



# A Deep Dive Into the Proposed New York Conditional Adult-Use Retail Dispensary License

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# About the Speakers



Omar Figueroa, Esq.

[Omar Figueroa](#) is the Founder and Principal Attorney of the Law Offices of Omar Figueroa, one of the leading cannabis licensing, regulatory compliance, and intellectual property law firms in California. Omar frequently speaks at cannabis events and has taught dozens of continuing legal education (CLE) seminars related to cannabis law and legal ethics. Omar is a Director of the [National Cannabis Industry Association](#), the [California Cannabis Tourism Association](#), and the Sebastopol Center for the Arts. He is also a Chapter Leader of the Sonoma County ACLU Chapter.

He is also a Founding Lifetime Member and former Director of the [International Cannabis Bar Association](#), a Lifetime Member of the [NORML Legal Committee](#), and recognized with the rare [Distinguished Counsel's Award](#) by NORML.

Omar is the author of numerous legal reference works on [California Cannabis Laws and Regulations](#) as well as [New York Cannabis Laws and Regulations](#).

Omar is a graduate of Yale College, Stanford Law School, and the Trial Lawyers College. He has also completed an Executive Education program for directors of corporate boards at the Wharton School in Philadelphia.

As a member of the prestigious [Ganjiier Council](#), Omar collaborated with cannabis luminaries in developing a curriculum for training cannabis sommeliers as well as a Systematic Assessment Protocol (SAP) for judging fine cannabis.



# About the Speakers



Andrew Kingsdale, Esq.

Andrew Kingsdale joined our firm in 2018 with over ten years of litigation and transactional experience, including class actions on behalf of consumers, enforcing environmental laws on behalf of non-profits, and advising cannabis start-ups. Andrew is passionate about the medical benefits of cannabinoids and helping cannabis, hemp, and psychedelics businesses thrive.

Andrew is an active member of the [New York State Bar Association Cannabis Law Section](#), as well as the [New York City and Hudson Valley Cannabis Industry Associations](#). He was selected to Northern California Super Lawyers® for 2021, and before that was a Northern California Rising Star by Super Lawyers® from 2015 to 2017.

Andrew graduated from Dartmouth College with a focus on Asian Studies. After working in China for five years, he earned his law degree with honors from Temple University School of Law. He is licensed to practice law in California, New York and Massachusetts.



# Agenda

- Overview of Current Status
- Eligibility and Application Requirements
- CAURD License Rights and Responsibilities
- Seeding Opportunity Initiative
- Pros and Cons of CAURD License
- Q & A

# Overview of Current Status



## Overview – Timeline

- March 31, 2021: Marihuana Regulation and Taxation Act becomes law
- March 10, 2022: CAURD licenses and Seeding Opportunity Initiative announced at CCB meeting and by Governor Hochul
- May 31, 2022: public comments on proposed CAURD regulations due
- May 2022(?): additional regulations issues on (non-conditional) license types
- Mid-2023(?): other non-conditional licenses will be issued



# Overview – Timeline

Chris Alexander, *Transcript of March 10, 2022 CCB Meeting*:

- “we’re anticipating July or so for the application tied to these conditional retail licenses.”
- “should there be a longer engagement it may take a little bit more time. But we’re optimistic that we can get this done and get some stores open by the end of this calendar year.”

Tremaine Wright and Chris Alexander, *April 23, 2022 Harlem community forum*:



**Legal weed should hit state’s shelves by fall, - Post-Standard, The (Syracuse, NY) - May 1, 2022 - page 001**

May 1, 2022 | Post-Standard, The (Syracuse, NY) | Sean Teehan - steehan@syracuse.com | Page 001





# Overview – Keep in Mind

- These conditional retail licenses are limited to ~ 100-200 total.
- This is just one of several license types and application rounds.
- The CAURD regulations are limited – a lot we don't know.
- Only have “**proposed**” version of the regulations – they are subject to change.



- **Submit comments!** Due May 31, 11:59pm ET (if sent via email).



# Overview – Submit Comments

## Adult Use Cannabis Regulations

- [Read the Proposed Adult-Use Conditional Retail Dispensary Regulations](#) – Comment period closes on May 31<sup>st</sup>

Questions or comments on the Proposed Regulations should be directed to:  
[regulations@ocm.ny.gov](mailto:regulations@ocm.ny.gov)

or mailed to us at:

New York State Office of Cannabis Management  
PO Box 2071  
Albany, NY 12220

# Eligibility and Application Requirements



# CAURD § 116.4, License Eligibility and Evaluation

1. New York Nexus

## **AND EITHER**

2. At least one individual is:
  - a. “Justice involved” [weighted, proposed section 116.4(c)(1)] **and**
  - b. Residence at time of “arrest or conviction” [weighted, proposed section 116.4(c)(2)]  
**and**
  - c. “Qualified business” [weighted, proposed section 116.4(c)(3)]

## **OR**

3. Non-profit organization that: serves justice involved individual and communities disproportionately impact by prohibition; justice involved board members; 5 full-time employees, etc.



# New York Nexus: § 116.4(a)(1)

Applicant must demonstrate:

- (i) a significant presence in New York State, either individually or by having a principal corporate location in the state; **or**
- (ii) it is incorporated or otherwise organized under the laws of New York State; **or**
- (iii) a majority of the ownership of the applicant are residents of New York State by being physically present in the state no less than 180 calendar days during the current year or 540 calendar days over the course of three years

(Proposed Section 116.4(a)(1))



## “Justice-involved”: § 116.4(a)(2)(i)

### Individual who:

(a) was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one; **or**

(b) had a parent, legal guardian, child, spouse, or dependent who was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one; **or**

(c) was a dependent of an individual who was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one;



# “Justice-involved” – marijuana-related offense

“Marijuana-related offense” means:

(q) Marihuana-related offense means a marihuana or cannabis offense defined under article two hundred twenty-one of the penal law prior to its repeal, any offense under article two hundred twenty or section 240.36 of the penal law prior to the effective date of article two hundred twenty-one of the penal law, where the controlled substance involved was marihuana, any offense that is eligible to be sealed or expunged pursuant to Chapter 131 of the Laws of 2019 or the Act or any offense identified by the Office to be a marihuana-related offense.

(Proposed section 116.1(q))



# “Justice-involved” – marijuana-related offense

Offenses described under Penal Law sections, generally include:

- ❖ PL sections starting with 221 (possession and sale)
- ❖ PL sections starting with 220 (if cannabis related)
- ❖ PL section 240.36 (loitering with intent to possess/use)
- ❖ *Eligible for expungement/sealing under MRTA: “an offense defined in sections 222.10 [smoking/vaping where not allowed], 222.15 [personal/home cultivation], 222.25 [possessing cannabis < 3 ounces or 24 grams concentrate], 222.45 [unlawfully selling < 3 ounces or 24 grams concentrate]”*





# “Justice-involved” – other “offenses”?

- ❖ Out-of-state or federal convictions?
- ❖ Arrest but no conviction?
- ❖ Adjourment in Contemplation of Dismissal (“ACD”)?
- ❖ Misdemeanor redemption?
- ❖ Non-criminal offense cases?
- ❖ Violations? Infractions? Unclassified misdemeanors (UM)?





# “Justice-involved” – Step 1 = Pull Criminal History

New York Division of  
Criminal Justice Service

“Unsuppressed  
Criminal History  
Record”

The screenshot shows the official website of the New York State Division of Criminal Justice Services (DCJS). At the top, there is a header with the New York State logo and a dropdown arrow. Below the header, a dark blue navigation bar contains a hamburger menu icon and the text "Division of Criminal Justice Services". The main content area is titled "Requesting Your New York State Criminal History". It contains the following text: "The Division of Criminal Justice Services (DCJS) is responsible for maintaining the New York State's official criminal history records. The agency is the only source of these official records." followed by "You must submit your fingerprints when you request a criminal history record response. This allows DCJS to match your fingerprints to fingerprint-based records the agency is required by law to keep. You will get either:" and a bulleted list: "• A copy of your New York State criminal history record, commonly called a 'rap sheet.'" and "• A 'no record' response, which verifies that you have no New York State criminal history record." At the bottom, it states: "If you have submitted fingerprints as required by law for employment, licensing or other purpose (for example, adoptions), you also will see that information on your criminal history record response. These responses also may be called fingerprint-based criminal background checks, police certificates or police certifications."

<https://www.criminaljustice.ny.gov/ojis/recordreview.htm>



# “Justice-involved” – Step 1 = Pull Criminal History

**NYCOURTS.GOV**

NEW YORK STATE UNIFIED COURT SYSTEM

## Criminal History Record Search

CHRS Home

Application Form

Sample Reports ▶

FAQ's

Criminal Records & Sealing

Misdemeanor Redemption Policy

Online Direct Access (Submit a  
Search Request Online)

### Overview

#### INTRODUCTION

The New York State Office of Court Administration (OCA) provides a New York Statewide criminal history record search (CHRS) for a fee of \$95.00. You can submit a CHRS request via our on-line Direct Access program or by mailing in a CHRS application form. The search criteria is strictly based on an exact match of Name and DOB (variations of Name or DOB are not reported). Background checks for companies are also part of the CHRS program. The search results are public records relating to open/pending and convictions in criminal cases originating from County/Supreme, City, Town and Village courts of all 62 counties. Sealed records are not disclosed. Town & Village criminal disposition data is limited (see [CHRS FAQs](#)).

<https://ww2.nycourts.gov/apps/chrs/index.shtml>



## Residence at “arrest or conviction”: § 116.4(a)(2)(ii)

### Residence is weighted according to:

- (i) the area’s historical rates of arrest, conviction, or incarceration for marihuana-related offenses;
- (ii) the area’s historical median income; and
- (iii) whether applicant was provided by a public housing authority in New York State or New York City



## “Qualifying Business”: § 116.4(a)(2)(iii)

Individual must “hold or have held, for a minimum of two years, at least ten percent ownership interest in, and control of, a qualifying business, which means a business that had net profit for at least two of the years the business was in operation”

- ❑ A business with net profit for at least two years
- ❑ 10% ownership interest in that business
- ❑ Control of the business

§ 116.1(g): “*Control* means the power to order or direct the management, managers, or policies of a person.”



## “Qualifying Business” – Step 2 = Gather Records

- Tax records (federal and state)
- Financial statements (audited in accordance with GAAP)
  - income statements
  - balance sheets
  - statements of retained earnings or owners' equity
  - statement of cash flows
- Weighting evidence: number of employees; number years in business; direct-to-consumer sales; how profitable



# Nonprofit Organizations: § 116.4(a)(3)

- (i) be recognized as an entity pursuant to section 501(c)(3) of the Internal Revenue Code;
- (ii) intentionally serve justice involved individuals and communities with historically high rates of arrest, conviction, incarceration or other indicators of law enforcement activity for marijuana-related offenses;
- (iii) operate and manage a social enterprise that had at least two years of positive net assets or profit as evidenced in the organization's tax returns;
- (iv) have a history of creating vocational opportunity for justice involved individuals;
- (v) have justice involved individuals on its board or as officers; and
- (vi) have at least five full time employees.

(Proposed Section 116.4(a)(3))



# Other Application Requirements

## MANY!

- \$2,000 non-refundable application
- Significant disclosure requirements for applicant AND all “*true parties of interest*,” who include:
  - members, managers, officers, stockholders . . . **and their spouses!**
  - Anyone with a financial interest in applicant
  - Anyone with authority to exercise control over applicant
- Agreements, contracts, term sheets, side letters
- Audited financials
- Business continuity plan
- Attestations
- Etc.



# CAURD License Rights and Responsibilities



## CAURD Licenses –

1. **Four year conditional period.** Must apply to renew after two years. Must apply to “transition” to a [non-conditional] adult-use retail dispensary license 120 day before expiration of conditional period.
2. **Renewal/transition criteria:**
  - a. Compliance with laws
  - b. “whether the applicant has served the community in which it is located”
3. **Cross-ownership restrictions:** shall not be interested, directly or indirectly, in any cultivator, processor, distributor, or microbusiness
4. **Location** - dictated by OCM and DASNY; ranked-choice for geographic regions
  - a. Not in cities or towns that opted out



# CAURD Regulations – Geographic Regions

## Ranked Choice Geographic Regions:

“The office may create **regional geographic zones** for the scoring of applicants. Applicants may be asked to **rank a number of preferences of regional geographic zones** to be considered for a license. ”

(Proposed Section 116.4(d))



# CAURD Licenses – Geographic Distribution

NYS Register/March 30, 2022

## Office of Cannabis Management

PROPOSED RULE MAKING  
NO HEARING(S) SCHEDULED

Part 116 – Conditional Adult-Use Retail Dispensary

### *Rural Area Flexibility Analysis*

Types and Estimated Numbers of Rural Areas:

Outside of major cities and metropolitan population centers, the majority of counties in New York State contain rural areas. Entities that wish to become an entity licensed as a conditional adult-use retail dispensary may have up to one dispensary initially, and an additional two dispensaries thereafter as permitted by the Cannabis Law. Some of the dispensaries may be located in rural areas. The selection of conditional adult-use retail dispensaries will take into account geographic distribution to ensure the needs of consumers in rural areas are met.



# CAURD Regulations – Loan and Lease/Sublease

## Mandatory(?) Loan and Lease/Sublease:

“the licensee **shall enter into** and comply with all terms and conditions of **any agreement with any fund**, as defined by this Part, **that has been approved by the Board and made available by the office, including, but not limited to, accepting a dispensary location identified by the fund or office, any loan agreement with such fund, any lease or sublease agreement with the State of New York or its agents**, or any other such agreements into which the licensee enters.” (Proposed Section 116.7(c)(6))

# Seeding Opportunity Initiative



# Seeding Opportunity Initiative – Loan and Location

"Loan funds will be provided to our conditional dispensary licensees. . . . I want you to think about this as a franchise model: **these folks don't get to pick where their location is, they will have a lot of assistance on buildout, and they will repay their loans.**"

- Tremaine Wright, April 23, 2022 NYC Open Streets in Harlem, from Sean Teehan, "Legal weed should hit state's shelves by fall," Post-Standard, The (Syracuse, NY), May 1, 2022



# Seeding Opportunity Initiative – Governor/OCM

Three programs within the Seeding Opportunity Initiative:

- 1) **Equity Owners Lead Program:** Conditional Adult-Use Retail Dispensary License to eligible equity-entrepreneur applicants
- 2) **Farmers First Program:** Adult-Use Conditional Cultivator License to eligible New York cannabinoid hemp farmers
- 3) **The New York Social Equity Cannabis Investment Program:**  
“would support the development of dispensary facilities for equity-entrepreneurs with a Conditional Adult-Use Retail Dispensary License”
  - March 10, 2022 Press Release (March 10, 2022), “Governor Hochul Announces The Office of Cannabis Management Seeding Opportunity Initiative”





# Seeding Opportunity Initiative – Governor/OCM

- **1) Equity Owners Lead Program:** This first-round, equity-licensing opportunity will be supported with renovated or renovation-ready retail locations and wraparound services with dispensaries sited in high-traffic areas.
- **3) The New York Social Equity Cannabis Investment Program:** Under the proposal, the Dormitory Authority of the State of New York (DASNY) would provide support with its leasing and construction services to site dispensaries at prime locations and renovate them to meet health, safety, and security requirements. The Social Equity Cannabis Investment Program's funding and accompanying services would reduce barriers to entry and position these equity-entrepreneur owners for long-term success. The proposal remains under discussion with the Legislature.
  - FY2023 Executive Budget: includes \$200 million fund New York Social Equity Cannabis Investment Program
  - DASNY: February 24, 2022 RFI + working with CBRE Group, Inc. to lock down storefronts



# Seeding Opportunity Initiative – DASNY RFI

DASNY Request for Information on “New York Social Equity Cannabis Investment Fund,”  
February 24, 2022:

A fund “to finance the establishment and development of adult-use retail cannabis dispensaries (“RCDs”) in the State of New York for the benefit of social and economic equity applicants (as defined in Section 87 of the New York State Cannabis Law)”

“Expected fund size would be a maximum of \$200mm, a portion thereof (up to \$50mm) to be invested by the State (the “Public Investment”) from revenues deposited in the Cannabis Revenue Fund.”

“DASNY and OCM aim to establish and develop Social-Equity RCDs with an anticipated investment of \$750,000 to \$1.5 million per RCD”



# Seeding Opportunity Initiative – DASNY RFI

“DASNY, acting directly or through a subsidiary, shall have the exclusive authority to act as agent on behalf of the Fund to select all site locations of all RCDs and negotiate all lease terms. DASNY (or a subsidiary thereof), as agent for the Fund, would execute the lease with each RCD landlord as well as the sublease with the licensee selected to operate the RCD. DASNY (acting directly or through a subsidiary), as agent for the Fund, would also manage the construction and fit-out and equipping of all RCDs, service all loan repayments, manage the property interests of the Fund in the RCDs, including, without limitation, the collection of rent from RCD operators and the payment of such rent to the RCD landlords and the taking of appropriate action to remediate payment and other defaults, which may include work-outs and transfers of interest.

- DASNY Request For Information on “New York Social Equity Cannabis Investment Fund,” February 24, 2022



# Seeding Opportunity Initiative – Loan and Location

DASNY “New York Social Equity Cannabis Investment Fund RFI, Questions & Answers”:

## **New York Social Equity Cannabis Investment Fund RFI Questions & Answers**

13. What ways will the private partner be able to negotiate terms on loans between DASNY and the licensee applying to the program?

**Response:**

It is the intention of the state to give consistent market rate terms for the loans. We anticipate the general partner will have some input into the final terms.

# Pros and Cons of CAURD License



# Pros

1. First to market. First mover advantage. Captive customer base!
2. State has a vested interest in your success.
3. Low-interest loan – startup capital.
4. Will be given a qualifying storefront. Finding retail dispensary locations can be difficult, especially in high density areas like NYC (500 feet from school; 200 feet from house of worship).
5. Licensee can also apply for two more retail dispensary licenses.



# Cons

1. Retail licensees generally excluded from other license types.
2. 280E impacts retail businesses the hardest. 70% effective tax rate.
3. No/limited choice of location. If you have the perfect store location, and have built up reputation and good will in your community, may not be able to leverage under this license type.
4. No advantages based solely on race, gender, disabled veteran, or distressed farmer status.
5. Lease and loan terms controlled by DASNY and private fund investors.
6. Unknowns. E.g. 30-day notice of intent to local government? What happens when the 4-year conditional period ends?
7. Initial product may not be the highest quality.

Q & A







# Thank you!

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