



Collateral Costs:

Racial Disparities and Injustice in Minnesota's Marijuana Laws

Nicole Simms, Ph.D., Minnesota 2020 Fellow

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2324 University Avenue West,
Suite 204, Saint Paul, MN 55114
www.mn2020.org

Editing: Joe Sheeran
Design & Layout: Rachel Weeks

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EXECUTIVE SUMMARY

Minnesota has one of the largest racial disparities in marijuana possession arrest rates in the nation: in 2011, blacks in Minnesota were 6.4 times more likely than whites to be arrested for marijuana possession – over two times the national average. This report examines why this disparity exists, how it manifests in different parts of the state, and most importantly, the extent to which it impacts the lives of black Minnesotans.

Most cost analyses of marijuana prohibition fail to consider the individual costs associated with an arrest for marijuana possession, focusing instead on police budgets and state taxes. Yet the direct and collateral individual costs of a marijuana possession arrest are potentially significant. This is true regardless of race, but since blacks have long been far more likely to be arrested for marijuana possession, they are much more likely to experience these costs (ACLU, 2013).

Moreover, these costs are likely to reverberate more strongly within black families and communities due to existing socio-economic challenges and disadvantages. For these reasons, some chapters of the NAACP have framed racial disparities in marijuana possession arrests as a civil right issue.

Marijuana possession arrests produce both immediate costs—fines, court fees, attorneys’ fees, and mandatory drug treatment fees—and collateral costs, potentially producing severe longer-term financial hardship for individuals.

For example, drug-related activity can result in a three to five year eviction from public housing. A Hennepin County family forced to move to private housing will end up paying at least \$14,300 more over three years and at least \$23,900 more over five years for private housing. A marijuana possession arrest can also potentially impact employment prospects, access to federal student loans, and immigration status.

These costs and more are examined in this report—especially insofar as they impact black Minnesotans. No one individual will be impacted by all of the costs considered; as such, hypothetical profiles are used to estimate potential lifetime costs associated with a felony-level marijuana possession conviction.



In 2011, blacks in Minnesota were 6.4 times more likely than whites to be arrested for marijuana possession.

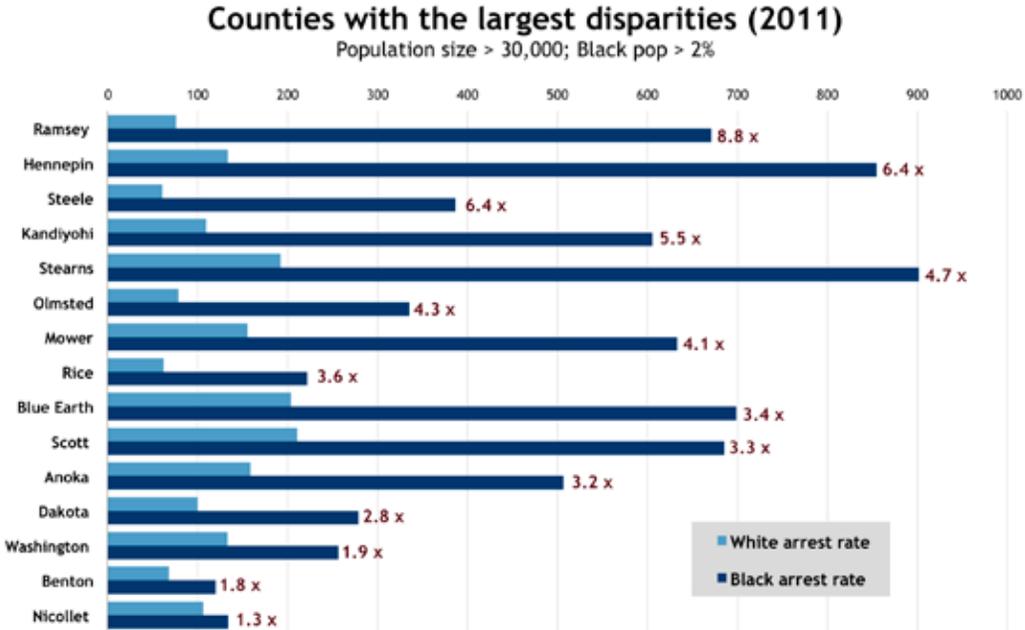


Despite their significant and disproportionate impacts, low-level marijuana offenses continue to be pursued by law enforcement, arguably as a result of financial incentives that reward high numbers of arrests regardless of their quality or court outcome. These include federal funding for drug task forces, which amounted to approximately \$4.2 billion through the Edward Byrne Memorial Justice Assistance Grant in 2012, and the proceeds from asset seizure through civil forfeiture, an estimated \$1.2 million of which were related to marijuana possession in 2012.

✓ Financial incentives reward high numbers of arrests regardless of their quality or court outcome.

There is also a long history of “hot spot” policing in Minnesota, which may help explain why marijuana possession arrests are so racially skewed. In “hot spot” policing, law enforcement expands its presence in areas it believes are more likely to experience crime based on previous crime patterns. “Hot spots” are often populated by low-income earners and people of color, subjecting residents to stops and searches more frequently than higher income whites in other areas.

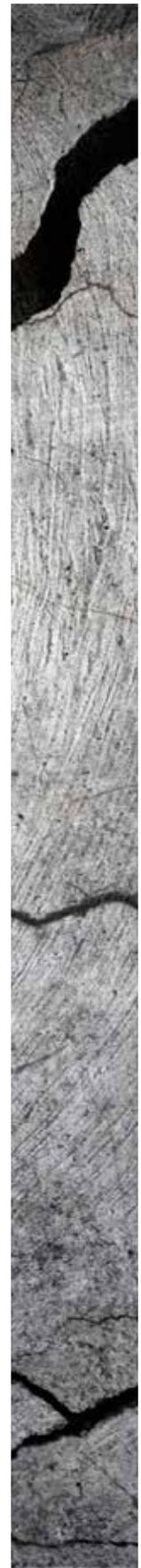
FIGURE 1:

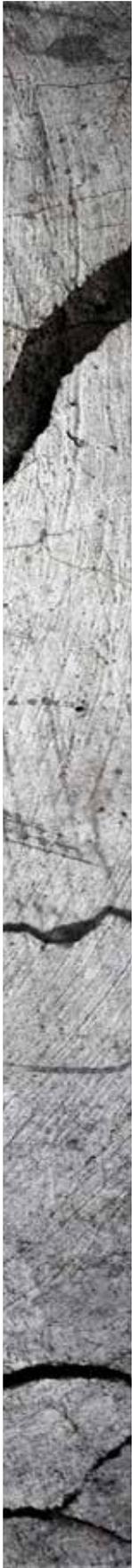


The racial disparity in marijuana arrests varies statewide, as indicated in Figure 1. Ramsey County, where blacks are 8.8 times more likely than whites to be arrested for marijuana possession, exhibits the highest disparity. Yet almost all of these counties have racial disparities well above the national average of 3.05 for 2011.

Given the range and severity of these costs, it behooves lawmakers and law enforcement officials to consider whether current marijuana laws are actually doing more harm than good. There are several laws that, if reformed, could mitigate the impacts of an arrest. Civil forfeiture, for example, could be amended so that a conviction was required prior to asset seizure, and arrest records for low-level offenses could be more easily expunged so that criminal records do not continue to haunt Minnesotans throughout their lives. These costs could also be mitigated or even eliminated through the legalization of marijuana for personal use.

In assessing such initiatives, Minnesota lawmakers should consider the prevalence of marijuana use in Minnesota and the U.S. as a whole. The costs and consequences of marijuana possession are being disproportionately shouldered by blacks in Minnesota when close to 40% of Americans admit to using marijuana at least once in their lifetime. Laws and policies that so selectively punish a behavior that is so widespread and considered harmless (and even beneficial) by many are clearly in need of revision.





FINDINGS

- ✓ Blacks in Minnesota are 6.4 times more likely than whites to be arrested for marijuana possession, a rate over two times the national average.
- ✓ In 2011, blacks in Ramsey County were 8.8 times more likely than whites to be arrested for marijuana possession – the highest disparity in the state, followed by Hennepin and Steele counties.
- ✓ Males, people under 25, Native Americans, and blacks are more likely to report marijuana use. However, the relatively small racial disparity in marijuana use rates cannot account for the large racial disparity in marijuana arrest rates.
- ✓ The direct and collateral costs associated with a marijuana possession arrest include hefty legal fees, treatment costs, lost income, eviction from public housing, emotional stress, and a variety of other financial and human costs.
- ✓ Neither conviction nor incarceration is required for marijuana possession to produce significant collateral costs – an arrest alone can hinder employment opportunities and engender anxiety and resentment.
- ✓ Estimated profiles indicate that the lifetime costs associated with a felony-level marijuana possession arrest could range from \$40-76 thousand, under conservative estimates.

RECOMMENDATIONS

- ✓ Minnesota’s significant racial disparities in marijuana possession arrest rates offer a compelling argument to legalize marijuana for personal use within a civil rights framework.
- ✓ Short of legalization, Minnesota citizens should demand lawmakers reform discriminatory practices around marijuana enforcement, and restructure funding mechanisms that incentivize low-level arrests.
- ✓ Law enforcement agencies must do a better job of sharing data to identify and address problematic patterns in policing activities.
- ✓ Minnesota lawmakers should consider initiatives to mitigate collateral costs associated with marijuana arrests, including:
 - An easier pathway toward expunging low-level, non-violent offenders’ records.
 - Reforming civil forfeiture laws so that a criminal court conviction is required for judicial forfeiture, and spouses and other innocent owners are able to raise claims when their assets are seized as a result of someone else’s criminal activity.
 - Medical marijuana’s legalization to limit collateral costs from health related usage.

INTRODUCTION

In 2013, the American Civil Liberties Union (ACLU) released “The War on Marijuana in Black and White: Billions of Dollars Wasted on Racially Biased Arrests.” In it, the ACLU documents the disturbingly disproportionate rates at which blacks are arrested for marijuana possession compared to whites. “[A] Black person is 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates” (ACLU 2013).

Such disparities exist across the country, but they are particularly high in Minnesota, where blacks were 7.81 times more likely to be arrested for marijuana possession than whites in 2010.

This figure places Minnesota third nationally for the highest racial disparity in marijuana possession arrest rates, behind only Iowa (with an 8.34) and the District of Columbia (at 8.05). Minnesota’s presence among these top offenders is perhaps unsurprising given the state’s poor track record when it comes to racial equity in other areas; Minnesota has the highest racial disparity in unemployment in the United States, and significant racial disparities in homeownership, educational attainment, incarceration, and health outcomes (Austin, 2012; MDH, 2014).

It is encouraging to note that the state’s racial disparity in marijuana possession arrest rates declined slightly between 2010 and 2011. The ACLU’s report is based on FBI data from 2010, but newer data from 2011 indicates blacks are 6.4 times more likely to be arrested for marijuana possession than whites, still well above the 2011 national average of 3.05.

Black Minnesotans therefore remain particularly vulnerable to the many direct and indirect costs and consequences of a marijuana arrest or conviction. This report aims to identify and—where possible—quantify these costs in order to better understand the economic impact that marijuana enforcement has on Minnesotans, and particularly on black Minnesotans.



Black Minnesotans remain particularly vulnerable to the many direct and indirect costs of a marijuana conviction.

This focus on individuals and communities represents a departure from most analyses of the costs associated with marijuana prohibition, which often only consider enforcement’s administrative costs.

While some individual costs resulting from a drug arrest or conviction seem apparent, such as fines, court costs, and attorney and treatment fees, there are various other associated, or “collateral” costs, which significantly impact individuals and communities.

In one of the several studies emphasizing collateral costs, Boire (2007) notes that “the collateral sanctions associated with a marijuana conviction are significant, and in many cases far exceed (in both severity and duration) the direct punishment.” As such, Boire contends the range of collateral sanctions triggered by a conviction “should be recognized and included in a rational debate about marijuana policy and social justice, and carefully considered when crafting or revising legislation.”

Beckett and Herbert (2008) similarly argue that the “enforcement of marijuana laws imposes a range of social, psychological and familial costs on those arrested for marijuana law violations. A complete accounting of the costs and benefits of marijuana prohibition requires consideration of these nonmonetary costs.”

In response to these calls, the costs addressed in this report include:

- ✓ Attorneys’ fees, fines, and other court costs
- ✓ Mandatory drug treatment
- ✓ Civil forfeiture / seized assets
- ✓ Drug tax stamp violations
- ✓ Driver’s license suspensions
- ✓ Lost income and job prospects, including revocation of or ineligibility for professional licenses, and travel restrictions
- ✓ Removal or suspension from public housing
- ✓ Barriers to public assistance
- ✓ Loss of access to federal student loans
- ✓ Deportation
- ✓ Loss of access to affordable medication for medical marijuana users
- ✓ Incalculable individual, familial, and societal costs



MARIJUANA IN MINNESOTA: USE, LAWS, ARRESTS

Marijuana Use in MN

Minnesota’s marijuana use largely mirrors the nation’s, with about 8.3% of Minnesota adults acknowledging they used marijuana in the past year (DHS, 2012). Of these users, approximately 38% (3% of all adult Minnesotans) reported using it frequently—at least once a week during the past year or on four or more days over a month.

As Figure 2 indicates, Minnesota’s reported marijuana use differs according to gender, age, and race. Overall, males reported more marijuana use than females, young adults reported more marijuana use than other age groups, and Native Americans reported more marijuana use than other racial/ethnic groups, followed by blacks.

The age discrepancies in Figure 2 are notable; young adults aged 18 to 24 reported marijuana use over two times more than adults aged 25 to 44, and almost five times more than adults aged 45 to 64.

Figure 2 racial discrepancies are also statistically significant, suggesting that in 2010, blacks were approximately 1.8 times as likely to use marijuana as whites.

However, Gettman (2009) argues the difference in arrest rates between whites and blacks far exceeds racial differences in marijuana use: blacks were 6.4 times more likely to be arrested for marijuana possession in 2011. It is clear that the racial disparity in marijuana arrest rates cannot solely be attributed to higher marijuana use rates among blacks.



The difference in arrest rates between whites and blacks far exceeds racial differences in marijuana use.

Minnesota Marijuana Laws

Marijuana possession in Minnesota has been “decriminalized” since 1976. This does not mean it is legal to possess marijuana, but that the infraction is a civil rather than criminal offense in possession cases under 42.5 grams/1.5 ounces. These are considered petty misdemeanors generally met with a citation akin to a traffic ticket.

FIGURE 2: MARIJUANA USE IN MINNESOTA
Percent by Gender, Age, and Race/Ethnicity (2010) ¹

Use	Gender (%)		Age (%)				Race/Ethnicity (%)				
	Male	Female	18-24	25-44	45-64	65+	African American	American Indian	Asian Pacific Islander	Hispanic	White
Past Year	10.5	5.7	23.2	9.8	4.9	0.5*	12.2	20.5	4.0*	7.1	7.9
Frequent	4.6	1.6	8.9	3.7	1.7	0.2*	5.6	8.8	0.5*	4.9	2.8

**Estimate may not be reliable*

Adapted from Minnesota Department of Human Services. 2012. 2010 Minnesota Survey on Adult Substance Abuse. Available online at <https://edocs.dhs.state.mn.us/lfservlet/Public/DHS-6423B-ENG>

¹ These estimates rely on individuals reporting illicit behavior, and are therefore likely underestimates.

FIGURE 3: MARIJUANA POSSESSION LAWS IN MINNESOTA ²

Offense	Degree	Penalty ³	Incarceration	Maximum Fine
Paraphernalia	N/A	petty misdemeanor	none	\$300
Less than 42.5 g	N/A	petty misdemeanor	none	\$200*
42.5 g - 10 kg	Fifth	felony	5 years	\$10,000
10 - 50 kg	Third	felony	20 years	\$250,000
50 - 100 kg	Second	felony	25 years	\$500,000
100 kg or more	First	felony	30 years	\$1,000,000
More than 1.4 g in car**	N/A	misdemeanor	90 days	\$1,000

* Drug education course may be required
 ** Unless in trunk

Imprisonment is not involved, and the infraction does not result in a criminal record as long as the sentence is complied with (though a drug education class may be required).

This reduced penalty generally only applies to first time offenders; a subsequent offense may be enhanced to a misdemeanor and involve mandatory drug treatment (Pacula, Chiqui, and King, 2003: 9; MN BCA, 2013).

For those in possession of more than 42.4 grams of marijuana, the possible penalties increase sharply, as indicated in Figure 3.

In order to determine the appropriate penalty, the court considers the infraction’s circumstances, an individual’s age, prior convictions, and community standing. However, in some instances, individuals convicted of marijuana-related offenses are subject to mandatory minimum sentencing laws, wherein a

specified prison term, treatment program, fine, and/or other sentencing measures are mandated and judicial discretion is not permitted.

A previous charge related to marijuana possession can also increase the severity of the sentencing associated with a subsequent crime of a different nature (ACLU, 2013). ⁴



Neither conviction nor incarceration is required for marijuana possession to produce significant costs for individuals.

In addition to laws relating directly to marijuana possession and sale, there are other laws and regulations which can have large financial impacts on individuals caught with marijuana, including tax stamp laws, criminal forfeiture laws, and rules governing the conditions under which public assistance may be rendered or revoked. These will be discussed in the “Costs” section of this report.

2 The possession of any amount of marijuana remains a criminal offense under federal law, according to which a first offense of possession is a misdemeanor with maximum jail time of one year and a maximum fine of \$1,000. However, the federal government has elected to respect state marijuana laws in the expectation that state and local governments “will implement strong and effective regulatory and enforcement systems that will address the threats those state laws could pose to public safety, public health, and other law enforcement interests” (Cole, 2013).

3 Designating a case as possession versus sale is not always clear cut. One does not need to be “caught in the act” of selling in order to be charged with marijuana sale; rather, an individual simply found to be in possession of larger amounts of marijuana can be ascribed with intent to sell – especially if it is divided and packaged in smaller quantities. The designation (possession or sale) generally takes place at the discretion of law enforcement officials at the time of arrest, though it may be altered in the absence of evidence during a hearing.

4 A mandatory minimum sentence may be waived by the court for a fifth-degree controlled substance crime if warranted by substantial and compelling reasons.

Neither conviction nor incarceration is required for marijuana possession to produce significant costs for individuals. An arrest record alone produces an easily searchable criminal history that presents possible employment obstacles, particularly for low-income and minority citizens, who are far more likely to be arrested for low-level offenses than wealthy, white citizens (Stuckey, 2008).

Even if cases are dismissed or do not lead to formal charges, arrest records remain publicly available for many years, likely because the option to have records expunged is either not well-known, or is cost-prohibitive. Making it easier for low-level, non-violent offenders to have their records expunged would mitigate an arrest's long-term impacts on an individual's employment and housing prospects.



Men are three times more likely than women to use marijuana frequently, but six times as likely to be arrested for marijuana possession.

Marijuana Arrests in MN

Annual Minnesota marijuana arrests have remained close to 12,000 for the past decade (SUMN, 2013). Of 2012's 11,969 marijuana arrests, 7,269 were for possession and 4,700 were for sale (BCA, 2013). However, 2011 is the most recent year for which marijuana possession arrest data by gender, age, and race is available from the FBI – as such, data from 2011 will be used for this analysis (U.S. Department of Justice, 2013).

FIGURE 4: MINNESOTA MARIJUANA POSSESSION ARRESTS BY AGE (2011)

Age	Arrests	Percent of total
Below 18 ⁶	1502	20.7%
18 - 24	3572	49.2%
25 - 44	1871	25.8%
45 - 64	296	4.1%
65+	15	0.2%

In 2011, 7,256 Minnesotans were arrested for marijuana possession, representing 60% of total marijuana arrests and 41% of all drug arrests.⁵ Analyzing FBI data reveals that an individual is most likely to be arrested for marijuana possession if they are male, under the age of 25, and black.

Males represented 86% of all marijuana possession arrests in 2011. The discrepancy between male and female marijuana use (especially frequent use) outlined in Figure 4 helps explain this gender imbalance in arrests, though not entirely. For example, men are three times more likely than women to use marijuana frequently, but six times as likely to be arrested for marijuana possession.

Differences in use by age are more closely related to differences in arrest by age. Based on reported use, higher numbers of arrests among younger Minnesotans would be expected. Indeed, as shown in Figure 4, individuals under the age of 25 accounted for 70% of all marijuana possession arrests in 2011.

As with use rates, individuals aged 18 to 24 were twice as likely to be arrested for possession as people in the 25-44 age group. However, they were 17 times more likely to be arrested than 45-64 year olds – a significant leap from the difference in use rates between these two groups.⁶

⁵ The other 40% were for sale of marijuana, which includes growing.

⁶ Marijuana has accounted for at least 70% of all juvenile drug arrests since 1980; in 2010, it accounted for 87% (DPS, 2013).

This gap is likely largely explained by the location in which individuals use marijuana. Younger people are more likely to use marijuana outside of the home, where they are far more apt to be caught.

Most significantly given the ACLU's findings on racial disparities in arrest rates, differences in arrest rates between blacks and whites far outstrip any differences in use rates. Blacks report using marijuana approximately 1.8 times more than whites, yet blacks are much more likely to be arrested for marijuana possession than whites.

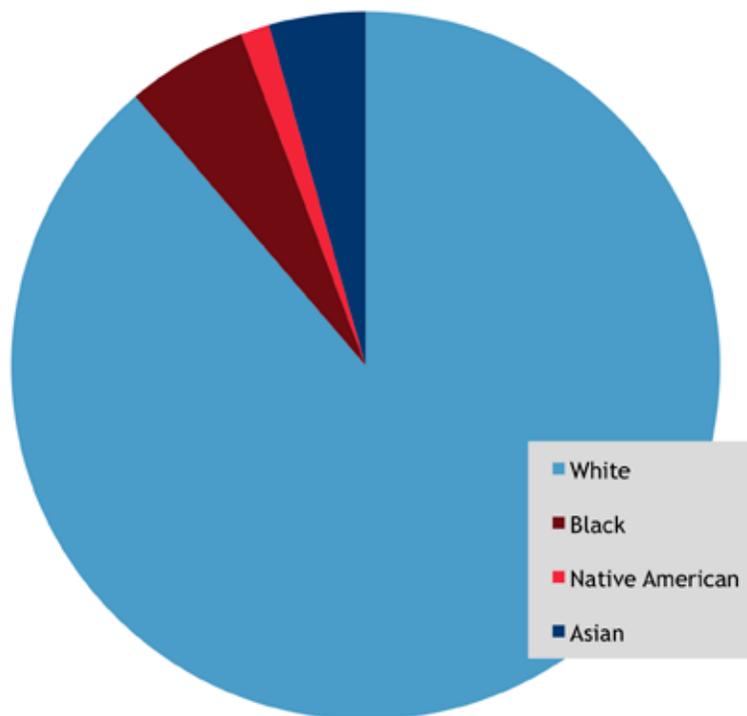
The actual number of white arrests for marijuana possession (4,986) is much larger than the number of black arrests (1,991), but when compared to the prevalence of both groups in the general population, blacks are more likely to be arrested.

In 2011, blacks represented 27.4% of marijuana possession arrests in Minnesota, but only 5.5% of the population. Meanwhile, whites represented 69% of arrests, but constituted 87% of the 2011 population. Thus, the black arrest rate for marijuana possession was 687 and the white arrest rate was 107⁷, making blacks 6.4 times more likely to be arrested for marijuana possession than whites.⁸

7 That is, 687 out of 100,000 blacks are arrested for marijuana possession versus 107 out of 100,000 whites.

8 Among other racial groups, Native Americans are 1.78 times more likely to be arrested than whites, and Asians are about half as likely as whites to be arrested for marijuana possession.

FIGURE 5:
Racial Composition of MN's Population (2011)



Racial Composition of MN's Marijuana Possession Arrests (2011)

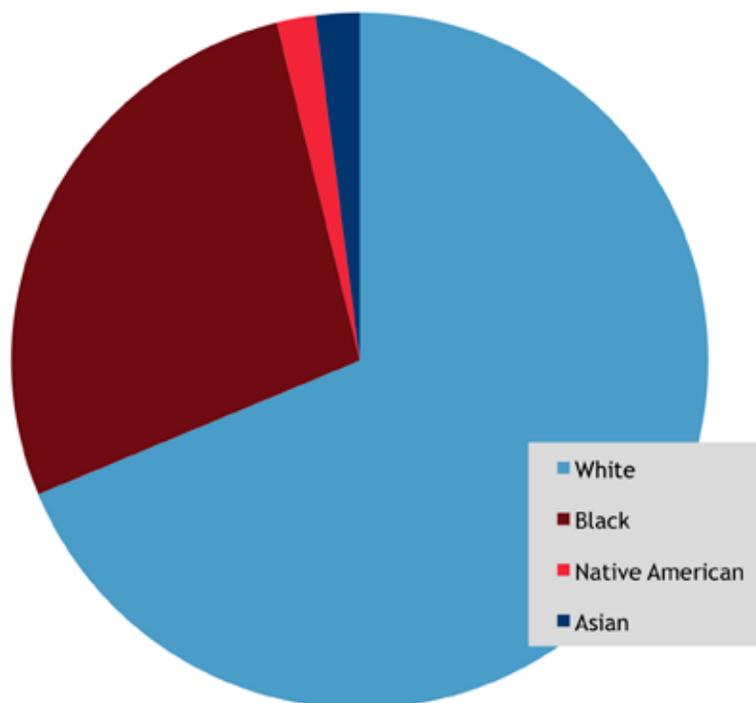
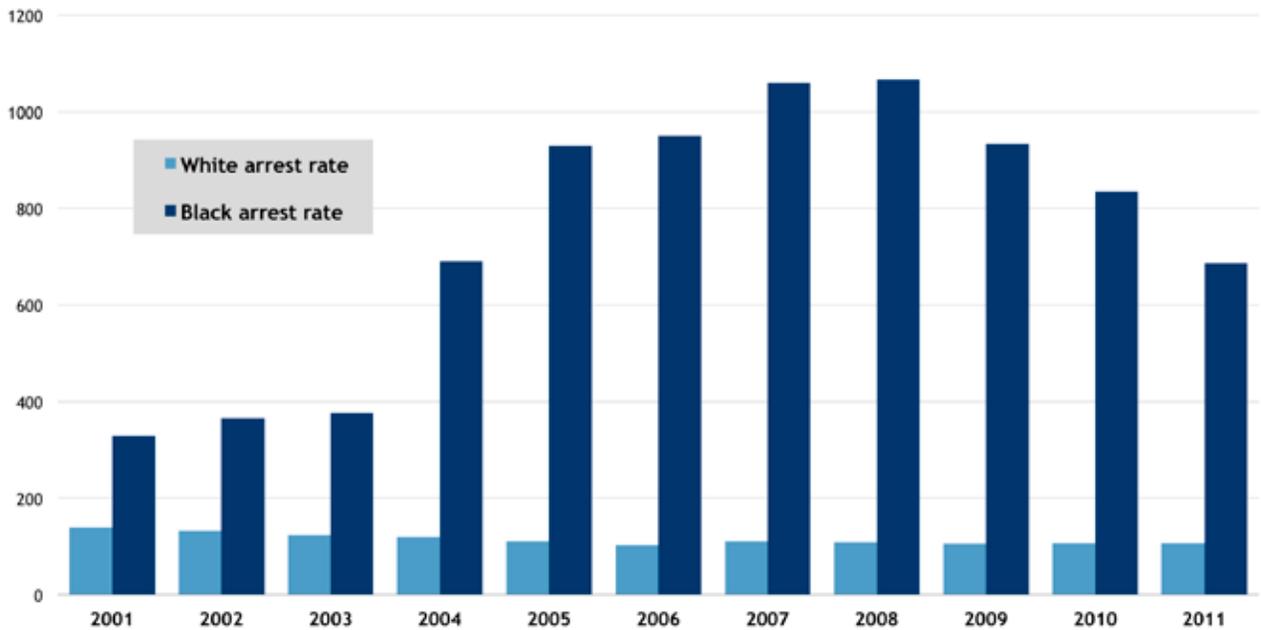


FIGURE 6:

Minnesota Marijuana Possession Arrest Rates 2001-2011



These numbers differ from the figures for 2010 in ACLU’s “The War on Marijuana in Black and White” report, which indicate blacks in Minnesota are 7.8 times more likely to be arrested than whites for marijuana possession. The 2011 number represents a decrease of 23.8%.

The total number of marijuana possession arrests fell slightly from 7,494 in 2010 to 7,256 in 2011, and there were approximately 150 more white arrests and 350 fewer black arrests. The black population grew at a faster rate than the white population between 2010 and 2011, which contributes to a decrease in the racial disparity in arrest rates.

A decrease in the disparity between black and white arrests for marijuana possession has been occurring since 2008, as indicated in Figure 6

However, at 6.4, Minnesota’s disparity is still well above the national average.⁹ This disparity is not borne evenly across the state, as highlighted in the next section.

9 While Minnesota had the third highest racial disparity in the nation with 7.8, 6.4 would still place it among the top five offenders in the ACLU’s list.

ENFORCEMENT DISPARITIES IN MINNESOTA (REGIONAL ANALYSIS)

Marijuana arrests differ across Minnesota. In 2011, for example, the counties with the ten highest numbers of arrests are shown in Figure 7:

While the numbers stick out, remember these are also among the state’s most populated counties. For more illuminating patterns, one should consider arrests per 100,000 of the population. This is crucial in attempting to better understand the nature of Minnesota’s racial disparity in arrest rates.

To prevent skewing arrest rates that occur in counties with very small black populations, the ACLU elected to consider only Minnesota counties with a population over 30,000, and a black population over 2% in its analysis. This report follows suit.

As Figure 8 shows, Ramsey County tops the list, with blacks 8.8 times more likely than whites to be arrested for marijuana possession. All of the counties indicate a racial

disparity, but the majority exhibit disparities above the national average of 3.05 for 2011.

It is no simple task to explain why racial disparities are higher in one county versus another. The majority of marijuana arrests are made

by local police agencies, which use considerable discretion in enforcing marijuana (and other) laws. In the following section, possible explanations for racial disparities in marijuana arrest rates will be explored.

FIGURE 7: MN COUNTIES WITH THE MOST MARIJUANA POSSESSION ARRESTS (2011)

County	Total Arrests
Hennepin	2503
Ramsey	729
Anoka	555
Dakota	443
Stearns	315
Washington	310
Scott	286
St. Louis	215
Wright	170
Blue Earth	137

FIGURE 8: (SAME AS FIGURE 1)

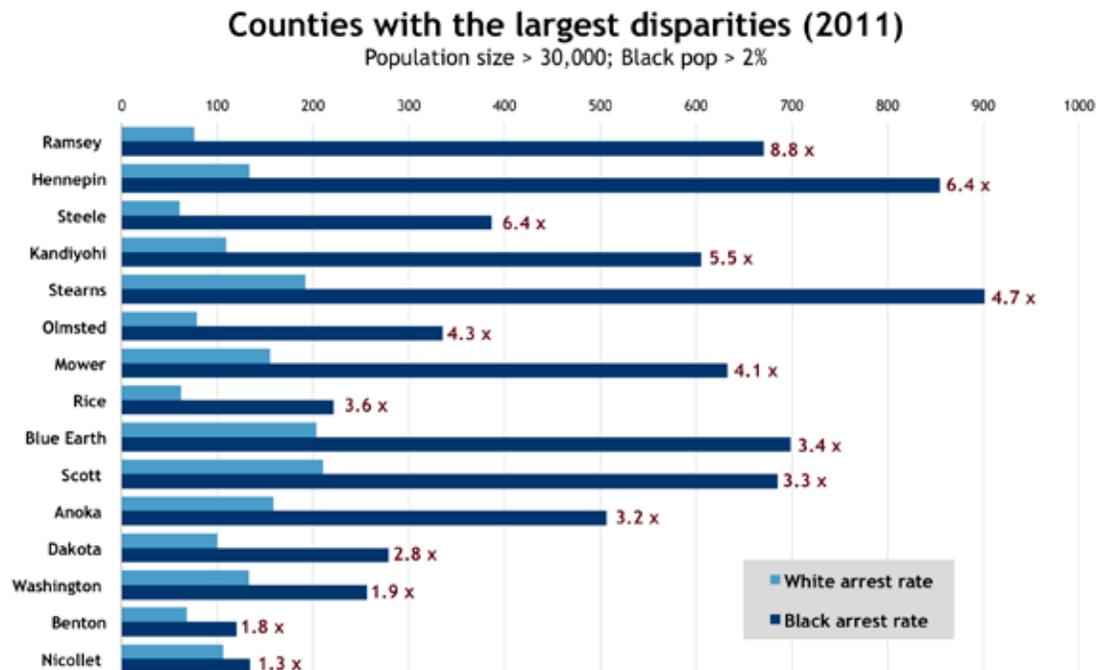
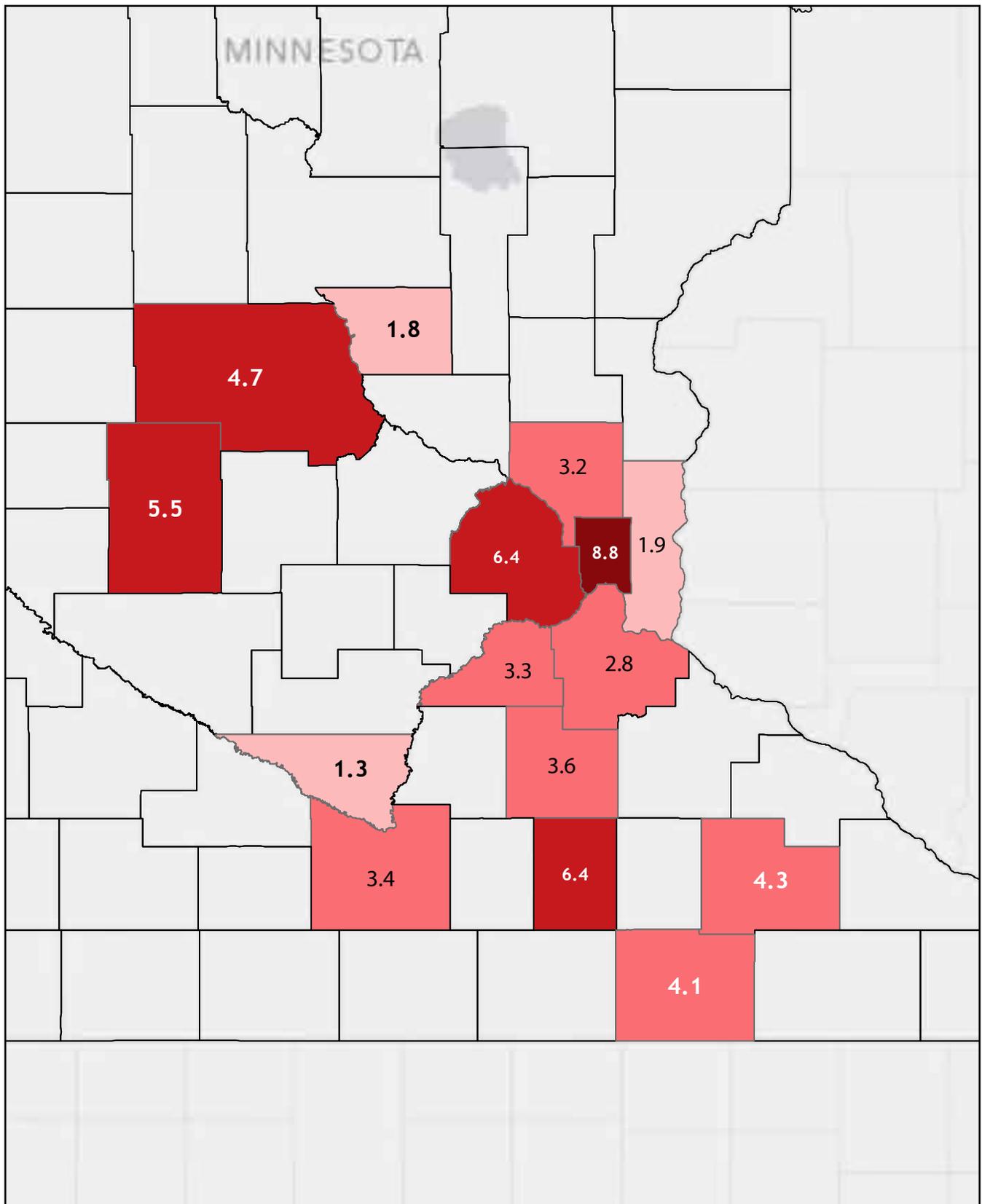


Figure 9: Disparity Rates

Times more likely blacks arrested than whites, population >30,000, >2% black population



ACCOUNTING FOR RACIAL DISPARITIES IN ARREST RATES

Racial disparities in arrest rates are not unique to Minnesota, nor are they limited to marijuana offenses. According to the 2010 census, blacks account for 28% of all arrests in the United States, even though they comprise only 12 to 14% of the country’s population (Snyder, 2012). Figure 10 shows racial disparities in arrest rates for the country.

Minnesota has a particularly poor track record in this regard: in 2010, black arrests comprised 27% of all arrests – a figure comparable to the national average. Yet in Minnesota, blacks only make up a little more than 5% of the population. Thus, while blacks in the U.S. are arrested at rates a little over two times their percentage of the national population, blacks in Minnesota are arrested at rates over five times their percentage of the state population. The statewide racial disparity in arrests is echoed in marijuana possession arrests: in 2011, blacks made up 27.4% of possession arrests, despite comprising roughly 5% of the population.

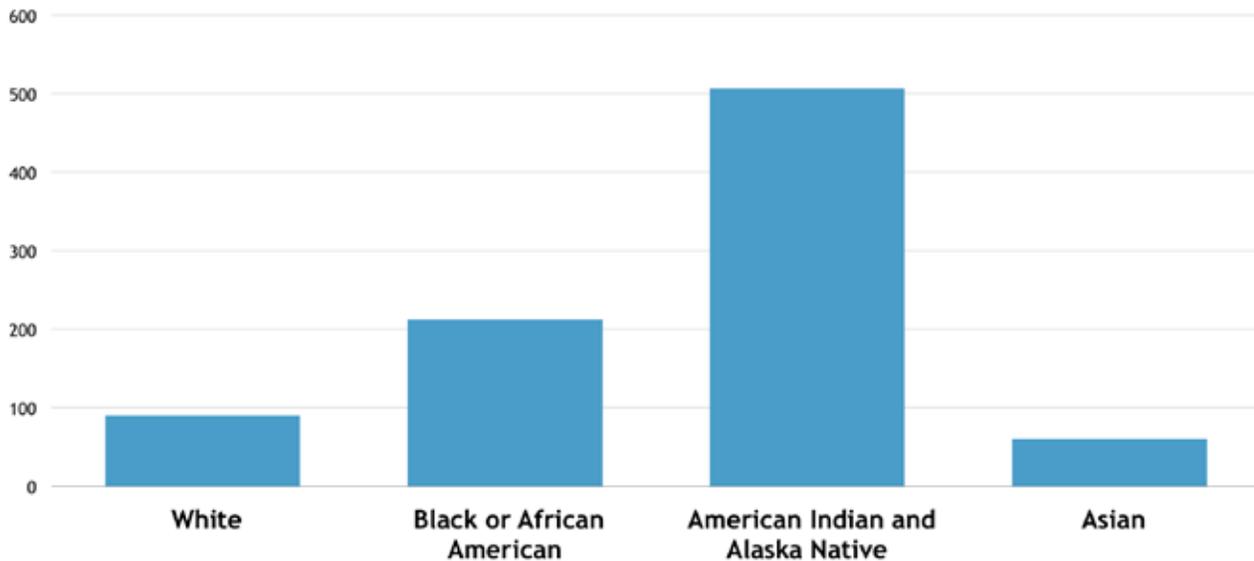
One explanation for racial disparities in marijuana possession arrests has been offered by Ramchand, Pacula, and Iguchi (2006), who investigated the marijuana purchasing behaviors of different racial groups. The authors note that although most people purchase marijuana in private settings from someone they know, African Americans are more likely to “engage in risky purchasing behaviors that increase their likelihood of arrest.”

Their analysis indicates African Americans are nearly twice as likely to buy marijuana outdoors, three times as likely to buy it from a stranger, and significantly more likely to buy it away from home. While these factors may help to explain the racial disparity in marijuana possession arrest rates, they cannot fully account for it—especially in the case of Minnesota, where the disparity is so large.

Racially skewed arrest rates are arguably largely attributable to police practices. Put simply, blacks are arrested and sentenced at higher rates than whites because they are policed more heavily.

FIGURE 10:

U.S. Arrest Rates by Race (2010)



Across American cities, aggressive police models which involve targeted stop, frisk, and search practices are often deployed in “hot spots” (small areas with large amounts of crime). Minneapolis was home to the very first hot spots patrol experiment in the nation in 1988-89. (Weisburd, et al. 2012)¹⁰ The experiment’s findings indicated targeted patrols could effectively reduce crime and disorder – an assessment corroborated by much of the subsequent literature on hot spot policing (Braga, Papachristos, and Hureau, 2012).



Racially skewed arrest rates are arguably largely attributable to police practices.

However, hot spot policing is not without criticism. It can divert crime to other areas, and can drive a wedge between the police and communities when it is characterized by zero-tolerance and aggressive tactics (Rosenbaum, 2006, in Braga, Papachristos, and Hureau, 2012). Moreover, the “short-term crime gains produced by particular types of hot spots policing initiatives could undermine the long-term stability of specific neighborhoods through the increased involvement of mostly low-income minority men in the criminal justice system” (Braga, Papachristos, and Hureau, 2012).

This latter outcome is possible because “hot spots” are mainly populated by low-income whites and people of color. For example, in the ten Minneapolis neighborhoods with the highest number of crimes in 2010, 58% of residents were people of color (29% were black), and the median household income was \$38,668; in the ten Minneapolis neighborhoods with the lowest number of crimes in 2010, 27% were

people of color (13% were black), and the median household income was \$65,331 (City of Minneapolis, 2011 & 2014).

When police stop and search residents of hot spots in an attempt to reduce crime, the most common item they are likely to find that will result in an arrest is marijuana. Though just as many people in areas with lower crime may use marijuana, they are far less likely to be stopped and searched than are residents with more patrols, and therefore far less likely to be arrested.

Racial disparities in marijuana arrests in Minnesota also occur because people of color are subject to traffic stops much more frequently than whites. In 2003, the Council on Crime and Justice’s Institute on Race and Poverty analyzed traffic stops using data from 65 law enforcement jurisdictions across Minnesota (Council on Crime and Justice, 2003). In almost every participating jurisdiction, law enforcement officers stopped and searched black, Latino, and Native American drivers at greater rates than white drivers.



When police stop and search residents of hot spots in an attempt to reduce crime, the most common item they are likely to find that will result in an arrest is marijuana.

As a result, a greater quantity of contraband was found in cars with drivers of color, even though contraband was actually found with greater frequency in cars of whites – contraband was procured during 24% of discretionary searches of whites compared to only 11% of blacks searched and 9% of Latinos searched.

¹⁰ Minneapolis’ CODE FOR (Computer Optimized DEployment – Focus On Results) Program, which was initiated in 1998, uses computer-generated data to identify hotspots, and diverts police resources to these areas.

The Council noted that “[t]hese patterns suggest a strong likelihood that racial/ethnic bias plays a role in traffic stop policies and practices in Minnesota.”

However, although racial profiling is indicated in such cases, Levine (2013) notes that racial disparities in marijuana arrest rates are “clearly not the product of personal prejudice or racism on the part of individual police officers... It’s a systemic problem, a form of institutional racism created and administered by people at the highest levels of law enforcement and government.”

There are certainly institutional incentives for police to pursue arrests in areas where it is perceived crime is more likely to occur that do not necessarily reflect a racial motivation. Many argue that the nature of federal funding encourages law enforcement agencies to pursue low-level drug offenses, such as marijuana possession (Mosedale, 2014).

Many of these arrests are considered to be of poor quality—that is, they are not substantiated by enough evidence to lead to convictions (Council on Crime and Justice, 2004). Police likely pursue them because federal funding, such as the \$300 to \$500 million in annual Edward Byrne Memorial Justice Assistance Grants, is based on performance measures that include arrest numbers, rather than their quality or outcome in court.

In 2012, 23 drug task forces in Minnesota received approximately \$4.2 million in federal funds from the Edward Byrne Memorial Justice Assistance Grant. During discussions on the potential legalization of medical marijuana in Minnesota during the 2014 legislative session, Rep. Carly Melin alleged Dennis Flaherty, Executive Director of the Minnesota Police and Peace Officers Association, expressed concern that legalization might result in “harmful reductions” to the federal grants upon which so many police agencies depend (Mosedale, 2014).

To remedy this issue in other places, the Drug Policy Alliance (DPA) recommended that Byrne Grant funding in California be redirected (DPA, 2013). The DPA advocated that more funds be allocated to substance use treatment, and that funding for marijuana suppression activities be eliminated entirely in the interest of eradicating racially disproportionate low-level drug arrests.

At the state level, the Institute for Justice, the ACLU, and the Minnesota Association of Criminal Defense Lawyers (MACDL) are working to reform Minnesota’s criminal forfeiture laws (ACLU, 2014). Criminal forfeiture, which entails the seizure of assets “suspected” to be connected to drug-related activity, is seen by critics as a resource generator for law enforcement, encouraging officers to pursue low-level drug offenses.



There is clearly a need to devise funding programs, policies, and systems that take seriously the question of racial equity in police practices.

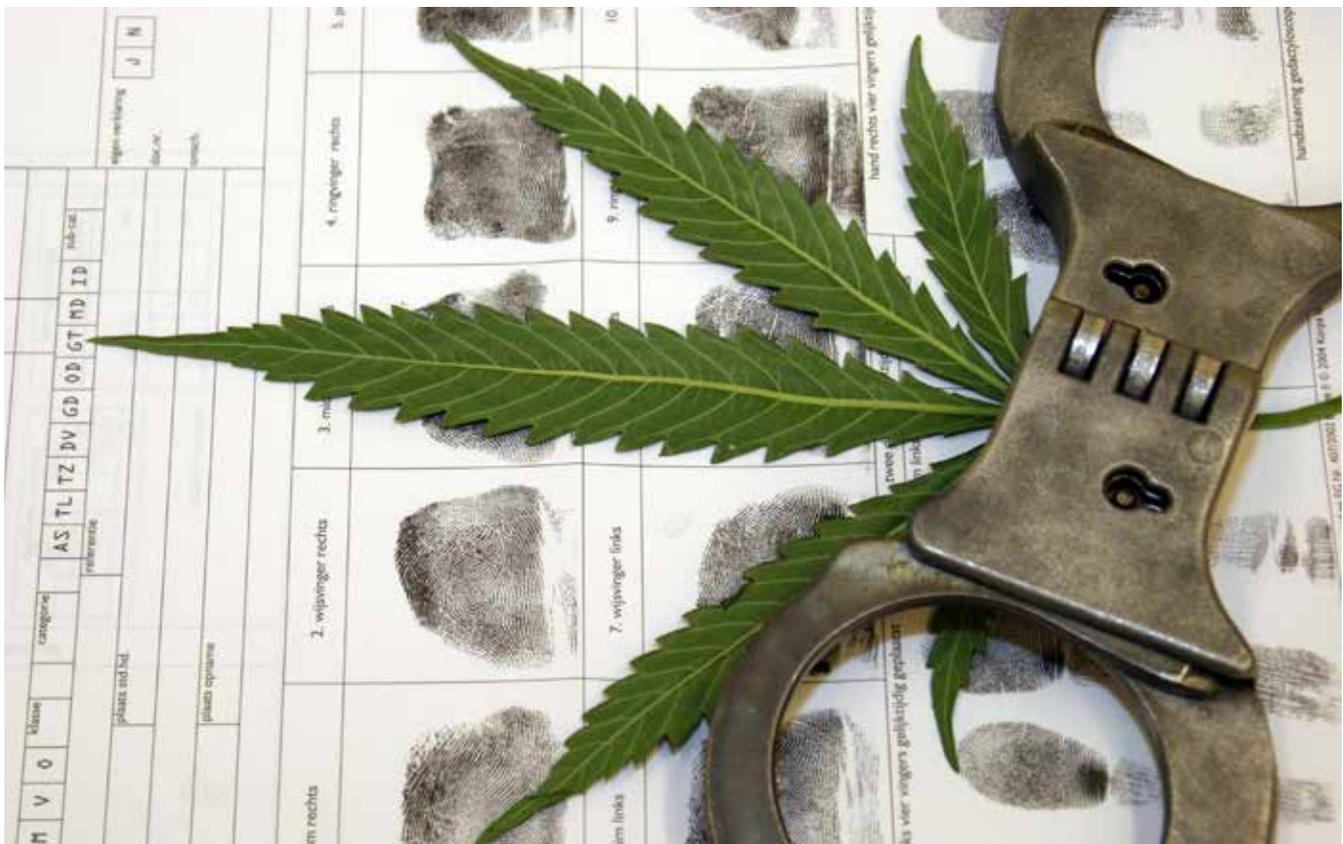
Law enforcement can currently seize assets without a conviction, even if they do not directly (or solely) belong to the person allegedly engaged in criminal activity. Proposed amendments would make a conviction in criminal court a prerequisite for all judicial forfeiture, and would enable spouses and other innocent owners to raise claims when someone else’s criminal activity results in asset forfeiture.

These institutional barriers to racial equity at the national and state levels are accompanied by local barriers, including a lack of coordination among law enforcement agencies. Randy Gustafson, Public Information Officer for the Ramsey County Sheriff's Office, noted that there are currently four different record keeping systems used by Ramsey County's nine law enforcement agencies (Gustafson, Personal Communication).

Gustafson said patterns like the stark racial disparities in marijuana possession arrests in Ramsey County are hard to understand without a comprehensive examination of arrest data, but

data cannot currently be shared effectively across agencies in Ramsey County. Gustafson noted the county is in the process of putting a new record-keeping system in place which will enable police to share data and provide guidance to policy makers.

There is clearly a need to devise funding programs, policies, and systems that take seriously the question of racial equity in police practices. Until this happens, thousands of Minnesotans, especially black Minnesotans, will continue experiencing the individual costs associated with marijuana possession arrests.



DIRECT AND COLLATERAL COSTS

Sharp racial disparities in arrests and incarceration across the United States mean that blacks are more likely to experience the immediate repercussions of an arrest, and the lasting consequences of incarceration and a criminal record. Since a criminal history can significantly impact an individual's life prospects, some critics refer to discriminatory policing and its effects as the "new Jim Crow" (Alexander, 2012).

The enforcement of marijuana possession laws certainly contributes to this problem – especially in Minnesota, where the racial disparity in arrest rates is significantly higher than in most other states. An arrest (even a citation) for marijuana possession produces an array of individual costs, from the immediate monetary impact of fines, lawyers' fees, and court and treatment costs to longer-term collateral consequences.



In addition to calculating direct costs, this report identifies and, where possible, quantifies marijuana possession arrests' collateral costs.

Collateral costs can be numerous and severe. Yet, they are often excluded from conventional cost-benefit analyses seeking to assess the economics of marijuana enforcement because they are difficult to quantify (Beckett and Herbert, 2008). In addition to calculating direct costs, this report identifies and, where possible, quantifies marijuana possession arrests' collateral costs.

Since blacks in Minnesota are arrested at disproportionately high rates for marijuana possession, they and their communities will experience the burden of these costs more intensely than whites.

Attorney's fees, fines, and other court costs

Taking into account fines, court costs, bail, and attorney fees, the out-of-pocket costs for a defense against a single low-level marijuana charge can run thousands of dollars depending on the quantity of marijuana, the need/ability to post bail, and the defense attorney's rate.

An individual caught with less than 42.5 grams of marijuana will be issued a ticket rather than arrested (unless that person is deemed a threat to public safety or a flight risk). However, there can still be costs beyond the original fine associated with a petty misdemeanor charge. The individual may have to miss work to appear at an arraignment, and if they wish to plead not guilty to the charge, they may opt to hire an attorney (a public defender cannot be appointed for petty misdemeanors) and will likely incur court fees. Moreover, the judge may mandate participation in a drug education program.

With respect to felony marijuana arrests, first-time, non-violent offenders are often released on their own recognizance after their first court appearance in the expectation that they will continue to appear in court as required. Posting bail for those not granted own recognizance release can cost several thousands of dollars.

For a controlled substance felony, there is no maximum bail – the amount is set at the discretion of the judge. Those unable to pay bail in full may use a bail bond, which requires a non-refundable 10% payment. Bail bonds may be cost-prohibitive for low-income individuals, who have no choice but to remain in custody until their hearings or trials.

Hiring an attorney experienced in drug arrests is also not an option for low-income defendants, though this can dramatically decrease the sentencing associated with a marijuana arrest. A public defender will be appointed in such cases, but costs may still be incurred. A \$75 co-payment is required upon conclusion of the case, though this may be waived at the discretion of the court. The court may also order the defendant to reimburse the state for the cost of the public defender (Pirius, 2012).

In Minnesota, the average private hourly attorney fee in 2011 was \$258 at a small legal firm, and \$357 at a large one (Burdge, 2011). However, many attorneys will charge a flat fee, which varies relative to the charge’s complexity: a petty misdemeanor marijuana charge can cost \$500 - \$2,000, a misdemeanor marijuana charge can cost \$1,000 - \$3,500, and a first-time felony marijuana charge can cost \$3,500 - \$12,000.

If an individual is found guilty, the maximum fines associated with marijuana possession are as follows:

FIGURE 11: MINNESOTA MARIJUANA POSSESSION, MAXIMUM FINES	
Quantity	Fine
Less than 42.5 g	\$200
Paraphernalia	\$300
42.5 g - 10 kg	\$10,000
10 - 50 kg	\$250,000
50 - 100 kg	\$500,000
More than 100 kg	\$1,000,000
More than 1.4 grams inside one’s vehicle (except the trunk)	\$1,000

When mandatory sentencing does not dictate a minimum fine, a lower fine can be issued at the discretion of the judge.

Upon completion of the trial/sentence, an individual who wishes to have his record expunged must submit an application and – if the court ruled against them or they pleaded guilty – pay a filing fee of \$310 to \$324, depending on the county. A partial or full waiver may be granted for those who cannot afford to pay the fee. Expungement does not erase a criminal case record but limits who can see it, which may be helpful in mitigating the collateral impacts of a marijuana arrest. Unfortunately, as Stuckey (2008) notes, few individuals pursue expungement, likely because they are not aware of it or do not understand it.

Costs of mandatory drug treatment

Those arrested for smaller amounts of marijuana may be ordered to take drug education classes at the discretion of a judge. This is particularly likely in cases where similar offenses have occurred in the past or where minors are involved. Drug education classes range in price – a popular online service offers classes for minors and adults that range from \$175 for an 8 hour class to \$325 for a 24 hour class (AJ Novik Group, Inc., 2014).

For felony-level possession charges, some individuals are given the option of appearing in drug court rather than conventional criminal court. Eligible participants must commit to intensive treatment programs for a year or more, appear frequently in court for progress reports, and submit to regular random drug testing. Many programs also provide job training and counseling. Individuals who successfully complete treatment can avoid a conviction and incarceration, and eventually have their records expunged.

The costs associated with drug court participation differ by county – program and supervision fees range from approximately \$125 to \$960. Participants also have to pay any court fees and restitution ordered by the judge. These fees do not cover the cost of treatment.

Participants are usually able to choose from a variety of court-approved treatment programs, and are expected to contribute to the cost of their treatment according to ability. These programs vary tremendously in cost. Inpatient programs at private facilities can cost tens of thousands of dollars, while outpatient or shorter programs can cost a few hundred. Fees can be applied on a sliding scale based on income at participating institutions. Most programs also take partial payment through private insurance plans. Over half of Minnesota’s treatment admissions are publicly funded, mostly with state funds (Office of the Legislative Auditor, 2006).

A 2007 study of the funding and service provision structures of Minnesota’s adult drug courts identified a mix of funding sources for assessment and treatment (NPC Research, 2007). These include state and federal grants, private insurance, and self-payment by clients. The average per-client cost of treatment in 2006/07 ranged from \$2,010.66 in Watonwan County to \$9,872.59 in Blue Earth County, with an average per-client cost of \$4,903.73. Very few clients paid this cost themselves, relying instead on public funding. However, client court fees (which are often determined on a sliding scale) are used as a source of support for the cost of drug treatment and operations (NPC, 2007).

Drug court is lauded by some as a kinder alternative to criminal court, because it keeps people out of prison for drug use, and brings drug treatment more fully into the criminal justice system.¹¹ A 2007 assessment of drug courts in three Minnesota

counties (Stearns, Saint Louis, and Dodge) found that drug court increases participant quality of life with respect to employment, education, and housing, and also saves state and law enforcement resources because it is less expensive than prison, and reduces recidivism and associated costs (Anton, 2007).



Drug court is lauded by some as a kinder alternative to criminal court.

Drug court also has many critics, who argue that the use of sanctions against people who fail to meet all the terms of their treatment can result in participants spending more time in jail than they would have had they never enrolled in the drug court program.

Drug court may also exacerbate existing racial disparities in the prison system. Individuals with longer criminal histories are often disqualified, and since people of color and people from poorer communities are more likely to be under greater surveillance due to “hot spot” policing they are more likely to have a criminal record and be deemed ineligible for drug court. Moreover, among those who are admitted to drug court, people with more resources are more likely to succeed in treatment; those who are unemployed or under-educated are at a disadvantage. Socio-economic disadvantages therefore produce lower drug court success rates for people of color than for whites. (Mumola and Karberg, in King and Pasquarella, 2009).

¹¹ Drug treatment while incarcerated is often unlikely and/or ineffective. For example, in 2004, 53% of inmates in state prison were identified as having a drug or alcohol problem, but only 15% of people were receiving treatment (King and Pasquarella, 2009).

Civil forfeiture/seized assets

Under Minnesota law, the municipality (city or state) can seize assets they believe have been used or derived from the possession or sale of contraband.¹² Items eligible for seizure include cash, vehicles, and even homes. These items become the possession of the state upon seizure, and they become a separate case from the criminal proceedings. Even if a person is acquitted of a drug charge, they can still lose their property in civil forfeiture as long as there is “clear and convincing evidence” of a controlled substance offense (Williams, et al. 2010).¹³

In Minnesota in 2012, there were 6,851 forfeiture incidents involving \$6.6 million worth of assets, roughly \$1.2 million of which was likely marijuana possession related.

Dollar amounts related to the overall value of the goods seized do not indicate the individual costs of forfeiture. Net proceeds derived from individual forfeitures in 2012 ranged from \$1 to \$78,845, but the net proceeds per forfeiture incident averaged \$1,263 (Office of the State Auditor, 2012: 1). Data from the report “A Stacked Deck” indicates that 50% of property kept by law enforcement was worth \$400 or less (Carpenter, McGrath, and Erickson, 2013).

Individuals trying to recoup seized property face several financial barriers, from filing fees (\$75 to \$327, depending on the value of the property) to attorney costs. In about two-thirds of cases, people do not bother to convert a case from administrative to a judicial forfeiture “because the cost to hire a

lawyer may be greater than the value of the property seized,” according to Lee McGrath, an attorney and the Executive Director of the Institute for Justice. “A seven-year-old Subaru Forester is worth about \$4,000. That is less than what it will cost a lawyer to litigate your judicial forfeiture case” (McGrath, Personal Communication).



Civil forfeiture has been widely criticized for providing law enforcement officers incentive to pursue low-level drug offenses.

Civil forfeiture has been widely criticized for providing law enforcement officers incentive to pursue low-level drug offenses; that is, to “police for profit” (Williams, et al. 2010). Between 2003 and 2010, Minnesota law enforcement agencies netted almost \$30 million through civil forfeiture. During this period, forfeiture revenues grew 75% (Carpenter, McGrath, and Erickson, 2013).¹⁴ In Minnesota, law enforcement is allowed to retain 70% of the proceeds from property seizures.

Proposed amendments to civil forfeiture laws in Minnesota would require a conviction in criminal court for all judicial forfeiture, and would make it possible for spouses and other innocent owners to raise claims when their assets have been forfeited as a result of someone else’s criminal activity.

12 Limits on what can be seized are determined by the value of the controlled substance found. A car worth tens of thousands of dollars, for example, can be forfeited as long as the retail value of the drugs is \$75 or more and is associated with a felony-level offense (Pirius, 2010).

13 This stands in contrast to criminal forfeiture, in which property cannot be deemed instrumental to a crime (and therefore subject to seizure) without a person first being convicted of that crime (McGrath, Personal Communication).

14 Minnesota keeps relatively good civil forfeiture records compared to other states, making an analysis of property seized through forfeiture possible.

Drug tax stamp violations

Minnesota has a marijuana tax stamp law that was enacted in 1986 (20 other states have similar laws). The law requires those who possess marijuana to purchase state-issued stamps and affix them to all contraband. The marijuana tax rate in Minnesota is \$3.50/gram.

FIGURE 12:

Minnesota marijuana tax stamp



Critics argue that the stamps are merely a way to increase penalties upon arrest for marijuana possession or sale, because their absence adds tax evasion to the charge. Failure to purchase stamps can result in a fine or criminal sanction – a defendant without evidence of having paid for stamps may face a fine of up to \$14,000, a jail sentence of 7 years, or may have to pay 200% of the tax. These penalties are in addition to any fines or incarceration associated with possession or sale of the substance itself.

Lost income and job prospects

While under arrest, individuals miss school and family responsibilities. If employed, they miss work, which costs them pay and sometimes even their job. An arrest, conviction, and especially incarceration can also have long-term consequences for an individual's ability to secure employment or promotion opportunities with government and private agencies.

While individuals possessing a small amount of marijuana are not arrested, they may miss at least one day of work attending their court hearing, and may also have to set aside time to attend required drug education classes.

Those arrested on a felony marijuana charge may be held up to 48 hours (excluding weekends and holidays) before an initial court appearance, potentially costing individuals up to four days' pay. Subsequent hearings will likely follow, costing more lost work time. Individuals not released on their own recognizance or unable to post bail typically remain incarcerated, costing thousands more in lost wages. Based on the state's average 2012 per capita income [\$46,925], two months in jail—the mandatory timeline for a drug case to be adjudicated—would cost about \$7,820.

If a defendant has to serve time in treatment or prison post adjudication, that adds to lost wages or employment opportunities.

The maximum incarceration terms associated with a felony-level marijuana possession charge range from 5 to 30 years, depending on the amount. Individuals incarcerated for marijuana possession could lose \$234,625 to \$1,407,750 in earnings over these periods, though a maximum sentence is uncommon.

Incarceration has also been found to produce at least a decade of decreased earnings, ranging from 10-30% (Western, 2002). Depending on the county, a 10% salary decline can range from \$30,568 to \$65,115; a 30% decrease ranges from \$91,704 to \$195,345 over a decade.

Even in the absence of incarceration, an arrest and/or conviction for marijuana possession can produce severe financial consequences (Boire, 2007). There are many professions for which an arrest will result in the loss of a job, and/or stand in the way of future job prospects that require a clean record. According to Stuckey (2008), over 60% of employers indicate that they probably would not or definitely would not hire someone with a criminal record, including those with only an arrest record containing no conviction. Criminal records are now easy and inexpensive to locate through private screening companies (Stuckey, 2008).

The recent “ban the box” initiative has made it illegal for private Minnesota employers to ask about the existence of a criminal history on an initial job application (public employers have been banned from doing so for several years). This may help some people with criminal records for marijuana possession to get an interview, but employers are still allowed to ask about a criminal history during an interview or while extending a conditional job offer. There are also many government jobs for which one cannot be hired if they have a criminal history (Council on Crime and Justice, 2012).

A criminal record can also impact one’s ability to retain or obtain the professional licenses required for some positions, including in real-estate, insurance, medicine, the legal practice, pharmaceuticals, accounting, taxi driving, cosmetology, and day care provision (Boire, 2007). Licensing boards can only consider records that are directly related to the license (Council on Crime and Justice, 2012). However, as Boire (2007) notes, even in states where licensing boards require a direct or substantial relationship between a crime and a position in order to revoke or refuse to grant a professional license, “few have defined the meaning of ‘directly or substantially related.’”

Another factor that could lead to lost wages or job opportunities is the loss of an individual’s ability to travel to other countries. Canada, for example, considers all controlled substance offenses grounds for inadmissibility (Immigration Canada, 2007).



Even in the absence of incarceration, an arrest and/or conviction for marijuana possession can produce severe financial consequences.

Attempting to quantify the cost of lost wages and employment opportunities because of a marijuana possession arrest is difficult, but an arrest can clearly have a potentially significant impact on an individual’s short and long-term financial prospects, regardless of whether or not they are actually convicted and/or incarcerated.

Driver’s license suspensions

If an individual is arrested for marijuana possession while driving a vehicle, their driver’s license can be suspended for 30 days. A notation of the suspension remains on the driver’s license record, which is more public than court records.

In addition to the \$20 reinstatement fee for a suspended license, individuals may also have to take a driver’s test, take a drug and alcohol education class, and prove that they have insurance. Insurance companies may increase a driver’s insurance premiums or drop their policy.

Along with a loss of personal mobility, job loss, difficulty finding employment, and reduced income may also result from a driver's license suspension. These issues can produce broader consequences. According to the New Jersey DOT (2007):

[Driver's license] suspension can have broader economic and societal impacts such as limiting the labor force for specific industries such as automobile sales and services, home health care aides and the construction trades. Jobs in each of these industries depend on semi-skilled workers with a valid driver's license. In addition, many employers use possession of a valid driver's license as a pre-qualifying "screening" question. This may unnecessarily limit the available labor force when driving a motor vehicle is not integral to job responsibilities.

One study of Milwaukee public assistance recipients found that having a driver's license was a better predictor of sustained employment than a General Education Diploma (GED) (Pawasarat and Quinn, 2007).

The costs associated with a driver's license suspension are borne disproportionately by people of color, because they are more likely to be stopped and searched while driving than whites. Police are therefore more likely to find African American drivers in possession of marijuana.



Drug-related criminal activity will result in the entire household being evicted from public housing for at least three years.

Removal or suspension from public housing

Over 36,000 Minnesotans live in public housing, including 12,000 children (HOME Line, 2014). Drug-related criminal activity will result in the entire household being evicted from public housing for at least three years. Each of Minnesota's 141 Public Housing Authorities (PHA) has its own rules regarding criminal history and eligibility – in Minneapolis, for example, households evicted because of drug-related criminal activity are ineligible for public housing for five years.

An eviction may force families to move into private housing, which is significantly more expensive. In Figure 13, public housing rents from 2012 are compared to private housing rents from HUD's Fair Market Rent data from 2012 over three and five years respectively (HUD, 2012a; HUD, 2012b). The range of rent increase for an efficiency / studio to a four bedroom unit is indicated. Shown are the five counties with the largest and smallest initial leap between public and private housing (that is, the largest and smallest difference between public housing rent and studio / efficiency rent).

Of public housing occupants, 79.5% live in 0-1 bedroom units, 7.5% live in 2 bedroom units, and 13% live in 3+ bedroom units. As such, most evicted occupants would likely seek out efficiencies or 1 bedroom units. Depending on the county, a move from public housing to a studio / efficiency will cost a household \$1,368 to \$14,364 more over three years and \$2,280 to \$23,940 more over five years. For those requiring more space, the increase in rent would be far more substantial: from \$15,048 to \$39,492 over three years and \$25,080 to \$65,820 over five years for a four bedroom unit, depending on the county.

FIGURE 13: RENT COMPARISON BETWEEN PUBLIC AND PRIVATE HOUSING OVER THREE AND FIVE YEARS (2012)

	County	Public Housing Monthly Rent	Private Housing Monthly Rent				Range of Rent Increase Between Public and Private Housing		
			Efficiency	1 Bed	2 Bed	3 Bed	4 Bed	Over 3 years	Over 5 years
<i>Counties with the highest price increase between public housing and an efficiency</i>	Hennepin	\$233	\$632	\$745	\$904	\$1,183	\$1,330	\$14,364 - \$39,492	\$23,940 - \$65,820
	Isanti	\$270	\$632	\$745	\$904	\$1,183	\$1,330	\$13,032 - \$38,160	\$21,720 - \$63,600
	Chisago	\$289	\$632	\$745	\$904	\$1,183	\$1,330	\$12,348 - \$37,476	\$20,580 - \$62,460
	Anoka	\$301	\$632	\$745	\$904	\$1,183	\$1,330	\$11,916 - \$37,044	\$19,860 - \$61,740
	Wright	\$309	\$632	\$745	\$904	\$1,183	\$1,330	\$11,628 - \$36,756	\$19,380 - \$61,260
<i>Counties with the lowest price increase between public housing and an efficiency</i>	Aitkin	\$283	\$378	\$444	\$583	\$728	\$787	\$3,420 - \$18,144	\$5,700 - \$30,240
	Swift	\$287	\$378	\$460	\$583	\$745	\$771	\$3,276 - \$17,424	\$5,460 - \$29,040
	Cass	\$303	\$378	\$484	\$583	\$735	\$757	\$2,700- \$16,344	\$4,500 - \$27,240
	Waseca	\$303	\$378	\$444	\$583	\$697	\$729	\$2,700 - \$15,336	\$4,500- \$25,560
	Becker	\$340	\$378	\$448	\$583	\$730	\$758	\$1,368 - \$15,048	\$2,280 - \$25,080

Data from HUD Public Housing Statistics 2012 and HUD Fair Market Rent Summary 2012

As established, blacks are far more likely to be arrested for marijuana possession in Minnesota, and since blacks are approximately four times more likely than whites to reside in public housing, they are more vulnerable to eviction and its associated costs.

Having a criminal history not only impacts an individual’s ability to apply for public housing – landlords perform background checks which can disqualify applicants with records. Individuals who already have an arrest may lose out on rentals in “better” neighborhoods, thereby increasing the likelihood they will end up living in crime “hot spots” and endure greater numbers of police stops and searches. This in turn increases the chances of subsequent arrests (and increases severe consequences for minor offenses because a criminal record already exists).

Barriers to public assistance

Federal law imposes a lifetime ban preventing individuals convicted of drug-related felonies from accessing federally-funded food stamps and cash assistance; however, states can limit or eliminate this ban at their discretion (LAC, 2014; McCarty et al. 2013). In Minnesota, a drug-related felony does not limit public assistance eligibility, but a new state law requires counties to administer random drug tests to convicted drug felons receiving benefits under several programs.

If drugs are detected, a partial reduction or complete termination of benefits will result. Two failed tests result in permanent disqualification, unless the individual successfully completes a drug treatment program. Eligibility for public assistance is also lost if a person fails to appear for a drug test, but sanctions will be lifted if the person appears for testing within one month. A single small dose of marijuana can be detectable for up to seven days (a longer window is possible, though unlikely) (Cary, 2006).

This means a very casual or even one-time marijuana smoker can lose access to public assistance if they happen to be called in for a drug test during that seven day window.

The testing applies to individuals receiving Minnesota Supplemental Aid, General Assistance, and the Minnesota Family Investment Program – approximately 1.67% of people enrolled in these programs have a past drug felony conviction. The benefits associated with these programs vary, but the following Department of Human Services figures indicate their monthly contributions to individuals and families:

- ✓ Minnesota Supplemental Aid: \$96.94 per recipient (2011 average);
- ✓ General Assistance: \$203 for an individual, \$260 for a couple, \$250 for children under 18 who are not part of a family;
- ✓ Minnesota Family Investment Program: \$532 in financial assistance and \$473 in Supplemental Nutrition Assistance Program (SNAP) (food stamps) benefits.

A loss of public assistance can be devastating for families that are already struggling financially. Yet even if a test comes back negative and assistance is



Conviction for the sale or possession of illegal drugs can result in the loss of access to grants, loans, or work-study programs.

not lost, subjecting an individual who has a felony conviction for marijuana possession to random drug testing means they continue to be treated like a criminal long after their sentence or probation has ended.

Loss of access to federal student loans

There are few students who can afford to attend college without financial aid – in 2010, 71% of students who received undergraduate degrees from Minnesota colleges had student loans; the average amount borrowed for an undergraduate degree was \$29,100 (Minnesota Office of Higher Education, 2014). Conviction for the sale or possession of illegal drugs while an individual is receiving federal student aid can result in the loss of access to grants, loans, or work-study programs. Students can regain eligibility after a waiting period of one year from the date of conviction of a first offense, or two years from the date of conviction for a second offense. An indefinite waiting period is imposed for three or more offenses.

Nationwide, undergraduate borrowers received federal loans averaging \$6,760 in 2012-13 (College Board, 2014); losing out on these funds for a year or more makes it impossible for most students to continue their studies uninterrupted. Eligibility can be regained sooner if an individual successfully completes a drug rehabilitation program or passes two unannounced drug tests administered by an approved drug rehabilitation program.

Since lower-income college students depend on federal loans, they are especially vulnerable to the collateral costs associated with a marijuana possession arrest. Given the racial disparity in marijuana possession arrest rates, lower-income black students in particular are at risk of aid suspension.

Deportation

According to the Immigration and Nationality Act, immigrants convicted of a drug crime (except for simple possession of small amounts of marijuana) are subject to “mandatory detention.”¹⁵ The chances marijuana possession (especially possession of smaller amounts) will actually lead to deportation were recently lessened when the Supreme Court ruled in April of 2013 that conviction for possessing a small amount of marijuana is not grounds for mandatory deportation (Hurley, 2013). However, the court still has the ability to initiate deportation proceedings against an individual in such circumstances.

Fighting deportation can cost thousands of dollars in court and attorney fees, depending on the complexity of the case. Some immigration lawyers are willing to work on a sliding scale, and may be able to accommodate lower-income clients.

An individual risks losing wages or even his job when held in immigration detention following a drug charge, and might face longer-term financial losses if he ends up being deported to a country with fewer financial prospects.

Loss of access to affordable remedies for medical marijuana users

According to some medical marijuana advocates, there are over 200 health conditions for which medical marijuana can be beneficial, including cancer, HIV / AIDS, epilepsy, multiple sclerosis,

glaucoma, and arthritis. Marijuana can be used to manage the symptoms of such diseases, and/or the side-effects associated with their sometimes aggressive treatment.

Although the use of marijuana for medical purposes is currently illegal in Minnesota, there are surely some individuals who use marijuana illegally to help manage health conditions.¹⁶ Since medical marijuana users are more likely to carry marijuana with them when they leave the house in order to address a chronic, debilitating medical condition, they are especially vulnerable to arrest (Levine, Gettman, and Siegel, 2012).¹⁷

An added collateral cost of a marijuana possession arrest for people who use marijuana to treat medical conditions can be estimated by comparing the price of marijuana to prescription drugs. The cost of prescription drugs varies by condition, but as one example, anti-nausea medication for cancer patients undergoing chemotherapy ranges from \$250 to \$890 over 5 sessions (Consumer Reports, 2009). Marijuana, which is considered effective in treating chemo-induced nausea, costs mere pennies to grow and smoke.¹⁸

An arrest for marijuana possession (or even sale, if an individual is growing their own marijuana for medical purposes) may prompt an individual to cease using marijuana medically. With costly pharmaceuticals as their only treatment option, the financial cost of managing their illness will increase dramatically.

15 Two guilty pleas to misdemeanor marijuana possession can also lead to deportation, and individuals with a single conviction for a “significant misdemeanor” including possession of a small amount of marijuana are not eligible for Obama’s Deferred Action Plan.

16 A case involving a New Ulm man defending what he terms his constitutional right to grow marijuana to treat his depression is ongoing in Brown County at the time of writing (Hanley, 2014).

17 However, in several states where medical marijuana in plant form is legal and available at dispensaries, many health insurance companies will not cover its cost, making it more expensive than prescriptions that are covered.

18 There are marijuana derivatives that are far more costly than marijuana in plant form – cannabis oil, which can be ingested to treat seizures, can cost \$1,000 - \$2,000 per month.

Incalculable individual, familial, and societal costs

There are a variety of other collateral costs whose complexity makes them exceedingly difficult to quantify. Nevertheless, these human costs can have significant impacts on individuals, families, and society as a whole, and must be taken into account in any attempt to consider the true costs of the enforcement of marijuana possession laws.

Emotional stress and anxiety: Beckett and Herbert (2008) found the greatest stress associated with a marijuana arrest stems from “the uncertainty of what the future would bring. While they awaited the resolution of their cases, most [people] lived in perpetual anxiety.” This uncertainty can persist over several years – court cases can drag on, treatment and testing can be mandated for months or even years, and the specter of incarceration if the terms of probation are unmet can loom large during this time. In addition, an arrest can produce uncertainty and stress related to the series of long-term consequences discussed in this report. The resulting feelings of shame, helplessness, and anxiety can have negative individual and familial impacts.

They can also have severe consequences for workers and companies. Anxiety and depression are among the top five health conditions that produce employee absenteeism and loss of worker productivity (Harvard Health, 2010). Those who seek mental health treatment to help cope with stress and anxiety will also incur costs – a therapy session in the U.S. ranges from \$60 to \$300 per hour (though some providers offer a sliding scale based on income). In the Twin Cities, an hour of therapy ranges from \$60 to \$200 (New Family Beginnings, 2013).¹⁹

19 In a study on mental health care provision in rural Minnesota, cost and insurance coverage issues were listed as top barriers to mental/behavioral health services (MDH, 2005).

Familial Tensions and Disruptions: Arrest and incarceration have negative consequences for all members of a family. Many black families in Minnesota already face socio-economic challenges; the disproportionate rate at which blacks are arrested for marijuana possession exacerbates these. Children in particular suffer when parents are incarcerated. As Levy-Pounds (2010) notes, when poor African-American mothers and fathers are imprisoned, their children suffer psychological and emotional harm. These children are more likely to become incarcerated themselves, and to engage in harmful activities, including gang involvement and/or substance abuse.

Extended families may be unable to care for these children due to limited resources, and children of incarcerated parents may end up in foster care. The ensuing anxiety and emotional distress can result in poor school performance, contributing to Minnesota’s persistent achievement gap, and potentially impacting a child’s lifetime earnings.²⁰ Grandparents who are able to take in grandchildren may experience a worsening of existing health issues induced by the stress of child-rearing (Levi-Pounds, 2006). The costs and consequences of a marijuana possession arrest can therefore reverberate across generations.

A criminal history is also taken into account during adoption proceedings and child custody cases. In order to adopt a child from China, for example, a person cannot have a criminal record from the past 10 years. Domestically, drug charges are weighted particularly heavily in family court, and can make retaining or obtaining custody of a child difficult.

20 In addition to individual economic consequences, the achievement gap also impacts the state and national economy. Grunewald and Batbold (2013) estimate that closing the racial achievement gap for eighth grade students in Minnesota would result in a 0.1 to 0.3 percentage point increase in the long-run economic growth rate. Such an increase would add up over time to boost the state’s GDP by an estimated \$10 billion in 50 years.

Increased Health Disparities: Racial disparities in the enforcement of marijuana laws can deepen existing racial health disparities because health care delivery in correctional settings is often subpar (Gaiter, Potter, and O’Leary, 2006). Since more blacks are likely to be arrested for marijuana possession, they are more likely to be incarcerated (either as a result of the possession charge itself, or because that charge violates the terms of parole for another conviction) – many of these inmates will be unable to access adequate health care. Health disparities along racial lines are already significant in Minnesota (MDH, 2014). Poor health outcomes impact a person’s quality of life, and the cost of treatment combined with diminished productivity can produce a significant financial burden for individuals and their families. State healthcare spending is also impacted by health disparities.

Loss of Faith in the Legal System: As noted by the ACLU (2013), “the targeted enforcement of marijuana laws against people of color, and the unsettling, if not humiliating, experience such enforcement entails, creates community mistrust of the police, reduces police-community cooperation, and damages public safety.” A loss of faith in the legal system makes people less likely to seek out police or legal protection when facing threats to safety or property. This increases individual and community vulnerability to crime, and impedes police activity that actually has the potential to contribute to public safety. Racially biased policing also produces feelings of resentment that increase societal tensions.



ESTIMATING COSTS: HYPOTHETICAL PROFILES

As the preceding analysis shows, the costs associated with an arrest for marijuana possession are varied and significant, but there is little chance one individual would incur all of them. The following hypothetical profiles have been developed to impart a clearer sense of the extent to which an individual could be impacted by a fifth degree, felony-level charge for marijuana possession in Minnesota. Costs that cannot be reasonably estimated are included for consideration; though not included in the calculations, such costs can be exceedingly high.

FIGURE 14:	
A student in Duluth is found with 43 g (1.58 oz) of marijuana in his car	
Calculable	
Attorney fees	\$3,500
Fines (may be lower at judge's discretion)	\$10,000
Court fees (administrative costs, fines, public defender shared costs, library fees)	\$120
Loss of access to federal student loans (1 year)	\$6,760
Hennepin County Drug Court fee	\$125
Treatment (2006/07 Hennepin County average) (publicly funded if eligible)	\$3,963
Car seized through civil forfeiture	\$5,000
Reinstatement of suspended driver's license	\$20
Graduating later - opportunity cost of 1 year missed income (starting salary before tax for University of Minnesota Duluth graduate [payscale, 2014])	\$42,800
Expungement of record - St. Louis County filing fee	\$322
TOTAL	\$72,610
Incalculable/indeterminable	
<ul style="list-style-type: none"> • Bail/bail bond, if not released on own recognizance • Difficulty getting to part-time job because of suspended license • Car insurance rates increase as a result of license suspension • Loss of faith in legal system • Criminal record may impact future earnings 	

FIGURE 15:

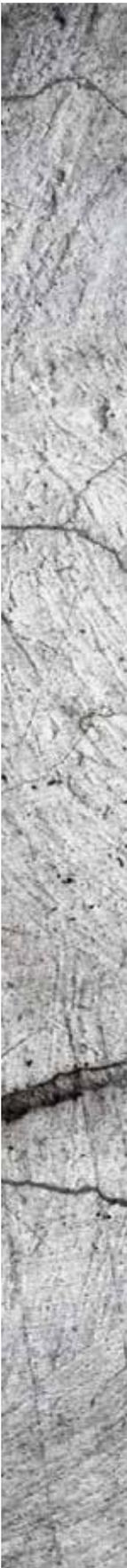
A 35-year-old public housing resident in Minneapolis, receiving public assistance, is found with 43 g (1.58 oz) of marijuana, and deemed ineligible for drug court

Calculable	
Public Defender co-pay	\$75
Fines (may be lower at judge's discretion)	\$10,000
Court fees (administrative costs, fines, public defender shared costs, library fees)	\$120
Lost wages due to time held (Hennepin County Public Housing resident annual income - 2 working days lost)	\$56
Lost wages over 5 year incarceration (Hennepin County Public Housing resident annual income over 5 years) (may be lower at judge's discretion)	\$34,880
Family evicted from public housing for five years - move to private efficiency	\$23,940
Incarceration may impact future job prospects/earnings by 10-30% for over a decade (rate shown is 10% of Hennepin County Public Housing resident per capita income over 10 years)	\$6,976
Expungement of record - Hennepin County filing fee	\$324
TOTAL	\$76,371
Incalculable/indeterminable	
<ul style="list-style-type: none"> • Bail/bail bond, if not released on own recognizance • Decline in health resulting from poor health care while incarcerated • Must report for random drug tests to receive public assistance - lost income 	

FIGURE 16:

A 40 year old divorced businessperson in Mankato is found with 43 g (1.58 oz) marijuana

Calculable	
Attorney fees	\$3,500
Fines (may be lower at judge's discretion)	\$10,000
Court fees (administrative costs, fines, public defender shared costs, library fees)	\$120
Lost wages due to time held (Blue Earth County per capita income - 2 working days lost)	\$313
Blue Earth County Drug Court Proram Fee	\$600
Blue Earth County Drug Court Supervision Fee	\$360
Treatment (2006/07 Blue Earth County average)(publicly funded if eligible)	\$9,873
Assets seized through civil forfeiture (2012 average)	\$1,263
Drug tax stamp violation	\$14,000
Expungement of record - Blue Earth County filing fee	\$319
TOTAL	\$40,348
Incalculable/indeterminable	
<ul style="list-style-type: none"> • Bail/bail bond, if not released on own recognizance • Loss of child custody • Anxiety/depression affects job performance • Criminal record may impact future earnings 	



CONCLUSION

An arrest for marijuana possession has the potential to generate a wide range of direct and collateral costs. These costs are borne by individuals—some potentially over the course of an entire lifetime – but they also have broader societal implications. For example, when an individual loses out on employment opportunities and advancement because of a criminal record for marijuana possession, they are less able to contribute to the state’s tax base; when children find themselves unable to concentrate in school because of the incarceration of a parent, their lifetime earning potential and ability to contribute to the nation’s GDP may be compromised; when an arrest produces high levels of personal anxiety, this can induce absenteeism and lowered productivity at work, costing companies money.

In particular, racial disparities in marijuana possession arrests contribute to the socio-economic disadvantages and challenges already faced by people of color. Since blacks in Minnesota are 6.4 times more likely than whites to be arrested for marijuana possession, they are 6.4 times more likely than whites to experience the collateral costs associated with an arrest for marijuana possession. Their ability to confront and absorb these costs is compromised by existing racial inequities in income. Such costs further entrench racial disparities in employment, education, and health, and thwart broader efforts to achieve racial equity. These racial disparities in marijuana possession arrest rates cannot be explained by racial differences in marijuana use; rather, they result from policies that incentivize large numbers of low-level arrests in areas likely to be populated by low-income and minority residents.

As demonstrated in this report, the individual costs associated with an arrest for marijuana possession are diverse, substantial, and have the potential to produce lasting impacts on individuals, families, communities, the state, and even the nation. In light of these human and financial costs, Minnesota lawmakers and law enforcement officials have a responsibility to consider whether marijuana possession laws in their current conception are actually contributing to public safety, or if they are instead producing undue hardship for individuals and growing inequities within society.

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