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The Injustice of Marijuana Arrests

By JESSE WEGMAN JULY 28, 2014

America's four-decade war on drugs is responsible for many casualties, but the criminalization of marijuana has been perhaps the most destructive part of that war. The toll can be measured in dollars — billions of which are thrown away each year in the aggressive enforcement of pointless laws. It can be measured in years — whether wasted behind bars or stolen from a child who grows up fatherless. And it can be measured in lives — those damaged if not destroyed by the shockingly harsh consequences that can follow even the most minor offenses.

In October 2010, Bernard Noble, a 45-year-old trucker and father of seven with two previous nonviolent offenses, was stopped on a New Orleans street with a small amount of marijuana in his pocket. His sentence: more than 13 years.

At least he will be released. Jeff Mizanskey, a Missouri man, was arrested in December 1993, for participating (unknowingly, he said) in the purchase of a five-pound brick of marijuana. Because he had two prior nonviolent marijuana convictions, he was sentenced to life without parole.

Outrageously long sentences are only part of the story. The hundreds of thousands of people who are arrested each year but do not go to jail also suffer; their arrests stay on their records for years, crippling their prospects for jobs, loans, housing and benefits. These are disproportionately people of color, with marijuana criminalization hitting black communities the hardest.

Meanwhile, police departments that presumably have far more important things to do waste an enormous amount of time and taxpayer money chasing a drug that two states have already legalized and that a majority of Americans believe should be legal everywhere.

A Costly, Futile Strategy

The absurdity starts on the street, with a cop and a pair of handcuffs. As the war on drugs escalated through the 1980s and 1990s, so did the focus on common, low-level offenses — what became known as “broken windows” policing. In New York City, where the strategy was introduced and remains popular today, the police made fewer than 800 marijuana arrests in 1991. In 2010, they made more than 59,000.

Nationwide, the numbers are hardly better. From 2001 to 2010, the police made more than 8.2 million marijuana arrests; almost nine in 10 were for possession alone. In 2011, there were more arrests for marijuana possession than for all violent crimes put together.

The costs of this national obsession, in both money and time, are astonishing. Each year, enforcing laws on possession costs more than \$3.6 billion, according to the American Civil Liberties Union. It can take a police officer many hours to arrest and book a suspect. That person will often spend a night or more in the local jail, and be in court multiple times to resolve the case. The public-safety payoff for all this effort is meager at best: According to a 2012 Human Rights Watch report that tracked 30,000 New Yorkers with no prior convictions when they were arrested for marijuana possession, 90 percent had no subsequent felony convictions. Only 3.1 percent committed a violent offense.

The strategy is also largely futile. After three decades, criminalization has not affected general usage; about 30 million Americans use marijuana every year. Meanwhile, police forces across the country are strapped for cash, and the more resources they devote to enforcing marijuana laws, the less they have to go after serious, violent crime. According to F.B.I. data, more than half of all violent crimes nationwide, and four in five property crimes, went unsolved in 2012.

The Racial Disparity

The sheer volume of law enforcement resources devoted to marijuana is bad enough. What makes the situation far worse is racial disparity. Whites and blacks use marijuana at roughly the same rates; on average, however, blacks are 3.7 times more likely than whites to be arrested for possession, according to a comprehensive 2013 report by the A.C.L.U.

In Iowa, blacks are 8.3 times more likely to be arrested, and in the worst-offending counties in the country, they are up to 30 times more likely to be arrested. The war on drugs aims its firepower overwhelmingly at African-Americans on the street, while white users smoke safely behind closed doors.

Only about 6 percent of marijuana cases lead to a felony conviction; the rest are often treated as misdemeanors resulting in fines or probation, if the charges aren't dismissed completely. Even so, every arrest ends up on a person's record, whether or not it leads to prosecution and conviction. Particularly in poorer minority neighborhoods, where young men are more likely to be outside and repeatedly targeted by law enforcement, these arrests accumulate. Before long a person can have an extensive "criminal history" that consists only of marijuana misdemeanors and dismissed cases. That criminal history can then influence the severity of punishment for a future offense, however insignificant.

While the number of people behind bars solely for possessing or selling marijuana seems relatively small — 20,000 to 30,000 by the

most recent estimates, or roughly 1 percent of America's 2.4 million inmates — that means nothing to people, like Jeff Mizanskey, who are serving breathtakingly long terms because their records contained minor previous offenses. Nor does it mean anything to the vast majority of these inmates who have no history of violence (about nine in 10, according to a 2006 study). And as with arrests, the racial disparity is vast: Blacks are more than 10 times as likely as whites to go to prison for drug offenses. For those on probation or parole for any offense, a failed drug test on its own can lead to prison time — which means, again, that people can be put behind bars for smoking marijuana.

Even if a person never goes to prison, the conviction itself is the tip of the iceberg. In a majority of states, marijuana convictions — including those resulting from guilty pleas — can have lifelong consequences for employment, education, immigration status and family life.

A misdemeanor conviction can lead to, among many other things, the revocation of a professional license; the suspension of a driver's license; the inability to get insurance, a mortgage or other bank loans; the denial of access to public housing; and the loss of student financial aid.

In some states, a felony conviction can result in a lifetime ban on voting, jury service, or eligibility for public benefits like food stamps. People can be fired from their jobs because of a marijuana arrest. Even if a judge eventually throws the case out, the arrest record is often available online for a year, free for any employer to look up.

Correcting an Old Inequity

As recently as the mid-1970s, politicians and the public generally agreed that marijuana abuse was handled better by treatment than by prosecution and incarceration. Jimmy Carter ran for president and won while supporting decriminalization. But that view lost out as the war on drugs broadened and intensified, sweeping marijuana along with it.

In recent years, public acceptance of marijuana has grown

significantly. Thirty-five states and the District of Columbia now permit some form of medical marijuana, and Colorado and Washington fully legalized it for recreational use in 2012. And yet even as “ganjapreneurs” scramble to take economic advantage, thousands of people remain behind bars, or burdened by countless collateral punishments that prevent them from full and active membership in society.

In a March interview, Michelle Alexander, a law professor whose book, “The New Jim Crow,” articulated the drug war’s deeper costs to black men in particular, noted the cruel paradox at play in Colorado and Washington. She pointed to “40 years of impoverished black kids getting prison time for selling weed, and their families and futures destroyed,” and said, “Now, white men are planning to get rich doing precisely the same thing?”

As pioneers in legalization, those two states should set a further example by providing relief to people convicted of crimes that are no longer crimes, including overturning convictions. A recent ruling by a Colorado appeals court overturned two 2011 convictions because of the changed law, and the state’s Legislature has enacted laws in the last two years to give courts more power to seal records of drug convictions and to make it easier for defendants to get jobs and housing after a conviction. These are both important steps into an uncharted future.

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A version of this editorial appears in print on July 29, 2014, on page A20 of the New York edition with the headline: The Injustice of Marijuana Arrests.