

Committee on the Justice System
Maxwell Kampfner-Williams, *Counsel*
Kieshorne Dennie, *Policy Analyst*
Monica Pepple, *Financial Analyst*



THE COUNCIL OF THE CITY OF NEW YORK

**COMMITTEE REPORT OF THE
JUSTICE DIVISION**

Jeffrey Baker, Legislative Director
Brian Crow, Deputy Director, Justice Division

COMMITTEE ON THE JUSTICE SYSTEM

Hon. Rory Lancman, Chair

March 26, 2019

Resolution 641: Expunging Misdemeanor Marijuana Convictions

RESO. 641: By the Public Advocate (Mr. Williams) and Council Members Levin, Cumbo, Ayala, Lander and Kallos

TITLE: Resolution calling on the coordination of the New York State Division of Criminal Justice Services (DCJS), the New York State Office of Court Administration, and New York City District Attorneys to expunge the records of all city misdemeanor marijuana convictions.

I. INTRODUCTION

On March 25, 2019, the Committee on the Justice System, chaired by Council Member Rory Lancman, will on vote on Resolution 641. The Committee previously heard the resolution on February 27, 2019, at a joint hearing with the Committee on Public Safety, the Committee on the Justice System, the Committee on Consumer Affairs and Business Licensing, and the Committee on Civil and Human Rights. Representatives from the New York City Mayor’s Office of Criminal Justice (“MOCJ”), the New York City Commission on Human Rights (“CCHR”), District Attorney offices, as well as advocates and other members of the public testified at that hearing.

II. HISTORY OF DISPARATE IMPACT IN ENFORCEMENT OF MARIJUANA PROHIBITION

The possession and sale of recreational marijuana is currently illegal under New York State Penal Law Article 221. The racially disparate impact of the enforcement of that prohibition has been well documented. In February 2018, the Data Collaborative for Justice (“DCJ” formerly Misdemeanor Justice Project) at John Jay College of Criminal Justice issued a report entitled “Trends in Arrests for Misdemeanor Charges in New York City, 1993-2016,” which shows that over the past two decades, consistent racial disparities have remained despite extreme fluctuations in the number of arrests for marijuana misdemeanor charges.¹ In 1993, just 5,221 arrests were made in New York City. That number skyrocketed to 60,190 in 2000, and then

¹ Chauhan, P., Tomascak, S., Cuevas, C., Hood, Q. O., & Lu, O. (2018, February). Trends in Arrests for Misdemeanor Charges in New York City, 1993-2016. New York: New York. available at http://misdemeanorjustice.org/wp-content/uploads/2018/01/2018_01_24_MJP.Charges.FINAL_.pdf (Herein Misdemeanor Justice Project Report)

dropped to 32,745 in 2004.² Arrests for marijuana charges rose again to 55,623 in 2010 under Police Commissioner Ray Kelly, and dropped to 21,457 in 2016,³ three years after a federal judge determined that the New York Police Department's ("NYPD") ("Department") stop-and-frisk practices were unconstitutional and appointed a federal monitor to oversee changes to those practices.⁴

According to the DCJ, over the same period, arrests for marijuana-related charges in New York City were overwhelmingly of Black and Latino men. In 1993, the arrest rate for marijuana charges for Blacks was 20.9 times higher than the arrest rate for Whites.⁵ That difference peaked at 23.3 times higher in 1994.⁶ In 2016, while the overall arrest rate had begun to decline, the arrest rate for Blacks was still 7.8 times higher than for Whites.⁷ The figures below, provided by the report, illustrate the total number of arrests made, between 1993 and 2016, by sex and race.⁸

² *Id.* at 51

³ *Id.*

⁴ *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013)

⁵ Chauhan, P., Tomascak, S., Cuevas, C., Hood, Q. O., & Lu, O. (2018, February). Trends in Arrests for Misdemeanor Charges in New York City, 1993-2016. New York: New York. available at http://misdemeanorjustice.org/wp-content/uploads/2018/01/2018_01_24_MJP.Charges.FINAL_.pdf (Herein Misdemeanor Justice Project Report)

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

Figure 50: Number of Misdemeanor Arrests for Marijuana Charges by Sex in New York City, 1993-2016

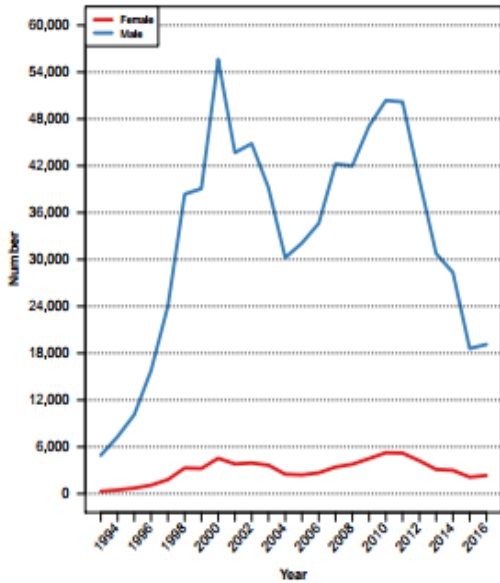
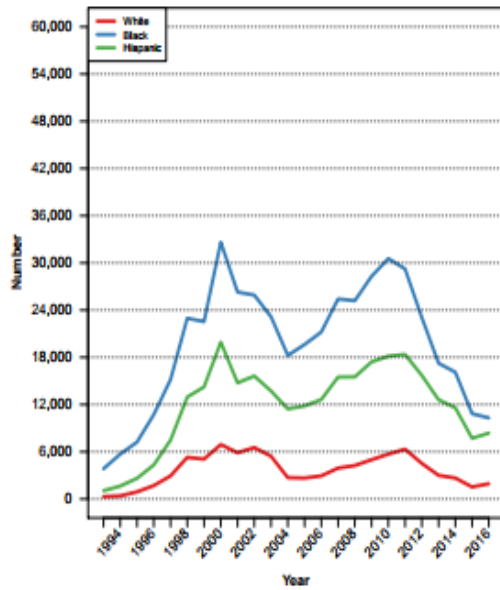


Figure 52: Number of Misdemeanor Arrests for Marijuana Charges by Race/Ethnicity in New York City, 1993-2016



These disparities persist: from January to March of 2018, 93 percent of people arrested for marijuana possession were people of color.⁹ Several studies have indicated that despite higher arrest and incarceration rates for Blacks and Latinos, rates of drug use and sales are similar across racial and ethnic identities.¹⁰ Advocates have asserted that the enforcement of marijuana in New York City is a part of “broken windows” policing strategies where officers actively seek marijuana arrests.¹¹

The NYPD has maintained that it enforces marijuana laws in response to 911 and 311 calls and community complaints. However, data provided to the City Council suggested there was no correlation between these calls and the volume of marijuana arrests in the City and the

⁹ “Racial Disparities Evident in New York City Arrest Data for Marijuana Possession,” May 14, 2018, <https://www.innocenceproject.org/racial-disparities-in-nyc-arrest-data-marijuana-possession/>

¹⁰ “The Drug War, Mass Incarceration, and Race” The Drug Policy Alliance January 25, 2018 *available at* <http://www.drugpolicy.org/resource/drug-war-mass-incarceration-and-race-englishspanish>

¹¹ “Marijuana arrests in city increased in 2016, with large racial disparities”, Politico, available at <https://www.politico.com/states/new-york/city-hall/story/2017/02/marijuana-arrests-in-nyc-increase-in-2016-still-large-racial-disparities-109306> (Last accessed Feb. 22, 2019).

racial disparities of arrestees.¹² In addition, research has shown a lack of a connection between marijuana arrests and a reduction in more serious crime.¹³

In June 2018, the Department announced that it would begin issuing criminal summonses in lieu of arrests for the majority of persons found smoking marijuana in public.¹⁴ The exceptions to the new policy include individuals who had been arrested for a violent crime within three years, individuals on probation or parole, and individuals with open arrest warrants.¹⁵ However, the eligibility criteria and decision to utilize a criminal summons instead of a civil penalty was met with considerable skepticism from advocates.¹⁶ In addition, two of the City's District Attorney's offices have stopped prosecuting marijuana possession cases in circumstances where the NYPD would continue making arrests. Kings County District Attorney Eric Gonzales stopped prosecuting low-level marijuana cases in 2014 and Manhattan District Attorney Cyrus Vance announced that his office would do the same beginning in May 2018.¹⁷

The harshly disproportionate impact of marijuana enforcement has been notable for decades. Misdemeanor charges for the possession of marijuana could mean the loss of a job, suspension or termination of a professional license, inability to receive federal student loans,

¹² Cheney, Brenden "Data don't show link between marijuana complaints and arrests" Politico March 7, 2018 available at <https://www.politico.com/states/new-york/city-hall/story/2018/03/07/data-dont-show-link-between-marijuana-complaints-and-arrests-294825> (Last accessed Feb. 22, 2019).

¹³ "Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York" Harcourt and Ludwig, available at:

https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1250&context=public_law_and_legal_theory

¹⁴ Mueller, Benjamin "New York City Will End Marijuana Arrests for Most People" New York Times June 19, 2018 available at <https://www.nytimes.com/2018/06/19/nyregion/nypd-marijuana-arrests-new-york-city.html> (Last accessed Feb. 22, 2019).

¹⁵ Id.

¹⁶ "Advocates: De Blasio Plan won't end racial disparities", *City & State New York*, available at:

<https://www.cityandstateny.com/articles/policy/criminal-justice/new-york-city-marijuana-summonses-racial-disparities>

¹⁷ Id.

eviction from public housing, and child custody and adoption issues.¹⁸ While marijuana use is not the basis for Administration for Children’s Services to start a case against a parent,¹⁹ drug testing for marijuana, or subsequent discoveries of it in the home, can limit visitation privileges and delay eventual parent-child reunification.²⁰ Studies find that mandated reporters are more likely to report a Black parent’s drug use to protective services, and that once a case is initiated those services are more likely to ultimately remove children from Black families than others.²¹

Misdemeanor convictions for marijuana possession create criminal records that are easily found by credit agencies, financial institutions, schools, landlords, and employers.²² One study found that prospective renters with a criminal conviction lowered the probability of even being able to view, let alone rent an apartment in New York City.²³ Even for cases that end without a conviction, attending multiple court appearances can jeopardize jobs, beds in shelters, and educational opportunities. An arrest itself can also endanger immigration status even if the person is otherwise here legally; even before the current administration’s immigration policies, in 2013, marijuana possession was the fourth most cited cause of deportation in the country.²⁴

One possible remedy to this legacy of racial disparity in marijuana enforcement is to expunge criminal convictions from criminal records. As referenced in the Mayor’s Task Force report, most states that have legalized cannabis use for adults have allowed resentencing of past

¹⁸ Babe Howell, "Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing," *New York University Review of Law & Social Change* 33(2009)

¹⁹ New York Family Court Act § 1012.

²⁰ New York Domestic Relations Law Sections 70 & 240.

²¹ "The Life-Changing Consequences of a Marijuana Arrest in New York: Family Law" September 2017 Drug Policy Alliance available at http://smart-ny.com/wp-content/uploads/2017/10/StartSMART_DPA_Collateral-Consequences-Family-Law_09.14.2017.pdf

²² Jenny Roberts, "Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts," *UC Davis Law Review* 45(2011)

²³ D.N. Evans & J.R. Porter, "Criminal History and Landlord Rental Decisions: A New York Quasi-Experimental Study," *Journal of Experimental Criminology* 11(1)

²⁴ TRAC Immigration "Secure Communities and ICE Deportation: A Failed Program?" April 8, 2014, available at <https://trac.syr.edu/immigration/reports/349/>

convictions, petitions for expungement or sealing, or both.²⁵ However, as the State’s recent sealing legislation has shown, requiring individuals to petition to have their records sealed or expunged creates a significant barrier.²⁶ Another option is to expunge or seal these convictions automatically.

III. RESOLUTION NO. 641

This resolution calls on New York State’s Division of Criminal Justice Services and Office of Court Administration to work in coordination with the City’s District Attorneys to expunge the records of all City misdemeanor marijuana convictions. The resolution has not changed since it was heard in February.

²⁵ “A Fair Approach to Marijuana: Recommendations from the Mayor’s Task Force on Cannabis Legislation”, *available at*: <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2018/12/A-Fair-Approach-to-Marijuana.pdf>, p. 17

²⁶ “Criminal Convictions Behind Them, Few Have Had Their Records Sealed,” *New York Times*, Jan Ransom, July 4, 2018 *available at* <https://www.nytimes.com/2018/07/04/nyregion/criminal-conviction-records-sealed.html>

Res. No. 641

Resolution calling on the coordination of the New York State Division of Criminal Justice Services (DCJS), the New York State Office of Court Administration, and New York City District Attorneys to expunge the records of all city misdemeanor marijuana convictions.

By the Public Advocate (Mr. Williams) and Council Members Levin, Cumbo, Ayala, Lander and Kallos

Whereas, In recent years many jurisdictions around the country have sought to correct the wrongs of the war on drugs and collateral consequences of marijuana-related convictions; and

Whereas, In New York City, enforcement policies have been amended to move further away from criminalizing the low-level possession and use of marijuana; and

Whereas, As of September 2018, the New York City Police Department committed to issuing criminal summons in lieu of arrests for the majority of persons found smoking marijuana in public; and

Whereas, Arrests will only be made if persons are on probation or parole, have an existing criminal warrant, a recent history of violence, does not possess a form of identification, or if their smoking poses an immediate public safety risk, such as while driving a car; and

Whereas, While the City has taken steps to improve enforcement, a legacy of unduly harsh policies has had significantly negative adverse consequences on those with convictions for marijuana possession, hindering access to housing, education, and employment prospects for persons with decades-old convictions; and

Whereas, Due to racial disparities in policing strategies, research shows that poor communities of color are disproportionately affected by marijuana convictions; and

Whereas, According to the Misdemeanor Project at John Jay College of Criminal Justice, between 1993 and 2016, arrestees for marijuana-related charges were overwhelmingly Black and Latino men, despite there being no difference in usage across race; and

Whereas, As many states have now legalized marijuana for recreational use, some jurisdictions, including San Francisco, San Diego, and Seattle have automatically cleared prior misdemeanor convictions for possession; and

Whereas, New York should follow in the footsteps of these jurisdictions; therefore be it

Resolved, That the Council of the City of New York calls on the coordination of the New York State Division of Criminal Justice Services (DCJS), the New York State Office of Court Administration, and New York City District Attorneys to expunge the records of all city misdemeanor marijuana convictions

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10/18/2018
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