



The Bronx Defenders Marijuana Arrest Project

March 29, 2012

Fact Sheet

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Over the course of the past seven months, the Marijuana Arrest Project (MAP) at The Bronx Defenders—a holistic, community-based public defender in the South Bronx—has systematically interviewed over 500 clients arrested for low-level marijuana possession between May and October 2011 from every NYPD precinct and command in the Bronx. Preliminary data suggest that over 200 of the cases we investigated—more than 40%—present clear constitutional and evidentiary problems stemming primarily from unconstitutional searches and seizures and improper charging of clients by the NYPD. Many of these unlawful arrests were made *after* NYPD Commissioner Kelly issued an Operations Order specifically instructing officers to discontinue practices leading to illegal charging and arrests. If these numbers reflect NYPD practices across the City, more than 20,000 arrests could be called into question for last year alone.

The NYPD's marijuana arrest policy reveals a policing strategy that overwhelmingly and disproportionately targets young people of color and relies on rampant disregard for the civil rights of the people the NYPD is charged with protecting. The New York State legislature decriminalized possession of a small amount of marijuana more than 30 years ago, making it a violation, not a crime. Research has shown, however, that NYPD officers manufacture thousands of misdemeanor arrests every year by charging clients with possessing marijuana that is “open to public view,” even when it only comes into public view as a result of a police request or unlawful search. In September 2011, Commissioner Kelly issued a department-wide Operations Order specifically instructing all NYPD officers to discontinue this practice.

Preliminary early data, however, show that the percentage of illegal detentions and manufactured misdemeanors actually *increased* in the month immediately following Operations Order #49. Of the 518 clients interviewed by MAP, 397 were arrested prior to Operations Order

#49 and 121 were arrested after the Order. The percentage of illegal stop-and-frisks increased from 31% (123 of 397) before the Order to 44% (53 of 121) after the Order. Similarly, the percentage of manufactured misdemeanors increased from 33% (131 of 397) to 44% (53 of 121). In addition:

- The police lacked sufficient legal basis to justify the initial detention of the client in 34% of all of the cases reviewed (176 of 518).
- In 36% of the cases (184 of 518), police officers manufactured misdemeanor charges by arresting clients for misdemeanors despite the fact that the marijuana only came into public view as a result of police action. In 79% of these cases (145 of 184), the marijuana was brought into public view as the result of an intrusive physical search by the police officer rather than by the client.
- Taken together, cases in which the police had no legal cause for the detention and/or manufactured misdemeanor charges account for 41% of all of the cases evaluated by MAP (212 of 518).

While the numbers tell a compelling story, they do not adequately capture the full extent of the problem. These arrests have devastating consequences for clients, their families and their communities. Most of those arrested for low-level marijuana possession are handcuffed, thrown in the back of a police car and held in filthy holding cells for at least 24 hours before seeing a judge. For many, an arrest can lead not only to a criminal record, but also to eviction, deportation, loss of parental rights, denial of financial aid, absences from school, and lost employment. Moreover, these arrests are overwhelmingly concentrated in a select number of already under-resourced and disenfranchised neighborhoods. When the negative collateral consequences stemming from a staggering number of marijuana arrests are so concentrated at the neighborhood level, there is a significant multiplier effect that works to destabilize entire communities.

The Bronx Defenders Marijuana Arrest Project was created in June 2011 to address the devastating consequences of the NYPD's enforcement of New York's marijuana laws. The Bronx Defenders has consistently taken a leading role in challenging police practices through litigation and policy reform, with a particular focus on "stop and frisk" and "quality of life" policing. Law firm Cleary Gottlieb Steen & Hamilton LLP is also providing pro bono assistance to MAP.