Why is Marijuana Decriminalization Not Enough for New York?

We are the Drug Policy Alliance.

June 2017

New York's Senseless Marijuana Policy

Under New York law, a first offense of *personal possession* of 25 grams or less of marijuana is technically a violation punishable only by a $100 fine. The categorization of the offense as a violation means that it carries no jail time as a result of conviction, which is a key component of decriminalization.

Twenty states (including New York) and Washington D.C. have enacted various forms of marijuana decriminalization,[1] which means that these states have replaced criminal sanctions with the imposition of civil penalties.

Many New Yorkers don't know that the state decriminalized marijuana possession forty years ago – and that the 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.[2]

They are unaware, primarily, because in the last twenty years the police in New York State have still made about 800,000 arrests for possession of small amounts of marijuana.[3] On average, more than 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]

Racial Bias in Enforcement

These arrests have been largely justified by a loophole left in the law allowing police offers to distinguish between public and private personal possession. Because possession in "public view" remains a crime, this loophole – coupled with pervasive and racially biased over-policing of certain communities – has resulted in continued mass arrests for personal possession of marijuana despite decriminalization.[5]

Significant racial bias in enforcement exacerbates the effects of the "public view" loophole. While drug use and drug selling occur at similar rates across racial and ethnic groups, Black and Latino individuals are arrested for possessing marijuana at vastly disproportionate rates.[6] Nationally, Black people were nearly four times more likely to be arrested for possession than white people in 2010. The discrepancy is more extreme in New York, where in 2016 more than 80% of all those arrested were Black and Latino; more than 72% of those arrested were under 30 years old; and nearly a third were under 21 years old.[7]

Decriminalization of marijuana possession is a necessary first step towards reducing the harms caused by marijuana prohibition. But it falls short in that it operates within the framework of prohibition, which is still enforced disproportionately in communities of color.

Marijuana Decriminalization Does Not End the Harms of Prohibition

At its core, marijuana decriminalization is an attempt to make sense of the senseless policy of marijuana prohibition. Marijuana prohibition has not curbed use and it has not increased public safety.[8, 9] Despite 80 years of prohibition, marijuana remains the most widely used illegal drug in the U.S. and the world.[10] More than 128 million adults in the U.S. – 50 percent of those surveyed – admit to having tried marijuana at least once in their lives, and more than 34 million to using it once or twice a month.[11]

Decriminalization, then, is an attempt to limit the ways that an arrest stemming from this senseless policy may hinder an individual's ability to succeed and participate in society by preventing him or her from obtaining employment, housing, and student loans.[12]

However, in New York, imposing a civil fine for an offense merely adds a step before criminalization.

Those lacking the means to pay the fine have a warrant issued for their arrest; those who have been previously targeted by law enforcement can still face criminal penalties, as penalties are removed only for a first offense but a second offense is punishable by an increased fine and up to 15 days in jail.[13]

In New York, marijuana decriminalization has fallen short and will continue to do so. It has not succeeded in curbing the costs or the harms of prohibition and has instead made the need for reform clearer.

New York City's Attempt at Decriminalization has Been Ineffective

In 2014, then-Police Commissioner Bill Bratton issued a statement in coordination with Mayor de Blasio that instructed NYPD police officers to no longer make an arrest when they have discovered marijuana on a person in the course of a search.[14] The accompanied police instruction, Order 43, represented a clarification of the existing law to law enforcement. This policy change represented a visible shift from the NYPD's previous practices and signaled the potential for the increased efficacy of New York's 1977 Decriminalization statute.

However, the result has been much of the same. In 2015 arrests dropped significantly, but 2016 saw those numbers increase once again. More importantly, although arrests have been generally reduced from their 2014 level, the racial disparities in *who* is being arrested have remained consistent.

New York Deserves Statewide Reform

Eight states and the District of Colombia have now legalized marijuana for recreational use and allowed for the growth of a multibillion dollar industry. Tax revenue is being used to build schools and re-build communities.

New York must also move beyond prohibition to address the damage being done to communities across the state that 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 by voting for the Marijuana Regulation and Taxation Act.

For more information, to get involved, or to share an arrest story, contact Chris Alexander at calexander@drugpolicy.org or 212-613-8076.

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[1] "State Laws." NORML. http://norml.org/laws.
[2] *Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977).
[3] New York State Division of Criminal Justice Services, *Adult Arrests 1996-2016*, Computerized Criminal History System, January 2017.
[4] New York State Division of Criminal Justice Services, *New York City Arrests for PL 221.10 in 2016,* Computerized Criminal History System, January 2017.
[5] American Civil Liberties Union. "*The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*." January 2017, https://www.aclu.org/report/report-war-marijuana-black-and-white?redirect=criminal-law-reform/war-marijuana-black-and-white.
[6] Jamie Fellner, Decades of disparity: drug arrests and race in the United States (Human Rights Watch, 2009). Accessed January 2017, https://www.hrw.org/sites/default/files/reports/us0309web_1.pdf.
[7] New York State Division of Criminal Justice Services, *New York City Arrests for PL 221.10 in 2016,* Computerized Criminal History System, January 2017.
[8] Christopher Ingraham, "Teen marijuana use falls as more states legalize," *Washington Post*, December 16, 2014.
[9] Alejandro Crawford, "What Have We Been Smoking?" *U.S. News & World Report*, July 13, 2015.
[10] Substance Abuse and Mental Health Services Administration, "Results from the 2014 National Survey on Drug Use and Health: Detailed Tables," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2015), Table 1.1A & B.
[11] Yahoo/Marist Poll: Weed and the American Family, April 17, 2017. http://maristpoll.marist.edu/wp-content/misc/Yahoo%20News/20170417_Summary%20Yahoo%20News-Marist%20Poll_Weed%20and%20The%20American%20Family.pdf
[12] American Civil Liberties Union. "*The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests*." January 2017, https://www.aclu.org/report/report-war-marijuana-black-and-white.
[13] *Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977).
[14] Operations Order No. 43, Enforcement of Criminal Possession of Marijuana, Fifth Degree, Subdivision One. November 11, 2014, https://www.scribd.com/document/246263485/NYPD-Marijuana-Operations-Order.