

# DECLINING DRUG ENFORCEMENT AFTER PROPOSITION 47

Maureen Washburn, Policy Analyst  
Center on Juvenile and Criminal Justice



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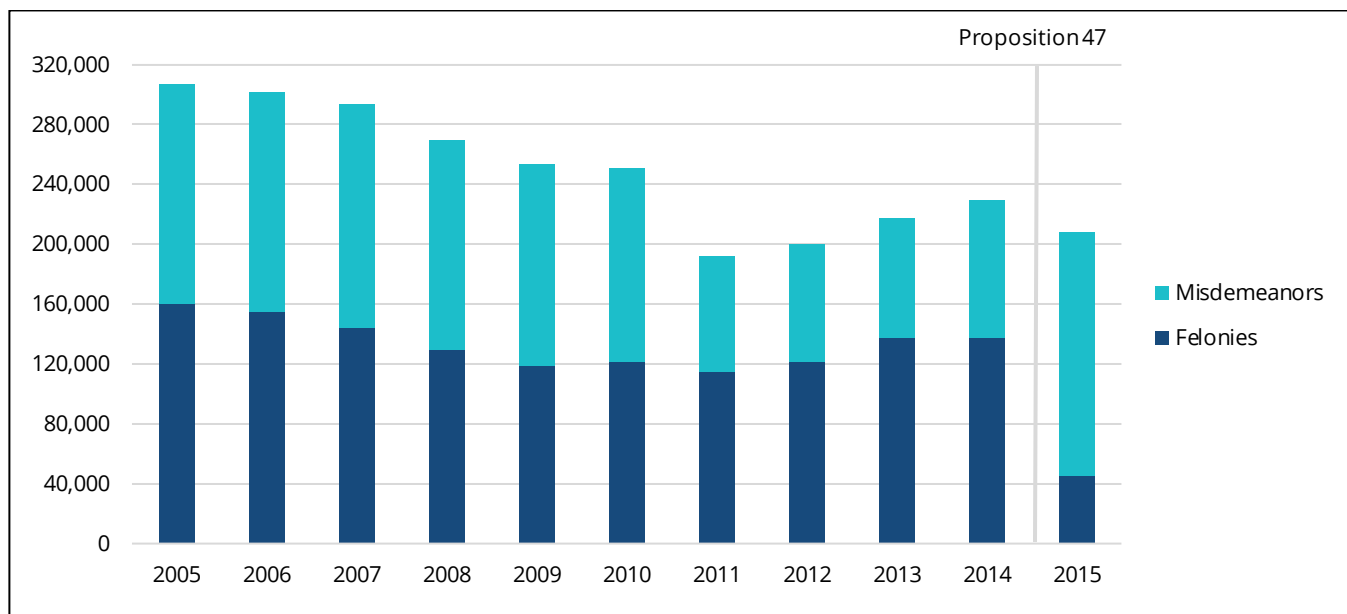
Research Report

## Introduction

Since the 1980s, local police departments have harnessed punitive sentencing and targeted federal funding to vigorously enforce drug laws. This created a justice system that incentivizes drug arrests, convictions, and incarceration, and a drug enforcement apparatus that places criminal consequences ahead of public health solutions. However, in November 2014, California took a significant step toward reforming this approach by passing Proposition 47, a ballot measure that prioritizes drug treatment over punishment by reclassifying three drug possession felonies to misdemeanors,<sup>1</sup> and reinvesting state savings in direct services.

Following the implementation of Proposition 47 in late 2014, there was a 67 percent statewide drop in felony drug arrests – a decline driven by the reclassification of possession of a narcotic (California Health and Safety Code (HS) 11350), possession of concentrated cannabis (HS 11357), and possession of a non-narcotic (HS 11377) from felonies or wobblers to misdemeanors. However, even considering the reclassification of these three offenses, the decline in felony drug arrests exceeded the corresponding increase in misdemeanors. In 2015, the first full year after Proposition 47 was implemented, felony drug arrests fell by over 92,000 while misdemeanor drug arrests increased by only 70,000. Taken together, these shifts produced a 10 percent decline in total drug arrests from 2014 to 2015 (See Figure 1).

**Figure 1. Drug offense arrests in California, 2005-2015**



Source: DOJ, 2016. Note: From 2010 to 2011, misdemeanor drug arrests declined sharply as a result of Senate Bill (SB) 1449, which took effect on January 1, 2011 and reduced personal possession of marijuana from a misdemeanor to an infraction (SB 1449, 2010).

<sup>1</sup> Prior to Proposition 47, possession for personal use could be charged as a misdemeanor, felony, or either a misdemeanor or a felony (a “wobbler”) depending on the drug.

To better understand the impact of Proposition 47, this report examines arrests, citations,<sup>2</sup> and prosecutions for drug possession offenses in the two largest California counties: Los Angeles and San Diego. The county data suggest the following findings:

1. Proposition 47 reduced inconsistencies in the classification of drug possession offenses as felonies or misdemeanors.
2. Drug arrests and citations were increasing in the years immediately preceding Proposition 47.
3. Arrests and citations declined after Proposition 47, but varied by county, city, and substance.

## **Recent Drug Policy Reforms Shift Priorities and Support Reinvestment**

Across the United States, attitudes about drug use are changing (SAMHSA, 2015). Increasingly, the American public views problematic substance use as a public health problem, not a criminal one (Pew Research Center, 2014). As a result, marijuana has been legalized in eight states and the District of Columbia,<sup>3</sup> and a majority of states have recently enacted drug law reforms.<sup>4</sup>

In California, drug policy reforms reflect changing perceptions of substance use (Tulchin Research, 2012). In 2000, voters passed Proposition 36, which allows persons convicted of certain nonviolent drug possession offenses to be diverted to drug treatment in place of incarceration (DPA, 2016). A decade later, in 2010, the California Legislature reduced the penalty for possessing small amounts of marijuana from a misdemeanor to an infraction<sup>5</sup> (SB 1449, 2010). In 2014, a bill by State Senator Holly Mitchell equalized sentences for crack and powder cocaine, thereby lessening the disparate racial impacts of drug conviction sentencing (SB 1010, 2014). Most recently, in November 2016, California voters approved Proposition 64, which legalized marijuana possession, sharing, cultivation, and use by persons 21 years of age and older.

Similar to these other reforms, Proposition 47 lessens the criminal consequences of drug possession for personal use. The ballot measure – which enjoyed strong support from the California electorate<sup>6</sup> – took effect immediately and applied retroactively, creating opportunities for incarcerated persons to petition for resentencing that could shorten their sentences or allow them to be released outright, and for those with past convictions to apply for a record change. It also shifted the ways law enforcement agencies and prosecutors contend with Proposition 47 offenses.

In response to the passage of Proposition 47, some police departments began redirecting drug enforcement resources to community policing or the enforcement of other, more serious offenses (ACLU, 2015; Los Angeles Times Editorial Board, 2015). Critics of the policy, however, claim that it limits police authority and constrains the effectiveness of drug control, a contention that has led some law enforcement agencies to deemphasize the enforcement of Proposition 47-related offenses (Saslow, 2015; Chang, 2015). Reduced enforcement, whether in support or opposition to Proposition 47, places the responsibility for substance use, as the United States Surgeon General now advises, in the domain of public health departments, not criminal justice systems (Surgeon General, 2016).

As police and sheriff's departments expend fewer resources on the enforcement of minor drug offenses, they also produce fewer cases for prosecution. Proposition 47 cases referred to a prosecutor are now filed as

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<sup>2</sup> A citation is a written order to appear in court that can be issued in place of arrest.

<sup>3</sup> Marijuana is currently legal for those over 21 in Alaska, California, Colorado, Maine, Massachusetts, Nevada, Oregon, Washington, and the District of Columbia.

<sup>4</sup> From 2009 to 2014, 35 states enacted at least one drug law reform, including repealing or limiting mandatory minimum sentences for drug offenses, reclassifying drug offenses, or expanding drug courts (Vera Institute of Justice, 2014).

<sup>5</sup> An infraction is a non-arrestable citation, like a parking ticket.

<sup>6</sup> Proposition 47 passed with nearly 60 percent voter support (SOS, 2014).

misdemeanors rather than felonies, requiring far less time to process and adjudicate (LAO, 2016). Fewer cases and faster processing reduces overall prosecution caseloads and generates local savings. The impacts, however, are uneven. In many counties, including Los Angeles and San Diego, felony cases are handled by the district attorney, while misdemeanor prosecutions are shared among the district attorneys, city attorneys, and city prosecutors. As a result, county district attorneys may experience a decline in drug felony cases, while city prosecutors grapple with an increase in drug misdemeanor cases. However, as noted, the corresponding increase in misdemeanors is not commensurate with the decline in felonies.

Countywide reductions in prosecution, public defense, and court caseloads, jail and prison populations, and drug enforcement – defined as arrests and citations – generate substantial savings for localities and the state. In the first year of Proposition 47, the state of California is estimated to have saved tens of millions to hundreds of millions of dollars, while the counties are thought to have saved hundreds of millions (CJCJ, 2014; DOF, 2016; LAO, 2016).

State and local savings present California with an opportunity for reinvestment. By statute, Proposition 47 channels 65 percent of state savings into mental health, substance use treatment, diversion, housing, and other recidivism reduction programs. The initiative also directs 10 percent of savings to the Victim Compensation and Government Claims Board and 25 percent to the California Department of Education. No similar mandate currently exists for local savings. Rather, communities across the state must actively leverage the savings generated through reduced drug enforcement, prosecution, and court demands to redefine priorities and support programs that address the underlying needs of persons with substance use disorders.

## **Case Study: Los Angeles and San Diego Counties**

### *Data, Methodology, and Limitations*

To measure the county-level impact of Proposition 47 and identify opportunities for reinvestment, this report selects Los Angeles and San Diego as case study counties. Los Angeles and San Diego counties have large populations and constitute a considerable share of statewide drug arrests: In 2014, they comprised 34 percent of California's population and 31 percent of its felony charges for drug offenses (US Census, 2014; DOJ, 2014). Given their size and demographic diversity, trends in Los Angeles and San Diego counties can provide insight into Proposition 47's influence on the enforcement and prosecution of drug possession offenses in California's urban centers.

The data presented in this report were collected by special request from 55 police departments, two sheriff's departments, two district attorneys, and nine city prosecutors or city attorneys in Los Angeles and San Diego counties (see Appendix A). Police and sheriffs reported annual arrest and citation totals issued for possession of a narcotic (HS 11350), concentrated cannabis (HS 11357), and a non-narcotic (HS 11377) for 2010 through 2015. Prosecuting agencies reported the number of misdemeanor and felony cases filed under each of these offense categories for 2010 through 2015.

Several jurisdictions reported data that did not encompass the full six years of this study, including a number of jurisdictions that did not provide data for the final days of 2015 or the early months of 2010.<sup>7</sup> Available data for each incomplete year were used to approximate full-year statistics.<sup>8</sup>

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<sup>7</sup> The following jurisdictions did not report data for all of 2015: Alhambra, Arcadia, Azusa, Baldwin Park, Beverly Hills, Burbank, Downey, El Monte, Glendora, Hawthorne, Hermosa Beach, Monrovia, Palos Verdes Estates, Pomona, Redondo Beach, San Fernando, San Marino, Signal Hill, South Pasadena, and Torrance police departments, and the Los Angeles County District Attorney. The Pasadena Police Department did not provide full-year data for 2010.

<sup>8</sup> This analysis does not account for seasonal trends when approximating missing data or offering projections. In 2016, the Department of Justice released a report on the impact of Proposition 47 in the City of Los Angeles, which used daily arrest statistics to estimate seasonal

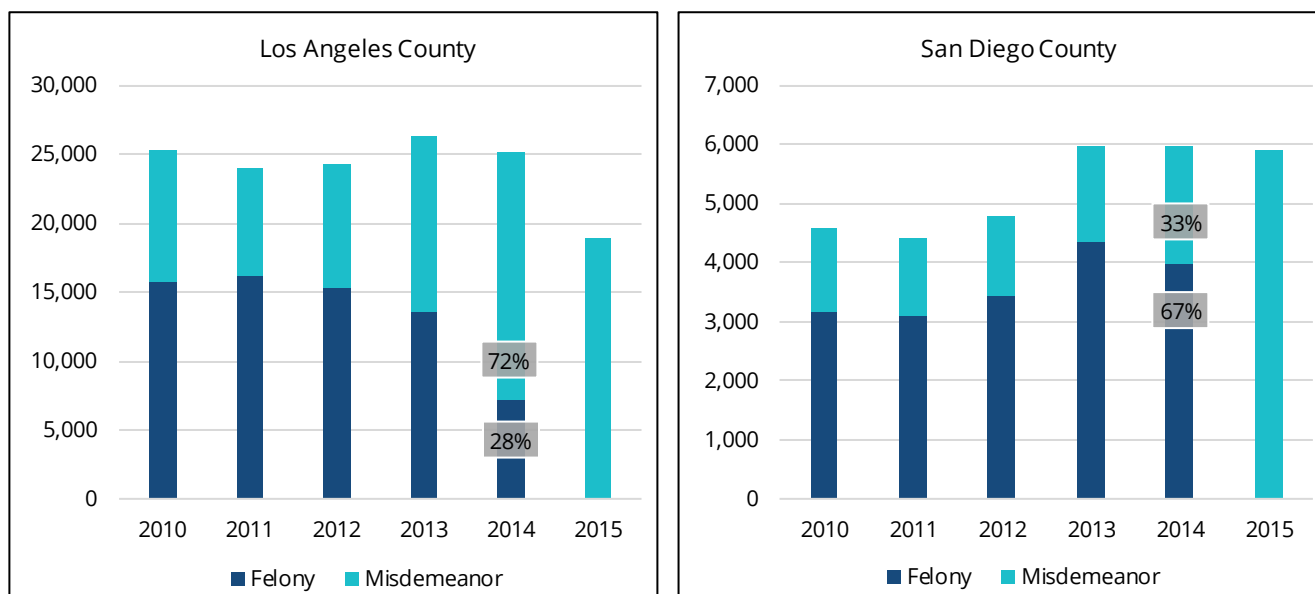
This report compares trends in arrests and citations from 2010 through 2014 to the arrest and citation figures for 2015. The extent to which 2015 data deviate from the 2010-2014 trends and projections serves as an indicator of Proposition 47's impact on enforcement. This report also examines trends in misdemeanor and felony filings to determine the impact of the policy on the total number of drug possession cases and their composition. A review of enforcement and prosecution data yields the following three key findings.

## 1. Proposition 47 Reduced Inconsistencies in the Classification of Drug Possession Offenses

Prior to the passage of Proposition 47, qualifying drug possession offenses were prosecuted as misdemeanors, felonies, or “wobblers,” meaning they could be charged as either felonies or misdemeanors. However, the share classified as felonies or misdemeanors varied substantially by county (See Figure 2). In 2014, for example, 67 percent of Proposition 47 drug possession offenses were filed as felonies in San Diego County compared to just 28 percent in Los Angeles County.

Predictably, after the passage of Proposition 47, Proposition 47-eligible cases were filed as misdemeanors – a shift that balanced the classification of common drug possession offenses across counties and reduced the presence of “justice by geography” in the treatment of drug offenses statewide.

**Figure 2. Felony and misdemeanor charging for Proposition 47 drug possession offenses, 2010-2015**



Source: Los Angeles and San Diego County Prosecution Agencies, 2016

## 2. Drug Arrests and Citations Were Increasing in the Years Immediately Preceding Proposition 47

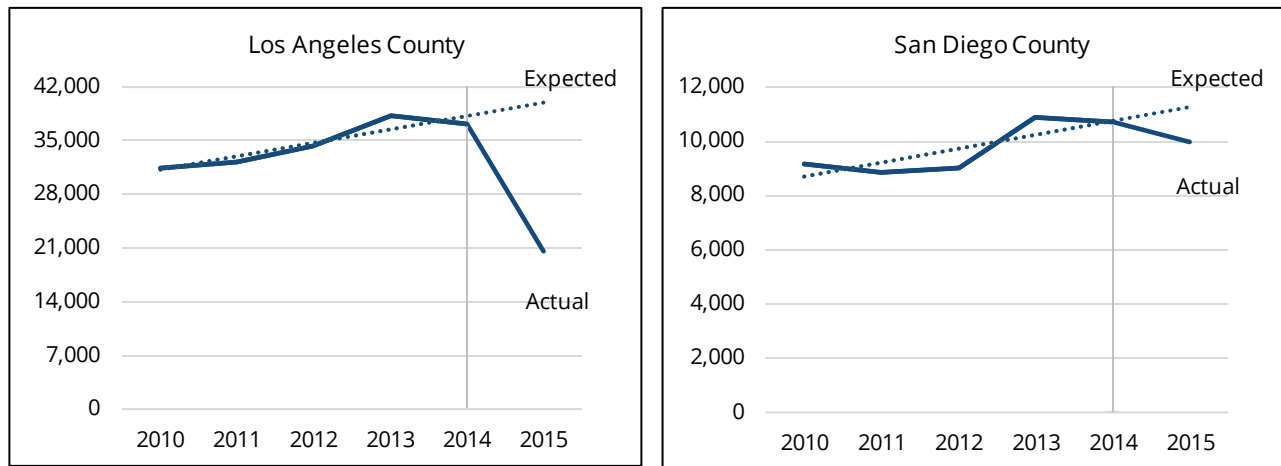
From 2010 to 2014, arrests and citations for Proposition 47 drug possession offenses increased in 72 percent of law enforcement agencies in Los Angeles and San Diego counties. Yet, between 2014 and 2015, 58 percent of agencies reported declines. Figure 3 illustrates this shift by presenting the rising levels of enforcement in the years prior to Proposition 47 compared to the declines since its implementation.

This report confines its analysis of changing enforcement under Proposition 47 to the three drug possession offenses directly reclassified under the measure. However, a 2016 Department of Justice review of arrest and crime trends in the City of Los Angeles found that arrests for the sale of narcotic substances, marijuana, and non-narcotic substances were unaffected by Proposition 47, while possession arrests declined sharply (Groff, 2016). This result

trends and predict 2015 statistics absent Proposition 47 reforms (Groff, 2016). By contrast, this report relies on annual arrest and citation statistics for 2010-2014 to project forward and, therefore, does not account for seasonality.

suggests that Proposition 47's impact on enforcement is limited to the three possession offenses it directly reclassified.

**Figure 3. Arrests and citations for Proposition 47 drug offenses, by county, 2010-2015**



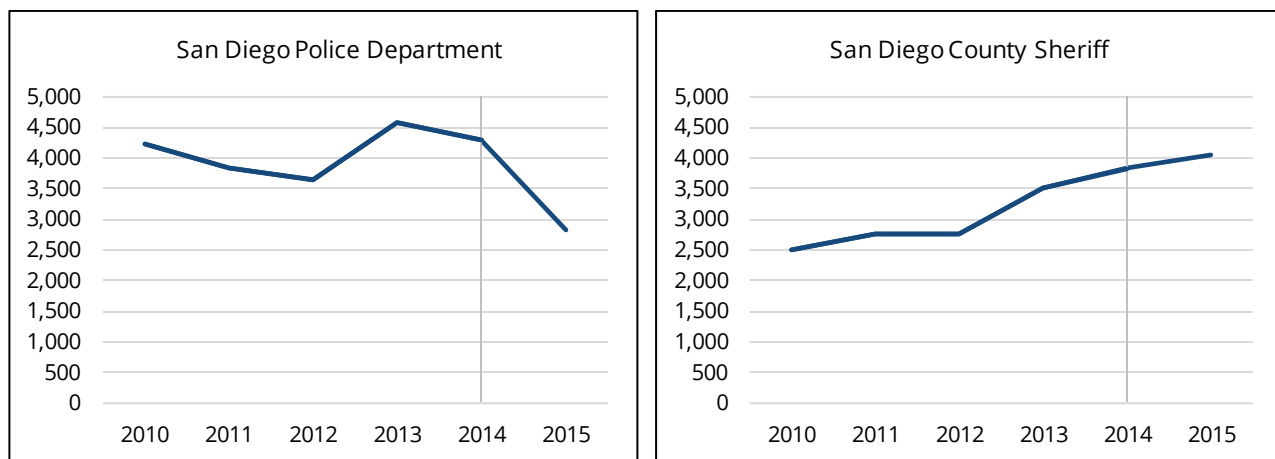
Source: Los Angeles County and San Diego County Law Enforcement Agencies, 2016.

### 3. Arrests and Citations Declined After Proposition 47, but Varied by County, City, and Substance

Although drug possession arrests and convictions declined in San Diego and Los Angeles counties following the passage of Proposition 47, trends varied by county, city, and substance. As shown in Figure 3, Los Angeles County reported far steeper declines and a greater deviation from expectations than did San Diego County: In 2015, Proposition 47 arrests in Los Angeles County fell by 45 percent and deviated 49 percent from expected levels, while similar arrests in San Diego County declined by just 7 percent and deviated 12 percent from the prediction.

Reductions in arrests and citations also varied within each county. For example, while the San Diego Police Department reported a sharp decline in arrests and citations after Proposition 47, the San Diego County Sheriff reported a continued increase (Figure 4).

**Figure 4. Arrests and citations for Proposition 47 drug offenses, by jurisdiction, 2010-2015**



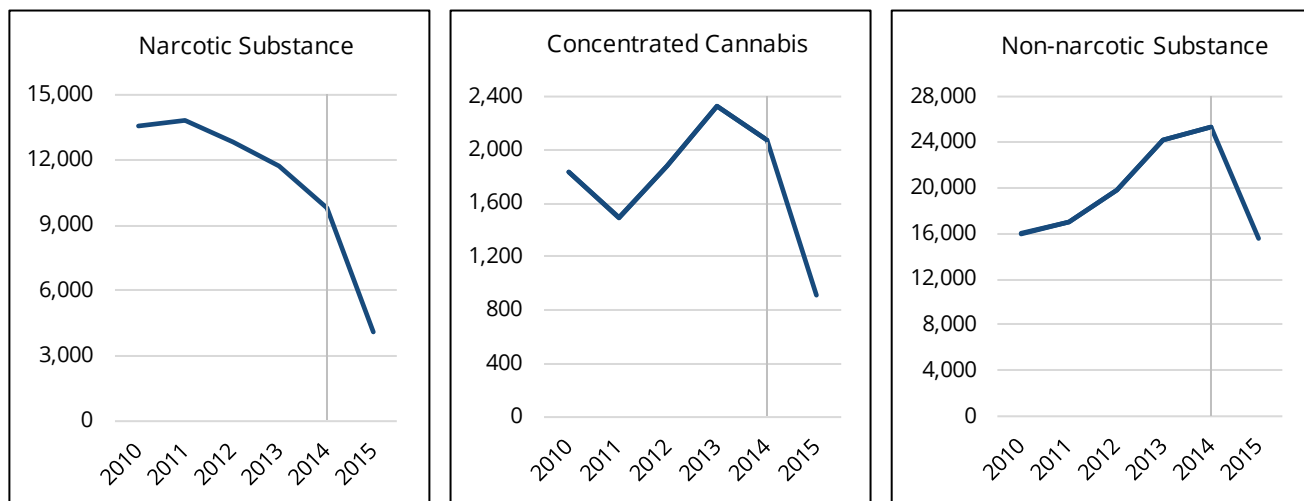
Source: Los Angeles County and San Diego County Law Enforcement Agencies, 2016.

Arrest and citation trends varied by substance type as well. Figure 5 presents six-year trends in arrests and citations for possession of a narcotics substance, concentrated cannabis, and a non-narcotics substance in Los Angeles and San Diego counties. While enforcement declined in 2015 for all drug types, the magnitude of this decline and its departure from previous trends varied by substance and county. For example, in both counties arrests and citations for possession of a narcotic had been declining prior to Proposition 47 and continued to fall in 2015, but

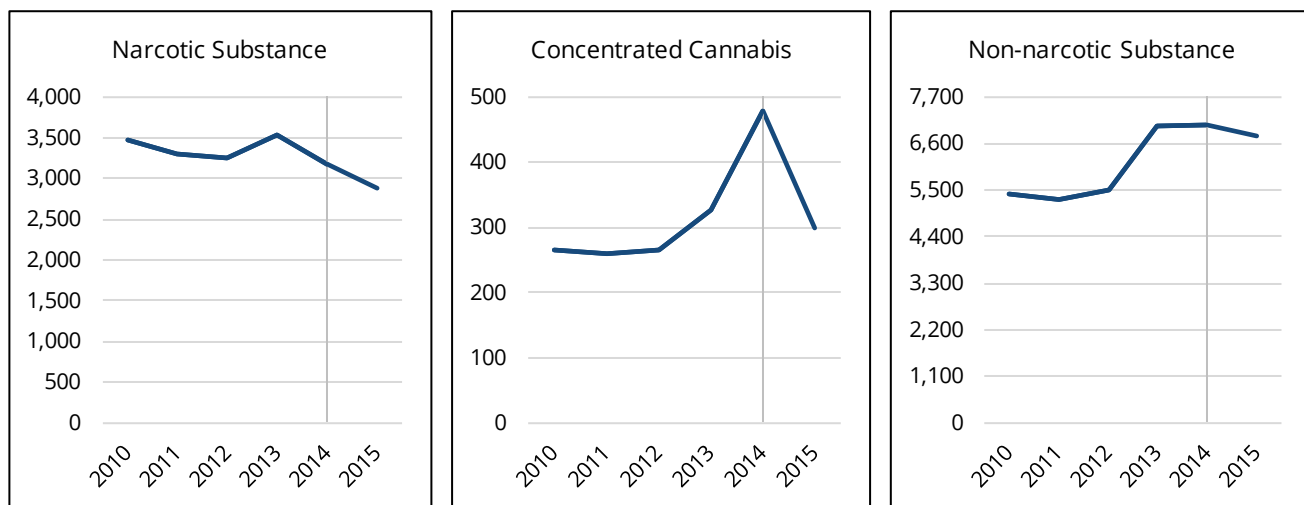
arrests and citations for possession of a non-narcotic substance had generally increased between 2010 and 2014, then declined following the reform.

**Figure 5. Arrests and citations for Proposition 47 drug offenses, by county and substance, 2010-2015**

#### Los Angeles County



#### San Diego County



Source: Los Angeles County and San Diego County Law Enforcement Agencies, 2016.

## Conclusion

After the passage of Proposition 47 in late 2014, drug arrests fell statewide. Los Angeles and San Diego county data can offer insight into the drivers of this decline and the ways in which enforcement and prosecution shifted after the reform took effect. Using Los Angeles and San Diego counties as case studies, this report finds that drug possession arrests and citations were generally increasing in the years immediately preceding Proposition 47, but largely declined after its implementation, with variation by substance type and across counties and local jurisdictions. By statute, Proposition 47 affects the prosecution, not the enforcement, of drug possession for personal use. Yet many jurisdictions in Los Angeles and San Diego counties markedly reduced the number of arrests and citations for possession for personal use following the passage of the reform, lessening the life-changing, criminal consequences of drug possession. Local data also suggest that Proposition 47 eliminated discrepancies in the felony or misdemeanor classification of drug possession for personal use offenses, thereby reducing inconsistencies across counties.

While Proposition 47 has repealed some vestiges of the war on drugs, sustained and intentional law enforcement and prosecutor cooperation is crucial to achieving lasting reform. Science and medicine agree that substance use is best addressed with a public health, rather than criminal justice, approach (Surgeon General, 2016). At the state level, reduced spending on policing, prosecutions, and incarceration of minor drug offenses offers local jurisdictions the opportunity to reinvest savings in drug treatment and rehabilitative services. Though Proposition 47, and more recently Proposition 64, represent major steps forward, only by ending the criminalization of substance use can communities effectively address problematic substance use, align local policies with best practices, and improve local health and safety.

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## Appendix A: Jurisdictions Included in Analysis

Police and Sheriff's Departments		
Los Angeles County		
Alhambra Police Department	Hawthorne Police Department	Pomona Police Department
Arcadia Police Department	Hermosa Beach Police Department	Redondo Beach Police Department
Azusa Police Department	Huntington Park Police Department	San Fernando Police Department
Baldwin Park Police Department	Inglewood Police Department	San Gabriel Police Department
Beverly Hills Police Department	Irwindale Police Department	San Marino Police Department
Bell Police Department	La Verne Police Department	Santa Fe Springs Police Department
Bell Gardens Police Department	Los Angeles Police Department	Santa Monica Police Department
Burbank Police Department	Los Angeles Sheriff's Department	Sierra Madre Police Department
Claremont Police Department	Long Beach Police Department	Signal Hill Police Department
Culver City Police Department	Manhattan Beach Police Department	South Gate Police Department
Downey Police Department	Monrovia Police Department	South Pasadena Police Department
El Segundo Police Department	Montebello Police Department	Torrance Police Department
Gardena Police Department	Monterey Park Police Department	Vernon Police Department
Glendale Police Department	Palos Verdes Estates Police Department	West Covina Police Department
Glendora Police Department	Pasadena Police Department	Whittier Police Department
San Diego County		
Carlsbad Police Department	Escondido Police Department	San Diego Harbor Police Department
Chula Vista Police Department	La Mesa Police Department	San Diego Police Department
Coronado Police Department	National City Police Department	San Diego Sheriff's Department
El Cajon Police Department	Oceanside Police Department	San Diego State University Police
Prosecuting Agencies		
Los Angeles County		
Burbank City Attorney	Los Angeles City Attorney	Redondo City Prosecutor
Hawthorne City Attorney	Long Beach City Prosecutor	Santa Monica City Attorney
Los Angeles County DA	Pasadena City Attorney	Torrance City Attorney
San Diego County		
San Diego County DA	San Diego City Attorney	

Note: Covina Police Department is omitted from analysis because it did not maintain historical arrest and citation records. El Monte Police Department is omitted because it does not maintain records before 2011. Covina and El Monte are 2 percent of Los Angeles County by population (US Census, 2014). Downey Police Department's HS 11357 data were omitted because the department does not retain HS 11357 offense records for more than two years. The Inglewood City Attorney is omitted because the office does not maintain records of misdemeanor filings. Omitting a city prosecutor from analysis underreports the number of misdemeanor cases filed in the county. However, Inglewood represents 1 percent of the population of Los Angeles County and 0.3 percent of its Proposition 47 drug arrests and citations (US Census, 2014; Los Angeles County and San Diego County Law Enforcement Agencies, 2016).

**Please note:** Jurisdictions submitted data to CJCJ in response to a common Public Records Act request. While every effort is made to review data for accuracy, CJCJ is not responsible for data reporting errors by local jurisdictions.

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**Contact:** [cjcjmedia@cjcj.org](mailto:cjcjmedia@cjcj.org), (415) 621-5661 x 121, [www.cjcj.org](http://www.cjcj.org)