

# Exploring Race & Ethnic Disparities: Colorado Courts & Probation Convictions, Pre-Sentence Investigations, Probation Program Placement & Probation Outcomes

Sherri Hufford, Evaluation Unit  
Division of Probation Services  
April 7, 2023

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Presentation to the Sentencing Alternative, Decisions & Probation Working Group  
Sentencing Reform Task Force  
Colorado Commission on Criminal and Juvenile Justice

CCJJ

Sentencing Reform Task Force

# Sentencing Alt./ Dec. & Probation Working Group

Request for Information

Sentencing Alt./Dec. & Prob. Working Group  
Sentencing Reform Task Force  
Colorado Commission on Criminal and Juvenile Justice

The CCJJ is statutorily charged to examine racial disparities in the criminal justice system. (Enabling legislation: HB07-1358, HB08-1119, HB13-1299, SB13-007 and HB18-1287)

The CCJJ Sentencing Reform Task Force, through its Probation Working Group, is exploring various decision-making points in the criminal justice system to identify opportunities to further examine racial disparities in and around probation.

Due to the nuances of Judicial data related to PSIs, sentencing, and collection of race and ethnicity data, the task force asked Judicial to provide the following:

- 1) Pre-sentence Investigations Ordered and Convictions by Race/Ethnicity
- 2) Probation Terminations by Race/Ethnicity (using CLEAR data)

Explore Race/Ethnic Disparities in Courts/Probation

April 7, 2023

# Helpful Information

## Common Definitions and Information

- For the purpose of this presentation, convictions include cases where there was a finding or plea of guilty, and will also include other case closures (e.g., deferred judgments, diversion) Convictions will not include any cases that were dismissed.
- Presentence Investigations are completed by Probation Departments upon order of the Court. PSIs are used by the court to inform sentencing decisions. Parties to the case make requests to the Court regarding PSIs. Stipulated sentences impact orders for PSIs. Not all cases with PSIs are sentenced to Probation. Not all probation cases have PSIs.

## Information and Data Limitations

- All data in this analysis is Calendar Year, focused on Adults, any exceptions will be noted. Defendants may have multiple cases, with multiple charges. Offense Type will defer to the most serious charge. Depending on the subject matter, the analysis may be done by case, or by person. Ns from slide to slide will not match, given various approaches to analyzing data. Notable exceptions will be identified.
- Ordered vs Completed PSIs (not all defendants show up for their interviews or for sentencing)
- Judicial data includes county and district court data, with the exception of Denver County.

## COVID impact on operations and timeline of the analysis

- The volume of justice involved individuals drastically changes from 2018/2019 to 2020/2021 due to the pandemic and the impact on operations.
- When looking at trends, we will do our best to show you numbers and percentages to provide as much context as possible.

# Research on Bias in the CJ System: It's Complicated

## **Disparities are rarely a function of a single point of entry into the system**

Hinton, E. & Cook, D. (2020). The Mass Criminalization of Black Americans: A Historical Overview. *Annual Review of Criminology*, 4, 261-286.

Hinton, E., Henderson, L. & Reed, C. (2018). *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*. Vera Institute of Justice. <https://www.vera.org/publications/for-the-record-unjust-burden>

Kovera, M. B. (2019). Racial Disparities in the Criminal Justice System: Prevalence, Causes, and a Search for Solutions. *Journal of Social Issues*, 75(4), 1139-1164.

Nembhard, S. & Robin, L. (2021). *Racial and Ethnic Disparities throughout the Criminal Legal System: A Result of Racist Policies and Discretionary Practices*. Urban Institute.

<https://www.urban.org/sites/default/files/publication/104687/racial-and-ethnic-disparities-throughout-the-criminal-legal-system.pdf>

## **More Study is Needed - the Data Raises More Complex Questions than Provides Simple Answers**

# What is the sequence of events in the criminal justice system?

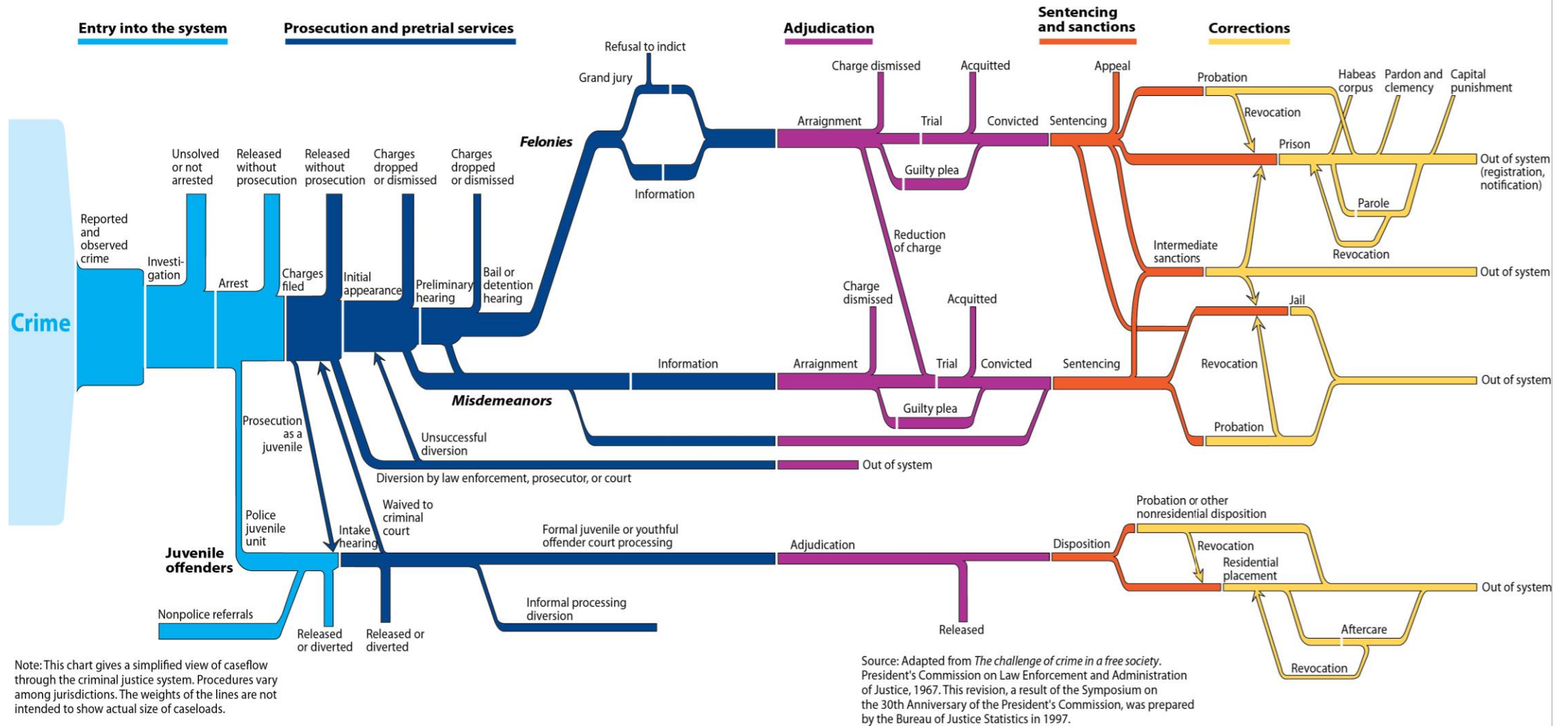


Image from Bureau of Justice Statistics



## Judicial's Role in the Criminal Justice Process    Probation's Role in the Criminal Justice Process

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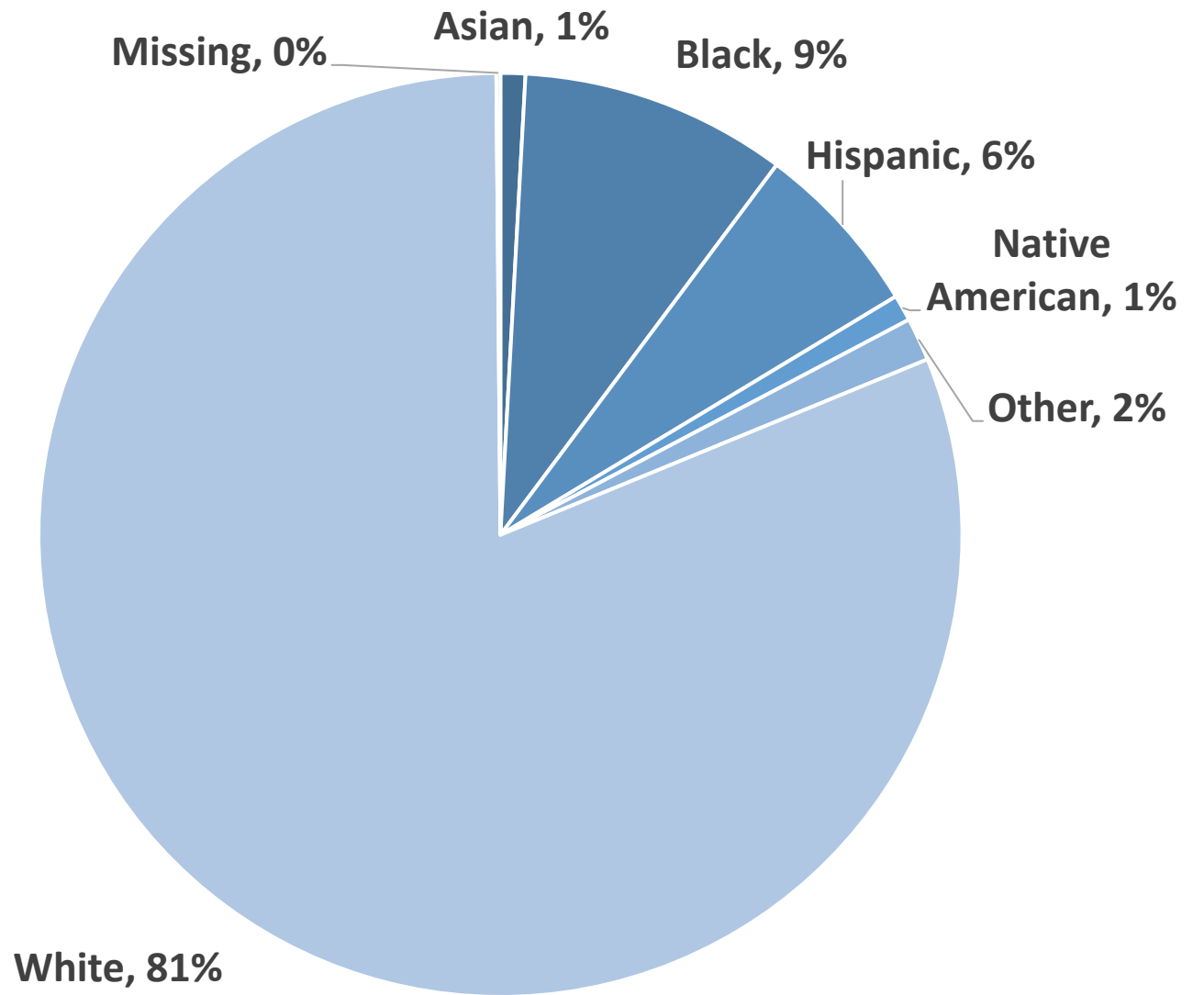
# Judicial's Race/Ethnicity Data: Challenges

- In criminal matters, data are entered by court staff who receive information from law enforcement and District Attorney's offices (e.g., arrest report, summons, affidavits, complaints)
- Race and ethnicity are combined
- Categories are limited for race
- Data are not typically self-report
- Data are shared with other agencies (NCIC, CCIC/CBI, local law enforcement)

**COLORADO  
COURTS ADULT  
CONVICTIONS  
CY2018-2021  
N=329,079**

These data are entered by court staff from information provided in the summons, affidavit, arrest report, or complaint filed by the District Attorney's Office.

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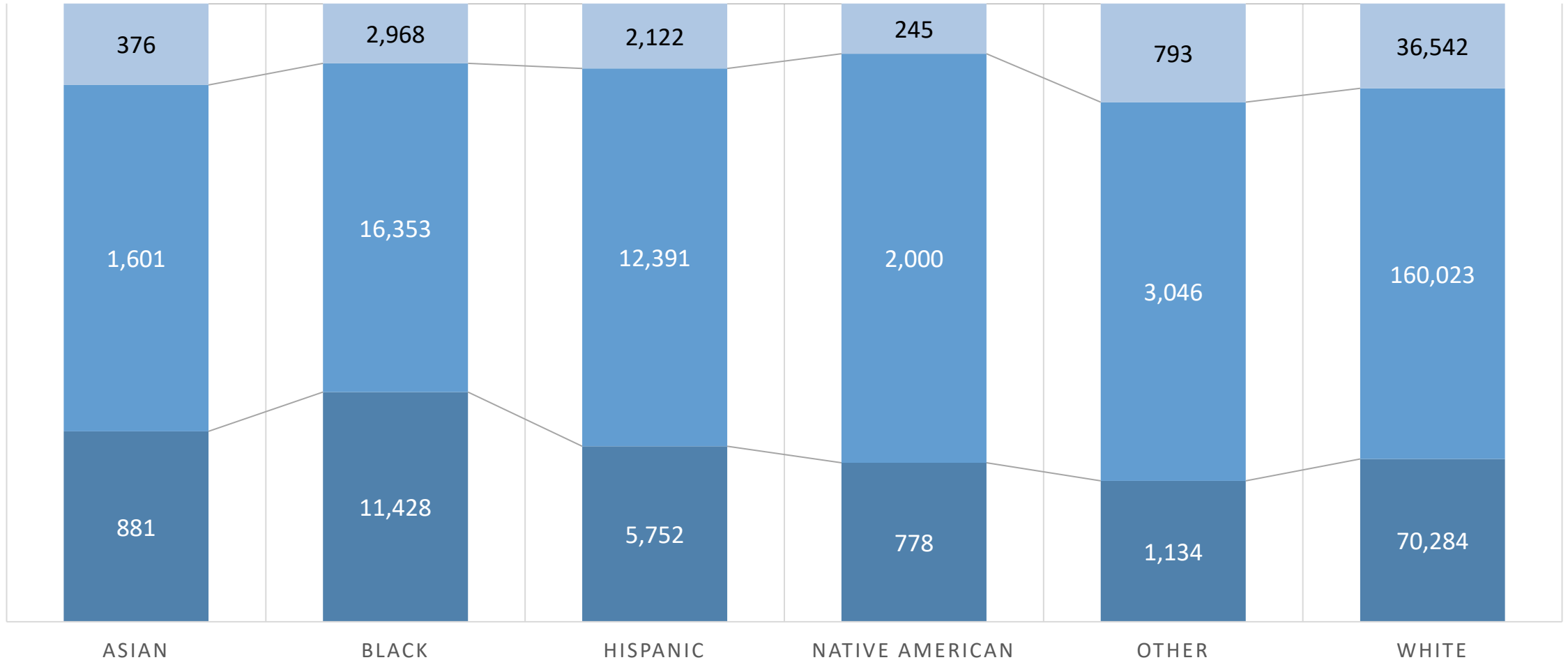
■ Asian ■ Black ■ Hispanic ■ Native American ■ Other ■ White ■ Missing

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# ADULT CONVICTIONS BY LAW CLASS & RACE 2018-2021

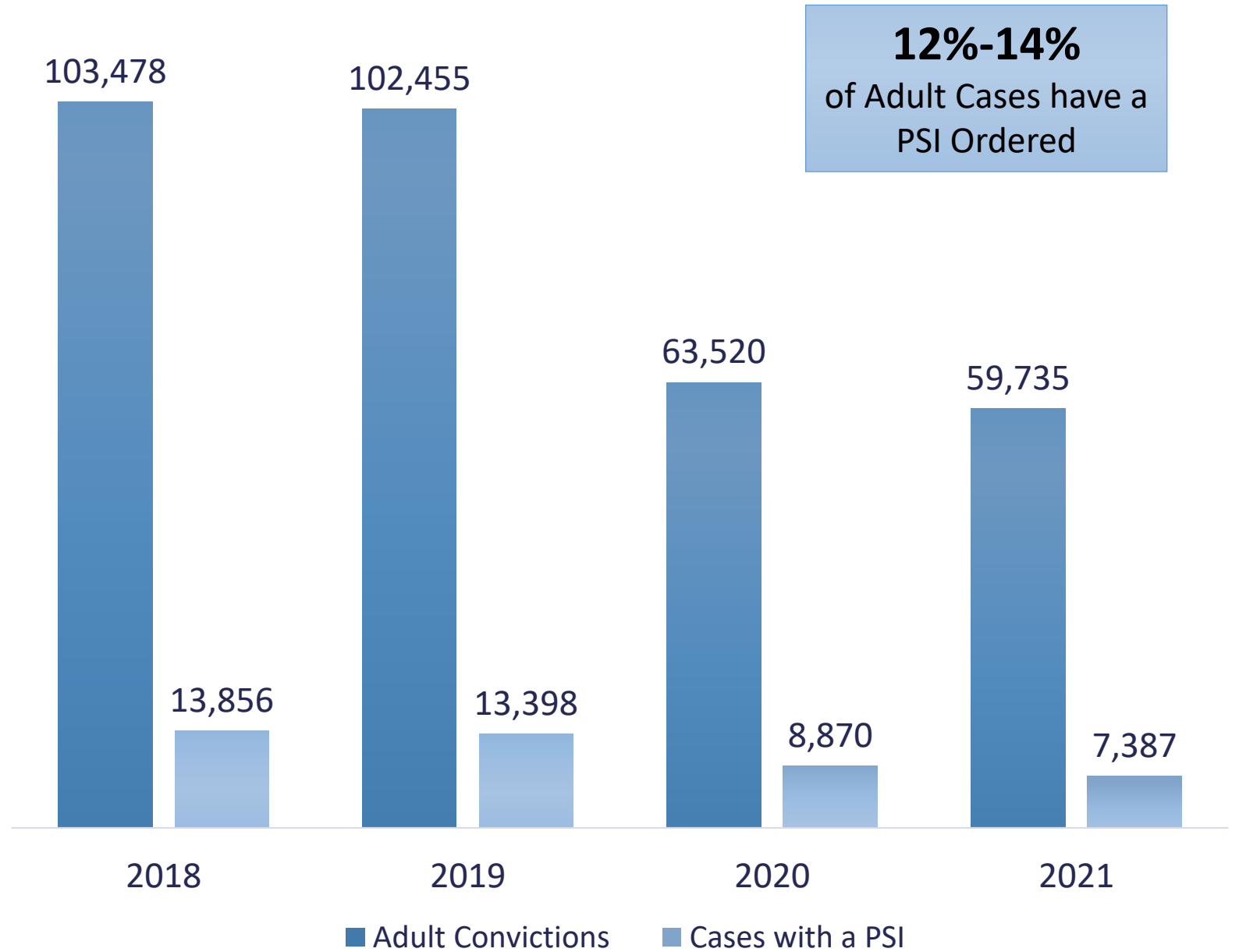
■ Felony/Drug Felony   
 ■ Misdemeanor/Drug Misdemeanor   
 ■ Other



Other Convictions includes Unknown Law Classes, Petty, and Traffic Offenses.

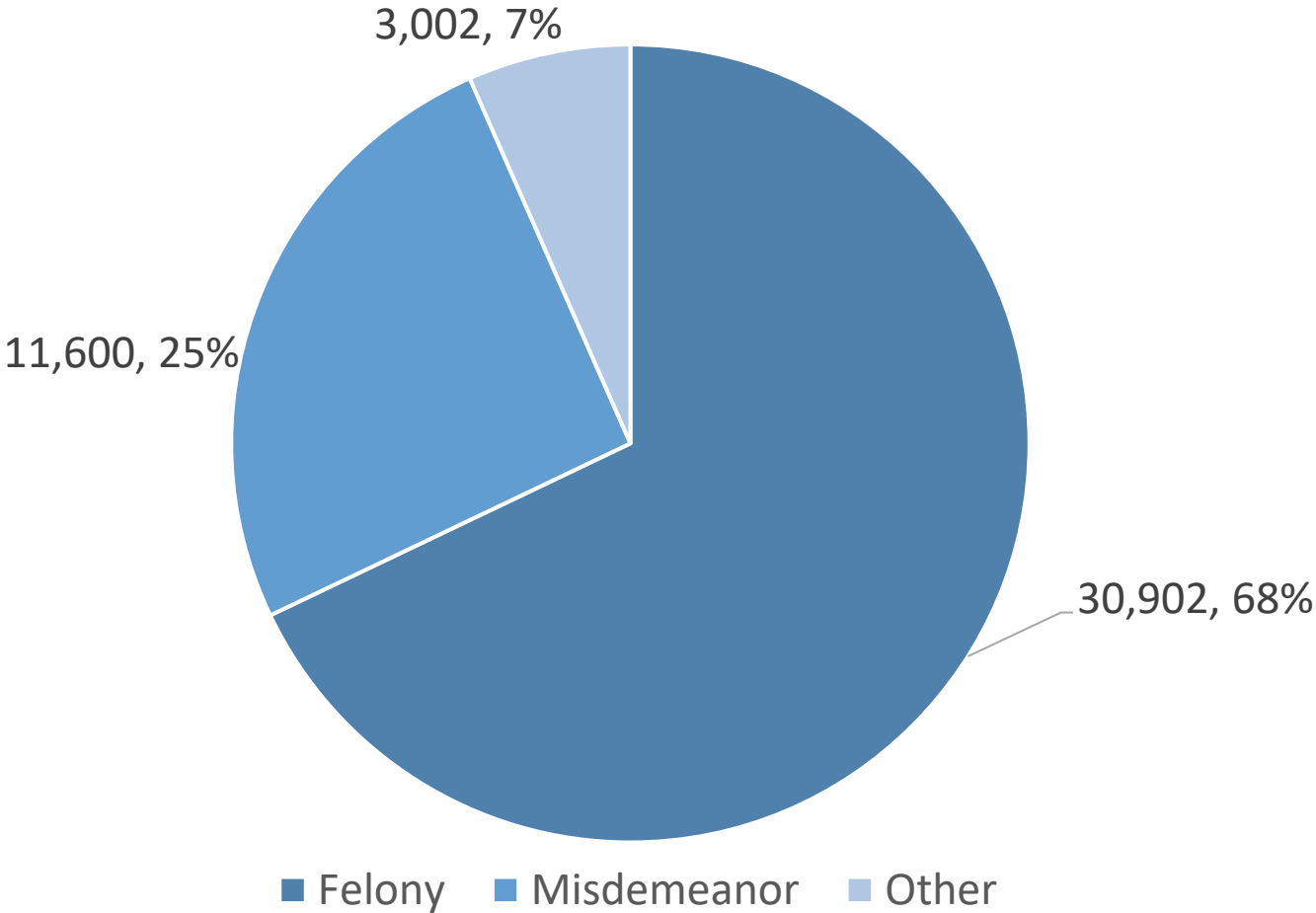


# Convictions and PSIs Ordered 2018-2021



# Pre-sentence Investigations Completed 2018-2021

## Adult PSI's Completed by Law Class n=45,504



\*Other includes Unknown Law Class, Traffic, and Petty Offenses

# PSI Trends

## 2018-2022 Offense Types with PSIs Ordered by Law Class

Offense Type	Felony Conviction	Misdemeanor Conviction	Other Conviction
Sex	88.8%	46.0%	29%
DUI	64.1%	2.8%	35%
Person	51.2%	13.8%	12%
Traffic	43.8%	2.9%	7%
Drug	40.5%	8.3%	24%
Other*	38.2%	11.0%	15%
Property	36.3%	9.9%	12%
<b>Average</b>	<b>43.0%</b>	<b>7.4%</b>	<b>11%</b>

\*Other Offenses include a variety of crimes including, but not limited to harassment, forgery, false information to a pawnbroker, criminal impersonation, failure to register, menacing and weapons possession. Other Convictions includes Unknown Law Classes, Petty, and Traffic Offenses.

# Total Number of Adult Convictions 2018-2021:

# 329,079

## 13% of cases had a PSI Ordered by the Court (n=43,511)

<b>28,980</b>	<b>127,694</b>	<b>8,310</b>	<b>101,882</b>	<b>62,213</b>
<b>DOC</b>	<b>Jail</b>	<b>CommCorr</b>	<b>Probation</b>	<b>Other</b>
<b>PSI Ordered: 37%</b>	<b>PSI Ordered: 8.5%</b>	<b>PSI Ordered: 76%</b>	<b>PSI Ordered: 15%</b>	<b>PSI Ordered: &gt;1%</b>

# 2018-2021 Sentence Placement and PSIs by Race (Felony Cases)

<b>2018-2021</b>	<b>DOC</b>	<b>PSI Ordered</b>	<b>% with PSI</b>	<b>Community Corrections</b>	<b>PSI Ordered</b>	<b>% with PSI</b>
<b>Asian</b>	216	84	39%	41	28	68%
<b>Black</b>	4,449	1,660	37%	795	564	71%
<b>Hispanic</b>	1,871	664	35%	380	308	81%
<b>Missing</b>	21	6	29%	2	2	100%
<b>Native American</b>	253	114	45%	80	69	86%
<b>Other</b>	328	106	32%	68	56	82%
<b>White</b>	21,842	8,297	38%	6,944	5,321	77%
<b>Total</b>	<b>28,980</b>	<b>10,931</b>	<b>38%</b>	<b>8,310</b>	<b>6,348</b>	<b>76%</b>

# 2018-2021 Sentence Placement and PSIs by Race (Felony, Misdemeanor, Traffic, Petty Offense)

2018-2021	Jail	PSI Ordered	% with PSI	Probation	PSI Ordered	% with PSI
Asian	882	77	9%	1,049	143	14%
Black	9,907	844	9%	10,508	1,625	15%
Hispanic	8,260	750	9%	6,480	1,111	17%
Missing	120	3	3%	71	2	3%
Native American	1,392	236	17%	858	289	34%
Other	1,795	151	8%	1,377	221	16%
White	105,338	8,783	8%	81,539	11,665	14%
<b>Total</b>	<b>127,694</b>	<b>10,844</b>	<b>8%</b>	<b>101,882</b>	<b>15,056</b>	<b>15%</b>



## Observations & Items for further Exploration

- According to court records from 2018-2021, a large portion of adults sentenced for criminal offenses were classified as White (81%)
- Black individuals proportionally have more felony convictions than other race/ethnicities (37.2% compared to the average 27.4%)
- On average, 12%-14% of cases have a PSI ordered
- PSIs are ordered more frequently in Felony matters (68% of PSI completed are for felony cases)
- Felony and Misdemeanor Sex Offense cases are the most likely offense type to have PSIs ordered



## More Observations & Items for further Exploration

- Adults sentenced to Community Corrections or DOC are more likely to have a PSI (76% and 37% respectively) than Probation (15%) or Jail (8.5%).
- Native American adults are more likely to have a PSI ordered than other race groups across all sentencing options (i.e., DOC, Jail, Probation, Community Corrections). Regional practices and populations may combine to account for this trend.



**Focus on Probation:**  
Population, Risk and Needs Types by  
Race/Ethnicity using  
CLEAR Data

2020 Probationers

# Helpful Information: Clear Act

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## What is the CLEAR Act?

The CLEAR Act mandates that the Division of Criminal Justice (DCJ) annually analyze, and report data provided by law enforcement agencies, the Judicial Department, and the Adult Parole Board, to reflect decisions made at multiple points in the justice system process.

See: Senate Bill 15-185, Community and Law Enforcement Action Reporting Act

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## Why use CLEAR Data?

The CLEAR Act requires that the data be analyzed by race/ethnicity and gender.

DCJ applies a statistical model to refine Judicial's race and ethnicity data that specifically detects the misidentified Hispanic population.

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## How was the data for this presentation created?

DCJ took 2020 data for the CLEAR Report, applied the statistical model and then sent the data back to Judicial, where the data was matched for this analysis. The numbers you see here will not match numbers in other reports for several reasons (e.g., matched data, calendar year vs. fiscal year)

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## Limitations:

This is a one-year data set from 2020 which restricts our ability to draw strong conclusions. The pandemic significantly impacted court and probation practices and the data may or may not reflect the norm.

DCJ's Interactive Dashboard:  
<https://ors.colorado.gov/ors-sb185>

# 2020 Probation Population by Race/Ethnicity

**Clear  
Data  
Impact**

- Asian .7%
- Native American 1.0%
- Other 1.0%
- Black 8.9%
- **Hispanic 24.9%**
- **White 63.5%**

**Judicial Data:  
Hispanic 10%  
White 77%**

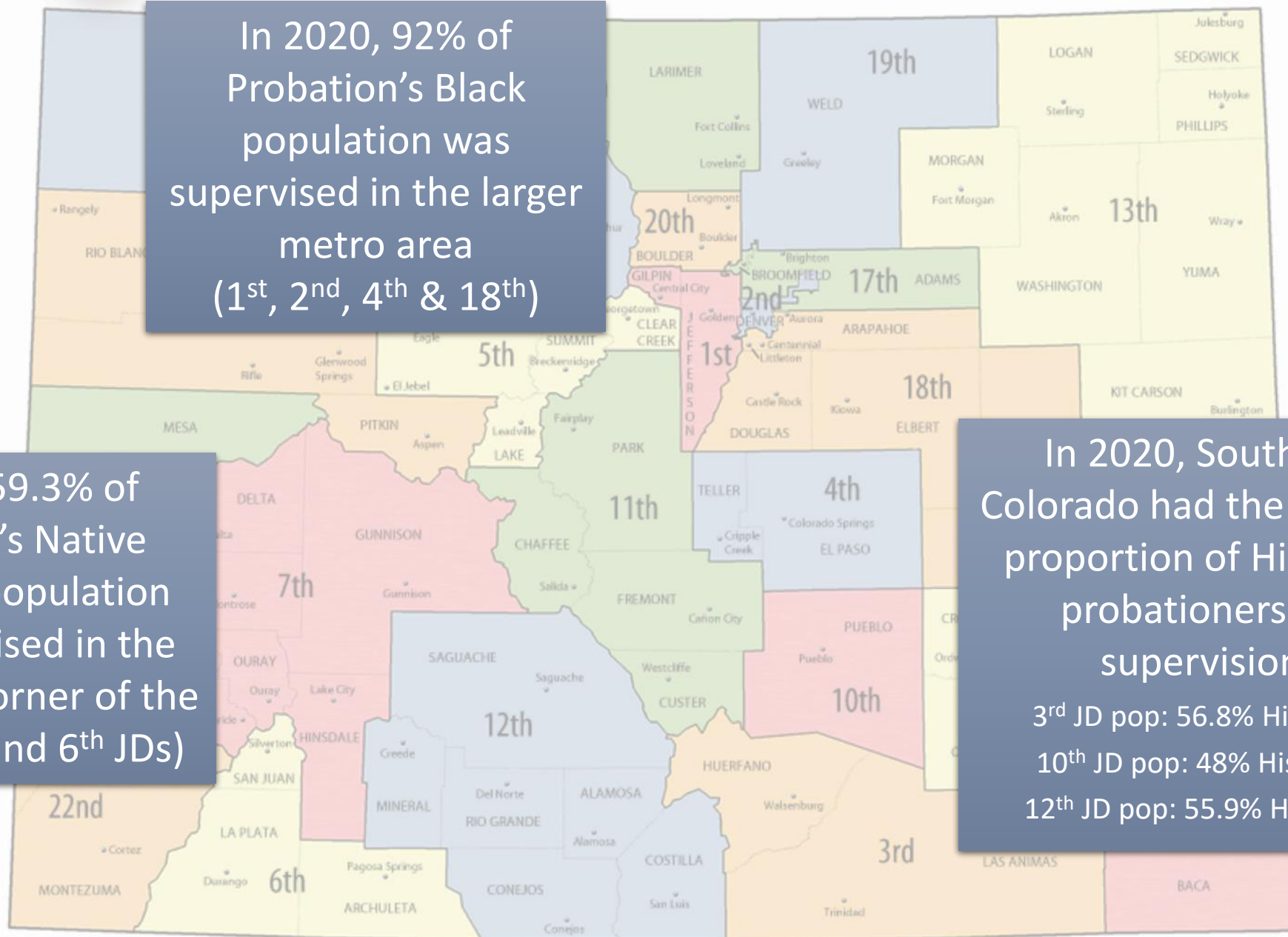
# Probation's Regional Differences

In 2020, 92% of Probation's Black population was supervised in the larger metro area (1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> & 18<sup>th</sup>)

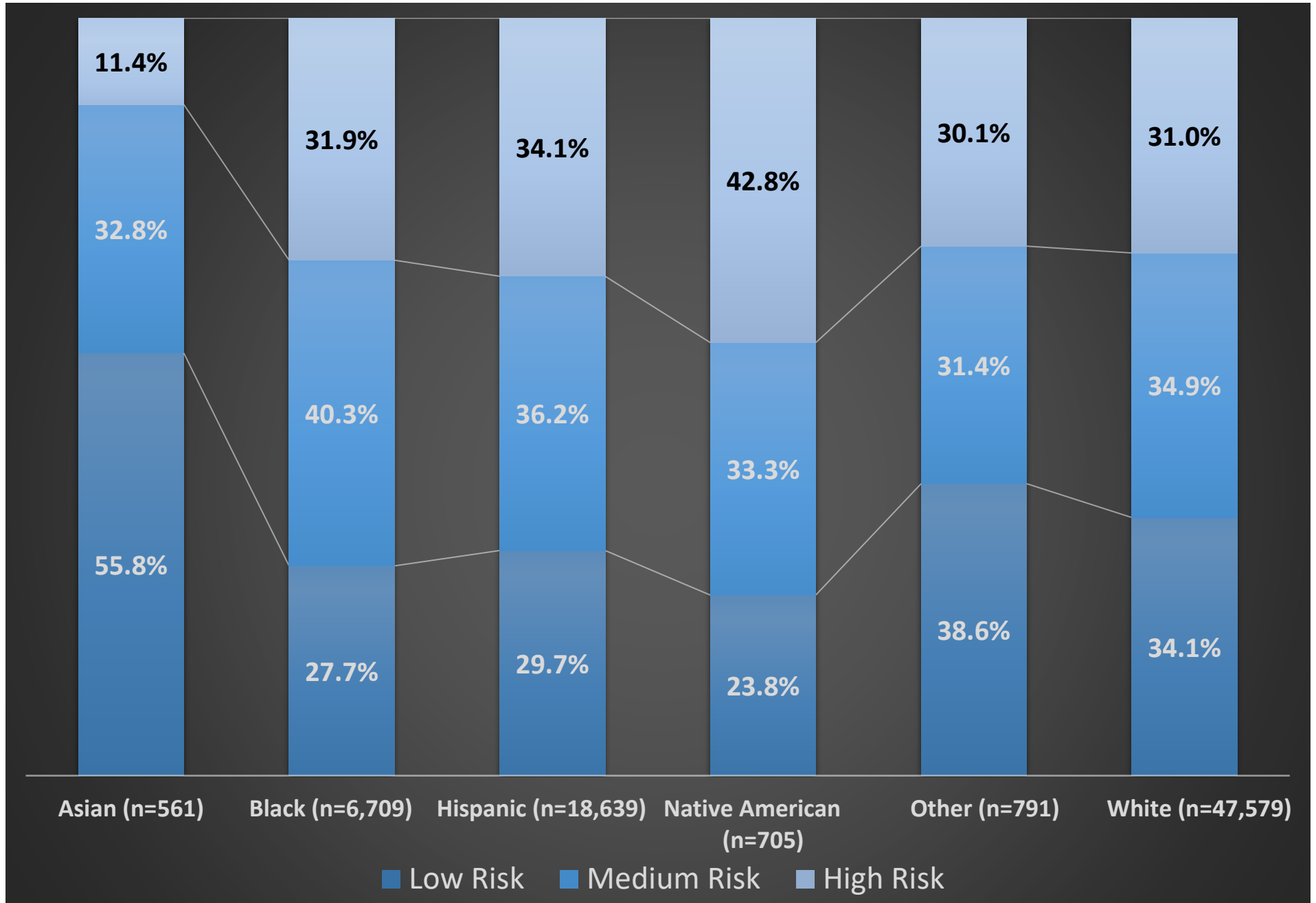
In 2020, 59.3% of Probation's Native American population was supervised in the Southwest corner of the state (22<sup>nd</sup> and 6<sup>th</sup> JDs)

In 2020, Southern Colorado had the highest proportion of Hispanic probationers on supervision

- 3<sup>rd</sup> JD pop: 56.8% Hispanic
- 10<sup>th</sup> JD pop: 48% Hispanic
- 12<sup>th</sup> JD pop: 55.9% Hispanic



# 2020 Adult Probationers LSI Risk Level by Race/Ethnicity (CLEAR data)



Note: A small number of probationers (n=27) of unknown race/ethnicity were excluded from this chart

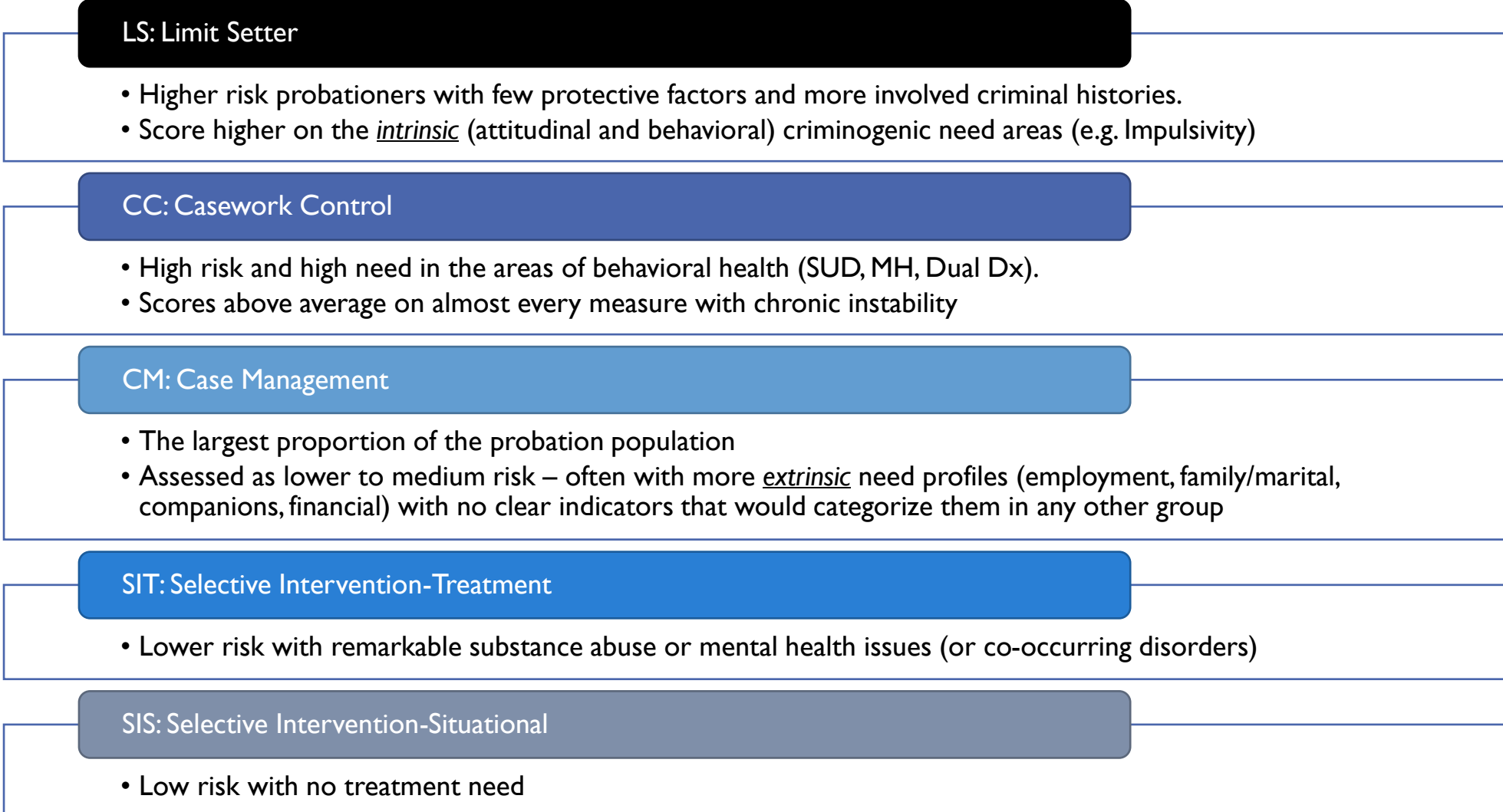
# Colorado Probation Typologies

Typologies are a research-informed practice that categorize adult probationers according to similar risk and needs profiles to better tailor supervision strategies in alignment with the Risk-Needs-Responsivity framework. The profiles are listed below with distinguishing characteristics for each profile.

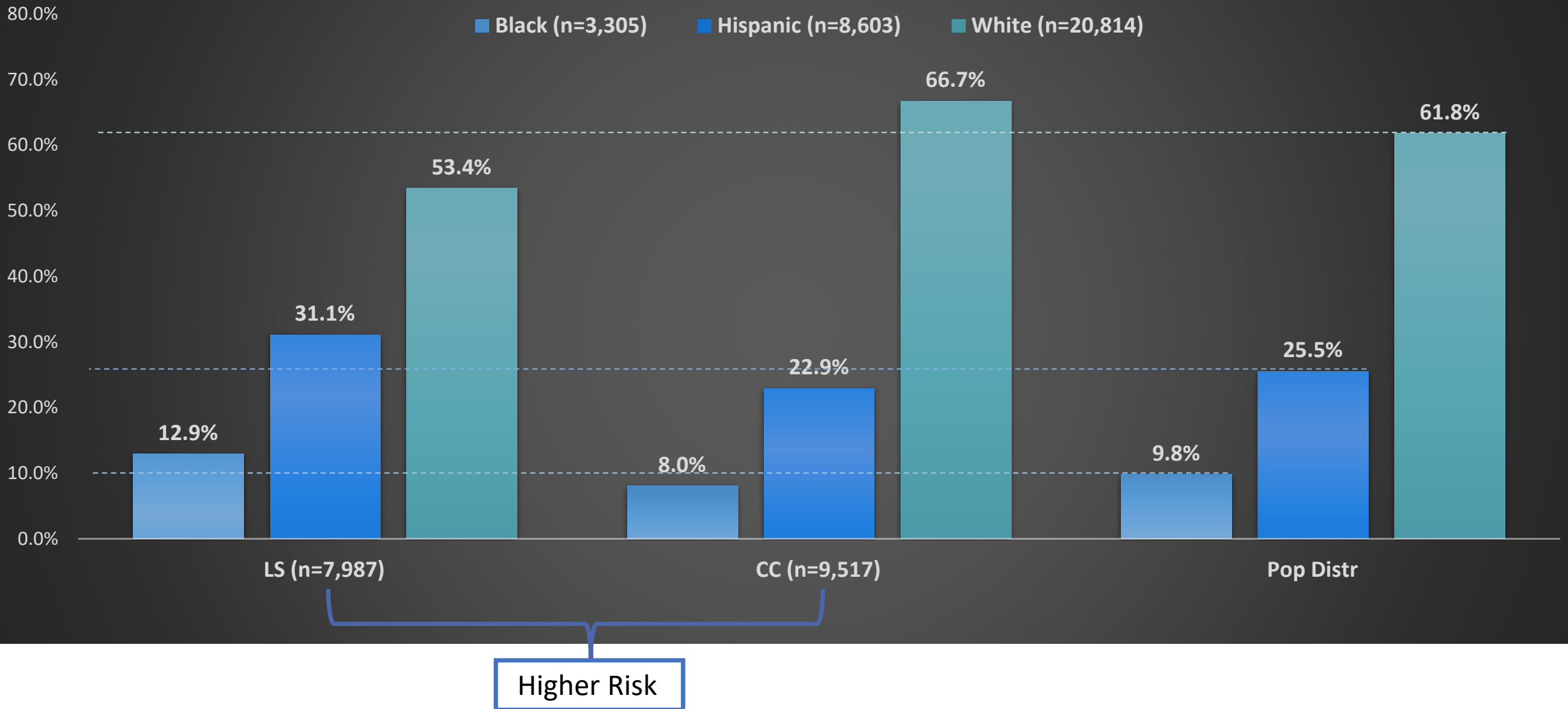
Higher Risk  
and Need



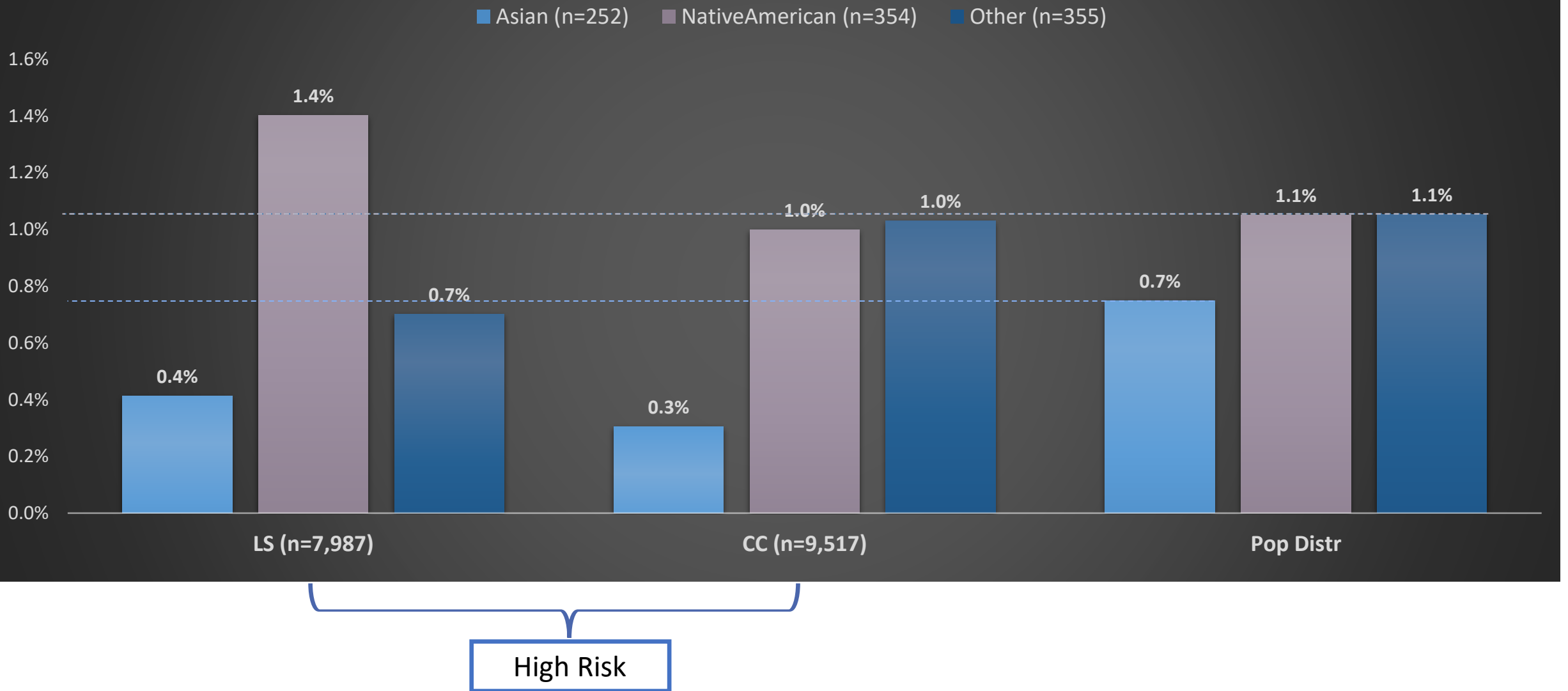
Lower  
Risk and Need



# Initial Probation Typology by Race/Ethnicity with Population Distributions

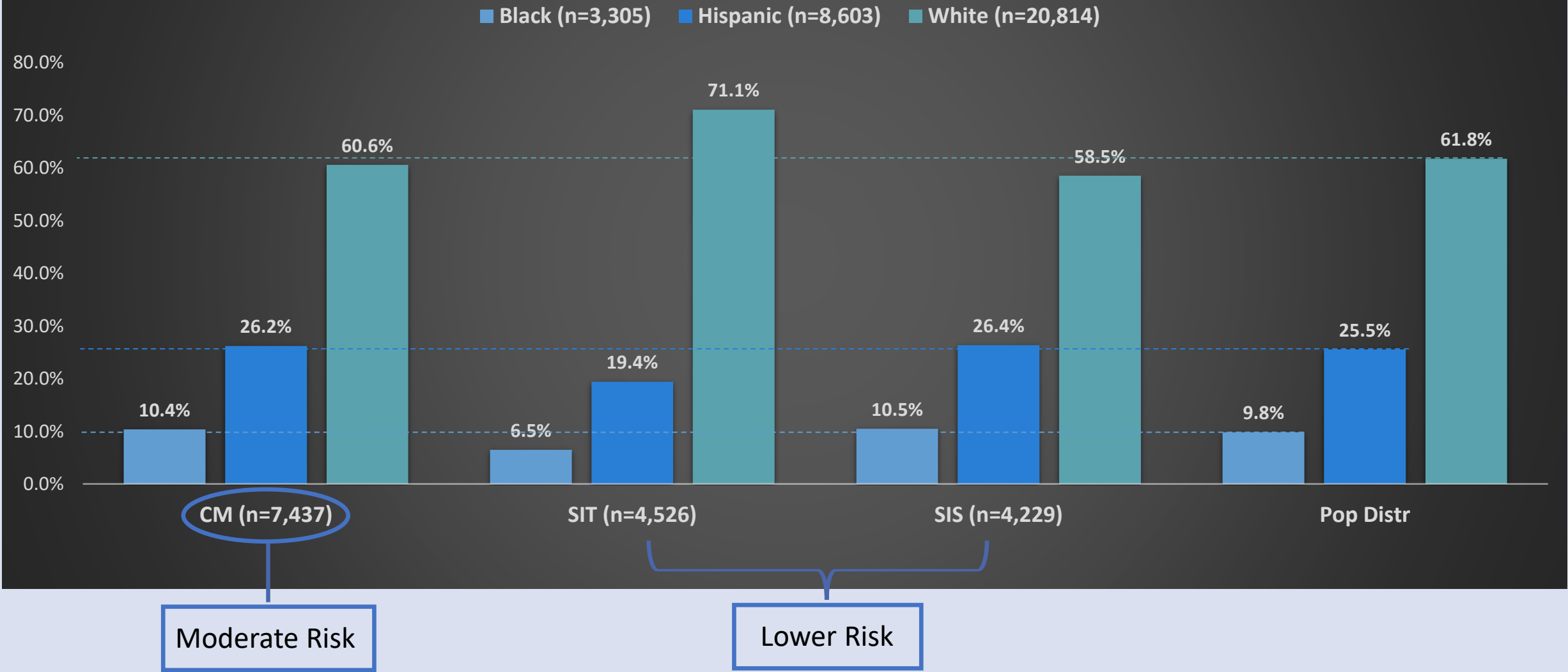


# Initial Probation Typology by Race/Ethnicity with Population Distributions



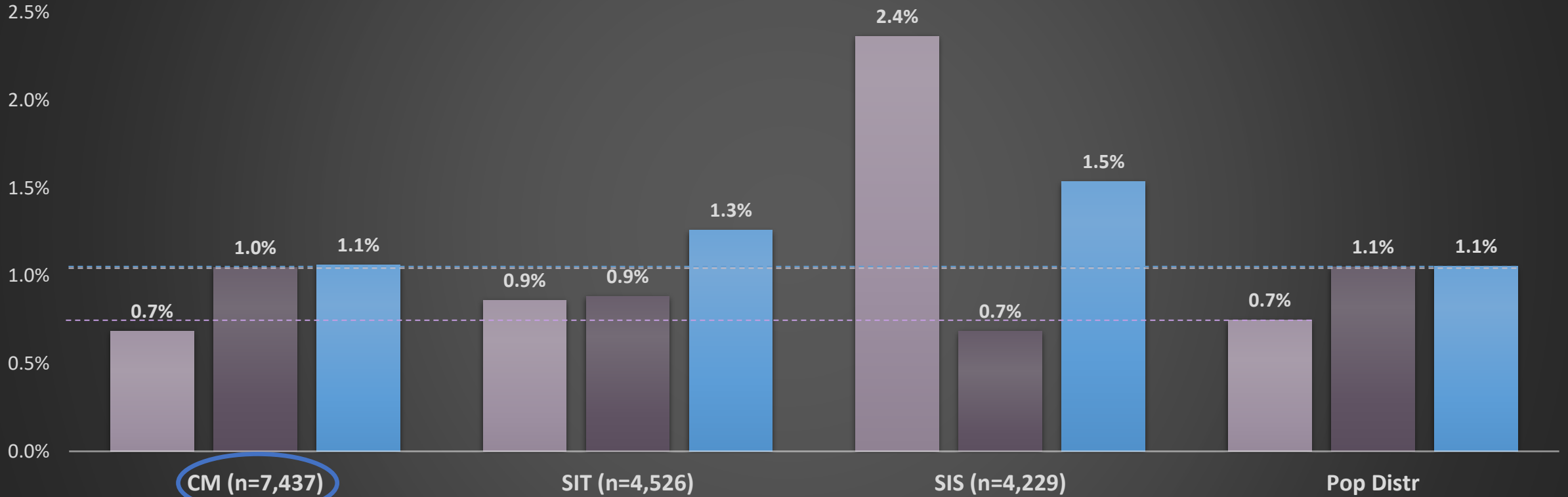


# Initial Probation Typology by Race/Ethnicity with Population Distributions



# Initial Probation Typology by Race/Ethnicity with Population Distributions

Asian (n=252) NativeAmerican (n=354) Other (n=355)



CM (n=7,437)

Medium Risk

SIT (n=4,526)

SIS (n=4,229)

Pop Distr

Low Risk

# Focus on Probation: Program Placement by Race/Ethnicity using CLEAR Data

2020 Probationers

# Program Placement

## Regular

- Problem Solving Courts (criteria driven, acceptance criteria varies by district/court type, may not be in probation's discretion, not all districts have PSCs)
- Non-SOISP Sex Offenders (offense driven)
- Domestic Violence (offense driven)
- Mental Health (criteria driven)
- Economic Crime (offense & criteria driven)
- Regular Supervision

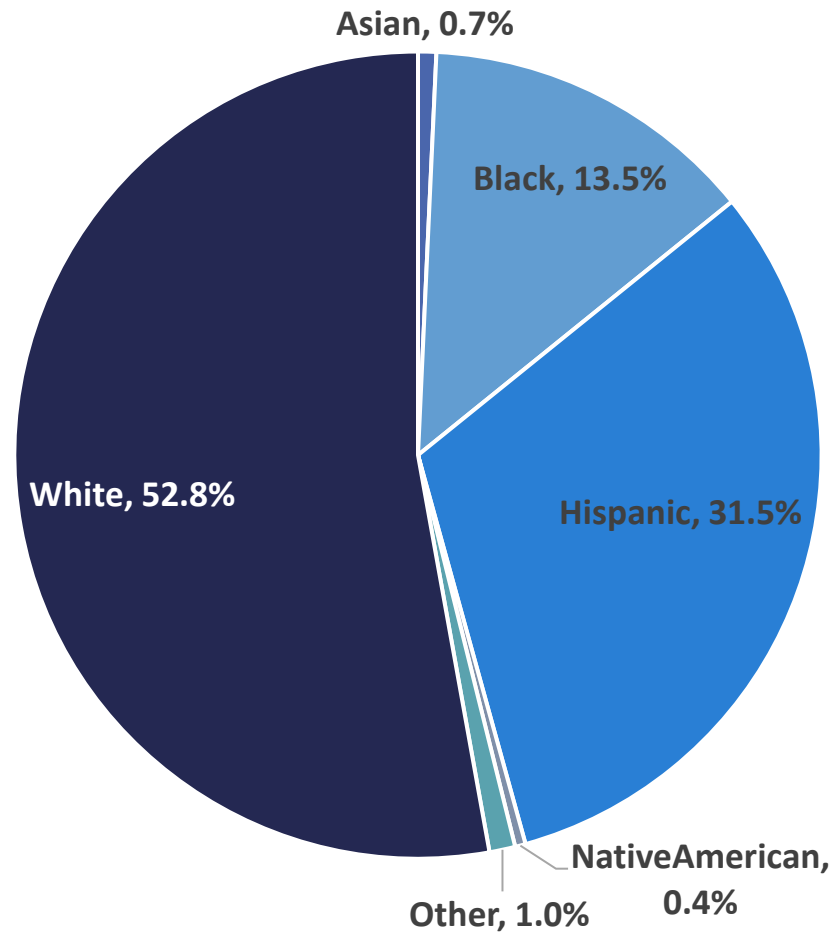
## Intensive

- SOISP (statutorily driven, offense based)
- LS-Intensive (eligibility driven by assessment and program capacity)
- CC-Intensive (eligibility driven by assessment and program capacity)

Many programs have specific criteria that must be met for a client to be eligible for program placement.

# LS-INTENSIVE (High Risk/Low Need)

n=2,608

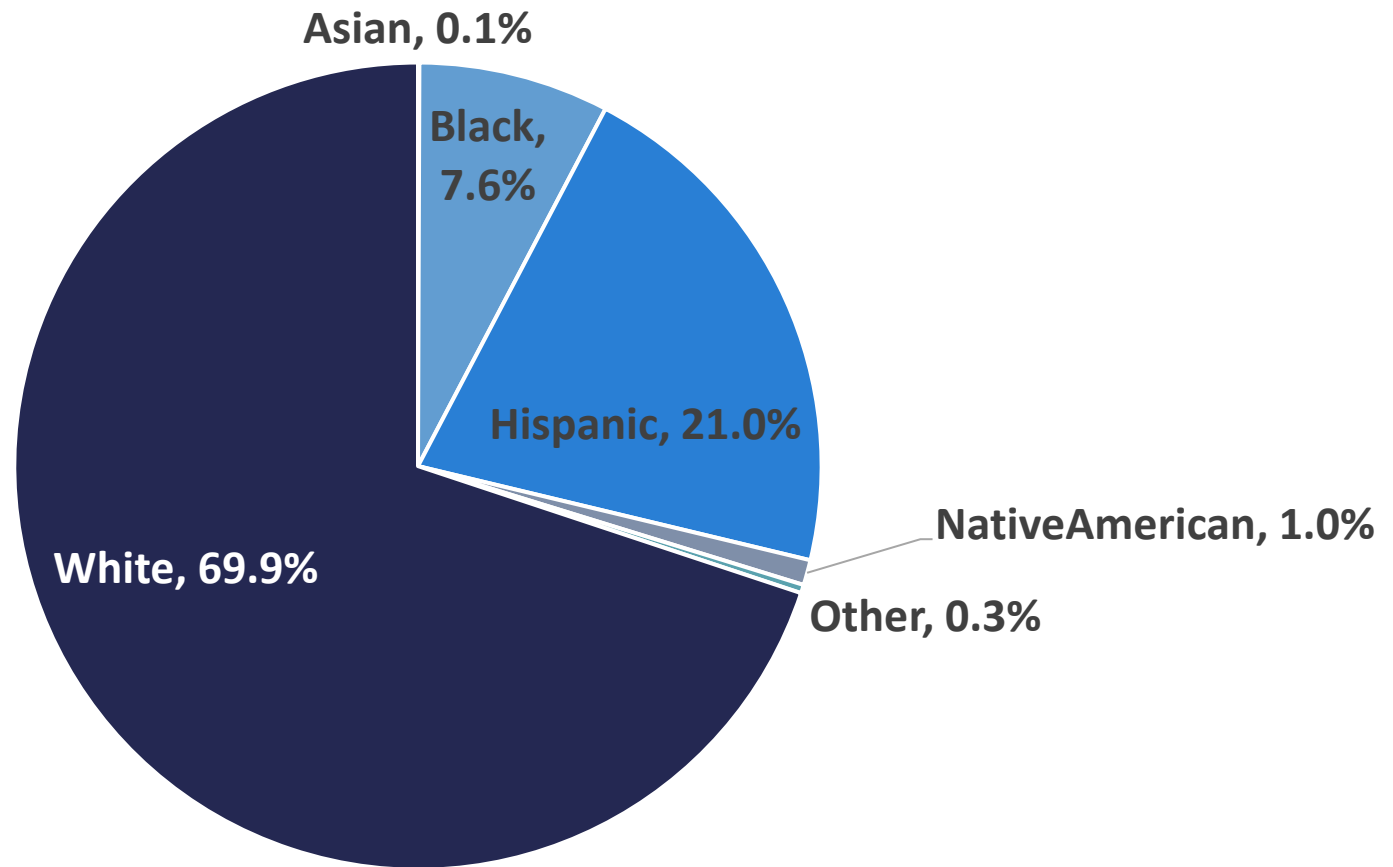


## Important Notes:

- Criteria driven
- Phase supervision
- Can complete the program and transfer to regular supervision
- More males than females

# CC-INTENSIVE (High Risk/High Need)

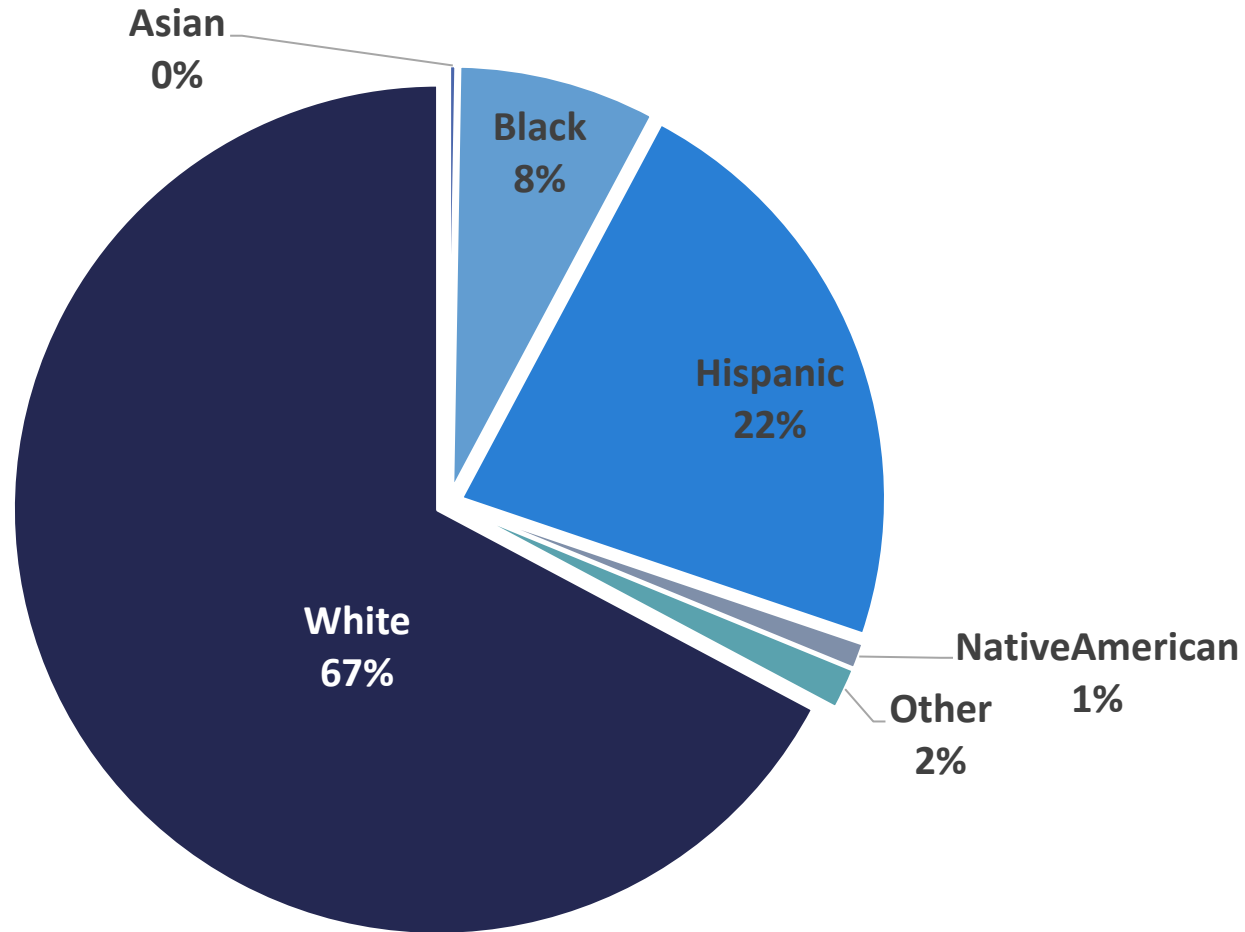
n= 1,782



## Important Notes:

- Criteria driven
- Phase supervision
- Can complete the program and transfer to regular supervision
- More females than males

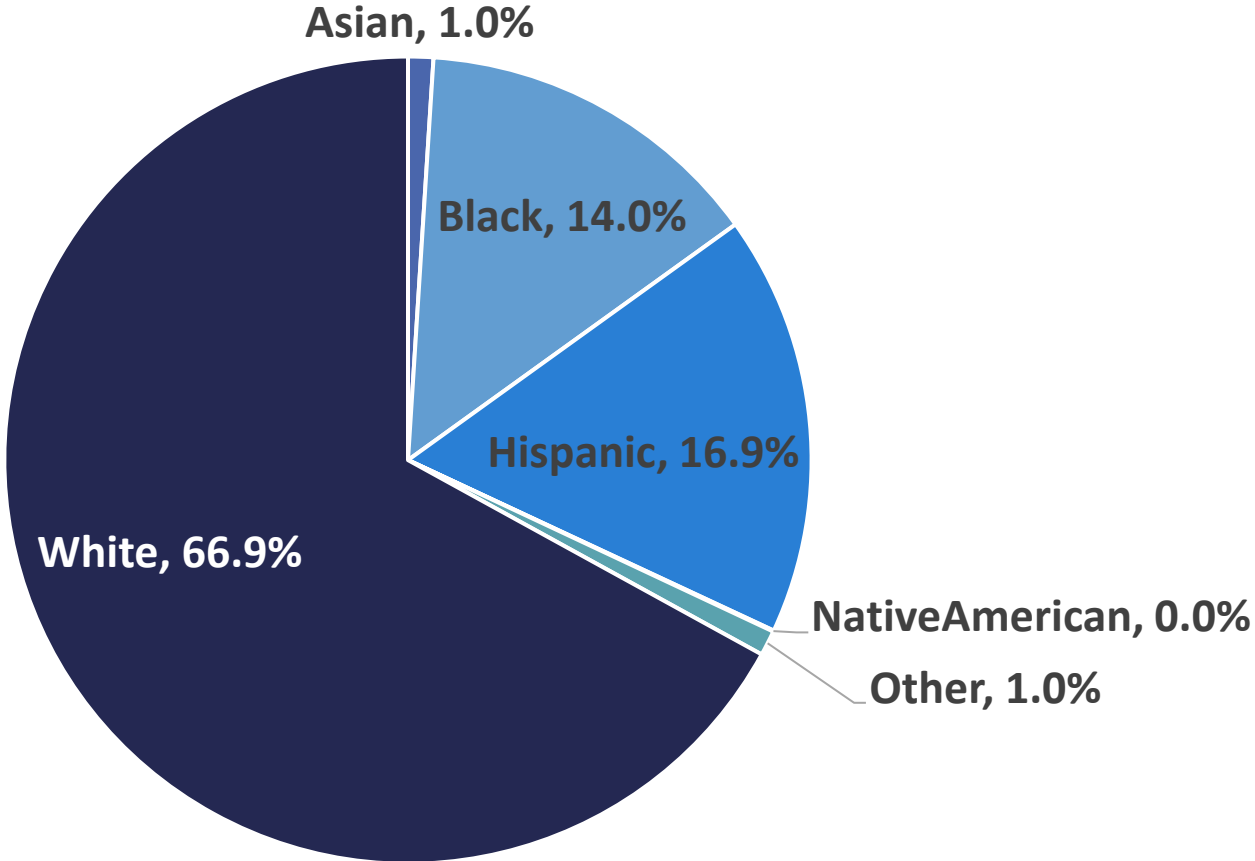
## Adult Problem Solving Courts (n=2,591)



### Important Notes:

- Pathways to PSCs vary
- Not all districts have PSCs
- PSCs are more than drug courts

# Mental Health (n=2,278)

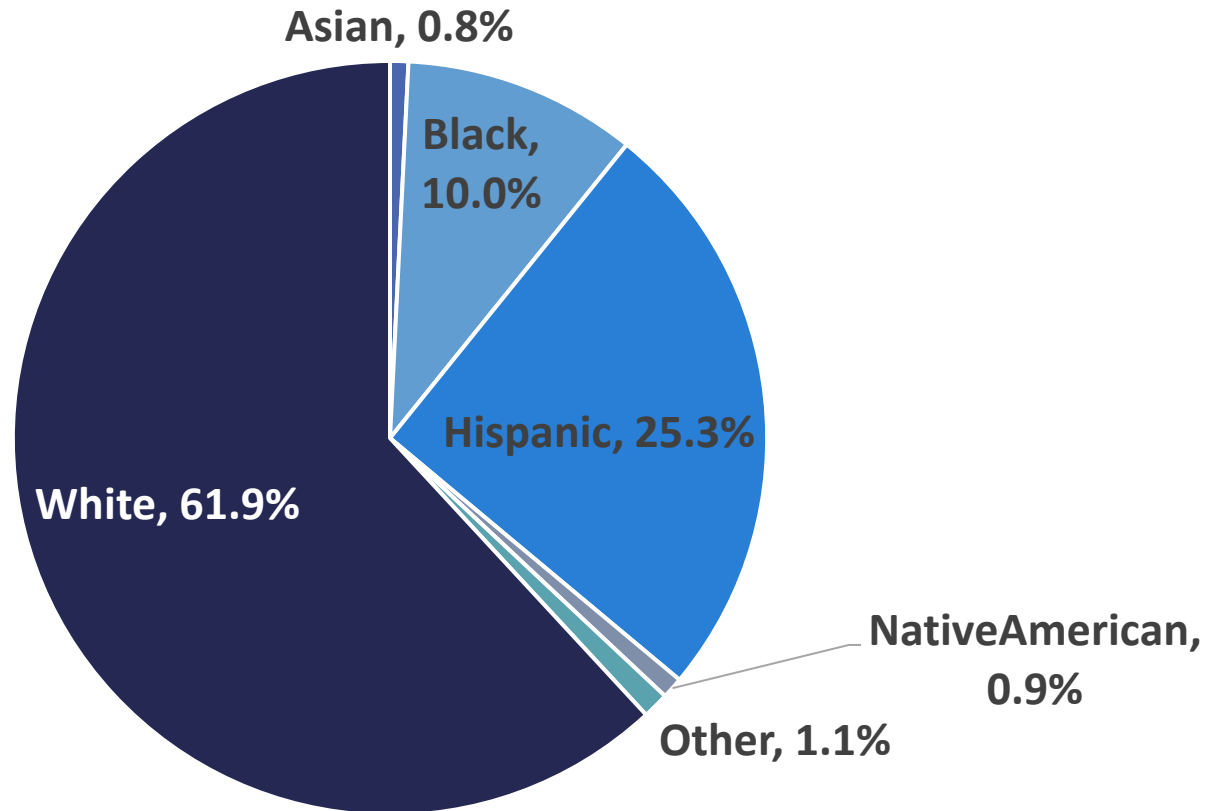


Important Notes:

- Must have a current professional diagnosis
- Special Terms and Conditions



## Domestic Violence (n=18,401)



### Important Notes:

- Driven by Offense
- Probationers with DV Offense may be supervised in intensive programs
- Distribution is similar to the statewide population

# Focus on Probation: Adult Termination by Race/Ethnicity using CLEAR Data

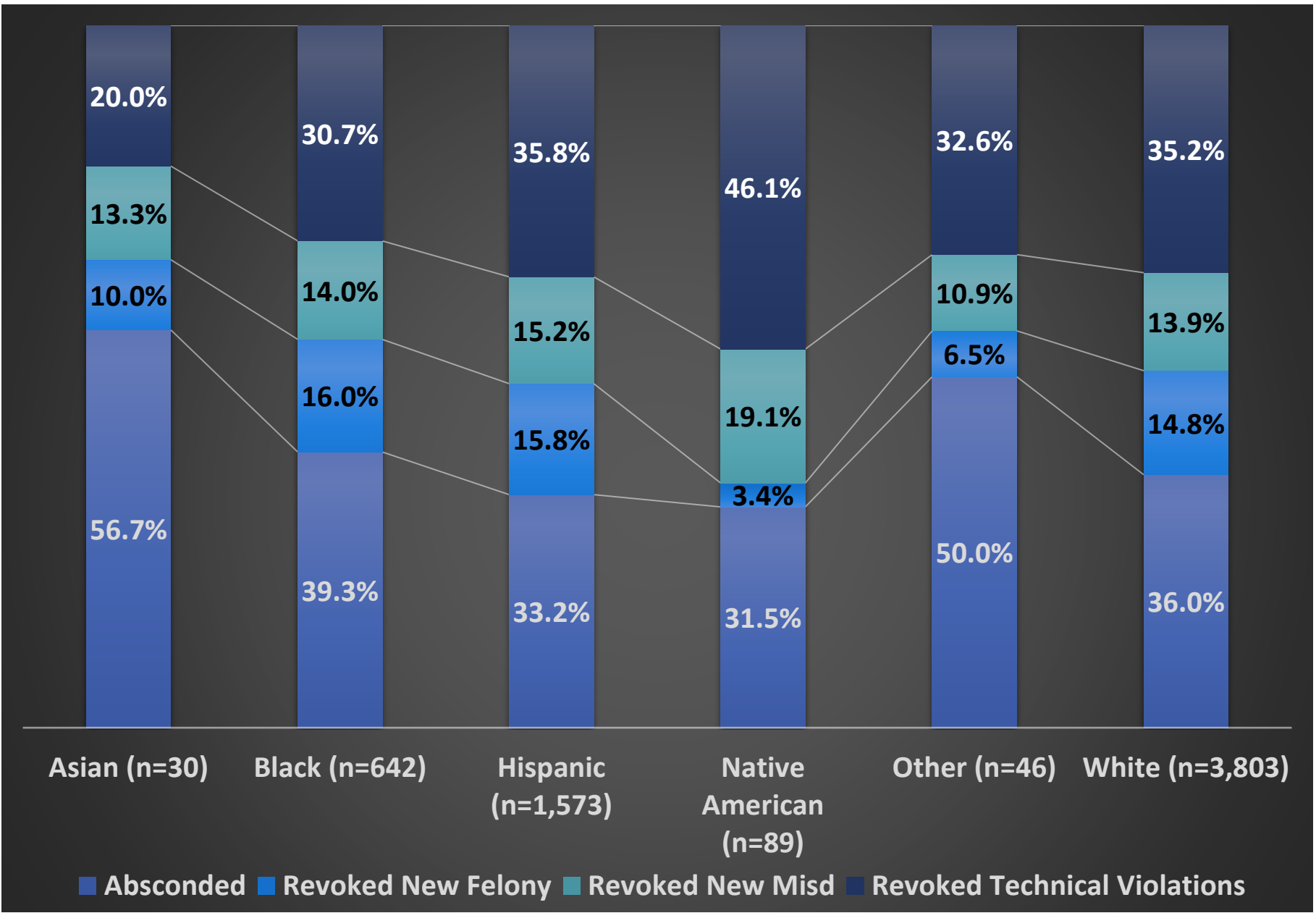
2020 Probationers

# Adult Probation Terminations- CLEAR data

## Limitations:

- This chart represents adult probationers who started and were unsuccessfully terminated in the same year. As the average length of stay for probationers is between 18-24 months, this data set represents a much smaller number of terminations in that same year.
- This is only one year of data, captured during the pandemic.
- Success rates are not included in this data set.
- The Clear Act interactive dashboard only displays revocations- this chart does the same and adds absconders.
- Absconder rates increased during the pandemic for all community based criminal justice agencies. Note: absconders are administrative closures for probation, court-ordered warrants are still active.

# Adult Probation Unsuccessful Terminations 2020 CLEAR Data





# Observations & Items for further Exploration

(2020 Clear Data)

- A portion of Probation's Hispanic population is misidentified as White. The Hispanic population increased from 10% → 25% when matched on CLEAR data
- Regional differences, both in population and practice, can impact the data. Caution should be exercised when drawing conclusions.
- Native American probationers represent the largest proportion of high-risk (42.8%), Black probationers represent the largest proportion of medium-risk (55.8%) and Asian probationers have the largest proportion of low-risk (40.3%)

# More Observations- Probation Types (2020 Clear Data)

## Lower Risk/Needs Types

- Asian Probationers are overrepresented in the lowest risk/need type (SIS)
- White Probationers are overrepresented in lower risk with Tx needs (SIT)
- Black and Hispanic probationers are underrepresented in lower risk with Tx needs (SIT)

## Moderate Risk/ Needs Types

- The probationers in this risk/need profile are representative of the race/ethnicity breakdown in the state probation data

## Higher Risk/Needs Types

- Black and Hispanic probationers are overrepresented in the High Risk/Lower Need Type (LS) and underrepresented in the High Risk/High Need Type (CC)
- White probationers are overrepresenting the High Risk/High Need Type (CC)
- Native American probationers are slightly overrepresented in High Risk/Lower Need (LS), Other probationers are underrepresented in High Risk/Lower Need (LS), while Asian probationers are underrepresented in both High Risk Types (LS and CC)



# More Observations & Items for further Exploration

(2020 Clear Data)

## Program Placement

### Intensive Programs

Black and Hispanic probationers make up 45% of LS-Intensive

White probationers make up nearly 70% of CC-Intensive

### Problem Solving Courts

White and Other probationers are slightly overrepresented in PSCs

### Mental Health

Black probationers are overrepresented and White probationers are slightly overrepresented in this program compared to the general probation population

Black: 14%, White: 66.9%



# More Observations & Items for further Exploration

(2020 Clear Data)

## Adult Terminations

(2020 CLEAR Data- unsuccessful terminations only)

- Hispanic and Black probationers were slightly more likely to be revoked for new crimes compared to White probationers.
- Black probationers were less likely to be revoked for technical violations than White and Hispanic probationers.
- Asian and Black probationers were more likely to abscond than White and Hispanic probationers.

## Overall

- Better race and ethnicity data is required to fully explore racial disparities



# Thank you



Colorado Judicial Courts and Probation  
Office of the State Court Administrator  
Division of Probation Services  
Evaluation Unit  
[www.courts.state.co.us](http://www.courts.state.co.us)