

Dane County, Wisconsin

**Identifying New Opportunities for Deflection and Diversion  
Programs Targeted at Non-Violent, Misdemeanor-level  
Offenses: Data Analysis & Recommendations**

January 2020



**JanuaryAdvisors**

For questions, please contact [info@januaryadvisors.com](mailto:info@januaryadvisors.com).

# Table of Contents

|   |    |
|---|----|
| Introduction                              | 2  |
| Key Terms                                 | 5  |
| What We Heard                             | 7  |
| Areas of Inquiry                          | 8  |
| General Overview                          | 8  |
| Disorderly Conduct                        | 12 |
| Probation Violation                       | 23 |
| Bail Jumping                              | 32 |
| Possession of Drug Paraphernalia          | 35 |
| Retail Theft                              | 40 |
| Expanding the Community Restorative Court | 45 |
| Summary of Recommendations                | 49 |



# Introduction

In an effort to achieve a more equitable and effective criminal justice system, Dane County has already addressed several of the most pressing and obvious reasons that people end up in jail.

The goal of this analysis is to identify areas where Dane County can continue to build on its work to reduce the number of people in the criminal justice system through deflection and diversion programs. Dane County already has many tools in place to deflect and divert, from specific programs to deferred prosecution, healthcare coordination, and the Community Restorative Court.

We began this project by interviewing select members of the Dane County Criminal Justice Council (CJC) to better understand the history of deflection and diversion in Dane County, how these programs were conceived and implemented, and to figure out what was left to accomplish. Then we focused on trends within the three datasets used in this analysis.

The first dataset contains Dane County Jail Bookings from January 1, 2016 to December 31, 2018, known in this report as the “bookings” dataset. This dataset contains information from 101 law enforcement agencies, including those outside of Dane County. It is designed to provide an overview of who is in jail, why they are there, and how they got there.

The second dataset contains law enforcement arrests from January 1, 2016 to December 31, 2018, known in this report as the “law enforcement” dataset. This dataset includes encounters with six different law enforcement agencies in Dane County. While it is not a comprehensive look at all adult arrests in Dane County, it does provide context for this analysis.

The third dataset is Madison Municipal Court data that was used to provide supporting information about municipal court case volume for specific offenses such as disorderly conduct or possession of drug paraphernalia.



Based on the trends elucidated by the datasets, we researched innovative deflection and diversion programs that would have an impact in Dane County.

It's important to note that the recommendations in this report are not exhaustive. The research was prioritized based on the data provided, and where there are models of programs to highlight from other jurisdictions. We made an effort to include only non-violent, misdemeanor-level offenses for consideration for deflection and diversion programs.

Additionally, there are limitations to the data we analyzed and the resulting report:

- There is a portion of the jail population that is incarcerated because of an external (federal or state) hold that Dane County has no authority to lift.
- The data we analyzed does not include information on case outcomes. In order to properly analyze case outcomes, additional data is necessary, including Wisconsin Circuit Court dispositions, referrals to the Deferred Prosecution Unit (and outcomes), referrals to Community Restorative Court (and outcomes), and other current diversion and/or deflection programs. Please see our recommendations at the end of this document for suggestions for future research.
- The analysis and recommendations are derived from adult data sets and do not include youth.

This report is structured as a series of data analyses. Each section defines the population for analysis, provides an overview of the offense, calculates the size of the population, and identifies deflection and diversion strategies from across the country. The report concludes with a summary of recommendations.



There are repeated correlations between certain offenses analyzed in this report. For example, someone who is arrested for Disorderly Conduct has a high likelihood that they are also in violation of their probation. Similarly, people charged with Possession of Drug Paraphernalia have a high correlation of associated drug and retail theft offenses.

We highlight these correlations to identify the portfolio of offenses that would require deflection or diversion in order to prevent an arrest or a jail stay. In many cases, one person might need multiple programs and/or wraparound case management across agencies.

Throughout this report, we calculate statistics in terms of offenses and in terms of people. This helps quantify how repeat offenders impact the numbers, which should be a consideration when designing deflection and diversion programs that could be restricted to first-time offenders. It is important to note that individuals may be associated with more than one offense, and may belong to multiple categories of offenses. This affects the total count of individuals, who are only counted once in the total for each analysis.

We wish to thank members of the Dane County Criminal Justice Council and their staff for generously offering their time, perspective, and expertise to this research, including the Dane County Sheriff, the Dane County District Attorney, the Dane County Executive, the Wisconsin State Public Defender's Office, and members of the Judiciary, as well as members of the Community Restorative Court, among others. As a result of time limitations, we were not able to interview agencies outside of Dane County, such as the Wisconsin Department of Corrections.



# Key Terms

- **Community Restorative Court.** A program in Dane County that resolves certain types of offenses outside of a criminal or municipal courtroom and drawing upon restorative justice best practices. It is open to offenders aged 17-25 who are charged with misdemeanors including Simple Battery, Disorderly Conduct, Obstructing an Officer, Theft, or Criminal Damage to Property.
- **Associated offense.** A separate offense charged to the same person, with the same day of arrest or booking.
- **Datasets reviewed:**
  - **Law enforcement dataset.** This dataset contains arrest data from six (6) law enforcement agencies in Dane County, including police departments in Madison, Verona, Sun Prairie, Fitchburg, Middleton, and Monona. This dataset was made available by the agencies as part of the Dane County Criminal Justice Council Data Sharing Initiative memorandum of understanding.
  - **Bookings dataset.** This dataset contains jail bookings information from one hundred one (101) arresting agencies, which include Dane County, other counties in the State of Wisconsin, and federal agencies, among others. This dataset was made available by the jail as part of the Dane County Criminal Justice Council Data Sharing Initiative memorandum of understanding.



- **Madison Municipal Court Records.** This dataset contains City of Madison Municipal Court records, and was made available through an information request to the City of Madison. This dataset was used to provide supporting information about municipal case volume for specific offenses researched here.
- **Deflection.** A method for resolving a perceived criminal activity outside of the typical criminal justice process.
- **Diversion.** A method for resolving criminal charges outside of a courtroom that may result in no charges filed, dropping the charges, or dismissing the case.
- **Offense.** A single charge/statute.
- **People/Individuals.** An individual with a deidentified unique person code. An individual may be associated with multiple offenses.
- **Repeat offender(s).** An individual whose deidentified unique person code appears in the data on two or more dates.



# What We Heard

We spoke with members of the Criminal Justice Council (CJC) to better understand the history of deflection and diversion in Dane County, and to elicit new ideas for investigation.

This included interviews with the County Executive, District Attorney, Sheriff, Clerk of Courts, one Criminal Court Judge, one Municipal Court Judge, as well as interviews with staff members from the Public Defender's Office. We also interviewed entities outside of the CJC including staff members from the Nehemiah Center for Urban Leadership Development, and the Dane County Community Restorative Court.

The primary themes of these conversations included:

- Disorderly Conduct, and methods for understanding the data.
- Probation Holds, and coordination with the Department of Corrections (DOC) to reduce the length of stay in the Dane County Jail.
- Bail Jumping offenses, and the impact on the jail population.
- Existing diversion programs and their successes.
- Limitations of law enforcement and prosecution.
- Capacity of deferred prosecution programs and the jail itself.
- Understanding context about the datasets used in this analysis.

These discussions served as a jumping off point for the data analysis in this report.

Additional stakeholders that we did not interview, but whose input should be gathered and considered prior to further analysis and implementation of recommendations on this issue include the Wisconsin Department of Corrections, additional law enforcement agencies, and those with deep experience working with the populations identified in this report.



## Areas of Inquiry



### Areas of Inquiry: Overview

In addition to the qualitative interviews, we looked at the most frequent offenses in the booking and law enforcement datasets compiled from multiple law enforcement agencies in Dane County. The following two pages contain tables of the most frequent offenses from the law enforcement dataset and the bookings dataset.

In all datasets, there were patterns that confirmed the topics in our initial conversations. For example, Disorderly Conduct is the most frequently occurring charge in both datasets. The areas of inquiry in this report reflect offenses that are non-violent, and that appear frequently in both datasets.

Each area of inquiry includes data analysis as well as related deflection and/or diversion program models.



## Law Enforcement Dataset: Most Frequent Offenses

| Offense   | 2016  | 2017  | 2018  | Total |
|---|-------|-------|-------|-------|
| Disorderly Conduct                                  | 2,313 | 2,369 | 2,538 | 7,220 |
| Domestic Enhancer                                   | 1,052 | 1,029 | 1,151 | 3,232 |
| Retail Theft  | 667   | 668   | 465   | 1,800 |
| Battery - Simple                                    | 614   | 601   | 578   | 1,793 |
| Misdemeanor Bail Jumping                            | 475   | 489   | 588   | 1,552 |
| Possession of Drug Paraphernalia                    | 438   | 438   | 460   | 1,336 |
| Probation Hold                                      | 630   | 313   | 367   | 1,310 |
| Felony Bail Jumping                                 | 399   | 426   | 454   | 1,279 |
| Unlawful Trespass (After Notified Not to Enter)     | 350   | 361   | 415   | 1,126 |
| Resisting/Obstructing an Officer                    | 332   | 317   | 343   | 992   |
| Damage Property                                     | 267   | 276   | 266   | 809   |
| Probation Violation                                 | 231   | 284   | 288   | 803   |
| Unlwl to Possess/Consume Open Intox on Public St    | 288   | 235   | 138   | 661   |
| Misdemeanor Retail Theft Intentionally Take <\$500  | 225   | 201   | 221   | 647   |
| Operating While Intox (1st)                         | 202   | 199   | 212   | 613   |
| Casual Possession of MJ or Cannabis in Public Place | 235   | 168   | 209   | 612   |
| Possess Heroin                                      | 179   | 223   | 202   | 604   |
| Battery- Misdemeanor                                | 155   | 206   | 193   | 554   |
| Parole Violation                                    | 188   | 140   | 158   | 486   |
| Party to a Crime                                    | 150   | 114   | 149   | 413   |



## Bookings Dataset: Most Frequent Offenses

| Offense                       | 2016  | 2017  | 2018  | Total  |
|-------------------------------|-------|-------|-------|--------|
| Disorderly Conduct            | 3,760 | 3,838 | 3,841 | 11,439 |
| Probation Violation           | 2,285 | 2,069 | 1,898 | 6,252  |
| Operating While Intoxicated   | 1,641 | 1,664 | 1,621 | 4,926  |
| Battery                       | 1,462 | 1,520 | 1,404 | 4,386  |
| Bail Jumping - Misdemeanor    | 1,499 | 1,483 | 1,129 | 4,111  |
| Bail Jumping - Felony         | 1,389 | 1,403 | 1,058 | 3,850  |
| Theft                         | 1,040 | 1,086 | 931   | 3,057  |
| Parole Violation              | 909   | 969   | 1,036 | 2,914  |
| Resisting or Obstructing      | 804   | 819   | 947   | 2,570  |
| Criminal Damage to Property   | 716   | 771   | 739   | 2,226  |
| Retail Theft Intent Take      | 720   | 660   | 610   | 1,990  |
| Possess Drug Paraphernalia    | 663   | 690   | 578   | 1,931  |
| Writ                          | 604   | 639   | 579   | 1,822  |
| Possess Narcotic/Analog       | 619   | 629   | 519   | 1,767  |
| OAR (1st Rev Due to OWI/PAC)  | 424   | 481   | 383   | 1,288  |
| ID Theft                      | 335   | 433   | 290   | 1,058  |
| Drug                          | 357   | 309   | 210   | 876    |
| Forgery Uttering              | 216   | 334   | 202   | 752    |
| Possession of THC             | 210   | 264   | 265   | 739    |
| Burglary Building or Dwelling | 198   | 278   | 251   | 727    |



Because this report is focused on diversion and deflection, we selected non-violent, misdemeanor offenses that have a history of diversion and deflection programs in other jurisdictions.

We examined the frequency of charges, the presence of associated offenses, and the number of repeat offenders. Then we researched applicable deflection and diversion programs from across the country.



## Areas of Inquiry



# Area of Inquiry: Disorderly Conduct

## Overview

Wisconsin's Disorderly Conduct statutes are broadly defined. The most frequently used Disorderly Conduct statute is Wisconsin Statute 947.01. Approximately 93.1% of the people in jail with a Disorderly Conduct offense are associated with 947.01. This statute leaves broad discretion to law enforcement to determine whether the offense was serious enough to result in an arrest:

Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.<sup>1</sup>

Disorderly Conduct offenses are associated with 36.5% of the Dane County Jail population between January 1, 2016 and December 31, 2018. During this time, there were 11,439 Disorderly Conduct offenses listed among other offenses for 6,807 individuals.

In this deflection and diversion analysis, we are focusing on trends within Disorderly Conduct offenses that do not have an enhancer and are not associated with a federal or state hold.

---

<sup>1</sup> Wisconsin State Legislature, Statute 947.01. Accessed December 3, 2019. <https://docs.legis.wisconsin.gov/statutes/statutes/947/01>



## Disorderly Conduct Enhancer Overview

Approximately two-thirds of the Disorderly Conduct offenses in the bookings dataset had an enhancer, while approximately one-third of the Disorderly Conduct offenses in the law enforcement dataset had an enhancer:

| <b>Disorderly Conduct</b>        | <b>Total Charges (Bookings)</b> | <b>Individuals (Bookings)<sup>2</sup></b> | <b>Total Charges (LEA)</b> | <b>Individuals (LEA)</b> |
|----------------------------------|---------------------------------|---|----------------------------|--------------------------|
| Disorderly Conduct (total)       | 11,439                          | 6,807                                     | 7,220                      | 4,686                    |
| Disorderly Conduct (enhancer)    | 7,472                           | 5,011                                     | 2,488                      | 2,086                    |
| Disorderly Conduct (no enhancer) | 3,967                           | 2,637                                     | 4,732                      | 3,582                    |

An enhancer helps clarify whether the offense was related to domestic violence, weapons, a repeat offense, or other elements that would disqualify the person from deflection or diversion.

In this report, we limit our analysis and recommendations to non-violent, misdemeanor offenses. Throughout this section, we calculate totals for disorderly conduct with enhancers and with no enhancers in order to accurately represent the potential population for diversion or deflection.

---

<sup>2</sup> The total number of individuals includes people who have more than one Disorderly Conduct charge, both with an enhancer and with no enhancer. As such, these individuals are counted in both of the subtotals, but only once in the total.



### Disorderly Conduct with Associated Probation or Parole Violation

We separated associated probation and parole violations from this analysis. Addressing this population would require additional coordination with the Wisconsin Department of Corrections.

| Probation or Parole Violation                    | Total Charges (Bookings) <sup>3</sup> | Individuals (Bookings) |
|--|---------------------------------------|------------------------|
| DC + Probation or Parole Violation (total)       | 1,685                                 | 1,038                  |
| DC + Probation or Parole Violation (enhancer)    | 1,173                                 | 806                    |
| DC + Probation or Parole Violation (no enhancer) | 512                                   | 388                    |

### Disorderly Conduct with No Enhancer and No Associated Offenses

This table below shows the total number of offenses where the Disorderly Conduct has no enhancer, and no associated offenses at the time of booking.

| No Enhancer and No Associated Offenses                            | Total Charges (Bookings) | Individuals (Bookings) |
|---|--------------------------|------------------------|
| DC + No Enhancer + No Associated Offenses (total)                 | 935                      | 787                    |
| DC + No Enhancer + No Associated Offenses (repeat offenders)      | 571                      | 423                    |
| DC + No Enhancer + No Associated Offenses (one-time) <sup>4</sup> | 364                      | 364                    |

<sup>3</sup> It is important to note the existing collaboration between the Dane County Sheriff and the Wisconsin Department of Corrections to evaluate Probation Hold cases within the Dane County Jail. This collaboration has led to a sustained reduction of people in custody for Probation Holds beginning in 2018.

<sup>4</sup> This row represents the number of one-time offenders within the three year span of the data.



### Disorderly Conduct with Other Associated Offenses

The table below counts disorderly conduct offenses when there are associated offenses that are not probation or parole violations.

| Other Associated Offenses                    | Total | Individuals |
|--|-------|-------------|
| DC + Other Associated Offenses (total)       | 8,431 | 4,806       |
| DC + Other Associated Offenses (enhancer)    | 5,399 | 3,456       |
| DC + Other Associated Offenses (no enhancer) | 3,032 | 2,036       |

### Top Associated Offenses with Disorderly Conduct with No Enhancer

The table below shows offenses most associated with Disorderly Conduct, not including probation or parole violations.

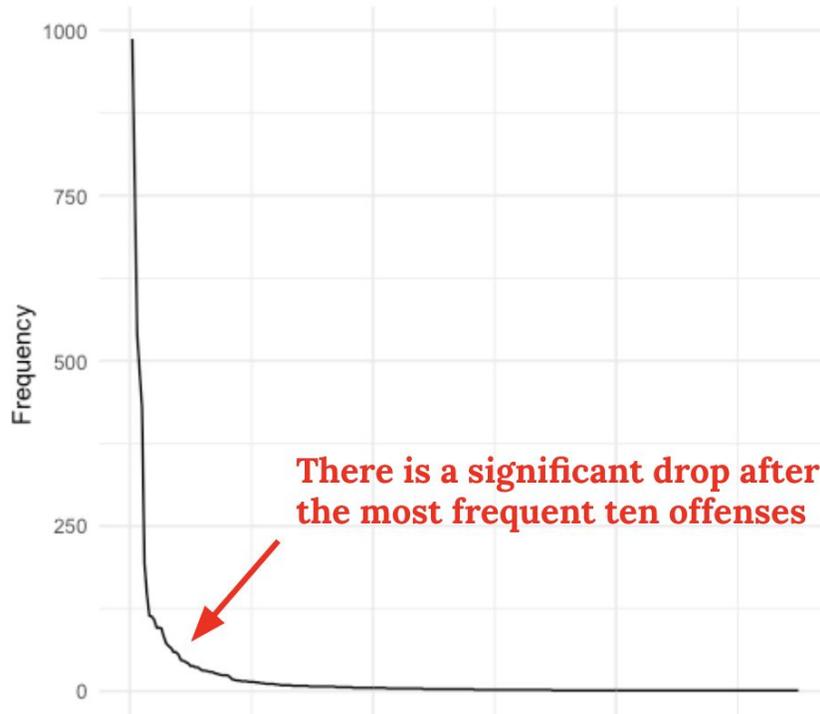
| Top Associated Offenses          | Total |
|----------------------------------|-------|
| Battery                          | 987   |
| Bail Jumping - Misdemeanor       | 770   |
| Resisting or Obstructing         | 541   |
| Criminal Damage to Property      | 485   |
| Bail Jumping - Felony            | 430   |
| Theft                            | 194   |
| Retail Theft Intent Take         | 147   |
| Trespass to Land                 | 114   |
| Possession of Drug Paraphernalia | 113   |

The top ten most frequently occurring associated offenses in the table above comprise 63% of all associated offenses.



After the top ten, there is a significant drop in associated offense frequency:

## Associated offenses with Disorderly Conduct (no enhancer)



*The top ten associated offenses comprise 63% of the total associated offenses in the bookings dataset.*

There are approximately 440 other associated charges. Two-thirds of these offenses have fewer than 10 occurrences. We focus on a selection of the most frequently occurring associated offenses elsewhere in this report, including opportunities for deflection and diversion for Bail Jumping - Misdemeanor, Probation Violation, Retail Theft Intent Take, and Possession of Drug Paraphernalia.

We recommend additional research into the offenses Resisting or Obstructing, Criminal Damage to Property, Bail Jumping - Felony, and Theft, since the parameters of this analysis and data do not provide additional information about the nature of these offenses:



[D]atabases typically only list the charge the person was convicted of, not the circumstances. So a person with a disorderly conduct conviction may have been in a drunken fist fight in a bar, or simply in a shouting match with a neighbor that got heated enough for someone to call police.<sup>5</sup>

Similarly, the frequently associated charge of Resisting or Obstructing does not provide details about the nature of the offense. In order to evaluate those offenses for deflection or diversion, the data needs to contain more information about the offense itself and whether it was violent or associated with a violent offense.

### **Disorderly Conduct and Misdemeanor Bail Jumping**

Of the disorderly conduct offenses associated with misdemeanor bail jumping, 80% had no enhancer.

| <b>DC + Misdemeanor Bail Jumping</b>        | <b>Total</b> | <b>Individuals</b> |
|---|--------------|--------------------|
| DC + Misdemeanor Bail Jumping (total)       | 1,649        | 694                |
| DC + Misdemeanor Bail Jumping (enhancer)    | 339          | 174                |
| DC + Misdemeanor Bail Jumping (no enhancer) | 1,310        | 592                |

---

<sup>5</sup> Flatten. “City Court: Misdemeanor Convictions Lead to Life-Long, ‘Beyond Horrific’ Consequences.” Goldwater Institute, April 2018. Accessed December 15, 2019. <https://goldwaterinstitute.org/wp-content/uploads/2018/04/City-court-cosequences-final.pdf>



## Disorderly Conduct and Retail Theft

Of the disorderly conduct offenses associated with retail theft, two-thirds had no enhancer.

| DC + Retail Theft                           | Total | Individuals |
|---|-------|-------------|
| DC + Retail Theft Intent Take (total)       | 228   | 111         |
| DC + Retail Theft Intent Take (enhancer)    | 77    | 45          |
| DC + Retail Theft Intent Take (no enhancer) | 151   | 76          |

### Deflection Strategy: Deflect from Arrest by Referring Disorderly Conduct Offenses to Madison Municipal Court

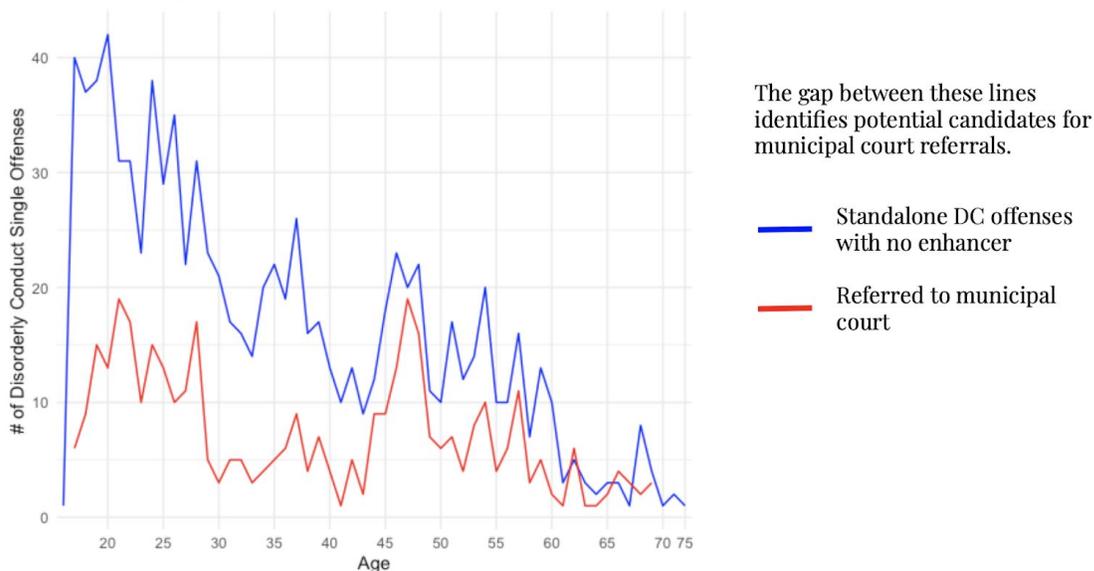
If the law enforcement officer works for a municipal police department, they can decide whether to arrest a person for disorderly conduct, or refer them to municipal court for a potential citation. Because municipal court is a civil court, a referral effectively deflects arrest and diverts the individual from the criminal court system and the associated consequences.

It seems that this is already a common practice: within the law enforcement dataset, there were 1,558 disorderly conduct encounters (21.5% of total) with an outcome of “released with citation.”

In the bookings dataset, there were 382 records of disorderly conduct with no enhancer and no associated offenses with an entry type of “Municipal Offense.” But there were also 429 records that fit the same criteria, but were charged with a misdemeanor.



## Standalone Disorderly Conduct offenses could be referred to municipal court



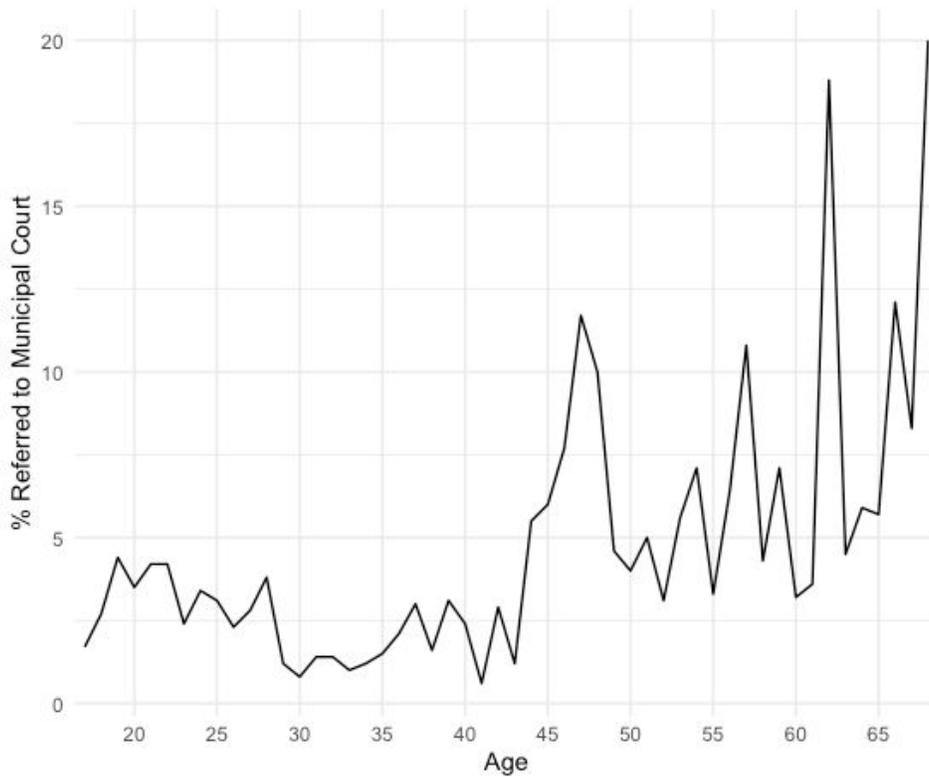
There is potential to increase the number of referrals to municipal court. Within the jail bookings dataset, there are 521 bookings by the Madison Police Department for Disorderly Conduct with no enhancer, and no associated offenses. 234 of these bookings were first-time offenders in the data, while 244 were repeat offenders.<sup>6</sup>

Additionally, we found that the median age of a person charged with Disorderly Conduct in Dane County is 31 years old. However, the median age of a person referred to the City of Madison Municipal Court in Dane County is 36 years old. Based on the available data, we observed that people over 45 years old are much more likely to be referred to municipal court.

---

<sup>6</sup> Repeat offenders may have repeat disorderly conduct offenses, or another offense in the bookings dataset. The total number of people will be fewer than the total number of records.





*People referred to municipal court for Disorderly Conduct offenses tend to be older.*

**Comparable Programs: Eau Claire County Pre-Charge Diversion Program (ECCPDP)**

We reviewed a variety of Disorderly Conduct deflection and diversion programs from across the United States. These programs differ based on several key factors, such as age and criminal history of the participating populations.

For first-time offender deflection, the Eau Claire County Pre-Charge Diversion Program (ECCPDP) has been in operation since 2012 and accepts charges related to Disorderly Conduct, Drugs, and Theft.<sup>7</sup> This program requires eligible adults “to meet with the program coordinator, enroll in an

---

<sup>7</sup> Eau Claire does not have a municipal court and this program was likely created so that Disorderly Conduct charges were not necessarily sent to circuit court.



educational course, pay program and restitution fees, as well as remain offense-free for the supervision period.”<sup>8</sup>

The recidivism rate for participants in the ECCPDP facing Disorderly Conduct charges is 16.7%.<sup>9</sup> Of the charges accepted by the ECCPDP, Disorderly Conduct is the most likely to experience reduced rates of recidivism due to participation in the ECCPDP. The authors note that the risk of re-offense “nearly doubles when offenders do not complete the Diversion Program and are instead formally charged” (Callister & Braaten, 2016).

---

<sup>8</sup> Kopak & Frost. “Correlates of Program Success and Recidivism among Participants in an Adult Pre-Arrest Diversion Program.” American Journal of Criminal Justice, Vol 42, Issue 4, 2017. Accessed December 15, 2019.

<https://university.pretrial.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=894318a6-4c97-2a41-895f-7663426c49c8&forceDialog=0>

<sup>9</sup> Callister & Braaten. “An Evaluation of the Eau Claire County Pre-Charge Diversion Program as Measured by Three Year Recidivism Rates.” 2016. Accessed December 15, 2019.

<https://www.co.eau-claire.wi.us/home/showdocument?id=10918>



## **Comparable Programs: Deflection with Citation in Lieu of Arrest**

There is comprehensive research performed by the International Association of Chiefs of Police (IACP) that shows the benefits of “citation in lieu of arrest.”

<sup>10</sup> The findings include:

- Citation in lieu of arrest is used “most often for disorderly conduct, theft, trespassing, driving under suspension, and possession of marijuana.”
- Citations take 24.2 minutes to process, compared to 85.8 minutes for an arrest, resulting in a significant time savings for the officer.
- Law enforcement officers retain discretion whether to arrest, and they benefit from “comprehensive data availability” in the field.

The study calls for comprehensive research on the topic, which presents opportunities for Dane County to establish formal programs for Disorderly Conduct offenses.

---

<sup>10</sup> “Citation in Lieu of Arrest: Examining Law Enforcement’s Use of Citation Across the United States.” Accessed December 15, 2019.

<https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20Lieu%20of%20Arrest%20Literature%20Review.pdf>



## Areas of Inquiry



# Area of Inquiry: Probation Violation

## Overview

In Wisconsin, probation is a form of community-based supervision that requires meetings with a probation agent, possible fees for restitution, and other restrictions determined at the discretion of the probation agent:

During your first meeting, your agent will discuss the rules and conditions of supervision. The court, as well as your agent, may require that you do certain things or prohibit you from doing certain things while you are on supervision. For instance, you may have to take part in drug or alcohol counseling, family counseling, a school program, a job program, or other programs. The court may also order you to pay a fine, court costs, or attorney fees, perform community service work, pay restitution to the victim, or pay supervision fees. Payment of supervision fees is an important condition of your supervision and is required by law. Your agent will explain what you owe and assist you in setting up a monthly payment plan based on your financial situation. If you are not able to pay, your agent may ask the court to give you more time to pay or change the financial conditions of your supervision.<sup>11</sup>

Probation Violation is a frequent offense in the law enforcement and bookings datasets. It should be noted that all misdemeanants in Wisconsin are supervised by the state (WI DOC) rather than by the county. This is

---

<sup>11</sup> State of Wisconsin, Department of Corrections, DOC Community Corrections. Accessed December 15, 2019. <https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/GeneralInformation.aspx>



unique to the State of Wisconsin. For example, in Minnesota, misdemeanants are supervised by the county’s law enforcement.

| <b>Probation Violation</b>        | <b>Total Bookings</b> | <b>Individuals (Bookings)<sup>12</sup></b> | <b>Total LEA Encounters<sup>13</sup></b> | <b>Individuals (LEA Encounters)</b> |
|-----------------------------------|-----------------------|--|--|-------------------------------------|
| <b>All Probation Violation</b>    | <b>6,252</b>          | <b>3,424</b>                               | <b>803</b>                               | <b>673</b>                          |
| <b>All, no associated offense</b> | <b>2,983</b>          | <b>2,059</b>                               | <b>562<sup>14</sup></b>                  | <b>487</b>                          |
| Misdemeanor, no associated        | 926                   | 659  | -  | -                                   |
| Felony, no associated             | 1,743                 | 1,260                                      | -  | -                                   |
| Civil, no associated              | 310                   | 295  | -  | -                                   |
| Other, no associated              | 4 <sup>15</sup>       | 4  | 562                                      | 487                                 |
| <b>All, associated offense</b>    | <b>3,269</b>          | <b>2,268</b>                               | <b>241</b>                               | <b>222</b>                          |
| Misdemeanor, associated           | 1,084                 | 829  | -  | -                                   |
| Felony, associated                | 1,866                 | 1,337                                      | -  | -                                   |
| Civil, associated                 | 319                   | 308  | -  | -                                   |
| Other, associated                 | 0                     | 0  | 241                                      | 222                                 |

### **Misdemeanor Probation Violation**

In this report, we focus on non-violent, misdemeanor-level offenses. There were 926 records of misdemeanor probation violation from 659 individuals that had no associated offense. This represents 15% of all probation violations in the bookings dataset.

<sup>12</sup> The total number of individuals across this analysis includes people who have more than one probation violation offense, both with an associated offense and without any associated offenses. As such, these individuals are counted in both of the subtotals, but only once in the total. This is the case with both the bookings and law enforcement datasets.

<sup>13</sup> The total number of probation violations in the law enforcement dataset does not include encounters marked as parole/probation violation (42) or probation hold (738).

<sup>14</sup> The law enforcement dataset does not include a misdemeanor, felony, or civil Crime Class for probation violation.

<sup>15</sup> Includes 3 records with a blank Crime Class Description and 1 record with a Crime Class Description of County Ordinance.



There were 1,084 records of misdemeanor probation violation from 829 individuals that had at least one associated offense. The most common offenses associated with misdemeanor probation violation are as follows:

| Misdemeanor Probation Violation Associated Charge | Total |
|---|-------|
| Disorderly Conduct                                | 640   |
| Battery   | 333   |
| Bail Jumping - Misdemeanor                        | 228   |
| Theft   | 205   |
| Retail Theft Intent Take                          | 192   |
| Resisting or Obstructing                          | 183   |
| Criminal Damage to Property                       | 168   |
| Operating While Intoxicated                       | 118   |
| Bail Jumping - Felony                             | 104   |
| Possession of Drug Paraphernalia                  | 99    |

### Probation Violation and Probation Hold Arrests

When an individual is suspected of violating their probation, the Wisconsin Department of Corrections can detain the individual pending an investigation into the probation violation. These individuals are not subject to the requirement of a probable cause hearing within 48 hours of arrest because the individual is not under arrest.<sup>16</sup>

Probation holds have been cited as one cause of over incarceration:

Another way that community corrections supervision drives mass incarceration is through the use of what are colloquially called probation or parole “holds.” Without revoking someone’s supervision,

<sup>16</sup> Wisconsin Legislature: 970.01(2). Accessed December 15, 2019. <https://docs.legis.wisconsin.gov/statutes/statutes/970/01/2>



and sometimes without any intent to revoke, Division of Community Corrections agents can incarcerate someone on a hold. These holds do not require judicial review or approval, and can extend for up to 21 business days (not including weekends or holidays) without initiating a revocation process (Satinsky et al. 2016). This period can be extended with the approval of an administrator. Once a revocation process is initiated, a person can remain incarcerated while the revocation hearing process unfolds. While someone is incarcerated on a probation or parole hold, they are not eligible to be released on bail. Many people incarcerated for probation and parole holds are held in county jails, and there are not good data available to indicate how many people are held there, for how long, or how these numbers may have changed over time.<sup>17</sup>

It is important to continue to research the nature of probation violations and probation holds. In 2016, Wisconsin's supervision rate ranked 29th among states, with 1-in-67 people on either probation or parole. Nationally, more than three quarters of people are under supervision for a non-violent crime, and nearly one-third fail to complete their term.<sup>18</sup>

In 2018, through an ongoing collaboration with the Wisconsin Department of Corrections, the Dane County Sheriff made significant progress with decreasing the number of probation holds in the jail each day.

---

<sup>17</sup> Williams, Schiraldi, and Bradner. "The Wisconsin Community Corrections Story." Columbia University Justice Lab, January 2019. Accessed December 17, 2019. <https://justicelab.columbia.edu/sites/default/files/content/Wisconsin%20Community%20Corrections%20Story%20final%20online%20copy.pdf>

<sup>18</sup> Horowitz. "Probation and Parole Systems Marked by High Stakes, Missed Opportunities." Pew Charitable Trusts, September 2018. Accessed December 17, 2019. (<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2018/09/probation-and-parole-systems-marked-by-high-stakes-missed-opportunities>)



| <b>Probation Holds</b>                             | <b>Total Bookings</b> | <b>Individuals (Bookings)<sup>19</sup></b> | <b>Total LEA Encounters</b> | <b>Individuals (LEA)</b> |
|--|-----------------------|--|-----------------------------|--------------------------|
| <b>Probation Holds (all)</b>                       | <b>3,880</b>          | <b>2,588</b>                               | <b>1,310</b>                | <b>1,039</b>             |
| Probation Holds, no associated offenses            | 1,557                 | 1,354                                      | 738                         | 629                      |
| Probation Holds, associated offenses <sup>20</sup> | 2,323                 | 1,381                                      | 572                         | 515                      |

Many probation holds do not have an associated offense.<sup>21</sup> In the LEA dataset, the top offenses prompting a probation hold are as follows:

| <b>Top LEA Offenses Prompting with Probation Holds</b> | <b>Count</b> |
|--|--------------|
| Federal Offense  | 726          |
| OAR (1st Rev Due to OWI/PAC)                           | 234          |
| Contempt of Court Pun Sanction                         | 223          |
| Immigration Detainer                                   | 200          |
| Contempt of Court                                      | 186          |
| Disorderly Conduct                                     | 165          |
| Operating While Intoxicated                            | 142          |
| Retail Theft Intent Take                               | 132          |
| Theft  | 130          |
| Possession of THC                                      | 108          |

<sup>19</sup> The total number of individuals across this analysis includes people who have more than one probation hold offense, both with an associated offense and without any associated offenses. As such, these individuals are counted in both of the subtotals, but only once in the total. This is the case with both the bookings and law enforcement datasets.

<sup>20</sup> The law enforcement dataset does not distinguish between misdemeanor and felony level offenses in most cases.

<sup>21</sup> Although the Probation Hold is an isolated offense in the data, the Dane County District Attorney noted that charges are often filed for individuals on a probation hold after they are released from the jail due to the time for case processing.



Of probation holds that have an associated offense, the top associated offenses are:

| <b>Top Bookings Offenses Associated with Probation Holds</b> | <b>Count</b> |
|--|--------------|
| Disorderly Conduct   | 457          |
| Bail Jumping - Felony  | 447          |
| Probation Violation  | 403          |
| Bail Jumping - Misdemeanor                                   | 387          |
| Retail Theft Intent Take                                     | 320          |
| Operating While Intoxicated                                  | 313          |
| Resisting or Obstructing                                     | 299          |
| Theft  | 298          |
| Battery  | 260          |
| OAR (1st Rev Due to OWI/PAC)                                 | 234          |

| <b>Top LEA Offenses Associated with Probation Holds</b> | <b>Count</b> |
|---|--------------|
| Disorderly Conduct                                      | 175          |
| Domestic Enhancer                                       | 114          |
| Resisting/Obstructing an Officer                        | 74           |
| Possession of Drug Paraphernalia                        | 67           |
| Battery - Simple  | 65           |
| Possession of Heroin                                    | 49           |
| Damage Property   | 45           |
| Unlawful Trespass (After Notified Not to Enter)         | 29           |
| Felony Bail Jumping                                     | 22           |



In the case of probation violations, there is a broad set of potential conditions that could trigger a violation in Wisconsin. These conditions include the DOC Standard Rules of Community Supervision<sup>22</sup> as well as any additional rules imposed by the supervising agent or sentencing court. The reason for the probation violation is not in the data provided, so we cannot determine the reason for the probation violation and the resulting arrest.

In the case of probation holds, the Wisconsin Department of Corrections<sup>23</sup> makes the determination for re-incarceration. The data about what happens to a person after a probation hold is critical to better understand the cost-benefit of the arrest, especially if there are no associated offenses. That data was not available for this report.

---

<sup>22</sup> DOC Standard Rules of Community Supervision. Accessed December 17, 2019.

<https://doc.wi.gov/Pages/AboutDOC/CommunityCorrections/SupervisionRules.aspx>

<sup>23</sup> We did not speak with the Wisconsin Department of Corrections for this report, but it should be noted that all misdemeanants in Wisconsin that are on community supervision are supervised by the Wisconsin DOC rather than by the county.



## **Policy Changes at the State Level: Program Examples**

There are several state-level policy changes that have been documented to reduce the probation revocation rate across the country:<sup>24</sup>

- Arizona: the Safe Communities Act of 2008 focused probation supervision on people who have a high risk of reoffending, and created incentives for localities to reduce revocations. This led to a 29% reduction in revocations over an eight-year period between 2008-2016.
- Colorado: the 2010 Colorado legislature reduced penalties for low-level drug offenses, and incentivized people on supervision to be compliant. This led to a 24% reduction in revocations between 2006 and 2015.
- North Carolina: the Justice Reinvestment Act of 2011 provided evidence-based treatment to people on probation, as well as empowered probation officers to incarcerate probation violations without full revocation. This led to a 42% reduction in revocations between 2006 and 2015.

## **Comparable Programs: Additional Research Needed**

Much of the available research we reviewed about probation and sentencing focuses on restorative justice as a form of diversion, and sentencing guidelines to reduce supervision periods. Through the Community Restorative Court, Dane County already has a mechanism for restorative justice, but it currently does not accept people on probation or extended supervision.

Probation Violation is a complex offense with a variety of underlying factors that cannot be determined in the available data. There are no model deflection or diversion programs that can address all aspects of Probation

---

<sup>24</sup> For additional reading on these policy changes, please view “Reducing Recidivism: States Deliver Results.” Council of State Governments Justice Center. June 2017. Accessed December 15, 2019. [https://csgjusticecenter.org/wp-content/uploads/2017/06/6.12.17\\_Reducing-Recidivism\\_States-Deliver-Results.pdf](https://csgjusticecenter.org/wp-content/uploads/2017/06/6.12.17_Reducing-Recidivism_States-Deliver-Results.pdf)



Violation, because the conditions of probation are also complex and non-standard. For this report, we focused on Probation Violation associated with another offense that is a candidate for deflection or diversion.



## Areas of Inquiry



# Area of Inquiry: Bail Jumping

## Overview

Bail jumping is defined by Wisconsin statute 946.49(1):

- (1) Whoever, having been released from custody under ch. 969, intentionally fails to comply with the terms of his or her bond is:
  - (a) If the offense with which the person is charged is a misdemeanor, guilty of a Class A misdemeanor.
  - (b) If the offense with which the person is charged is a felony, guilty of a Class H felony.

Bail jumping is defined as Misdemeanor Bail Jumping and Felony Bail Jumping in the law enforcement and bookings datasets. For the purpose of this analysis, we only look at Misdemeanor Bail Jumping.



| <b>Bail Jumping Offenses</b>             | <b>Total Bookings</b> | <b>Individuals (Bookings)<sup>25</sup></b> | <b>Total LEA Encounters</b> | <b>Individuals (LEA Encounters)</b> |
|--|-----------------------|--|-----------------------------|-------------------------------------|
| Bail Jumping, All                        | 7,981 <sup>26</sup>   | 2,646                                      | 2,832 <sup>27</sup>         | 1,532                               |
| Bail Jumping, All Felony                 | 3,850                 | 1,447                                      | 1,279                       | 835                                 |
| <b>Bail Jumping, All Misdemeanor</b>     | <b>4,112</b>          | <b>1,596</b>                               | <b>1,552</b>                | <b>906</b>                          |
| Bail Jumping, Misdemeanor, no associated | 321                   | 269  | 344                         | 249                                 |
| Bail Jumping, Misdemeanor, associated    | 3,791                 | 2,200                                      | 1,208                       | 753                                 |

In the bookings dataset, these are the top offenses associated with misdemeanor bail jumping:

| <b>Top Booking Offenses Associated with Misdemeanor Bail Jumping</b> | <b>Count</b> |
|--|--------------|
| Disorderly Conduct   | 1,916        |
| Battery  | 813          |
| Resisting or Obstructing   | 777          |
| Possess Drug Paraphernalia   | 704          |
| Retain Theft Intent Take   | 697          |
| Theft  | 544          |
| Criminal Damage to Property  | 484          |
| OAR (1st Rev Due to OWI/PAC)   | 322          |
| Operating While Intoxicated  | 300          |
| Probation Violation  | 204          |

<sup>25</sup> The total number of individuals includes people who have more than one bail jumping offense, both with an associated offense and without any associated offenses. As such, these individuals are counted in both of the subtotals, but only once in the total. This is the case with both the bookings and law enforcement datasets.

<sup>26</sup> Includes 19 records simply marked “Bail Jumping” with a crime class of “County Ordinance.”

<sup>27</sup> Includes 1 record marked “Bail Jumping Failure of Witness to Show.”



In the law enforcement dataset, these are the top offenses associated with misdemeanor bail jumping:

| <b>Top LEA Offenses Associated with Misdemeanor Bail Jumping</b> | <b>Count</b> |
|--|--------------|
| Disorderly Conduct   | 399          |
| Felony Bail Jumping  | 218          |
| Domestic Enhancer  | 175          |
| Possession of Drug Paraphernalia                                 | 132          |
| Battery-Simple   | 119          |
| Misdemeanor Retail Theft Intentionally Take <\$500               | 116          |
| Resisting/Obstructing an Officer                                 | 92           |
| Damage Property  | 60           |
| Possession of Heroin   | 43           |
| Felony Retail Theft Intentionally Take >\$500 - \$5000           | 33           |

### **Strategies for Reducing Misdemeanor Bail Jumping**

A comment in the Wisconsin Law Review outlines several strategies for addressing the population of people incarcerated for bail jumping, though they require data that was not in scope for this analysis:<sup>28</sup>

- Collect additional data regarding how and why bond conditions are being violated.
- Explore bail jumping charge dismissals and leverage situations.
- Analyze outcomes based on race and age.
- Implement uniform, statewide practices for setting bail conditions.

---

<sup>28</sup> Johnson. "Comment: The Use of Wisconsin's Bail Jumping Statute: A Legal and Quantitative Analysis." Wisconsin Law Review, May 2018. Accessed December 17, 2019. <http://wisconsinlawreview.org/wp-content/uploads/2018/05/Johnson-Final.pdf>



## Areas of Inquiry

|          |                    |                     |              |                    |              |            |
|----------|--------------------|---------------------|--------------|--------------------|--------------|------------|
| Overview | Disorderly Conduct | Probation Violation | Bail Jumping | Drug Paraphernalia | Retail Theft | Expand CRC |
|----------|--------------------|---------------------|--------------|--------------------|--------------|------------|

# Area of Inquiry: Possession of Drug Paraphernalia

## Overview

Possession of Drug Paraphernalia is one of the most frequently occurring offenses in both the bookings dataset (2,005 offenses from 1,227 people) and the law enforcement dataset (1,337 offenses from 1,041 people).

Statute 961.573(1) states:

No person may use, or possess with the primary intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance or controlled substance analog in violation of this chapter. Any person who violates this subsection may be fined not more than \$500 or imprisoned for not more than 30 days or both.

There is a high likelihood that Possession of Drug Paraphernalia has an associated offense, and there is also a high likelihood that the associated offense is drug related. This analysis looks at standalone and associated offenses.



## Possession of Drug Paraphernalia as a Standalone Offense

Possession of Drug Paraphernalia has a very high likelihood to have associated offenses:

| Possession of Drug Paraphernalia            | Total Bookings | Individuals (Bookings) <sup>29</sup> | Total LEA Encounters <sup>30</sup> | Individuals (LEA Encounters) |
|---|----------------|--------------------------------------|------------------------------------|------------------------------|
| <b>All Possession of Drug Paraphernalia</b> | <b>2,005</b>   | <b>1,227</b>                         | <b>1,337</b>                       | <b>1,041</b>                 |
| <b>All, no associated offense</b>           | <b>107</b>     | <b>100</b>                           | <b>237</b>                         | <b>222</b>                   |
| Misdemeanor, no associated                  | 92             | 87                                   | 49                                 | 47                           |
| Civil/other, no associated                  | 15             | 15                                   | 188 <sup>31</sup>                  | 182                          |
| <b>All, associated offense</b>              | <b>1,898</b>   | <b>1,163</b>                         | <b>1,100</b>                       | <b>885</b>                   |
| Misdemeanor, associated                     | 1,781          | 1,097                                | -                                  | -                            |
| Felony, associated                          | 21             | 20                                   | -                                  | -                            |
| Civil/other, associated                     | 96             | 89                                   | 507                                | 211                          |

<sup>29</sup> The total number of individuals includes people who have more than one possession of drug paraphernalia offense, both with an associated offense and without any associated offenses. As such, these individuals are counted in both of the subtotals, but only once in the total. This is the case with both the bookings and law enforcement datasets.

<sup>30</sup> In the law enforcement dataset, if the "Arrest Type" was "Summoned/Cited" it was noted as a civil offense. Otherwise, we cannot determine the split between felonies and misdemeanors.

<sup>31</sup> This total includes 33 records with no outcome listed.



## Associated Offenses with Possession of Drug Paraphernalia<sup>32</sup>

The most frequent offenses associated with possession of drug paraphernalia in the bookings dataset are:

| Associated Offense         | Frequency |
|----------------------------|-----------|
| Possession Narcotic/Analog | 797       |
| Bail Jumping - Felony      | 780       |
| Bail Jumping - Misdemeanor | 588       |
| Probation Violation        | 331       |
| Retail Theft Intent Take   | 322       |
| Disorderly Conduct         | 269       |
| Theft                      | 256       |
| Possession of Cocaine/Base | 244       |
| Resisting or Obstructing   | 240       |
| Possession of THC          | 203       |

Many of the top associated offenses are drug-related, suggesting the obvious link between possession of drugs and possession of drug paraphernalia. Additionally, many of these associated offenses are misdemeanors. However, 71% of these cases result in a new arrest rather than a diversion.

In the law enforcement dataset, there were 885 people charged with Possession of Drug Paraphernalia with associated charges across 1,100 incidents. Of this population, there were 570 taken into custody, 202 booked, and 227 released with a citation. In 23 cases, the person was transferred to a hospital or detox. In this dataset, the most frequent associated offenses are:

---

<sup>32</sup> There are non-standard ways that an offense is listed in the data, based on the different ways that law enforcement agencies keep records. For example, in the bookings dataset there is an offense of Possession Heroin. The equivalent in the law enforcement dataset would be Possession Narcotic/Analog.



| Associated Offense        | Frequency |
|---------------------------|-----------|
| Possession Heroin         | 253       |
| Felony Bail Jumping       | 185       |
| Misdemeanor Bail Jumping  | 132       |
| Casual Possession of MJ   | 88        |
| Disorderly Conduct        | 86        |
| Poss Controlled Substance | 68        |
| Probation Hold            | 67        |
| Possess Cocaine           | 65        |
| Resisting/Obstructing     | 65        |

### Existing Programs: Drug Court Diversion

Dane County already has several drug and alcohol diversion programs. Some examples of these programs include:

- The Dane County Drug Diversion Court, which is a pre-adjudication program designed to keep felony-level, non-violent drug offenders out of the court system.
- The Dane County Drug Treatment Court, which provides supportive services after adjudication of felony-level, non-violent drug offenses.
- The Madison Addiction Recovery Initiative (MARI) provides pre-arrest diversion and treatment. The MARI program recently received a new grant to expand services to cover people on probation.
- The Dane County Deferred Prosecution Unit provides deferred prosecution for first-time and some repeat offenders.



- During the three year study period, Madison Municipal Court handled 279 possession of drug paraphernalia infractions.

However, these programs are not designed to address the type of offender somewhere in the middle, with drug paraphernalia charges alongside misdemeanor associated offenses.

### **Comparable Programs: Decriminalize Drug Paraphernalia**

One potential option is to take action at the state level and decriminalize the possession of drug paraphernalia, as the State of New Mexico did in April 2019.<sup>33</sup>

That would effectively eliminate arrests for a Possession of Drug Paraphernalia standalone offense, and it would remove Possession of Drug Paraphernalia as an associated offense with drug offenses, simplifying the charges and potentially reducing the sentence and rate of reoffense.

It is important to note that the New Mexico law ensures that drug paraphernalia is decriminalized for personal possession, and the penalty is reduced to a misdemeanor for manufacture and delivery.

---

<sup>33</sup> New Mexico Senate Bill 323. Legiscan. Accessed December 17, 2019.  
<https://legiscan.com/NM/text/SB323/2019>



## Areas of Inquiry



# Area of Inquiry: Retail Theft

## Overview

In this analysis, we focus on retail theft offenses that can be classified as a misdemeanor.<sup>34</sup> Retail theft can be a misdemeanor offense defined by Statute 943.50(1M)(B):

Intentionally takes and carries away merchandise held for resale by a merchant or property of a merchant.

Retail theft can also be classified as a felony when the amount taken exceeds \$500. Additionally, retail theft can also be a civil offense that is handled with a citation. The differentiation between these different types of offenses is not always clear in the data, so we have only classified retail theft offenses when they are explicitly labeled as a felony, misdemeanor, or civil/local violation.

---

<sup>34</sup> The law enforcement dataset does not have a specific field to indicate whether the offense is a misdemeanor or a felony. This information is contained in the offense description in most cases, but not all cases. We have only included offenses explicitly labeled felony or misdemeanor in the offense description.



| <b>Misdemeanor Retail Theft Offenses</b>  | <b>Total Bookings</b> | <b>Individuals (Bookings)<sup>35</sup></b> | <b>Total LEA Encounters</b> | <b>Individuals (LEA Encounters)</b> |
|---|-----------------------|--|-----------------------------|-------------------------------------|
| Retail Theft, All <sup>36</sup>           | 2,393                 | 916  | 3,124 <sup>37</sup>         | 2,059                               |
| Felony Retail Theft, All                  | 494                   | 251  | 294                         | 223                                 |
| <b>Misdemeanor Retail Theft, All</b>      | <b>1,704</b>          | <b>675</b>                                 | <b>689</b>                  | <b>477</b>                          |
| Civil Ordinance / Other Retail Theft, All | 195 <sup>38</sup>     | 170  | 2,141 <sup>39</sup>         | 1,722                               |

### Most Frequent Associated Charges with Misdemeanor Retail Theft

For all misdemeanor retail theft offenses in the bookings dataset, the most frequent associated offenses are:

| <b>Associated Offense</b>  | <b>Frequency</b> |
|----------------------------|------------------|
| Bail Jumping - Misdemeanor | 651              |
| Bail Jumping - Felony      | 633              |
| Theft                      | 284              |
| Probation Violation        | 246              |
| Resisting or Obstructing   | 208              |
| Possess Drug Paraphernalia | 185              |
| Disorderly Conduct         | 167              |

<sup>35</sup> The total number of individuals includes people who have more than one misdemeanor retail theft offense, both with an associated offense and without any associated offenses. As such, these individuals are counted in both of the subtotals, but only once in the total. This is the case with both the bookings and law enforcement datasets.

<sup>36</sup> This includes retail theft offenses where the individual was charged with a felony, as well as retail theft offenses where the individual was released with a citation.

<sup>37</sup> Not all retail theft offenses in the law enforcement dataset had a felony, misdemeanor, or civil designation. If the offense lacked a designation, it was not included in this column.

<sup>38</sup> Includes 13 cases that were blank and 4 state law violations. The remaining offenses are civil and/or local ordinance violations.

<sup>39</sup> Includes retail theft offenses that were not designated as felony or misdemeanor, including 1,913 that were “released with citation.”



For all misdemeanor retail theft offenses in the law enforcement dataset, the most frequent associated offenses are:

| <b>Associated Offense</b>        | <b>Frequency</b> |
|----------------------------------|------------------|
| Misdemeanor Bail Jumping         | 120              |
| Felony Bail Jumping              | 114              |
| Party to a Crime                 | 61               |
| Resisting/Obstructing an Officer | 44               |
| Possession of Drug Paraphernalia | 28               |
| Disorderly Conduct               | 23               |
| Probation Hold                   | 22               |



## **Comparable Programs: Deflection Through District Attorney-led Reforms**

There are several types of retail theft deflection and diversion programs across the country.

Within District Attorney's offices, there are some DAs who are declining to charge certain types of retail theft:

- In 2018, the District Attorney of Philadelphia released a memo<sup>40</sup> instructing his staff to charge and dispose of Retail Theft cases as summary offenses, which is the lowest level of a criminal conviction in Pennsylvania. In cases where the defendant has a “very long history” of theft or retail theft, the attorney can reconsider this directive.
- In 2019, in Dallas County, Texas, the District Attorney has declined to prosecute theft cases with a value under \$750, as long as the theft was not for economic gain.<sup>41</sup> Dubbed “Theft of Necessary Items,” there was initial concern that it would lead to a spike in theft cases. However, the District Attorney has clarified his position on prosecution with more rigorous standards for what constitutes an appropriate volume of necessary items.

---

<sup>40</sup> Philadelphia District Attorney's Office. Accessed December 17, 2019.

[https://cdn.muckrock.com/outbound\\_composer\\_attachments/Lucasgsl/62919/Philadelphia-DA-Larry-Krasner-s-Memo.pdf](https://cdn.muckrock.com/outbound_composer_attachments/Lucasgsl/62919/Philadelphia-DA-Larry-Krasner-s-Memo.pdf)

<sup>41</sup> Dallas County District Attorney's Office. Accessed December 17, 2019.

[https://www.dallascounty.org/Assets/uploads/docs/district-attorney/messages-from-da/Official-DACreuzotPoliciesLetter\\_April2019.pdf](https://www.dallascounty.org/Assets/uploads/docs/district-attorney/messages-from-da/Official-DACreuzotPoliciesLetter_April2019.pdf)



### **Comparable Programs: Deflection Through Private Sector “Retail Justice”**

Within the private sector, there is a recent trend of “retail justice” where stores refer shoplifting suspects to a private company that offers a fee-based restorative justice course in exchange for a promise not to call the police. In some cases, the retailer receives a portion of the fees.

This practice has been the target of lawsuits, and research on this topic suggests that the process needs optimization and regulation.<sup>42</sup> It is likely that “retail justice” already exists in Dane County, but there is no data on the topic.

---

<sup>42</sup> Rappaport. “Criminal Justice, Inc.” Columbia Law Review, Vol. 118, No 8. Accessed December 17, 2019. <https://columbialawreview.org/content/criminal-justice-inc-2/>



## Areas of Inquiry



# Area of Inquiry: Expanding the Community Restorative Court

## Overview

The Dane County Community Restorative Court (CRC) is a restorative justice program that has been in practice since 2014 in South Madison, and has been expanded to include all of Dane County.

The CRC can accept cases involving people ages 17-25 who are arrested for misdemeanor-level offenses that are not domestic violence related, and that receive a direct referral from law enforcement or the District Attorney. This usually includes offenses such as Simple Battery, Disorderly Conduct, Obstructing an Officer, Theft, and Criminal Damage to Property.

The CRC acts as a diversion program because there are no criminal or civil judges assigned, and successful completion of the CRC program results in no criminal charges filed.



## Offenses Eligible for Community Restorative Court

The following table provides an overview of the volume of all offenses that could be eligible for Community Restorative Court:

| Offense                     | Age <= 25 |
|-----------------------------|-----------|
| Simple Battery              | 1,408     |
| Disorderly Conduct          | 3,530     |
| Obstructing an Officer      | 1,204     |
| Theft                       | 1,027     |
| Criminal Damage to Property | 881       |
| All Other Misdemeanors      | 3,660     |

The table below only includes individuals with a single appearance and no co-occurring offenses during the three-year period covered by this analysis:

| Offense                     | Age <= 25 | Age > 25 |
|-----------------------------|-----------|----------|
| Simple Battery              | 99        | 144      |
| Disorderly Conduct          | 391       | 730      |
| Obstructing an Officer      | 306       | 521      |
| Theft                       | 119       | 434      |
| Criminal Damage to Property | 75        | 117      |
| All Other Misdemeanors      | 856       | 2,675    |

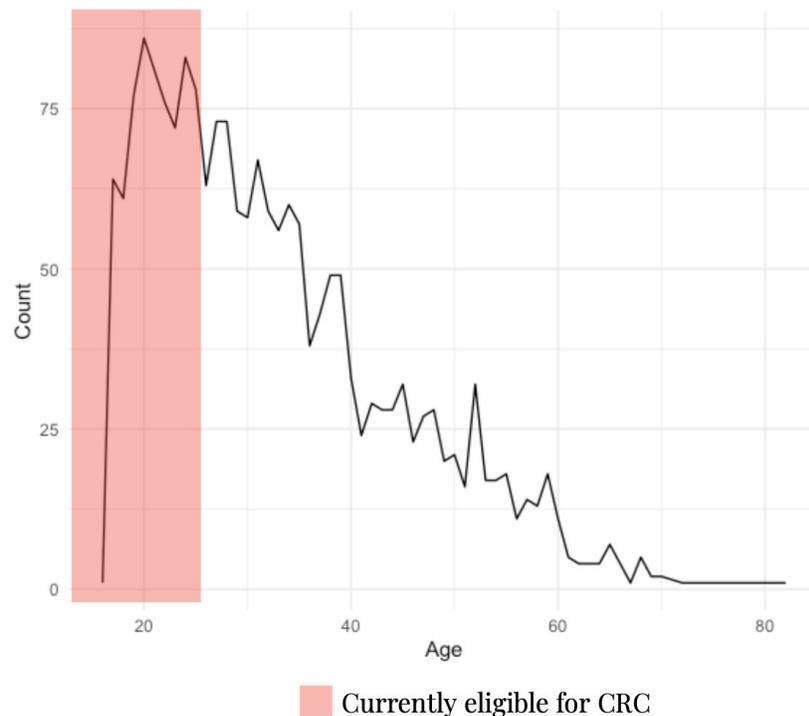


## Creating Programs for People Over 25

In this analysis, we wanted to understand the universe of eligible offenses, and the potential reach of the CRC without changing the types of cases it accepts.

To do this, we subset the offenses currently accepted by the CRC, including Battery, Disorderly Conduct, Obstructing an Officer, Theft, and Criminal Damage to Property. We also ensured that each person was a one-time offender within the three-year dataset

### Cases Eligible for Community Restorative Court Grouped by Age



Although the CRC stops accepting cases at age 25, the sharp decline in eligible offenses does not begin until age 40. Currently, there are 1,009 eligible cases that the CRC could potentially accept, of which 698 (69%) resulted in an arrest.



If there were a program to work with people up to age 35, that would include an additional 953 people and 673 arrests. If there were a program with no age limit, that would include a total addition of 1,949 people and 1,391 arrests.

Although it is not possible to model CRC caseloads based on the bookings data, this count provides a sized universe of eligible offenses.

**Expand the Offenses Accepted by the Community Restorative Court**

One way to extend the reach of the Community Restorative Court is to expand the types of offenses accepted. For example, if the CRC were to accept any misdemeanor offense from any age, there would be a considerable increase in eligible offenses. Specifically, an additional 601 offenses and people that would be eligible for the CRC:

| Top First-Time Misdemeanor Offenses      | Count |
|--|-------|
| Probation Violation                      | 109   |
| Possession of Drug Paraphernalia         | 72    |
| Possession of THC                        | 60    |
| Bail Jumping - Misdemeanor               | 59    |
| Retail Theft Intent Take                 | 34    |
| Contempt of Court Pun Sanction           | 27    |
| Writ                                     | 23    |
| Possession of Cocaine/Base               | 19    |
| 59 other eligible offenses <sup>43</sup> | 198   |

<sup>43</sup> We excluded offenses that were OWI-related, potentially violent, or sex-related.



# Summary of Recommendations

This section contains a summary of the findings in this report, and associated recommendations.

## Actions:

- **Investigate the potential for deflecting more Disorderly Conduct cases prior to arrest:**
  - **Refer more Disorderly Conduct cases to municipal court.**<sup>44</sup>

While this is already common practice among law enforcement, there were 364 bookings for Disorderly Conduct with no enhancer and no associated charges. We recommend at least two research areas:

    - Research the feasibility of increasing municipal court referrals by identifying the circumstances of cases currently referred to municipal court, and collaborating with law enforcement to test and implement a program.
    - Research why older people are more likely to get referred to municipal court.

---

<sup>44</sup> Because Wisconsin's Disorderly Conduct statute is so broadly defined, we could not locate a study citing the specific benefits of municipal court referrals. However, other studies referenced throughout this report note that avoiding criminal prosecution has benefits for law enforcement through less time spent processing low-level offenses, as well as benefits to the public by diverting the offense from criminal court into civil court, thereby avoiding the collateral consequences of a criminal conviction. Additionally, 41% of the Madison Municipal Court infractions for Disorderly Conduct were from one-time offenders, compared to 3% from the bookings dataset.



- **Release with citation in lieu of arrest.** Citations take less time to process, and law enforcement keeps discretion.<sup>45</sup>
- **Work to reduce misdemeanor probation violation with no associated offenses.** There were 926 people who went to jail because of misdemeanor probation violations and no other co-occurring offenses. A potential reduction strategy involves the early discharge of probation for misdemeanor offenses.<sup>46</sup>
- **Work with the Wisconsin DOC to reduce the number of arrests and incarcerations for Probation Holds with no major co-occurring offenses.** This includes encouraging the DOC to report outcomes of Probation Hold arrests and incarcerations to better understand the cycle of interactions with the criminal justice system.<sup>47</sup>
- **Research programs like the Community Restorative Court that can accept people who are over 25.** The current age limit of 25 covers 1,009 additional people who could potentially be diverted to the CRC. If there were a program with an age limit of 35, the number of eligible people would increase by an additional 953 people. If there were no age limit were eliminated, it would include an additional 1,949 people.

## Areas for Additional Research:

---

<sup>45</sup> “Citation in Lieu of Arrest.” International Association of Chiefs of Police. Accessed December 17, 2019.

<https://www.theiacp.org/sites/default/files/all/c/Citation%20in%20Lieu%20of%20Arrest%20Literature%20Review.pdf>

<sup>46</sup> Two of the recommendations from The Wisconsin Community Corrections Story are to “reduce probation and parole terms to between 1 to 3 years, except in rare circumstances” and “provide for ‘merit time’ or ‘earned compliance credit,’ and allow for early termination for sustained compliance, for probation, parole, and incarceration” (Williams, Schirali, Bradner 2019).

<sup>47</sup> Another recommendation from The Wisconsin Community Corrections Story is to “eliminate or strictly limit incarceration as a response to technical violations, and increase due process protections for people under community corrections supervision” (Williams, Schirali, Bradner 2019).



These were areas where the data was insufficient to understand the impact of diversion or deflection.

- **Disorderly Conduct associated charges.** We recommend additional research into the charges Resisting or Obstructing, Criminal Damage to Property, Bail Jumping - Felony, and Theft, since the parameters of this analysis and data do not provide additional information about the nature of these offenses.
- **Felony Bail Jumping.** The underlying nature of the Felony Bail Jumping offenses, and whether they are considered violent, are unclear based on the available data, and require further research and evaluation for deflection or diversion.
- **Drug diversion.** While we investigated Possession of Drug Paraphernalia, there was a high rate of associated drug charges. Yet the majority of these encounters ended in an arrest and a jail stay, suggesting that there is additional demand for drug diversion programs. Currently, Dane County Drug Courts only accept felony-level charges, but our analysis focused on misdemeanors, suggesting there is a gap in drug offenses that is not covered by Dane County's Drug Courts and/or drug diversion programs.
- **Decriminalization of drug paraphernalia.** In April 2019, the State of New Mexico was the first to decriminalize drug paraphernalia. Dane County should research opportunities to work with the State of Wisconsin to enact similar changes.



## Suggested Additional Data to Collect for Analysis:

This analysis would have been improved if the following data had been collected and available. In future data releases, Dane County should attempt to include the following:

- **Disposition data.** Court disposition data would help illustrate the various outcomes of what happens after arrest or booking. For example, we could calculate the percentage of bail jumping charges that were dismissed.
- **Deferred prosecution data.** Currently, we are unable to link the law enforcement and bookings data to the District Attorney's deferred prosecution program. This is important to understand existing diversion tactics already in place.
- **Judge name and/or judge code.** Analyzing judge performance will help researchers understand bail amounts and supervision lengths by charge and by judge. It will also help develop standards based on existing best practices, ensuring that benefit of future diversion and deflection programs can be calculated accurately.
- **Home address of record.** This will assist with any homelessness analysis for law enforcement arrests and the Dane County Jail, ensuring that people experiencing homelessness are diverted to other resources outside of the criminal justice system.
- **Sentencing information.** In order to understand the impact of repeat offenders, especially for people charged with Probation Violation and people charged with Bail Jumping, the data should include sentencing lengths and locations. This will quantify the impact of diversion and deflection programs in terms of length of stay avoidance.



- **“Retail justice” data.** It’s likely that there are retailers who use private services to divert shoplifting suspects to a fee-based program. Understanding the scope of “retail justice” in Dane County can help analysts understand and evaluate outcomes of activities that fall outside of the criminal justice system.

