

1976

## Deterrence and Deviance: The Example of Cannabis Prohibition

Patricia G. Erickson

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

---

### Recommended Citation

Patricia G. Erickson, Deterrence and Deviance: The Example of Cannabis Prohibition, 67 J. Crim. L. & Criminology 222 (1976)

This Criminology is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

# CRIMINOLOGY

## DETERRENCE AND DEVIANCE: THE EXAMPLE OF CANNABIS PROHIBITION

PATRICIA G. ERICKSON\*

Much of the analysis of the criminal justice system by social scientists has focused on deterrence. Until quite recently capital punishment and the crime of murder claimed the most attention.<sup>1</sup> In the past decade, research on deterrent effects has been extended to a number of other crimes. The central notion of deterrence, the threat that the unpleasant consequences which result from breaking the law will serve to discourage criminal activities,<sup>2</sup> has often been simplified in popular usage as a binomial question of whether a specific punishment will or will not prevent a particular crime. However, the concept of deterrence is used by the social researcher in a relative way, to ask under what conditions and to what extent the deterrent purpose is effected.<sup>3</sup> Accordingly, a number of recent studies have examined the sources of variation in official crime rates. This approach was criticized by Chiricos and Waldo<sup>4</sup> who concluded that the inconsistency of findings in research drawing on these official data argued against using available, aggregate rates of crime to test deterrence hypotheses. These same authors suggested that alternative approaches "based upon unofficial data collected at the individual level" might better answer some of the questions posed by deterrence theory.<sup>5</sup>

This paper adopts one such approach in addressing the question of the impact of the criminal law on

the proscribed behaviour of cannabis use in Canada. The research reported here is in the sociological tradition of the empirical analysis of the "law in action."

### THE CANADIAN LAW AND POLICY

The possession, sale, cultivation and importing of all cannabis substances are totally prohibited under the Canadian Narcotic Control Act.<sup>6</sup> This is the same law that governs all the opiate narcotics. As a federal law, its terms cannot be altered by any provincial government. That is, unlike the situation in the United States, no province can unilaterally decide to change the penalty for possession. There have been two major changes in legislation affecting cannabis offenders in the last half decade. In 1969, the Narcotic Control Act was altered so as to give the crown prosecutor the discretion to proceed on a simple possession charge as a summary offense.<sup>7</sup> This is comparable to the misdemeanor category in the United States. Before this time, all possession charges were treated as indictable offences (i.e., felonies). With this change in 1969, the maximum penalties were reduced to six months and/or a \$1000 fine for a first offense on summary proceeding, but the seven year maximum was retained for the indictable proceeding. This option of treating the possession of cannabis as a less serious offense is almost always taken by the prosecutor.

A second change in the Criminal Code introduced a discharge provision which took effect in mid-1972.<sup>8</sup> Under this provision, a person found guilty of simple possession can, at the judge's discretion, be awarded an absolute or conditional discharge rather than a conviction. The aim of the discharge option is to avoid the stigma of criminal conviction. This Canadian provision is similar to a Florida law that permits a judge to withhold adjudication of guilt from defendants placed on probation.<sup>9</sup> The Canadian

\*Addiction Research Foundation, Toronto, Canada. Portions of this article were presented in preliminary form at the North American Congress on Alcohol and Drug Problems, San Francisco, Dec. 1974. The author would like to extend her appreciation to Lorne M. Salutin for his research assistance with this project.

<sup>1</sup>Chambliss, *The Deterrent Influence of Punishment*, 12 CRIME & DELINQUENCY 70 (1966).

<sup>2</sup>F. ZIMRING & G. HAWKINS, *DETERRENCE: THE LEGAL THREAT IN CRIME CONTROL* 7 (1973).

<sup>3</sup>J. ANDENAES, *PUNISHMENT AND DETERRENCE* 84 (1974).

<sup>4</sup>Chiricos & Waldo, *Punishment and Crime: An Examination of Some Empirical Evidence*, 18 SOCIAL PROBLEMS 200 (1970).

<sup>5</sup>Waldo & Chiricos, *Perceived Penal Sanction and Self-Reported Criminality: A Neglected Approach to Deterrence Research*, 19 SOCIAL PROBLEMS 522 (1972).

<sup>6</sup>CAN. REV. STAT. c. N-1, §§ 3, 4, 5, 6 (1970).

<sup>7</sup>CAN. REV. STAT. c. N-1, § 3(2)(a) (1970).

<sup>8</sup>Criminal Law Amendment Act, 1972 Stat. Can. c.13 s.72. CRIMINAL CODE, s. 662.

<sup>9</sup>FLA. STAT. ANN. § 948.01(3) (1974).

discharge provision does not appear to be widely used as yet; in 1973 only 16 per cent of those sentenced for simple possession of cannabis, and 20 per cent in 1974, received either form of discharge.<sup>10</sup> In 1974, legislation was introduced in the Canadian Senate that would move cannabis to the Food and Drug Act, which now covers such illicit drugs as LSD and amphetamines.<sup>11</sup> The new bill, if implemented, would reduce the maximum penalties to \$500 for a first offense, \$1000 for subsequent offenses, and abolish imprisonment except in default of payment of a fine. Otherwise the same criminal penalties for simple possession now in effect under the Narcotic Control Act would be retained.

The official policy of the Canadian government and its enforcement agencies continues to be one of discouraging the use of cannabis.<sup>12</sup> Statistics show that the number of persons criminalized officially for the possession of marijuana or hashish—criminalized here refers to the legal process of being arrested, tried, sentenced and given a criminal record—has risen steadily since the mid 1960's. In 1974, 27,202 persons were criminalized for this offense in Canada. This figure represents a 46% increase over the 1973 figure (18,603) and is far greater than the total number of persons found guilty of all other (non-alcohol) drug offenses combined.<sup>13</sup>

## DETERRENCE CONCEPTS, THEORY AND RESEARCH

### *Defining deterrence*

With persons being criminalized in ever-increasing numbers for the possession of this particular drug, it is evident that the threat of criminal sanction is being mobilized to prevent the crime of cannabis use. Despite the ongoing controversy over the so-called "legalization" issue, legal barriers to the use of marijuana still exist throughout western nations. The continued reliance on the criminal law to control drug use behavior rests on the assumption that the number of persons who will refuse to engage in the illegal activity, or discontinue the activity once detected and punished, is sufficiently high to justify the hardships inflicted on convicted individuals.

The concept of deterrence is central to both the

<sup>10</sup>Information obtained from Bureau of Dangerous Drugs, Health Protection Branch, Ottawa, Canada.

<sup>11</sup>CAN. REV. STAT. c. F-27, scheds. G & H (1970).

<sup>12</sup>Health Minister Lalonde, *Globe & Mail*, Nov 27, 1974, § 1, at 1, col. 6; Inspector Tomalty, Head of R.C.M.P. Drug Enforcement, 1 *THE JOURNAL* 2 (Oct. 1972) (Monthly publication of the Addiction Research Foundation, Toronto, Canada).

<sup>13</sup>Information obtained from Bureau of Dangerous Drugs, Health Protection Branch, Ottawa, Canada.

philosophic and pragmatic underpinnings of the criminal justice system. Zimring and Hawkins comment that "[b]elief in the deterrent efficacy of penal sanctions is as old as the criminal law itself. . . . [I]t has been described as a 'primary and essential postulate' of almost all criminal law systems."<sup>14</sup> The *Final Report of Canada's Commission of Inquiry into the Non-Medical Use of Drugs*, Le Dain Commission, places the issue of deterrence in the context of non-medical drug use in the following way:

Whether we should use the law at all, and if so, to what degree, . . . turns on the relative effectiveness of the law in this field—the extent to which it is an effective deterrent of the behaviour involved in non-medical drug use—and also on the price which must be paid for the use of it in terms of various adverse effects on individuals and the society as a whole.<sup>15</sup>

It is significant that until fairly recently, there have been few attempts to assess the costs and the benefits of any particular legal policy manifested by the criminal justice system.<sup>16</sup> The evidence that has been provided in a few empirical studies is difficult to interpret. It appears that illegal parking and driving after drinking are deterrable acts responsive to variation in penalties, while murder is not.<sup>17</sup> Most of the studies of deterrent effects have relied on official crime rates or recidivism figures. There are many problems in the interpretation of these data, including such obvious factors as regional differences and changes in reporting procedures and undetected crime. There is also the inconsistency of the findings. Recent studies have suggested that a more fruitful but "neglected" approach would be "to follow a number of individual cases through the criminal justice system"<sup>18</sup> and determine "how the penalties are perceived by potential offenders."<sup>19</sup> This more longitudinal approach was the design chosen for the present study of cannabis offenders.

<sup>14</sup>F. ZIMRING & G. HAWKINS, *supra* note 2, at 1.

<sup>15</sup>CANADIAN COMMISSION OF INQUIRY INTO THE NON-MEDICAL USE OF DRUGS ("LE DAIN COMMISSION"), *FINAL REPORT* (1973).

<sup>16</sup>For two recent and excellent overviews see D. GLASER, *ROUTINIZING EVALUATION: GETTING FEEDBACK IN CRIME AND DELINQUENCY PROGRAMS* (1973) and D. GLASER, *ADULT CRIME AND SOCIAL POLICY* (1972).

<sup>17</sup>Chambliss, *supra* note 1; Ross, *Law, Science and Accidents: The British Road Safety Act of 1967*, 2 *J. LEGAL STUDIES* 1 (1973); Schuessler, *The Deterrent Influence of the Death Penalty*, 284 *ANNALS* 54 (1952); Sellin, *Homicide in Retentionist and Abolitionist States*, in *CAPITAL PUNISHMENT* 135 (T. Sellin Ed. 1967).

<sup>18</sup>Chiricos & Waldo, *supra* note 4, at 215.

<sup>19</sup>Waldo & Chiricos, *supra* note 5, at 524.

Before discussing research findings of drug use and deterrence, the concepts of the deterrence model and their hypothesized relationships should be explored. The central concept of deterrence is threat, the threat that "some harm, loss or pain will follow noncompliance" with the law.<sup>20</sup> The major elements are identified as the threat itself (embodied in the law), the threatening agencies (generally the police and the court systems), the threatened behavior (drug use in this instance) and threatened consequences (usually thought of as the range of criminal penalties but also including related effects of stigmatization). Classical deterrence theory states simply that the likelihood of someone engaging in law-breaking activity is determined negatively by the certainty, severity and swiftness of punishment. Thus, the more certain, severe and swiftly applied the penalties are, the greater is their deterrent effect.

More recent refinements of deterrence theory, outgrowths of the insights of modern social science, incorporate the potential law-breaker's subjective perceptions of the certainty, severity and celerity of punishment. As Andenaes has commented, "The decisive factor in creating the deterrent effect is, of course, not the objective risk of detection but the risk as it is calculated by the potential criminal."<sup>21</sup> Similarly, the would-be offender is assumed to have beliefs about the range of penalties, which may or may not be accurate, that would apply to him if he were convicted.<sup>22</sup> These perceptions, in turn, will be shaped by the various modes of socialization the individual has been subject to. That is, the way the threatened consequences are perceived will depend to some extent on a variety of individual characteristics—the social and psychological space one occupies at the time the threats are salient.<sup>23</sup> This process is not static, but rather subject to on-going reassessment by any given individual.

#### *Research Relevant to Deterrence of Marijuana Use*

What then does available research tell us about deterring marijuana use? It is obviously impossible to establish how many persons have tried, stopped, decreased or even increased marijuana use because of the existence of legal sanctions. However, while the findings are somewhat inconsistent, the data that can be brought to bear on this question do not generally offer support for the operation of deterrence in the use of cannabis. Surveys in the United States and

Canada in the late 1960's showed a continuous increase in the number of persons joining the "ever-used" marijuana category at a time when both the maximum possible penalties and the actual sentences awarded were very severe.<sup>24</sup> During this same period, estimates of the actual certainty of punishment were very low. For instance, about 1 per cent of those in Canada who had ever used the drug and 3 to 5 per cent of "weekly-using" students in the United States were thought to have been convicted.<sup>25</sup> Risk of detection would no doubt vary according to age group, socio-economic status and other factors involved in the selective process of enforcement.

The situation regarding the *perceptions* of severity and certainty of punishment held by the actual or potential cannabis user is less clear. Fear of apprehension is very rarely stated by the non-user as a basis for the decision to refrain from consumption.<sup>26</sup> In a study which asked the question directly, one quarter of non-users affirmed that they would consider using marijuana if penalties were reduced.<sup>27</sup> The perceived probability of arrest has been found to be *lower* among users than non-users in one study,<sup>28</sup> but another study showed that the perceived risk of legal sanctions was *higher* among experienced users than among non-experienced users.<sup>29</sup> Both of these latter studies were limited to college students. That cannabis users are not oblivious to legal consequences was illustrated by Grupp's findings that among ninety heavy marijuana users, 41 per cent had turned down a chance to smoke marijuana on some occasion because they were afraid of being caught.<sup>30</sup> A similar finding in the more

<sup>24</sup>UNITED STATES PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 3, 11 (1967); CANADIAN COMMISSION OF INQUIRY INTO THE NON-MEDICAL USE OF DRUGS ("LE DAIN COMMISSION"), CANNABIS 203 (1972) [hereinafter cited as LE DAIN COMMISSION 1972].

<sup>25</sup>LE DAIN COMMISSION 1972, *supra* note 24, at 290; Johnson, *Sense and Nonsense in the "Scientific" Study of Drugs: An Anti-Commission Report*, 10 SOCIETY 58 (1973).

<sup>26</sup>NATIONAL COMMISSION ON MARIJUANA AND DRUG ABUSE ("SCHAFFER COMMISSION"), MARIJUANA: A SIGNAL OF MISUNDERSTANDING (1972); R. SMART, D. FEJER & J. WHITE, DRUG USE TRENDS AMONG METROPOLITAN TORONTO STUDENTS: A STUDY OF CHANGES FROM 1968 TO 1972 (1972).

<sup>27</sup>Waldo & Chiricos, *supra* note 5, at 538.

<sup>28</sup>*Id.* at 532.

<sup>29</sup>Littlejohn, Grupp & Schmitt, *Marijuana Use in a Small College: A Midwest Example*, in THE MARIJUANA MUDDLE 63 (S. Grupp ed. 1973).

<sup>30</sup>*Id.* at 172. However, this might be more properly

<sup>20</sup>F. ZIMRING & G. HAWKINS, *supra* note 2, at 7.

<sup>21</sup>J. ANDENAES, *supra* note 3, at 52.

<sup>22</sup>Waldo & Chiricos, *supra* note 5, at 524.

<sup>23</sup>The relevant literature is reviewed extensively in F. ZIMRING & G. HAWKINS, *supra* note 2, at 96-128.

rigorous study by Waldo and Chiricos, that lower levels of marijuana use are related to the perception that arrest or maximum penalty on conviction would be likely, provides some support for deterrence theory.<sup>31</sup> However, as these authors point out, neither users nor non-users perceived the potential of detection as very great; 75 per cent of non-users and nearly all users saw the risk as *less* than a fifty/fifty chance.

The research cited so far has focused mainly on the perceived certainty of punishment. Only one study has considered the perceived severity of punishment, and none has been found which examined the deterrent effect of the swiftness of punishment. The work of Waldo and Chiricos strongly suggests that marijuana use is unrelated to perceptions of the severity of punishment.<sup>32</sup> In their study, marijuana use was most frequent among those whose perceptions of the law were most accurate, and less common for those who underestimated the penalties.

In summary, the somewhat confused picture that emerges from the literature is that the deterrent effect of the law on cannabis use is likely to be weak since actual certainty is low. The deterrent effect can be enhanced by increasing the *perceived* certainty of punishment, but not the perceived or actual severity. This situation illustrates the more general statement that "when the risks of detection are considered small, it is possible that questions about the severity of the penalty tend to lose their significance."<sup>33</sup>

#### SAMPLE AND DESIGN

The research reported in this paper tests deterrence hypotheses with a sample of persons found guilty of the offense of simple possession of cannabis. The sample was selected in such a way as to be representative of all types of sentences awarded for this offense over an eleven-week period in July, August and September of 1974 in the Metro Toronto court, which hears virtually all such cases. Only persons with no prior convictions for any adult offence were included in the sample.<sup>34</sup> Potential

subjects were approached immediately after being sentenced, and if they were eligible and agreeable, the interview proceeded at once. All but five of the ninety-five completed interviews occurred on the day of the respondent's trial, in the environs of court. The remainder took place within one week.

What sort of people are sent to court for the possession of cannabis? The wide range of characteristics displayed by the sample suggests that almost anyone can be "busted." Subjects included a self-employed thirty-seven-year-old father of three, a sixteen-year-old arrested after trying his first "joint," a pregnant mother, a Ph.D. student, and an epileptic who said he never used marijuana. However, the sample was composed predominantly of young, single males who admitted to being heavy users of cannabis. Two-thirds of the sample were between sixteen and twenty-one years old; the median age was 19.7 years. Males outnumbered females almost nine to one. Almost half the sample had less than a twelfth grade education. Although this is partly a reflection of the youthfulness of the sample, it also indicates a fairly high dropout rate from high school. Only 16.8 per cent were planning to continue secondary or post secondary studies in the next school year. The great majority of those interviewed (71.6 per cent) considered themselves to be employed either full or part-time. Eleven and one half per cent were looking for work or unsure of their plans after just leaving school. Excluding those who had a temporary job between school years or who had never worked, the mean length of time spent on the sample member's most recent job was eleven months. While slightly over half of those in the labor force had worked six months or less at their latest job, one quarter had been in the same position for over a year. Living situation at the time of arrest varied: 43.2 per cent lived at home with at least one parent; 16.7 per cent were with a partner; 22.1 per cent shared accommodations with a sibling, roommate or group; and 17.9 per cent lived alone. Only seven of the sample members had children.

When considering the sample's experience with cannabis, it is important to keep in mind the distinction between legal definitions and actual behavior. In an attempt to legislate against the *use* of cannabis, which is difficult to prove, the offense has been defined as that of *possession* of the illicit drug. Being aware of and consenting to the presence, in the vicinity of one's person or property, of a drug that is

consequences of the criminalization of cannabis offenders. In order to control for the effect of prior conviction, subjects with such a record were excluded.

interpreted as a test of sanity rather than deterrence theory See J. AENDENAES, *supra* note 3, at 49.

<sup>31</sup>Waldo & Chiricos, *supra* note 5, at 531, 535.

<sup>32</sup>*Id.* at 530. A related finding is that cannabis users who are also sellers are almost evenly divided between those who fear arrest and those who do not; yet, being convicted of selling, or even of possession of large amounts, carries much more severe penalties than does simple possession of small amounts. B. JOHNSON, *MARIJUANA USERS AND DRUG SUBCULTURES* 76 (1973).

<sup>33</sup>J. AENDENAES, *supra* note 3, at 55.

<sup>34</sup>The data on deterrence was collected as part of a larger study whose broad objective was to assess the social

in fact cannabis is considered to be evidence of possession. Prior involvement with the drug or intensity of use are not considered relevant in determining guilt, although they may in practice bear on sentencing if the defense counsel or accused produces the information. Thus, while all ninety-five members of the sample had the common judicial experience of being officially criminalized for the simple possession of cannabis, they varied in their drug use behavior prior to their court appearance. Of the group, 87.3 per cent can be classified as regular users, and the balance as irregular, experimental or non-users. Most (72.6 per cent of the ninety-five) fall into the moderate to heavy regular user categories of smoking marijuana or hashish at least twice a week to daily. The light regular users (*i.e.*, more than once a month to not more than once a week) make up 14.7 per cent of the total. The remaining 12.7 per cent of the sample present some interesting features. Six persons can be described as occasional smokers who use marijuana sporadically a few times a year, but no more than once a month on the average. Four persons were experimental users who had just tried it a few times when arrested. One person, a former moderately heavy user, had not smoked marijuana at all in the year prior to being charged; his offense was possession of one "decorative" plant. One person, who denied ever trying cannabis, claimed that a cube of hashish had been planted on him by the police after he had had the misfortune to sit next to a person staked out by the narcotics squad.

The mean age at which cannabis was first tried by the respondents was 15.8, and the range was from eleven to thirty-one years. The length of time between first use of the drug and the court appearance averaged 5.1 years. Nearly as many persons had originally tried cannabis seven years or more before their arrest as had tried it for the first time within the past three years (twenty-one and twenty-three respectively). It is evident that for most of the sample, several years had elapsed between acquaintance with the drug and the sanction for its use. As a twenty-four year old male respondent commented, "Being caught once in six years is a pretty good average." In addition, much of the initial exposure to the drug had occurred prior to the so-called "softening" of the Canadian law in 1969 and 1972.<sup>35</sup> With this profile of the sample in mind, let us turn to the major findings of the study.

<sup>35</sup>For an analysis of the Canadian legal response to cannabis use in the decade of 1965-74 see Erickson &

## FINDINGS

Initially, we shall address two questions. First, what is the relative effect of different types of sanction, that is, the *actual severity of punishment*, on the illegal behavior? Second, how does the offender's perception of the chances of being arrested again, that is, the *perceived certainty of punishment*, affect the likelihood of engaging in the unlawful activity? Finally, a competing social-cultural explanation will be considered. Do factors such as commitment to cannabis-using norms, age of introduction to cannabis use, and shared criminalization experience with peers account for variation in the intention to commit this illegal act?

The principal dependent variable, the degree of deterrent effect, was operationalized by a self-report measure of the subject's intention to continue the use of cannabis in the next year. Zimring and Hawkins consider that while self-reports must be viewed with caution, they can be useful indicators of occurrence of the threatened behavior.<sup>36</sup> The data presented in this paper are based on the respondent's expressed intention at the time of trial and sentence.<sup>37</sup> The overall trend indicated a high likelihood of continued use. While 84.2 per cent indicated they were "very likely" or "quite likely" to continue using cannabis, only 14.8 per cent responded "not very likely" or "not likely at all." One said "don't know."

### *Type of Sanction (Actual Severity)*

Deterrence theory suggests that those given the more severe penalties would be least likely to continue the proscribed behavior. In this study, subjects awarded a conditional discharge (requiring probation) or a fine would be expected to be more deterred from further cannabis use than those given an absolute discharge, which provides no other penalty. The fine is considered to be a more severe sanction than the probation provided by the conditional discharge, since the fine can only follow the

---

Smart, *Community Response to Drug Use: Canada*, in *THE COMMUNITY'S RESPONSE TO DRUG USE* (S. Einstein ed. 1976), (forthcoming).

<sup>36</sup>F. ZIMRING & G. HAWKINS, *supra* note 2, at 321-27.

<sup>37</sup>The final follow-up interviews, which were completed for 89.5 per cent of the original sample of ninety-five, provide some opportunity to assess the extent to which the subjects' forecast of their drug-using behaviour coincided with their self-reported drug use a year later. Since none of those in the "very likely/quite likely" group reported cessation of use, and only one of the "not likely at all" group said he had resumed use, intention to use appears to be a very reliable predictor of subsequent use for this sample.

registering of a conviction, while any form of discharge precludes a conviction.<sup>38</sup>

The data shown in Table I do not support the above hypothesis that likelihood of infraction is conditioned negatively by the severity of sentence. Sample members who were fined were shown to be more likely to continue the use of cannabis than those given either form of discharge. While 65.2 per cent of those fined were in the "high likelihood" category, slightly less than half of those with discharges were. Virtually no differences in the expressed intention to use cannabis were found between those placed on probation and those who received an absolute discharge. About a third of each group expressed a "medium likelihood" of continuing use, and 18.8 per cent and 12.8 per cent respectively, were found in the low, or most deterred, category. Thus, the deterrent effect of absolute versus conditional discharge appears to be insignificant, and the effect of conviction and fine tends to be in the opposite direction than that postulated by deterrence theory.

*Perceived Likelihood of Re-Arrest (Perceived Certainty)*

The deterrence hypothesis that the greater the perceived certainty of punishment, the less the likelihood of law-breaking activities, received some empirical support from the work of Waldo and Chiricos.<sup>39</sup> However, the findings of this study, shown in Table II, not only do not support this hypothesis, but contradict it. While the number of persons who perceived a high risk of re-arrest was small, numbering only seventeen, 76.5 per cent of this group expressed a high likelihood of continuing cannabis use. Only 61.8 per cent of those with a median perception of certainty of punishment, and 37.5 per cent of those with a low one, were found in the "high likelihood" of future use category. In contrast, 25.0 per cent of those who perceived the lowest certainty of re-arrest also had the lowest likelihood of continuing the use of cannabis. Indeed, none of those who had a high perception of certainty of punishment were found in this most deterred category. Even given the possibility that a feedback loop is operating (*i.e.*, that some of the persons making up the 25.0 per cent had already assessed the risk of re-

<sup>38</sup>The subjective perception of the person sentenced may be at variance with the legal definition. The effect of perceived severity of penalty on likelihood of continuing use is an important part of any deterrence model to be developed.

<sup>39</sup>Waldo & Chiricos, *supra* note 5, at 535.

TABLE I  
*Likelihood of Subsequent Cannabis Use by Type of Sanction*

Likelihood of Subsequent Use*	Type of Sanction		
	Absolute Discharge (Per Cent)	Conditional Discharge (Per Cent)	Fine (Per Cent)
Low	12.8	18.8	13.0
Medium	35.9	34.4	21.7
High	51.3	46.9	65.2
Total	100.0	100.1**	99.9**
(N)	(39)	(32)	(23)

gamma = +.09

(Total N excludes one "don't know" response)

\* How likely is it that you will continue to use cannabis in the next year?

Low = Not very likely, not likely at all

Medium = Quite likely

High = Very likely

\*\* On this and following tables, totals may not add up to exactly 100 per cent due to rounding.

TABLE II  
*Likelihood of Subsequent Cannabis Use by Perceived Certainty of Punishment*

Likelihood of Subsequent Use**	Perceived Certainty of Punishment*		
	Low (Per Cent)	Medium (Per Cent)	High (Per Cent)
Low	25.0	5.9	0
Medium	37.5	32.4	23.5
High	37.5	61.8	76.5
Total	100.0	100.1	100.0
(N)	(40)	(34)	(17)

gamma = +.52

(Total N excludes four "don't know" responses)

\* How likely is it that the police will arrest you again for possession of cannabis in the next year?

Low = Not likely at all

Medium = Not very likely

High = Very likely, quite likely

\*\* See Table I for operational definition.

arrest as high, made a decision to discontinue use, and hence then perceived a low certainty of re-arrest), these data offer quite dramatic opposition to deterrence theory.<sup>40</sup> Next, it is important to intro-

<sup>40</sup>Possible reasons for the difference between these findings and those of Waldo and Chiricos are that the two samples vary on several important dimensions. Waldo and Chiricos' sample consisted of both using and non-using college students, none of whom were said to have been arrested for cannabis offences. The sample in the present study were nearly all users in some degree, had mainly

duce some socio-cultural variables that may provide a more satisfactory explanation of these findings than the classical deterrence model does.

*Socio-Cultural Factors*

The three variables selected as possible significant explanatory factors in the continuing use of cannabis after arrest and sentence are: attachment to cannabis-using norms, age of initial use and shared criminalization experience. These factors have theoretical relevance to newer elaborations of the deterrence model.

Let us consider the "deviant" behavior of cannabis use within its socio-cultural context. It has been suggested that the law acts as a socializing agent by setting up standards of acceptable and non-acceptable behavior, and encouraging conformity to the acceptable patterns. Hence, exposure to the justice system directly, through arrest and trial, can re-socialize the individual into the "proper" forms of behavior. Zimring and Hawkins argue that this is one way in which the deterrence process is effective.<sup>41</sup> However, the more strongly a person has been socialized into, or is affiliated with, a "deviating" (in terms of the law) behavior pattern, the less amenable he will be to the court's intervention and attempt to change this lifestyle. Since commitment to cannabis-using norms, age of initiation and having criminalized friends are some indicators of socialization into a drug use career, likelihood of continued use would be expected to vary accordingly.

*Attachment to Cannabis-Using Norms.* The concept of "attachment to cannabis-using norms" was operationalized in terms of frequency of use in the year preceding the time of sentence.<sup>42</sup> The data relating likelihood of ongoing cannabis use to past frequency of use is presented in Table III. A large majority of both light and moderate regular users responded that they were "very likely" or "quite

lower secondary education, and had all been found guilty of this offence of simple possession. One would expect that the fear of the stigmatizing consequences of a criminal record (and the specific law on the Florida college campus of Waldo and Chiricos' subjects that suspension would automatically result) would have greater salience for the higher educated group. For the Toronto group, Bob Dylan's phrase "if you ain't got nothing, you ain't got nothing to lose" seems more appropriate—that is, being already subject to the aftermath of official criminalization, the prospect of re-arrest would be less threatening.

<sup>41</sup>F. ZIMRING & G. HAWKINS, *supra* note 2.

<sup>42</sup>Frequency of use was recorded at the first interview. Figures in two cases were corrected to conform to the drug use history obtained at the final follow-up interview.

TABLE III  
*Likelihood of Subsequent Cannabis Use by Past Frequency of Use*

Likelihood of Subsequent Use**	Frequency of Use*			
	Never, Experimental, Occasional (Per Cent)	Light (Per Cent)	Moderate (Per Cent)	Heavy (Per Cent)
Low	63.6	7.1	14.7	2.9
Medium	36.4	64.3	32.4	17.1
High	0	28.6	52.9	80.0
Total (N)	100.0 (11)	100.0 (14)	100.0 (34)	100.0 (35)

gamma = +.69

(Total N excludes one "don't know" response)

\* How often have you used cannabis in the past year (if at all)?

Never = not at all in past year

Experimental = once or twice/did not continue

Occasional = once a month or less

Light = more than once a month, not more than once a week

Moderate = at least 2 or 3 times a week

Heavy = more than 3 times a week to daily

\*\* See Table I for operational definition.

likely" to continue to use cannabis. The most striking findings are that 80 per cent of the heavy users express the highest likelihood of continuing use, and that 63.6 per cent of the never, experimental or occasional user group indicated the lowest likelihood of further use of the drug. In other words, almost all of those who appear to be deterred were those whose use was minimal or non-existent before being arrested and tried. As the high gamma value indicates, we can reduce by 69 per cent the error in predicting who will continue use just by knowing the pre-trial behavior. In conjunction with the prior discussion of perceived certainty of punishment, these data suggest that although some users do assess the likelihood of re-arrest as high, most do not plan to change their cannabis-using behavior.

It is also important to ask whether the relationship between type of sanction and deterrent effect, and between perceived certainty of re-arrest and deterrent effect, varies according to frequency of cannabis use in the past. It is possible that the analysis of the simple zero-order relationships above has obscured some deterrent effect that is related to a particular use pattern. For this part of the analysis, likelihood of continued use will be dichotomized into low and high categories, and frequency of use into heavier and lighter groupings. Table IV shows that





young, are those most oppressed by, and least deterred by, the criminal sanction. This study provided a few examples of support for the view that arresting a person early enough in his drug-using career (*i.e.*, just after his first purchase) can act as an effective deterrent. However, 60 per cent of the sample had tried cannabis while still juveniles (at age fifteen or younger). Since most had been using for several years without official detection, reliance on early intervention does not appear realistic.

*Shared Criminalization Experience.* The third socio-cultural factor, shared criminalization experience, operationalized as having friends charged for cannabis offenses, has significance for the notion of general deterrence. This view holds that the awareness of consequences suffered by others for specific illicit acts will deter someone from engaging in the law-breaking activities. Hence, the more friends one has who have been criminalized for cannabis, the less likely a person should be to commit the punished act of cannabis use. However, the competing socio-cultural explanation is that marijuana users support each other in their deviance, and shared criminalization is one more bond in their set of countervailing. While being "busted" may not necessarily be prestigious it is certainly not, in this interpretation, a cause

TABLE V

*Likelihood of Subsequent Cannabis Use by Perceived Certainty of Punishment, According to Past Frequency of Use*

Likelihood of Subsequent Use**	Frequency of Cannabis Use*		
	Perceived Certainty of Punishment***		
	Low (Per Cent)	Medium (Per Cent)	High (Per Cent)
	Heavy/Moderate		
Low	16.0	3.4	0
High	84.0	96.6	100.0
Total	100.0	100.0	100.0
(N)	(25)	(29)	(13)
	Light/Occasional/Experimental/Never		
Low	40.0	20.0	0
High	60.0	80.0	100.0
Total	100.0	100.0	100.0
(N)	(15)	(5)	(4)

gamma = +.79 (Total N excludes four "don't know" responses) gamma = +.70

\* See Table III for operational definition.

\*\* Low = not very likely/not likely at all

High = quite likely/very likely

\*\*\* See Table II for operational definition.

TABLE VI

*Likelihood of Subsequent Cannabis Use by Age First Tried, According to Past Frequency of Use*

Likelihood of Subsequent Use**	Frequency of Cannabis Use*		
	Age First Tried***		
	13 or less (Per Cent)	14 to 16 (Per Cent)	17 or more (Per Cent)
	Heavy/Moderate		
Low	4.8	3.1	25.0
High	95.2	96.9	75.0
Total	100.0	100.0	100.0
(N)	(21)	(32)	(16)
	Light/Occasional/Experimental/Never		
Low	25.0	20.0	40.0
High	75.0	80.0	60.0
Total	100.0	100.0	100.0
(N)	(4)	(10)	(10)

gamma = -.61 (Total N excludes one "don't know" and one "not applicable" response.) gamma = -.32

\* See Table III for operational definition.

\*\* Low = not very likely/not likely at all

High = quite likely/very likely

\*\*\* How old were you when you first tried cannabis?

for exclusion from the group. This view is supported by Waldo and Chiricos who concluded that "general deterrence appears *not* to be working among marijuana offenders."<sup>46</sup> Their data showed that the use of marijuana was more than twice as great among respondents who had knowledge of someone arrested for possession than among those without such knowledge.

While the analysis of the primary relationship between likelihood of subsequent use and having criminalized friends, which showed a positive correlation (+.20), appeared to support the socio-cultural explanation, it is necessary to examine the relationship more closely by controlling for frequency of use. Having friends who have been criminalized may be primarily a function of frequency of use, and only spuriously related to intention to continue use. This analysis is shown in Table VII.

For the heavy user group, the data offers no support for either the principle of general deterrence or the socio-cultural hypothesis. The vast majority of the heavier users intended to continue use, regardless of the proportion of criminalized friends. However, for the lighter user group, only 37.5 per cent of those who reported no friends charged had a high intention

<sup>46</sup>*Id.* at 534.



young persons, the associated social and legal stigma, inculcation of disrespect for authority, distrust of the police, and drain of resources to enforcement.<sup>51</sup>

Our belief in the general preventative function of the law is rooted in the common law tradition expressed by these words of an eighteenth century British judge: "Young man, you are to be hanged not because you have stolen a sheep, but in order that others shall not steal sheep." The dilemma is more acute in the instances of victimless crimes. In the words of a more contemporary criminologist:

Punishment in this context [general prevention] is used not to prevent future violations on the part of the

<sup>51</sup>LE DAIN COMMISSION 1972, *supra* note 24, at 292-98; Glaser, *Criminology and Public Policy*, 6 AM. SOCIOLOGIST 30, 35 (1971); Schwartz & Skolnick, *Two Studies of Legal Stigma*, 10 SOCIAL PROBLEMS 133, 134-38 (1962).

criminal but in order to instill lawful behaviour in others. The individual criminal . . . is sacrificed in a manner contrary to our ethical principles.<sup>52</sup>

It has been debated whether a legitimate purpose of the law is to prevent an individual damaging himself, and indirectly society, through the use of potentially harmful substances.<sup>53</sup> Although some would argue that the decriminalization of cannabis should await the valid, scientific elucidation of long range physical effects, it should also be considered whether the application of the criminal law to this form of drug-taking behavior has sufficient justification if its deterrent efficacy cannot be demonstrated empirically. Lacking this evidence, the ultimate issue is to some extent an ethical one.

<sup>52</sup>J. ANDENAES, *supra* note 3, at 77.

<sup>53</sup>LE DAIN COMMISSION 1972, *supra* note 24, at 275-93.