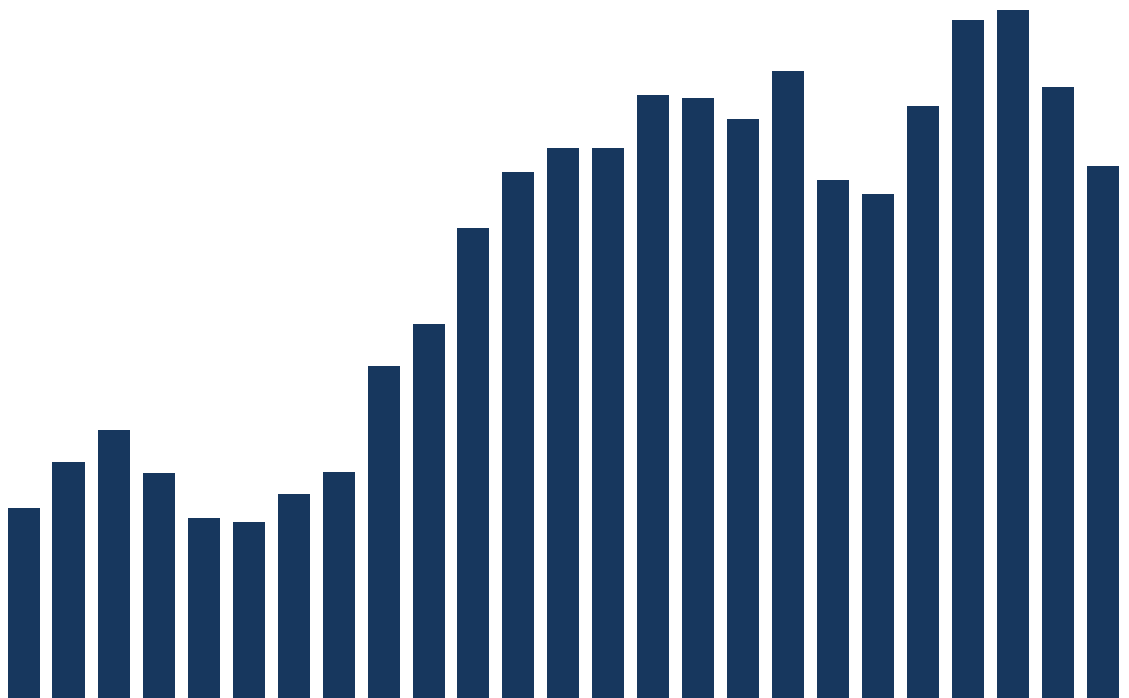


240,000 Marijuana Arrests

Costs, Consequences, and Racial Disparities of Possession Arrests in Washington, 1986-2010



Prepared by the Marijuana Arrest Research Project

<http://marijuana-arrests.com>

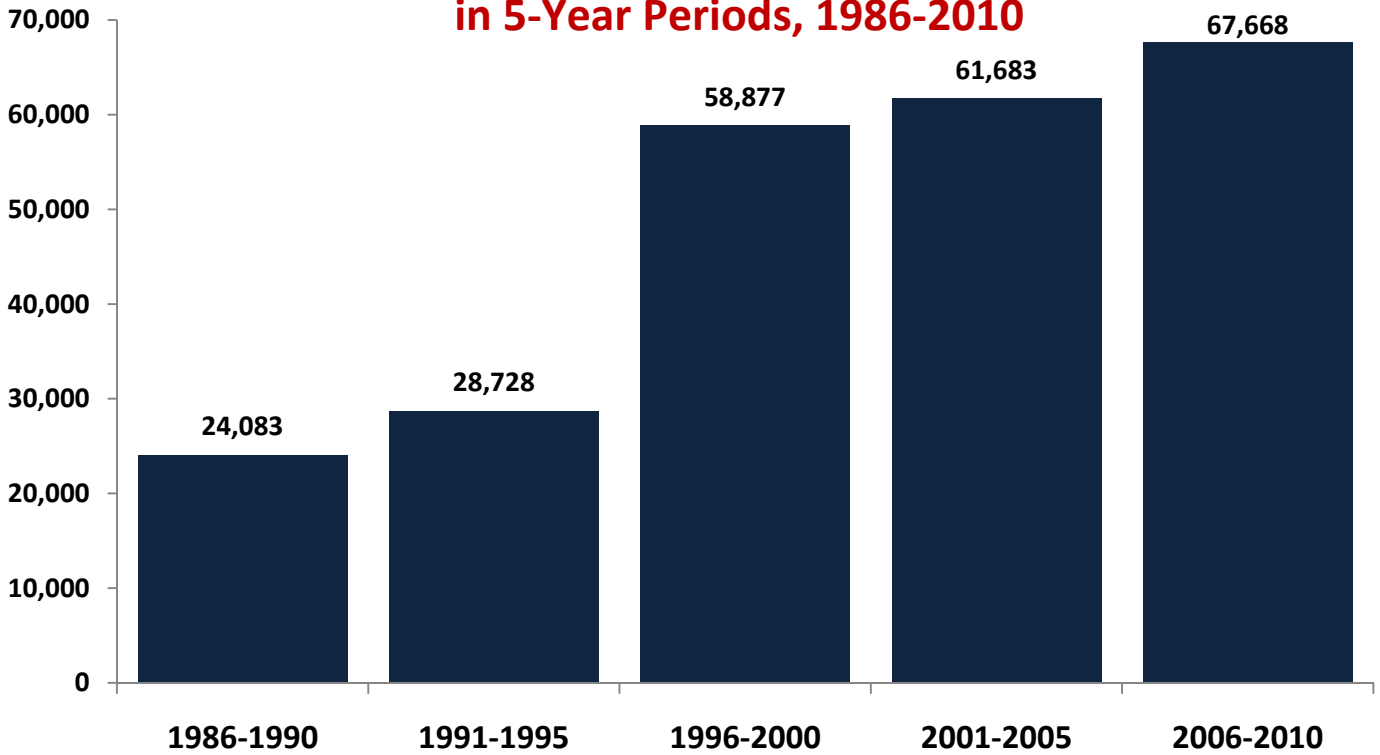
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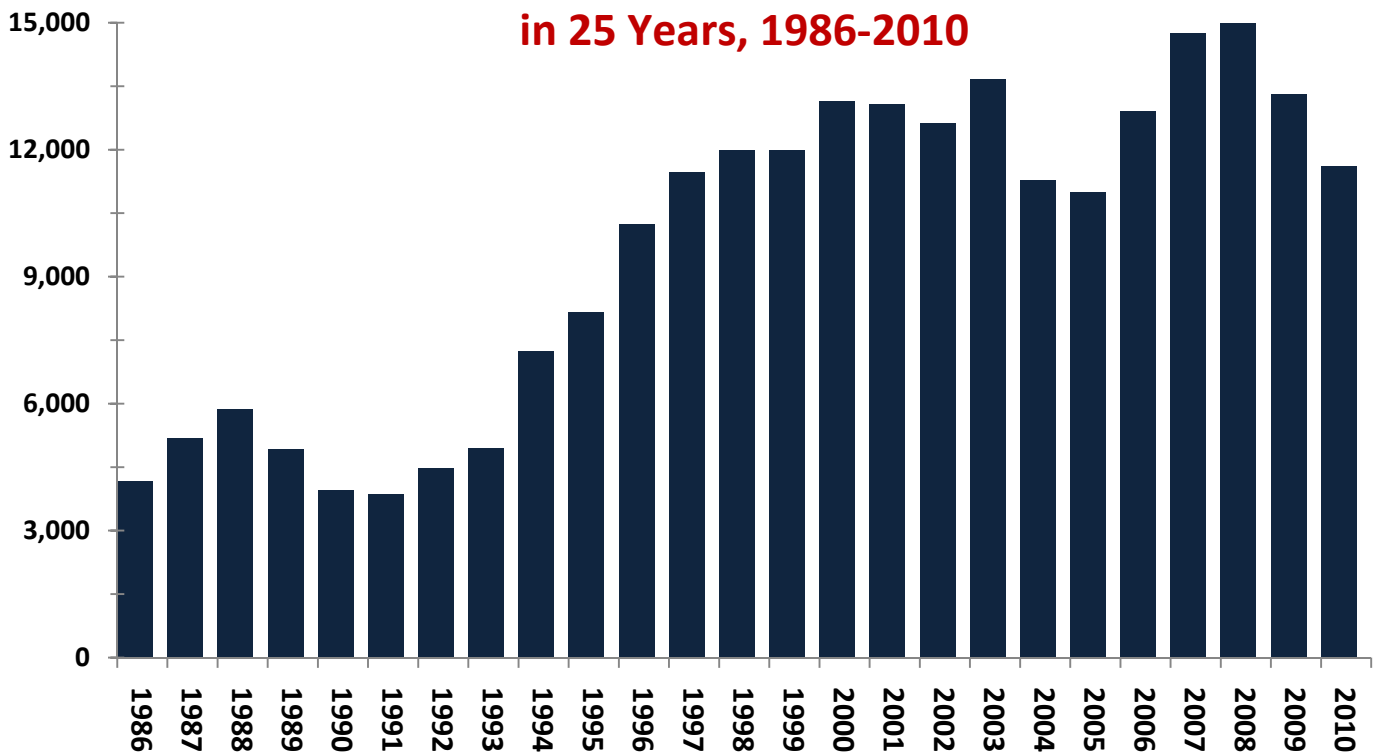
Loren Siegel, JD, LS Consulting, Brooklyn, NY

October 2012

240,000 Marijuana Possession Arrests in Washington in 5-Year Periods, 1986-2010



240,000 Marijuana Possession Arrests in Washington in 25 Years, 1986-2010



Source: FBI-UCR Uniform Crime Reports. Prepared by the Marijuana Arrest Research Project <http://marijuana-arrests.com>
 Harry G. Levine, PhD, Jon B. Gettman, PhD, Loren Siegel, JD. October 2012

Report Highlights

Marijuana Possession Arrests in Washington

- Marijuana possession arrests in Washington State rose sharply over the past 25 years, from 4,000 in 1986 to 11,000 in 2010, totaling 240,000 arrests.
- In the five years from 1986 to 1990, Washington police made 24,000 low-level possession arrests. Twenty years later, from 2006 to 2010, police made 67,600 marijuana possession arrests, almost three times as many.
- In the last decade, 79% of those arrested for marijuana possession were age 34 or younger, 71% were 29 or younger, and 58% were 24 or younger. 73% of those arrested were white and most were young.
- Although young African Americans and Latinos use marijuana at lower rates than young whites, in the last ten years police in Washington arrested African Americans at 2.9 times the rate of whites, and they arrested Latinos and Native Americans at 1.6 times the rate of whites.
- From 2001-2010, blacks, Latinos and Native Americans were 14% of the state's residents, but they were 25% of the people arrested for marijuana possession.
- In the last 25 years, a single arrest for possession – including police, court, prosecutor and defense expenses – cost from \$1000 to \$2000, conservatively estimated. The 129,000 possession arrests since 2001 cost taxpayers at least \$200 million. The 240,000 arrests since 1986 cost \$300 million or more.
- A marijuana possession arrest creates a permanent criminal record easily found on the internet by employers, landlords, schools, credit agencies, licensing boards, and banks. A criminal record for the "drug crime" of marijuana possession creates barriers to employment and education for anyone, including whites and the middle class.
- Washington arrests people for marijuana possession at a higher rate than California. Police frequently arrest medical marijuana patients, even when the patients show written authorization from a health care professional. But marijuana possession arrests do not reduce serious crimes, and they take police from other crime-fighting work.

Marijuana Possession Arrests in Washington In 10 Years and 25 Years In the 25 Largest Counties, 1986-2010

	<u>25 YEARS</u> Total # of Marijuana Possession Arrests 1986-2010	<u>10 YEARS</u> Total # of Marijuana Possession Arrests 2001-2010	Average Yearly Arrest Rate for Marijuana Possession per 100,000 of Pop 2001-2010	Ten-Year Average of Population 2001-2010
State Total	241,039	129,351	204	6,329,138
King	65,483	35,823	194	1,830,445
Pierce	25,087	15,026	197	758,945
Spokane	22,716	8,349	188	446,244
Snohomish	18,307	11,152	172	660,708
Benton	10,009	5,945	374	158,414
Yakima	9,618	5,236	226	230,715
Clark	9,300	3,978	102	400,163
Thurston	9,025	4,120	180	232,201
Whatcom	8,063	4,534	245	187,181
Kitsap	6,088	3,814	158	239,301
Grays Harbor	5,436	2,635	371	70,344
Skagit	5,338	2,750	243	112,750
Grant	4,288	2,657	328	81,819
Chelan	3,886	1,989	283	69,524
Island	3,378	2,318	297	79,165
Cowlitz	3,377	1,879	188	97,963
Lewis	3,259	1,790	246	72,190
Whitman	3,196	1,969	474	41,741
Kittitas	2,804	1,821	492	37,382
Franklin	2,767	1,670	259	64,684
Clallam	2,745	1,048	153	68,696
Okanogan	2,055	937	232	39,507
Mason	1,950	1,115	202	54,750
Stevens	1,643	853	203	41,272
Walla Walla	1,409	684	118	57,247
Total of 25 Largest Counties	231,227	124,092	202.3	6,133,351

Source: FBI-UCR Uniform Crime Reports and US Census.

Prepared by the Marijuana Arrest Research Project, <http://marijuana-arrests.com>

Harry G. Levine, PhD, Jon B. Gettman, PhD, Loren Siegel, JD October 2012

240,000 Marijuana Possession Arrests

25 Years of Arresting People in Washington

In the 25 years from 1986 to 2010, police and sheriffs' departments in Washington State made 240,000 arrests for the crime of possessing small amounts of marijuana. During this time, Washington's marijuana possession arrests nearly tripled, from 4,000 to 11,000 per year. In the five years from 1986 to 2010, police made 24,000 arrests. Twenty years later, from 2006 to 2010, police made 67,600 marijuana possession arrests, almost three times as many.¹

According to the most recent data from the Federal Bureau of Investigation and its Uniform Crime Reports, police made 129,000 of these arrests in the decade spanning 2001 to 2010. Seventy thousand of those arrests were made in the state's four most populous counties – King, Pierce, Snohomish and Spokane, 35,000, 15,000, 11,000, and 8,000 arrests respectively. Washington arrests people for marijuana possession at a higher rate than California.²

Arrestees are often handcuffed, taken to a police station, fingerprinted and photographed. Their prints and other data are then sent to the FBI never to be returned or expunged. Many people spend 24 hours or more in custody before appearing before a judge. Some are given a citation for a required court appearance at a specific date and released by the police on the spot after being detained. Others are taken to the police station, booked, held, and then released with a court appearance summons.

People frequently plead guilty to marijuana possession, a misdemeanor punishable by 90 days in jail and a fine of \$1,000. At a minimum, anyone convicted of a misdemeanor faces “imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars.” Other fees incurred in a marijuana misdemeanor case – including lawyer’s fees, bail, fines and court costs – often total more than \$5,000.

Claims that marijuana possession arrests contribute to an overall reduction in crime are not supported by any evidence. There are no studies showing that arrests for possession of small amounts of marijuana reduce serious or violent crimes.³

In 2008, University of Washington Professors Katherine Beckett and Steve Herbert released their comprehensive study, “The Consequences and Costs of Marijuana Prohibition.” They found: 1) enforcement of the state's marijuana laws does not measurably reduce marijuana use or any harm associated with it; 2) the war on marijuana is costly in financial and human terms; and 3) marijuana arrests are disproportionately imposed on racial minorities. The data presented in this report confirm and extend these findings.⁴

Costs Of Marijuana Arrests In Washington

How much money has it cost Washington State to make and process all these marijuana possession arrests? As in many states and cities, no one really knows what police and prosecutor operations cost. Only the top managers of the police and sheriffs' departments and a small number of elected officials have access to all the data. At present, all the information needed to *precisely* calculate the cost of Washington's marijuana possession arrests is not available.

Fortunately, a number of researchers have studied police and court expenses in different states and cities. These estimates vary, with costs generally increasing over time. But there is considerable agreement and the studies converge on a *minimal* cost range of \$1,000 to \$2,000 or more for a basic, custodial misdemeanor arrest and court arraignment.⁵ The most often cited and highly respected study of the costs of arrests and prosecutions is from Washington's own Institute for Public Policy. In 2001, Aos et al. prepared a 180-page report: "*The Comparative Costs And Benefits Of Programs To Reduce Crime.*" They calculated average police and court costs per arrest for a number of crime categories in Washington.⁶ For a misdemeanor arrest, such as a marijuana possession arrest, police costs were \$764 and court costs were \$336, for a total of \$1,100 in 1995 dollars, or over \$1,500 in 2010 dollars. This did not include defense and other costs.

In 2012, the ACLU of Washington drew upon a thorough study of the cost of all marijuana arrests in the state, including prosecution and defense costs.⁷ This study, by an attorney with a Master's degree in Public Administration, drew heavily upon the work of the Washington State Institute for Public Policy, including its recent analyses.⁸ For the ten years from 2001 to 2010, it calculated the average cost per arrest as \$2,118: \$650 in police costs; \$288 in court costs; \$551 in prosecutor costs; \$571 in defense costs; and \$58 in jail costs. Again, these costs are averaged over a ten-year period.

The table on the next page – "Estimated Costs of Marijuana Possession Arrests in Washington in 10 Years and 25 Years" – shows cost figures for the 25 largest counties in Washington and for the state as a whole for the two periods.⁹ We estimate that from 1986 to 2000 each arrest cost \$1,000 or more; from 2001 to 2010 each arrest cost \$1,500 to \$2,000 or more. We use these figures to calculate a lower and higher cost for 10 years and for 25 years. For the state as a whole – for all police, prosecutor, court, jail and defense costs – this works out as follows:

Estimated Costs of Marijuana Possession Arrests in Washington

10 Years, 2001-2010 = \$200 Million to \$300 Million

25 Years, 1986-2010 = \$300 to \$400 Million

Estimated Costs of Marijuana Possession Arrests in Washington in 10 Years and 25 Years In the 25 Largest Counties, 1986-2010

	<u>10 YEAR</u> <u>Lower Est Costs</u> \$1500 per arrest 2001-2010	<u>10 YEAR</u> <u>Higher Est Costs</u> \$2000 per arrest 2001-2010	<u>25 YEAR</u> <u>Lower Est Costs</u> \$1000 an arrest 1986-2000 + \$1500 per arrest 2001-2010	<u>25 YEAR</u> <u>Higher Est Costs</u> \$1500 an arrest 1986-2000 + \$2000 per arrest 2001-2010
State Total	\$194,026,500	\$258,702,000	\$305,714,500	\$426,234,000
King	\$53,734,500	\$71,646,000	\$83,394,500	\$116,136,000
Pierce	\$22,539,000	\$30,052,000	\$32,600,000	\$45,143,500
Snohomish	\$16,728,000	\$22,304,000	\$23,883,000	\$33,036,500
Spokane	\$12,523,500	\$16,698,000	\$26,890,500	\$38,248,500
Benton	\$8,917,500	\$11,890,000	\$12,981,500	\$17,986,000
Yakima	\$7,854,000	\$10,472,000	\$12,236,000	\$17,045,000
Whatcom	\$6,801,000	\$9,068,000	\$10,330,000	\$14,361,500
Thurston	\$6,180,000	\$8,240,000	\$11,085,000	\$15,597,500
Clark	\$5,967,000	\$7,956,000	\$11,289,000	\$15,939,000
Kitsap	\$5,721,000	\$7,628,000	\$7,995,000	\$11,039,000
Skagit	\$4,125,000	\$5,500,000	\$6,713,000	\$9,382,000
Grant	\$3,985,500	\$5,314,000	\$5,616,500	\$7,760,500
Grays Harbor	\$3,952,500	\$5,270,000	\$6,753,500	\$9,471,500
Island	\$3,477,000	\$4,636,000	\$4,537,000	\$6,226,000
Chelan	\$2,983,500	\$3,978,000	\$4,880,500	\$6,823,500
Whitman	\$2,953,500	\$3,938,000	\$4,180,500	\$5,778,500
Cowlitz	\$2,818,500	\$3,758,000	\$4,316,500	\$6,005,000
Lewis	\$2,685,000	\$3,580,000	\$4,154,000	\$5,783,500
Kittitas	\$2,731,500	\$3,642,000	\$3,714,500	\$5,116,500
Franklin	\$2,505,000	\$3,340,000	\$3,602,000	\$4,985,500
Mason	\$1,672,500	\$2,230,000	\$2,507,500	\$3,482,500
Clallam	\$1,572,000	\$2,096,000	\$3,269,000	\$4,641,500
Okanogan	\$1,405,500	\$1,874,000	\$2,523,500	\$3,551,000
Stevens	\$1,279,500	\$1,706,000	\$2,069,500	\$2,891,000
Walla Walla	\$1,026,000	\$1,368,000	\$1,751,000	\$2,455,500
Total of 25 Largest Counties	\$186,138,000	\$248,184,000	\$293,273,000	\$408,886,500

Source: FBI -UCR Uniform Crime Reports.

Prepared by the Marijuana Arrest Research Project, <http://marijuana-arrests.com>

Harry G. Levine, PhD, Jon B. Gettman, PhD, Loren Siegel, JD October 2012

Marijuana Possession Arrests

Have **Serious Consequences**

In Washington, the possession of 40 grams or less of marijuana is a criminal misdemeanor. Police departments have a great deal of discretion in how an arrest is executed, and practices differ from county to county, within counties, and even within law enforcement agencies. Some people are locked up over night. Others are held at the police station and then released with a citation ordering them to appear in criminal court on specific date. Yet others are released with the court appearance summons after being stopped and detained by the police.^{10 11}

In Washington, the crime of marijuana possession is punishable by 90 days in jail and a fine of \$1,000. Everyone convicted of a misdemeanor faces, at a minimum, punishment by “imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars.”¹² Judges cannot suspend or defer the minimum term of imprisonment unless they find that “it would pose a substantial risk to the defendant’s physical or mental well-being” or that the jail is overcrowded.¹³

Fines are not the only financial burden. Those who can afford to hire a private attorney discover the legal fees can be daunting. A 2008 study by two criminologists at the University of Washington found that the average cost of private counsel for marijuana possession cases in the Puget Sound area was \$4,250. The same study reported that other fees incurred in a misdemeanor marijuana possession case – including bail, fines and court costs – averaged \$1,675.¹⁴ Out-of-pocket costs for defending yourself for a single low-level marijuana charge can total more than \$5,000.

Those who cannot afford to hire a private attorney must rely on public defenders. Most marijuana possession cases are prosecuted in the municipal courts where low-income defendants are represented by private attorneys who have contracts with the cities to represent people. Misdemeanor contracting practices are uneven, with some jurisdictions doing a better job of legal representation than others. In the past, municipal court public defense contracts allowed an attorney to handle over 1,000 misdemeanor cases per year – in addition to their private caseloads. This is more than double the maximum allowable amount for a full-time public defender under standards established by the Washington State Bar Association.¹⁵ And the consequences are severe – many people end up pleading guilty and acquiring a permanent criminal record.

A single marijuana possession charge produces substantial additional consequences. The need for repeated court appearances and time-consuming penalties frequently jeopardizes a person’s job security. Beckett and Herbert cite the case of a

woman who lost her job as a housekeeper when the court sentenced her to home detention for 90 days for marijuana possession.¹⁶

A permanent criminal record can seriously limit employment and educational opportunities. Twenty years ago, misdemeanor arrest and conviction records were papers kept in court storerooms and warehouses, often impossible to locate. Ten years ago they were computerized. Now they are instantly searchable on the Internet for free or for a nominal fee through commercial criminal-record database services. Employers, landlords, credit agencies, banks, and licensing boards for nurses, beauticians and security guards now routinely search these databases for background checks on applicants. A majority of colleges now collect criminal justice information on applicants for admission, and they view a drug conviction, no matter how minor, as a negative factor.¹⁷ The stigma of a criminal record has created barriers to employment, housing, credit or education for hundreds of thousands of people in Washington.

SEARCH OVER 460 MILLION CRIMINAL OFFENSE RECORDS IN ABOUT 30 SECONDS

CRIMINAL CHECKS	ADVANCED CRIMINAL CHECKS	BACKGROUND CHECK	EVICTION CHECK	SEX OFFENDER	IDENTITY VERIFICATION
CRIMINAL CHECKS			SEARCH PRICE \$12.95		
STATE NATIONAL REGIONAL COUNTY			A State level Criminal Background Check is a comprehensive criminal check revealing felony, misdemeanor, sex offender, inmate, probation, OFAC (Terrorist Database), and other state and county criminal offense records. Our criminal background checks are FCRA compliant for employment and tenant screening		
First Name					
Last Name					
Date Of Birth 01 01 2011					
State Alabama					
SEARCH					

Medical Marijuana Patients

Medical marijuana patients are especially vulnerable to arrest since many of them carry marijuana in their vehicles or on their persons to address a chronic, debilitating medical condition. Efforts to reform the Medical Use of Marijuana Act so that it is more protective of patients' rights have so far been unsuccessful.¹⁸ The Act, passed in 1998 by 59 percent of the voters, does not protect patients from being arrested and charged. Police officers can and do arrest people for marijuana possession – even if the patient shows written authorization from a health care professional as required by the law. According to State Senator Jeanne Kohl-Welles, patients who comply with the law have been arrested, prosecuted and had their medical marijuana seized. The Senator explained that “Often, a patient or provider must endure the stress,

cost and embarrassment of a trial, and the patient must disclose private medical information before being acquitted by a jury.”¹⁹ In one such case in Mason County, a patient with multiple sclerosis was stopped, allegedly for driving over the speed limit, but he was not ticketed for that offense. Instead, the officer asked if he had any marijuana. When the patient said "yes" and displayed his medical authorization, the officer handcuffed him, took him to the police station, and held him for several hours. Concerned that the ordeal of the criminal trial would aggravate his MS, he pleaded guilty to the misdemeanor and acquired a permanent criminal record.²⁰



Renee Devan, left, takes down a phone number for Martin O. Nickerson, of Northern Cross medical marijuana collective, as he sits in the back of a Bellingham Police Department vehicle, under arrest, in the alley behind the store on Thursday, March 15, 2012, in Bellingham. (Andy Bronson / The Bellingham Herald)

<http://www.thenewtribune.com/2012/09/04/2274509/whatcom-officials-question-aclu.html#storylink=cpy>

Immigrants

Immigrants face severe penalties if they have ever been found guilty of marijuana possession, even in the distant past. The Obama Administration's "Deferred Action Policy," announced in June 2012, defers deportation for young immigrants who were brought here as children – except for those with even a single conviction for a “significant misdemeanor” including possession of a small amount of marijuana.²¹ An attorney with the Northwest Immigrants Rights Project in Seattle represented a young man who immigrated to Washington from St. Lucia as a child, and who became a permanent legal resident in 1990. After police searched a car driven by a friend of his, and found some marijuana, both he and the driver were arrested and charged with marijuana possession. His original lawyer advised that he plead guilty to “attempted possession of marijuana” and he received a 90-day suspended sentence and a fine. Several years later he travelled to Saint Lucia to visit his family; at the Atlanta airport on his way back home, he was immediately detained and placed in removal proceedings. Immigrants’ rights attorneys were eventually able to win his release, but his application to become a citizen of the United States, where he has lived for nearly all his life, is still being held up because of the guilty plea to "attempted possession." Such a conviction can lead to immediate (summary) deportation and exclusion from the country, even for immigrants who are legal residents.

Age, Race and Ethnicity

in Marijuana Possession Arrests

In Washington State, as throughout the United States, nearly 60% of people age 18-25 have tried marijuana, 32% used it in the last year, and nearly 20% used it in the last month. This is a higher rate than for any other age group.²²

In Washington, as elsewhere in America, most people arrested for marijuana possession are young. From 2001 through 2010, 79% of those arrested in Washington for marijuana possession were age 34 or younger, 71% were 29 or younger, and 58% were 24 or younger. Young people age 18-24 were most likely to get arrested for possessing marijuana. We estimate that from 2001 through 2010, Washington State arrested approximately 90,000 young people age 29 or younger (70% of 129,000)

In Washington State in the last decade (2001-2010), Caucasian (or white) people, were 76.3% of the population and 73.3% of those who were arrested for marijuana possession. Most of the remaining possession arrests in Washington were of young African Americans, Native Americans, and Latinos.²³

African Americans (or blacks) made up 8% of the people arrested for marijuana possession in the last decade, but blacks were only 3.4% of the state's population. In Washington, blacks were arrested at 2.5 times their percentage of the population and at 2.9 times the rate of whites.

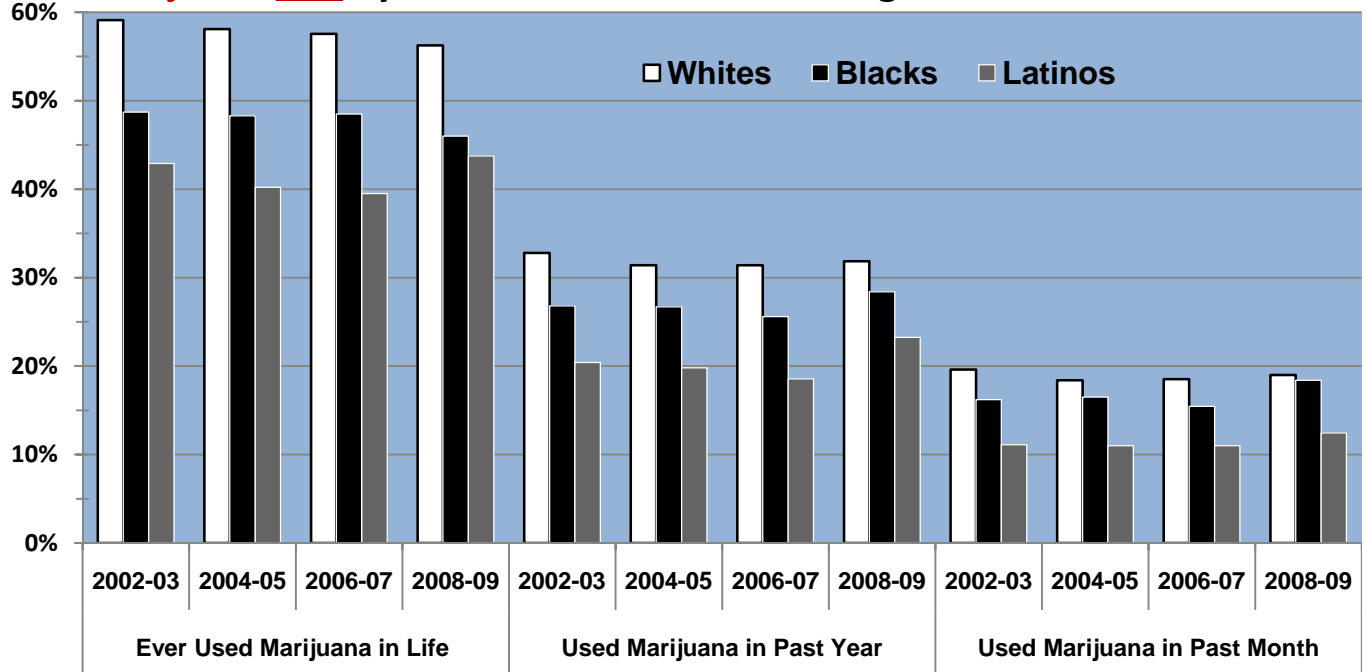
Native Americans made up 2.2% of the people arrested for marijuana possession, but Native Americans were only 1.4% of Washington's population. Police in the state arrested Native Americans at 1.6 times their percentage of the population and 1.6 times the rate of whites.

Hispanics (or Latinos) made up 14.5% of the people arrested for marijuana possession, but Latinos were only 9.3% of Washington's population. In the last decade, Latinos were arrested at 1.6 times their percentage of the population and 1.6 times the rate of whites.

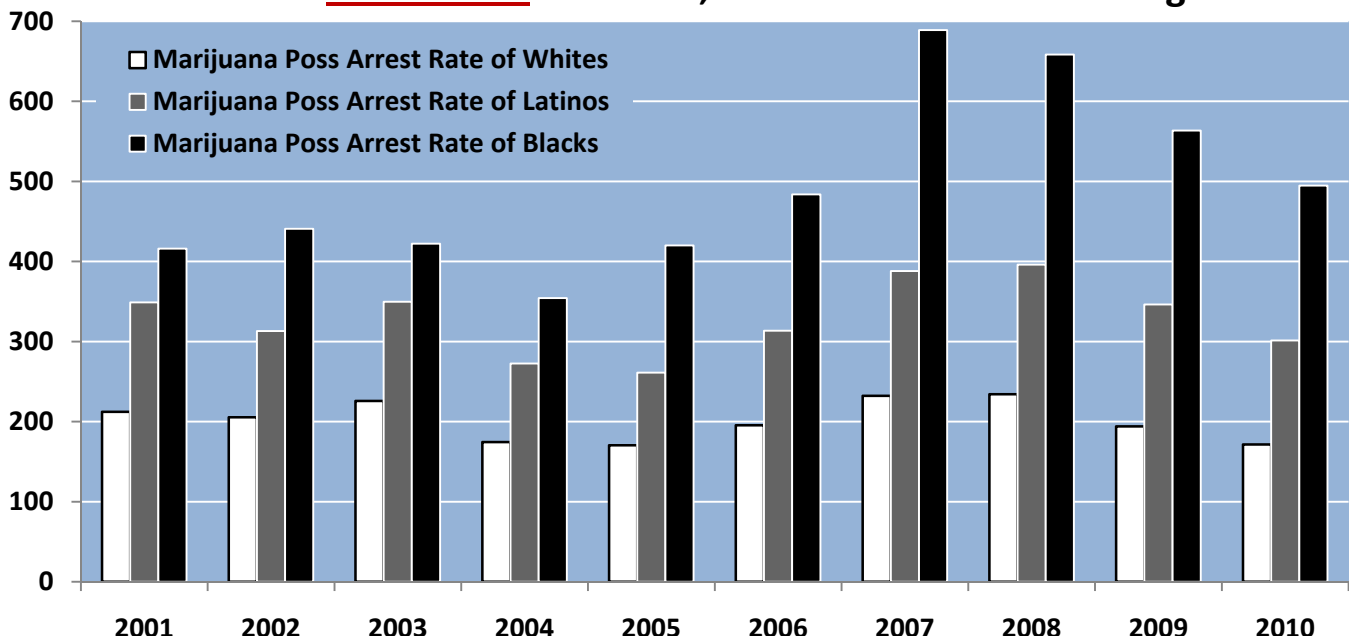
From 2001-2010, blacks, Latinos and Native Americans together made up 14% of the state's population, but they were 25% of the people arrested for marijuana possession.

Why have the mostly young blacks, Latinos, and Native Americans been arrested at higher rates than whites? It is *not* because they use marijuana more. Although young Native Americans use marijuana at slightly higher rates than young whites, as the graph on the next page shows, young blacks and Latinos do not.

Marijuana Use by Whites, Blacks & Latinos, Ages 18 to 25, 2002-2009



MJ Possession Arrest Rates of Whites, Latinos & Blacks in Washington State



Use Data Source: US Dept HHS, SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002-2010.

2003-2005: Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups Annual Averages Based on 2002-2003 and 2004-2005.

<http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B>.

2006-2010: Table 1.26B – Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25

2006-2007: <http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>

2008-2009: <http://www.oas.samhsa.gov/NSDUH/2k9NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>

2009-2010: <http://www.samhsa.gov/data/nsduh/2k10NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>

Arrest Data Source: Based on FBI-UCR data adjusted with proxy measure for Latinos and non-Hispanic whites, 2001-2010

Many years of U.S. health surveys have consistently found that young whites use marijuana at *higher* rates than do young blacks or Hispanics. The previous page has two graphs. The top one shows marijuana use of young whites, blacks and Latinos from 2002 through 2009. In every category – ever used marijuana, used it in the last year, or used it in the last month – the studies found that young whites used marijuana at higher rates than young blacks or than young Hispanics.²⁴

The second graph shows the rate of marijuana possession arrests per 100,000 of each group in Washington's population. As throughout the U.S., blacks and Latinos in Washington were arrested at higher *per capita* rates than whites even though young whites use marijuana at high rates than young blacks and Latinos. Why does this happen?

Although there is racial and ethnic prejudice everywhere, we do not think that that most racial disparities in marijuana possession arrests can be explained by explicit or overt personal prejudice on the part of individual police officers.

Police departments in cities and large towns tend to deploy patrol police to certain neighborhoods or geographic areas usually designated "high crime" or "crime prone." These are disproportionately low-income areas, some with concentrations of Latinos and blacks. It is in these places where the police are assigned to make more patrols, and where they stop and search more vehicles and individuals looking for "contraband" of any type in order to make an arrest. Often patrol officers have to meet formal or informal monthly quotas of stops, arrests, and tickets. The item that people in any neighborhood are most likely to possess which can get them arrested is a small amount of marijuana. The marijuana possession arrests are skewed by class, ethnicity and race in part because patrol police tend to "fish" for arrests in neighborhoods with more low-income whites, blacks and Latinos.²⁵

Cities in Washington have not been immune from charges of racially-biased policing. In December 2011 the U.S. Justice Department released the findings of its investigation into the Seattle Police Department which was initiated at the request of the ACLU of Washington and thirty-four civic and advocacy organizations. In a public letter to Seattle Mayor Michael McGinn, the Justice Department wrote: "our investigation raises serious concerns on this [discriminatory policing] issue. Some Seattle Police Department policies and practices, particularly those related to pedestrian encounters, could result in unlawful policing."²⁶

Many marijuana possession arrests take place in the context of traffic stops on the state's major highways. Independent research studies conducted since 2001 show that, unlike many other states, Washington State Patrol troopers pull over white and minority motorists at similar rates and that "there is no discernible bias with regard to traffic stops."²⁷

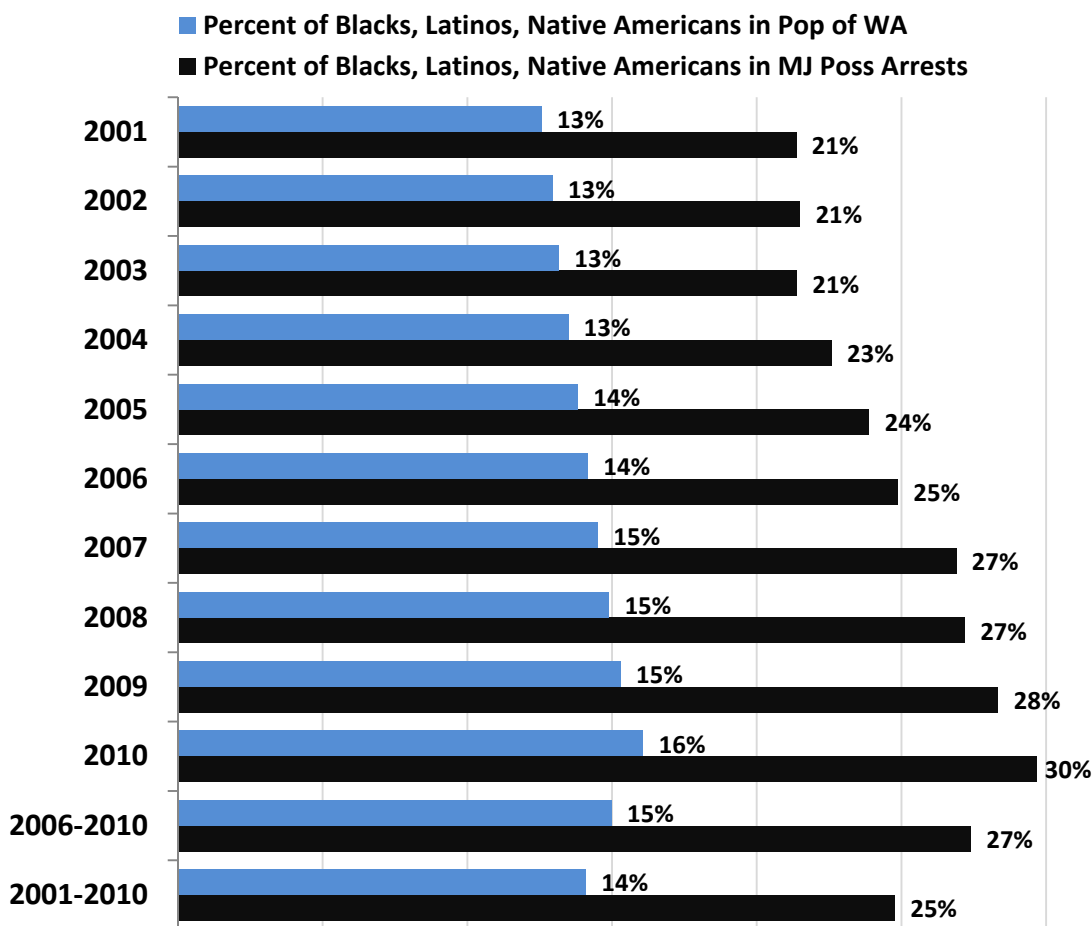
However, there are significant differences when it comes to whose vehicles are subjected to a *search*. Studies have looked at two types of searches conducted by the

Washington State Patrol: “low discretion” searches, such as the required searches incident to an arrest or a warrant, and “high discretion” searches where the search is left to the patrolman’s discretion. In the second type of search racial and ethnic biases based on stereotypes can and do emerge.

Studies of the Washington State Patrol show that, in comparison to an eighteen-year-old white male driver, the eighteen-year-old Native-American male driver is four times more likely to be searched; the eighteen-year-old black male driver is 1.5 more likely to be searched; and the eighteen-year-old Latino male driver is 1.75 times more likely to be searched. The researchers refer to this as “unconscious or implicit bias.”²⁸

The higher rate of “high discretion” searches of minority motorists is one of the factors contributing to disparities in marijuana possession arrests.²⁹

Percentage of Blacks, Latinos, and Native Americans in Washington's Population, and Percentage of Blacks, Latinos, and Native Americans in Washington's Marijuana Possession Arrests, 2001-2010



Source: FBI Uniform Crime Reports

About This Report

"240,000 Marijuana Arrests: Costs, Consequences and Racial Disparities of Possession Arrests in Washington, 1986-2010" was prepared by the Marijuana Arrest Research Project, New York, NY.

The Marijuana Arrest Research Project is directed by Harry G. Levine and Loren Siegel. We often collaborate with Jon B. Gettman and other researchers. We study race, police policy, and the growing number of arrests for marijuana possession and other petty offenses.

Our publications rely on public data and on the first-hand knowledge of current and former police officers, public defenders, judges, assistant district attorneys, and others who work daily in the criminal justice system. We have authored three reports on marijuana possession arrests in California, and numerous reports and testimony about arrests in New York City and State. Our reports have been published in conjunction with the Drug Policy Alliance, the New York Civil Liberties Union, and the NAACP. We have consulted for the NAACP and the ACLU about racial bias in marijuana possession arrests nationally.

Our research and writings have been cited in editorials and news stories in The New York Times, the Los Angeles Times, National Public Radio, WNYC, Associated Press, New York Magazine, New York Daily News, the Economist, Reason Magazine, and many other print and online publications. Our reports and other work can be found at <http://marijuana-arrests.com>. We can be reached at marijuana.arrests@gmail.com.

Harry G. Levine is a professor of sociology at Queens College and the Graduate Center, City University of New York. He has won awards for his research and writing on the history and sociology of drug issues. He was born in Galena, Washington.

Loren Siegel is an attorney and an independent consultant specializing in media and communications for non-profits. She was for many years the director of public education for the American Civil Liberties Union.

Jon B. Gettman is a professor in the Criminal Justice Program at Shenandoah University, in Winchester, Virginia. He has authored numerous reports about marijuana arrests and policy.

The Marijuana Arrest Research Project is a project of Community Studies of New York, Inc., a non-profit research and educational organization founded in 1993. Among its activities is running the Infoshare Community Data Service (www.infoshare.org), which collects and makes available on a publicly accessible database a full range of New York data on population, immigration, employment, housing, health status, crime, child care, public schools, land use, business pattern, and other matters. Community Studies of New York, 155 West 72nd Street, Suite 402, New York, NY 10023

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NOTES

¹ According to U.S. Census and Uniform Crime Reporting (UCR) data, from 1986 to 2010 the population of Washington grew 50% while the marijuana possession arrests grew 178%.

² For example, in 2007 California arrested people for marijuana possession at a rate of 203 arrests and Washington at a rate of 255 arrests per hundred thousand residents. "Marijuana Arrest Rates Based on User Populations, by state, (2007)" at: http://www.drugscience.org/States/US/rate_rank.htm
In 2006 California's marijuana possession arrest rate was 145 arrests and Washington's was 201 arrests. "United States Marijuana Arrests by State, (2006)" at: http://www.drugscience.org/States/US/US_la.htm
In 2006, California arrested young men aged 20-24 at 857 arrests and Washington at 1,362 arrests per hundred thousand. " Marijuana Possession Arrest Rates, By State, Age 15 to 24 by Sex (2006)"
At: http://www.drugscience.org/States/US/US_lg.htm [Note: punctuation is omitted at the end of web addresses to reduce errors when copying to a browser.]

³ In their 2007 study of the effect of marijuana possession arrests on reducing crime in New York City, Harcourt and Ludwig, two University of Chicago researchers, found that the NYPD's marijuana arrests do not reduce crime and may even increase it by taking officers off the street. They write:

"[New York City's] experiment with misdemeanor MPV [marijuana possession] arrests —along with all the associated detentions, convictions, and additional incarcerations — represents a tremendously expensive policing intervention.... Our study further shows that there is no good evidence that it contributed to combating serious crime in the city. If anything, it has had the reverse effect. As a result, the NYPD policy of misdemeanor MPV [marijuana possession] arrests represents an extremely poor trade-off of scarce law enforcement resources."

See: Bernard E. Harcourt and Jens Ludwig, "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://papers.ssrn.com/sol3/papers.cfm?abstract_id=948753

⁴ The arrest data presented in this report was obtained from the Uniform Crime Reporting (UCR) Program of the Federal Bureau of Investigation (FBI). This program annually collects data from state and local law enforcement agencies, though not every local police agency participates in the program. The UCR program maintains two distinct data sets. One makes available the raw data provided by local police agencies with details on the race, age and sex of people arrested for various categories of crime. For the state of Washington this provides demographic data for approximately 80% of all the arrests in the state. Demographic data on marijuana possession arrests in Washington are based on this UCR data set. Arrest rates have been calculated using this arrest data and US Census data for the respective groups.

The other UCR data set used for this report is commonly referred to as the county-level data set. It provides total arrest counts for every county in the states that participate in the program. The UCR program uses widely accepted statistical practices to produce estimates for those agencies which have not reported data. Data from this county-level data set has been used to present data on Washington arrests for marijuana possession throughout the last twenty-five years. These estimation procedures account for differences between data provided by the UCR county level data set and data reported by Washington State criminal justice agencies. The Washington State data and the UCR race, age, and sex data set, are for all practical purposes, identical. Both UCR data sets referred to here are publicly available through the Inter-University Consortium for Political and Social Research.

⁵ Mark A. Cohen, an economist and veteran criminal justice researcher at Vanderbilt University, whose work has been published by the U.S. National Institute of Justice, used data from several jurisdictions and calculated all police and court costs to be about \$2,000 for a rape arrest, about \$1,100 for a robbery arrest,

and about \$1,200 for an aggravated assault arrest – in 1987 dollars. Mark A. Cohen, *The Costs of Crime and Justice*. New York: Routledge, 2005, pp.84-5; and Mark A. Cohen, "Measuring the Costs and Benefits of Crime and Justice," pp. 263-316 in Volume 4: *Measurement and Analysis of Crime and Justice*, National Institute of Justice, July 2000, NCJ 182411. Available at:

http://www.ncjrs.org/criminal_justice2000/vol_4/04f.pdf p.297. Cohen, M., Miller, T., and Rossman, S. "The costs and consequences of violent behavior in the United States." In Roth, A. (Ed.), *Understanding And Preventing Violence* (Vol. 4, pp. 67-166). Washington, D.C.: National Academy Press. 1994. The police and court costs from earlier years can be calculated in terms of later years with a basic cost of living calculator - for example see: <http://www.aier.org/research/worksheets-and-tools/cost-of-living-calculator>

Other studies have produced similar figures. In evaluating mandatory sentencing costs in California for the Rand Corporation, Greenwood and his coauthors estimated \$624 in police costs and \$1,100 in total court costs per arrest – in 1993 dollars. Peter W. Greenwood *et al.* "Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory Sentencing Law," Rand Corporation, Santa Monica, CA. 1994. p.15; also: C. Peter Rydell and Susan S. Everingham, "Controlling Cocaine: Supply Versus Demand Programs," Rand Corporation, Santa Monica, CA. 1994. They calculated that the court costs per narcotics arrest was \$1166 in 1990.

A study by Massey about controlling illegal immigration found the cost of one arrest at the border to be \$1,700 in 2002. A recent detailed study of diversion programs in the San Antonio metropolitan area, by The Research Triangle Institute, reported the cost of an arrest from "the initial peace officer interaction through booking" to be \$2,860 in 2007 dollars. Douglas S. Massey, "Backfire at the Border: Why Enforcement without Legalization Cannot Stop Illegal Immigration," Cato Institute, Washington, D.C, June 2005, p.8. See also, "A Cost Analysis of the Bexar County, Texas, Jail Diversion Program Report 2: An Analysis of Cost-Shifting between the Treatment and Criminal Justice Systems" Prepared by Alexander J. Cowell *et al.* RTI International, Research Triangle Park, NC (p.3-7 page 36 of the pdf.) May 2008. At: <http://www.naco.org/programs/csd/documents/criminal%20justice/jail%20diversion%20forum%20materials/cost%20benefit%20study.pdf> For a recent review of studies of police and court costs see: Jonathan P. Caulkins, "Cost of Marijuana Prohibition on the California Criminal Justice System," Rand Corporation, Santa Monica, August 2010. At: http://www.rand.org/pubs/working_papers/2010/RAND_WR763.pdf . California issues summonses and does not routinely make custodial arrests for marijuana possession; this significantly reduces the police costs per "arrest."

⁶ Steve Aos, Polly Phipps, Robert Barnoski, Roxanne Lieb. *The Comparative Costs and Benefits of Programs to Reduce Crime*, (Version 4), Washington State Institute for Public Policy, Olympia, Washington, May 2001. 180 pages. See Table IV-D, Estimates of Marginal Resource Operating Costs, Per Unit, p. 85, at: <http://www.wsipp.wa.gov/rptfiles/costbenefit.pdf>

⁷ Rachel Stoermer, JD, MPA "Methodology for ACLU-WA Marijuana Law Enforcement Costs Data Visualization" This study has a good bibliography of relevant studies. At: http://www.aclu-wa.org/sites/default/files/attachments/Marijuana%20Law%20Enforcement%20Costs%20Data%20Visualization%20-%20Methodology%20Description%20-%20082412_0.pdf These findings were used to created an interactive map of marijuana possession arrests and costs in all of Washington's counties, here: <http://www.aclu-wa.org/blog/mjmap>

⁸ "Evidence-Based Public Policy Options To Reduce Future Prison Construction, Criminal Justice Costs, And Crime Rates" Washington State Institute for Public Policy, Olympia, WA. October 2001. At: <http://www.wsipp.wa.gov/rptfiles/06-10-1201.pdf>

⁹ In the tables and calculations in this report, we have used slightly lower figures (for the lower range) than cited in the ACLU study. Nonetheless, our cost totals are higher. This is because, as Stoermer explains, that study relied on marijuana arrest numbers from the Washington Association of Sheriffs and Police Chiefs (WASPC). As the author correctly notes, "WASPC relies on individual law enforcement

agencies to report the information used to generate their data. Although the majority of police agencies in Washington participate, a number of the agencies do not, or do not participate fully. In its 2010 report on Crime in Washington, WASPC identified 46 police agencies that either provided no data, or provided incomplete data. For this reason, the number of arrests reported is almost certainly less than the number that actually occurred." Our report, however, used the U.S. Department of Justice FBI-Uniform Crime Report data, which each year must produce arrest and other data for each state and their counties. It uses the same as used by the U.S. Census to fill in the gaps created when local agencies do not report their activities. See note 1 above.

¹⁰ This description of police practices is based on interviews with private and public defense attorneys throughout the state of Washington.

¹¹ Some police departments use particularly punitive practices. For example, the Spokane Police Department will sometimes notify a person's employer that he has been arrested for marijuana possession, often leading to termination. Police in Spokane and other cities have sometimes notified Child Protection Services of a marijuana possession arrest, leading to the removal of children from their parent's custody. If the marijuana was found in a vehicle, the police will often impound the car and it costs from \$200 and \$500 to get it back.

¹² Section 69.50.4014 of the Revised Code of Washington: "Possession of forty grams or less of marihuana — penalty. Except as provided in RCW 69.50.401(2)(c), [which defines possession with intent to manufacture or deliver marijuana as a Class C felony] any person found guilty of possession of forty grams or less of marihuana is guilty of a misdemeanor."
<http://apps.leg.wa.gov/rcw/default.aspx?cite=69.50.4014>

¹³ Section 69.50.425 of the Revised Code of Washington:
"Misdemeanor violations — minimum penalties. A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community restitution. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred." (Emphasis added)

¹⁴ Katherine Beckett and Steve Herbert, "The Consequences and Costs of Marijuana Prohibition" (2008), p. 33. http://www.aclu-wa.org/library_files/BeckettandHerbert.pdf The figures cited in this report are based on interviews with fifteen marijuana defendants whose criminal cases took place prior to 2008. The cost of defending a marijuana misdemeanor charge has undoubtedly increased since then.

¹⁵ *Wilbur v. City of Mount Vernon*, United States District Court, Western District of Washington.

¹⁶ Katherine Beckett and Steve Herbert, "The Consequences and Costs of Marijuana Prohibition" (2008), p. 34. http://www.aclu-wa.org/library_files/BeckettandHerbert.pdf

¹⁷ Center for Community Alternatives, "The Use of Criminal History Records in College Admissions Reconsidered," November 2010, at <http://www.communityalternatives.org/pdf/Reconsidered-criminal->

hist-recs-in-college-admissions.pdf This report was based on a 59-question survey filled out by admissions officers and registrars from colleges and universities throughout the country.

¹⁸ In 2011, SB 5073, a bill sponsored by Sen. Jeanne Kohl-Welles (D-Seattle), was passed by the state legislature. It would have protected patients from arrest, provided clarity to law enforcement, and established a tightly regulated system of production and distribution for medical cannabis. However, Gov. Chris Gregoire vetoed key sections of the bill, resulting in a lack of protection for patients and confusion for local governments. See Mark Cooke, "So What Does the Medical Marijuana Law Say Now? Let Us Explain...", August 15, 2011 at <http://www.aclu-wa.org/blog/so-what-does-medical-marijuana-law-say-now-let-us-explain>

¹⁹ Karen West, "Navigating Washington State's Medical Marijuana Maze," *Seattle Magazine*, February 2011 at <http://www.seattlemag.com/article/lost-weed>

²⁰ Interview with the Law Office of Charles W. Lane, Olympia, WA, July 16, 2012.

²¹ "Understanding the Criminal Bars to the Deferred Action Policy for DREAM Act-Eligible Individuals," Immigrant Legal Resource Center, June 2012 at <http://www.ilrc.org/resources/understanding-the-criminal-bars-to-the-deferred-action-policy>

²² Source: Substance Abuse and Mental Health Services Administration, *Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-41, HHS Publication No. (SMA) 11-4658. Rockville, MD: Substance Abuse and Mental Health Services Administration, 2011. <http://www.oas.samhsa.gov/NSDUH/2k10NSDUH/2k10Results.htm>

²³ All data is from the FBI-UCR data sets, described above in note 4. This data mixes Hispanics with whites and with blacks. This distorts arrest data for whites and blacks and produces no U.S. data at all on arrests of Hispanics. For many years this has limited the usefulness and accuracy of the FBI-UCR crime data which is the official and only national U.S. crime data. In a recent, path-breaking article in *Criminology*, the official publication of the American Society of Criminology and the leading journal in the field, Steffensmeier et al. (2011) have devised a statistical technique for more accurately estimating arrests of whites and of blacks, and for accurately estimating arrests of Hispanics. Their technique uses data from jurisdictions where the arrests of whites, blacks and Hispanics are reported and known. (They use data from California and New York). The method then uses this data to distinguish the three groups in another jurisdictions where FBI-UCR data and state data only show arrests of whites that include white Hispanics, and arrests of blacks that include black Hispanics. In this report, this method has been applied to marijuana possession arrests in Washington based on marijuana possession arrest data from California for the years 2001 through 2010. Steffensmeier et al. briefly summarize their method as follows:

Our adjustment method for removing the "Hispanic effect" from White and Black UCR arrest figures follows a straightforward procedure that is elaborated subsequently and includes the following four steps: 1) mimic UCR national estimates in the CA-NY data by adding Hispanic arrests into White and Black arrest categories to create *confounded White and Black CA-NY arrest figures*, 2) downward-adjust these *confounded White and Black CA-NY arrest figures* (to account for the relatively larger Hispanic population in CA-NY than in the nation as a whole), 3) use *clean* and *confounded White and Black CA-NY arrest figures* to create *correction factors* for UCR data, and 4) apply these *correction factors* to UCR arrest figures to estimate *clean* national counts of White and Black arrests that do not include Hispanics.

See: Steffensmeier, D; Feldmeyer, B; Harris, C; Ulmer, J. (Feb, 2011) "Reassessing Trends in Black Violent Crime, 1980-2008: Sorting Out the 'Hispanic Effect' in Uniform Crime Reports Arrests, National Crime Victimization Survey Offender Estimates, and US Prisoner Counts." *Criminology*; 49; 1; pg 197-pg 251.

²⁴ The web addresses of the sources for the data in the graph "Marijuana Use by Whites, Blacks & Latinos, Ages 18 to 25, 2002-2009" are on page 12 at the bottom of the page. We reproduce them here to make it easy for people to find them. All data comes from: US Dept HHS, SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002-2010. The following lists the data sources by years. 2003-2005 from: "Table 1.80B Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Racial/Ethnic Subgroups Annual Averages" Based on 2002-2003 and 2004-2005. <http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B> 2006-2010 from: "Table 1.26B – Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25" 2006-2007: <http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B> 2008-2009: <http://www.oas.samhsa.gov/NSDUH/2k9NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B> 2009-2010: <http://www.samhsa.gov/data/nsduh/2k10NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26> These major U.S. studies consistently find that young whites use marijuana at higher rates than young blacks and Latinos. However, some studies find that older whites use marijuana at lower rates than blacks. For our purposes, it is the younger people who are most important because a) young people use marijuana at significantly higher rates than older people; and b) police arrest young people at far, far higher rates.

²⁵ The logic of police patrol and arrest processes, including arrest quotas and their important role in policing for marijuana possession and other misdemeanors is described in: Harry G. Levine and Deborah P. Small, *Marijuana Arrest Crusade: Racial Bias and Police Policy in New York City, 1997-2007*. NYCLU, New York, 2009. At: http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf Patrol and narcotics police, and their immediate supervisors, often face enormous pressure to meet arrest and ticket quotas – sometimes termed "performance guidelines." Making marijuana arrests are a relatively safe and easy way for police to meet their quotas.

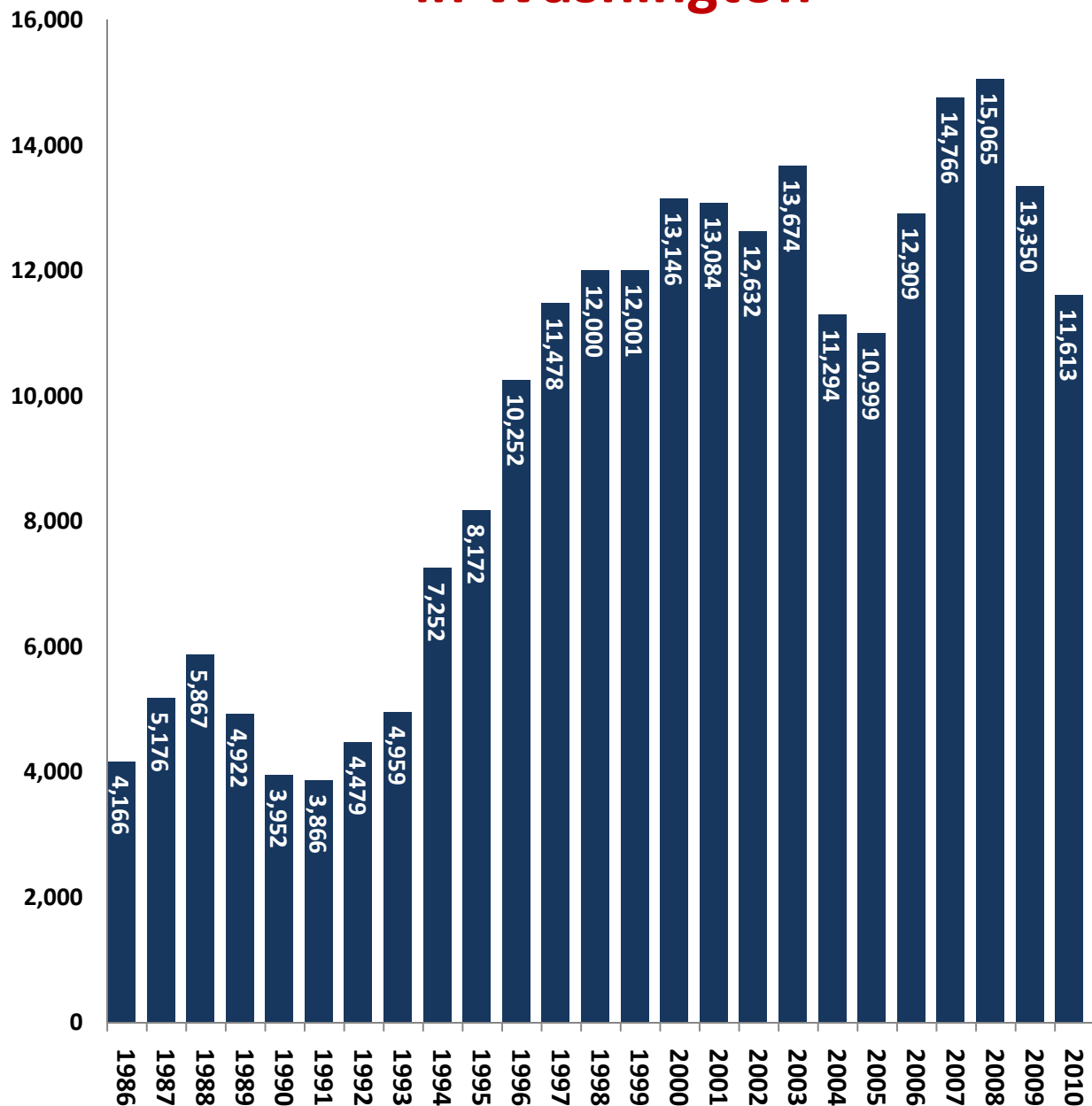
²⁶ "Investigation of the Seattle Police Department," United States Department of Justice, Civil Rights Division, United States Attorney's Office, Western District of Washington, December 16, 2011, at http://www.justice.gov/crt/about/spl/documents/spd_findletter_12-16-11.pdf

²⁷ Mario L. Barnes & Robert S. Chang, "Analyzing Stops, Citations, and Searches in Washington and Beyond," Vol. 35, *Seattle University Law Review*, p. 677 (2012). See also, Clayton Mosher & Mitchell Pickerill, "Methodological Issues in Biased Policing Research with Applications to the Washington State Patrol," *Seattle University Law Review*," Vol. 35:769 (2012).

²⁸ Nicholas P. Lovrich et al., Div. of Gov't Studies & Servs. Wash. State Univ., Report to the Washington State Patrol 1 (2007), cited in Barnes & Chang, *supra* note 27. See also, Warren Cornwall and Cheryl Phillips, "The racial-profiling question: How is the State Patrol doing?," *Seattle Times*, January 5, 2003. The article is based on a study of 1.7 million traffic stops over 27 months which showed that minorities are searched 2 ½ times as often as whites by the WSP.

²⁹ For providing much information in many phone calls and emails and other help, many thanks to: Mark Cooke, ACLU of Washington; Travis Stearns Esq. Washington Defenders Assn; Douglas Hiatt, Esq.; Charles Lane, Esq.; Frank Cikutovich, Esq.; Patrick Stiley, Esq.; Ann Benson, Esq., Washington Defenders Assn; Matt Adams, Esq., Northwest Immigrants Rights Project, Professor Craig Reinerman; Professor Katherine Beckett; Tony Newman; Stephen Gutwillig.

25 Years of Marijuana Possession Arrests in Washington



Source: FBI Uniform Crime Reports .

Prepared by the Marijuana Arrest Research Project, <http://marijuana-arrests.com>

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