

STATEMENT OF

CYRUS R. VANCE, JR.
NEW YORK COUNTY DISTRICT ATTORNEY

BEFORE THE PUBLIC SAFETY COMMITTEE
JUNE 12, 2012

1:00 PM

250 BROADWAY, 14th FLOOR

Good afternoon Chairman Vallone and members of the Public Safety Committee. My name is Cyrus R. Vance, Jr., and I am the District Attorney of New York County. Thank you for this opportunity to submit written testimony with regard to Resolution 986-A, which supports Governor Andrew Cuomo's proposal to amend the Penal Law to make possession of a small quantity of marijuana in public view a violation rather than a misdemeanor; applauds the Speaker of the Assembly for his support of the proposal; and calls upon the New York Senate to pass legislation enacting the same.

Last Monday, I stood with Governor Cuomo, Assembly Speaker Sheldon Silver, Mayor Michael Bloomberg, and my fellow district attorneys in New York to express our support for a thoughtful solution to the issues surrounding arrests for the possession of small amounts of marijuana.

The most important job of the District Attorney is to enhance public safety while maintaining an unwavering commitment to the fair and just administration of the law. But one of the challenges we face, especially in these times of limited resources, is to make sure that we are focusing our resources on the most violent criminals and significant crime problems, and in the smartest and fairest way possible. In Manhattan, we work closely with the community and the NYPD, through what we call "intelligence-based prosecution," to focus on the criminals and organizations that cause a disproportionate amount of violence in our communities.

Working with the NYPD, for example, we are identifying and dismantling some of the most violent drug trafficking crews in Manhattan. Internally, our bureau-based projects focus on specific strategies to drive down crime, and our Violent Criminal Enterprises Unit focuses on

dismantling violent crews and drug organizations. These efforts, both within the office and in partnership with other law enforcement agencies and the community, continue to be a critical priority.

That is why I support Governor Cuomo's proposed changes to the laws governing possession of marijuana. This simple and fair change will help us redirect significant resources to the most serious criminals and crime problems.

Under the current law, if an individual possesses a small amount of marijuana outside his pocket, he can be charged with a misdemeanor. But if that same amount of marijuana is inside his pocket, he can be charged with a violation, a non-criminal offense. The consequences for someone who possesses a small amount of marijuana should be the same, whether the marijuana is in a person's pocket or in his hand.

Last year, 6,170 people were charged with open to public view criminal possession of marijuana in Manhattan. Half of these individuals had never been arrested before, and approximately 46 percent were 16 to 24 years of age. Many of these defendants were held in jail before they were arraigned before a judge, a cold introduction to the criminal justice system. A first-time arrest for a small amount of marijuana should not trigger a young person's incarceration or subject them to a criminal record.

The human costs to each one of those people and their families is serious, and it is real. It could affect an individual's ability to secure a job or receive admission into an academic or training program. The consequences of this can be devastating for a young man or woman starting out in life. It can also impose a financial burden on someone forced to miss days of work to appear in court.

Furthermore, the drain of resources in our office and the NYPD to process those 6,000 cases is significant. The proposed law will allow us to redirect resources away from processing people charged with simple low-level possession of marijuana and use those valuable resources to fight

violent crimes, to make all of our communities safer. This is just an application of common sense and fundamental fairness.

I do not make this recommendation lightly — fighting drug crime, particularly drug markets, in New York is a top priority of my office, and a leading concern among residents and community leaders.

Striving to strike the right balance between public safety and fairness is a shared goal of all of us in law enforcement. Resolution 986-A is an important step toward achieving that balance.



First, I want to thank the Public Safety Committee for hearing my statement.

My name is Brian Pearson and I am a leader of VOCAL New York.

I am here today to tell my own experience with wrongful arrest for low-level marijuana possession that I believe illustrates why the resolution you are discussing today needs to be passed. And why I support Governor Cuomo, Assemblyman Jeffries and Senator Grisanti in their efforts to end these arrests which are racially biased, economically wasteful and illegal under 1977 New York State law.

My story also shows the collateral consequences of these arrests that Mayor Bloomberg and police Commissioner Kelly have tried to brush under the rug.

Last fall I was on parole, but my life was improving. I was up for early release. I was working on the construction of subway tunnels and on my way to getting a union position. I had moved from a 3-quarter house for parolees, and was renting a room in Crown Heights.

On a Wednesday, my cousin drove me to the train at Eastern Parkway and Utica Avenue so I could get to work for the 3PM to 11PM shift.

Before I could exit the car we were surrounded by officers who came out of nowhere. They claimed we fit the description of recent bank robbery suspects. My cousin tried to assert his rights to not be searched, but we were pulled from the car and frisked.

The officer found the remainder of a joint, about a thumbnail long, after searching my cousin. My cousin said they had no right to conduct the search and argued that it was a tiny amount of marijuana. Most importantly, he told them everything he had on him and in the car was his and asked that they let me go to work.

They refused.

All of this was an illegal search and violation of our rights, but common for people in the African-American and Latino community.

I was eventually arrested and held in Central Booking's tombs for about 72-hours before I finally saw a judge. When I was released, I was given another court date.

In all, I had three court dates before all charges were dropped.

Three days I was held without a lawyer, missing work and all for a wrongful arrest. But upon being released I began to suffer the collateral consequences.

I was able to convince my job to keep me on, but it set me back in the competitive process to get a union book needed to get union membership. This meant that after the temporary construction work ended in the tunnels, I was left without employment or union membership.

Next, I had to immediately visit my parole officer so I would not be violated and sent back to prison. After a negative urine test for drugs and a statement by my cousin I was not violated, but my early release from parole was terminated and I had to spend an additional 4-months on parole.

Today, I live in Wood Haven Queens, a community with a lot of hard working immigrants, but not a lot of African-Americans and Latinos, who make up 87% of the roughly 50,000 marijuana arrests in New York City.

I do not see police officers rolling up on people there like I did in Crown Heights, or any black and Latino community.

The NYPD are not trying to create safe and healthy communities for people who look like me. They are using policies to harass us, to intimidate us and to drive us into the criminal justice system because they believe that blacks and Latinos are more likely to be criminals.

While I believe that the underlying institutional racism of the New York Police Department will not end with the passage of this one law, it will remove the number one method they have used to criminalize an entire generation of black and Latino men and pump them into the criminal justice system.

Thank you.



**Testimony of Evan Goldstein
Policy Coordinator, New York
Drug Policy Alliance**

Submitted to:

**City Council of New York Committee on Public
Safety**

Hearing on Resolution 986A

**June 12, 2012
New York, NY**

Thank you Mr. Chairman and members of the Public Safety Committee for inviting me to testify in support of Resolution 986-A, a resolution supporting the Governor's proposal to amend the Penal Law to make possession of a small quantity of marihuana in public view a violation, applauding the Speaker of the Assembly for his support of the proposal, and calling upon the New York Senate to pass legislation enacting the same.

The Drug Policy Alliance is the nation's leading organization promoting alternatives to current drug policy that are grounded in science, compassion, health and human rights. We seek to advocate policies that move drug use and abuse towards a health-oriented framework. Our office in New York works to promote sensible drug policies and to build a movement to end the drug war in New York City and State. To that end, our campaigns are developed in partnership with grassroots community organizations, researchers, service providers and other advocates for reform.

For the past year and half, we have worked on a campaign with our organization partners, the Institute for Juvenile Justice Reforms and Alternatives, and VOCAL New York, to educate New Yorkers about the illegal, costly, and racially biased arrests for small amounts of marijuana in public view. We have met with over a hundred organizations to learn about how marijuana arrests impact their communities. And while all of these organizations want to prevent youth from using marijuana, they were also unanimous in their alarm that these racially biased and unconstitutional arrests. They understand that these arrests represent a huge cost in their communities, both in terms of the estimated \$75 million we spend to arrest 50,000 people each year in New York, but also in terms of the collateral consequences associated with such arrests. These community organizations were not interested in marijuana per se, but what marijuana arrests represented: an early introduction into the criminal justice system for young people of color in their communities. It exposed a police practice, now acknowledged by Mayor Bloomberg and Commissioner Kelly, as confusing and leading to unlawful arrests.

In 1977, a Republican State Senator and a Democratic State Assemblyperson sponsored legislation to remove the criminal penalties for *possession* of marijuana for personal use. The Legislature passed the *Marihuana Reform Act of 1977*, finding that "arrests, criminal prosecutions and criminal penalties are inappropriate for people who possess small quantities of marihuana (sic) for personal use."¹ Possession of 25 grams or less of marijuana (about 7/8 of an ounce) was decriminalized – that is, it was made a *violation*; a first offense punishable by a \$100 fine, not jail. Multiple possession offenses were punishable by a \$250 fine and up to 15 days in jail.

When they decriminalized small amounts of marijuana, the Legislature also established a *misdemeanor* penalty for burning marijuana or possessing it *in public view* – a *criminal* offense punishable by arrest, fine, and/or a jail sentence of up to three months.

For nearly fifteen years after marijuana decriminalization in 1977², there were relatively few marijuana possession arrests in New York. But changes in policing practices led to a dramatic increase in these arrests. For instance in New York City, in 1990 there were only 892 arrests for possession of small amounts of marijuana. In 2011, 50,684 people were arrested, a 5,500% increase.³ Since Michael Bloomberg became Mayor in 2002, there have been over 400,000 arrests in NYC for possession of small amounts of marijuana – more than Mayors Dickens, Koch, and Giuliani combined.

¹ "The Legislature finds that arrests, criminal prosecutions and criminal penalties are inappropriate for people who possess small quantities of marihuana (sic) for personal use. Every year, this process needlessly scars thousands of lives and waste millions of dollars in law enforcement resources, while detracting from the prosecution of serious crime." — *New York Marihuana Reform Act of 1977*

² *Marihuana Reform Act of 1977*, Public Law 360, 1977-1978 Legislature, Regular Session (29 June 1977)

³ Where simple marijuana arrests are the top charge. That is, these are not arrests for sales or for other offenses. These are arrests only for low-level possession.

This police practice is extremely expensive and wasteful to New York City: a study found that each of these arrests costs about \$1,500. That means that in 2011, New York City spent \$75 million arresting people for possessing small amounts of marijuana in public view. These arrests continue, even while the City eliminates bus and subway lines, cuts youth summer job and after-school programs, closes senior centers, shuts hospitals, and eliminates services for the homeless and desperately poor. In the past 10 years, New York City taxpayers have spent over \$600 million dollars on the more than 400,000 arrests for marijuana possession in public view.

These arrests are also racially biased and target young people. In the City, nearly 85% of all those arrested are Black and Latino, even though the federal government's national household survey consistently shows year after year that young whites use marijuana at higher rates. Nearly 70% of those arrested for possessing small amounts of marijuana are young people aged 16-29. Statewide, studies by Dr. Harry Levine of Queens College show that among cities and counties in the U.S., Buffalo, Syracuse, along with New York City rank among the highest in terms of racial disparities associated with arrests for possessing small amounts of marijuana.

Most of these arrests are the result of illegal searches and false charges. Recent news investigations and our own interviews with people facing these charges demonstrate that most people arrested for possessing small amounts of marijuana were either falsely charged – charged with a crime they did not commit – and/or illegally searched. Often in the course of a stop-and-frisk encounter, if the police find marijuana in a pocket or bag, they arrest and charge the individual with possessing marijuana in public view -- a misdemeanor. For others, the police ask them to "empty out your pockets/bag." Many people comply with the officer's request, even though they are not legally required to do so. Once in "public view", the marijuana possession becomes a misdemeanor – a criminal offense – and the person is arrested. In September 2011, NYPD Police Commissioner Ray Kelly issued an internal directive, ordering police to follow the law – they must stop making arrests for marijuana possession in "public view" when the person was compelled by an officer to display marijuana in public. However, arrests have actually *increased* since the order was issued.

These arrests also impact documented and undocumented immigrants, especially under the Secure Communities program being forced upon New York by the federal government. Secure Communities requires that the local police send fingerprints to the FBI and Immigration and Customs Enforcement (ICE) for every criminal arrest. ICE then reviews the prints to determine if the individual is a "criminal alien," often placing a detention hold on the individual. Misdemeanor marijuana possession arrests are currently a fingerprintable criminal offense. Thus, it is highly likely that documented and undocumented immigrants will face severe consequences – including deportation – as Secure Communities is implemented in New York even if arrested through unlawful tactics described above. The proposed legislative reform – A.10581 – won't stop Secure Communities and won't stop racial profiling, but it will drastically reduce the number of people – including immigrants – falsely charged and arrested for marijuana possession in NYC, which is currently the number one arrest in the city.

Support of A.10581 (Jefferies): Relates to the offense of criminal possession of marijuana in the fifth degree

Since last week's announcement that Governor Cuomo favors a legislative remedy to bring clarity to the marijuana possession penal law and reduce the racial disparities of these arrests, support has been coming in from around the state. Over three dozen grassroots, advocacy, research, and legal organizations support the legislation to clarify marijuana possession offenses in public view.

Lawmakers also support this legislation. Assembly Speaker Sheldon Silver has joined nearly 50 Assembly Members in co-sponsoring legislation introduced by Assembly Member Hakeem Jefferies at the request of

the Governor. In New York City, Mayor Bloomberg also supports this legislation, joining the 28 New York City Council Members co-sponsoring this resolution.

Law enforcement also supports this legislation. Not only does NYPD Commissioner Ray Kelly support this reform, the NYC Patrolman's Benevolent Association, all five New York City District Attorneys, as well as Nassau County District Attorney Kathleen Rice and District Attorneys from Long Island and upstate support the measure to bring clarity to the law.

In the media, the New York Times, New York Daily News, and New York Post are amongst various media outlets throughout the state have also offered their support for this legislation through editorials.

We can't afford not to act. This racially biased policing practice is destroying the community's trust in law enforcement, and it is destroying the lives of our young people. This is powerfully demonstrated through the stories we collected from the nearly one hundred people we spoke to impacted by these arrests. From their stories, it is clear that the fiscal and human cost is too great, and New York must act now to end these arrests. Please support stopping these racially biased, unconstitutional, and costly arrests once and for all by voting in favor of Resolution 986-A.

Stories of those arrests

- Alfredo was hanging out with three of his friends on the staircase of a public housing project in Harlem when they were approached by five uniformed police officers. The officers entered the building and approached Alfredo and his three friends with their guns drawn. Alfredo described officers' demeanor as aggressive and intimidating. The officers demanded that Alfredo and his friends put their hands up.

The young men complied, and the officers still proceeded to frisk all four men. During their search, the officers explained that they were members of the NYPD Weapons Unit and were conducting searches of various housing developments for illegal weapons. Although they did not recover any weapons in their search, they did find marijuana in Alfredo's pocket.

Alfredo and his friends were arrested for marijuana possession in public view, even though the officers found the marijuana in their pockets. Alfredo spent more than 24 hours in Central Booking and was only assigned a lawyer right before he was scheduled to go before a judge for sentencing. He was sentenced to "time served" for possession of an illegal substance and sent home.

- Anthony was walking out of a store with his friend when he was stopped on the street by two uniformed police officers. They did not provide Anthony with a reason for the stop and did not ask to see his ID. The officers said, "We know you got it on you, just cough it up, and we won't put you through the system."

Anthony verbally denied consent to a search and invoked his right to remain silent. The police officers disregarded this and proceeded to illegally search him without his permission. The officers illegally recovered a small amount of marijuana from Anthony's pocket and arrested him for criminal possession of marijuana in public view. He was held at the precinct for 24 hours and then taken to Central Booking for an additional 24-26 hours.

He saw a lawyer only shortly prior to his appearance before a judge. He was sentenced with an Adjournment in Contemplation of Dismissal (ACD). Anthony believes that he was racially profiled.

When he was released from court his mother asked him, "What happened?" to which he replied, "I was just breathing while Black." This happened after the Kelly operations order was initiated.

- During one early evening around 10pm in February 2012, Jonathan had been asleep in the backseat of his friend's car, and his cousin was asleep in the passenger seat. His friend had parked the car in a driveway and ran to the store leaving his friends sleeping in the car. Three plain clothed police officers approached the car and woke him up. Jonathan woke up to the words, "roll down the window". The police officers had him get out of the car and searched his bag, frisked him, and searched the car. He asked them why they were searching his bag and was told the car was parked illegally. They asked him, "Do you have anything on you that you are not supposed to have". He admitted that he had marijuana on him in his inside jacket pocket. The officers asked him to give it to them and he complied. They found nothing in the car or on his cousin.

Jonathan and his cousin were both arrested. By the time their friend got back from the store about ten minutes later they were gone, arrested and sent to precinct 115. Jonathan spent 10 to 12 hours at the precinct before he was sent to central booking. His court case is still opened. He stands by the fact that his cousin did not have anything on him and should not have been charged. He believes he should have been given a ticket because he did not have marijuana in public view, and he was asleep, not smoking.

TESTIMONY

The Legal Aid Society

In Support of:

Res. 986-A - Resolution Supporting the Governor's Proposal to Amend the Penal Law to Make Possession of a Small Quantity of Marijuana in Public View a Violation, Applauding the Speaker of the Assembly for His Support of the Proposal, and Calling Upon the Senate to Pass Legislation enacting the Same.

At a Public Hearing on Tuesday, June 12, 2012
14th Floor Committee Room

Presented to:

New York City Council Public Safety Committee

Submitted by:

Steven Banks
Attorney-in-Chief
The Legal Aid Society
199 Water Street
New York, NY 10038

Good afternoon. I am Steve Banks, Attorney-in-Chief of The Legal Aid Society. The Legal Aid Society thanks the New York City Council's Public Safety Committee for inviting our comments on Resolution 986-A which endorses a change the Penal Law regarding possession of a small quantity of marijuana. We support the Resolution and appreciate your attention to this issue of vital concern.

The Legal Aid Society is the nation's largest and oldest provider of legal services to low-income families and individuals. From offices in all five boroughs in New York City, the Society annually provides legal assistance to low-income families and individuals in some 300,000 legal matters involving civil, criminal and juvenile rights problems. The Society operates three major practices: the Criminal Practice, which serves as the primary provider of indigent defense services in New York City; the Civil Practice, which improves the lives of low-income New Yorkers by helping families and individuals obtain and maintain the basic necessities of life - housing, health care, food and subsistence income or self sufficiency; and the Juvenile Rights Practice, which represents virtually all of the children who appear in Family Court as victims of abuse or neglect or as troubled young people facing charges of misconduct.

During the last year, our Criminal Practice handled nearly 240,000 cases for clients accused of criminal conduct. Through this work we are all too familiar with the fact that arrests for

possession of marijuana consume a disproportionate amount of the criminal justice resources of our City. Because of the breadth of Legal Aid's representation, we are uniquely positioned to report on the serious consequences that the excessive number of marijuana arrests cause for the people of the City of New York.

THE LEGAL FRAMEWORK

In New York State the possession of small quantities of marijuana is not a criminal matter but a violation punishable by no more than a ticket and a \$100 fine. In practice in New York City, however, every year thousands of people who have no more than a small amount of marijuana in their pocket are arrested, charged with a crime, and held for over 24 hours in squalid detention cells. This practice of the New York Police Department makes a mockery of the law and causes very serious collateral consequences for large numbers of people.

The statutory scheme governing the possession or sale of marijuana was enacted in 1977 with the passage of "The Marihuana Reform Act of 1977." A salient goal of the law was to reduce penalties for the possession of small quantities of marijuana. The legislative purpose was incorporated into the text of the law, the first paragraph of which states: "The legislature finds that arrests, criminal prosecutions, and criminal penalties are inappropriate for people who possess small quantities of marihuana for personal use. Every year, this process needlessly scars thousands of lives and wastes millions of dollars in law

enforcement resources, while detracting from the prosecution of serious crimes." L.1977, c.360, § 1.

The decriminalization of possession of small quantities of marijuana was to be effectuated by several provisions in the newly-created Penal Law Article 221. PL § 221.05 ("Unlawful Possession of Marihuana") is the lowest possession offense on an ascending scale; PL § 221.10(1) (Criminal Possession of Marihuana in the Fifth Degree") is the next lowest. Both cover possession of any amount of marijuana less than 25 grams.

The difference between the two sections is whether the possession is in public, and conspicuously so. PL § 221.05 covers possession of less than 25 grams of marijuana that is neither burning nor open to public view. To effect the legislative purpose of the Marihuana Reform Act, this conduct was not made a crime by the Legislature, but only a "violation," akin to a traffic violation. The maximum penalty for the violation is a fine of \$100. A jail sentence is not an option, unless an offender also had two prior drug convictions in the previous three years.

The Marihuana Reform Act created a companion provision to PL § 221.05 in the Criminal Procedure Law. CPL § 150.75 requires that, "in any case wherein the defendant is alleged to have committed an offense defined in section 221.05 of the penal law . . . an appearance ticket shall promptly be issued" The appearance ticket spares the person the full arrest process that culminates in an arraignment before a judge. The appearance

ticket, like a traffic ticket, requires instead that a defendant appear in court on some future date.¹

PL § 221.05 and CPL § 150.75 are consistent with the Legislature's explicit finding that "arrests, criminal prosecutions, and criminal penalties are inappropriate for people who possess small quantities of marihuana for personal use." PL § 221.05 rules out any jail sanction for first or second offenders, and CPL § 150.75, through the prompt issuance of an appearance ticket, avoids the custody and other negative consequences of the full arrest process.

For a decade and a half after passage of the law, arrests for possession of small amounts of marijuana in New York City were low, in conformity with the legislative directive. In the years before passage, the number of marijuana arrests had averaged approximately 25,000 per year, mostly for small amounts.² In 1990 there were only 1,000 such arrests, and 900 in each of the following two years, 1991 and 1992.³

By the end of the decade, however, arrests for possession of small quantities of marijuana had surged. There were 33,200 such arrests in 1998.⁴ During the decade after 2000, the arrest figure was in the approximate range of 30,000 to 50,000 per

¹CPL § 150.75 provides for making the appearance ticket conditional on the posting of bail only in those cases where a defendant's true identity or residence cannot be ascertained.

²Harry G. Levine & Deborah Peterson Small, Marijuana Arrest Crusade: Racial Bias and Police Policy In New York City 1997-2007, 60 (April 2008), http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf.

³ Id. at 7.

⁴ Id.

year.⁵ In 2010, the NYPD arrested over 50,000 individuals, who were subjected to the full arrest process, for possession of small amounts of marijuana.⁶ In 2011, the police surpassed that figure making more than 50,680 arrests.⁷

Such arrests now represent roughly one-seventh of all offenses arraigned in the New York City Criminal Court. In April 2011, WNYC News reported that "[p]olice arrest 140 people every day in New York City for possessing small amounts of marijuana. It's now by far the most common misdemeanor charge in the city."⁸ Instead of saving resources, the report cited one study which found that the "city continues to spend more than \$75 million a year to keep arresting people for misdemeanor marijuana possession."⁹ The report identified "more than a dozen men" arrested for alleged violations of PL § 221.10(1), all of whom stated that the marijuana in their possession was concealed until the police themselves uncovered it.¹⁰ A recent study showed that

⁵ Id.; Drug Policy Alliance, \$75 Million a Year: The Cost of New York City's Marijuana Possession Arrests, 11 (March 2011), <http://marijuana-arrests.com/docs/75-Million-A-Year.pdf>.

⁶ Drug Policy Alliance, supra, n.12.

⁷ Drug Policy Alliance, New Data Released: NYPD Made More Marijuana Possession Arrests in 2011 than in 2010; Illegal Searches and Manufactured Misdemeanors Continue Despite Order By Commissioner Kelly to Halt Unlawful Arrests, (Feb. 1, 2012), <http://www.drugpolicy.org/news/2012/02/new-data-released-nypd-made-more-marijuana-possession-arrests-2011-2010-illegal-searches>.

⁸ Alisa Chang, Alleged Illegal Searches by NYPD May Be Increasing Marijuana Arrests, WNYC News (April 26, 2011), <http://www.wnyc.org/articles/wnyc-news/2011/apr/26/marijuana-arrests/>.

⁹ Id.

¹⁰ Id.

44% of arrests for marijuana possession were for marijuana that was only brought into "public view" after the police either performed a search or directed the individual to empty his pockets.¹¹ In each case, the person should have received a Desk Appearance Ticket but instead was subjected to the full arrest process.

No change in the law authorized this fifty-fold increase in arrests for an offense that had been decriminalized. CPL § 150.75, requiring prompt issuance of a Desk Appearance Ticket for possession of small quantities of marijuana instead of the full arrest process, remains the law.

POLICE CONDUCT INCONSISTENT WITH THE GOVERNING LAW

The skyrocketing number of arrests that has occurred – in direct contravention of the statutory scheme explicitly designed to diminish the number of such arrests – is the result of police illegally charging possessors of marijuana under PL § 221.10(1) where marijuana is neither burning nor "open to public view" at the outset of the encounter.

The recurring scenario culminating in a PL § 221.10(1) charge is a police-citizen encounter in which marijuana is taken from the pocket, bag, or person of the New Yorker. The marijuana is not burning and is concealed from public view at the outset of the encounter. But either by a police search of the person, or

¹¹ Daniel Beekman, Study Claims NYPD Made Hundreds of Unlawful Pot Arrests, N.Y. Daily News (April 3, 2012), http://articles.nydailynews.com/2012-04-03/news/31282994_1_marijuana-arrests-pot-study.

by an order or request from the police to empty one's pockets, the marijuana becomes visible to the police. Rather than promptly issuing an appearance ticket for a PL § 221.05 violation, the police arrest the person for the PL § 221.10(1) misdemeanor and subject him or her to the full arrest process. The result is that a significant portion of the thousands of marijuana related arrests per year arise out of circumstances where the marijuana only becomes visible to a police officer following a search, request or directive.

CONSEQUENCES OF THE ILLEGAL POLICE CONDUCT

Subjecting a person detained for possession of a small quantity of marijuana to the full arrest process imposes consequences dramatically different from release with an appearance ticket. The immediate consequence is enforced detention for a period of approximately 24 hours. This period has often exceeded 24 hours, particularly on weekends. The physical conditions of the pre-arraignment holding cells are squalid.

The Appellate Division has recognized that "the deprivation entailed by pre-arraignment detention is very great with the potential to cause serious and lasting personal and economic harm to the detainee." *People ex rel. Maxian v. Brown*, 164 AD2d 56, 63(1st Dept. 1990), *aff'd*, 77 NY2d 422 (1991). Besides the immediate disruption to work, school, or family caused by the arrest, it leaves the person with an arrest record. In contrast to the recipient of a Desk Appearance Ticket pursuant to

CPL § 150.75, who is not fingerprinted, the arrestee is photographed and fingerprinted. The information thus becomes part of the database maintained by the State Division of Criminal Justice Services.

The resulting arrest record can mean the loss of a job or be an impediment to obtaining a job. Government agencies, in particular, often require the reporting of an arrest by an employee. And "Have you ever been arrested?" is a question commonly posed on employment applications.

The arrest can also lead to deportation. The fingerprints of any arrestee are transmitted by the Police Department to federal immigration authorities, as required by the "Secure Communities" law. But PL § 221.05 is not a fingerprintable offense. Individuals properly charged under that section do not face the deportation consequences that will follow an arrest for possession of a small amount of marijuana.

One's entitlement to public housing can similarly be jeopardized. The New York City Housing Authority (NYCHA) is regularly informed of arrests in its properties by the New York City Police Department. A misdemeanor marijuana arrest can be grounds for NYCHA to evict the arrestee – as well as his or her family – or to deny an application for an apartment.

Many individuals who are parents arrested for possession of violation-level marijuana amounts have been subjected to child

neglect proceedings, and some have even lost custody of their children as a result.¹²

Car drivers from whom marijuana is seized are subject to loss of their vehicles because of the arrest. The Police Department, under Administrative Code § 14-140, can confiscate and seek forfeiture of any vehicle allegedly used as the instrumentality of the "crime" of marijuana possession. PL § 221.10(1) is a "crime," while PL § 221.05, a violation, cannot be the basis for forfeiture.

THE INEFFECTIVE OPERATIONS ORDER

On September 19, 2011, the Police Commissioner, under considerable pressure from members of the City Council and advocates who criticized the illegal police practice, issued OPERATIONS ORDER Number 49. That order acknowledged that "[q]uestions have been raised about the processing of certain marihuana arrests. At issue was whether the circumstances under which uniformed members of the service recover small amounts of marihuana (less than 25 grams) from subjects in a public place support the misdemeanor level charge of Criminal Possession of Marihuana. The specific circumstances in question include occasions when the officers recover marihuana pursuant to a search of the subject's person or upon direction of the subject to surrender the contents of his/her pockets or other closed container." (OPERATIONS ORDER at ¶¶ 1-2.)

¹² See Mosi Secret, No Cause for Marijuana Case, But Enough for Child Neglect, N.Y. Times, Aug. 18, 2011, at A1.

The OPERATIONS ORDER, consistent with the statutory scheme, stated that "[s]uch circumstances may constitute a violation of Penal Law section 221.05 – Unlawful Possession of Marihuana, a violation[,] not Penal Law section 221.10(1) – Criminal Possession of Marihuana in the 5th degree, a class B misdemeanor." (Id. at ¶ 2 (emphasis in original).)

The OPERATIONS ORDER continued, "To support a charge of PL 221.10(1) the public display of marihuana must be an activity undertaken of the subject's own volition. Thus, uniformed members of the service lawfully exercising their police powers during a stop may not charge the individual with PL 221.10(1) CPM 5th if the marihuana recovered was disclosed to public view at an officer's direction." (Id. at ¶ 3 (emphasis in original).)

The OPERATIONS ORDER emphasized that violation of PL § 221.05 is a non-fingerprintable offense punishable by a fine and that the violator is generally entitled to receive a Desk Appearance Ticket. (See OPERATIONS ORDER ¶ 4.)

Nevertheless, numerous cases have shown that the issuance of OPERATIONS ORDER Number 49 has not resulted in police compliance with the law. Countless individuals are still subjected to the full arrest process for possession of small amounts of marijuana found on their person that was neither burning nor "open to public view" as a result of the subject's own volition. These individuals are wrongly charged with a misdemeanor and face a possible sentence of 90 days in jail, instead of the violation carrying a penalty of no more than a \$100 fine. Their lives are disrupted, they are held for arraignment in harsh and squalid

conditions, and their records are permanently stained – the precise consequences that the marijuana reform law of 1977 was intended to address.

Recent statistics from the Division of Criminal Justice Services confirm that the current marijuana arrest situation is essentially unchanged from that preceding the issuance of OPERATIONS ORDER Number 49. In August 2011, the month before the order, arrests under PL § 221.10(1) totaled 4,189. Figures showed a decline for a few months after September: the December arrest figure was 2,974. But that decline was only temporary. The number of PL § 221.10(1) arrests for March 2012 was 4,186. This figure is virtually identical to the 4,189 arrests made in August 2011, before the order was issued.

Despite the OPERATIONS ORDER, large numbers of illegal arrests continue to occur. On April 3, 2012, The New York Daily News reported that illegal arrests "actually increased in the month after the order . . . from 33% to 44%."13 Indeed, the data shows that in October 2011, "after the Kelly order – the NYPD arrested 2,661 people . . . [t]hat number dipped slightly in November and December, but was still higher than the same months in previous years."14

ALTERNATIVE SOLUTIONS

¹³ See Beekman, supra at n.4.

¹⁴ Alice Brennan, New York Police Officers Defy Order to Cut Marijuana Arrests, The Raw Story (March 30, 2012), <http://www.rawstory.com/rs/2012/03/30/new-york-police-officers-defy-order-to-cut-marijuana-arrests/>.

On June 1, 2012, The Legal Aid Society informed the City of New York that, in light of the serious and continuous violation of the rights of people arrested for possession of marijuana even after the issuance of Operations Order 49, the Society intended to sue the City to correct the illegal practice. The Operations Order has proven to be an ineffective remedy and further steps to bring the NYPD into compliance with the law are clearly needed.

On June 3, 2012, Governor Andrew M. Cuomo announced that he planned to ask the New York State legislature to pass a bill that would make the possession of small amounts of marijuana even "in public view" a violation-level infraction, which would result in a Desk Appearance Ticket rather than a full arrest process. If that bill were to pass, individuals could no longer be subjected to the full arrest process even when marijuana comes into "public view". That is because the process to be followed for individuals charged with possessing marijuana in small amounts would be the same – a Desk Appearance Ticket – regardless of whether the marijuana was in public view or not. New York City Mayor Michael R. Bloomberg, Police Commissioner Kelly, the five District Attorneys in New York City, and the Patrolmen's Benevolent Association have all voiced support for this legislation.

The Senate majority is reported as opposing Governor Cuomo's plan to decriminalize possession of small amounts of marijuana in public. The Senate's alternative proposal is to prohibit the full arrest of anyone who produces marijuana into public view at the request of a police officer. The proposal does little more

than restate the current law and is an effort to replicate the ineffective Operations Order 49 on a statewide basis. This demonstrably ineffective remedy will neither resolve the problem of unlawful arrests nor achieve the legislative mandate that arrests and criminal penalties are inappropriate for people who possess small quantities of marihuana for personal use. With this remedy the harm to thousands of lives and the waste millions of dollars in law enforcement resources will continue and thousands of additional people will be victimized by the unlawful marijuana arrest practice.

We appreciate to testify about this issue of vital concern.

TESTIMONY OF

HARRY G. LEVINE

Professor of Sociology
Queens College and The Graduate Center
City University of New York

HEARINGS OF THE NEW YORK CITY COUNCIL PUBLIC SAFETY COMMITTEE, Regarding Res. 986-A - Resolution supporting the Governors proposal to amend the Penal Law to make possession of a small quantity of marihuana in public view a violation, applauding the Speaker of the Assembly for his support of the proposal, and calling upon the New York Senate to pass legislation enacting the same.

June 12, 2012, New York, New York

MARIJUANA POSSESSION ARRESTS, ILLEGAL SEARCHES, AND THE SUMMONS COURT SYSTEM

I am a professor of sociology at Queens College and the Graduate Center of the City University of New York. For many years I have been researching and writing about the history and sociology of alcohol and drug policies and problems. With a few colleagues, I have been researching racial disparities in arrests for marijuana possession in New York City and throughout the United States. In the last year we have developed the web site www.marijuana-arrests.com as an online library of information about marijuana possession arrests, the NYPD's stop and frisks, and other policing issues. Thank you for inviting me to testify today. ¹

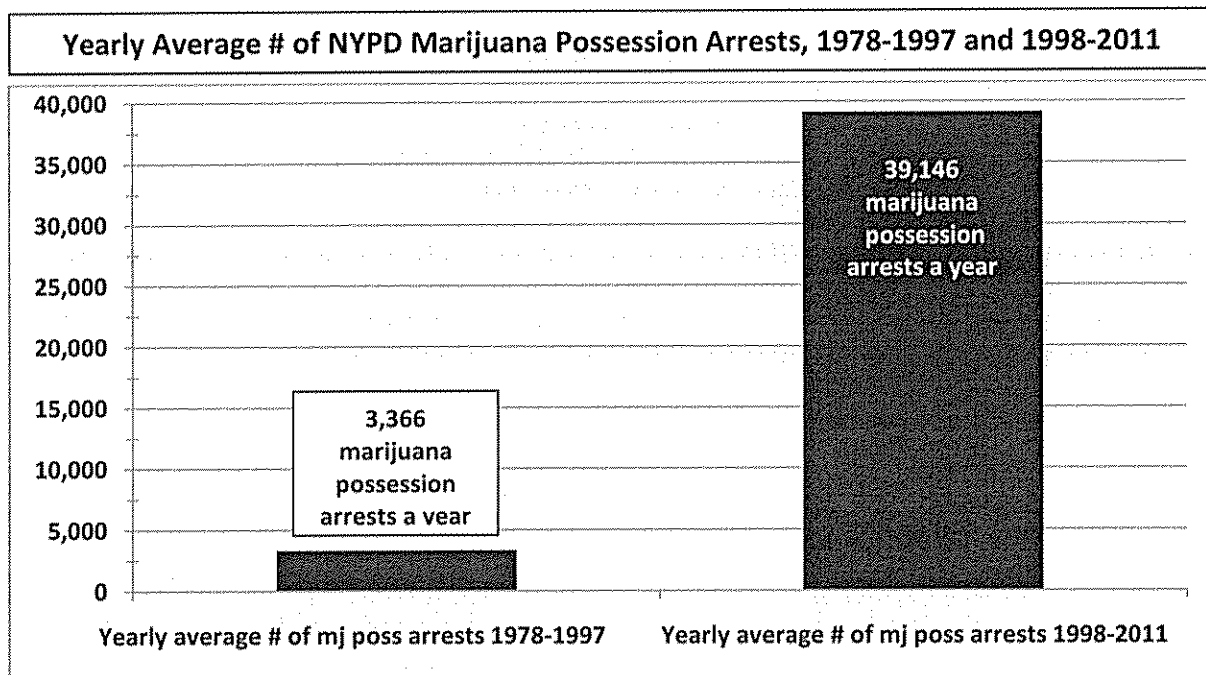
I applaud members of the New York City Council for their leadership in speaking out about New York City's hundreds of thousands of misdemeanor marijuana possession arrests, their racial bias, damaging effects and costliness. And I applaud you for bringing that message to the media, the Governor, the legislature, and the citizens of New York City and State, and for persuading the city's district attorneys, the Police Commissioner and the Mayor that it is long past time to end these arrests. The resolution under consideration is part of that larger effort and I hope its passage will bring reform.

I would like to briefly discuss how New York City got into this problem, potential effects of the proposed reforms, and problems that will remain unsolved even if the reform passes.

The legislative intent section of The Marijuana Reform Act of 1977 as passed by the New York State Senate and Assembly, and signed by the Governor says:

"The legislature finds that arrests, criminal prosecutions, and criminal penalties are inappropriate for people who possess small quantities of marijuana for personal use. Every year, this process needlessly scars thousands of lives and wastes millions of dollars in law enforcement resources, while detracting from the prosecution of serious crimes."
– Chapter 360 of the Laws of New York, "Crimes and Offenses–Possession and Sale of Marijuana"

For about twenty years, from 1978 when the Marijuana Reform Act went into effect to 1997, the letter and intent of that law was apparently carried out in New York City. And then something changed, as the following graph shows.



Source: New York State Division of Criminal Justice Services. Charges under NYSPL 221.10, age 16 and older

The first bar in the graph reports the average number of marijuana possession arrests over 20 years and under three mayors (Koch, Dinkins, and Giuliani's first term). The second bar reports the average number of arrests over 14 years and under two mayors (Giuliani's second term and Bloomberg's ten years in office thus far).²

How did this marijuana arrest crusade happen? How did the NYPD shift from averaging about 3,000 lowest-level marijuana possession arrests a year to averaging 39,000 marijuana possession arrests a year – including over 50,000 marijuana arrests in 2010 and 2011? What changed?

First of all, the leadership changed. Howard Safir became New York City's Police Commissioner in April of 2006 and marijuana possession arrests jumped from 5,700 to the new high of 9,400. In 2007 the arrests jumped again to 17,900. Then, in 1998, the lowest-level marijuana possession arrests climbed to 32,936, beginning a fourteen year arrest crusade that we are still experiencing.

Howard Safir, it should be noted, spent fifteen years working for the U.S. Drug Enforcement Administration (DEA) rising from narcotics agent to Deputy Commissioner. Safir and Giuliani had known each other since the early 1980s when they both worked in the anti-drug office of the Reagan administration. There seemed to have been a meeting of minds between Giuliani, who was always strongly anti-drugs, and his police commissioner about making many lowest-level marijuana possession arrests. Further, by the last third of the 1990s the crack cocaine crisis had ebbed, and marijuana was far more prevalent than any other drug. Marijuana is also popular among teenagers and young people in their twenties who are easy to find, intimidate, and arrest. Safir proudly reported that as police commissioner he "established thirty-

nine major anti-drug initiatives" Almost certainly, one of them was the marijuana possession arrest crusade.³

Searching Pockets and Possessions for Marijuana

How did the NYPD accomplish the enormous growth in marijuana possession arrests from a few thousand a year to an average of nearly 40,000 a year? The answer appears to be: by focusing great attention on the contents of people pockets and possessions. Focusing on the contents of people's pockets and possessions was a form of policing that narcotics officers – anti-drug police – had long used in apprehending people for possession of hard drugs, almost entirely heroin and cocaine. In effect, Safir and Giuliani applied the street-level policing style of narcotics squads – where people are stopped, frisked and searched – to the possession of small amounts of marijuana. The technique, though financially costly, and damaging to the lives of the young people arrested, has produced an astonishing number of arrests for tiny amounts of marijuana.

How do the police find a bit of marijuana, usually a few grams or less, in a tiny plastic bag about the size of a silver dollar, or a thin marijuana cigarette, or even part of one? First of all, in the course of a pat down, or a frisk, an officer simply reaches into the person's pockets. Five years ago, when we began researching marijuana arrests, we interviewed many people who had been arrested who told us that police retrieved the marijuana by reaching into their pockets.

In the last two years, news coverage about New York City's marijuana arrests has increased dramatically. Experienced, reputable journalists have quoted citizens, mostly young people of color, describing encounters in which police had put their hands inside of someone's pockets. For example, on February 1, 2012, Jennifer Peltz of Associated Press reported on the case of Stephen Glover. He was standing outside a Bronx job-training center,

"sharing a box of mints with friends, when police came up to him, asked him whether he had anything in his pockets that could hurt them, and searched them [his pockets] without asking his permission. They found the remains of two marijuana cigarettes in his pockets, he said. 'They just take it upon themselves to search,' the 30-year-old Glover said."⁴

In December of 2011, Steve Wishnia of Alternet quoted Sydney Peck, a Brooklyn public defender: "A police officer pulls marijuana out of someone's pocket, and all of a sudden, it's marijuana in public view" Wishnia also quoted Joshua Saunders, a staff attorney at the Brooklyn Defenders, who said he has "seen a lot of 'dropsy' cases, in which police say they saw the defendant drop the marijuana on the ground" Saunders cited the police report of a man in front of a bodega, "in possession of a quantity of marihuana, which was open to public view" which the officer reported he "recovered from defendant's pants pocket" The attorney, perplexed by how marijuana in a pocket could be open to public view, wondered if his client had worn "transparent pants."⁵

Most thorough of all was the DuPont Award-winning, two-part series by Ailsa Chang, the police and criminal justice reporter for WNYC, about illegal searches for marijuana by the

NYPD. In April 2011 she reported a number of cases of police putting their hands inside people's pockets and searching their clothing.

WNYC tracked down more than a dozen men arrested after a stop-and-frisk for allegedly displaying marijuana in public view. Each person said the marijuana was hidden – in a pocket, in a sock, a shoe, or in underwear. There's no videotape to confirm their accounts, but they each said the police pulled the drugs out of his clothes before arresting him for having marijuana in public view. None of them had been buying their drugs outside. And none of them were carrying a weapon when they were stopped....

Antonio Rivera, 25, said he gets stopped by police up to five times a month. In January, he said he was stopped and frisked near the corner of E. 183rd Street and Creston Avenue in the Bronx. He was arrested for misdemeanor marijuana possession. Critics of the police say his case is an example of how officers may be conducting illegal searches when making marijuana arrests. Rivera said his marijuana was in his pants and that police pulled it out of his clothes after searching him without his consent. "So they checked my pockets, my coat pockets, and they patted my jean pockets," Rivera said, "and then once he felt the package I had in my crotch area, he went into my pants and he pulled it out."

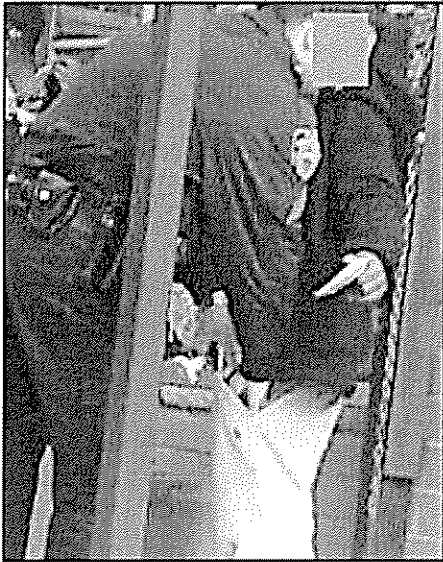
Rivera had lodged a soft Ziploc bag of marijuana between his legs inside his pants while still in the room where he bought it. He said he never took the drugs out when he went outside, but the police officer who arrested him told prosecutors Rivera was openly displaying his drugs.

In the criminal complaint against Rivera, the arresting officer stated that he "observed the defendant to have on his person, in his right hand 1 ziplock bag containing a dried-green leafy substance with the distinctive odor alleged to be marijuana in public view"....

Leo Henning, an African-American, said he was walking with a Ziploc bag of marijuana in his sock – under his foot – when two officers stopped him in March on a street corner in East Harlem. He had just bought the marijuana inside a warehouse several blocks away and had tucked the bag in his sock before he stepped outside, he said. Henning said one of the officers who stopped him placed his hands on him almost immediately.... "He went into my front right pocket. Then he went into my front left pocket," Henning said. "Then he went into my right back pocket. Then he went into my left pocket" Finding nothing, Henning said the officer stuck his fingers down Henning's left sock. "And then he switched over to my right sock," Henning said. "He stuck his hands in. His fingers was going under my foot inside my sock. That's when he felt it, I gather." At that point, the officer allegedly pulled out the bag of marijuana and arrested Henning for displaying marijuana "open to public view." Henning spent the night in jail.⁶

On the next page are three photographs of New York police officers reaching into people's pockets during a frisk. One we received from an extremely trustworthy source who witnessed the frisk in his Bedford Stuyvesant neighborhood and filmed it on his iPhone. The other two photos are from videos taken by Jazz Hayden, a long-time civil rights activist who posts photographs, videos and news stories about the police stops, frisks, and searches on his web site www.allthingsharlem.com.

Police with their hand in a suspect's pocket. No arrests were made in these cases.



1. Brooklyn - Bedford Stuyvesant, April 2011



2. Harlem on Broadway, April 2009



3. Harlem on Broadway, April 2009

Full video for #2 and #3 at:

<http://www.allthingsharlem.com/copwatch/2009/4/26/nypd-harassment-in-harlem-stop-and-frisk-kids-on-bench.html>

It is completely, flatly, illegal and unconstitutional for police to reach inside of someone's pockets without prior "probable cause" to believe the person has contraband – meaning evidence sufficient to justify an arrest. As Ira Glasser, a constitutional expert and the former executive director of the American Civil Liberties Union, has explained:

"A full search, in which the person stopped is required to empty his pockets, or where an officer puts his hands in an individual's pockets or otherwise goes beyond the pat-down of outer clothing for the purposes of determining whether there is a weapon, requires probable cause – that is, enough evidence to justify an arrest."

As the U.S. Supreme Court established in *Terry v. Ohio* (1968) police officers may formally, officially stop and detain someone only when they have "reasonable suspicion" that something illegal or dangerous is going on that warrants further investigation. However, in order to conduct a frisk – what the Supreme Court called "a limited search of the outer clothing for weapons," especially a gun – the officer must have "reasonable suspicion" to believe that the person is armed and dangerous, posing a threat to the officer or others. But even this frisk, this pat down, this "limited search," is to be of only the "outer clothing," and there is no legal justification for reaching into someone's pockets or possessions unless the officer feels a weapon – and guns are relatively easy to feel.

"What Terry means, therefore, is that in the absence of probable cause – that is, in the absence of enough evidence to justify an arrest or a search warrant issued by a court – a police officer may frisk someone, once he has been legally and forcibly stopped, *only* if the officer has good and specific reasons to suspect a concealed weapon. What the officer may not legally do is frisk someone because he "suspects" a crime other than the possession of a concealed weapon. And he certainly may not legally frisk someone, much less search their pockets, for a small amount of marijuana, which could not possibly be mistaken for a weapon, and which in any case is not a crime in New York if it remains concealed and weighs 25 grams or less."⁷

The second principal way that police retrieve marijuana is that some individuals take out their marijuana and hand it over to the police. Few people do this without being asked or ordered. When we began our research on the marijuana arrests five years ago we had many reports from public defender and legal aid attorneys, and from people who had been stopped and searched, that police, in effect tricked people to empty their pockets or take out their marijuana.

Since Police Commissioner Kelly's order of September 11, 2011, it has become far more common to acknowledge that police officers, in Kelly's words, "*recover marihuana pursuant to a search of the subject's person or upon direction of the subject to surrender the contents of his/her pockets or other closed container.*"⁸ Commissioner Kelly also referred to individuals who are "*requested or compelled*" by police officers to empty their pockets and reveal their marijuana. As Kelly's order acknowledged, police officers sometimes ask people to empty their pockets, but police also "*direct*" or "*compel*" people to do so.

In his press conference last week on June 4th, Governor Cuomo also addressed this situation of police ordering people to turn out their pockets. The Governor said:

"I understand the intent of the law in 1977, and what Governor Carey was intending to do, and the legislature was intending to do. That is not [the] current effect of the law. There is a blatant inconsistency. If you possess marijuana privately, it's a violation; if you show it in public, it's a crime. It's incongruous; it's inconsistent the way it has been enforced. There have been additional complications in relation to the stop and frisk policy where there are claims that young people can have [a] small amount of marijuana in their pocket. During the stop and frisk the police officer says "turn out your pockets" and marijuana is now in public view. [The offense] Just went from [a] violation to a crime, to a possible misdemeanor."

Numerous newspaper and other media stories have also reported cases where people were told (or directed, ordered, commanded, instructed) to empty their pockets, to turn their pockets inside out.

Given that so much of the marijuana for the hundreds of thousands lowest-level possession arrests has been retrieved from people's pockets, it seems me and many of my colleagues that it is appropriate and necessary for the New York City Council to do everything it possibly can to prohibit the police from conducting these unconstitutional searches on the streets and public spaces of New York City. The NYPD's narcotics squad-style policing of young people for marijuana, and the routine illegal police searches of pockets and possessions, must be exposed and ended.^{9 10}

Marijuana As Violation and The Summons Court System

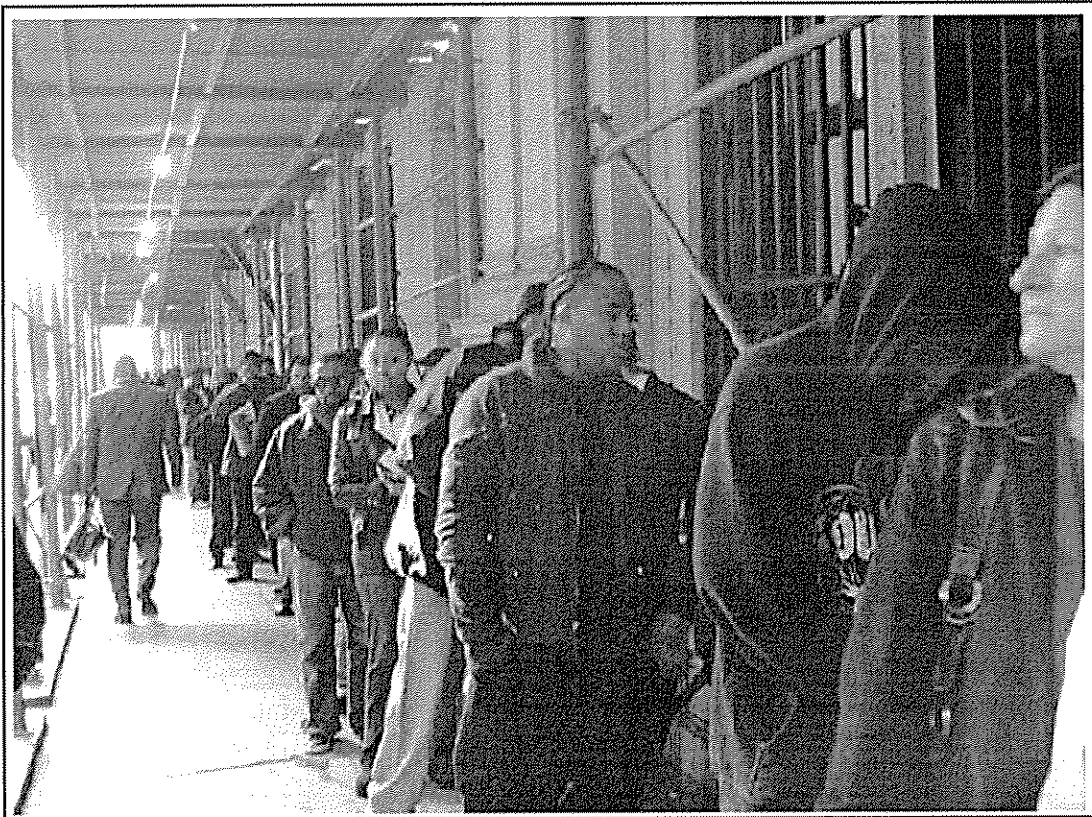
Under the proposed legislation all forms of marijuana possession of less than 26 grams, except openly smoking it in public, will cease to be a crime, a misdemeanor, subject to almost certain arrest and jailing. Instead, marijuana possession, including marijuana "in public view," will become what New York State law terms a "violation" Under the proposed legislation, when police officers find someone possessing a small amount of marijuana, they are to issue the person a summons, a kind of ticket. In New York City the summons tickets are colored pink.

To glimpse what may well happen if the proposed legislation goes into effect, it is necessary to understand this hidden, even subterranean, system of offenses, tickets, fines, warrants, and other consequences.

The New York Police Department already writes more than 600,000 summonses a year for various quality of life and public safety offenses, nearly all for "violations" Like New York City's large number of marijuana possession arrests, these "quality of life" summonses are fruit of the city's aggressive stop and frisk crusade. Although unknown to most middle-class and white New Yorkers, summonses are a familiar part of life for the people in New York City's predominately black and Latino neighborhoods.

Many people issued a summons believe they are comparable to automobile tickets. That is also frequently said about the proposed summons system for marijuana possession. But the summonses have more serious consequences than most routine traffic offenses. And they are handled by an entirely different court system – a subsection of the New York Criminal Court. Indeed, these mandatory court appearance summonses – including for marijuana possession – are not minor and are probably better understood as "*misdemeanors lite*."

The summons court for Manhattan and Brooklyn is at 346 Broadway, New York, NY 10013, and the entrance is on Leonard Street. Because the court building cannot hold all the people appearing with summonses, people line up on the street by the entrance each morning starting at about 9:00 a.m. Below is a photograph of people waiting outside the summons court on Leonard Street.



Patrol officers write summonses (tickets) and make arrests where they are assigned to patrol, and that is mostly in the city's primarily black and Latino neighborhoods.¹¹ News stories in the *New York Daily News*, *New York Times*, *Village Voice*, *ABC-TV*, and other media have reported the enormous pressure put on patrol officers by their commanders to write summonses and meet formal and informal monthly summons quotas.¹²

In 2009 and 2010, the third most frequently issued summons in New York City was for riding a bicycle on the sidewalk. Because these summonses are given out most heavily in low-income neighborhoods, white middle-class parents may not even be aware that teenagers can get

a summons for riding a bicycle on a sidewalk, even slowly on a deserted sidewalk, and sometimes just for straddling a bicycle.

In New York City's public housing developments, however, the tickets are so common that teenagers from poor and working-class families will beg police officers to give them a summons for having an open alcohol container rather than a ticket for a bike on the sidewalk. Why? Because the fine for an alcohol container summons is \$25 but the bike summons is \$100. The teenagers who live in the city's housing developments have a chance of raising \$25 to pay a fine, but they usually cannot get \$100 from their families to pay a criminal court fine for a summons. Because of family, work and school responsibilities, and for other reasons – including not having the money to pay the fine – a sizeable but unknown percentage of people issued a summons do not appear at the summons court on the required day.

The summonses require that people show up at the criminal court on a specific date to pay a fine. When someone does not appear in court as ordered by the summons, leaves after waiting in line for many hours, or cannot pay the fine by a set time, the court issues a bench warrant for the person's arrest. When an individual in heavily policed neighborhoods is stopped by patrol officers for any reason – a stop and frisk, a routine traffic stop – the officers frequently conduct a computer background search for outstanding warrants. When the officers find a bench warrant for non-payment or nonappearance for a summons, the person is handcuffed, physically searched, brought to the police station, is photographed and fingerprinted, and typically is taken in chains to the central booking jail with all other arrestees for twenty-four or more hours.

Police officers will sometimes explain to reporters that, as part of simply checking someone's ID, they will run a computer search for arrest warrants – especially when patrolling in housing projects, in "safe halls buildings" where private landlords have allowed the police to patrol as in housing projects, and in surrounding neighborhoods. When police tell reporters they check for "outstanding arrest warrants," it sounds as if they are looking for dangerous criminals. But mostly police are checking to find arrest warrants for people who did not appear in court or pay a summons for possessing an unsealed alcohol container, sitting on a bench on the edge of a park after sunset, riding a bike on the sidewalk – and soon perhaps for marijuana possession. These offenses are often so minor that police issue only a small percentage of such summonses in most predominately white and affluent neighborhoods.

As far as we have learned, nobody outside of law enforcement and the courts knows how many of these "return on warrant" arrests for violations the NYPD makes a year. Because the arrest warrants stay active for many years (there is apparently no statute of limitations), it is likely that police make many tens of thousands of these arrests annually. This huge system of arrest warrants for non-appearance in summons court operates completely outside of public scrutiny and awareness, or even of accessible public records. But as experienced police officers will sometimes say, including on public online police blogs, these return of warrant arrests for summonses are an important result of the stop and frisk campaign. The return on warrant arrests generate much needed overtime pay for patrol officers – and they produce fingerprints, photographs, addresses, and other information for the police department's criminal database.

Although a violation does not produce a police "rap" sheet, court records of violations may appear in some government and commercial criminal databases. For immigration status, credit reports, occupational licensing, and other official purposes, a guilty plea to a violation can sometimes have the same criminal record consequences as a misdemeanor arrest or guilty plea. For example, two guilty pleas to the violation of marijuana possession can get an immigrant with a green card deported; any drug offense, including a violation for marijuana possession, is regarded as a "moral turpitude" offense. One guilty plea to a marijuana possession violation, even if it occurred many years ago, can prevent a legal immigrant from returning to the U.S. from a visit their country of origin, and can exile them to a year or more in an immigration detention camp while they fight their case.

Unlike people facing misdemeanor charges, people facing charges in the violations sections of the criminal court are not automatically provided with an attorney. With few exceptions the city's experienced legal aid and public defender attorneys do not represent people in the summons court. Most people eventually plead guilty to the violations with little or no understanding of their serious potential consequences.¹³

If The Proposed Legislation Is Enacted...

If the proposed legislation for marijuana possession is enacted, marijuana possession will become part of this summons court system. When police make an arrest they usually return go to the police station for several hours, fingerprinting, photographing, and booking the individual. They may also accompany the person to the central booking holding cells at one of the city's court houses. If the proposed legislation is enacted, and if the police department commands its officers to obey the law, and if it punishes officers who make improper (and illegal) arrests, and if police officers do not respond by arresting more people for other offenses such as trespassing or disorderly conduct – if all of that happens – then more police officers will remain on the street. This police time could and should be spent serving the citizens of New York and protecting them from serious and violent crime. This is what Governor Cuomo, District Attorney Vance, and Assembly members Silver and Jeffries called for in their press conference on June 4th.

However, without other changes in police practice – including around stops, frisks, searches, and quotas – marijuana arrests could easily become a significant part of the summons court system. Instead of making 50,000 custodial arrests a year for marijuana possession, police officers driven by quotas could write 100,000 summonses for marijuana possession. This would not be unprecedented: in 2010 the NYPD wrote 140,425 summons to people who possessed an unsealed alcohol container, often a can of beer in a brown paper bag. Police also wrote 81,036 summonses for various "disorderly conduct" offenses, most commonly simply for obstructing "vehicular or pedestrian traffic," sometimes on completely empty sidewalks on quiet streets. Summonses for the open container and disorderly conduct violation offenses, and for a number of others including for bicycles on sidewalks, are predominately given out in the neighborhoods and police precincts where a majority of the population is African American and Latino.

If the current police procedures and policies for finding marijuana continues by searching people's "person" and pockets, and of ordering people to empty or turn out their pockets (as described in Commissioner Kelly's order of September 19, 2011, and in numerous news stories), and if there is no countervailing order or pressure, then it is likely that police will find many tiny

amounts of marijuana and will write many summonses. Some large but unknown percentage of these summonses will turn into arrest warrants, and many if not most of those warrants will eventually turn into full-fledged criminal arrests, primarily of low-income black and Latino young people. These arrests, and perhaps some of the summonses, will also wind up as records on commercial criminal databases to be found by employers, landlords, credit agencies, banks, and licensing boards for many occupations including security guards, nurses, teachers, and even beauticians. Although many of these marijuana possession tickets will be written in predominately black and Latino neighborhoods, relatively few of them will be written in white and affluent neighborhoods, even though U.S. government surveys consistently find that young whites use marijuana at higher rates than young blacks and Latinos.

Whatever the number of summons issued for marijuana possession, nobody will be able to find out how many of them were given to African Americans, Latinos, and whites because currently the NYPD does not collect race and ethnicity information about the summonses. There is no box for race or ethnicity on the summons form.

Information about arrests for crimes, including about the 50,000 marijuana possession arrests which the NYPD made in 2010 and 2011, is readily and quickly available through the New York State Division of Criminal Justice Services (DCJS). This is a large state government agency with a prominent web site and a professional staff to collect, process, crunch, and make available arrest and other crime data for New York State. All of the numerical and statistical data about New York City's marijuana arrests, which has become public and known in the last few years, has come from DCJS. But that agency does not collect or make available any data whatsoever about violations and summonses.

To obtain the limited data available about summonses, one must make a request through the New York State Court system. According to a young woman in Albany who I spoke with recently, the research office of the court system has one full time employee devoted to data analysis and responding to requests for data. Under current conditions it can take quite a while for the court to respond to a request for data, and it does have to refuse some of the requests. Under its current funding and staffing, if legislators, journalists, and researchers from academic institutions and non-profit organization were to begin making requests for summons data as has become common for misdemeanors, especially marijuana possession offenses, the court system would quickly become overwhelming and incapacitated.

I hope that my description of illegal searches of pockets and possessions, and of the summons court system, will not deter anyone from strongly supporting the proposed legislation and the downgrading of the possession of small amounts of marijuana from a misdemeanor to a violation. It is a step in the right direction.

Rather I have tried to show some of what else needs to be done to make the reform effective and workable. The illegal and unconstitutional searches must end. There needs to be serious reform of the summons court system. Information about race and other demographic variables should be collected on the summonses. A far more efficient system needs to be created for making available information about the summonses, warrants and policing of them. The entire summons system, and the policing of it including stop and frisks and quotas, must be radically reinvented. The intent of the proposed legislation of 2012, in the words of the Marijuana Reform Act of 1978, is to end policies and procedures that "needlessly scars [hundreds of] thousands of lives and wastes [hundreds of] millions of dollars in law

enforcement resources" I have tried to say that beyond this one law much more must be done to bring that about.

END NOTES

¹ Publications about marijuana possession arrests, including the 100 page report *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City* (New York Civil Liberties Union, 2008) can be found here: <http://marijuana-arrests.com/nyc-pot-arrest-docs.html>

2

Marijuana Possession Arrests under New York Penal Law 221.10

Year	1978	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Average
Arrests	2,757	1,923	1,438	1,831	1,512	1,660	2,463	4,546	3,209	2,847	1,861	1,062	891	774	812	1,450	3,141	5,716	9,433	17,992	3,366

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Average
Arrests	32,936	33,819	51,267	41,521	44,111	39,213	27,944	29,752	31,925	39,156	40,383	46,487	50,383	50,684	39,146

In the twenty years from 1978 to 1997 the NYPD averaged about 3,000 marijuana possession arrests a year. These two-decades cover periods when violent crime was rising, especially during extreme crack years, and also when violent crime was declining. There is no evidence that arrests for small amounts of marijuana had anything to do with reducing crime. Bernard Harcourt Jens Ludwig, the University of Chicago scholars who have studied the question directly, conclude that the marijuana arrests do not reduce crime and probably increase it by taking police officers off the street. At the press conference in Albany on June 4, 2011, the Manhattan District Attorney, Cyrus Vance, appeared to agree with that conclusion: "Governor Cuomo's proposed changes" he said, "will allow us to redirect resources away from processing people charged with simple low level possession of marijuana and use those valuable resources to fight violent crime to make all our communities safer and thereby enhance public safety."

³ We do not have the numbers of narcotics police from, say, 1980 to the present, but the City Council could ask the New York City Independent Budget Office to investigate the narcotics police staffing over several decades. Veteran police officers who were on the force in the 1990s and early 2000s have said that under Safir the number of narcotics officers increased substantially.

⁴ "Pot arrests Top 50K in 2011 Despite NYPD Order" by Jennifer Peltz, *Associated Press*, Feb 1, 2012 (over a hundred papers across the US carried this AP story) <http://news.yahoo.com/pot-arrests-top-50k-2011-despite-nypd-order-182052393.html>

⁵ "Hypocritical NYPD Continues Racist Pot Arrest Crusade," By Steven Wishnia, *Alternet*, Dec 30, 2011 <http://www.alternet.org/module/printversion/153617>

⁶ "Alleged Illegal Searches by NYPD May Be Increasing Marijuana Arrests." by Ailsa Chang, *WNYC*. April 26, 2011 (excellent 10 minute radio show plus text) <http://www.wnyc.org/articles/wnyc-news/2011/apr/26/marijuana-arrests/>
Also: "Alleged Illegal Searches By NYPD Rarely Challenged in Marijuana Cases." Ailsa Chang, *WNYC*, April 27, 2011 (excellent 8 minutes radio show plus text) <http://www.wnyc.org/articles/wnyc-news/2011/apr/27/alleged-illegal-searches/>

⁷ Ira Glasser is the author of numerous works on the constitution including *Visions of Liberty: The Bill of Rights for All Americans* (New York:1991). The quotes are from a pamphlet written in direct response to the NYPD stop and frisks and marijuana arrests: *Stop, Question and Frisk: What the Law Says About Your Rights* (Drug Policy Alliance, 2011). At: <http://www.drugpolicy.org/resource/stop-question-and-frisk-what-law-says-about-your-rights>

⁸ New York Police Department Operations Order: "Charging Standards For Possession Of Marihuana In A Public Place Open To Public View" By Direction Of The Police Commissioner, September 19, 2011 On line here: <http://marijuana-arrests.com/docs/NYPD-ORDER-RE-MARIJUANA-ARRESTS-SEPT-19-2011.pdf>

⁹ For a critical but neglected source of rich description about how NYPD narcotics police routinely made illegal searches and arrests in the 1980s and early 1990s, see Chapter 4, "Perjury and Falsifying Documents" (pages 36- 43 of: *The City of New York Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, Commission Report, July 1994*. This is the report of the "Mollen Commission," appointed by Mayor Dinkins to investigate police corruption. Although much of the report focused on gangs of police who robbed drug dealers, one chapter focused on the most common and routine form of corruption which the Commission termed "Perjury and Falsifying" We have excerpted parts of that chapter describing the routine illegality that occurs when narcotics police seek to make drug arrests on the street. For those unfamiliar with its findings, or who wish to understand what narcotics policing has historically meant in New York City, it is an eye-opening work, available here: <http://marijuana-arrests.com/docs/Mollen-Excerpts-Falsification.pdf>

¹⁰ There is a type of narcotics squad, based in police precincts, that may make many of the marijuana possession arrests. The squads are called Street Narcotics Units, or SNU (pronounced Snue). A SNU team officer was responsible for the shooting death of Ramarley Graham in the Bronx in February 2012. Police believed the teenager had a gun, but he had only a bit of marijuana. According to the New York Times, about half of the police precincts in the city have SNU teams. The Times reporter was unable to obtain from the police or DA's office a list of the police precincts, but we hypothesize that they are likely many or most of the precincts that have high levels of marijuana arrests. In nearly all of these precincts the majority of the population is black and Latino.

¹¹ For a map showing the precincts with a primarily black and Latino population, and those with a primarily white and other population, and a list of the precincts, see: <http://marijuana-arrests.com/maps-NYC-pot-arrests-race.html>

¹² For a list of news stories and excerpt about the NYPD's quotas, including for summonses, see: <http://marijuana-arrests.com/quotas-arrest-quotas.html>

¹³ For a discussion of, and links to, articles discussing the collateral consequences of criminal records, including only for arrests, see: <http://marijuana-arrests.com/consequences-of-arrest.html>

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