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Ending the War on Drugs in Travis County, Texas How Low-Level Drug Possession Arrests are Harmful and Ineffective

There is widespread understanding that the War on Drugs intentionally targeted communities of color, while depriving those same communities of harm-reduction resources to address the damaging effects of drug use.¹ Nonetheless, Austin and Travis County, Texas, continue to use drug enforcement practices that harm communities, worsen racial disparities, and increase the health and financial consequences that people most directly impacted must bear. Further, local use of police as the primary means of enforcing harsh drug laws consistently fails to achieve its stated goal of reducing drug activity.² Travis County residents, particularly in areas most heavily populated by people of color, have seen time and again that current practices are not working.

SNAPSHOT: Between 2013 and 2017, the number of low-level Possession of a Controlled Substance (POCS) cases in Travis County increased by 43 percent,³ and Travis County courts saw a 66 percent increase in the overall number of new felony drug possession cases, rising from 1,786 to 2,977—a rate of increase that is 2.5 times higher than the increase in drug possession cases across Texas courts.⁴

In 2018, the Travis County Commissioners Court was poised to approve a \$97 million bond to construct a new building at the Travis County Correctional Complex to detain a growing number of women, especially for POCS charges. While the majority of people arrested for low-level possession are men, the rising rates of women arrested for POCS strained the limited capacity to detain women at the jail complex. **In 2017, the fourth leading charge for distinct days in jail for women in Travis County was less-than-a-gram POCS (a state jail felony), which accounted for 33,939 days. Of those days, almost 32 percent were for Black women,⁵** despite the fact that Black individuals comprise less than 9 percent of Travis County’s population,⁶ and Black women comprise roughly half that total, or 4.5 percent.

In protesting the effort to fund expanded jail capacity, community advocates called for the increased use of community-based alternatives to arrest, especially for issues stemming from mental health needs and substance use disorder. Commissioners voted to delay plans for the new jail, giving time to consider alternatives.⁷ When the construction was delayed, the Texas Criminal Justice Coalition, the Texas Harm Reduction Alliance, Grassroots Leadership, and the UT Law Civil Rights Clinic launched a research project analyzing arrest data to better understand what was driving the increase in drug arrests.

**CONSEQUENCES OF POSSESSION OF
PERSONAL USE AMOUNTS OF DRUGS
IN TEXAS**

POCS <1g = state jail felony = 180 days to 2 years in state jail and fine of up to \$10,000

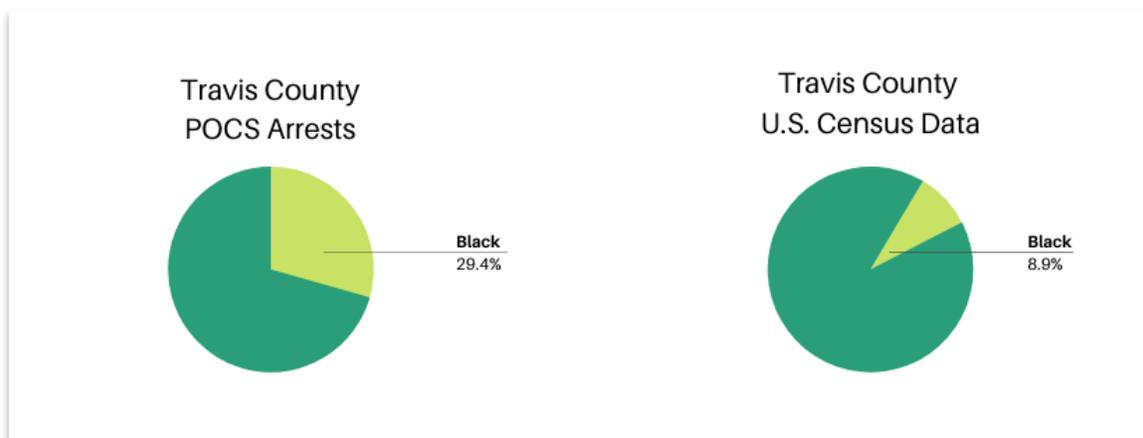
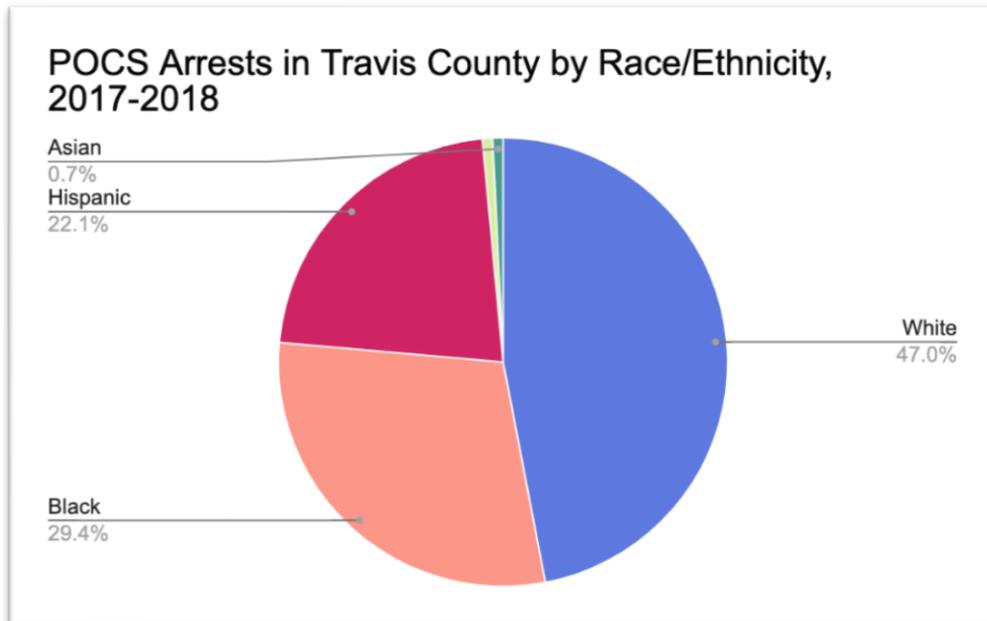
POCS 1<4 g = third degree felony = 2 years to 10 years in prison and fine of up to \$10,000

A Deeper Dive into Drug Possession Arrests

Advocates' data collection team thoroughly examined 2,900 Travis County arrest records and other court documents filed between June 2017 and May 2018, specifically to determine the circumstances that precipitated arrest for possession of less than one gram of cocaine, crack, heroin, methamphetamine, ecstasy, Xanax, or other substances where possession is classified as a state jail felony. The team compiled information on demographics, arrest location, bail bond amounts, and other data. **The purpose of the study was to identify police and prosecutorial decisions that could be modified to prevent arrests and to develop community-based alternatives in areas with the highest rate of POCS arrests.** Instances where the POCS arrest was secondary to another charge (like robbery or DWI) were removed, leaving a total of 1,689 POCS cases where drug possession was the primary reason for arrest.

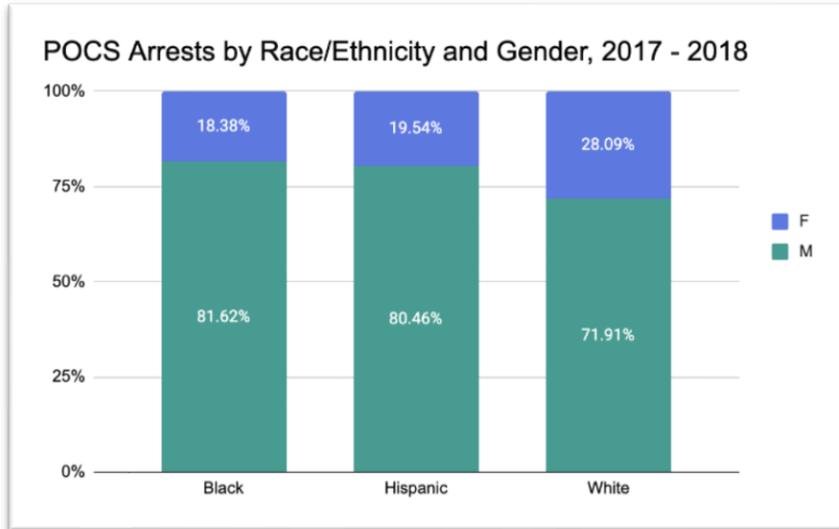
Research Study Results: Racial Disparities

Similar to policing trends across the country, Black residents in Travis County were by far the most over-represented racial group arrested for POCS. **From 2017-2018, Black individuals made up 29.4 percent of possession cases, despite comprising only 8.9 percent of the county's population.**⁸

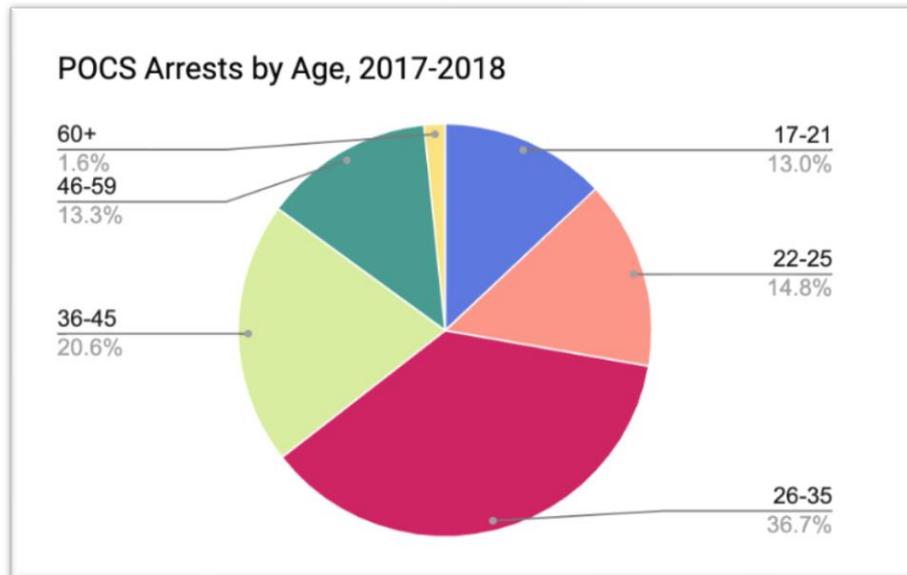


Research Study Results: Gender and Age

The majority of people arrested for POCS in Travis County from 2017-2018 were **male**. The proportion of men to women (as reported in arrest affidavits, not self-reported) among Black and Latinx arrestees was roughly the same—approximately 80 percent and 20 percent, respectively—whereas females comprised 28 percent of white arrestees for possession.



The majority of individuals arrested for POCS were **under the age of 36**. About 28 percent were under the age of 25, a developmental group that is least likely to succeed on adult community supervision (probation), and is far more likely to succeed in community-based and career-driven programs outside the justice system⁹ Arrests among this age group can have serious long-term implications, such as inhibiting access to employment. Moreover, for young people of color, who are already over-represented in the system, arrest and incarceration increase the likelihood of future drug use and justice system involvement.¹⁰



Research Study Results: Circumstance

In determining the factors leading to a drug possession arrest, the data collection team developed a series of codes to categorize the range of circumstances. Team members were trained to read and analyze the arrest affidavit, which includes a narrative statement from the arresting officer detailing the basis for interacting with, searching, and arresting the individual for POCS. For instance, if an officer stopped a vehicle for an expired registration and subsequently initiated a vehicle search based on the smell of marijuana, the team member would code the circumstance as TS (Traffic Stop) – Expired Registration.

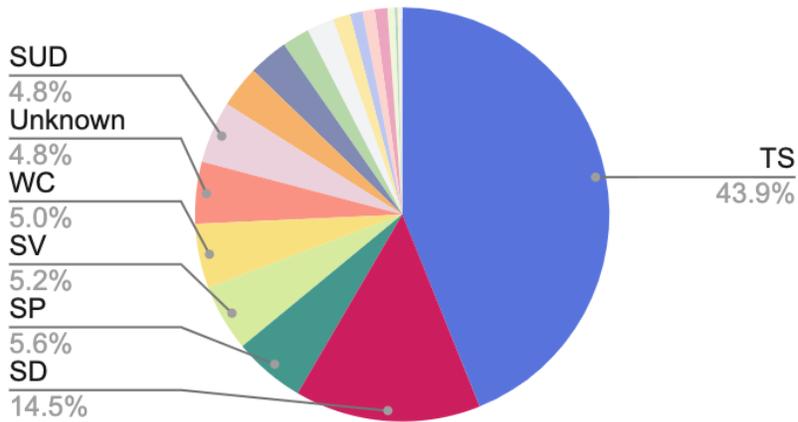
The full list of codes and their meanings are included in the table below along with the percent of total POCS cases.

Circumstance Code	Code Meaning	% of Total (POCS Primary Charge)
TS	Traffic Stop (failure to signal, expired registration, license plate not visible, etc.)	46.99%
WC	Welfare Check	8.30%
SP	Suspicious Person	6.77%
SD	Suspected of Dealing Drugs	6.20%
SV	Suspicious Vehicle	3.98%
PCS	Probable Cause Search (other than a traffic stop and vehicle search)	2.79%
SUD	Suspected of Using Drugs	2.62%
OU	Open Use of Drugs	1.48%
SW	Search Warrant	1.19%
T	Trespass	1.08%
OP	Open Purchase of Drugs	1.02%
VCO	Violation City Ordinance	0.91%
TI	Theft Investigation	0.80%
WA	Warrant Arrest	0.51%
PI	Public Intoxication	0.51%
DIB	Drug-Induced Behavior	0.51%
MHC	Mental Health Crisis	0.17%
DWI	Driving While Intoxicated	0.17%
OTH	Other	0.06%

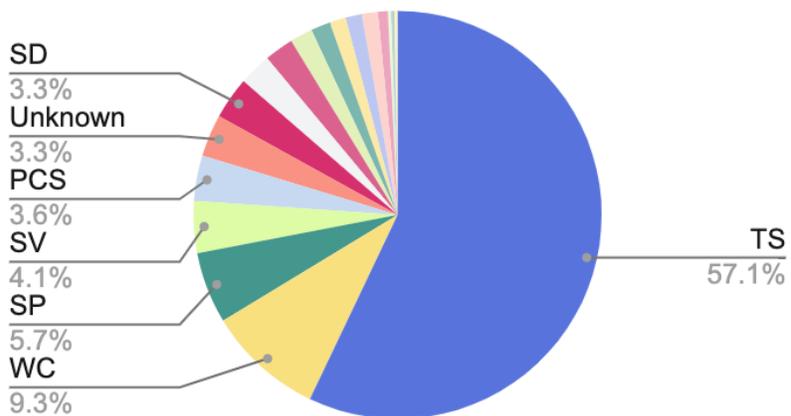
Note: Circumstance codes were missing or marked as “Unknown” for 13.94 percent of POCS primary charges.

Ultimately, **47 percent of POCS charges originated from motor vehicle stops, typically for minor traffic violations such as failure to signal or expired registration.** These findings amplify concerns raised in a January 2020 report from the City of Austin, which found a disproportionate number of motor vehicle stops and searches targeting Black and Latinx populations in Austin.¹¹

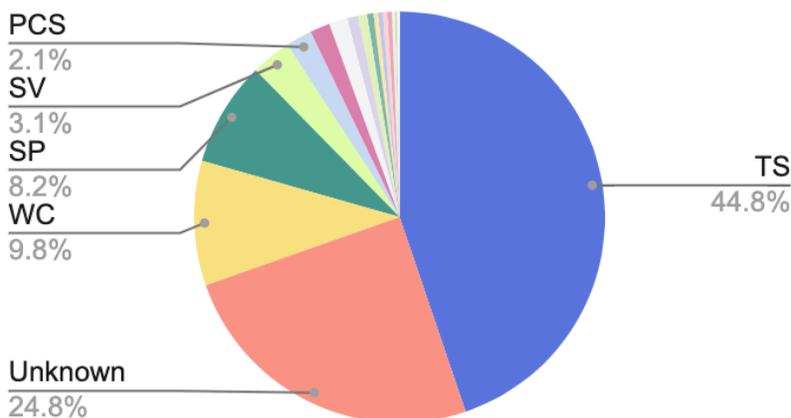
Black POCS Arrests by Circumstance, 2017-2018



Hispanic POCS Arrests by Circumstance, 2017-2018

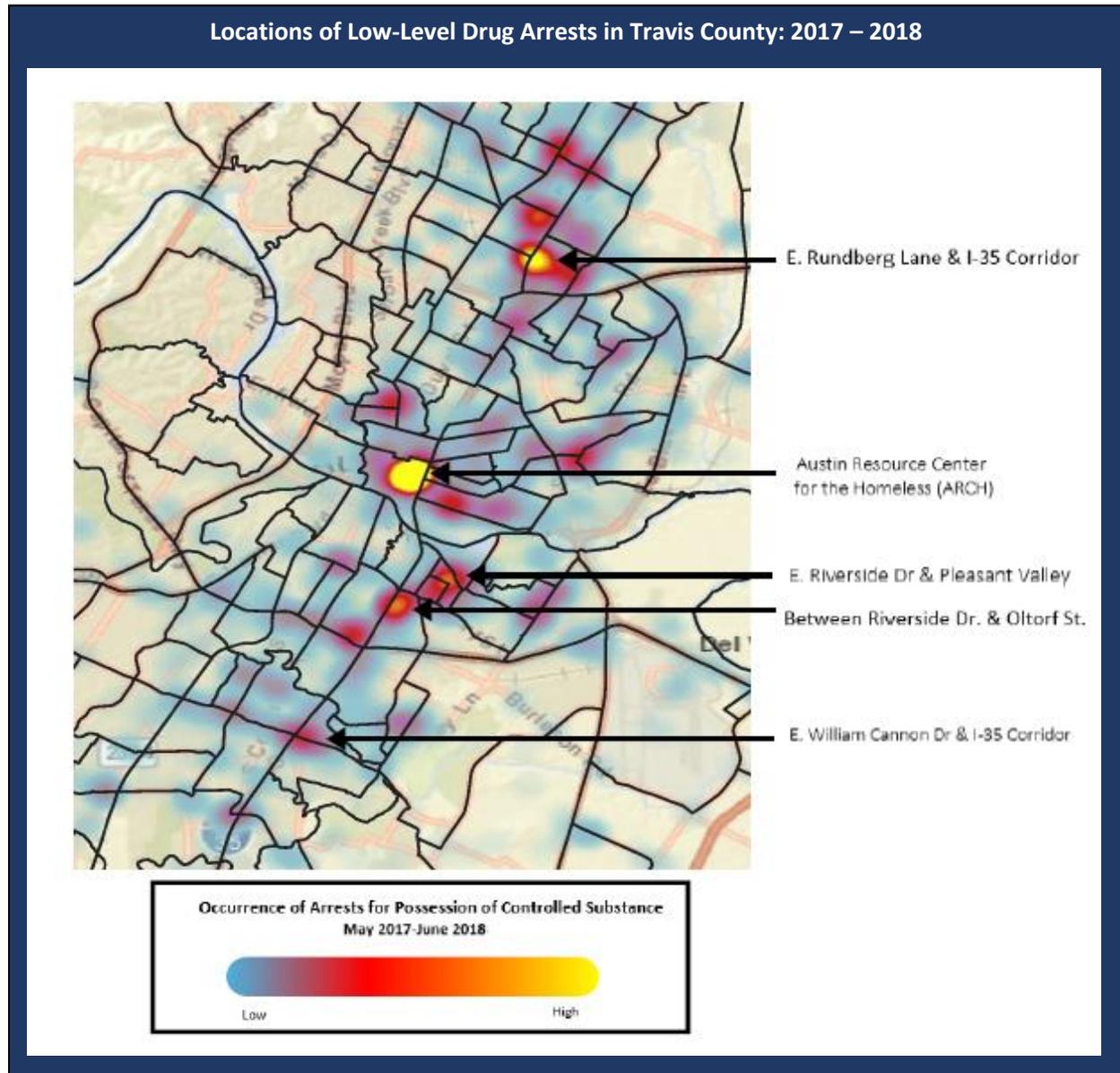


White POCS Arrests by Circumstance, 2017-2018



Research Study Results: Location

The data collection team identified the arrest location for all cases filed in Travis County District Court between June 2017 and May 2018. While drug arrests occurred throughout Travis County, they were most heavily concentrated (1) near the Rundberg Lane/I-35 corridor, (2) in downtown Austin, (3) on East Riverside Drive, (4) between Oltorf Street and East Riverside Drive, and (5) in the William Cannon Drive/I-35 corridor.



Understanding the Legality of Traffic Stops

The extraordinarily high number of drug possession arrests in Travis County that were precipitated by minor traffic stops deserves attention. A recent study found a disproportionate number of motor vehicle stops and searches targeting Black and Latinx populations in Austin.¹² Since the 1960s, the United States Supreme Court has repeatedly held that even brief investigatory stops by law enforcement officers, whether of pedestrians or people traveling in vehicles, must be based on an officer's "reasonable suspicion" that the person being stopped is "engaged in wrongdoing," based upon the totality of circumstances or "the whole picture."¹³ This is because even brief stops by police curtail an individual's right to physical liberty "and personal security free from arbitrary interference by law officers."¹⁴ Reasonable suspicion must be specific and particular to the person stopped. In a case from 1979, the Supreme Court noted that walking in a neighborhood frequented by drug users was not, in and of itself, a basis for concluding that a person was engaging in criminal conduct.¹⁵ The Supreme Court also explained that for a brief investigatory stop to be lawful under the Fourth Amendment, the stop must not only be justified at its inception but also reasonably related in scope and duration to the circumstances that justified the stop.¹⁶ In other words, the officer cannot unduly prolong the stop, or use additional methods of investigation, once the reasons for suspicion evaporate.

In the 1990s, the Supreme Court ruled that police could lawfully stop a vehicle so long as they had probable cause to believe that the driver had committed a traffic violation.¹⁷ These so-called routine traffic stops typically include stopping the vehicle, explaining to the driver the reason for the stop, verifying the driver's credentials, and then issuing a citation or a warning.¹⁸ In practice, however, routine traffic stops have become so closely associated with underlying War on Drugs motivation that they also entail database checks for criminal history and outstanding warrants, interrogation about drugs and the reason for travel, seeking consent to conduct a full search of the vehicle, and using a drug-sniffing dog to detect the presence of drugs in the vehicle.¹⁹

Today, law enforcement officers have wide leeway in conducting traffic stops because of the prevalence of traffic code violations, the expansion of routine stops to include interrogation and searches for drugs, and people's mistaken belief that they must consent to vehicle searches.²⁰ Studies show that **aggressive practices in traffic stops cause problems, including racial disproportionality (specifically high rates of traffic stops among Black individuals) and erosion of trust between police and communities targeted for traffic stops.**²¹

However, because aggressive stops and other War on Drugs enforcement strategies have proven ineffective, local communities are re-focusing resources on more compassionate, health-based strategies to prevent harm to drug users, connect them to services and treatment as needed, and prevent deadly overdoses.²²

Drug Arrests: A Public Health Failure

Approximately five percent of the analyzed POCS arrests in Travis County were precipitated by a police response to a medical or mental health crisis. These include overdose, suicidality, and other circumstances in which the individual's life is at risk. In one case, an officer described being at the scene of an overdose; he was there to conduct a welfare check for a man passed out in the grass, whose lips had turned blue and who had grass in his mouth. EMS revived him using Narcan and took him to the hospital. Upon release from the hospital, the same officer who witnessed his revival arrested the man and took him to jail. In

another incident, an officer came to check on a person experiencing suicidal thoughts; after a search of the person and premises, the officer arrested the person for having less than a gram of cocaine.

There are glaring disconnects between the public health imperatives illustrated in these cases and the law enforcement response. **Half of the cases relating directly to medical or mental health crises resulted in jail time anywhere between two days and two years, delaying or denying the immediate need to respond to medical and mental health needs.** These are not just missed opportunities; they represent a failure of a community to prioritize public health over drug enforcement.

Arresting someone subsequent to an overdose is dangerous on many levels. During their time in jail, they may experience the harmful, sometimes deadly, effects of opiate withdrawal. Similarly, the time following release has been known to be a high-risk time for death, with 48.5 percent of these deaths being drug-related.²³

Drug Arrests: Harm to Individuals, Families, and Communities

Drug enforcement for low-level possession has a net negative impact on individuals, families, and communities. Indeed, the War on Drugs has been found to destabilize families, introduce childhood trauma, and reduce access to resources such as health care, education, housing, and employment.²⁴ **Rather than restoring people to wellness, low-level drug enforcement worsens the conditions that perpetuate drug use, and it does so disproportionately according to race and socio-economic status.** Of the more than 2.3 million Americans who were in prison or jail 2019, nearly 60 percent were Black or Latinx,²⁵ while comprising a combined 31.7 percent of the total U.S. population.²⁶ The War on Drugs has also devastated migrant communities: Since 2007, more than 250,000 people have been deported from the U.S. for drug law violations.²⁷

In addition to racial disproportionalities, it is impossible to ignore the socio-economic disparities among those impacted by the drug war and incarceration in the U.S. Nearly two-thirds of incarcerated people had incomes less than \$12,000 per year prior to entering prison.²⁸ Economic disparities also prevent people from being released while awaiting trial.

MINOR CASES WITH MAJOR CONSEQUENCES

A Black male Travis County resident was arrested for .01 grams of crack cocaine, given a bail amount of \$12,000, and later sentenced to 9 months in jail.

A Black male Travis County resident was arrested for possession of .03 grams of cocaine, given a bail amount of \$3,000, and later sentenced to 150 days in jail.

A Black female Travis County resident was arrested for .078 grams of methamphetamine, given a bail amount of \$25,000, and sentenced to 270 days in jail.*

* The woman arrested for possession of .078 grams of methamphetamine was detained in jail for a lengthy period awaiting competency restoration, which involves medication management for mental illness to ensure that the defendant is competent to stand trial. Arresting people with mental illness for minor offenses, only to detain them for extended periods for competency restoration, raises additional concerns about the harmful and disparate impact the justice system has on people with mental health and substance use disorders.

A significant portion of arrestees for POCS that we studied were denied the opportunity for pretrial release (at least 475 out of 1,811 cases where POCS was the offense charged), either because they did not qualify for a personal recognizance bond or could not afford bail. **Most were ultimately sentenced to time served rather than placed onto community supervision.** Research indicates that individuals who are detained in jail pretrial are more likely than those not detained to be sentenced to county or state jail (64 percent compared to 17 percent), more likely to plead guilty to a conviction, and especially more likely to experience economic disadvantages.²⁹

In a study controlling for variables such as offense seriousness, prior record, and demographics, pretrial detention was still the strongest predictor of both incarceration and length of sentence.³⁰ **Pretrial detention decreases employment and other economic opportunities, which in turn can increase the likelihood of future justice system involvement.** In one recent study, three-fifths of the detained individuals in the study sample were readmitted within four years of release.³¹

Merely being arrested for drug possession brings long-term collateral consequences that will follow individuals and families throughout their lives. People with felony drug records experience barriers to employment and occupational licensing, housing, education, social services, and civic participation.³² People with drug possession convictions may be automatically disqualified from certain jobs related to medicine, law, and working with children; furthermore, protections against automatic denial of occupational licenses do not apply to people with drug possession convictions.³³ People also may lose the right to obtain a visa to travel to certain countries, or to obtain a gun.

Drug Arrests: A Path to Homelessness

Arrests and incarceration for POCS can have a detrimental effect on a person's ability to secure and maintain stable housing. Nationally, people who have been previously incarcerated are 10 times more likely to experience homelessness than the general public.³⁴ This is especially important to consider in Travis County, given the rising rates of homelessness.³⁵

Racial and gender disproportionality also relate to risk of homelessness. For instance, Black women who have been previously incarcerated experience homelessness at rates four times as high as formerly incarcerated white men when looking at national statistics.³⁶

In the Austin housing market, private landlords, City of Austin subsidized housing administrators, and the local Housing Authority have implemented policies or practices that have the effect of reducing access to stable housing for people with convictions or even arrests. A 2015 study of 80 City of Austin subsidized housing properties uncovered significant barriers to housing if someone has had interactions with the criminal legal system.³⁷ Of the surveyed properties, 25 percent of administrators considered arrests as criminal activity, warranting denial of an application, and a few property administrators would not rent their property to someone on probation or parole.³⁸ Additionally, 49 percent of the surveyed property administrators enforced a lifetime ban on people with any felony conviction, creating a significant barrier to affordable housing access for persons with state jail felony convictions for POCS.³⁹

Similarly, the Housing Authority City of Austin (HACA) uses arrest records as evidence to determine if an applicant has "engaged" in drug-related criminal activity.⁴⁰ Although HACA also factors in convictions or lack thereof, the use of arrests to investigate is itself problematic and casts a wide net.⁴¹

Limitations of Current Efforts to Address Drug Possession in Travis County

In June 2018, the Travis County District Attorney's Office launched the State Jail Felony Court to refer into one court all individuals with low-level drug possession and property crimes classified as state jail felonies, the lowest-tier felony classification in Texas.⁴² The purposes of the court include: reducing wait times for court appearances, increasing the number of people accepting pretrial diversion programming, and decreasing the number of people sentenced to jail or prison time. Early results indicate a reduction in time awaiting a court appearance, as well as a decrease in people sent to the state prison system. However, **the program has no impact on the number of low-level possession arrests in Travis County, and, as such, does not address racial disparities in arrest. Further, the court does address the harms of traffic stop enforcement of drug possession.** None of the recommendations below include court-based interventions; instead, they are aimed at keeping people out of the justice system entirely.

Maggie's Story

In 2016, I was arrested for possessing 0.5 grams of meth. At that time, I was a single mother of three (two in diapers) with an untreated substance use disorder, and I had already been cycling through the justice system. It had become almost impossible to support myself and three children. I was never offered help for my addiction, and with every arrest, it was harder to find a job or a place to live. I was forced to do the best I could with no outside support.

The justice system made the problem worse, not better. I was unable to provide the stability my children needed as I fought addiction. After the arrest in 2016, I was sentenced to serve one year in state jail, and Child Protective Services removed my children from my care. I faced more obstacles, not solutions, and the real issue was never addressed.

Ultimately, my parental rights were terminated and my three children were taken into state custody. The underlying trauma that needed to be addressed was still there after many incarcerations; the time I spent inside jails and away from my family offered no form of rehabilitation. A punitive response to an untreated disorder was harmful not only for me, but for my family as well. The State of Texas took away my parental rights. The lives of my children will affect the lives of their community, and the cycle will continue.

I was released in 2017 with nothing and had to rebuild my life. But this time, people in my community connected me with resources. I went to a treatment program for women, which helped me identify the problem, and I began to heal. For the first time, opportunities opened up for me that I never knew were possible.

I imagine how different the outcome would have been for me and my children if I had been given the same options years ago, when I first entered the system. Ultimately, it was the *community* that helped me heal, not the justice system. If we want to do something about drug addiction, it starts in the community. Arresting people for being addicted to drugs does nothing but hurt people, their families, and their communities.

Recommendations

- (1) **End the Prosecution and Incarceration of People for Possession of Less than Four Grams of a Controlled Substance.** Officials in other cities have begun to halt prosecutions for possession of personal-use quantities of drugs and instead invest in community-based services to address the health of residents who may contend with substance use disorder.⁴³ For cases involving personal-use amounts of drugs,⁴⁴ Travis County should decline to prosecute.
- (2) **End Law Enforcement Practices that Rely on Racial Profiling and the Use of Motor Vehicle Stops as the Primary Means of Drug Enforcement.** This practice, which results in motor vehicle searches, not only increases the number of people brought into the justice system on POCS charges, but it engenders community animosity—even in communities that have requested a police presence to address issues of violence and property crimes. Most people of color have experienced being stopped by the police for the most minor of violations, or no violation at all. For the same reasons, law enforcement agencies should eliminate drug possession arrests from hot-spot policing campaigns.⁴⁵
- (3) **Develop a Harm Reduction-Based Municipal Strategy to Address Substance Use.** Studies show that punitive approaches to drug use have proven ineffective in reducing the availability of drugs, while actually causing harms including increased incarceration and separation of families.⁴⁶ It is critical to decrease reliance on harmful policing strategies and criminalization of illicit drug use and instead prioritize harm reduction-based strategies.

What is Harm Reduction?

The primary goal of harm reduction is to keep people alive and encourage positive change in their lives. It refers to policies, programs, and practices that aim to minimize negative health, social, and legal impacts associated with drug use and drug policies. Harm reduction is grounded in dignity, justice, and human rights—working with people without judgment, coercion, or discrimination, and without requiring them to stop using as a condition of support. Numerous studies confirm that harm reduction prevents overdose, prevents diseases such as HIV, viral hepatitis, and tuberculosis, and supports recovery for those who seek it.⁴⁷

Adopt a Municipal Strategy for Addressing Drug Use

Cities like Ithaca, New York, are formulating a municipal drug strategy that is health-based and grounded in harm reduction.⁴⁸ **A municipal drug strategy enables local stakeholders to design policy solutions for problematic drug use that respect individuals' civil and human rights, avoid over-incarceration and attendant harms, and respond to critical public health needs, such as preventing overdose deaths.**⁴⁹ Such a strategy also allows the locality to balance health and safety resources while involving impacted individuals and communities in designing the policy solutions.⁵⁰ In many communities that seek to effectively implement a municipal drug strategy, policy-makers realize their investments in community-based health resources must significantly increase and diversify.

Keep People Out of Jail as a Harm Reduction Strategy

Local officials are turning away from enforcement-based approaches aimed at curbing illicit drug use and toward health-based approaches that can reduce the public health and social harms related to drug use.⁵¹ For instance, many U.S. cities and counties⁵² are implementing **Law Enforcement Assisted**

Diversion (LEAD) programs, which enable law enforcement and harm reduction outreach workers to connect drug users with support services in lieu of arrest. A LEAD program is often the initial step in devising a broader municipal drug strategy.⁵³ Programs like LEAD have decreased the rate of future arrest; improved health, housing, and employment outcomes; and reduced crime rates.

Train Law Enforcement on Harm Reduction

As policy-makers grow to embrace harm reduction principles and methodologies, law enforcement training and practices may lag behind.⁵⁴ **Training officers on harm reduction-based policing goals and methods is critical to deploying law enforcement toward a less punitive and evidenced-based approach to illicit drug use.**⁵⁵ Moreover, **law enforcement training and practices necessarily must address the gross racial disparities caused by War on Drugs strategies and tactics;** when police target racial or ethnic minority communities for drug enforcement, aggressive “zero tolerance” tactics tend to exacerbate racial disproportionalities in the justice system.⁵⁶

Adopt a Good Samaritan Policy

Travis County should implement protections from arrest following an overdose. Many states have adopted Good Samaritan laws to help combat opioid-related deaths; **these laws prevent arrest for a person who has overdosed, as well as for the person who places the 911 call to assist them,** thus encouraging the reporting of life-threatening situations. States with Good Samaritan laws have experienced a **15 percent decrease in overall opioid deaths,** and an even greater decrease in opioid deaths among Black individuals (26 percent) and Latinx individuals (16 percent).⁵⁷

Having arrest protection alleviates the fear around police interactions that are often experienced by some communities of color. Also importantly, jurisdictions that have passed laws to protect people in an overdose situation have not seen an increase in non-medical opioid use.⁵⁸

Implement a Hospital-Based Deflection Program

Hospitals and health care providers have the unique opportunity to address life-threatening drug use following an overdose. Two examples include Project ASSERT⁵⁹ at the Boston Medical Center in Massachusetts, and AnchorED at the Providence Center in Rhode Island.⁶⁰ **The programs employ peer recovery coaches and health advocates to help provide outreach, education, and assistance in accessing recovery services, syringe exchange, or medication assisted treatment.** These models are promising examples of how health care systems can respond proactively to an overdose without involving the justice system.

Acknowledgements

Authors

Cate Graziani, Texas Harm Reduction Alliance

cgraziani@harmreductiontx.org

David Johnson, Grassroots Leadership

djohnson@grassrootsleadership.org

Ranjana Natarajan, Civil Rights Clinic, University of Texas School of Law

rnatarajan@law.utexas.edu

Douglas Smith, Texas Criminal Justice Coalition

dsmith@texascjc.org

Contributors

Ashlyn Branscum

Kayla Sohns

Data Analysts

Dr. Laura Sanchez-Fowler

Allison Binder

Pro-Bono Project Consultants (Civil Rights Clinic, University of Texas School at Law)

Savannah Kumar

Jaqueline Odum

Data Collection Team

Andrew Robinson (Trainer/Project Manager)

Melissa McCargar (Trainer)

Megan Sissom (Trainer)

Amelia Casas

Alycia Castillo

Myrick Clark

Allison Franklin

Bailey Gray

Sophia Papan

Ja'Juan Smith

Allyson Todd

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