

MEMO

To: The Oregon Criminal Justice Commission

Re: Racial and Ethnic Impact Statement Discussion Draft, Initiative Petition #44 (IP44)

From: Dr. Andrew Seaman, MD; P. Todd Korthuis, MD, MPH; Kelsey Priest, PhD, MPH; Ximena Levander, MD; David Lawrence, MD

Date: July 22, 2020

We appreciate the opportunity to provide feedback on the “Racial and Ethnic Impact Statement Discussion Draft” that the Criminal Justice Commission prepared about *The Drug Addiction Treatment and Recovery Act of 2020*, the Oregon citizen initiative that will appear on the November 2020 election ballot. The authors are academic addiction medicine clinicians and researchers at Oregon Health and Science University. These ideas are our own and do not represent the views of our organization or our funders.

While we applaud the Criminal Justice Commission’s (CJC) initial effort to assess the impact of the IP44 ballot measure on racial and ethnic minorities and find it to be accurate and unbiased, we find a crucial piece of the impact of IP44 to be missing. Specifically, the impact study only addresses the disparity in convictions for substance use possession while omitting the impact of arrests more broadly on Black, Indigenous, and people of color (BIPOC) who use drugs. Through this omission, the report fails to convey the full implications of the criminalization of substance use on these community members and IP44.

The CJC report predicts IP44 would result in a 90.7% decrease in possession of controlled substances (PCS) convictions across all races and ethnicities, down to 348 after adoption from 4,057 in 2019. This is a substantial improvement in Oregon’s current punishment-oriented approach to a public health crisis. This represents less than half of the 8,903 individuals whom the CJC reports were arrested during 2019 on PCS charges. It is critical to understand that an arrest or fear/threat of arrest alone can have profound health and social impacts on people who use drugs and their communities, and as the report and literature demonstrate, BIPOC endure a disproportionate burden of those impacts.

Arrests for PCS lead to substantial health consequences. Most notably for people who use opioids, arrests and even temporary incarceration are associated with up to a 129 times higher rate of overdose in the first two weeks of release than that of community residents.¹ Fear of arrest can lead to harmful drug use behaviors such as sharing supplies, injecting too quickly, and injecting too strong of dose, potentially leading to overdose and increasing risk of infection requiring hospitalization, and transmission of HIV and HCV.^{2,3} Moreover, fear of arrest in policed populations may also discourage people from contacting life-saving emergency services.³ Among the general population interactions with law enforcement are

more often deadly for Black people than White people, Black people are 2.5 times as likely to be killed by law enforcement than white people.⁴ Due to the effects of systemic racism, national data has long shown BIPOC at increased risk for arrest for substance use and possession.⁵⁻⁷ In Multnomah county, a study of Health Share CCO members showed that Black/African American and Native American individuals were 85% and 50%, respectively, more likely to be arrested than White people, with minimal substance use disorder interventions post-release.⁸

These arrests also cause social destabilization and subsequent health consequences in several other ways. As addiction medicine specialists, clinicians, and/or researchers who frequently provide care for those experiencing homelessness and incarceration, we can attest that people who are arrested and incarcerated are at increased risk of losing their homes and employment, thereby obstructing their access to substance use disorder treatment. Inequities in bail decisions can prolong duration of incarceration and thus worsen these consequences, as well as further amplify underlying arrest biases, heightening the effects of incarceration on post-release social vulnerabilities for BIPOC.⁹

The CJC assessment of racial and ethnic impact of IP44 on convictions is a good start, but ultimately inadequate without the inclusion of data describing the effect of IP44 on arrests related to possession of controlled substances and thus, the impact of targeted policing on BIPOC communities. The negative impacts of arrests for substance possession on people who use drugs and the broader substance use crisis cannot be overstated, even in the absence of criminal conviction. IP44 would not only mitigate this impact and the systemic racism embedded in drug law enforcement, it would offer humane and evidence-informed treatment pathway options for those suffering with substance use disorders. This must be reflected in the CJC equity assessment.

Thank you for the opportunity to provide feedback on the Racial and Ethnic Impact Statement.



Andrew Seaman, MD
Assistant Professor of Medicine
Division of Addiction Medicine
Oregon Health & Sciences University



P. Todd Korthuis, MD, MPH
Professor of Medicine and Public Health
Chief, Section of Addiction Medicine
Oregon Health & Science University



David Lawrence, MD
Assistant Professor of Medicine
Division of General Internal Medicine & Geriatrics
Section of Addiction Medicine
Oregon Health & Sciences University



Kelsey Priest, PhD, MPH
MD/PhD Student
School of Medicine
Oregon Health & Science University



Ximena A. Levander, MD
Clinical Instructor
General Internal Medicine Clinical Research Fellow
Division of General Internal Medicine & Geriatrics – Section of Addiction Medicine
Oregon Health & Science University

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