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## PRIOR CRIMINAL RECORD AND ADULT MARIHUANA ARREST DISPOSITIONS

STANLEY E. GRUPP\*

The extent of criminal involvement by persons who use marihuana has historically produced emotionally charged discussion. Recent efforts to assemble objective information on the subject are virtually nonexistent. There are, of course, earlier examples in the literature considering this question.<sup>1</sup> As with many aspects of the drug problem, generalizing from the exceptional case is not uncommon. At other times it is either assumed that the question cannot be answered or the question is side-stepped by the refusal to take a position. Without making any apparent effort to assess the credibility of its sources and before any discussion, it is of interest to note that the *President's Task Force on Narcotics and Drug Abuse* initiated its discussion on this matter saying, "Here differences of opinion are absolute and the claims are beyond reconciliation."<sup>2</sup>

The belief that marihuana smokers also engage in criminal activities remains deeply ingrained. Undoubtedly, this is partly a function of the association of all drugs with the unsavory, the lazy, the licentious and the uninhibited. Simmons refers to the conventional "stereotype of the marihuana user as a half-human addict, skulking through the shadowy byways of society, bereft of willpower or decency, or any future except untimely death."<sup>3</sup> Few would probably accept such a generalization today and it appears that some of the traditional stereotypes of the marihuana smoker may be breaking down.<sup>4</sup> The claim, how-

ever, that there is an association or a causal relationship between marihuana and criminal behavior is still prevalent. One need not return to the summer of 1937 to read Anslinger's inflammatory statement to find support for this point of view.<sup>5</sup> Note, for example, Donald E. Miller's comments in 1966 and again in 1968. After some discussion, heavily supported by foreign sources and the files of the former Bureau of Narcotics, he states:

In the final analysis it is clear that marihuana may be causally associated with the commission of crimes in a number of ways, depending upon the variability of the strength of the dose and the underlying personality of the user. The important question for society is not in what manner marihuana causes crime—the question is, how many crimes would not be committed but for the addition of this dangerous drug to the social environment. The available studies are suggestive enough of the risks involved in its use.<sup>6</sup>

In juxtaposition to this point of view is the common assertion that large proportions of the marihuana law violators have clean records as far as the criminal law is concerned. Kaplan, for example, observes that "a large percentage of marihuana offenders have been in no serious trouble with the law."<sup>7</sup> Similarly, it appears that much of today's middle class concern about the ostensible severity of marihuana laws and the severe punishments that are supposedly being generally imposed is also predicated on the assumption that the marihuana law is being aggressively

*Use and the College Student: A Midwest Example* (Paper presented at the 34th Annual Meeting, Midwest Sociological Soc'y 1970).

<sup>5</sup> Anslinger & Cooper, *Marihuana: Assassin of Youth*, 124 AM. MAG. 18-19, 150-153 (1937).

<sup>6</sup> Miller, *Narcotic Drug and Marihuana Controls* 8-9 (Paper presented at the Nat'l Ass'n of Student Personnel Administrators Drug Education Conf. 1966). See also Miller, *Legislative and Judicial Trends in Marihuana Control* (Paper presented at the Ill. St. Med. Soc'y Nat'l Symposium on Psychedelic Drugs and Marihuana 1968); *Marihuana and Crime*, 18 U. N. BULL. ON NARCOTICS 15-22 (1966).

<sup>7</sup> Morton, Mueller, Ohlgren, Pearson, Weisel & Kaplan, *Marihuana Laws: An Empirical Study of Enforcement and Administration in Los Angeles County*, 15 U.C.L.A. L. REV. 1505 (1968).

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<sup>1</sup> See, e.g., Bromberg, *Marihuana: A Psychiatric Study*, 113 J.A.M.A. 4-12 (1939); Chopra, Chopra, & Chopra, *Cannabis Sativa in Relation to Mental Diseases and Crime in India*, 31 INDIAN J. MED. RESEARCH 155 (1942).

<sup>2</sup> PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE REPORT: NARCOTICS AND DRUG ABUSE 13 (1967).

<sup>3</sup> MARIHUANA MYTHS AND REALITIES 7 (Simmons ed. 1967).

<sup>4</sup> See, e.g., McCain, Grupp, & Schmitt, *Marihuana*

applied to persons who are otherwise not criminal. While not always explicitly stated, this point of view is very close to the surface.<sup>8</sup> One observer, for example, states:

To crack down on these youth [social marihuana smokers] with all of the powerful forces of law and order and to justify such a restriction of freedom in the name of preventing crime or disease seems more an uncontrolled expression of adult moral indignation and righteousness than of human concern or social justice. . . .<sup>9</sup>

It must, on the other hand, be frankly admitted that while we can reject some of the ominous labels attached to the marihuana smoker, it remains for further investigation to determine whether the assumption of the causal relationship between marihuana use and criminal behavior joins the scrap heap of rejected myths and stereotypes. Apparently, no one has ever inquired in any detail of marihuana smokers themselves about their involvement in criminal activities. Such an effort would at the outset be saddled with all the sampling problems that harass research efforts in this area. A curious aspect of the attention given this matter in the literature is the lack of consideration of the objective information that is available. It appears that those who defend the relationship are not disposed to look at this information and those who might be willing to do so feel the question has been settled and does not need attention. The questions that remain to be answered concern what information is available and what that information reveals about the association of marihuana and criminal activities.

Currently available information does not permit detailed inquiry into the exact nature of the prior criminal records of the marihuana arrest population. It is possible, however, to present data relevant to the general seriousness of the prior criminal record and to look at police-court disposition data in relation to this prior record. Data of this type provides an index not only of how the adult marihuana arrestee is viewed by the disposition process but also of the effect of prior criminal records on the disposition pattern.

The remainder of this article is concerned with two areas:

(1) the identification of the nature of the prior criminal record of an adult marihuana arrest disposition population, and (2) the identification of the disposition and sentencing patterns and trends with respect to the various prior criminal record categories of this population.

The source of data is the statistical reports of the California Bureau of Criminal Statistics, *Drug Arrests and Dispositions in California*, issued annually since 1960. The inclusive years considered are 1960 through 1967. In 1968 sample data only are included in the reports; therefore, they are not strictly comparable and only selected reference is made to that year.

It is apparent that information generated from these data cannot be applied to the ostensible majority of marihuana smokers who have never been arrested. Assuming that arrestees for marihuana law violations are also marihuana smokers, one really cannot determine how representative they may be of the entire population of persons who are experienced with marihuana. Similarly, since the data are based on the California adult marihuana arrest population, generalizations to like arrest populations in other states carry similar but, perhaps, less marked hazards.

#### PRIOR CRIMINAL RECORD

Since 1961-1962 there has been a gradual increase in the proportion of adult marihuana arrest dispositions who have had no prior criminal record. In 1961 and 1962, sixteen percent had no prior record, in 1965 the proportion had risen to 20 percent, in 1966 to 25 percent and in 1967 to 35 percent. Viewed in terms of the rate of increase between 1960 and 1967, there is marked disparity between the increase in persons with no prior record and the other categories. This clearly indicates that there has been an increase in the attention given this group. Accompanying this trend, there has been a similar, but much less emphatic decrease in the proportion of marihuana arrest dispositions of adults who have either a major prior criminal record or a prior prison criminal record. In 1960, persons with major prior criminal records contributed 29 percent to the total adult marihuana arrest dispositions and those with a prior prison record contributed 11 percent; in 1967 their contributions were 20 percent and 4 percent respectively. Definitions of prior criminal record categories and the trends in their relative contribution to the total disposition pattern are presented in Figure 1.

<sup>8</sup> Grupp & Lucas, *The "Marihuana Muddle" as Reflected in California Arrest Statistics and Dispositions*, 5 LAW & SOC'Y REV. 251 (1970).

<sup>9</sup> Suchman, *The "Hang-Loose" Ethic and the Spirit of Drug Use*, 9 J. HEALTH & SOC'L BEHAVIOR 155 (1968).

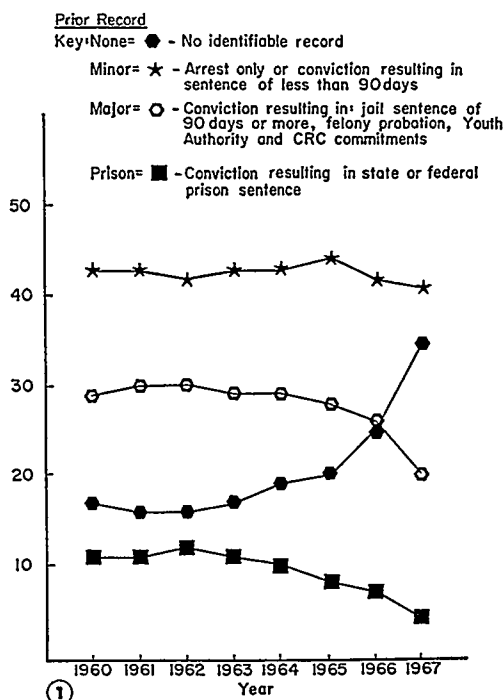
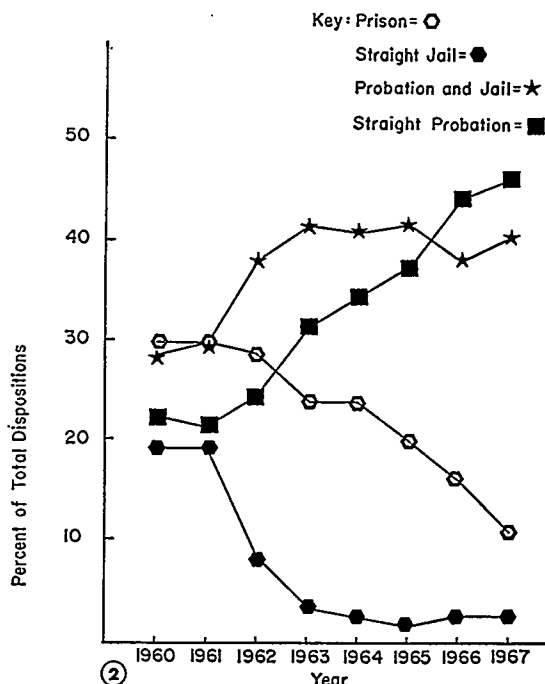


FIGURE 1

Prior criminal record of California adult marihuana arrest dispositions, 1960-1967.

FIGURE 2

Sentencing trends for California adult marihuana convictions, 1960-1967.



The increase in the proportion of those with no prior criminal record should not cloud the fact that in 1967 sixty-five percent of those disposed of did have some kind of a prior criminal record. Note, however, that consistently this is most apt to be of a minor nature. Keeping in mind that a minor record means anything from an arrest followed by a dismissal, release, or acquittal to a jail sentence of less than ninety days, it can be argued that while adult marihuana arrestees are apt to have had some kind of criminal record, it is not likely to have been a serious one and, since 1962, it has been decreasingly serious. While not as a whole unknown to police registers, as characterized by the criteria at hand, the group does not appear to be a particularly threatening one criminally.

#### DISPOSITIONS

In recent years the most likely disposition of a marihuana arrestee is release, dismissal, or acquittal. This has always been true for those with no prior criminal record. Through 1966 the general trend for all prior criminal record categories was one of an increasing chance of release, dismissal, or

acquittal. In 1966 no less than 61 percent of the arrestees in any one category was released, dismissed, or acquitted. While a reversal of this overall trend occurred in 1967, with relatively fewer persons in this category, the majority of dispositions in each prior record category were still disposed of in this manner. The similarity in the proportions of the several categories that were released, dismissed or acquitted in 1967 is especially striking. See Table 1.

Chances of being convicted are consistently greater if one has a minor or serious prior criminal record. The internal patterns within the convicted category are especially interesting. Since 1961 there has been a gradual but not always consistent decrease in the proportion of persons with no prior criminal record who are convicted. Between 1961 and 1966 this proportion dropped from 43 percent to 25 percent. In 1967 the proportion rose to 29 percent. Sample data for 1968 again indicate an increase in the proportion of those with no prior criminal record who are convicted. Thirty-three percent were disposed of in this manner in that year. In sum, the data indicate a long range de-

TABLE 1

TRENDS IN ADULT MARIHUANA ARREST DISPOSITIONS IN RELATION TO SERIOUSNESS OF PRIOR CRIMINAL RECORD<sup>a</sup>

Type of Disposition	Seriousness of Prior Criminal Record <sup>b</sup>	Year <sup>c</sup>							
		1960	1961	1962	1963	1964	1965	1966	1967
Released, dismissed or acquitted	None	400(58) <sup>d</sup>	272(52)	297(58)	397(56)	659(64)	945(63)	2164(69)	3884(58)
	Minor	862(50)	674(47)	597(46)	911(51)	1342(57)	1951(59)	3422(67)	4280(54)
	Serious	708(44)	610(46)	559(43)	765(45)	1144(53)	1597(58)	2427(61)	2433(54)
Convicted	None	266(38)	226(43)	192(37)	273(38)	325(31)	468(31)	782(25)	1923(29)
	Minor	787(45)	682(48)	656(50)	811(45)	946(40)	1262(38)	1607(31)	3084(39)
	Serious	762(47)	626(47)	632(49)	766(45)	884(41)	1088(40)	1472(37)	1861(41)
Other <sup>e</sup>	None	26(4)	23(4)	27(5)	41(6)	52(5)	78(5)	176(6)	916(14)
	Minor	82(5)	74(5)	57(4)	78(4)	85(4)	88(3)	91(2)	530(7)
	Serious	139(9)	102(8)	111(9)	185(11)	118(5)	66(2)	102(3)	241(5)
Total <sup>f</sup>	None	692	521	516	711	1036	1491	3122	6723
	Minor	1731	1430	1310	1800	2373	3301	5120	7894
	Serious	1609	1338	1302	1716	2146	2751	4001	4535

<sup>a</sup> Data in this table has been abstracted from the table in the various issues of *Drug Arrests and Dispositions in California* entitled "Adult Drug Arrest Dispositions by Type of Disposition, Original Offense and Prior Criminal Record."

<sup>b</sup> For an explanation of the prior criminal record categories, see Figure 1. The serious category was formed by combining the major and prison prior criminal categories as defined in Figure 1.

<sup>c</sup> Percentages in parentheses may not total 100 per cent due to rounding error.

<sup>d</sup> The table should be read, fifty-eight per cent (400) of the 692 marihuana arrestees disposed of in 1960 who had no prior criminal record were released, dismissed or acquitted.

<sup>e</sup> Includes federal cases, probationers and parolees referred to their supervising agency in lieu of prosecution, civil commitments and persons not prosecuted on narcotic charges because of non-narcotic charges currently pending against the individual.

<sup>f</sup> Each total represents the total N for each prior criminal record category.

crease in the proportion of convictions among those with no prior criminal record, with an indication that there has been some reversal of this trend in 1967 and 1968.

During the period investigated for any given year there is typically very little difference in the proportion of persons from the minor and serious prior criminal categories who are convicted. Excepting 1966 for which there is a six-point spread, the proportions in both categories vary no more than 2 percent. Stated differently, given a prior criminal record, one's chances of conviction on a marihuana arrest are very much the same regardless of the seriousness of the record.

#### SENTENCING TRENDS

Consistently over the eight year period persons with no prior criminal record represent the smallest proportion of violators who are actually sentenced. In 1967 the contribution of this group reached an

eight year high of 24 percent; in 1966 they represented 19 percent of the total. Summary data are presented in Table 2. Sample data for 1968 indicate their proportion as 27 percent of the sentenced violators.

While those with no prior criminal record have increased the fastest between 1960 and 1967, indicating increasing attention to this group, their 24 percent contribution to the total sentenced population does not suggest that marked attention is being given this group as it emerges at the actual sentencing level.

One's chances of being committed to prison as the result of a marihuana conviction are markedly enhanced by the existence of a serious prior criminal record. Note, however, that since the early 1960's there has been a marked and generally consistent decrease in the proportion of those with a serious prior criminal record who are committed to prison. This proportion ranges from a high of 53

TABLE 2

SENTENCING TRENDS FOR ADULT MARIHUANA CONVICTIONS IN RELATION TO SERIOUSNESS OF PRIOR CRIMINAL RECORD, 1960-1967<sup>a</sup>

Sentence	Seriousness of Prior Criminal Record <sup>b</sup>	Year <sup>b</sup>							
		1960	1961	1962	1963	1964	1965	1966	1967
Prison	None	11 (5) <sup>d</sup>	9 (5)	12 (7)	10 (4)	13 (5)	8 (2)	8 (2)	12 (1)
	Minor	109 (16)	100 (17)	78 (14)	80 (12)	83 (11)	89 (9)	76 (7)	116 (6)
	Serious	347 (52)	284 (53)	281 (52)	269 (44)	300 (46)	342 (41)	350 (35)	323 (27)
	Total	467 (30)	393 (30)	371 (29)	359 (24)	396 (24)	439 (20)	434 (16)	451 (11)
Straight jail	None	18 (8)	13 (7)	6 (3)	—	1 (.4)	3 (.9)	2 (.4)	12 (1)
	Minor	105 (16)	102 (17)	37 (7)	14 (2)	8 (1)	4 (.4)	9 (.8)	25 (1)
	Serious	173 (26)	138 (26)	61 (11)	28 (5)	21 (3)	17 (2)	30 (3)	37 (3)
	Total	296 (19)	253 (19)	104 (8)	42 (3)	30 (2)	24 (1)	41 (2)	74 (2)
Probation and jail	None	75 (34)	81 (41)	64 (37)	80 (36)	92 (36)	123 (35)	140 (28)	315 (33)
	Minor	264 (39)	233 (40)	264 (48)	323 (49)	365 (49)	445 (45)	483 (42)	814 (43)
	Serious	111 (17)	88 (16)	152 (28)	225 (37)	215 (33)	341 (41)	396 (39)	505 (43)
	Total	450 (29)	402 (30)	480 (38)	628 (42)	672 (41)	909 (42)	1019 (38)	1634 (41)
Straight probation	None	116 (53)	96 (48)	90 (52)	134 (60)	147 (58)	218 (62)	359 (71)	627 (65)
	Minor	194 (29)	148 (25)	167 (31)	240 (37)	289 (39)	443 (45)	586 (51)	932 (49)
	Serious	38 (6)	29 (5)	48 (9)	91 (15)	122 (19)	131 (16)	232 (23)	312 (27)
	Total	348 (22)	273 (21)	305 (24)	465 (31)	558 (34)	792 (37)	1177 (44)	1871 (46)
Total <sup>e</sup>	None	220 (14)	199 (15)	172 (14)	224 (15)	253 (15)	352 (16)	509 (19)	966 (24)
	Minor	672 (43)	583 (44)	546 (43)	657 (44)	745 (45)	981 (45)	1154 (43)	1887 (47)
	Serious	699 (43)	539 (41)	542 (43)	613 (41)	658 (40)	831 (38)	1008 (38)	1177 (29)
	Total	1561	1321	1260	1494	1656	2164	2671	4030

<sup>a</sup> Data in this table has been abstracted from the table in the various issues of *Drug Arrests and Dispositions in California* entitled "Adult State Drug Law Convictions by Final Charge, Prior Criminal Record and Sentence." The information relates to specific type of sentence generated by the final charge and therefore is not strictly comparable to the conviction data presented in Table 1. Fines, commitments to the California Rehabilitation Center and the California Youth Authority are not included because they represent a very small proportion of the total.

<sup>b</sup> Percentages in parentheses may not total 100 per cent due to rounding error.

<sup>c</sup> For an explanation of the prior criminal record categories see Figure 1 and Table 1, note b.

<sup>d</sup> The table should be read, five per cent (11) of the sentenced adult marihuana convictions in 1960 who had no prior criminal record were sentenced to prison.

<sup>e</sup> Each total represents the total N for each prior criminal record category.

percent in 1961 to a low of 27 percent in 1967. Similarly, but in many years by only a slight margin, those with a minor prior record are more apt to be committed to prison than are those with no prior criminal record. A conspicuously small number of persons with no prior criminal record are committed to prison for violating marihuana laws. Only twelve persons found themselves in this category in 1967. For the eight-year period under investigation there are but eighty-three individuals with no prior criminal record who were committed to prison. Thus, regardless of how one approaches the data, the trend is one of decreasing

use of the prison sentence as a vehicle for handling marihuana law violators. Trend lines reflecting the overall patterns of sentences generated are presented in Figure 2.

Since 1961 the overall use of probation has consistently increased from year to year. With minor variations, similar increases occur for each of the prior criminal record categories. Persons with no prior record are consistently more apt to be placed on probation while those with a serious record are least likely to be sentenced in this manner. It is noteworthy that twenty-seven percent of those sentenced with a serious prior

criminal record were placed on straight probation in 1967. In 1960 only six percent of this group were placed on probation.

Changes in the use of the combined probation-jail sentence are somewhat less consistent. Through 1965, however, collectively, the probation-jail disposition was the second most frequent type of sentence. In 1966 and 1967 this type of sentence was a close second in overall frequency. Particularly noticeable is the relative use being made most recently, as opposed to the early years, of the probation-jail sentence for those with a serious prior criminal record.

Used more at the early period, by 1967 the straight jail sentence had decreased to an insignificant proportion, 2 percent, of the total sentences.

#### DISCUSSION

Viewing the data from the perspective of the sentences generated, the pattern is clear; in California, regardless of one's criminal record, there has been a decreasingly punitive response to the convicted adult marihuana law violator. Although a serious prior criminal record enhances one's chances of being sent to prison, this disposition alternative is markedly less apt to occur in recent years than it was in the early 1960's. This finding is consistent with the general sentencing trends for the adult marihuana arrest population when the prior drug arrest record is observed.<sup>10</sup> Shifts in the actual chances of conviction for persons with a serious prior criminal record have not been quite so dramatic. Nevertheless, relatively fewer are being convicted and relatively more persons with serious prior criminal records are being released, dismissed, or acquitted. Overall, assuming all other conditions to be equal, the existence of a serious prior criminal record today has less effect in terms of the punitive consequences than it did at an earlier date.

It should be recognized, however, that there are

<sup>10</sup> Grupp & Lucas, *supra* note 8.

innumerable factors which may affect the disposition patterns which have not been considered here. These include changes in the law itself and court rulings as well as the kind of arrest and the level of arrest activity of the police.

Although the data have permitted only a cursory look at prior criminal record characteristics of the adult marihuana arrest population, the patterns which are evident pose some interesting questions. Clearly there has been an increase in recent years in the proportion of adult marihuana arrest dispositions of persons with no prior criminal record. The striking fact remains, however, that in 1967, the most recent year under consideration, no less than sixty-five percent of those arrested did have some kind of prior criminal record. While the predominantly minor character of this prior record does not suggest a marihuana arrest population that is especially criminal in nature, it is apparent that the entire story is not told by this superficial observation. The population as a whole is not naive to the criminal process. This fact alone is inconsistent with the claims of some that the contemporary targets of the marihuana law enforcers are subjects who have had no previous contact with the law.

It must also be recognized that the minor prior record category (arrests only or convictions resulting in a sentence of less than ninety days) covers a wide range. The nature of the arrests which are dropped, the factors involved in this decision, and the extent to which this category includes guilty pleas to charges reduced from more serious crimes remain indeterminable considerations. Similarly, activities of marihuana smokers have not been scrutinized with regard to their involvement in unreported criminal behavior of a non-marihuana nature. These are important concerns and information on the criminal characteristics of the adult marihuana arrest population will remain incomplete until researchers address themselves to these considerations.