

2022

How State Reforms Have Mellowed Federal Enforcement of Marijuana Prohibition

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Recommended Citation

Douglas A. Berman and Alex Fraga, *How State Reforms Have Mellowed Federal Enforcement of Marijuana Prohibition*, 49 Fordham Urb. L.J. 675 (2022).

Available at: <https://ir.lawnet.fordham.edu/ulj/vol49/iss3/7>

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HOW STATE REFORMS HAVE MELLOWED FEDERAL ENFORCEMENT OF MARIJUANA PROHIBITION

Douglas A. Berman & Alex Fraga***

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INTRODUCTION

The history of drug prohibitions and enforcement efforts in the United States always reflects a kind of federalism in action. Because the federal

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government always lacks the resources and often lacks the political will to fully enforce drug prohibitions nationwide, state laws and local practices will inevitably shape and color the full picture of U.S. drug policy and enforcement. When alcohol Prohibition was written into our nation's Constitution, for example, state and local officials embraced an array of different approaches to enforcing temperance, which produced a patchwork of on-the-ground practices across the nation.¹

In modern times, marijuana prohibitions and reforms present the most salient and dynamic examples of national drug policies reflecting diverse and sometimes clashing federal and state laws and local practices. Though some commentators have explored how federal marijuana prohibition has shaped state reform efforts and local enforcement realities,² few have focused attention on the most tangible and arguably most consequential aspect of federal enforcement, namely federal sentences imposed for marijuana activity. This Essay seeks to document and examine critically the remarkable recent decline in the number of *federal* marijuana sentences imposed as *states* have begun fully legalizing marijuana for all uses by adults.

This Essay begins with a brief overview of marijuana reform history to set the context for examining modern federal marijuana prohibition enforcement patterns. Even while formal federal marijuana law has persisted unchanged amid state-level reforms, federal marijuana enforcement on the ground has changed dramatically. Drawing on data from the U.S. Sentencing Commission (USSC), this Essay details the new federal enforcement patterns that emerged when states started fully legalizing marijuana. The data reveal some trends that reform advocates would likely consider encouraging (e.g., a sharp reduction in federal marijuana sentences)³ as well as some likely to be viewed as discouraging (e.g., the evolving demographics of those federally sentenced).⁴ This Essay

1. See generally LISA MCGIRR, *THE WAR ON ALCOHOL: PROHIBITION AND THE RISE OF THE AMERICAN STATE* (2016); Robert Post, *Federalism, Positive Law, and the Emergence of the American Administrative State: Prohibition in the Taft Court Era*, 48 WM. & MARY L. REV. 1 (2006). For an interesting account of a single state's enforcement experience during alcohol prohibition, see Phil Roberts, *Regulating Liquor: Prohibition Enforcement, Official Corruption, and State Efforts to Control Alcohol After Prohibition Repeal*, 12 WYO. L. REV. 389, 389–420 (2012).

2. For just a small sample of recent coverage on these topics, see generally MARIJUANA FEDERALISM: UNCLE SAM AND MARY JANE (Jonathan H. Adler ed., 2020); DOUGLAS A. BERMAN & ALEX KREIT, *MARIJUANA LAW AND POLICY* ch. 3 (2020); Robert A. Mikos, *The Evolving Federal Response to State Marijuana Reforms*, 26 WIDENER L. REV. 1 (2020); Erwin Chemerinsky et al., *Cooperative Federalism and Marijuana Regulation*, 62 UCLA L. REV. 74 (2015).

3. See *infra* Section II.A.

4. See *infra* Section II.D.

concludes with questions about the future of federal marijuana policies and practices and their impact on the populations historically subject to disproportionate punitive marijuana enforcement.

I. A SHORT HISTORY OF INTERSECTING FEDERAL AND STATE MARIJUANA PROHIBITIONS AND REFORMS

Marijuana was not subject to criminal law for most of U.S. history as farmers grew industrial cannabis known as hemp, and doctors used marijuana as an ingredient in patent medicines and home remedies.⁵ But when white citizens came to associate marijuana use with Mexicans in the early 1900s, numerous state legislatures started to criminalize the drug.⁶ The federal government, though mostly focused on alcohol Prohibition, began regulating drugs in this era. Congress created the Federal Bureau of Narcotics in 1930, and its leader, Harry Anslinger, used racialized advocacy to cast marijuana as a menace.⁷ Seemingly because he feared his position and the Federal Bureau of Narcotics were in political jeopardy after the end of alcohol Prohibition, Anslinger in the mid-1930s “declared [a] war on marijuana” and for decades advocated for punitive criminal justice responses to drug policy issues.⁸ In particular, Anslinger first pushed Congress to pass the 1937 Marihuana Tax Act,⁹ after which he urged states to criminalize and enhance punishments for marijuana; Anslinger’s advocacy ultimately advanced the 1951 Boggs Act, which created federal mandatory minimum prison sentences for possession of marijuana and other drugs.¹⁰

5. See generally MITCH EARLEYWINE, *UNDERSTANDING MARIJUANA: A NEW LOOK AT THE SCIENTIFIC EVIDENCE* 3–14 (2002).

6. See Richard J. Bonnie & Charles H. Whitebread, II, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 VA. L. REV. 971, 1012 (1970); see also NAT’L COMM’N ON MARIHUANA & DRUG ABUSE, *MARIHUANA: A SIGNAL OF MISUNDERSTANDING* 14 (1972) [hereinafter *SIGNAL OF MISUNDERSTANDING*].

7. See JOHN HUDAK, *MARIJUANA: A SHORT HISTORY* 25–26 (2016); see also Steven W. Bender, *Joint Reform? The Interplay of State, Federal, and Hemispheric Regulation of Recreational Marijuana and the Failed War on Drugs*, 6 ALB. GOV’T L. REV. 359, 360–64 (2013) (detailing how “[p]rejudices against both [B]lacks and Mexicans” were catalysts for early marijuana criminalization efforts).

8. See Rebecca Carroll, *Under the Influence: Harry Anslinger’s Role in Shaping America’s Drug Policy*, in *FEDERAL DRUG CONTROL: THE EVOLUTION OF POLICY AND PRACTICE* 61, 70 (Jonathon Erlen & Joseph F. Spillane eds., 2004).

9. For an extended discussion of the passage of the Marihuana Tax Act of 1937, see Bonnie & Whitebread, *supra* note 6, at 1048–62.

10. See Phil Nicholas & Andrew Churchill, *The Federal Bureau of Narcotics, the States, and the Origins of Modern Drug Enforcement in the United States, 1950–1962*, 39 CONTEMP. DRUG PROBS. 595, 599 (2012).

Despite the enactment of new criminal statutes and punishments at the federal and state level, enforcement of marijuana prohibition was still limited into the 1960s.¹¹ However, then-President Richard Nixon entered the Oval Office on a law-and-order platform with a focus on drug enforcement: in 1969, he told Congress that drug abuse was “a serious national threat to the personal health and safety of millions of Americans,”¹² and in 1971, he pronounced drugs “public enemy number one.”¹³ Notably, Nixon Administration officials have suggested his decision to wage a “war on drugs” was driven by a desire to target political enemies and racial minorities.¹⁴

Prodded by President Nixon, Congress passed the Controlled Substances Act (CSA) in 1970, which regulated the use, production, distribution, and sale of certain drugs.¹⁵ In some respects, the CSA marked an improvement in federal drug laws; the Act replaced or amended patchwork federal drug control statutes (some of which carried severe punishments)¹⁶ and prioritized scientific and medical determinations for creating distinct drug classes.¹⁷ However, Congress opted to classify marijuana as a Schedule I drug presenting “a high potential for abuse” and “no currently accepted medical use” in the CSA; scheduled with drugs like LSD and heroin, this

11. See James B. Slaughter, *Marijuana Prohibition in the United States: History and Analysis of a Failed Policy*, 21 COLUM. J.L. & SOC. PROBS. 417, 420–21 (1988). As late as 1965, there were still only roughly 20,000 annual total arrests for marijuana offenses throughout the United States. See *id.*

12. President Richard M. Nixon, *Special Message to the Congress on the Control of Narcotics and Dangerous Drugs*, AM. PRESIDENCY PROJECT (July 14, 1969), <https://www.presidency.ucsb.edu/documents/special-message-the-congress-control-narcotics-and-dangerous-drugs#:~:text=Special%20Message%20to%20the%20Congress%20on%20Control%20of%20Narcotics%20and%20Dangerous%20Drugs.,-July%2014%2C%201969&text=To%20the%20Congress%20of%20the,safety%20of%20millions%20of%20Americans> [https://perma.cc/KH6F-XPNU].

13. President Richard M. Nixon, *Remarks About an Intensified Program for Drug Abuse Prevention and Control*, AM. PRESIDENCY PROJECT (June 17, 1971), <https://www.presidency.ucsb.edu/documents/remarks-about-intensified-program-for-drug-abuse-prevention-and-control> [https://perma.cc/GE7R-SZBM].

14. See Dan Baum, *Legalize It All: How to Win the War on Drugs*, HARPER'S MAG., Apr. 2016, (discussing comments by Nixon aide John Ehrlichman suggesting “Nixon’s invention of the war on drugs [was] a political tool”).

15. See 21 U.S.C. §§ 801–904.

16. See Molly M. Gill, *Correcting Course: Lessons from the 1970 Repeal of Mandatory Minimums*, 21 FED. SENT'G REP. 55, 56–57 (2008) (discussing the federal mandatory minimum sentencing provisions appearing in the Boggs Act of 1951 and the Narcotics Control Act of 1956).

17. For a review of the CSA’s improvement on what it superseded, see generally Thomas M. Quinn & Gerald T. McLaughlin, *The Evolution of Federal Drug Control Legislation*, 22 CATH. U. L. REV. 586 (1973).

classification made any manufacture or distribution of marijuana a serious federal criminal offense.¹⁸

The CSA's classification of marijuana contradicted the recommendation of the National Commission on Marihuana and Drug Abuse, known as "the Shafer Commission," which advocated in 1972 for decriminalizing personal use of marijuana.¹⁹ The Shafer Commission called criminal law "too harsh a tool to apply" to personal marijuana use because it leads to users being "stigmatized as criminals, incurring the economic and social consequences of involvement with the criminal law."²⁰ A dozen states responded to the Shafer Commission's recommendation; throughout the 1970s, legislatures in states ranging from Maine to Mississippi, Ohio to Oregon, and California to New York, enacted various forms of marijuana decriminalization.²¹ However, at the federal level, the Nixon Administration rejected the Shafer Commission's decriminalization recommendation,²² and blanket federal prohibition of marijuana in any and all forms has remained the law of the land for the ensuing half century.

The modern state marijuana reform movement started in 1996, when the citizens of Arizona and California voted to legalize marijuana for medical use.²³ Within the next decade, nearly a dozen additional states approved ballot initiatives or enacted traditional legislation to create various means to permit certain persons to access marijuana for medical purposes.²⁴

18. See 21 U.S.C. § 812(b)(1); see also *Gonzales v. Raich*, 545 U.S. 1, 10–12 (2005) (reviewing placement of marijuana as a Schedule I drug).

19. See SIGNAL OF MISUNDERSTANDING, *supra* note 6, at 176, 184.

20. *Id.* at 140–46.

21. See Wayne A. Logan, *After the Cheering Stopped: Decriminalization and Legalism's Limits*, 24 CORNELL J.L. & PUB. POL'Y 319, 324–25 (2014) (reviewing marijuana decriminalization developments in the 1970s). Though most decriminalization laws enacted in the 1970s remain in place, limited research on these reforms provide a mixed and muddled picture of their impact. See generally Rosalie Liccardo Pacula, Jamie F. Chriqui & Joanna King, *Marijuana Decriminalization: What Does It Mean in the United States?* 11 (Nat'l Bureau of Econ. Rsch., Working Paper No. 9690, 2003), https://www.nber.org/system/files/working_papers/w9690/w9690.pdf [<https://perma.cc/E8N8-M2DZ>].

22. See generally HUDAK, *supra* note 7, at ch. 4.

23. See Alex Kreit & Aaron Marcus, Raich, *Health Care, and the Commerce Clause*, 31 WM. MITCHELL L. REV. 957, 962–63 (2005); see also *Conant v. Walters*, 309 F.3d 629, 632 (9th Cir. 2002). The Arizona initiative proved largely ineffective because it called for a doctor's prescription, whereas California's initiative only required "the recommendation of a physician." See CAL. HEALTH & SAFETY CODE 11362.5(b)(1)(B) (West 2022). A federal court later ruled that the First Amendment protects doctors from professional sanctions for simply recommending marijuana to their patients. See *Walters*, 309 F.3d at 639.

24. See generally Troy E. Grandel, *One Toke over the Line: The Proliferation of State Medical Marijuana Laws*, 9 U.N.H. L. REV. 135, 139–49 (2010) (reviewing state medical marijuana laws enacted between 1996 and 2010). Though the number of states with medical marijuana laws on the books continued to grow after California pioneered reforms in 1996,

However, the federal government during this period still sought to block the implementation of state medical marijuana laws in ways that included raids and prosecutions of medical marijuana dispensaries,²⁵ as well as successful defenses of blanket federal prohibition in two distinct challenges before the U.S. Supreme Court.²⁶

In 2009, the trajectory of federal enforcement and state reforms was significantly altered when the Obama Administration issued its first memorandum signaling it would not prioritize federal prosecution of citizens “in clear and unambiguous compliance” with state laws unless conduct conflicted with “core federal enforcement priorities.”²⁷ This policy, which followed up on President Barack Obama’s campaign promise to end federal raids on medical marijuana facilities, had a profound impact on the development of state medical marijuana programs. Many public and private actors viewed this 2009 memo as a green light to develop medical marijuana programs in the states without federal interference, and the modern marijuana industry began to flourish.²⁸

As medical marijuana reform picked up momentum, advocates and industry players began discussing state ballot measures to legalize the use of marijuana by all adults. A failed first proposition in California in 2010 provided key lessons for reform advocates who succeeded in securing voter approval of full legalization in Colorado and Washington in 2012.²⁹ While states geared up regulatory rules for state marijuana businesses, the Justice Department issued another memorandum in August 2013 indicating a disinclination to prosecute state-compliant marijuana actors whose

very few states had functioning medical marijuana industries. *See* HUDAK, *supra* note 7, at 145. In Nevada, for example, the state’s first medical marijuana dispensary did not open until 2015, even though voters approved a medical marijuana constitutional amendment back in 2000, because legislators were resistant to enacting effective implementing legislation. *See id.* at 137–48.

25. *See* AMS. FOR SAFE ACCESS, WHAT’S THE CO\$T? THE FEDERAL WAR ON PATIENTS 37 (2013), <https://american-safe-access.s3.amazonaws.com/documents/WhatsTheCost.pdf> [<https://perma.cc/JRL9-TPHJ>] (“Over the past 17 years, the Justice Department has carried out over 500 aggressive SWAT-style raids on medical cannabis patients and providers, arrested nearly 400 people, and prosecuted more than 160 cases.”).

26. *See* *Gonzales v. Raich*, 545 U.S. 1, 24 (2005); *see also* *United States v. Oakland Cannabis Buyers’ Coop.*, 532 U.S. 483, 497–98 (2001).

27. *See* Memorandum from David W. Ogden, Deputy Att’y Gen., U.S. Dep’t of Just., to all U.S. Att’ys (Oct. 19, 2009), <https://www.justice.gov/sites/default/files/opa/legacy/2009/10/19/medical-marijuana.pdf> [<https://perma.cc/P2WK-MMU9>].

28. *See* Paul Lewis, *A Gateway to Future Problems: Concerns About the State-By-State Legalization of Medical Marijuana*, 13 U.N.H. L. REV. 49, 62–63 (2015); *see also* Brian J. Fairman, *Trends in Registered Medical Marijuana Participation Across 13 US States and District of Columbia*, 159 DRUG & ALCOHOL DEPENDENCE 72 (2016) (detailing sharp increases in registered medical marijuana patients in multiple states after 2009).

29. *See* Bender, *supra* note 7, 373–75.

activities did not threaten federal enforcement priorities.³⁰ In addition to prodding further regulatory development in Colorado and Washington, this memo emboldened advocates, industry players, and state officials around the country to move forward with various marijuana reform efforts.³¹ Ballot initiatives authorizing recreational use of marijuana moved ahead and were approved in 2014 by voters in Alaska, Oregon, and Washington, D.C.; in the 2016 election cycle, similar ballot initiatives were also approved in California, Maine, Massachusetts, and Nevada; in 2018, Michigan voters added their state to the legalization list; and similar ballot initiatives were approved by voters in Arizona, Montana, New Jersey, and South Dakota in the November 2020 election.³² In addition, since early 2018, Connecticut, Illinois, New Mexico, New York, Vermont, and Virginia have all enacted adult-use marijuana legalization regimes through the traditional legislative process.³³

The federal executive branch's non-enforcement policy for state-compliant marijuana activity was partially codified when Congress started enacting appropriations bills with a spending rider prohibiting the U.S. Department of Justice from interfering with state efforts to implement medical marijuana programs in 2014.³⁴ These spending riders, which have been given a relatively broad interpretation by courts,³⁵ fueled further growth in the number of states developing medical marijuana regimes and added still more momentum to the broader reform movement by signaling that Congress was now prepared to formally limit the authority of the federal government to prosecute certain state-legal marijuana activity.³⁶

30. See Memorandum from James M. Cole, Deputy Att'y Gen., U.S. Dep't of Just., to all U.S. Att'ys (Aug. 29, 2013), <https://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf> [<https://perma.cc/47RE-BNU3>].

31. See generally Sam Kamin, *Legal Cannabis in the U.S.: Not Whether but How?*, 50 U.C. DAVIS L. REV. 617, 634–40 (2016).

32. See Claire Hansen, Horus Alas & Elliot Davis, Jr., *Where Is Marijuana Legal? A Guide to Marijuana Legalization*, U.S. NEWS (Jan. 6, 2022, 3:25 PM), <https://www.usnews.com/news/best-states/articles/where-is-marijuana-legal-a-guide-to-marijuana-legalization> [<https://perma.cc/WAG7-CHG5>] (providing a list of all legalization states).

33. See *id.*

34. The first of these riders was enacted in late 2014 in the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 538, 128 Stat. 2130, 2217. Similar riders have appeared in subsequent appropriation bills and have been enforced in courts in various ways. See generally Florence Shu-Acquaye, *Rohrabacher-Blumenauer Amendment, Case Law and the Department of Justice: Who Prevails in the Medical Marijuana Legalization Debate?*, 54 GONZ. L. REV. 127 (2018) (discussing the Ninth Circuit's treatment of the appropriations act).

35. See, e.g., *United States v. McIntosh*, 833 F.3d 1163, 1178 (9th Cir. 2016).

36. See Hilary Bricken, *Funding and Financing a Marijuana Business*, 13 SCITECH LAW. 6, 7 (2017) (suggesting that “investors and medical marijuana businesses” could feel

The election of Donald Trump in 2016 could have slowed state reform momentum because it raised uncertainty about federal enforcement policies, and these policies formally changed in January 2018, when then-Attorney General Jeff Sessions rescinded previous Justice Department memoranda on marijuana enforcement.³⁷ However, this action actually generated added political support for state reforms as members of Congress on both sides of the political aisle criticized the prospect of greater federal criminal enforcement in reform states,³⁸ and U.S. Attorneys generally did not increase marijuana enforcement beyond the framework of the previous non-enforcement memoranda.³⁹ Sessions' replacement as Attorney General, William Barr, indicated during his confirmation hearings that he did not plan to "go after" actors complying with state marijuana laws.⁴⁰

The 2020 election saw many Democratic presidential candidates compete over federal marijuana reform proposals,⁴¹ and states from coast to coast passed ballot initiatives to legalize marijuana for medical or adult-use consumption.⁴² By summer 2021, 18 states and three U.S. territories had legalized marijuana for adult recreational use, 36 states and four U.S.

more confident moving forward with industry plans after "Congress in 2014 passed an appropriations bill that includes a prohibition against the Department of Justice spending money to interfere with a state's implementation of medical marijuana laws"). *See generally* Alex Kreit, *What Will Federal Marijuana Reform Look Like?*, 65 CASE W. RESV. L. REV. 689, 690–91 (2015) (noting that the spending rider suggested that the "executive and legislative branches [were both] finally coming around to the conclusion that enforcing federal marijuana prohibition in states that have enacted reform is simply no longer a viable option").

37. Memorandum from Jefferson B. Sessions, III, Att'y Gen., U.S. Dep't of Just., to all U.S. Att'ys (Jan. 4, 2018), <https://www.justice.gov/opa/press-release/file/1022196/download> [<https://perma.cc/N2HA-9UXS>].

38. *See* James Higdon, *Did Jeff Sessions Just Increase the Odds Congress Will Make Marijuana Legal?*, POLITICO (Jan. 6, 2018), <https://www.politico.com/magazine/story/2018/01/06/jeff-sessions-marijuana-legalization-congress-216251/> [<https://perma.cc/4TLL-BKG4>].

39. *See* Jill Beathard, *Keep Calm and Follow State Law: Marijuana Attorneys React to Sessions Memo*, 95 DENV. L. REV. F. 112, 116 (2018).

40. *See* Tom Angell, *Trump Attorney General Pick Puts Marijuana Enforcement Pledge in Writing*, FORBES (Jan. 28, 2019, 1:23 PM), <https://www.forbes.com/sites/tomangell/2019/01/28/trump-attorney-general-pick-puts-marijuana-enforcement-pledge-in-writing/?sh=7803dae65435> [<https://perma.cc/22W6-QW2T>] (quoting former Attorney General William Barr).

41. *See 2020 Presidential Candidates on Marijuana*, OHIO ST. UNIV., <http://moritzlaw.osu.edu/faculty-and-research/drug-enforcement-and-policy-center/research-and-grants/policy-and-data-analyses/2020-Pres-Candidates-Marijuana> [<https://perma.cc/CCQ9-NTNH>] (last visited Dec. 31, 2021).

42. *See Drug Reforms on the 2020 Ballot*, OHIO ST. UNIV., <http://moritzlaw.osu.edu/faculty-and-research/drug-enforcement-and-policy-center/research-and-grants/policy-and-data-analyses/drug-reforms-2020-ballot> [<https://perma.cc/BC35-2E6S>] (last visited Dec. 31, 2021).

territories had laws to enable comprehensive medical marijuana programs, and nearly every other state allowed the use of low tetrahydrocannabinol (THC), high cannabidiol (CBD) products for medical reasons.⁴³

In sum, the last quarter century has seen dozens of U.S. states and territories legalize medical and adult use of marijuana, while blanket federal prohibition has remained the law of the land — though federal enforcement policies have evolved in response to changing state laws. Various commentators have discussed the politics and policies surrounding the evolution of federal enforcement,⁴⁴ but few have given focused attention to the most tangible and arguably most consequential aspect of federal enforcement practices, namely federal sentences imposed for marijuana activity. The next Part closely examines this aspect of the modern federal marijuana enforcement story.

II. MODERN FEDERAL MARIJUANA ENFORCEMENT AND SENTENCING

The impact of marijuana prohibitions and the scope of enforcement are often documented through nationwide arrest data, in part because the numbers are enormous and in part because there is little other reliable national information on marijuana enforcement. Interestingly, yearly arrest data, as collected by the Federal Bureau of Investigation (FBI), have been dynamic: as arrests for all drug offenses increased during the “war on drugs” acceleration in the 1980s, the total number of marijuana arrests actually dipped due to a more aggressive focus on cocaine and heroin.⁴⁵ Yet, as state marijuana reforms picked up steam, so too did total marijuana arrests — peaking at over 850,000 arrests in 2007⁴⁶ and averaging over

43. See *State Medical Marijuana Laws*, NAT’L CONF. ST. LEGISLATURES (Feb 3, 2002), <http://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx> [https://perma.cc/MRX2-622G]. See generally AMS. FOR SAFE ACCESS, 2020 STATE OF THE STATES REPORT: AN ANALYSIS OF MEDICAL CANNABIS ACCESS IN THE UNITED STATES (2020), https://american-safe-access.s3.amazonaws.com/sos2020/StateoftheStates20_Spreads.pdf [https://perma.cc/JD5N-QA39]. An up-to-date list of state marijuana legalization laws is maintained by the advocacy group NORML. See *Legalization*, NORML, <http://norml.org/legal/legalization> [https://perma.cc/8QL5-DWU8] (last visited Feb. 14, 2022).

44. See generally Alex Kreit, *Drug Truce*, 77 OHIO ST. L.J. 1323 (2016); Mikos, *supra* note 2; Zachary S. Price, *Reliance on Nonenforcement*, 58 WM. & MARY L. REV. 937 (2017).

45. See *Drugs and Crime Facts, Number of Arrests, By Drug Type, 1982–2007*, BUREAU JUST. STAT., <https://www.bjs.gov/content/DCF/tables/drugtype.cfm> [https://perma.cc/7EVS-G2CW] (last visited Jan. 21, 2022).

46. See *id.*; see also Ryan S. King & Marc Mauer, *The War on Marijuana: The Transformation of the War on Drugs in the 1990s*, 3 HARM REDUCTION J., no. 3, 2006.

750,000 arrests for more than a dozen years.⁴⁷ Starting in 2014, total marijuana arrests showed declines in the FBI data and recently hit a (pre-pandemic) low of under 550,000 arrests in 2019,⁴⁸ and then another new low of just over 350,000 in 2020.⁴⁹ Disconcertingly, as the American Civil Liberties Union has documented in a series of reports, one pernicious consistency in the marijuana arrest data has been racial disparities, where African Americans were many more times likely than whites to be arrested for marijuana possession.⁵⁰

While national arrest patterns tell one story, actual sentences imposed for marijuana convictions reflect the most significant consequence of marijuana prohibition's enforcement. Disappointingly, there seemingly has been no systematic collection or analysis of marijuana sentencing outcomes nationwide since the work done by Ryan King and Marc Mauer through the year 2000.⁵¹ Indeed, even with growing attention on marijuana reform, there is no recent data on how many persons nationwide are incarcerated for marijuana offenses nor any detailed accounting of the types of offenders still incarcerated for marijuana activities in the states.⁵² However, data assembled by the USSC allows at least a close look at how federal marijuana enforcement has cashed out since the start of state-level marijuana reforms in the form of yearly sentencing outcomes.⁵³

47. See ACLU, *THE WAR ON MARIJUANA IN BLACK AND WHITE* 49 (2013) [hereinafter *ACLU BLACK & WHITE*], https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-re11.pdf [<https://perma.cc/9RNV-QFPL>].

48. See Kyle Jaeger, *Marijuana Arrests Decline Nationally for First Time in Four Years, FBI Data Shows*, MARIJUANA MOMENT (Oct. 1, 2020), <https://www.marijuanamoment.net/marijuana-arrests-decline-nationally-for-first-time-in-four-years-fbi-data-shows/> [<https://perma.cc/289D-QDS9>].

49. See Kyle Jaeger, *Marijuana Arrests Dropped Sharply in 2020 as Both COVID and Legalization Spread, FBI Data Shows*, MARIJUANA MOMENT (Sept. 27, 2021), <https://www.marijuanamoment.net/marijuana-arrests-dropped-sharply-in-2020-as-both-covid-and-legalization-spread-fbi-data-shows/> [<https://perma.cc/5BNV-3LJ6>].

50. See ACLU BLACK & WHITE, *supra* note 47; see also ACLU, *A TALE OF TWO COUNTRIES: RACIALLY TARGETED ARRESTS IN THE ERA OF MARIJUANA REFORM* (2020), https://www.aclu.org/sites/default/files/field_document/marijuanareport_03232021.pdf [<https://perma.cc/HN7D-D7SV>].

51. See King & Mauer, *supra* note 46 (providing a leading, and perhaps the only, detailed report with analysis of marijuana criminal case processing outcomes from leading policy analysts).

52. See Zoe Sigman, *The Women Fighting for Cannabis Justice and Data Transparency in the U.S. Prison System*, VOGUE (Apr. 20, 2021), <https://www.vogue.com/article/cannabis-justice-data-transparency-us-prison-system> [<https://perma.cc/6X62-7SGF>] (discussing the “massive gap in data” that precludes knowing “[h]ow many people are serving time for cannabis”).

53. Drawn from U.S. Sentencing Commission, *Monitoring of Federal Criminal Sentences*. See app. H.

A. The Decline in Federal Marijuana Sentences

The number of marijuana sentences imposed in federal courts actually climbed significantly for five consecutive years, starting in 1996, after the first states legalized medical marijuana.⁵⁴ By 2002, however, the number of federal marijuana sentences each year had leveled out but remained consistently high for more than a decade — from 2002 to 2012 — when an ever-growing number of states were adopting medical marijuana reforms.⁵⁵

However, over the last decade, coinciding with the emergence of state adult-use marijuana reforms, there has been a considerable and steady drop in the number of sentenced federal marijuana defendants and marijuana cases have composed an ever-smaller percentage of federal drug cases being sentenced in federal courts. In USSC fiscal year 2020,⁵⁶ 1,129 people were sentenced for trafficking marijuana in federal courts, down 83% from USSC fiscal year 2012.⁵⁷ In 2012, a full 27.7% of all drug trafficking cases sentenced in federal court involved marijuana as the primary drug type; by 2020, only 7% of all drug trafficking cases sentenced in federal court involved marijuana as the primary drug type.⁵⁸

While the total number of marijuana cases being sentenced in federal court has declined, so too has the average prison sentence length and the number of extreme life or de facto life sentences. In fiscal year 2012, offenders were sentenced to a median sentence length of 34 months — two years and ten months — in prison. By 2020, the median sentence length had dropped to 29 months — two years and five months. Also, from 2012 to 2016, an average of four life or de facto life sentences were imposed each year on marijuana offenders, but since 2017 only two total such

54. Drawn from U.S. Sentencing Commission, *Monitoring of Federal Criminal Sentences*. See app. H.

55. See app. A.

56. U.S. Sentencing Commission data covers a fiscal year that runs from October 1 through September 30 so that fiscal year 2020 covers data collected from October 1, 2019, through September 30, 2020.

57. See app. B.

58. The data reported in this section are drawn from various reports and data files coming from the U.S. Sentencing Commission, and available online at U.S. SENT'G COMM'N, QUICK FACTS: MARIJUANA TRAFFICKING OFFENSES (2020) [hereinafter U.S. SENT'G COMM'N 2020], https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Marijuana_FY20.pdf [<https://perma.cc/3MFH-6NLX>]; U.S. SENT'G COMM'N, QUICK FACTS: MARIJUANA TRAFFICKING OFFENSES (2016) [hereinafter U.S. SENT'G COMM'N 2016], https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Marijuana_FY16.pdf [<https://perma.cc/R29F-6HYC>]; U.S. SENT'G COMM'N, QUICK FACTS: MARIJUANA TRAFFICKING OFFENSES (2012) [hereinafter U.S. SENT'G COMM'N 2012], https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Quick_Facts_Marijuana_Trafficking.pdf [<https://perma.cc/26UW-NMU3>] (last visited Feb. 14, 2022). Additional data sources appear in the Appendix of this Essay. See app. H.

sentences have been imposed — with none imposed in the last three years.⁵⁹

B. The Impact and Import of Many Fewer Federal Marijuana Sentences

Based on the median length of sentences and number of sentences imposed as reported by the USSC, there was, collectively, nearly 20,000 total human years of federal imprisonment imposed for marijuana trafficking in fiscal year 2012 alone.⁶⁰ Eight years later, despite the fact that federal law had not changed — and marijuana trafficking activity likely increased due to state reforms — “only” about 2,700 human years of federal imprisonment was imposed for marijuana trafficking in fiscal year 2020.⁶¹ For a visual comparison, these collective years sentenced are represented below⁶² and equate to 245 full human lifespans in 2012 and “only” 35 lifespans in 2020.⁶³

Declining federal marijuana sentences also means less expected federal spending committed to incarcerating those convicted of marijuana trafficking. In fiscal year 2012, at an average annual cost of \$37,449 per inmate each year,⁶⁴ an estimated \$722,000,000 was committed to the federal imprisonment of those sentenced for marijuana trafficking.⁶⁵ Expected incarceration expenditures for marijuana trafficking have declined considerably with the dramatic recent decrease in the number of sentences imposed, but that should not occlude the fact that significant costs persist for continued federal marijuana imprisonment in our era of widespread state marijuana reforms. Approximately \$102 million was

59. Drawn from U.S. Sentencing Commission, *Monitoring of Federal Criminal Sentences*. See app. H.

60. Calculated from the number of sentences, mean length of sentence drawn from the U.S. Sentencing Commission *Monitoring of Federal Criminal Sentences* and the 2019 average American life span of 78.8 years old. See ELIZABETH ARIAS, BETZAIDA TEJADA-VERA & FARIDA AHMAD, NAT’L CTR. FOR HEALTH STAT., *PROVISIONAL LIFE EXPECTANCY ESTIMATES FOR JANUARY THROUGH JUNE, 2020 (2021)*, <https://www.cdc.gov/nchs/data/vsrr/VSRR10-508.pdf> [<https://perma.cc/JN2L-T3LQ>].

61. See *id.*

62. See app. C.

63. Calculated from 2019 average American life span of 78.8 years old. See ARIAS ET AL., *supra* note 60.

64. Calculated as total prison years times Annual Determination of Average Cost of Incarceration Fee (COIF) for FY 2018 COIF, which was \$37,449. See Annual Determination of Average Cost of Incarceration Fee (COIF), 84 Fed. Reg. 63,891 (Nov. 19, 2019).

65. See app. D.

committed to the federal imprisonment of people convicted of marijuana trafficking in the 2020 fiscal year.⁶⁶

C. Changes in Rates of Convictions

Those with federal marijuana charges are increasingly less likely to be convicted. In 2012, 8% of all federal marijuana charges resulted in a dismissal, equivalent to the average rate of dismissal among all federal charges.⁶⁷ Yet, the rate of dismissals has climbed year after year for marijuana charges while overall rates of dismissals have remained relatively steady.⁶⁸ By 2020, 22% of all federal marijuana charges were ultimately dismissed.⁶⁹ Rates of dismissals for marijuana possession charges have risen higher than for marijuana trafficking, but dismissals of both have become increasingly more common.⁷⁰ Specifically, 45% of all federal marijuana possession charges were dismissed in 2020, up from 15% in 2012.⁷¹ Today, 12% of all federal marijuana trafficking charges are ultimately dismissed relative to just 7% in 2012.⁷² While the rates of dismissals might explain some of the decline in federal marijuana sentences, it does not explain the bulk of the decline over time.

D. Changes in Law Enforcement Seizures

The significant decline in the number of marijuana sentences imposed in federal courts over the last decade is likely in large part the direct result of a significant decline in marijuana seized by the Drug Enforcement Administration (DEA). Since 2012, both marijuana sentences⁷³ and DEA

66. *See id.*

67. *Table D-4. U.S. District Courts — Criminal Defendants Disposed of, by Type of Disposition and Offense, During the 12-Month Period Ending September 30, 2012*, U.S. CTS. [hereinafter *2012 Data*, U.S. CTS.], <https://www.uscourts.gov/file/10681/download> [<https://perma.cc/DJ5T-VBXX>] (last visited Jan. 23, 2022).

68. *See id.*

69. *See Table D-4 — U.S. District Courts — Criminal Judicial Business (September 30, 2020)*, U.S. CTS. [hereinafter *2020 Data*, U.S. CTS.], https://www.uscourts.gov/sites/default/files/data_tables/jb_d4_0930.2020.pdf [<https://perma.cc/4987-YV5R>] (last visited Jan. 24, 2022).

70. Counts for marijuana trafficking include trafficking, sale, distribution, importing, exporting, and manufacturing. *See id.*

71. *Compare id.* (finding that 209 out of a total 468 marijuana possession cases were dismissed in 2020), *with 2012 Data*, U.S. CTS., *supra* note 67 (listing that 239 out of 1,613 marijuana possession cases were dismissed in 2012).

72. *Compare 2020 Data*, U.S. CTS., *supra* note 69 (finding that 336 out of a total 1,531 marijuana cases were dismissed in 2020), *with 2012 Data*, U.S. CTS., *supra* note 67 (listing that 680 out of 8,361 marijuana cases were dismissed in 2012).

73. Drawn from U.S. Sentencing Commission, *Monitoring of Federal Criminal Sentences*. *See app. H* (listing data sources); *see also* U.S. SENT'G COMM'N 2020, *supra* note

marijuana seizures have declined by roughly 85%.⁷⁴ The DEA attributes the decline in marijuana seizures to state-level changes in marijuana laws, leading to significantly more domestic marijuana production and less trafficking of marijuana over international borders.⁷⁵

E. Demographics of a Changing Enforcement Landscape

The geography of federal marijuana prosecutions has also evolved in the last decade. In 2012, only 29% of federal marijuana sentences were imposed in districts not at the U.S.-Mexico border.⁷⁶ As of 2020, 47.5% of all federal marijuana sentences are imposed in non-border districts.⁷⁷ Reports from the DEA indicate that marijuana seizures at the southern U.S. border have dwindled as states have legalized adult use and medicinal use of marijuana, suggesting that reduced trafficking over the southern border accounts for both the reduced number and changing location of federal prosecutions of marijuana offenses.⁷⁸ Nonetheless, though shrinking in

58 (based on information drawn from “FY 2016 through FY 2020 Datafiles, USSCFY16-USSCFY20”); U.S. SENT’G COMM’N 2016, *supra* note 58 (based on information drawn from “2012 through 2016 Datafiles, USSCFY12-USSCFY16”); U.S. SENT’G COMM’N 2012, *supra* note 58 (information drawn from “2008 through 2012 Datafiles, USSCFY08-USSCFY12”).

74. Compare DRUG ENF’T ADMIN., U.S. DEP’T OF JUST., 2015 NATIONAL DRUG THREAT ASSESSMENT SUMMARY 127 tbl.B11 (2015) [hereinafter 2015 NAT’L DRUG THREAT ASSESSMENT SUMMARY], <https://www.dea.gov/sites/default/files/2018-07/2015%20NDTA%20Report.pdf> [<https://perma.cc/7T6R-UTBR>] (showing a decline in marijuana seizures of 1.19 million in 2014 from 2.33 million in 2010), with DRUG ENF’T ADMIN., U.S. DEP’T OF JUST., 2020 DRUG ENFORCEMENT ADMINISTRATION NATIONAL DRUG THREAT ASSESSMENT 57 fig.49 (2021) [hereinafter 2020 DRUG ENF’T ADMIN. NAT’L DRUG THREAT ASSESSMENT], https://www.dea.gov/sites/default/files/2021-02/DIR-008-21%202020%20National%20Drug%20Threat%20Assessment_WEB.pdf [<https://perma.cc/W6D8-HD2J>] (citing the Domestic Cannabis Eradication/Suppression Program (a DEA program) in coordination with state and local LE agencies) (showing a decline in marijuana seizure from 886,200 in 2015 to 309,012 in 2019).

75. See app. E; see also DRUG ENF’T ADMIN., U.S. DEP’T OF JUST., 2019 DRUG ENFORCEMENT ADMINISTRATION NATIONAL DRUG THREAT ASSESSMENT 88 (2019), https://www.dea.gov/sites/default/files/2020-01/2019-NDTA-final-01-14-2020_Low_Web-Dir-007-20_2019.pdf [<https://perma.cc/GCF8-6EQ7>] (“According to [Custom and Border Protection (CBP)] information, marijuana seizures along the [Southwest border] have continued to decline as domestic production increases.”).

76. Drawn from U.S. Sentencing Commission, Monitoring of Federal Criminal Sentences. See app. H. Border districts are defined as Southern California, Arizona, New Mexico, Western Texas, and Southern Texas. All other districts are considered to be non-U.S.-Mexico border districts.

77. Drawn from U.S. Sentencing Commission, Monitoring of Federal Criminal Sentences 2019–2020. See app. H.

78. Compare 2015 NAT’L DRUG THREAT ASSESSMENT SUMMARY, *supra* note 74, at 71 (noting “decline in the total weight of marijuana seizures along the Southwest Border” may be caused by the “possible impact of domestic legalization initiatives” while still noting “marijuana seizures along the Southwest Border totaled over 984,600 kilograms in 2014”),

relative size, there were still more than 1,000 people — mostly people of color — sentenced in federal court for marijuana trafficking in fiscal year 2020. Specifically, of the 1,129 federal defendants sentenced for marijuana trafficking in 2020, according to USSC data, 200 were Black and 701 were Hispanic, with a total of over \$100 million committed to the incarceration of defendants for activities not dissimilar from the activity now conducted by licensed, regulated commercial business in states in which marijuana has been legalized for various purposes.⁷⁹

Notably, the racial composition of persons sentenced in federal court for marijuana offenses has evolved as the caseload has shrunk. In 2012, the majority sentenced for marijuana offenses were Hispanic (66.4%), followed by white (22.2%), Black (8.3%), and Other Races (3.1%).⁸⁰ In 2020, the majority were still Hispanic (62.1%), followed now by Black (17.7%), white (14.9%), and Other Races (5.1%).⁸¹ The proportion of white federal marijuana defendants has been consistently falling since 1997, while there has been a considerable relative growth in the percentage of Black marijuana defendants being sentenced in the federal system during the modern period of state marijuana legalization reforms.⁸²

These data suggest that white people are benefiting relatively more from fewer federal marijuana prosecutions and sentences. The recent doubling in the relative percentage of Black offenders subject to federal marijuana sentencing is particularly notable and disconcerting at a time when marijuana reforms are now being more robustly promoted in the name of racial justice.⁸³ Though a fewer absolute number of Black defendants were sentenced in federal court for marijuana offenses in 2020 than in 2012, proportionately more white people benefitted from the reduction in the

with 2020 DRUG ENF'T ADMIN. NAT'L DRUG THREAT ASSESSMENT, *supra* note 74, at 58 (stating “marijuana seizures along the [Southwest Border (SWB)] have continued to decline as domestic production increases” and noting the “total weight [of marijuana] seized by CBP along the SWB was 248,585 kilograms in 2019”).

79. Number of sentences and demographics of those sentenced drawn from U.S. Sentencing Commission, Monitoring of Federal Criminal Sentences 2019–2020. *See* app. H. Cost estimates — calculated as total prison years times Annual Determination of Average Cost of Incarceration Fee (COIF) for FY 2018 COIF — were \$37,449. Annual Determination of Average Cost of Incarceration Fee (COIF), 84 Fed. Reg. 63,891 (Nov. 19, 2019).

80. Drawn from U.S. Sentencing Commission, Monitoring of Federal Criminal Sentences. *See* app. H.

81. Drawn from U.S. Sentencing Commission, Monitoring of Federal Criminal Sentences 2019–2020. *See* app. H.

82. *See* app. F. The United States Sentencing Commission introduced a new variable in the USSC Datafiles to capture both race and ethnicity in 1997. Thus, comparisons to 1996 could not be made.

83. Drawn from U.S. Sentencing Commission, Monitoring of Federal Criminal Sentences 2019–2020. *See* app. H.

federal marijuana caseload.⁸⁴ The racial patterns emerging within modern federal marijuana enforcement seem to exacerbate a racially skewed modern marijuana landscape in which some profit from the demand for marijuana without facing federal prosecution while others are prosecuted and imprisoned for similar activity. Notably, 80% of those sentenced for trafficking marijuana in the federal system are Black or Hispanic,⁸⁵ while only 10% of marijuana business owners are Black or Hispanic.⁸⁶

Notably, some recent research has provided reasons to be hopeful that historic and pernicious racial disparities in national punishment practices and in federal drug sentencing have been declining in recent years. The Council on Criminal Justice in a 2019 report, for example, detailed that from 2000 to 2016, racial and ethnic disparities declined across prison, jail, probation, and parole populations in the United States.⁸⁷ Professor Michael Light has also recently documented that the average sentencing difference between Black and white drug defendants in federal courts shrunk considerably between 2009 and 2018.⁸⁸ Yet, the federal marijuana sentencing data assembled here provide a sobering reminder that even overall declines in certain forms of drug enforcement can still prove to disadvantage, relatively speaking, populations historically subject to disproportionate punitive drug regimes.

CONCLUSION

New state laws legalizing marijuana for various purposes have prompted evolving federal enforcement policies even as the blanket federal marijuana prohibition has remained unchanged in the law. Examined through the lens of actual federal sentences imposed, federal marijuana enforcement has changed considerably: when states first enacted medical marijuana reforms beginning in 1996, the number of federal marijuana sentences grew to historic highs.⁸⁹ However, after Colorado and Washington legalized

84. See app. H.

85. Based on FY 2020 estimates from the USSC Individual Offenders Fiscal Year 2020 datafile. See app. H.

86. See app. G; see also Eli McVey, *Chart: Percentage of Cannabis Business Owners and Founders by Race*, MJBIZDAILY (Dec. 17, 2021), <https://mjbizdaily.com/chart-19-cannabis-businesses-owned-founded-racial-minorities/> [<https://perma.cc/PPK5-KX7E>].

87. See WILLIAM J. SABOL, THADDEUS L. JOHNSON & ALEXANDER CACCAVALE, COUNCIL ON CRIM. JUST., *TRENDS IN CORRECTIONAL CONTROL BY RACE AND SEX 1* (2019), <https://counciloncj.org/wp-content/uploads/2021/09/Trends-in-Correctional-Control-FINAL.pdf> [<https://perma.cc/K9F8-C2PM>].

88. See Michael T. Light, *The Declining Significance of Race in Criminal Sentencing: Evidence from US Federal Courts*, 100 SOC. FORCES 1110, 1114 (2021).

89. See *supra* text and notes 53–56 (discussing data drawn from U.S. Sentencing Commission, *Monitoring of Federal Criminal Sentences*. Also see Appendix H).

recreational marijuana and additional states followed suit, marijuana traffic over the southern border declined and the number of federal marijuana sentences declined dramatically from 2012 to 2020.⁹⁰ Furthermore, as marijuana trafficking across the border and federal prosecutions declined, the landscape of federal prosecutions started shifting from rural and urban communities along the Southern border to more cities and towns throughout the United States.⁹¹

The decline of federal marijuana sentences has not benefitted all persons equally. Trends in these sentences indicate that reductions in enforcement have disproportionately benefited white populations as the share of sentenced federal marijuana defendants who are Black has increased. White people are increasingly more likely to be avoiding federal prosecution even though they are also more likely to be beneficiaries of flourishing legal marijuana industries comprised of overwhelmingly white marijuana business owners.

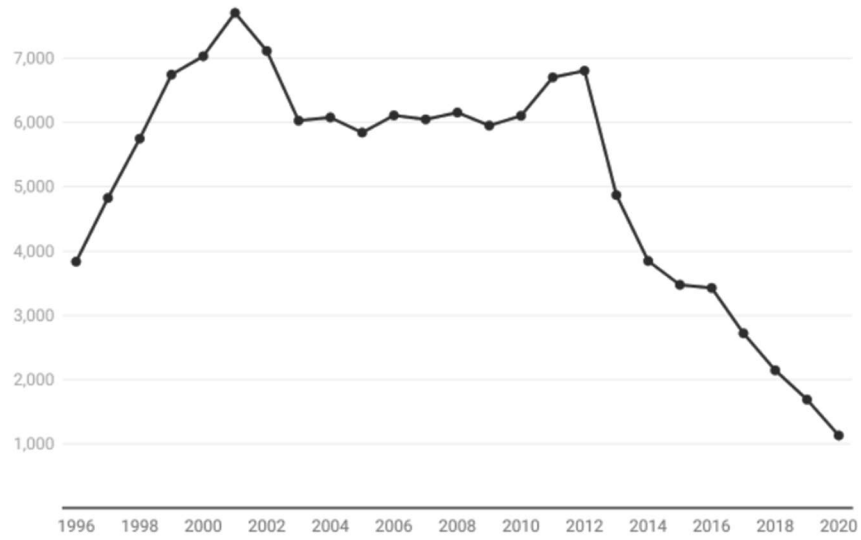
A number of members of Congress have put forward federal marijuana reform proposals that aspire to advance racial and social justice in light of long-standing racial disparities in marijuana enforcement at all levels. Whatever the fate of these federal proposals, advocates of marijuana reform should notice that there are developments to celebrate in the recent pattern of federal marijuana sentences, but also that there is still considerable work to be done.

90. *See supra* note 78. Additional data sources drawn from U.S. Sentencing Commission, *Monitoring of Federal Criminal Sentences 2019–2020*. *See app. H*.

91. *See supra* text and notes 66–70.

APPENDIX A

Figure 1: Federal Marijuana Trafficking Sentences Imposed



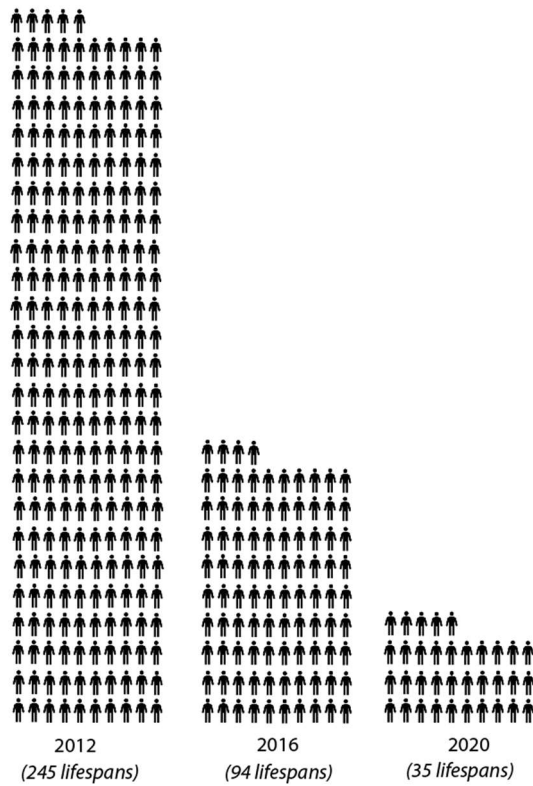
APPENDIX B

Figure 2: Federal Marijuana Trafficking Sentences Imposed in 2012, 2016, and 2020



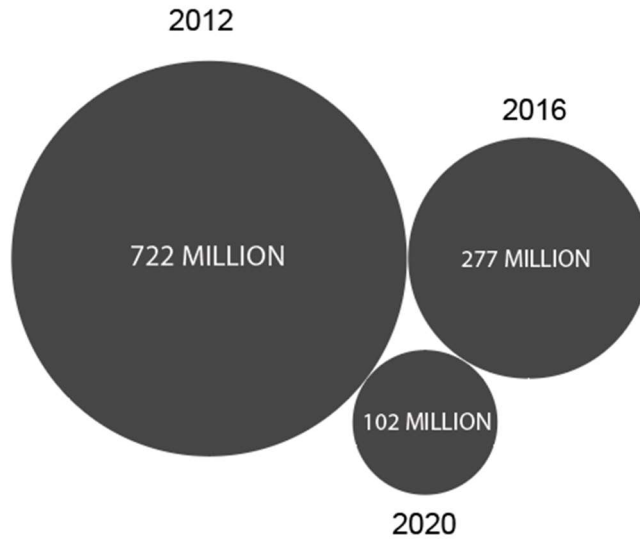
APPENDIX C

Figure 3: Approximate Collective Lifespans Lost to Federal Marijuana Trafficking Imprisonment



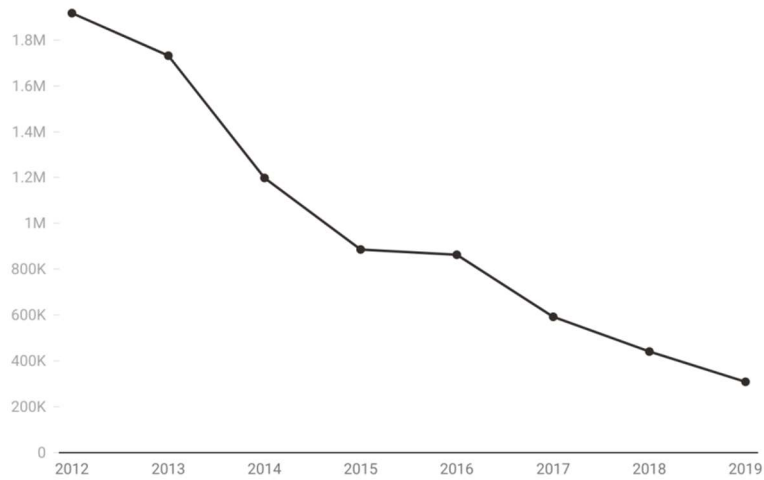
APPENDIX D

Figure 4: Approximate Incarceration Expenses Committed to Marijuana Sentences



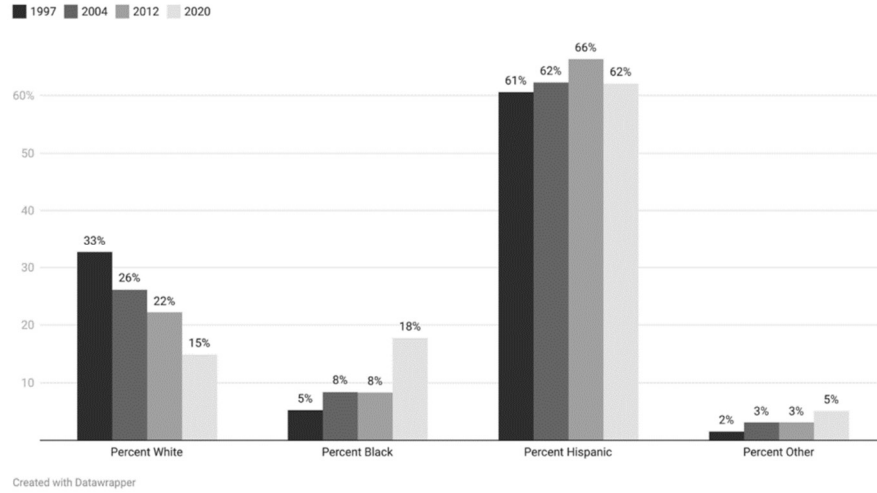
APPENDIX E

Figure 5: Marijuana Seized in Kilograms from 2012–2019



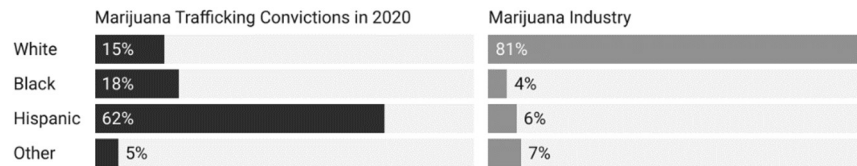
APPENDIX F

Figure 6: Racial Composition of Marijuana Trafficking Sentences Imposed by Year



APPENDIX G

Figure 7: Racial Composition of those Sentenced for Marijuana and the Marijuana Industry



APPENDIX H

Data Sources

To find datafiles on the United States Sentencing Commission's Monitoring of Federal Criminal Sentences, datafiles for 2016–2017, 2017–2018, 2018–2019, 2019–2020 may be found on their website. See *Commission Datafiles*, U.S. SENT'G COMM'N, <https://www.ussc.gov/research/datafiles/commission-datafiles> [<https://perma.cc/ASL6-C67L>] (last visited Dec. 23, 2021).

For data prior to 2016–2017, please see the data sources listed below.

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2015–2016*, U.S. SENT'G COMM'N (May 23, 2018), <https://doi.org/10.3886/ICPSR36962.v1> [<https://perma.cc/T6EX-V3BN>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2014–2015*, U.S. SENT'G COMM'N (Nov. 9, 2016), <https://doi.org/10.3886/ICPSR36571.v1> [<https://perma.cc/QX5Q-U3KD>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2013–2014*, U.S. SENT'G COMM'N (Oct. 26, 2016), <https://doi.org/10.3886/ICPSR36568.v1> [<https://perma.cc/72ZB-4UDK>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2012–2013*, U.S. SENT'G COMM'N (Nov. 25, 2014), <https://doi.org/10.3886/ICPSR35345.v1> [<https://perma.cc/L3K5-6F99>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2011–2012*, U.S. SENT'G COMM'N (Nov. 25, 2014), <https://doi.org/10.3886/ICPSR35342.v1> [<https://perma.cc/D4SA-N8PN>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2010–2011*, U.S. SENT'G COMM'N (Oct. 28, 2014), <https://doi.org/10.3886/ICPSR35339.v1> [<https://perma.cc/XD2P-EJTR>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2009–2010*, U.S. SENT'G COMM'N (Oct. 28, 2014), <https://doi.org/10.3886/ICPSR35336.v1> [<https://perma.cc/E2J8-SX6F>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2008–2009*, U.S. SENT'G COMM'N (Oct. 28, 2014), <https://doi.org/10.3886/ICPSR28602.v1> [<https://perma.cc/2KTX-9YV6>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2007–2008*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR25424.v2> [<https://perma.cc/ZKT9-3CKW>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2007*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR22623.v2> [<https://perma.cc/M2LT-DXLP>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2006*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR20120.v2> [<https://perma.cc/K5TE-NEE7>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2005*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR04630.v2> [<https://perma.cc/7V7E-MTHG>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2004*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR04633.v2> [<https://perma.cc/UKA4-DXDG>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2003*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR04290.v3> [<https://perma.cc/QV2C-HS69>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2002*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR04110.v1> [<https://perma.cc/H7YJ-V3MG>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 2001*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR03497.v1> [<https://perma.cc/Q5W7-8X5U>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 1999–2000*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR03496.v1> [<https://perma.cc/M68X-KK9P>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 1998–1999*, U.S. SENT’G COMM’N (June 25, 2014), <https://doi.org/10.3886/ICPSR03106.v1> [<https://perma.cc/5R4J-F6JE>].

Ann Arbor, MI: Inter-university Consortium for Political and Social Research, *Monitoring of Federal Criminal Sentences 1987–1998*, U.S.

SENT'G COMM'N (June 25, 2014), <https://doi.org/10.3886/ICPSR09317.v5>
[<https://perma.cc/K8NE-EKL9>].