

Is the ‘War on Drugs’ Over? Arrest Statistics Say No

Arrests for marijuana possession are most common, even as public opinion has shifted in favor of its legalization.

By Susan Stellan

Nov. 5, 2019, 5:00 a.m. ET

Despite bipartisan calls to treat drug addiction as a public health issue rather than as a crime — and despite the legalization of marijuana in more states — arrests for drugs increased again last year.

According to estimated [crime statistics](#) released by the F.B.I. in September, there were 1,654,282 arrests for drugs in 2018, a number that has increased every year since 2015, after declining over the previous decade. Meanwhile, arrests for violent crime and property crime have continued to trend downward.

Drug-Related Arrests Are Rising Again

A consistent decline in total national drug arrests from 2006 to 2015 has been followed by a small rise.



Source: Estimates from F.B.I. U.C.R. report • [Get the data](#) • Created with [Datawrapper](#)

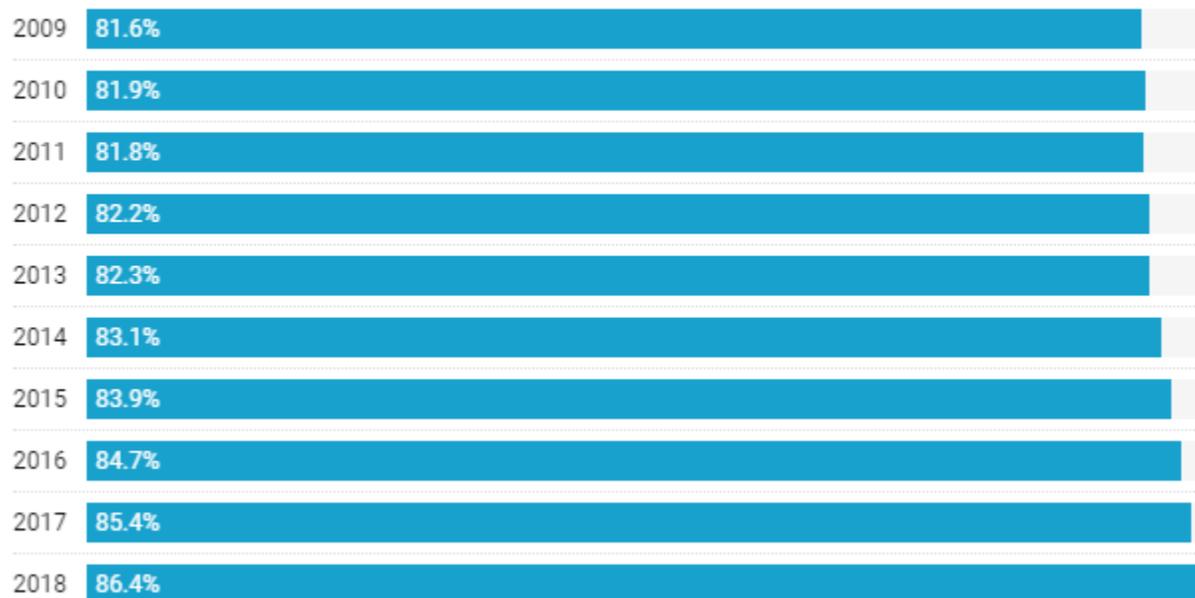
Drugs have been the top reason people have been arrested in the United States for at least the past 10 years, and marijuana has been the top drug involved in those arrests.

The percentage of drug arrests that have been for possession (instead of for sale or manufacturing charges) has also risen, to 86 percent last year from around 67 percent in 1989. And the majority of drug arrests have involved small quantities.

“We’ve gotten so used to the idea that this is normal to arrest so many people for tiny amounts of drugs, but it’s not normal,” said Joseph E. Kennedy, a professor at the University of North Carolina School of Law who was an author of a paper titled [Sharks and Minnows in the War on Drugs: A Study of Quantity, Race and Drug Type in Drug Arrests](#).

Large Majority of Arrests Are Still for Possession

The percentage of arrests for possession of drugs has inched up compared with arrests for their sale or manufacturing.



Source: Estimates from F.B.I. U.C.R Report • [Get the data](#) • Created with [Datawrapper](#)

Although many arrests don’t result in conviction — some are dismissed and some result in pleas to a lesser offense — any drug conviction can harm employment, housing and educational prospects. And this continues to disproportionately affect African-Americans and Hispanics, even as [many conservatives have joined](#) liberals in saying that racial disparities in the criminal justice system need to be addressed.

[The F.B.I. annual report](#) compiles information from thousands of law enforcement agencies that voluntarily participate in its Uniform Crime Reporting (U.C.R.) program. Of the 18,586 federal, state, local and other agencies eligible to participate, 16,659 submitted data for 2018, so the arrest statistics are estimates that don’t include some jurisdictions, like New York City.

Drug arrests are classified into four categories: 1) heroin or cocaine and their derivatives, 2) marijuana 3) synthetic or manufactured drugs like fentanyl and 4) other dangerous non-narcotic drugs like barbiturates.

In 2018, there were 663,367 arrests involving marijuana, up from 659,700 in 2017, nearly 92 percent of them for possession. The F.B.I.'s crime data includes only the top charge for each arrest, so if a suspect is found with drugs while being arrested on a more serious charge, the drug possession would not be counted in the agency's statistics.

"I always caution people to read the U.C.R. data as an approximation because it's imperfect," said Tess Borden, a staff attorney with the American Civil Liberties Union who worked on a report published by the A.C.L.U. and Human Rights Watch in 2016: [Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States](#).

According to New York State's [Division of Criminal Justice Services](#), there were 75,897 arrests for drug felonies and misdemeanors in New York in 2018, which includes any arrest where fingerprints were taken. About 35 percent of those arrests involved people who were identified as white; 37 percent as black; 25 percent as Hispanic; and 2 percent as Asian. The remainder were listed as other/unknown. (In New York State, blacks make up 18 percent of the population, and Hispanics 19 percent.)

"We know from national survey data that people of all races use drugs in their adult lifetimes at approximately the same rates," Ms. Borden said. "So the fact that we have great variances in who is arrested tells us about police priorities."

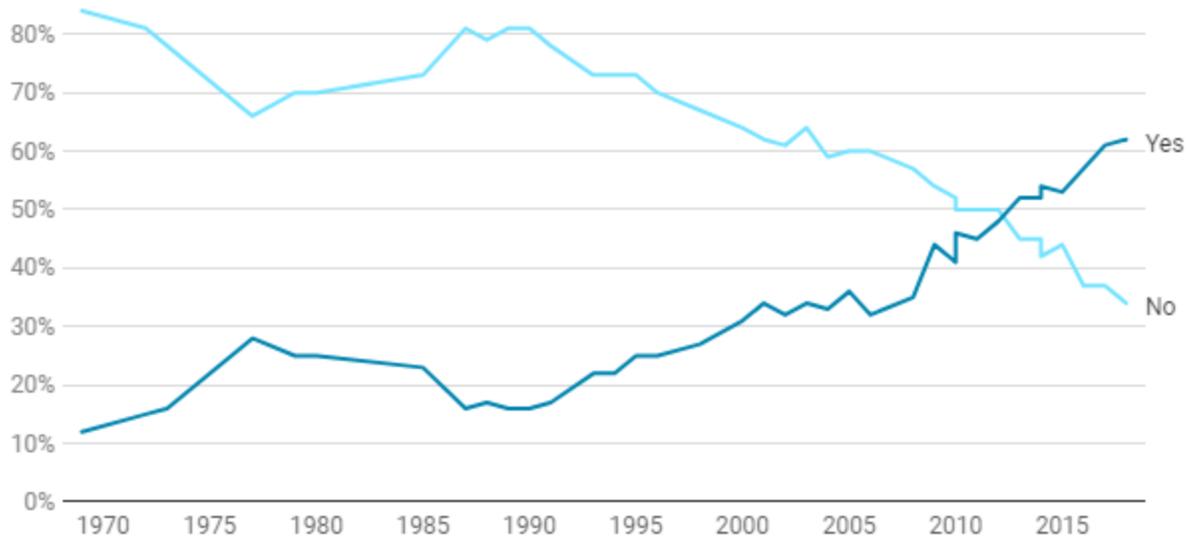
In 2021, the F.B.I. plans to begin using its [National Incident-Based Reporting System](#) to track crime data, which has more detail about a greater number of crimes.

This reporting system also contains information about the quantity of drugs involved in an arrest. Analyzing 700,000 drug arrests using this data for 2004, 2008 and 2012, the authors of the "Sharks and Minnows" paper found that about 40 percent of those arrests were for possessing or selling a quarter of a gram or less of drugs. And 20 percent were for possessing or selling drugs weighing between 0.25 grams and one gram. (A packet of Splenda sweetener weighs one gram.)

Mr. Kennedy wrote the paper with Isaac Unah, associate professor of political science at U.N.C.-Chapel Hill, and Kasi Wahlers Robinson, a graduate of the University of North Carolina School of Law now in private practice. Their analysis found that although the highest number of drug arrests involve marijuana, some key differences drive racial disparities that flow through the criminal justice system.

Clear Support for Marijuana Legalization

In public opinion surveys, Americans' longstanding opposition to legalization has flipped to support that is now almost at a 2 to 1 ratio.



Source: Pew Research, Gallup, General Social Survey • [Get the data](#) • Created with [Datawrapper](#)

“Whites are mainly arrested for heroin and meth, among the hard drugs, and blacks are much more likely to be arrested for crack,” Mr. Kennedy said. “But we don’t arrest as many people for heroin and meth.”

It’s not clear why drug arrests are rising after a downturn in those arrests from 2006 to 2015. It may reflect in part a [tougher enforcement approach](#) begun under Jeff Sessions by the current administration, even with respect to marijuana. Even in states where marijuana is legal, people can still be arrested if they violate [state laws](#) like limits on the amount allowed for personal use. And increasing use nationwide — perhaps with an assumption of more leniency — may put more people at risk of arrest. According to the 2018 National Survey on Drug Use and Health, 43.5 million people 12 and older used marijuana in the past year, a number that has risen since 2011.

Public opinion has shifted decisively in favor of marijuana legalization. But Chuck Wexler, executive director of the Police Executive Research Forum, pointed out that 39 states haven’t passed laws making recreational marijuana legal, and that police practices and attitudes toward drugs vary among law enforcement agencies across the nation. “Some departments still see arrest as a measure of productivity, even though many of us see that as outdated,” he said.

Mr. Wexler says the [overdose epidemic](#) has contributed to how police departments respond to drugs, particularly in communities that lack diversion programs like the one in [Seattle](#).

“Today you have more recognition that you need to get people into treatment, but treatment is expensive and resources aren’t equal around the country,” he said, adding that “in many parts of the U.S., arrest is viewed as the only alternative that they have.”

Better data collection and reporting about drug arrests would help inform policy as attitudes toward the drug war shift, particularly with respect to marijuana.

“Anyone who’s spending money and law enforcement resources on this needs to be keeping track of this data,” said Mr. Kennedy, the U.N.C. law professor. “We have a right to know who we are arresting.”