

IMMIGRATION DETAINER REQUESTS FOR LOW PRIORITY MARIJUANA ARRESTS



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Fact Sheet

Law enforcement officials across California have made enforcement of low-level drug offenses, especially simple marijuana possession, a low public safety priority (Holder, 2013). Yet federal immigration authorities continue to request that criminal justice facilities detain low priority drug offenders for civil immigration purposes, expending public safety resources. This fact sheet analyses data on California's ICE¹ hold requests from October 2009 to February 2013 obtained courtesy of the Immigration Justice Clinic of the Benjamin N. Cardozo School of Law as a result of litigation filed in 2010.²

- **During the 41-month period, of the 234,363 ICE hold requests, 5,359 were for people who had convictions for marijuana as the most serious offense documented on their criminal record.**

The data set includes convictions ranging from April 1968 through January 2013. Thirty-four percent of these convictions occurred before 2005. Around 83 percent of the population with marijuana convictions is from Mexico, followed by El Salvador, Cuba, and Jamaica, reflecting the demographics of California's undocumented populations in general (Hill, 2013).

- **Of the 5,359 ICE hold requests for people who had documented marijuana convictions, 1,915 were for simple misdemeanor possession.**

The remaining 3,444 marijuana convictions were for felonies, including 2,863 for sales and other felonies, and 581 for marijuana smuggling.³ Misdemeanor marijuana possession offenses are not a criminal justice priority in California and do not create an immediate public danger requiring secure custody.

- **ICE hold requests for people with marijuana convictions rose during the 2000's to a peak in 2010, and then declined rapidly.**

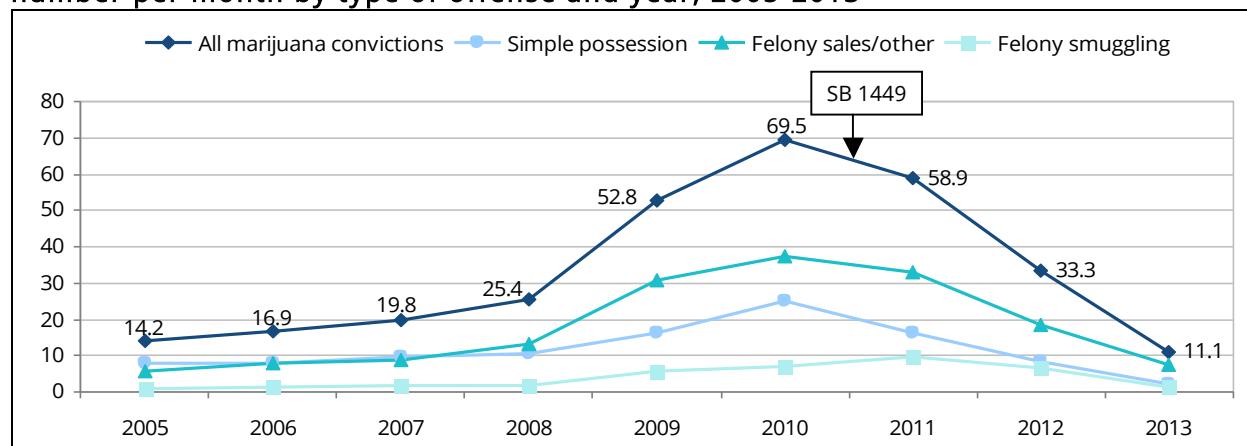
Implemented on January 1, 2011, the effect of SB 1449, making possession of less than one ounce of marijuana an infraction rather than a criminal offense is reflected in the sharp drop in marijuana possession convictions among ICE hold detainees in 2011, 2012, and early 2013 (Figure 1). Marijuana sales convictions also declined, but more slowly. This pattern occurred for Californians in general, following the passage of SB 1449.

¹ Under federal detainer programs, Immigration and Customs Enforcement (ICE) make non-binding requests to local law enforcement to detain an immigrant of interest for up to 48 hours, excluding weekends and federal holidays, allowing ICE to assume federal custody (ICE, 2008). These detainers are commonly known as "ICE holds."

² The data used in this analysis is subject to limitations. See CJCJ's *Data Clarification* for more details at http://www.cjcj.org/uploads/cjcj/documents/data_clarification_for_ice_holds_reports.pdf.

³ Two reporting categories only list "marijuana" or "marijuana-other" convictions, which might be either felonies or misdemeanors. In this report, they are assumed to be felonies.

Figure 1. California ICE hold requests for people with marijuana convictions, average number per month by type of offense and year, 2005-2013



Source: ERO LESA Statistical Tracking Unit (2012).

- **Almost 75 percent of ICE hold requests for people with marijuana-related convictions were directed at local jails.⁴**

If public safety officials responded to all of these requests, detaining these individuals at an average cost of \$114 per day would cost taxpayers \$267,060 per year solely for federal civil immigration purposes (BSCC, 2012).⁵ This contradicts stated public safety priorities and causes unnecessary strain on law enforcement.

Sources:

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Board of State and Community Corrections (BSCC). (2012). *Average Daily Cost to House Inmates in Type II and III Local Detention Facilities*. Sacramento, CA: BSCC. At: http://www.bscc.ca.gov/download.php?f=/Avg_Cost_II_III_12.pdf

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⁴ Of the remaining, 513 ICE hold requests were issued for people in California state prisons, 722 in federal facilities, 25 in facilities in other states, and 97 at unknown locations.

⁵ Estimated cost assumes 4,002 detainees are held for 48-hours during the 41-month period, to create an annual average.