

News > Politics • News

Campaign fact check: Here's how Kamala Harris really prosecuted marijuana cases

As district attorney, Harris oversaw 1,900 convictions for pot offenses

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SAN FRANCISCO — Kamala Harris' opponents and critics have picked apart her prosecution of marijuana crimes during her presidential run, knocking her for over-aggressive jailing of pot users and lambasting her as a hypocrite for saying she now supports legalizing the drug.

But Harris' history of prosecuting marijuana cases as San Francisco district attorney is more nuanced than those debate-stage confrontations indicate, according to new data obtained by the Bay Area News Group and interviews with more than a dozen former prosecutors, defense attorneys, criminal justice experts and activists who've been following her career.

Harris oversaw more than 1,900 marijuana convictions in San Francisco, previously unreported records from the DA's office show. Her prosecutors appear to have convicted people on marijuana charges at a higher rate than under her predecessor, based on data about marijuana arrests in the city.



But former lawyers in Harris' office and defense attorneys who worked on drug cases say most defendants arrested for low-level pot possession were never locked up. And only a few dozen people were sent to state prison for marijuana convictions under Harris' tenure.

"There is no way anyone could say that she was draconian in her pursuit of marijuana cases," said Niki Solis, a high-ranking attorney in the San Francisco Public Defender's office during Harris' time as DA.

Still, advocates wonder why it took so long for the California senator to come out in support of marijuana legalization. She actively fought a ballot measure for recreational pot in 2010, co-authoring an opposition argument [in the voter guide](#), and stayed on the sidelines when a second ballot initiative passed in 2016.

Harris publicly came out for legalizing marijuana only [in May 2018](#), after she was widely considered a likely presidential contender. Since then, it's become a [centerpiece](#) of her plans to reform the criminal justice system. "We can't keep repeating the same mistakes of the past," she [tweeted](#) last year. "Too many lives have been ruined by these regressive policies."

When it came to the fight for legalization, "she was nowhere, zilch, nada, no help," said Tom Ammiano, a former San Francisco supervisor and assemblyman who has endorsed Sen. Bernie Sanders for president. "Like a lot of candidates for a lot of offices, she's come to Jesus on the issue. But it does leave a bad taste in your mouth about how sincere or how authentic she is."

Conviction data

During the last presidential debate in July, Rep. Tulsi Gabbard blasted Harris over marijuana convictions, saying she "put over 1,500 people in jail for marijuana violations and then laughed about it when she was asked if she ever smoked marijuana." Gabbard was [misleadingly citing figures](#) for all of California while Harris was attorney general — even though the vast majority of marijuana cases in the state are prosecuted by independently elected county district attorneys.

As San Francisco DA from 2004 through 2010, however, Harris had wide latitude to decide which marijuana cases to prosecute and what sentences to seek in the city.

She took office after defeating the legendarily liberal District Attorney Terence Hallinan. During their acrimonious campaign, Harris [criticized Hallinan](#) over his office's low conviction rate and vowed to run a tighter ship, although she mostly focused her rhetoric on violent crime. Both candidates supported medical marijuana, which was already legal in California.



Over Harris' seven years as top prosecutor, her attorneys won 1,956 misdemeanor and felony convictions for marijuana possession, cultivation, or sale, according to data from the DA's office. That includes people who were convicted of marijuana offenses and more serious crimes at the same time.

While there were more marijuana convictions during Hallinan's tenure, there were also a lot more arrests. San Francisco arrest data compiled by the Attorney General's office suggests that 24 percent of marijuana arrests led to marijuana convictions under Harris, compared with 18 percent of arrests under Hallinan.

The comparison between arrests and convictions isn't necessarily one-to-one, however — not everyone convicted of marijuana offenses was arrested for pot in the first place.

Conviction rate aside, only 45 people were sentenced to state prison for marijuana convictions during Harris' seven years in office, compared with 135 people during Hallinan's eight years, according to data from the state corrections department. That only includes individuals whose most serious conviction was for marijuana.

Those numbers don't cover people sentenced to time in county jail. The district attorney's office, superior court, sheriff's office and attorney general's office said they didn't have or couldn't release more specific data about marijuana sentencing during Harris' tenure.

The number of marijuana convictions trailed off swiftly after Harris left office, in part due to a state law [reclassifying](#) some marijuana misdemeanors as infractions — making them similar to a traffic ticket.

Prosecutorial policy

Despite the substantial number of convictions, many of the people who were arrested for marijuana during Harris' tenure were never locked up or never even charged with a crime, according to attorneys who worked on both sides of the courtroom.

"Our policy was that no one with a marijuana conviction for mere possession could do any (jail time) at all," said Paul Henderson, who led narcotics prosecutions for several years under Harris. Defendants arrested for the lowest-level possession would typically be referred to drug treatment programs instead of being charged, and weightier charges for marijuana sales would routinely be pleaded down to less serious ones, he said.

Solis, who led the public defender's office misdemeanor division for part of Harris' tenure, agreed that her office only rarely prosecuted people for low-level, simple possession.



“Kamala Harris and I disagreed on a lot of criminal justice issues, but I have to admit, she was probably the most progressive prosecutor in the state at the time when it came to marijuana,” Solis said.

Not all defense attorneys agree. J. David Nick, who represented several dozen marijuana defendants during Hallinan and Harris’ tenures, said he remembered Harris as more aggressive in charging marijuana sales cases than her predecessor, who was already declining to prosecute many of those arrested.

“Some of the cases that Terence Hallinan would have just declined to prosecute, (Harris) said no, we’re going to prosecute these as felonies,” he said, attributing the change to a desire by police to crack down on dealers.

Other activists point out that marijuana convictions still impact defendants’ lives even if they aren’t incarcerated.

“Just because you didn’t rot your life away in prison doesn’t mean it wasn’t a big deal to get a conviction,” said Dale Sky Jones, a Bay Area marijuana activist. “Your ability to keep your job, get another job or get housing with that conviction on your record is all hurt by that.”

None of the marijuana convictions Harris’ office secured are still on the books. Her successor as DA, George Gascón, moved earlier this year to [expunge all 9,300](#) of the city’s marijuana convictions going back to 1975.

In recent years, newly elected district attorneys in cities like Philadelphia and St. Louis have issued [blanket policies](#) vowing not to prosecute low-level marijuana possession, even though it’s still illegal in their states.

But Harris’ supporters say it’d be unfair to compare her work more than a decade ago to today’s standards of a “progressive prosecutor.”

“You can’t look at this with historical amnesia,” said Tim Silard, her former head of policy. “The positions she took then were quite progressive and very much out of step with her colleagues around the state.”

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