



**SALLY
HERNANDEZ
FOR SHERIFF**

A working comprehensive draft plan to de-prioritize first time, minor marijuana offenses and direct more resources towards property crimes and violent offenses

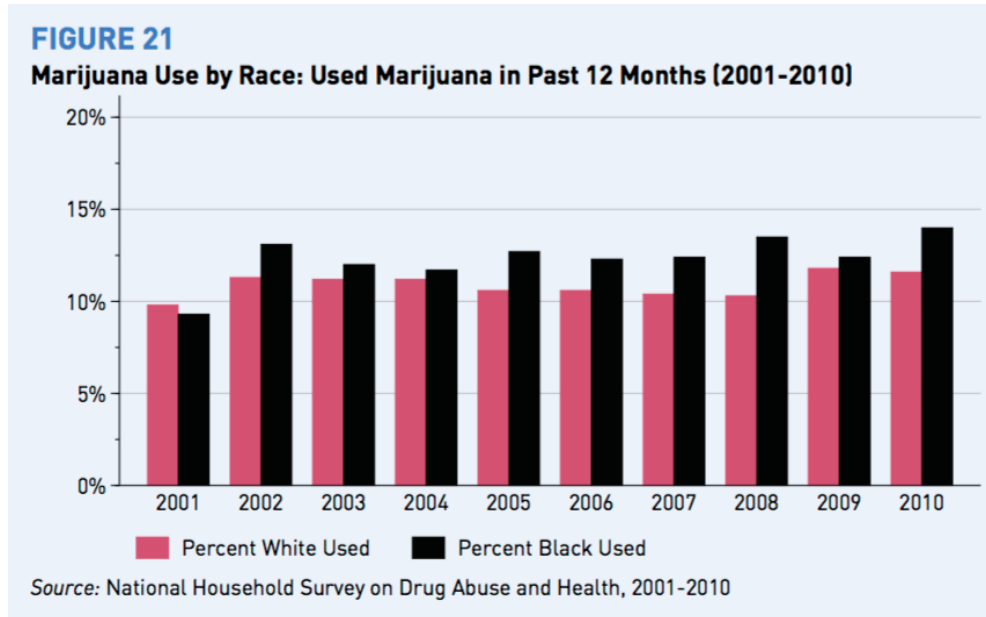
January 21, 2015

“We are spending too many resources and valuable time on prosecuting and destroying the lives of young people. We should be focusing on violent crime and property offenses.”

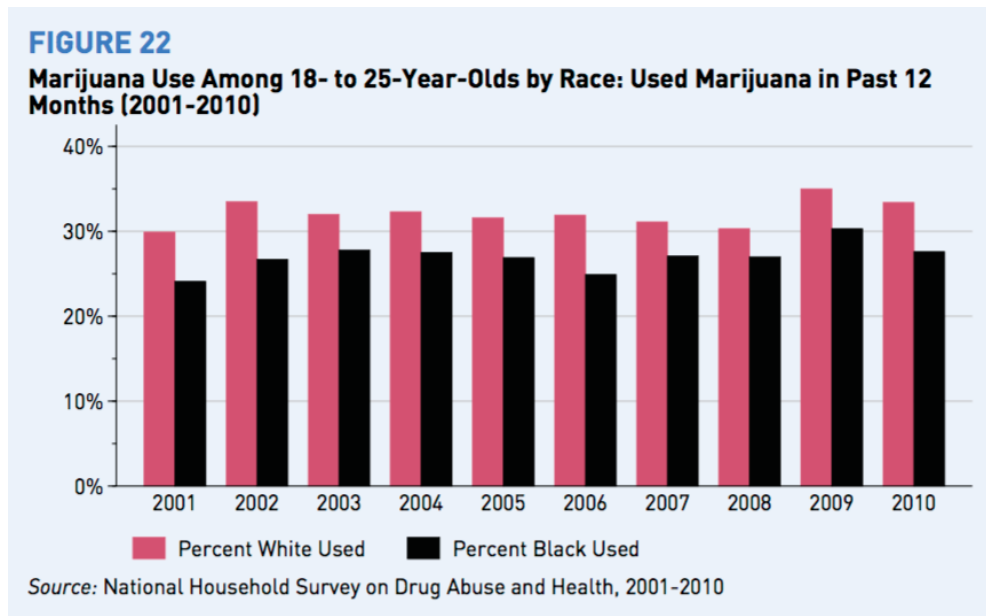
-Constable Sally Hernandez

Race Groups Use Marijuana at the Same Rate

African-Americans and Whites use marijuana at the same rate.¹ Indeed, in 2010, 14% of African-Americans and 12% of whites reported using marijuana.



Graphic from the ACLU's "The War On Marijuana In Black and White"

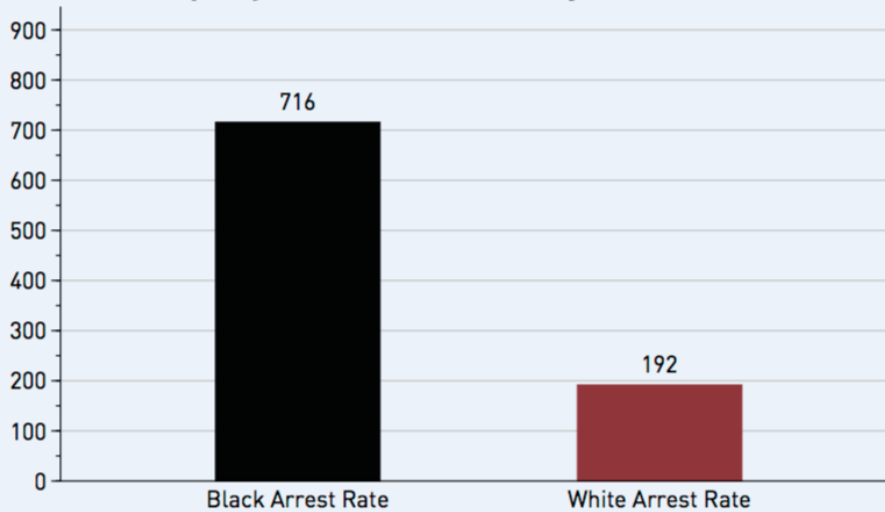


Graphic from the ACLU's "The War On Marijuana In Black and White"

¹ *The War On Marijuana In Black in White*, AMERICAN CIVIL LIBERTIES UNION, Jun. 2013, https://www.aclu.org/sites/default/files/field_document/1114413-mj-report-rfs-rel1.pdf.

FIGURE 9

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

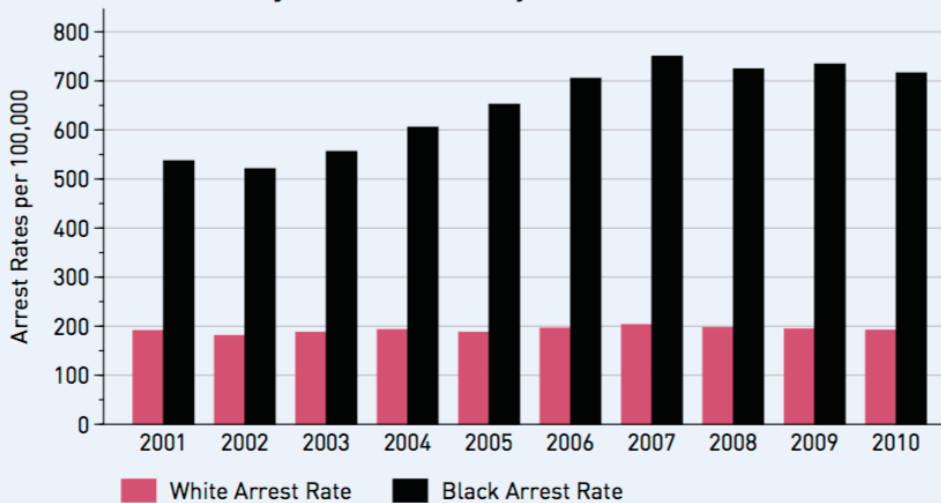


Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Graphic from the ACLU's "The War On Marijuana In Black and White"

FIGURE 10

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



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

Graphic from the ACLU's "The War On Marijuana In Black and White"

There Is A National Racial Disparity in Possession of Marijuana Cases

In the south, African-Americans are roughly three times more likely to be arrested for possession of marijuana offenses.²

These racial disparities exist "regardless of county household income levels, and are greater in middle income and more affluent counties."³

What is more concerning is that racial disparities have increased over

the last 10 years.⁴ According to the American Civil Liberties Union ("ACLU"), "[a]s the

² *Id.*

³ *Id.*

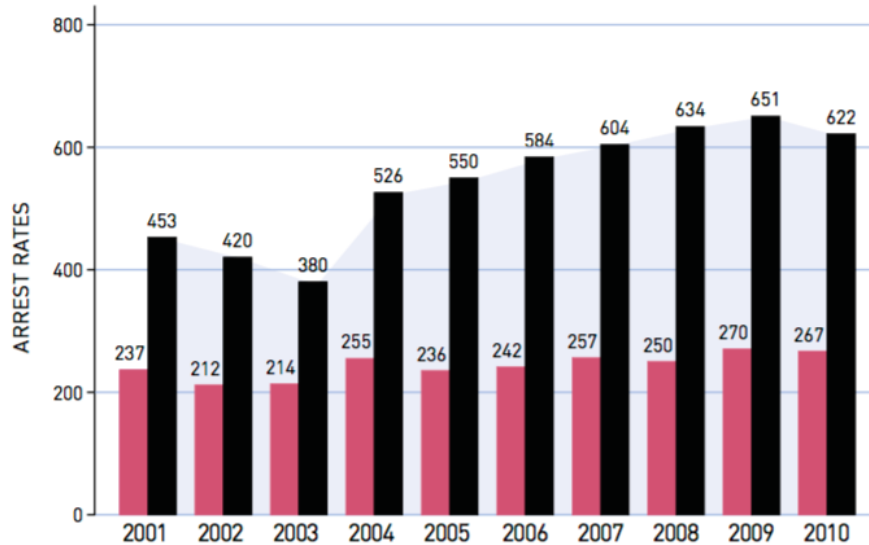
⁴ *Id.*

overall number of marijuana arrests has increased over the past decade, the white arrest rate has remained constant...whereas the Black arrest rate has risen[.]”

There Is A Racial Disparity In Our State And In Travis County.

In Texas, African-Americans make up 12.2% of the population but account for 25.8% of possession of marijuana arrests.⁵ Specifically, in Travis County, African-Americans are 3.3 times more likely to be arrested for possession of marijuana offenses.

Statewide marijuana possession arrest rates 2001-2010

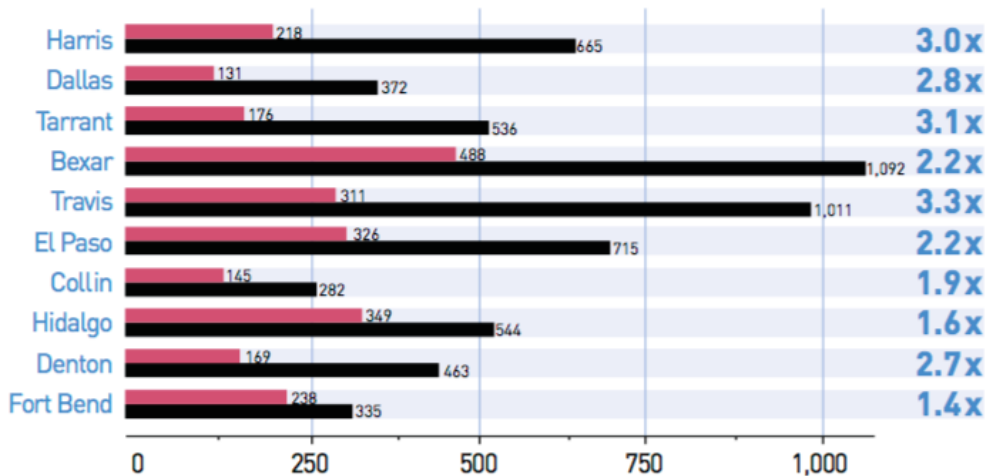


■ White arrest rate Source: FBI / Uniform Crime Reporting Program Data and U.S. Census Data
■ Black arrest rate *All arrest rates are per 100,000 and based on 2010 data

Graphic from the ACLU’s “The War On Marijuana In Black and White”

Counties with the largest population

Includes all counties, listed in order of size



Graphic from the ACLU’s “The War On Marijuana In Black and White”

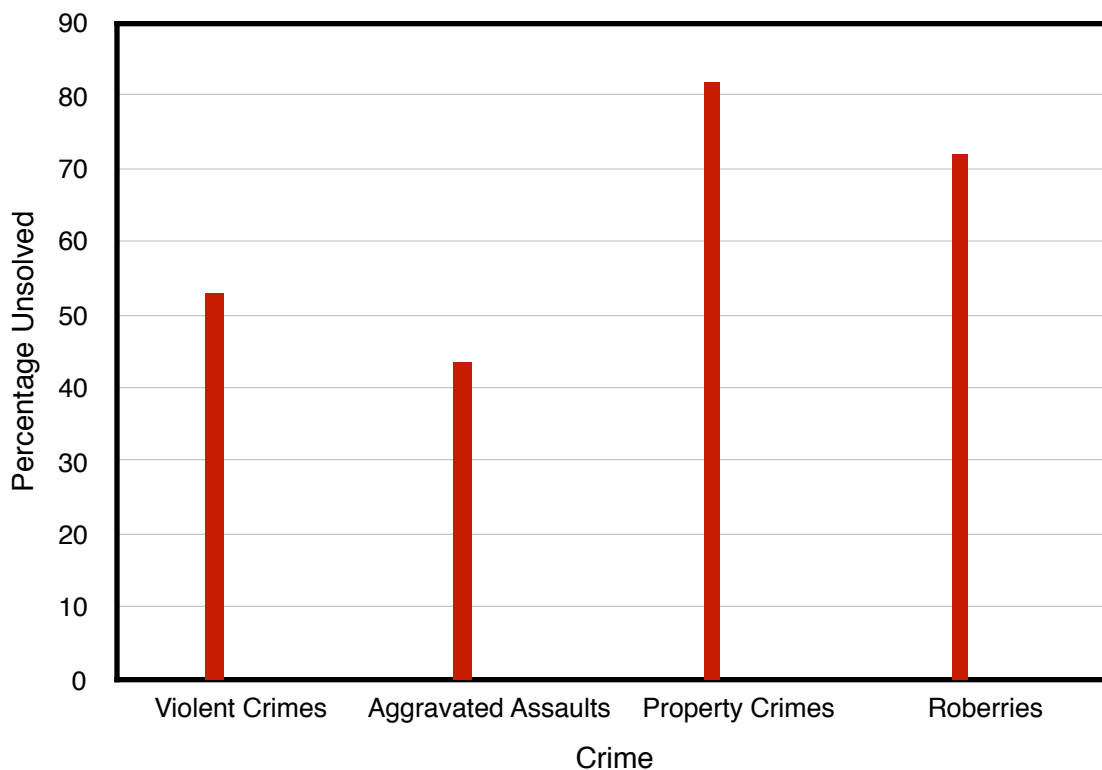
⁵ *Id.*

When Possession of Marijuana Cases Are De-prioritized, There Is No Indication That Marijuana Usage Rates Increase Or That Crime Increases

There is little evidence that de-prioritizing possession of marijuana cases, leads to an increase in marijuana use.⁶ Advocates for zero-tolerance policing may predict that de-prioritizing possession of marijuana cases lead to an increase in youth crime. However, in 2011, evidence showed that crime among young people fell in all categories when California law made possession of marijuana offense a citable offense instead of a arrest-able offense.⁷

Violent Crimes and Property Crimes Are Going Unsolved

In 2010, nationwide 53% of violent crimes, 43.6% of aggravated assaults, 82% of property crimes, and 72% of robberies went unsolved.⁸ It is time we invest our time, money, and resources on the investigation of violent crimes and property crimes in order to keep our communities and neighborhoods safe.



⁶ *Marijuana and Medicine: Assessing the Science Base*, NATIONAL ACADEMY OF SCIENCES, INSTITUTE OF MEDICINE, 1999.

⁷ *The War On Marijuana In Black in White*.

⁸ *Id.*

De-Prioritizing Possession of Marijuana Cases Saves Money We Should Invest In Violent Crimes and Property Offenses

Investigating and prosecuting possession of marijuana cases is costly and resources are better spent and more effective pursuing violent crimes and property offenses. According to the ACLU, it costs a county roughly \$3,300 to prosecute minor possession of marijuana offenses. The national expenditure of enforcing possession of marijuana laws is approximately \$3.613 billion.⁹ Texas has the second highest possession of marijuana arrests, behind New York.¹⁰ Possession of marijuana cases made up 53.5% of all drug offenses in Texas.¹¹ There is a better use for these resources and we must stop distracting those tasked with serving our community.

Code of Criminal Procedure Article 14.06(c), (d)

Texas law enforcement has the power to cite and release a person caught for with a first time, minor possession of marijuana. Under Texas' Code of Criminal Procedure Article 14.06(c), better known as the "cite and release" provision,

If the person resides in the county where the offense occurred, a peace officer who is charging a person with committing an offense that is a Class A or B misdemeanor may, instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate of this state as described by Subsection (a), the name and address of the person charged, and the offense charged.

A Class B Possession of Marijuana under 2.5 ounces is eligible for cite and release under Article 14.96(c).

Current Travis County Policy

Travis County only cites and releases in 30% of instances. If a person receives a citation then they receive a court date scheduled for two to three weeks later.¹² Unlike a regular traffic ticket, a person is not able to plead or pay a fine without showing up to court. Once a person shows up to court, they go through a process similar to booking and the case is routed to a misdemeanor court.¹³ There are some who argue that people do not show up to these court appearances because there is no financial loss. When someone

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *In Travis' cite and release program, 40% of suspects are no-shows*, AUSTIN AMERICAN-STATESMAN, Jun. 15, 2013, <http://www.mystatesman.com/news/news/crime-law/in-travis-cite-and-release-program-40-of-suspects-/nYMG2/>.

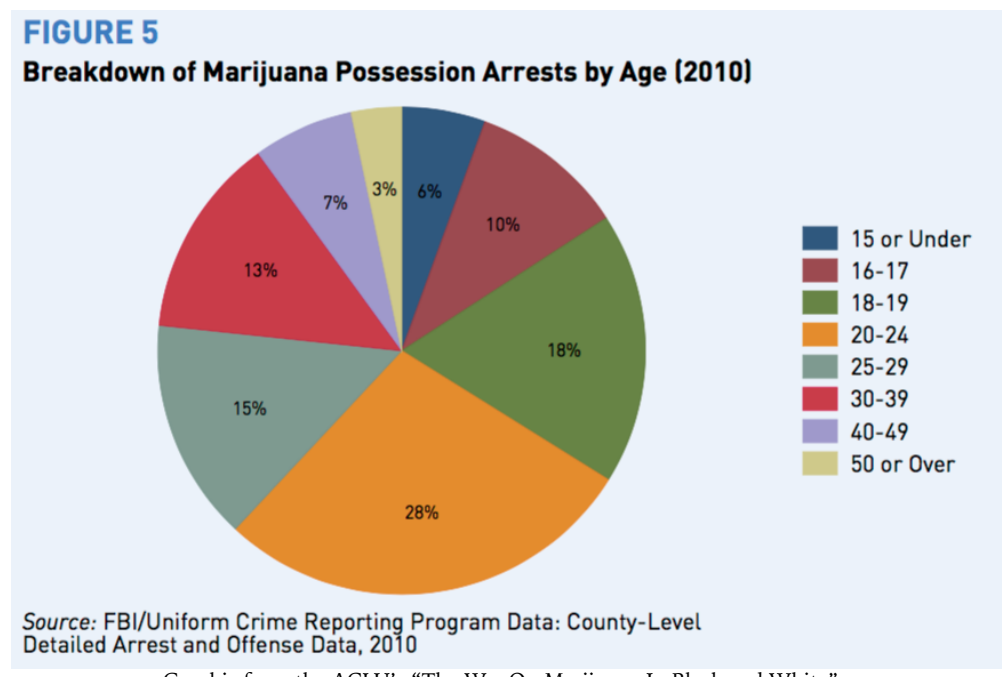
¹³ *Id.*

does not show up it results in an arrest warrant being issued. However, the stronger argument is that people are not aware of the process and the process scares them, especially if they are a young person. People must be adequately informed of the process and of the consequences.

There must be a uniformed policy on when a person is cite and release eligible. Additionally, we must rethink how we handle possession of marijuana cases.¹⁴

First Chance Intervention Program (Harris County)

In Harris County, if a person is caught with two ounces or less of marijuana for the first time and has no outstanding warrants or holds, among other requirements,¹⁵ they are eligible for the First Chance Intervention Program. A person eligible for this program must participate in either a 60 or 90 day period¹⁶ in which they cannot break the law, pay a \$100 program fee, and complete either eight hours of community service or an eight hour cognitive class¹⁷.



Graphic from the ACLU's "The War On Marijuana In Black and White"

The First Chance Intervention Program reduces administrative and court costs, saves taxpayer money, and allows young people to maintain a clean record. It provides them with a second chance.

This program can be effective. During the First Chance Intervention Program pilot,

¹⁴ *Id.*

¹⁵ *First Chance Intervention Program*, OFFICE OF DISTRICT ATTORNEY HARRIS COUNTY, TEXAS, no date, <http://app.dao.hctx.net/OurOffice/FirstChanceIntervention.aspx>.

¹⁶ Determined at the intake interview.

¹⁷ Determined at the intake interview. *First Chance Intervention Program*.

93% of people who participated have not been re-arrested and the primary group benefiting from the program were males in their early 20s. ACLU data also indicates that 56% of those who are arrested are between 16 and 24 years old.

A similar program in Travis County will allow us to spend more law enforcement, investigative, and prosecutorial resources on property crimes. It will allow us to work with low level offenders and go after high level offenders. More importantly, it will give young people a second chance and help alleviate the disproportionate effect possession of marijuana charges have on minority communities.

My plan to de-prioritize first time, minor marijuana offenses and direct more resources towards property crimes and violent offenses:

- Give young people and the Travis County community a second chance, instead of criminal records and a ticket towards the school to prison pipeline.
- Work with the Commissioners Court and the County Attorney to implement a possession of marijuana second chance program.
- Direct saved resources to property crimes such as theft and burglary and violent crimes.