

Just A Slap On The Wrist?

The Life-Changing Consequences of a Marijuana Arrest

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A marijuana arrest is no small matter. Most people are handcuffed, placed in a police car, taken to a police station, fingerprinted, photographed, held in jail for 24 hours or more, arraigned before a judge, and branded with a permanent criminal record that can easily be found on the internet by employers, landlords, schools, credit agencies and banks.¹

Marijuana Arrests Have Skyrocketed

Marijuana arrests are the engine driving the U.S. war on drugs. In 2014, there were 700,993 marijuana arrests in the U.S. – roughly 45 percent of all drug arrests. The vast majority (88 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.²

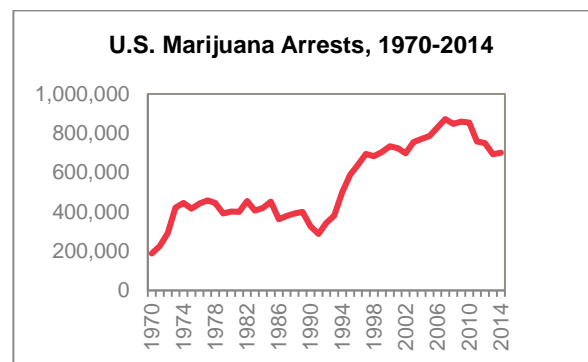
These arrests overwhelmingly affect young people of color. According to government data, drug use and drug selling occur at similar rates across racial and ethnic groups.³ Yet black⁴ and Latino individuals⁵ are arrested for marijuana possession or selling marijuana at vastly disproportionate rates. In fact, black people were nearly four times more likely to be arrested for possession than white people in 2010.⁶

The Costs and Consequences of Marijuana Arrests

Although some states have reduced penalties for marijuana possession, others still have extremely harsh laws on the books. In Florida, for example, possession of an ounce can be punished with “five years in prison and a fine of \$6,000.”⁷ In Arizona, possession of any amount of marijuana is a felony.⁸ In at least two-thirds of U.S. states, marijuana possession can still lead to jail time.⁹

Many of those arrested spend time behind bars awaiting arraignment.¹⁰ Thousands of others on parole or probation are locked up for failing a drug test or

being caught with small amounts of marijuana. Even if a person avoids jail time, “the vast majority face a fine...or are placed into community supervision.”¹¹



Source: Federal Bureau of Investigation, Uniform Crime Reports, 1970-2014.

Those arrested are saddled with a criminal conviction that can make it difficult or impossible to vote, obtain educational loans, get a job, maintain a professional license, secure housing, or even adopt a child.¹² A misdemeanor marijuana conviction can lead to: a bar on adopting a child in 38 states; revocation of a professional license in 20 states; denial of federal financial aid for a year or more in 28 states; suspension of one’s driver’s license for six months in 21 states and D.C.; and a ban from public housing for three years in 46 states.¹³ For noncitizens, a conviction can trigger deportation, sometimes with almost no possibility of discretionary relief.¹⁴ In fact, simple marijuana possession was the fourth most common cause of deportation for any crime in 2013. More than 13,000 people were deported in 2012 and 2013 just for personal marijuana possession.¹⁵

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 cost more than \$3.6 billion each year.¹⁶ The huge number of arrests drains scarce resources at enormous cost to taxpayers.¹⁷ More than half of those in treatment for marijuana are referred by the criminal justice system and likely did not need or want treatment.¹⁸

“Even a simple possession arrest sometimes means spending a night or more in jail awaiting arraignment, and this constitutes a significant harm of marijuana prohibition; spending time in jail is unpleasant, and much more dangerous than merely smoking pot.”¹⁹

-Jonathan Caulkins et al., *Marijuana Legalization: What Everyone Needs to Know* (Oxford University Press, 2012).

Signs of Hope

Local Reform. More than a dozen local governments have declared marijuana possession their “lowest law enforcement priority,” and several have eliminated criminal penalties for marijuana possession altogether.

State Reform. Twenty states have enacted various forms of marijuana decriminalization by reducing or

eliminating penalties for minor marijuana offenses.²⁰ In November 2012, Colorado and Washington made history by voting to legally regulate the sale, cultivation and distribution of marijuana for adults over 21. Both states have developed restrictions on the marijuana trade designed to protect public safety and health. Alaska, Oregon and Washington D.C. voted to legalize marijuana in 2014, and legislators and activists in several other states will likely follow suit in 2016.

National Reform. Historic bipartisan legislation has been introduced in Congress to end federal marijuana prohibition.²¹ Meanwhile, the Department of Justice announced that it would allow states to regulate marijuana within their jurisdictions and directed federal prosecutors not to interfere with state marijuana laws – as long as a number of stipulations are adhered to, such as preventing distribution to minors.²² Internationally, Uruguay recently became the first country in the world to legalize marijuana.

Public Support. Public support for making marijuana legal has shifted dramatically in the last two decades, with recent polls showing greater than majority support.²³

¹ 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).

² Federal Bureau of Investigation, “Crime in the United States, 2014,” (Washington, DC: U.S. Department of Justice, 2015).

³ 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.

⁴ American Civil Liberties Union, “The War on Marijuana in Black and White; Holly Nguyen and Peter Reuter, “How Risky Is Marijuana Possession? Considering the Role of Age, Race, and Gender,” *Crime & Delinquency* 58, no. 6 (2012); Harry G. Levine and Deborah P. Small, *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City 1997-2007* (New York: New York Civil Liberties Union, 2008); A. Golub, B.D. Johnson, and E. Dunlap, “The Race/Ethnicity Disparity in Misdemeanor Marijuana Arrests in New York City,” *Criminology & public policy* 6, no. 1 (2007).

⁵ National arrest data for people of Latino / Hispanic ethnicity are not collected systematically and are therefore incomplete. State-level data, however, show that Latinos and Latinas are disproportionately arrested for marijuana possession. See California Department of Justice, “Crime in California 2014,” (2015) <https://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/candd/cd14/cd14.pdf>; Harry Levine, Loren Siegel, and Gabriel Sayegh, “One Million Police Hours: Making 440,000 Marijuana Possession Arrests In New York City, 2002-2012,” (New York: Drug Policy Alliance, 2013).

⁶ American Civil Liberties Union, “The War on Marijuana in Black and White.”

⁷ Jonathan P. Caulkins et al., *Marijuana Legalization: What Everyone Needs to Know* (Oxford: Oxford University Press, 2012), 46.

⁸ Arizona REV. STAT. § 13-3405, <http://www.azleg.state.az.us/ars/13/03405.htm>.

⁹ Robert C. Boruchowitz, Malia N. Brink, and Maureen Dimino, *Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts* (National Association of Criminal Defense Lawyers, 2009), 32.

¹⁰ Nguyen and Reuter, “How Risky Is Marijuana Possession? Considering the Role of Age, Race, and Gender,” 899.

¹¹ Caulkins et al., *Marijuana Legalization: What Everyone Needs to Know*, 47.

¹² 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).

¹³ Boire, *Life Sentences: Collateral Sanctions Associated with Marijuana Offenses*. (Note: some states' laws may have changed).

¹⁴ Jason Cade, “The Plea Bargain Crisis for Noncitizens in Misdemeanor Court,” *Cardozo Law Review* 34(2013): 1754.

¹⁵ 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/>.

¹⁶ American Civil Liberties Union, “The War on Marijuana in Black and White,” 22.

¹⁷ Ibid; Jeffrey A. Miron and Katherine Waldock, *The Budgetary Impact of Ending Drug Prohibition* (Cato Institute, 2010).

¹⁸ 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.

¹⁹ Caulkins et al., *Marijuana Legalization: What Everyone Needs to Know*, 47.

²⁰ Eleven states (California, Connecticut, Delaware, Maine, Maryland, Massachusetts, Mississippi, Nebraska, New York, Rhode Island, and Vermont) consider simple possession of marijuana as an administrative or civil infraction. Five states (Minnesota, Missouri, Nevada, North Carolina, and Ohio) treat marijuana possession as a misdemeanor without jail time. And four states (Oregon, Alaska, Washington and Colorado) plus Washington D.C. have completely eliminated all penalties for personal marijuana possession by adults.

²¹ *The Ending Marijuana Prohibition Act of 2013*, House Resolution 499.

²² James Cole, “Memorandum for all United States Attorneys: Guidance Regarding Marijuana Enforcement,” (Washington, DC: U.S. Department of Justice, Office of the Deputy Attorney General, 2013).

²³ Jeffrey M. Jones, “In U.S., 58% Back Legal Marijuana Use,” *Gallup* 2015.