

About the Brief

This policy brief was drafted by Mary Jane Kruger, Executive Director of Roc NORML (National Organization for the Reform of Marijuana Law), in collaboration with the New York State Policy Office of the Drug Policy Alliance.

The brief analyzes the last year (2018) of data on arrests for low-level marijuana possession within the City of Rochester and Monroe County as a whole. It also explores the prior data on case dispositions for low-level marijuana possession within Monroe County. The data was obtained from the New York State Division of Criminal Justice Services. This analysis highlights the history of racial disparities in arrests and convictions during the period from 2010 to 2018, analyzing the reasons behind these disparities and the damage caused in communities of color that are most heavily criminalized for marijuana.

This research brief informs the work of Rochester-based organizations and community groups in support of the Marijuana Regulation and Taxation Act (MRTA) and Start SMART NY, a campaign to end marijuana prohibition and reinvest in impacted communities.



Call to Action: Marijuana Policy Reform in the City of Rochester & Monroe County

Marijuana arrests are the engine driving the U.S. war on drugs. In 2017, there were 659,700 marijuana arrests in the U.S. – roughly 40% of all drug arrests. Ninety percent of these arrests were for mere possession, not sale or manufacture. Nationally, twice as many people were arrested for marijuana possession than for *all violent crimes combined* in 2017.¹

MARIJUANA ARRESTS IN NEW YORK STATE

Over the past twenty years, New York State had the troubling distinction of being the marijuana arrest capital of the country, with more than 800,000 marijuana possession arrests – despite the fact that low-level marijuana possession has been *decriminalized since 1977*.²

The Marijuana Reform Act of 1977 includes a sub-section that treats general/private possession different than “public view” possession. “Private possession” is a civil violation, while “public view” possession is a misdemeanor, which can lead to arrest.³

Police exploited this “private” and “public” distinction to target young men of color by asking them to empty their pockets, thereby bringing any marijuana in their personal possession from “private” to “public” view.

Despite reductions in arrests in recent years in New York City, the rate of marijuana possession enforcement remains harsh across the state: in the main Upstate cities (Rochester, Syracuse, Albany, Buffalo, and Yonkers) *the 2017 arrest rate was double the 1990 rate* (126 per 100,000 versus 63 per 100,000).⁴ In the rest of the state (outside of NYC and the main Upstate cities) the arrest rate was at its highest in 2017 at 82 per 100,000 versus 25 per 100,000 in 1990.⁵

Racial disparities in marijuana enforcement continue to be extreme across the state as well. In 2017, in the main Upstate cities Black people were 12.1 times more likely to be arrested for marijuana possession than white people; Latino people were 6.4 times more likely to face arrest⁶ – despite government data showing similar rates of use. In the rest of the state in 2017 (outside of NYC and the main Upstate cities), Black people were 11.2 times more likely to be arrested while Latino people were 5.2 times more likely.⁷

Additionally, in Upstate cities the number of marijuana arrests resulting in a jail sentence *increased* from 9.8% to 17.8% in 2016.⁸

The consequences of a marijuana arrest are devastating; it creates a permanent criminal record that can have negative effect on employment, housing, school loans, credit agencies, banks, adopting children, and more. While most marijuana offenses don't lead to a substantial amount of jail time, the consequences can last a lifetime.⁹

ROCHESTER ENFORCEMENT DISPARITIES

Though New York City may be most infamous for its racial disparities in arrests for low-level marijuana possession, large disparities are also found in the City of Rochester and Monroe County as a whole.

Marijuana Arrests in the City of Rochester

From 2010 to 2018, 1,396 people were arrested for low-level marijuana possession in the City of Rochester.¹⁰ The vast majority of those arrested for low-level marijuana possession were Black (81%) despite the fact that there are comparable numbers of Black and white residents living in Rochester (see Figures 1 and 2). Government surveys also consistently show that Black and white people consume marijuana at similar rates.

In Rochester, for every one white person arrested for low-level marijuana possession, there are nearly ten Black people arrested for the same charge.

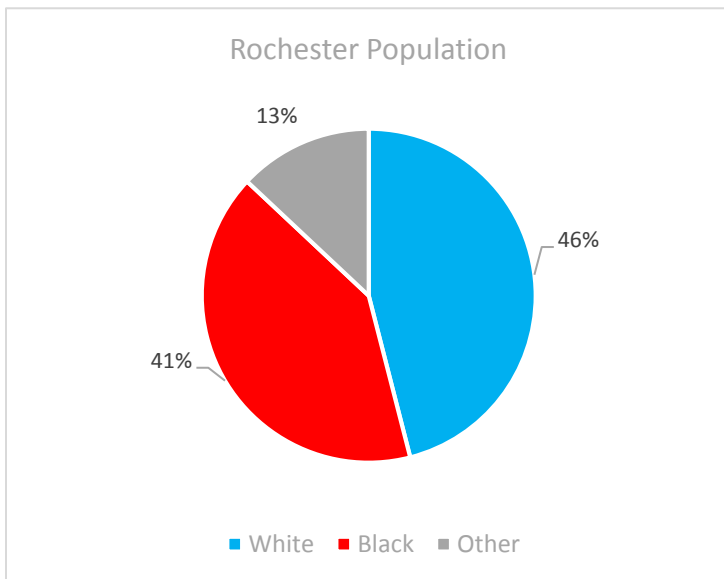


Figure 1: Rochester Population by Race

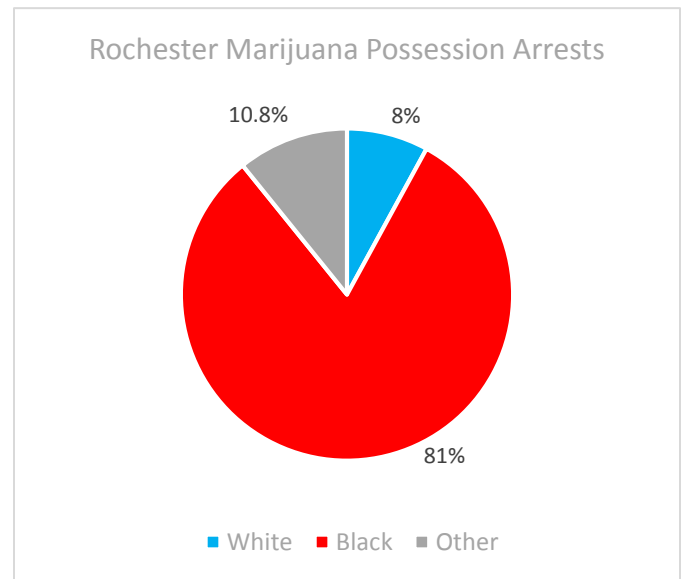


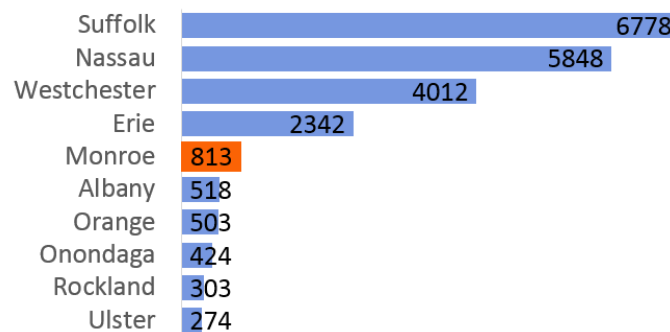
Figure 2: Rochester Arrests 2010-2018 by Race

MONROE COUNTY ENFORCEMENT DISPARITIES

Monroe County has one of the highest arrest rates for low-level marijuana-related offenses in New York State; in fact, it has the fifth highest rate by county in the state for low-level marijuana possession outside of NYC.

Marijuana Arrests in Monroe County

Top New York Counties Outside of New York City: Number of Low-Level Marijuana Possession Arrests, 2013-2017



From 2010 to 2018, the number of arrests for low-level marijuana possession totaled 1,753 in Monroe County. Although the majority of Monroe County is comprised of white people (see Figure 3), they are underrepresented in marijuana arrests (see Figure 4) even though use patterns are similar.

For every one white person arrested for low-level marijuana possession in Monroe County, there are four Black people arrested for that charge.¹¹

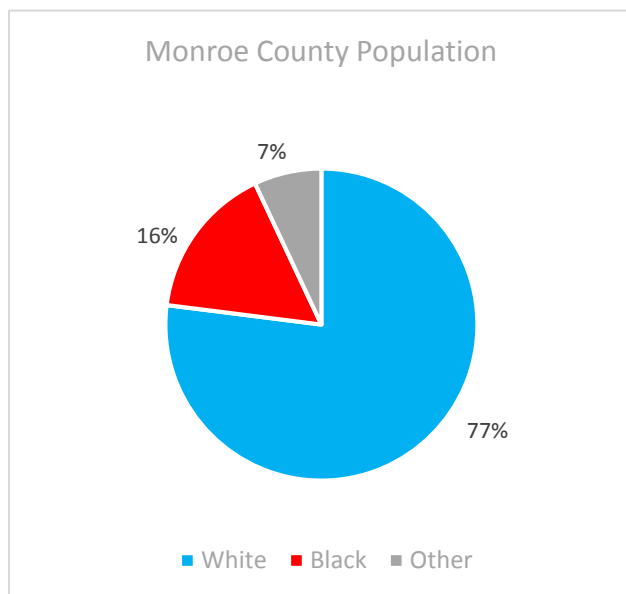


Figure 3: Monroe County Population by Race (2016)

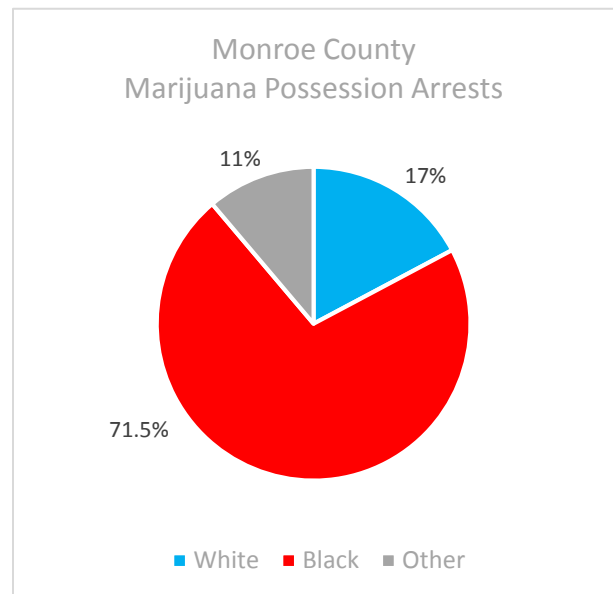


Figure 4: Monroe County Arrests 2010-2018 by Race

Racial Disparities in Marijuana Arrest Case Dispositions in Monroe County

Racial disparities are not just seen in arrests; they carry over into the courtroom and are present in prosecutions and how cases are charged by district attorneys' offices.

When an individual is arrested for low-level marijuana possession, their case might result in a conviction, dismissal, or acquittal. An adjournment in contemplation of dismissal (ACD) is a court disposition that has been used more frequently with marijuana charges in recent years. An ACD acts as a dismissal of the pending charges against a defendant if the defendant has no subsequent criminal charges filed against them in the following six to 12 months and the records relating to the misdemeanor proceedings are sealed. However, during that period, the case remains open and visible to prospective employers, landlords, and other entities that may do background checks. Because of the way that data is accessed by third parties, a case may be listed as open long after it has actually been resolved – causing significant problems for an individual.¹²

In Monroe County, Black people are convicted of low-level marijuana possession nearly ten times as often as their white counterparts.

Case dispositions in Monroe County also exhibit glaring racial disparities. Whereas the vast majority of white people with low-level marijuana possession charges are likely to receive a conditional discharge, Black people are just as likely to be convicted as they are to receive a conditional discharge. Broken down by race, in 2016, 85.5% of those convicted of low-level marijuana possession in Monroe County were Black, 9% were white, and 5% were Hispanic.¹³

CURRENT CRIMINALIZATION OF MARIJUANA IN ROCHESTER AND MONROE COUNTY

This data is consistent with historical trends for marijuana enforcement in Rochester (see Figures 7 and 8). Despite the number of arrests decreasing over the period from 2010 to 2018, the persistent racial disparities are inexcusable.¹⁴

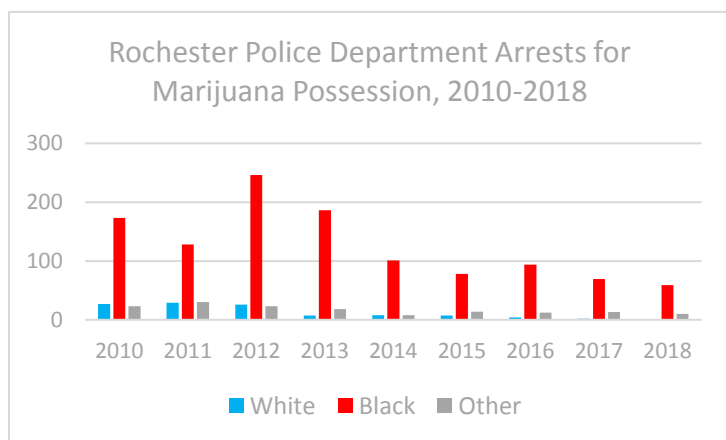


Figure 7: Rochester PD Enforcement by Race and Year

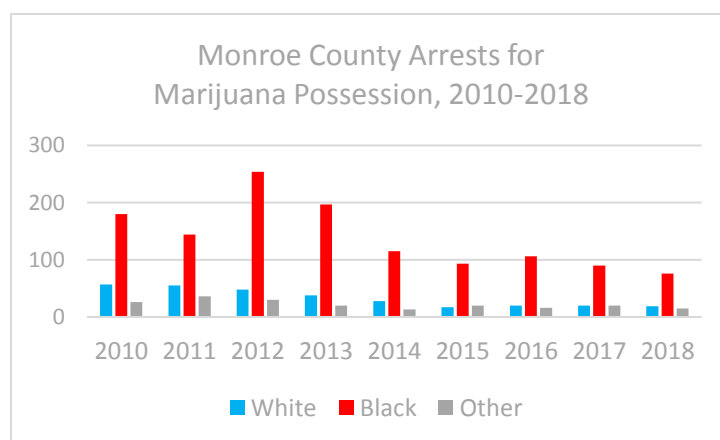


Figure 8: Monroe County Enforcement by Race and Year

THE FUTURE OF MARIJUANA LEGALIZATION IN NEW YORK STATE

Governor Cuomo ordered the New York State Department of Health to conduct a study that was released in June 2018. New York's Health Commissioner Howard Zucker said, "We looked at the pros, we looked at the cons, and when we were done, we realized that the pros outweigh the cons and the report recommends that a regulated, legal marijuana program be available to adults in the state of New York."¹⁵

In May 2018 the New York City Comptroller released a report estimating potential for a \$3.1 billion adult-use marijuana market for New York State, with \$2 billion of that being generated outside NYC. The report estimated \$1.3 billion in total tax revenue at the state and municipal, which could be used to invest in communities damaged most by the criminalization of marijuana.¹⁶

A recent report from Rockefeller Institute of Government projected that an adult-use cannabis industry in New York could directly employ from 21,000 to 43,000 workers, generating a total economic output of \$4.1 billion and attracting hundreds of millions of dollars in capital investment. To put these numbers into perspective, the adult-use marijuana industry would be larger than New York's burgeoning craft brewing production, including the related tourism, food service, and distribution industries, which currently employ 13,000 workers directly.¹⁷

In addition to the employment opportunities and tax revenue predicted, the ACLU reported in 2010 approximately \$675 million was spent in New York enforcing marijuana possession laws; predicted revenue does not include the potential cost savings that would occur under a regulated marijuana program.¹⁸

WHAT WE KNOW ABOUT OUTCOMES FOLLOWING LEGALIZATION IN OTHER STATES

It has been more than four years since Colorado was the first state to implement a legal adult-use marijuana market. Since then, multiple states have followed suit. Not only has the experience of these states shown that legalization can be successful, it has also dispelled many of the misconceptions people have regarding legalization, including concerns about road safety and marijuana use among youth after marijuana is legalized.

Road Safety

Reports from legalized states show that establishing a regulated market for adult-use is not correlated to changes in DUI rates and road accidents. A recent report could not find evidence for a relationship between DUI arrests for marijuana and legalization.¹⁹ Since there is no method for detecting "marijuana impaired driving," researchers analyze the number of DUIs before and after legalization. DUI arrest rates are down in Colorado and Washington, the first two states to regulate marijuana for adult use. Further, there has been no correlation between marijuana legalization and crash rates. Crash rates in legalized states are statistically similar to comparable states without legal marijuana.²⁰ Overall, it is too early to determine whether there is a relationship between DUI arrests for marijuana and legalization. In addition, proposed legislation would use revenues collected from legalization to create public education campaigns to promote safer drug use.²¹

Youth Use

Several studies suggest that youth marijuana consumption does not rise after states legalize adult-use marijuana.^{22, 23, 24} *The Journal of American Medicine* reports marijuana use dropped a small, but statistically significant amount among 8th and 10th graders in Washington state following legalization, while no change was observed among 12th graders.²⁵

Similarly, youth use has remained stable in Colorado, with researchers concluding, “We did not find a significant effect associated with the introduction of legal sales of recreational marijuana to adults in Colorado on adolescent (illegal) use...”²⁶

Crime Rates

Recent studies also show that marijuana dispensaries are not linked to increased crime.²⁷ In fact, research shows that marijuana legalization in Colorado and Washington has “produced some demonstrable and persistent benefit”²⁸ to police departments’ abilities to solve other types of crime.

Another study in the *Journal of Economic Behavior and Organization* found that after legalization, Washington saw a significant decrease in crime, concluding that concerns over a link to increased crime and marijuana legalization are not justified.²⁹

Workplace Safety

A study conducted by one of the country’s biggest drug testing labs found the rate of workers testing positive for drugs in states with legal marijuana is on par with the increase seen in the nationwide average.³⁰ Colorado’s positivity rate has gone up by 1%, while Washington State’s increased by 3%. Compared to the national average, which has increased by 4%, legalized states’ positivity rates parallel the national trend of an increase of positive drug tests.

Additionally, a forthcoming study found evidence that legalizing medical marijuana corresponded with a significant decline in workplace deaths in medical marijuana states.³¹ The research analyzed data from the Bureau of Labor Statistics from 1992 to 2015 and found that *workplace deaths declined* by about 34% five years after a state legalized medical marijuana. The trend was most pronounced among workers between the ages of 25 and 44.

Marijuana and Opioids

A growing body of evidence suggests that marijuana could be an important tool to help people to reduce their opioid use. Multiple studies with medical marijuana patients indicate that they find that it has helped them to reduce or stop their use of opioids for pain.^{32, 33, 34, 35} For example, 67% of the patients surveyed in a recently conducted study reported that gaining access to legal medical marijuana helped enable them to stop using their opioid medications altogether.³⁶

Legal medical marijuana access has the potential to decrease rates of opioid use and misuse, helping to prevent situations that can lead to overdose. A study published in the *Journal of the American Medical Association* found that states with medical marijuana laws are associated with a significant reduction in

mortality from opioid abuse; these states saw a 25% reduction in opioid overdose deaths compared to states without such laws, resulting in 1,700 fewer deaths in 2010 alone.³⁷

Legalization will create a surplus of tax revenue, increase employment opportunities, lower arrest rates, and could help address aspects of the opioid epidemic.

Legalization is smart for racial justice, smart for communities, and smart for the state's economy.

These outcomes in states with legal marijuana access show that the sky hasn't fallen post-legalization, and demonstrate that there are important lessons for New York. Marijuana legalization will allow for a regulated marijuana market with positive effects that will outweigh the negative impacts.³⁸

CALL TO ACTION

It is time to stop the ineffective and unjust enforcement of marijuana prohibition in Monroe County and Rochester and begin responsibly regulating marijuana to better serve public health, community well-being, and equity by passing statewide comprehensive marijuana reform.

Our city and our county cannot wait any longer for marijuana justice. We must do better.

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