

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

**ESCOLA SUPERIOR DA DEFENSORIA PÚBLICA DA BAHIA
OBSERVATÓRIO DA PRÁTICA PENAL**

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01

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OBSERVATÓRIO DA PRÁTICA PENAL

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QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

CONTENTS

1. INTRODUCTION	3
2. METHODOLOGY	3
3. FORMAT AND FREQUENCY OF THE PUBLICATIONS	6
4. MOST IMPORTANT FINDINGS – FIRST QUARTER 2011 TO FIRST QUARTER 2014	6
4.1. Correlation between the defendant's criminal record and the situation and result of the criminal prosecution	5
4.2. Correlation between the convicted's criminal record and the average sentence length.	6
4.3. Correlation between the convicted's criminal record and the type of penalty.	6
4.4. Correlation between the defendant's criminal record and the average time spent in prison before judgment.	7
4.5. The defendant's gender.	7
4.6. Type and amount of drug seized.	8
5. CONCLUSION	8
ANNEX I – INDICATORS, ACCORDING TO THE DEFENDANT'S CRIMINAL RECORD	9
ANNEX II – INDICATORS, ACCORDING TO THE DEFENDANT'S GENDER	13
ANNEX III – TYPE AND AMOUNT OF DRUGS SEIZED, PER ARREST	15

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

1. INTRODUCTION

The Bahia School of Public Defense (*Escola Superior da Defensoria Pública da Bahia – ESDEP*) created its Criminal Justice Observatory (*Observatório da Prática Penal*) on May 2013. Its main goal is to collect, analyze, publish and discuss relevant data about how the Criminal Justice System works in Bahia (fourth most populous state in Brazil), starting with data from its capital and largest city, Salvador (third most populous in Brazil, largest in the northeast region).

The Observatory started publishing its bulletins and reports on February 2014, in Portuguese. Since then, it is receiving almost universal recognition for richness of its information and precision in methodology. In part this is due to the lack of other reliable data on these subjects, in Bahia in particular and in Brazil in general, with a few exceptions, that made these studies, meant to be published at least monthly to keep researchers, lawyers and the community constantly supplied with fresh information, an unique service, at least for now.

This report, written as a cooperative effort with the International Drug Policy Consortium, is destined to provide the English-speaking readers with data on a relevant country, with the world's fourth largest prison population, and a recent spike in incarceration rates for drug-related crimes.

Even though Salvador is far from being the most known Brazilian city, like Rio or São Paulo, it is a representative metropolis (with almost three million inhabitants) from the poorest region and with the same drug-related incarceration problem as the rest of the country.

Like the Portuguese publications, the Observatory will publish this report every quarter to provide the community with scientific information that can be compared with data from other countries and so help understand the global scenario on drug-related crimes prosecution.

2. METHODOLOGY

The Criminal Justice Observatory collects data from every case of arrest for flagrant offences that is reported to the Public Defender's Office. According to the Brazilian law, since 2007, the police must report every arrest for a flagrant offence not only to the judge and the prosecutor, but also to the public defender, if the person

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

arrested doesn't inform who his/her counsel is, which is what happens in the vast majority of cases.

So the Observatory works on these very rich files, available at the Public Defender's Office, and monitors every case from the arrest until the judgment (pending appeal). The collection started with arrests made in 2011, monitored during the following three years. If the case isn't concluded three years after its occurrence, it stops being followed, and is considered for research purposes as an ongoing or suspended case.

This monitoring consists in an additional collection of data from two different information systems publicly available at the internet: the Official Gazette (<http://www2.tjba.jus.br/diario/internet/pesquisar.wsp#>) and the legal case management (<http://esaj.tjba.jus.br>) systems, both from Bahia's Court of Justice.

The three year term was chosen because it is the minimum limitation period for criminal charges in Brazil (with an important exception: drug possession for personal use has a two year limitation period).

Each case is registered in a Microsoft Excel spreadsheet with more than 140 variables. They range from the defendant's gender, his/her criminal record, the type and amount of drug seized, his/her address, where the supposed crime happened, to the time spent in prison before judgment, the verdict, the type of penalty and length of sentence, the reasons for the not guilty verdict, among many others.

One of the most complex variables is the defendant's criminal record. It was divided in five categories: recidivism, other previous convictions, other ongoing prosecutions, other criminal record, and no criminal record. Because of the right to be presumed innocent until proven guilty, in many cases a previous criminal record, or even conviction, doesn't mean recidivism. According to the Brazilian law, only if someone committed a crime after being convicted (including all appeals) during the first five years after serving his/her sentence, then the defendant can be considered a recidivist.

But since only in guilty verdicts the criminal record is fully analysed, it was possible to measure these five categories only amongst the convicted, that represent less than one third of all cases, and not more than half the concluded (pending appeal) cases. For the rest, it was only possible to check two broader categories: with or without previous criminal record, and information collected from the arrest for flagrant offences' files, sent by the Police.

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

Each month, the Observatory collects data from an average of 200 cases, 60 of them drug-related. This first quarterly report contains information on 192 arrests for drug-related flagrant offences that occurred during the first quarter of 2011, of which 187 cases could be monitored during the first three years after their occurrence.

At first, the research intended to be a census, collecting data from each case reported to the Public Defender's Office. In the end, it was not possible to collect information on approximately 10% of them, given the incompleteness of Bahia's Court of Justice databases, therefore the need to calculate and inform the confidence level and the margin of error of almost all the indicators.

Whenever the sample was not reliable, the first choice was not to publish the data at all, or, when it was indispensable to do so, the "unreliable" disclaimer was visibly associated with the information.

3. FORMAT AND FREQUENCY OF PUBLICATIONS

The Criminal Justice Observatory publishes bulletins and reports, in Portuguese, at least monthly, and now started to publish a quarterly report in English, specific on Drug-Related Crimes. Each publication only comes to public when the sample is big enough to provide reliable data on any of the subjects.

4. MOST IMPORTANT FINDINGS – FIRST QUARTER 2011 TO FIRST QUARTER 2014

- 4.1. Correlation between the defendant's criminal record and the situation and result of the criminal prosecution.

Even though it is not among this study's objective to measure recidivism rates, it's important to register that, from the 187 cases (Table 1), 79 defendants had a previous criminal record (42,24%), while 108 had no previous record (57,75%). The defendants with previous criminal record were slightly more likely to be judged (Table 1) (67,09%) during the first three years after the arrest than those without a criminal record (60,19%).

More meaningfully (Table 2), defendants with a criminal record were much more likely to be convicted as drug traffickers (67,92%) than those without a criminal

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

record (43,08%), and therefore much less likely to be dismissed as drug users (13,21%) or to be absolved (13,21%) than those with no criminal record (26,15% and 23,08% respectively).

4.2. Correlation between the convicted's criminal record and the average sentence length.

As was said in the methodology section, in the cases concluded (pending appeal) with a conviction, it was possible to divide the criminal record variable in five categories: recidivism, other previous convictions, other ongoing prosecutions, other criminal record and no criminal record.

The observation (Table 3) showed that the harsher the criminal record was, the longer were the sentences. The average sentence length, for drug trafficking, was 96,86 months for the recidivist, 66 months for those with other previous convictions, 53,09 months for those with other ongoing prosecutions, 42,65 months for those with other criminal record and, lastly, 40,58 months for those without criminal record. The average sentence length, considering all cases, was 51,52 months.

4.3. Correlation between the convicted's criminal record and the type of penalty

The same trend was observed in the correlation between the convicted's criminal record and the type of penalty (Table 4). The harsher the record, the more likely that the convicted would receive a prison sentence, rather than community service. On average, prison sentences for drug trafficking were imposed on 55,74% of the convicted, but on 100% of the recidivist and 100% of those with other previous convictions, on 76,4% of those with other ongoing prosecutions, on 52,94% of those with other previous records, and only on 21,05% of those with no criminal record.

So this means that the judges tend to consider the criminal record to define the type and length of sentence, in cases when they are legally obliged (recidivism and other previous convictions). But they also considered it in some cases when they were not only free to act otherwise, but also when they are instructed to ignore it (other ongoing prosecutions and other criminal record), and to respect the right to be presumed innocent.

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

4.4. Correlation between the defendant's criminal record and the average time spent in prison before judgment.

The general trend (the harsher the previous record, the harsher the treatment) was observed in the correlation between the defendant's criminal record and the average time spent in prison before judgment, with some exceptions, even though the judges are free to evaluate, in every case, the need to keep the defendant in detention before his trial.

On average (Table 5), the defendants spent 128 days in prison before judgment, but the recidivist spent 174 days, and those with no criminal record spent 109 days.

The percentage of those arrested during all prosecution (including appeal) (Table 6) was, on average, 13,04%, but the rate for recidivists was 71,43%, and only 3,00% for those with no criminal record.

This trend to give a harsher treatment to those with a criminal record, even when the law doesn't require it, could well be correlated to one of the worst indicators of injustice in the Criminal System: the average time spent in pre-trial detention by those who are not convicted in the end.

It was only partially confirmed (Table 7): among the defendants proven to be only drug users, rather than traffickers and so, according to Brazilian law, not subject to prison of any kind, those with a criminal record spent much more time in prison (225 days) than those without it (80 days). On the other hand, among the defendants proven innocent, those with a criminal record spent less time in jail (116 days) than those without a criminal record (158 days).

4.5. The defendant's gender

Male defendants (Table 8) were more likely to be judged during the first three years (64,07%) than females ones (55%). On the other hand (Table 9), even though it was a small sample, females were more likely to be convicted (63,64%) than males (53,27%). Among the convicted (Table 10), men were more likely to receive a prison sentence (56,14%) than women (42,86%).

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

4.6. Type and amount of drug seized

Crack cocaine was the most frequently seized drug (Table 11), with 31,25% of the cases, besides other 19,48% of the cases when it was found simultaneously with another drug. On the other hand (Table 12), crack cocaine seizures were remarkably low in quantity. Considering only single-drug seizures, the defendant was found with less than half an ounce (or less than 15 grams) of crack in 65% of the cases, and even then he/she was arrested as a drug trafficker.

Curiously (Table 13), single-drug seizures led to a similar percentage of convictions (54,17%) as multiple-drug seizures (52,63%). Considering only the single-drug seizure cases (Table 14), powder cocaine was the substance for which the conviction rates was the highest, with 61,57% of the cases. On the other hand (Table 15), crack cocaine was the substance for which the convicted received the longest sentence terms, with 63,82 months on average, compared to the average of only 37 months for powder cocaine convictions.

5. CONCLUSION

By publishing its findings, the Criminal Justice Observatory from the Bahia School of Public Defense intends to fulfill its duty to develop and spread legal knowledge. It is destined not only for the Public Defender's Office, or the academic and legal professionals, but to the community, enriching public debate on the Criminal Justice System with reliable and rigorously collected data, useful for decision-making and critical reflection.

With its first foreign-language publication, the Observatory intends to provide data on a sensible and typically international problem (Drug Policy) that can be used by lawyers, scholars, politicians, activists and anyone interested in comparing the results and consequences of the Drug Policy currently in force in Brazil.

Salvador, April 8th, 2014.

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Coordinator

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

ANNEX I –

INDICATORS, ACCORDING TO THE DEFENDANT'S CRIMINAL RECORD

TABLE 1 – CRIMINAL PROSECUTIONS FOR DRUG TRAFFICKING, THREE YEARS AFTER THE ARREST.

SITUATION THREE YEARS AFTER THE ARREST	ALL CASES %	CASES	WITH PREVIOUS CRIMINAL RECORD %	CASES	NO PREVIOUS CRIMINAL RECORD %	CASES
CONCLUDED (PENDING APPEAL)	63,10%	118	67,09%	53	60,19%	65
ONGOING	34,76%	65	29,11%	23	38,89%	42
SUSPENDED	2,14%	4	3,80%	3	0,93%	1
TOTAL	100%	187	100%	79	100%	108
CONFIDENCE LEVEL	99%		99%		99%	
MARGIN OF ERROR	3%		3%		3%	

TABLE 2 – VERDICT ON PROSECUTIONS FOR DRUG TRAFFICKING, CONCLUDED WITHIN THREE YEARS AFTER THE ARREST.

VERDICT, ON CONCLUDED CASES	ALL CASES %	CASES	WITH PREVIOUS CRIMINAL RECORD %	CASES	NO PREVIOUS CRIMINAL RECORD %	CASES
GUILTY AS CHARGED	54,24%	64	67,92%	36	43,08%	28
DISMISSED AS DRUG USER	20,34%	24	13,21%	7	26,15%	17
NOT GUILTY	18,64%	22	13,21%	7	23,08%	15
EXEMPT FROM PUNISHMENT	4,24%	5	3,77%	2	4,62%	3
TRANSFERED TO OTHER JURISDICTION	2,54%	3	1,89%	1	3,08%	2
TOTAL	100%	118	100%	53	100%	65
CONFIDENCE LEVEL	99%		99%		99%	
MARGIN OF ERROR	4%		4%		4%	

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

TABLE 3 – AVERAGE SENTENCE LENGTH FOR DRUG TRAFFICKING, ACCORDING TO THE CONVICTED'S CRIMINAL RECORD

AVERAGE SENTENCE LENGTH FOR DRUG TRAFFICKING	ALL CASES		RECIDIVISM		OTHER PREVIOUS CONVICTONS		OTHER PENDING PROSECUTIONS		OTHER CRIMINAL RECORD		NO CRIMINAL RECORD	
	TIME	CASES	TIME	CASES	TIME	CASES	TIME	CASES	TIME	CASES	TIME	CASES
AVERAGE TIME (MONTHS)	51,52	61	96,86	7	66,00	1	53,09	17	42,65	17	40,58	19
CONFIDENCE LEVEL	95%		95%		95%		95%		95%		95%	
MARGIN OF ERROR	5%		5%		5%		5%		5%		5%	

TABLE 4 – TYPE OF PENALTY FOR DRUG TRAFFICKING, ACCORDING TO THE CONVICTED'S CRIMINAL RECORD

TYPE OF PENALTY	ALL CASES		RECIDIVISM		OTHER PREVIOUS CONVICTONS		OTHER PENDING PROSECUTIONS		OTHER CRIMINAL RECORD		NO CRIMINAL RECORD	
	%	CASES	%	CASES	%	CASES	%	CASES	%	CASES	%	CASES
PRISON AND FINE	55,74%	34	100,00%	7	100,00%	1	76,47%	13	52,94%	9	21,05%	4
COMMUNITY SERVICE AND FINE	44,26%	27	0,00%	0	0,00%	0	23,53%	4	47,06%	8	78,95%	15
FINE ONLY	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0	0,00%	0
TOTAL	100,00%	61	100,00%	7	100,00%	1	100,00%	17	100,00%	17	100,00%	19

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

TABLE 5 – AVERAGE TIME IN PRISON BEFORE JUDGEMENT FOR DRUG TRAFFICKING, ACCORDING TO THE DEFENDANT’S CRIMINAL RECORD.

AVERAGE TIME IN PRISON BEFORE JUDGEMENT FOR DRUG TRAFFICKING	ALL CASES		RECIDIVISM		OTHER PREVIOUS CONVICTONS		OTHER PENDING PROSECUTIONS		OTHER CRIMINAL RECORD		NO CRIMINAL RECORD	
	DAYS	CASES	DAYS	CASES	DAYS	CASES	DAYS	CASES	DAYS	CASES	DAYS	CASES
DAYS IN PRISON	128	140	174	2	N/A	0	144	7	155	50	109	81
CONFIDENCE LEVEL	95%		95%		95%		95%		95%		95%	
MARGIN OF ERROR	5%		5%		5%		5%		5%		5%	

TABLE 6 – ARRESTED DURING ALL PROSECUTION TIME, INCLUDING APPEAL, FOR DRUG TRAFFICKING, ACCORDING TO THE DEFENDANT’S CRIMINAL RECORD

PERCENTAGE OF ARRESTED DURING ALL PROSECUTION TIME	ALL CASES		RECIDIVISM		OTHER PREVIOUS CONVICTONS		OTHER PENDING PROSECUTIONS		OTHER CRIMINAL RECORD		NO CRIMINAL RECORD	
	PERCENTAGE	CASES	PERCENTAGE	CASES	PERCENTAGE	CASES	PERCENTAGE	CASES	PERCENTAGE	CASES	PERCENTAGE	CASES
DRUG TRAFFICKING	13,04%	21	71,43%	5	0,00%	0	52,63%	10	5,00%	3	3,00%	3
CONFIDENCE LEVEL	95%		95%		95%		95%		95%		95%	95%
MARGIN OF ERROR	5%		5%		5%		5%		5%		5%	5%

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

TABLE 7 – AVERAGE TIME IN PRISON BEFORE JUDGEMENT, FOR DRUG TRAFFICKING, ON PROSECUTIONS CONCLUDED WITHOUT GUILTY VERDICTS, ACCORDING TO THE DEFENDANT’S CRIMINAL RECORD

AVERAGE TIME IN PRISON BEFORE JUDGMENT (PENDING APPEAL)	ALL CASES		WITH CRIMINAL RECORD		WITHOUT CRIMINAL RECORD	
	DAYS	CASES	DAYS	CASES	DAYS	CASES
NOT GUILTY	144	15	116	5	158	10
DISMISSED AS DRUG USER	126	22	225	7	80	15
CONFIDENCE LEVEL	90%		90%		90%	
MARGIN OF ERROR	14%		14%		14%	

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

ANNEX II – INDICATORS, ACCORDING TO THE DEFENDANT’S GENDER

TABLE 8 – CRIMINAL PROSECUTIONS FOR DRUG TRAFFICKING, THREE YEARS AFTER THE ARREST.

SITUATION THREE YEARS AFTER THE ARREST	ALL CASES %	CASES	MALE %	CASES	FEMALE %	CASES
CONCLUDED (PENDING APPEAL)	63,10%	118	64,07%	107	55,00%	11
ONGOING	34,76%	65	33,53%	56	45,00%	9
SUSPENDED	2,14%	4	2,40%	4	0,00%	0
TOTAL	100%	187	100%	167	100%	20
CONFIDENCE LEVEL	99%		99%		99%	
MARGIN OF ERROR	3%		3%		3%	

TABLE 9 – VERDICT ON PROSECUTIONS FOR DRUG TRAFFICKING, CONCLUDED UNTIL THREE YEARS AFTER THE ARREST.

VERDICT, ON CONCLUDED CASES	ALL CASES %	CASES	MALE %	CASES	FEMALE %	CASES
GUILTY AS CHARGED	54,24%	64	53,27%	57	63,64%	7
DISMISSED AS DRUG USER	20,34%	24	20,56%	22	18,18%	2
NOT GUILTY	18,64%	22	18,69%	20	18,18%	2
EXEMPT FROM PUNISHMENT	4,24%	5	4,67%	5	0,00%	0
TRANSFERED TO OTHER JURISDICTION	2,54%	3	2,80%	3	0,00%	0
TOTAL	100%	118	100%	107	100%	11
CONFIDENCE LEVEL	99%		99%		99%	
MARGIN OF MARGIN OF ERROR	4%		4%		4%	

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

TABLE 10 – TYPE OF PENALTY, FOR DRUG TRAFFICKING, ACCORDING TO THE CONVICTED'S GENDER

TYPE OF PENALTY	ALL CASES %	CASES	MALE %	CASES	FEMALE %	CASES
PRISON AND FINE	54,69%	35	56,14%	32	42,86%	3
COMMUNITY SERVICE AND FINE	45,31%	29	43,86%	25	57,14%	4
FINE ONLY	0,00%	0	0,00%	0	0,00%	0
TOTAL	100,00%	64	100%	57	100%	7
CONFIDENCE LEVEL	99%		99%		99%	
MARGIN OF ERROR	3%		3%		3%	

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

ANNEX III – TYPE AND AMOUNT OF DRUGS SEIZED, PER ARREST

TABLE 11 – TYPE OF DRUG SEIZED, PER ARREST

TYPE OF DRUG	PERCENTAGE	CASES
CRACK COCAINE	31,25%	60
MARIJUANA	20,83%	40
POWDER COCAINE	16,15%	31
CRACK COCAINE + MARIJUANA	7,81%	15
CRACK COCAINE + POWDER COCAINE	9,38%	18
MARIJUANA + POWDER COCAINE	5,21%	10
CRACK COCAINE + POWDER COCAINE + MARIJUANA	7,29%	14
OTHER	2,08%	4
TOTAL	100,00%	192

TABLE 12 – AMOUNT OF DRUG SEIZED, IN SINGLE-DRUG SEIZURES, PER ARREST

AMOUNT OF DRUG	% CRACK COCAINE	CRACK COCAINE	% MARIJUANA	MARIJUANA	% POWDER COCAINE	POWDER COCAINE
less than 0,5oz	65,00%	39	7,50%	3	54,84%	17
0,5oz to 1oz	6,67%	4	22,50%	9	22,58%	7
1oz to 2 oz	16,67%	10	15,00%	6	0,00%	0
more than 2 oz	10,00%	6	50,00%	20	6,45%	2
NOT MEASURED	1,67%	1	5,00%	2	12,90%	4
TOTAL	100,00%	60	100,00%	40	100,00%	31

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

TABLE 13 – VERDICT, ON CONCLUDED PROSECUTIONS, ACCORDING TO THE VARIETY OF DRUGS SEIZED PER ARREST

VERDICT, ON CONCLUDED CASES	ALL CASES %	CASES	ONE TYPE OF DRUG %	CASES	MORE THAN ONE TYPE OF DRUG %	CASES
GUILTY AS CHARGED	54,24%	64	54,17%	39	52,63%	20
DISMISSED AS DRUG USER	20,34%	24	23,61%	17	10,53%	4
NOT GUILTY	18,64%	22	19,44%	14	21,05%	8
EXEMPT FROM PUNISHMENT	4,24%	5	2,78%	2	7,89%	3
TRANSFERED TO OTHER JURISDICTION	2,54%	3	0,00%	0	7,89%	3
TOTAL	100,00%	118	100,00%	72	100,00%	38
NOT INFORMED	*	0	*	4	*	4
CONFIDENCE LEVEL	99%		95%		95%	
MARGIN OF ERROR	4%		5%		5%	

QUARTERLY REPORT ON DRUG-RELATED CRIMES #01 (2014)

TABLE 14 – VERDICT, ON CONCLUDED CASES, IN SINGLE-DRUG SEIZURES, ACCORDING TO THE TYPE OF DRUG.

VERDICT, ON CONCLUDED CASES	CRACK COCAINE %	CASES	MARIJUANA %	CASES	POWDER COCAINE %	CASES
GUILTY AS CHARGED	54,29%	19	50,00%	12	61,54%	8
DISMISSED AS DRUG USER	22,86%	8	20,83%	5	30,77%	4
NOT GUILTY	20,00%	7	29,17%	7	0,00%	0
EXEMPT FROM PUNISHMENT	2,86%	1	0,00%	0	7,69%	1
TRANSFERED TO OTHER JURISDICTION	0,00%	0	0,00%	0	0,00%	0
TOTAL	100,00%	35	100,00%	24	100,00%	13
CONFIDENCE LEVEL	99%		95%		95%	
MARGIN OF ERROR	4%		5%		5%	

TABLE 15 – AVERAGE SENTENCE LENGTH, FOR DRUG TRAFFICKING, ACCORDING TO THE TYPE OF DRUG FOUND WITH THE CONVICTED

AVERAGE SENTENCE LENGTH, IN MONTHS	CRACK COCAINE	CASES	MARIJUANA	CASES	POWDER COCAINE	CASES
AVERAGE TIME (MONTHS)	63,82	19	38,25	12	37,00	8
CONFIDENCE LEVEL	99%		95%		95%	
MARGIN OF ERROR	4%		5%		5%	