I. Research Background

Drug control has long been a global issue. Governments all over the world have tried every possible way to eliminate the crises and hazards brought about by drug abuse. In 1955, Taiwan's "Drug Control Act during the Period for Suppression of the Communist Rebellion", with a total of 44 articles, was enacted. Later in 1992, the Act was renamed as "Drug Control Act". In 1998, the Act was retitled again and became today's Narcotics Hazard Prevention Act in enforcement. It was the first introduction of the concept of drug classification into the Act, which was also the largest scale of amendment being made since 1955.

Meanwhile, the 5th session commissioners in the 2017 National Affairs Conference on Judicial Reform suggested that a review should be made to amend the regulation specifying that drug-abuse recidivists should be sentenced less than five years to an even shorter period. Moreover, an amendment should also be made to the length and times of observations and rehabilitation for drug abusers. Treatment of both rehabilitative measures and imposition of penalty were suggested to be applied to recidivists. In the conference, the commissioners also considered that some adjustments should be made on the stricter regulation specifying "one punishment for one crime" for drug abusers currently applicable. The commissioners advised that our government should offer more resources to help drug users get rid of drug addiction and successfully return to the society[1]. Additionally, the New-Generation Strategy to Combat Drug Abuse[2] promulgated by the Executive Yuan in 2017 gave a more substantial direction and plan for the government to tackle drug issues. On one hand, the work of drug control and prevention is implemented by the Narcotics Control Board of Executive Yuan at the national level. Related authorities will be assigned to

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[1] Please refer to: Office of the President, Report of National Affairs Conference on Judicial Reform, 74-75(2017), http://www.president.gov.tw/File/Doc/1754f2f0-c60d-4de1-a2e3-4c967610bcaa (last visited 07/15/2019).

[2] For full text, please go to: Anti-drug, Strategies and Prospects, New-Generation Strategy to Combat Drug Abuse (approved version), https://antidrug.moj.gov.tw/cp-7-5113-1.html (last visited 07/15/2019).

undertake projects and programs for drug control. On the other hand, the drug abuse prevention centers under city and county governments are in charge of drug control and integration of the resources held by the departments of public health, police, social affairs, education and labor affairs at the city/county level.

By referring to the conclusions reached in the 2017 National Affairs Conference on Judicial Reform and the 2017 New-Generation Strategy to Combat Drug Abuse, it is not difficult to realize that our government is determined to deal with drug issues. Much manpower and lots of materials, ranging from procurement of test equipment to discussions and talks across governmental authorities, have been input in drug control. However, have there been any observations made over current practice of the policies, laws and regulations? Have we had dialogues over the achievements of multimodal treatment and the draft bill to be introduced? In case the existing mechanism had already been on the right and smooth track and achieved effective outcomes, such observations could be considered as support to the existing policies. If the existing system did not run effectively, the observations could help provide some information, suggestions and feedback in order to more effectively achieve focused policies and amendments as well as better policy stipulation and planning in the future.

II. Literature Review

The academic literature exploring crimes of drug abuse published in Taiwan has been based on different disciplines including public administration, legal research, clinical psychology, crime research, information management, public health, pharmacy management, neuropsychiatry, etc. Apparently, the search results of the academic works on crimes of drug abuse may be diverse but various facets drilled by each discipline have led to discussions in silos. There is a lack of dialogues over theories. Hence, knowledge accumulation and evolution may not be substantial as there are more academic works being released. It will be a waste if we fail to apply these academic works with fruitful outcomes to policies. Based on the aforesaid reasons, this paper is designed to make observations from a “legal perspective on drug abuse”. In the past, literature in this regard mainly dealt with legal controversies such as discussions over the penalty for drug offenses, protective legal interest of related regulations, and debates over pros and cons of decriminalization of drug abuse. It is expected that the

observations made in this paper can help clarify certain legal issues over drug abuse.

A. Legal perspective of drug abuse: punishment or decriminalization as a priority?

Should a drug user be given a legal punishment? Before having further discussions over this question, one undisputed premise most scholars agree is that Criminal Code doesn't apply to self-harm. Based on such ground, is it legitimate to apply Criminal Code to Class 1 and 2 drug users who only harm their own bodies or impair their own legal interest of life rather than undermine other people's legal interest in terms of a consequential offense? Scholars have held various perspectives over this issue.

Professor Hsu Fu-Seng reflected that the regulations concerning Class 1 and 2 drug use in Criminal Code were established on the mechanism of "abstinence paradigm", accompanied with legal restraint and addiction treatment. These regulations helped suppress illegal behavior, create the effect of deterrence, enlighten the society with certain value orientation, and form people's behavior and positive attitude in life. Such mechanism serves for people to autonomously restrain each other through public opinion so as to achieve social stability and positive development. In general, Professor Hsu Fu-Seng thought that the abovementioned legal mechanism was able to achieve preventive purposes that Criminal Code is designed for[3].

As opposed to the above viewpoint of deterrence, Professor Wang Huang-Yu proposed a quite different thinking path[4]. First, Professor Wang believed that such suppression over the freedom of personal choice could not be simply interpreted as an extension from the power of criminal punishment. The essence of criminal punishment was to declare the abstinence paradigm and redirect the lifestyle of a drug abuser. The concept of abstinence paradigm was closely correlated with the operations of capitalist societies. This was because an individual's productivity and labor were related to the overall economic performance of a society and disciplined lifestyles were beneficial to smooth social operations followed by the formulation of

[3] Hsu Fu-Seng, A Study of Taiwan's Anti-drug Strategy, *the Military Law Journal. 63*(6), 23-24 (2017).

[4] Wang Huang-Yu, On the Criminalization of Drug Abuse, *National Taiwan University Law Journal. 33*(6), 22-31 (2004).

social collective consciousness. As a result, financial strength and personal achievements would become typical indicators that public opinion might easily focus on if a person expected to survive well in the society. Thus, the connotations of collective consciousness would be further solidified and become a dominating standpoint. The issues of criminal punishment for drug use were formed within such context. The above described viewpoint was strongly supported by public opinion and legitimate democratic procedures. On top of all, what we could not ignore was that such phenomenon was a reflection of the outcomes formed by discipline and even by self-discipline commonly demanded in the society.

It seems that there are paths we can track to see the formation of the mechanism of criminal punishment for drug use. Some viewpoints demonstrated that it's not appropriate to apply criminal punishment to deal with drug abuse[5]. Professor Liu Pang-Hsiu was convinced that it would be very difficult to completely eradicate drug abuse with the application of such mechanism. This was because the principle of last means of criminal punishment had not been fully taken into consideration. Since it was reasonable to deal with drug abuse by means of medical care, a sentence of criminal punishment to a drug user could be over strict and inconsistent with the principle of proportionality[6]. In addition, some theorists also agreed that a progressive treatment model could be adopted. Possible criminal punishment could be replaced by rehabilitation assisted with medical care. The legal structures upon which criminal punishment had been replaced by medical treatment in foreign countries might serve as a measure to be considered and adopted in Taiwan[7].

B. Discussion over legal interests stipulated in Article 10 of Narcotics Hazard Prevention Act

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[5] Ma Yueh-Chung, the Discussion on Criminal Sanction of Drug Crime, *the Military Law Journal, 60(2)*, 89 (2014).

[6] Liu Pang-Hsiu, a Rethinking of Drug Policy in Medical Treatment or Criminal Punishment, *the Law Month, 62(4),* 40-42 (2011).

[7] Shih I-Huei, the Difficulty and Future of the Against Narcotics Policies-From the Decriminalization Aspect of Drugs Abuse, *the Military Law Journal, 59(3),* 100-101 (2013).

The use of drug might cause negative effects on human body and mind. However, it was debatable in order to clarify if drug use featured blameworthiness in terms of Criminal Code under the condition that a doer was the "victim" and he or she caused no detriment to anyone else's interests. There were theories supporting "the principle of not imposing punishment to self-harm[8]." A Suicide or self-harm was defined as behavior that doers had full control over themselves without involving any interactions with other subjects of right. Therefore, it's not the type of behavior featuring criminal illegality. Moreover, penalties imposed on people committing a suicide or self-harm did not fulfill general prevention that Criminal Code was designed to aim at. Above all, people wouldn't give up committing a suicide or self-harm only because of fearing the imposition of severe criminal punishment. Without substantial elements of criminal illegality, Criminal Code could become an ethical law hard to be put into practice when self-harm was still deemed the behavior to be punished.

The above argument clarifies one thing. Within the existing framework of the Criminal Code, personal legal interests were to be ruled out of legal interests in case drug use, defined as self-harm, was considered criminally illegal. To put this in another way, personal legal interests concerning an individual's life and body were not protected by the Criminal Code. In the context of empirical research, it was essential to infer the rationality of the abovementioned legal perspective by identifying what type of legal interest the behavior of drug use fell into.

Professor Hsu Fu-Seng cited the interpretation filed No. 544 made by Constitutional Court, Judicial Yuan, and expressed that other crimes might arise from drug abuse and thus adversely affect social security and public interests[9]. In other words, it could be reasonably inferred on a basis of the interpretation made by the Constitutional Court that drug use characterized criminal illegality because it damaged a wider range of social legal interests instead of an individual's legal interests concerning life and body.

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[8] Wang Huang-Yu, On the Criminalization of Drug Abuse, *National Taiwan University Law Journal*, 33(6), 8-12 (2004).

[9] Hsu Fu-Seng, A Study of Taiwan's Anti-drug Strategy, *the Military Law Journal.* 63(6), 23 (2017).

However, Professor Wang Huang-Yu delivered his doubt over the opinion raised in the previous paragraph. He pointed out in his book[10] that criminal punishment was not applicable to drug users in terms of detriment to "public interest". There might be various reasons for drug abuse, including euphoria brought by drugs, escape from reality, the pursuit of excitement, etc. Not all of the reasons for drug use stood for impairing public interest. Therefore, the thought of so-called "detriment to public interest" didn't occur to drug users from the beginning.

C. Criminal policy featuring justice tempered with mercy? Impractical rehabilitation benefits

In conclusion, it's not hard to realize that scholars held different perspectives towards the application of Criminal Code to drug use. Both supporters and opponents had their own theories with careful and rigorous arguments. However, most debates either supporting criminal penalties or contending decriminalization for drug use mainly put an emphasis on dialectical analyses on philosophical speculation and theories of law. There was a lack of results from empirical observations serving as evidence for their arguments. This means, the existing academic works, only a very small quantity available so far, had been confined to the traditional model that probed the theories of law while exploring the effectiveness of the application of criminal penalties to drug use in Taiwan, and not stepping out of the scope of the discussions in terms of comparative law[11]. No established position held by those research teams was found regarding decriminalization. However, literature review made in this paper has verified that Taiwan hasn't had sufficient legal empirical studies to serve as the foundation for further arguments and debates in this regard. The strengths and weaknesses reflected from current legal mechanism could pave a solid and strong basis for arguments either supporting the existing legal system or decriminalization of drug use. It's a pity that the discussions in the academic field kept their focus on

[10] Wang Huang-Yu, On the Criminalization of Drug Abuse, *National Taiwan University Law Journal*, *33(6),* 21-22 (2004).

[11] Tang Shung-Ming, Study of Gradual Decriminalization as a Solution for Drug Control Issues, *Shih Hsin Law Review*, 11(2), 247-254 (2018).

establishing theories instead of providing first-hand empirical observations.

In accordance with Article 20 of Narcotics Hazard Prevention Act, Class 1 and Class 2 drug users would be ordered to undergo observation, rehabilitation or compulsory rehabilitation and wouldn't be facing criminal prosecutions unless they used drug again. Pursuant to Article 24, the order of a rehabilitation treatment as a deferred prosecution given by prosecutors would be withdrawn if a doer had any violation against a deferred prosecution. This made an extra option possible for prosecution. It might be argued that the design of "administrative measure coming before criminal punishment" was a solid evidence proving that Taiwan had a criminal policy featuring justice tempered with mercy over drug use. Nonetheless, the argument was accompanied with the same issue, that is, the inadequacy of first-hand empirical observations. Regardless of the appropriateness of the design of such legal mechanism, it's essential to further drill the following issues. Does such policy really help achieve the goal of the legislation after its being implemented? Is it possible to substantially verify the effectiveness of multimodal treatment for drug abuse in terms of the criminal law and drug control and prevention? These are the approaches awaiting a breakthrough in future studies.

D. Characteristics and theoretical development presented from existing literature

Literature review made in this study suggested that several facets were highlighted by the academic circle while conducting research on the judicial system or drug control policies. The first phenomenon mirrored from the existing academic works was the scarcity of legal theories and the standpoints being excluded from each other, which had hindered the advancement of drawing inferences at the judicial level. As mentioned earlier, self-harm was not protected by the Criminal Code so a breakthrough was expected to be made in terms of legal interest while developing a theory. Apparently, the so-called "public interest" or "social legal interest" had not been carefully defined so that excessive criminal punishment at an earlier stage could be imposed. Thus, such interests might not be adopted as an ideal perspective for giving explanations. Next, there was a lack of empirical observations to support related theories. It is found that no scholars have reasoned the existing judicial system by way of observing the legal system already in practice so far. In general, the results found from the literature

by our research team showed that only few authors were concerned about the legal issues of drug abuse and their works merely focused on the interpretation of laws without support by empirical observations. Consequently, no empirical data could be provided as feedback to the present legal system while empirical research could solve the puzzles upon making policy analyses.

III. Problem Awareness

The findings from literature review revealed that it's not common to have discussions over the legal system on drug abuse. Even though several outstanding academic works were found, they merely dealt with the interpretation of laws. The processes of induction and deduction rendered by these authors might be brilliant, but empirical observations were ruled out from the outset when it came to research methodology. Under such circumstance, it's difficult to go over all viewpoints and theories proposed by these scholars for comparisons and integration at the same time. Without having a consensus based on the existing practice of the legal system, the theories proposed by the scholars in silos have diminished the possibility of advancing related debates. On the other hand, there were also some academic works carried out with an empirical approach. However, the authors failed to well elaborate the general ideas proposed therein or even were off track of the fundamental logic that our criminal penalties were based on because of their lack of knowledge in legal theories. Hence, readers might explore the distribution of the issues in this type of works while they were unable to see close correlations between the statistical outcomes and empirical methodology therefrom.

Bearing the above reasons in mind, our research team aimed to carry out empirical observations over criminal treatment for drug abuse. However, before carrying this out, it was necessary for our team to clarify problem awareness in this study. By referring to limited academic works in Taiwan, either it's a writing focusing on the interpretation of laws or making an empirical analysis, the authors expected to discuss about *what can be done to reduce the risk in recidivism for Class 1 and Class 2 drug abusers*. Or we might question *if it is appropriate to impose criminal punishments on drug users*. However, it was highly risky for the research team to directly jump into the abovementioned discussions in this writing before obtaining a full picture of the

legal system concerning drug abuse in practice now. Therefore, it's more likely for us to step forward to the realm of discussing the said propositions if we were able to see the outcomes of the existing judicial practice. The strategies for making observations set up for this study are as follows:

A. Data mining of criminal policies and crime research database: characteristics of Class 1 drug users found in the correction system

The Crime Prevention Research Center of Academy for the Judiciary of Ministry of Justice (hereinafter referred to as CPR Center) served to provide rich and solid information for criminal policies and crime research in Taiwan. After consulting with the Department of Information Management and other related authorities subordinate to the Ministry of Justice, de-identified raw data in relation to drug-abuse cases was obtained. After data cleaning, encoding and interface design, the "Criminal Policies and Crime Research Database" was set up. This was the first large-scale project for establishing a database in the field of criminal law and crime research in Taiwan. This database is currently open and available to the full-time and part-time researchers at the CPR Center. It is also expected that the database will be gradually open to the scholars outside the CPR center and graduate students upon requests. With limited budget and time for the project carried out this year, the initial step was to establish the database containing partial information derived from the correction system. A total of 144,065 pieces of information from 2015 to 2017, a 3-year time period, have been established.

Our research team observed the abovementioned data and obtained the following results. As shown in Figure 1, by looking at the distribution of the "most serious offenses" committed by offenders later put into prison or correction centers, the number of the cases violating Narcotics Hazard Prevention Act was 61,853, or 42.9% of all cases established in this database. A total of 19,416 cases, or 13.5%, were put in prison or correction centers because of unsafe driving. The 3rd offense was larceny with a total of 4,141 cases or 2.9% of all cases. The above figures revealed that drug-related crimes actually accounted for nearly half of all cases in the database. However, we had to note and clarify that the above numbers stood for the "cases" rather than the "real numbers of inmates" while interpreting the data because there were repeat inmates among these cases. Thus, it's necessary to compute the number of repeat inmates in

order to obtain a precise result. Only after deducting the number of repeat inmates could we accurately get the right percentage of repeat inmates committing drug-related crimes during a certain time period.

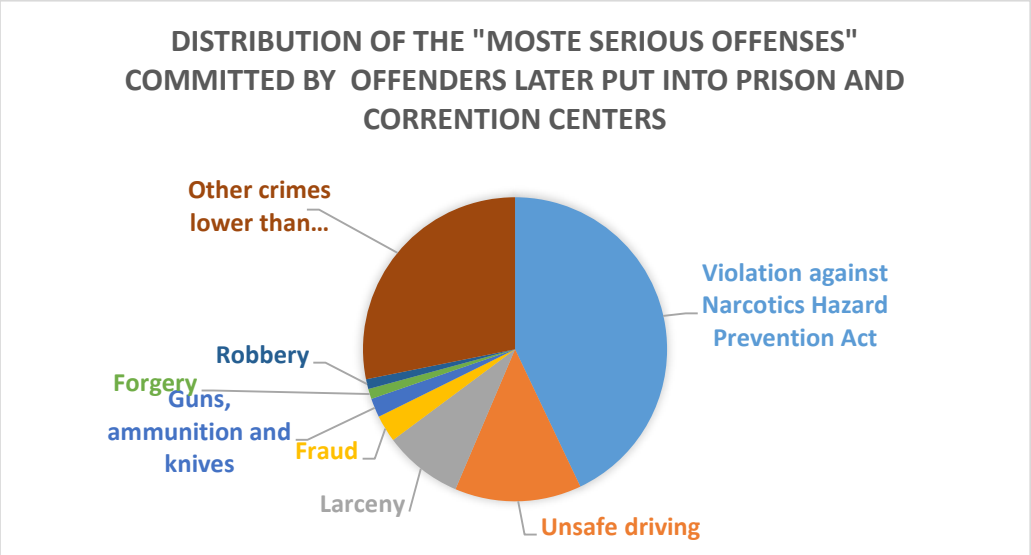

Figure 1 Distribution of the most serious offenses committed by offenders later put into prison or correction centers

For achieving the above goal, the research team made a pivot analysis based on the data covered. De-identified unique identifiers were used to screen out the cases containing repeat inmates. The distribution of inmates by crimes is shown in Figure 2. In Taiwan, from 2014 to 2017 a total of 90,390 inmates were put in jail or correction centers. Among them, 25.6% or 23,094 inmates were sentenced to prison because of drug related crimes. Inmates with unsafe driving accounted for 17.2% or 15,533. Inmates involved in larceny accounted for 9.6% or 8,688. To conclude, by looking at the real number of inmates instead of the number of cases, drug-related crimes remained the top one category followed by unsafe driving and larceny. Therefore, the rankings kept unchanged.

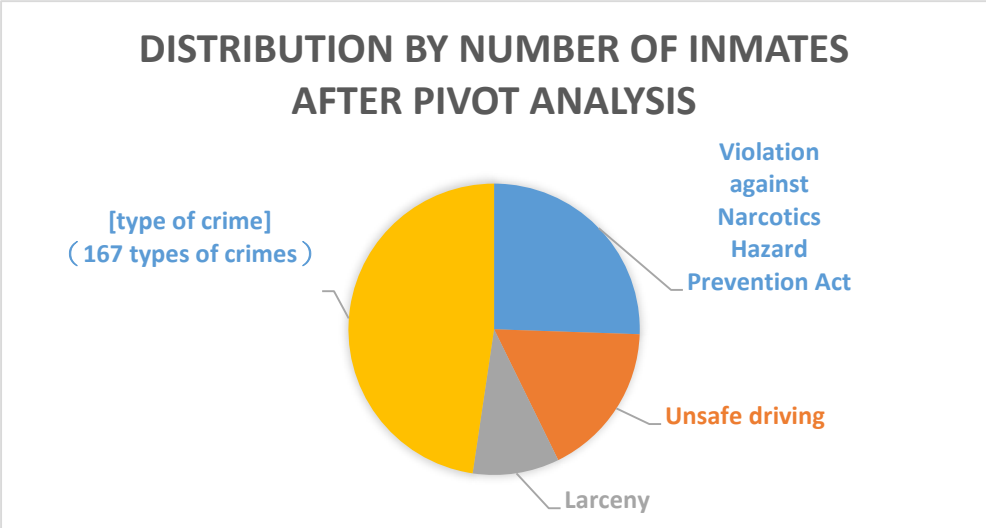

Figure 2 Distribution by number of inmates after pivot analysis

However, a separate observation on "the offenders with repeat imprisonment records" was not particularly made while carrying out the observations mentioned in the previous paragraph. In case of having a separate examination on the imprisonment records of the inmates, it was discovered that those who committed drug-related offenses and were put in prison for at least two times accounted for 21,149 or 23.3% of all inmates. The inmates who were put in prison for larceny for at least two times totaled 7,244 or 8% of all inmates. Those who were sentenced to prison because of unsafe driving for at least two times accounted for 6,856 or 7.6% of all inmates. As shown in Figure 3, the highest percentage still went to the category of the inmates who violated the Narcotics Hazard Prevention Act, followed by larceny while unsafe driving shifted its place from the 2nd to the third when we made the observations based on the "records showing repeat imprisonment".

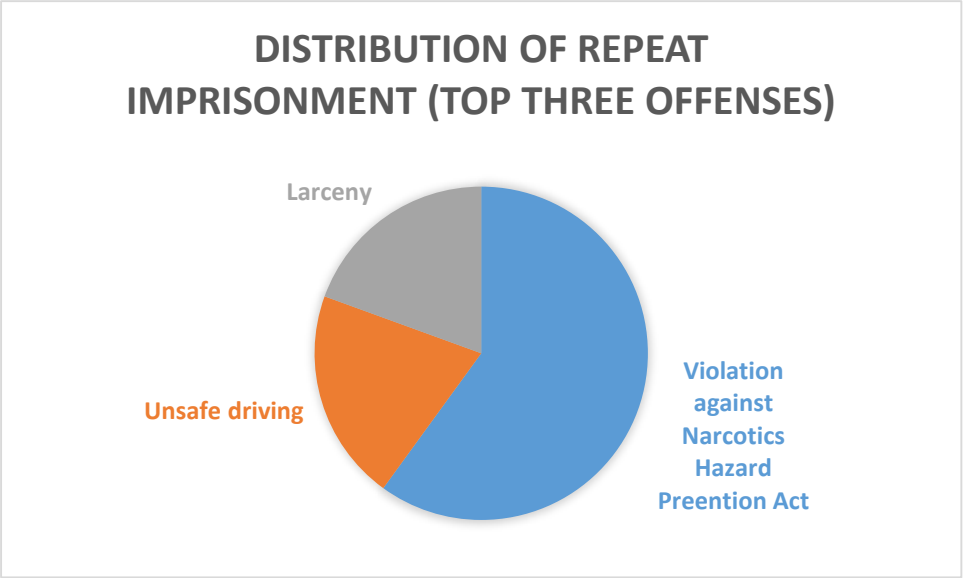

Figure 3 Distribution of Repeat Imprisonment（Top 3 Offenses）

To sum up, according to the 2014-2017 data derived from the "Criminal Policies and Crime Research Database" established by the CPR Center, the observations made either on the basis of "the number of inmates" or "the number of cases" illustrated that those categorized into violation against Narcotics Hazard Prevention Act as the most serious offense accounted for the highest. When the observations were made on the basis of the number of inmates, 23.3% of all inmates during the said three-year period were recorded imprisonment for at least two times and the most serious crime was violation against Narcotics Hazard Prevention Act. In other words, nearly one fourth of all inmates put in prison or correction centers during the three years violated against Narcotics Hazard Prevention Act and had a record of at least two-time imprisonment. The above observations implied that drug users might actually have the possibility of repeat drug use and repeat imprisonment.

B. Characteristics of Class 1 drug offenders being prosecuted and asked for an imprisonment sentence by prosecutors

The above description might verify the perspective that "drug users bear a higher chance of recidivism" was considerably reliable by referring to the outcomes of statistical research. Meanwhile, the following question we should discuss between drug abuse and multimodal treatment policy is: why were drug users unable to quit

using drug after being put through the procedures of observation, rehabilitation or compulsory rehabilitation and ultimately become repeat drug users followed by stepping into the stage of criminal penalties? To be more precise, the question raised earlier should be rephrased as: "what characteristics did the cases with repeat drug users have?" This question could serve as a preliminary move in order to get some feedback to the multimodal treatment policy for drug users in Taiwan so that it might be possible to make certain adjustments in this regard.

On the other hand, in comparison with the judicial text which was hard to collect in Taiwan and the books either with or without sufficient records, the indictments produced by prosecutors with the conclusions obtained after the termination of investigations could provide relatively abundant and complete information for researchers to make analyses and encode. Therefore, if the indictments regarding Class 1 drug offenders produced by prosecutors could be obtained, it would be more likely to carry out empirical observations in a more meticulous manner. Under such a framework, what could be further explained includes:

1. Probing the treatment mechanism ever received by defendants

In accordance with Article 10-1, Articles 20-1 & 2, and Article 24-1, prosecutors should file a motion to the court of an observation, rehabilitation or compulsory rehabilitation for Class 1 drug offenders. Or by complying with Article 24-1, prosecutors were able to order a rehabilitation treatment as a deferred prosecution. Drug offenders would not undergo an official public prosecution ordered by prosecutors unless they did not complete the above said treatment programs or they committed the same crime again within five years. Hence, the defendants found in the indictments prepared by prosecutors had already been put through the above mentioned multimodal treatment mechanism. Then why didn't such multimodal treatment mechanism achieve expected effectiveness on these defendants? What were the possible reasons that drove them to commit the same crime again? All of these could be explored and probed by referring to the content recorded in these indictments.

2. Cases for prosecutors seeking an imprisonment sentence as subjects for analysis

Within the context mentioned above, the follow-up prerequisite for designing the research upon analyzing the text of the indictments prepared by prosecutors is: the cases that prosecutors also sought an imprisonment sentence to the court. The reasons are stated below:

First, seeking a sentence serves as an indicator upon which prosecutors made applicable laws known and expressed their legal opinions after investigations were terminated. Even though prosecutors' seeking a sentence was not binding in court and related legal customs had been corrected by the Control Yuan in recent years, the Control Yuan members considered that the action of seeking a sentence to the court upon prosecution demonstrated a lack of source of law and at the same time might form a public prejudgment on the cases. Under this condition, public opinion might have already held an established impression over the legal decisions of the cases before a trial was carried out in court. This was against the principle of presumption of innocence[12]. However, pragmatists also responded to the corrections made by the Control Yuan[13]. They believed that the practical application of the principle of the presumption of innocence required prosecutors' appropriate and substantial performance in public prosecution and burden of producing evidence. On top of that, the principle of presumption of innocence was defined that defendants were considered not guilty before a conviction was affirmed. Such consideration was not contradicted to a sentence asked by prosecutors upon filing an indictment. It seemed that the Control Yuan held a misunderstanding viewpoint. A pragmatist also expressed[14] that prosecutors acted for a nation to enforce public prosecution. After completing the investigations, prosecutors were able to concretely reflect a nation's prosecution policy by expressing substantial opinions towards sentencing. Their opinions would facilitate the court to properly consider sentencing so that the gap between the request

[12] Control Yuan, Ministry of Justice corrected by Control Yuan for prosecutors' constant requests for a sentence and violation against the principle of presumption of innocence before a formal court trial. https://www.cy.gov.tw/sp.asp?xdURL=./di/Message/message_1.asp&ctNode=903&msg_id=3919 （Last visited 07/16/2019）.

[13] Lin Yen-Liang, What's wrong with an indictment stating a request for a sentence: review of the 2012 Ssu Cheng Tze No. 4 Correction Case by the Control Yuan. *Taiwan Prosecutor Review*, 14, 47-51 (2013).

[14] Tsai Pi-Yu, Seeking a sentence and sentencing. *Court Case Times*, 21, 59-63 (2013).

for an imprisonment sentence and final sentencing could be reduced. In terms of practice, the prosecution system should be established with refined and specific standards for sentencing. It's also suggested that the prosecution system should make efforts to carefully observe the factors upon seeking a sentence so that the process of asking for an imprisonment sentence could be more reliable. After the correction case was filed by the Control Yuan, the discussions over the prosecution system never ceased and thus enabled it to present a new look in practice in recent years[15]. In addition, both prosecutors and judges were part of the judiciary and received the same training for two years. A prosecutor could apply for a job transfer to become a judge, and vice versa. This explains that the cultivation of the prosecutors in Taiwan had allowed them to be as competent as judges in understanding and applications of laws without having a significant gap in between. Therefore, prosecutors' requests for an imprisonment sentence could serve as a considerably reliable indicator.

Next, seeking a sentence might reflect the special conditions of a case. In addition, prosecutors would suggest and ask for a sentence against a defendant when the facts of a crime were apparent and significant. On the other hand, for cases with special conditions or with the causes described from Article 57 to Article 59 in Criminal Code, prosecutors might also request judges to rule in a less strict manner. In short, the indictments with a request for an imprisonment sentence were usually the cases with special conditions compared to other cases in the same crime category.

C. Analysis on factors contributing to sentencing requested by prosecutors

Bearing what is set forth in the previous section, the observations could now be shifted to the content detailing the request for an imprisonment sentence by prosecutors after the collection of such indictments. By doing so, crucial variables for objective verification and encoding could be found after reading through all indictments. The content stating a request for a sentence by prosecutors in each case was set as a dependent variable. The rest important variables observed were introduced as

[15] Prosecutors seeking an imprisonment sentence will be restored, China Times, 07/11/2014, https://www.chinatimes.com/realtimenews/20141107005306-260402?chdtv (Last visited 07/16/2019).

independent variables. With a statistical approach, the team was able to find out the factors influencing the length of time asked for an imprisonment sentence by prosecutors.

IV. Research Methodology

In this paper, empirical legal research is adopted for carrying out the study in order to explore the information about Class 1 drug offenders being prosecuted and asked for an imprisonment sentence by prosecutors. Regarding the research design and statistical approach, analyses were not be particularly made on individual cases by mentioning the names of drug offenders or any individual medical history. The features and characteristics of the individuals were protected without being released. The statistical analyses aimed at finding out the characteristics of drug use. It is expected that the outcomes of the analyses could serve as reflections for policy assessment. Then, our government might be able to acquire sufficient information while tackling the issues arising from the legal system concerning drugs. In the following section, descriptions would be made on sources of data, logic for selecting variables, and the operational definition for this study. Apart from the above, explanations would also be made on the statistical method adopted herein. The connotation, principle and the range reached by the outcomes of statistical method in the research would be detailed so that readers could well understand the methodology applied in this paper.

A. What is empirical legal research?

Empirical legal research emerged in the 1990s in the USA. Over the last decade, empirical legal research has been well developed, rooted and blossomed in many reputed law schools such as New York University, Cornell University, and University of Chicago and University of California, Berkeley. The key person who facilitated this type of research (which can also be called a school) was Professor Theodore Eisenberg (1947-2014), who once worked in Cornell University. His great contributions have made him Father of Empirical Legal Research respected by his followers in the academic circle.

The uniqueness of empirical legal research lies in its combination of several disciplines which are widely known but rarely put together. These disciplines, including law, statistics, epidemiology, etc., are very specialized while they seem irrelevant with each other. In the broad sense, empirical legal research also covers the methods and works of "non-quantitative research", for example, in-depth interviews, focus groups, etc. As long as authors are engaged in the collection of research materials, and organize, compile, induce and analyze them, what they carry out can be considered as a type of empirical legal research. Above all, problem awareness should be related to legal issues. If a hypothesis set by an author is not related to any legal issue, then such work is merely considered as outcomes of observations in social science.

In other words, what a researcher should recognize while being engaged in empirical legal research is that the materials and approaches should be connected with legal theories or arguments in judicial practice so that the study can be regarded as a work of empirical legal research. For instance, in case the study with the outcomes obtained from a statistical analysis over the documentation about a suspect of a certain crime category are not connected with the existing legal system in Taiwan or fail to respond to the current legal debates, it can only be considered as a work of empirical research instead of being regarded as "empirical legal research". It's because such study makes no contribution to judicial policies, review of legislation or amendments, or legal theories.

B. Conceptual clarification: is empirical legal research all about data reading?

If it is acceptable that in the narrow sense, empirical legal research aims to apply statistical approach to probe legal issues and explain current operations of the legal system by referring to a variety of variables, then another issue to be clarified is: *can a work be considered as empirical legal research as long as the author applies data as supportive evidence in the process of arguments?* To be more specific, is it an academic work of empirical legal research if an author uses the data derived from the monthly or annual reports of the Prosecutorial Statistics, or the data from the monthly or annual reports of Statistics of Justice, or the statistics obtained by other scholars followed by the author's own explanations or interpretation to be used as the basis for

arguments?

In this study, the above described type of work *is not* a product of empirical legal research. In nature, interpreting the statistical results obtained by others is already off the direction being empirical when it comes to empirical legal research. It is essential for authors to practically get involved in the process of data collection and processing so as to clearly comprehend the characteristics, strengths or weaknesses of the data. Greater fallacies may be brought by authors from their secondary processing and interpretation based on the results obtained and completed by others. This is not going to help with the development of academic research. Defining and capturing variables is a very significant part in empirical legal research. Different researchers may expect to explore different variables. On top of all, we are not able to control the quality of variable definition and capture accomplished by others. It would be strenuous to identify inaccurate encoding process or unprecise definitions in papers. If researchers are used to taking statistics obtained by others for self-defining, self-interpreting and then putting the pieces into a research paper, it would be inevitable for the authors to fall into a trap of making wrong propositions.

Generally speaking, the use of statistics obtained by others as an indicator or evidence for supporting personal viewpoint in an academic work should not be considered as a way of writing a paper characterizing empirical legal research. Moreover, citing or quoting the statistics constitutes only a facet of empirical legal research. Empirical legal researchers should personally engage themselves in data collection, selection and reading followed by statistical analyses so as to fully comprehend and control all aspects of the data. Empirical legal research is not equivalent to the use of others' statistical results to complete the works in relation to legal issues. This type of method by referring to related statistics can only serve as a ground for arguments upon literature review. The statistics captured from this type of papers could be covered as a description in the section of literature review but it should not be or cannot be considered as the independent opinion of the author. Consequently, authors have to bear related risks arising from the application of such research methodology.

C. Description of data sources

The data for analyses in the paper was offered by the Department of Information Management of Ministry of Justice. This included the cases featuring Class 1 drug users being prosecuted and asked for an imprisonment sentence by prosecutors. The problem awareness arose from the research request made by the Department of Prosecutorial Affairs of Ministry of Justice for the purpose of exploring the gap between a sentence asked for by prosecutors and court decisions. Therefore, a special request was made to the Department of Information Management to provide raw data from 2008 to 2017, including the cases with an imprisonment sentence asked by prosecutors across District Prosecutors Offices in Taiwan. With the raw data, the Academy for the Judiciary was able to carry out a series of observations for the "Comparative Research of Sentencing and Decision of Criminal Cases". By taking this opportunity, the Academy was ready to seek the possibility of further expansion of empirical observations in order to establish a database dedicated to criminal policies and crime research in Taiwan.

1. Data inventory and corrigenda

After receiving the above said data, our research team set out preliminary data inventory. A total of 1,379 cases were found with Class 1 drug offenders being prosecuted and asked for an imprisonment sentence by prosecutors. However, the data, a direct output from the Department of Information Management of the Ministry of Justice, was not initially provided for academic research. We had to examine each case to see if it met our requirements and remove cases with the same file numbers. Finally, the data of only 880 cases was used for further data processing in the next stage.

2. Requests for and compilation of indictments

After generating a list of indictments, our research team sent official requests to District Prosecutors Offices across Taiwan based on file numbers thereof in order to collect related electronic files. All District Prosecutors Offices were requested to encrypt the e-files of those indictments so as to ensure cybersecurity upon data circulation. After receiving the replies from all District Prosecutors Offices, our team had to confirm if all indictments meeting our requirements were well received. We contacted the person in charge at each District Prosecutors Office via phone calls to

cross check missing files. Further requests were also made for resending those missing indictments. In addition to being encrypted, the electronic files of the indictments were also saved in a mobile drive which was stored in a locker in order to make sure that no data leakage would occur.

After completing the stage of the collection of electronic indictments, the team took action to number the above said 880 indictments and replace the file numbers with serial numbers for the purpose of retrieving and encoding of variables for the following stage.

3. Indictment Selection and Screening

The completion of encoding work allowed the team to move on to reading the content of the 880 indictments. The allocation of reading work was based on the serial numbers. It was found from the reading work that several cases were in need of being given extra serial numbers or removed from our list. The former characterized the indictments of the same file number with several Class 1 drug users being prosecuted. The indictments to be removed included those being unable to be found by the District Prosecutors Offices; those with doers who were Class 2 drug users; those with doers who were aiders to Class 1 drug users; those with offenders not receiving a sentence asked by prosecutors; and so on. By referring to the above mentioned standards, 545 indictments were left for encoding and filing after the screening process was completed.

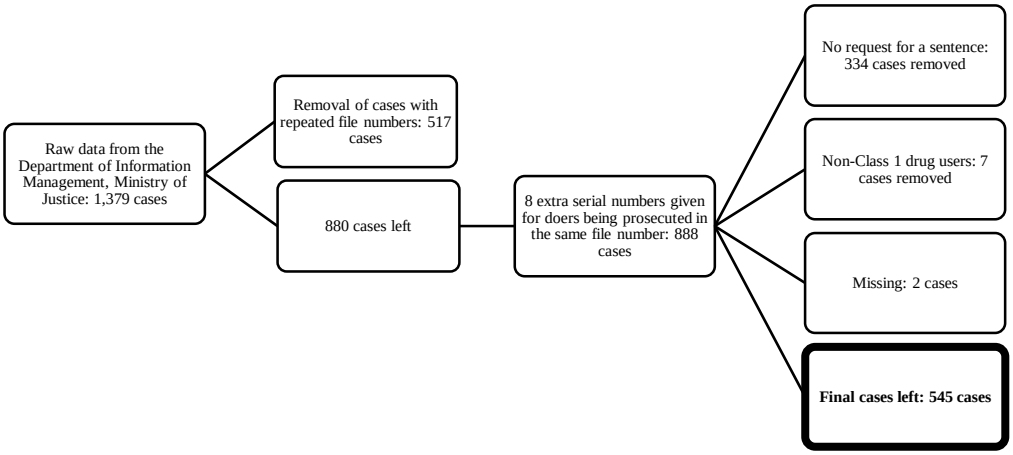

Figure 4 Indictment collection and screening

D. Research Ethics

This study was the first empirical work using indictments for analyses in legal and related research fields in Taiwan. Meanwhile, the research team was aware that these indictments contain loads of information of the defendants. Even if the academic research here aimed at finding out the general trend instead of making observations on specific subjects or disclosing private information of the defendants, the research team still took research ethics into consideration and submitted this research project to National Cheng Kung University Human Research Ethics Committee for review before it was initiated. The project was approved by the Committee by fulfilling the standards of "Full Board Review", with a file number of Cheng Da Lun Shen Huei (Huei) Tze No. 108-065-2.

E. Statistical Method

In general, descriptive and inferential statistics are the two major types of statistical method. Descriptive statistics presents general characteristics and trend distribution while inferential statistics aims to probe the correlations between variables. If two variables are statistically correlated, a null hypothesis is overthrown and an alternative hypothesis is proved. On the contrary, a null hypothesis sustains if two variables are not statistically correlated. In statistics, it is set that p-value < 0.05 reaches statistical significance, the probability of accepting a null hypothesis[16].

1. Descriptive statistics

Descriptive statistics is denoted by percentage, mean, median, mode and standard deviation. As it is mentioned in the previous section, the purpose of the observations is to illustrate distributions of the variables to readers.

2. Inferential statistics

In this study, the punishments proposed by prosecutors were taken as the

[16] LEE EPSTIEN, ANDREW D. MARTIN, AN INTRODUCTION TO EMPIRICAL LEGAL RESEARCH 168-171 (2014).

dependent variables and would be introduced in the form of continuous variables. Upon examining the correlations between factors and punishments recommended by prosecutors, the chi-square test was applied first in case dependent variables were regarded as categorical variables. For further excluding confounding factors, the logic regression analysis would be adopted in order to verify what the factors really were to impose effects on the imprisonment sentences demanded by prosecutors.

V. Research Outcomes

For examining the characteristics of Class 1 drug users under the existing multimodal treatment system, our research team followed the steps previously mentioned and completed data collection. Then the statistics software SPSS was applied for filing based on the types of variables and standards of classification mentioned in the previous section before making data analyses. The results obtained in terms of both descriptive statistics and inferential statistics are stated below.

A. Descriptive Statistics

Descriptive statistics mainly presents the distribution characteristics of variables observed in this study. In this section, we are able to examine the figures in relation to the variables and their percentage of the overall population examined. Such results thus reflected the status in the most original manner.

1. Demographic and geographical characteristics

As shown in Table 1, among Class 1 drug defendants (N=545) with an imprisonment sentence recommended by prosecutors, males accounted for 87.7% or 478, which was far higher than females at 12.3% or 67. In terms of age, doers using drugs at the age between 30 and 40 totaled 40.9% or 223. Other defendants using drugs when they were between 20 and 30 amounted to 25.1% or 137, followed by 27.2% or 148 defendants aged between 40 and 50. Generally speaking, Class 1 drug users were mainly aged between 20 and 50, featuring the young adult generation, amounting to 508 or 93.3%.

In addition, the problem awareness specified in this study also guided us to explore the places of drug use. A total of 110 Class 1 drug defendants or 20.2% of all defendants being examined used drugs in Nantou County, followed by 71 or 13% of the defendants in Tainan City and 52 or 9.5% in Changhua. As to the places with the lowest figures, only 4 defendants or 0.7% of all defendants used drugs in Yunlin County followed by Chiayi Country accounting for 5 or 0.9% of all defendants and Taipei City for 6 or 1.1% of all defendants. Further observations revealed that Class 1 drug users might not particularly appear in any of the north, central or south region while West Taiwan presented a much higher percentage of drug use than East Taiwan.

2. Facts and Characteristics of Cases

The distribution trend shown in Table 1 also suggested that most Class 1 drug offenders chose a place with good privacy and easy to control for drug use. Therefore, "one's own residence" was the number one place for drug use, accounting for 214 or 44.2%, followed by parks or other public places for 82 or 15%. An amount of 29 defendants or 5.3% of all defendants chose to use drug at other's residence. As many as 22 defendants or 4% of all defendants chose to use drugs in a car. By looking at the trend showing the places of drug use chosen by doers, "one's own residence" and "other's residence" amounted to a total of 270 or 49%, nearly half of all doers.

Apart from exploring the places of drug use, this study also examined and analyzed how and how often Class 1 drugs were used based on the indictments covered herein. Several methods were used by drug abusers, including syringe injection, smoke inhalation after heating drugs up, cigarettes, and mixed use. The statistics demonstrated that most doers, 238 or 43.7%, went for syringe injection. Next, 89 defendants or 16.3% of all defendants added Class 1 drugs into cigarettes for use. The defendants who used a glass ball shaped heater or other ways for heating drugs accounted for a relatively lower figure at 29 or 5.3%. Finally, 3 doers, accounting for 0.6%, mixed several methods for using Class 1 drugs based on the related indictments.

Meanwhile, doers might use drugs several times to satisfy their drug cravings as they were recorded in the indictments. The analysis on these indictments showed that 483 doers or 88.6% of all doers used drugs only once, followed by those who used

drugs twice, amounting to 50 or 9.2%, and three times, 9 or 1.7%.

Doers who used more than one type of drugs including Class 1 drugs amounted to 223 or 40.8%. Doers without mixed use of drugs totaled 323 or 59.2%. Doers mixing Class 1 drugs with Class 2 drugs accounted for 223, the same group of doers mentioned at the beginning of this paragraph.

3. Features of Multimodal Drug Treatment Procedures

As shown in Table 1, 379 defendants or 69.5% of all defendants underwent an observation and rehabilitation procedure once and 55 defendants or 10.1% received an observation or rehabilitation two times. Another 93 defendants or 17.1% of all defendants were never put under an observation or rehabilitation.

In terms of the times of compulsory rehabilitation, 256 doers, accounting for 47% of the population surveyed, experienced compulsory rehabilitation once; 37 doers or 6.8% received compulsory rehabilitation two times. There were 2 doers, or 0.4%, receiving compulsory rehabilitation for 3 times. However, there were 234 doers, amounting to 42.9%, never received any compulsory rehabilitation.

After the enforcement of the new system featuring the order of a rehabilitation treatment as a deferred prosecution given by prosecutors, 98 defendants, accounting for 18% of the population covered herein, benefited from it once while 2 doers received such treatment twice. However, another 446 defendants or 81.7% of the overall population surveyed in this study were not introduced with this new system.

4. Features of Criminal Procedure Law

As shown in Table 2, 137 defendants, or 25.1% of the population surveyed herein, were put in prison (or in custody) because of being involved in another case after the investigation of their current cases were completed. Meanwhile, 408 defendants, or 74.9% of the population, were free from being put in prison or custody.

In addition, a review was made on the methods of drug use in the cases seized by

prosecutors and the police. The results found from the indictments showed that 167 doers, or 30.6% of the population, were under the condition being demanded by the police to have a "urine test" without mentioning the reasons for sending a urine sample. Next, 154 doers, or 28.3% of the population, got seized upon a spot check or roadside check by the police. These doers were pulled over or stopped for checks by the police mainly because they were wandering or had weird behavior after drug use. In addition, 95 doers, accounting for 17.4%, were found using Class 1 drugs upon the investigations on other cases by the police. Another 91 doers, accounting for 16.7%, were seized because of the current cases under investigation. It's worth mentioning that 28 doers, or 5.1% of the population, were found using Class 1 drugs because of the random checks on the drug users filed for control based on the details specified in the indictments.

Besides, 487 or 89.4% of the doers being seized did not file a defense while 58 or 0.6% of the doers did. By reviewing the reasons filing a defense (N=58), 39 or 67.2% of the doers claimed that they did not use drugs. Meanwhile, 4 or 6.9% of them argued that they used the drugs by following doctors' prescriptions. Using other over-the-counter medicine, medicine for colds or receiving Methadone Maintenance Treatment accounted 2 or 3.4% respectively.

Upon encoding, the research team found that the descriptions of seeking an imprisonment sentence were not consistent among prosecutors in these cases. Most prosecutors would give a fixed time for a sentence, for example, "request for a 1-year imprisonment sentence". However, some prosecutors might give a statement such as "request for sentence between one and two years in prison". By taking the variance into consideration, the research team went for the maximum length of a sentence requested for observations for the purpose of computing.

Based on the above descriptions, the mean obtained from a sentence requested by prosecutors was 15.22 months by taking into consideration the cases being surveyed in the study. The SEM was 0.59. The median was 12 months. The mode was 18 months. Standard deviation was 13.75 months. The maximum length was 180 months while the minimum was 4 months.

5. Characteristics from the Perspective of Criminal Substantial Law

Most drug users, accounting for 438 or 80.4%, had criminal records in addition to the current cases being prosecuted. Another 106 doers, accounting for 19.4%, did not have any criminal records. Those who had ever got involved in criminal cases (N=438) were mainly found violating against Article 10 of Narcotics Hazard Prevention Act, accounting for 329 or 60.4%, followed by larceny, accounting for 137 or 25.1%. Those who violated regulations other than Article 10 of Narcotics Hazard Prevention Act accounted for 62 or 11.4%.

Among these drug users in the cases being surveyed in this study, recidivists amounted as high as 427 or 78.4%. To be more specific, the recidivists mentioned herein referred to "a person, who intentionally committed an offense with a minimum punishment of imprisonment within five years after having served a sentence of imprisonment or having been pardoned after serving part of the sentence, is a recidivist." The crimes committed by these recidivists were not limited to drug use. They committed other crimes as well.

Apart from the above, drug users in some cases might commit other crimes based on the indictments surveyed in this study. Such type of cases accounted for 22 (N=22), including 12 or 54.5% doers on larceny; and 2 or 9% on robbery. Generally speaking, crimes in relation to property amounted up to 14 or 63.6%.

Finally, the research team made further necessary efforts to analyze the reasons to ask for an imprisonment sentence. As shown in Table 4, after encoding and making analyses, "strong cravings for drugs and failing to quit" and "unrepentant and weak will" were the reasons appearing in indictments at a higher percentage, accounting for 222 or 40.7%. Next, 160 or 29.4% of the drug users were described by prosecutors as "being detrimental to health, destroying social order or public legal interest." Some other prosecutors also made a statement such as "drug use causing self-harm without infringement to others' interest", accounting for 67 or 12.3%. Apart from the above descriptions made in the indictments, some prosecutors requested the court to increase punishments in accordance with Article 47 of Criminal Code based on the fact of recidivism. Such type of doers amounted to 388 or 71.2% of the population.

Table 1 Descriptive Statistics 1

	Total number of drug users N=545		
	N （%）		
Gender		Place of drug use	
Female	67（12.3）	One's own residence	241（44.2）
Male	478（87.7）	Other's residence	29（5.3）
Age group of drug use		Motel, hostel, etc.	10（1.8）
10~20	2（0.4）	Park or other public place	82（15.0）
20~30	137（25.1）	Pub & other entertainment places	6（1.1）
30~40	223（40.9）	Restaurants & other commercial premises	6（1.1）
40~50	148（27.2）	In a car	22（4.0）
50~ 60	31（5.7）	Others	8（1.4）
60~70	3（0.6）	Unidentified	142（26.1）
Unidentified	1（0.2）	Method of use	
Place of drug use		Syringe injection	238（43.7）
Taipei City	6（1.1）	Smoke inhalation	29（5.3）
New Taipei City	25（4.6）	Cigarette	89（16.3）
Taoyuan City	20（3.7）	Mixed methods	3（0.6）
Hsinchu City	7（1.3）	Unidentified/not recorded	186（34.1）
Hsinchu County	14（2.6）	Times of drug use in related prosecution	
Miaoli County	11（2.0）	1 time	483（88.6）
Taichung City	23（4.2）	2 times	50（9.2）
Chunghua County	52（9.5）	3 times	9（1.7）
Nantou County	110（20.2）	4 times	2（0.4）
Yunlin County	4（0.7）	5 times	1（0.2）
Chiayi County	12（2.2）	Mixed use of drugs	
Chiayi City	5（0.9）	No	322（59.1）
Tainan City	71（13.0）	Yes	223（40.9）
Kaohsiung City	20（3.7）	Observation & rehabilitation	
Pingtung County	13（2.4）	Never received	93（17.1）
Hualien County	11（2.0）	1 time	379（69.5）

Taitung County	12（2.2）	2 times	55（10.1）
Unidentified	129（23.7）	Multimodal treatment not mentioned	18（3.3）

Source: produced by the authors

Table 2 Descriptive Statistics 2

	All doers N=545		
	N （%）		
Times of compulsory rehabilitation		In prison (custody) due to another case	
Never received	234（42.9）	No	408（74.9）
1 time	256（47.0）	Yes	137（25.1）
2 times	37（6.8）	File a defense	
3 times	2（0.4）	No	487（89.4）
Multimodal treatment not mentioned	16（2.9）	Yes	58（10.6）
Order of a rehabilitation treatment as a deferred prosecution		Other criminal record	
Never received	445（81.7）	No	106（19.4）
1 time	98（18.0）	Yes	438（80.4）
2 times	2（0.4）	Unidentified	1（0.2）
Method of seizure		Recidivist	
Random check on drug users filed for control	28（5.1）	No	118（21.7）
Investigation on another case	95（17.4）	Yes	427（78.3）
Stop check or roadside check by police	154（28.3）	Turn oneself in	
“urine test” demanded by police	167（30.6）	No	539（98.9）
Investigation of current case	91（16.7）	Yes	6（1.1）
Turn oneself in	3（0.6）	Provision of upstream suppliers	
Other	3（0.6）	No	537（98.5）
unidentified	4（0.7）	Yes	8（1.5）

Source: prepared by the research team

Table 3 Reasons for Filing a Defense by Doers

	No. of doers filing a defense N=58
	N （%）
Reasons	
Take potion for colds	2（3.4）
Follow doctor’s prescription	4（6.9）
Take other OTC medicine	2（3.4）
Denial of drug use	39（67.2）
Methadone Maintenance Treatment	2（3.4）
Other	9（15.5）

Source: prepared by the research team

Table 4 Reasons for prosecutors to request for a sentence

	All doers N=545
	N （%）
“strong cravings for drugs and failing to quit”, “unrepentant and weak will”, etc.	
No	323（59.3）
Yes	222（40.7）
Criminal record other than drug use mentioned	
No	458（84.0）
Yes	87（16.0）
Being detrimental to health, destroying social order or public legal interest	
No	385（70.6）
Yes	160（29.4）

Drug use causing self-harm without infringing others' interest	
No	478 (87.7)
Yes	67 (12.3)
Recidivist	
No	157 (28.8)
Yes	388 (71.2)

Source: prepared by the research team

B. Inferential Statistics

First, the chi-square test was carried out by the research team. As shown in Table 5, the six independent variables creating significant effects on dependent variables include: “place of drug use”, “times of drug use in related prosecution”, “order of a rehabilitation treatment as a deferred prosecution”, “in prison (custody) due to another case”, ”criminal record other than the current offense”, and “criminal record of drug use in other offenses”. For excluding mutual control, influence and interference between variables, logic regression test was applied for making follow-up analyses in order to clarify if the above mentioned independent variables were able to jointly affect the dependent variables. Meanwhile, we also examined the interference and effects by various combinations of independent variables. Then, an attempt was made to find out what variables remained significant in influencing the prosecutors’ decisions in requesting for an imprisonment sentence.

Follow-up explanations had to be made before setting out logic regression analyses. By looking at the variable of “place of drug use”, the research team set dummy variables for each administrative district for carrying out chi-square test of independence respectively. The statistics revealed that the offenses with Class 1 drugs occurring in Nantou County, Tainan City, Taitung County, Taoyuan City, Miaoli County and Kaohsiung City significantly affected prosecutors’ consideration to ask for an imprisonment sentence. However, compared with other independent variables, administrative districts featured more sub-items so dummy coding for division and dilution of the cases was introduced to these sub-items respectively. This step consequently led to an obvious drop of the numbers of offenses and thus a relatively low percentage for certain districts. By reviewing the results obtained from the previously mentioned chi-square test, Taitung County (N=12), Taoyuan City (N=20), Miaoli County (N=11) and Kaohsiung City (N=20) were the places with the results at a significant level but marking the above mentioned condition. That is, the numbers of cases in these cities our counties were lower than thirty, which was the minimum number of samples requested for quantitative research, so the counties or cities with fewer cases were ruled out before carrying out logic regression analyses in order to maintain the stability of data analysis. As a result, only two administrative districts including Nantou (N=110) and Tainan (N=71) met the requirements for an

analysis.

After conducting the chi-square test, the independent variables showing a significant level including “place of drug use: Nantou”, “place of drug use: Tainan”, “times of drug use in related prosecution”, “order of a rehabilitation treatment as a deferred prosecution”, “in prison (custody) due to another case”, “criminal record other than the current offense”, and “criminal record of drug use in other offenses” were introduced into the regression model. As shown in Table 5, the seven variables mutually controlled and influenced each other and only four variables remained significant, including “place of drug use: Nantou County” (p-value<0.001), “place of drug use: Tainan City” (p-value<0.05), “times of drug use in related prosecution” (p-value<0.001), and “criminal record of drug use in other offenses” (p-value<0.05). At this point, we were able to further examine the Odds Ratio (OR) relating to these four variables so as to find out the effects of independent variables on dependent variables.

In conclusion, the Odds Ratios suggested that the offenses with Class 1 drugs in Nantou were requested for at least 1-year sentence by prosecutors, which was 13.17 times that in other places. The offenses of drug use in Tainan experienced only a chance of 0.49 facing a sentence of more than one year proposed by prosecutors. In the same prosecution, it was 9.237 times more likely to face a sentence of more than one year when it wasn’t the first time for the offenders using Class 1 drugs. Finally, in comparison with other drug users, it was 2.09 times more likely for the offenders with a previous criminal record showing drug use to face a sentence of more than one year in the instant public prosecution.

Table 5 Logic Regression Test

		Sentencing		Subtotal	>1 year %	chi-squared *p*-value	OR	95% C.I	Adjust *p*-value
		< 1 year	>1 year						
Nantou	No	207	99	306	32.4%	<0.001***	1	6.169-28.100	<0.001***
	Yes	16	94	110	85.5%		13.166		
Tainan City	No	168	177	345	51.3%	<0.001***	1	0.242-0.974	0.042*
	Yes	55	16	71	22.5%		0.485		
Times of drug use	= 1	272	211	483	43.7%	<0.001***	1	3.970-21.494	<0.001***
	>1	13	49	62	79.0%		9.237		
order of a rehabilitation treatment as a deferred prosecution	No	266	179	445	40.2%	<0.001***	1	0.712-3.288	0.276
	Yes	19	81	100	81.0%		1.530		
in prison (custody) due to another case	No	196	212	408	52%	0.001**	1	0.461-1.382	0.421
	Yes	89	48	137	35%		0.798		
criminal record other than the current offense	No	65	41	106	38.7%	0.04*	1	0.735-3.980	0.213
	Yes	220	218	438	49.8%		1.710		
criminal record of drug use in other offenses	No	127	158	285	55.4%	0.014*	1	1.084-4.020	0.028*
	Yes	89	171	260	65.8%		2.088		

p-value<0.05* *p*-value<0.01** *p*-value<0.001***

Source: prepared by the research team

VI. Research Findings and Discussions

Following the results obtained from the statistical analyses, the research team attempted to compile and explain the findings gained from both descriptive statistics and inferential statistics by taking into consideration the meaningful problem awareness concerning the drug legal system and criminal law. It was expected that the statistical outcomes could be in line with problem awareness so that this quantitative research would not become a work purely serving for the sake of statistics. The discussions made below featured specific issues in relation to the legal system or criminal law pertaining to drug abuse. It was intended to closely associate the quantitative results from the empirical analyses with legal theories and systems. Meanwhile, it was expected that this work could serve as a reference for the legal system in practice.

A. Severe or not adequate? Probing into legal punishment variations in counties and cities

"Class 1 drug offenders in Nantou were the most likely to receive a more severe punishment while those in Tainan were the least likely." This is a slightly general interpretation of the data but the easiest explanation to understand given in this study. Based on the statistical results presented in the previous chapter, the research team analyzed the statistics from 2008 to 2017 characterizing Class 1 drug users being publicly prosecuted with indictments seeking an imprisonment sentence. The findings demonstrated that "place of drug use" was significantly correlated with the punishment proposed by prosecutors either in the chi-square test of independence or the analysis carried out via logic regression after excluding interference. To make it simple, the statistics in Table 5 clearly indicated that it was 13 times (OR=13.17, 95% C.I.=6.17-28.1) more likely for Class 1 drug offenders in Nantou to receive an imprisonment sentence for at least one year than that in other counties and cities. On the contrary, Class 1 drug offenders in Tainan only had a small chance of 0.49 (OR=0.49, 95% C.I.=0.24-0.97), which was even less than half of the figures of other counties and cities, to face a sentence for more than 1 year. There was no doubt that such findings were confusing because this result was against the principle of equality specified in the Constitution. Moreover, anyone who possessed the basic conception of criminal law would agree that the place of act shouldn't be one of the indicators for discretion in the

criminal legal system not to mention that these administrative districts were under the same sovereignty.

In response to the section of “What is Empirical Legal Research”, unlike the traditional comparative research or legal dogmatics featuring induction and deduction after analyzing the constituents of jurisprudence and articles, empirical legal research focuses on exploring experiences and practice. This type of research aims at confronting the issues that theorists are unable to tackle and examining the results reflecting the effectiveness of the legal system in practice. In the early period of the study, the authors had to decide what variables to be captured from the indictments. The inclusion of place of drug use as an item for observation was an attempt to find out whether the geographical distribution of drug use marked the difference between the metropolitan areas and the countryside or the variations by respective administrative district. However, the descriptive statistics didn’t reflect the truth that Class 1 drug offenders were from any particular region, such as north, central or south Taiwan, nor did the statistics show any significant difference between metropolitan areas and the countryside. On the other hand, the results obtained from the inferential statistics surprisingly demonstrated that the figures in relation to several counties and cities were significantly correlated with the length of a sentence suggested by prosecutors. By considering the stability of the statistical model, the research team controlled the data in the strictest manner and therefore screened out the administrative districts with an inadequate number of samples. After doing this, two administrative districts remained statistically significant. These two districts happened to respectively characterizing the places of drug use where the shortest and longest lengths of an imprisonment sentence were sought by prosecutors. Such findings were out of the research team’s expectation. However, it coincidentally accentuated the contributions that empirical legal research could make to the practice of our legal system from the “to-be” perspective. The contributions of this study did not lie in giving criticism or making evaluations. Instead, this study aimed to discover the deviance of the application of theories focusing on what “ought-to-be” to social domain. The gap between theories and practice may be hard to envision and it was likely to be realigned only if the gap was found.

As it is mentioned in the previous passage, the deviance in practice found from the

statistical analysis delivered a message to potential drug users: “it is better to use drug in Tainan than in Nantou.” It is for certain that such risky information requires corrections. Nonetheless, the authors could have used the data to prove the significant correlations between administrative districts and sentencing requested by prosecutors. We could also have used the data to infer the significant variations in sentencing evaluations between the prosecutors in Tainan City and Nantou County. We could even generally have obtained probability for the drug offenders to face a shorter or a longer sentence suggested by prosecutors in two different administrative districts. Unfortunately, the authors could not nor should not jump into conclusions based on the data to determine why such a phenomenon should exist. We could merely make an honest report on the possible signs and speculations we have observed during the process of indictment reading and data collection. In spite of that, further research is expected to be made by other researchers and practitioners to find out if there are any errors or evidence proving if the signs and speculations are indeed significantly correlated with the findings obtained from the above-mentioned data

B. Correlations between Criminal Records and the Instant Offenses

Did doers’ criminal records other than that mentioned in the instant offenses create effect on how prosecutors sought a sentence? This was one of the hypotheses the research team would like to verify. In other words, was it possible that doers’ criminal records other than the instant offenses would in nature affect prosecutors’ moral conviction apart from the concept specified in Article 57 of Criminal Code that recidivists should receive a heavier punishment? Then, could such moral conviction lead to a proposal for a heavier punishment in terms of the applicability of law? The foresaid inference requires further discussion in addition the verification made via statistical approaches.

1. Doers’ past criminal records could affect sentencing

As shown in Table 5, “sentencing” was set as the dependent variable in the chi-square test. When “criminal record other than the current offense” was introduced as an independent variable, the result obtained from the chi-square test showed statistical significance ($p\text{-value}<0.05$). That is, by following the logic of the chi-square test of

independence, we would examine whether the variable of having criminal record other than the instant offense was correlated with the sentencing suggested by prosecutors. Even if the said variable was not statistically significant after it was introduced for the regression analysis, attention should still be paid to the outcomes of the chi-square test. The discussions are as follows:

By reviewing the results shown in Table 5, 38.7% of the doers without other criminal record other than the instant offense were suggested by prosecutors to receive a sentence over a year while 49.8% of the doers ever having criminal records other than the current offense were suggested to receive a sentence more than a year. Generally speaking, nearly half of the doers with criminal records other than the instant offenses would face a sentence of at least one-year imprisonment sought by the prosecutors.

The research team considered that the fore-mentioned condition demonstrated that prosecutors, similar to judges, might adopt the concept specified in Article 57 of Criminal Code. They took doers' historical criminal records into consideration at the same time so that they would make an evaluation with a higher degree of blameworthiness. Based on this, both prosecutors' sentencing and the decision made by the court were the results from the evaluations based on the judiciary's comprehension and applications of laws. We could see the values while making comparisons between prosecutors' suggestions and the courts' decisions.

2. Both times of drug use and criminal records of drug use affect sentencing

Based on the premise described above, the research team also found that when "times of drug use" and "criminal record of drug use in other offenses" were introduced as independent variables, they presented statistical significance in the chi-square test of independence. By carrying out the logic regression analysis and ruling out possible interference factors, "times of drug use" (p-value<0.001, OR=9.24, 95% C.I. =3.97-21.5) and "criminal record of drug use in other offenses" (p-value<0.05, OR=2.09, 95% C.I. =1.08-4.02) were statistically correlated at a significant level.

The statistics mentioned above illustrated that the offenders using drugs more than one time (one time excluded) were 9.24 times more likely to receive a sentence of

longer than one year suggested by prosecutors than those only using drug once. Meanwhile, doers with criminal records of drug use other than the instant offenses were 2.09 times more likely to receive a sentence longer than one year suggested by prosecutors than those without having criminal records. In general, offenders using drugs more than once and being convicted because of drug use had a higher chance to be sentenced in prison longer than one year suggested by prosecutors.

The results of the regression analysis helped us reach a conclusion towards prosecutors' inclination to sentencing upon investigating Class 1 drug offenses. That is, offenders who were found using Class 1 drugs more than one time within the reach of the prosecution filed for the instant offenses, and ever involved in drug use and having completed a sentence in prison because of other offenses would receive a relatively heavier punishment.

C. Rethinking the Appropriateness of Drug Enforcement

By referring to the results concerning the methods of drug enforcement in Table 1, 28 drug users, or 5.1% of the population, were seized by way of "random checks on the drug users filed for control". What drew our attention was that in many indictments only "a urine test demanded by police" was mentioned without indicating how the police "got contact" or "seized" the doers. There were 167 offenders, or 30.6% of the population, in this category. The research team considered that the statement of "a urine test demanded by police" may be quite likely to be the result from the random checks on the drug users filed for control. Therefore, if the above hypothesis was true, then there were a total of 195 offenders, reaching up to 35.7% of the population, being seized because of the random checks. In other words, among the cases of Class 1 drug use asked for a sentence in prison, it is highly possible that more than one third was seized by way of random checks on the drug users filed for control. This category accounted for the highest compared with other methods of seizure.

Though the above method of seizure was carried out in accordance with Articles 25-1 and -2 of Narcotics Hazard Prevention Act, it was obviously against the path of the policy dealing with a criminal also being a patient at the same time. The reason for this is that Class 1 drugs are highly addictive with strong withdrawal symptoms and

the toughest to withdraw. Both the academic field and practitioners had the consensus that the effect of rehabilitation was usually poor. Under such ground, it was not hard to find out via random checks that a relatively high percentage of Class 1 drug users tended to use drug again. The research team held the viewpoint that a Class 1 drug offender being a patient at the same time had been set as the target of the multimodal treatment policy so it was not necessary to put them under criminal punishments from time to time since they were highly vulnerable to use drug again. Instead of imposing criminal punishments on these recidivists filed for control, it seemed that medical resources and social welfare systems should be provided to them in order to fulfill the goals that the policy was designed to achieve while facing offenders as a patient. The strategy featuring random checks on those who were highly possible to be recidivists thus highlighted the dilemma of Class 1 drug users and how impotent and helpless they were while fighting against state apparatus. Excessively strong criminal interference was not going to assist drug users to withdraw from the harms brought by drugs. Such measure only ended up with bringing a hopeless circle for drug users to be situated between imprisonment and repeated drug use. They would never find a way out.

D. Protective Legal Interest of Drug Offenses – empirical materials used for observations

What is the legal interest in terms of drug offenses? The answers may vary. The research team has reviewed the literature we've had so far in Taiwan and there were only two papers explicitly stating the opinions but with quite different explanations. Therefore, it would be moderate to say that no consistent opinions on the protective legal interest of drug offenses had been reached in our academic field.

Nonetheless, the above description of the issue outlined the orientation of the opinions in practice via indictment reading. The statistics in Table 4 demonstrated that the prosecutors would normally state the reasons for sentencing requests upon filing a prosecution. Some words mentioned in the indictments could evidence prosecutors' attitudes towards the legal interest regarding drug offenses. The research team used dummy encoding to observe the reasons given by prosecutors for sentencing. After drilling the reasons, it was found that 160 offenders, or 29.4%, were considered their drug use "*being detriment to health, destroying social order or public legal interest*."

Meanwhile, 67 offenders, or 12.3%, were considered by prosecutors that their use of drugs was merely "*self-harm without infringement to others' interest*." The examination of the reasons for sentencing mentioned in the indictments made us easier to realize that a higher percentage of prosecutors perceived drug use as an infringement upon legal interest and public order of the society than as an infringement upon personal legal interest.

It's not difficult to reach a conclusion from the above mentioned figures that in practice prosecutors were more inclined to the view that *drug use was detrimental to the legal interest of the society*. However, we could not overlook the results in connection with places of drug use. As shown in Table 1, one's own residence was the top one place for drug use. A total of 241 doers, or 44.2% of the population, chose their residence for drug use. Other places with privacy included: other's residence chosen by 29 offenders, accounting for 5.3%; and motels chosen by 10 offenders, accounting for 1.8%. If we added up the numbers of the offenders choosing to use Class 1 drugs in a place with better privacy and control from an objective viewpoint, it came to a total of 280 doers, accounting for 51.4% of all defendants.

By making an overview of the reasons given by prosecutors for sentencing and the places of drug use pointed out by the research team via indictment reading, it was found that the majority of prosecutors held the view that drug use was detrimental to the legal interest of the society and might put public interest in danger. On the other hand, more than half of the Class 1 drug offenders chose a place with very good privacy and easy to control for drug use. And this fact was exactly contradicted to prosecutors' reasons for sentencing.

Frankly speaking, drug use mostly occurred in a private environment. Therefore, the situation of "*possibly being seen and heard by others*" does not exist. In addition, punishment is not applicable to self-harm according to the Criminal Code. By thinking over the nature of privacy upon drug use, the only path for evidencing protective legal interest of drug offenses is to interpret it in terms of social legal interest. In this paper, it is suggested that two paths could be attempted to interpret social legal interest. The first path was in relation to the externality of drug use behavior. The criticism from a more traditional viewpoint was that drug use tended to diminish social

labor force so that the overall productivity of the society reduced. However, when we proceeded to this era, some viewpoints or opinions were in need of being slightly realigned. Instead of pointing out that drug use might reduce social labor force, it was better to argue that drug use would consume loads of medical and social resources and further form great social externality and detriment to social legal interest. Next, it was suggested to cite the risk society theory proposed by Beck as an approach for interpretation[17]. According to Beck's theory, new patterns of criminal behavior (risks) might continue appearing in response to social and technological development. Thus, the existing systems and legal norms failed to catch up with the changes so the public might constantly demand amendments or updates of our legal systems. In other words, Beck's theory had reflected that legislation was amended and updated for fulfilling the current situations and needs of the society. However, such amendments and updates were not necessarily in consistent with the existing criminal theories. In terms of drug crimes, we could date back to the offenses relating to opium specified in Article 256 of Criminal Code in 1935. The shift of time proved that the number of people using opium was no longer the same as in the past, which later gave rise to stipulation of "Drug Control Act during the Period of Suppression of the Communist Rebellion" and "Drug Control Act" followed by today's "Narcotics Hazard Prevention Act". The ever new drugs and complicated trade models we are facing now have left the existing constituent elements of laws behind. Therefore, it is crucial to make appropriate adjustments while examining the definitions of drug offenses so as to reach the goal of protecting social legal interest.

VII. Conclusions

Following the policies specified in the New Generation Strategy to Combat Drug Abuse, Drug Control Fund was established accordingly. This work is an academic research project supported by the Fund. The core of the study here is to examine and review the current conditions of Taiwan's multimodal treatment for drug use in practice via the path of empirical research. To avoid uncertainties for promoting the project

[17] For details of risk society theory proposed by Ulrich Beck, please refer to: Ku Chen-Chung, Risk Society and Symbolization of the Modern Criminal Law, collected in Strafrecht zwischen Symbolisierung und rationalistät, 2nd ed., 45-103, April 2019.

arising from being over idealistic, the research team referred to the raw data provided by the Department of Information Management, Ministry of Justice, to construct the "Criminal Policies and Crime Research Database". The information concerning the correction system in the database was examined. Then, our research team evidenced recidivism rarely being empirically verified by researchers but an issue that drug offenders inevitably encountered. Additionally, the research team went through the indictments filed from 2008 to 2017 in which the Class 1 drug offenses were publicly prosecuted with a request for an imprisonment sentence by prosecutors. And these indictments served as the most important text for this research. In general, after reading the indictments concerning Class 1 drug offenses with a request for an imprisonment sentence by prosecutors, some important characteristics were identified based on these cases. The objective characteristics included: young adults, males more than females, being inclined to use syringe injection for drug use at a place with excellent privacy. Apart from the above, an authority having the power to assist with investigations preferred to find out conditions of recidivism by way of the random checks on drug users filed for control. The doers covered in this study were often involved in other crimes in addition to drug use, which formed a special condition of committing drug crimes and other crimes at the same time. The prosecutors in certain cities or counties might have a certain preference when it came to sentencing. Other than this, times of drug use and repeated drug offenses covered in the prosecutions hereunder constituted the factors leading to a heavier sentence proposed by prosecutors.

VIII. Study Limitations

Finally, study limitations should be emphasized while being engaged in empirical research. Empirical research puts its focus on experience observations while limitations always exist for data collection. The research team has to be honest with the readers in disclosing the insufficiency in explaining the data. Meanwhile, over-inference should be avoided in terms of writing strategy. In other words, the authors shouldn't jump into final conclusions based on their instinct when they failed to fully cover everything and give thorough explanations within the context of their research. This is the line that empirical researchers shouldn't go across.

During the process of encoding, it is found that the indictments were unable to

completely provide sufficient information about when doers received treatment every time. The insufficiency contributed to an analysis limited to receiving treatment or not and times of receiving treatment. Therefore, we could not infer the age and frequency of drug use based on the timing they received treatment and thus we were unable to evaluate the effectiveness of the treatment policies at different time periods. Furthermore, some facts of crimes such as place of drug use or the method of seizure might not be recorded in the indictments. If a doer committed a drug offense together with another crime in the same case, the details of drug use were often overlooked. While reading review comments given by the prosecutors, it's quite often to see that the indictments rendered by the same prosecutors or at the same prosecutors offices were often repeated copies of similar cases. Similar or exactly the same evaluations or review comments on different doers and different facts of crimes might lead to a result showing a high correlation between the evaluations or review comments and the districts. However, further exploration would naturally discover that such result was not because of the prosecutors' shared opinion over drug offenses but because of the same example of indictments used. On top of that, sentencing was the most important variable in this study. The prosecutors in different districts used various expressions to exercise their right to propose a sentence. Some of them made their propositions by textual descriptions, some did it by roughly giving a range of a sentence, and some directly gave a specific length of a sentence. Unlike the statistical analyses on verdicts upon which the explicit decision of a sentence could be introduced as continuous variables, the authors of this study had to introduce these variations as categorical variables upon making analyses over the indictments.

At last, the authors had to emphasize again that some limitations were set upon data collection for the study. First, the "indictments" being examined in this study were exclusive of those with a decision of non-prosecution, deferred prosecution and other forms of prosecution documents such as a conclusion made by prosecutors following the administrative rules and procedures. As a result, in this study, the authors were not capable of rendering the "comprehensive picture" of the prosecutions on drug offenses together formed by the non-prosecution and deferred-prosecution documents. And we shouldn't extend our explanations to the facts that were not covered in this study. Moreover, the indictments collected for this study were those

with suggestions for sentencing made by prosecutors. Therefore, the indictments without seeking a sentence were not within our reach for observations. Hence, the effect of the explanations made via the statistics was not applicable to that type of cases.

In conclusion, the statistical results can only be applicable to explaining the cases characterizing "public prosecution and request for an imprisonment sentence filed by prosecutors." The cases without being prosecuted, with deferred prosecution or without sentencing proposed were not within the realm of the research for examination herein. Therefore, the statistical results obtained from the study cannot be applied to all drug offenses in Taiwan. The limitations pertaining to the explanations given based on the outcomes of this study remain.