

# Marijuana Arrests in NY: Fiscally Irresponsible, Racially Biased and Unconstitutional

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## NY: The Marijuana Arrest Capital of the World

Since 1996, the Police have made nearly 600,000 arrests for possession of small amounts of marijuana. In 2012 alone, 44,622 people were arrested for marijuana possession. In fact, marijuana possession is one of the top arrests in New York State, representing 1 in 9 misdemeanor arrests and 1 in 12 of all arrests.<sup>1</sup> Most of those arrested are handcuffed, placed in a police car, booked at the station, held in jail for up to 24 hours (and sometimes longer), and then arraigned before a judge. Nearly 70% of those arrested are under 30 years old; over a third are under 21 years old. And over 82% of all those arrested are Black and Latino, even though whites use marijuana at higher rates.<sup>2</sup> On average, nearly 125 people are arrested every day for marijuana possession in New York, making our state the “Marijuana Arrest Capital of the World.”

## 1977: Penalties for Marijuana Possession Reduced

Many New Yorkers don’t know that the state decriminalized marijuana possession over thirty years ago – and that law is still on the books. In 1977, a Republican State Senator and a Democratic State Assemblyperson sponsored legislation to remove the criminal penalties for *possession* of marijuana for personal use.<sup>3</sup> The Legislature passed the *Marihuana Reform Act of 1977*, finding that “arrests, criminal prosecutions and criminal penalties are inappropriate for people who possess small quantities of marihuana (sic) for personal use.”<sup>4</sup> Possession of 25 grams or less of marijuana (about 7/8 of an ounce) was decriminalized – that is, it was made a *violation*; a first offense punishable by a \$100 fine, not jail. Multiple possession offenses are punishable by a \$250 fine and up to 15 days in jail.<sup>5</sup>

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

## Rapid Escalation in Marijuana Arrests in NY

For nearly fifteen years after decriminalization, there were relatively few marijuana possession arrests in NY. But changes in policing practices – especially in NYC – led to dramatic

increases in these arrests. In 1990, there were only 892 arrests for possession of small amounts of marijuana in NYC; in 2012, 39,230 people were arrested, a nearly a 4,400% increase. Marijuana arrests in New York City are the number one arrest in the City. Since Michael Bloomberg became mayor in 2002, there have been nearly 450,000 marijuana possession arrests in NYC. In fact, the total number of 2011 marijuana possession arrests in the state – 55,240 – has led to the *highest number of marijuana arrests ever recorded in New York State history*.

The dramatic rise in marijuana arrests is *not* the result of increased marijuana use, which peaked nationally around 1980.<sup>6</sup> Rather, police in NY have made possession of small quantities of marijuana one of their top arrest priorities – at enormous costs to our state.

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**“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 waste millions of dollars in law enforcement resources, while detracting from the prosecution of serious crime.”**

— *New York Marihuana Reform Act of 1977*

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## Marijuana, Stop, Question and Frisk, and the Police

Research shows that most people arrested for marijuana possession are *not* smoking in public, but simply have a small amount in their pocket, purse or bag.<sup>7</sup> Possessing a small amount of marijuana in one’s pocket or bag is a legal *violation*, not a criminal offense. Sometimes, police illegally search people, find marijuana, and then falsely charge them for marijuana in “public view.” Or, when police stop and question a person, they say “empty your pockets” or “open your bag.” Many people comply, even though they’re not legally required to do so. If a person pulls out marijuana from their pocket, it is then “open to public view,” a *crime*. The police then arrest the person.

In 2012, the NYPD stopped and questioned over 533,000 people — 87% of them people of color. About half of these encounters resulted in a frisk, and only 11% led to a summons

or arrest; in *less than one percent* of the stops was a gun recovered.<sup>8</sup> A Columbia University professor found at least 30% of stops themselves are likely unconstitutional.<sup>9</sup> Another study from the University of Chicago found that marijuana arrests do not reduce serious or violent crime, and may actually increase it.<sup>10</sup>

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**More people have been arrested for marijuana possession under Mayor Bloomberg (2002 – 2011) than were arrested under Mayors Ed Koch, David Dinkins and Rudy Giuliani combined (1977 – 2001).**

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### **These Arrests Are Expensive and Wasteful**

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. New York spent nearly \$70 million arresting people for low-level marijuana possession offenses in 2012 alone.<sup>11</sup> Over the last decade, state tax-payers have spent *over \$1 billion* on arrests for possession of small amounts of marijuana. These arrests continue, even while the state cuts youth summer job and after-school pro-grams, closes senior centers, shuts hospitals, raises col-lege tuition, and eliminates services for the homeless and the poor.

### **Bias and Inequity in Marijuana Law Enforcement**

Marijuana possession arrests expose profound bias and inequity within the New York criminal justice system. U.S. Government surveys of high school seniors show that whites use marijuana at higher rates than Blacks and Latinos.<sup>12</sup> While whites make up over 65% of the population in NY, they account for 14% of those arrested for marijuana possession.<sup>13</sup> In contrast, Blacks and Latinos combined make up nearly 34% of New York's population, yet comprise 82% of those arrested for marijuana possession.<sup>14</sup> Additionally, the vast majority of those arrested are young people between 16 - 29 years old<sup>15</sup> and occur in the state's poorest neighborhoods.

During the 2001 mayoral race, Michael Bloomberg was asked if he'd ever tried marijuana. His response: "You bet I did. And I liked it."<sup>16</sup> In fact, many New Yorkers have tried marijuana.<sup>17</sup> But every year, tens of 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 – like Mayor Bloomberg – are left alone. The law is not applied equally or fairly, undermining the relationship between the police and many of the communities they're supposed to serve.

### **Simple Solutions are Available: Fix the Law**

When the Legislature decriminalized marijuana possession in 1977, they made a clear *statement of intent*, declaring arrests for small amounts of marijuana "inappropriate" and economically wasteful.

The law has not changed, but policing practices have. The NYPD has made marijuana their *number one arrest priority*. This "marijuana arrest crusade"<sup>18</sup> began in the early 1990s and has continued and expanded under Mayor Bloomberg.

Today, simple solutions exist that could:

- Save tens of millions of dollars every year.
- *Reduce* outrageous racial disparities in arrests.
- *Stop* needlessly introducing tens of thousands of young people to the criminal justice system.
- *End* practices that violate constitutional rights.
- *Promote* more constructive, equitable relationships between police and NYC residents.

In September 2011, NYPD Police Commissioner Ray Kelly issued an internal directive, ordering police to follow the law – they must stop making arrests for marijuana possession in "public view" when the person was compelled by an officer to display marijuana in public. However, the order has not yielded an overall significant decrease in marijuana arrests. In fact, the total marijuana arrests for 2011 increased from 2010. This order does not address illegal searches and only applies to NYC; we need a permanent solution statewide.

In his 2013 State of the State address, Governor Cuomo announced marijuana decriminalization as one of his priorities for the year. "The stigma of the criminal records that can have lasting and deleterious effects on the young person's future," he said. These arrests are "*not fair, it's not right. It must end, and it must end now.*"

### **A Majority of New Yorkers Support Change**

A new Siena poll of New York voters released in March 2013 shows a record 63% in favor of Governor Cuomo's decriminalization proposal. Support cuts across racial lines with 71% of Black voters, 63% of white voters, and 60% of Latino voters supporting it. Additionally, 69% of Democratic, 65% of Independents and 50% of Republicans support fixing the law. New Yorkers from around the state – including NYC, the suburbs, and upstate – overwhelming support the change.

The *NY State Legislature* should pass A.6716A (Camara)/S.3105A (Squadron), introduced at the request of Governor Cuomo, which would standardize penalties for possessing small amounts of marijuana in private and public view. This reform is supported by Mayor Bloomberg, NYPD Police Commissioner Ray Kelly, all five NYC District Attorneys, and DA's from Long Island and Upstate. With this simple fix, penalties for possession of a small amount of marijuana would be standardized as a violation punishable by a summons and fine, not arrest and jail.<sup>19</sup>

### **New York's marijuana arrest crusade undermines fiscal responsibility, racial equity and our constitutional rights.**

For more information, to get involved, or to share an arrest story, contact DPA at [nyc@drugpolicy.org](mailto:nyc@drugpolicy.org) or 212-613-8053.

<sup>1</sup>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.

<sup>2</sup>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>.

<sup>3</sup>*Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977).

<sup>4</sup>Ibid

<sup>5</sup>*Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977).

<sup>6</sup>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>

<sup>7</sup>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.

<sup>8</sup>“Ruderman, Wendy. “Number of Frisks Fell in ‘12, Police Data Show.” *The New York Times*. 8 February 2013. Web. 11 February 2013. <<http://www.nytimes.com/2013/02/09/nyregion/number-of-frisks-fell-in-12-police-data-show.html>>; 87 Percent of Those Stopped Black and Latino,” Center for Constitutional Rights press release, February 24, 2011, on CCR website, <http://ccrjustice.org/newsroom/press-releases/stop-and-frisks-of-new-yorkers-2010-hit-all-time-high-600,601%3B-87-percent-of>, accessed February 2012.

<sup>9</sup>Fagan, J. (2010). Report of Jeffrey Fagan, Ph.D. on Floyd et al v City of New York et al., New York. Retrieved from [http://ccrjustice.org/files/Expert\\_Report\\_JeffreyFagan.pdf](http://ccrjustice.org/files/Expert_Report_JeffreyFagan.pdf)

<sup>10</sup>Bernard E. Harcourt and Jens Ludwig, “Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000,” *Criminology and Public Policy* 6:1 (2007), pp. 165-182.

<sup>11</sup>Harry G. Levine and Loren Siegel, *\$75 Million A Year*, (New York: Drug Policy Alliance, 2011).

Also see: Harry Levine, *New York City’s Marijuana Arrest Crusade Continues*, September 2009.

<sup>12</sup>U.S. Department of Health and Human Service, Office of Applied Studies. Table 1.34a marijuana use in lifetime, past year, and past month among persons aged 12 to 17, by demographic characteristics. *National Survey on Drug Use and Health, 2002 and 2003*. <http://www.oas.samhsa.gov/Nhsda/2k3tabs/Sect1peTabs1to66.htm#tab1.30b>. Retrieved February 14, 2011.

<sup>13</sup>U.S. Census Bureau, *American Community Survey Demographic and Housing Estimates: 2009* (Washington D.C.: United States Census Bureau, 2009), Accessed on April 17, 2012. Also see: New York State Division of Criminal Justice Services, *Adult Arrests in 2012*, Computerized Criminal History System, February 2013.

<sup>14</sup>Ibid.

<sup>15</sup>New York State Division of Criminal Justice Services, *Adult Arrests in 2010*, Computerized Criminal History System, January 2011.

<sup>16</sup>Gordon Meryl, “Citizen Mike,” *New York Magazine*, 16 April 2001.

<sup>17</sup>New York City Department of Health and Mental Hygiene, Data Report from the New York City Health Department. (2010). Illicit drug use in New York City New York: New York City Vital Signs. Retrieved from <http://www.nyc.gov/html/doh/downloads/pdf/survey/survey-2009drugod.pdf>. See also New York City Department of Health and Mental Hygiene, New York City Youth Risk Behavior Survey. (2007). Substance use among New York City youth NYC Vital Signs. Retrieved from <http://www.nyc.gov/html/doh/downloads/pdf/survey/survey-2007subsAbuse.pdf>.

<sup>18</sup>*Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997 – 2007*, 6. In this report we refer to what is happening in New York City as a “marijuana arrest crusade” to highlight the massive, organized, even relentless pursuit of these arrests under two mayors and three police commissioners for over ten years. But the term crusade does not capture other important characteristics of these marijuana possession arrests – including their racial bias, gender bias, costliness, and other harmful effects to New York City and especially to Black and Latino young people and their families.”

<sup>19</sup>By changing just the “public view” provision, multiple offenses could still lead to arrest and up to 15 days in jail. See *Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977) From the penal code, 221.05: “A person is guilty of unlawful possession of marihuana when he knowingly and unlawfully possesses marihuana. Unlawful possession of marihuana is a violation punishable only by a fine of not more than one hundred dollars. However, where the defendant has previously been convicted of an offense defined in this article or article 220 of this chapter, committed within the three years immediately preceding such violation, it shall be punishable (a) only by a fine of not more than two hundred dollars, if the defendant was previously convicted of one such offense committed during such period, and (b) by a fine of not more than two hundred fifty dollars or a term of imprisonment not in excess of fifteen days or both, if the defendant was previously convicted of two such offenses committed during such period.” The Legislature could consider eliminating the jail penalty altogether.