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Research paper

### Criminal justice outcomes for cannabis use offences in New Zealand, 1991–2008

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#### ABSTRACT

*Background:* There have been no changes to the statutory penalties for cannabis use in New Zealand for over 35 years and this has attracted some criticism. However, statutory penalties often provide a poor picture of the actual criminal justice outcomes for minor drug offending.

*Aim:* To examine criminal justice outcomes for cannabis use offences in New Zealand over the past two decades.

*Method:* Rates of apprehension, prosecution, conviction and related criminal justice outcomes for the use of cannabis in New Zealand (per 100,000 population) were calculated for 1991–2008. The same measures were calculated (per 1000 last year cannabis users) for 1998, 2001, 2003 and 2006. Trends were tested for using logistic regression with year predicting each measure outcome and with chi-square tests.

*Results:* The number of police apprehensions for cannabis use per year (per 100,000 population) declined from 468 in 1994 to 247 in 2008. The number of apprehensions for cannabis use per year (per 1000 cannabis users) also declined from 36 in 1998 to 21 in 2006. There were similar declines in prosecutions and convictions for cannabis use from 1991 to 2008. Those prosecuted for cannabis use in 2000–2008 were less likely than those prosecuted in 1991–1999 to be convicted and were more likely to be diverted away from the courts, 'discharged without conviction' and 'convicted and discharged'.

*Conclusion:* There has been a substantial decline in arrests for cannabis use in New Zealand over the past decade and this led to similar declines in prosecutions and convictions for cannabis use. The decline in convictions for cannabis use was further assisted by the expansion of police diversion to include cannabis use offences. Our findings underline the importance of examining the implementation of law, as well as statutory penalties, when characterising a country's criminal justice approach to minor drug offending.

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#### Introduction

There has been intense debate about how the criminal justice system should address cannabis use in many Western countries over the past few decades. A number of countries have adopted more lenient criminal justice approaches and statutory penalties for cannabis use as a result (see Babor et al., 2010; Lenton & Allsop, 2010; MacCoun & Reuter, 2001; Room, Fischer, & Hall, 2010). In New Zealand, the statutory penalties for cannabis use have not changed in over 35 years and this has attracted some criticism (Bell, 2010; Drug Policy Forum Trust, 1998; New Zealand Law Commission, 2010a, 2011; NORML, 2001).

However, statutory penalties often provide a poor picture of the actual criminal justice outcomes for minor drug offending

(see Alcohol & Public Health Research Unit, 1998; European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2009). The maximum sentences set out in drug control statutes are rarely imposed and the way the law is implemented is not apparent from the details of the statute (Bewley-Taylor, Hallam, & Allen, 2009; European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2009). This appears to be particularly the case for cannabis use offences where, despite the statutory provisions for prison terms in many countries, offenders rarely receive anything other than a fine and a criminal record (Caulkins & Sevigny, 2005; Lenton, Ferrante, & Loh, 1996; Reuter, 2010; Reuter & Schnoz, 2009; Room et al., 2010; Weatherburn, Jones, & Donnelly, 2003). A number of aspects of a country's criminal justice system, other than the statutory penalties, can play an important role in the outcomes for minor drug offenders including police policy, sentencing legislation, case law precedent and judicial views of the seriousness of minor drug offences (see Alcohol & Public Health Research Unit, 1998; European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), 2009). A focus on statutory penalties ignores

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evolutionary changes to other parts of the criminal justice system which influence what happens to minor drug offenders. Yet there are surprisingly few examples in the literature of detailed examinations of the criminal justice outcomes for minor drug offending (see [Alcohol & Public Health Research Unit, 1998](#); [Bright & Ritter, 2010](#); [European Monitoring Centre for Drugs and Drug Addiction \(EMCDDA\), 2009](#)).

The aim of this paper was therefore to investigate in detail the criminal justice outcomes for cannabis use offences in New Zealand and to identify how these outcomes may have changed over the past two decades.

## Method

The statutory penalties for cannabis use in New Zealand are set out in the *Misuse of Drugs Act 1975* (MODA). As detailed in MODA, those caught in possession of cannabis for personal use (i.e. 28 g or less of cannabis plant) are liable for a term of imprisonment not exceeding three months, or a fine not exceeding \$500, or both ([Mathias, 1988](#)). The criminal justice process in regard to prosecuting individuals for cannabis use is made up of two broad processes: apprehension and prosecution by police; and conviction and sentencing in the courts.

### *Apprehension statistics for cannabis use*

New Zealand police data on apprehensions for cannabis use was available in electronic form from 1994 to 2008. A single incident can generate more than one apprehension and a single offender can have more than one apprehension over a year. Two police apprehension categories were combined to capture all types of cannabis use offences (i.e. 'procure/possess cannabis' and 'consume/smoke/use cannabis'). There are six possible outcomes from an apprehension for cannabis use in New Zealand: 'Prosecution'; 'Warned/caution'; 'Youth aid'; 'Family conference', 'Diversion', and 'Other'. 'Warned/cautioned' means the police officer has warned the offender and no further action has been taken. 'Youth aid' means the offender is under 17 years old and has been directed to youth services. 'Family conference' means the offender has been directed to attend a family conference. 'Diversion' means the case has been withdrawn and no criminal conviction entered under the Police Adult Diversion Scheme ([New Zealand Police, 2009a](#)). Diversion is granted at the discretion of police and requires offenders to admit their guilt and complete certain conditions before the case is withdrawn.

### *Prosecution statistics for cannabis use*

New Zealand Ministry of Justice data on prosecution, conviction and sentencing for cannabis use was available in electronic form from 1991 to 2008. We chose to examine outcomes by individual charge so we could include those offenders for whom a cannabis use offence was not their most serious offence. Officials from the Ministry of Justice indicated to us that the statistical data sets had distinctive outcomes for each charge even when offenders were prosecuted for multiple charges. New Zealand Police statistics on apprehensions are not directly comparable to New Zealand Ministry of Justice statistics on prosecutions (see [Statistics New Zealand, 2009](#)) for a number of reasons, including: not all offences resolved by police result in a prosecution; agencies other than police may prosecute people for a drug offence (e.g. Customs Service); and police apprehensions and court cases are resolved and counted within a calendar year using different criteria. There are five possible outcomes from a police prosecution for the use of cannabis in New Zealand: 'Conviction'; 'Youth Court proved'; 'Discharge without conviction'; 'Not proved' and 'Other'. 'Youth

court proved' means the prosecution involved a young person aged 14–16 years and the charge was proved and resolved in the Youth Court. 'Discharge without conviction' means the prosecution resulted in a guilty verdict or guilty plea, but the judge considered the consequence of a conviction for the defendant to outweigh the seriousness of the offence and so discharged the prosecution without a conviction under section 106 of the Sentencing Act 2002. The 'Not proved' category includes outcomes where the accused was acquitted, discharged or pardoned, or the case was dismissed, not proceeded with, struck out or withdrawn or the offender received diversion. Those prosecutions which resulted in diversion were placed in the 'Not proved category' up until 2004 (personal communication, Ministry of Justice, 2010). From 2004 onwards, charges which resulted in diversion were given their own separate category in the statistics (i.e. 'Completed diversions'). In the interest of permitting consistent comparisons with previous years we continued with the aggregate category (i.e. including 'completed diversions' in the 'Not proved' category). 'Other' includes situations where there was a stay of proceedings, the offender was found unfit to stand trial, or the offender was acquitted on the basis of insanity.

### *Sentencing statistics for cannabis use*

A range of sentence types are available to the New Zealand Courts in regard to convictions for cannabis use offences and these are influenced by statutes other than the MODA, such as the *Sentencing Act 2002*. 'Community-based sentences' refer to home detention and various types of community work and community supervision (see [Ministry of Justice, 2008](#)). 'Deferment' means the prosecution resulted in a conviction but the offender is only required to serve a sentence if called upon to do so by the court (usually only if the offender re-offends during the time of their deferment). 'Convicted and discharged' means the prosecution resulted in a conviction but the judge considered the registration of the conviction to be a sufficient penalty. The 'other category' includes orders for treatment in a psychiatric facility, deportation and driver disqualification.

## Analysis

We calculated rates of apprehension, prosecution and conviction and related outcomes for cannabis use offences per 100,000 population aged 14 years or older in New Zealand for the years 1991–2008. The same measures for cannabis use offences were calculated per 1000 people aged 14–65 years who had used cannabis in the previous 12 months for select years when this data was available. The population prevalence of cannabis use in the previous 12 months was obtained from the New Zealand National Household Drug Survey which was completed in 1998, 2001, 2003 and 2006. The population of New Zealand increased steadily over these years but the proportion of the population reporting using cannabis in the previous 12 months declined in the most recent wave of the survey (i.e. 14.7% in 1998; 14.7% in 2001; 15.4% in 2003; 12.6% in 2006). The numbers of last year cannabis users aged 14–65 years in the New Zealand population were therefore as follows: 379,900 = 1998; 387,100 = 2001; 424,400 = 2003; and 363,700 = 2006. We tested for overall trends in each outcome for all the years for which data was available (e.g. 1991–2008 for conviction data) using logistic regression with year predicting each measure outcome (e.g. convicted or not convicted). We used a chi-square test to determine if the mean outcomes per year had changed in the current decade compared to the previous decade (e.g. between 2000–2008 and 1991–1999 for conviction data). All tests were conducted at the 95% confidence interval. All analysis was conducted using SAS software.

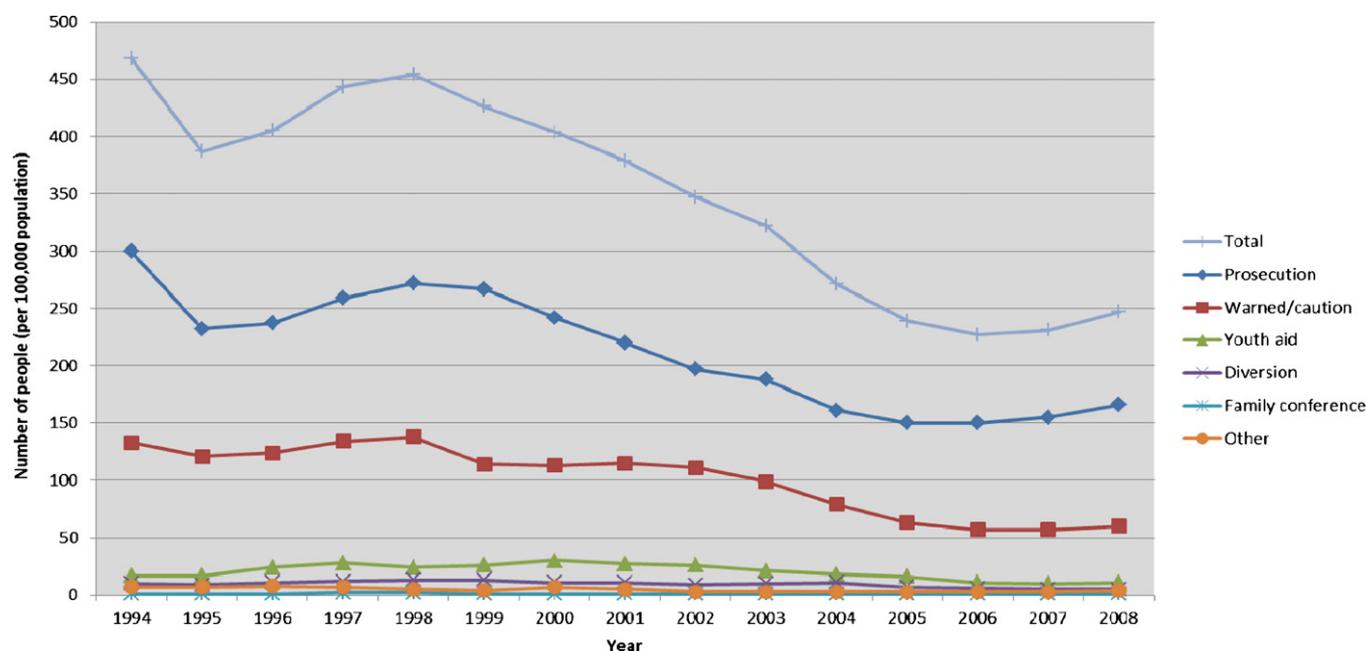


Fig. 1. Outcomes from police apprehensions for the possession of cannabis for personal use in New Zealand (per 100,000 population), 1994–2008.

Source: New Zealand Police.

## Results

### Apprehensions for the use of cannabis

There was a statistically significant decline in the number of police apprehensions for cannabis use per year, (per 100,000 population) down from 468 in 1994 to 247 in 2008 (OR=0.94, 95%CI, 0.94–0.95,  $p < 0.001$ ) (Fig. 1). There were similar declines in the number of prosecutions (OR=0.95, 95%CI, 0.95–0.95,  $p < 0.001$ ), cautions (OR=0.93, 95%CI, 0.93–0.94,  $p < 0.001$ ), youth aid (OR=0.95, 95%CI, 0.95–0.96,  $p < 0.001$ ) and diversions (OR=0.95, 95%CI, 0.94–0.96,  $p < 0.001$ ) given for cannabis use offences per 100,000 population from 1994 to 2008. There was also a decline in the annual number of cannabis use apprehensions (per 1000 cannabis users) (OR=0.93, 95%CI, 0.92–0.93,  $p < 0.001$ ) (i.e. 36 = 1998; 30 = 2001; 24 = 2003; 21 = 2006). There was little change in how the police dealt with arrests for cannabis use between the two decades. In the period 1994–2000, 61% of cannabis use apprehensions resulted in a prosecution, 29% resulted in a warning, 6% were sent to youth aid, 3% were offered diversion and less than 1% were directed to a family conference. In the period 2001–2008, 61% of cannabis use apprehensions resulted in a prosecution, 28% resulted in a warning, 6% were sent to youth aid, 3% were offered diversion and less than 1% were directed to a family conference.

### Prosecutions for the use of cannabis

There was a statistically significant decrease in the number of prosecutions for the use of cannabis per year (per 100,000 people), down from 295 in 1991 to 189 in 2008 (OR=0.96, 95%CI, 0.96–0.96,  $p < 0.0001$ ) (Fig. 2). There were similar declines in the number of convictions (OR=0.95, 95%CI, 0.95–0.95,  $p < 0.001$ ) and 'not proved' (OR=0.98, 95%CI, 0.98–0.98,  $p < 0.001$ ) for cannabis use offences per 100,000 population from 1991 to 2008. There were small increases in number of youth court (OR=1.01, 95%CI, 1.00–1.02,  $p = 0.0395$ ) and 'discharged without conviction' (OR=1.02, 95%CI, 1.01–1.03,  $p < 0.001$ ) per 100,000 population from 1991 to 2008. There was a decline in the number of cannabis use prosecutions

(per 1000 cannabis users) (OR=0.94, 95%CI, 0.93–0.94,  $p < 0.001$ ) (i.e. 25 = 1998; 21 = 2001; 16 = 2003; 16 = 2006). There was also a decline in the number of convictions for cannabis use (per 1000 cannabis users) (OR=0.93, 95%CI, 0.92–0.93,  $p < 0.001$ ) (i.e. 18 = 1998; 14 = 2001; 11 = 2003; 11 = 2006). Those prosecuted for the use of cannabis in 2000–2008 were slightly less likely than those prosecuted in 1991–1999 to be convicted and slightly more likely to be found 'Not proved' (i.e. not guilty or diverted) or 'Discharged without conviction' (Chi square = 741, d.f. = 4,  $p < 0.001$ ). In the years 1991–1999, 75% of prosecutions resulted in a conviction, 23% were 'Not proved', 1% were 'Youth Court proved' and 1% were 'Discharged without conviction'. For the years 2000–2008, 69% of prosecutions resulted in a conviction, 28% were 'Not proved', 2% were discharged without conviction and 1% were referred to the Youth Court. For the years 2004–2008 (i.e. the years when there was a separate category for diversion), an average 12% of prosecutions resulted in a 'completed diversion'. The numbers of 'completed diversion' (per 100,000 population) for 2004–2008 were as follows: 2004 = 28; 2005 = 22; 2006 = 20; 2007 = 21; and 2008 = 20.

### Convictions for the use of cannabis

There was a statistically significant decline in the number of convictions for the use of cannabis resulting in imprisonment per year (per 100,000 population), down from 16 in 1991 to 11 in 2008 (OR=0.97, 95%CI, 0.97–0.98,  $p < 0.001$ ) (Fig. 3). There was a small increase in the number of offenders per year (per 100,000 population) who were 'convicted and discharged', up from 10 in 1991 to 22 in 2008 (OR=1.02, 95%CI, 1.02–1.03,  $p < 0.001$ ). There was also a decline in the number of cannabis use convictions resulting in imprisonment (per 1000 cannabis users) (OR=0.96, 95%CI, 0.95–0.98,  $p < 0.001$ ) (i.e. 1.5 = 1998; 1.2 = 2001; 0.9 = 2003; 1.3 = 2006). Those convicted for the use of cannabis in the years 2000–2008 were less likely than those convicted in 1991–1999 to receive a fine or community sentence and slightly more likely to be 'convicted and discharged' ( $\chi^2 = 1644$ , d.f. = 5,  $p < 0.001$ ). In the years 1991–1999, 48% of those convicted for the use of cannabis received a fine, 36% were given a community sentence, 7% were convicted

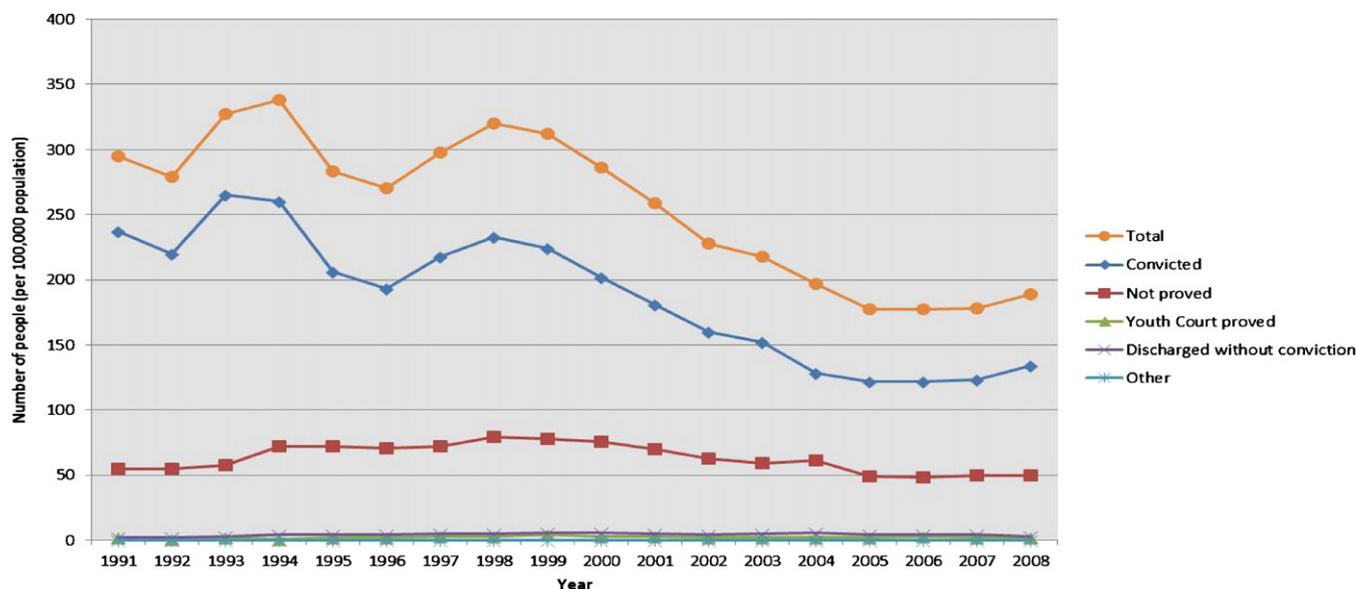


Fig. 2. Outcomes from prosecutions for the possession of cannabis for personal use in New Zealand (per 100,000 of population), 1991–2008.

Source: New Zealand Ministry of Justice.

and discharged, 7% were imprisoned and 2% received deferment. Over the period 2000–2008, 43% of those convicted for the use of cannabis received a fine, 31% were given a community sentence, 14% were convicted and discharged, 9% were imprisoned and 3% received deferment.

*Penalties for cannabis use*

There was little change in the magnitude of penalties imposed for those convicted and sentenced for cannabis use in 2000–2008 compared to 1991–1999 (Table 1). For the years 2000–2008, the mean length of imprisonment for cannabis use was 1.7 months, the mean length of community service was 95 hours and the mean monetary fine was \$196 (1\$NZ = 0.73\$U.S. = 0.49€ = 0.81\$Australian).

**Discussion**

Our paper is a rare example of a detailed examination of a country’s criminal justice response to cannabis use over a number of decades. Much of the policy debate about the criminal justice penalties for cannabis use tends to focus on statutory penalties and comparing statutory penalties between countries. Our paper demonstrates that the focus on statutory penalties can obscure important changes in the way the criminal justice system addresses cannabis use overtime.

We found a considerable decline in the number of arrests, prosecutions and convictions for cannabis use in New Zealand over the past ten years. These trends were driven by a substantial decline in the number of arrests for cannabis use in the order of magnitude of 40% since the late 1990s. When the New Zealand

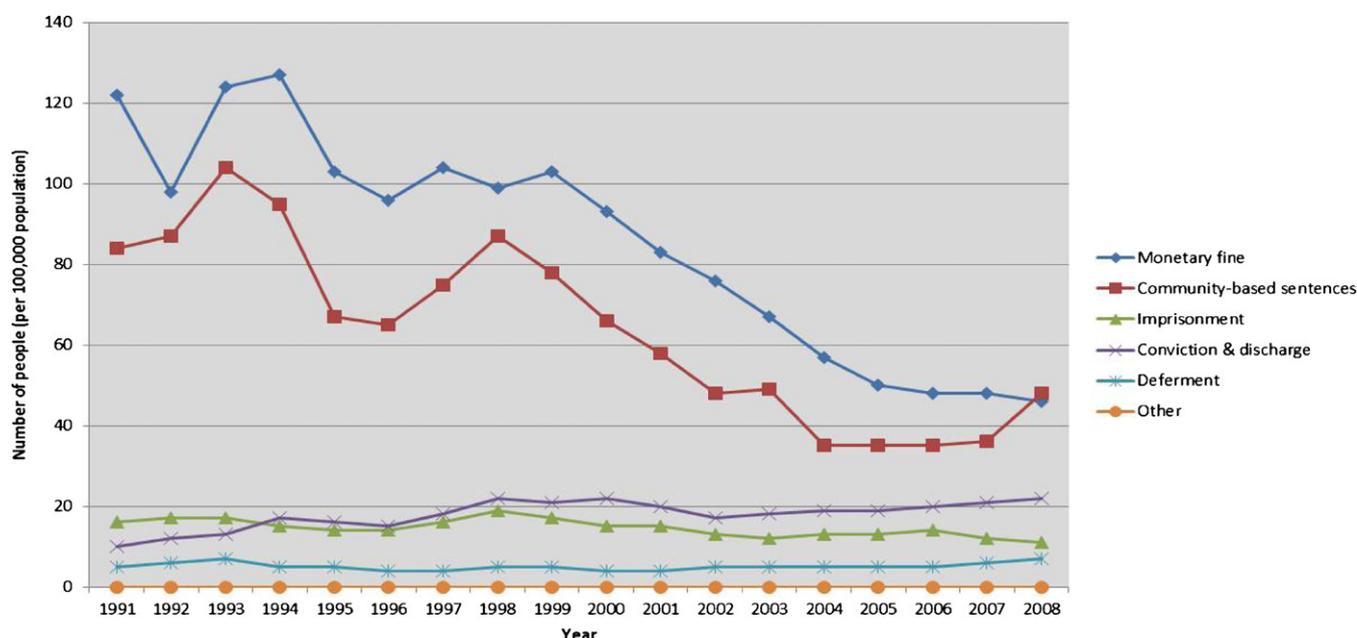


Fig. 3. Sentence types imposed for a conviction for the possession of cannabis for personal use in New Zealand (per 100,000 population), 1991–2008.

Source: New Zealand Ministry of Justice.

**Table 1**  
 Mean length of sentence imposed for the possession of cannabis for personal use, 1990–2008.

Sentence category	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	91–99	00–08
Imprisonment <sup>a</sup>	1.9	1.8	1.8	1.6	1.8	1.9	2.1	1.7	1.7	1.9	2.1	1.6	1.6	1.8	1.8	1.5	1.5	1.5	1.8	1.7
Community-based sentence <sup>b</sup>	97.6	91	95.5	94.4	91.9	99.3	97.9	92.4	95.7	95.7	98.5	219.8	118.8	116.4	105.9	106.1	111.1	103.1	95.1	95.1
Monetary <sup>c</sup>	191.0	182.0	181.0	180.0	179.0	183.0	186.0	186.0	182.0	186.0	189.0	193.0	196.0	191.0	201.0	200.0	200.0	206.0	183.0	196.0
Deferment <sup>d</sup>	8.1	8.5	8.4	8.9	9.1	8.8	8.8	8.8	8.4	8.1	8.9	8.5	9.0	8.9	8.9	8.9	8.3	7.9	8.6	8.6

Source: New Zealand Ministry of Justice.

Notes.

<sup>a</sup> Sentence length imposed shown in months.

<sup>b</sup> Sentence length imposed shown in hours

<sup>c</sup> Sentence length imposed shown in New Zealand dollars.

**Table 2**

Arrest rates for cannabis use (per 100,000 population) and (per 1000 cannabis users) for New Zealand and seven other countries.

Country	Arrests for cannabis use	
	Per 100,000 population	Per 1000 cannabis users
Austria	333	44
Australia	276	24
United States	269	31
Germany	239	34
New Zealand	239	21
France	225	26
United Kingdom	206	20
Netherlands	19	3

Source: Room et al. (2010).

Police were contacted about these findings they indicated there has been no change in police policy toward cannabis use over this time but suggested the decrease in cannabis arrests most likely represented a re-prioritisation of drug enforcement effort to the more serious methamphetamine offending over the past decade (NZ Police, personal communication, 2010). Methamphetamine emerged in New Zealand in the early 2000s and has subsequently attracted a strong law enforcement response (New Zealand Police, 2009b; Wilkins, Bhatta, & Casswell, 2002; Wilkins & Sweetsur, 2011). It is not easy to examine the impact the emergence of methamphetamine had on number of arrests and prosecutions for methamphetamine offences as a specific statistical category for methamphetamine offences was only created in 2003; a number of years after significant increases in the prevalence of methamphetamine were found and police had reported large increases in detections of methamphetamine laboratories (Wilkins et al., 2002; Wilkins & Sheridan, 2009). The best statistical grouping available is an aggregate one which includes a mix of ‘new’ synthetic drugs (i.e. methamphetamine, amphetamine, ecstasy and GHB). The number of arrests for these synthetic drugs increased from 9 (per 100,000 population) in 1994 to 31 (per 100,000 population) in 2008 with a steep increase in arrests occurring from 1998 onwards. While this increase in arrests for synthetic drugs provides some support for the explanation that police changed drug enforcement priorities over the past decade, the magnitude of the increase does not appear sufficient to explain the much larger decline in cannabis arrests. Further investigation is required to establish the impact the increase in arrests for synthetic drugs had on the time and resources available to enforce cannabis use offences, and whether there are alternative explanations for the substantial decline in cannabis arrests.

A comparison of the arrest rate for cannabis use in New Zealand with seven other Western countries in 2005 (Room et al., 2010) indicates that New Zealand ranks in the middle of this group (i.e. 4th equal with respect to arrests for cannabis use per 100,000 population and 6th with respect to cannabis arrests per 1000 users) (Table 2). Switzerland sits above this group with over 600 arrests for cannabis possession per 100,000 population in the same year (Reuter & Schnoz, 2009). Conversely, the arrest rate for cannabis use for the Netherlands is only 19 arrests per 100,000 population due to the general non-arrest policy for cannabis use (MacCoun & Reuter, 2001; Room et al., 2010).

Furthermore, in contrast to the decline in arrests for cannabis use found in New Zealand over the past decade, arrests for cannabis use are reported to have risen sharply in many Western countries since the mid-1990s, notably in Switzerland and the United States (Caulkins & Reuter, 2010; Reuter & Schnoz, 2009; Room et al., 2010). The arrest rate for cannabis use in the United States increased from 89 per 100,000 population in 1991 to 233 per 100,000 population in 1997, and then rose more slowly to about 250 arrests per 100,000 in 2008 (Kilmer, Caulkins, Pacula, MacCoun, & Reuter, 2010). Australia

experienced a national decline in cannabis arrests of approximately one-third over the period 1995–2005, but this included a time when four of the eight Australian states and territories either depenalised or decriminalised low level cannabis possession (National Cannabis Prevention & Information Centre, 2009; Room et al., 2010). There is now considerable variation in arrest rates for cannabis use between different states in Australia from as low as 67 arrests per 100,000 population in the ACT to as high as 405 arrests per 100,000 population in Queensland (McDonald, 2010).

Our analysis showed that there has been a substantial decline in convictions for cannabis use in New Zealand and this decline had been assisted by the introduction of the police diversion scheme for cannabis use offences (Ministry of Justice, 1998). However, there appears to be considerable potential to expand the use of diversion for cannabis use offences. In the years for which we have separate Ministry of Justice statistics for diversion (i.e. 2004–2008), 12% of prosecutions for cannabis use resulted in a 'completed diversion' compared to 69% of prosecutions resulting in a criminal conviction. A number of factors may be limiting the increased use of diversion for cannabis use offences including the restriction of diversion to first time offences and the fact that an individual may face more serious offences, including more serious drug offences, in addition to cannabis use which are not eligible for diversion. Diversion schemes can be designed to apply for more serious drug and other offences, allow repeat opportunities for eligibility, focus on young offenders, and can be applied by the courts later in the prosecution process (Hughes, 2010; Hughes & Ritter, 2008). In Australia, the national expansion of diversion has been associated with a number of benefits including reduced demands on the criminal justice system, reduced re-offending and likelihood of imprisonment, reduced drug use, reductions in drug related harm and savings in financial costs (Hughes, 2010). The New Zealand Law Commission identified the expansion of the New Zealand Police Adult Diversion Scheme as one possible future option for addressing minor drug offending but has expressed concern that the scheme has no basis in statute and its implementation is a matter of police discretion (New Zealand Law Commission, 2010b). Diversion schemes have also been found to have a number of unintended consequences such as 'net widening' (i.e. increasing contact with police by lowering the administrative costs of imposing penalties and reducing the propensity to give informal warnings), issues of equity (particularly for indigenous drug users), access (particularly in rural areas) and in the cases where there is the option for diversion to drug treatment the overloading of treatment services with occasional cannabis users (Hughes & Ritter, 2008). These issues emphasise the need for good programme design and evaluation of diversion schemes (Hughes & Ritter, 2008).

Our paper also identified a small increase in the number and proportion of those convicted for cannabis use offences receiving a 'conviction and discharge'. This means a conviction is recorded against the individual's name but no additional legal penalty is imposed such as a fine or prison term. This trend may represent some softening of New Zealand judges' views concerning the seriousness of cannabis use. However, it is accurate to refer to 'conviction and discharge' as no *additional* legal penalty, rather than no legal penalty at all, as a conviction for a drug offence can in itself impose a significant penalty on a person. Research in Australia and the United States has found that those convicted of a cannabis use offence can suffer serious negative consequences when looking for employment, retaining employment, and meeting legal requirements for employment (see Lenton & Heale, 2000). A number of professions in New Zealand, including lawyers, teachers and police, require potential practitioners to demonstrate a required standard of character and a drug conviction can be considered an obstacle to reaching these standards. A criminal conviction for a drug offence can also restrict international travel, particularly to the United

States and Canada, and can influence how the police perceive an individual in the future (see Lenton & Heale, 2000).

## Conclusion

Our paper presents a rather unusual country case study of a substantial reduction in arrests for cannabis use without any change in statutory penalties or formal police policy related to cannabis use. Further research is required to determine the cause of the reduction in cannabis arrests but it may have been an unintended consequence of a greater enforcement focus on the emerging and more harmful drug methamphetamine. Our findings underline the importance of examining the implementation of the law, as well as statutory penalties, when characterising a country's criminal justice approach to minor drug offending.

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