

Sentencing snapshot: Illicit drug offences involving amphetamines, 2009-2010

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Aim: To describe the penalties imposed on adult offenders convicted of illicit drug offences involving amphetamines.

Summary: In 2009-2010, 2,397 offenders were convicted of illicit drug offences involving amphetamines. The majority (70.9%) were convicted of using or possessing amphetamines, while approximately a quarter were convicted of dealing or trafficking amphetamines. The most common penalty imposed on an offender convicted of using or possessing amphetamine was a fine. For higher level supply offences, including importing, manufacturing or dealing amphetamine, the vast majority of convicted offenders received a custodial sentence. For those convicted of deal/traffic and use/possess offences, the likelihood of being imprisoned increased with the number of prior convictions and for those who had prior drug convictions that resulted in a custodial sentence. Among those imprisoned, the average aggregate sentence for manufacturing amphetamine was 59.7 months, with an average minimum term of 37.6 months. The average aggregate sentence for dealing or trafficking amphetamines was 39.8 months, with an average minimum term of 22.7 months. In contrast, the average aggregate sentence for using or possessing amphetamines was 7.6 months, with an average minimum term of 5.2 months.

Keywords: illicit drugs, amphetamines, penalty, prison, sentence length

Introduction

This Bureau Brief describes sentencing outcomes for adult offenders convicted of illicit drug offences involving amphetamines between 2009 and 2010 in the NSW Criminal Courts.¹ Under the *Drug Misuse and Trafficking Act 1985*, the maximum penalty for illicit drug offences varies from 2 years for using or possessing amphetamines to life imprisonment for offences involving large commercial quantities. For dealing and trafficking offences, penalties vary according to the quantity of amphetamines involved, with a maximum penalty of 15 years for a non-commercial quantity, and life imprisonment for a large commercial quantity. Maximum penalties for offences involving manufacturing amphetamines also vary according to the quantity involved and special provision is made when the offences are committed in the presence of children. Offences involving importing or exporting prohibited drugs are dealt with under the *Commonwealth Criminal Code Act 1995*, where the maximum penalty for importing or exporting a commercial quantity of amphetamines is life imprisonment. For the

current brief, offences have been categorised according to the Australian and New Zealand Standard Offence Classification (ANZSOC: Australian Bureau of Statistics, 2011) for illicit drug offences. The categories include: import/export; deal/traffic; manufacture/cultivate; use/possess; and other.

Age, gender and prior record of offenders

Over the years 2009 and 2010, 2,397 adult offenders, 1,897 males and 498 females, were convicted of illicit drug offences involving amphetamines.² Table 1 shows the distribution of adult offenders convicted of amphetamine offences by gender and age at the time of the offence.

As shown in Table 1, nearly three quarters of offenders (70.9%) were convicted of using or possessing amphetamines, while one quarter were convicted of dealing or trafficking amphetamines. Less than five per cent of all offenders convicted of illicit drug offences involving amphetamines were convicted of import/export offences (1.1%), manufacture/cultivate offences (1.8%) or other offences illicit drug offences (0.8%).

Table 1. Adult offenders convicted of an illicit drug offence involving amphetamines in 2009 and 2010: Offenders' gender and age by offence type

| | Import/Export | | Deal/Traffic | | Manufacture/ Cultivate | | Use/Possess | | Other | | Total | |
|-------------------|---------------|------------|--------------|-------------|---------------------------|------------|--------------|-------------|-----------|------------|--------------|--------------|
| | n | % | n | % | n | % | n | % | n | % | n | % |
| Age group | | | | | | | | | | | | |
| 18-24 years | 4 | 15.4 | 118 | 19.4 | 4 | 9.1 | 462 | 27.2 | 1 | 5.6 | 589 | 24.6 |
| 25-29 years | 4 | 15.4 | 128 | 21.0 | 5 | 11.4 | 327 | 19.2 | 6 | 33.3 | 470 | 19.6 |
| 30-39 years | 9 | 34.6 | 197 | 32.3 | 13 | 29.5 | 563 | 33.1 | 5 | 27.8 | 787 | 32.8 |
| 40 years and over | 9 | 34.6 | 166 | 27.3 | 22 | 50.0 | 348 | 20.5 | 6 | 33.3 | 551 | 23.0 |
| Gender | | | | | | | | | | | | |
| Female | 3 | 11.5 | 120 | 19.7 | 5 | 11.4 | 362 | 21.3 | 8 | 44.4 | 498 | 20.8 |
| Male | 23 | 88.5 | 489 | 80.3 | 39 | 88.6 | 1,336 | 78.6 | 10 | 55.6 | 1,897 | 79.1 |
| Total | 26 | 1.1 | 609 | 25.4 | 44 | 1.8 | 1,698 | 70.9 | 18 | 0.8 | 2,395 | 100.0 |

Note. Data is missing on gender for two offenders.

The majority (55.8%) of offenders convicted of amphetamine offences were aged over 30 years at the time of conviction. The average age across all offence types was 32.5 years. There was some evidence that those convicted of use/possess amphetamines were younger (31.7 years) compared to those convicted of other illicit drug offences, particularly those convicted of manufacturing or cultivating amphetamines (40.6 years).

Table 2 shows the number of prior convictions over the last five years for offenders convicted of drug offences involving amphetamines broken down by offence category.

As presented in Table 2, overall 42.7 per cent of offenders convicted of an illicit drug offence involving amphetamines had no prior convictions recorded in the five years prior to their offence. Approximately 20 per cent had one, or two to three prior convictions, while 15.2 per cent had four or more prior convictions in the five years prior to their current offence. The average number of prior convictions in the last five years was 1.6. Those convicted of dealing/trafficking amphetamines tended to have slightly more prior convictions (average

of 1.9) than those convicted of other offences involving amphetamines.

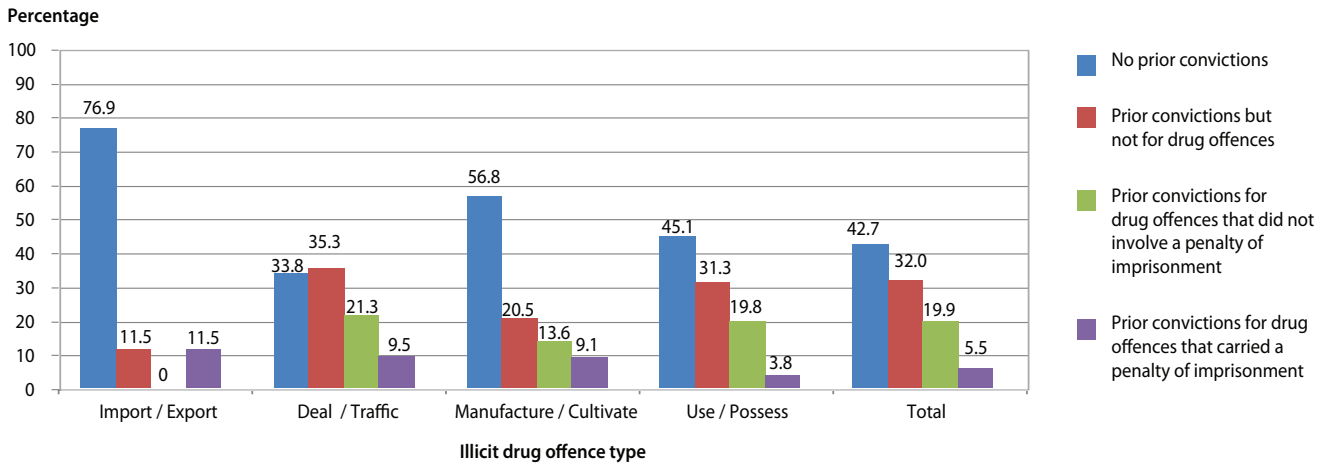
Figure 1 shows the proportions of offenders convicted of illicit drug offences involving amphetamines who had (a) no prior convictions; (b) prior convictions but not for drug offences; (c) prior convictions for drug offences that did not involve a penalty of imprisonment; and (d) prior convictions for drug offences that carried a penalty of imprisonment. Due to small numbers, other illicit drug offences are not included separately in the figure, but are included in the total.

Results displayed in Figure 1 show that, overall most drug offenders (57.3%) had prior convictions. While most of those with prior convictions had not been previously convicted of a drug offence, approximately a quarter of all amphetamine offenders had a prior drug conviction, of whom 5.5 per cent had previously been imprisoned for that offence. Those convicted of deal/traffic amphetamine offences were most likely to have prior convictions for drug offences, while those convicted of import/export amphetamine offences were most likely to have had a prior drug conviction that resulted in imprisonment.

Table 2. Prior convictions for offenders convicted of illicit drug offences involving amphetamines.

| Offence Type | Number or Prior Convictions | | | | | | | | | |
|-------------------------------|-----------------------------|-------------|------------|-------------|------------|-------------|------------|-------------|--------------|--------------|
| | 0 | | 1 | | 2-3 | | 4+ | | Total | |
| | n | % | n | % | n | % | n | % | n | % |
| Import | 20 | 76.9 | 6 | 23.1 | 0 | 0.0 | 0 | 0.0 | 26 | 1.1 |
| Deal/traffic (commercial) | 55 | 38.7 | 25 | 17.6 | 38 | 26.8 | 24 | 16.9 | 142 | 5.9 |
| Deal/traffic (non-commercial) | 151 | 32.3 | 95 | 20.3 | 124 | 26.6 | 97 | 20.8 | 467 | 19.5 |
| Manufacture | 25 | 56.8 | 8 | 18.2 | 8 | 18.2 | 3 | 6.8 | 44 | 1.8 |
| Possess | 761 | 45.2 | 344 | 20.4 | 347 | 20.6 | 231 | 13.7 | 1,683 | 70.2 |
| Use | 6 | 35.3 | 3 | 17.6 | 3 | 17.6 | 5 | 29.4 | 17 | 0.7 |
| Other | 6 | 33.3 | 3 | 16.7 | 5 | 27.8 | 4 | 22.2 | 18 | 0.8 |
| Total | 1,024 | 42.7 | 484 | 20.2 | 525 | 21.9 | 364 | 15.2 | 2,397 | 100.0 |

Figure 1. Nature of prior convictions in the preceding five years for offenders convicted of illicit drug offences involving amphetamines



Sentence types

Table 3 shows the distribution of penalty types broken down by the type of illicit drug offence. Due to small numbers, other illicit drug offences are excluded from the table and are not included in total calculations.

Overall, the most common penalty imposed on offenders convicted of illicit drug offences involving amphetamines was a fine followed by imprisonment. However, there was a great deal of variation in the types of penalties imposed for different types of drug offences. For example, all of those convicted of import/export offences and the vast majority of those convicted of manufacture/cultivate offences (84.1%) involving amphetamines received a prison sentence. Most of those convicted of deal/traffic offences also received a prison sentence (54.7%), although nearly a quarter of this group (24.0%) received a suspended sentence. In contrast, the most common penalties for those convicted of use/possess amphetamines were non-custodial in nature, with the majority receiving a fine, followed by a bond without conviction.

In the following two figures, the proportion of offenders convicted for use/possess and deal/traffic amphetamines who were imprisoned is explored in relation to the number and nature of prior convictions. Data for offenders convicted of import/export and manufacture/cultivate amphetamines are not included in the figures, due both to small group numbers and the fact that the vast majority of these offenders were imprisoned irrespective of their prior convictions. Other illicit drug offences are also excluded due to small numbers.

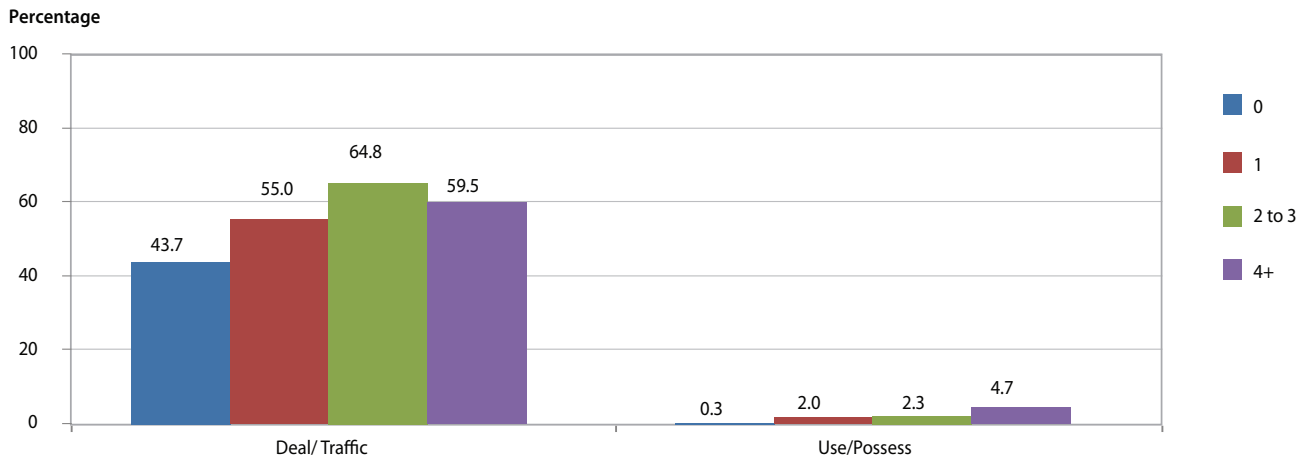
Figure 2 shows the percentage of offenders convicted of use/possess and deal/traffic offences involving amphetamines who were given a custodial penalty, broken down by the number of prior convictions in the last five years (e.g. 0, 1, 2 to 3, 4+).

Results displayed in Figure 2 show that the proportion of offenders convicted of use/possess and deal/traffic amphetamines who were imprisoned is positively associated with the number of prior convictions. For example, with respect to deal/traffic offences 43.7 per cent of those with no prior convictions were imprisoned compared with over 60 per cent of those with at least two prior convictions. With respect

Table 3. Principal penalty imposed on offenders convicted of illicit drug offences involving amphetamines

| Penalty | Import/Export | | Deal/Traffic | | Manufacture/ Cultivate | | Use/Possess | | Total | |
|---|---------------|--------------|--------------|--------------|---------------------------|--------------|--------------|--------------|--------------|--------------|
| | n | % | n | % | n | % | n | % | n | % |
| Imprisonment | 26 | 100.0 | 333 | 54.7 | 37 | 84.1 | 28 | 1.6 | 424 | 17.8 |
| Home/Periodic detention & Intensive correction orders | – | – | 29 | 4.8 | – | – | 2 | 0.1 | 31 | 1.3 |
| Suspended sentence | – | – | 146 | 24.0 | 5 | 11.4 | 19 | 1.1 | 170 | 7.1 |
| Community service order | – | – | 22 | 3.6 | 1 | 2.3 | 11 | 0.6 | 34 | 1.4 |
| Bond | – | – | 63 | 10.3 | 1 | 2.3 | 221 | 13.0 | 285 | 12.0 |
| Fine | – | – | 11 | 1.8 | – | – | 978 | 57.5 | 989 | 41.6 |
| Nominal sentence | – | – | – | – | – | – | 43 | 2.5 | 43 | 1.8 |
| Bond without conviction | – | – | 4 | 0.7 | – | – | 255 | 15.0 | 259 | 10.9 |
| No conviction recorded | – | – | 1 | 0.2 | – | – | 143 | 8.4 | 144 | 6.1 |
| Total | 26 | 100.0 | 609 | 100.0 | 44 | 100.0 | 1,700 | 100.0 | 2,379 | 100.0 |

Figure 2. Percentage of offenders convicted of illicit drug offences involving amphetamines who were imprisoned, by number of prior convictions



to those convicted of use/possess amphetamines, although only a small proportion (1.6%) received a custodial sentence, the likelihood of imprisonment is clearly higher for those with more prior convictions.

Figure 3 shows the percentage of convicted offenders imprisoned for use/possess and deal/traffic amphetamines according to whether they had (a) no prior convictions; (b) prior convictions but not for drug offences; (c) prior convictions for drug offences that did not involve a penalty of imprisonment; and (d) prior convictions for drug offences that carried a penalty of imprisonment.

Results displayed in Figure 3 show that those who have prior convictions are much more likely to be imprisoned for both deal/traffic or use/possess amphetamines. Although, a much higher proportion of those convicted of deal/traffic offences are imprisoned overall compared to those convicted of use/possess offences, it appears that the nature of prior convictions exerts a similar influence on the likelihood of imprisonment for both offence types. In particular, those previously imprisoned

for an illicit drug offence were at a markedly elevated risk of being imprisoned compared to those with no prior convictions.

Sentence length

Table 4 shows the minimum, maximum, median and average sentence lengths for offenders convicted of illicit drug offences involving amphetamines. The upper portion of the table shows descriptive statistics for aggregate prison terms (i.e., the longest period an offender can spend in custody), while the lower portion of the table presents the minimum prison term (i.e., the shortest period an offender can spend in custody).

Data presented in Table 4 shows that the average sentence length is highest for those convicted of higher level supply offences involving amphetamines, with those convicted of import/export offences receiving an average sentence of approximately eight years (99.1 months) while those convicted of manufacture/cultivate offences received an average sentence of nearly five years (59.7 months) in length. The average aggregate sentence for deal/traffic offences was over

Figure 3. Percentage of offenders convicted of illicit drug offences involving amphetamines who were imprisoned, by number of prior convictions

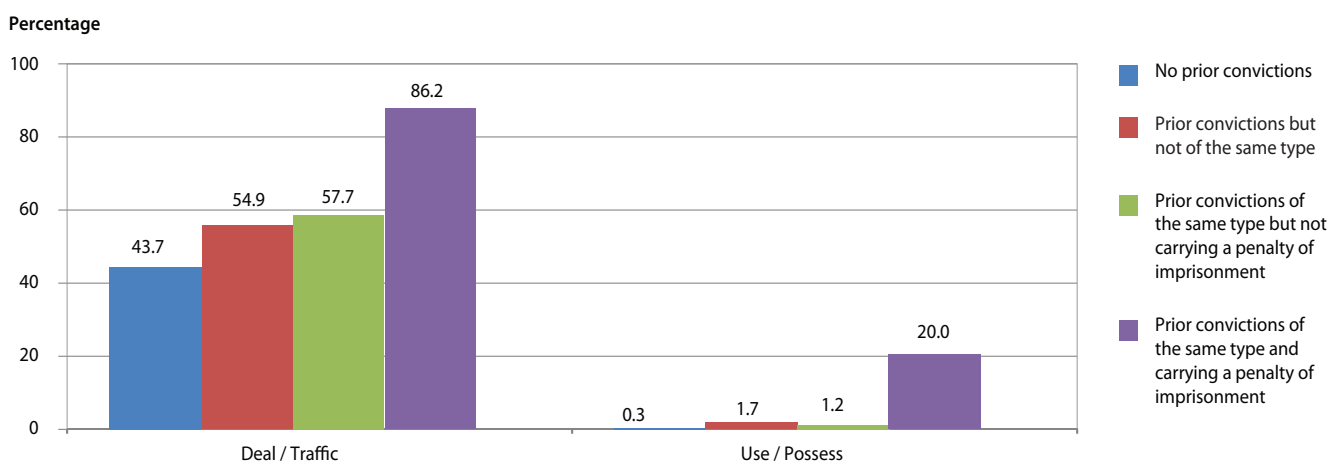


Table 4. Descriptive statistics on prison sentences for offenders convicted of illicit drug offences involving amphetamines

| | | n | mean | median | min | max |
|------------------------------------|-----------------------|----------|-------------|---------------|------------|-------------------|
| Aggregate sentence (months) | Import/Export | 26 | 99.1 | 96.0 | 12.00 | 216.0 |
| | Deal/Traffic | 333 | 39.8 | 31.5 | 0.50 | 192.0 |
| | Manufacture/Cultivate | 37 | 59.7 | 43.2 | 3.00 | 222.0 |
| | Use/Possess | 28 | 7.6 | 3.0 | 0.03 | 39.0 ^a |
| | Other | 3 | 10.7 | 12.0 | 8.00 | 12.0 |
| | Total | | 427 | 42.8 | 32.0 | 0.03 |
| Minimum term (months) | Import/Export | 26 | 59.8 | 59.0 | 9.00 | 144.0 |
| | Deal/Traffic | 333 | 22.7 | 16.0 | 0.50 | 108.0 |
| | Manufacture/Cultivate | 37 | 37.6 | 24.0 | 3.00 | 144.0 |
| | Use/Possess | 28 | 5.2 | 3.0 | 0.03 | 25.0 |
| | Other | 3 | 7.0 | 9.0 | 3.00 | 9.0 |
| | Total | | 427 | 25.0 | 16.2 | 0.03 |

^a This maximum term relates to possession of a prohibited drug precursor which carries a maximum penalty of 10 years.

three years (39.8 months). The shortest average prison length was observed for use/possess offences (7.6 months), which is consistent with the earlier presented findings showing that only a very small proportion of those convicted of use/possess amphetamines are imprisoned. Aggregate sentences ranged from less than a month to over 18 years.

The average minimum term was nearly five years (59.8 months) for import/export amphetamine offences, over three years (37.6 months) for manufacture/cultivate, nearly two years (22.7 months) for deal/traffic offences and less than a year for both use/possess offences (5.2 months) and other illicit drug offences (7 months). Minimum sentences ranged from less than a month to 12 years.

Note that although the minimum terms recorded under the column 'min' may appear very short, these terms are unlikely to reflect the actual minimum time spent in custody, as offenders are often incarcerated whilst awaiting trial and this time is taken into account when the sentence is set.

Conclusion

The average age of offenders convicted in NSW courts in 2009-2010 of illicit drug offences involving amphetamines was 32.5 years. The vast majority of these offenders were male (79.1%). Just less than half (42.7%) of those convicted had no prior convictions, while approximately a further third of the sample (32.0%) had no prior convictions for illicit drug offences. The most common penalty imposed across all drug offence types was a fine, followed by imprisonment, although the likelihood of imprisonment varied markedly across different types of amphetamine offences. For example, the vast majority of those convicted of more serious amphetamine supply offences (import/export; manufacture/cultivate; deal/traffic) received

a sentence of imprisonment, whereas less than two per cent of those convicted of use/possess amphetamines received a prison sentence. For those convicted of use/possess or deal/traffic amphetamines, the likelihood of imprisonment increased with the number of prior convictions and for those who had prior drug convictions which resulted in a term of imprisonment. Among those who received a prison sentence, the average aggregate term across all drug offence types was three and a half years (42.8 months) and the average minimum term was just over two years (25.0 months). However, there was a great deal of variation in sentence lengths across different offence types, with an average aggregate sentence for import/export amphetamine offences of eight years, compared to nearly eight months for use/possess amphetamine offences.

Acknowledgements

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Notes

1. This data comprises conviction episodes and therefore may include multiple records for individuals convicted of amphetamine offences on more than one occasion in the study timeframe.
2. Gender was unknown for two offenders in the sample.