

# Update to Possession of Controlled Substances Report

December 2019

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## Oregon Criminal Justice Commission

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Executive Director

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The mission of the Oregon Criminal Justice Commission is to improve the legitimacy, efficiency, and effectiveness of state and local criminal justice systems.

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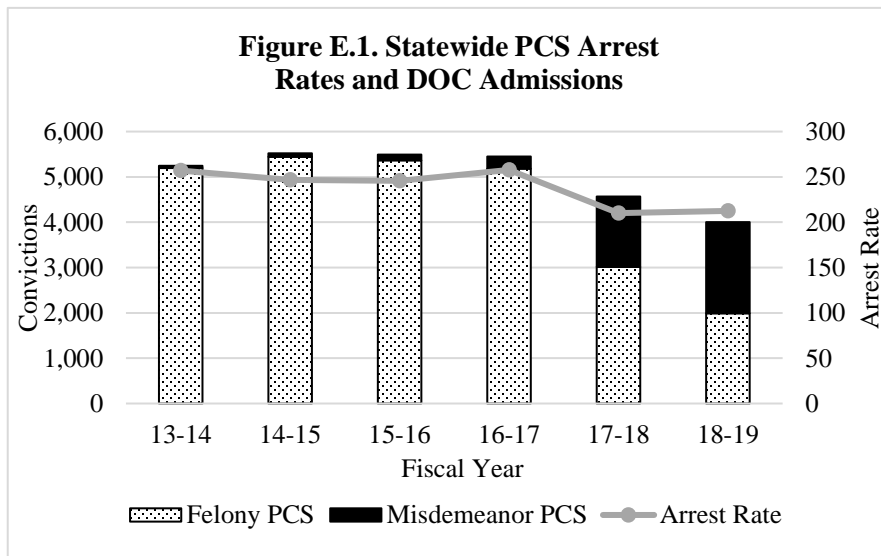
## Executive Summary

HB 2355 (2017) reclassified the crime of possession of a controlled substance (PCS) to a Class A misdemeanor from a Class B or C Felony. There are exceptions to the reclassification of PCS for the possession of larger amounts of narcotics, as well as for individuals with pre-existing felony convictions. The bill also required the Oregon Criminal Justice Commission to study the effect of the reduction in possession penalties on the criminal justice system, rates of recidivism, and the composition of convicted offenders. This report is an update to the September 2018 Possession of Controlled Substances Report.<sup>1</sup>

As in the 2018 Report, it was too soon to calculate recidivism rates for the cohorts affected by the changes made by HB 2355; however, CJC identified a few profound impacts HB 2355 has had on the criminal justice system in the two years following its passage. Felony PCS conviction rates plummeted in the year after HB 2355 was implemented, and over 3,000 fewer Oregonians have been convicted of felony PCS since then than would have been absent the law change, resulting in fewer collateral consequences for offenders and the public.<sup>2</sup> Racial/ethnic disparities in convictions have also declined significantly since the passage of HB 2355. Black and Native American disparities in particular have decreased in felony convictions statewide and nearly reached zero in Multnomah County.

CJC used data on PCS arrests from the Law Enforcement Data System (LEDS) and data on PCS convictions from the Department of Corrections (DOC) to study the effects of HB 2355. Following the bill's passage, the number of felony convictions dropped from 5,183 to 3,016 (42 percent). In FY 18-19, felony convictions again fell significantly from 3016 to 1992 convictions (a 34 percent drop). Combined misdemeanor and felony convictions have also fallen in the past two fiscal years, although not nearly as sharply as felony PCS convictions.

The difference has been made up by a significant increase in misdemeanor PCS convictions: in FY 17-18, misdemeanors saw a 482 percent increase, and then saw a 29 percent increase in FY 18-19. Arrest rates initially fell in FY 17-18, but stabilized in FY 18-19. While slight increases and decreases in arrest rates may be related to policing strategies, staffing levels, and other variables beyond the scope of this review, the increase in misdemeanor convictions directly reflects the changes to sentencing made in HB 2355.



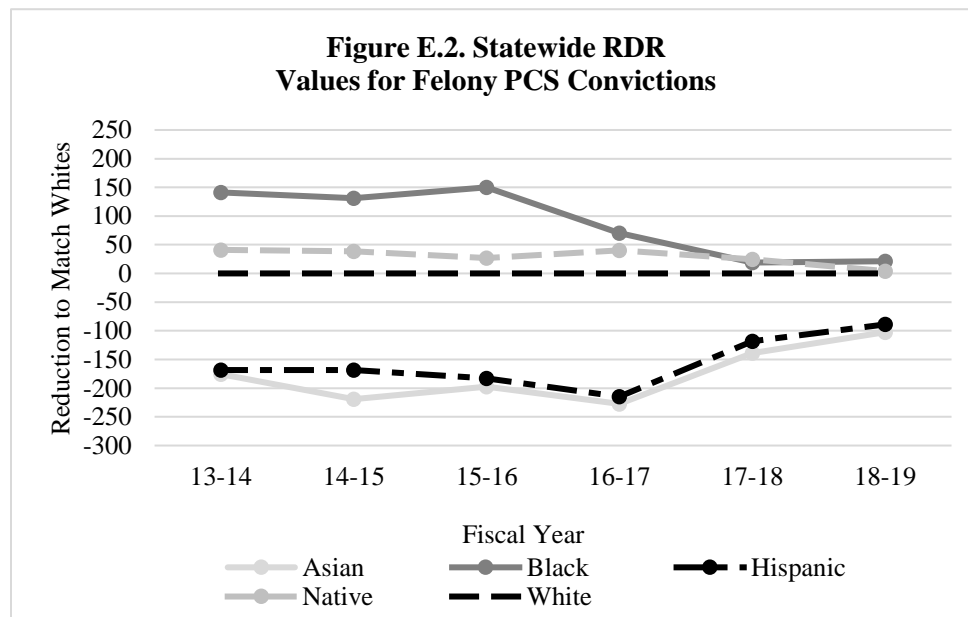
<sup>1</sup> Find the original report here:

<https://www.oregon.gov/cjc/CJC%20Document%20Library/PossessionofControlledSubstancesReport-9-2018.pdf>

<sup>2</sup> "Too often, individuals with addiction issues find their way to the doorstep of the criminal justice system when they are arrested for possession of a controlled substance. The penalty is often a felony drug conviction where the person may receive a jail sentence, are placed on probation and receive limited treatment services. Unfortunately, felony convictions in these cases also include unintended and collateral consequences including barriers to housing and employment and a disparate impact on minority communities." Press Release of the Oregon Association Chiefs of Police and the Oregon State Sheriffs Association, dated September 26, 2016.

In addition to these overall trends, a few more broad changes have occurred in the two years after the bill’s passage. A significant number of offenders who may have been convicted of a first-time felony were not, due to the drop in overall convictions, as well as the rise in misdemeanor convictions. Since the passage of HB 2355, the total number of first-time felonies has been less than 75 percent of the number of first-time felonies in FY 2016-2107. This means over 2,500 Oregonians avoided felony convictions in the last two years.

In addition to a reduction in first-time felonies, as mentioned above, data indicate that racial/ethnic disparities for felony PCS convictions have fallen dramatically since the passage of HB 2355. CJC used the RDR (Raw Differential Representation) metric to examine racial/ethnic disparities. Substantively, the RDR represents the reduction in arrests or convictions that would be required to reach parity with Whites given population differences across races/ethnicities. A positive RDR indicates a minority racial/ethnic minority is overrepresented in the system compared to whites, whereas a negative RDR indicates a racial/ethnic minority is underrepresented in the system compared to whites.



Using the RDR, CJC examined trends in racial/ethnic disparities for arrests, and determined that disparities were consistent throughout the study period and do not appear to have been affected by HB 2355. Felony PCS convictions, however, experienced a significant improvement in

racial/ethnic disparities since the implementation of the bill. Figure E.2 shows an immediate drop in disparities (trend toward zero) for all races/ethnicities after FY 2016-2017, with a fall in Black disparity beginning after FY 2015-2016 (due in large part to Multnomah County’s implementation of the changes in HB 2355 before they were enacted statewide). In the second year following the bill’s passage, disparities continued to improve for Native Americans, Asians, and Hispanics, while the disparity for Blacks increased slightly. Overall, disparities decreased by 61 percent for all races/ethnicities combined since the implementation of HB 2355.

This updated report on the changes made to Oregon’s criminal justice system by HB 2355 indicates that the reduction in felony PCS convictions, increase in misdemeanor convictions, and improvement in racial/ethnic disparities have continued, as expected, in the second year since the bill’s passage. Once enough time has passed, CJC will provide an in-depth recidivism analysis, and will continue to provide updated information on the trends examined in the body of this report. CJC maintains a “PCS Dashboard” as well for the public to monitor and interact with these trends.<sup>3</sup>

<sup>3</sup> Find the Dashboard here: <https://www.oregon.gov/CJC/SAC/Pages/pcs.aspx>

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## 1. Background

### 1.1. Legislative Changes to Schedule I and II Drug Possession

During the 2017 legislative session, the Oregon State Legislature elected to make several changes to the statutes governing the possession of controlled substances (PCS) through the passage of HB 2355 (2017). As described in § 9 of the Bill, the possession of both Schedule I and II controlled substances were reclassified as Class A misdemeanors. Previously, possession of a Schedule I controlled substance was a Class B felony while possession of a Schedule II controlled substance was a Class C felony.

**Table 1.1.1. Exceptions to Reclassification of PCS as Class A Misdemeanors by Narcotic Type<sup>4</sup>**

| Narcotic Type         | Threshold Amount for Felony PCS            |
|-----------------------|--|
| Heroin                | ≥1 gram                                    |
| MDMA (Ecstasy)        | ≥1 gram; or ≥5 pills, tablets, or capsules |
| Methamphetamine       | ≥2 grams                                   |
| LSD                   | ≥40 user units                             |
| Psychedelic Mushrooms | ≥12 grams                                  |
| Methadone             | ≥40 user units                             |
| Oxycodone             | ≥40 pills, tablets, or capsules            |
| Cocaine               | ≥2 grams                                   |

This general reclassification, however, was not applied to all possession cases. HB 2355 §§ 7 and 8 defined several exceptions to the general reclassification described in § 9. First, possession of a controlled Schedule I or II substance remains a felony if the individual possesses a usable quantity<sup>5</sup> of said substance *and* any of the following conditions apply: (a) the individual has a prior felony

conviction, (b) the individual has two or more prior convictions for possessing a usable quantity of a controlled substance, or (c) the possession is a commercial drug offense under 475.900(1)(b). Second, possession of a controlled Schedule I or II substance would remain a felony if the individual possesses a quantity of narcotics above a specific narcotic dependent threshold. Table 1.1.1 describes these thresholds by narcotic type.

### 1.2. Legislative Request for a Research Report Regarding the Impacts of HB 2355

Beyond the changes mandated via HB 2355 to possession of Schedule I and II drugs in Oregon, the bill also tasked the Criminal Justice Commission (CJC) with studying its impacts. Specifically, HB 2355 § 24 requires the CJC study the effects the legislative changes outlined above have had on (i) the criminal justice system, (ii) rates of recidivism, and (iii) the composition of the population of persons convicted of felony offenses. The changes enacted by HB 2355 were effective as of August 15, 2017 and applied to all charges filed after that date.

### 1.3. HB 2355 Research Report Update

This report contains updated results from the previous HB 2355 report published by the CJC in September 2018. It is important to note, however, that CJC was (as in the 2018 report) unable to study all of the outcomes requested in the bill. Specifically, given the period of time that has elapsed since the effective date of HB 2355, it is not yet possible to evaluate changes in recidivism rates attributable to the bill. In Oregon, “recidivism,” as defined in ORS 423.557, is an arrest, conviction, or incarceration for a

<sup>4</sup> HB 2355 §9(7)(b)(A), lysergic acid diethylamide (LSD); 2355 §9(7)(b)(B), psilocybin or psilocin (psychedelic mushrooms); 2355 §10, ORS 475.824 methadone; 2355 §11, ORS 475.834 oxycodone; 2355 §12, ORS 475.854 heroin; 2355 §13, ORS 475.874 3,4-methylenedioxymethamphetamine (MDMA or Ecstasy); 2355 §14, ORS 475.884 Cocaine; 2355 §15, ORS 475.894 methamphetamine.

<sup>5</sup> HB 2355 § 23 defined “usable quantity” to mean: an amount sufficient to physically weigh independent of packaging that does not fall below the uncertainty of the measuring scale, or an amount that has not been deemed unweighable by the state crime lab.

new crime within three years of release from custody or the start of a probation term. Thus, to evaluate the effects of HB 2355, it is necessary to wait until at least August of 2020, when the first individuals charged under the new system begin to hit the three-year mark necessary for a full recidivism analysis.

Reporting on the effects of HB 2355 presents several challenges due to the complex nature of the legal and criminal justice systems that the CJC had to overcome. First, given the effective date of HB 2355 was in August of 2017, the CJC was unable to conduct its analyses using a standard calendar year to compare the time preceding and subsequent to the law change. To address this issue, the CJC examined arrest and conviction trends by fiscal year, starting with 2013-2014 and ending with 2018-2019. This allowed the CJC to most directly compare the trends before and after the law change while also setting an easily interpretable standard to communicate trends in future reports and on the CJC's website. Beyond this general date issue, Multnomah County began to institute the changes mandated by HB 2355 a full five months before the law came into effect. To account for this timing difference, the CJC examined Multnomah County's trends separately in analyses that will follow the initial discussions of statewide trends.

Second, another complicating factor in examining conviction rates for PCS is the fact that many PCS cases involve conditional discharges. In a conditional discharge case, a defendant pleads or is found guilty of a PCS crime, but the court is permitted to place the defendant on probation without entering a formal judgment (ORS 475.245(1)). If the defendant successfully completes their term of probation, the court discharges the individual and dismisses the case against them (ORS 475.245(3)). If the individual violates their probationary terms, however, the court may adjudicate the individual guilty and proceed as otherwise provided by Oregon Statute (ORS 475.245(2)). The primary challenge this program poses from a data perspective is that true conviction data are incomplete in recent years. This is because individuals currently participating in the conditional discharge program cannot be counted as truly convicted unless and until they fail to complete their often multi-year term of probation. This impacts comparisons of trends in particular, because if convictions were used in the analyses then they would be upwardly biased during the most recent fiscal years. To address this issue, the comparisons of trends over time will be made for data containing felony convictions including all conditional discharge cases, which means all individuals who enter into the system, regardless of whether they have been given the opportunity for a conditional discharge and/or completed the conditional discharge program, will be included in our counts. While this overestimates the trends in PCS slightly, it has two distinct advantages: (a) it allows for accurate comparisons of trends as the overestimation is consistent over time, and (b) it provides the most up to date information on current trends. For ease of interpretation, however, throughout this report the CJC will refer to this statistic as "convictions (including yet to be completed conditional discharge cases)".

To measure the effects of the changes mandated in HB 2355, the CJC relied on two sources of data: data regarding arrests found in the Oregon Law Enforcement Data System (LEDS) and data from the Oregon Department of Corrections (DOC) regarding convictions. The CJC queried data from 2013 through 2019 from each of these systems in an effort to provide a sufficient number of data points to make comparisons between the years preceding the law as well as the years following the effective date of HB 2355. As this is an updated report, CJC pulled a new set of data from each of these sources in order to see trends beyond the dates in the previous report. Cases have progressed in the time between the last report and the data draw for this update, and they have been updated in LEDS and DOC data systems, so there are some counts in this update for previous years that may not match the counts for those years in the 2018 report. These small count differences do not affect the trends discussed.

## 2. Updated Effects of HB 2355

In the time since CJC published the September 2018 PCS Report, an additional year of continuing data have been collected. Here, CJC updates and discusses the majority of figures included in the September 2018 Report, omitting only certain figures for which the trends are better displayed using other methods (specifically RDRs). This report addresses the same subsets of PCS arrest and conviction data as addressed in the previous report: Statewide Effects and Detailed Effects (described in following sections). Again, some figures may show data from previous years which do not perfectly match the data presented in the figures updated here. This is because a new, updated data set was used at the time this updated report was written and certain cases may have been updated or changed in the data systems CJC uses to compile these figures. These are not substantive differences, and do not affect the overall trends viewed in any of the figures.

### 2.1. Updated Statewide Effects of HB 2355

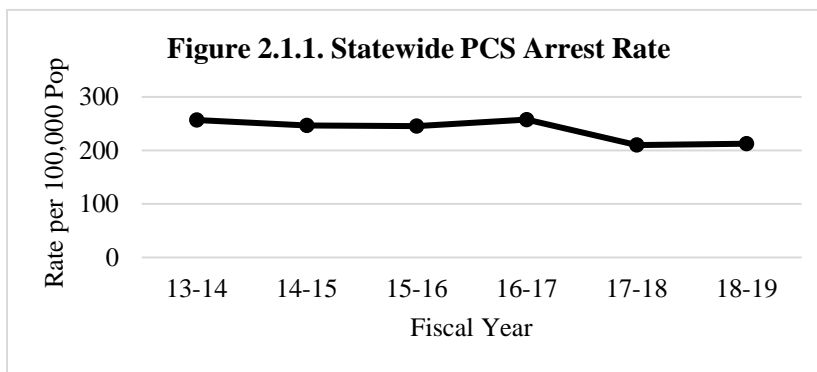
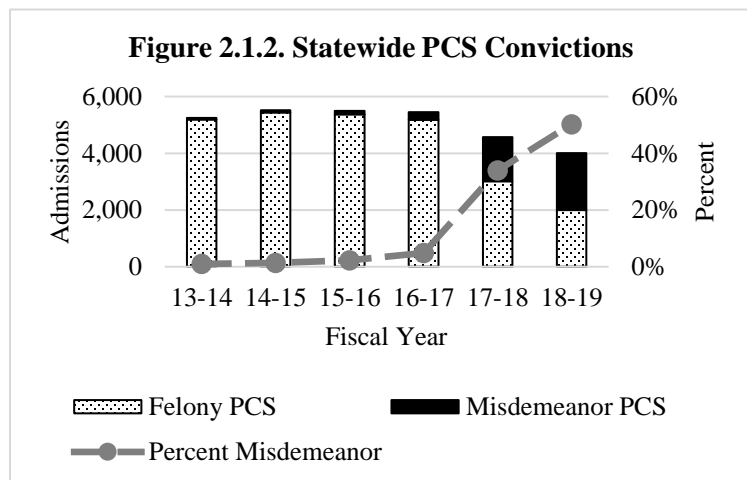


Figure 2.1.1 displays data regarding trends for PCS arrest rates statewide. For this figure, as well as all other figures displaying LEDS (arrest) data, the CJC includes all arrests for which the PCS crime was the most serious offense. LEDS data do not differentiate between felony and misdemeanor PCS.<sup>6</sup> Examining the trend for all PCS

arrests shown in Figure 2.1.1 above, there was an initial decrease in arrests for PCS seen from FY 16-17 to FY 17-18 immediately after the changes made by HB 2355. However, from FY 17-18 to FY 18-19, the statewide arrest rate for PCS has stabilized (rising only slightly from approximately 210 to approximately 212 arrests per 100,000 population).

Figure 2.1.2 displays data on PCS convictions (including yet to be completed conditional discharge cases) broken down by felonies and misdemeanors. Similar to arrests, the CJC examined convictions where PCS was the most serious offense. Note that after HB 2355 went into effect, total PCS convictions fell between FY 16-17 and FY 17-18. This trend continued from FY 17-18 to FY 18-19 as well, falling from 4,570 total convictions to 4,003 total convictions. This is approximately a 12 percent drop, following a nearly 20 percent drop the previous year. Figure 2.1.2 also displays the share of felony versus misdemeanor PCS convictions.



<sup>6</sup> In most cases, prosecutors make the decision to charge an individual with a felony versus a misdemeanor for PCS. This is due to the fact that charges often cannot be determined until narcotics have been weighed and/or analyzed and criminal histories have been examined.



Immediately following the passage of HB 2355, it shows a jump in misdemeanor PCS convictions from approximately 5 percent of total PCS convictions in FY 16-17 to 34 percent of total PCS convictions in FY 17-18. Again, this trend continued in the following year – from FY 17-18 to FY 18-19, misdemeanors as a percentage of the total PCS convictions jumped from 34 percent to just over 50 percent. While data regarding misdemeanor PCS convictions before the passage of HB 2355 are incomplete and should be interpreted with a degree of caution, it is clear that there has been significant change.<sup>7</sup>

## 2.2. Updated Detailed Effects of HB 2355

In this section, detailed effects of HB 2355 including breakdowns by drug type, racial/ethnic groups, first-time and repeat offenders, and geographic location are updated from the September 2018 report.

### 2.2.1. Geographic Breakdown of Arrests and Felony Convictions

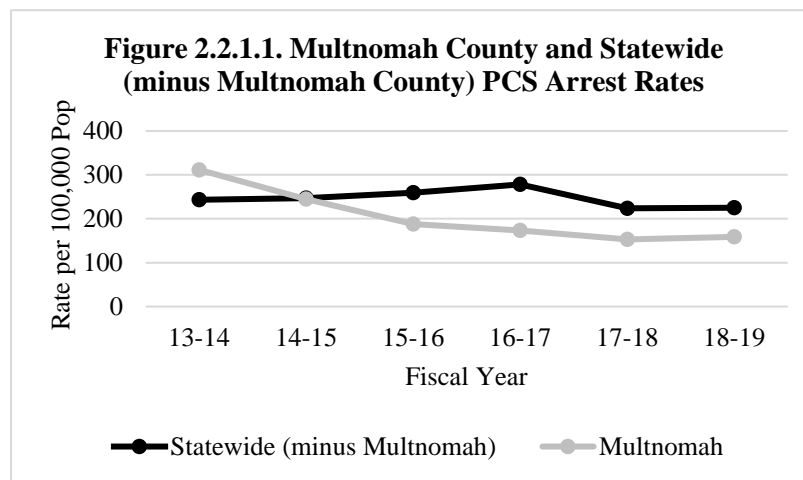


Figure 2.2.1.1<sup>8</sup> displays the trends in overall PCS arrest rates for Multnomah County as well as the remainder of the state. After being relatively steady from FY 13-14 through FY 16-17, the statewide (minus Multnomah County) PCS arrest rate dropped immediately following the changes made by HB 2355. The Multnomah County PCS arrest rate, however, was falling before HB 2355 took effect, and simply continued that trend from FY 16-17 to FY 17-18. In the year since the September 2018

report, both statewide (minus Multnomah County) and Multnomah County arrest rates have stabilized (or risen slightly).

<sup>7</sup> In addition to the reclassification of PCS, HB 2355 also made changes to the community corrections grant-in-aid formula to include drug possession misdemeanor caseloads. Prior to HB 2355, misdemeanor drug PCS supervision cases were not included in the grant-in-aid formula and often were not entered into the DOC data system. Now that funding levels are tied to accurate reporting, misdemeanor conviction data have improved substantially. It is possible, however, that some misdemeanors may still be missed in the DOC data if offenders are being supervised through alternative means outside of community corrections, such as through bench probation.

<sup>8</sup> In the September 2018 PCS Report, Figure 3.1.1 (which is conceptually the same as Figure 2.2.1.1 here) and Figure 3.1.2 (which is conceptually the same as Figure 2.2.1.2 here) miscalculated the statewide (minus Multnomah County) rates. The upward and downward trends were accurate, however the rates were overall elevated. Here, they have been corrected.

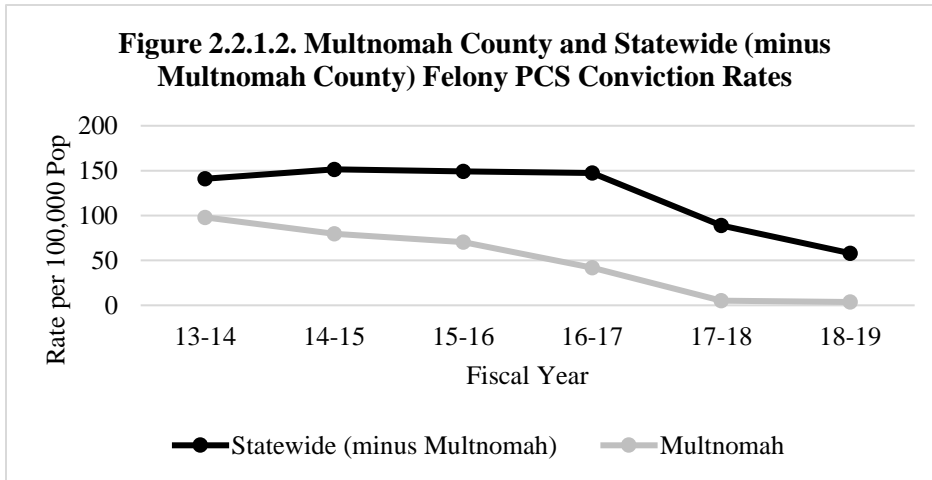


Figure 2.2.1.2<sup>9</sup> displays the trends in felony PCS conviction (including yet to be completed conditional discharge) rates, comparing Multnomah County and the rest of the state. The statewide (minus Multnomah County) felony PCS conviction rate remained steady from FY 13-14 to FY 16-17, then dropped from 147

to 89 convictions per 100,000 population after HB 2355 took effect. Throughout the study period, Multnomah County felony PCS conviction rates are far below those of the rest of the state – even at their closest in FY13-14, Multnomah County’s rate was only 70 percent of the statewide rate (minus Multnomah County).

### 2.2.2. Drug Breakdown of Arrests and Felony Convictions

Due to emerging problems with the use of methamphetamine and heroin in Oregon, it is important to look at each of these drugs separately in order to detect any underlying patterns. Heroin has seen a recent uptick in use, and methamphetamine has remained a serious issue in the state. Additionally, methamphetamine and heroin are (respectively), the first and second most common drugs resulting in PCS arrests and convictions in Oregon.

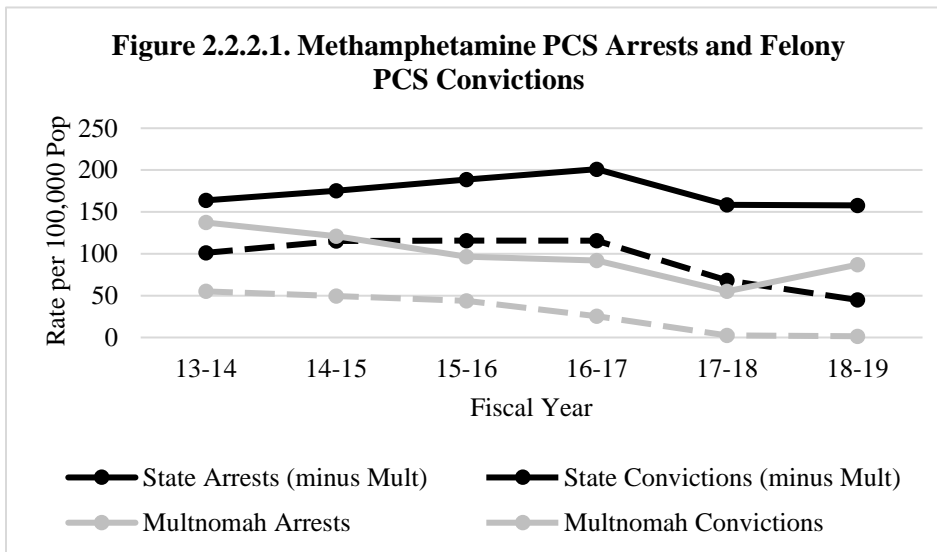
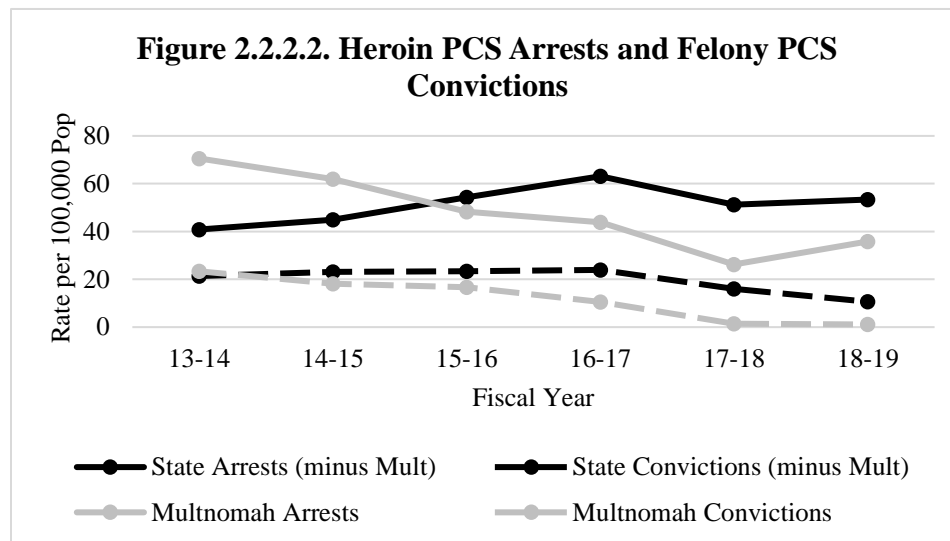


Figure 2.2.2.1<sup>10</sup> illustrates the Multnomah County and statewide (minus Multnomah County) rates of arrest and felony conviction for methamphetamine PCS over the study period. Statewide (minus Multnomah) rates of arrest and felony conviction for methamphetamine PCS saw a slow and steady increase from FY 13-14 to FY 16-17

<sup>9</sup> (See note 8 above).

<sup>10</sup> In the 2018 report, Figures 3.2.1 and 3.2.2 (conceptually the same as Figures 2.2.2.1 and 2.2.2.2 here) did not include conditional discharge cases in their calculations for statewide (minus Multnomah) felony PCS convictions, resulting in lowered rates. In addition, statewide (minus Multnomah) arrest rates were calculated using statewide (including Multnomah) populations, resulting in lowered rates. Here, both of these issues have been corrected.

(HB 2355’s implementation), after which both arrest and conviction rates dropped sharply. Convictions continued to decline in the last fiscal year, however arrest rates have remained nearly the same (with a drop of less than 1 arrest per 100,000 population), while felony conviction rates dropped from 68 to 45 convictions per 100,000 population (34 percent drop). In Multnomah County, arrest and felony conviction rates for methamphetamine PCS fell steadily before the implementation of HB 2355 and continued to fall from FY 16-17 through FY 17-18. In the past fiscal year, however, the Multnomah county methamphetamine PCS arrest rate saw an uptick from 55 to 87 arrests per 100,000 population (a 58 percent increase), while the felony conviction rate fell by just over 1 arrest per 100,000 population.



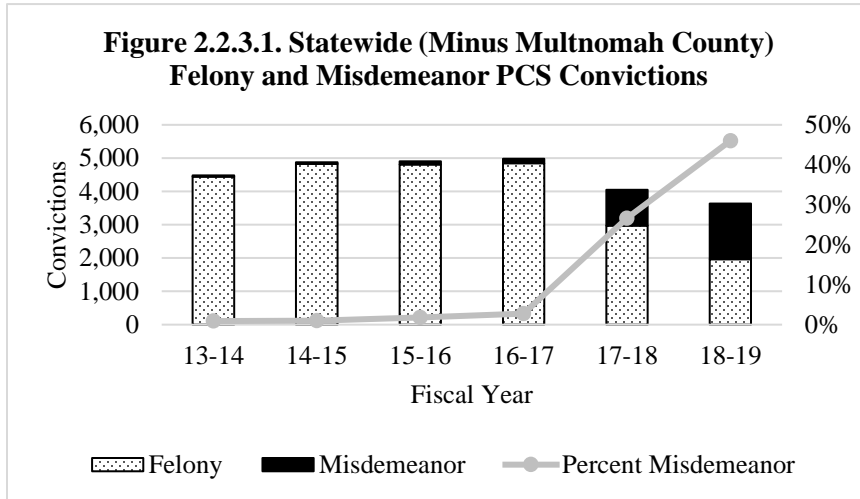
Heroin PCS arrest and felony conviction rates are shown in Figure 2.2.2.2<sup>11</sup> for the state (minus Multnomah County) and for Multnomah County. Leading up to the implementation of HB 2355, statewide arrest and felony conviction rates for heroin PCS were increasing steadily. Between FY 16-17 and FY 17-18, however, both rates

dropped: arrests from 63 to 51 per 100,000 population (19 percent drop), and convictions from 24 to 16 per 100,000 population (33 percent drop). Since then, the arrest rate has increased slightly up to 53 arrests per 100,000 population in FY18-19, while the conviction rate has again dropped from 16 to 11 per 100,000 population (31 percent drop). In Multnomah County, the heroin PCS arrest rate was falling from FY 13-14 (71 arrests per 100,000 population) to FY 16-17 (44 arrests per 100,000 population) before HB 2355 was implemented. In the year following, the rate dropped again from 44 to 26 per 100,000 population (41 percent drop). In the most recent year, the arrest rate has increased by 10 arrests per 100,000 population (38 percent). Felony convictions for heroin PCS in Multnomah County were also decreasing until and following the implementation of HB 2355, however between FY 17-18 and FY 18-19, the rate leveled out at 1 conviction per 100,000 population.

The trends for methamphetamine and heroin arrest and felony conviction rates are similar: Multnomah saw decreases in arrest rate and conviction rate for both drugs before and immediately following HB 2355, then experienced an uptick or leveling. Statewide, the arrest and felony conviction rates for both drugs were increasing before HB 2355, and experienced an immediate drop following the bill’s implementation, but arrests have seen a slight uptick in the last fiscal year. In general, Multnomah County’s rates for both arrests and convictions tend to be lower than statewide (aside from convictions in FY 13-14 and FY 14-15).

<sup>11</sup> (see note 10 above).

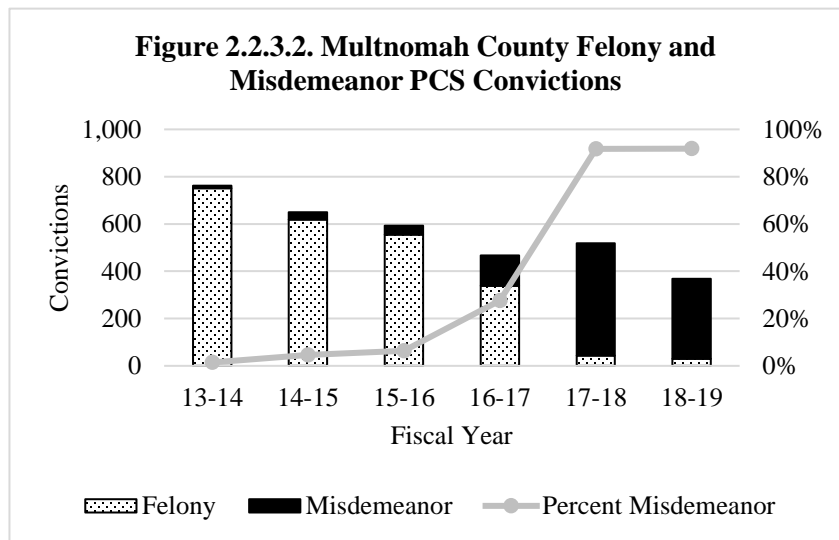
### 2.2.3. Misdemeanor Convictions



As described above, the statutory change enacted by HB 2355 reduced many instances of PCS to the Class A Misdemeanor level. On the whole, this led to a significant increase in the number of misdemeanor convictions for PCS (including yet to be completed conditional discharge cases) Figure 2.2.3.1 displays the change in the proportion of overall PCS convictions (and yet to be completed conditional

discharges) which are misdemeanors in the state as a whole (minus Multnomah County). Following the passage of HB 2355, the percent of PCS convictions that were misdemeanors jumped from 3 percent to 27 percent between FY 16-17 and FY 17-18, and jumped again to 46 percent between FY 17-18 and FY 18-19.

Figure 2.2.3.2 displays the same measures for Multnomah County. Before the passage of HB 2355, Multnomah County’s percentage of overall PCS misdemeanor convictions (and yet to be completed conditional discharges) was already increasing. From FY 15-16 to FY 16-17, this jumped from 6 percent to 28 percent, then following the bill’s passage, it jumped from 28 percent to 92 percent. In the most recent year, misdemeanors accounted for 92 percent of Multnomah County’s PCS convictions.



### 2.2.4. First Time Felony Convictions

One concern that motivated the passage of HB 2355 was the argument that many individuals convicted of PCS were first time felons and that bringing these individuals into the criminal justice system at a felony level could prove harmful to a population that was more in need of treatment rather than punishment.

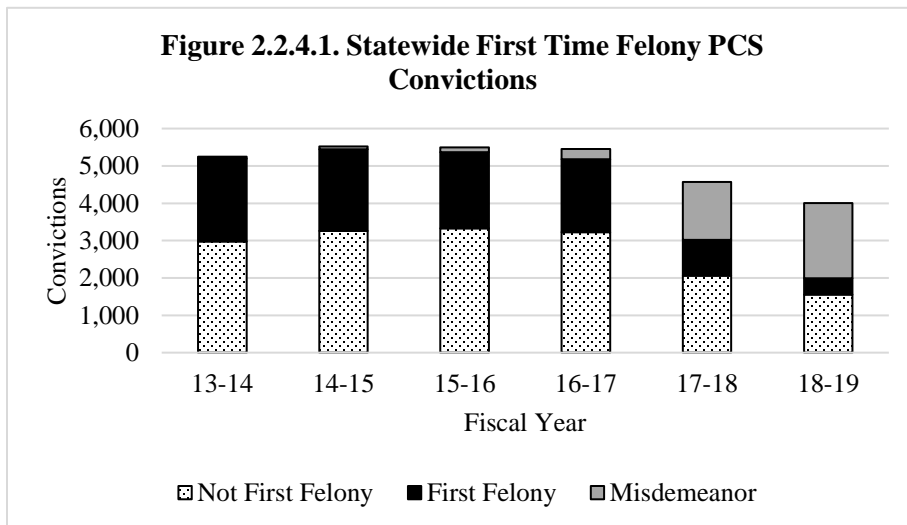


Figure 2.2.4.1 shows a significant decrease in first-time felony convictions after the passage of HB 2355 and continuing through 2018-2019.<sup>12</sup> As noted in the previous report, this is due largely to the overall reduction in all felony convictions, as opposed to the reduction of first-time felony convictions in particular, however the percentage of felony convictions that were

first-time felony convictions did drop from 32 percent to 22 percent between FY 17-18 and FY 18-19. In the last two fiscal years combined, there have been fewer first-time felony convictions than there were in FY 16-17 alone.

### 2.2.5. Racial/Ethnic Disparities in Arrests and Convictions

In this section, some of the previous report’s general race/ethnicity trend figures have been omitted and replaced with RDR figures that display racial/ethnic disparities more clearly. The RDR metric is particularly appropriate for making comparisons over time (Girvan, McIntosh, and Smolkowski 2018). It is also an intuitive measure that reports statistics of disproportionality in terms of the number of individuals affected, which can better guide policy makers and report real, on the ground changes that occur in response to new policies and practices.

Substantively, the RDR represents the reduction in arrests or convictions that would be required to reach parity with Whites given population differences across race/ethnicity. As such, the RDR value for Whites is always zero because it is the group to which others are compared. Positive RDRs for non-White race/ethnicity groups indicate that a reduction equal to that number is necessary to bring the group in line with Whites. Alternatively, if the RDR value is negative for a non-White group, it indicates that the non-White group is underrepresented relative to Whites.

<sup>12</sup> To classify individuals as first time felons, the CJC examined each individual’s past felony conviction history using Oregon DOC data. If an individual had no felony record in the DOC data preceding their PCS conviction, then that individual was classified as a first time felon. It is possible, however, that a subset of individuals identified as first time felons in this report could have out of state felony convictions, as data on convictions from outside the State of Oregon is not included in the DOC data possessed by the CJC.

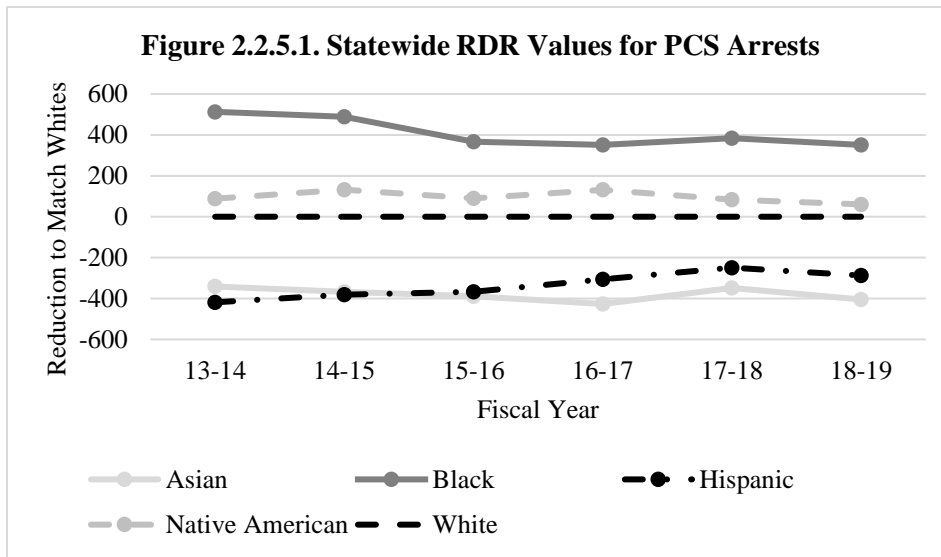
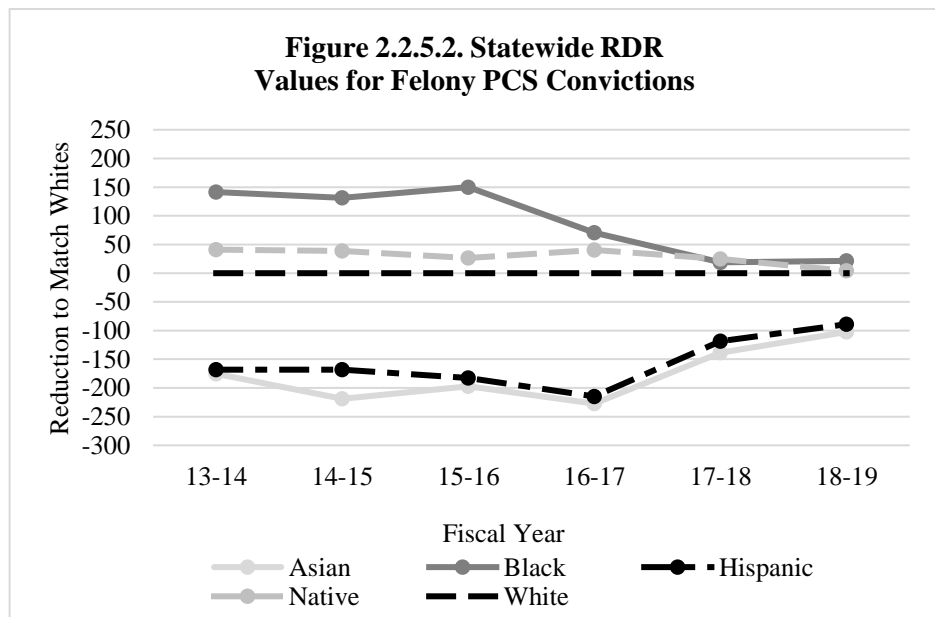


Figure 2.2.5.1 details RDRs for PCS arrests for different racial/ethnic groups statewide. RDRs higher than zero (in this case, Black and Native American RDRs) indicate that more arrests relative to the general population are being made of those groups than whites. Despite slight increases over the past few fiscal years, both Black and Native

American RDRs for PCS arrests decreased somewhat between FY 17-18 and FY 18-19. Still, it would take 351 fewer arrests of Blacks and 60 fewer arrests of Native Americans in order for these groups to reach parity with Whites. On the other hand, Asians and Hispanics are both underrepresented compared to Whites in statewide PCS arrests (and more so in FY 18-19 than in FY 17-18). HB 2355, passed in 2017, does not appear to have had any clear effect on the RDRs for PCS arrests statewide.

Figure 2.2.5.2, however, shows a decline in PCS felony conviction (and yet to be completed conditional discharge) disparities since the passage of HB 2355. The RDR value increased slightly (from 19 to 21) for Blacks between FY 17-18 and FY 18-19, but trended toward zero for Asians, Native Americans, and Hispanics. Similar to arrests, convictions have an overrepresentation of Blacks and Native Americans, and an



underrepresentation of Asians and Hispanics statewide. Large strides (a reduction by 86 percent of the Black RDR between FY 15-16 and FY 18-19 and a reduction of the Native American disparity to only 4 convictions) have been made over the course of the study period. The drop in the Black RDR between FY 15-16 and FY 16-17 (before the statewide implementation of HB 2355) in particular calls for a look into Multnomah County's RDRs for felony convictions.

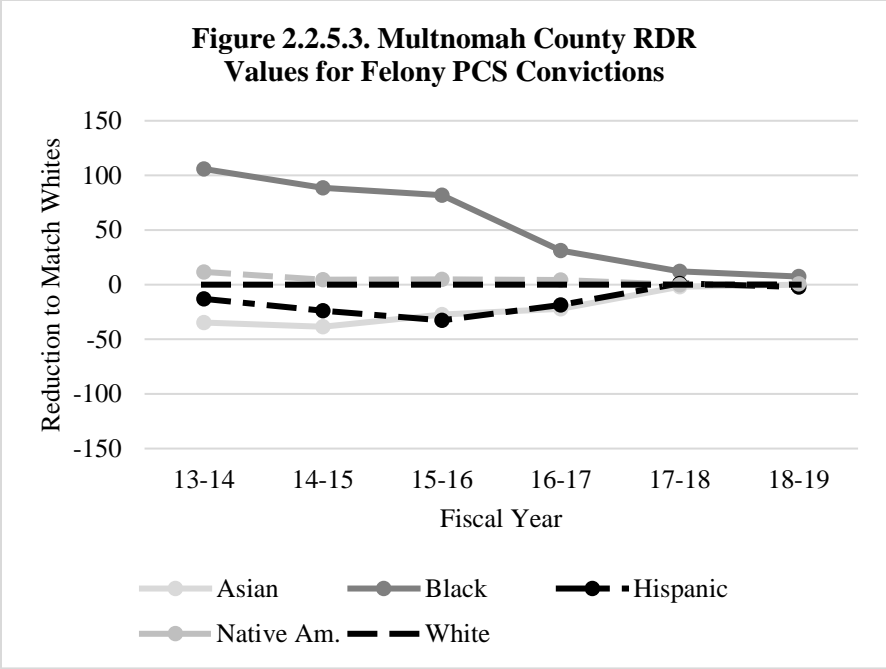


Figure 2.2.5.3 shows that before HB 2355 was implemented, the Multnomah County RDR for felony PCS convictions (and yet to be completed conditional discharges) of Blacks was decreasing, particularly between FY 15-16 and FY 16-17, where the RDR dropped by 62 percent (from 82 to 31). Over the course of the study period, felony PCS conviction RDRs have trended toward zero for all races/ethnicities, with a Black RDR of 7 in FY 18-19 being the furthest from zero. In conjunction with Figure 2.2.5.4 below,

this indicates that Multnomah County may be a driver of much (though not all) of the improvement we see in the RDRs statewide.

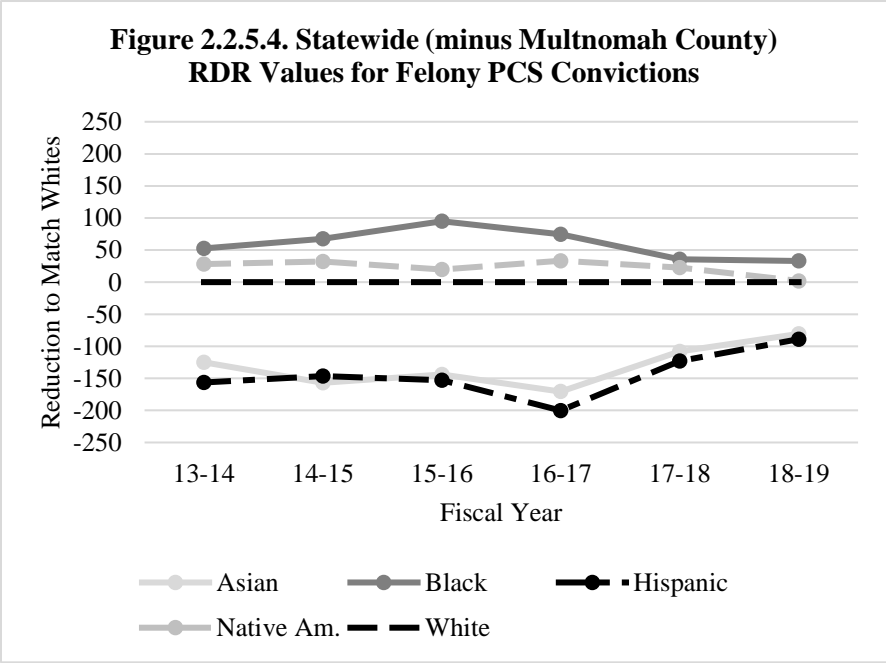


Figure 2.2.5.4 indicates that since the passage of HB 2355, there has been an overall trend toward zero in the PCS felony conviction RDRs for all racial/ethnic groups statewide (minus Multnomah County). This general trend began after FY 16-17 and has continued through FY 18-19 (with the Black RDR nearly leveling out between FY 17-18 and FY 18-19). The decrease in the Black RDR for statewide felony PCS convictions (Figure 2.2.5.2) between FY 15-16 and FY 16-17 appears to be somewhat attributable to

Multnomah County, given that in Figure 2.2.5.4, the decrease in the Black RDR is slight (21 percent) compared to that in Figure 2.2.5.3 for Multnomah County (62 percent). However, a 21 percent reduction in the Black RDR for statewide (minus Multnomah) felony PCS convictions is not small – it represents a reduction from 95 fewer convictions to 75 fewer convictions necessary to reach parity with Whites. Clearly, not all of the statewide reduction in racial/ethnic disparities is attributable to Multnomah County alone. The gap has also closed for Hispanics, Asians, and Native Americans, with Native Americans achieving an RDR of only 2 in FY 18-19.

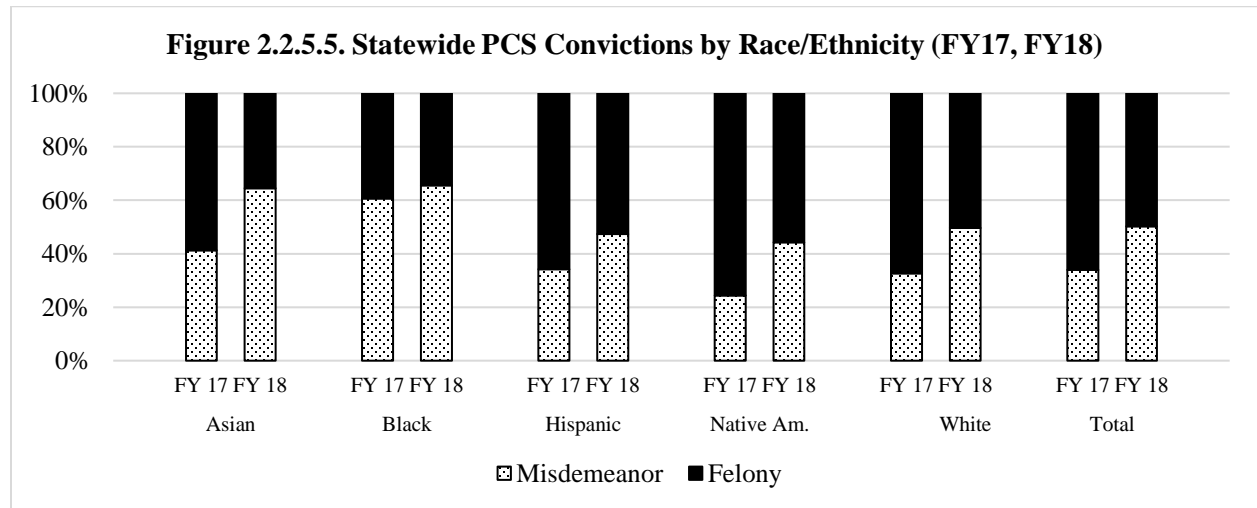
A full examination of racial/ethnic disparities for misdemeanor convictions at this time is

**Table 2.2.5.1. RDR Values for Misdemeanor PCS Convictions**

| Race/<br>Ethnicity | Statewide |          | Statewide (minus Mult) |          | Multnomah County |          |
|--------------------|-----------|----------|------------------------|----------|------------------|----------|
|                    | FY 17-18  | FY 18-19 | FY 17-18               | FY 18-19 | FY 17-18         | FY 18-19 |
| Asian              | -61       | -92      | -35                    | -62      | -52              | -39      |
| Black              | 97        | 81       | 10                     | 36       | 68               | 40       |
| Hispanic           | -46       | -106     | -40                    | -91      | -33              | -33      |
| Native Am.         | 2         | -2       | -3                     | -7       | 4                | 4        |

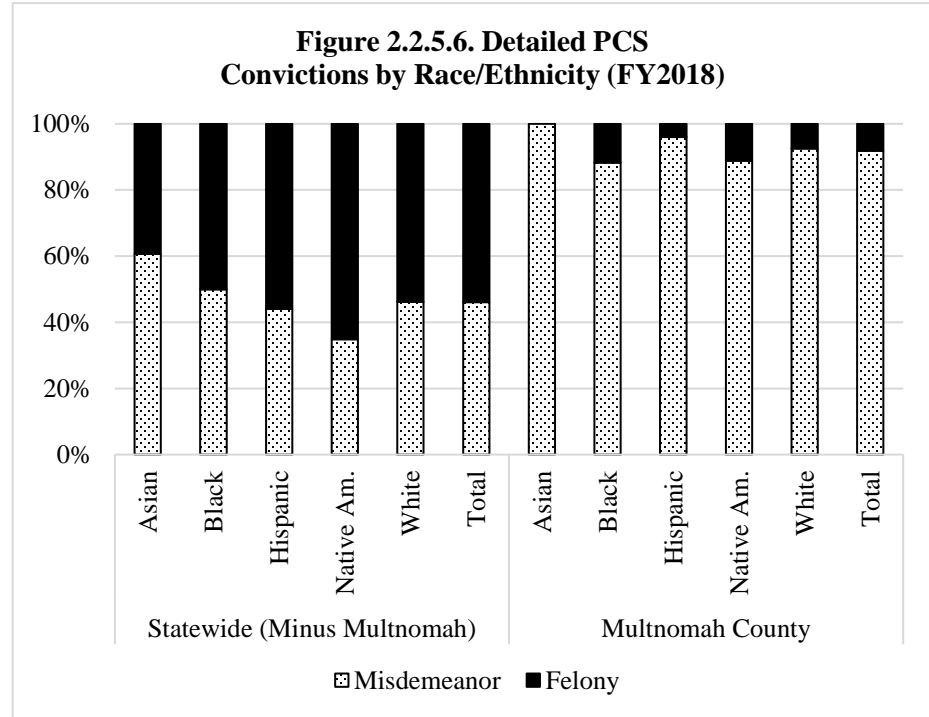
difficult, but because there are two years of data following HB 2355’s passage, it is possible to make a simple comparison across two years of data. Table 2.2.5.1 reports the statewide, statewide (minus Multnomah County), and Multnomah County RDR values for misdemeanor PCS convictions in FY 17-18 and FY 18-19. Multnomah County, having implemented the policies in HB 2355 before the bill’s passage, has more complete data on Misdemeanor convictions than much of the state. This leads to their RDRs being more reliable for the first two years following implementation: both Asian and Black RDRs dropped between FY 17-18 and FY 18-19, while Hispanic and Native American disparities stayed nearly the same. Statewide (minus Multnomah County) RDRs all increased between FY 17-18 and FY 18-19. This is likely a product of the sheer number of misdemeanors in counties other than Multnomah increasing significantly after the implementation of HB 2355. Statewide RDRs increased for Asians and Hispanics, and decreased for Blacks and Native Americans.

To provide a breakdown of misdemeanor and felony PCS convictions over time across the state, Figure 2.2.5.5 displays the percentage of all statewide PCS convictions that were misdemeanors and felonies by race/ethnicity in FY 17-18 and FY 18-19. For each race/ethnicity, the misdemeanor percent increased over the year, with the misdemeanor percent increasing the least for Blacks. For all races/ethnicities combined, the misdemeanor percent increased by 29 percent (458 cases).

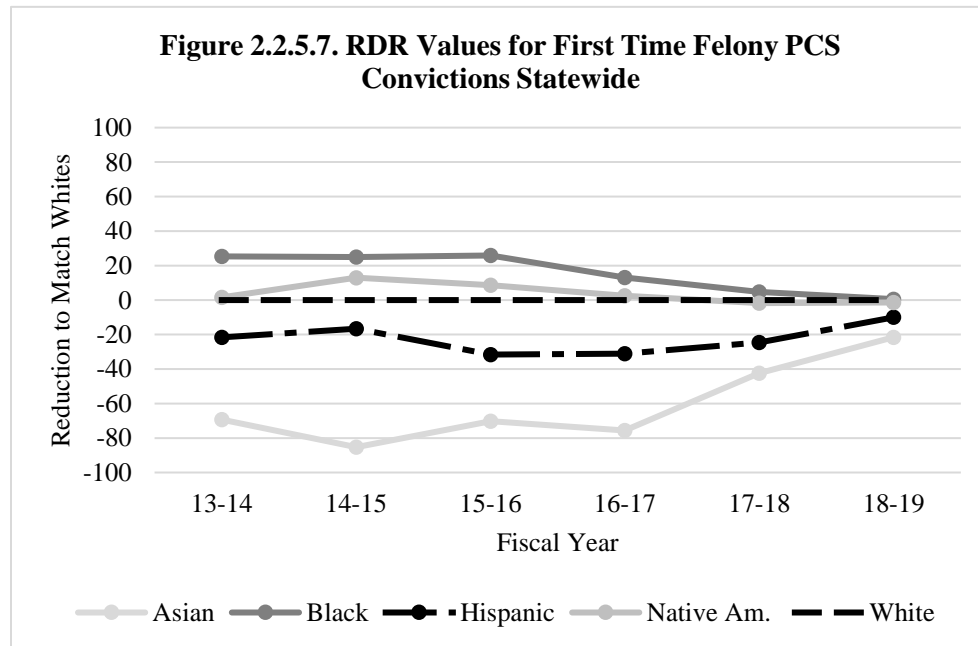




The misdemeanor and felony PCS conviction breakdown by race/ethnicity is another trend that was necessary to examine in different locations. In Figure 2.2.5.6, FY 18-19 data on convictions are broken down by location and race/ethnicity to show how misdemeanor percentages differ between the state (minus Multnomah County) and Multnomah County. Multnomah County has a much higher misdemeanor percent than the state (minus Multnomah County) for each race/ethnicity in FY



18-19. Overall, Multnomah County’s misdemeanor percent PCS convictions is twice that of the rest of the state (92 percent misdemeanors in Multnomah as opposed to 46 percent misdemeanors in the rest of the state).



Finally, Figure 2.2.5.7 reports RDRs for statewide first-time felony PCS convictions. Note that over the entire period shown in the figure, RDR values have been relatively low (compared to overall felony conviction RDRs shown in previous figures). However, since the implementation of HB 2355, RDRs for first-time felonies have been trending

sharply toward zero for all races/ethnicities. Black and Native American RDRs in particular have reached nearly zero in FY 18-19, while Hispanic and Asian RDRs both decreased significantly and are below a 22 conviction difference from Whites in the most recent fiscal year.

Overall, racial/ethnic disparities across arrests and different conviction types have been mixed. Racial/ethnic disparities in arrests do not appear to have been affected by HB 2355, as RDRs have both decreased and increased slightly for all races/ethnicities (except Native American, which has decreased slightly in both years) since the implementation of the bill; Blacks and Native Americans remain overrepresented while Hispanics and Asians remain underrepresented. No difference in arrest patterns would be expected due to HB 2355, so this is somewhat unremarkable. It would be expected, however, to see changes in conviction rates related to sentencing changes made in the bill. Felony PCS convictions have seen a significant drop in racial/ethnic disparities following the implementation of HB 2355. For all geographic groups (statewide, statewide minus Multnomah, and Multnomah County), felony PCS conviction RDRs for all races/ethnicities have trended sharply toward zero since FY 16-17. It is clear that, for Blacks in particular, the reduction in statewide disparity is largely (though not solely) attributable to reductions in Multnomah County, as statewide (minus Multnomah County) reductions are quite large themselves. It is notable, however, that over the course of the study period (even before implementation of HB 2355), Multnomah County's low racial/ethnic disparities and their continued reduction surpassed those of the rest of the state. In FY 18-19, Multnomah County's disparities for non-Whites are all nearly zero. One of the greatest overall effects of HB 2355 statewide appears to be the significant reduction in racial/ethnic disparities across races/ethnicities for felony PCS convictions, regardless of geographic location.

### **3. Other Effects of HB 2355**

There are a few other effects that the CJC and outside stakeholders are interested in surrounding the lasting effects of HB 2355 beyond what has been discussed in previous sections. Recidivism rates in particular are outlined in the bill, and are of interest to many stakeholders. As discussed above, calculating recidivism rates for those sentenced under HB 2355 is not yet possible, but as data over the appropriate period of time become available, the CJC will be able to present information on recidivism rates for groups of interest (such as would-be first time felons who instead were convicted of a misdemeanor). Other topics of interest including effects on felony drug delivery charges, drug court participation, and young people's drug use have not been analyzed as of yet. The CJC is monitoring data that will lead to analysis of these trends as they become available, and plans to provide more information on them when possible.

#### 4. Methodology

The majority of the analyses contained in this report consist of tables and figures built from bivariate cross tabulations of data drawn from LEDS and the Oregon DOC. Back up documentation and tables of the data underlying all figures are available upon request.

To calculate the raw differential representation (RDR) metric, the CJC followed the approach outlined by Girvan, McIntosh, and Smolkowski (2018). The formula for computing the RDR takes the following form:

$$A_K = \frac{A_K}{RR_{W-K}}$$

where  $A_K$  represents the number of arrests or convictions for minority group  $K$ , and  $RR_{W-K}$  represents the risk ratio for Whites compared to minority group  $K$ . The risk ratio formula takes the following form:

$$RR_{W-K} = \frac{\frac{A_K}{Pop_K}}{\frac{A_W}{Pop_W}}$$

Where  $A_K$  represents the number of arrests or convictions for minority group  $K$ ,  $A_W$  represents the number of arrests or convictions for Whites,  $Pop_K$  is the total population count for minority group  $K$  and  $Pop_W$  is the total White population.

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## Appendix

**Table A.1. Statewide PCS Arrest Counts and Raw Differential Representation Metrics by Race/Ethnicity**

| <b>Race</b>       | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|-------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <i>Asian</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 122             | 96              | 99              | 114             | 105             | 78              |
| RDR               | (-341)          | (-367)          | (-389)          | (-427)          | (-348)          | (-404)          |
| <i>Black</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 700             | 674             | 560             | 562             | 559             | 537             |
| RDR               | (513)           | (489)           | (367)           | (351)           | (384)           | (351)           |
| <i>Hispanic</i>   |                 |                 |                 |                 |                 |                 |
| Count             | 875             | 889             | 954             | 1,118           | 938             | 970             |
| RDR               | (-419)          | (-381)          | (-368)          | (-306)          | (-249)          | (-287)          |
| <i>Native Am.</i> |                 |                 |                 |                 |                 |                 |
| Count             | 206             | 246             | 207             | 256             | 185             | 166             |
| RDR               | (88)            | (132)           | (90)            | (132)           | (83)            | (60)            |
| <i>White</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 8,170           | 7,867           | 8,038           | 8,490           | 6,903           | 7,130           |
| <b>Total</b>      | <b>10,073</b>   | <b>9,772</b>    | <b>9,858</b>    | <b>10,540</b>   | <b>8,690</b>    | <b>8,881</b>    |

**Table A.2. Statewide Felony PCS Conviction Counts and Raw Differential Representation Metrics by Race/Ethnicity**

| <b>Race</b>       | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|-------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <i>Asian</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 67              | 46              | 70              | 49              | 27              | 11              |
| RDR               | (-176)          | (-219)          | (-197)          | (-227)          | (-140)          | (-102)          |
| <i>Black</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 239             | 237             | 256             | 178             | 83              | 65              |
| RDR               | (141)           | (131)           | (150)           | (70)            | (19)            | (21)            |
| <i>Hispanic</i>   |                 |                 |                 |                 |                 |                 |
| Count             | 509             | 558             | 542             | 513             | 316             | 207             |
| RDR               | (-168)          | (-168)          | (-183)          | (-215)          | (-118)          | (-89)           |
| <i>Native Am.</i> |                 |                 |                 |                 |                 |                 |
| Count             | 103             | 104             | 91              | 104             | 62              | 29              |
| RDR               | (41)            | (39)            | (27)            | (40)            | (25)            | (4)             |
| <i>White</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 4,278           | 4,498           | 4,408           | 4,339           | 2,526           | 1,678           |
| <b>Total</b>      | <b>5,196</b>    | <b>5,443</b>    | <b>5,367</b>    | <b>5,183</b>    | <b>3,014</b>    | <b>1,990</b>    |

**Table A.3. Multnomah County Felony PCS Conviction Counts and Raw Differential Representation Metrics by Race/Ethnicity**

| <b>Race</b>       | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|-------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <i>Asian</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 19              | 9               | 16              | 7               | 1               | 0               |
| RDR               | (-35)           | (-39)           | (-27)           | (-22)           | (-2)            | (0)             |
| <i>Black</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 144             | 122             | 112             | 51              | 14              | 9               |
| RDR               | (106)           | (89)            | (82)            | (31)            | (12)            | (7)             |
| <i>Hispanic</i>   |                 |                 |                 |                 |                 |                 |
| Count             | 64              | 44              | 29              | 22              | 5               | 1               |
| RDR               | (-13)           | (-24)           | (-33)           | (-19)           | (1)             | (-2)            |
| <i>Native Am.</i> |                 |                 |                 |                 |                 |                 |
| Count             | 17              | 9               | 9               | 7               | 0               | 1               |
| RDR               | (12)            | (4)             | (5)             | (4)             | (0)             | (1)             |
| <i>White</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 506             | 435             | 389             | 251             | 23              | 19              |
| <b>Total</b>      | <b>750</b>      | <b>619</b>      | <b>555</b>      | <b>338</b>      | <b>43</b>       | <b>30</b>       |

**Table A.4. Statewide (minus Multnomah County) Felony PCS Conviction Counts and Raw Differential Representation Metrics by Race/Ethnicity**

| <b>Race</b>       | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|-------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <i>Asian</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 48              | 37              | 54              | 42              | 26              | 11              |
| RDR               | (-125)          | (-157)          | (-144)          | (-171)          | (-108)          | (-81)           |
| <i>Black</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 95              | 115             | 144             | 127             | 69              | 56              |
| RDR               | (52)            | (67)            | (95)            | (75)            | (36)            | (33)            |
| <i>Hispanic</i>   |                 |                 |                 |                 |                 |                 |
| Count             | 444             | 514             | 513             | 491             | 311             | 206             |
| RDR               | (-157)          | (-147)          | (-153)          | (-200)          | (-123)          | (-89)           |
| <i>Native Am.</i> |                 |                 |                 |                 |                 |                 |
| Count             | 86              | 95              | 82              | 97              | 62              | 28              |
| RDR               | (28)            | (32)            | (20)            | (33)            | (23)            | (2)             |
| <i>White</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 3,772           | 4,063           | 4,019           | 4,088           | 2,503           | 1,659           |
| <b>Total</b>      | <b>4,445</b>    | <b>4,824</b>    | <b>4,812</b>    | <b>4,845</b>    | <b>2,971</b>    | <b>1,960</b>    |

**Table A.5. Statewide First Time Felony PCS Conviction Counts and Raw Differential Representation Metrics by Race/Ethnicity**

| <b>Race</b>       | <b>FY 13-14</b> | <b>FY 14-15</b> | <b>FY 15-16</b> | <b>FY 16-17</b> | <b>FY 17-18</b> | <b>FY 18-19</b> |
|-------------------|-----------------|-----------------|-----------------|-----------------|-----------------|-----------------|
| <i>Asian</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 34              | 20              | 31              | 27              | 10              | 3               |
| RDR               | (-69)           | (-85)           | (-70)           | (-76)           | (-42)           | (-22)           |
| <i>Black</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 67              | 67              | 66              | 53              | 25              | 10              |
| RDR               | (25)            | (25)            | (26)            | (13)            | (5)             | (1)             |
| <i>Hispanic</i>   |                 |                 |                 |                 |                 |                 |
| Count             | 267             | 272             | 243             | 239             | 113             | 54              |
| RDR               | (-22)           | (-17)           | (-32)           | (-31)           | (-25)           | (-10)           |
| <i>Native Am.</i> |                 |                 |                 |                 |                 |                 |
| Count             | 28              | 39              | 33              | 26              | 10              | 4               |
| RDR               | (2)             | (13)            | (9)             | (2)             | (-2)            | (-1)            |
| <i>White</i>      |                 |                 |                 |                 |                 |                 |
| Count             | 1,823           | 1,788           | 1,670           | 1,610           | 800             | 363             |
| <b>Total</b>      | <b>2,219</b>    | <b>2,186</b>    | <b>2,043</b>    | <b>1,955</b>    | <b>958</b>      | <b>434</b>      |