A SMART Solution to New York's Senseless Marijuana Arrests:
Tax and Regulate Marijuana in New York State

We are the Drug Policy Alliance.

June 2017

New York's Senseless Marijuana Policy
Since 1996, there have been more than 800,000 arrests for possession of small amounts of marijuana in New York State, with over 700,000 arrests by the NYPD alone.[1] Nearly 70 percent of those arrested are under 30 years old; more than a third are under 21 years old.[2] And more than 85 percent of all those arrested are Black and Latino, even though whites use marijuana at higher rates.[3] On average, 60 people are arrested every day for marijuana possession in New York State, making marijuana possession one of the top arrests in the state.[4]

1977 Decriminalization: Reduced Penalties for Marijuana Possession but Enforcement Loophole Remains
Many New Yorkers don't know that the state decriminalized marijuana possession 40 years ago – and that law is still on the books. When New York State passed the *Marihuana Reform Act of 1977* the bipartisan legislation, sponsored by a Republican State Senator and a Democratic State Assemblyperson, removed criminal penalties for *possession* of marijuana for personal use.[5]

This law decriminalized possession of 25 grams or less of marijuana (about 7/8 of an ounce) – that is, it was made a *violation*; a first offense became punishable by a $100 fine, not jail. Multiple possession offenses are punishable by a $250 fine and up to 15 days in jail.[6]

The legislature also established a *misdemeanor* penalty for burning marijuana or possessing it *in public view* – making it a *criminal offense* punishable by arrest, fine and/or a jail sentence of up to three months.

Rapid Escalation in Marijuana Arrests in New York
For nearly fifteen years after decriminalization, there were relatively few marijuana possession arrests in New York. But changes in policing practices – especially in New York City – led to dramatic increases in these arrests. For example, in 1990, there were only 892 arrests for possession of small amounts of marijuana in NYC; in 2016, 18,136 people were arrested, a more than 2,000 percent increase.[7]

The dramatic rise in marijuana arrests is *not* the result of increased marijuana use, which peaked nationally around 1980.[8] Rather, police in New York made possession of small quantities of marijuana one of their top arrest priorities – at enormous costs to our state.[9] These arrests have largely been tied to a shift in policing tactics – most notably the implementation of broken windows policing.[10]

"The Legislature finds that arrests, criminal prosecutions and criminal penalties are inappropriate for people who possess small quantities of marihuana [sic] **for personal use. Every year, this process needlessly scars thousands of lives and wastes millions of dollars in law enforcement resources, while detracting from the prosecution of serious crime."**
— New York Marihuana Reform Act of 1977[11]

Stop, Questioned, and Searched by the Police
Research shows that many of the people arrested over the last twenty years for marijuana possession were *not* smoking in public, but simply had a small amount in their pocket, purse, or bag – a legal *violation*, not a criminal offense.[12] These individuals were either subject to an illegal search by police or given a directive to empty their pockets or open their bags. The discovery of marijuana by police then resulted in their arrest for possession in public view.[13]

In 2015, the NYPD stopped and questioned nearly 25,000 people – 82 percent of them people of color.[14] About half of these encounters resulted in a frisk, and only 12 percent led to a summons or arrest.[15] Five years prior, in 2010, a Columbia University study found at least 30 percent of stops like these are likely unconstitutional.[16] Additionally, a study from the University of Chicago found that marijuana arrests do not reduce serious or violent crime, and may actually increase it.[17]

These Arrests Are Expensive and Wasteful
A 2013 ACLU report examining marijuana arrests found that in New York State, more than $675 million was devoted to marijuana possession enforcement in 2010.[18]

Yet these arrests continue, even as the state cuts youth summer job and after-school programs, closes senior centers, shutters hospitals, raises college tuition, and eliminates services for the homeless and the poor.

In NYC: Executive Action Falls Short

In October 2014, Professor Harry Levine, in conjunction with the Drug Policy Alliance, released a blistering report outlining the continued practice of racially biased marijuana arrests in New York City under Mayor Bill de Blasio, who had campaigned on ending such arrests.[19] Facing ongoing public pressure, in November 2014, Mayor de Blasio and former New York City Police Commissioner William Bratton announced that NYPD would follow the 1977 decriminalization law and not arrest people for small amounts of marijuana, and would instead issue a violation which would result in a summons.[20]

That change in policy resulted in a 66 percent decrease in marijuana arrests from 2014–2015, bringing NYC's annual marijuana possession arrest total down from more than 25,000 to over 16,500.[21] However, disproportionate enforcement in communities of color has continued, with people of color comprising 88 percent of those arrested in 2015 and 85 percent in 2016 in NYC.[22] Additionally, an overall increase in marijuana arrests in 2016[23] shows the need for actual legislative change and not simply a shift of policy.

It is evident that the action taken by the Mayor and former Commissioner has fallen short of ending these racially biased arrests and curtailing the damaging collateral consequences that they carry.

What Decriminalization Misses

While most of the conversation around marijuana arrests has focused on simple possession, arrests for low-level marijuana sale have also been disproportionately enforced in communities of color, despite research showing that people buy drugs from people that look like them.[24] The New York Penal Law defines low-level sale as sale of a marijuana compound or substance that is less than 2 grams, the equivalent of a single marijuana cigarette.[25] These offenses amount to 90 percent of all arrests for sale (in any quantity).[26] The low threshold for this offense and the discretion afforded to police in making an arrest for this offense – and the disparate rates of arrest – is alarming.

The 2014 directive from former NYPD Police Commissioner Bratton outlines the current policy used to distinguish between low-level possession and low-level sale:

"Additionally, a person found in possession of marijuana in public view in a manner that is inconsistent with personal use will be arrested and charged with the appropriate degree of Criminal Possession of Marihuana."[27]
— Police Commissioner Bratton, Operation Order 43

While the illicit market in New York is substantial,[28] the enforcement has almost entirely been on the lowest level of sale.[29]

Bias and Inequity in Marijuana Law Enforcement

U.S. Government surveys of high school seniors consistently demonstrate that young whites use marijuana at higher rates than Blacks and Latinos.[30] But a report by the ACLU found that Black people in New York are arrested or detained for marijuana 4.5 times more than whites.[31]

Source: American Civil Liberties Union, June 2013.[32]

Many New Yorkers have tried marijuana.[33] But every year, thousands of young people, especially Black and Latino youth, are illegally searched and falsely arrested for possessing small amounts of marijuana, while many other people who try marijuana have no contact with law enforcement. The law is not applied equally or fairly, undermining the relationship between the police and many of the communities they are supposed to serve.

New York Deserves Statewide Reform

While a reduction of senseless marijuana possession arrests can be viewed as a step forward, marijuana prohibition and its continued enforcement are a direct affront to racial justice and personal liberties.

New York must move beyond prohibition to address the damage being done to communities across the state who have suffered from marijuana prohibition and its collateral consequences. New Yorkers deserve a statewide solution to this statewide problem.

The *NY State Legislature* should make the SMART choice: End prohibition, create a system to tax and regulate marijuana, and repair and reinvest in communities most harmed by the war on marijuana and communities by voting for the Marijuana Regulation and Taxation Act.

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[1] New York State Division of Criminal Justice Services (2016, October). *New York State Arrests for Marijuana Charges by year*, Computerized Criminal History System.
[2] New York State Division of Criminal Justice Services (2016, October). *New York State Arrests for Marijuana Charges by year*, Computerized Criminal History System.
[3] New York State Division of Criminal Justice Services, *New York City Arrests for PL 221.10 in 2012,* Computerized Criminal History System, February 2013. See also: U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, *2005 National Survey on Drug Use and Health,* (Washington D.C.: United States Government Office of Applied Studies, 2006) See: Table 1.80B *Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005,* Accessed on January 26, 2011, http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B.
Also see: U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, *2007 National Survey on Drug Use and Health,* (Washington D.C.: United States Government Office of Applied Studies, 2008) See: Table 1.26B *Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, 2006 and 2007,* Accessed on January 26, 2011, http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B.
[4] New York State Division of Criminal Justice Services, *Adult Arrests in 2012*, Computerized Criminal History System, February 2013.
Also see: New York State Division of Criminal Justice Services, *New York State Arrests in 2010*, Computerized Criminal History System, January 2011.
[5] *Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977).
[6] *Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977).
[7] New York State Division of Criminal Justice Services, *Adult Arrests in 2014*, Computerized Criminal History System, 2014.
Also see: New York State Division of Criminal Justice Services, *New York State Arrests in 2014*, Computerized Criminal History System, January 2015.
[8] In 2008, 27.52% of Americans aged 18 to 25 (and 32% of those in New York State) had used marijuana once or more in the last year. Twenty-nine years earlier, in 1979, 46% of Americans 18 to 25 had used marijuana in the last year. Source: U.S. Dept. of Health and Human Services, Substance Abuse and Mental Health Services Administration, *National Survey on Drug Use and Health, 2007 and 2008* (Washington D.C.: United States Government Office of Applied Studies, 2008). See: Table B.2 *Marijuana Use in Past Year, by Age Group and State: Percentages, Annual Averages Based on 2007 and 2008*. Accessed on January 26, 2011. http://www.oas.samhsa.gov/2k8State/AppB.htm#TabB.2
[9] American Civil Liberties Union. "*The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*." June 2013.
[10] Bernard E. Harcourt & Jens Ludwig, "Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York ," University of Chicago Public Law & Legal Theory Working Paper, No. 142 (2006).
[11] Ibid.
[12] Harry Levine and Deborah Peterson Small, *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997 – 2007*, (New York: New York Civil Liberties Union, 2008), pp 38 – 45.
[13] Harry Levine and Loren Siegel, "Marijuana Madness: The Scandal of New York City's Racist Marijuana Possession Arrests," *The New York City Police Department: The Impact of its Policies and Practices* (New York: CRC Press, 2015), pp 117-161.
[14] Stop, Question & Frisk Data 2015. New York Police Department, Jan. 2016. Accessed January 2017, http://www.nyc.gov/html/nypd/html/analysis_and_planning/stop_question_and_frisk_report.shtml
[15] Stop, Question & Frisk Data 2015. New York Police Department, Jan. 2016. Accessed January 2017, http://www.nyc.gov/html/nypd/html/analysis_and_planning/stop_question_and_frisk_report.shtml
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[18] American Civil Liberties Union. "*The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*." June 2013.
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[21] New York State Division of Criminal Justice Services, Adult Arrests in 2015, Computerized Criminal History System, January 2016.
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