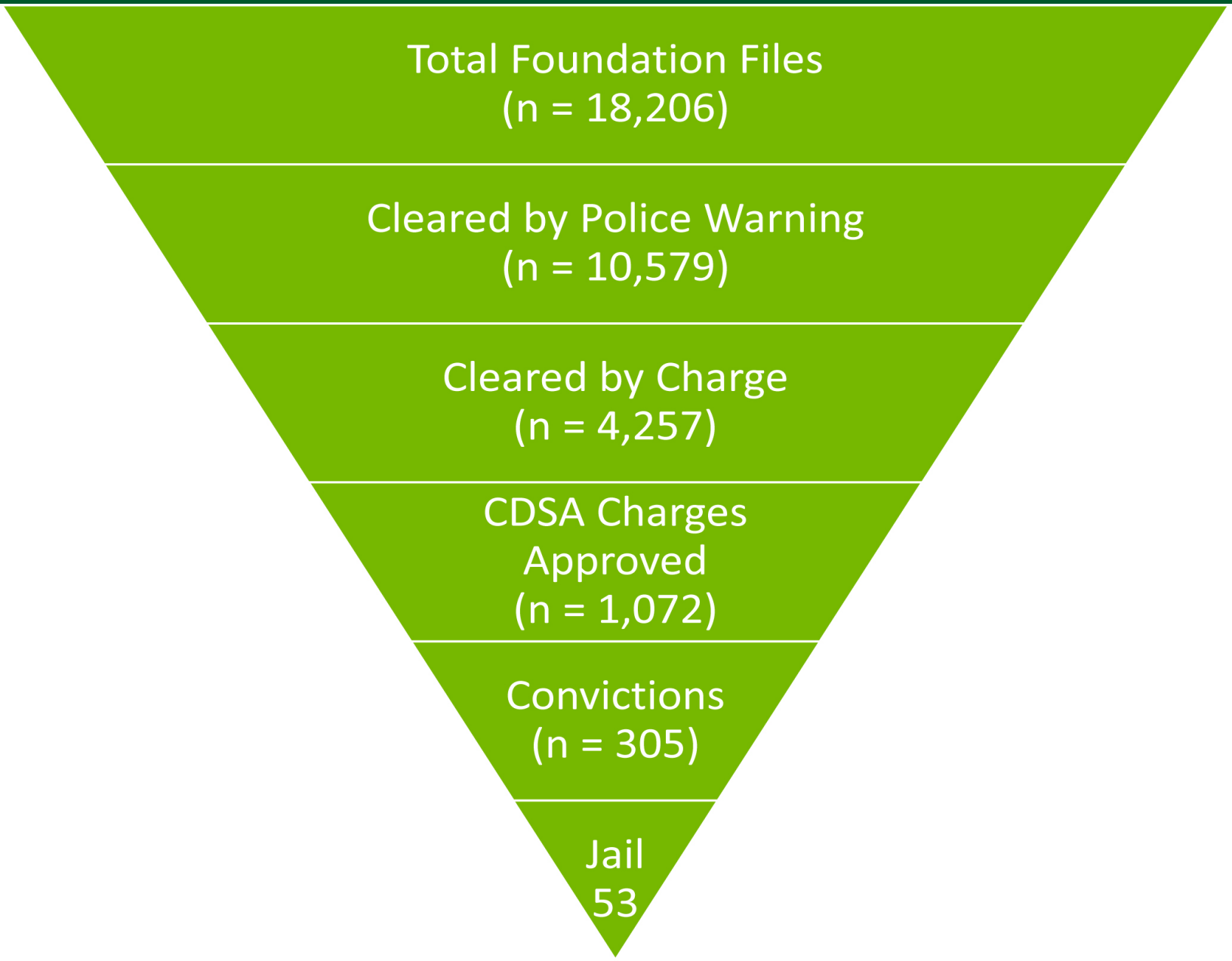
THE NATURE AND EXTENT OF MARIHUANA POSSESSION IN BRITISH COLUMBIA



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Introduction

The illegal status of marihuana has been the subject of debate for decades.[1] Quantitative accounts of the police response to marihuana possession offences using data from Statistics Canada are frequently quoted in the media, by advocate groups, political parties, policy makers, police, and by academics to support their positions. However, there is very little discussion or analyses into the challenges associated with the way Statistics Canada collects and reports this data. The purpose of this report is to examine marihuana possession offences in British Columbia from the number of recorded police seizures of marihuana to the number of individuals who received a criminal conviction for the offence in order to argue that the information reported in the media and used by many researchers vastly overestimates the number of people charge, convicted, and incarcerated for marihuana possession in British Columbia from 2009 to 2011.

The Vancouver Sun (2012) stated that marihuana possession charges in British Columbia were up 88% over the last decade; a policy paper by the federal Liberal Party of Canada (2013) stated in relation to marihuana "in some jurisdictions possession is prosecuted vigorously" and "across Canada 28,183 people were charged with possession of marijuana [in 2011]"; a recent study by Simon Fraser University Professor Neil Boyd (2013) stated that, in 2011, there were 3,774 charges for marihuana possession in British Columbia of which about 1,200 resulted in a conviction. In all cases, the data from these claims derived from Statistics Canada and are fundamentally incorrect or misleading.

The use of information from Statistics Canada has influenced those who create Canadian drug laws. In 1997, the two federal legislative branches created the Special Committee on Illegal Drugs designed to review all Canadian drug legislation. After a number of delays, the committee concluded in September 2002 with a final report titled, *Cannabis: Our Position for a Canadian Public Policy*. Using Statistics Canada data, they highlighted that, in 1999, there were approximately 50,000 drug related charges in Canada, of which 21,381 (43 per cent) were for the possession of cannabis. The committee discussed the implications this had for Canadians in relation to the principles of fairness and justice. Furthermore, the Office of the Auditor General of Canada (2001) used the same statistic in their report. Although the Auditor General recognized that drug data in general was sparse, often outdated, not available, or located in a myriad of different sites, it still made an estimate of the impact that the reported drug charges had on the court system. The caution that the Auditor General recognized in the recording for drug offence data appears to have not been responded to, and academics, drug policy advocates, politicians, police, and the media have continued to use the data from Statistics Canada to draw conclusions about the nature and extent of marihuana possession in British Columbia, and more broadly in Canada.

As indicated, in Canada, the primary source of statistics on marihuana offences is analyzed and published by Statistics Canada. They obtain their data through mandatory reporting by police agencies across Canada. In British Columbia, all police agencies use a computerized records system called Police Records Information Management Environment (PRIME). PRIME captures the information required by the

[1] It is acknowledged that marihuana is a sub-category of cannabis. This report uses the term marihuana for consistency to refer to the leaf and flower portion of the plant and the resin (hashish). The spelling of marihuana, as opposed to marijuana, is used in this report as the former is commonly used in Canada and is used in the Controlled Drugs and Substances Act.

Canadian Centre for Justice Statistics (CCJS) through the Uniform Crime Reporting (UCR) surveys. In turn, the CCJS provides the data to Statistics Canada for their analysis and publishing.

In order to fully understand how marihuana possession offence statistics are gathered and tallied, a basic understanding of the Uniform Crime Reporting Survey is required. According to Statistics Canada (2012), the UCR was designed to measure the incidence of crime in Canadian society and its characteristics. The primary data used is in relation to incidents that the police have categorized as 'founded' meaning that the police have reason to believe that the offence actually took place. The UCR survey only captures the most serious offence of each eligible founded file on PRIME. Importantly, the UCR survey is incident based, not violation based. Given this, the status of the file is reflective of the entire incident and not each offence that may make up the incident. Furthermore, if one violation is cleared by charge or otherwise, the UCR survey records the entire incident as cleared. In the example of an assault offence and a marihuana offence being part of the same incident, the entire file is cleared if any one of these offences is cleared. However, the UCR survey rules state that traffic[2] and non-traffic incidents are to be scored as separate incidents. In the case of an impaired driver who was also in possession of marihuana, two police files should be generated; one to record the criminal traffic offence and one to record the drug offence (non-traffic offence). Moreover, if the police issued a violation ticket for a liquor act offence and, in the course of dealing with the subject, marihuana was located, but dealt with by way of a verbal warning, this would be recorded as a single incident with a cleared by charge status. In this case, the primary UCR code reported to CCJS would misrepresent the marihuana possession as cleared by charge.

Through the reporting to CCJS by each police agency, Statistics Canada provides annual reports on various offences, including drug offences. For 2011, the raw numbers from Statistics Canada state that police reported more than 113,164 drug offences in Canada. Of these, 61,406 (54 per cent) were for possession of marihuana. However, in this case, Statistics Canada used raw data from police where a seizure of marihuana was made, but this is not reflective of whether the police associated the marihuana to a person. Additionally, the number does not reveal anything about the action taken by police against any person that possessed marihuana.

According to Statistics Canada, in 2011, there were 3,774 people charged with possession of marihuana in British Columbia (see Table 1). Furthermore, a British Columbia Ministry of Justice (2012: 6) report emphasized, "the overall drug crime rate is driven by possession offences, specifically cannabis possession, which constitutes the majority of all drug offences". The report utilized Statistics Canada data to show that, in 2011, police recorded 16,578 founded marihuana possession offences, which included cleared and not cleared incidents, that 79% of these founded cases were cleared, but only 23% resulted in a person being charged with possession of marihuana. Although the overall number of incidents consistently increased from 2009 to 2011, the proportion of persons charged with marihuana possession over those three years remained constant.

[2] Within the meaning of the UCR survey, traffic and non-traffic offences refer to driving offences and non-driving offences and not drug trafficking.

TABLE 1: Total Number of Marihuana Possession Offences and Number of Persons Charged in BC

Type of Call	2009	2010	2011
Total Number of Founded Marihuana Possession Incidents in BC	13,284	15,721	16,578
Number of Incidents Cleared in BC	10,238	12,474	13,095
Number of Persons Charged with Marihuana Possession in BC	3,246	3,626	3,774

It is important to comprehend the definitions of the terms cleared and charged as used by Statistics Canada to understand the meaning of the data. An incident is cleared when the police have identified at least one offender in relation to an offence and have sufficient evidence to solve the offence (Mahony and Turner, 2010). An incident is cleared by charge when the police have sworn a charge or recommended a charge to Crown Counsel in relation to any offence that comprised the incident. The legal definition of charge is "the formal accusation against a person". [3] In Canada, a formal accusation is made when an Information has been sworn to the court accusing a person of a specific offence, which initiates further proceedings by the court. In British Columbia, an Information is sworn, in most cases,[4] on the approval of Crown Counsel after they have received the facts of the case from police and agree to proceed with the matter in court. Accordingly, in cases that are cleared by charge, it may be expected that not all incidents will proceed to court as Crown may quash the police laid charge or not approve a recommended charge.

Statistics Canada has a more liberal definition of charged stating that an offence is cleared by charge when either a charge has been laid (Information sworn) or a charge is recommended by police against at least one person on the police file. Another category of a founded police reported incident is cleared otherwise. CCJS states that for a file to be coded as cleared otherwise, which is sometimes referred to as cleared by other means, there must be sufficient evidence[5] to lay a charge, but, for some reason, the police decide not to lay the charge. Common reasons for not charging can be: issuing a warning from police or using 'departmental discretion'; a complainant declines to press charges, which is not common to drug investigations as the police are typically the witness to the offence; the subject is already in prison and the current charge will not achieve any sentencing or criminal justice goals; or the case is referred to a diversion program. Hollins (2007) and McCormick et al. (2010) observed that the use of the cleared otherwise designation is inconsistent between jurisdictions making it extremely problematic to compare different jurisdictions' clearance rates.

To date, all the available literature regarding the nature of marihuana possession has relied on the charged data from Statistics Canada. As demonstrated in Table 1, in British Columbia, this suggests that 3,774 people in 2011 were charged with simple marihuana possession. However, no one has challenged the meaning of this figure despite its implication that, on average, 10 people per day in British Columbia are

[3] Provided by Irwin Law: Canadian Online Legal Dictionary. Retrieved from: http://www.irwinlaw.com/cold/term/808

[4] In British Columbia, police will swear an Information prior to providing Crown Counsel the file details only when the police conduct a bail hearing, which is typically done on weekends for in-custody matters when Crown is not available.

[5] Sufficient evidence is defined as evidence that must pass a reasonable person test, meaning confirmation from a reliable source, police information, admission of guilt, physical evidence, or other substantiation that would allow for the police to proceed with a charge (UCR Reference Manual, 2010.) This definition has broad interpretation because for police to 'proceed with a charge', many rules of evidence, search, and self-incrimination may preclude a case from proceeding with a charge.

charged with possession of marihuana. Moreover, a review of court registry lists in British Columbia reveals a near absence of simple marihuana possession cases. This raises several important questions about the methods used to document the disposition of marihuana offences. To investigate this issue, all the police files in British Columbia with a marihuana possession UCR code for the years 2009 to 2011 were analyzed, including the court outcome and criminal record of those convicted, to provide an in-depth assessment of the nature and extent of marihuana possession in British Columbia.

Research Methodology

For this project, the methodology for determining the frequency of specific offences was to use the UCR code reported to CCJS by individual police agencies. As discussed in the previously mentioned studies and publications analyzing marihuana possession offences, researchers typically rely exclusively on the charged categorization for their analysis and do not investigate further into the nature of the charges (Boyd, 2013; Special Committee on Illegal Drugs, 2002). As a result, in this study, not only were the categorizations used by CCJS considered, but the primary files were consulted to provide more context to the data and allow for an analysis of the data without the definitional and criteria constraints imposed by CCJS reporting. Due to the sheer volume of marihuana possession offences in British Columbia, it was not practical to review each file to examine the variables of each incident. In British Columbia, CCJS data originates from the PRIME database; therefore, the use of data stored in PRIME was selected, as this would include the information provided to CCJS and more specific case information not provided to CCJS. The information not provided to CCJS includes information such as other offences and charges associated to the incident, the amount of marihuana seized, the actual disposition of the incident, the disposition of any court action, and the criminal history of the offender.

This study used anonymized data for the years 2009 to 2011 obtained from the RCMP through the University of the Fraser Valley RCMP Research Chair. The data included police incidents for each year that had as one of the four possible UCR offence codes; (1) Possession - Cannabis Over 30 grams (4140-1), Possession - Cannabis 30 grams & Under (4140-2), Possession - Cannabis Resin Over 1 gram (4140-3), and Possession-Cannabis Resin 1 Gram & Under (4140-4). The data was collected from all municipal police agencies and RCMP detachments in BC from the PRIME database. To begin, the total number of marihuana possession files, including incidents where no marihuana was ever seized, was assessed. This included assistance files and files where a complaint was made regarding the possession of marihuana, but the police were either unable to verify the presences of it or they were able to verify through investigation that no marihuana was possessed. These assistance, unfounded, and unsubstantiated files are not relevant to actual police seizures of marihuana and were eliminated from the database leaving only founded incidents. In all founded cases, it was determined that marihuana was possessed, but this does not necessarily mean that it was associated to a person. Incidents where the marihuana was not associated to a person can include marihuana located in found property or marihuana turned over to the police by other agencies, such as schools, where no suspect name is known or provided. These cases are scored as founded – not cleared. Again, the founded – not cleared files do not offer any details about offenders and the file is primarily made as a mechanism to report and process the marihuana for destruction.

The two CCJS statuses used for marihuana possessed by a known person in which the police believe there is an offence contrary to the Canadian Controlled Drugs and Substances Act (CDSA) are founded –

cleared otherwise and founded – cleared by charge. In the case of incidents scored as founded – cleared otherwise, this typically refers to the police taking no action against the person found in possession or the police issuing a verbal warning. In the case of a verbal warning, the incident is coded as founded – cleared otherwise: departmental discretion, as the officer uses their discretion to not proceed with an enforcement action. In the case of founded – cleared by charge incidents, it is implied that the police have proceeded against a person for illegal possession of marihuana or some other offence associated to the incident.

As it related to marihuana possession, all previous research stops the data dissection once it reaches the number of cases that were founded – cleared by charge. However, when the founded – cleared by charge files are examined, practitioners and researchers need to be cognizant of the broad interpretation of this status. As this study searched all PRIME files for a marihuana possession UCR code present in one of the four available UCR codes, the cleared by charge status may reflect the outcome of another offence. To assist in deciphering if the cleared by charge status is associated to the marihuana offence, an examination of the number of CDSA charges formally laid was conducted. The PRIME tracking of CDSA charges laid does not distinguish by the type of drug charge; therefore, the results may be referring to marihuana, cocaine, heroin, or some other drug. To assist in distinguishing the marihuana charges from the other drug charges, a search of PRIME files with only a marihuana possession charge as the UCR code was completed. This eliminated the possibility that any other criminal offence or drug offence could be the reason for the cleared by charge CCJS code. UCR survey rules state that a traffic offence and a non-traffic offence have to be scored as separate occurrences even though they are part of the same incident. Therefore, if scored properly by the police, some marihuana possession only files may be part of an impaired driving or other traffic offence. This would be very difficult to determine without reading each file narrative.

The total number of CDSA files that included marihuana possession as one of its four UCR codes was further broken down into the type of disposition of the CDSA charge. To organize the data, a total of 20 distinct dispositions or status categories were developed. This list was collapsed to combine similar dispositions into a common category. The final data extract involved reviewing all convictions for the CDSA offences and extracting the incidents that resulted in a prison sentence. The CPIC criminal records of persons sentenced to a period of incarceration for marihuana possession were examined from a random sample of 155 incidents. The records were coded separating variables for type of previous conviction, the length of an offender's criminal history, the length of any previous prison sentences, whether the offender met the designation of a prolific offender, and general demographic information. It should be noted that this methodology presents several limitations, including the fact that the researchers could not independently verify the validity or accuracy of the data. As is common practice, those who use CCJS data must rely on the clearance categories assigned without any external validation. Specifically on this point, McCormick et al. (2010) suggested that clearance rate statistics should be considered and used with caution, as there is widely inconsistent use of these categories by police.

Research Results

Between 2009 and 2011, there was an increase in the total number of files that had a marihuana possession UCR code in any of the four fields designated for an offence code. Specifically, the count

increased from 18,961 in 2009 to 21,423 in 2010, to 22,561 in 2011. The total file count for each year included assistance files, unsubstantiated, and unfounded files, in addition to the founded files directly relevant to this study (see Table 2). An assistance file is typically a request from another detachment to assist in some way on an investigation, such as serving a summons or interviewing a witness. An unsubstantiated file includes reports made to police that, when investigated, it was determined that there was insufficient information to conclude that the offence occurred. An unfounded file includes reports made to police where an investigation has concluded that the offence did not occur.

Table 2: Categorization of CCJS Code on PRIME for Files with Marihuana Possession

CCJS Code	2009	2010	2011
Assistance, Unsubstantiated, and Unfounded	4,366	4,148	4,355
Founded – Not Cleared	3,122	3,432	3,370
Founded – Cleared Otherwise	7,921	9,783	10,579
Founded – Cleared by Charge	3,558	4,060	4,257

Of note, when considering all founded files for each year, the proportion of founded – not cleared files decreased each year from 22% in 2009 to 20% in 2010 and 19% in 2011. Correspondingly, the proportion of founded – cleared otherwise increased from 54% in 2009 to 57% in 2010 and 58% in 2011. The proportion of founded – cleared by charge remained relatively stable with a high of 24% in 2009 to a low of 23% in 2011. Moreover, the overwhelming explanation for founded – cleared otherwise files was departmental discretion. In fact, for the three years under consideration, virtually all (approximately 98%) of all founded – cleared otherwise files were coded as departmental discretion.

A further refinement of the data was done to determine how many founded files had only a marihuana possession UCR code (see Table 3). In other words, the data presented in Table 3 reflects the proportion of founded files by year in which the only offence was possession of marihuana or, as per UCR survey rules, a traffic offence was also part of the incident and two police files were made to record each offence separately. As demonstrated by Table 3, the proportions remained very stable over the three years under review. Importantly, similar to the data presented in Table 2, while the raw number of files increased slightly in each of the three years, the general ways in which these files were resolved remained extremely consistent. Critically, when marihuana possession was the only charge, these cases are very infrequently cleared by charge.

Table 3: Proportion of Founded Files with Only a Marihuana Possession UCR Code

CCJS Code	2009	2010	2011
Founded – Not Cleared	32%	29%	27%
Founded – Cleared Otherwise	65%	68%	70%
Founded – Cleared by Charge	3%	3%	3%

The total proportion of files that had a marihuana UCR code either on its own or in combination with other UCR codes, and had a CDSA charge approved by Crown, decreased over the three year period under review from 27% in 2009 to a slight increase to 28% in 2010, and finally down to its lowest proportion of 25.2% in 2011. Of note, the data extraction from PRIME did not differentiate what drug the

charge was associated to. Therefore, the number of charges sworn may include possession of drugs listed in other schedules, as well as trafficking offences, production, import/export, and marihuana possession offences. Still, in terms of raw numbers of files, there were only very minor increases from 2009 to 2010, and then a minor decrease from 2010 to 2011 in the number of files associated to having an information sworn with a CDSA undetermined drug, including trafficking charge, the number of CDSA undetermined drug, including trafficking charges laid, the number of CDSA charges for drug possession (drug undetermined), and the number of CDSA charges for possession for the purposes of trafficking (drug undetermined) (see Table 4). In effect, with the exception of the number of CDSA charges for possession for the purpose of trafficking (drug undetermined), there were only slight increases in the number of files from 2009 to 2011. And, with respect to files for possession for the purposes of trafficking, the raw number of files in 2011 was at its lowest over the three years under review.

Table 4: Charges Laid by Crown in Relation to a File with a Marihuana Possession UCR Code

	2009	2010	2011
Files Where an Information was Sworn with a CDSA Charge	969	1,144	1,072
Total Number of CDSA Charges Laid	1,533	1,762	1,638
Number of CDSA Charges for Possession	1,123	1,311	1,261
Number of CDSA Charges for Possession for the Purpose of Trafficking	289	307	266

In terms of how the courts adjudicated these files, Table 5 presents the outcomes over the 3 years under review. It is important to keep in mind that this data represents the court outcomes for how charges proceeded through the court process for any cases where the police indicated marihuana possession as one of the UCR codes and inclusive of any other charge that may have been part of the specific police file. For example, if a person was charged with possession of cocaine and they also had a small amount of marihuana, the police file would have a UCR code for both; however, the court outcome data obtained from PRIME will only show that a CDSA charge was laid without distinguishing what drug may have been the basis for the charge. Again, the results presented in Table 5 are very consistent over the three years; however, it is interesting to note that the proportion of cases that resulted in a conviction decreased in each of the three years reviewed from a high of 28% in 2009 to a low of 19% in 2011. It is also relevant that nearly one-third of files each year were stayed, withdrawn, or dismissed.

Table 5: Outcome of CDSA Charges from a File with a Marihuana Possession UCR Code

Outcome	2009 (n = 1,533)	2010 (n = 1,762)	2011 (n = 1,638)
Guilty of Lesser Offence	1%	1%	1%
Extra-Judicial Measures/Diversion	3%	3%	2%
Not Guilty/Acquitted/Absolute Discharge	2%	2%	2%
Conditional Discharge	3%	4%	3%
Convicted	28%	25%	19%
No Charge/Crown Would Not Prosecute	18%	23%	20%
Stayed/Withdrawn/Dismissed	38%	31%	30%
Still in Progress	6%	11%	23%

In terms of the types of dispositions associated with a conviction for a marihuana possession file, over the three years under review, on average, slightly less than one-quarter (18 per cent) of convictions resulted in a prison term. In terms of the general pattern of incarceration, 2009 has 21% of convictions result in some term of imprisonment. This decreased to 16% in 2010, but slightly increased to 17% in 2011. In considering just 2011, the data suggests that of the 4,257 cleared by charge files, 305 resulted in a conviction, and, of those convicted, 53 resulted in a prison sentence. However, the data does not indicate whether the possession of marihuana or some other offence was responsible for the custody disposition.

When considering just the 2011 data for files with only a marihuana possession UCR code cleared by charge (3 per cent or 249 files), slightly more than two-thirds (68 per cent) proceeded to court. Of these, 24% or 42 files resulted in a conviction. The same proportion resulted in no charge, a smaller proportion resulted in a stay of proceedings (19 per cent), and nearly one-third (32 per cent) resulted in some other disposition. In other words, in 2011, in British Columbia, only 42 files that only had possession of marihuana as the sole charge resulted in a conviction with some kind of disposition. Critically, only seven of these 42 files resulted in any type of custody sentence. More specifically, four of these seven files resulted in a jail term of only one day, two files resulted in a jail term of seven days, and one file resulted in 14 days in jail. In summary, very few files in which possession of marihuana was the only or most serious offence was cleared by charge (3 per cent), and of those, a very small proportion resulted in a conviction of some kind (17 per cent). Of those, a very small proportion was associated with a jail term (17 per cent), and those that did result in jail had very short custody terms (X^2 = 4.6 days).

CPIC criminal records check of those who were convicted and sentenced to custody for possession of marihuana, regardless of whether there were other charges associated to the conviction, indicated that the overwhelmingly majority of offenders were male (95 per cent) and, on average, 33 years old. Moreover, these individuals were typically prolific offenders with criminal histories spanning, on average, 12 years with 19 prior convictions (see Table 6). As such, it appears that one's criminal history contributed to a custody sentence when marihuana possession was either the only charge or a concurrent charge, rather than the assumption stated in the introduction that many people are sentenced to custody exclusively because they were found to be in possession of marihuana.

Table 6: Criminal Histories of Offenders Sentenced to Custody in BC for Possession of Marihuana (n = 155)

	Per Cent or Number	Average Number of Prior Offences
Male	95%	
Average Age	33 Years Old	
Prior Criminal History	90%	19
Average Length of Criminal History	12 Years	
Convictions for Property Offences	75%	8
Convictions for Violent Offences	64%	3
Convictions for Non-Compliance	74%	4
Convictions for Criminal Driving Offences	30%	1
Convictions for Drug Offences	64%	3
Average Number of Jurisdictions Charged In	4	
Served a Previous Prison Sentence	83%	
Prolific Offender (10 or More Prior Convictions)	57%	

Again, the total file count of all incidents reported to or by police regarding the possession of marihuana over the years 2009 to 2011 was, on average, 21,000 files per year in British Columbia. In each year, approximately 20%, or 4,289 files were either unfounded, unsubstantiated, or given some other code indicating that marihuana was not observed or seized by police. In order to understand marihuana possession, it is necessary to limit one's analysis to those founded files where the police seized marihuana. When police seize marihuana, but there is insufficient evidence to support a charge or there is no one to associate the marihuana to, the police categorize this as founded – not cleared. Out of the all the founded files, nearly 20% are not cleared. There are also incidents where police locate marihuana and the police officer has enough evidence to proceed with a charge, but an alternative resolution is decided. This resolution can include extrajudicial measures for youth or departmental discretion. Of all the incidents where police determined that someone was in illegal possession of marihuana as indicated by cleared otherwise and cleared by charge files, 70% were resolved by police using their discretion and not recommending a charge.

What garners the most attention from researchers, advocates, and policy makers are marihuana possession files that are cleared by charge. Of all the founded marihuana possession files from 2009 to 2011, nearly one-quarter (24 per cent) were categorized as founded – cleared by charge. Over the three years under review, this averaged nearly 4,000 incidents per year in which a charge of some type was forwarded to Crown Counsel or a provincial violation ticket was issued for a concurrent offence related to marihuana possession. This average is higher than the numbers provided by Statistics Canada because they only receive information from the primary UCR line in PRIME, or the offence considered the most serious. The analysis in this report examined all four UCR lines in PRIME and used any file in which marihuana possession was indicated.

For a marihuana possession file to be reported to CCJS, their reporting criteria requires that marihuana possession must be in the primary UCR field; however, this current study included all marihuana possession incidents recorded in any of the UCR fields. As demonstrated in Table 7, this results in a greater number of total files considered in each of the three years under review, and likely give a more accurate accounting of the number of marihuana possession incidents cleared by charge. The small number of files cleared by charge in which marihuana possession was the only UCR code suggests that police are rarely recommending a charge in incidents where there is no concurrent offence.

Table 7: Comparison of Cleared by Charge Incidents by UCR Field

	2009	2010	2011
Cleared by Charge Incident (Marihuana Possession as Primary UCR Code)	3,246	3,626	3,774
Cleared by Charge Incidents (Marihuana Possession in any UCR Field)	3,558	4,060	4,257
Marihuana Possession as the only UCR Code	183	237	249

Due to a variety of limitations with extracting specific data from PRIME, it was only determined if a CDSA charge of any type resulted from the incident. For the files reported to CCJS, this should not present a major problem, as all drug offences, except the possession of ecstasy, are considered more serious than marihuana possession by CCJS. Since the reportable incidents to CCJS have marihuana possession as the primary UCR code, it can be assumed that most of the CDSA charges are for possession of marihuana.

As demonstrated by Table 8, on average, slightly more than one-quarter (27 per cent) of founded – cleared by charge incidents have an actual CDSA charge that is sworn and initiates the court process. This represents a reduction by approximately two-thirds in the number of marihuana possession charges reported by Statistics Canada.

Table 8: Comparison of Cleared by Charge Files and Sworn CDSA Charges

	2009	2010	2011
Marihuana Possession Police Files Founded – Cleared by Charge	3,558	4,060	4,257
Number of Police Files with a CDSA Charge Sworn	969	1,144	1,072
Proportion of Founded – Cleared by Charge Marihuana Possession Files that Proceed to a Sworn Charge	27%	28%	25%

The outcome of incidents that involved a CDSA charge, and possibly other charges, suggests that, on average, 388 convictions result from the average 4,000 marihuana possession files categorized as cleared by charge. Again, these 388 convictions represent convictions of any type and not necessarily for marihuana possession. These convictions were further examined to determine which incidents led to a prison sentence. On average, 18% of those convicted resulted in a prison sentence. Again, it is important to emphasize that the conviction and/or prison sentence may not be due primarily or at all to a marihuana possession offence. Accordingly, in 2011, of the 14,836 marihuana possession incidents that had evidence against a known person, a total of 305 incidents resulted in a conviction for a drug offence that was not necessarily a marihuana possession offence. Of those convicted, in 2011, 53 resulted in a prison sentence.

Recommendations and Conclusion

The data published by Statistics Canada regarding the number of people charged for marihuana possession offences in British Columbia is a gross over count of people actually being charged. According to Statistics Canada, the definition of cleared by charge states that at least one accused must have been identified and either a charge was laid or recommended against an individual in connection with the incident. These criteria complicate police file scoring as it relates to marihuana possession data because the rule does not specify that the charge laid has to be for the offence listed in the primary UCR field. In cases where a less serious criminal or CDSA offence is listed in one of the non-primary UCR fields, the cleared by charge status may refer to that offence. Furthermore, the charge may also be a provincial statute charge, such as a violation ticket for being intoxicated in public. It is easy to conceive of instances where a police officer processes a person for a liquor act violation who is also in possession of marihuana may give a warning for the drug offence and issue a violation ticket for the provincial offence. The file status would indicate ‘charged’ in reference to the violation ticket; however, PRIME would automatically place the marihuana offence as the primary offence.

The 4,257 incidents from PRIME and the 3,774 incidents reported by Statistics Canada in 2011 that are listed as cleared by charge do not accurately represent that number of marihuana possession incidents that are actually proceeding by charge. In fact, only 1,072 incidents proceeded with a drug charge being sworn and this is not necessarily for marihuana possession. This indicates that all of the other incidents were being charged in some other manner, most likely through a provincial offence. The inaccurate cleared by

charge classification given to the majority of marihuana possession incidents is alarming, and has greater implications when considering the prospect of this occurring with other criminal offences; for example, an assault incident that does not proceed to charge is classified as cleared by charge due to a liquor act ticket being issued to address the concurrent offence within the incident.

Given this, it is recommended that Statistics Canada review the rule of assigning a cleared by charge status to an incident in general and allow for police to code each offence indicated on the PRIME file with its own charge status independent of each other. This would allow for an accurate picture of what offences are associated to each other and how the police and the courts resolve offences. This recommendation would also allow for traffic and non-traffic offences to be part of the same police file avoiding extra work for police. Moreover, the analysis conducted for this report demonstrates that some police agencies are not strictly following the practice of separating traffic and non-traffic offences within the same incident resulting in an inflation of the marihuana possession offences as being charged when the charged is in reference to a violation ticket.

The fact that approximately 70% of marihuana possession incidents that are cleared by charge or otherwise are done so by departmental discretion implies that police are, in most cases, concluding the marihuana offence with a verbal warning. It is suggested that this is an under estimation of the police discretion to not proceed by charge, as supported by the small amount of formal charges laid on all incidents involving marihuana possession. In 2011, of the 14,836 opportunities for police in British Columbia to charge a person for marihuana possession, only 7% of incidents resulted in a criminal charge of some kind and only 2% resulted in a conviction. The low rate of charges associated to marihuana possession offences clearly indicates that the possession of marihuana results in little formal consequences beyond the loss of the marihuana. This may be a factor in the increased public tolerance for the drug. The lack of response to marihuana possession may serve as a message from the government that they find it acceptable for people to possess marihuana, but are reluctant to make formal changes to legalize the substance.

It is also recommended that research into the nature and extent of marihuana possession explore the entire PRIME file of all incidents coded as founded – cleared by charge. The narratives and court tracking pages should provide the information required to determine the nature of any charges laid, as well as a more detailed picture of the circumstances that led to the recommendation of charges. This recommendation is currently impeded by the time consuming nature of reviewing each file and the security policies in place limiting researchers' access to PRIME. Additionally, an analysis of the weight of the marihuana seized on each incident would provide perspective on the role that this has on charge recommendations and the court's response.

The characteristics of the persons sentenced to prison in relation to an incident that involved a marihuana possession offence in this study demonstrates that people who incorporate criminality into their lifestyle are more likely to be subjected to prison sentences when found in possession of marihuana. However, it must be emphasized that the jail sentences associated to the files in this study are not necessarily for possession of marihuana, but are, in most cases, for an offence different or in addition to possession. Still, it is likely that the criminal histories of those in this study are more extensive than indicated above because the data derived from CPIC under represents the true nature of an individual's criminal history because a criminal conviction can only be entered on CPIC with suitable fingerprints taken for each incident. Poor quality prints, an error in not taking prints, or delays in entering the convictions on CPIC

result in a lack of a full record of criminal convictions. Future research in this area would be able to better overcome this by reviewing court tracking information on PRIME and utilizing the Justice Information system (JUSTIN) to acquire real-time conviction information.

In conclusion, the statistics reveal that, in 2011, out of 18,206 marihuana possession seizures made by police in British Columbia, 10,344 (56 per cent) were resolved by a police warning, 4,257 (23 per cent) involved some form of enforcement action, such as issuing a violation ticket for a non-drug provincial offence or some type of criminal or CDSA charge, 94% of those that had an enforcement action were incidents that included another offence in addition to the marihuana possession, 25% of the enforcement actions included the formal laying of a CDSA charge, 305 cases resulted in a conviction for some offence, and 53 of these incidents resulted in a prison sentence. This suggests that less than 1% of all marihuana possession seizures in British Columbia in 2011 resulted in someone receiving a prison sentence, and not necessarily for the possession of marihuana. In fact, in 2011, only 249 files had possession of marihuana was the only or most serious offence and, in these cases, only seven files resulted in a jail term, which was typically either one day or seven days in length.

This analysis of police files involving the possession of marihuana clearly suggests that police are rarely recommending charges when they encounter people with marihuana. Moreover, when charges are recommended, there are usually other offences being committed in addition to the possession of marihuana and the individuals have long criminal histories, which contribute to the decision to recommend charges. Overall, the 1,072 unspecified CDSA charges and 305 convictions for undetermined CDSA offences related to a possession of marihuana strongly suggest that the information provided by Statistics Canada and used by law makers, advocates, academics, and police misrepresents the true nature and extent of marihuana possession in British Columbia. It should be noted that this misconception is not exclusive to Canada. In his book examining the main myths about marihuana in the United States, Sabet presents Bureau of Justice studies indicating that "…only one-tenth of one percent of people in state prisons are serving sentences for first-time marihuana possession. Just three-tenths of one percent of people in state prisons are serving time for marihuana possession if they have prior offences, and only 1.4 percent of people are in jail for offences involving only marihuana-related crimes." (2013: 90).

This report serves as a message to the prevailing view about the response of the criminal justice system to the possession of marihuana in British Columbia. Contrary to an acceptance of the data as presented by Statistics Canada, thoughtful consideration of the limitations and challenges associated with this data and a more nuanced examination of the files indicates that, at least in British Columbia, there are not thousands of people being charged and convicted of possession of marihuana. Instead, the vast majority of these cases, when founded, are not cleared by charge, and for the small proportion that are cleared by charge, very rarely do these files result in a conviction and jail time. Before policy-makers and the public decide on the most appropriate ways to respond to all of the complicated issues involved with marihuana, an important first step is to understand the reality of marihuana possession in British Columbia.

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