

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.

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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*

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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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