

THE CONSEQUENCES AND COSTS OF MARIJUANA PROHIBITION

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SUMMARY OF KEY FINDINGS

FINDING 1: Increasing marijuana arrests does not achieve the stated goals of marijuana prohibition.

- Efforts to reduce marijuana use in the United States over the past four decades have largely depended on arrest, imprisonment, incarceration and, more recently, the seizure of private property.
- Marijuana arrests in the U.S. have increased dramatically since 1992. In 2006, there were a record 829,625 marijuana arrests. Nearly half (44%) of the roughly 1.9 million annual drug arrests were for marijuana.
- Despite recent increases in marijuana arrests, the price of marijuana has dropped; its average potency has increased; it has become more readily available; and marijuana use rates have often increased during the decade of increasing arrests. It thus appears that the goals of marijuana prohibition have not been achieved.

FINDING 2: The collective costs of marijuana prohibition for the public are significant; The personal costs to individuals are also substantial, not adequately assessed by policymakers, and may negatively impact society as a whole.

- The enforcement of the laws prohibiting marijuana consumes significant fiscal and organizational resources that could usefully be allocated toward other pressing public safety goals.
- Marijuana arrests are not evenly distributed across the population, but are disproportionately imposed on African Americans.
- The enforcement of marijuana laws imposes a range of social, psychological and familial costs on those arrested for marijuana law violations. A complete accounting of the costs and benefits of marijuana prohibition requires consideration of these nonmonetary costs.
- A full and adequate analysis of the cost of enforcing current marijuana laws requires better and more complete record-keeping and data reporting by the police and others in the criminal justice system.

FINDING 3: Decriminalizing marijuana and deprioritizing enforcement of marijuana laws leads to no significant increase in marijuana use.

- Many states and localities have either decriminalized marijuana or deprioritized the enforcement of marijuana laws.
- There is no evidence that the decriminalization of marijuana by certain states or the deprioritization of marijuana enforcement in Seattle and other municipalities caused an increase in marijuana use or related problems.
- This conclusion is consistent with the findings of numerous studies indicating that the increasing enforcement of marijuana laws has little impact on marijuana use rates and that the decriminalization of marijuana in U.S. states and elsewhere did not increase marijuana use.

PREFACE

Adam¹ is a middle-aged man afflicted with multiple sclerosis. If left uncontrolled, his ailment blurs his vision, fatigues his muscles, and impairs his physical coordination. His physician recommended marijuana to help control the effects of Adam's illness. This recommendation enables Adam to legally consume medical marijuana under Washington state law, and to grow and harvest his own marijuana plants. As a result, Adam, who earns \$30,000 a year, produced his own medication and avoided paying weekly expenses of \$200 or more for commercially grown marijuana. He also was able to avoid purchasing his medication from an illegal and potentially dangerous source.

One afternoon, Adam arrived home to discover police officers in his apartment. While he had been at one of his four jobs, burglars entered his apartment, stole some items, and left his door ajar upon their departure. Summoned by Adam's neighbors, the police explored the apartment and discovered his marijuana plants. They seized Adam's plants and the equipment that he used to grow them, which had cost him several thousand dollars and would likely be even more costly to replace.

Despite his status as a physician-authorized medical marijuana patient, Adam soon learned that he could be charged with a crime for possessing marijuana plants, just like any other defendant in a marijuana case. The government placed a lien on his house and told Adam that he would have to pay a \$14,000 fine as part of a proposed plea deal. Adam hired an attorney, paid him \$2,000, and waited over a year before the charges were finally dropped. It was a distressing period in his life:

I didn't know whether I was going to jail. . . So I had to wait out a whole year. It was not easy. I mean, I was lucky that I didn't let the emotional stress affect my disability, because stress, with MS, makes the disease more intense. . . I had no control. I was powerless to the situation of what was gonna happen with my life.

Brian was a college student, experiencing the freedom of adulthood after a fairly strict religious upbringing. Part of this newfound freedom involved experimentation with marijuana. One evening, he and friend took a small amount of marijuana with them to the Washington State Fair. As Brian strolled around the grounds, another young man approached him. The young man quietly but insistently asked whether Brian had any marijuana to sell. Brian demurred but the stranger persisted, explaining that he just wanted enough to smoke a bit with his friends. Feeling pressured, Brian agreed and they went into a nearby bathroom so Brian could hand the stranger \$5 worth of his own pot. Apparently, the young stranger who had pursued Brian was either a plainclothes officer or an informant. When they emerged from the bathroom, Brian was arrested by waiting police officers.

¹ Pseudonyms have been assigned to all interviewees to protect confidentiality.

Thus began a year-long process that involved numerous court appearances, court-mandated drug testing and therapy, and great tension between Brian and his mother. He had grown up as a devout Christian and had never been in trouble with the law. Like Adam, Brian found the experience extremely trying.

Adam and Brian are just two of thousands of individuals who face criminal prosecution in Washington state each year for a marijuana offense. Across the nation, considerable expense goes toward punishing those citizens who run afoul of laws that prohibit marijuana. The stated purpose of these laws is to prevent the use and sale of marijuana by disrupting the marijuana market, increasing its price, reducing its availability, and deterring potential users.

This report assesses whether these goals are achieved as a result of the enforcement of marijuana laws. It also considers the costs of the enforcement of these laws in Seattle/King County, Washington state and the United States as a whole. These include fiscal and public safety costs, as well as the human costs borne by those individuals, like Adam, who are arrested for violating these laws.

The findings indicate that the enforcement of marijuana laws does not measurably reduce marijuana use or any harm that may be associated with it. We also conclude that the war on marijuana is quite costly, in both financial and human terms.

INTRODUCTION

Marijuana is currently prohibited by the federal government and classified as a Schedule I controlled substance. Schedule I substances are categorized by the government as those with a high potential for abuse, no accepted medical use and no safe level of use under medical supervision.² Although local, state and federal marijuana laws vary substantially, it is illegal throughout the United States to possess or distribute any amount of marijuana for any nonmedical reason (except for federally approved research) anywhere in the United States.³ Washington state law imposes criminal sanctions for possessing or growing marijuana, although it recognizes the drug's medical benefits by allowing patients with specified medical conditions to use marijuana with their physician's recommendation.

The number of marijuana arrests taking place in the United States each year has skyrocketed in the past few decades. In 2006, there were 829,625 marijuana arrests. Today, nearly half (44%) of the roughly 1.9 million annual drug arrests now involve marijuana.⁴ Both the absolute number and rate of marijuana arrests are at record levels and increasing.

Yet the classification of marijuana as an illegal drug is controversial. Although researchers can show that heavy and long-term use of marijuana may produce adverse health effects, most conclude that occasional marijuana use does not cause health problems for the vast majority of users. As the editors of *Lancet*, a leading British medical journal, concluded, while marijuana use likely poses health risks for people with particular vulnerabilities, "the smoking of cannabis, even long term, is not harmful to health" for most people.⁵ And despite popular claims regarding marijuana's role as a "gateway drug," a comprehensive Institute of Medicine report concluded that "There is no conclusive evidence that the drug effects of marijuana are causally linked to the subsequent abuse of other drugs."⁶

Further, public opinion about marijuana prohibition indicates that there is substantial disagreement with current policy. In 2001, 46% of all Americans polled supported repealing the laws that make marijuana possession a criminal offense (i.e. "decriminalization"). However, levels of support for decriminalization may be even higher than this result suggests. When survey questions focus on the appropriate penalty for marijuana possession, 72% of those polled in 2002 preferred that those arrested for possession of small amounts of marijuana be fined rather than incarcerated.⁷ By 2003, 34% favored

2 Controlled Substances Act, 21 U.S.C. § 812 (1996).

3 As discussed below, some states permit use of marijuana for limited medical purposes.

4 In 2006, 44% of the nations' 1,889,810 drug arrests involved marijuana, and nearly 88% of those arrests were for simple possession. See United States Department of Justice, Federal Bureau of Investigation, *Crime in the United States, 2006* (September 2007). Available online at <http://www.fbi.gov/ucr/cius2006/index.html>

5 *Lancet* 1995. "Cannabis" is often used interchangeably with the term marijuana and is derived from the plant's scientific name.

6 Joy et al 1999.

7 Stein 2002.

complete legalization of marijuana.⁸ Support nationally for medical marijuana was even stronger. In 2001, 75% of those responding to a national public opinion poll believed that it should be legal for a physician to prescribe marijuana; only 12% opposed legalizing marijuana for medical use.⁹

Similar public sentiment was found in state-level public opinion as measured by a 2006 Washington state poll. Combined, 74% believed that marijuana possession, even for nonmedical use, should be treated either as a noncriminal infraction or made legal. The Washington state research also found 82% support for making medical marijuana available.¹⁰

Shifts in some state and local marijuana laws reflect these public preferences. For example, a number of states now have laws that, to varying degrees, permit the use of marijuana for medical purposes.¹¹ Since the early 1970s, a number of state and local governments also reduced the penalties associated with marijuana offenses,¹² formally or informally deprioritized marijuana enforcement,¹³ and/or mandated that nonviolent drug offenders receive treatment rather than incarceration.¹⁴ As a result of these kinds of state and local policy changes, the intensity with which marijuana laws are enforced varies significantly.

8 Maguire, K. and Pastore, eds, 2002, Tables 2.67 and 2.86. Available online at <http://www.albany.edu/sourcebook/pdf/t267.pdf> and <http://www.albany.edu/sourcebook/pdf/sb2001/sb2001-section2.pdf> respectively. The terms “decriminalization” and “legalization” denote distinct policies, but they are often conflated. Decriminalization typically refers a policy that continues to prohibit marijuana use, but enforces that policy through civil enforcement analogous to fines for traffic infractions. Legalization refers to a policy by which some or all individuals could lawfully choose to consume marijuana, which would be subject to regulation by the government.

9 Maguire, K. and Pastore 2002, Table 2.87. Available online at <http://www.albany.edu/sourcebook/pdf/sb2001/sb2001-section2.pdf>

10 Poll conducted by Belden Russonello & Stewart for the American Civil Liberties Union (January 2006).

11 Twelve states currently have laws that protect medical marijuana patients to varying degrees, including: Alaska, California, Colorado, Hawaii, Maine, Maryland, Montana, Nevada, Oregon, Rhode Island, Vermont, and Washington. The protection afforded by these laws is often inadequate. For example, Washington State’s Medical Marijuana Act provides a defense at trial, but does not protect even certified medical marijuana patients from arrest or prosecution by state, local or federal authorities. In fact, Washington’s law does not even require that judges permit medical marijuana defendants to present evidence of their medical use to a jury. See, e.g, *State v. Tracy*, No. 77534-6 (Wash. Sup. Nov 22, 2006) [see also the dissenting opinion in *Tracy*]; “A Guide to Washington’s Medical Marijuana Law” ACLU of Washington, available at <http://www.aclu-wa.org/detail.cfm?id=182>

12 These include Oregon, California, Nevada, Colorado, Nebraska, Minnesota, Mississippi, North Carolina, Ohio, Maine, New York, and Alaska.

13 See, for example, Seattle Municipal Code, Section 12A.20.060 (passed as Seattle I-75 in 2003). Since Seattle’s law was enacted, similar ordinances have passed in San Francisco, CA; Denver, CO; San Eureka Springs, Arkansas; Columbia, MO; Missoula, MT; Haily, ID and other jurisdictions.

14 For example, in November 2000, California state voters adopted Proposition 36, The Substance Abuse and Crime Prevention Act, also known as Proposition 36, by 61%. This vote permanently changed state law to allow first- and second-time nonviolent, simple drug possession offenders the opportunity to receive substance abuse treatment instead of incarceration (see <http://www.drugreform.org/prop36/fulltext.tpl>).

The consequences of being arrested for marijuana offense also vary. Beginning in the early 1970s, possession of small amounts of marijuana was decriminalized in 11 states.¹⁵ A person found in possession of marijuana, where there is no evidence of illegal distribution, might face a civil fine. But he or she would not be arrested, prosecuted or jailed. By contrast, a third conviction for possession of one ounce of marijuana may be penalized by up to 20 years in prison in Louisiana.¹⁶ The maximum penalty for a first-time conviction of distribution of one pound of marijuana is life in prison in Montana and Oklahoma, whereas the penalty for a first-time conviction for the distribution of up to 10,000 pounds of pot in New Mexico is no more than three years.¹⁷

The somewhat surprising coincidence of a trend away from stringent enforcement of marijuana laws within some states and local jurisdiction, on the one hand, and sharply increased marijuana arrests in the United States as a whole, on the other hand, suggests significant national ambivalence about the war on marijuana. This appearance of ambivalence is heightened by federal government estimates that 94 million Americans, nearly a third of the national population, have used marijuana.¹⁸

This report assesses the consequences and costs of the enforcement of criminal laws that prohibit the use of marijuana. Part I describes national and local trends in marijuana law enforcement, identifies the goals that underlie marijuana prohibition, and analyzes whether current marijuana policy is achieving those goals. Findings indicate that the intensification of law enforcement has not reduced marijuana consumption. Indeed, marijuana has become more available, affordable and potent as the number of marijuana arrests has skyrocketed.

Part II of the report considers marijuana enforcement's fiscal and public safety costs, as well as the more subtle human costs that are often overlooked in conventional cost-benefit analyses. As a starting point for assessing these impacts, we draw on interviews with those arrested for marijuana violations to identify the potential human costs that may be associated with the war on marijuana. The findings indicate that the war on marijuana is quite costly, in both financial and human terms.

Part III of the report considers whether the decriminalization of marijuana or deprioritization of marijuana enforcement in various jurisdictions resulted in increased marijuana use or any harm potentially associated with it. This analysis includes an assessment of the impact of the City of Seattle's 2003 Initiative 75 (I-75) on public health and safety. The findings indicate that neither the decriminalization of marijuana nor the deprioritization of marijuana law enforcement increased marijuana use or any harm associated with it in U.S. states and localities.

15 Faupel, Horowitz and Weaver 2004.

16 Louisiana Revised Statutes 40:966(E)(3). See also Schlosser 2003: 26.

17 Montana Code Annotated 45.9.101(4); Oklahoma State Statute 63.2.401(B)(2); New Mexico Statutes Annotated 30-31-22(1)(C), NMSA 31-18-15(A)(8). Schlosser 2003: 26.

18 National Institute on Drug Abuse 2006. Available online at <http://www.nida.nih.gov/ResearchReports/Marijuana/Marijuana2.html#scope>

PART I:

THE CRIMINALIZATION OF MARIJUANA: LAWS, ARRESTS AND OUTCOMES

The stated goal of marijuana prohibition is to suppress its use. Supporters of marijuana prohibition argue that the enforcement of marijuana laws disrupts the marijuana market. This disruption should increase marijuana's price, reduce its availability, and deter potential users. As a result, prohibition advocates contend, the enforcement of marijuana laws reduces the harm that may be associated with marijuana consumption.¹⁹ By contrast, critics argue that these goals are not being met or that the costs of enforcing marijuana laws are greater than any presumed benefits.²⁰

At the center of this debate, then, are two central empirical issues: whether marijuana prohibition reduces marijuana use and any harm associated with it, and what the costs of enforcing those laws are. Research on the costs of marijuana law enforcement generally focuses on fiscal issues, and, more recently, public safety costs that may result from the allocation of criminal justice resources to the enforcement of marijuana laws. In what follows, we describe trends in marijuana law enforcement and summarize research findings regarding the outcomes associated with the criminalization of marijuana. Our analysis of the costs and consequences of marijuana prohibition considers its fiscal, public safety and human costs as well as whether it reduces marijuana consumption and any harm that may be associated with it. We conclude that criminalization does not achieve the stated goals of marijuana prohibition and imposes a wide range of costs on those arrested, their families, and society as a whole.

MARIJUANA ARRESTS NATIONALLY

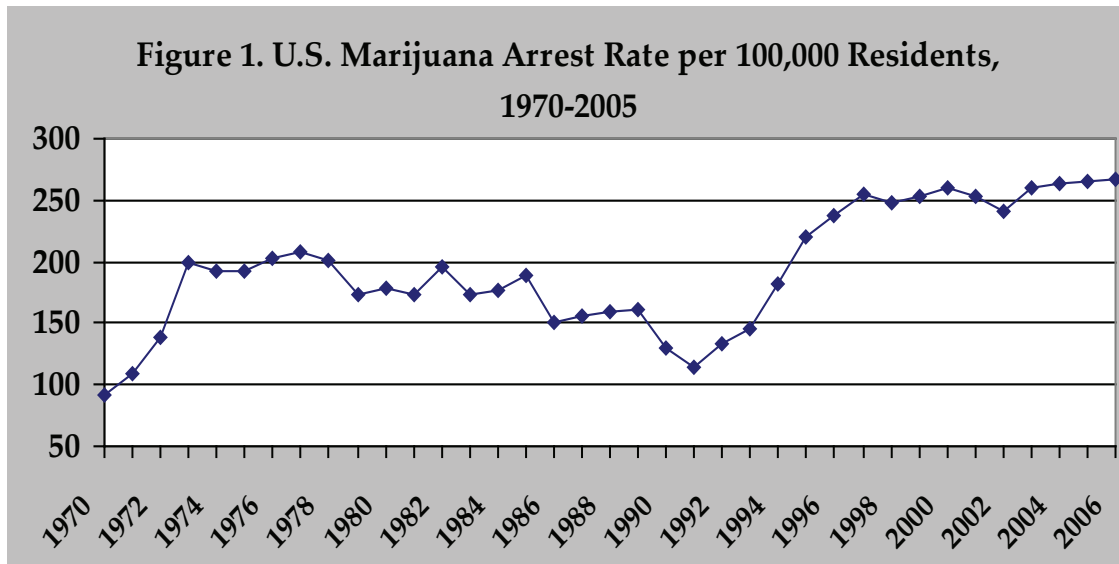
The recent history of marijuana law enforcement is characterized by two apparently contradictory trends. On the one hand, some states and local governments moved to relax their marijuana laws, and public support for changing marijuana policy increased. On the other hand, there were notable increases in the number of marijuana arrests taking place in the United States as a whole and in the public resources allocated to marijuana law enforcement.

Despite apparent public support for state and local government efforts to change their approach to marijuana use, the enforcement of marijuana laws by law enforcement agencies has intensified in recent years. Uniform Crime Report (UCR) data collected by the Federal Bureau of Investigation (FBI) indicate that both the number and (per capita) rate of marijuana arrests have increased significantly since the early 1990s. In 1990, there were an estimated 327,000 marijuana arrests; by 2006, that number more than doubled

19 See ONDCP 2005a.

20 See, for example, Nadelmann 2004.

to reach 829,625.²¹ The per capita marijuana arrest rate also more than doubled in recent years, from 131 per 100,000 persons in 1990 to 265 in 2006 (see Figure 1).



Sources: 1970-2003 figures taken from Gettman 2005: 48; 2004 and 2005 figures calculated using Bureau of Justice Statistics n.d. "Number of Arrests by Drug Type 1982-2005 and U.S. Census Bureau, 2005 Population Estimates; 2006 data calculated from the UCR and U.S. Census Bureau, 2006 Population Estimates.

The proportion of all drug arrests that involved only marijuana also grew considerably over the 1990s. Until 1995, most drug arrests focused on other drugs such as heroin and cocaine. By 2006, however, 44% of the nation’s roughly 1.9 million drug arrests involved only marijuana.²² In fact, most of the increase in the number of drug arrests since 1990 was caused by rising numbers of marijuana arrests. This pattern leads some experts to suggest that the war on drugs is, increasingly, a war on marijuana.²³

Marijuana arrests also became more likely to involve the crime of possession rather than trafficking or distribution. Between 1990 and 2006, the share of all drug arrests that involved marijuana possession increased from 24% to 39.1%.²⁴ By 2006, only 11% of marijuana arrests were for growing or selling marijuana; the remaining 89% were for possession of marijuana.²⁵

21 In 2006, 44% of the nation’s 1,889,810 drug arrests involved marijuana, and nearly 89% of those arrests were for simple possession. See United States Department of Justice, Federal Bureau of Investigation, Crime in the United States, 2006. Retrieved February 25, 2008 from http://www.fbi.gov/ucr/cius2006/data/table_29.html .

22 BJS n.d.

23 King and Mauer 2005.

24 Ibid; Maguire and Pastore, n.d., Table 4.29 [available online at <http://www.albany.edu/sourcebook/pdf/t4292003.pdf> and U.S. Department of Justice, September 2007.

25 Calculated using data from Uniform Crime Reports, "Arrest Table, Arrests for Drug Abuse Violations,% Distribution by Region, 2006." Available online at <http://www.fbi.gov/ucr/cius2006/arrests/index.html>.

There is also evidence that the increase in marijuana arrests disproportionately affects people of color. For example, in 2002, 26% of all marijuana possession arrestees were black.²⁶ By contrast, 2002 household survey data indicate that less than 14% of those who had consumed marijuana in the previous month were black.²⁷ Thus, blacks appear to be over-represented among arrestees compared to the marijuana-using population. Similarly, survey data indicate that only 17.6% of those who sold marijuana in the past month were black, yet 36.1% of those arrested for selling marijuana in 2002 were black.²⁸ Whatever costs are associated with being arrested for marijuana are thus disproportionately borne by African Americans.

Despite the dramatic increase in marijuana arrests, the number of marijuana offenders in state prisons has grown only slightly: the proportion of state prison inmates who were sentenced for marijuana-only offenses rose from 2.6% in 1990 to 3.6% in 2000.²⁹ Several factors may help to explain this apparent contradiction. First, many marijuana arrests may be prosecuted as or plea bargained to non-felony offenses; confinement sentences imposed for misdemeanor convictions would be served in local jails rather than state prison. It is also possible that a significant number of arrests do not result in conviction; or if they do, they do not result in a prison term.³⁰ These factors are not mutually exclusive, and may help to explain why the more than two-fold increase in marijuana arrests did not translate into an equivalent increase in the incarceration of marijuana offenders in state prisons.

At the same time, a significant portion of marijuana-only felony offenders who are convicted of felony charges do serve time in jail or prison. In 2000, half of those convicted of a marijuana possession felony and two-thirds of those convicted of a marijuana trafficking felony in state courts were sentenced to prison.³¹ Persons convicted of marijuana possession felonies in state courts were sentenced to an average of 31 months in jail or prison; those convicted of felony marijuana trafficking offenses were sentenced to an average of 27 months in jail or prison.³² Using government data, King and Mauer (2005) estimate that 27,900 people are serving a federal or state prison sentence for which a marijuana offense is the most serious charge.³³ Of those serving time in prison for marijuana offenses, 40% were first-time offenders, and 88% had no history of violence.³⁴ A small but unknown

26 FBI 2002; see also King and Mauer 2005.

27 SAMHSA 2002, Table 1.31A and Gettman 2005: 10 and 75.

28 *Ibid.*

29 King and Mauer, 2005: 22.

30 King and Mauer 2005.

31 King and Mauer 2005.

32 *Ibid.* It is not clear why those convicted of marijuana possession received longer sentences than those convicted of marijuana trafficking. As King and Mauer point out, this may reflect the fact that persons arrested for possession with intent to deliver were included in the possession category in their analysis.

33 *Ibid.*: 27. Researchers at the Justice Policy Institute have produced a very similar estimate of 30,000 (see Zeidenberg and Colburn 2005). However, Austin (2005) argues that these figures overestimate the number of marijuana offenders who are sentenced to prison. The ONDCP (2005b) emphasizes that most of those incarcerated are convicted of a felony marijuana violation, but it is clear that this is in dispute.

number of people in the United States are serving life sentences for the distribution of marijuana.³⁵

In addition to these prisoners, a significant number of marijuana offenders are on probation, parole, or in jail for committing only a marijuana offense. In Louisiana, for example, 10% of those under correctional supervision are marijuana offenders.³⁶ King and Mauer (2005) estimate that at least 68,000 people were in prison, on probation, or serving a jail sentence for a marijuana offense in 2003.³⁷ In addition, an unknown number of marijuana defendants are in jail awaiting adjudication or are on parole as a result of a marijuana conviction, and an unknown number of probationers and parolees are returned to jail or prison after testing positive for marijuana.³⁸ All of these marijuana-related cases consume federal, state, and local law enforcement and correctional agency resources.

MARIJUANA ARRESTS IN WASHINGTON STATE

The arrest pattern in Washington state largely mirrors the national trend. That is, the available data indicate that the number of marijuana arrests occurring in Washington state has increased considerably in recent years.³⁹ These figures indicate that the absolute number of marijuana arrests in Washington state increased from 3,861 in 1985 to 13,712 in 2002. And as is true nationally, marijuana possession arrests far outnumber sales arrests (see Figure 2).

34 King and Mauer 2005: 27.

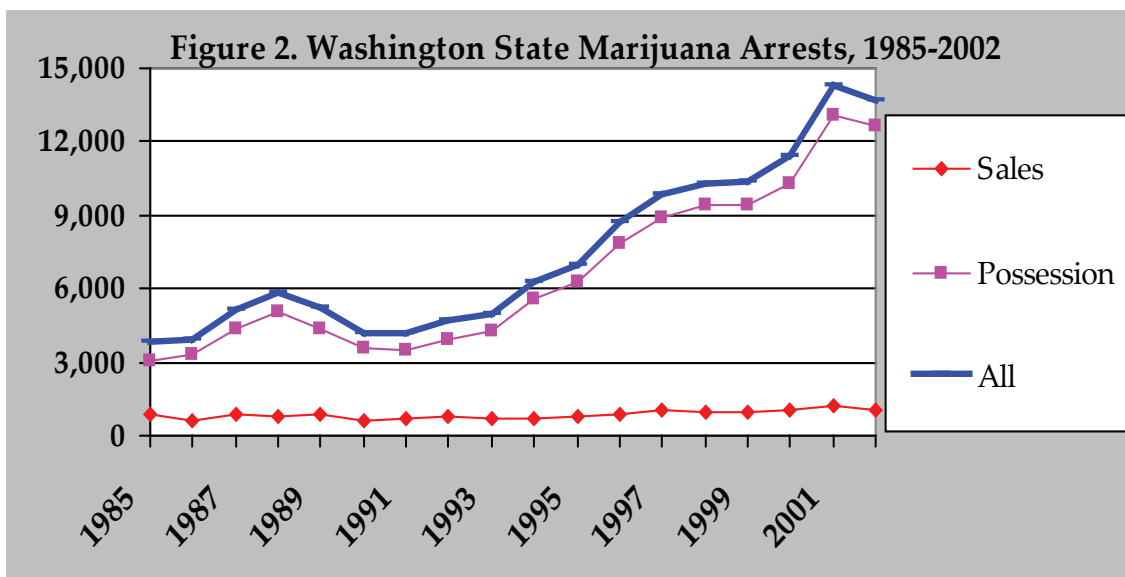
35 Schlosser 2003, Chapter 1.

36 Austin 2005: 7.

37 As King and Mauer conclude, "While there are no data regarding the proportion of persons on parole for a marijuana offense, it is likely that this group would raise the total number of persons under supervision to more than 75,000" (2005: 28).

38 Data from some states indicate that as many as two-thirds of all prison admissions result from parole and probation violations. However, the data needed to calculate the proportion of these revocations that resulted from the use or possession of marijuana are not available (Austin 2005: 7-8).

39 Some agencies do not report some or all of their arrest data to the FBI. Missing monthly data from agencies that report some but not all monthly totals to the UCR are imputed by federal data analysts. This methodology assumes that jurisdictions that report some but not all monthly totals make a similar number of arrests in the months not reported. Law enforcement agencies that do not report any data are excluded from county level estimates.



Source: Uniform Crime Reports, Federal Bureau of Investigation, 1985-2003.

MARIJUANA ARRESTS IN SEATTLE/KING COUNTY

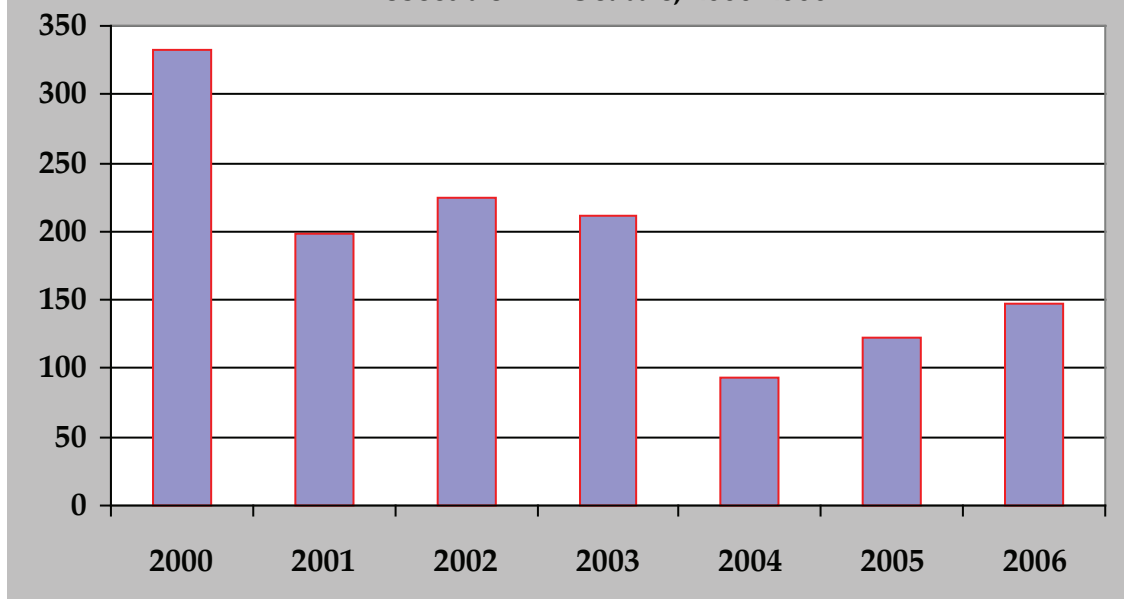
Existing estimates indicate that the marijuana arrest rate in King County increased sharply from 1990 to 2002, from 733 to 3,795 per 100,000 residents, an increase of 418%.⁴⁰[1] Data provided to and analyzed by the Seattle City Council’s Marijuana Policy Review Panel (MPRP) following the adoption of ballot initiative 75 (I-75) suggest that most of these arrests took place outside of Seattle.⁴¹[2]

The data provided to the MPRP included all Seattle police referrals to the City Attorney’s Office for misdemeanor marijuana offenses from 2000 through 2006. While these figures do not include felony cases or marijuana-related arrests that the SPD decided not to refer to the City Attorney’s office for prosecution, they nonetheless provide useful information regarding trends in marijuana law enforcement in Seattle. The data shown in Figure 3 indicate that Seattle misdemeanor marijuana arrests declined sharply after 2000, but were then relatively flat from 2001 through 2003. The number of misdemeanor cases referred for prosecution by Seattle police again dropped sharply again in 2004 following enactment of I-75, but began to creep up in 2005 and 2006 (although they still remained below the pre-I-75 levels).

⁴⁰[1] King and Mauer 2005: 13.

⁴¹[2] In September 2003, Seattle voters adopted ballot initiative I-75, “An Ordinance to Establish a Sensible Marijuana Law Enforcement Policy in Seattle.” The ordinance created a new section of the Seattle Municipal Code (SMC 12A.20.060) which mandates that “The Seattle Police Department and City Attorney’s Office shall make the investigation, arrest and prosecution of marijuana offenses, where the marijuana was intended for adult personal use, the City’s lowest law enforcement priority.” This legislation and its effects are discussed in greater detail in Part III of this report.

Figure 3. Misdemeanor Marijuana Cases Referred for Prosecution in Seattle, 2000-2006



Source: "Final Report of the Marijuana Policy Review Panel on the Implementation of Initiative 75", Table 1 (December 4, 2007) available at http://www.cityofseattle.net/council/attachments/2008mprp_final_report.pdf.

SUMMARY OF ARREST TRENDS

The number of national marijuana arrests occurring each year and the proportion of all drug arrests that involved marijuana declined in the 1980s, but increased dramatically beginning in the early 1990s. By the end of 2006, nearly 830,000 (44%) of all U.S. drug arrests involved only marijuana, and the vast majority of these - nearly 90% - were for possession rather than selling or growing marijuana. The trends in Washington state and King County (not including Seattle) were apparently similar, although the available data regarding arrest trends in King County are comparatively unreliable.

The causes of the increase in marijuana arrests in many jurisdictions are not well understood. In Maryland, researchers found that the increase in marijuana arrests was not the result of an intentional policy shift, but rather resulted from increased patrols and traffic stops in "drug hot spots."⁴² Several factors likely contributed to this trend. First, as is described more fully below, marijuana use rates did increase somewhat in the 1990s, particularly among the young. Although this development could affect arrest rates to some degree, only a very small fraction of marijuana users are ever arrested. It thus seems unlikely that the modest increase in use explains why arrests increased so significantly. Second, the emphasis on misdemeanor offenses characteristic of "Broken Windows" policing⁴³ and the associated increase in the number of stops and investigations

⁴² Reuter, Hirschfield and Davies 2001.

⁴³ See page 39 of this report.

by police officers may contribute to the rise in the number of marijuana arrests.⁴⁴ Third, the focus on drugs in general may increase the number of marijuana arrests, given that marijuana is the most widely used illegal substance. Finally, as will be discussed in greater detail in the following section, many analysts suggest that the incentives created by asset forfeiture statutes encourage law enforcement agencies to shift resources toward drug law enforcement operations.

While the causes of the increase in marijuana arrests are not well understood, the enforcement of drug laws is intended to reduce illicit drug use and any harm that may be associated with it. The following section considers whether the intensification of marijuana law enforcement achieved these results.

MARIJUANA PROHIBITION: OUTCOMES

The primary rationale for subjecting drug users and sellers to law enforcement and incarceration is, in the words of the President's Office of National Drug Control Policy:

*... to disrupt the market for illegal drugs—and to do so in a way that both reduces the profitability of the drug trade and increases the costs of drugs to consumers. In other words, we seek to inflict on this business what every legal business fears—escalating costs, diminishing profits, and unreliable suppliers.*⁴⁵

These disruptions, it is hoped, will make it more difficult for people to find, afford, and use marijuana and other illegal drugs. The threat of criminal penalties is also intended to deter people from trying and using marijuana. Where this is unsuccessful and individuals are able to find and use marijuana, the goal is to ensure that the drugs are of a reduced quality and potency.

The most often cited reasons for maintaining marijuana prohibition are its potential health effects and concern that marijuana might lead to the use of other drugs. There is considerable controversy about each of these issues.⁴⁶ There appears to be widespread agreement among researchers that heavy, long-term marijuana use can have adverse health effects, but most agree that these are not more serious than those posed by many legal substances. There also seems to be a general consensus that moderate marijuana use does not lead to acute or long-term adverse health impacts for most people.

However, even if there were widespread consensus that even moderate marijuana use poses significant health risks, the relevant question is: Does the enforcement of marijuana laws reduce marijuana use and the harm with which it is associated? This question is considered below.

⁴⁴ See Harcourt and Ludwig 2006; King and Mauer 2005.

⁴⁵ ONDCP 2005a.

⁴⁶ See, e.g., Institute of Medicine 1982; Joy et al 1999; The Lancet 1995; National Commission on Marijuana and Drug Abuse 1972; World Health Organization 1982; Zimmer and Morgan 1997.

TRENDS IN MARIJUANA AVAILABILITY, PRICE AND POTENCY

In 1990, before the significant national increase in marijuana arrests, 84.4% of U.S. high school seniors reported that it was “fairly easy” or “very easy” to obtain marijuana. Despite the sharp increase in marijuana arrests throughout the 1990s, the percentage of high school seniors reporting that marijuana could be easily obtained did not decrease over the course of the 1990s. In fact, the percentage of seniors reporting that marijuana was “fairly easy” or “very easy” to obtain increased slightly to 87.2% by 2002.⁴⁷ The National Drug Intelligence Center’s 2005 Summary Report similarly indicates that “Marijuana is readily available in drug markets throughout the United States, and interagency estimates as well as law enforcement reporting, drug survey data, and drug seizure data indicate that availability of the drug is increasing.”⁴⁸ Marijuana thus appears to be *more* readily available to U.S. residents even as the number and rate of marijuana arrests reach record numbers.

Nor does it appear that intensified marijuana enforcement decreases its cost. The price (in adjusted dollars) of a gram of marijuana *declined* by 16%, and the average, per gram cost of marijuana to the occasional user, regular user, and mid-level distributor all declined steadily between 1990 and 2000.⁴⁹ Nationally, for example, the average cost of a gram of marijuana to an occasional user declined from approximately \$15 in 1992 to under \$10 in 2000.⁵⁰ In King County, too, a 2001 report similarly notes that “marijuana has trended downward in price” throughout the 1990s.⁵¹

Government data also indicate that despite escalating marijuana arrest rates, average potency *increased* by 53% between 1990 and 2000.⁵² The increasing availability of more potent marijuana varieties stems largely from the spread of domestic marijuana cultivation (a response to heightened border interdiction efforts), as well as innovations that enable growers to produce marijuana with higher THC content.⁵³ Prohibition may be a causal factor in the greater availability of more potent marijuana.⁵⁴

In short, the available evidence indicates that marijuana is slightly easier to obtain, less expensive and, on average, more potent even after years of increasing marijuana arrests.

47 Johnston et al 2004, Table 9-6.

48 National Drug Intelligence Center 2005.

49 ONDCP 2004.

50 King and Mauer 2005: 8.

51 Silverman et al 2001.

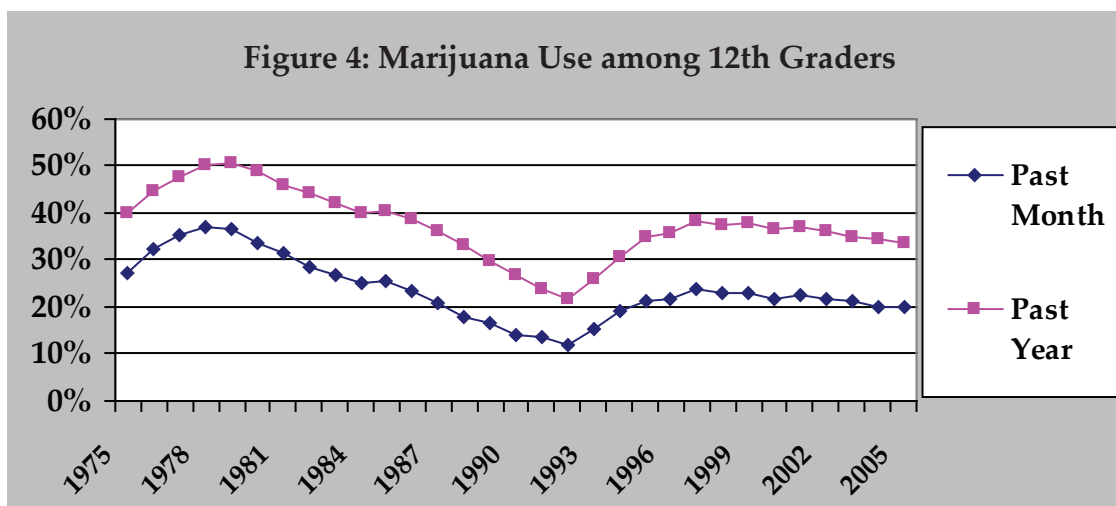
52 Pacula et al 2000. The National Drug Intelligence Center’s 2005 Summary Report suggests that “The escalating prevalence of higher potency marijuana such as sinsemilla has resulted in an increase in average marijuana potency; however, high potency marijuana constitutes a relatively small portion of the marijuana available throughout the United States.” This report is available online at <http://www.usdoj.gov/ndic/pubs11/13846/marijuana.htm#Top>

53 National Drug Intelligence Center 2005.

54 See, e.g., Harry G. Levine and Craig Reinerman, “Alcohol Prohibition and Drug Prohibition Lessons from Alcohol Policy for Drug Policy” Available online at <http://www.cedro-uva.org/lib/levine.alcohol.html>.

Marijuana Use Trends Nationally

The results of national surveys regarding marijuana use tell a remarkably consistent story about the prevalence of marijuana use: rates of marijuana use peaked in 1979, declined through the 1980s, and rose again in the 1990s. Figure 4 illustrates this trend among high school seniors.



Source: Monitoring the Future Project, Institute for Social Research, University of Michigan, 1975-2005. Data from 1991 to 2005 are available online at <http://www.monitoringthefuture.org/data/05data.html#2005data-drugs>

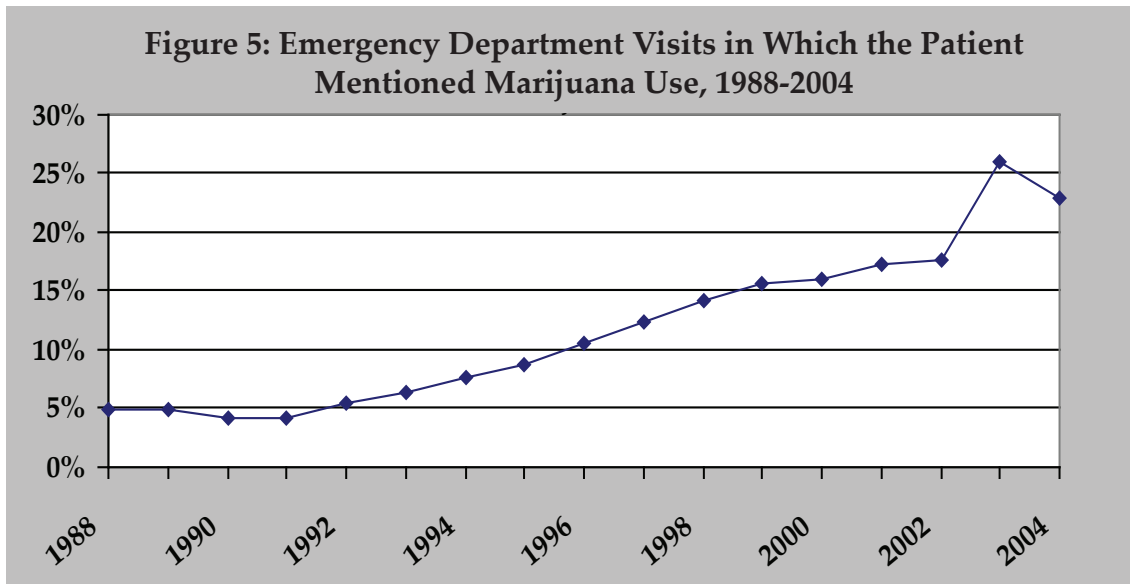
The trend among the general U.S. population is similar: marijuana use rates among those aged 12 and older peaked in 1979, when 16.6% of those polled reported marijuana use in the previous year and 13.2% indicated use in the previous month. The incidence of marijuana use dropped to a low point in 1992-3, when 7.9% of those polled reported use in the previous year and 4.6% in the previous month. The incidence of past year marijuana use among Americans aged 12 and older peaked again at 11% in 2002, while past month use of marijuana rose to 6.2%.⁵⁵ The percentages of adults reporting past year and past month marijuana use has leveled off somewhat since 2002, to 10.4% and 6% respectively.⁵⁶ Moreover, the average age of those trying marijuana for the first time decreased throughout this period, from 18.6 in 1970 to 17.2 in 2002.⁵⁷

55 SAHMSA 2003, Table 1.20B. Available online <http://www.oas.samhsa.gov/Nhsda/2k3tabs/Sect1peTabs1to66.htm#tab1.20b>

56 SAHMSA 2005a, Table 1.1b. Available online <http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs1to66.htm#Tab1.1B>

57 Gettman 2005: 51, Table 20.

DAWN Emergency Department data provide another indicator of trends in marijuana use, and also indicate that marijuana use increased in the 1990s. DAWN data track the number of hospital emergency department (ED) visits in which marijuana is “mentioned.”⁵⁸ These data indicate that the proportion of ED visits in which the patient admitted that he or she recently used marijuana increased from 5% in 1988 to 22.9% in 2004 (see Figure 5). The share of all ED visits in which marijuana was the only drug mentioned also increased sharply beginning in the late 1990s: In 1995, 1.9% of all patients who mentioned a drug mentioned only marijuana; by 2002, this figure had risen to 4.9%.⁵⁹ DAWN ED data thus provide further evidence that marijuana use within this survey group increased rapidly even as the marijuana arrest rate rose.⁶⁰



Sources: Drug Abuse Warning Network, 1988-2002, reprinted in Jon Gettman, “Crimes of Indiscretion: Marijuana Arrests in the United States,” 2005: 120, Table 23; 2003 and 2004 data taken from Drug Abuse Warning Network, “National Estimates of Drug-Related Emergency Department Visits”, 2003 and 2004 (available online at <https://dawninfo.samhsa.gov/pubs/edpubs/default.asp>).

In sum, multiple data sources further indicate that national marijuana use rates increased during the 1970s and again in the 1990s. During both periods, rising levels of marijuana use coincided with increases in marijuana arrests. Below, we consider whether this pattern also characterizes recent developments in Washington state.

⁵⁸ These estimates are based on a representative sample of non-federal, short-stay hospitals with 24-hour emergency departments in the coterminous United States. The drug(s) mentioned may or may not be the reason for the hospital visit and many patients report using more than one drug.

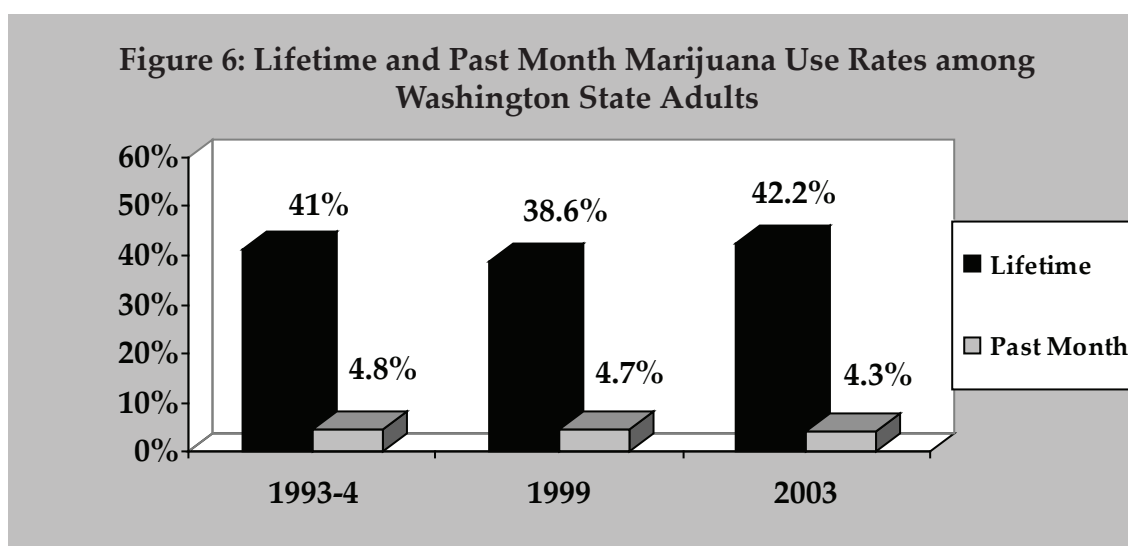
⁵⁹ Gettman 2005: Table 23, p. 53.

⁶⁰ Alternatively, it is possible that people have become more willing to admit their use of marijuana.

Marijuana Use Trends in Washington State

The primary source of information regarding trends in marijuana use among Washington state adults comes from the Washington State Department of Social and Human Services' Division of Alcohol and Substance Abuse (DASA). DASA conducts the Washington Needs Assessment Household Survey to determine the prevalence of drug and alcohol use and abuse and need for substance abuse treatment in the state of Washington. In the latest survey, conducted in 2003, over 7,000 adults statewide were surveyed; members of minority racial and ethnic groups were over-sampled to facilitate reliable demographic analysis.

The results of the survey indicate that past-month marijuana use rates among members of Washington state's households remained constant throughout the 1990s but dropped slightly (from 4.7% to 4.3%) between 1999 and 2003 (see Figure 6). Thus it appears that rates of marijuana use were relatively constant among Washington state adults living in stable or semi-stable households.⁶¹

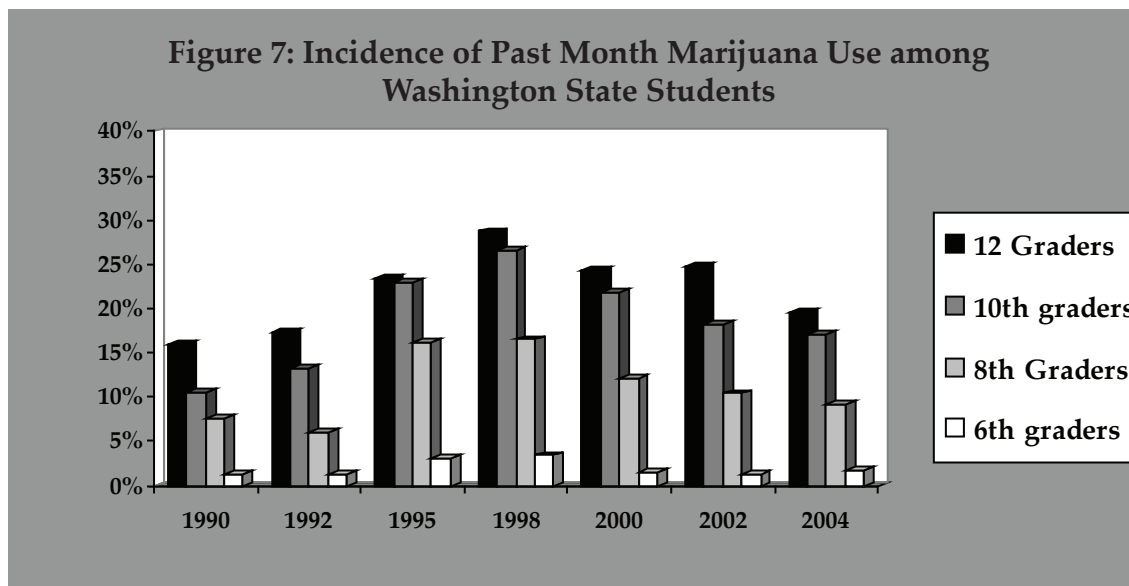


Sources: Department of Social and Human Services' Division of Alcohol and Substance Abuse. 1993-4 data are available online at <http://www1.dshs.wa.gov/pdf/ms/rda/research/4/25.40.pdf>. 1999 data are available online at <http://www1.dshs.wa.gov/pdf/ms/rda/research/4/32/State.pdf>. 2003 data were published in Tobacco, Alcohol and other Drug Abuse Trends in Washington State (Department of Social and Human Services, Division of Alcohol and Substance Abuse, December 2004).

Limited information regarding marijuana use among middle and high school students in Washington state is also available. The Washington State Department of Health's Healthy Youth Survey has been conducted for over a decade. In each year the survey is administered, a random sample of Washington state schools are identified and asked to

⁶¹ These data indicate that the racial composition of recent marijuana users in Washington state households has fluctuated over time: in 1993-4, whites had higher rates of recent marijuana use than blacks (5.1% versus 4.9%); in 2004, this pattern was reversed (4.2% for whites and 6.6% for blacks). Throughout this period, Asians and Native Hawaiians/Pacific Islanders reported consistently lower levels of marijuana use than whites or blacks.

participate in the survey. Typically, only between 40 and 65% of the students enrolled in the selected schools completed a survey; the results therefore must be interpreted with caution.⁶² These data indicate that marijuana use rates rose among Washington state students between 1990 and 1998, but then declined slightly between 1998 and 2004 (see Figure 7).



Source: Washington State Office of Superintendent of Public Instruction, *Washington State Healthy Youth Survey 2002: Analytic Report*; 2004 Washington State Department of Health, *Healthy Youth*.

Treatment admission data provide an additional source of information about recent trends in marijuana use in Washington state. TARGET (Treatment Assessment Report Generation Tool) is a reporting management information system used by the Washington State Department of Social and Health Services, Division of Alcohol and Substance Abuse.⁶³ TARGET data are available for the years 1999-2003 and show a steady increase in the proportion of adult treatment recipients who identify marijuana as their primary drug of choice. Specifically, the percentage of adults in publicly funded substance abuse treatment programs who claimed to primarily use marijuana increased from 10% in 1999 to 13% in 2003.⁶⁴ According to these data, marijuana is the most frequently cited drug of choice among youth who receive public substance abuse treatment services. In 1999, 63% of those people under the age of 18 who received treatment services primarily used marijuana; in 2003, that percentage increased very slightly to 64%.⁶⁵

⁶² Washington State Office of Superintendent of Public Instruction 2003.

⁶³ The TARGET reporting system collects information regarding those who are admitted to publicly funded drug and alcohol treatment facilities in Washington state. All treatment agencies providing public sector-contracted/publicly funded treatment services must report data for those clients whose treatment is partially or fully publicly funded; reporting for any private pay clients is optional.

⁶⁴ Washington State Department of Health and Human Services 2004. In 2003, another 47% of public treatment recipients primarily abused alcohol, 10% cocaine, 8% heroin, 19% methamphetamine, and 3% other substances (p. 186).

⁶⁵ Washington State Department of Health and Human Services 2004: 205.

While these data identify the primary drug of choice among those who received publicly funded drug treatment, they may or may not reflect an increase in the use or abuse of marijuana. Specifically, the increased reporting of marijuana as the primary substance used reflects an increase in actual marijuana dependence or an increase in court-mandated drug treatment for growing numbers of marijuana arrestees. This latter possibility is supported by the fact that the proportion of marijuana referrals from private individuals, health care providers, schools, employers and others in the community – i.e., referrals not from the criminal justice system – declined while both the number and share of referrals from the criminal justice system increased substantially.⁶⁶

In sum, Washington state data indicate that during a time of increasing enforcement of marijuana law, recent marijuana use declined very slightly among adults living in stable or semi-stable households. On the other hand, recent marijuana use increased through 1998 among students but subsequently declined slightly. The number of people admitted to publicly funded treatment and who identified marijuana as their drug of choice increased, though an increasing proportion of these were referred to treatment by the criminal justice system.⁶⁷ Thus, while the patterns are somewhat mixed, the evidence suggests that marijuana use rates fluctuated slightly as the number of marijuana arrests rose.

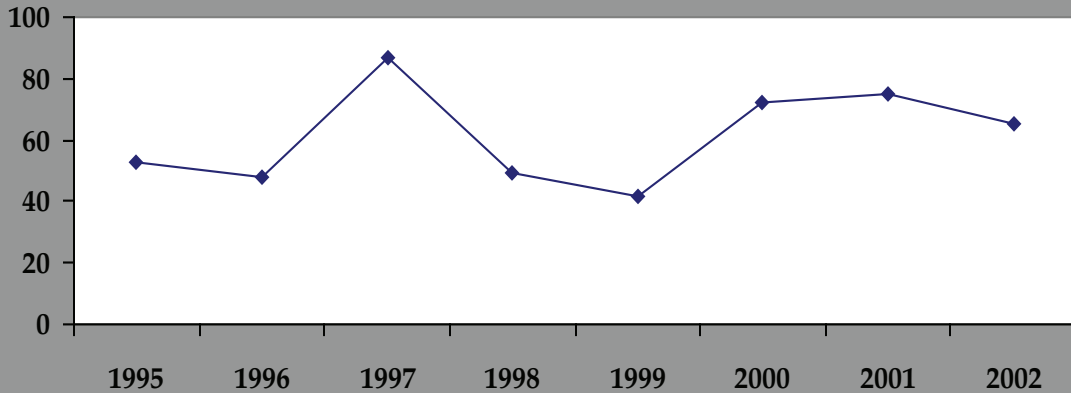
Marijuana Use Trends in Seattle/King County

Rates of recent marijuana use in King County appear to be quite similar to those that characterize Washington state as a whole. According to the 1998 DASA survey data, 4.8% of King County adult residents (compared with 4.7% of Washington state adult residents) reported using marijuana in the past month. In 2003, 4.3% of Washington state and 4.1% of King County adult residents reported recent (i.e. past-month) marijuana use. Thus, 2003 past-month marijuana use rates among adults in King County were similar to those in Washington state and appear to be fairly stable. The rate of marijuana Emergency Department mentions for King and Snohomish counties also remained fairly constant into the twenty-first century (see Figure 8).

⁶⁶ Ibid.

⁶⁷ SAHMSA 2005.

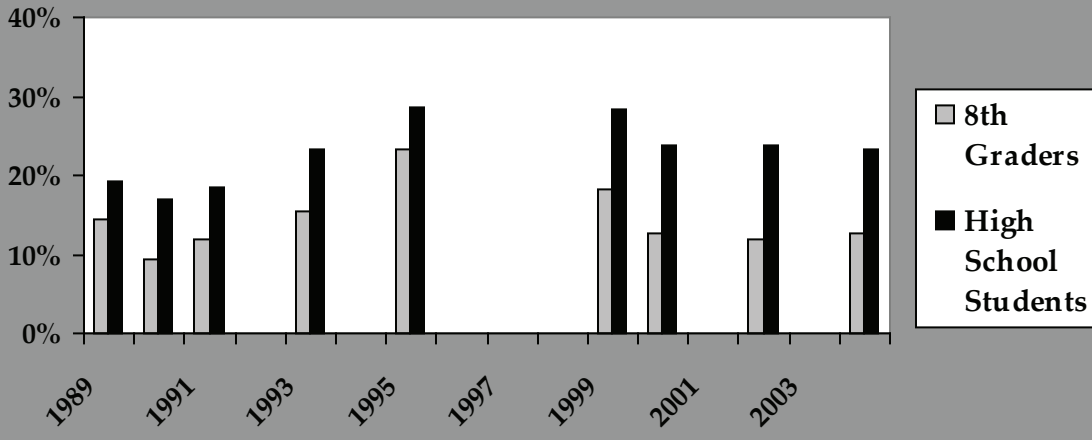
Figure 8: Rate of Emergency Department Marijuana Mentions, King and Snohomish Counties, 1988-2002



Source: Proceedings of the Community Epidemiology Work Group December 1998, p. 13 and Proceedings of the Community Epidemiology Work Group, Volume II, June 2004, p. 11.
Note: Rates are calculated per 100,000 population. King and Snohomish County data were combined after 1994.

The Washington State Department of Health’s Healthy Youth Survey data for Seattle suggest that marijuana use rates among the city’s public school population have fluctuated somewhat, rising in the 1990s and declining slightly since 1999 (see Figure 9).

Figure 9: Past Month Marijuana Use among Seattle Public School Students

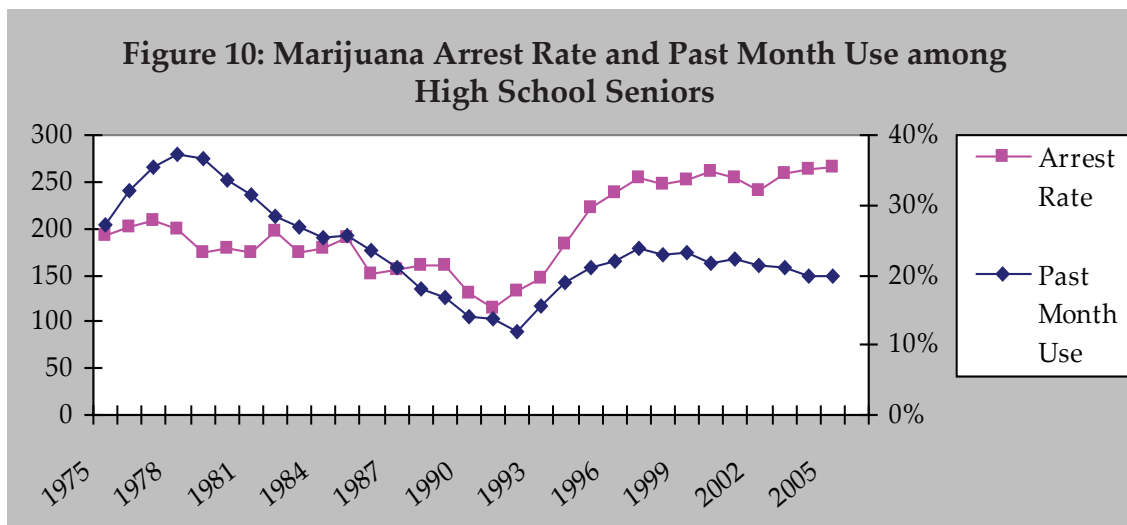


Sources: Seattle Public Schools, 1999 Teen Health Survey Results: Final Report (Health Education Office); Seattle Public Schools, Communities that Care Youth Survey, Spring 2004.
 Note: Data for 1997 are unavailable.

CONCLUSION:

Does the Criminalization of Marijuana Decrease Marijuana Use?

Nationally, the available evidence strongly suggests that the intensification of the war on marijuana has not achieved the goals identified by the government. Rather than leading to increased price, reduced availability, reduced potency, and reduced use, the upward trend in marijuana arrests has been associated with decreased price, increased availability, increased potency and increased use (see Figure 10). Contrary to policymakers' expectations, then, increased marijuana law enforcement does not appear to suppress marijuana use. Developments at the state and local levels are somewhat more mixed, but show no clear relationship between intensified marijuana enforcement and decreased marijuana use. Thus, examining the relationship between marijuana arrests and marijuana, there is nothing to support the claim that marijuana use is reduced by increasing arrests.⁶⁸



Sources: Arrest figures for 1975-2003 figures taken from Gettman 2005: 48. 2004 and 2005 figures were calculated using Bureau of Justice Statistics data and U.S. Census Bureau, 2005 Population Estimates. Prevalence of past month marijuana use taken from Monitoring the Future Project, Institute for Social Research, University of Michigan, 1975-2005.

Note: Arrest rates are calculated per 100,000 residents.

Proponents of marijuana prohibition might argue that marijuana would be even more available, affordable, potent and widely used if it were decriminalized or legalized. This claim is difficult to prove or disprove, although, as will be discussed below, studies show that the use of marijuana did not increase in states that decriminalized marijuana possession.⁶⁹ Some local communities have attempted to reverse the increase in marijuana arrests and expenditures of public resources relating to marijuana. In our third section, we

⁶⁸ There is also evidence that the use of drugs may decline in the absence of criminalization. For example, rates of tobacco consumption have declined among both adolescents and adults since 1997 (Center for Disease Control 2005: 8-9). While causes of the downward trend in tobacco consumption are complex, the development nonetheless indicates that public health and education campaigns may be effective in reducing the use of drugs.

⁶⁹ See Johnston, Bachman, and O'Malley 1981: 27-29; Johnston et al 1994.

consider whether the decriminalization of marijuana in various locales or legislation that explicitly requires that police and prosecutors deprioritize marijuana law enforcement increase marijuana use and the harm that may result from it.

Before we do that, we wish to provide a more full accounting of what it means to use criminal law as a mechanism to pursue marijuana prohibition. This requires that we examine the range of costs we incur in the process. As we show, these costs are extensive. For this reason, they should be included in any assessment of the value of using law enforcement to reduce marijuana use and sales.

PART II

ASSESSING THE COSTS OF MARIJUANA ENFORCEMENT

As we showed above, the evidence indicates that the intensification of marijuana law enforcement efforts in the United States does not lead to declining rates of marijuana use. A complete assessment of the effects of marijuana law enforcement requires that evidence regarding the costs and harms associated with the enforcement of marijuana laws also be considered. These costs are analyzed below.

We split these costs into two categories. The first involves those collective costs that are borne by society as a whole. These include the various fiscal costs of arresting, prosecuting, and incarcerating marijuana offenders, and the public safety costs of enforcing these laws instead of others. The second category includes the costs borne by individuals (and their family members) who are arrested for violating marijuana laws. We use data from interviews with some of these individuals to identify the range of financial, emotional, and familial costs borne by those who are brought into the criminal process as a result of an alleged violation of marijuana law.

This distinction between collective and individual costs is largely an analytic one; it enables us to isolate and assess the effects of marijuana law. Yet, in many ways, the distinction is misleading. For example, a person convicted of (and sometimes only accused of) possessing or distributing marijuana might be denied federal assistance for the poor, student loans, and public housing.⁷⁰ That person might also experience job loss, emotional, financial or physical harm, the loss of their driver's license, deportation, and/or loss of custody of their children.⁷¹ Although individuals bear these particular costs, there is also evidence that the collective decision to pursue marijuana prohibition has consequences that may negatively impact the entire community.

COLLECTIVE COSTS

Fiscal and Organizational Costs

The enforcement of marijuana laws consumes significant fiscal and organizational resources, beginning with law enforcement. As described previously, marijuana arrests constitute the vast majority of the recent increase in drug arrests nationally. As the number of marijuana arrests grew, so too did the domestic law enforcement component of the federal drug control budget, from \$4.6 billion in 1991 to \$9.5 billion in 2002.⁷² Given that marijuana arrests constituted nearly all of the increase in drug arrests during this period, it appears that the majority of the \$4.9 billion increase in domestic law enforcement

70 Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) [Pub. L. 104-193, enacted on August 22, 1996] Pub L. No. 104-193, 110 Stat. 2105 [codified at 21 U.S.C. 862a] [TANF]; 20 U.S.C. 2091(r). This provision was added by the Higher Education Amendments of 1998, Pub. L. No. 105-244, 112 Stat. 1581 (1998).

71 See Nadelmann 2004 and Schlosser 2003, Chapter 1.

72 King and Mauer 2005: 10.

spending was allocated to the enforcement of marijuana laws.⁷³ In fact, researchers have estimated that approximately \$2.1 billion, nearly 3% of the nation's entire law enforcement budget, was spent on marijuana law enforcement in 2001 alone.⁷⁴ Of this \$2.1 billion, an estimated \$1.7 billion was spent enforcing the prohibition against marijuana *possession*.⁷⁵ Insofar as the number of marijuana arrests continues to rise, it appears likely that federal monies allocated to marijuana law enforcement are likely to be much greater than the 2001 figure.

Although most marijuana arrestees do not serve time in prison, the enforcement of marijuana laws nonetheless consumes significant correctional resources. Approximately 28,000 people are serving time in federal or state prison for marijuana offenses.⁷⁶ If we assume that it costs a national average of \$22,650 to incarcerate someone in state prison for a year⁷⁷ (far below the approximately \$31,600 per prisoner per year to fund each new prison bed in Washington state),⁷⁸ we can estimate that incarcerating marijuana offenders in prison costs over \$600 million per year.

Nationally, 1.6% of those serving time in state prisons in 1997 were marijuana offenders.⁷⁹ If we assume that this is also true of Washington state, we can estimate that Washington state taxpayers spend \$1.4 million per year to cover the operating costs associated with incarcerating these marijuana offenders in state prisons. These figures include the costs associated with incarceration in state prisons; they do not take into account the cost of detaining marijuana offenders in county jails, supervision in the community after release, or any of the other costs associated with enforcing marijuana laws.

Processing hundreds of thousands of marijuana arrestees through the courts is also quite costly. Although many of these cases are ultimately dismissed, filtering large numbers of arrests through prosecutors' offices and the courts consumes significant local and court resources.⁸⁰

Despite the fact that King County and Seattle have average or lower than average marijuana arrest rates, marijuana enforcement nonetheless entails significant institutional costs, including police, court, and jail resources. In 2002, UCR data indicate that marijuana possession was the most serious charge in 5.2% of all King County arrests; arrests for marijuana sales and possession together comprised 5.6% of all King County arrests.⁸¹ Once arrested, many marijuana offenders are booked into jail and their cases are processed by prosecutors, defense attorneys, judges, and court personnel. According to King County

73 Ibid, p. 9.

74 Ibid.

75 Ibid.

76 King and Mauer 2005.

77 Bureau of Justice Statistics, n.d. This figure is a national average for the year 2001. Using it undoubtedly produces a conservative estimate, as the cost of incarceration has very likely increased since 2001.

78 Washington State Institute for Public Policy 2006: 4.

79 ONDCP 2005b.

80 Austin 2005.

81 King and Mauer 2005: 10.

budget staff, average adjudication costs for misdemeanants total \$3,000 per case; each booking costs an estimated \$140.⁸² The average misdemeanant spends 5.8 days in jail at a cost of \$89 per day.⁸³ Thus, each marijuana misdemeanor arrest that leads to a booking and the average number of days in jail costs a minimum of \$3,656.

King County law enforcement agencies that provide data to the UCR reported 3,795 marijuana arrests in 2002. If we assume that 88% of these were for possession (as is the case nationally in 2002), then we can estimate that there were 3,340 marijuana possession arrests by the agencies that report to the UCR. Using the data described in the previous paragraph, we can estimate that the cost of processing these possession cases through the judicial system in 2002 would have been approximately \$12 million. This estimate is likely conservative, as it does not take into account marijuana possession cases that were charged as felonies or any of the remaining estimated 455 selling and growing cases.

These figures provide a sense of the resources that are currently devoted to the enforcement of marijuana laws. Some argue that the elimination of these costs would result in significant fiscal savings. For example, a recent report by Harvard University economist Jeffrey Miron concludes that marijuana legalization would save \$7.7 billion per year in total government expenditures.⁸⁴ However, as James Austin points out, the fiscal costs associated with law enforcement and criminal justice institutions would not necessarily be eliminated if marijuana were decriminalized or legalized, as government agency budgets are relatively static and not typically affected by changes in the number of events such as arrests or prosecutions in the absence of commensurate reductions in staffing and facilities.⁸⁵ Absent significant reductions in personnel and the use of court and jail space, it is more likely that the immediate impact of reducing marijuana arrests would be to free up relatively scarce public safety resources.

In sum, although some estimates of immediate cost savings to be accrued under a hypothetical repeal of marijuana prohibition may be exaggerated, it is clear that the enforcement of current marijuana laws consumes significant fiscal and organizational resources that might be usefully allocated toward other public safety goals.

Asset Forfeiture and the Enforcement of Marijuana Laws

Some might argue that the fiscal/organizational costs associated with marijuana law enforcement are offset by the resources acquired through the seizure of assets associated with marijuana law violations. Since the Reagan Administration's Omnibus Crime Bill of 1984, and the enactment of similar state statutes, police departments can confiscate private property they believe was acquired through or used in commission of a drug offense.⁸⁶ In

82 These estimates were provided in 2005 by King County Council staff and are on file with the authors.

83 *Ibid.*

84 In addition, Dr. Miron suggests that between \$2-6 billion would accrue from the taxation of marijuana (Miron 2005). Professor Miron's report was the basis of an open letter urging President Bush to encourage an open debate about marijuana prohibition, signed by over 100 economists, including Milton Friedman and two other Nobel Laureates. See <http://www.prohibitioncosts.org/endorsers.html>

85 See Austin 2005: 1.

86 Congressional Research Service 2002.

most states, law enforcement agencies are allowed to keep a portion of seized assets, whether or not their owners are ever convicted of—or even formally charged with—a drug offense.⁸⁷ By 1990, over 90% of police and sheriff’s departments serving populations of at least 50,000 had seized and retained money or goods through a drug asset forfeiture program. Asset forfeiture receipts increased from \$27.2 million in 1985 to \$425.5 million in 2001; the private assets and goods seized during the 1990s alone were worth more than \$5 billion.⁸⁸

There is little systematic data available that would enable us to assess on a national level how widely asset forfeiture provisions are utilized in marijuana cases and how the proceeds are distributed. Even if it were possible, however, such an analysis begs the question of whether permitting governmental agencies to fund public law enforcement by seizing private property from people suspected (and not necessarily convicted) of committing marijuana law violations is sound public policy.

In addition to these philosophical questions, studies indicate that asset forfeiture laws encourage the reallocation of law enforcement resources and attention toward drug offenses and away from the investigation of property and violent crimes. For example, researchers found that legislation permitting police departments to retain a portion of the seized assets leads to an 18% increase in drug arrests, and increases drug arrests as a proportion of all arrests by 20%. This effect appears to result from the diversion of resources away from other law enforcement activities.⁸⁹

While supporters of marijuana prohibition would likely consider this increase in drug arrests (both in terms of numbers and as a proportion of all arrests) to be a positive outcome, it is not without cost. Based on their field observations, another research team reports that asset forfeiture provisions lead law enforcement agencies to shift their priorities from preventing and solving property and violent crime to “asset hunting.”⁹⁰ As will be discussed below, contemporary research demonstrates an association between increases in drug arrests and increases in property and violent crimes. Whatever fiscal gains are accrued from the application of asset forfeiture laws must be weighed against the impact of these laws on other law enforcement and public safety goals.

There is also the question of whether it is wise to create a monetary incentive for law enforcement agencies to engage in the controversial policing techniques often associated with drug investigations. Because of the consensual nature of most drug transactions, the police often use comparatively invasive techniques such as undercover operations, home searches, and high-tech surveillance in order to detect drug activity. The increasingly widespread use of these techniques and their implications for constitutional rights are highly controversial.⁹¹

87 Jensen and Gerber 1996: 412-34.

88 Maguire and Pastore 2002: Table 4.43.

89 Mast, Benson and Rasmussen 2000.

90 Miller and Selva 1997: 275-96.

91 See, for example, Wisotsky 1992.

Public Safety Costs

The “Broken Windows” theory of policing suggests that neighborhoods that fail to address “disorder” display a lack of informal social control, thus inviting serious criminals into the neighborhood.⁹² Law enforcement agencies that adopt this form of policing are therefore encouraged to treat otherwise insignificant offenses such as the use of marijuana – sometimes described as “quality of life” offenses – as serious criminal matters.⁹³

Contrary to what this theory would predict, the evidence suggests that drug arrests in general, and marijuana arrests in particular, do not lower criminal activity, and may actually increase crime.⁹⁴ For example, researchers using Florida data found that every additional drug arrest led to an *increase* in 0.7 index crimes.⁹⁵ That is, for every 10 additional drug arrests, there were an additional 7 index (violent and property) crimes. A similar but more recent study found that a 1% increase in drug arrests leads to a .18% increase in index crimes.⁹⁶ And a study of New York state law enforcement practices reports that rising numbers of drug arrests resulted in a significant increase in assaults, robberies, burglaries, and larcenies. For example, the authors report that a 10% increase in marijuana sales arrests was accompanied by an additional 800 larcenies in the state.⁹⁷

Collectively, these studies show that increased law enforcement attention to drug crimes is associated with higher rather than lower levels of serious crime. To explain these correlations, researchers theorize that shifting limited resources to drug law enforcement adversely affects law enforcement’s ability to respond to, investigate, and solve crimes with victims, thus leading to an increase in the number of such crimes.⁹⁸

In sum, there is ample evidence that the enforcement of marijuana laws consumes significant fiscal and organizational resources which, were they devoted to other public safety goals, might reduce the number of property and violent crimes. Although asset forfeiture laws may offset some of the public fiscal cost of drug law enforcement, there is evidence that the incentives they create for police agencies reduce public safety. In addition, the enforcement of marijuana laws entails many social costs that are more difficult to quantify and that are often overlooked. These include the use of controversial policing tactics, the erosion of civil liberties, court over-crowding, the diversion of treatment dollars (when recreational marijuana smokers are required to participate in mandatory drug treatment programs), and racial inequity in the application of the law. The evidence presented in the first section of the report indicates that these costs are not offset by a reduction in the availability or use of marijuana.

92 Kelling and Coles 1996; Wilson and Kelling 1982.

93 See Harcourt and Ludwig 2007.

94 Ibid.

95 Index crimes include murder and non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny-theft, motor vehicle theft, and arson. See Benson, Rasmussen and Kim 1998: 77-100.

96 Benson, Leburn, and Rasmussen 2001.

97 Shepard and Blackley 2005: 323-342.

98 See Benson, Rasmussen and Kim 1998; Benson, Leburn, and Rasmussen 2001; Shepard and Blackley 2005.

As the above analysis demonstrates, there are numerous collective costs associated with the enforcement of marijuana laws. As significant as these collective costs might be, they are not the only ones to address when assessing current marijuana policy. In addition, we must consider the costs borne by individuals who face criminal charges when accused of violating marijuana laws.

HUMAN COSTS

To provide a sense of the extent and consequence of these costs, we interviewed 15 individuals from the greater Puget Sound area who were arrested for marijuana-related offenses. These individuals were asked to recount their experiences, and to itemize the various costs they incurred. Some of these costs were calculable: attorney's fees, fines and other court costs, lost income from missing work, seized assets. Others were incalculable: emotional stress, familial tensions and disruptions, loss of faith in the legal system. Though these costs varied from person to person, they were reported to be significant in every case.⁹⁹

The interview sample consisted largely of whites (11 persons), as well as two African Americans, one Latino and one American Indian. Twelve of the 15 were male, three were female. The interviewees ranged in age from their early 20s to their mid-50s. Four were authorized medical marijuana patients. Four were arrested as a result of a targeted police investigation of their alleged marijuana-related activities, and six through police investigations of other possible crimes. The other five arrests resulted from a police traffic stop. Eight were booked into jail. All 15 interviewees in our sample were charged by prosecutors with a violation of marijuana law; those charges were eventually dropped in three cases.¹⁰⁰ Of the 12 whose charges were not dropped, 11 pled guilty, and one went to trial, where he was convicted. All 15 incurred both calculable and incalculable costs.

The demographic characteristics of our sample are fairly similar to those of marijuana arrestees nationally. For example, in 2002, 85% of those arrested for marijuana possession were male and 72% were white.¹⁰¹ However, African Americans and younger people, particularly juveniles, are somewhat under-represented in our sample, while those using marijuana for medical reasons may be over-represented. It is important to stress, therefore, that the costs borne by those in our sample may not be representative of the larger population of those arrested for marijuana-related offenses. We are therefore not able to generalize about the typical costs borne by individuals who face criminal prosecution of marijuana law. Our intent is more modest, but nonetheless of considerable significance: to catalogue the range of costs that are incurred by some marijuana arrestees but are

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100 Two of the three cases in which charges were dropped involved medical marijuana patients. In these cases, the charges were dropped after defense attorneys threatened to go to the media. Neither of the two defendants involved was able to recover cash or personal property that had been taken by law enforcement.

101 Gettman 2005.

overlooked in conventional cost-benefit analyses. These costs vary from individual to individual, given the nature of the charge, their past history, their geographical location, and their economic and social position. Our hope is that by cataloguing some of the costs borne by those arrested for marijuana infractions, we can help broaden the discussion about marijuana policy to include a full consideration of its consequences.

Financial Costs

Many of the costs these individuals bore can be measured. The most common such cost consisted of **lawyers' fees**. Ten of the 15 interviewees hired private legal counsel. The others relied on public defenders, the cost of which can also be included amongst the public costs described above. The cost of private counsel varied widely, from \$750 to \$11,000. The average cost for those who hired private attorneys was \$4,250. In every case, these expenses constituted a financial hardship, despite the fact that several defendants benefited from the altruistic impulses of their legal counsel who provided services at reduced rates.

Recall Adam, described in the preface, a working-class man afflicted with multiple sclerosis who was charged with "intent to distribute" the marijuana that he cultivated for his own use as an authorized medical marijuana patient. Adam was able to pay his lawyer only a "few thousand dollars." This was considerably less than his lawyer's standard fee, yet enough to impose quite a hardship upon Adam. Still, Adam realizes the significance of his lawyer's generosity:

[My lawyer] was very kind, because he knew my situation, of being not a wealthy individual, working just to make ends meet, and being disabled with MS. He saw my assets, and saw what I made a year. Okay, working four jobs, I'm just still, just surviving, you know? I don't make over thirty thousand dollars a year, even working four jobs. So I'm not like a wealthy man. . . I owe [him] my life.

Scott was also unable to pay his lawyer in full for representation from two possession cases that resulted from traffic stops. A tattoo artist, Scott also does not earn a large salary. Yet he felt a strong need for capable representation, so he hired a lawyer. Fortunately for him, his lawyer was willing to forgive Scott's tardiness in making payments on the \$2500 fee. As he said of his lawyer, "Yeah, he's letting me pay it however I can, whenever I can."

Legal proceedings exacted other costs as well. These included **bail, fines, and court costs**. One or more of these costs were incurred by nine of the interviewees, in amounts ranging from \$200 to \$4,200. The average cost of these arrest-related, non-attorney fees was \$1,675.

As with lawyers' fees, these costs were typically difficult for the defendants to meet. Brian, the young man who was arrested at the state fair for selling \$5 worth of marijuana, saw his life savings evaporate just in posting bail: "I only had about \$2500 in savings at that point, so I gave it to my mom. That pretty much wiped me out, right there."

Besides these outlays of income, many of the interviewees incurred other losses. In some cases, they forfeited income because they **missed or lost work**. All of the defendants who contested their charges in court were required to take time from work. In so doing, they sacrificed income in amounts ranging from \$200 to \$3000.

Even more significantly, five of the defendants lost their jobs as a direct consequence of their criminal prosecution. In some cases, this was because of the notoriety their case attracted. Grant was a health services worker who lost his job after a lengthy and public legal contest over medical marijuana that he and his partner grew to help Grant cope with his hepatitis. His case was ultimately dropped by the prosecutor on the eve of the scheduled jury trial. The well-publicized case consumed enough of Grant's time that he went on administrative leave. But after the prosecutor's decision to drop the case, Grant was unable to get his job back. As he put it:

When this finally was settled, I was called into this meeting [my employer] and their lawyer and my lawyer and the union and a whole lot of people and was told that my job was going to be RIFed – reduction in force – and that I could quit in lieu of being RIFed, which would allow me to get unemployment. Or I could take it into court.

Grant ultimately lost his job. He eventually found work as a caregiver. Yet the job change meant a huge reduction in his annual salary, from \$40,000 to \$12,000.

In other cases, the defendants lost jobs because the requirements of attending court or complying with various restrictions left them unable to discharge their employment obligations. Rhonda was convicted of a marijuana possession charge following a police traffic stop. She was placed on home detention for 90 days and required to undergo random urinalysis. This meant daily calling a hotline to learn whether she needed to head downtown to provide a urine sample. The persistent possibility that she might have to miss work to comply with this requirement forced her to give up her housekeeping job, as well as a second part-time job that she was about to accept on a temporary basis to pay for Christmas presents for her children.

For others, the long-term employment implications of a criminal conviction were significant. Three of the interviewees reported difficulties in finding the vocational opportunities to which they aspired. This included Grant, who, as mentioned, saw his annual salary drop significantly. It also included Scott, whose conviction prevented him from acquiring a grant to pay his tuition at a school in Pittsburgh he hoped to attend:¹⁰²

102 This provision of the federal Higher Education Act was subsequently amended to include only drug crimes that were committed during a time that the student was already receiving federal educational assistance. Although this change is beneficial, the law still exerts a considerable affect on many students. Higher Education Reconciliation Act of 2005, Pub. L. 109-171, §484(r)(1).

Scott: I was accepted into a school back in Pittsburgh. But I can't attend because these charges have eliminated me from the possibility of getting a grant. .. It's the Higher Education Act. It's if you're charged with any drug crime whatsoever, you're no longer eligible for state or federal grants or loans.

Interviewer: I see. What school would you want to attend?

Scott: It's a school to learn how to do movie special effects. It's actually a really good school. They're hiring people out of there at \$200,000 a year. And I've been accepted into the school, it's just I can't afford the tuition now.

A final category of calculable costs consists of **lost assets**, including savings and property, seized by the police through forfeiture laws. These laws enable police agencies to retain assets from individuals when they possess a reasonable suspicion of a drug law violation. Such assets can include personal savings, vehicles, and family homes. Five of the 15 interviewees lost assets in this fashion. In four cases – two of them authorized medical marijuana patients – marijuana growing equipment was seized. These ranged in value from \$1,500 to \$8,000. In other cases, the police retained various financially valuable or personally important items. These included computers, guns, cameras, and cash, in values ranging from \$300 to \$6,000. In addition, three defendants lost cars. Two of these had their cars impounded after an arrest following a traffic stop. Each car was ultimately auctioned, in one case before the defendant had an opportunity to retrieve it. In a third case, a defendant who is a part-time drag racer lost his customized \$15,000 vehicle.

The greatest loss of assets was sustained by Frank, a defendant who grew marijuana on a limited scale at his home. As part of the plea arrangement he negotiated with prosecutors, he lost \$90,000 in equity in his home. What bothered Frank the most was the fact that the property was seized before he was convicted of his crime. He came to learn that a regional drug enforcement task force knew of his marijuana plants more than a year before he was charged. The task force officers served him with a warrant five days after he deposited an inheritance check upon the death of his mother. He surmised that the police were monitoring his personal financial transactions and initiated the seizure only after there were sizeable assets in his bank account:

Interviewer: But your point is that they seized your stuff before you had been convicted.

Frank: Yeah, that's the whole idea, that's the whole thing, they just came here to get the money.

From Frank's perspective, marijuana law enforcement can be used by the police not so much to suppress use but to seize an opportunity to take private property. He knew no other way to understand the police decision not to arrest him as soon as they learned of his plants. Because of his experience, Frank lost not only a significant amount of assets, but also his faith in the legal system. In fact, this was a common result of the process for

those who were interviewed, one of the less calculable – but still quite consequential – costs of the enforcement of marijuana laws, a point explored further below.

Social, Psychological and Physical Costs to Individuals and Their Families

Each of the above categories of costs – lawyers’ fees, fines and other court charges, lost income, lost assets – can be measured. Yet the criminal process exacts other costs that cannot be reduced to a number. For the interviewees, these costs were often even more significant than an outlay of several thousand dollars. The emotional stress of fearing an uncertain future, the sense of guilt from burdening family members, the loss of confidence in the criminal process, the difficulty faced by medical marijuana patients in continuing their treatment – these were all exacting costs suffered by those who faced criminal charges for violating marijuana laws. These costs deserve elaboration, and they deserve consideration when evaluating marijuana policy.

All of the interviewees described some sort of **emotional stress** that they suffered as a consequence of being charged. For many, the greatest stress stemmed from the uncertainty of what the future would bring. While they awaited the resolution of their cases, most of the interviewees lived in perpetual anxiety. This was especially true for those who lacked experience with the legal system.

Kelly was working as a legislative assistant in Olympia when she was stopped for driving at night with her headlights extinguished. When she opened her glove compartment to provide the police officer with her car’s registration, she revealed a small amount of marijuana. The officer spotted it, and asked Kelly if there was anything in the car she wanted to tell him about. She turned over the marijuana, and was cited for possession. She then entered a legal process that ultimately led to an acceptable conclusion: her attorney negotiated a plea bargain that resulted in a deferred prosecution and a small fine. Yet the uncertainty of the process caused her significant anxiety:

Interviewer: Why was it traumatic for you?

Kelly: Just having the, you know, I mean the actual night you know was traumatic... and then... having to go court and not knowing, I mean I’d never been to court before, never-

Interviewer: And you were there by yourself?

Kelly: Yeah, the first time. . .and then just not knowing what the outcome could be. For all I knew I was going to be spending time in jail. . . And getting fired, and you know, I had no idea. And even the deal sounded pretty good. But I was like, you know, maybe it’s too good to be true.

Most of the interviewees expressed similar anxiety about how the criminal process would conclude. For Adam, coping with the stress only compounded his struggles with MS. For 14 months, Adam said, he lived in a state of emotional limbo:

I had no control. I was powerless to the situation of what was gonna happen with my life. . . So I just kept going and tried to not let it stress me because I had more going on my plate than the law: I had MS. Which, you know, they can put me in jail but MS, you know, it's terminal.

Some of the defendants described a more permanent sense of losing control, a persistent feeling that they could be brought into the criminal process at any moment. The most pronounced case of this was Grant, whose home was searched on two different occasions. As Grant described the resultant tension he experiences:

You know, there's this, I live knowing that at any moment, the powers that be could sweep in, take everything I own, and my life will not be the same.

For many of the interviewees, anxiety about themselves was magnified by the burden their situation placed upon family members. These **familial tensions** added significantly to the stress created by the criminal process.

Adam's legal troubles coincided with his father's battle with stomach cancer. This left Adam extremely reluctant to discuss his situation with his parents. He eventually decided to tell his mother, but not his father.

Richard's sense of guilt stemmed from the fact that police surveillance of him extended to his daughter. Richard grew marijuana for his own use; marijuana relieved his suffering from the migraines he commonly gets as a result of a car crash. The police raided his house, destroyed his plants and growing equipment, and seized his \$15,000 drag racer. The police also searched his daughter's house, presumably because they believed her to be part of an alleged distribution network. They uncovered 1/8 of an ounce of marijuana in searching his daughter's house and charged her with possession of marijuana. Richard assisted her in contesting the charges, in large part by paying the \$2,000 retainer for her attorney. (This was in addition to the \$5,000 he was spending on his own legal counsel.) But assuming financial responsibility for his daughter's legal costs hardly alleviated Richard's emotional difficulty:

Richard: My daughter and I have been very tight and very close all her life. I think it's hurt me more emotionally more than anything.

Interviewer: And what do you mean by that?

Richard: Well, scared to death that my daughter would have to spend any time in jail, cause I feel that she's being blamed for my actions. So that hurt. . .

When Rhonda was arrested for marijuana possession following a traffic stop, her car was impounded. It was eventually auctioned off, depriving her of mobility. Her home detention further limited her mobility. These constraints diminished the important role she otherwise would play in her extended family:

Interviewer: So what kind of accommodations have you had to make because of the house arrest? What sorts of things can't you do that you would...

Rhonda: Nothing. I can't spend the night at my boyfriend's house, I can't stay the night at my dad's house, you know. I have a lot of family and we're always doing sleepovers and parties and being with family and kids. All that's over. Everybody depends on me for everything. Nobody in my family drives except for my daughter and me. My mother has never driven a car and my father is sick. Everybody depended on us and I'm the only one that had the good running car... So it's all over. All the going to grocery store, buying presents, birthday parties, everything.

Various emotional stresses thus buffeted each of the interviewees, often disrupting wider familial networks. Another key incalculable cost that the criminal process exacted was the **loss of faith in the judicial system** that resulted for a majority of those interviewed. For some, this loss of faith resulted from what they regarded as a disproportionate reaction to private behavior that endangered no one.

Take James, who was arrested for carrying what he described as a very small amount of marijuana, enough to fill a single, small pipe. Thus began a legal process that necessitated several trips to court and lengthy plea negotiations. These resulted in his receiving a six-month suspended sentence and a \$500 fine. James could not see the value of the exercise:

The real insult is the cost and time the court and their clerks and the judges and the lawyers and the prosecutors all took, just to make me miserable for 500 bucks. It doesn't seem worth it. . . . I mean, you're talking about a value of marijuana that if I tried to sell it on the street I couldn't get five bucks for it. It wasn't worth it. Maybe a dollar or two, but so nil it's not worth it, because that means that the state is operating at a loss where they're paying you to not smoke pot.

In some cases, the interviewees developed resentment because they believed themselves to be the explicit target of unwanted and undeserved police attention. Rhonda's traffic stop resulted from an officer inputting her license plate number into his patrol car's computer database. This search revealed that she possessed a suspended driver's license. The resultant interaction led to her being asked to submit to a field sobriety test, a request she granted. The officer arrested her because, he said, she failed the test. On the basis of the arrest, the officer searched her and discovered \$20 worth of marijuana. Once at the police station, she was asked to undergo a Breathalyzer test. She again agreed and was cleared of suspicion of driving while impaired. However, even though the original allegation of driving under the influence disappeared, she was still charged for possession for marijuana. This led to her earning a 90-day home detention. The process left Rhonda feeling similarly to Frank: that the system was fundamentally unfair, and that the marijuana charge was being used to take something from here for reasons that had nothing to do with marijuana:

I understand that I was not supposed to be driving, but like I said, I was only behind the wheel for a few blocks and the thing that I hate is the harassment, why are you singling me out, running my plates, when there is clearly so much other stuff you can be doing?... You know. Just running my plates, why? And then you promise me that if I blew below [the legal limit], you wouldn't tow my car or take me to jail and you still did. So, I think about that all the time. I don't, I just don't trust anybody anymore.

Because he was an activist – openly supporting the use of medical marijuana and spearheading an effort to distribute clean needles for intravenous drug users – Grant also experienced himself as a target for law enforcement. Moreover, he was led to expect that the police were going to come not just for him, but for his property as well. Grant called the police to try and clarify where the investigation stood:

I called the lead investigator, and the first words out of his mouth – I mean he didn't even say hello to me, he said "We know about that grow, and we're gonna seize your property." Those were his words to me.

Grant extended this analysis to a critique of the asset forfeiture system, which represented to him a “perversion of criminal justice” – it provided law enforcement officials a strong incentive to investigate and charge anyone with appreciable assets. For him, this distorted the presumed aims of the criminal process:

Grant: It's hard to be part of that system and not know that, yeah, they, how it's operated. It's damaging. I can't think of enough bad words to say about what it's doing to people. I mean, I have you on a charge, it's a very weak charge, it's not going to hold up, but I'm going to push that to the wall to get a conviction, and do this "let's make a deal."

This dynamic was the principal driver behind both Richard's and Frank's loss of faith in the fairness of the legal system. Richard saw his prized drag race car seized, Frank his home. Richard's expression of disillusionment is particularly striking given that he agrees that he deserved to be held accountable for violating the law. As he said:

Richard: One other thing that really hurts me is, my view of it is, if you've taken an honest man that did one thing in 43 years that was wrong, and you put me in jail, I'm going to come out as a criminal. And I am going to be very. . . I mean, I donate to the police department, been doing it for over 15 years, you know, for kids on DARE, to families of fallen police officers, to fire and police, to kids with cancer and all this stuff. I don't think that, you know, I should be let off, I still feel that yes, I deserve a punishment, but my punishment should fit my crime. I am seeing people in court that if they have nothing, they could have a hundred plants and their hands are slapped because there is nothing there to get. But if you got something and you're a hard worker, they're going to come after you with tooth and nail to take everything you have to just drive you into the ground and try to bankrupt you. That's what I'm seeing.

As subjects of a marijuana prosecution, many of the interviewees encountered the criminal justice system for the first time. Many of them were shocked and distressed by what they perceived to be the arbitrariness of the system. James, charged with possession of an extremely small amount of marijuana, experienced himself as one misstep away from a serious downfall, a reality that caused him considerable anxiety:

Just stress, just stress because they can, they hold that over you, it's an open threat, it's an open threat. . . You can go into court and a response could piss off the judge and you could be going straight to jail. That's the problem – that your freedom is totally illusory.

What became evident to more than one defendant was that social class heavily influenced case outcomes. Recall Kelly, the legislative assistant, who came from a solidly middle-class background and possessed a college degree. She is certain that her social position enabled her to escape the process relatively unscathed:

Kelly: I do think that I'm pretty lucky and I think it has a lot to do with what I look like and my background. I mean when we were in court it was, you know, an issue that I had a college degree and I had a good job.

Interviewer: How was that an issue?

Kelly: Well I mean, even the prosecutor telling the judge that this is why we recommend this [lenient punishment], because she's not going to be a problem to society.

Joshua was not quite as lucky. In his early 20s, Joshua scrapes by economically through restaurant work. His arrest for marijuana possession resulted from an unusual set of circumstances. He came home to his apartment early one morning, after an evening of partying at a friend's house. After he was dropped off at home, he discovered he lacked his house keys. He entered his apartment through a back window, an act observed by a neighbor. The neighbor, fearing a burglary, called the police. When the police arrived, they entered the apartment without knocking and roused Joshua from sleep. Groggy, Joshua quickly became angry with the police and demanded that they leave his apartment. The police, however, discovered a marijuana pipe on Joshua's bedside table. They threatened Joshua with arrest, and he became angrier, demanding even more loudly that they leave his apartment. Tensions rose between Joshua and one officer, and eventually they engaged in a scuffle. Joshua was charged with obstructing an officer and possession of marijuana.

Joshua chose to contest his charges and used the services of a public defender. However, his case was delayed on more than one occasion, and his case was passed onto another public defender who lacked experience. Joshua pushed his case to a jury trial but did not testify. The police officers who were in his apartment did testify and Joshua lost his case. He concluded that his financial inability to hire a private attorney led him to suffer legal consequences that more affluent defendants likely could have avoided.

Joshua also lost faith in the legal system because of the simple fact that marijuana figured in his case at all. There was no marijuana in his pipe. Further, the police only found the pipe after entering his apartment without his permission or a warrant. He came to believe that the marijuana charge persisted solely as a means to strengthen the prosecution's chance of securing a conviction on the more serious charge of obstruction:

Joshua: I knew [the marijuana charge] wasn't going to last, even the judge when I first met her or whatever, she was trying to throw it out. And the first time I went, she was like this is ridiculous for the marijuana charge. She was like, it's already going to be thrown out, but the prosecutor fought to keep it there.

Other defendants told similar stories. Sergio finds himself frequently under the attention of the police. In some of those encounters, the police discover small amounts of marijuana. He believes the police are not especially concerned with marijuana, but rather use its discovery to carry an investigation further or to gain some leverage. On one occasion, he was arrested for criminal trespass at a pool hall on Aurora Avenue and searched. The police discovered a small bag containing a gram of marijuana. The police placed him in jail, where he stayed for three days before his arraignment. His case was ultimately resolved when the prosecutor agreed to drop the marijuana possession charge in exchange for a guilty plea on the criminal trespass charge. That experience, along with others, leaves him convinced that the police use marijuana possession to enable other ends that otherwise might be inappropriate or unlawful:

Interviewer: If you hadn't had the pot on you, if there had been no pot arrest and there had only been the trespassing charge, would it have played out differently do you think?

Sergio: I might have been able to talk them out of taking me to jail.

Interviewer: You think so?

Sergio: Yeah, you know, I say I'll be cool, I'll be gone and I wasn't being belligerent or anything.

Interviewer: You were happy to leave?

Sergio: Well, I wasn't happy to leave, I would have.

Interviewer: I mean, you were happy to walk away from the police.

Sergio: Right, yeah. But it just didn't happen like that.

Interviewer: So you think because of the pot charge, the pot, things got more serious?

Sergio: Yeah. It's just a doorway for the police, I mean...

Interviewer: What's that?

Sergio: Its just a doorway for the police to just say they smell pot and they can just tear your whole car up, anywhere.

Martin reached the same conclusion after an arrest that also involved marijuana. He was shopping at a suburban mall when he was confronted by a police officer. He was told that he matched the description of a shoplifting suspect and was asked to submit to a search. Protesting his innocence, Martin refused to consent to be searched. The police officer then forcibly attempted to subdue him but he continued to resist. He was eventually handcuffed and searched. The search did not uncover any stolen property, but the officer did find a small bag containing 20 grams of marijuana. Martin was arrested and ultimately charged with assaulting a police officer and possession of marijuana. His public defender negotiated a plea arrangement:

Martin: The deal is they drop the assault down to a 4th degree misdemeanor assault and then I plea to having 40 grams of marijuana, a felony amount, and I did not have a felony amount.

Interviewer: Why did they structure the deal that way? How do you understand that?

Martin: Because the only reason I did that was to get rid of the assault on a police officer. So they had to come up with what's called a legal fiction.

Interviewer: So they got rid of the assault on a police officer or they reduced it from a felony count to a misdemeanor count?

Martin: To a misdemeanor count and then, they changed the weed from a misdemeanor charge to a felony.

Interviewer: Why was that in your interest to take that deal?

Martin: Because I don't want the felony assault.

Like Joshua and Sergio, Martin came to the conclusion that the marijuana possession charge was useful to the police and prosecutors primarily as a mechanism to gain leverage over a defendant who might not otherwise be convictable. Even though the prosecution reduced the severity of the assault charge, Martin believes that it was his refusal to consent to be searched that got him in trouble. He ultimately received the maximum sentence, a year in jail, of which he served eight months. It was not, Martin said, a positive experience:

It affected me as a person, just, could you imagine the place where I was at for those eight months, it's just like, a helluva small room, I'm in a small room, in a small

unit, and then, all you could do was just walk around the unit. It's real low, just to sit in a little cage like that for almost a year.

Because he is uncertain whether he would have received such a punishment absent the marijuana possession, Martin's experience led him to conclude that the criminal justice system is more about ensuring punishment than securing justice.

This distrust of the legal system is especially pronounced amongst the medical marijuana patients we interviewed. This might seem surprising, given that Washington is one of the few states that actually allow those with authorization from a physician to consume and to even grow marijuana for their own medical use. Yet, as is the case in other states as well, the statute does not provide other legal means to obtain marijuana. One consequence of this is that many medical marijuana users have **limited access to medical marijuana**.

Adam's medical marijuana plants and growing equipment, for instance, were immediately removed from his apartment when the police entered to investigate an apparent burglary. The officers on site told him, when he ultimately arrived, that they were required to seize his plants and equipment. Despite his medical marijuana authorization, a criminal prosecution ensued that required 14 months to be resolved, at no small cost to him, financially and emotionally.

One of the greatest expenses Adam incurred resulted from the loss of his ability to grow his medication. The severity of his symptoms from multiple sclerosis resulted in his consumption of about \$400 worth of medical grade marijuana a month. Although he was able to acquire marijuana, it was still extremely expensive for someone earning only \$30,000 annually.

The fact that certified patients like Adam can still be prosecuted leaves other marijuana patients wary. Scott, for instance, was afraid to use the services of a nonprofit medical marijuana provider for fear that the organization was under police surveillance. He thus faced the additional cost of purchasing his medication on the black market:

Interviewer: How would your life be different if you felt comfortable growing or going to [nonprofit organization] or wherever to...

Scott: It would probably be like a huge weight taken off my shoulders. . .I'd know the quality I was getting constantly, so I wouldn't have to worry about that. Uh, I wouldn't have to spend as much money, 'cause it's a lot cheaper going through the clinics and everything.

Scott's belief that his status as a medical patient does not relieve him of the social stigma of marijuana deeply influenced his legal strategy. He was arrested three times for possession, each time following traffic stops. Although he was a certified patient, Scott was simply too leery of the cost and outcome of a jury trial to mount an aggressive defense of his charges:

Interviewer: Why did you take the plea as opposed to go to trial?

Scott: Money. It costs a lot more money to go all the way to trial. We're talking, I'm going to be paying, like we said, \$2,500 for my attorney. If I take it to trial, we're probably multiplying the number to \$25,000. Plus, if I lost, I'm then... all the court costs get thrown on to me. And I don't feel like being in debt to the state forever.

Interviewer: Even though you could have mounted a medical marijuana defense?

Scott: My attorney told me, "You know you might be able to win this using the medical marijuana thing, but do you want to be a martyr?" And I don't, I don't want to be a martyr.

In short, Scott believes that the social acceptance of marijuana as a legitimate medicine is too weak to withstand a vigorous prosecution.

Matt makes a similar point regarding his use of marijuana. He is also an authorized patient, suffering as he is from hepatitis. Even in Seattle, where attitudes toward marijuana use are comparatively tolerant, Matt knows that he cannot openly use his medication as can those who use conventional prescription drugs:

It really shouldn't, really shouldn't be that way. Not, not for a medical patient. I should be able to walk anywhere I damn well please. It's like popping a pill at Southcenter. Granted, I, hey, fine, take it outside. I understand that. That's cool. You know? Um, but, no, I can't do that. If I was at [a local shopping mall] and I wanted to medicate, I essentially would, prior to going there, I would roll two joints. . . And, you know, on my break or whatever, I would take a walk out to my car. And I'd have to either hang out in my car, or go take a walk, a long walk around the parking lot and keep my eye open for security. Instead of me being able to just walk up where the smokers are and just light up and not have a problem.

Adam recognizes that his multiple sclerosis is a serious disability, and suffers daily from its symptoms. For this reason, he is extremely reliant on the ameliorative effects of medical marijuana and conscious that current marijuana policy complicates his treatment:

Interviewer: Do you think you could work if you weren't medicating with marijuana?

Adam: No. Absolutely I don't think I can. I don't think I could continue. Because I do doubles. I only work four days a week, three days off. Because I'm not, I mean, I might work a lot of jobs but I'm not stupid. I know I have a disability. I know I have to take care of myself. I don't drink alcohol. I don't consume anything that's toxic. I eat healthy. So I take care of myself now. The only thing I do is consume cannabis and eat healthy.

Yet his disability does not yet diminish his dream – to play golf on the Senior Professional Golf Association Tour. He arranges his work schedule so that he works four long days a week, reserving the other three for golf. He also works at a golf course, to alleviate the expense of greens' fees. Yet Adam fears the notoriety that might attach to his use of marijuana, even as a medicine:

I'm just a man who's got a disability, who wants to be a good golfer, and maybe become a senior player. That's my only dream. And MS is the only thing that's stopping me, but I'm not letting it. I'm going to still try to play. That's the only fame I want, is to win a trophy. But I don't want to be known as a bud grower, because I probably won't be able to get into the tour, because people don't understand, that to medicate...they see it another way. They see it as an evil.

From Adam's perspective, the lack of social acceptance of marijuana use significantly impeded his attainment of his dream. Brian feels similarly, wistfully wondering what his life might have been like had he not been arrested at the Washington State Fair:

The impact there is kind of hard to measure, what things I might have been doing, what interests I might have gotten in to during college if I had the opportunity to explore different things with my time rather than being absolutely consumed for about a good year, not just in terms of my time, but also mentally. Oh my gosh, I am charged with two felonies and it's all over, pretty much. So, it's hard to measure the cost in terms of what I might have gotten into, you know, other interests I might have explored, ways I might have gotten more interested in my schoolwork, um, but ah, yeah, it definitely caused an impact there in terms of my mental energies and temporal engagements.

PART III:

THE CONSEQUENCES OF DECRIMINALIZATION AND DEPRIORITIZATION

In Part I, we demonstrated that the intensification of marijuana law enforcement in the United States over the past two decades did not reduce marijuana consumption or render marijuana less expensive, available, or potent. In Part II, we showed that the costs of the criminal prohibition of marijuana are extensive and wide-ranging. Given these realities, it is sensible to consider what happens when jurisdictions choose to decriminalize marijuana or deprioritize marijuana law enforcement. Many opponents of such policy shifts fear an increase in marijuana will result. This concern is understandable. We use this Part to consider whether marijuana use undergoes any appreciable change when criminal law is not used as a principal means to pursue marijuana prohibition.

At the federal level, there have been a number of efforts to alter marijuana's status as a Schedule I drug under the Controlled Substance Act. In 1972, a petition was submitted to the Bureau of Narcotics and Dangerous Drugs (now called the Drug Enforcement Administration, or DEA) to reschedule marijuana so that it could be prescribed by medical doctors.¹⁰³ The federal government denied the petition, but in 1988 the DEA's chief administrative law judge, Francis L. Young, wrote that, "Marijuana, in its natural form, is one of the safest therapeutically active substances known... It would be unreasonable, arbitrary and capricious for DEA to continue to stand between those sufferers and the benefits of this substance."¹⁰⁴ Judge Young ruled that marijuana should be reclassified from Schedule I to Schedule II of the federal Controlled Substance Act.¹⁰⁵ Despite this ruling, and the subsequent filing of several petitions advocating the rescheduling of marijuana, the federal government continues to classify marijuana as a Schedule I substance.

Attempts to change marijuana laws are more successful at the state and local levels. Beginning in the 1960s, state governments began to reclassify possession of small amounts of marijuana as a misdemeanor rather than felony offense and to reduce the penalties associated with it.¹⁰⁶ By 1972, simple possession of less than one ounce of marijuana was considered a misdemeanor offense in all but eight states.¹⁰⁷ During the 1970s, possession of small amounts of marijuana for personal use was decriminalized in 12 states.¹⁰⁸ Since 1996, a number of states, including Washington in 1998, have permitted the use of marijuana for medical purposes and allowed patients to cultivate their own marijuana; 12

103 U.S. Department of Justice 1988, Docket #86-22.

104 U.S. Department of Justice 1988, Docket #86-22, p. 57

105 U.S. Department of Justice 1988, Docket #86-22, p. 67

106 Bonnie 1980.

107 Bonnie 1980.

108 Faupel and Weaver 2004: 361-2. In Alaska, personal possession in one's home was decriminalized in 1975 by the Alaska Supreme Court. The state legislature has since attempted to reverse that ruling, but the courts have struck down that legislation. See http://www.nytimes.com/2006/07/12/us/12brfs-001.html?_r=1&pagewanted=print&oref=slogin

of these state-level programs remain active.¹⁰⁹ Several states have also passed initiatives that mandate treatment rather than jail for first- and second-time, nonviolent drug law violators.¹¹⁰

On a local level, some municipalities have formally made marijuana laws their lowest enforcement priority. In September 2003, for example, Seattle voters adopted ballot initiative I-75, “An Ordinance to Establish a Sensible Marijuana Law Enforcement Policy in Seattle.” The ordinance created a new section of the Seattle Municipal Code (SMC 12A.20.060) which mandates that “The Seattle Police Department and City Attorney’s Office shall make the investigation, arrest and prosecution of marijuana offenses, where the marijuana was intended for adult personal use, the City’s lowest law enforcement priority.” Since then, San Francisco (CA), Denver (CO), Eureka Springs (AR), Columbia (MO), Missoula (MT), Haily (ID) and other towns passed similar laws.

Whatever the means – rescheduling, decriminalization or deprioritization – attempts to change current punishment-based policies are often criticized as abandonment of the effort to reduce the potential harms associated with marijuana use. The question left unanswered by these critics is whether these changes actually lead to increased harm.

COMPARATIVE AND LONGITUDINAL STUDIES OF DECRIMINALIZATION AND DEPRIORITIZATION

Researchers assess the impact of marijuana deprioritization and decriminalization in a number of ways. One strategy is to compare patterns of marijuana use in jurisdictions with very different policy responses to marijuana use. Another is to examine trends in use over time within a particular jurisdiction in which the policy response to marijuana is altered. The results of studies using both these comparative and longitudinal methodologies suggest that the enforcement of marijuana laws generates little impact on rates of marijuana consumption.

For example, the results of a comparative study assessing rates of marijuana use in the United States, Australia, and the Netherlands suggest that the de-penalization of marijuana possession is not associated with increased marijuana use.¹¹¹ Another study comparing drug use patterns in Amsterdam and San Francisco found no evidence that

109 As of 2006, 30 states and the District of Columbia have laws on the books that recognize marijuana’s potential medicinal value (Marijuana Policy Project 2006: 4). Twelve states currently have laws that protect medical marijuana patients to varying degrees, including: Alaska, California, Colorado, Hawaii, Maine, Maryland, Montana, Nevada, Oregon, Rhode Island, Vermont, Washington. Washington State’s Medical Marijuana Act provides a defense at trial, but does not protect even certified medical marijuana laws from arrest or prosecution by state, local or federal authorities. In fact, Washington’s law does not even require that judges permit medical marijuana defendants to present evidence of their medical use to a jury, which in practice guarantees that the patient will be convicted. See, e.g., *State v. Tracy*, No. 77534-6 (Wash. Sup. Nov 22, 2006) (see also the dissenting opinion in Tracy); “A Guide to Washington’s Medical Marijuana Law” ACLU of Washington, available at <http://www.aclu-wa.org/detail.cfm?id=182>

110 California Proposition 36 (2000) and Arizona Proposition 200 (1996).

111 MacCoun and Reuter 2001.

criminalization decreases drug use – or that decriminalization increases use.¹¹² Noting that rates of drug use are higher in San Francisco than in Amsterdam, these researchers conclude that “drug policies may have less impact on cannabis use than is currently thought.”¹¹³

This conclusion is supported by the work of researchers with the World Health Organization, who report that rates of illegal drug use are much higher among U.S. teenagers than their European counterparts - despite the fact that drug law enforcement is far more vigorous in the United States. In 1999, 41% of 10th graders in the United States, but only 17% of their European counterparts, had tried marijuana; 23% of the students in the United States, but 6% of the Europeans, had used other illicit drugs.¹¹⁴

Studies assessing marijuana use patterns over time (i.e., longitudinal analyses) reach similar conclusions. In particular, researchers investigating the effects of decriminalization on marijuana use in states that changed their marijuana laws concluded that “decriminalization has had virtually no effect either on the marijuana use or on related attitudes and beliefs about marijuana use among American young people in this age group.”¹¹⁵

Deprioritizing Marijuana Arrests: The Impact of Seattle’s I-75

In September 2003, Seattle voters adopted ballot initiative I-75, “An Ordinance to Establish a Sensible Marijuana Law Enforcement Policy in Seattle.” The ordinance created a new section of the Seattle Municipal Code (SMC 12A.20.060) which mandates that “The Seattle Police Department and City Attorney’s Office shall make the investigation, arrest and prosecution of marijuana offenses, where the marijuana was intended for adult personal use, the City’s lowest law enforcement priority.”

The following analysis relies upon data submitted for analysis to the Marijuana Policy Review Panel (MPRP), which was appointed by the Seattle City Council as required by Initiative I-75. The MPRP’s data included only SPD referrals to and filings by the Seattle City Attorney involving misdemeanor offenses. Even though I-75 applies to felony possession charges (possession of more than 40 grams of marijuana), these arrests and prosecutions are not included in the MPRP’s analysis.¹¹⁶

The available data indicate that the number of SPD referrals for misdemeanor marijuana possession was already low in Seattle before passage of I-75. That is, compared to other mid-sized cities, the number and (per capita) rate of marijuana arrests occurring in Seattle was already low even before adoption of a formal policy making certain marijuana offenses the city’s lowest law enforcement priority (see Table 1). However, because the data for other cities include a similar but not identical set of cases, comparisons of Seattle

112 Reinerman, Cohen, and Kaal 2004: 836-42.

113 Ibid, p. 841.

114 Zernike 2001.

115 See Johnston et al 2004; see also Bachman, and O’Malley 1981: 27-29.

116 Because the SPD does not report drug arrest figures to the FBI we are unable to assess the effect of I-75 on felony possession cases covered by I-75.

and other cities should be interpreted with caution.¹¹⁷

Table 1. Marijuana Possession Arrests and Arrest Rates per 100,000 Residents, Mid-Sized U.S. Cities, 2003

City	Marijuana Possession Arrests/Referrals	Marijuana Possession Arrest/Referral Rate
Portland	50	9.2
Seattle	212	37.6
San Francisco	342	44.3
Milwaukee	274	46.1
Honolulu	517	57.1
Columbus	423	58.3
Louisville	369	59.2
Austin	569	83.4
San Jose	1317	144.7
Charlotte-Mecklenburg	1146	171.6
Nashville	1094	197.2
Ft. Worth	1187	206.0
Memphis	1580	241.6
Oklahoma City	1397	267.8
El Paso	1976	337.0
Indianapolis	2944	367.9
Denver	2290	404.7
Tucson	2382	462.9
Baltimore	4701	729.4

Sources: Seattle referral data were taken from “Final Report of the Marijuana Policy Review Panel on the Implementation of Initiative 75”, Table 1 (December 4, 2007) available at http://www.cityofseattle.net/council/attachments/2008mprp_final_report.pdf. This number does not include felony marijuana cases referred by the SPD to the Office of The King County Prosecutor. Data for other mid-sized cities are based on the FBI’s Uniform Crime Reporting (UCR) program, and include all arrests for which marijuana law violations are the most serious charge. 2000 U.S. Census Bureau data were used to calculate the arrest rate per 100,000 residents.

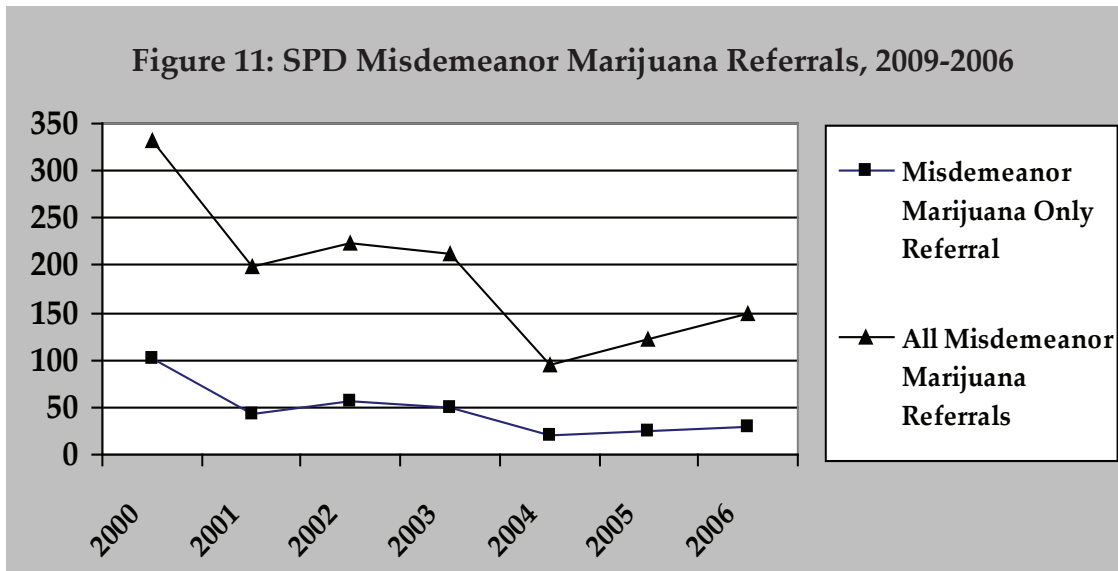
A few caveats should be kept in mind when interpreting these figures. First, the Seattle data used in these calculations include only misdemeanor marijuana possession cases referred to the City Attorney’s office, usually by police agencies operating in Seattle; data for the other cities include both felony and misdemeanor possession arrests. On the other

117 In this analysis, the data pertain to all misdemeanor cases including a marijuana charge. While these figures exclude felony marijuana arrests, they do include cases in which marijuana charges are accompanied by other misdemeanor charges. Data for other mid-sized cities are based on the FBI’s Uniform Crime Reporting (UCR) program, and include all arrests for which marijuana law violations are the most serious charge.

hand, the Uniform Crime Reports which provide data for the other cities classify arrests by the most serious charge. Thus, for the cities listed above other than Seattle, marijuana possession arrests may also include other, less serious charges but do not include charges considered to be more serious than marijuana law violations. These difficulties highlight the need for more detailed and accurate recordkeeping and data reporting by the SPD to enable more accurate assessment of the public safety and fiscal impacts of law enforcement practices.¹¹⁸

In sum, it appears likely that the number of arrests for marijuana possession occurring in Seattle was comparatively low before I-75 passed, with a sharp drop from 2000 to 2001 and a relatively flat number of arrests from 2001 through 2003.

In Seattle, the number of referrals involving misdemeanor marijuana possession fell sharply in 2001 and again in 2004 after I-75 went into effect. The number of SPD referrals for misdemeanor marijuana possession was lowest in 2004, the year following the implementation of I-75, when the City Attorney’s office received only 20 referrals for cases involving only misdemeanor marijuana charges. Since that time, the number of misdemeanor marijuana possession referrals has increased very slightly, but remains quite low by both historical and comparative standards (see Figure 11).



Source: Seattle City Council, Marijuana Policy Review Panel 2007, Table 1.

In short, it appears that “following the adoption of I-75, there were reductions in both the number of referrals of marijuana-related incidents from the Seattle Police Department to the City Attorney, and in the number of cases filed by the City Attorney that charged individuals with possession of marijuana.”¹¹⁹

118 [Footnote re the SPD’s representations to the MPRP about the agency’s lack of a computerized database to adequately track arrests.]

119 Marijuana Policy Review Panel 2007: iii.

Significantly, the MPRP found from the available data that there was “no evidence of any adverse effect of the implementation of I-75 in any of the substantive areas examined,” including marijuana use rates among young people, crime rates, and various public health indicators.¹²⁰

However, there is evidence that racial disproportionality in Seattle marijuana arrests was and remains significant. In Seattle, the percentage of SPD misdemeanor marijuana referrals increased (unevenly) from 40% in 2000 to 56% 2006. That is, even as the number of misdemeanor marijuana referrals declined, an increasing share of the defendants referred by the SPD to the City Attorney for misdemeanor marijuana law violations were black. It thus appears that the Seattle’s law enforcement agencies implemented the policy mandated by I-75 more to the benefit of white marijuana users than black marijuana users.¹²¹

The over-representation of blacks among persons referred to the Seattle Municipal Court by the Seattle Police Department for possession of marijuana appears to be especially severe in comparison to other cities. Table 2 shows the “over-representation ratio” for blacks in mid-sized cities for which marijuana possession arrest data was available in 2003. This ratio is calculated by dividing the black marijuana possession arrest rate by the white marijuana arrest rate. In Seattle, the marijuana possession arrest rate per 1,000 black residents was 12.3 times greater than the white marijuana possession arrest rate. Although the numbers of marijuana arrests were small, the over-representation of blacks among those arrested for possession of marijuana relative to the general population in Seattle was more extreme than in any of the mid-sized cities that report arrest figures to the Uniform Crime Reporting program (see Table 2). In Seattle since 2003, this over-representation of blacks in misdemeanor marijuana arrests has grown.¹²²

120 Ibid.

121 See Marijuana Policy Review Panel 2007, Tables 2, 3 & 4.

122 Ibid.

**Table 2. Racial Disparity in Marijuana Possession Arrests
in Mid-Sized Cities, 2003**

City	Black Arrest Rate	White Arrest Rate	Black/White Arrest Disparity
Seattle	1.75	0.14	12.3
Baltimore	10.20	2.01	5.1
Columbus	1.18	0.23	5.0
San Francisco	2.44	0.50	4.9
Louisville	1.86	0.41	4.5
Portland	0.37	0.09	4.1
Memphis	3.40	0.95	3.6
Charlotte-Mecklenburg	3.25	0.95	3.4
Ft. Worth	7.34	2.20	3.3
Indianapolis	5.26	1.63	3.2
Nashville	4.21	1.33	3.2
Milwaukee	0.84	0.28	3.0
Oklahoma City	6.70	2.36	2.8
Denver	12.43	4.65	2.7
Austin	2.13	0.97	2.2
Tucson	13.30	6.38	2.1
El Paso	8.41	4.41	1.9
San Jose	4.69	2.68	1.8
Honolulu	0.90	0.65	1.4

Sources: Population data were taken from the 2000 U.S. Census Bureau. Arrest data for all cities, except Seattle, were taken from the FBI's Uniform Crime Reports. Seattle arrest/referral rates were calculated from data provided by the Marijuana Policy Review Panel 2007, Table 2. Note: Unlike the figures for all other cities listed, Seattle data do not include any felony cases. Seattle data do, however, include misdemeanor marijuana possession cases accompanied by other misdemeanor charges.

CONCLUSION:

DECRIMINALIZING MARIJUANA POSSESSION OR DEPRIORITIZING MARIJUANA LAW ENFORCEMENT DOES NOT APPEAR TO INCREASE MARIJUANA USE

Researchers adopting diverse research methodologies provide no evidence that the decriminalization of marijuana leads to increased marijuana use. Similarly, the Seattle City Council Marijuana Policy Review Panel concluded that the de-emphasis of marijuana law enforcement mandated by ballot initiative I-75 did not result in increased marijuana use or problems related to public safety. When combined with substantial evidence that the intensification of marijuana enforcement since 1990 has not been associated with decreased marijuana use, and has therefore failed to reduce any harm potentially associated with the use or abuse of marijuana, *these findings strongly suggest that the enforcement of marijuana laws does not reduce marijuana use or any harm with which it may be associated.*

CONCLUSION

This report draws on a wide range of data sources to assess the consequences and costs of enforcing criminal laws that prohibit the use of marijuana. Despite widespread and longstanding disagreement about the continuation of marijuana prohibition, the number and rate of marijuana arrests have increased significantly in the United States since the early 1990s. These arrests are not evenly distributed across the population, but are disproportionately imposed on African Americans. Our findings regarding the costs and consequences of marijuana prohibition, as well as state and local efforts to relax it, are summarized below.

FINDING 1: Intensified enforcement of marijuana laws does not achieve the stated goals of marijuana prohibition.

- Marijuana arrests in the U.S. have increased dramatically since 1992. In 2006, there were a record 829,625 marijuana arrests. Nearly half (44%) of the roughly 1.9 million annual drug arrests were for marijuana.
- Despite increases in marijuana arrests, the price of marijuana dropped; its average potency increased; it has become more readily available; and marijuana use rates increased during the 1990s, the decade of increasing rapidly increasing marijuana arrests. It thus appears that the goals of marijuana prohibition have not been achieved.

FINDING 2: The collective costs of marijuana prohibition for the public are significant; The personal costs to individuals and their families are also substantial, even in the absence of incarceration

- The enforcement of the laws prohibiting marijuana consumes significant

fiscal and organizational resources that could usefully be allocated toward other pressing public safety goals.

- Marijuana arrests are not evenly distributed across the population, but are disproportionately imposed on African Americans.
- The enforcement of marijuana laws imposes a range of social, psychological, and familial costs on those arrested for marijuana law violations. A complete accounting of the costs and benefits of marijuana prohibition requires consideration of these non-monetary costs.
- A full and adequate analysis of the cost of enforcing current marijuana laws requires better and more complete record-keeping and data reporting by the police and others in the criminal justice system.

FINDING 3: Decriminalizing marijuana and deprioritizing enforcement of Marijuana laws Leads to no significant increase in marijuana use.

- Many states and localities have either decriminalized marijuana or deprioritized the enforcement of marijuana laws.
- There is no evidence that the decriminalization of marijuana by certain states or the deprioritization of marijuana enforcement in Seattle and other municipalities caused an increase in marijuana use or related problems.
- This conclusion is consistent with the findings of studies indicating that the increasing enforcement of marijuana laws has little impact on marijuana use rates, and that the decriminalization of marijuana in U.S. states and elsewhere did not increase marijuana use.

As the stories of Adam and Brian illustrate, the human costs associated with enforcing marijuana laws can be high even in the absence of conviction or incarceration. These costs, along with the absence of evidence that criminalization reduces marijuana use and any harm associated with it, underscore the need to reconsider the criminalization of marijuana.

REFERENCES

- Armentano, Paul. 2006. "A Billion Dollars a Year for Pot?" *Washington D.C. Examiner*, Oct 18.
- Austin, James, "Rethinking the Consequences of Decriminalizing Marijuana," National Organization for the Reform of Marijuana Laws (2005). Available online http://www.norml.org/pdf_files/NORML_Rethinking_Decriminalizing_Marijuana.pdf
- Beckett, Katherine, Kris Nyrop, and Lori Pflingst. 2006. "Race, Drugs and Policing: Understanding Disparities in Drug Delivery Arrests." *Criminology* 44, 1: 105-38.
- Beckett, Katherine, Kris Nyrop, Lori Pflingst and Melissa Bowen. 2005. "Drug Use, Drug Arrests, and the Question of Race: Lessons from Seattle." *Social Problems* 52, 3: 419-41.
- Benson, B.L., D.W. Rasmussen, and I. Kim. 1998. "Deterrence and Public Policy: Trade-Offs in the Allocation of Police Resources." *International Review of Law and Economics* 18: 77-100.
- Benson, B.L., I.S. Leburnand and D.W. Rasmussen. 2001. "The Impact of Drug Enforcement on Crime: An Investigation of the Opportunity Costs of Police Resources." *Journal of Drug Issues* 31, 4: 989-1006.
- Bonnie, Richard J. 1980. *Marijuana Use and Criminal Sanctions: Essays on the Theory and Practice of Decriminalization* (New York: Michie/Bobbs-Merrill).
- Bureau of Justice Statistics (BJS). n.d. "Number of Arrests by Drug Type, 1982-2005." Available online at <http://www.ojp.usdoj.gov/bjs/dcf/tables/drugtype.htm>
- Bureau of Justice Statistics (BJS). n.d. "State Prison Expenditures, 2001." Available online at <http://www.ojp.usdoj.gov/bjs/pub/pdf/spe01.pdf>
- Bureau of Justice Statistics (BJS). 2005. Sourcebook of Criminal Justice Statistics Online. Available online at <http://www.albany.edu/sourcebook/>
- Center for Disease Control. 2005. "Health, United States, 2005." Available online at <http://www.cdc.gov/nchs/data/hus/hus05acc.pdf>
- Congressional Research Service. 2002. "Crime Control: The Federal Response." Available online at http://www.policyalmanac.org/crime/archive/crs_federal_crime_policy.shtml
- Department of Justice, Drug Enforcement Agency. 1988. "In the Matter of Marijuana Rescheduling Petition," [Docket #86-22].
- Donziger, Steven A., ed. 1996. *The Real War on Crime: The Report of the National Criminal Justice Commission* (New York: Perennial).

Faupel, Charles E., Alan M. Horowitz and Greg S. Weaver. 2004. *The Sociology of American Drug Use* (Boston: McGraw Hill).

Federal Bureau of Investigation (FBI). 2002. *Arrests by Age, Sex and Race* (Washington D.C.: Government Printing Office).

Federal Bureau of Investigation (FBI). 2005. "Crime in the United States: FBI Uniform Crime Reports 2004" (Washington, DC: U.S. Government Printing Office).

Gettman, Jon. 2005. "Crimes of Indiscretion: Marijuana Arrests in the United States." Published by the NORML Foundation. Available online at http://www.norml.org/index.cfm?Group_ID=6411

Golub, Andrew and Bruce D. Johnson. 2001. "The Rise of Marijuana as the Drug of Choice Among Youthful Adult Arrestees." Washington D.D.: National Institute of Justice.

Harcourt, Bernard E. and Jen Ludwig. 2007. "Reefer Madness: Browken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000." Forthcoming in *Criminology and Public Policy*. Available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=948753#PaperDownload

Institute of Medicine. 1982. *Marijuana and Health* (Washington D.C.: National Academy Press.)

Jensen, Eric L. and J. Gerber. 1996. "The Civil Forfeiture of Assets and the War on Drugs," *Crime and Delinquency* 42: 412-34.

Johnston, L. D., J. Bachman, and P. O'Malley. 1981. "Marijuana Decriminalization: The Impact on Youth, 1975-1980." *Monitoring the Future Occasional Paper 13* (Ann Arbor, MI: Institute for Social Research).

Johnston, L.D., P.M. O'Malley, J.G. Bachman, and J.E. Schulenberg 2004. *Monitoring the Future: National Survey Results on Drug Use, 1975-2003*. Volume 1: Secondary School Students. Bethesda, MD: National Institute on Drug Abuse.

Joy, Janet E., Stanley J. Watson, Jr. and John A. Benson, Jr. 1999. *Marijuana and Medicine: Assessing the Science Base*. Division of Neuroscience and Behavioral Research, Institute of Medicine (Washington D.C.; National Academy Press).

Kalant, Harold. 2004. "Adverse Effects of Cannabis on Health: An Update of the Literature since 1996." *Progress in Neuro-Psychopharmacology and Biological Psychiatry* 28, 5: 849-863.

King, Ryan S. and Marc Mauer. 2005. "The War on Marijuana: The Transformation of the War on Drugs in the 1990s," (Washington D.C.: The Sentencing Project).

- Lancet*. 1995. "Deglamorising Cannabis." *Lancet* 346: 1241.
- MacCoun, R., and Reuter, P. 2001. "Evaluating Alternative Cannabis Control Regimes", *British Journal of Psychiatry* 178: 123-128.
- Maguire, K. and A.L. Pastore, eds. 2002. *Sourcebook of Criminal Justice Statistics 2001*.
- Maltz, Michael D. and Joseph Targonski. 2002. "A Note on the Use of County Level UCR Data." *Journal of Quantitative Criminology* 18, 3 (September 2002): 297-318.
- Marijuana Policy Project (MPP). 2006. "State-by-State Medical Marijuana Laws." Available online at http://www.mpp.org/atf/cf/{FC4E88DF-6ACE-4AA6-851C-0688A929D3C5}/2006_SBS_REPORT.PDF Accessed December 7, 2006.
- Mast, B.D., Benson, B.L., and Rasmussen, D.W. 2000. "Entrepreneurial Police and Drug Enforcement Policy." *Public Choice* 104, 3: 285-308.
- Miller, J. Mitchell and Lance H. Selva. 1997. "Drug Enforcement's Double-Edged Sword: An Assessment of Asset Forfeiture Programs." In Larry K. Gaines and Peter B. Kraska, eds, *Drugs, Crime and Justice: Contemporary Perspectives* (Prospect Heights, IL: Waveland Press), pp. 275-96.
- Minron, Jeffrey. 2005. "The Budgetary Implications of Marijuana Prohibition." Available online at <http://www.prohibitioncosts.org/MironReport.pdf> Accessed February 27, 2006.
- Nadelmann, Ethan, "An End to Marijuana Prohibition," *National Review*, July 12, 2004. Available online at http://www.drugpolicy.org/docUploads/Nadelmann_National_Review_Article_with_Footnotes.pdf
- National Commission on Marijuana and Drug Abuse. 1972. *Marijuana: A Signal of Misunderstanding* (Washington D.C.: U.S. Government Printing Office).
- National Drug Intelligence Center. 2005. *National Drug Threat Assessment 2005: Summary Report*. Available online at <http://www.usdoj.gov/ndic/pubs11/13846/marijuana.htm> Accessed May 19, 2005.
- Office of National Drug Control Policy. 2004. "The Price and Purity of Marijuana Through the Second Quarter of 2003" (Washington DC: Executive Office of the President), Publication Number NCJ 207768. Available online at http://www.whitehousedrugpolicy.gov/publications/price_purity/exec_summ.pdf.
- Office of National Drug Control Policy (ONDCP). 2005a. "Disrupting the Market: Attacking the Economic Basis of the Drug Trade." This report is online at: http://www.whitehousedrugpolicy.gov/publications/policy/ndcs05/disrupt_mkt.html

Office of National Drug Control Policy. 2005b "Who's Really in Prison for Marijuana?" Available online at http://www.whitehousedrugpolicy.gov/publications/whos_in_prison_for_marij/whos_in_prison_for_marij.pdf

Pacula, R.L., Grossman, M., Chaloupka, F.J., O'Malley, P.M., Johnston, L.D., and Farrelly, M.C. 2000. *Marijuana and Youth*. Working Paper No. 7703. Cambridge, MA: National Bureau of Economic Research.

Reinarman, Craig, Peter D.A. Cohen, and Hendrien L. Kaal. 2004. "The Limited Relevance of Drug Policy: Cannabis in Amsterdam and San Francisco," *American Journal of Public Health* 94, 5: 836-42.

Reuter, P., P. Hirschfield., and C. Davies. 2001. "Assessing the Crack-Down on Marijuana in Maryland." Available online at http://www.dpf.org/docUploads/md_mj_crackdown.pdf

SAMHSA. 2001. National Survey on Drug Use & Health, 2001.

SAMHSA. 2002. National Survey on Drug Use and Health, 2002.

SAHMSA. 2003. National Survey on Drug Use and Health, 2003.

SAHMSA. 2005. National Survey on Drug Use and Health, 2005.

SAHMSA. 2005b. "Differences in Marijuana Admissions Based on Source of Referral: 2002." Available online at <http://oas.samhsa.gov/2k5/MJreferrals/MJreferrals.htm>

Schlosser, Eric. 2003. *Reefer Madness: Sex, Drugs and Cheap Labor in the American Black Market* (New York: Houghton Mifflin Books, Inc.).

Seattle Post-Intelligencer. 2005. "Two years later, little fallout from Seattle's pot initiative" (November 23).

Silverman E, Wrede AF, Banta-Green C, Jackson TR, Nyrop K, Freng S, Kingston S, Hanrahan M, Thiede H, Harruff R, Nakagawara J, Fillipi N, McBride M, Forbes A. 2001. *Recent Drug Abuse Trends in Seattle-King County in Proceedings of the Community Epidemiology Work Group, Vol. II. December 2001*. National Institute on Drug Abuse, Bethesda, MD.

Shepard, E.M. and P.R. Blackley. 2005. "Drug Enforcement and Crime: Recent Evidence from New York State," *Social Science Quarterly* 86, 2: 323-342.

Stein, Joel. 2002. "The New Politics of Pot," *Time Magazine*, November 4, 2002. Available online at <http://www.time.com/time/archive/preview/0,10987,1101021104-384830,00>

The Stranger. 2005. "After I-75". December 8 -December 14.

Tonry, Michael. 1995. *Malign Neglect: Race, Crime and Punishment in America* (Oxford University Press).

U.S. Department of Justice, Drug Enforcement Agency. 1988. "In the Matter of Marijuana Rescheduling Petition," [Docket #86-22] (September 6).

Washington Citizens for Medical Rights, n.d. "The Washington State Medical Marijuana Act: A Guide for Patients and Physicians." Available online at <http://www.eventure.com/i692/Media/MMJINFO.pdf>

Washington State Department of Health and Human Services. 2004. *Tobacco, Alcohol, and Other Drug Abuse Trends in Washington State: 2004 Report* (Olympia, Washington).

Washington State Department of Health and Human Services, n.d. *County Profile of Substance Use and Need for Treatment Services: King County*. Available online at <http://www1.dshs.wa.gov/pdf/hrsa/dasa/2003WANAHSCoProfiles/King.pdf>

Washington State Office of Superintendent of Public Instruction. 2003. *Washington State Healthy Youth Survey 2002: Analytic Report*. Available online at <http://www.k12.wa.us/safedrugfree/pubdocs/HealthyYouth2002/HealthyYouth2002.pdf>

Washington State Institute For Public Policy. 2006. "Evidence-Based Public Policy Options To Reduce Future Prison Construction, Criminal Justice Costs, And Crime Rates." Available online at <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf>.

Wisotsky, Steven. 1992, "Society of Suspects: The War on Drugs and Civil Liberties." Available online at <http://www.cato.org/pubs/pas/pa-180es.html>

World Health Organization. 1982. *Report on Cannabis Use* (Toronto: Addiction Research Foundation).

Zeidenberg, Jason and Jason Colburn. 2005. *Efficacy & Impact: The Criminal Justice Response to Marijuana Policy in the U.S.* Washington D.C.: Justice Policy Institute.

Zernike, Kate. 2001. "Study Finds Teenage Drug Use Higher in U.S. than in Europe," *New York Times*, February 21, 2001, p. A4. Available online at <http://www.mapinc.org/newscsdp/v01/n315/a01.html>.

Zimmer, Lynn and John P. Morgan. 1997. *Marijuana Myths, Marijuana Facts: A Review of the Scientific Evidence* (New York: The Lindesmith Center).

STATUTES CITED

Controlled Substances Act, 21 U.S.C. § 812 (1996).

Higher Education Amendments of 1998, Pub. L. No. 105-244, § 483, 112 Stat. 1581 (1998), amended by the Higher Education Reconciliation Act of 2005, Pub. L. No. 109-171, § 8021(c), 120 Stat. 178 (2005).

Mont. Code Ann. § 45.9.101(4) (2005).

N.M. Stat. Ann. § 30-31-22(1)(C), N.M. Stat. Ann. § 31-18-15(A)(8) .

Okla. Stat. tit. 63, § 2-401(B)(2) (2006).

Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, § 115, 110 Stat. 2105 (1996).

Seattle Municipal Code, Section 12A.20.060 (2006).

Washington State Medical Marijuana Act, Chapter 69.51A RCW.