IP 44 Racial and Ethnic Impact Statement

Oregon Criminal Justice Commission

16 July 2020

Background

The Oregon Criminal Justice Commission (CJC) received a written request from a member of the Legislative Assembly from each major political party requesting a racial and ethnic impact statement pursuant to ORS 137.685 for a state measure that is related to crime and likely to have an effect on the criminal justice system. This request concerns ballot initiative IP 44, titled the Drug Addiction Treatment and Recovery Act[1].

This statement describes the racial and ethnic impact to the criminal offender population that includes individuals convicted of a felony or misdemeanor level drug possession offense. There are several components of IP 44 that are not related to crime or the criminal justice system, and this statement does not include the racial and ethnic impact of those components. As such, the primary focus of this analysis centers on Sections 11 through 22 of the initiative.

Table 1. Proposed Changes in IP 44 to Possession of Controlled Substances (PCS) compared to Current Law

Current Law	IP 44
Felony	**Felony**
Subject has a prior felony conviction	Subject is convicted of a commercial drug offense
Subject has two or more misdemeanor convictions for PCS	
Subject possesses a substantial quantity of controlled substances	
Subject is convicted of a commercial drug offense	
Misdemeanor	**Misdemeanor**
All other non-felony PCS	Subject possesses a substantial quantity of controlled substances
Violation	**Violation**
	All other non-felony and non-misdemeanor PCS

IP 44 changes the sentencing for unlawful possession of controlled substances (PCS) statutes. As shown in Table 1, under current law, PCS convictions are misdemeanors, except in certain circumstances in which they are felonies, including when the subject has a prior felony conviction, has two or more prior PCS convictions, possesses a substantial quantity, or is convicted of a commercial drug offense. IP 44 changes PCS convictions to violations except in

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[1] http://oregonvotes.org/irr/2020/044text.pdf

certain circumstances including when the subject possesses a substantial quantity, which is a misdemeanor, or is convicted of a commercial drug offense, which is a felony.

As discussed in greater detail below, the methodology and data sources used for this statement mirror previous analyses regarding possession of controlled substances conducted by the CJC. House Bill 2355 (2017) required CJC to study the effect of the reduction in possession penalties on the criminal justice system and the composition of convicted offenders[2]. CJC used data from the Department of Corrections (DOC) that includes felony and misdemeanor convictions for drug possession to compile that report.

Finally, this statement is required to show an estimate of the racial and ethnic composition of the crime victims who may be affected by the state measure. Unfortunately, a comprehensive data source on victims of individuals convicted of drug possession crimes is not available. The Uniform Crime Reporting (UCR) Program housed at Oregon State Police collects data on reported crime from law enforcement agencies in the state. The UCR Program recently released the Oregon Crime Data Dashboards[3], which displays crimes reported to law enforcement from January to May 2020. The dashboard provides summary level data on a publicly available website that can be filtered by several variables. Under the Victims Dashboard, the data can be filtered by drug/narcotic offenses. This is more broadly defined than drug possession offenses, but is used here for example purposes. From January to May 2020, 4,796 distinct victims are displayed. The victim type for all offenses is displayed as society/public. The victim demographics that would be displayed by age, sex, and race are not available for this crime type.

Methods and Analysis

Current Convictions for PCS

CJC queried misdemeanor and felony convictions for PCS in 2019 where PCS was the most serious or only conviction.[4] Following this definition, in 2019 there were 2,139 misdemeanor PCS convictions and 1,918 felony PCS convictions. Table 2 displays the counts by race and ethnicity.

Table 2. 2019 PCS Convictions

Race/Ethnicity	Misdemeanor	Felony	Total
Asian	16	19	35
Black	120	69	189
Hispanic	238	198	436
Native	27	25	52
Unknown	5	4	9
White	1,733	1,603	3,336
Total	2,139	1,918	4,057

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[2] https://www.oregon.gov/cjc/CJC%20Document%20Library/2019PCSReport.pdf

[3] https://www.oregon.gov/osp/Pages/Uniform-Crime-Reporting-Data.aspx

[4] While PCS charges often accompany other felony charges, the CJC restricts the analysis to instances where PCS was the only or most serious charge because it is in those cases that CJC can best estimate the effects that IP 44 could have on the offender population. It is possible that in cases where PCS charges co-occur with other felonies, such as property or other statutory crimes, that sentencing outcomes could be different should IP 44 go into effect. However, these cases will likely result in a criminal conviction due to the determining factor of the other, more serious felonies.

Estimated Changes to PCS Population

Under IP 44, convictions for commercial drug offenses would remain felonies. To identify those offenders in 2019, CJC assumes that current felony drug PCS convictions showing a crime category 6 or higher on the sentencing guidelines grid would remain felonies. Of the total 1,918 felony convictions in 2019, five percent, or 102 total convictions, would be estimated to remain felonies under IP 44. A breakdown by race/ethnicity for these felonies is reported in the third column of Table 3.

Table 3. 2019 PCS Convictions with IP 44

Race/Ethnicity	Misdemeanor	Felony	Total	% Reduction
Asian	5	1	6	-82.9%
Black	9	3	12	-93.7%
Hispanic	40	19	59	-86.5%
Native	1	2	3	-94.2%
Unknown	2	0	2	-77.8%
White	219	77	296	-91.1%
Total	276	102	378	-90.7%

CJC assumes that 14 percent of felony PCS convictions, which amounts to 276, were for possession of a substantial quantity of narcotics, which under IP 44 would be misdemeanors. To arrive at this estimation, CJC identified the felony convictions in 2019 that were not commercial drug offenses but also were not convictions for individuals with either a felony record or a criminal history containing two or more prior PCS convictions. A breakdown by race/ethnicity for these convictions is reported in the second column of Table 3. Finally, all remaining convictions under IP 44 would be violations and would not be supervised or included in the DOC population.

Comparing Tables 2 and 3 provides an initial understanding of the magnitude of the change that could be ushered in by the passage of IP 44. As shown in column five of Table 3, in total CJC estimates that convictions for PCS would be reduced by 3,679, or 90.7 percent. When broken down by race, the reduction in convictions overall ranges from 82.9 percent for Asian Oregonians to almost 94 percent for Black Oregonians.

To further evaluate the racial and ethnic impact of this sentencing change, CJC employed a disproportionality metric known as the Raw Differential Representation, or RDR.[5] Substantively, the RDR represents the reduction in convictions that would be required to reach parity with white individuals given population differences across different races/ethnicities. A positive RDR indicates a minority racial/ethnic minority is overrepresented in the system compared to white individuals, whereas a negative RDR indicates a racial/ethnic minority is underrepresented in the system compared to white individuals. The goal, when assessing the RDR, is for each racial/ethnic group to be as close to white individuals as possible, as this would indicate that the group is neither underrepresented nor overrepresented compared to the baseline (white) group.

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[5] https://www.oregon.gov/cjc/CJC%20Document%20Library/2019PCSReport.pdf

Figure 1 displays the RDRs for 2019 felony convictions and the estimated felony convictions under IP 44. For 2019 felony convictions, there would need to be 24 fewer convictions for Black individuals to reach parity with white individuals. Under the estimated impact of IP 44, the RDR drops to one. Asian individuals are underrepresented compared to white individuals in 2019 convictions and under the estimated impact of IP 44, though to a lesser extent under IP 44. 2019 felony convictions for Hispanic individuals show a negative RDR, indicating that 85 additional Hispanic individuals would need to be convicted to achieve parity with white individuals. Under the estimated impact of IP 44, Hispanic individuals would instead be overrepresented by five. The RDR for Native Americans is the same under 2019 convictions and under the estimated impact of IP 44. The RDR analysis indicates that the estimated impact of IP 44 would be a decrease in overrepresentation of Black individuals in felony convictions. In general, Figure 1 shows that RDRs are closer to zero with the impact of IP 44, indicating a decrease in disparity.

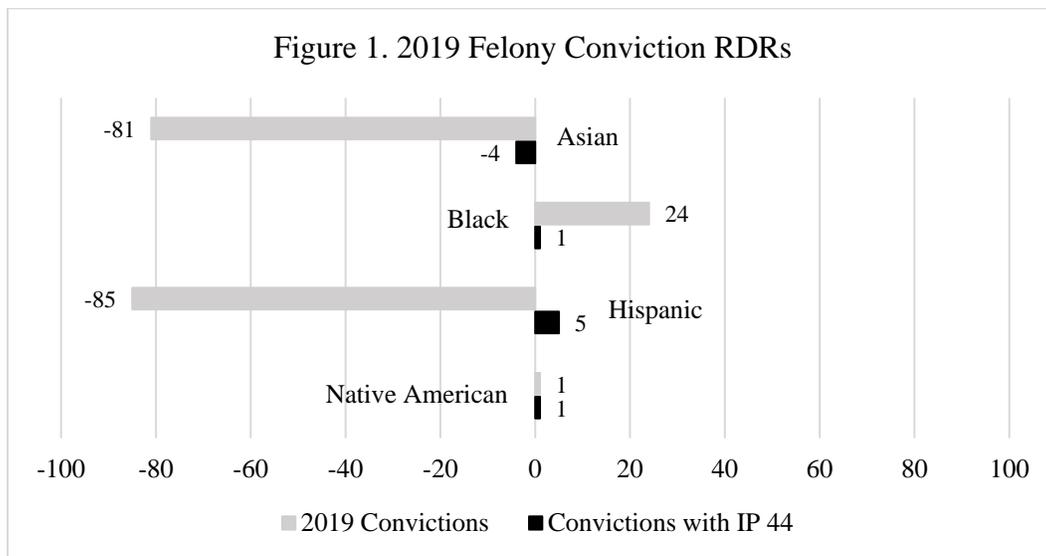
Figure 1. 2019 Felony Conviction RDRs

Figure 2 displays the RDRs for 2019 misdemeanor convictions and the estimated misdemeanor convictions under IP 44. For 2019 misdemeanor convictions, there would need to be 75 fewer convictions for Black individuals to reach parity with white individuals. Under the estimated impact of IP 44, that RDR drops to three. The RDR for 2019 misdemeanor convictions indicates that Asian and Hispanic individuals are both underrepresented in convictions compared to white individuals, and that remains true under IP 44 for Asian individuals. One fewer Hispanic individual would need to be convicted of a misdemeanor under IP 44 in order to reach parity with white individuals. Native American individuals were moderately overrepresented in 2019 convictions (by one), and under the estimated impact of IP 44 would be moderately underrepresented compared to whites (by two). The RDR analysis indicates that IP 44 would decrease overrepresentation of Black and Native American individuals in misdemeanor convictions compared to white individuals.

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Figure 2. 2019 Misdemeanor Conviction RDRs
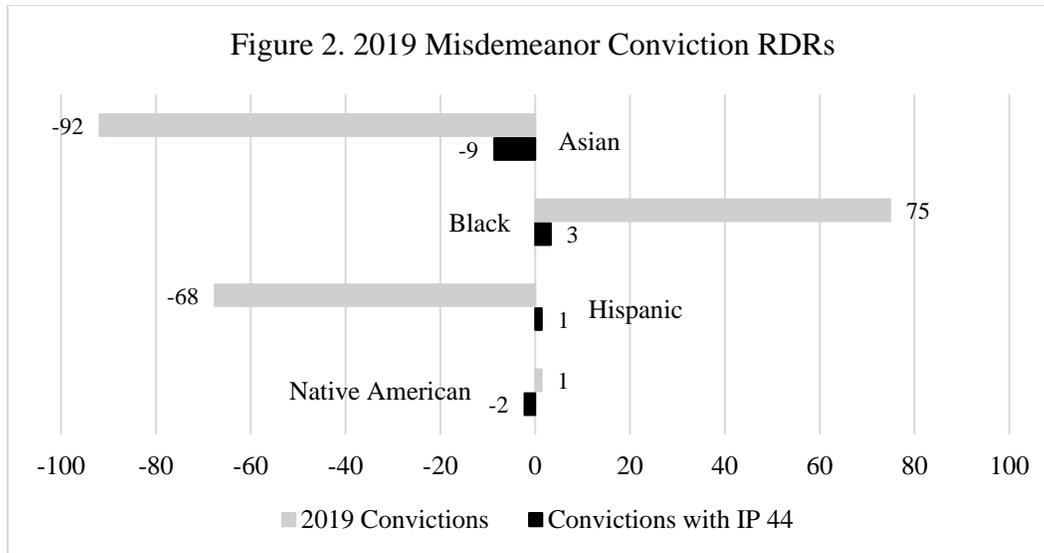
In conclusion, the RDRs for felony and misdemeanor convictions are closer to zero with the impact of IP 44. For Black individuals, the RDR drops to one for misdemeanor convictions and three for felony convictions. For Hispanic individuals, the RDR changes from an underrepresentation in convictions, to a value of one for misdemeanor convictions and five for felony convictions. The RDR for Native Americans is unchanged for felony convictions at one, and drops to negative two for misdemeanor convictions. As the RDRs trend to zero, this indicates a decrease in disparity for individuals convicted of misdemeanor and felony PCS. In addition, approximately 1,800 fewer Oregonians per year are estimated to be convicted of felony PCS and nearly 1,900 fewer convicted of misdemeanor PCS. Prior research suggests this drop in convictions will result in fewer collateral consequences stemming from criminal justice system involvement (Ewald and Uggen, 2012)[6].

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[6] Ewald, A., and Uggen, C. 2012. "The Collateral Effects of Imprisonment on Prisoners, Their Families, and Communities." In J. Petersilia & K. Reitz (Eds.), The Oxford Handbook on Sentencing and Corrections (pp. 83-103). New York, NY: Oxford University Press.