



## The Epidemic of Pot Arrests in New York City

By Harry G. Levine

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**There are two things that need to be understood about marijuana arrests in New York City.**

First, possession of less than an ounce of marijuana is not a crime in New York State. Since 1977 and passage of the Marijuana Reform Act, state law has made simple possession of less than seventh-eighths of an ounce of pot a violation, like a traffic violation. One can be given a ticket and fined \$100 for marijuana possession, but not fingerprinted and jailed. For over thirty years, New York State has formally, legally, decriminalized possession of marijuana.

Second, despite that law, since 1997 the New York City Police Department has arrested 430,000 people for possessing small amounts of marijuana, mostly teenagers and young people in their twenties. Most people arrested were not smoking pot. Usually they just carried a bit of it in a pocket. In 2008 alone, the NYPD arrested and jailed 40,300 people for possessing a small amount of marijuana. These extraordinary numbers of arrests and jailings, continuing for over twelve years, now make New York City the marijuana arrest capital of the world.

The arrests for marijuana possession first increased dramatically under Mayor Rudolph Giuliani. They have continued unabated under Mayor Michael Bloomberg. By 2008 Bloomberg had arrested more people for pot possession than Giuliani, and more than other mayor in the world.

Why has the NYPD continued to order narcotics and patrol officers to make so many misdemeanor pot arrests? For many reasons. The arrests are easy, safe, and provide training for new officers. The arrests gain overtime pay for patrol and narcotics police and their supervisors. The pot arrests allow officers to show productivity, which counts for promotions and choice assignments. Marijuana arrests enable the NYPD to obtain fingerprints, photographs and other data on many young people they would not otherwise have in their criminal justice databases. And there is very little public criticism and thus far no political opposition to New York City's marijuana arrest crusade.

Do the pot arrests reduce serious and violent crimes? No, if anything they increase other crimes. Professors Harcourt and Ludwig at the University of Chicago Law School analyzed NYPD data and concluded that the pot possession arrests took officers off the street and distracted them from other crime-fighting activities. "New York City's marijuana policing strategy," they reported, "is having exactly the wrong effect on serious crime – increasing it, rather than decreasing it." Veteran police officers agree terming the possession arrests "a waste of time." The arrests drain resources not just of police, but also of courts, jails, prosecutors and public defenders.

Perhaps most appalling is who the police are arresting for marijuana possession. U.S. government studies have consistently found that young whites use marijuana at higher rates than do young blacks or Latinos. But the NYPD has long arrested young blacks and Latinos for pot possession at much higher rates than whites.

In 2008, blacks were about 26% of New York City's population, but over 54% of the people arrested for pot possession. Latinos were about 27% of New Yorkers, but 33% of the pot arrestees. Whites were over 35% of the City's population, but less than 10% of the people arrested for possessing marijuana. In 2008, police arrested Latinos for pot possession at four times the rate of whites, and blacks at seven times the rate of whites.

Do the arrests violate New York State's decriminalization law? Yes and no. Yes, they certainly violate the spirit and intent of the 1977 law which explicitly sought to eliminate the pot possession arrests and the stigma of criminal records, especially for young people. And yes, some police, in particular narcotics squads, do make some illegal searches and arrests.

But no, most of the arrests are probably technically legal. The NYPD has found easy ways to trick or intimidate young people so they allow a search, or even just take out their marijuana and hand it over to the officers.

Here's how the police do it. NYPD commanders direct officers to stop and question many young people and make arrests for possessing "contraband." In 2008, the NYPD made more than half a million recorded stop and frisks and an unknown number of unrecorded stops, disproportionately in black, Latino and low-income neighborhoods. By far, the most common contraband young people might possess is a small amount of marijuana.

According to U.S. Supreme Court decisions, police are allowed to thoroughly pat down the outside of someone's clothing looking for a gun, which is bulky and easy to detect. But police cannot legally search inside a person's pockets and belongings without permission or probable cause.

However, police officers can legally make false statements to people they stop, and officers can trick people into revealing things. So in a stern, authoritative voice, NYPD officers will say to the young people they stop:

"We're going to have to search you. If you have anything illegal you should show it to us now. If we find something when we search you, you'll have to spend the

night in jail. But if you show us what you have now, maybe we can just give you a ticket. And if it's nothing but a little weed, maybe we can let you go. So if you've got anything you're not supposed to have, *take it out and show it now.*"

When police say this, the young people usually take out their small amount of marijuana and hand it over. Their marijuana is now "open to public view." And *that* – having a bit of pot out and open to be seen – technically makes it a crime, a fingerprintable offense. And for cooperating with the police, the young people are handcuffed and jailed.

Before Mayors Giuliani and Bloomberg, New York police rarely if ever did this to make marijuana arrests. Since 1997 the NYPD has used this procedure to make tens of thousands of marijuana arrests a year, averaging about a hundred a day, every day for over twelve years. This is more than ten times the average number of marijuana arrests the City made previously. As NYPD and New York Criminal Court data show, before 1997 marijuana arrests were less than one percent of all arrests. The lowest-level misdemeanor pot possession arrests are now over ten percent of all arrests in New York City.

New York is extreme in the number of its marijuana arrests. But other cities are also making many pot possession arrests and jailings at high rates, often using the same techniques as the NYPD. As FBI arrest data shows, this includes Atlanta, Baltimore, Cincinnati, Cleveland, Denver, Houston, Indianapolis, Philadelphia, Phoenix, San Antonio, and other cities.

Since the 1990s, the U.S. War on Drugs has emphasized making many low-level possession arrests, especially of marijuana. At least forty percent of all drug arrests are now just for marijuana possession and U.S. marijuana arrests are at an all time high. In the last ten years, the U.S. has arrested more than six million people, mostly young people, for possessing marijuana.

As in New York City, pot arrests nationally are racially skewed, racially biased. Throughout the U.S., young blacks and Latinos are stopped, searched and arrested for pot possession at much higher rates than whites – even though young whites use marijuana at higher rates.

Do the arrests harm the people arrested? Absolutely. They produce permanent, criminal records which potential employers can easily find, often on the internet. As even the New York City Health Department recognizes, "A marijuana conviction can keep you from getting a student loan, a job, a house or an apartment – even years later." In effect, the marijuana arrests provide the young, mostly low-income blacks, Latinos and whites with a head start for unemployment and prison.

The arrests are expensive, but state and local governments do not have to pay for them all. Arrests for possessing even tiny amounts of marijuana and other drugs are subsidized by the U.S. government. Up to a billion dollars a year has been going to states, prosecutors and police departments through the Byrne Grant Program to "fight" drugs and crime.

Many Democrats in Congress have been strong supporters of Byrne Grants, including Senators Joe Biden and Barack Obama.

In 2009, the economic stimulus package enacted by Congress added two billion dollars more to the Byrne Grant Program. This tripled Byrne Grant funding raising it to the highest level ever. As a result, this epidemic of racially-biased and stigmatizing marijuana possession arrests in New York City and elsewhere will grow even larger.

The Obama administration's Department of Justice could alter Byrne grant regulations so that police departments, prosecutors and local governments cannot use the federal funds to subsidize arrests of people who possess only small amounts of marijuana. That alone could do a great deal to reduce the arrests, jailings, and stigmatizing criminal records. But police departments and prosecutors have enormous political clout in Washington. And other than a few civil liberties and drug policy reform groups, there is currently little organized opposition to the pot arrests.

Partly because of the economic crisis, some people, especially in California, have proposed that marijuana be legalized, taxed and regulated like alcohol is. Serious, broad-ranging debate about alternatives to marijuana prohibition would be a sensible, hopeful development. But marijuana legalization would constitute a huge change in U.S. drug law and is not likely any time soon. Meanwhile, the great many damaging, expensive, racially-biased marijuana possession arrests and jailings continue – even in places like New York that have legally decriminalized simple possession.

In the 1980s Barack Obama was a college student in New York City, living on the border of Harlem. He used marijuana, walked around the city a lot, and sometimes may have carried a bit of pot in his pocket. If the current policing policies of New York and other cities were in effect at that time, he might well have been arrested and jailed. If that had happened Barack Obama would not be president today.

Is this what Americans want their police to be doing: arresting enormous numbers of young people, disproportionately black and Latino, and destroying their futures, for ... *pot possession*?

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