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What is This?
Do State Policies Matter in Prosecutor-Reported Juvenile Marijuana Case Disposition?

Yvonne M. Terry-McElrath¹, Jamie F. Chriqui², Hannalori Bates³, and Duane C. McBride⁴

Abstract
This article examines outcomes for first-time juvenile marijuana possession offenders based on relationships between state policy and local prosecutor self-reported decision making. Specifically, relationships between state statutory penalty data for low-level marijuana possession offenses and prosecutor-reported case outcomes for first-offender juvenile marijuana possession cases are examined. A national sample of prosecutors was interviewed in 2000. Analyses included state statutory policy data in effect as of January 1, 1999, as well as community sociodemographic controls. Results indicated that state statutory policy significantly related to prosecutor-reported juvenile court processing as well as diversion and transfer to criminal court. State statutory policy appears to play a significant role among the legal, resource, and extralegal factors that affect prosecutorial discretion regarding juvenile substance offenders.

Keywords
marijuana, drug policy, prosecutor, prosecutorial discretion, juvenile

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Research has shown that juvenile case outcomes are related to a wide variety of factors, including prosecutorial discretion, community and offender sociodemographics, and other factors. In regards to substance offenses, prosecutors report significant differences in case outcomes for first-time juvenile marijuana possession offenders across the United States (Terry-McElrath et al., 2005), and such variance relates significantly to community sociodemographics and prosecutor caseloads (Terry-McElrath & McBride, 2004; Terry-McElrath et al., 2005). However, no research is available that examines how state law may figure into the equation. Significant variation exists between states in terms of their criminal court policies relative to illicit substance use (Chriqui et al., 2002). The potential impact of differences in case outcomes is not insignificant. Research indicates that adjudication outcomes focusing solely on high severity (such as out-of-home placement) may relate to unintended outcomes including higher recidivism rates and lower opportunities to help a juvenile change behavioral direction (Bernburg & Krohn, 2003; Bishop & Frazier, 1996; Sampson & Laub, 1993; Western & Beckett, 1999). The current article will investigate if and how state law is related to first-time juvenile offenders charged with marijuana possession across a wide range of processing outcomes. Specifically, this article will examine whether self-reported local prosecutorial decision making for juvenile marijuana offenders varies by state policy context for low-level marijuana possession as measured by state statutory penalties (specifically, maximum jail time) and allowances for community service, treatment, and probation.

Background

The Importance of the Role of the Prosecutor in the Juvenile Court

The prosecutor is currently recognized as the most powerful official in the court system (Davis, 2007). This power stems from the significant discretionary powers inherent in the role relative to enforcement and decision-making power over case processing. State prosecutors balance significant discretion with sensitivity to statutory and case law, community standards, and expectations as elected officials. This discretionary balance may be especially important as applied in the juvenile justice system.

In recent years, there has been a movement to better incorporate elements of rehabilitation as well as accountability/punishment into the juvenile justice system. Often this has been called a balanced and restorative justice (BARJ) perspective (Rodriguez, 2007; Scott & Steinberg, 2008). BARJ integrates the juvenile court’s traditional rehabilitative orientation with an accountability/punishment perspective, emphasizing public safety, offender accountability, and skills development
that will allow offenders to successfully navigate a law-abiding and productive future. For prosecutors, the BARJ perspective calls for an increased use of therapeutic justice together with treatment progress monitoring and the use of incentives and sanctions. In addition, the model calls for community reintegration through service or victim offender mediation. It is also important to note that the BARJ system continues an emphasis on maintaining community safety through monitoring and the use of sanctions (Bazemore, 1997).

Current state juvenile codes vary significantly in their approaches to juvenile delinquency as reflected in the “purpose clauses” of their written codes. As of March 2005 (the most recent data available), 17 states had a BARJ or BARJ-like focus; 6 states emphasized punishment, deterrence, accountability, and/or public safety; 3 states had a traditional child welfare emphasis; and 15 states had clauses remaining close to those developed in the 1960s that emphasized either (a) care, guidance, and control or (b) care, guidance, and control together with rehabilitation and the assurance of constitutional and legal rights (Griffin, Szymanski, & King, 2006). As a result of such a wide variance in state policy perspectives, even higher levels of prosecutorial discretion exist in the juvenile justice system than are found in the criminal court system (Frazier, Bishop, & Henretta, 1992; Hagan, 1989; Leiber & Stairs, 1999; Sampson & Laub, 1993).

Today, prosecutors are typically involved at every stage of juvenile court proceedings, including intake, detention, disposition, and review (Schmalleger & Bartollas, 2008). The overwhelming majority of prosecutorial offices accept and process juvenile cases (DeFrances, 2002), resulting in the necessity of most prosecutors commonly being involved in deciding how to apply different perspectives of juvenile justice to individual cases.

**Influences on Prosecutorial Discretion**

Scholars who have studied the prosecutorial role have focused on legal, resource, and extralegal factors influencing case outcomes (Rainville, 2001). As summated in both Rainville (2001) and Worrall, Ross, and McCord (2006), legal factors studied to date include police evidence quality, offense seriousness, defendant culpability, prior criminal record, and aggravating/mitigating circumstances (e.g., serious victim injuries). In the criminal and juvenile justice system, resource factors are non-case-specific environmental issues including absence of pretrial detention facilities, average caseload per prosecutor, cost of litigation, and size of pool of eligible defendants for trial. Extralegal factors are not the fundamental elements of a case but can play a substantive role in prosecutor decisions in criminal and juvenile courts. Extralegal factors are those “for which gray areas exist in regard to the propriety of their use” (Rainville, 2001, p. 296), including...
victim-offender relationships, offender demographics, and the personal values of prosecutors.

Whereas the majority of studies have focused on the criminal court system, research supports the existence of significant legal, resource, and extralegal effects on case outcomes across various stages of juvenile court processing (Sampson & Laub, 1993; Terry-McElrath & McBride, 2004; Terry-McElrath et al., 2005). However, no available literature provides a window into how differences in the legal factor of state policy may affect prosecutor decision making and case outcomes within the juvenile court. If prosecutors are affected by the state statutory policy environment, significant differences could be found in case outcomes based on which state a case was tried in, regardless of other legal, resource, or extralegal factors. Given that no prior research has examined this issue, the potential strength of state policy as an independent predictor of juvenile substance offence case outcomes is unknown.

The Relevance of Marijuana Policy and Juvenile Marijuana Cases

As noted in Chriqui et al. (2002), as of January 1, 2000 (the most recent year of data available), 37 states followed the federal Controlled Substances Act (CSA) and listed marijuana as a Schedule I substance (high potential for abuse and dependence and no currently accepted medical use). However, 6 states did not schedule marijuana at all, and 3 scheduled it below a Schedule I listing. State statutory maximum imprisonment times for standard retail amounts of marijuana ranged from a low of 0.003 to 5 years for possession offenses (9 states did not specify) and 0.5 to life for sales offenses (1 state did not specify). Fines showed similar variation, with maximum amounts ranging from $100 to $150,000 for possession (2 states not specifying) and $100 to $500,000 for sales (3 states not specifying). Clearly, significant variation exists between states relative to marijuana possession policy and penalties.

Substance offenses make up a significant percentage of juvenile offender caseloads. According to 2003 to 2004 Juvenile Court Statistics data (Stahl et al., 2007), in 12% of juvenile cases drugs were the most serious offense (up from 7% in 1985). Among juveniles aged 15 or younger, drugs as the most serious offense were recorded for 9% of offenders; this increased to 16% for youth aged 16 and older (Stahl et al., 2007). From 2000 to 2003 (the latest years for which data are available), marijuana constituted more than two-thirds of drug-related juvenile arrests (Federal Bureau of Investigation, 2004). Nationally in 2004, 58% of juvenile drug offense cases were formally petitioned. Of these cases, 1% were waived to criminal court, 68% were adjudicated delinquent, and 30% were not adjudicated delinquent. Of those adjudicated delinquent, 18% received out-of-home
placement, 67% probation, and 15% some other sanction (Stahl et al., 2007). Of those cases given out-of-home placement, 10% were for cases where drugs were the most serious offense (up from 5% in 1985). These data suggest that a wide range of possible outcomes exist for juveniles relative to substance offense cases and the importance of understanding factors such as state policies that may be related to such variance.

Some degree of difficulty arises when considering how to link state policy with juvenile marijuana possession offenses. No separate body of law exists defining penalties associated with juvenile marijuana offenses. Because possession of any quantity of marijuana is illegal in the United States (regardless of whether the purchaser is an adult or juvenile), state laws governing marijuana possession penalties do not stipulate different penalty schemes based on offender age. Rather, variation in state policy penalty schemes is typically associated with whether it is a first or subsequent offense, the quantity of marijuana involved, and other mitigating factors (Chriqui et al., 2002). As a result, it is not possible to analyze statutory penalties that would apply only to juvenile, low-level marijuana possession offenders. Models must utilize state statutory penalties that apply to criminal court when examining juvenile illicit substance offenses, including marijuana possession. These penalties provide a context within which local prosecutors make decisions. No prior research has investigated this issue. Thus, as noted previously, it is the purpose of this article to begin to explore if local prosecutor-reported juvenile marijuana case dispositions relate to differences in state statutory marijuana possession penalty parameters. Our specific research questions related to first-time juvenile marijuana possession offender case dispositions are

1. Do state statutory penalty provision allowances for (a) community service, (b) probation, and (c) treatment significantly relate to the following non–juvenile court processing outcomes: (a) availability of diversion with expungement, (b) use frequency of diversion with expungement (where available), and (c) use frequency of criminal court transfer?
2. Does the maximum statutory incarceration penalty allowed significantly relate to the following non–juvenile court processing outcomes: (a) availability of diversion with expungement, (b) use frequency of diversion with expungement (where available), and (c) use frequency of criminal court transfer?
3. Do state statutory penalty provision allowances for (a) community service, (b) probation, and (c) treatment significantly relate to overall juvenile court disposition severity level?
4. Does the maximum statutory incarceration penalty allowed significantly relate to overall juvenile court disposition severity level?

5. Is there evidence that significant differences exist between state statutory penalty provisions and juvenile case outcomes based on penalty quantity definition (“any” quantity vs. 1 ounce)?

**Method**

Prosecutor data collection was undertaken as part of the Robert Wood Johnson Foundation–supported ImpacTeen project (McBride et al., 2003). State statutory law data were collected by the MayaTech Corporation as part of the ImpacTeen project and through additional grants from the National Institute on Drug Abuse. Sample description and data collection methods will be discussed separately below, followed by a discussion of analysis models.

**Independent Variables: State Statutory Policy Data**

State statutory marijuana possession penalties (hereafter referred to as state penalties) were obtained from detailed primary reviews of statutes in effect as of January 1, 1999, for the 50 states and the District of Columbia (DC). The use of 1999 state penalty data allowed at least one year of lag time for policy implementation before comparing policy with prosecutor responses. Statutes were obtained from electronic searches of the Westlaw state statutory databases using primary legal research methods (Mersky & Dunn, 2002). In many instances, penalty schemes were tied with the state controlled substance schedule for marijuana (see Chriqui et al. [2002] for a detailed explanation of controlled substance scheduling and discussion of marijuana schedules). Furthermore, substance offense penalties are often linked with a specific “trigger” quantity or amount, with larger quantities typically associated with stronger penalties (Chriqui et al., 2002). Because the focus of this study was on whether state statutory penalties for marijuana possession provide a framework for prosecutorial decision making regarding juvenile marijuana possession offenders, it was decided to focus on low-level possession offenses rather than higher level possession, sale, trafficking, or manufacturing-related penalties that would often be tied with much more severe penalty structures and likely not applicable for most juvenile marijuana offenders. Thus, penalties were collected that were associated with possession of 1 ounce and “any” quantity (i.e., less than 1 ounce or a nonspecified quantity) of marijuana.

Independent variables focused on general state penalty structures for marijuana possession for both “any” and 1-ounce quantities: community service allowance (any/none), probation allowance (any/none), and treatment allowance (any/none),
indicating whether the state statutes allowed for such outcomes as part of the penalty scheme. These provisions were not necessarily requirements but, rather, enabling provisions incorporated as part of the state penalty schemes. Continuous data were compiled as to the maximum statutorily imposed jail or imprisonment time (measured in years). For states that did not specify a maximum jail time, a 0 was assigned to the variable, and the resulting distribution was then recoded into an above-median dichotomy of 0.49 years or more for “any” quantity (nondichotomized range of 0 to 4 years) and 0.50 years or more for 1 ounce (nondichotomized range of 0 to 5 years).

**Dependent Variables: Prosecutor-Reported Juvenile Case Outcomes**

Detailed discussion of the methods for prosecutor interviews can be found elsewhere (Terry-McElrath & McBride, 2004; Terry-McElrath et al., 2005). Briefly, the sample for this study included prosecutors with jurisdiction over juvenile cases in 173 communities surrounding public schools participating in the nationally representative year 2000 Monitoring the Future (MTF) study of 8th-, 10th-, and 12th-grade students supported by the National Institute on Drug Abuse (for information on MTF sampling and related procedures, see Bachman, Johnston, O’Malley, & Schulenberg, 2006; Johnston, O’Malley, Bachman, & Schulenberg, 2007). Computer-assisted telephone interviews were completed with at least one eligible prosecutorial respondent in 135 of the 173 total communities for a 78% response rate (nonresponse resulted from either refusals or an inability to contact an appropriate respondent). Comparisons of communities with and without completed interviews showed no significant differences associated with Hispanic or White race/ethnic population distributions, community median household income, region of the United States, or population density. Odds of a completed interview were, however, lower in communities with above-average populations aged 12 to 17 (odds ratio \( [OR] = 0.32 \)).

Prosecutors were presented with a case vignette and instructed to answer “for minors with no prior adjudications or convictions” to ensure that respondents would consider comparable cases (specific wording is provided below). As noted in Rainville (2001), the use of a case vignette methodology has been established as valid when attempting to obtain prosecutorial preferences (McDonald, Rossman, & Cramer, 1979; Spohn & Horney, 1992). A first-offense context was used to provide a consistent context for prosecutor responses. In addition, a first offense is a crucial point in the application of prosecutorial models of juvenile justice. That is, will a rehabilitative or accountability/punishment perspective be implemented? Dependent variables focused on prosecutor-reported non–juvenile court as well as juvenile court case processing outcomes that ranged from treatment options to criminal court transfer.
Non–juvenile court processing outcomes of diversion or criminal court transfer.

For diversion programming availability, prosecutors were asked, “Does your jurisdiction have a formal diversion program for juvenile marijuana possession offenders, where instead of being prosecuted, they are sent to some type of treatment program?” If yes, the follow-up question was asked, “If the child completes diversion successfully, will the offense be cleaned (expunged) from their record?” Responses were coded as dichotomous yes-no, 0, 1 items. If prosecutors reported diversion with expungement availability, they were then asked, “How often are juveniles processed through diversion for marijuana possession when the juvenile has no prior record of adjudications or convictions for any offense?” Response categories included 1 = never, 2 = rarely, 3 = sometimes, 4 = usually, and 5 = always. Given the skewed nature of the resulting data distributions, responses were coded as 1 = usually/always versus 0 = never/rarely/sometimes.

For the formal processing item of waiver to criminal court, prosecutors were told, “The following questions concern standard sentences for minors with no prior adjudications or convictions.” Respondents were asked, “Does the standard or presumptive sentence for marijuana possession by minors differ from the mandated minimum sentences?” If they answered that either sentencing did differ or mandated minimums were not in place, they were asked about the frequency of waiving to criminal court.1 Response categories ranged from 1 = never to 5 = always and were recoded as 1 = sometimes/usually/always versus 0 = never/rarely due to the highly skewed distributions of the original responses.

Juvenile court processing outcomes. The same statement regarding only answering for standard sentences for minors with no prior adjudications or convictions was used for juvenile court processing outcomes. Also, respondents again were asked, “Does the standard or presumptive sentence for marijuana possession by minors differ from the mandated minimum sentences?” If they answered that either sentencing did differ or mandated minimums were not in place, they were asked about the frequency of using the following disposition alternatives: (a) given placement in detention, a residential facility, or other out-of-home placement; (b) given informal or voluntary probation; (c) given court-ordered probation with mental health or other treatment services; (d) given court-ordered probation without treatment services; (e) given home detention; (f) given a fine; (g) given community service; (h) given victim-offender mediation, restitution, or victim services; or (i) dismissed or released. Response categories ranged from 1 = never to 5 = always. As described in Terry-McElrath et al. (2005), prosecutor responses were grouped into four individual disposition severity levels: Level 1—dismissal, Level 2—minimal reaction (informal probation, fine, community service, mediation), Level 3—community-based corrections (court-ordered probation with or without treatment, home detention), and Level 4—placement.
Respondents were then assigned an overall disposition severity level (ODSL) value according to the number of the individual disposition severity level that (a) was used most frequently and (b) was the most severe. Thus, the ODSL value is based on a conceptual framework that examines sentencing alternatives by degree of infringement on personal freedoms, ranging from dismissal to placement. For marijuana possession, no prosecutor reported Level 1 (dismissal) as the most severe and most frequently used outcome; thus, ODSL values for marijuana possession ranged from 2 to 4.

After examining available data on existing state-level policies and the overall distribution of responses, the following juvenile court disposition alternatives were chosen for final analyses: (a) use of community service (1 = usually/always versus 0 = never/rarely/sometimes); and (b) ODSL, coded into three any/none dichotomies: minimal community reaction, community corrections, and out-of-home placement.

**Control Variables**

Control variables included those known to significantly relate to juvenile substance offense disposition outcomes (Terry-McElrath & McBride, 2004; Terry-McElrath et al., 2005): average juvenile caseload reported per prosecutorial office, community age and racial composition, community median household income, population density, and region. Age, race, and income variables were obtained from the 2000 U.S. Census and matched by zip code. Initial models included the U.S. Census measures in their original continuous form; however, model stability was significantly improved when moving to dichotomies. Variables were dichotomized in two steps: (a) calculating the U.S. mean (9% for community population aged 12–17; 82% for community White population; 12% for community Hispanic population; $40,816 for community median household income) and then (b) giving a value of 1 to those communities with above-mean values and 0 to those communities at or below the U.S. mean value. Population density was measured using a dichotomous variable for urban/suburban versus town/rural community derived from an urbanization variable from the National Center for Education Statistics. Reported juvenile case load was dichotomized into top quartile (>225) versus other. Missing data existed for the average juvenile caseload measure; restricting the sample to only cases with valid data resulted in a final N of 119.

**Analyses**

Data were merged using state FIPS codes. All analyses were conducted using SAS version 9.1.3, clustering by state, and including weights to account for the
MTF sampling procedures that guided the selection of each individual school (and thus the community surrounding the school and relevant prosecutor). Results should be interpreted as the percentage of U.S. middle and high school youth in the jurisdictions of prosecutors reporting case outcomes. Analyses used the PROC GENMOD procedure specifying a binomial distribution and logit link, controlling for community-level urbanicity, median household income, and above-U.S.-average White population. Given the possible multicollinearity between state statutory policy measures (discussed in the Results section below), models included only one such variable at a time.

Results

The 119 prosecutor/community cases came from 38 states plus DC, with a range of 1 to 11 cases per state (mean = 3.1). Analyses compared policies of included states with the 12 excluded states; no significant differences were found. See Table 1 for descriptives on all measures.

Significant overlap existed between analyzed state statutory policies. For both the “any” and 1-ounce quantities, policies allowing community service, probation, and treatment were all significantly and positively related (p < .05 or lower). For the “any” quantity, no significant overlap between above-median maximum jail time and community service was observed; however, positive relationships significant at the p < .05 level were observed between jail time and both probation and treatment. For the 1-ounce quantity, probation allowance and above-median maximum jail time were significantly and positively associated; however, no significant overlap was observed between jail and either community service or treatment. Due to the observed collinearity, models included only one policy at a time.

Non–Juvenile Court Processing: Diversion and Criminal Court Transfer

Table 2 shows results of models examining relationships between state policy and diversion availability and use as well as criminal court transfer use. Given the treatment-oriented nature of diversion programming, all four state policies (community service, probation, treatment, and jail) were used as predictors for diversion availability and use. For the prosecutor use of criminal court transfer, state treatment policy was explored, but no significant relationships were observed (and thus not reported in Table 2).

Results indicate that “any” quantity policies showed more relationships with prosecutor-reported diversion availability than 1-ounce policies. State policies
Table 1. Descriptives.

<table>
<thead>
<tr>
<th>Variable</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prosecutor-reported juvenile marijuana possession case outcomes</td>
<td></td>
</tr>
<tr>
<td>Non–juvenile court processing</td>
<td></td>
</tr>
<tr>
<td>Diversion with expungement available (N = 79)</td>
<td>69.2</td>
</tr>
<tr>
<td>Use of diversion with expungement usually/always if available (N = 62)</td>
<td>71.8</td>
</tr>
<tr>
<td>Use of criminal court transfer sometimes/usually/always (N = 77)</td>
<td>15.2</td>
</tr>
<tr>
<td>Juvenile court processing</td>
<td></td>
</tr>
<tr>
<td>Use of community service usually/always (N = 77)</td>
<td>52.2</td>
</tr>
<tr>
<td>Overall disposition severity level (N = 77)</td>
<td></td>
</tr>
<tr>
<td>Dismissal</td>
<td>0.0</td>
</tr>
<tr>
<td>Minimal reaction</td>
<td>28.3</td>
</tr>
<tr>
<td>Community corrections</td>
<td>53.3</td>
</tr>
<tr>
<td>Placement</td>
<td>18.3</td>
</tr>
<tr>
<td>State marijuana possession penalties as of January 1, 1999 (N = 119; 39 states)</td>
<td></td>
</tr>
<tr>
<td>Community service allowed</td>
<td></td>
</tr>
<tr>
<td>Any quantity</td>
<td>34.3</td>
</tr>
<tr>
<td>1 oz</td>
<td>45.3</td>
</tr>
<tr>
<td>Probation allowed</td>
<td></td>
</tr>
<tr>
<td>Any quantity</td>
<td>51.3</td>
</tr>
<tr>
<td>1 oz</td>
<td>56.3</td>
</tr>
<tr>
<td>Treatment allowed</td>
<td></td>
</tr>
<tr>
<td>Any quantity</td>
<td>28.6</td>
</tr>
<tr>
<td>1 oz</td>
<td>27.9</td>
</tr>
<tr>
<td>Above-median maximum incarceration penalty allowed</td>
<td></td>
</tr>
<tr>
<td>Any quantity (0.49 years or more)&lt;sup&gt;b&lt;/sup&gt;</td>
<td>43.9</td>
</tr>
<tr>
<td>1 oz (0.50 years or more)&lt;sup&gt;c&lt;/sup&gt;</td>
<td>53.2</td>
</tr>
<tr>
<td>Control measures (N = 119)</td>
<td></td>
</tr>
<tr>
<td>Average prosecutorial office juvenile case load &gt; 225&lt;sup&gt;d&lt;/sup&gt;</td>
<td>24.6</td>
</tr>
<tr>
<td>Community sociodemographics&lt;sup&gt;e&lt;/sup&gt;</td>
<td></td>
</tr>
<tr>
<td>Above U.S. average White population (U.S. average = 82.2%)</td>
<td>53.1</td>
</tr>
<tr>
<td>Above U.S. average Hispanic population (U.S. average = 11.9%)</td>
<td>25.5</td>
</tr>
<tr>
<td>Above U.S. average population aged 12–17 (U.S. average = 8.6%)</td>
<td>57.2</td>
</tr>
<tr>
<td>Above U.S. average median household income (U.S. average = $40,816)</td>
<td>55.9</td>
</tr>
<tr>
<td>Urban/suburban vs. town/rural</td>
<td>70.8</td>
</tr>
<tr>
<td>Region</td>
<td></td>
</tr>
<tr>
<td>Midwest</td>
<td>27.0</td>
</tr>
<tr>
<td>North</td>
<td>16.4</td>
</tr>
<tr>
<td>South</td>
<td>36.7</td>
</tr>
<tr>
<td>West</td>
<td>19.9</td>
</tr>
</tbody>
</table>

Percentage data represent the percentage of 8th-, 10th-, and 12th-grade youth in the jurisdictions of prosecutors reporting each outcome, or in states reporting such penalties.

<sup>a</sup>“Any” quantity defined as less than 1 ounce or nonspecified quantity.

<sup>b</sup>Maximum jail penalty specified for “any” quantity was 4 years.

<sup>c</sup>Maximum jail penalty specified for 1 ounce was 5 years.

<sup>d</sup>Average per-office juvenile caseload in top quartile (i.e., > 225). Average juvenile caseload ranged from 1–4,000.

<sup>e</sup>Data for population density obtained from the National Center for Educational Statistics. Race/ethnicity distribution data obtained from the 2000 U.S. Census.
Table 2. State Policy and Prosecutor-Reported Non–Juvenile Court Processing.

<table>
<thead>
<tr>
<th>State Policy</th>
<th>“Any” Quantity Trigger</th>
<th></th>
<th>“1-Ounce Quantity Trigger</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Odds Ratio (OR)</td>
<td>p</td>
<td>%</td>
</tr>
<tr>
<td>Any diversion availability (N = 79 prosecutors; 30 states)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community service allowed % no</td>
<td>82.1 (ref)</td>
<td>79.5 (ref)</td>
<td>% yes</td>
<td>48.6</td>
</tr>
<tr>
<td>Probation allowed % no</td>
<td>87.6 (ref)</td>
<td>86.0 (ref)</td>
<td>% yes</td>
<td>56.3</td>
</tr>
<tr>
<td>Treatment allowed in penalty structure % no</td>
<td>79.1 (ref)</td>
<td>74.9 (ref)</td>
<td>% yes</td>
<td>48.2</td>
</tr>
<tr>
<td>Above-median maximum jail time % no</td>
<td>83.9 (ref)</td>
<td>81.9 (ref)</td>
<td>% yes</td>
<td>53.7</td>
</tr>
<tr>
<td>Usually/always use diversion if available (N = 62 prosecutors; 28 states)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community service allowed % no</td>
<td>72.2 (ref)</td>
<td>68.4 (ref)</td>
<td>% yes</td>
<td>70.9</td>
</tr>
<tr>
<td>Probation allowed % no</td>
<td>77.8 (ref)</td>
<td>77.6 (ref)</td>
<td>% yes</td>
<td>65.2</td>
</tr>
<tr>
<td>Treatment allowed in penalty structure % no</td>
<td>81.9 (ref)</td>
<td>81.1 (ref)</td>
<td>% yes</td>
<td>43.1</td>
</tr>
<tr>
<td>Above-median maximum jail time % no</td>
<td>78.6 (ref)</td>
<td>76.9 (ref)</td>
<td>% yes</td>
<td>60.5</td>
</tr>
<tr>
<td>Sometimes/usually/always use criminal court transfer (N = 77 prosecutors; 32 states)a</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community service allowed % no</td>
<td>14.4 (ref)</td>
<td>17.9 (ref)</td>
<td>% yes</td>
<td>16.9</td>
</tr>
</tbody>
</table>

(continued)
for “any” quantity allowing community service, probation, treatment, or approximately 6 months or longer maximum jail time for marijuana possession were all related to significantly lower odds of prosecutors’ reporting diversion programming availability for first-offender juvenile marijuana possession offenders (for example, if state policy stipulated above-median maximum jail time, only 54% of prosecutor respondents indicated having diversion availability vs. 84% where state policy fell below the median maximum jail time; OR = 0.16). One-ounce quantity state policies that significantly predicted decreased odds of diversion availability were limited to probation allowance and above-median jail time. State policy allowing treatment as part of the penalty structure was associated with lower odds of diversion availability at borderline significance levels (p < .10).

If diversion was available, the odds of prosecutors’ reporting frequent use of such programming was not associated with state policy allowing community service, probation, or above-median maximum jail time. Only state policy allowing treatment as part of the penalty structure was related to diversion use frequency. For both the “any” and 1-ounce quantities, state allowance of treatment was associated with significantly lower odds of frequent diversion use.

A significant relationship was observed between maximum jail time specified in state policy and the odds of prosecutors’ reporting that they used criminal court

---

Table 2. (continued)

<table>
<thead>
<tr>
<th>State Policy</th>
<th>“Any” Quantity Trigger</th>
<th>1-Ounce Quantity Trigger</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>Odds Ratio (OR)</td>
</tr>
<tr>
<td>Probation allowed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% no</td>
<td>9.2</td>
<td>(ref)</td>
</tr>
<tr>
<td>% yes</td>
<td>19.5</td>
<td>2.76</td>
</tr>
<tr>
<td>Above-median maximum jail time</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% no</td>
<td>3.8</td>
<td>(ref)</td>
</tr>
<tr>
<td>% yes</td>
<td>28.2</td>
<td>9.87</td>
</tr>
</tbody>
</table>

One state policy entered at a time. All models controlled for average prosecutorial office caseload, community sociodemographics, and region unless otherwise noted.

*The 32 states include Washington, D.C. Models for criminal court transfer do not include a dummy for West, as this outcome never occurred in the western region.

*Multivariate models including this policy not possible due to small cell sizes (N = 2 for use of criminal court transfer if no state policy for above-median maximum jail time at either the “any” or 1-ounce quantity trigger levels). Thus, ORs reported here are from bivariate models employing state clustering.

*p < .10. **p < .05. ***p < .01. ****p < .001.
transfer for first-offender juvenile marijuana possession cases. Higher jail time in
state policy was associated with higher odds of a prosecutor’s decision to transfer
a juvenile to criminal court \((p < .05\) for “any” quantity; \(p < .10\) for 1 ounce). However, there was not a significant relationship between prosecutor use of
criminal court and other state policies. Neither community service nor probation
allowance in state policy was related to prosecutors’ reporting using criminal
court transfer for first-offender juvenile marijuana possession offenders.

**Juvenile Court Processing**

Table 3 provides results of models examining the relationships between state
policy measures and the reported ODSL for first-offender juvenile marijuana
possession cases. As with Table 2, state allowance of treatment as part of the
penalty structure was explored for all three ODSL levels. As significant relation-
ships were observed only for community corrections, treatment policy results are
not reported for either minimal reaction or placement outcomes.

**Minimal reaction.** None of the state policies examined related to prosecutors’
reporting that minimal reaction would be the most frequent and most severe out-
come for first-time juvenile marijuana possession offenders. As noted previously,
minimal reaction includes a variety of possible outcomes including community
service. Given that state policy specifically allowing community service was
captured in the predictor variables, a separate model was run examining the rela-
tionship between state policy allowing community service and the odds of
prosecutors’ reporting that community service was usually/always used (data not
shown). Results indicated that state policy allowing community service was not
significantly related to prosecutors’ reporting frequent use of community service
at either the “any” or 1-ounce quantities.

**Community corrections.** As described previously, the ODSL of community cor-
rections included court-ordered probation with and without treatment or home
detention. Models showed no relationships between state community service
policy at the “any” quantity and the odds of prosecutors’ reporting an ODSL of
community corrections for marijuana possession (results approached significance
for the 1-ounce quantity). State policy allowing probation at the 1-ounce quantity
was significantly related to higher odds of community corrections use. Results
indicated that state policy allowing treatment as part of the penalty structure may
be associated with higher odds of community corrections for the 1-ounce quan-
tity \((p < .10)\). Finally, the odds of community corrections were significantly
### Table 3. State Policy and Prosecutor-Reported Juvenile Court Processing: Overall Disposition Severity Level.

<table>
<thead>
<tr>
<th>State Policy</th>
<th>“Any” Quantity Trigger</th>
<th>1-Ounce Quantity Trigger</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>Odds Ratio (OR)</td>
</tr>
<tr>
<td>Overall disposition severity level = Minimal reaction&lt;sup&gt;a&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community service allowed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% no</td>
<td>26.8</td>
<td>(ref)</td>
</tr>
<tr>
<td>% yes</td>
<td>32.1</td>
<td>0.97</td>
</tr>
<tr>
<td>Overall disposition severity level = Community corrections&lt;sup&gt;b&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community service allowed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% no</td>
<td>53.6</td>
<td>(ref)</td>
</tr>
<tr>
<td>% yes</td>
<td>52.7</td>
<td>3.35</td>
</tr>
<tr>
<td>Overall disposition severity level = Placement&lt;sup&gt;c&lt;/sup&gt;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Community service allowed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>% no</td>
<td>46.9</td>
<td>(ref)</td>
</tr>
<tr>
<td>% yes</td>
<td>67.3</td>
<td>3.24</td>
</tr>
</tbody>
</table>

(continued)
higher in states with above-median maximum jail time at the 1-ounce quantity and approached significance for the “any” quantity.

**Placement.** The odds of prosecutors’ reporting some type of out-of-home placement adjudication for first-offender juvenile marijuana possession offenders were not related to state community service policies. State allowance of probation at either the “any” or 1-ounce quantities was significantly associated with decreased odds of placement, as was higher maximum jail time at the 1-ounce quantity.

**Discussion**

The current study provided an opportunity to examine relationships between state statutory legal policy and self-reported prosecutorial decisions regarding first-time juvenile marijuana possession offenders within the framework of a BARJ juvenile justice system model. Results suggest that prosecutorial discretion may, indeed, be related to some state policies.

Before proceeding to the discussion, the limitations of the study should be considered. Analyses were based on case vignettes and not actual reviews of case outcomes. Thus, it was not possible to fully control for the wide range of offender characteristics that may affect case disposition. The extent to which outcomes might vary based on which prosecutor in a given office responded to the survey also is unknown. However, initial screening calls did ask respondents...
to self-identify if they were the best respondent to answer questions regarding juvenile substance offense case processing. State penalty schemes examined for this study were limited to state statutory penalties and did not include a review of sentencing guidelines (issued by state sentencing commissions) used by judges at the sentencing phase of a trial. Twenty states have active sentencing commissions (Stanford Criminal Justice Center, 2006); in such states, statutory penalties serve as a floor for what a sentencing commission (or local prosecutor) may be able to do relative to defining penalty schemes. Furthermore, the current analyses focus on a BARJ model of decision making. An additional area for research in future studies would be the investigation of alternate models of decision making, including those used to examine judicial decision making (for example, see Wrightsman, 1999). Furthermore, the cross-sectional nature of the data, and its being limited to a single year, clearly mark the current analyses as exploratory only.

**Prosecutor-Reported Outcomes: Diversion, Criminal Court Transfer, and Juvenile Court Processing**

Results indicated that diversion programming availability significantly related to several state policies. Prosecutors were less likely to report diversion availability if state policy allowed for community service, treatment, or probation. Diversion may be less likely to be utilized by local jurisdictions for first-time marijuana offenders if state policy already emphasizes treatment and/or probation policy alternatives in the penalty scheme. Prosecutors also were less likely to report diversion availability if state policy included above-median maximum jail time. Again, state policy emphasizing punishment with relatively long incarceration penalties may indicate an environment that is not supportive of allowing the possibility of alternatives to incarceration.

In contrast to diversion availability, diversion use was not strongly related to state policy. Decisions to refer a juvenile to diversion may be more dependent on what the prosecution concludes ought to occur on a case-by-case basis or may be aligned more closely with state sentencing guidelines not captured in this study. Yet state policy still showed some indication of relating to case outcomes. At both the “any” and 1-ounce quantities, state policy providing treatment as a part of the penalty structure decreased the odds of prosecutors frequently using diversion. Again, use of diversion programming outside of the traditional juvenile justice system may be less likely if the state policy specifically allows treatment access as part of the penalty scheme, thereby incorporating rehabilitative model components into the legal philosophy.

State policy specifying higher maximum jail time related to increased odds of a prosecutor’s decision to use criminal court transfer for first-time juvenile marijuana offenders. This may indicate that state policies based on a
punishment/deterrence approach set a context within which local prosecutors are more likely to treat first-offender juveniles as adult criminals. Research supports a high level of prosecutorial discretion in juvenile criminal court transfer cases. Bishop, Frazier, and Henretta (1989) interviewed prosecutors in all of Florida’s judicial circuits and showed that in that state at that time, (a) no statutory guidelines existed regarding transfer use, and (b) significant between-prosecutor differences existed regarding transfer utility based on personal prosecutor juvenile justice philosophy. Nationally in 2001, only 19% of all chief prosecutor offices had written guidelines for handling juvenile cases in criminal court (DeFrances, 2002); by 2005, this had dropped to 13% (Perry, 2006). The data presented here may indicate that prosecutor discretion to utilize an accountability or punishment/deterrence approach is influenced by a state legal framework that emphasizes punishment.

Criminal court may not always result in incarceration. The most recent data on juvenile transfer case outcomes are from 1998, with data obtained from 40 of the largest urban counties in the United States (Rainville & Smith, 2003). In this study, 42% of the analyzed transfer cases were the result of statutory exclusion, 24% from judicial waiver, and 35% prosecutorial direct filing. Four percent of the cases had “other” drug offense as the most serious charge recorded (not including trafficking, sales, distribution, etc.). In the criminal court, outcomes for “other” drug offense transfer cases included some type of incarceration (46%), probation (41%), and other (13%); none received a fine as a sentence. Thus, criminal court transfer for juveniles can result in a variety of outcomes but indicates that the local prosecutor or judge concluded that the juvenile should be processed as an adult criminal.

Case outcomes within the juvenile court system were likely to show significant relationships with at least one state policy measure if the ODSL value was higher than minimal reaction. Cases that fall into the traditional adjudication paths of the juvenile court appear to have some likelihood of relating to the state policy environment (although state policy clearly does not provide a strong predictor of case outcomes).

**Specific State Policies and Case Outcomes in the Juvenile Justice System**

Four general state policies related to marijuana possession offenses were utilized in the current analyses: allowance for community service, allowance for probation, allowance of treatment in the penalty structure, and specification of above-median maximum jail times. Overall, community service policy allowances did not appear
to strongly relate to reported case outcomes. Other policy areas all showed several important relationships, as discussed below.

**Probation.** Approximately half of the youth represented in the sample were in jurisdictions where state law allowed probation for either “any” or 1-ounce quantity triggers. State policies allowing probation for marijuana possession offenses at the 1-ounce quantity were related to higher odds of receiving a community corrections ODSL (composed mainly of some type of court-ordered probation) and lower odds of receiving a placement ODSL (at either “any” or 1-ounce quantities). State law as it relates to probation may provide a context that increases the likelihood of prosecutors’ reporting some type of probation outcome.

**Treatment.** Initially, the authors had planned to include a measure indicating if a state allowed for conditional discharge to treatment (where treatment was not included as part of the penalty scheme itself). Surprisingly, conditional discharge showed no significant relationships with reported case outcomes for either the “any” or 1-ounce quantities. Only when treatment was included as part of the penalty scheme itself were significant results observed. This may help explain the finding that the presence of a state penalty statute on treatment was related to decreased odds of frequent diversion programming use in non–juvenile court processing but gave some indication of increased odds of an ODSL of community corrections in juvenile court processing. Inclusion of treatment in the penalty structure may result in prosecutors’ preferring to have juveniles access treatment services through probation rather than diversion programming, where there may be less oversight and ability to ensure treatment program completion (depending on the nature of the program). This finding (as well as the findings reported in the previous paragraph) may indicate that when state policies include BARJ-related components such as treatment within the framework of specified sanctions, local prosecutors may be more likely to apply BARJ-related case processing.

**Maximum jail time.** Dichotomizing state-specified maximum incarceration penalties above the median for either “any” or 1-ounce marijuana possession resulted in a measure indicating approximately 6 months or more. For both “any” and 1-ounce quantities, 6 months or more maximum jail time was associated to some degree with higher odds of criminal court transfer for juvenile marijuana offenders. Higher maximum jail time was also associated with higher odds of community corrections. In state environments where policies emphasized higher maximum jail penalties, prosecutors were more likely to report more severe consequences. One exception to this was at the 1-ounce quantity, above-median maximum jail time was associated with lower odds of placement (with no relationship at the “any” quantity level). This apparent contradiction may relate to the likelihood of “jumping” severity levels. Instead of using minimal reaction, community corrections may be preferred. At the 1-ounce quantity level, criminal
court transfer may be preferred over juvenile justice system placement. Although complex, the results suggest that when state policy emphasizes punishment/deterrence, state prosecutors are more likely to report using a punishment approach for juvenile marijuana possession offenders.

**Comparison of “any” versus 1-ounce quantity level penalties.** There was no indication of a difference in relationship directionality when comparing results of “any” and 1-ounce quantity models. Differences were limited to the statistical significance levels (or lack thereof) of the relationships. For non–juvenile court processing, the significant findings at the “any” quantity were fairly consistent with those at the 1-ounce quantity. In contrast, the relationships were less robust between “any” and 1-ounce quantities when examining the relationship between state policy and juvenile court processing. Such findings may indicate that the state statutory framework for the 1-ounce quantity may provide a more consistent guidepost for prosecutor discretion in juvenile court processing than in areas such as diversion or criminal court transfer.

**Conclusion**

For youth, juvenile justice system contact is often a very significant event. As noted by Bartollas (1997), continued delinquent behavior has been shown to be more likely (a) the younger a child is at first involvement with the juvenile justice system, (b) with how often contact with the system occurs, and (c) with how far “into” the system the child is processed. In the current analyses, there was a general relationship between a state’s higher penalty policy environment and the prosecutor being more likely to report usually referring first-time juvenile marijuana law offenders to criminal court. This may suggest that some prosecutors are operating within the context of an accountability/punishment perspective rather than a rehabilitative or BARJ perspective. Given that the case scenario involved first-offenders, the data particularly indicate the application of an accountability/punishment perspective. In states where policy provided some type of rehabilitative framework (e.g., treatment or probation), prosecutors were less likely to report diversion programming availability—perhaps because the state already provided some flexibility in case disposition within state statutes. The data indicate that state policy context may play a significant role in local community prosecutor decisions regarding juvenile justice case outcomes. The degree of state policy impact on prosecutor and juvenile court decisions to apply a strict accountability approach, a more rehabilitative or BARJ approach, or some other framework needs to be further explored.

Prosecutorial decision making is affected by a broad range of legal, extralegal, and resource factors as well as the juvenile justice model that prosecutors may
subscribe to. The current study indicates that state policy differences may provide an important framework for understanding prosecutorial decision making regarding first-time juvenile marijuana possession offenders. This exploratory study provides important, new information that adds to criminal justice, drug policy, and juvenile justice model understandings of the interplay between state policy context and local policy implementation. Scholars continue to focus on the crucial nature of juvenile justice reform, advocating the movement to a balanced rehabilitative perspective (Scott & Steinberg, 2008) as well as toward a public health/harm-reduction perspective in drug policy with treatment alternatives to incarceration (McBride, Terry-McElrath, VanderWaal, Chriqui, & Myllyluoma, 2008). The data presented in this article suggest that state policy may be an important part of facilitating a local prosecutor’s decision in his or her choice of the application of a juvenile justice model to specific cases. Attempts to engage in policy reform focusing on using a rehabilitative model may need to include a focus on state policy to set an environmental context that influences the decisions made by local prosecutors.

**Authors’ Note**

The views expressed in this article are those of the authors and do not necessarily reflect the views of the sponsoring organizations.

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**Note**

1. Respondents indicating that standard sentencing did not differ from mandated minimum sentencing did not answer the more detailed sentencing items and, thus,
have missing data for criminal court transfer and juvenile court processing as state policy stipulations were planned to be used. Unfortunately, when examining state-policy-mandated minimum sentencing requirements, lack of reliability was found between prosecutors’ reporting such mandates existed and stated law. Thus, such cases have been removed.

References


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Yvonne M. Terry-McElrath is a research associate at the Institute for Social Research at the University of Michigan and received her MSA from the University of Notre Dame in 1999. Her research and publication experience has focused on trends and correlates of tobacco and illicit drug use in adolescent populations, antitobacco and anti-drug use media campaigns, drug policy, drug treatment provision within juvenile justice populations, the drug-crime cycle, and HIV/AIDS prevention services among high-risk groups. She has published more than 40 articles, chapters, books, and monographs in these fields.

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