

"We are one New York, and as one New York we will not tolerate discrimination. There is a challenge posed by the stop and frisk police policies: roughly 50,000 arrests in New York City for marijuana possession, more than any other [offense].

Of those 50,000 arrests, 82 percent are black and Hispanic. Of the 82 percent that are black and Hispanic, 69 percent are under the age of 30 years old. These are young, predominately black and Hispanic males.

These arrests stigmatize, they criminalize, they create a permanent record. It's not fair, it's not right, it must end, and it must end now.

The problem is the disconnect because marijuana on a person is a violation, marijuana in public view is a misdemeanor. There must be parity. Decriminalize the public view with fifteen grams or less, so there's fairness and parity in the system.

And we stop stigmatizing these young people, making it harder to find a job, making it harder to get into school, making it harder to turn their lives around, at a very young age."

*Governor Andrew Cuomo,
State of the State of New York Address, January 9, 2013*



On January 9, 2013, New York Governor Andrew Cuomo gave his State of the State address. The Governor's office also made available a 300 page report, "*NY Rising*," describing problems New York State faces and measures to be undertaken.

In the Governor's speech, broadcast live on public television and the web, he discussed marijuana arrests briefly but with considerable passion focusing on the destructive life consequences for the young people arrested.

The more comprehensive *NY Rising* devoted six pages to "Marijuana Possession" comparing the many arrests in New York City to the small number in the rest of New York State. Those pages are attached.

Video of the whole event including the Governor's address is on the web. What Cuomo says in the speech is different from the "*NY Rising*" report.

Cuomo's brief remarks about marijuana begin at 1.17.19 – 1 hour, 17 minutes, 19 seconds.

<http://livestre.am/4i58d> and at

<http://www.governor.ny.gov/> and at

http://www.livestream.com/newyorkstateofficeofthegovernor/video?clipId=pla_8043223b-e760-45a5-8c29-aa4c5a371435

A pdf of the complete "*NY Rising*" document is here:

<http://www.governor.ny.gov/sites/default/themes/governor/sos2013/2013SOSBook.pdf>

Reports, testimony, graphs, tables, and excerpts from many news stories and editorials about New York's racially-biased marijuana possession arrests are here:

<http://marijuana-arrests.com>

Testimony about illegal police searches and about the already serious problems with the New York Violations Courts is here:

<http://marijuana-arrests.com/docs/Testimony-NYCityCouncil-Marijuana-Arrests--Illegal-Searches--Summons-Court-System-June-2012.pdf>

Testimony discussing the marijuana possession arrests in NY City and State is here:

<http://marijuana-arrests.com/docs/Testimony-NYS-Senate-Marijuana-Arrests-June-2011.pdf>

The report about the costs of the arrests cited in *NY Rising* is: "\$75 Million A Year: The Cost of New York City's Marijuana Possession Arrests." .It can be found here:

<http://marijuana-arrests.com/docs/75-Million-A-Year.pdf>



NY RISING

**2013 State of the State
Governor Andrew M. Cuomo**

**The Challenge: Marijuana Possession
pages 98-104**

2. Education.....	61
More Learning Time: Extending the School Day and/or Year.....	64
Full-Day Pre-kindergarten Program for the Highest Needs Students	68
Better Teachers and Principals	70
A Success Story: The Teacher and Principal Evaluation System	72
Better Teachers and Principals: Rewarding High Performing Educators.....	73
Integrating Social Services and Schools by Expanding Community Schools	74
Create a Performance Management System	78
Expanding Innovative Ways to Make Students College and Career Ready.....	78
Create Innovation Zones.....	80
Continue to Find Efficiencies through Shared Services, Regionalization, and Consolidation	81
Another Round of NYSUNY 2020, and a New NYCUNY 2020	82
3. Progressive Agenda.....	85
We Must Raise the Minimum Wage.....	92
The Challenge: Stop and Frisk	95
The Challenge: Marijuana Possession.....	98
Strengthening Eyewitness Identification	104
Recording Criminal Interrogations.....	106

The Challenge: Marijuana Possession

Attention and concern over the growth in the use of stop and frisk has been accompanied by a similar concern over the exponential rise in arrests for low-level marijuana possession. Currently, New York State law makes “open view” possession of 25 grams or less of marijuana a misdemeanor punishable by not more than one year in jail, while possession of the same amount of marijuana in the home is a violation—a non-criminal offense punishable by a fine.

This distinction between public and private view possession stems from the passage of The Marihuana Reform Act of 1977.¹¹² The legislature noted the stigma that attaches to those arrested and the waste of government resources in pursuing activity that is not criminal in nature:

The legislature finds that arrests, criminal prosecutions, and criminal penalties are inappropriate for people who possess small quantities of marihuana for personal use. Every year, this process needlessly scars thousands of lives and wastes millions of dollars in law enforcement resources, while detracting from the prosecution of serious crime.¹¹³

At the same time that the legislature decriminalized personal possession in the home, it instituted a criminal penalty for the same quantity possessed in “public view.”¹¹⁴

In the first full year of enforcement of the separate “open view” marijuana law, there were 514 arrests for the crime. Today, police arrest 100 times more people for this offense and these arrests comprise the single largest category of arrests in New York City, accounting for 15 percent of all NYC arrests and 20 percent of NYC misdemeanors.¹¹⁵

Table 3.1. Arrests for “open view” marijuana possession from 1977 to 2011

	New York City	Rest of State	New York State Total
1977	38	116	154
1978	102	412	514
1979	122	548	670
1980	388	756	1,144
1981	894	835	1,729
1982	1,119	919	2,038
1983	1,463	1,028	2,491
1984	2,240	1,410	3,650
1985	2,236	1,568	3,804
1986	1,649	1,542	3,191
1987	2,697	1,360	4,057
1988	1,754	1,614	3,368

	New York City	Rest of State	New York State Total
1989	998	1,278	2,276
1990	824	1,187	2,011
1991	704	853	1,557
1992	720	842	1,562
1993	1,362	1,007	2,369
1994	3,018	1,292	4,310
1995	5,538	1,522	7,060
1996	9,142	1,985	11,127
1997	17,614	2,012	19,626
1998	32,567	1,867	34,434
1999	33,473	2,160	35,633
2000	50,825	2,169	52,994
2001	41,244	2,303	43,547
2002	43,267	2,549	45,816
2003	38,158	3,217	41,375
2004	27,176	3,142	30,318
2005	28,880	2,814	31,694
2006	31,075	3,246	34,321
2007	38,153	3,104	41,257
2008	39,437	3,265	42,702
2009	45,577	3,059	48,636
2010	49,457	3,181	52,638
2011	49,800	3,324	53,124

Source: DCJS, Computerized Criminal History system (5/2012). Prepared 6-5-2012¹¹⁶

Table 3.2. Arrests for “open view” marijuana possession in 2011 by Race

	Black	Hispanic	White	Asian/ Indian	Unknown	Total
New York City	25,746	16,108	6,123	1,352	471	49,800
Rest of State	1,196	668	1,335	26	99	3,324
New York State	26,942	16,776	7,458	1,378	570	53,124

Source: DCJS, Computerized Criminal History system (5/2012). Prepared 6-5-12



The effects of those arrests fall almost entirely on Black and Hispanic individuals—82 percent—and largely on the young: 52 percent are under 25 and 69 percent are under 30.

Table 3.3. Arrests for “open view” marijuana possession in 2011 by Age

	AGE GROUP				Total
	16 to 19	20 - 24	25-29	30 +	
New York City	11,569	14,321	8,259	15,651	49,800
Rest of State	1,094	1,160	459	611	3,324
New York State	12,663	15,481	8,718	16,262	53,124

Source: DCJS, Computerized Criminal History system (5/2012)

Approximately 10 percent of arrests result in convictions and 72 percent of those arrested had no prior conviction.

Table 3.4. Convictions for “open view” marijuana possession in 2011 by Race

	Black	Hispanic	White	Asian/ Indian	Unknown	Total
New York City	3,333	1,550	242	38	28	5,191
Rest of State	201	85	88	2	2	378
Total	3,534	1,635	330	40	30	5,569

Source: DCJS, Computerized Criminal History system (5/2012).
Includes 77 Youthful Offender adjudications. Prepared 6-5-12

Table 3.5.: Arrests for “open view” marijuana possession in 2011 by prior conviction status at time of arrest

	Total	No Prior Convictions		Prior Felony or Misd. Conviction(s)	
	Num.	Num.	Pct.	Num.	Pct.
New York City	49,800	35,584	71%	14,216	29%
Rest of State	3,324	2,506	75%	818	25%
New York State	53,124	38,090	72%	15,034	28%

Source: DCJS, Computerized Criminal History system (5/2012).
Prior convictions do not include Youthful Offender adjudications. Prepared 6-5-12

The numbers tell a story: overwhelmingly, young people of color are arrested, processed and then released. But, arrest has consequences that persist after release. There is the humiliation of arrest and, in some cases, detention during processing. More enduring is the stigma of the criminal records that can have lasting and deleterious effects on the young person's future. A "drug" arrest can have a significant impact on a person's life and key decisions made by employers, landlords, licensing boards and banks.

The mounting number of arrests without convictions in this area is not cost-free for law enforcement or the public either. A cost-benefit analysis performed by Dr. Harry Levine of Queens College examined the costs to the police and courts of each arrest—approximately \$764 in police and \$336 in court costs. Based on the number of arrests, the analysis concluded that it costs approximately \$75 million a year to support the current practice.¹¹⁷

Is it worth the price? Overwhelmingly, the answer is no: not worth it in dollars, in stigma or in impact. In order to fix the inequity in the law while still recognizing that possession in public is different from possession in one's home, the Governor will propose

legislation that makes “open view” possession of marijuana in amounts of 15 grams or less a violation punishable by a fine.

See also

<http://www.nytimes.com/interactive/2010/07/11/nyregion/20100711-stop-and-frisk.html?ref=stopandfrisk>.

¹¹⁰ *See* <http://wnyc.org/blogs/wnyc-news-blog/2012/feb/14/nypds-stop-and-frisk-reaches-record-highs>.

¹¹¹ *See* Fagan, Jeffrey, *Street Stops and Broken Windows Revisited: The Demography and Logic of Proactive Policing in a Safe and Changing City*, pages 334-335.

¹¹³ *See* L. 1977, ch. 360, § 1 .

¹¹⁴ *See* Penal Law § 221.10(1).

¹¹⁵ *See* DCJS Computerized Criminal History System, December 2012.

¹¹⁶ PL 221.10(01) became effective on July 29, 1977.

¹¹⁷ *See* Harry G. Levine and Loren Siegel, \$75 million a Year: The Cost of New York City's Marijuana Arrests. New York: Drug Policy Alliance, March 2011 *available at* http://www.drugpolicy.org/docUploads/_75_Million_A_Year.pdf.

¹¹⁸ *See* New York State Justice Task Force, *Recommendations for Improving Eyewitness Identifications*, February 2011, *available at*