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Marijuana Treatment Entries Did Not Decrease After Aggressive Arrest Policies Were Implemented in New York City

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Abstract

In the mid-late 1990s Mayor Rudy Giuliani and Police Chief William Bratton focused on arresting and detaining people for crimes that contributed to a lower “quality-of-life” in New York City. This aggressive arrest policy (AAP) resulted in a record growth in marijuana arrests. In 1992, the number of marijuana arrests was around 5,000. By 2000, the arrest rate hit an all-time high of about 60,000 (the large majority of which were for misdemeanor arrests in both years). Through a triangulation of data sources, including the Uniform Crime Reports and the Treatment Episode Data Set from 1992 to 2003, and other published accounts, this paper shows that entries into treatment for marijuana dramatically increased in New York City at the same time as misdemeanor and felony arrests for marijuana also rose. While it is unclear if these arrests *caused* the treatment increase (vis-à-vis criminal justice referral programs), the presence of these two phenomena show that policy regimes of increased treatment and increased law enforcement actions can co-exist. The oft-heard phrase “treatment versus law enforcement” may represent a false dichotomy in drug policy analysis.

Keywords

Marijuana; Treatment; Criminal Justice Referrals; New York City; Giuliani; Bratton; Zero Tolerance

Introduction

Before 1993, and prior to the election of Rudy Giuliani as mayor, and the appointment of William Bratton as commissioner, the New York City Police Department (NYPD) operated a policy of “limited marijuana enforcement,” for crimes that fell under New York State’s Penal Section 221 (concerning sale and use of marijuana). Drug enforcement mainly targeted heroin and crack sellers (Johnson et al., 2006b). Additionally, treatment admissions for marijuana as primary drug of abuse were rare (TEDS, annual).

Beginning in 1994 (and continuing today), Mayor Giuliani and Chief Bratton instituted a *aggressive arrest policy* (AAP)³ which has focused upon “quality-of-life” (QOL) crimes that are central to the theory of “broken windows” advanced by James Wilson and George Kelling in 1982 (Wilson and Kelling, 1982; Kelling and Coles, 1996). The theory proposes that obvious signs of disorder in public settings, like subway fare-beating, graffiti, loud music in public spaces, excessive loitering, and deteriorating public spaces, contribute to crime because it

signals to would-be criminals that “no one cares” or “anything goes” (Wilson and Kelling, 1982). Under this AAP, most QOL-arrestees, including marijuana smokers and sellers in public view (henceforth MPV) –and, often, persons stopped for non-marijuana QOL-offenses who were subsequently found to have detectable amounts of marijuana would be arrested. Most MPV arrestees underwent a 16 to 36 hour detention process while police performed the necessary procedures for a thorough background check (Johnson et al., 2006b; Golub, Johnson, & Dunlap, 2006). For a majority of these marijuana offenders, the hours spent in detention before seeing a judge was their primary punishment. Some, however, continued through the criminal justice system (as a result of an incriminating background check, felony charge, etc.). If police had screened for their drug use, many arrestees might have been assessed as having a primary marijuana problem (as defined by treatment staff/criminal justice officials) for which some form of drug treatment might be indicated. Several other drug enforcement policies (described below) may also have facilitated entry into drug treatment programs.

A widespread argument in the literature is the belief that policy makers must decide between two competing ideologies when formulating drug-user policies (e.g. Blendon & Young, 1998; Inciardi, 1999; Nadelmann, 1989; Justice Policy Institute, 2006). They can choose the “treatment” or public-health route, which argues that drug use is a health problem best dealt with by health officials. Alternatively, the opposing strategy to treatment has been presented as “incarceration” or public-safety interventions, whereby users are arrested, treatment entries decline, and health plays a little role in the lives of drug users (Schiraldi, Holman, and Beatty, 2000).

The purpose of this paper is to document that increases in law enforcement intensity in New York City were not tantamount to decreases in treatment delivery among marijuana and other drug users. The argument that treatment and incarceration work separately as opposing and competing strategies is one of the most repeated dichotomies used in the drug policy discourse (e.g. Zimmer & Morgan, 1997; Drug Policy Alliance, 2007; Blendon & Young, 1998; Justice Policy Institute, 2006; Real Reform New York, 2005; Schneider Institute for Health Policy, 2001). The activist-phrase “treatment over incarceration” or “treatment versus incarceration” is an accepted term within the drug policy discourse.

Indeed, this paper suggests that law enforcement intensity may be one of many different activities that could *increase* treatment entry. Using data from criminal justice admissions into public-funded treatment centers provided by the Treatment Episode Data Set (TEDS), this analysis examines pathways to treatment entry in New York City since the implementation of the AAP. Did the large number of arrests in New York – for both simple marijuana possession (MPV) and other QOL offenses targeted – coincide with an increase in treatment entry for marijuana users from the criminal justice system? This paper also supplements these data with published analyses of the arrest policy in New York. This article does not address the characteristics of the marijuana treatment being provided in New York, nor does it discuss the debate about marijuana dependence generally (see e.g. Tanda, Munzar, & Goldberg, 2000; Anthony, Warner, & Kessler, 1994; Budney et al., 2001; Beardsley et al., 1986; Holson et al., 1989; Huestis et al., 2001; Jones, 1983; Kouri et al., 1999). Instead, this analysis is focused on the relationship of the role of law enforcement in “mandating” or “encouraging” entry into drug treatment, especially for marijuana users, in New York City.

³The focus of this paper is on arrests for Marijuana in Public View (MPV), which is defined as a B Misdemeanor (221.10) in NY State Penal Code. The term “aggressive arrest policy” (AAP) is a descriptive term that is used to characterize the strict procedures for handling MPV (and other QOL) arrestees by the NYPD starting in 1995. This NYPD AAP resulted in large number of arrests and detentions that changed during this period (but jail and imprisonment rates for MPV were rare). Prior to this degree of aggressiveness, misdemeanors (for most QOL offenses) were given far more lenient sanctions, like citations and warrants which were rarely pursued. The term *aggressive arrest policy* (AAP) is not meant to ascribe a positive or negative notion; it is simply a descriptive term. The term can also be used to describe aggressive procedures directed at persons arrested for a wide range of non-marijuana misdemeanor offenses.

First, the article provides a background on the AAP in New York City, along with a review of a few relevant studies analyzing treatment need and outcomes among these arrestees. Next, the methods used for analyzing the relationship between marijuana treatment and the AAP are provided. Then, the results section documents the explosive increases in marijuana treatment. Finally, in the discussion, the results are analyzed.

Background

Prior research has contributed to our understanding of the aggressive arrest policy in New York City (e.g. Golub & Johnson, 1997, Golub, Johnson, & Dunlap, 2007, Johnson et al., 2006b, Johnson & Golub, 2003). Only a few studies, however, have analyzed the relationship between law enforcement policies and treatment entry among arrestees with marijuana as their primary drug problem. Johnson and Golub (2005) used Arrestee Drug Abuse Monitoring (ADAM) data to examine if arrestees in Manhattan received treatment. They found that only a quarter of Manhattan arrestees identified as at risk for drug dependence (defined by a screener consisting of a DSM-IV-based set of questions) received treatment in the past 12 months before arrest. This rate was even less for marijuana-only users (10 percent).

Yacoubian (2003) also examined treatment need in New York City, through a secondary analysis undertaken with New York City ADAM data collected in 2000, and found that 37% percent of the arrestees were diagnosed in need of drug treatment (estimated by the ADAM treatment need definitions, based on Substance Use Disorders Diagnostic Schedule, or SUDDS⁴), while 19% were diagnosed in need of alcohol treatment. Compared to those arrestees who were diagnosed as not needing alcohol/drug treatment, arrestees who met the criteria for ADAM abuse/dependence were more likely to be male, older, and to have tested positive by urinalysis for at least one illicit drug.

In the mid-1990s, Giuliani and Bratton made it very clear to the public that QOL crimes would no longer be tolerated (Kelling & Bratton, 1998; Purnick, 1996; Panzarella, 1998). In an interview, Bratton recounts: “New York had allowed all of this [QOL crimes] before. (They represented) many symptoms of (the) illnesses plaguing New York” (Bratton, personal interview, 2005). This was especially true for public marijuana use. As Bratton (personal interview, 2005) discussed:

Marijuana at that time was thought to be harmless, it had more social acceptance... the emphasis was on going after people in public places was to stop escalation before it began.

Mayor Giuliani took a keen interest in drugs, mentioning his desire to reduce “demand” and arrest “people who buy drugs” in his 1995 State of the City address. He mentioned drugs an astounding ten times during that speech (State of the City Address, 1995). He also discussed his disdain for marijuana as early as the 1993 campaign. Research clearly shows that offenders “got the message” – Golub and colleagues (2003) found that 92 percent of arrestees in 1999 perceived that the New York Police Department targeted those smoking marijuana in public. Numbers were similarly high for other substance-abuse behaviors targeted by law-enforcement. The AAP was also distinguished by a large increase in arrest rates for other crimes, including minor crack-selling. Johnson, Golub, and Dunlap (2006) indicate that many persons arrested for a wide range of felony crimes were primarily blunt smokers. One of the most common felony offenses, crack selling, often involved young adults who were primarily blunt and marijuana-smokers (and who personally avoided crack and hard drug use) (Benoit et al., 2003). As elaborated below, many crack-selling blunt smokers were mandated to drug treatment. Unpublished ethnographic work by Johnson and his colleagues confirm this.

⁴SUDDS asks a series of questions to determine treatment need. For elaboration, see Hunt and Rhodes, 2001.

New York's AAP was not just characterized by intensifying arrests for many QOL offenses. Other police and criminal justice procedures were designed and implemented to these arrests and impose a wider range of minor and increasingly severe sanctions upon arrestees. Besides targeting QOL-crimes like farebeating, trespassing, marijuana smoking, etc., the NYPD implemented three major changes to their enforcement operations (Johnson et al., 2006b). First, the police department took advantage of innovations in technology. The NYPD implemented the Comprehensive Computer Statistics, or CompStat to compile crime statistics on a weekly basis, including data on arrests for felony categories and gun violations. CompStat meetings consisted of sophisticated crime mapping where major organizational heads would meet and discuss trends and future strategies to reduce crime. It gave commanders time to regularly monitor the successes and failures of local precincts in reducing crime (Silverman, 1997). To Bratton, CompStat was part of an overall strategy of commander accountability which would help bring about more arrests and, in his view, less crime:

Prior to my time in the subway and the city, they didn't hold commanders accountable for crime numbers; they thought that crime was beyond them. CompStat...(helped us)...hold commanders accountable" (Bratton, personal interview, 2005; also see Bratton with Knobler, 1998).

Second, the NYPD focused on suppressing street-level drug sellers through undercover operations and placing a much greater police presence in neighborhoods with high concentrations of drug sellers. Finally, the NYPD took advantage of a little-known law that targeted commercial establishments that permitted the violation of the law. Police used the "nuisance abatement laws" to lockup storefronts from which drug dealers operated and landlords charged high rents (Johnson et al., 2006b).

This NYPD aggressive arrest policy has attracted harsh criticism. Most prominently, the increase in MPV arrests and aggressiveness was asserted to mean that less attention was directed at treatment for drug uses (e.g. King & Mauer, 2006; Sterling, 2004). Most critics have also argued that serious social costs undermine any supposed benefits, i.e. a large number of civil liberty concerns regarding excessive force in effect cancel out any crime-reduction benefit (e.g. Dixon, 1998; Greene, 1999) or criminal records for the already socially-disadvantaged further handicaps chances of success in the future (Karmen, 2000, Purnick, 1996).

Data from the Federal Bureau of Investigation's Uniform Crime Reports (which consist of data collected from the Department of Justice that record annually arrest rates made by police departments in cities throughout the United States) indicate a massive rise in arrests among people who may have a dependency on the drug (marijuana offenders, other arrestees). In 1990–1992, there were fewer than 1,000 MPV arrests. During Giuliani's tenure, however, marijuana arrests rose almost 5 times, from 12,354 in 1994 to 55,996 in 2000 – driven mainly by a jump in marijuana possession (misdemeanor and felony) arrests. In 2001, the number of arrests dropped modestly (to 46,030), but that drop could reflect a shift away from drug enforcement and toward terrorism prevention after the events of September 11th (U.S. General Accounting Office, 2004). This overall arrest increase was primarily driven by public-marijuana possession (MPV) and selling. It has been argued that by instituting this aggressive arrest policy New York rejected a public health approach in favor of a public safety-oriented policy, especially since it was well known that many arrestees had drug problems.

Methods

This paper primarily relies on the Treatment Episode Data Set (TEDS) for the Primary Metropolitan Statistical Area (PMSA) of New York, New York. TEDS provides data on admissions to public-funded drug treatment programs for marijuana as the primary drug of abuse. This PMSA includes the jurisdictions in the New York City, as well as Putnam,

Rockland, and Westchester counties, the latter three counties provide relatively fewer and a stable number cases of either treatment admissions or arrests.⁵

TEDS compiles data on the demographic and substance abuse characteristics of admissions to substance abuse treatment. The data are routinely collected by State administrative systems and then submitted to the Substance Abuse and Mental Health Services Administration (SAMHSA) in a standard format. This report presents results from the Treatment Episode Data Set (TEDS) for 2003, and trend data for 1992 to 2002. It includes facilities that are licensed or certified by the State substance abuse agency to provide substance abuse treatment (or are administratively tracked for other reasons). In general, facilities reporting TEDS data are those that receive State alcohol and/or drug agency funds (including Federal Block Grant funds) for the provision of alcohol and/or drug treatment services. TEDS data are based upon intake interviews which obtain the client's self reports of use of different drugs to identify the user's "primary substance abuse problem."

It is important to recognize that TEDS suffers from some limitations. Most notably, like many other drug surveys, TEDS provides a simple snapshot on treatment episodes, representing admissions, not the number of clients. It is possible that the same client could undergo numerous different admissions throughout the year and thus be counted as such. Additionally, states vary on data collecting procedures, state funding for treatment, target population served, and the way criminal justice populations enter treatment. Thus the Office of Applied Studies cautions researchers when making state-by-state comparisons. Additionally, TEDS only applies to publicly funded treatment –though for this analysis that concern is minor since the question here concerns those referred to treatment in New York City from the criminal justice system. Still, it is the only reliable source of information about local treatment trends. The TEDS data-file was requested and received with only the New York PMSA data.

In addition to TEDS, marijuana arrest data were obtained from the FBI Uniform Crime Reports (UCR) for New York City. The UCR compiles arrests from law enforcement agencies active in more than 98 percent of the nation's population (FBI, annual; Manski, Pepper, & Petrie, 2001). The senior author has argued previously (Sabet, 2006) that UCR data should be used with caution in policy analysis since the survey is not an annual accounting of the number of persons arrested, but rather, as the number of arrests reported by law enforcement – combining different jurisdictions with different data collection methods into one number, giving us an arbitrary figure for arrests. But this paper offers an exception to that general rule due to its concern with the number of all stops for marijuana. Similar limitations are found with the TEDS data, as "admissions" and not individuals are reported. For both, those entering these systems are counted ("arrests" by police, and "admissions" to treatment programs). A special dataset was obtained from the FBI with New York City-only level data. This data was used to discern the number of arrests in New York City for marijuana possession.

These treatment, referral, and arrest data were analyzed over time, from 1992 to 2004. Primary marijuana abuse information derived from TEDS measures changes over time in treatment admissions. In this paper, "marijuana treatment" means admission into a drug treatment program with marijuana "identified as the primary drug of abuse." Note that while the CJS may mandate drug treatment, it rarely assesses the person's primary drug of abuse. Thus, another variable of interest is marijuana treatment admissions recorded as coming from referrals made by criminal justice sources in the New York City PMSA. Finally, UCR arrest data is presented in order to illustrate the intensity of law enforcement action on low-level marijuana abusers in New York City during the years 1992 to 2004. Arrests here are defined

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⁵The New York City PMSA variables offer the finest level of geographic detail in the TEDS files.

by misdemeanor marijuana arrests. These data were examined side-by-side in order to examine any changes that may have resulted from police policies.

Results

Trends in Percentage of Drug Abusers for whom Marijuana is the Primary Drug Problem

The TEDS data shows that drug users at admission whose primary substance of abuse was marijuana grew about 4–5 times during the 1990s, coinciding with the start of the Giuliani administration (Figure 1). Also, it appears that the number treated rose generally during this period, from under 100,000 in 1995 to a peak of more than 140,000 in 2000. This represents a jump in marijuana admissions from 2 percent of in 1992 and 1993 to over 9 percent in 2001 and in 2002. The U.S. figures also show an increase in marijuana admissions, but this increase (about 2 to 3 times the 1992 figure) was at a lower rate than in New York. Additionally, the national rates reflect a modest increase between 2001 and 2002 while the New York City rates show a decline during those two years, which also witnessed a time of new political leadership in the city. The national rates also display an increase between 1992 and 1993, indicating that there was a rate of growth prior to 1992; the New York rates do not start to increase until 1994. As for other illegal drugs, in New York, TEDS analyses revealed that treatment for cocaine declined during this time, though heroin treatment grew modestly (see additional detailed data in Johnson et al 2006a).

Trends in Percentage of Marijuana-related Drug Treatment Referrals

TEDS defines a criminal justice referral as entry to treatment mandated by “any police official, judge, prosecutor, probation officer, or other person affiliated with a Federal, State, or county judicial system” (SAMHSA, 2004). This includes referral by a court for DWI/DUI, clients referred in lieu of or for deferred prosecution, clients referred during pretrial release, or before or after official adjudication. TEDS data shows that CJS -mandated admissions for marijuana treatment increased from about a third in 1992 to two-thirds in 2001 during under the Giuliani administration (Figure 2), but tapered off after Giuliani left office. The national trend also shows an increase between 1992 and 2004, but a much smaller one – from about 47% in 1992 to 57% in 2004. Additionally, increases of mandated marijuana treatment admissions more or less tapers off in 1999, whereas in New York City the rate continues growing to a high of near 70% in 2001, Giuliani’s final year in office. In 2003–4, the proportions of CJS mandated marijuana treatment admissions was nearly equal in both NYC and nationally.

Trends in Percentage of Marijuana-related Arrests

UCR data indicate that marijuana possession (misdemeanor) arrests grew exponentially from 1992 to 2004. Figure 3 illustrates that the number of marijuana arrests in 1992 was 4,157, compared with 60,543 during the peak year in 2000. How has the New York MPV arrest experience compared with the growth in treatment admissions for marijuana from criminal justice referrals?

Figure 4 explores the rate of growth in marijuana arrests with criminal justice referrals to marijuana treatment in New York. From the base year of 1992, the rates of growth are strikingly similar and parallel. In 1993, there was more than a 100 percent increase in arrests for marijuana and criminal justice referrals to treatment for a primary marijuana problem. By 2000, both had grown 1000 percent since 1992. In 1998, the rate of growth between arrests and referrals slightly widen (8 times more arrests since 1992; 6 times more referrals to treatment), but that year acts as an anomaly in the whole time series. Although MPV arrests greatly outnumber referrals to treatment, the trend lines are quite parallel and similar to each other

Certainly, comparing the arrest rate for all crimes (which experienced slower growth than the marijuana arrest rate) would have shown an even more impressive relative growth in treatment. Whatever the reason for increases in mandated marijuana treatment referrals (these are discussed in the discussion and conclusion sections below), the aggressive arrest policy did not inhibit people from entering marijuana treatment, whether they chose treatment for themselves or were compelled by the CSJ to enter treatment. As Giuliani left office, the growth in marijuana arrests and CJS mandates to marijuana treatment tapered off.

Processing of Marijuana-only arrests

TEDS does not delineate the charges against persons mandated to marijuana treatment. Detailed data on the processing and detention of marijuana possession (MPV) arrestees is available from government sources, however. The data show that about 80% of MPV offenders during the 1990s and early 2000s had their cases dismissed – that is, their primary punishment was detention between 16-to-36 hours (Golub, Johnson, & Dunlap, 2007). Nearly every dismissed case meant that the record of that arrest was sealed, and would not be used against the offender in the future. An additional 9% of marijuana offenders during 1992–2003 were sentenced to time served with no additional penalties. Some were given a fine (8%) and a small percentage were sentenced to additional jail time (3%). Thus, QOL-marijuana sentences tended to be quite short. Johnson, Golub, and Dunlap (2007) reported that in nearly every case (99.7%), the minimum sentence was for zero additional days. The median for the maximum sentence was only five days. They also found that less than 0.5% of arrestees during the period of 1992–2003 were sentenced to probation (922), community service (99), prison (45) and other (23). Most of the first-time, lowest level marijuana possession arrests made during this time resulted in dismissal or minor sanctions. None were recorded as mandates to drug treatment. For some marijuana arrestees with prior felony records, or felony possession of large amounts of marijuana, these few cases often led to some jail/prison time, or a referral to a drug treatment program was possible (Johnson et al., 2006b). Felony arrests for possession of (relatively large amounts of) marijuana pale in comparison to misdemeanor/QOL arrests for marijuana possession (MPV), but they are not insignificant. The number of felony possession arrests reached a high of 1,394 arrests in 1997, consistently higher than in 1992 (GAO, 2004). Figure 5 compares marijuana possession felony arrests in New York with treatment admissions from the criminal justice system for marijuana use. It is possible that other arrest charges were funneling users into marijuana treatment; however, only a modest portion (about 10%) seems to derive from (felony) marijuana arrests, about the same proportion of marijuana-only arrestees that are dependent on the drug (Johnson & Golub, 2006).

Other Law Enforcement Policies in New York City

Increased arrest activity was not the only response city officials implemented for drug users and sellers during the 1990s. Indeed, New York City greatly expanded a variety of CJS-based programs referred to as “alternatives to incarceration.” These were especially targeted upon persons with perceived drug problems and who had committed felonies or were repeat misdemeanants. As of this writing, 23 such programs were established in New York City – all of them began prior to the AAP (Division of Probation and Correctional Alternatives, 2008). An example of one such program was the first drug court opening in Brooklyn, with Manhattan following suit.

Indeed, Manhattan opened its first drug court in 1998, offering nonviolent drug arrestees the chance to forgo formal criminal sanctions if they agree to enter into and complete a procedure of intensive drug treatment and routine drug testing as directed by the Court. Six drug courts now function in New York City. Data from the New York City drug courts show that of the 6,635 referrals from 1998–2003, 41% have been eligible to enter the drug court (ineligibility is determined by criminal history or if the offender refuses to enter the drug court). This

implementation and increase in drug court resources may tell part of the story about why an increase in marijuana-treatment admissions occurred. Felony offenders were offered entry into the drug court; rather than spend time in jail or prison. Forty-five percent of the participants had marijuana as their primary drug of choice when evaluated at entry to the Manhattan drug court. (Rempel et al. 2003).

New York City is also home to other prosecutor-initiated, “alternative to incarceration” programs, as noted above. These programs had dual purposes: to keep thousands of drug addicts out of prison (or long jail stays) and yet impose “sanctions” which the criminal justice system (and offenders) considered as severe, as well as possibly bring about substantial reductions in addictive behaviors and associated criminality. The most popular program was the TASC (treatment alternatives to street crime) model, which operates in Kings, Queens, Bronx and Richmond Counties and acts as a diversion for nonviolent drug users. Usually, TASC is only offered to those drug defendants facing a minimum sentence of 60 days of incarceration as a result of the commission of a non-violent crime (Education and Assistance Corporation, 2007). According to the TEDS data, in fact, “diversionary programs,” or “alternatives to incarceration” like TASC participation grew enormously from 1997, from no more than 6 actual cases between 1992–1997, to 340 in 1998 (more than a 50-fold increase) and 1046 in 2004 (TEDS, annual).

Discussion

This paper has indicated that law enforcement activities are not necessarily incompatible with increased treatment entry, as often asserted. Several plausible reasons exist for such an increase in marijuana admissions. First, it could be the result of an actual growing marijuana prevalence rates or marijuana dependence rates in New York, especially at a time when marijuana potency seems to be rising. Golub and Johnson (1997) and Johnson, Golub, and Dunlap (2006) describe the transformation from the “crack era” to the “blunts era” in the early 1990s. That is, blunts (marijuana in cigar shells) became the primary drug of abuse among youthful users (especially African-American and Latinos) during the 1990s and 2000s. Those arrested for a variety of felony crimes would be primary blunts users. So when a mandate for drug treatment is imposed by the courts, many more would be evaluated as “marijuana as primary drug of abuse” at treatment entry.

The increase could also be possibly driven by successful tertiary prevention campaigns convincing higher numbers of casual users that they need treatment--though evidence for this scenario is thin since no such campaign in New York was known to have occurred, and self-referral rates for marijuana treatment declined during this era. Additionally, the increase probably is not due to a possibility of increased treatment capacity, since there is no evidence for an expansion of “alternative to incarceration” or other treatment programs during the AAP.

But finally, this analysis provides some evidence that part of the reason could be the product of aggressive enforcement and new policies designed to increase drug treatment in community courts, probation, and “alternative to incarceration” programs (as noted on page 15, none of these 23 programs were initiated during the AAP-era). Though most AAP arrestees had their cases dismissed, an appreciable number of offenders were either felony marijuana offenders, had a prior criminal record rendering them ineligible for dismissal, or were arrested for a non-marijuana offense and mandated to treatment, where program staff determined that their primary drug of abuse was marijuana. All of these groups very plausibly were targeted by the AAP but, since they were arrested for multiple charges, had their most serious offense category recorded in the data. For example, an individual who entered treatment for marijuana could have initially been apprehended for smoking that drug in public, but, after later being found to

have crack-cocaine on his person, the arrest category recorded in the data would have been for crack, not marijuana.

That we do not know for sure what primarily caused the increase in marijuana treatment rates in New York City (as discussed above, it may have had to do with rising marijuana prevalence, increased potency of the drug, law enforcement efforts, or some combination of these and other factors) is of little importance here. We found no evidence that treatment facilities increased in size or scope throughout the 1990s. The increase in treatment and arrests during this time show us at a minimum that treatment resources *were not scaled back* at a time when arrests and enforcement pressures greatly increased. Indeed, the evidence above illustrates that those two mechanisms could have been used in concert. While most first-time and minor marijuana arrestees were released and not sent to treatment (or prison), those with more serious marijuana problems seemed to have been receiving treatment.

Limits of this analysis should be noted. Basing our assessment on TEDS and UCR data restricts our conclusions about which arrestees were entering treatment – it is difficult to say whether these individuals were actually marijuana arrestees, crack-arrestees, or arrested on other charges. Also, this analysis could have benefited from a comparison with another jurisdiction that did not experience a similar arresting policy during this time. Unfortunately those data are difficult to come by. Still, we have presented clear evidence that treatment provision for marijuana users increased during an atmosphere of aggressive arresting policies.

What implications does this have? On the national policy level, it means that perhaps drug arrests can accompany an atmosphere of increased health services delivery in the form of treatment for drug users. Importantly, since the prospects of treatment and criminal justice intervention are, unfortunately, often placed as opposing and dichotomous strategies, this analysis challenges that widely-held assumption. For example, reformer Eric Sterling once wrote that “...one might reasonably conclude that a drug user needs treatment, not criminal prosecution” (Sterling 2004, p. 55). King and Mauer discuss the value of “treatment and education rather than incarceration” (King & Mauer, 2006). These suggestions make for sloppy analysis and prevent analyzing policies in light of the total harm (not just the micro harm or the drug use changes) they incur (MacCoun & Reuter, 2001). Such juxtapositions frame the drug policy debate today – even though it appears that treatment can be fostered by criminal justice mandates. Indeed, many criminal justice practitioners believe that court mandates can “motivate” otherwise “unwilling” addict offenders into treatment (Wexler, Lipton, & Johnson, 1988). Those mandated to treatment are no less likely to be successful in reducing their drug use and crime rates than those entering treatment voluntarily.

The data presented here showed that many offenders with marijuana as their primary drug problem appeared in drug treatment system at a substantial rate during institution of AAP policies in New York City. At the same time, data from the Treatment Episode Data Set, marijuana arrest dispositions, and other data point to the fact that many more offenders than in the past were mandated to treatment from criminal justice routes during the AAP – signaling that perhaps the aggressive enforcement of marijuana laws, other drug laws, and more sophisticated crime control techniques funneled many drug users into the treatment system. Furthermore, the dramatic increase in treatment provision during this time points to the fact that the treatment system can adapt to policy changes, a significant reassurance.

Future research could explore incarceration rates before and after the AAP to discern if treatment indeed substituted for jail or prison for qualified offenders, and should explore ways in which often cash-strapped therapeutic institutions can more diligently serve this population.

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Marijuana as Primary Drug in Treatment 1992-2004

Source: TEDS

Figure 1.
Marijuana as a primary drug at treatment admission in New York City and U.S

Criminal Justice Referrals to Treatment for Marijuana 1992-2003

Source: TEDS

Figure 2.
Rates of Criminal Justice System-Referral to Drug Treatment with marijuana as the primary drug of abuse at entry, 1992–2004

Marijuana Possession Arrests

Figure 3.
Marijuana possession arrests in New York City, 1992 to 2003

Rates of growth from 1992 to 2003 for marijuana arrests and marijuana referrals from the criminal justice system, New York

Source: FBI Uniform Crime Statistics; Treatment Episode Data Set

Figure 4.

Rates of growth from 1992 to 2003 for marijuana arrests and referrals to treatment from the criminal justice system.

Marijuana Possession Felony Arrests and Referrals to Treatment from the Criminal Justice System for Marijuana Use, NYC

Sources: New York State Division of Criminal Justice Services and TEDS

Figure 5.
Marijuana felony arrests and referrals to treatment from the criminal justice system for marijuana use in New York City.