



AS MUCH AS TIMES CHANGE

FEDERAL DRUG CHARGES STAY THE SAME

A White Paper Presented by Ron Cordova, Attorney-at-Law



AN OVERVIEW OF FEDERAL DRUG CRIMES AND THE CONSEQUENCES OF CONVICTION

California's stance toward the always controversial issue of drug crimes has undergone a transformation since the passage of the Three Strikes sentencing law in 1994.

This transformation began in earnest with the passage of the California Compassionate Use Act of 1996, when the Golden State became the first in the nation to legalize marijuana for purely medicinal purposes. Changes in the approach to drug crimes came again in 2012 with the passage of Proposition 36, which rectified the injustice of the Three Strikes law by giving thousands of people sentenced to life in prison for otherwise minor crimes like simple drug possession the chance to seek a reduction of sentence.

Most recently, the November 2014 election saw California voters approve Proposition 47. Among other things, this measure makes California the first state in the nation to mandate a misdemeanor sentence, as opposed to a felony or wobbler sentence,¹ for the vast majority of drug possession offenses.

All of this seems to suggest that both state lawmakers and law enforcement agencies are serious about softening their stance toward drug crimes and ushering in a new era where the focus is more on treatment than on punishment and incarceration. While there may be some truth to this idea, it would nevertheless be a grave mistake to think this progressive stance toward drug crimes is shared by the federal government.

The reality is in fact quite the opposite at the federal level, however, where law enforcement agencies and prosecutors alike remain unwavering in their quest to punish drug-related offenses.

As an illustration, consider recently released statistics from the United States Sentencing Commission (USSC) for fiscal year 2013, the most recent year for which such data are available.² These

figures show that drug trafficking offenses comprised 30.4 percent of all reported criminal offenses in the United States in fiscal year 2013 and that 96.3 percent of these offenders were ultimately sentenced

FEDERAL DRUG TRAFFICKING CASES IN THE SOUTHERN DISTRICT OF CALIFORNIA



Furthermore, of the 22,215 federal drug trafficking cases in fiscal year 2013, 1,426 were in the Southern District of California, putting it at No. 2 on the list behind only the Western District of Texas.

HEROIN, COCAINE & MARIJUANA ACCOUNTED FOR MORE THAN HALF OF DRUG TRAFFICKING CASES IN U.S. - 55.4%

Breaking the numbers down further, the USSC report reveals the following:

COCAINE CASES

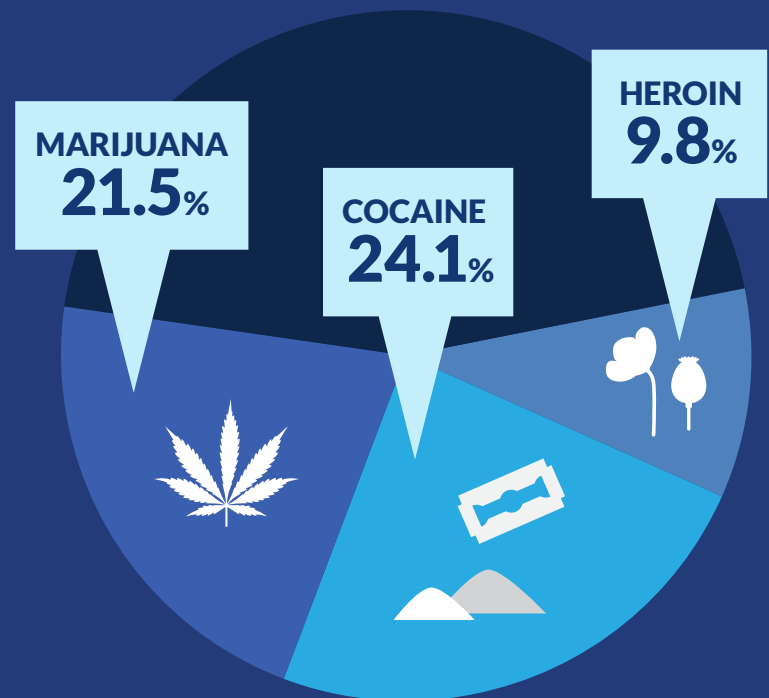
24.1 percent of all federal drug trafficking cases in fiscal year 2013 involved powder cocaine and 97.4 percent of these offenders were sentenced to prison; the Southern District of California was fifth in the nation for the number of powder cocaine trafficking offenders.³

MARIJUANA CASES

21.5 percent of all federal drug trafficking cases in fiscal year 2013 involved marijuana and 93.8 percent of these offenders were sentenced to prison; the Southern District of California was fourth in the nation for the number of marijuana trafficking offenders.⁴

HEROIN CASES

9.8 percent of all federal drug trafficking cases in fiscal year 2013 involved heroin



and 97.5 percent of these offenders were sentenced to prison; the Southern District of California was third in the nation for the number of heroin trafficking offenders.⁵

What this information underscores is despite the recent dialogue and actions concerning drug crimes at the state level, federal prosecutors are still very much pursuing these cases across the nation, including right here in California.

This is particularly significant given the much higher stakes for defendants in federal court, including larger fines, very limited possibilities for probation and, of course, mandatory minimum sentences.



**THE JURISDICTION OF
FEDERAL COURTS OVER
DRUG CRIMES**

QUESTION?

How is it that drug charges come to be classified as a federal offense?

ANSWER!

The American judicial system is divided between 50 state court systems and the single federal court system. In a typical state court system, like the one in California, there are trial courts, appellate courts and a state supreme court.

The federal court system, however, is comprised of 94 district courts (with at least one court in each state), 13 appellate courts (with one in each designated judicial circuit) and the Supreme Court of the United States. Both state and federal courts hear and hand down sentences in criminal cases. However, state courts handle a much broader range of criminal matters than federal courts, which are limited by the U.S. Constitution to reviewing a much smaller range of prohibited criminal activity.

When it comes to crimes that can be prosecuted in either court system, like drug offenses, the ultimate forum for the prosecution depends largely upon such factors as which law enforcement agency made the arrest and where.

Similarly, a defendant could end up being prosecuted in federal court if he or she has

been implicated by an informant seeking leniency in his or her own federal drug crime case, or if state prosecutors and federal prosecutors simply come to an agreement -- that cannot be appealed -- in private discussions.

Indeed, it is not uncommon for state prosecutors to abdicate jurisdiction in a drug crime case to federal prosecutors given the extent of their available resources and the severity of the sentences.



**THE FORUM FOR
PROSECUTION --
STATE OR FEDERAL
COURT -- DEPENDS
UPON THE INDIVIDUAL
CIRCUMSTANCES**

For example, someone arrested in a national park or as part of a Drug Enforcement Administration sting will face federal prosecution.



SENTENCING FOR FEDERAL DRUG CRIMES

QUESTION?

Why should the prospect of facing drug charges in federal court be so alarming to defendants?

ANSWER!

The current sentencing structure for federal drug crimes can be traced to Congress' passage of the Anti-Drug Abuse Act of 1986. Passed in an era of profound fear over the proliferation of drug-related violence and borne out of a belief that severe penalties for drug-related activities would punish major players and somehow serve as a deterrent, the law created mandatory minimum sentences for designated federal drug crimes.

Unlike sentencing guidelines, which direct federal judges to consider multiple factors about the defendant and the underlying offense before handing down a sentence somewhere within a designated range, mandatory minimum sentences employ what essentially amounts to a one-size-fits-all approach.

In the context of drug crimes, this means that a federal judge cannot go below the minimum number of years in prison mandated by Congress when handing down a sentence and may consider only the type of drug involved and its weight. Judicial discretion is essentially eliminated in the sentencing phase of drug crime cases subject to mandatory minimums.



TWO WAYS TO ESCAPE MANDATORY MINIMUM SENTENCES

ONE

The first involves providing the federal government with substantial assistance by disclosing information regarding other offenders.

TWO

The second involves the safety valve, introduced by Congress in the mid-1990s, which allows federal judges to apply the sentencing guidelines instead of a mandatory minimum sentence if the defendant can be classified as a first-time, non-violent, low-level offender.

MANDATORY MINIMUM PENALTIES AND FEDERAL DRUG CRIMES

The majority of federal drug crime cases are prosecuted under the following five statutes, all of which share the same mandatory minimum sentencing structure and can be loosely classified as prohibiting various forms of drug trafficking. The mandatory minimum sentencing structure shared by these drug crimes is set forth in 21 U.S.C. § 841(b) and 21 U.S.C. § 960(b).

These mandatory minimum sentences are tied directly to the type of drug and the weight; the more dangerous and/or the larger quantity of the drug that is present, the greater the number of years a convicted defendant will likely spend in federal prison.

Furthermore, the presence of certain aggravating factors -- prior convictions for felony drug crimes, the offense resulting

FIVE STATUTES SHARING THE SAME MINIMUM SENTENCING

21 U.S.C. § 841

Criminalizes the manufacture and distribution of, and possession with intent to manufacture or distribute controlled substances⁶

21 U.S.C. § 846

Criminalizes both attempts and conspiracies to manufacture, distribute, or possess with intent to manufacture or distribute controlled substances

21 U.S.C. § 952

Criminalizes importation of controlled substances

21 U.S.C. § 953

Criminalizes the exportation of controlled substances

21 U.S.C. § 963

Criminalizes both attempts and conspiracies to either import or export controlled substances

in serious bodily injury or death, etc. -- will serve to increase these already steep mandatory minimum sentences. While a complete discussion of the mandatory minimum sentences for all

felony drug offenses is clearly beyond the scope of this introduction to the prosecution of drug offenses, consider the following breakdown using some of the better-known street drugs.⁷

A CLOSER LOOK AT MANDATORY MINIMUM PENALTIES

	HEROIN	METH	COCAINE	MARIJUANA
FIRST OFFENSE	<p>Less than 100g up to 20 years</p> <p>100g-999g 5 to 40 years</p> <p>1kg + 10 years to life</p>	<p>Less than 5g up to 20 years</p> <p>5g-49g 5 to 40 years</p> <p>50g + 10 years to life</p>	<p>Less than 500g up to 20 years</p> <p>500g-4999g 5 to 40 years</p> <p>5kg + 10 years to life</p>	<p>Less than 50kg up to 5 years</p> <p>50kg-99kg up to 20 years</p> <p>100kg-999kg 5 to 40 years</p> <p>1000kg+ 10 years to life</p>
SECOND OFFENSE	<p>Less than 100g up to 30 years</p> <p>100g-999g 10 years to life</p> <p>1kg + 20 years to life</p>	<p>Less than 5g up to 30 years</p> <p>5g-49g 10 years to life</p> <p>50g + 20 years to life</p>	<p>Less than 500g up to 30 years</p> <p>500g-4999g 10 years to life</p> <p>5kg + 20 years to life</p>	<p>Less than 50kg up to 10 years</p> <p>50kg-99kg up to 30 years</p> <p>100kg-999kg 10 years to life</p> <p>1000kg+ 20 years to life</p>
THIRD OFFENSE	<p>1kg + § 841(b)(1)(A) (life)</p> <p>1 kg + § 960(b)(1) (20 years to life)</p>	<p>50g + § 841(b)(1)(A) (life)</p> <p>50g + § 960(b)(1) (20 years to life)</p>	<p>5kg + § 841(b)(1)(A) (life)</p> <p>5 kg + § 960(b)(1) (20 years to life)</p>	<p>1000kg + § 841(b)(1)(A) (life)</p> <p>1000kg + § 960(b)(1) (20 years to life)</p>



If death or serious bodily injury results from use of the controlled substance, these mandatory minimum penalties can increase anywhere from 20 years to life.

As eye-opening as this is, consider that the federal government has also established mandatory minimum penalties for a host of other drug-related crimes.



EXAMPLES RESULTING IN A MANDATORY MINIMUM PENALTY

The following are all treated as felonies punishable by a mandatory minimum sentence of at least one year in prison in the absence of an otherwise applicable -- and more severe -- mandatory minimum penalty.⁸



The cultivation or manufacture of any controlled substances on federal property



The manufacture and distribution of controlled substances in or near schools and colleges



The distribution of controlled substances to people under the age of 21 by using people under the age of 18

DON'T UNDERESTIMATE THE SEVERITY OF FEDERAL DRUG CRIMES

There is no question that the state's legal landscape will continue to evolve as far as drug crimes are concerned. Indeed, many political pundits are already forecasting a victory for marijuana legalization advocates in the upcoming 2016 election.

California will then follow the lead of Washington, Colorado and, most recently, Alaska and Oregon in legalizing marijuana for recreational use.

While this reality will certainly change the rules in state prosecutions of drug offenses in California, the fact remains that terms like decriminalization and legalization are simply not in the vocabulary of the federal government regarding marijuana or any other controlled substance.

Indeed, the guiding principle for federal law enforcement officials and federal prosecutors alike has been -- and will remain -- enforcement.



CAUSE FOR CONCERN

This reality, coupled with the steep fines, limited options for probation and relatively low thresholds for mandatory minimum penalties, should be cause for concern for anyone under investigation or facing charges for a federal drug offense.

In these situations, representation by an experienced and highly skilled legal professional may make all the difference in protecting rights, preserving reputations and, most importantly, establishing innocence.

SOURCES

¹When a crime is referred to as a “wobbler,” it means that it can be charged as either a felony or a misdemeanor. The court will consider multiple factors (i.e., the nature of the crime, the defendant’s criminal history) in making this decision. (pg. 03)

² United States Sentencing Commission, “Quick Facts: Drug Trafficking Offenses,” May 2014. (pg. 03)

³ United States Sentencing Commission, “Quick Facts: Powder Cocaine Trafficking Offenses,” April 2014. (pg. 04)

⁴ United States Sentencing Commission, “Quick Facts: Marijuana Trafficking Offenses,” May 2014. (pg. 04)

⁵ United States Sentencing Commission, “Quick Facts: Heroin Trafficking Offenses,” May 2014. (pg. 04)

⁶ The Controlled Substances Act divides drugs into five schedules based on their 1) currently accepted medical use, 2) their potential for abuse and 3) chances for addiction when abused. Controlled Substances Act, 21 U.S.C. §§ 801-812 (2012). For example, heroin, peyote and ecstasy are all classified as Schedule I controlled substances as they have no accepted medical use and a high potential for abuse. (pg. 09)

⁷ See 21 U.S.C. § 841(b) (2012); 21 U.S.C. § 960(b) (2012). (pg. 10)

⁸ See 21 U.S.C. § 841(b)(5) (2012); 21 U.S.C. 860 (2012); 21 U.S.C. 859 (2012). (pg. 11)

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