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This policy brief was drafted by Andrea Ó Súilleabháin, Deputy Director at Partnership for the Public Good, in collaboration with Open Buffalo and the New York office of the Drug Policy Alliance.

The brief analyzes the last five years of data on arrests for low-level marijuana possession within the City of Buffalo and across Erie County, obtained from the New York State Division of Criminal Justice Services. It explores the consistent racial disparities in arrests from 2012-2016, the drivers of these trends, and the social and economic impacts of unequal enforcement on communities of color.

The brief concludes by considering the potential positive impacts of marijuana legalization, including racial justice, improved public safety, and economic benefits for previously targeted communities.

The research and analysis in this brief inform PPG's work with Open Buffalo's Justice and Opportunity Coalition, which will work toward the adoption of the New York State Marijuana Regulation and Taxation Act (MRTA) in 2018.



**We are
the Drug
Policy
Alliance.**

Policy Brief

Advancing Racial Equity and Public Health: Smarter Marijuana Laws in Western New York

NOVEMBER 2017

Marijuana Arrests in Buffalo and Erie County

In New York State, 80 percent of those arrested for low-level marijuana possession in 2016 were black or Hispanic people.¹ The disparity in the City of Buffalo is slightly worse. From 2012 to 2016, over two-thousand people were arrested in Buffalo for low-level marijuana possession. 86 percent of those arrested were people of color, while 13 percent were white, though Buffalo's population is 51 percent people of color and 49 percent white and others (Figure 1).²

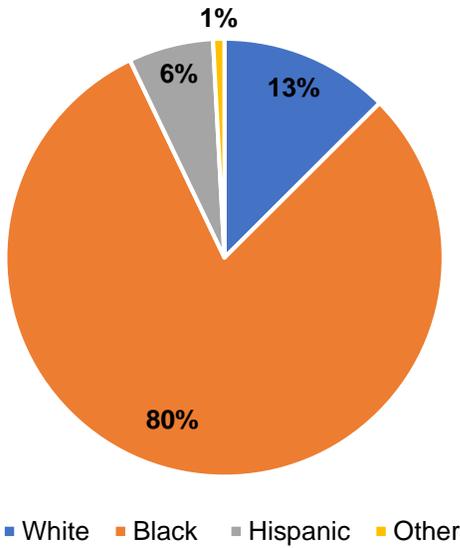
Across Erie County, from 2012 to 2016, 76 percent of those arrested for the same offense were people of color, while 24 percent were white people.³ Erie County's population is 18 percent people of color, and 82 percent white people and others.⁴

As PPG argued in 2015, the costs of continuing to enforce marijuana prohibition far outweigh the benefits.⁵ Rather than adding to public safety, prohibition undermines it by criminalizing individuals and their neighborhoods and driving a large and violent underground economy. The persistent racial disparities in arrests in Buffalo and Erie County also harm community-police relations and counters trust in over-policed neighborhoods.⁶

Indeed, advocates for ending marijuana prohibition in New York argue that current policies and enforcement have profound costs in both human and economic terms. The Start SMART NY campaign, convened by the Drug Policy Alliance, argues that the legalization of marijuana is smart for communities, for racial justice, and for the state's economy.⁷

Figure 1.

City of Buffalo
Marijuana Arrests, 2012-2016



City of Buffalo
Population

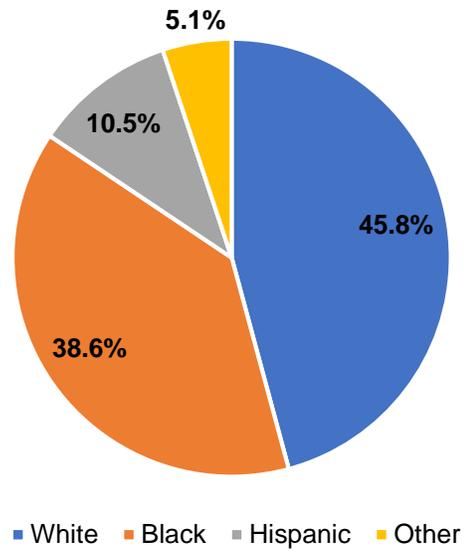
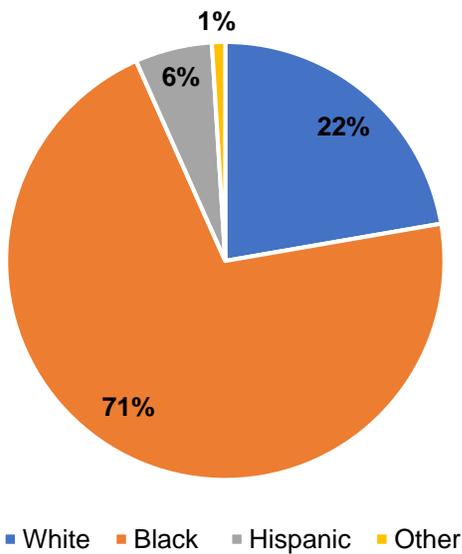
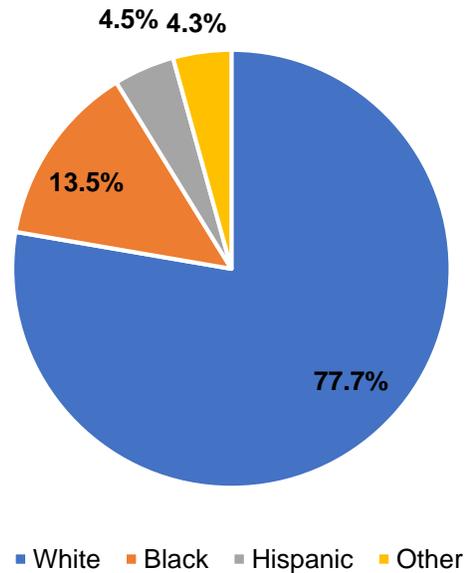


Figure 2.

Erie County
Marijuana Arrests, 2012 to 2016



Erie County
Population



Note: Race data labels reflect US Census categories.

Legalization is also in line with public opinion. “Since Colorado and Washington became the first states to legally regulate marijuana in 2012, support for legalization has continued to increase, now reaching 60% nationally.”⁸ Yet there are now more arrests for marijuana possession annually in the US than for all violent crimes.⁹ Marijuana prohibition is unique in being so widely and aggressively enforced, and yet viewed as unnecessary by the majority of the population.¹⁰

Racial Disparities in Marijuana Prohibition Enforcement

Despite the persistent racial disparities in arrest rates for residents of Buffalo and Erie County, rates of marijuana use are roughly equal. In fact, across the United States, young white people use marijuana at slightly higher rates than young people

of color (Figure 3).¹¹ In Buffalo and across New York State, the disparities in the number of marijuana possession arrests cannot be explained by a higher use among black or Hispanic people.

In the last five years, arrests for low-level marijuana possession in both Buffalo and Erie County peaked in 2013. Within Buffalo, there were 555 arrests in 2013, and 86 percent of these were people of color (Figure 4). Across Erie County, there were 678 arrests, and 76 percent of these were people of color (Figure 5).

Like many jurisdictions, Buffalo and Erie County have reduced enforcement of marijuana prohibition in the last three years, perhaps in response to a shifting policy consensus and growing awareness of racial bias in enforcement. Though arrests decreased steadily in 2014, 2015,

Figure 3.

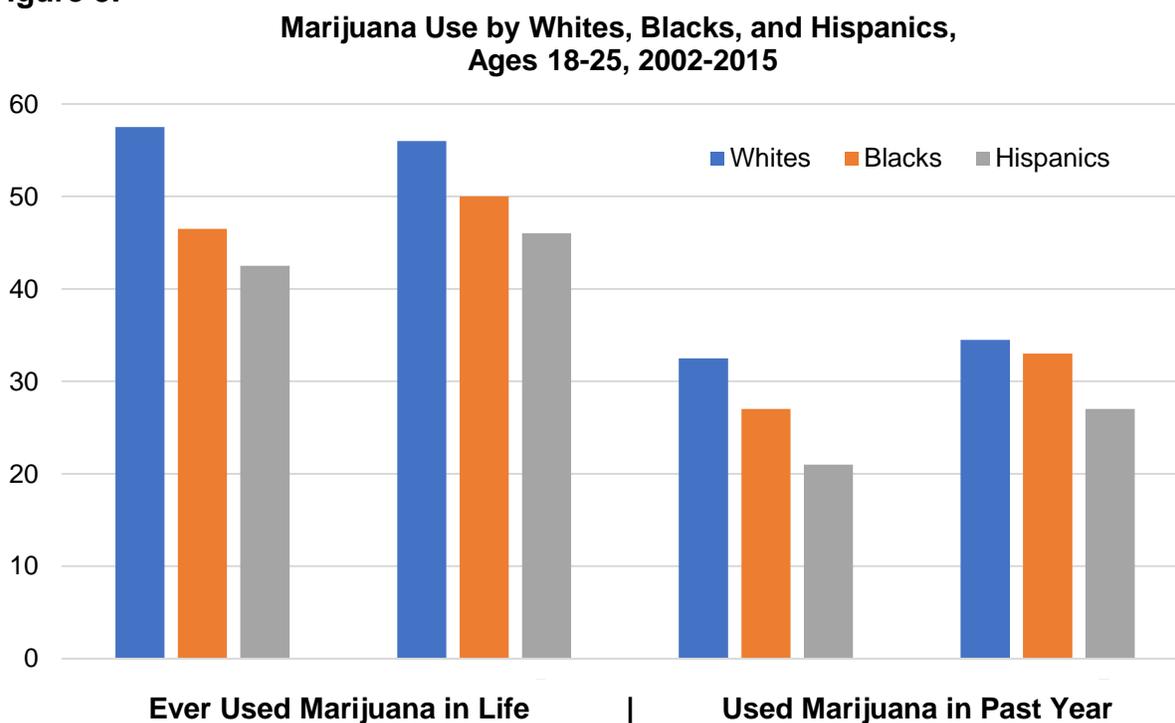


Chart reproduced from Harry Levine, “Unjust and Unconstitutional: 60,000 Jim Crow Marijuana Arrests in Mayor de Blasio’s New York,” Drug Policy Alliance and Marijuana Arrest Research Project, June 2017.

POLICY BRIEF

and 2016, the racial disparity remained almost constant. In 2016, within Buffalo, there were 231 total arrests, and 82 percent were people of color (Figure 4).

In Erie County, there were 313 total arrests, and 74 percent were people of color (Figure 5).

Figure 4.

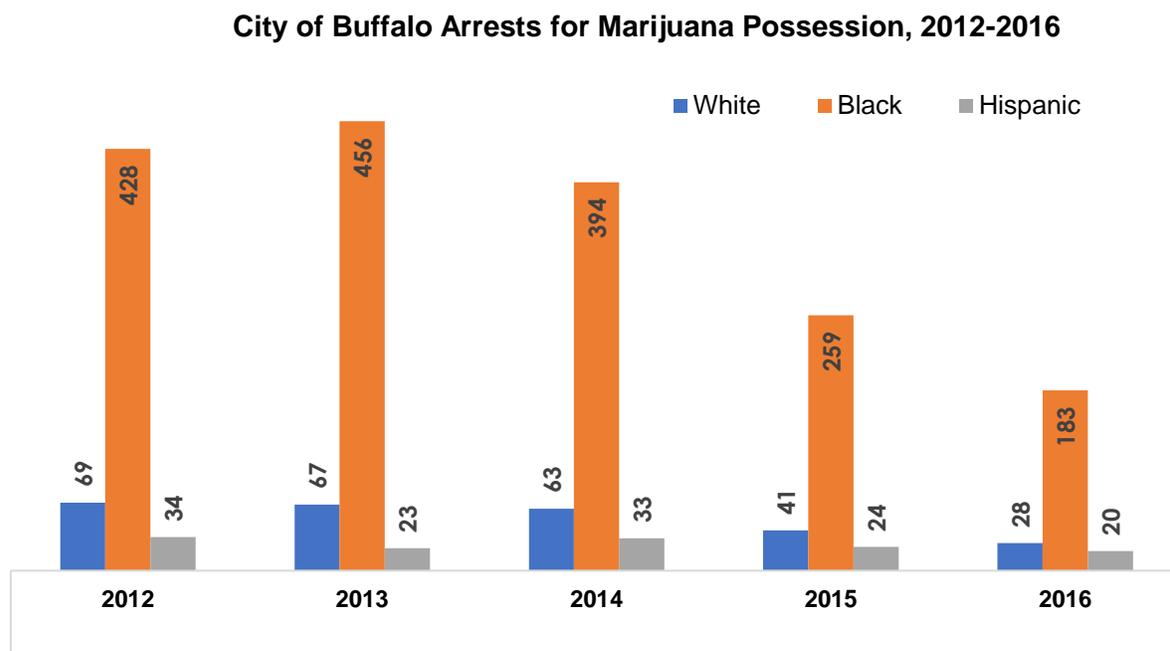
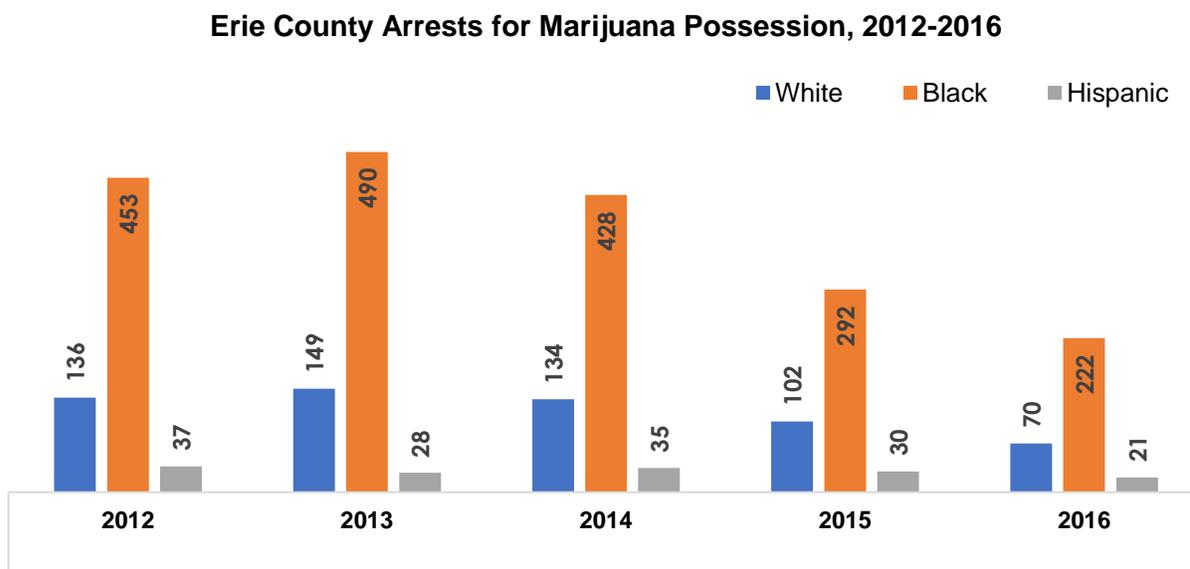


Figure 5.



Marijuana, “Broken Windows,” and the War on Drugs

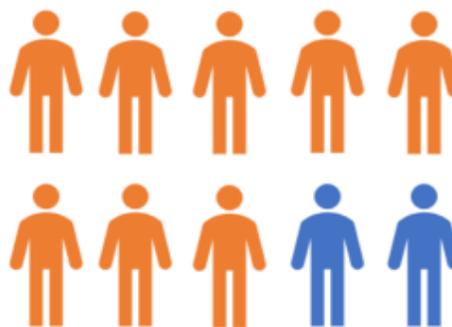
The continued enforcement of low-level marijuana possession reflects national trends driven by the war on drugs and the broken windows theory of policing. Since the 1980s, new laws and policies led to a massive increase in the number of arrests and convictions for drug offenses, and tended to target low-level offenses in non-white, poor communities. Broken windows practices asked police officers to eliminate visible signs of disorder, prevalent in public housing and low-income neighborhoods. As these policies took hold, in the 1990s, marijuana accounted for nearly 80 percent of the rise in drug arrests nationwide.¹²

While many cities are beginning to reject these policies in favor of more community-oriented policing, the targeting of low-level possession of drugs continues to dominate police practice. In 2015, 43 percent of all drug arrests in the United States were for marijuana (643,122 arrests in total). Almost 90 percent of these arrests were for possession alone, not for sale or manufacture.¹³ Between 20,000 and 30,000 people are currently imprisoned solely for marijuana offences, according to a 2014 estimate.¹⁴

Targeting marijuana possession has broader effects in law enforcement tactics, when it is used as a tool for illegal or overly aggressive stops and searches. Perhaps most notoriously in New York City, police sometimes use the “claimed odor of marijuana or observation of smoking” to justify illegal or frequent ‘stop and frisk’ practices.¹⁵

The Drug Policy Alliance has concluded that marijuana prohibition and enforcement “...have effectively eroded key principles of the criminal justice system, including the Constitutional protection against illegal searches and seizures, the Constitutional right to due process, and the general principle of a presumption of innocence.”¹⁶ More research is needed on the connection of marijuana to the Buffalo Police Department’s stop and search policies, but already there is cause for concern. The Buffalo Police Department’s Strike Force Unit and Housing Unit generate huge numbers of arrests through traffic stops and checkpoints—which have been challenged as racially biased and unconstitutional.

In the City of Buffalo, 8 of every 10 people arrested for possession of marijuana are black.



Prohibition and Communities of Color

The enforcement of marijuana prohibition has devastating effects for individuals, families, and whole communities across Buffalo and Erie County. Thousands of individuals brought into the criminal justice system on marijuana possession charges

face the expense of fines, fees, and missed work. In the longterm, it weighs individuals down with criminal records that limit their access to housing and loans, employment, and education. Their families also face these consequences, as well as the absence of parents and spouses due to arrest and incarceration.

For communities of color, marijuana prohibition has justified an invasive police presence that damages citizens' relationships with law enforcement. And it brings a violent, underground economy into their neighborhood, that cannot be governed by rule of law or regulated as an industry. For immigrant communities, arrests for marijuana possession can lead to deportation. This has happened on a large scale; simple marijuana possession was the fourth most common cause of deportation for any offense in 2013.¹⁷

For young people, the stakes of a marijuana arrest are particularly high, due to the longterm costs of early involvement in the criminal justice system. In Erie

County, young people are most frequently arrested for marijuana possession. 58 percent of those arrested in 2016 were 25 years old or younger; 83 percent were 34 or younger (see Figure 6). When these young people are convicted, even of minor marijuana offenses, the impact on their educational, employment, and other life opportunities for young people can be severe.¹⁸

Potential Impacts of Legalization

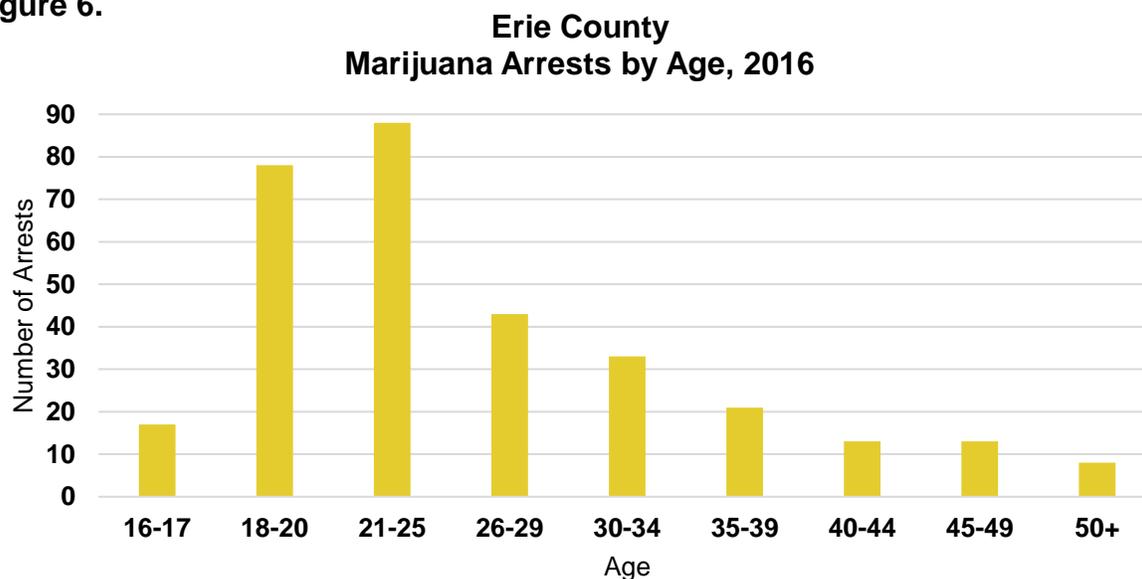
The Marijuana Regulation and Taxation Act (MRTA) has been introduced into the New York State Assembly by Assemblymember Crystal Peoples-Stokes, a representative from the City of Buffalo.

Passing the MRTA can bring the following positive impacts:

Public Health and Youth Access

As demonstrated in other states, regulation and legalization of marijuana reduces and restricts access to it. This helps reduce youth use of marijuana by banning it near

Figure 6.



schools and youth centers and prohibiting advertising to minors. Under MRTA provisions, just like alcohol regulation, retail business must check IDs for age and selling to minors can result in loss of license.

Racial Justice

In 2016, arrests for low-level marijuana possession made up ten percent of all misdemeanor drug arrests in Erie County. Legalizing marijuana would reduce low-level drug arrests by ten percent, and help reduce racial disparities in overall arrest numbers. The MRTA is a significant step toward de-criminalizing communities of color, and it makes changes retroactive. Past convictions for crimes eliminated under the MRTA can be sealed or reduced on a criminal record.¹⁹

Community Reinvestment

The economic benefit gained from a regulated marijuana industry can be used to serve communities harmed by the war on drugs. An official study by the New York City comptroller found that estimated tax

revenue for a regulated marijuana market could exceed \$400 million in the city alone.²⁰ The MRTA allocates 25 percent of tax revenue to the state department of education; another 25 percent is directed to funding drug treatment programs and public education programs that prevent and treat misuse of substances like alcohol and marijuana by youth. The remaining 50 percent would be used to establish the Community Grants Reinvestment Fund, to fund community-based projects that redress harms caused by the war on drugs, with job training, adult education, afterschool programs, re-entry services, and more.

This brief calls on the New York State Legislature to end prohibition, create a system to tax and regulate marijuana, and repair and reinvest in communities most harmed by the war on drugs by adopting the Marijuana Regulation and Taxation Act (MRTA).

- ¹ New York State Division of Criminal Justice Services (DCJS) data, cited in Drug Policy Alliance, “Marijuana Prohibition and Policing”, June 2017, available at: http://smart-ny.com/wp-content/uploads/2017/06/StartSMART_DPA_Police-Reform-and-MRTA-6.9.2017.pdf.
- ² New York State Division of Criminal Justice Services (DCJS) data, obtained by PPG.
- ³ Ibid.
- ⁴ US Census Bureau, 2010
- ⁵ Sam Magavern, “The Potential Impact of Legalizing, Regulating and Taxing Marijuana on Erie County and New York State,” Partnership for the Public Good, October 2015.
- ⁶ Partnership for the Public Good, “Alarming Disparities: the Disproportionate Number of African American and Hispanic People in the Erie County Criminal Justice System” (2013). Available from: www.ppgbuffalo.org.
- ⁷ Start SMART New York, Fact Sheets. Available from <http://smart-ny.com/resources/fact-sheets>.
- ⁸ Drug Policy Alliance, “The Costs of Marijuana Prohibition Enforcement: The Criminal Justice System,” June 2017, citing Swift, A. (2016). Support for Legal Marijuana Use Up to 60% in U.S. Retrieved from <http://www.gallup.com/poll/196550/support-legalmarijuana.aspx>.
- ⁹ Christopher Ingraham, “More people were arrested last year over pot than for murder, rape, aggravated assault and robbery – combined,” *The Washington Post*, September 26, 2017. Retrieved from https://www.washingtonpost.com/news/wonk/wp/2017/09/26/more-people-were-arrested-last-year-over-pot-than-for-murder-rape-aggravated-assault-and-robbery-combined/?utm_term=.1d4d4dc26cf0.
- ¹⁰ Drug Policy Alliance, “Ten Facts about Marijuana.” Retrieved from <http://www.drugpolicy.org/sites/default/files/TenFactsAboutMarijuana.pdf>.
- ¹¹ “Marijuana Use” chart is reproduced from Harry Levine, “Unjust and Unconstitutional: 60,000 Jim Crow Marijuana Arrests in Mayor de Blasio’s New York,” Drug Policy Alliance and Marijuana Arrest Research Project, June 2017. Available at https://www.drugpolicy.org/sites/default/files/Marijuana-Arrests-NYC--Unjust-Unconstitutional--July2017_2.pdf.
- ¹² American Civil Liberties Union, “The War on Marijuana in Black and White” (June 2013). Available at www.aclu.org.
- ¹³ Drug Policy Alliance, “State of New York: Casualties of the Marijuana Arrest Crusade,” September 2017. Available at <http://smart-ny.com/ny-casualties-marijuana-arrest-crusade/>.
- ¹⁴ Jesse Wegman, “The Injustice of Marijuana Arrests,” *New York Times*, July 28, 2014.
- ¹⁵ Drug Policy Alliance & Marijuana Arrest Research Project, “Unjust and Unconstitutional: 60,000 Jim Crow Marijuana Arrests in Mayor de Blasio’s New York,” July 2017. Available at <http://marijuana-arrests.com/docs/Marijuana-Arrests-NYC--Unjust-Unconstitutional--July2017.pdf>.
- ¹⁶ Drug Policy Alliance, “The Costs of Marijuana Prohibition Enforcement: The Criminal Justice System,” September 2017. Available at <http://smart-ny.com/marijuana-prohibition-and-criminal-justice-system>.
- ¹⁷ Drug Policy Alliance, “The Drug War and Mass Deportation,” February 2016. Available at <https://www.drugpolicy.org/resource/drug-war-and-mass-deportation>.
- ¹⁸ Drug Policy Alliance, “The Marijuana Regulation and Taxation Act: The SMART Way to Protect Young New Yorkers,” June 2017.
- ¹⁹ Drug Policy Alliance, “The Marijuana Regulation and Taxation Act: Racial Justice Considerations,” June 2017.
- ²⁰ Ibid.

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