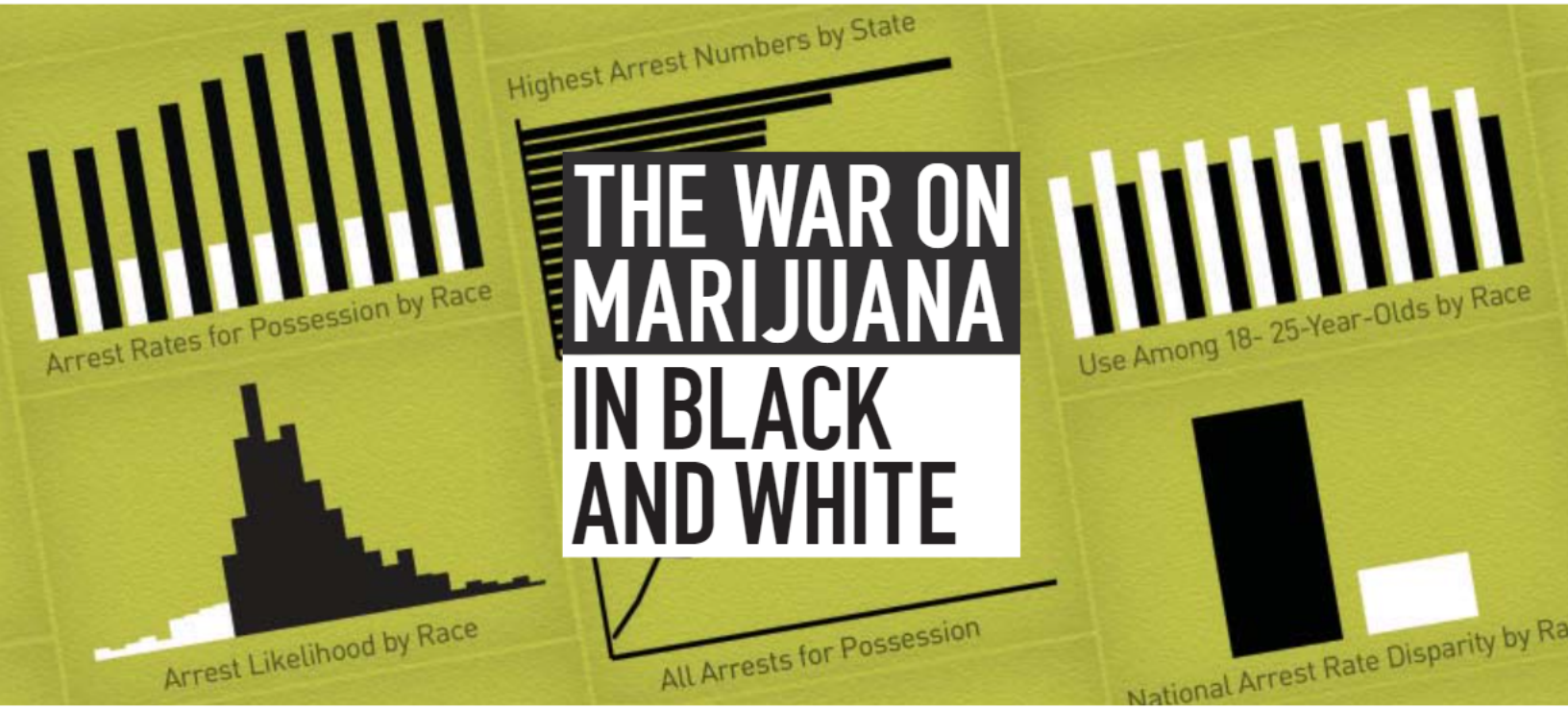


THE WAR ON MARIJUANA IN BLACK AND WHITE

BILLIONS OF DOLLARS WASTED ON RACIALLY BIASED ARRESTS

June 2013

ACLU
AMERICAN CIVIL LIBERTIES UNION

The War on Marijuana in Black and White

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EXECUTIVE SUMMARY

This report is the first to examine marijuana possession arrest rates by race for all 50 states (and the District of Columbia) and their respective counties from 2001 to 2010. The report relies on the Federal Bureau of Investigation's Uniform Crime Reporting Program and the United States Census' annual county population estimates to document arrest rates by race per 100,000 for marijuana possession.

The report finds that between 2001 and 2010, there were over 8 million marijuana arrests in the United States, 88% of which were for possession. Marijuana arrests have increased between 2001 and 2010 and now account for over half (52%) of all drug arrests in the United States, and marijuana possession arrests account for nearly half (46%) of all drug arrests. In 2010, there was one marijuana arrest every 37 seconds, and states spent combined over $3.6 billion enforcing marijuana possession laws.

Marijuana arrests have increased between 2001 and 2010 and now account for over half (52%) of all drug arrests in the United States

The report also finds that, on average, a Black person is 3.73 times more likely to be arrested for marijuana possession than a white person, even though Blacks and whites use marijuana at similar rates. Such racial disparities in marijuana possession arrests exist in all regions of the country, in counties large and small, urban and rural, wealthy and poor, and with large and small Black populations. Indeed, in over 96% of counties with more than 30,000 people in which at least 2% of the residents are Black, Blacks are arrested at higher rates than whites for marijuana possession.

The report concludes that the War on Marijuana, like the larger War on Drugs of which it is a part, is a failure. It has needlessly ensnared hundreds of thousands of people in the criminal justice system, had a staggeringly disproportionate impact on African-Americans, and comes at a tremendous human and financial cost. The price paid by those arrested and convicted of marijuana possession can be significant and linger for years, if not a lifetime. Arrests and convictions for possessing marijuana can negatively impact public housing and student financial aid eligibility, employment opportunities, child custody determinations, and immigration status. Further, the War on Marijuana

has been a fiscal fiasco. The taxpayers' dollars that law enforcement agencies waste enforcing marijuana possession laws could be better spent on addressing and solving serious crimes and working collaboratively with communities to build trust and increase public health and safety. Despite the fact that aggressive enforcement of marijuana laws has been an increasing priority of police departments across the country, and that states have spent billions of dollars on such enforcement, it has failed to diminish marijuana's use or availability.

To repair this country's wrecked War on Marijuana, the ACLU recommends that marijuana be legalized for persons 21 or older through a system of taxation, licensing, and regulation. Legalization is the smartest and surest way to end targeted enforcement of marijuana laws in communities of color, and, moreover, would eliminate the costs of such enforcement while generating revenue for cash-strapped states. States could then reinvest the money saved and generated into public schools and public health programs, including substance abuse treatment. If legalization is not possible, the ACLU recommends depenalizing marijuana use and possession for persons 21 or older by removing all attendant civil and criminal penalties, or, if depenalization is unobtainable, decriminalizing marijuana use and possession for adults and youth by classifying such activities as civil, not criminal, offenses.

The ACLU also recommends that until legalization or depenalization is achieved, law enforcement agencies and district attorney offices should deprioritize enforcement of marijuana possession laws. In addition, police should end racial profiling and unconstitutional stop, frisk, and search practices, and no longer measure success and productivity by the number of arrests they make. Further, states and the federal government should eliminate the financial incentives and rewards that enable and encourage law enforcement to make large numbers of arrests, including for low-level offenses such as marijuana possession.

In sum, it is time to end marijuana possession arrests.

ACKNOWLEDGMENTS

The report has been a project of the American Civil Liberties Union (ACLU). The primary authors are Ezekiel Edwards, director, Criminal Law Reform Project; Will Bunting, fiscal policy analyst; and Lynda Garcia, Soros Justice Fellow.

The authors thank Vanita Gupta, deputy legal director, ACLU, and director, Center for Justice, for her strategic guidance, edits, and assistance in overseeing production of the report; Rebecca McCray, paralegal, ACLU, and Kate Larkin, administrative assistant, ACLU, for their editorial assistance; and Nicole Kief, advocacy and policy strategist, ACLU, for her outreach and assistance to ACLU affiliates.

The authors also thank Allen Hopper at the ACLU of Northern California, Alison Holcomb at the ACLU of Washington, and Udi Ofer of the ACLU of New Jersey for their invaluable feedback; Julie Ebenstein and Benjamin Stevenson at the ACLU of Florida, and Michael Barnfield, legal consultant to the ACLU of Florida, for their assistance in obtaining arrest data from the state of Florida; Sarah LaPlante at the New York Civil Liberties Union for her assistance in obtaining data from the Criminal Court of the City of New York; and Rosalyn Overstreet-Gonzalez at the Public Defender Service for the District of Columbia for her assistance in obtaining data from the D.C. Metropolitan Police Department.

The authors would like to extend their deep gratitude and a special thanks to Professors Jon Gettman at Shenandoah University and Harry Levine at Queens College, City University of New York. Professor Gettman, who has researched and reported extensively on data related to marijuana arrests for over 12 years, was extremely generous in providing the ACLU with his data set for marijuana possession arrests from 2001 to 2010. This data set served as the foundation for this report. Professor Levine has long been one of the leading voices on marijuana arrests and their racial disparities. Indeed, previous reports on marijuana arrests in various cities and states by Professor Levine, his colleague Loren Siegel, and Professor Gettman provided indispensable models for this report.

The Internet references cited in this publication were valid as of June 2013. Given that URLs and web sites are in constant flux, the ACLU cannot vouch for their current validity.

I. INTRODUCTION

Over the past 40 years, the United States has fought a losing domestic drug war that has cost one trillion dollars, resulted in over 40 million arrests, consumed law enforcement resources, been a key contributor to jaw-dropping rates of incarceration, damaged countless lives, and had a disproportionately devastating impact on communities of color. The ferocity with which the United States has waged this war, which has included dramatic increases in the length of prison sentences, and has resulted in a 53% increase in drug arrests, a 188% increase in the number of people arrested for marijuana offenses, and a 52% increase in the number of people in state prisons for drug offenses, between 1990 and 2010.[1] Indeed, the United States now has an unprecedented and unparalleled incarceration rate: while it accounts for 5% of the world's population, it has 25% of the world's prison population.[2]

Despite costing billions of dollars,[3] the War on Drugs has polluted the nation's social and public health while failing to have any marked effect on the use or availability of drugs.[4] Indeed, the United States is the

Despite costing billions, the War on Drugs has polluted the nation's social and public health and failed to curb the use or availability of drugs.

1 *See* Allen J. Beck & Paige M. Harrison, U.S, Dep't of Just., Bureau of Just. Statistics, Prisoners in 2000 1 & 12 (Aug. 2001), *available at* http://bjs.gov/content/pub/pdf/p00.pdf (reporting the state prison population at 708,370 in 1990 and that 22% of that population, or 155,843 people, were incarcerated for drug offenses); Paul Guerino, Paige M. Harrison & William J. Sabol, U.S, Dep't of Just., Bureau of Just. Statistics, Prisoners in 2010 2 (Dec. 2011), *available at* http://bjs.gov/content/pub/pdf/p10.pdf (reporting the state prison population at 237,000 in 2010).

2 *See* Jenifer Warren, One in 100: Behind Bars in America 2008, Pew Ctr. on the States 35, tbl. A-7 (2008), *available at* http://www.pewstates.org/uploadedFiles/PCS_Assets/2008/one%20in%20100.pdf; *see also* Adam Liptak, *U.S. Prison Population Dwarfs that of Other Nations*, N.Y. Times, April 23, 2008, *available at* http://www.nytimes.com/2008/04/23/world/americas/23iht-23prison.12253738.html?pagewanted=all&_r=3&.

3 The incarceration of drug users comes at a heavy price—the average annual operating cost per state inmate in 2010 was $28,323, or $77.60 per day. *See* Tracey Kyckelhahn, U.S. Dep't of Just., Bureau of Just. Statistics, State Corrections Expenditures, FY 1982-2010 4 (2012), *available at* http://bjs.ojp.usdoj.gov/content/pub/pdf/scefy8210.pdf; *see also* Christian Henrichson & Ruth Delaney, Vera Inst. Of Just., The Price of Prisons: What Incarceration Costs Taxpayers 10 (2012), *available at* http://www.vera.org/pubs/price-prisons-what-incarceration-costs-taxpayers (follow "The Price of Prisons report" hyperlink) (reporting that it costs an average of $31,286 per year to incarcerate an inmate based on additional cost drivers such as underfunded contributions to retiree health care for corrections employees, states' contributions to retiree health care on behalf of their corrections departments, employee benefits, such as health insurance, and hospital and other health care for the prison population).

4 A World Health Organization survey of 17 countries in 2008, including the Netherlands and other countries with less stringent drug laws, found that the United States has the highest level of illegal drug use in the world. *See* Louisa Degenhardt et al., *Toward a Global View of Alcohol, Tobacco, Cannabis, and Cocaine Use: Findings from the WHO World Mental Health Surveys*, 5 PLoS Medicine 1053, 1061 & 1065 (2008) [hereinafter *Toward a Global View*], *available at* http://www.plosmedicine.org/article/info:doi/10.1371/journal.pmed.0050141 (follow "download" hyperlink). Americans report the highest level of cocaine and marijuana use — Americans were 4 times more likely to have tried cocaine in their lifetime than the next closest country, the Netherlands, while 42.2% of Americans admitted to having used marijuana.

world's largest consumer of illegal drugs.[5] On the 40th anniversary of the War on Drugs, former President Jimmy Carter declared it a total failure, noting that global drug use for all drugs had increased in the years since the drug war started.[6]

The first half of the War on Drugs focused largely on relentless enforcement of heroin and crack cocaine laws in poor communities of color.[7] But with the ebb of the crack epidemic in the late 1980s, law enforcement agencies began shifting to an easy target: marijuana. As a result, over the past 20 years police departments across the country have directed greater resources toward the enforcement of marijuana laws. Indeed, even as overall drug arrests started to decline around 2006, marijuana arrests continued to rise, and now make up over half of all drug arrests in the United States. In 2010, there were more than 20,000 people incarcerated on the sole charge of marijuana possession.[8]

Stated simply, marijuana has become the drug of choice for state and local police departments nationwide. Between 2001 and 2010, there were 8,244,943 marijuana arrests, of which 7,295,880, or 88%, were for marijuana possession. In 2010 alone, there were 889,133 marijuana arrests — 300,000 more than arrests for all violent crimes

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5 U.S. Senate Caucus on Int'l Narcotics Control, Reducing The U.S. Demand For Illegal Drugs 11 (2012), *available at* http://www.feinstein.senate.gov/public/index.cfm/files/serve/?File_id=81b53476-64a3-4088-9bae-254a84b95ddb (citing Ctr. For Behavioral Health Statistics & Quality, Substance Abuse and Mental Health Services Administration (SAMHSA), U.S. Dep't of Health & Human Services, Results From The 2010 National Survey on Drug Use and Health (NSDUH): Summary of National Findings (Sept. 2011)) ("According to the National Survey on Drug Use and Health, in 2010, about 22.6 million Americans aged 12 and older were current (in the past month) illegal drug users, representing 8.9 percent of the population. This represents the largest proportion in the past decade of people aged 12 and older identified as current illegal drug users.").

6 Jimmy Carter, Op-Ed., *Call Off the Global Drug War*, N.Y. Times, June 16, 2011, *available at* http://www.nytimes.com/2011/06/17/opinion/17carter.html?_r=3&. Further evidence that the War on Drugs has been a global failure is a 2012 report by the Global Commission on Drug Policy that found that the "global war on drugs is driving the HIV/AIDS pandemic among people who use drugs and their sexual partners." Global Comm'n on Drug Pol'y, The War on Drugs and HIV/AIDS: How the Criminalization of Drug Use Fuels the Global Pandemic 2 (2012), *available at* http://globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/GCDP_HIV-AIDS_2012_REFERENCE.pdf. The Commission points to research that shows that repressive drug law enforcement practices result in driving drug users away "from public health services and into hidden environments where HIV risk becomes markedly elevated." *Id.* Furthermore, the mass incarceration of nonviolent drug offenders increases HIV risk—in the United States as many as 25% of Americans infected with HIV may pass through correctional facilities annually, and higher rates of incarceration for African Americans may be one reason for markedly higher HIV rates among African Americans. *Id.*

7 Blacks have borne the disproportionate brunt of the broader War on Drugs. Although Blacks comprise only 13% of the general population, 33% of all drug arrests are of Blacks, and they are more likely to be incarcerated upon conviction for drug offenses. Jamie Fellner et al., Human Rights Watch, Decades of Disparity: Drug Arrests and Race in the United States 4 & 16 (2009), *available at* http://www.hrw.org/sites/default/files/reports/us0309web_1.pdf. Blacks' likelihood of being arrested for drugs at ages 17, 22, and 27 are approximately 13%, 83%, and 235% greater than that of whites. *See* Ojmarrh Mitchell & Michael S. Caudy, Examining Racial Disparities in Drug Arrests, Just. Q., 1 (2013) [hereinafter Mitchell & Caudy]. While some have suggested that such disparities can be explained by differences in drug use, drug offending, or neighborhood residence, a recent study examining these severe racial disparities in drug arrests found that the disparities cannot be accounted for by differences in such factors. *Id*. Specifically, the study found that 87% of Black's higher probability of drug arrests is in fact not attributable to differences in drug use, nondrug offending, or neighborhood context, but instead due to racial bias in law enforcement. *Id*. at 20. These findings are consistent with previous research finding that racial disparities in drug arrests are only partially explained by racial differences in drug offending. *See* Katherine Beckett, ACLU Drug Law Reform Project & The Defender Ass'n, Race and Drug Law Enforcement in Seattle 3-4 (2008), *available at* http://www.aclu.org/files/assets/race20and20drug20law20enforcement20in20seattle_20081.pdf (finding that while the majority of those who use and deliver serious drugs in Seattle are white, the majority of those purposefully arrested for delivering serious drugs in Seattle are Black, and that the focus on crack cocaine is the fundamental cause of such racial disparity and is not a function of race-neutral policy).

8 *See* Nat'l Ctr. On Addiction & Substance Abuse, Behind Bars II: Substance Abuse And America's Prison Population 2, 14 (2010) [hereinafter Behind Bars II], *available at* http://www.casacolumbia.org/articlefiles/575-report2010behindbars2.pdf (reporting that there were 20,291 people incarcerated for marijuana possession as their only offense).

combined — or one every 37 seconds. There were 140,000 more marijuana arrests in 2010 than in 2001, and 784,021 of them, or 88%, were for possession.[9]

In states with the worst disparities, Blacks were on average over six times more likely to be arrested for marijuana possession than whites.

The War on Marijuana has largely been a war on people of color. Despite the fact that marijuana is used at comparable rates by whites and Blacks, state and local governments have aggressively enforced marijuana laws selectively against Black people and communities.[10] In 2010, the Black arrest rate for marijuana possession was 716 per 100,000, while the white arrest rate was 192 per 100,000. Stated another way, a Black person was 3.73 times more likely to be arrested for marijuana possession than a white person — a disparity that increased 32.7% between 2001 and 2010. It is not surprising that the War on Marijuana, waged with far less fanfare than the earlier phases of the drug war, has gone largely, if not entirely, unnoticed by middle- and upper-class white communities.

In the states with the worst disparities, Blacks were on average over six times more likely to be arrested for marijuana possession than whites. In the worst offending counties across the country, Blacks were over 10, 15, even 30 times more likely to be arrested than white residents in the same county. These glaring racial disparities in marijuana arrests are not a northern or southern phenomenon, nor a rural or urban phenomenon, but rather a national one. The racial disparities are as staggering in the Midwest as in the Northeast, in large counties as in small, on city streets as on country roads, in counties with high median family incomes as in counties with low median family incomes. They exist regardless of whether Blacks make up 50% or 5% of a county's overall population. The racial disparities in marijuana arrest rates are ubiquitous; the differences can be found only in their degrees of severity.

Thus, while the criminal justice system casts a wide net over marijuana use and possession by Blacks, it has turned a comparatively blind eye to the same conduct

9 While the broader War on Drugs also often fails to differentiate meaningfully between corner-dealer and kingpin, low-level possessor and major pusher, addicts who sell simply to support their habits and profit-reaping entrepreneurs, its architects at least claimed that it was designed originally to disable larger-scale drug distributors.

10 See *infra* Figures 21–23. Between 2001 and 2010, of individuals surveyed by SAMHSA, each year slightly more Blacks than whites reported using marijuana over the past year; among 18- to 25-year-olds, marijuana use was higher among whites than Blacks over the same time period. Substance Abuse and Mental Health Serv. Admin., Marijuana Use in Lifetime, Past Year, and Past Month among Persons Aged 18 to 25, by Demographic Characteristics: Percentages, 2009 and 2010 tbls. 1.26A & 1.26B, *available at* http://www.samhsa.gov/data/nsduh/2k10NSDUH/tabs/Sect1peTabs1to46.htm.

occurring at the same rates in many white communities. Just as with the larger drug war, the War on Marijuana has, quite simply, served as a vehicle for police to target communities of color.

The War on Marijuana has, quite simply, served as a vehicle for police to target communities of color.

To the extent that the goal of these hundreds of thousands of arrests has been to curb the availability or consumption of marijuana, they have failed.[11] In 2002, there were 14.5 million people aged 12 or older — 6.2% of the total population — who had used marijuana in the previous month; by 2011, that number had increased to 18.1 million — 7.0% of the total population.[12] According to a World Health Organization survey of 17 countries, 42.2% of Americans have tried marijuana in their lifetime.[13] The 2010 National Survey on Drug Use and Health reported similar numbers — 39.26% of Americans surveyed reported having used marijuana in their lifetimes — and over 17.4 million Americans had used marijuana in the past month.[14] Between 2009 and 2010, 30.4% of 18- to 25-year-olds reported having used marijuana at least once in the past month.[15]

All wars are expensive, and this war has been no different. States spent over $3.61 billion combined enforcing marijuana possession laws in 2010. New York and California combined spent over $1 billion in total justice system expenditures just on enforcement of marijuana possession arrests. Had marijuana been regulated like alcohol, and had its

11 Indeed, one report noted that the increase in marijuana arrests during the 1990s had no measurable impact on price, access, or availability of marijuana. *See* Katherine Beckett & Steve Herbert, ACLU of Wash., The Consequences and Costs of Marijuana Prohibition 18-20 (2008) [hereinafter Beckett & Herbert], *available at* http://www.aclu-wa.org/library_files/BeckettandHerbert.pdf. *See also* Nat'l Drug Intelligence Ctr., Nat'l Drug Threat Assessment 2011 5, 29 (2011), *available at* http://www.justice.gov/archive/ndic/pubs44/44849/44849p.pdf (noting that the demand for marijuana is rising and that availability is high); *id.* at iv ("Despite recent increases in marijuana arrests, the price of marijuana has dropped; its average potency has increased; it has become more readily available; and marijuana use rates have often increased during the decade of increasing arrests. It thus appears that the goals of marijuana prohibition have not been achieved."); *see generally* Craig Reinarman, Peter D.A. Cohen, & L. Kaal, *The Limited Relevance of Drug Policy: Cannabis in Amsterdam and in San Francisco*, 94 Am. J. of Pub. Health 836 (2004), *available at* http://ajph.aphapublications.org/doi/pdf/10.2105/AJPH.94.5.836 (comparing the availability and use of marijuana between Amsterdam, where the government adopted de facto decriminalization in 1976, and San Francisco, and finding that the criminalization of marijuana did not reduce use, nor did decriminalization of marijuana increase use). Marijuana use throughout the 1980s, when marijuana arrests were level, actually fell. In 1979, rates of usage began to decline sharply, falling 61%, while arrest rates declined by only 24% for the time period. From 1991 to 2003, marijuana arrest rates increased disproportionately by 127% as compared to the 22% increase in use. Jason Ziedenberg & Jason Colburn, Just. Pol'y Inst., Efficacy & Impact: The Criminal Justice Response to Marijuana Policy in the US 9 (2005) [hereinafter Ziedenberg & Colburn], *available at* http://www.justicepolicy.org/research/2017.

12 *See Drug Facts: Nationwide Trends,* Nat'l Inst. on Drug Abuse, (Dec. 2012), http://www.drugabuse.gov/publications/drugfacts/nationwide-trends (last visited Feb. 25, 2013).

13 *See Toward a Global View, supra* note 4.

14 U.S. Dep't of Health & Human Serv., Substance Abuse & Mental Health Serv. Admin., Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings (2011), *available at* http://www.samhsa.gov/data/NSDUH/2k10NSDUH/2k10Results.htm.

15 U.S. Dep't of Health & Human Serv., Substance Abuse & Mental Health Serv. Admin., State Estimates of Substance Use and Mental Disorders from the 2009-2010 National Surveys on Drug Use and Health 2.2 (last updated 2012), *available at* http://www.samhsa.gov/data/NSDUH/2k10State/NSDUHsae2010/NSDUHsaeCh2-2010.htm#2.2.

use been treated as a public health issue akin to alcohol instead of as a criminal justice issue, this is money that cities, counties, and police departments could have invested in an array of other law enforcement priorities and community initiatives.

States spent over $3.6 billion combined enforcing marijuana possession laws in 2010.

Marijuana arrests, prosecutions, and convictions have wrought havoc on both individuals and communities, not only causing direct harm but also resulting in dire collateral consequences. These include affecting eligibility for public housing and student financial aid, employment opportunities, child custody determinations, and immigration status. Marijuana convictions can also subject people to more severe charges and sentences if they are ever arrested for or convicted of another crime. In addition, the targeted enforcement of marijuana laws against people of color, and the unsettling, if not humiliating, experience such enforcement entails, creates community mistrust of the police, reduces police-community cooperation, and damages public safety.

Concentrated enforcement of marijuana laws based on a person's race or community has not only been a central component of this country's broader assault on drugs and drug users, it has also resulted from shifts in policing strategies, and the incentives driving such strategies. Over the past 20 years, various policing models rooted in the "broken windows" theory, such as order-maintenance and zero-tolerance policing, have resulted in law enforcement pouring resources into targeted communities to enforce aggressively a wide array of low-level offenses, infractions, and ordinances through tenacious stop, frisk, and search practices. Indeed, it seems hard to avoid the conclusion that police tactics of effectuating a high volume of arrests for minor offenses has been a major contributor to the 51% rise in marijuana arrests between 1995 and 2010. Adding further stimuli to such policing strategies are COMPSTAT — a data-driven police management and performance assessment tool — and the Byrne Justice Assistance Grant Program, a federal funding mechanism used by state and local police to enforce drug laws. These programs appear to create incentives for police departments to generate high numbers of drug arrests, including high numbers of marijuana arrests, to meet or exceed internal and external performance measures.

So we stand at a strange crossroads in America with regards to marijuana policy. On the one hand, as of November 2012, two states — Colorado and Washington — have legalized marijuana; 19 jurisdictions (18 states and the District of Columbia) allow

marijuana for medical purposes; a majority of Americans favor both full legalization[16] as well as legalizing marijuana for medicinal purposes;[17] whites and Blacks use marijuana at comparable rates,[18] and many residents of middle- and upper-class white communities use marijuana without legal consequence or even fear of entanglement in the criminal justice system. On the other hand, in 2010 there were over three-quarters of a million arrests for marijuana possession — accounting for almost half of the almost 1.7 million drug arrests nationwide — for which many people were jailed and convicted. Worse yet, Blacks were arrested for marijuana possession at almost four times the rate as whites, with disparities even more severe in several states and counties, and the country spent billions of dollars enforcing marijuana laws.

But the right road ahead for this country is clearly marked: marijuana possession arrests must end. In place of marijuana criminalization, and taking a cue from the failure of alcohol prohibition, states should legalize marijuana, by licensing and regulating marijuana production, distribution, and possession for persons 21 or older. Legalization would, first and foremost, eliminate the unfair race- and community-targeted enforcement of marijuana criminal laws; help reduce overincarceration in our jails and prisons; curtail infringement upon constitutional rights, most notably as guaranteed by the Fourth Amendment's proscription of unreasonable searches and seizures; and allow law enforcement to focus on serious crime.[19]

Furthermore, at a time when states are facing budget shortfalls, legalizing marijuana makes fiscal sense. The licensing and taxation of marijuana will save states millions of dollars currently spent on enforcement of marijuana criminal laws. It will, in turn, raise millions more in revenue to reinvest in public schools and substance abuse

16 *Majority Now Supports Legalizing Marijuana*, Pew Research Ctr for the People & the Press (Apr. 4, 2013), http://www.people-press.org/2013/04/04/majority-now-supports-legalizing-marijuana/. A 2012 Rasmussen poll of likely voters revealed that 56% favored legalizing and regulating marijuana in a similar manner to alcohol and tobacco regulation, while 36% opposed. *56% Favor Legalizing, Regulating Marijuana*, Rasmussen Reports (May 17, 2012), http://www.rasmussenreports.com/public_content/lifestyle/general_lifestyle/may_2012/56_favor_legalizing_regulating_marijuana. Other polls have produced similar results. *Record High of 50% of Americans Favor Legalizing Marijuana Use*, Gallup Politics (Oct. 27, 2011), http://www.gallup.com/poll/150149/record-high-americans-favor-legalizing-marijuana.aspx.

17 A Gallup poll in 2010 found that 70% of Americans favored making marijuana legally available for doctors to prescribe to reduce pain and suffering. Elizabeth Mendes, *New High of 46% of Americans Support Legalizing Marijuana*, Gallup Politics (Oct. 28, 2010), http://www.gallup.com/poll/144086/New-High-Americans-Support-Legalizing-Marijuana.aspx.

18 See *infra* Figures 21–23.

19 A retired deputy chief of the Los Angeles Police Department criticized the drug war's diversion of police resources, citing the reassignment of Los Angeles police officers to oversee the constant transfer of prisoners to county correctional facilities as well as the fact that police laboratories were inundated with drug samples to test, which slowed the testing of rape kits and evidence related to other serious crimes. *See* Stephen Downing, Op-Ed, *Drug War: What Prohibition Costs Us [Blowback]*, L.A. Times, Oct. 6, 2011, *available at* http://opinion.latimes.com/opinionla/2011/10/drug-war-blowback.html. Drug law enforcement "is believed to have redirected law enforcement resources that have resulted in more drunk driving, and decreased investigation and enforcement of violent crime laws." Bryan Stevenson, *Drug Policy, Criminal Justice and Mass Incarceration* 4 (Global Comm'n on Drug Policies, Working Paper, 2011), *available at* http://www.globalcommissionondrugs.org/wp-content/themes/gcdp_v1/pdf/Global_Com_Bryan_Stevenson.pdf. In Illinois, for example, a 47% increase in drug arrests corresponded with a 22.5% decrease in drunk driving arrests. Mark Mauer & Ryan S. King, The Sentencing Project, A 25-Year Quagmire: The War on Drugs and Its Impact on American Society 5 (2007) [hereinafter Mauer & King], *available at* http://www.sentencingproject.org/doc/publications/dp_25yearquagmire.pdf.

prevention, as well as general funds and local budgets, research, and public health, to help build stronger, safer communities.[20] Indeed, Washington State's Office of Financial Management projects that Initiative 502, which legalized the possession of marijuana for people 21 or older under tight regulations, will generate more than half a billion dollars in new revenue each year through a 25% marijuana excise tax, retail sales, and business and occupation taxes.[21] The state will direct 40% of the new revenues toward the state general fund and local budgets and 60% toward education, health care, substance abuse prevention, and research.[22] At the national level, a CATO Institute study estimated that federal drug expenditures on marijuana prohibition in 2008 were $3.4 billion, and that legalization would generate $8.7 billion in annual revenue.[23]

If legalizing marijuana through taxation, licensing, and regulation is unobtainable, states should significantly reduce marijuana arrests by removing all criminal and civil penalties for authorized marijuana use and possession for persons 21 or older. Under depenalization, there would be no arrests, prosecutions, tickets, or fines for marijuana use or possession as long as such activity complies with existing regulations governing such activities. If depenalization is unobtainable, states should decriminalize marijuana possession for personal use by reclassifying all related criminal laws as civil offenses only, with a maximum penalty of a small fine.

In addition to ending marijuana possession arrests, police departments should reform order-maintenance policing strategies that focus on low-level offenses. Instead, law enforcement should address public health questions and safety concerns in ways that minimize the involvement of the criminal justice system by moving toward non-punitive, transparent, collaborative community- and problem-oriented policing strategies. These strategies should aim to serve, protect, and respect all communities. In addition, the federal government should end inclusion of marijuana possession arrests as a performance measure of law enforcement agencies' use of or application for federal funds, and redirect such funds currently designated to fight the War on Drugs toward drug treatment, research on treatment models and strategies, and public education.

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20 For example, Colorado's Amendment 64 directs $24 million to the state's Building Excellent Schools Today program, which is projected to create 372 new jobs from school construction projects by 2017. *See* Christopher Stiffler, Colo. Ctr. for Law and Pol'y, Amendment 64 Would Produce $60 million in New Revenue and Savings for Colorado 9 (2012) [hereinafter Stiffler], *available at* http://www.cclponline.org/postfiles/amendment_64_analysis_final.pdf.

21 *See* Washington State Office of Fin. Mgmt., Fiscal Impact Statement (I-502) (2012), *available at* http://www.ofm.wa.gov/initiatives/2012/502_fiscal_impact.pdf.

22 Wash. Initiative 502 (I-502) (2012), *available at* http://sos.wa.gov/_assets/elections/initiatives/i502.pdf.

23 Jeffrey A. Miron & Katherine Waldock, Cato Inst., The Budgetary Impact of Ending Drug Prohibition 1 (2010) [hereinafter Miron & Waldock, Budgetary Impact], *available at* http://www.cato.org/sites/cato.org/files/pubs/pdf/DrugProhibitionWP.pdf. *See* Fiscal Cost Analysis *infra* pp. 68-71 (explaining the methodology used in the Miron and Waldock study).

II. FINDINGS

FINDING #1 Marijuana Arrests — 88% of Which Are for Possession Offenses — Have Risen Since 2001 and Accounted for Over Half (52%) of All Drug Arrests in America in 2010

- Between 2001 and 2010, there were over 7 million arrests (7,295,880) for marijuana possession. In 2010 alone, of the 1,717,064 drug arrests in America, over three-quarters of a million — 784,021 — were for marijuana possession.

- While overall drug arrests rose steadily between 1990 and 2006, between 2006 and 2010 they had fallen by over 200,000. Marijuana possession arrests have not only been rising since 1990, when there were just over 250,000 marijuana possession arrests, but increased between 2006 and 2010. There were 100,000 more marijuana possession arrests in 2010 than in 2001, an 18% increase; 200,000 more than in 1995, a 51% increase; and over 500,000 more than in 1990, a 193% increase.

- In 2010, nearly half (46%) of all drug arrests in America were for marijuana possession, an increase from 34% in 1995. Between 2005 and 2010, the percentage of all drug arrests accounted for by marijuana possession arrests increased 21%. In Alaska, 81% of all drug arrests were for marijuana possession in 2010; in Nebraska and Montana, 73% and 70%, respectively; in Wyoming, Georgia, Iowa, Wisconsin, and Colorado, 60% or more of all drug arrests were for marijuana possession.

- Of all marijuana arrests in 2010, 784,021, or 88%, were for possession. Similarly, 88% of all marijuana arrests between 2001 and 2010 — 7,295,880 out of 8,244,943 — were for possession.

- In New York and Texas, the two states with the most marijuana arrests in 2010, 97% were for possession. In nearly half of all states, over 90% of marijuana arrests were for possession. In only seven states did possession

arrests account for less than 80% of all marijuana arrests, and in only two (Massachusetts and Minnesota) was the figure below 65%.

- The 12 states with the most marijuana possession arrests in 2010 made over half a million total arrests: New York, which alone made over 100,000 arrests, Texas, Florida, California, Illinois, Georgia, Maryland, New Jersey, Pennsylvania, North Carolina, Ohio, and Virginia. In total numbers, the states with the greatest increase in annual marijuana possession arrests between 2001 and 2010 were Texas (20,681 more arrests in 2010 than in 2001), New York (16,173), Illinois (12,406), Florida (12,796), and Georgia (9,425).

- The national marijuana possession arrest rate in 2010 was 256 per 100,000 people. The jurisdictions with the highest overall marijuana possession arrest rates per 100,000 residents were:

D.C.	**846**
New York	**535**
Nebraska	**417**
Maryland	**409**
Illinois	**389**

- Twenty-nine states and the District of Columbia had higher marijuana possession arrest rates in 2010 than in 2001.[24] The states with the greatest percentage increases in marijuana possession arrest rates were Montana (146%), Delaware (102%), Nevada (96%), the District of Columbia (62%), and Oregon (45%).

- Cook County, IL (includes Chicago) made the most marijuana possession arrests in 2010 with over 33,000, or 91 per day.[25] The five counties (or boroughs) of New York City made a total of 59,451 marijuana possession arrests, or 163 per day; Kings County (Brooklyn) made over 20,000,

24 In addition to the 50 states, this report has analyzed marijuana arrest and fiscal data for the District of Columbia. While the District of Columbia is obviously not a state, the report includes the data for the District of Columbia when presenting both state and county data. Thus, there are instances when the report presents state data (e.g., "the states with the highest" or "list of states"), particularly in the graphs, charts, and tables, and includes the District of Columbia.

25 It is worth noting that in 2012 the Chicago City Council overwhelmingly voted to decriminalize marijuana possession, opting to allow police to issue tickets rather than make arrests. Kristen Mack, *Chicago OKs Pot Tickets*, Chi. Tribune, June 28, 2012 [hereinafter Mack], *available at* http://articles.chicagotribune.com/2012-06-28/news/ct-met-chicago-city-council-0628-20120628_1_pot-possession-possession-of-small-amounts-pot-tickets.

Bronx County over 16,000. Los Angeles County, CA, made over 15,600 such arrests and Harris County, TX (includes Houston), almost 12,000. There were another combined 30,000 arrests for marijuana possession in Maricopa County, AZ (includes Phoenix), Fulton County, GA (includes Atlanta), Clark County, NV (includes Las Vegas), and Baltimore City, MD; and there were 40,000 more combined in San Diego and Orange Counties, CA, Suffolk (part of Long Island) and Erie (includes Buffalo) Counties, NY, St. Louis City, MO, Philadelphia County, PA, Milwaukee County, WI, Bexar County, TX (includes San Antonio), and the District of Columbia.

- The counties with the highest marijuana possession arrest rates per 100,000 residents were:

Worcester, MD	**2,132**
Kleberg, TX	**1,294**
Cole, MO	**1,230**
Bronx, NY	**1,154**
Baltimore City, MD	**1,136**

- Teenagers and young adults bear the brunt of marijuana possession arrests: 62% of marijuana possession arrests in 2010 were of people 24 years old or younger, and more than 34% were of teenagers or younger.

FINDING #2 Extreme Racial Disparities in Marijuana Possession Arrests Exist Across the Country: Blacks Are 3.73 Times More Likely Than Whites to Be Arrested for Marijuana Possession

- In 2010, nationwide the white arrest rate was 192 per 100,000 whites, and the black arrest rate was 716 per 100,000 blacks.

- Racial disparities in marijuana possession arrests are widespread and exist in every region in the country. In the Northeast and Midwest, Blacks are over four times more likely to be arrested for marijuana possession than whites. In the South, Blacks are over three times more likely, and in the West, they are twice more likely. In over one-third of the states, Blacks are more than four times likelier to be arrested for marijuana possession than whites.

- Racial disparities in marijuana possession arrests exist regardless of county household income levels, and are greater in middle income and more affluent counties. In the counties with the 15 highest median household incomes (between $85K–$115K), Blacks are two to eight times more likely to be arrested for marijuana possession than whites. In the 15 counties in the middle of the household income range (between $45K–$46K), Blacks are over three times more likely to be arrested for marijuana possession than whites. In the poorest 15 counties (median household incomes between $22K–$30K), Blacks are generally 1.5 to five times more likely to be arrested.

Racial disparities in marijuana possession arrests exist regardless of county household income levels, though they are worse in middle income and more affluent communities.

Racial Disparities at the State Level

- The states (plus the District of Columbia) with the largest racial disparities in marijuana possession arrest rates per 100,000 are:

	Black Arrest Rate	White Arrest Rate	Times More Likely Blacks Arrested
Iowa	1,454	174	8.34
D.C.	1,489	185	8.05
Minnesota	835	107	7.81
Illinois	1,526	202	7.56
Wisconsin	1,285	215	5.98
Kentucky	697	117	5.95
Pennsylvania	606	117	5.19

Even at the "lower end" of the spectrum, the disparities persist. In Oregon, for example, the state with the fifth *lowest* disparity, the Black arrest rate (563) is still more than double the white arrest rate (271).

The states, plus the District of Columbia, with the highest Black arrest rates per 100,000 for marijuana possession were:

	Black Arrest Rate
Nebraska	1,699
Illinois	1,526
D.C.	1,489
Iowa	1,454
Wisconsin	1,285
Nevada	1,272
Wyoming	1,223
New York	1,192

- While the Black arrest rate for marijuana possession was *under* 300 in only two states, Hawaii (179) and Massachusetts (61)(following decriminalization), the white arrest rate was *over* 300 in only three states: Wyoming (376), Nebraska (365), and Alaska (318). In only 10 states was the Black arrest rate *under* 500, while in no state was the white arrest rate *over* 400.

- Of marijuana possession arrests in the District of Columbia, a staggering 91% were of Blacks. In Mississippi, 69% of all marijuana possession arrests were of Blacks. In Georgia and Louisiana, the numbers are 64% and 61%, respectively. These figures are further illuminated when taking into account the difference between Blacks' percentage of marijuana arrests and Blacks' percentage of state populations. In Illinois, for instance, Blacks make up 15% of the population, but account for 58% of the marijuana possession arrests. Similarly, in Alabama, 60% of the marijuana possession arrests are of Blacks, yet Blacks account for less than 25% of the population. In Kentucky and Minnesota, Blacks represent only 8% and 5% of the respective states, but 36% and 31% of the marijuana possession arrests.

Racial Disparities at the County Level

- This report examined 945 counties in the United States with at least 30,000 residents and where Blacks make up at least 2% of the population; these 945 counties represent 78% of the total United States population.[26] Of these counties, in only 37 (or 3.9%) is the white arrest rate for marijuana possession higher than the Black arrest rate. In other words, in over 96% of the counties examined in this report, Blacks are more likely than whites to be arrested for marijuana possession.

- The counties with the largest racial disparities in arrest rates for marijuana possession are not necessarily in the states with the largest racial disparities in arrest rates. For instance, Missouri has the 40th largest Black-white arrest ratio (2.63) of all the states, but in St. Louis City, MO, one white person is arrested for every 18.4 Black persons arrested. Georgia has the 21st largest racial disparity (3.69), but in Gordon, GA, the ratio is one white arrest for every 14.1 Black arrests (or 136 white arrests per 100,000 as compared to 1,921 Black arrests per 100,000). Ohio is 16th on the racial disparity list (4.11), but in Allen, OH, Blacks are 13.2 times more likely to be arrested than whites. Kings County (Brooklyn), New York has the 10th largest racial disparity in marijuana possession arrests at 4.52); 161 whites per 100,000 are arrested, whereas 1,554 Blacks per 100,000 are arrested — a ratio of 9.68.

26 When reporting the national and state data regarding marijuana possession arrests, this report considers all 3,143 counties and 100% of the population of the United States.

- The counties with the highest Black arrest rates for marijuana possession are spread throughout the country, from Campbell and Kenton, KY, to Worcester, MD; from Dare, NC, to Livingston and Montgomery, IL; from Onondaga, Broome, and Chautauqua, NY, to Chambers, Kleberg, Hopkins, Cooke, and Van Zandt, TX.

- 92% of marijuana possession arrests in Baltimore City, MD, were of Blacks; 87% in Fulton, GA (includes Atlanta); 85% in Prince George's, MD; 83% in Shelby, TN (includes Memphis); and 82% in Philadelphia, PA.

- These staggering racial disparities in marijuana possession arrests exist in many counties irrespective of the overall Black population. For example, in Lycoming and Lawrence, PA, and in Kenton County, KY, Blacks make up less than 5% of the population, but are between 10 and 11 times more likely than whites to be arrested. In Hennepin County, MN (includes Minneapolis), and Champaign and Jackson Counties, IL, Blacks are 12%, 13%, and 15% of the population, respectively, but are 9 times more likely to be arrested than whites. In Brooklyn, NY, and St. Louis City, MO, Blacks comprise 37% and 50% of the residents, respectively, and are 12 and 18 times more likely to be arrested than whites. In Chambers, AL, and St. Landry, LA, Blacks account for more than twice as many marijuana arrests (90% and 89%, respectively) than they do of the overall population (39% and 42%, respectively). In Morgan and Pike Counties, AL, Blacks make up just over 12% and 37% of the population, respectively, but account for 100% of the marijuana possession arrests.

FINDING #3 While There Were Pronounced Racial Disparities in Marijuana Arrests Ten Years Ago, the Disparities Have Increased

- As the overall number of marijuana arrests has increased over the past decade, the white arrest rate has remained constant at around 192 per 100,000, whereas the Black arrest rate has risen from 537 per 100,000 in 2001 (and 521 per 100,000 in 2002) to 716 per 100,000 in 2010. Hence, it appears that the increase in marijuana arrest rates overall is largely a result of the increase in the arrest rates of Blacks.

- Racial disparities in marijuana possession arrests have increased in 38 of the 50 states (and in the District of Columbia) over the past decade. The states where the disparities have increased the most since 2001 are:

	Black/White Arrest Ratio		% Change in Disparity
	2001	2010	
Alaska	0.3	1.6	+384%
Minnesota	2.4	7.8	+231%
Wisconsin	2.4	6.0	+153%
Michigan	1.3	3.3	+149%
Kentucky	2.4	6.0	+146%
Tennessee	1.8	4.0	+122%
Ohio	1.9	4.1	+118%

FINDING #4 Blacks and Whites Use Marijuana at Similar Rates

- Marijuana use is roughly equal among Blacks and whites. In 2010, 14% of Blacks and 12% of whites reported using marijuana in the past year; in 2001, the figure was 10% of whites and 9% of Blacks. In every year from 2001 to 2010, more whites than Blacks between the ages of 18 and 25 reported using marijuana in the previous year. In 2010, 34% of whites and 27% of Blacks reported having last used marijuana more than one year ago — a constant trend over the past decade. In the same year, 59% of Blacks and 54% of whites reported having never used marijuana. Each year over the past decade more Blacks than whites reported that they had never used marijuana.

- The relentless criminalization of marijuana has not had a noticeable deterrent effect on usage rates, which have remained constant over time. Notably, marijuana use reached an all-time low around 1990, when there

were far fewer arrests for marijuana possession. As law enforcement has increasingly prioritized marijuana possession arrests, usage rates have risen. Generally, from 1980 to 2000 there was no upward trend in the number of people using marijuana. Since 2000, however, marijuana use has generally increased among persons aged 18 or older and has remained approximately the same for persons aged 12 to 17.

FINDING #5 Money Wasted on Marijuana Arrests: States Spent Over $3.6 Billion on Marijuana Possession Enforcement in 2010

- The ACLU estimates the total national expenditure of enforcing marijuana possession laws at approximately $3.613 billion. In 2010, states spent an estimated $1,747,157,206 policing marijuana possession arrests, $1,371,200,815 adjudicating marijuana possession cases, and $495,611,826 incarcerating individuals for marijuana possession.

- New York and California combined spent over $1 billion to enforce their marijuana laws in 2010.[27] Add the amount of money that Texas, Illinois, Florida, New Jersey, Georgia, and Ohio spent, and the total is over $2 billion.

- Over half of the states (27) each spent over $30 million in 2010 enforcing marijuana possession laws.

- Even when discounting entirely all state fiscal spending on prison facilities, corrections expenditures associated with marijuana possession enforcement are significant — California, Florida, Illinois, New York, and Texas, for example, each spent more than an estimated $20 million of state taxpayer money in 2010 housing individuals in local jail and county

27 Note that California's expenditures in 2011 would be lower following decriminalization of possession of 28.5 grams or less of marijuana in 2010 and the accompanying drop in marijuana arrests. *See* Kamala D. Harris, Cal. Dep't of Just. Crim. Just. Statistics Ctr., Crime in California: 2011 2 & 26 (2012), *available at* http://oag.ca.gov/sites/all/files/pdfs/cjsc/publications/candd/cd11/cd11.pdf? (noting the decline in misdemeanor marijuana arrests after reclassification).

correctional facilities for possession of marijuana, with New York and California spending more than $65 million apiece.

- The states, including the District of Columbia, that had the highest per capita fiscal expenditures enforcing marijuana possession laws in 2010 were, in order: the District of Columbia, New York, Maryland, Illinois, and Wyoming, followed closely by Nevada, Delaware, New Jersey, and Connecticut.

PROFILE

DeMarcus Sanders, 26

Waterloo, IA

The first time DeMarcus Sanders was arrested for having marijuana, it cost him his job, his driver's license, the start of a college degree, a month in jail, and thousands of dollars.

A police officer pulled Mr. Sanders over for playing his music too loud. "My music was up," he said. "So I didn't argue with him."

The first time DeMarcus Sanders was arrested for having marijuana, it cost him his job, his driver's license, the start of a college degree, a month in jail, and thousands of dollars.

After the police officer ran Mr. Sanders' license, he said he smelled marijuana, and insisted on searching the car. The police found marijuana, arrested Mr. Sanders, and charged him with possession of marijuana. Mr. Sanders pled guilty and was sentenced to 30 days in jail. While in jail, he was let go from his janitorial job and lost credit for the college classes he had been taking.

Even though it has been a few years since he was arrested, Mr. Sanders still owes the state $2,346 for room and board at the jail, and for fines, court costs, and other fees. "They always send you threats like 'You'll get more jail time if you don't hurry up and pay this off,'" he said.

But as Mr. Sanders is all too aware, it is hard to pay off fines when you do not have a job, and it is hard to find or keep a job when you do not have a driver's license. Getting arrested for marijuana possession in Iowa automatically triggers a six-month suspension of one's license. And one has to pay off a certain percentage of court fees and fines before it can be reinstated.



In fact, of all the consequences of his marijuana arrest, the biggest challenge has been losing his driver's license. Waterloo does not have much public transportation, so not being able to drive makes it difficult to do many things, such as job-hunting and grocery shopping. It is also hard because Mr. Sanders has full custody of his 8-year-old son, Daivion, and it can be difficult to take him places, such as doctors' appointments. Mr. Sanders says he was offered, but had to turn down, a job in Cedar Rapids, because it was 45 minutes away and he did not have a license.

Mr. Sanders' last steady job was as a construction worker in Waterloo. However, the construction business in Iowa slows down significantly during the winter, so now he is making ends meet doing small jobs for his father's yard work business and his grandfather's funeral home. To save money, he and his son live with Mr. Sanders' mother and brother.



Mr. Sanders feels like being an African-American in Waterloo makes him a target for the police. Mr. Sanders was arrested for marijuana possession again last July. Two plainclothes police officers stopped him one night for crossing the street in downtown Waterloo against the light. They said his jaywalking had nearly caused an accident. Mr. Sanders said he was in the crosswalk, and there were no cars or other pedestrians at that hour.

The police officer patted him down, then asked to search him.

"I told him, 'No, you cannot,'" Mr. Sanders remembers. "I haven't done anything. I'm not drunk, I'm not high. I'm not bothering anybody."

But they handcuffed and searched him anyway, claiming that they could see something in the pocket of his jeans, and found a small bag of marijuana. The police arrested him, booked him, and gave him a citation.

Mr. Sanders fought the case, and the judge threw it out after ruling that the marijuana could not be used as evidence because the police violated Mr. Sanders' constitutional rights when they searched him.

Mr. Sanders said he wants to be reasonable, but he is also frustrated.

"I understand cops have to do their jobs. I'm not bashing cops," he said. "[But] you're on me now, my name hasn't brought up anything and you're on me, that's profiling. You're racially profiling me." ■

PROFILE

Alfredo Carrasquillo, 29

New York, NY



Alfredo Carrasquillo's first rule about life in the city is never stand on the corner in a group. His second rule is never stand on the corner by yourself. "You're a bull's-eye if you're standing in a group or by yourself," he said. "You're just making yourself a target."

Mr. Carrasquillo grew up in the South Bronx and has been working as a community organizer in low-income neighborhoods for years. He says he has not yet taught the rules to his 11-year-old daughter, Taneshia, and his 6-year-old son, Alfredo, Jr. But he will.

To avoid getting stopped by the police, Mr. Carrasquillo does not walk through public housing complexes, even if it is the shortest route. He wears button-up shirts as often as possible. And he always carries his identification.

"I'm Black regardless," he said. "I can't escape it. What you try to figure out is how to minimize it. And that's definitely what I've done."

But his rules have not been enough to protect him: he has been arrested

"I'm Black regardless," says Mr. Carrasquillo. "I can't escape it. And let's be honest. It's not just about smoking. It's also about race."

several times for having marijuana. Sometimes, he said, it was after the police stopped him on the street and frisked him for no reason. Other times, he was in the wrong place at the wrong time when the police were doing security checks in and around a building in public housing.

That is what happened the last time the police arrested Mr. Carrasquillo, about a year and a half ago. It was a summer evening, and he and a group of friends were in the courtyard of the housing project where one of his friends lived.

"A lot of times, that's where we hang out, because there aren't many places for us to go. As a big group, we can't all go up to somebody's house," he said. Besides, it was hot and everybody wanted to be outside.

The police asked everyone to put their hands on their heads, and began searching them. The search, as Mr. Carrasquillo remembers it, "went from being a pat-down to going into our pockets. Whatever we had [in our pockets] they pulled out."

Most of what the police pulled out, they gave back. Except that day, Mr. Carrasquillo had a five-dollar bag of marijuana in his pocket. "And [the police officer] was like, 'you know what? I'm going to have to take you in for that.'"

Mr. Carrasquillo said the police arrested him and he then spent three days in jail. He was arrested on a Friday and not released until Monday. He was strip-searched at the precinct, then held at Bronx Central Booking, where, Mr. Carrasquillo says, "People are literally shoulder to shoulder. The toilet is in the cell and you have to use it in front of other people. There are rats and roaches all over, the walls are dirty, and there is food left over on the floor." When Mr. Carrasquillo was finally brought to court, he pled guilty, and was ordered to pay $120 in court fees and stay out of trouble for one year.

Mr. Carrasquillo is angry, but also resigned. "It's the price you pay to smoke [marijuana] and be a person of color," he said. "Let's be honest. It's not just about smoking. It's also about race." ■

III. METHODOLOGY

This report relies on the Federal Bureau of Investigation's Uniform Crime Reporting Program ("FBI/UCR Program") and the United States Census' annual county population estimates by age, sex, race, and ethnicity to document arrest rates per 100,000 for marijuana possession by race. This report is the first to report and examine this data for all 50 states, as well as the District of Columbia.

This report provides a purely descriptive analysis. In other words, the data is used to describe the problem of racial disparities in marijuana possession arrests, and not to formally test a specific causal hypothesis as to why such disparities exist. A more scholarly analysis would employ panel data techniques on this county-level data, controlling for a set of time-varying explanatory variables, such as total drug arrests and drug use, to test whether the coefficient on the race variable is statistically significant. Ideally, the multivariate regression analysis would also control for individual characteristics of each arrest, such as amount of marijuana possessed and the age and criminal history record of the individual arrested, as well as for various forms of within-county variation (e.g., on average, within a given county, are Blacks more likely than whites to live in high-density residential areas where the arrest rate overall is higher?). Given that the FBI/UCR Program aggregates arrest data at the level of local enforcement agency, however, individual characteristics of an arrest at a more granular level than that of the local enforcement agency will require the use of a different dataset and, short of a vast and very costly data collection effort, is likely to preclude a truly nationwide analysis along the lines of this report. Moreover, given the pervasiveness of the problem of racially disparate arrests, existing, as our data reveals, in counties of different sizes, population densities, demographics, and economic well-being, it is not immediately clear just what variable, if not race itself, could in fact be the true driving causal force behind the consistent and widespread racial disparities in marijuana possession arrest rates in the vast majority of counties in this country. This report neither attempts nor provides an empirical answer to that question, and thus presents the opportunity for future research on this fertile topic.

To calculate the white/Black arrest rate for marijuana possession in a given jurisdiction, the number of white/Black arrests for marijuana possession is divided by the white/Black population in the given jurisdiction (e.g., the state or county); the corresponding ratio is then multiplied by 100,000 to obtain the arrest rate per 100,000. In this report, the measure of racial disparity in a given jurisdiction in terms of arrests for marijuana

possession is calculated as the ratio of the Black arrest rate to the white arrest rate. So, for example, a racial disparity measure (or ratio) of 3 implies that the rate at which Blacks are arrested for marijuana possession is 3 times the rate at which whites are arrested for marijuana possession.

A. Data

i. Sources

The marijuana possession arrest data presented in this report was obtained largely from the FBI/UCR Program. This program annually collects data from state and local law enforcement agencies. In particular, the two main FBI/UCR data sets used in the report are:

- **Uniform Crime Reporting Data [United States]: Arrests by Age, Sex, and Race [Alternative Title: ASR], 2001-2010**
- **Uniform Crime Reporting Data [United States]: County-Level Detailed Arrest and Offense Data, 1995-2010**

Both series are publicly available through the Inter-University Consortium for Political and Social Research (ICPSR) at the University of Michigan.

Annual county population estimates by age, sex, race, and ethnicity were drawn from the United States Census:

- **U.S. Census Bureau, *Annual County Resident Population Estimates by Age, Sex, Race, and Hispanic Origin*: April 1, 2000 to July 1, 2010**

Additional county-level data on median household income were also drawn from the United States Census:

- **U.S. Census Bureau, *American Community Survey 5-Year Estimates:* 2006-2010**

Data on marijuana use were obtained from the National Survey on Drug Use and Health (NSDUH):

- **Substance Abuse and Mental Health Services Administration, *Results from the 2010 National Survey on Drug Use and Health: Summary of National Findings*, NSDUH Series H-41, HHS Publication No. (SMA) 11-4658: 2011**

The NSDUH survey is the primary source of information on the use of illicit drugs, alcohol, and tobacco in the civilian, non-institutionalized population of the United States aged 12 years old or older. Approximately 67,500 persons are interviewed for the NSDUH survey each year. It is important to note that the terms "white" and "Black" in this data set do not include Latinos, unlike the FBI/UCR data sets, in which the terms "white" and "Black" do include Latino (see below for a discussion of FBI/UCR handling of Latino data). In other words, the SAMHSA data set includes a separate category for marijuana usage rates among Latinos, whereas the FBI/UCR does not include a separate category for marijuana possession arrests of Latinos.

Finally, the fiscal cost analysis utilizes the aforementioned arrest data and draws supplemental data from the Justice Expenditure and Employment Extracts, 2009:

- **Bureau of Justice Statistics, Criminal Justice Expenditure and Employment Extracts (CJEE) Program, *Percent Distribution of Expenditure for the Justice System by Type of Government, Fiscal Year 2009*. Filename: cjee0903.csv**

This expenditure data is drawn from the Census Bureau's Annual Government Finance Survey and Annual Survey of Public Employment. This series includes national-, federal-, and state-level estimates of government expenditures and employment for the following justice categories: (1) police protection; (2) all judicial functions (including prosecution, courts, and public defense); and (3) corrections.

It should be noted that Illinois, Florida, the District of Columbia, and the five counties (or boroughs) of New York City do not report data on marijuana possession arrests by race to the FBI/UCR Program. To obtain data on marijuana possession arrests for all 102 counties in Illinois, the authors filed a Freedom of Information Act request with the Illinois Department of State Police (ISP). Every policing body in Illinois is required by statute to report crime statistics to the ISP, which acts as a central repository and custodian for crime statistics. Likewise, to obtain data on marijuana possession for all 67 counties in Florida, the authors submitted a research proposal for statistical information to the Florida Department of Law Enforcement (FDLE). The FDLE maintains arrest data for all criminal offenses in the Computerized Criminal History Central Repository for Florida. The data for the District of Columbia was acquired by filing a Freedom of information Act request with the Research and Analysis Branch of the D.C. Metropolitan Police Department (MPD), which collects, analyzes, and disseminates crime and arrest data amongst other data sources. Finally, the data for New York City was obtained by making a records request under New York state's Freedom of Information Law with the Office of Justice Research and Performance of the New York State Division of Criminal Justice Services (DCJS) and the Criminal Court of the City of New York.

ii. The Latino Data Problem

This report's sole focus on Black-white racial disparities is the result of the fact that the FBI/UCR arrest data does not identify Latinos as a distinct racial group and thus does not distinguish between white and Latino arrests. In other words, an arrest of a Latino is overwhelmingly categorized as a "white" arrest. This conflation of Latino and white arrests not only prevents calculation of Latino arrest rates based on the UCR data, but also results in an underestimation of the racial disparities between Black and white arrests, since a portion — potentially a significant portion in some places — of the "white" arrests are likely arrests of Latinos. Put another way, classifying Latinos as whites for the purposes of reporting arrest data to the FBI/UCR Program can inflate the "true" white arrest rate and, in turn, deflate the "true" racial disparity in arrest rates between whites and Blacks. Therefore, in any jurisdiction where the Latino arrest rate is greater than the white arrest rate — which we suspect is the case in many jurisdictions — the arrest rate disparities between Blacks and whites will be even more pronounced than the disparities as captured by the FBI/UCR data. So, for instance, suppose that there are an equal number of whites, Latinos, and Blacks in a jurisdiction, and that the true arrest rates for these three groups are 100, 200, and 300, respectively. If all Latinos are classified as white, then the reported "white" arrest would be calculated as 150, implying a Black/white racial disparity of 2 (= 300 (Black arrest rate)/150 (white arrest rate)) when, in fact, the true racial disparity is 3 (= 300/100). Indeed, based on the limited data we have from two states for which we have Black, white, and Latino arrest data (New York and California), it appears that Latinos are arrested at higher rates than whites, sometimes significantly so, but at lower rates than Blacks, and that there are fewer arrests of whites than suggested by the FBI/UCR data. In New York City, for example, where Latino arrest data exists, Latinos are arrested at 2.5 times the rates of whites for marijuana possession. **See Appendix A, Figure A1.** We are thus able to capture a more accurate Black-white arrest disparity, revealing that Blacks are arrested at 6.3 times the rate of whites (and 2.5 times the rate of Latinos). Were all Latino arrests categorized as "white" arrests in New York City, the Black-white arrest disparity, while evident, would be lower.[28]

Indeed, of the 10 states with the lowest disparities in Black-white arrest rates — Hawaii, Alaska, Colorado, New Mexico, Oregon, Maine, California, Texas, Arizona, and Rhode Island — seven are among the 15 states with the highest Latino populations, including the top four: New Mexico, California, Texas, and Arizona. In other words, in these states,

28 At the same time, the inclusion of Latino data will not always have as significant an impact on the reported disparities in the Black and white arrest rates. In California, Latinos are arrested for all marijuana offenses at only a slightly greater rate than whites. **See Appendix A, Figure A2.** Therefore, the exclusion of Latino arrest data in California would not result in a significant underestimation of the Black-white arrest disparity.

a portion, if not a significant number, of marijuana possession arrests are of Latinos, but the FBI/UCR likely classifies them as "white" arrests, thereby reducing artificially the Black-white arrest disparities to the extent that Latinos are arrested at higher rates than whites. That is, if many of those "white" arrests are actually arrests of Latinos, and if the Latino arrest rate is greater than the white arrest rate, the actual Black-white arrest rates are much greater than the disparities contained in the present data. How much greater, unfortunately, cannot be ascertained from the present FBI/UCR data.[29]

Similarly, in 22 of the 25 counties where Latinos account for the highest percentage of the overall population, the Black-white disparity in marijuana possession arrests is below the national average. **See Appendix A, Figure A3.** This is likely because many of the "white" arrests in those counties are, in fact, of Latinos, yet because they are counted as "white" arrests, the white arrest rate is inflated artificially. If the actual number of white arrests was known, the Black-white arrest disparities in many if not all of these counties would be larger, if not also equal to or above the national average.

iii. Counting and Classifying Marijuana Possession Arrests

The FBI/UCR Program counts one arrest for each separate instance in which a person is arrested, cited, or summoned for an offense. Because a person may be arrested more than once during a year, the FBI/UCR arrest numbers used in this report do not reflect the actual number of individuals who have been arrested; rather, the arrest data shows the total number of times that persons have been arrested, as reported by law enforcement agencies to the FBI/UCR Program.

Further, when someone is arrested for multiple crimes arising from a single police enforcement action, the FBI/UCR Program calls it a "multiple-offense situation." As a general rule, a multiple-offense situation requires classifying each of the offenses committed and determining which of them are Part I offenses as opposed to non-Part I offenses.[30] The Hierarchy Rule, as described in the FBI/UCR Handbook, requires that in

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29 The two states with the lowest Black-white disparity in marijuana possession arrest rates, Hawaii and Alaska, have large non-Black/non-white populations: Hawaii is almost 60% non-Black/non-white (39% Asian, 10% Native Hawaiian, 9% Latino) and Alaska is over one-quarter non-Black/non-white (15% American Indian or Alaska Native, 6% Asian, 6% Latino). In Alaska, the arrest rate for persons classified as Native American or Native Alaskan is 366 compared to 318 for whites and 510 for Blacks. Thus, in Alaska, there are still racial disparities in arrest rates for marijuana possession between whites and Blacks, but also between whites and Native Americans/Native Alaskans, although the latter disparity is not quite as large (i.e., 1.2 as compared to 1.6). Interestingly, in Hawaii, the arrest rate for persons classified as Asian, Pacific Islander, or Native Hawaiian is 117 as compared to 181 for whites and 179 for Blacks, revealing that there exists a racial disparity in arrest rates for marijuana possession not with respect to whites and Blacks, but rather with respect to the majority Asian/Pacific Islander/Native Hawaiian populations and the minority white and Black populations.

30 Part I offenses include: (1) Criminal Homicide, (2) Forcible Rape, (3) Robbery, (4) Aggravated Assault, (5) Burglary, (6) Larceny-Theft (except Motor Vehicle Theft), (7) Motor Vehicle Theft, and (8) Arson. *See* U.S. Dep't of Just., Fed. Bureau of Investigation, UNIFORM Crime Reporting Handbook 8 (2004), *available at* http://www2.fbi.gov/ucr/handbook/ucrhandbook04.pdf.

a multiple-offense situation — when more than one Part I offense is classified — the law enforcement agency must identify the offense involved that is highest on the hierarchy list and score that offense and not the other offense(s).[31] Most relevantly for present purposes, in a multiple-offense incident involving, for example, both Part I (e.g., Robbery — Other Dangerous Weapon) and non-Part I offenses (e.g., Marijuana — Possession), only the Part I offense, Robbery — Other Dangerous Weapon, must be classified and scored. The arrest for marijuana possession would not be reported in this situation. Thus, any racial disparity observed in the FBI/UCR data with respect to marijuana possession is not a product of differential arrest rates for Part I crimes, as marijuana possession offenses are not recorded with respect to these offenses. By contrast, in a multiple-offense incident involving marijuana possession and a traffic violation — neither of which constitute a Part I offense — the enforcement action is coded as *both* a marijuana possession arrest and a traffic violation (i.e., the Hierarchy Rule does not apply in this situation).

B. Coverage Ratios

The FBI/UCR Arrests by Age, Sex, and Race data set indicates the coverage population for each county, which is the size of the total population covered by all of the reporting agencies in that county. The coverage population can be compared to the total census population in the county to calculate a *coverage ratio*.

Participation in the FBI/UCR Program varies among jurisdiction. Many counties have full participation with all local enforcement agencies in the county reporting to the FBI/UCR Program. As a result of budgetary and information constraints, however, certain agencies within some counties do not report to the FBI/UCR Program. So, for example, within a given county, if the size of the total population covered by all of the local enforcement agencies reporting to the FBI/UCR Program is 100,000 and the total population size of the county itself is also 100,000, then the coverage ratio for that county is calculated as 1.0 (= 100,000/100,000), or 100%. Similarly, if the size of the total population covered by all of the reporting local enforcement agencies within a given county is 50,000 and the total county population size is 100,000, then the coverage ratio for that county is calculated as 0.5 (= 50,000/100,000), or 50%.

If the coverage ratio in a county is equal to one (i.e., 100%), then the arrest data for that county is analyzed as reported. In large metropolitan areas, the coverage ratio tends

31 *See id.* at 10-12.

to be equal to one. If the coverage ratio in a county is less than one, however, then the report weighted the arrest data for that county by a factor equal to 1/(coverage ratio). So, for example, if the coverage ratio in a given county is 0.8 (or 80%), then the raw arrest numbers (e.g., total arrests, Black arrests, white arrests) are increased by a weight of 1.25 (= 1/0.8). This imputation procedure produces a national number and provides comparable data across all counties in the United States.

To test the validity of this imputation procedure, we compared the total number of arrests for marijuana possession, using the above imputation procedure, to the total number of arrests for marijuana possession as reported in the FBI/UCR County-Level Detailed Arrest and Offense data set, which employs its own imputation procedure to provide arrest data for marijuana possession for all counties in the United States, but which does not report county-level arrest numbers by race — or age and sex for that matter. The numbers are approximately equal, suggesting that the procedure described above yields reliable estimates of the total number of arrests for marijuana possession; or, at least, estimates that are generally consistent across the two main FBI/UCR data sets reporting arrest numbers for marijuana possession.

Finally, when reporting county-level results (as opposed to state-level results or results for the country as a whole), this report considers only those counties where the coverage ratio exceeds 0.5 (or 50%). Recall that the lower the coverage ratio, the greater the likelihood that the arrest estimates do not accurately reflect the arrest activities of the jurisdiction as a whole. Thus, because the possibility that arrest activities in areas of a county not covered by the FBI/UCR Program may look different from that suggested by available data for that county, a difference that generally increases as the coverage ratio decreases, this report extrapolates in the manner described above only if a majority of the county population is covered by local enforcement agencies reporting to the FBI/UCR Program. Most counties satisfy this reporting condition; in 2010, for example, the coverage ratio was greater than or equal to 0.5 (or 50%) in 3,011 out of 3,143 total counties (i.e., in approximately 96% of all counties). In fact, it is worth noting that in 89% of all counties the coverage ratio is greater than 0.9 (or 90%). Additionally, when reporting county-level results, this report usually further restricts the subset of counties considered to those in which the total census population exceeds 30,000 and the Black population percentage share of the total county population is greater than 2%. This is to ensure that the Black population within a given county is large enough to draw reliable conclusions from the county's arrest rates. Specifically, in 2010, 945 counties in the United States had a coverage ratio greater than 0.5 (or 50%) and satisfied these two demographic criteria. These 945 counties comprise 78% of the population of the United States.

IV. MARIJUANA ARRESTS HAVE RISEN SIGNIFICANTLY BETWEEN 2001 AND 2010, AND THE RACIAL DISPARITIES OF THOSE ARRESTS HAVE INCREASED

A. The Rise in Marijuana Arrests

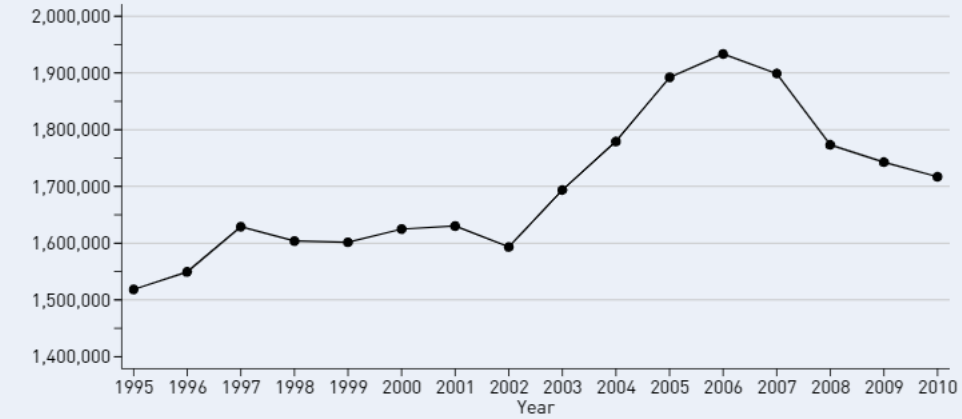
i. National Data

Marijuana arrests have risen over the past two decades. Between 2001 and 2010 alone, there were 8,244,943 marijuana arrests, more than 7 million of which (7,295,880) were for marijuana possession. There were 100,000 more marijuana possession arrests in 2010 than in 2001 (an 18% increase); 200,000 more than in 1995 (a 51% increase); and over 500,000 more than in 1990 (a 193% increase).

While the total number of drug arrests overall reached an astonishing peak of more than 1.9 million in 2006, they had fallen by over 200,000 in 2010. **See Figure 1.** Marijuana arrests, on the other hand, did not follow this trend. In fact, in 2006, there were over 800,000 total marijuana arrests for the first time, and in every year between 2006 and 2010 the number of marijuana arrests remained above 845,000. Similarly, the total number of marijuana possession arrests reached 700,000 in 2004 and remained above 750,000 each year between 2006 and 2010. **See Figure 2**.

FIGURE 1

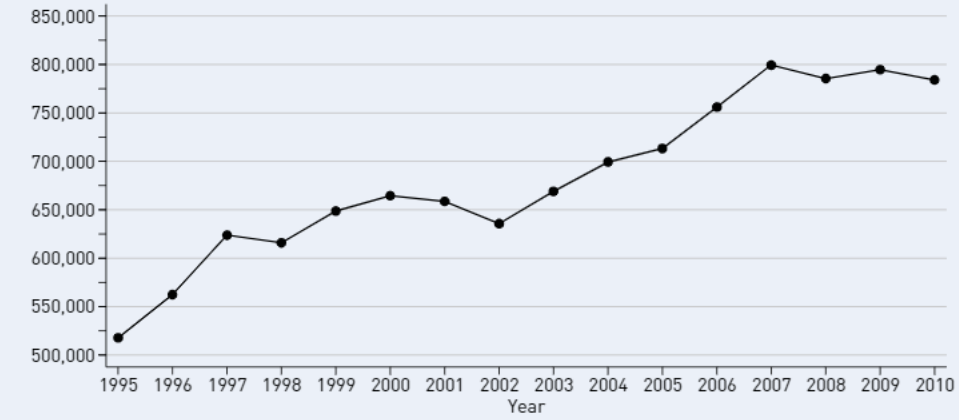
Total Number of Drug Arrests in U.S. (1995-2010)



Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 1995-2010

FIGURE 2

Number of Arrests for Marijuana Possession in U.S. (1995-2010)

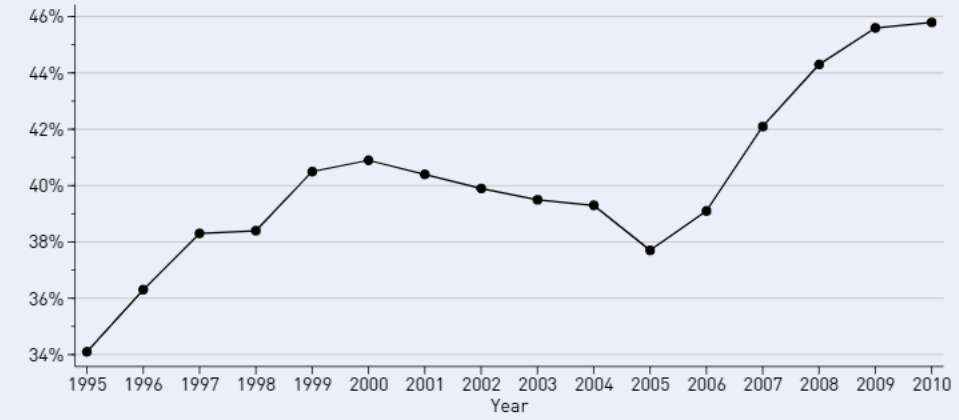


Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 1995-2010

Consequently, of the 1,717,064 drug arrests in the United States in 2010, more than half — 889,133, or 52% — were for marijuana, and almost half — 784,021, or 46% — were for marijuana possession. **See Figure 3.** The percentage of all drug arrests in the United States that were for marijuana possession has increased 21% since 2005, and 34% since 1995.

FIGURE 3

Percentage of All Drug Arrests That Were for Marijuana Possession (1995-2010)

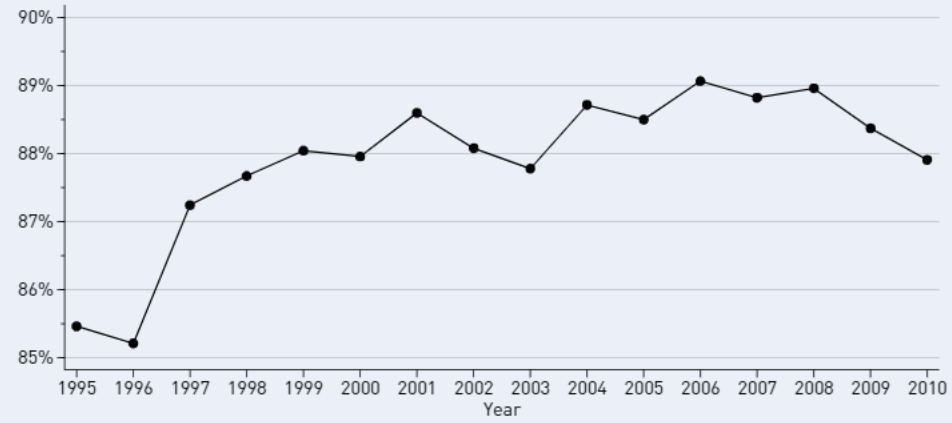


Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 1995-2010

Since 1999, 87.5% of all marijuana arrests have been for possession, while only 12.5% have been for sale or manufacture. **See Figure 4.**

FIGURE 4

Percentage of All Marijuana Arrests That Were for Possession (1995-2010)

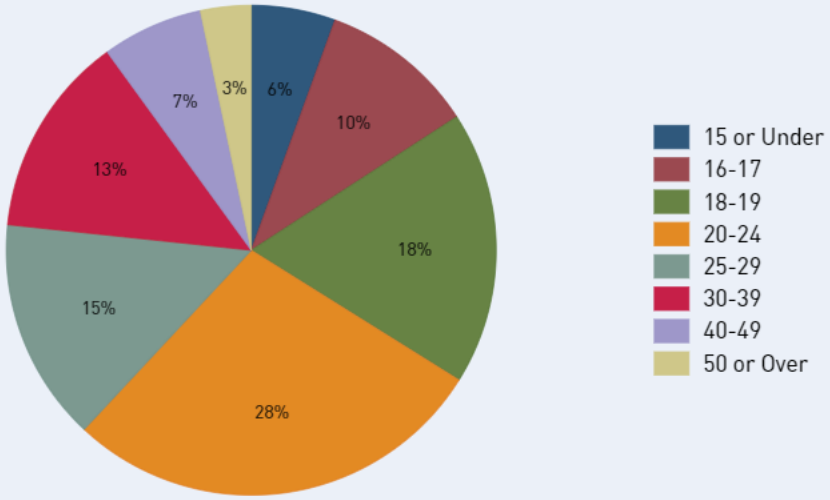


Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 1995-2010

Teenagers and young adults bear the brunt of the marijuana possession arrest policies in this country; 77% of marijuana arrests in 2010 were of people 29 or younger, 62% were of people younger than 25, and more than one-third were of teenagers and pre-teens. **See Figure 5.**

FIGURE 5

Breakdown of Marijuana Possession Arrests by Age (2010)



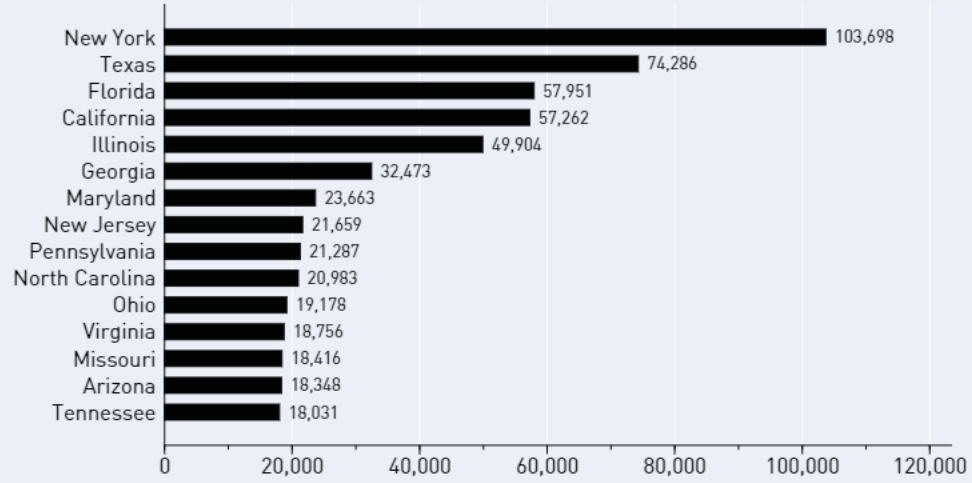
Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 2010

ii. State Data

There were 784,021 arrests for marijuana possession in 2010. Half a million were made by 12 states: New York, Texas, Florida, California, Illinois, Georgia, Maryland, New Jersey, Pennsylvania, North Carolina, Ohio, and Virginia. **See Appendix A, Table A1 for full state list.** New York State alone made more than 100,000 arrests for marijuana possession. **See Figure 6.**

FIGURE 6

States with Highest Numbers of Arrests for Marijuana Possession (2010)



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

In nearly half of all states, over 90% of marijuana arrests were for possession. In only seven states did possession arrests account for less than 80% of all marijuana arrests, and in only two — Massachusetts and Minnesota — was the figure below 65%. **See Appendix A, Table A2.**

In 28 states, half or more of *all* drug arrests were for marijuana possession in 2010. **See Appendix A, Table A3.** In Alaska, 81% of all drug arrests were for marijuana possession; in Nebraska and Montana, 73% and 70%, respectively; in Wyoming, Georgia, Iowa, Wisconsin, and Colorado, between 61% and 67%. **See Table 1.**

TABLE 1
States Where Marijuana Possession Arrests Account for Highest Percentage of All Drug Arrests (2010)

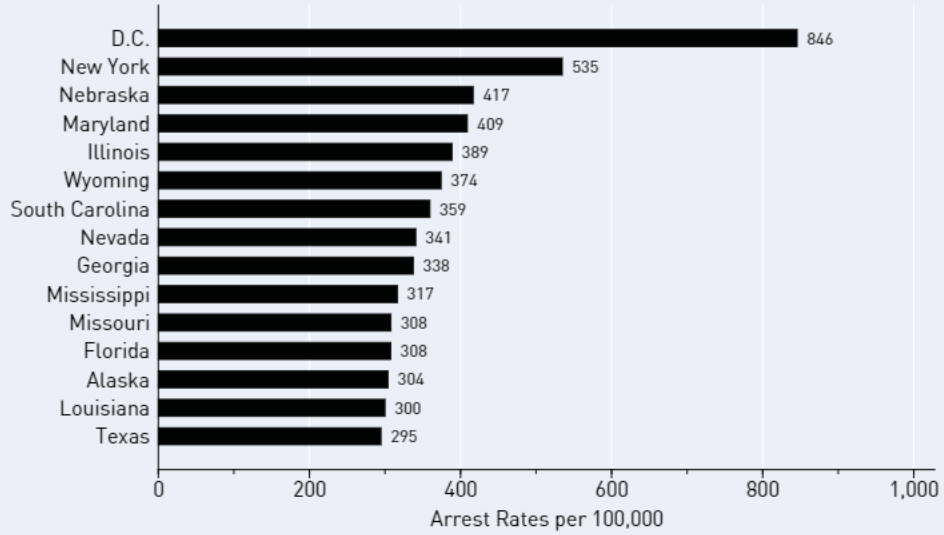
	Number of Arrests		Marijuana Possession
State	Marijuana Possession	All Drug Offenses	% of All Drug Arrests
Alaska	2,028	2,517	80.6%
Nebraska	7,437	10,217	72.8%
Montana	1,210	1,723	70.2%
Wyoming	2,104	3,136	67.1%
Georgia	32,473	49,876	65.1%
Iowa	6,123	9,758	62.8%
Wisconsin	15,950	26,206	60.9%
Colorado	10,343	17,029	60.7%
New York	103,698	174,493	59.4%
Rhode Island	2,253	3,809	59.1%
Alabama	5,235	9,077	57.7%
North Dakota	1,162	2,054	56.6%
Arizona	18,348	32,628	56.2%
West Virginia	4,400	7,986	55.1%
Oregon	9,849	18,047	54.6%

Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 2010

The national marijuana possession arrest rate in 2010 was 256 per 100,000. The jurisdictions with the highest marijuana possession arrest rates per 100,000 were the District of Columbia (846, which is 3.3 times greater than the national rate), New York (535, which is more than double the national rate), Nebraska (417), Maryland (409), and Illinois (389). **See Figure 7.**

FIGURE 7

States with Highest Marijuana Possession Arrest Rates (2010)



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Twenty nine states and the District of Columbia had higher marijuana possession arrest rates in 2010 than in 2001. **See Appendix A, Table A4.** The states with the greatest percentage increases in marijuana possession arrest rates were Montana (146%), Delaware (102%), Nevada (96%), the District of Columbia (62%), and Oregon (45%). **See Table 2.** In total numbers, the states with the greatest increase in marijuana possession arrests since 2001 were Texas (20,681), New York (16,173), Illinois (12,406), Florida (12,796), and Georgia (9,425).[32]

TABLE 2

States with Largest Percent Increases in Marijuana Possession Arrest Rates (2001-2010)

	Arrest Rates per 100,000		
State	Total Arrest Rate (2001)	Total Arrest Rate (2010)	% Change in Total Arrest Rate
Montana	52	127	145.8%
Delaware	140	284	102.1%
Nevada	174	341	96.0%
D.C.	524	846	61.5%
Oregon	177	257	44.8%
Missouri	214	308	43.6%
Tennessee	210	284	35.3%
Virginia	177	234	31.7%
Illinois	300	389	29.6%
South Carolina	278	359	29.2%
Maryland	328	409	24.7%
West Virginia	196	241	23.3%
Pennsylvania	136	167	23.0%
Connecticut	201	247	22.5%
Georgia	282	338	19.6%

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

32 The states that saw the largest decrease in marijuana arrest rates were Massachusetts (-86%), Kentucky (-61%), Alabama (-54%), New Mexico (-46%), and Washington (-29%). **See Appendix A, Table A4.**

iii. County Data

Cook County, IL (includes Chicago[33]), made the most marijuana possession arrests in 2010 with over 33,000, or 91 per day. Kings County (Brooklyn), Bronx County, and New York County (Manhattan), NY, made over 20,000,16,000, and 11,000, respectively (the five counties, or boroughs, of New York City made a total of 59,451 marijuana possession arrests in 2010, or 163 per day). Los Angeles County, CA, made over 15,600 such arrests and Harris County, TX (includes Houston), almost 12,000. **See Table 3.**

TABLE 3
Counties with Highest Numbers of Marijuana Possession Arrests (2010)

County-State	Number of Arrests for Marijuana Possession			
	Total	Black	White	Black % of Arrests
Cook, IL	33,068	24,046	8,760	72.7%
Kings, NY	20,413	12,544	1,443	61.5%
Bronx, NY	16,001	6,943	497	43.4%
Los Angeles, CA	15,643	3,978	11,549	25.4%
Harris, TX	11,836	5,320	6,387	44.9%
New York, NY	11,221	4,047	1,596	36.1%
Queens, NY	9,456	3,449	1,135	36.5%
Maricopa, AZ	9,435	1,258	7,786	13.3%
Miami-Dade, FL	9,240	5,279	3,935	57.1%
Bexar, TX	8,741	1,493	7,234	17.1%
Fulton, GA	7,622	6,658	941	87.3%
Clark, NV	7,598	2,810	4,556	37.0%
Baltimore City, MD	7,047	6,461	555	91.7%
San Diego, CA	6,954	1,076	5,761	15.5%
Orange, CA	6,327	285	5,967	4.5%
Broward, FL	6,061	3,617	2,413	59.7%
Philadelphia, PA	5,598	4,590	954	82.0%
D.C.	5,115	4,648	467	90.9%
Erie, NY	4,991	2,425	2,516	48.6%
St. Louis, MO	4,928	2,556	2,346	51.9%
Milwaukee, WI	4,732	3,103	1,588	65.6%
Suffolk, NY	4,520	1,260	3,237	27.9%
Orange, FL	4,502	2,294	2,168	51.0%
Pima, AZ	4,352	408	3,744	9.4%
Dallas, TX	4,206	2,015	2,150	47.9%

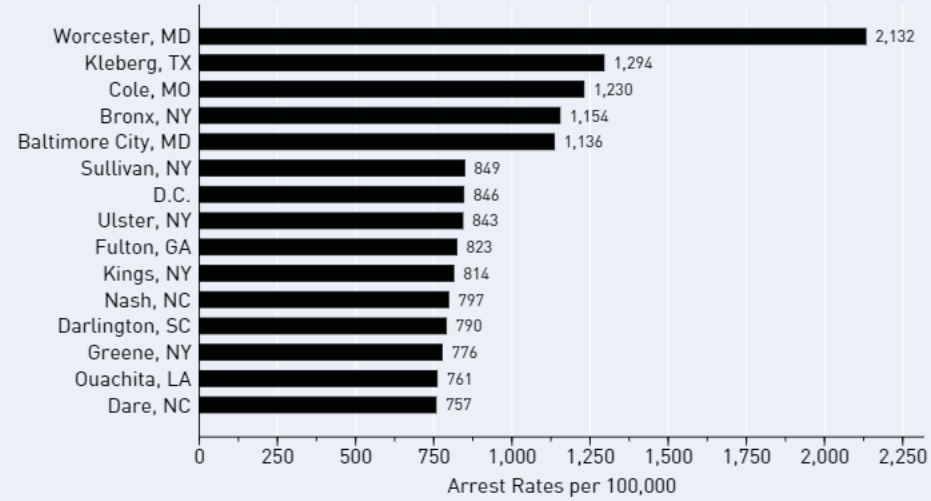
Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

33 *See supra* Mack, note 25 (discussing Chicago's recent decriminalization of marijuana possession).

The counties with the highest marijuana possession arrest rates per 100,000 were Worcester, MD (2,132),[34] Kleberg, TX (1,294), Cole, MO (1,230), Bronx, NY (1,154), and Baltimore City, MD (1,136). **See Figure 8.**

FIGURE 8

Counties with Highest Marijuana Possession Arrest Rates (2010)



NOTE: Population Size > 30,000 and Black Population Percentage Share > 2%

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

34 One possible explanation for the conspicuously high arrest rate in Worcester County, even relative to the other counties with the highest total marijuana possession arrest rates, is its encompassment of Ocean City. Ocean City is a beachside community with a year-round population of less than 10,000, but it is a popular tourist destination that receives hundreds of thousands of vacationers over the summer, and up to 8 million visitors annually. This constant population influx may increase the number of people who possess marijuana in Worcester County and/or increase the police enforcement of marijuana laws during those heavy population influxes.

The counties with the largest increases in marijuana possession arrest rates between 2001 and 2010 include Miami and Manatee, FL, Vanderburgh, IN (includes Evansville), and Hancock and Kanawha (includes Charleston), WV. **See Table 4.**

TABLE 4

Counties with Largest Percent Increases in Marijuana Possession Arrest Rates (2001-2010)

County-State	Arrest Rates per 100,000		
	Total Arrest Rate (2001)	Total Arrest Rate (2010)	% Change in Total Arrest Rate
Hancock, WV	4.7	112.9	2,319.5%
Fairfax, VA	18.5	198.9	976.4%
Cole, MO	160.0	1,230.0	668.7%
Vanderburgh, IN	56.7	399.0	603.9%
Douglas, KS	25.0	170.5	583.5%
DeKalb, GA	41.2	230.3	459.5%
Curry, NM	22.4	120.8	438.3%
Buchanan, MO	83.2	439.7	428.4%
Avoyelles, LA	44.4	232.2	422.8%
Charlottesville City, VA	8.7	41.4	373.5%
Kanawha, WV	91.3	398.5	336.4%
Roanoke City, VA	123.5	523.5	324.0%
Ouachita, LA	193.0	760.5	294.0%
Dunklin, MO	63.0	243.4	286.7%
St. Louis, MO	129.2	493.4	282.0%

NOTE: Population Size > 30,000 and Black Population Percentage > 2%
Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

Of larger counties (counties with populations of 200,000 or greater), those with the highest percentage increases in marijuana possession arrest rates between 2001 and 2010 include DeKalb, GA (includes Decatur and part of Atlanta), St. Louis City, MO, Washoe, NV (includes Reno), Davidson, TN (includes Nashville), Erie, NY (includes Buffalo), Charleston, SC, Miami-Dade, FL, Milwaukee, WI, and Wayne, MI (includes Detroit). **See Table 5.**

TABLE 5

Large Counties with Largest Percent Increases in Marijuana Possession Arrest Rates (2001-2010)

	Arrest Rates per 100,000		
County-State	Total Arrest Rate (2001)	Total Arrest Rate (2010)	% Change in Total Arrest Rate
Fairfax, VA	18.5	198.9	976.4%
DeKalb, GA	41.2	230.3	459.5%
St. Louis, MO	129.2	493.4	282.0%
Franklin, OH	65.3	247.9	279.5%
Washoe, NV	60.7	226.9	274.0%
Kalamazoo, MI	71.5	265.0	270.8%
Davidson, TN	203.3	585.5	188.0%
Erie, NY	205.3	543.2	164.6%
Charleston, SC	317.5	710.8	123.9%
Winnebago, IL	185.5	402.9	117.2%
Miami-Dade, FL	170.2	369.2	116.9%
Milwaukee, WI	233.6	498.8	113.6%
Manatee, FL	193.0	401.6	108.1%
Bernalillo, NM	10.7	22.2	106.8%
Wayne, MI	113.5	229.2	102.0%

NOTE: Population Size > 200,000 and Black Population Percentage > 2%
Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

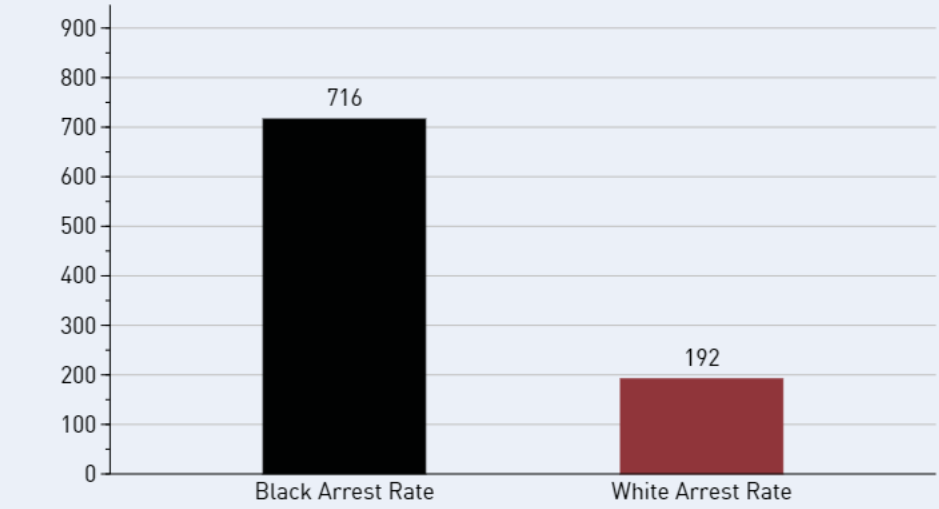
B. Significant Racial Disparities Exist in Marijuana Possession Arrests Across the Country

i. National Data

Enormous disparities exist in states and counties nationwide between arrest rates of Blacks and whites for marijuana possession. Nationally, Blacks are 3.73 times more likely than whites to be arrested for marijuana possession. The Black arrest rate is 716 per 100,000; the white arrest rate is 192 per 100,000 (the national arrest rate is 256 per 100,000). **See Figure 9.**

FIGURE 9

National Racial Disparity in Arrest Rates for Marijuana Possession (2010)

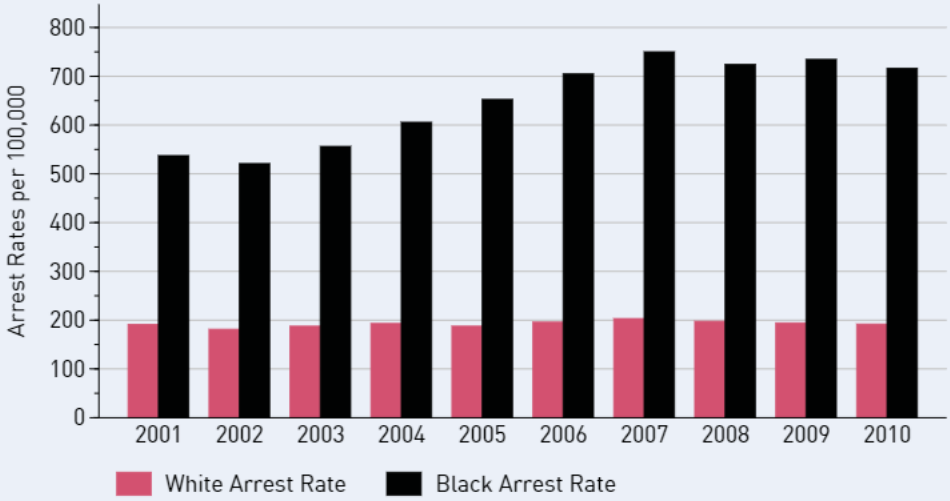


Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

While there were pronounced racial disparities in marijuana possession arrests 10 years ago, the disparities have increased 32.7% between 2001 and 2010. In fact, while the white arrest rate has remained constant at around 192 per 100,000, the Black arrest rate has gone from 537 per 100,000 in 2001 (and 521 per 100,000 in 2002) to 716 per 100,000 in 2010. Hence, it appears that the increase in marijuana possession arrest rates overall is largely a result of an increase in arrests of Blacks. **See Figure 10.**

FIGURE 10

Arrest Rates for Marijuana Possession by Race (2001-2010)



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

ii. State Data

In Iowa, Minnesota, Illinois, and the District of Columbia, Blacks are almost eight times more likely to be arrested for marijuana possession than whites. In Wisconsin, Kentucky, and Pennsylvania, a Black person is over five times more likely to be arrested than a white person for marijuana possession. In over one-third of the states, Blacks are more than four times as likely to be arrested. **See Table 6.**

TABLE 6

States with Largest Racial Disparities in Marijuana Possession Arrest Rates (2010)

State	Arrest Rates per 100,000			
	Total	Black	White	Times More Likely Blacks Arrested
Iowa	211	1,454	174	8.34
D.C.	846	1,489	185	8.05
Minnesota	144	835	107	7.81
Illinois	389	1,526	202	7.56
Wisconsin	281	1,285	215	5.98
Kentucky	162	697	117	5.95
Pennsylvania	167	606	117	5.19
South Dakota	249	943	197	4.79
Nebraska	417	1,699	365	4.65
New York	535	1,192	263	4.52
Nevada	341	1,272	284	4.47
North Dakota	183	732	166	4.41
Kansas	181	688	156	4.41
Alabama	115	277	64	4.35
Vermont	119	514	118	4.35

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

Comparing white and Black arrest rates directly, the data show that in Iowa the white arrest rate is 174 per 100,000, and the Black arrest rate is 1,454 per 100,000. In the District of Columbia, 185 whites per 100,000 are arrested versus 1,489 Blacks per 100,000. In Minnesota, the arrest rate is 107 for whites, 835 for Blacks; in Illinois, 202 for whites, 1,526 for Blacks; and in Kentucky, 117 whites as compared to 697 Blacks. These startling disparities continue down the list of states. Even at the "other end" of the spectrum, the disparities persist. In Oregon, for example, the state with the fifth *lowest* disparity, Blacks are still more than twice as likely to be arrested; the arrest rate for whites is 271, and for Blacks it is 563. **See Appendix A, Table A5.**[35]

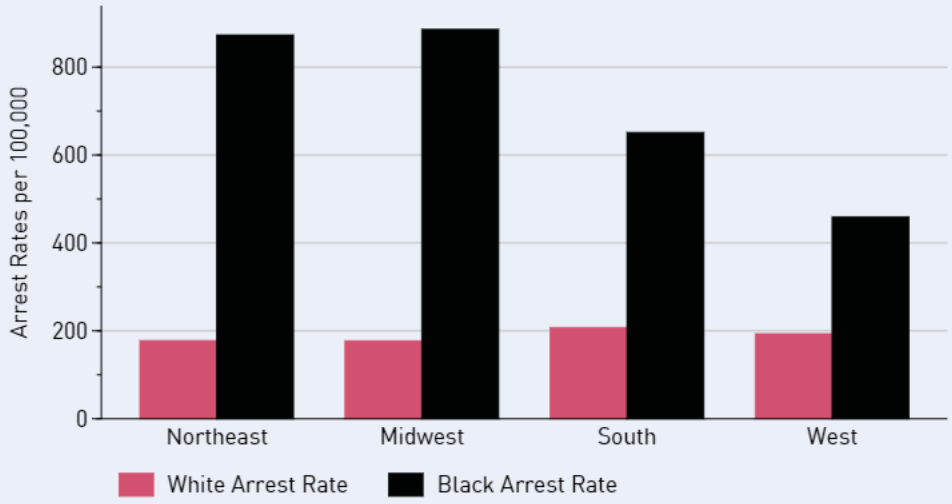
Racial disparities in marijuana possession arrests are widespread and exist in every region in the country. In the Northeast and Midwest, Blacks are over four times more

35 *See supra* text accompanying note 29 (discussing Alaska and Hawaii's Black-white arrest ratios).

likely to be arrested for marijuana possession than whites. In the South, they are over three times more likely, and in the West, twice more likely.[36] **See Figure 11.**

FIGURE 11

Arrest Rates for Marijuana Possession by Race and Region (2010)



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Perhaps the data that best captures the ubiquity of racial disparities in marijuana possession arrests in the United States is that in 96.1% of the 945 counties that this report examined when looking at county data only (representing 78% of the total United States population),[37] Blacks are more likely than whites to be arrested for marijuana possession. Stated another way, in only 3.9% of the 945 counties with at least 30,000 residents and where Blacks make up at least 2% of the population is the white arrest rate for marijuana possession higher than the Black arrest rate.[38]

36 The U.S. Census Bureau defines these four geographical regions of the country according to the following groupings of states (plus the District of Columbia): Northeast: Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont; Midwest: Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, Wisconsin; South: Alabama, Arkansas, Delaware, the District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia; and West: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Utah, Washington, Wyoming.

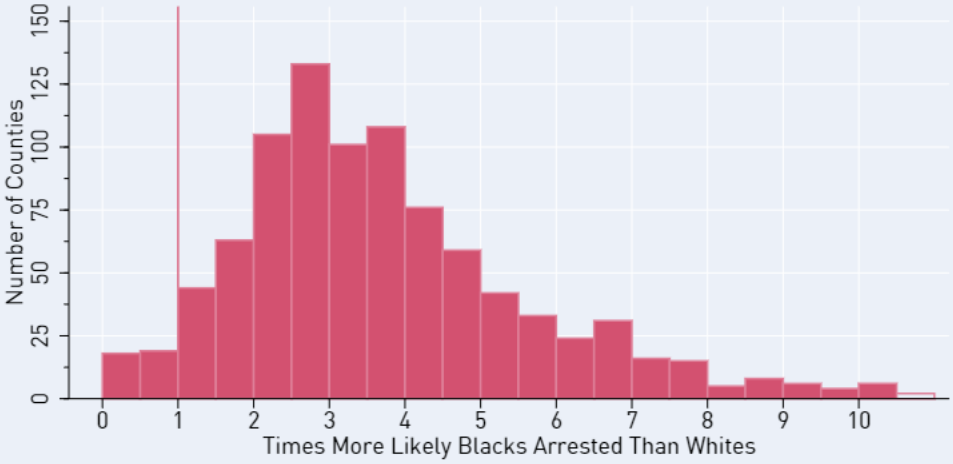
37 As previously stated, when reporting the national and state data regarding marijuana possession arrests, this report considers all 3,143 counties and 100% of the population of the United States. *See supra* text accompanying note 26.

38 Further, as discussed on pp. 31-32 of the report, given that the FBI/UCR categorizes most arrests of Latinos as "white" arrests, it may well be that the actual arrest rates of whites in some of these counties is, in fact, smaller than the Black arrest rates. Indeed, of almost one-quarter of the 37 counties with higher arrest rates of whites for marijuana possession, the Latino population is above the national average. If a percentage of these counties' "white" arrests as categorized by the FBI/UCR are, in fact, arrests of Latinos, and if the arrest rates for Latinos in these counties are higher than the arrest rates for whites, then Blacks in these counties may be more likely to be arrested for marijuana possession than whites.

This startling statistic is illustrated in **Figure 12**. Not only do racial disparities in marijuana possession arrests exist in almost every county in the United States, but the racial disparity in a sizable proportion of these counties lies between two and five (in other words, Blacks are between two and five times more likely than whites to be arrested for marijuana possession in the majority of counties),[39] and in a significant number of other counties, as noted elsewhere in the report, this racial disparity is even larger.

FIGURE 12

Distribution of Racial Disparity in Marijuana Possession Arrests (2010)



NOTE: Population Size > 30,000 and Black Population Percentage Share > 2%

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

39 As indicated at the outset of the report, when examining the national data, which considers every county in the United States and thus 100% of the population, the total arrest rate for marijuana possession is 256, the white arrest rate is 192, and the Black arrest rate is 716. But when examining the data for the 945 counties with more than 30,000 residents and Black populations of over 2%, which cover 78% of the United States' population, the white arrest rate drops slightly to 189 while the Black arrest rate rises to 739 (the total arrest rate is 269). In other words, the racial disparities in marijuana possession arrests increases to 3.9.

In 38 states and the District of Columbia, the racial disparities in marijuana possession arrests increased between 2001 and 2010. **See Table 7.** The jurisdictions with the greatest percentage increases in racial disparities in marijuana possession arrest rates over the past 10 years were Alaska (384%), Minnesota (231%), Wisconsin (153%), Michigan (149%), and Kentucky (146%).[40]

TABLE 7

States with Largest Percent Increases in Racial Disparities in Marijuana Possession Arrest Rates (2001-2010)

State	Racial Disparity		
	Times More Likely Blacks Arrested (2001)	Times More Likely Blacks Arrested (2010)	% Change in Racial Disparity
Alaska	0.3	1.6	384.1%
Minnesota	2.4	7.8	231.0%
Wisconsin	2.4	6.0	153.0%
Michigan	1.3	3.3	149.3%
Kentucky	2.4	6.0	145.8%
Tennessee	1.8	4.0	121.7%
Ohio	1.9	4.1	118.1%
D.C.	4.6	8.0	76.8%
Massachusetts	2.2	3.9	75.4%
Georgia	2.2	3.7	71.0%
Mississippi	2.3	3.9	68.9%
Alabama	2.6	4.4	67.1%
South Carolina	1.8	2.8	57.4%
Connecticut	2.2	3.3	53.7%
Arkansas	2.0	3.1	53.5%

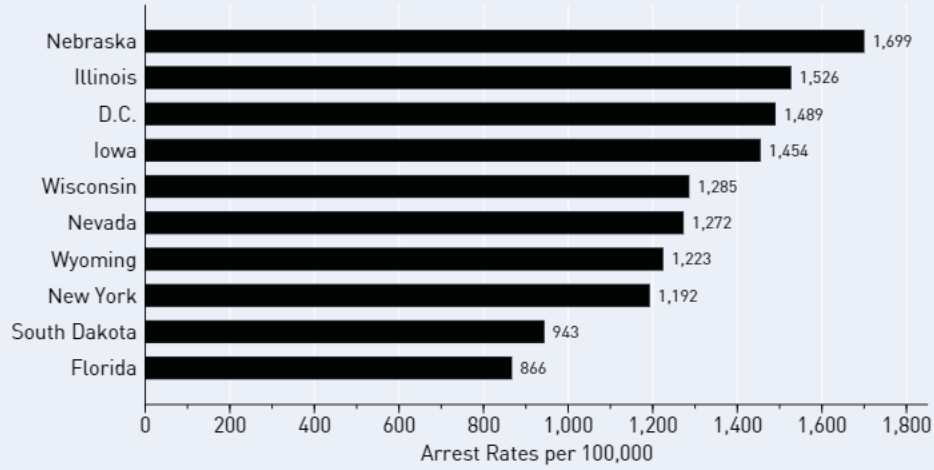
Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

40 The states with the greatest decreases in racial disparities in marijuana arrest rates were Nebraska (-51%), Colorado (-38%), Montana (-34%), California (-11%), and South Dakota (-10%). **See Appendix A, Table A6.** Note that although Massachusetts reduced its overall marijuana possession arrests by 86% after decriminalizing adult marijuana possession of an ounce or less in 2008, the racial disparity in arrest rates still increased: it was 3.42 in 2008 (before decriminalization), went up 56.1% to 5.34 in 2009 (after decriminalization), and then fell to 3.87 in 2010 (though still a 13.1% increase from 2008). Overall, the disparity increased 75% between 2001 and 2010.

The states that made the highest numbers of arrests of Blacks for marijuana possession in 2010 were New York (40,326), Illinois (29,083), Florida (26,711), Georgia (20,765), and Texas (19,164). **See Appendix A, Table A1.** The states (including the District of Columbia) with the highest Black arrest rates per 100,000 for marijuana possession are Nebraska (1,699), Illinois (1,526), the District of Columbia (1,489), Iowa (1,454), and Wisconsin (1,285). **See Figure 13.** When compared to the combined white arrest rate in those states (215), not to mention the marijuana possession arrest rate for whites nationally (192), or even the national marijuana possession arrest rate for Blacks (716), the Black arrest rates for marijuana possession in these states is, simply, astronomical.

FIGURE 13

States with Highest Black Arrest Rates for Marijuana Possession (2010)



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Of marijuana possession arrests in the District of Columbia, a staggering 91% were of Blacks. In Mississippi, 69% of marijuana possession arrests were of Blacks. In Georgia and Louisiana, 64% and 61% of marijuana possession arrests were of Blacks, respectively. **See Table 8.**

TABLE 8

Differences in Black Percentage of Population and Marijuana Possession Arrests by State (2010)

	State Percentages		
State	Black % of Population	Black % of Arrests	Difference
Illinois	14.9%	58.3%	43.4%
D.C.	51.6%	90.9%	39.3%
Alabama	24.8%	59.7%	34.8%
Mississippi	36.3%	69.4%	33.1%
Georgia	30.9%	63.9%	33.1%
Florida	16.4%	46.1%	29.7%
Pennsylvania	11.3%	40.8%	29.6%
Tennessee	16.8%	45.8%	28.9%
Louisiana	32.0%	60.8%	28.8%
North Carolina	22.0%	50.0%	28.0%
Maryland	30.0%	57.9%	27.9%
Kentucky	8.2%	35.6%	27.3%
Minnesota	5.4%	31.3%	25.9%
Delaware	21.9%	47.7%	25.8%
Ohio	12.6%	38.1%	25.6%
South Carolina	28.2%	53.3%	25.1%
Virginia	19.8%	43.4%	23.7%
Nevada	8.6%	32.1%	23.5%
Wisconsin	6.5%	29.6%	23.1%
Michigan	14.3%	36.9%	22.5%
Arkansas	15.5%	37.2%	21.8%
New York	17.4%	38.9%	21.4%
New Jersey	14.6%	35.1%	20.5%
Connecticut	11.0%	30.3%	19.3%
Iowa	3.1%	21.7%	18.5%
Massachusetts	7.7%	25.9%	18.2%
Indiana	9.8%	27.6%	17.8%
Kansas	6.2%	23.7%	17.5%
Missouri	11.7%	26.7%	15.0%
Nebraska	4.8%	19.7%	14.8%
Texas	12.2%	25.8%	13.6%
Oklahoma	7.6%	20.8%	13.2%
Rhode Island	7.1%	17.5%	10.3%
California	6.7%	16.3%	9.6%
West Virginia	3.5%	10.8%	7.3%
Washington	3.8%	10.7%	6.9%
Arizona	4.4%	10.4%	6.0%
South Dakota	1.5%	5.5%	4.1%
Colorado	4.3%	8.3%	4.0%
North Dakota	1.3%	5.2%	3.9%
Vermont	1.0%	4.5%	3.5%
Utah	1.2%	4.7%	3.4%
Alaska	3.6%	6.1%	2.5%
Oregon	1.9%	4.3%	2.3%
New Mexico	2.5%	4.8%	2.3%
Wyoming	0.9%	3.0%	2.1%
New Hampshire	1.2%	3.3%	2.1%
Maine	1.2%	2.6%	1.4%
Idaho	0.7%	2.0%	1.3%
Hawaii	1.6%	2.8%	1.1%
Montana	0.4%	1.5%	1.1%

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

Indeed, examining the state-by-state differences between Black percentages of the population and Black percentages of marijuana possession arrests, in *every* state the Black arrest rate is disproportionate to Blacks' percentage of the population. **See Table 8.** In fact, in 42 states the Black percentage of marijuana possession arrests is more than double the Black percentage of the population, while in 18 states Blacks account for more than three times the percentage of marijuana possession arrests than they do of the population. In four states, the difference is a factor of at least four.

In Illinois, for instance, Blacks are 15% of the population, but account for 58% of marijuana possession arrests. In the District of Columbia, Blacks are just over half the population, but account for more than nine out of every ten marijuana possession arrests. In Alabama, 60% of the marijuana possession arrests are of Blacks, yet Blacks account for less than 25% of the population. In Kentucky and Minnesota, Blacks represent only 8% and 5% of the respective states, but 36% and 31% of the marijuana possession arrests. Similarly, in Iowa, the percentage of Blacks arrested for marijuana possession is seven times greater than their percentage of the state population.

iii. County Data

The counties that arrested the highest numbers of Blacks for marijuana possession in 2010 were Cook, IL (includes Chicago[41])(24,046), Kings, NY (Brooklyn) (12,544), Bronx, NY (6,943), Fulton, GA (includes Atlanta) (6,658), and Baltimore City, MD (6,461). **See Table 9**.

TABLE 9
Counties with Highest Numbers of Black Arrests for Marijuana Possession (2010)

	Number of Arrests for Marijuana Possession			
County-State	Black	White	Total	Black % of Arrests
Cook, IL	24,046	8,760	33,068	72.7%
Kings, NY	12,544	1,443	20,413	61.5%
Bronx, NY	6,943	497	16,001	43.4%
Fulton, GA	6,658	941	7,622	87.3%
Baltimore City, MD	6,461	555	7,047	91.7%
Harris, TX	5,320	6,387	11,836	44.9%
Miami-Dade, FL	5,279	3,935	9,240	57.1%
D.C.	4,648	467	5,115	90.9%
Philadelphia, PA	4,590	954	5,598	82.0%
New York, NY	4,047	1,596	11,221	36.1%
Los Angeles, CA	3,978	11,549	15,643	25.4%
Broward, FL	3,617	2,413	6,061	59.7%
Queens, NY	3,449	1,135	9,456	36.5%
Shelby, TN	3,311	652	3,978	83.2%
Milwaukee, WI	3,103	1,588	4,732	65.6%
Clark, NV	2,810	4,556	7,598	37.0%
St. Louis, MO	2,556	2,346	4,928	51.9%
Wayne, MI	2,448	1,702	4,160	58.9%
Erie, NY	2,425	2,516	4,991	48.6%
Orange, FL	2,294	2,168	4,502	51.0%
Davidson, TN	2,267	1,384	3,677	61.7%
Cuyahoga, OH	2,155	756	2,916	73.9%
Prince George's, MD	2,043	334	2,396	85.3%
Dallas, TX	2,015	2,150	4,206	47.9%
Hillsborough, FL	2,012	2,006	4,049	49.7%

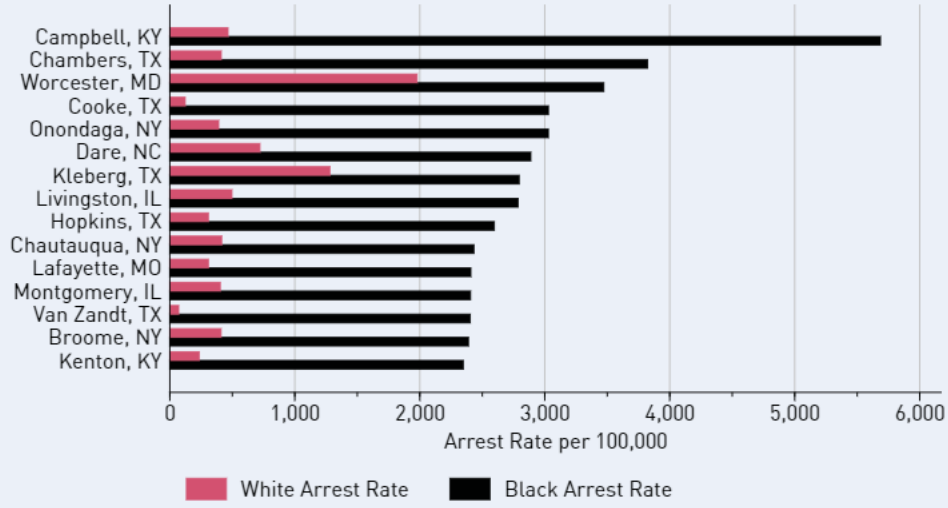
Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

41 *See supra* Mack, note 25 (discussing Chicago's recent decriminalization of marijuana).

Figure 14 shows the counties with the highest Black arrest rates for marijuana possession. These counties are spread throughout the country, from Kenton, KY, to Worcester, MD; from Dare, NC, to Livingston and Montgomery, IL; from Broome and Chautauqua, NY, to Kleberg, Hopkins, and Van Zandt, TX. In all of these counties, the Black arrest rate is over 1,000 — the national arrest rate for marijuana possession for all races is 256 — and is equal to or greater than a staggering 3,000 in Campbell, KY (adjacent to Cincinnati, OH), Chambers (approximately 30 miles east of Houston) and Cooke (approximately 50 miles north of Dallas), TX, Worcester, MD, and Onandaga, NY (includes Syracuse). In none of these counties is the white arrest rate for marijuana possession — though quite high in many of them — similar to the Black arrest rate.

FIGURE 14

Counties with Highest Black Arrest Rates for Marijuana Possession (2010)



NOTE: Population Size > 30,000 and Black Population Percentage Share > 2%

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Table 10 shows the counties with the greatest racial disparities in marijuana possession arrests.[42] As the data presented reveals, the counties with the greatest racial disparities in arrest rates are not necessarily in the states that have the greatest racial disparities in arrest rates. For instance, in Missouri, Blacks are on average over 2.5 times more likely to be arrested for marijuana possession than whites, but the ratio of white to

42 It is important to note that in three counties in the United States, all in Alabama — Dallas (which has a Black arrest rate of 95 per 100,000), Morgan (Black arrest rate of 55), and Pike (Black arrest rate of 115) — the number of white arrests in 2010 was zero. Given that this report defines racial disparity (i.e., the ratio of Black arrests rates to white arrest rates) by dividing the Black arrest rate by the white arrest rate, in these three counties the rate at which Blacks are arrested as compared to whites is an infinite number. Therefore, because we do not have a precise ratio to report, these three counties are not represented in **Table 10.** However, they should still be included among the counties nationwide with the largest racial disparities in arrest rates for marijuana possession.

Black marijuana possession arrests in St. Louis City, MO, is 18.4. In Georgia, statewide disparity is over 3.5, but in Gordon County, Georgia, the ratio is 14.1, or 136 white arrests per 100,000 as compared to 1,921 Blacks per 100,000. In Ohio, Blacks are over four times more likely than whites to be arrested for marijuana possession; in Allen County, OH, Blacks are 13.2 times more likely. In Van Zandt and Cooke County, TX (each located approximately 50 miles from Dallas, TX), Blacks are 34 times and 25 times more likely to be arrested for marijuana possession than whites, respectively, while the disparity statewide is 2.33. Blacks are over 4.5 times more likely to be arrested than whites for marijuana possession in New York State; but in Kings (Brooklyn), NY, Blacks are 9.68 times more likely (161 whites per 100,000 compared to 1,554 Blacks per 100,000).

TABLE 10

Counties with Largest Racial Disparities in Marijuana Possession Arrest Rates (2010)

		Arrest Rates per 100,000		Demographics	
County-State	Times More Likely Blacks Arrested	Black	White	Population	% Black
Van Zandt, TX	34.1	2,403	71	52,661	2.8%
Nelson, KY	32.1	324	10	43,576	5.1%
Coffee, AL	25.7	198	8	50,167	17.0%
Cooke, TX	24.7	3,029	123	38,438	2.9%
St. Louis City, MO*	18.4	51	3	319,008	49.5%
Monroe, MI	15.4	710	46	151,964	2.2%
Gordon, GA	14.1	1,921	136	55,191	3.8%
Columbiana, OH	13.8	161	12	107,851	2.3%
Chambers, AL	13.7	121	9	34,143	39.0%
Allen, OH	13.2	1,370	104	106,239	12.1%
Campbell, KY	12.2	5,686	465	90,534	2.6%
Tangipahoa, LA	11.8	586	50	121,460	30.4%
Lawrence, PA	11.2	858	77	90,975	3.9%
Barnstable, MA	11.0	194	18	215,988	2.2%
St. Landry, LA	10.7	758	71	83,503	41.7%
Plymouth, MA	10.5	63	6	495,731	9.0%
St. Clair, MI	10.1	1,041	103	162,730	2.5%
Monroe, TN	10.1	501	50	44,584	2.2%
Dubuque, IA	10.0	1,816	181	93,888	2.7%
Kenton, KY	10.0	2,348	235	159,897	4.7%
Sarasota, FL	10.0	1,199	120	380,043	4.9%
Lycoming, PA	10.0	1,098	110	116,177	4.6%
Martin, FL	9.8	1,497	152	146,488	5.5%
Kings, NY	9.7	1,369	116	2,508,515	36.5%
Hoke, NC	9.6	81	8	47,506	34.1%

* For St. Louis City, in 2007, 2008, and 2009, respectively, the Black arrest rate was 376, 345, and 316 and the white arrest rate was 46, 25, and 32. The sharp drop-off in arrest rates for whites and Blacks in 2010 is likely attributed to reporting error.

NOTE: Population Size > 30,000 and Black Population Percentage Share > 2%

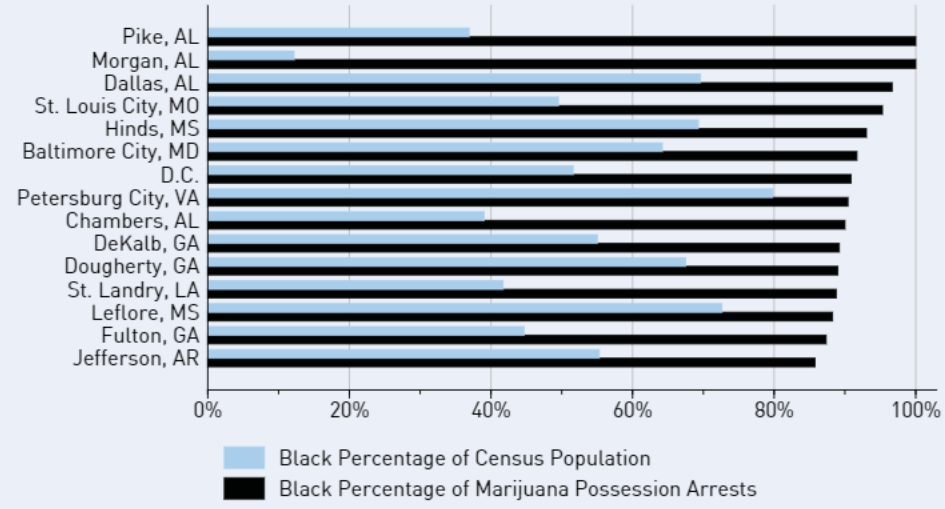
Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

As **Table 10** shows, significant arrest disparities exist in counties across the country irrespective of the counties' overall Black populations. For example, in Lycoming (includes Williamsport) and Lawrence (includes New Castle), PA, as in Kenton County (includes Covington), KY, Blacks make up less than 5% of the population, but are between 10 and 11 times more likely than whites to be arrested. In Kings (Brooklyn), NY, and St. Louis City, MO, Blacks comprise 37% and 50% of the residents, respectively, and are 12 and 18 times more likely to be arrested for marijuana possession than whites, respectively.

Figure 15 below shows the counties where Blacks account for the highest percentages of marijuana possession arrests — over 80% in each county. Data from Alabama is particularly stark: in Morgan County, AL, Blacks make up just over 10% of the population, and in Pike County, AL, Blacks make up less than 40% of the population, yet they account for 100% of all marijuana possession arrests; meanwhile, in Chambers, AL, Blacks account for less than 40% of the population, but 90% of the marijuana possession arrests. In St. Landry, LA, Blacks account for twice as many marijuana arrests (almost 89%) as they do the overall population (42%).

FIGURE 15

Counties with Highest Black Percentages of Marijuana Possession Arrests (2010)



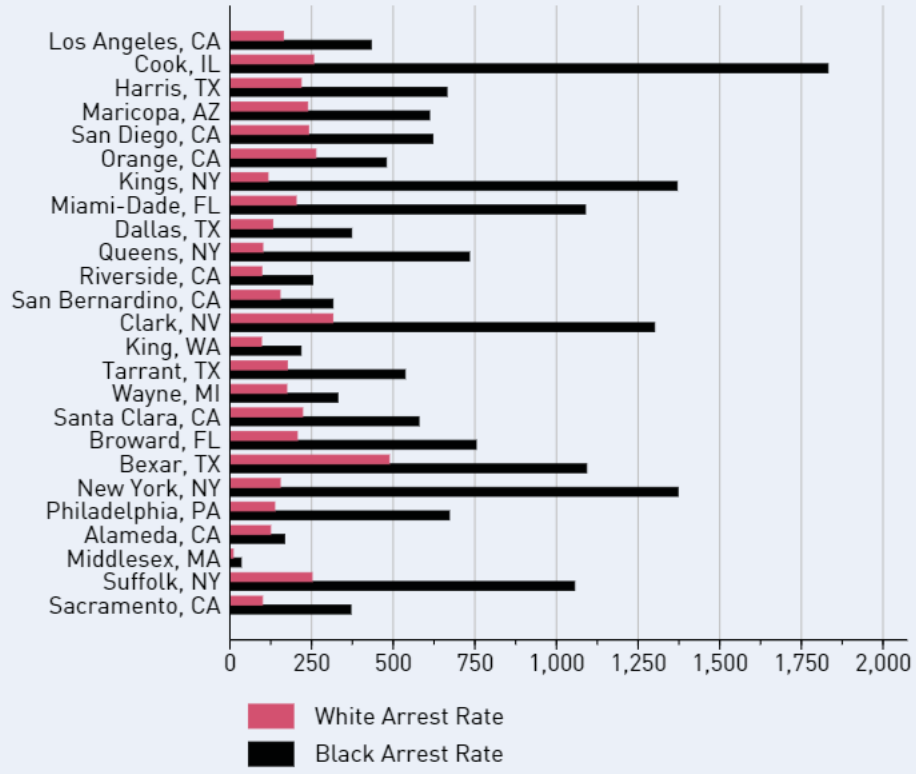
NOTE: Population Size > 30,000

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

In each of the 25 most populous counties in the United States, the Black arrest rate for marijuana possession exceeds the white arrest rate, further evidence of the pervasiveness of racial disparities throughout the country. **See Figure 16.** The most populous counties with the greatest racial disparities in marijuana possession arrest rates are Kings County (Brooklyn), NY (where Blacks are 9.7 times more likely to be arrested than whites), New York County (Manhattan), NY (9.4 times more likely), Cook County (Chicago), IL (7.2 times more likely), Miami-Dade County, FL (5.4 times more likely), Philadelphia County, PA (5 times more likely), Queens County, NY (4.6 times more likely), Suffolk County (part of Long Island) NY (4.2 times more likely), and Clark County (includes Las Vegas), NV (4.1 times more likely). Notably, in each of these 25 counties, the percentage of marijuana arrests that are of Blacks also significantly exceeds the Black percentage of those counties' populations.

FIGURE 16

Racial Disparities in Marijuana Possession Arrests in the 25 Most Populous Counties in U.S. (2010)

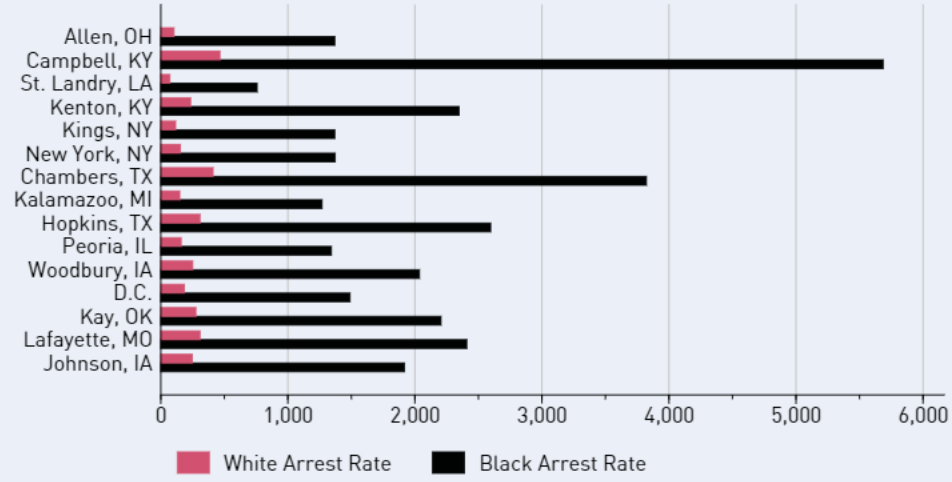


Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Figure 17 looks at the largest disparities between the white and Black arrest rates for marijuana possession in counties where the overall marijuana possession arrest rate is greater than the national average.

FIGURE 17

Largest Racial Disparities in Counties with Above-Average Marijuana Possession Arrest Rates (2010)



NOTE: Population Size > 30,000 and Black Population Percentage Share > 2%

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Table 11 lists the counties with the largest increases in racial disparities in marijuana possession arrests from 2001 to 2010. The largest increases range from 426.2% in Kent, MI (includes Grand Rapids), to 1,230.8% in Monroe, TN.

TABLE 11

Counties with Largest Percent Increases in Racial Disparities in Marijuana Possession Arrest Rates (2001-2010)

County-State	Racial Disparity		
	Times More Likely Blacks Arrested (2001)	Times More Likely Blacks Arrested (2010)	% Change in Racial Disparity
Monroe, TN	0.8	10.1	1,230.8%
Chambers, AL	1.1	13.7	1,090.6%
Lycoming, PA	0.9	10.0	1,048.0%
Hoke, NC	1.0	9.6	906.4%
Jefferson, AR	0.5	4.8	851.4%
Madison, IN	0.4	3.5	834.1%
St. Lawrence, NY	0.2	2.1	793.7%
Coffee, AL	3.5	25.7	625.5%
Graham, AZ	0.5	3.0	537.0%
Walton, GA	0.5	3.4	528.1%
McDowell, NC	0.8	4.5	464.6%
Wyoming, NY	0.1	0.6	449.3%
Lawrence, AL	1.3	6.8	442.6%
Kalamazoo, MI	1.6	8.5	429.0%
Kent, MI	1.4	7.5	426.2%

NOTE: Population Size > 30,000 and Black Population Percentage > 2%

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

Table 12 is similar to **Table 11,** but focuses only on larger counties (more than 200,000 people) with the largest increases in racial disparities in marijuana possession arrests since 2001. Three of the larger counties with the greatest increases are in Michigan: Kalamazoo, Kent (includes Grand Rapids), and Wayne (includes Detroit). Other counties on this list include Davidson, TN (includes Nashville), Hennepin, MN (includes Minneapolis), St. Louis City, MO, Philadelphia, PA, Bernalillo, NM (includes Albuquerque), and Milwaukee, WI.

TABLE 12

Large Counties with Largest Percent Increases in Racial Disparities in Marijuana Possession Arrest Rates (2001-2010)

County-State	Racial Disparity		
	Times More Likely Blacks Arrested (2001)	Times More Likely Blacks Arrested (2010)	% Change in Racial Disparity
Kalamazoo, MI	1.6	8.5	429.0%
Kent, MI	1.4	7.5	426.2%
Davidson, TN	0.8	3.8	355.6%
Plymouth, MA	2.4	10.5	346.4%
Hennepin, MN	2.1	9.1	328.7%
Wayne, MI	0.5	1.9	271.0%
St. Louis City, MO	6.1	18.4	201.2%
Bernalillo, NM	1.5	3.9	162.0%
Chatham, GA	1.3	3.5	157.7%
Contra Costa, CA	1.1	2.8	150.2%
Dakota, MN	2.3	5.6	145.9%
Lorain, OH	1.8	4.4	141.8%
Suffolk, MA	2.0	4.8	135.0%
Philadelphia, PA	2.1	4.9	134.7%
Milwaukee, WI	2.0	4.7	132.5%

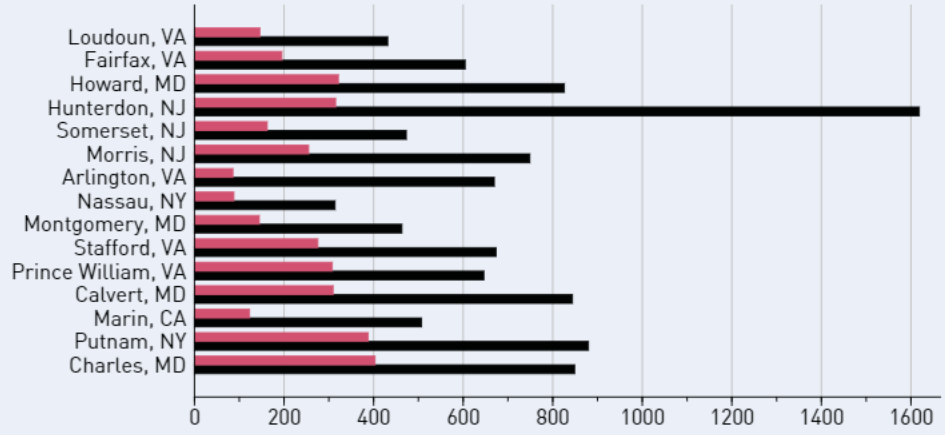
NOTE: Population Size > 200,000 and Black Population Percentage > 2%
Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

Racial disparities in marijuana possession arrests exist across median household income levels. Blacks are arrested at higher rates than whites for marijuana possession in counties with the highest, middle, and lowest median household income levels (the disparity is greater in the counties with the middle and highest income levels).

In the 15 counties with the highest median household incomes in the United States, Blacks are two to eight times more likely than whites to be arrested for marijuana possession. In Arlington, VA, for example, where the median household income is $94,880, Blacks are almost eight times more likely to be arrested for marijuana possession than whites. In Delaware, OH (north of Columbus), where the median household income is just under $88,000, Blacks are arrested at almost six times the rate of whites. In Howard, Calvert, and Charles Counties in Maryland, the median household income is between $88,825 and $103,273, and the Black marijuana possession arrest rate is a stunning 837 per 100,000 (compared to the national rate of 253 per 100,000). In Fairfax and Loudoun, VA, where the median household incomes are both over $100,000, Blacks are approximately three times more likely than whites to be arrested for marijuana possession. In Nassau, NY (part of Long Island), the median household income is over $93,000 and Blacks are over 3.5 times more likely than whites to be arrested for marijuana possession. **See Figure 18.**

FIGURE 18

Counties with Highest Median Household Incomes ($115,574-$88,825)



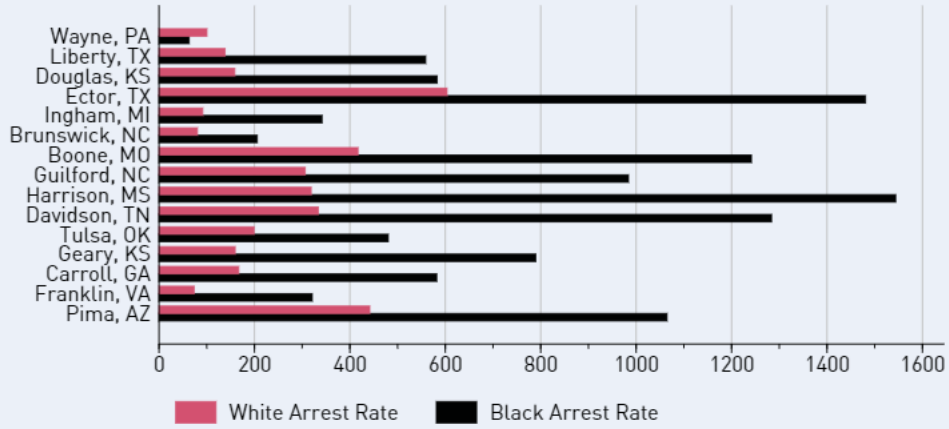
NOTE: Population Size > 30,000 and Black Population Percentage > 2%
Counties listed in descending order by Median Household Income.

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

In the counties with the middle median household incomes, **see Figure 19,** where the household incomes are all in the $45,000 range, Blacks are over three times more likely to be arrested for marijuana possession than whites. In Geary, KS, and Harrison, MS (includes Gulfport and Biloxi), Blacks are almost five times more likely to be arrested. In Davidson, TN (includes Nashville), Ingham, MI (includes Lansing), and Douglas, KS (includes Lawrence), Blacks are over 3.5 times more likely to be arrested.

FIGURE 19

Counties with Middle Median Household Incomes ($45,930-$45,521)



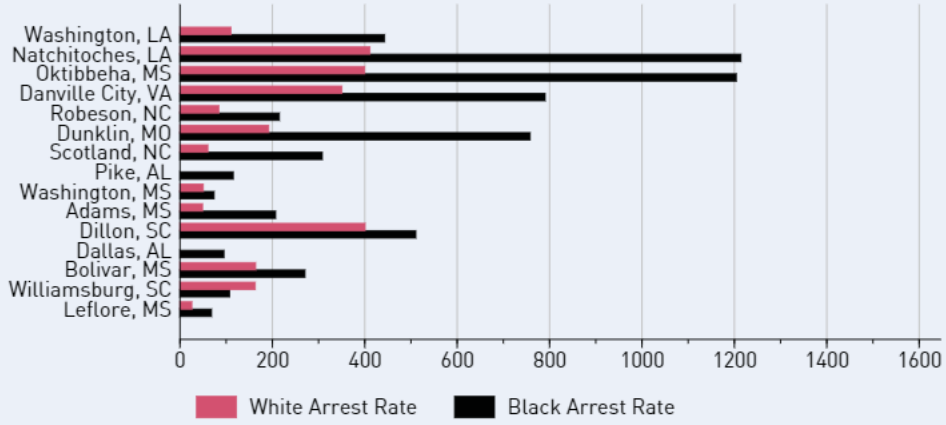
NOTE: Population Size > 30,000 and Black Population Percentage > 2%
Counties listed in descending order by Median Household Income.

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Turning to the 15 counties with the lowest median household incomes, **see Figure 20,** in Scotland, NC, and Adams, MS, where the median household income is below $30,000, Blacks are almost five times more likely to be arrested for marijuana possession than whites. In Washington, LA ($27,797), and Dunklin, MO ($29,375), Blacks are four times more likely. In Dallas (includes Selma) and Pike, AL, both with median household incomes below $30,000 and white populations of 31% and 61%, respectively, the white arrest rate for marijuana possession was 0, while the Black arrest rate was 95 and 115, respectively. In Natchitoches, LA, and Oktibbeha, MS, the median household income is approximately $30,300, and the Black marijuana possession arrest rate is a staggering 1,201 per 100,000.

FIGURE 20

Counties with Lowest Median Household Incomes ($30,363-$22,020)



NOTE: Population Size > 30,000 and Black Population Percentage > 2%
Counties listed in descending order by Median Household Income.

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

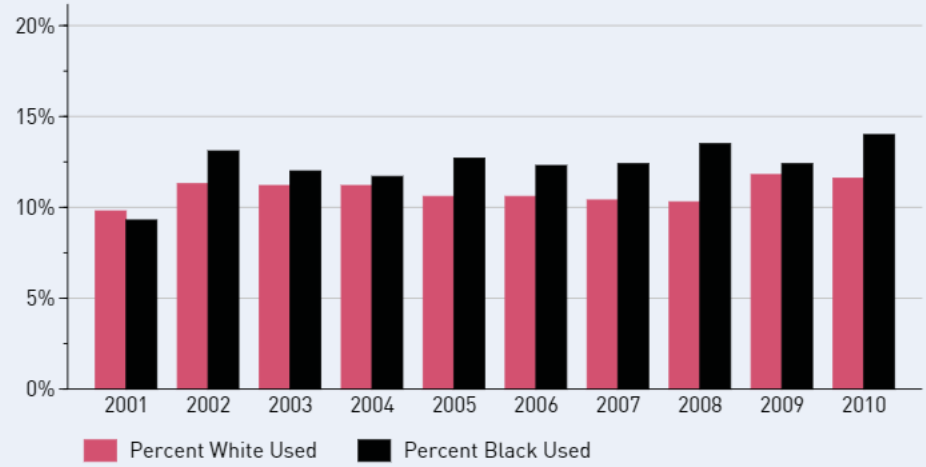
c. Blacks and Whites Use Marijuana at Similar Rates

Despite the pronounced disparities in arrest rates of whites and Blacks for marijuana possession, rates of marijuana use and non-use between whites and Blacks are roughly equal. Therefore, the wide racial disparities in marijuana possession arrest rates cannot be explained by differences in marijuana usage rates between whites and Blacks.

Among all age groups since 2001, use by Blacks of marijuana in the past 12 months is slightly higher than use by Whites. In 2010, for instance, 14.0% of Blacks and 11.6% of whites reported using marijuana in the past year. In 2009, reported use of marijuana in the past year was 12.4% for Blacks and 11.7% for whites. In 2001, 9.8% of whites and 9.3% of Blacks reported using marijuana over the past year. **See Figure 21.**

FIGURE 21

Marijuana Use by Race: Used Marijuana in Past 12 Months (2001-2010)

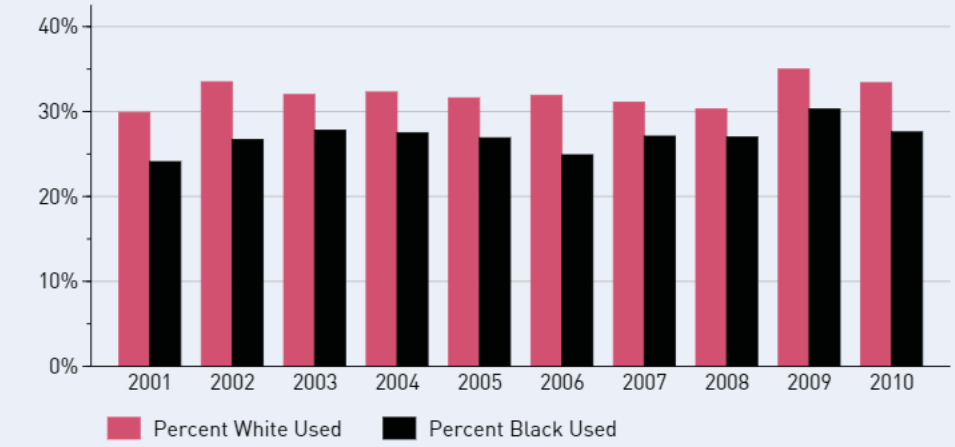


Source: National Household Survey on Drug Abuse and Health, 2001-2010

Every year between 2001 and 2010, among 18- to 25-year-olds — a group with higher arrest rates generally than other age brackets — more whites than Blacks had used marijuana in the previous 12 months. In 2010, for instance, among 18- to 25-year-olds, 33.4% of whites and 27.6% of Blacks reported using marijuana in the past year. **See Figure 22.**

FIGURE 22

Marijuana Use Among 18- to 25-Year-Olds by Race: Used Marijuana in Past 12 Months (2001-2010)

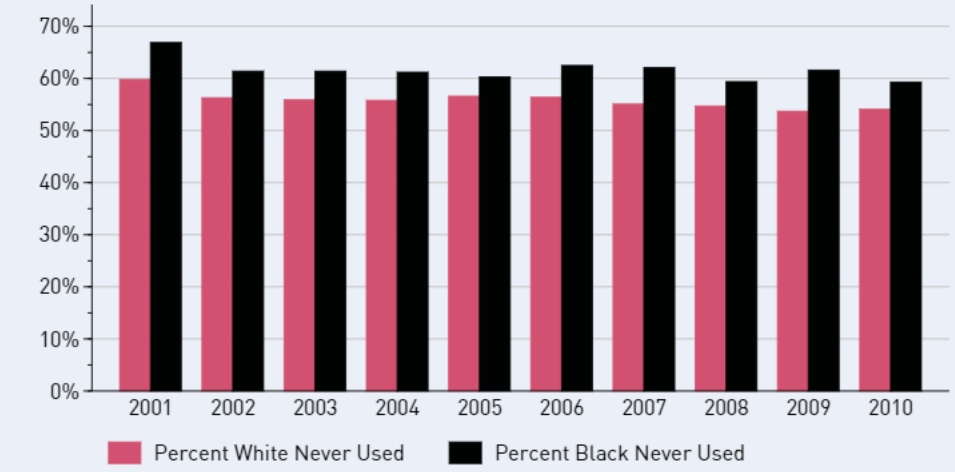


Source: National Household Survey on Drug Abuse and Health, 2001-2010

In terms of non-use of marijuana, 59.3% of Blacks and 54.1% of whites in 2010 reported having never used marijuana. In fact, in every year between 2001 and 2010, more Blacks than whites reported having never used marijuana. **See Figure 23.**

FIGURE 23

Marijuana Use by Race: Never Used Marijuana (2001-2010)



Source: National Household Survey on Drug Abuse and Health, 2001-2010

V. FISCAL COST ANALYSIS

This section calculates three estimates of the annual fiscal costs of marijuana possession arrests in the United States, denoted as: (1) Low Estimate, (2) Middle Estimate, and (3) High Estimate. For the reasons provided below, we believe that the Middle Estimate is the best estimate of the true annual fiscal cost of marijuana possession enforcement.[43]

It should be noted that the economic analyses of the fiscal cost of marijuana possession enforcement in this report are almost certainly conservative estimates, to the extent that we do not include downstream factors in our analysis (e.g., additional costs incurred beyond the justice system, such as reduction in labor force, reduction in tax revenue, educational disparities leading to under-employment in already economically depressed neighborhoods, and so forth). Rather, the report focuses only on direct enforcement costs.

A. Estimates

i. High Estimate

To calculate the High Estimate, this report largely follows the methodology employed by Professor Jeffrey A. Miron in his analysis of the fiscal impact of decriminalization.[44] Professor Miron's basic approach consists of prorating historical criminal justice system

43 As an initial matter, all three estimates represent a summation of 2010 expenditures, and are not the products of an empirical comparison of jurisdictions where marijuana possession is legal with jurisdictions where marijuana possession is illegal. *See, e.g.*, Jerome Adda, Brendon McConnell & Imran Rasul, *Crime and the Depenalization of Cannabis Possession: Evidence from a Policing Experiment* 15 (Working Paper, 2011), *available at* http://www.ucl.ac.uk/~uctpimr/research/depenalization.pdf. Moreover, although some criminologists have suggested that reducing the number of marijuana possession arrests may not reduce total fiscal expenditures (e.g., due to the redirection of resources from marijuana possession enforcement to other lower-level offenses, such as traffic violations, trespassing, loitering, etc.), such policy choices are separate from a determination of what is presently spent by state and local governments on marijuana possession enforcement in this country. This prorating approach plays an important role in the policy discussions surrounding marijuana legalization, and this section continues that tradition. In addition, it is important to note that the estimates provided in this section consider only the budgetary or fiscal impact of enforcing criminal laws or statutes prohibiting marijuana possession, and do not in any way seek to account for the broader costs and benefits to society that would follow were state and local agencies to put these resources to other uses, nor do the estimates contemplate the positive fiscal impact of tax revenues generated by wholesale legalization or commercialization. Further, no consideration is made for the indirect effects of legalization, such as any cross-substitution effects of marijuana legalization (i.e., reduction in consumption demand for other goods such as alcohol or cigarettes, arising from changes in the availability of marijuana), primarily because such effects are extremely difficult to quantify or measure with any accuracy or precision. *See, e.g.*, Jonathan P. Caulkins, Angela Hawken, Beau Kilmer & Mark A. R. Kleiman, Marijuana Legalization: What Everyone Needs to Know 133-34 (2012) (noting that if the cross-price elasticity between alcohol and marijuana consumption is even just slightly negative, then the costs of increased marijuana use resulting from decriminalization may be offset by the benefits flowing from a corresponding decrease in alcohol abuse and dependence, which impose far greater costs upon society).

44 *See* Miron & Waldock, Budgetary Impact, *supra* note 23, at 1; Jeffrey A. Miron, Marijuana Policy Project, The Budgetary Implications of Marijuana Prohibition (2005) [hereinafter Miron, Budgetary Implications], *available at* http://www.prohibitioncosts.org/mironreport/; *see generally* Jeffrey A. Miron & Jeffrey Zweibel, *The Economic Case Against Drug Prohibition*, 9 J. Econ. Persp. 175 (1995).

expenditures, where these expenditures are broken down into three distinct components: (1) police expenditures, (2) judicial and legal services expenditures, and (3) corrections expenditures.[45]

To start, the fiscal cost of police expenditures on marijuana possession arrests is estimated as the total budget for policing services multiplied by the percentage share of total arrests accounted for by marijuana possession.[46] An adjustment is made, however, for the fact that some marijuana possession arrests are made incidental to other enforcement actions. Specifically, as described in the Methodology section, individuals can be arrested for multiple offenses as a consequence of a single enforcement action. For example, if the police arrest an individual for a traffic violation and a small amount of marijuana is subsequently found within the vehicle, then the enforcement action is generally coded as both a marijuana possession arrest and a traffic violation, even if the police would have taken the enforcement action were marijuana possession legal. To adjust for this, following Professor Miron, this report assumes for all fiscal cost estimates that only 50% of all marijuana possession offenses are "stand-alone" offenses such that the total number of marijuana possession arrests is equal to 50% of the total number of recorded arrests for marijuana possession.[47]

To calculate the adjudication costs of arrests for marijuana possession, Professor Miron multiplies the total judicial and legal expenditures by the percentage of marijuana-related proceedings in state courts resulting in felony convictions, using, in particular, a national fraction of 10.9% because state-level data are not available.[48] This report estimates adjudication costs slightly differently. Available state data suggest that marijuana possession's percentage share of total state cases is approximately two times as large as the percentage share of total arrests accounted for by marijuana possession. Thus, to calculate the adjudication costs of arrests for marijuana possession, this report

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45 This methodology has been used in a number of reports examining the fiscal impact of marijuana decriminalization. *See e.g.,* Jon B. Gettman, Nat'l Org. for the Reform of Marijuana L., Crimes of Indiscretion: The Nature, Extent, and Costs of Marijuana Arrests in the United States (2004), *available at* http://norml.org/pdf_files/NORML_Crimes_of_Indiscretion.pdf; Ryan King & Marc Mauer, *The War on Marijuana: The Transformation of the War on Drugs in the 1990s*, 3 Harm Reduct. J. 6 (2006), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1420279/. A proportionate cost model has also been adopted by the federal Office of National Drug Control Policy on the Economic Costs of Drug Abuse. *See generally* Office of Nat'l Drug Control Pol'y, The Economic Costs of Drug Abuse in the United States, 1992-2002 (2004), *available at* https://www.ncjrs.gov/ondcppubs/publications/pdf/economic_costs.pdf.

46 There at two concerns here. First, not all arrests are equally burdensome on police (e.g., some arrests may require greater investigative effort). Miron's methodology assumes that average costs equal marginal costs, which implies that law enforcement is a constant cost industry (i.e., that increased dollars spent on law enforcement result in approximately the same increase in the number of arrests). Second, police do more than simply arrest individuals (i.e., there is evidence that only one-third of enforcement expenditure is properly allocated to arrests). This concern is mitigated to some extent by the fact that the costs of other non-enforcement activities are relatively low compared to the overall costs of enforcement.

47 *See* Miron, Budgetary Implications, *supra* note 44, at 6 ("There are few hard data on the fraction of 'stand alone' possession arrests, but the information in Miron (2002) and Reuter, Hirshfield and Davies (2001) suggests it is between 33% and 85%."). In our view, the 50% figure likely underestimates the total number of arrests for marijuana possession.

48 There are at least three concerns here: (1) not all convictions are equally burdensome on the judiciary (e.g., felony offenses consume more judicial resources than misdemeanor offenses); (2) most marijuana charges are classified as misdemeanors or lower; and (3) the judiciary is responsible for more than simply adjudicating criminal cases.

multiplies the total judicial and legal expenditures by two times marijuana possession arrests' percentage share of total arrests.[49]

Finally, to estimate the corrections costs associated with marijuana possession convictions, fiscal expenditures on local jail and county correctional facilities (but not state prison facilities) are multiplied by the ratio of stand-alone arrests for marijuana possession arrests to total arrests.[50] In his analysis, Professor Miron estimates corrections costs as equal to 1% of *total* corrections expenditures, including state prison facilities, where 1% corresponds to the weighted average of the proportion of prisoners incarcerated on marijuana charges in five states.[51] Our departure from Professor Miron's methodology is motivated by the fact that the aim of this fiscal cost analysis is to provide an estimate of marijuana *possession* offenses only, and not of all marijuana offenses.

Specifically, our fiscal analysis does not consider offenses for the sale and/or manufacture of marijuana that are more likely to result in a felony charge and, in turn, to constitute the majority of the estimated 1% of the prison population serving time solely on a marijuana charge.[52] To account for this difference, our fiscal analysis ignores entirely all fiscal spending on state correctional facilities and considers only fiscal expenditures on local jail and county correctional facilities and other services.[53]

In our view, Professor Miron's approach yields a plausible *upper* bound on the annual fiscal costs of marijuana possession enforcement for the country as a whole. In

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49 The factor of two is consistent with other studies that examine state-level data. *See, e.g.*, Stiffler, *supra* note 20, at 9. Note that because under Miron's approach only 50% of all marijuana possession arrests are considered "stand-alone," this calculation is equivalent to simply multiplying marijuana possession's percentage share of total arrests by total judicial and legal expenditures.

50 Here, "local jail and county correctional facilities" corresponds to confinement in a local correctional facility while pending trial, awaiting sentencing, serving a sentence of less than one year, or awaiting transfer to other facilities after conviction. "Prison facilities," by contrast, corresponds to confinement in a state correctional facility to serve a sentence of more than one year, but this varies in certain jurisdictions. Six states have unified prison systems, meaning that there is an integrated state-level prison and jail system: Alaska, Connecticut, Delaware, Hawaii, Rhode Island, and Vermont. For these six states, the local correction expenditure was calculated as 30% of total reported corrections expenditures. The 30% number is calculated as local correction expenditure's percentage share of total correction expenditure averaged over the remaining 44 states with non-unified prison systems.

51 The five states are California, Georgia, Massachusetts, Michigan, and New Hampshire. *See* Miron, Budgetary Implications, *supra* note 44, at tbl.A1.

52 According to the National Center on Addiction & Substance Abuse at Columbia University, less than 1% of all individuals incarcerated in federal and state prisoners in the United States are incarcerated for marijuana possession as their sole offense. *See* Behind Bars II, *supra* note 8, at 2 & 14.

53 Thus, our analysis will not reflect the dramatic rate at which corrections expenditures, as a percentage of overall state budgets, have been increasing nationwide since the late 1980s, often at the expense of other crucial state services, such as public education and infrastructure. *See generally* Pew Ctr. On the States, One in 31: The Long Reach of American Corrections 11 (2009), *available at* http://www.pewstates.org/research/reports/one-in-31-85899371887 (reporting that overall state spending on corrections increased from $11 billion in 1988 to $52 billion in 2008); Christian Henrichson & Ruth Delaney, Vera Inst. of Just., The Price of Prisons: What Incarceration Costs Taxpayers 6, 8 (2012), *available at* http://www.vera.org/pubs/price-prisons-what-incarceration-costs-taxpayers (highlighting that in some states a significant proportion of incarceration costs is found in other areas of the state budget, such as the "central administrative funds" or "central account" and stating that the true total taxpayer cost of incarceration is more realistically equal to $77 billion annually); *see also* Inimai Chettiar, Will Bunting & Geoff Schotter, ACLU, At America's Expense: The Mass Incarceration of the Elderly v & vii (2012), *available at* http://www.aclu.org/criminal-law-reform/americas-expense-mass-incarceration-elderly (follow "At America's Expense" hyperlink, then follow "Read or Download the Report" hyperlink) (finding that approximately 16% of the national prison population is 50 and older and that it costs $68,270 per year to house these elderly prisoners).

particular, using a modified proportionate cost methodology, the High Estimate of the annual fiscal costs of marijuana possession arrests in the United States is calculated as: **$6.032 billion.**

ii. Low Estimate

To calculate the Low Estimate of the annual fiscal costs of marijuana possession arrests in the United States, rather than pursue the top-down, aggregate expenditures approach developed by Professor Miron, where fiscal expenditures are prorated in proportion to the total number of arrests, the report adopts a conceptually straightforward unit cost approach in which the unit cost per marijuana possession arrest is multiplied by the total number of such arrests.[54] Unfortunately, at present, the data required to calculate precisely the unit cost of a marijuana possession arrest on a state-by-state basis is not available.[55]

A number of researchers and policy analysts, however, have examined police and adjudication expenses in smaller, isolated jurisdictions, and while these unit cost estimates vary, with costs generally increasing over time, there is considerable agreement that the *minimal* unit fiscal cost of a misdemeanor arrest ranges from $1,000 to $2,000. Specifically, the present report borrows unit cost estimates from what is perhaps the most often cited and highly respected study of the fiscal costs of arrests and prosecutions, published in 2001 by the Washington State Institute for Public Policy (WSIPP).[56] It is important to note, however, that the estimates derived by the WSIPP are specific to Washington state and may not translate reliably to other states. Moreover, the WSIPP estimates reflect the policing cost of a misdemeanor arrest rather than the policing cost of a marijuana possession arrest more specifically, although there is little reason to think that these two costs should differ significantly. Like the High Estimate, the Low Estimate is calculated as the sum of the following criminal justice system expenditures: (1) police expenditures, (2) judicial and legal services expenditures, and (3) corrections expenditures.

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54 This alternative methodology has been used in a number of reports investigating the fiscal costs of marijuana enforcement and prohibition. *See, e.g.*, Harry Levine, Jon Gettman & Loren Siegel, Marijuana Arrest Research Project, 240,000 Marijuana Arrests: Costs, Consequences, and Racial Disparities of Possession Arrests in Washington, 1986-2010 6 (2012) [hereinafter Levine, Gettman & Siegel], *available at* http://marijuana-arrests.com/docs/240,000-Marijuana-Arrests-In-Washington.pdf; Jonathan P. Caulkins, *Cost of Marijuana Prohibition on the California Criminal Justice System* (RAND Drug Pol'y Res. Ctr., Working Paper, July 2010) [hereinafter Caulkins, *Marijuana Prohibition*], *available at* http://www.rand.org/content/dam/rand/pubs/working_papers/2010/RAND_WR763.pdf; *see also* Beckett & Herbert, *supra* note 11.

55 *See* Levine, Gettman & Siegel, *supra* note 54.

56 *See* Steve Aos, Polly Phipps, Robert Barnoski & Roxanne Lieb, Wash. State Inst. for Pub. Pol'y, The Comparative Costs and Benefits of Programs to Reduce Crime (2001) [hereinafter 2001 WSIPP Report], *available at* http://www.wsipp.wa.gov/rptfiles/costbenefit.pdf.

On the basis of the WSIPP 2001 Report, as well as other comparable studies and fiscal impact analyses, this report *conservatively* estimates the operating per unit cost of policing marijuana possession as: $750/arrest.[57]

Next, the average annual cost per arrest made in Washington was approximately $5,518 in 2010, and is calculated by dividing Washington's total expenditures on policing (including capital expenditures) by the total number of arrests made in 2010.[58] If the operating per unit cost of policing marijuana possession is $750/arrest in 2010, then the operating per unit cost of a marijuana possession arrest is approximately 13.6% (=750/5,518) of the average annual cost per arrests.[59] Thus, to estimate the annual operating per unit cost of policing marijuana possession in a given state in 2010, the average annual cost per arrest is first calculated. This number is then multiplied by approximately 13.6% to obtain the estimated operating per unit policing cost of a marijuana possession arrest for that state. Estimated total annual police expenditures by the state on marijuana possession arrests in 2010 are calculated by multiplying this number times the total number of marijuana possession arrests made in 2010, as reported to the FBI/UCR Program.

The annual costs of adjudicating marijuana possession arrests (i.e., judicial and legal services expenditures) are derived in a similar manner. Specifically, on the basis of the WSIPP 2001 Report, as well as other relevant studies and fiscal impact analyses, our report *conservatively* estimates the operating per unit cost of adjudicating a marijuana possession offense, which is assumed to include court costs, as well as the fiscal costs

57 The 2001 WSIPP Report calculated the operating per unit policing cost of a misdemeanor arrest as $764/arrest in 1995 dollars (or, equivalently, as $1,079/arrest in 2010 dollars). *See* 2001 WSIPP Report, *supra* note 56, at 82. By contrast, a lesser-known, more recent 2006 study also published by the WSIPP, using a slightly different model, calculated the operating per unit policing cost of a misdemeanor arrest as $305/arrest in 1995 dollars (or, equivalently, as $351/arrest in 2010 dollars). *See* Steve Aos, Marna Miller & Elizabeth Drake, Wash. State Inst. for Pub. Pol'y, Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates (2006), [hereafter 2006 WSIPP Report],*available at* http://www.wsipp.wa.gov/pub.asp?docid=06-10-1201. Although the two studies arrive at different estimates regarding per unit policing costs, they reach similar estimates regarding total per unit criminal justice expenditures with respect to misdemeanor arrests. *See infra* text accompanying note 60 (explaining that the 2006 study arrived at higher estimates than the 2001 study regarding the per unit adjudication costs). This report relies more heavily on the estimates of the 2001 study due to its greater prominence in the field.

58 "Capital expenditures" include construction costs; equipment, such as vehicles, furnishings, and computers; and other capital costs, such as the purchase of land.

59 In other words, the report estimates that the marginal cost of a marijuana possession arrest is equal to 13.6% of the average cost of all arrests made.

of both defense and prosecution, as: $400/disposition sought on a marijuana possession arrest.[60]

Next, in Washington, the average annual cost per court case was approximately $6,985 in 2010, and is calculated by dividing Washington's total expenditures on judicial and legal services (including capital expenditures) by the total number of court cases in 2010. The operating per unit adjudication cost of a disposition sought for a marijuana possession arrest is, therefore, approximately 5.7% (= 400/6,985) of the average annual cost per court case. Thus, to estimate the annual operating per unit adjudication cost of a disposition sought on a marijuana possession arrest in a given state, the average annual cost per court case is calculated and multiplied by approximately 5.7%. Estimated annual legal and judicial expenditures by the state on marijuana possession arrests in 2010 are then calculated by multiplying this estimated operating per unit adjudication cost of a disposition sought for a marijuana possession arrest times the total number of dispositions sought on marijuana possession arrests in the state in 2010, where, based on limited available state-level data, the report assumes that, on average, dispositions are sought on 90% of all arrests for marijuana possession.[61]

Finally, the annual corrections costs associated with marijuana possession enforcement are estimated as (1) the number of individuals in local jail or county correctional facilities for a marijuana possession offense multiplied by the average state-level per diem costs of jail/county correctional facilities, plus (2) the number of individuals on local or community supervision for a marijuana possession offense multiplied by the average per diem cost of such supervision.[62] Unfortunately, well-known data limitations complicate the derivation of the number of individuals in jail or on local supervision as a result of a

60 The 2001 WSIPP Report calculated the operating per unit adjudication cost of a misdemeanor arrest as $336/conviction in 1995 dollars (or, equivalently, as $475/conviction in 2010 dollars), where, notably, the estimate does not include defense costs. *See* 2001 WSIPP Report, *supra* note 56, at 83. The 2006 WSIPP Report calculated the operating per unit adjudication cost of misdemeanors as $593/conviction (or, equivalently, as $603/conviction in 2010 dollars), again not including defense costs. *See* 2006 WSIPP Report, *supra* note 57, at 41. Other studies have derived similar estimates in slightly different contexts. Using data from several jurisdictions, Mark Cohen calculated combined police and court costs to be about $2,000 for a rape arrest, $1,100 for a robbery arrest, and approximately $1,200 for an aggravated assault arrest, measured in 1987 dollars. *See* Mark A. Cohen, Nat'l Inst. of Just., *Measuring the Costs and Benefits of Crime and Justice*, *in* Measurement and Analysis of Crime and Justice 263, 297 (2000), *available at* http://www.smartpolicinginitiative.com/sites/all/files/Measuring%20the%20Costs%20and%20Benefits%20of%20Crime%20and%20Justice.pdf. Evaluating mandatory sentencing costs in California, Greenwood and others estimated $624 in police costs and $1,300 in total costs per arrest, measured in 1993 dollars. *See* Peter W. Greenwood et al., RAND Corp., Three Strikes and You're Out: Estimated Benefits and Costs of California's New Mandatory Sentencing Law 15, tbl.3.1 (1994), *available at* http://www.rand.org/content/dam/rand/pubs/monograph_reports/2006/MR509.pdf. The National Juvenile Justice Network has developed a useful toolkit to calculate the approximate cost of an arrest in a local jurisdiction. *See generally* Julius C. Chaidez, Nat'l Juv. Just. Network, How to Calculate the Cost of a Youth Arrest (2012), *available at* http://www.njjn.org/uploads/digital-library/NJJN-Arrest-Costing-Toolkit-FINAL-Nov12.pdf.

61 *See* Caulkins, *Marijuana Prohibition*, *supra* note 54, at 9 ("For most but not all marijuana arrests a 'complaint was sought' as opposed to simply releasing the person or transferring them to another agency.").

62 "Local or community supervision" is an alternative to incarceration, defined as a court-ordered period of correctional supervision in the community.

marijuana possession conviction.[63] In response to these data limitations, two simplifying assumptions are made, both of which are informed by data that are available for specific local jurisdictions: (1) the average conviction rate in cases where a disposition is sought on an arrest for marijuana possession is 0.3 or 30%;[64] and (2) the average time spent in local jail or county correctional facilities on a marijuana possession conviction is 5.5 days, with an additional 74.5 days spent on local or community supervision.[65]

Based on a review of other studies examining the fiscal impact of mass incarceration, this report estimates the average per diem cost of local or community supervision as $2/day for all 50 states, as well as the District of Columbia.[66] In addition, the report calculates the average per diem jail cost on a state-by-state basis using publicly available data on the total jail population, coupled with the corrections expenditure data for jail and county correctional facilities used to calculate the High Estimate.[67] Specifically, the report estimates the national average per diem jail cost as approximately $95/day.

Using these estimates, the average corrections cost of a marijuana possession conviction in the United States is calculated as $672 (= $95*5.5 + $2*74.5), where the first term corresponds to estimated average jail costs and the second term corresponds to estimated average local or community supervision costs. The estimated annual corrections cost of marijuana possession enforcement in the United States is readily obtained by multiplying the average corrections cost, $672, by the estimated total number of convictions for marijuana possession offenses, recalling that 27% (= 0.9*0.3) of all arrests for marijuana possession offenses are assumed to result in a conviction.

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63 *See* Caulkins, *Marijuana Prohibition*, *supra* note 54, at 9-12; Peter Reuter, Paul Hirschfield & Curt Davies, *Assessing the Crack-Down on Marijuana in Maryland* 37 (Abell Found., Working Paper, May 2001), *available at* http://www.abell.org/pubsitems/hhs_assessing_crackdown_501.pdf ("It proved exceedingly difficult to obtain data on the number of admissions to jail for specific offenses.").

64 *See, e.g.*, Lawrence W. Boyd, Drug Pol'y Action Group, The Budgetary Implications of Marijuana Decriminalization and Legalization in Hawai'i 7 (2005), *available at* http://www.dpfhi.org/A_PDF/Budgetary_Implications_Marijuana_Decrim.pdf ("Approximately 65% [of misdemeanor drug cases] are dismissed, not prosecuted, or stricken ... and a relatively small proportion, about 25%, results in conviction."); *see generally* David C. Nixon, Drug Pol'y Action Group, Update to: Budgetary Implications of Marijuana Decriminalization and Legalization in Hawai'i (2013), *available at* http://acluhawaii.files.wordpress.com/2013/01/econreptmarijuana1_2013.pdf (updating Boyd (2005) using data through 2011 and demonstrating that Hawaii's enforcement of marijuana possession laws has jumped significantly over the past half-decade); *see also* Sandra Norman-Eady, Conn. G. Assemb., Office of Legis. Research, Marijuana Crimes and Statistics tbl.3 (2008), *available at* http://www.cga.ct.gov/2008/rpt/2008-r-0455.htm (reporting conviction rates for possession or control of any quantity of any controlled substance, other than a narcotic substance or a hallucinogenic substance other than marijuana, or less than four ounces of marijuana (CGS § 21a-279 (c)), ranging from 33.1% to 36.4% over the period of 2002-2007).

65 *See, e.g.*, Local Government Fiscal Note 1550 HB at 4 ("According to the AOC [Administrative Office of the Courts] 2009 misdemeanor convictions table the average jail sentence for possession of marijuana for less than 40 grams was 82.7 days, with all but 4.4 days suspended."); *see also* Beckett & Herbert, *supra* note 11, at 29 ("The average misdemeanant spends 5.8 days in jail at a cost of $89 per day"). The U.S. Department of Justice reports that 80% of all defendants charged with felony drug possession crime are released within one week of their booking into the jail. Moreover, as Professor Austin notes, "[w]hile the length of stay may be short, the booking process is one of the most expensive and dangerous operations in a jail." James Austin, JFA Inst., Nat'l Org. for the Reform of Marijuana Laws 8-9 (2005), *available at* http://norml.org/pdf_files/NORML_Rethinking_Decriminalizing_Marijuana.pdf.

66 *See, e.g.*, Legislative Budget Board, Criminal Justice Uniform Cost Report, Fiscal Years 2008-2010 11 (Jan. 2011) (calculating a $2.92 per diem total cost of community supervision); *see also* Ram Subramanian & Rebecca Tublitz, Vera Inst. for Just., Realigning Justice Resources: A Review of Population and Spending Shifts in Prison and Community Corrections (2012), *available at* http://www.vera.org/files/Full%20Report.pdf.

67 *See* James J. Stephan & Georgette Walsh, U.S. Dep't of Just., Bureau of Just. Stat., Census for Jail Facilities, 2006 (2011).

The Low Estimate represents, in our view, a plausible *lower* bound on the annual fiscal costs of marijuana possession arrests for the country as a whole that is generally supported by other fiscal impact studies focusing solely on marijuana-related costs in smaller jurisdictions. The Low Estimate is calculated as the sum of the estimated annual fiscal expenditures on policing, adjudication, and corrections, and is equal to: **$1.196 billion.**

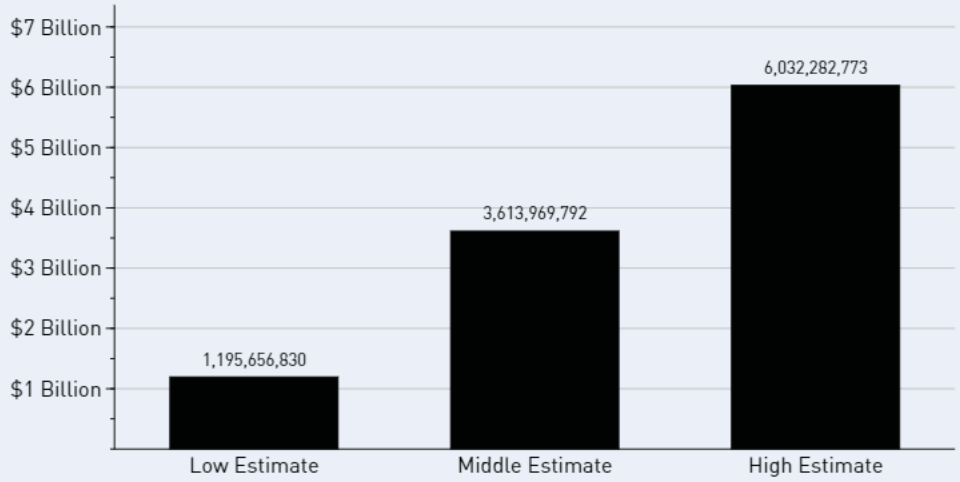
iii. Middle Estimate

The Middle Estimate is simply calculated as the average of the Low and High Estimates. The Middle Estimate represents this report's best estimate of the true annual fiscal costs of marijuana possession enforcement in the United States, and is equal to: **$3.614 billion.**

The Middle Estimate is depicted graphically in **Figure 24,** along with the Low and High Estimates for comparison.

FIGURE 24

Estimated Annual Fiscal Costs of Marijuana Possession Enforcement in U.S. (2010)



Source: ACLU Nationwide Fiscal Impact Analysis (2013)

Appendix A, Table A7 further reports the Low, Middle, and High Estimates on a state-by-state basis.[68]

Table 13 breaks down the Middle Estimate, which is the report's best estimate of the true fiscal cost of marijuana possession enforcement by state in terms of (1) police expenditures, (2) judicial and legal expenditures, and (3) corrections expenditures.

Police and judicial/legal expenditures constitute the bulk of the fiscal cost of marijuana possession enforcement in each state. New York, for example, spent $574.5 million on police and judicial/legal services combined on marijuana possession arrests; California spent $425.5 million. Moreover, note that for each state, expenditures are not proportionate across the three fiscal spending categories, because the relative amount spent, *in total*, on each of these three categories of criminal justice expenditures varies by state; and the Middle Estimate is a function of these total expenditure amounts. The ratio of police expenditures to judicial/legal services, for example, in Hawaii, Alaska, and Kentucky is approximately equal to one. In North Carolina, Illinois, and Florida, by contrast, this same ratio is approximately equal to three (i.e., in 2010, each of these states spent approximately three times more on police than on judicial/legal services). Finally, even when ignoring entirely all fiscal spending on state prison facilities, corrections expenditures associated with marijuana possession enforcement are not trivial; California, Florida, Illinois, New York, and Texas, for example, each spent more than an estimated $20 million of state taxpayer money in 2010 housing individuals in local jails and county correctional facilities for possession of marijuana, with California spending more than $65 million and New York more than $103 million.

68 Note that our fiscal cost estimates are less variable than would be the case if conviction rates and jail sentences imposed for marijuana possession offenses (which are held constant in our fiscal analysis) were allowed to vary across all 50 states, as well as the District of Columbia. The same holds true with respect to marijuana possession's percentage share of all arrests (as well as its percentage share of all court cases), variables that, as this report finds, vary across all 50 states, as well as the District of Columbia, but which the report holds constant for the purposes of our fiscal cost estimates.

TABLE 13
Annual Fiscal Cost of Marijuana Possession Enforcement by State (2010)

State	Fiscal Expenditures by Category (in dollars)		
	Police	Judicial & Legal	Corrections
Alabama	7,102,974	4,923,779	1,260,020
Alaska	3,120,335	4,506,208	839,758
Arizona	39,842,768	32,130,460	13,849,007
Arkansas	6,900,048	4,580,166	1,714,300
California	209,655,536	215,907,232	65,403,300
Colorado	19,667,502	14,307,992	3,731,071
Connecticut	20,631,726	24,825,234	4,369,251
Delaware	6,088,890	5,565,111	1,580,180
D.C.	17,931,502	6,340,831	2,255,385
Florida	125,627,288	71,162,936	31,845,628
Georgia	58,312,112	44,361,480	19,224,558
Hawaii	2,954,338	4,629,526	565,083
Idaho	5,520,933	4,861,350	1,502,169
Illinois	126,770,856	72,313,504	22,347,420
Indiana	19,019,174	13,862,287	5,599,443
Iowa	10,476,821	9,821,206	2,547,612
Kansas	10,312,387	7,521,286	2,349,114
Kentucky	7,621,554	9,503,561	2,374,654
Louisiana	20,820,868	18,037,214	7,592,286
Maine	4,000,067	3,032,438	1,836,459
Maryland	55,304,360	39,281,380	12,117,049
Massachusetts	4,637,007	4,149,921	540,723
Michigan	47,342,472	34,981,716	12,514,604
Minnesota	21,132,200	15,231,101	5,707,988
Mississippi	8,740,758	5,558,722	2,441,293
Missouri	27,934,658	17,447,384	3,737,572
Montana	2,742,488	2,853,947	565,431
Nebraska	10,279,377	8,601,595	3,928,298
Nevada	20,225,352	14,261,103	7,115,149
New Hampshire	2,990,006	2,369,232	1,167,126
New Jersey	59,824,356	50,239,964	17,279,192
New Mexico	4,892,209	4,781,376	1,405,865
New York	312,838,848	261,724,896	103,886,848
North Carolina	29,278,582	17,512,486	8,143,603
North Dakota	1,765,464	1,569,460	387,127
Ohio	58,318,516	54,232,980	7,596,568
Oklahoma	16,548,724	12,085,168	2,196,012
Oregon	22,916,122	16,259,286	11,018,617
Pennsylvania	42,185,656	40,449,756	18,113,114
Rhode Island	6,530,830	4,199,064	1,121,471
South Carolina	25,775,858	16,244,107	7,520,674
South Dakota	2,603,931	2,131,037	816,961
Tennessee	21,680,354	15,870,712	5,397,755
Texas	126,051,984	85,102,288	40,494,536
Utah	6,179,560	5,739,280	2,151,927
Vermont	2,355,988	1,995,941	536,010
Virginia	33,484,050	23,272,156	10,488,655
Washington	14,677,699	14,653,145	5,295,467
West Virginia	8,297,871	8,185,582	891,896
Wisconsin	22,896,670	14,583,442	6,885,944
Wyoming	4,347,580	3,438,789	1,361,657
United States	1,747,157,206	1,371,200,815	495,611,826

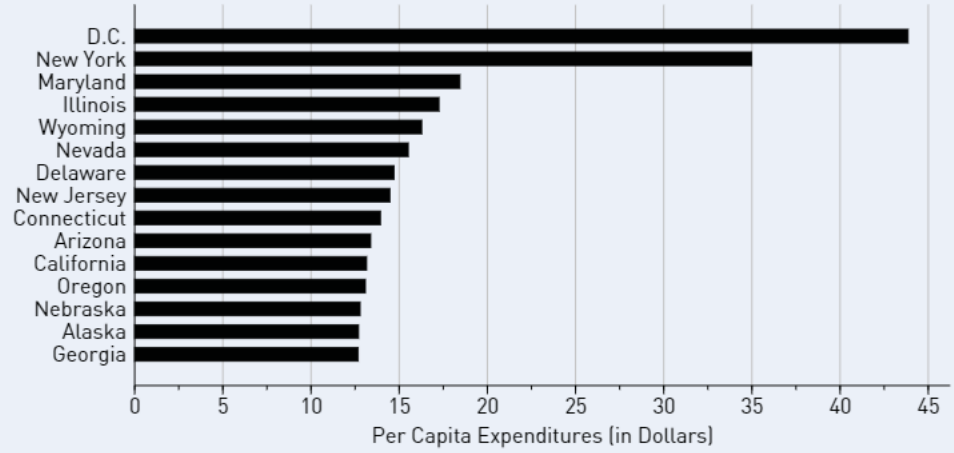
Source: FBI/Uniform Crime Reporting Program Data, 2010, and Criminal Justice Expenditure and Employment Extracts Program (CJEE), 2009

B. Analysis

Having estimated annual total fiscal expenditures on marijuana possession enforcement, it is straightforward to calculate marijuana possession enforcement's percentage share of total annual criminal justice expenditures. To control for the fact that certain states spend relatively more, in *per capita* terms, on criminal justice as a whole, fiscal expenditures are divided by the state's total census population to obtain a measure of how much the state spends per person enforcing its marijuana possession laws. Specifically, **Figure 25** lists the 15 states with the highest *per capita* fiscal expenditures on marijuana possession enforcement.[69]

FIGURE 25

States That Spend the Most Per Capita on Marijuana Possession Enforcement (2010)



Source: U.S. Census Bureau, Annual Survey of State and Local Government Finances, 2010

Note that the District of Columbia spends the most *per capita* on marijuana enforcement, as Figure 25 demonstrates, even though its percentage share of annual criminal justice expenditures accounted for by marijuana possession enforcement is lower than New York and Illinois. This is because the District of Columbia spends more, in per capita terms, on criminal justice as a whole than do any of the 50 states in the country. That is, even though the percentage of criminal justice system expenditures accounted for by marijuana possession is smaller in the District of Columbia than in either New York

69 To put these numbers in some context, note that New York, Illinois, and Maryland spent more in 2010 on marijuana possession enforcement, in *per capita* terms, than the nation spent, on average, on capital outlays for hospital facilities, provision of hospital care, and support of public or private hospitals.

or Illinois, because the District of Columbia spends sufficiently more *per capita* on its criminal justice system as a whole than does either New York or Illinois, the smaller percentage share spent on marijuana enforcement still translates into relatively larger *per capita* expenditures on marijuana enforcement (as compared to New York and Illinois). The same is true of California, Nevada, and Wyoming, states that all spend more than $900 per capita on criminal justice and are among those with the highest *per capita* fiscal expenditures on marijuana possession enforcement, but none of which are in the top 10 in terms of the percentage share of criminal justice system expenditures accounted for by marijuana possession enforcement.

PROFILE

Nick Smith, 31

Austin, TX

Every weekday morning for the last three years, Nick Smith has left his house at 7:15 a.m. He catches a bus that takes him to work downtown. The ride, which includes walks on both ends and a wait for the bus, takes twice as long as driving. But in Texas, a conviction for marijuana possession means an automatic license suspension. Mr. Smith, who has been arrested three times for marijuana possession, could not drive for a long time.

The first time Mr. Smith was arrested (he was 18), he spent the night in jail and one year on probation. There were fines and court fees to pay. "All I had was a blunt," he said. "All I had was five dollars worth of weed, and it cost me about two thousand dollars," he said.



All told, Mr. Smith has spent almost three months in jail for marijuana possession. A 20-day jail stint cost him a job at a fast-food restaurant. "I come back to Austin and they told me 'We couldn't keep your job; we had to hire somebody else.' And I'm like, dang, here I am back to square one, no job, no income."



Mr. Smith has spent almost three months in jail ... and spent close to $10,000 on ... charges for marijuana possession.

But now Mr. Smith has been working as a clerk at the Texas Workforce Commission for three years. His girlfriend, Danyell Stanley, has a full-time job at Time Warner. They have a baby daughter, Sydney; the three of them recently moved in with Mr. Smith's mother and sister so they can save money to buy a place of their own. He is happy in his current job, but not having a license had meant that he could only apply for jobs he could get to on the bus.

It also affected where they could live, Ms. Stanley said. "When we were actively seeking our own place, one of the key things was, is it on the bus line? Will you be able to get to work?" The farther from Mr. Smith's job they moved, the longer his commute, and the more Ms. Stanley had to be responsible for their daughter. And until Mr. Smith got his new license, Ms. Stanley had to take Sydney to and from daycare, and anywhere else she needed to go, even though Ms. Stanley's work hours are less flexible than Mr. Smith's.

Moreover, Mr. Smith is a musician, and used to play regularly in clubs in Austin and around Texas. But he had to give it up because he could not drive to rehearsals or shows.

Mr. Smith recently managed to get an occupational driver's license — it cost him $250 and a court appearance — that allows him to drive to and

from work, which means he can finally use his car. But none of this has been easy.

The arrests have cost them money they can ill afford. Altogether, Mr. Smith estimates that he has spent close to $10,000 on court costs, fines, and lawyers' fees just to handle charges for possessing marijuana. That does not account for lost wages, or for time he had to appear in court or was in jail.

Even though even though it has been years since he was arrested for marijuana possession, he is still paying administrative fees to the state. That money, Mr. Smith says, he and Ms. Stanley could use for Sydney. "It'd go to [formula] and diapers and wipes." ■

PROFILE

Marisa Garcia, 32

Los Angeles, CA

Marisa Garcia never expected her 19th birthday celebration to cost her a year of college tuition. It was January 2000, a month before she was to start her first semester of college at Cal State Fullerton.

She and two friends were on their way to pick up another friend, not far from where they lived east of Los Angeles, when Ms. Garcia's friend stopped for gas. Ms. Garcia went inside to pay, and came out to find a police car parked behind their van.

"Eventually they started searching the car," she remembered. "There was a little coin purse, with a small pipe with ash in it. It was put away; it wasn't in plain view."

When Ms. Garcia admitted it was hers, the police arrested her and wrote her a summons for possession of marijuana. "I had never been in any sort of trouble," she said.

She decided not to tell her parents. When she showed up for her court appearance, she did not bring a lawyer.

"I just said, 'Guilty' [when the judge asked how she pled]," she said.

Ms. Garcia feels that because she did not have money, she was punished twice for marijuana possession. Even after she paid her fine, she then lost her financial aid.

She paid about $400 in court fees, and thought she had put the ordeal behind her.

But then, two months later, she got a letter from the federal financial aid office saying she had to answer the question asking whether she had a drug conviction. A drug conviction of any kind is grounds for revoking federal financial aid. Ms. Garcia had not been trying to dodge the question the first time: her mother had filled out the application, and simply did not see it.

"And my heart kind of stopped. My mom is just like, 'Answer no, and we'll send it back.' I had to tell her, 'I don't know that I can answer no.'"

Ms. Garcia ended up losing her financial aid for a year (a second conviction





can result in a longer suspension; more than three bars receipt of federal financial aid indefinitely).

She could have gotten her aid reinstated sooner if she had gone through a court-approved drug treatment program. But Ms. Garcia was only a recreational marijuana user, and, moreover, the drug treatment programs cost more than the tuition she could not afford without a loan.

"I felt like I just screwed up a huge part of my life. I was telling my mom, 'I'll drop out of school.'"

Her mother, Sandra Garcia, put her foot down. "You need an education to get somewhere in life," she said. "I wanted that for my family."

Marisa Garcia was lucky. Her mother, who was supporting Ms. Garcia and her three brothers alone, was in the process of refinancing the family's three-bedroom house when Marisa lost her aid. So she took out a line of equity on the house, and drew money against it to pay her daughter's tuition.

Today, Ms. Garcia works as an office manager at a non-profit organization in Los Angeles. She also volunteers with other groups, trying to change the drug laws, so nobody else has to go through what she did.

She feels that because she did not have money, she was punished twice: even after she paid her fine, she then lost her financial aid.

"I still would have been arrested for marijuana. [But] if I was wealthier, I could go out and do whatever I wanted and just be punished once." ■

VI. THE RISE IN MARIJUANA POSSESSION ARRESTS: WHAT CAUSED THE EXPLOSION?

This section addresses some of the possible key factors that have led to the significant increase in marijuana arrests over the last decade. First, it looks at this country's marijuana policies in the context of the disastrous War on Drugs. Second, this section discusses the implementation of policing strategies in the 1990s that shifted law enforcement priorities toward low-level offenses. Lastly, the section addresses some of the law enforcement incentives behind making marijuana arrests, namely data-driven crime assessment systems that place a premium on large numbers of arrests, and the fact that arrests for marijuana possession are included in the federal government's performance measures for law enforcement agencies participating in the Byrne Justice Assistance Grant Program.

A. The War on Drugs and the Shift from Rehabilitation to Punishment

Before the War on Drugs began in the 1970s and was ramped up in the 1980s, many American policymakers viewed drug abuse as a social disease, like alcoholism, that should be dealt with by treating the underlying addiction. A reform process had been underway in the 1960s that adopted this medico-legal view of drug policy, and laws enacted during this time reflected this approach.[70] When the use of narcotics began to increase during the 1960s, the government responded by passing the Narcotics Addict Rehabilitation Act (NARA) in 1966.[71] As its title indicates, the Act reflected the medical view of drug addictions as a disease and provided for the diversion of drug abusers into

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70 *See, e.g., Civil Commitment and Treatment of Narcotic Addicts: Hearings on H.R. 9051, H.R. 9159 and H.R. 9167 and Related Bills before Subcomm. No. 2 of the Comm. on the Judiciary*, 89th Cong. 234 (1965) (statement of Hon. Ogden R. Reid, Rep. of the State of N.Y.)("The purpose of these bills ... is to come up with a full-scale approach to the problem of narcotics and to distinguish between the criminal 'pusher' and the victimized addict who is in need of medical treatment, assistance and rehabilitation and not a postgraduate course in crime.") Congress members called on the federal government to abandon the criminal approach toward drug use:

> [D]rug addiction is a medical problem. This may not sound very revolutionary, but up to now the Congress of the United States, judging by the laws that it has passed, has viewed it as a revenue problem and a criminal problem, but not as a question involving the health of our citizens ... there can be no real solution to the problem of drug abuse in this country unless Federal efforts to solve it include a medical approach.

Id. at 53 (statement of Hon. Emanuel Celler, a Rep. of the State of N.Y.).

71 *See* Andrew B. Whitford & Jeff Yates, Presidential Rhetoric and the Public Agenda: Constructing the War on Drugs 39-40 (John Hopkins Univ. Press 2009).

programs to treat their underlying addiction rather than prosecute them in the criminal justice system.[72] Even President Richard Nixon's administration had initially adopted the popular view at the time that drug abuse was a health problem, and called for education and scientific research to learn about the dangerousness of drugs.[73]

In 1970, the federal government passed the Comprehensive Drug Abuse Prevention and Control Act of 1970 (1970 Act), which contained provisions that softened the drug laws: the repeal of mandatory minimums for drug offenses,[74] re-categorization of possession of a controlled substance as a misdemeanor, and probation for first-time offenders. Title II of the 1970 Act, which included the Controlled Substances Act (CSA), established five drug regulation schedules based on their medical values and potentials for addiction. Schedule I was reserved for the most serious drugs with purported high potential for abuse, lack of any accepted medical use, and absence of any accepted use or benefits in medically supervised treatment. Congress noted a lack of scientific study on marijuana and claimed that further research was necessary to determine its health effects, and thus temporarily placed marijuana in Schedule I.[75]

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72 *See* 42 U.S.C. § 3401:

> It is the policy of the Congress that certain persons charged with or convicted of violating Federal criminal laws, who are determined to be addicted to narcotic drugs, and likely to be rehabilitated through treatment, should, in lieu of prosecution or sentencing, be civilly committed for confinement and treatment designed to effect their restoration to health, and return to society as useful members. It is the further policy of the Congress that certain persons addicted to narcotic drugs who are not charged with the commission of any offense should be afforded the opportunity, through civil commitment, for treatment, in order that they may be rehabilitated and returned to society as useful members and in order that society may be protected more effectively from crime and delinquency which result from narcotic addiction.

Id.

73 *See Richard Nixon: Special Message to the Congress on Control of Narcotics and Dangerous Drugs*, The American Presidency Project (July 14, 1969), *available at* http://www.presidency.ucsb.edu/ws/index.php?pid=2126&st=&st1.

74 Federal mandatory minimum penalties for drug offenses were first introduced by the Boggs Act of 1951. *See* U.S. Sentencing Comm'n, Report on Cocaine and Fed. Sentencing Pol'y (2007) [hereinafter Report on Cocaine and Fed. Sentencing Pol'y], *available at* http://www.ussc.gov/Legislative_and_Public_Affairs/Congressional_Testimony_and_Reports/Drug_Topics/199502_RtC_Cocaine_Sentencing_Policy/CHAP6.HTM. Two decades later, Congress overhauled federal drug policy, repealing the Act with the Comprehensive Drug Abuse Prevention and Control Act of 1970. Congress members "expressed a general concern that 'increasingly longer sentences that had been legislated in the past had not shown the expected overall reduction in drug law violations.'" *Id.* (citing S. Rep. No. 613, 91st Cong., 1st Sess. (Dec. 16, 1969)). The Act of 1970 illustrates the government's shift away from overly punitive drug laws toward a rehabilitative approach.

75 Ironically, future research about marijuana's medical benefits has been limited precisely because of its categorization as a Schedule I drug. Researchers must obtain a special license from the Drug Enforcement Agency (DEA) to conduct research and gain access to supply, which is controlled by the National Institutes of Drug Abuse (NIDA). Rep. Earl Blumenauer & Rep. Jared Polis, *The Path Forward: Rethinking Federal Marijuana Policy* 12 (2013), *available at* http://polis.house.gov/uploadedfiles/the_path_forward.pdf. To this day, marijuana remains a Schedule I drug, meaning that the federal government considers it as having a higher potential for abuse than cocaine, a Schedule II drug, and as high a potential for abuse as heroin and LSD. This categorization continues to be criticized as having no scientific basis:

> Based on evidence currently available the Schedule I classification is not tenable; it is not accurate that cannabis has no medical value, or that information on safety is lacking. It is true cannabis has some abuse potential, but its profile more closely resembles drugs in Schedule III (where codeine and dronabinol are listed). The continuing conflict between scientific evidence and political ideology will hopefully be reconciled in a judicious manner.

Igor Grant et al., *Medical Marijuana: Clearing Away the Smoke*, 6 The Open Neurology J. 18, 24 (2012), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3358713/pdf/TONEUJ-6-18.pdf.

The 1970 Act also established the National Commission on Marijuana and Drug Abuse to assess the medical and addictive effects of marijuana. The Commission's First Report to Congress, *Marihuana: A Signal of Misunderstanding*, recommended that marijuana no longer be classified as a narcotic, since that definition associated marijuana with more addictive drugs such as heroin and misled the public by exaggerating marijuana's harms.[76] The report further recommended decriminalization of marijuana in small amounts for personal use.[77] A second report the following year, *Drug Use in America: Problem in Perspective*, reaffirmed the findings of the first report and again recommended decriminalization.[78] While the reports and their recommendation to decriminalize marijuana had gained widespread support, the Nixon administration ignored the Commission's findings.[79]

Despite the fact that Nixon disregarded the Commission's reports, and even after Nixon initiated the War on Drugs by declaring drugs "public enemy number one" in 1971, his administration maintained a strong focus on rehabilitation and treatment.[80] Indeed, the majority of government funding at the time was dedicated to rehabilitation programs aimed at eradicating heroin use.[81] Similarly, in 1975, the Ford administration's White Paper on Drug Abuse identified marijuana as a low-priority drug, and recommended that treatment and law enforcement efforts instead prioritize drugs that pose the greatest health risks, such as heroin and amphetamines.[82] In 1976, Jimmy Carter, whose own

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76 Nat'l Comm'n on Marihuana and Drug Abuse, Marihuana: A Signal of Misunderstanding 223 (1972).

77 *Id.* at 191.

78 *See* Nat'l Commission on Marihuana and Drug Abuse, Drug Use in America: Problem in Perspective, Second Report at 224 n.5 (1973) [hereinafter Drug Use in America: Problem in Perspective]. The first report recommended that federal and state governments decriminalize marijuana possession for personal use. *Id.* at 458-59.

79 Ernesto Zedillo & Haynie Wheeler, Eds., Yale Ctr. for the Study of Globalization, Rethinking the "War on Drugs" through the US-Mexico Prism 10 (2012) [hereinafter Zedillo & Wheeler] (citing David F. Musto, Drugs in America: A Documentary History 460 (N.Y.U. Press 2002)), *available at* http://www.ycsg.yale.edu/center/forms/rethinking-war-on-drugs.pdf; Eric Blumenson & Eva Nilsen, *No Rational Basis: The Pragmatic Case for Marijuana Law Reform*, 17 Va. J. Soc. Pol'y & L. 43, 55-56 (2009) (citing Rudolph J. Gerber, Legalizing Marijuana, Drug Policy Reform and Prohibition Politics 25 (2004)) ("the 'Shafer Commission' ... unequivocally recommended marijuana decriminalization ... [and] urged more attention to scientific findings. ... [However,] the President disowned the report out of hand, stating that although marijuana was no more dangerous than the drink then in his hand, following his commission's view would send the wrong message.").

80 *Richard Nixon: Special Message to the Congress on Drug Abuse Prevention and Control*, The American Presidency Project (June 17, 1971), *available at* http://www.presidency.ucsb.edu/ws/?pid=3048:

> We are taking steps under the Comprehensive Drug Act to deal with the supply side of the equation and I am recommending additional steps to be taken now. But we must also deal with demand. We must rehabilitate the drug user if we are to eliminate drug abuse and all the antisocial activities that flow from drug abuse.

81 *Id. See also Thirty Years of America's Drug War: A Chronology*, Frontline PBS [hereinafter *Thirty Years*], *available at* http://www.pbs.org/wgbh/pages/frontline/shows/drugs/cron/ (last visited Feb. 13, 2013). Nixon famously declared drug abuse as "public enemy number one" in response to an explosive report released by Congressmen Robert Steele (R-CT) and Morgan Murphy (D-IL) on the growing heroin epidemic among U.S. servicemen in Vietnam. *See Drug Wars, Part I: Transcripts*, PBS Frontline, (PBS television broadcast Oct. 9, 2000), *available at* http://www.pbs.org/wgbh/pages/frontline/shows/drugs/etc/script.html (last visited Feb. 13, 2013); *Richard Nixon: Remarks about an Intensified Program for Drug Abuse Prevention and Control*, The American Presidency Project (June 17, 1971), *available at* http://www.presidency.ucsb.edu/ws/?pid=3047.

82 *See DEA History 25*, Drug Enforcement Admin., http://www.justice.gov/dea/about/history.shtml (follow "1975-1980" hyperlink) (last visited Feb. 13, 2013); Office of the White House Press Sec'y, Fact Sheet: White Paper on Drug Abuse (1975), *available at* http://www.fordlibrarymuseum.gov/library/document/0248/whpr19751014-009.pdf.

drug czar did not view marijuana as a serious public health threat, was elected president while campaigning on a platform supporting the decriminalization of marijuana.

But the focus on harm reduction and public health was cast aside in the 1980s under President Ronald Reagan, who, with the help of Congress, ratcheted up the drug war to a full-fledged assault on drug use, relying on increased arrests and incarceration as key strategic components. Initially, the United States government focused its law enforcement resources on cocaine,[83] which was fueling the lucrative and expansive Columbian drug trade. The public alarm over drugs — aided mightily by sustained media frenzy — escalated in 1984 with the rise of crack cocaine. Reagan responded by signing the Anti-Drug Abuse Act of 1986, which budgeted an additional $1.7 billion to the drug war and imposed mandatory minimum sentences for drug offenses. Under the Act, judges were required to sentence individuals convicted of certain drug offenses to a minimum number of years, or more, known as mandatory minimum sentences.[84] Congress decided that these mandatory minimums would be triggered not by a person's actual role in a drug offense or operation, but by drug type and quantity instead. Causing further harm, the United States Sentencing Commission decided to link its Sentencing Guidelines to these draconian mandatory minimum sentences.[85] Although these harsh sentences were intended for masterminds and managers of large drug operations, as a result of these sentencing structures, the vast majority of people who have received such severe sentences are neither kingpins nor leaders, but low-level offenders. The Act thus stripped judges of discretion to impose fair sentences tailored to the facts and circumstances of individual cases and the characteristics of individual defendants. The Act also created the infamous 100-to-1 disparity between powder and crack cocaine, which imposed the same mandatory minimum sentence upon someone possessing one one-hundredth the amount of crack cocaine as powder cocaine. So, for example,

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83 *See* David T. Courtwright, *The Controlled Substances Act: How a "Big Tent" Reform Became a Punitive Drug Law*, 76 Drug & Alcohol Dependence 9, 10 (2004) (discussing how the Controlled Substances Act originally was intended to focus on cocaine and opiates, but that Congress continuously amended the Act to give the DEA greater control over scheduling, transforming the law into the legal foundation of the drug war).

84 The trend toward mandatory minimums had started the decade before with New York's Rockefeller drug laws. In 1973, Governor Nelson Rockefeller enacted "one of the nation's toughest sentencing schemes for drug offenders, establishing mandatory incarceration periods for those convicted of the unlawful possession and sale of controlled substances based on the measured weight of the drug involved in the case." Edward J. DiMaggio, *New York's Rockefeller Drug Laws, Then and Now*, 78 N.Y. St. B.J. 30, 30 (2006). The laws required judges to sentence anyone selling two ounces or possessing four ounces of narcotics to a term of 15 years to life — about the same sentence as for second-degree murder. Madison Gray, *A Brief History of New York's Rockefeller Drug Laws*, Time Mag., Apr. 2, 2009, *available at* http://www.time.com/time/nation/article/0,8599,1888864,00.html. This led to an increase in drug convictions in the state, with no marked decrease in crime. *Id*. By 1994 drug offenders made up 35% of New York's prison population, an increase of 24% since 1973. *Id.*

85 Under the Comprehensive Crime Control Act of 1984, Congress had created the United States Sentencing Commission to promulgate mandatory — as opposed to advisory — sentencing guidelines for drug and gun crimes for federal courts. *See* U.S. Sentencing Comm'n, Fifteen Years of Guidelines Sentencing 2 (2004), *available at* http://www.ussc.gov/Research/Research_Projects/Miscellaneous/15_Year_Study/chap1.pdf ("The sentencing guidelines were intended most importantly to curtail judicial … discretion, which was viewed as 'arbitrary and capricious' and an ineffective deterrent to crime."). Requiring judges to follow a set of sentencing guidelines stripped them of discretion to impose sentences tailored to the individual circumstances of a given case or the characteristics of the defendant. The mandatory sentences led to rapid increases in incarceration rates and expenditures on prisons. Charles Ogletree, *Getting Tough on Crime: Does it Work?*, 38-Apr B. B.J. 9, 27 (1994).

someone convicted of possessing with intent to distribute *five* grams of crack cocaine received the same five-year minimum term as someone convicted of possessing with intent to distribute *500* grams of powder cocaine.[86] The combination of increased drug arrests and lengthier prison sentences contributed significantly to the tenfold growth of our federal prison population since 1980; indeed, half of all federal prisoners today are incarcerated for drug offenses.[87]

Presidents George H. W. Bush and Bill Clinton continued to fight the drug war aggressively.[88] In 1989, during President Bush's tenure, the Office of National Drug Control Policy, created by the Anti-Drug Abuse Act of 1988 to advise the President on drug-control issues, coordinate drug-control activities and related funding across the federal government, and produce an annual National Drug Control Strategy, made clear in its first strategy report that a central component of its approach to illegal drugs was arresting more people in targeted communities:

> To prevent people from using drugs, drug enforcement activities must make it increasingly difficult to engage in any drug activity with impunity. That deterrent, however, will only remain credible so long as pressure is brought to bear on the entire drug market, dealers and users alike. That's why we need a national drug law enforcement strategy that casts a wide net and seeks to ensure that all drug use — whatever its scale — faces the risk of criminal sanction … [W]hen neighborhood police increase the number of drug arrests in an area … the drug markets that menace neighborhoods cease to flourish … . Effective street-level enforcement means dramatically increasing the number of drug offenders arrested. But unless there is a system ready to absorb them, drug control will end at the police station.[89]

Continuing the legacy of Presidents Reagan and Bush, during President Clinton's presidency, drug arrests rose 46%, and more Blacks were imprisoned than ever before in American history.[90]

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86 In 2010, Congress enacted the Fair Sentencing Act, which reduced the crack-to-powder cocaine disparity from 100-to-1 to an equally arbitrary but less drastic 18-to-1. *See* Report on Cocaine and Fed. Sentencing Pol'y, *supra* note 74.

87 Nancy LaVigne & Julie Samuels, Urban Inst., Just. Pol'y Ctr., The Growth & Increasing Cost of the Federal Prison System: Drivers and Potential Solutions 5 (2012), *available at* http://www.urban.org/UploadedPDF/412693-The-Growth-and-Increasing-Cost-of-the-Federal-Prison-System.pdf.

88 Under President Reagan, federal spending on drug control reached $6.66 billion by 1989. Drug control spending exceeded $19 billion under President Bush and $18 billion under President Clinton. Ziedenberg & Colburn, *supra* note 11, at 5-6.

89 Office of Nat'l Drug Control Pol'y, Nat'l Drug Control Strategy 17-18, 21, 24 (1989), *cited in* Mitchell & Caudy, *supra* note 7. A copy of the National Drug Control Strategy report is available at https://www.ncjrs.gov/pdffiles1/ondcp/119466.pdf.

90 Every year during Clinton's tenure, the African-American incarceration rate increased by an average rate of 100.4 per 100,000 persons. Lisa Feldman, Vincent Schiraldi, & Jason Ziedenberg, Ctr. on Juv. & Crim. Just., Too Little Too Late: President Clinton's Prison Legacy 2 (2001), *available at* http://www.cjcj.org/files/too_little.pdf. Clinton also passed the Higher Education Act, which blocks eligibility for federal financial aid if a student is convicted of a drug offense. *See* 20 U.S.C. § 1091 (r)(1).

Our country's drug war has also fueled an incredibly profitable and violent illegal drug trade in Mexico.[91] Since 1969, when our government began attacking the supply side of drugs (rather than the current approach of also cracking down heavily on the demand side),[92] the United States has expended significant resources on targeting the flow of drugs, including marijuana, from Mexico.[93] But as the drug war has intensified, so have the profits and casualties south of our border. An inter-agency report by the Federal Bureau of Investigation in 2010 found that marijuana is the top revenue generator of the Mexican drug trade.[94] A RAND study estimated that 15% to 26% of Mexican drug export revenues are attributable to marijuana.[95] Further, the intense, profit-driven competition between drug cartels to supply drugs, including marijuana, to millions of American consumers has left tens of thousands of Mexicans dead. Between 2006 and 2012 alone, there were approximately 60,000 drug-related deaths in Mexico.[96] The United States could curtail its role in causing such violence by ending marijuana prohibition, not to mention end its role in such violence by repealing drug prohibition altogether.

America's hyper-criminalization of people who use, possess, and sell drugs and its insistence that the solution can be found in the criminal justice system has resulted in the abandonment of public health solutions.

America should abandon its hyper-criminalization of people who use, possess, and sell drugs and its insistence that drug use and abuse can and should be addressed within

91 See *Mexico Under Siege: The Drug War at Our Doorstep* for a series of news stories covering the drug war in Mexico. L.A. Times, last updated Feb. 27, 2013, http://projects.latimes.com/mexico-drug-war/#/its-a-war (last visited Mar. 25, 2013).

92 Just weeks after President Nixon gave his war on drugs speech in 1969, the United States launched Operation Intercept, a massive action involving inspection of vehicles and people crossing the Mexican border, in order to reduce drug trafficking, but it caused so much disruption that it had to be scaled back only two weeks later. Zedillo & Wheeler, *supra* note 79, at 11. *See also* Kate Doyle, *Operation Intercept: The Perils of Unilateralism,* The Nat'l Security Archive (April 13, 2003), http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB86/#article.

93 *See Thirty Years*, *supra* note 81.

94 *See Drug Trafficking Violence in Mexico: Implications for the United States: Testimony*, Fed. Bureau of Investigation (May 5, 2010), http://www.fbi.gov/news/testimony/drug-trafficking-violence-in-mexico-implications-for-the-united-states (last visited April 2, 2013).

95 *See* Beau Kilmer et al., RAND Corp., Reducing Drug Trafficking Revenues and Violence in Mexico: Would Legalizing Marijuana in California Help? 33 (2010) [hereinafter Kilmer et al.], *available at* http://www.rand.org/content/dam/rand/pubs/occasional_papers/2010/RAND_OP325.pdf.

96 Nick Miroff & William Booth, *Mexico's Drug War is at a Stalemate as Calderón's Presidency Ends*, Wash. Post, Nov. 27, 2012, *available at* http://articles.washingtonpost.com/2012-11-27/world/35509536_1_drug-war-drug-violence-drug-fight.

the criminal justice system and instead recommit to alternative approaches to drug use centered on public health solutions.[97]

B. Broken Windows' Broken Model

Law enforcement agencies have increasingly shifted their focus from traditional, reactive policing strategies of responding to calls for service and investigation to preventive policing strategies concentrating on low-level, quality-of-life offenses predominantly in communities of color. Police departments have often employed aggressive stop, frisk, and search tactics that bend if not flaunt the Fourth Amendment's proscriptions. This shift to preemtive policing has likely been a major contributor to the increase in arrests for marijuana possession across the country, particularly in communities of color.

Beginning in the 1990s, police departments began cracking down on minor offenses under the theory that such tactics would increase public safety and reduce violent crime. This preventive crime-fighting phenomenon was precipitated by a highly influential article in 1982 by criminologists James Q. Wilson and George L. Kelling published in The Atlantic Monthly, which introduced the now well-recognized "broken windows theory" of crime.[98] Broken windows posits that by addressing minor indicators of neighborhood decay and disorder and cracking down on petty offenses, police will reduce serious crime attracted and fueled by such disorder. The central premise of broken windows is that the *appearance* of disorder begets *actual* disorder. Broken windows reframed visual cues traditionally associated with economic and social disadvantage as signs of crime and disorder.[99] As one law professor points out, "[t]he orderliness of broken windows policing may be an *illusion of disorder*."[100]

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97 *See generally* Nat'l Institute on Drug Abuse, U.S. Dep't of Health & Human Services, Principles of Drug Addiction Treatment: A Research-Based Guide v-vi (rev. 2012), *available at* http://www.drugabuse.gov/sites/default/files/podat_1.pdf (describing drug addiction as a "brain disease" that requires medical and rehabilitative treatment). Much of the political discourse surrounding drug policy improperly conflates drug *use* with drug *abuse*. The United Nations Office on Drugs and Crime (UNODC) currently acknowledges that there is a distinction between the two. While 5% of the world population uses drugs annually, a recent UNODC *World Drug Report* found that only 0.6% of the world population engages in "problem drug use." UNODC, World Drug Report 2012 61, fig.1 (2012), *available at* http://www.unodc.org/documents/data-and-analysis/WDR2012/WDR_2012_web_small.pdf. An evaluation of countries that decriminalized marijuana (the Netherlands, the Czech Republic, and Portugal) showed that removing or reducing the criminal penalties on possession does not lead to a substantial increase in use. Thomas F. Babor, Yale Ctr. for the Study of Globalization, The Public Health Impact of Drug Policies 76 (2012), *available at* http://www.ycsg.yale.edu/center/forms/public-health-impact73-84.pdf; *see also Promoting a Public Health Approach*, Harm Reduction Int'l, http://www.ihra.net/promoting-a-public-health-approach (last visited Feb. 13, 2013).

98 George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, The Atlantic Monthly, Mar. 1982, *available at* http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/.

99 A study found that observed disorder predicts perceived disorder, but racial and economic context matter more. *See generally* Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows"*, 67 Soc'l Psychol. Q. 319, 319 (2004), *available at* http://www.asanet.org/images/members/docs/pdf/featured/67401-sampson.pdf. Using neighborhood surveys, census data, police records, and observational surveys of Chicago neighborhoods, the authors found that social structure (concentration of minorities and poverty) is a more powerful predictor of perceived disorder than observed disorder. *Id*.

100 Bernard E. Harcourt, Illusion of Order: The False Promise of Broken Windows Policing 19 (2001) [hereinafter Harcourt, Illusion of Order] (emphasis in original).

There are other policing models, in which arrests are last resorts, and that embrace a problem-solving approach to crime prevention that addresses underlying problems and provides support services.

Broken windows policing provides the theoretical framework for the implementation of order-maintenance policing strategies that focus on the enforcement of low-level and "quality-of-life" offenses. Wilson and Kelling had called for the return to the order-maintenance model of the 1960s, when police maintained peace and order within communities by focusing on both physical disorder — repairing broken windows and cleaning up abandoned lots — and social disorder through non-arrest interventions — communicating with individuals, establishing trust and rapport, and issuing warnings. But by the 1990s, as cities across the country adopted a spate of anti-loitering and anti-gang laws and youth curfews aimed at maintaining order, police departments began implementing distorted versions of Wilson and Kelling's model by increasing arrests for a slew of minor offenses.[101] Rather than rely on articulable, reasonable suspicion of criminal activity, an individual's mere presence in a particular area designated by authorities as "disorderly" increasingly served to justify his or her detention and search. Under the pretext of maintaining "order" and wed to the belief that racking up arrests for minor transgressions prevents more serious crime, certain police departments have embraced a "zero-tolerance," arrest-first approach to low-level — and in some cases non-criminal — conduct, drastically increasing the

101 *See, e.g.*, William J. Bratton, *The New York City Police Department's Civil Enforcement of Quality-of-Life Crimes*, 3 J. L. & Pol'y 447, 448-50 & 463-64 (1995) (article by former New York City Police Commissioner who instituted quality-of-life enforcement program expresses unabashed support for the "broken windows" thesis and also affirms his belief in community policing); Paul Scott Abbott, *Operation Clean Sweep: Depressed Community Both Applauds and Decries Cleanup By Police*, Sun-Sentinel, Mar. 8, 1996, *available at* http://articles.sun-sentinel.com/1996-03-08/news/9603110142_1_cleanup-effort-liberia-arrests (Broward County sheriff's deputy cites "broken-window syndrome" in explaining the enforcement of public drinking law and similar misdemeanors); Ronald Brownstein, *Taming the Mean Streets*, L.A. Times, May 4, 1994, *available at* http://articles.latimes.com/1994-05-04/news/mn-53670_1_city-streets ("With this aggressive initiative to arrest a cycle of disorder in Five Oaks, Dayton [Ohio] joined a new urban policy movement that has raised complex questions of rights, responsibilities and fairness from coast to coast."); Edmund Mahony, *Taking It to the Streets*, Hartford Courant, Apr. 15, 1995, at A1, *available at* http://articles.courant.com/1995-04-15/news/9504150144_1_red-lights-loud-music-police-chief-nicholas-pastore (describing how the police chief in Hartford, Connecticut, "has taken the broken-window theory to heart"); Albert W. Alschuler & Stephen J. Schulhofer, *Antiquated Procedures or Bedrock Rights? A Response to Professors Meares and Kahan*, 1998 U. Chi. Legal F. 215, 233 (1998) (citing Michael Gillis & Fran Spielman, *City's Loitering Law Ruled Unconstitutional*, Chi. Sun-Times, Dec. 19, 1995) (Chicago's anti-loitering ordinance was ruled unconstitutional in 1995 after it was used to arrest 41,740 people and to disperse 43,457); Kimberly Garcia, *Ordinance Aims to End Drug Deals*, Milwaukee Sentinel, Jan. 28, 1994, at 1A, *available at* http://news.google.com/newspapers?nid=1368&dat=19940128&id=AKxRAAAAIBAJ&sjid=_hIEAAAAIBAJ&pg=3493,6931639 (reporting the passage of drug loitering statute in Milwaukee); John Rivera, *Loitering Bill with $1,000 Fine Targets Brooklyn Park Prostitution*, Baltimore Sun, Jan. 4, 1994, *available at* http://articles.baltimoresun.com/1994-01-04/news/1994004069_1_arrest-prostitutes-brooklyn-park-ritchie (reporting 1994 enactment of anti-loitering bill to discourage prostitution in Baltimore's Brooklyn Park by imposing a $1,000 fine).

number of street stops, frisks, and searches, primarily of young persons of color.[102] As a result, police have dragged hundreds of thousands of individuals into the criminal justice system for minor, nonviolent offenses, including, often, marijuana possession.

Nowhere has this arrest-happy approach been more highly publicized, or more fervently embraced, than in New York City. In 1994, New York City Mayor Rudolph Giuliani and Police Commissioner William Bratton implemented an order-maintenance policing strategy emphasizing the proactive and aggressive selective enforcement of "quality-of-life" offenses.[103] The NYPD's quality-of-life initiative was accompanied by practices that included the proliferation of anti-crime units, such as the Street Crimes Unit, which was disbanded in 2002 after its members fatally shot unarmed Amadou Diallo.[104] The initiative ramped up use of stop, question, frisk, and search practices, and increased arrests for minor offenses.[105] Specifically, Bratton:

> [R]etooled New York City's drug enforcement effort to target more muscle toward low- and middle-level dealers, and he lifted a longstanding police policy that discouraged drug enforcement arrests by patrol officers — freeing them to seek warrants, make narcotics arrests, and go after those they suspected of drug dealing for quality-of-life violations to sweep them off the streets and into the jails.[106]

Under its zero-tolerance policy, the NYPD detained thousands of individuals for nonviolent offenses. In 1991, the NYPD made 44,209 stops;[107] by 2010, the number of stops rose to a staggering 601,285.[108] Of the 685,724 people stopped by the NYPD in 2011,

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102 For instance, there were 685,724 stops made in 2011 by the New York Police Department, of which young Black and Latino men made up 41.6% despite representing only 4.7% of the city's population. New York Civil Liberties Union, Stop-and-Frisk 2011: NYCLU Briefing, 2 (2012) [hereinafter NYCLU Briefing], *available at* http://www.nyclu.org/files/publications/NYCLU_2011_Stop-and-Frisk_Report.pdf. In Los Angeles, street stops doubled between 2002 and 2008 to 244,038; 30% of those stops resulted in arrests in 2008. Colleen Long, *Stop and Frisk: Police Stop More than 1 Million People on the Street*, Huffington Post (Oct. 8, 2009, 10:13 PM), http://www.huffingtonpost.com/2009/10/08/stop-and-frisk-police-sto_n_314509.html. Statistics for stop and frisks for other large police departments in cities such as Boston, Chicago, and New Orleans are unavailable because the departments do not release the statistics or claim that they do not keep the data.

103 Harcourt, Illusion of Order, *supra* note 100, at 1.

104 *See* William K. Rashbaum & Al Baker, *Police Commissioner Closing Controversial Street Crime Unit*, N.Y. Times, Apr. 10, 2002, *available at* http://www.nytimes.com/2002/04/10/nyregion/police-commissioner-closing-controversial-street-crime-unit.html.

105 *See* Clifford Krauss, *Efforts on Quality of life in Village a Success, the Police Say*, N.Y. Times, June 24, 1994, *available at* http://www.nytimes.com/1994/06/24/nyregion/efforts-on-quality-of-life-in-village-a-success-the-police-say.html (noting increased summonses in Greenwich Village for minor offenses such as graffiti vandalism and unlicensed vending); Bob Herbert, Op-Ed, *Jim Crow Policing*, N.Y. Times, Feb. 1, 2010, *available at* http://www.nytimes.com/2010/02/02/opinion/02herbert.html (describing the overuse of stops by the NYPD as tool of racial harassment). For an overview of stop, question, and frisk practices in New York City see Dr. Delores Jones-Brown, Jaspreet Gill & Jennifer Trone, Ctr. on Race, Crime, and Just. at John Jay College of Crim. Just., Stop, Question & Frisk Policing Practices in New York City: A Primer (2010), *available at* http://www.jjay.cuny.edu/web_images/PRIMER_electronic_version.pdf.

106 Judith A. Greene, *Zero Tolerance: A Case Study of Police Policies and Practices in New York City*, 45 Crime & Delinquency 171, 175 (1999), *available at* http://crab.rutgers.edu/~goertzel/ZeroNYC.htm.

107 U.S. Comm'n on Civil Rights, Police Practices and Civil Rights in New York City, ch.5, n.63 (Aug. 2000), *available at* http://www.usccr.gov/pubs/nypolice/ch5.htm.

108 *Stop-and-Frisk Data*, New York Civil Liberties Union, http://www.nyclu.org/content/stop-and-frisk-data (last visited Feb. 14, 2013).

605,328 — or about 88% — were innocent of any crime.[109] Eighty-seven percent of the people stopped were Black or Latino,[110] even though whites stopped were twice more likely to be found with a weapon.[111]

Using the number of arrests as a performance metric necessarily creates pressure, and incentives, for police to generate high numbers of arrests.

The increase in racially biased stops and searches was mirrored by the increase in, and racial disparities among, marijuana arrests. In 1991, the NYPD made approximately 774 marijuana arrests;[112] just one year after the zero-tolerance policy took effect, the number of marijuana possession arrests increased 82% to 5,716.[113] By 2010, the NYPD made over 59,000 marijuana arrests, making New York City the marijuana arrest capital of the country. The racial disparities in these arrests are as jarring as their overall number. In Kings County (Brooklyn), the white arrest rate for marijuana possession was 161 per 100,000, the Latino arrest rate was 717 per 100,000, and the Black arrest rate was 1,554 per 100,000. In the Bronx, per 100,000, the arrest rate was 324 for whites, 892 for Latinos, and 1,640 for Blacks. In New York County (Manhattan), while the white marijuana possession arrest rate was 208, the Latino and Black arrest rates were a staggering 999 and 1,952, respectively. **See Appendix Figure A1.**

The NYPD attributes New York City's dramatic drop in crime to these aggressive enforcement tactics, but this cause-and-effect claim is controversial and much disputed. When Mayor Rudolph Giuliani took office in 1994, violent crime in New York City had already dropped 12% since 1990.[114] Though New York City's crime decrease was

109 *See* NYCLU Briefing, *supra* note 102, at 15; *see also* Sean Gardiner, *Stop-and-Frisks Hit Record in 2011*, Wall Street J., Feb. 14, 2012 [hereinafter Gardiner, *Stop-and-Frisks*], *available at* http://online.wsj.com/article/SB10001424052970204795304577221770752633612.html.

110 *See* Gardiner, *Stop-and-Frisks*, *supra* note 109.

111 Christopher Mathias, *NYPD Stop and Frisks: 15 Shocking Facts About a Controversial Program*, Huffington Post (May 15, 2012, 1:54 PM), http://www.huffingtonpost.com/2012/05/13/nypd-stop-and-frisks-15-shocking-facts_n_1513362.html. The higher "hit rate" for whites could be the result of police being more likely to have reasonable suspicion that a criminal activity is afoot when stopping whites as opposed to relying more on an individual's race, appearance, and/or neighborhood surroundings in deciding to detain a person of color.

112 *New York City Marijuana Possession Arrests 1978-2011*, Marijuana Arrest Project, http://www.marijuana-arrests.com/graph8.html (last visited Feb. 25, 2013).

113 *See* Harry G. Levine, *New York City's Marijuana Arrest Crusade Continues* 3 (2009), *available at* http://marijuana-arrests.com/docs/NYC-MARIJUANA-ARREST-CRUSADE-CONTINUES-SEPT-2009.pdf.

114 The crime rate declined at a steady rate pre- and post-1994. COMPSTAT and Mayor Giuliani's quality-of-life initiative, often credited with New York City's crime drop, began around 1994. From 1990 to 1994, violent crime and property crime had already been declining. David F. Greenberg, *Studying New York City's Crime Decline: Methodological Issues*, Just. Q. 11 (2013) [hereinafter Greenberg]. Had COMPSTAT or aggressive policing been the cause of the continued decline, the rate of decline would have sharpened after 1994. *See id.* at 11 & 29.

particularly pronounced, over the past 20 years rates of serious crime dropped in cities nationwide, including many that did not resort to the same wide-sweeping stop, frisk, and search police tactics. Criminologists and economists have posited many theories as to the factors that may have contributed to the decrease in crime in New York City and nationwide, including a stronger economy, an increased number of police officers on the street, gun control programs, the legalization of abortion and declining birth rates, the waning popularity of crack cocaine, and even — though perhaps most statistically compelling — the levels of exposure to atmospheric lead.[115] Further, a recent study examining New York City's crime decline found no evidence that misdemeanor arrests reduced homicide,[116] robbery, or aggravated assault rates.[117]

Nationwide, there is no clear correlation between an increase in arrests for marijuana possession and a decrease in crime. As indicated in the FBI/UCR Program, crime rates have increased in 38% of all counties since 1995. Within these counties, marijuana possession arrests were more likely to have increased than decreased. On the other hand, crime rates have decreased in 62% of all counties since 1995, and within these

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115 *See, e.g.*, K. Babe Howell, *Broken Lives from Broken Windows: The Hidden Costs of Aggressive Order-Maintenance Policing*, 33 N.Y.U. Rev. of L. & Soc. Change 271, 278 (2009), *available at* http://www.law.nyu.edu/ecm_dlv3/groups/public/@nyu_law_website__journals__review_of_law_and_social_change/documents/documents/ecm_pro_065175.pdf (noting that the drop in crime began before zero-tolerance policies or other significant order-maintenance policing was adopted in New York City, citing factors such as getting guns off the street and increasing the number of police officers); Steven D. Levitt, *Understanding Why Crime Fell in the 1990s: Four Factors that Explain the Decline and Six that Do Not*, 18 J. of Econ. Perspectives 163 (2004), *available at* http://pricetheory.uchicago.edu/levitt/Papers/LevittUnderstandingWhyCrime2004.pdf (attributing drop in crime to increased number of police, decreased use of crack, increased incarceration, and legalized abortion; and discounting policing strategies such as order-maintenance because crime dropped in both cities that adopted these strategies and cities that did not); Kevin Drum, *America's Real Crime Element: Lead*, Mother Jones, Jan. 2013, *available at* http://www.motherjones.com/environment/2013/01/lead-crime-link-gasoline (attributing increases and decreases in crime rates to lead exposure); Bill Dixon, *Zero Tolerance: The Hard Edge of Community Policing,* 9 Afr'n. Sec. Rev. no.3 (2000):

> The managerial and other changes made in the NYPD by Bratton ... including the recruitment of 7000 additional police officers — make it impossible to attribute any crime reduction effects ... to the introduction of order maintenance policing alone. What is more, crime also fell in 17 out of 25 of the largest US cities between 1993 and 1996. Among these 17 were places such as San Diego where vastly different policies of problem-oriented "neighbourhood policing" were implemented and Oakland where no significant change in strategy occurred at all.

Bernard Harcourt and Jens Ludwig analyzed the changes in total misdemeanor arrests within New York City precincts from 1989 to 1998 against changes in violent crime only, and found that "if anything, increases in misdemeanor arrests were accompanied by *increases* in violent crime." Bernard E. Harcourt & Jens Ludwig, *Reefer Madness: Broken Windows Policing and Misdemeanor Marijuana Arrests in New York City, 1989-2000* 173 (U. of Chi. L. & Econ., Working Paper No. 317, 2007), *available at* http://www.econ.brown.edu/fac/glenn_loury/louryhomepage/teaching/Ec%20222/marijuana-arrests-Ludwig.pdf.

116 Since Mayor Michael Bloomberg took office, the number of shooting victims has remained constant over the past decade; according to NYPD and city statistics, 1,892 people were shot in 2002, 1,821 in 2011. Murray Weiss, *Stop-and-Frisks Have Done Little to Reduce Shootings, NYPD Data Show*, DNAinfo.com (June 5, 2012, 8:25 AM), http://www.dnainfo.com/new-york/20120605/new-york-city/stop-and-frisks-have-done-little-reduce-shootings-nypd-data-shows. The NYPD also claims its zero-tolerance approach to low-level offenses has been effective in removing illegal guns from the street. However, of the 685,724 stops carried out by the NYPD in 2011, only about one in every 3,000 (or .03%) resulted in the recovery of a gun. *New NYCLU Report Finds NYPD Stop-and-Frisk Practices Ineffective; Reveals Depth of Racial Disparities*, New York Civil Liberties Union (May 9, 2012), http://www.nyclu.org/news/new-nyclu-report-finds-nypd-stop-and-frisk-practices-ineffective-reveals-depth-of-racial-dispar. While stops have continued to increase in the past few years, the number of guns recovered through stop and frisk has decreased. *See* Murray Weiss, *Stop-and-Frisks Fail to Pull More Guns Off the Streets, NYPD Stats Show*, DNAinfo.com (Aug. 13, 2012, 6:35 AM), http://www.dnainfo.com/new-york/20120813/new-york-city/stop-and-frisks-fail-pull-more-guns-off-street-nypd-data-shows.

117 *See* Greenberg, *supra* note 114, at 1, 7 & 28. Further, the study notes that a crime drop occurred in many American cities as well as other countries from 1988 to 2001, a global pattern that "implicates national and international trends that may have occurred more strongly in some cities than in others." *See id*. at 12.

counties, marijuana possession arrest rates were somewhat more likely to have increased than decreased. **See Table 14.**

TABLE 14

Counties Categorized by Changes in Marijuana Possession Arrest Rates and Violent Crime Rates (1995-2010)

	Marijuana Possession Arrest Rates	
Violent Crime Rates	Increased Since 1995	Decreased Since 1995
Increased Since 1995	549 (*23.36%*)	352 (*14.98%*)
Decreased Since 1995	895 (*38.09%*)	554 (*23.57%*)

Source: FBI/Uniform Crime Reporting Program Data

More tellingly, however, this data reveals that the likelihood that violent crime increased or decreased was the same in counties where marijuana possession arrests increased as in counties where such arrests decreased. **See Table 15.**

TABLE 15

	The Likelihood that Violent Crimes Rates INCREASED Since 1995	**The Likelihood that Violent Crimes Rates DECREASED Since 1995**
In Counties in which Marijuana Possession Arrest Rates Have INCREASED Since 1995 is:	38.02% ($= \frac{549}{549+895}$)	61.98% ($= \frac{895}{549+895}$)
In Counties in which Marijuana Possession Arrest Rates Have DECREASED Since 1995 is:	38.85% ($= \frac{352}{352+554}$)	61.15% ($= \frac{554}{352+554}$)

These results show that movements in marijuana possession arrests are uncorrelated with movements in crime rates.[118]

118 Indeed, a study in New York City found that the large numbers of people the NYPD arrests for misdemeanor marijuana possession—disproportionately young people of color—do not subsequently engage in violent crime. *See* ISSA KOHLER-HAUSSMAN & JAMIE FELLNER, HUMAN RIGHTS WATCH, A RED HERRING: MARIJUANA ARRESTEES DO NOT BECOME VIOLENT FELONS (2012), *available at* http://www.hrw.org/sites/default/files/reports/us_mj1112webwcover.pdf (tracking 30,000 people without prior criminal convictions who were arrested in 2003 and 2004 for marijuana possession, and finding that during the six-and-a-half to eight-and-a-half years that the research covered, 90% (26,315) had no subsequent felony convictions of any kind, and only 3.1% (or 1,022 persons out of nearly 30,000) were subsequently convicted of one violent felony offense). Indeed, marijuana prohibition likely increases gun violence. Because of the profits that a prohibited substance can yield, "[a] Black market route for drugs can become a Black market route for guns." Emily Crockett, *How Ending the War on Drugs Could Curb Gun Violence*, CAMPUS PROGRESS, CTR. FOR AM. PROGRESS, Feb. 4, 2013 (quoting Trevor Burrus, research fellow with the Cato Institute), http://campusprogress.org/articles/how_ending_the_war_on_drugs_could_curb_gun_violence/ (last visited Feb. 15, 2013). A comprehensive review of all existing scientific research conducted by the International Centre for Science in Drug Policy similarly concluded that the "evidence suggests that drug related violence and high homicide rates are likely a natural consequence of drug prohibition and that increasingly sophisticated and well-resourced methods of disrupting drug distribution networks may unintentionally increase violence." WERB ET AL., *infra* note 146, at 5-6.

There are other policing models — including certain forms of community- and problem-oriented policing — that use arrests as last resorts; embrace an approach to crime prevention in which law enforcement works with social services agencies and community-based organizations to address underlying problems and provide support services such as after-school programs or job training; collaborate with community members, the private sector, and public agencies to enhance public safety; and improve relations and foster trust between communities and police.[119]

But under the common refrain of maintaining "order" and improving "quality-of-life," many cities nationwide have subscribed to some form of broken windows and shifted their policing priorities toward the aggressive enforcement of minor offenses. Milwaukee implemented zero-tolerance broken windows policing beginning in 1996.[120] Boston announced a crackdown on misdemeanor offenses in 2006, which the Police Commissioner explained was part of the city's longstanding belief in broken windows policing.[121] In 2007, Denver Police implemented broken windows policing in the Cole-Whittier neighborhoods, which was quickly denounced by residents and community leaders as targeting the poor and people of color.[122] Across the country, it would appear that these strategies have contributed to the overall rise in misdemeanor arrests, and specifically to the racial disparities in marijuana possession arrests. It is time to pick up the pieces of broken windows policing.

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119 *See* Debra Livingston, *Police Discretion and the Quality of Life in Public Places: Courts, Communities, and the New Policing*, 97 Colum. L. Rev. 551, 583-84 (1997). According to the Center for Problem-Oriented Policing, problem-oriented policing focuses on "new responses that are preventive in nature, that are not dependent on the use of the criminal justice system, and that engage other public agencies, the community and the private sector when their involvement has the potential for significantly contributing to the reduction of the problem." *What is POP?,* Ctr. for Problem-Oriented Policing, http://www.popcenter.org/about/?p=whatiscpop (last visited Mar. 1, 2013). *See generally* Peter K. Manning, Democratic Policing in a Changing World 158-162 (2010) (discussing the failures of modern policing models that shifted away from detective work and engaging with the community to solve crimes, which had traditionally been an important source of citizen contact in disadvantaged communities).

120 *Arthur L. Jones, 1996-2003*, Milwaukee Police Dep't, http://city.milwaukee.gov/Police/ArthurJones.htm (last visited Feb. 14, 2013). While marijuana arrests in Milwaukee decreased by 25% in 2004 and then increased by over 100% in 2005, (*see* FBI/Uniform Crime Reporting Program Data and U.S. Census Data (2004) & (2005)), the number of homicides followed the opposite trend, reaching their lowest in years in 2004 and then rising by 40% in 2005, one of the largest increases in the country. *See* Kathleen Kingsbury, Middle America's Crime Wave, Time Mag., Dec. 3, 2006, available at http://www.time.com/time/magazine/article/0,9171,1565527,00.html.

121 Daniel Brook, *The Cracks in 'Broken Windows'*, Boston Globe, Feb. 19, 2006, *available at* http://www.boston.com/news/globe/ideas/articles/2006/02/19/the_cracks_in_broken_windows/?page=full. That year, marijuana arrests increased tenfold in Suffolk County (Boston makes up 86% of Suffolk County's population). FBI/Uniform Crime Reporting Program Data and U.S. Census Data (2005) & (2006). The following year Boston created its Safe Streets Teams under the "community policing" philosophy to address quality-of-life issues and as a crime deterrent; marijuana arrest rates remained constant. *Initiatives*, City of Boston, http://www.cityofboston.gov/police/about/initiatives.asp (last visited Feb. 14, 2013). Not surprisingly, when Massachusetts decriminalized marijuana in 2009, the entire state, including Boston, experienced a dramatic drop in marijuana arrests. **See Figure 26.**

122 Felisa Cardona, *Denver Police Efforts Draw Protests*, Denver Post (Mar. 11, 2007, 1:00AM), http://www.denverpost.com/newsheadlines/ci-5637386.

C. The Incentives Behind Making Marijuana Arrests

i. COMPSTAT Performance Measures: Targeting Communities, Rewarding Arrests

Order-maintenance policing reorients police toward the crackdown of minor offenses, but use of COMPSTAT, short for "computer statistics" or "comparative statistics," has further incentivized some police departments to carry out this crime prevention strategy. Introduced to the NYPD in 1994 by Police Commissioner Bill Bratton and based on a simpler model used by the New York City Transit Police known as Charts of the Future, COMPSTAT is a technological and management system combining police department crime data[123] and geographic information with police accountability, purportedly to enable police departments to identify and address specific crime problems quickly and efficiently.[124] COMPSTAT monitors crime patterns by location, resulting in the deployment of police resources to specific areas and neighborhoods. COMPSTAT's accountability system requires precinct commanders to answer for crime rates in their jurisdictions at twice-weekly "Crime-Control Strategy Meetings" with department heads.[125] One significant data point by which a police department measures precinct performance is arrest numbers.[126] Using the number of arrests as a performance metric necessarily creates pressure, and incentives, for police to generate high numbers of arrests. Higher arrest numbers are easier to obtain by focusing on nonviolent, low-level offenses, which require far less time and resources (including less experienced officers)

123 The fact that police departments rely on their own data collection and entry when they use COMPSTAT has raised questions about the accuracy and reliability of COMPSTAT programs. For example, four Florida police agencies discontinued their programs because of data inaccuracy. *See* Janet. E. Hartman, *COMPSTAT Within a State-Wide Law Enforcement Agency: Applying New York City Police Department's Success to The Florida Department of Environmental Protection* 4-5 (2009), *available at* http://www.fdle.state.fl.us/Content/getdoc/8287f764-9d1a-47e3-bd38-27f424077e5b/Hartman-Janet-Research-Paper-pdf.aspx.

124 *See* David Weisburd et al., Police Found. Reports, The Growth of COMPSTAT in American Policing 2 (2004) [hereinafter Weisburd, Growth of COMPSTAT], *available at* www.lapdonline.org/inside_the_lapd/pdf_view/6247; Eric Jenner, *Computer-Based Crime-Fighting, From the Ground Up*, N.Y. Times, Dec. 12, 1997, *available at* http://partners.nytimes.com/library/cyber/week/121297police.html (last visited Feb. 14, 2013) (describing COMPSTAT's growth from a handwritten mapping system to a computerized program).

125 Weisburd, Growth of COMPSTAT, *supra* note 124, at 2. At such meetings crime statistics are projected on overhead screens, electronic maps are generated to show where crime is occurring, and the hour of the day and crime spike analyses are presented. *Id.*

126 *Id.*, *supra* note 124, at 3.

than the longer, intensive investigations required to make arrests for many serious offenses.[127]

Thus, while COMPSTAT itself does not call for the aggressive enforcement of low-level offenses,[128] when used by police departments employing a form of broken windows, it can encourage the aggressive and frequent enforcement of low-level offenses and minor infractions by calling for heavy police resources in areas designated as crime hot spots. One study found that COMPSTAT departments were significantly more likely to increase arrests for targeted offenders.[129] The NYPD's use of COMPSTAT intensified New York City's quality-of-life initiative by encouraging precinct commanders to enforce laws for minor offenses and pressuring officers to increase arrests in designated areas.[130] Indeed, both immediately following and in the years after the implementation of COMPSTAT in New York City, arrests for minor offenses, including marijuana possession, have risen significantly in poor communities of color.[131]

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127 Professor and former NYPD Captain John Eterno has been one of the most vocal critics of New York City's use of COMPSTAT:

> Eighteen years after the start of the much-vaunted COMPSTAT system of data-driven crime fighting ... precinct commanders are pitted against one another and officers are challenged to match or exceed what they did the previous year, month and week. Words like "productivity" are code for quotas. Supervisors must exceed last year's "productivity" — regardless of community conditions, available budget and personnel, and, most important, the consequences to citizens.

John A. Eterno, Op-Ed, *Policing By the Numbers*, N.Y. Times, June 17, 2012, *available at* http://www.nytimes.com/2012/06/18/opinion/the-nypds-obsession-with-numbers.html.

128 *See* Weisburd, Growth of COMPSTAT, *supra* note 124, at 2.

129 David Weisburd et al., *Reforming to Preserve: COMPSTAT & Strategic Problem Solving in American Policing,* Criminology & Pub. Pol'y 421, 443, tbl.8-C (Jan. 2002) [hereinafter Weisburd, *Reforming to Preserve*].

130 Weisburd, Growth of COMPSTAT, *supra* note 124, at 2; Weisburd, *Reforming to Preserve*, *supra* note 129, at 425 (discussing the Police Commissioner's creation of COMPSTAT as intended to make the organization responsive to leadership). While the NYPD vehemently denies the use of arrest quotas, the Department admits that officers have "performance goals" that they are expected to meet. Al Baker & Ray Rivera, *Secret Tape Has Police Pressing Ticket Quotas*, N.Y. Times, Sept. 9, 2010, *available at* http://www.nytimes.com/2010/09/10/nyregion/10quotas.html?pagewanted=all&_r=0. Police officers who have exposed the NYPD's quota system have explained that terms such as "performance measures" or "productivity" are code for quotas, a system in which police are mandated to increase arrest numbers. *See id.*; *see also* Ryan Devereaux, *'We Were Handcuffing Kids For No Reason': Stop-and-Frisk Goes on Trial,* The Nation, March 28, 2013, *available at* http://www.thenation.com/article/173565/we-were-handcuffing-kids-no-reason-stop-and-frisk-goes-trial#:

> 'There came a point in time in 2009 where they came very hard with the quotas. They call it productivity.' [Active-duty officer Adhyl] Polanco testified. Every day, he and his fellow officers would return from patrol, report to their platoon commander, 'and specifically tell him what we had done for that night. They will never question the quality,' he added. 'They will question the quantity ... How we got them, they don't really care about.'

See also Marina Carver, NYPD Officers Say They Had Stop-and-Frisk Quotas, CNN Justice, March 26, 2013, *available at* http://www.cnn.com/2013/03/22/justice/new-york-stop-and-frisk-trial; Graham Rayman, *The NYPD Tapes: Inside Bed-Stuy's 81st Precinct*, Village Voice, May 4, 2010, *available at* http://www.villagevoice.com/2010-05-04/news/the-nypd-tapes-inside-bed-stuy-s-81st-precinct (exposing how police officers are threatened by bosses if they do not make their arrest and stop and frisk quotas, after an eight-year police veteran secretly taped his superiors). In 2006, a New York jury awarded a woman punitive damages for her arrest, finding that "the number of arrests officers were to make violated plaintiff's constitutional rights and contributed to her arrest." Oren Yaniv, *Court Rules that Cops Do Use Quotas; Woman Injured in 2006 Arrest Settles for $75,000*, N.Y. Daily News, Feb. 19, 2011, *available at* http://articles.nydailynews.com/2011-02-19/news/28631245_1_arrest-numbers-quota-decision-false-arrest.

131 Before 1995, the NYPD was averaging 2,300 marijuana arrests per year; since then the Department has averaged 36,000 marijuana arrests per year. Harry Levine & Loren Siegel, Drug Policy Alliance, $75 Million a Year: The Cost of New York City's Marijuana Possession Arrests 4 (Mar. 2011), *available at* http://marijuana-arrests.com/docs/75-Million-A-Year.pdf.

A few years after New York's COMPSTAT program gained wide-scale publicity between 1997 and 1998, there was a noticeable increase in the implementation of COMPSTAT or similar programs by police departments in a number of major cities.[132] By 2002, at least 72 police departments in the South, West, Northeast, and North Central regions of the country visited the NYPD to learn more about COMPSTAT.[133]

Police departments' use of COMPSTAT, specifically the importance placed on arrest data and measuring police effectiveness by arrest volume in targeted communities, coupled with aggressive stop-and-search operations in designated neighborhoods, has likely contributed to the significant increase in the enforcement of low-level offenses, and thus has likely been a major contributor to the skyrocketing number of marijuana arrests in communities of color.

ii. The Inclusion of Misdemeanor Drug Arrests in Byrne Justice Assistance Grant's Performance Measures

The drug war is sustained in part by powerful private and public entities that reap handsome profits from large-scale rates of arrests and incarceration, and are thus determined to continue the War on Drugs despite its failure and terrible toll on the community.[134]

One financial mechanism funding the drug war and its accompanying policing strategies is a federal funding program called the Byrne Justice Assistance Grant

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132 Weisburd, *Reforming to Preserve, supra* note 129, at 432. Law enforcement agencies that implemented COMPSTAT or similar programs include the Lee County Sheriff's Office in Florida, the Chicago Police Department, the Los Angeles Police Department, the Newark Police Department, the San Francisco Police Department, and the New Haven Police. *See* Edward Tamayo, Lee County Sheriff's Office, Implementing Accountability at the Lee County Sheriff's Office, *available at* http://www.fdle.state.fl.us/Content/getdoc/b22786b9-e80d-4386-a5a4-1d0e9acdff11/Tamayo-edward-paper-pdf.aspx; Wesley G. Skogan & Lynn Steiner, The Chi. Community Policing Evaluation Consortium, CAPS at Ten: Community Policing in Chicago 1 (2004), *available at* https://portal.chicagopolice.org/i/cpd/clearpath/Caps10.pdf; George Gascon, *COMPSTAT Plus*, Los Angeles Police Dep't, http://www.lapdonline.org/inside_the_lapd/content_basic_view/6364; Whet Moser, *Meet Garry McCarthy Chicago's New Top Cop*, Chicago Mag., (May 2, 2011, 4:57PM), http://www.chicagomag.com/Chicago-Magazine/The-312/May-2011/Meet-Garry-McCarthy-Chicago-s-New-Top-Cop/; *COMPSTAT Policing in San Francisco*, S.F. Police Dep't, http://www.sf-police.org/index.aspx?page=3254 (last visited Feb. 14, 2012); James Lu, *Esserman Brings "COMPSTAT" to NHPD,* Yale Daily News, Feb. 8, 2012, *available at* http://yaledailynews.com/blog/2012/02/08/esserman-brings-COMPSTAT-to-nhpd/. In 2000, the new Police Commissioner of Baltimore, Edward T. Norris, introduced a NYPD-style COMPSTAT to the city. John A. Eterno & Eli B. Silverman, The Crime Numbers Game: Management by Manipulation 228 (2012). Coupled with aggressive zero-tolerance enforcement of quality-of-life offenses, the Baltimore Police Department was ultimately sued in 2006 for routine arrests without probable cause. *Id.* A settlement agreement was reached that included "establishing policies to handle properly Quality of Life violations, trainings, tracking compliance, and having effective oversight." *Id.* Philadelphia, New Orleans, and Newark also emulated the COMPSTAT process, and every one of these cities has come under investigation or court monitoring for civil rights violations. *Id.* at 229.

133 *See* Weisburd, Growth of COMPSTAT, *supra* note 124, at 11, fig.5; Weisburd, *Reforming to Preserve, supra* note 129, at 431.

134 For instance, the private prison industry has prospered immensely from the incarceration epidemic, and hence from the drug war; in 1990, there were 7,000 people incarcerated in private prisons. By 2009, the population had increased by 1,664% to 129,336, making the private prison industry a $3-billion-a-year business. David Shapiro, ACLU, Banking on Bondage: Private Prisons and Mass Incarceration 11, 13 (2011), *available at* http://www.aclu.org/files/assets/bankingonbondage_20111102.pdf (providing a comprehensive overview of the growth of the private prison industry and how its business model is dependent on mass incarceration and the creation of more prison beds).

(JAG) program. Established in 1988, the Edward Byrne Memorial State and Local Law Enforcement Assistance Program provides states and local units of government with funding to improve the functioning of their criminal justice system and to enforce drug laws.[135] Under what is now called the Justice Assistance Grant Program (JAG), each state is required to develop a statewide strategy for their criminal justice systems, focusing specifically on drug trafficking, violent crime, and serious offenders. There are seven general program areas for which funding can be used: 1) law enforcement; 2) prosecution and courts; 3) crime prevention and education; 4) corrections and community corrections; 5) drug treatment and enforcement; 6) planning, evaluation, and technology improvement; and 7) crime victim and witness. However, of the half a billion dollars spent every year on average in jurisdictions across the country through the Byrne JAG Program, over 50% is used to fund law enforcement activities.[136]

Law enforcement agencies can apply for JAG funds from two sources: either directly through the Bureau of Justice Assistance (BJA), or through each state's administering agency, which applies for grants from the BJA and then awards subgrants to local law enforcement agencies. In so doing, law enforcement agencies must set forth their project goals, objectives, and performance measures. As one state Attorney General explained to prospective grantees, "objectives must be clearly expressed and in measurable terms. ... Example: Increase the number of drug-related arrests by 10 percent . ... [An example of] Performance Measures [are]: Number of drug-related arrests [for a given year]."[137] Local law enforcement agencies, whether they receive direct funds or subgrants, are required to submit quantitative quarterly performance

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135 The Byrne Grant programs were authorized by the Anti-Drug Abuse Act of 1988. 21 USC § 1501, P. L. No. 100-690 (1988). The original Byrne Grant programs had two components, a formula grant program (Byrne Formula Grant program) and a discretionary grant program (Byrne Discretionary Grant program). Funds awarded to states under the Byrne Formula Grant program were to be used to provide personnel, equipment, training, technical assistance, and information systems for more widespread apprehension, prosecution, adjudication, detention, and rehabilitation of offenders who violate state and local laws. Grant funds could also be used to provide assistance to victims of crime. The Local Law Enforcement Block Grant Program (LLEBG) is another formula grant program that was authorized by Congress in 1995. The LLEBG program was established under the Omnibus Consolidated Rescissions and Appropriations. P.L. 104–134, 110 Stat. 1321 (1996). The purpose of the LLEBG program was to provide units of local government with federal grant funds so they could either hire police officers or create programs that would combat crime and increase public safety. In 2005, Congress combined the Byrne Grant program with the LLEBG into the Edward Byrne Memorial Justice Assistance Grant program (JAG) to streamline the application process for the states.

136 Nat'l Crim. Just. Ass'n, Bureau of Just. Assistance, Cornerstone for Justice: Byrne JAG and its Impact on the Criminal Justice System 2 (2011), *available at* https://www.bja.gov/Publications/NCJA_JAGReport.pdf.

137 Office of Att'y General of North Dakota, Edward Byrne Memorial State and Local Law Enforcement Assistance Program for Drug and Violent Crime Control Initiatives: Program Guidelines and Application Kit 14 (2004), *available at* www.ag.state.nd.us/bci/grants/byrne/Application.pdf. (emphasis omitted). Similarly, the application instructions for Byrne grant funding from the State of Louisiana Commission on Law Enforcement and the Administration of Criminal Justice states that "[m]easurable objectives use the words 'to increase,' 'to decrease,' or 'to maintain.' ... These are activity statements. Once the objectives are written, ask, 'Does the statement allow you to measure something?' The number that will be increased, decreased or maintained directly relates to the baseline statistics." The Commission gives the following example: "To increase the number of drug arrests from 300 to 350 within the twelve month period." Regarding "Prior Results" for continuing projects, the Commission notes: "Applications for continuation funding must describe the program's activities and accomplishments to date. This should include a summary of the previous funding project's activities such as, the number of arrests, drugs seized, the recidivism rate, policies and/or products developed, and data concerning the project's progress up to the time of application in meeting its goals." Louisiana Comm'n On Law Enforcement & The Admin. Of Criminal Just., Edward Byrne Memorial/Justice Assistance Grant (Jag) Program, Application Instructions 13-14 (July 2010), *available at* http://www.lcle.la.gov/programs%5Cuploads%5CByrne%5CByrne_JAG_App_Instruct_rev_072010.pdf.

measure reports, quarterly Federal Financial Status Reports, and quantitative and qualitative annual programmatic performance reports.[138] Indeed, along with reporting the number of investigations and prosecutions, agencies receiving funds for law enforcement purposes are required to report the total number of arrests as part of their "performance measures."[139] JAG does not restrict the categories of arrests in its performance measures to felonies or serious drug cases. Rather, all drug arrests, including misdemeanors (such as for marijuana possession), must be reported to the BJA as a condition of receiving federal funds.[140] Because JAG does not limit the categories of arrests in its performance measures to felony arrests, or arrests for more serious drug offenses — as one would expect given the program's original purpose of fighting serious, violent drug crime — police agencies are able to increase their productivity numbers by including arrests for mere possession, including marijuana possession. When submitting annual reports to the BJA, law enforcement agencies may improve the likelihood of receiving federal grants by measuring performance through the enforcement of low-level offenses, and thus perhaps demonstrating the "effectiveness" of BJA-funded activity. Thus, although JAG funding was initially designed to address major drug crime, by linking police budgets to drug law enforcement and including the number of drug arrests in states' and law enforcement agencies' productivity assessments, the Byrne Grant system enables — and, indeed, likely incentivizes — police departments to increase arrests for low-level drug possession.

Indeed, in a civil rights lawsuit brought in the early 1990s against members of a Byrne-funded task force, the Ninth Circuit Court of Appeals provided a disturbing description of how police agencies' dependence on federal funding drives them to generate high arrest numbers:

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138 U.S. Dep't of Just., Edward Byrne Memorial Justice Assistance Grant (JAG) Program: FY 2011 State Solicitation 7 (2011), *available at* https://www.bja.gov/evaluation/pm-solicitations/FY11_Byrne_State_Justice_Assistance_Grant_Program.pdf; *see also* Edward Byrne Memorial Justice Assistance Grant (JAG) Program, *Frequently Asked Questions* 12 (updated Aug. 2012), *available at* https://www.bja.gov/Funding/JAGFAQ.pdf.

139 The Bureau of Justice Assistance (BJA) uses a variety of performance measures to evaluate the activities for which funds are being used, including arrests. *See* Bureau of Just. Assistance, Program Performance Measures for American Recovery and Reinvestment Act (ARRA) and Justice Assistance Grant (JAG) Programs (2010) [hereinafter BJA, Performance Measures (2010)], *available at* https://www.bjaperformancetools.org/help/ARRAJAGandJAGCombinedIndicatorGrid.pdf (discussing the JAG performance measures, including the number of people arrested). Agencies must submit data into a Performance Measurement Tool (PMT), which requires that they "report on all performance measures that pertain to funded activity." Bureau of Just. Assistance, Bureau of Justice Assistance Program Performance Measures for Justice Assistance Grant (JAG) Programs 1 (Jan. 2012), *available at* https://www.bja.gov/Programs/JAG_Questionnaire_PA1_Law%20Enforcement.pdf. For agencies receiving grant monies for law enforcement purposes, number of arrests is one of the metrics used to measure performance. *See id.* at 6. Agencies are asked to report total number of arrests, how many of these arrests were misdemeanor arrests, and how many of these arrests were felony arrests. *See id.* at 6-7. The BJA also asks for an itemization of the amount of drugs seized, including marijuana. *See id.* at 7.

140 *See* Michelle Alexander, Op-Ed, *Why Police Lie Under Oath*, N.Y. Times, Feb 2, 2013, *available at* http://www.nytimes.com/2013/02/03/opinion/sunday/why-police-officers-lie-under-oath.html ("Agencies receive cash rewards for arresting high numbers of people for drug offenses, no matter how minor the offenses or how weak the evidence. Law enforcement has increasingly become a numbers game").

> [The commander] ... regularly exhorted Task Force officers to keep their arrest numbers up. All the officers were aware that the federal grant that funded their unit, and on which their jobs depended, was good for only eighteen to twenty-four months. [The commander] warned that they would need statistics to show that the federal money was well spent and thus to secure another grant. On more than one occasion, he sent the Task Force out to begin a shift with comments like, "Let's go out and kick ass," and "[E]verybody goes to jail tonight for everything, all right?"[141]

As far back as 1973, the National Commission warned against perverse financial incentives embedded in the structure of early drug war funding programs:

> The funding mechanism is so structured that it responds only when "bodies" can be produced or counted. Such a structure penalizes a reduction in the body count, while it rewards any increase in incidence figures and arrest statistics with more money. Those receiving funds thus have a vested interest in increasing or maintaining those figures.[142]

Four decades later, states remain heavily dependent on federal funding such as Byrne grants,[143] and the federal government continues to evaluate the performance of law enforcement agencies receiving Byrne money in part through the number of people arrested, rather than by more appropriate and logical barometers, such as decreases in drug use, availability, addiction, overdoses, and deaths.[144]

Even if the decision to award, or to continue to award, the federal block grant to a local enforcement agencies is not directly or indirectly tied to reported arrest data, the mere fact of receiving money for the purpose of drug law enforcement likely incentivizes local enforcement agencies to make drug arrests, and low-level drug arrests in

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141 *United States v. Reese*, 2 F.3d 870, 874 (9th Cir. 1993).

142 *See* Drug Use in America: Problem in Perspective, *supra* note 78, at 282.

143 The National Criminal Justice Association, along with dozens of other law enforcement associations, submitted a letter to Congress in 2011 explaining the critical role that JAG funding plays for local and state law enforcement:

> Jobs are created and retained across America because of the investment of Byrne JAG dollars, in direct law enforcement, local government ... as well as the ample multiplier effect which increase jobs and economic activity in our communities. ... Because of Byrne JAG's reach, this dynamic is at play in every pocket of our country.

Letter from the Nat'l Stakeholder Coalition on Byrne JAG Funding to the Senate Appropriations Subcomm. on Commerce, Justice, Science, and Related Agencies (Sept. 9, 2011), *available at* http://www.naco.org/legislation/policies/Documents/Justice%20and%20Public%20Safety/National%20Stakeholder%20Coalition%20Letter%20on%20Byrne%20JAG%20Funding%20-%209-9-11%20-%20with%20signatures.pdf.

144 *See generally* Christopher Hallam & David R. Bewley-Taylor, *Mapping the World Drug Problem: Science and Politics in the United Nations Drug Control System*, 21 Int'l J. of Drug Pol'y 1 (2010) (discussing the current limitations in assessing the global use of drugs and the drug problem).

particular, including for marijuana possession. In other words, providing state and local enforcement agencies with federal grants for drug law enforcement purposes means that some, if not all, of this money will be spent making arrests. To the extent that these arrests are for UCR Part I violent crimes, this promotes the original goals and objectives of the Byrne JAG Program. But since drug enforcement is a key priority of JAG funding, many agencies will use such funds to make arrests for low-level drug offenses, which, as this report has exhaustively documented, almost always have a racially disparate impact. In these circumstances, the results of such federal funding for law enforcement purposes are of significant concern and deserve further scrutiny.

In short, the overall financial structure of the drug war, and the Byrne JAG program in particular, may propel police departments to increase minor drug arrests using federal funds.[145] Through its substantial funding of drug law enforcement and its inclusion of misdemeanor drug arrests as a performance measure for law enforcement agencies reporting requirements, the United States government has, it appears, been a driving force in the increase of such arrests, which are disproportionately of people of color. Indeed, while police agencies benefit from JAG funding that increases law enforcement budgets, individuals living in communities where police departments concentrate arrests can pay a costly price. While further study is necessary on the effect that federal funds, and the prospective and retrospective performance measures regarding the use of those funds, have on the number of low-level drug arrests generated by agencies vying for or receiving such funds, it is noteworthy that since the federal government first began distributing JAG funds in 1989, the arrest rate for marijuana possession has increased dramatically.

145 Another financial incentive of the drug war can be found in the asset seizure section of the 1984 federal Comprehensive Crime Act, which provides police departments with another means by which they benefit financially from the War on Drugs. The law enables police — without having to even make an arrest, let alone wait for a criminal conviction — to seize assets (usually money) from individuals that the police claim are connected to illicit (most often drug) activities, assets which are often then awarded to the police in part or in whole after forfeiture, thereby allowing police to increase their discretionary budgets through civil asset seizures and forfeitures. One study found that state asset forfeiture laws permitting police to keep assets seized provide an institutional incentive for police to commit relatively more resources to drug offenses. *See* Brent D. Mast, Bruce L. Benson & David W. Rasmussen, *Entrepreneurial Police and Drug Enforcement Policy*, 104 Pub. Choice 285, 301 (2000), *available at* http://mailer.fsu.edu/~bbenson/PC2000.pdf. The authors found that drug arrests as a portion of total arrests is about 20% higher, and drug arrest rates are 18% higher in states that have such laws. *Id*. at 303. Scholars further argue that asset forfeiture laws that permit police departments to keep seized property have created a law enforcement agenda that targets assets rather than crime. *See* Eric Blumenson & Eva S. Nilsen, *Policing for Profit: The Drug War's Hidden Economic Agenda*, 65 U. Chi. L. Rev. 35 (1998). For example, the Volusia County, Florida, Sheriff's Department's drug squad seized over $8 million from motorists in a 41-month period from 1989 to 1992. David W. Rasmussen & Bruce L. Benson, The Economic Anatomy of a Drug War: Criminal Justice in the Commons 136 (1994). Most of the seizures involved motorists traveling southbound, rather than northbound, suggesting that the drug squad was more interested in seizing money than drug interdiction (since drugs seized are normally destroyed and thus have no monetary value for police). *Id*. at 136-37. Additionally, there were no criminal charges filed in over 75% of the seizure cases. *Id*. at 137. *See generally* Marian R. Williams, Jefferson E. Holcomb, & Tomislav V. Kovandzic, Inst. for Just., Policing for Profit: The Abuse of Civil Asset Forfeiture (2010), *available at* http://www.ij.org/policing-for-profit-the-abuse-of-civil-asset-forfeiture-4.

PROFILE

SAM Court

A Pilot Marijuana Court Program in Philadelphia That Seeks to Reduce Marijuana Penalties Fails to Solve the Underlying Problem: An Unending Influx of People Arrested for Marijuana Possession

Among the numerous consequences of arresting so many people for marijuana are states, and cities, struggles to process them through overburdened criminal justice systems. In a time when jurisdictions across the country are trying to save money, it is an expensive endeavor. Philadelphia, which in 2010 made 5,590 arrests for marijuana possession (82% of which were of Black people) — representing 27.7% of all drug arrests that year — responded by creating the Small Amounts of Marijuana (SAM) Court, a diversion program that treats people arrested with 30 grams or less of marijuana as a summary offense rather than a misdemeanor, designed to unclog the court system and free up prosecutors to focus on serious crimes. "We were spending thousands of dollars for when someone possessed $10 or $15 worth of weed," District Attorney Seth Williams told the Philadelphia Daily News in 2011. "It just didn't make any sense."

> Of course, a better and significantly more far-reaching approach would be for the police and prosecutors to stop enforcing marijuana possession laws altogether, obviating the need for SAM in the first place.

In SAM Court, a magistrate offers the choice of the program or a trial. The program consists of a two-hour class taught by a lawyer and costs $200, a price the District Attorney's Office says covers running the class. No plea is entered, and if the defendant pays the fee and completes the class, his or her record is expunged automatically.

Three years on, the results of the program are mixed. The program did initially slow the flow of cases into criminal court, and, according to

the District Attorney's Office, diverting thousands of these marijuana possession cases out of criminal court has saved the city an estimated $2 million in the past year. But data from last summer shows that less than half of the participants actually complete the program. Though there has not been a formal study examining why many people do not finish SAM, it appears to be in part because most people who cycle through the program are poor and cannot afford the fees.

Regardless of how SAM and similar pilot programs are structured, they fail to address the underlying problem: high arrest rates for marijuana possession. A better and significantly farther-reaching approach would be for the police and prosecutors to stop enforcing marijuana possession laws altogether, obviating the need for SAM in the first place.

The ACLU spoke to Derek Riker, Chief of Diversion Courts in Philadelphia, and Kirsten Heine, Chief of the Charging Unit at the Philadelphia District Attorney's Office, about the program.

ACLU: How did SAM Court come about?

DR: When D[istrict] A[ttorney Seth] Williams got elected, one of the issues the assistant district attorneys raised was that they were spending a great amount of time preparing trials for small amounts of marijuana cases.

At the end of it all, [though], the most the court could sentence a defendant was to 30 days incarceration, which never happened. It was generally no further penalty, some community service, or at most a few days probationary time, so there was really no bang for the buck.

ACLU: How does it work?

DR: Each person is individually called up in front of a trial commissioner. [The] options are [to] enter the SAM program or ask for a trial.

If you choose to enter the SAM class, you'll be given a subpoena for a class date, between four and seven weeks out. You have to appear [at the class] with either a bank check or a money order for $200 to cover court costs and the cost of the program.

The class is Saturday, three to four hours long; you participate in a presentation.

You're also given a second subpoena for what's called a status date. If [for] any reason you miss the [SAM class], you already have a preset date to return to court.

ACLU: There's no guilty plea involved?

DR: You're not entering a plea. If you complete the class, no plea is ever entered, your case is just withdrawn, and eventually your record is expunged. No paperwork needs to be filed. No additional fee.

ACLU: So it's about getting people through the system, not decriminalizing marijuana?

KH: It's the legislature's choice to classify marijuana the way it has. People often say, 'You decriminalized marijuana.' And I say, 'That's not true; we haven't decriminalized marijuana.'

The police department is going to continue arresting people. That's something you have to talk to them about. I think they have some feelings about the impact on the community of people smoking marijuana in whatever community they're policing. I agree with their concerns. I think the question becomes, what is the appropriate penalty for that?

We still process [defendants]. But we've changed the way that we deal with them in the court system.

ACLU: Who ends up in SAM court? On the day I went, there were 21 African-Americans and 2 white people. Is that typical?

KH: I've been asked the question so many times: do you consider race in making your decisions?

I can't speak to whom the police department arrests. When we charge people, we have no idea who they are. So I really don't think [race] impacts what we do at all.

DR: My personal speculation as to why you're going to end up with those kinds of results [is] because more crime in Philadelphia is in areas that are populated by more minorities. So we have more police forces dedicated to those areas, [which] just increases your chances of encounter. ■

PROFILE

Roderick Battle, 29

Memphis, TN

Right before the Memphis police arrested Roderick Battle, they told his nine-year-old daughter not to worry. They said, "Don't worry about anything. He's not going to go to jail. Daddy's going to be fine." But when they found marijuana in the apartment where Mr. Battle was hanging out with a friend, "They ended up arresting me anyway. That hurt my daughter. It hurt her real bad," Mr. Battle said.

As Mr. Battle tells it, he was at his friend's house the day it happened. The friend was outside parking his car, when the police stopped him and started asking questions. Mr. Battle peered out the door to see what was going on.

The police saw him and told him not to move. But Mr. Battle, who had a bag of marijuana in his pocket, panicked, and moved away from the door.

"I came back to the door and the police were already coming in with guns out."

The police handcuffed him. When they asked if they would find anything in the apartment, Mr. Battle was honest. "There's marijuana. It's mine, I can't lie."

When Mr. Battle was arrested, he said he spent the whole time worrying, "Who's going to take care of the kids? Who's going to be there when they get out of school?"

As the police tell it, they were getting ready to search the apartment. They saw what they thought was a marijuana cigarette on the coffee table. They claim that Mr. Battle, who was standing nearby, said that the marijuana was his.

In any case, it is undisputed that the police arrested Mr. Battle and charged him with possession with intent to distribute, a felony. He was lucky it took only a day to get him out of jail, but his wife had to borrow money



to come up with the $300 bail. With the help of his lawyer, a public defender, the charge was reduced to simple possession, a misdemeanor. Mr. Battle enrolled in a court-supervised diversion program, which means he is on probation for the next year. While on probation, he is subject to random drug testing, and any misstep, whether a failed drug test or a traffic violation, could send him back to jail. If he successfully completes the program and pays all his fines, plus another fee, he could have his record expunged.

That is especially important to him, because until now he had no criminal record and had never been arrested before. "I'm not the type of person to do anything to get myself caught up. I'm a family guy; I stay around my kids, my wife, you know, just stay out of the way."

He and his wife have four children — two daughters, 9 and 4, and 7-year-old twin boys. When Mr. Battle was arrested, he said he spent the whole time worrying: "Who's going to take care of the kids? Who's going to be there when they get out of school?"

He was recently laid off from his job as a cook, and has been trying to find a new job. That could be hard, because as long as he is on probation, his case will appear as "pending" when employers do background checks. For now, he watches his kids while his wife is at her job as a supermarket cashier.

Mr. Battle is grateful the charges were reduced. But the experience has been extremely difficult, and he is still perplexed at the police response.

"I'm not a bad guy," he said. "I just had a little marijuana." ■

VII. RECOMMENDATIONS

A. Marijuana Policy

i. Legalize Marijuana Use and Possession

The most effective way to eliminate arrests for marijuana use and possession, the racial disparities among such arrests, and the Fourth Amendment violations that often accompany such arrests, is to legalize marijuana. For instance, in Washington, Blacks were almost three times more likely to be arrested for marijuana possession as whites, and the Black/white racial disparity in marijuana possession arrests increased by 42% between 2001 and 2010. By passing Initiative 502, which legalized possession of marijuana for people 21 years or older and thus ended arrests of adults for possession, Washington has also ended such racial disparities with respect to marijuana possession arrests of people 21 years or older.

Marijuana legalization should occur through a system of taxation, licensing, and regulation under which private businesses licensed and regulated by the state can sell marijuana subject to a sales tax. Legalization through taxing and licensing would not only solve the arrests epidemic and its attendant racial disparities by removing marijuana possession and use from the criminal justice system, it would also save cash-strapped state and local governments millions of dollars in decreased police, jail, and court costs that could be redirected to supporting public health approaches to drug addiction and confronting more serious crime. For example, in 2010, 61% of all drug arrests in Colorado were for marijuana possession, the ninth highest percentage share in the country. Following passage of Amendment 64, which legalized marijuana possession for adults, police can reinvest those resources toward other more important public health and safety objectives. At the same time, legalization through taxation and regulation would raise new revenue that states could apportion to public schools, substance abuse prevention, including community- and school-based programs, as well as to general funds, local budgets, research and health care.

Legalization would not only solve the arrest epidemic and its attendant racial disparities, it would save cash-strapped state and local governments millions of dollars.

The legalization of marijuana will also provide more seriously ill patients with critical access to a medicine that can alleviate their pain and suffering without the harmful side effects – such as nausea or loss of appetite – of many prescription medicines. Currently there are 19 states, along with the District of Columbia, that allow marijuana for medicinal purposes.

Legalization would also reduce the demand for marijuana from Mexico, thereby removing the profit incentives of the Mexican marijuana trade and reducing its associated violence.[146] Indeed, one study estimates that the marijuana legalization laws in Colorado and Washington will deprive Mexican drug cartels of $1.425 and $1.372 billion in profits, respectively.[147]

Therefore, states should:

- **License, tax, and regulate marijuana production, distribution, and possession for persons 21 or older[148]**
- **Remove criminal and civil penalties for activities so authorized**
- **Tax marijuana sales**
- **Earmark marijuana-related revenues to public schools and substance-abuse prevention, including community- and school-based programs, as well as general funds, local budgets, research and health care**

The specific contours of regulation will vary from jurisdiction to jurisdiction, depending on local laws and public opinion. For instance, in Washington, Initiative 502 prohibits home growing of marijuana except for medical marijuana patients, whereas in Colorado, home growing is permitted. Therefore, this report offers examples of regulations for potential consideration as opposed to endorsing a fixed set of rules for every jurisdiction. Initiative 502 in Washington provides one regulatory model: it ensures

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146 In 2009, California recognized "the linkages between drug demand in the US and violence in Mexico, as well as the recent fiscal deficit, [prompting] the State Board of Equalization to prepare estimates of the potential revenue from a regulated marijuana market." Dan Werb et al., Int'l Ctr. for Science in Drug Pol'y, Effect of Drug Law Enforcement on Drug-Related Violence: Evidence from A Scientific Review 20 (2010) [hereinafter Werb et al.], *available at* http://www.icsdp.org/docs/ICSDP-1%20-%20FINAL.pdf. Vicente Fox, the former president of Mexico, has has also advocated for the legalization of marijuana in Mexico to end the drug violence caused by organized crime. *See* Rafael Romo, *Former Mexican President Urges Legalizing Drugs*, CNN.com, Jul. 26, 2011, http://articles.cnn.com/2011-07-26/world/mexico.drugs_1_drug-cartels-drug-policy-drug-violence?_s=PM:WORLD (last visited Apr. 10, 2013).

147 Olga Khazan, *How Marijuana Legalization Will Affect Mexico's Cartels, in Charts*, Wash. Post (Nov. 9, 2012, 4:24 PM), http://www.washingtonpost.com/blogs/worldviews/wp/2012/11/09/how-marijuana-legalization-will-affect-mexicos-cartels-in-charts/ (citing the Mexican Competitiveness Institute's 2012 study). The RAND Corporation estimates that the Mexican cartels stand to lose $1.5 billion per year if the United States were to legalize marijuana, a slightly lower yet still significant figure. *See* Kilmer et al., *supra* note 95, at 3.

148 Since legalization for persons over 21 still exposes persons under 21 to criminal sanctions, and given that 42% of people arrested for marijuana possession in 2010 were 20 and younger, when legalizing use and possession for persons 21 or older, states should decriminalize marijuana use and possession for persons under 21 by reclassifying such activity as a civil offense subject only to a fine. If decriminalization for persons under 21 is unobtainable, police departments and prosecutors should make marijuana use and possession for people under 21 a low enforcement priority.

that establishments licensed to sell marijuana are located at least 1,000 feet from schools, playgrounds, and parks, and do not display marijuana in a way that is visible to the public; limits availability to stores that sell no products other than marijuana; prohibits public use and display of marijuana; prohibits sales to minors; restricts advertising generally and bans advertising in places frequented by youth;[149] and establishes a standard for driving under the influence of marijuana (i.e., active THC content) that would operate like the alcohol DUI standards. State agencies can also regulate the numbers of stores per county, operating hours, security, quality control, labeling, and other health and safety issues.

If legalizing marijuana is unobtainable, states can significantly reduce marijuana arrests and their damaging consequences through depenalization. Decriminalization is a viable third option.

Marijuana legalization through a tax and regulate system should not mandate state employees to grow, distribute, or sell marijuana, as such conduct would require state officials to violate federal law and thus likely be preempted by federal law (the Controlled Substances Act, 21 U.S.C. §801) as it now stands. But legalization laws can require state officials to perform administrative, ministerial, and regulatory duties necessary to implement and oversee state laws and regulations.

As a society, we permit the controlled use of alcohol and tobacco, substances that are dangerous to health and at times to public safety. We educate society about those dangers, and have constructed a system of laws that allow for the use and possession of these substances while seeking to protect the public from their dangers. There is no reason, particularly given the findings of this report, that such a system cannot and should not also be constructed for marijuana use and possession.

ii. Depenalize Marijuana Use and Possession

If legalizing marijuana through taxation and licensing is unobtainable, states can take significant steps toward reducing marijuana arrests and their damaging consequences

149 When drafting legalization legislation to regulate the possession and sale of marijuana, proponents should be cognizant of federal — and often similar state — laws regarding drug-free school zones, see 21 U.S.C. § 860(a), which enhance penalties for violating federal drug laws if such violations occur within 1,000 feet of a public or private elementary, vocational, or secondary school or a public or private college, junior college, or university, or a playground, or housing facility owned by a public housing authority. Jurisdictions should also be aware of local laws regulating liquor sales, advertising, and licenses, as they may provide a helpful if not necessary guide to regulating marijuana sale, advertising, and licenses.

by removing all criminal and civil penalties for marijuana use and possession.[150] Under depenalization, there would be no arrests, prosecutions, tickets, or fines for marijuana use or possession, as long as such use and possession complied with any existing regulations governing such activity.[151]

Depenalization not only removes marijuana possession and use from the grasp of the criminal justice system, it avoids the pitfalls associated with replacing criminal penalties with civil penalties (see Recommendation #3 below).

Therefore, states should:

- **Amend their current criminal and civil statutes to remove all penalties for persons 21 or older for possession of marijuana for personal use (the amount could be, for example, limited to an ounce or less, but this can be determined on a state by state basis)**

iii. Decriminalize Marijuana Use and Possession

If both legalizing marijuana use and possession through taxation and regulation and depenalization are unobtainable, states can take steps toward reducing marijuana arrests by decriminalizing marijuana possession for adults and youth.[152] Decriminalization replaces all criminal penalties for marijuana use and possession with civil penalties. Massachusetts provides a useful case study on the impact that decriminalization can have on reducing marijuana arrests.[153] In 2009, Massachusetts decriminalized adult possession of an ounce or less of marijuana for personal use, with a maximum civil penalty of a $100 fine and forfeiture of the marijuana (anyone

150 For the reasons stated in footnote 148, since depenalization for persons over 21 still exposes persons under 21 to criminal sanctions, states should decriminalize marijuana use and possession for persons under 21 by reclassifying such activity as a civil offense subject only to a fine. If decriminalization for persons under 21 is unobtainable, police departments and prosecutors should make marijuana use and possession for people under 21 a low enforcement priority.

151 In Alaska, marijuana possession and use inside of the home has long been protected from penalty as a matter of privacy under the state constitution. *See Ravin v. State*, 537 P.2d 494, 504 (Alaska 1975).

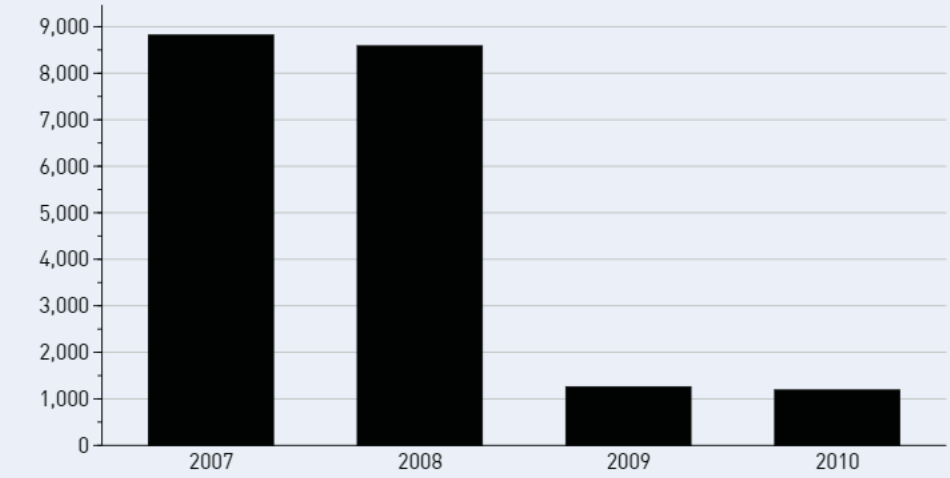
152 Passed in 2010 and taking effect in January 2011, California's SB 1449 reduced simple marijuana possession for adults and youth to an infraction involving a citation rather than a criminal arrest. A research brief by the Center on Juvenile and Criminal Justice found that the new law reduced marijuana possession arrests of youth by 61% in just one year, from 15,000 in 2010 to 5,800 in 2011, and contributed to the 20% overall drop in arrests of youth under 18. Mike Males, Ctr. on Juv. & Crim. Just., California Youth Crime Plunges to All-Time Low 7 (2012), *available at* http://www.cjcj.org/files/CA_Youth_Crime_2011.pdf. While proponents of zero-tolerance policing might predict an attendant spike in youth crime, the opposite occurred. Crime among youths fell in all categories in 2011 — felony arrests by 17%, both violent and property felonies by 16%, misdemeanor and status offenses by 21%, and homicide by 26%, indicating that marijuana decriminalization not only reduces arrests, but can be accompanied by a simultaneous decrease in crime. *See id.* at 1.

153 Other jurisdictions that have recently decriminalized possession of small amounts of marijuana include Rhode Island, which passed legislation in 2012 that will take effect in April 2013 making possession of an ounce or less of marijuana a civil violation subject to a fine of $150, *see* Mike McKinney, *R.I. Gov. Chafee Signs into Law Decriminalization of Small Amounts of Marijuana*, Providence J., June 13, 2012, *available at* http://news.providencejournal.com/breaking-news/2012/06/ri-gov-chafee-s-6.html, and Chicago, which in 2012 allowed police to issue tickets instead of make arrests for possession of 15 grams or less of marijuana. *See* Mack, *supra* note 25.

under 18 must also complete a drug awareness program). In 2008, the year before decriminalization took effect, Massachusetts arrested 8,502 people for marijuana possession; in 2009, that figure dropped to 1,240 — an 85% decrease — and dropped again to 1,181 in 2010. **See Figure 26.** Indeed, the arrest rate for marijuana possession in Massachusetts (18 per 100,000) is the lowest in the country. Despite being one of the 15 most populous states, in 2010 Massachusetts made the third fewest total marijuana possession arrests nationwide behind only North Dakota and Vermont. Not surprisingly, marijuana arrests now make up less than 10% of all of drug arrests in Massachusetts, by far the smallest percentage of any state in the country. Although the racial disparities in marijuana possession arrests did not improve — in fact, they grew worse: the arrest rate in 2010 was 61 per 100,000 Blacks and 16 per 100,000 whites, a ratio of 3.81 — the actual number of Blacks arrested declined 83% between 2008 and 2010 (while the number of whites arrested dropped 87%).

FIGURE 26

Number of Marijuana Possession Arrests in Massachusetts (2007-2010)



Source: FBI/Uniform Crime Reporting Program Data

Although reclassification of marijuana possession and use from a criminal to a civil offense is a far better alternative to the criminalization of marijuana possession, it is important to recognize that replacing marijuana possession arrests with fees, fines, and/or tickets is not an ideal solution for a number of reasons. First, the same racial disparities that exist nationwide in arrests for marijuana possession would likely be replicated in citations for civil offenses for marijuana possession. Second, the monetary fines that accompany civil offenses can place a substantial burden on those fined, particularly the young and/or poor, groups that are disproportionately targeted by police.

Third, individuals who are unable to make payments in a timely fashion, or at all, or who do not appear in court to answer to the civil charge, are subject to arrest — often by a warrant squad — which results in individuals being brought to court, and in some cases jailed, for failing to pay the fines or to appear. In addition to placing significant personal and financial burdens on the individual, this also imposes significant costs on the state, possibly exceeding the original fine imposed. Therefore, at the very least, whenever anyone is unable to pay a fine levied for marijuana possession or use, there should be alternatives to cash payments. Further, under no circumstances should the state be permitted to detain or incarcerate anyone as a penalty for failure to pay a civil fine for possessing marijuana. Fourth, allowing cities and counties to generate revenue through civil fines provides an incentive for police to enforce such civil laws aggressively.

If legalization and depenalization are unobtainable, states should:

- **Amend their current criminal statutes so that possession of an ounce or less of marijuana for personal use by adults and youth would be a civil offense only, for which the maximum penalty is a small fine, with alternative penalties available for people unable to pay**
- **Earmark revenues generated from marijuana-related civil penalties to public schools, substance abuse prevention, including community- and school-based programs, as well as to general funds, local budgets, research and health care**

B. Policing

i. Police Departments Should Make Marijuana Possession Arrests a Lowest Enforcement Priority

Aggressive enforcement of low-level offenses such as marijuana possession unnecessarily draws hundreds of thousands of people into the criminal justice system, primarily young people of color, for nonviolent activities. Such enforcement is a waste of precious law enforcement time, money, and resources.

Indeed, in 2010, 52.8 % of violent crimes and 81.7 % of property crimes nationwide went

unsolved. Among violent crimes, 35.2 % of murder offenses went unsolved, along with 59.7 % of forcible rapes, 71.8 % of robberies, and 43.6 % of aggravated assaults.[154]

Until marijuana possession is legalized or otherwise decriminalized, municipalities, district attorneys,[155] and police departments should make the investigation, arrest, and prosecution of marijuana offenses, particularly when intended for personal use, a lowest enforcement priority. Over the past several years, certain cities, including Seattle (prior to legalization) and San Francisco, made marijuana possession a lowest enforcement priority. Such a policy allows police departments to focus resources on serious crimes while their municipalities address drug use through public health and education initiatives.[156]

ii. Police Departments Should End Racial Profiling

"Racial profiling" refers to the act of selecting or targeting a person(s) for law enforcement contact (including stop, frisk, search, and arrest) based on the individual's real or perceived race, ethnicity, or national origin rather than upon reasonable suspicion that the individual has or is engaged in criminal activity. Racial profiling includes policies or practices that unjustifiably have a disparate impact on certain communities.

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154 *Uniform Crime Reports, Offenses Cleared*, clearance fig., Fed. Bureau of Investigation, http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/clearances (last visited Apr. 10, 2013).

155 District attorneys have discretion as to which arrests they prosecute. In 2010, the Harris County District Attorney's Office implemented a policy to stop prosecuting drug paraphernalia possession cases as felonies. *See* Brian Rogers, *Crack Policy puts Harris County DA at Odds with Police*, Houston Chronicle, Dec. 5, 2011, *available at* http://www.chron.com/news/houston-texas/article/District-Attorney-and-police-divided-on-crack-2346724.php. Under the old practice, officers would arrest people found with paraphernalia with felony drug possession if there was any drug residue. The change in policy resulted in a drop of 7,800 felony drug possession cases between 2008 and 2011. Rebecca Bernhardt, Tex. Crim. Just. Coal., Harris County Communities: A Call for True Collaboration, Restoring Community Trust and Improving Public Safety 9 (2013), *available at* http://www.texascjc.org/sites/default/files/uploads/Harris%20County%20Communities%20A%20Call%20for%20True%20Collaboration.pdf. Additionally, both violent and property crimes dropped during this period, challenging opponents' claim that arresting and prosecuting people for possessing drug paraphernalia prevents more serious crime. *See id*. at 9-10. Despite the precipitous drop in arrests, and the attendant decline in violent and property crimes, the newly elected Harris County district attorney reversed the policy in January 2013. *See* Brian Rogers, *DA Anderson Reverses Trace Case Policy*, Houston Chronicle, Jan. 24, 2013, *available at* http://www.chron.com/news/houston-texas/houston/article/DA-Anderson-reverses-trace-case-policy-4221910.php. Similarly, Bronx District Attorney Robert Johnson recently announced that his office would no longer prosecute people arrested for trespassing in public housing projects unless the prosecutor first interviewed the arresting officer to ensure that the arrest was proper. Joseph Goldstein, *Prosecutor Deals Blow to Stop-and-Frisk Tactic*, N.Y. Times, Sept. 25, 2012, *available at* http://www.nytimes.com/2012/09/26/nyregion/in-the-bronx-resistance-to-prosecuting-stop-and-frisk-arrests.html?pagewanted=all&_r=0. This change in policy came after allegations that people were being stopped and charged with trespass when they were legitimately on the premises. The month after the policy took effect, arrests fell 25% from the same month one year before. Such "stop-prosecution" policies — particularly if adopted by district attorneys in counties with significant racial disparities in marijuana possession arrests — can be used to end such arrests and their attendant racial disparities.

156 For instance, a study found that police reallocation of resources toward drug arrests in Florida resulted in a 41% increase of Index I crimes over the same data period. Bruce L. Benson, David W. Rasmussen & Iljoong Kim, *Deterrence and Public Policy: Trade-Offs in the Allocation of Police Resources*, 18 Int'l Review of L. and Econ. 77, 78 (1998), *available at* http://mailer.fsu.edu/~bbenson/IRL&E1998.pdf. By shifting "resources away from alternative uses, thereby reducing patrolling to prevent nondrug crimes and/or the ability to respond and make arrests after such crimes have been committed[,]" serious crime increased. *Id*. at 97.

Racial profiling can lead to the aggressive enforcement of minor offenses in communities of color, disproportionately and needlessly entangling such communities — particularly their youth members — in the criminal justice system for nonviolent activities that are not enforced in other communities. Such targeted enforcement of petty offenses, including marijuana possession, not only engulfs hundreds of thousands of people into the criminal justice system, it creates mistrust of the police by targeted communities, thereby reducing public safety, as these communities avoid police interaction and are less likely to report criminal activities or to cooperate with police in solving serious crimes. Even when utilizing geographic crime-mapping of serious crime, police departments should work with communities to address and prevent those crimes rather than simply target large swaths of those communities for enforcement of low-level offenses.

Targeted enforcement of marijuana possession engulfs hundreds of thousands of people into the criminal justice system and creates mistrust of the police, thereby reducing public safety.

Therefore, police departments should adopt model racial profiling policies that strictly prohibit law enforcement from engaging in profiling of persons — drivers, passengers, and pedestrians alike — and make clear that enforcement of state and federal laws must be carried out in a responsible and professional manner, without regard to race, ethnicity, or national origin. Police departments must ensure that all department personnel receive training about the harms of racial profiling and discrimination; investigate all complaints in a thorough and timely manner; in concert with appropriate disciplinary action, require additional diversity, sensitivity, and implicit bias training of all officers with sustained bias profiling or other discrimination complaints filed against them; and implement appropriate discipline for non-compliance with such policies, up to and including dismissal.

iii. Police Procedures Must Be Fair and Constitutional

Police departments must end suspicionless stops, suspicionless frisks, and searches without probable cause. Such stop, frisk, and search policies violate the Fourth Amendment's prohibition against unreasonable searches and seizures and disproportionally impact innocent Blacks and Latinos. They are humiliating and can be traumatic. They are also ineffective and foster community resentment against the police.

Police departments must establish explicit guidelines outlining the specific, limited circumstances under which the Fourth Amendment permits a stop, frisk, and subsequent search, and train officers on the guidelines annually. No pedestrian or motorist shall be detained beyond the point when there is no reasonable suspicion of criminal activity, and no person or vehicle shall be searched in the absence of a warrant, a legally recognized exception to the warrant requirement, or the person's informed voluntary consent.

Suspicionless stops, suspicionless frisks, and searches without probable cause violate the Fourth Amendment and disproportionately impact innocent Blacks and Latinos.

iv. Police Should Adopt, Whether Voluntarily or as Required by State Law, Model Consent Search Policies

A law enforcement officer may only seek consent to search when he or she has articulable suspicion, i.e., when an officer possesses knowledge of sufficient articulable facts at the time of the encounter to create a reasonable belief that the person in question has committed, or is about to commit, a crime.

A police officer should conduct a consensual search only after advising a civilian of his or her right to refuse. Prior to a search, the police must articulate the following factors to, and subsequently receive consent from, the person subject to the search or the person with the apparent or actual authority to provide permission to search: (1) the person is being asked to voluntarily consent to a search; and (2) the person has the right to refuse the request to search.

After providing the advisement, a police officer may conduct the requested search only

if the person subject to the search voluntarily provides verbal or written consent in a language understood and, where applicable, read by the person. If consent is obtained orally, a law enforcement agent shall make an audio recording of the person's statement consenting to the search voluntarily.[157]

v. Police Departments and the Federal Government Should Eliminate Policies That Incentivize Arrests for Minor Offenses

a. Police Departments Should Cease Using Raw Numbers of Stops, Citations, Summons, and Arrests as a Metric to Measure Their Productivity and Effectiveness in Serving Communities and Addressing Crime

Evaluating law enforcement agencies based on the numbers of stops, citations, summons, and arrests does not properly measure public safety and increases pressure on police officers and departments to aggressively enforce criminal laws for nonviolent offenses. Including arrests as a measure of productivity creates an incentive for police to selectively target poor and marginalized communities for enforcement of low-level offenses, as low-level offenses are committed more frequently than serious felony crimes, the arrests are less resource- and time-intensive than investigating arrests for serious felony crimes, and such arrests can be made most easily and at the least political cost.

By relying heavily on stops, citations, summons, and arrests, COMPSTAT encourages police departments to target their resources on low-level offenders to increase their arrest statistics and thus appear highly active, while discouraging police to pursue and record serious crimes accurately for fear of impugning the police department's crime-reducing reputation. The pressure on police officers to "make their numbers" results in a focus on aggressive stops and searches that often flaunt the suspicion-based requirements of the Fourth Amendment and lead to arrests for minor offenses, including marijuana possession. The end results are heavily policed communities that are not necessarily safer and in which many law-abiding people are subject to stops, frisks, and searches; heightened animosity between the communities and the police; a de-emphasis on procedural justice and police legitimacy;[158] and pushing minor rule-breakers into the criminal justice system unnecessarily, often at an immense

157 If a policy requiring recording is unobtainable, written consent remains an option.

158 *See* Tom R. Tyler & Jeffrey Fagan, *Legitimacy and Cooperation: Why do People Help the Police Fight Crime in Their Communities?*, 6 Ohio St. J. of Crim. L. 231, (2008) (finding that for police to be successful addressing crime, police need cooperation from communities, which is achieved when communities perceive police actions and decisions as legitimate, and police treatment of the community as fair and respectful).

(and sometimes lifelong) personal cost to individuals and their families as well as at a pecuniary cost to taxpayers.

Therefore, while the crime-mapping components of COMPSTAT can identify where serious crimes are occurring with greater frequency, thus focusing police departments' resources on those areas to address serious crimes, it need not and indeed should not be accompanied by unconstitutional stop and search practices or a focus on generating high numbers of arrests for minor offenses in those areas. To move away from evaluating progress and productivity through arrest numbers, police departments should reduce the reliance on stops, citations, summons, and arrests and broaden their benchmarks of success, relying instead more heavily on other measurements of community safety and police-community relations.

b. The Federal Government Should Not Include Marijuana Possession Arrests in its Performance Measures for Byrne Justice Assistance Grants

Justice Assistance Grants were created with the purpose of curtailing serious, violent crime and cracking down on drug kingpins. However, because arrest statistics — which include any arrest, including any drug arrest — are included in law enforcements' performance measures, police departments are likely encouraged to increase their arrest numbers by targeting their limited resources on low-level drug users and possessors. By including marijuana possession arrests in performance assessments of a states' use of federal funds, the federal government is relying upon an unreliable measure of law enforcement's effectiveness in fighting crime and reducing the traffic and availability of drugs. Indeed, such arrests reduce neither the use nor availability of marijuana.

Therefore, the Bureau of Justice Assistance should take the following steps to reform the existing JAG process:

- **Cease including marijuana possession arrests as a performance measure for purposes of federal funding**
- **Ensure that federal funds are not provided or used by state and local law enforcement agencies to make arrests for marijuana possession**
- **Require law enforcement agencies receiving federal funding to enforce a ban on racial profiling and document their pedestrian and traffic stops, arrests, and searches by race, ethnicity, and gender (designating money for data collection if needed)**
- **Reform performance measures to include factors such as the numbers of citizen complaints, surveys measuring community satisfaction with the police, including community views on the legitimacy and fairness of police actions and decisions, and the rates of violent crime**

vi. Police Should Increase Data Collection and Transparency Regarding Stop, Frisk, Search, and Arrest Practices

Police departments should promote accountability and transparency by collecting stop, frisk, search, citation, and arrest data; making the aggregate data publicly available; creating evaluation systems to analyze such data to identify and address racial disparities in enforcement practices; and developing policing strategies that reduce such racial disparities in enforcement practices.

Whether or not a citation is issued or an arrest is made, the police officer must document the following information consistent with existing or adopted local reporting protocols and technology:

- **The age, gender, race, and ethnicity of the individual stopped and the date, time, and location of the stop**
- **The duration of and reason for the stop**
- **Whether a search was conducted, and if so, whether the person stopped consented to the search**
- **Whether and what type of contraband was recovered**
- **Whether and what type of citation or summons was issued or arrest made; and**
- **The identification of the officers involved**

To guarantee statewide uniform arrest and citation documentation, state legislatures should require all police departments to electronically record information regarding stops, frisks, searches, citations, and arrests by race and locality, share the information with a central state agency, and publish the data in biannual or quarterly reports (on their website or in print available upon request). Personally identifiable information about the person stopped should not be recorded. The reports should be easily searchable. Such transparency will provide the public — community members, local and state policymakers, criminologists, lawyers, academics, the media, etc. — with a meaningful empirical basis for determining what precipitates a police action, and, in particular, for determining whether race, ethnicity, and gender have been used inappropriately, and to raise concerns where warranted. This would provide more objective and understandable information for assessing crime and the police response to crime; inform community-police discussions about the nature and appropriateness of police practices and allocation of police resources; promote more respectful and productive police-civilian encounters and build community trust in local police

departments; better ensure accountability for police departments; and prompt the development of training programs that educate police officers about the conscious and subconscious uses of racial and ethnic stereotypes.

vii. External Oversight Agencies Should Conduct Regular Audits and Reviews of Police Departments and Practices

An external oversight agency, such as an Inspector General or civilian review board, should regularly analyze data regarding police departments' stops, frisks, searches, citations, and arrests, by race and locality, to assess whether there are any unjustified racial disparities in enforcement practices. All such analyses and findings should be made available to the public.

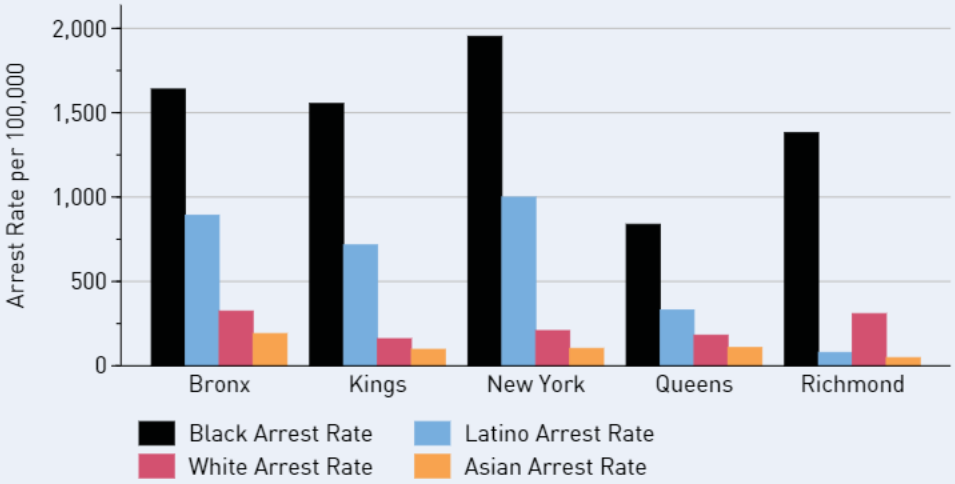
VIII. CONCLUSION

Like America's larger War on Drugs, America's War on Marijuana has been a failure. The aggressive enforcement of marijuana possession laws needlessly ensnares hundreds of thousands of people in the criminal justice system, crowds our jails, is carried out in a racially biased manner, wastes millions of taxpayers' dollars and has not reduced marijuana use or availability. Marijuana possession arrests also waste precious police resources and divert law enforcement from responding to and solving serious crimes. It is time for marijuana possession arrests to end.

APPENDIX A

FIGURE A1

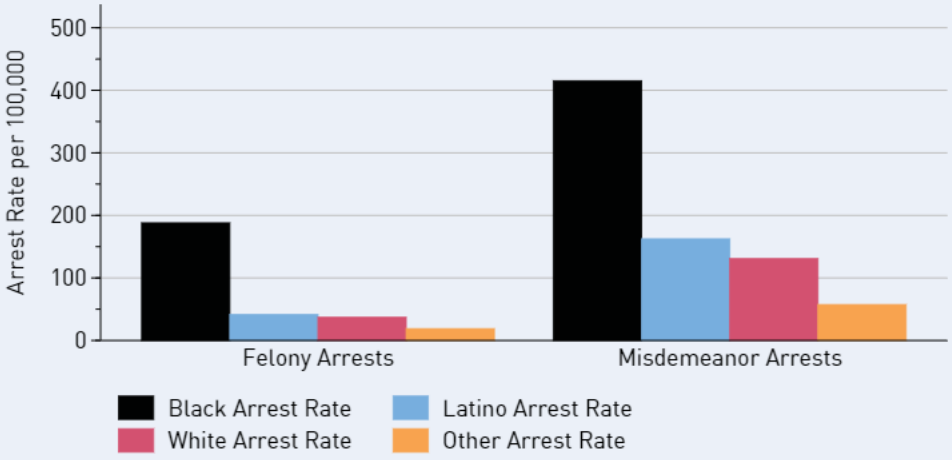
Arrest Rates for Marijuana Possession in New York City by Race/Ethnicity (2010)



Source: New York State Division of Criminal Justice Services and U.S. Census Data

FIGURE A2

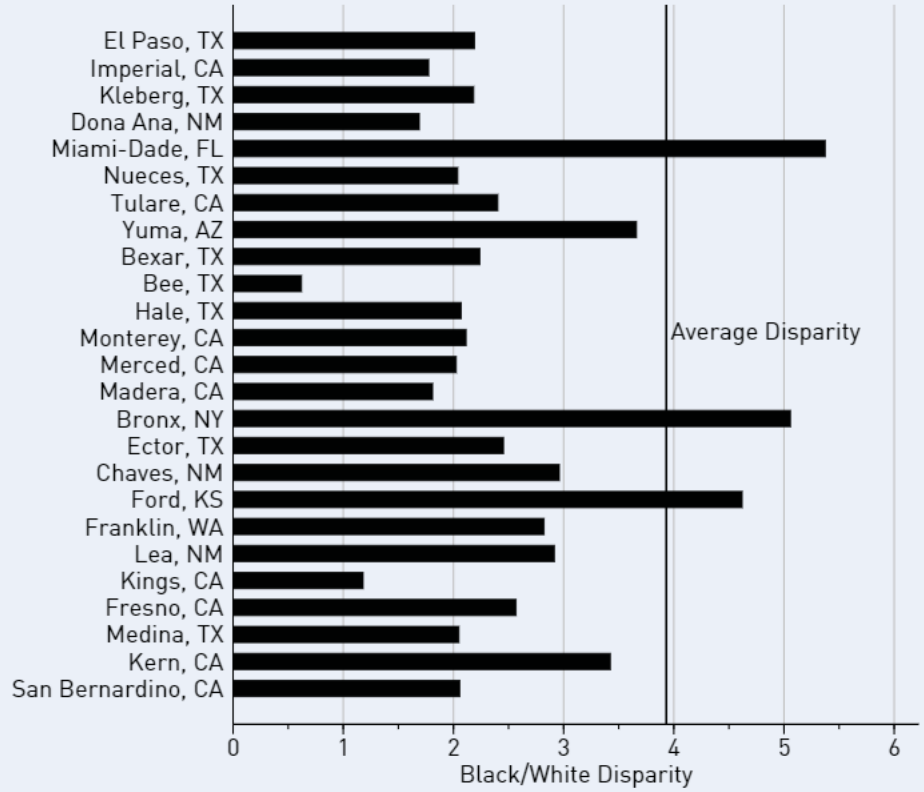
Arrest Rates for Marijuana Offenses in California by Race/Ethnicity (2010)



Source: Criminal Justice Statistics Center, Crime in California 2010 (2011) and U.S. Census Data (2010)

FIGURE A3

Black/White Disparity in 25 Highest Percent Latino Counties (2010)



NOTE: Population Size > 30,000 and Black Population Percentage > 2%

Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

TABLE A1
Number of Arrests for Marijuana Possession by State (2010)

State	Number of Arrests for Marijuana Possession			
	Total	White	Black	Black % of Arrests
New York	103,698	36,612	40,326	38.9%
Texas	74,286	54,580	19,164	25.8%
Florida	57,951	30,895	26,711	46.1%
California	57,262	47,235	9,314	16.3%
Illinois	49,904	20,235	29,083	58.3%
Georgia	32,473	11,539	20,765	63.9%
Maryland	23,663	9,775	13,710	57.9%
New Jersey	21,659	13,665	7,609	35.1%
Pennsylvania	21,287	12,459	8,695	40.8%
North Carolina	20,983	10,192	10,500	50.0%
Ohio	19,178	11,818	7,316	38.1%
Virginia	18,756	10,414	8,146	43.4%
Missouri	18,416	13,419	4,918	26.7%
Arizona	18,348	15,390	1,906	10.4%
Tennessee	18,031	9,675	8,256	45.8%
Michigan	17,830	11,156	6,577	36.9%
South Carolina	16,669	7,682	8,878	53.3%
Wisconsin	15,950	10,785	4,720	29.6%
Louisiana	13,435	5,232	8,171	60.8%
Indiana	12,850	9,256	3,548	27.6%
Oklahoma	10,478	7,657	2,176	20.8%
Colorado	10,343	9,396	854	8.3%
Oregon	9,849	9,220	420	4.3%
Nevada	9,139	5,937	2,936	32.1%
Connecticut	8,815	6,035	2,673	30.3%
Washington	8,365	7,119	896	10.7%
Mississippi	8,166	2,470	5,666	69.4%
Minnesota	7,494	4,835	2,348	31.3%
Nebraska	7,437	5,886	1,463	19.7%
Kentucky	6,540	4,195	2,327	35.6%
Arkansas	6,310	3,934	2,349	37.2%
Iowa	6,123	4,702	1,327	21.7%
Alabama	5,235	2,075	3,124	59.7%
D.C.	5,115	467	4,648	90.9%
Kansas	5,035	3,786	1,194	23.7%
West Virginia	4,400	3,917	476	10.8%
Utah	4,001	3,658	188	4.7%
Idaho	3,468	3,338	70	2.0%
New Mexico	3,041	2,701	145	4.8%
Maine	2,842	2,743	75	2.6%
New Hampshire	2,769	2,655	92	3.3%
Delaware	2,554	1,330	1,218	47.7%
Rhode Island	2,253	1,831	394	17.5%
Wyoming	2,104	1,981	63	3.0%
Alaska	2,028	1,482	123	6.1%
South Dakota	1,743	1,232	96	5.5%
Hawaii	1,448	629	40	2.8%
Montana	1,210	1,055	18	1.5%
Massachusetts	1,191	872	309	25.9%
North Dakota	1,162	952	60	5.2%
Vermont	737	700	33	4.5%
United States	784,021	460,808	286,117	36.5%

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

TABLE A2

Percentage of All Marijuana Offenses That Were for Marijuana Possession by State (2010)

State	Number of Arrests		Marijuana Possession
	Marijuana Possession	All Marijuana Offenses	% of All Marijuana Arrests
Alabama	5,235	5,546	94.4%
Alaska	2,028	2,219	91.4%
Arizona	18,348	20,079	91.4%
Arkansas	6,310	7,134	88.4%
California	57,262	71,816	79.7%
Colorado	10,343	11,009	94.0%
Connecticut	8,815	9,669	91.2%
D.C.	5,115	5,393	94.8%
Delaware	2,554	3,195	79.9%
Florida	57,951	62,663	92.4%
Georgia	32,473	35,888	90.5%
Hawaii	1,448	1,635	88.6%
Idaho	3,468	3,826	90.6%
Illinois	49,904	51,031	97.8%
Indiana	12,850	15,174	84.7%
Iowa	6,123	6,610	92.6%
Kansas	5,035	7,175	70.2%
Kentucky	6,540	8,546	76.5%
Louisiana	13,435	15,872	84.6%
Maine	2,842	3,461	82.1%
Maryland	23,663	26,375	89.7%
Massachusetts	1,191	2,751	43.3%
Michigan	17,830	21,818	81.7%
Minnesota	7,494	11,893	63.0%
Mississippi	8,166	8,967	91.1%
Missouri	18,416	20,325	90.6%
Montana	1,210	1,281	94.5%
Nebraska	7,437	7,919	93.9%
Nevada	9,139	10,382	88.0%
New Hampshire	2,769	3,242	85.4%
New Jersey	21,659	25,607	84.6%
New Mexico	3,041	3,523	86.3%
New York	103,698	106,860	97.0%
North Carolina	20,983	24,402	86.0%
North Dakota	1,162	1,381	84.1%
Ohio	19,178	20,866	91.9%
Oklahoma	10,478	11,516	91.0%
Oregon	9,849	10,543	93.4%
Pennsylvania	21,287	27,201	78.3%
Rhode Island	2,253	2,455	91.8%
South Carolina	16,669	18,738	89.0%
South Dakota	1,743	1,866	93.4%
Tennessee	18,031	21,863	82.5%
Texas	74,286	75,968	97.8%
Utah	4,001	4,388	91.2%
Vermont	737	813	90.6%
Virginia	18,756	21,231	88.3%
Washington	8,365	10,124	82.6%
West Virginia	4,400	4,987	88.2%
Wisconsin	15,950	18,356	86.9%
Wyoming	2,104	2,254	93.3%

NOTE: All Marijuana Offenses includes the manufacture and sale of marijuana.
Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 2010

TABLE A3

Percentage of Drug Arrests That Were for Marijuana Possession by State (2010)

State	Number of Arrests		Marijuana Possession
	Marijuana Possession	All Drug Offenses	% of All Drug Arrests
Alabama	5,235	9,077	57.7%
Alaska	2,028	2,517	80.6%
Arizona	18,348	32,628	56.2%
Arkansas	6,310	13,675	46.1%
California	57,262	250,351	22.9%
Colorado	10,343	17,029	60.7%
Connecticut	8,815	17,692	49.8%
D.C.	5,115	10,898	46.9%
Delaware	2,554	5,431	47.0%
Florida	57,951	141,775	40.9%
Georgia	32,473	49,876	65.1%
Hawaii	1,448	2,802	51.7%
Idaho	3,468	6,665	52.0%
Illinois	49,904	110,232	45.3%
Indiana	12,850	29,214	44.0%
Iowa	6,123	9,758	62.8%
Kansas	5,035	11,498	43.8%
Kentucky	6,540	20,560	31.8%
Louisiana	13,435	36,275	37.0%
Maine	2,842	5,933	47.9%
Maryland	23,663	47,409	49.9%
Massachusetts	1,191	12,486	9.5%
Michigan	17,830	35,944	49.6%
Minnesota	7,494	17,501	42.8%
Mississippi	8,166	19,101	42.8%
Missouri	18,416	36,559	50.4%
Montana	1,210	1,723	70.2%
Nebraska	7,437	10,217	72.8%
Nevada	9,139	18,040	50.7%
New Hampshire	2,769	5,172	53.5%
New Jersey	21,659	49,926	43.4%
New Mexico	3,041	9,696	31.4%
New York	103,698	174,493	59.4%
North Carolina	20,983	39,144	53.6%
North Dakota	1,162	2,054	56.6%
Ohio	19,178	39,828	48.2%
Oklahoma	10,478	20,010	52.4%
Oregon	9,849	18,047	54.6%
Pennsylvania	21,287	57,093	37.3%
Rhode Island	2,253	3,809	59.1%
South Carolina	16,669	31,126	53.6%
South Dakota	1,743	3,486	50.0%
Tennessee	18,031	42,696	42.2%
Texas	74,286	138,916	53.5%
Utah	4,001	11,177	35.8%
Vermont	737	1,382	53.3%
Virginia	18,756	34,876	53.8%
Washington	8,365	24,837	33.7%
West Virginia	4,400	7,986	55.1%
Wisconsin	15,950	26,206	60.9%
Wyoming	2,104	3,136	67.1%
United States	784,021	1,717,064	45.7%

Source: FBI/Uniform Crime Reporting Program Data: County-Level Detailed Arrest and Offense Data, 2010

TABLE A4
Percent Change in Marijuana Possession Arrest Rates by State (2001-2010)

State	Arrest Rates per 100,000		
	Total Arrest Rate (2001)	Total Arrest Rate (2010)	% Change in Total Arrest Rate
Alabama	252	115	-54.4%
Alaska	329	304	-7.7%
Arizona	286	286	-0.0%
Arkansas	223	221	-0.9%
California	143	153	7.6%
Colorado	241	207	-14.2%
Connecticut	201	247	22.5%
D.C.	524	846	61.5%
Delaware	140	284	102.1%
Florida	276	308	11.4%
Georgia	282	338	19.6%
Hawaii	92	106	15.8%
Idaho	211	222	5.2%
Illinois	300	389	29.6%
Indiana	232	209	-9.9%
Iowa	187	211	12.9%
Kansas	210	181	-13.6%
Kentucky	414	162	-61.0%
Louisiana	273	300	10.0%
Maine	280	214	-23.4%
Maryland	328	409	24.7%
Massachusetts	134	18	-86.4%
Michigan	164	181	9.9%
Minnesota	145	144	-0.5%
Mississippi	386	317	-18.1%
Missouri	214	308	43.6%
Montana	52	127	145.8%
Nebraska	464	417	-10.1%
Nevada	174	341	96.0%
New Hampshire	294	210	-28.5%
New Jersey	226	246	8.9%
New Mexico	288	155	-46.1%
New York	459	535	16.6%
North Carolina	222	221	-0.3%
North Dakota	175	183	4.6%
Ohio	168	169	0.4%
Oklahoma	303	279	-7.9%
Oregon	177	257	44.8%
Pennsylvania	136	167	23.0%
Rhode Island	208	214	3.0%
South Carolina	278	359	29.2%
South Dakota	307	249	-18.9%
Tennessee	210	284	35.3%
Texas	252	295	17.2%
Utah	198	147	-25.7%
Vermont	110	119	8.5%
Virginia	177	234	31.7%
Washington	174	124	-28.8%
West Virginia	196	241	23.3%
Wisconsin	272	281	3.4%
Wyoming	401	374	-6.7%

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

TABLE A5
Racial Disparity in Marijuana Possession Arrest Rates by State (2010)

State	Arrest Rates per 100,000			
	Total	Black	White	Times More Likely Blacks Arrested
Iowa	211	1,454	174	8.34
D.C.	846	1,489	185	8.05
Minnesota	144	835	107	7.81
Illinois	389	1,526	202	7.56
Wisconsin	281	1,285	215	5.98
Kentucky	162	697	117	5.95
Pennsylvania	167	606	117	5.19
South Dakota	249	943	197	4.79
Nebraska	417	1,699	365	4.65
New York	535	1,192	263	4.52
Nevada	341	1,272	284	4.47
North Dakota	183	732	166	4.41
Kansas	181	688	156	4.41
Alabama	115	277	64	4.35
Vermont	119	514	118	4.35
Florida	308	866	208	4.16
Ohio	169	512	125	4.11
Tennessee	284	771	191	4.03
Massachusetts	18	61	16	3.87
Mississippi	317	605	157	3.86
Utah	147	557	146	3.81
Georgia	338	699	189	3.69
Montana	127	432	123	3.52
Indiana	209	591	174	3.39
North Carolina	221	503	149	3.38
Connecticut	247	681	205	3.33
Michigan	181	464	141	3.30
West Virginia	241	745	228	3.26
Wyoming	374	1,223	376	3.26
Louisiana	300	569	182	3.13
Arkansas	221	532	171	3.11
Delaware	284	619	206	3.01
Maryland	409	790	276	2.86
Oklahoma	279	763	268	2.84
New Jersey	246	593	209	2.84
Virginia	234	514	182	2.83
Idaho	222	639	227	2.81
South Carolina	359	679	242	2.80
Washington	124	353	128	2.75
New Hampshire	210	561	213	2.64
Missouri	308	701	267	2.63
Rhode Island	214	524	201	2.60
Arizona	286	677	283	2.39
Texas	295	622	267	2.33
California	153	374	171	2.19
Maine	214	461	216	2.13
Oregon	257	563	271	2.08
New Mexico	155	300	161	1.87
Colorado	207	397	213	1.87
Alaska	304	510	318	1.60
Hawaii	106	179	181	0.99
United States	256	716	192	3.73

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

TABLE A6

Percent Change in Racial Disparity in Marijuana Possession Arrest Rates by State (2001-2010)

State	Racial Disparity		
	Times More Likely Blacks Arrested (2001)	Times More Likely Blacks Arrested (2010)	% Change in Racial Disparity
Alabama	2.6	4.4	67.1%
Alaska	0.3	1.6	384.1%
Arizona	2.4	2.4	0.0%
Arkansas	2.0	3.1	53.5%
California	2.5	2.2	-10.8%
Colorado	3.0	1.9	-37.5%
Connecticut	2.2	3.3	53.7%
D.C.	4.6	8.0	76.8%
Delaware	3.0	3.0	0.0%
Florida	3.6	4.2	15.0%
Georgia	2.2	3.7	71.0%
Hawaii	1.0	1.0	0.0%
Idaho	2.2	2.8	28.2%
Illinois	5.7	7.6	33.0%
Indiana	2.7	3.4	24.2%
Iowa	6.3	8.3	32.0%
Kansas	2.9	4.4	50.2%
Kentucky	2.4	6.0	145.8%
Louisiana	2.3	3.1	33.3%
Maine	1.7	2.1	25.4%
Maryland	2.0	2.9	44.4%
Massachusetts	2.2	3.9	75.4%
Michigan	1.3	3.3	149.3%
Minnesota	2.4	7.8	231.0%
Mississippi	2.3	3.9	68.9%
Missouri	2.4	2.6	9.0%
Montana	5.3	3.5	-34.0%
Nebraska	9.5	4.6	-51.0%
Nevada	3.6	4.5	23.9%
New Hampshire	2.7	2.6	-0.6%
New Jersey	2.1	2.8	33.4%
New Mexico	1.2	1.9	51.9%
New York	4.0	4.5	12.6%
North Carolina	2.5	3.4	36.3%
North Dakota	3.5	4.4	24.7%
Ohio	1.9	4.1	118.1%
Oklahoma	2.2	2.8	29.8%
Oregon	2.3	2.1	-8.9%
Pennsylvania	3.7	5.2	38.6%
Rhode Island	2.7	2.6	-4.1%
South Carolina	1.8	2.8	57.4%
South Dakota	5.3	4.8	-9.5%
Tennessee	1.8	4.0	121.7%
Texas	1.9	2.3	21.5%
Utah	2.6	3.8	49.1%
Vermont	2.9	4.4	52.6%
Virginia	2.1	2.8	37.2%
Washington	1.9	2.7	42.4%
West Virginia	3.5	3.3	-7.0%
Wisconsin	2.4	6.0	153.0%
Wyoming	2.8	3.3	15.1%

Source: FBI/Uniform Crime Reporting Program Data: Arrests by Age, Sex, and Race and U.S. Census Data

TABLE A7

Annual Fiscal Cost Estimates of Marijuana Possession Enforcement by State (2010)

	Fiscal Expenditures (in dollars)		
State	Low	Middle	High
Alabama	4,392,606	13,286,772	22,180,938
Alaska	2,531,400	8,466,300	14,401,201
Arizona	28,245,142	85,822,232	143,399,328
Arkansas	4,671,434	13,194,514	21,717,594
California	152,537,632	490,966,080	829,394,496
Colorado	12,627,071	37,706,564	62,786,060
Connecticut	15,516,520	49,826,212	84,135,904
D.C.	9,607,214	26,527,716	43,448,220
Delaware	4,208,648	13,234,181	22,259,714
Florida	77,938,064	228,635,840	379,333,632
Georgia	38,007,888	121,898,152	205,788,416
Hawaii	2,476,326	8,148,947	13,821,568
Idaho	3,874,670	11,884,452	19,894,234
Illinois	78,744,768	221,431,776	364,118,784
Indiana	12,643,076	38,480,904	64,318,728
Iowa	7,706,796	22,845,638	37,984,480
Kansas	6,655,185	20,182,786	33,710,388
Kentucky	5,832,540	19,499,768	33,166,998
Louisiana	14,228,912	46,450,368	78,671,824
Maine	3,205,790	8,868,964	14,532,138
Maryland	36,001,112	106,702,784	177,404,464
Massachusetts	2,973,921	9,327,650	15,681,380
Michigan	30,988,868	94,838,792	158,688,720
Minnesota	14,399,496	42,071,288	69,743,080
Mississippi	5,723,253	16,740,772	27,758,290
Missouri	17,657,698	49,119,612	80,581,528
Montana	1,936,396	6,161,866	10,387,336
Nebraska	7,999,439	22,809,270	37,619,100
Nevada	14,370,383	41,601,604	68,832,824
New Hampshire	2,463,242	6,526,364	10,589,486
New Jersey	41,405,908	127,343,512	213,281,120
New Mexico	3,465,111	11,079,450	18,693,788
New York	229,002,496	678,450,560	1,127,898,624
North Carolina	19,837,282	54,934,668	90,032,056
North Dakota	1,264,110	3,722,051	6,179,993
Ohio	38,592,652	120,148,064	201,703,472
Oklahoma	10,437,594	30,829,904	51,222,216
Oregon	16,725,914	50,194,024	83,662,136
Pennsylvania	30,580,662	100,748,528	170,916,400
Rhode Island	4,062,350	11,851,363	19,640,376
South Carolina	16,667,885	49,540,640	82,413,392
South Dakota	1,840,336	5,551,929	9,263,521
Tennessee	14,437,048	42,948,820	71,460,592
Texas	83,905,992	251,648,800	419,391,616
Utah	4,558,895	14,070,766	23,582,638
Vermont	1,550,619	4,887,939	8,225,259
Virginia	21,805,582	67,244,864	112,684,144
Washington	11,093,001	34,626,312	58,159,620
West Virginia	5,565,508	17,375,348	29,185,190
Wisconsin	15,632,073	44,366,056	73,100,040
Wyoming	3,060,325	9,148,026	15,235,727
United States	1,195,656,830	3,613,969,792	6,032,282,773

Source: FBI/Uniform Crime Reporting Program Data, 2010 and Criminal Justice Expenditure and Employment Extracts Program (CJEE), 2009

APPENDIX B

Analysis by State

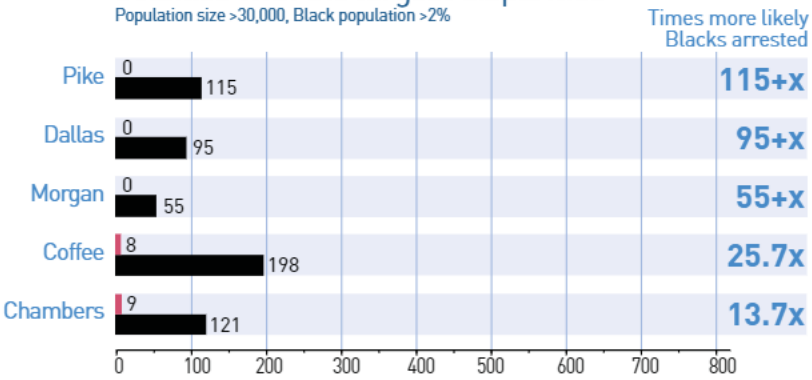
Alabama

Blacks are **4.4** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

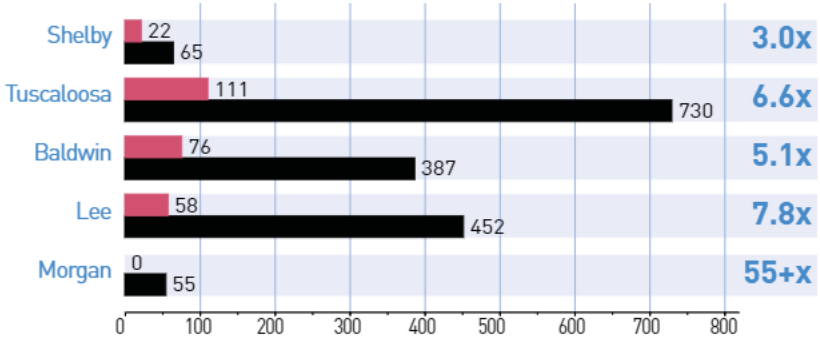
Counties with the largest disparities

Population size >30,000, Black population >2%

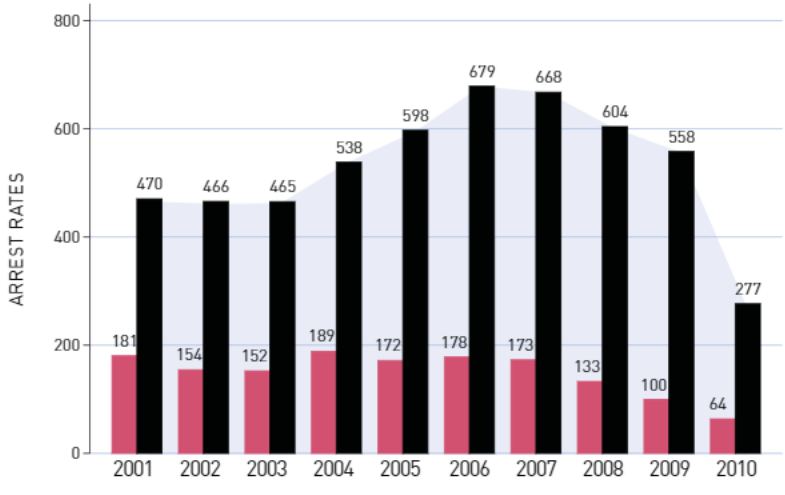


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
277	64

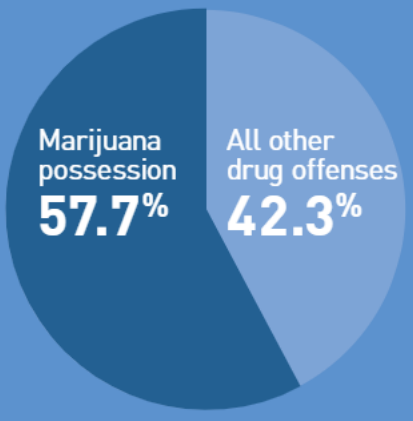
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$13,286,772**

Drug Arrests by Offense in 2010



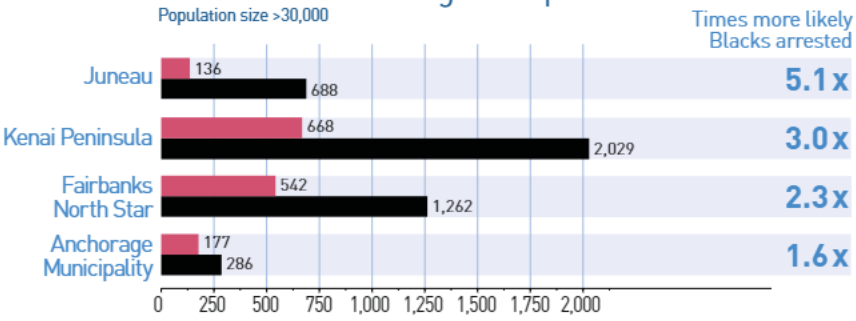
Alaska

Blacks are **1.6** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

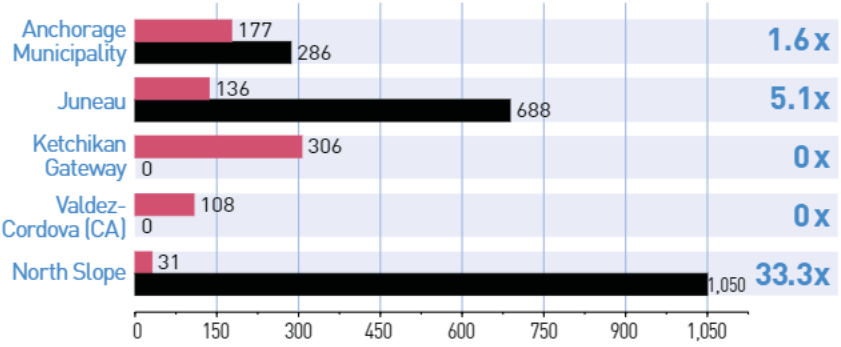
Counties with the largest disparities

Population size >30,000

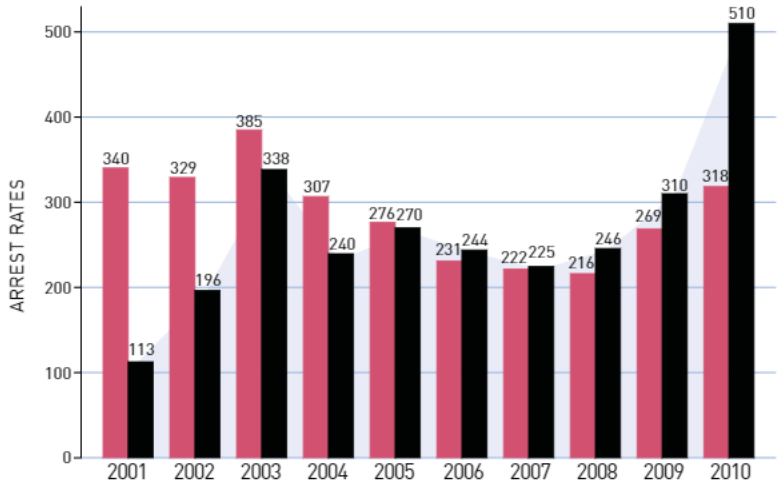


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
510	318

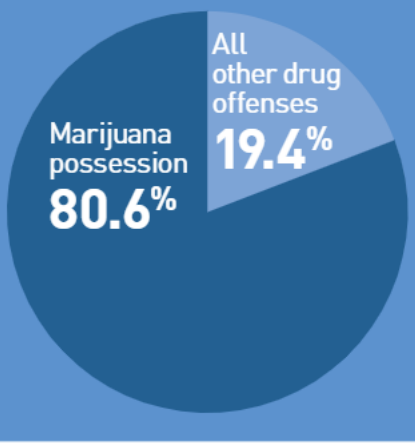
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$8,466,300**

Drug Arrests by Offense in 2010



Arizona

Blacks are **2.4** times more likely than whites to be arrested for marijuana possession

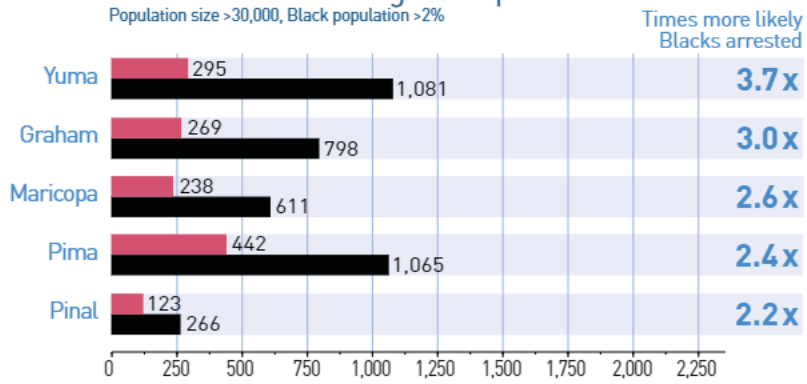
Arrest Rates

BLACK	WHITE
677	283

Racial Disparities In Marijuana Possession Arrest Rates*

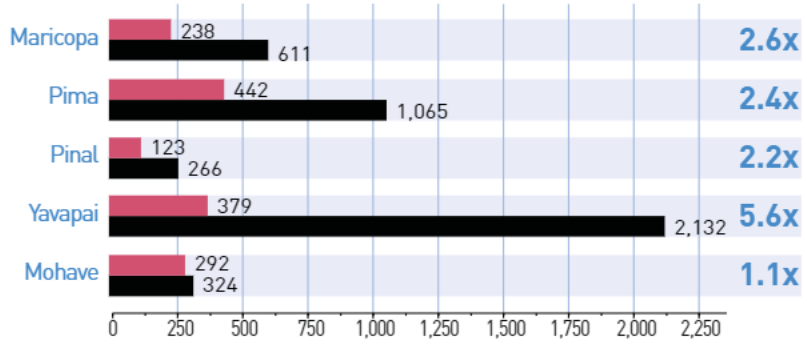
Counties with the largest disparities

Population size >30,000, Black population >2%

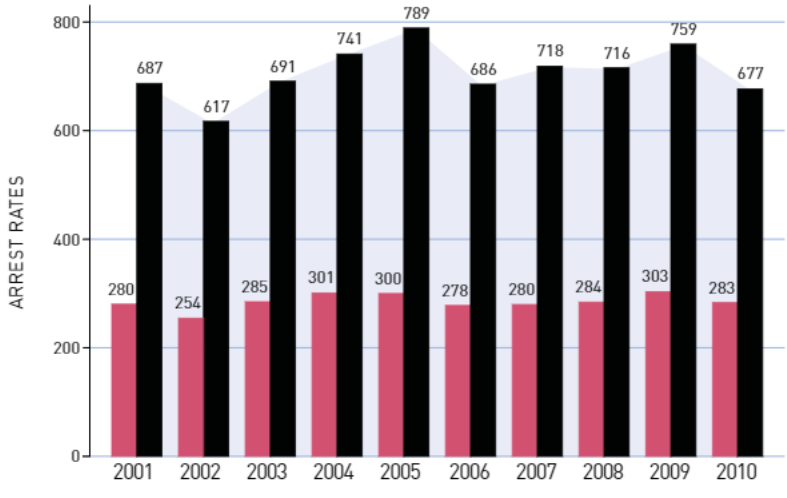


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate

Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

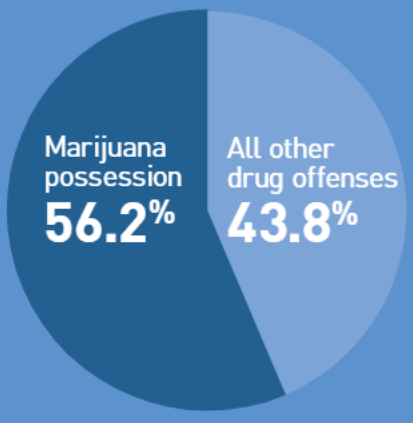
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$85,822,232**

Drug Arrests by Offense in 2010



Arkansas

Blacks are **3.1** times more likely than whites to be arrested for marijuana possession

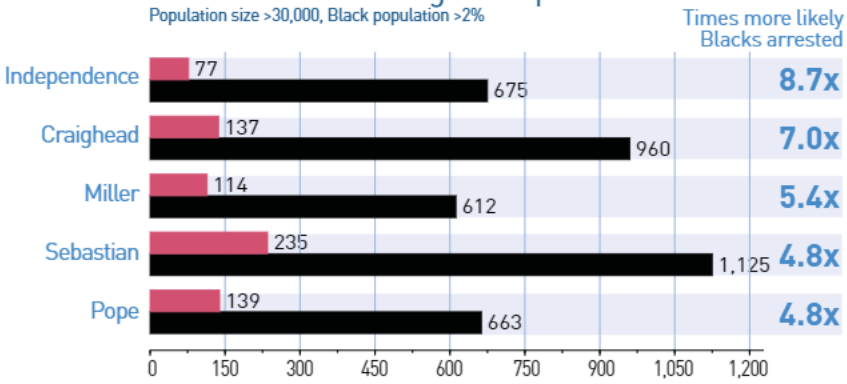
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
532	171

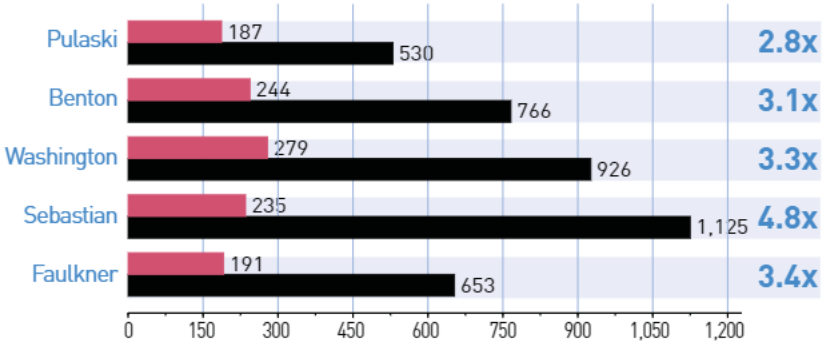
Counties with the largest disparities

Population size >30,000, Black population >2%



Counties with the largest population

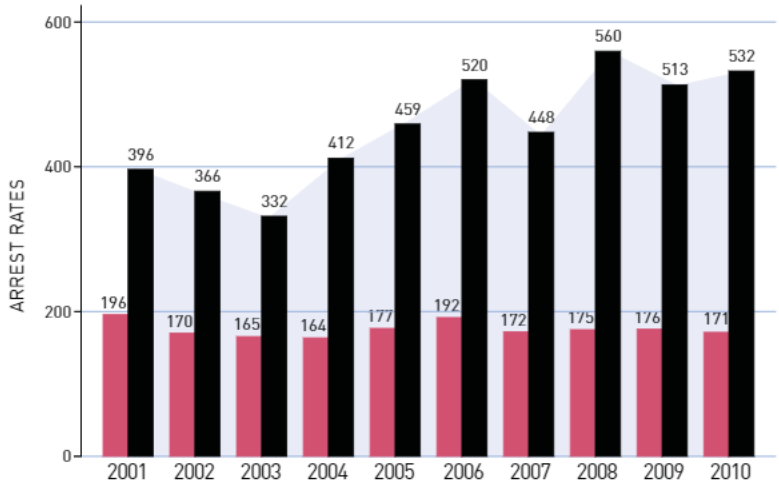
Includes all counties, listed in order of size



All counties with racial disparities above the national average (3.73)



Statewide marijuana possession arrest rates 2001-2010



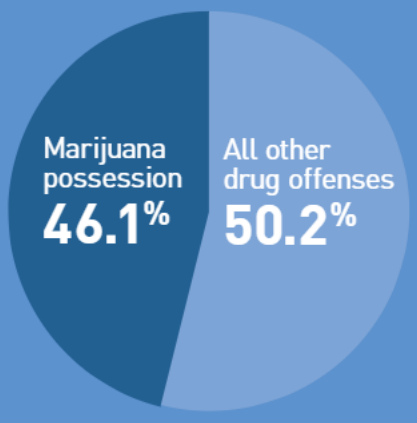
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$13,194,514**

Drug Arrests by Offense in 2010



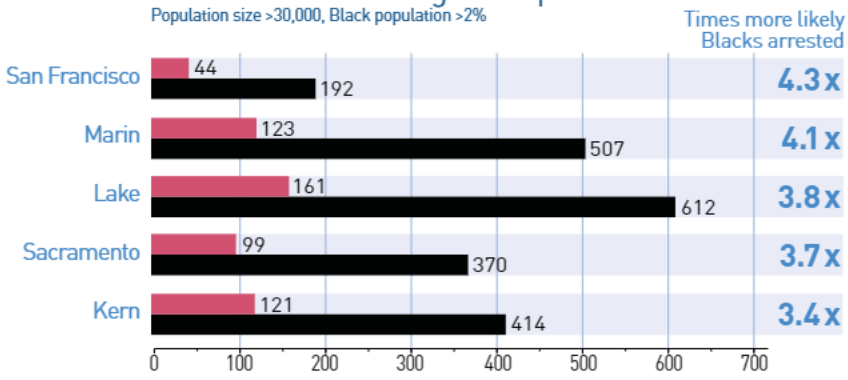
California

Blacks are **2.2** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

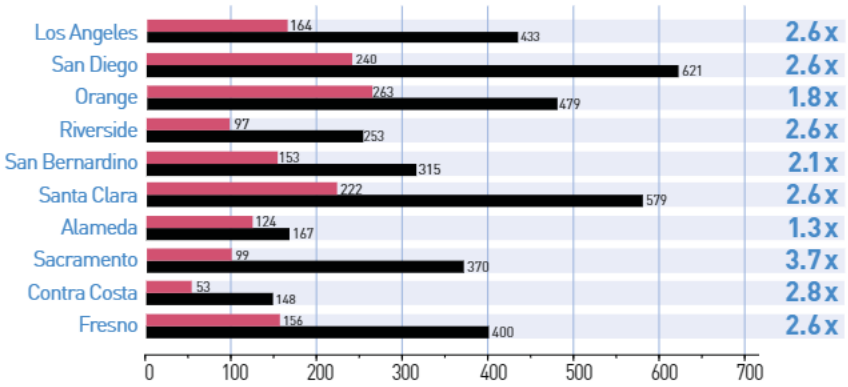
Counties with the largest disparities

Population size >30,000, Black population >2%

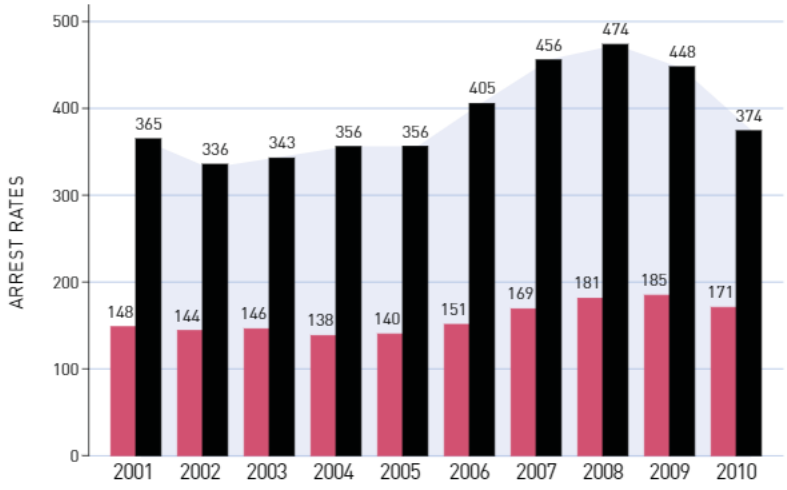


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
374	171

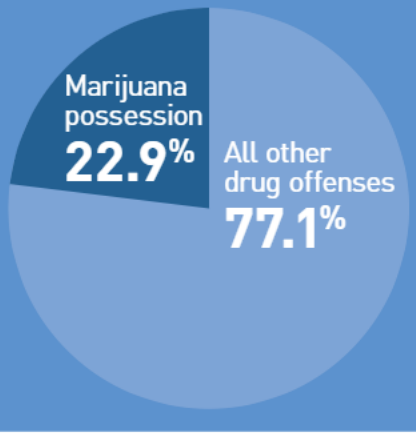
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$490,966,080**

Drug Arrests by Offense in 2010



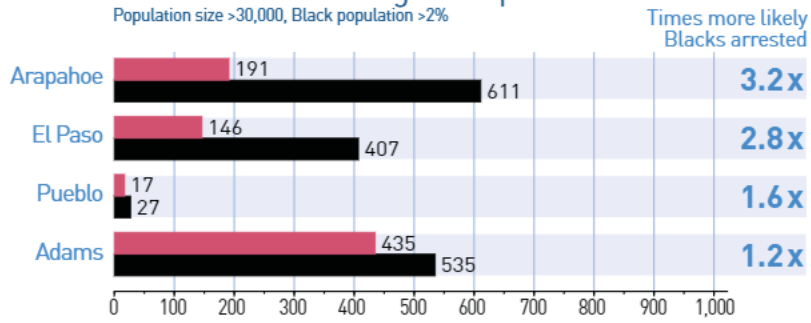
Colorado

Blacks are **1.9** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

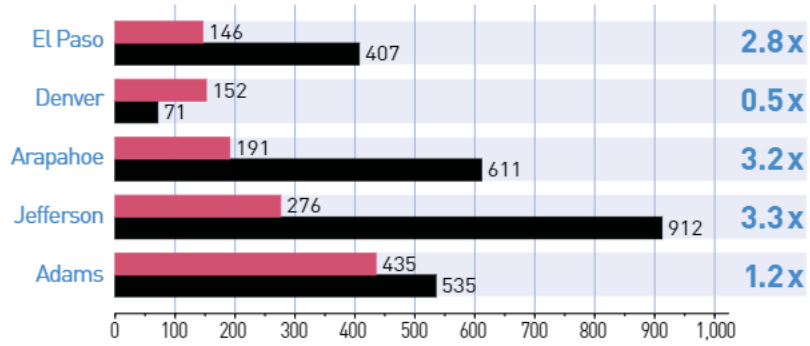
Counties with the largest disparities

Population size >30,000, Black population >2%

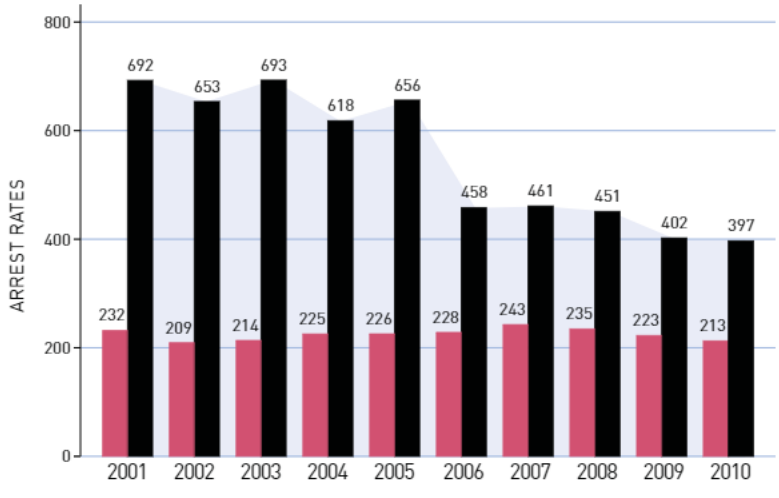


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
397	213

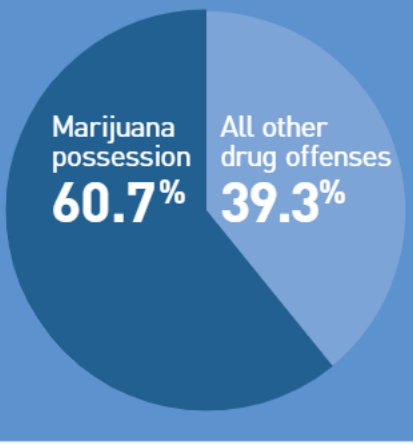
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$37,706,564**

Drug Arrests by Offense in 2010



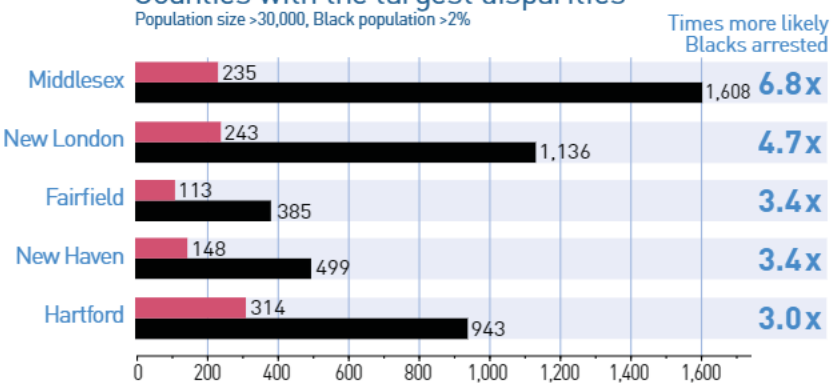
Connecticut

Blacks are **3.3** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

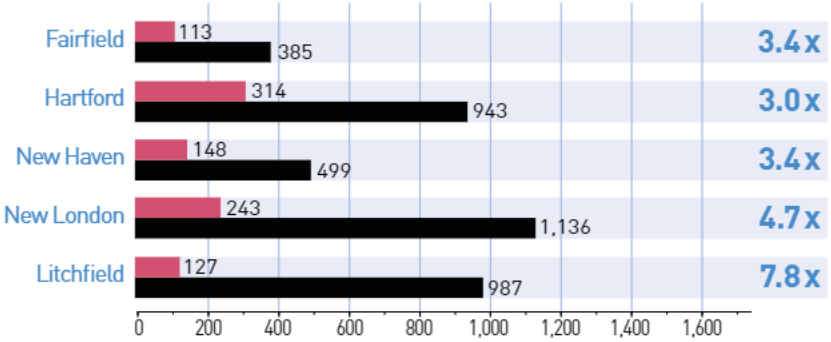
Counties with the largest disparities

Population size >30,000, Black population >2%

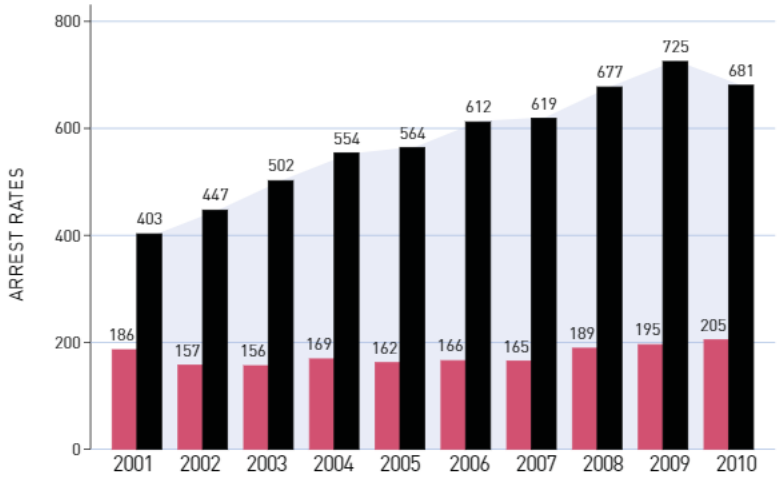


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



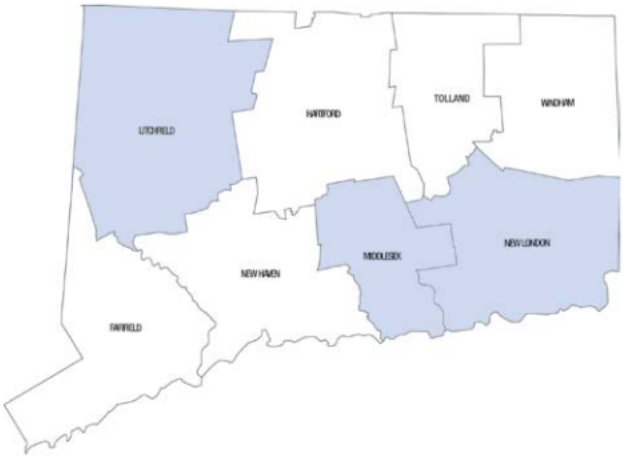
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
681	205

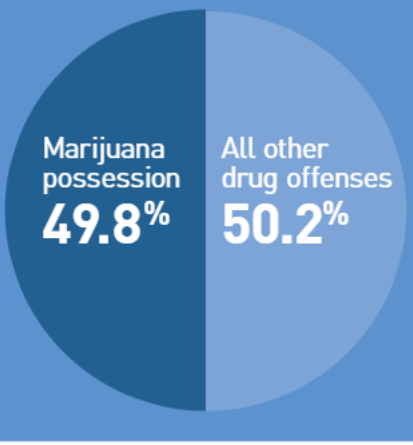
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$49,826,212**

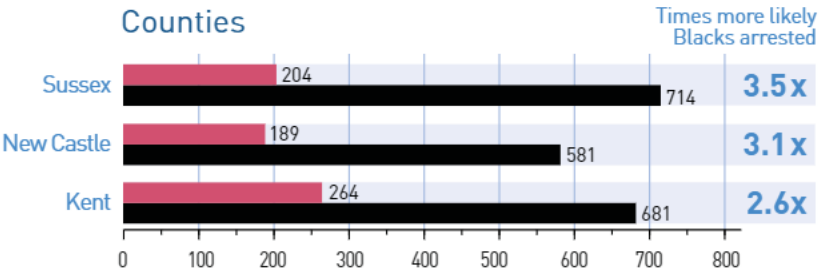
Drug Arrests by Offense in 2010



Delaware

Blacks are **3.0** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates In All Counties*



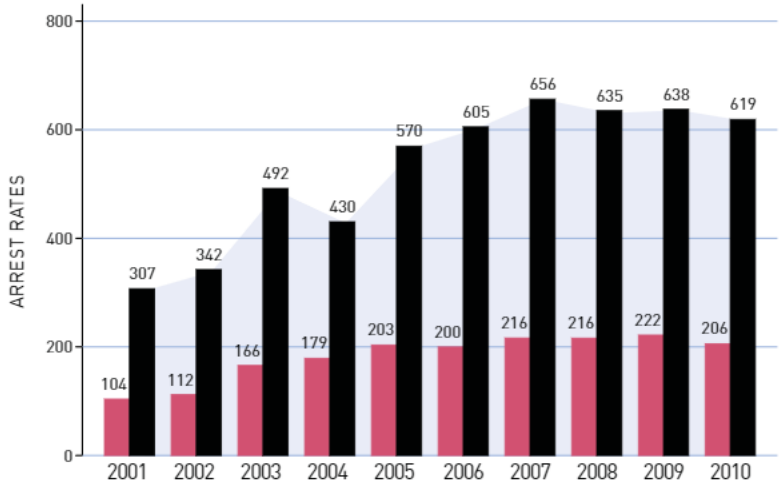
Arrest Rates

BLACK	WHITE
619	206

All counties with racial disparities above the national average (3.73)



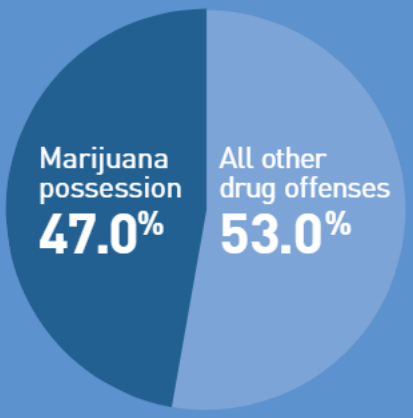
Statewide marijuana possession arrest rates 2001-2010



Cost

Money spent enforcing marijuana possession laws in 2010: **$13,234,181**

Drug Arrests by Offense in 2010



White arrest rate
Black arrest rate

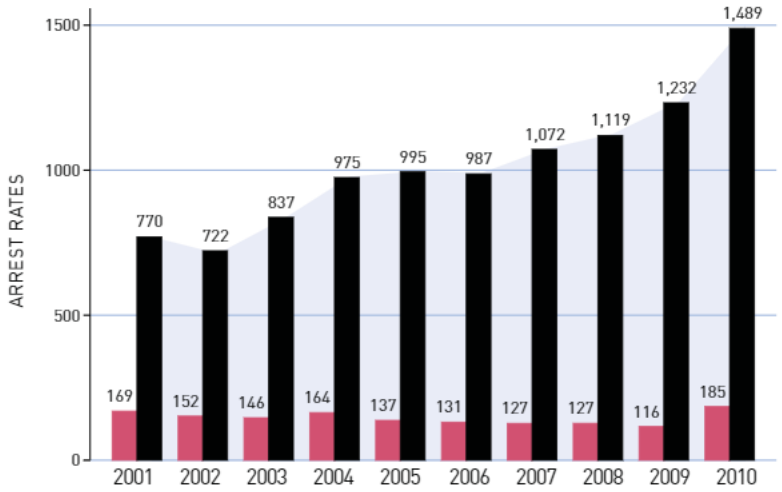
Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

District of Columbia

Blacks are **8.0** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

District-wide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
1,489	185

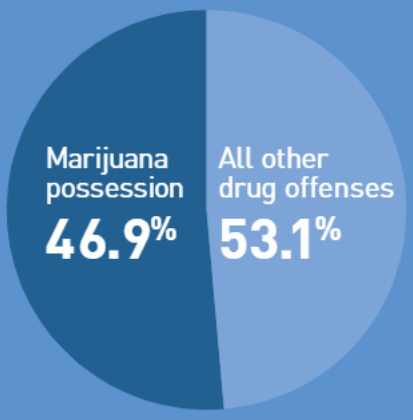
The District's racial disparity is above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$26,527,716**

Drug Arrests by Offense in 2010



Florida

Blacks are **4.2** times more likely than whites to be arrested for marijuana possession

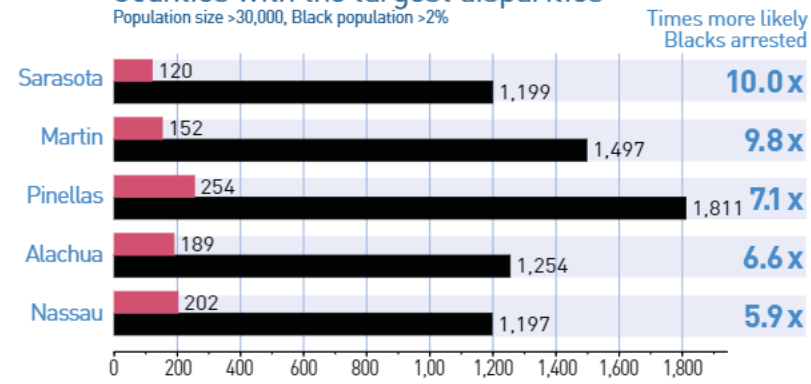
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
866	208

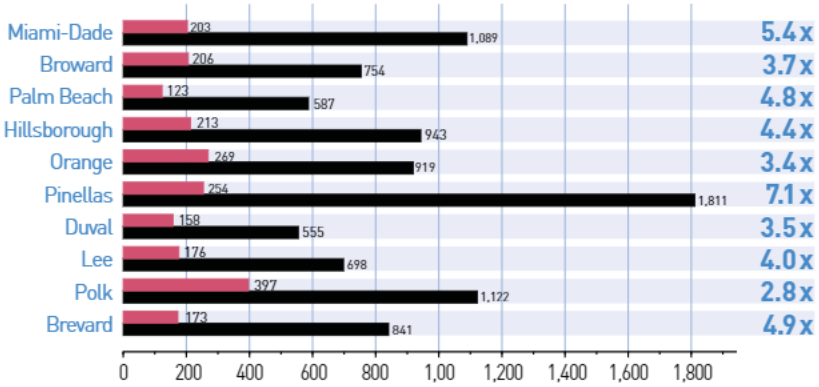
Counties with the largest disparities

Population size >30,000, Black population >2%

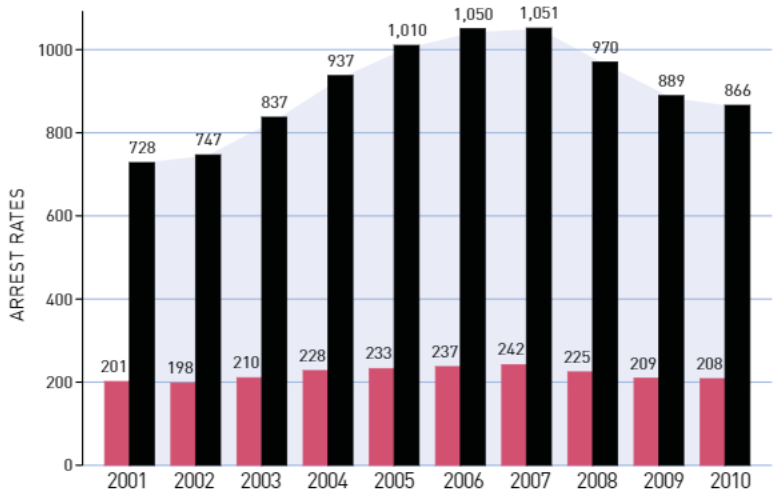


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate

Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

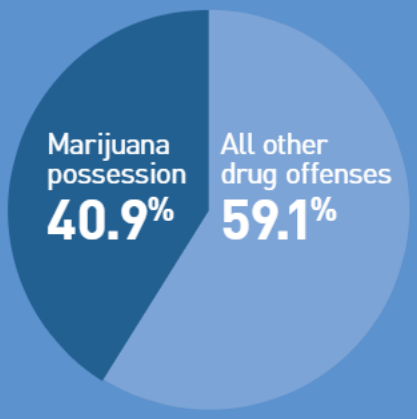
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$228,635,840**

Drug Arrests by Offense in 2010



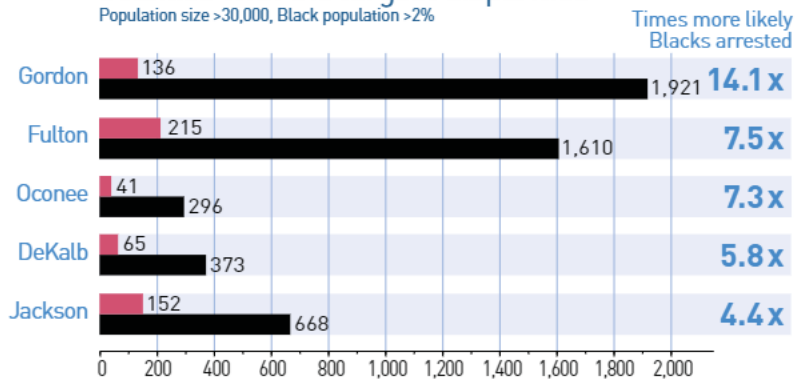
Georgia

Blacks are **3.7** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

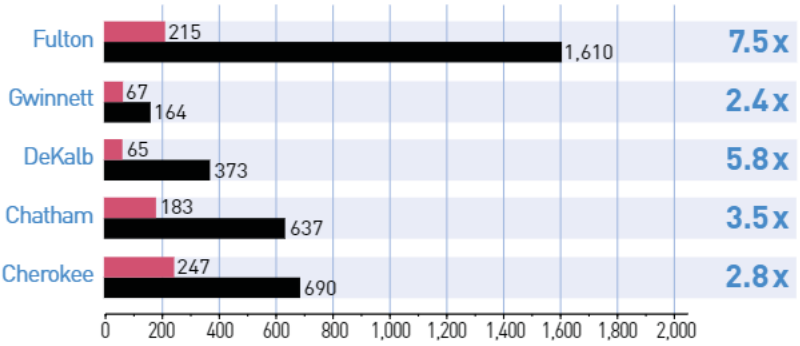
Counties with the largest disparities

Population size >30,000, Black population >2%

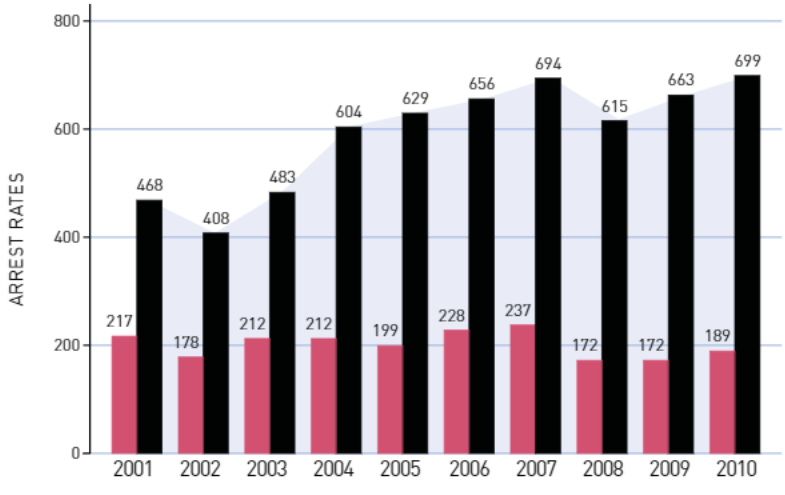


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
699	189

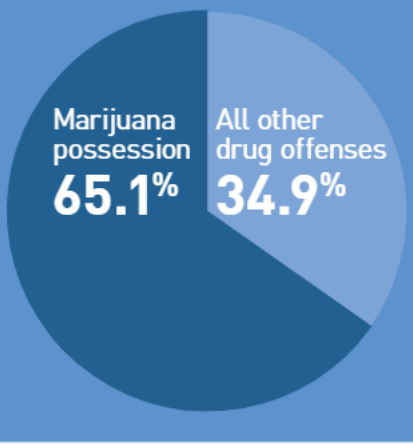
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$121,898,152**

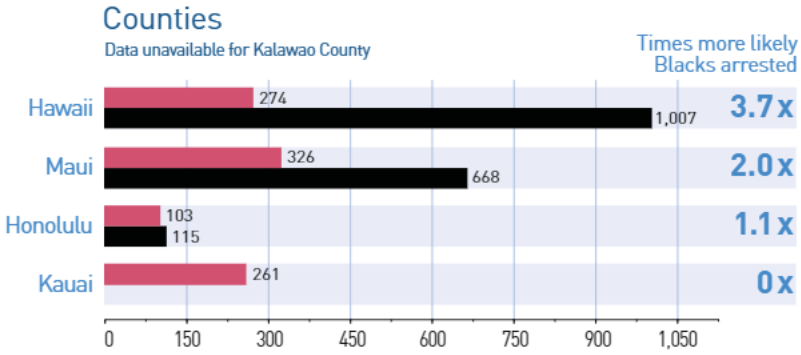
Drug Arrests by Offense in 2010



Hawaii

Blacks are no more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates In All Counties*



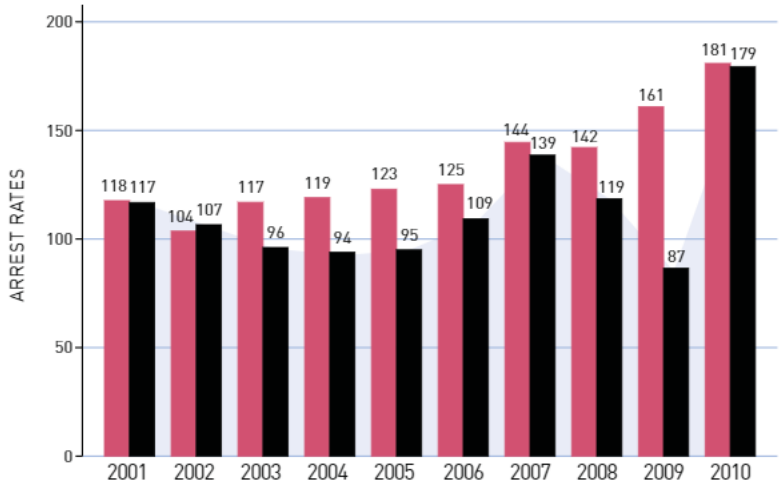
Arrest Rates

BLACK	WHITE
179	181

All counties



Statewide marijuana possession arrest rates 2001-2010



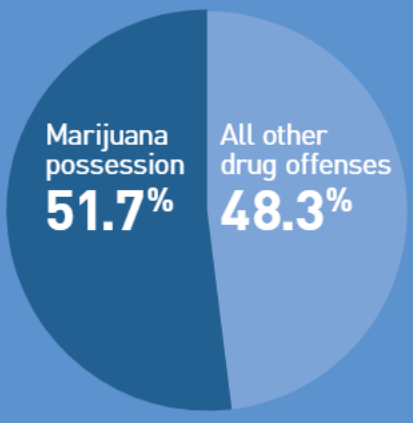
White arrest rate

Black arrest rate

Cost

Money spent enforcing marijuana possession laws in 2010: **$8,148,947**

Drug Arrests by Offense in 2010



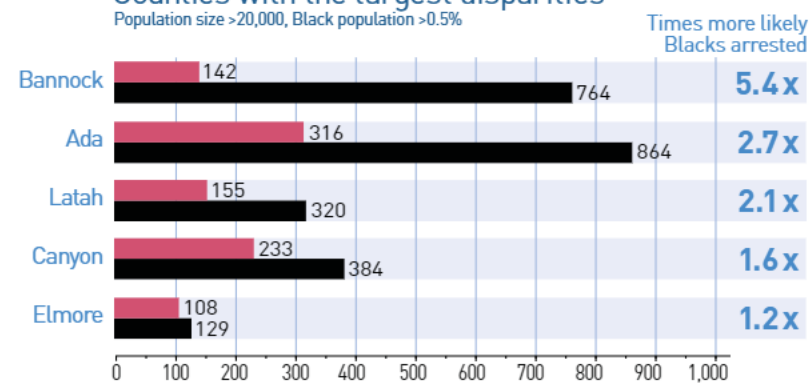
Idaho

Blacks are **2.8** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

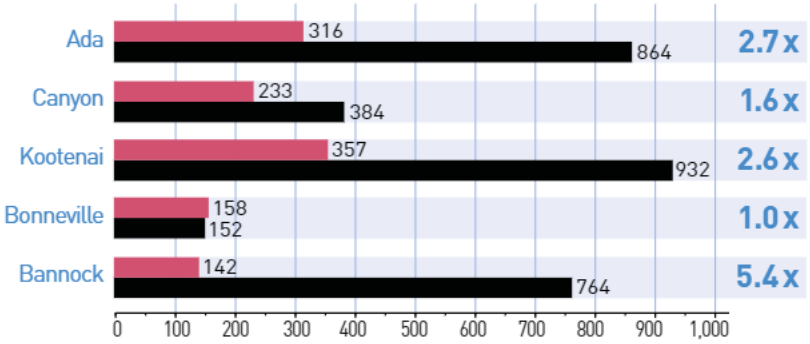
Counties with the largest disparities

Population size >20,000, Black population >0.5%

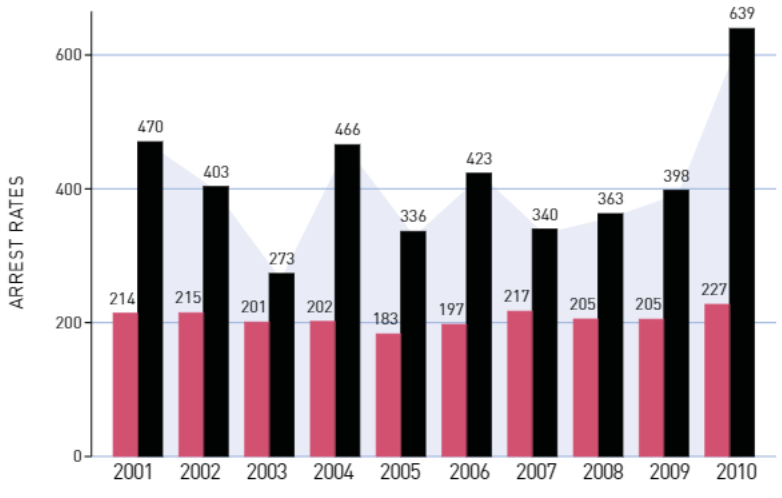


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
639	227

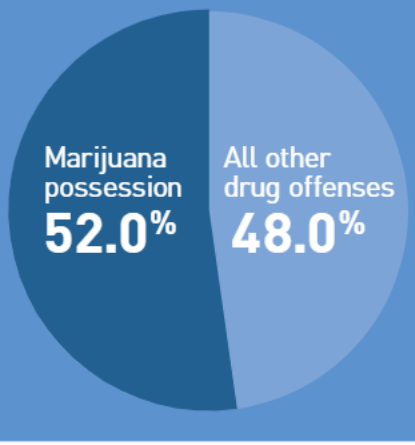
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$11,884,452**

Drug Arrests by Offense in 2010



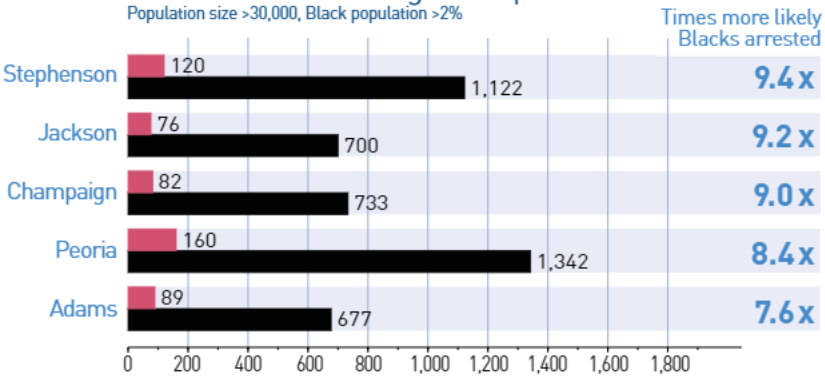
Illinois

Blacks are **7.6** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

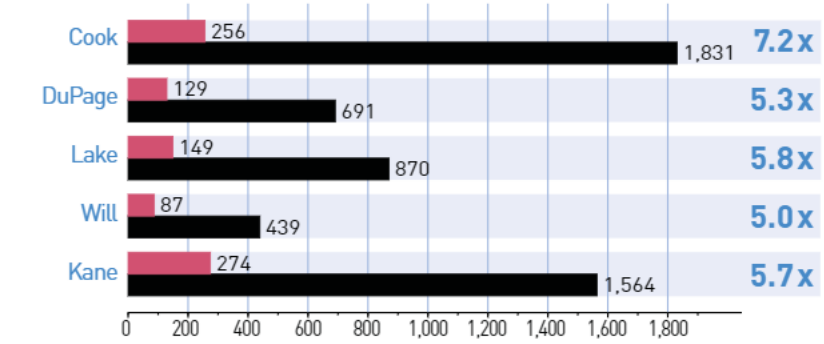
Counties with the largest disparities

Population size >30,000, Black population >2%

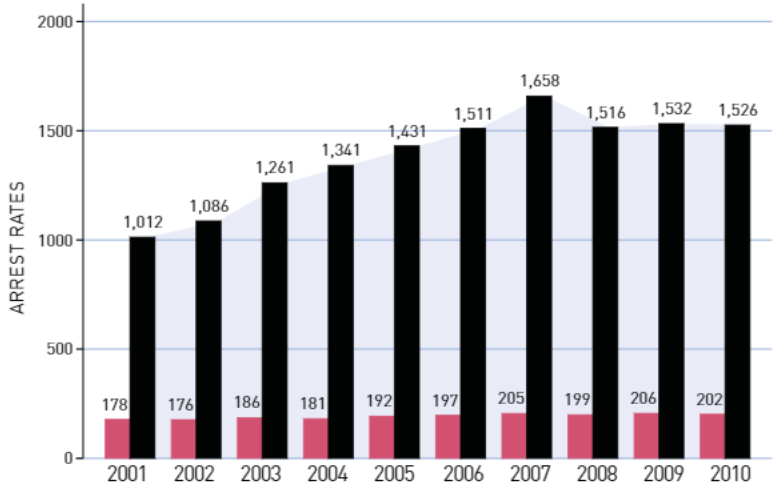


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
1,526	202

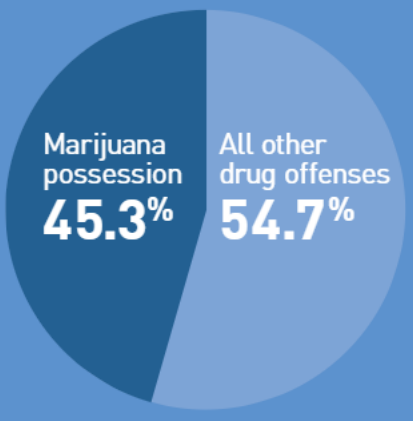
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$221,431,776**

Drug Arrests by Offense in 2010



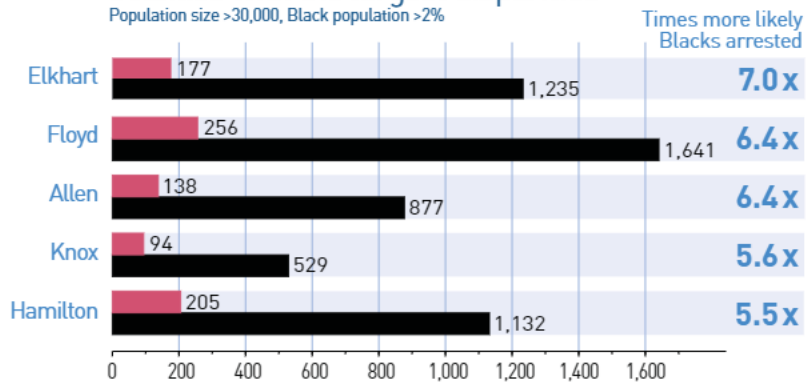
Indiana

Blacks are **3.4** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

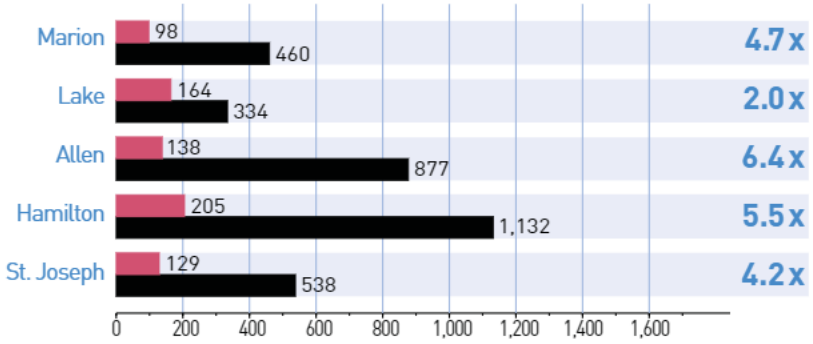
Counties with the largest disparities

Population size >30,000, Black population >2%

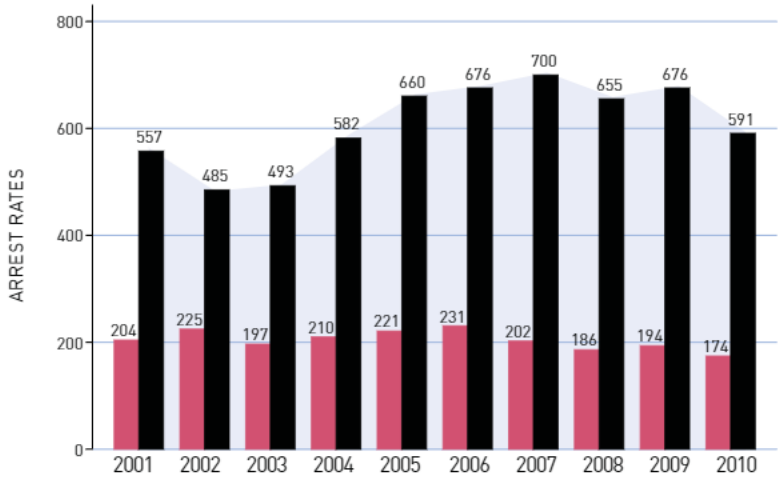


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
591	174

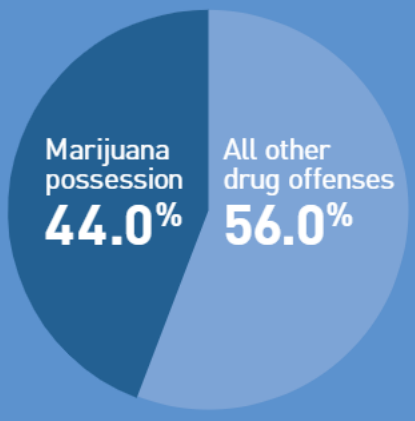
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$38,480,904**

Drug Arrests by Offense in 2010



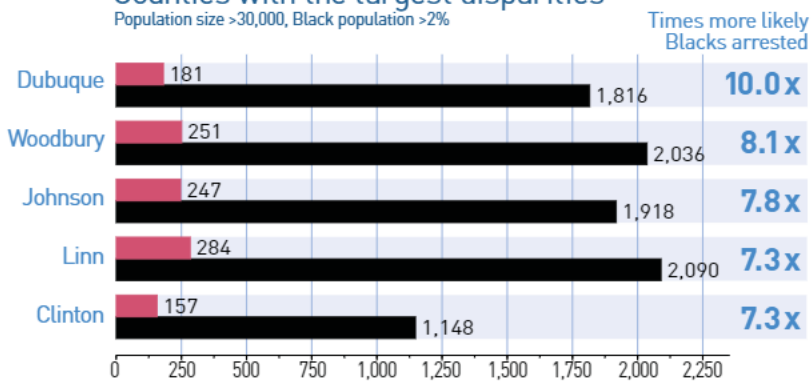
Iowa

Blacks are **8.3** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

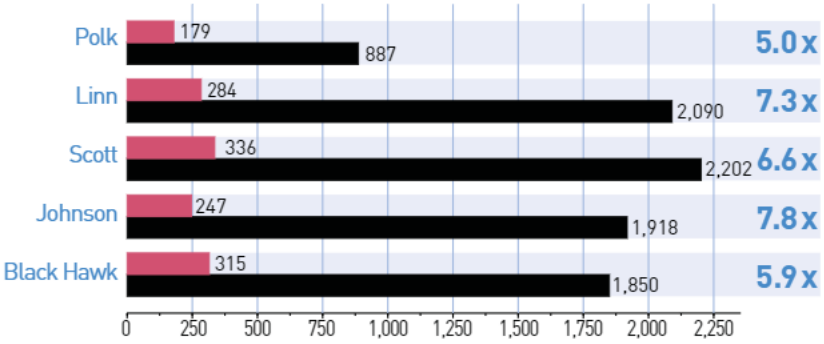
Counties with the largest disparities

Population size >30,000, Black population >2%

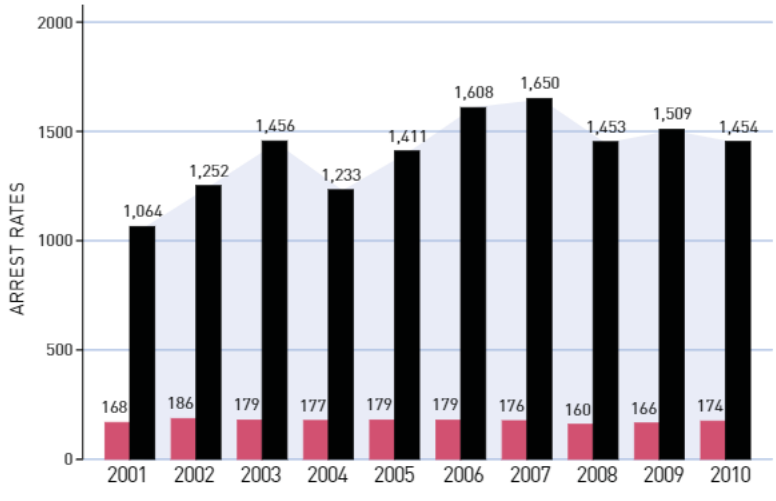


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



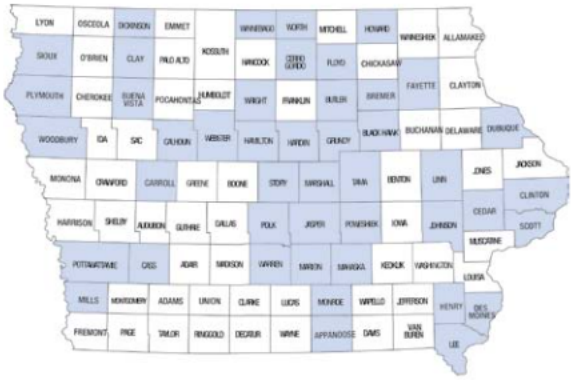
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
1,454	174

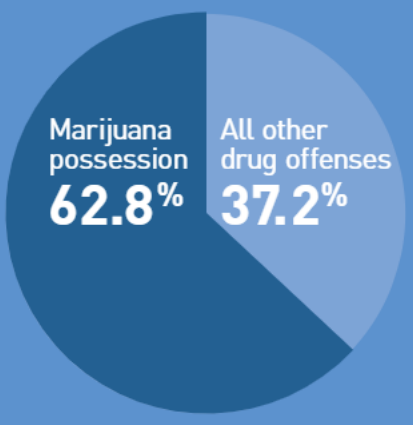
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$22,845,638**

Drug Arrests by Offense in 2010



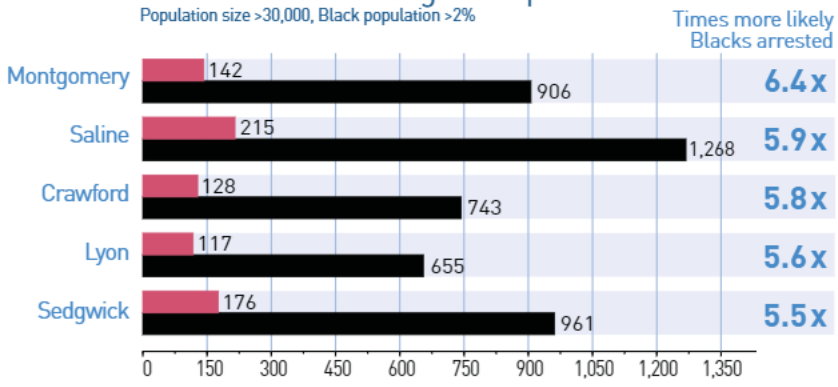
Kansas

Blacks are **4.4** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

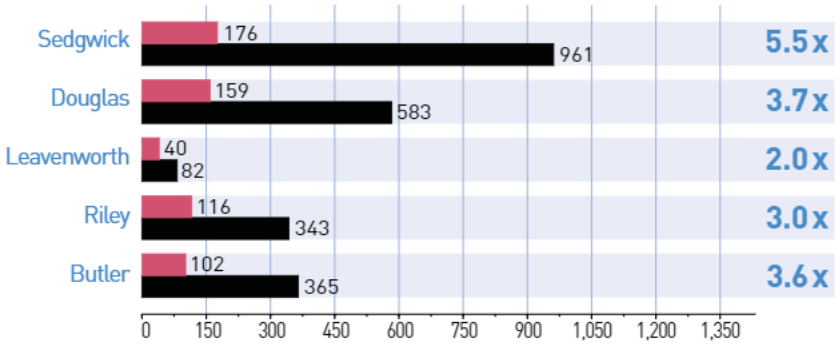
Counties with the largest disparities

Population size >30,000, Black population >2%

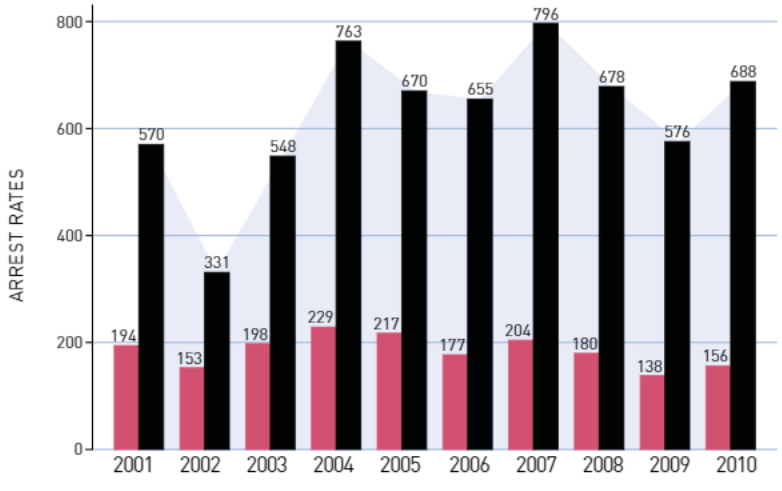


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
688	156

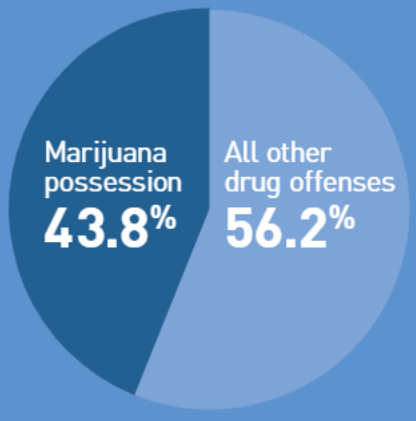
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$20,182,786**

Drug Arrests by Offense in 2010



Kentucky

Blacks are **6.0** times more likely than whites to be arrested for marijuana possession

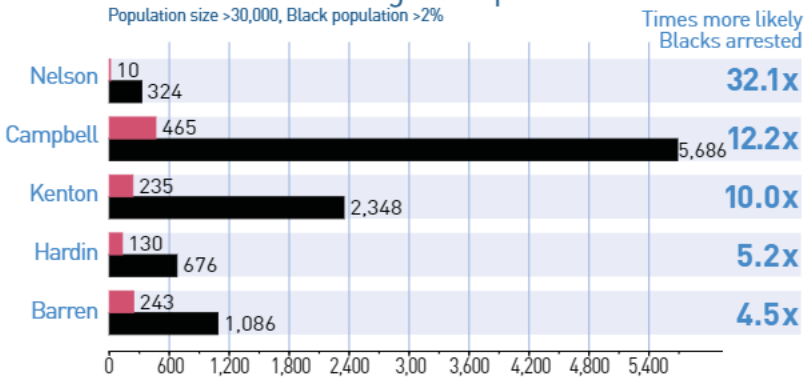
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
697	117

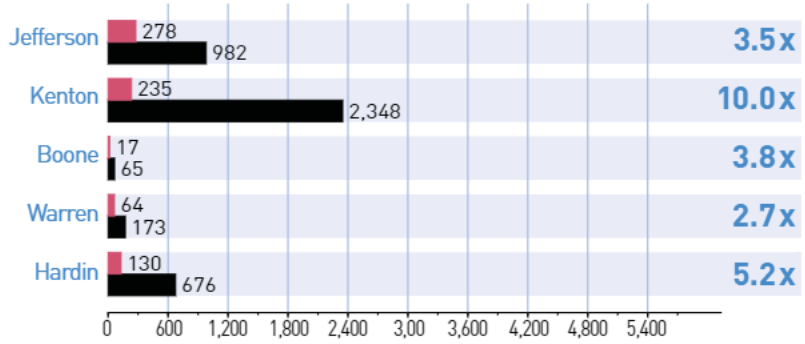
Counties with the largest disparities

Population size >30,000, Black population >2%



Counties with the largest population

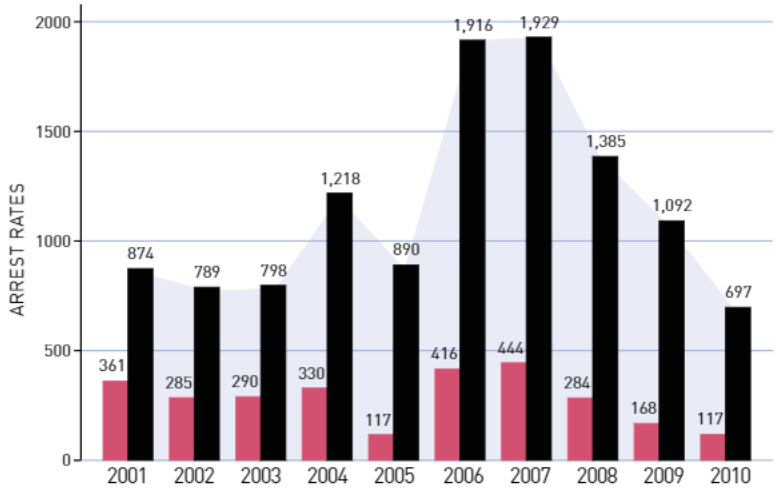
Includes all counties, listed in order of size



All counties with racial disparities above the national average (3.73)



Statewide marijuana possession arrest rates 2001-2010



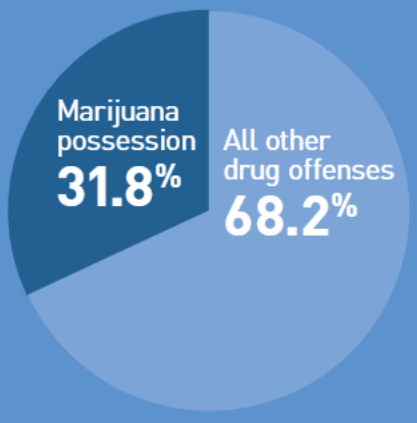
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$19,499,768**

Drug Arrests by Offense in 2010



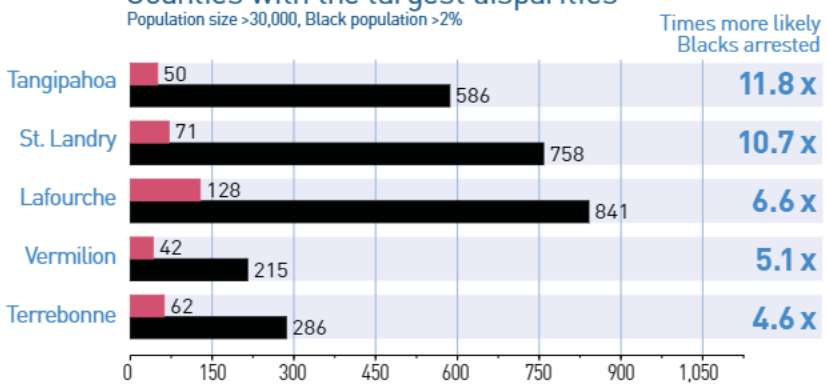
Louisiana

Blacks are **3.1** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

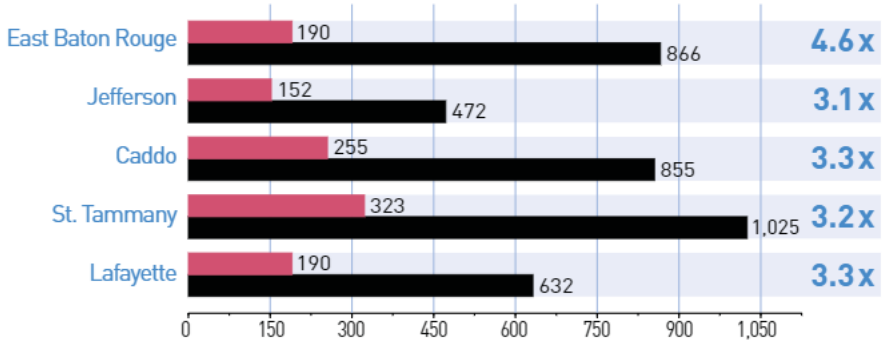
Counties with the largest disparities

Population size >30,000, Black population >2%

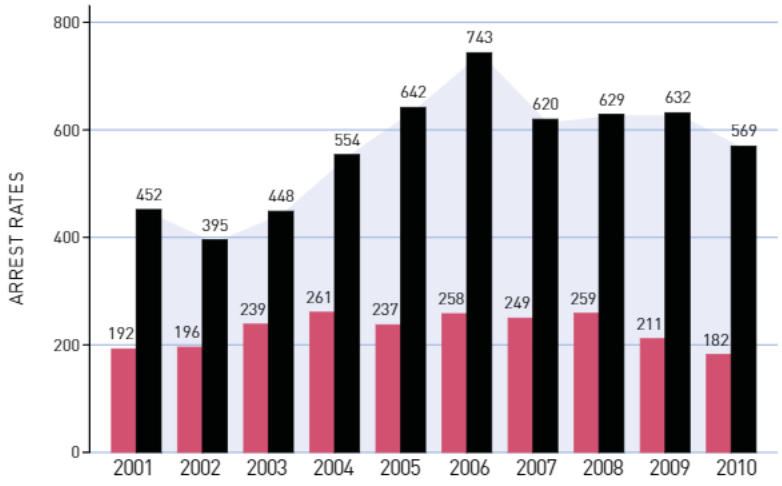


Counties with the largest population

Includes all counties, listed in order of size
Data unavailable for Orleans County (New Orleans)



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
569	182

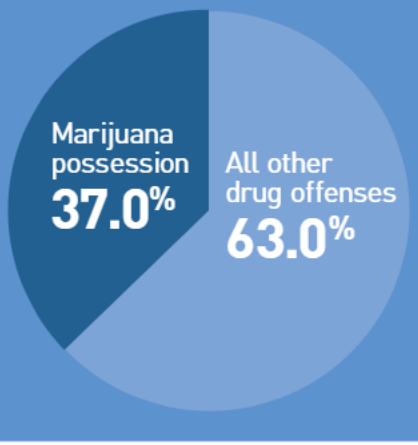
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$46,450,368**

Drug Arrests by Offense in 2010



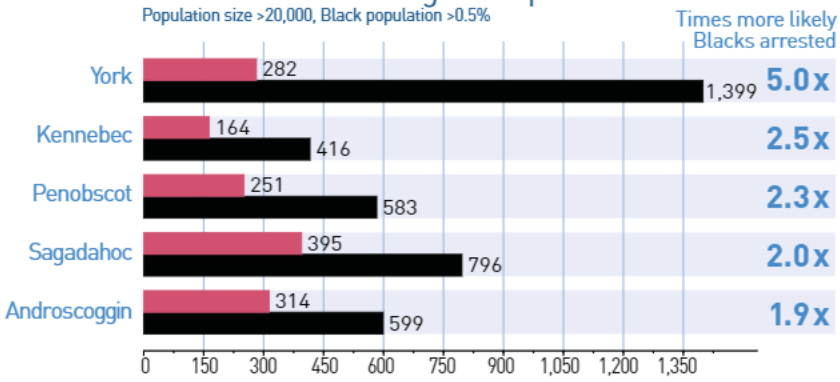
Maine

Blacks are **2.1** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

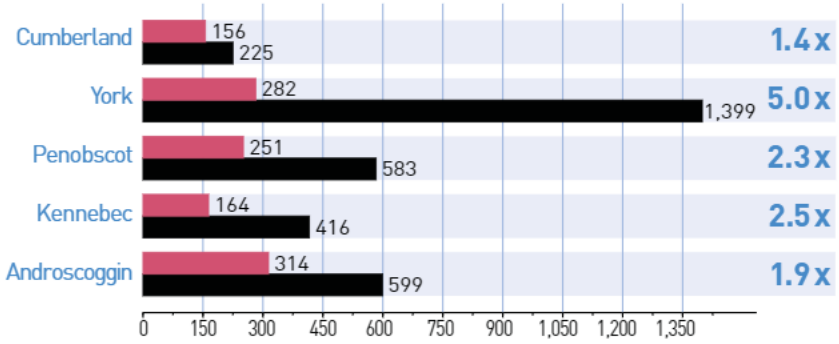
Counties with the largest disparities

Population size >20,000, Black population >0.5%

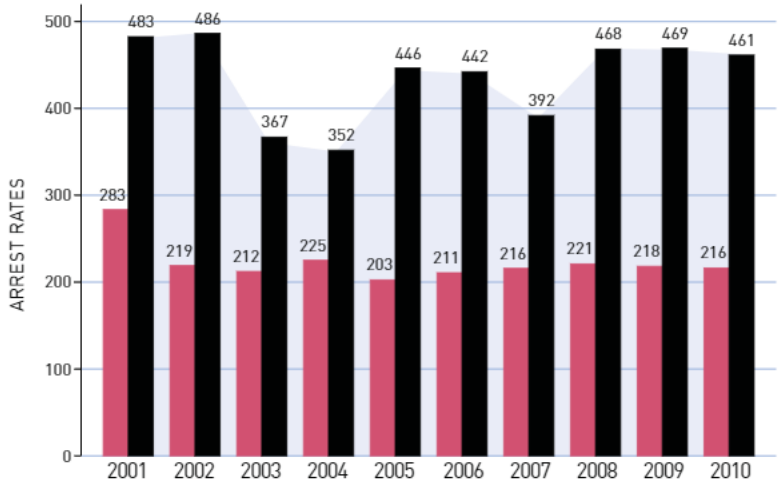


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
461	216

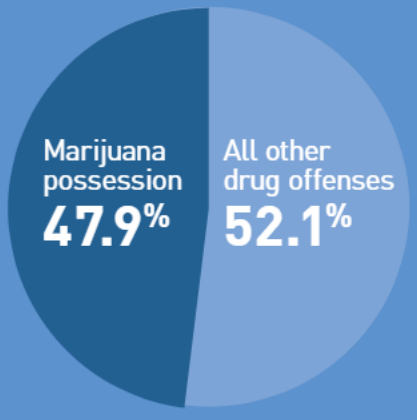
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$8,868,964**

Drug Arrests by Offense in 2010



Maryland

Blacks are **2.9** times more likely than whites to be arrested for marijuana possession

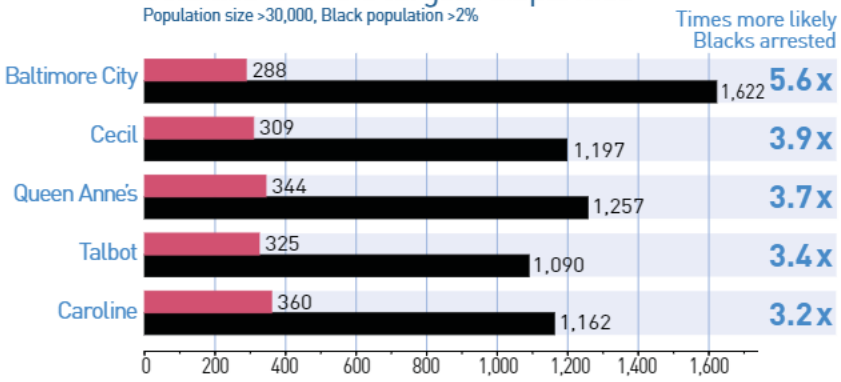
Arrest Rates

BLACK	WHITE
790	276

Racial Disparities In Marijuana Possession Arrest Rates*

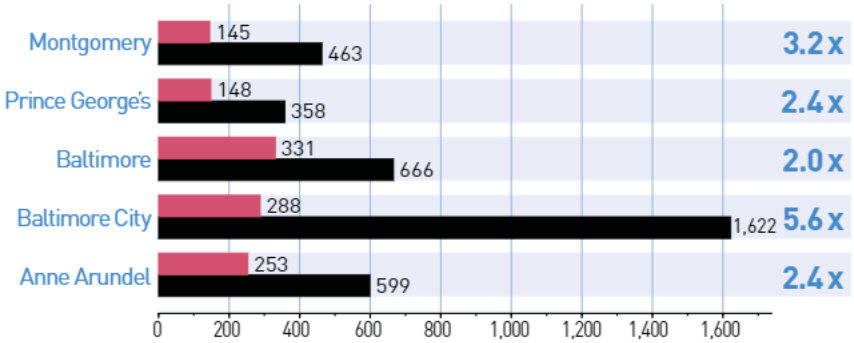
Counties with the largest disparities

Population size >30,000, Black population >2%

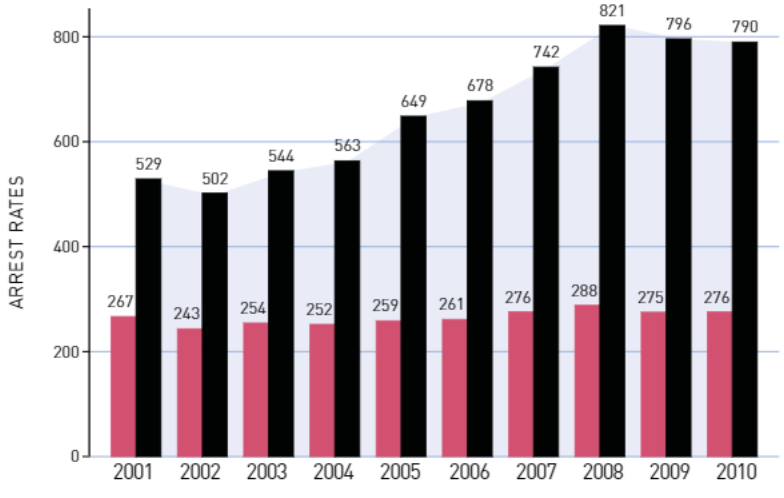


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



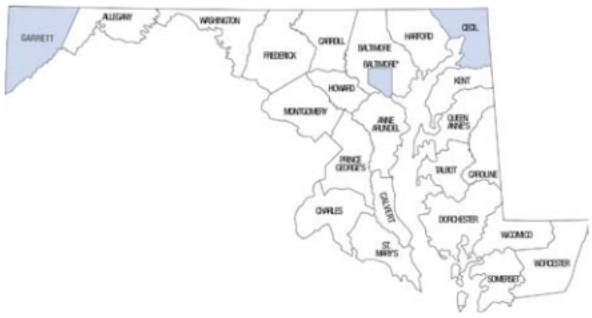
White arrest rate

Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

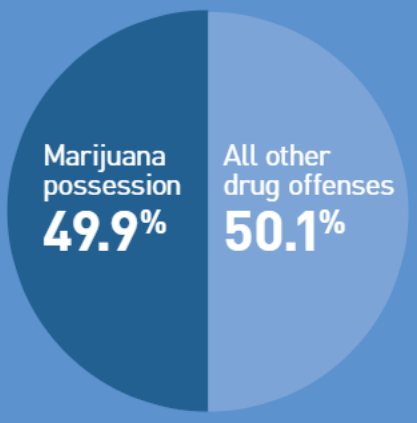
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$106,702,784**

Drug Arrests by Offense in 2010



Massachusetts

Blacks are **3.9** times more likely than whites to be arrested for marijuana possession

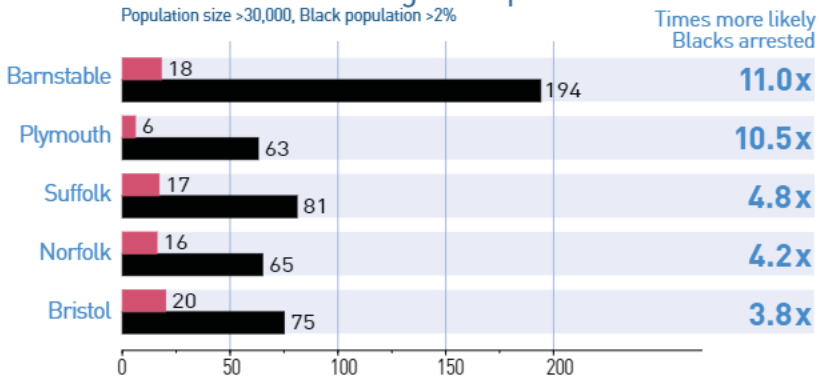
Arrest Rates

BLACK	WHITE
61	16

Racial Disparities In Marijuana Possession Arrest Rates*

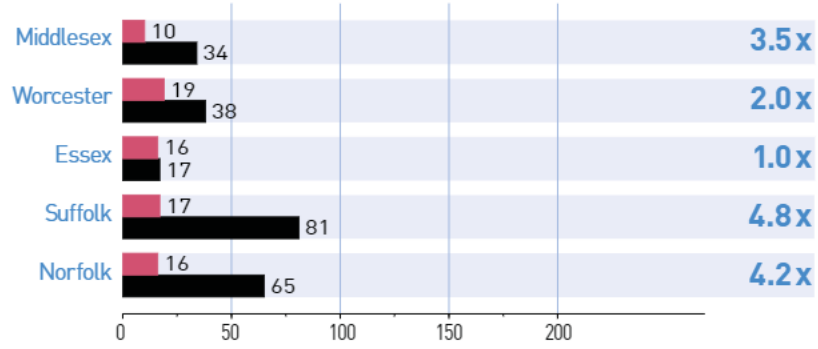
Counties with the largest disparities

Population size >30,000, Black population >2%

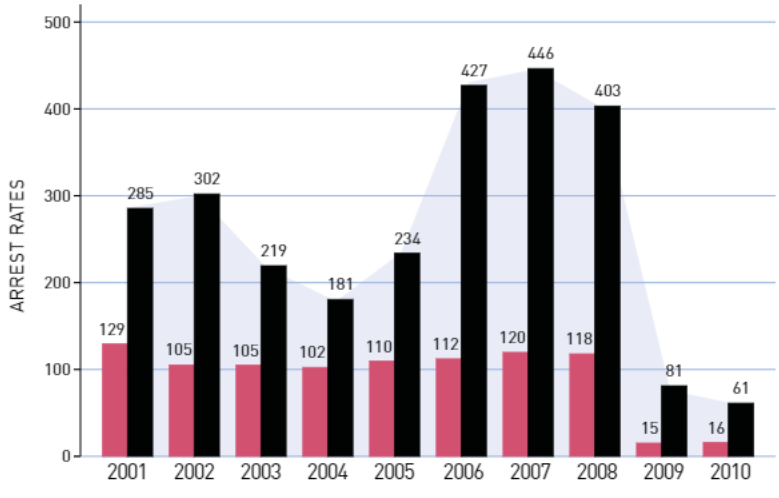


Counties with the largest population

Includes all counties, listed in order of size



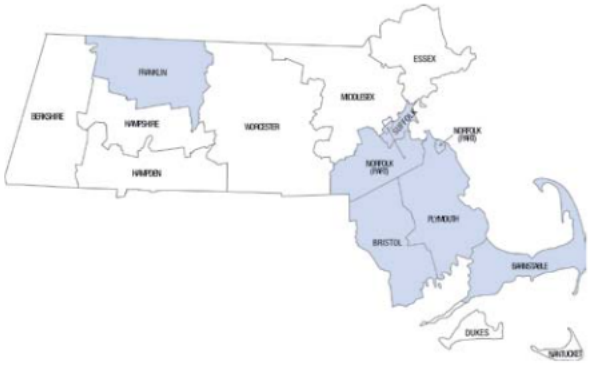
Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

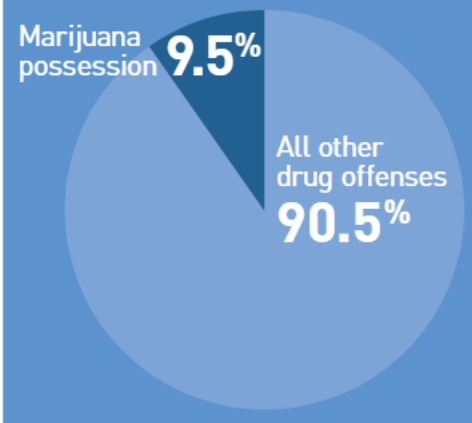
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$9,327,650**

Drug Arrests by Offense in 2010



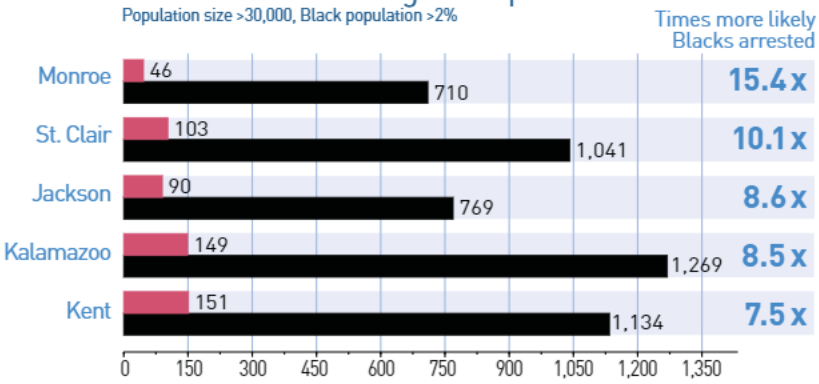
Michigan

Blacks are **3.3** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

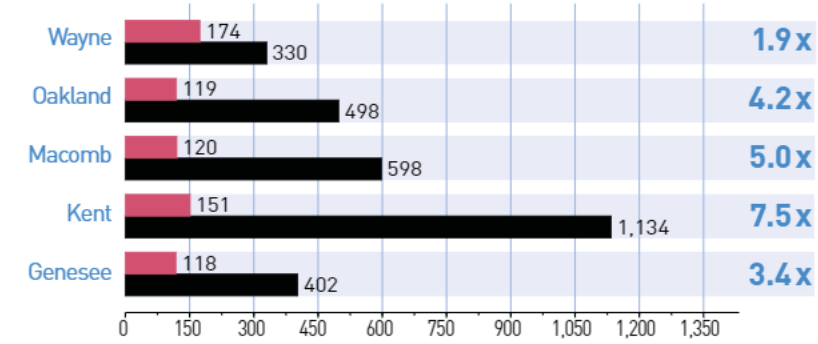
Counties with the largest disparities

Population size >30,000, Black population >2%

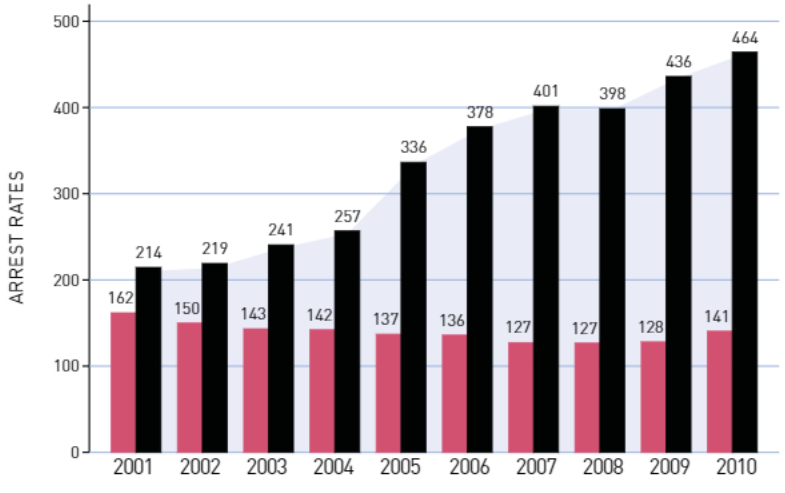


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
464	141

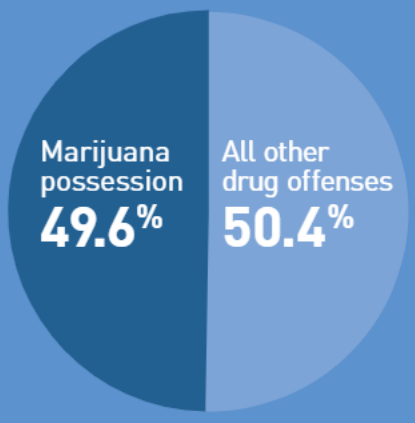
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$94,838,792**

Drug Arrests by Offense in 2010



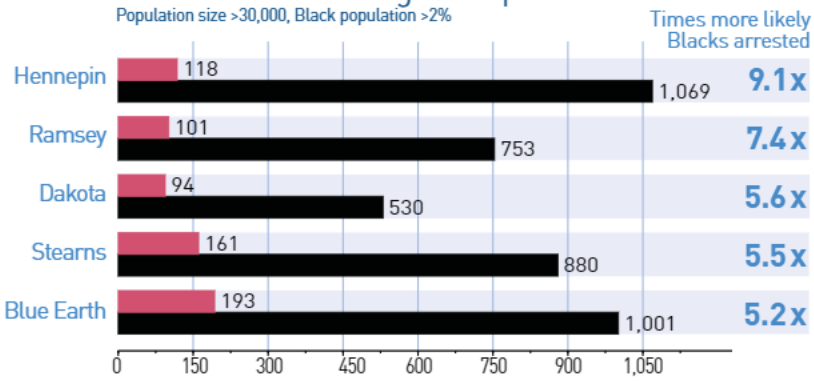
Minnesota

Blacks are **7.8** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

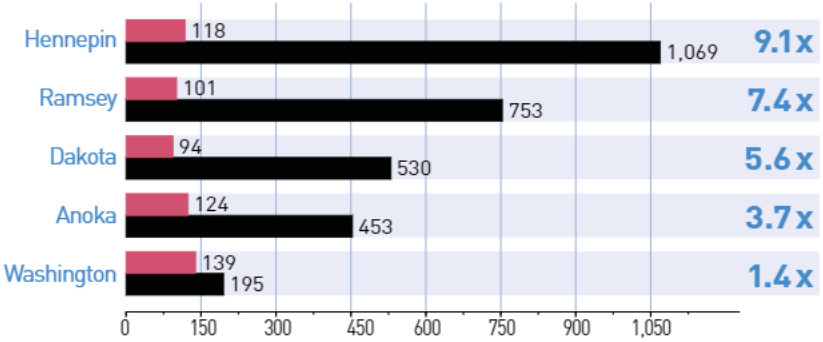
Counties with the largest disparities

Population size >30,000, Black population >2%

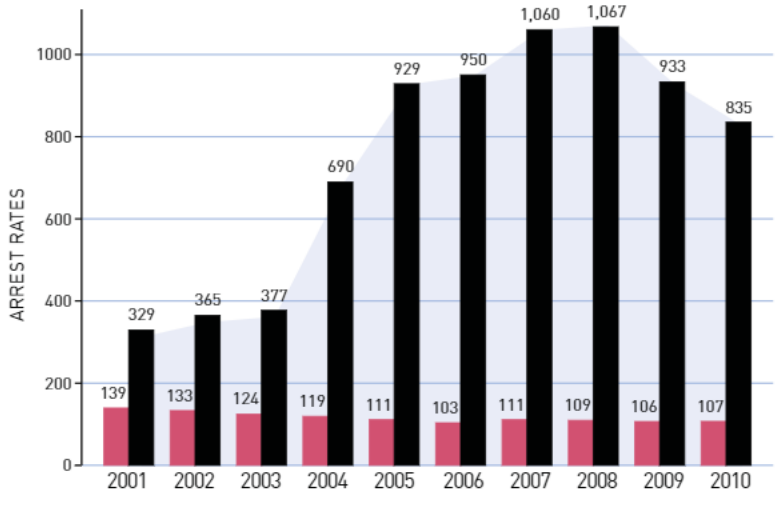


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



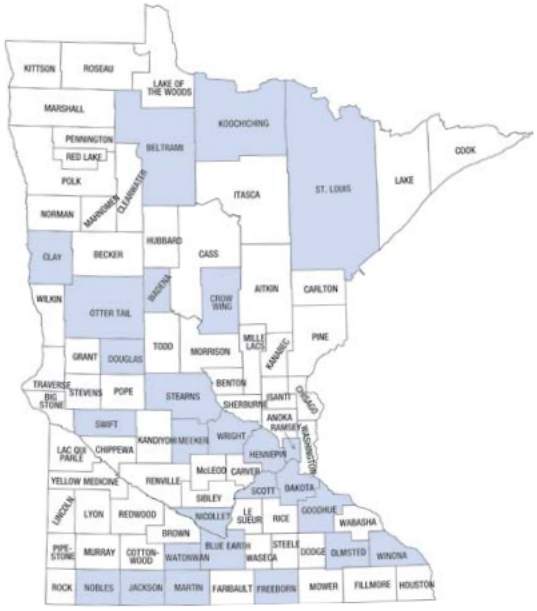
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
835	107

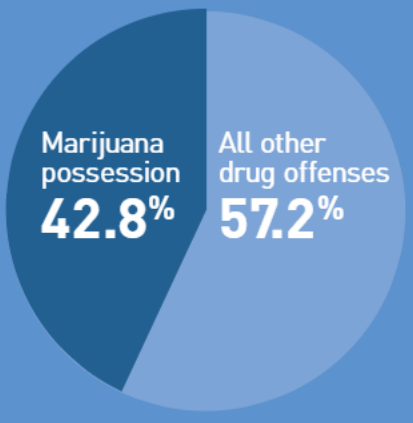
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$42,071,288**

Drug Arrests by Offense in 2010



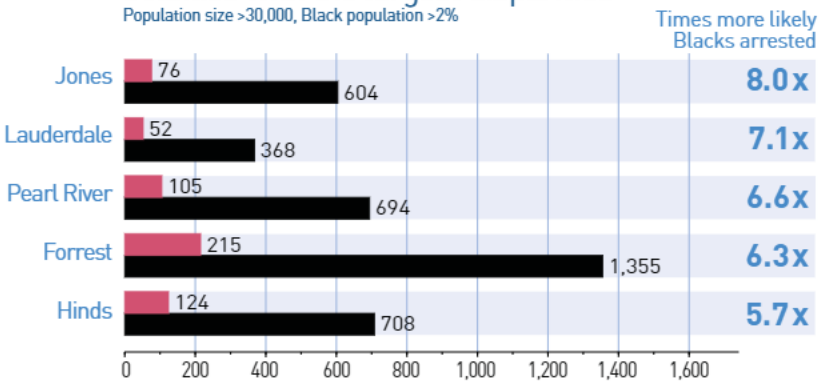
Mississippi

Blacks are **3.9** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

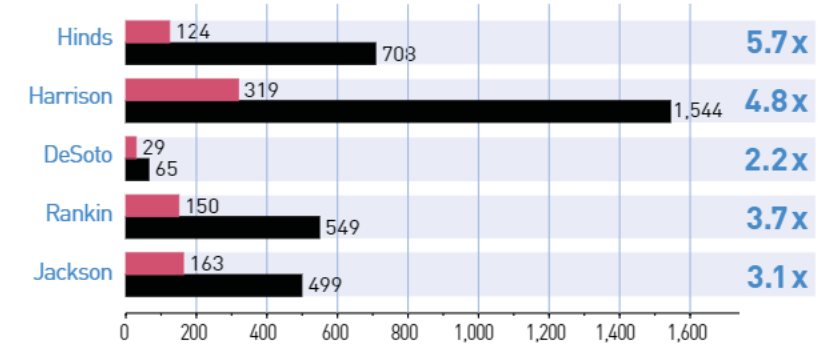
Counties with the largest disparities

Population size >30,000, Black population >2%

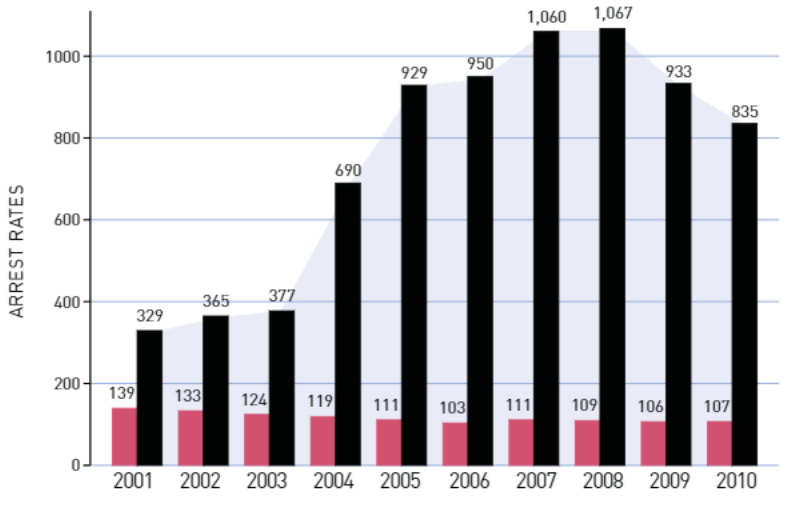


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
605	157

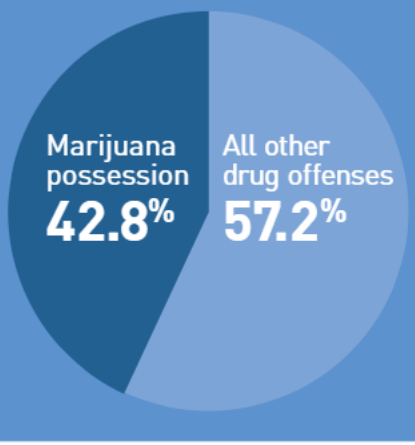
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$16,740,772**

Drug Arrests by Offense in 2010



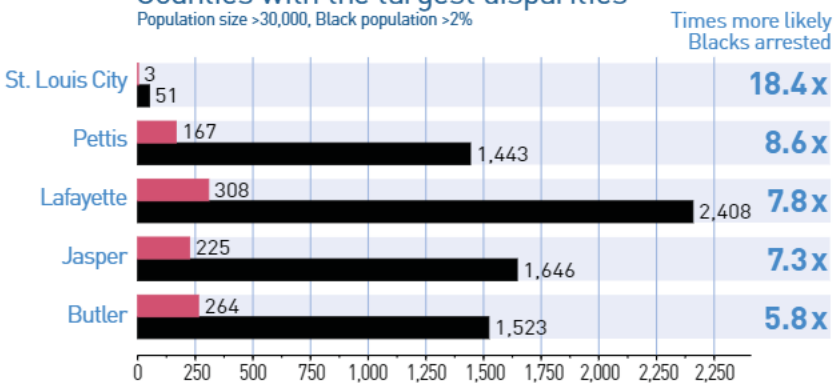
Missouri

Blacks are **2.6** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

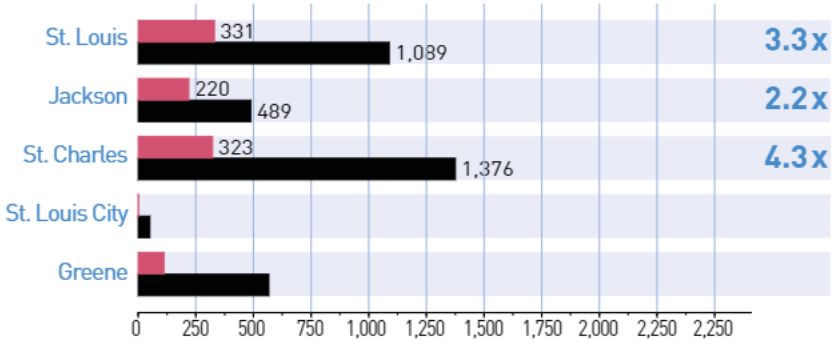
Counties with the largest disparities

Population size >30,000, Black population >2%

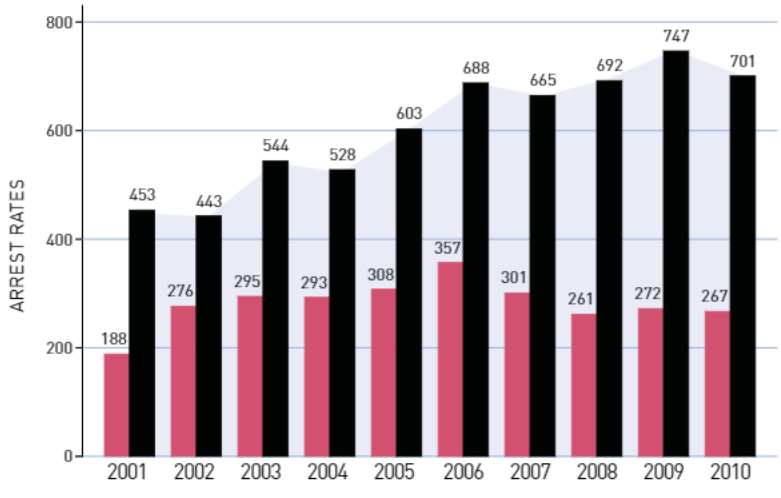


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
701	267

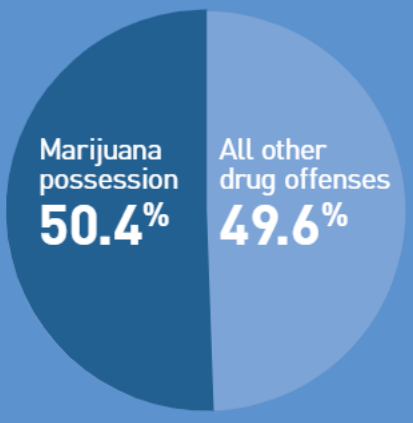
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$49,119,612**

Drug Arrests by Offense in 2010



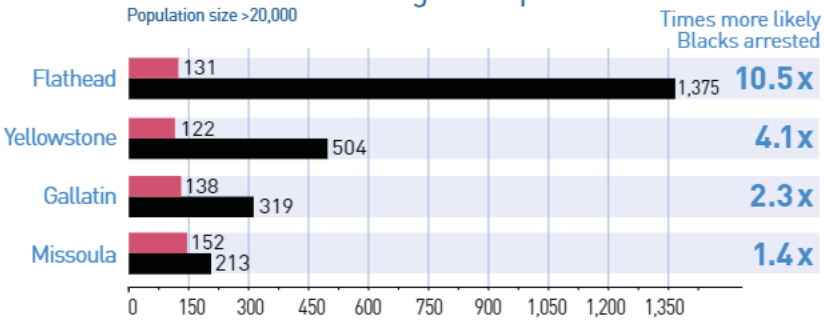
Montana

Blacks are **3.5** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

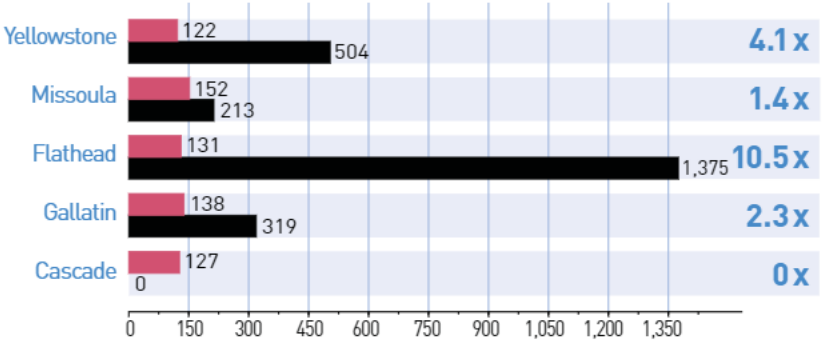
Counties with the largest disparities

Population size >20,000

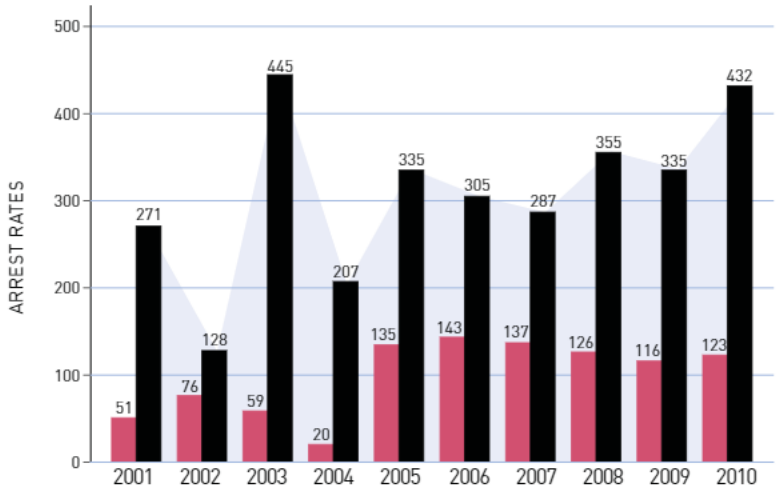


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
432	123

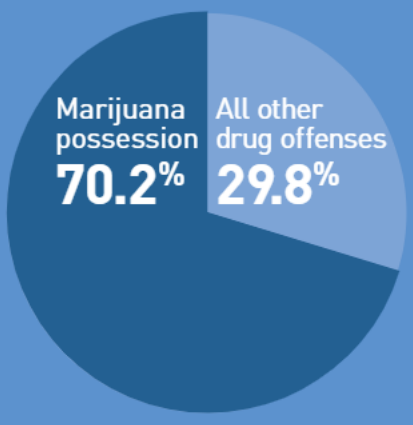
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$6,161,866**

Drug Arrests by Offense in 2010



Nebraska

Blacks are **4.7** times more likely than whites to be arrested for marijuana possession

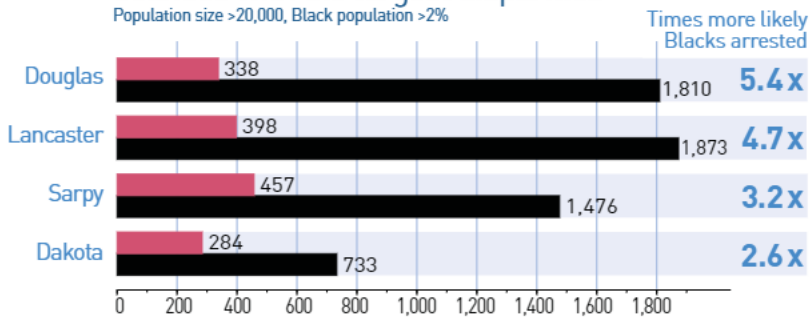
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
1,699	365

Counties with the largest disparities

Population size >20,000, Black population >2%

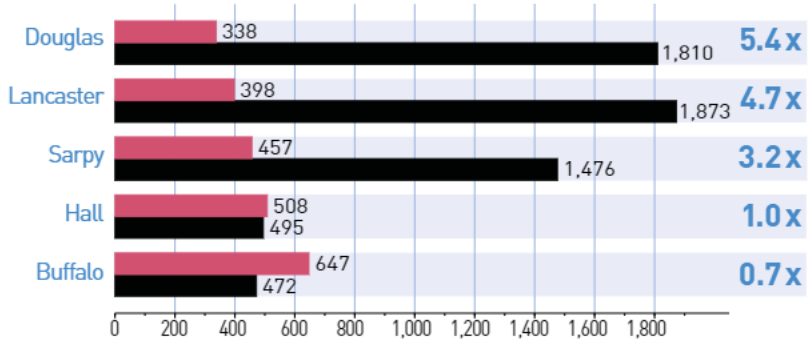


All counties with racial disparities above the national average (3.73)

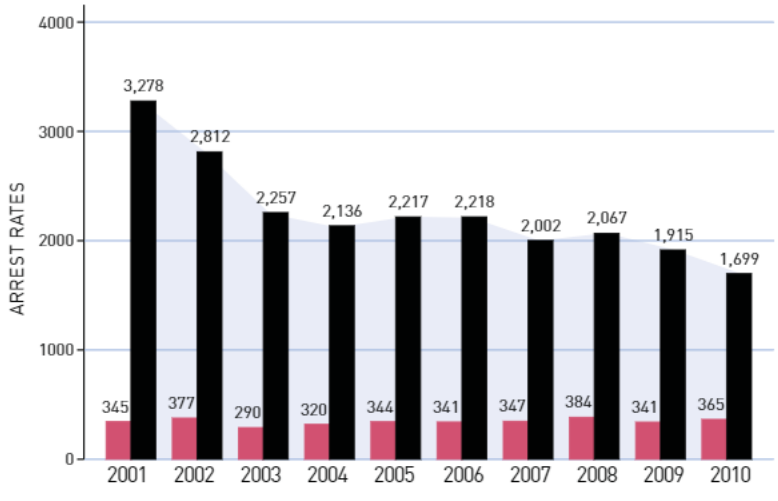


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



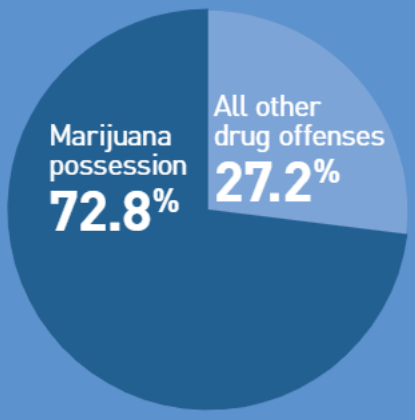
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$22,809,270**

Drug Arrests by Offense in 2010



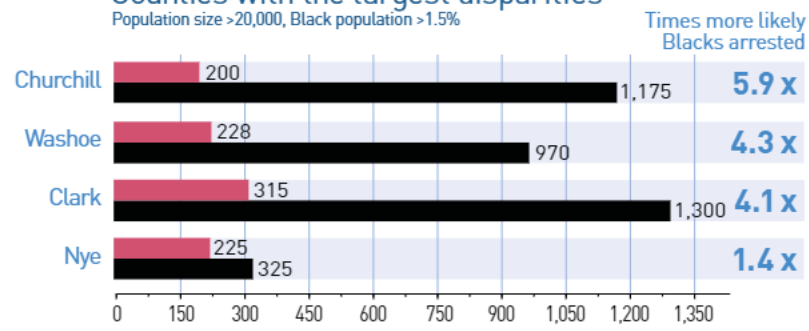
Nevada

Blacks are **4.5** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

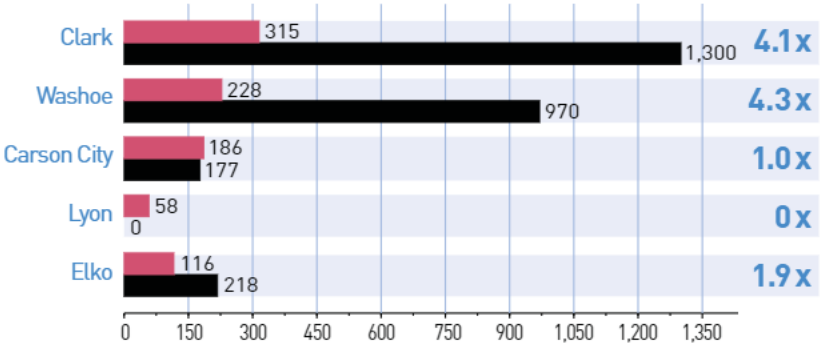
Counties with the largest disparities

Population size >20,000, Black population >1.5%

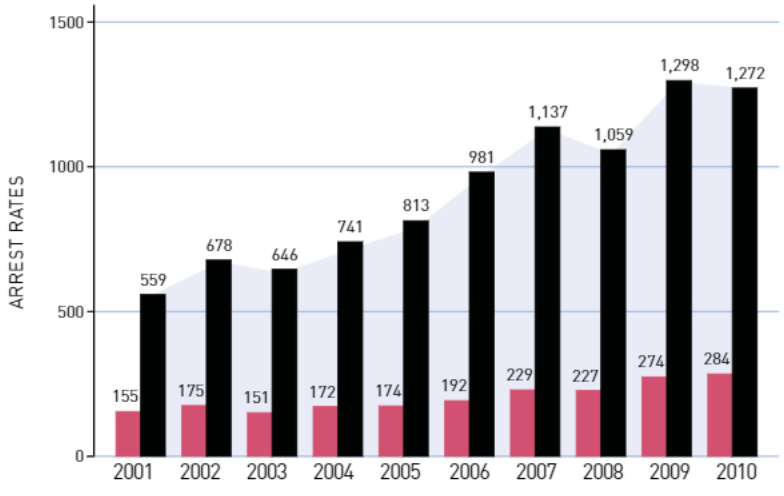


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate

Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
1,272	284

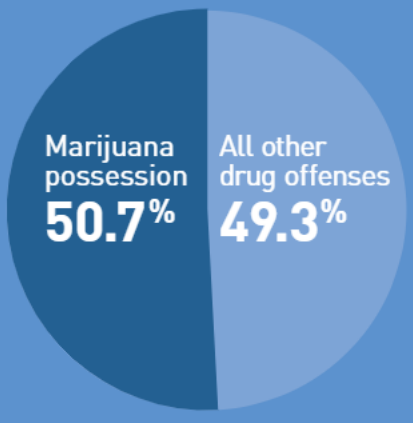
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$41,601,604**

Drug Arrests by Offense in 2010



New Hampshire

Blacks are **2.6** times more likely than whites to be arrested for marijuana possession

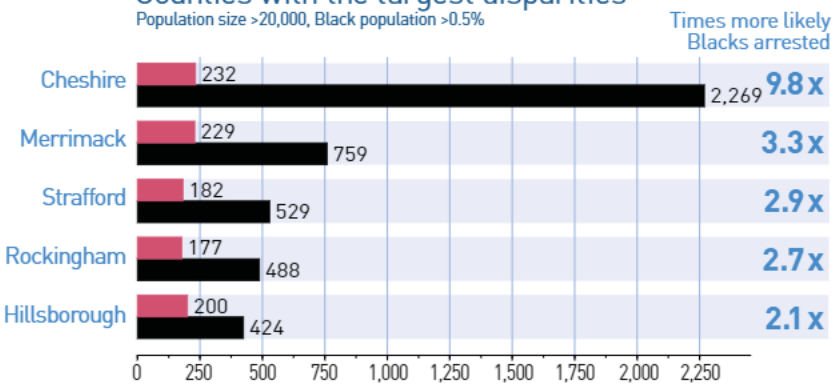
Arrest Rates

BLACK	WHITE
561	213

Racial Disparities In Marijuana Possession Arrest Rates*

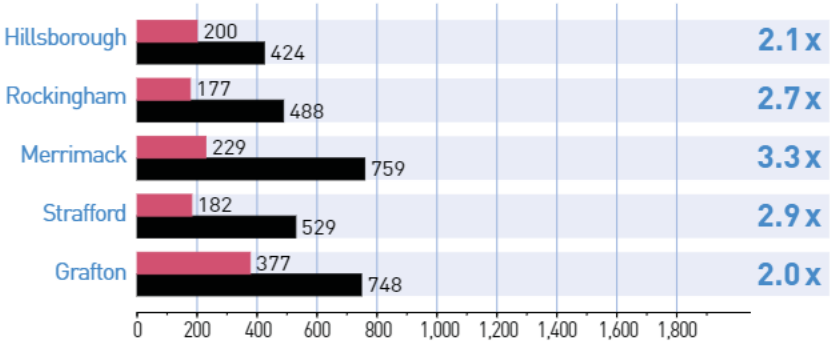
Counties with the largest disparities

Population size >20,000, Black population >0.5%

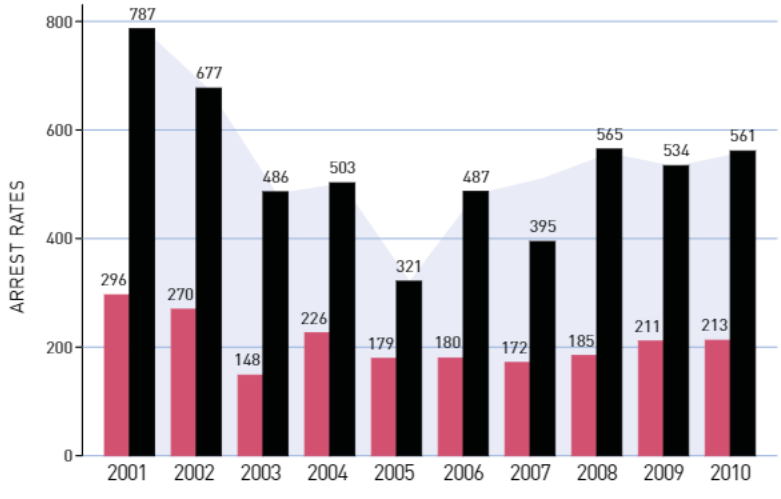


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

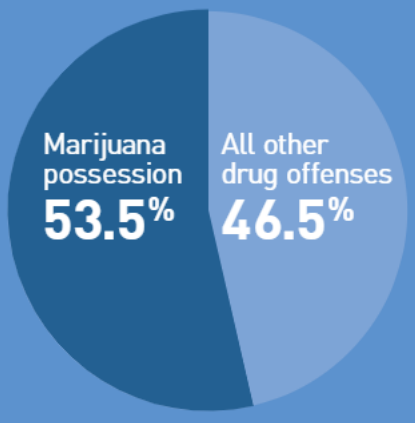
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$6,526,364**

Drug Arrests by Offense in 2010



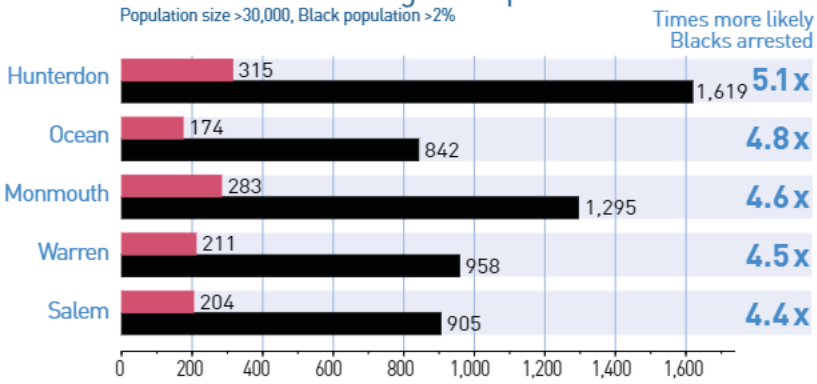
New Jersey

Blacks are **2.8** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

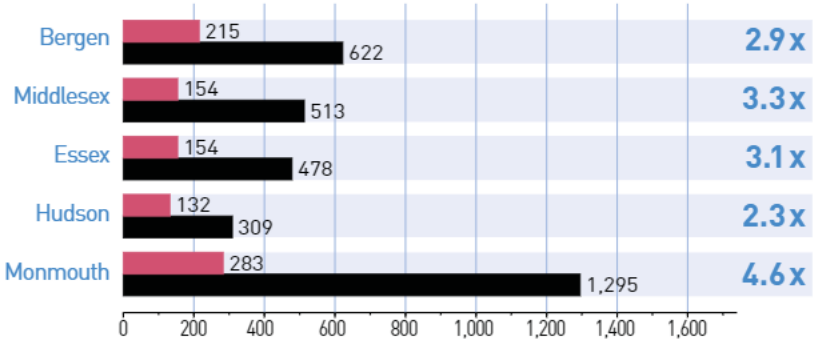
Counties with the largest disparities

Population size >30,000, Black population >2%

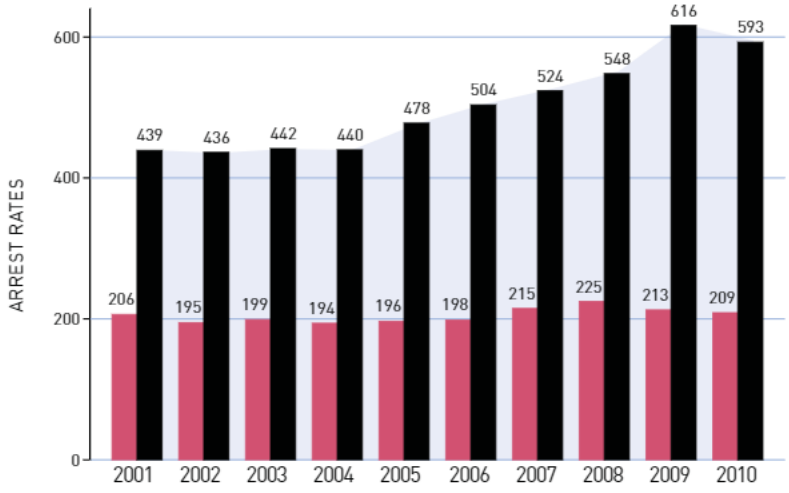


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
593	209

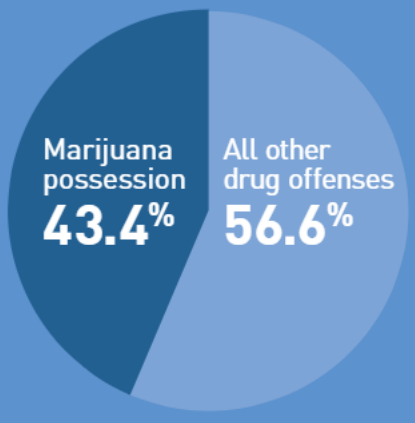
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$127,343,512**

Drug Arrests by Offense in 2010



New Mexico

Blacks are **1.9** times more likely than whites to be arrested for marijuana possession

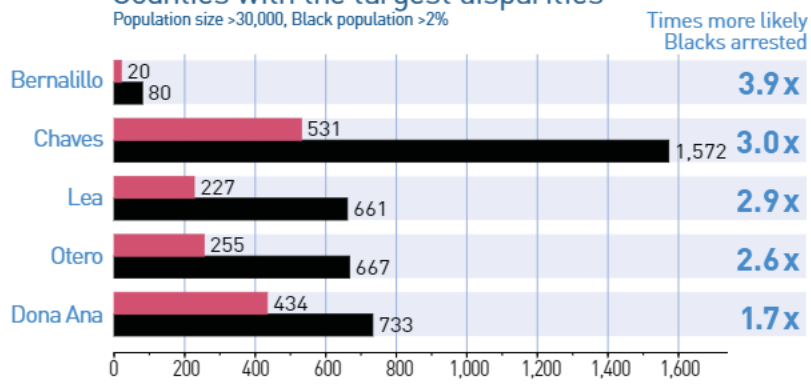
Arrest Rates

BLACK	WHITE
300	161

Racial Disparities In Marijuana Possession Arrest Rates*

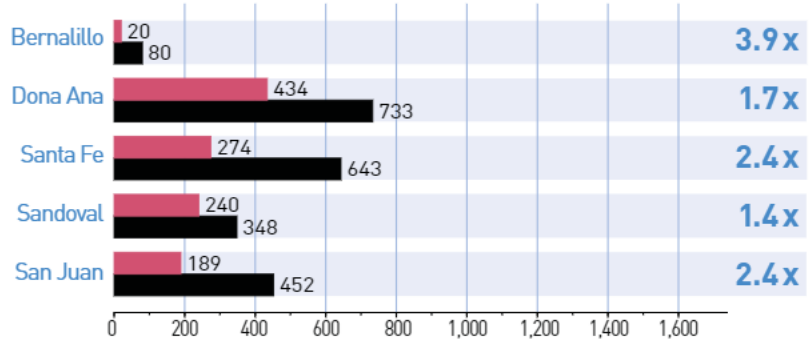
Counties with the largest disparities

Population size >30,000, Black population >2%

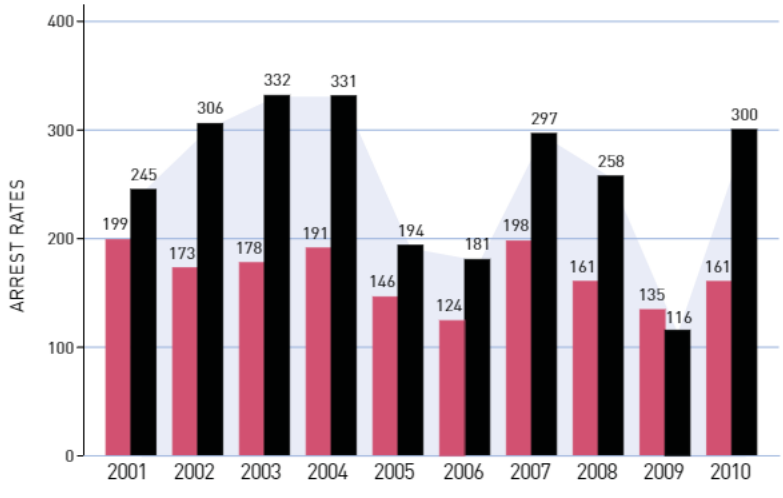


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



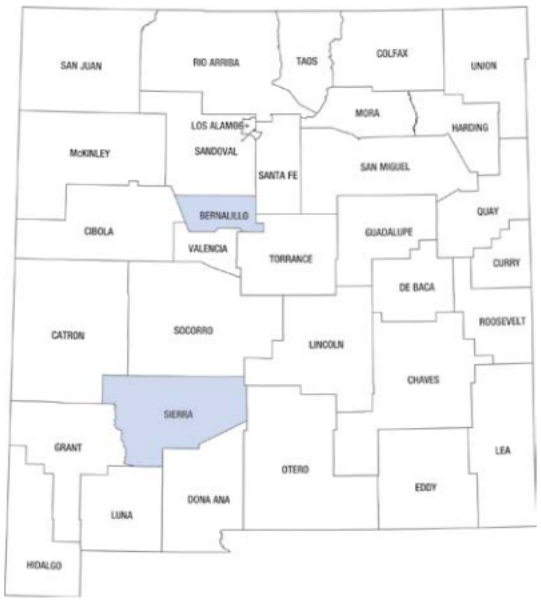
White arrest rate

Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

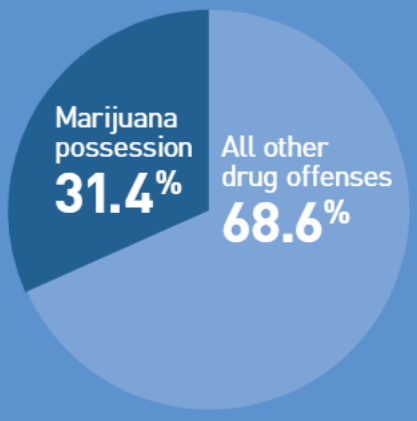
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$11,079,450**

Drug Arrests by Offense in 2010



New York

Blacks are **4.5** times more likely than whites to be arrested for marijuana possession

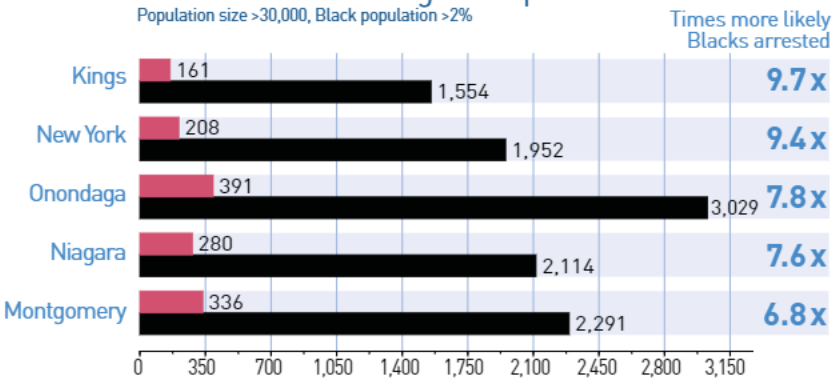
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
1,192	263

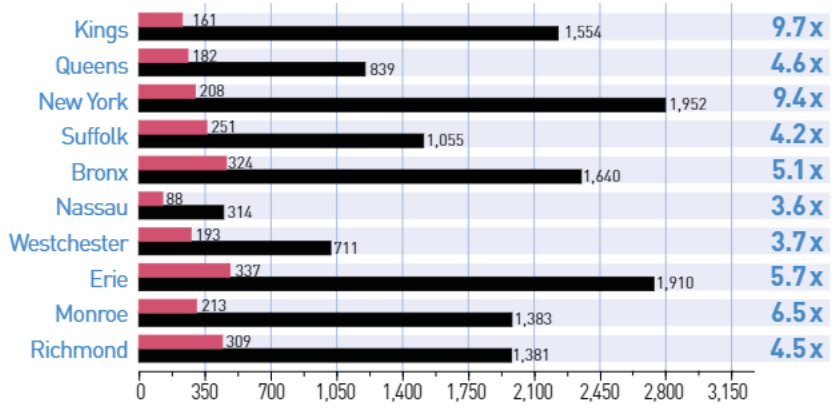
Counties with the largest disparities

Population size >30,000, Black population >2%

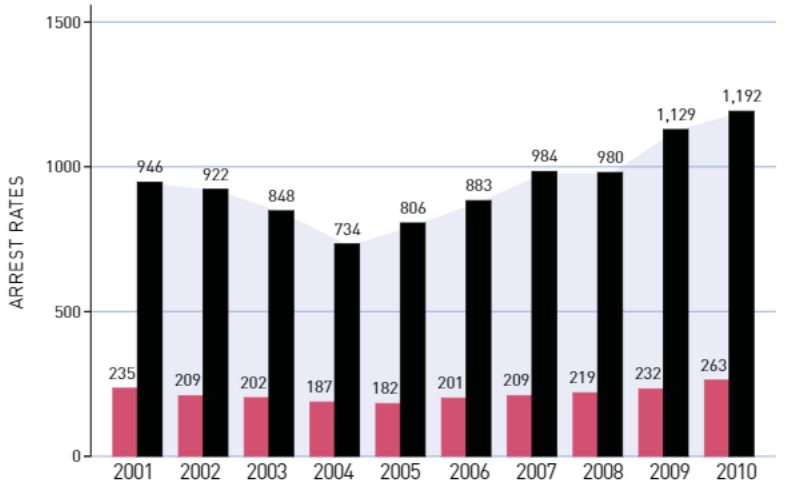


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

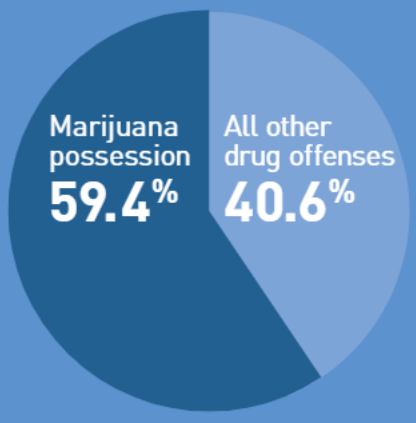
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$678,450,560**

Drug Arrests by Offense in 2010



North Carolina

Blacks are **3.4** times more likely than whites to be arrested for marijuana possession

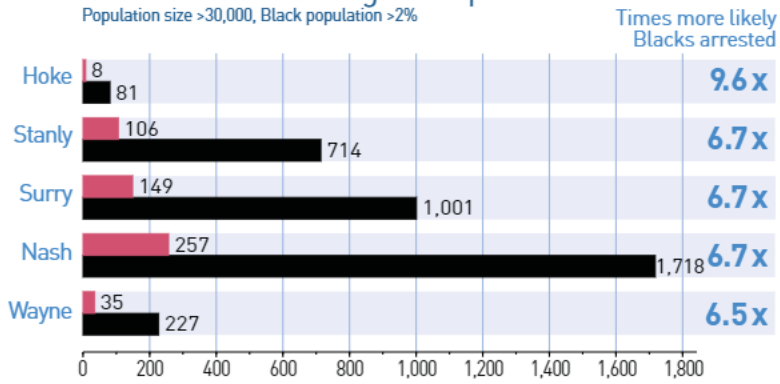
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
503	149

Counties with the largest disparities

Population size >30,000, Black population >2%

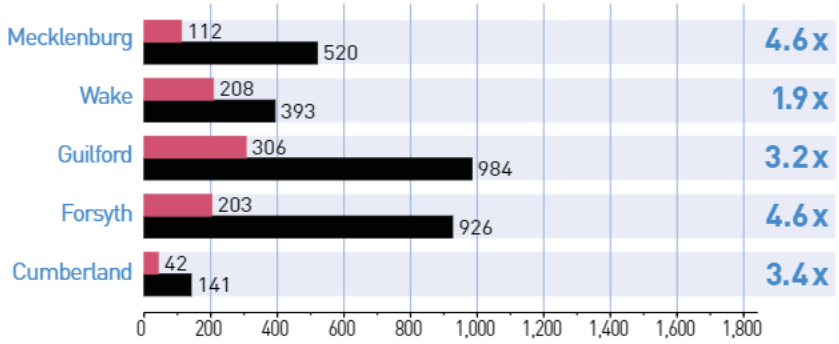


All counties with racial disparities above the national average (3.73)

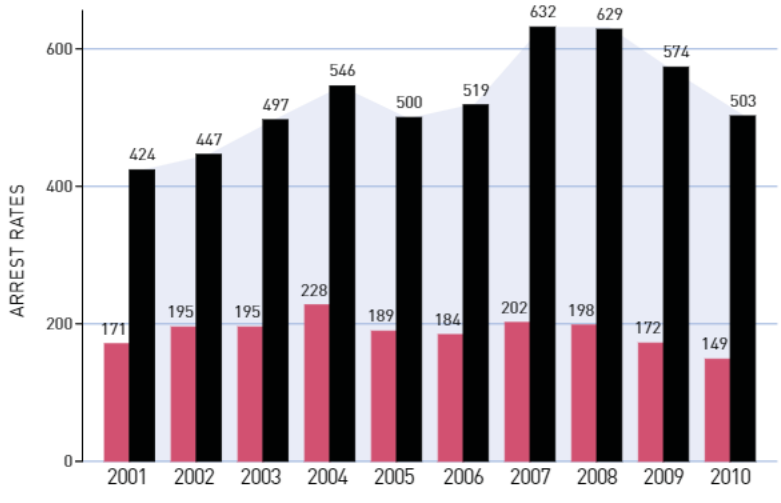


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



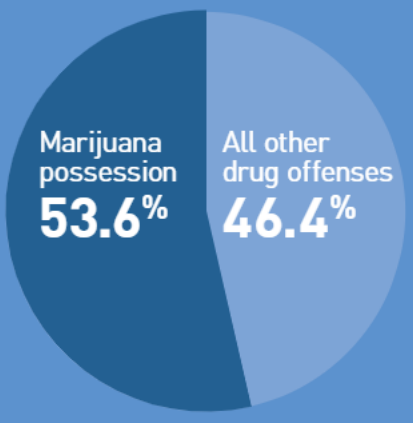
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$54,934,668**

Drug Arrests by Offense in 2010



North Dakota

Blacks are **4.4** times more likely than whites to be arrested for marijuana possession

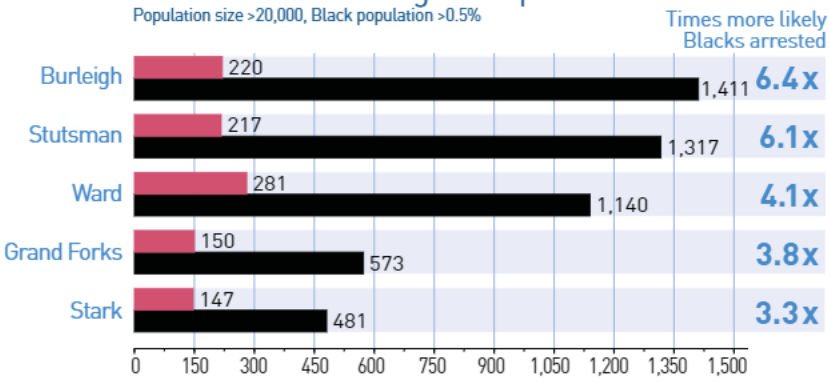
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
732	166

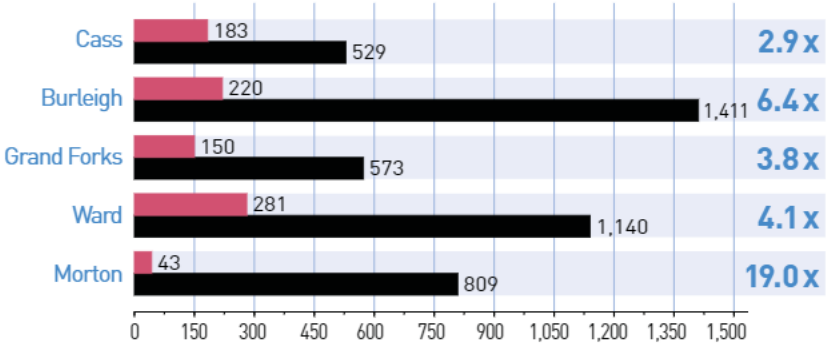
Counties with the largest disparities

Population size >20,000, Black population >0.5%



Counties with the largest population

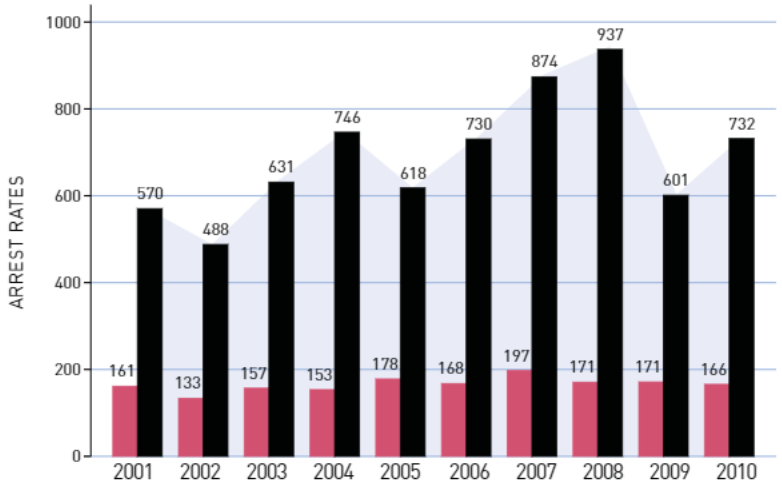
Includes all counties, listed in order of size



All counties with racial disparities above the national average (3.73)



Statewide marijuana possession arrest rates 2001-2010



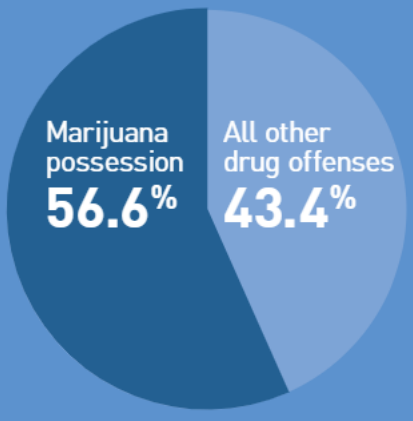
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$3,722,051**

Drug Arrests by Offense in 2010



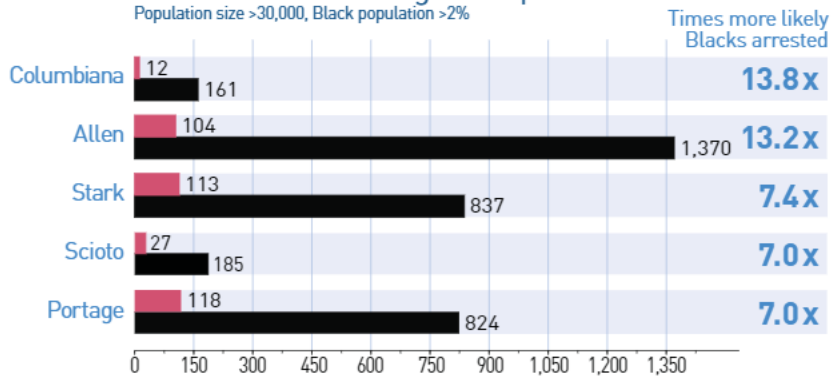
Ohio

Blacks are **4.1** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

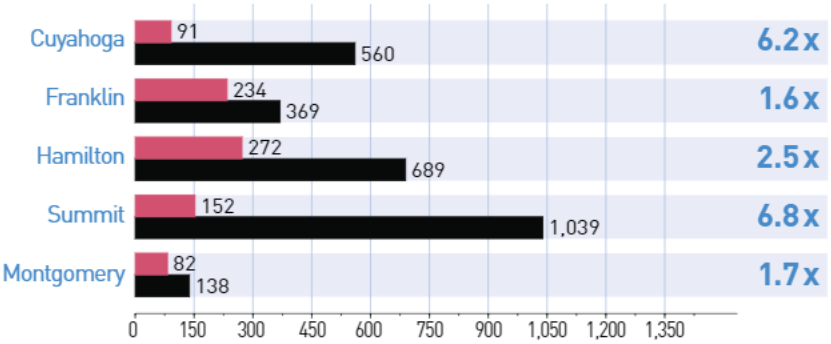
Counties with the largest disparities

Population size >30,000, Black population >2%

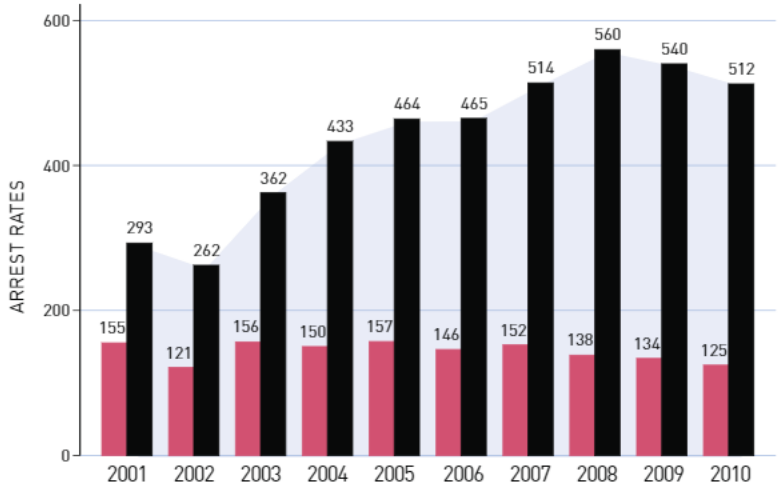


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
512	125

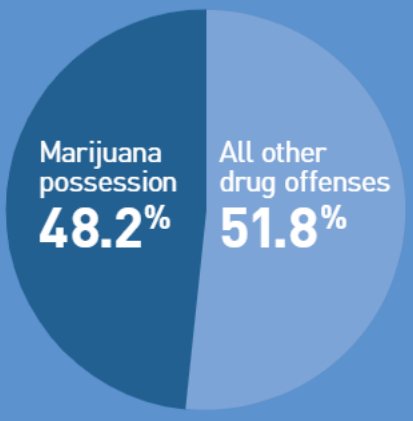
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$120,148,064**

Drug Arrests by Offense in 2010



Oklahoma

Blacks are **2.8** times more likely than whites to be arrested for marijuana possession

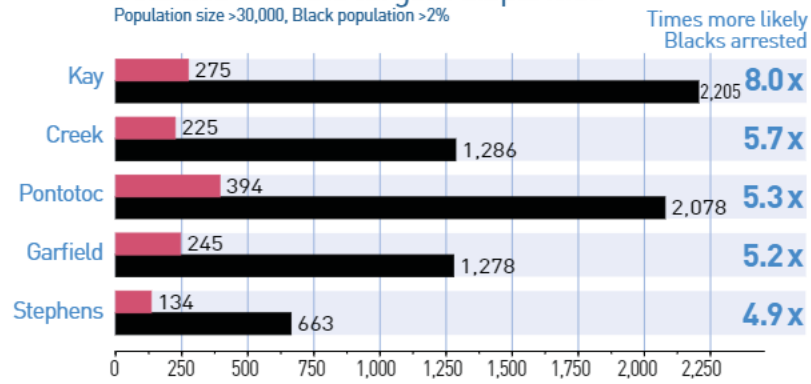
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
763	268

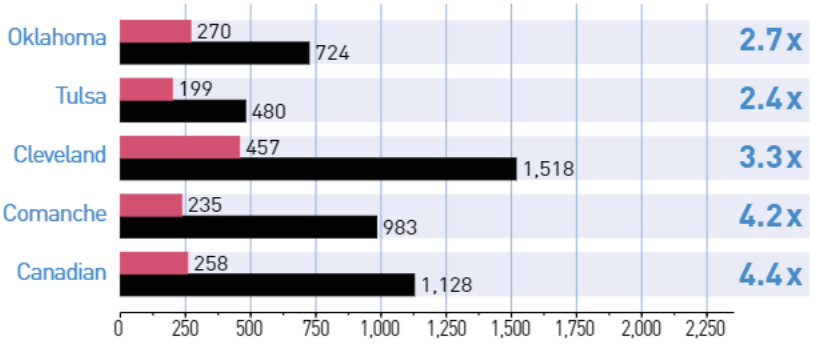
Counties with the largest disparities

Population size >30,000, Black population >2%

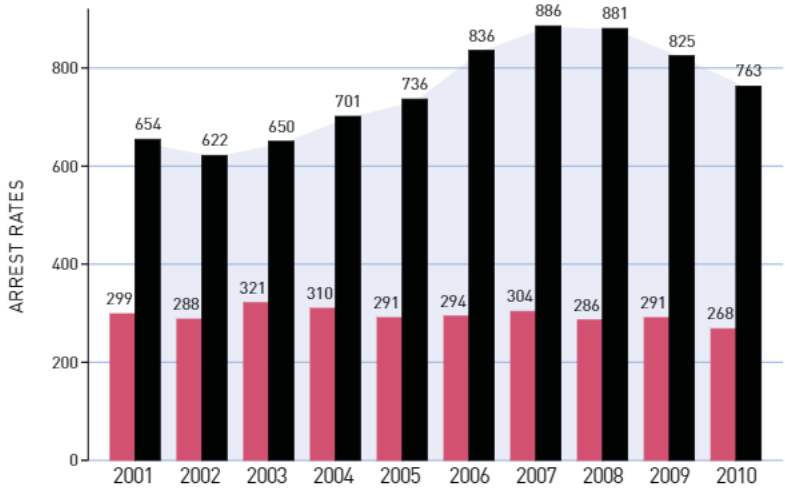


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

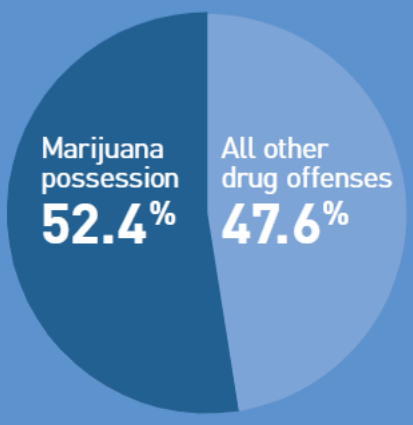
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$30,829,904**

Drug Arrests by Offense in 2010



Oregon

Blacks are **2.1** times more likely than whites to be arrested for marijuana possession

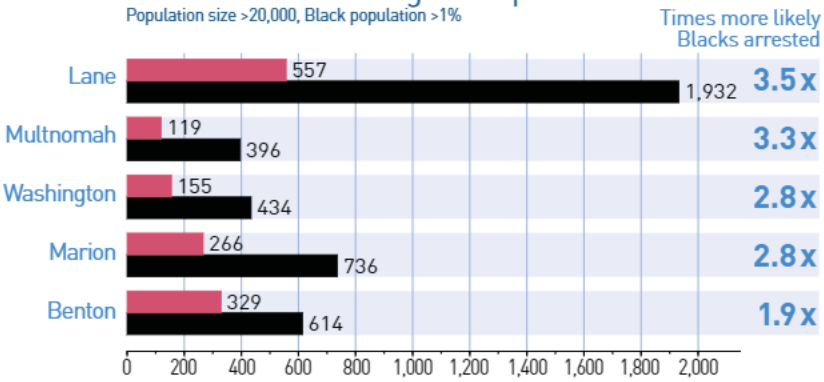
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
563	271

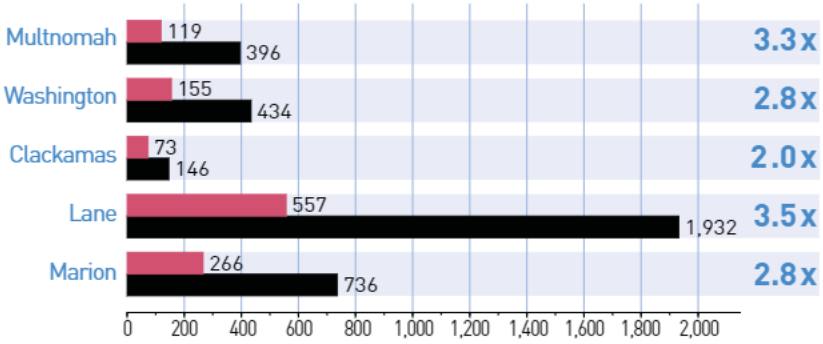
Counties with the largest disparities

Population size >20,000, Black population >1%



Counties with the largest population

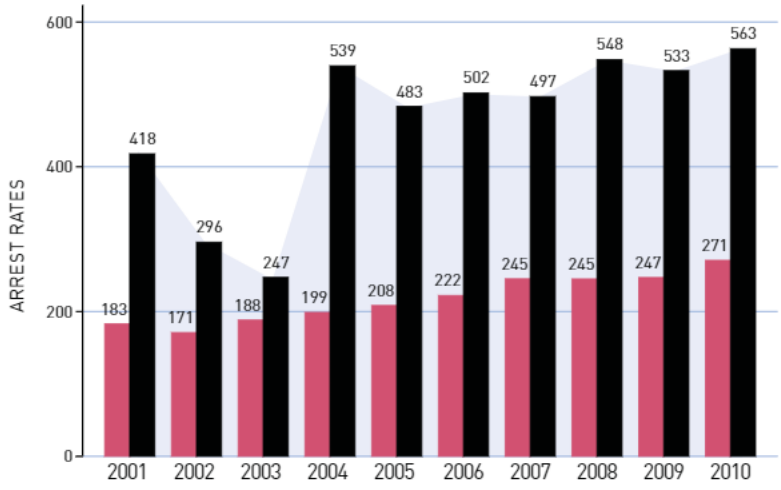
Includes all counties, listed in order of size



All counties with racial disparities above the national average (3.73)



Statewide marijuana possession arrest rates 2001-2010



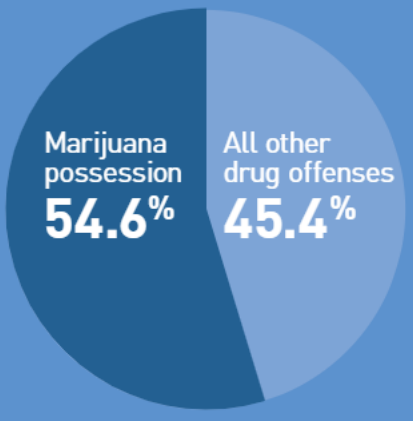
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$50,194,024**

Drug Arrests by Offense in 2010



Pennsylvania

Blacks are **5.2** times more likely than whites to be arrested for marijuana possession

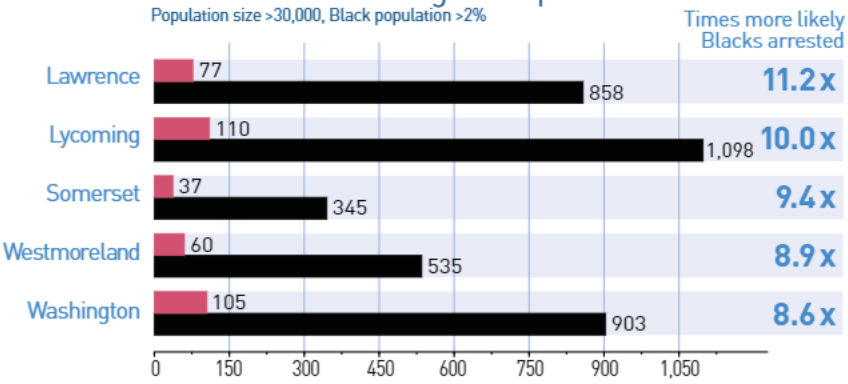
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
606	117

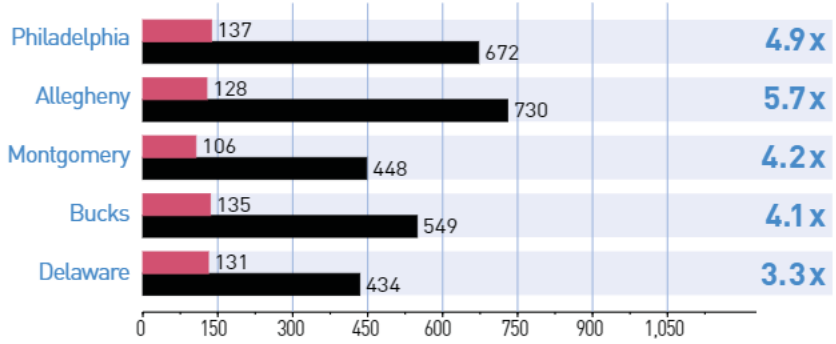
Counties with the largest disparities

Population size >30,000, Black population >2%

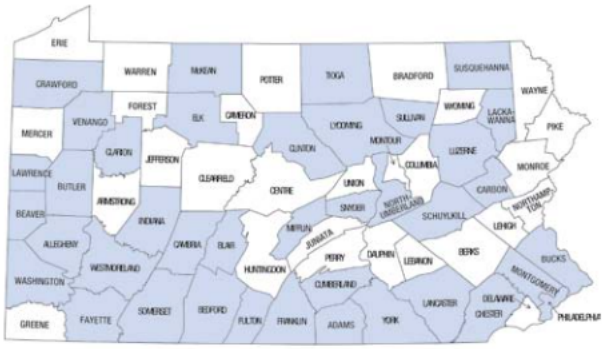


Counties with the largest population

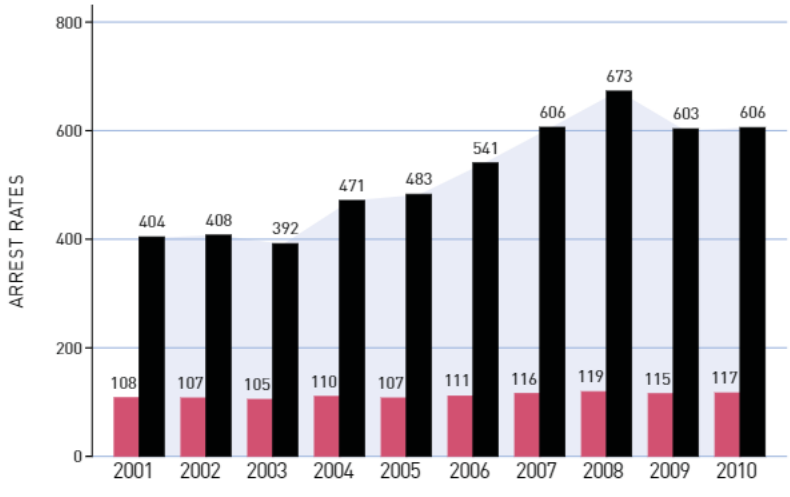
Includes all counties, listed in order of size



All counties with racial disparities above the national average (3.73)



Statewide marijuana possession arrest rates 2001-2010



White arrest rate

Black arrest rate

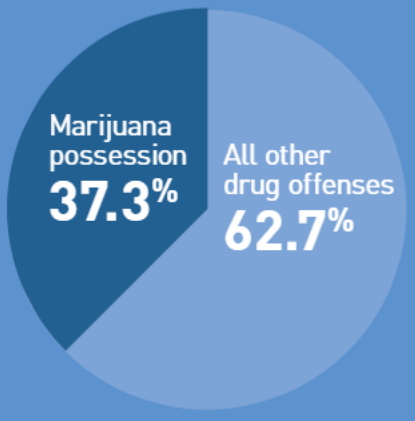
Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$100,748,528**

Drug Arrests by Offense in 2010

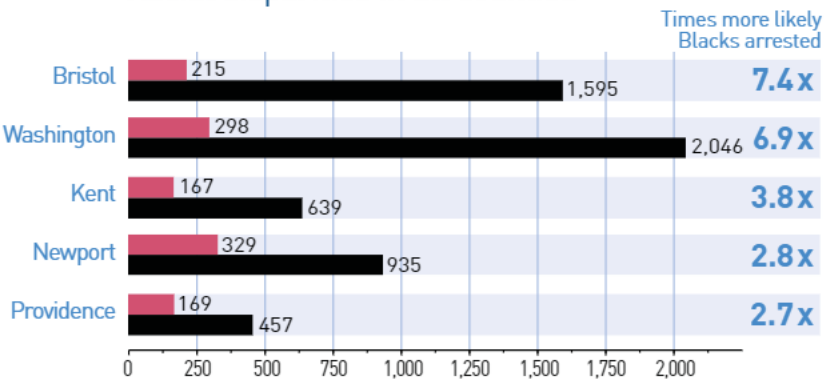


Rhode Island

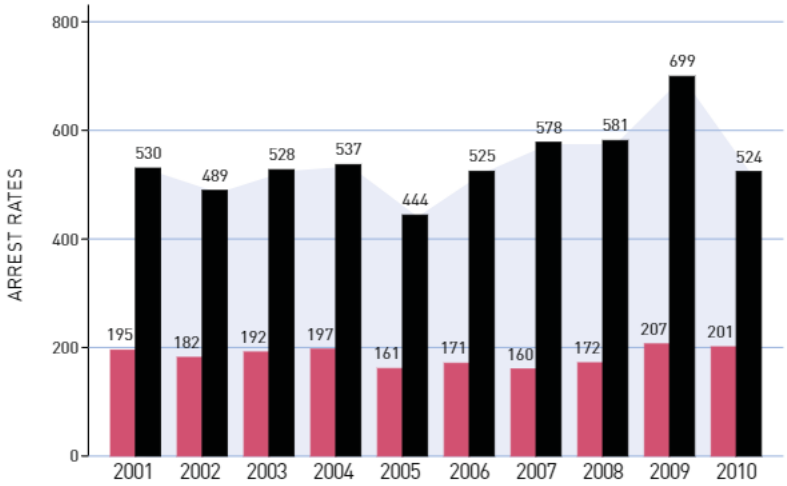
Blacks are **2.6** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

Racial disparities in all counties



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
524	201

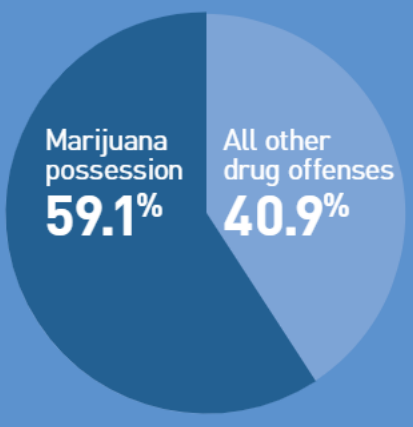
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$11,851,363**

Drug Arrests by Offense in 2010



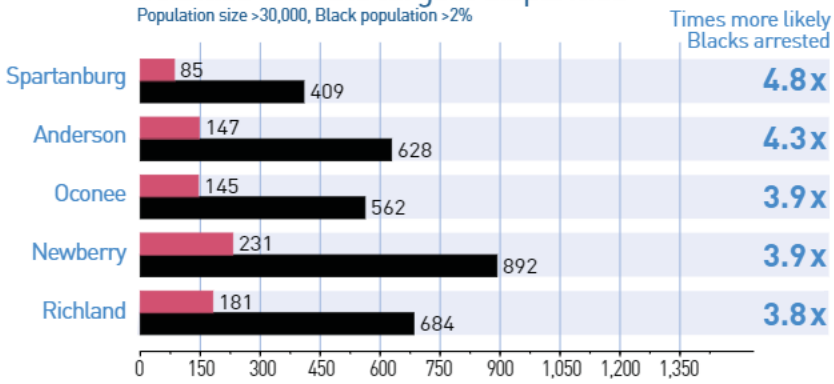
South Carolina

Blacks are **2.8** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

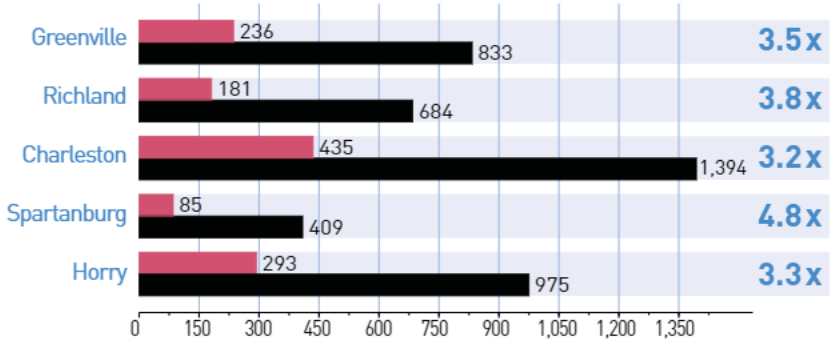
Counties with the largest disparities

Population size >30,000, Black population >2%

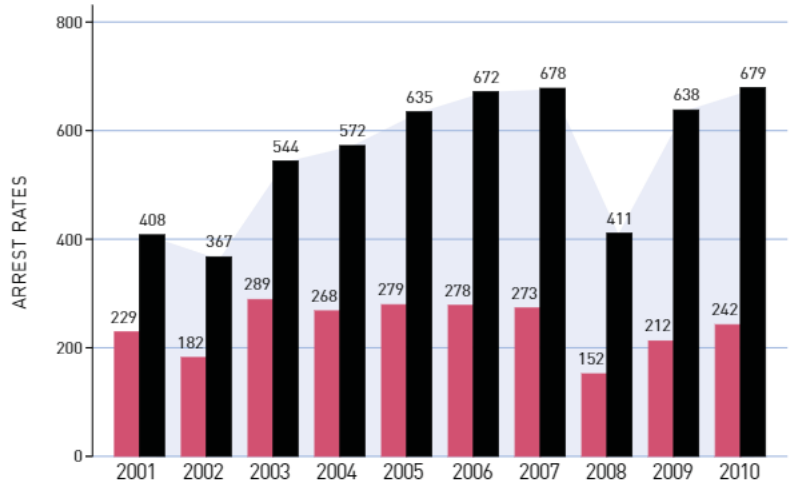


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
679	242

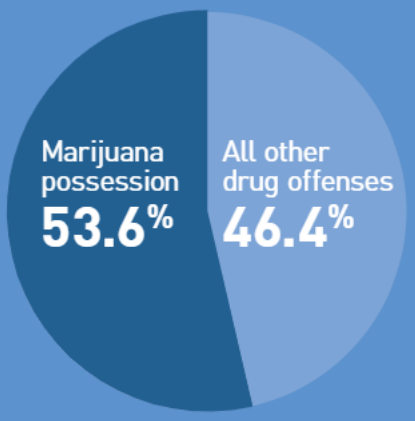
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$49,540,640**

Drug Arrests by Offense in 2010



South Dakota

Blacks are **4.8** times more likely than whites to be arrested for marijuana possession

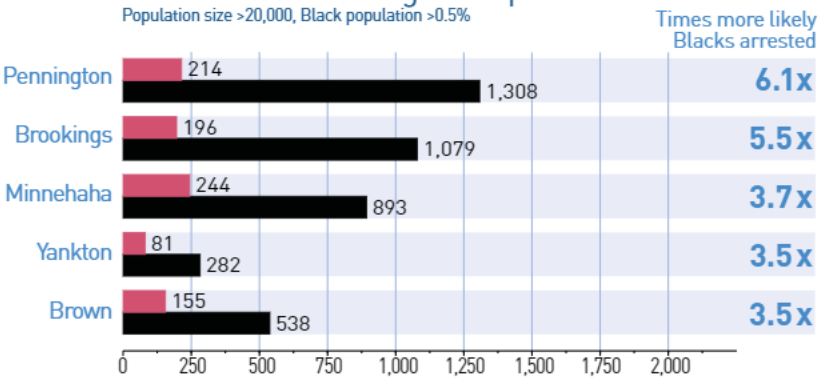
Arrest Rates

BLACK	WHITE
943	197

Racial Disparities In Marijuana Possession Arrest Rates*

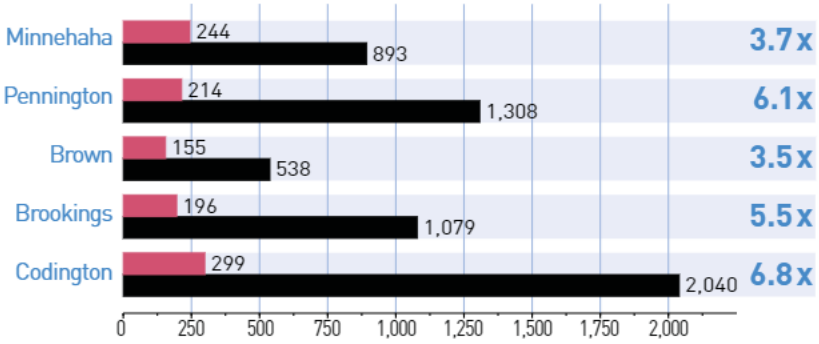
Counties with the largest disparities

Population size >20,000, Black population >0.5%

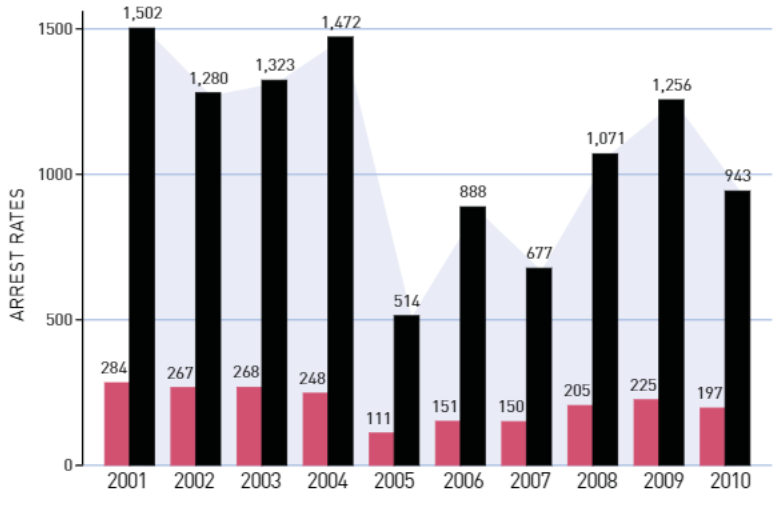


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

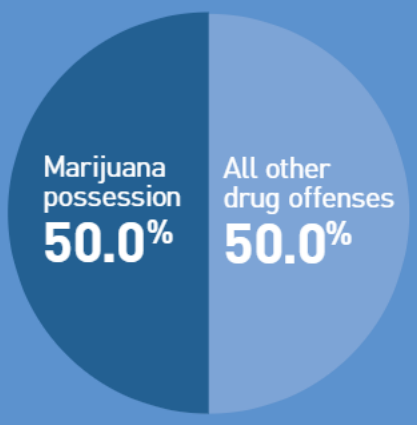
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$5,551,929**

Drug Arrests by Offense in 2010



Tennessee

Blacks are **4.0** times more likely than whites to be arrested for marijuana possession

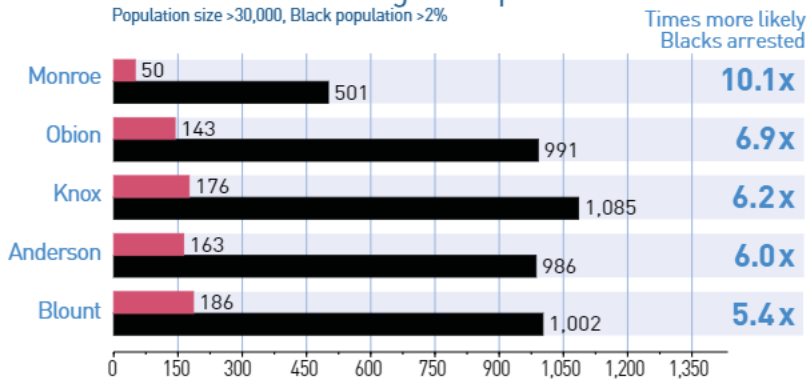
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

BLACK	WHITE
771	191

Counties with the largest disparities

Population size >30,000, Black population >2%

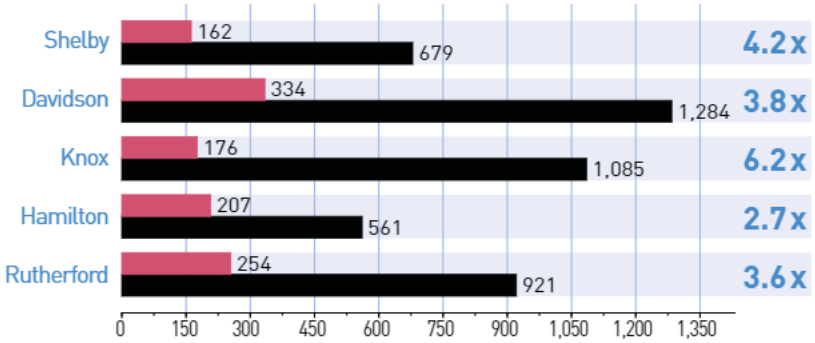


All counties with racial disparities above the national average (3.73)

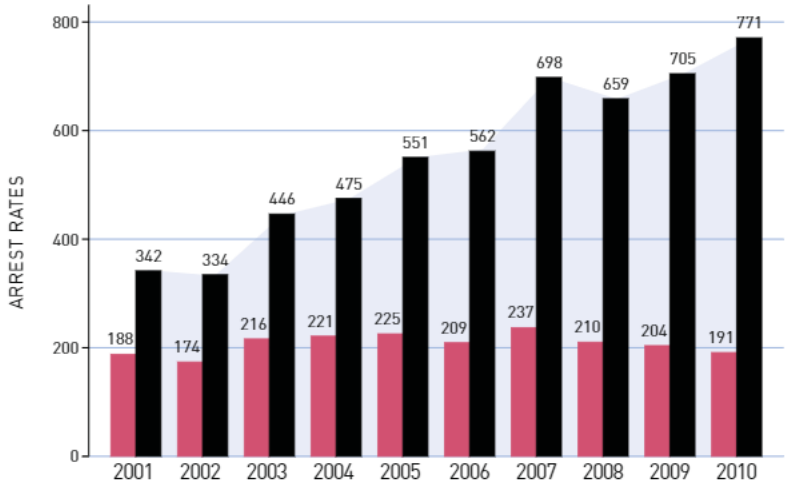


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



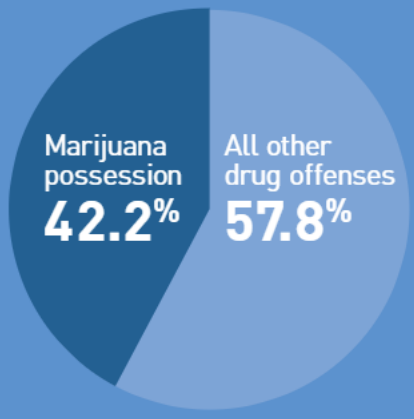
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$42,948,820**

Drug Arrests by Offense in 2010



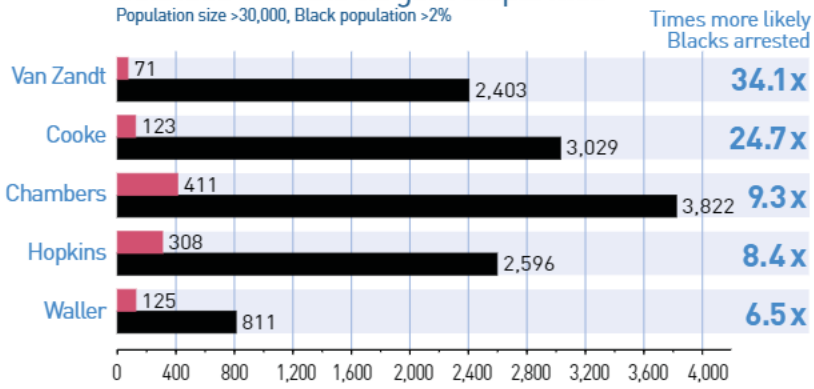
Texas

Blacks are **2.3** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

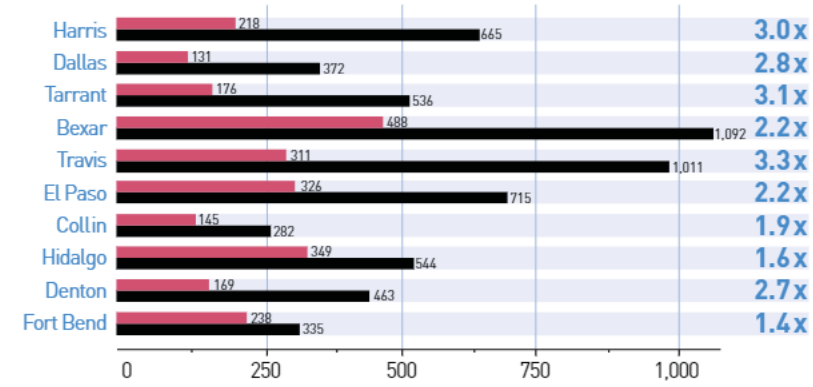
Counties with the largest disparities

Population size >30,000, Black population >2%

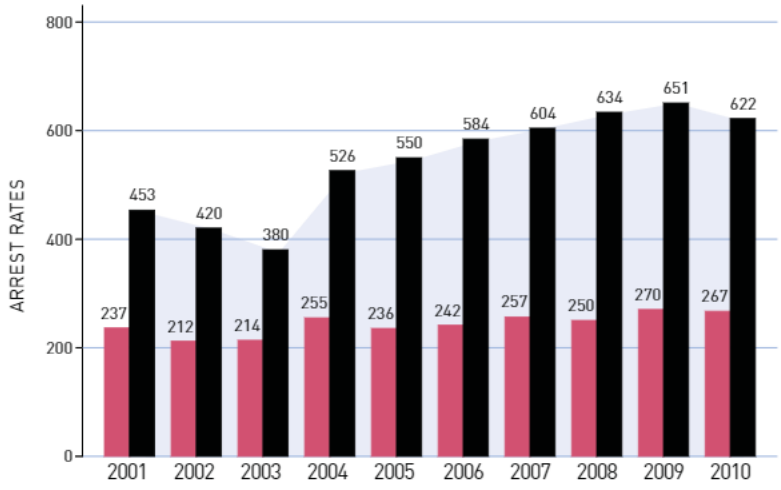


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate

Black arrest rate

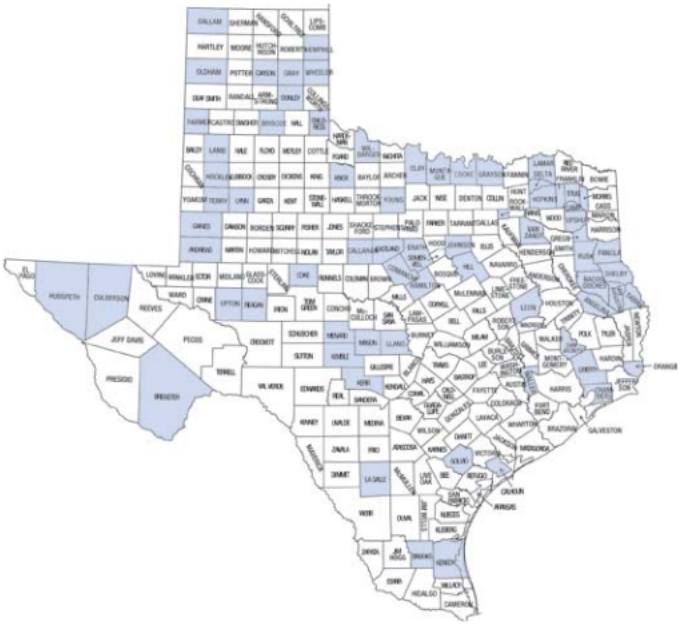
Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
622	267

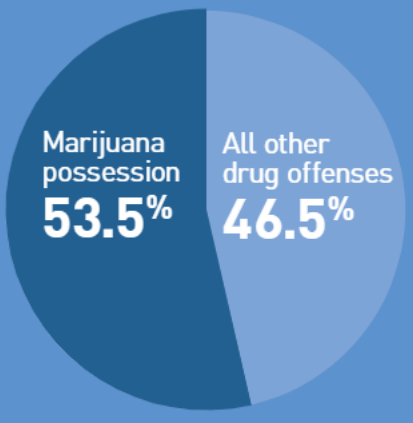
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$251,648,800**

Drug Arrests by Offense in 2010



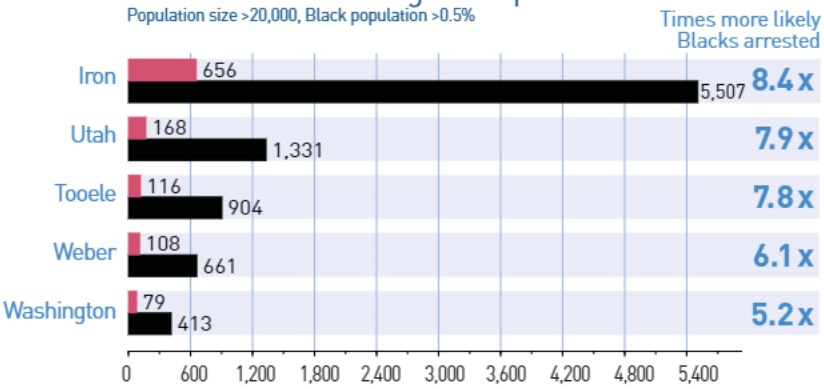
Utah

Blacks are **3.8** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

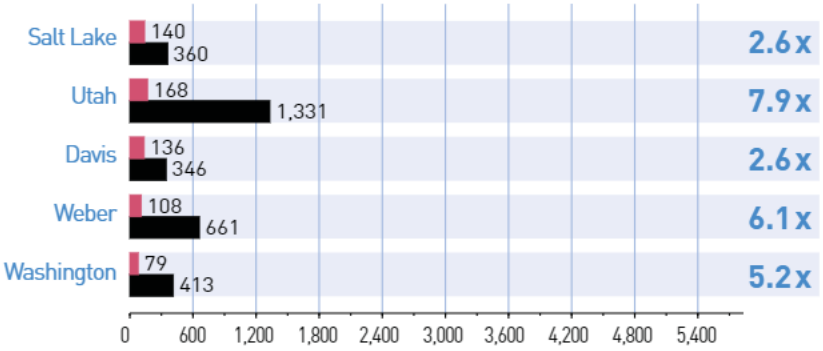
Counties with the largest disparities

Population size >20,000, Black population >0.5%

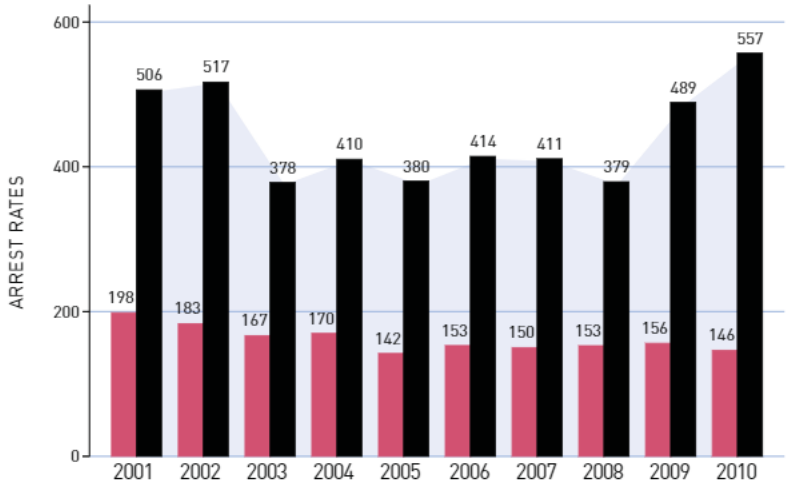


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
557	146

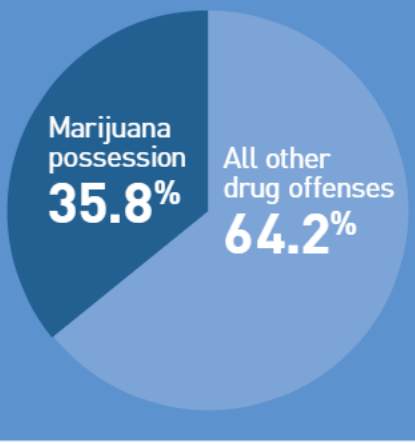
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$14,070,766**

Drug Arrests by Offense in 2010



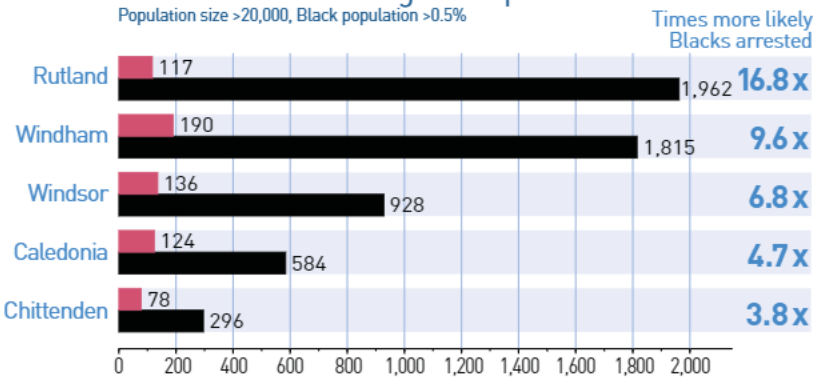
Vermont

Blacks are **4.4** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

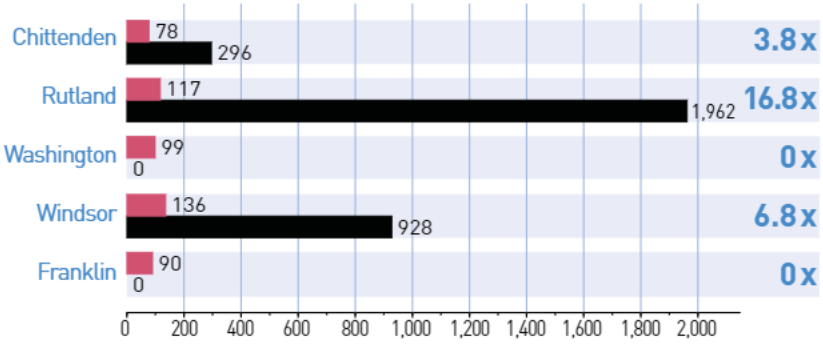
Counties with the largest disparities

Population size >20,000, Black population >0.5%

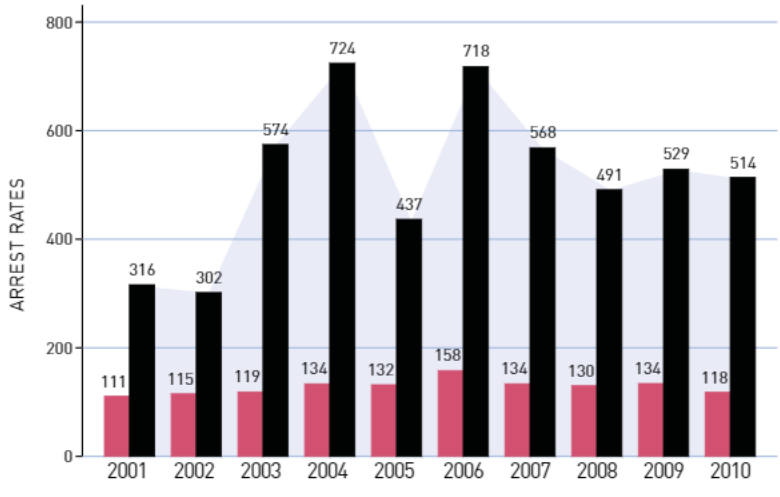


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
514	118

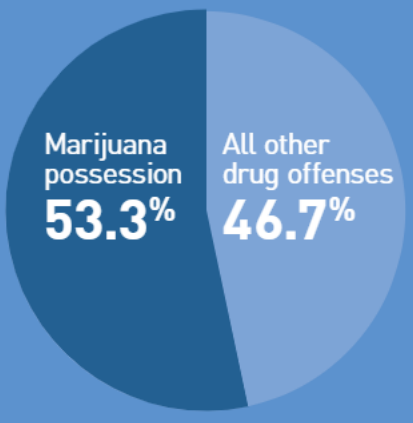
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$4,887,939**

Drug Arrests by Offense in 2010



Virginia

Blacks are **2.8** times more likely than whites to be arrested for marijuana possession

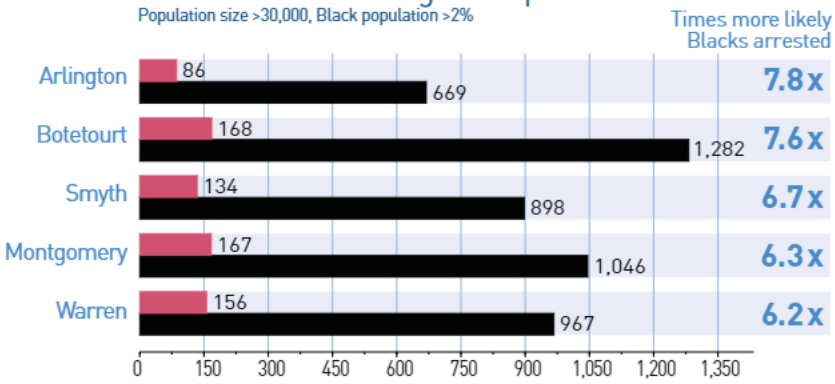
Racial Disparities In Marijuana Possession Arrest Rates*

Arrest Rates

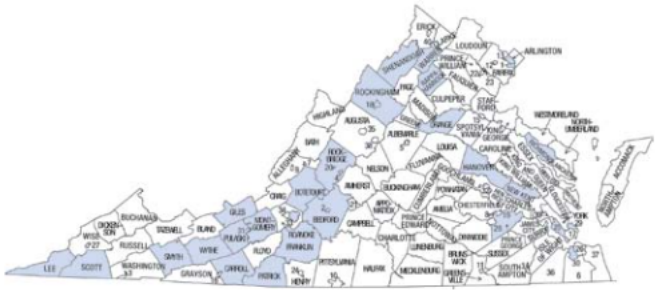
BLACK	WHITE
514	182

Counties with the largest disparities

Population size >30,000, Black population >2%

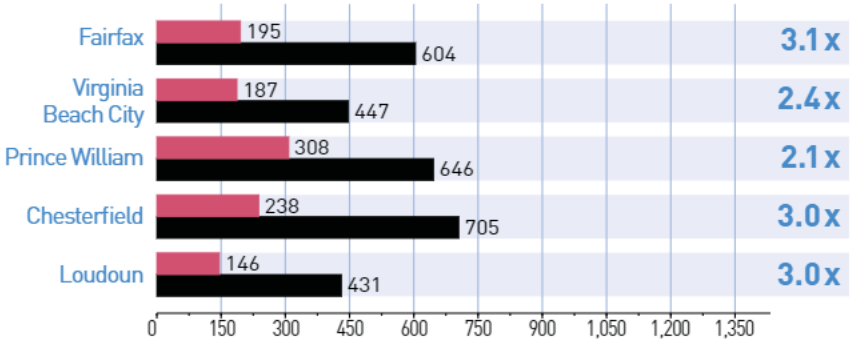


All counties with racial disparities above the national average (3.73)

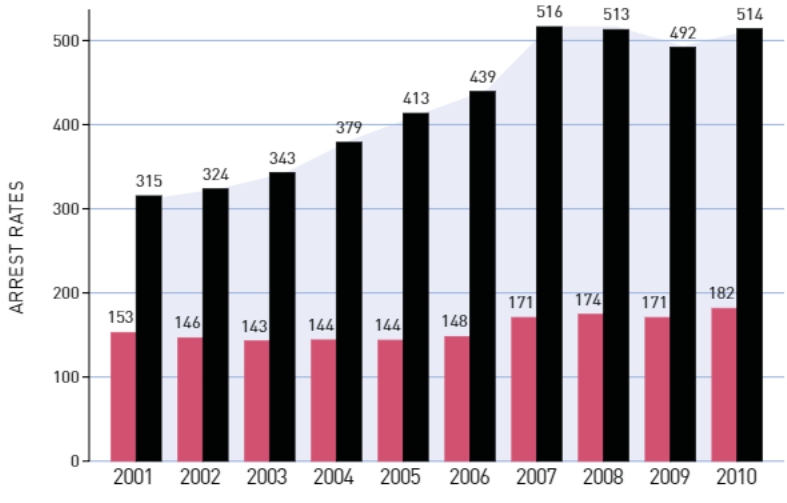


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



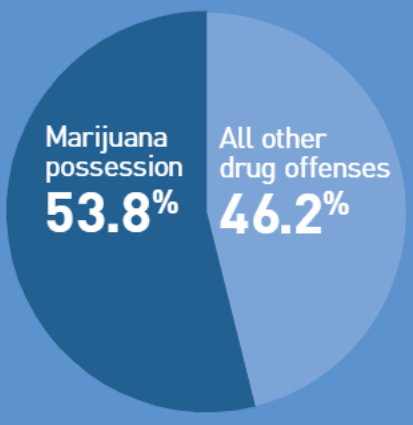
Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data

*All arrest rates are per 100,000 and based on 2010 data

Cost

Money spent enforcing marijuana possession laws in 2010: **$67,244,864**

Drug Arrests by Offense in 2010



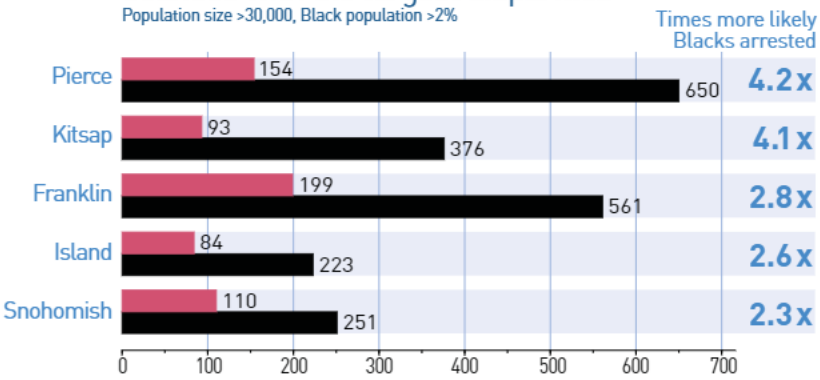
Washington

Blacks are **2.8** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

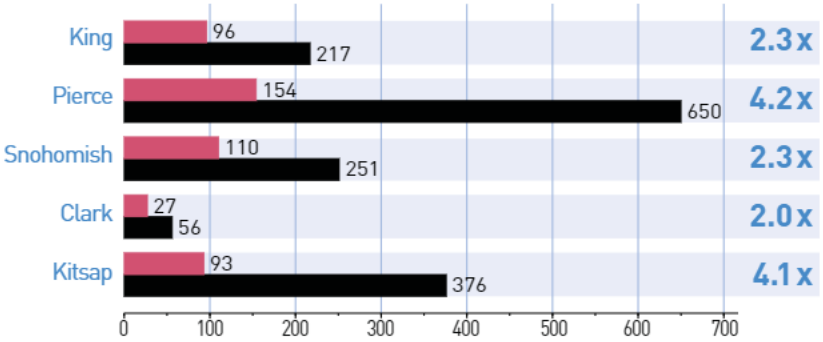
Counties with the largest disparities

Population size >30,000, Black population >2%

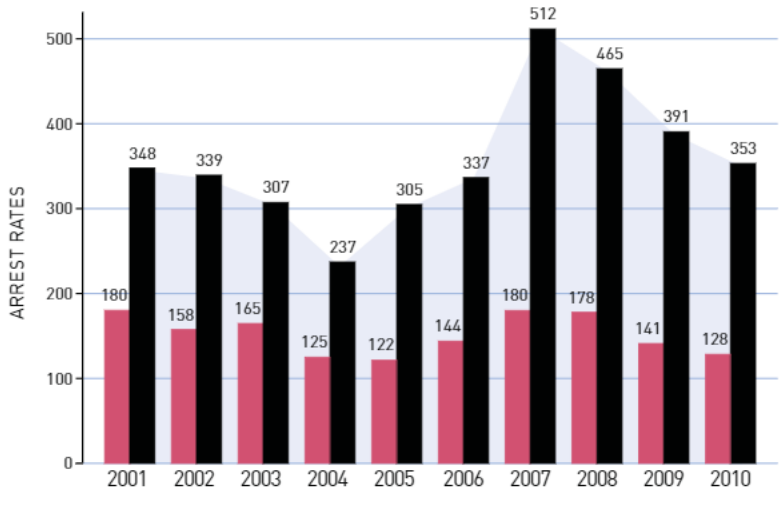


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
353	128

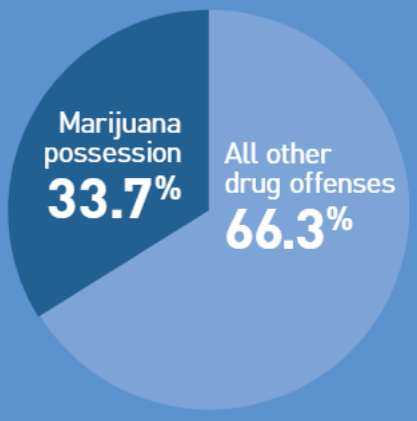
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$34,626,312**

Drug Arrests by Offense in 2010



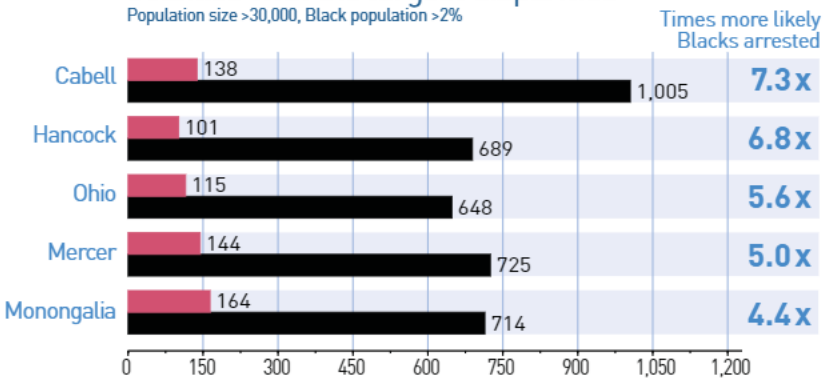
West Virginia

Blacks are **3.3** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

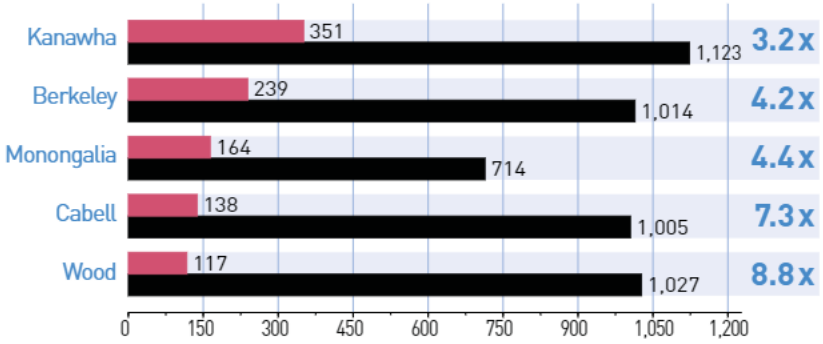
Counties with the largest disparities

Population size >30,000, Black population >2%

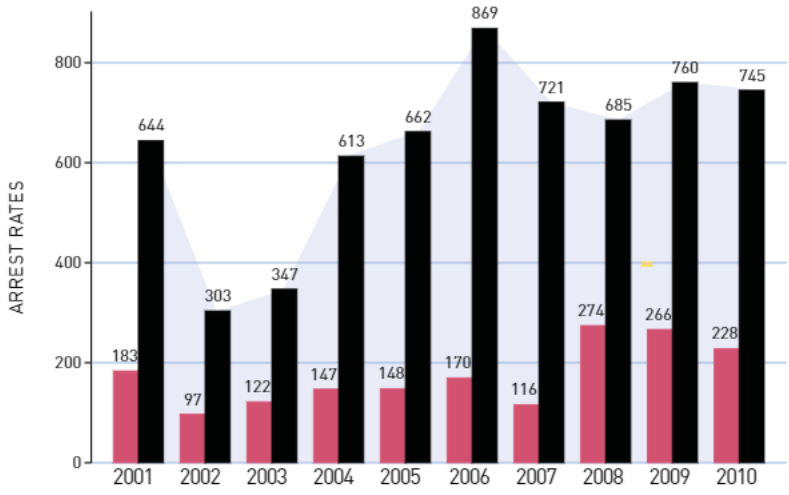


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



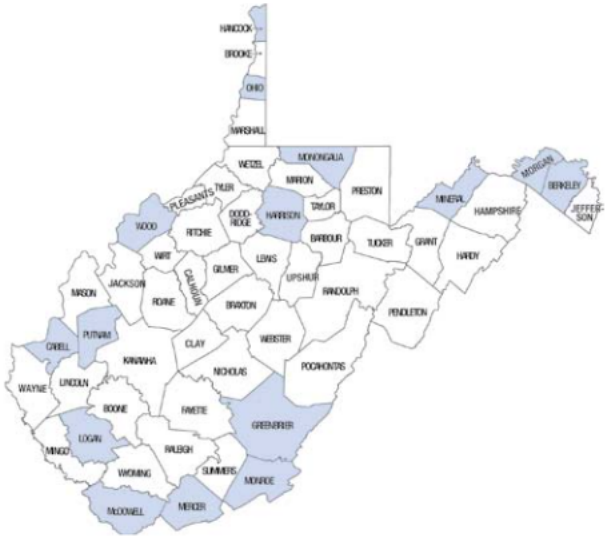
White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
745	228

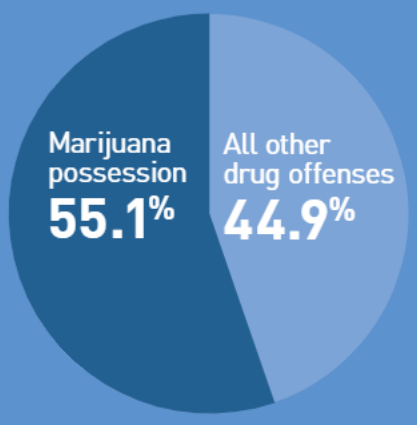
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$17,375,348**

Drug Arrests by Offense in 2010



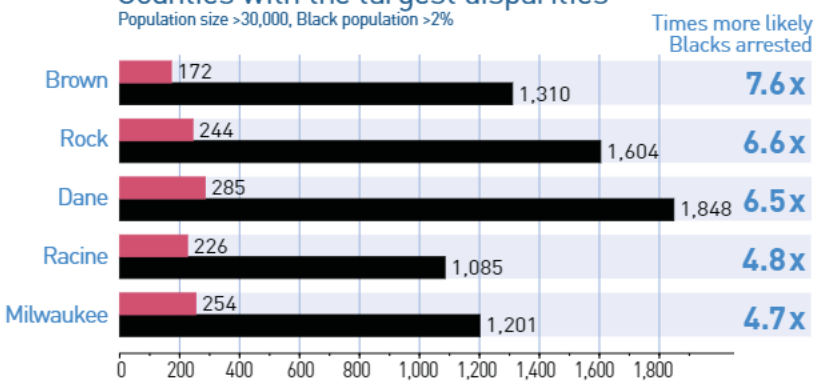
Wisconsin

Blacks are **6.0** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

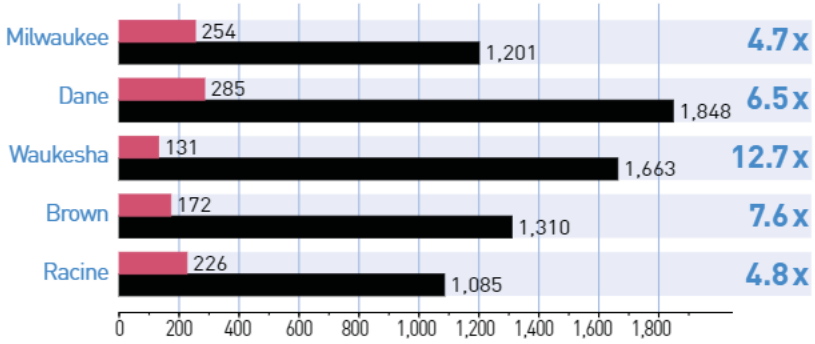
Counties with the largest disparities

Population size >30,000, Black population >2%

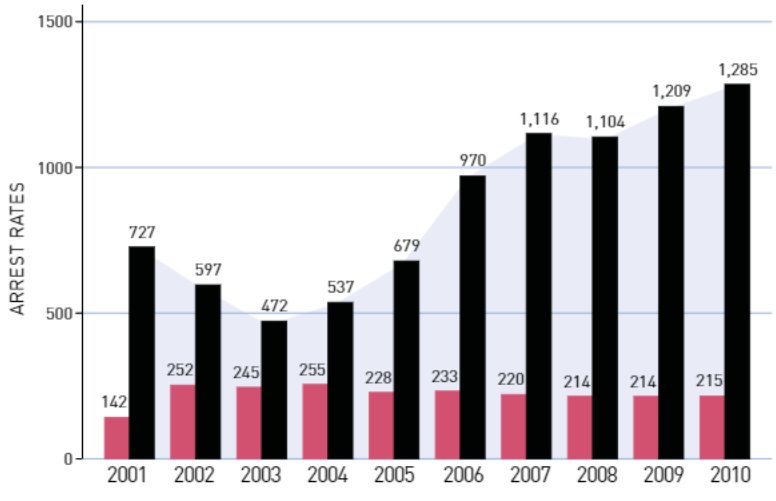


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
1,285	215

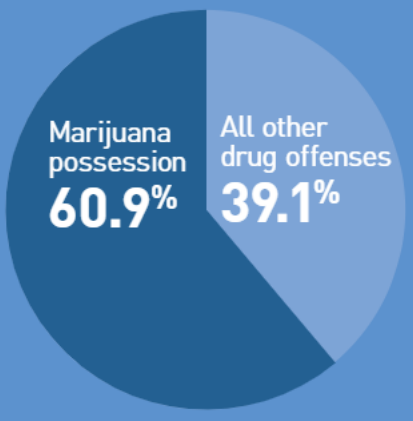
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$44,366,056**

Drug Arrests by Offense in 2010



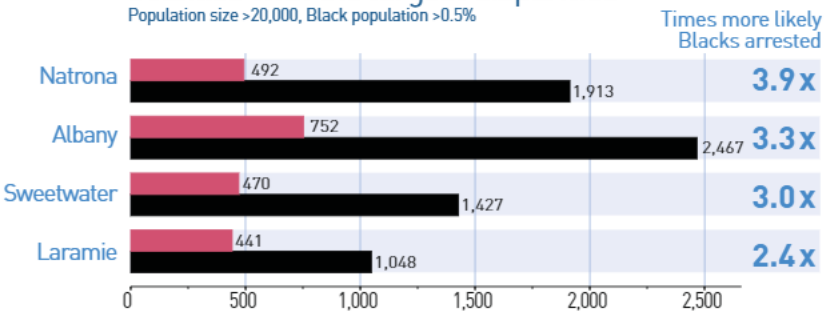
Wyoming

Blacks are **3.2** times more likely than whites to be arrested for marijuana possession

Racial Disparities In Marijuana Possession Arrest Rates*

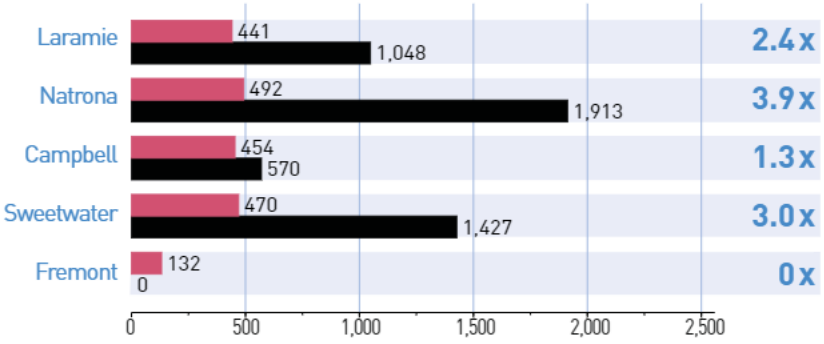
Counties with the largest disparities

Population size >20,000, Black population >0.5%

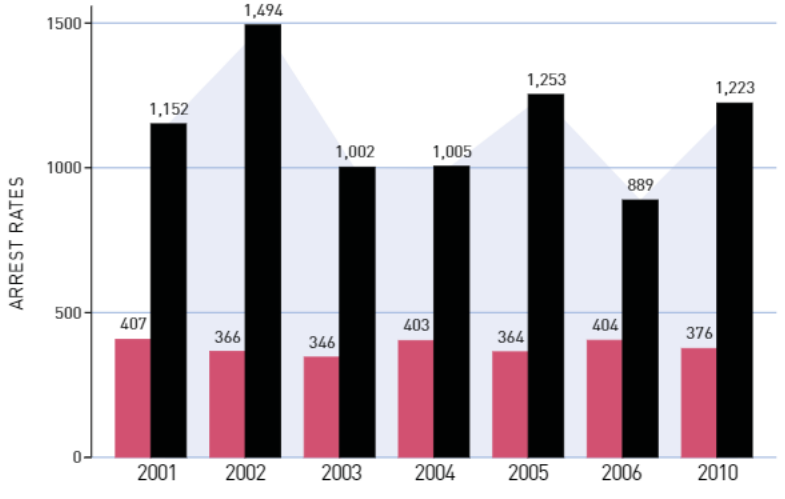


Counties with the largest population

Includes all counties, listed in order of size



Statewide marijuana possession arrest rates 2001-2010



White arrest rate
Black arrest rate

Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
*All arrest rates are per 100,000 and based on 2010 data

Arrest Rates

BLACK	WHITE
1,223	376

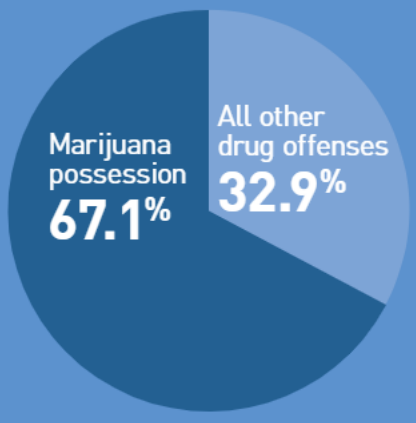
All counties with racial disparities above the national average (3.73)



Cost

Money spent enforcing marijuana possession laws in 2010: **$9,148,026**

Drug Arrests by Offense in 2010



THE WAR ON MARIJUANA IN BLACK AND WHITE

Over the last twenty years, police have turned much of their zeal for fighting the failed War on Drugs towards the enforcement of marijuana laws in communities across the country – with disastrous consequences.

The aggressive enforcement of marijuana possession laws needlessly ensnares hundreds of thousands of people into the criminal justice system, crowds our jails, wastes billions of taxpayers' dollars, fails to reduce marijuana use and availability, diverts precious police resources away from focusing on serious crimes, and is carried out in a racially biased manner.

It's time to call off the failed War on Marijuana.

