

RESEARCH NOTE

Public Possession of Legal Marijuana

Loren T. Atherley and Mark Baird

In 2012, Washington and Colorado embarked on an unprecedented social experiment to legalize possession of personal use quantities of marijuana. Though possession of small quantities is legal, public possession and use of marijuana is still viewed as a public nuisance. Seattle and Denver established municipal codes making the public possession of marijuana a civil infraction. This dataset, a direct result of that enforcement effort, is evolving as a result of efforts by the Seattle City Council to better understand the implications of such public policy. Early observations suggest a correlation between this low level civil infraction and people of disadvantaged socioeconomic means. While it is premature to draw any specific conclusions, the development of this dataset could lead to a rich source of data for social justice policy analysis.

Drug enforcement has been the focus of the disparate impact discussion for many years. Criminal justice scholarship has examined the social justice implications and posed strategies to combat bias at a more detailed level; however, the answer to the broader problem lies in public policy. Attitudes toward drug enforcement are evolving. As society develops an awareness of the social cost of enforcement versus the relative risk of harm to the public interest, we witness many things becoming prominent components of the social discourse: Sentencing guidelines, alternatives to incarceration, and even, the nature of drug regulation.

Physics teaches us, for every action, there is a reaction. Unlike the hard sciences, the calculus of social science cannot often rely on those relationships as “equal and opposite.” When the voters of Washington State approved Initiative 502 (I-502), the public concern shifted from public safety to public disorder. In response, the City of Seattle amended the Seattle Municipal Code to reflect the prohibition against public possession or consumption in the Revised Code of Washington (RCW 69.50.4013) and in so doing opened a new avenue to disparate impact. Mindful of the potential for harm, the Seattle City Council ordered a standing social justice analysis to be conducted semiannually for the first two years the measure is in effect. This research note, representing the first cut of that data, is an exploration of the potential utility of the dataset and presents descriptive statistics of the first six (6) months of data.

Background

For many years, western states have been on a pathway to legalization. In 1998, Washington voters approved Initiative 692 (I-692) decriminalizing possession of marijuana for medical use. Since that time, there has been a progressive, voter led movement to decriminalize, and eventually legalize, the production, processing, distribution, and possession of marijuana.

In 2003, the voters of Seattle passed Initiative 75 (I-75) which established “for adult personal use Seattle’s lowest law enforcement priority” and created “an 11-member panel to review... marijuana policy.” Supported by “highly respected local organizations” such as the League of Women Voters of Seattle, the King County Bar Association, and the American Civil Liberties Union of Washington, I-75 was promoted as common-sense legislation which would “strengthen public safety” and continue “the right message to kids: Marijuana is not for you.” (Kohl-Welles & Kline, 2003).

In November 2012, Washington State voters also passed I-502 providing for licensing and regulation of marijuana, as well as possession of up to one ounce of marijuana, 16 ounces in solid form and 72 ounces in liquid form (Washington State Liquor Control Board, 2014). In addition to establishing a regulated market, I-502 levies a 25% excise tax. The so-called “dedicated marijuana fund” is explicitly earmarked for healthcare, drug abuse treatment and education, and marijuana related research at the University of Washington. One State estimate suggests revenue could exceed \$606 million by 2017 (Martin, 2012). Implied in this fiscal provision is a clear concern for public health and social justice.

Decriminalization of marijuana is more than a recreational movement. Drug enforcement and disparate impact have been a topic of scholarship since the early 1990s (Blumstein, 1993; Tonry, 1995; Duster, 1997; Stuntz, 1998). Seattle has long been on the forefront of this discussion. Researchers such as Klement, Siggins, & Sparrow (2001), Beckett, Nyrop, Pflingst, & Bowen (2005), Banta-Green et al. (2005), Beckett, Nyrop, & Pflingst (2006), and Smith & Engel (2008) have examined drug use, drug enforcement and disparate impact in and around the Seattle and King County area. Although there is robust discussion of the origins of the disparity, a disparity would appear to exist nonetheless.

Some evidence suggests that marijuana is the most frequently used substance, second only to alcohol. Much of the work on social justice and drug enforcement centers on the effects of crack cocaine and opiates, referred to as “hard drugs.” Common among many primary users of hard drugs is secondary use of marijuana. In a 2005 report by the Office of National Drug Control Policy (ONDCP), 37.2% of all adult males arrested in the City of Seattle tested positive for marijuana. 52.6% of those arrested reported use of marijuana within the preceding year and indicated they used the drug an average of 9.2 days per month. Between 2002 and 2004, high school seniors reported lifetime use of marijuana (52.5% and 54.4% respectively) second only to alcohol (70.7% and 74.5% respectively) (ONDCP, 2005).

A valid social justice analysis is dependent on solid benchmark data. In 2004, the Journal of the American Medical Association (JAMA) published a comparison of “marijuana usage disorders” from two national epidemiological surveys (Compton, Grant, Colliver, Glantz, & Stinson, 2004). In what has developed into a divisive example of the role of benchmarking, a 2005 study made use of benchmark data specific to Seattle and found a statistically significant difference between rates of disorder (based on a survey of those engaged in treatment) and arrest rates when comparing ethnicity or race (Beckett, Nyrop, Pflingst, & Bowen, 2005). In a reexamination, Smith and Engel (2008) cite the need to benchmark the population “at risk for law enforcement detention” when conducting a disparate impact analysis.

From a public policy standpoint, an analysis of outcomes may prove relevant to the discussion. Agreement with and a clear understanding of the units of measurement and analysis defines the social justice analysis. Outcomes have been used to assess the impact of certain police policies and tactics, such as Stop-and-Frisk (Gelman, Fagan, & Kiss, 2007). With stops as a basic unit of measurement, outcomes may reveal either implicit or explicit bias in the decision making of the officer. For an analysis of the social justice implications of a broader public policy initiative, an amalgam of methodologies may be appropriate (Ridgeway, 2007).

There is little evidence to support a strong public safety argument against decriminalization. Between 2000 and the first half of 2004, the King County Medical Examiner’s Office reported 869 deaths as “drug-caused.” Marijuana was not reported as the “Drug Identified” as in any of those cases. Crime control advocates often cite the violence associated with production and distribution of illegal drugs as

reason for a continued crime control stance on the issue; however, under I-502 those components of the underground market remain criminal and subject to enforcement.

In light of the potential social implications and weakening support for a public safety argument against, decriminalization appears to be the socially just alternative. That having been established, the public nuisance associated with the public possession and consumption of regulated substances such as alcohol, tobacco and now marijuana remains a concern. I-502 legalized possession of small amounts of marijuana for recreational use but did not provide for legal consumption in public. Thus, a revision to the Seattle Municipal Code (SMC) and the associated civil infractions issued since January 1, 2014 have afforded criminal justice scholars a new paradigm through which to view the social justice implications of public policy.

On December 16th 2013, the Seattle City Council passed Ordinance 124393, “relating to consuming marijuana in public; amending Chapter 12A.20 of the Seattle Municipal Code to conform with the State.” The amendment made “the infraction of opening or consuming a marijuana product in public a class 3 civil infraction, comparable to open consumption of alcohol in a public place, subject to a monetary penalty of up to \$50, plus statutory assessments currently set at 105% of the penalty;” Also contained in the ordinance was a requirement for the Seattle Police Department to:

“monitor the enforcement of this ordinance for at least two years. Monitoring shall include, but not necessarily be limited to, a periodic review and analysis of the age, race and sex of those cited for violations of this ordinance, the stops leading to the violations, and, to the extent feasible, the reasons officers give for the stops leading to the citations.” (Section 2)

Beginning January 1, 2014, the Seattle Police Department began tracking citations issued under the amended SMC 12A.20.100.

The Current Contribution

After six months of being enacted, researchers compiled a dataset from Seattle Police Department citation data. Individual variables from these infractions were pulled from the original citations. The dataset is comprised of demographic and geolocated data. In addition to the subjects’ age, sex, race, and identifying physical characteristics, researchers geocoded the addresses of both the location where the citation was issued and the legal residence of the subject receiving the citation. In addition to basic data contained in the paper citations themselves, the dataset contains calculated fields to capture the age of the subject at the time the citation was issued and identified indices of economic crisis¹.

Of potential interest to the question, researchers used an internet address search to identify where the subject of a citation may reside, receive services or mail, at an address associated with a social service agency or emergency service agency (e.g. a homeless shelter). Additionally, making use of real estate aggregation services (e.g. Redfin and Trulia), where an address appears, upon visual inspection of an

¹ For the purposes of this document, “economic crisis” is defined as indicators of unstable or insecure housing or receipt of social or mental health services. These indices are coded based on an address association, keyed to the subjects’ legal address as it appears on a government issued identification card, drawn from public sources.

historical listing, to be a “Private Residence,” that data is coded as well. With six (6) months of data, the resulting data file contains 33 variables spread across 82 records.

Between January 1 and June 30, 2014, officers from the Seattle Police Department (SPD) wrote 82 tickets, primarily, in the West Precinct area². All of those tickets were written for possession of marijuana or marijuana products in public and primarily occurred in the public parks and public streets. While the majority of citations (31.7%) were issued in Victor Steinbrueck Park (A), cumulatively, the area in and around Westlake Park and in close proximity to the 3rd Ave transit corridor (B) represents the largest concentration of enforcement activity with 43.9% of all citations being written in this area (see Figure 1).

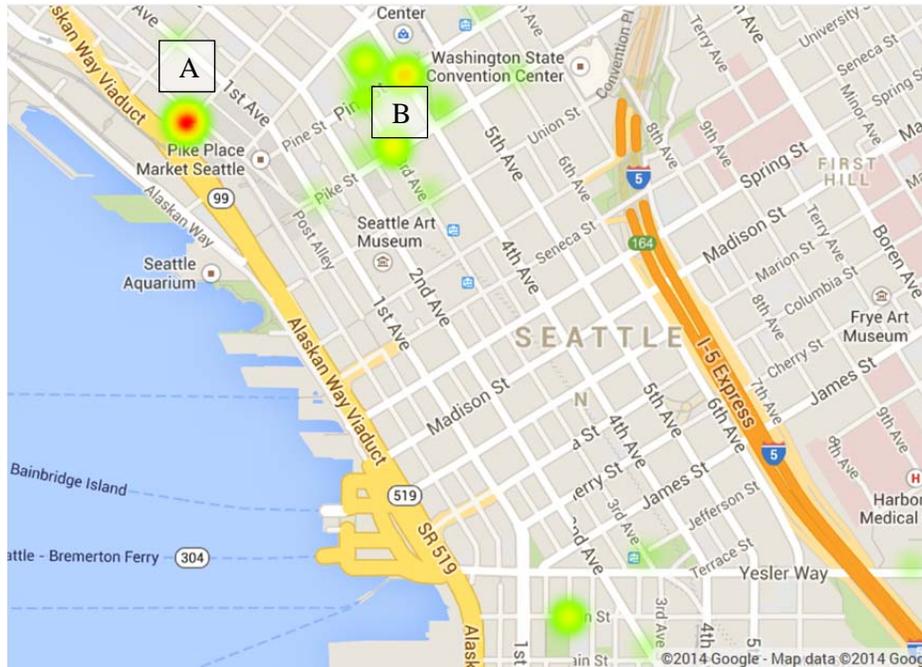


Figure 1

Legal addresses of those cited indicate subjects travel from as far away as Everett, Washington³ (to the north) and Graham, Washington but are generally contained within close proximity to the Interstate 5 corridor. The highest density of subjects can be found in the Seattle area and contained, primarily in the “downtown core.”

² For the purposes of law enforcement management, the Seattle Police Department divides the city into five (5) precinct areas. The West Precinct covers the downtown core area. In addition to a number of public buildings, transit infrastructure and a significant number of State of Washington, local and non-profit social service agencies. Additionally, a large number of popular public parks are in the West Precinct.

³ Two (2) subjects reported legal addresses originating outside the Puget Sound area.

The 82 citations were issued to 81 subjects – with one individual being ticketed twice for this infraction. Of 81 subjects cited during the first six (6) months since the code was enacted, 54% listed a private residence as an address. Cumulatively, 46% of those cited listed legal addresses (from a government issued ID) associated with homeless services, transitional housing, post offices (General Delivery), mental health services or motels (see Table 1).

Subjects Legal Address - By Type

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Private / Residential	44	53.7	53.7	53.7
	Homeless Shelter / Services	15	18.3	18.3	72.0
	Transitional Housing	15	18.3	18.3	90.2
	Low Income Housing	2	2.4	2.4	92.7
	Mental Health Services	2	2.4	2.4	95.1
	Post Office	2	2.4	2.4	97.6
	Motel	1	1.2	1.2	98.8
	Vacant Lot	1	1.2	1.2	100.0
	Total	82	100.0	100.0	

Table 1

RACE & SEX

The majority of those cited were White males (43.9%). The next most represented demographic, Black males made up (32.9%) of the population. The remaining subject demographics each represented less than ten percent, respectively (see Table 2).

Race * Sex Crosstabulation

			Sex		Total
			Female	Male	
Race	White	Count	5	36	41
		% of Total	6.1%	43.9%	50.0%
	Native American	Count	0	2	2
		% of Total	0.0%	2.4%	2.4%
	Missing	Count	0	3	3
		% of Total	0.0%	3.7%	3.7%
	Black	Count	3	27	30
		% of Total	3.7%	32.9%	36.6%
	Asian	Count	1	5	6
		% of Total	1.2%	6.1%	7.3%
Total		Count	9	73	82
		% of Total	11.0%	89.0%	100.0%

Table 2

AGE

The age of those cited ranged from 18 to 77 with an average age of 34.28. The average age of females (41.22) tended to be slightly higher than males, 33.42 (see Table 3).

Descriptive Statistics

Sex		N	Minimum	Maximum	Mean	Std. Deviation
Female	Age at Citation	9	19	67	41.22	18.151
	Valid N (listwise)	9				
Male	Age at Citation	73	18	77	33.42	12.441
	Valid N (listwise)	73				

Table 3

Thirty-five percent (35.4%) of those cited were in their 20's (21-29). More than two-thirds (70.8%) of those represented in the population were under the age of 40 (see table 4).

Race * AgeRange Crosstabulation

			AgeRange						Total	
			< 21	21-29	30-39	40-49	50-59	60-69		> 70
Race	White	Count	4	13	9	7	6	2	0	41
		% of Total	4.9%	15.9%	11.0%	8.5%	7.3%	2.4%	0.0%	50.0%
	Native American	Count	0	0	1	0	1	0	0	2
		% of Total	0.0%	0.0%	1.2%	0.0%	1.2%	0.0%	0.0%	2.4%
	Missing	Count	0	1	0	0	1	0	1	3
		% of Total	0.0%	1.2%	0.0%	0.0%	1.2%	0.0%	1.2%	3.7%
	Black	Count	5	15	5	3	1	1	0	30
		% of Total	6.1%	18.3%	6.1%	3.7%	1.2%	1.2%	0.0%	36.6%
	Asian	Count	1	0	4	0	1	0	0	6
		% of Total	1.2%	0.0%	4.9%	0.0%	1.2%	0.0%	0.0%	7.3%
Total		Count	10	29	19	10	10	3	1	82
		% of Total	12.2%	35.4%	23.2%	12.2%	12.2%	3.7%	1.2%	100.0%

Table 4

The average age of white males, the largest demographic, was 35.31 years of age and black males, the second largest demographic, slightly younger, 29.07 years of age (see Table 5).

Descriptive Statistics

Sex	Race		N	Minimum	Maximum	Mean	Std. Deviation
Female	Asian	Age at Citation	1	53	53	53.00	.
		Valid N (listwise)	1				
	Black	Age at Citation	3	19	57	40.00	19.313
		Valid N (listwise)	3				
	White	Age at Citation	5	21	67	39.60	20.816
		Valid N (listwise)	5				
Male	Asian	Age at Citation	5	18	31	28.40	5.814
		Valid N (listwise)	5				
	Black	Age at Citation	27	20	62	29.07	9.409
		Valid N (listwise)	27				
	Missing	Age at Citation	3	22	77	51.00	27.622
		Valid N (listwise)	3				
	Native American	Age at Citation	2	32	57	44.50	17.678
		Valid N (listwise)	2				
	White	Age at Citation	36	19	62	35.31	11.870
		Valid N (listwise)	36				

Table 5

All citations, with the exception of one⁴, were written by bicycle units operating out of the West Precinct and were initiated as “on-view”⁵. Twenty unique officers are listed as first or second officers on citations for public possession. 70% (57) of citations were written by two officer units, the remaining 30% (25) were written by an officer operating as a single unit. There were 16 unique two-officer combinations issuing citations, the top four (4) of which accounted for 51% of all citations issued with the top combination writing one-quarter (25%) of all citations in the population. Seven (7) officers issued one officer citations, the top two of which accounted for 18% of all citations written⁶.

⁴ One citation was written by the “DUI Squad,” a specialty unit assigned to Driver Under the Influence (DUI) emphasis. Members of the DUI squad frequently are trained as Drug Recognition Experts (DRE).

⁵ “On-view” is the Computer Aided Dispatch (CAD) designation of origin indicating how the call was generated and is differentiated from “Dispatched” calls or calls generated from “calls for service” to the communications center. It represents a scenario where an officer views criminal or disruptive activity as it takes place rather than being purposely dispatched to a location as a result of a citizen viewing the activity and calling for a police response.

⁶ The remaining seven (7) officers accounted, individually, for less than 1%, each.

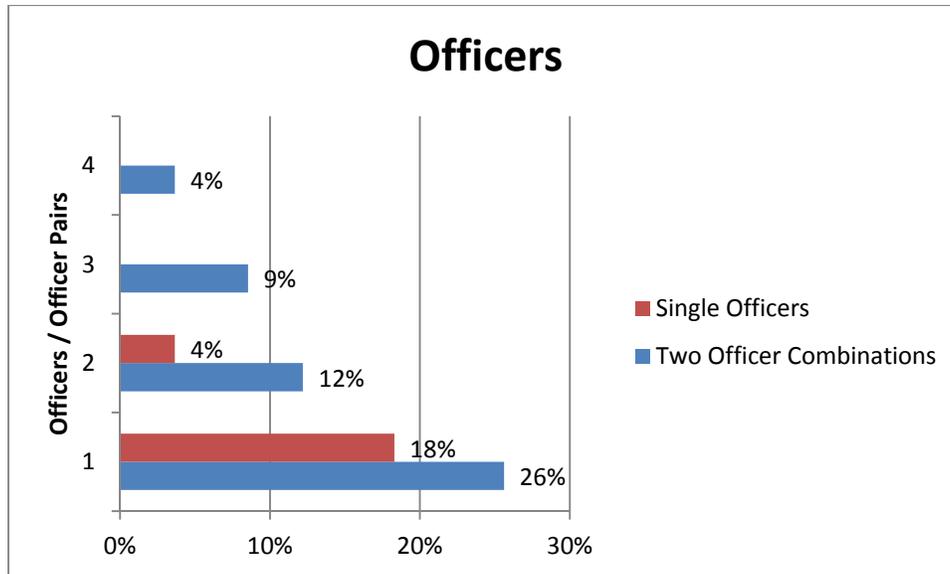


Figure 2

OTHER DATA

A secondary component of the City Council’s inquiry required a reporting of “the stops leading to the violations, and, to the extent feasible, the reasons officers give for the stops leading to the citations.” (Section 2). In all 82 cases, the stated purpose of the stop leading to the citation was the public display of marijuana. In terms of the disposition of these citations, records from the Municipal Court of Seattle indicated that of the 82 citations issued between the 1st of January and the 30th of June 2014, only 6% (5) have been paid. Fifty-three (65%) citations are currently in default and nineteen (23%) are pending.

Conclusion

Initially, at least, this dataset would seem to support the literature on social disorganization, differential association with public spaces and social disorder. That a person’s economic status would appear to be predictive of receiving a citation for public possession of marijuana has profound implications. Given that, it is likely this enforcement tool is substantially under-enforced and that it will be some time before this dataset is large enough to support the academic rigor necessary to make such assertion, any conclusions, at this stage, are largely anecdotal. However, if such stories continue throughout the evaluation of this project, analysis, like this, will serve to guide the standard in just and effective public policy.

As we write this, “Washington’s legal marijuana policy experiment” (Kollipara, 2014) continues. On July 7th 2014, the first stores began selling recreational marijuana in Seattle. While some themes are beginning to emerge, this dataset is limited. Seattle is one of only two cities where the sale of marijuana is legal but public procession and use is not. The civil infraction instrument, as an enforcement tool, is an experimental policy in an arena where changes in norms frequently outpace policy. This data will serve to inform that policy choice.

This dataset is limited. In its current state, for example, the first six (6) months does not account for seasonal variability or the adjustment period inherent in a new enforcement tool. Also, any potential

viability for social justice analysis would require development of an accurate risk population for comparison. Further development of the dataset and comparative populations is necessary to render any meaningful analysis.

Opportunities for future research are abundant. With next to nothing known, empirically, about legally available marijuana, for recreational use, this dataset may prove invaluable in its use with other sources in future analysis. The dataset introduced here serves as measure of social disorder - of the public nuisance of marijuana, as observed by law enforcement. Additionally, future discussions born of this analysis will serve to refine this concept of “recreational marijuana” and offer policy makers evidence-based solutions to complex social problems.

Seattle has been on the forefront of the drug policy movement for nearly 20 years. Datasets, such as this, support a rational assessment, weighing the risk of disparate impact against the potential for public harm. Over the next year and a half, this dataset will continue to evolve. This project represents a commitment to better understanding the effects of public policy on the disadvantaged and is both democratic and just.

References

- Washington State Liquor Control Board. (2014). Retrieved June 2, 2014, from FAQs on I-502: http://lcb.wa.gov/marijuana/faqs_i-502
- Ayres, I. (2002). Outcome Tests of Racial Disparities in Police Practices. *Yale University Law Review*.
- Banta-Green, C., Jackson, R. T., Hanrahan, M., Kingston, S., Albert, D. H., Freng, S., et al. (2005). *Recent Drug Abuse Trends in the Seattle-King County Area*. Seattle-King County: Epidemiologic Trends in Drug Abuse.
- Beckett, K., Nyrop, K., & Pflingst, L. (2006). Race, Drugs, and Policing: Understanding Disparities in Drug Delivery Arrests. *Criminology*.
- Beckett, K., Nyrop, K., Pflingst, L., & Bowen, M. (2005). Drug Use, Drug Possession Arrests, and the Question of Race: Lessons from Seattle. *Social Problems*, 419-441.
- Blumstein, A. (1993). Racial Disproportionality of U.S. Prison Populations Revisited. *University of Colorado Law Review*, 751-73.
- Compton, W. M., Grant, B. F., Colliver, J. D., Glantz, M. D., & Stinson, F. S. (2004). Prevalence of Marijuana Use Disorders in the United States. *Journal of the American Medical Association*.
- Duster, T. (1997). Pattern, Purpose and Race in the Drug War. In C. Reinerman, & H. G. Levine, *Crack in America: Demon* (pp. 260-287). Berkeley: University of California Press.
- Engel, R., Frank, J., Tillyer, R., & Klahm, C. (2006). *Cleveland Division of Police Traffic Stop Data Study: Final Report*. Cincinnati, OH: University of Cincinnati, Division of Criminal Justice.
- Gelman, A., Fagan, J., & Kiss, A. (2007). An analysis of the New York City police department's "stop-and-frisk." *Journal of the American Statistical Association*.
- Klement, T., Siggins, E., & Sparrow, M. (2001). *A Window of Opportunity: Addressing the Complexities of the Relationship Between Drug Enforcement and Racial Disparity in Seattle*. Cambridge, MA: John F. Kennedy School of Government, Harvard University.
- Kohl-Welles, J., & Kline, A. (2003, September 9). Yes to Initiative 75: Free up police, courts. *Seattle Post-Intelligencer*.
- Kollipara, P. (2014, July 9). Wonkbook: Washington's legal marijuana policy experiment. *The Washington Post*.
- Martin, J. (2012, March 21). State: Potential I-502 pot revenue double what supporters predict. *The Seattle Times*.
- McNerthney, C. (2009, December 1). State cuts to criminal supervision 'are a tragedy waiting to happen'. *Seattle PI*.

- ONDCP. (2005). *Seattle, Washington: Profile of Drug Indicators*. Rockville, MD: Drug Policy Information Clearinghouse.
- Ridgeway, G. (2007). *Analysis of Racial Disparities in the New York Police Department's Stop, Question, and Frisk Practices*. Santa Monica, CA: Rand.
- Smith, M. R., & Engel, R. S. (2008). *Race, Drugs and Policing in Seattle: A Reexamination of the Evidence*. Cincinnati, OH: University of Cincinnati Policing Institute.
- Smith, M. R., & Engel, R. S. (2008). *Race, Drugs and Policing in Seattle: A Reexamination of the Evidence*. Cincinnati, OH: Cincinnati Policing Institute.
- Spitzer, G. (2014, March 10). Washington's 'Swift and Certain' Parole Reforms Getting Results and Attention. *National Public Radio*.
- Stuntz, W. J. (1998). Essay: Race, Class, and Drugs. *The Columbia Law Review*.
- Tonry, M. (1995). *Malign Neglect: Race, Crime, and Punishment in America*. New York: Oxford University Press.