

It's Not Legal Yet: Nearly 500,000 Californians Arrested for Marijuana in Last Decade

August 2016

Short of legalization, California has some of the most permissive marijuana possession laws in the United States, yet law enforcement continues to arrest, prosecute, and incarcerate thousands of people annually for marijuana offenses. Between 2006 and 2015, there were nearly half a million marijuana arrests in California.¹ During this period, there were on average 14,000 marijuana felony arrests in the state each year.² California voters will have the chance to greatly reduce marijuana arrests this November when they vote on Proposition 64, the Adult Use of Marijuana Act.

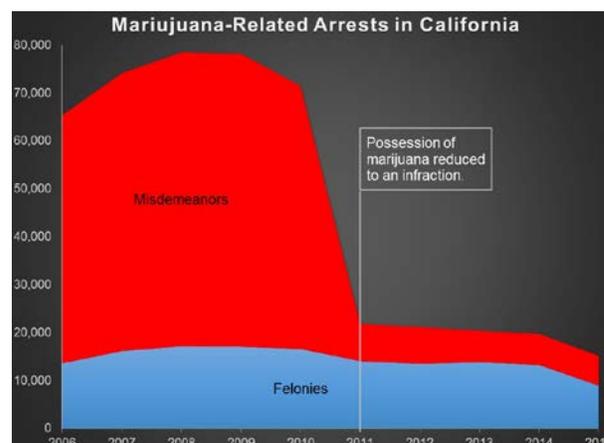
Many Californians believe that marijuana has been essentially legal in the state since 1996, when voters passed the Compassionate Use Act (Prop. 215) and California became the first in the nation to legalize medical marijuana for qualified patients.³ Since that time, the state has established an estimated \$1.3 billion medical marijuana market under which individuals may grow, sell, and purchase marijuana for medical use.⁴ California's marijuana laws were further relaxed in 2011 when lawmakers reduced possession of up to an ounce of marijuana for personal use from a misdemeanor to a non-arrestable infraction, similar to a traffic ticket.⁵ This penalty reduction dramatically decreased the number of misdemeanor marijuana arrests in California.

Arrests Continue Despite Relaxed Marijuana Laws

In spite of the passage of these more permissive laws, there are still thousands of marijuana arrests annually in California. Between 2006 and 2015 there were 465,873 arrests for marijuana offenses in the state.⁶

¹ Through Public Record Act requests, the Drug Policy Alliance has learned that since 2011—the year in which state lawmakers reduced possession of marijuana for personal use to an infraction—thousands of Californians receive infractions for marijuana possession annually. See Drug Policy Alliance & American Civil Liberties Union of California, *Marijuana*

While the number of marijuana misdemeanor arrests declined by 86 percent in 2011—the first year after lawmakers reduced possession of marijuana for personal use to an infraction* from a misdemeanor—the number of marijuana felony† arrests remained relatively stable (as demonstrated in the chart below).⁷



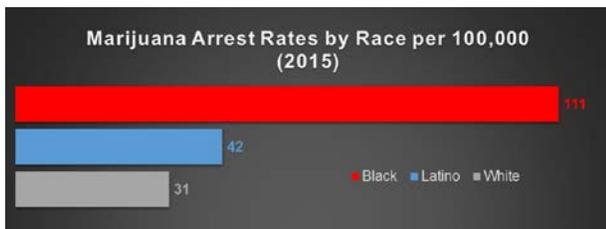
It is important to note that the annual number of marijuana felony arrests hovered between 13,000 and 17,000 between 2005 and 2014,⁸ but then dropped by a third to 8,866 in 2015.⁹ It is too early to determine what caused this decline, and whether it establishes a new trend or is merely an anomaly.

Racial Discrimination in Marijuana Arrests

Black, Latino, and white people consume and sell marijuana at similar rates.¹⁰ Yet, law enforcement officers arrest people for marijuana offenses in a racially disparate manner (as demonstrated in the following chart).

Enforcement Disparities in California: A Racial Injustice (May 2016), <http://www.drugpolicy.org/resource/marijuana-enforcement-disparities-california-racial-injustice>.

[†] Possessing even a small amount of marijuana for sale is a felony in California punishable by up to three years in jail or prison. Cal. Health & Safety Code § 11359.



Law Enforcement Arrests Black Californians for Marijuana Offenses at Grossly Unequal Rates

Despite dramatic declines in the number of misdemeanor marijuana arrests in the state, law enforcement continued to arrest black people for all marijuana offenses at three and a half times the rate of white people in 2015. The enforcement is more unequal for felony marijuana offenses than for misdemeanors. In 2015, black people were more than twice as likely as white people to be arrested for a marijuana misdemeanor and nearly five times more likely than white people to be arrested for a marijuana felony.¹¹

Law Enforcement Arrests Latino People for Marijuana Offenses at Increasingly Unequal Rates

Although the unequal enforcement of marijuana laws is not as stark for Latino people (“Hispanic” in the data provided) as it is for black people in California, a troubling trend is emerging. Law enforcement appears to be arresting Latino people at increasing rates as compared to white people. Over the past decade, marijuana arrests rates have moved higher and higher for Latino people, compared to those of white people. In 2006, law enforcement officers in California arrested Latino people and white people for marijuana offenses at near equal rates. A decade later, Latino people are arrested for marijuana offenses 35 percent more often than white people in California.¹²

It is important to note that Latino marijuana arrest rates may have been higher than actually reported over the past decade. California has a long history of data collection challenges regarding Latino people, who are often classified by law enforcement officers as white.¹³ Thus, past disparities in Latino arrests may have been underreported.

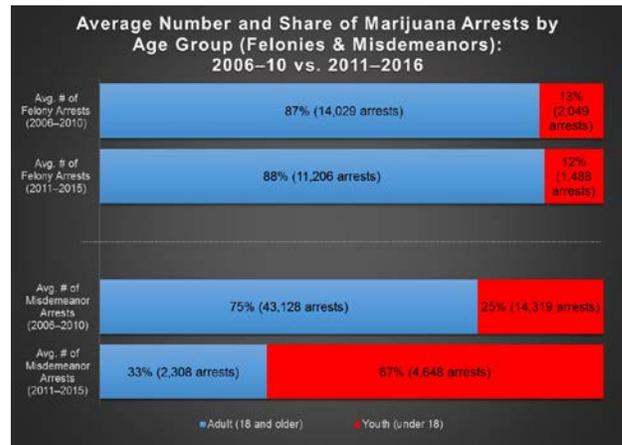
Marijuana Enforcement and Youth

Marijuana arrests declined dramatically for youth (under 18 years of age) and adults (18 and older) alike after

[†] As noted above, thousands of Californians receive infractions annually for possession of marijuana for personal use. See Drug Policy Alliance & American Civil Liberties Union of California, *Marijuana Enforcement Disparities in California: A Racial Injustice* (May 2016),

lawmakers reduced possession of marijuana for personal use to an infraction in 2011.[‡] However, the declines looked different for the two age groups.

Marijuana felony arrests declined by approximately 20 percent for adults and 27 percent for youth. Simultaneously, marijuana misdemeanor offenses declined by a staggering 95 percent for adults as compared to a 68 percent decline for youth.¹⁴



Youth and adults alike have benefitted from the decline in felony and misdemeanor marijuana arrests, yet the disparate rates of decline have resulted in an unexpected outcome: prior to 2011 youth only accounted for a quarter of misdemeanor marijuana arrests; now they account for two-thirds of such arrests (as demonstrated by the chart above).¹⁵ The likely explanation for this is that possession of an ounce or less on school grounds remains a misdemeanor.¹⁶ As discussed below, this will change under Prop. 64, which would reduce such violations from a misdemeanor to an infraction for youth under 18.¹⁷

Implications and Conclusions

California Department of Justice data¹⁸ show that there continue to be thousands of marijuana arrests in California each year despite the legalization of medical marijuana and the decriminalization of marijuana possession. The reduction of marijuana possession from a misdemeanor to an infraction in 2011 dramatically reduced marijuana arrests in the state, but it did not go far enough. The disparate enforcement of marijuana laws impacts black people—and increasingly Latino people—most heavily.[§]

<http://www.drugpolicy.org/resource/marijuana-enforcement-disparities-california-racial-injustice>.

[§] This is true for marijuana possession infractions as well. Substantial costs are associated with an infraction, such as legal fees, court costs, and lost time at school or at work—and

In November 2016, Californians will have the chance to address these inequities by voting for Proposition 64, the Adult Use of Marijuana Act.¹⁹ Prop. 64 will not only strictly regulate marijuana in California—allowing adults 21 and older access to safe products while generating an estimated billion dollars in tax revenues for the state—it will also dramatically reduce the number marijuana arrests, particularly felony arrests.²⁰

For youth under 18, Prop 64 will end marijuana arrests and 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. Prop. 64 will also seal youth marijuana records at age 18.²¹

For everyone, Prop. 64 contains important sentencing reforms that eliminate or reduce most criminal marijuana offenses. All penalty reductions will be applicable retroactively. Thousands of Californians can petition to have their sentences reduced and hundreds of thousands more may be eligible for criminal record clearing.²²

¹ 10 Year Arrest Data 2006-2015, Open Justice, California Department of Justice (2016), <http://openjustice.doj.ca.gov/data>.

² *Id.*

³ California Proposition 215 (2016), available at http://repository.uchastings.edu/cgi/viewcontent.cgi?article=2138&context=ca_ballot_props.

⁴ See, e.g., Matt Ferner, *Legal Marijuana Is The Fastest-Growing Industry In The U.S.: Report*, January 26, 2015, http://www.huffingtonpost.com/2015/01/26/marijuana-industry-fastest-growing_n_6540166.html

⁵ Cal. Health and Safety Code § 11357(b).

⁶ 10 Year Arrest Data 2006-2015, Open Justice, California Department of Justice (2016), <http://openjustice.doj.ca.gov/data>; Report P-3: Population Projections by Race/Ethnicity, Detailed Age, and Gender 2010-2060, Demographic Research Unit, California Department of Finance (2016); California and Counties by Age and Race/Ethnicity – Total Only 2000-2010, Demographic Research Unit, Department of Finance (revised 2013).

⁷ 10 Year Arrest Data 2006-2015, Open Justice, California Department of Justice (2016), <http://openjustice.doj.ca.gov/data>.

⁸ Marijuana Arrests 2005-2014, STATE OF CALIFORNIA DEP'T OF JUSTICE, OFFICE OF THE ATTORNEY GENERAL, CJSC STATISTICS: ARRESTS, <https://oag.ca.gov/crime/cjsc/stats/arrests>.

⁹ 10 Year Arrest Data 2006-2015, Open Justice, California Department of Justice (2016), <http://openjustice.doj.ca.gov/data>.

¹⁰ 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; American Civil Liberties Union, *The War on Marijuana in Black and White* 66 (2013); Meghana Kakade et al., Adolescent Substance Use and Other Illegal Behaviors and Racial Disparities in Criminal Justice System Involvement: Findings From a U.S. National Survey, 7 AMERICAN JOURNAL OF PUBLIC HEALTH 102, (2012); MICHELLE ALEXANDER,

THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010). Katherine Beckett et al., *Race, drugs, and policing: Understanding disparities in drug delivery arrests*. 44 CRIMINOLOGY 105-137 (2006); Human Rights Watch, *Decades of disparity: Drug arrests and race in the United States* (2009); DORIS M. PROVINE, UNEQUAL UNDER THE LAW: RACE IN THE WAR ON DRUGS (2007); MICHAEL TONRY, PUNISHING RACE: A CONTINUING AMERICAN DILEMMA (2011).

¹¹ 10 Year Arrest Data 2006-2015, Open Justice, California Department of Justice (2016), <http://openjustice.doj.ca.gov/data>; Report P-3: Population Projections by Race/Ethnicity, Detailed Age, and Gender 2010-2060, Demographic Research Unit, California Department of Finance (2016); California and Counties by Age and Race/Ethnicity – Total Only 2000-2010, Demographic Research Unit, Department of Finance (revised 2013).

¹² *Id.*

¹³ See e.g., Jeffrey S. Passel & Paul Taylor, *Who's Hispanic*, Pew Research Center (2009).

¹⁴ 10 Year Arrest Data 2006-2015, Open Justice, California Department of Justice (2016), <http://openjustice.doj.ca.gov/data>.

¹⁵ *Id.*

¹⁶ CAL. HEALTH & SAFETY CODE §11357(e) (West 2015).

¹⁷ Proposition 64 (2016), http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?

¹⁸ 10 Year Arrest Data 2006-2015, Open Justice, California Department of Justice (2016), <http://openjustice.doj.ca.gov/data>.

¹⁹ Proposition 64 (2016), http://www.oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf?

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

the burden of these costs most heavily impact black and Latino individuals in California, because they receive infractions at disproportionately high rates. See Drug Policy Alliance & American Civil Liberties Union of California, *Marijuana*

Enforcement Disparities in California: A Racial Injustice (May 2016), <http://www.drugpolicy.org/resource/marijuana-enforcement-disparities-california-racial-injustice>.