

# **A MYTH OF PROGRESS: MARIJUANA, RACIAL DISCRIMINATION & INJUSTICE IN FAYETTEVILLE**

In 2008, Fayetteville voters approved a ballot measure making marijuana the lowest priority for Fayetteville's police and prosecutors; nevertheless, marijuana arrests have increased 284% since 2008. In this report, we examine who is most vulnerable to this unnecessary violence and what Fayetteville can do about it.

“ I was 20 years old when I was arrested for felony possession of marijuana. At the time, I was attending college and learning to navigate life as a queer indigenous young adult. I'm 25 years old now, and was recently diagnosed with PTSD. I have spent the last year and three months working through the trauma of the arrest and subsequent turmoil with various counselors and trauma recovery professionals. Each day I am blessed to have made it through the years of suicidal depression that followed my arrest and am privileged to have the monetary and emotional support to do so. I never imagined how harrowing a simple arrest for possession of a plant could be. ”

- Maria

In 2008, Fayetteville passed an ordinance making marijuana the lowest priority for our city's police and prosecutors.

The City has arrested 284% more people for marijuana since the 2008 ballot measure equating to hundreds of people each year.

While only about 7% of Fayetteville's residents are Black, in 2018:

- 26% of those arrested for misdemeanor marijuana charges were Black.
- 37% of those arrested for felony marijuana charges were Black.
- 47% of those arrested by Fayetteville Police Department's Drug Task Force officers were Black.

# A MYTH OF PROGRESS:

Marijuana, Racial Discrimination & Injustice In Fayetteville

## 1 / Low Priority

### 2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

### 3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

### 4 / Racial Injustice on the Rise

### 5 / Discrimination in Marijuana Arrests

### 6 / Community Solutions

### 7 / Daniel's Case

### 8 / Fayetteville Marijuana Arrests 2008 & 2018

### 9 / The Power to Change

# 1 / Low Priority

In 2008, Fayetteville voters approved an ordinance making marijuana the lowest priority for Fayetteville police and prosecutors.<sup>1</sup>

The findings in support of the measure, were as follows:

- 1 Decades of arresting millions of marijuana users have failed to control marijuana use or reduce its availability.
- 2 Otherwise law-abiding adults are being arrested and imprisoned for nonviolent marijuana offenses, which is clogging courts and jails in Arkansas.
- 3 Marijuana arrests prosecuted as criminal offenses result in loss of important job and educational opportunities.
- 4 In 2005 alone, over **four hundred and two** (402) marijuana arrests were booked by the City of Fayetteville.
- 5 Each year, Arkansas spends more than \$30,000,000.00 of taxpayer money enforcing marijuana laws.
- 6 Law enforcement resources would be better spent fighting serious and violent crimes.
- 7 Making adult marijuana offenses Fayetteville's lowest law enforcement priority will reduce the city's spending on law enforcement and punishment.

**🔍 The ordinance defines "Lowest law enforcement priority" as** "a priority such that all law enforcement and prosecutorial activities related to all offenses other than adult, personal-use marijuana offenses shall be a higher priority than all law enforcement and prosecutorial activities related to marijuana offenses, where the marijuana was intended for adult personal use, other than the exceptions designated in this chapter."

Crucially, the ordinance declares that all sections are **mandatory**, and that "[i]f any provision of this article is not carried out properly, any person who is registered to vote in Fayetteville may seek a writ of mandate to ensure the law is fully implemented."

At that time in 2008, advocates also suggested the creation of an advisory board to ensure this measure was adhered to by the city police and city prosecutor. But, the police chief at that time opposed the advisory board, and so the city did not institute any such oversight.

<sup>1</sup>FAYETTEVILLE CODE OF ORDINANCES, Title XIII, Article II s. 130.02.

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2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise


5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

 **State Violence** is violence enacted by the government, whether through acts or omissions, that causes people to suffer. In Fayetteville, perhaps the most damaging perpetrator of violence is the city government itself.

## 2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements In State Law

In 2011, the Arkansas Legislature passed the Public Safety Improvement Act, which substantially restructured the criminal statutes related to drug possession offenses. One purpose of that Act was to address the crisis of prison overcrowding by reducing penalties for drug possession. The Act was necessary because, prior to 2011, Arkansas was imprisoning far more people than the national average.<sup>2</sup> By redefining some nonviolent felonies as misdemeanors, fewer people would be subject to prison sentences and the State could save resources.

Based on Fayetteville's arrest statistics, the Act did succeed in reducing the number of *felony* marijuana arrests in proportion to total arrests. In 2008, felony charges made up 27% of total marijuana arrests, whereas in 2018, felonies made up only 21% of marijuana arrests. This is a positive change.

However, the *rise in total marijuana arrests* shows that the City has disregarded its own ordinance and thus the will of its residents. We told our police and prosecutors we wanted fewer marijuana arrests – instead, the **City has arrested 284% more people for marijuana since the 2008 ballot measure.**

**Remarkably, the biggest increase in arrests has been for those whose ONLY arrest charge was simple, misdemeanor possession of marijuana.** In 2008, only 50 arrests were made where the person was charged ONLY with misdemeanor possession of marijuana. By contrast, in 2018, ten years after the passage of the de-prioritization ordinance, the Fayetteville Police Department conducted 192 arrests where the ONLY arrest charge was misdemeanor marijuana possession.

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**...the rise in total marijuana arrests shows that the City has disregarded its own ordinance and thus the will of its residents. We told our police and prosecutors we wanted fewer marijuana arrests – instead, the City has arrested 284% more people for marijuana since the 2008 ballot measure.**

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<sup>2</sup> At that time, Arkansas's imprisonment rate was 522 per 100,000 residents, whereas the national average was 442 per 100,000 residents. Pew Ctr. on the States, Arkansas's 2011 Public Safety Reform (2011) at 13 n. 14 [hereinafter Public Safety Reform], available at [www.ncsl.org/documents/cj/pew/ARhandoutAug2011.pdf](http://www.ncsl.org/documents/cj/pew/ARhandoutAug2011.pdf).

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## 1 / Low Priority

## 2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

## 3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

## 4 / Racial Injustice on the Rise

## 5 / Discrimination in Marijuana Arrests

## 6 / Community Solutions

## 7 / Daniel's Case

## 8 / Fayetteville Marijuana Arrests 2008 & 2018

## 9 / The Power to Change

## 2 / The 2011 Public Safety Act (Cont.)

### Arkansas Laws & Penalties<sup>3</sup> / Simple Possession

Offense	Penalty	Incarceration	Max. Fine
Less than 4 oz (first 4 offenses)	Misdemeanor	1 year or less	\$ 2,500
1 - less than 4 oz (5th offense)	Felony	6 years or less	\$ 10,000
4 oz - less than 10 lbs	Felony	6 years or less	\$ 10,000
10 - less than 25 lbs	Felony	3* - 10 years	\$ 10,000
25 - less than 100 lbs	Felony	5* - 20 years	\$ 15,000
100 - less than 500 lbs	Felony	6* - 30 years	\$ 15,000

*In Fayetteville, the city is the primary perpetrator of violence against marginalized people, specifically Black people, low-income people, and LGBT+ people. The city uses marijuana to criminalize these groups. In so doing, Fayetteville removes parents from households, keeps people from getting certain professional licenses, and bars people from financial aid.*

*Fayetteville's Drug Task Force (DTF) officers cause perhaps the greatest suffering to LGBT+ people here through the DTF's routine arrest and coercion of us. The DTF arrests young people on nonviolent marijuana charges and then forces them to choose between prison and snitching on their friends. I know 15 such young people. Half of them have confided in me that their drug use was their way of self-medicating trauma, and at least three said they were considering suicide as a way out of this predicament. One of them has attempted suicide.*

*This pressure to snitch on our friends is especially harmful to LGBT+ people since many of us cannot turn to our families due to family expulsion. Our friends are our family.*

**- Stephen Cogger**, Director, Arkansas Justice Collective

<sup>3</sup> Ark. Code Ann. § 5-64-419(b)(5)

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2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

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4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

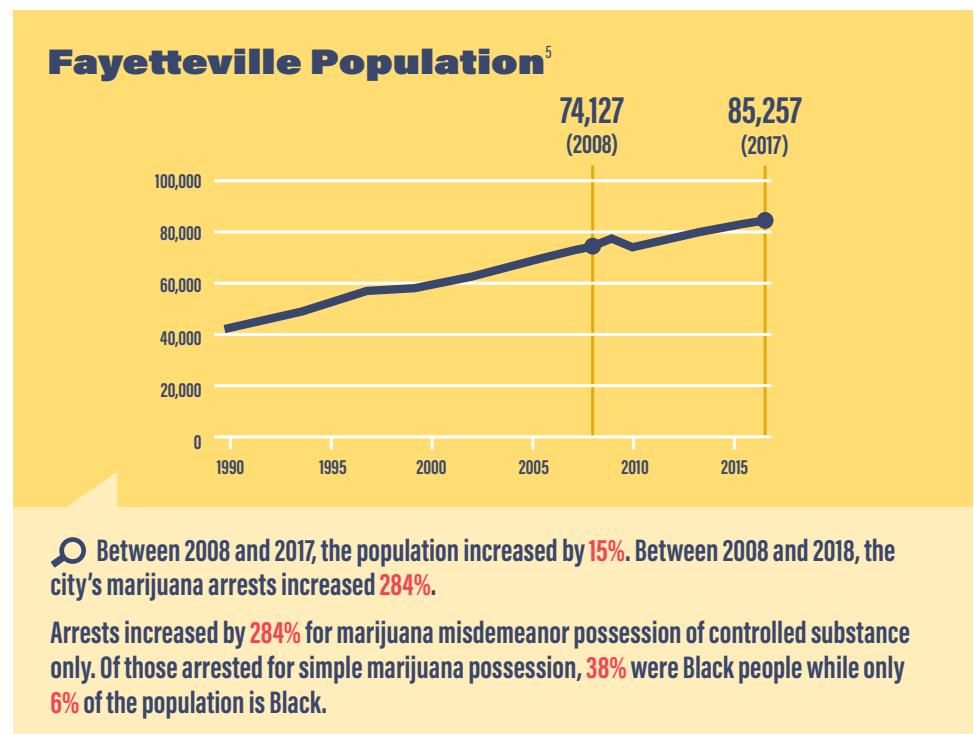
8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

### 3 / Expensive Racism: Fayetteville's Marijuana Arrests Numbers

The city arrests hundreds of people every year for marijuana, and Fayetteville residents must pay for each arrest. These unnecessary arrests are not only expensive for the city and for those arrested, but they reveal Fayetteville's serious, historic, and ongoing racism. While only 7% of Fayetteville's residents are Black,<sup>4</sup> over 25% of people arrested for marijuana misdemeanors are Black. For felony marijuana charges, a shocking 37% of those arrested are Black. **When the city's Drug Task Force officers are arresting people for marijuana, 47% of those arrested are Black.**

Next, you can see that the increase in the city's marijuana arrests far exceed the population growth in Fayetteville.



Interestingly, Ft Smith, which has approximately 88,000 residents, arrested less people for marijuana.<sup>6</sup> Between 2008 and 2018, Ft. Smith arrested 1,497 for marijuana while Fayetteville arrested far more despite having a lower population in the same period of time.

<sup>4</sup> [www.census.gov/quickfacts/fayettevillecityarkansas](http://www.census.gov/quickfacts/fayettevillecityarkansas)

<sup>5</sup> An email from Fayetteville City Council person Matthew Petty estimates the population change at only 13% during this 10-year period. Whatever the case, whether the increase was 13% or 15%, the 284% increase in marijuana-only arrests far outpaces our population growth. Fayetteville's increase in marijuana arrests was more than 18 times the city's population increase.

<sup>6</sup> From a January 16, 2019 email from Aric Mitchell, Public Information Officer, Fort Smith Police Department.

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3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

 **Racial profiling** occurs when law enforcement agents impermissibly use race, religion, ethnicity, or national origin in deciding who to investigate. The criminal punishment system is infected with racial bias, and a presumption of guilt and dangerousness has led to unjustified police violence against Black and Brown people.

## 4 / Racial Injustice on the Rise

In 2015, community members began highlighting certain spots of class- and race-based discriminatory policing in Fayetteville. In Southeast Fayetteville, one of the most economically disadvantaged parts of town, there were often police waiting in SUVs next to Chad's Barber Shop – an area in Southeast Fayetteville where the speed limit is an unexpectedly low 25 mph.<sup>7</sup> Then, in 2018, local business owners alerted us to a similar practice on Poplar Avenue, another of the few remaining bastions of relatively affordable housing in Fayetteville.

Advocates have contacted city officials about the discriminatory policing and have seen a mixed response; and, now the city must begin to do better proactively. In addition to identifying these problematic speed traps, one major way to advance justice in Fayetteville is to end the practice of arresting people for simple marijuana possession. When responding to our Freedom of Information Act (FOIA) request, the police gave us information for every arrests from 2008 through 2018. In an April 2019 meeting with the mayor, police chief and other city officials, it was said that often police simply destroy marijuana when they find it. If not, they often do not take the person to jail but instead cite them. A citation avoids being held in jail from the moment of arrest, which is less disruptive to people's lives. However, whether a person is cited or actually booked into the jail, **both are arrests**; that is, people are not free to leave the situation with police, they are charged with the same crimes, with the same potential for jail time, and they are prosecuted by the same prosecutor, and have to appear in criminal court (as opposed to civil court, where the only possible punishment would be monetary deprivation, not a deprivation of a person's liberty). They are under arrest and subject to criminal procedure, not civil. Whether a citation arrest or an off-to-the-jail arrest, the same consequences remain: loss of financial aid, loss of employment opportunities, and—for our immigrant and refugee neighbors—an extremely increased risk of deportation.

Prosecutorial discretion plays a crucial role in this process. Prosecutors are the most powerful actors in the criminal punishment system. They have discretion over which crimes to charge, if any, and the severity of those charges. Prosecutors can even decline to prosecute charges, and have complete discretion to do so. Finally, prosecutors act in our names; that is, they represent the people of our city and state. A prosecutor's job should be to seek justice, not convictions. It is not justice when our city prosecutes people for mere possession of marijuana, especially in light of the 2008 low priority ordinance, and especially when those charged are disproportionately Black.

In 2008, we the people of Fayetteville sent a clear message that we do not support marijuana arrests and prosecutions. As public servants, and as representatives of the People, Fayetteville's prosecutors have both the power and the duty to decline to prosecute misdemeanor marijuana charges.

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<sup>7</sup> Similar discriminatory policing and ticketing has been discussed on Last Week Tonight by John Oliver in his episode, "Municipal Violations," as well as by the Dept of Justice in its report on Ferguson, Missouri's discriminatory practices. See Dept of Justice Report Re: the Criminal Investigation Into the Shooting Death of Michael Brown by Ferguson, Missouri Police Officer Darren Wilson, 3/4/2015.

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Marijuana, Racial Discrimination & Injustice In Fayetteville

1 / Low Priority

2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

## 4 / Racial Injustice on the Rise (Cont.)

# Why, Fayetteville? The Background of Our City's Violence

Fayetteville's criminal punishment practices are rooted in our country's history of racial injustice; as a city, justice requires that we truthfully face that history and address it today. To understand why this is happening today in Fayetteville, we have to look at the history of our country. This is because our history informs the daily work of our police and prosecutors. Slavery in America was justified by a White supremacist and lethal narrative of **racial hierarchy** — the belief that Black people were inferior, and therefore needed and benefited from slavery. Slavery evolved into **convict leasing** — African Americans were arrested for “crimes” like loitering and forced to work in White-owned businesses throughout the South. **The decades of racial terror lynchings** that followed slavery grafted onto the narrative of racial hierarchy a presumption of guilt and dangerousness, as Whites used vigilante violence against Black people claiming it was necessary to protect their property, families, and the Southern way of life from Black “criminals.”<sup>8</sup>

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**Whether a citation arrest or an off-to-the-jail arrest, the same consequences remain: loss of financial aid, loss of employment opportunities, and— for our immigrant and refugee neighbors—an extremely increased risk of deportation.**

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The presumption of guilt and dangerousness assigned to African Americans has made minority communities particularly vulnerable to the unequal deployment of criminal punishment. Numerous studies have demonstrated that White subjects have strong unconscious associations between Blackness and criminality. Implicit bias has been shown to affect policing in that police are more likely to stop young men of color, search them, or involve them in violence.<sup>7</sup>

The presumption that people of color are dangerous and guilty is so deeply entrenched that a recent study found that Americans' support for harsh criminal justice policies correlated with how many African Americans they believed were in prison: put another way, **the more Black people they believed were incarcerated, the more people supported aggressive policing tactics and excessively punitive sentencing laws.** According to the Equal Justice Initiative, African Americans make up about 13% of the nation's population, but constitute 28% of all arrests, 40% of those incarcerated in jails and prisons, and 42% of the population on death row.<sup>9</sup> This disproportionality is mirrored in Fayetteville's marijuana arrests.

<sup>8</sup> For a concise and compelling look at the history and intersections of race and criminal punishment, read Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*.

<sup>9</sup> Equal Justice Initiative, Presumption of Guilt, at [eji.org/racial-justice/presumption-guilt](http://eji.org/racial-justice/presumption-guilt)



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Marijuana, Racial Discrimination & Injustice In Fayetteville

1 / Low Priority

2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

Since Fayetteville has no jail of its own, arrests by Fayetteville PD result in a booking at the Washington County Jail. This is extra dangerous and unjust because Sheriff Tim Helder voluntarily helps initiate deportation proceedings against immigrants and refugees as part of a xenophobic program known as 287g.

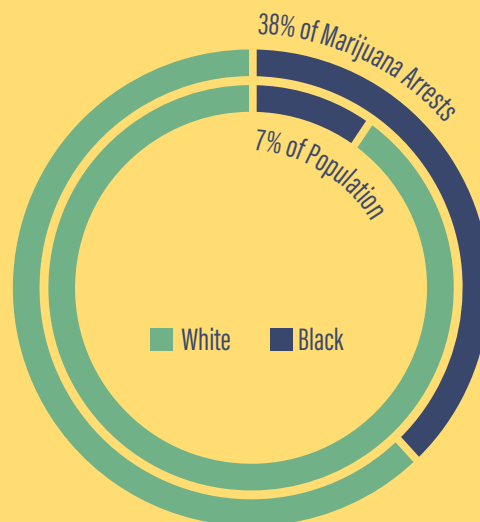
## 5 / Discrimination in Marijuana Arrests

That anyone was arrested for marijuana possession is alone concerning, but as discussed above, the racial discrimination in Fayetteville is especially troubling.

Despite less than 7% of Fayetteville being African American, over 25% of misdemeanor marijuana arrests were of Black people. For felony marijuana arrests, Black people made up 37% of those arrested! Marijuana arrests by the Drug Task Force [DTF] in particular are problematic: 47% of the DTF's marijuana arrests are of black people. **This is why the community is calling for an end to the City's funding of the DTF and a nationwide search for a new police chief upon the retirement of Greg Tabor.**

**For both felony and misdemeanor charges, Black Fayetteville residents are arrested at much higher rates than White residents, relative to their share of the overall population.**

### 2018 Black & White Demographics With Marijuana Arrests in Fayetteville<sup>10</sup>



This chart's inner ring shows the percentage of Black and White people living in Fayetteville. The outer circle shows the severely disproportionate arrests of Black people for mere possession of marijuana; it is about **6 times** that of the Black population.

<sup>10</sup> This information was provided by the Fayetteville Police Department's corporal in charge of public information. It came in response to the Arkansas Justice Collective's request for information on all marijuana-related arrests by the FPD from 2008-2018.

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Marijuana, Racial Discrimination & Injustice In Fayetteville

1 / Low Priority

2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise


5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

 **Drug Task Force:** The Fayetteville Police Department is the lead agency for the Fourth Judicial District Drug Task Force and Fayetteville Police Chief Greg Tabor is its chairman.

## 6 / Community Solutions

Fayetteville fought hard to protect its anti-discrimination ordinance, mostly to protect LGBT+ people from violence by private actors. Now the City must turn its attention to the biggest perpetrator of discriminatory violence in our city: the city government itself. Our community offers the following solutions. *Note: we are suggesting a new committee; that is, we do not think this should be a responsibility of the Chief's Advisory Committee. This committee rarely meets and its members are not independent because they are chosen by the chief. Nor are we recommending that this be made the job of the Civil Service Commission, though it perhaps could be under this commission if the city expands the scope of the commission's responsibilities.*

1. **Immediate end to misdemeanor marijuana arrests.** At \$62 per booking, per day, the city would save tens of thousands of dollars by choosing not to arrest people for marijuana.<sup>11</sup> Furthermore, as Fayetteville itself has no jail, it sends people to Washington County Sheriff Tim Helder's jail. Sheriff Helder is hoping to expand his jail by adding over 600 new beds, and the city should give him no incentive to do so, as he will likely return to imprisoning immigrants and refugees for Immigration and Customs Enforcement, as he did until 2011.

**Now the City must turn its attention to the biggest perpetrator of discriminatory violence in our city: the city government itself.**

2. **Immediate implementation of an advisory committee to ensure fair policing and prosecution in Fayetteville.** This would include (but not be limited to) ensuring that no more marijuana arrests take place and that, if those arrests do take place, the police leadership is admonished in writing and the arrestee is not prosecuted.

The City's advisory committee should also ensure that no hydraulic displacement in arrests takes place; that is, we should not see a decrease in marijuana arrests only to see an increase in people arrested for obstructing governmental operations.

The various tasks could also include tracking:

- a. the outcome of marijuana prosecutions
- b. which officers are arresting people for marijuana
- c. the race, age, and location of those arrested for simple marijuana possession
- d. If the city does not withdraw from the Drug Task Force, the committee would monitor the DTF to ensure it is targeting dangerous people and not threatening non-violent people with years in prison if they refuse to snitch on their friends,
- e. And, unrelated to marijuana, ensure that the discriminatory policing of certain parts of Fayetteville finally ends permanently.

<sup>11</sup> City Resolution 24-18 set the booking fee at \$62.

# A MYTH OF PROGRESS:

Marijuana, Racial Discrimination & Injustice In Fayetteville

1 / Low Priority

2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

## 6 / Community Solutions (Cont.)

3. **Immediate end to funding of and participation in the Drug Task Force, and instead funding opportunities for disadvantaged young people, like resources for the ALLPS school.** Each year, the Fayetteville City Council votes to give funds to the Drug Task Force.<sup>12</sup>
  - a. The DTF targets young people and then forces them to turn on one another in exchange for not going to prison.<sup>13</sup> Queer and trans youth are disproportionately affected,<sup>14</sup> as are youth of color. This is both a symptom of the implicit racism of the DTF's officers, as well as police and prosecutors' practice of compelling young people to betray their social networks in exchange for lighter sentences.
  - b. The Fayetteville Police Department is the lead agency for the Fourth Judicial District Drug Task Force and Fayetteville Police Chief Greg Tabor is the chairman.<sup>15</sup> The Fayetteville PD must end its participation in the DTF, and the city must initiate a nationwide search for a new chief to change the culture at the Fayetteville Police Department when Greg Tabor retires later this year.
  - c. Some community members asked that this report include an alternative in the likely event that the City refuses to end its participation in the DTF. They suggest that the funding and participation become contingent upon the Task Force focusing its resources on dangerous drugs and dangerous drug traffickers. If the city chooses this option, the DTF must have clear, quantifiable goals by which they are held accountable and upon which their funding is contingent.
4. **Immediate implementation of a prosecutorial policy to drop the charges of anyone simply possessing marijuana.** Prosecutorial discretion and transparency are paramount.
  - a. As public servants, the City's prosecutors must decline to prosecute misdemeanor marijuana arrests, in accordance with the 2008 popular vote by those in Fayetteville to stop punishing people for marijuana possession.
  - b. Philadelphia's lead prosecutor recently implemented a policy that no marijuana possession is to be prosecuted, regardless of weight, in a state where marijuana is still illegal. Fayetteville can and should do the same thing.

<sup>12</sup> The city gave \$233,000 to fund the Drug Task Force. One city council member told AJC that the City does not "give" the DTF money but merely allows money from the federal government to pass to the DTF. As she herself said, the simple truth is that the council could stop doing so.

<sup>13</sup> The median age of those arrested for marijuana is 25 years.

<sup>14</sup> In 2016, Many LGBT+ youth cannot turn to their parents for support with attorneys fees due to family expulsion. Due to trauma, they are also more likely to use drugs to self-medicate. See "The Psychological Impact of LGBT Discrimination: How the LGBT community is being harmed each and every day," Feb 11, 2014 [www.psychologytoday.com/us/blog/brick-brick/201402/the-psychological-impact-lgbt-discrimination](http://www.psychologytoday.com/us/blog/brick-brick/201402/the-psychological-impact-lgbt-discrimination).

<sup>15</sup> [www.fayetteville-ar.gov/193/Drug-Task-Force](http://www.fayetteville-ar.gov/193/Drug-Task-Force) as viewed on March 4, 2019

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Marijuana, Racial Discrimination & Injustice In Fayetteville

1 / Low Priority

2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

## 7 / Daniel's Case

Fayetteville deploys state violence against people who use marijuana, and it has to end now. We'll use the pseudonym Daniel to explain some of the real, human consequences of this violence.

Daniel was sitting alone in his car at Walker Park. A Fayetteville Police Department officer saw him, and told Daniel he looked suspicious because a parking lot is either empty or full, and that Daniel was one of just two cars in the parking lot. The officer claimed he could smell marijuana, searched the car, and found a joint. He arrested Daniel.

Daniel got a **\$1,000** bond and had to pay a bondsman **\$100** plus:

The state fee of **\$80** and the booking fee of **\$20**

Later on, if Daniel pleads guilty, he will also have to pay:

A **\$100** court cost

A **\$150** fine

A **\$125** Drug Task Force Fee

A **\$10-\$100** user fee, based on Daniel's income, to pay for the public defender.

**Note:** Because Daniel cannot afford to pay these fines and fees, he will have to pay **\$10/month extra** (for as long as there is a balance) so that he can pay them on credit.

**Also note:** Some of this money will go to the Fayetteville PD's retirement fund, some to the judge's retirement fund, and some to the court clerk automation fund. We can no longer force low-income, disproportionately young and black people to fund this.

**Note:** Fayetteville municipal judges have also made this fee higher for some people. In Fayetteville, his fee must be paid upfront; otherwise, a public defender is not appointed. In Prairie Grove, it is a flat **\$40**, and it is paid at the end of representation.

Misdemeanor marijuana is enhanceable down the road: a **5th misdemeanor offense** becomes a **felony** (if they possess 1 ounce or more).

So, Daniel could face **serious prison time** for mere possession due to Fayetteville police and prosecutors' disregard of the 2008 low prioritization law.

The city can **take away people's driver's license for 180 days**. The Department of Finance and Administration requires a a reinstatement fee of **\$150** before returning Daniel's license

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## 2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

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## 4 / Racial Injustice on the Rise

## 5 / Discrimination in Marijuana Arrests

## 6 / Community Solutions

## 7 / Daniel's Case

## 8 / Fayetteville Marijuana Arrests 2008 & 2018

## 9 / The Power to Change

## 7 / Daniel's Case (Cont.)

Fayetteville PD and prosecutors thus placed Daniel into a cycle of poverty.

Sadly, Daniel **lost his job** due to his arrest. When he was unable to pay the fines, a **warrant was issued for his arrest**; which cost him more money: **\$100** in court costs, **\$100** fine, and **\$85** for the warrant fee.

Simply having to appear in court disrupts people's lives and costs money, equating to **missing time from work** and thus money, arranging for **childcare**, and having to **report an open case** when applying for jobs.

Even if the prosecutor lowers the charge from possession of a controlled substance to "possession of instrument of crime," the original arrest charge **stays on a person's record**, and is often visible to police and prosecutors in the future. Possession of an instrument of crime is a non-drug offense, and so this is better than possession of a controlled substance because Daniel could honestly answer no if a potential employer asks whether he's been convicted of a drug offense. It is still a Class A misdemeanor, and any time he is ever asked whether he has been convicted of a crime, he will have to answer yes. People are still getting criminal records when our prosecutors could instead simply drop the charge.

It can also prevent you from getting certain professional license. If you are an immigrant or a refugee, marijuana possession charges **will make you more vulnerable to deportation**.

Fayetteville's city judge and prosecutors often will allow a person to accept the punishment of a plea under advisement (PUA). So, the city holds a finding of guilt over Daniel's head, and then dismisses it if he is not found violating the law within the next 12 months. Sadly, if Daniel were an immigrant, the PUA requires an admission of guilt, and so even though there is never a finding of guilt by the court, a PUA could still **rip an immigrant or refugee out of our community** for mere marijuana possession.

## A MYTH OF PROGRESS:

Marijuana, Racial Discrimination & Injustice In Fayetteville

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2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

6 / Community Solutions

7 / Daniel's Case

8 / Fayetteville Marijuana Arrests 2008 & 2018

9 / The Power to Change

# 8 / Fayetteville, Arkansas Marijuana Arrests 2008 & 2018<sup>16</sup>

## 2008

**Total arrests: 480**

**Felonies: 131 (27% of total arrests)**

Black: 49 (37%)  
White: 79 (60%)  
Latinx/Hispanic: 1 (<1%)  
API<sup>15</sup>: 1 (<1%)  
Native American: 1 (<1%)

**Misdemeanors: 349 (73% of total arrests)**

Black: 44 (13%)  
White: 286 (82%)  
Latinx/Hispanic: 12 (3%)  
API: 5 (1%)  
Unknown: 2 (<1%)

**Marijuana misdemeanor possession of controlled substance only<sup>18</sup>: 50**

14% of total MJ misd. arrests

White: 38 (76% of total PCS only)  
13% of the 286 Whites charged with marijuana misdemeanors were charged with possession ONLY

Black: 8 (16%)  
18% of the 44 Black people charged with marijuana misdemeanors were charged with possession ONLY

Latinx/Hispanic: 4 (8%)  
33% of the 12 Latinz people charged with marijuana misdemeanors were charged with possession ONLY

## 2018

**Total arrests: 688**

**(44% increase from 2008)**

**Felonies: 148 (21% of total arrests)**

**(13% increase from 2008)**

Black: 55 (37%)  
White: 81 (55%)  
Latinx/Hispanic: 11 (7%)  
API<sup>17</sup>: 1 (<1%)

**Misdemeanors: 541 (79% of total arrests)**

**(55% increase from 2008)**

Black: 142 (26%)  
White: 356 (66%)  
Latinx/Hispanic: 30 (6%)  
API: 5 (1%)  
Native American: 1 (<1%)  
Unknown: 7 (1%)

**Marijuana misdemeanor possession of controlled substance only<sup>18</sup>: 192**

35% of total MJ misd. arrests

**(284% increase from 2008)**

White: 103 (54% of total PCS only)  
29% of the 356 Whites charged with marijuana misdemeanor charged with possession ONLY

Black: 73 (38%)  
51% of the 142 Black people charged with marijuana misdemeanors were charged with possession ONLY

11 Latinx/Hispanic: (6%)  
37% of the 30 Latinx people charged with marijuana misdemeanors were charged with possession ONLY

4 Unknown

1 API

<sup>16</sup> All data herein were received via Freedom of Information Act requests from the Fayetteville Police Dept.

<sup>17</sup> API stands for Asian Pacific Islander.

<sup>18</sup> People whose ONLY arrest charge was Possession of a Controlled Substance VI (that is to say, their only charge was marijuana possession: not having a pipe or rolling papers, just the plant).

# A MYTH OF PROGRESS:

Marijuana, Racial Discrimination & Injustice In Fayetteville

1 / Low Priority

2 / The 2011 Public Safety Act: Fayetteville Arrests More, Despite Improvements in State Law

3 / Expensive Racism: Fayetteville's Marijuana Arrest Numbers

4 / Racial Injustice on the Rise

5 / Discrimination in Marijuana Arrests

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9 / The Power to Change

## 9 / The Power to Change

The city could change all this today. Specifically, our city prosecutor has a responsibility to do better. Sometimes called the district attorney or the state's attorney, the prosecutor is the lawyer who punishes people for breaking the law.

Our city prosecutor is **Brian Thomas**, and he is appointed by **Kit Williams**, city attorney. Kit is elected. Our county prosecutor, **Matt Durrett** is elected and has run unopposed since taking office. Both of these prosecutors could simply drop marijuana-related charges. **When they do not, they are completing the state violence that began with the discriminatory policing of marijuana users.**

### The Power to Change the Prosecutor

**Lioneld Jordan**, Mayor



**Kit Williams**, City Attorney



**Brian Thomas**, City Prosecutor



The **Fayetteville City Council** could use the power of the purse to curb the City's marijuana-related violence; specifically, the Council could stop funding the Drug Task Force, and apply public pressure to make the prosecutor drop marijuana possession charges.



### The Power to Change the Police

**Lioneld Jordan**, Mayor



**Greg Tabor**, Chief Fayetteville Police Department



**Note:** the Mayor appoints the Police Chief, subject to the approval of the City Council. The Police Chief is in charge of the police force. His decisions regarding hiring, promotions, and adverse actions (such as suspension or termination) are subject to review by the Civil Service Commission, which Fayetteville residents can apply to join.

### Power to Change the 4th Judicial District Drug Task Force (DTF)

**Greg Tabor**, Fayetteville Police Chief & Chairman of the DTF

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## 9 / The Power to Change (Cont.)

“ When the police approached my car, I was sitting in the shade at Gulley Park and they told me that I looked suspicious because there were not many cars in the parking lot. I was arrested by the city police and prosecuted by the city prosecutor for misdemeanor marijuana. I am in my early 20s, and I am a black male. I will have a harder time finding money for my education and an even harder time finding jobs. ”

- Daniel

### **Fayetteville prosecutors must drop all marijuana possession charges.**

Cities all over the country are making it a policy to drop all marijuana charges: Baltimore's prosecutor Ms. Mosby will not be prosecuting possession at all. Prosecutors Kim Foxx in Chicago, Larry Krasner in Philadelphia, Cyrus R. Vance Jr. in Manhattan and Eric Gonzalez in Brooklyn are moving away from marijuana cases, declaring them largely off limits and in some cases going so far as to clear old warrants or convictions off the books.

In Chicago, Ms. Foxx said her office will move to expunge all misdemeanor marijuana convictions. In St. Louis County, Wesley Bell will prosecute no marijuana cases involving amounts under 100 grams. In Boston, Rachael Rollins has pledged to stop prosecuting drug possession and possession with intent to distribute, along with 13 other crimes.<sup>19</sup>

**Like other cities in states where marijuana remains illegal, Fayetteville can also drop all charges for mere possession of marijuana today without waiting on any changes to state law.**

<sup>19</sup> A Growing Chorus of Big City Prosecutors Say No to Marijuana Convictions, by Shaila Dewan, Jan 29, 2019  
<https://www.nytimes.com/2019/01/29/us/baltimore-marijuana-possession.html>



*A Myth of Progress* was produced entirely by volunteers including attorneys, paralegals, and community members. We are especially grateful to a particular prosecutor who told us to investigate this matter, and later helped us understand the vast web of collateral consequences of Fayetteville's discriminatory and unnecessary marijuana arrests.

My slightly younger LGBT+ friends who bravely shared with me their stories of navigating our city's discriminatory and unnecessary state violence — they are the true bearers of suffering and story. Without their brave sharing, the story of Fayetteville's Myth of Progress would remain untold. **Now, the city must decide if it will fight against its own racist and classist state violence with the same zeal that it fought to preserve its anti-discrimination ordinance to protect LGBT+ people from violence by private individuals.** Kit Williams has said that he cannot drop charges without a change in state law, but this is not true. He could order his prosecutors to stop the prosecutions today.

In the age of Trump, many supportive people want to take immediate action to serve queer and trans people, immigrants and refugees, and Black people. We respectfully offer this report to the compassionate residents of Fayetteville as a way for them to take immediate, direct action on a serious issue of economic and racial injustice issue in our town.

This city is ours, and the prosecutors and police all work for us. But, they will only do better when we the people do better by studying the issues and getting involved consistently. We have to study and then follow through, and meet privately and publicly with policy makers, **and replace them if they refuse to do better.** We have to attend the Drug Task Force's regular meetings and we have to show up to city council meetings and learn and speak our minds.

The average age of these arrests is 25 years of age. Most of these people are young and the consequences of a marijuana arrest can plague them for life, preventing them from accessing financial aid for school and barring them from certain professional licenses. Fayetteville police and prosecutors are also making many NW Arkansas residents more vulnerable to deportation. And, apart from the human costs, is the financial expense: wasting thousands of dollars per year on booking fees to the county jail, and paying police and prosecutors to criminalize young people using marijuana. Many people unmotivated by injustice may feel motivated to end these arrests based on how expensive they practices are.

**The community solutions presented here are not merely remedies, but metrics, also.**

That is, if Fayetteville implements all 4 of these solutions, the city would show a deep dedication to addressing its state violence. If the city enacts only 2 of the solutions proposed by our community, it will reveal their dedication to this issue is lackluster.

**Whatever the city does will directly reflect the level of civic engagement that takes place around this issue.** So, please get involved and ask your loved ones to do so as well.

With gratitude and hope, I submit this report as **a plea for help.** I believe we can make true our city's Myth of Progress. Please visit [www.arkansaslaw.org/fayetteville](http://www.arkansaslaw.org/fayetteville) to get involved.

**Stephen Cogger**

Arkansas Justice Collective, Director

# Know Your Rights

Being stopped by police is a stressful experience, and it can go bad quickly. Follow these tips to try and protect yourself from arrest and mistreatment:

- › To the best of your ability, **stay calm** and **do not exhibit hostility** toward any officer.
- › You have the right to remain silent. **You do not have to answer any questions**
  - ▶ about where you are going,
  - ▶ where you are traveling from,
  - ▶ what you are doing, or
  - ▶ where you live.
- › If you wish to exercise your right to remain silent, tell the officer, *“I am exercising my right to remain silent.”*
  - ▶ Note: **In Arkansas, you are required to provide your name if asked to identify yourself.** You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country.
- › Do not consent to a search, but also do not argue with the police if they search your car or other property anyway. Just make a clear objection before or during the search. This can help preserve your rights in any later legal proceeding. Even just saying, *“I respectfully do not consent to a search”* is enough. Remember though that if the officer has probable cause (say, if they smell marijuana) they can search.
  - ▶ Be ready for pushback. The police officer may ask why they cannot search. They may say you are hiding something. Just be polite and say something like, *“I’m sorry, but I do not consent to a search.”*
- › Ask, *“Am I free to go? If I am not being detained or arrested then I would respectfully request to leave.”* If you are allowed to leave, do so slowly.

**The truth is that there are situations where people have done everything they could to put an officer at ease and assert their rights, yet still ended up searched, arrested, or worse.**

The logo for Arkansas Justice Collective is a yellow-outlined shape that resembles the state of Arkansas. Inside the shape, the words "ARKANSAS", "JUSTICE", and "COLLECTIVE" are stacked vertically in a bold, yellow, sans-serif font.

ARKANSAS  
JUSTICE  
COLLECTIVE