



# IP 44 Racial and Ethnic Impact Statement

## *Supplemental Document*

Oregon Criminal Justice Commission

5 August 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<sup>1</sup>.

This statement describes the racial and ethnic impact to the criminal offender population in detail and is intended to supplement the short racial and ethnic impact statement in the voter pamphlet. Relevant to the creation of the data estimates reported below, IP 44 would change possession of controlled substances (PCS) offenses to criminal violations, except where an individual possesses a substantial quantity of drugs, which would be a misdemeanor, or is convicted of a commercial drug offense, which would be a felony (please see Sections 11 through 22 of the initiative).

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

<b>Current Law</b>	<b>IP 44</b>
<b>Felony</b>	<b>Felony</b>
Subject has a prior felony conviction 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	Subject is convicted of a commercial drug offense
<b>Misdemeanor</b>	<b>Misdemeanor</b>
All other non-felony PCS	Subject possesses a substantial quantity of controlled substances
<b>Violation</b>	<b>Violation</b>
	All other non-felony and non-misdemeanor PCS

IP 44 changes the sentencing for unlawful 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

<sup>1</sup> <http://oregonvotes.org/irr/2020/044text.pdf>

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 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<sup>2</sup>. CJC used data from the Department of Corrections (DOC) that includes felony and misdemeanor convictions for drug possession, as well as data from the Law Enforcement Data Systems (LEDS) database, which contains data on all fingerprinted arrests in the state, to compile that report.

## Methods and Analysis

Racial and ethnic disparities can exist at any and all steps of the criminal justice process. For this analysis, the CJC focuses on convictions, sentence type and length, and arrests. It is possible, however, that inequities exist in police stops, jail bookings, bail, pretrial detention, or other areas, but the CJC lacks sufficient or appropriate data to examine those stages of the process. Similarly, while the CJC is required by statute to include an estimate of the racial/ethnic makeup of crime victims, data concerning victims of individuals convicted of drug possession are not available.

### *Current Convictions for PCS*

CJC queried misdemeanor and felony convictions for PCS in 2019 where PCS was the most serious or only conviction.<sup>3</sup> Following this definition, in 2019 there were 2,139 misdemeanor PCS convictions and 1,918 felony PCS convictions. Table 2 displays the counts and percentage breakdown by race and ethnicity. Compared to Census estimates for race and ethnicity within Oregon, Black and Native American Oregonians were overrepresented in convictions relative to their populations, while Hispanic and Asian Oregonians were underrepresented.

**Table 2. Convictions for Possession of Controlled Substances in 2019**

Race/Ethnicity	Misdemeanor		Felony		Total		Census
	Count	Pct.	Count	Pct.	Count	Pct.	Pct.
Asian	16	0.7%	19	1.0%	35	0.9%	5.1%
Black	120	5.6%	69	3.6%	189	4.7%	1.9%
Hispanic	238	11.1%	198	10.3%	436	10.7%	13.3%
Native American	27	1.3%	25	1.3%	52	1.3%	1.1%
White	1,733	81.0%	1,603	83.6%	3,336	82.2%	75.2%
Total <sup>4</sup>	2,139		1,918		4,057		

<sup>2</sup> <https://www.oregon.gov/cjc/CJC%20Document%20Library/2019PCSReport.pdf>

<sup>3</sup> 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.

<sup>4</sup> In a small number of instances, race is not known, which leads to the total being higher than the sum of the racial categories reported in this table.

CJC examined 2019 PCS convictions by the type of sentence an individual received as well as sentence length. Table 3 reports sentence type and sentence length by race. Overall, probation sentence lengths were between 16.5 and almost 21 months in duration, while local jail stays ranged from 15 to almost 45 days. For sentence type, the share of each racial group across the different outcomes was relatively consistent, suggesting that different racial groups were no more or less likely to receive a probation or jail sentence relative to other groups. For sentence length, small differences were detected by racial group, although only differences in felony probation sentence length were found to be statistically significant. As such, the data contained in Tables 2 and 3 suggest that the primary source of inequality by race and ethnicity in 2019 regarding sentencing for PCS was among convictions overall, given that both Black and Native American Oregonians were convicted at rates higher than their share of the Census population would predict.

**Table 3. Average Sentence Length in Months by Sentence Type in 2019**

<i>Community Supervision</i>	Misd. Probation		Felony Probation†	
	Count	Avg. LOS	Count	Avg. LOS
Asian	16	18.4	11	16.5
Black	120	17.3	49	19.0
Hispanic	238	18.0	145	20.8
Native American	27	18.9	15	18.0
White	1,733	17.9	1,169	19.5
Total <sup>4</sup>	2,139		1,393	

<i>Local Control Sentences</i>	First Sentence		Revocation	
	Count	Avg. LOS	Count	Avg. LOS
Asian	8	0.5	5	0.8
Black	20	0.6	23	0.9
Hispanic	53	0.8	74	1.5
Native American	10	0.9	21	1.3
White	434	0.7	720	1.3
Total <sup>4</sup>	525	0.7	844	1.3

† Difference between groups is statistically significant as assessed by F-statistic following an analysis of variance.

*Estimated Changes to PCS Conviction Population*

If IP 44 passes, convictions for commercial drug offenses would remain felonies. To identify commercial drug PCS 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

**Table 4. Estimated Convictions if IP 44 Passes**

<b>Race/Ethnicity</b>	<b>Misd.</b>	<b>Felony</b>	<b>Total</b>	<b>% Chg</b>
Asian	5	1	6	-82.9%
Black	9	3	12	-93.7%
Hispanic	40	19	59	-86.5%
Native American	1	2	3	-94.2%
White	219	77	296	-91.1%
Total <sup>4</sup>	276	102	378	-90.7%

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 4. 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 misdemeanors is reported in the second column of Table 4. Finally, all remaining convictions under IP 44 would be violations and would not be supervised or included in the DOC population.

Comparing Tables 3 and 4 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 4, 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 approximately 94 percent for Black and Native American 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.<sup>5</sup> 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 racial/ethnic group is overrepresented in the system compared to white individuals, whereas a negative RDR indicates a racial/ethnic group is underrepresented compared to white individuals. The goal, when assessing the RDR, is for each racial/ethnic group to be as close to the white “baseline” as possible, as this would indicate that the group is neither underrepresented nor overrepresented compared to the white group.

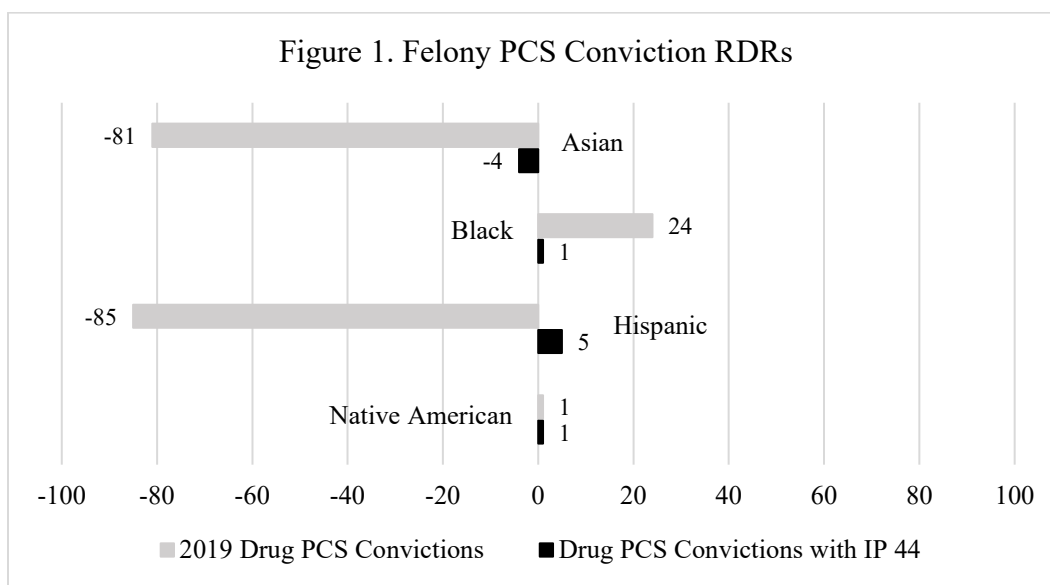
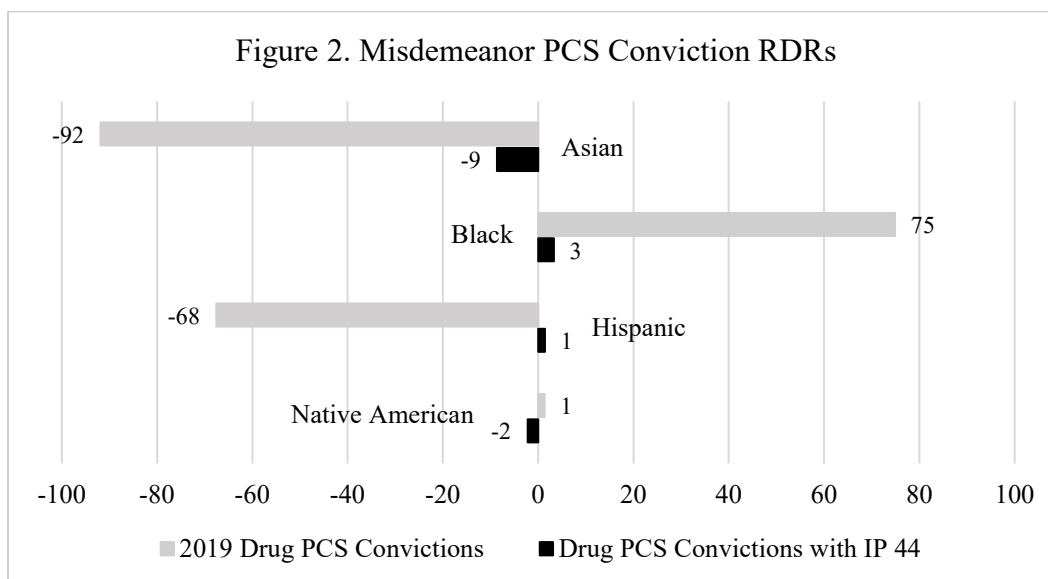


Figure 1 displays the RDRs for 2019 felony convictions as well as the estimated felony convictions under IP 44. For 2019 felony convictions, there would need to be 24 fewer convictions for Black individuals to reach parity with white individuals. Under the estimated impact of IP 44, that RDR drops to one. Asian individuals are underrepresented compared to white individuals in 2019 convictions and would continue to be underrepresented if IP 44 were to pass, though to a lesser extent. 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 American Oregonians 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

<sup>5</sup> <https://www.oregon.gov/cjc/CJC%20Document%20Library/2019PCSReport.pdf>

convictions. In general, Figure 1 shows that RDRs are closer to zero with the impact of IP 44, indicating an overall decrease in disparity.

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 white individuals (by two). The RDR analysis indicates that IP 44 would decrease overrepresentation of Black and Native American Oregonians in misdemeanor convictions compared to the white baseline.



### PCS Arrests

Beyond convictions, arrests can also have a significant negative impact on the lives of individuals. In 2019, 8,513 arrests were logged in LEDS where PCS was the most serious offense. The CJC examined a subset of those arrests, which included all arrests for PCS where the possession charge was the most serious offense *except* for those cases where there was a co-occurring arrest for violations of ORS 813.010 Driving While Under the Influence of Intoxicants, 164.245 Trespassing in the Second Degree, 164.045 Theft in the Second Degree, or 164.043 Theft in the Third Degree. The CJC excluded those arrests because it is likely that an arrest for the companion charges would still occur even if the individual would no longer be taken into custody for possessing narcotics. Table 5 provides a breakdown of these data by race/ethnicity.

**Table 5. Arrests for PCS in 2019**

Race/Ethnicity	Count	Pct.
Asian	59	0.9%
Black	422	6.3%
Hispanic	542	8.0%
Native American	84	1.3%
White	5,619	83.4%
Total	6,726	

Unlike the conviction data discussed previously, LEDS does not provide the same level of detail that the CJC would require to estimate which arrests would most likely not occur following the passage of IP 44. For example, the CJC does not have data specifying which arrests were for different quantities or amounts of narcotics. Similarly, CJC lacks data indicating whether an individual may be eligible to be charged with a commercial drug offense at the time of arrest. To estimate the possible effect of IP 44, therefore, the CJC relied on the percentage reductions, by race, that were estimated for PCS convictions. This means that, following the reductions described above in Table 4, the CJC modeled what the racial breakdown of PCS arrests would look like if there was a reduction of 82.9 percent for Asian individuals, 93.7 percent reduction for Black individuals, 86.5 percent reduction for Hispanic individuals, 94.2 percent reduction for Native American individuals, and a 91.1 percent reduction for white individuals. Table 6 reports the racial breakdown under this scenario. In total, as shown in Tables 5 and 6, arrests for PCS are estimated to fall from 6,726 to 615, a reduction of approximately 91 percent.

**Table 6. Estimated Arrests for PCS if IP 44 Passes**

Race/Ethnicity	Count	Pct.
Asian	10	1.6%
Black	27	4.3%
Hispanic	73	11.9%
Native American	5	0.8%
White	500	81.3%
Total	615	

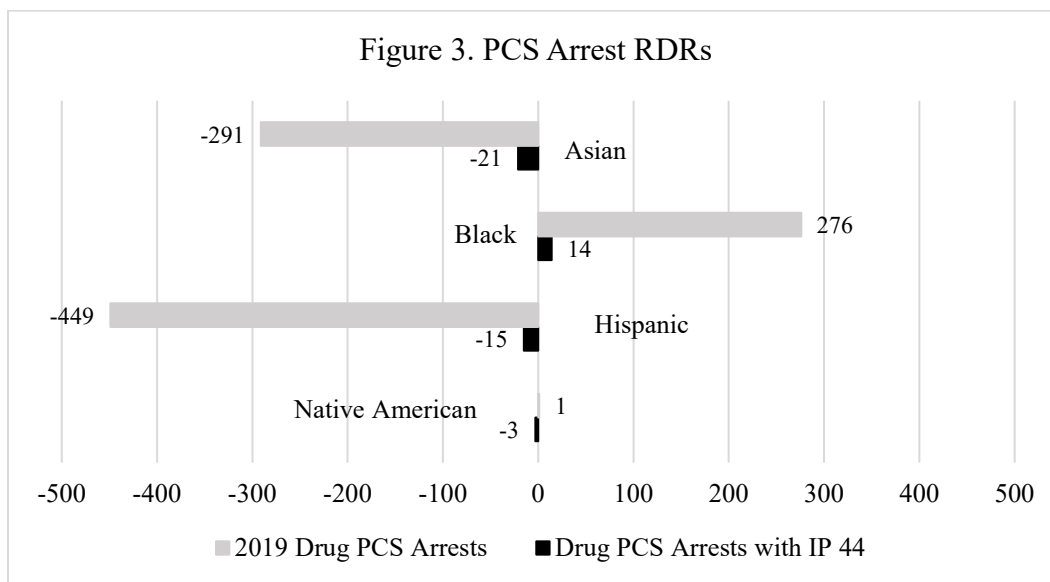


Figure 3 reports the raw differential representation metric for arrests following the possible passage of IP 44. Similar to convictions, disparities are estimated to fall substantially for arrests. Most notably, the disparity in arrests of Black Oregonians for PCS are estimated to fall from 276 per year to 14. For Native American Oregonians, it is estimated that previous trends of overrepresentation could flip from being currently overrepresented in arrests for PCS, to being underrepresented.

## Conclusion

Overall, if IP 44 were to pass, the Oregon Criminal Justice Commission estimates that approximately 1,800 fewer Oregonians per year would be convicted of felony PCS and nearly 1,900 fewer Oregonians per year would be 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)<sup>6</sup>, which include the reduced ability to find employment, reduced access to housing, restrictions on the receipt of student loans, inability to obtain professional licensure, and others.

The CJC estimates that IP 44 will likely lead to significant reductions in racial/ethnic disparities in both convictions and arrests. The RDRs for felony and misdemeanor convictions are estimated to be 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 American Oregonians 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.

Similarly, it is estimated that disparities in arrests for PCS would fall as well. If arrests follow the same trends as were estimated for convictions, then the overall number of PCS arrests would fall from just over 6,700 to 615. In this case, the significant overrepresentation of Black Oregonians as measured by the RDR among those arrested for PCS would fall substantially, being reduced by nearly 95 percent. In addition, Native American Oregonians would go from being overrepresented, to underrepresented compared to white individuals.

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<sup>6</sup> 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.