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Legislative Policy Study

Marijuana Arrests and California's Drug War:

A Report to the California Legislature

by

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Introduction

For nearly three decades, California's criminal justice system has devoted ever-increasing resources towards the arrest, prosecution, and imprisonment of drug offenders. Drug offenses typically are categorized as manufacturing, distribution, and possession. Historically, manufacturing and distribution accounted for the preponderance of law enforcement resources as this category of offenders were seen as the greater menace since they were responsible for promoting and maintaining the illicit drug trade. Possession offenders, at least those who committed no additional offenses, were viewed with greater sympathy since they were the drug users who were often seen as the victims of their own addictions. Indeed, prison statistics prior to the 1990s showed imprisonments for manufacturing and sales far exceeding imprisonments for possession (California Department of Corrections and Rehabilitation (CDCR), 2009).

However, beginning in the 1990s, prison statistics show a dramatic and unprecedented change in priorities, as possession offenders became the primary target of law enforcement. By 2008, for the first time in recorded history, the number of offenders imprisoned for drug possession exceeded the number of offenders imprisoned for manufacturing and sales. The unprecedented shift in California law enforcement priorities towards targeting the demand side of the drug war is clearly demonstrated by the extraordinary increase in the rate of arrests for misdemeanor possession (small quantity, less than one ounce^{*}) of marijuana (Table 1).

Table 1

California drug arrests by category			
<u>Drug offense category</u>	<u>1990</u>	<u>2008</u>	<u>Rate change*</u>
Misdemeanor marijuana possession	20,834	61,388	+127%
Possession of all other drugs	86,708	79,858	- 29%
Felony sale/manufacture of marijuana	16,819	17,126	- 21%
<u>Felony sale/manufacture of all other drugs</u>	<u>128,732</u>	<u>111,191</u>	<u>- 33%</u>
Marijuana possession, % of all drug arrests	8.2%	22.8%	+178%

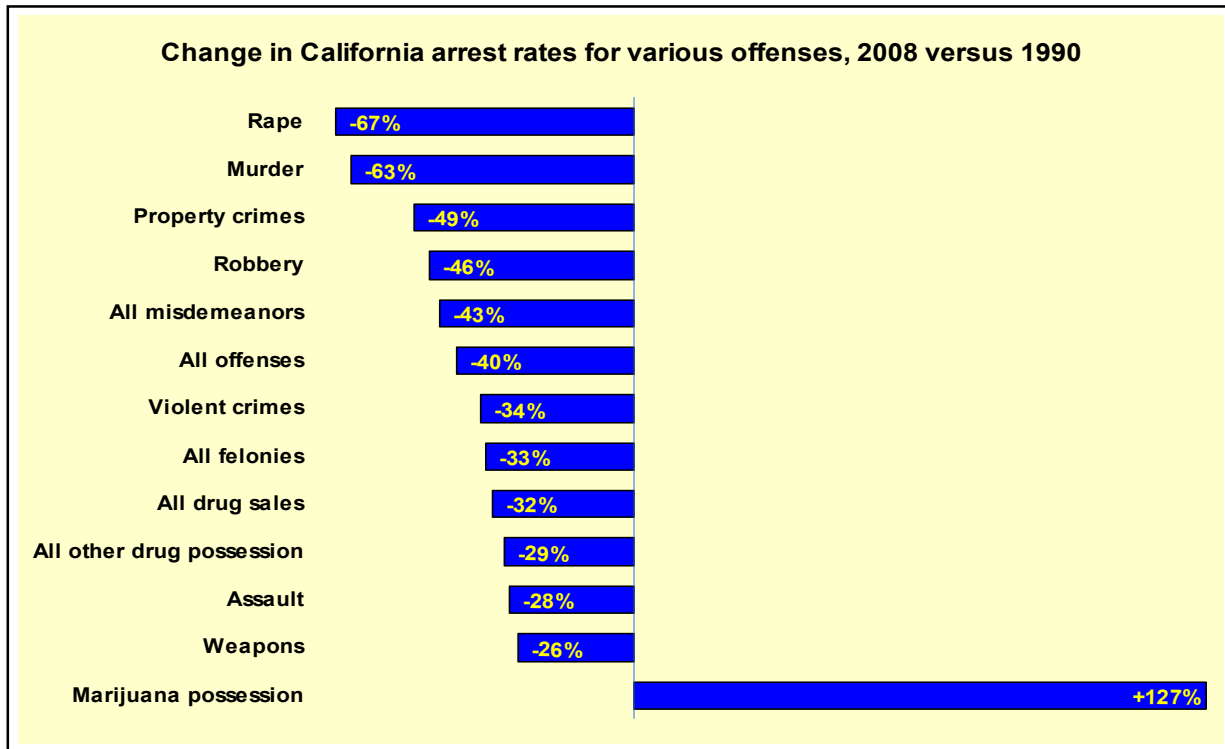
*Arrest rate adjusted for increase in California's population age 10-69, the age defined as at risk for arrest by the California Department of Justice.

Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

In fact, simple marijuana possession is the *only* offense category showing an increase over the last two decades (Figure 1). While virtually every category of serious crime registered sizeable decreases in rate of arrest, *marijuana possession arrest rates increased by 127%*. In contrast, arrests for all other forms of drug sales and manufacturing decreased by 33%, while arrests for sales and manufacturing of marijuana decreased by 21%.

* Misdemeanor possession of marijuana involves one ounce or less (Health and Safety Code Section 11357) and carries a maximum punishment of a \$100 fine. Under Proposition 36, a voter-approved initiative effective July 1, 2001, first- and second- time possession-only offenders may opt for a treatment program instead of jail. Possession convictions are expunged from the offender's record after two years or upon successful completion of the program (Health and Safety Code Sections 11361.5, 11361.7.).

Figure 1



Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

The result is that nearly one fourth of all drug arrests in California are now for simple marijuana possession. Small-quantity marijuana possession is rapidly becoming California’s main drug offense, with arrest rates rising at 1.8 times the rates for all other drug offenses (Table 1). California’s trend toward vastly more marijuana possession arrest is occurring at a time when death rates from overdoses of heroin, cocaine, methamphetamine, prescription opiates, and combinations of these harder drugs are soaring (2,100 in 1990, rising to 4,100 in 2007), indicating that genuine drug abuse and addiction issues goes unaddressed.

Demographic trends in marijuana arrests

Dramatic changes have occurred in the demography of marijuana arrestees (Tables 2, 3, 4). In 1990, half of all marijuana possession arrests were European American (white), 60% were 21 or older, and 90% were male; in 2008, 56% were African American or Hispanic, just half were 21 or older, and 88% were male.

Table 2

Marijuana possession arrests increasingly target younger African Americans and Hispanics and, to a lesser extent, middle-agers			
<u>Population group, percent of marijuana arrests</u>	<u>1990</u>	<u>2008</u>	<u>Rate change*</u>
European American/Asian	57.2%	44.0%	+110%
African American/Hispanic	42.8%	56.0%	+148%
Female, all races	9.9%	11.7%	+166%
Under age 21, all races	35.2%	49.4%	+205%
Age 21 to 39, all races	60.0%	41.7%	+144%
Age 40 and older, all races	4.9%	8.9%	+257%
Total marijuana possession arrests	20,834	61,388	+127%

*Arrest rate adjusted for increase in populations age 10-69 for each race and age group.

Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

Some of these trends result from population changes, but not all (Table 3). Rates of arrest per 100,000 population have risen much faster for African Americans, Hispanics, under-21 ages, and European Americans over 40. The age groups accounting for the biggest increases in marijuana possession arrests per capita from 1990 to 2008 were ages 50-59 (up 420%), age 60+ (up 418%), and under 21 (up 205%). Barely 1,000 Californians age 40 and older were arrested for marijuana in 1990; in 2008, nearly 5,500.

Table 3

California marijuana possession arrests, changes in numbers and rates* by gender, race, and age group, 1990-2008					
<u>Groups</u>	<u>Arrest numbers</u>		<u>Arrest rates/100,000 pop.</u>		<u>Rate change* 2008 vs. 1990</u>
	<u>1990</u>	<u>2008</u>	<u>1990</u>	<u>2008</u>	
<u>All age 10-69</u>	<u>20,834</u>	<u>61,388</u>	<u>90.3</u>	<u>205.2</u>	<u>+ 127%</u>
Female	2,071	7,156	18.2	48.3	+ 166%
Male	18,763	54,232	160.5	359.0	+ 124%
<u>Race</u>					
Asian	1,513	3,824	64.9	95.9	+ 48%
European American	10,408	23,163	78.5	175.8	+ 124%
Hispanic	5,242	23,071	89.3	212.2	+ 138%
African American	3,671	11,330	225.6	604.1	+ 168%
<u>Age</u>					
<18	3,088	14,313	96.0	310.7	+ 224%
18-20	4,245	16,039	294.8	903.6	+ 207%
21-24	4,441	11,505	218.7	530.7	+ 143%
25-29	4,118	7,699	145.1	301.1	+ 107%
30-39	3,927	6,367	74.1	120.6	+ 63%
40-49	839	3,744	22.4	65.5	+ 192%
50-59	139	1,449	5.8	30.2	+ 420%
60+	37	272	1.7	9.1	+ 418%

*Rates are based on the population age 10-69, defined by the California Department of Justice as the population at risk for arrest. The population used to calculate rates for age <18 is 10-17; for age 60+, the population used is 60-69.

Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

The groups showing the biggest increases in marijuana possession arrest rates are African Americans age 40 and older, European Americans age 40 and older, females age 40 and older, and Hispanics under age 20 (Table 4). In 1990, European Americans ages 40 and older were less likely to be arrested for marijuana than were older Asian and Hispanic Americans. By 2008, this group was considerably more likely to be arrested for marijuana possession. Substantial increases in arrest among the older age groups, especially European Americans who are the most generally affluent population, cannot be explained through this study and runs counter to popular assumptions about drug use demographics.

Table 4

Marijuana possession arrest trends detailed by race, age, and gender, 1990-2008					
<u>Race, age</u>	<u>Arrest numbers</u>		<u>Arrest rates*</u>		<u>Rate change*</u>
	<u>1990</u>	<u>2008</u>	<u>1990</u>	<u>2008</u>	
<u>Asian</u>					
age <20	365	1,556	79.1	244.9	+ 210%
20-29	721	1,709	137.6	241.1	+ 75%
30-39	321	347	57.8	44.1	- 24%
40+	106	212	13.4	11.4	- 15%
<u>White</u>					
age <20	2,773	9,605	148.0	479.4	+ 224%
20-29	4,923	8,463	182.3	424.4	+ 133%
30-39	2,155	2,338	69.7	117.3	+ 68%
40+	557	2,757	10.0	38.4	+ 285%
<u>Hispanic</u>					
age <20	1,702	11,588	114.8	417.9	+ 264%
20-29	2,678	8,679	152.9	388.2	+ 154%
30-39	724	1,799	56.8	82.4	+ 45%
40+	138	1,005	10.1	27.3	+ 170%
<u>Black</u>					
age <20	1,044	3,195	320.6	808.1	+ 152%
20-29	1,686	4,761	414.4	1,316.7	+ 218%
30-39	727	1,883	191.4	601.8	+ 214%
40+	214	1,491	41.5	185.1	+ 345%
<u>Female, all races</u>					
age <20	636	3,151	32.0	111.2	+ 247%
20-29	877	2,554	34.5	100.4	+ 191%
30-39	441	746	16.9	28.9	+ 71%
40+	117	705	2.7	10.3	+ 275%
<u>Male, all races</u>					
age <20	5,248	22,793	243.4	766.7	+ 215%
20-29	9,131	21,058	321.3	763.9	+ 138%
30-39	3,486	5,621	129.4	208.8	+ 61%
40+	898	4,760	22.5	71.2	+ 217%

*The population used to calculate rates for age <20 is 10-19; for age 40+, 40-69.

Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

Marijuana possession imprisonments

Equally surprising, imprisonments of Californians whose chief offense was small-quantity possession of drugs have risen faster than admissions for other offenses (Table 5). While they comprise only a little more than 1% of all new imprisonments, simple marijuana possession prison sentences have registered the largest increase. Although male drug possession admissions have risen more rapidly, six in 10 women's drug admissions are now for simple possession, compared to half for men.

Table 5

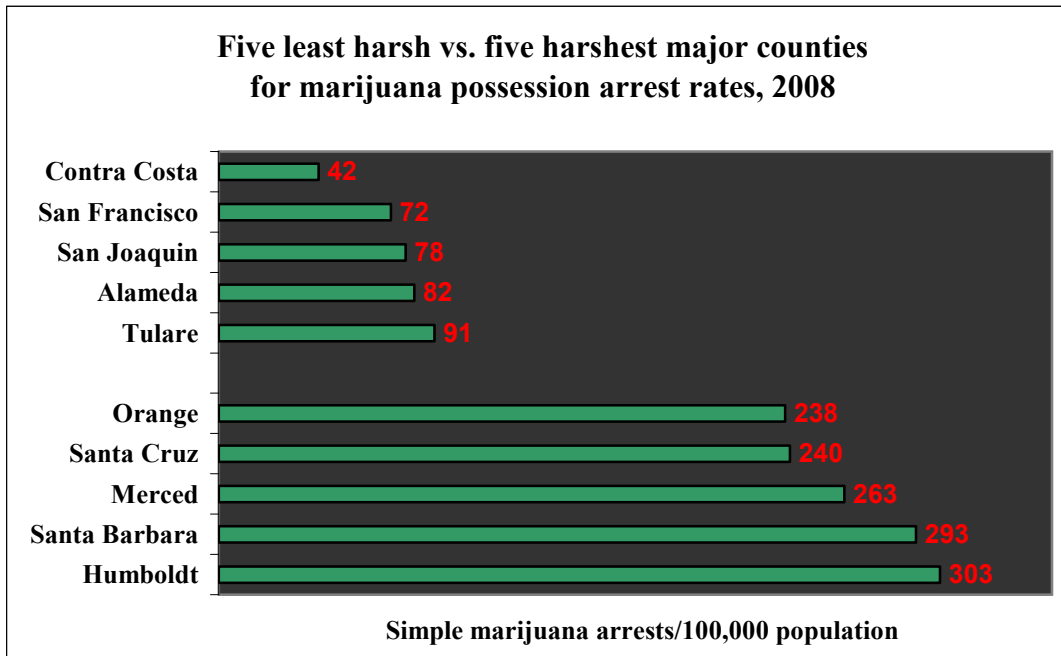
Small-quantity drug possession is the fastest-growing imprisonment offense in California—now exceeding felony drug sales				
<u>All felon admissions (state prison)</u>	<u>1990</u>	<u>1998</u>	<u>2008</u>	<u>Change</u>
Marijuana possession	68	96	219	+222%
<u>All other drug possession</u>	<u>4,963</u>	<u>7,994</u>	<u>9,243</u>	<u>+86%</u>
Total drug possession	5,031	8,090	9,462	+88%
<u>Drug manufacture/sales</u>	<u>8,710</u>	<u>9,460</u>	<u>9,407</u>	<u>+8%</u>
Total drug admissions	13,741	17,550	18,869	+37%
<u>Total felon admissions</u>	<u>39,272</u>	<u>46,823</u>	<u>66,336</u>	<u>+69%</u>
Drug possession as a percent of:				
All drug admissions	37%	46%	50%	+35%
Female drug admissions	49%	58%	60%	+22%
Male drug admissions	35%	44%	49%	+40%

Source: Criminal Justice Statistics Center (2009) and CDCR (2009)

County disparities in marijuana arrest rates and trends

Counties vary widely in arrest rates and trends for small-quantity marijuana possession—even relative to neighboring counties and those with similar demographics (Figure 2 and Appendix A). The county-by-county variations in both small and populous counties are broad and unpredictable. At the high end, the number of marijuana arrests in Inyo County in 2008 totaled more than 500 for every 100,000 county residents; at the low end, marijuana possession arrests in Sierra County totaled fewer than 30 in 100,000 county residents.

Figure 2



Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

Likewise, Orange County’s simple marijuana arrest rates were nearly six times higher than Contra Costa County’s. San Joaquin County and San Francisco County were among the lowest in misdemeanor marijuana arrest rates, while Santa Cruz County and Merced County were among the highest. Two adjacent, major marijuana producing counties had diametrically opposite trends: Humboldt County had large increases and high rates of simple marijuana arrests, while Mendocino County had among the lowest rates and most modest increases in marijuana arrests. Adding to the disordered pattern in marijuana possession enforcement, arrest rates fell in five counties but rose by more than 1,000% in four others since 1990.

The increase in small-quantity marijuana possession arrests comes at a time when California law enforcement agencies are failing to clear (that is, make an arrest) in 56.5% of violent crimes and 62.4% of all serious violent and property index offenses reported to them (2008 figures). Counties with high rates of marijuana possession arrests had about the same rates of crime clearance as those with low marijuana arrest rates, indicating that arresting more people for marijuana neither detracts from nor enhances the ability of police agencies to solve more serious offenses.

Nor do marijuana arrest rates seem connected to a county’s overall crime rate. As Appendix A shows, counties with very similar marijuana possession arrest rates (i.e., Santa Cruz and Merced, or San Bernardino and Marin) have very different rates of violent, property, and other offenses. Nor do the political leanings of a county reliably predict marijuana arrest rates, as the high rates for liberal Santa Cruz and conservative Orange counties, and the low rates for conservative Fresno and liberal San Francisco counties indicate.

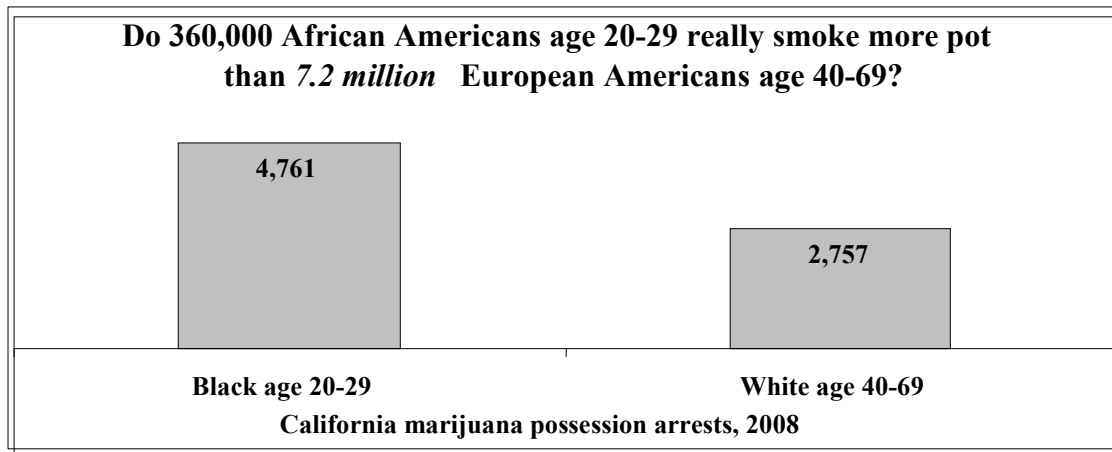
Counties also varied widely in ages targeted. Californians under age 21 (using the population age 10-20 as the denominator) were 3.6 times more likely to be arrested for marijuana possession than those over age 21 (using age 21-69 as the population). Some of the more notable comparisons are:

- Marin County’s under 21 age group was nearly eight times more likely to be arrested for marijuana possession as the over 21 age group;
- In San Mateo, Tulare, and Ventura counties, persons under 21 were around 7 times more likely to be arrested for marijuana than ages 21 and older in those same counties;
- In San Francisco, Sonoma, Contra Costa, Santa Clara, and Santa Cruz counties the ratio of under-21 to over-21 arrest rates was around 6-1.

At the other end of the spectrum, persons under age 21 were around 3 times more likely to be arrested for marijuana possession in Los Angeles County and Sacramento County, and around twice as likely in counties such as Kern and Merced.

That counties have such large disparities in ages arrested for marijuana is peculiar. As a general rule, counties with higher rates of under-21 marijuana arrests also had high rates of over-21 arrest rates. However, arrest rates of younger ages were disproportionately higher in counties with *lower* overall marijuana arrest rates. That is, the areas that have moved away from enforcing marijuana possession laws against adults seem to have shifted toward arresting more teenagers, primarily from minority communities, for small amounts of marijuana possession. Marin County, for example, ranks 44th in the state in its arrest rate for adults 21 and older for marijuana, but ranks 12th highest in its rate of arrests of persons under age 21, with especially high arrest levels among its relatively small populations of African American and Hispanic youth. San Francisco has a similar pattern, with very low adult marijuana arrest rates offset by especially heavy marijuana arrest levels among its African American youth.

Figure 3



Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

Racial and age disparities in marijuana arrests versus use

In 2008, persons under age 21 comprised 30,350 of the state's 61,400 marijuana possession arrests, nearly two-thirds of which were people of color. African Americans are disproportionately likely to be arrested for marijuana (7.3% of the population age 10-20, 12.3% of under-21 marijuana possession arrests). European Americans, Hispanics, and Asians are under-arrested compared to their populations. Surveys show that people under 21 do not comprise half of California's marijuana users, and young African Americans are not more inclined to the drug than other populations.

The other curious trend is the big jump in over-40 arrests, though the numbers remain small (around 5,500 possession arrests in 2008). This would not seem to be a group targeted by police. Middle-aged racial disparities are even more pronounced. African Americans comprise 6.2% of the population age 40-69 but 27.3% of small-quantity marijuana arrests among age 40 and older. European Americans are 56% of California's middle-aged population but comprise half of its over-40 marijuana possession arrests. Middle-aged Hispanics and Asians are less likely than their population proportions would indicate to be arrested for marijuana.

Conclusion

California's trends, age breakdowns, racial breakdowns, and wildly disparate local arrest rates reveal an erratic and inexplicable pattern of county-based marijuana possession enforcement. In many major counties, arrests surge and plummet by 40% or more from year to year. In other instances, counties with similar demographics have arrest rates that may vary by 10-fold or more. It appears that the odds of getting arrested for marijuana are a function of geography, race, age, year, and local practices.

The volatility of marijuana policing in California shown in the radical shifts (mostly upward) in numbers and in the large divergence in targeted populations has serious implications both for the current criminalization scheme and proposals to legalize the drug. The shift by law enforcement toward markedly greater marijuana arrests (at a time when all other arrest categories are declining) would seem to defy both sensible policing priorities and voter preferences (expressed in Proposition 36 and many local ordinances) that low-level, mild drug offenders constitute a low priority. It is not clear why police agencies are concentrating more resources on small-quantity marijuana enforcement when more serious crimes are going unsolved, local jails and state prisons are overcrowded, and harder drugs present much more of a menace.

While continued criminalization of marijuana has financial and social implications, current disparities in arrest point to issues needing careful consideration. For example, Contra Costa, San Francisco, Alameda, Marin, Tulare, San Joaquin, and Stanislaus, have very low rates of adult arrest for marijuana possession. In these counties, young people, disproportionately African Americans, are arrested in even more skewed numbers than elsewhere in the state. In these counties, young people, disproportionately African Americans, are arrested in even more skewed numbers. In the 17 counties with the lowest rates of arrest for adults 21 and older (less than 1 per 1,000 population), young people are 6.2 times more likely than adults to be arrested for marijuana possession; in the 17 counties with the highest arrest rates (averaging four times higher than the lowest group), the age disparity is just 2.8. Both cost savings and the goal of

greater fairness in law enforcement will suffer if reform efforts merely shift arrests from one demographic to another.

If more discriminatory and erratic enforcement of marijuana laws is to be avoided, then the current push for legalization should be seen as an opportunity for comprehensive review of California's deeply flawed drug criminalization and regulation policies. Current arbitrary, biased, and rising patterns of arrest for small-quantity marijuana possession argue strongly for meaningful reform.

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About the Authors

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Daniel Macallair is the Executive Director and a co-founder of the Center on Juvenile and Criminal Justice. Mr. Macallair's expertise is in the development and analysis of correctional policy for youth and adult offenders and has implemented model programs throughout the country. In the past ten years his programs received national recognition and were cited as exemplary models by the United States Department of Justice and Harvard University's *Innovations in American Government* program. In 1994, Mr. Macallair received a leadership award from the State of Hawaii for his efforts in reforming that state's juvenile correctional system. He has been a consultant to juvenile justice systems around the country and frequently provides expert assistance on correctional practices and juvenile justice reform.

Mr. Macallair's research and publications have appeared in such journals as the *Stanford Law and Policy Review*, *Journal of Crime and Delinquency*, *Youth and Society*, *Journal of Juvenile Law and Policy*, and the *Western Criminology Review*. His studies and commentary are often cited in national news outlets. Mr. Macallair recently edited a book on juvenile justice reform and co-authored two recent studies on the California youth corrections system. He teaches in the Department of Criminal Justice Studies at San Francisco State University and is an invited speaker and trainer at conferences and seminars throughout the country.

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Dr. Males has a Ph.D. in social ecology from U.C. Irvine and formerly taught sociology at U.C. Santa Cruz. With over 12 years of experience working in youth programs, his research interests are focused on youth issues like crime, drug abuse, pregnancy and economics. He is the author of dozens of articles and four books, the latest of which is *Kids and Guns: How Politicians, Experts, and the Press Fabricate Fear of Youth*. Recent articles and op-eds have appeared in *The Los Angeles Times*, *The American Journal of Public Health*, *The Lancet*, *Journal of School Health*, and *Scribner's Encyclopedia of Violence in America*.

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**Counties vary 2000% in 2008 arrest rates for small-quantity marijuana possession
and even more radically in arrest trends**

Ranked by 2008 marijuana arrest rate*		Ranked by change in arrest rates*, 2008 vs. 1990	
Inyo	544.1	Mariposa	n.a.
Alpine	332.8	Plumas	4,588%
Calaveras	319.7	Calaveras	4,084%
Humboldt	303.0	Butte	2,784%
Mono	298.7	Sutter	1,818%
Santa Barbara	292.9	Merced	713%
Merced	262.8	Kings	583%
Santa Cruz	240.0	Sonoma	510%
Orange	238.0	Amador	493%
Plumas	236.8	Madera	474%
Del Norte	234.7	Inyo	395%
San Benito	227.3	San Bernardino	374%
Sonoma	216.1	Imperial	373%
Shasta	211.5	Trinity	368%
Imperial	210.3	Fresno	293%
Yuba	208.7	San Mateo	245%
Sutter	207.2	San Joaquin	244%
Colusa	201.4	Kern	240%
Butte	197.5	Riverside	230%
San Diego	195.5	Humboldt	229%
Mendocino	187.7	Monterey	228%
San Luis Obispo	187.4	Sacramento	216%
Solano	181.2	Yuba	214%
Los Angeles	178.7	Tehama	211%
Tehama	174.5	San Benito	200%
Lake	170.1	Tuolumne	187%
California	160.9	Los Angeles	187%
Siskiyou	160.8	Siskiyou	181%
Placer	160.6	San Luis Obispo	174%
Amador	155.8	Napa	171%
Monterey	155.4	Santa Barbara	166%
Modoc	154.2	El Dorado	166%
Kings	154.2	Del Norte	161%
Santa Clara	148.2	Tulare	160%
Ventura	147.2	Placer	153%
Marin	145.6	Lake	148%
El Dorado	143.9	Ventura	143%
Yolo	143.5	Colusa	142%
San Bernardino	141.9	Shasta	139%
Glenn	140.0	California	134%
Mariposa	136.6	Santa Cruz	128%
Madera	136.2	Nevada	124%
Nevada	136.2	Solano	110%
Riverside	135.8	Santa Clara	92%
Kern	128.5	Orange	87%
Napa	127.0	Yolo	83%
Fresno	123.8	Glenn	83%
Sacramento	122.3	Alpine	81%
Tuolumne	106.3	Marin	64%
San Mateo	102.8	Lassen	60%
Stanislaus	100.2	San Diego	58%
Tulare	90.6	Stanislaus	50%
Alameda	82.1	Mendocino	33%
Lassen	81.1	Contra Costa	19%
San Joaquin	78.5	Alameda	-1%
San Francisco	72.3	Mono	-23%
Trinity	72.0	Modoc	-25%
Contra Costa	41.9	San Francisco	-44%
Sierra	29.8	Sierra	-92%

*Rates are per 100,000 population by county. Trends are population-adjusted. Mariposa County had no marijuana arrests in 1990, so a trend cannot be calculated.

Source: Criminal Justice Statistics Center (2009) and Demographic Research Unit (2009)

The Center on Juvenile and Criminal Justice is a nonprofit, nonpartisan organization that offers policy analysis, program development, and technical assistance in the criminal justice field.