

Cannabis Law in New York State: The Licensing Process

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**Office of Cannabis
Management**

The Licensing Process Under Marihuana Regulation and Taxation Act (Cannabis Law)

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How NYS Legalized Cannabis

- The Marihuana Regulation & Taxation Act (MRTA) was signed into law on March 31, 2021 legalizing cannabis (also known as marijuana, or recreational marijuana) in New York State. The legislation created a new Office of Cannabis Management (OCM) governed by a Cannabis Control Board to comprehensively regulate adult-use, medical, and hemp cannabis. The OCM are and will continue to issue licenses and develop regulations outlining how and when business can participate in the new industry.
- MRTA Chapter 92 of the Laws of 2021; Senate Bill S854A / Assembly A1248 (a copy of this legislation was not provided in the materials due to its length)



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What is the MRTA?

Chapter 92 of the laws of 2021

- Legalized adult-use cannabis (recreational marijuana) while also expanding the State's existing medical cannabis and cannabinoid (CBD) hemp programs
- Legalization represents a shift to a **public health framework** for cannabis policy
- Adults may now carry and use (smoke or consume) cannabis in NYS
- As of today – no one in NYS is legally authorized to sell cannabis for recreational use
 - Medical marijuana sales are legal for patients who are certified by a health care provider



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What is Legal in NYS

- Adults over 21 can buy and possess:
 - Up to three ounces of cannabis flower
 - Up to 24 grams of concentrated cannabis (oils, tincture, edibles, vapes, etc.)
- Cannabis can be consumed in a private home or, in the future, at on-site consumption lounges
- Smoking cannabis is prohibited anywhere smoking tobacco and vaping is prohibited
- Currently, home cultivation for adult-use is not legal in NYS, however medicinal cannabis patients are legally authorized to grow at home, themselves or through their designated caregivers, as of October 30, 2022.
 - Up to six plants for personal use (3 mature plants and 3 immature plants)
 - A maximum of 12 plants per household (even if there are three or more adults over the age of 21)

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Office of Cannabis Management

The Office of Cannabis Management (OCM) is an independent state office established by the Marijuana Regulation and Taxation Act (MRTA). The OCM will provide a unified regulatory structure to comprehensively regulate and control the cultivation, processing, manufacture, distribution, transportation, and sale of cannabis in New York State. This includes medical cannabis, adult-use or “retail” cannabis and cannabinoid hemp.

- The goal of the OCM is to ensure social justice, public health and safety, and economic development through a comprehensive regulatory framework that centralizes licensing, enforcement and economic development functions



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The Cannabis Control Board and OCM

- The Board and OCM regulates adult-use cannabis (“retail / recreational”), medical cannabis, and hemp.
- The MRTA created OCM to be governed by a Cannabis Control Board (“the Board”) consisting of 5 board members, with 3 appointments from the Governor, 1 from the Senate and 1 from the Assembly.
- The Board is vested with the power to issue or deny licenses, as well as the ability to revoke, cancel or suspend any licenses.



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The MRTA and Social Equity

Equity in the Market


- MRTA establishes a goal to award 50% of all Adult-Use Licenses to Social and Economic Equity applicants- individuals who have lived in communities disproportionately impacted by the War on Drugs and other underrepresented groups including minority and woman owned businesses, distressed farmers, and service-disabled veteran-owned businesses.

Record Expungement

- Expungement for any cannabis conviction for conduct which is now legal under the law.

Community Reinvestment

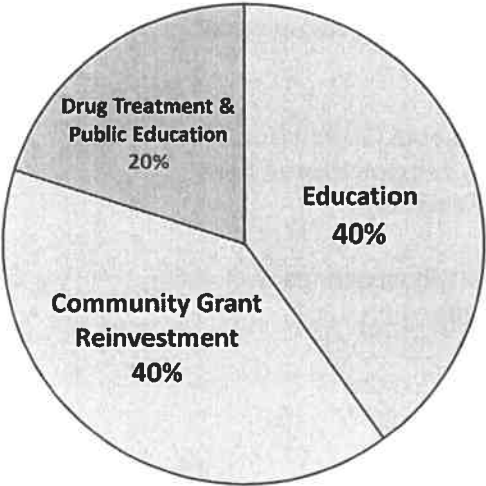
- Invests 40% of the adult-use cannabis tax revenue towards rebuilding communities harmed by the War on Drugs via the New York State Community Reinvestment Grant Fund.




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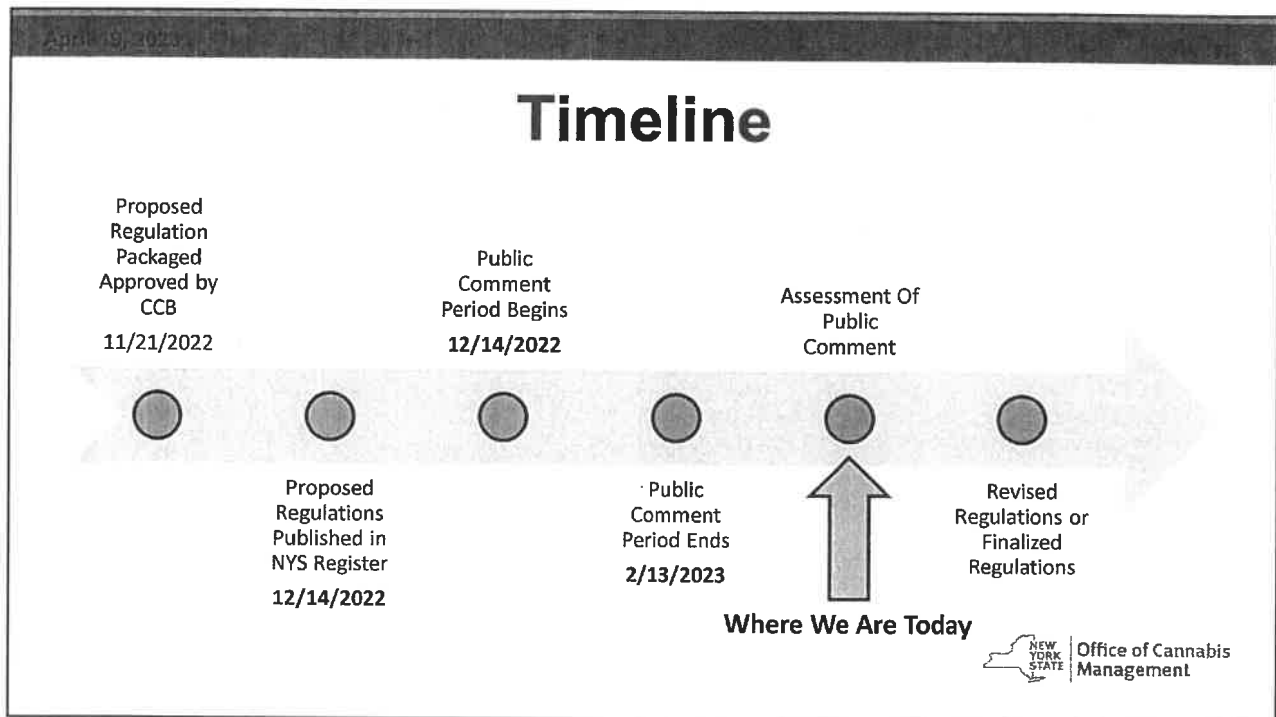
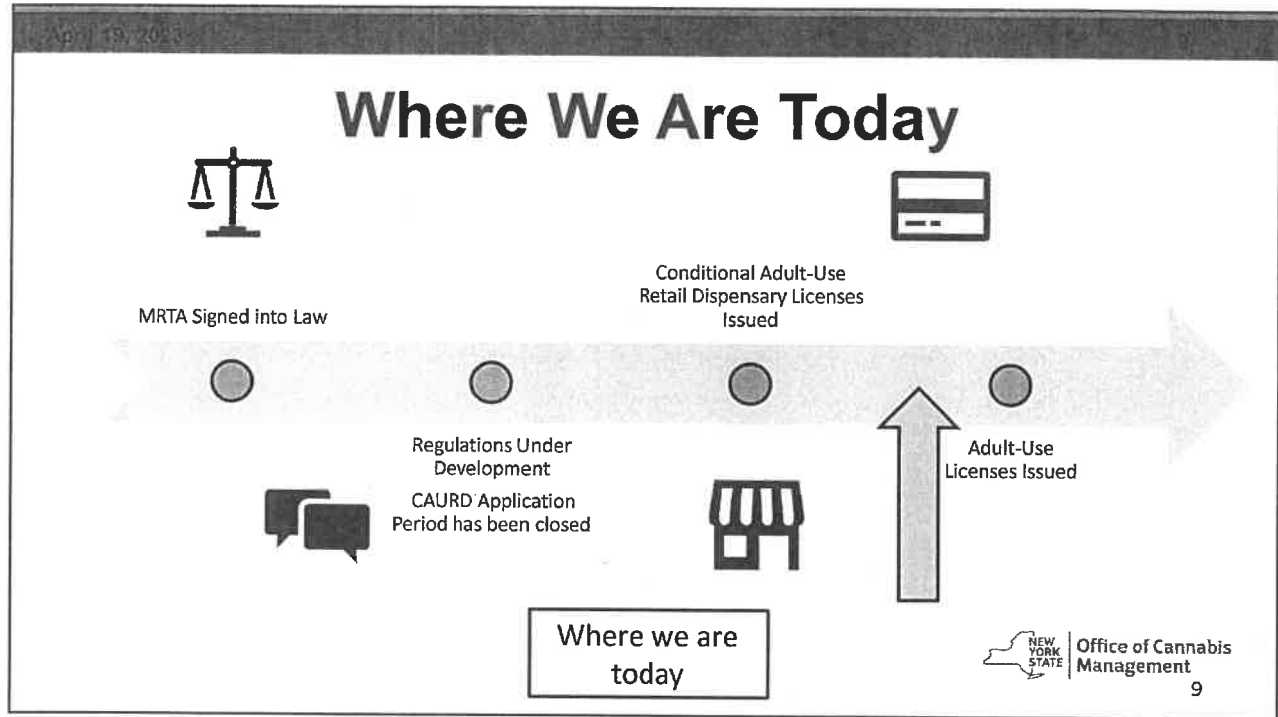
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New York State Cannabis Tax Revenue Fund



- All cannabis tax revenue deposited into this fund
- **Community Grants Reinvestment**
 - Grants to non-profit and community-based organizations in communities disproportionately impacted by cannabis prohibition and other social equity initiatives as determined by the Cannabis Advisory Board
- **Drug Treatment & Public Education**
 - Develop and implement statewide public education campaigns and provide substance use disorder treatment programs for youth and adults





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Adult-Use Licenses

Cultivator growing, cloning, harvesting, drying, curing, grading, trimming	Nursery only clones, immature plants, seeds, and other agricultural products	Processor extracts concentrated cannabis and/or compounds or manufactures	Distributor wholesale sale to dispensary, on-site consumption, or delivery service
Retail-dispensary sells cannabis products directly to consumers	Delivery bringing cannabis products directly to consumers	On-Site Consumption sells directly to consumers for use on-site at the location (like a bar)	Adult-Use Cooperative democratically controlled. Can cultivate, process, distribute. Cannot sell directly to consumer
Microbusiness may be cultivator, processor, distributor or retailer. No person can own more than one license			



Overview: License Issuance and Denial

- Section 2 of the MRTA creates the Cannabis Law which establishes the consolidated laws associated with cannabis.
- Cannabis Law vests the authority to issue or deny licenses with the Cannabis Control Board (“the Board”). Cannabis Law §61(1)
- All applications are submitted to the Office and reviewed and processed by the Licensing team and then enter a background investigation led by OCM’s Enforcement team. Once cleared by Licensing and Enforcement, they go for a legal sufficiency review by the Office of General Counsel. Final recommendation is made to the board by the Director of Operations (which encompasses Licensing).
- All license decisions are issued during a public meeting by the Board.

What are Conditional Licenses?

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Jump Starting the NYS Cannabis Industry

- **Conditional licenses** created by OCM to quickly stand-up NYS cannabis industry
- Began in Feb 2022 with cultivators followed by processors in June 2022
- Conditional Adult-Use Retail Dispensary (CAURD) was final conditional license released in August 2022
- Open to some nonprofit organizations and justice involved individuals with qualifying business experience



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Conditional Licenses

- Conditional Adult-Use Cultivator License "AUCC"
 - Cannabis Law §68-C
- Conditional Adult-Use Processor Licenses "AUCP"
 - Cannabis Law §69-A
- Conditional Adult-Use Retail Dispensary Licenses "CAURD"
 - Regulations in 9 NYCRR 116

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AUCC Licenses

- The Conditional Cannabis Cultivation Bill was signed in February 2022 by Governor Hochul to give the opportunity for the first licenses to grow cannabis to be issued to New York Farmers.
- Eligible applicants for an AUCC license must have been authorized to grow hemp under the Department of Agriculture and Markets Industrial Hemp Research Program.
- The AUCC Licenses were established in order to allow for the early growing of cannabis to kick-start the supply chain.
- Cannabis is federally illegal, so the supply must be grown within the state.
- In order to have a successful retail market, the cannabis products must be grown, processed, packaged, and delivered to the retail dispensary from within New York State, prior to retail dispensary being able to open.
- When applying applicants must have provided proof that they grew hemp for two of the past four years (2018-2021), and that they were in good standing with the Department of Agriculture and Markets.

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AUCC Licenses

- The Board has issued a total of 261 licenses to date.
- Applicants were required to provide proof of their authorization from the Department of Agriculture and Markets and proof of their growing and harvesting hemp for two of the past four years (2018-2021).
- Applicants were permitted to form a new entity to apply for this license, in order to isolate their cannabis business from their other assets. In these situations, applicants had to show majority common ownership between the two entities. *Cannabis Law §68-C(1)(c)*

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AUCP Licenses Cannabis Law §69-A

- Adult Use Conditional Processor licenses were established in order to facilitate the processing of cannabis products grown by the AUCC licensees.
- Applicants for an AUCP license must have applied for a Hemp Processor license from OCM prior to January 1, 2022; and must hold an active cannabinoid hemp processor license prior to applying for an AUCP license.
- Like the AUCC licensees, AUCP applicants were able to form a new business entity to apply for this license, so long as majority common ownership was maintained.
- The Board has issued a total of 25 licenses to date.



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What is a CAURD license?

- Conditional Adult-Use Retail Dispensary (CAURD)
- First set of licenses to legally sell adult-use cannabis
- Limited to:
 - people with a previous cannabis conviction (or their eligible family members) and experience owning a qualified business; or
 - Non-profit organizations serving justice involved people
- Conditional license period for four years (with two-year renewal)



Wesley Shields, the first customer from the general public, 2022, for several sales a part of the first dispensary in the state.



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CAURD Licensees get extra support

- Eligible for Cannabis Investment Funding
 - Mix of state and private funding
 - Money can be used to help:
 - Provide the selected applicants with a premises
 - Design or Build Dispensary
 - Fit out location with furniture and equipment



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Eligibility for a CAURD License

Individual Eligibility

9 NYCRR 116.4 License Eligibility and Evaluation

Justice
Involved



Have Business
Ownership
Experience



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What does it mean to be justice involved?

9 NYCRR 116.4(a)(2)(i)

- a) You (the person applying for the license) was convicted of a cannabis related offense in New York State prior to March 31, 2021
- OR
- b) You had a parent, legal guardian, child, spouse, or dependent who was convicted of a cannabis related offense in New York State prior to March 31, 2021
- OR
- c) You were a dependent of an individual who was convicted of a cannabis related offense in New York State prior to March 31, 2021

Applicants had to provide proof of this conviction



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Does it have to be a cannabis conviction?

For CAURD Licenses: YES

- Applicants must have a cannabis conviction to be eligible for a CAURD license.
- If a person is convicted of another crime with no cannabis conviction, they are not eligible for the CAURD license.
- Having additional convictions is not automatically disqualifying but are subject to Cannabis Law Section 137 prohibitions.



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Persons Forbidden from Trafficking Cannabis

Cannabis Law Section 137 sets forth “Persons Prohibited from Trafficking Cannabis” and includes (but is not limited to) prohibitions for:

- Individuals with felony convictions in the past three years involving fraud, money laundering, forgery or “other unlawful conduct related to owning and operating a business;”
- Individuals with a felony conviction in the past five years for relating to employing, using, or providing a minor with any controlled substance;
- Individuals under 21 years of age;
- Certain prohibitions against non-citizens or persons not lawfully admitted for permanent residence in the United States;
- Police officers; and
- Elected village officers.

Note: Section 137 provides an avenue for the applicant to overcome some prohibitions against prior convictions by showing evidence of rehabilitation in accordance with Article 23-A of the Correction Law



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Cannabis Law

- **Section 127:
Protections for
the use of
Cannabis;
unlawful
discriminations
prohibited**

2. No landlord may refuse to lease to and may not otherwise penalize an individual solely for conduct authorized under this chapter, except:

(a) if failing to do so would cause the landlord to lose a monetary or licensing related benefit under federal law or regulations; or

(b) if a property has in place a smoke-free policy, it is not required to permit the smoking of cannabis products on its premises, provided no such restriction may be construed to limit the certified medical use of cannabis.



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CAURD applications must be *led* by Justice Involved People

9 NYCRR §116.4 License Eligibility and Evaluation

- The justice involved person or persons applying must own at least 51% of the proposed cannabis business (§116.4(b)(1))
 - The 51% does not have to be made up by a single justice involved person
- The justice involved person or persons must be able to prove a conviction of a marijuana-related offense that qualifies them to be considered justice involved and the place of residence of the convicted person at the time of the arrest or conviction



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Business Ownership Requirements for CAURD Applicants

- The justice involved person applying must have experience owning at least 10%, and having control, of a “qualifying business” (§116.4(a)(2)(iii))
- Qualifying business: a business had at least two years of net profits *while the justice involved person was the business owner* (§116.4(a)(2)(iii))
- The applicant does not have to currently own the business – but they need to prove that they did own it at some point
- *The individual that satisfies this requirement under §116.4(a)(1) and (2) must own at least 30% of the applicant entity and shall have sole control of the applicant or license.* (§116.4(b)(2))



CAURD Eligibility for Non-Profit Organizations: 9 NYCRR 116.4(a)(3)

- Is a 501(c)(3) or you operate under a 501(c)(3) nonprofit organization
- Intentionally services "justice involved" individuals and communities disproportionately impacted by cannabis prohibition
- Operate and manage a social enterprise that has been profitable for a minimum of two years
- Have a history of creating vocational opportunities for justice involved individuals
- Have justice involved individuals on its board or serving as officers
- Have a minimum of five full time employees



What were the CAURD applicants required to provide?



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Application Requirements: Justice Involvement

Required to demonstrate:

- Proof of the conviction
 - Before 3/31/2021
 - Many different types of documentation could be accepted
- Where they lived at the time of the conviction
 - Applicants who lived in areas with a low median household income at the time of arrest or conviction will be prioritized
- For family members of someone convicted they must prove how they are related to the person who was convicted (i.e., marriage certificate, birth certificate, etc.)

Suggestions from the office on what documents are applicable:

- Proof of the conviction
 - Certificate of Disposition
 - Record of judgment, conviction, plea, verdict or sentence
 - A docket entry
- Proof of residence
 - Lease, utility bill, post-marked envelope, letter from public housing authority
- Proof of relationship
 - Birth or Marriage Certificate
 - Legal Custody Agreement



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Application Requirements: Previous Business Ownership

Required to demonstrate:

- The applicant don't have to currently own the business
- Proof the CAURD applicant owned at least 10% of a business
- Demonstrate at least two years of net profits when justice involved person owned the business

Suggestions from the office on what documents are applicable:

- To show ownership:
 - Business tax returns/statements
 - Legal documents (partnership, incorporation agreements)
- To show profitability:
 - Bank statements/records
 - Tax returns
 - Audited financial statements
 - *Must show two years of profits during the same time period the applicant was an owner*



CAURD Applicant Evaluations

9 NYCRR 116.4(c)

- Evaluation criteria:
 - Whether the justice involved individual themselves were convicted of a cannabis related offense
 - The justice involved individual's residence at the time of the arrest or conviction compared to areas with historically high rates of arrest, conviction, or incarceration for cannabis related offenses, areas with historically low median income, or whether or not the justice involved individual was provided by a public housing authority in NYS
 - The number of employees employed by the qualifying business
 - The number of years the qualifying business has been in operation
 - The profitability of the qualifying business
 - The type of business and whether the business was a retail business, or sold products or services directly to the end-consumer;
 - Whether the business had a physical location
 - Whether the business received or resolved any violations, fines or fees assessed by state, federal or regulatory authorities



What about people who are not eligible for the conditional licenses?



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This is just a first step...


- CAURD licenses are just the first group of retail licenses available
- The Office will be opening the “general licenses” in the coming months for all license types.
- Persons ineligible for the conditional licenses may still receive support through mentorship, incubation and business development

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Adult-Use Licenses

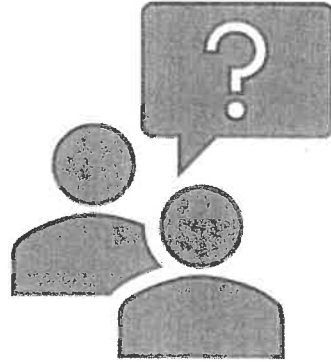
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Stay Connected with OCM

- Resources on Medical Cannabis Home Cultivation at cannabis.ny.gov/medical-cannabis
- Share your feedback on regulations via email to: regulations@ocm.ny.gov
- If you submitted a CAURD application you can direct questions to: licensing@ocm.ny.gov
- Contact us at 1-888-OCM-5151
- Follow us on Twitter:
 - @NYS_Cannabis



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Thank You



