



Arresting Latinos for Marijuana in California

Possession Arrests in 33 Cities, 2006-08

Prepared by The Marijuana Arrest Research Project for the Drug Policy Alliance and the William C. Velasquez Institute

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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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Report Highlights: Arresting Latinos for Marijuana

- In the last twenty years, California made 850,000 arrests for possessing small amounts of marijuana, and half a million arrests in the last ten years, disproportionately of young Latinos and blacks.
- U.S. government surveys consistently find that young Latinos use marijuana at lower rates than young whites. Yet from 2006 through 2008, major cities in California arrested and prosecuted Latinos for marijuana possession at double to nearly triple the rate of whites.
- In the City of Los Angeles, where one in ten Californians live, police arrested Latinos for marijuana possession at twice the rate of whites.
- In San Jose, the third largest city in the state, Latinos are 31% of the population but 54% of those arrested for marijuana possession. Police in San Jose arrested Latinos at 2.2 times the rate of whites.
- In the twenty years from 1990 to 2009, the marijuana possession arrest rate of Latino teenagers in California more than tripled.
- These patterns in marijuana arrests are a system-wide phenomenon, occurring in cities throughout California. The arrests were not mainly the result of individual prejudice or racism. In making these arrests, patrol officers were doing what they were assigned to do.
- Marijuana possession arrests have serious consequences. They create permanent "drug offense" records easily found on the Internet by employers, landlords, schools, credit agencies, licensing boards, and banks.
- One guilty plea for marijuana possession can deny a legal immigrant re-entry to the U.S. Two guilty pleas can trigger mandatory deportation.
- 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 Latinos and blacks.

Arresting Latinos for Marijuana in California

In 2009, police departments in California made 61,000 marijuana possession arrests. The people arrested were disproportionately Latinos and African Americans, and overwhelmingly young people, especially young men.¹

The substantial disparities in marijuana possession arrest rates of whites and Latinos *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 Latinos use marijuana at *lower* rates than young whites.

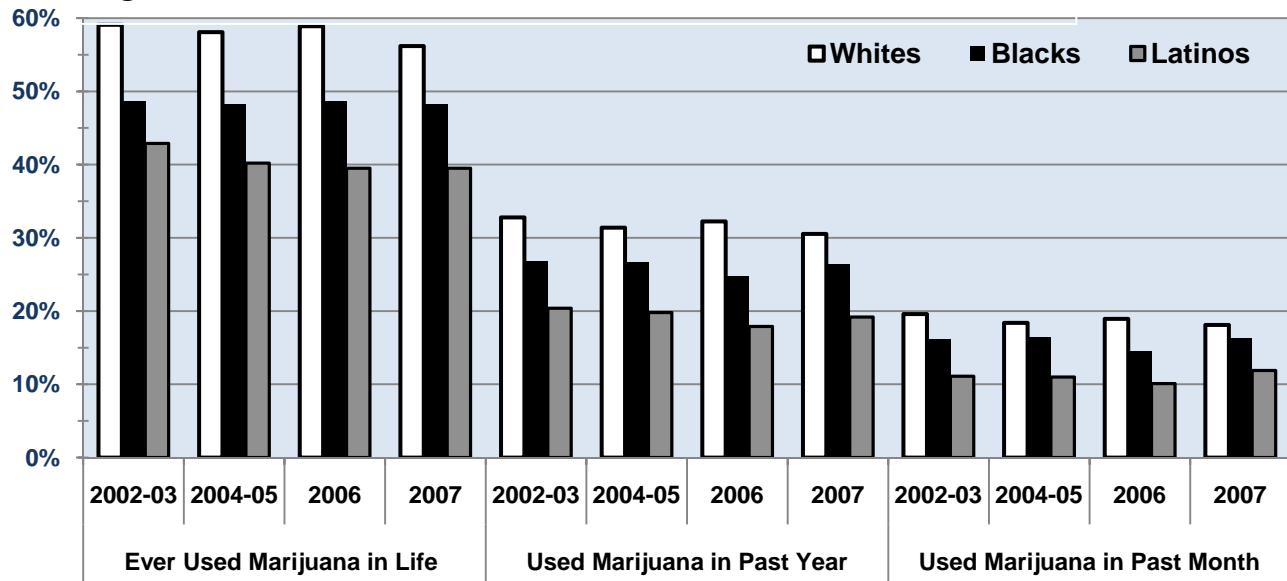
In their recent report to the California legislature, Daniel Macallair and Mike Males documented law enforcement's unprecedented shift – from targeting marijuana manufacturing and sales offenses to targeting low-level marijuana possession offenses.² Since 1990, arrests for nearly every serious crime have declined in California. Yet arrests for possession of marijuana, usually for very small amounts, have tripled. From 1990 through 2009, California made 850,000 arrests for possessing small amounts of marijuana, and half a million arrests in the last ten years.³

Maccallair and Males also documented the racial and ethnic disparities in California's marijuana possession arrests as shown in the state's official criminal justice data. In 2009, blacks and Latinos made up 44% of the state's population, but together they constituted 57% of the people arrested in California for possessing marijuana. In the twenty years from 1990 to 2008, the marijuana arrest rate of Latino teenagers more than tripled.

The data presented here confirm and extend these findings to show that in 33 cities throughout California, police have been arresting Latinos at significantly higher rates than whites. The figures in this report use arrest data, averaged for three years, 2006 through 2008, to show that these arrests were not a one-year fluke, but a consistent pattern extending over several years.⁴

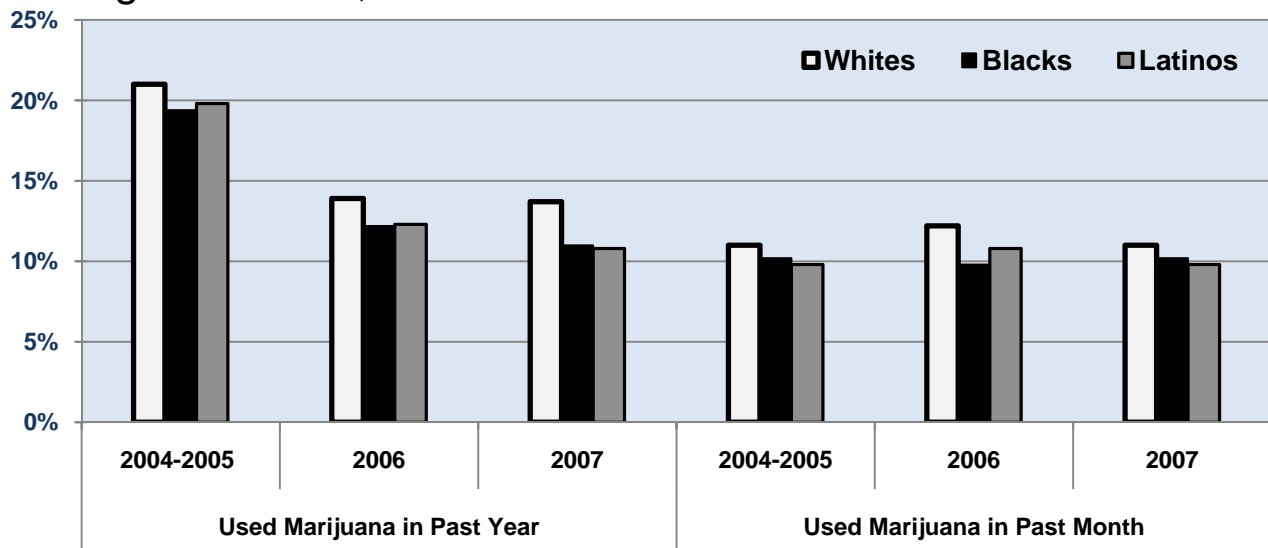
In The City of Los Angeles, with ten percent of California's population, and in San Jose, the third largest city in the state, Latinos were arrested at twice the rate of whites. Santa Monica police arrested Latinos for marijuana possession at almost triple the rate of whites. In Irvine, a city of nearly 200,000 in Orange County, Latinos are 8.7% of the population but 19.5% of the people arrested for marijuana possession.

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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Marijuana Possession Arrests of Latinos in 33 Cities

The data presented in this report show the marijuana possession arrest rates of whites and Latinos in 33 California cities from 2006 through 2008. The total population of these cities is ten million people, a quarter of California's population. Four million Latinos live in these cities, a third of all Latinos in the state.

The arrest numbers in this report were obtained from the Justice Statistics Center of the California Department of Justice.⁵ Unlike FBI arrest data, California's arrest reports do distinguish Latinos (referring to them as "Hispanic").

However, from our study of arrest data from California and other states, we are convinced that Latinos have been substantially undercounted in the marijuana arrest data from many if not most cities and police agencies in California. The California Department of Justice warns about the subjectivity of the racial and ethnic classifications of arrestees in a statement it includes with data it sends out:

The subjectivity of the classification and labeling process must be considered in the analysis of race/ethnic group data. As commonly used, race refers to large populations which share certain similar physical characteristic such as skin color. Because physical characteristics can vary greatly within groups, *determination of race is frequently, by necessity, subjective.* Ethnicity refers to cultural heritage and can cross racial lines. For example, *the ethnic designation "Hispanic" includes persons of any race.* Most commonly, *self-identification of race/ethnicity is used in the labeling process.* (emphasis added)

We have spoken about this classification problem with police officers at several police conferences, including officers from California, Texas, Florida and other states with many Latinos. We have learned that sometimes officers will ask an arrestee's race, and sometimes Latinos will say that they are "white." Other times, officers or local police departments will not routinely ask in ambiguous cases, and will instead write "white" or "other" on the form.⁶

It is likely, therefore, that Latinos are undercounted and whites are overcounted in misdemeanor arrests and summonses, though in some places significantly more than others. As a result, the Latino marijuana possession arrest rates should be regarded as low, and often quite low. Nonetheless, as the data on these 33 California cities shows, even with this undercounting Latinos have been arrested at substantially higher rates than whites.

Arrests of Latinos in Cities in Los Angeles County, 2006-08: Los Angeles County has nearly ten million residents and over a quarter of California's population. Latinos constitute 47% of the county's population. The twelve cities in Los Angeles County shown in this report have over half of the county's population. Latinos were arrested on average at more than double the rate of whites.

- The *City of Los Angeles*, with nearly four million people and ten percent of California's population, arrested Latinos at twice the rate of whites.
- *Pasadena* arrested Latinos for marijuana possession at 2.9 times the rate of whites – 395 Latinos per 100,000 Latinos compared to 137 whites per 100,000 whites.
- In *Alhambra*, Latinos make up 35.5% of population, but 75% of the people arrested for marijuana possession. *Alhambra* arrested Latinos at almost three times the rate of whites.
- *Long Beach*, the sixth largest city in California, arrested Latinos for marijuana possession at nearly twice the rate of whites. *Long Beach* arrested 409 Latinos per 100,000 Latinos compared to 246 whites per 100,000 whites.
- In *Glendale*, Latinos are 17.4% of the population of almost 200,000, but 30% of those arrested for marijuana possession were Latino. *Glendale* arrested Latinos at a rate of 981 per 100,000 Latinos — the highest Latino arrest rate of the 33 cities discussed here.
- In *Burbank*, Latinos are 25.7% of the population, but they were 35% of the people arrested for marijuana possession. *Burbank* arrested 901 Latinos per 100,000 Latinos, the second highest Latino arrest rate of the cities discussed here.
- *Santa Monica* has a Latino population of 11.8%, but 22.5% of the people arrested for marijuana possession were Latinos. *Santa Monica* arrested Latinos at close to three times the rate of whites.

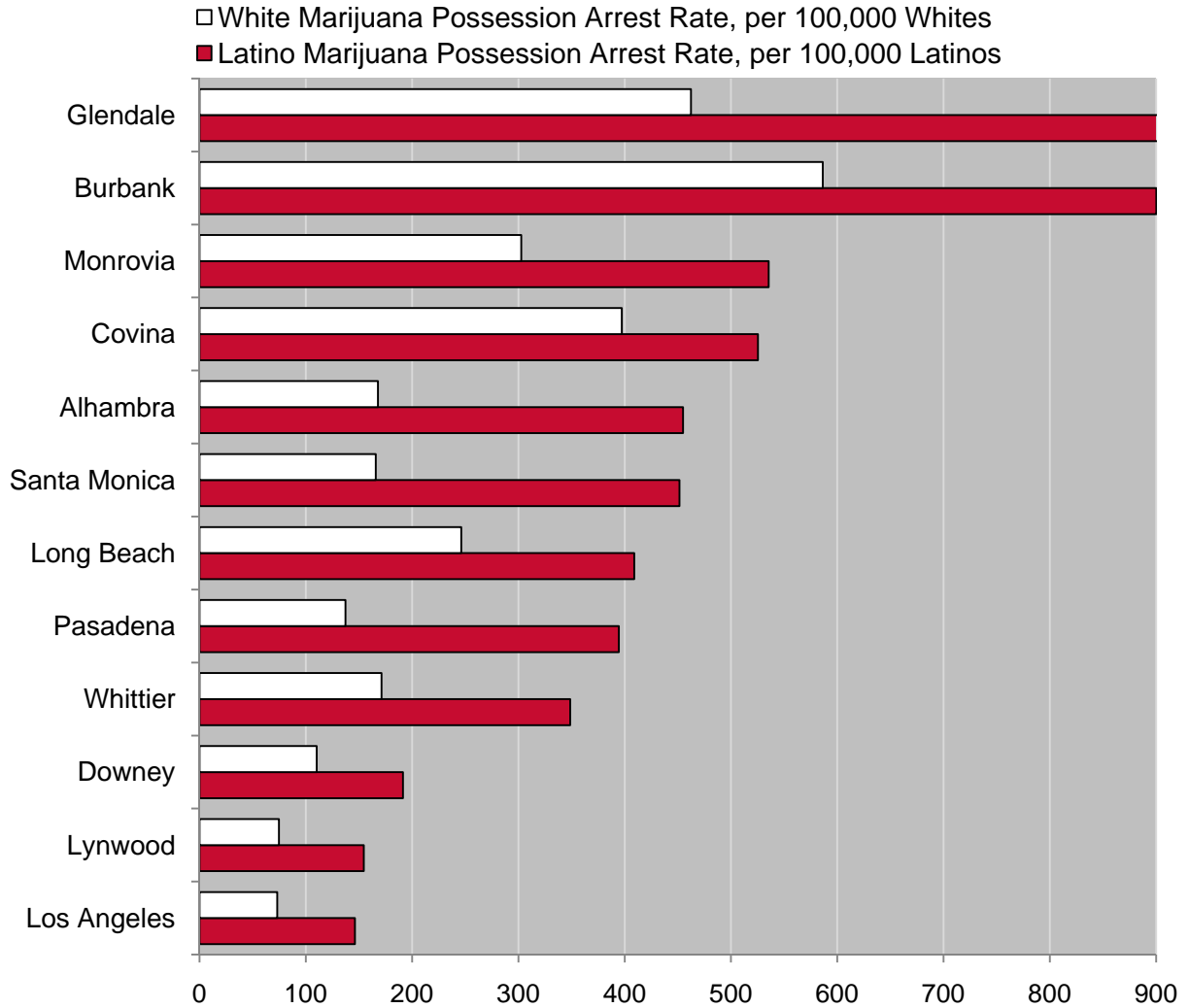
Arrests of Latinos in Cities in Orange County, 2006-08: Orange County is the second largest county in California, and the six cities discussed here contain almost a million people, a third of Orange County's population.

- In *Irvine*, with nearly 200,000 people, Latinos were arrested at twice the rate of whites. Latinos are 8.7% of *Irvine*'s population, but they were almost 20% of the people arrested for marijuana possession.
- *Tustin* arrested Latinos at almost twice the rate of whites.
- In *Fullerton*, Latinos are 33% of the city's population, but almost 46% of its arrests for marijuana possession.
- The *City of Orange* arrested 692 Latinos per 100,000 Latinos, the third highest Latino arrest rate of the 33 cities.

Arrests of Latinos in 15 California Cities, 2006-08: We have also included arrest data on 15 other major cities, in 12 counties, with a combined population of over four million Californians.

- *San Jose*, the third largest city in California, arrested Latinos for marijuana possession at more than twice the rate of whites. Latinos are 31.5% of the city's population but they were 54.7% of marijuana possession arrests.
- In San Bernardino County, The *City of Chino* arrested Latinos at 1.6 times the rate of whites. Chino arrested 616 Latinos per 100,000 Latinos compared to 392 whites per 100,000 whites. The *City of Upland* arrested Latinos at 1.7 times the rate of whites
- *San Diego*, the second largest city in California, arrested Latinos at 1.2 times the rate of whites (one place where Latinos were likely undercounted ⁷). *Escondido*, also in San Diego County, arrested Latinos at 1.5 times the rate of whites. Latinos are 45% of that city's population, but they were 55.4% of marijuana arrests.
- *Santa Barbara* arrested 451 Latinos per 100,000 Latinos, which is 1.3 times the white arrest rate.
- *Fresno*, the fifth largest city in California, arrested Latinos at 1.8 times the rate of whites.

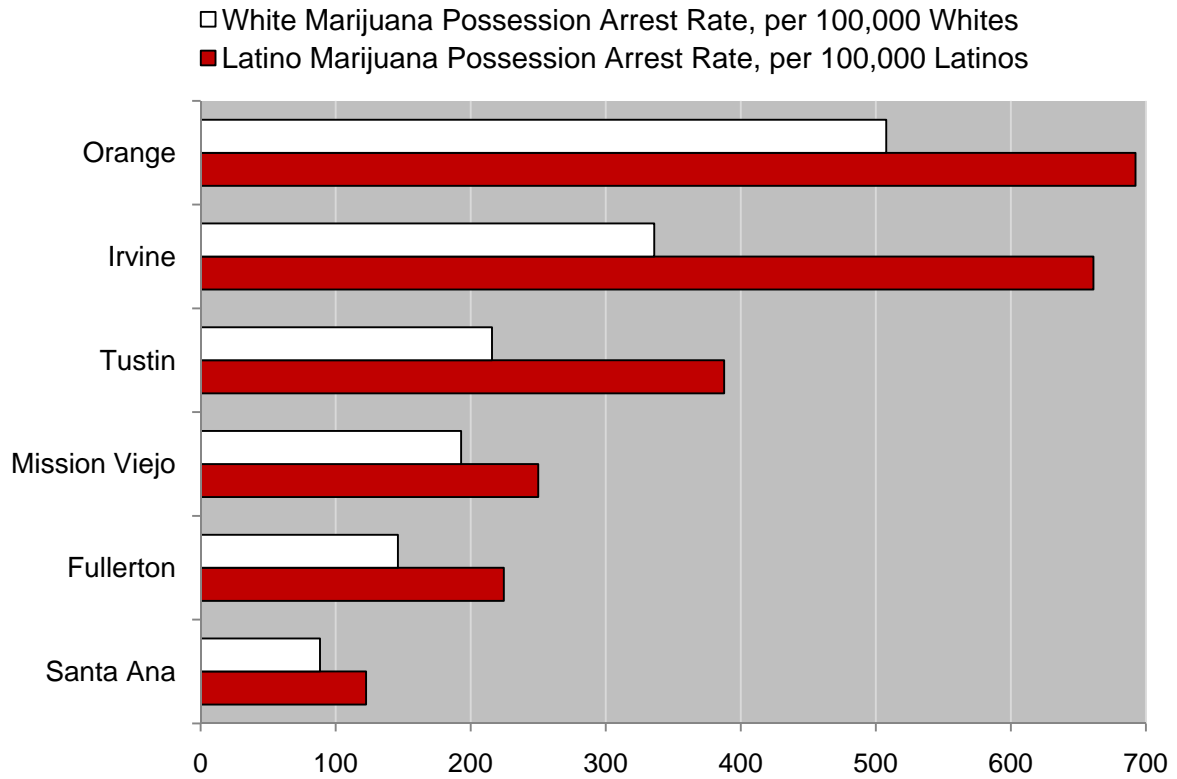
12 Cities In Los Angeles County White and Latino Rates of Marijuana Possession Arrests, 2006-08



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

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5 Cities In Orange County White and Latino Rates of Marijuana Possession Arrests, 2006-08

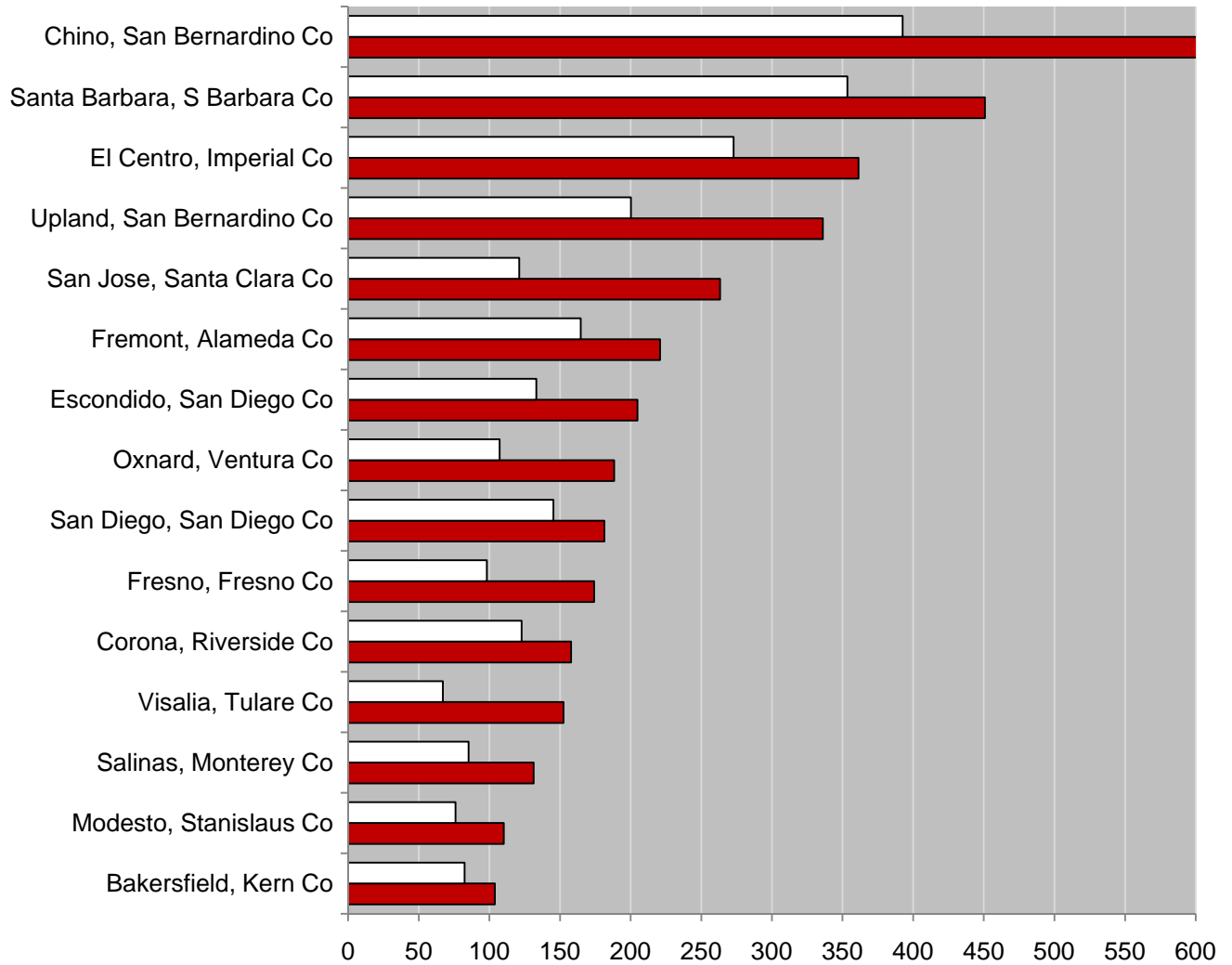


Source: California Department of Justice, Criminal Justice Statistics Center, and American Community Survey, US Census Bureau, 2006-08

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15 Cities In 12 California Counties White and Latino Rates of Marijuana Possession Arrests, 2006-08

□ White Marijuana Possession Arrest Rate, per 100,000 Whites
 ■ Latino Marijuana Possession Arrest Rate, per 100,000 Latinos



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

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White and Latino Marijuana Possession Arrest Rates in 33 California Cities, 2006-2008

City, County	White Rate of MJ Poss Arrests per 100,000 Whites	Latino Rate of MJ Poss Arrests per 100,000 Latinos	Times the Latino Arrest Rate is Greater than the White Arrest Rate	City Pop	Latino % of Pop	Latino % of MJ Arrests
Alhambra, LA Co	168	455	2.7	85,949	35.5%	74.6%
Burbank, LA Co	586	900	1.5	104,191	25.7%	34.9%
Covina, LA Co	397	525	1.3	51,114	47.9%	56.3%
Downey, LA Co	110	191	1.7	115,800	70.4%	75.4%
Glendale, LA Co	462	981	2.1	195,505	17.4%	29.9%
Long Beach, LA Co	246	409	1.7	462,556	40.2%	36.2%
Los Angeles, LA Co	73	146	2.0	3,749,058	48.4%	48.3%
Lynwood, LA Co	75	155	2.1	71,138	83.1%	73.7%
Monrovia, LA Co	303	535	1.8	37,155	34.3%	46.9%
Pasadena, LA Co	137	395	2.9	137,885	33.5%	33.1%
Santa Monica, LA Co	166	452	2.7	87,935	11.8%	22.5%
Whittier, LA Co	171	349	2.0	88,207	64.9%	78.3%
Fullerton, Orange Co	146	225	1.5	133,484	33.0%	45.8%
Irvine, Orange Co	336	661	2.0	193,872	8.7%	19.5%
Mission Viejo, Orange Co	193	250	1.3	95,378	15.9%	19.0%
Orange, Orange Co	508	692	1.4	137,855	37.5%	45.1%
Santa Ana, Orange Co	88	123	1.4	327,681	79.0%	87.9%
Tustin, Orange Co	216	388	1.8	72,232	36.8%	51.0%
Bakersfield, Kern Co	82	104	1.3	318,436	42.2%	36.3%
Chino, San Bernardino Co	392	616	1.6	78,446	51.4%	63.6%
Corona, Riverside Co	123	158	1.3	156,525	40.9%	48.6%
El Centro, Imperial Co	273	361	1.3	39,979	75.0%	78.5%
Escondido, San Diego Co	133	205	1.5	137,991	45.1%	55.4%
Fremont, Alameda Co	165	221	1.3	206,241	14.6%	26.7%
Fresno, Fresno Co	98	174	1.8	472,179	44.6%	49.7%
Modesto, Stanislaus Co	76	110	1.4	204,070	34.4%	40.1%
Oxnard, Ventura Co	107	188	1.8	175,906	70.1%	82.3%
Salinas, Monterey Co	85	131	1.5	143,853	72.0%	78.0%
San Diego, San Diego Co	145	181	1.2	1,251,184	27.3%	27.0%
San Jose, Santa Clara Co	121	263	2.2	905,180	31.5%	54.7%
Santa Barbara, S. Barbara Co	353	451	1.3	86,087	32.1%	37.0%
Upland, San Bernardino Co	200	336	1.7	76,446	35.8%	41.3%
Visalia, Tulare Co	67	152	2.3	116,306	40.6%	60.7%

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 Latinos use marijuana at *lower* rates than young whites. So why have police in California's cities been arresting young Latinos at substantially higher rates than young whites, and often in 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 Latino and African American. 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."⁸ This produces what has been termed "racism without racists."⁹

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 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 \$360.¹⁰ People unable to

^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. 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 Latinos, have continually increased.

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 Latino and black 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.¹¹

For immigrants, even one guilty plea to a marijuana conviction can have disastrous consequences. People who leave the country even briefly for a funeral, wedding or family event can be denied re-entry on the basis of one guilty plea to marijuana possession. Two guilty pleas to possessing marijuana can trigger a deportation.¹²

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 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."¹³ These marijuana possession arrests, which target young, low-income Californians, serve as a "head start" program for a lifetime of unemployment and poverty.¹⁴

NOTES

¹ We have discussed the marijuana possession arrests of African Americans in California in an earlier report: "Targeting Blacks for Marijuana: Possession Arrests in California, 2004 - 08, by Harry G. Levine, Jon Gettman, and Loren Siegel. Los Angeles: The Drug Policy Alliance, June 2010. At:

http://www.drugpolicy.org/docUploads/Targeting_Blacks_for_Marijuana_06_29_10.pdf.

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 California's misdemeanor arrests for marijuana 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 the last page for a graph of California's marijuana possession arrests for the last twenty years.

⁴ 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 Latinos 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 of whites and Latinos and therefore were not included in this study. It is worth noting that some California cities with low arrest rates for whites and Latinos still arrest African Americans at extremely high rates. See our report: "Arresting Blacks for Marijuana in California: Possession Arrests in 25 Cities." Los Angeles: Drug Policy Alliance, October 2010 at: <http://www.drugpolicy.org/docUploads/ArrestingBlacks.pdf>

⁵ Although data about the arrests of whites and blacks are available from the FBI-Uniform Crime Reports, the FBI data does not distinguish Latinos as a separate racial or ethnic group and categorize most arrests of Latinos as arrests of "whites."

⁶ The difficulties in identifying and counting Latinos (or Hispanics), and the various ways that people of Latin American and Spanish-speaking origin identify themselves, have been discussed in a number of publications, several of them from the Pew Hispanic Center. See:

Sonya Tafoya, *Shades of Belonging*. Pew Hispanic Center Report. Washington D.C. December 2004; At: <http://pewhispanic.org/reports/report.php?ReportID=35>

Jeffrey Passel and Paul Taylor, *Who's Hispanic?* Pew Hispanic Center, Washington D.C. May 2009; At: <http://pewhispanic.org/files/reports/111.pdf>

Latinos In California, Texas, New York, Florida And New Jersey, Pew Hispanic Center, Washington D.C. March 2004; At: <http://pewhispanic.org/files/factsheets/10.pdf>

Jeffrey S. Passel, *Census History: Counting Hispanics*. Pew Hispanic Center, Washington D.C. March 2010; <http://census.pewsocialtrends.org/2010/census-history-counting-hispanics-2>

Susana Rinderle, "The Mexican Diaspora: A Critical Examination of Signifiers", *Journal of Communication Inquiry* 2005 29: 294; At: <http://hjb.sagepub.com/content/21/1/47.short>

⁷ San Diego is one of the cities where Latinos are likely undercounted in the marijuana possession arrest data – that is, where a significant percentage of Latino marijuana possession arrestees are being coded as white. This is probably also true for the cities of Orange and Santa Barbara. In two of the cities the white arrest rates are unusually high, and the Latino-white arrest rate disparities are relatively low. All three cities are predominantly white and have relatively high median household incomes (above \$66,000), especially among whites. Such demographics tend to produce *low* rates of white arrests for marijuana possession. Latinos in all three cities constitute 25% to 35% of the population and tend to reside in low-income neighborhoods that are more heavily policed. In all three cities it is likely that significant numbers of Latino arrestees are being coded as white by the police, thus increasing the marijuana possession arrest rates for whites and decreasing them for Latinos. .

⁸ 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.

⁹ 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."

¹⁰ 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.

¹¹ 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.

¹² The U.S Supreme court recently held that Legal Permanent Residents *may* be eligible for a defense to removal notwithstanding two guilty pleas to possession of marijuana. Human Rights Watch reports that from 1997 to 2007, the United States deported 11,063 people where the only or highest charge against them was possession of marijuana. They also note that nearly 80% of the people deported for anything were from Mexico. *Forced Apart (By the Numbers): Non-Citizens Deported Mostly for Nonviolent Offenses*. New York: Human Rights Watch, 2009, at: <http://www.hrw.org/node/82173>

¹³ 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.

¹⁴ 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 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 it creates new 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 a pocket 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.

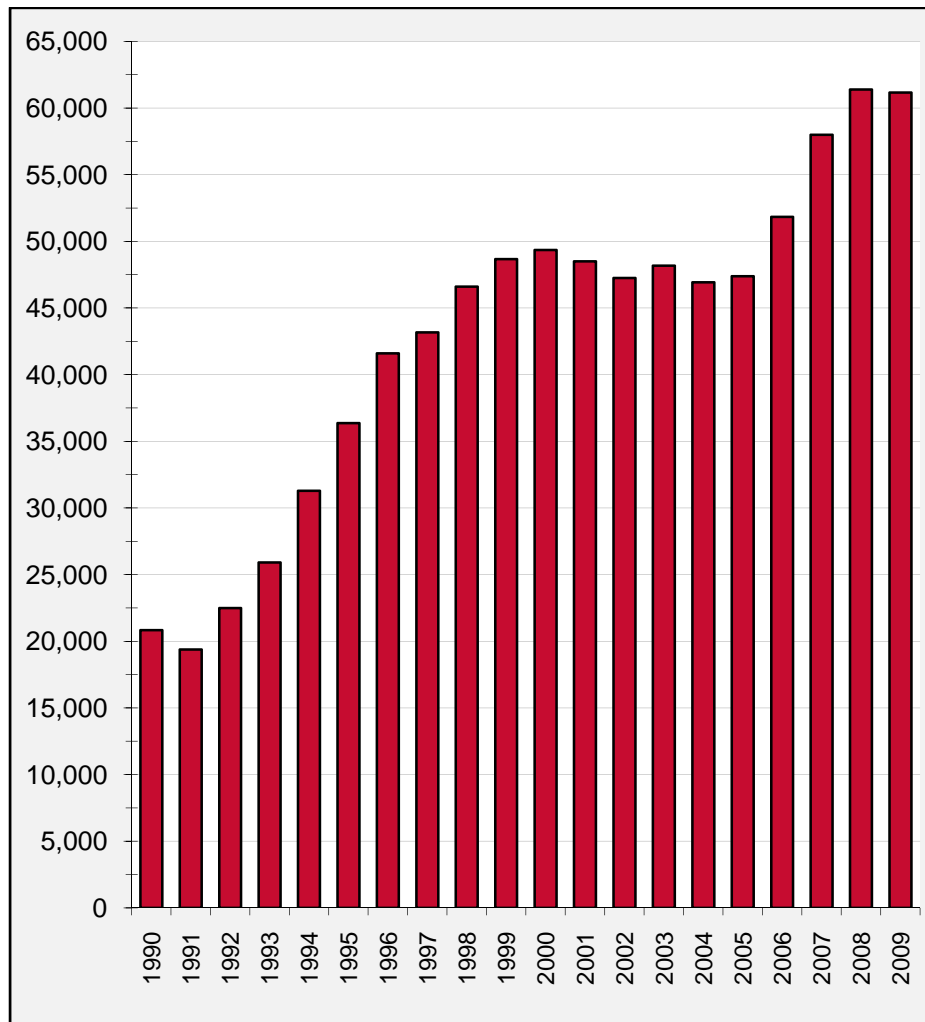
Contrary to some media reports, making marijuana possession an infraction is not technically or legally "decriminalization." Under California law, an infraction is still a criminal offense, a crime. Although an infraction does not produce a police "rap" sheet, there are court records of infractions for 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.

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 offenses 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.