



# Marijuana Enforcement Disparities In California: A Racial Injustice

May 2016

**Effective January 1, 2011, California reduced the penalty for possession of one ounce or less of marijuana from a misdemeanor to an infraction.<sup>1</sup> Subsequently, misdemeanor marijuana arrests plummeted by 86 percent.<sup>2</sup> Although the penalty does not include jail, the offense is still punishable by up to a \$100 fine *plus fees*, making the actual cost of an infraction much higher.<sup>3</sup> This can be a substantial burden for young and low-income people. According to original research presented here, enforcement of marijuana possession—and the economic burden it entails—falls disproportionately on black and Latino people. The disparity is particularly acute for black people and young men and boys.**

White people consume marijuana at similar rates to black people and more than Latinos in the U.S.;<sup>4</sup> yet black and Latino people are disproportionately targeted by law enforcement for low-level marijuana possession infractions.<sup>5</sup> In 2010, black people were 3.73 times more likely to be arrested for marijuana possession than white people nationwide.<sup>6</sup> (Data on Latinos were not available.) In California that year, 16.38 percent of people arrested for marijuana possession were black, 41.5 percent were Latino, and only 35.7 percent were white,<sup>7</sup> even though California’s population is only 6.6 percent black, 38.4 percent Latino, and 39 percent white.<sup>8</sup>

## Methodology

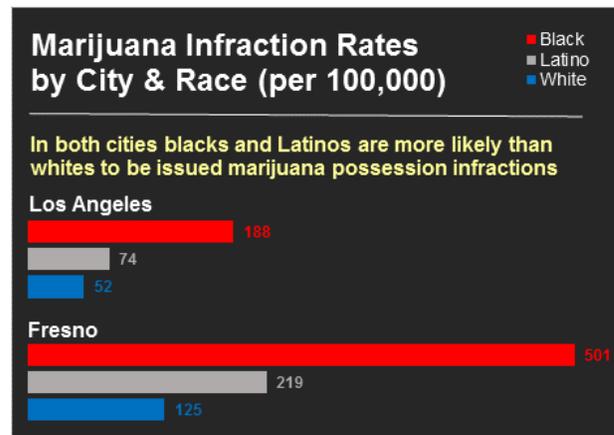
Demographic information about marijuana infractions in California is hard to obtain. Unlike misdemeanor arrests, infraction data are not collected at the state level, making it significantly more challenging to identify how marijuana enforcement is affecting Californians of different races/ethnicities, genders and ages.

The ACLU of California and the Drug Policy Alliance partnered to bring marijuana infraction data to light.<sup>9</sup> This analysis focuses on data provided by the Fresno and Los Angeles Police Departments. These cities differ greatly

from each other in demographics, economics and population density. As such, findings in these two cities may reflect broader trends across the state, particularly given that marijuana possession arrest disparities pre-dating the 2011 reclassification were experienced statewide. We limited the record review to the first two years following the reclassification of marijuana possession. Since there have been no subsequent changes to marijuana possession violations in California, these numbers—and the disparities they reveal—remain relevant today.

## Racial Disparities in Marijuana Enforcement Persist

Infraction data from both cities show that black people account for a wildly disproportionate number of marijuana possession infractions. In Los Angeles and Fresno black people were respectively cited for marijuana possession infractions 4.0 and 3.6 times more often than white people. The disparity is worse than the rates at which black people were arrested for possession of marijuana prior to 2011, when possession was a misdemeanor offense. In 2010, black Californians were 2.2 times more likely than white Californians to be arrested for marijuana possession.

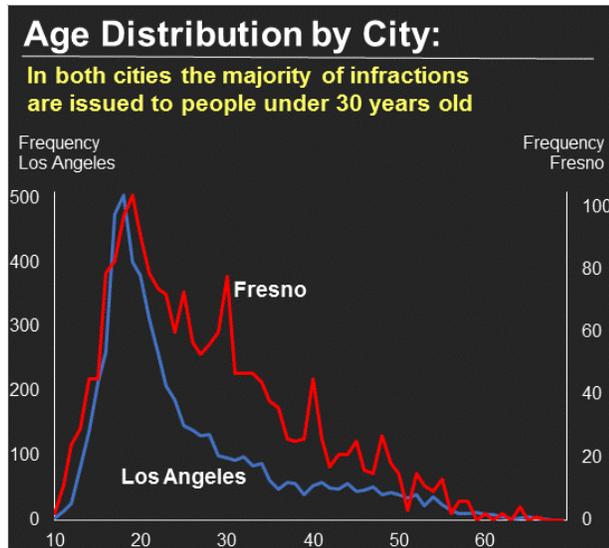


Latinos (“Hispanic” in the data provided) were cited for marijuana possession infractions 1.4 times more often in Los Angeles and 1.7 times more often in Fresno than

white people. It is likely that these disparities are actually greater. California has a long history of data collection challenges regarding Latinos, who are often classified by law enforcement officers as white and thus undercounted.<sup>10</sup>

### Citations Disproportionately Affect Young People

The age distribution of those receiving marijuana infractions in both cities skews toward younger people, particularly in Los Angeles.



The mean age for those receiving marijuana infractions is 26.58 years old in Los Angeles and 28.82 years old in Fresno. In both cities, the majority of marijuana possession infractions were issued to individuals 29 years of age and younger (59 percent in Fresno and 72 percent in Los Angeles). In Los Angeles 40 percent of all

marijuana possession infractions were issued to individuals between 16 and 21 years old; 26 percent of the infractions in Fresno were issued to this age group.

### Implications and Conclusions

Infraction data are hard to come by in California. The demographic profile of people issued marijuana possession infractions in Fresno and Los Angeles, however, demonstrates that enforcement continues to fall disproportionately on black and Latino people, particularly young men and boys. In Los Angeles and Fresno 90% and 86% of marijuana possession infractions respectively were issued to men or boys.

These findings demonstrate that reducing penalties for possession of small amounts of marijuana does not go far enough. There are still substantial costs associated with an infraction, such as legal fees, court costs, and lost time at school or at work—and the burden of these costs most heavily impact young black men and boys. While reducing marijuana possession to an infraction has dramatically decreased the number of marijuana arrests in the state, it has not sufficiently reduced the disparate manner in which marijuana laws are enforced.

In November 2016, Californians will have the chance to address these disparities by voting for the Adult Use of Marijuana Act (AUMA). The AUMA will not only regulate marijuana in the state, it will also remove marijuana possession penalties prospectively and retroactively for adults age 21 and older. For youth, it will replace criminal penalties with drug education, counseling, and/or treatment in an effort to reduce the harms associated with criminal justice involvement at an early age.

<sup>1</sup> Cal. Health & Safety Code § 11357(b). While infractions remain criminal offenses in California, they are not subject to the same collateral consequences – such as preclusion from some public benefit programs – as misdemeanors, because they do not appear on one's criminal record. The \$100 fine without the possibility of a jail sanction for possession of up to an ounce of marijuana did not change when the offense was reduced from a misdemeanor to an infraction.

<sup>2</sup> See Bureau of Criminal Statistics, California Department of Justice, "Crime in California 2010," (2011), Table 35 (reporting 54,849 marijuana misdemeanor arrests in 2010); and Bureau of Criminal Statistics, California Department of Justice, "Crime in California 2011," (2012), Table 35 (reporting 7,764 marijuana misdemeanor arrests in 2011, down 85.8 percent from 2010.)

<sup>3</sup> *Not Just a Ferguson Problem: How Traffic Courts Drive Inequality in California*, Lawyers Committee For Civil Rights, April 2015.

<sup>4</sup> Substance Abuse and Mental Health Services Administration, "Results from the 2014 National Survey on Drug Use and Health," (2015), Tables 1.24A and 1.24B.

<sup>5</sup> See e.g., Justice Policy Institute, "Rethinking the Blues: How We Police in the U.S. And at What Cost," (2012); Jamie Fellner, "Race, Drugs, and Law Enforcement in the United States," *Stanford Law & Policy Review* 20 (2009); National Research

Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences* (2014), 97; and Katherine Beckett et al., "Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle," *Social Problems* 52, no. 3 (2005); see also Ojmarrh Mitchell and Michael S Caudy, "Examining Racial Disparities in Drug Arrests," *Justice Quarterly* (2013), DOI: 10.1080/07418825.2012.761721.

<sup>6</sup> American Civil Liberties Union, "The War on Marijuana in Black and White," (2013).

<sup>7</sup> Bureau of Criminal Statistics, California Department of Justice, "Crime in California 2010," (2011), Table 34.

<sup>8</sup> See U.S. Census Bureau, "California Quick Facts"; and Hans Johnson, "California's Population," (California Institute of Public Policy: 2014).

<sup>9</sup> A major drawback of California's policy change is that it is now more difficult to track who is receiving marijuana citations. These data are not collected and made readily available in the same manner as criminal arrests. No state agency or organization is documenting the number of infractions issued, whom they affect, and whether they are indirectly leading to criminal sanctions for failure to pay fines.

<sup>10</sup> See e.g., Jeffrey S. Passel & Paul Taylor, *Who's Hispanic*, Pew Research Center (2009).