



**THE WAR ON
MARIJUANA
IN BLACK
AND WHITE**

A MASSACHUSETTS UPDATE

October 2016



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The methodology and appendices for this report can be found online at www.aclum.org.

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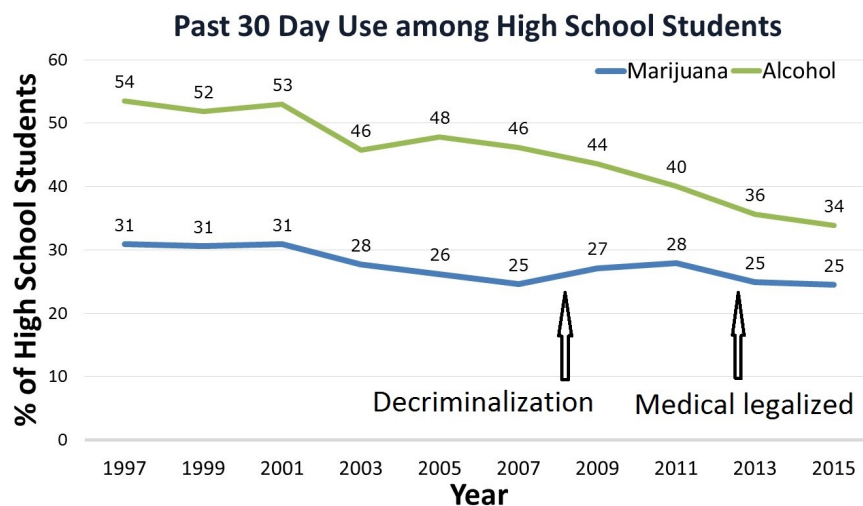
EXECUTIVE SUMMARY

In 2008, Massachusetts voters decriminalized the possession of one ounce or less of marijuana. On November 8, 2016, Massachusetts voters will decide whether to tax and regulate the sale and adult consumption of marijuana. Question 4, as the ballot initiative is known, would establish a legal system whereby adults may purchase marijuana, and remove all penalties for personal possession of up to one ounce of marijuana, or up to 10 ounces and 12 plants within an individual's primary residence.

This report presents a detailed look at marijuana law enforcement in Massachusetts before and after decriminalization by examining arrest rates in the context of demographic categories including race, age, and region. It also debunks many of the arguments made by opponents of legalization. The data show three important trends:

The elimination of criminal penalties for possession of one ounce or less has had little impact on marijuana use in the state.

- The total number of arrests for marijuana possession plummeted 93% between 2008 and 2014, from 8,695 to 616 but racial disparities persist.
- Marijuana use in Massachusetts in 2013 remained below pre-decriminalization levels overall for adults 26 and older and among youth under 18.
- Annual marijuana use among 18-to-25 year olds has increased only slightly, from 39.9% in 2003 to 41.9% in 2013.



Source: CDC Youth Risk Behavior Surveillance Survey, 2015

ENFORCEMENT IN MASSACHUSETTS AFTER DECRIMINALIZATION: MORE OF THE SAME

Black people continue to be arrested at higher rates for marijuana offenses than white people, despite the fact that white people use and sell marijuana at similar rates.

- Black people are only 8% of the population of Massachusetts, but comprise 24% of marijuana possession arrests and 41% of sales arrests.
- The marijuana possession arrest rate for Black people was 3.2 times higher than for white people in 1994, 2.2 times higher in 2000, and 5.4 times higher in 2009 (immediately after decriminalization).
- In 2014, five years after decriminalization, the marijuana possession arrest rate for Black people was 3.3 times higher than for white people, demonstrating that racial disparity increased after decriminalization.
- In 2014, the arrest rate for marijuana sales for Black people was 7.1 times higher than the arrest rate for white people.

After decriminalization, disparities in the enforcement of marijuana laws in Massachusetts remained in effect with respect to age and region.

- Young people (18 to 24) represent 14% of the adult population but account for 63% of those arrested for marijuana possession offenses.
- In certain counties, the disparity in arrest rates for Black people and white people more than doubled from before decriminalization (2006) and after (2014).
- In Bristol County, the disparity in possession arrest rates increased from 5.0 to 11.0.
- In Franklin County, the disparity in possession arrest rates increased from 6.9 to 17.1.
- In Norfolk County, the disparity in sales arrest rates increased from 3.4 to 9.4.

Taxing and regulating marijuana will not “solve” the problem of racially biased policing or economic inequality in Massachusetts, nor will it exacerbate youth use or crime as opponents claim. However, adopting a new regulatory system will remove a significant barrier to racial equality, and at the same time provide the state with the much-needed tax revenue to improve the lives of all residents. Additionally, the Massachusetts initiative contains language to promote participation in new marijuana businesses by people from communities that have been hit hardest by the Drug War.

INTRODUCTION

If the goal of the Drug War, announced with great fanfare by the Nixon Administration over 40 years ago, is to stop the sale and consumption of illegal drugs, it has been a complete failure.ⁱ Over the course of four decades, marijuana use has not significantly declined, while state enforcement costs have skyrocketed to an estimated \$3.6 billion per year.ⁱⁱ But the Drug War has been a great success in one respect: it is a reliable mechanism for implementing a system of racial control. This war has been waged disproportionately in Black communities, despite evidence that white people use and sell illegal drugs at similar rates. While marijuana use is roughly equal among Black people and white people, nationally Black people are 3.73 times more likely to be arrested for marijuana possession.ⁱⁱⁱ

Even one arrest can send someone's life into a downward spiral. Arrests for even small amounts of marijuana may make it difficult or impossible to find a job, secure a student loan, or live in affordable housing. The evidence is everywhere around us that the disproportionate enforcement of drug laws on Black people has devastated communities, derailed futures, and ruined lives.

Meanwhile, public opinion about marijuana has changed dramatically over the past few decades. A March 2015 poll found that the majority of Americans favor shifting the focus of the nation's overall drug policy to legalization.^{iv} These attitudes are clearly reflected in voters' approval of ballot initiatives to tax and regulate marijuana for adults, allow access for medical patients, and decriminalize possession, despite the federal government's continued prohibition.^v When considering legalization Massachusetts has the benefit of the experience of four states that have already implemented this reform: Alaska, Colorado, Oregon, and Washington. Massachusetts voters also have the ability to look at the effects of eight years of decriminalization of marijuana in the Commonwealth.

Opponents of legalization in Massachusetts have brought much heat but little light to the debate, ignoring evidence that the Drug War has been a failure from the start and discounting its effect on Black communities. Local prosecutors who opposed the state's decriminalization measure in 2008 based their arguments on fear and misinformation, claiming that it would promote drug use and benefit drug dealers.^{vi} Yet as this report shows, the removal of criminal sanctions for possession of one ounce or less of marijuana has not created the problems that the district attorneys predicted. In other states, taxation and regulation has not increased use, but has produced much-needed state revenue.^{vii}

IMPORTANT DATA NOTE: This report focuses on Black-white racial disparities because federal arrest data does not identify Latinos as a distinct racial group, and thus does not distinguish between arrests of Latino people and arrests of white people. Consequently, a portion of the white arrest data includes Latinos. This means that disparities between Black people and white people included in this report are likely even higher than documented.

"I look at how far we've come, and I think there's a real possibility that we'll have a system that works...If you eliminate the black market, make it harder for kids to get marijuana. We can put more money into education for kids."

Colorado Governor John Hickenlooper
September 9, 2015

This report is a Massachusetts specific update to the national American Civil Liberties Union 2013 report [The War on Marijuana in Black and White](#),^{viii} using the same data sources, which were provided to the ACLU by Dr. Jon Gettman.

A review of the state’s marijuana arrest data provides a balanced look at how decriminalization has been working. Specifically, the data helps answer three important questions:

- What are the impacts of decriminalization on marijuana use in the state?
- What is the scope and extent of marijuana arrests in Massachusetts following decriminalization?
- What additional insight does a review of recent arrest and related data provide about changes to Massachusetts marijuana laws?

Question #1: What are the impacts of decriminalization on marijuana use in Massachusetts?

Decriminalization exposed the lack of impact criminal sanctions had on marijuana use. If criminal sanctions were a major component in discouraging use, removal of them would have resulted in a large increase in the prevalence of marijuana use in the state.

Total marijuana arrests dropped dramatically after possession of one ounce was changed from a criminal to a civil infraction, from 10,260 in 2008 to 2,748 the following year. Arrests fell further to 1,647 by 2014. Marijuana possession arrests fell from 8,695 in 2008 to 1,292 the following year and have further fallen to 616 by 2014, a reduction of 93%. Sales arrests now account for 63% of marijuana arrests in the state and have remained at a consistent level averaging about 1,500 arrests per year from 2006 to 2012, before a slight reduction to 1,143 in 2013 and 1,031 in 2014. (See Figure 1.)

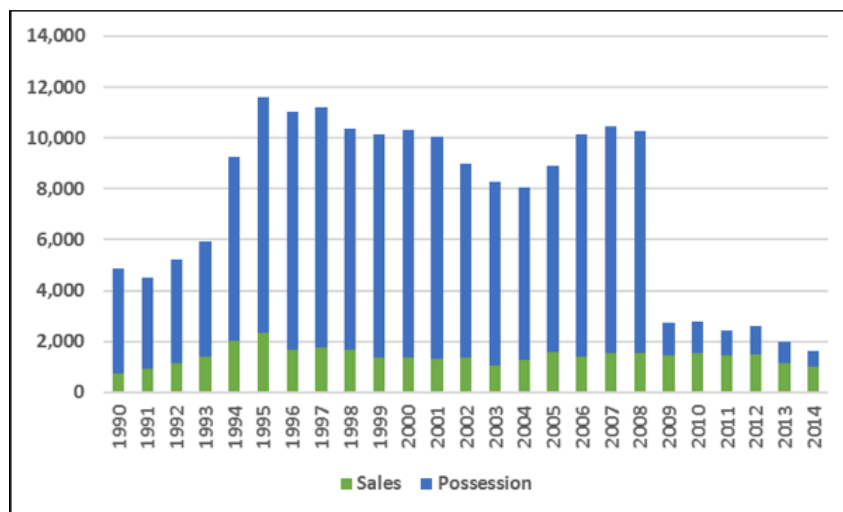


Figure 1. Marijuana Arrests in Massachusetts (1990-2014)

A small but significant number of residents of the Commonwealth use marijuana. According to the National Survey on Drug Use and Health (NSDUH)^x about one in six residents of Massachusetts used marijuana in the last year during 2013 and 2014. Despite panicked warnings about an oncoming marijuana apocalypse from decriminalization opponents, the change from a criminal to a civil penalty for possession of one ounce of marijuana in 2008 did not have much impact on the prevalence of marijuana use in Massachusetts. (See Table 1.) Surveys in states where marijuana has been legalized reflect similar findings: both Colorado and Washington State found no increase in marijuana use by high school students following passage of those laws.^{x, xi}

YEARS	AGE 12-17	AGE 18-25	AGE 26 +	TOTAL POPULATION
2002/2003	21.2%	39.9%	11.8%	16.2%
2004/2005	17.9%	40.0%	6.2%	11.6%
2006/2007	17.2%	39.5%	8.0%	13.0%
2008/2009	16.8%	40.7%	10.1%	14.9%
2010/2011	19.8%	43.9%	9.8%	15.3%
2012/2013	15.1%	41.9%	11.0%	15.6%

Table 1. Prevalence of Annual Marijuana Use in Massachusetts (2002 – 2013)

There is considerable difference in the rate of marijuana use between age groups; use is most prevalent in the 18-25 age group. This demographic is only 11.8% of the total population of the state, but since they use marijuana at higher rates than other age groups, they comprise 33.8% of all marijuana users. This group saw only a small increase in annual use between 2007 and 2013, rising from 39.5% to 41.9%, a difference of only 2.4%. Conversely, the 12-17 year-old age group saw a drop in annual use in the same period, from 17.2% to 15.1%. (See Figure 2.)

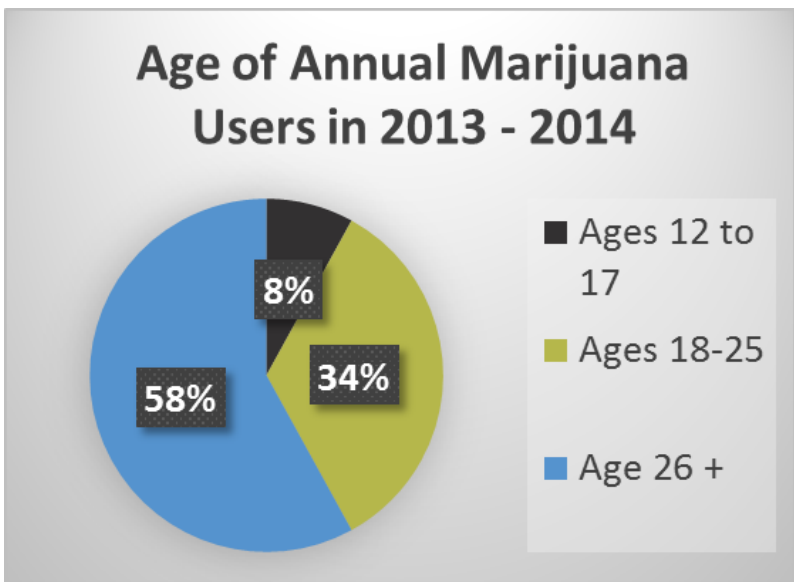


Figure 2. Age of Annual Marijuana Users in Massachusetts (2013-2014)

Question #2: Does current marijuana policy have a disparate impact on Black people versus white people in Massachusetts?

Black people continue to be arrested at higher rates for marijuana offenses than white people, despite the fact that white people use and sell at similar rates. Disparity between Black and white arrest rates also increased during several years since decriminalization.

There is little difference in the overall prevalence of annual marijuana use by race. Federal data from 2002 through 2009^{xii} indicates that 14.4% of white people in Massachusetts use marijuana on an annual basis while 16.6% of Black people do. Since Black people make up only 8.4% of the population in Massachusetts, they account for just 6.6% of total annual marijuana users. (See Figure 3 and Figure 4.)

Racial disparity in policing has been a longstanding issue in Massachusetts. And the evidence is clear that decriminalization did not decrease this disparity, and in some communities, disparities increased. (See Table 2.)

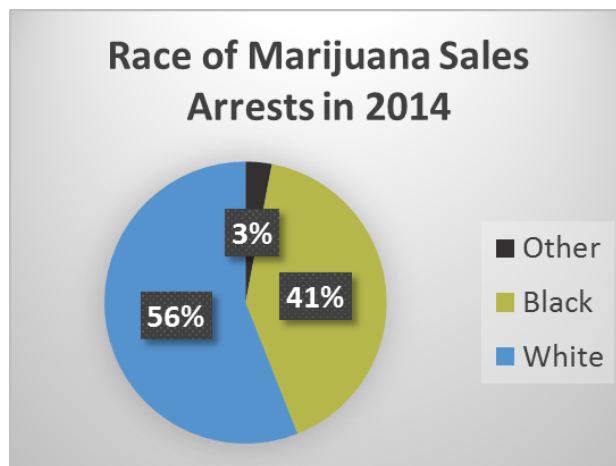


Figure 3.

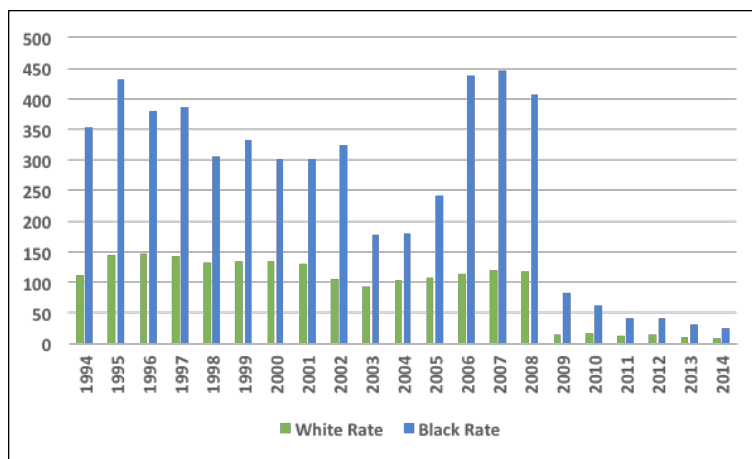


Figure 4. MA Marijuana Possession Arrest Rates Per 100,000, by Race (1994-2014)

FACT: The 2016 Massachusetts ballot initiative to tax and regulate marijuana contains language to promote participation in new marijuana businesses by people from communities that have been disproportionately affected by the Drug War. This is important because reducing criminal penalties may not be enough to eliminate racial disparities associated with marijuana arrests. Even as the total number of arrests decreases, disparities may remain, as they do in all aspects of our criminal justice system. That’s why providing employment opportunities that allow people to move away from the illegal drug trade and into this newly legal economy is part of a holistic approach to undoing the damage caused by the Drug War.

	POSSESSION		SALES	
	2006	2014	2006	2014
BARNSTABLE	5.8	5.7	6.9	2.5
BERKSHIRE	7.3	0.0	5.5	0.0
<u>BRISTOL</u>	<u>5.0</u>	<u>11.6</u>	<u>7.3</u>	<u>7.9</u>
DUKES	5.8	0.0	0.0	0.0
<u>ESSEX</u>	<u>1.1</u>	<u>1.3</u>	<u>1.5</u>	<u>2.7</u>
<u>FRANKLIN</u>	<u>6.9</u>	<u>17.1</u>	10.3	0.0
HAMPDEN	2.6	2.0	6.6	3.6
<u>HAMPSHIRE</u>	<u>2.9</u>	<u>5.7</u>	<u>4.0</u>	<u>8.4</u>
<u>MIDDLESEX</u>	<u>3.1</u>	<u>3.4</u>	8.2	5.1
NANTUCKET	5.7	0.0	0.0	0.0
<u>NORFOLK</u>	<u>2.9</u>	<u>3.9</u>	<u>3.4</u>	<u>9.4</u>
<u>PLYMOUTH</u>	<u>2.4</u>	<u>4.9</u>	10.6	5.0
SUFFOLK	5.6	2.4	7.2	4.7
<u>WORCESTER</u>	<u>2.2</u>	<u>3.2</u>	<u>5.0</u>	<u>7.5</u>

Table 2. Ratio of Marijuana Arrest Rate of Black People to White People by County (2006 and 2014)

“What kind of a system are we building if Harvard kids can smoke pot and continue to enjoy every privilege, but Black and brown residents go to jail, face disproportionate impacts in enforcement?”

Michelle Wu
Boston City Council President

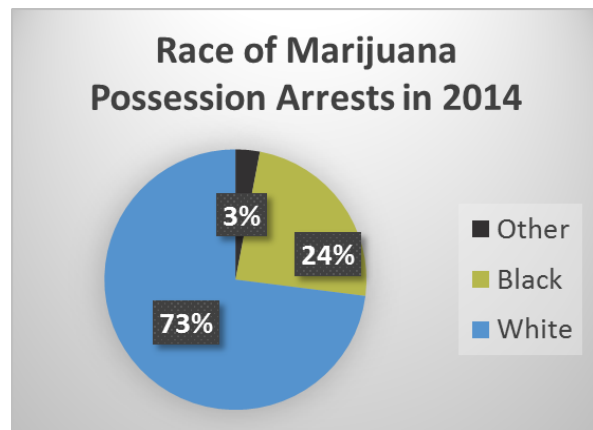
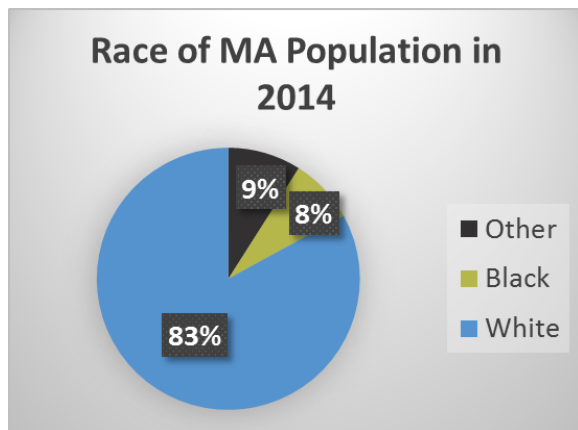


Figure 5. Prevalence of Race in Population Compared to Marijuana Possession Arrests

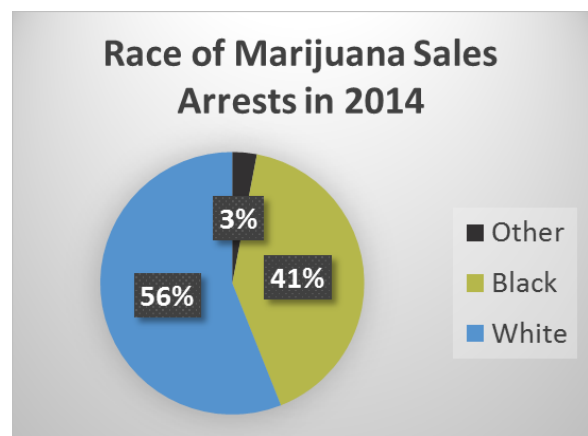
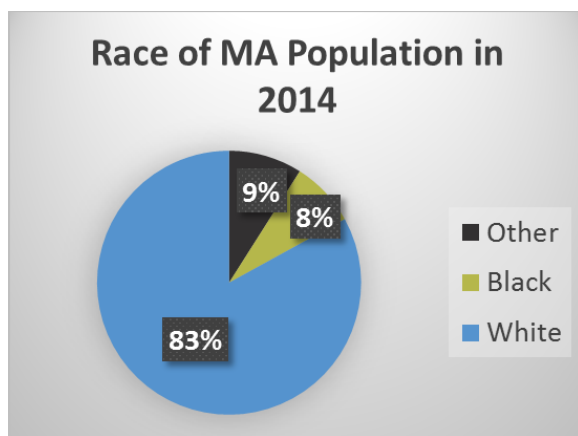


Figure 6. Prevalence of Race in Population Compared to Marijuana Sales Arrests

BLACK PEOPLE ARE ARRESTED AT HIGHER RATES THAN WHITE PEOPLE: When looking at overall population data, Black people account for 8% of the population of Massachusetts, but comprise 24% of marijuana possession arrests. (See Figure 5.) The same disparity is apparent, and in fact greater, with respect to sales arrests where Black people represent 41% of marijuana sales arrests. (See Figure 6.)

In 2008 the arrest rate for marijuana sales for Black people (106.58) was 5.9 times higher than the arrest rate for white people (18.14). In 2014 the arrest rate for sales for Black people (70.73) was 7.1 times higher than the arrest rate for white people (9.98). (See Figure 7.^{xiii})

Black people continue to be disproportionately affected by marijuana laws for many reasons. The most apparent is that arrests of any kind are a function of police activity, such as enforcement priorities and concentration of resources. For instance, while Black people make up only 24% of the population of Boston, they make up 63% of stop-and-frisk encounters.^{xiv} This racial disparity remains even after other factors, such as neighborhood crime rates and gang membership or criminal history of residents, are controlled for. Critics of this approach to policing, including the ACLU of Massachusetts, point out that it increases tensions and distrust

between communities and police while failing to increase public safety. In over 200,000 stop-and-frisks in Boston from 2007-2010, only 2.5% involved the seizure of contraband or weapons.^{xv} Low-level marijuana arrests of Black people are a consistent result of this biased policing.

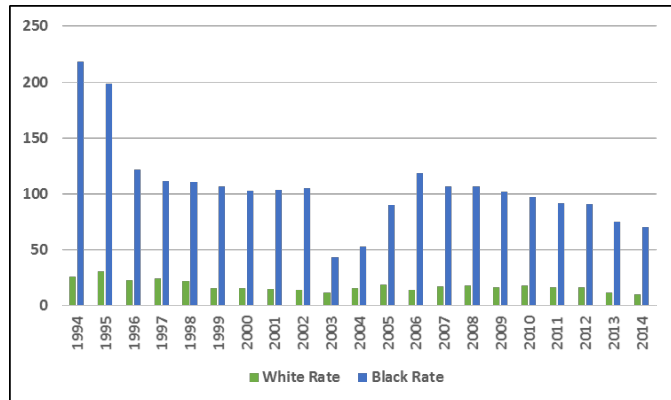


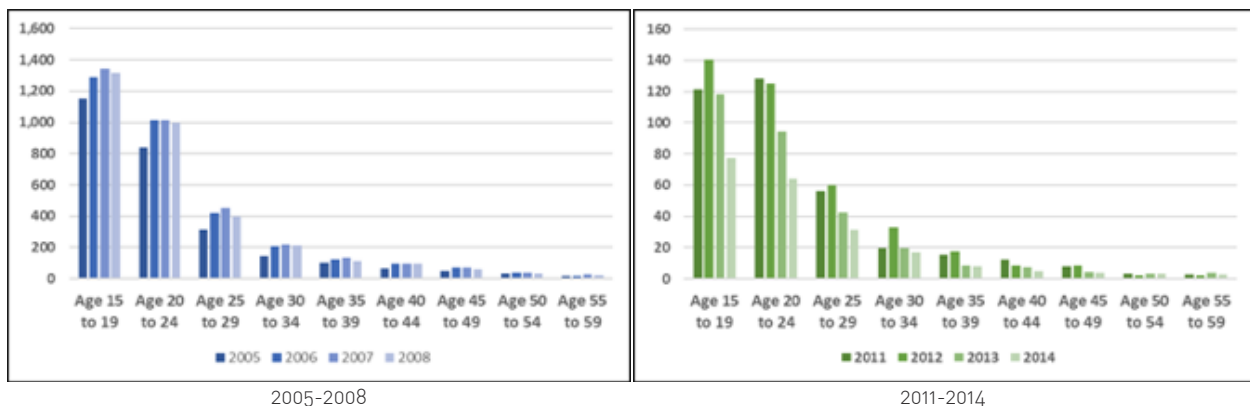
Figure 7. Massachusetts Marijuana Sales Arrests Rates per 100,000 by Race (1994-2014)

Question#3: What is the scope and extent of marijuana arrests across different ages and regions of Massachusetts?

The total number of arrests for marijuana possession was reduced by 93% after decriminalization but there are significant disparities in the enforcement of marijuana laws with respect to age, and in some counties the racial disparity in arrests has more than doubled since decriminalization.

DISPARATE IMPACT ON MALES AND YOUTH: Despite the significant decrease in marijuana arrests after decriminalization, youth remain more likely to be arrested for marijuana offenses than other age groups, raising concerns about police practices disproportionately targeting this demographic. Marijuana arrests have the greatest impact on males aged 15 to 24. In 2014 the arrest rate for marijuana possession for 15-to-19-year-old males was 77.28 per 100,000; for 20-to-24-year-old males it was 64.07. The possession arrest rate falls with each successive five-year age group of males. This follows the same pattern as possession arrests prior to passage of the decriminalization law. (See Figure 8.) Females are arrested for possession at a much lower rate than males but the same age-group pattern prevails, with the highest rate for 15-to-19-year-olds (9.33) and 20-to-24-year-olds (7.07) in 2014.

Figure 8. Marijuana Possession Arrest Rates per 100,000 Males, Selected Age Groups



The same trends apply to arrests for marijuana sales offenses, which were not affected by the adoption of decriminalization of one ounce of marijuana in 2008.

YOUNG PEOPLE ARE ARRESTED AT HIGHER RATES THAN OLDER PEOPLE: Young people are more likely to be arrested for marijuana offenses because they operate more in public spaces than older people and are therefore more likely to be targeted by police, particularly in urban areas. For example, targets of stop-and-frisks by Boston police are disproportionately male, young, and black. A 2015 study found that 54.7% of people stopped by police are under age 24.^{xvi} The disproportionate impact of marijuana laws on young people can also be understood through a comparison of age group prevalence in the general population with the population of those arrested for marijuana-related offenses. The 18-to-24-year-old age group represents 14% of the adult population but accounts for 63% of those arrested for marijuana possession offenses and 56% of those arrested for marijuana sales offenses. (See Figures 9 and 10.)

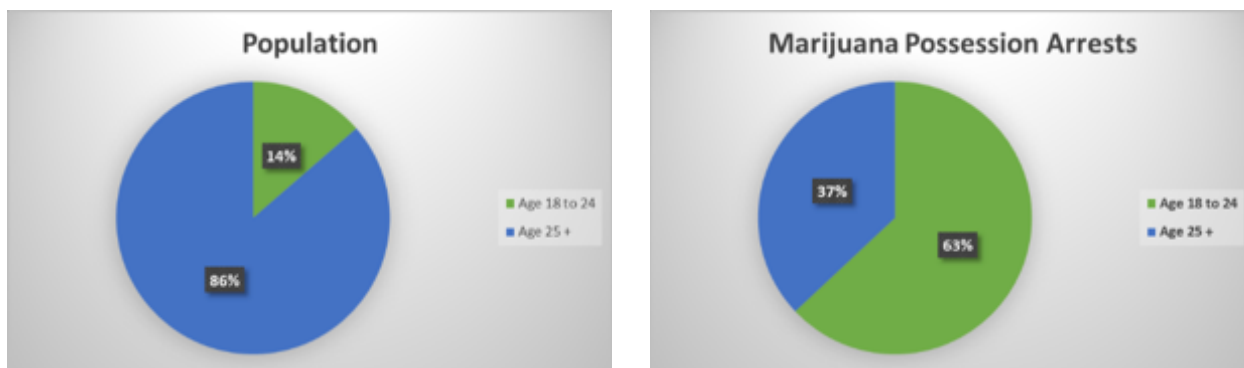


Figure 9. Adult Age Group Prevalence of Population Compared to Marijuana Possession Arrests (2014)

The datasets on arrests and marijuana use include different age groupings, but a reasonable comparison of the two is revealing. Those aged 26 and older account for 58% of marijuana users, but those aged 25 and older only account for 37% of marijuana possession arrests.

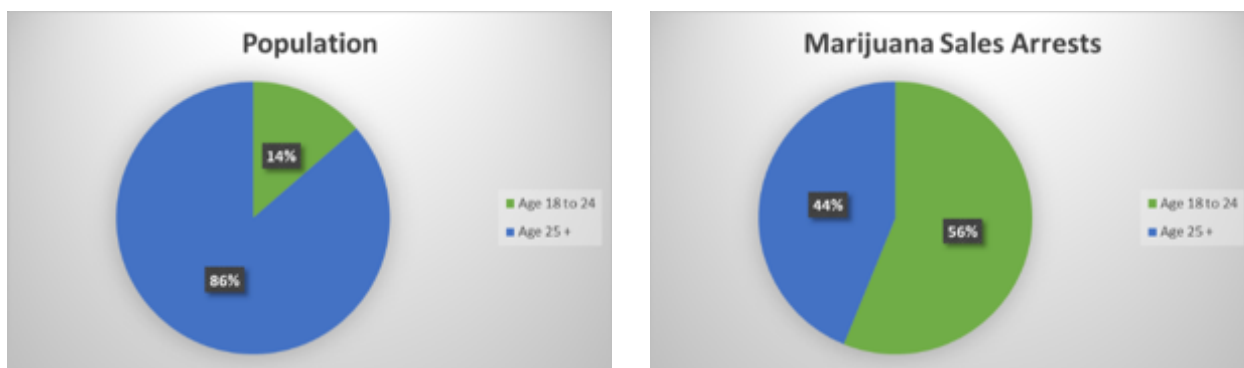


Figure 10. Adult Age Group Prevalence of Population Compared to Marijuana Sales Arrests

REGIONAL ENFORCEMENT TRENDS INCREASE DISPARATE IMPACT: Since decriminalization, the number of marijuana possession arrests has dropped dramatically in every county – in some cases to nearly zero. However, racial disparities in arrests some counties are well above the state-wide average. Two of the counties that saw the greatest increase in racial disparities after decriminalization, Bristol County and Franklin County, are also two of the five whitest counties in the state. While the state as a whole is 82.1% white, Bristol County is 90% white, and Franklin county is 94.5% white.^{xvii} Between 2006 and 2014, these counties also saw a vast increase in the disparity in possession arrest rates. (See Figure 11.) In Bristol County, the disparity in possession arrest rates more than doubled, from 5.0 to 11.0. In Franklin County, the disparity in possession arrests increased even more, from 6.9 to 17.1. The greatest increase in the racial disparity in marijuana sales arrests took place in Norfolk County, where it increased from 3.4 to 9.4 between 2006 and 2014. (See Figure 12.)

The drastic increase in racial disparities in these counties may be the result of racial profiling. The fact that the disparity did not increase as much in other counties indicates how current marijuana policy is enforced differently in different regions, raising concerns about equal treatment under the law.

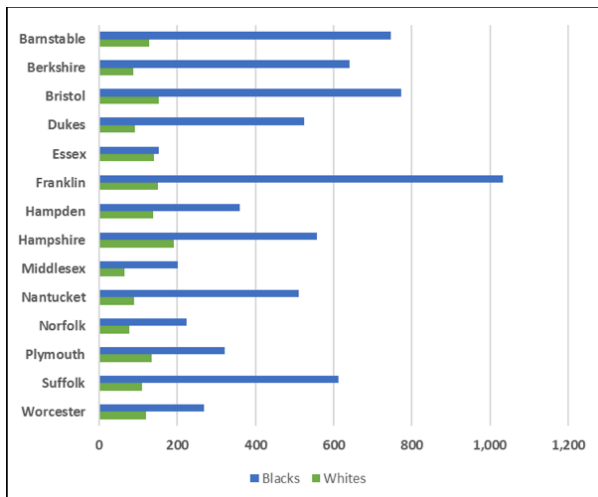


Figure 11. Marijuana Possession Arrest Rates per 100,000, by Race and County (2014)

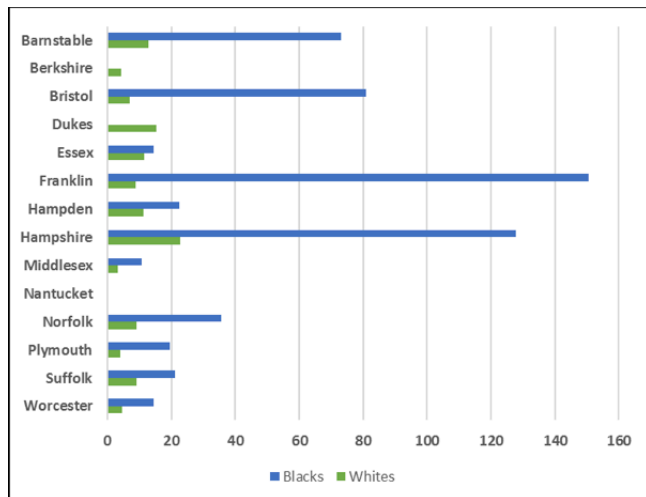


Figure 12. Marijuana Sales Arrests Rates by Selected Local Police Agencies (2014)

CONCLUSION

Current marijuana laws in Massachusetts do not stop people from using or selling marijuana, but have produced unacceptable costs for Black people in the state. Taxation and regulation of marijuana is an important step toward rectifying the harms created by the Drug War. More than four decades since its inception, the time is long overdue to establish a greater measure of fairness and effectiveness to our laws and policies. In addition to the data compiled in this report for Massachusetts, we can look to the experience of legalization in other states to identify the benefits that can accrue in the form of tax revenue, jobs, and regulation of marijuana businesses, with no downsides in the form of increased underage use.

In the words of the National Commission on Marihuana and Drug Abuse in 1972, “The existing social and legal policy is out of proportion to the individual and social harm engendered by the use of the drug.”^{xviii} Those words were true when they were first expressed in 1972, and they remain so today.

“The Nixon White House had two enemies: the antiwar left and black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or black, but by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”

John Ehrlichman, Nixon Advisor ^{xix}

APPENDIX available at aclum.org/question4

ENDNOTES

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