



Arresting Blacks for Marijuana in California

Possession Arrests in 25 Cities, 2006-08

Prepared by the Marijuana Arrest Research Project for the Drug Policy Alliance and the California NAACP.

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About:

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The Drug Policy Alliance (DPA) is the nation's leading organization promoting policy alternatives to the drug war that are grounded in science, compassion, health and human rights.

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California State Conference of the NAACP: The National Association for the Advancement of Colored People (NAACP) is the nation's largest and strongest civil rights organization. The NAACP's principal objective is to ensure the political, educational, social and economic equality of minority citizens of the United States and eliminate race prejudice. The NAACP seeks to remove all barriers of racial discrimination through democratic processes.

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Credits:

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Report Highlights: Arresting Blacks for Marijuana

- In the last twenty years, California made 850,000 arrests for possession of small amounts of marijuana, and half a million arrests in the last ten years. The people arrested were disproportionately African Americans and Latinos, overwhelmingly young people, especially young men. (pp. 5-6, 22)
- Yet, U.S. government surveys consistently find that young whites use marijuana at higher rates than young blacks. (p. 6)
- From 2006 through 2008, police in 25 of California's major cities arrested blacks at four, five, six, seven and even twelve times the rate of whites. (pp. 7-10, 12)
- The City of Los Angeles, with ten percent of California's population, arrested blacks for marijuana possession at seven times the rate of whites.
- San Diego, the second largest city in California, arrested blacks for marijuana possession at nearly six times the rate of whites. (pp. 7, 10-12)
- In Pasadena, blacks are 11% of the population but 49% of the people arrested for marijuana possession. Pasadena arrested blacks at twelve and a half times the rate of whites. (pp. 7, 10-12)
- In Sacramento, the state capitol, blacks are 14% of the city's population but more than 51% of all the people arrested for possessing marijuana. (pp. 9-12)
- These racially-biased marijuana arrests were a system-wide phenomenon, occurring in every county and nearly every police department in California. They were not mainly the result of individual prejudice or racism. In making these arrests, patrol officers were doing what they were assigned to do. (pp. 7-14, 20-21)
- The "scarlet letter" stigma of drug offense records can create barriers to employment and education for anyone, including whites and middle class people. (p.13-14)
- Changing the crime of marijuana possession from a misdemeanor to an infraction does not change the double standard of enforcement. Police will almost certainly continue to give out a great many summonses, disproportionately to young blacks and Latinos. (pp. 17-18)

Marijuana Law Reform Is a **Civil Rights** Issue

by Alice Huffman, President, California NAACP

"Injustice anywhere is a threat to justice everywhere," said Rev. Dr. Martin Luther King, Jr. when he spoke out against the Vietnam War in April 1967.

He was severely criticized for addressing an issue considered outside the purview of a civil rights leader.

By speaking out, Dr. King helped speed the day when a majority of Americans also understood the waste and injustice of the war in Vietnam.

Following Dr King in the struggle for civil rights and social justice, we speak out against another war, the so called "war on drugs" – which is a war on people of color.

For decades, law enforcement strategies have targeted low-income people of color who bear the disproportionate burden and stigma of arrest, prosecution, and permanent criminal records for marijuana possession and other minor drug offenses.

This report – released by California NAACP and the Drug Policy Alliance – confirms that marijuana law enforcement in California disproportionately targets young African Americans. .

Despite consistent data showing that black youth use marijuana at lower rates than whites, in 25 major cities in California blacks have been arrested for marijuana possession at up to twelve times the rate of whites.

As is well known, many prominent and successful individuals – including business leaders, public officials, and our current President – have admitted using marijuana.

But they were not targeted by the police, were not frisked and searched, did not get arrested, and have not faced the stigma of criminal records that affects so many young people today.

This double standard of justice must not be allowed to continue.

It long past time to end the failed war on drugs. Let us invest in people, not jails and prisons. .

Arresting Blacks for Marijuana in California

From 1990 through 2009, police departments in California made 850,000 arrests for possessing small amounts of marijuana, and half a million marijuana possession arrests in the last ten years.¹

Since 1990, arrests for nearly every serious crime have declined in California. Yet arrests for possession of marijuana, usually for very small amounts, have tripled.

In 2009 alone, police departments in California made 61,000 marijuana possession arrests. The people arrested were disproportionately African Americans and Latinos, and overwhelmingly young people, especially young men.²

The substantial disparities in marijuana possession arrest rates of whites and blacks *cannot* be explained by their patterns of marijuana use. As the marijuana use graphs on the next page show, U.S. government studies consistently find that young blacks use marijuana at *lower* rates than young whites.

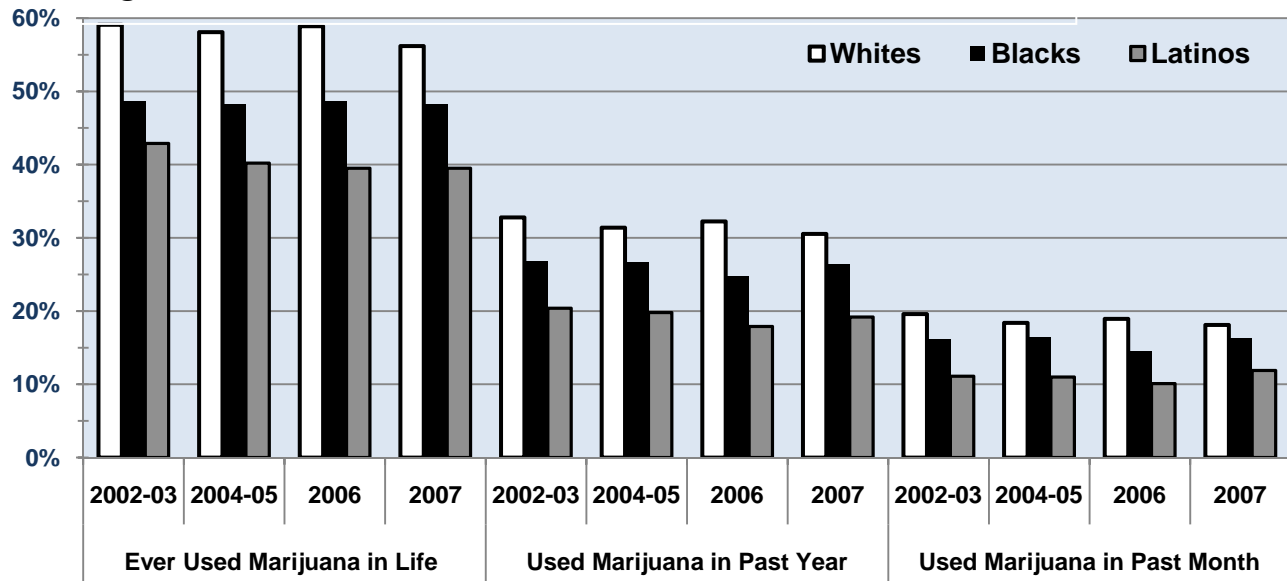
In June 2010, we released "Targeting Blacks for Marijuana: Possession Arrests of African Americans in California, 2004-08." It showed that in California's 25 largest counties, blacks were arrested for marijuana possession at up to quadruple the rate of whites.³

This new report shows the even greater racial disparities in the marijuana possession arrest rates of whites and blacks in 25 California cities. Police in these 25 major cities have arrested blacks for marijuana possession at four, five, six, seven, and up to twelve times the rate of whites.

The cities discussed here have 10 million residents, about a quarter of California's total population. They have a combined African American population of nearly a million, almost half of all blacks in California.⁴

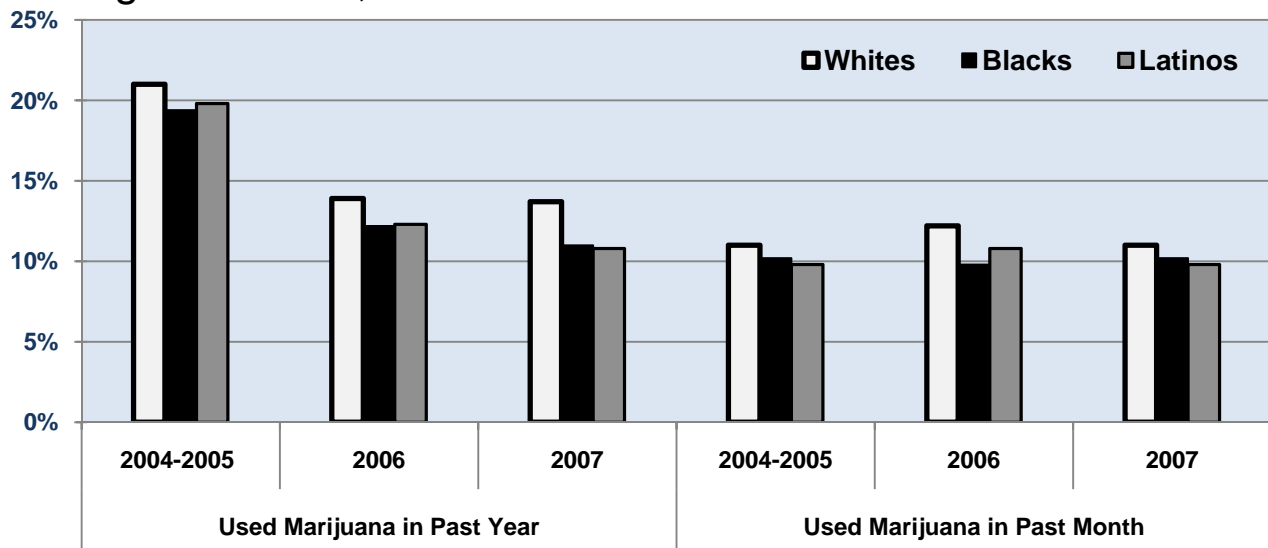
The arrest numbers for these 25 cities were obtained from the Justice Statistics Center of the California Department of Justice. The arrest and census data is averaged for three years, 2006 through 2008, to show that these racially-skewed or biased arrests were not a one-year fluke, but a consistent pattern extending over several years.⁵

Marijuana Use by Whites, Blacks and Latinos Ages 18 to 25, 2002-2007



Source: US Dept HHS, SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002-2007
 2003-2005: 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.
<http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.80B>.
 2006-2007: Table 1.26B – Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, 2006 and 2007
<http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.26B>

Marijuana Use by Whites, Blacks and Latinos Ages 12 to 17, 2004-2007



Source: US Dept HHS, SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002-2007
 2003-2005: Table 1.74B Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 to 17, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005.
<http://www.oas.samhsa.gov/NSDUH/2k5NSDUH/tabs/Sect1peTabs67to132.htm#Tab1.74B>
 2006-2007: Table 1.25B – Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 12 to 17, 2006 and 2007
<http://www.oas.samhsa.gov/NSDUH/2k7NSDUH/tabs/Sect1peTabs1to46.htm#Tab1.25B>

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Arrests of Blacks for Marijuana Possession in 25 California Cities, 2006-08

Los Angeles County: Los Angeles County has nearly ten million residents and over a quarter of California's population. Blacks make up 10% of the county's population, but they constituted 30% of the marijuana possession arrests. Within specific cities, the disparities are even greater.

- The *City of Los Angeles*, with 3.8 million residents, arrested blacks at seven times the rate of whites. Blacks make up 9.6% of *Los Angeles'* population but they were almost 35% of the people arrested for marijuana possession.
- *Pasadena* arrested blacks for marijuana possession at 12.5 times the rate of whites. Blacks are 11.4% of the city's population but 49.2% of those arrested for marijuana.
- *Long Beach*, the sixth largest city in California, arrested blacks for marijuana possession at 5.9 times the rate of whites. Blacks are 13.2% of the city's population but 42.4% of marijuana arrests.
- In *Inglewood*, blacks are 43.8% of the population but 76.7% of those arrested for marijuana possession. Blacks were arrested at 6.3 times the rate of whites.
- In *Burbank*, blacks are less than 3% of the population, but over 9% of the people arrested for marijuana possession. *Burbank* arrested blacks at 3.5 times the rate of whites.
- The *City of Torrance*, with a population of 140,000, had the highest racial disparity of the 25 cities. Blacks are only 2% of the population but they made up almost 24% of the people arrested for marijuana possession. *Torrance* arrested blacks at over thirteen times the rate for whites.

San Diego County: African Americans are 5.6% of the county's three million residents, but 20% of the people arrested for marijuana. The possession arrest rate for blacks was three and a half times higher than the arrest rate for whites. The three cities we studied show even great disparities:

- In *San Diego*, the second largest city in California, blacks were arrested at nearly six times the rate of whites. African Americans are only 6.5% of *San Diego's* population but they made up 29.5% of those arrested for marijuana possession.

- In *Oceanside*, blacks are only 4.6% of the population but 17.6% of those arrested for marijuana possession. Police arrested 184 whites per 100,000 whites for marijuana possession, compared to 774 blacks per 100,000 blacks.
- In *El Cajon*, blacks are 6.2% of the population but more than 20% of those arrested for possessing marijuana. The city arrested 326 whites per 100,000 whites compared to 1153 blacks per 100,000 blacks for marijuana possession.

Riverside County: Blacks are 6.6% of this large southern California county, but blacks make up 17% of the people arrested for marijuana possession.

- Blacks are 6.3% of *Riverside*, the 12th largest city in California, but are 24% of the those arrested for marijuana possession. *Riverside* arrested blacks at almost five times the rate for whites.
- Blacks are 16.7% of the population of *Moreno Valley*, the 23rd largest city in the state. But blacks made up 39.1% of the city's marijuana arrests. The marijuana arrest rate for blacks was almost three and a half times more than the rate for whites.

San Bernardino County: African Americans are 9.5% of San Bernardino County's 1,977,000 residents, but they made up 23% of the people arrested for possessing marijuana.

- The *City of San Bernardino* arrested blacks for marijuana possession at almost seven times the rate of whites. Blacks are 15.5% of the city's population but 49.6% of marijuana arrestees.

Kern County: In Kern County, just north of Los Angeles, blacks were 19% of the marijuana arrests but only 6.4% of the population.

- *Bakersfield* is the eleventh largest city in California. Blacks are 8.2% of Bakersfield's population but 34.1% of the people arrested for marijuana possession. Police in *Bakersfield*, arrested blacks at more than six times the rate of whites.

Fresno County: Fresno is north of Bakersfield in central California. African Americans are 5.8% of the county population but they made up 18% of marijuana arrests. Blacks were arrested for marijuana possession at over three times the rate for whites.

- The *City of Fresno*, the fifth largest city in California, arrested blacks at five times the rate of whites. Blacks make up 7.7% of *Fresno*'s population, but they are 24.6% of those arrested for possessing marijuana.

Santa Clara County: Santa Clara, in the southern Bay Area, is only 2.8% black. But blacks were 11% of the people arrested for possessing marijuana.

- *San Jose*, the third largest city in California, is only 2.9% African American. But San Jose arrested blacks for marijuana possession at more than five times the rate of whites. *San Jose* arrested 619 blacks per 100,000 blacks compared to 121 whites per 100,000 whites.

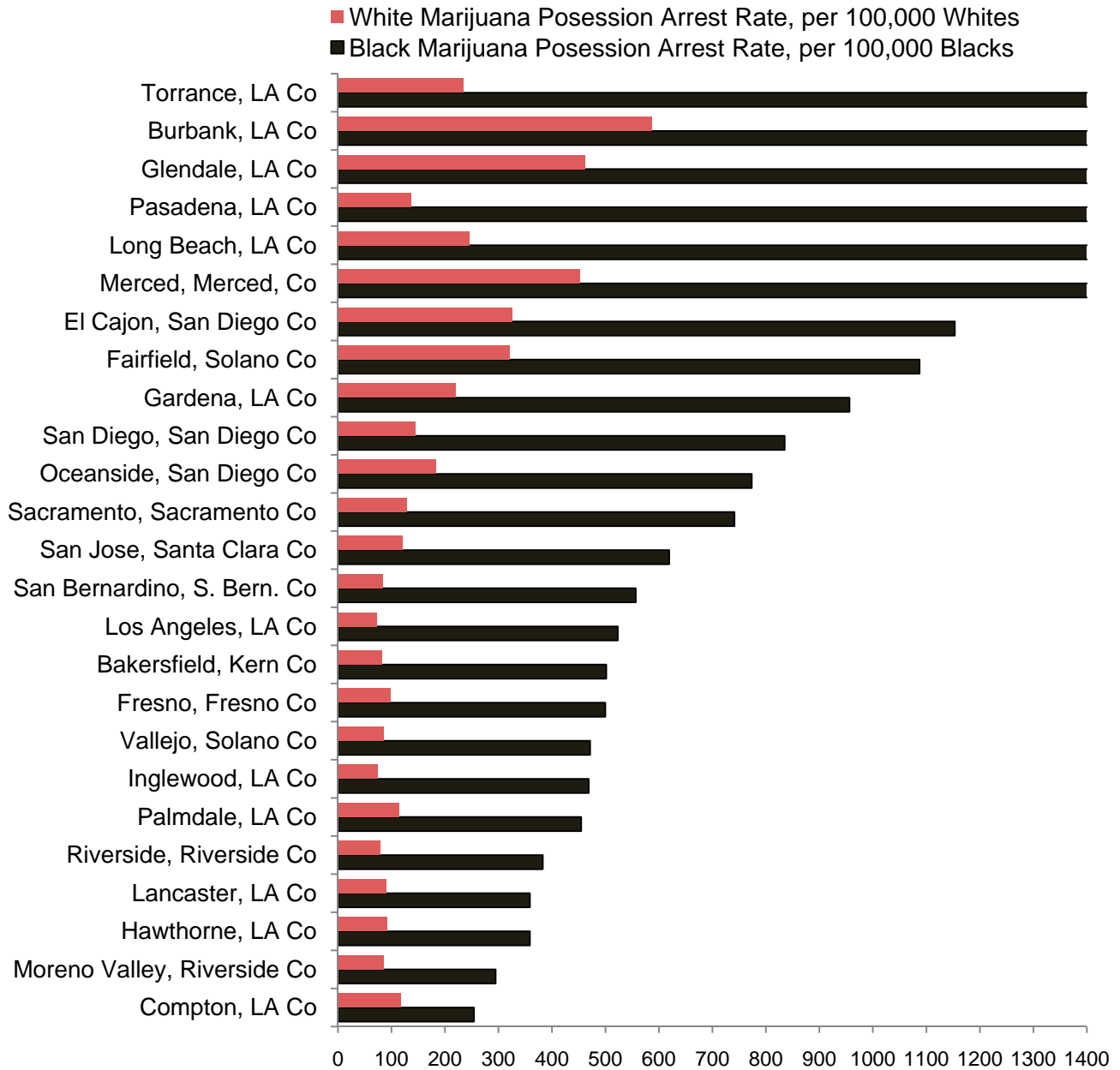
Solano County: Solano County, about half way between San Francisco and Sacramento, is 15.3% black. But 39% of the people arrested for marijuana possession are blacks.

- *Fairfield*, the Solano county seat, arrests blacks at three and a half times the rate of whites. *Fairfield's* population is only 16.4% black, but 42.4% of those arrested for marijuana are black.
- *Vallejo's* population is 21.4% black, but 63.4% of those arrested for marijuana possession are black. *Vallejo* arrests blacks at five and a half times the rate of whites.

Sacramento County: African Americans make up 10.4% of the county's population but 38% of those arrested for marijuana. Blacks are arrested at 4.1 times the arrest rate for whites.

- *Sacramento* is the seventh largest city in the California. Blacks are 13.7% of Sacramento's population but more than half of all the city's marijuana possession arrests. *Sacramento*, the state capitol, arrests blacks at 5.7 times the rate of whites.

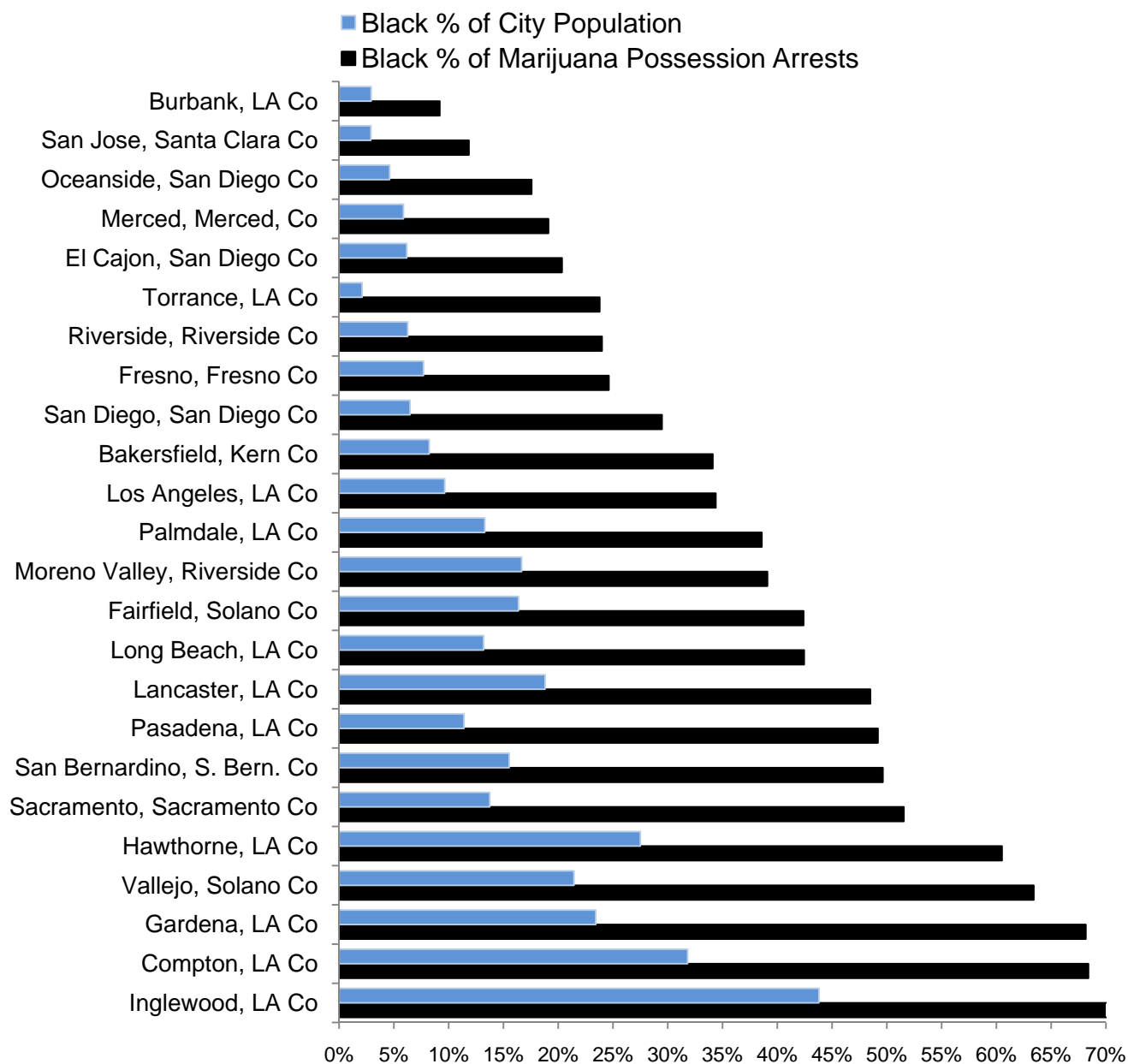
White And Black Rates of Marijuana Possession Arrests in 25 Major California Cities, 2006-08



Source: California Department of Justice, Criminal Justice Statistics Center, and American Community Survey, US Census Bureau, 2006-08

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Black % of City Population and Black % of Marijuana Possession Arrests in 25 Major California Cities, 2006-08



Source: California Department of Justice, Criminal Justice Statistics Center, and American Community Survey, US Census Bureau, 2006-08

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Marijuana Possession Arrest Rates in 25 Major California Cities, 2006-08

City, County	White Rate of MJ Poss Arrests, per 100,000 Whites	Black Rate of MJ Poss Arrests, per 100,000 Blacks	Number of Times Black Rate is Higher Than White Rate	City Pop	Black % of City Pop	Black % of MJ Poss Arrests	Number of Times Black % of MJ Arrests is Higher Than Black % of Pop
Bakersfield, Kern Co	82	502	6.1	318,436	8.2%	34.1%	4.1
Burbank, LA Co	586	2077	3.5	104,191	2.9%	9.2%	3.1
Compton, LA Co	118	254	2.2	97,300	31.8%	68.4%	2.2
El Cajon, San Diego Co	326	1153	3.5	94,176	6.2%	20.3%	3.3
Fairfield, Solano Co	322	1087	3.4	105,579	16.4%	42.4%	2.6
Fresno, Fresno Co	98	500	5.1	472,179	7.7%	24.6%	3.2
Gardena, LA Co	220	956	4.4	58,620	23.4%	68.2%	2.9
Glendale, LA Co	462	1843	4.0	195,505	1.7%	5.4%	3.2
Hawthorne, LA Co	93	359	3.9	87,498	27.5%	60.5%	2.2
Inglewood, LA Co	74	469	6.3	115,904	43.8%	76.7%	1.8
Lancaster, LA Co	90	359	4.0	152,184	18.8%	48.5%	2.6
Long Beach, LA Co	246	1461	5.9	462,556	13.2%	42.4%	3.2
Los Angeles, LA Co	73	523	7.1	3,749,058	9.6%	34.4%	3.6
Merced, Merced, Co	453	1448	3.2	74,135	5.9%	19.1%	3.3
Moreno Valley, Riverside Co	86	295	3.4	187,412	16.7%	39.1%	2.3
Oceanside, San Diego Co	184	774	4.2	165,231	4.6%	17.6%	3.8
Palmdale, LA Co	115	455	4.0	144,451	13.3%	38.6%	2.9
Pasadena, LA Co	137	1721	12.5	137,885	11.4%	49.2%	4.3
Riverside, Riverside Co	80	383	4.8	301,560	6.3%	24.0%	3.8
Sacramento, Sacramento Co	129	741	5.7	446,530	13.7%	51.5%	3.7
San Bernardino, S. Bern. Co	84	557	6.7	207,832	15.5%	49.6%	3.2
San Diego, San Diego Co	145	835	5.7	1,251,184	6.5%	29.5%	4.6
San Jose, Santa Clara Co	121	619	5.1	905,180	2.9%	11.8%	4.1
Torrance, LA Co	234	3227	13.8	140,625	2.1%	23.8%	11.4
Vallejo, Solano Co	86	471	5.5	113,811	21.4%	63.4%	3.0

Source: California Department of Justice, Criminal Justice Statistics Center, and American Community Survey, US Census Bureau, 2006-08

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Biased Marijuana Arrests as a System-Wide Phenomenon

Young blacks use marijuana at *lower* rates than young whites. So why have police in California been arresting young blacks at higher rates than young whites, and in much greater numbers than their percentages of the population? Based on our studies of policing in New York and other cities, we do not think the arrests are mostly a result of personal bias or racism on the part of individual patrol officers and their immediate supervisors. Rather, this is a system-wide phenomenon, occurring in cities and counties throughout California.

Police departments deploy most patrol and narcotics police to certain neighborhoods, usually designated "high crime." These are disproportionately low-income, and disproportionately African American and Latino. It is in these neighborhoods where the police make most patrols, and where they stop and search the most vehicles and individuals, looking for "contraband" of any type in order to make an arrest. The item that people in *any* neighborhood are most likely to possess, which can get them arrested, is a small amount of marijuana. In short, the arrests are ethnically- and racially-biased mainly because the police are systematically "fishing" for arrests in only some neighborhoods, and methodically searching only some "fish." ⁶ This produces what has been termed "racism without racists." ⁷

Marijuana Possession Arrests Have Serious Consequences

In California, most people arrested for marijuana possession have been charged with violating section 11357 of the California Health and Safety Code, because they possessed less than an ounce of marijuana, typically much less. This is legally a crime and produces a criminal record or "rap sheet."^A

Most people found by the police possessing small amounts of marijuana were given a court summons requiring them to appear before a judge at a specified date and time. For those who failed to appear, the court issued an arrest warrant. When they were next stopped by the police for any reason, including a routine traffic stop, their names

^A As this report was going to press in October 2010, California reduced the legal status of a marijuana possession arrest from a misdemeanor to an infraction, which is also a crime. This change will go into effect in 2011 and we have addressed some of what this means in a brief Postscript following the Notes. This section discusses the consequences of the misdemeanor arrests as they have existed in California for the last twenty years, as the possession arrests, especially of blacks and Latinos, have continually increased.

were searched in the criminal databases. When the "failure to appear" warrant showed up, they were handcuffed, arrested and jailed.

When people with a summons appeared in court at the required date and time, they went before a judge. If they plead guilty – which happened in the vast majority of cases – they were ordered to pay a fine up to \$100, plus court costs as high as \$360.⁸ People unable to pay may have been given time to raise the money, but if they could not pay they were usually arrested, handcuffed, and jailed.

In the low-income and heavily black and Latino district of Central Los Angeles, for example, people given a court appearance summons were ordered to appear at the Central Arraignment Court on Bauchet Street. The defendants often did not realize that they had been charged with a crime because the summons looks like a traffic ticket. They appeared before a judge who told them they had been charged with a misdemeanor, and that if they plead guilty they would be fined up to \$100. The judges routinely recommended defendants waive their right to a trial. The vast majority of defendants wanted to be released and put this experience behind them. They accepted the judge's recommendation and plead guilty.

Most people found the money to pay the fine and court costs and gave it little thought until they applied for a job, apartment, student loan or school and were turned down because a criminal background check revealed that they had been convicted of a "drug crime."

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 \$20 to \$40 through commercial criminal-record database services. Employers, landlords, credit agencies, licensing boards for nurses and beauticians, schools, and banks now routinely search these databases for background checks on applicants. The stigma of a criminal record has created huge barriers to employment and education for hundreds of thousands of people in California.⁹

At some arraignment courts, people are played a video tape that introduces the arraignment process and says they can have their conviction record "expunged." Those who return to court to do so learn they have to file their own expungement petition with a \$120 filing fee. Unless they speak to an attorney, most people are not told that, contrary to popular belief, an expungement does *not* erase a criminal record – it merely changes the finding of "guilty" to a "dismissal." The criminal record simply states that the case was dismissed *after conviction*. So, although people can legally say that they have not been convicted of a crime, they still have a "rap sheet," and a simple background check will show they were arrested and convicted.

A criminal record lasts a lifetime. The explosive growth of criminal record databases, and the ease with which those databases can be accessed on the Internet, creates barriers to employment, housing and education for anyone simply arrested for drug possession. As a result, an arrest in California has serious consequences for anyone, including white, middle class, and especially young people.

For young, low-income blacks and Latinos – who use marijuana less than young whites, and who already face numerous barriers and hurdles – a criminal record for the "drug crime" of marijuana possession can seriously harm their life chances. Some officials, such as U.S. Representatives Steve Cohen and Sheila Jackson Lee, have termed the stigmatizing effect of criminal records for marijuana possession a modern "scarlet letter."¹⁰ These marijuana possession arrests, which target young, low-income Californians, serve as a "head start" program for a lifetime of unemployment and poverty.¹¹

NOTES

¹ California's misdemeanor arrests for marijuana and other offences from 1991 to 2000 are available here: http://stats.doj.ca.gov/cjsc_stats/prof00/00/4A.htm
The marijuana and other misdemeanor arrests from 1999 to 2008 are available here: http://stats.doj.ca.gov/cjsc_stats/prof08/00/4A.htm
In 2009, California made 61,164 misdemeanor marijuana arrests. See page 19 of this report for a graph of California's marijuana possession arrests for the last twenty years.

² *Marijuana Arrests and California's Drug War: A Report to the California Legislature, 2010 Update* by Daniel Macallair and Mike Males, Center For Juvenile and Criminal Justice, San Francisco, CA. The original Oct. 2009 report is at: http://www.cjcj.org/files/Marijuana_Arrests_and_Californias_Drug_War.pdf

³ "Targeting Blacks for Marijuana: Possession Arrests in 25 California Counties." by Harry G. Levine, Jon B. Gettman, and Loren Siegel. Los Angeles: Drug Policy Alliance, June 29, 2010. (at: http://www.drugpolicy.org/docUploads/Targeting_Blacks_for_Marijuana_06_29_10.pdf). These are the 25 largest counties in California and home to about 90% of the state's population and almost all of the state's African Americans. "Targeting Blacks" used data from the FBI-Uniform Crime reports from 2004-2008. Two graphs from that report are included as an appendix to this report, on pages 20-21.

⁴ In this report we use the terms black and African American interchangeably. In California most people coded by the police as black are African American, but some are immigrants from the Caribbean, Africa and elsewhere.

⁵ The arrest rate is calculated by dividing the number of arrests of a group by the population of that group times 100,000. The cities discussed here were selected first for demographic and statistical reasons. We sought cities with recent census data and arrest data for three years. We also sought cities with enough blacks and enough marijuana possession arrests to minimize statistical aberrations. We sought cities with larger populations and cities from

different parts of California. A number of cities, especially in the San Francisco Bay Area, make very few marijuana arrests and therefore were not included in this study.

⁶ The logic of police patrol and arrest processes 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, 2009. At: http://www.nyclu.org/files/MARIJUANA-ARREST-CRUSADE_Final.pdf. Also see: Jim Dwyer. "Whites Smoke Pot, but Blacks Are Arrested." *NY Times*. Dec 23, 2009. At: http://www.nytimes.com/2009/12/23/nyregion/23about.html?_r=1

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, including by writing court summonses, are a relatively safe and easy way for police to meet their quotas. Arrests, quotas and their importance for patrol and narcotics police and their supervisors are discussed in *Marijuana Arrest Crusade*, cited above. For a detailed and chilling example of the pressure put on patrol officers to meet arrest and ticket quotas, see: Graham Rayman, "The NYPD Tapes: Inside Bed-Stuy's 81st Precinct," *The Village Voice*, May 4, 2010. At: <http://www.villagevoice.com/content/printVersion/1797847>

For an ethnographic and theoretical discussion of the criminalization of Latino and Black young men see: Victor Rios, *The Hyper-Criminalization of Black and Latino Male Youth in the Era of Mass Incarceration*, *Souls*, 8:2, 40 - 54, July 2006.

⁷ Representatives of police departments and prosecutors will sometimes tell the media that marijuana possession arrests reduce serious crime. We have found no study to support that claim, and some researchers have found the opposite. In their report, Macallair and Males (cited above) write: "Counties with high rates of marijuana possession arrests had about the same rates of crime clearance [making an arrest] as those with low marijuana arrest rates, indicating that arresting more people for marijuana neither detracts from nor enhances the ability of police agencies to solve more serious offenses. Nor do marijuana arrest rates seem connected to a county's overall crime rate.... Counties with very similar marijuana possession arrest rates (i.e., Santa Cruz and Merced, or San Bernardino and Marin) have very different rates of violent, property, and other offenses."

For a sophisticated study of the impact of marijuana possession arrests on serious crime in New York City, by two University of Chicago law professors, 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. The authors write: "We find no good evidence that the MPV [marijuana possession] 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."

⁸ In addition to a \$100 fine, misdemeanor marijuana possession offenders are subject to nine separate fees in the California Penal and Business Codes. These assessments include a \$30 flat fee "imposed on every conviction for a criminal offense" and multiple assessments from \$1 to \$10 for every \$10 of the base fine. If each of these assessments were imposed, \$360 in additional fees would accrue.

⁹ The discussion of the damaging effects of criminal records for marijuana possession is based on our ongoing research in New York, California, and elsewhere in the U.S. For an overview of the spread and dangers of the online criminal databases see: Hon. Cynthia Diane Stephens, "Keeping an Arrest from Resulting in a Life Sentence." *Michigan Bar Journal*, Nov 2008. <http://www.michbar.org/journal/pdf/pdf4article1433.pdf>.

A simple Google search for the phrase criminal database or criminal records will produce numerous links to firms, some claiming that their searches are better than the others. Some offer "50 state searches" for as low as \$12.95.

¹⁰ During a major hearing of the Judiciary Committee of the U.S. House of Representatives, Representative Steve Cohen from Memphis repeatedly termed the stigmatizing effects of criminal records for marijuana possession a type of "scarlet letter." See: "Unfairness In Federal Cocaine Sentencing: Is It Time To Crack The 100 To 1 Disparity?" *Hearing Before The Committee On The Judiciary House Of Representatives*. May 21, 2009. Pages 19-20. At: http://judiciary.house.gov/hearings/printers/111th/111-27_49783.PDF.

On the life-damaging effects of drug arrests also see: Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. New Press, 2009.

¹¹ For an excellent, detailed discussion of the many costs and collateral consequences of policing focused on misdemeanor arrests see: Babe Howell, "Broken Lives from Broken Windows: The Hidden Costs of Aggressive Misdemeanor Policing." *New York University Review of Law and Social Change*, Vol. 33, No. 3, 2008. At: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1307112

Postscript: It's Not Just A Ticket: Marijuana Possession as an "Infraction"

As this report was going to press, Governor Arnold Schwarzenegger signed Senate Bill 1449. Beginning in 2011, possession of 28.5 grams (an ounce) of marijuana will be an infraction rather than a misdemeanor. People found possessing a small amount of marijuana are to be given a summons and fined, but the offense will not automatically create a permanent criminal record easily found on the Internet. This is certainly a less punitive policy and a victory for criminal justice reform.

But this one important change leaves in place other unfair consequences of the marijuana possession offenses and of the policing strategy that produces them. And making marijuana possession an infraction creates other undesirable consequences. In what follows we briefly review some of what can be anticipated at this early stage.

In discussing the shift from misdemeanor to infraction, one perceptive observer quoted in the *Oakland Tribune* pointed out: "There's no reason to believe policing practices are going to change simply because the technical nature of the offense has." Indeed, as has happened in other U.S. cities, police may well feel free to give out more summonses for an infraction.

Both misdemeanors and infractions are results of routine policing practices which disproportionately focus on low-income black and Latino neighborhoods and their young people. Police departments have "productivity goals" (or quotas) for the summonses and arrests that patrol officers should make. Because the routine police stops are much more frequent in black and Latino neighborhoods, they unfairly produce more marijuana infractions and misdemeanors for young people in those neighborhoods. And this goes on despite the fact that U.S. government studies repeatedly find that young whites use marijuana at *higher* rates than young blacks and Latinos. None of this will change because of the new legislation.

If young people stopped by police are found to have a bit of marijuana in their pockets or possessions, and do not have sufficient identification papers, they can still be handcuffed and taken to the police station to check their fingerprints on a database. In the course of the police stop, the officers may add other charges including disorderly conduct or resisting arrest. In 2009 the *New York Times* reported that police in San Jose, California made many arrests in which the only charge was "resisting arrest." Latinos are 30% of San Jose's population, but Latinos were 60% of the people arrested when "resisting arrest" was the only charge. A reporter for the *San Jose Mercury News* told the *Times* that:

"Some people call these 'contempt of cop' or 'attitude arrests.' Contempt of cop arrests are not about committing an underlying crime but disrespecting or disobeying officers. A large segment of the city's Latino population feels particularly targeted." (See: *NY Times*, "In San Jose, Resisting Arrest Is Often the Only Reason for an Arrest" By Michelle Quinn, Nov 1, 2009. At: <http://bayarea.blogs.nytimes.com/2009/11/01/san-jose-police-and-resisting-arrest-cases/?emc=eta1>)

Again, the "contempt of cop" arrests often come about when the police are writing summonses for infractions, or just investigating the suspicion of an infraction. And that happens much more often in only certain neighborhoods.

Although infractions usually can be paid by mail, many young people, especially those from low-income families, do not have credit cards or checking accounts and will therefore go to the court to pay them. Many will not easily be able to make it to court by the required day because of demands of jobs, school, and family.

Under California law, failure to pay the fine for an infraction is itself a misdemeanor, a "fingerprintable" offense. When the person eventually appears before a judge or magistrate, the infraction charge may be dropped if the person pleads guilty to the "failure to pay" misdemeanor. This results in a criminal record and often a period of probation for an open criminal offense, with a new set of damaging collateral consequences.

Contrary to some media reports, making marijuana possession an infraction is not technically or legally "decriminalization." Under California law, an infraction is still a criminal offense, a crime. Although an infraction does not produce a police "rap" sheet, there are court records of infractions for marijuana possession that may still appear in some criminal justice databases. For immigration status, credit reports, occupational licensing, and other official purposes, the infraction can still show up as a "drug offense" with some of the same consequences as a misdemeanor.

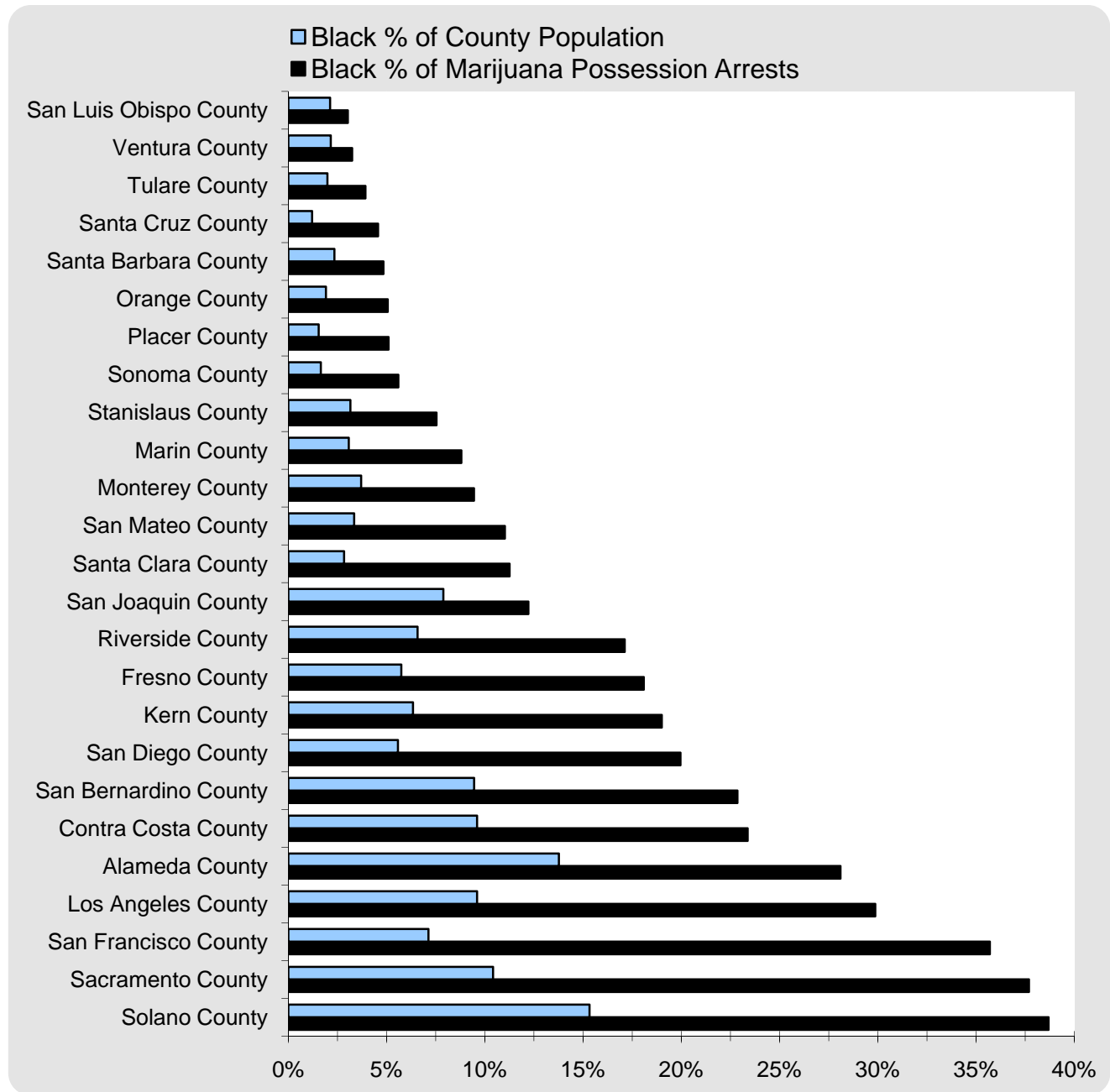
As this report has documented, all the above consequences that can follow from being stopped by the police and given a marijuana infraction are two to twelve times *less likely* to happen in California's white middle-class neighborhoods.

In his signing statement, the Governor indicated what he regards as the impact of the new law. "The only difference," between a misdemeanor and an infraction, he wrote, "is that because it is [currently] a misdemeanor, a criminal defendant is entitled to a jury trial and a defense attorney." From the Governor's perspective, changing the offense from a misdemeanor saves money by denying defendants in marijuana possession cases access to a public defender and the right to have a jury trial. Moving marijuana possession from a misdemeanor to an infraction reduces some punitive consequences, but it comes at the considerable cost of depriving people of fundamental rights.

Finally, there is one other effect of the change of marijuana possession from a misdemeanor to infraction with serious consequences for public debate and policy. When marijuana possession becomes an infraction, there will be no way for reporters or researchers to find out how many summonses for the infraction of marijuana possession are being given out. Misdemeanor arrest data is available from the California Department Justice, but not data on infractions. Without a change in law or policy, the basic information presented in this report will not be available. In 2012, one year after the infraction goes into effect, nobody will be able to prepare a report like this one showing in each California county and city how many blacks, Latinos, or young people were given summonses and fined under the new law. In effect, the policing of marijuana possession will become even more hidden and invisible.

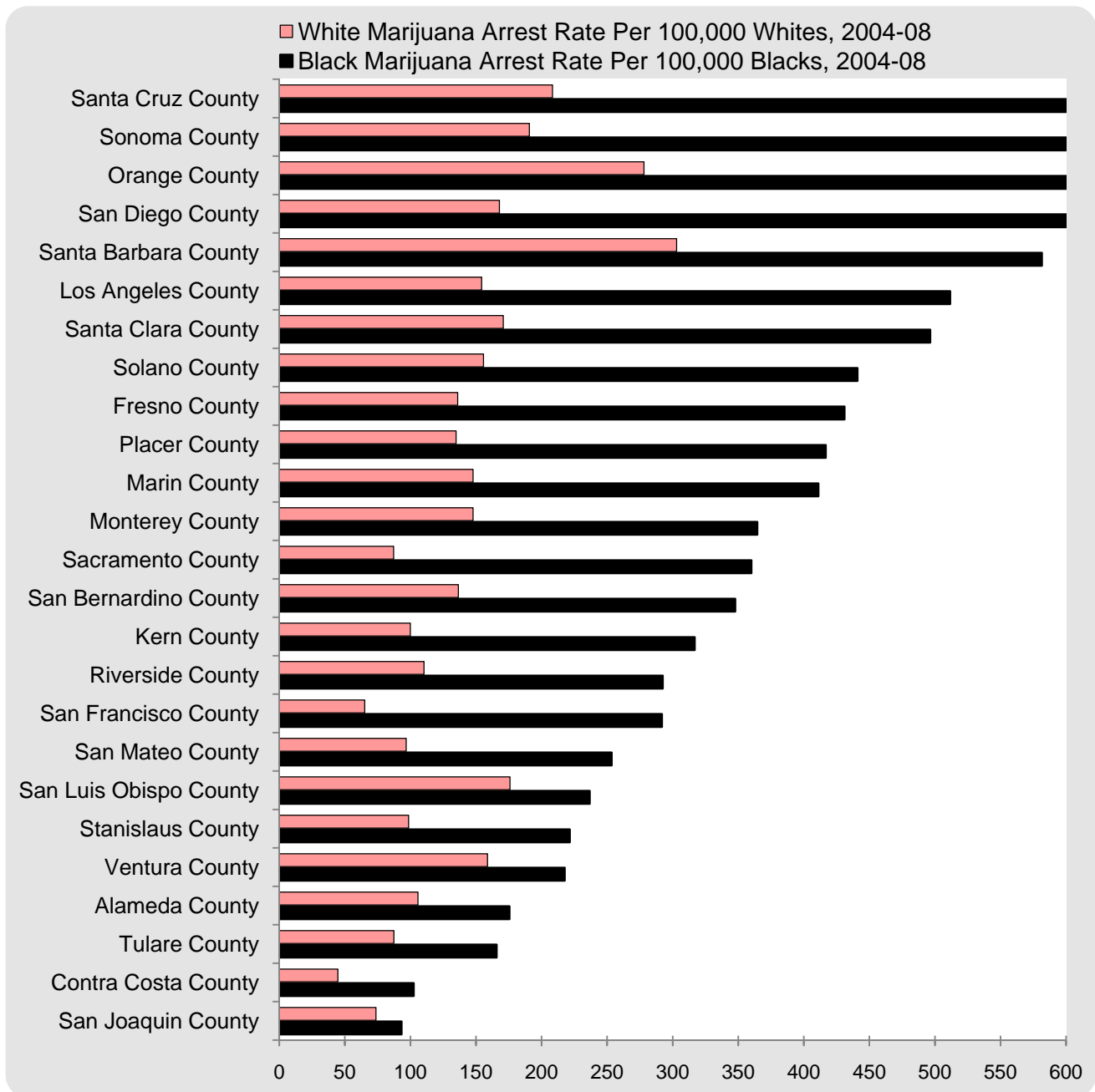
Appendix: County and State Data

The 25 Largest *Counties* in California, 2004-08 Black % of County Population and Black % of Marijuana Possession Arrests



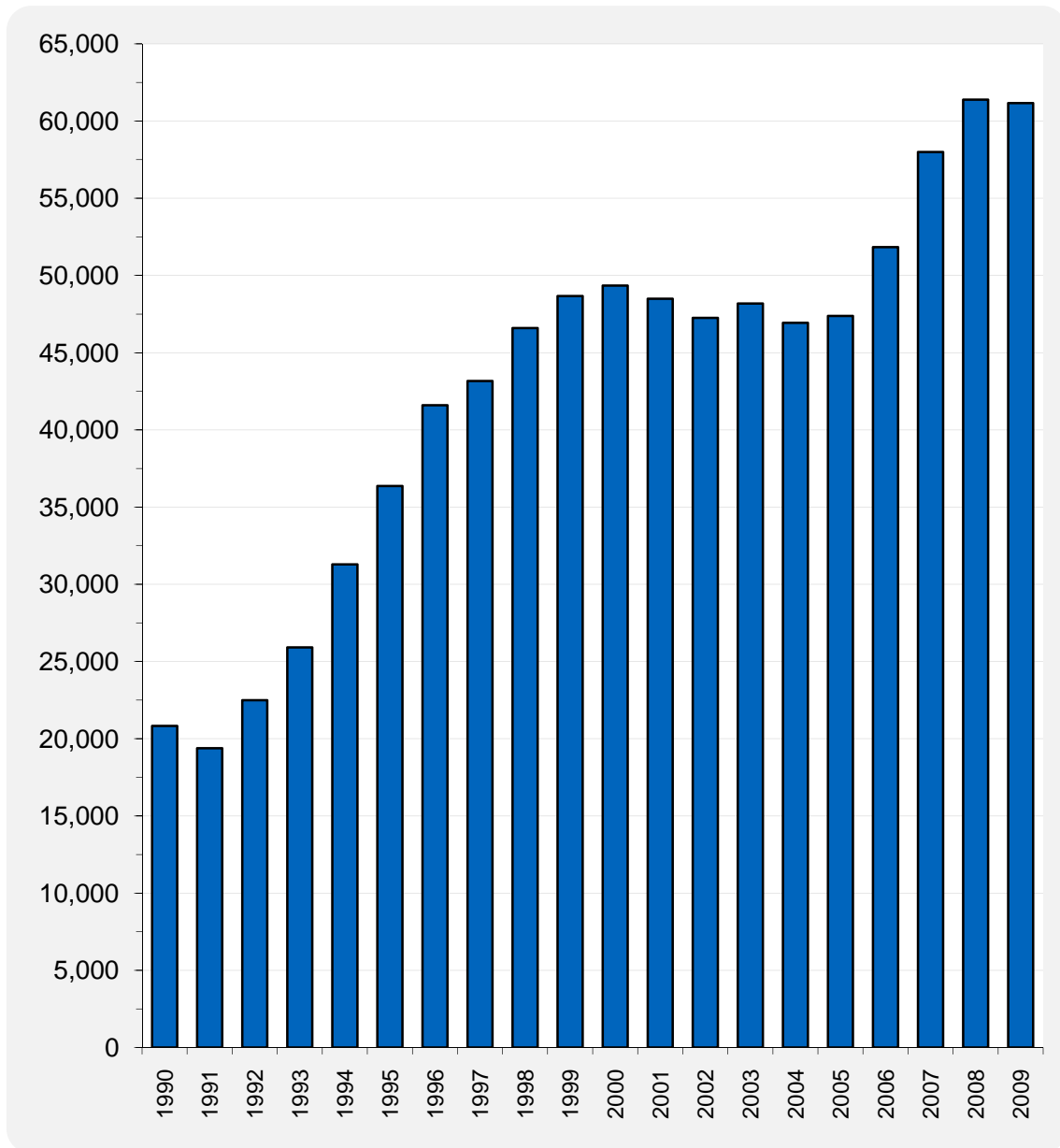
Source: FBI / Uniform Crime Report County Arrest Data and U.S. Census Data. 5 year average: 2004-2008
 Harry G. Levine, Sociology Department, Queens College, City University of New York,
 Jon B. Gettman, Criminal Justice Department, Shenandoah University, Winchester, VA
 Loren Siegel, LS Consulting, Brooklyn, NY. June 2010

The 25 Largest *Counties* in California, 2004-08 White and Black Marijuana Possession Arrest Rates



Source: FBI / Uniform Crime Report County Arrest Data and U.S. Census Data. 5 year average: 2004-2008
 Harry G. Levine, Sociology Department, Queens College, City University of New York,
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Twenty Years of Marijuana Possession Arrests in California, 1990-2009



Source: California Department of Justice, Criminal Justice Statistics Center. California's misdemeanor arrests for marijuana and other offences from 1991 to 2000 are available here: http://stats.doj.ca.gov/cjsc_stats/prof00/00/4A.htm
The marijuana and other misdemeanor arrests from 1999 to 2008 are available here: http://stats.doj.ca.gov/cjsc_stats/prof08/00/4A.htm
In 2009, California made 61,164 misdemeanor marijuana arrests.