



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.

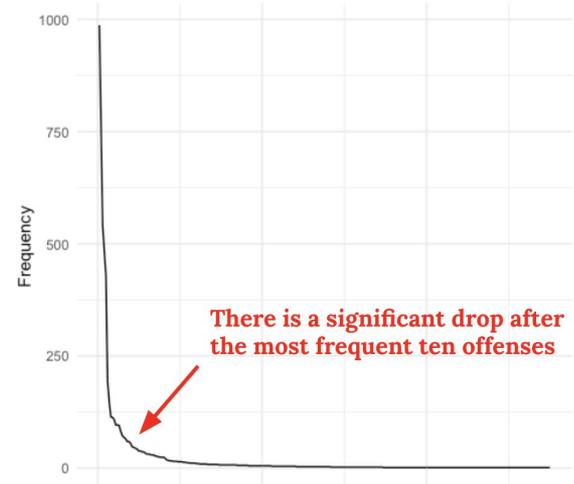


Top offenses associated with disorderly conduct

- 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) |
|-----------------------------------|----------------|------------------------|----------------------|------------------------------|
| All Probation Violation | 6,252 | 3,424 | 803 | 673 |
| All, no associated offense | 2,983 | 2,059 | 562 | 487 |
| Misdemeanor, no associated | 926 | 659 | - | - |
| Felony, no associated | 1,743 | 1,260 | - | - |
| Civil, no associated | 310 | 295 | - | - |
| Other, no associated | 4 | 4 | 562 | 487 |
| All, associated offense | 3,269 | 2,268 | 241 | 222 |
| 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) |
|---|----------------|------------------------|----------------------|------------------------------|
| Probation Holds (all) | 3,880 | 2,588 | 1,310 | 1,039 |
| 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 |
| Bail Jumping, All Misdemeanor | 4,112 | 1,596 | 1,552 | 906 |
| 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) |
|---|----------------|------------------------|----------------------|------------------------------|
| All Possession of Drug Paraphernalia | 2,005 | 1,227 | 1,337 | 1,041 |
| All, no associated offense | 107 | 100 | 237 | 222 |
| Misdemeanor, no associated | 92 | 87 | 49 | 47 |
| Civil/other, no associated | 15 | 15 | 188 | 182 |
| All, associated offense | 1,898 | 1,163 | 3,175 | 885 |
| 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 |
| Misdemeanor Retail Theft, All | 1,704 | 675 | 689 | 477 |
| 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.

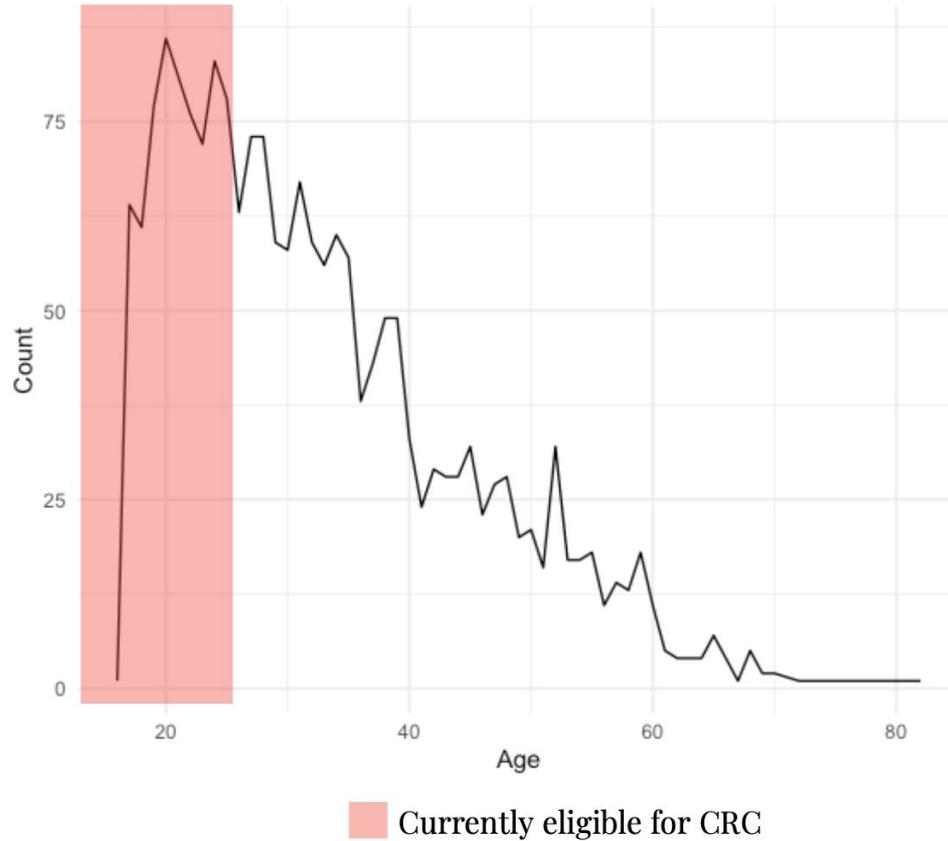


Expand Community Restorative Court: Overview

| 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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