

Marijuana and Punishment: Debunking Pot Proponents' Prison Myths

By Michael P. Tremoglie

MainStreet.com | April 7, 2014

NEW YORK (MainStreet) — Marijuana crusaders have waged an excellent public relations campaign convincing people America's prisons are overflowing with "nonviolent, petty" drug users and that an inordinate amount of tax money is spent arresting people for marijuana use.

Many politicians and journalists have taken this as gospel. They probably should not. Pennsylvania State Senator Daylin Leach (D-Bucks), a staunch advocate of legalizing marijuana, stated in a February 2013 release promoting legalizing marijuana, "According to the Office of National Drug Control Policy, 24,685 marijuana arrests were made in Pennsylvania in 2006 at a cost of \$325.36 million to taxpayers."

The statistics actually came from a report in the Bulletin of Cannabis Reform said Jonathan Tew, Leach's legislative director who said the method was the ONDCP's. Indeed, the report, authored by Jon Gettman, a marijuana legalization advocate, did say "the method utilized by ONDCP."

But, according to Rafael Lemaitre, the communications director of the Office of National Drug Control Policy (ONDCP), the office "does not maintain arrest figures."

"ONDCP does not maintain state by state arrest data nor do we employ that methodology to determine any impact on Pennsylvania," said Lemaitre.

Crawford County (Penn.) District Attorney Francis J. Schultz was skeptical of Gettman's figures when asked about them. He has been in this arena before having previously penned an article in 2008 criticizing a newspaper editorial about marijuana sentencing in Pennsylvania.

"I do not believe that a year's worth of marijuana arrests could possibly cost the Commonwealth \$325.36 million," Schultz said. "The method used to come up with the numbers does not accurately reflect the costs associated with marijuana arrests."

The Pennsylvania Department of Corrections (DOC), the state's prison system, provided specific data about prison sentences in the state for marijuana usage. According to the DOC, there are fewer than 300 people sentenced to prison in Pennsylvania each year for marijuana.

Deputy press secretary, Susan Bensinger, furnished the following data: "There are about 256 sentences to DOC each year for marijuana. Only 5 of these 256 marijuana sentences to DOC are for possession of 'small amounts of marijuana.' Currently there are 13 inmates in DOC population whose controlling offense is 'possession of small amounts of marijuana.' Most (if not all) of these cases have other offenses (particularly DUI) in addition to the marijuana possession offense too."

"Many people charged with the possession of marijuana do not spend one day in jail," said Schultz. "Many are given probation or have their cases disposed of through Accelerated Rehabilitative Disposition. Therefore using the \$2.80 billion in corrections as part of the formula provides for a highly inaccurate general estimate of costs."

Additionally, many times the possession of marijuana offense is part of a case involving much more serious charges. Costs associated to the investigation and prosecution of the marijuana charge in those situations are really non-existent.

Despite the relative ease with which one can obtain the facts, it is disturbing that the marijuana advocates' data is used unquestioningly by media. Opposing facts or opinions are not sought.

An article in the January 16, 2014 edition of the Wilkes-Barre, Penn. *Times Leader*, an article called "Seeing through the Smoke" read as follows: "According to the FBI's annual Uniform Crime Report, law enforcement carried out 749,825 arrests for marijuana violations in 2012. About 48 percent of all drug arrests nationwide are for marijuana. Of all the arrests for marijuana violations last year, about 88% were for possession only, while the rest were charged for the sale and/or manufacture, which includes almost all cultivation offenses."

Apparently, it is the *Times Leader* that cannot see through the smoke. While it is correct to say 88% were arrested only for possession, the *Times Leader* omitted the amount of pot involved the arrests - a significant fact.

Federal government data indicates those convicted for marijuana possession are not small time users. A 1997 Bureau of Justice Statistics(BJS) survey reveals the "the median amount of marijuana involved in the conviction of marijuana only possession offenders was 115 pounds."

Another BJS survey showed that only 0.7% of all state inmates were behind bars for marijuana possession only. A substantial portion of these were plea bargains down from more serious crimes. A 2004 BJS report disclosed that one-tenth of 1% of all state prisoners were marijuana-possession offenders with no prior sentences. A 2010 RAND study concluded that the risk of arrest for each joint smoked is about one arrest for every 12,000 joints.

So while the *Times Leader* wanted to report a sensational statistic - perhaps one taken from a marijuana legalization advocacy group - that would discredit enforcing marijuana laws, the paper could have delved into the data and realized that big time traffickers - or those plea bargaining something more serious - are arrested for possession. Rarely, if ever is a guy with three joints taking up prison space.

As far as the canard of the "nonviolent" marijuana user is concerned, Tom Gorman, director of the Rocky Mountain High Intensity Drug Trafficking Area observed, "Why they are sentenced to prison has nothing to do with whether they had a violent prior criminal record."

Here are some facts about marijuana and incarceration:

According to the United States Sentencing Commission (USSC), during 2008, 25,337 people were sentenced in federal court for drug crimes under six offense categories. Marijuana accounted for 6,337 (25%). Of the 6, 337 people sentenced, only 99 people or 1.6%, were sentenced for "simple possession" of marijuana.

According to an October 2006 Bureau of Justice Statistics survey of state and federal prisoners, approximately 12.7% of state prisoners and 12.4% of federal prisoners were serving time for a marijuana-related offense.

Between October 1, 2005 and September 30, 2006, U.S. Courts sentenced 6,423 offenders for marijuana-related - approximately 95.9% of the cases involved trafficking.

During Fiscal Year 2006, 25,814 offenders were sentenced in federal court on drug charges. Only 1.6% (406 people) were sentenced for simple possession.

The Center for Addiction and Substance Abuse at Columbia University reported in 2010 that "few are incarcerated for marijuana possession only."

Even esteemed, nonpartisan academicians will tell you that prisons are not filled with petty drug users or those arrested for small amounts of marijuana possession. This is true in Pennsylvania and elsewhere.

"It is a very small percentage of inmates who are in jail or prison for marijuana possession," said Stephanos Bibas, a professor of law and criminology at the University of Pennsylvania Law School. "That is not to say that people are not arrested and hassled for it, or that defendants do not sometimes plead down to that. But the overwhelming majority of inmates in for drugs had some role in distribution or sale."

Regarding the legalization debate, Bibas said it would be smart to wait and see what happens in Washington and Colorado. Much could be learned from these experiments. But for now he thinks the public needs to be more engaged.

"I do not think the public is confronting full-scale legalization head-on," he added.

This is true - and the public needs the facts not propaganda in order to start "confronting full-scale legalization head-on."

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