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**SPECIAL SECTION:**

**CANNABIS EXPIATION IN SOUTH AUSTRALIA**

# **Infringement versus conviction: the social impact of a minor cannabis offence in South Australia and Western Australia**

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**Abstract**

Quantitative data is reported from a study of 68 South Australians who had received an infringement notice or 'cannabis expiation notice' (CEN) and 68 West Australians who received a criminal conviction for a minor cannabis offence not more than 10 years ago to compare impact of the infringement notice and the conviction on their lives. The majority of both groups saw themselves as largely law-abiding, had respect for the law in general and had positive views regarding cannabis. However, more of the convicted group, compared to the infringement notice group, reported negative employment consequences (32% vs. 2%), further problems with the law (32% vs. 0%), negative relationship consequences (20% vs. 5%) and accommodation consequences (16% vs. 0%) as a result of their apprehension. While neither conviction nor infringement deterred subsequent cannabis use for the vast majority, the negative social impacts of conviction were far greater than those resulting from an infringement notice. The findings have implications for the legislative options for regulation of cannabis possession and use. [Lenton S, Humeniuk R, Heale P, Christie P. Infringement versus conviction: the social impact of a minor cannabis offence in South Australia and Western Australia. *Drug Alcohol Rev* 2000;19:257–264]

**Key words:** cannabis offences, conviction, expiation, prohibition, decriminalization, deterrence.

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## Introduction

Proponents of cannabis law reform argue that people convicted for minor cannabis offences who have no prior criminal conviction pay a substantial social cost for getting caught up in the criminal justice system [1]. This study sought to compare the social impact of receiving a criminal conviction for a minor cannabis offence under a strict prohibition model (Western Australia, WA) to that of receiving an infringement notice under a civil penalties model (South Australia, SA).

Under the Cannabis Expiation Notice (CEN) Scheme, which came into effect in SA in 1987, adults charged with offences relating to possession/use of small amounts of cannabis or cultivation of up to 10 cannabis plants can avoid a criminal conviction by paying a fine of between \$50 and \$150. Under the West Australian Misuse of Drugs Act 1981, a person who has in their possession less than 100 grams of cannabis is guilty of a criminal offence and subject to a maximum penalty of \$2,000, 2 years imprisonment, or both. The maximum penalty for possessing a used 'bong' (water pipe) is a fine not exceeding \$3,000 or 3 years jail, or both. In WA, although the typical fines received are far less than the statutory maximum, being found guilty for any of these offences results in a criminal conviction which can stay with offenders for life, yet after 10 years offenders may apply to have it expunged.

In WA during 1993 cannabis related charges comprised 85% of all drug charges, and 90% of cannabis charges were for minor offences [2]. In almost all cases where cannabis possession/use was the most serious offence, the offenders were found guilty and received a criminal conviction. The majority of minor cannabis offenders appear to be an otherwise non-criminal group [2]. Recent data (1994–6) suggested that little had changed [3]. For the purposes of this study, the group of interest in WA were first-time cannabis offenders who, if convicted, receive a criminal record for a minor cannabis offence.

The only published study on the effects of a criminal conviction on first time cannabis offenders was conducted in 1974 in Canada [4,5]. It was found that 1 year after their cannabis conviction offenders were more likely to have had periods of unemployment. Respondents remained respectful of the law in general; however, disrespect for the cannabis prohibition remained high, and a disrespect for the courts had emerged [4,5]. While the impact of cannabis use on

educational attainment and employment stability has been debated in the literature, the effects of the legislative sanctions which apply to cannabis are rarely evaluated adequately [6]. An Australian investigation of newspaper articles and departmental records concluded that the legislative option in a given jurisdiction appeared to have had little impact on cannabis users' school education or public sector employment, but recognized that research with users was needed [7].

## Method

The recruitment strategy developed for use in the two states attempted to avoid limiting the sample to young people heavily involved in cannabis culture, who may have been less likely to have experienced the longer-term adverse consequences of being apprehended for a cannabis offence. In WA the study received considerable coverage on radio and television, which was used to recruit potential respondents. However, in SA a less high-profile media recruitment strategy was employed as access to some mass media recruitment channels was restricted. In both sites flyers were placed in various venues (e.g. cafes, university and TAFE campuses and music stores), advertisements were placed in street magazines and community and student press, and snowball sampling was also employed.

A stratified matching strategy was employed for gender, age at arrest or issue of CEN and duration from apprehension to interview. Age and gender data for the WA population of first-time cannabis offenders suggested that the resulting WA sample was representative of WA cannabis offenders as a whole [3].

In order to compare the impact of a criminal conviction as the result of a minor cannabis conviction with that of an expiation notice, eligible respondents had no prior conviction or CEN, and their most serious offence at the time of arrest was their simple cannabis offence. As the SA system had been in place for 10 years and many of the effects of a criminal conviction or CEN may only eventuate some years after the apprehension, respondents had to have been apprehended between 6 months and 10 years previously. As SA law applies only to adults, respondents had to be at least 18 years old when they were apprehended for their first cannabis offence.

The questionnaires employed in each of the jurisdictions included both structured quantitative components and semi-structured qualitative components and are provided elsewhere [8,9]. In order to retrospectively collect data on the consequences of an

event which may have happened up to 10 years ago the retrospective timeline method reported by Stimson & Oppenheimer [10] was adapted and developed further. A 'grid' was employed of time in years by 10 domains including age, residential and living situation, employment and schooling, relationships, cannabis use, alcohol use and other drug use, legal consequences, travel and other consequences. The interviewer worked with the respondent to take a retrospective history across each of these domains. The main dependent variables of interest were the proportion of respondents in each group who had experienced at least one negative impact across the relevant domains, which they believed were at least somewhat related to their apprehension on their first cannabis charge. Interviews were conducted in a variety of locations including cafes, restaurants, food halls and respondents' homes. The average duration of interview was 2 hours, for which respondents were given \$20 for their time. WA respondents who gave their written permission to do so had their self-report data validated against their criminal record data. Quantitative analysis was undertaken using SPSS for Windows [11] and for Unix [12]. Qualitative results will be published elsewhere [13].

The sample size was limited to 68 eligible cases each for the SA expiator group and the WA convicted group. However, 'grid' data for nine of the expiator group were either missing or otherwise unable to be scored and these cases were excluded, resulting in a maximum of 127 cases for some comparisons. The restricted sample size limited the analysis to multiple univariate comparisons. All variables were dichotomized and an adjusted comparison-wise error rate of 0.001 was employed to reduce the likelihood of an experiment-wise Type I error. Analysis of the effect of possible confounding variables was done employing three-way univariate comparisons.

## Results

### Group characteristics

The SA expiator group were more likely than the WA group to be under 25 years of age at interview ( $p = 0.040$ ), to have smoked cannabis in the prior 12 months ( $p = 0.009$ ), to have smoked cannabis in the 6 months prior to arrest/CEN and to have used drugs other than alcohol and cannabis in the 6 months prior to arrest/CEN ( $p = 0.025$ ). The WA convicted group were more likely to be in full-time employment

**Table 1.** Attitudes to drug laws, police and laws in general by group: percentage of respondents

|   | Groups         |                | n <sup>1</sup> | Sig <sup>2</sup> |
|---|----------------|----------------|----------------|------------------|
|   | SA expiators % | WA offenders % |                |                  |
| Believes is a law-abiding citizen                 | 89.7           | 88.2           | 136            | 1.000            |
| Most laws are worth obeying                       | 94.1           | 80.9           | 136            | 0.038            |
| People should break laws they disagree with       | 20.6           | 14.7           | 136            | 0.500            |
| Strong laws deter illicit drug use                | 26.5           | 14.7           | 136            | 0.138            |
| Penalties should be harsher for repeat offenders  | 27.9           | 22.1           | 136            | 0.552            |
| Cannabis use should be legal                      | 88.2           | 89.7           | 136            | 1.000            |
| Commercial supply cannabis should be illegal      | 35.3           | 38.2           | 136            | 0.859            |
| Cannabis decrim. (would) increase cannabis use    | 30.9           | 13.2           | 136            | 0.023            |
| Cannabis decrim. would increase other drug use    | 14.7           | 4.4            | 136            | 0.080            |
| Police need respect for maintaining law           | 88.2           | 83.8           | 136            | 0.621            |
| Police have duty to enforce laws as written       | 95.6           | 83.8           | 136            | 0.048            |
| Police pick and choose how they enforce drug laws | 77.9           | 80.9           | 136            | 0.832            |
| Some police abuse their authority                 | 97.1           | 97.1           | 136            | 1.000            |
| Police have too much power                        | 67.6           | 73.5           | 136            | 0.572            |

<sup>1</sup> Each row represents two cells of a  $2 \times 2$  contingency table and  $n$  is overall value for all four cells.

<sup>2</sup> Chi-square test corrected for continuity.  $\alpha = 0.001$ .

**Table 2.** Attitudes to cannabis by group: percentage of respondents

|   | Groups               |                      | n <sup>1</sup> | Sig <sup>2</sup> |
|---|----------------------|----------------------|----------------|------------------|
|   | SA<br>expiators<br>% | WA<br>offenders<br>% |                |                  |
| Cannabis is a safe drug                       | 70.6                 | 80.0                 | 133            | 0.291            |
| Cannabis is beneficial                        | 51.5                 | 70.3                 | 132            | 0.041            |
| Benefits of cannabis outweigh the harms       | 56.7                 | 56.1                 | 133            | 1.000            |
| Respondent experienced any harmful effects    | 83.6                 | 88.1                 | 134            | 0.620            |
| Respondent experienced any beneficial effects | 100.0                | 97.0                 | 133            | 0.470            |
| Cannabis much less harmful than alcohol       | 85.3                 | 86.6                 | 135            | 1.000            |
| Cannabis much less harmful than tobacco       | 74.6                 | 69.7                 | 133            | 0.659            |
| Cannabis much less harmful than amphetamines  | 97.0                 | 98.4                 | 131            | 1.000            |
| Cannabis much less harmful than ecstasy       | 93.8                 | 91.8                 | 126            | 0.921            |
| Cannabis much less harmful than heroin        | 98.4                 | 96.9                 | 127            | 1.000            |

<sup>1</sup> Each row represents two cells of a 2 × 2 contingency table and *n* is overall value for all four cells.

<sup>2</sup> Chi-square test corrected for continuity.  $\alpha = 0.001$ .

( $p = 0.000$ ), and were more likely to be engaged in dealing or other crime at interview ( $p = 0.037$ ). There was no significant difference between the groups on a number of other variables including time in months from CEN or conviction to interview ( $p = 0.519$ ). This was important, as the likelihood of a subsequent negative consequence occurring is influenced by the 'exposure time' available for that event to occur.

Table 1 shows that there were no differences between the SA expiator group and WA convicted groups on their attitudes to the law in general, cannabis laws in particular and the role of police. Despite their transgression of the cannabis laws, the majority of both groups saw themselves as largely law-abiding and had respect for the role of police as law enforcers and the rule of law in general. The majority of both groups also shared a lack of support for punitive drug laws and showed a high level of support for cannabis use being legal. More than a third of each group supported commercial supply of cannabis remaining illegal.

Table 2 shows that the majority of both groups had positive views regarding cannabis. Most thought that it was a safe drug and that the benefits of cannabis outweighed the harms. Most saw it as much less harmful than a range of other substances including alcohol and tobacco.

#### *Circumstances of apprehension*

Seventy-five per cent of the WA group and 41% of the SA expiator group stated that the reason for their apprehension was that the police were suspicious that they were in possession of cannabis ( $p = 0.000$ ). Thirty-six per cent of the WA group and 8% of the SA expiator group said that police had a search warrant at the time of apprehension ( $p = 0.000$ ) and 49% of the WA sample compared to 19% of the SA expiator group said they were in a private dwelling or property when they were apprehended by police ( $p = 0.000$ ). Respondents in both groups were equally likely to report that they were friendly, respectful and co-operative towards the police when they were arrested or issued with their CEN. However, 49% of the WA group, compared with only 18% of the expiators, said that they had become less trusting of police ( $p = 0.000$ ) and 43% of the WA group, compared to 15% of the SA expiators, were more fearful of police as a result ( $p = 0.002$ ).

#### *Social consequences of CEN or conviction*

The social consequences of CEN or conviction are presented in Table 3. The WA group were more likely to report negative employment consequences of their cannabis offence and this difference did not appear

**Table 3.** Consequences of CEN and conviction: percentage of respondents

| Consequences                                       | Groups               |                      | n <sup>1</sup> | Sig <sup>2</sup> |
|--|----------------------|----------------------|----------------|------------------|
|  | SA<br>expiators<br>% | WA<br>offenders<br>% |                |                  |
| <b>Social consequences</b>                         |                      |                      |                |                  |
| At least one adverse employment consequence        | 1.7                  | 32.4                 | 127            | 0.000            |
| At least one related criminal justice event        | 0.0                  | 32.4                 | 127            | 0.000            |
| At least one adverse relationship consequence      | 5.1                  | 20.1                 | 127            | 0.022            |
| At least one adverse accommodation consequence     | 0.0                  | 16.2                 | 127            | 0.003            |
| At least one related travel problem                | 0.0                  | 7.4                  | 127            | 0.095            |
| <b>Effect on cannabis use</b>                      |                      |                      |                |                  |
| Using cannabis on daily basis during 1 month after | 70.6                 | 48.5                 | 136            | 0.014            |
| Cannabis use not at all affected 1 month after     | 91.2                 | 70.6                 | 136            | 0.004            |
| Police and court contact reduced cannabis use      | 4.5                  | 13.2                 | 135            | 0.137            |
| If caught using again would stop using altogether  | 5.9                  | 10.3                 | 136            | 0.529            |

<sup>1</sup> Each row represents two cells of a 2 × 2 contingency table and *n* is overall value for all four cells.

<sup>2</sup> Chi-square test corrected for continuity.  $\alpha = 0.001$ .

due to possible confounders. One SA expiator believed that they had lost a job because of their CEN. Nineteen per cent ( $n = 13$ ) of the WA group said they had not got at least one job they had applied for, 16% ( $n = 11$ ) had been sacked from at least one job and 9% ( $n = 6$ ) had stopped applying for jobs where they believed or knew that they were likely to be asked whether they had a criminal record. On average, employment consequences for the WA group occurred 8 months after conviction.

None of the expiators and 22 of the WA convicted group identified negative episodes of involvement with the criminal justice system which they thought were in some way related to their cannabis offence. Consequences in the WA group included further police enquiries or questioning (19%,  $n = 13$ ) and being found guilty of a non-cannabis-related offence (13%,  $n = 9$ ) or another minor cannabis offence (9%,  $n = 6$ ). On average, these consequences occurred 14 months after conviction.

Three of the SA expiator group identified any negative relationship consequences of their CEN, while 14 of the WA group identified at least one negative relationship event related to their cannabis conviction. This was in part due to the greater number of the WA group who were apprehended in a private

residence, but was not due to other possible confounders. Among the expiators 3% ( $n = 2$ ) described family disputes, and 2% ( $n = 1$ ) said a friendship ended as a result. Among the WA group 16% ( $n = 11$ ) identified family disputes, 6% ( $n = 4$ ) stress in a primary relationship and 3% ( $n = 2$ ) family estrangement. The first relationship consequence occurred, on average, 8 months after the CEN and 5 months after the arrest.

None of the SA expiator group identified any negative accommodation consequences but 11 of the WA sample did so. These included a change of accommodation (12%,  $n = 8$ ) and loss of work accommodation (4%,  $n = 3$ ) associated with loss of job due to the conviction. Accommodation differences appeared related to the impact of arrests which took place in a private residence ( $p = 0.422$ ) which occurred in a greater number of cases in the WA sample. Accommodation consequences occurred on average 3 months after conviction.

Table 3 shows there was no significant difference between the groups in terms of negative travel effects of conviction or CEN. An unsuccessful visa application to Canada or the USA was the most common ( $n = 3$ ) negative travel-related consequence of being apprehended for cannabis among the WA convicted

group. It appeared that the time from apprehension to interview may not have been long enough for travel effects to be evident in a large enough number of the convicted sample to result in a significant result, as 41% of the WA sample were interviewed within 38 months of conviction. The average duration to the first travel consequence was 39 months.

There were no differences between the SA expiator and WA groups regarding the extent to which they, or others who knew them, saw themselves as a criminal as a result of the incident. In both groups, only a small minority said they saw themselves as a criminal as a result of the incident.

#### *Deterrent effects on cannabis use*

Table 3 shows that there were minor but non-significant ( $\alpha = 0.001$ ) trends for the convicted group, more than the expiators, to reduce their cannabis use in the short term after their offence. However, these differences were not maintained, and there were no significant differences between the groups regarding the impact of the CEN or conviction on respondents subsequent drug use.

### **Discussion**

The differences between the SA and the WA samples in age at interview, cannabis use in the prior 12 months and the use of cannabis and other drugs in the 6 months prior to arrest/CEN may be due in part to the differences in recruitment strategy employed in the two jurisdictions. Controlling for such potentially confounding variables suggested that they did not account for the observed differences on the dependent variables of interest.

Consistent with earlier research [2,4], despite their transgression of the cannabis laws, the majority of both groups saw themselves as largely law-abiding and had respect for the role of police as law enforcers and the rule of law in general. The finding that most respondents saw cannabis as a safe drug suggest that there is a need for community education about cannabis in both jurisdictions and that harm reduction-based education may be of some merit for cannabis users.

Recipients of CENs saw the cannabis infringement as more of an incidental result of police attention, whereas the WA sample perceived the purpose of police investigation as being drug-related and were

more likely to be carried out in private residences. Additionally, the nature of policing of minor cannabis offenders is likely to be affected by the legislative framework which applies. It could be speculated that in a system where minor cannabis offences attract criminal sanctions, the vigour with which police apply the law is likely to be greater than where police detection of cannabis offences might only result in an infringement notice being issued. While an infringement notice system might result in net widening, through opportunistically apprehending people for minor cannabis offences in public, it appears to be less likely to result in cannabis users being apprehended for smoking or possessing the drug in their private homes.

The findings on attitudes toward police at the time of apprehension suggest that being apprehended for a minor cannabis offence under the prohibition system, compared to a civil penalties system, is more likely to erode attitudes toward police, particularly when the arrest experience includes police searching private residences.

There was clear evidence for a cannabis conviction having a negative impact on subsequent employment for a third of the WA respondents in a way that only happened for one of the SA expiator sample. Controlling for the effect of possible confounders, including demographics, the number of jobs applied for, and variables indicative of the degree of drug involvement, did not affect the differences between the two groups on the number of employment consequences. This suggests that affects on employment are indeed due to the differences between the legislative systems.

There was a significant difference between the groups in terms of negative criminal justice system consequences of conviction or CEN. Others have shown that once arrested and convicted, a young person is at increased risk of further scrutiny from police than they would be had they had no such conviction and the likelihood of being re-arrested increases [14]. After their initial apprehension, more respondents in the WA sample were subject to further police attention which, in many cases, resulted in subsequent convictions. Some of these events appeared to be the result of police who made the original arrest following this up, others were the result of the original conviction appearing in the police computer, which is accessed by police on patrol through cross-checking with a driver's licence. Anecdotal reports suggest that it is not

uncommon for people who have been cautioned or had no conviction recorded to be subject to such attention after a driver's licence check. It may be that such events are a result of the computer access to offenders records that the WA police have, rather than the conviction *per se*. While CEN data in SA are recorded and archived, there has been no computer record of CENs in SA that is readily accessible by operational police. It may be the case that if the storage and retrieval of CENs by the SA police reaches the power of the system in place in WA then the same kind of snowballing involvement with the criminal justice system may occur under the infringement notice system.

It is not surprising, given both the consequences of having one's residence visited and searched by police, that the WA system is more likely to contribute to problems in primary and family relationships and have adverse effects on accommodation. Failure to find a difference in effects of conviction versus CEN on subsequent international travel was unexpected but, as discussed above, was probably because the exposure time may not have been long enough for travel effects to be evident in a large enough number of the convicted sample to result in a significant result.

The findings suggest that a strict prohibition of cannabis is no better at deterring cannabis use among those apprehended by the law than in a civil penalties model. Neither a criminal conviction nor an infringement notice had a significant impact on the cannabis use of most of those so apprehended. Given that most respondents in both the SA expiators group and the WA group did not support punitive drug laws, but did support cannabis use being legal, it is to be expected that being apprehended is likely to reinforce disapproval of the cannabis laws rather than result in a decrease in use. The failure to find a (specific) deterrent effect of the law on cannabis use needs to be considered by legislators, police and criminal justice personnel as some officials may believe that the laws as they stand do reduce the drug use of those who are apprehended. These findings also have relevance to the application and success of systems such as cautioning, bond options for first offenders and increasing penalties for subsequent offences. Having increased penalties for subsequent offences, may at face value, serve to deter drug use, but these data suggest this assumption ought to be questioned and that such schemes subject to evaluative research.

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