



Targeting Blacks for Marijuana

Possession Arrests of African Americans in California, 2004-08

Prepared By

The Marijuana Arrest Research Project

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About

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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Cite as: Harry G. Levine, Jon B. Gettman, Loren Siegel. "Targeting Blacks for Marijuana: Possession Arrests of African Americans in California, 2004-08." Drug Policy Alliance, LA: June 2010.

We would like to thank: Joey Huddleston, Brian Scott, and Allison Stouch, DPA fellows, Southern California; Anne Irwin, deputy public defender in San Francisco; Greg Hoegge and Rigoberto Arrechiga, deputy public defenders in Los Angeles County; Alice Huffman, President, California State NAACP; Mauricio Garzon, Campaign Coordinator, Tax Cannabis 2010; the members of the National Black Police Association and its Executive Director, Ron Hampton; the Open Society Foundations; Jamie Fellner and Human Rights Watch for the title; Craig Reinerman, Professor, Department of Sociology, University of California-Santa Cruz; Troy Duster, Professor, Department of Sociology, University of California-Berkeley; and especially Stephen Gutwillig, who supervised the editing and production of this report.

Report Highlights: Targeting Blacks for Marijuana

- In every one of the 25 largest counties in California, blacks are arrested for marijuana possession at higher rates than whites, typically at double, triple or even quadruple the rate of whites. (pages 6-8, 12)
- U.S. government studies consistently find that young blacks use marijuana at *lower* rates than young whites. (pages 5)
- In Los Angeles County, with nearly ten million residents and over a quarter of California's population, blacks are arrested at over triple the rate of whites. Blacks are less than 10 percent of L.A. County's population, but they are 30 percent of the people arrested for marijuana possession. (pages 6-8, 12)
- These racially-biased marijuana arrests are a system-wide phenomenon, occurring in every county and nearly every police department in California, and elsewhere. The arrests are not mainly the result of personal bias or racism on the part of individual patrol officers – who are doing what they are assigned to do. (pages 9,11)
- Marijuana possession arrests have serious consequences. They create permanent "drug arrest" records that can be easily found on the Internet by employers, landlords, schools, credit agencies, licensing boards, and banks. (pages 9-11)
- The "scarlet letter" stigma of criminal records for marijuana possession can create barriers to employment and education for anyone, including whites and middle class people. (pages 10-11)
- Criminal records for marijuana possession severely limit the life chances of the poor, the young, and especially of young blacks and Latinos. (pages 10-11)

Targeting Blacks for Marijuana

Possession Arrests of African Americans in California, 2004-08

In 2008, police departments in California made more than 60,000 marijuana possession arrests, three times as many as in 1990. The people arrested are disproportionately African Americans¹ and Latinos, overwhelmingly young people, especially young men.

In their recent report to the California legislature, Daniel Macallair and Mike Males documented this unprecedented shift by California law enforcement since 1990 – from targeting marijuana manufacturing and sales offenses to targeting low-level marijuana possession offenses. 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.²

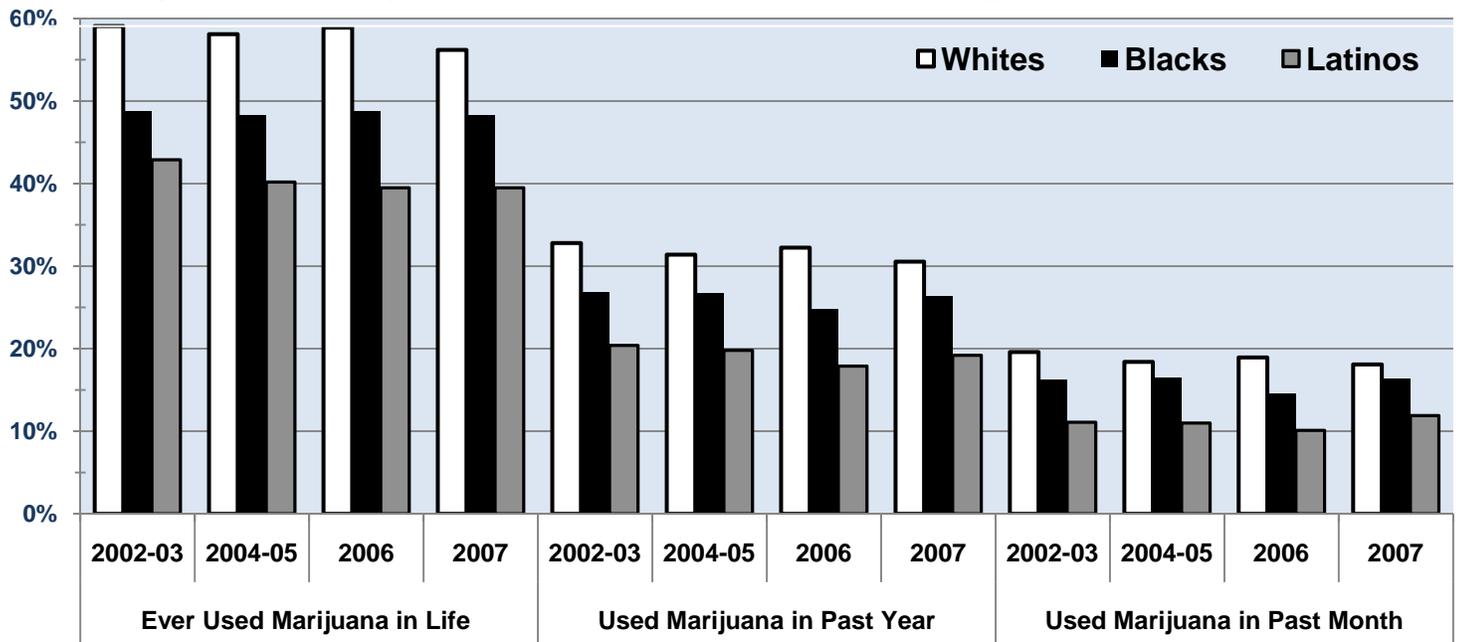
Macallair and Males also documented the racial disparities in California's marijuana possession arrests as shown in the state's official criminal justice data. In 2008, blacks and Latinos made up less than 44% of the state's population, but together they constituted 56% of the people arrested in California for possessing marijuana.

The data presented here confirm and extend these findings on racial disparities in California's marijuana possession arrests by drawing on arrest data from the U.S. Government's FBI Uniform Crime Report and the U.S. Census. The graphs and table in this report use arrest data averaged for five years, 2004 through 2008, showing these racially-skewed or biased arrests for marijuana possession are not a one-year fluke, but a consistent pattern extending over many years.

Although U.S. marijuana use data includes Latinos, the FBI Uniform Crime Report arrest data does not identify Latinos as a distinct group and categorizes nearly all arrests of Latinos as arrests of "whites." As a result the graphs, table and discussion in this report focus on the marijuana arrest disparities between whites and blacks, though the FBI's bundling of Latinos with whites actually underestimates the racial disparities shown here.³

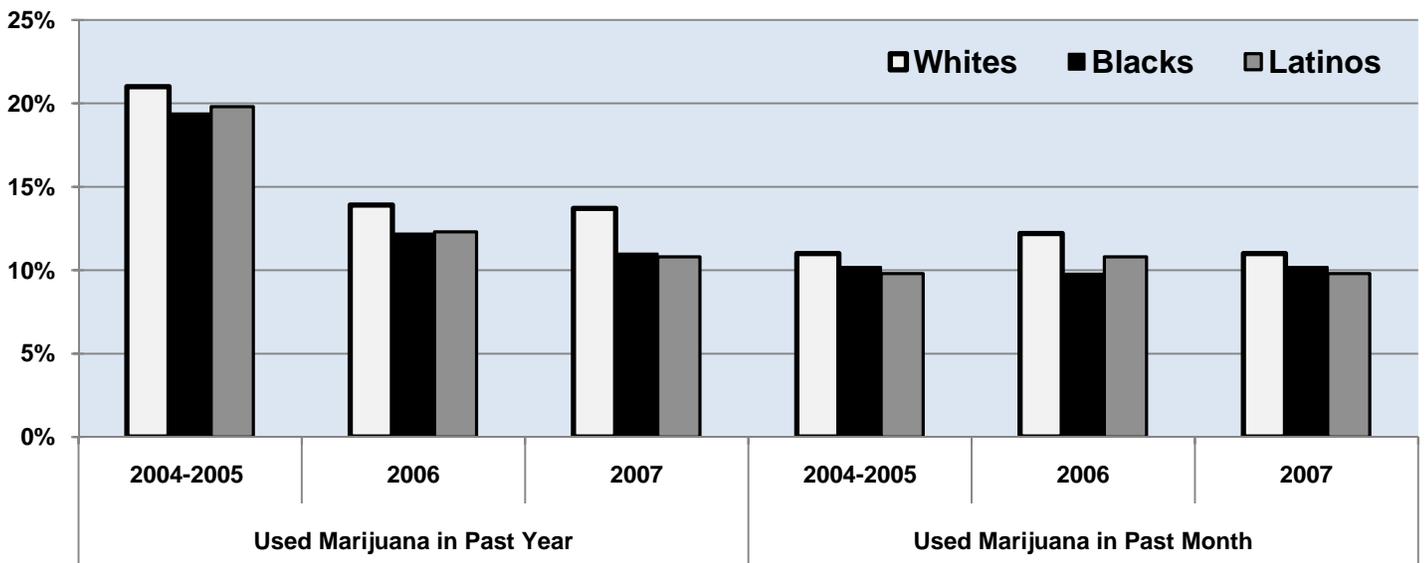
The substantial disparities in marijuana possession arrest rates between whites and blacks *cannot* be explained by their patterns of marijuana use. As the marijuana use graphs on page 5 show, U.S. government studies consistently find that young blacks use marijuana at *lower* rates than young whites.

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



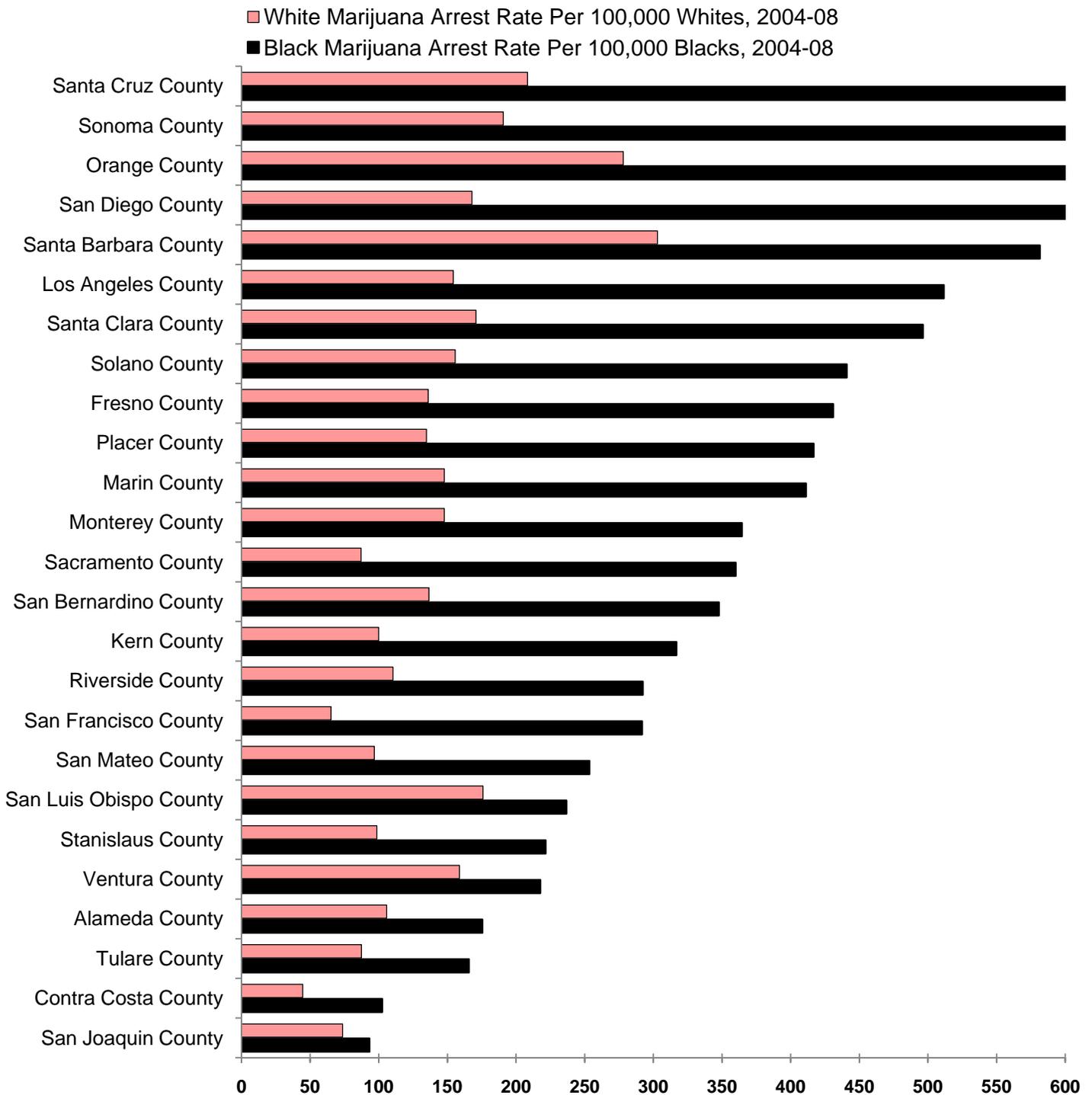
Source: US Dept HHS, SAMHSA, Office of Applied Studies, National Survey on Drug Use and Health, 2002-2007
 2003-2005: Table 1.74B Illicit Drug Use in Lifetime, Past Year, and Past Month among Persons Aged 12 to 17, by Racial/Ethnic Subgroups: Percentages, Annual Averages Based on 2002-2003 and 2004-2005. <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>

Marijuana Possession Arrests in California's 25 Largest Counties

The 25 largest counties in California are home to about 90% of the state's population and almost all of the state's African Americans. The many different law enforcement agencies in these counties make nearly all of the marijuana possession arrests in the state.

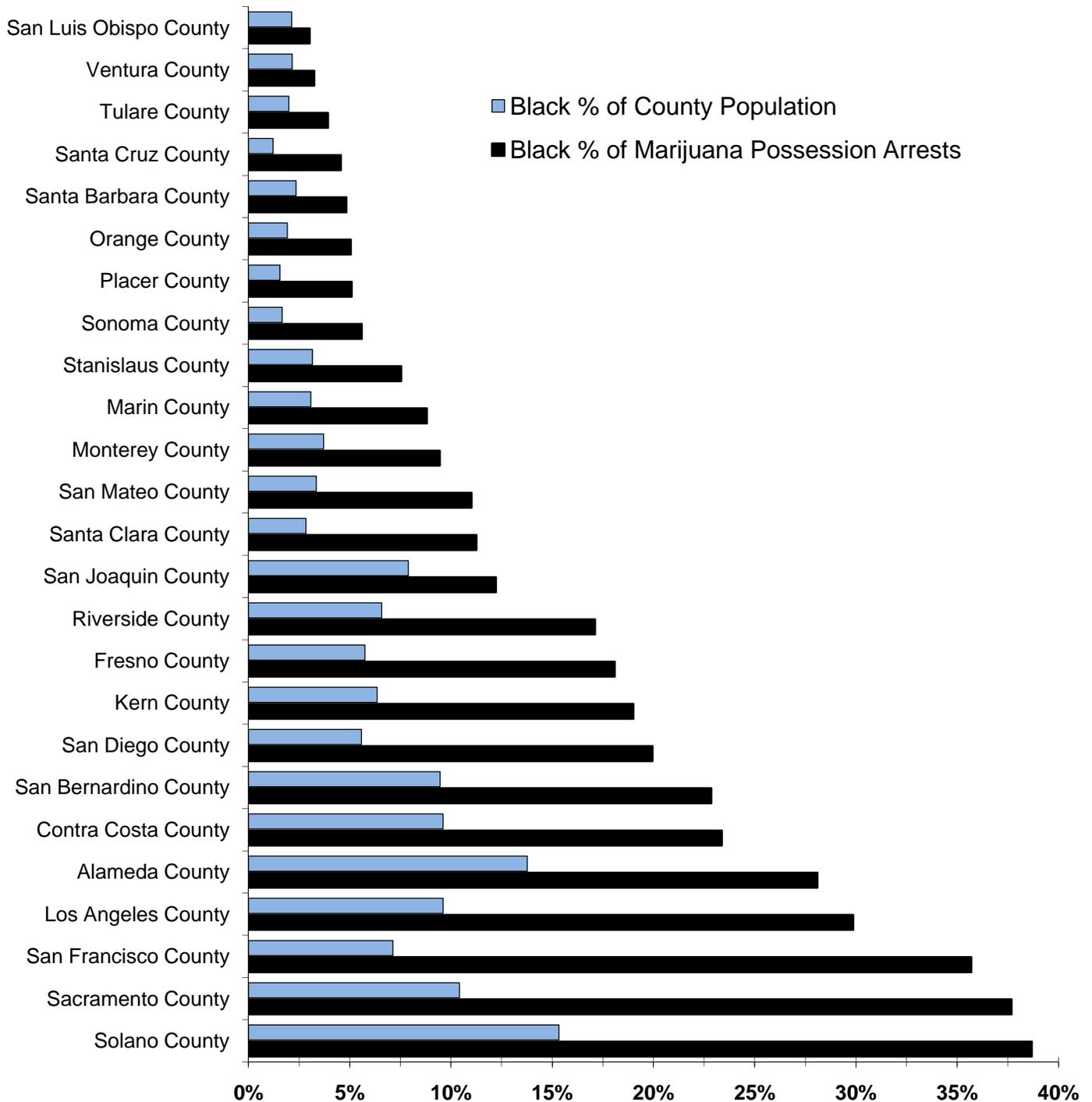
- *Young blacks use marijuana at lower rates than young whites.* Yet from 2004 through 2008, in every one of the 25 largest counties in California, blacks were arrested for marijuana possession at higher rates than whites, typically at double, triple or even quadruple the rate of whites.⁴ And blacks were arrested for simple marijuana possession far out of proportion to their percentage in the total population of the counties. In the 25 largest counties as a whole, blacks are 7% of the population but 20% of the people arrested for possessing marijuana.
- In Los Angeles County, with nearly ten million residents and over a quarter of California's population, the marijuana possession arrest rate for blacks is 332% higher than the arrest rate for whites. Blacks make up less than 10% of L.A. County's population, but they constitute 30% of the marijuana possession arrests.
- In San Diego and Orange counties, each with about three million residents, the marijuana arrest rates for blacks are 365% and 221% higher than the arrest rates for whites. In San Diego County, blacks are 5.6% of the population but 20% of marijuana possession arrests.
- In Riverside and San Bernardino counties, each with about two million people, the marijuana arrest rates for blacks are 265% and 255% higher than the arrest rates for whites. In Riverside County, blacks are 6.6% of the population, but 17% of the arrests. In San Bernardino County, they are 9.5% of the population, but 23% of the arrests.
- Four other heavily populated counties – Santa Clara, Sacramento, Contra Costa, and Fresno – each with a population from just under two million to just under one million, arrest African Americans at double to triple the rate of whites. In Santa Clara County, blacks are less than 3% of the population but 11% of the arrests. In Sacramento County, blacks are 10.4% of the population but 38% of the marijuana possession arrests.
- Police in other California counties, even those with relatively few blacks or relatively low rates of marijuana arrests, still arrest blacks at much higher rates than whites. African Americans are arrested for marijuana possession at nearly three times the rate of whites in Solano County, and at three to four times the rate of whites in Sonoma, Santa Cruz, and San Francisco counties.
- The FBI Uniform Crime Report data also show that in California's 25 largest counties, young people are being arrested in very large numbers. In most counties, teenagers and young people age 20 to 29 make up the great bulk –70% to 80% – of all the people arrested for possessing marijuana from 2004 through 2008.

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



Source: FBI / Uniform Crime Report County Arrest Data and U.S. Census Data. 5 year average: 2004-2008
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Black % of County Population and Black % of Marijuana Possession Arrests in the 25 Largest Counties in California, 2004-08



Source: FBI / Uniform Crime Report County Arrest Data and U.S. Census Data. 5 year average: 2004-2008
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Racially-Biased Marijuana Arrests as a System-Wide Phenomenon

Young blacks and Latinos use marijuana at *lower* rates than young whites. So why are police in California arresting young blacks and Latinos at higher rates than young whites, and at 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 every county and nearly every police department in California and elsewhere.

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 neighborhoods. 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 young 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 racially-biased mainly because the police are systematically "fishing" for arrests in only some neighborhoods, and methodically searching only some "fish."⁵ This produces what has been termed "racism without racists."⁶

Marijuana Possession Arrests Have Serious Consequences

In California, most people arrested for marijuana possession are charged with a misdemeanor, usually for violating section 11357 of the California Health and Safety Code, because they possessed less than an ounce of marijuana, typically much less. Misdemeanors are legally "crimes" and produce a criminal record or "rap sheet."

Most people found by the police possessing small amounts of marijuana are given a court summons requiring them to appear before a judge at a specified date and time. For those who fail to appear, the court issues an arrest warrant. When they are next stopped by the police for any reason, including a routine traffic stop, their names are searched in the criminal databases. When the "failure to appear" warrant shows up, they are handcuffed, arrested and jailed.

When people with a summons do appear in court at the required date and time, they go before a judge. If they plead guilty – which happens in the vast majority of cases – they are ordered to pay a fine up to \$100, plus court costs as high as \$360.⁷ People unable to pay may be given time to raise the money, but if they cannot they will be arrested, handcuffed, and jailed.

Within these broad policies, marijuana possession arrests are handled differently in various counties, and even within different jurisdictions in the same county.

For example, in the low-income and heavily black and Latino district of Central Los Angeles, people given a court appearance summons are ordered to appear at the Central Arraignment Court on Bauchet Street. Once there, they do not meet a public defender attorney because, as in most California courts, none is provided for people charged in these marijuana possession cases. The defendants often do not realize that they have been charged with a crime because the summons looks like a traffic ticket or infraction.

They go before a judge who tells them they have been charged with a misdemeanor, and that if they plead guilty they will be fined up to \$100. The judges routinely recommend defendants waive their right to a trial. Most people, wanting to get released and put this experience behind them, accept this recommendation and plead guilty.

Most people find the money to pay the fine and court costs and give it little thought until they apply for a job, apartment, student loan or school, and are turned down because a criminal background check reveals that they have 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 criminal records can create barriers to employment and education for anyone, including whites and middle class people. Criminal drug arrest and conviction records can severely limit the life chances of the poor, the young, and especially young African Americans and Latinos.⁸

Some jurisdictions provide a public defender to people given a court appearance summons for marijuana possession – for example, in the largely Latino areas of East LA in Los Angeles County. When defendants appear for arraignment at the East Los Angeles Courthouse, a public defender meets with them and explains that if they attend ten Narcotics Anonymous (NA) meetings, the possession charges against them can be dismissed. Most people accept this in order to avoid a criminal drug conviction, which can get immigrants deported. If they attend all ten NA meetings, their misdemeanor possession charge is dropped. However, they still have a permanent criminal drug arrest record which can be found on the Internet by anyone who has their name, social security number, and birth date.

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, a misdemeanor marijuana arrest in California has serious consequences for anyone, including white, middle class, and especially young people.

For young, low-income African Americans 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.”⁹ These marijuana possession arrests, which target young, low-income Californians, serve as a “head start” program for a lifetime of unemployment and poverty.¹⁰

End Notes

¹ 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.

² Daniel Macallair and Mike Males, "Marijuana Arrests and California's Drug War: A Report to the California Legislature." Center on Juvenile and Criminal Justice, San Francisco, Ca, October 2009. At: http://www.cjcj.org/files/Marijuana_Arrests_and_Californias_Drug_War.pdf

³ We are working on a follow up report using California state data to focus on the marijuana possession arrests of Latinos.

⁴ The arrest rate is calculated by dividing the number of arrests of a group by the population of that group times 100,000.

⁵ 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 is 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>

⁶ 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."

⁷ 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.

⁸ 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.

⁹ Representatives Steve Cohen and Sheila Jackson Lee used the phrase "scarlet letter" during a major hearing of the Judiciary Committee of the U.S. House of Representatives. Cohen repeatedly termed the stigmatizing effects of criminal records for marijuana possession a type of "scarlet letter." "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*, New Press, 2009.

¹⁰ 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

Appendix:
 Marijuana Possession Arrest Percentages
 in the 25 Largest Counties in California,
 Averages for 2004 - 2008

	Black Mj Poss Arrest Rate per 100,000 Blacks, 04-08	White Mj Poss Arrest Rate per 100,000 Whites, 04-08	Percentage that the Black Rate is Higher than the White Rate	County Pop, 04-08	Black % of County Pop, 04-08	Black % of Mj Poss Arrests, 04-08	Total % of all Mj Poss Arrests Ages 15-29, 04-08
Alameda Co	175	106	166%	1,456,136	13.8%	28%	75%
Contra Costa Co	102	45	230%	1,015,831	9.6%	23%	76%
Fresno Co	431	136	317%	886,523	5.8%	18%	72%
Kern Co	317	100	317%	770,241	6.4%	19%	70%
Los Angeles Co	512	154	332%	9,880,727	9.6%	30%	74%
Marin Co	411	148	278%	246,953	3.1%	9%	74%
Monterey Co	365	148	247%	409,145	3.7%	9%	78%
Orange Co	616	278	221%	2,988,718	1.9%	5%	81%
Placer Co	417	135	309%	324,335	1.6%	5%	79%
Riverside Co	292	110	265%	1,997,594	6.6%	17%	75%
Sacramento Co	360	87	413%	1,372,397	10.4%	38%	69%
San Bernardino Co	348	137	255%	1,977,004	9.5%	23%	74%
San Diego Co	612	168	365%	2,955,564	5.6%	20%	68%
San Francisco Co	292	65	448%	769,431	7.1%	36%	65%
San Joaquin Co	93	74	126%	663,649	7.9%	12%	70%
San Luis Obispo Co	237	176	135%	259,435	2.1%	3%	77%
San Mateo Co	253	97	262%	702,606	3.4%	11%	80%
Santa Barbara Co	582	303	192%	402,385	2.4%	5%	75%
Santa Clara Co	496	171	291%	1,719,666	2.8%	11%	76%
Santa Cruz Co	761	208	365%	250,964	1.2%	5%	73%
Solano Co	441	156	283%	409,274	15.3%	39%	77%
Sonoma Co	624	191	327%	465,201	1.7%	6%	71%
Stanislaus Co	222	99	225%	505,947	3.2%	8%	72%
Tulare Co	166	87	190%	414,206	2.0%	4%	68%
Ventura Co	218	159	137%	795,294	2%	3%	81%

Source: FBI / Uniform Crime Report County Arrest Data and U.S. Census Data.. 5 year average: 2004-2008
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