Racial Inequities in Drug Arrests: Treatment in Lieu of and After Incarceration

See also Mooney et al., p. 987.

Drug arrests and incarcerations have deep and lasting consequences for the health and well-being of people involved in the criminal justice system as well as their families and communities. Two issues are at stake: law enforcement practices and opportunities for treatment.

Arrests and incarcerations have been shown to both exacerbate existing health conditions and contribute to reduced access to the resources needed for good health after release.[1–3] In this issue of *AJPH*, Mooney et al. (p. 987) highlight the racial disparity in felony drug arrest rates and emphasize the need to identify strategies that can reduce racial inequities in criminal justice exposure. We thank Mooney et al. for their willingness to explicitly explore the link between disproportionality in poor health outcomes for Black residents and disproportionality in arrests. We agree with them that further investigation is warranted so that strategies for addressing disproportionality are not confined to sentencing reform and rehabilitative services but also include the factors that drive crime (e.g., community instability). By understanding the profound impact of racism on institutions that provide "services" (including criminal justice and health care), we can focus on fixing systems, not just fixing people.

PROPOSITION 47

The authors' central finding that Proposition 47 (Prop 47) increased the relative disparity in Black and White felony drug arrests is deeply concerning. Among all drug arrests, the proportion that were felonies was highest for Blacks before Prop 47, and the proportion that the law reclassified from felonies to misdemeanors was lowest for Blacks. The result of these dynamics is that, among all racial and ethnic groups, non-Hispanic Blacks experienced the lowest percentage decline in felony drug arrests one year after Prop 47's passage. Furthermore, whereas Blacks were twice as likely as Whites to be arrested on a felony drug charge before Prop 47, they became three times as likely as Whites to experience this outcome one year after the law's implementation.

As Mooney et al. note, Prop 47 prevents reclassification of felony drug offenses for people with other serious or violent convictions. As Blacks may have had more frequent or serious prior charges than Whites, future reform should acknowledge the impact of prior convictions on perpetuating inequities and limit the types of offenses that preclude reclassification of drug felonies.

RACIAL BIAS IN LAW ENFORCEMENT

The increased racial inequity in felony arrest rates also calls for a better understanding of the role of race in law enforcement practices. Blacks are no more likely than Whites to use illicit drugs or be involved in drug sales; consequently, these behaviors do not explain disparities in arrest rates.[4] However, research has found greater surveillance of and arrests related to illicit drug (e.g., crack cocaine) sales in markets that are more likely to have Black sellers than White sellers, and when occurring in racially diverse than in predominantly White drug markets.[5] Other investigations revealed a strong association between the share of White residents in a neighborhood and a Black person's likelihood of a drug arrest.[6]

Importantly, racial bias in law enforcement limits the potential of drug laws to reduce inequities in drug arrests. We agree with Mooney et al. that there is a need to better understand this relationship if the intent of decriminalization is to address racial inequities. Such an inquiry requires improved collection and review of data on arrest and incarceration rates by race and ethnicity. Moreover, we share the authors' conclusion that "racial/ethnic variation in arrests and charge composition must be addressed to ensure more equitable drug law reform."(p992)

Greater equity in health and well-being also demands action beyond changing drug laws and enforcement practices. Resources should be aligned to ensure community stability and equitably distributed to address years of disinvestment and marginalization in communities of color. The opportunity lies in community partnership and investments in resident-driven prevention strategies.

TREATMENT OPPORTUNITIES

Although solutions are most likely to be sustainable when we

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address the drivers of crime, we need to also acknowledge that substance use is a public health issue, not primarily a criminal justice issue. Consequently, a strategy that explicitly prioritizes equity needs to provide more opportunities for diversion and access to health and social services, including substance use treatment, particularly for first-time offenders (urbn.is/2IPn9ED). Considering the history of inequitable access to diversion programs for people of color,[7] standards for diversion programs that provide treatment in lieu of and after incarceration should include equity metrics that shape resource allocation decisions.

California's criminal justice reforms in recent years have offered a policy framework and provided funding to support programs that may contribute to more equitable criminal justice policies. Prop 47 produced savings in California's criminal justice system, and the state repurposed these funds to support substance use and mental health services, truancy and dropout prevention, and victim services. This approach echoed elements of California's criminal justice reforms of 2011 (Assembly Bill 109), which similarly redirected the savings that resulted from reducing the prison population to counties. Counties are required to use a portion of these funds to provide offenders with rehabilitative community-based services, which may include substance use, mental health, job training, and employment services.

In addition, California substantially enhanced its Medicaid benefit for substance use disorder services in 2015. This expansion provides much greater access to a continuum of evidence-based addiction treatment and serves as a stable payer for many participants in the county's community-based criminal justice programs.

Los Angeles County uses these resources to support a range of diversion and reentry programs that provide substance use, mental health, health, housing, and employment services. A preliminary analysis of participation rates in select programs (data from the Los Angeles County Department of Public Health, Substance Abuse Prevention and Control, Participant Reporting System; and the Los Angeles County Probation Department) demonstrates that Blacks may not be accessing community-based treatment services at rates proportional to their involvement in the criminal justice system. Between 2014 and 2017, roughly 22% of people who participated in the county's AB 109 substance use disorder treatment programs were Black. Because Blacks account for 33% of the AB109 population under probation's community supervision, barriers to participation that contribute to this disproportionality should be identified.

A FALSE HIERARCHY OF HUMAN VALUE

Drug law reforms reduce the overall number of arrests and incarcerations and their negative effects on individual and community health and well-being. However, Mooney et al. provide strong evidence that this step alone is not sufficient to reduce racial inequities in these outcomes. We need to eliminate racial bias in law enforcement practices and policies and address racial inequities in the distribution of resources and opportunities needed for thriving neighborhoods and stable communities if we are serious about dismantling systems and practices that perpetuate a false hierarchy of human value on the basis of race. AJPH

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