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The ABCs of Racial Disparity

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The ABCs of Racial Disparity

Enforcement of Low-Level Drug Crimes in Dallas County in 2018

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FROM THE DIRECTOR

Racial inequity in the enforcement of low-level drug laws is at the forefront of our national conversation about criminal legal reform. Across the country, elected prosecutors are using their discretionary powers to help end this injustice.

In 2018, Dallas County residents elected John Creuzot to serve as District Attorney. Mr. Creuzot ran on a "progressive prosecution" platform and promised to make data-informed decisions about smart, safe, and fair criminal justice. The Deason Center's District Attorney Learning and Leadership through Application of Science (DALLAS) Project responds to that challenge by publishing a series of reports about prosecutorial policy and practice in the Dallas County District Attorney's Office.

Reducing racial disparity in marijuana prosecutions was among Mr. Creuzot's earliest priorities. In April of 2019, Mr. Creuzot announced that his office would decline to prosecute most misdemeanor cases of first-time marijuana possession.[1] *The ABCs of Racial Disparity* launches a series of reports that explores the impact of this new policy.

The ABCs of Racial Disparity looks at marijuana enforcement in six Dallas County municipalities in 2018—the year before Mr. Creuzot took office. The report provides a baseline against which to evaluate trends during Mr. Creuzot's tenure. Because Mr. Creuzot hoped that successful county-level reform would encourage similar reform in Dallas' many municipalities, the report assesses both municipal and county data.

The report demonstrates that, in six large Dallas County municipalities, Black people were overrepresented among people cited, arrested, prosecuted, or referred to the Dallas County District Attorney for prosecution for misdemeanor possession of drug paraphernalia and marijuana.[2] Future reports from the *DALLAS* Project will explore how enforcement of drug paraphernalia and marijuana possession laws changed during Mr. Creuzot's first year in office. We look forward to sharing these reports with legal reform communities in Dallas and across the nation.

Sincerely,

Pamela R. Metzger
Professor of Law, SMU Dedman School of Law
Director, Deason Criminal Justice Reform Center

Introduction

Data show that marijuana use is roughly equal in the Black and White populations.[3] Yet, in 2018, in six of Dallas County's biggest cities, Black people were overrepresented in the enforcement of Class A, B, and C marijuana-related misdemeanor offenses.[4]

The ABCs of Racial Disparity explores this racial disproportionality in the cities of Dallas, Garland, Grand Prairie, Irving, Mesquite, and Richardson.[5] The report concludes that, as compared to their representation in each city's population, Black people were grossly overrepresented among those who were accused of low-level drug offenses.

Question:
Were Black people overrepresented in 2018 enforcement of low-level drug crimes in Dallas County?

Study:
Investigate the racial composition of people cited, arrested, prosecuted, or referred for prosecution for low-level drug offenses in six Dallas County cities.

Policing the Possession of Drug Paraphernalia and Marijuana

When police observe illegal conduct, they have broad discretion about how to proceed. Police can ignore the illegal conduct, give a warning, issue a citation, or make an arrest.

Texas law criminalizes the possession of marijuana, as well as the possession of drug paraphernalia, such as rolling papers, pipes, or destemming devices. But Texas police have wide discretion over whether to enforce these laws and what crimes to charge.

FIGURE 1

Police have a choice

| Ignore | Warn | Cite | Arrest |

A citation is a legal notice that requires a person to appear in criminal court and respond to a criminal allegation. When enforcing misdemeanor drug laws, police in Dallas County can issue a citation rather than arresting that person and booking them in jail. However, in 2018, police in Dallas County rarely used this "cite-and-release" option for misdemeanor marijuana possession.[6]

The stakes are high in these exercises of police discretion. Possession of drug paraphernalia is a Class C misdemeanor, punishable only by a fine.[7] Paraphernalia cases are referred to a city attorney who must decide whether to pursue a conviction. Cases accepted for prosecution are resolved in the local municipal court.

In contrast, possession of marijuana is a Class A or B misdemeanor. Class A misdemeanors (between two to four ounces of marijuana) are punishable by up to one year in jail and a fine of up to $4,000.[8] Class B misdemeanors (less than two ounces of marijuana) are punishable by up to 180 days in jail and a fine of up to $2,000.[9] Marijuana cases must be referred to the Dallas County District Attorney's Office. If the District Attorney accepts a case for prosecution, that case must be resolved in one of Dallas' county courts.

FIGURE 2

The Difference between Municipal Courts and County Courts

Municipal Courts

Municipal judges and justices of the peace have the power to resolve Class C misdemeanors that occur within municipal borders. These judges do not have the power to sentence a person to jail.

County Courts
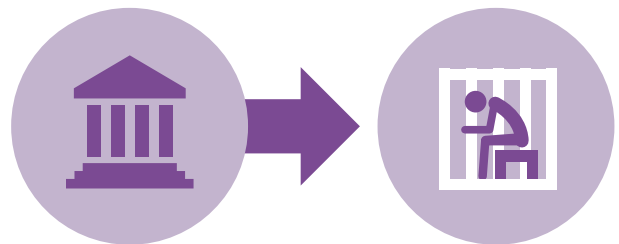
County court judges have the power to resolve Class A and B misdemeanor cases that occur anywhere in the county. They also have the power to impose jail sentences of up to one year.

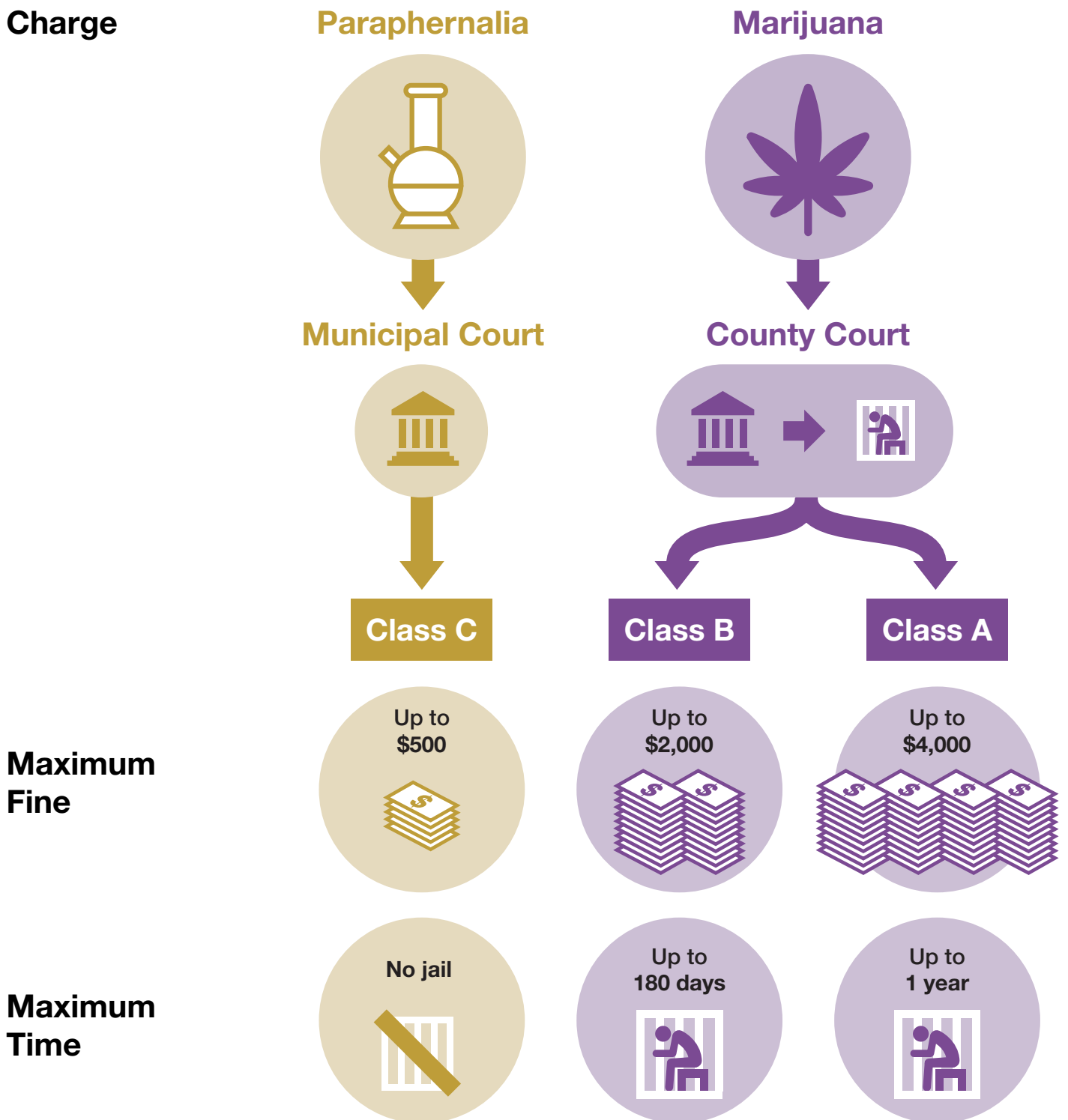When police find a person in possession of marijuana, their discretion has an extra dimension. Police are free to "down charge" the incident as a paraphernalia offense, even if the evidence supports a charge of marijuana possession.

FIGURE 3
The Consequences of Police Discretion

Charge

Paraphernalia   **Marijuana**

Municipal Court   **County Court**

Class C   Class B   Class A

Maximum Fine

Up to $500   Up to $2,000   Up to $4,000

Maximum Time

No jail   Up to 180 days   Up to 1 year

The Study

Using data from 2018, the Deason Center studied the enforcement of low-level drug crimes in the cities of Dallas, Garland, Grand Prairie, Irving, Mesquite, and Richardson.[6] First, the Center compared each city's racial composition to the racial composition of the people prosecuted in that city for Class C possession of drug paraphernalia. Then, the Center compared each city's racial composition to the racial composition of the people whose cases were referred to the Dallas County District Attorney's Office for prosecution of Class A or B possession of marijuana. As compared to their presence in each city's population, Black people were significantly overrepresented in all enforcement categories.

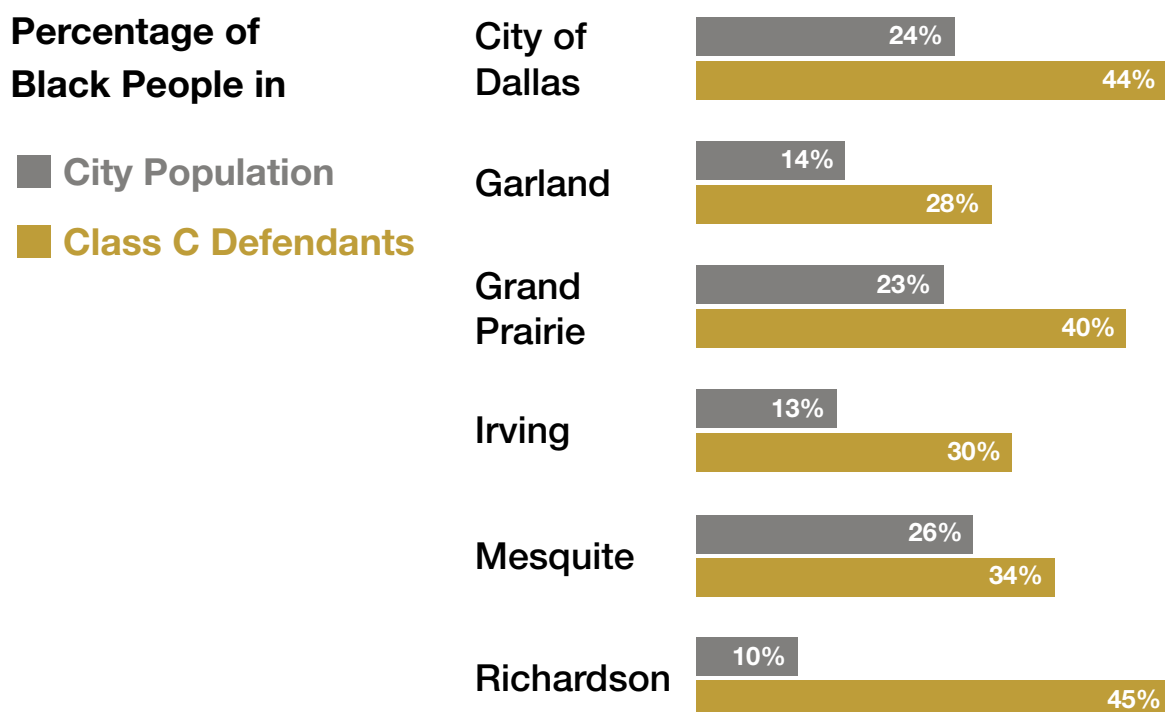## FIGURE 4
Six Cities in Dallas County
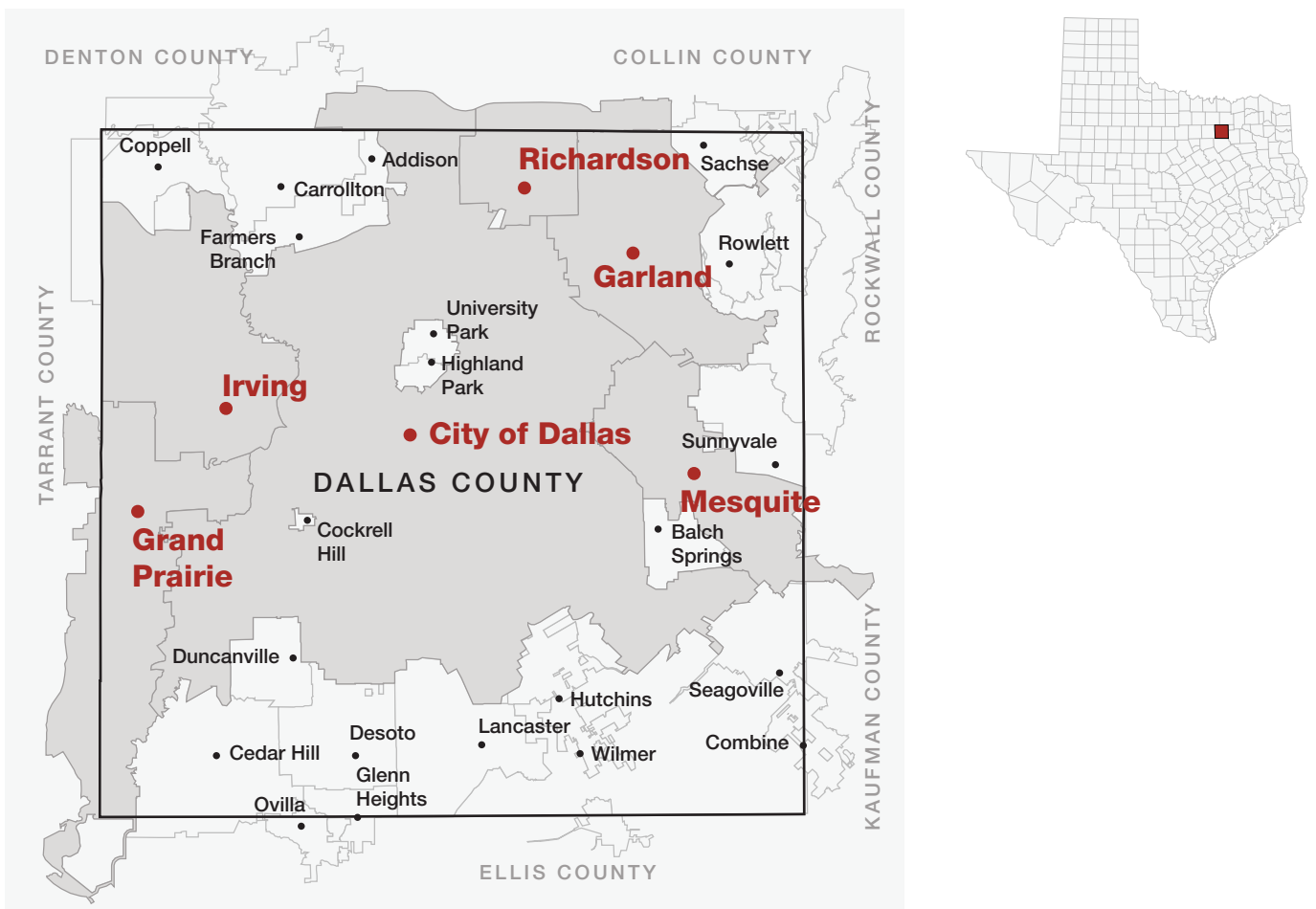
Significant Overrepresentation in Police Arrests and Referrals

Black People Were Overrepresented in Class C Paraphernalia Prosecutions

In all of the studied cities, Black people were overrepresented among defendants charged with Class C possession of drug paraphernalia. The cities' Black populations ranged from 10% (Richardson) to 26% (Mesquite) of the general population. But Black people accounted for between 28% (Garland) and 45% (Richardson) of the people prosecuted for possession of drug paraphernalia.

FIGURE 5

Racial Disproportion in 2018 Municipal Prosecutions for Possession of Drug Paraphernalia

Percentage of Black People in

■ **City Population**
■ **Class C Defendants**

City of Dallas
- City Population: 24%
- Class C Defendants: 44%

Garland
- City Population: 14%
- Class C Defendants: 28%

Grand Prairie
- City Population: 23%
- Class C Defendants: 40%

Irving
- City Population: 13%
- Class C Defendants: 30%

Mesquite
- City Population: 26%
- Class C Defendants: 34%

Richardson
- City Population: 10%
- Class C Defendants: 45%

Black People Were Overrepresented in Referrals for Class A and B Misdemeanor Prosecution

The overrepresentation of Black people was even greater among those referred to the Dallas County District Attorney's Office for the prosecution of Class A and B misdemeanors. In the City of Dallas, only 24% of the population was Black. Yet Black people accounted for 64% of the marijuana possession cases that Dallas law enforcement agencies referred to the Dallas County District Attorney's Office for prosecution. In Richardson, Black people were only 10% of the city's population but accounted for 52% of Richardson's Class A and B referrals to the Dallas County District Attorney's Office.

FIGURE 6

Racial Disproportion in 2018 Police Referrals for Class A and B Misdemeanor Prosecution[10]

Percentage of Black People in

- ■ **City Population**
- ■ **Class A/B Referrals**

City of Dallas
- City Population: 24%
- Class A/B Referrals: 64%

Garland
- City Population: 14%
- Class A/B Referrals: 41%

Grand Prairie
- City Population: 23%
- Class A/B Referrals: 47%

Irving
- City Population: 13%
- Class A/B Referrals: 34%

Mesquite
- City Population: 26%
- Class A/B Referrals: 50%
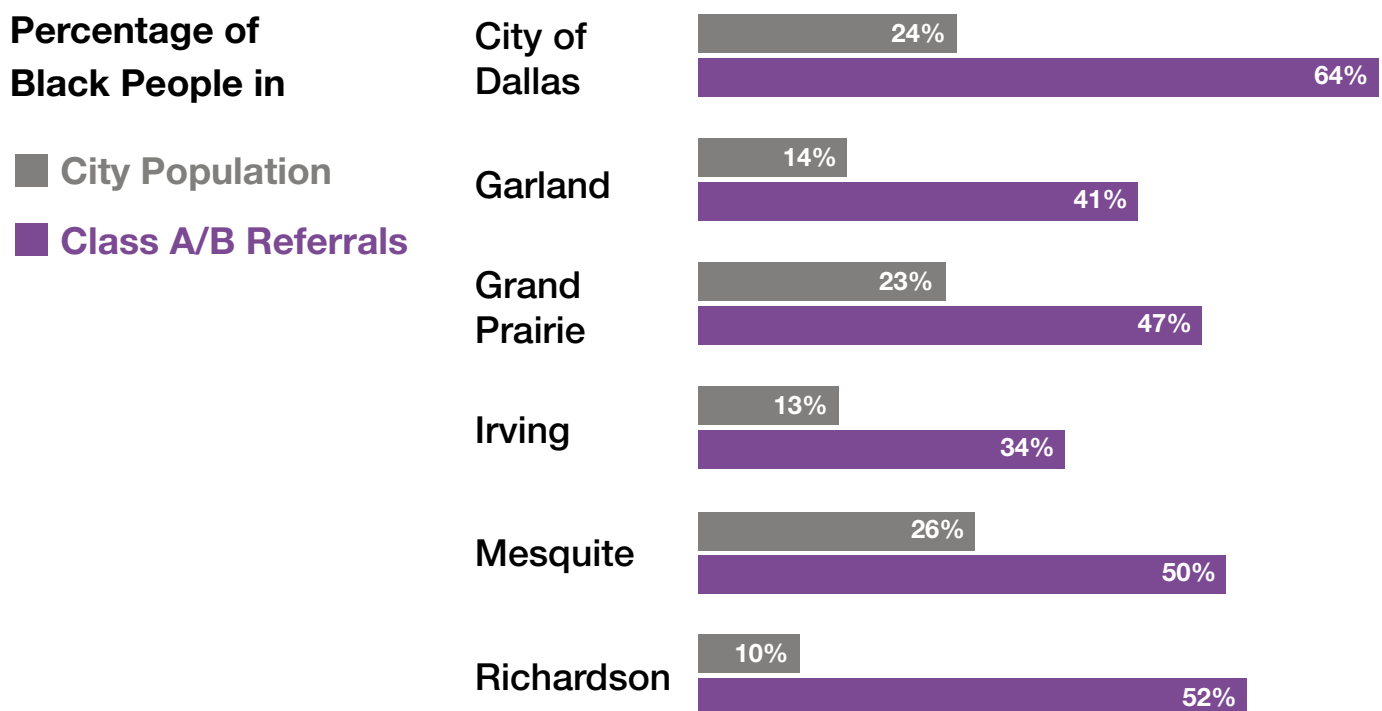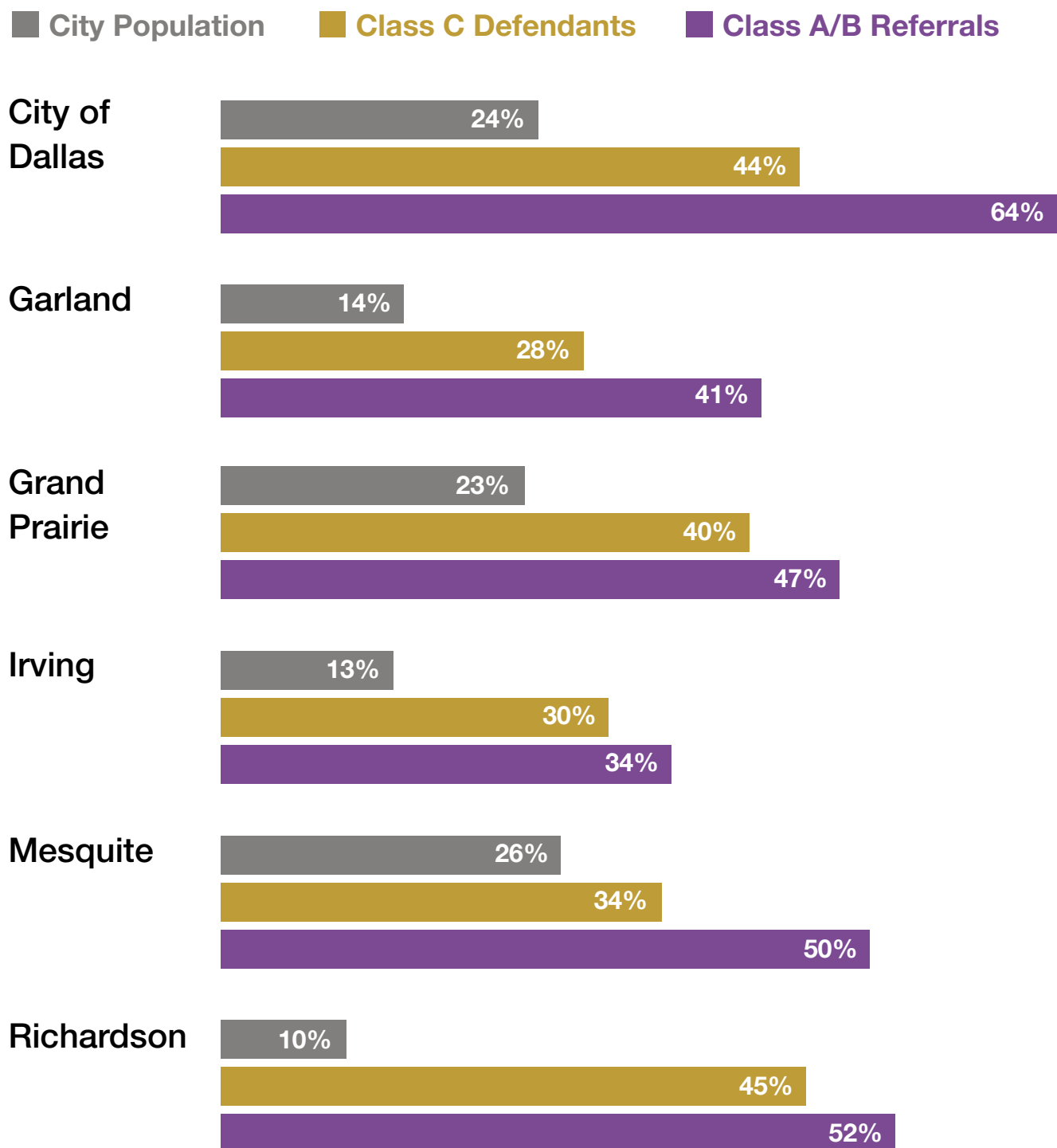
Richardson
- City Population: 10%
- Class A/B Referrals: 52%

FIGURE 7

Comparing the Percentage of Black People in City Populations with the Percentage of Black People in All Categories of Enforcement[11]

■ **City Population**   ■ **Class C Defendants**   ■ **Class A/B Referrals**

City of Dallas
- City Population: 24%
- Class C Defendants: 44%
- Class A/B Referrals: 64%

Garland
- City Population: 14%
- Class C Defendants: 28%
- Class A/B Referrals: 41%

Grand Prairie
- City Population: 23%
- Class C Defendants: 40%
- Class A/B Referrals: 47%

Irving
- City Population: 13%
- Class C Defendants: 30%
- Class A/B Referrals: 34%

Mesquite
- City Population: 26%
- Class C Defendants: 34%
- Class A/B Referrals: 50%

Richardson
- City Population: 10%
- Class C Defendants: 45%
- Class A/B Referrals: 52%

Conclusion

Data show that Black and White people use marijuana at roughly equivalent rates.[12] Yet in 2018, in six of Dallas County's biggest cities, there was a high level of racial disproportionality in the enforcement of laws prohibiting the possession of marijuana and drug paraphernalia. In those cities, Black people were far more likely to be cited, arrested, prosecuted, or referred for prosecution than people of other races.

These data underscore the urgent need for a new approach to low-level drug offenses. The marijuana prosecution reforms initiated by Dallas County District Attorney John Creuzot were intended to reduce disparity and increase fairness in Dallas County's criminal legal system. In the next report from the *DALLAS* Project, the Deason Center will explore how the enforcement of low-level drug crimes changed during Mr. Creuzot's first year in office.

Study:
Investigate the racial composition of people cited, arrested, prosecuted, or referred for prosecution for low-level drug offenses in six Dallas County cities.

Conclusion:
In six of Dallas County's biggest cities, Black people were overrepresented in the enforcement of laws prohibiting possession of drug paraphernalia and marijuana.
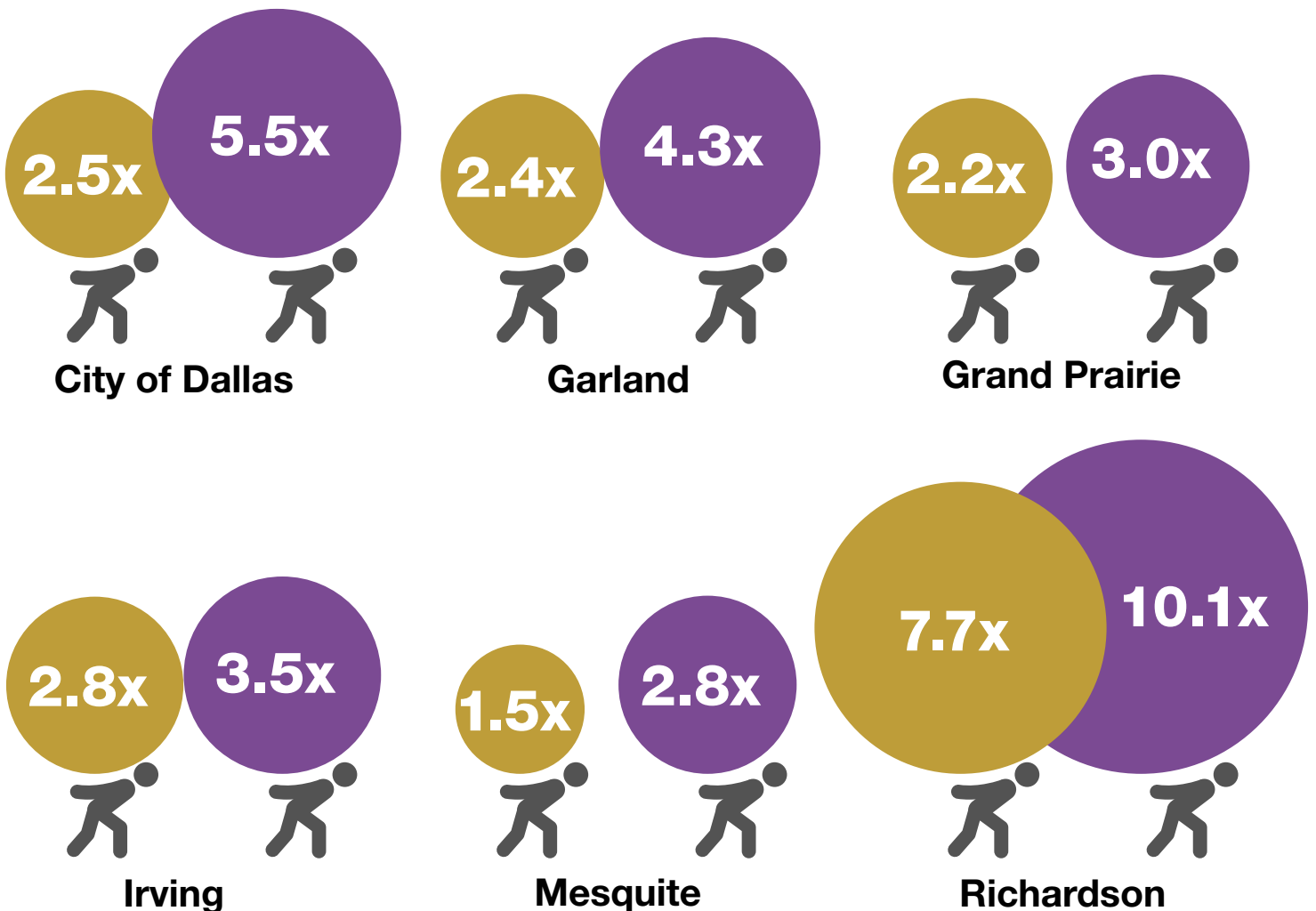
FIGURE 8

Summary of Findings

Data show that Black and non-Black people use marijuana at equal rates. But in 2018, in six Dallas cities, Black people were more likely than non-Black people to be prosecuted for Class C possession of drug paraphernalia and more likely than non-Black people to be referred to the Dallas County District Attorney's Office for Class A and B misdemeanor prosecution.

Non-Black

1x

- More likely to be prosecuted for Class C possession of paraphernalia

- More likely to be referred for Class A or B prosecution for possession of marijuana

Black

2.5x **5.5x**

City of Dallas

2.4x **4.3x**

Garland

2.2x **3.0x**

Grand Prairie

2.8x **3.5x**

Irving

1.5x **2.8x**

Mesquite

7.7x **10.1x**

Richardson

In the City of Dallas, Black people were

2.48x

more likely to be prosecuted for **Class C misdemeanors**

and

5.54x

more likely to be referred for **Class A or B prosecution.**

Richardson

Garland

Irving

City of Dallas

Mesquite

Grand Prairie

Black People as Percentage of

City Population

24%

319,834 / 1,318,806

Class C Defendants

44%

498 / 1,126

Class A/B Referrals

64%

1,674 / 2,617
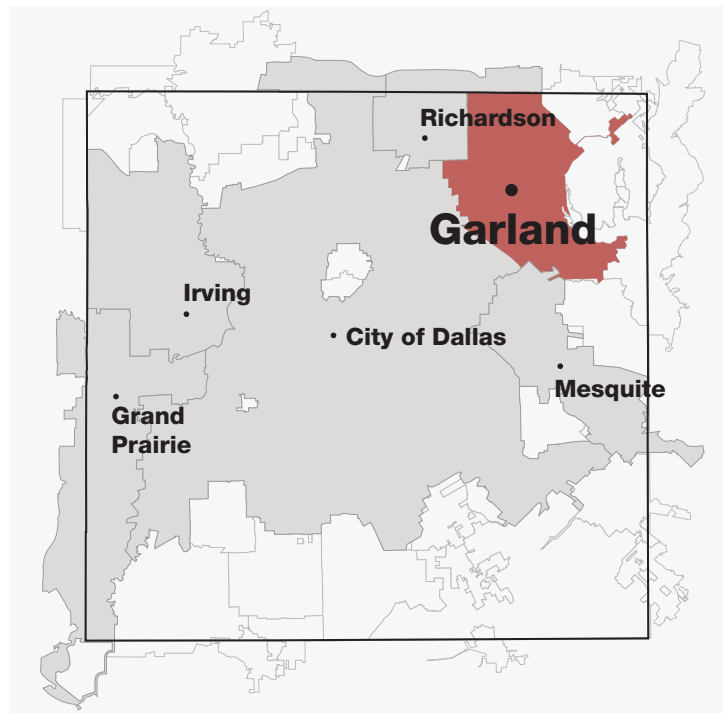
In Garland, Black people were

2.36x

more likely to be prosecuted for **Class C misdemeanors**

and

4.33x

more likely to be referred for **Class A or B prosecution.**

Black People as Percentage of

City Population

14%

33,305 / 237,982

Class C Defendants

28%

245 / 883

Class A/B Referrals

41%

243 / 588

In Grand Prairie, Black people were

2.24x

more likely to be prosecuted for **Class C misdemeanors**

and

2.97x

more likely to be referred for **Class A or B prosecution.**

Black People as Percentage of

City Population

23%

44,401 / 191,104

Class C Defendants

40%

593 / 1,468

Class A/B Referrals

47%

140 / 296

In Irving, Black people were

2.77x

more likely to be prosecuted for **Class C misdemeanors**

and

3.45x

more likely to be referred for **Class A or B prosecution.**

Black People as Percentage of

City Population

13%

31,477 / 238,637

Class C Defendants

30%

419 / 1,414

Class A/B Referrals

34%

223 / 648
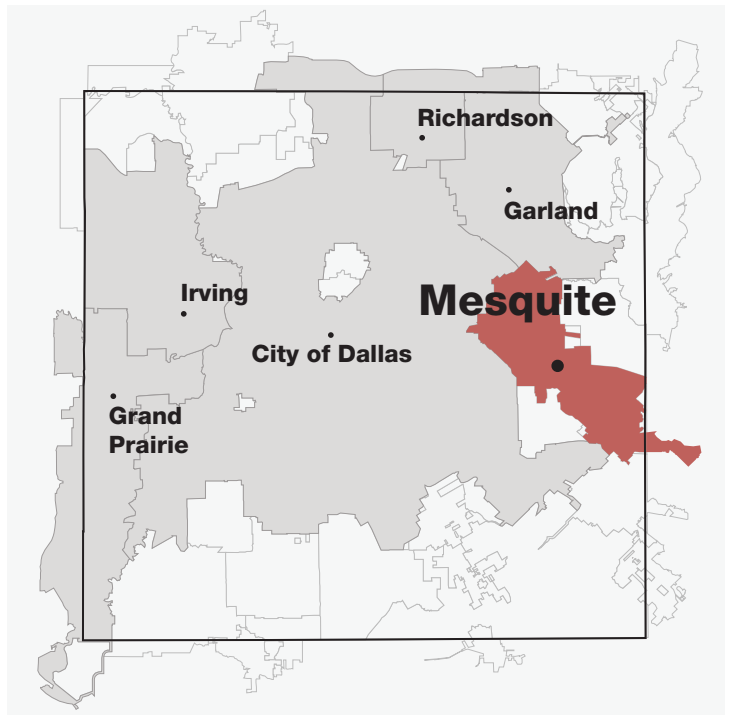
In Mesquite, Black people were

1.45x

more likely to be prosecuted for **Class C misdemeanors**

and

2.80x

more likely to be referred for **Class A or B prosecution.**

Black People as Percentage of

City Population

26%

37,489 / 144,250

Class C Defendants

34%

434 / 1,289

Class A/B Referrals

50%

310 / 625

In Richardson, Black people were

7.65x

more likely to be prosecuted
for **Class C misdemeanors**

and

10.05x

more likely to be referred
for **Class A or B prosecution.**

Black People as Percentage of

City Population

10%

10,949 / 114,402

Class C Defendants

45%

485 / 1,084

Class A/B Referrals

52%

285 / 553

RESEARCH METHODS

The Deason Center obtained data about the races of 5,327 people who were referred by police from the cities of Dallas, Garland, Grand Prairie, Irving, Mesquite, and Richardson to the Dallas County District Attorney's Office in 2018 for marijuana prosecution. The Center obtained similar data about 7,264 people cited for Class C possession of drug paraphernalia in those cities. Data on the cities' populations and demographics came from the 2018 American Community Survey and were retrieved using the U.S. Census Bureau's website.

Risk ratios were calculated through a two-step process. For each city, the individual group "risk" was calculated separately for Black and Non-Black people by dividing the number of Black (or Non-Black) individuals in each enforcement category by the number of Black (or Non-Black) individuals in the city population, multiplied by 100. The Black group risk was then divided by the Non-Black group risk to answer the question, "what is the risk of Black individuals being in that enforcement category as compared to the risk for Non-Black individuals?"

For cities that span more than one county, the population data capture the total population of that municipality, but the data about Class A and B referrals to Dallas County only capture enforcement actions that occurred within Dallas County. Therefore Class A and B risk ratios for those cities should be contextualized to mean "the risk of referral to the Dallas County District Attorney's Office for the prosecution of Class A and B marijuana possession."

Authors: Kenitra Brown, Dr. Andrew L.B. Davies, Kristin Meeks, Professor Pamela Metzger, Dr. Victoria Smiegocki

Statistical Analysts: Dr. Andrew L.B. Davies and Dr. Victoria Smiegocki

Data Visualization and Layout: Randy Krum and Jeremy Yingling, InfoNewt

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ENDNOTES

1. Letter of District Attorney John Creuzot, April 11, 2019. (Dallas County District Attorney's Office will "decline [ ] prosecution on misdemeanor possession of marijuana cases for first-time offenders whose offenses do not occur in a drug-free zone, involve the use or exhibition of a deadly weapon, or involve evidence of delivery.")

2. The Deason Center endeavors to use language that reflects and affirms the Center's commitment to the equal dignity and worth of all people. Consistent with the 2021 conventions of the APA style guide, the AMA style guide, the Chicago Manual of Style, and others, the Deason Center capitalizes the terms 'Black' and 'White.'

3. Subst. Abuse and Mental Health Svces Admin., *2018 National Survey on Drug Use and Health: Methodological summary and definitions*, (2019); Jane Carlisle Maxwell, Ph.D., *Substance Abuse Trends in Texas 2017: A Report to the National Drug Early Warning System*, 21 Tbl. 4b (2017); Katherine M. Keyes et al., *Racial/Ethnic Difference in Use of Alcohol, Tobacco, and Marijuana: Is There a Cross-Over from Adolescence to Adulthood?*, 124 Soc. Sci. & Med. J. 132, 136-137 (2015); Am. Civ. Liberties Union, *The War on Marijuana in Black and White* (2013).

4. All data comparisons in this report are between data about Black people (people who were categorized as Black in the source data) and data about non-Black people (people who were not categorized as Black in the source data).

5. The cities of Dallas, Garland, Grand Prairie, Mesquite, and Richardson are located primarily in Dallas County, but extend into Collin (Dallas, Garland, and Richardson), Denton (Dallas), Ellis (Grand Prairie), Kaufman (Dallas and Mesquite), Rockwall (Dallas and Garland), and Tarrant (Grand Prairie) counties. Only the city of Irving is entirely within the geographic borders of Dallas County.

6. See e.g. Dallas Morning News, *Cite-and-release' is used in only a small portion of Dallas police's marijuana possession cases*, Dana Branham (August 13, 2018).

7. Tex. Health & Safety Code § 481.125; Tex. Penal Code § 12.23.

8. Tex. Health & Safety Code § 481.121(b)(2); Tex. Penal Code § 12.21.

9. Tex. Health & Safety Code § 481.121(b)(1); Tex. Penal Code § 12.22.

10. In the cities of Dallas, Garland, Grand Prairie, Mesquite, and Richardson, these data only reflect offenses that occurred in Dallas County and were referred to the Dallas County District Attorney's Office for prosecution. Arrests made in other counties, or referred to other district attorney's offices, are not included in the Center's computations.

11. The Appendix contains a more detailed breakdown of data from each city.

12. See note 3, *supra*.

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About the Deason Center

The Deason Criminal Justice Reform Center takes a Stats and Stories approach to criminal justice reform. The Stats: we collect, analyze, and assess qualitative and quantitative data about our criminal justice system. The Stories: we uncover, recount, and amplify the experiences of people who live and work in that system. Together, these Stats and Stories make a compelling case for compassionate criminal justice reform.

The District Attorney Learning and Leadership through Application of Science (DALLAS) initiative is a research partnership between the Deason Center and the Dallas County District Attorney's Office. The DALLAS Project analyzes how prosecutorial reform policies impact the Dallas community and innovates reform strategies.

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