

# **MARIJUANA LEGALIZATION DOES NOT CREATES SOCIAL JUSTICE FOR BLACK AND HISPANIC AMERICANS**

## **Executive Summary**

1. Legalization will have a negative effect for communities of color as today's highly intoxicating THC levels will result in far worse health, mental health, familial, public safety and economic consequences.

2. The claim that our nation's prisons are overflowing with otherwise law-abiding people convicted for nothing more than simple possession of marijuana is treated by many as conventional wisdom. It is a myth - an illusion conjured and aggressively perpetuated by drug advocacy groups seeking to relax or abolish America's marijuana laws. This myth it is not substantiated by the evidence. Mass numbers of Blacks and Hispanic are not going to prison for just having personal amounts of marijuana. Marijuana offenders of all races occupy relatively few jail and prison cells, and the ones that do tend to be dealers.

3. Community complaints about marijuana use are legitimate.

4. Legalizing marijuana does not provide social justice for Black or Hispanic Americans. The claim that legalization eliminates racial bias in the justice system is not accurate.

5. A number of states have reduced their prison populations while also cutting crime. This can be done by expanding alternatives to incarceration such as drug courts and drug treatment and making better use of probation and parole resources.

## **Introduction**

The marijuana lobby promotes a false narrative that many thousands of Blacks or Hispanics in the United States are in prison due to petty charges for possession of small amounts of marijuana. This false narrative is used to advocate for marijuana legalization claiming that Blacks and Hispanics are disproportionately incarcerated for marijuana offenses. They claim that if marijuana were legal for personal use the injustice would not occur. They argue that in the interest of "social justice" we should legalize marijuana for personal use. Some people just accept this false claim. Others use it as an excuse to legalize marijuana. It provides them with political cover to sell a dangerous intoxicant in minority communities.

What they do not say is that the marijuana industry stands to make a lot of money promoting this myth of "social justice." They realize they can become rich off of the addiction of others. It does not matter to them what race you are.

In an article entitled "Marijuana Legalization in the United States: a Social Injustice," the authors note that:

Just as Big Tobacco and liquor stores have targeted lower-income communities as an important consumer-base, the marijuana industry seeks a similar base to establish addiction-for-profit businesses. According to Truth Initiative, an organization dedicated to exposing the truth about Big Tobacco, tobacco companies have historically targeted and advertised to lower-income communities and communities of color. Borrowing the playbook of Big Tobacco, the marijuana industry is actively doing the same. [1]

Legalizing marijuana only increases the problems in minority communities by promoting increased marijuana use and its negative social, medical and public safety consequences. The growing normalization of marijuana in schools, in workplaces and in homes in our communities is alarming. This is a social change that has no positive outcomes. Marijuana products of today can reach 99% THC. High potency marijuana is particularly dangerous for youth. It causes addiction, mental illness, violence, crime, traffic deaths, poor school performance, suicides, overdoses and many health and social problems. There are many ways that marijuana use damages or kills people. Our children are paying the price for the commercialization of marijuana. [2]

In terms of epidemiology, a study published in the American Journal on Addictions showed that marijuana use disorders were most common among Black Americans, as compared to Whites or Hispanics. Black American participants were found to report co-occurring alcohol and marijuana use disorders significantly more frequently than either White or Hispanic participants. [3]

### **The Answer to the False Narrative**

The prisons are not overcrowded with petty crime marijuana offenders. Mass numbers of Blacks and Hispanic are not going to prison for just having personal amounts of marijuana such as a few joints. The marijuana lobby tries to get the public to believe that all inmates convicted for marijuana possession were only personal users and not involved in trafficking or violent crimes. [4]

A more accurate view is that inmates in prison with marijuana charges have been found guilty of more than simple possession of a few joints. They were charged with drug trafficking, or for marijuana possession along with other offenses such as assault or robbery. They may have entered a guilty plea to a lesser marijuana charge down from a more serious charge.

### **Violent Crimes Drive Incarceration Rates**

Jason Riley, Wall Street Journal editorial board member, in his article in the Wall Street Journal, “Legalizing Pot Is a Bad Way to Promote Racial Equality,” claims that:

Violent offences, not drug offences, drive incarceration rates, and blacks commit violent crimes at seven to 10 times the rate whites do,” Riley says. “Data from 2015, the most recent available, show that about 53 percent of people in state prisons (which house nearly 90 percent of the nation’s inmates) were imprisoned for violent crimes, 19 percent for property crimes, and just 16 percent for drug crimes. [5]

Drug users in the general population are more likely than nonusers to commit crimes. Adults who use marijuana were much more likely to commit crimes of all types than those who did not use these substances. Of those reporting use of marijuana and other drugs, 26.1% report that they committed violent crimes during the year. [6]

### **Marijuana Is the Drug Most Often Linked to Crime**

In 2013, the US Drug Czar announced a study finding that marijuana was the drug most often linked to crime in several cities in the United States. The study included examinations of 1,736 urine samples and 1,938 interviews with men who were arrested. Marijuana was the most popular drug used by the men ranging from a low of 37 percent in Atlanta to a high of 58 percent in Chicago. [7]

### **There Is Lots of Data Contrary to the False “Social Justice” Narrative**

Contrary to the news stories and the marijuana industry claims, over the years the actual conviction and imprisonment records tell a very different story.

### **State Sentencing Over the Years**

Marijuana offenders of all races occupy relatively few jail and prison cells, and the ones that do tend to be dealers. [8]

In the 1990s when marijuana had not been legalized, just 1.6 percent of the state inmate population were held for offenses involving only marijuana, and less than one percent of all state prisoners (0.7 percent) were incarcerated with marijuana possession as the only charge. An even smaller fraction of state prisoners were first time offenders (0.3 percent). The numbers on the US federal prisons were similar. In 2001, the overwhelming majority of offenders sentenced for marijuana crimes were convicted for trafficking and only 63 inmates served time for simple possession. [9]

Federal reports on drug use and crime at the time of the offense and prior drug use by state offenders show the following facts: [10]

1. Jail inmates - Of those inmates held in local jails in 2002, 55% of convicted jail inmates reported they had used illegal drugs during the month before their offense, and marijuana use in the month before the offense increased from 36% to 37%. Among jail inmates who had a mental health problem, in the month before the offense more than two-fifths (43%) had used marijuana or hashish.

2. Probationers - Marijuana (10%) was the most commonly used drug among probationers at the time of the offense.

3. DWI - Two-thirds of Driving While Intoxicated (DWI) offenders on probation reported using drugs in the past. Among DWI probationers, marijuana (65%) and stimulants (29%) were the most commonly used drugs. Over three-quarters of DWI offenders in jail reported using drugs in the past. Among jail inmates held for DWI, marijuana (73%) and cocaine-based drugs including crack (41%) were the most commonly used drugs. Thirty percent of those in jail reported drug use in the month prior to arrest.

4. Mental Health - State prisoners who had a mental health problem (62%) had a higher rate of drug use in the month before the offense compared to those without a mental health problem (49%). Marijuana was the most common drug inmates said they had used in the month

before the offense.

5. A third of the parents in state prison reported committing their current offense while under the influence of drugs. Parents were most likely to report the influence of cocaine-based drugs (16%) and marijuana (15%) while committing their crime.

## **Federal Sentencing**

In their report “Quick facts, Marijuana Trafficking Offenses the US Sentencing Commission stated that:

87.2% of marijuana trafficking offenders were men.

67.4% of marijuana trafficking offenders were Hispanic, 14.2% were Black, 13.4% were White, and 5.0% were other races.

Their average age was 33 years

56.9% were United States citizens.

Some sentences were increased for possessing a weapon (16.2%).

The top states for marijuana trafficking offenders were in states that border Mexico: Texas, Arizona, New Mexico, Puerto Rico [11]

There were only 1,734 marijuana offenders sentenced in FY 2019. Not all were sentenced to prison. [12]

According to one US Bureau of Justice Statistics estimate based on a survey of federal prisoners, the median amount of marijuana involved in the conviction of marijuana-only possession offenders was 115 pounds. [13] 115 pounds could be over 100,000 joints. This is not an amount

Between 2008 and 2013, nearly all (91.5%) simple possession of marijuana offenders were apprehended at or near the U.S./Mexico border, possessing a median amount of 48.5 pounds - an amount that does not correspond to “simple personal possession.” [14]

2017 data from the U.S. Sentencing Commission shows that only 92 people were sentenced for just marijuana possession. This is out of a total of nearly 20,000 drug convictions. [15]

## **Plea Bargains Distort the Picture**

Marijuana possession sentences may also result from plea bargains, a prior criminal history, or violations taking place in protected areas such as schools.

The standard practice in drug cases is for the offender to be given the opportunity to plead guilty in exchange for lighter punishment thus sparing the taxpayers the expense and risk of a trial. If the offender is only charged with one crime, the prosecutor will typically offer a shorter sentence to a lesser charge. If the offender has multiple charges, the common practice is to dismiss one charge in exchange for a guilty plea to another lesser charge, especially if the government feels the offender can provide valuable assistance to law enforcement by providing information on drug trafficking.

There are a number of circumstances under which a simple-possession marijuana offender might receive a sentence to prison. For example, this may happen if:

1. The marijuana offense was committed while the offender was on probation or parole.
2. An offender charged with a more serious crime pleads guilty to the lesser offense of marijuana possession but as part of a plea bargain is required to serve a prison sentence.
3. The offender has a criminal history, particularly one involving drugs or violent crime.
4. The violation took place in a designated drug-free zone (such as on school property).
5. The marijuana sentence runs concurrent with the sentence for one or more other offenses.

### **Community Complaints about Marijuana Use Are Legitimate**

A New York City Councilman stated "people in my community, when they call 311 or 911, want a response ... they are disturbed when they go outside and people are smoking pot." The Councilman pointed out that his district is overwhelmingly Hispanic. The complaints aren't race-based, because everyone is the same race. But the complaints are real. [16]

Chief Cathy Lanier who was Chief of the DC Metropolitan Police Department (MPD) until 2016 stated that

It is, indeed, a sad fact that blacks represent a disproportionate number of arrestees in the District; the proportions are similar for marijuana arrests, for other narcotics and all arrests. But this is a complex issue that cannot be boiled down to an allegation that MPD selectively enforces the law against our black communities.

She noted that difference in marijuana arrest rates has nothing to do with police targeting blacks for marijuana possession, but rather police being responsive to reports generated in the community itself. Indeed, 59 percent of MPD officers were black, a higher proportion than the city as a whole. [17]

### **Marijuana Law Enforcement is Not Per Se Racist**

James Forman, a former District of Columbia public defender, wrote a book "Locking Up Our Own." An Amazon promotional article for his book states:

Forman shows us that the first substantial cohort of black mayors, judges, and police chiefs took office amid a surge in crime and drug addiction. Many prominent black officials, including Washington, D.C. mayor Marion Barry and federal prosecutor Eric Holder, feared that the gains of the civil rights movement were being undermined by lawlessness - and thus embraced tough-on-crime measures, including longer sentences and aggressive police tactics. In the face of skyrocketing murder rates and the proliferation of open-air drug markets, they believed they had no choice. [18]

Laurence A. Elder in his 2018 article "If Tough Anti-Drug Laws Are 'Racist,' Blame Black

Leaders” noted that

In the '80s and '90s, many black leaders supported tough anti-drug laws. Facing an inner-city explosion of gang activity, violent crime and a crack epidemic, black politicians pressured Congress to pass these laws. [19]

### **Legalizing Marijuana Has Not Created Social Justice**

Even after legalization in some states, the disproportionate impact of marijuana arrests remains high. The claim that legalization eliminates racial bias in the justice system is not accurate. Washington D.C. provides an example. In the years following legalization, the total marijuana-related arrests decreased but distribution and public consumption arrests nearly quadrupled. 84.8% of marijuana distribution or public consumption adult arrestees were blacks. [20]

In an article in USA Today, Jeff Hunt the Vice President of Public Policy at Colorado Christian University notes:

According to the Colorado Department of Public Safety, arrests in Colorado of black and Latino youth for marijuana possession have increased 58% and 29% respectively after legalization. This means that Black and Latino youth are being arrested more for marijuana possession after it became legal.

Furthermore, a vast majority of Colorado's marijuana businesses are concentrated in neighborhoods of color. Leaders from these communities, many of whom initially voted to legalize recreational marijuana, often speak out about the negative impacts of these businesses. [21]

Even though between 2008 and 2014 marijuana arrests decreased by 60% in Colorado and 90% in Washington, a study of FBI Uniform Crime Reports concluded that Black Americans were twice as likely to be arrested for marijuana in both states. The author of the study concluded that “The forces that contribute to racial disparities under prohibition are clearly still in place after legalization.” [22]

Smart Approaches to Marijuana in their report “Prison Population in AK, CO, DC, OR, and WA Since Legalization” note the following facts:

Black Americans are twice as likely to be arrested for marijuana in Colorado and Washington, both states that have legalized recreational use and sales (CJ CJ)

Colorado’s marijuana arrest rate for Black Americans (233 per 100,000) was nearly double that of Caucasians (118 per 100,000) in 2017. (CDPS, 2018)

In Colorado, on-view arrests are up 26% since 2015 (1,074 to 1,353 in 2017). Blacks (39%) were 21% more likely to experience an on-view arrest than whites (18%) in 2017. (CDPS, 2018) (on-view means that the marijuana use was observed)

In Denver, Colorado, Black American arrests in 2017, the last year for which data are available, remain unchanged versus 2012. Hispanic and Asian arrests are up during the same period. (CDPS, 2018)

Disturbingly, according to state data, in states that have legalized since 2014, the overall prison population has stayed stable and in some states like Colorado and Washington D.C. it has risen sharply since legalization after years of decline.

In states that have legalized marijuana, minority youth are showing much larger increases in use of marijuana than their Caucasian counterparts. (Johnson RM) [23]

### **Use of Small Amounts of Marijuana Has Already Been Decriminalized**

A majority of states and the District of Columbia have decriminalized small amounts of marijuana. This generally means certain small, personal-consumption amounts are a civil or local infraction, not a state crime (or are a lowest misdemeanor with no possibility of jail time). For offenders whose involvement with marijuana is minor, the sanctions are slight and often involve a referral to treatment rather than incarceration. [24]

### **Conclusions by Those Who Have Studied this Issue**

The full legalization and commercialization of marijuana would spawn Big Tobacco 2.0 - and, because of today's highly intoxicating THC levels, would result in far worse consequences for social justice within at-risk communities. [25]

The idea that our nation's prisons are overflowing with otherwise law-abiding people convicted for nothing more than simple possession of marijuana is treated by many as conventional wisdom. But this, in fact, is a myth - an illusion conjured and aggressively perpetuated by drug advocacy groups seeking to relax or abolish America's marijuana laws. [26]

### **The New Jim Crow?**

The marijuana lobby claims that the marijuana laws are a form of the infamous "Jim Crow" laws. [27] They were state and local laws that imposed racial segregation in the southern states. They were passed in the late 19th and early 20th centuries by white Democratic Party dominated state legislatures to end the political and economic gains made by Black people after the Civil War. Some were enforced until 1965. Here are some points to consider:

1. This analogy leads to a distorted view because it does not look at the history of the marijuana laws that were not aimed at segregation.
2. The analogy fails to consider minorities' attitudes toward crime and punishment in that it ignores violent crimes while focusing almost exclusively on drug crimes. Minorities suffer more from crime than whites.
3. It overlooks the effects of drug laws on other racial groups.

4. The analogy diminishes our collective memory of the Jim Crow laws' particular harms that were not racially neutral.

5. How can it apply to cities that are or were administered by minorities such as Baltimore, Atlanta, Newark, New York City, Philadelphia, Los Angeles and Washington DC, etc?

6. The marijuana lobby offers few realistic solutions to reduce incarceration other than to legalize drugs in order to reduce the number of incarcerated minorities. They never face the obvious question of what this would do to the minority communities, indeed, to all communities in terms of the public health.

## The Solution

We can scale back our incarceration rates by taking the following actions:

1. A number of states have reduced their prison populations while also cutting crime. This can be done by expanding alternatives to incarceration such as drug courts and drug treatment and making better use of probation and parole resources.

2. It will require a multiracial movement. The focus on Black Americans does not encourage other racial groups to recognize that, on this issue, minority interests coincide with their own. We must encourage coalition politics to find common solutions.

3. We must always protect community safety. Many of those who push for sensible laws do so out of a real concern about safety. Americans of all colors want to be able to walk home without being mugged or seeing drug sales on their street. These concerns must be acknowledged.

4. There is a close connection between incarceration rates and educational success. Marijuana use correlates with dropping out and poor school performance. People of all races who drop out of high school are more likely to be locked up than those who have attended more education or training. This suggests that appropriate educational and social service interventions fight crime. The normalization of marijuana use has brought increased use to schools. Edibles and vaping have made marijuana use harder to detect by schools. Colorado has had an increase in high school drug violations of 71% since legalization and school suspensions for drugs increased 45%. [28]

5. Marijuana commercial sales operations should be ended and not encouraged or subsidized in minority communities. Addiction, crime and incarceration are each fueled by drug use including marijuana use.

6. Does the marijuana lobby believe that Black or Hispanic communities could only prosper if they can engage in marijuana trafficking? This is a completely insulting notion.

## About the Author

Mr. Evans has been a criminal defense attorney for over four decades. He was a Public Defender in Newark, New Jersey for two years and then he worked for 15 years for the New Jersey Department of Health setting up addiction treatment programs for offenders. He has served on the faculty of the John Jay College of Criminal Justice in New York where he taught courses on drugs, addiction and crime. He is the author of six books that deal in whole or in part with substance abuse issues and the law.



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