

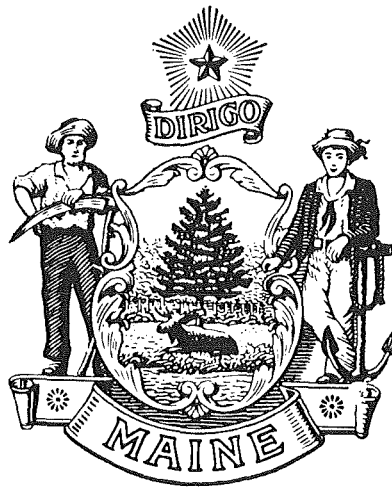
# MAINE STATE LEGISLATURE

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DRUG ABUSE AND THE MAINE CRIMINAL  
JUSTICE SYSTEM – AN ATTITUDE AND  
OPINION SURVEY OF POLICE CHIEFS,  
COUNTY SHERIFFS, COUNTY ATTORNEYS  
AND DISTRICT COURT JUDGES



STATE OF MAINE

COMMISSION ON DRUG ABUSE\*

\* As of January 1, 1974, the Office of Alcoholism and Drug Abuse Prevention



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## Foreword

Maine, like all other states, relies principally on criminal sanctions to prevent the illegal use and abuse of drugs and narcotics. Accordingly, the impact of any change in drug laws is strongly felt by those who must administer the law: the police and sheriffs, prosecutors, and judges. In recognition of this fact, many Maine Legislators and policymakers have expressed a strong concern about the effects of various laws and legislative proposals on the criminal justice system.

This survey was undertaken to lessen the information gap between the criminal justice system and legislative draftsmen and state governmental policymakers. Essentially, the authors have attempted to "take the pulse" of the criminal justice system so that the collective opinions, attitudes and recommendations of the experts in the field may be more accurately considered and properly evaluated. This has been accomplished through lengthy interviews with 98 members of the Maine Criminal Justice system.

This report does not urge the adoption of any of the recommendations or responses offered by the interviewees, although it is felt that many are worthy of legislative consideration and enactment. The report has been limited to a factual presentation and explanation of the findings in the hope that the reader may formulate his own conclusions and appropriate courses of action.

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## I. METHODOLOGY

This survey was conducted and prepared in the 10 week period between June 10 and August 18, 1973. It consists of 90 personal interviews<sup>1</sup> and two written interviews<sup>2</sup> with Maine's drug abuse "field experts": police chiefs, county sheriffs, county attorneys and district court judges. All the interviews were conducted by the Maine Commission on Drug Abuses' legal intern, N. Dennis Hawkesworth, and all interviewees were assured that their individual responses would remain confidential.

Only with regard to police chiefs was an interviewee selection process utilized, and only there because of time limitations. The 50 chiefs interviewed were selected mostly on the basis of the size of the town or city they serve.<sup>3</sup> A few chiefs, mostly from the sea-coast counties, were interviewed because their town was in an area thought to be of relatively heavy drug use. Although the 50 chiefs interviewed comprise only 40% of the police chiefs in Maine the towns and cities they serve comprise close to 70% of the population.

All county sheriffs, county attorneys and district court judges were contacted and all were asked to be interviewed. Fourteen (88%) of the county sheriffs, 16 (100%) of the county attorneys and 12 (63%) of the district court judges were actually interviewed. No one contacted refused an interview. To the contrary, many participants were concerned that their views on drug abuse had not previously been systematically solicited. The only hurdles encountered by the interviewer were time limitations and conflicting vacation schedules.

Three slightly different sets of questionnaires were used: one for county attorneys, one for judges and one for county sheriffs and police chiefs (see appendix). The questionnaires were based on a questionnaire used by the National Commission on Marijuana and Drug Abuse in on August, 1971 national survey of State District Attorneys.

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<sup>1</sup>These interviews ranged in length from 30-150 minutes. In addition to the 90 interviews noted, six interviews with narcotic officers were conducted, but the results of these interviews have not been included in this report.

<sup>2</sup>These were actually not "interviews". Rather, a questionnaire was left with these two persons who completed it and delivered it by mail.

<sup>3</sup>The police chiefs of the following towns and cities were interviewed: Auburn, Augusta, Bangor, Bar Harbor, Bath, Belfast, Biddeford, Boothbay Harbor, Brewer, Brunswick, Bucksport, Calais, Camden, Cape Elizabeth, Caribou, Dover-Foxcroft, Ellsworth, Fairfield, Fort Fairfield, Falmouth, Farmington, Fort Kent, Freeport, Gorham, Houlton, Lewiston, Madawaska, Machias, Northeast Harbor, Orono, Ogunquit, Portland, Presque Isle, Rockland, Rockport, Saco, Sanford, Skowhegan, South Paris, South Portland, Southwest Harbor, Thomaston, Van Buren, Waldobor, Waterville, Wells, Westbrook, Wilton, Wiscasset, Yarmouth.



	Jan-Mar	April-June	July-Sept	Oct-Dec	Total Arrests	Total Convicted
Sale of Drugs	33	6	15	2	56	24
Illegal Possession-						
Adult	133	54	122	24	333	214
Juvenile	72	29	52	24	177	95
Illegal Possession of syringe	10	1	1	1	13	4
Operating under the influence of drugs	2	5	1	0	<u>8</u>	<u>3</u>
Totals					587	330

\*These arrest statistics pertain only to arrests made by the Maine State Police. They represent only a small percentage of the total drug arrests made in Maine in 1972 for they do not include the numerous arrests made by local police and sheriffs departments. For a more detailed statistical description of state police arrests see Maine's Drug Abuse Prevention Plan for 1973 available upon request from the Maine Commission on Drug Abuse, Bureau of Rehabilitation, Department of Health and Welfare, 32 Winthrop Street, Augusta, Maine 04330.

### III. FINDINGS

#### 1. Law Enforcement Practice and Policy

##### A. Investigations and Arrests by Police and County Sheriffs

In most areas of Maine and the United States police departments are allocated limited amounts of manpower and finances to cope with an increasing crime rate and an ever growing criminal code. In order to most efficiently and properly utilize their limited resources, police departments often develop investigative and enforcement priorities. These priorities are generally set according to the number and seriousness of offenses that are committed within a particular jurisdiction. Accordingly, we may assume that criminal offenses that are frequently committed and are viewed by the police or society as serious will be given a high investigative priority while petty offenses will usually be assigned a lower priority.

Police. The survey results reveal that the greatest percentage of chiefs (58%) give the sale of hard drugs<sup>1</sup> a high investigative priority. A somewhat lower percentage (46%) attach a high priority to the sale of marijuana. Many chiefs qualified their responses by stating that although they encountered very few or no cases of hard drug sales they would attach a top most priority to such an offense should it occur or occur more often.

16% of the chiefs give the sale of hard drugs a low investigative priority while 10% give the sale of marijuana a similar priority.<sup>2</sup> Generally, in all instances where the sale of marijuana or hard drugs is given a low priority the chiefs stated that this was because there was little or no such crime within their town or that their department did not have the manpower necessary to conduct investigations independent of those conducted by the sheriffs department or the state police.

The chiefs often stated that drug offenses are investigated only after a complaint is filed because the department either cannot afford or does not need a full time drugs and narcotics officer. In the larger towns and cities that employ a full time drug officer, pre-complaint investigations are often continually conducted and the sale offenses tend to receive a high priority while the possession offenses, especially possession of marijuana, receive low priorities. In the small to medium size towns, however, the chiefs indicated that possession of hard drugs and marijuana is viewed differently. In these towns, where alcohol and traffic offenses account for most of the crime, the police chiefs often designate the apprehension of marijuana and drug users (possessors) as a top priority simply because possession of marijuana or hard drugs is the most frequently committed, relatively serious offense.

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<sup>1</sup>The term hard drugs was used, for lack of a better term, to refer to the narcotics, barbiturates amphetamines and hallucinogens. Interviewees were informed that hard drugs referred to all commonly illegally used drugs except marijuana and alcohol.

<sup>2</sup>24% (sale of marijuana) and 20% (sale of hard drugs) of the chiefs stated either that they did not know, or that they didn't have set investigative priorities; rather, they allocate priorities after a complaint is filed according to the nature and source of the complaint.

For example, 58% of the chiefs give the possession of marijuana either a high (34%) or moderate (24%) investigative priority. An identical 58% give the possession of hard drugs a high (44%) or moderate (14%) investigative priority. 12% of the chiefs, almost all from the larger cities, give the possession of marijuana a low priority, while 16% give a similar priority to possession of hard drugs.<sup>3</sup>

Because there is only a moderate degree of uniformity of investigative priorities throughout the state, one might expect drug arrests to arise from different enforcement activities.

The interviews reveal that the drug arrests made by the police in the 50 towns and cities whose chiefs were interviewed arise mostly from investigations into traffic in marijuana, street arrests and automobile arrests.<sup>4</sup> Investigations into traffic in hard drugs and arrests in connection with non-drug complaints account for a smaller amount of the total arrests. Street arrests and automobile arrests are the most frequent form of apprehension in the small to moderate size towns, while arrests resulting from investigations into traffic in marijuana or hard drugs occur primarily in the larger towns and cities. These findings agree with other studies that have shown that in rural areas investigations into traffic in marijuana, street arrests and automobile arrests account for the bulk of the drug arrests.<sup>5</sup>

Sheriffs. Like the police chiefs, the greatest percentage of sheriffs (64%) give the sale of hard drugs a high investigative priority while five (35%) attach a high priority to the sale of marijuana. One sheriff gives the sale of hard drugs a low priority while 21% give such a priority to the sale of marijuana.

Lesser percentages give the possession of marijuana a high (28%) or moderate (14%) priority while more than half attach either a high (50%) or moderate (14%) investigative priority to the possession of hard drugs. As with the sale of hard drugs, no sheriffs give the possession of hard drugs a low investigative priority. Three sheriffs (21%), however, do give a low priority to the possession of marijuana. Those sheriffs who did not list priorities stated that they investigate "complaints on the same priority, as we receive them."

Unlike the police chiefs, the sheriffs stated that most of their drug arrests arise from investigations into traffic in marijuana and hard drugs. Arrests in connection with non-drug complaints or investigations were the second most common source of drug arrests, street arrests ranked third and automobile arrests were fourth. These figures accurately reflect the fact that the sheriffs are involved to a lesser extent than the police departments in traffic control and on the street apprehensions of criminals. Instead it may be assumed that they focus a greater proportion of their drug related activities on investigations into sale of marijuana and hard drugs.

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<sup>4</sup> Street arrests and automobile arrests are referred to as "accidental" drug arrests for the contraband is often discovered as a result of an arrest or temporary detention for a non drug related offense.

<sup>5</sup> Marijuana A Signal of Misunderstanding, the National Commission on Marijuana and Drug Abuse, p. 794.

## B. Pre Trial Release by Police and County Sheriffs.

Police chiefs and county sheriffs were asked if they knew of examples within their departments where a person who was arrested or stopped for possession of a small amount of marijuana or hard drugs was released with just a warning. In other words, is it the unwavering practice of the police and sheriffs in Maine to turn over every drug case to the county attorney for prosecution. This question, like most of the questions in section III-1, is a general indicator of the relative seriousness of drug offenses, in the minds of Maine police and sheriffs, for only in exceptional circumstances do law enforcement officers informally deal with and dismiss persons suspected or accused of serious crimes.

Thirty-five (70%) of the chiefs and nine (64%) of the sheriffs stated that all drugs arrests are presented for prosecution. Five (10%) of the chiefs and three (21%) of the sheriffs frankly stated that many (25%-50%) cases involve an illegal search but they are nevertheless given to the prosecutor.

Fifteen (30%) of the police and five (35%) of the sheriffs were aware of drug arrests that had not been handed over for prosecution. None of the chiefs or sheriffs stated that pre-prosecution release was the common practice, instead they felt that this occurred in unusual situations where special treatment was warranted.

## C. Law Enforcement Policy

In a question designed to determine the extent of the social stigma and the negative implications arising from a drug possession conviction, the chiefs and sheriffs were asked if they would employ as a police officer anyone who had been convicted for possession of marijuana or hard drugs.

Fourty-one (82%) of the chiefs and five (35%) of the sheriffs would not employ a person who had been convicted for possession of marijuana. Six (12%) of the chiefs and five (35%) of the sheriffs would employ such a person. Three (6%) chiefs and three (21%) sheriffs felt they might but this determination would depend upon a lot of factors, e.g. how long ago the person was convicted and what he has done since then. One sheriff did not know.

Fourty-seven (94%) of the chiefs and seven (50%) of the sheriffs would not employ a person who had been convicted of possession of hard drugs. Two chiefs (4%) and three sheriffs (21%) would employ such a person and one chief and three sheriffs said they might but it would depend heavily upon other factors. One sheriff did not know.

The chiefs and sheriffs were lastly asked to state the drug or drugs currently being used or sold in Maine that holds the greatest threat to the health and welfare of the individual user and society.

Individual. Sixteen of the chiefs chose Mephamphetamine, (speed) as the number one threat to the health and welfare of the individual user in Maine. LSD and marijuana ranked second with each being mentioned by nine of the chiefs, and cocain and heroin ranked third, with each being mentioned by seven chiefs. Six chiefs answered all "hard drugs", five chose "all drugs", and one picked barbiturates. Although the question was designed to specifically exclude alcohol (it was limited to illegal drugs) many chiefs commented that alcohol was probably the worst threat because of its wide spread use and acceptance. Similarly, most of the nine chiefs who thought marijuana was the worst threat explained that this was the result of marijuana's widespread prevalence and acceptance.

The sheriff's choices of the drugs posing the greatest danger to the individual user differed somewhat from those of the chiefs. Like the chiefs, mephamphetamine and LSD ranked at the top with each drug being mentioned by five sheriffs. Unlike the chiefs, cocain was not specifically mentioned and only one sheriff picked heroin or marijuana as the greatest threat. "All hard drugs" was listed by three sheriffs and "all drugs" was chosen by two.

Society. The sheriffs choices of the drugs posing the greatest threat to society were identical to their choices regarding the individual.

The police chief's responses were somewhat different. The greatest number of chiefs (11) chose marijuana as the number one threat. Mephamphetamine placed second as the choice of ten chiefs. "All hard drugs" ranked third with eight chiefs selecting it, seven chiefs mentioned LSD, six selected heroin, five chose "all drugs", four mentioned cocain and two chose barbiturates. Again, many of the chiefs explained that marijuana was their top choice because they feel it is a drug of wide spread use and acceptance that leads to the use of hard drugs (see III-4).

A. Law Enforcement Practice and Policy (III-1)

	Police Chiefs	Sheriffs
1) The investigative priority given to <u>possession</u> of:		
Marijuana-		
High	34	28
Moderate	24	14
Low	12	21
Other*	30	35
Hard Drugs-		
High	44	50
Moderate	14	14
Low	16	0
Other*	26	35
2) The investigative priority given to <u>sale</u> of:		
Marijuana-		
High	46	35
Moderate	20	14
Low	10	21
Other*	26	35
Hard Drugs-		
High	58	64
Moderate	6	0
Low	16	6
Other*	20	30
3) Does your department see to it that every arrest for possession of drugs is presented for prosecution.		
Yes	70	64
No	30	35
4) Would you employ as a police officer anyone who has been convicted of possession of:		
Marijuana-		
Yes	12	35
No	82	35
Hard Drugs-		
Yes	4	21
No	94	50

\*Other includes those who either did not answer or responded that the allocation of priorities depends upon the complaint.

### III. FINDINGS

#### 2. Prosecutorial Policy

Prosecutors in Maine, as in all other states, are vested with the authority to determine which offenders will be tried and for what specific offenses. This gives prosecutors the power to strengthen or reduce the effect of any given law, for a frequent decision not to prosecute certain offenders or offenses (except for lack of evidence) usually reflects a personal or societal recognition of the relative non-serious nature of the offense. As stated by the National Commission on Drug Abuse and Marijuana in their first report, Marijuana - A Signal of Misunderstanding,<sup>1</sup> "in actual practice a consistent decision not to prosecute in certain circumstances amounts to a de facto repeal".

Five (31%) of the county attorneys stated that they do not as a matter of common practice, prosecute everyone charged with possession of marijuana, while one does not always prosecute everyone charged with either sale of marijuana, possession of "hard drugs"<sup>2</sup> or sale of hard drugs. Stated conversely, eleven (67%) of Maine's county attorneys usually prosecute all persons charged with possession of marijuana and fifteen (94%) generally prosecute all persons charged with sale of marijuana and/or sale or possession of hard drugs. In the view of one prosecutor, failure to regularly prosecute drug offenders (either marijuana or hard drugs) would not be consistent with a prosecutor's official duties and would weaken the deterrent effect of the law. On the other hand, those who withhold prosecution feel that their actions allow limited state resources to be applied to more serious criminal offenses.

Those county attorneys who do not consistently prosecute every case were asked whether they had established a "rule of thumb" or minimum amount policy. For example, are all arrests involving X amount of drugs routinely dismissed? All five (31%) of the prosecutors who do not regularly prosecute everyone charged with possession of marijuana stated that they had such a rule of thumb regarding marijuana cases and one had such a rule regarding hard drug cases.<sup>3</sup> All the prosecutors who used such a rule of thumb reported that this policy had been either formally or informally communicated to the police department. Such a communication may demonstrate one way in which prosecutorial policy affects law enforcement policy for it may be assumed that policemen in a "rule

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<sup>1</sup>Copies of this Report may be obtained from the Maine Commission on Drug Abuse.

<sup>2</sup>The term "hard drugs" was used to refer to the narcotics, barbiturates, amphetamines and hallucinogens. Interviewers were informed that hard drugs referred to all commonly illegally used drugs except marijuana and alcohol.

<sup>3</sup>Three county attorneys stated that although they did not have a "rule of thumb" as such, they usually did not prosecute unless there was a "usable amount" of drugs seized.

of thumb" jurisdiction will be reluctant to arrest in cases involving less than the designated amount of drugs.

The arrestee's age, the amount of drugs involved and the arrestee's lack of a previous record were the factors most frequently listed as being influential in deciding not to prosecute. Closely following them in importance were: the defendants personal situation, (i.e., his general attitude, his reputation in the community, conduct which had previously come to the attention of law enforcement agencies, his education, his present job and his desires concerning future jobs.)

Although it is not the common practice of most county attorneys to withhold prosecution, a significant number have done so, usually in cases involving unusual circumstances. Eight (50%) county attorneys stated that they had made use of informal probation (filing of charges)<sup>4</sup> in cases involving possession of marijuana. Lesser percentages have utilized informal probation for: sale of marijuana (25%), possession of hard drugs (18%) and sale of hard drugs (18%). Three prosecutors reported that they were very rarely presented with cases involving hard drugs, but they might utilize informal probation if the occasion arose more often. Also, two prosecutors stated that the district court judge in their jurisdiction would not allow the use of an informal probation process.

Those prosecutors who have on occasion filed charges were most often influenced by defendants age, previous record and attitude. For defendants charged with sale or possession of hard drugs the prosecutor would usually only allow informal probation in exchange for vital information concerning drug sellers.

At the disposition level, a substantial majority of fifteen (94%) prosecutors take an active role in recommending appropriate dispositions. Defendant's age, lack of previous criminal record, personal situation and attitude were mentioned by thirteen (82%) county attorneys as factors influencing their recommendations. Other factors mentioned were defendants associations, his "I.Q.", his involvement in the drug scene and his education. Four prosecutors specifically pointed out that they were not influenced by defendant's social status or family connections.

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<sup>4</sup>Under this arrangement a prosecutor usually indefinitely suspends formal proceedings if the defendant maintains good behavior for a set period of time.



## 2. PROSECUTORIAL POLICY (III)

	Maine County Attorneys	National District Attorneys*
1) % of prosecutors whose common practice is to prosecute everyone charged with:		
-possession of marijuana	67	60
-sale of marijuana	94	60
-possession of hard drugs	94	
-sale of hard drugs	94	
2) % of prosecutors who utilize a defined "rule of thumb" (minimum amount policy) in decisions to prosecute		
-marijuana offenses	31	12
-hard drug offenses	6	
3) % of prosecutors who have, on occasion, granted informal probation (filing or dismissal of charges) for persons charged with:		
-possession of marijuana	50	
-sale of marijuana	25	
-possession of hard drugs	18	
-sale of hard drugs	18	
4) % of prosecutors who play an active role in recommending appropriate sentences in drug cases	94	

\*From a 50 state survey of District Attorneys conducted in August, 1971 by the National Commission on Marijuana and Drug Abuse.

### III. FINDINGS

#### 3. Judicial Caseloads and Hypotential Sentencing.

A. Caseload. The judges were first questioned about the number of drug offenders brought before them during the last five years.<sup>1</sup> Nine of the judges (75%) thought that the number of persons charged with drug offenses had increased sharply in the last five years. One judge (8%) felt there was slight increase, one thought his drug related caseload had remained the same and another stated that there had not been a readily identifiable trend. None of the judges felt that their drug caseload had decreased in the last five years, but two judges mentioned that their drug caseload had decreased slightly in the last two to three years.

Even though a majority of judges indicated that there has been a sharp increase in their drug caseload, the approximations of the percentage of drug offenders brought before the court in the last year (1972) remained relatively small. Four of the judges estimated that their drug caseload comprised 2-3% of their total caseload. One judge put the figure at 5% and three others estimated that drug cases make up 10% of their total caseload. One judge, without giving a specific percentage, stated that drug offenses made up a "fairly small" portion of his caseload, and two other judges described it as "very small". One judge declined to answer this question.

B. Hypothetical Sentencing. In an attempt to determine what punishment is most justly suited to a particular drug offense, judges were asked to hypothetically disregard the present law in Maine and to recommend an appropriate sentence for a 24 year old, successfully employed college graduate with no criminal record who was convicted of: possession of a small amount of marijuana, possession of a small amount of narcotics, sale of \$50 worth of marijuana, and sale of \$50 worth of narcotics. In almost every case, the judges expressed an unwillingness to "disregard", even hypothetically, any law. As a result of the judges refusal to "disregard" the law for purposes of this question, the "disregard" wording was deemphasized and the judges were asked instead to suggest the sentence that most appropriately fitted the stated hypothetical situation.

For possession of a small amount of marijuana, <sup>2</sup> seven (58%) of the judges would either file the charges or impose a light to moderate fine with no jail sentence. The lightest recommended sentence, which is actually not a sentence at all, was filing of the case upon

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<sup>1</sup>The District Courts in Maine possess concurrent trial jurisdiction for misdemeanors with the Superior Courts (M.R.S.A. 4, Section 152). In addition, District Courts possess original jurisdiction to receive guilty pleas in felony cases and they process the preliminary phases of felony cases.

<sup>2</sup>Possession of marijuana is a misdemeanor punishable by a fine of not more than \$1000 and by imprisonment for not more than 11 months. M.R.S.A. 22, Section 2383.

payment of court costs. Filing was recommended by two (16%) of the judges. One judge (8%) would impose a \$50-100 fine, three (25%) would impose a \$100 fine, and one would impose a \$100-150 fine.

Four of the judges (33%) chose a moderate fine coupled with a short jail sentence. Two judges (17%) would impose a \$150 fine and a five day suspended jail sentence. One judge chose a \$150-200 fine with a short (unspecified) jail sentence. The harshest sentence, recommended by one judge, was a \$250 fine with 2-3 days in jail. One judge declined to suggest a specific penalty.

Possession of narcotics. Seven judges (58%) declined to answer this question for a variety of reasons. Four cited the district courts lack of jurisdiction over felony proceedings.<sup>3</sup> One judge felt that "narcotics" covers too wide a range of drugs, one declined to answer because he couldn't be expected to "disregard" the law and another judge stated that the sentence would depend on the individual case.

Of the five judges (41%) who did recommend a sentence, three (25%) would place the defendant in this hypothetical situation on probation. One judge would impose a jail sentence and another would impose a six month suspended sentence and then would attempt to funnel the defendant into a treatment program.

Sale of marijuana. Four of the judges (33%) again cited a lack of jurisdiction over felony proceedings<sup>4</sup> and declined to answer. As before, one judge stated that the sentencing determination depends upon many factors.

Of the seven judges (58%) who suggested a specific sentence, the lightest sentence, recommended by two judges, (16%) was a suspended jail sentence. One judge recommended a \$500 fine, another suggested a fine (unspecified) coupled with a suspended jail sentence, and one other would impose a \$200 fine and a suspended jail sentence. The harshest penalties were 60 days in jail, recommended by one judge and a "heavy penalty", again recommended by one judge.

Sale of narcotics. Three judges (25%) did not answer this question due to their lack of jurisdiction over felony proceedings.<sup>5</sup> Another three stated that the sentence would depend upon facts particular to each individual case.

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<sup>3</sup>Possession of narcotics is a felony punishable (first offense) by a fine of \$50,000 or imprisonment for not more than 20 years. M.R.S.A. 22, Section 2362.

<sup>4</sup>First offense sale of marijuana is punishable by a fine of not more than \$1000 or by imprisonment for not more than five years. M.R.S.A. 22, Section 2384.

<sup>5</sup>First offense sale of narcotics is punishable by a fine of not more than \$50,000 and not less than one nor more than 20 years imprisonment.

Of the 42% who did recommend a specific punishment, all recommended a jail sentence. One recommended a 30 day sentence coupled with a substantial fine, another suggested a 60 day sentence, another would impose a "heavy" sentence while a fourth would not specify what length sentence would be appropriate because such a sentence would depend upon a lot of circumstances. The fifth judge would impose a fine and a suspended jail sentence and look into the need for and possibility of rehabilitation.

### III. FINDINGS

#### 4. Opinions Concerning the Psychological and Physiological Effects of Marijuana Use.

In March of 1972, the National Commission on Marijuana and Drug Abuse released their first report, Marijuana: A Signal of Misunderstanding. This report, the most comprehensive and authoritative marijuana study ever undertaken in America, made the following conclusions:

"From what is now known about the effects of marijuana, its use at the present level does not constitute a major threat to public health.... No conclusive evidence exists of any physical damage, disturbances of bodily processes or proven human fatalities attributable solely to even very high doses of marijuana."

"Marijuana use per se does not dictate whether other drugs will be used.... Indeed, if any drug is associated with the use of other drugs, including marijuana, it is tobacco, followed closely by alcohol.... The user's social group seems to have the strongest influence on whether other drugs will be used.... but the fact should be emphasized that the overwhelming majority of users do not progress to other drugs."

"The most notable statement that can be made about the vast majority of marijuana users - experimenters and intermittent users - is that they are essentially indistinguishable from their non-marijuana using peers by any fundamental criteria other than their marijuana use."

"In sum, the weight of the evidence is that marijuana does not cause violent or aggressive behavior; if anything, marijuana generally serves to inhibit the expression of such behavior."

Many of the above conclusions are contrary to beliefs that are deeply imbedded in the public mind. In an attempt to determine whether Maines' criminal justice officials have been informed of and have accepted the medical-social studies performed in the last three years, each interviewee was asked to state the principal physiological and psychological effects of marijuana use. Interviewees were also asked whether use of marijuana led to the use of hard drugs, caused a loss of motivation and caused aggressive behavior.

These beliefs and opinions, apart from indicating the extent of current scientific learning among interviewees, usually form part of the basis for recommendations on how to control marijuana use. For example, an interviewee who felt that marijuana use leads to the use of hard drugs would quite probably be opposed to a relaxation of legal controls. Conversely, an interviewee who felt that marijuana had no harmful effects would in all probability be more disposed towards a relaxation of legal controls.

A. Police Chiefs. The chiefs were first asked to state what they thought were the principal psychological and physiological effects of marijuana use on the individual. Their responses were the most numerous and varied of the four groups.<sup>1</sup>

The most frequent response, offered by twenty (40%) of the chiefs was that they did not feel qualified to answer questions of this nature, rather they felt "you should be a medical person or doctor to answer this". In addition to those who felt they shouldn't answer, sixteen (32%) of the chiefs candidly stated that they couldn't answer because they really weren't sure of the effects, or because not enough was known to give an accurate answer.

Of those who did volunteer a specific answer, the specific effect mentioned by the largest percentage (22%) of the chiefs was that marijuana leads to an indifferent, "I don't care" attitude. Users seem to "lose interest in things."

Closely following this response, ten (20%) of the chiefs thought that marijuana could become psychologically addictive, while ten others thought that the effects of marijuana are determined more by the person using it than the drug itself.

Seven (14%) of the chiefs thought that marijuana affects an individual "in a way similar to alcohol, while six (12%) stated that "there is no effect at all". The other responses included: it causes a loss of coordination, and slowing of reflexes (10%), it makes a person sleepy and lethargic (8%), it makes one become a different person (8%), it produces brain damage (6%), it makes you silly and giggly (4%), it makes you "crazy" (4%), and it affects you similar to cigarettes (4%).

In addition, some singular responses included the following, marijuana: "gives you courage...", "causes you to lose courage...", "makes you look older...", "makes you lose your appetite...", "causes you to become skinny and acquire white skin...", "makes you mean when you come down from a high and it acts as an aphrodisiac...".

In response to specific questions concerning the effects of marijuana use, thirty-six (72%) of the chiefs felt that marijuana use leads to the use of hard drugs, forty-three (86%) thought that marijuana use causes loss of motivation, twenty-six (52%) felt that the use of marijuana causes aggressive behavior, and twenty-three (46%) stated that they had personally witnessed such behavior.

When asked to describe the aggressive behavior they had witnessed, most chiefs stated that such behavior consisted of abusive language, either directed at a police officer or a family member. Other examples offered included: assault upon a police officer, murder of a girl, mad disregard for authority, and refusal to break up a party.

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<sup>1</sup>Many chiefs had two or three responses and therefore the percentage breakdown contains some overlap.

Almost half the chiefs who cited examples of aggressive behavior felt that such behavior could have resulted from the use of another drug, especially alcohol, in connection with marijuana. Almost all stated that there was no absolute way (except by an admission) to be sure if marijuana caused the behavior because there is no valid test which they were aware of to determine if a person is under the influence of marijuana.

B. County Sheriffs. When questioned about the psychological and physiological effects of marijuana the responses of the sheriffs were somewhat different than those of the chiefs.

The most frequent response, offered by seven (50%) of the sheriffs was that they didn't really know what the effects were, three (21%) thought the effects were similar to alcohol and two (14%) stated that this was a question that required medical training and knowledge to properly answer. Another two stated that the effects were different for each individual.

Singular responses included: "it does not produce effects as problematic as alcohol...", "it damages the brain...", "it can be psychologically addictive...", "it affects depth perception...", and "it creates the sensation of walking in space".

In response to the specific questions concerning the use of marijuana, nine (64%) of the sheriffs felt that marijuana use leads to the use of hard drugs. Ten (71%) thought that marijuana use causes loss of motivation. Five (35%) believed that marijuana use causes aggressive behavior and all five stated that they had personally witnessed such behavior.

As with police chiefs, the aggressive behavior witnessed by the sheriffs consisted primarily of abusive language. One example of an assault on a sheriff was cited and also an example of "crazy acting".

C. County Attorneys. Unlike county sheriffs and police chiefs, a substantial percentage of county attorneys (31%) stated that there were no significantly harmful psychological and physiological effects resulting from marijuana use. The other responses of the prosecutors were more similar to those of police chiefs and sheriffs: four (25%) felt the effects were similar to those of alcohol; 25% felt this was a question more properly addressed to a medical authority; 25% thought that users could become psychologically addicted; three (19%) didn't know what the effects were; and two (12%) stated that it effects different individuals in different ways.

Other singular responses included: "it creates problems of depth perception...", "it dilates the user's pupils...", "it creates a lackadaisical attitude toward personal hygiene...", and "it becomes a 'status symbol' with the user's peer group".

The responses of county attorneys to the specific questions concerning the effects of marijuana also differed significantly from those of the chiefs and sheriffs. A much lower percentage (25%) of county attorneys thought that marijuana use leads to the use of hard

drugs. A lower percentage, nine (56%) also felt that marijuana use leads to loss of motivation, and five of the nine limited the motivational loss to heavy, regular users. Comparatively few prosecutors, two (12%), felt that marijuana use causes aggressive behavior, and only (one) stated that he had personally witnessed behavior.

The aggressive behavior was described as "belligerent, loud, aggressive behavior following an arrest for possession of marijuana".

D. District Court Judges. The responses of the judges concerning the psychological and physiological effects of marijuana use contained the greatest degree of consensus. Nine (75%) of the judges stated that this question could more appropriately be answered by a doctor rather than a lawyer or judge. They felt that this was a medical question upon which medical authorities were in disagreement and therefore "it is difficult for one not skilled in medicine to reach a sure conclusion on this." In addition to those who cited the conflicting medical evidence, two judges (16%) stated that they hadn't kept abreast of medical findings and therefore could not answer this question.

Of those judges who did mention specific effects, two (17%) felt that marijuana was not at all harmful, and lesser percentages (8%) thought that it makes you age quickly, breeds contempt for society, can be psychologically addictive, can affect driving abilities and produces apathy.

As with the county attorneys, the judges responses to the specific questions concerning the effects of marijuana use differed significantly from those of the chiefs and the sheriffs. A comparatively low percentage (33%) thought that marijuana use leads to the use of hard drugs. An even lower percentage (25%) felt that marijuana use causes loss of motivation but another 25% stated that it may,<sup>2</sup> depending upon the individual involved. Only one judge (8%) thought that marijuana use causes aggressive behavior, but again, three judges (25%) stated that it may, depending upon the individual.

One judge stated that he had personally witnessed such aggressive behavior but he was not specific as to what constituted this behavior.

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<sup>2</sup>These judges gave a "yes and no" response to the question.



OPINIONS CONCERNING THE PHYSIOLOGICAL AND PSYCHOLOGICAL EFFECTS OF  
MARIJUANA USE

	Police	County Sheriffs	Maine County Attorneys	National District Attorneys*	Judges
% who believe that:					
1) The use of marijuana leads to the use of hard drugs	72%	64%	25%	(74)%	33%
2) The use of marijuana causes loss of moti- vation	86	71	56#	(43)	25#
3) The use of marijuana causes aggressive behavior	52	35	12	(38)	8#
4) % who have person- ally witnessed such aggressive behavior	46	35	6	-	8
	(N=50)	(N=14)	(N=16)	(N=807)	(N=12)

\*From a 50 state survey of District Attorneys conducted in August of 1971 by the National Commission on Marijuana and Drug Abuse.

#Qualified, see narrative.

### III. FINDINGS

#### 5. Attitudes Concerning the Deterrent Effect of Drug Laws.

The agencies of criminal justice perform two major deterrent functions. First, in an effort to promote general deterrence, they carry out the community's efforts to maintain its moral standards, its norms and its regulations by an organized readiness to impose penalties on those who would violate them. General deterrence then refers to the ability of the criminal law to make the general populace law abiding.

The second function, individual deterrence, concerns the effects of punishment on the individual who is being punished. Individual or specific deterrence is achieved through the use of punitive sanctions designed to reduce the incidence of offenses on the part of those most likely to violate the law, whether repeatedly or initially.

How the discretion available to agencies of criminal justice is best employed to increase individual deterrence remains uncertain. The question has long been open to dispute. Two opposing and somewhat extreme views are put forward. The first is that an increase in the severity of punishment does not reduce the incidence of crime. In support of their position the proponents of this view cite historical evidence indicating that crime flourished during periods of the most severe punishments, and current statistical evidence indicating that the most severely punished offenders are often the most persistent law violators. In part, this view stems from a legitimate concern with social conditions that induce criminal behavior, and from a desire to focus social resources on the amelioration of these conditions.

The opposing view is that the only effective means of increasing crime control is to increase the certainty and severity of punishment. The proponents of this view argue essentially from common sense, and from an intuitive appreciation of the efficacy of punitive sanctions in motivating compliance to even trivial restrictive rules. Additional support for this view is derived from the deeply felt certitude that public morality can be sustained only if there is reasonable certainty that those who violate the criminal law will be punished, and that the severity of the punishment will be matched to the injury inflicted by the offense.<sup>1</sup>

The interviewees in this survey were first asked whether they thought that the present laws in Maine regarding marijuana and hard drugs deter most young people from 1) casual or experimental use, 2) regular use and 3) small sales or gifts for little or no profit. If the interviewee felt that such laws did act as a deterrent he was asked to state whether there was a significant, moderate or minimal degree of deterrence.

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<sup>1</sup>Kobrin et. al., The Deterrent Effectiveness of Criminal Justice Sanction Strategies, U.S. Dept. of Justice, 1972

To the extent that marijuana and hard drug laws are a deterrent, county attorneys and judges were then asked to choose, from a list of five factors, those factors which they regarded as the primary deterrent.

All interviewees were next questioned whether they thought a civil penalty for possession of marijuana applied with certainty would deter more than, less than, or about the same as the threat of incarceration applied sporadically.

Lastly all interviewees were told that the National Commission on Marijuana and Drug Abuse recently estimated that 26,000,000 Americans have used marijuana. To the extent that this indicates that marijuana laws are not an effective deterrent, interviewees were asked to recommend changes to achieve greater deterrent effectiveness.

A. Police and County Sheriffs-Marijuana. The great majority of police and county sheriffs did not feel that the present marijuana laws deter either experimental use, regular use or small sales or gifts.

With regard to casual or experimental use, thirty-nine (78%) of the police and fourteen (100%) of the sheriffs felt that the law was not a deterrent. Of the eleven chiefs who responded in the positive, one felt the deterrent effect was "minimal", eight felt it was "moderate", one felt it was "significant" and one didn't know.

With regard to regular use thirty-seven (74%) of the chiefs and eleven (78%) of the sheriffs stated that the law was not a deterrent. One chief was uncertain and did not answer. Again, one chief felt the deterrent effect was "significant", while three chiefs thought it was "minimal" and eight chiefs and three sheriffs believed the law to be of "moderate" deterrent value.

Thirty-eight (76%) of the chiefs and twelve (85%) of the sheriffs stated that the marijuana laws do not effectively deter small sales or gifts for little or no profit. One chief did not respond. Of those who answered otherwise, five chiefs and two sheriffs believe there is a "minimal" degree of deterrence, three chiefs felt the deterrence was "moderate" and three chiefs felt it was "significant".

Police and Sheriffs-Hard Drugs. Somewhat higher percentages of both chiefs and sheriffs thought the present laws deter experimental use, regular use and small sales or gifts of hard drugs.

Thirty (60%) of the chiefs and ten (71%) of the sheriffs answered in the negative when asked whether the law deters most young people from casual or experimental use of hard drugs. Two chiefs were uncertain. Of the 36%<sup>1</sup> and 29% (respectively) who answered in the positive, one chief was unsure as to the degree of deterrence, eight chiefs felt there was a "significant" degree of deterrence, six chiefs and two sheriffs stated there was "moderate" deterrence and three chiefs and two sheriffs felt the deterrent effect was "minimal".

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<sup>1</sup>Two chiefs (4%) did not respond to this question.

Regarding regular use, twenty-five (50%) of the chiefs and nine (64%) of the sheriffs thought that the hard drug laws are not a deterrent. Of the 46%<sup>2</sup> of the chiefs and 36% of the sheriffs who thought otherwise, three chiefs did not know what strength the deterrent effect was, six chiefs thought it was "significant", eight chiefs and three sheriffs believed it to be "moderate" and six chiefs and two sheriffs regarded it as "minimal".

As for small sales or gifts, thirty-one (62%) of the chiefs and eight (57%) of the sheriffs felt the present law does not act as a deterrent. Of the 34%<sup>2</sup> of the chiefs and 43% of the sheriffs who answered in the positive, two chiefs could not state how strong the deterrent effect was, seven chiefs thought it was "significant", four chiefs and two sheriffs thought it was "moderate" and four chiefs and four sheriffs believed there was a "minimal" degree of deterrence.

Police and Sheriffs-Civil Penalty. When asked what the deterrent effect would be of a fine applied with certainty ten (20%) of the chiefs and two (14%) of the sheriffs stated that such a fine would deter more than the threat of incarceration applied sporadically. Twenty-two (44%) of the chiefs and six (43%) of the sheriffs thought that such a fine would deter less than the threat of incarceration, while eighteen (36%) of the chiefs and three (21%) of the sheriffs did not give an opinion on this question.

Police and Sheriffs-Deterrent Recommendations. The chiefs and sheriffs were then told that 26,000,000 Americans have used marijuana.<sup>3</sup> To the extent that marijuana laws are not a deterrent they were asked how they could be changed to become more effective.

#### 1. Police Chief's Recommendations.<sup>4</sup>

Fifteen (30%) of the police chiefs felt that stiffer sentences, higher fines and overall greater penalties would make the marijuana possession laws more effective. Fourteen (28%) said that the laws didn't need changing, rather the problem is with courts that are too lenient and in the application of the law. Seven (14%) felt that, specifically, a mandatory jail sentence for possession of marijuana would make the present law effective. Four (8%) reacted with doubt at the "26,000,000" figure used in the question. Three (6%) wanted uniformity of enforcement, 6% wanted more education programs for young people and another 6% felt that there should be a specific amount stated in the statutes to designate a seller from a possessor.<sup>5</sup> Two (4%) said that they did not know how to make the laws more effective and another 4% felt that the present law is effective if the officer presents his case right.

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<sup>2</sup>Two chiefs (4%) did not respond to this question.

<sup>3</sup>This figure of 26,000,000 should be distinguished from the 13,000,000 Americans who the National Commission on Marijuana and Drug Abuse report regularly use marijuana.

<sup>4</sup>Percentages will overlap because many interviewees gave more than one response.

<sup>5</sup>A bill which accomplishes this, Public Laws of 1973, c. 510 was passed by the 106th Legislature and signed into law by Governor Curtis in June, 1973.

Singular recommendations included the following: "More strict control just on sale...", "more psychiatric care...", "put them in jail for a few days...", "loose the search and seizure statutes...", "legalize marijuana...", the law is not effective now and something must be done one way or another...", "it is a matter of economics, we need more money, more men...", "I'd like to say more stringent laws, but because of mass use, you can't really say that...", "swifter justice".

## 2. Sheriff's Recommendations.

Three (21%) of the county sheriffs felt that stiffer penalties would make the marijuana possession laws more effective. Two (14%) felt that a mandatory jail sentence would make the law effective, 14% did not know, and another 14% said that the laws should remain the same for the laws are strict enough, and a stricter law will not deter.

Singular comments included: "The courts must stiffen up the existing law...", "there should be uniformity of the laws...", "legalize marijuana and take a look towards the future...", "reduce penalties for small amounts and go after the pusher to stop the supply".

B. County Attorneys and Judges-Marijuana. Like the police and sheriffs, the majority of prosecutors and judges felt that the present law does not deter either casual or regular use or small sales or gifts.

Fifteen (94%) of the prosecutors and ten (83%) of the judges interviewed believed that the present marijuana law does not deter casual use. All those (6% and 17% respectively) who thought the law does act as a deterrent felt there was a "moderate" degree of deterrence.

Regarding regular use, 94% (15) of the county attorneys and 58% (seven) of the judges<sup>6</sup> felt that the law does not deter regular use. One prosecutor and two judges felt the law provides a "moderate" degree of deterrence, while two other judges thought there was a "significant" degree of deterrence.

With respect to small sales or gifts, twelve (75%) county attorneys and seven (58%) judges were convinced that the present law did not act as a deterrent.

County attorneys and judges were then asked, "to the extent that marijuana laws are a deterrent, what factors do you regard as the primary deterrent". Although there was disagreement on this question, the greatest percentage of prosecutors (62%) and judges (41%) responded that the threat of arrest and prosecution was the primary deterrent. Two (12%) of the prosecutors and one of the judges thought the primary deterrent was the fact that use or sale is against the law. No prosecutors and three judges (25%) believed deterrence resulted from the fear of being labeled a criminal, while one prosecutor and two judges thought it resulted from the threat of some

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<sup>6</sup>One judge (8%) gave no answer.

incarceration. One prosecutor believed deterrence resulted from the threat of lengthy incarceration; one said it was all the above mentioned factors together, one stated that it was none of these factors and one did not know.

Prosecutors and Judges-Hard Drugs. The county attorneys and judges placed a higher deterrent value on the present hard drug laws than did the chiefs and sheriffs. Eleven (68%) of the prosecutors and four (33%)<sup>7</sup> of the judges felt that the present laws do not deter casual or experimental use of hard drugs.

The judges response to this question was the first time less than 50% of any group interviewed felt the law had no deterrent effect.

Of the (five) county attorneys and five judges who felt the law did have a deterrent effect, one prosecutor and four judges thought there was a "significant" deterrent effect, three prosecutors felt the deterrent effect was "moderate" and one prosecutor and one judge thought it was "minimal".

Regarding regular use of hard drugs, lesser percentages of both county attorneys and judges attributed no deterrent value to the law. Eight (50%) of the county attorneys and three (25%)<sup>7</sup> of the judges felt the law does not deter regular use of hard drugs. Of the eight (50%) prosecutors and six (50%) judges<sup>8</sup> who felt the law does have a deterrent effect, three prosecutors and four judges thought there was "significant" deterrence, four prosecutors and two judges thought there was a "moderate degree" of deterrence and one prosecutor believed deterrence was "minimal".

Concerning small sales or gifts of hard drugs, nine (56%) of the county attorneys and two (16%)<sup>8</sup> of the judges felt the present laws are not a deterrent. To the contrary, seven prosecutors (44%) and seven judges (58%) believed the law was an effective deterrent. Four prosecutors and four judges thought there was "significant" deterrence, two prosecutors and three judges believed the deterrent value was "moderate" and one prosecutor felt there was "minimal" deterrence.

When asked to state what factors they regard as the primary deterrent, county attorneys and judges responded in the following manner: Four of the thirteen<sup>9</sup> prosecutors and five of the 11 judges<sup>10</sup> answering this question, stated that the "threat of arrest and prosecution" was the primary deterrent. One judge believed deterrence resulted because "use or sale was against the law", one prosecutor thought it resulted from the "fear of being labeled or branded a criminal", one judge stated it was the "threat of some incarceration".

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<sup>7</sup>Three judges (24%) gave no response to this question.

<sup>8</sup>Three judges (25%) gave no response to this question.

<sup>9</sup>Three prosecutors were uncertain and did not list any factors.

<sup>10</sup>One judge was uncertain and did not list any factors.

Two prosecutors and one judge believed it was the "threat of lengthy incarceration", three prosecutors and one judge stated that the medical effects of hard drugs are the primary deterrent, one prosecutor said deterrence didn't result from any of the factors listed and two prosecutors and one judge said it resulted from all these factors taken together.

Prosecutors and Judges-Civil Penalty. When asked what the deterrent effect would be of a fine applied with certainty, two (12%) prosecutors and (one) 8%<sup>11</sup> judge thought that such a fine would deter more than the threat of incarceration applied sporadically. Eleven (68%) of the county attorneys and nine (75%) of the judges believed that such a fine would deter less than the threat of incarceration and three (19%) of the prosecutors thought the deterrent effect would be about the same.

Prosecutors and Judges-Deterrent Recommendations. The county attorneys and judges were lastly asked how marijuana laws could be changed to become a more effective deterrent. In other words how can we change these laws so they will do the job (detering crime) that we expect them to do?

1. County Attorneys. 37% (six) of the county attorneys responded that the law could never be effective and that legalization of marijuana is the only answer to the problem.<sup>12</sup>

The other responses are quite varied, they include: "assuming full administration of the law, you should stiffen the penalty for people will yield with the pressure of swift, sure and certain action...", "more effective investigation into large sources of production of marijuana and more and better trained investigators...", "There is nothing wrong with the laws, the courts are not sentencing strictly enough..."; "the only possible way to make marijuana laws more of a deterrent is to get higher penalties and strict administration, but I wouldn't want to see this happen..."; "I don't know, for it is difficult to legislate control of marijuana...", "I favor legalization of private consumption in the home, but this is logically inconsistent..."; "decriminalize it..."; "laws are not the way to attack marijuana, education is a more effective approach..."; "there is no respect for the present law because of the readily visible number of alcoholics and legal pill pushers (the legitimate drug companies). Marijuana is more of a socialological problem, the younger generation is merely doing its own thing..."

2. Judges. The judges also made numerous varied recommendations. These recommendations include the following: "This issue is debatable. If you want to make the law a deterrent, you need a mandatory jail sentence, but I don't favor this..."; "possession laws are not a deterrent, the courts would feel free to do more if the records were expunged after six months. We are in the middle of a social revolution...", "I feel the same way about liquor as I do about

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<sup>11</sup>Two judges (16%) did not answer this question.

<sup>12</sup>Refer to III. 4, Opinions concerning changes in the Marijuana Laws, for a more complete discussion of legalization.

marijuana, it is the abuse of the drug which is bad. I can't say to legalize it, yet, it will probably come to that..."; "There is no effective way of controlling it. If medical reports say that marijuana is no more damaging than alcohol, than we can't enforce it..."; "Uniformity of penalties throughout the states and uniformity of sentencing, but of course you could never get this. It would be better if all states treated marijuana possession as a misdemeanor..."; "legalize smoking of marijuana in your own home..."; "I favor the recommendations of the president's National Commission on Marijuana and Drug Abuse...".

"You can't legislate morals, but if medical science does prove that it is harmful, which hasn't been established as yet, then an educational program is needed..."; "Reduce the penalty for a small amount, but make possession of a large amount more strict..."; "Assuming that there should be effective deterrent laws, there should be a stiffening of penalties, but the real question is, is marijuana use an offense which should be punished..."; "This is like the old bootlegger days. A mandatory jail sentence might make it slightly more effective. I'd favor decriminalization if they (medical researchers) ever reach a conclusion that marijuana use is not harmful..."; "Possibly legalization, sell it through state liquor stores. If kids want to drink, they will drink, if they want to smoke marijuana they will smoke. There's nothing wrong with letting a person have a joint, after work, in his own home...".



The Deterrent Effect of Marijuana Laws

	Police Chiefs	County Sheriffs	County Attorneys	Judges
% who feel that the present marijuana laws deter most young people from:				
1) Casual or experimental use	22%	0%	6%	17%
-Significant deterrence	2	-	-	-
-Moderate deterrence	16	-	6	17
-Minimal deterrence	21			
2) Regular use	24	21	6	36
-Significant deterrence	2	-	-	18
-Moderate deterrence	16	21	6	18
-Minimal deterrence	6	-	-	-
3) Small Sales or Gifts for Little or no Profit	22	14	25	41
-Significant deterrence	6	14	-	17
-Moderate deterrence	6	-	25	25
-Minimal deterrence	10	-	-	-

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<sup>1</sup>One chief (27%) did not answer this question.

# The Deterrent Effect of Hard Drug Laws

% who feel the present hard drug laws deter most young people from:	Police Chiefs	County Sheriffs	County Attorneys	Judges
1) Casual or experimental use	36%	29%	32%	41%
-Significant deterrence	16	6	-	33
-Moderate deterrence	12	14.5	18	-
-Minimal deterrence	6 <sup>1</sup>	14.5	6	8
2) Regular use	46	36	50	50
-Significant deterrence	12	-	19	33
-Moderate deterrence	16	25	25	17
-Minimal deterrence	12 <sup>2</sup>	16	6	-
3) Small Sales or Gifts for Little or no Profit	34	43	44	58
-Significant deterrence	14	-	25	33
-Moderate deterrence	8	14	12	25
-Minimal deterrence	8 <sup>3</sup>	29	7	-

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<sup>1</sup>One chief (2%) did not answer this question.

<sup>2</sup>Three chiefs (6%) did not answer this question.

<sup>3</sup>Two chiefs (4%) did not answer this question.

### III. FINDINGS

#### 6. Opinions Concerning Alternatives for Marijuana Control and Recommendations for Future Drug Legislation.

In this section interviewees were asked to approve or disapprove a broad range of options for controlling marijuana. These options ranged from proposals that would result in no change in the law to other proposals that would constitute major changes. The control alternatives each interviewee was questioned about were: a permanent criminal record for a marijuana arrest or conviction (this is presently the practice in Maine), reduction of penalties for possession and maintenance of heavy penalties for sale (this is the present legislative tendency in Maine), expungement of criminal records upon successful completion of probation or rehabilitation (moderate change), decriminalization of possession<sup>1</sup> (major change), and legalization (major change).

In addition to these specific alternatives, interviewees were given two open ended questions in which they were asked to make recommendations for future legislative action in the areas of sale and use of marijuana and hard drugs.

##### A. Control Alternatives for Marijuana. (1) Criminal record.

The chiefs were the only group of interviewees of which a majority favored a permanent criminal record as the result of an arrest or conviction for possession of marijuana. 74% (thirty-seven) of the chiefs favored such a record and 26% (thirteen) were opposed. Five of those in favor of this alternative mentioned that in cases where such a record causes significant harm a governors pardon might be appropriate and another three stated they would limit such criminal records to persons over 18 years of age.

The sheriffs disagreed sharply with their fellow law enforcement officers with only 35% (five) in favor and 57% (eight) opposed to a permanent criminal record. One sheriff split his vote by favoring a permanent arrest record and opposing a permanent conviction record.

An almost equal percentage of county attorneys and judges favored this alternative. 43% (seven) of the county attorneys and 41% (five) of the judges endorsed a permanent criminal record while 43% (seven) of the prosecutors and 58% (seven) of the judges were opposed. One prosecutor (7%) favored only a permanent conviction record and one other stated that we should not reach the question of criminal records for possession because such offenses should not be made criminal.

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<sup>1</sup>Decriminalization is distinguished from legalization in that with decriminalization of possession, sale remains a felony and only private possession for personal use becomes legal. With legalization, however, marijuana would assume a status similar to alcohol; both possession and sale would be legal and sales would be licensed and regulated by the state.

Most of the interviewees who favored a criminal record felt that the benefits derived from having such a record (e.g., future investigations, punishment and deterrence), outweighed the harm. Opponents, on the other hand, felt that such records frequently injure the innocent and are of no great value in minor offenses of this nature.

(2) Reduction of Possession Penalties, maintenance of sale penalties. The chiefs again led the opposition to this alternative with 42% (twenty-one) opposed and 58% (twenty-nine) in favor.

Much higher percentages of the other three groups supported this alternative with 85% (twelve) of the sheriffs, 81% (thirteen) of the prosecutors and 91% (eleven) of the judges in favor. Two sheriffs (14%) two prosecutors (12%), and one judge (8%) were opposed. One prosecutor defined the problem as determining the pusher or user rather than in determining the respective penalties.

Almost all those who favored this alternative felt the law enforcement emphasis should be on the sale of drugs. Selling is thought of as a much more serious offense than possession, for peer group pressure forces many otherwise innocent youths to use (experiment) with marijuana. In addition, the pusher himself was thought of as a much more evil person, a "profit oriented bad guy", as opposed to the "average persons" who are using marijuana. Other interviewees felt that if you get to the source of the illicit drugs you would necessarily reduce illegal use for if there's no illicit supply there can be no illicit use.

(3) Expungement of Criminal Records. The next alternative proposed to the interviewees involved a moderate form of legislative change that was considered and rejected by the 106th Legislature.<sup>2</sup> The greatest opposition to this alternative came from county prosecutors<sup>3</sup> with 67% (eleven) opposed and 25% (four) in favor.<sup>4</sup> An almost equal percentage (68%) (thirty-four) of the chiefs were opposed with a slightly greater percentage (32%) in favor of expungement. Judges and sheriffs felt quite alike on this alternative with 41% (five) of the judges and 43% (six) of the sheriffs opposed. 58% (seven) of the judges and 50% (seven) of the sheriffs favored expungement. One sheriff (7%) was uncertain and did not answer this question.

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<sup>2</sup>L.D. 618 a bill similar to one enacted by 35 states and the U.S. Congress, would have required the destruction of criminal records of those defendants convicted for the first time of possession of marijuana. The bill passed in the House by a 2-1 margin but was soundly defeated in the Maine Senate.

<sup>3</sup>In April of 1973 the Maine Prosecutors Association went on record as being opposed to L.D. 618. Senate observers felt the prosecutors opposition contributed heavily to the defeat of this bill.

<sup>4</sup>One prosecutor stated that this question should not be considered because it assumes that possession will remain illegal.

There was not a great deal of discussion by the interviewees concerning their opposition to expungement. Those prosecutors who opposed expungement and yet endorsed a more liberal reform did so because they believed expungement was a halfway solution that would "beg the issue and cause further confusion". Police were generally opposed because they didn't want their records and files subject to legal "search and destroy missions".

(4) Decriminalization. Decriminalization of possession of marijuana is a major reform proposal that met with low to moderate acceptance among all groups of interviewees. The police chiefs led the opposition with 14% (seven) in favor of decriminalization, 84% (fourty-two) opposed and one undecided. The seven chiefs who endorsed decriminalization generally felt that marijuana was relatively harmless and that it would eventually be decriminalized anyway. The majority of chiefs who opposed decriminalization did so even though most admitted that marijuana possession laws have little or no deterrent effect (see III-3). Their reasons were varied but most felt that not enough was known about marijuana and the time for decriminalization was not yet at hand.<sup>5</sup>

Another principle reason the chiefs opposed decriminalization was their concern about possible increases in marijuana use. 66% (thirty-three) of the chiefs thought that marijuana use would increase if it was decriminalized, 2% (one) thought it would decrease and 32% (sixteen) felt it would remain about the same.

A higher percentage of sheriffs (35%) (five) favored decriminalization. Most gave as their reason their belief that marijuana possession was not a serious offense and therefore didn't warrant all the law enforcement attention it was getting. 64% (nine) of the county sheriffs opposed decriminalization mostly for the same reasons given by the police chiefs, although a lesser percentage (35%) expressed a concern that decriminalization would increase marijuana use. 21% (three) of the sheriffs thought use would decrease if marijuana was decriminalized and 43% (six) felt it would remain about the same.

The greatest approval of decriminalization was voiced by county attorneys with 37% (six) approving and 62% (ten) disapproving. Those who favored this approach generally regarded possession of marijuana as conduct not warranting criminal punishment. Three of those who didn't endorse decriminalization did, nevertheless, support legalization. These three felt that decriminalization, like expungement, is a partial solution that does not solve the law enforcement problems created by marijuana sanctions. Other opponents were bothered by a logical inconsistency that would result from use being legal and sale being illegal; they felt that legal use would only promote illegal sales. A majority of prosecutors (56%) felt that use would increase if decriminalization took effect. No prosecutors thought use would decrease, 37% believed it would remain the same, and one

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<sup>5</sup>Many of the chiefs and a large number of other interviewees stated that although they didn't support this change they felt it was inevitable.

didn't know. Prosecutors were also in disagreement as to how decriminalization would effect their ability to enforce laws against sale; 31% believed it would have a substantial effect, 31% thought it would be moderate, 6% said minimal, 6% didn't know and 25% believed decriminalization would have no effect on their enforcement of sale offenses.

25% (three) of the judges favored decriminalization, although one judge would allow decriminalization of only moderate amounts. One judge felt possession offenses were not serious enough to be criminal and another objected to attempts to legislate morality. 75% of the judges opposed decriminalization, primarily because they too felt it was only half a solution and also because they believed that the medical evidence concerning use was inconclusive. 50% of the judges thought that use would increase if decriminalization took place and 50% believed it would remain the same.

(5) Legalization. With the exception of the county attorneys, legalization of marijuana did not receive a great deal of support from the interviewees. 2% (one) of the chiefs, 7% (one) of the sheriffs, 17% (two) of the judges and 56% (nine) of the county attorneys favored legalization. 94% (fourty-seven) of the chiefs, 93% (13) of the sheriffs, 75% (nine) of the judges and 43% (seven) of the county attorneys opposed legalization. Those who opposed legalization did so primarily because they felt the long term medical effects of marijuana use were questionable. Many stated that if marijuana could be proven harmless they might change their minds. In addition, many opponents felt that another alcohol type drug should not be legalized regardless of what the medical researchers say because America already has a substantial drug and alcohol abuse problem. In their view, legalization would only contribute to this existing problem. Other opponents cited the argument that legalization will increase the use of hard drugs.

Those interviewees (mostly county attorneys) who favored legalization unanimously felt that this was the only realistic solution to the problem of marijuana use. In their view, decriminalization would result in unknown quantities and qualities of marijuana being sold on the black market. They felt that the state would profit from tax revenues and a presently existing, highly lucrative black market operation, similar to prohibition's bootlegging, would be eliminated. More importantly, police and prosecutorial time could be focused on medically proven harmful illicit drugs. In short, almost all proponents of legalization felt that "it's high time we stop making criminals out of innocent kids and stop wasting our time arguing over a medically proven harmless drug".

B. Prosecutorial and Judicial Opinion Covering the Public's View of Marijuana Control. When county attorneys and judges were asked whether they felt that public opinion in their jurisdiction presently supports the marijuana laws. 75% (nine) of the prosecutors and 91% (ten) of the judges answered in the affirmative while 19%<sup>6</sup> and 8%, respectively, answered in the negative.

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<sup>6</sup>One prosecutor was undecided.

When asked whether public opinion in their jurisdiction would support an increase in penalties for possession of marijuana the judges and prosecutors disagreed, with 18% of the judges and 69% of the prosecutors answering yes, and 82% and 31%, respectively, responding in the negative. This difference can be explained in part by the feeling of some prosecutors that public opinion could be "molded" or "shaped" to support any change in the law. This sentiment was echoed by some judges who stated that public opinion could be heavily influenced by a "Madison Avenue, public relations approach".

An identical percentage (25%) of county attorneys and judges felt that public opinion would support decriminalization and equal percentages (75%) felt the opposite.

25% or a little less than half of the county attorneys who favored legalization, felt that public opinion would support this change, while no judges believed that public opinion would presently support legalization. 75% of the prosecutors and 100% of the judges held the opposite view that public opinion in their jurisdiction would not support legalization.

C. Other Recommendations for Future Drug Legislation. In addition to the recommendations embodied in section A of III-4 (supra), interviewees were asked what action they would like to see the Maine Legislature take. In most instances these recommendations were expressed in a general nature, rather than as specific proposals and in many instances these recommendations merely paraphrased the responses specifically elicited in other parts of this study.

Police Chiefs. The largest percentage of police chiefs (30%) recommended making the laws on sale and use of marijuana "more strict".

One overriding theme consistently expressed by the chiefs in other questions was chosen by 14% to be expressed specifically in this question: "the present laws are adequate but the courts must enforce what is on the books; the courts are much too lenient." Relative to this stance, 4% (two) felt that despite whatever action is taken, legislators should "first research the subject adequately, for too often politics is the main consideration".

Another 4% (two) felt that they would keep marijuana illegal but take it out of the court's jurisdiction and put the emphasis on treatment.

Other responses included: "use Japan's system...", "eliminate the amount of time involved in getting cases through the courts...", "institute mandatory jail sentences for both sale and use...", and "make parents undergo counseling along with their children who use marijuana".

In the area of hard drug control, 42% (twenty-one) of the police chiefs interviewed specifically recommended enactment of stiffer penalties for sale and use, 12% felt that the present laws are adequate, but the courts are lax in their enforcement of existing penalties. 6% (three) specified that they would set up a "stiffer penalty" for sale without defining the new penalty, and two chiefs recommended a 10 year mandatory prison sentence for sale.

Other suggestions for legislation included: "greater education and rehabilitation for use..."; "adopt the N.Y. Penal Code and see that courts have to abide by the penalties..."; "study the problem..."; "dismiss a judge who doesn't go along with the penalties..."; "adopt the Japanese system..."; "appoint or encourage appointment of more conservative judges..."; "legislate money to train narcotics investigators..."; "provide immediate mandatory hospitalization until users are cured..."; and "institute stiffer control of doctors and prescriptions...".

County Sheriffs. 50% of the county sheriffs would maintain the present law regulating the sale and use of marijuana, 28% (four) would make "use" (possession) of marijuana more lenient and 21% (three) would reduce penalties for sale and use.

Other responses included: "legislate education programs for schools..."; "define responsibility of enforcement (federal government vs. state government)..."; "make the laws easier but leave them open to the discretion of the court..."; "legalize marijuana and set up a control system similar to the present alcohol control system..."; "have a fine similar to the \$50 fine per illegal lobster, and after a minimum amount of marijuana, tax each ounce and put the money into the state treasury...".

35% (five) of the county sheriffs interviewed would not change the existing laws on hard drug control because they feel that the present laws are adequate. 14% (two) would increase the penalties for sale and use and 14% would enact legislation to institute adequate rehabilitation centers. On this point, one sheriff said, "we must offer rehabilitation programs to give the courts an alternative, a drug dependant person or an addict cannot be rehabilitated in a prison".

Singular recommendations included: "we should establish a central control agency...", "we should send them (users-sellers) to Puerto Rico or Cuba for five to six years..."; "the penalty should be 99 years for sale, but treat users differently because half of the people who become addicted are already halfway there before they know it due to doctor's prescriptions...".

County Attorneys. The county attorneys were more specific in their recommendations than the police chiefs, sheriffs and judges. 56% (nine) of the county attorneys would act in the legislature to legalize marijuana and institute a control system similar to the present alcohol control system. 25% (four) would leave the present law as it stands now. 12% would research the problem to determine



if it is possible to construct legislation to legalize limited amounts and control marijuana in a manner similar to alcohol. Other comments included: "don't give it disproportionate attention as compared with other problems..."; "act in the area of shield laws to protect sources of information in regard to drug traffic...".

One prosecutor felt that legislators should appropriate substantial expenditures to:

- 1) devise a test for determination of whether a person has consumed marijuana, and what quantity;
- 2) set up strict standards of quantitative control;
- 3) set up strict controls over sale and use;
- 4) set up strict enforcement against juvenile use (under 18).

31% (five) of the county attorneys would leave the hard drug laws in their present form because they feel the present laws are adequate. 12% (two) feel that the present penalties are not realistic due to a lack of consistency and uniformity. "There should be strict control on such drugs as amphetamines, but often mild drugs are included under the narcotics classification." Two prosecutors would remove the mandatory sentencing provisions and another two would move in the direction of more education and rehabilitation or hard drug users.

Singular recommendations included: "The present laws are adequate, but courts are lax in sentencing..."; "I wouldn't take any action because drug use is a personal problem; unless the user has to steal to get money, then it becomes a social problem..."; "study the mandatory sentencing provisions. There should be stiff penalties on the books but there should not be the need to perform legal gymnastics in order to avoid injustice in certain circumstances..."; "There should be as a result of a conviction a mandatory confinement in a medical facility, to determine the real nature of the use..."; "There should be stricter control of the legal drug industry..."; "something should be done so that you could get a conviction under the potent medicinal substance law; probably a revision of the regulatory provisions for legal sales is needed..."; "Legislate money to train more personnel in drug investigation similar to the alcohol commission..."; and "rewrite and clarify the prescription laws...".

Judges. Most of the judges recommendations were incorporated in responses to earlier questions. 25% (three) of the district court judges responded that they would decrease possession penalties and leave the sale penalties as they presently stand. Another 25% (three) felt that the present law was adequate. 17% (two) of the judges would legalize marijuana and apply a control system similar to the present alcohol control system. Other recommendations included: "The record of convictions should be expunged" and "I would measure how public opinion evolves regarding marijuana, then act".

42% (five) of the district court judges interviewed felt that the present laws regarding hard drug sale and use are adequate. 24% (three) would study the mandatory sentencing aspect of the present law, and another 25% (three) would enact legislation to provide facilities for treatment.

17% (two) favor stronger penalties for sale of a hard drug, if such sale is only for profit. Other comments and recommendations for legislation were: "The problem is for one of police enforcement of the law...", "mild prescription drug use should not be a felony and prescription laws should be revised".

OPINIONS CONCERNING ALTERNATIVES FOR MARIJUANA CONTROL

	Police Chiefs	County Sheriffs	County Attorneys	National District Attorneys <sup>1</sup>	Judges
% who favor:					
(no change)					
1) a permanent arrest or conviction record for possession of marijuana	74%	35%	43%		41%
(no change)					
2) the reduction of possession penalties and maintenance of heavy penalties for sale	58	86	81	(65.5)	92
(moderate change)					
3) the expungement of criminal records upon satisfactory comple- tion of probation or rehabilitation	32	50	25		58
(major change)					
4) decriminalization	14	36	37	(15)	25
If marijuana was de- criminalized the % who feel that use would					
-increase	66	36	56	(76)	50
-decrease	2	21	-		
-remain about same	32	43	38 <sup>2</sup>		50
(major change)					
5) Legalization	2	7	56	(11)	17
6) Either form of major change (de- criminalization or legalization)	14	43	62	(20)	33
	(N=50)	(N=14)	(N=16)	(N=807)	(N=12)

<sup>1</sup>From a 50 survey of District Attorneys conducted in August, 1971 by the National Commission on Marijuana and Drug Abuse.

<sup>2</sup>One prosecutor was uncertain and did not answer.

### III. FINDINGS

#### 7. Opinions Concerning Recently Enacted Drug Legislation

A. Mandatory Minimum Sentences. Mandatory minimum sentences for drug offenders were enacted by the Regular<sup>1</sup> and Special<sup>2</sup> Sessions of the 105th Legislature. They presently apply to the unlawful sale of all drugs and narcotics except barbiturates and to the unlawful possession of all drugs except barbiturates, Cannabis, Mescaline, Peyote and the Hallucinogenics. In Maine, mandatory minimum sentences dictate that the defendant "shall be punished for not less than X years" and that "the imposition or execution of such sentence shall not be suspended and probation not be granted".

The greatest degree of approval of mandatory minimums for marijuana offenders was voiced by police chiefs, with Judges expressing the strongest opposition. Twenty-five (50%) of the police chiefs, four (25%) of the county attorneys, two (14%) of the county sheriffs and none of the judges favored mandatory minimum for marijuana offenders. Stated in the negative, 100% of the judges, 85% of the county sheriffs, 75% of the county attorneys and 50% of the police chiefs opposed mandatory minimums for marijuana offenders. One county attorney was in favor of mandatory minimums for only sellers, while 3 police chiefs voiced a similar sentiment. Also, one county attorney favored 2-3 days mandatory minimums for marijuana offenders. Many of the county attorneys and judges were adamantly opposed to mandatory minimums for any criminal offense.

In the opinion of most of those who opposed mandatory minimums, such sentences deny judges the flexibility necessary to properly administer justice. In their opinion, each case involves different individuals influenced by widely varying factors and the sentencing options should be broad enough to do justice to all defendants.

The greatest approval of mandatory minimums for hard drug offenders was again expressed by police chiefs with judges also on the opposite end of the opinion spectrum. Forty-one (82%) of the police chiefs, seven (50%) of the county sheriffs, four (25%) of the county attorneys and three (25%) of the judges favored mandatory minimums for hard drug offenders. Stated conversely, 75% of all judges and county attorneys interviewed, 50% of all county sheriffs and 18% of all police chiefs interviewed opposed mandatory minimums for hard drug offenders.

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<sup>1</sup>Public Laws of 1971, C. 487.

<sup>2</sup>Public Laws of 1971 (Special Session), C. 620.

B. Knowingly Present. In 1969 the 104th Legislature made it a criminal offense for any person to be "present where Cannabis... is kept or deposited..." or to be "in the company of a person knowing that said person is in the possession of Cannabis..."<sup>3</sup>. The 106th Legislature abolished the crime of knowingly being in the presence of Cannabis<sup>4</sup> (knowingly being in the presence of mescaline or peyote remains a criminal offense).

The interviewees were asked if they agreed with (favored) the abolishment of the knowingly present law regarding marijuana. Fourteen (87%) of the prosecutors, ten (83%) of the judges, nine (64%) of the county sheriffs and twenty (40%) of the police chiefs were in agreement with the Legislature. Stated conversely, 7% of the judges, 13% of the county attorneys, 36% of the county sheriffs and 58% of the police chiefs were opposed to the abolishment of the law. One judge and one police chief were undecided.

Those who favored retention of the law differed in their reasons. The two county attorneys and the one judge who favored retention stated that the law could be and had been abused, but on the whole they felt that the benefits (e.g., plea bargaining) outweighed the injustices. The police and sheriffs who favored retention, did so principally because they felt the law was a useful police tool that helped to control illegal drug use.

The most frequent reason given for abolishing the law was that it was too often and too easily abused. It subjected non drug using persons to criminal liability merely because they associated with drug users. Furthermore, many interviewees felt that persons were often charged under this law when there was insufficient evidence to obtain a conviction for possession.

C. Marijuana Possession Penalties. The 106th Legislature also rewrote the penalty provision for the second or subsequent conviction for possession of marijuana.<sup>5</sup> The penalty was reduced from a fine of not more than \$2000 and imprisonment for not more than two years<sup>6</sup> to a fine of not more than \$1000 and imprisonment for not more than 11 months.

Interviewees were asked if they agreed with this act of the Legislature. Once again there was a wide split of opinion among groups with judges, county attorneys and sheriffs at great variance with police chiefs. All twelve (100%) of the judges, all sixteen (100%) of the county attorneys and eleven (79%) of the county sheriffs agreed with the legislature. On the other end of the spectrum, only thirteen (26%) of the police chiefs were in favor of this legislation.

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<sup>3</sup>M.R.S.A. 22, Section 2383

<sup>4</sup>Public Laws of 1973, C. 502.

<sup>5</sup>Public Laws of 1972, C. 546.

<sup>6</sup>M.R.S.A. 22, Section 2383.

For the most part, the opposition of the attorneys, judges and sheriffs was based on technical grounds. Most expressed an awareness that this penalty provision had proven legally burdensome and procedurally inoperative. The police chiefs did not express as great an awareness of the significant legal difficulties encountered in applying this law, instead their opposition was based more on philosophical than technical grounds. That is, the chiefs were strongly opposed to a reduction in penalties for the illegal use of marijuana at a time when such illegal use continues to rise.

OPINIONS CONCERNING RECENTLY ENACTED DRUG LEGISLATION

% who favor:	Police Chiefs	County Sheriffs	County Attorneys	Judges
1) Mandatory Minimums for Marijuana Offenders	50%	14%	25%	0%
2) Mandatory Minimums for hard drug offenders	82	50	25	25
3) Abolishment of knowingly being in the prescence of marijuana	40	64	87	83
4) Reduction of penalty for 2nd and subsequent pos= session of marijuana	26	79	100	100
	(N=50)	(N=14)	(N=16)	(N=12)

### III. FINDINGS

#### 8. Attitudes Concerning the Treatment and Rehabilitation of Drug Offenders.

Within the criminal justice system there are numerous ways of making treatment available to drug dependant persons who are arrested for criminal offenses. Some of these methods are: pre-arrest informal police diversion for purposes of detoxification or withdrawal; post-arrest diversion for detoxification; treatment as a condition of pretrial release; treatment while awaiting trial; treatment in lieu of prosecution; treatment as a condition of a suspended sentence, continuance for sentencing or other form of probation; treatment as a condition of the deferred entrance of an adjudication of guilt or conditional discharge; commitment for treatment in lieu of other sentencing; treatment while serving a sentence within a correctional facility; and treatment as a condition of parole.

Maine law specifically provides for only one of these methods, treatment as a condition of probation.<sup>1</sup> In anticipation of future treatment legislation, interviewees were asked if they felt that voluntary treatment and rehabilitation should be made available to all drug dependant persons and addicts<sup>2</sup> (whether or not they are charged with an offense) residing in Maine. Unlike the responses to most other questions, agreement on this issue was surprisingly high among all interviewees.

A. Police Chiefs. Forty-nine (98%) of the chiefs favored the concept of treatment and rehabilitation and 92% felt that the state should help subsidize such programs. Even those chiefs who said they were "hard nosed on drugs" readily stated that treatment was a "must". There was frequent criticism of the lack of alternatives for dealing with youthful drug offenders. As one chief put it, "we would like to help kids by not arresting them, but we have no place to send them and the only alternative is to arrest". The feelings of many of the chiefs are expressed in the statement, made by one chief, that "it doesn't matter what the law is because if they don't get treatment, they just keep on using".

Although the chiefs overwhelmingly favored voluntary<sup>3</sup> treatment programs there was less agreement as to how drug offenders should be

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<sup>1</sup>Public Laws of 1973, C. 566 (effective January 1, 1974).

<sup>2</sup>Many interviewees also expressed a strong desire for treatment programs and facilities for alcoholics.

<sup>3</sup>Although the questionnaire was limited to a discussion of voluntary treatment programs some chiefs expressed approval of involuntary programs as well.



channeled into the programs. Twenty-six (52%) of the chiefs stated that they would personally assist and encourage drug dependant persons and addicts charged with drug offenses (possession and sale of drugs) to undergo treatment in lieu of prosecution, forty-five (90%) endorsed treatment as a condition of probation, 88% while serving a sentence in a penal facility and 90% as a condition of parole.

Similarly 52% of the chiefs stated that they would personally assist and encourage drug dependant persons and addicts charged with non-drug offenses (assault, larceny, etc.) to undergo treatment in lieu of prosecution, 88% while serving a sentence in a penal facility and 90% as a condition of parole.

Although the majority of chiefs favored treatment in penal facilities and as a condition of parole, a good number of this percentage questioned whether treatment would be more effective in an earlier stage of the criminal process.

B. Sheriffs. A vast majority of the county sheriffs (93%)<sup>4</sup> also favored the concept of treatment and rehabilitation, and an equal percentage (93%) thought that the state should help pay the cost of treatment programs. Like the chiefs, the sheriffs expressed the recognition that a jail or prison sentence can temporarily prevent a person from using drugs but "once he's released he'll go hang around with his old friends and start taking drugs right over again".

As with chiefs, only a small majority of sheriffs (57%) endorsed the concept of treatment in lieu of prosecution for drug offenders. Their reason was also the same, they felt that a defendant should be at least required to stand trial before he is released for treatment. 85% favored treatment as a condition of probation, 85% (twelve) favored treatment while serving a sentence in a penal facility and 64% as a condition of parole.

Slightly lesser percentages stated that they would encourage and assist the various forms of treatment for non drug offenders. 57% approved of treatment in lieu of prosecution, 78% as a condition of probation, 78% while serving a sentence in a penal facility and 64% as a condition of parole. Two (14%) of the sheriffs strongly objected to the idea of rehabilitation within a penal institution or as a condition of parole, while others questioned whether such treatment would be successful.

C. County attorneys and Judges. 100% of the county attorneys and the judges interviewed favored treatment and rehabilitation for drug offenders and an equal percentage (100%) thought the state should provide financial assistance to these programs. With regard to the various treatment methods for drug offenders, 67% of the county attorneys and 58% of the judges endorsed treatment in lieu of prosecution. Again the reason was much the same, the state should not let the defendant go completely unpunished for his wrong doing; he should at least be required to stand trial. As with the chiefs and sheriffs,

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<sup>4</sup>One sheriff (7%) favored treatment programs and state financial assistance only if such treatment was made mandatory.

the largest percentages, 100% of both county attorneys and judges favored treatment as a condition of probation for drug offenders. 92% of the judges and 94% of the county attorneys agreed with treatment while serving a sentence in a penal facility and identical percentages endorsed treatment as a condition of parole.

For non-drug offenders, 67% of the county attorneys and 58% of the judges endorsed treatment in lieu of prosecution. 100% of both groups endorsed treatment as a condition of probation, 94% (county attorneys) and 92% (judges) agreed with treatment in penal facilities and 94% and 92% respectively as a condition of parole.

# TREATMENT AND REHABILITATION

% who favor:	Police Chiefs	County Sheriffs	County Attorneys	Judges
1) Voluntary treatment and rehabilitation for drug dependant persons and addicts	98%	93%	100%	100%
2) State subsidization of such programs	92	93	100	100
3) Persons charged with <u>Drug Offenses:</u>				
-treatment in lieu of prosecution	52	57	67	58
-treatment as condition of probation	90	86	100	100
-treatment while serving a sentence in penal facility	88	86	94	92
-treatment as a condition of parole	90	64	94	92
4) Persons charged with <u>Non-drug Offenses:</u>				
-treatment in lieu of prosecution	52	57	67	58
-treatment as a condition of probation	88	78	100	100
-treatment while serving a sentence in a penal facility	86	78	94	92
-treatment as a condition of parole	90	64	94	92

#### IV. SUMMARY OF FINDINGS.

##### A. Law Enforcement Practice and Policy (III-1).

	Police Chiefs	Sheriffs
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The investigative priority given to possession of:

Marijuana		
high	34	28
moderate	24	14
low	12	21
other*	30	35
Hard Drugs		
high	44	50
moderate	14	14
low	16	0
other*	26	35

The investigative priority given to sale of:

Marijuana		
high	46	35
moderate	20	14
low	10	21
other*	24	30
Hard Drugs		
high	58	64
moderate	6	0
low	16	6
other*	20	30

Does your department see to it that every arrest for possession of drugs is presented for prosecution

Yes	70	64
No	30	35

Would you employ as a police officer anyone who has been convicted of possession of:

Marijuana		
Yes	12	35
No	82	35
Hard Drugs		
Yes	4	21
No	94	50

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\*Other refers to those who either did not answer or responded that the allocation of priorities depends upon the complaint

## B. PROSECUTORIAL POLICY (III-2)

	Maine County Attorneys	National District Attorneys*
1) % of prosecutors whose common practice is to prosecute everyone charged with:		
-possession of marijuana	67	60
-sale of marijuana	94	60
-possession of hard drugs	94	
-sale of hard drugs	94	
2) % of prosecutors who utilize a defined "rule of thumb" (minimum amount policy) in decisions to prosecute		
-marijuana offenses	31	12
-hard drug offenses	6	
3) % of prosecutors who have, on occasion, granted informal probation (filing or dis- missal of charges) for persons charged with:		
-possession of marijuana	50	
-sale of marijuana	25	
-possession of hard drugs	18	
-sale of hard drugs	18	
4) % of prosecutors who play an active role in recommending appropriate sentences in drug cases	94	

\*From a 50 state survey of District Attorneys conducted in August, 1971 by the National Commission on Marijuana and Drug Abuse.

C. OPINIONS CONCERNING THE PHYSIOLOGICAL AND PSYCHOLOGICAL EFFECTS OF MARIJUANA USE (III-4)

	Police	County Sheriffs	Maine County Attorneys	National District Attorneys*	Judges
% who believe that:					
1) The use of marijuana leads to the use of hard drugs	72%	64%	25%	(74)%	33%
2) The use of marijuana causes loss of motivation	86	71	56#	(43)	25#
3) The use of marijuana causes aggressive behavior	52	35	12	(38)	8#
4) % who have personally witnessed such aggressive behavior	46	35	6	-	8
	(N=50)	(N=14)	(N=16)	(N=807)	(N=12)

\*From a 50 state survey of District Attorneys conducted in August of 1971 by the National Commission on Marijuana and Drug Abuse.

#Qualified, see narrative.

D. The Deterrent Effect of Marijuana Laws (III-5)

	Police Chiefs	County Sheriffs	County Attorneys	Judges
% who feel that the present marijuana laws deter most young people from:				
1) Casual or experimental use	22%	0%	6%	17%
-Significant deterrence	2	-	-	-
-Moderate deterrence	16	-	6	17
-Minimal deterrence	21			
2) Regular use	24	21	6	36
-Significant deterrence	2	-	-	18
-Moderate deterrence	16	21	6	18
-Minimal deterrence	6	-	-	-
3) Small Sales or Gifts for Little or no Profit	22	14	25	41
-Significant deterrence	6	14	-	17
-Moderate deterrence	6	-	25	25
-Minimal deterrence	10	-	-	-

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<sup>1</sup>One chief (27%) did not answer this question.

D. The Deterrent Effect of Hard Drug Laws (III-5)

% who feel the present hard drug laws deter most young people from:	Police Chiefs	County Sheriffs	County Attorneys	Judges
1) Casual or experimental use	36%	29%	32%	41%
-Significant deterrence	16	6	-	33
-Moderate deterrence	12	14.5	18	-
-Minimal deterrence	6 <sup>1</sup>	14.5	6	8
2) Regular use	46	36	50	50
-Significant deterrence	12	-	19	33
-Moderate deterrence	16	25	25	17
-Minimal deterrence	12 <sup>2</sup>	16	6	-
3) Small Sales or Gifts for Little or no Profit	34	43	44	58
-Significant deterrence	14	-	25	33
-Moderate deterrence	8	14	12	25
-Minimal deterrence	8 <sup>3</sup>	29	7	-

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<sup>1</sup>One chief (2%) did not answer this question.

<sup>2</sup>Three chiefs (6%) did not answer this question.

<sup>3</sup>Two chiefs (4%) did not answer this question.



E. OPINIONS CONCERNING ALTERNATIVES FOR MARIJUANA CONTROL (III-6)

	Police Chiefs	County Sheriffs	County Attorneys	National District Attorneys <sup>1</sup>	Judges
% who favor:					
(no change)					
1) a permanent arrest or conviction record for possession of marijuana	74%	35%	43%		41%
(no change)					
2) the reduction of possession penalties and maintenance of heavy penalties for sale	58	86	81	(65.5)	92
(moderate change)					
3) the expungement of criminal records upon satisfactory comple- tion of probation or rehabilitation	32	50	25		58
(major change)					
4) decriminalization	14	36	37	(15)	25
If marijuana was de- criminalized the % who feel that use would					
-increase	66	36	56	(76)	50
-decrease	2	21	-		
-remain about same	32	43	38 <sup>2</sup>		50
(major change)					
5) Legalization	2	7	56	(11)	17
6) Either form of major change (de- criminalization or legalization)	14	43	62	(20)	33
	(N=50)	(N=14)	(N=16)	(N=807)	(N=12)

<sup>1</sup>From a 50 survey of District Attorneys conducted in August, 1971 by the National Commission on Marijuana and Drug Abuse.

<sup>2</sup>One prosecutor was uncertain and did not answer.

F. OPINIONS CONCERNING RECENTLY ENACTED DRUG LEGISLATION (III-7)

% who favor:	Police Chiefs	County Sheriffs	County Attorneys	Judges
1) Mandatory Minimums for Marijuana Offenders	50%	14%	25%	0%
2) Mandatory Minimums for hard drug offenders	82	50	25	25
3) Abolishment of knowingly being in the prescence of marijuana	40	64	87	83
4) Reduction of penalty for 2nd and subsequent pos- session of marijuana	26	79	100	100
	(N=50)	(N=14)	(N=16)	(N=12)

G. TREATMENT AND REHABILITATION (III-8)

% who favor:	Police Chiefs	County Sheriffs	County Attorneys	Judges
1) Voluntary treatment and rehabilitation for drug dependant persons and addicts	98%	93%	100%	100%
2) State subsidization of such programs	92	93	100	100
3) Persons charged with <u>Drug Offenses:</u>				
-treatment in lieu of prosecution	52	57	67	58
-treatment as condition of probation	90	86	100	100
-treatment while serving a sentence in penal facility	88	86	94	92
-treatment as a condition of parole	90	64	94	92
4) Persons charged with <u>Non-drug Offenses:</u>				
-treatment in lieu of prosecution	52	57	67	58
-treatment as a condition of probation	88	78	100	100
-treatment while serving a sentence in a penal facility	86	78	94	92
-treatment as a condition of parole	90	64	94	92





QUESTIONNAIRE FOR POLICE CHIEFS AND SHERIFFS

I. Policy

A. Police Policy

1. To the best of your knowledge, what percentage of drug arrests in your jurisdiction would you estimate arise from:

Investigation into traffic in hard drugs	_____ %
Investigation into traffic in marijuana	_____ %
Street arrests	_____ %
Automobile arrests	_____ %
Arrests in connection with non-drug complaints or non-drug investigations	_____ %
Other	_____ %
	100%

2. What investigative priority does your department give to traffic (sale) of:

Marijuana

Hard Drugs

3. What investigative priority does your department give to possession (use) of:

Marijuana

Hard Drugs

4. Do you know of examples in your department where a person has been arrested or stopped for possession of a small amount of drugs (marijuana) and the arresting officer has released the person with just a warning, or does your department see to it that every arrest for possession of drugs is presented for prosecution?

5. Would you employ as a police officer anyone who has been convicted of possession of:

Marijuana

Hard Drugs

6. What drug or drug currently being illegally sold and used in Maine do you feel poses the greatest threat to the health and welfare of:

The individual user

Society

QUESTIONNAIRE FOR COUNTY ATTORNEYS

I. Prosecution Policy

A. Police Policy

1. To the best of your knowledge, what percentage of drug arrests in your jurisdiction would you estimate arise from:

Investigation into traffic in hard drugs	_____ %
Investigation into traffic in marijuana	_____ %
Street arrests	_____ %
Automobile arrests	_____ %
Arrests in connection with non-drug complaints or non-drug investigations	_____ %
Other	_____ %

100%

2. To the best of your knowledge, do the police departments in your county focus primarily on users or sellers

of marijuana	_____ users
	_____ sellers
of hard drugs	_____ users
	_____ sellers

B. Prosecution

1. Assuming no lack of evidence, is it the common practice of your office to prosecute everyone charged with:

	<u>Yes</u>	<u>No</u>
possession of marijuana	_____	_____
sale of marijuana	_____	_____
possession of hard drugs	_____	_____
sale of hard drugs	_____	_____

if "no", please indicate what factors influence your decision not to prosecute:

arrestee's age	_____
arrestee's lack of previous record	_____
arrestee's personal situation (i.e. attitude, family/social status)	_____
difficulty of proof of offence	_____
other	_____

2. Does your office have an explicit or defined "minimum amount policy" or "rule of thumb" regarding prosecution of

	<u>Yes</u>	<u>No</u>
marijuana cases	_____	_____
hard drug cases	_____	_____

(i.e. possession of less than X amount will not be prosecuted).

If "yes", has this rule of thumb been communicated to the police departments?

<u>Yes</u>	<u>No</u>
_____	_____

3. Do you ever make use of informal probation (filing of charges) for:

	<u>Yes</u>	<u>No</u>
possession of marijuana	_____	_____
sale of marijuana	_____	_____
possession of hard drugs	_____	_____
sale of hard drugs	_____	_____

If "yes", please explain.

4. Does your office take an active role in recommending appropriate dispositions in cases that result in conviction?

<u>Yes</u>	<u>No</u>
_____	_____

If "yes" what are the most important factors influencing your recommendation?

defendant's age	_____
defendant's lack of previous record	_____
defendant's personal situation (i.e. attitude, family/social status)	_____
other	_____



QUESTIONNAIRE FOR JUDGES

A. Judicial Policy

1. Thinking about your caseload during the las five years, has the number of offenders apprehended for drug offenses

increased sharply

\_\_\_\_\_

increased slightly

\_\_\_\_\_

remained the same

\_\_\_\_\_

decreased

\_\_\_\_\_

2. Approximately what percentage of offenders in your caseload during the pas year were apprehended for sale or possession of drugs?

\_\_\_\_\_ %

3. Disregarding the present law of Maine, what kind of sentence would you give to a 24 year old, successfully employed college graduate with no previous criminal record who was convicted for possession of a small amount of

marijuana?

narcotics?

4. Disregarding the prèsent law of Maine, what kind of sentence would you give to a 24 year old successfully employed college graduate with no previous criminal record who was convicted for sale of \$50 worth of

marijuana?

narcotics?

**B. Drugs and Public Policy**

1. What do you believe are the principal physiological and psychological effects of marijuana on the individual user?

Physiological

Psychological

2. Please answer yes or no.

Yes    No

- |  |       |       |
|--|-------|-------|
| a. Do you believe that the use of marijuana leads to the use of hard drugs?          | _____ | _____ |
| b. Do you believe that the use of marijuana causes loss of motivation?               | _____ | _____ |
| c. Do you believe that the use of marijuana causes aggressive behavior?              | _____ | _____ |
| d. If answer to c. is "yes", have you personally witnessed such aggressive behavior? | _____ | _____ |
| If "yes", please explain:  |       |       |

3. Do you feel the present laws in Maine regarding marijuana deter most young people from:

	<u>Yes</u>	<u>No</u>
casual or experimental use	_____	_____
regular use	_____	_____
small sales or gifts for little or no profit	_____	_____

If "yes", is there a

significant	_____	degree of detemence.
moderate	_____	
minimal	_____	

4. To the extent that marijuana laws are a deterrent, what factors do you regard as the primary deterrent?

Fact that such use or sale is against the law?	_____
The threat of arrest and prosecution?	_____
The fear of being labelled or branded a criminal?	_____
The threat of some incarceration?	_____
The threat of lengthy incarceration?	_____
Other	_____

5. Do you feel the present laws in Maine regarding hard drugs deter most young people from:

	<u>Yes</u>	<u>No</u>
casual or experimental use	_____	_____
regular use	_____	_____
small sales or gifts for little or no profit	_____	_____

If "yes", is ther a

significant	_____	degree of deterrence
moderate	_____	
minimal	_____	

6. To the extent that hard drug laws are a deterrent, what factors do you regard as the primary deterrent?

Fact that such use or sale is against the law?	_____
The threat of arrest and prosecution?	_____
The fear of being labelled or branded a criminal?	_____
The threat of some incarceration?	_____
The threat of lengthy incarceration?	_____
Other	_____

7. To the extent that penalties for possession of marijuana operate as a deterrent, do you feel that a civil penalty applied with certainty deters

more than	_____	the threat of incarceration applied sporadically.
less than	_____	
about the same as	_____	

8. Do you favor mandatory minimum sentencing

	<u>Yes</u>	<u>No</u>
for marijuana offenses	_____	_____

9. The National Commission on Marijuana and Drug Abuse recently stated that 26,000,000 Americans have used marijuana, to the extent that marijuana possession laws are not an effective deterrent, how can they be changed to become more effective?
10. Some people have suggested that the legal and social consequences of a criminal record (i.e. possible loss of voting rights, disqualification from positions of public trust, denial of right to practice medicine or law, etc.) raise serious questions about the wisdom of treating marijuana possession (use) as a crime. In light of these considerations would you favor
- |   | <u>Yes</u> | <u>No</u> |
|---|------------|-----------|
| a permanent criminal record as a result of either arrest or conviction?   | _____      | _____     |
| a criminal record resulting from arrest or conviction with expungement of the record contingent upon completion of a rehabilitation program and/or compliance with conditions of probation? | _____      | _____     |
| treatment or attention (counseling, education, etc.) which avoids the criminal justice system entirely?   | _____      | _____     |
11. It seems to be a current tendency among State and Federal legislators to reduce the penalties for possession of marijuana and maintain heavy penalties for sale of marijuana. Do you favor this trend?
- |  | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
|  | _____      | _____     |
- If yes, please explain:
- 12.a. Some observers have recommended decriminalization of possession of moderate amounts of marijuana (replacing it by "violation" or "traffic ticket" treatment). Do you favor such a scheme?
- |  | <u>Yes</u> | <u>No</u> |
|--|------------|-----------|
|  | _____      | _____     |

If yes, please explain:

12. b. If such an approach were adopted, do you think the use of marijuana would

Increase \_\_\_\_\_

Decrease \_\_\_\_\_

Remain about the same \_\_\_\_\_

13. Do you favor "legalization" of marijuana (by adoption of a licensing scheme like that applied to alcohol or by adoption of any similar scheme)?

Yes \_\_\_\_\_

No \_\_\_\_\_

14. Do you feel that public opinion in your jurisdiction

Supports the present marijuana laws? \_\_\_\_\_

Yes

No

Would support an increase in penalties for possession of marijuana for personal use? \_\_\_\_\_

Would support a scheme which decriminalized possession for personal use? \_\_\_\_\_

Would support legalization (by adoption of a licensing or similar scheme)? \_\_\_\_\_

15. Do you agree with the recent action of the Maine legislature which eliminates "knowingly in the presence of marijuana" as a criminal offense.

Yes \_\_\_\_\_

No \_\_\_\_\_

16. Do you agree with the recent legislation which changed the second and subsequent possession of marijuana offense from a felony to a misdemeanor?

Yes \_\_\_\_\_

No \_\_\_\_\_

17. If you were a legislator, what action would you take in regard to sale and use of marijuana? (What action would you like to see the Legislature take?)

- 18.a. If you were a legislator, what action would you take in regard to sale and use of hard drugs?

- b. What other recommendations can you offer.

C. Treatment

1. Do you feel that voluntary treatment and rehabilitation should be made available to all drug dependent persons and addicts (whether or not they are charged with an offense) residing in Maine?

<u>Yes</u>	<u>No</u>
_____	_____

If yes, do you think the state of Maine should help subsidize such treatment programs?

<u>Yes</u>	<u>No</u>
_____	_____

2. Would you personally assist and encourage drug dependent persons and addicts charged with drug offenses to undergo treatment:

In lieu of prosecution	_____
As a condition of probation	_____
While serving a sentence penal facility	_____
As a condition of parole	_____

3. Would you personally assist and encourage drug dependent persons and addicts charged with a non-drug offense to undergo treatment:

In lieu of prosecution	_____
As a condition of probation	_____
While serving a sentence in a penal facility	_____
As a condition of parole	_____