yet fathom the State did, thanks to the tireless advocacy of the people and families whose lives were ruined by the War on Drugs. The State understood that legalizing cannabis must go together with economic reparations for the people who were most

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<sup>2</sup> <https://ww2.nycourts.gov/COURTS/nyc/criminal/annual-reports.shtml>

<sup>3</sup> <https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white>

<sup>4</sup> <https://datacollaborativeforjustice.org/wp-content/uploads/2020/04/Marijuana-Brief.pdf>

<sup>5</sup> *Id.*

<sup>6</sup> <https://comptroller.nyc.gov/wp-content/uploads/documents/Marijuana-justice-brief.pdf>

directly harmed by its prohibition and criminalization. Otherwise, the State would be adding economic insult to moral, bodily, and spiritual injury.

### **The State's Social Equity Promise**

On March 31, 2021, the State codified this commitment to repair the harms of the War on Drugs by passing the MRTA. “Unlike any other state in America, this legislation is intentional about equity,” Crystal D. Peoples-Stokes, the Democratic majority leader in the Assembly who sponsored the bill, said on the floor of the lower chamber. “Equity is not a second thought, it’s the first one, and it needs to be, because the people who paid the price for this war on drugs have lost so much.”<sup>7</sup>

Immediately, legalization was a game-changer in criminal court. As public defenders, we represented tens of thousands of people for decades in courts across the legal system who found themselves in one proceeding after another due to an arrest for cannabis use or possession. Now, there are virtually zero cases, with no significant or even arguably measurable increase in crime as a result. We have also seen illegal searches predicated on the blatantly pretextual rationale that an officer detected the “odor of marijuana” nearly vanish. The notion that legalizing cannabis would be a gateway to other vices and thus undermine public safety—so prevalent for decades in justifying the mass incarceration of Black and brown New Yorkers—has been shown in less than two years to be the totally illusory myth we and others always knew it to be.

However, as the Legislature realized, simply legalizing recreational adult-use cannabis moving forward was not sufficient. In addition, the law sought to repair harm in three distinct ways:

- 1) by expunging past cannabis convictions;
- 2) by dedicating 40 percent of tax revenue from cannabis sales to communities disproportionately impacted by cannabis policing;
- 3) and by aiming for half the licenses in the new market to go to those most harmed by its criminalization, including those who were victims of racist policing.

Advocates fought hard for these provisions, and the State deserves praise and credit for its initial implementation. The Office of Cannabis Management (OCM) has leadership that understands the commitment to equity deeply. Yet the more difficult provisions in this social equity promise were always going to be finding ways to ensure New Yorkers whose past criminalization made them eligible for licenses received the support needed to participate in the new legal market.

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<sup>7</sup> <https://www.nytimes.com/2021/03/31/nyregion/cuomo-ny-legal-weed.html>

## **The Unfulfilled Promise of CAURD**

In March of 2022, OCM took the first step forward in meeting this challenge by announcing the creation of the Conditional Adult-Use Retail Dispensary (CAURD) license program. Only New Yorkers who had been directly impacted by cannabis prohibition—specifically, people who had been convicted of cannabis-related offenses or who had immediate family members who had such convictions—and demonstrated a successful capacity to own and operate a business, could apply for the new CAURD license.

Immediately, it was clear to us that in the absence of an independent, trusted organization, with zero ties to the cannabis space and equipped with the legal capacity to rigorously vet potential partners, that the promise of the CAURD program would not be realized. One of the greatest threats to social equity provisions, such as those in Illinois and California, has been the capacity of non-state and corporate actors to exploit these provisions, either by using their vast resources to challenge social equity provisions for cannabis sales in court, or by luring social equity applicants into predatory partnerships that slowly rob applicants of control over their profits. Another threat has been the incapacity, incompetence, or indifference of State governments to enforce and protect the social equity provisions they created.

We launched The Bronx Cannabis Hub in July 2022 specifically to fill this void. Through the Hub, we partnered with cannabis legal experts and our large pro-bono network to create a flexible, pop-up legal clinic where New Yorkers interested in applying for the new CAURD program could get screened for eligibility and receive assistance in submitting a CAURD application if they wished. Critical to our mission as both the Hub and BxD was a commitment we made to every New Yorker we helped apply to the CAURD program that we would continue to support them in each phase of the program's rollout until they were securely in possession of not just a dispensary license, but the material and financial means to execute the license.

From July to September of 2022, we screened over 600 applicants interested in applying for the CAURD license. We held workshops and office hours at our office in the South Bronx, free of charge. We connected them to pro-bono law firms to form LLCs and organization charts. We walked them through the intricacies of the True Party of Interest forms. We scanned documents and uploaded PDFs. We paid for the application fees on their behalf. Ultimately, we helped 30 justice-impacted individuals submit CAURD applications.<sup>8</sup> The Hub received no funding from the City or the State to complete this work. Twenty-three of our cohort eventually received conditional CAURD licenses, including the first individual to open a legal cannabis business in New York State.<sup>9</sup>

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<sup>8</sup> <https://www.curbed.com/2022/12/new-york-marijuana-dispensary-license-applicants.html>

<sup>9</sup> <https://www.nytimes.com/2023/01/24/nyregion/weed-dispensary-licensed.html>

Over the course of the past year we have continued to stay in close contact with our cohort. They included taxi drivers, contractors, grocery store owners, and more, all of whom had been directly impacted by marijuana policing. Our experience working with them and supporting them as they continue to navigate the State's CUARD rollout and response to its legal and financial challenges, has given us a front row seat into the ways in which the State is silently undermining its own commitment to the social equity promise it so deliberately and admirably made two years ago.

The promises made by the State to those justice-impacted individuals have not been realized, subsequently causing more harm to the directly impacted communities they pledged to protect. Ultimately, 23 members of our cohort received conditional CAURD licenses. Twenty of these licensees are unable to progress due to the court-ordered injunction currently in place. They are in a tenuous position, in limbo while the court case plays out, applying for the new Adult Use licenses recently announced by OCM.

### **The Exploitative Nature of the Social Equity Cannabis Investment Fund**

Meanwhile, the members of our cohort who had identified retail locations and are able to move forward under CAURD are facing issues of their own.

As a part of the States commitment to social equity, CAURD licensees were promised access to funding. This funding would play a pivotal role in opening avenues to capital for social equity applicants. When the creation of the New York Social Equity Cannabis Investment Fund (the Fund) was announced in June of 2022, a press release from the Governor's office characterized it as a

key component of the Seeding Opportunity Initiative to create opportunities for individuals with business experience who have been convicted of cannabis-related offenses, or their family members. The Initiative is a step toward addressing barriers that have significantly impeded progress for these individuals in other states, particularly accessing the capital needed to source, lease, construct and equip suitable real estate for conditional adult use retail cannabis dispensary locations.<sup>10</sup>

In practice, the operation of the Fund has perpetuated many of the inequities it was ostensibly created to combat. The creation itself was a bit of a bait-and-switch. Instead of creating a State-funded grant program, the Governor created a modified loan program born from a public-private limited partnership. Of the \$200 million invested, \$150 million comes from the private sector and \$50 million comes from the

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<sup>10</sup> <https://www.governor.ny.gov/news/governor-hochul-announces-major-progress-toward-advancing-equity-cannabis>

State.<sup>11</sup> The Fund struggled to secure a private partner for nearly a year, finally entering into an agreement with Chicago Atlantic this past June.

Again, this partnership was touted as one that would lead to opportunity and support for CAURD licensees. “New York has always strived to lead the nation in providing opportunities for those who have been unjustly denied privileges and opportunities,” Governor Hochul stated in a press release. “Today’s announcement reinforces New York’s commitment to building partnerships that benefit New Yorkers and setting right the wrongs of the past.”<sup>12</sup> Senator Cooney stated, “Thank you to Chicago Atlantic for their investment in the promise we made when first legalizing adult use cannabis—New York must be the most equitable and empowering cannabis marketplace in the nation.”<sup>13</sup>

That promise has not been fulfilled. Instead, interactions between the Fund and the CAURD applicants that they are supposed to be support have been opaque and coercive. We have witnessed, and continue to witness first-hand, how the State’s partnership with these non-governmental entities is exposing the most vulnerable New Yorkers to predatory exploitation—the precise outcome that the MRTA was designed to stand against by creating such strong social equity provisions to begin with, and which the Legislature has a moral and constitutional obligation to address.

One of the CAURD applicants that we’ve worked closely with over the past year has been presented with a loan agreement that includes a 13% interest rate. Interest rates of this magnitude do not reflect a social equity model. This overzealous move by the Fund sends the astounding message to CAURD applicants: New York is focused on making money off their CAURD licenses rather than fostering restorative justice for drug war victims. Additionally, restrictive financial covenants included in the proposed agreement do not give CAURD holders the flexibility needed to start up a business, significantly increasing the likelihood of default under the loan. Borrowers are also prohibited from refinancing in the future if better terms become available on the open market under the terms of agreement. Subjecting the Fund’s borrowers to these restrictions reflects the Fund’s commitment to protecting itself rather than investing in social equity.

Other portions of the loan agreement are similarly flummoxing for a supposed “social equity fund.” CAURD holders who borrow from the Fund are subjected to program-related expenses, meaning they would be forced to foot the bill for the administration of the Fund, including personal expenses of its employees. Given that this was supposed to be a social equity model, social equity license holders should not be liable to pay for the Fund’s employees’ food and travel.

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<sup>11</sup> <https://www.governor.ny.gov/news/governor-hochul-announces-150-million-investment-cannabis-social-equity-investment-fund>

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

The predatory nature of the Funds’ practices are on full display during loan negotiation conversations with applicants. Borrowers have been threatened with being kicked out of their store if they do not agree to the Fund’s loan terms. Numerous conversations have taken place with borrowers outside of the presence of their pro-bono counsel, even after the Fund had been advised that counsel should be included in all interactions. Rather than providing support and empowerment, the Fund’s actions make clear that its only priority is return on investment. This retributive negotiating position is not reflective of a model aimed at empowering the CAURD cohort.

This has left the few CAURD holders who actually have brick-and-mortar stores dispirited. Individuals and their families have sacrificed their other jobs, their time, and their energy because they believed in this program, not to mention hundreds of thousands of dollars they now owe to security, contractors, and others. And now they feel trapped, surrounded by bad faith actors from within the State’s own social equity program who seem to be looking to exploit them.

As one of our applicants shared with respect to dealing with the Fund: “It’s like I can’t even afford to say no. I have to accept terms that are less-than because of the power and financial dynamic. They know I didn’t go to Harvard or Yale—they know where I came from. It’s just another example of how exploitative it is for poor people. People they can take advantage of and don’t have the ability to say no.”

### **What Needs to Change**

We are calling on The Governor, the Legislature, and OCM to support those who have been directly impacted by the -War on Drugs not just in theory, but in practice. These institutions must hold true to the promises of innovative services and avenues for economic opportunities made when the MRTA was passed. The State needs to put its money where its mouth is. Social equity is more than a slogan. People applied because of a promise the State made—a promise it must keep. This can be done by establishing the following:

#### ***I. Codify the CAURD Program in Statute***

The Legislature must codify the CAURD program and make explicit that OCM has the legal authority to create social equity programs which prioritize justice-impacted individuals. CAURD applicants followed the rules that the State set forth—instead of opening illegal smoke shops, they tried to do it the right way. They invested their time, energy, hopes and dreams in this program. And now the vast majority of them are at a standstill. CAURD license holders must be prioritized and supported.

## *II. Immediately Reform the Social Equity Cannabis Investment Fund*

It was a mistake to create a public-private partnership and hand over the keys to the social equity fund to a private investment group. Doing so has replicated the very same power dynamics that led us here in the first place. The State must step in to ensure that the agreements being made are not exploitative but rather supportive of social equity. There must be transparency regarding the Fund's expenditures, contract with private investment, and dealings with CAURD license holders. The State must also increase the amount of direct funding, rather than depending on private entities that prioritize profit over all else. Failure to take action will result in the downfall of meaningful social equity cannabis licensing in New York.

On the day the MRTA was signed into law, Senator Krueger, said that "New York's program will not just talk the talk on racial justice, it will walk the walk."<sup>14</sup> We've talked. It's time to start walking.

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<sup>14</sup> <https://www.nysenate.gov/newsroom/press-releases/2021/liz-krueger/statement-senator-liz-krueger-senate-passage-marijuana>