



**Conviction and Sentencing for
Cannabis Use Offences in New Zealand,
1990-2008**

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Abstract

Aim: To examine the outcomes of court prosecutions for the use of cannabis in New Zealand over the past two decades.

Method: We examined the number and outcomes of court prosecutions for cannabis use offences in New Zealand for the years 1990-2008. We compared outcomes from prosecutions for the use of cannabis between 2000-2008 and 1990-1999.

Results: The mean number of prosecutions and convictions per year for the use of cannabis declined by approximately one quarter in 2000-2008 compared to 1990-1999. A lower proportion of those prosecuted for cannabis use were convicted and a slightly higher proportion were diverted or discharged in 2004-2008 compared to 1990-1999. In 2008, 16% of those prosecuted for the use of cannabis were successfully diverted. The mean number of people imprisoned each year for the use of cannabis (as their most serious charge) fell by 63% in the years 2000-2008 compared to 1990-1999. The mean number of people convicted and discharged for the use of cannabis increased by 45% for the period 2000-2008 compared to 1990-1999. Only 11% of the people convicted for the use of cannabis had no prior convictions over the past two decades. Most of the people who were convicted for the use of cannabis in the years 2000-2008 received either a fine (72%) or community-based sentence (17%). Six percent were 'convicted and discharged', 4% received deferment and 1% were imprisoned. There has been little change in the length of penalties imposed for the use of cannabis during the past two decades.

Conclusion: There has been a decline in the number of prosecutions and convictions for cannabis use offences in New Zealand over the past decade or so. The majority of the people convicted for the use of cannabis had previous convictions for drug and/or non-drug offences.

Introduction

The *Misuse of Drugs Act 1975* makes it a criminal offence to possess, use, produce or sell cannabis in New Zealand (see Mathias 1988). The maximum penalty for the possession of cannabis for personal use under the *Misuse of Drugs Act 1975* is imprisonment for a term not exceeding three months, or a fine not exceeding \$500, or both. Section 7(2)(b) of the *Misuse of Drugs Act 1975* instructs judges to only impose a custodial sentence for cannabis use offences if an offender has previous convictions, or there are exceptional circumstances associated with the offence and these factors convince the judge that a custodial sentence is warranted.

Focusing on the statutory penalties for the use of cannabis provides an incomplete picture of the outcomes for cannabis users who come to the attention of the police and courts. The outcomes for cannabis offenders are also greatly influenced by police prosecution policy; other legal statutes concerned with sentencing; legal precedents established from case law; and the opinion of the court judge. To gain a clear picture of how the New Zealand legal system addresses cannabis use offences we must investigate the outcomes for these offenders using police apprehension statistics and court statistics. In a previous report we investigated the outcomes following police apprehensions for cannabis offences in New Zealand (see Wilkins 2009). In this report we investigate outcomes from the prosecution, conviction and sentencing for cannabis use offences in New Zealand.

Before a charge can be recorded by the Ministry of Justice an offender has to be identified and apprehended by police and police have to pursue a prosecution for the offence. Not all police apprehensions result in a prosecution. Police may decide to issue a warning to the offender or the offender may be directed to attend youth aid or a family conference (see Wilkins 2009).

New Zealand Police apprehensions for cannabis use are not directly comparable to New Zealand Ministry of Justice convictions and sentencing for cannabis use for a number of reasons (Statistics New Zealand 2009b).

These include:

- Not all cannabis use offences resolved by the Police result in a person being prosecuted
- The Police and Ministry of Justice figures related to cannabis use offences are resolved and counted within a calendar year but under different criteria.
- Agencies other than the Police may prosecute a person for cannabis use (e.g. Customs Service) and consequently are counted in the Ministry of Justice figures.
- Classifications of offences differ between the Police and Ministry of Justice

Method

The New Zealand Ministry of Justice collates national statistics on conviction and sentencing for drug offences in New Zealand for each calendar year (i.e. January to December). These statistics are published annually by the Ministry of Justice in report form (eg. Soboleva and Chong 2006) and are also available from the Statistics New Zealand website using a table builder (Statistics New Zealand 2009a).

We requested data for cannabis use offences for the years 1990-2008 (i.e. approximately two decades) from the New Zealand Ministry of Justice. We did this to provide a picture of how the New Zealand Courts currently handle prosecutions and sentencing for cannabis use offences and to illustrate how these outcomes have changed over recent decades. Most of the data presented in this report refers to individual charges rather than individual offenders. A single incident can result in a number of charges being laid. One offender can also accumulate more than one charge as a result of a single incident or numerous charges from multiple incidents over 12 months. Each charge results in a separate outcome in the Ministry of Justice statistics.

We chose to look mainly at the outcomes by individual charge rather than individual offender, as this meant we could include offenders who had been charged with a cannabis offence but where the cannabis offence was not necessarily their most serious

offence. New Zealand Ministry of Justice statistics identify individual offenders on the basis of their most serious charge. If we had examined cannabis offences by individual offender we could only include those offenders for whom their cannabis offence was their most serious offence. Examining the outcomes by charge thus provided the broadest picture of cannabis prosecution in New Zealand. We have included some data by individual offender to provide a more focused examination of sentences imposed for cannabis use convictions only.

In this report we compare the different outcomes from a cannabis prosecution between two time periods (i.e. 2000-2008 versus 1990-1999). The cut-off point between the two periods is fairly arbitrary (i.e. the mid-point of the years available), but nicely represents two decades. This historical analysis of the cannabis use data provides an indication of how the incidence of a particular type of outcome from a prosecution has changed over time. We also compare how the different outcomes for a given year have changed between 2000-2008 and 1990-1999. This provides an indication of the extent to which a specific type of outcome occurs as a proportion of all outcomes from cannabis prosecutions in a given year.

Results

Outcomes of prosecutions for the possession of cannabis

There are a number of possible outcomes from a prosecution for the use of cannabis (see Table 1). If a prosecution results in a 'conviction' this means the offender is given a penalty of some type as outlined in the next section on sentencing. 'Youth court proved' means the charges involved young people and the prosecution was 'proved' and the matter was finalised in the Youth Court. 'Discharge without conviction' means the charge resulted in a guilty verdict or a plea of guilty, but the judge considered the consequence of a conviction for the defendant to outweigh the seriousness of the offence and consequently the prosecution was discharged without a conviction. 'Other' includes situations where there was a stay of proceedings, the offender was found unfit to stand trial, or the charge was acquitted on the basis of insanity. 'Not proved' means the charge was acquitted, dismissed, discharged, not proceeded with, pardoned, struck out or withdrawn.

Diversion is a scheme administered by the New Zealand Police Prosecution Service which allows offenders to be dealt with in an ‘out of Court’ way (New Zealand Police 2009). The intention of the scheme is to provide a means by which police can deal with offending in a pro-active fashion and encourage rehabilitation (i.e. offering a chance to reflect on and change behavior, or address underlying reasons for offending) and facilitate restorative justice outcomes (i.e. providing an apology and/or monetary compensation to a victim or community). If an offender completes certain conditions, as set out by the Police Prosecution Service, the charge is withdrawn and a conviction is not recorded. Diversion is offered at the discretion of the Police Prosecution Service which reviews the circumstances of the offence and consults with the police officer concerned. The offender must accept responsibility for their actions and show remorse. Diversion is generally only offered in the case of first-time offences of a non-serious nature, although there is opportunity to consider special circumstances and all offences are reviewed for eligibility for diversion. Diversion is currently available for cannabis use offences and Class C drug offences. The conditions for successfully completing diversion can include apologising to the victim; making monetary reparations to the victim; working for an approved community group; making a donation of money to an approved charity; and referral to an approved counseling programme, such as alcohol and drug counseling, counseling for gambling, counseling for violence and counseling for sexual abuse; and participating in a restorative justice process.

The Ministry of Justice informed us that for a number of years the ‘Not proved’ category included charges which had resulted in diversion (personal communication, Ministry of Justice). From 2004 onwards, prosecutions which had resulted in a completed diversion were separated out into a specific category. The Ministry of Justice statistics record the number of ‘completed diversions’. These figures include only charges where diversion had been offered and the terms of the diversion successfully completed (e.g. a donation made to a charity). They do not include prosecutions where, for whatever reason, an offender failed to meet the requirements of their diversion.

Table 1 presents the outcomes of prosecutions for the use of cannabis for the calendar years 1990 to 2008. Table 1 shows that the mean total number of prosecutions per year for cannabis use fell by 21% in 2000-2008 compared to 1990-1999 (i.e. down from a mean of 8,621 prosecutions per year in 1990-1999 to a mean of 6,834 prosecutions per year in 2000-2008). The number of convictions for cannabis use fell by 28% in 2000-2008 compared to 1990-1999. The number of charges for cannabis use which were 'discharged without conviction' increased by 38% in 2000-2008 compared to 1990-1999 (i.e. up from 104 per year in 1990-1999 to 144 per year in 2000-2008).

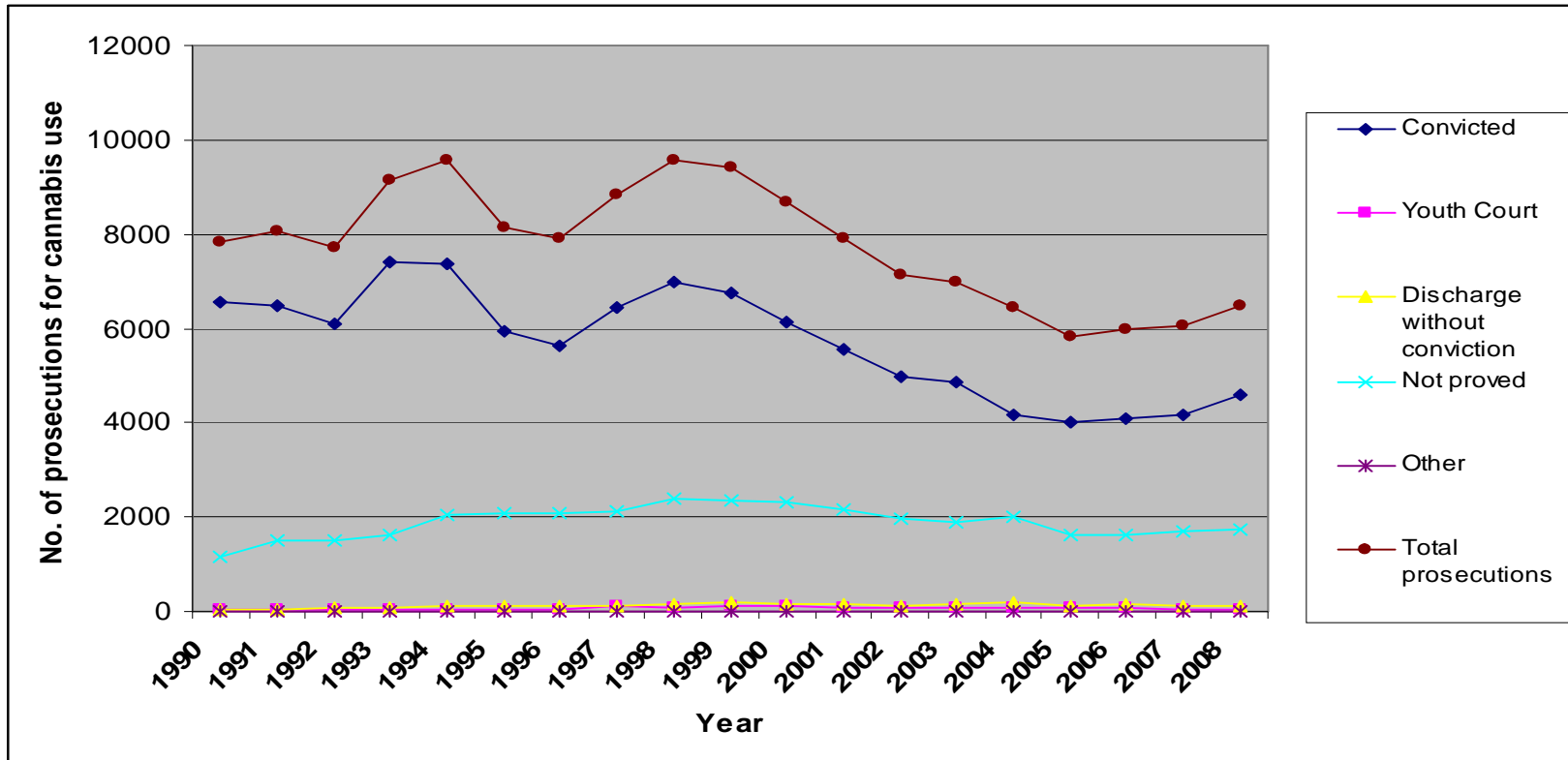
A lower proportion of cannabis use prosecutions resulted in a conviction and a higher proportion were diverted in 2000-2008 compared to 1990-1999. Based on the mean outcomes of prosecutions each year for the years 1990-1999, 76% of prosecutions for cannabis use resulted in a conviction, 22% were 'Not proved', 1% were 'Youth Court proved' and 1% were 'discharged without conviction'. For the years 2004-2008 (i.e. the years when separate diversion figures were available), 68% of prosecutions for cannabis use resulted in a conviction, 16% were 'Not proved', 12% completed diversion, 2% were discharged without conviction and 1% were referred to the Youth Court.

Table 1: Outcomes of prosecutions for the use of cannabis, 1990 to 2008

Outcome	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	90-99	00-08	% 04-08	
Convicted	6569	6484	6101	7417	7388	5926	5652	6459	6970	6761	6131	5541	4988	4856	4176	4023	4099	4179	4596	6573	4732	-28	4215
Youth Court proved	33	44	34	43	32	50	51	98	78	109	98	85	63	66	63	64	91	57	57	57	72	+26	66
Discharge without convictions	54	42	64	74	114	108	122	135	139	190	167	142	123	148	193	128	151	129	119	104	144	+38	144
Not proved	1164	1509	1517	1620	2050	2065	2076	2132	2378	2337	2296	2156	1954	1900	1093	910	954	1002	1019	1885	1476	-22	996
Withdrawn-Diversion Completed	0	0	0	0	0	0	0	0	0	0	0	0	0	0	898	715	667	699	700	0	409	-	736
Other	4	3	0	0	0	0	4	2	1	2	0	1	2	0	2	5	0	1	3	2	2	0	2
Total	7824	8082	7716	9154	9584	8149	7905	8826	9566	9399	8692	7925	7130	6970	6425	5845	5962	6067	6494	8621	6834	-21	6159

Source: New Zealand Ministry of Justice.

Figure 1: Outcomes of prosecutions for the use of cannabis, 1990 to 2008



Source: New Zealand Ministry of Justice.

Outcomes of convictions for cannabis use

A range of penalties are available to the New Zealand Courts in regard to convictions for cannabis use offences and these are influenced by statutes other than the *Misuse of Drugs Act 1975*; such as the *Sentencing Act 2002* (see Table 2). ‘Imprisonment’ includes preventative detention and corrective training. ‘Community-based sentences’ refer to various types of community work, home detention and community supervision. The Sentencing Amendment Act 2007 established home detention and new community-based sentences (see Ministry of Justice 2008). ‘Monetary penalties’ means the conviction resulted in the imposition of a fine or reparation. ‘Deferment’ means the prosecution resulted in a conviction but that the offender is only required to serve a sentence if called upon by the court. This usually only occurs if the offender re-offends during the time of their deferment. ‘Convicted and discharged’ means the prosecution resulted in a conviction but no sentence was imposed. The ‘other category’ includes orders for treatment in a psychiatric facility, deportation and driver disqualification.

Table 2 presents the different sentence types imposed for a conviction for cannabis use for the years 1990 to 2008. Table 2 includes all charges for cannabis use which resulted in a conviction, regardless of whether the offender was also convicted for a more serious charge(s). As outlined in the previous section, the mean total number of convictions per year for the use of cannabis fell by 28% in 2000-2008 compared to 1990-1999. The mean number of convictions for the use of cannabis resulting in imprisonment fell by 10% (i.e. down from a mean of 471 imprisonments per year in 1990-1999 to a mean of 423 imprisonments per year in 2000-2008). Both the number of community-based sentences and monetary penalties imposed for cannabis use offences fell by approximately one third. The number of convictions for cannabis use resulting in ‘conviction and discharge’ increased by 47% (i.e. up from a mean of 437 per year in 1990-1999 to a mean of 644 per year in 2000-2008). There was also a small increase in the number of convictions resulting in ‘Deferment’.

A lower proportion of those convicted for the use of cannabis received a fine or community sentence and a higher proportion were convicted and discharged in 2000-2008 compared to 1990-1999 (Figure 2). Based on the mean type of sentences

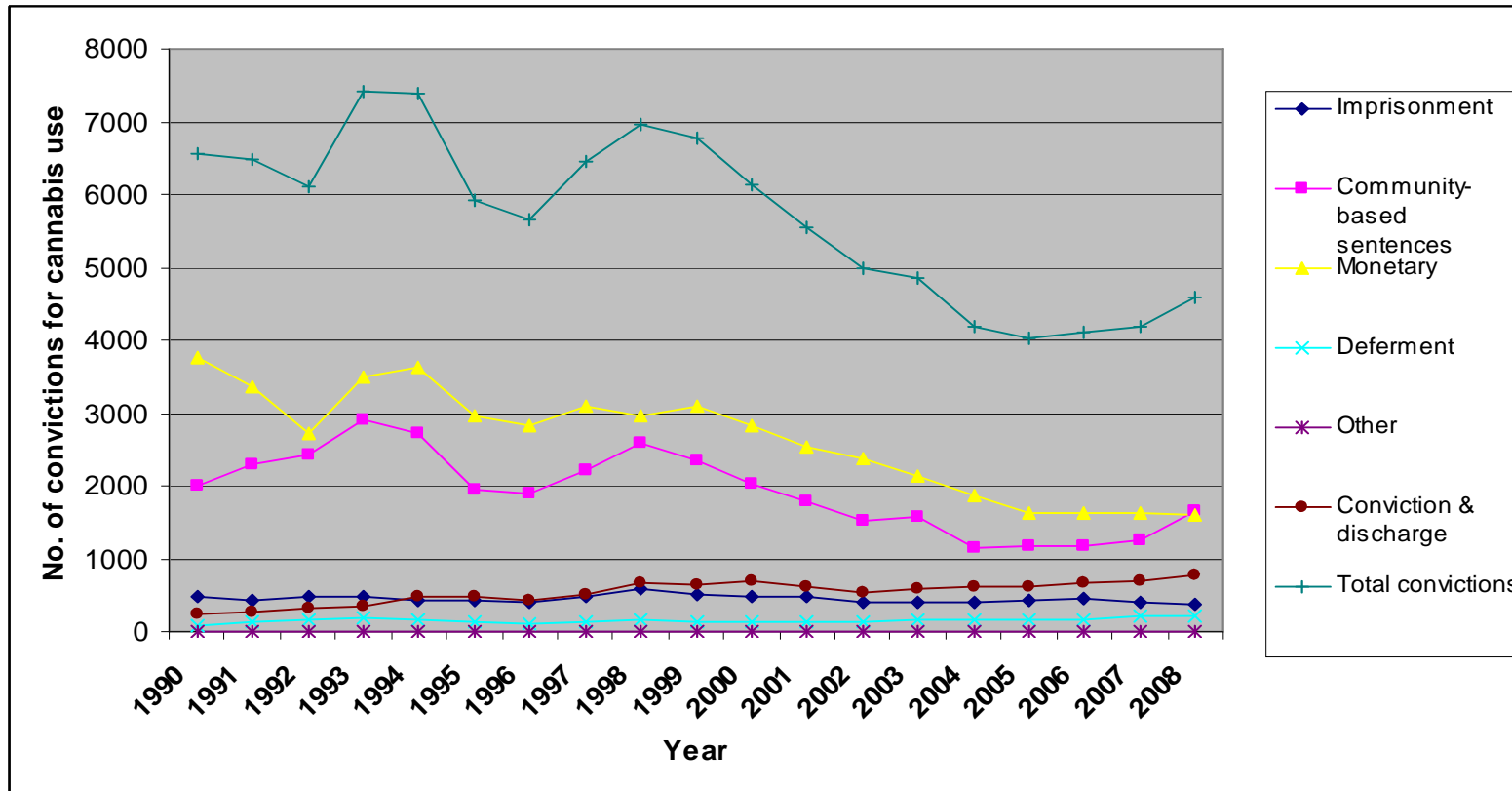
imposed per year for the years 1990-1999, 48% of those convicted for the use of cannabis received a fine, 35% were given a community sentence, 7% were convicted and discharged, 7% were imprisoned and 2% received deferment. Over the period 2000-2008, 43% of those convicted for the use of cannabis received a fine, 31% were given a community sentence, 14% were convicted and discharged, 9% were imprisoned and 3% received deferment.

Table 2: Outcomes of convictions for cannabis use, 1990 to 2008

Sentence Category	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	90-99	00-08	%
Imprisonment	486	434	483	479	433	414	397	486	580	515	469	473	399	392	411	433	465	397	365	471	423	-10
Community-based sentences	1990	2298	2419	2910	2708	1943	1894	2219	2594	2349	2014	1777	1515	1582	1151	1167	1183	1242	1647	2332	1475	-37
Monetary	3770	3353	2713	3483	3614	2955	2820	3098	2966	3102	2834	2530	2380	2132	1855	1640	1624	1624	1587	3187	2023	-36
Deferment	92	134	166	190	154	146	114	133	163	141	128	130	143	162	153	157	162	208	226	143	163	+14
Other	1	0	1	0	1	1	1	3	5	11	5	5	7	4	1	6	0	3	2	2	4	+100
Conviction & discharge	230	265	319	355	478	467	426	520	662	643	681	626	544	584	605	620	665	705	769	437	644	+47
Total	6569	6484	6101	7417	7388	5926	5652	6459	6970	6761	6131	5541	4988	4856	4176	4023	4099	4179	4596	6573	4732	-28

Source: New Zealand Ministry of Justice.

Figure 2: Outcomes of convictions for the use of cannabis, 1990 to 2008



Source: New Zealand Ministry of Justice.

A more focused approach to examining the types of sentences imposed for the use of cannabis is to look only at offenders for whom the use of cannabis is their most serious conviction. This excludes offenders who were also convicted for offences more serious than cannabis use (e.g. violence, property or sex offences). A conviction and sentence for a more serious offence may influence the type of penalty imposed for any lesser charge, such as cannabis use (e.g. if a judge is sending an offender to jail for a violent assault they may decide to also send them to jail for the use of cannabis) (personal correspondence, Ministry of Justice).

Table 3 presents the outcomes of convictions for cannabis use for those offenders for whom the use of cannabis was their most serious conviction. The mean number of people who were convicted per year for the use of cannabis (as their most serious offence) fell by 41% in 2000-2008 compared to 1990-1999 (i.e. down from a mean of 2,140 convictions per year in 1990-1999 to a mean of 1,266 convictions per year in 2000-2008). The mean number of people imprisoned per year for the use of cannabis fell by 63% in 2000-2008 compared to 1990-1999 (i.e. down from a mean of 32 imprisonments per year in 1990-1999 to a mean of 12 imprisonments per year in 2000-2008). The mean number of people per year receiving community-based sentences and fines for the use of cannabis fell by 56% and 40% respectively. The number people convicted and then discharged (i.e. essentially received no penalty) increased by 45% during these two decades.

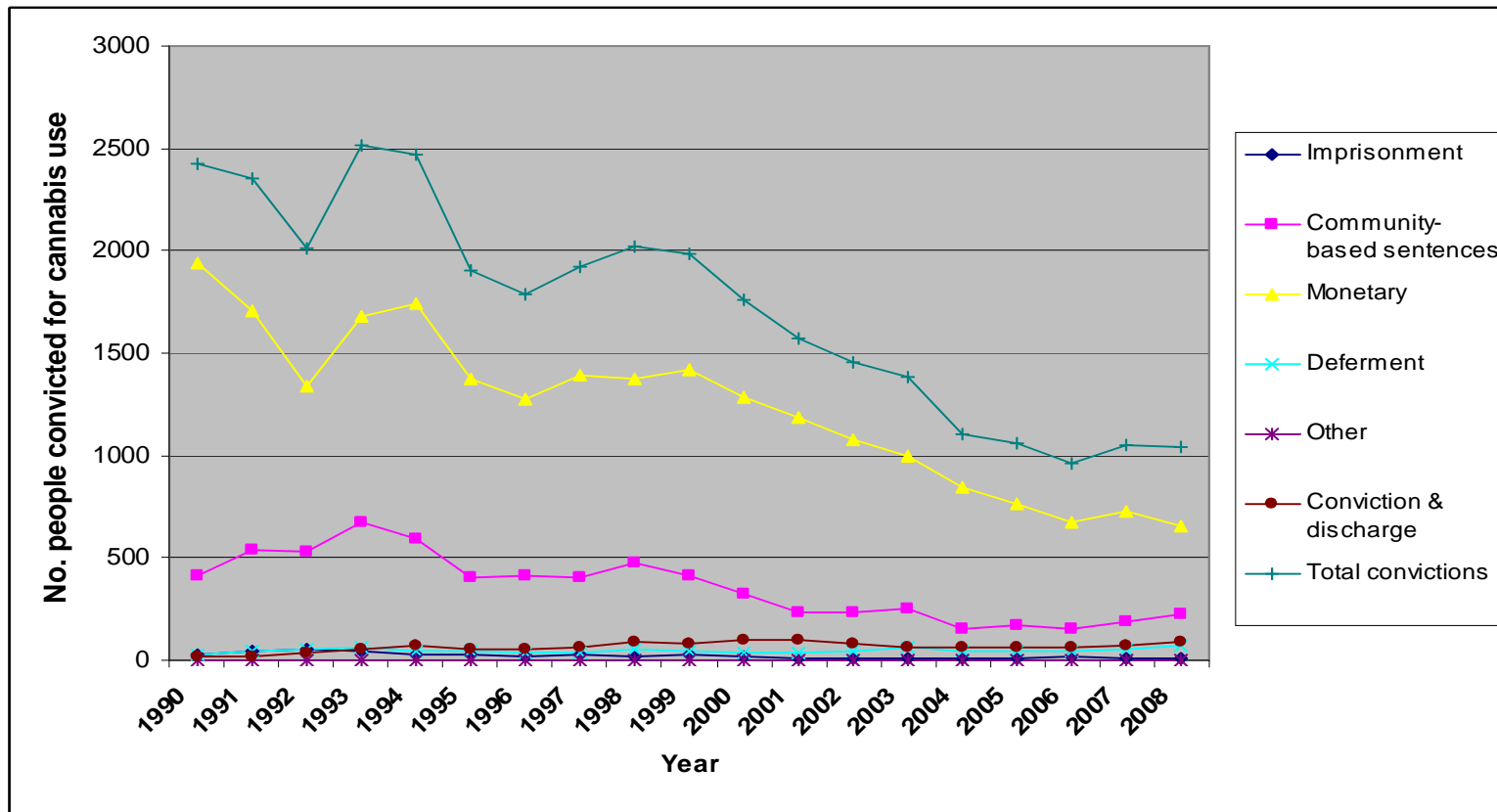
Based on the mean sentences imposed per year for the use of cannabis for the years 1990-1999, 71% of people received a fine, 23% received a community-based sentence, 2% were convicted and discharged, 2% received deferment and 1% were imprisoned. For the years 2000-2008, 72% of people received a fine, 17% received a community-based sentence, 6% were convicted and discharged, 4% received deferment and 1% were imprisoned for the use of cannabis.

Table 3: Outcomes for people convicted for the use of cannabis, 1990 to 2008

Sentence category	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	90-99	00-08	%
Imprisonment	29	45	53	46	25	30	15	26	21	28	14	10	12	12	10	12	22	10	10	32	12	-63
Community-based sentences	414	540	534	670	591	403	416	402	478	411	326	237	237	250	154	171	153	186	221	486	215	-56
Monetary	1936	1711	1341	1682	1741	1372	1271	1395	1374	1417	1286	1189	1076	1001	843	764	675	726	654	1524	913	-40
Deferment	31	42	51	65	43	48	33	35	58	44	39	35	43	59	41	44	47	57	71	45	48	+7
Other	0	0	1	0	0	0	0	0	1	0	1	0	3	1	0	1	0	0	0	0	1	-
Conviction & discharge	17	18	36	51	74	52	50	63	89	82	96	101	81	63	60	64	65	76	89	53	77	+45
Total	2427	2356	2016	2514	2474	1905	1785	1921	2021	1982	1762	1572	1452	1386	1108	1056	962	1055	1045	2140	1266	-41

Source: New Zealand Ministry of Justice.

Figure 3: Outcomes of people convicted for the use of cannabis, 1990 to 2008



Source: New Zealand Ministry of Justice.

Another influence on the type of sentence imposed for a cannabis use offence is an offender's previous convictions. Repeat offenders or those with criminal records for offences more serious than a cannabis use offence are more likely to receive a heavier penalty for a cannabis use conviction. At our request, the New Zealand Ministry of Justice provided us with figures for the previous convictions of those people convicted for the use of cannabis, so we could gain an appreciation of the influence previous convictions may have played on the sentence imposed.

Table 4 presents the previous convictions accumulated for the period 1990-2008 of those convicted and imprisoned for a cannabis use offence in 2008. Just over 1,000 people were convicted for the use of cannabis in 2008. Eleven percent of these people had no prior criminal convictions in the period 1990-2008. Thirty-seven percent of those convicted for the use of cannabis had a prior conviction for a non-drug offence and 39% had a prior conviction for a cannabis offence and a non-drug offence during the previous two decades. In the case of the nine people imprisoned for the use of cannabis in 2008, only one had no prior convictions in the previous 19 years. Seven of those imprisoned for the use of cannabis had prior convictions for cannabis and another type of offence (i.e. serious drug or non-drug offence) and two had prior convictions for cannabis, a more serious drug offence and a non-drug offence.

Table 4: Previous convictions in the period 1990-2008 of those convicted and imprisoned for the use of cannabis in 2008, by type of offence

Prior convictions in the 1990s	Convicted	Imprisoned
No prior convictions in the 1990s	111	1
Cannabis only ²	46	0
Other drug only ³	1	0
Non-drug only ⁴	391	1
Cannabis and other drug only	3	0
Cannabis and non-drug only	405	4
Other drug and non-drug only	14	1
Cannabis, other drug, and non-drug	73	2
Total	1044	9

Notes:

1. Only includes all offenders imprisoned whose most serious offence in 2008 is cannabis related.
2. Prior conviction for possession, use, dealing, or other cannabis offence.
3. Prior conviction for possession, use, dealing, or other non-cannabis drug offence.
4. Prior conviction not drug related.

Source: New Zealand Ministry of Justice.

Length of sentence imposed for the possession of cannabis

Table 5 presents the average length of sentence imposed for a conviction for the possession of cannabis for personal use for the years 1990-2008. There was little change in the length of penalty imposed for a conviction for the use of cannabis. The length of imprisonment imposed for the use of cannabis decreased by 5% in 2000-2008 compared to 1990-1999 (i.e. down from a mean sentence of 1.8 months in the years 1990-1999 to a mean sentence of 1.7 months in the years 2000-2008). The length of community-based sentence and dollar amounts imposed as a fine for the use of cannabis increased by 3% and 6% respectively for the years 2000-2008 compared to 1990-1999.

Table 5: Average length of sentence imposed for the use of cannabis, 1990 to 2008

Sentence Category	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	90-99	00-08	%
Imprisonment ¹	1.7	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	-5
Community-based sentence ²	67.8	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	92.4	95.1	+3
Monetary ³	191	191	182	181	180	179	183	186	186	182	186	189	193	196	191	201	200	200	206	184	196	+6
Deferment ¹	9.4	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	8.7	8.6	-1

Notes

1. Sentence length imposed shown in months.
2. Sentence length imposed shown in hours.
3. Sentence length imposed shown in dollars.

Source: New Zealand Ministry of Justice.

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