



EFFICACY & IMPACT

THE CRIMINAL JUSTICE REPOSE TO
MARIJUANA POLICY IN THE US

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A POLICY BRIEF
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Efficacy and Impact: The Criminal Justice Response to Marijuana Policy in the United States

The definition of insanity is doing the same old thing over and over again and expecting a different result.

-Benjamin Franklin

Introduction

In 2002, Weldon Angelos received a 55-year mandatory minimum sentence after being convicted of three charges: selling \$700 of marijuana, concealing a hand gun that was neither used nor brandished, and possessing guns at his home in Salt Lake City.¹ Absent the two firearms charges, Angelos would still have faced eight years in prison for a first-time offense. While millions of Americans carry and own weapons, he came under scrutiny of the criminal justice system essentially because he possessed marijuana. U.S. District Judge Paul G. Cassell, who presided over the case, called the sentence “unjust, cruel and even irrational,” but said *he had no choice under the law.*²

Earlier this year, Angelos’ attorneys began challenging the 55-year sentence, claiming the length of the sentence violates the 8th Amendment and is an example of cruel and unusual punishment. By June, 163 former attorney generals, retired federal judges and prosecutors joined together to petition the 10th Circuit of the U.S. Court of Appeals on the matter. Former Assistant U.S. Attorney Harry Rimm wrote in the friend of court brief that the sentence was “grossly disproportionate” and “contrary to the evolving standards of decency which are the hallmark of our civilized society.”

While Angelos is not representative of the thousands of people serving time for mandatory minimums drug or weapon offenses, the response by prosecutors and law enforcement illustrates an evolving sense of concern over the efficacy and ultimate impact of our criminal justice response to controlled substances.

The U.S. drug control budget grew from \$65 million in 1969 to \$19.18 billion in 2003. We spend 295 times more on drug control now than we did just 15 years ago.³ Every administration, from President Nixon to President G.W. Bush, has relied heavily on a criminal justice response to drug use by increasing the emphasis on ways to arrest, detain and incarcerate drug users. This has been done by often de-emphasizing alternative approaches, including harm reduction and treatment.

Marijuana arrests accounted for 82 percent of the new drug abuse violations arrests from 1990 to 2002,⁴ and nearly half of the 1.5 million current drug arrests. In the past decade, marijuana control has occupied an increasing amount of law enforcement expenditures. An estimated yearly amount of \$4 billion is spent arresting, prosecuting and incarcerating people for marijuana offenses.⁵ The number of people incarcerated for this drug alone is greater than the total number of people in prison in 8 out of 10 individual EU countries, and larger than the total prison populations for all crimes in 32 U.S. states.⁶

While the number of people incarcerated for a marijuana offense (about 30,000) may appear relatively small—a perspective that is only possible in a country with 2 million prisoners and the highest incarceration rate in the world—the *impact* of a criminal justice approach to marijuana goes well beyond the number of people incarcerated at any given time. Former prisoners and people who carry a felony conviction for a marijuana offense will face “collateral consequences” that range from denial of public assistance, barriers to employment, inability to drive, to a suspension of the right to vote.⁷

Has the growing criminal justice response to marijuana curtailed the use of this drug? At best, leading national indicators of marijuana use rates show little relationship between increased arrests of drug users and drug use.⁸ In 1991, marijuana arrests surged, while use remained level—only rising again in the early part of this decade. (See Figure 4) The National Research Council (NRC) notes in its rigorous analysis of efficacy and impact of federal drug policy that current drug use monitoring systems and research programs are “strikingly inadequate to support the full range of policy decisions that the nation must make.”⁹ We are left largely in the dark as to how effective, if at all, criminal justice responses are in reducing drug use. As the NRC states, “it is unconscionable for this country to continue to carry out a public policy of this magnitude and cost without any way of knowing whether and to what extent it is having the desired effect.”

This policy brief will measure the *efficacy* and the *impact* of our national drug control policies. Law enforcement has been at the center of federal spending on criminal justice responses to drug use for decades. Leading national indicators of drug use (the *National Household Survey on Drug Abuse/National Survey on Drug Use and Health*) and drug violations (arrest data from the *Federal Bureau of Investigations Uniform Crime Report*) will show that 1) there is no clear relationship between drug arrests and drug use, and that 2) the impact of increased arrests, convictions and incarcerations of people for marijuana offenses has significant and measurable “collateral consequences” on communities and individuals.

Overall, this country has spent a great deal of money to police, arrest and incarcerate people for drug offenses. The significant impact has been on the on those arrested, convicted and imprisoned for this offense. Our approach to marijuana is not yielding the results we should expect.

Significant Findings

Finding I: The United States is spending nearly 300 times what it did 35 years ago on drug control. Drug control spending rose from \$65 million in 1969 to \$19 billion in 2003.

Drugs “are among the modern curse of the youth, just like the plagues and epidemics of former years. And they are decimating a generation of Americans.”¹⁰

-Richard Nixon 1968

The Increase in Drug Control Spending

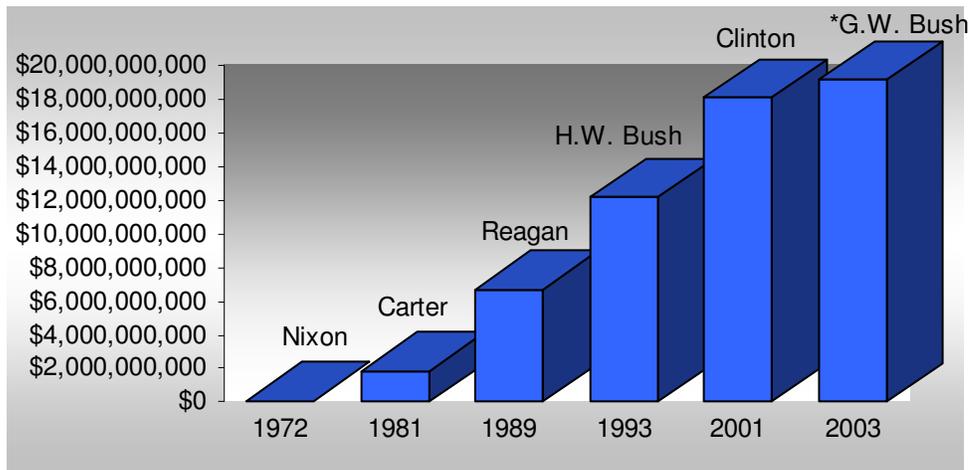
President Richard Nixon’s campaign against drug use was part and parcel of his law-and-order pitch to the electorate, and his administration was the first to push drug control to the forefront of the national agenda.¹¹ Even so, in 1969 only 3 percent of the American population believed that drugs were the country’s number one problem.

Recreational marijuana use was prohibited in October of 1937. But it wasn’t until 1970, when Congress established the Drug Enforcement Agency (DEA) and issued the Controlled Substances Act of 1970, that marijuana was classified as a Schedule I drug offense along with LSD, mescaline and heroin, and began carrying with it criminal consequences that have since shaped the laws to present day.

In 1971, President Nixon declared drug abuse “public enemy number one in the United States.”¹² That same year, the number of Americans ranking drugs as the number one concern increased to 23 percent. The Nixon administration and Congress increased drug control spending from \$65 million in 1969 to \$100 million in 1972.¹³ This significant change in policy occurred even as the National Commission on Marijuana and Drug Abuse—whose representatives were selected by the Nixon administration—found that marijuana should be *decriminalized*.¹⁴

As Figure 1 shows, in 2003 spending on drug control was 295 times greater than it was in 1969—rising from \$65 million to \$19.18 billion. Every administration since Nixon’s has demonstrated a continued reliance on criminal justice as the leading policy for controlling drug use. Commonly regarded as the “deterrent effect,”¹⁵ such policies hinge on the belief that increasing drug arrests and incarceration rates reduces drug use.¹⁶

**Figure 1
Presidential Spending On Drug Control**



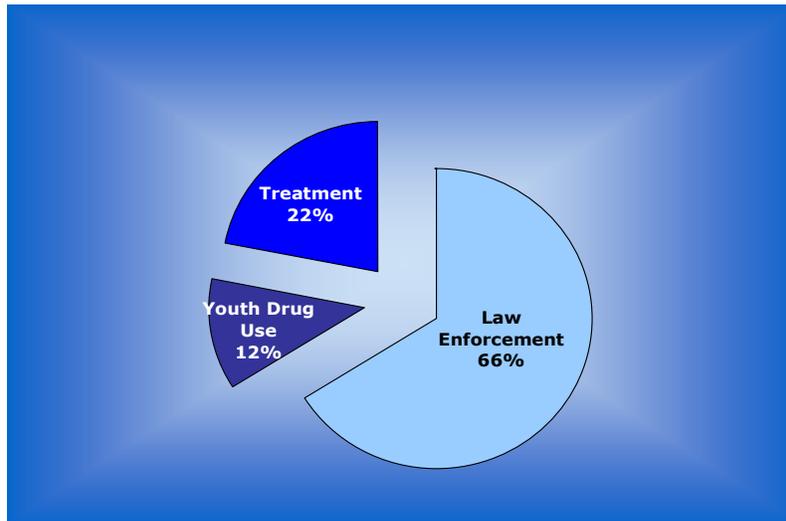
*Sources: "Drug Enforcement Laws, Alternatives Discussed in November Conference," Hoover Institution Newsletter, Stanford University, (Winter, 2002), Retrieved Jul 25, 2005. Online Available: <http://www-hoover.stanford.edu/pubaffairs/newsletter/00winter/conference.html>; Murphy, P., *Keeping Score: The Frailties of the Federal Drug Budget*, RAND Organization (1994). Online Available: <http://www.rand.org/publications/IP/IP138/IP138.html>; Office of National Drug Control Policy (ONDCP), "Government Drug Control Spending," *The National Drug Control Strategy:1996*, Table 5-1, p. 77.; Office of National Drug Control Policy (ONDCP), *National Drug Control Strategy: FY2003 Budget Summary*, Table 4, p. 11 (2002). Online Available: <http://www.whitehousedrugpolicy.gov/publications/policy/03budget/funding.pdf>
Denotes G.W. Bush's requested amount. Refer to endnote 23 for more information

Nearly a decade after Nixon, President Carter (1977-1981) approved growth of the drug control budget to \$1.65 billion. Under President Reagan (1981-1989), spending grew again, topping \$6.66 billion by 1989. With the “crack epidemic” as the backdrop, Reagan encouraged Congress to pass the Anti-Drug Abuse Act of 1986. This legislation established mandatory minimum penalties as federal law and enhanced sentences for drug offenses, including marijuana possession and trafficking.¹⁷ Before President Reagan left office, he signed the Anti-Drug Abuse Act of 1988, instituting the Office of National Drug Control Policy (ONDCP)—headed by the “Drug Czar”—as a part of the executive branch.¹⁸

Figure II illustrates an analysis of the percentage of resources allocated in the 1999 drug control policy budget. According to an analysis by the Effective National Drug Control Strategy, a consortium of groups proposing increased spending on drug treatment, spending on law enforcement approached two-thirds of the entire federal drug control budget. Treatment and youth drug use initiatives (implemented by programs such as the Youth Anti-Drug Media Campaign, Safe and Drug Free Schools program and Youth Tobacco Initiative) utilize 22 percent and 12 percent, respectively. The Sentencing Project showed that just the domestic law portion of the federal drug control budget grew by \$5 billion between 1990 and 2002—a period of time when most of the growth in drug arrests was with marijuana arrestees. Using a different methodology than the Effective National Drug Control Strategy, the Sentencing Project found that more than half of the total drug control budget in 2002 was spent on domestic law enforcement.¹⁹

In 2001, when President Clinton left the presidency, federal drug control spending was at \$18.05 billion. Under the Bush administration (2001-), the drug control budget request was \$19.18 billion in fiscal year 2003.²⁰ Since then, federal spending on drug control has been obscured since the Office of National Drug Control Policy (ONDCP) changed its reporting methods, thereby significantly altering the totals and making it difficult to compare figures on drug control spending from other years.²¹

Figure 2
1999 Analysis of the Drug Control Budget



ONDCP National Drug Control Budget. **The EFFECTIVE NATIONAL DRUG CONTROL STRATEGY 1999** <http://www.csdp.org/edcs/theneed.htm>

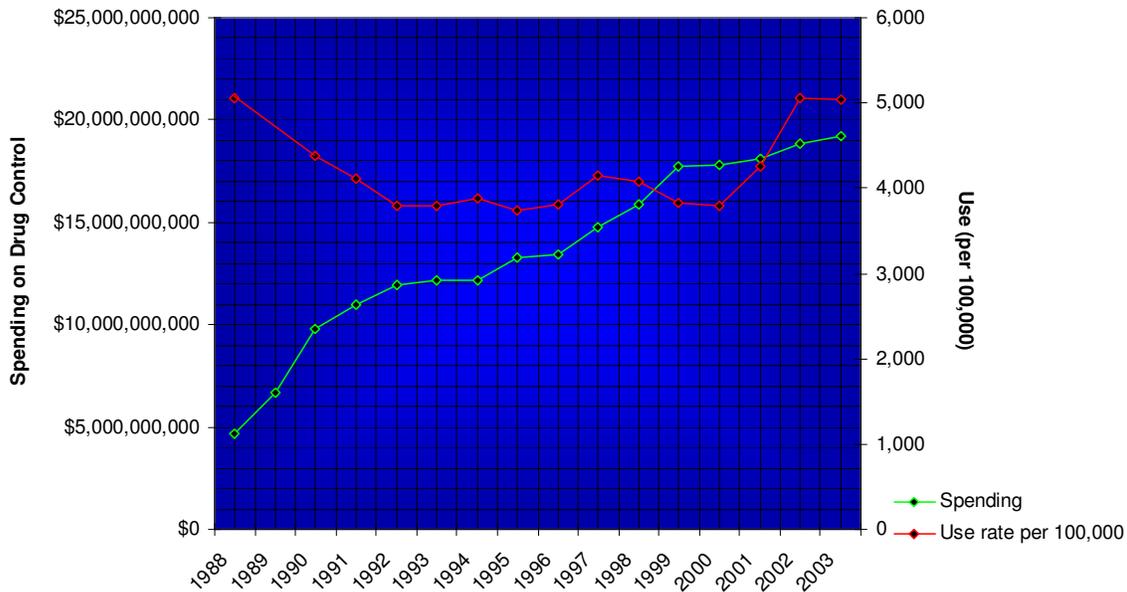
Finding II: While spending on drug control has increased, marijuana use remains relatively unchanged.

Using figures from the National Household Survey on Drug Abuse (re-named in 2002 the National Survey on Drug Use and Health),²² the Justice Policy Institute (JPI) calculated a national marijuana drug use rate per 100,000 adults (12 and older) for the years 1988 through 2003—the same time period in which figures on the change in drug control spending were gathered. Comparing the change in ONDCP spending to use rates provides one measure of the efficacy of the increase in drug control spending. Since 1988, the United States has cumulatively spent an estimated \$217 billion dollars on drug control. The overall trend reflected in Figure 3 is that, while the national drug control budget grew steadily—increasing 307 percent over this period—marijuana use saw little change. Others have shown that spending on the criminal justice response to this drug are substantial: According to Harvard economist Jeffrey A. Miron, law enforcement, judicial and corrections responses to marijuana represented \$5.1 billion in spending in 2000.²³

Meanwhile, the Sentencing Project estimated an annual amount of \$4 billion is dedicated to criminal justice responses to marijuana use.²⁴

Figure 3
National Drug Control Budget and Marijuana Use Rates, 1988 - 2003

Spending on national drug control increases, while marijuana use shows very little change over the 15-year period.



*Sources: Years 1988-1990: The National Drug Control Strategy 1996 Table 5-1: Federal Drug Control Budget, Office of National Drug Control Policy (ONDCP) Feb 1 1996; 1991-2000: The President's National Drug Control Strategy, Table 5: National Drug Control Budget by Function. ONDCP Feb 1 2000; *Year 2000, Estimated.; 2001-2003: The President's National Drug Control Strategy, Table 2: Federal Drug Control Spending by Function, ONDCP, Feb 1 2002; National Household Survey on Drug Abuse (1989-2004).*

Note To Reader: The National Household Survey on Drug Abuse (NHSDA) has changed methodologies several times within the last 20 years. In 1994, the NHSDA improved its questionnaire and estimation procedures. In 1999, it created major redesigns of both its sample and data collection method. In 2002, it used new data- collection control procedures, including incentive payments for respondents and a 5.3 percent increase in response rate.²⁵ Thus, it should be recognized that these modifications could have a small effect on changes in trends between years.

The Efficacy of National Drug Control Policy: Findings from the National Research Council (2001).

The National Research Council (NRC) is a private, nonprofit institution that provides science, technology and health policy advice under a congressional charter. The Council was organized by the National Academy of Sciences in 1916 to associate the broad

community of science and technology with the Academy's purposes of further knowledge and advising the federal government. NRC is part of the National Academies, which also comprise the National Academy of Sciences, National Academy of Engineering and Institute of Medicine.

In their 2001 report, *Informing America's Policy on Illegal Drugs: What We Don't Know Keeps Hurting Us*, the NRC reports that there is little research to support the current drug enforcement policy.²⁶ In 1999, only \$1 was spent on researching enforcement policies for every \$107 spent on enforcement itself. Despite there being data systems and research infrastructure within law enforcement and the public health sector, NRC reported that there was little research either on the monitoring of drug use or its treatment and prevention. As a result, there was insufficient knowledge of current drug control efforts and a lack of understanding whether spending is minimizing drug use.

NRC further noted that existing research appears to indicate that there is “*little apparent relationship between severity of sanctions prescribed for drug use and prevalence or frequency of use, and that perceived legal risk explains very little in the variance of individual drug use.*”²⁷ This finding suggests that drug users do not appear to be affected by enforcement penalties, thereby showing that spending may not be allocated most efficiently.

NRC concluded that there is no empirical basis for the current national drug control policy and its emphasis on criminal justice responses to drug use, stating, “*it is unconscionable for this country to continue to carry out a public policy of this magnitude and cost without any way of knowing whether and to what extent it is having the desired effect.*”

Finding III: Increasing or decreasing arrest rates had little impact on marijuana use.

Drug use, some might say, is destroying this country. And we have laws against selling drugs, pushing drugs, using drugs, importing drugs. And the laws are good because we know what happens to people in societies and neighborhoods which become consumed by [drugs]. And so if people are violating the law by doing drugs, they ought to be accused and they ought to be convicted and they ought to be sent up.²⁸

-Rush Limbaugh, October 5th 1995

National Findings: *The decline in arrests during the 1980s were marked by a decline in use, while the sharp increase in arrests in the 1990s were, at best, associated with an increase in use.*

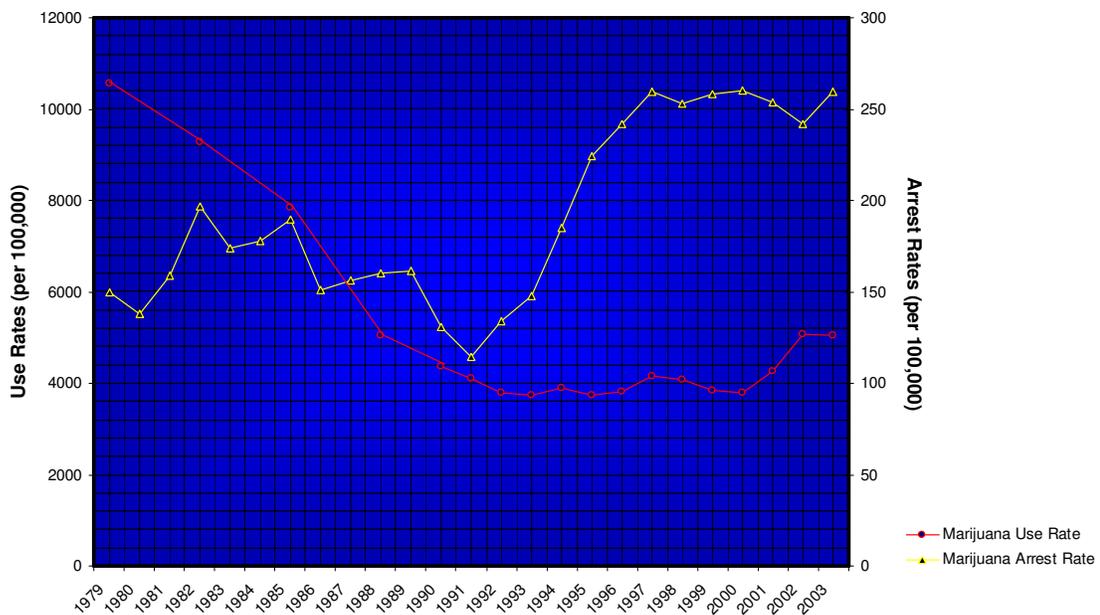
Beginning in the 1990s, law enforcement has focused a significant amount of resources on marijuana control. Indeed, marijuana arrests accounted for 82 percent of the new drug abuse violations from 1990 to 2002.²⁹ The Sentencing Project has shown that marijuana arrests make up nearly half of the 1.5 million drug arrests. This rapid increase in arrests

is best explained by “selective enforcement decisions” or a deliberate change in policy to focus law enforcement resources on marijuana offenses.³⁰

As Figure 4 shows, throughout the 1980s, when marijuana arrests were generally level, current use fell. Starting in 1979, use rates began a precipitous decline—falling 61 percent by 1991 while arrest rates declined by only 24 percent in the same time period. When arrests rose sharply in the 1990s, use for the most part increased or remained the same. From 1991 to 2003, the number of arrests increased by 127 percent, while use rates remained relatively level, climbing only 22 percent.

Figure 4
National Marijuana Arrests Rates vs. Marijuana Use Rates 1979-2003

When marijuana arrests were generally level, use fell.
When arrests rose, use remained fairly stable, rising in this decade.



*Sources: FBI: Uniform Crime Report and * National Household Survey on Drug Abuse and Health (NHSDA), Estimated Numbers of Past Month Users of Illicit Drugs Aged 12 and Older (1995, 1996, 1997-Table 5A; 1998-Table 2.1, 1999, 2000-Table 1.1A, 2001, Table H.1); National Survey on Drug Use and Health (NSDUH) Estimated Numbers of Past Month Users of Illicit Drugs Aged 12 and Older (Table H.1-2002, Table G.1-2003). Note: NHSDA current use estimates were not reported for 1980, 1981, 1983, 1984, 1986, 1987, and 1989.*

While marijuana arrests were increasing in the 1990s, arrests for other drugs such as heroin and cocaine fell during the same time period. In 1992, heroin and cocaine arrests numbered 565,200, while there were 342,300 arrests for marijuana. The 755,200

marijuana arrests in 2003 exceeded the combined arrests that year for heroin and cocaine—a total of 508,500.³¹

These findings are echoed by another leading indicator of marijuana use: the Monitoring the Future Survey, an annual survey of some 50,000 8th, 10th and 12th grade students. (Note: 12th graders have been surveyed since 1975, and 8th and 10th graders since 1991).³² During roughly the same time period (when marijuana arrests came to account for 82 percent of the new drug abuse violations), the percentage of youth who reported using marijuana in the past year rose. The survey showed a 90 percent increase for 8th graders, a 66 percent increase for 10th graders, and a 44 percent increase for 12th graders.³³ The lifetime prevalence of marijuana use for these age groups also rose during the period. It showed 60 percent for 8th graders, 50 percent for 10th graders and 25 percent for 12th graders. While there was some decline in the last three years in drug use by these youth (the biggest drop was for 8th graders, which fell 20 percent since 2001), *the rise in marijuana arrests corresponded with a 13-year trend towards increased youth marijuana use.*

During the time when marijuana arrests came to account for 82 percent of the new drug abuse violations, the percentage of 12th graders who said it was “fairly easy, or very easy” to get marijuana barely changed (82.7 percent in 1992 to only 87.2 percent in 2002) declining only marginally since 2002.³⁴

Finding IV: In 7 out of 10 states over half of the drug arrests were for marijuana-offenses.

Because 99 percent of all marijuana arrests occur at the state level,³⁵ localizing the analysis to the state level provides another lens to view the magnitude of law enforcement’s focus on marijuana.

JPI used the leading national indicator of arrests, the Federal Bureau of Investigations Uniform Crime Reports, to analyze marijuana arrests by state. Marijuana arrest proportions (Marijuana Arrests/Total Drug Arrests) were created for each state.

As Table 6 indicates, states have recently been focusing their resources on marijuana control. The most recent available data reveals in 7 out of 10 states marijuana arrests are over half of the drug arrests and in nearly 3 out of 10 states marijuana arrests are over 60 percent of total drug arrests.

At the top of the list: North Carolina and South Dakota both had a proportion of 74 percent, while California and Maryland had the lowest proportions, 22 percent and 37 percent, respectively.

Table 6
Percentage of Total
Drug Arrests

<i>State</i>	<i>Marijuana Arrest Percentages</i>
Alabama	59%
Alaska	64%
Arizona	51%
Arkansas	44%
California	22%
Colorado	58%
Connecticut	49%
Delaware	51%
Georgia	50%
Hawaii	39%
Idaho	51%
Indiana	60%
Iowa	63%
Kansas	52%
Kentucky	51%
Louisiana	58%
Maine	66%
Maryland	37%
Massachusetts	54%
Michigan	62%
Minnesota	65%
Mississippi	44%
Missouri	47%
Montana	62%
Nebraska	64%
Nevada	48%
New Hampshire	78%
New Jersey	40%
New Mexico	45%
New York	63%
North Carolina	74%
North Dakota	66%
Ohio	58%
Oklahoma	54%
Oregon	42%
Pennsylvania	40%
Rhode Island	58%

South Carolina	60%
South Dakota	74%
Tennessee	54%
Texas	56%
Utah	48%
Vermont	54%
Virginia	56%
Washington	51%
West Virginia	61%
Wisconsin	59%
Wyoming	68%
<i>Source: FBI: Uniform Crime Report (1999 & 2003) U.S. Arrest by Age and the Arrest by State</i>	

Is National Drug Control Spending Cost-Effective?

Findings of Citizens Against Government Waste, Westat and The Annenberg School of Communication

Citizens Against Government Waste (CAGW) was founded as an offshoot of President Reagan's Private Sector Survey on Cost Control, also known as the Grace Commission. CAGW is a private, nonpartisan, non-profit organization, whose mission is to "eliminate waste, mismanagement, and inefficiency in the federal government." According to CAGW's report *Up In Smoke: Office of National Drug Control Policy's Wasted Efforts in the War on Drugs*,³⁶ the ONDCP has "morphed into a federal wasteland, throwing taxpayer money toward numerous high priced drug control programs that have failed to show results."³⁷

Since 1997, ONDCP has spent \$4.2 billion on media advertising. This money has been used to promote state legislation that supports the federal approach to drug control as well as a variety of "anti-drug trafficking efforts" that are largely focused on reducing marijuana use. Of the 26 anti-drug television advertisements aimed at youth, 17 mention marijuana, while only two mention other specific illicit drugs. In addition, over half of the ONDCP-funded 62 anti-drug print advertisements are aimed specifically at marijuana use. CAGW reported that "more 8th graders see a greater risk in smoking marijuana occasionally than in taking LSD regularly, taking ecstasy occasionally, trying crack cocaine, or drinking nearly every day." Angela French, author of CAGW's *Up In Smoke* report, says that the campaign "may actually be steering kids toward the most dangerous drugs."³⁸

According to the *Evaluation of the National Youth Anti-Drug Media Campaign's 2003 Report of Findings*—a study conducted by Westat, a health survey research company,

and the Annenberg School of Communication—those young people “who were more exposed to Campaign messages are no more likely to hold favorable beliefs or intentions about marijuana than are youth less exposed to those messages.” In fact, the evaluation showed that the campaign sometimes had the unintended effect of instilling attitudes leaning towards dangerous drug behaviors.³⁹

Finding V: There are a significant number of people incarcerated in the United States for marijuana possession and sales.

State and Federal Marijuana Prison Populations

**State & Federal Estimates: 27,900⁴⁰ to 35,000⁴¹
Local Jail: 4,600⁴²**

Both the shortcomings of state and local corrections systems and the politicization of drug policy have made quantifying the number of people incarcerated for marijuana offenses a challenge. In a policy brief released this year, *Who’s Really in Prison for Marijuana?*, ONDCP references the 1997 Bureau of Justice Statistics (BJS) survey of people in state and federal prison for marijuana offenses as the most up-to-date national measure.⁴³ Applying the BJS percentages to the most recent state and federal prison population counts would yield a 2004 estimate of roughly 35,000 people in prison for a marijuana offense. The Sentencing Project estimates that there are 27,900 people in prison for a marijuana offense,⁴⁴ and also estimates there to be 4,600 people in jail for this kind of offense.

Only in a country with the world’s highest incarceration rate and largest prison population (2 million) could so many people behind bars be considered “small.” Taking either estimate into account, the number of people in prison in the United States for a marijuana offense *is greater than the total prison populations for all offenses in 32 states.*⁴⁵ Combining the 35,000 people in state and federal prisons for marijuana offenses with the estimated 4,600 in jail would represent 12 percent of the 437,000 people in prison and jail nationally whose most serious offense is a drug offense.⁴⁶ By way of international comparison, Table 7 lists the number of European countries and their total prison populations for all offenses. *The United States imprisons more people for marijuana than the individual prison populations of 8 out of 10 EU countries.*⁴⁷ There are more people in prison in the United States whose most serious offense was a marijuana offense than are in prison for all offenses in the Netherlands, the Czech Republic, Hungary and Portugal.

Table 7
Comparison of U.S. Marijuana Offense Related Prisoners to the Prison Populations in the E.U.

The U.S. prison population for marijuana-only offenses is greater than the individual prison populations of 8 out of 10 EU countries.

Country	Prison Population
United States Marijuana Prisoners*	Low 27,900
	High 35,000
United Kingdom and Scotland	82,062
Poland	79,807
Germany	79,329
Spain	59,899
Italy	57,046
Netherlands	19,999
Czech Republic	18,830
Hungary	16,700
Portugal	13,498
Belgium	9,245
Slovakia	8,891
Greece	8,760
Austria	8,700
Lithuania	8,063
Latvia	7,796
Sweden	7,332
Estonia	4,571
Denmark	3,774
Finland	3,719
Ireland	3,417
Slovenia	1,129
Luxembourg	655
Cyprus	355
Malta	278

*Source: International Centre for Prison Studies, Kings College London; [http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/euro pe.html](http://www.kcl.ac.uk/depsta/rel/icps/worldbrief/euro%20pe.html). *This is the number of people in state and federal prison for marijuana offenses.*

Finding VI: The “collateral consequences” faced by those imprisoned or convicted of marijuana offenses are far-reaching

There are currently 13 million people with former felony convictions in the United States. For most (and for some people convicted of misdemeanors), there are “collateral consequences” that await each person upon release. Based on the laws of the individual state in which they are incarcerated, these people could be denied public assistance, be barred from certain jobs, be hobbled from effectively finding work by restrictions on their

driving abilities, and be denied the right to vote. In addition, those who have served time face serious social barriers, such as difficulty reconnecting with families and communities and the cultural stigma attached to a criminal conviction. This prevents many ex-prisoners from ever making a successful economic and social return to society.

Key Collateral Consequences in States⁴⁸

- Denial of Public Assistance and Food Stamps
- Employer Access to Criminal Records
- Voting Disenfranchisement
- Drivers' Licenses Suspension

In a study on youth aged 16 to 24 jailed prior to 1980, Richard Freeman of the London School of Economics and the National Bureau of Economic Research found that “jail reduced work time over the next decade by 25-30 percent when compared with arrested youth who were not incarcerated. Meanwhile, youth who were convicted or charged with a crime but not jailed did not experience the “massive long-term effects of incarceration on employment.”⁴⁹ For adults, Freeman found that a higher proportion of men held jobs before imprisonment than after. In 1981, 50 percent of men were employed before prison and only 19 percent of them were employed post-prison.⁵⁰

Felony disenfranchisement—the condition where people under criminal justice control for a felony offense (or people who once were convicted of a felony offense and have completed their sentence) lose their right to vote—is emblematic of the various collateral consequences that researchers and advocates are only now beginning to quantify as the extended impact of the nation’s prison expansion. Forty-eight of the 50 states bar people under criminal justice control for a felony offense from voting for the remainder of their lives—including, in most cases, those people on probation and parole.⁵¹

Collateral Consequences for Marijuana-Related Offenders

Because of the increasing incarceration rates for marijuana related offenses, a significant number of people in the United States are facing these grave “collateral consequences” for marijuana-related offenses. Furthermore, given that these individuals may have dependents such as children or partners, even non-offenders may likely be adversely affected by the various barriers to the successful re-integration of the offender.

The Sentencing Project has estimated that there were 41,000 people convicted of a felony offense involving marijuana in 2000, some of whom were sentenced to probation or some form of supervision outside of prison or jail. Of the people currently estimated to be behind bars for a marijuana offense, the majority were convicted of a felony offense, as most incarcerated drug misdemeanants serve less than a year in jail.

To give a sense of what awaits people convicted of a felony marijuana offense who leave jail, either after serving their sentence or on parole (or whatever diversion mechanism may exist in their jurisdiction), JPI has summarized the consequences that people

convicted of marijuana felonies face in a sampling of states. Alabama, California, Florida, and Texas were selected because of the significant number of people in prison for marijuana offenses in these states, as shown in Table 8.⁵²

Table 8. States with the Largest Number of People Incarcerated for Marijuana		
Jurisdiction	Number of Persons Incarcerated for Drug Offenses	Number of Persons Incarcerated for Marijuana Offenses
Alabama*	4,370	408
California	33,034	1,189
Florida	15,985	534
Texas	22,805	1,215

Sources: The Alabama, California, Florida, Michigan, New York and Texas State Department of Corrections reported the data. Alabama only reported those incarcerated for possession.

How Race Factors into Collateral Consequences for Drug Offenders

While the majority of drug users and drug traffickers are white, drug enforcement policies have been shown to have a disproportionate impact on the African-American community. The Sentencing Project in 2002 reports that 30 percent of people arrested for marijuana violations are African-American, yet blacks only make up about 12 percent of the population and 14 percent of marijuana users, while non-Hispanic whites make up 74 percent of marijuana users.⁵³ A 2004 Princeton University study highlights the stark impact of incarceration on African-American unemployment in New York City. The study shows that black men with prison records receive less job offers for entry-level positions than white men with identical records. The researchers sent 13 white, black, and Hispanic men posing as formerly incarcerated people—people who just completed an 18-month drug sentence—to search for unskilled jobs. They found that the white men were far more likely to receive offers or get called back than the black men.⁵⁴ The study concludes that racial disparity in incarceration has increased black/white wage inequality by approximately 10 percent.⁵⁵

Table 9
Collateral Consequences for Marijuana Offenders
in California, Florida, Alabama and Texas

<p>California: 1,189 people in prison for marijuana.⁵⁶</p>	<p>Felony versus Misdemeanor: The possession of any amount of marijuana in California is defined under law as a misdemeanor and the cultivation or sale of any amount of marijuana is considered a felony. The California Health and Safety Code defines trafficking as transporting, importing, selling, administering or giving away any controlled substance or narcotic drug, unless prescribed by a doctor.⁵⁷</p> <p>Key Collateral Consequences: There is no specific regulation prohibiting public or private employers or occupational licensing agencies from discriminating against ex-prisoners; however, former prisoners are allowed to earn certificates of rehabilitation. Individuals that were charged with drug possession are allowed access to food stamps, while individuals that were charged with trafficking are not.⁵⁸ People in California on parole for a felony are not allowed to vote. Drivers' licenses for individuals with an alcohol or drug conviction are revoked for the first six months after release, though people in treatment may obtain restricted licenses to attend work or treatment.⁵⁹</p>
<p>Florida: 534 people in prison for marijuana.⁶⁰</p>	<p>Felony versus Misdemeanor: According to Florida law, a misdemeanor charge is imposed if the individual is in possession of 20g or less of marijuana. The possession of more than 20g and the cultivation or sale of any amount of marijuana is a felony under state law.⁶¹</p> <p>Key Collateral Consequences in Florida: Conviction records and certain arrests that did not lead to convictions will indefinitely be available upon request and on the internet. While seeking employment after release, private employers and occupational licensing authorities can refuse to hire because of a conviction on record. Employers may also learn of and consider arrests that did not lead to a conviction. People who were formerly incarcerated for drug trafficking will never be eligible for public assistance or food stamps. Individuals convicted of a drug offense have their drivers' licenses automatically revoked for at least six months. After the six months, a restricted license may be granted solely on the basis of business or employment. Voting rights are also denied while on parole unless the person is granted a full pardon.⁶²</p>
<p>Alabama: 408 people in prison for marijuana.⁶³</p>	<p>Felony versus Misdemeanor: In Alabama, the first or second conviction for possession of over 2.2 lbs. of marijuana is considered a felony. In fact, any amount of drug possession is considered a felony in Alabama if it is after a first conviction for drug possession.⁶⁴ Trafficking of any amount is a felony. The sale, cultivation, or manufacture of any amount less than 1 kilogram or 2.2 lbs. requires a mandatory minimum sentence of 3 years and a fine of \$25,000. Mandatory minimum sentences increase in tandem with the amount of marijuana, with an amount over 1,000 lbs. being punishable with life in prison. Selling paraphernalia to a minor who is 3 years younger or more than the seller also constitutes a felony.⁶⁵</p> <p>Key Collateral Consequences in Alabama: When hiring, employers may</p>

	<p>consider arrests that never led to a conviction and may also deny anyone with a criminal conviction a job despite his or her qualifications. In light of this, there is no prospect of achieving rehabilitation certificates. Public assistance and food stamps are denied to people with drug felonies for the rest of their lives. There is also a lifetime bar on voting, which can be lifted by a restoration of civil rights. Where public housing is concerned, the Birmingham Public Housing Authority makes decisions on a case-by-case basis but arrests that did not lead to a conviction can be considered. Driving licenses are also revoked or suspended for up to six months for all drug convictions.⁶⁶</p>
<p>Texas: 1,215 in prison on a marijuana offense.⁶⁷</p>	<p>Felony versus Misdemeanor: In Texas, persons in possession of 4 oz. or less of marijuana receive a misdemeanor, while those in possession of between 4 oz. to 5 lbs. may receive a misdemeanor or a felony charge. The possession of 5 lbs. or more automatically constitutes a felony. The sale of up to ¼ oz. of marijuana is considered a misdemeanor, while the sale of ¼ oz. to 5 lbs. could be charged as either a misdemeanor or a felony. The sale of 5 lbs. or more is classified as a felony. The selling of any amount of marijuana within 1,000 feet of a school or within 300 feet of specified areas may either constitute a misdemeanor or a felony.⁶⁸</p> <p>Key Collateral Consequences in Texas: Texas currently has 22,805 people incarcerated for drug convictions and 1,215 of those people are in prison for a marijuana offense. These individuals are going to face a number of roadblocks when re-entering the community. In Texas, employers can not only request information about arrests that never led to conviction, but also refuse to hire individuals with a criminal history, regardless of their qualifications. An employer can deny employment to a person that was detained by the police despite that person never being found guilty of any crime. People convicted of a drug felony in Texas are denied public assistance and food stamps for their lifetime. In addition, these individuals are barred from voting if they are incarcerated or on parole or probation. Drivers' licenses can be revoked or suspended for a wide range of drug or alcohol offenses—some are not necessarily driving related. These individuals are not allowed to obtain restricted licenses to attend work, school or treatment.</p>

Conclusion

This policy brief shows that while thousands of people, their families and communities are impacted by the arrest, detention, conviction and imprisonment of marijuana offenders, the leading drug use and drug violation indicators suggests that the current policy is not having the desired impact on curbing marijuana use. Put another way: *while the costs of the criminal justice approach to marijuana runs into the billions of dollars, and affects tens of thousands of people through prison and jail (and hundreds of thousands through arrests), there isn't a clear observable benefit in terms of reduced drug use.*

JPI recommends that we look to the past as a prologue for the country's future policy choices. There is a need to reconvene a body of experts—not unlike, say, the National Commission on Marijuana and Drug Abuse or the National Research Council—to review

the efficacy and impact of the current criminal justice approach, and recommend other policy choices.

The lack of corrections and justice system data on marijuana-related issues demonstrate a need for the criminal justice statistics community to work with state and local corrections systems to help collect and keep data on drug prison admissions, controlling for the drug of the offense. And given the “collateral consequences” facing 41,000 people convicted of a felony marijuana offense each year, there is a need to get a better handle of the impact of various barriers that these drug offenders face—even when they serve no prison time.

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Notes

Table 4 Methodology:

State agencies were called in all 50 states. The research question was, “How many people are currently in prison for a marijuana offense as their controlling conviction?” Of these, we received positive or negative responses from 33 states, 17 of which provided us with a solid number. Nine additional states replied, saying they are attempting to get the information to us, but as of 14th June, 2005, they had not done so. We were unable to establish contact with six states because they were not able to receive our phone calls, did not return our messages left on their voice mail, e-mail account or with an agency secretary, or the person was out of the office for a matter of weeks. One state, Louisiana, required an expensive fee to process the request. We declined.

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