TESTIMONY OF

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**AT HEARINGS OF NEW YORK STATE ASSEMBLY COMMITTEES
ON CODES AND ON CORRECTIONS, ALBANY, NEW YORK**

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**REGARDING PENDING AND PROPOSED LEGISLATION TO COLLECT DNA
FROM ALL PEOPLE CONVICTED OF A MISDEMEANOR IN NEW YORK STATE,
AND ALSO REGARDING
NEW YORK CITY'S EPIDEMIC OF MARIJUANA POSSESSION ARRESTS**

I am a professor of sociology at Queens College and the Graduate Center of the City University of New York. I received my PhD from the University of California at Berkeley. For thirty years I have been researching and writing about the history and sociology of alcohol and drug policies and problems. I have written about addiction, about alcohol prohibition, and (in the book *Crack in America* published by the University of California Press) about the crack cocaine period in the late 1980s and early 1990s.

For the last two years I have been researching misdemeanor arrests in New York City focusing on low-level marijuana possession arrests. I have interviewed many long-time police officers, public defenders, legal aid and private attorneys, assistant district attorneys, and people arrested for possessing marijuana, mainly Black men in their 20s.[1]

Although almost nobody knows this, in the last ten years New York City has arrested and jailed more people for possessing marijuana than any city in the world. Beginning in 1995, and continuing to this day, New York City has created a serious marijuana possession arrest wave, binge or epidemic.

I have brought some graphs to show what has been happening. The data comes from the New York State Office of Criminal Justice Services here in Albany and the graphs are fairly self-explanatory. Graph #1 shows the marijuana arrests in the last three decades.

From 1997 to 2006 New York City arrested and jailed over 360,000 people for possessing small amounts of marijuana. This was nearly a 10 fold increase in marijuana arrests over the previous decade, and a 9 fold increase over the decade before that.

Nearly everyone arrested in New York City for marijuana possession has been charged with violating section 221.10 of the New York State penal code. This is a misdemeanor, a "finger-printable offense" in State terminology, and would be a DNA swipeable offense under the proposed legislation.

Most of the people arrested possessed only a tiny amount, usually a few grams in a marijuana cigarette or part of one, or a small, plastic bag about the size of quarter or half dollar – in street parlance a "nickel bag" or a "dime bag." Some people arrested were simply standing with or near others who had the marijuana. According to numerous police, public defenders, legal aid and private attorneys, most of the people arrested were <u>not</u> smoking in public; they simply had marijuana in their possession, generally in their pocket.

Graph #2 shows the arrests in the last two decades broken down by race.

Of these 362,000 marijuana possession arrests in the last decade – or 33,000 of them in the last year, in 2006 – 55% are of Black people, nearly 30% are of Hispanics or Latinos, and less than 15% are of Whites. The majority of the people arrested are between 16 and 26 years old and 91% are male. Since 1997, New York City has arrested and jailed for at least 24 hours nearly 200,000 Blacks, over 100,000 Latinos, and over 50,000 Whites for marijuana possession.

New York City has arrested about 100 mostly young people a day, every day, for the last ten years. By the end of today another 90 to 100 will be arrested. About 85% of the people arrested are Black or Latino, most are working class or poor, from the outer boroughs and from less affluent and poorer neighborhoods. These are among the New Yorkers, or a convicted subset of them, whose DNA would be taken and kept by the state of New York if this proposed legislation is put into effect.

Graph #3 shows the arrests each year for the last 20 years, showing the portion of total marijuana arrests in each year that were of Whites, Hispanics and Blacks.

Graph #4 shows the rate of arrests for Whites, Blacks and Hispanics. For every 100,000 Whites in New York City, 124 were arrested; for every 100,000 Hispanics, 430 were arrested; and for every 100,000 Blacks, 975 were arrested.

Why is the New York City Police Department making all these misdemeanor marijuana possession arrests? I hope to be able to tell you, though it may have to be in the question period, but I can tell you that it is not because of any dramatic increase in marijuana use – which has not changed significantly since the early 1980s. Nor is the dramatic racial imbalance in the arrests the result of marijuana use patterns. In fact, marijuana use among Blacks and Hispanics is <u>lower</u> than for Whites, and has been for decades, as U.S. government statistics show.

Graph #5 shows the patterns of use of White, Hispanic and Black high school seniors in 2004 and 2005. This comes from the U.S. government's annual "Monitoring The Future" survey and shows lifetime, annual, last month, and daily marijuana use. In every category, whites use marijuana more than Hispanics and Blacks.

Graph #6 is from the U.S. government's annual National Survey and shows use by Whites, Blacks and Hispanics aged 18 to 25 in two-year groups: 2002 and 2003 together, and 2004 and 2005 together. This data set does not show cities or states, but other data make clear that the use patterns in New York City and New York State are like those in the rest of the U.S.: among teenagers and young adults, Whites use marijuana more than Blacks and Latinos, but Blacks and Latinos get arrested and jailed much more often, especially in New York City.

Graph #7 shows the arrests of Whites, Hispanics and Blacks for each year of the last 10 years.

Finally, Graph #8 shows the percentage of the population that is Black compared to the percentage of marijuana arrestees who are Black in Brooklyn, Bronx, Queens, Manhattan, and Staten Island in 2006. In each case, Blacks make up a significantly larger share of the marijuana arrestees than they do of the general population.

When the New York State legislature considers collecting DNA evidence from people on the basis of marijuana and other misdemeanor arrests, it needs to understand that it will do so with a sample that is racially skewed and biased because the police find it easy and convenient to arrest certain people for these offenses and not others.

In my neighborhood on the West Side of Manhattan, White students at Columbia University walking around with marijuana in their pockets are almost never arrested – the area has one of the lowest marijuana arrest rates in New York City. However, Blacks in west and central Harlem, just a few blocks away from Columbia, are routinely stopped, searched and arrested, and Hispanics in Washington Heights, just a little further up on Broadway, are likewise arrested much more often.

Approximately one in three New Yorkers from ages 18 to 25 have used marijuana in the last year, but the Blacks and Hispanics are much more likely to get arrested and wind up in the criminal justice database with criminal records. And if this legislation is enacted their DNA samples will forever identify them as "suspects." The Whites, however, will likely never have criminal records of any kind and will not have their DNA collected, processed, and possibly mislabeled or confused with someone else's.

* * * * *

Why has New York City been making this enormous number of marijuana possession arrests?

The New York City Police Department does not like to talk about its marijuana arrests. The NYPD holds no press briefings and offers no press releases or documents taking credit for capturing record numbers of marijuana offenders. It would appear that the police, from the Commissioner and Mayor on down, have not wanted attention drawn to the city's extraordinary number of marijuana arrests. As a result there has effectively been no media coverage of the arrests. [2]

The dramatic increase in marijuana arrests began in 1996 and 1997 with Mayor Rudolph Giuliani. But marijuana arrests have continued at historically high levels under Mayor Michael Bloomberg, and have remained high even after the bombing of 9-11 when one might think there were more important things for NYPD to do.

Because the NYPD is not publicly claiming credit for making record numbers of marijuana arrests, my colleague Deborah Small and I have been trying to understand who wants the arrests, or likes them, or gains from them. The most important constituency we have found has been significant sectors of the New York Police Department. From our research and interviews, we identified several major incentives within the NYPD for maintaining high levels of marijuana arrests.

Marijuana arrests are generally easy, safe, and provide overtime.
Ordinary New York police, street cops and narcotics police, like making marijuana arrests. The arrests are relatively easy. People arrested for smoking or possessing marijuana tend to be non-violent, easy to handle, and, in the words of one cop, "clean" – meaning physically clean, not smelly or dirty. This matters because the arresting officer is "married" to the arrestee through the booking process, sometimes for many hours. Because NYPD pay scales are very low, police naturally want overtime work. A marijuana arrest (or other low-level misdemeanor arrest) near the end of a shift guarantees several or more hours of relatively clean, easy overtime. And the officers can use the arrests to show they are being productive.
In effect, making marijuana arrests and other misdemeanor arrests has become a quality of work-life issue for the police. According to some news reports, narcotics police have resisted efforts to shift them to other duties, or even to higher level drug work, which is more dangerous and has less chance for overtime.

Marijuana arrests generate records, facilitate supervision of police activities, and allow police at all levels to show they are being productive.
Police supervisors from the precinct level up to the police chief and perhaps even the Mayor also like the marijuana arrests. When cops are making many marijuana arrests (and other minor misdemeanor arrests such as having an open beer can in a paper bag) they are keeping busy. As a police lieutenant said: "you don't have to worry that they are goofing off or doing something else." Most important, the work generates records of where they have been

during their shifts. In the era of computerized records, this is reassuring and useful to police supervisors at all levels. In addition, supervisors also accumulate overtime pay when the officers working directly under them do.

Further, at a time when other crimes (and therefore arrests) are down significantly, making many misdemeanor arrests is a handy way for supervisors, from the precinct on up, to show that cops are not sloughing off. Even though all categories of reported crime have dropped significantly since 1990, by making many marijuana and other misdemeanor arrests, police at all levels can show high numbers of arrests and high productivity.

Police assigned to marijuana duties (and misdemeanor arrests in general) can easily be shifted elsewhere when needed.

Police supervisors also like having cops assigned to making marijuana arrests because if something big comes up – an emergency, fire, bombing, visiting dignitary – they can pull the police off making marijuana and other misdemeanor arrests with absolutely no effect on other crime. No ongoing investigation is affected by temporarily reducing the marijuana arrests. In effect, cops making marijuana and other minor misdemeanor arrests function as a kind of "reserve army" of police to be used whenever necessary, which is handy for the top brass at the department.

Marijuana arrests provide an easy way to target and acquire information on young people.

Along with national and other local police agencies, the NYPD seeks to get as many young people as possible "into the system" – meaning getting them fingerprinted, photographed, and now increasingly DNA tested. Marijuana arrests are the best and easiest way currently available to acquire data on young people, especially Black and Latino youth, who have not previously been entered into the criminal justice databases. *There is nothing else police currently can do that gets as many new people "into the system" as the wide net of marijuana arrests and other misdemeanor arrests.* Black and Latino youth are disproportionally searched and arrested because it is easy and convenient to do so, and because they usually lack political and social connections that might make the arrests troublesome or embarrassing for the arresting officers or their commanders.

As a result of these factors and others, in the last ten years the NYPD has made a great many marijuana misdemeanor arrests, and many other low-level and arbitrary misdemeanor arrests as well, catching in their nets overwhelmingly poor, Black and Hispanic youth, mainly teenage boys and young men.

Creating a DNA database on the basis of such a racially and demographically skewed and biased sample – essentially created by whom it is convenient for the police to search and arrest – is unfair and unjust. It would create a system which – especially in New York City, but elsewhere in the State as well – should be an embarrassment to its citizens and policy makers.

Notes

[1] This project on marijuana arrests has been carried out in collaboration with Deborah Peterson Small from Break The Chains in New York City. A full report is forthcoming in August 2007.
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[2] New York's media and journalists have not investigated and reported on the city's marijuana arrests. However, two groups of academic and professional researchers have been studying the lowest level and largest number of misdemeanor marijuana possession arrests, also called MPV arrests.

Bernard E. Harcourt and Jens Ludwig at the University of Chicago law school have recently studied the effect of New York's marijuana arrests on crime and policing. They write:

> "Whatever the conceptual underpinning of this marijuana policing strategy, we have analyzed the MPV arrests building on our previous research on broken windows policing and, using a number of different statistical approaches on these MPV arrest data, we find no good evidence that the MPV arrests are associated with reductions in serious violent or property crimes in the city. As a result New York City's marijuana policing strategy seems likely to simply divert scarce police resources away from more effective approaches that research suggests is capable of reducing real crime.

Harcourt, Bernard E. and Ludwig, Jens, "Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000", *Criminology and Public Policy 6:1 pp 165-182,* 2007 Available at: http://bernardharcourt.com/documents/marijuana-arrests.pdf
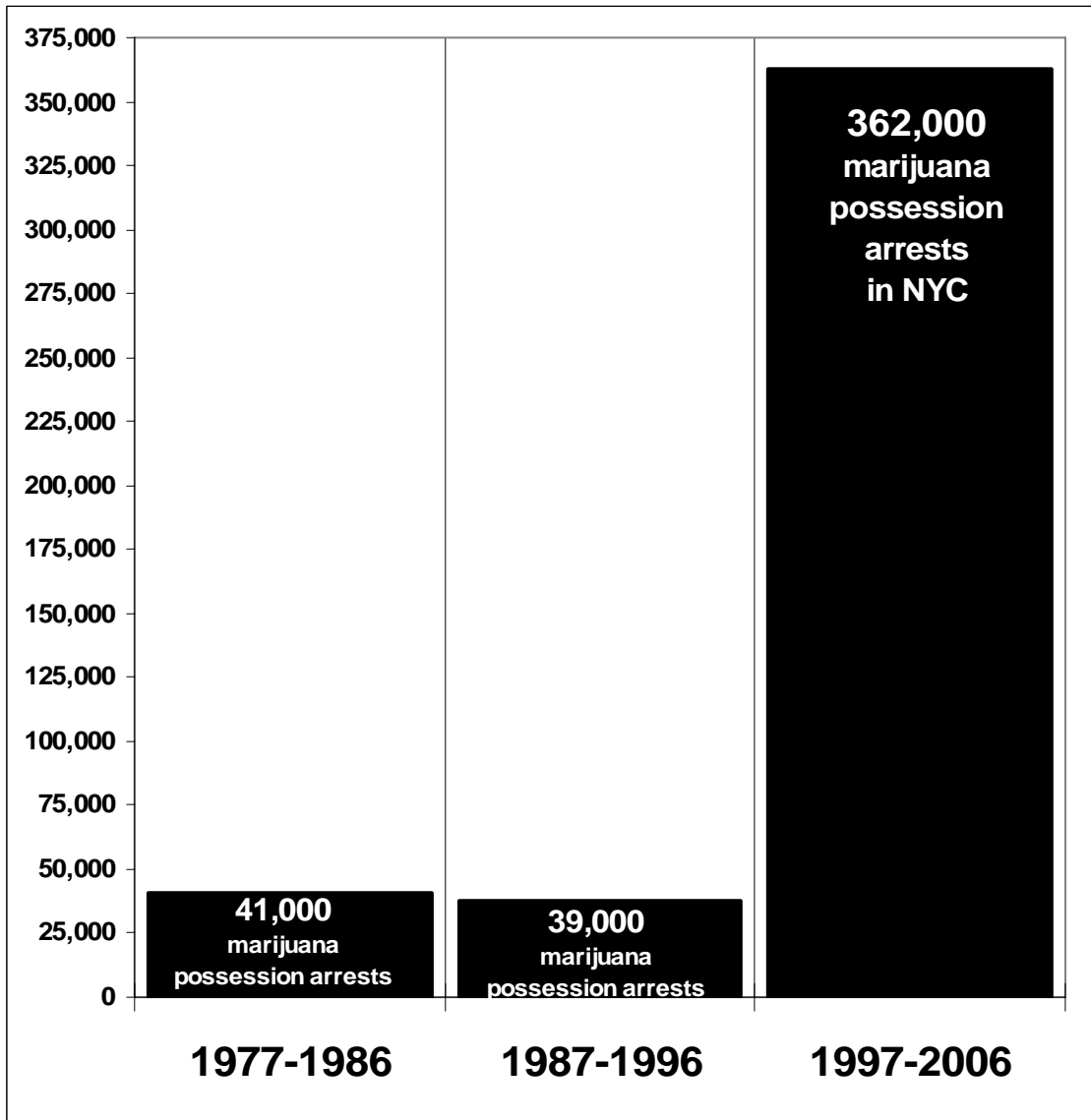
In addition, a team of researchers at NDRI in New York City have studied New York's marijuana arrests from various perspectives. See: Golub, Andrew, Bruce D. Johnson, and Eloise Dunlap. "The Race/ethnicity Disparity In Misdemeanor Marijuana Arrests In New York City", *Criminology and Public Policy 6:1 pp 131-163,* 2007. In their conclusion they write:

> "This study has shown that MPV arrest has become one of the NYPD's biggest law enforcement activities since the mid-1990s. In 2000, there were more than 50,000 MPV arrests accounting for 15% of all NYC arrests, more than any nondrug misdemeanor arrest charge and rivaling the number of controlled substance arrests. This study further documented that the burden of MPV arrest has been falling disproportionately on blacks and Hispanics and that members of these minority groups, on average, have been receiving harsher treatment within the criminal justice system. Black and Hispanic MPV arrestees have been more likely than their white counterparts to be detained, convicted, and sentenced to further time in jail even controlling for prior arrests."

Golub, Johnson and Dunlap have also mapped the neighborhoods where the marijuana arrests are most concentrated. The maps graphically reveal the racial bias and disparities in the marijuana arrests which are concentrated in poorer Black and Hispanic neighborhoods. See: Golub, Andrew, Bruce D. Johnson, and Eloise Dunlap. "Smoking marijuana in public: the spatial and policy shift in New York City arrests, 1992–2003", *Harm Reduction Journal* 3:22, 2006. Available at: http://www.harmreductionjournal.com/content/pdf/1477-7517-3-22.pdf

As far as I know, New York City's "war on marijuana" was first described in graphs and text by The Sentencing Project in 2005. See: King, Ryan S. and Marc Mauer, *The War on Marijuana: The Transformation of the War on Drugs in the 1990s*, The Sentencing Project. Washington, D.C., 2005. Available at: http://www.sentencingproject.org/Admin/Documents/publications/dp_waronmarijuana.pdf

1. Marijuana Possession Arrests
in New York City
in Three Decades

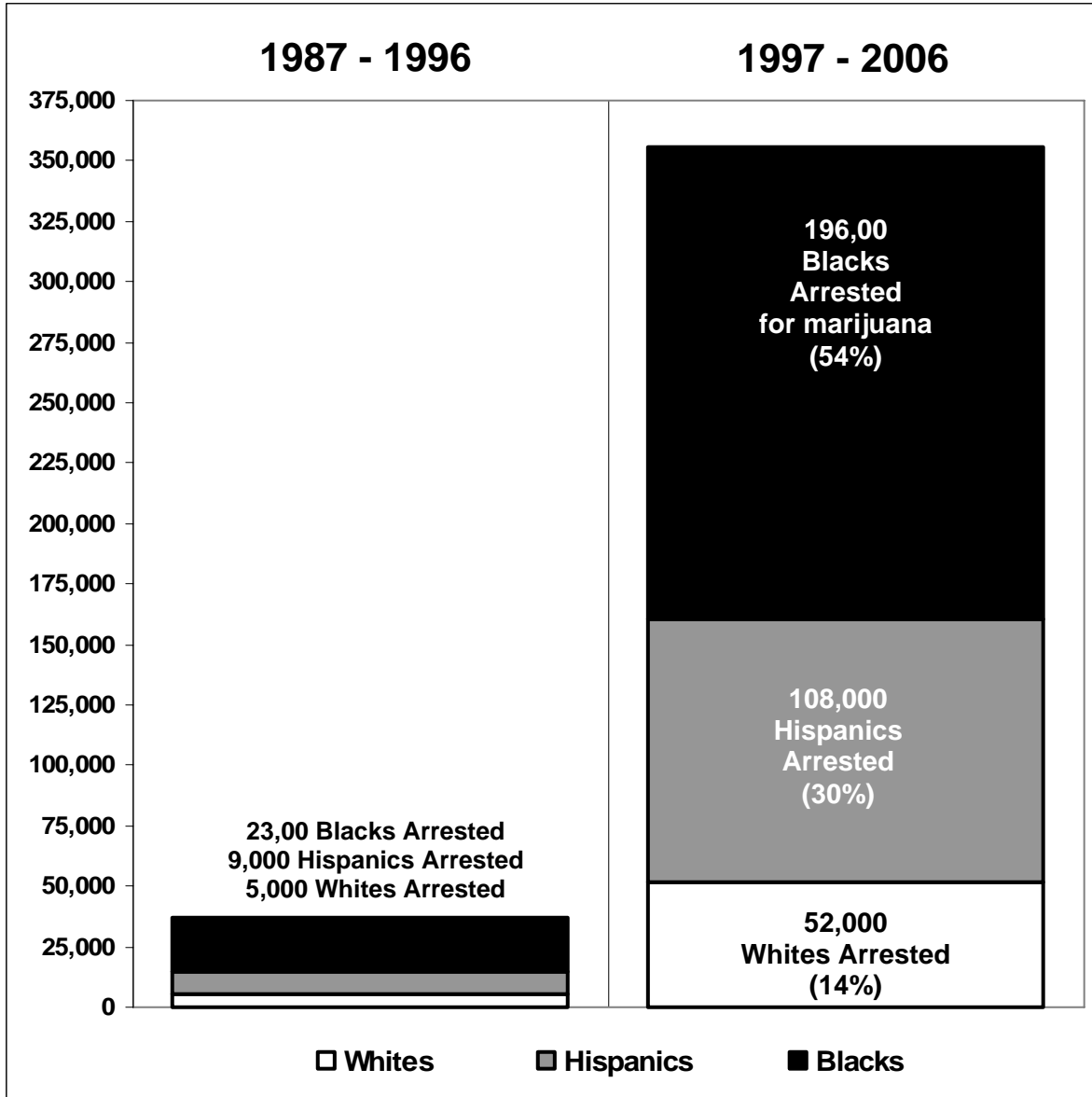|		
375,000		
350,000		**362,000** marijuana possession arrests in NYC
325,000		
300,000		
275,000		
250,000		
225,000		
200,000		
175,000		
150,000		
125,000		
100,000		
75,000		
50,000		
25,000	**41,000** marijuana possession arrests	**39,000** marijuana possession arrests
0		
	1977-1986	**1987-1996** **1997-2006**

Source: New York State Division of Criminal Justice Services, Computerized Criminal History system.
Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious
charge in an arrest event. Ages 16 and older. 1978 data was used for 1977.

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2. New York City Marijuana Possession Arrests of Whites, Hispanics and Blacks in Two Decades

1987 - 1996

1997 - 2006

196,00
Blacks
Arrested
for marijuana
(54%)

108,000
Hispanics
Arrested
(30%)

23,00 Blacks Arrested
9,000 Hispanics Arrested
5,000 Whites Arrested

52,000
Whites Arrested
(14%)

Axis values: 375,000 / 350,000 / 325,000 / 300,000 / 275,000 / 250,000 / 225,000 / 200,000 / 175,000 / 150,000 / 125,000 / 100,000 / 75,000 / 50,000 / 25,000 / 0
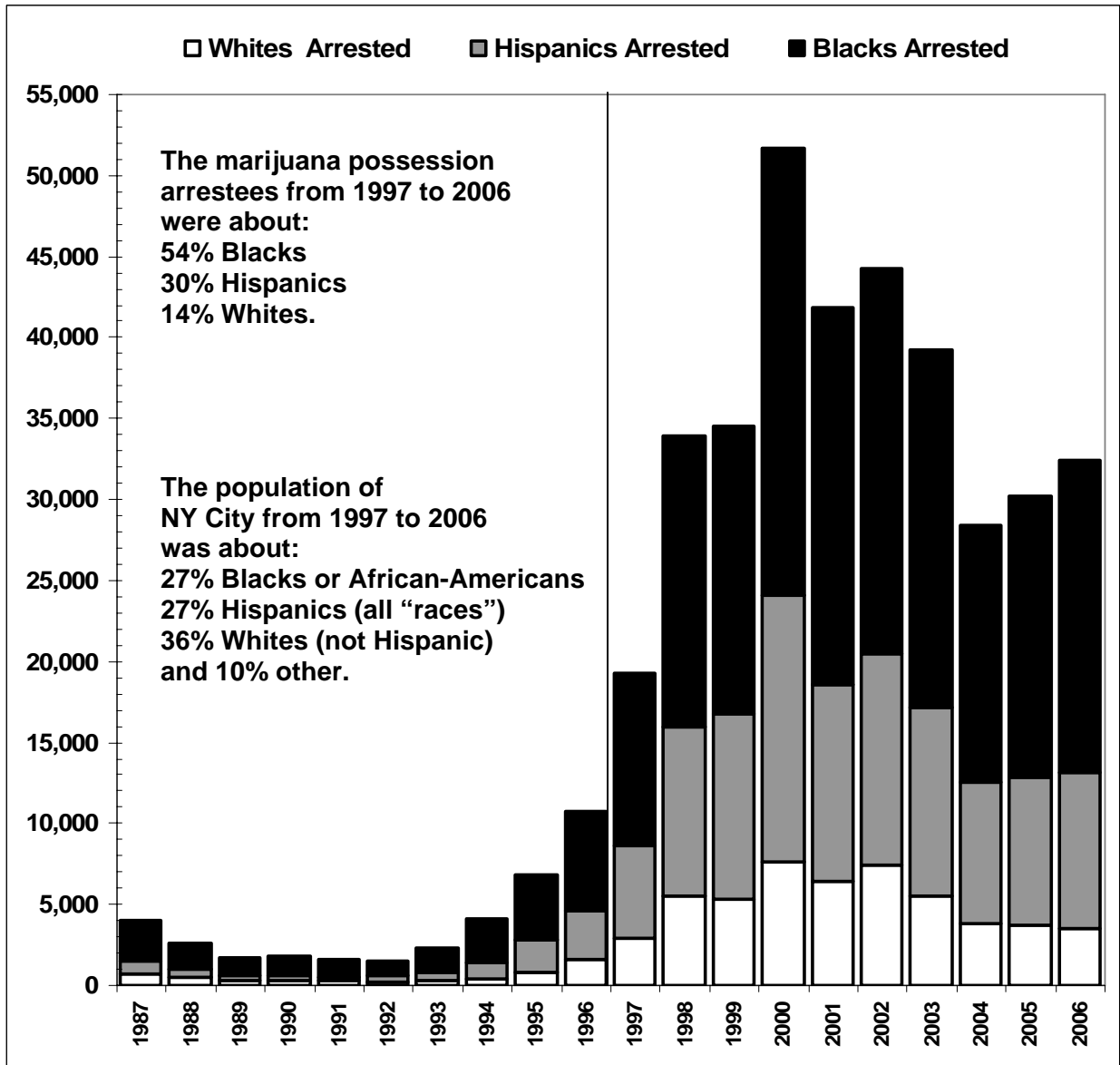
☐ Whites ☐ Hispanics ■ Blacks

Source: New York State Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious charge in an arrest event. Ages 16 and older.

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3. Arrests of Whites, Hispanics and Blacks for Marijuana Possession in NY City, 1987–2006

□ Whites Arrested   ■ Hispanics Arrested   ■ Blacks Arrested

The marijuana possession arrestees from 1997 to 2006 were about:
54% Blacks
30% Hispanics
14% Whites.

The population of NY City from 1997 to 2006 was about:
27% Blacks or African-Americans
27% Hispanics (all "races")
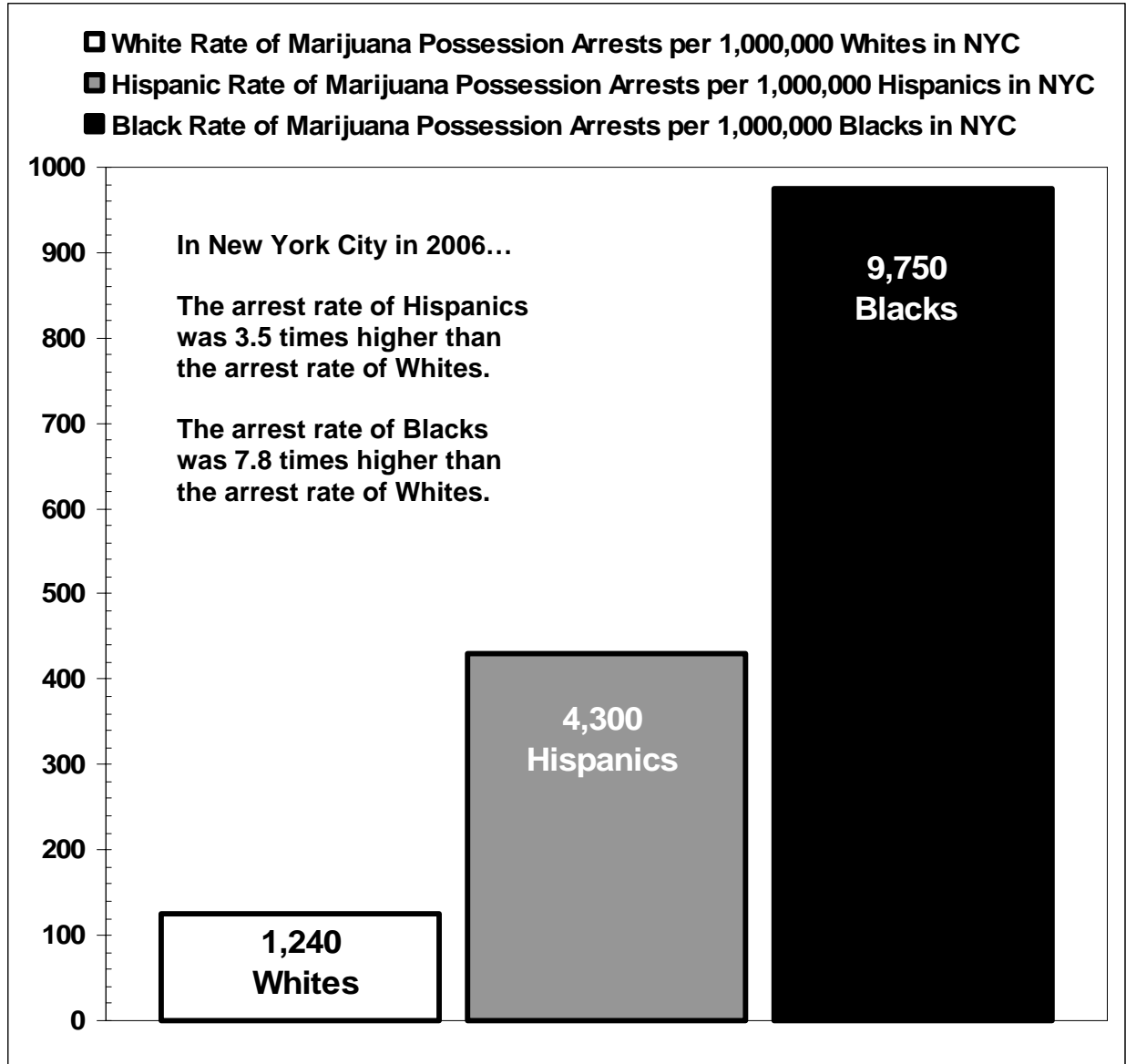36% Whites (not Hispanic) and 10% other.

Source: New York State Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious charge in an arrest event. Ages 16 and older. The NYPD has not reported arrests by race for 2003-2005. Arrest counts by race for those three years were calculated using percentages from time trend data from 2006, 2002, 2001 and 2000.

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4. White, Hispanic and Black Rates of Marijuana Possession Arrests in New York City, 2006

☐ **White Rate of Marijuana Possession Arrests per 1,000,000 Whites in NYC**
☒ **Hispanic Rate of Marijuana Possession Arrests per 1,000,000 Hispanics in NYC**
■ **Black Rate of Marijuana Possession Arrests per 1,000,000 Blacks in NYC**

In New York City in 2006…

The arrest rate of Hispanics was 3.5 times higher than the arrest rate of Whites.

The arrest rate of Blacks was 7.8 times higher than the arrest rate of Whites.
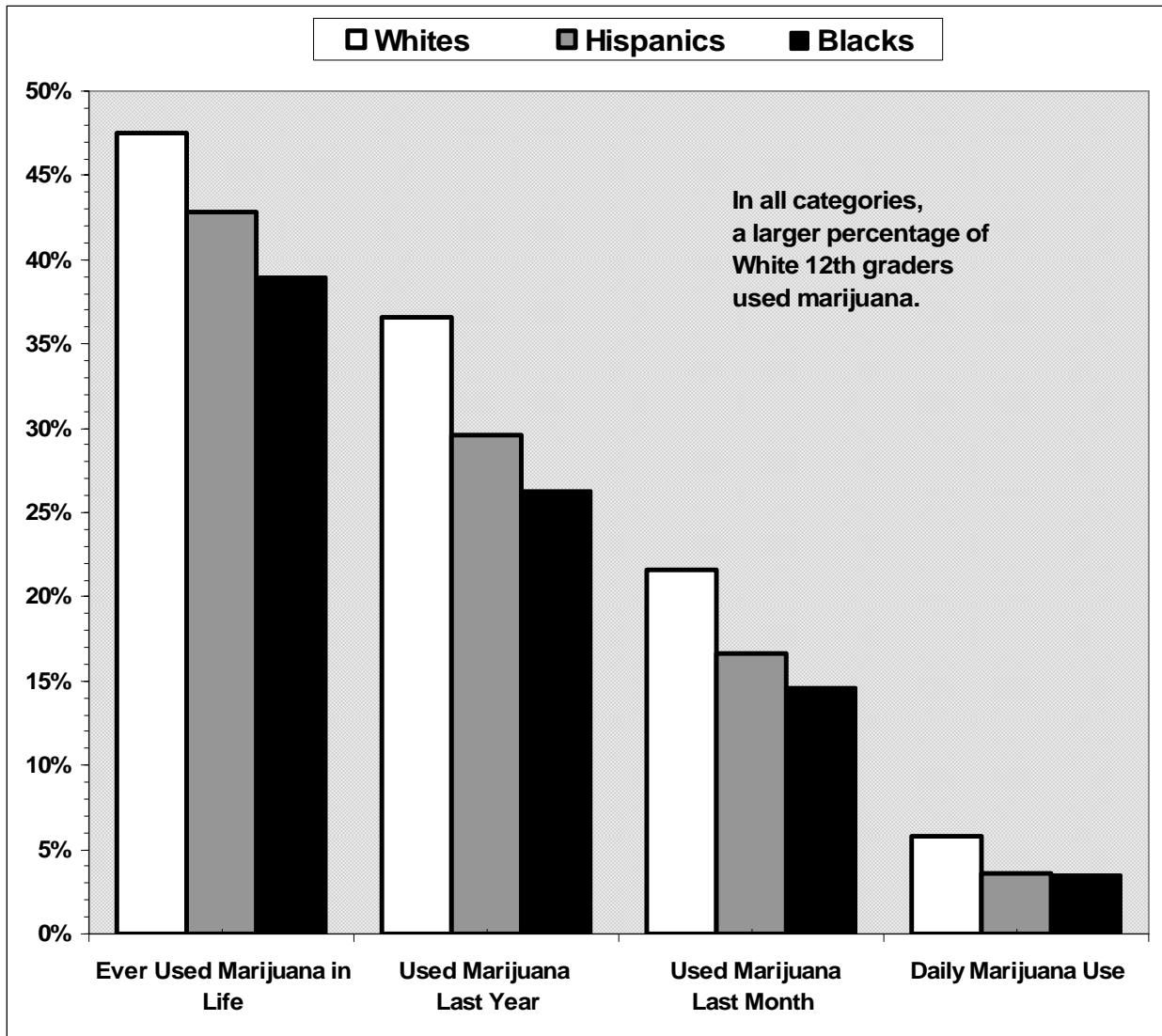
9,750 Blacks

4,300 Hispanics

1,240 Whites

Source: New York State Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious charge in an arrest event. Ages 16 and older. U.S. Dept. of Commerce, Census Bureau. CC-EST2005-6RACE-[ST_FIPS]: County Population Estimates

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5. Marijuana Use by
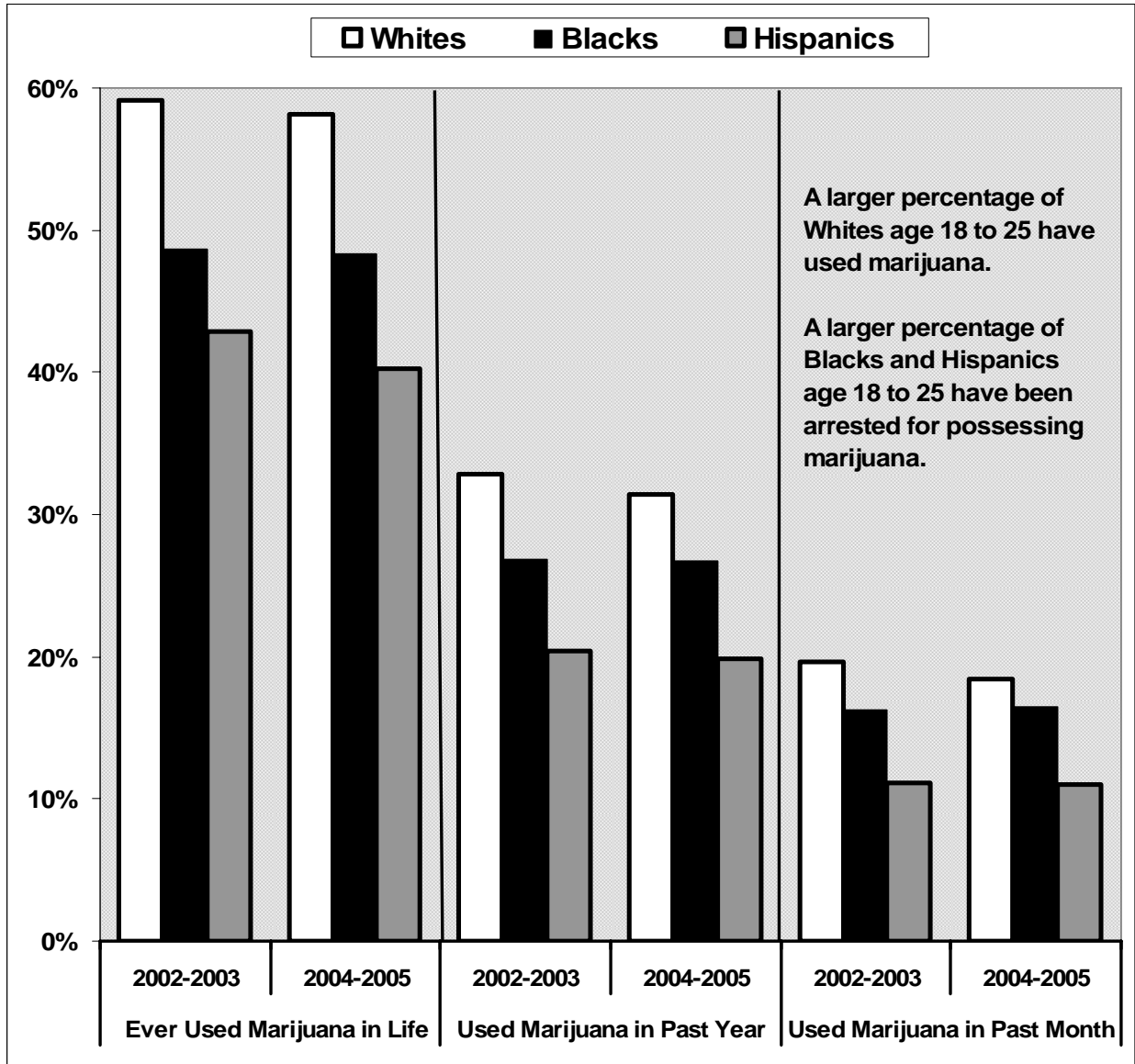# White, Hispanic, And Black 12th Graders, in 2004-5

□ **Whites**   ▣ **Hispanics**   ■ **Blacks**

In all categories,
a larger percentage of
White 12th graders
used marijuana.

- Ever Used Marijuana in Life
- Used Marijuana Last Year
- Used Marijuana Last Month
- Daily Marijuana Use

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6. Marijuana Use by Whites, Blacks and Hispanics, Ages 18 to 25

A larger percentage of Whites age 18 to 25 have used marijuana.

A larger percentage of Blacks and Hispanics age 18 to 25 have been arrested for possessing marijuana.
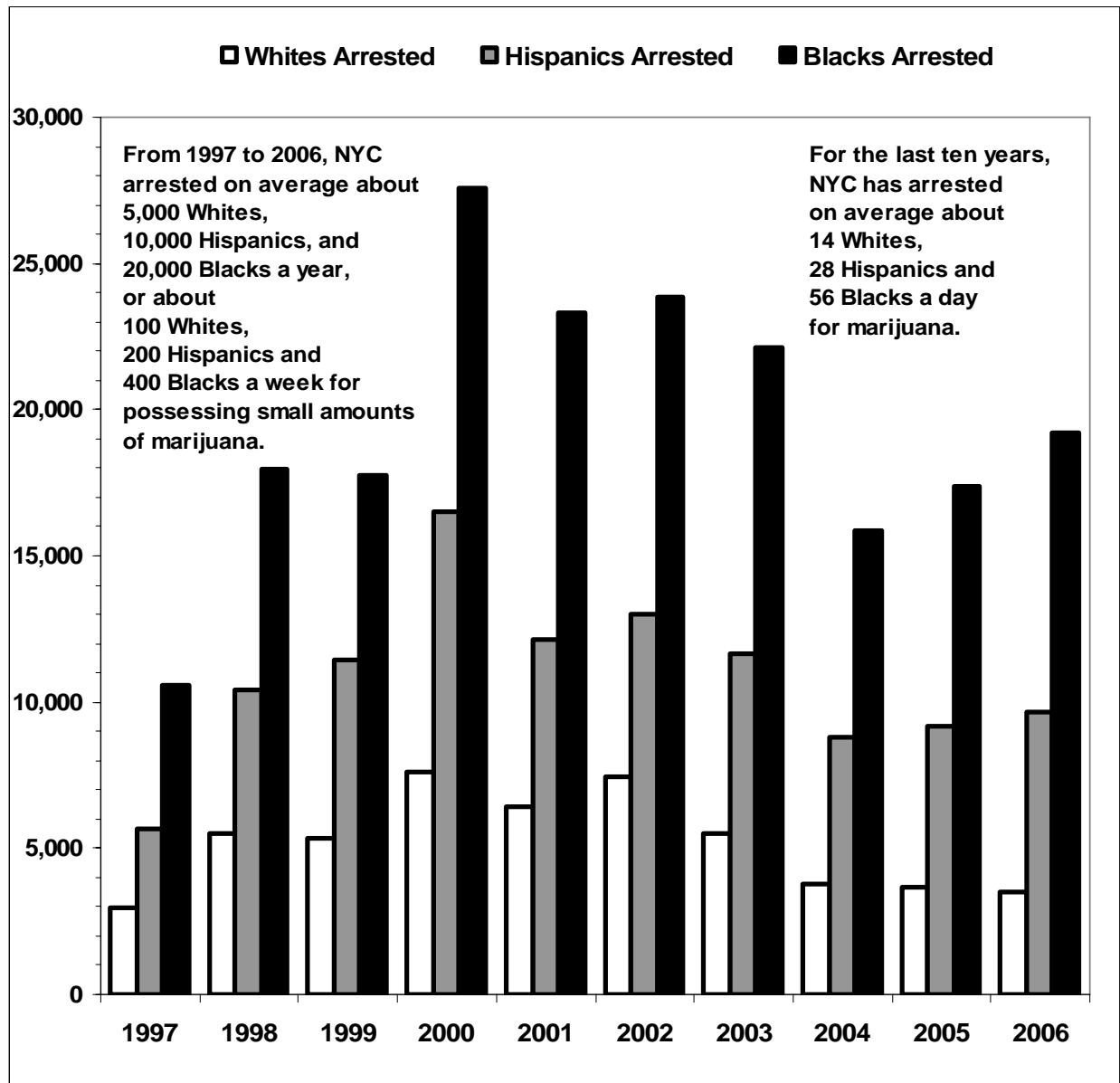
Source: U.S. Department of Health and Human Service, SAMHSA, Office of Applied Studies, 2005 National Survey on Drug Use & Health: Detailed Tables.
Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005
At: http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B

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7. Arrests of Whites, Hispanics and Blacks for Marijuana Possession In NY City, 1997-2006

□ **Whites Arrested**   ▨ **Hispanics Arrested**   ■ **Blacks Arrested**

From 1997 to 2006, NYC arrested on average about 5,000 Whites, 10,000 Hispanics, and 20,000 Blacks a year, or about 100 Whites, 200 Hispanics and 400 Blacks a week for possessing small amounts of marijuana.

For the last ten years, NYC has arrested on average about 14 Whites, 28 Hispanics and 56 Blacks a day for marijuana.
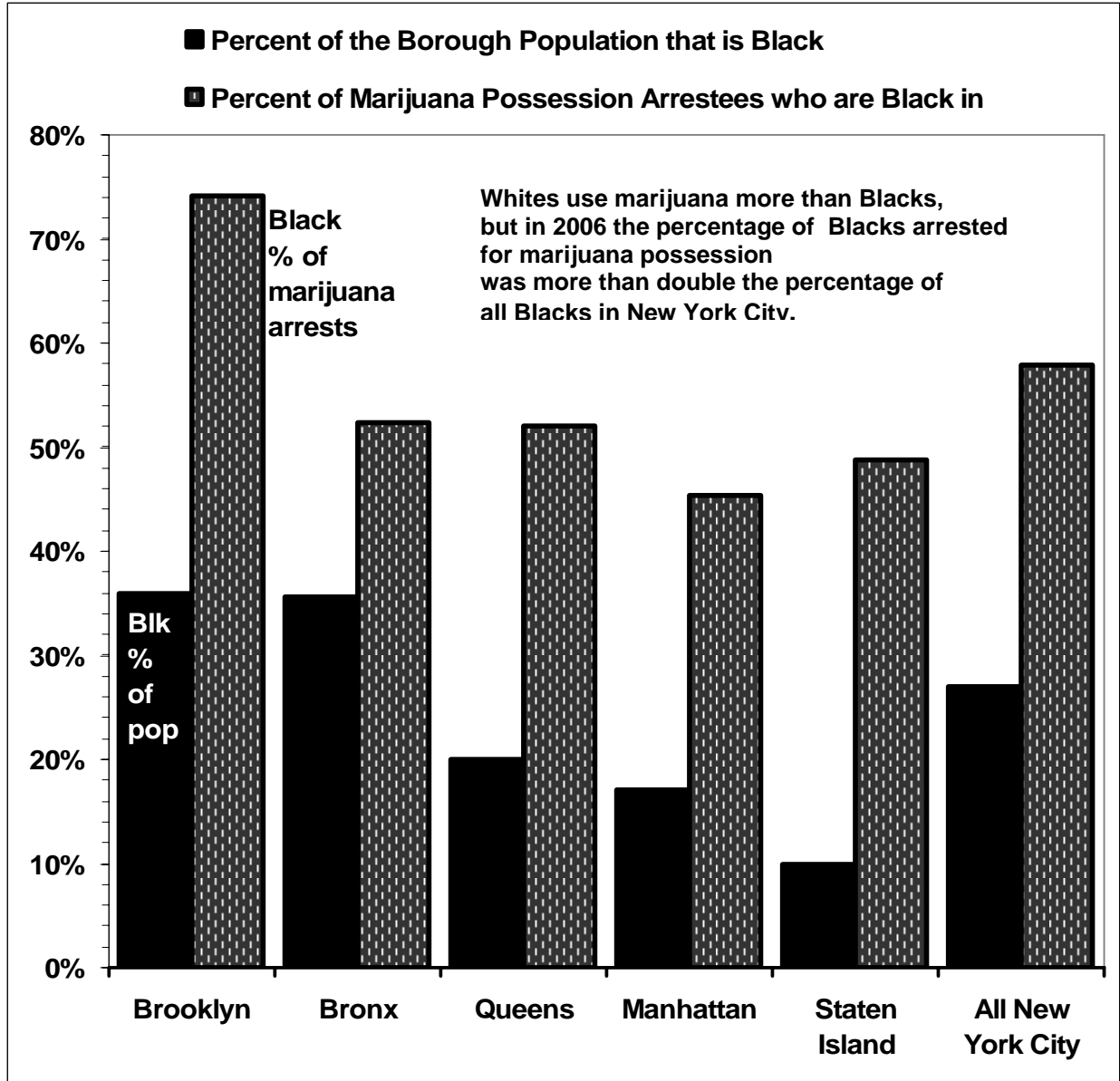

Source: New York State Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious charge in an arrest event. Ages 16 and older. The NYPD has not reported arrests by race for 2003-2005. Arrest counts by race for those three years were calculated using percentages from time trend data from 2006, 2002, 2001 and 2000.

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8. Black Percentage of the Population and Black Percentage of Marijuana Possession Arrestees, in Brooklyn, Bronx, Queens, Manhattan & Staten Island, 2006

■ **Percent of the Borough Population that is Black**

▨ **Percent of Marijuana Possession Arrestees who are Black in**

Black % of marijuana arrests

Whites use marijuana more than Blacks, but in 2006 the percentage of Blacks arrested for marijuana possession was more than double the percentage of all Blacks in New York City.

Blk % of pop

Brooklyn | Bronx | Queens | Manhattan | Staten Island | All New York City

(y-axis: 0% to 80%)

Source: New York State Division of Criminal Justice Services, Computerized Criminal History system. Includes all fingerprintable arrests for NY State Penal Law Article 221 offenses as the most serious charge in an arrest event. Ages 16 and older.

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