



INFRASTRUCTURE, SAFETY,
AND ENVIRONMENT

***Just Cause or Just Because?:
Prosecution and Plea Bargaining among
Low-Level Drug Offenders in California***

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Genesis of the Drug Prosecution Project

- Passage of Prop. 36:
 - **Lack of empirical** information about key pro-36 arguments
 - “Too many” “low-level” drug offenders are incarcerated
 - Especially marijuana users
 - **Counterclaims** that prosecutors rarely seek prison for low-level drug offenses, except:
 - When combined with a severe criminal history or
 - When the offender accepted sentencing on a low-level offense as part of a plea from a more serious drug offense
 - The clear intention of Prop. 36 supporters to export the model to other states

Study Objectives

- To characterize the prosecution of drug possession offenses relative to drug sales and other non-possession offenses
- To examine how marijuana is treated relative to other drugs
- To explore the racial implications of drug sentencing and plea bargaining practices
- To examine what factors influence plea bargaining behavior and plea bargaining outcomes

Legal analysis to define “low level” drug offense

<i>Prop 36 applies</i>	<i>Prop 36 arguably applies</i>	<i>Prop 36 in part applies</i>
<p>Possession of</p> <ul style="list-style-type: none">• controlled depressants• hashish• narcotics• non-narcotics	<ul style="list-style-type: none">• Possession of controlled substance while in possession of a firearm• Bringing controlled substance into youth authority institution• False compartments with intent to conceal drugs	<ul style="list-style-type: none">• Marijuana sales• Transportation, sale, giving certain controlled substances into CA• Bringing marijuana into CA

Sampling plan

- **Population:** 23,000 offenders
 - Committed in 1998 or 1999
 - In one of the nine California counties with the largest imprisoned drug offender population
 - With a low-level drug offense being the most serious charge
- **Sample:** 875 offenders
 - Stratified by county, race, sex, and offense type
 - Three counties dropped from the sample and some records did not exist
 - Sequential sampling strategy aimed to produce similar precision in each subpopulation

Data collection

- Data abstracted from county prosecution records
- Derived variables
 - **Offense severity index**, score from 1 (less serious) to 74 (serious)
 - **Plea bargaining**, indicated in file or drop in sum severity score of charges, filing to sentencing
 - **Demographics**, race, sex, employment, etc.
 - **Drug type and quantity** at arrest
 - **Trial method**, none, jury, bench

Sample description of arrestees

	Population	Probationers	Arrestees
N	875	256	619
ESS	187.2	50.6	136.9
Race/Ethnicity*			
White	28%	20%	25%
Hispanic/Latinos	35%	38%	34%
Black	34%	40%	38%
Race-Other	3%	2%	3%
Drug Type			
Cocaine	53%	65%	48%
Heroin	8%	3%	10%
Marijuana	3%	3%	2%
Multiple, incl. MJ	5%	5%	5%
Multiple, excl. MJ	4%	4%	4%
Other	27%	19%	30%
Drug Sale?			
Yes	25%	22%	26%
No	75%	78%	74%
Prop 36 applies?			
Yes	75%	78%	73%
Partially	24%	21%	25%
Arguably, no	2%	.4%	2.0%

Sample description of arrestees

	Population	Probationers	Arrestees
Mode of Disposition			
Plead Guilty	98%	99%	97%
Bench Trial	.3%	0.0%	.4%
Jury Trial	2%	.5%	2%
Arrest/Probation Charges	11	8	13
Arrests in Prior Record	9	6	10
Offenses in Prior Record	3	2	4
Sum Severity Score of Prior Offense	167	99	195
Charges Filed by Prosecution	3	2	3
Sum Severity Score of Charges Filed by Prosecution	129	76	150
Charges at Sentencing	1	1	1
Sum Severity Score of Offenses at Sentencing	31	34	29
Sentence Length (in months)	30.8	34.2	29.4

Plea-bargaining from sales charges

Drug type	N	Original was a sales or transport charge (%)	Standard Error
Cocaine	196	11%	3.6%
Heroin	70	1%	0.9%
Marijuana	15	13%	9.6%
Multiple with marijuana	46	22%	8.8%
Multiple, no marijuana	41	8%	4.4%

- **Many of those in prison on non-sales marijuana offenses pled down from a sales charge**

Plea-bargaining from sales charges

Sale charge	Sale conviction	N	Average quantity	Standard Error
Yes	Yes	191	200.16	15.4
Yes	No	58	126.25	19.5
No	No	344	74.27	6.0

- There seem to be clear quantitative breaks in quantities between sales and non-sales cases.

Plea-bargaining from sales charges

Sales Offense?	N	Total Criminal History Severity	Standard Error	Number of Convictions in Criminal History	Standard Error
Cocaine					
No	125	202	23.2	4.0	0.44
Yes	64	159	20.3	3.2	0.43
Heroin					
No	53	196	26.3	4.2	0.43
Yes	13	46	31.9	1.0	0.69
Marijuana					
No	7	211	75.2	4.7	1.54
Yes	11	117	25.3	1.9	0.41

- **Those imprisoned on non-sales charges have more severe criminal histories than those imprisoned on sales offenses**
- **Pattern holds up across drug types and, more generally, across counties**

Summary

- **Support for the prosecution contention that the people imprisoned on possession charges have**
 - **more extensive criminal histories or**
 - **have cases that involve larger amounts of drugs**

Marijuana offenders likely to plea bargain

Drug	% with Plea	SE
Cocaine	0.89	0.032
Heroin	0.70	0.173
Marijuana	0.99	0.007
Multiple (with MJ)	0.85	0.059
Multiple (no MJ)	0.93	0.043
None/unk	0.30	0.193
Other	0.79	0.037

- **Plea-bargaining is generally common**
- **Marijuana offenders seem by far the most likely**
- **In addition, they tend to have smaller criminal history severity, prior convictions, and prior arrest**

Summary

- **Support** for the prosecution contention that the people imprisoned on possession charges have
 - more extensive criminal histories or
 - have cases that involve larger amounts of drugs
- **Mixed evidence** on marijuana offenders
 - Less severe criminal history
 - Frequently a sales offense

Race and Drug Type Effects on Plea-Bargaining

Race	Drug						All drugs	
	Coc.	Her.	MJ	Mult. drugs incl. MJ	Mult. drugs, no mj	None or unk.		
Black	94	--	--	--	--	--	58	87
Hispanic	82	87	--	66	--	--	74	81
White	65	67	--	99	--	--	83	81
Other	--	--	--	79	--	--	92	90
All Races	88	67	99	84	93	--	79	83

- Difficult to estimate many race × drug interactions
- Rates of plea-bargaining
 - No evidence of a race influence ($p=0.63$)
 - Influenced by drug type ($p<0.001$)

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- Plea-bargaining seems **unaffected** by race

Factors Affecting Plea-Bargaining

	Decrease in Severity	
	β	SE
Male	-0.270	0.566
Race (reference: Other)		
Hispanic	-0.008	0.888
Black	1.560	1.008
White	0.671	0.874
Age at Sentencing	-0.055*	0.027
Employed	0.473	0.509
Drug Type (reference: Other)		
Cocaine	-0.934	0.572
Heroin	-0.061	0.613
Marijuana	3.004**	1.072
Multiple drugs, incl MJ	0.035	1.035
Multiple drugs, no MJ	-0.724	1.294
Drug Sale Charge	0.410	0.623
County (reference: Alameda)		
Kern	2.863*	1.215
Los Angeles	3.738***	1.127
Riverside	3.817**	1.385
Santa Clara	-3.436**	1.228
San Diego	2.704*	1.356
Number of Charges Filed	2.917***	0.505
Number of Prior Convictions	0.048	0.052

- Plea-bargaining primarily influenced by
 - Drug type
 - County
 - Number of filed charges (enhancements are often dropped)
 - Age
- Plea-bargaining appears unaffected by
 - Sex
 - Race
 - Drug sales charges

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 - more extensive criminal histories or
 - have cases that involve larger amounts of drugs
- **Mixed evidence** on marijuana offenders
 - Less severe criminal history
 - Frequently a sales offense
- Plea-bargaining seems **unaffected** by race
- Drug type, county, and number of filed charges are the **primary factors** influencing plea-bargaining rates

Policy implications

- Plea bargaining aims to incarcerate drug offenders who are perceived to present a greater threat to the community due to more **extensive criminal involvement** and more **serious drug offenses**
- Prosecution, sentencing, and incarceration of low-level drug offenses does not appear to be particularly harsh
- Given the opacity of prosecution, these findings could **not** have been **evident** to California or Arizona voters
- Public understanding of the prosecution process will be important as other states consider similar initiatives

Low-level drug offenders are often much more than low-level offenders

Related presentations at ASC

“Impact of Prosecution Decisions in Drug Cases: An Examination of Arizona’s Mandatory Drug Treatment Law Pre and Post Implementation”

Vincent Webb and Nancy Rodriguez
Arizona State University West
Thursday 9:30am, Conv Ctr 202

“Probation Violations and Sentencing Decisions: The Imprisonment of Low-Level Drug Offenders in Arizona”

Nancy Rodriguez and Vincent J. Webb
Arizona State University West
Saturday 10:00am, Conv Ctr 104