

State of New York: Casualties of the Marijuana Arrest Crusade



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There is growing consensus that New York's marijuana policies are a profound and costly failure in both human and economic terms. This fact sheet outlines the problems with our current marijuana policies and identifies solutions to fix them.

New York's Marijuana Policies Are Broken

Marijuana arrests are the engine driving the U.S. war on drugs. In 2015, there were 643,122 marijuana arrests in the U.S. – roughly 43 percent of all drug arrests. The vast majority (over 89 percent) of these arrests were for simple possession, not sale or manufacture. There are more arrests for marijuana possession every year than for all violent crimes combined.¹ In a country characterized by such a punitive approach to marijuana policy, the state of New York – where more than 60 people are arrested for marijuana possession every day – has some of the harshest enforcement practices.^{2, 3}

In 2014, law enforcement in NYC shifted its public policy; people would now be ticketed rather than arrested for possession of marijuana found during a search.⁴ This was done in an effort to align department practices with state law. Nevertheless, people in NYC and across the state are still being arrested and forced to deal with the subsequent collateral consequences.⁵

Furthermore, New York's decriminalization of personal possession of marijuana still operates within the framework of prohibition, allowing profound harms to be inflicted upon the state and its residents. Below are some of the symptoms of New York's broken marijuana policies.

Skyrocketing Arrests

Over the past twenty years, New York has become the marijuana arrest capital of the world, with nearly 800,000 marijuana possession arrests and summonses in New York – more than any other state.^{6,7} This is possible despite the state's decriminalization of personal marijuana possession because of a subsection of the law that treats general (or private) possession differently from "public view" possession.

New York's *Marihuana Reform Act of 1977* made private marijuana possession a violation rather than a criminal offense, while making possession in "public view" a misdemeanor.⁸ This loophole – coupled with over-policing of certain communities – has resulted in mass arrests for marijuana possession.^{9, 10}

Nearly 23,000 people were arrested statewide in 2016, a nearly 2,300 percent increase from 1990.¹¹ The lack of statewide reform means that every year, tens of thousands of New Yorkers continue to be swept into the criminal justice system.

Racial Inequality

Racial disparities in marijuana arrests are consistent across boroughs in New York City and persist across the state.¹² Combined, New York's Black and Latino populations account for a little more than a third of the state's total population,¹³ and drug use and drug selling occur at similar rates across racial and ethnic groups.¹⁴ Yet, nearly 85% of the people arrested annually for marijuana possession in New York are Black or Latino.¹⁵

A report by the ACLU found that Black people in New York are arrested or detained for marijuana 4.5 times more than whites.¹⁶ There is no evidence to suggest that these disparities will cease to exist without reform, as this trend continued throughout 2016.¹⁷ Additionally, the vast majority of those arrested are young people between 16 and 29 years old,¹⁸ and most arrests occur in the state's poorest neighborhoods.¹⁹

Collateral Consequences

A marijuana arrest is no small matter. It involves being handcuffed, placed in a police car, taken to a police station, fingerprinted, photographed, possibly being held in jail for up to 24 hours while awaiting arraignment before a judge, appearing in court several times over the course of months, and can conclude with the imposition of a permanent criminal record that can easily be found on the internet by employers, landlords, schools, credit agencies, and banks.²⁰

People arrested or ticketed for simple marijuana possession can face a range of collateral consequences

with long-term damaging effects. Those lacking the means to pay the fine have a warrant issued for their arrest, and those arrested can be saddled with a criminal conviction that can make it difficult to get and keep a job, maintain a professional license, obtain educational loans, secure housing, keep custody of a child, or even adopt.²¹ These obstacles can seriously hinder an individual's ability to successfully participate in society.

Employment

Information about arrests and convictions can be easily accessed by employers through third-party background checks and internet searches.²² Additionally, restrictions on financial aid and denial or revocation of occupational licenses make it very difficult for an individual to obtain the education and training necessary for many jobs.

Housing

An individual who carries a marijuana conviction on their record can be barred from public housing for at least 3 years.²³ Additionally, families residing in public housing cannot provide shelter for a loved one with a marijuana conviction without risking eviction. Even if a violation of policy regarding marijuana is not used by the public housing authority to start an action against a resident, it could be used to continue one and further increase the likelihood that a family be displaced from their home.

In many cases – especially when public housing is not an option – an individual with a marijuana conviction may seek private housing. Unfortunately, federal, state, and local fair housing laws created with the intention of ensuring equal housing opportunities for everyone do not provide protections for people with criminal records.^{24, 25}

Research on landlord rental decisions in the state of New York reveals that a criminal conviction reduces the probability of prospective tenants even being allowed to view an apartment rental by more than 50 percent.²⁶ Discrimination in private housing may differ in appearance, but it is hardly less pernicious, and it is multifaceted.

Immigration

For noncitizens, a conviction can trigger deportation, sometimes with almost no possibility of discretionary relief.²⁷ In fact, simple marijuana possession was the fourth most common cause of deportation nationally for any crime in 2013.²⁸ Abrupt deportations can separate children from their parents and force families into difficult decisions about childcare and custody/living arrangements.

Child Welfare

Despite similar rates of marijuana use across racial groups,²⁹ parents of color are overrepresented in the child welfare system.³⁰ Extreme racial disparities in marijuana arrests have left a disproportionate number of families of color to deal with the subsequent collateral

consequences. Additionally, the racial bias that is prevalent among caseworkers has influenced the rate at which families of color come into contact with child welfare systems as well as the quality of services they receive once the intervention is underway.^{31, 32, 33}

Although any individual *could* be negatively affected by the aftermath of a marijuana misdemeanor, racially-biased law enforcement and social institutions ensure that Black and Latino New Yorkers overwhelmingly bear the brunt of these collateral consequences.

Wasted Resources

Adding insult to injury, marijuana prohibition imposes the onerous financial and administrative burden of enforcement and incarceration primarily on cash-strapped state and local governments.

Enforcing marijuana possession laws is estimated to have cost New York \$675 million in 2010 alone.³⁴ According to Dr. Harry Levine of Queens College, it costs between \$1,000 and \$2,000 in police, court, and jail costs to process a simple marijuana arrest in NYC.³⁵ From 2002 to 2012, NYC spent nearly \$1 billion arresting people for possessing small amounts of marijuana.³⁶ The huge number of arrests drains scarce resources at enormous cost to taxpayers.³⁷

More than half of those in treatment for marijuana nationally are referred by the criminal justice system and likely did not need or want treatment.³⁸ Fixing New York's marijuana laws would save hundreds of millions every year, which could be reinvested into job training, education, and healthcare.

Youth Access

Under prohibition, there are no age restrictions for purchasing marijuana; no one checks IDs to ensure an individual is old enough to buy. Prohibition has been largely ineffective and often counterproductive in reducing marijuana access or use among young people.³⁹ As a result, young people are more likely to have access to marijuana than adults,⁴⁰ and consequently face premature introduction to the criminal justice system.

Due to prohibition, there is also a lack of honest public education that makes it impossible to ensure youth are educated properly on marijuana, ways to take a safety-first approach, or the collateral consequences that may accompany a marijuana arrest.

No Oversight of Production or Quality Control

Under prohibition, there are no safety or quality controls for production. Marijuana bought and sold on the illicit market is not tested for adulterants or potency, and consumers often can't verify what they're getting.

Lack of Harm Reduction Options

As a result of marijuana's criminalization, harm reduction options that exist for problematic alcohol consumption – such as easily accessible information about how alcohol dosage affects physical and mental functioning – are not available for marijuana use.⁴¹

The SMART Choice: Fixing NY's Approach to Marijuana through Regulated Access

Without reform, New York will continue to fall behind changing public opinion and responsible policymaking regarding marijuana. It is time for New York to fix its broken marijuana policies and repair the harm caused by the war on drugs. It is time to end prohibition.

By ending prohibition through legalization, New York can create a system of *regulation* – similar to alcoholic beverages, but specific to marijuana – complete with municipal flexibility, age limits, licensing requirements, quality controls and other restrictions.^{42, 43} Under regulation, there is control over how and where marijuana is produced, distributed, sold, taxed, and consumed.

Pass Legislation to End Prohibition and Establish a Well-Regulated, Inclusive Marijuana Industry

By passing legislation to end prohibition and regulate marijuana in New York, lawmakers can:

- End the unfair, wasteful, harmful practice of arresting people for marijuana possession.
- Reduce the number of people facing barriers to employment, public housing, custody of their children, and human services as a result of marijuana arrests.
- Prevent families from being separated by deportation or loss of custody due to marijuana arrests.
- Save millions of taxpayer dollars by reducing law enforcement costs.
- Create thousands of new jobs through a new legal market.
- Provide better access to medical marijuana for patients.
- Generate millions more in revenue for education, job training and human services.
- Repair the harm caused by the war on drugs and mass incarceration by investing revenue from the legal marijuana market into communities for job training, economic empowerment, and youth development programming.
- Protect youth by preventing access to marijuana and eliminating a common reason for introduction to the criminal justice system.
- Encourage safety through quality control, harm reduction options, and public education.

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 Federal Bureau of Investigation, "Crime in the United States, 2015," (Washington, DC: U.S. Department of Justice, 2016). <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/persons-arrested/persons-arrested>.

² New York State Division of Criminal Justice Services, *Adult Arrests in 2016*, Computerized Criminal History System, February 2017.

Also see: New York State Division of Criminal Justice Services, *New York State Arrests in 2010*, Computerized Criminal History System, January 2011.

³ Drug Policy Alliance, "Marijuana Arrests in NY: Fiscally Irresponsible, Racially Biased and Unconstitutional," Available at http://www.drugpolicy.org/sites/default/files/NY_State_MJ_fact_sheet_GENERAL_2013_0.pdf.

⁴ Bill Bratton and Bill de Blasio, "Transcript: Mayor de Blasio, Police Commissioner Bratton Announce Change in Marijuana Policy" (November 2014). <http://www1.nyc.gov/office-of-the-mayor/news/511-14/transcript-mayor-de-blasio-police-commissioner-bratton-change-marijuana-policy>.

⁵ New York State Division of Criminal Justice Services, *Adult Arrests in 2016*, Computerized Criminal History System, February 2017.

⁶ Drug Policy Alliance, "Marijuana Arrests in NY: Fiscally Irresponsible, Racially Biased and Unconstitutional," Available at: http://www.drugpolicy.org/sites/default/files/NY_State_MJ_fact_sheet_GENERAL_2013_0.pdf

⁷ New York State Division of Criminal Justice Services (2016, October). *New York State Arrests for Marijuana Charges by year*, Computerized Criminal History System.

⁸ *Marijuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977).

⁹ Harry Levine and Deborah 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.

¹⁰ New York State Division of Criminal Justice Services, *New York State Arrests in 2010*, Computerized Criminal History System, January 2011.

¹¹ New York State Division of Criminal Justice Services, *Adult Arrests in 2016*, Computerized Criminal History System, February 2017.

Also see: New York State Division of Criminal Justice Services, *New York State Arrests in 2010*, Computerized Criminal History System, January 2011.

Sayegh, Gabriel. "New York Legislators and Community Groups Hold Urgent Rally to Reform State's Broken Marijuana Possession Law," *Huffington Post*, March 12, 2013. Accessed at: http://www.huffingtonpost.com/gabriel-sayegh/new-york-legislators-and-marijuana_b_2856013.html.

¹² *Ibid*.

¹³ Demographics for New York State taken from the United States Census Bureau Quick Facts. Available at: <http://www.census.gov/quickfacts/table/PST045215/36>

¹⁴ American Civil Liberties Union, "The War on Marijuana in Black and White," (2013); 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), Tables 1.19B.

¹⁵ New York State Division of Criminal Justice Services (2016, October). *New York State Arrests for Marijuana Charges by year*, Computerized Criminal History System.

¹⁶ American Civil Liberties Union. "The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests." June 2013.

¹⁷ New York State Division of Criminal Justice Services (2017, March). *New York State Arrests for Marijuana Charges by year*, Computerized Criminal History.

Also see: 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>.

¹⁸ New York State Division of Criminal Justice Services, *Adult Arrests in 2016*, Computerized Criminal History System, February 2017.

Also see: New York State Division of Criminal Justice Services, *New York State Arrests in 2010*, Computerized Criminal History System, January 2011.

¹⁹ Wegman, Jesse. "The Injustice of Marijuana Arrests." *New York Times*, 28 July 2014. Accessed January 2017, <https://www.nytimes.com/2014/07/29/opinion/high-time-the-injustice-of-marijuana-arrests.html>.

²⁰ See Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," *UC Davis Law Review* 45(2011); Alexandra Natapoff, "Misdemeanors," *Southern California Law Review* 85(2012).

²¹ Babe Howell, "Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing," *New York University Review of Law & Social Change* 33(2009); Richard Glen Boire, *Life Sentences: Collateral Sanctions Associated with Marijuana Offenses* (Center for Cognitive Liberty & Ethics, 2007).

²² See Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," *UC Davis Law Review* 45(2011); Alexandra Natapoff, "Misdemeanors," *Southern California Law Review* 85(2012).

²³ New York LawHelp Consortium, "The Consequences of Criminal Proceedings: A People's Guide," (November 2013). Retrieved from <http://www.lawhelpny.org/files/B23B29BF-0DED-F7B9-2149-1DB14E1A7DE5/attachments/2F5175D0-11CC-4650-9047-FA8475F42C77/peoples-guide-june-2014.pdf>.

²⁴ New York Office of the Attorney General (2017). "Fair Housing." Retrieved from <https://ag.ny.gov/civil-rights/fair-housing>.

²⁵ Camila Domonoske, National Public Radio, "Denying Housing Over Criminal Record May Be Discrimination, Feds Say," (April 4, 2016). Retrieved from

<http://www.npr.org/sections/thetwo-way/2016/04/04/472878724/denying-housing-over-criminal-record-may-be-discrimination-feds-say>.

²⁶ Evans, D. N., & Porter, J. R. (2015). Criminal history and landlord rental decisions: A new york quasi-experimental study. *Journal of Experimental Criminology*, 11(1), 21-42. doi:<http://dx.doi.org.ezproxy.cul.columbia.edu/10.1007/s11292-014-9217-4>.

²⁷ Jason Cade, "The Plea Bargain Crisis for Noncitizens in Misdemeanor Court," *Cardozo Law Review* 34(2013): 1754.

²⁸ Transactional Records Access Clearinghouse, "Secure Communities and ICE Deportation: A Failed Program?," (Syracuse: Transactional Records Access Clearinghouse, 2014) <http://trac.syr.edu/immigration/reports/349/>.

²⁹ American Civil Liberties Union, "The War on Marijuana in Black and White," (2013); 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), Tables 1.19B.

³⁰ NYS Office of Children & Family Services; The OCFS Initiative to Address Racial Disproportionality in Child Welfare and Juvenile Justice.

³¹ Miller, Keva M. Dynamics that contribute to racial disproportionality and disparity: Perspectives from child welfare professionals, community partners, and families. *Children and youth services review* 34.11 01 Nov 2012: 2201-2207. Elsevier. 20 Mar 2017.

³² Rajendran, K. & Chemtob, C. M. (2010). Factors associated with service use among immigrants in the child welfare system. *Evaluation and Program Planning*, 33, 317-323, DOI: 10.1016/j.evalprogplan.2009.06.017.

³³ Osterling, Kathy Lemon. The Influence of Family Reunification Services on Racial/Ethnic Disparities in Permanency Outcomes for Children in the Child Welfare System. *Journal of public child welfare* 6.3 29 Jun 2012: 330-354. Haworth Social Work Practice Press. 20 Mar 2017.

³⁴ ACLU. (2013, June). *The War on Marijuana in Black and White*. Retrieved from: <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

³⁵ Drug Policy Alliance (2011). \$75 Million a Year: The Cost of New York City's Marijuana Possession Arrests. Retrieved on

December 12, 2016, from <http://www.drugpolicy.org/resource/75-million-year-cost-new-york-citys-marijuana-possession-arrests>.

³⁶ Ibid.

³⁷ ACLU. (2013, June). *The War on Marijuana in Black and White*. Retrieved from: <https://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>; Jeffrey A Miron and Katherine Waldoock, *The Budgetary Impact of Ending Drug Prohibition* (Cato Institute, 2010).

³⁸ Substance Abuse and Mental Health Services Administration Center for Behavioral Health Statistics and Quality, "Treatment Episode Data Set (TEDS) 2002-2012: National Admissions to Substance Abuse Treatment Services," (Rockville, MD: Substance Abuse and Mental Health Services Administration, 2014), Table 2.6.

³⁹ Johnston, L. D., O'Malley, P. M., Miech, R. A., Bachman, J. G., & Schulenberg, J. E. (2016). Monitoring the Future national survey results on drug use, 1975-2015: Overview, key findings on adolescent drug use. Ann Arbor: Institute for Social Research, The University of Michigan. Available at <http://www.monitoringthefuture.org/pubs/monographs/mtf-overview2015.pdf>.

⁴⁰ The University of Michigan Institute for Social Research 2012 Report on Key Findings on Adolescent Drug Use Available at: <http://www.monitoringthefuture.org/pubs/monographs/mtf-overview2012.pdf>.

⁴¹ Drug Policy Alliance, "Marijuana: The Facts," (July 2014) Available at:

<http://www.drugpolicy.org/sites/default/files/TenFactsAboutMarijuana.pdf>

⁴² Drug Policy Alliance, "Why is Marijuana Decriminalization Not Enough?" (February 2016) Available at: http://www.drugpolicy.org/sites/default/files/DPA_Fact%20sheet_Marijuana%20Decriminalization%20and%20Legalization_%28Feb.%202016%29.pdf

⁴³ American Public Health Association, "Regulating Commercially Legalized Marijuana as a Public Health Priority" (2014). Available at <http://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2015/01/23/10/17/regulating-commercially-legalized-marijuana-as-a-public-health-priority>.