

REFORMING MARIJUANA LAWS: WHICH APPROACH BEST REDUCES THE HARMS OF CRIMINALIZATION? A FIVE-STATE ANALYSIS



Mike Males, Senior Research Fellow
Lizzie Buchen, Communications and Policy Analyst
Center on Juvenile and Criminal Justice

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Research Report

Introduction

The War on Marijuana is losing steam. Policymakers, researchers, and law enforcement are beginning to recognize that arresting and incarcerating people for marijuana possession wastes billions of dollars, does not reduce the abuse of marijuana or other drugs, and results in grossly disproportionate harms to communities of color (ACLU, 2013; Ingram, 2014). Marijuana reforms are now gaining traction across the nation, generating debates over which strategies best reduce the harms of prohibition.

Should marijuana be decriminalized or legalized? Should it be restricted to people 21 and older? Advocates of the latter strategy often argue their efforts are intended to protect youth (Newsom, 2014; Holder, 2013; Californians for Marijuana Legalization and Control, 2014). However, if the consequences of arrest for marijuana possession — including fines, jail time, community service, a criminal record, loss of student loans, and court costs — are more harmful than use of the drug (Marijuana Arrest Research Project, 2012), it is difficult to see how continued criminalization of marijuana use by persons under 21 protects the young. Currently, people under 21 make up less than one-third of marijuana users, yet half of all marijuana possession arrests (ACLU, 2013; Males, 2009).

This analysis compares five states that implemented major marijuana reforms over the last five years, evaluating their effectiveness in reducing marijuana arrests and their impact on various health and safety outcomes. Two types of reforms are evaluated: all-ages decriminalization (California, Connecticut, and Massachusetts), and 21-and-older legalization (Colorado and Washington). The chief conclusions are:

- All five states experienced substantial declines in marijuana possession arrests. The four states with available data also showed unexpected drops in marijuana felony arrests.
- All-ages decriminalization more effectively reduced marijuana arrests and associated harms for people of all ages, particularly for young people.
- Marijuana decriminalization in California has not resulted in harmful consequences for teenagers, such as increased crime, drug overdose, driving under the influence, or school dropout. In fact, California teenagers showed improvements in all risk areas after reform.
- Staggering racial disparities remain— and in some cases are exacerbated — following marijuana reforms. African Americans are still more likely to be arrested for marijuana offenses after reform than all other races and ethnicities were before reform.
- Further reforms are needed in all five states to move toward full legalization and to address racial disparities.

Two types of state reforms

Decriminalization for all ages

California, Connecticut, and Massachusetts decriminalized marijuana by reducing low-level possession from a misdemeanor to a civil infraction for all ages. California's reform under Senate Bill 1149, effective January 1, 2011, reduced possession of less than one ounce (28.5 grams) of marijuana from a misdemeanor to an infraction carrying a maximum fine of \$100 (Legislative Analyst, 2010). Possession of marijuana on a school campus remains a criminal offense.

Although penalties for small-quantity marijuana possession changed only marginally, the reform appears to have had a strong effect on law enforcement. Surveys of several urban police departments found very few marijuana citations are being issued (see ACLU, 2013). The Sacramento Police Department, for example, reports 21 marijuana infraction citations in 2011 and nine in 2012 — and these included vehicle code violations prohibiting marijuana in the passenger area while driving (Sacramento Police Department, personal correspondence, 2014). In effect, low-level marijuana possession outside of a school or moving vehicle is *de facto* legal for all ages.

Two other states implemented reforms similar to California's, reducing possession of less than one ounce of marijuana from a misdemeanor to a civil infraction: Massachusetts, on January 1, 2009, and Connecticut, on July 1, 2011. The reforms apply to all ages, although people convicted of the infraction who are under 18 may be required to attend drug counseling or community service. Massachusetts' reform does not require those cited for marijuana to identify themselves to police or provide a means of collecting the fine, making enforcement nearly impossible.

At least one year of arrest data is available to evaluate the effects of these reforms (2011 and 2012 for California; 2009 through 2012 for Massachusetts, and 2012 for Connecticut). Several other states/jurisdictions have also approved reforms, including Maine, Nebraska, Vermont, the District of Columbia, and Philadelphia, but data are not yet available for evaluation.

Legalization for ages 21 and older

Washington's reform under Initiative 502, effective December 6, 2012, removes all criminal penalties for people 21 and older who possess less than one ounce of marijuana or small amounts of marijuana products, with certain minor exceptions, such as possession in a vehicle or by tourists (Office of Program Research, 2012). These exceptions explain why small numbers of people 21 and older continue to be arrested for low-level marijuana offenses after the reform. Marijuana possession by people under 21 remains a criminal offense, carrying potential fines, jail time, loss of driving privileges, and loss of student loans. The law sets up a licensing system for the production and sale of marijuana.

Colorado's reform under Amendment 64, effective December 10, 2012, also removes all criminal penalties for people over age 21 who possess less than one ounce of marijuana and sets up a licensing system for marijuana production and sales (Colorado State Government, 2012). Possession of one to two ounces by people 21 and older, and up to two ounces by people under 21, is a petty criminal offense carrying a \$100 maximum fine. Unlawful manufacture and sales, and possession of larger amounts of marijuana, depending on quantity, remain more serious misdemeanors or felonies.

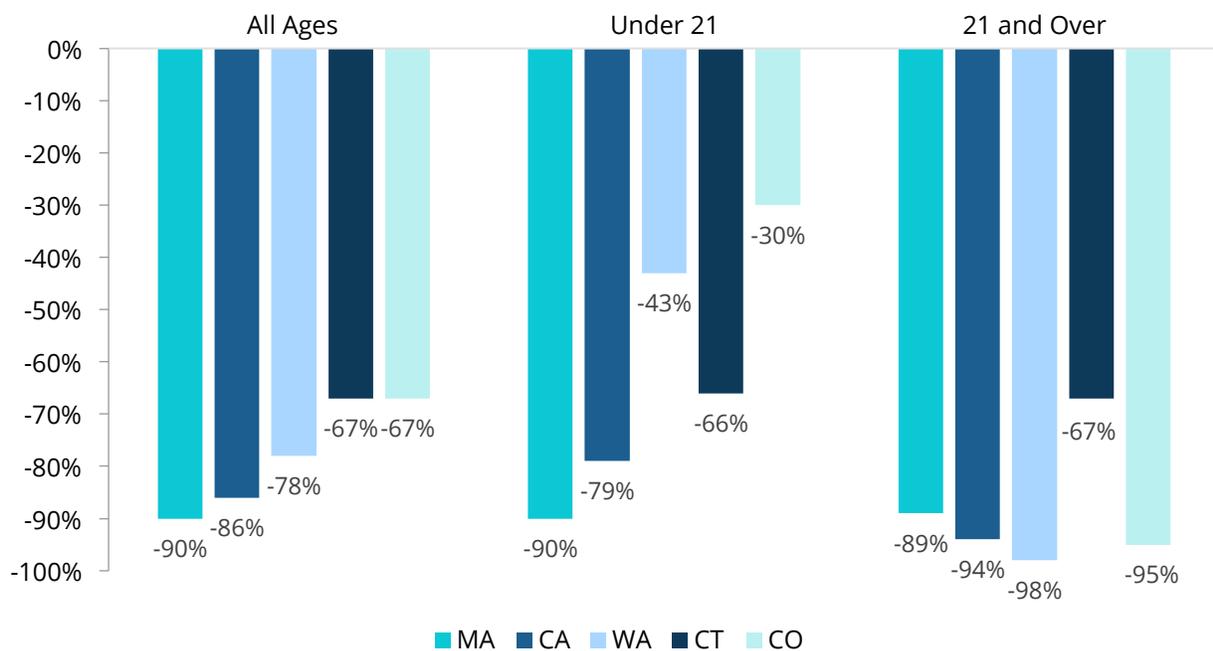
Both states have statistics on court-filed marijuana cases for the year before and at least one year after the reform took effect (see Appendix 1 for detailed data and methods), but not arrest data.

Findings

States that decriminalized marijuana for all ages experienced the largest drops in marijuana arrests or cases, led by substantial drops among young people and for low-level possession.

Arrest and court data show that decriminalization reforms in Massachusetts, California, and Connecticut were followed by declines of 90, 86, and 67 percent, respectively, in low-level possession arrests for all ages, compared to declines following 21-and-over legalization of 78 percent in Washington and 67 percent in Colorado for low-level marijuana court filings (Figure 1). The largest differences were among young people: Compared to 21-and-over legalization, all-ages decriminalization led to substantially larger decreases in low-level arrests among those under 21 and somewhat smaller decreases among those over 21. Colorado's decline is based on the change in cases involving under two ounces of marijuana because cases involving 1-2 ounces are not available. Detailed possession arrest and court filing trends are shown in Appendix 2, Table 1.

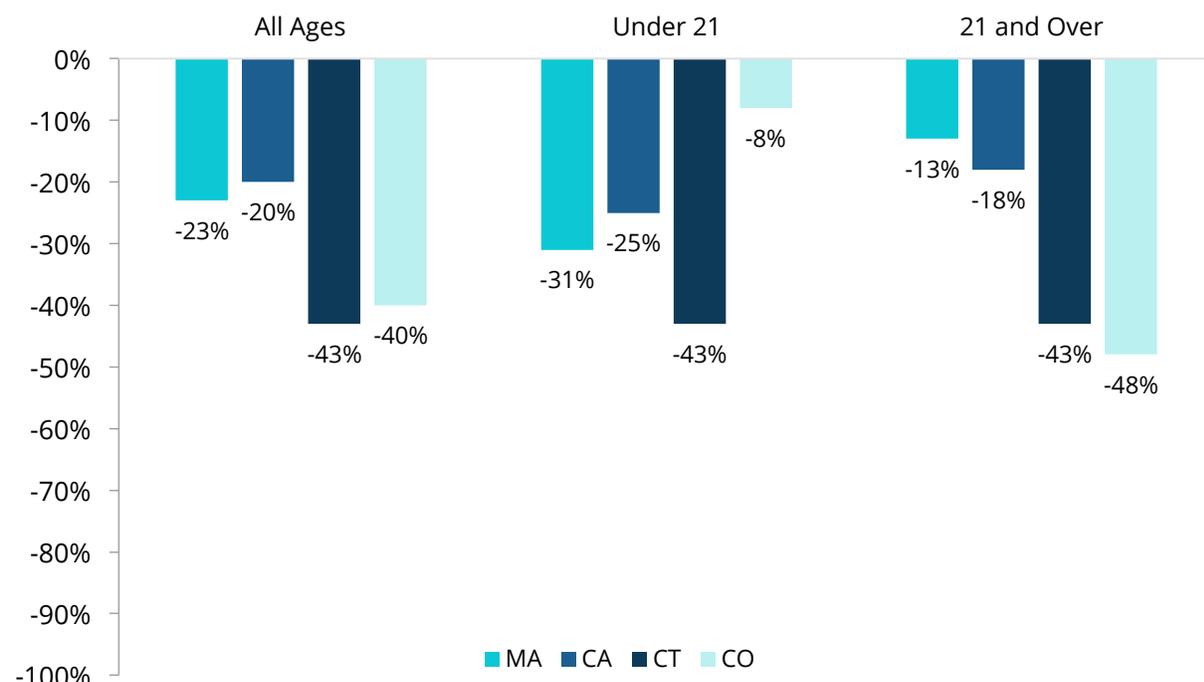
Figure 1. Decrease in rates of low-level marijuana arrests and case filings by age after marijuana reform



Note: Caution should be used in comparing these numbers because they reflect differing state regimes. The ages used to calculate rates are 10-20 for Under 21, 21+ for 21 and Over, and 10+ for Total. California figures are for arrests for possession of less than one ounce and are available through 2012; Washington's are court filings for possession of under one ounce and are available through 2013; Colorado's are court filings for possession of under two ounces, available through July 25, 2014, and do not include Denver County or municipal courts; Massachusetts' and Connecticut's figures are arrests (CJIS, 2014). Sources: Criminal Justice Statistics Center (California) (2013); Colorado State Judicial Branch (2014); Washington Administrative Office of the Courts (2014); Criminal Justice Information Services (Massachusetts, Connecticut, and other states) (2014).

Although reforms only applied to possession of small amounts of marijuana, California, Colorado, Connecticut, and Massachusetts also experienced considerable decreases in high-level marijuana misdemeanor and felony arrests and cases, including manufacture, sale, and possession in larger quantities (Figure 2). Data were not available for Washington. Law enforcement appears to be responding to reforms with reduced attention to marijuana across the board, from minor infractions to felonies. Colorado’s law, which established a state licensing and sales framework, may further reduce marijuana felonies in the future.

Figure 2. Decrease in rates of high-level marijuana arrests and case filings by age after reform

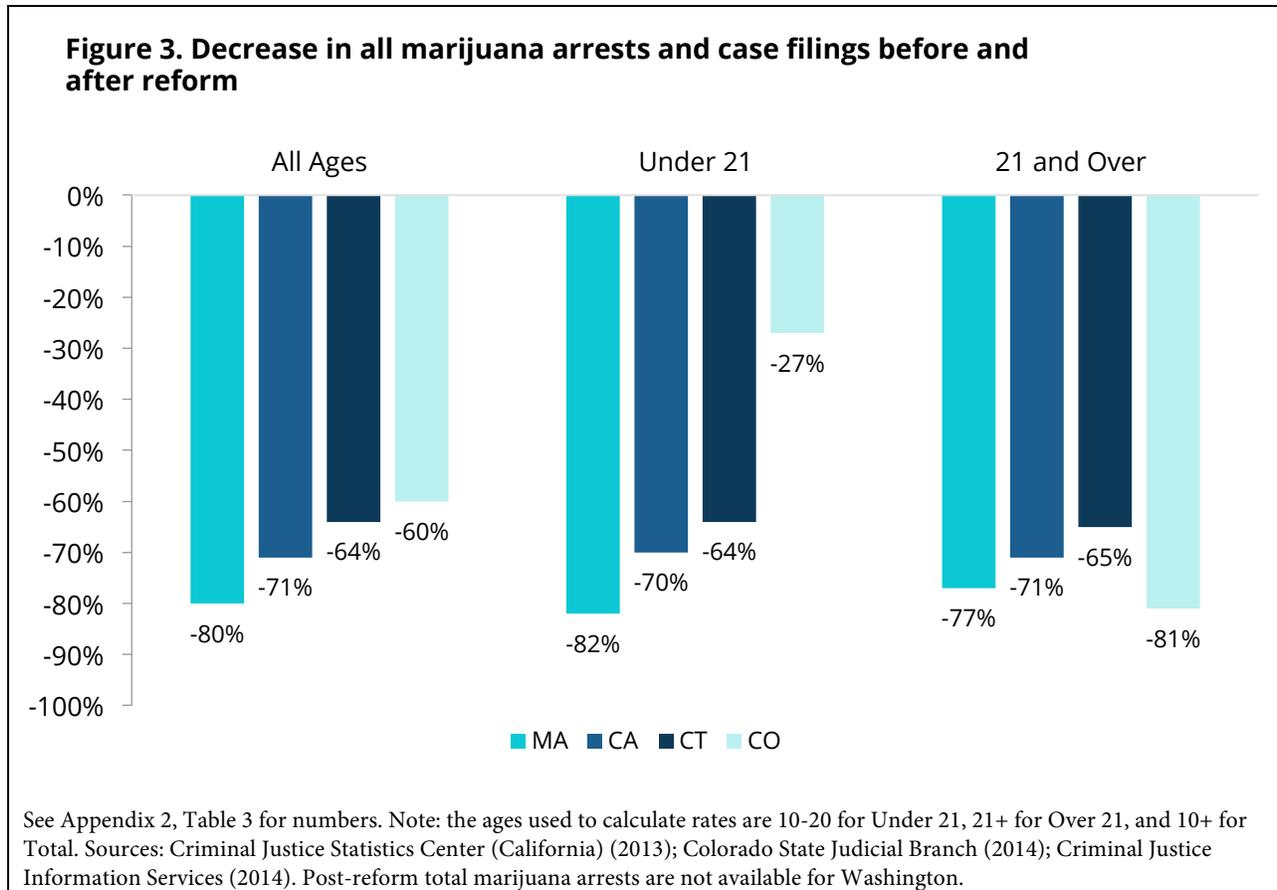


See Appendix 2, Table 2 for numbers. Notes: Includes manufacture, sale, and possession in larger quantities. The ages used to calculate rates are 10-20 for Under 21, 21+ for 21 and Over, and 10+ for All Ages. Sources: Criminal Justice Statistics Center (California) (2013); Colorado State Judicial Branch (2014); Criminal Justice Information Services (2014). No post-reform data on felonies available for Washington at this writing. *Fewer than two years of post-law data.

One way to neutralize the differing ways states classify offenses (see Appendix 1) is to analyze total marijuana arrests, including both felonies and misdemeanors. All-ages decriminalization in Massachusetts, California, and Connecticut proved substantially more effective in reducing under-21 arrests, moderately less effective in reducing 21-and-over arrests, and more effective in reducing arrests overall than did Colorado’s 21-and-over legalization (Figure 3).

Examination of marijuana arrests nationwide (in the 48 states for which reasonably complete reports are available from 2008-2012) indicates that states which undertook no significant reforms experienced only marginal declines in marijuana arrests (Criminal Justice Information Services, 2014). The three states that had at least one year of post-reform data available by 2012 — California, Connecticut, and Massachusetts — experienced an average decrease of 72 percent in rates of arrest for marijuana, including an 81 percent decrease in arrests for marijuana possession and 29 percent for marijuana felonies. The remaining 45 states experienced average decreases of 7 percent in rates of marijuana arrest, including an 8

percent decrease in arrests for marijuana possession and 4 percent for marijuana felonies. These data suggest that the most effective way to reduce arrests and collateral damage is through proactive reform of marijuana laws.

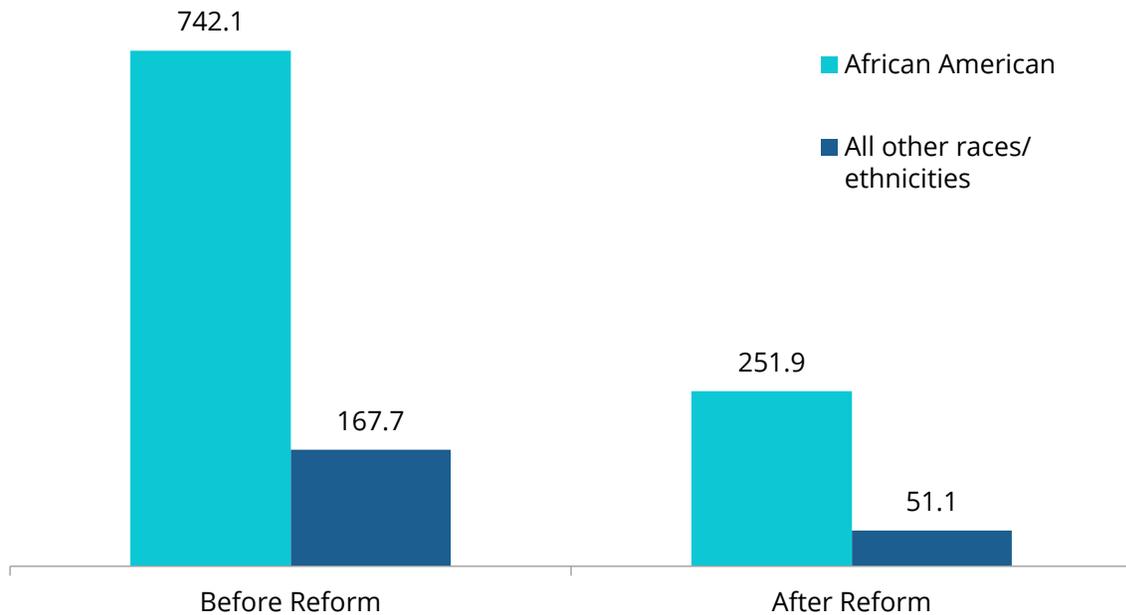


Reforming marijuana laws does not reduce staggering racial disparities.

While reforms dramatically reduced the numbers of marijuana arrests and court cases, and therefore mitigated the impacts across all racial groups, racial disparities after reform remained much the same as before (see Appendix 2, Table 3). In Connecticut prior to reform, the number of African Americans arrested for marijuana annually was equivalent to 1 percent of the state’s entire African American population age 10 and older — nearly five times the rate of all other races. Other states also had high rates and similar arrest disparities. Racial disparities increased after reform in Colorado and Massachusetts. On average, in California, Colorado, Connecticut, and Massachusetts, African Americans were 4.4 times more likely to be arrested for marijuana offenses than all other races before reform, and 4.9 times more likely after reform (data from Washington are not available).

One particularly striking finding is that post-reform marijuana arrest rates for African Americans across these four states remain considerably higher than pre-reform rates for people of all other races (Figure 4). In other words: African Americans were more likely to be arrested for marijuana possession after legalization or decriminalization than were people of all other races while marijuana possession was still criminalized.

Figure 4. Average arrest rates for African Americans versus all other races before and after marijuana reform



Note: “All other races/ethnicities” refers to people classified as any race or ethnicity besides “black” or “African American,” including “White,” “Hispanic,” “Latino,” “Other,” “Asian,” “Native,” “Unknown,” and “White/Hispanic.” The four states with relevant post-reform data on all marijuana arrests/cases by race are California, Colorado, Massachusetts, and Connecticut. Rates are per 100,000 population by race, averaged for the four states. Sources: Criminal Justice Statistics Center (California) (2013); Colorado State Judicial Branch (2014); CJIS (2014).

Decriminalizing marijuana for youth has not led to increased risk behavior.

Table 1 summarizes some of the risks commonly thought to be associated with marijuana abuse, such as crime, violent death, suicide, impaired driving, property offenses, involvement with harder drugs, and school dropout. The table focuses on teenagers, since they are subjected to the most sensational claims of harmful effects. By a variety of measures, California’s teenage behaviors actually improved dramatically after marijuana was effectively legalized — improvements that occurred more weakly or not at all among older Californians and among teenagers nationwide. While no claim is made here that *de facto* legal access to marijuana contributed to improved behaviors among youth and young adults (other than benefits from decreased arrests for marijuana), there is certainly no evidence of harm.

Post-reform data are not yet available for Colorado, Connecticut, or Washington. Some measures are available for Massachusetts and did not indicate any major effects of marijuana decriminalization; most risks, in fact, declined.

Table 1. California's marijuana reform was followed by improvements in 15-19 year-olds' risk indexes, both absolutely and compared to teenagers elsewhere in the country

Index		Year before (2010)	Year after (2011)	2 years after (2012)	Change
Violent Deaths	California	28.5	27.4	24.7	-4%
	Rest of US	38.3	37.9	N/A	-1%
Drug Overdose Deaths	California	3.0	2.4	2.3	-20%
	Rest of US	3.9	4.0	N/A	4%
Suicide	California	5.3	5.8	4.6	9%
	Rest of US	7.8	8.7	N/A	11%
Criminal Arrest	California	9,505.3	7,712.0	6,612.2	-30%
	Rest of US	14,711.1	13,572.8	11,908.0	-19%
Drug arrests*	California	718.4	593.8	551.6	-23%
	Rest of US	2,013.7	1,794.0	1,734.4	-14%
Property crime arrests	California	2,272.1	1,996.1	1,708.0	-25%
	Rest of US	3,229.1	3,045.4	2,784.4	-14%
DWI, marijuana**	California	0.289	0.240	0.282	-3%
	Rest of US	0.119	0.131	0.129	+9%
School dropout rate	California	14.7%	13.1%	11.4%	-22%
	Rest of US	N/A	N/A	N/A	

Notes: Death and crime rates are per 100,000 population age 15-19. Change is 2011 versus 2010 for mortality measures, and 2012 versus 2010 for arrest and DWI measures. School dropout is those failing to graduate on time as a percent of all eligible students. DWI marijuana is the proportion of fatal accidents involving a driver under age 20 in which marijuana is found by test. Vital statistics are not available nationally for 2012, nor are comparable school dropout rates. Different measures may account for differences in California and national numbers. Sources: Centers for Disease Control (2014); California Department of Public Health (2014); Criminal Justice Statistics Center (2013); Federal Bureau of Investigation (2013); National Highway Traffic Safety Administration (2014); California Department of Education (2014). *Excluding marijuana possession arrests in California. **California drug-tests a substantially greater proportion of drivers than other states and therefore finds more drug involvement. The measure used here maximizes marijuana presence by treating multiple drug tests a separate when in fact they probably include testing the same drivers more than once.

Conclusion

The experiences of the five states examined in this report clarify the debate over marijuana. First, reform of marijuana laws is necessary to remove or ameliorate the deleterious effects of marijuana arrest. Without proactive reform, law enforcement agencies will continue to arrest marijuana users and suppliers in high numbers (CJCJ, 2011; ACLU, 2013). Second, if one views criminal penalties for marijuana use as unacceptable regardless of age, then the all-ages decriminalization reforms in California, Connecticut, and Massachusetts have proven most effective, producing the largest drops in all levels of marijuana arrests.

For people under the age of 21, the all-ages decriminalization states experienced substantially larger declines in marijuana arrests than did the 21-and-over legalization states. As a result, many fewer young people in the former states are suffering the damages and costs of criminal arrest, prosecution, incarceration, fines, loss of federal aid, and other punishments. Meanwhile, no harmful consequences appear to be materializing: California teenagers displayed remarkably *improved* behaviors and none of the dire consequences predicted to result from effectively legal marijuana access.

Although Colorado and Washington, which legalized marijuana possession only for people 21 and older, experienced significant declines in marijuana case filings, they continue to expose young people to criminal sanctions. Under-21 Washingtonians face particularly serious consequences for low-level marijuana possession, including jailing for up to 90 days, fines of up to \$1,000, revoked driving privileges, permanent loss of student loans, and potential "out of pocket expenses total[ing] more than \$5,000" (MARP, 2012). Under-21 Coloradans face considerably lighter penalties, but low-level possession remains a petty offense that can result in a criminal record, which risks additional sanctions such as loss of student loans. These punishments buttress claims that for most users, getting arrested is more harmful than the drug itself.

The states with available data — California, Colorado, Connecticut, and Massachusetts — continue to struggle with staggering racial disparities, some of which were exacerbated by reforms. Most striking is the finding that in these states, African Americans were still more likely to be arrested for marijuana possession *after* legalization or decriminalization than were people of all other races while marijuana possession was still criminalized.

Recommendations

States should adopt the best of both approaches by the five pioneers in marijuana reform. Promising results in California, Massachusetts, and (to a lesser extent) Connecticut indicate a pathway toward reducing the price that current policies inflict on young people, while reforms in Colorado and Washington initiated a pathway to legalized, regulated, and taxed marijuana production and sales. However, the egregious racial disparities that persist in these states indicate marijuana reforms should extend beyond marijuana policy — most urgently, toward reforming police procedures and practices that contribute significantly to these racial disparities (see CJCJ, 2012; ACLU, 2013).

Learning from the progress of all five states is essential to designing marijuana reforms that move toward full legalization, regulation, and taxation of marijuana production, sale, possession, and use. Marijuana regulation should discriminate on the basis of responsible versus harmful use, such as dependency or driving under the influence, with the overriding goal of treatment and return to society — not policing and punishing by race, age, or other demographic factors.

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Appendix 1: Data and methods

California's Criminal Justice Statistics Center provides statistics on marijuana felony and marijuana misdemeanor arrests by age and year from 99%+ of the state's jurisdictions. Washington's data are from the Washington Administrative Office of the Courts (2014), as tabulated by the American Civil Liberties Union of Washington (2014), which believes the figures are reasonably complete. These consist of court filings for marijuana misdemeanors by age, which produce lower numbers than would raw arrest totals since some arrestees do not go to court. Marijuana felonies are lumped with other drug felonies and cannot be estimated separately at this time, but drug felonies as a whole did not decline in Washington in 2013.

Colorado's statistics were provided by special request to the Colorado State Judicial Branch (2014) and also consist of court filings for marijuana offenses by age. None are available for Denver County (one-eighth of Colorado's population) or municipal courts, which makes the statistics incomplete. The filings include petty, misdemeanor, and felony offenses by case, but some juvenile filings are reported in aggregate. The most feasible approach was to separate offenses involving possession of less than two ounces from more serious marijuana offenses. While statistical sources in Colorado and Washington were responsive and diligent in supplying information, it is concerning that neither state has data sufficient to fully evaluate their historic marijuana reforms. Populations by age, race, and year for California, Washington, and Colorado minus Denver County, are used to calculate rates of marijuana arrests and court filings. The figures reflect the most recent year available after the reform; the tables variously compare the first year after reform for all states and the most recent year for California and Massachusetts.

Connecticut and Massachusetts arrest figures were supplied by the Criminal Justice Information Services (2014) by request for the years 2008-2012. These are based on FBI Uniform Crime Report data collections, which the agency reports were available from more than 90 percent of the law enforcement agencies in the two states. Arrest rates are adjusted to reflect populations covered by the FBI reports for each state and year.

Appendix 2: Detailed tables on marijuana possession arrests, higher-level arrests, and racial disparities in reform states

Table 1. Low-level marijuana possession arrests/cases per 100,000 residents age 10+, before and after reform took effect

	Age group	Year before	Year after	Most recent year	Change
California (effective Jan 1, 2011)	Under 21	476.3	108.6	102.1	-79%
	21 and over	100.3	4.8	6.4	-94%
	All ages	170.2	23.8	23.7	-86%
Colorado (effective Dec 10, 2012)	Under 21	571.2	398.9	*	-30%
	21 and over	152.8	7.5	*	-95%
	All ages*	225.3	74.3	*	-67%
Connecticut (effective July 1, 2011)	Under 21	644.4	219.1	*	-66%
	21 and over	188.6	62.2	*	-67%
	All ages	266.7	89.0	*	-67%
Massachusetts (effective Jan 1, 2009)	Under 21	462.9	63.9	46.1	-90%
	21 and over	84.8	13.6	9.0	-89%
	All ages	149.4	22.1	15.1	-90%
Washington (effective Dec 6, 2012)	Under 21	359.7	206.4	*	-43%
	21 and over	121.4	2.4	*	-98%
	All ages	160.1	35.1	*	-78%

Notes: Caution should be used in comparing these numbers because they reflect differing state regimes. The ages used to calculate rates are 10-20 for Under 21, 21+ for 21 and Over, and 10+ for Total. California figures are for arrests for possession of one ounce or less and are available through 2012; Washington's are court filings for possession of under one ounce and are available through 2013; Colorado's are court filings for possession of under two ounces, available through July 25, 2014, and do not include Denver County or municipal courts; Massachusetts' and Connecticut's figures are arrests (CJIS, 2014). *Fewer than two years after reform available for comparison. Sources: Criminal Justice Statistics Center (California) (2013); Colorado State Judicial Branch (2014); Washington Administrative Office of the Courts (2014); Criminal Justice Information Services (2014).

Table 2. High-level marijuana misdemeanor and felony arrests/cases per 100,000 residents age 10+ before and after reform took effect

	Age group	Year before	Year after	Most recent year	Change
California	Under 21	90.8	75.5	68.4	-25%
	21 and over	42.5	35.9	34.9	-18%
	All ages	51.5	43.1	41.0	-20%
Colorado	Under 21	95.9	88.2	*	-8%
	21 and over	72.7	37.7	*	-48%
	All ages	76.7	46.3	*	-40%
Connecticut	Under 21	61.2	34.7	*	-43%
	21 and over	20.1	11.4	*	-43%
	All ages	27.1	15.4	*	-43%
Massachusetts	Under 21	76.4	65.9	53.0	-31%
	21 and over	16.8	16.7	14.6	-13%
	All ages	27.0	25.0	20.8	-23%

Note: The ages used to calculate rates are 10-20 for Under 21, 21+ for 21 and Over, and 10+ for Total. Sources: Criminal Justice Statistics Center (California) (2013); Colorado State Judicial Branch (2014); Criminal Justice Information Services (2014). No post-reform data on felonies available for Washington at this writing. *Fewer than two years of post-law data.

Table 3. All marijuana arrests/cases (felony and misdemeanor) per 100,000 residents age 10+, before and after reform took effect, and change in rates two years after reform

	Age group	Year before	Year after	Most recent year	Change
California	Under 21	567.2	184.1	170.5	-70%
	21 and over	142.4	40.7	41.4	-71%
	All ages	221.2	66.9	64.6	-71%
Colorado	Under 21	657.6	478.2	*	-27%
	21 and over	208.0	40.1	*	-81%
	All ages	283.2	112.2	*	-60%
Connecticut	Under 21	705.6	253.8	*	-64%
	21 and over	208.7	73.6	*	-65%
	All ages	293.8	104.4	*	-64%
Massachusetts	Under 21	539.3	129.8	99.1	-82%
	21 and over	101.6	30.3	23.6	-77%
	All ages	176.4	47.1	35.9	-80%

Note: The ages used to calculate rates are 10-20 for Under 21, 21+ for 21 and Over, and 10+ for Total. Sources: Criminal Justice Statistics Center (California) (2013); Colorado State Judicial Branch (2014); Criminal Justice Information Services (2014). Post-reform total marijuana arrests are not available for Washington.

Table 4. Declines in marijuana arrests/cases per 100,000 population by race before and after reform, all ages

All ages	Marijuana arrest rate			Arrest disparity versus all races	
	Before	After	Change	Before	After
California (all marijuana arrests)					
African American	679.3	196.7	-71%	3.1	3.0
Asian	88.9	29.7	-67%	0.4	0.5
Latino	250.1	73.9	-70%	1.1	1.1
White	183.6	51.5	-72%	0.8	0.8
All races	221.7	64.6	-71%		
Colorado (all marijuana court filings, Denver County and municipal courts excluded)					
African American	650.9	292.0	-55%	2.1	2.4
Asian	84.1	62.9	-25%	0.3	0.5
Native	301.8	69.8	-77%	1.0	0.6
Other/Unknown	115.9	51.4	-56%	0.4	0.4
White/Latino	302.3	119.6	-60%	1.0	1.0
All races	304.2	121.5	-60%		
Massachusetts (all marijuana arrests)					
African American	634.4	160.7	-75%	3.7	4.5
Asian	35.8	11.7	-67%	0.2	0.3
Native	86.3	7.6	-91%	0.5	0.2
White/Latino	148.2	28.2	-81%	0.9	0.8
All races	173.0	36.1	-80%		
Connecticut (all marijuana arrests)					
African American	1,003.7	358.0	-64%	3.5	3.5
Asian	66.8	20.4	-69%	0.2	0.2
Native	208.1	76.2	-63%	0.7	0.7
White/Latino	220.8	77.9	-65%	0.8	0.8
All races	290.9	103.2	-64%		

Note: Colorado's court filings inconsistently distinguish between Latino and non-Latino white filings, and Massachusetts and Connecticut do not report Latino ethnicity, and so the two are combined. Since Latinos generally have higher marijuana arrest rates than whites, the effect is to understate black-white racial disparities in these three states. "After" period includes entire post-law period. Sources: Criminal Justice Statistics Center (California) (2013); Colorado State Judicial Branch (2014); CJIS (2014).