

The “Marihuana Muddle” as Reflected in California Arrest Statistics and Dispositions

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The “marihuana problem” has rapidly degenerated into the “marihuana muddle.” As the use of marihuana increases, and as this use expands into the middle and upper classes, officials are increasingly confronted with questions concerning the effects and dangers of marihuana. Unfortunately, the answers that can be given are limited. We really do not know very much about marihuana. Perhaps the most decisive point that can be made is that the possession and sale of marihuana are against the law.

The impetus in the public’s concern about marihuana is its expansive use in the middle and upper classes, as well as its association with the dissidents, the disenchanteds, and hippie groups. It is these facts, together with the crecive nature of the criminal law relevant to the possession and sale of marihuana which provide the thrust in the continued discussion and controversy which has emerged. Had the use of marihuana remained concentrated with the Negro, the Mexican, and the

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dance band musician, an increase in use notwithstanding, it probably would not be receiving the attention it is today.

The sustained controversy characterizing the “marihuana muddle” centers around two questions; what shall we do about it, and, more recently, what does it all mean (Simon and Gagnon, 1968: 61-63, 75-78)? As is usual in cases of this kind, there has been a call for more research and information. This position finds much support. Recently, the President’s Commission on Law Enforcement and Administration of Justice (1967: 14) called on the National Institute of Mental Health to “execute a plan of research . . . covering all aspects of marihuana use.” Without deemphasizing the value or desirability of research, it does have at least one unfortunate accompaniment. Recognition of the need for research is a position that all points of view can support while vigorously continuing to campaign for the particular position each represents. In sum, support for research is a safe position to take and places one in respectable company.

The general themes characterizing approaches to the “marihuana muddle” today are well known. Omitting those who for various reasons choose to remain silent, both public and professional opinion in the United States currently focuses around two countervailing trends—one liberal, the other punitive. On the one hand, we have those who defend the continuation of the situation as it is—that is, continuation of criminal sanctions for marihuana offenders—or those who argue for more stringent measures (Miller, 1966; Giordano, 1968; Munch, 1966; Seever, 1966). On the other, we have those who ask that penal sanctions against users and sellers of marihuana be eliminated or at least ameliorated.¹ The point of view that our penal sanctions in this area are too severe and that the marihuana smoker has been the subject of a “crackdown” is a common one today, voiced not only by proselytizers for marihuana, but by members of the professional community as well. One such observer recently stated, “To crack down on these youth [social marihuana smokers] with all of the powerful forces of law and order and to justify such a restriction of freedom in the name of preventing crime or disease seems more an uncontrolled expression of adult moral indignation and righteousness than of human concern or social justice” (Suchman, 1968: 155).²

Often the exchange of opinion is one of charges and counter-charges not uncommonly emotionally tinged. In the sustained exchange of views and accusations between these factions, all too little attention has been given to a systematic examination and appraisal of the limited data that is available. The failure to examine applies to many phases of the marihuana muddle, including the absence of inspection of the pattern of activity of law enforcement agencies and court activity itself. This paper directs itself to these areas and looks specifically at marihuana arrest and disposition data from the state of California.

Inspection of the scarce data available regarding the activities of law enforcement agencies as represented in arrest statistics suggests that at the formal arrest level we have not moved away from a criminal law enforcement approach to the problem. Indeed, the available evidence suggests that law enforcement agencies by choice or request are directing an increasing amount of their energies to this area.³

Unfortunately, independent data for marihuana arrests as opposed to arrests for other drug law violations is not available for many areas in the United States. The Federal Bureau of Investigation, for example, does not provide a breakdown for marihuana offenses in the Uniform Crime Reports. As with most arrest statistics, where separate marihuana data is available there is typically no adequate follow-up data regarding the dispositions of the arrests. Respectable arrest and disposition data are available, however, from the Bureau of Criminal Statistics in California. Data more detailed than most is available from New Jersey, and limited information can be found in the annual reports of the Federal Bureau of Narcotics. Information from other areas is spotty and limited.

Marihuana arrest trends are especially interesting, for they come at a time when there is an increasing concern about the dangers of LSD as well as those of a variety of other dangerous drugs, and at a time when there is an increasing articulation of the treatment-rehabilitation approach with respect to the traditional hard-drug user. Interestingly, while the relative concern about the dangers of marihuana use has varied from time to time, a treatment-rehabilitation milieu surrounding its use has not emerged. Marihuana use at most is viewed as a vice to be reckoned with but not treated. In this regard, as compared with the conventional drugs subject to penal sanction, marihuana is unique.

The increase in police activity with respect to marihuana involves at least two dimensions: the police themselves, and the public. First it should be noted that the problems of locating marihuana law violators and in "making cases" are much less pronounced than they are with hard drug law violators. Several factors contribute to this, including (1) the frequency of marihuana use as opposed to hard drug use, (2) the permissive and not uncommonly careless atmosphere often surrounding marihuana use, along with which we find (3) a feeling on the part of a considerable number that marihuana smoking is a relatively innocuous leisure-time activity. One result of these several factors is that if law enforcement officers feel a need to justify their existence, marihuana users and sellers most certainly offer a fertile ground. Supporting the law enforcement position is the traditional law enforcement mentality of our society which extends well beyond the body of law enforcement personnel themselves and sustains the viewpoint that the use and sale of marihuana can be controlled by the criminal law, and that this is a desirable objective to seek. Furthermore, the increase in police activity in the marihuana sphere is undoubtedly influenced to a great extent by referrals to the police by citizens who have become aware of this problem and are concerned about it.

MARIHUANA ARREST PATTERNS AND DISPOSITION TRENDS

Adult arrests (18 and older) for marihuana offenses in California increased approximately 525% from 1960 to 1967. In absolute figures, there were 4,245 and 26,527 marihuana arrests in 1960 and 1967 respectively. Viewed in terms of adult drug and marihuana arrests, marihuana represented 24% of the total arrests in 1960 and 56% in 1967. Sample data indicate that in 1968 marihuana arrests represented approximately 50% of the total drug-marihuana arrests.⁴ The low point for the 1960 to 1967 period was reached in 1961 when marihuana arrests contributed 20% of the total drug-marihuana arrests in the state of California.⁵

Similar increases in marihuana arrests appear to characterize many areas of the United States. In early 1967, for example, Henry L. Giordano, then United States Narcotics Commissioner, reported that marihuana arrests had doubled since 1965 (*Time*, 1967: 36). In the state of Illinois an astronomical increase

between 1964 and 1967 is reported by the Chicago Police Department, with marihuana arrests increasing from 63 to 2,128, an increase of 3,278% (Chicago Police Statistical Report, 1966, 1967; Chicago Police Annual Reports, 1967, 1968). The Illinois Division of Narcotic Control, the state narcotic agency, also reports marked changes in the adult (21 and over) marihuana arrests from 1963 to 1967. In 1963 there were 59 marihuana arrests which accounted for 29% of all arrests for narcotics and marihuana. By 1967 this figure had risen to 201 arrests, 87% of all narcotic-marihuana arrests by that agency.⁶

Irrespective of one's hunches on the extent these figures represent real increases, the data do reflect an increase in police activity, an apparently common trend in the United States today. How have the courts responded to this activity? To what extent, if any, have the characteristics of those who are targets of this activity changed? The remainder of this paper addresses itself to these general questions using statistical data reported annually since 1960 by the state of California (Bureau of Criminal Statistics, 1961 and 1962).⁷

In 1968, because of the unwieldy nature of the data, the California Bureau of Criminal Statistics adopted the procedure of limiting its drug arrest-disposition report to data based on a 30% sample. Therefore the 1968 data are not strictly comparable to previous years and are not made a primary focus of discussion in this paper; neither are 1968 data included in the tables. When it seems appropriate, however, reference will be made to the 1968 sample data.

Gross marihuana arrest *disposition* data follows a pattern similar to the overall arrest trends but provides an index of court activity. Since 1962 marihuana arrest dispositions in California have consistently contributed an increasing proportion to the total pattern of drug-marihuana arrest dispositions, rising from 21% in 1962 to 56% in 1967.⁸ Sample data indicate that in 1968 this proportion fell to approximately 50%.

There have been some marked changes in the pattern of marihuana arrest dispositions. cursory inspection of Table 1 indicates that the relative frequency of marihuana convictions has decreased from 45% in 1960 to 31% in 1966. This has been accomplished by a commensurate increase in those who were released, dismissed, or acquitted, which increased from 49% to

TABLE 1
ADULT MARIJUANA ARREST DISPOSITIONS (1960-1967):
 Percentage of All Dispositions^a

Type of Disposition	1960		1961		1962		1963		1964		1965		1966		1967	
	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)
Released, Dismissed, or Acquitted	49	(1,985)	47	(1,561)	47	(1,471)	50	(2,082)	57	(3,154)	60	(4,534)	65	(8,068)	56	(10,825)
Convicted	45	(1,815)	47	(1,534)	47	(1,482)	44	(1,853)	39	(2,156)	37	(2,818)	31	(3,864)	35	(6,869)
Other ^b	6	(247)	6	(199)	6	(197)	6	(234)	5	(256)	3	(234)	3	(391)	9	(1,742)
Total	100	(4,047)	100	(3,294)	100	(3,150)	100	(4,169)	100	(5,566)	100	(7,586)	100	(12,323)	100	(19,436)

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

b. Includes federal cases, probationers, and parolees referred to their supervising agency in lieu of prosecution, civil commitments and persons not prosecuted on narcotic charges because of nonnarcotic charges currently pending against the individual.

65%. The shift in the pattern of dispositions, however, did not start until 1963, with the most precipitous changes coming in 1964 and 1966.⁹ In 1967 there was a reversal of this trend with 56% being released, dismissed, or acquitted.

While there has been an increase in absolute numbers convicted since 1962, it is apparent that the trend in rates of conviction does not sustain the precipitous scurry of activity at the arrest level that has occurred in recent years. Note, for example, that while the overall increase in marihuana arrests was 525% between 1960 and 1967, arrest dispositions increased 380%, convictions increased only 278% as opposed to a 445% increase in those released, dismissed, or acquitted (see Table 1).

It should, of course, be recognized that disposition trends are reflective of the intricacies of the entire adjudication process and of the innumerable forces influencing this process. In this regard it is noted that the released, dismissed, or acquitted category reflects decisions of the police and the state's attorney as well as of the court.¹⁰

The tenor of this discussion should not cloud the fact that, viewed absolutely, more people are being convicted today for marihuana offenses. In 1967, 5,054 more persons were convicted of a marihuana offense than were similarly treated in 1960.

PRIOR DRUG RECORD AND DISPOSITION

California statistical data reports prior drug record of arrestees *as measured by previous arrests and dispositions for drug-marihuana offenses*. Using nonconviction and type of conviction as criteria the arrest population is divided into four prior drug record categories; none, minor, major and prison (for definitions of these categories, see Table 2, note b). It is apparent that there are limitations in the use of these criteria as operational definitions of prior drug use. It is common knowledge that there are many persons who have used marihuana and drugs who have no arrest or criminal conviction which attests to this fact.¹¹ These criteria do, however, provide an index of past legal involvement with respect to marihuana and drugs and fortunately of trends concerning disposition activity over an eight-year period.

TABLE 2
PRIOR DRUG RECORD OF ADULT MARIHUANA ARREST DISPOSITIONS (1960-1967):
 Percentage of All Dispositions^a

Prior Drug Record ^b	1960		1961		1962		1963		1964		1965		1966		1967	
	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)
None	60	(2,409)	57	(1,862)	55	(1,721)	59	(2,445)	62	(3,449)	63	(4,775)	65	(8,000)	70	(13,406)
Minor	23	(920)	25	(825)	25	(796)	24	(1,008)	22	(1,231)	23	(1,743)	22	(2,737)	22	(4,127)
Major	13	(524)	14	(469)	15	(472)	13	(531)	12	(665)	10	(751)	9	(1,160)	7	(1,363)
Prison	4	(179)	4	(133)	4	(139)	4	(173)	4	(210)	4	(274)	3	(346)	1	(257)
Total	100	(4,032)	100	(3,289)	100	(3,128)	100	(4,157)	100	(5,555)	100	(7,543)	100	(12,243)	100	(19,153)

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

b. Prior drug record categories are defined as follows. "None" refers to those subjects for whom a fingerprint card has never been received by the Bureau of Criminal Identification and Investigation which indicates any previous arrest of the subject on a marihuana drug charge. "Minor" refers to subjects having a prior record of arrest for a marihuana drug charge either without conviction or a record of conviction resulting in a jail sentence of ninety days or less. "Major" refers to subjects having a prior conviction for a marihuana drug charge which resulted in a jail or institutional sentence of over ninety days or a felony probation sentence. "Prison" refers to subjects having at least one prior conviction on a marihuana drug charge which resulted in a prison sentence. Because they represent a conspicuously small proportion, subjects whose prior drug record is unknown are not included in Table 2. In no instance does their proportion reach more than seven-tenths of one percent.

Consistently, it is persons with no prior drug record who contribute the largest proportion of the marihuana arrest dispositions for the several years under consideration. In no instance does this drop to less than 55% of the total dispositions for any given year (see Table 2).

It is noteworthy that, viewed in terms of the total prior drug profile, the variation in the relative characteristics of the marihuana arrest dispositions over the eight-year period 1960 to 1967 does not change markedly. There is an overall increase of 10% (60 to 70%) from 1960 to 1967 in the proportion of those having no prior drug record. This is accompanied by a similar decrease, from 13 to 7%, in the proportion having a major prior drug record.

The minor prior drug record category is the second largest contributor to marihuana arrest dispositions. If we add the minor prior drug category and those with no prior drug record, the contribution of the two combined categories never goes lower than 80% (1962) of the total marihuana arrest dispositions in a given year. Viewed in terms of these groups the marihuana arrest subjects disposed of during these years do not appear to represent a particularly "noxious" population.

It is of special interest that the relative distribution of prior drug records changes so little between 1960 and 1967. From this perspective, that is, relatively, the character of the population being selected as targets for the enforcement of the law relating to marihuana has remained about the same. Note, however, that after reaching a low of 55% in 1962, the contribution of those with no prior drug record slowly but consistently increases. This suggests that since 1962 there has been a tendency to be more aggressive in applying the marihuana law to new cases. Viewed proportionately, the tendency does not appear to be a marked one. If, on the other hand, we view the profile in terms of percentage increase, those with no prior drug record and those with a minor prior drug record increased at a much faster rate from 1960 to 1967 than did the major and prison prior drug record categories. This is true in spite of the substantial size of the former groups through the years.

The pattern of arrest disposition in relation to prior drug record provides an excellent basis for inspecting trends in the handling of marihuana law violators. For this purpose three categories of prior drug record are used: those with no prior drug record, those with a

TABLE 3
TRENDS IN ADULT MARIHUANA ARREST DISPOSITIONS IN RELATION TO
SERIOUSNESS OF PRIOR DRUG RECORD (1960-1967)^a

Type of Disposition	Seriousness of Prior Drug Record ^b	1960		1961		1962		1963		1964		1965		1966		1967	
		%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)
Released, Dismissed, or Acquitted	None	51 ^c	(1,227)	47	(884)	50	(866)	51	(1,235)	58	(2,015)	60	(2,855)	67	(5,336)	55	(7,423)
	Minor	47	(431)	48	(396)	42	(331)	51	(516)	54	(666)	61	(1,068)	67	(1,830)	57	(2,335)
	Serious	44	(312)	46	(276)	42	(256)	46	(322)	53	(464)	57	(570)	56	(847)	52	(840)
Convicted	None	44	(1,054)	47	(875)	44	(761)	43	(1,057)	37	(1,285)	37	(1,765)	30	(2,401)	35	(4,661)
	Minor	46	(427)	45	(374)	53	(419)	45	(457)	41	(503)	36	(632)	31	(855)	37	(1,523)
	Serious	48	(334)	47	(285)	49	(300)	48	(336)	42	(367)	41	(421)	40	(605)	42	(684)
Other ^d	None	5	(128)	6	(103)	5	(94)	6	(153)	4	(149)	3	(155)	3	(263)	10	(1,322)
	Minor	7	(62)	7	(55)	6	(46)	3	(35)	5	(62)	2	(43)	2	(52)	7	(269)
	Serious	8	(57)	7	(41)	9	(55)	6	(46)	5	(44)	3	(34)	4	(54)	5	(79)
Total	None	100	(2,409)	100	(1,862)	100	(1,721)	100	(2,445)	100	(3,449)	100	(4,775)	100	(8,000)	100	(13,406)
	Minor	100	(920)	100	(825)	100	(796)	100	(1,008)	100	(1,231)	100	(1,743)	100	(2,737)	100	(4,127)
	Serious	100	(703)	100	(602)	100	(611)	100	(704)	100	(875)	100	(1,025)	100	(1,506)	100	(1,620)

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

b. For an explanation of the prior drug record categories, see Table 2, note b. The serious category was formed by combining the major and prison prior drug categories as defined in Table 2, note b. Subjects whose prior drug record is unknown represent a conspicuously small percent and are not included in Table 3.

c. Fifty-one percent (1,227) of the marihuana arrestees disposed of in 1960 who had no prior drug record were released, dismissed or acquitted.

d. See Table 1, note b.

minor prior drug record, and those with a “serious” prior drug record. The serious category was formed by combining those with a major prior drug record and those with a prison prior drug record. These categories were combined because it was felt that individually they were too small for a meaningful presentation of the data and because it was felt they could be logically combined. (The reader should consult Table 2 for a clear picture regarding the relative contribution of the various prior drug categories to the dispositions for any one year.) Table 3 summarizes this data and presents year-by-year comparative disposition data for the above categories.

We find that the general disposition patterns (as discussed above and presented in Table 1) are sustained when we look at dispositions for specific prior drug record categories. Prior to 1962, the pattern is less clear, but starting that year and continuing through 1966, with one exception, the rate of convictions, *irrespective of the type of prior drug record*, decreases consistently. Holding prior drug record constant, one arrested for violation of the marihuana law in 1966 would experience less likelihood of being convicted than he would have had he been arrested in any of the preceding years. The one exception occurs between 1964 and 1965, when the conviction rates for those with no prior drug record remained the same.

Information for 1967 suggests a slight reversal of this trend, with the chances of being convicted increasing over the previous year for all prior drug record categories with the proportions approximating the 1965 level. Sample data for 1968 suggests about the same distribution as 1967. Chances of conviction in 1967 remained, however, considerably less than for the 1960 through 1963 period for all categories. Note also that the 1967 decrease in the proportion of persons released, dismissed, or acquitted was to some extent absorbed in “other” dispositions, which is somewhat of a wastebasket category and does not necessarily represent a tougher disposition policy.

Of special interest are the similarities in the relative proportions that occur among the various prior drug record categories for any one type of disposition. Breaks in this overall pattern do occur in 1962 and 1966. Generally, over the years, there is a greater likelihood of persons with a serious prior drug record being convicted, but the tendency is not a marked one. Slightly more

TABLE 4
 SENTENCING TRENDS FOR ADULT MARIHUANA CONVICTIONS IN RELATION TO
 SERIOUSNESS OF PRIOR DRUG RECORD (1960-1967)^a

Sentence ^b	Seriousness of Prior Drug Record ^c	1960		1961		1962		1963		1964		1965		1966		1967	
		%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)	%	(n)
Prison	None	17	(149)	17	(130)	17	(113)	13	(117)	14	(141)	12	(163)	9	(144)	7	(186)
	Minor	32	(112)	28	(87)	30	(101)	23	(80)	25	(96)	20	(95)	18	(105)	12	(111)
	Serious	62	(138)	71	(176)	64	(157)	59	(162)	63	(159)	57	(181)	45	(185)	35	(154)
Straight Jail	None	17	(151)	17	(129)	8	(54)	2	(20)	1	(14)	1	(12)	1	(24)	2	(41)
	Minor	23	(82)	25	(78)	8	(29)	3	(12)	1	(4)	2	(9)	1	(6)	2	(17)
	Serious	22	(44)	17	(46)	9	(21)	4	(10)	5	(12)	1	(3)	3	(11)	4	(16)
Probation and Jail	None	35	(315)	37	(281)	43	(297)	44	(387)	43	(439)	43	(583)	37	(626)	38	(1,019)
	Minor	31	(108)	32	(99)	39	(129)	50	(173)	49	(184)	49	(237)	44	(254)	47	(433)
	Serious	11	(24)	9	(22)	22	(54)	25	(68)	19	(49)	28	(89)	34	(139)	42	(182)
Straight Probation	None	31	(282)	29	(224)	32	(219)	40	(350)	42	(430)	45	(608)	53	(886)	53	(1,415)
	Minor	15	(52)	14	(44)	22	(74)	24	(83)	25	(94)	29	(142)	37	(218)	40	(370)
	Serious	6	(13)	2	(5)	5	(12)	12	(32)	13	(34)	14	(42)	18	(73)	20	(86)
Total	None	100	(897)	100	(764)	100	(683)	100	(874)	100	(1,024)	100	(1,366)	100	(1,680)	100	(2,661)
	Minor	100	(354)	100	(308)	100	(333)	100	(348)	100	(378)	100	(483)	100	(583)	100	(931)
	Serious	100	(219)	100	(249)	100	(244)	100	(272)	100	(254)	100	(315)	100	(408)	100	(438)

a. The data in this table relates to specific type of sentence generated by the final charge and therefore is not strictly comparable to the conviction data presented in Table 1 or Table 3. Fines, commitments to the California Rehabilitation Center and the California Youth Authority are not included because they represent a very small proportion of the total.

b. The table should be read, seventeen percent (149) of the sentenced adult marihuana convictions in 1960 who had no prior criminal drug record were sentenced to prison. See note a.

c. For an explanation of the prior drug record categories, see Table 2, note b, and Table 3, note b. Subjects whose prior drug record is unknown represent a conspicuously small percent and are not included in Table 4.

marked, when viewed in terms of consistency, is the tendency for those with a serious record to be least likely to be released, dismissed, or acquitted. It should be emphasized, however, that with the exception of 1962 and 1966, when compared on the basis of prior drug record, irrespective of the type of disposition, the differences are anything but conspicuous.

Given their overall contribution to the total marihuana arrest population for any given year, it is to be expected that persons with no prior drug record will be the major contributors to a given type of disposition in a given year. In this regard, conviction data is of special interest since it represents persons finally screened as criminals by virtue of their involvement with marihuana. While there is a general tendency over the years for convictions to decrease proportionately (Table 1), interpolation of data presented in Table 3 indicates that since 1962 the contribution of persons with no prior drug record to the convicted category tends to increase. Since 1964 no less than 60% of those convicted were persons with no prior drug record. Only 16 and 10% of the marihuana convictions in 1966 and 1967 respectively were persons who has a serious prior drug record.

SENTENCING TRENDS

In the 1965 California report (Bureau of Criminal Statistics, 1965), Messrs. Bridges and Morris observe:

The statistics of dispositions and sentences for marihuana in particular tend to indicate that there is a trend toward regarding non-heroin drug offenses as less serious each year. The proportion convicted is decreasing and the proportions receiving lenient kinds of sentences are increasing. In spite of this, the numbers arrested for marihuana offenses continue to show large increases each year. It is obvious that law enforcement officials regard this offense as being sufficiently serious to warrant their concerted attention.

Sentencing trends themselves provide the best evidence on these points and are presented in Table 4. It should be stressed that the data in Table 4 represent those cases which were disposed of by sentencing during the respective years and therefore are not precisely comparable to the previous tables. Fines and commitments to the California Rehabilitation Center and the California Youth Authority have been excluded from the discussion and tables because they represent a small proportion of those sentenced.

While the year-to-year trend has not been consistent, the general trend in the mitigation of punishment for marihuana law offenders is clearly discernible for all prior drug categories. Viewed both collectively and in terms of individual categories, in 1967 as compared to 1960, there has been a decrease in the relative use of the prison sentence. Collectively, 11% were committed in 1967 as opposed to 27% in 1960. Paralleling this change, a marked increase occurred in the use of straight probation. The latter increased from 24% to 46% of the sentenced convictions in 1960 and 1967 respectively.

In general, over the years a decreasing proportion of subjects in all categories have been sentenced to straight jail sentences. Since 1960 a marked increase has occurred in the proportion of both minor and serious categories receiving a probation and jail sentence. Again, the year-to-year shift is not consistent, but nevertheless this is further evidence of the decreasing harshness of sentences for all subjects irrespective of their prior drug record.

DISCUSSION

The interesting and complex issues that are apparent or suggested by the above data are numerous. Of special interest is

- (1) the decreasing proportion of convictions in relation to total arrest dispositions,
- (2) the clear trend in the mitigation of the severity of punishment for all categories of persons convicted of marihuana offenses,
- (3) the relative stability in the prior drug record characteristics of the marihuana arrest population disposed of year to year, and
- (4) perhaps the most striking, far-reaching, and important of all is the evidence regarding the glaring and increasing disparity between the level of arrest activity of law enforcement agencies and the response to this activity on the part of the court.

Generalization of these patterns to the whole of the United States is hazardous. Similar patterns may not characterize all states. Special caution seems indicated with respect to prior drug record characteristics since this dimension clearly reflects the dynamics of the screening process.^{1 2}

When we consider the sustained criticism and attack in recent years on the use of penal sanctions in dealing with marihuana smokers, when we consider the common assertion that the penal sanctions applied to marihuana law violators are too severe, and the point that is sometimes made that persons who have not previously been the targets of the police are now being harassed because of their involvement with marihuana, the data of the present paper are of special interest. The decrease in conviction rates is apparent and similarly, viewed in terms of the prison sentences generated, the overall trend is toward nonprison, nonjail disposition. Clearly, the trend is that of decreasing punitiveness. It is true that persons with no prior drug record make up the largest body of convictions. On the other hand, the sentencing trend for this as well as the other prior drug record categories is one of amelioration. It can be argued that, as suggested by the data at hand, the intense and increasing fervor of the criticism and the opposition to the severity of our penal sanctions seems anomalous.

If we emphasize the absolute figures and percentage increase, a slightly different interpretation is suggested. As we have observed, the no prior drug record category increased the fastest between 1960 and 1967 (see Table 2). This may help to account for the concern on the part of some that penal sanctions are too severe. And, absolutely more persons (3,607) with no prior drug record were convicted in 1967 than in 1960. Note, however, that in 1966 fewer persons in this group were actually committed to prison than in 1960. And, in 1967, compared with 1960, *only* 37 more persons with no prior drug record were actually committed to prison. This is hardly consonant with the claim that penal sanctions for marihuana law violators are too severe. The impact of this latter fact is somewhat offset if we assume that more and more middle- and upper-class persons are being subjected to arrest.¹³ Given this trend we would expect increased public concern. It should not be assumed, however, that the adult marihuana arrest population as a whole represents a group previously unknown to the police registers.¹⁴ The weight of the evidence in California is clearly to the contrary.

Admittedly, although the data does not permit an in-depth examination of the type of prison sentence meted out, it does provide a general sentencing index. Likewise, in considering the implications of the present information, the following facts should

not be overlooked. Five thousand fifty-three more persons were convicted in 1967 than in 1960 and 2,560 more were actually sentenced. The increase in sentenced subjects, however, was almost entirely absorbed by straight probation and probation-jail sentences.

Other evidence suggests that there are some severe sentences being imposed, but just how many it is difficult to say.¹⁵ Viewed in terms of the trends observed in this paper, it appears that relatively severe sentences, while technically possible, may in fact be the exception. Overall, the pattern is clear. An increasing disparity exists between aggressiveness of law enforcement personnel (as measured by arrests) and disposition—court activity (as measured by conviction rates and prison commitments). There is a consistent year-to-year increase in the ratio of arrests to convictions between 1961 and 1967.

What are the implications of this gross disparity? The immediate and long-range effect is that of disorganizing and vitiating the effectiveness of law enforcement. It is difficult to understand how the deterrent function (the traditional function of the police) can operate and be sustained under these disparate circumstances.¹⁶ In general, our courts are viewing marihuana offenders as a relatively innocuous group, a view supported by an increasing segment of our population. It is apparent that we have here a special case of a type of situation that confronts law enforcement in its attempts to regulate all spheres of vice activity, the difficulties of which have long been recognized by observers.¹⁷ We have indeed presented the police with an impossible situation.

We find little solace in the argument that similar disparities may characterize the pattern of law enforcement activity in other areas. There are few areas in the criminal law today, if any, that evoke the kind of attack elicited by laws related to marihuana. This alone makes the marihuana muddle a special situation.

Continued efforts to attempt to enforce and to expect enforcement of a law which attempts to regulate behavior that increasing numbers of persons participate in or tolerate, a law whose wisdom is questioned by persons representing a broad spectrum of lay and professional segments of our society and which appears to be largely unenforceable, can only lead to further disrespect for and an attenuation of the law enforcement process.

NOTES

1. Note, for example, the activities of the Committee to Legalize Marihuana and the Ad Hoc Committee for Reform of Marihuana Laws. See also Lindesmith (1965: ch. 8) and President's Commission on Law Enforcement and Administration of Justice (1967).

2. For other opinions that our laws are excessively severe, see Etzioni (1968), the position statement of the Council on Mental Health and the Committee on Alcoholism and Drug Dependence of the American Medical Association and the Committee on Problems of Drug Dependence of the National Research Council, National Academy of Sciences (1968) and Simmons (1967). See note 14.

3. It can be argued that to the extent the increase in marihuana arrests are the result of activity of the traffic and patrol divisions as an adjunct to their usual routine, the arrests are incidental and do not flow from an especially aggressive effort on the part of the police or from referrals. Nevertheless, the decision to arrest is selective and reflects the resource allocation process, be it formal or informal. For an interesting discussion of the enforcement of the marihuana law in Los Angeles County, in which the authors discuss the fortuitous nature of law enforcement in this area, see Morton et al. (1968).

4. Information for 1968 indicates a decrease in the rate of increase of adult marihuana arrests. The 1968 increase, as measured by sample data, is approximately 30%. The previous year the increase in adult marihuana arrests was about 87%.

5. Data in this paragraph are based on arrest statistics as reported in Bureau of Criminal Statistics (1966; 1967). Information in these reports varies and is the result of editing and updating of data. For further clarification on this point, see page 4 of the 1966 report.

6. Information provided by Mr. Paul Dollins, Division of Narcotic Control, Department of Public Safety, Springfield, Illinois.

7. The 1960 report was titled "Narcotic Arrests and Their Dispositions in California"; the 1961 report was titled "Narcotic Arrests and Dispositions in California."

8. Starting in 1965, federal offenses were included in California *arrest* data. In the strictest sense, this affects the comparability of arrest data with previous years. The actual impact, however, appears to be negligible if we accept the federal figures reported by the Federal Bureau of Narcotics. See United States Treasury Department, Bureau of Narcotics (1965: 47). As reported in the California statistical reports, the tables and discussion of the present paper report federal arrest *dispositions* under "other dispositions," a relatively small category, but retained in the tables to give a better idea of the total picture. Data relevant to *sentences imposed* apply only to state charges. For further comment on these points, see Bureau of Criminal Statistics (1966: 7, 15).

9. While it is not our primary concern here, similar trends are evident in the conviction and released, dismissed, or acquitted categories for nonmarihuana, including "heroin and other narcotics" arrest disposition in 1960 and 1966 respectively. Changes in the "other disposition" category for "heroin and other narcotics" dispositions presented considerably more variation than the marihuana dispositions. Changes in both of these disposition areas undoubtedly reflect the increasing numbers of narcotic drug users under state supervision in California, the inclusion of federal cases, as well as the development and expansion of several alternative processing procedures, namely civil commitment. See note 8.

10. In 1964 California police, for example, released more than 26% of all adult felony narcotic arrests (Bureau of Criminal Statistics, 1965). For a discussion of the arrest disposition classification used in California, see Bureau of Criminal Statistics (1960: 4, 5). For an interesting discussion of the processing of marihuana arrests, see Morton et al. (1968).

11. Viewed in terms of actual prior drug use the data relevant to this point in the present paper unquestionably errs in the direction of conservatism. Some tables in the California statistical reports are based on attempts to ascertain prior drug use by various indirect means. The temptation to use this information, however, was rejected because it was felt the data was not sufficiently reliable.

12. Some evidence is available. Chayet (1968) reports that in the Second District Court of Plymouth, Massachusetts for the period of July 1, 1968, to October 31, 1968, of 116 *narcotics* cases prosecuted not one person was sentenced to jail or prison.

13. There are a number of indications that this is the case. Time (1967) quotes Henry Giordano to this effect. The "pot busts" on college campuses across the nation during the past several years also attest to this. See, for example, Time (1965), and Sanford (1967a, b). Geis (1968) has observed that the rapid increase in marihuana arrest rates, "represents at least in considerable measure the movement of middle and upper class citizens into marihuana use." See also Newsweek (1965) and Arnold (1965).

14. Independent data reported in Drug Arrests and Dispositions in California but not presented in the present paper indicates that there has been an increase since 1960 in the proportion of adult marihuana arrest dispositions who had no prior *criminal* records. This group accounted for 17% of the dispositions in 1960 and 35% in 1967. It may be noted that 65% of the dispositions in 1967 did have some type of prior criminal record, usually of a minor nature. Consistently since 1960, persons with minor criminal records contributed more than 40% of the adult marihuana arrest dispositions. In view of this data, the contention of some that large proportions of marihuana offenders have had no previous involvement with the law seems incorrect. See, for example, Kaplan's foreword to Morton et al. (1968: 1505). A different pattern may, of course, be presented if we looked at juvenile arrests.

15. The initial 30-year sentence of Timothy Leary was a case in point. The 20-year sentence of Kerrigan Gray in the state of Washington is another example. See Sanford (1967b) and McBroom (1966). Data from California indicates that in 1959 the median number of months served in prison by male marihuana law offenders paroled for the first time by the California Department of Corrections was 24 months. By 1966, the median had increased to 30 months. The latter, however, is the same as it was in 1962 and actually represents a decline from 1964 when the median number of months served was 34. See Department of Corrections (1961-1966). See note 2.

16. One point of view argues that the outcome of cases in court is neither the responsibility nor the concern of the police. This position, however, seems ill-advised. It is precisely the isolation of law enforcement from other segments of the machinery for the administration of justice that has contributed to many of our problems and exacerbated efforts to evaluate the work of the police.

17. See, for example, Schur (1965).

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