

27,000 Torontonians were arrested for marijuana possession in a decade. What will happen to them?

Wide amnesty for those with marijuana records preferable to expensive and onerous pardons, say academics and lawyers.

Activist and entrepreneur Jodi Emery chants during the Toronto Global Marijuana March in May. (STEVE RUSSELL FILE PHOTO / TORONTO STAR) | ORDER THIS PHOTO

Caitlyn Kasper, a staff lawyer at Aboriginal Legal Services in Toronto, says it is the duty of the federal government to come up with a plan for Canadian left with criminal records because of pot possession. (JIM RANKIN / TORONTO STAR) | ORDER THIS PHOTO



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Fri., July 7, 2017

More than 27,000 people in Toronto were arrested for possessing marijuana from 2003 to 2013, a Star analysis reveals. Nearly one-quarter of them were aged 12 to 18.

The data obtained by the Star also indicates that possession arrests and charges rose where the “carding” of residents by police was widespread. And just as this police practice of stopping, questioning and documenting impacted Black people disproportionately, so did marijuana charges.

About one in five people arrested were released unconditionally with no charges going to court, but their names and noted offences remain in a police database.

All of the offences — 40,634 for possession and possession for the purpose of trafficking, over the decade covered by the data — are documented in the Toronto Police Service arrest and charge database, regardless of whether a charge was tested in court.

Police note that in about half of the cases, an arrested individual was facing another criminal charge or charges, not related to marijuana possession. Outcomes of court cases are not part of the data released to the Star in a freedom-of-information request.

This rare, race-based glimpse at those most impacted by marijuana arrests and charges confirms anecdotal evidence of systemic bias, and highlights a challenge faced by the federal Liberal government. As it moves to legalize marijuana by July 2018, what should it do for citizens with possession records? Pardons are an expensive and bureaucratic process, so some have suggested a widespread amnesty.

There are calls for the government to tackle the almost century-long legacy of marijuana laws, and their disproportionate impact on poor and non-white communities, particularly Black and Indigenous peoples.

A poll in May by Nanos Research and the Globe and Mail indicated 62 per cent of Canadians support or somewhat support a pardon — now known as a record suspension — for people with a criminal record for marijuana possession. Of the respondents, 35 per cent were opposed or somewhat opposed to a pardon.

The C.D. Howe Institute in a 2016 report also called on the federal government to pardon people whose only Criminal Code charge or conviction is for marijuana possession.

“Such individuals would benefit in terms of not experiencing possible travel restrictions and being able to access more labor market opportunities, resulting in economic benefits to governments as well,” [said the report](#), written by Anindya Sen, an economics professor at the University of Waterloo.

A criminal record for marijuana further marginalizes already “targeted and over-policed” black people by making them ineligible for many good-paying jobs, says Kofi Hope, executive director of the CEE Centre for Young Black Professionals.

Faced with high unemployment, some Black youths turned to selling marijuana to make ends meet, says Hope, whose centre provides skills training and career development programs for young Black people.

“It doesn’t require a resumé, it doesn’t require a job interview, sometimes it doesn’t even require start-up capital — someone will just give you something on consignment,” he says. Besides, Black people are constantly confronted with the expectation of being dealers: “You walk down Yonge St. and people come up to you all the time, ‘Hey man, you got weed?’”

Selling, at least in some forms, will soon become legal. But when it comes to the legalized marijuana industry, marijuana convictions will likely exclude people from jobs. Meanwhile, everyone from the Tragically Hip to Shoppers Drug Mart is poised to cash in on the new economy.

Hope says this further injustice isn’t lost on the Black community. “You often hear people say, ‘People in the community have had their lives ruined by consuming this substance or being involved in distributing it. And now, folks from outside of the community are going to be making hundreds of millions of dollars off of this. This is messed up.’”

He wants the federal government to give people with marijuana records a chance to work in the new economy through programs similar to Smart Serve Ontario, which trains and certifies people for work in businesses that serve alcohol.

In Toronto, a first arrest for simple possession often results in an unconditional release or “diversion” — a donation to charity, for example. The accused walks away without a criminal record, but the arrest remains in police databases and can haunt, particularly during carding stops.

(Aggregate data from 2014 to 2016 sent to the Star by Toronto police shows a sharp decline in the use of unconditional releases for marijuana possession charges. Police were not immediately able to explain the reasons for the decrease.)

Those with influence and the money to afford good lawyers are especially assured of diversion, as Prime Minister Justin Trudeau made clear earlier this year. He told the story of how his father, former prime minister Pierre Trudeau, had the resources to make sure marijuana charges against Justin's late brother Michel did not lead to a criminal record "for life."

"He reached out to his friends in the legal community, got the best possible lawyer and was very confident that he was going to be able to make those charges go away," said Trudeau, who has also admitted to smoking pot.

"People from minority communities, marginalized communities, without economic resources, are not going to have that kind of option to go through and clear their name in the justice system," he said, adding that a "fundamental unfairness of this current system is that it affects different communities in a different way."

What will Trudeau do for those without his family's privilege and wealth?

The government has hinted that some sort of plan to address criminal records would be rolled out once marijuana is legal. Caitlyn Kasper, a lawyer with Aboriginal Legal Services in Toronto, says there hasn't been serious thought about what that should look like.

"It just seems like that discussion hasn't been happening at all and it really feels like they're riding this wave of legalization, and how great it's going to be with the Cannabis Act, and how this is putting us forward into the future — and they're not taking a look at what it's done in the past at all," says Kasper. "And that is seriously concerning."

Defence lawyers and academics call marijuana possession a "gateway charge," because it often leads to more serious charges and convictions when bail conditions are broken, particularly for those who can't afford lawyers. Automatic jail time often results.

A growing number of voices are calling for amnesty, a way of wiping possession records clean and giving people a fresh start, particularly in the job market.

"Amnesty is an economic and social imperative," says Hope. "But first and foremost it's a moral imperative."

“There should be an amnesty because the application of the (marijuana) law was unjust and biased,” he says, adding it was “arbitrarily enforced along race lines.”

Untangling criminal records for pot offences from other offences is going to be difficult and expensive.

Without an amnesty, the only route to clearing a record would be applying for a pardon, or [record suspension](#) — an expensive and onerous option that costs hundreds of dollars and require legal help. The application processing fee alone costs \$631. The poor and racially marginalized would again lose out.

“It’s the same story all the time in the justice system,” says Kasper. “Those who can pay for and afford justice will get it.

“If they were serious about this, why are they not engaging with more groups who are directly legally representing the people who have been most affected by these laws?”