



June 6, 2013

***Via overnight mail***

Sheriff Anthony Betterton  
Upshur County Sheriff Department  
405 North Titus  
Gilmer, TX, 75644

Dear Sheriff Betterton,

We write to call your attention to the alarming racial disparity in marijuana possession arrests between black and white individuals in Upshur County. Based on an ACLU analysis of arrest statistics, we have concluded that your department is one of the primary drivers of this disparity. The ACLU released a report this week documenting the racial disparities in marijuana possession arrests,<sup>1</sup> and Upshur County ranks among the worst dozen counties in the state for racial disparity, with the highest disparities with blacks being over 4 times more likely than whites to be arrested for marijuana possession. Your leadership is essential in solving this problem: we call on you to take immediate and affirmative steps to correct this disturbing disparity so that the people of Upshur County are treated equally and fairly, regardless of race.

The American Civil Liberties Union Criminal Law Reform Project's report, *The War on Marijuana in Black and White*, documents the racial disparities in marijuana possession arrests in counties across the country. The arrest data presented in the report were obtained from the Uniform Crime Reporting ("UCR") Program of the Federal Bureau of Investigation. This program annually collects crime data, including arrest data, reported by state and local law enforcement agencies. The arrest data reveal disturbing trends in Texas as a whole: while blacks make up 12.2% of Texas's population, they account for 25.8% of arrests for marijuana possession. In many Texas counties, the racial disparities are even worse and come at great cost. The state of Texas spent \$251,648,800.00 enforcing marijuana laws in 2010 alone.

In fact, in Upshur County the racial disparity in marijuana possession arrests is among the highest in the state. This disparity is deeply concerning because studies consistently show that whites and blacks use marijuana at roughly the same rates.<sup>2</sup> Yet despite parity in use, blacks have been arrested for marijuana possession at significantly higher rates than whites in Upshur County. For example, in 2010 blacks accounted for almost 30% of the marijuana possession arrests in the County even though they comprise less than 9% of the County's population. In the

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<sup>1</sup> For your convenience, we have appended a copy of the report with an insert highlighting the relevant Texas data. The report can also be found here: <http://www.aclu.org/files/assets/aclu-thewaronmarijuana-rel2.pdf>.

<sup>2</sup> American Civil Liberties Union, *The War on Marijuana in Black and White* 66 (2013).

same year, the National Household Survey on Drug Abuse and Health documented that, nationally, 14% of blacks and 12% of whites reported using marijuana in the past year.<sup>3</sup>

This disparity in arrest rates in your jurisdiction suggests that your department is targeting blacks for enforcement of marijuana possession laws. That kind of biased policing offends the Constitution and our country's commitment to equal treatment before the law.

We are deeply troubled by the racial disparity in Upshur County and in your department's marijuana possession arrests. We assume you are as well: the money spent on enforcing marijuana possession laws could be better used for solving serious crimes, particularly when government resources are already stretched thin. While a department policy prohibiting the use of racial profiling and establishing fair search procedures based on consent might help improve this situation, other factors must also be addressed to eliminate the racial disparity. Top among these are the eliminating any performance measures that incentivize aggressive enforcement of drug laws, such as COMPSTAT and the Byrne Justice Assistance Grant's performance measures. Law enforcement agencies should also stop using raw data about stops, citations, summons, and arrests to measure productivity and effectiveness. As the report points out, this type of data does not accurately measure impacts on public safety, and its collection only encourages the over-enforcement of low-level offenses that are less resource intensive, like marijuana possession arrests. Instead, law enforcement agencies should make marijuana possession laws the lowest enforcement priority. Law enforcement agencies should also make a concerted effort to increase transparency and accountability by collecting data on stops, frisks, searches, and arrests. Additional suggestions can be found in the report, which we have appended for your convenience.

We urge you to give this problem your utmost attention and to identify the causes of racially disparate arrest rates in your own department. Please do not hesitate to contact us with any questions.

Sincerely,



Terri Burke  
Executive Director  
ACLU of Texas



Rebecca L. Robertson  
Legal & Policy Director  
ACLU of Texas

Encl.

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<sup>3</sup> *Id.*