

**MEMO (IN LIEU OF TESTIMONY) OF**

**HARRY G. LEVINE**

**Department of Sociology, Queens College and The Graduate Center,  
City University of New York**

**REGARDING NEW YORK STATE SENATE BILL 5187 (GRISANTI)  
Relating to standardizing penalties associated with marijuana possession and making unlawful  
possession of small amounts of marijuana a violation punishable by a fine.**

**JUNE 15, 2011**

**REGARDING MARIJUANA POSSESSION ARRESTS IN NEW YORK, 1977 - 2010**

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I am a professor of sociology at Queens College and the Graduate Center of the City University of New York. For thirty years I have been researching the history and sociology of alcohol and drug policies. In recent years, my colleagues and I at the Marijuana Arrest Research Project have been collecting data on the enormous numbers of marijuana possession arrests that the New York City Police Department has made since 1996. Included in this memo are graphs and tables showing data from the New York State Division of Criminal Justice Services and the U.S. Census. But it is worth reviewing some of the highlights of what has been happening.

Since 1977 and the passage of the Marijuana Reform Act, under New York State Law, carrying a small amount of marijuana in a pocket, backpack or purse has been a violation, like a traffic violation, and is *not* a crime.

Nonetheless, in the fifteen years from 1996 through 2010, the NYPD made 536,320 lowest level marijuana possession arrests under NY State Law 221.10. In the previous fifteen years, from 1981 through 1995, the NYPD made only 33,770 of these arrests. The number of marijuana arrests in from 1997 to 2010 is nearly 16 times the number of arrests in the previous period.

In recent years, the number of marijuana possession arrests has grown ever larger. The arrests have nearly doubled since 2005, and in 2010 reached 50,383. Preliminary data from the first quarter of 2011 show that this year the NYPD is on track to make an even higher number of possession arrests.

In 2010, nearly 55,000 people were arrested for lowest-level marijuana possession in New York State and over 50,000 of those arrests were in New York City. Because of this historic increase in the number of arrests, it is appropriate to call this a marijuana arrest epidemic, and to describe what the NYPD has been doing as engaging in a marijuana arrest crusade.

These marijuana possession arrests cost the tax payers of New York a great deal of money. We recently released a study that found these arrests, jailings, and prosecutions currently cost \$1500 to \$2000 or more per arrest. In recent years this works out to \$75 million or more a year. In 2010, when the NYPD made over 50,000 of these lowest-level marijuana arrests, New York City likely spent upwards of \$100 million dollars arresting mainly young people, overwhelmingly blacks and Latinos, simply for possessing

small amounts of marijuana. In the last fifteen years, New York City has likely spent over a billion dollars making these arrests.

The marijuana possession arrests constitute an enormous drain on the resources of the police, courts, jails, prosecutors and legal aid and public defender attorneys. More people are now arrested for lowest-level marijuana possession than for any other single crime in New York City. In 2010, one out of every seven arrests in all of New York City was for marijuana possession.

The arrests target young people. In 2010, 23% of the 50,300 people arrested for lowest-level marijuana possession were teenagers; 56% were under 25 years of age; and 68% were under 30 years of age.

The arrests target people who have never been convicted or even arrested before. Of the 50,300 people arrested in 2010: 30% had never been arrested before for anything; another 40% had never been convicted or plead guilty to anything, not even a misdemeanor. Mostly the charges were dismissed or dropped. In other words, 70% of the people arrested had never been convicted of any crime whatsoever. Another 11% had a previous conviction for a misdemeanor. Only 19% of the people arrested for marijuana possession had been previously convicted of a felony, mostly a low-level felony for non-violent drug offenses such as selling small amounts of marijuana.

The youngest people, the great majority of those arrested for marijuana, are the least likely to have criminal convictions. In 2010, 46% of the teenagers (age 16 to 19) arrested for marijuana possession had never been arrested before for anything. Another 48% of the teenagers had never been convicted of even one misdemeanor. In 2010, 32% of the young people age 20 to 24 had never been arrested before for anything, and another 45% had never been convicted of even one misdemeanor. The arrests are not capturing career criminals; they are ensnaring young people, overwhelmingly without any criminal convictions. For many of the young people, this is their first arrest.

The NYPD's focus on arresting young people who have no criminal records simply to charge them with possession of small amounts of marijuana violates the intent of New York State Law. The introduction to *The Marijuana Reform Act of 1977* as passed by the New York State Senate and Assembly, and signed by Governor Carey, says:

"The legislature finds that arrests, criminal prosecutions, and criminal penalties are inappropriate for people who possess small quantities of marijuana for personal use. Every year, this process needlessly scars thousands of lives and wastes millions of dollars in law enforcement resources, while detracting from the prosecution of serious crimes."

The arrests unjustly target young African Americans and Latinos and their neighborhoods. U.S. government surveys consistently find that young whites use marijuana at higher rates than young blacks and Latinos. But for many years, New York City has arrested African Americans at seven times the rate of whites, and Latinos at nearly four times the rate of whites. From 1996 through 2010, blacks were 54% of the people arrested, but only 25% of the population; Latinos were 33% of the people arrested, but only 27% of the population; whites (non-Hispanic) were only 12% of the arrests, but constitute 35% of the population. For the last 15 years, 87% of the people arrested for marijuana possession have been blacks and Latinos, who use marijuana at *lower* rates than young whites. As *New York Times* columnist Jim Dwyer accurately titled his December 23, 2009 column, "*Whites Smoke Pot, but Blacks Are Arrested.*"

The narcotics and patrol police making these arrests target primarily black and Latino precincts, which are disproportionately low income neighborhoods. Included with this memo is a graph and a table showing the marijuana possession arrests in fifteen precincts with the lowest rates of marijuana arrests in the New York City, and fifteen other precincts with the highest rates of marijuana possession arrests in the city. This is new data and analysis, never before presented. The population of police precincts varies, so the number of arrests is less useful and accurate than the rate of arrests per hundred thousand residents. We averaged arrests for three years, 2008 through 2010, to show this is not a one-year fluke but a consistent pattern.

The rates of arrest in the precincts with the lowest rates range from 16 to 130 a year per hundred thousand residents. The rates of arrest in the precincts with the highest rates range from 995 to 2,507 a year. The average rate of arrests in the highest rate precincts is 1,473, and in the lowest it is only 79 a year. The average rate in the fifteen neighborhoods with the highest rates is 18.6 times higher than in the fifteen neighborhoods with the lowest rates. People in the targeted neighborhoods have over eighteen times the chances of getting arrested for possessing marijuana. But even these figures do not fully reveal the disparities in marijuana arrest rates among the various neighborhoods of New York.

The 19th Precinct on the Upper-East Side of Manhattan, where Mayor Michael Bloomberg lives, has the very lowest rate of marijuana arrests in the city: a mere 16 arrests a year per hundred thousand residents. This is a wealthy and overwhelmingly white neighborhood: blacks and Latinos make up only 8% of the precinct's population.

On the other end of the continuum are the Brooklyn neighborhoods of Ocean-Hill Brownsville and East New York (Precincts 73 and 75), the Manhattan neighborhoods of East Harlem and Washington Heights (Precincts 25 and 33), and the neighborhood of University Heights and Fordham in the Bronx (Precinct 44). The marijuana possession arrest rates in these precincts range from 100 times the rate of Bloomberg's neighborhood to an astonishing 155 times the rate in Ocean-Hill Brownsville. The population in these precincts averages over 90% African Americans and Latinos.

The consequences of these arrests for the young people targeted are substantial and potentially life long. Everyone arrested is handcuffed, taken to a police station, finger-printed, photographed, and nowadays their eyes are electronically scanned. Their personal information is sent to the FBI, and then to other public and private criminal records databases. These records are permanent and effectively cannot be expunged.

Twenty years ago, misdemeanor arrest and conviction records were papers kept in court store-rooms and warehouses, often impossible to locate. Now they computerized and instantly searchable on the Internet for \$20 to \$40 through commercial criminal-record database services. A simple Google search for the phrase 'criminal database' or 'criminal records' produces numerous links to firms, some claiming that their searches are better than the others. Some offer "50 state searches" for as low as \$12.95.

Employers, landlords, credit agencies, licensing boards for nurses and beauticians, schools, and banks now routinely search these databases for background checks on applicants. A simple arrest for marijuana possession can show up on criminal databases as "a drug arrest" without specifying the substance, the charge, or even if the person was convicted. Employers and landlords, faced with an abundance of applicants, often eliminate those with criminal arrest records, especially for drugs. Nurses, security guards, and others licensed by the state can lose their licenses and their jobs from just one misdemeanor marijuana arrest.

For legal immigrants, two guilty pleas to misdemeanor marijuana possession can lead to deportation, and one guilty plea can bar someone from ever returning to the U.S. Family court can remove children from a home because a parent is convicted or even just arrested for marijuana possession. A person cannot be considered for public housing with an "open criminal case," including the typical probation for a first time arrest for possessing small amounts of marijuana.

### *ARRESTS ACROSS NEW YORK STATE*

Although this memo focuses on arrests in New York City, it is worth noting that marijuana possession is heavily policed throughout New York State with dramatic racial disparities in arrests. A graph and table attached to this memo use FBI Uniform Crime Report data for 13 large counties in New York State to show "arrests" for marijuana possession as reported by the FBI.

This FBI data likely includes the many summonses with mandatory court appearance that are given out for the non-criminal "violation" of NYSPL 221.05 (and relatively few of the criminal misdemeanor 221.10 arrests discussed above for New York City). Nonetheless, the FBI data shows that throughout New York State the rates of these "arrests" including summonses are high, and the rates at which blacks are arrested in a number of counties and cities in New York State is similar to the rate blacks are arrested in some of the highest arrest rate neighborhoods in New York City.

For example, the rates of marijuana arrests of blacks in eight counties – Albany, Erie (Buffalo), Monroe (Rochester), Niagara, Oneida (Utica), Onondaga (Syracuse), Orange, and Rockland – ranges from over 1000 to 2000 arrests per 100,000 black residents. This is in the same arrest rate range as misdemeanor marijuana possession arrests in New York City's black and Latino neighborhoods such as Bedford-Stuyvesant and East Harlem. As in New York City, these marijuana possession arrests elsewhere in New York State are also primarily of young people, 60% to 70% of them aged 15 to 24. And in various large counties in New York State, blacks are arrested at three to seven times the rate of whites. In the midst of New York's severe economic crisis, when schools, health care and other essential services are being cut, is this the best use of many millions of dollars a year?

In short, in New York City and throughout the State, for those concerned with the heavy policing of young people for simple possession of marijuana, for those concerned about the substantial racial disparities in the large number of marijuana possession arrests, and for those concerned with the substantial costs and consequences of making and processing all these arrests, there is much that can be reformed.

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For research and further information on New York City's marijuana arrests see:

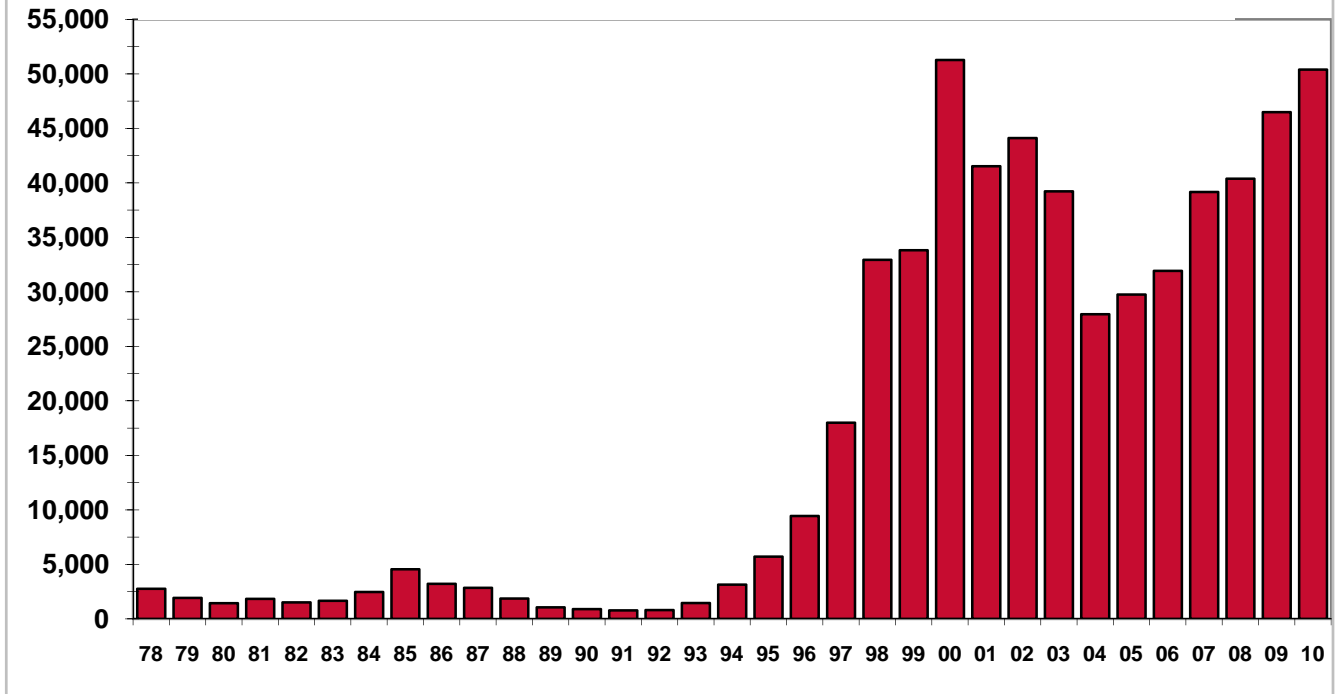
Harry G. Levine and Deborah Peterson Small, *Marijuana Arrest Crusade: Racial Bias and Police Policy, 1997- 2007*, New York Civil Liberties Union, NY, April 2008.

at: [http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE\\_Final.pdf](http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf)

Harry G. Levine, Jon Gettman and Loren Siegel, *\$75 Million a Year: The Cost of New York City's Marijuana Arrests*. New York: Drug Policy Alliance, March 2011.

at: [http://www.drugpolicy.org/docUploads/\\_75\\_Million\\_A\\_Year.pdf](http://www.drugpolicy.org/docUploads/_75_Million_A_Year.pdf)

## Marijuana Possession Arrests in New York City, 1978 - 2010



## Marijuana Possession Arrests in New York City by Race, 1996 - 2010

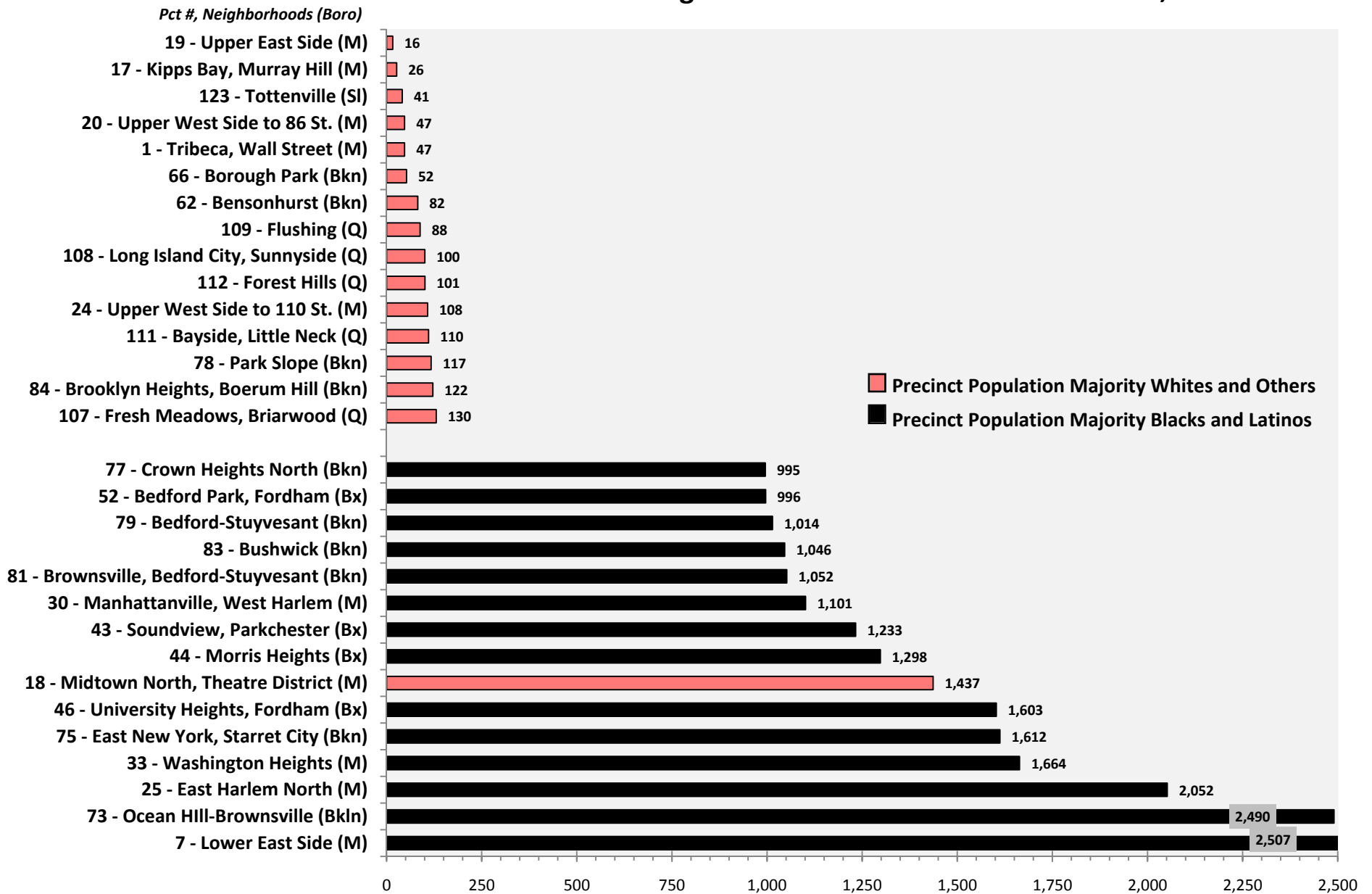
| Total Arrests |         | Whites |     | Latinos |     | Blacks  |     | All others |    |
|---------------|---------|--------|-----|---------|-----|---------|-----|------------|----|
| 1996          | 9,433   | 1,289  | 14% | 2,975   | 32% | 5,086   | 54% | 83         | 1% |
| 1997          | 17,992  | 2,548  | 14% | 5,626   | 31% | 9,604   | 53% | 214        | 1% |
| 1998          | 32,936  | 4,861  | 15% | 10,636  | 32% | 17,060  | 52% | 379        | 1% |
| 1999          | 33,819  | 4,645  | 14% | 11,841  | 35% | 16,900  | 50% | 433        | 1% |
| 2000          | 51,267  | 6,590  | 13% | 17,363  | 34% | 26,670  | 52% | 644        | 1% |
| 2001          | 41,521  | 5,557  | 13% | 12,860  | 31% | 22,544  | 54% | 560        | 1% |
| 2002          | 44,111  | 6,324  | 14% | 13,929  | 32% | 22,949  | 52% | 909        | 2% |
| 2003          | 39,213  | 5,250  | 13% | 12,254  | 31% | 20,690  | 53% | 1,019      | 3% |
| 2004          | 27,944  | 2,468  | 9%  | 9,597   | 34% | 15,310  | 55% | 569        | 2% |
| 2005          | 29,752  | 2,355  | 8%  | 9,998   | 34% | 16,605  | 56% | 794        | 3% |
| 2006          | 31,925  | 2,584  | 8%  | 10,564  | 33% | 17,990  | 56% | 787        | 3% |
| 2007          | 39,156  | 3,387  | 9%  | 13,114  | 34% | 21,581  | 55% | 1,074      | 3% |
| 2008          | 40,383  | 3,959  | 10% | 13,406  | 33% | 21,954  | 54% | 1,064      | 3% |
| 2009          | 46,487  | 4,658  | 10% | 15,291  | 33% | 25,329  | 54% | 1,209      | 3% |
| 2010          | 50,383  | 5,493  | 11% | 16,123  | 32% | 27,177  | 54% | 1,590      | 3% |
| 96-10         | 536,322 | 61,968 | 12% | 175,577 | 33% | 287,449 | 54% | 11,328     | 2% |

Source: New York State Division of Criminal Justice Services, Computerized Criminal History System (Feb 2011). Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. These tables show only the lowest-level misdemeanor marijuana possession arrests and charges.

- Harry G. Levine, Sociology Department, Queens College and the Graduate Center, City University of New York. June 2011

# Marijuana Possession Arrest Rates in NYPD Precincts

## 15 Lowest and 15 Highest MJ Arrest Rate Precincts in NYC, 2008-2010



Source: New York State Division of Criminal Justice Services, Computerized Criminal History System. Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. These tables show only the lowest level misdemeanor marijuana possession arrests and charges. 3-year average of rates per 100,000 of precinct population, 2008-2010. U.S Census: 2005-2009 from the Census Bureau's American Community Survey

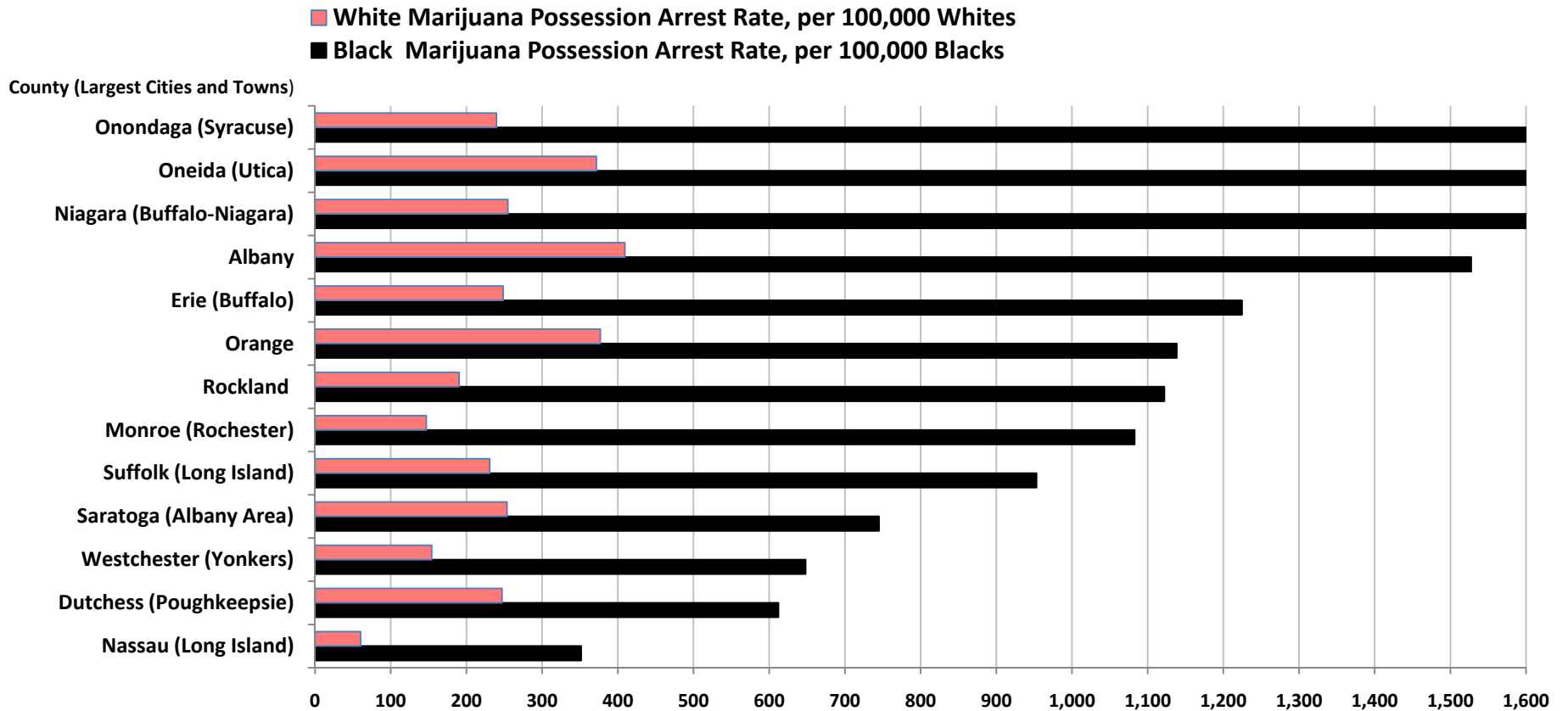
## Precincts with the Lowest and Highest Marijuana Possession Arrest Rates in NYC, 2008-2010

| <b>15 Precincts with the LOWEST Marijuana Possession Arrest Rates in NYC</b>  | <b>2008- 2010 MJ Poss Arrest Rates</b> | <b>% of pop Blacks &amp; Latinos</b> | <b>Average # of MJ Possession Arrests 2008-10</b> | <b>Total population of precinct</b> |
|---|--|--------------------------------------|---|-------------------------------------|
| <b>Precinct # - Neighborhood</b>  |  |                                      |   |                                     |
| 19 - Upper East Side (M)  | 16                                     | 8%                                   | 35  | 218,183                             |
| 17 - Kipps Bay, Murray Hill (M)   | 26                                     | 9%                                   | 21  | 78,005                              |
| 123 - Tottenville (SI)  | 41                                     | 9%                                   | 69  | 166,738                             |
| 20 - Upper West Side to 86 St. (M)  | 47                                     | 11%                                  | 47  | 100,644                             |
| 01 - Tribeca, Wall Street (M)   | 47                                     | 10%                                  | 26  | 54,499                              |
| 66 - Borough Park (Bkn)   | 52                                     | 15%                                  | 99  | 189,342                             |
| 62 - Bensonhurst (Bkn)  | 82                                     | 12%                                  | 145   | 177,569                             |
| 109 - Flushing (Q)  | 88                                     | 20%                                  | 222   | 251,908                             |
| 108 - Long Island City, Sunnyside (Q)   | 100                                    | 38%                                  | 115   | 114,115                             |
| 112 - Forest Hills (Q)  | 101                                    | 15%                                  | 119   | 117,843                             |
| 24 - Upper West Side to 110 St. (M)   | 108                                    | 7%                                   | 127   | 117,744                             |
| 111 - Bayside, Little Neck (Q)  | 110                                    | 12%                                  | 138   | 125,381                             |
| 78 - Park Slope (Bkn)   | 117                                    | 25%                                  | 79  | 67,295                              |
| 84 - Brooklyn Heights, Boerum Hill (Bkn)                                      | 122                                    | 36%                                  | 71  | 58,647                              |
| 107 - Fresh Meadows, Briarwood (Q)  | 130                                    | 31%                                  | 206   | 157,790                             |
|   |  |                                      |   |                                     |
| <b>15 Precincts with the HIGHEST Marijuana Possession Arrest Rates in NYC</b> | <b>2008- 2010 MJ Poss Arrest Rates</b> | <b>% of pop Blacks &amp; Latinos</b> | <b>Average # of MJ Possession Arrests 2008-10</b> | <b>Total population of precinct</b> |
| <b>Precinct # - Neighborhood</b>  |  |                                      |   |                                     |
| 77 - Crown Heights North (Bkn)  | 995                                    | 80%                                  | 993   | 99,722                              |
| 52 - Bedford Park, Fordham (Bx)   | 996                                    | 83%                                  | 1,340   | 134,479                             |
| 79 - Bedford-Stuyvesant (Bkn)   | 1,014                                  | 84%                                  | 898   | 88,566                              |
| 83 - Bushwick (Bkn)   | 1,046                                  | 89%                                  | 1,132   | 108,164                             |
| 81 - Brownsville, Bedford-Stuyvesant (Bkn)                                    | 1,052                                  | 94%                                  | 684   | 65,028                              |
| 30 - Manhattanville, West Harlem (M)  | 1,101                                  | 85%                                  | 638   | 57,959                              |
| 43 - Soundview, Parkchester (Bx)  | 1,233                                  | 87%                                  | 2,247   | 182,270                             |
| 44 - Morris Heights (Bx)  | 1,298                                  | 95%                                  | 1,752   | 134,975                             |
| 18 - Midtown North, Theatre District (M)                                      | 1,437                                  | 10%                                  | 376   | 26,151                              |
| 46 - University Heights, Fordham (Bx)   | 1,603                                  | 92%                                  | 2,093   | 130,622                             |
| 75 - East New York, Starret City (Bkn)  | 1,612                                  | 90%                                  | 2,825   | 175,243                             |
| 33 - Washington Heights (M)   | 1,664                                  | 87%                                  | 1,383   | 83,130                              |
| 25 - East Harlem North (M)  | 2,052                                  | 90%                                  | 911   | 44,399                              |
| 73 - Ocean Hill-Brownsville (Bkn)   | 2,490                                  | 96%                                  | 2,035   | 81,731                              |
| 07 - Lower East Side (M)  | 2,507                                  | High*                                | 400   | 15,945                              |

Source: New York State Division of Criminal Justice Services, Computerized Criminal History System. Includes all fingerprintable misdemeanor arrests for NYS Penal Law Article 221.10 as the most serious charge in an arrest event. Ages 16 and older. These tables show only the lowest level misdemeanor marijuana possession arrests and charges. 3-year average of rates per 100,000 of precinct population, 2008-2010. U.S Census: 2005-2009 from the Census Bureau's American Community Survey.

\*Precise population by race not available for the 07 precinct.

## White and Black Marijuana Possession Arrest Rates in 13 Large Counties in New York State, 2003-2007



Source: FBI / Uniform Crime Report County Arrest Data and U.S. Census Data. All counties larger than 200,000. "Whites" includes Hispanics, 5 year average, 2003-2007

Note: New York City data is not included here because, like Florida and Illinois, the City does not report its arrests to the FBI. Further the other counties in NY charge people with a lesser offense than NYC. We have covered New York City's marijuana possession arrests at length in a series of publication.

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## Marijuana Possession Arrests Rates in 13 Large Counties in New York State, 2003-2007

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| <i>County (Largest Cities and Towns)</i> | White Rate of MJ Poss Arrests per 100,000 Whites, 03-07 | Black Rate of MJ Poss Arrests per 100,000 Blacks, 03-07 | Times black rate is higher than white rate | County Pop | Black % County Pop | Black % of MJ Poss Arrests | Total # MJ Poss Arrests, 2007 | % of MJ Poss Arrests Age 15-24 |
|--|---|---|--|------------|--------------------|----------------------------|-------------------------------|--------------------------------|
| Albany                                   | 409   | 1,528   | 3.7  | 297,154    | 12%                | 27%                        | 1,511                         | 62%                            |
| Dutchess (Poughkeepsie)                  | 247   | 612   | 2.5  | 296,416    | 10%                | 24%                        | 769                           | 71%                            |
| Erie (Buffalo)                           | 249   | 1,225   | 4.9  | 914,121    | 13%                | 48%                        | 4,608                         | 62%                            |
| Monroe (Rochester)                       | 147   | 1,083   | 7.4  | 728,081    | 15%                | 57%                        | 2,103                         | 65%                            |
| Nassau (Long Island)                     | 60  | 352   | 5.9  | 1,320,440  | 11%                | 39%                        | 1,244                         | 68%                            |
| Niagara (Buffalo-Niagara)                | 255   | 1,763   | 6.9  | 215,039    | 7%                 | 31%                        | 844                           | 62%                            |
| Oneida (Utica)                           | 372   | 1,989   | 5.4  | 233,118    | 6%                 | 25%                        | 1,060                         | 64%                            |
| Onondaga (Syracuse)                      | 240   | 2,042   | 8.5  | 455,272    | 10%                | 51%                        | 2,480                         | 61%                            |
| Orange                                   | 377   | 1,139   | 3.0  | 380,352    | 10%                | 23%                        | 1,699                         | 69%                            |
| Rockland                                 | 190   | 1,122   | 5.9  | 295,219    | 11%                | 43%                        | 986                           | 70%                            |
| Saratoga (Albany Area)                   | 254   | 745   | 2.9  | 216,944    | 2%                 | 4%                         | 583                           | 67%                            |
| Suffolk (Long Island)                    | 231   | 953   | 4.1  | 1,472,242  | 8%                 | 29%                        | 4,389                         | 65%                            |
| Westchester (Yonkers)                    | 154   | 648   | 4.2  | 950,091    | 15%                | 43%                        | 2,166                         | 63%                            |

Source: FBI / Uniform Crime Report County Arrest Data and U.S. Census Data. All counties larger than 200,000.

Note: New York City data is not included here because, like Florida and Illinois, the City does not report its arrests to the FBI. Further the other counties in NY State likely charge people with a lesser offense than NYC. We have covered New York City's marijuana possession arrests at length in a series of publication

NOTE: The 13 counties listed here have 70% of the population of New York excluding NY City

"Whites" includes Hispanics, 5 year average: 2003-2007

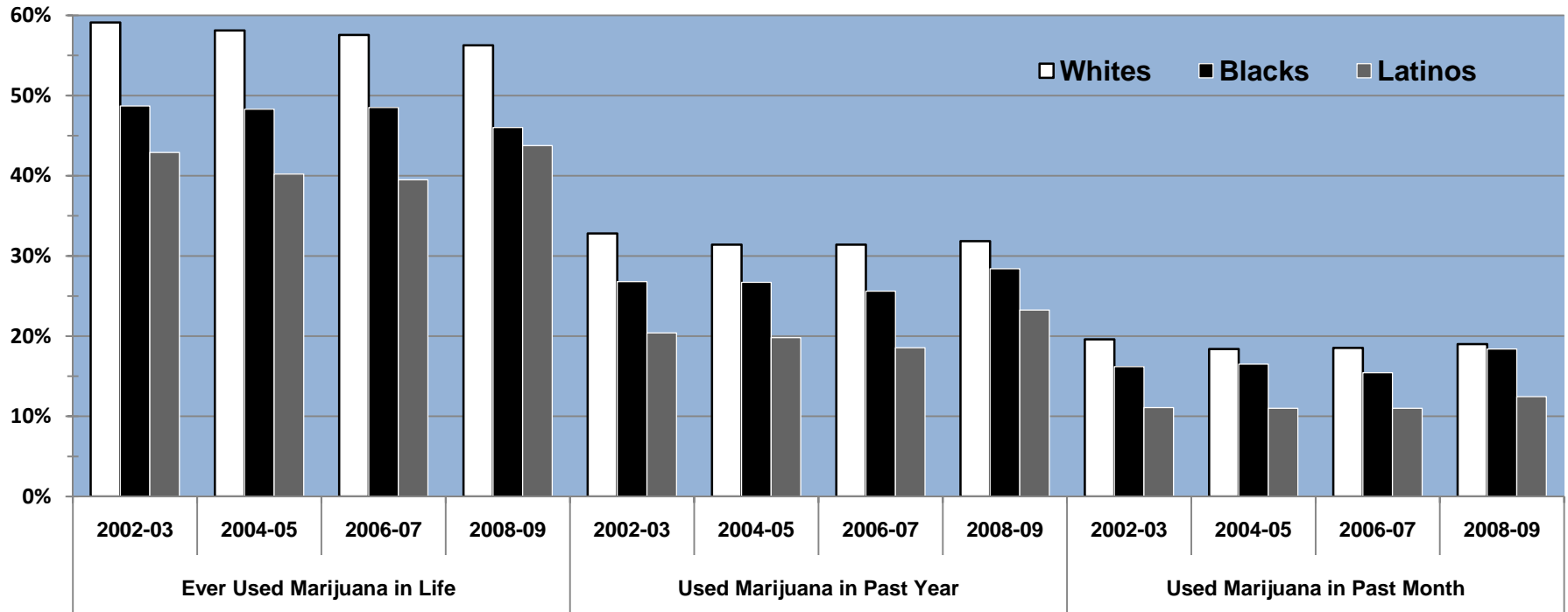
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June 2011

## Marijuana Use by Whites, Blacks and Latinos, Ages 18 to 25, 2002-2009



Source: US Dept HHS, SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002-2007.

2003-2005: Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005.

<http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B>.

2006-2007: Table 1.26B – Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, 2006 and 2007

<http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>

2008-2009: Table 1.26B – Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, 2008 and 2009

<http://www.oas.samhsa.gov/NSDUH/2k9NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>

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