

KINGPINS OR MULES: AN ANALYSIS OF DRUG OFFENDERS INCARCERATED IN FEDERAL AND STATE PRISONS

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Research Summary:

Drug policy reformers and defenders contest the extent to which low-level drug offenders are being sent to prison and for how long. Using data from the Survey of Inmates in Federal and State Correctional Facilities, 1997, (BJS, 2000), we assess the seriousness of incarcerated drug offenders along dimensions of dangerousness, culpability, and harm—specifically, functional role and drug group participation, type and amount of drugs, firearms involvement, and criminal conviction and arrest history. We find that only about 1.6% of federal and 5.7% of state inmates can be described as “unambiguously low-level.” Alternatively, not many are “kingpins.” Rather, most fall into a middle spectrum representing different degrees of seriousness that depend on what factors are emphasized.

Policy Implications:

Our findings dampen hopes of dramatically reducing prison populations by getting out of prison those who are unambiguously low-level drug offenders. They simply do not represent the majority of incarcerated drug offenders. In particular, most played some role in distribution, so eliminating prison terms for users (decriminalization) would not have affected many now in prison. Indeed, if decriminalization increased demand, it could plausibly increase prison populations by increasing the number of suppliers still subject to imprisonment. On the other hand, “drug courier exceptions” to sentencing laws that apply to minor role offenders possessing large quantities could have a greater prison reduction impact.

KEYWORDS: Incarceration, Drug Policy, Inmate Surveys, Low-Level Drug Offenders, Culpability

The preponderance of drug offenders incarcerated under mandatory sentencing laws are nonviolent men and women convicted of low-level drug offenses . . . most of these offenders are guilty of minor crimes for

which they should be held accountable—but for whom prison is a misguided sentence. — Human Rights Watch (1999)

The idea that prisons are teeming with petty, first-time drug offenders and persons convicted of mere possession is simply false . . . Most imprisoned drug traffickers are hardly low-level dealers. — John DiIulio, Jr. (1996)

INTRODUCTION

In 2002, the United States surpassed 2 million inmates incarcerated in federal and state prisons and local jails following more than two decades of unprecedented expansion (Harrison and Karberg, 2003). The magnitude of this prison growth has been well documented (Austin and Irwin, 2001; Blumstein, 1995). Incarceration of drug offenders has been a major factor in this rapid rise, a consequence of changing market activities and criminal justice policies that led to significant increases in the number of arrests, convictions, and prison terms for drug offenses (Blumstein and Beck, 1999; Greenberg and West, 2001; MacKenzie, 2001). What remains less clear, however, is the extent to which low-level drug offenders are being sent to prison and for how long. One view, held by critics of current policies, maintains that current drug sentencing laws, primarily mandatory minimums, have not reduced substance abuse or targeted high- to mid-level drug traffickers for longer prison terms. Instead, critics argue, the prison system is (being) filled with easily replaceable low-level sellers and users who might be more deserving of alternative sanctions or substance abuse treatment but who often receive similar or more severe sanctions than more culpable high-level drug offenders. An alternative view associated with defenders of current policies maintains that claims of over-imprisonment are exaggerated due to flawed analyses and definitions of “low-level” that are too inclusive. The reality, they contend, is that the majority of incarcerated drug offenders are high-level, repeat, and/or violent offenders.

These opposing claims are undergirded not only by conflicting interpretations of existing data, but also more fundamentally by different views on what constitutes the just and effective sanctioning of drug offenders. Defenders of current policies place primacy on the types and quantities of drugs possessed, citing long sentences’ benefits for deterrence and compelling cooperation with prosecutors (Hutchinson, 1999). Critics point to the sanctioning of drug offenders with minor roles (Froyd, 2000; Lutjen, 1996) and the negligible incapacitation effects of incarcerating easily replaceable, low-level drug offenders (Blumstein, 1998; Cohen, 1992).

Given budgetary constraints and prison crowding, many states are reconsidering the value of incarcerating drug offenders and examining

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alternative sentencing and community-based options (Baker, 2003; King and Mauer, 2002a), so it is timely to assess “whether we are incarcerating the right people, and for the right lengths of time” (Hofer and Semisch, 1999:18). This paper seeks to provide an objective assessment of the number, characteristics, and sanctioning severity of drug offenders incarcerated in federal and state prisons, with particular attention given to nonviolent, low-level offenders, based on a detailed analysis of prisoner self-report data collected by the *Survey of Inmates in Federal and State Correctional Facilities, 1997* (BJS, 2000). Perhaps inevitably, the answer to the question “How many low-level drug offenders are incarcerated?” depends on one’s definition of “low-level.” So, a second objective is to help the reader understand what types of drug offenders are and are not locked up in large numbers.

Leowy (1988) argues that determinations of criminal liability or offender “seriousness” should involve the balanced assessment of three juridical factors: dangerousness, culpability, and harm. The self-reported inmate survey data provide information relevant to all three. For example, dangerousness is assessed here by a violent criminal record and/or firearms involvement. Culpability relates to the offender’s functional role in the offense, with sophisticated or high-level roles connoting greater criminal liability, and given the prominence of repeat-offender laws, to prior convictions. Harm is tied to the type and quantity of the drug involved. Quantity can also indicate role; people possessing very large quantities probably played some role in distribution, even if it was only as a courier. The challenge of producing a just and effective sanctioning system for drug offenders is highlighted by the tensions that exist among these three factors. An offender can be “low level” with respect to one or two but “high level” with respect to the last, so estimates of the number of low-level offenders can depend greatly on which factor(s) are emphasized and how they are combined. For instance, offenders who possessed large drug quantities include both leaders of importing organizations (a high-level role) and couriers (a low-level role), and leaders or retail distribution organizations play a high-level role, but at any given time handle smaller quantities. Obviously, there are more incarcerated offenders who had key roles or large quantities than who had key roles and large quantities. Thus, this paper examines elements of all three juridical factors and their interactions so the seriousness of those incarcerated can be judged from multiple perspectives. Policy makers will then be in a better position to evaluate the consequences of current policy and, ultimately, to make more informed decisions concerning how if at all those policies could be made more just and effective.

LITERATURE REVIEW

What does the empirical literature say about the number and characteristics of drug offenders sentenced to or now incarcerated in prison? Although many publications provide estimates of individual drug offender characteristics (e.g., nonviolent, first-time, or simple possession offenders), few studies have attempted a comprehensive assessment of drug offender attributes across the nexus of dangerousness, culpability, and harm. Those that have leave us with mixed findings. For example, the Department of Justice (DOJ, 1994) examined drug offender liability independently of drug quantity by defining low-level drug offenders as first-time, nonviolent offenders with no pending charges, no indication of being a public safety threat (e.g., no firearms use or sexual predation), and no sophisticated role in a criminal organization. Applying these criteria against Bureau of Prison (BOP) automated data, the DOJ estimates that there were 16,316 low-level drug offenders incarcerated in federal prison in 1993, or about 36% of all drug offenders. Excluding also offenders with even a single criminal history point or any prior arrests cuts the estimate to 9,673, or 21% of all drug offenders.

Willard and Coffin (1995) argue that even the lower DOJ (1994) estimate may be overstated because complete criminal history information was not available for noncitizen and juvenile offenders. Indeed, when DOJ analysts examined a subsample of the low-level offenders in greater detail, they found that 34% had mid- to high-level roles in their offense, 9% had previously been arrested for a violent crime, and 1% had a weapons-related charge (Roth, 1994). In sum, many “low-level” offenders had high-level characteristics that were not readily discernable from the initial BOP automated data screen.

Vincent and Hofer (1994) analyze 1992 United States Sentencing Commission (USSC) data and estimate that 50% of federal drug offenders sentenced that year were low level—defined as having one criminal history point or less, no weapons involvement, and no organizational or supervisory role in their offense. After restricting the criteria further to offenders with no criminal history points, 41% were still characterized as low level. Using more recent sentencing data, the United States Sentencing Commission (2002) compares powder and crack cocaine offenders sentenced to federal prison in 1995 and 2000. Although the report does not provide a specific estimate of the number of low-level cocaine offenders, it reveals that as the number of cocaine offenders sentenced to federal prison increased throughout the latter 1990s, their seriousness in terms of functional role, drug quantity, and weapons involvement decreased. The report noted the disproportionate impact of sentencing laws on crack offenders in particular: “[c]rack cocaine mandatory minimum penalties currently apply

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most often to offenders who perform low-level trafficking functions, wield little decision-making authority, and have limited responsibility” (USSC, 2002:99–100).

Studies at the state level have assessed drug offender characteristics across at most two juridical factors. For example, Males et al. (2002) found that about one-quarter of California drug offenders sentenced to prison in 1999 were small quantity, nonviolent offenders. Brownsberger (1997) examined the drug weight and criminal history characteristics of Massachusetts cocaine/heroin offenders sentenced in 1995–1996 and found that high-quantity offenders had less serious criminal histories than low-quantity offenders. King and Mauer (2002b) analyze data from the *Survey of Inmates in State Correctional Facilities, 1997* to estimate the number of low-level drug offenders in state prisons potentially eligible for diversion. Their results indicate that 124,885 nonviolent, minor role drug offenders were incarcerated in state prisons in 1997, or about 58% of all state drug inmates. As we show below, however, many of these “eligible” offenders were involved with substantial drug quantities and/or firearms.

Not all analyses have found our prisons overflowing with low-level drug offenders. DiIulio and Mitchell (1996) report that among an admittedly small subsample of 12 drug offending inmates imprisoned in Wisconsin in 1995, none were incarcerated for simple possession or drug use and none could be considered low-level due to firearms involvement or previous violent offenses.

Turning to the issue of sanctioning severity, we know that in both federal and state prisons, those convicted of drug trafficking receive much longer sentences than those convicted of drug possession (Pastore and Maguire, 2002), drug offenders in possession of a firearm serve longer sentences (Harlow, 2001), and marijuana offenders tend to be sanctioned less severely than other drug offenders (Scalia, 2001). However, few studies compare the sanctioning severity of low- and high-level drug offenders in a comprehensive manner. For example, the DOJ (1994) compared sentencing outcomes only for pre-guideline (1985) and post-guideline (1992) low-level drug offenders. The results indicate that federal sentencing guidelines increased the probability that convicted low-level drug offenders would be sent to prison and that the average sentence length imposed more than doubled over this time. However, the DOJ does not include similar information on higher level offenders.

Meierhoefer (1992a, 1992b) conducts a more thorough analysis of federal sentencing trends for all marijuana, cocaine, and opiate trafficking offenders sentenced between 1984 and 1990. Her findings indicate that offenders with drugs other than marijuana, larger drug quantities, weapons, a prior felony record, and a higher level role received longer

sentences on average. Furthermore, the average sentence for similarly situated offenders subject to mandatory minimum penalties almost doubled between 1984 and 1990 (from 57 to 102 months), whereas sentences for drug offenders not subject to mandatory sentencing rose more modestly (from 31 to 40 months). The USSC (2002) similarly reveals that in 2000 both federal powder and crack cocaine offenders with high-level roles generally received longer sentences than offenders with less culpable roles, and that exposure to mandatory sentencing occurred less often for offenders with minor roles. With respect to sentencing disparities, crack offenders received substantially longer sentences on average than powder cocaine offenders, leading the Sentencing Commission to conclude that “the current penalty structure’s almost exclusive reliance on quantity-based penalties to account for the entirety of the harms examined . . . fails to provide adequate sentencing proportionality” (p. 101).

In summary, the more serious offenders receive longer sentences on average, but over time, sentences have become longer overall and prison sanctions are being applied to a wider range of drug offenses. The literature provides a mixed assessment regarding the number of imprisoned low-level drug offenders—differences in outcome that can be attributed to the definitional criteria applied, the data sources used (including whether prison stock or sentencing flow data were used), and the specific offender characteristics, time periods, and jurisdictions examined. On the basis of the available evidence, then, one would have to agree with DiIulio’s (1996) assertion that “some small but as yet undetermined fraction of imprisoned state and federal drug law violators are neither major traffickers nor persons who have committed lots of serious nondrug felonies [and that at] present, it is impossible to know how many low-level ‘drug-only’ offenders . . . are behind bars in America today” (p. 19). One of this paper’s primary objectives is to provide such an estimate.

DATA AND MEASURES

DATA

The *Survey of Inmates in State and Federal Correctional Facilities, 1997* (BJS, 2000) is a nationally representative survey of federal and state inmates conducted regularly by the Bureau of Justice Statistics (BJS). It collects self-report data on a wide array of offender characteristics, including current offense and sentencing information, criminal history, socioeconomic status, incident characteristics, alcohol and drug use and treatment history, health status, and conditions of confinement. The 1997 survey is the most current available in a series that has been fielded every 5–6 years since 1974 (1991 for federal inmates). Between June and October 1997, 4,041 federal and 14,285 state inmates were interviewed using computer-

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assisted personal interviewing methods. Inmates were selected according to a two-stage stratified sampling plan, first selecting prisons and then inmates from a universe of 1,409 state and 127 federal prisons. Total non-response rates were 7.8% and 9.8% at the state and federal levels, respectively.

We focus on the 4,787 offenders with a controlling drug offense plus 205 additional inmates whose conduct was primarily drug-related but who reported being convicted under nondrug statutes, typically drug-related money laundering, conspiracy, participation in a criminal enterprise, or weapons possession.¹ For example, an inmate was convicted of a single money-laundering offense, which BJS codes as a public order offense. However, incident information reveals that the offender was convicted of laundering money for 10 Kg of cocaine. A series of recodes was performed to reclassify such “nondrug” offenders as drug offenders.² This resulted in 169 federal and 36 state inmates being reclassified as drug offenders, for a total drug offender subsample of 4,992.³ Note that this subsample does not include murderers, robbers, burglars, and other serious offenders who were also convicted of a less serious secondary drug offense. Results were similar with and without the 205 recoded cases; findings are reported here only for the complete subsample of sentenced drug offenders (i.e., including the 205 additional cases).

MEASURES

The *Inmate Surveys* collect information on a number of factors relevant to assessing offender seriousness. For our analyses, dangerousness is measured by firearms involvement and, with respect to violence, criminal history. Specifically, firearms involvement refers to whether the offender reports ever using a gun during a crime or receiving a firearms sentence enhancement. Violent criminal history is a measure of both prior and concurrent violent convictions, that is, violent criminal conduct occurring before and/or in conjunction with the current drug offense. Offender culpability is measured both by the offender’s role in the immediate offense and the nature of drug group participation in the year prior to arrest. Role

1. Numerical information presented in this section (only) refers to unweighted sample data.

2. In a personal communication with the author on February 4, 2003, BJS statistician Caroline Wolff Harlow supported the rationale for recoding these cases.

3. BJS asked a different series of offense-specific questions for violent, property, and drug offenders. Most (82%) of the 205 recoded cases were asked the drug-related questions; only 37 were not. Additionally, 46 offenders from the initial BJS drug offender subsample were not asked the drug-related questions, so a total of 83 cases were missing drug-specific data. There was no systematic reason discerned for these missing data patterns.

in the offense captures ten levels of drug market conduct, ranging from importer to user/possessor. Drug group participation measures whether there was involvement in organized distribution and, if so, the nature of that involvement ranging from leader/organizer to minor participant. One aspect of culpability is the offender's prior and concurrent criminal conviction and arrest record. Thus, we assess whether the inmates are first-time or repeat drug offenders and whether they have a violent or other nondrug criminal background. We also examine the number of previous arrests. Harm potential is reflected in the type and amount of drugs involved. Drug categories examined include heroin or other opiates, (meth)amphetamine, crack cocaine, powder cocaine, marijuana, and all other drugs. We use a measure of "standard retail units" to code drug amount equivalencies across the different types of drugs and quantity metrics collected by the *Inmate Surveys*. The appendix provides details on variable construction and other coding decisions.

FINDINGS

We report three types of findings. First, we estimate the number of incarcerated drug offenders by individual aspects of dangerousness, culpability, and harm. Second, these factors are combined to generate a series of estimates using various definitions of the number of "low-level" drug offenders incarcerated in 1997. Finally, we examine how sanctioning severity varies across these dimensions.

INDEPENDENT DRUG OFFENDER CHARACTERISTICS

CONVICTION OFFENSE AND ROLE

We estimate that in 1997, there were 57,076 federal and 217,248 state drug offenders incarcerated in the United States, representing 65% of federal and 21% of state inmates. Most federal (86%) and state (71%) drug offenders were incarcerated for drug distribution, whether trafficking or possession with intent to sell. An additional 5% of federal and 27% of state drug offenders were incarcerated for simple possession, with the remainder incarcerated for some "other drug offense" (e.g., conspiracy to traffic drugs or drug paraphernalia violations). These possession figures are substantially smaller than those cited by the *1998 Sourcebook of Criminal Justice Statistics* based on the same survey (18% and 43%, respectively, cf. Table 6.56) in small part because of the 205 recodes but predominantly because the *Sourcebook* lumps possession with intent to distribute together with simple possession.

Tables 1a and 1b cross-tabulate conviction offense by self-reported

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role,⁴ from which several points can be drawn. First, roles are clearly distributed differently across federal and state prisons, with federal drug offenders involved in a greater proportion of the high-level roles of importer, manufacturer/grower, money launderer, wholesale dealer, or body guard/debt collector (38.9% vs. 23.9%) and state offenders in a greater proportion of the minor roles of retail seller, peripheral role, or user/possessor (62.4% vs. 33.3%). Second, self-reported functional roles map imperfectly onto the conviction offense. For instance, 38.8% of federal and 21.7% of state simple possession offenders self-reported functional drug distribution roles (e.g., importing, manufacturing, retail selling). Conversely, 1.5% of federal and 8.5% of state inmates convicted of drug trafficking self-report being a user/possessor of no more than ten retail units. Third, about half of all drug offenders were both convicted of either drug trafficking or possession with intent to sell and self-reported a participatory role in drug distribution; the majority of them appear to be retail sellers. For three out of ten, self-report did not match conviction charge, including those who acknowledged a drug distribution role but were not convicted of a distribution offense (7%) and those who denied a drug distribution role but were convicted of a distribution offense (23%). That leaves about one in five drug inmates who were neither convicted of a distribution offense nor self-reported a distribution role. However, about half of them reported possession of more than ten retail drug units. The majority (97%) of the one-in-ten drug prisoners who possessed smaller quantities, reported no distribution role, and were convicted of simple possession resided in state prisons.⁵

Recall that the survey also asks respondents whether they were part of a drug organization and, if so, what role they played in that organization. The most striking finding in this regard is that the majority of incarcerated federal (85.7%) and state (91.9%) drug offenders report that they were not part of an organized drug group. Organizational affiliation was more common for those reporting higher level roles. It was least common (< 2% of respondents) for user/possessors in state prisons and for those with an “other functional role” in both state and federal prisons.

Finally, note that the role of user is not mutually exclusive of the role of

4. All data in the inmate survey are self-reported, even those that could be verified through official sources, such as age and conviction offense. However, reliability may be lower for certain questions, such as those pertaining to the respondents' role in the offense and firearm use, whose true answers are less likely to be known to any official. To emphasize the possibility that such data are more susceptible to underreporting, we often refer to “self-reported” rates. Strictly speaking, however, all rates are based on self-report.

5. Note, for some of this final group, the simple possession conviction was the result of a plea bargain.

TABLE 1(A). CONVICTION OFFENSE BY FUNCTIONAL ROLE AT THE TIME OF ARREST, FEDERAL INMATES

Role in the Offense	Conviction Offense				Group Total
	Simple Possession	Possession with Intent	Trafficking	Other Drug	
Total	100%	100%	100%	100%	100%
Importer	18.9	9.5	10.9	6.0	10.7
Manufacturer/Grower	3.4	1.4	5.9	4.1	5.0
Money Launderer	0.3	0.2	3.7	1.8	2.9
Wholesale Dealer	3.1	5.0	15.7	19.3	14.0
Bodyguard/Debt Collector	3.3	6.2	6.4	6.4	6.3
Retail Seller	8.2	29.7	17.5	9.1	17.9
Peripheral Role	1.6	1.6	2.3	2.1	2.2
User/Possessor (>10 Units)	12.4	19.1	10.4	7.7	11.3
User/Possessor (#10 Units)	11.9	2.0	1.5	0.0	1.9
Other Functional Role	36.9	25.3	25.7	43.5	27.7
No. Inmates	2,700	7,026	41,064	4,712	55,503

Percentages may not add to 100% due to rounding.

distributor. Combining data for federal and state inmates, retail sellers (37%) and peripheral role offenders (35%) were particularly likely to have committed their offense for money to buy drugs or to obtain drugs

TABLE 1(B). CONVICTION OFFENSE BY FUNCTIONAL ROLE AT THE TIME OF ARREST, STATE INMATES

Role in the Offense	Conviction Offense				Group Total
	Simple Possession	Possession with Intent	Trafficking	Other Drug	
Total	100%	100%	100%	100%	100%
Importer	1.4	4.3	4.7	2.8	3.7
Manufacturer/Grower	1.1	4.8	4.3	3.3	3.5
Money Launderer	1.6	0.9	1.3	1.6	1.3
Wholesale Dealer	4.1	12.5	13.0	3.3	10.3
Bodyguard/Debt Collector	2.0	6.3	6.4	7.9	5.2
Retail Seller	10.9	37.0	39.3	15.2	30.7
Peripheral Role	0.8	1.6	2.7	1.6	2.0
User/Possessor (>10 Units)	21.3	11.2	7.1	20.7	11.9
User/Possessor (#10 Units)	40.2	10.9	8.5	22.0	17.8
Other Functional Role	16.8	10.5	12.8	21.6	13.7
No. Inmates	57,373	33,607	116,495	5,308	212,783

Percentages may not add to 100% due to rounding.

for their personal use. Conversely, other functional role offenders (7%) and bodyguard/debt collectors (13%) were the least likely. Likewise,

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among those (relatively few) who reported drug group participation in the year prior to arrest, minor-level participants (36%) and sellers (34%) were the most likely and leader/organizers (25%) and middle men (27%) were the least likely to have committed their offense to buy drugs. Thus, it appears that lower level participants' involvement in the drug trade is more likely to be motivated by a desire to obtain drugs for personal use.

That is not to say that only lower level participants were frequent users. Concerning daily or near-daily use of drugs in the month prior to arrest, manufacturer/growers (67%) along with small quantity user/possessors (65%) were the most likely to use drugs this frequently and other functional role offenders (21%) and importers (38%) were the least likely. Among drug group participants, leader/organizers (68%) and middle men (65%) were the most likely and underlings (46%) and minor participants (56%) were the least likely to use drugs daily in the month before arrest.

DRUG AMOUNT

Not surprisingly, smaller reported drug amounts are strongly associated both with conviction for simple possession and being a state prisoner. Table 2 shows mean and quartile drug amounts stratified by role for state and federal inmates. There are dramatic differences across federal and state inmates. The mean quantity is over 20 times greater for federal inmates, and at each quartile, the ratio is more like 200:1. There are also differences by role, with importers having the greatest and retail sellers the smallest amounts. Presumably user/possessors report more, on average, than retailers because they include courier/mule/handlers. The same may be true of some of those with "other functional roles."

Plots of the cumulative distribution functions of quantity possessed by conviction charge (not shown) indicate that at both the state and federal level, the curves for possession with intent and for trafficking offenses essentially overlap, whereas the curve for simple possession offenders is to the left, indicating lower quantities. However, both the cumulative distributions and the ratios of means to medians in Table 2 indicate that the distribution of quantities has a long tail. For every self-reported role in state and even more so in federal prison, some inmates report having quantities far in excess of the median for their category. Hence, neither a simple possession conviction nor a self-reported using/possessing role necessarily connotes small quantity drug offenders. Thus, when analysts using the *Inmate Survey* refer to state-level retail sellers and user/possessors categorically as "drug offenders not engaged in high level activity" (King and Mauer, 2002b:8), that pertains to their role but not necessarily in every case to drug quantity or market level.

TABLE 2. MEAN AND QUARTILE DISTRIBUTION OF DRUG AMOUNT* BY ROLE IN THE OFFENSE, FEDERAL, AND STATE INMATES

Role in the Offense	Federal				State			
	Mean	1Q	Med.	3Q	Mean	1Q	Med.	3Q
Importer	254,238	2,100	5,760	60,000	45,744	21	320	1,888
Manufacturer/ Grower	44,287	369	1,361	8,000	361	5	30	170
Money Launderer	161,044	1,360	10,000	34,568	376	4	28	98
Wholesale Dealer	63,789	180	2,800	11,686	3,957	4	28	202
Bodyguard/Debt Collector	31,216	510	3,066	10,000	18,550	8	64	510
Retail Seller	10,549	40	186	2,000	159	1	4	28
Peripheral Role	93,421	640	2,500	9,072	383	1	2	12
User/Possessor	39,479	70	1,000	8,000	860	>1	2	14
Other Functional Role	189,765	284	3,800	24,000	10,562	1	8	200
Total	105,860	180	2,000	12,000	4,923	1	6	58

* Drug amount refers to one “standard retail amount.” See Appendix for more details.

PRIMARY DRUG INVOLVED

The majority of federal (63%) and state (69%) drug offenders are incarcerated for crack or powder cocaine offenses, with powder cocaine more prevalent in federal prisons (61% of all cocaine offenders) and crack cocaine in state prisons (57% of all cocaine offenders). Roughly one in ten are incarcerated for (meth)amphetamines (10% and 9%, respectively) and for heroin or other opiates (9% and 11%). Marijuana accounted for more federal than state inmates (15% vs. 8%). Role-drug interactions are as expected. Importers, especially federal importers, were most often imprisoned for internationally trafficked drugs such as powder cocaine, marijuana, and heroin. Manufacturer/growers were involved most commonly with drugs produced domestically, including methamphetamine, marijuana, and crack cocaine. Money launderers were disproportionately involved with crack or powder cocaine. Retail sellers and small amount user/possessors were more likely to be involved with crack cocaine, indicative of the smaller typical drug amounts possessed by crack offenders and the heavy street-level enforcement and harsher sanctioning targeted to crack offenders.

One might expect that marijuana would be under-represented among user/possessors with ten or fewer retail units if one needed to be involved with drug distribution or a “hard” drug to be imprisoned, but that is not the case. In state prisons marijuana accounts for the same share of low-

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quantity user/possessors as of all inmates (8%) and in federal prisons the share is twice as high (30% vs. 15%).

FIREARMS INVOLVEMENT

Only about one-quarter of federal and one-fifth of state drug offenders reported firearms involvement, defined as receiving a firearms sentence enhancement or ever being armed during a crime. Proportionally, more state offenders reported previous use of a firearm during a crime (17.9% vs. 13.6%) and more federal offenders acknowledged receiving a sentence enhancement for firearms (15.9% vs. 4.0%). Thus, although firearms activity plays a nontrivial role in characterizing drug offender dangerousness, most offenders do not self-report a connection to firearms.

Table 3 shows how firearms involvement varies across functional role. Offenders involved in drug distribution roles report higher rates of firearms involvement than use/possession offenders. For example, manufacturer/growers had the highest rates of firearms activity, and as might be expected, bodyguard/debt collectors also reported relatively high rates. However, the few small-amount user/possessors incarcerated in federal prison reported a relatively high rate of firearms involvement (29.8%), consistent with a notion that such offenders are less likely to provoke incarceration in federal prison unless they are particularly dangerous. Furthermore, even among low-quantity user/possessors in state prison, 10.6% reported ever being armed during a crime. That is lower, but still more than half the corresponding figures for retail sellers (16.4% state, 18.8% federal). So, one should not conclude that those incarcerated for drug use/possession are necessarily nonviolent or, conversely, that incarcerated drug sellers are violent. If these self-report data can be trusted, and firearms involvement may be one of the more sensitive question topics in the *Inmate Survey*, they indicate that the majority of incarcerated drug sellers have never been armed during a crime, which presumably includes their selling activity.

CRIMINAL CONVICTION AND ARREST HISTORY

Most drug offenders do not have violent criminal records. Indeed, as shown in Tables 4a and 4b, only 12% of federal and 24% of state drug offenders were ever convicted of a violent offense, whether as an adult or a juvenile. Overall, federal drug offenders also have less extensive criminal records than do state drug offenders. For example, 52% of federal drug offenders have never been convicted of a nondrug offense and 36% are first-time drug offenders compared with 35% and 21% of state drug offenders, respectively. The highest rates of violent offending occur among manufacturer/growers, bodyguard/debt collectors, and retail sellers for

TABLE 3. FIREARM INVOLVEMENT BY ROLE IN THE OFFENSE AT THE TIME OF ARREST, FEDERAL AND STATE INMATES

Role in the Offense	Federal			State		
	Firearm Sentence Enhancement	Ever Armed During Crime	Union of Both Measures	Firearm Sentence Enhancement	Ever Armed During Crime	Union of Both Measures
Importer	9.1	8.7	12.0	6.3	35.2	37.4
Manufacturer/ Grower	24.1	21.9	39.2	9.8	52.3	54.1
Money Launderer	13.3	12.1	21.5	3.1	33.3	36.0
Wholesale Dealer	18.4	21.1	31.2	5.4	24.7	26.7
Bodyguard/Debt Collector	24.6	22.0	37.4	2.5	30.2	31.4
Retail Seller	19.0	18.8	29.9	3.7	16.4	17.8
Peripheral Role	10.6	20.4	21.4	8.1	17.0	21.2
User/Possessor (>10 Units)	16.3	9.8	21.3	3.6	12.5	15.0
User/Possessor (#10 Units)	18.1	11.7	29.8	2.8	10.6	11.9
Other Functional Role	12.2	6.4	17.1	3.9	11.5	12.9
Total Percent	15.9	13.6	24.1	4.0	17.9	19.6
Total Number	8,780	7,511	13,385	8,572	38,056	41,791

federal drug offenders and manufacturer/growers, money launderers, and peripheral role offenders for state drug offenders.

On the other hand, arrest history data (not shown) indicate that most incarcerated drug offenders had some prior criminal justice involvement. Indeed, 70% of federal and 86% of state drug offenders had at least one prior arrest, and 37% of federal and 58% of state offenders reported three or more prior arrests. Importers were least likely to have a prior arrest; importing drugs may be essentially a “one-strike and you’re out” offense. Those reporting “other functional role” were second only to importers in terms of having no prior arrests and convictions. Perhaps they include courier/mules carrying quantities that make simple transport essentially a one strike offense.

BRINGING IT TOGETHER: HOW MANY LOW-LEVEL DRUG OFFENDERS?

We estimate the number of incarcerated “low-level” drug offenders both without and with consideration of the quantity possessed. The former facilitates comparison with some other estimates in the literature; the latter includes an additional, relevant, juridical factor.

Figure 1 partitions drug offenders using successively restrictive criteria to form seven low-level drug offender subgroups. As the figure’s legend

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TABLE 4(A). PRIMARY ROLE IN THE OFFENSE AT TIME OF ARREST BY OFFENSE CONVICTION RECORD, FEDERAL INMATES

Role in the Offense	Offense Conviction Record				Total	No. Inmates
	Concurrent or Prior Violent Conviction	Concurrent or Prior Nonviolent Conviction	Current and Prior Drug Convictions Only	First-Time Drug Conviction Only		
Importer	5.2	29.7	9.2	55.8	100%	5,939
Manufacturer/ Grower	20.3	37.9	16.7	25.1	100%	2,798
Money Launderer	8.8	70.5	6.2	14.5	100%	1,613
Wholesale Dealer	12.3	36.8	18.1	32.8	100%	7,781
Bodyguard/Debt Collector	19.1	31.6	29.7	19.7	100%	3,474
Retail Seller	19.6	39.0	16.3	25.1	100%	9,935
Peripheral Role User/Possessor	5.8	42.1	18.0	34.1	100%	1,200
(>10 Units)	7.8	40.0	17.1	35.1	100%	6,292
User/Possessor (#10 Units)	3.6	34.0	36.3	26.1	100%	1,080
Other Functional Role	10.8	29.5	12.7	47.0	100%	15,391
Group Total	12.4	35.5	15.9	36.2	100%	55,503

Percentages may not add to 100% due to rounding.

indicates, the criteria for each successive subgroup (A through G) is additive and includes the following indications: no concurrent or prior violent convictions, no firearms involvement, no sophisticated drug group involvement, no high-level role in the offense, no current or prior nondrug convictions, no prior convictions of any kind (i.e., first-time drug offenders), and finally, no prior arrests. Selection into each subgroup was positively determined to account for missing data, such that Subgroup A, for example, excludes offenders with a violent record and offenders for whom a prior record of violence could not be ascertained. Thus, the least serious drug offender group (G) includes only first-time drug offenders positively determined to have no previous arrests, no concurrent nondrug convictions, no evidence of firearms activity, and no sophisticated/high-level functional involvement in their current offense.

Only 7,699 (13.5%) federal and 16,554 (7.6%) state inmates met this definition of being a low-level drug offender in 1997. However, Subgroup G is arguably too restrictive because, for example, small-time sellers or users convicted only of multiple drug offenses are excluded. Subgroup E, similar in all respects to Subgroup G, except it includes multiple convicted drug offenders and repeat arrestees, may be of greater interest to some. According to that criteria, 15,365 (26.9%) federal and 50,474 (23.2%) state inmates were low-level drug offenders in 1997.

TABLE 4(B). PRIMARY ROLE IN THE OFFENSE AT TIME OF ARREST BY OFFENSE CONVICTION RECORD, STATE INMATES

Role in the Offense	Offense Conviction Record				Total	No. Inmates
	Concurrent or Prior Violent Conviction	Concurrent or Prior Nonviolent Conviction	Current and Prior Drug Convictions Only	First-Time Drug Conviction Only		
Importer	17.6	36.2	16.9	29.4	100%	7,806
Manufacturer/ Grower	31.6	39.3	11.8	17.3	100%	7,403
Money Launderer	39.9	34.8	13.5	11.8	100%	2,751
Wholesale Dealer	25.2	34.7	14.8	25.3	100%	21,846
Bodyguard/Debt Collector	20.3	47.4	14.8	17.5	100%	11,080
Retail Seller	24.8	38.7	16.8	19.7	100%	65,274
Peripheral Role User/Possessor	31.3	30.6	13.6	24.5	100%	4,162
(>10 Units)	23.5	38.0	11.6	26.9	100%	25,409
User/Possessor (#10 Units)	25.2	52.4	13.2	9.1	100%	37,798
Other Functional Role	20.1	38.7	12.7	28.5	100%	29,354
Group Total	24.2	40.8	14.4	20.6	100%	212,783

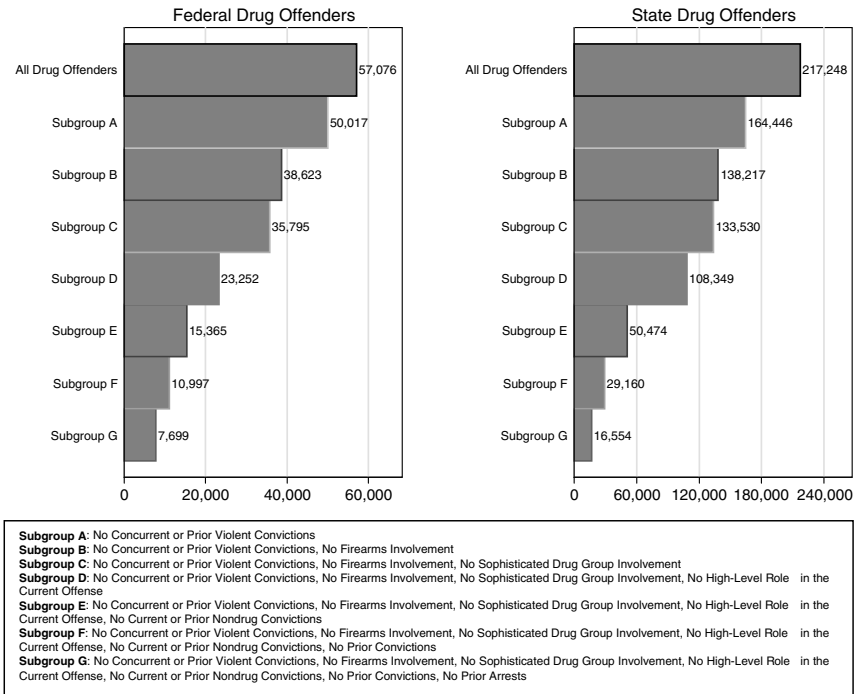
Percentages may not add to 100% due to rounding.

Given marijuana’s prominence in drug policy debates, we replicated this analysis just for marijuana offenders. Compared with offenders involved with other drugs, we expected marijuana offenders would have to be somewhat more “noxious” to be sent to prison, resulting in a smaller proportion of marijuana offenders falling in these lower level subgroups. However, the proportion of marijuana offenders falling within Subgroups E through G ranged from 15% to 25% (1,257 to 2,194 individuals) for federal and 13% to 28% (2,399 to 5,017, individuals) for state offenders, very similar proportions to the 14% to 27% and 8% to 23% ranges just estimated for all drug offenders.

These estimates excluded drug amount as a factor. Moreover, they do not clearly show interactions among these factors. To obtain a more detailed assessment, we collapsed the offender seriousness characteristics into four indicators: drug amount, functional/drug group role, violent/firearm activity, and other criminal history. We dichotomized these indicators into high- and low-level classifications. For drug amount, inmates responsible for ten retail units or less were considered small amount offenders; otherwise, they were considered large amount offenders. For functional/drug group role, importers, grower/manufacturers, money launderers, wholesale dealers, and bodyguards, as well as drug group leaders and middle men were categorized as key role offenders. Others were categorized

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FIGURE 1. PARTITIONING LOW-LEVEL DRUG OFFENDERS



as minor role offenders. We included the “other functional role” offenders in the minor role category because they resembled other minor role offenders more closely than key role offenders in every respect except drug amount. Offenders with any violent convictions or evidence of firearms involvement were labeled violent or gun offenders. Finally, for other criminal history, offenders were classified into (1) first- or second-time convicted drug-only offenders and (2) others—including multiply convicted drug offenders and those with property and public order convictions. Note that these criteria do not include information about addiction or compulsive drug use. We noted earlier that drug use is tied to the level of drug trade activity, but our primary aim here is to assess offender seriousness along the three dimensions of dangerousness, culpability, and harm.

Tables 5a and 5b cross-tabulate these indicators into 16 cells, plus column and row totals. The upper-left cell represents the least and the lower-

right cell the most culpable, dangerous, and harmful drug offenders. Due to missing data, the table totals sum to only 85% of federal and 80% of state drug inmates. However, the distribution of offenders across indicators does not change appreciably when examined individually or in combinations of two or three, suggesting that the findings in Tables 5a and 5b are representative of the 15% to 20% of offenders dropped due to missing data.

As Table 5a indicates, in 1997, about one-third (31.6%) of federal inmates were nonviolent, first- or second-time drug-only offenders, and 1 in 15 (6.8%) were minor role offenders with small drug amounts. However, only 1.6% (750 of 48,343) of federal drug offenders met both criteria and so could be described as “unambiguously low-level” offenders, that is, nonviolent/nongun, small drug amount, minor role, first- or second-time drug-only offenders. Scaling this estimate up to the full federal drug offender population suggests that about 913 federal inmates were unambiguously low-level drug offenders in 1997. Roughly ten times as many (18.7% or 10,673 of the full population) met the unambiguous low-level offender criteria in every respect, except that they were responsible for large drug amounts. Thus, whether one thinks that 1 in 5 or 1 in 60 federal drug inmates were low level depends on whether large-quantity “courier/mules” with no other known culpability are considered to be low-level offenders.

Similarly at the state level in 1997 (Table 5b), 17.4% of drug inmates were nonviolent, first- or second-time drug-only offenders and 47.4% were minor role offenders possessing small drug amounts. About 5.7% (10,000 of 174,744) met both criteria and so were unambiguously low level. Scaling this up to the full population suggests that 12,383 state drug inmates were nonviolent, small drug amount, minor role, first- or second-time drug-only offenders. Roughly an equal number (14,990) were low level in all respects except drug amount. So, for someone who thinks “courier/mules” are low-level offenders, they could represent something over 90% of the one in five federal drug inmates who are low-level offenders and a bit over 50% of the one in eight state drug inmates who are low-level offenders.

Who are the low-level offenders who possessed smaller quantities and, hence, do not appear to be courier/mules? We looked in detail at each of these 20 federal and 178 state respondents serving as the basis for the weighted low-level estimates in the upper left cells of Tables 5a and 5b. Minimum sentencing rules may play a role for these federal inmates. Sixteen of the 20 reported that the judge was required to give a sentence of the specified length, and two of the other four were subject to drug sentence enhancements. Sixteen were convicted of drug distribution and/or reported a selling role, but the individual sentenced the longest could possibly be a “poster child” for sentencing critics, if his self-report information

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TABLE 5(A). DISTRIBUTION OF DRUG OFFENDERS ACROSS FOUR OFFENDER SERIOUSNESS INDICATORS (DRUG AMOUNT, FUNCTIONAL/DRUG GROUP ROLE, VIOLENT/FIREARM ACTIVITY, AND CRIMINAL HISTORY), FEDERAL INMATES

	Nonviolent, Nongun First- or Second-Time Drug Offender Only	Nonviolent, Nongun Repeat Drug or Other Nondrug Conviction Record	Violent or Gun Record First- or Second- Time Drug Offender Only	Violent or Gun Record Repeat Drug or Other Nondrug Conviction Record	Row Total
Small Drug Amount ∩ Minor Role	750 (1.6)	1,263 (2.6)	79 (0.2)	1,186 (2.5)	3,277 (6.8)
Small Drug Amount ∩ Key Role	108 (0.2)	365 (0.8)	0 (0.0)	634 (1.3)	1,106 (2.3)
Large Drug Amount ∩ Minor Role	9,020 (18.7)	9,017 (18.7)	1,022 (2.1)	6,211 (12.8)	25,270 (52.3)
Large Drug Amount ∩ Key Role	5,389 (11.1)	7,110 (14.7)	1,287 (2.7)	4,904 (10.1)	18,690 (38.7)
Column Total	15,266 (31.6)	17,754 (36.7)	2,387 (4.9)	12,935 (26.8)	48,343 (100%)

† "Other functional role" offenders are included with the minor role group.

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TABLE 5(B). DISTRIBUTION OF DRUG OFFENDERS ACROSS FOUR OFFENDER SERIOUSNESS INDICATORS (DRUG AMOUNT, FUNCTIONAL/DRUG GROUP ROLE[†], VIOLENT/FIREARM ACTIVITY, AND CRIMINAL HISTORY), STATE INMATES

	Nonviolent, Nongun First- or Second-Time Drug Offender Only	Nonviolent, Nongun Repeat Drug or Other Nondrug Conviction Record	Violent or Gun Record \cap First- or Second-Time Drug Offender Only	Violent or Gun Record \cap Repeat Drug or Other Nondrug Conviction Record	Row Total
Small Drug Amount \cap Minor Role	10,000 (5.7)	45,844 (26.2)	759 (0.4)	26,180 (15.0)	82,783 (47.4)
Small Drug Amount \cap Key Role	2,101 (1.2)	6,963 (4.0)	588 (0.3)	7,129 (4.1)	16,782 (9.6)
Large Drug Amount \cap Minor Role	12,095 (6.9)	18,209 (10.4)	1,216 (0.7)	13,022 (7.5)	44,542 (25.5)
Large Drug Amount \cap Key Role	6,208 (3.6)	10,520 (6.0)	1,217 (0.7)	12,692 (7.3)	30,637 (17.5)
Column Total	30,404 (17.4)	81,536 (46.7)	3,781 (2.2)	59,023 (33.8)	174,744 (100%)

[†] "Other functional role" offenders are included with the minor role group.

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is correct. He is a 63-year-old white male, sentenced at age 57 to 30 years for his first ever arrest and conviction for conspiracy related to a continuing criminal enterprise even though he reports no particular drug role, no drug organizational affiliation, and claims only one ounce of marijuana was involved.

Among the 178 state respondents who were low-level offenders with small quantities there are 16 second-strike offenders, whose sentences may be driven by their repeat-offense status, not the drug charge per se. There are also some records with bad data (e.g., two second or third strikers reporting no previous arrests). There may be a few more “poster children” for critics, e.g., a 36-year-old black female peripheral role offender convicted of trafficking three-tenths of a gram of crack cocaine and sentenced to 15 years, even though she was a first-time offender who used drugs regularly and committed her offense for money to buy drugs. On the other hand, not all 178 respondents reported extremely long sentences. A moderate number (18.5%) reported imposed sentences of 18 months or less, and almost one-third (31.5%) expected to serve less than 18 months. Most, however, appear to be low-level sellers sentenced to 2–7 years and who expect to serve 14–47 months (both figures are interquartile ranges).

Notably, although three-quarters said they were regular users, very few appear to have been just users. Only 51 of 178 were convicted of simple possession, and of them, all but 19 had entered a plea agreement (e.g., from a distribution charge or to fewer counts) and/or self-reported some selling role. Most of those 19 were convicted for cocaine (8) or crack (5) violations; only one was for marijuana.

In summary, very few people appear to be in prison as first-time, nonviolent offenders simply because they used drugs. Indeed, although more than three-quarters of the 10,750 “lowest of the low” drug inmates reported a history of regular drug use or treatment, only 1,409 were convicted for simple drug possession and did not enter a plea agreement or self-report a drug distribution role. Including nonviolent repeat drug offenders who may have been convicted of nondrug offenses increases this estimate to 7,814 and including all repeat offenders (i.e., entire first row of Tables 5a and 5b) to 11,960. For 682 of the 7,814 (8.7%) marijuana was the primary drug involved. These nonviolent, small-quantity (i.e., 10 ounces or less) marijuana possessors who were not involved in drug distribution represent two-tenths of 1% of all drug prisoners and 0.06% of all prisoners.

The 11,960 figure might loosely be thought of as an upper bound on the number of people in prison for drug-law violations because they were users.⁶ This amounts to only 4.4% of drug offenders in state and federal

6. This figure overstates the number in prison for drug use to the extent that

prisons (and 1.0% of all prisoners), which suggests that decriminalizing drugs (in the sense of eliminating criminal sanctions for drug users) would not greatly reduce prison populations. Indeed, if decriminalization increased drug use by enough to increase the number of people incarcerated for drug distribution by 5%, then decriminalization would lead to a net increase in the number of drug offenders in prison.

A distinct type of “low-level” drug offender is a “juggler” or retail seller who is selling to support a drug habit. Based on the survey data, 26,808 retail sellers who used drugs regularly at some point in their lives acknowledged committing their offense to obtain money to buy drugs. Most of these “jugglers” (41%) were small quantity sellers with no history of violence or firearms involvement (i.e., they fall into the first two columns of the top row in Figures 5a and 5b).

SANCTIONING SEVERITY

The *Inmate Survey* asks inmates about their definite or expected release date from prison. Calculating from the inmate’s prison admission date gives a total expected time to be served, which is typically less than the sentence length because inmates receive and/or expect time off for good behavior. In general, the more culpable, dangerous, and harmful drug inmates received the severest sentences and expected to serve the longest times. Figures 2a and 2b graph the median time expected to be served for each cell from Tables 5a and 5b, excluding offenders sentenced to life in prison. In general, the graphs show that as one moves up the offender seriousness scales from A to D (reflecting amount and role) and from 1 to 4 (reflecting criminal history and violence), the median time expected to serve increases. Thus, as depicted in Figure 2a, the median time expected to serve for the most serious federal inmates (109 months, cell D4) is more than 3.5 times that of the least serious federal offenders (30 months, cell A1). Likewise, Figure 2b shows that time expected to serve for the most serious state inmates (53 months, cell D4) is more than two times that of the least serious offenders (24 months, cell A1). It is worth emphasizing that even for these least serious drug offenders, the median expected time to serve is still two years for state and 2.5 years for federal offenders.

Sanctioning severity depends not only on sentencing given conviction but also on the probability of conviction given arrest. Inmate surveys have

some people involved in distribution may only be charged with possession. It could be an understatement if the plea to simple possession was a plea from multiple counts of simple possession. Likewise, some who pled to simple possession may also have been arrested not for distribution but for some more serious nondrug crime (e.g., burglary). It is not clear whether in such instances, assuming they exist, the drug use led to imprisonment per se or simply gave prosecutors a convenient way to incarcerate a serious offender without having to win a burglary conviction at trial.

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limited capacity to inform about probabilities upstream in the adjudication process, but comparison with average arrest data for 1995-1997 is instructive. Dividing people in prison in a given year by arrests per year in preceding years gives a rough indication of the expected time served per arrest. The ratios are only a rough guide because of the system not being in steady-state, definitional differences, and plea bargaining. In particular, whether possession with intent to distribute is recorded as a possession or a sales/manufacture arrest in UCR arrest data depends on the individual reporting agencies. Nevertheless, as there were about 560,000 marijuana possession arrests a year and only 9,324 people incarcerated for marijuana possession convictions (including possession with intent to distribute), one might take $365 * 9,324/560,000 = 6$ days as an upper bound on the expected time served per marijuana possession arrest. Excluding inmates convicted of possession with intent to distribute and those convicted of possession via a plea agreement from the numerator would reduce this ratio to 1.7 days per marijuana possession arrest.

On the other hand, with about 200,000 arrests annually for sale/manufacture and 126,045 people in prison with convictions for drug trafficking concerning cocaine, crack, or heroin, a lower bound on the expected time served per heroin/cocaine arrest might be 7.5 months. Adding inmates convicted of possession with intent to distribute and simple possession via a plea ($n = 203,645$) would raise that estimate to about one year per cocaine/heroin sale/manufacture arrest.

CONCLUSIONS

One of our principal findings is that definitions matter mightily when answering the question: "How many low-level drug offenders are incarcerated?" For instance, we confirmed King and Mauer's (2002b) finding that most incarcerated drug offenders gave no evidence of being violent and most gave no evidence of having played a sophisticated organizational role. However, if one asks how many were nonviolent, had no sophisticated role, and had no other nondrug convictions, the proportions drop to about one-quarter (27% federal, 23% state), and roughly half of them had prior drug convictions or more than one prior arrest. Considering quantity matters as well, particularly for minor role federal inmates. Among nonviolent/nongun, minor role, and first- or second-time drug-only offenders, 90+% of those in federal prison and 50+% of those in state prison were involved with more than ten retail units (i.e., ten ounces of marijuana, 5 g of crack or cocaine, or 3 g of heroin). The majority of the remaining low-level offenders without prior records appeared to be involved in selling.

Indeed, it appears that no more than about 11,960 drug-inmates were likely to have been incarcerated simply because they were drug users. That

FIGURE 2(A). MEDIAN TIME EXPECTED TO SERVE BY OFFENDER SERIOUSNESS, FEDERAL INMATES*

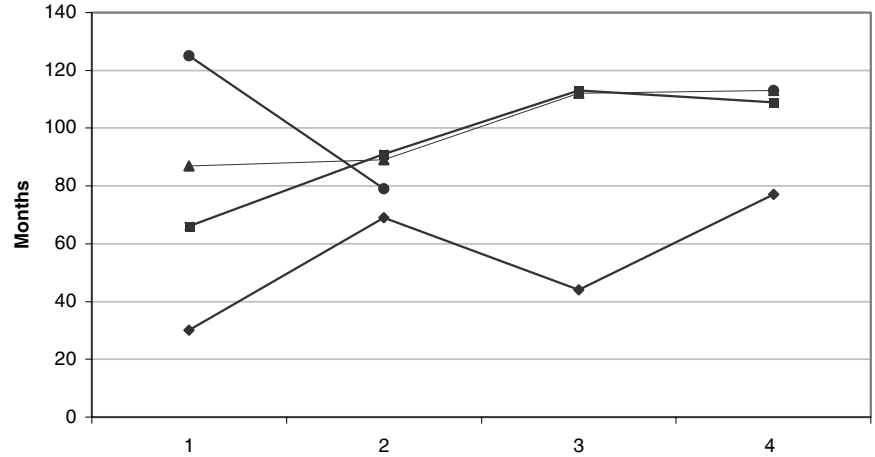
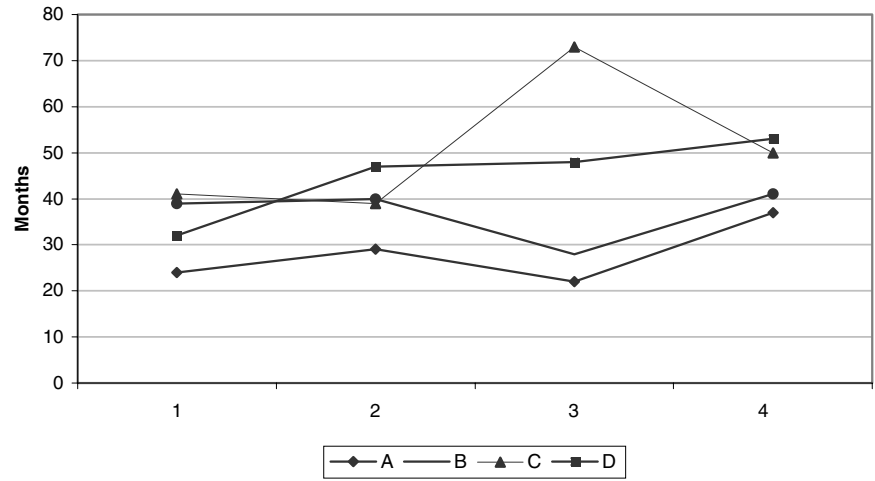


FIGURE 2(B). MEDIAN TIME EXPECTED TO SERVE BY OFFENDER SERIOUSNESS, STATE INMATES*



A: Small Drug Amount ∩ Minor Role	1: Nonviolent, Nongun ∩ First- or Second-Time Drug Offender Only
B: Small Drug Amount ∩ Key Role	2: Nonviolent, Nongun ∩ Repeat Drug or Other Nondrug Conviction Record
C: Large Drug Amount ∩ Minor Role	3: Violent or Gun Record ∩ First- or Second-Time Drug Offender Only
D: Large Drug Amount ∩ Key Role	4: Violent or Gun Record ∩ Repeat Drug or Other Nondrug Conviction Record

*As shown in Table 5a, no offenders fell into category B3, and, therefore, the respective data point is not plotted in Figure 2a.

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is far less than the 102,467 inmates that the *Sourcebook of Criminal Justice Statistics* reports were convicted of possession based on the same survey data. The difference originates because most of the 102,467 were convicted of possession with intent to distribute, were convicted of simple possession via a plea agreement, possessed quantities beyond those associated with personal consumption, and/or self-reported some drug distribution role. Clearly, the offense of conviction does not always match the offender's criminal conduct, a point worth remembering when considering sentencing or other policy reforms.

Although it does not appear that many incarcerated drug offenders are merely users, it also does not appear that most were involved with large trafficking organizations or firearms. Only 6.6% of federal and 4.0% of state incarcerated drug offenders reported being high- to mid-level drug ring participants, in no small part because the majority—particularly of retail sellers—did not report being part of any organization at all. Offenders with higher level distribution/trafficking roles reported more firearms activity than those with lower-level roles, including retail sellers, but overall the majority of federal (75%) and state (80%) drug inmates gave no indication of firearm activity, not only with respect to their most recent offense but also in response to the question, "Have you EVER been armed with a gun while committing a crime?" Likewise few (12% of federal and 24% of state drug inmates) report prior or concurrent convictions for violent offenses. Indeed, substantial portions of incarcerated federal (52%) and state (35%) drug offenders report never having been convicted of any nondrug offense, and fully 36% of federal and 21% of state drug inmates claim to be first-time convicted offenders.

Lower level offenders also generally received shorter average sentences and expected to serve less time than did higher level offenders, although even the low-level drug offenders in this survey (and, hence, in prison) had average sentences of 2+ years.

What does all of this mean for policy? For one it dampens hopes of dramatically reducing prison populations by getting out of prison only those who are unambiguously low-level drug offenders. They simply do not represent the majority of incarcerated drug offenders. That is not because most drug inmates are kingpins or are obviously very violent. Rather, there is a spectrum of drug offenders in prison, and the greatest numbers come from the ambiguous middle of that spectrum.

On the other hand, even a modest proportion of roughly 275,000 drug inmates is still a nontrivial number of individuals. If one perceived their punishments to be unjust, then there are enough such individuals that a sense of justice and compassion ought to motivate action, even if such action would do little to alleviate overcrowding or budgetary problems. Among these individuals at the lower end of the spectrum, quite a few

appear to be couriers and not so many simple users. So those seeking to change policies and laws to reduce these numbers might focus on writing “drug courier exceptions” to mandatory sentencing.

Conversely, “decriminalizing drugs”—if that was understood to mean removing criminal penalties for drug users—would not obviously reduce the number of drug inmates much at all. This would be particularly true if the decriminalization was restricted to marijuana. Only about two-tenths of 1% of all drug-inmates appeared to be incarcerated simply for marijuana use. Indeed, if decriminalization increased demand (e.g., because of reduced fines, perceived risk of jail, or sanctions from employers and others outside the criminal justice system), it could plausibly increase the number of suppliers by enough that prison populations could actually increase.

Another relevant policy goal is reducing drug-related violence. A common concern is that violence is inherent in the drug-selling role, so if incarcerated drug sellers are replaced, the replacement sellers will commit about the same number of violent acts as the replaced dealers would have. On the one hand, our data could make one even more pessimistic about the violence-control benefits of incarcerating drug sellers. Not only might they be replaced, but many were apparently not that violent to begin with. On the other hand, there clearly is a great deal of violence related to drug-selling, so apparently there is considerable heterogeneity across drug sellers in their proclivity to use violence. Some are violent; most claim to have never used a firearm in the commission of a crime. Hence, incarcerating unusually violent dealers could greatly reduce drug-related violence, even if they were rapidly replaced, as long as the replacements were merely “average” with respect to violence. This line of reasoning suggests that if the goal is reducing violence, the key may be not so much how many dealers are incarcerated, but which ones are incarcerated. Targeting lengthier sentences on the dangerous armed drug trafficker, if consistently applied, would serve this incapacitation goal and have a general deterrent effect, although Hofer (2000) suggests that this has been hard to put into practice effectively.

Another targeting issue pertains to whether the risk of incarceration is greater for wholesale sellers than for retail sellers. If one thinks of the drug distribution network as a tree with a given branching factor f (i.e., everyone at a given market level sells to f people at the next lower level), then there are f retailers for every first-level wholesaler and $f-1$ retailers for every higher level dealer, including not just first-level wholesalers, but also second-level wholesalers, third-level, and so on. If they all incurred the same sanction risk, defined as years served in prison per year worked, there would be $f-1$ as many retailers as wholesale sellers in prison. If retail sellers were at greater risk, the ratio would be larger. If wholesale sellers

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were at higher risk, the ratio would be smaller. In fact, based on self-reported role and combining state and federal inmates, about 2.5 times as many retail sellers are incarcerated as wholesale sellers (75,209 vs. 29,628). As branching factors in the drug distribution network are commonly thought of as being more than 3 or 4 to one, this suggests that wholesale dealers incur a greater risk of sanction per year worked, even though there are fewer of them in prison.

There are ample opportunities for further research. Data used here are from the 1997 survey. The *Inmate Survey* being fielded in summer 2003 will offer more recent data when it becomes available in a few years. On the other hand, comparing these findings with the 1991 *Federal Inmate Survey*, which collected comparable drug offense incident data, might reveal interesting changes over time. Also, we analyzed the state data in aggregate, but there is heterogeneity in sanctioning policies among the 50 states. The restricted access *Inmate Survey* data sets single out only three states (California, New York, and Texas), but they house more than half of all state inmates, so analysis by jurisdiction could be fruitful. Likewise replicating the analysis by racial and ethnic group, and perhaps by gender, could be informative. Finally, we reported data primarily in aggregate, not by drug, but sentencing policy is typically made by drug, so drug-specific replications could be informative.

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APPENDIX

VARIABLE CONSTRUCTION

ROLE

The *Inmate Survey* asked respondents two questions about their functional role(s) at the time of arrest:

Q1) At the time of your arrest for [CURRENT OFFENSE] were you: (i) Importing or helping others import illegal drugs into the United States, (ii) Illegally manufacturing, growing or helping others manufacture or grow drugs, (iii) Laundering drug money, (iv) Distributing or helping to distribute drugs to dealers, (v) Selling or helping to sell drugs to others for their use, (vi) Using or possessing illegal drugs?

Q2) Were you: (i) A street-level dealer, (ii) A dealer above the street-level dealer, (iii) A bodyguard, strongman or debt collector, (iv) A go-between or broker, (v) A moneyrunner, (vi) A courier, mule or loader?

All respondents were asked the first question (Q1); those who reported wholesale dealing or retail selling (responses [iv] and [v]) were also asked the second (Q2). Respondents were asked to report all applicable roles for both questions. We collapsed these responses into a single variable by taking the most culpable role reported. The hierarchy from most to least culpable, derived from existing literature (Miller and Freed, 1994; USSC, 2002: Appendix C), is importer, manufacturer/grower, money launderer, wholesale dealer, bodyguard/debt collector, retail seller, peripheral role, and user/possessor. The peripheral role category is an aggregation of responses for go-between/brokers, moneyrunners, and courier/mule/loaders. For dealers, the wholesale-retail distinction from Q1 was used rather than the above-street/street-level distinction from Q2.

Because a nontrivial number of user/possessors reported possessing very large quantities of drugs, we suspect some might have self-identified as courier/mule/loaders had they been asked Q2. Although involvement with large quantities can be indicative of a high-level role, it is unlikely that someone who possessed drugs solely for their personal use would have been in possession of an extremely large quantity of drugs. High-quantity “user/possessors” are more likely to have been involved in distribution at the level of courier, holder, or other low-level assistant. This interpretation is justified in that user/possessors by rule had denied higher level involvement in dealing and trafficking and, due to idiosyncrasies in the data collection instrument, were not asked the follow-on question that would have enabled finer role distinctions among such offenders (e.g., courier, mule, go-between). Thus, in order to distinguish drug users from offenders whose reasons for possessing drugs extend beyond personal consumption, we subdivided the user/possessor role at a cutoff of ten “standard retail

units” (defined below). Also, in 17.4% of cases, respondents reported no particular role; that is, they responded “no” to all functional roles specified. The phrasing of the question (i.e., “At the time of your arrest. . .”) might explain why so many respondents did not specify a role, because arrest can occur well after commission of the offense. Alternately, none of the *Inmate Survey*’s specified roles may have been applicable. We describe this group of offenders as having an “other functional role.”

Drug offenders were also separately asked whether they participated in a drug organization in the year before their arrest and, if so, what role they played:

In the year before your arrest on [DATE], were you a part of any group or organization that engaged in drug manufacturing, importing, distribution or selling?

Which of these best describes your role in that group or organization: (i) A leader or organizer, (ii) A middle man, (iii) An underling, such as a carrier, runner, etc., (iv) A seller, (v) Other?

Respondents could indicate a single role. For offenders who indicated some “Other” organizational role (n = 47), the write-in response was inspected and recoded for 25 individuals whose response matched a prespecified role category. The remaining 22 respondents reported minor roles such as “wife,” “girlfriend,” or “bystander” and were relabeled “minor participants.”

PRIMARY DRUG AND TOTAL DRUG AMOUNT

The *Inmate Survey* collected information on which drugs were involved in the current offense:

You said that you were serving time for [CURRENT OFFENSES]. What drugs were involved (i) Heroin, (ii) Other opiates or methadone, (iii) Amphetamines or methamphetamine (Uppers), (iv) Methamphetamine, (v) Barbiturates (Downers), (vi) Tranquilizers, (vii) Crack cocaine, (viii) Cocaine other than crack, (ix) PCP, (x) LSD or other hallucinogens, (xi) Marijuana or hashish, (xii) Other?

Respondents could indicate as many drugs as applied, including up to two “Other” specifications. These data were collapsed into six categories: heroin or other opiates, (meth)amphetamine, crack cocaine, powder cocaine, marijuana, and other. For offenders reporting multiple drugs (11.5%) or with missing data (1%), the variable was recoded manually, if possible, based on inspection of relevant incident characteristic information. For instance, if the inmate reported serving time for both marijuana and cocaine offenses or these data were missing but the alphanumeric controlling offense variable read “conspiracy to distribute cocaine,” then the inmate was coded as a primary cocaine offender. Likewise for all offenders

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who indicated an “Other” drug, the data were inspected and recoded if possible. For example, if a respondent mentioned “morphine” in the “Other” drug category, then the inmate was coded as a heroin or other opiate offender.

For each substance, respondents were asked, “*Approximately what amount of [DRUG] was involved?*” The interviewer could record the amount using several standard metrics such as grams, kilograms, pounds, and ounces. Nonstandard response options, such as pills and doses, were also allowed, as were respondent-specified street amounts such as rocks, bags, and joints.⁷ Drug amounts were recoded to a common metric, approximately equal to a typical retail purchase amount. In particular, nonstandard metrics were transformed into grams using a standard formula for common street retail amounts specific to each drug type (ONDCP, 1995–2002; CEWG, 2000–2002). For example, one bag, capsule, paper, and so on of heroin was assumed to be 0.1 g; one rock, vial, capsule, bag, and so on of powder or crack cocaine was assumed to be 0.2 g; one marijuana joint to be 0.5 g; one marijuana plant to be 100 g; and so forth. Quantities were then expressed in terms of “standard retail units” based on law enforcement, ethnographic, and drug price series data (ONDCP, 2001a). Specifically, a “standard retail unit” was assumed to be 0.3 g for heroin or other opiates; 0.5 g for powder and crack cocaine, PCP, and (meth)amphetamine; one ounce for marijuana; and five pills or doses for sedatives and LSD. For polydrug offenders, we summed across drugs to generate a single measure for drug amount, which corresponds to the total number of “standard retail units” the offender reported possessing or trafficking.

FIREARMS INVOLVEMENT

Our measure of firearms involvement comprises the union of two questions: “*Did you receive an increase in your sentence because of a firearms violation?*” and “*Have you EVER been armed with a gun while committing a crime?*” If a respondent answered affirmatively to either question, firearms involvement was coded “yes.”

CRIMINAL HISTORY

We use both conviction and arrest information to gauge an offender’s criminal history. The conviction history variable contains four categories based on concurrent and prior convictions and is derived from up to five current offense and several BJS-computed criminal history variables. Four mutually exclusive categories were created: *concurrent or prior violent*

7. The percentage of all drug offenders specifying a nonstandard write-in amount ranged from 0.0% for sedative drugs to 3.2% for crack cocaine.

conviction refers to drug offenders who have ever been convicted of a violent offense; *concurrent or prior nonviolent conviction* to drug offenders who have ever been convicted of a property, public order, or other offense but not a violent offense; *current and prior drug convictions only* to repeat drug offenders who have never been convicted of a nondrug offense; and *first-time drug conviction only* to first-time drug offenders with no concurrent or prior nondrug convictions. Arrest history is derived from the question: "How many times have you ever been arrested, as an adult or a juvenile, before your arrest in [DATE]?" Responses ranged from 0 to 99 arrests, with inmates initially reporting more than 40 arrests being probed to confirm their response.

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