



## FREQUENTLY ASKED QUESTIONS ABOUT MARIJUANA OFFENDERS

**Q: How many people go to federal prison each year for a marijuana offense?**

**A:** Each year, about 6,200 people are sent to federal prisons for growing, trafficking, or possessing marijuana. Virtually all federal marijuana offenders are convicted of trafficking or growing marijuana, rather than simple possession (i.e., possessing without intent to distribute) of the drug. There are more people sentenced to federal prison for marijuana than for any other type of drug, including crack cocaine, powder cocaine, heroin, and methamphetamine.<sup>1</sup>

**Q: How many people get mandatory minimum sentences for a federal marijuana offense?**

**A:** In 2009, about 2,400 people (39 percent of all federal marijuana offenders) received five- or 10-year mandatory minimum prison sentences for marijuana crimes. The majority of these (29.4%) received 5-year mandatory minimums. Marijuana offenders are among the least likely of all drug offenders to receive a mandatory minimum for their offenses.<sup>2</sup> About one in five (21.5%) federal marijuana offenders also received the benefit of the “safety valve” in 2009, permitting the judge to sentence the person below the mandatory minimum.<sup>3</sup>

**Q: How long, on average, is the sentence for a federal marijuana offense?**

**A:** The average sentence for a federal marijuana crime is just over three years (36.2 months). This average sentence is significantly shorter than the average federal prison sentences for offenses involving any other type of drug.<sup>4</sup>

**Q: Are most federal marijuana offenders violent kingpins or repeat offenders?**

**A:** Neither. In 2009, only 6.8 percent of federal marijuana offenders committed their crimes with a weapon. Marijuana offenders are among the least likely of any drug offenders to have or use a gun during their offenses.<sup>5</sup> Marijuana offenders are the most likely among all federal drug offenders to receive reduced sentences because they played a minimal or minor role in the offense – almost 40 percent of all federal marijuana offenders received such a sentence reduction in 2009.<sup>6</sup> Nearly 70 percent of all federal marijuana offenders sentenced in 2009 had very few or no prior convictions.<sup>7</sup>

**Q: How many federal marijuana offenders are not American citizens?**

**A:** Forty-three percent of all federal marijuana offenders in 2009 were non-citizens. Marijuana offenders have a higher percentage of non-citizen offenders than any other category of federal drug offenders.<sup>8</sup>

**Q: What are the racial demographics of federal marijuana offenders?**

**A:** Over half (57.2%) of all federal marijuana offenders in 2009 were Hispanic. Almost a third (29%) were white, 9.4% were black, and 4.4% were of other races.<sup>9</sup>

**Q: How many people are in state prisons for marijuana offenses?**

**A:** Data shows that in 2004 (most recent data available), there were over 32,750 people in state prisons for marijuana trafficking and possession offenses. This does not include the number of people who were in jails for marijuana offenses.<sup>10</sup>



**Q: Are most drug offenders in state prisons convicted of marijuana offenses?**

**A:** No. Data from 2004 (most recent data available) shows that 12.7% of all drug offenders in state prisons were imprisoned for marijuana offenses. This was higher than the percentages of offenders serving sentences for hallucinogens (1.7%), depressants (2.2%), and heroin (12.2%) and lower than the percentages of offenders serving sentences for stimulants (18.6%) or crack or powder cocaine (61.8%).<sup>11</sup>

**Q: How many people are arrested each year for marijuana offenses?**

**A:** According to the FBI, there were over 1.7 million arrests for drug violations in the United States in 2008.<sup>12</sup> Over 750,000 of these arrests were for simple possession (i.e., not selling, growing, or distributing) of marijuana, and an additional 93,000 were for selling or trafficking marijuana.<sup>13</sup> These numbers reflect the number of *arrests reported*, not the number of individuals arrested – hence, the same people may have been arrested multiple times in the course of the same reporting year. Thus, it is impossible to know how many individuals are arrested for simple possession of marijuana each year. Additionally, arrest data does not distinguish between actual arrests and the issuing of citations or tickets, so it is difficult to know how many of these arrests involved taking a person into physical custody or placing them in jail.

**Q: How many states put people in prison for simple possession of marijuana?**

**A:** The federal government and 37 states punish people with imprisonment for simple possession of marijuana. The federal sentence for simple possession of marijuana is up to one year in federal prison.<sup>14</sup> Among the 37 states that use imprisonment for simple possession of marijuana, the sentences vary greatly. The 13 states that do *not* use imprisonment to punish at least some types of simple possession of marijuana are Massachusetts, New York, Maine, Ohio, North Carolina, Mississippi, Minnesota, Nebraska, Colorado, Nevada, Oregon, California, and Alaska.<sup>15</sup>

**Q: Are federal and state prisons full of people serving long sentences for simple possession (i.e., not trafficking or growing) of marijuana?**

**A:** No. Last year, there were only 105 cases in which people were sent to federal prisons for simple possession of marijuana.<sup>16</sup> In the states, most simple possession offenses carry short sentences of less than one year in jail and/or a fine.<sup>17</sup>

**Q: How many states have laws allowing the medical use of marijuana?**

**A:** Currently, 15 states permit people to use marijuana legally for medicinal purposes: Washington, Oregon, California, Nevada, Alaska, Hawaii, New Mexico, Colorado, Montana, Michigan, Vermont, Maine, Rhode Island, New Jersey, and Maryland.<sup>18</sup> Under federal law and in the District of Columbia, it is illegal to use marijuana medically.

**Q: Can people using medical marijuana in a state that allows it still be prosecuted in federal courts for using marijuana?**

**A:** Yes. People can be prosecuted for most drug crimes under state law, federal law (which applies nation-wide), or both. Even when a state makes the use of medical marijuana legal, that use is still illegal under federal law. People can be prosecuted by the U.S. Department of Justice



in federal courts for using, growing, or prescribing medical marijuana, even if that conduct happens in a state where using, growing, or prescribing medical marijuana is legal under that state's laws. In October 2009, however, the U.S. Department of Justice announced that federal prosecutors should not prosecute people who are using, growing, or prescribing marijuana in clear and unambiguous compliance with their state's medical marijuana laws.<sup>19</sup> See <http://www.justice.gov/opa/pr/2009/October/09-ag-1119.html>.

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<sup>1</sup> U.S. SENTENCING COMMISSION, 2009 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, Table 33 (2010), available at <http://www.ussc.gov/ANNRPT/2009/SBTOC09.htm> (last visited Aug. 17, 2010). In 2009, there were only 105 cases of simple possession of marijuana that were sentenced. *Id.*

<sup>2</sup> *Id.* at Table 43.

<sup>3</sup> *Id.* at Table 44.

<sup>4</sup> *Id.* at Figure J.

<sup>5</sup> *Id.* at Table 39.

<sup>6</sup> *Id.* at Table 40.

<sup>7</sup> *Id.* at Table 37.

<sup>8</sup> *Id.* at Table 36.

<sup>9</sup> *Id.* at Table 34.

<sup>10</sup> U.S. DEP'T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, DRUG USE AND DEPENDENCE, STATE AND FEDERAL PRISONERS, 2004, at 4, 11 (revised Jan. 2007), available at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=778> (last visited Aug. 24, 2010).

<sup>11</sup> *Id.* at 4.

<sup>12</sup> FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 2008, Table 29, available at [http://www.fbi.gov/ucr/cius2008/data/table\\_29.html](http://www.fbi.gov/ucr/cius2008/data/table_29.html) (last visited Aug. 17, 2010).

<sup>13</sup> FEDERAL BUREAU OF INVESTIGATION, CRIME IN THE UNITED STATES 2008, ARRESTS, available at <http://www.fbi.gov/ucr/cius2008/arrests/index.html> (last visited Aug. 17, 2010).

<sup>14</sup> See 21 U.S.C. § 844 (2010).

<sup>15</sup> See NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS, STATE BY STATE LAWS, at [http://norml.org/index.cfm?Group\\_ID=4516](http://norml.org/index.cfm?Group_ID=4516) (updated June 30, 2010).

<sup>16</sup> U.S. SENTENCING COMMISSION, 2009 SOURCEBOOK OF FEDERAL SENTENCING STATISTICS, TABLE 33.

<sup>17</sup> See generally NATIONAL ORGANIZATION FOR THE REFORM OF MARIJUANA LAWS, STATE BY STATE LAWS.

<sup>18</sup> See *id.*

<sup>19</sup> U.S. DEP'T OF JUSTICE, OFFICE OF PUBLIC AFFAIRS, Press Release: Attorney General Announces Formal Medical Marijuana Guidelines (Oct. 19, 2009) (“[T]he focus of federal resources should not be on individuals whose actions are in compliance with existing state laws, while underscoring that the Department will continue to prosecute people whose claims of compliance with state and local law conceal operations inconsistent with the terms, conditions, or purposes of those laws.”), available at <http://www.justice.gov/opa/pr/2009/October/09-ag-1119.html> (last visited Aug. 17, 2010).