

Dope busts in the West: minor cannabis offences in the Western Australian criminal justice system

SIMON LENTON¹, ANNA FERRANTE² & NINI LOH²

¹*National Centre for Research into the Prevention of Drug Abuse, Curtin University of Technology and* ²*Crime Research Centre, University of Western Australia, Perth, Western Australia*

Abstract

Proponents of cannabis law reform argue that many people who are convicted for minor cannabis offences have no prior criminal conviction and are otherwise law-abiding citizens. This study of criminal justice system data in a strict prohibition jurisdiction (Western Australia) found that over 10% of all charges and 85% of all drug charges were for cannabis. Approximately 90% of these were for minor offences. Over 40% of those charged with cannabis possession/use as their most serious offence had never been arrested for any prior offence. Almost half of those first arrested for cannabis possession/use had not been arrested up to 10 years later. Younger first-time arrested cannabis users were more likely to be re-arrested than older offenders. Almost all adult cannabis offenders who went to court were convicted and fined. Nearly 95% of those imprisoned for possession/use of cannabis were gaoled for fine default. The findings accord with earlier research showing that the vast majority of these offenders are, in all respects apart from their cannabis use, a non-criminal section of the community. [Lenton S, Ferrante A, Loh N. Dope busts in the West: minor cannabis offences in the Western Australian criminal justice system. *Drug Alcohol Rev* 1996;15:335-341]

Key words: drug policy; law enforcement; cannabis use; criminal justice.

Background

In recent years there has been a great deal of attention given to examining policy and legislative options for dealing with cannabis in Australia. In 1992 the National Drug Strategy, the administrative arm of the Ministerial Council on Drug Strategy (MCDS), appointed the National Task Force on Cannabis to prepare a comprehensive report on cannabis to inform the development of an appropriate national response. Four technical reports were produced which covered the health and psycho-

logical consequences of cannabis, legislative options, patterns of use, and public perceptions of cannabis law in Australia [1-4]. The Task Force made 22 recommendations based on these reports. These included that jurisdictions consider discontinuing the application of criminal penalties for the simple possession and use of cannabis without compromising those strategies which are aimed at deterring use, that those jurisdictions which have discontinued or were considering discontinuing such criminal sanc-

Simon Lenton, BPsych, MPsych (Clin.), Research Fellow, National Centre for Research into the Prevention of Drug Abuse, Curtin University of Technology, GPO Box U1987, Perth, Western Australia 6001; Anna Ferrante, BA (Maths), Dip Ed, Research Fellow, Crime Research Centre, University of Western Australia, Perth, Western Australia; Nini Loh, BSc (Maths), Dip Sc (Applied Stats.), Research Officer, Crime Research Centre, University of Western Australia, Perth, Western Australia. Correspondence to: Mr Simon Lenton.

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tions be adequately monitored; and that consideration be given to conducting research comparing the cannabis expiation schemes operating in South Australia (SA) and the Australian Capital Territory (ACT) with the legal approaches used in other Australian states [5]. Under the Cannabis Expiation Notice Scheme, which came into effect in SA in 1987, people charged with possession/use and growing offences under a specified personal use limit can avoid appearance in court (and the possibility of a criminal conviction) by paying a fine of between \$50 and \$150 within 60 days of the charge. A similar scheme called the Simple Cannabis Offence Notice or 'SCON' was introduced in the ACT in 1992.

The National Cannabis Task Force reported to health and justice ministers in September 1994. Subsequently, the Federal Justice Minister announced that further research into the social impact of laws against cannabis would be conducted. The study on which the current paper is based [6] was one component of the work undertaken as part of phase one of research, conducted by a consortium of Australian researchers, into the social impact of the various actual and potential legislative responses for cannabis in this country. The full report of this project was considered by the Ministerial Council on Drug Strategy in June 1995 [7].

Relevance of this study

Proponents of cannabis law reform argue that significant numbers of people who are convicted for minor cannabis offences have no prior criminal conviction and are otherwise basically law-abiding. Additionally they maintain that these individuals, and society as a whole, pay a substantial social cost for becoming caught up in the criminal justice system in this manner. The data presented here address the first of these propositions. The best available evidence which addresses the social costs of conviction is now somewhat dated [8,9]. However, it is hoped that phase two of the research into the social impact of the legislative responses for cannabis in Australia will address this important issue.

An analysis of data from Western Australia (WA) is important for a number of reasons. First, the laws which apply to cannabis in WA are some of the most wide-ranging in Australia and thus the data provide a good example of a high enforcement prohibition model. A sensible appraisal of the

relative merits of the various newer legislative approaches can only be made if they are compared to the costs and benefits of the prevailing systems of prohibition. Secondly, it has become apparent that few Australian jurisdictions have data available which allow a comprehensive and coherent analysis of the criminal justice system's response to minor cannabis offenders. Unlike many jurisdictions, Western Australian data from the police, courts and corrections systems distinguish cannabis offenders from other drug offenders, and include comprehensive information about the characteristics of these offenders. Finally, in all other Australian jurisdictions there are currently no mechanisms which link data from police, courts and corrective service agencies that allow individuals to be followed or 'tracked' through the system [7]. The criminal career data base established and maintained by the Crime Research Centre (CRC) at the University of Western Australia allows for a comprehensive analysis of cannabis offenders in the justice system of a state operating a strict cannabis prohibition in a way that, to date, has not been possible elsewhere [10].

Cannabis law in WA

WA is unique across Australia in that, under Section 5(1)(e) of the Misuse of Drugs Act 1981, it is an offence to be found in any place being used for the purpose of smoking a prohibited drug or prohibited plant. This simple offence is rarely used, with 89 such offences recorded over 5 years [11]. It is also a criminal offence to be an owner of such a property, the maximum penalty for these offences being a fine of \$2000, 2 years imprisonment, or both. Under the Act, a person who has in their possession or uses less than 25 cannabis plants, less than 100 grams of cannabis, less than 20 grams of cannabis resin or less than 80 cigarettes containing cannabis, is guilty of a criminal offence and subject to a maximum penalty of \$2000, 2 years imprisonment, or both. A person who has in their possession any pipes or other utensils for use in connection with the smoking, manufacture or preparation of cannabis is liable to a fine not exceeding \$3000 or to a term of imprisonment not exceeding 3 years, or both. Thus the maximum penalty for possessing a 'bong' (water pipe) is greater than that for possessing the cannabis to smoke in it. All these offences are criminal and

conviction on any of them results in the offender acquiring a criminal record which can stay with them for the rest of their life, although after 10 years offenders may apply to have it expunged.

Drug dealing or trafficking, described as 'intent to sell or supply' is defined under the Act in terms of quantity, that is, being in possession of not less than 25 cannabis plants, 100 grams cannabis, 20 grams cannabis resin, or 80 cigarettes each containing any portion of cannabis. Those found guilty of trafficking or manufacture/grow offences above the specified quantity are liable to a fine not exceeding \$100 000 or to imprisonment for a term of up to 25 years, or both, and also acquire a criminal record.

Method

The data presented here were extracted from records which are routinely provided to the CRC from the WA Police Service and the Ministry of Justice. Data are described for the most recent year available and focus on minor cannabis offences.

As individuals can be arrested more than once during a particular period and can be charged with more than one offence, it is important to consider the number of distinct persons so charged. In order to determine the impact of the cannabis charges for each individual, it is necessary to identify those individuals whose most serious offence (MSO) was a cannabis offence. This enables the consequences of arrest, such as the penalties applied, to be attributed to the cannabis offence rather than be confused with penalties which they may have received for more serious offences committed at the same time. For the data presented here, the CRC's Draft Seriousness Index was used to rank offences. This index takes into account legal seriousness, as determined by penalty, as well as the results of public opinion research [12].

People who were first arrested for a minor cannabis offence are of particular interest in evaluating the impact of current cannabis laws. If found guilty these 'first timers' acquire a criminal record as a direct result of their cannabis conviction. A criminal conviction has for a long time been recognized as a most severe and often life lasting harmful consequence of cannabis use [13]. Data are presented on people charged for the first time between 1990 and 1994 whose MSO was cannabis possession/use. Data on first-time arrested cannabis users were

extracted from the CRC database which contains anonymous records of all persons first arrested between 1 April 1984 and 31 December 1994 [14].

The extent to which those who are charged with cannabis offences end up in prison is, of course, of interest to those on both sides of the debate around changing the laws which apply to cannabis. The prison data have been extracted from the computerized records of the Corrective Services Division of the Ministry of Justice and are presented for distinct people (by the MSO) received in prisons both sentenced and on remand. For prison data the MSO is determined by the longest sentence. Data from the National Prison Census (NPC), which only included cases where the principal offences and the drug type was known (which excluded all New South Wales data) showed that on 30 June 1992 very few (125) prisoners were held in Australian prisons for cannabis-related offences [15]. However, data from the Corrective Services Division of the Ministry of Justice showed that during the same year, in WA alone, 151 people were received into prison for a cannabis offence. Differences between the NPC data and Ministry of Justice figures are accounted for by differences in counting procedures. The census methodology used by the NPC only counts those people in prison on one particular day and does not consider prison terms that finished before, or started after, the census date. In other words, census figures count only the 'stock' of a prison and not the 'flow' of prisoners through it. This biases the prison statistics against counting prisoners with shorter sentences.

Results

All cannabis charges

In 1993, 9272 cannabis-related charges were laid by police in WA. This represents a rate of 552.7 charges per 100 000 people. Cannabis-related charges comprised 11.7% of all charges issued by police and 85.3% of all drug charges. Half (49.1%) of these charges were for possession/use offences, 30.7% were for possession of implements, 14.0% were for make/grow offences, and 6.0% were for trafficking, or 'dealing' as it is more commonly known. Thus, four in five cannabis charges were accounted for by minor possession and implement offences. The bulk of the remainder consisted of minor cultivation offences. The proportion of all charges for possession/use of drugs which related to

cannabis declined from 90.1% in 1990 to 80.0% in 1993. In 13.0% of the apprehensions or arrests for possession/use of cannabis during 1993 the person was held in custody prior to facing court. The majority of cannabis possession/use charges in 1993 were laid against males (85.2%), non-Aboriginal people (93.9%) and adults (90.6%). Juveniles comprised 9.5% of cannabis possession/use charges but made up 12.9% of those involving the possession of a smoking implement. Young adults (18–21 years of age) comprised about 30% of all possession/use cannabis charges issued in 1993.

Distinct persons

In 1993, 3670 distinct persons were charged with a cannabis offence as their MSO, a rate of 218.8 people charged per 100 000 population. For 2038 (55.5%) of these people, their MSO was possession/use cannabis. A further 420 (11.4%) distinct persons had possession of a smoking implement as their MSO.

First time arrestees

In 1993, 42.2% (860) of the 2038 (121.5 per 100 000 pop.) persons charged with cannabis possession/use as their most serious offence had never been arrested for any prior offence. Women comprised 24.2% of first-time arrestees, Aboriginal people 2.8% and juveniles 9.8%, down by half from 20.1% in 1990.

Data aggregated for the period 1984–94 indicate that, where known, 49.3% of first-time arrested cannabis users were from 'blue collar' occupations, only 18.8% had 'white collar' jobs, while the remainder had no occupation recorded (30.0%) or were not in the work-force (2.0%). Since 1990, one in ten (9.8%) of those arrested were held in custody prior to facing court. Younger first-time arrested cannabis users were more likely to be re-arrested than older offenders. Of those arrested in 1993, two-fifths (40.5%) of those under 18 years of age, 27.3% of those between 18 and 21, 21.7% of those aged 22 to 25 and 9.7% of those 26 to 29 years of age were re-arrested by 31 December 1994.

The likelihood of being re-arrested is influenced by the time available to re-offend, which is often referred to as 'exposure time'. For example, at the end of 1994, a person arrested in 1993 would have had between 12 and 24 months in which to re-

offend, compared to 36 to 48 months for a person first arrested in 1991. Just under one-quarter (22.8%) of cannabis users first arrested in 1993 were re-arrested by the end of 1994. However, of those first arrested in 1991, more than a third (36.0%) had been re-arrested by the end of 1994. About half (51.5%) of those first arrested in 1984 for cannabis possession/use had been re-arrested 10 years on, the remainder having had no further arrest up until that time.

The most common offences for which cannabis users were re-arrested were driving under the influence of alcohol or drugs (24.8%), another possession/use cannabis offence (18.9%), theft (7.8%), other minor drug offences (5.0%) and cultivation of cannabis (4.2%).

Court outcomes

In 1991, the Children's Court and Panel dealt with 780 cannabis possession/use charges and 327 children whose MSO was possession/use cannabis. Charges for possession/use comprised 54.5% of all cannabis charges while 33.4% of charges were for the possession of a smoking implement. The majority (62.1%) of the 327 juveniles charged with cannabis possession/use as their most serious offence had the charge dismissed. Dismissals included being discharged with no penalty and being dismissed with no conviction recorded. One in five (21.1%) of those charged were fined, and all but one of the remainder were given non-custodial sentences such as probation, community service orders, good behaviour bonds and suspended sentences.

Almost all minor cannabis charges against adults are dealt with by the Courts of Petty Sessions. In 1992 97.7% of the 2739 distinct people appearing before these courts with cannabis possession/use as their most serious offence were convicted. Almost all (94.4%) received a fine, 3.0% were given a non-custodial penalty and a negligible proportion (0.3%) received a custodial sentence during that year.

Imprisonment

In 1993 146 distinct persons were received in WA prisons whose MSO was cannabis-related. These people comprised only 3.0% of all persons received but 51.4% of all those whose offences were drug-related. Numbers imprisoned per year for possession/use cannabis as their MSO decreased from 114 in 1990 to 53 in 1993. In 1993 just over a third

(36.3%) of prisoners received with cannabis related charges as their most serious offence were there for a possession/use offence. A further 40.4% were jailed for dealing offences. Significantly there were 17 (11.6%) individuals who were jailed for no more serious offence than possession of an implement. For six of these, the implement charge was their only offence, five of these offenders having defaulted on their fines. Six others were also charged with possession of cannabis, while the remainder had a range of other charges including breaching of a work and development order and making a false statement. Almost all (94.3%) people received into prison for possession/use of cannabis were there for non-payment of fines. Most (90.7%) of possession/use receivals resulted in prison terms of less than 2 months.

Discussion

As the data presented here have shown, over 85% of all drug charges in WA are comprised of cannabis charges and approximately 90% of these are for minor offences. It would seem, then, that minor cannabis offences are responsible for the majority of the criminal justice resources devoted to drug offences. However, an observation made by police is that a proportion of minor cannabis charges are 'opportunistic', meaning that they are laid while police are making enquiries about other matters. Thus, the proportion of policing resources attributable to these offences may be less than these figures suggest.

While the 13% of arrests for cannabis possession/use which result in detention in police custody prior to court is less than the 20% similarly detained for all types of offences in the same year [12], it is important to note that the latter figure includes a range of serious as well as more minor offences. Aboriginal people were less represented in cannabis possession/use offences (6.1%) than they were in all arrests (28.6%) [12].

Young cannabis offenders appear to be more at risk of implement offences than their older counterparts. This is possibly because juveniles are more likely to smoke cannabis outside the home and therefore are more likely to be in possession of smoking implements in public while travelling to or from the site where they smoke cannabis. This makes police detection of such offences by juveniles more likely.

There is evidence of a reduction in the proportion of juveniles among first-time cannabis possession/use offenders. In part, this may be due to an increase in charges for amphetamines in WA over the period 1988 to 1994 [16]. However, this may also be the product of two reforms to the WA juvenile justice system. The first, the introduction of the formal cautioning system in August 1991, allows police to formally caution a juvenile for a minor offence rather than charge the offender or bring the matter to Court. The second was the Children's Court Amendment Act (No. 2) 1991 which extended the eligibility provisions of the Children's Panel to cover children over the age of 16 years. The intention of the Children's Panel was to divert young first offenders away from the more formal processes of the Children's Court. Although an appearance before the Panel was officially recorded, no formal criminal conviction or criminal record was acquired by the young offender. However, drug trafficking and other serious offences were excluded from this Act [17]. Note that following the introduction of the Young Offenders Act in March 1995, the Panel was replaced by Juvenile Justice Teams. These teams run family conferences and have some of the same functions as the Panel.

Overall the data suggest that of those people charged each year with possession/use cannabis as their most serious offence, about 40% are likely to be 'first timers', meaning that they will never have been arrested before. Almost all will be convicted and consequently receive a criminal record for this offence. This group comprise 68.3 per 100 000 of the general population. This means that each year a significant section of the community acquires a criminal record as a direct result of their use of a small amount of cannabis. Two-thirds of these people fail to have any further criminal involvement up to 3.5 years after their first arrest. Of those who are re-arrested, the majority are likely to be charged for driving under the influence of a drug (including alcohol) or for minor cannabis offences. These findings accord with earlier research showing that the vast majority of these offenders are, in all respects apart from their cannabis use, a non-criminal section of the community [9].

It is worth noting that once convicted of a minor cannabis offence, younger users are much more likely than their older counterparts to be re-arrested and re-convicted. It is argued that this is not simply because younger people are more delinquent than

others but rather because young people, especially those from working classes, Aboriginal and other marginalized groups, spend much of their lives in public. Their high visibility coupled with their lack of involvement in mainstream social activities make them more likely to be targets of street policing. It is further argued that the role of the police in maintaining public order and 'keeping the streets safe' necessarily results in a high degree of police contact with young people in which youth behaviour is often criminalized [18]. Once arrested and convicted, a young person is at increased risk of more scrutiny from police than they would be had they no such conviction and the likelihood of being re-arrested increases [14]. The potential for young cannabis users to find themselves in a snowballing involvement with the law is one of the more concerning consequences of the current legal system. It is hoped that the impact of this on first time cannabis offenders will be investigated by future research.

Almost all adult cannabis offenders who go to court in WA are convicted. This contrasts with earlier Canadian research which showed a trend toward greater leniency in sentencing. The Canadian study found that 54% of cannabis offenders studied received an absolute discharge in 1981, compared to 42% in 1974. The authors argued that this trend toward leniency was counterproductive in that it removed some of the impetus for law reform in this area [9]. If the same logic was applied to the WA experience, where so many adult Western Australians facing court on cannabis possession get a criminal conviction, the impetus for reform of cannabis law in this state should be stronger than it is. It is relevant that the WA Government's Task Force on Drug Abuse has recommended consideration of alternative mechanisms, notably formal police cautioning, to address simple cannabis offences [16]. Should this recommendation be adopted, its implementation and impact will need to be carefully evaluated.

While less than 1% of those convicted of cannabis possession/use as their most serious offence were given a custodial sentence, a number of those who were fined ended up serving time in prison as a result of defaulting on their fines. It is likely that recent legislative changes, which allow for the suspension of driver's licences until fines are paid, may result in fewer cannabis offenders ending up in prison under such circumstances, yet it seems that

this system may further disadvantage those who are least able to pay.

It is widely acknowledged that cannabis is the most commonly used illegal drug in Australia. According to the most recent survey data available, 37% of West Australians aged 14 or over have tried cannabis, and 16% have used it in the past 12 months [19]. Based on the most recent population figures this means that approximately 500 000 West Australians aged 14 years and over have used cannabis at some time, with over 200 000 having used the drug in the past year [20]. Thus it would appear that a considerable proportion of Western Australians have not been deterred from using cannabis by the existing criminal penalties. What is of most concern, however, is that such a large number of people also face the potential consequences of a criminal conviction, if charged and brought to court. One might argue that some of the non-users may have been so dissuaded by the legislation. However, the fact that so many were not, would suggest that the law is, on balance, an ineffective deterrent for many.

Like alcohol and tobacco, cannabis has the potential to harm those who use it and affect their social and family relationships. The key questions for policy makers should not only relate to the drug's potential to do harm or not, although clearly we need to look very carefully at this issue, but also at whether the aggregate costs to those who use cannabis, and to the community as a whole, are best dealt with under our current system or some other legislative mix. The data presented here show that the strict prohibition which applies to cannabis in WA negatively impacts on a number in the community who otherwise would have no contact with the law. A system which criminalizes a significant number of those who use cannabis and results in some going to prison, even for possession of a smoking implement, while large numbers of the community continue to use the drug despite its proscription, is a system which is not in the community's best interest. The continuation of such a system comes at a great price—not only to those on whom it directly impacts, but also on those who must enforce it. These data suggest that the resources expended by the police, and the justice system on minor cannabis offences are likely to be considerable. According to estimates made by the Criminal Justice Commission in Queensland, in the 1991/92 financial year the total cost to that state

for processing and prosecuting people charged with possession of cannabis as a principal offence was \$2,132 000 and for those charged with possession of smoking implements was \$463 000 [21].

The range of legislative options for dealing with cannabis currently being implemented in Australia provide a unique opportunity to look closely at the costs and benefits of the regimes being applied. Careful research is needed to evaluate the social impact of the various models available and to recommend a legislative mix for cannabis use that will contribute to the best social, health and judicial outcomes for our community.

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References

- [1] Hall W, Solowij N, Lemon J. The health and psychological consequences of cannabis use, Monograph No. 25. Canberra: Australian Government Printing Service, 1994.
- [2] McDonald D, Moore R, Norberry J, Wardlaw G, Ballenden N. Legislative options for cannabis in Australia, Monograph No. 26. Canberra: Australian Government Printing Service, 1994.
- [3] Donnelly N, Hall W. Patterns of cannabis use in Australia, Monograph No. 27. Canberra: Australian Government Printing Service, 1994.
- [4] Bowman J, Sanson-Fisher R. Public perceptions of cannabis legislation, Monograph No. 28. Canberra: Australian Government Printing Service, 1994.
- [5] Ali R, Christie P. (eds) Report of the National Task Force on Cannabis. Canberra: Australian Government Printing Service, 1994.
- [6] Lenton S. Cannabis offenders in the Western Australian criminal justice system. In: McDonald D, Atkinson L. (eds) Social impacts of the legislative options for cannabis. Canberra: Australian Institute of Criminology, 1995.
- [7] McDonald D, Atkinson L. (eds) Social impacts of the legislative options for cannabis. Canberra: Australian Institute of Criminology, 1995.
- [8] Erikson P. Cannabis criminals: the social effects of punishment on drug users. Toronto: Addiction Research Foundation, 1980.
- [9] Erikson PG, Murray GF. Cannabis criminals revisited. *Br J Addict* 1986;81:81-85.
- [10] Ferrante A. Developing an offender-based tracking system: the Western Australian INOIS project. *Aust NZ J Criminol* 1993;26:232-250.
- [11] Atkinson L, McDonald D. Cannabis the law and social impacts in Australia (Trends and issues in crime and criminal justice). Canberra: Australian Institute of Criminology, 1995.
- [12] Ferrante AM, Loh NSN, Broadhurst RG. Crime statistics for Western Australia: 1993. Perth: Crime Research Centre, The University of Western Australia, 1994.
- [13] Le Dain Commission (commission of inquiry into the non-medical use of drugs). Cannabis. Ottawa: Information Canada, 1972.
- [14] Broadhurst RG, Loh NSN. Re-arrest probabilities for the 1984 to 1993 apprehended Western Australian population: a survival analysis. *Q J Criminol* 1995;11:289-313.
- [15] Walker J. Characteristics of drug offenders in prison at 30 June 1992. In: McDonald D, Atkinson L. (eds) Social impacts of the legislative options for cannabis. Canberra: Australian Institute of Criminology, 1995.
- [16] Task Force on Drug Abuse. Protecting the community: the report of the Task Force on Drug Abuse. Perth: Government of Western Australia, 1995.
- [17] Broadhurst RG, Ferrante AM, Loh NSN. Crime statistics for Western Australia: 1992. Perth: Crime Research Centre, The University of Western Australia, 1993.
- [18] Blagg H, Wilkie M. Young people and police powers. The Australian Youth Foundation, Sydney, 1995.
- [19] Commonwealth of Australia. National Drug Strategy Household Survey—Survey Report 1995. Canberra: Australian Government Publishing Service, 1996.
- [20] Australian Bureau Of Statistics. Estimated resident population by sex and age states and territories of Australia June 1994 and Preliminary June 1995. Canberra: Australian Government Publishing Service, 1996.
- [21] Criminal Justice Commission. Report on Cannabis and the Law in Queensland. Brisbane: Goprint, 1994.