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The National Association of Criminal Justice Planners



BULLETIN

DRUG TRAFFICKING: A SENTENCING PERSPECTIVE

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Introduction

The National Association of Criminal Justice Planners (NACJP) has been working under the auspices of the Bureau of Justice Statistics (BJS) for six years to establish a statistical series on sentencing outcomes in state felony courts. This work not only fills a statistical gap on sentencing at the state level, but also provides the opportunity to compare state and federal sentencing outcomes. Given the concern about drug abuse, this sentencing series also provides a useful perspective on how convicted drug traffickers are sentenced in felony court.

The purpose of this Bulletin is to provide descriptive data on sentences meted out to drug traffickers [1] and to compare these findings to sentencing outcomes in federal courts. The data are drawn principally from the 1986 sentencing data collected in 39 large, urban jurisdictions.[2] Thirty of these sites are among the top 75 most populous counties in the country in which the majority of drug trafficking cases are processed.[3]

DRUG CASES

Among the major offense groups outside of "other" felony listed below, drug traffickers and burglars constitute the largest percent of state felony sentences, each comprising 16%. However, there is considerable variation among the jurisdictions as to the proportionate share of sentences attributable to drug trafficking, ranging from a low of 2% in Hennepin County (MN) to a high of 31% in Baltimore City (MD). As these percentages illustrate, the drug problem is not equally distributed across the United States. The 1986 sentencing data provide an indicator of which counties are experiencing serious problems.

Table 1

Percent distribution of sentences by conviction offense

Drug Trafficking	16%
Homicide	2
Rape	3
Robbery	10
Aggravated Assault	6
Burglary	16
Larceny	15
Other Felony	33

Drug possession constitutes 9% of the 33% total of "Other" felonies. Consequently, one-quarter of all felony sentences involve drug-related offenses: trafficking with 16% and possession with 9%.

Sentencing Dispositions

Drug traffickers have a surprisingly low rate of imprisonment (30%). While the overall imprisonment rate is 39%, the rate varies substantially among the

offense categories. Not surprisingly, persons convicted of homicide experience the highest imprisonment rate (91%), while those convicted of "Other" felonies have the lowest (27%).

The low imprisonment rate for persons convicted of drug trafficking offenses probably stems from the definition of drug trafficking: "possession with intent" to sell, manufacture or distribute. Because the threshold weight for "possession with intent" varies among jurisdictions and generally involves ounces, not pounds, many of the street-level dealers convicted in state courts are small-time operators.

Although sentences to prison are low among drug traffickers, it is offset by the fact that 45% of this population are sentenced to jail. Thus, 75% of all convicted drug traffickers are incarcerated either in prison or jail.

Table 2

Percent of sentences involving incarceration, by offense

	Prison	Jail
Drug Trafficking	30%	45%
Homicide	91	5
Rape	65	19
Robbery	69	19
Aggravated Assault	41	35
Burglary	49	27
Larceny	34	32
Other Felony	27	36

Most drug traffickers sentenced to jail also receive a probation sentence. In all, 62% of convicted drug traffickers receive probation. Ironically, probation is the correctional component that receives the least attention in the debate over sanctions for convicted criminals, especially drug traffickers.

Sentencing Legislation

The type of sentence drug traffickers receive is affected by state laws governing the sentencing process. State sentencing schemes can be classified into two categories: 1) Determinate meaning that the parole board has been replaced by sentencing guidelines; and 2) Indeterminate meaning that there is a parole board. Determinate sentencing jurisdictions, such as California, Minnesota and Washington rely much more heavily on jail as a sentencing response for drug traffickers (59%) than indeterminate jurisdictions (26%), such as Maryland, New York and Texas.

Prison and Jail Terms

The average prison and jail terms for drug traffickers are displayed in Table 3. Determinate jurisdiction prison terms are substantially lower than those in indeterminate jurisdictions. However, in the latter, the longer terms do not necessarily translate into longer prison stays since these terms are affected by such legislative provisions as good

time, earned time and discretionary release authority extended to parole boards. Determinate jurisdictions have less generous good time and earned time provisions, and without parole boards' discretionary authority, there is minimal flexibility in effecting release before the judicially imposed term is served.

Table 3

Average prison and jail terms imposed on drug traffickers

	Determinate	Indeterminate
Prison	41 months	79 months
Jail	6 months	9 months

In the 39 jurisdictions surveyed, the average prison term imposed for drug traffickers is 60 months. Offenders in determinate sentencing jurisdictions receive an average prison term of 41 months; in indeterminate jurisdictions, the average is 79 months.

A similar phenomenon occurs for jail terms. Offenders sentenced in indeterminate jurisdictions receive terms one and a half times as long as offenders' terms in determinate jurisdictions.

Table 4

Percent of drug traffickers sent to prison and jail in selected states

	Prison	Jail
California	22%	69%
Texas	60	1

As displayed in Table 4, in California, a determinate sentencing state, judges send only 22% of their drug traffickers to prison; in Texas, an indeterminate sentencing state, judges send 60% to prison. Is Texas "tougher" than California? If one were to limit the analysis to the use of prison, the apparent answer would be "Yes". However, when jail sentences are included, the picture changes radically. Better than 9 out of 10 drug traffickers are incarcerated in California in contrast to only 6 out of 10 in Texas. These statistics raise, once again, the perennial sentencing debate of certainty versus severity. While there is no clear cut answer as to which sentencing response is best, it is evident from the data that the certainty of incarceration is much higher in California than in Texas, but with a shorter term of confinement.

Life Sentences

Life sentences for drug traffickers are relatively rare, but they do occur with some frequency in New York State. The reasons are twofold: 1) The 1971 "Rockefeller Drug Law" and 2) the work of a special narcotics court whose main purpose is to try major drug trafficking cases. Three-quarters of all life sentences for drug trafficking come from New York

City, with the rest attributable to the other New York counties.

Life sentences for drug cases are quite different from those imposed for other offenses. For homicide convictions on the other hand, the minimum is -- 251 months. The minimum term to be served in prison associated with a life term for a drug trafficking conviction is 56 months.

Type of Drug

Information on the type of drug involved in drug trafficking offenses is limited to whether the respective state penal code had different citations for each drug type. In only 39% of the cases could the distinction be made between marijuana and non-marijuana drug trafficking cases.

The sentencing outcomes differ for these two categories. Just 15% of offenders convicted of trafficking in marijuana go to prison compared to 60% who go to jail. Offenders convicted of trafficking in non-marijuana drugs, on the other hand, are much more likely to be sent to prison (41%) although jail also remains a major sanction (42%).

Changes Over Time

The ability to examine sentencing changes over time for drug traffickers is severely limited. Because the initial NACJP sentencing studies involved a smaller number of jurisdictions than those presently involved, little can be done to examine changes in the volume of cases associated with drug trafficking. However, because the same methodology was used in each of the three sentencing studies conducted to date (1983, 1985 and 1986), rates of incarceration can be examined. Table 5 shows that there has, indeed, been a change in sentencing outcomes for drug traffickers.

Table 5

Percent of drug traffickers incarcerated from 1983 to 1986

	Prison	Jail
1983	23%	41%
1985	27	40
1986	30	45

Although a minority of drug traffickers serve time in prison, the rate has steadily increased between 1983 and 1986, growing from 23% to 30%. This increase translates into a 30% boost in the use of prison for drug traffickers. Sentences to jail have also risen, up from 41% to 45%. These rates indicate that sentencing practices have changed, reflecting the concern by the public for the myriad problems that arise from drug abuse.

Case Management Considerations

The manner in which an offender is convicted can

have a significant impact on the type and duration of sentence received. Individuals found guilty by trial have a higher rate of imprisonment than do those who enter a guilty plea. Drug traffickers enter guilty pleas slightly more than the overall average of all convicted offenders, 92% versus 90%.

Of those who plead guilty, only 28% are sentenced to prison; of those convicted by a jury, 56% go to prison. Similar differences emerge with regard to the average prison term imposed. Drug traffickers who plead guilty receive an average term of 55 months in contrast to the nearly three times longer term (155 months) imposed on those convicted by a jury.

Rates of Conviction

Drug trafficking is second only to homicide with regard to conviction rate (41% versus 56%). This rate may be somewhat understated in that it is based on the number of drug trafficking arrests and the number of felony drug trafficking convictions. Persons convicted on other charges, including misdemeanors, are not included in the calculation.

Table 6

Conviction rate for selected offenses

Drug Trafficking	41%
Homicide	56
Robbery	38
Aggravated assault	13
Burglary	36

Comparisons to Federal Efforts

Drug trafficking is a concurrent jurisdiction offense. In other words, it can just as easily be prosecuted in a federal court as in a state court. A comparison of sentencing outcomes for drug traffickers between state and federal courts is useful for understanding how workload is divided between the two and how that workload gets processed.

Federal courts handled only 13% of all drug trafficking cases processed in 1986/87 (11,200 versus 76,400 at the state court level). The federal share is low despite the tremendous increase (142%) in drug trafficking convictions that it has experienced since 1981. Although there is insufficient data to quantify the workload increase at the state level, it is safe to assume that a similarly striking increase has occurred there as well.

The conviction rates for persons arrested on drug trafficking charges are similar in federal and state courts. In federal court, the conviction rate is 42%, in state court 41%.

Sentencing outcomes, on the other hand, are different for the two court systems. Drug traffickers sentenced in federal court are much more likely to go to prison (85%) than those sentenced

at the state court level (37%).

To understand the divergence in imprisonment rates between the court systems, the following points must be considered. First, the federal courts do not distinguish between jail and prison. Consequently, the disparity between federal and local sentencing outcomes narrows when the 27% who receive jail sentences in state courts are added in the combined prison/jail state court incarceration rate rises to 64%. Second, there is a widespread perception that the federal courts process the more serious cases. Data are not readily available to quantify the seriousness of drug trafficking offenses along such dimensions as the weight, purity and type of drug involved. However, if they are more serious cases, then the higher imprisonment rate in the federal system would be an expected outcome.

As for those drug traffickers who go to prison, the average prison terms imposed in the two court systems are identical. On average, they receive a prison term of 69 months.

Conclusion

These descriptive data provide a useful context for understanding how the justice system is currently responding to drug traffickers. These data also provide a useful bench mark for examining changes that may occur in the handling of these cases over time.

[1] Drug traffickers typically are white males between the ages of 21 and 30. The average age of a convicted drug trafficker is 29; 88% are men and 58% are white.

[2] Langan, P.A. (1989). *Felony sentences in state courts, 1989*. Washington, DC: Bureau of Justice Statistics and Cuniff, M. (1988). *The scales of justice: Sentencing outcomes in 39 courts, 1986*. Washington, D.C: National Association of Criminal Justice Planners.

[3] As reported in the BJS Bulletin, *Felony Sentences in State Courts, 1986*, more than half of the drug trafficking cases (52%) were processed through the 75 largest counties in the U.S. Fifty-four of the 75 largest counties were representatively sampled for that study. The NACJP collected data on 30 of those counties while the Bureau of the Census collected data from the other 24. The other nine jurisdictions in the NACJP complement were all fairly large jurisdictions, the smallest being Kane County (IL) whose 1986 population was 305,800. While the data shown here are not derived from all of the large jurisdictions in the study, it is nonetheless representative of what occurs in urban jurisdictions.