



**ACT DRUG INDICATORS PROJECT**

**SENTENCING DRUG OFFENDERS  
IN THE  
AUSTRALIAN CAPITAL TERRITORY**

**Monograph Series Part I**

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## **CONTENTS**

<b>INTRODUCTION</b>	<b>1</b>
<b>METHODOLOGY AND DATA SOURCE</b>	<b>2</b>
<b>SELECTION OF THE SAMPLE</b>	<b>3</b>
The Sample	
Age Structure of the Sample	
Prior Criminal Record	
<b>ANALYSIS OF DRUG CHARGES AND SUMMONSES</b>	<b>5</b>
<b>ANALYSIS OF NON-DRUG CHARGES AND SUMMONSES</b>	<b>10</b>
<b>SENTENCING</b>	<b>11</b>
Magistrates' Court	
Court Proceedings	
Final Sentencing Outcomes	
<b>SUMMARY AND CONCLUSIONS</b>	<b>24</b>
<b>REFERENCES</b>	<b>28</b>

## DRUG SENTENCING IN THE AUSTRALIAN CAPITAL TERRITORY

### INTRODUCTION

This report is the first of a series of reports to be published by the ACT Drug Indicators Project, relating to the sentencing of drug offenders in the Australian Capital Territory (ACT). The objective of this study was to develop methods of presenting data to provide information which is useful in understanding the sentencing process, with particular attention to the sentencing of drug offenders. It is thought that the information gathered in these studies will provide further useful indicators of illegal drug use to be used in conjunction with other indicators already being monitored by the ACT Drug Indicators Team. Furthermore, the information in this report has a direct bearing on government planning and expenditure in the areas of drug assessment, counselling and residential rehabilitation for illegal drug users who have been identified through the legal system. As well, the report should be useful to the planners of government agencies such as the ACT Adult Corrective Services (Probation and Parole, and the Community Service Orders scheme) which have the responsibility for supervision of a proportion of drug offenders dealt with by the Courts.

The general aims of this study were threefold:

1. to estimate the number and characteristics of drug offenders who were dealt with by the ACT Supreme and Magistrates' Courts during the four- month period 1 June to 30 September 1987;
2. to analyse all charges and summonses for drug offenders during the period, according to type of charge or summons (throughout the text the term charge will relate to both charge and/or summons), type of drug involved, and whether

other offences (drug-related) were committed at the same time; and

3. to describe sentencing outcomes for those in the sample with particular attention to court orders made for drug assessment or drug treatment, both during the pre-sentence stage and at the time of sentence.

The information relating to the Supreme Court will be reported in Part II of this monograph series.

#### **METHODOLOGY AND DATA SOURCE**

To obtain the necessary data, the Chief Magistrate, Mr R. Cahill, was contacted. With his permission and the assistance of the Clerk of the Court, Mr P. Thompson and his staff, information was collected from court records.

The ACT courts operate a manual records system. Consequently the work involved in collecting was time-consuming as at least five sets of papers were examined per charge (or set of charges).

Computerised police records were utilised to assess whether or not the offender had a prior criminal record. An analysis of prior criminal records was undertaken to determine the extent of previous drug and/or criminal involvement prior to the current charges.

Data collection began by searching through the 'After Court' files during the specified period. It was possible to identify from this source, by 'type of offence', all persons who, during the given period, were charged with a drug offence, the type of offence, the charge and summons numbers and the number of charges and summonses each person was facing; the date of the court appearance and the outcome of that appearance, including a remand

or adjournment date, if applicable. Other files provided further useful data such as date of birth and the number of previous court appearances for each person for any particular charge or summons.

A further set of files provided the date of sentencing, the sentencing outcome or disposition, the name of the sentencing magistrate and whether or not the defendant was represented. If a long remand or bail was ordered, the bench sheets were perused to establish the reason for this action. The bench's comments were particularly important if they related to drug detoxification, drug assessment, drug counselling or drug rehabilitation whilst on bail or remand.

In the total sample of 161 individuals, thirteen (8 per cent) were identified as serious drug users through drug-related offences. In such cases, their drug use was positively confirmed by 'notes from the bench' on the bench sheets.

The total number of offenders identified during the specific time period was followed through each court appearance until each matter was finalised or until 29 February 1988 which was the initial cut-off date. However, a further check was made for those cases which were not completed at the end of June 1988. Uncompleted matters after that date were noted thus.

The offender's age was taken at the time of sentence or in the cases where committal to the Supreme Court occurred, at that time.

#### **SELECTION OF THE SAMPLE**

All individuals who appeared before the ACT Supreme Court or Magistrates' Court on a drug charge or summons during the four-month period 1 June to 30 September 1987 irrespective of whether

they were there for a first, second or third appearance, or for a final hearing and sentencing, were included in the sample. The progress of each identified individual during the period was then followed as he/she proceeded through the court system, until the final sentence was passed.

### **The Sample**

The sample was made up of 161 individuals before the Magistrates' Court of whom 139 (86.3 per cent) were male and twenty-two (13.7 per cent) were female. All but thirteen were before the court for one or more specific drug charge, such as 'possess cannabis'. The other thirteen individuals included were on drug-related charges and were positively identified as regular drug users, as discussed earlier.

### **Age Structure of the Sample**

At the time of sentence, sixty-nine (42.9 per cent) of the total sample of 161 cases were in the nineteen to twenty-four years age range with fifty-four cases (33.5 per cent) falling into the twenty-five to twenty-nine years age range. Therefore, those aged between nineteen and twenty-nine (123 cases) made up 76.4 per cent of the total sample (Table 1).

**Table 1**  
**Age at Sentence**

Age	Offenders	Per cent
under 18	6	3.7
19-24	69	42.9
25-29	54	33.5
30-34	21	13.1
35+	11	6.8
Total	161	100.0



### Prior Criminal Record

One hundred and twenty (74.5 per cent) of the sample had a prior criminal record and forty-one (25.5 per cent) had no prior criminal record. Of the forty-one with no prior record, twenty-one were on charges other than a 'possess cannabis' charge.

### ANALYSIS OF DRUG CHARGES AND SUMMONSES

The total number of all charges including drug offences of the sample of 161 was 965 (Table 4). Of these, 354 (Table 5) were direct drug charges which were classified into the following categories shown in Table 2.

Table 2

#### Drug Charges/Summonses

<u>Drug</u>	<u>Charge/Summons</u>
Cannabis	Simple Possession
Cannabis	Use, Administer
Cannabis	Supply, Traffic, Sell
Cannabis Resin	Simple Possession
Cannabis Resin	Use, Administer
Cannabis Resin	Supply, Traffic, Sell
Amphetamine	Simple Possession
Amphetamine	Use, Administer
Amphetamine	Supply, Traffic, Sell
Heroin	Simple Possession
Heroin	Use, Administer
Heroin	Supply, Traffic, Sell
Cocaine	Simple Possession
Cocaine	Use, Administer
Cocaine	Supply, Traffic, Sell
Other	Simple Possession
Other	Use, Administer
Other	Supply, Traffic, Sell
Other Drug-related	Fail to Keep a Register of Drugs of Addiction
	Manufacture Drug without a Licence

The majority of the sample had more than one charge or summons. However, forty-one (25.5 per cent) of the 161 had only one charge. Of these only one charge was not a direct drug charge as shown in the breakdown in Table 3.

**Table 3**

**Number of Offenders with One Only Charge or Summons by Charge Type**

<u>Charge Type</u>	<u>Number of Offenders</u>
Possess cannabis	32
Possess heroin	4
Possess amphetamine	2
Possess drug suspected of being imported	1
Knowingly present altered prescription	1
Trespass with intent to steal	1
Total	41

Of the 148 persons charged with a drug offence, seventy-one were found to have one drug charge only, but with the exception of the forty-one described above, the remainder before the court for one drug charge had also been charged with other offences (not direct drug offences).

Table 4 shows the frequency of all charges/summonses by number of offenders while Table 5 shows the frequency of all drug charges/summonses by number of offenders.

The most commonly occurring drug offence in the four-month period was 'possess cannabis' with 101 single charges. There were five offenders with two, one with three and two with five charges, making a total of 109 offenders charged with 124 'possess cannabis' charges. Interestingly, there was only one charge of 'use cannabis', but thirty offenders were charged with fifty-nine counts of 'supply cannabis', nineteen of these being single charges.

Charges relating to heroin were the next most commonly occurring with seventy-one charges (covering possess, use and supply) in the four-month period. Amphetamine charges numbered thirty-seven.

**Table 4**  
**Total Number of All Charges and Summonses**

Charge	Offender	Per cent	Offender Per cent	Cumulative Per cent
1	41	15.4	25.5	25.5
2	34	12.8	21.1	46.6
3	18	6.8	11.2	57.8
4	14	5.3	8.7	66.5
5	14	5.3	8.7	75.2
6	11	4.1	6.8	82.0
7	1	0.4	0.6	82.6
8	4	1.5	2.5	85.1
9	2	0.8	1.2	86.3
10	2	0.8	1.2	87.6
11	1	0.4	0.6	88.2
13	2	0.8	1.2	89.4
14	1	0.4	0.6	90.1
15	1	0.4	0.6	90.7
17	1	0.4	0.6	91.3
19	1	0.4	0.6	91.9
23	4	1.5	2.5	94.4
24	1	0.4	0.6	95.0
25	1	0.4	0.6	95.7
28	1	0.4	0.6	96.3
29	1	0.4	0.6	96.9
32	1	0.4	0.6	97.5
44	1	0.4	0.6	98.1
50	1	0.4	0.6	98.8
53	1	0.4	0.6	99.4
54	1	0.4	0.6	100.0

Total Charges: 965  
No. of Offenders: 161

Table 5

## Total Number of Drug Charges and Summonses

Charge	Offender	Per cent	Offender Per cent	Cumulative Per cent
1	71	26.7	48.0	48.0
2	38	14.3	25.7	73.6
3	18	6.8	12.2	85.8
4	6	2.3	4.1	89.9
5	5	1.9	3.4	93.2
6	2	0.8	1.4	94.6
8	3	1.1	2.0	96.6
10	1	0.4	0.7	97.3
11	1	0.4	0.7	98.0
12	2	0.8	1.4	99.3
23	1	0.4	0.7	100.0

Total Charges: 354  
No of Offenders: 148

Charges for other drugs were less frequent as noted in Table 6.

Table 6

Number of Drug Charges/Summonses by Type of Drug Charge/Summons  
by Number of Persons Charged

Drug Type	Total No Charges	Total Persons Charged	Persons by charges Persons	Charges
<b>CANNABIS</b>				
Possess	124	109	101	1
			5	2
			2	5
			1	3
Use/Administer	1	1	1	1
Supply/Traffic/Sell	59	30	19	1
			6	2
			1	3
			1	4
			1	5
			1	7
			1	9

Drug Type	Total No Charges	Total Persons Charged	Persons by Persons	charges Charges
<b>CANNABIS RESIN</b>				
Possess	20	18	14	1
			3	2
			1	4
Use/Administer	2	2	2	1
Supply/Traffic/Sell	17	6	3	1
			1	4
			2	5
<b>AMPHETAMINE</b>				
Possess	24	23	22	1
			1	2
Use/Administer	8	8	8	1
Supply/Traffic/Sell	5	4	3	1
			1	2
<b>HEROIN</b>				
Possess	37	34	31	1
			3	2
Use/Administer	26	18	16	1
			1	2
			1	8
Supply/Traffic/Sell	8	5	2	1
			3	2
<b>COCAINE</b>				
Possess	2	1	1	2
Use/Administer	1	1	1	1
Supply/Traffic/Sell	0	0	0	0
<b>OTHER DRUG</b>				
Possess	6	5	4	1
			1	2
Use/Administer	8	1	1	8
Supply/Traffic/Sell	0	0	0	0
<b>FAIL TO KEEP REGISTER OF DRUGS OF ADDICTION</b>	5		5	1
<b>MANUFACTURE DRUG WITHOUT A LICENCE</b>	2		1	2

# ANALYSIS OF NON-DRUG CHARGES AND SUMMONSES

Charges for offences other than direct drug charges were categorised according to the Australian Bureau of Statistics (ABS) Draft Australian National Classification of Offences (DANCO) categories as shown in Table 7 (ABS, 1987, p. 25).

Table 7

Number of Non-Drug Charges/Summonses by Type of Offence  
and by Number of Persons Charged

Type of Offence	Total Charges	Total Persons Charged	Total Persons by <u>Charges per Person</u>	
			Persons	Charges
Against the Person	7	6	5 1	1 2
Robbery and Extortion	0	0	0	0
Break and Enter; and Other Theft, including receiving stolen goods	538	87	38 13 6 6 4 2 2 2 14	1 2 3 4 7 6 9 10 *
Property Damage	2	1	1	2
Against Good Order			8 7 1	1 2 3
	25	16		
Motor Vehicle, Traffic and Related Offences			11 2 1 1	1 3 2 7
	26	15		
Other, Non-drug			12 3	1 2
	18	15		

\* There were fourteen persons who had 5, 14, 15, 16, 17, 19, 22, 23, 25, 28, 34, 42, 44 and 50 charges respectively.

The high incidence of offences in the 'break and enter, and other offences of dishonesty' was not unexpected. Those charges made up 55.75 per cent of the total number of all charges for the sample for the four-month period under study.

At this point it should be mentioned that during the four-month period further charges arose for some offenders. These could have been outstanding unfinalised matters, or fresh charges. Frequently these were merged together and accounted for individuals who had in excess of twenty charges.

Apart from the above, it was found in general that the drug offenders with charges for other offences were charged with the non-drug charges in conjunction with the drug charge.

#### **SENTENCING**

In the ACT jurisdiction, the court structure consists of a number of magistrates' courts presided over by five permanent magistrates and two or three visiting magistrates who assist when required. The magistrates also preside over the Children's Court.

The ACT does not have an intermediate court such as the District Court in New South Wales. The next court in the hierarchy is the Supreme Court, which is presided over by judges who deal with the more serious matters as well as appeals from the Magistrates' Court. In certain circumstances it is possible for cases to be reviewed by the Federal Court and thereafter by the High Court. This applies only in very exceptional cases.

For the purposes of this study, data have been collected from the Magistrates' and Supreme Courts only.

### The Magistrates' Court

In the first instance, the Magistrates' Courts deal with all criminal matters. Summary offences are those of a less serious nature and are tried and disposed of by a magistrate alone. Indictable offences are those of a more serious nature where the offender is charged and the evidence against the accused is first outlined in a Magistrates' Court, in order to determine whether there is a *prima facie* case against the accused. If the magistrate so finds, then the accused will be committed for trial by judge and jury in the Supreme Court.

In certain circumstances, magistrates can deal with indictable offences providing the accused consents and the matter falls into the category of seriousness which is set out in Section 477 of the *Crimes Act, 1900 (New South Wales)* (ACT).

Sentencing decisions are not usually easy, although in relatively minor cases, the magistrates can speedily come to the conclusion that a fine is an appropriate penalty.

In this study it was found that forty-nine (30 per cent of total) offenders were dealt with by fine only. In a few cases where they were charged with more than one offence, some charges were dismissed through insufficient evidence, others were found proven, but were dismissed or discharged.

Many cases before the Magistrates' Court present complex sentencing problems which are difficult to resolve.

Firstly, many cases involve offenders who have multiple convictions whilst others may have only one conviction. However, the seriousness of one conviction may produce more problems for the sentencer than a string of lesser offences.



Secondly, in the ACT the bench has a variety of options from which to select an appropriate penalty. However, the drug offender poses especially complex problems for the sentencer because there is the further consideration of treatment to be weighed as well as that of punishment and/or deterrence. The penalty in these cases is often tailored to the offender rather than to the offence and this causes the appearance of disparity in sentencing.

In many cases individual judges and magistrates have differing views on the appropriate sentence to be passed. While all sentencers are faced with the dilemma of placing appropriate weight on the goals of punishment, deterrence and rehabilitation, these problems are particularly pointed when dealing with a drug offender. First and foremost the function of the court is to impose a just sentence; acting as a social welfare agency is not its role.

However, it would seem that the most desirable result for this particular group in many instances must be to combine punishment with the opportunity for treatment.

### **Court Proceedings**

In this study, all conviction information and all sentencing information was collected for each offender.

Following the 161 offenders through the Magistrates' Court process, it was found that at 30 June 1988, in 14 (8.7 per cent) cases that there was 'no appearance of the defendant', including one case in which the offender was deceased. In a further seven (4.3 per cent) cases the defendant was either discharged, the summons was not served, or there was not sufficient evidence to proceed.

The final sentencing outcomes for the remaining 140 individuals in the sample were as shown in Table 8, which gives a very broad picture.

**Table 8**

**Magistrates' Court: Penalties Imposed for  
Criminal Offences by Number of Defendants  
at 30 June 1988**

Penalty	No. of Offenders	Per cent of total Sample
Committed to Supreme Court	14	8.7
Imprisonment	7	4.3
Imprisonment, suspended upon entering a bond	14	8.7
Community Service Order (CSO)	2	1.2
CSO and fine	2	1.2
Monetary penalty (fine)	49	30.0
Bond	6	4.0
Bond with conditions (supervision, drug treatment, CSO, compensation)	20	12.4
Bond and fine	10	6.2
Long remand, bail or adjournment	16	10.0
Sub Total	140	86.7
No Appearance of Defendant	14	8.7
Discharged, summons not served, Not sufficient evidence to proceed	7	4.3
Total	161	*99.7

\* Not 100 per cent due to rounding of numbers

This Table however does not give us any indication of the complexities of the court proceedings which led to the final decisions handed down to the 140 individual offenders. During the months of the study it was not unusual to find new charges being merged with old (or old with new), some charges were dropped or dismissed, and many were not proven. These events led to numerous court appearances for some. Data collected to

29 February 1988 show the total number of court appearances for the sample of 161 was 1,298. The average number of appearances per offender was about eight. Frequently delays occurred because of a change of plea or the non-appearance of the defendant, who was then usually brought to court some time later as a result of a bench warrant.

It is thought that cases involving drug offenders were remanded more often than for other cases, although a comparative study was not carried out to check this.

Nevertheless, of the 161 in the sample, fifty-one (31.7 per cent) offenders were placed on a long remand or extended bail prior to the finalisation of their cases. In the case of twenty-five of these individuals, a long remand was used specifically for drug assessment, detoxification or a trial period in a residential drug rehabilitation unit (ten persons went to the latter). Sometimes the court offered the offender more than one opportunity for drug treatment whilst he/she was on bail or remand. As well, for twenty-two others of this group a long remand was used for the preparation or update of pre-sentence reports, Health Authority reports or for the assessment for suitability for a Community Service Order. When preparing a pre-sentence report, it would be usual practice for an offender on a drug charge to be referred to a suitable agency for drug assessment.

Of the remaining four of the fifty-one offenders on a long remand, two were in custody and the remaining two were on bail with strict police reporting conditions.

All the above procedures take time and they do not necessarily work smoothly. Even so, the study found that in general, the ACT magistrates made a particular effort to offer the drug offender

some opportunity for treatment, assessment or counselling before passing sentence.

### **Final Sentencing Outcomes**

As has been briefly explained above, the steps which lead to the final sentence or disposition for a defendant can be numerous and in some cases, very complex, particularly for the drug offender.

The study found it was not unusual for many of the sample to be facing multiple charges.

The sentencing patterns varied greatly. Some offenders were given multiple penalties for as few as one proven charge, whilst others with twenty or more convictions were also given multiple penalties. This depended on factors such as seriousness of the offence, previous convictions and previous dispositions.

In cases where there were many convictions, it was not uncommon to find that these were finalised on a number of different dates, sometimes by different magistrates.

At times similar penalties, for example a fine, were handed down for each proven matter found against one individual. On other occasions it was found that a variety of penalties were handed down, whilst in other instances, multiple convictions were dealt with by ordering an aggregate sentence such as imprisonment.

To explain this more clearly the data relating to the seven offenders who were sentenced to imprisonment have been analysed as follows. The information has been kept vague deliberately in order to maintain the anonymity of the group.

**Table 9**  
**Description of Those in Sample who Received**  
**a Sentence of Imprisonment**

Case	Previous Criminal Record	Previous Imprisonment	Type of Previous Convictions	Current Convictions Dishonesty	Drug	No of Court Appearances	Other Relevant Details
1	Very long	Yes	No drug	Many	2	9	-
2	Very long but minor offences	None	No drug	Many	0	7	Bailed to residential Broke bail
3	Long record	None	Mainly drug	20+	1	6	Bailed to residential Broke bail
4	Long record	None	Mainly drug	30+	5+	11	-
5	Short record	None	No drug	Mostly drug	-	6	-
6	Long record	Yes	No drug	Many	Many	9	-
7	Long record	None	Drugs & Dishonesty	Many	Few	7	Bailed to detox and resid. rehab. Broke bail

The study found that after monetary penalties (fines), the next most popular disposition was a *bond* (or *recognizance*) with *conditions*. A *bond* means that the offender undertakes 'to be of good behaviour' for a length of time stipulated by the court. If the offender re-offends whilst on a bond, he/she must return to court and be dealt with accordingly. A *bond with conditions* means that when the court makes an order with conditions (for example, the offender agrees to undertake drug treatment, or to

accept the supervision of the Probation Service in addition to 'being of good behaviour'), that another agency is usually involved which will support the court order. In this way the offender is given assistance in understanding and keeping the conditions set down.

If the offender should fail to comply with the court conditions, he/she is brought back to the court in one of two ways. Either he/she is charged by the police for a further offence, or the agency with the responsibility for supervision of the offender (for example, the director of a residential drug rehabilitation unit) must notify the court of the failure to comply with the court conditions.

Sometimes the court imposes a number of conditions and usually it stipulates the length of time such conditions should be in place.

Of the twenty individuals who received this disposition, ten were directed to continue or to commence drug counselling and/or residential drug treatment. The other ten were directed to accept the supervision of the Probation Service (on the understanding, one presumes, that the Probation Officer would refer the client to counselling/treatment for drug abuse).

Two random profiles of offenders from the sample who were sentenced to a 'bond with conditions' follow, to assist in explaining how these penalties were reached.

**Case A** was a young man with a long record of minor offences, mostly traffic, and a history of drug use for a few years. He was charged and found guilty of two offences. One was a drug charge whilst the other was for fraud. He made five court appearances during which time the court requested Pre-sentence

and Community Service Order (CSO) reports. On his sixth court appearance, four-months after his first, he was sentenced to a fine on one charge and to a Bond with Conditions for the other. The bond was for three years. The conditions were to accept the supervision of the Probation Service with particular reference to continuing drug counselling for twelve months.

Case B was a young man who was convicted of two drug charges and one of dishonesty. He had a short criminal record with no previous drug convictions. He made three court appearances and on the fourth he was sentenced to a Bond with the condition to accept counselling and treatment from a specific drug treatment unit in Canberra. He was also ordered to pay a fine.

Cases A and B both had legal representation.

The penalty of *imprisonment, suspended upon entering a bond, or recognizance* can also be used to encourage the drug offender to accept drug treatment if such a condition of the bond is made. This penalty is a severe one which hopefully helps to make the offender more responsible for his/her future actions. Failure to comply with this disposition brings the offender back to court. If convicted on further charges, he/she should serve the initial 'suspended' term of imprisonment, in addition to any further penalties handed down for subsequent offences. This however is a matter of discretion for the magistrate as wide powers of discretion are allowed when dealing with a breach of 'recognizance'.

Fourteen of the total sample received this disposition of whom six were ordered to accept 'residential drug treatment' or specific drug counselling as a condition of their good behaviour bond.

The following profiles of offenders from this study may assist in understanding something of how and why magistrates decided upon this penalty.

**Case C** was a young man with a very long record of dishonesty who had served more than one short term of imprisonment. He had no prior drug convictions. During the four-months of this study he was charged with four offences (three drug).

Ten court appearances were made in six months. During this time the court ordered pre-sentence and CSO reports.

He was dealt with by two magistrates. The first convicted him on one drug charge for which he was sentenced to two months imprisonment, suspended upon entering a bond to be of good behaviour (TBGB) for two years. The following month fresh charges were laid and a different magistrate dealt with these charges. One drug charge was dismissed because there was 'no evidence to offer'; a fine was handed down for the second offence which was not a drug offence; and the third offence was dealt with by way of a bond TBGB for twelve months and a fine. (This is an instance of a magistrate using his discretion when he did not enforce the previous 'suspended' sentence.)

This offender represented himself.

**Case D** was a young woman with a short criminal record of minor convictions including drug use. At the time of the study she was facing many charges of dishonesty but no drug charges. She was convicted of twenty-five plus offences. Whilst on remand she attended and completed a residential drug treatment program. During the court proceedings she made seven appearances over a six-month period before being sentenced as follows:

1. Nine months imprisonment, suspended upon entering into a bond TBGB for three years.



2. Conditions of bond: (a) to accept the supervision of the Probation Service for twelve months; (b) to continue with drug counselling.
  3. Pay compensation.
- She had legal representation.

**Case E** was a young man with a long criminal record, a quarter of which were drug offences. He had had several suspended sentences.

Charged with four offences, over a four-month period, he made six appearances. During that time a CSO report was requested.

This man was sentenced on two separate dates. Two matters were dealt with on the first occasion. For the offence of dishonesty he received a CSO and for the second conviction (drug) he was ordered to pay a fine. The two remaining matters were adjourned for three months whilst the offender undertook regular counselling at a specified drug rehabilitation centre. On the second sentencing date, his disposition was for twelve months imprisonment, suspended on being released on a bond TBGB for three years and to accept drug counselling for twelve months. He was also ordered to pay substantial compensation. This man had legal representation.

**Case F** was a young male with a short criminal record of dishonesty and no drug convictions.

He appeared in court fifteen times over a four-month period on ten plus charges of dishonesty during which time he was remanded to two different residential drug treatment units which he left after a few days. Finally, he was sentenced to twelve months imprisonment, suspended upon entering a 'recognizance' TBGB for three years, with the following conditions:

1. Accept the supervision of the Probation Service for twelve months.

2. Report within twenty-four hours to a specified drug rehabilitation unit.
3. Undergo twelve months assessment and treatment for drug addiction including random urine analysis.
4. Pay compensation.

This man had legal representation.

The final broad category group in Table 8 which requires some explanation comprises the sixteen individuals whose cases were not finalised at the cut-off date of 30 June 1988, ie. those who were still on a *Long Remand*.

There were a wide variety of reasons why these cases were not finalised. Some of these reasons are listed below:

1. The sample for the study was selected over a four-month period, which meant that some individuals who appeared for the first time towards the end of the four-month period with serious charges had now become the tail-enders of the study simply because of delays which occur as a normal matter of course.
2. In some cases an offender delayed proceedings by not appearing in court when required and it was some weeks before another appearance was made. In a few cases, after a bench warrant had been issued, the offender was apprehended and brought back to court.
3. Four of the sixteen were remanded until July or August 1988 for either CSO assessment, pre-sentence or Health Authority reports.
4. A further four of the sample on 'long remand' each had appeared in court between seven and twelve times already.

They were participating in or completing extended residential drug rehabilitation programs in the ACT or interstate. In some cases the offenders were under the supervision of an interstate probation officer. In all cases they had long criminal records: two had long histories of drug convictions whilst the other two had no direct drug convictions.

It is not unusual for the court to use the 'long remand' when a drug offender undergoes residential drug treatment. This is usually a form of treatment requiring many months of therapy. Furthermore, it is not unusual for the drug offender to move from one to another of these programs before he/she 'settles down'. In certain circumstances the court can be tolerant, giving the offender several opportunities for specialised treatment. Hence, for this reason, court proceedings can be delayed for many months.

5. In other cases, it was found, where serious drug charges were involved, some offenders had been sent to the Supreme Court for trial. These offenders were given very long adjournments for other concurrent matters from the Magistrates' Court, pending the Supreme Court decision.

The court process, as experienced by the group on 'long remand' further illustrates the complex task confronting judges and magistrates when sentencing drug offenders. The individual approach taken by magistrates is evident, showing us that ultimately sentencing is a human process involving the interaction of many participants.

## SUMMARY AND CONCLUSIONS

The research found that the group of 161 under study was predominantly male and that 123 (76.4 per cent) were in the nineteen to twenty-nine years age group. The most commonly occurring drug offence was 'possess cannabis' (124 charges) followed by combined heroin charges (seventy-one) then combined amphetamine charges (thirty-seven). The most common 'other than drug' charges were for offences of dishonesty, such as 'break and enter' and 'fraud'. They made up 55.75 per cent of the non-drug charges.

Data collected up to 29 February 1988 show that the total number of court appearances for the sample of 161 was 1,298. This meant that on average each individual appeared eight times.

Apart from the forty-nine (30 per cent) offenders who received a fine, it was found that the sentencing process for the remainder of the sample was complex. In the majority of cases the sentencing magistrates paid particular attention to gaining information about the extent of the offender's drug involvement which necessitated long remands/adjournments/bail for almost one third of the sample.

The final penalties for the sample included twenty who were handed down a 'bond with conditions'. The conditions invariably related to drug counselling or residential drug treatment. Three of the seven sentenced to terms of imprisonment had broken bail whilst in drug treatment.

Of the fourteen offenders who received a sentence of imprisonment, suspended upon entering a bond with conditions, the

conditions for six related to drug counselling or residential drug treatment.

Sixteen of the sample had matters not finalised at 30 June 1988. They were all on long remand, eight had been specifically directed to undertake drug assessment and/or treatment.

The study was limited by the fact that the sample represented only a proportion of the total number of serious drug users who go before the courts in the ACT. Many offenders who were before the courts for other offences were there because of their drug habit. However, unless they were charged with at least one drug charge (with the exception of thirteen cases already explained) they did not meet the criteria for sample selection for this study.

Even so, it has been shown that clearly the courts are an important referral agency for treatment for illegal drug users. Fifty-one (32 per cent) of the total sample were referred at least once for assessment and/or treatment. This is considered to be a very conservative estimate because of the study's limitations.

As is stands, the court process when dealing with drug offenders is both time consuming and expensive in the ACT. There is also the consideration of personal stress to the offender when repeated appearances are required.

It is therefore recommended that a more expeditious and formalised process of drug assessment at the pre-sentence stage be implemented to assist the magistrates to reach decisions more quickly.

It must be stressed however, that those carrying out assessment should be objective and well experienced in this field. It is most important that a reliable and realistic prognosis is produced which is not simply motivated by advocacy on behalf of the offender.

It is further recommended that consideration be given to changing the law in the Australian Capital Territory in respect to simple cannabis offences, along the lines of the South Australian legislation. The South Australian legislation, Section 8 45a of the *Controlled Substances Act Amendment Act 1986*, came into operation in April 1987. It requires that, before an adult can be prosecuted for a simple cannabis offence, an 'expiation notice' must be issued. Where an offence is expiated by payment of the prescribed fee within sixty days, no prosecution is commenced for the offence. Under the Act, payment of an expiation fee is not regarded as an admission of guilt, and accordingly no conviction or criminal record results (SA Attorney-General's Department, 1987).

This study found that of the 354 drug charges in the four-month period, 124 (35 per cent) were for 'possess cannabis'. The adoption of new legislation in the ACT based on the South Australian model, which removes the majority of simple cannabis offences by adults from the court system, would be advantageous for the following reasons:

- . The procedure for dealing with simple cannabis offences would be considerably simplified.
- . Pressure on criminal justice agencies such as the police, the courts and the probation service in terms of cost and time, would be reduced, freeing them to concentrate their scarce resources on more serious matters.

- . An opportunity would be created whereby the offender could avoid court action and the stigmatising effect which inevitably accompanies the conviction for a drug offence.

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