

Ending the War on Drugs in Travis County

How Low-Level Drug Possession Arrests are Harmful and Ineffective

The Texas Criminal Justice Coalition, the Texas Harm Reduction Alliance, Grassroots Leadership, and the UT Law Civil Rights Clinic launched a research project to analyze data for 2,900 less-than-a-gram drug possession arrests in Travis County (Austin), Texas, from June 2017 to May 2018, a one-year period; this offense is considered a state jail felony under Texas law. We conducted this research in response to the increasing rate of drug possession arrests in Travis County, and to identify ways to reduce such arrests.

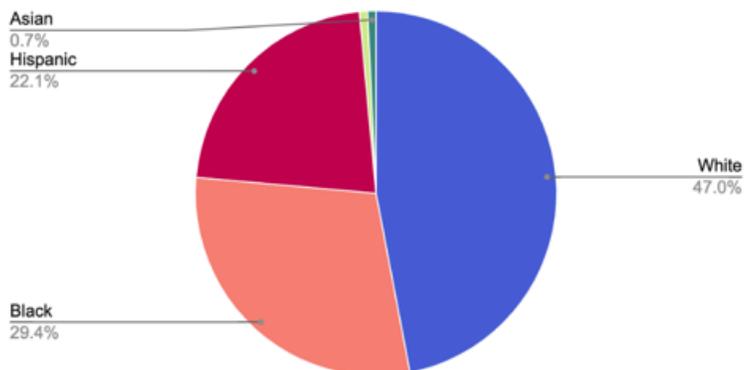
Why This Research Project?

- Between 2013 and 2017, the number of Possession of a Controlled Substance (POCS) arrests in Travis County increased by 43 percent,¹ and Travis County courts saw a 66 percent increase in the 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 in all Texas courts.²
- In 2017, POCS cases in Travis County had increased at such an alarming rate that county officials considered building more jail cells, especially to house the growing number of women arrested for drug possession.
- 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,³ despite the fact that Black individuals comprise less than 9 percent of Travis County’s population,⁴ and Black women comprise roughly half that total, or 4.5 percent.
- 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.⁵ 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.

What We Found

- From 2017-2018, Black individuals represented 29 percent of less-than-a-gram POCS cases in Travis County, despite comprising less than 9 percent of the county’s population.⁶
- Forty-seven percent of POCS charges that we analyzed originated from motor vehicle stops, typically for minor traffic violations such as failure to signal or expired registration. Our findings amplify concerns raised in a recent report from the City of Austin, which found a disproportionate number of motor vehicle stops and searches targeting Black and Latinx populations in Austin.⁷

POCS Arrests in Travis County by Race/Ethnicity, 2017-2018

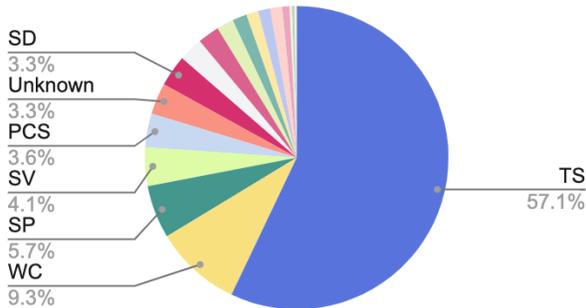


- For Latinx individuals arrested for less-than-a-gram POCS cases, 57 percent of cases originated with a traffic stop for a minor traffic violation (*coded as TS in the graphs at right and below*). The same was true for Black motorists in 44 percent of less-than-a-gram POCS arrests.

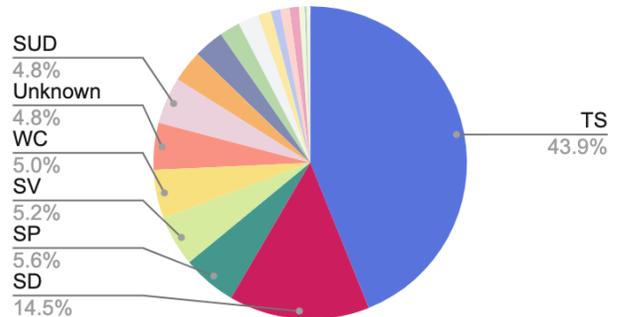
POCS Arrest Circumstance Codes

Code	Meaning
TS	Traffic Stops (for minor motor vehicle violations)
SUD	Suspected of Using Drugs
WC	Welfare Check
SV	Suspicious Vehicle
SP	Suspicious Person
SD	Suspected of Dealing

Hispanic POCS Arrests by Circumstance, 2017-2018



Black POCS Arrests by Circumstance, 2017-2018



- Half of POCS 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.
- Arrests for less-than-a-gram POCS cases were most heavily concentrated (1) near the Rundberg Lane/I-35 corridor, (2) in downtown Austin, (3) on East Riverside Drive, (4) between East Oltorf Street and East Riverside Drive, and (5) in the William Cannon Drive/I-35 corridor. The highest concentration of arrests was near the Austin Resource Center for the Homeless (ARCH).

Examples of Minor Cases with Major Consequences

- One Black male was arrested for .01 grams of crack cocaine, given a bail amount of \$12,000, and later sentenced to 9 months in jail.
- One Black male was arrested for possession of .003 grams of cocaine, given a bail amount of \$3,000, and later sentenced to 150 days in jail.
- One Black female was arrested for .078 grams of methamphetamine, given a bail amount of \$25,000, and sentenced to 270 days in jail.

Discussion

Drug Possession Arrests: An Ineffective Practice with Harmful Consequences

- When a person has a felony arrest record – even for something as minor as possessing less than one gram of a controlled substance – the collateral consequences create barriers to employment and occupational licensing, housing, social services, education, and civic participation.
- Using the justice system to address substance use disorder simply does not work. Drug possession arrests do not connect people with social services or treatment. Instead, a costly investment in incarceration, which disrupts people’s jobs and lives, fails to address the root cause(s) of criminalized behavior and produces no positive public health effects.

- Studies show that aggressive practices in traffic stops cause problems, including racial disproportionality – specifically high rates of traffic stops of Black individuals – and erosion of trust between police and communities targeted for traffic stops.⁸

Drug Possession Arrests and the Risk of Overdose or Mental Health Crisis

- In five percent of cases we analyzed, the police responded to an overdose or suicidal crisis. The police either took the individual directly to jail or awaited their release from the hospital to bring them to jail.
- For people at risk of overdose, the time following release from jail has been known to be a high-risk time for death, with 48.5 percent of these deaths being drug-related.⁹
- Because aggressive traffic stops and other War on Drugs strategies have proven ineffective, local communities are re-focusing resources on more compassionate strategies to prevent harm to drug users, connect them to services and treatment as needed, and prevent deadly overdoses and suicides.¹⁰

Drug Possession Arrests and Pretrial Jail Detention

- Even brief periods of jail detention disrupt work and family life. Long term, jail detention decreases employment and other economic opportunities, which can increase the likelihood of future justice system involvement. In one recent study, three-fifths of jail inmates were readmitted within four years of release.¹¹
- A significant portion of arrestees for POCS that we studied were denied the opportunity for pretrial release (at least 475 out 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. In these cases, the most common outcome was a county jail or state jail sentence.
- 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.¹²

Recommendations for Travis County

- (1) Reduce the Use of Motor Vehicle Stops as the Primary Means of Drug Enforcement.** The heavy use of traffic stops that lead to motor vehicle searches not only increases the number of people brought into the justice system, but it engenders community animosity – even in communities that have requested a police presence to address issues of violence and property crime. Many people of color have experienced being stopped by the police for the most minor of violations, or no violation at all. Police should end law enforcement practices that rely on racial profiling and the use of motor vehicle stops as the primary means of drug enforcement.
- (2) Develop a Harm Reduction-Based Municipal Strategy to Address Substance Use.** Many cities and counties around the country have reduced reliance on punitive policing and criminalization of illicit drug use in favor of harm reduction-based strategies. Travis County leadership should consider doing the following:
 - Create a pre-arrest deflection program for people who want and need help. Deflection programs allow police to refer individuals to community-based services in lieu of arrest. An example in Travis County is the Sobering Center, which serves as an alternative to arrest for public intoxication.
 - Implement a hospital-based deflection program. People brought to the hospital following an overdose would not be arrested but instead would receive peer-to-peer navigation services.

- Adopt a Good Samaritan policy to protect people calling 911 during an overdose. *Note: States with Good Samaritan laws 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).*¹³

(3) End the Prosecution and Incarceration of People for Less-Than-a-Gram Drug Possession Cases.

Officials in other cities have begun to halt prosecutions for possession of personal-use quantities of drugs, allowing them to instead invest in community-based services to address the health of residents who may contend with substance use disorder.¹⁴ The Travis County District Attorney’s Office should similarly do the following:

- Recognize the harms done through a punitive approach to personal drug possession and decline to accept charges for cases involving personal-use amounts of drugs.
- Decline to prosecute individuals for low-level drug possession, especially if the case arose from a vehicle search. Where prosecution for drug possession is necessary, limit it to cases where it was not the most serious offense.

Citations

¹ Texas Department of Public Safety, Criminal History Arrest and Conviction Statistics: 2019 - Arrest Stats by County (XLSX). County Arrest Records: 2013–2017, http://www.dps.texas.gov/administration/crime_records/pages/crimhistoryrptng.htm.

² Office of Court Administration, Court Activity Database, <https://card.txcourts.gov/>.

³ Travis County Sheriff’s Office, Data Request, 2018.

⁴ United States Census Bureau, *Quick Facts: Travis County Texas*, Population estimates: July 1, 2019, <https://www.census.gov/quickfacts/traviscountytexas>.

⁵ Karima Clayton, “The Collateral Consequences of the War on Drugs: An Interpretive Phenomenological Analysis of the Experience of Daughters Who Experienced Paternal Incarceration as a Result of the War on Drugs,” *Columbia Academic Commons*, <https://academiccommons.columbia.edu/doi/10.7916/D89S1QB9>.

⁶ United States Census Bureau, *Quick Facts: Travis County Texas*, 2019.

⁷ Office of Police Oversight, *Joint Report: Analysis of APD Racial Profiling Data*, January 2020, <http://www.austintexas.gov/edims/pio/document.cfm?id=334984>.

⁸ Jonathan Blanks, *Thin Blue Lies: How Pretextual Stops Undermine Police Legitimacy*, 66 Case W. L. Rev. 931 (Summer 2016).

⁹ B. Alex, D. Weiss, F. Kaba, Z. Rosner, D. Lee, et al, “Death After Jail Release: Matching to Improve Care Delivery,” *Journal of Correctional Health Care*, 23(1), 83–87 (2017), <https://doi.org/10.1177/1078345816685311>.

¹⁰ See e.g., Local Progress and Drug Policy Alliance, *Lessons in Taking Drug Policy Reform Local*, Sept. 11, 2019, http://www.drugpolicy.org/sites/default/files/dpa-localprogress-mds-policybrief_0.pdf.

¹¹ A.B. Wilson, J. Draine, T. Hadley, S. Metrazux, and A. Evans, “Examining the Impact of Mental Illness and Substance Use on Recidivism in County Jail,” *Public Health and Policy Perspectives for Psychiatry and Law*, (2011), 264-268.

¹² J.C. Oleson, C.T. Lowenkamp, T.P. Cadigan, M. VanNostrand, and J. Wooldredge, “The Effect of Pretrial Detention on Sentencing in Two Federal Districts,” *Justice Quarterly*, 33, no. 6 (October 2016), 1106.

¹³ Texas Health and Human Services Commission, *Overview of Drug Overdose Good Samaritan Laws, Presentation to the House Select Committee on Opioids and Substance Abuse*, 2018, https://www.dshs.texas.gov/legislative/2018-Reports/DSHS_SC-Opioid_Good-Samaritan-Laws.pdf.

¹⁴ Jason Jouvenal, “No Charges for Personal Drug Possession: Seattle’s Bold Gamble to Bring ‘Peace’ After the War on Drugs,” *The Washington Post*, June 11, 2019, https://www.washingtonpost.com/local/public-safety/no-charges-for-personal-drug-possession-seattles-bold-gamble-to-bring-peace-after-the-war-on-drugs/2019/06/11/69a7bb46-7285-11e9-9f06-5fc2ee80027a_story.html.