



JanuaryAdvisors

# Identifying New Opportunities for Deflection and Diversion Programs Targeted at Non-Violent, Misdemeanor-level Offenses

Overview of Data Analysis & Recommendations

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# Project goals

- Analyze Dane County jail bookings and law enforcement encounters data to identify populations that would be potential candidates for diversion or deflection.
- Research best practices for specific diversion and deflection programs from across the country and suggest areas for additional research and implementation.



# Datasets analyzed

- **Law enforcement 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. Made available by the Dane County CJC Data Sharing Initiative MOU.
- **Bookings 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. Made available by the Dane County CJC Data Sharing Initiative MOU.
- **Madison Municipal Court Records.** Contains City of Madison Municipal Court records, and was made available through an information request to the City of Madison. This dataset was only used to provide context and background to our analysis, and was not cited directly in this report.



# Areas of inquiry

- Disorderly conduct
- Probation violation
- Bail jumping
- Possession of drug paraphernalia
- Retail theft
- Impact of expanding the Community Restorative Court



# These areas are interlinked

- Many of the records have “associated offenses” – separate offenses for the same person on the same day. For example, possession of drug paraphernalia is often associated with a drug possession offense.
- We looked at the associated offenses in each area of inquiry and found significant overlap.
- Strategies used to deflect or divert these populations should take into account the association of offenses, especially when considering programs that are only open to first-time offenders.



# Most frequent offenses within the law enforcement dataset

- Areas studied are highlighted.
- Represents misdemeanor, non-violent offenses with enough context in the data for analysis.

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	667	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	339	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



# Most frequent offenses within the bookings dataset

- Areas studied are highlighted.
- Represents misdemeanor, non-violent offenses with enough context in the data for analysis.

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



# Disorderly Conduct: Overview

Disorderly Conduct	Total - LEA	Individuals - LEA	Total - Bookings	Individuals - Bookings
Disorderly Conduct (total)	6,303	4,686	11,439	6,807
Disorderly Conduct (enhancer)	2,017	1,726	7,472	5,011
Disorderly Conduct (no enhancer)	4,286	3,264	3,967	2,637

- 2 of 3 disorderly conduct offenses in the LEA dataset did not have an enhancer.
- 1 in 3 disorderly conduct offenses in the bookings dataset did not have an enhancer.





# Disorderly Conduct + Probation/Parole Violation

Probation or Parole Violation	Total - Bookings	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

- 1 in 3 disorderly conduct offenses + associated probation or parole violation in the bookings dataset did not have an enhancer.
- This is consistent with the disorderly conduct trends in the bookings dataset.



# Disorderly Conduct + No Enhancer + No Associated Offenses

No Enhancer and No Associated Offenses	Total	Individuals
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)	364	364

- 8.2% of all disorderly conduct offenses in the bookings dataset had no enhancer and no associated offenses.
- 39% of this group were one-time offenders during the three year study period.

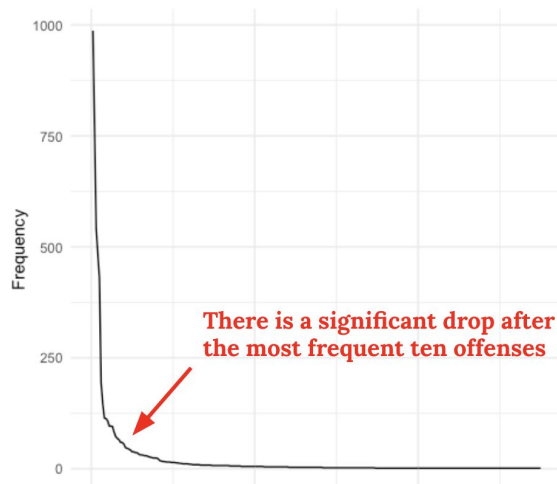


# Top offenses associated with disorderly conduct

- Areas studied are highlighted.
- 74% in bookings data had an associated offense.
- Significant drop in frequency after top 10 associated offenses.

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

Associated offenses with Disorderly Conduct (no enhancer)



# Disorderly Conduct + Misdemeanor Bail Jumping

DC + Misdemeanor Bail Jumping	Total	Individuals
DC + Misdemeanor Bail Jumping (total)	1,649	694
DC + Misdemeanor Bail Jumping (enhancer)	339	174
DC + Misdemeanor Bail Jumping (no enhancer)	1,310	592

- 80% of disorderly conduct + misdemeanor bail jumping had no enhancer.



# Disorderly Conduct + Retail Theft

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

- 2 of 3 disorderly conduct + retail theft had no enhancer.



# Disorderly Conduct: Strategies for Deflection/Diversion

The strategies for deflection/diversion explored in the report include:

- Identifying populations that could be **referred to municipal court**. This is already a common practice, with 25% of encounters in the LEA dataset resulting in “released with citation.”
- Eau Claire County’s Pre-charge Diversion Program (ECCPDP), which has a recidivism rate of 16.7% specifically for disorderly conduct.
- Cost-benefit of citation in lieu of arrest.



# Probation Violation: Overview

Probation Violation	Total Bookings	Individuals (Bookings)	Total LEA Encounters	Individuals (LEA Encounters)
<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</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	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 + Associated Offenses

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 Holds: Overview

Probation Holds	Total Bookings	Individuals (Bookings)	Total LEA Encounters	Individuals (LEA Encounters)
<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	2,323	1,381	572	515

- 40% of probation holds in the bookings dataset do not have an associated offense.
- 56% of probation holds in LEA dataset do not have an associated offense.



# Probation Holds: Top Associated Offenses (bookings)

Top Bookings Offenses Associated with Probation Holds	Count
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



# Probation Holds: Top Associated Offenses (LEA)

Top LEA Offenses Associated with Probation Holds	Count
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



# Probation Violation/Probation Holds Deflection and Diversion Strategies

The strategies for deflection/diversion explored in the report include:

- Policy changes at the State level (using Arizona, Colorado, and North Carolina as examples).
  - Arizona had a 29% reduction in revocations from 2008-2016.
  - Colorado had a 24% reduction in revocations from 2006-2015.
  - North Carolina had a 42% reduction in revocations from 2006-2015.
- Recommendations for additional data for research.



# Misdemeanor Bail Jumping: Overview

Bail Jumping Offenses	Total Bookings	Individuals (Bookings)	Total LEA Encounters	Individuals (LEA Encounters)
Bail Jumping, All	7,981	2,646	2,832	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

- 8% of misdemeanor bail jumping offenses in the bookings dataset do not have an associated offense.
- 22% of misdemeanor bail jumping offenses in the LEA dataset do not have an associated offense.

# Misdemeanor Bail Jumping + Associated Offenses (Bookings)

Top Booking Offenses Associated with Misdemeanor Bail Jumping	Count
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



# Misdemeanor Bail Jumping + Associated Offenses (LEA)

Top LEA Offenses Associated with Misdemeanor Bail Jumping	Count
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



# Misdemeanor Bail Jumping Deflection and Diversion Strategies

The strategies for deflection/diversion explored in the report echo a Wisconsin Law Review comment on Wisconsin bail jumping. Those recommendations include:

- 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.





# Possession of Drug Paraphernalia: Overview

Possession of Drug Paraphernalia	Total Bookings	Individuals (Bookings)	Total LEA Encounters	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	182
<b>All, associated offense</b>	<b>1,898</b>	<b>1,163</b>	<b>3,175</b>	<b>885</b>
Misdemeanor, associated	1,781	1,097	-	-
Felony, associated	21	20	-	-
Civil/other, associated	96	89	507	211

- Very few possession of drug paraphernalia offenses without an associated offense

# Possession of Drug Paraphernalia + Associated Offenses (Bookings)

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



# Possession of Drug Paraphernalia + Associated Offenses (LEA)

Associated Offense	Frequency
Possession Heroin	254
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 drug diversion programs & limitations in Dane County

- 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 **Dane County Deferred Prosecution Unit** provides deferred prosecution for first-time offenders.
- During the three year study period, **Madison Municipal Court** handled 279 possession of drug paraphernalia infractions.



# Possession of Drug Paraphernalia Deflection and Diversion Strategies

The strategies for deflection/diversion explored in the report are::

- Work with the State to legalize drug paraphernalia, similar to what the State of New Mexico did in April 2019. Drug paraphernalia is decriminalized for personal possession, and the penalty is reduced to a misdemeanor for manufacture and delivery.
- Send more standalone possession of drug paraphernalia cases to municipal court.



# Misdemeanor Retail Theft: Overview

Misdemeanor Retail Theft Offenses	Total Bookings	Individuals (Bookings)	Total LEA Encounters	Individuals (LEA Encounters)
Retail Theft, All	2,393	916	3,124	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	170	1,913	1,575

- 71% of all retail theft is misdemeanor retail theft in the bookings dataset.
- 22% of all retail theft is misdemeanor in the LEA dataset (61% is civil)

# Retail Theft + Associated Offenses (Bookings)

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



# Retail Theft + Associated Offenses (LEA)

Associated Offense	Frequency
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





# Retail Theft Deflection and Diversion Strategies

The strategies for deflection/diversion explored in the report are::

- District Attorney-led reforms in Philadelphia and Dallas.
  - Philadelphia: by default, handle retail theft as a summary (lowest-level) offense. DA can reconsider in cases of habitual offenders.
  - Dallas: decline to prosecute cases under \$750 involving household goods (“theft of necessary items”).
- Deflection through private sector “retail justice.”
  - More data needed to understand the implications.

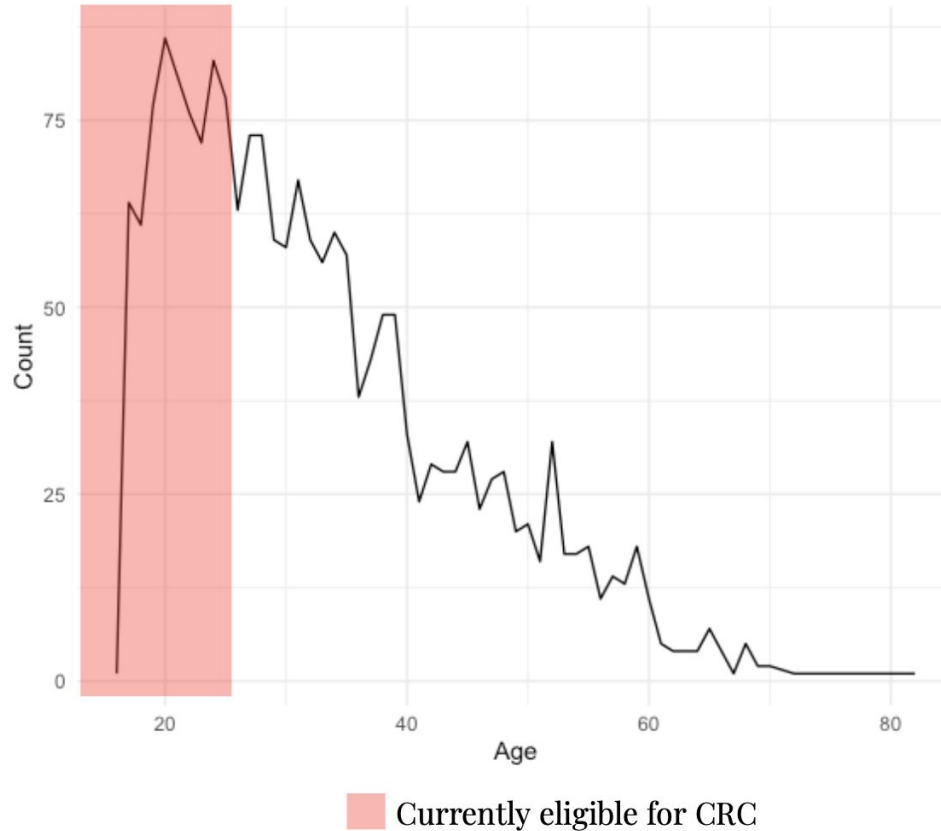


# Expand Community Restorative Court: Overview

Offense	Age <= 25	Age > 25	Total
Simple Battery	1,408	2,978	4,386
Disorderly Conduct	3,530	7,913	11,443
Obstructing an Officer	1,204	1,630	2,834
Theft	1,027	2,034	3,057
Criminal Damage to Property	881	1,345	2,226
All Other Misdemeanors	3,660	10,839	14,499

- Offenses currently eligible for CRC.
- If age limit were waived entirely, there would be a significant increase in eligible cases.

# Cases Eligible for Community Restorative Court Grouped by Age



# Expand CRC: Include All Misdemeanors

Top 10 First-Time Misdemeanor Offenses	Count
Operating While Intoxicated	1,209
Probation Violation	315
Possession of Drug Paraphernalia	262
Oar (1st Rev Due to OWI/PAC)	230
Contempt of Court Pun Sanction	221
Contempt of Court	195
Bail Jumping - Misdemeanor	181
Retail Theft Intent Take	113
Possession of THC	104
Possession of Cocaine/Base	78

# Summary of Recommendations

- Research feasibility of deflecting more disorderly conduct and possession of drug paraphernalia offenses to municipal court.
- Work to reduce misdemeanor probation violation with no associated offenses.
- Work with the Wisconsin Department of Corrections to reduce the number of arrests and incarcerations for Probation Holds with no major co-occurring offenses.
- Expand eligibility for existing programs, such as the Community Restorative Court and various drug programs, to include more offenses, broaden the qualified age range, and make it available for second-time offenders.

# Areas for Additional Research

- **Disorderly Conduct associated charges**, including 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 co-occurring 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.

# Additional Data to Collect (1/2)

- **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.

# Additional Data to Collect (2/2)

- **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.



**Thank you!**

Questions/comments:

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