



Who's Really in Prison for Marijuana?

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FOREWORD

In this report, we have endeavored to set the record straight regarding one of the most pervasive myths about marijuana. The truth, supported overwhelmingly by the best data available, is that our prisons are *not* overflowing with people arrested just for smoking pot. On the contrary, we are seeking—through new treatment-oriented approaches such as drug courts—to divert those whose involvement with drugs is limited to their own use, while actively working to disrupt drug-trafficking organizations by prosecuting those who distribute or deal in illicit drugs.

Of course, there will always be those who reject everything the government says or does. There are also those who are willing to spread false information for the purpose of legalizing drug trafficking and use—despite all the harm this would cause and the overwhelming public opposition to it.

While we cannot state categorically that no simple marijuana user has ever received a jail or prison sentence, the evidence is overwhelming that these cases are rare. The system on the whole is sound, it is just, and it is working as it should. Moreover, recent innovations such as drug courts are signs that the system is improving still.



JOHN P. WALTERS

Those who traffic in illegal drugs, who prey on our nation's youth with poisons that destroy bodies, minds, and futures, should find no refuge in the criminal justice system. Long prison terms, in many cases, are the most appropriate response to these predators. But for those on the other end of the criminal spectrum—the mere users—different measures are often in order, such as intervention, drug treatment, and the offer of another chance to end their destructive behavior.

The goal of drug laws, after all, is not just to penalize, but to keep people from harming themselves and others. So if we can stop these users now, before they become dependent and while they still have time to turn their lives around, the laws will have served their purpose well.

A large, stylized handwritten signature of John P. Walters in black ink.

John P. Walters
Director
Office of National Drug Control Policy

SUMMARY

The idea that our nation's prisons are overflowing with otherwise law-abiding people convicted for nothing more than simple possession of marijuana is treated by many as conventional wisdom.

But this, in fact, is a myth—an illusion conjured and aggressively perpetuated by drug advocacy groups seeking to relax or abolish America's marijuana laws. In reality, the vast majority of inmates in state and federal prison for marijuana have been found guilty of much more than simple possession. Some were convicted for drug trafficking, some for marijuana possession along with one or more other offenses. And many of those serving time for marijuana pled down to possession in order to avoid prosecution on much more serious charges.

In 1997, the year for which the most recent data are available, just 1.6 percent of the state inmate population were held for offenses involving *only* marijuana, and less than one percent of all state prisoners (0.7 percent) were incarcerated with marijuana *possession* as the only charge, according to the U.S. Department of Justice's Bureau of Justice Statistics (BJS). An even smaller fraction of state prisoners in 1997 who were convicted just for marijuana possession were first-time offenders (0.3 percent).

In reality, the vast majority of inmates in state and federal prison for marijuana have been found guilty of much more than simple possession.

The numbers on the federal level tell a similar story. Out of all drug defendants sentenced in federal court for marijuana crimes in 2001, the overwhelming majority were convicted for *trafficking*, according to the U.S. Sentencing Commission. Only 2.3 percent—186 people—received sentences for simple possession, and of the 174 for whom sentencing information is known, just 63 actually served time behind bars.

Drug use harms the user and it harms the community, and because of this, criminal penalties have been put in place to control the possession and use of illicit substances. Built into the criminal justice system is an appropriate measure of discretion that responds to the gravity of the offense. Those who persistently violate the country's drug laws face criminal penalties, which may include time behind bars. For offenders whose involvement in law-breaking is minor, the sanctions are slight and often involve a referral to treatment rather than incarceration.

And yet, in spite of these facts, a false characterization continues to be promoted that depicts the criminal-justice response to marijuana violations as unduly harsh, exclusively punitive, and disproportionate. This characterization must be countered by the truth, which is this: Americans are not routinely being sent to prison in large numbers just for possessing small amounts of marijuana. Our criminal justice system, on the whole, is fair and equitable, and despite frequent claims to the contrary, there's very little chance that anyone in this country, particularly a first-time offender, will be sent to prison for merely puffing a "joint."

SCRATCHING THE SURFACE

The headline says it all: “22-year-old suburban kid gets 25 years for selling pot.”¹

Or does it?

Seth Michael Ferranti was a kid from Northern Virginia who, as various Internet Web sites characterize his plight,² fell victim to the government’s draconian drug laws after he got busted near St. Louis with some marijuana. The state of Missouri extradited him to Virginia, where the Feds stepped in and put him away for two dozen years.

“I’m a prisoner in the war on drugs,” Ferranti told *Rolling Stone* magazine.³ In an essay posted on the Internet by a group called the November Coalition, Ferranti expresses dismay at his incarceration: “I was from the suburbs,” he writes. “What was I doing in jail with a plastic mattress, no pillow, no sheets, no nothing? I thought America was the land of opportunity, the land of the free. But it isn’t.”⁴

Clearly, this should not be the fate of a law-abiding young man who simply made a mistake. As it turns out, though, Ferranti was not exactly a law-abiding young man. This was not his first “mistake,” and it involved much more than a few bags of marijuana.

Shortly before his sentencing, and despite the deal he struck with prosecutors, Ferranti faked his own suicide and vanished.

From 1989 to 1991, Ferranti ran a drug-trafficking network that distributed more than 100,000 doses of LSD to high school and college kids in Fairfax County, Virginia. Arrested and charged, he pled guilty to the crime of engaging in a continuing criminal enterprise—a felony—and was released on his own recognizance pending trial. To reduce his sentence, he agreed to testify against one of his fellow drug gang members. Shortly before his sentencing, however, and despite the deal he struck with prosecutors, he faked his own suicide and vanished.

Ferranti spent several years on the run, distributing and transporting significant quantities of marijuana across state lines, and eventually earning a spot on the U.S. Marshals Service’s “15 Most Wanted” list. In September 1993, he was arrested in St. Charles County, Missouri, for possession of marijuana. By then, Ferranti was hiding his true identity behind false driver’s licenses, state ID cards, check-cashing ID cards, birth certificates, and voter registration cards. The arresting officers, unaware of the outstanding warrants against him, let him go.

It was another month before U.S. Marshals tracked Ferranti to St. Louis. They finally nabbed him there, along with his phony IDs and 18 pounds of marijuana. The Marshals brought him back to Virginia, where the court sentenced him to 12 months in prison for failing to appear at his sentencing and for mail fraud while he was a fugitive. The judge also ordered Ferranti to serve out his original term of 24 years and 3 months without the possibility of parole—not for marijuana, but for selling LSD.⁵

The same old story

Ferranti's tale is one of many tough-luck stories that are recounted by marijuana advocates and drug-law critics to show how an overzealous judicial system targets small-time marijuana offenders. As a result of this allegedly brutal and unjust crackdown, the advocates say, our nation's prisons are teeming with nonviolent non-criminals whose only offense was possessing small amounts of marijuana.

The idea that people are rotting away behind bars for nothing more than simple possession of marijuana has gained considerable currency in recent popular opinion. An article posted on the Internet by a well-known online magazine is a case in point. In the course of attacking what it describes as uneven drug-law enforcement in this country, the article states that “thousands of people languish in jails and prisons across America, serving long sentences for nothing more than simple possession of marijuana.”⁶

It's hardly an isolated accusation. Variations on this theme are common among those arguing for looser marijuana laws. For example:

- “A marijuana smoker is arrested every 45 seconds in America.”⁷
- “Unfortunately, the bulk of our nation's current anti-drug efforts and priorities remain fixated on arresting and jailing drug consumers—particularly recreational marijuana smokers.”⁸
- “We're also a nation overrun with robbers, rapists, murderers, wife beaters, child molesters. We say we're petrified of them. Yet we're releasing them first from overcrowded jails so dope smokers can take their cells.”⁹
- “Four million Americans were arrested for marijuana violations, the vast majority for simple possession, during [President Bill] Clinton's reign.”¹⁰
- “Though there aren't enough cells for violent criminals, marijuana smokers and small-time dealers are going to prison by the thousands—sometimes for life.”¹¹

Such allegations paint a horrific picture of the criminal justice system, conjuring visions of jack-booted officers kicking down doors to arrest recreational users peacefully puffing marijuana in their living rooms. Untold quantities of ink and energy are devoted to perpetuating this image of harmless marijuana smokers as victims of government persecution. Meanwhile, special-interest groups and activists with a pro-marijuana agenda cloud the issue further by mixing and matching half-truths, citing statistics out of context, and making emotional appeals about the benefits of so-called “medical marijuana.”

Finding the facts amid all the hyperbole and deception is not a simple task. But if you look beyond the unsubstantiated claims and carefully examine what is really happening, you see that the picture presented by the drug legalizers is wildly out of focus, and that the truth is something they do not want you to know.

Looking at the laws

To find out who is, and who is not, getting locked up for marijuana offenses, it helps to start with some definitions. “Simple possession” is the term typically used in cases when someone has on his or her person, or available for his or her use, a small amount of an illegal substance for the purpose of consuming or using it but without the intent to sell or give it to anyone else. Specific definitions of “simple possession” vary from state to state.

In federal court, simple possession of marijuana is punishable by up to a year in prison and a \$1,000 fine for a first offense.¹² For offenders possessing an ounce or less of marijuana, federal prosecutors have discretion to charge under the “personal use” statute. Here, possession is treated not as a crime but as a civil offense, much like a traffic ticket, but with a fine of up to \$10,000.¹³

On the matter of terminology, another important point is the distinction between “jail” and “prison.” Although the terms are often used interchangeably in casual discourse, there are actually important differences between the two. In most states, if not all, prison is the federal- or state-run institution where inmates serve sentences of a year or longer for felony crimes. Jails, on the other hand, are detention facilities usually managed by city or county governments and traditionally reserved for individuals awaiting trial and defendants serving less than a year for misdemeanor offenses.¹⁴

To understand how the drug laws are enforced, it is helpful to look briefly at the laws themselves in the 50 states, the federal system, and the District of Columbia. All 52 jurisdictions divide offenses into two general categories. The more serious of the two encompasses the charges of growing, manufacturing, distributing, and trafficking—all of which, generally, are felonies. The other category deals with possession, and here the specific amount becomes important. In most cases, when the amount possessed is low, the offense is defined as a misdemeanor or a non-

criminal offense.¹⁵ The threshold quantity differs from state to state, but many draw the “small amount” line for marijuana at about an ounce (28.3 grams).¹⁶

Some states—including Colorado, Maine, Nebraska, New York, and Ohio—have gone so far as to downgrade simple possession of marijuana from a misdemeanor to a civil offense, equating it to a traffic violation. This is not to say that penalties for the simple possession of marijuana have been removed. Indeed, the drug is still considered illegal in all 52 jurisdictions, including those where various “medical marijuana” defenses apply. And in 19 jurisdictions, judges have the discretion of imposing sentences of up to a year in custody for the lowest marijuana-possession offenses.¹⁷

But judges can, and frequently do, impose other conditions of probation in lieu of incarceration. For example, they can order a fine ranging from a few hundred dollars in some states to several thousand in others. They also have the ability to require offenders to enroll in drug treatment programs or to perform community service instead of doing time behind bars.

Ten jurisdictions—California, Colorado, Maine, Minnesota, Mississippi, Nebraska, Nevada, New York, Ohio, and Oregon—have specifically eliminated incarceration as an option for a first offense of simple possession of marijuana. Fines in most of those states range from \$100 to \$300, with Oregon allowing a fine of \$500 to \$1,000 and Nevada authorizing a fine of up to \$5,000.¹⁸

Although a conviction for marijuana possession can, on rare occasions, result in a prison term, sentences of less than a year are frequently served not in the state penitentiary but in the local jail.

Possession vs. trafficking

State and federal laws make a significant distinction between possession of small amounts of marijuana and amounts that clearly show that a person is engaged in the manufacture, cultivation, sale, or distribution of the drug. This is because the laws reflect our societal view that small-time users who are either dependent on drugs or at risk of becoming dependent need help to stop their use, and that through education, treatment, and reinforcement, these people can become drug free.

Trafficking, on the other hand, is viewed as a much more serious enterprise, akin to violent crime. It terrorizes communities and destroys lives. That policymakers would require more stringent punishment for trafficking offenses should come as no surprise to anyone who understands the drug trade and the magnitude of the damage it inflicts on our society.

BEYOND THE CLAIMS

It would be wrong to suggest that simple-possession offenders *never* see the inside of a prison cell. Sometimes they do, of course. A few may be sentenced outright, even when no other charges or aggravating factors are involved. But there is also a range of other circumstances under which a simple-possession marijuana offender might receive a prison sentence. For example, this could happen if:

- the marijuana offense was committed while the offender was on probation or parole;
- an offender charged with a more serious crime pleads guilty to the lesser offense of marijuana possession but, as part of a plea bargain, is required to serve a prison sentence;
- the offender has a criminal history, particularly one involving drugs or violent crime;
- the violation took place in a designated drug-free zone (such as on school property); or
- the marijuana sentence piggybacks (runs concurrent with) the sentence for one or more other offenses;

Despite overwhelming evidence to the contrary, there is no shortage of claims about so-called victims of the drug war who, charged with nothing more than minor marijuana violations, are serving long prison terms. Some of these allegations are grounded in truth but lack crucial elaboration or context. Most are exaggerations or blatant fiction. On the next two pages are a few claims that have been put forward by marijuana advocates, followed by facts that tell a different story.

THE CLAIM:

- “There have been 13,000,000 marijuana-related arrests since 1970.”¹⁹
- “In all, 704,812 Americans were arrested last year on marijuana-related charges.”²⁰
- “800,000 people are arrested on marijuana charges each year.”²¹
- “5.2 million marijuana arrests since 1992.”²²

LOOK AGAIN:

It's true that many people are arrested for offenses involving marijuana. However, the above assertions are vague and misleading, in that “marijuana-related arrests,” “marijuana-related charges,” “marijuana charges,” and “marijuana arrests” do not distinguish between a college student caught with one joint and a trafficker with several tons. Nor do they reflect how many of those arrests involved other, more serious crimes, or how many of those arrests actually led to incarceration.

THE CLAIM:

“The penalties for a first pot offense range from probation to life in prison and fines of up to \$4 million, depending on the amount of pot.”²³

LOOK AGAIN:

The probation part of that statement is correct. The part about life in prison and a \$4 million fine evidently comes from the Federal Sentencing Guidelines for the sale or cultivation of enormous amounts of marijuana. To generate a life sentence in federal court, a conviction would have to involve at least 33 *tons* of marijuana and additional aggravating factors, such as a leadership role in a continuing criminal activity. No one can get a life sentence in federal prison for marijuana based solely on the amount involved.²⁴

A few states—including Mississippi, Montana, Nevada, Oklahoma, and Texas—do, in fact, allow judges to impose a life sentence even for a first pot offense. Texas applies this provision only to trafficking offenses and to possession cases involving a ton or more of marijuana, and in Nevada, a life sentence is possible with possession of 10,000 pounds—five tons—or more. In the other states mentioned above, a first-time marijuana offense can draw a life sentence only if the case involves the sale, manufacture, or cultivation of the drug, not mere possession.²⁵

THE CLAIM:

“Even peaceful marijuana smokers sentenced to ‘life MMS’ [mandatory minimum sentences] must serve a life sentence with no chance of parole.”²⁶

LOOK AGAIN:

Mandatory minimums generally do not apply in cases involving only simple possession of marijuana, particularly for a first offense. Rather, states that set mandatory minimums for marijuana offenses usually apply them only to the cultivation, sale, or trafficking of the drug. So unless “peaceful marijuana smokers” are found guilty of more than simple possession, it is highly unlikely they will face a mandatory minimum sentence.

There are, however, a few very specific exceptions to this rule. In Louisiana, for instance, a first-time conviction for possession of marijuana on a school bus or within 1,000 feet of a school, religious building, or public housing triggers a mandatory minimum sentence of at least three months.²⁷

In the great majority of cases, people serving long prison terms for marijuana have been convicted of crimes far more serious than simple possession. They have previous felony convictions or have been found guilty of such offenses as distributing, selling, manufacturing, or illegally importing drugs, money-laundering, violating parole or drug kingpin statutes, or various combinations of those crimes.

It’s also true that a number of inmates technically serving time for marijuana possession have been convicted of that offense *along with* another, more serious crime. Most often in cases like this, the sentence for marijuana possession is simply running concurrent with (at the same time as) the more serious sentence. So while they may indeed have been convicted for marijuana possession, it was the other, more serious crime that put them behind bars.

UNTANGLING THE STATISTICS

Numbers don't lie—but they can deceive

A little knowledge, it's often said, is a dangerous thing. And that is precisely the problem in the marijuana sentencing debate. The danger, of course, is that arguments built on shaky ground can still be quite persuasive, especially if they tug at the heartstrings and stir outrage over an apparent injustice.

Those pushing to relax marijuana laws rely on authentic-sounding numbers and percentages to make their point about peace-loving pot smokers languishing in prison. And yet statistics can mask as much as they reveal. Drug advocates often select only those portions of the available data that support their position, ignoring facts and context that would point to a very different conclusion.

Drug advocates often select only those portions of the available data that support their position, ignoring facts and context that would point to a very different conclusion.

Sometimes, in fact, the truth lies not so much in having the right information, but in grasping the full context. Consider this example: A man is arrested for rape and assault, and at the time of his arrest police discover a bag of marijuana in his pocket. After being found guilty at trial of all charges, the man is sentenced to 20 years in prison for rape and assault, and one year concurrent for marijuana possession. Obviously, marijuana did not put him in prison or affect his sentence in any way. And yet, technically, he is in prison for marijuana possession.

Cases such as this, which are common, can skew perceptions of how many people are arrested or incarcerated for marijuana possession. It is easy to see how, through manipulation of the statistics and omission of essential context, clever people can make convincing claims about the number of small-time marijuana offenders serving prison sentences. Those claims, however, fall apart under rigorous examination of the facts.

State prison system

Using data from 1997 (the most recent survey results available), the Bureau of Justice Statistics (BJS) divided drug offenders in the state prison system into two general categories: trafficking offenses, which accounted for 70 percent of drug law violators, and possession offenses, accounting for about 27 percent.²⁸

Out of the total number of state inmates doing time for any drug offense, 83 percent had a prior criminal history. In other words, the large majority were not first-time offenders. They were people who had committed crimes in the past, and nearly two-thirds of them (62 percent) had multiple prior convictions.²⁹ Marijuana accounted for just 13 percent of all state drug offenders.³⁰

Looking at it from the broader perspective of the entire prison population, BJS noted that in 1997 marijuana was involved in the conviction of only 2.7 percent of all state inmates. About 1.6 percent of the state prison population were held for offenses involving *just* marijuana, while just 0.7 percent were incarcerated with marijuana *possession* as the only charge.³¹

Further narrowing the field by excluding those prisoners with criminal histories, BJS found that only 0.3 percent of all state inmates were first-time marijuana-possession offenders (*see Figure 1*). And this statistic, it’s worth noting, refers to possession of *any* amount—even as much as a hundred pounds or more—not just “personal use” quantities.³²

Recent BJS estimates based on prisoner surveys show that at midyear 2002, approximately 8,400 state prison inmates were serving time for marijuana possession (any amount), and fewer than half of them were first-time offenders. The point here is inescapable: Of the more than 1.2 million people serving time in state prisons across America, only 3,600 individuals were sentenced on a first offense for possession of marijuana. Again, this figure includes possession of *any* amount.³³

FIGURE 1
Inmates in state prison for marijuana offenses (1997)³⁴

Drug possession offenses	5.6% of all state inmates
First-time drug offenders	3.6% of all state inmates
Offenses involving marijuana	2.7% of all state inmates
Prisoners held for marijuana <i>only</i>	1.6% of all state inmates
Prisoners held for marijuana <i>possession</i> only	0.7% of all state inmates
First-time offenders held only for marijuana possession (any amount)	0.3% of all state inmates

Federal court system

The numbers are equally compelling on the federal level. In its 1997 prisoner survey, BJS found that drug-possession offenders made up 18.3 percent of the federal inmate population. Looking closely at the specific crimes involved, BJS researchers calculated that 11.9 percent of all federal prisoners in 1997 were serving time on charges that included some kind of marijuana violation, and that 9.3 percent were being held for marijuana offenses *only*.

The number dropped significantly when traffickers and repeat offenders were removed from the mix. According to BJS, only 2.2 percent of federal inmates in 1997 had been sentenced just on charges of marijuana *possession*, and less than half of that group—1.0 percent—were *first-time* offenders.³⁵

Data from the United States Sentencing Commission (USSC) reinforce the BJS findings. In 2001, according to the USSC, 24,349 people were sentenced in federal court for drug crimes under six offense categories. Fifty of those cases were excluded from the USSC's tally for lack of sufficient documentation. Of the remaining 24,299, marijuana accounted for 7,991 (32.9 percent).³⁶

The pro-marijuana lobby often points out that nearly one-third of all federal drug defendants are charged with marijuana offenses.³⁷ What they generally fail to mention, however, is that only a tiny percentage of that number are actually convicted for marijuana *possession*. As the USSC points out, of all drug defendants sentenced in federal court for marijuana crimes in 2001, the overwhelming majority were convicted for *trafficking*. Only 2.3 percent—186 people—received sentences for simple possession (*see Figure 2*), and of the 174 for whom sentencing information is known, just 63 actually served time behind bars.³⁸

In 1998, Columbia University's National Center on Addiction and Substance Abuse (CASA) published the results of a three-year study into drug and alcohol abuse/addiction among inmates in federal and state prisons and local jails. In *Behind Bars: Substance Abuse and America's Prison Population*, which used information collected by BJS and other sources, CASA showed just how groundless is the claim that nonviolent offenders guilty of mere possession are filling our jails and prisons. Based on the available data, "it appears that few inmates could be in prison or jail solely for possession of small amounts of marijuana," said the report. "Indeed," it continued, "the number is likely so small that it would have little or no impact on overcrowding or the vast gap between the need for treatment and training and available slots."³⁹

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FIGURE 2

Marijuana offenders sentenced in federal court system (2001)⁴⁰

- Drug offenders sentenced in federal court24,299
- Drug offenders sentenced for marijuana7,991
- Marijuana offenders sentenced for trafficking7,805 (97.7%)
- Marijuana offenders sentenced for simple possession186 (2.3%)
- Marijuana offenders sentenced for simple possession who went to prison63*

** of the 174 for whom sentencing information is known*

.....

Sentencing on the level

A look at the guidelines that federal judges follow in determining the sentences they impose sheds further light on why people arrested for small amounts of marijuana are rarely sent to prison.

The Federal Sentencing Guidelines⁴¹ categorize offenses into “set severity levels” that can be adjusted up or down depending on the circumstances. For example, a violation involving 40-60 kilos (approximately 88-132 pounds) of marijuana is a level 20 offense, which carries a sentence of 33-41 months. If the defendant has been a manager or supervisor in a drug gang, the level can be raised by three. Obstruction of justice raises the level by another two. So a 40-60 kilo offense for a gang supervisor charged with obstruction can become a level 25, which carries a sentence of 57 to 71 months.⁴²

By the same token, if the defendant in that 40-60 kilo marijuana charge is a minimal participant and accepts his or her responsibility in the crime, the level may be lowered by six. That brings a level 20 down to a level 14, which carries only 15 to 21 months.

Now consider the case of a first-time offender caught with, say, two kilograms of marijuana (a little more than 4 pounds, or approximately 5,440 joints). This would be listed as a level 10 offense, which, according to the sentencing guidelines, carries a 6- to 12-month sentence. The defendant’s acceptance of responsibility can knock it down two points to a level 8, which dictates up to six months—but can also include probation.

The same rules apply to smaller amounts as well. According to the sentencing guidelines, simple possession of marijuana is, at most, a level 4 offense, carrying a sentence of 0-6 months for first-time offenders and up to a year for those with a

criminal history. Acceptance of responsibility can trigger a reduction to level 2, which even for offenders with a long criminal record calls for no more than 7 months' incarceration.⁴³

Such flexibility in the sentencing structure gives judges latitude in the punishment they mete out, and it helps to explain why a number of people convicted in federal court for small amounts of marijuana wind up doing no prison time at all.

It turns out, in fact, that most inmates in federal prison for marijuana possession were arrested for considerably more than a small amount, as revealed by an eye-opening statistic from the Bureau of Justice Statistics. According to BJS estimates based on a survey of federal prisoners in 1997, the median amount of marijuana involved in the conviction of marijuana-only possession offenders was 115 pounds. In other words, half of all federal prisoners convicted only for marijuana possession were caught with amounts exceeding 115 pounds.⁴⁴ At, say, 85 joints per ounce,⁴⁵ 115 pounds translates into approximately 156,400 joints.

HOW PLEA BARGAINS DISTORT THE PICTURE

Whenever you see numbers that show how many people have gone to prison for possession of marijuana—regardless of the amounts involved—it's important to keep in mind that these figures tell only part of the story. To see the full picture, you need to take the original charges into account. In many cases, both the prosecutor and defendant have agreed to the possession charge as part of an arrangement called a plea bargain.

It is standard practice in drug cases for the offender to be given the opportunity to plead guilty in exchange for lighter punishment, thus sparing taxpayers the expense of a trial. If only one crime is alleged, the prosecutor will typically offer a shorter sentence or a lesser charge. If multiple charges are involved, the standard practice is to dismiss one charge in exchange for a guilty plea to another. The incentive may be enhanced further if the government feels the offender can provide valuable assistance to law enforcement.

Plea bargains are a useful tool, but they can distort the statistics on marijuana-possession offenders, consequently leading some people to claim that our prisons are overflowing with pot smokers. According to a 2001 BJS report, nearly 30 percent of all convicted federal drug offenders have received sentences *below* the guideline level in exchange for assisting the authorities.⁶⁵ Moreover, the report points out that virtually all federal drug convictions—95 percent—were the result of guilty pleas, a fact that speaks to the widespread use of plea bargaining.⁶⁶

THE REST OF THE STORY

What the Headlines Don't Reveal

Abandoning statistics when the numbers don't support their cause, drug advocates frequently turn to anecdotal evidence, copiously citing cases of individuals who, in their view, have received exceedingly harsh penalties for minor drug infractions. On the surface, they may seem to have a point. Scratch that surface, though, and quite often a different story emerges.

Donovan James Adams

Take, for instance, the tale of Donovan James Adams, described by one advocacy group as a "casual marijuana user" who increased his use to treat depression and headaches caused by injuries received in a car accident.⁴⁶ But his headaches were just beginning.

In 1998, then-24-year-old Adams was tried in a Montana federal court and sentenced to 66 months behind bars for selling three ounces of marijuana while carrying a firearm.⁴⁷ Adams's name appears on an Internet site along with those of other drug offenders under the heading "Profiles of Injustice,"⁴⁸ the idea being that his sentence for a marijuana-related offense was unfair and inappropriately harsh. True, only three ounces were involved. But marijuana was only part of the story.

Adams was arrested for selling those three ounces to an undercover detective, one ounce at a time, in three separate transactions. Even then, state guidelines dictated that he might have been able to work out a deal for probation or, at worst, get sent away for no more than six months.⁴⁹

The case got complicated and was prosecuted in federal court because Adams had displayed an automatic pistol during the course of selling the drugs. And it was the weapons charge—not the drug charge—that drew the long prison term. In effect, Adams is serving 60 of those 66 months for the gun charge. For being caught dealing marijuana three times, he got just six months.

Mark Young

Convicted and sentenced to life in prison in 1992 for his role in a conspiracy to distribute huge amounts of marijuana, Mark Young achieved near-celebrity status when his story became the centerpiece of the 1994 magazine article "Reefer Madness."

The widely quoted article, published in *The Atlantic Monthly*, describes Young as a middleman who "simply introduced two people hoping to sell a large amount of

marijuana to three people wishing to buy it.” In this and a follow-up article, Young is presented as a man who had no history of violent crime and who was not linked to the transaction by “confiscated marijuana, money, or physical evidence of any kind.”⁵⁰ The actual events of the case, however, reveal he was much more than an innocent go-between.

In 1991, Young brokered a transaction between a group of growers seeking to sell large quantities of marijuana and some drug traffickers who wanted to buy it. Young, then 36, invited the two parties into his house and helped set up a 700-pound, \$700,000 deal, cutting himself in for a handsome 10 percent broker’s fee. In all, he made between \$60,000 and \$70,000 in commissions before police discovered the scheme, broke up the ring, and arrested its members.⁵¹

Government prosecutors in the Southern District of Indiana explained to Young that, if convicted, his two previous felony drug convictions (for which he received suspended sentences) would be taken into consideration at sentencing. Should he lose in court, he faced a very long prison term. The prosecutors offered him a deal: If he pled guilty and agreed to testify against his co-conspirators, the government would ask for a greatly reduced sentence.⁵² Young’s family urged him to cooperate, but he refused. As he is quoted as saying later, “I feel kind of proud to have principles.”⁵³ Meanwhile, some of the others involved in the case agreed to testify against him. According to court testimony, Young threatened to have his former partners killed, along with their families.⁵⁴

In February 1992, Young was convicted by a jury for conspiracy to manufacture in excess of 1,000 marijuana plants, and for possessing with the intent to distribute more than 100 kilograms of marijuana. He was sentenced to life in prison without the possibility of parole.

But the story does not end there.

On appeal, Young’s prison sentence was reduced to 151 months.⁵⁵ He served his time and got out on supervised release, only to return for another six months for violating the terms of his probation. (He had failed several drug tests for using marijuana and cocaine.) Having served that sentence, he got out of prison—and again violated parole by testing positive for drugs and failing to report for a random drug screen. In May 2004, Mark Young was ordered back to prison for another nine months, with an 81-month term of supervised release to follow.⁵⁶ Had he simply managed to stay “clean,” he’d be a free man today.

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CRIMES AND PUNISHMENT

Critics of federal drug policy often make the claim that drug offenders typically serve longer sentences than people convicted for rape, assault, robbery, or even murder. While prison terms can indeed be stiff for drug trafficking, sentences for drug possession are generally much shorter than those handed down for major crimes. The following lists, based on the most recently available government statistics, show median sentence lengths for selected state and federal crimes.

Median Sentence Lengths

State Courts (2000)⁵⁷

Murder .....	.264 months
Robbery .....	.60 months
Sexual assault (including rape) .....	.48 months
Drug trafficking .....	.18 months
Aggravated assault .....	.16 months
Drug possession .....	.10 months

Federal Courts (FY2001)⁵⁸

Murder .....	.153.5 months
Robbery .....	.70 months
Drug trafficking .....	.51 months
Sexual abuse .....	.36 months
Assault30 months
Simple possession of illegal drugs (all kinds)6 months

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A SYSTEM THAT WORKS

Alternatives to incarceration

In recent years, jurisdictions across the nation have made enormous advances in the way they handle drug cases. They have developed and implemented programs specifically designed to help first-time drug offenders and give them a chance to avoid incarceration. Based largely on the principles of demand reduction, the new approaches provide more opportunities for early intervention, allowing people with drug problems to get the help they need and reverse course before it's too late.

“The Dell Dude”

Many judges today recognize that a second chance is sometimes all it takes to convince small-time marijuana users to change their ways. The story of the “Dell Dude” is a case in point. It illustrates not only how the system should work, but how it regularly does.

In February 2003, actor Benjamin Curtis, widely recognized for his role as a computer company’s “hip” television pitchman, was arrested in New York City for criminal possession of marijuana. The charge is defined by the amount possessed, which in this case was more than 25 grams but less than 57 grams (two ounces).⁵⁹

Under New York State law, if the amount of marijuana is under 25 grams, offenders can be punished by a fine ranging from \$100 to \$250 and/or a sentence of up to 15 days in jail, depending on whether it is the first, second, or third offense.⁶⁰ Because the amounts in Curtis’s case fell into the higher category, the judge could have ordered a jail sentence of up to three months and imposed a fine of up to \$500. But because this

Many judges recognize that a second chance is sometimes all it takes to convince small-time marijuana users to change their ways.

was his first offense, Curtis got a break. Under the terms of New York’s “adjournment in contemplation for dismissal” (ACD) procedure, he did not have to plead guilty to anything. He merely had to promise to stay out of trouble for one year. If he managed that, the case against him would be dismissed.

Essentially a form of pretrial probation, ACD is typical of various alternative sentencing strategies that are designed to keep casual or small-time offenders out of the criminal justice system. At least 23 states offer similar plans offering deferred prosecution in exchange for a promise not to violate the terms of the probation. Some of these plans require that the defendant take anti-drug courses or sign up for drug treatment. But if the offender stays clean and commits no crimes for the prescribed time period, no further court appearance is necessary. The matter is settled, the police fingerprint file destroyed. No jail time, no criminal record—end of story.⁶¹

Drug Courts

Another promising alternative-sentencing approach comes in the form of the nation’s growing network of drug courts. More than 1,000 of these innovative dockets are currently in operation around the country, and another 400 are in development.⁶² Established specifically to handle the swelling caseload of low-level drug offenders, drug courts offer treatment and community service as alternatives to incarceration to those who cooperate.

Although the concept has taken shape only within the past two decades, drug courts already have demonstrated considerable success in helping people conquer their drug problems and get back on their feet. To date, more than 312,000 adults and juveniles have enrolled in drug court programs, and 70 percent of all participants stick with the program to completion. Drug courts have helped some 3,500 parents regain custody of their children, and almost three-quarters of all program participants have retained or found new employment.⁶³

Many jurisdictions, encouraged by the success of adult drug courts, have launched similar programs offering hope, treatment, and rehabilitation as alternatives to incarceration for young drug offenders. As of July 2003, 275 juvenile drug courts were in operation in 45 states, the District of Columbia, and Guam, and another 120 were being planned.⁶⁴ In court systems that have juvenile drug court programs, young offenders who have been identified as having alcohol or drug problems and who have not been charged with violent or sex-related crimes are referred to a designated judge. The judge oversees each case through regular, often weekly, hearings with the defendant and a team that typically includes treatment professionals and vocational experts.

For offenders who play by the rules and follow the judge's orders, the rewards can be significant: They avoid time behind bars, their juvenile records are sealed or wiped clean, and, perhaps most significant, they emerge from the program drug free. In many cases, graduates step out into the world with healthier bodies and minds, improved coping skills, and a new, brighter outlook on life.

CONCLUSION

In their criticism of the criminal justice system, marijuana legalizers claim that thousands of people are imprisoned for marijuana “possession,” or, as they sometimes phrase it, “for marijuana.” The implication is that these inmates are otherwise law-abiding individuals arrested for nothing more than smoking a joint. Their crime, goes the argument, was simply having in their possession a little bit of dope.

Those protesting this “injustice” typically make their case by lumping together all marijuana defendants regardless of the quantities involved and the nature or seriousness of the conviction. And yet in doing so, they blur the critical distinction between “simple possession”—a low-level criminal offense—and “simply possessing,” a vague, all-encompassing term that can mean *any* possession, including felony amounts. They also overlook the fact that many of those technically serving time for marijuana possession were actually sent to prison on much more serious charges.

Claims about disproportionately harsh sentences for those who violate marijuana laws divert attention from the key point, which is this: The overwhelming majority of people incarcerated for marijuana offenses are not occasional, casual, or first-time users. Rather, they are criminals who have been found guilty of trafficking, growing, manufacturing, selling, or distributing the drug, or who were convicted of multiple offenses that happened to include a marijuana charge. Seldom does anyone in this country go to prison for nothing more than smoking pot.

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