Colorado Commission on Criminal and Juvenile Justice

Sentencing Reform Task Force

Sentencing Alternatives/Decisions & Probation Working Group MINUTES

October 7, 2022 / 9:00AM-11:30AM
Virtual Meeting

ATTENDEES:

WORKING GROUP MEMBERS

Glenn Tapia, *Working Group Leader*, Director, Probation Services/ Judicial Branch
Chris Gallo, Chief Deputy District Attorney/ 18th Judicial District (JD)
Kristin Heath, Assistant Director, Jefferson County Justice Services
Kazi Houston, Rocky Mountain Victim Law Center
Heather McClure, Adams County Division of Community Safety and Well-Being
Clay McKisson, Judge/ 3rd JD
Jenifer Morgen, Chief Probation Officer/ 17th JD
Greg Otte, Deputy Chief Parole Officer/ 8th JD
Thea Reiff, Office of the State Public Defender
Elaina Shively, District Attorney's Office/ 20th JD
Abigail Tucker, (CCJJ Vice-Chair) Psychologist/ Mental health services provider and consultant

STAFF

Richard Stroker, CCJJ Consultant
Jack Reed, Research Director, Division of Criminal Justice
Stephané Waisanen, WG staff, Division of Criminal Justice
Laurence Lucero, SRTF staff, Division of Criminal Justice

ABSENT

Matthew James, District Attorney's Office/2nd JD

GUEST

Erin Crites, Probation Services

Issue/Topic	Discussion
Welcome & Agenda *Glenn Tapia,* *Working Group Leader*	Glenn welcomed attendees and guests. Glenn reviewed the agenda and stated that the objective of the meeting was to hear presentations on race and ethnicity disparities in probation and identify areas of work.

Issue/Topic	Discussion
Racial & Ethnic Disparities in Community Supervision *Erin Crites, Probation Services*	Erin Crites, Ph.D. (Division of Probation Services) presented *Racial and Ethnic Disparities in Probation and Community Supervision.* The full presentation is available under the "Materials - Working Groups" tab at ccjj.colorado.gov/ccjj-srtf and appended below. Presentation highlights: • Presentation based on data from the Division of Probation Services • Race and ethnicity data collection and reporting have room for improvement. There are limited race/ethnicity categories and data is based on perception of the law enforcement officer rather than self-identification. • The probation population is primarily classified as "White" but this is partly because Hispanic/Latino ethnicity is not consistently captured. • Black, Indigenous, People of Color (BIPOC) are overrepresented in high risk probation categories. They have higher success rates in intensive supervision but lower success rates in other supervision categories. • BIPOC have lower recidivism rates after termination

Issue/Topic	Discussion
Community Law Enforcement Action Reporting (CLEAR) Act *Jack Reed, Division of Criminal Justice*	Jack Reed (Division of Criminal Justice presented on *CLEAR Act Methods & Results*. The full presentation is available under the "Materials - Working Groups" tab at ccjj.colorado.gov/ccjj-srtf and appended below. Presentation highlights: • Presentation is based on the report on race/ethnicity at criminal justice decision points mandated by the Community Law Enforcement Action Reporting Act (CLEAR Act) • Data were presented for racial/ethnic breakdowns for arrests, court filings, case outcomes, sentencing, probation revocation, and parole. • There is consistent disparity across criminal justice decision points, where Black/African-American and Hispanic/Latino are over-represented compared to their proportion in the population • There is variation in disparity based on judicial district • Black/African-American and Hispanic/Latino defendants are more likely to receive sentences to incarceration (jail or prison) compared to white defendants • There was no racial/ethnic disparity found in probation revocation decisions

Issue/Topic	Discussion
Examination and Discussion of race, ethnicity and gender disparities in probation outcomes and practices *Glenn Tapia & All*	The group identified areas of concern: • Lack of ethnicity information in the statewide court data system. Specifically, the Judicial Branch data system does not distinguish between race and ethnicity. As a result, persons of Hispanic ethnicity are typically in the White race category, and thus significantly under-counted in the Hispanic category. The Division of Criminal Justice adapted a Census Bureau statistical model to predict whether an offender was Hispanic. • Agencies across systems do not use the same data platform and therefore communication/tracking data can be problematic. • Targeting intervention is difficult with inconsistent and incomplete data. • Racial/ethnic disparity is a systemic issue that starts with arrests and proceeds through the criminal justice system. • Is probation moderating or contributing to race/ethnic disparity? • The CLEAR Act presentation illustrates disparities prior to the revocation process. Why are there no disparities during the revocation process? • Individuals of color are placed disproportionally into Intensive Programs. The group discussed the following suggestions for the continued review of race/ethnic disparities: • Develop short and long-term solutions to improve accuracy in the data collection throughout the criminal justice system. • Add an option for individuals to self-identify their race/ethnicity. • Examine how racial disproportionality is addressed within the system. • Target areas for potential improvement in the Limit Setter Intensive Program (LSIP). • Review the algorithm used to identify people of color in the Limit Setter (LS) typology and validate against bias. • Is there a problem of over-representation of youth in detention? • Is there disparity on probation after an individual is sentenced to probation? • Presentations have illustrated the revocation data did not show disparity. Is there a way to verify the data? • Review the Presentence Investigation Report (PSI) process. Is there disparity? • Determine why some districts have significantly lower disparity rates than other districts. After a brief discussion, the group decided not to review racial/ethnic disparities in youth, as there is no juvenile representation in the Working Group.

Issue/Topic	
Examination and Discussion of race, ethnicity and gender disparities in probation outcomes and practices *Glenn Tapia & All* *(continued)*	Richard provided an overview of three areas of interest the group may want to review: • Data & Analysis ▪ Are the data in the risk need-responsivity strategies sufficient to make a recommendation and resolve potential areas of disparity in probation? • Workforce ▪ Is there demographic diversity in the Probation workforce? ▪ Is there ample training provided to staff on implicit racial bias? ▪ Is probation staff prepared to problem-solve in social interaction settings? • Specific issues ▪ What other issues should the group review? ▪ Are we making the situation better or worse, as it relates to racial/ethical disparities? ▪ Are there promising practices in jurisdictions across Colorado that might be replicated? ▪ Why is there no a racial disparity associated with the revocation process?

Issue/Topic	Discussion
Next Steps & Adjourn *Glenn Tapia , Working Group Leader*	There was no public comment. The group will invite individuals with lived experience to offer feedback at the November meeting. Glenn thanked members and presenters and reminded the group to contact the DCJ staff if they have any contributions for the next meeting.

Next Meeting

Friday, November 4, 2022 / 9:00 am – 11:30 am

Details of the next meeting will be forwarded to the group and posted on the CCJJ web and calendar (ccjj.colorado.gov/ccjj-meetings & ccjj.colorado.gov/ccjj-calendar).

Racial and Ethnic Disparities in Community Supervision

October 7, 2022

Division of Probation Services

Presented to the Sentencing Alternatives/Decisions & Probation Working Group
of the Sentencing Reform Task Force (SRTF) of the Colorado Commission on Criminal and Juvenile Justice (CCJJ)

Race and Ethnicity in CO Probation

Limited Categories

- Must be compatible with CBI and other state systems
- Race and ethnicity are not separated

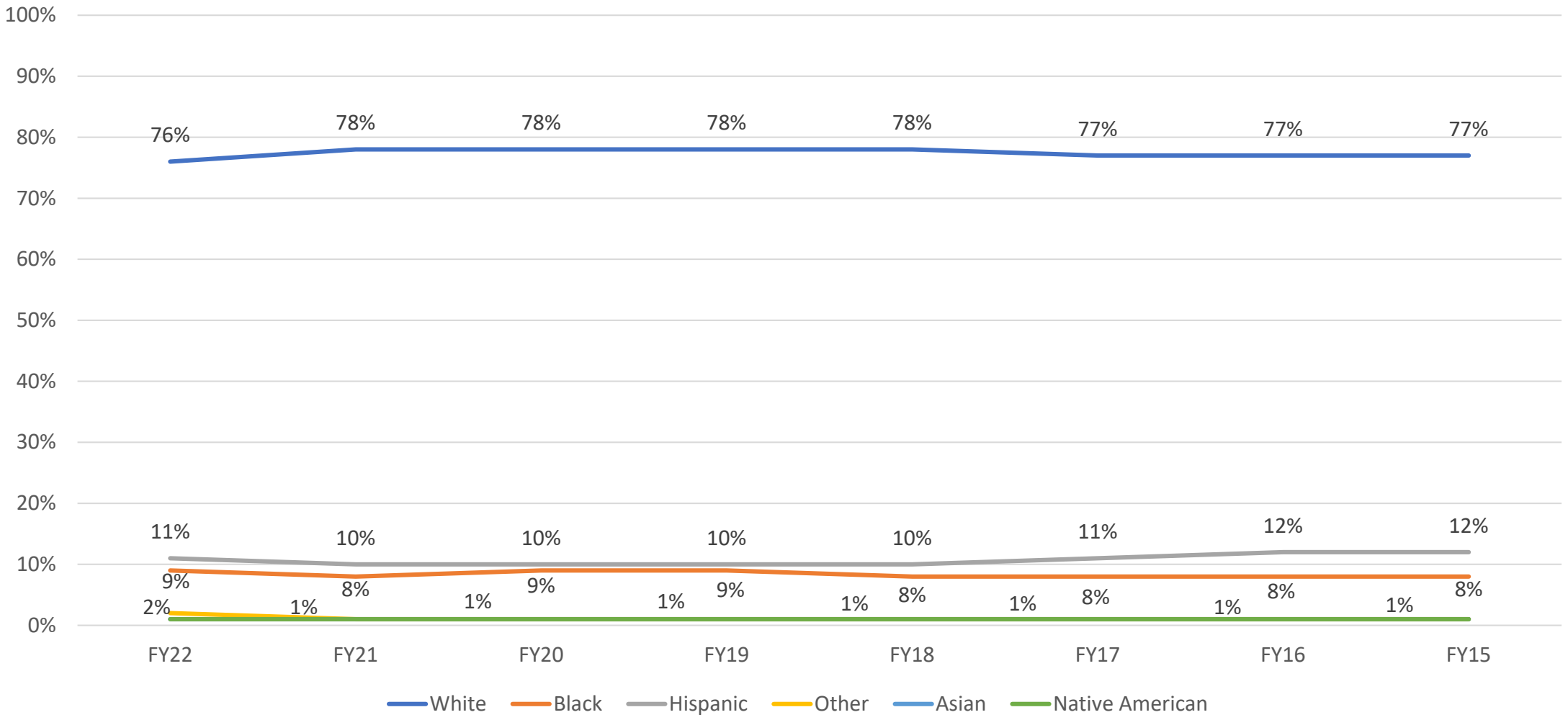
Dated system

- Challenge to update coding to allow for more categories
- Even if updated, reconciling data from previous cases is burdensome

Entries often based on perception

- Not self-identified
- Comes from arrest records, tickets, summons, affidavits, etc.

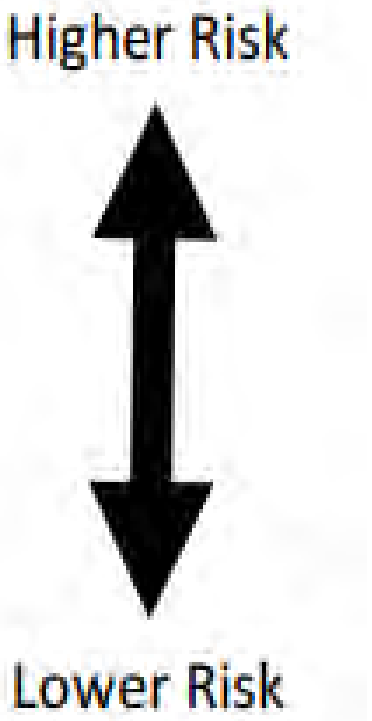
Population Distributions for New Probationers



Colorado Probation

Colorado Probation's Population: Risk-Need-Responsivity Strategies

Typologies are a research-informed practice that categorize adult probationers according to similar risk and need 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.



LS: Limit Setter

- Higher risk probationers with few protective factors and more involved criminal histories.
- Score higher on the *intrinsic* (attitudinal and behavioral) criminogenic need areas (e.g. Impulsivity)

CC: Casework Control

- High risk and high need in the areas of behavioral health (SUD, MH, Dual Dx).
- Scores above average on almost every measure with chronic instability

CM: Case Management

- The largest proportion of the probation population
- Assessed as lower to medium risk – often with more *extrinsic* need profiles (employment, family/marital, companions, financial) with no clear indicators that would categorize them in any other group

SIT: Selective Intervention-Treatment

- Lower risk with remarkable substance abuse or mental health issues (or co-occurring disorders)

SIS: Selective Intervention-Situational

- Low risk with no treatment need

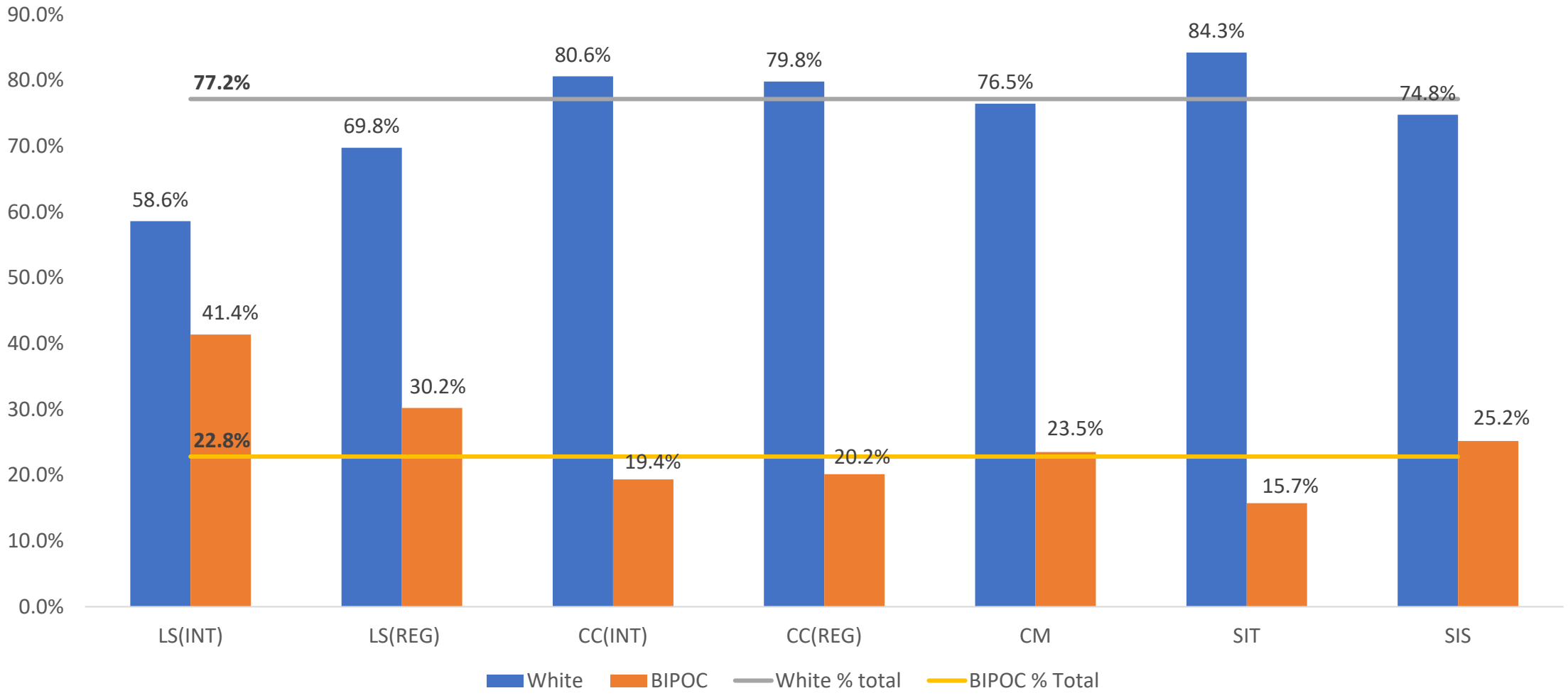
Typologies in Colorado Probation: Descriptions, Distributions, and Success Rates

Higher Risk and Need

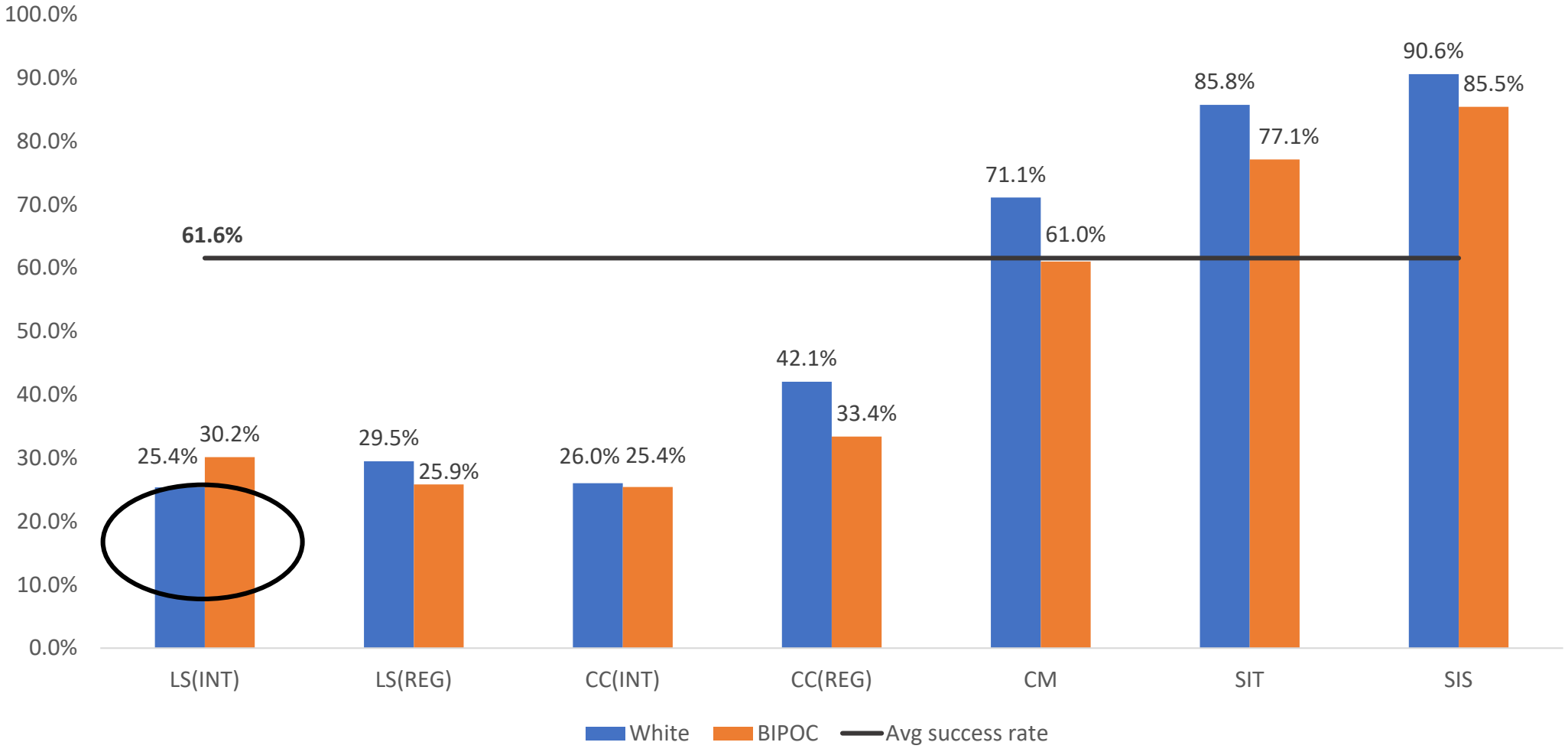
Lower Risk and Need

		Distribution	Success Rate	Unsuccessful Termination Rate		
				Abscond	Tech Viol	New Crime
Limit Setter Intensive (LS-INT)	Higher risk with antisocial orientation. Eligible for intensive program.	3%	43.9%	15.0%	20.4%	20.6%
Limit Setter Regular (LS-REG)	Higher risk with antisocial orientation and secondary needs.	12%	40.0%	17.4%	24.6%	18.1%
Casework Control Intensive (CC-INT)	Higher risk and higher need with stability issues. Eligible for intensive program.	5%	47.4%	13.8%	23.7%	15.2%
Casework Control (CC-REG)	Higher risk and higher need with stability issues. Eligible for intensive program.	13%	51.9%	15.0%	21.4%	11.7%
Case Management (CM)	Medium risk and need.	25%	69.6%	11.2%	12.2%	7.0%
Selective Intervention-Treatment (SIT)	Lower risk with single need factor typically related to a substance use or mental health treatment need.	20%	82.0%	7.0%	7.5%	3.5%
Selective Intervention-Situational (SIS)	Lower risk with no distinguishing need factors and high levels of stability and protective factors.	23%	86.9%	6.6%	4.5%	2.0%

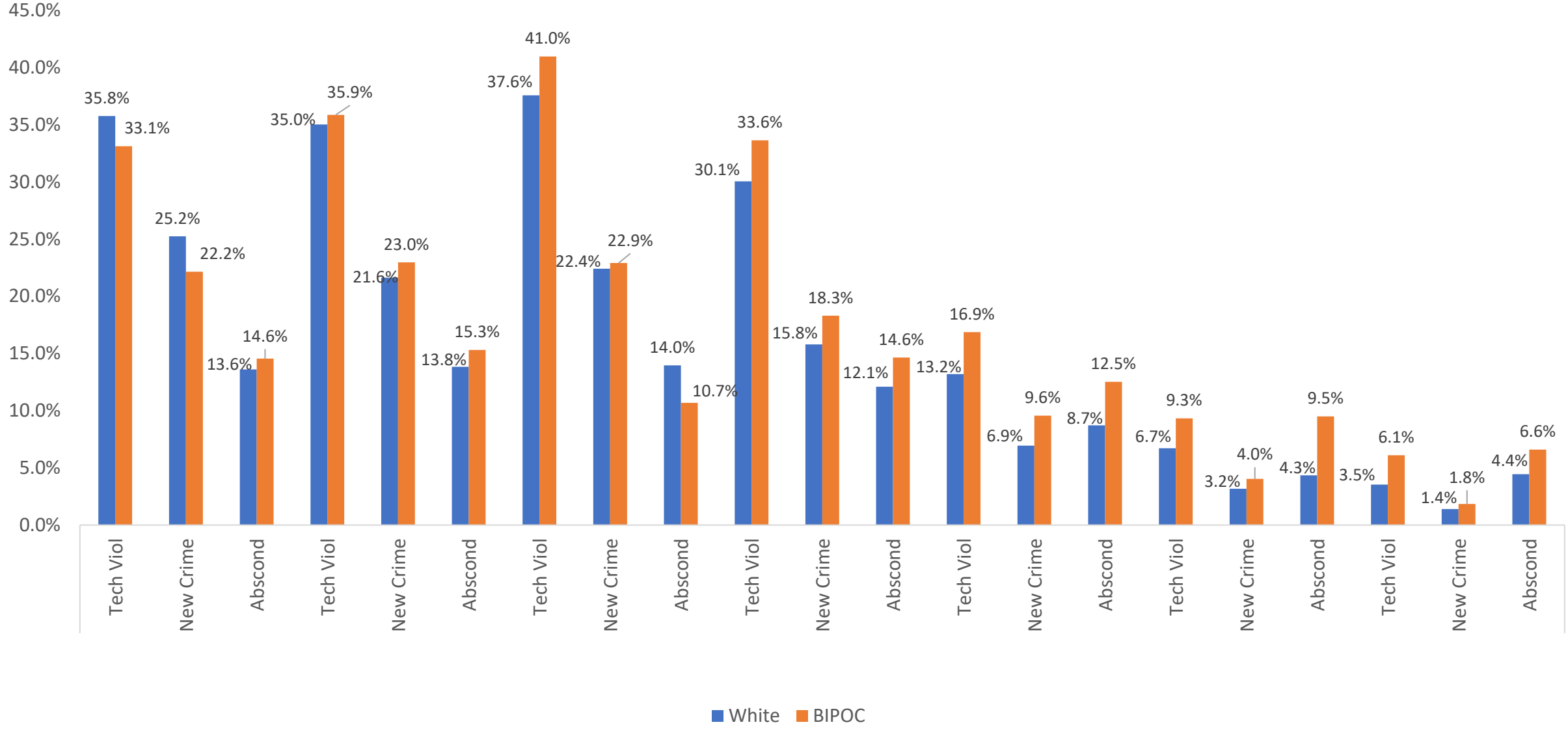
Disproportionate Representation



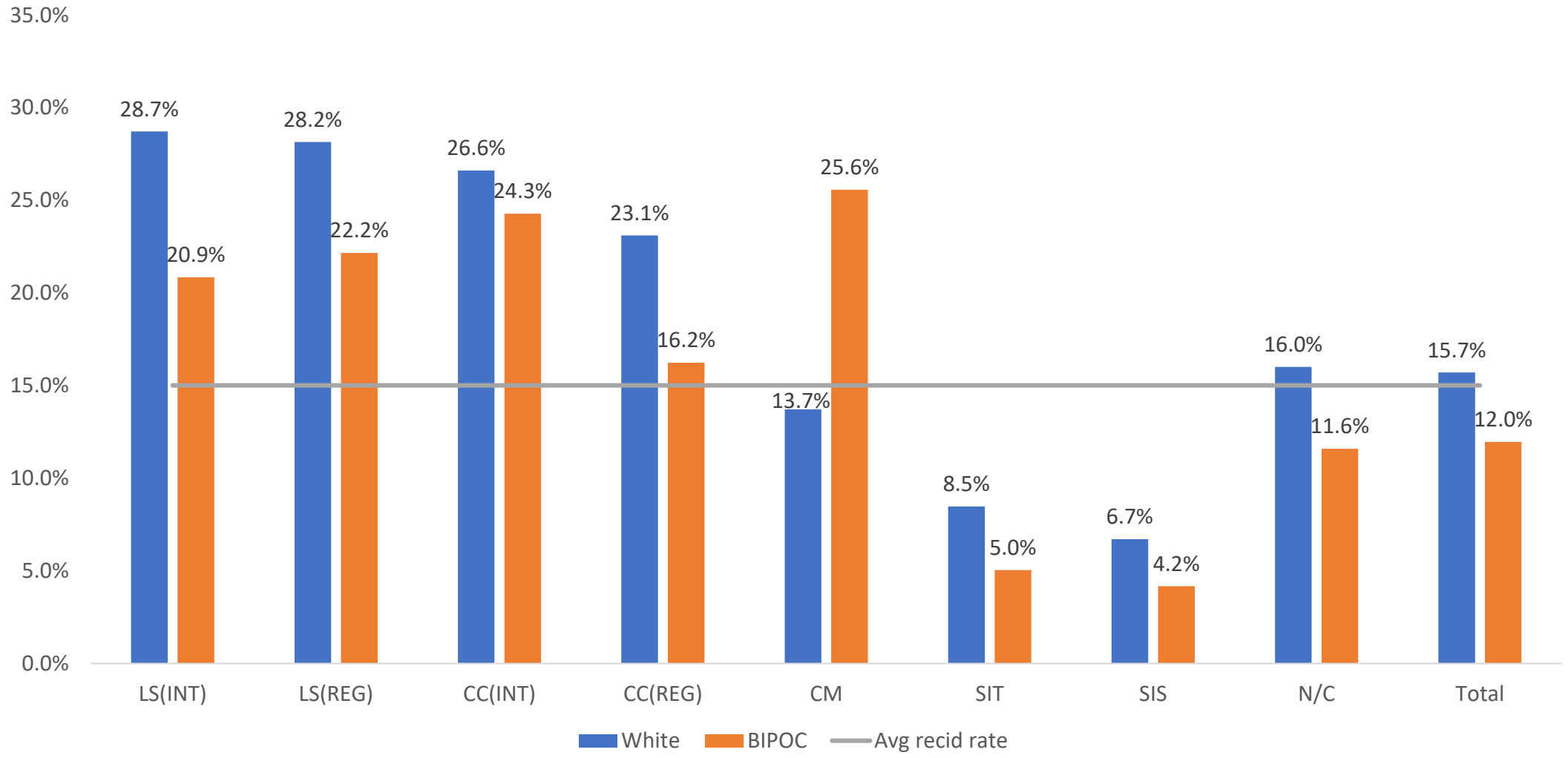
Outcomes by Risk/Need and Race/Ethnicity



Unsuccessful Terminations



Recidivism by Risk/Need and Race/Ethnicity



Key Takeaways:

Race and ethnicity data collection and reporting have room for improvement

- Limited categories
- Not self-identified

Probation population is primarily Caucasian

- Hispanic ethnicity isn't separate

BIPOC are overrepresented in higher risk categories

- Higher success rates in LS(INT)
- Lower success rates in other risk/need categories

BIPOC terminated from probation have lower recidivism rates

- Medium risk group is the exception

CLEAR Act

Methods & Results

Jack K. Reed
Colorado Department of Public Safety,
Division of Criminal Justice, Office of Research & Statistics

October 7, 2022

Presented to the Sentencing Alternatives/Decisions & Probation Working Group
of the Sentencing Reform Task Force (SRTF) of the Colorado Commission on Criminal and Juvenile Justice (CCJJ)

COLORADO
Department of Public Safety

CCJJ.Colorado.gov

Overview

- Legislative Priorities
- Methodology
- Results
- Possible Solutions

Legislative Requirements

- The CLEAR Act mandates that the Division of Criminal Justice (DCJ) annually analyze and report on decisions made at different points in the justice system
- Data analyzed by race/ethnicity, gender, adult/juvenile status, and offense type. Senate Bill 15-185 mandated DCJ to report these data disaggregated by offense type.
- Reporting is done at the state and judicial district level
- Reports and dashboard found here: ors.colorado.gov/ors-sb185

Criminal Justice Decision Points

- **Arrest**
  - **on view/probable cause**
  - **custody/warrant**
  - **summons**
- **Court filing**
- **Case outcome**
- **Initial sentence**
- **Revocation**
- **Parole**

Methodology

Data sources:

- Arrest: CBI National Incidence-Based Reporting System
- Court filing, outcome & sentencing: State Judicial Branch
- Probation: State Judicial Branch
- Parole: Department of Corrections

- Analyses conducted by DCJ
- Results presented by race/ethnicity, gender, crime type, and judicial district
- Hispanic ethnicity is not captured by court data. DCJ wrote an algorithm that predicts ethnicity and it cross-checks well with other datasets.

Reporting Methods-Report

SUMMARY: Report on the C.L.E.A.R. Act

Community Law Enforcement Action Reporting Act

Pursuant to Senate Bill 2015-185

Presented to the House and Senate Judiciary Committees of the Colorado General Assembly

Race/ethnicity	N population	% population	N arrests	% arrests
White	3,593,144	71%	19,659	57%
Hispanic	1,039,802	20%	59,848	29%
Black	228,485	4%	25,604	12%
Other	231,101	5%	4,285	2%

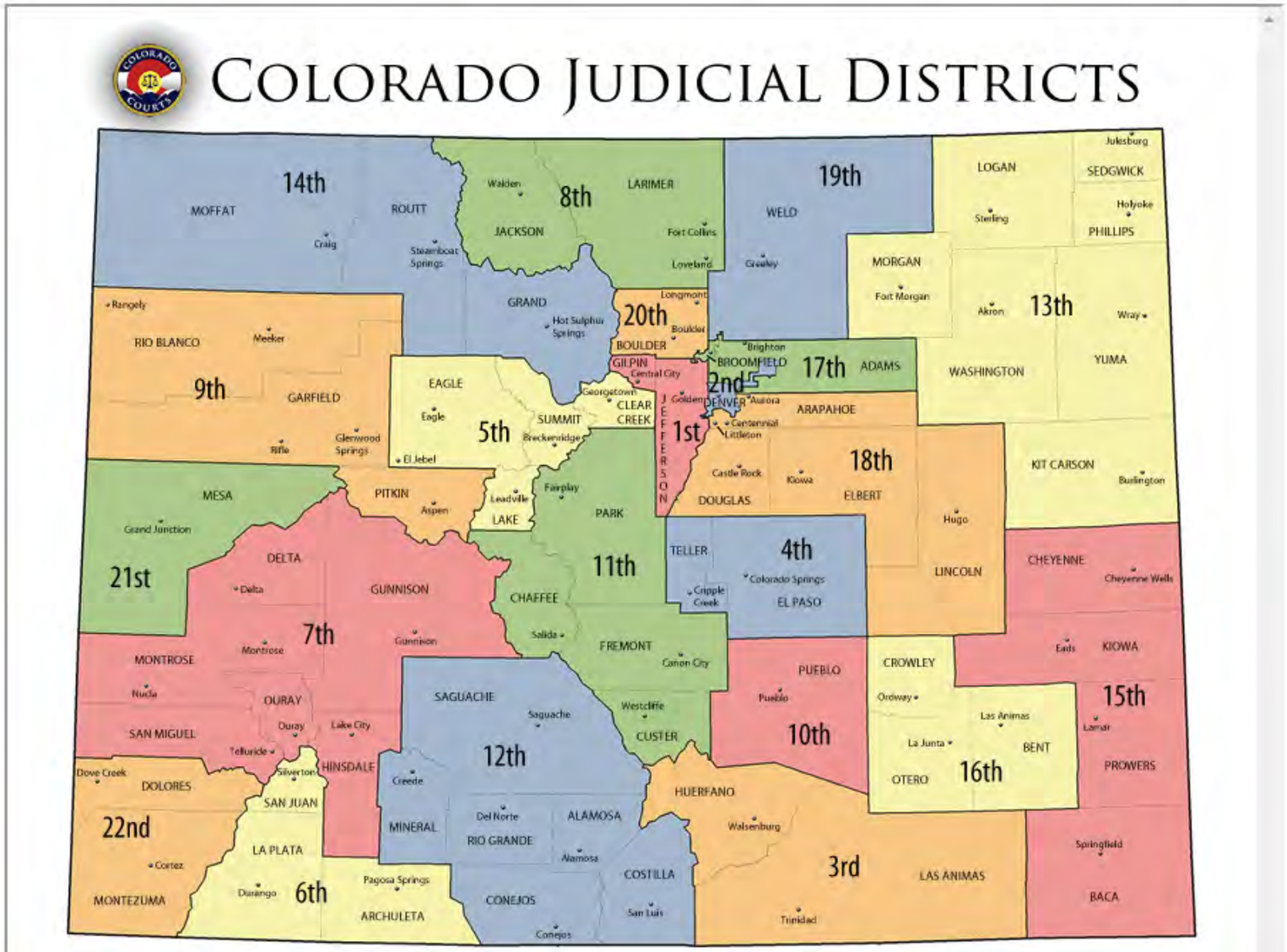
Population distribution in Colorado, by race/ethnicity, 2019

Source: Colorado State Demography at **demography.dola.colorado.gov**
Note: Juvenile population is 10-17 years old.

Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Reporting Methods-Dashboard

Race/Ethnicity at Criminal Justice Decision Points - 2019 Map



Statewide Data

Arrest Rates

Arrests Dashboard

Arrest_Summons | Case Filed | Filing Outcome | Sentences | Revocations

Judicial District: All

Arrest/Summons by Race and Ethnicity

Race/Ethnicity Distribution - 2019

	Adult		Juvenile		Grand Total	
White	3,246,785	72%	346,359	59%	3,593,144	71%
Hispanic	854,792	19%	185,010	31%	1,039,802	20%
Black	196,354	4%	32,131	5%	228,485	4%
Other	203,442	5%	27,659	5%	231,101	5%
Grand Total	4,501,373	100%	591,158	100%	5,092,532	100%

Provided by the State Demography office https://demography.dola.colorado.gov
Note: Juvenile population is 10-17 years old

Per the CLEAR Act, the data presented here include information concerning arrests classified as on view/probable cause (an arrest without a warrant but with probable cause, resulting in physical restraint), summons (an order to appear in court), and custody/warrant (an arrest that involves an outstanding warrant and physical restraint). More than 209,000 NIBRS incidents were analyzed for 2019; 36% were on view/probable cause arrests, about 33% were summonses, and 31% were custody/warrant arrests.

Law enforcement data for the period between January 1, 2019 and December 31, 2019 were obtained from the Colorado Bureau of Investigation's National Incident-Based Reporting System (NIBRS). The arrest information includes 17 offense categories summarized from more than 40. Please see Appendix A of the REPORT for details regarding the offense categories.

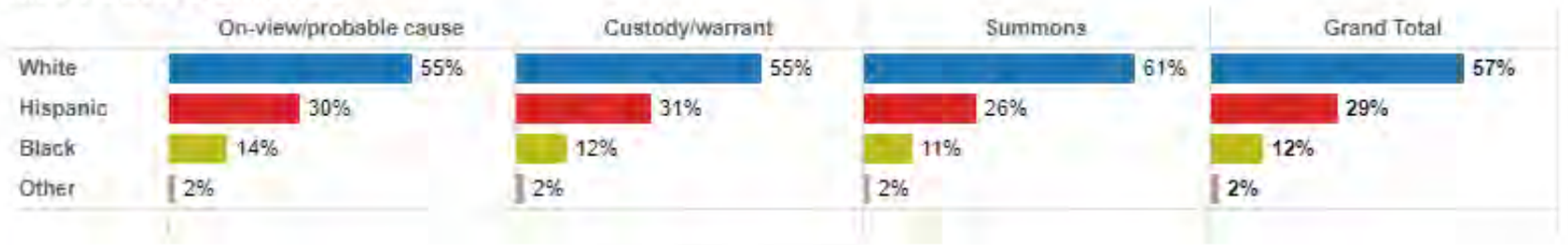
Race/ethnicity was determined using a statistical model. See Appendix C of the REPORT for more information.

The 17 categories of offenses have been summarized into Violent, Property, Other and Drug crime groups. Click on any of these to obtain information on specific types of crimes that fall into these larger categories. In 2019, Violent offenses represented 13% of arrests/summonses, Property offenses represented 15% of arrests/summonses, Other offenses were 63% of arrests/summonses, and Drugs were 10% of

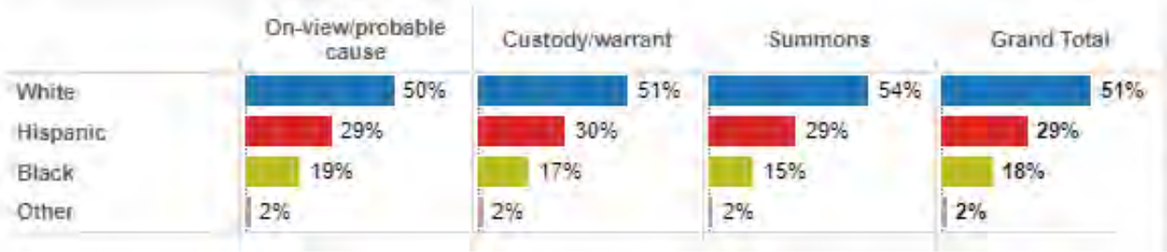
(All)
Female
Male

(All)
Adult
Juvenile

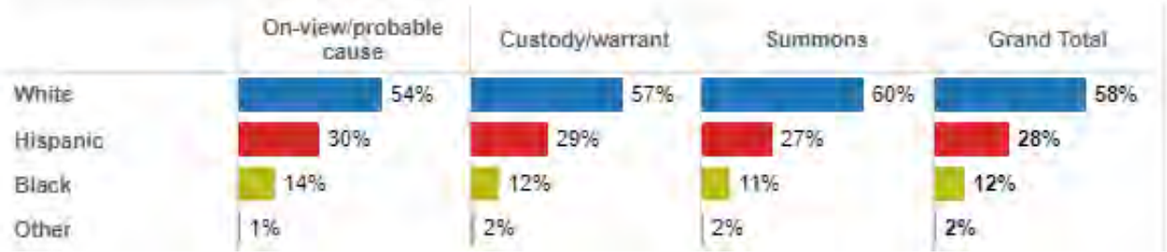
All Offenses Combined



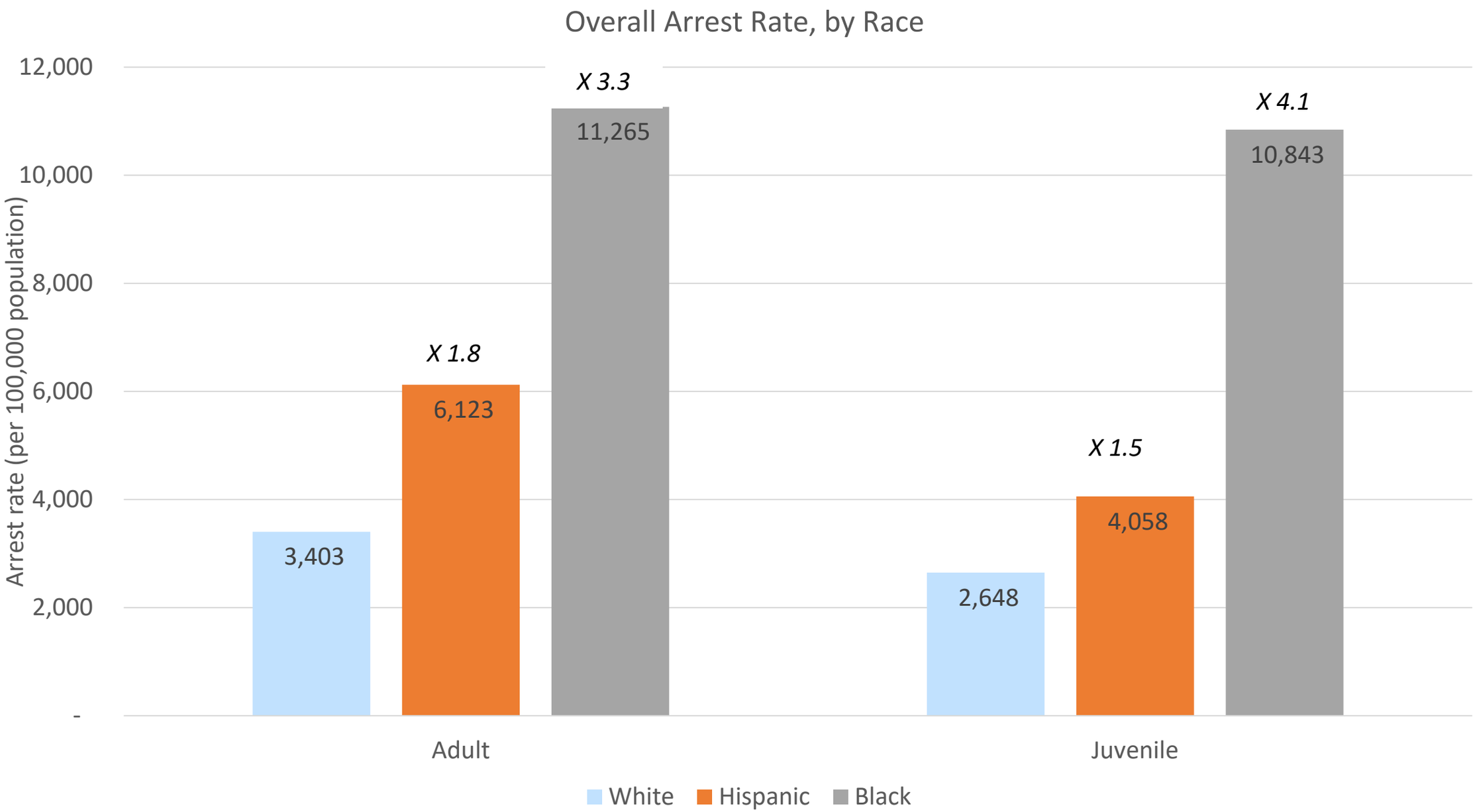
Violent Offenses
(All)



Property Offenses
(All)

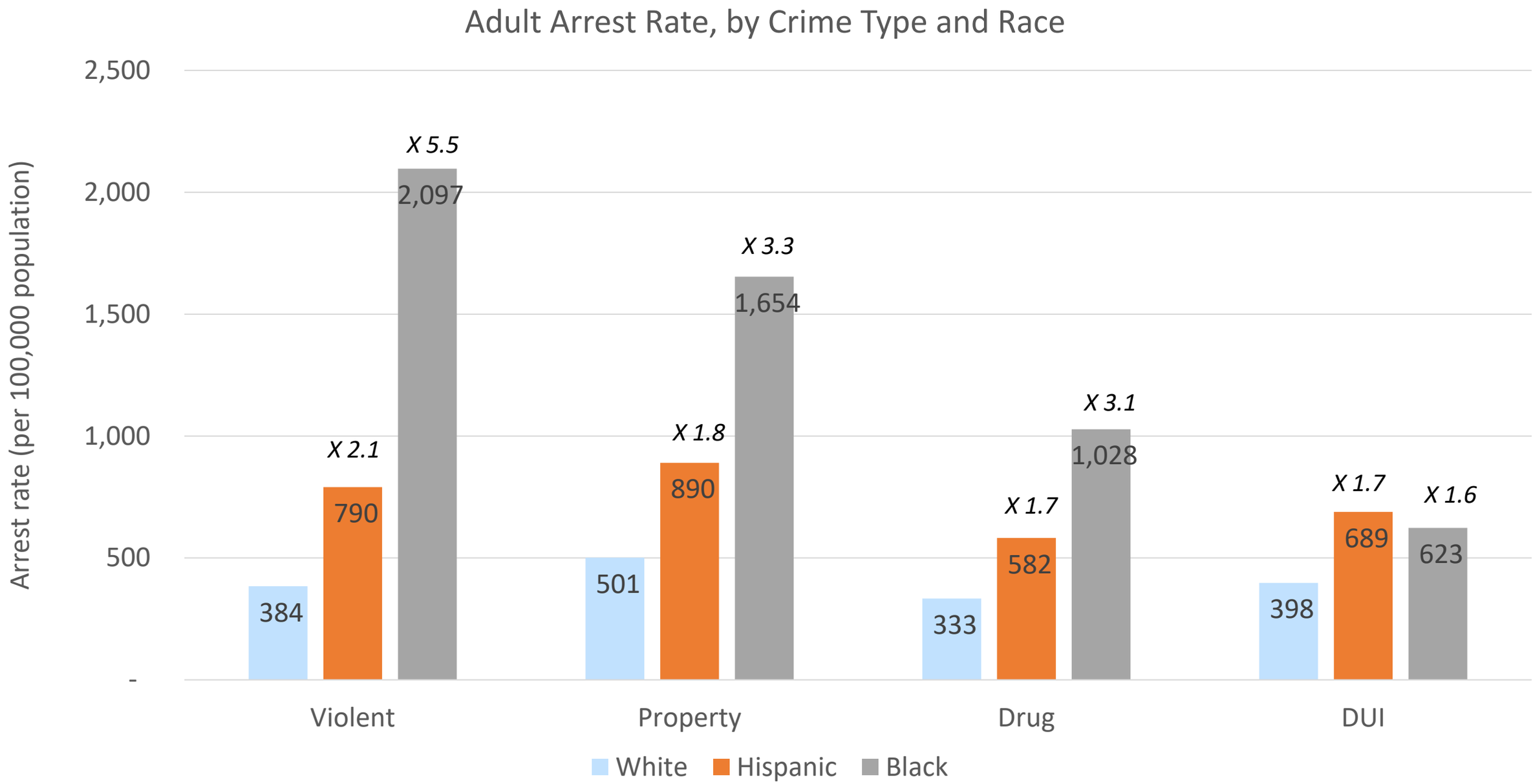


Arrest Rates & Disparity, 2019



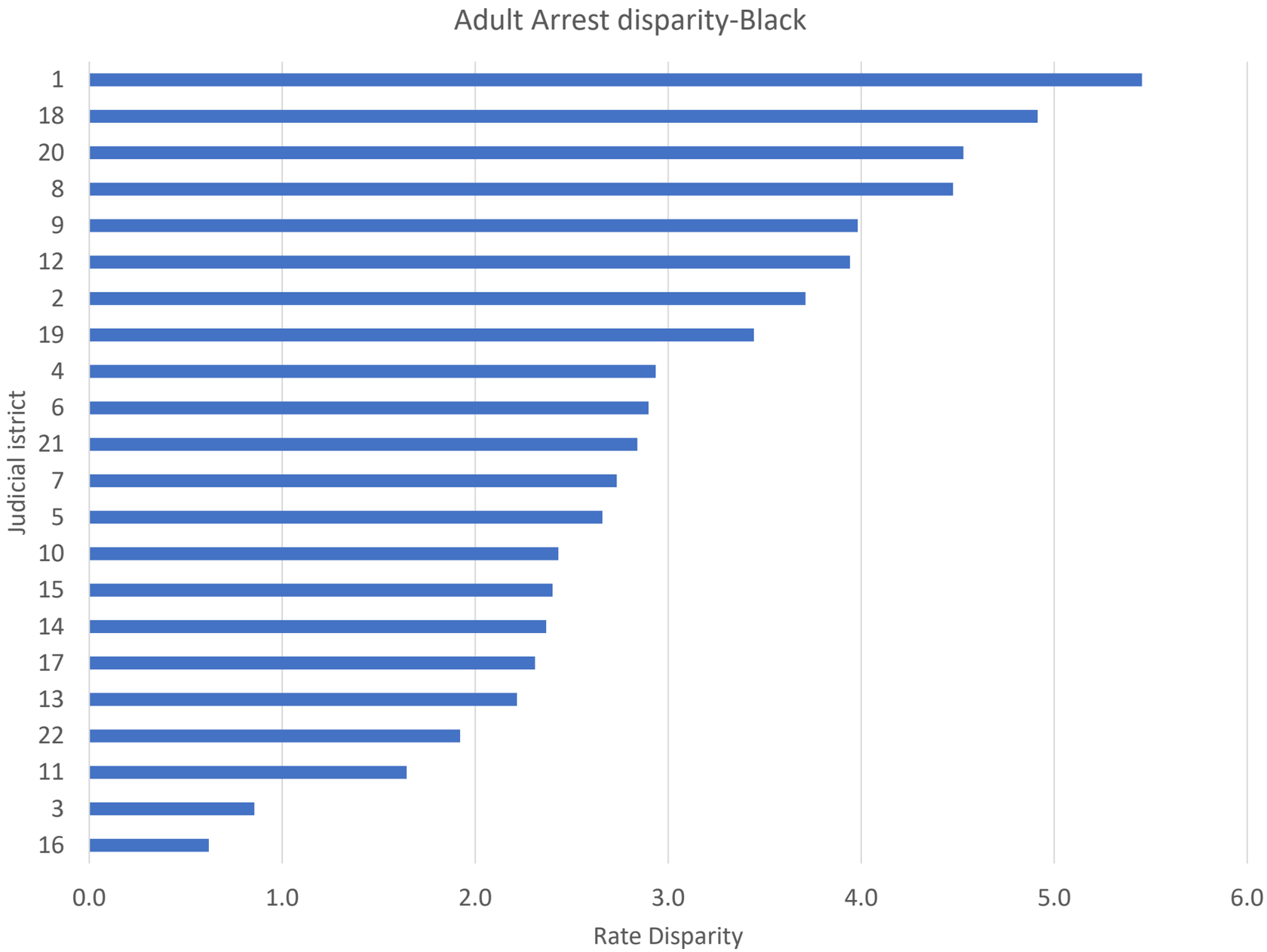
Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Adult Arrest Rates & Disparity, 2019



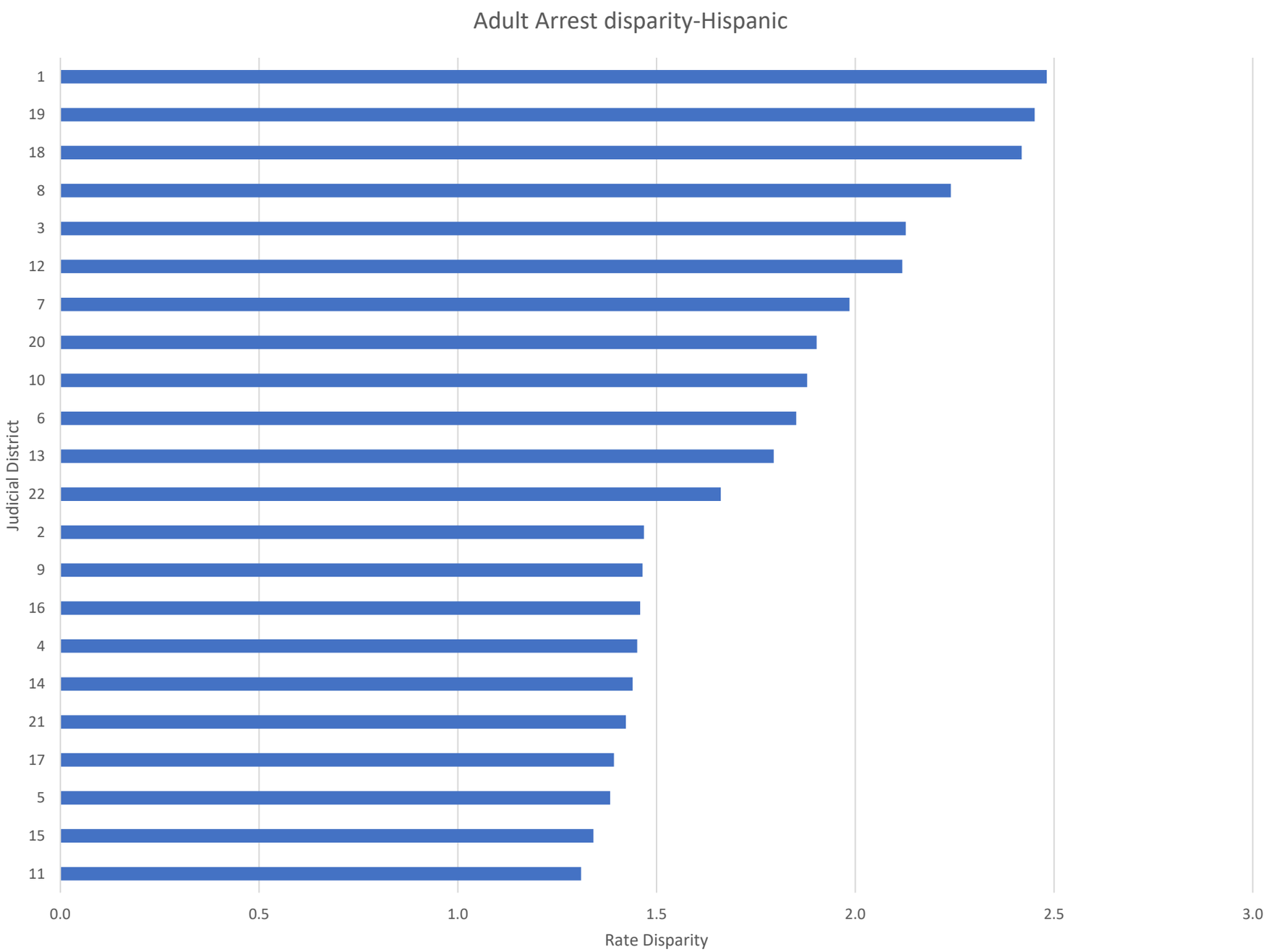
*Note: Violent offenses include murder, robbery, sexual assault, aggravated assault, **simple assault**, and kidnapping.*
Property offenses include burglary, theft, motor vehicle theft, arson, and fraud.
Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Adult Black Arrest Disparity, 2019



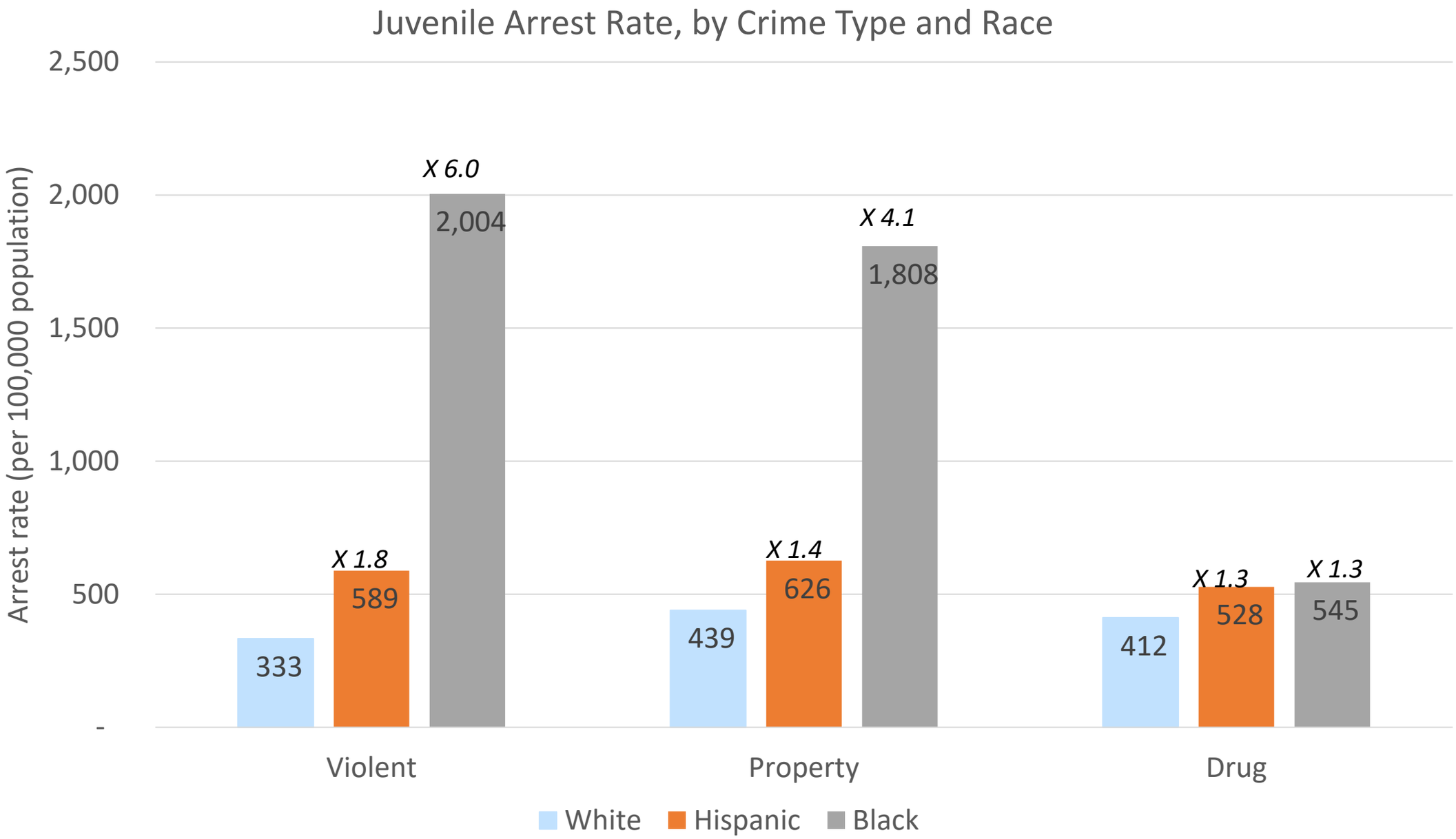
*Note: Violent offenses include murder, robbery, sexual assault, aggravated assault, **simple assault**, and kidnapping.*
Property offenses include burglary, theft, motor vehicle theft, arson, and fraud.
Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Adult Hispanic Arrest Disparity, 2019



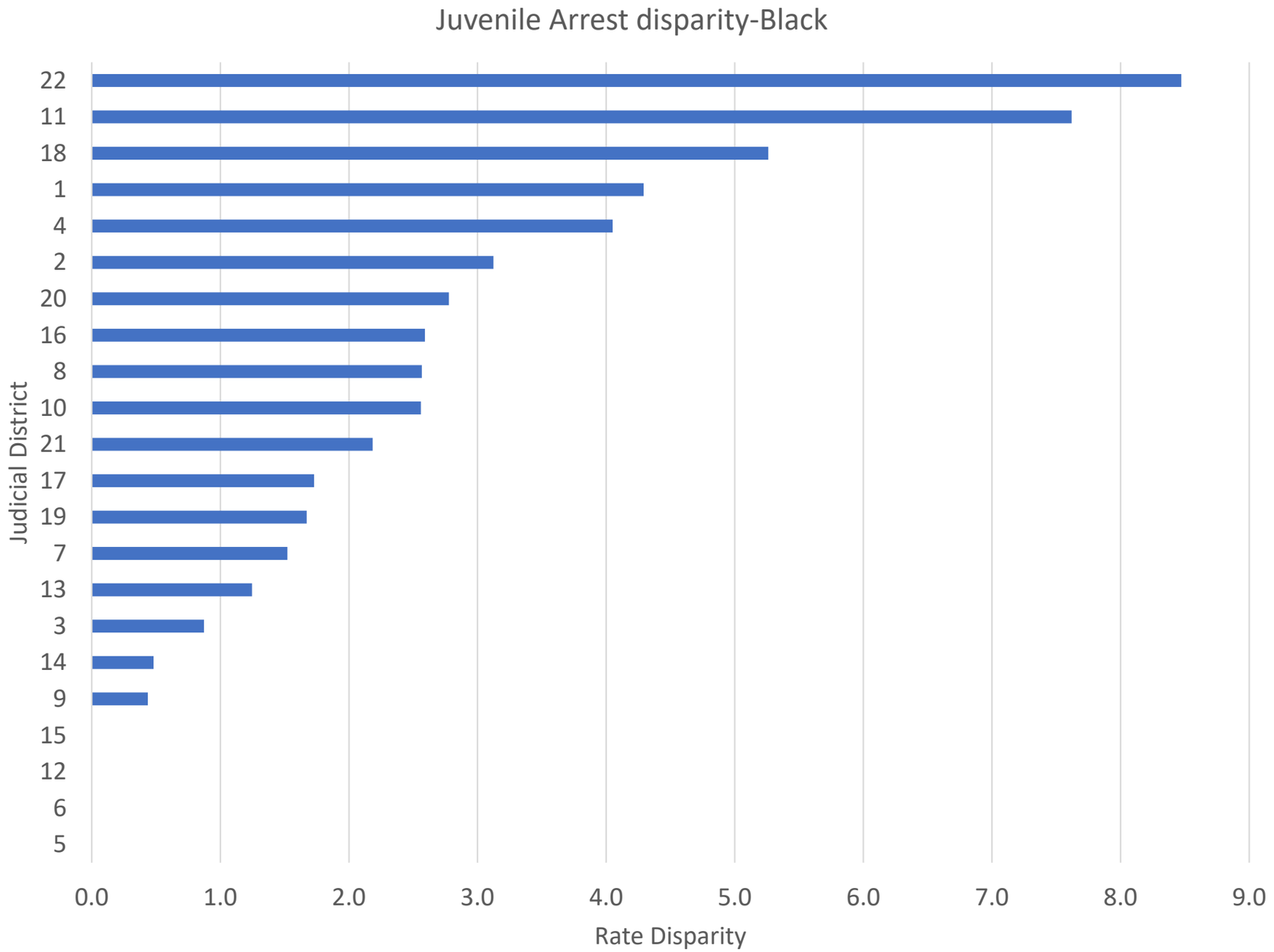
*Note: Violent offenses include murder, robbery, sexual assault, aggravated assault, **simple assault**, and kidnapping.*
Property offenses include burglary, theft, motor vehicle theft, arson, and fraud.
Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Juvenile Arrest Rates & Disparity, 2019



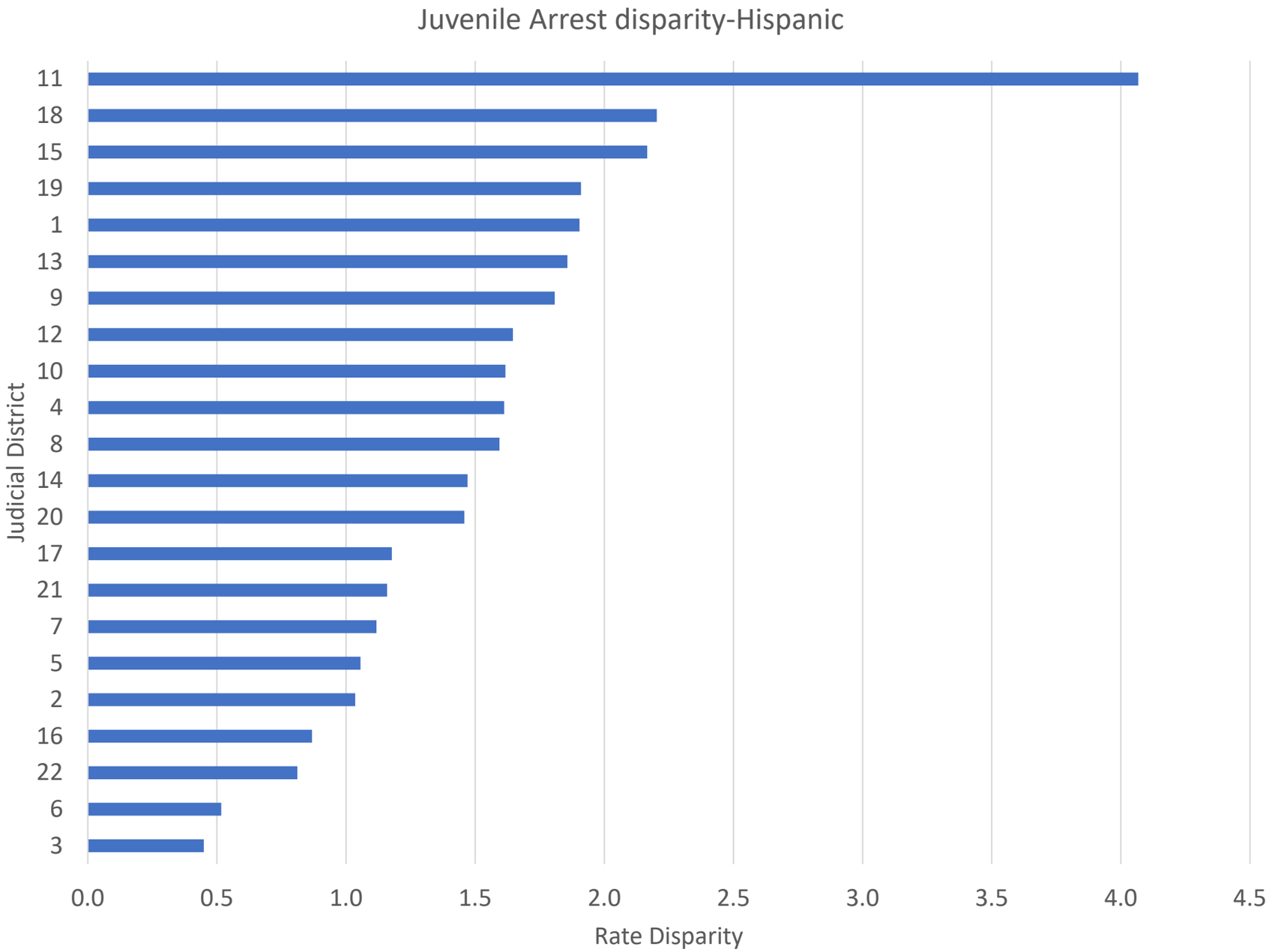
*Note: Violent offenses include murder, robbery, sexual assault, aggravated assault, **simple assault**, and kidnapping.*
Property offenses include burglary, theft, motor vehicle theft, arson, and fraud.
Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Juvenile Black Arrest Disparity, 2019



*Note: Violent offenses include murder, robbery, sexual assault, aggravated assault, **simple assault**, and kidnapping.*
Property offenses include burglary, theft, motor vehicle theft, arson, and fraud.
Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Juvenile Hispanic Arrest Disparity, 2019



Note: Violent offenses include murder, robbery, sexual assault, aggravated assault, ***simple assault****, and kidnapping.*
Property offenses include burglary, theft, motor vehicle theft, arson, and fraud.
Source: Colorado Bureau of Investigation, National Incident-Based Reporting System. Data extracted 6/10/2020.

Court Filings & Sentences

Court Filings-Dashboard

Arrest_Summons | Case Filed | Filing Outcome | Sentences | Revocations

Judicial District: All

Cases Filed by Race and Ethnicity

Race/Ethnicity Distribution - 2019

	Adult		Juvenile		Grand Total	
White	3,246,785	72%	346,359	59%	3,593,144	71%
Hispanic	854,792	19%	185,010	31%	1,039,802	20%
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Other	203,442	5%	27,659	5%	231,101	5%
Grand Total	4,501,373	100%	591,158	100%	5,092,532	100%

Provided by the State Demography office, https://demography.dola.colorado.gov
Note: Juvenile population is 10-17 years old.

ICON is the Colorado Judicial Branch's information management system, and this is the source o
ling information presented below for calendar year 2019. ICON contains county and district court
venile case filings and dispositions statewide, with the exception of Denver County Court which is
ICON. Consequently, Denver County Court data are excluded from all analyses presented here.

The crime information analyzed here reflects the most serious filing or conviction charge, based o
anor or felony classification, for 25 offense categories summarized from hundreds of criminal statu
25 offense categories are collapsed below into four broad groups: Violent, Property, Other and Dr
n any of these to obtain information on specific types of crimes that fall into these larger categorie
ee Appendix B in the REPORT for information regarding the crime categories.

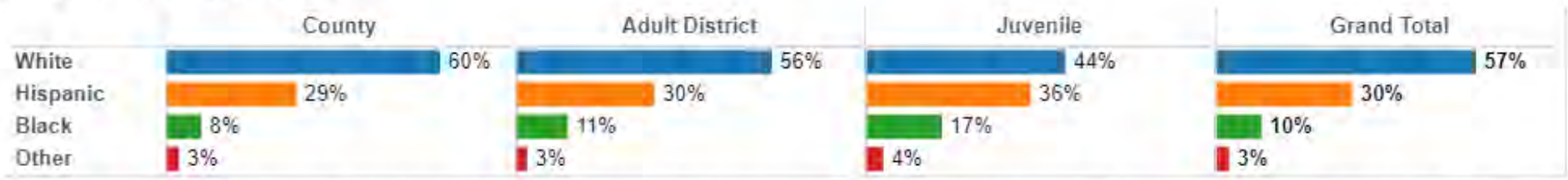
The data are presented by court type: county, adult district, and juvenile. County court contains bo
d juvenile misdemeanor cases. Juveniles who were charged as adults are in adult district court. T
es are not in this analysis unless they appeared in a District or County court case.

Note that the information presented here reflects the analysis of 115,964 cases not individuals. In
ay have multiple, concurrent cases, and cases typically have multiple charges. This analysis focus
most serious charge as defined by felony or misdemeanor level. All offenses include attempts, sol

(All)
Female
Male

(All)
Adult
Juvenile
Unknown

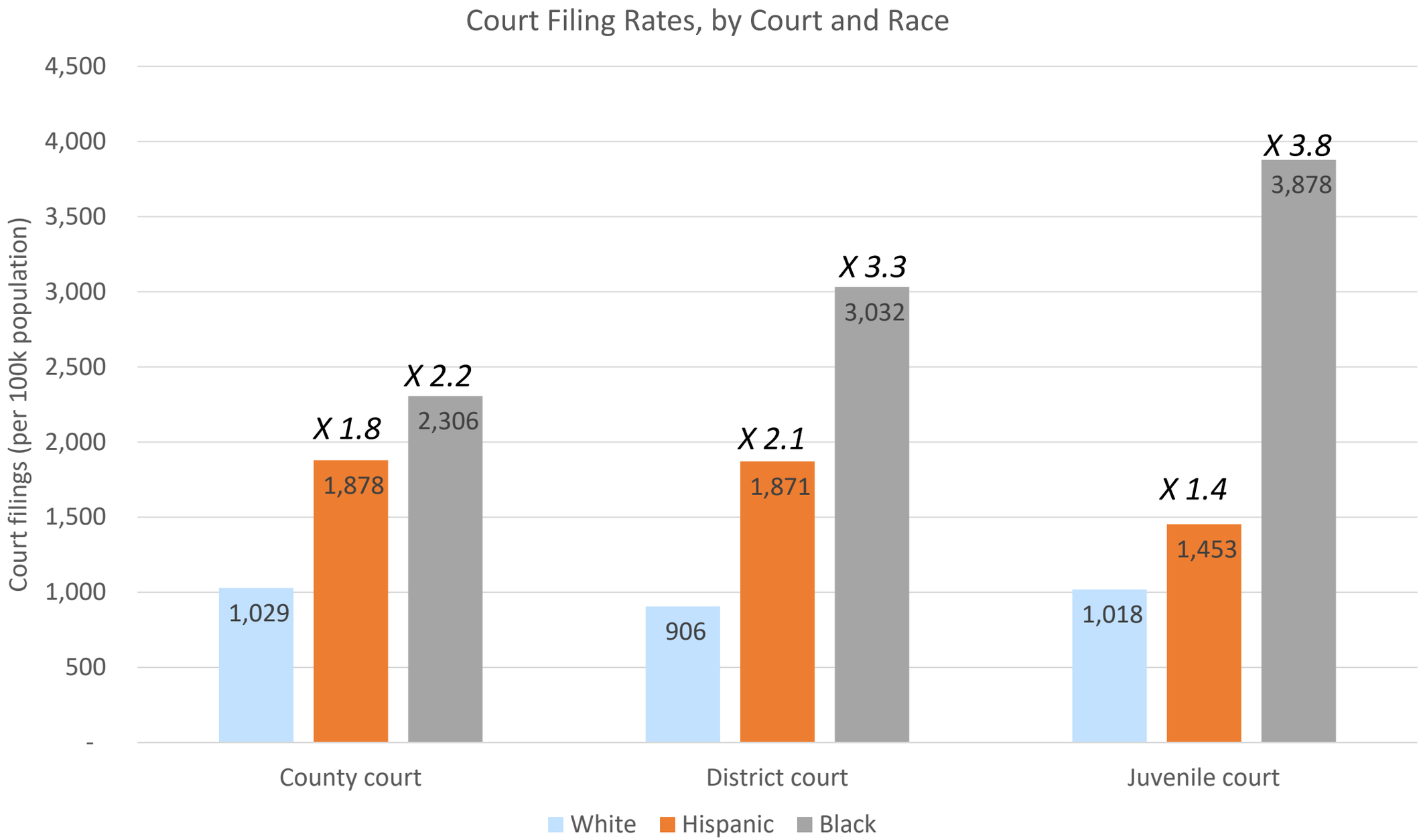
All Offenses Combined



** The Judicial Department collects race but not ethnicity. Therefore, hispanic ethnicity was determined using a DCJ-developed statistical model. See APPENDIX C of the REPORT for more information.*

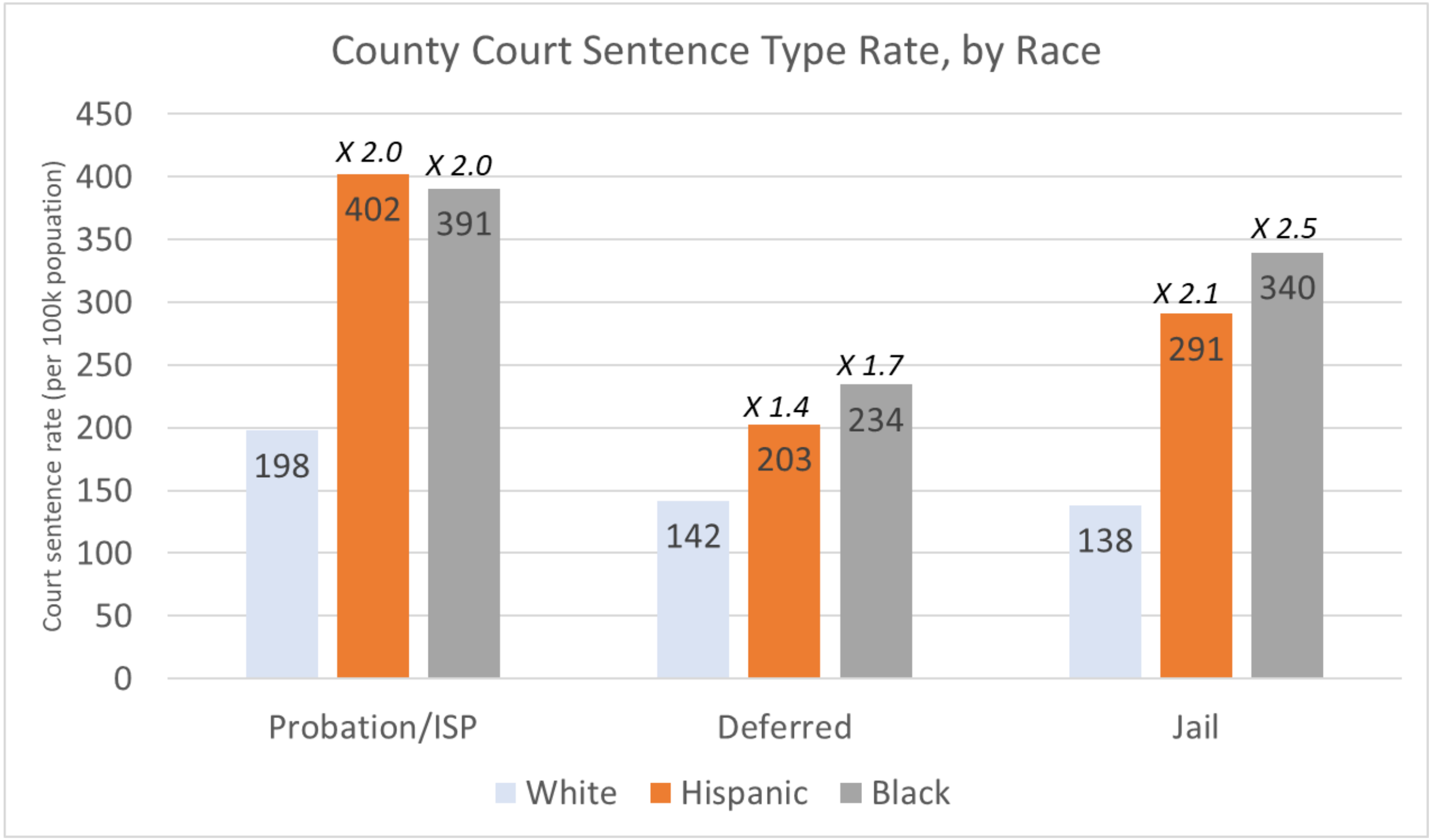
Source: Colorado State Judicial Branch with analysis by Division of Criminal Justice.

Court Filing Rates & Disparity, 2019



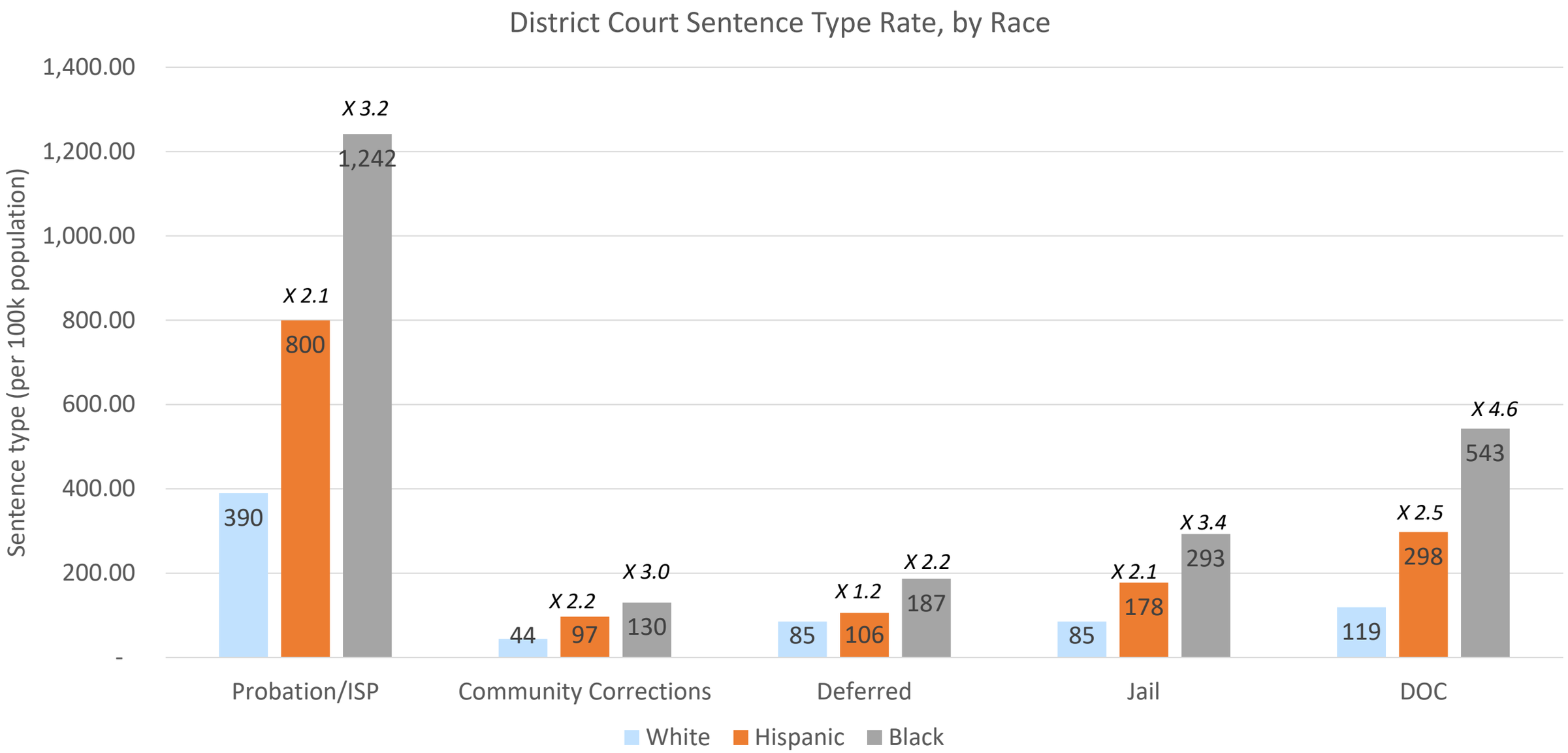
Source: Colorado State Judicial Branch with analysis by Division of Criminal Justice.

County Court Sentencing Rates & Disparity, 2019



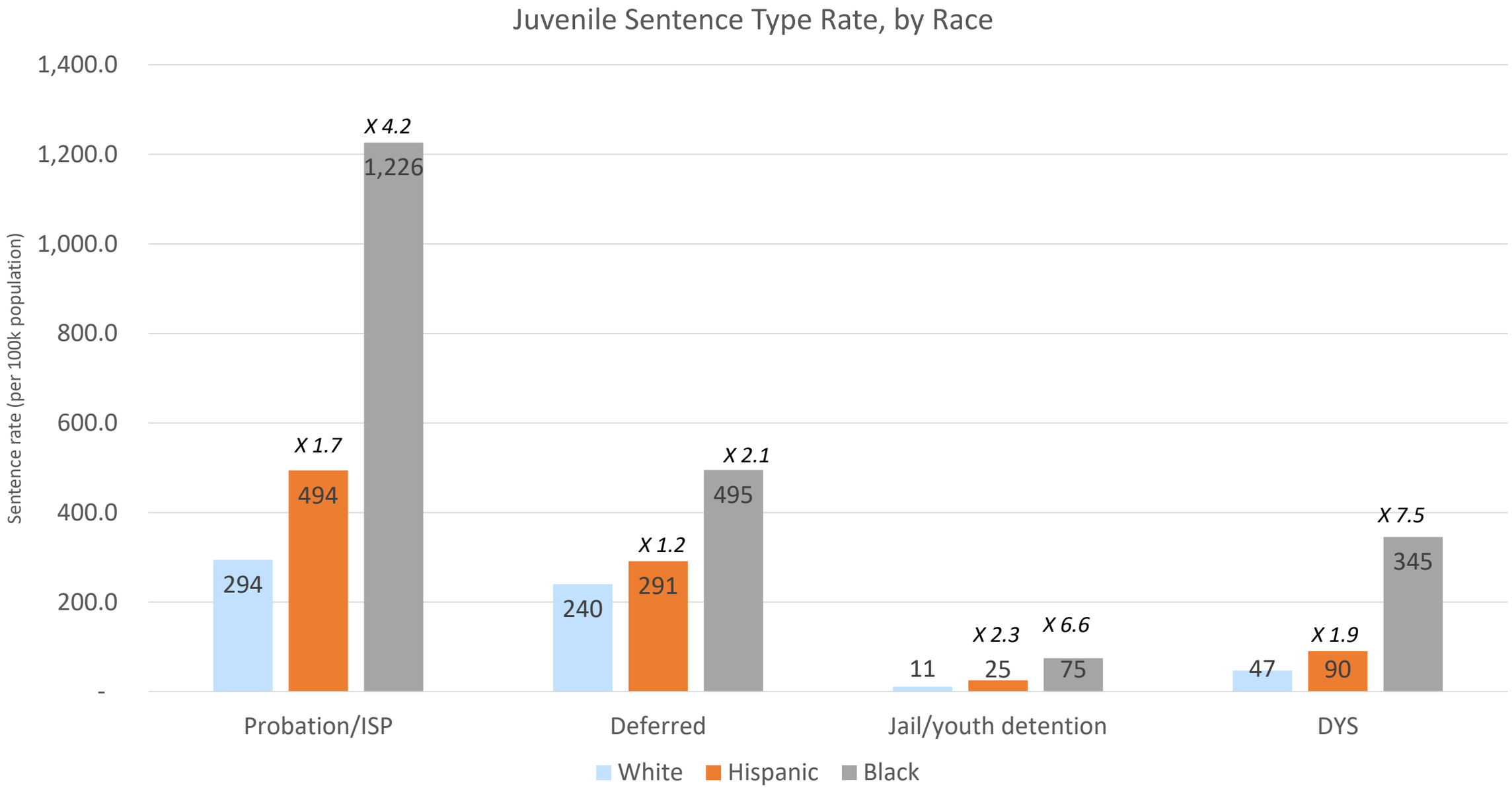
Source: Colorado State Judicial Branch with analysis by Division of Criminal Justice.

District Court Sentencing Rates & Disparity, 2019



Source: Colorado State Judicial Branch with analysis by Division of Criminal Justice.

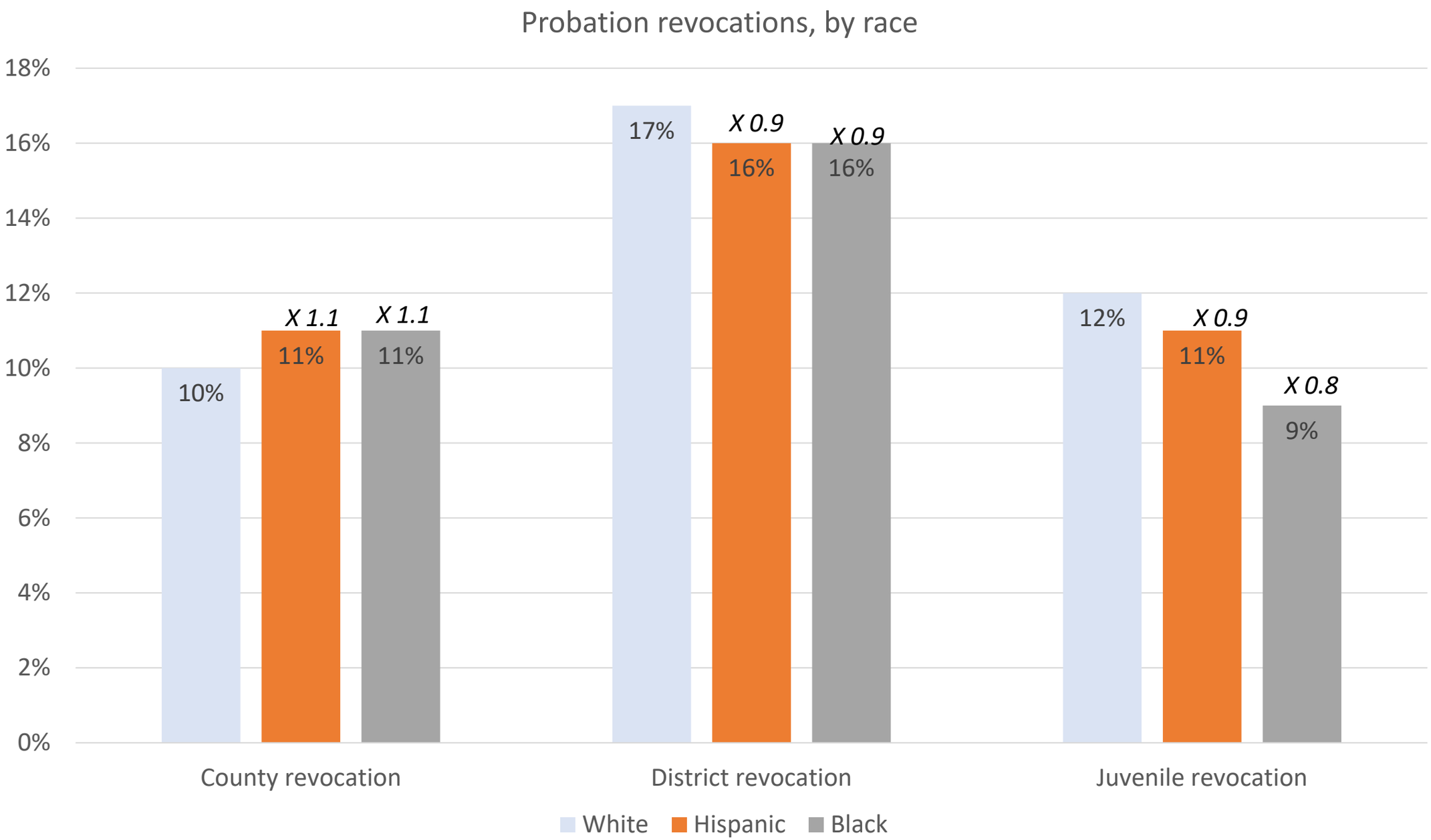
Juvenile Sentencing Rates & Disparity, 2019



Note: Community sentence includes probation/intensive supervision or deferred judgment. Incarceration includes prison & jail.
Source: Colorado State Judicial Branch with analysis by Division of Criminal Justice.

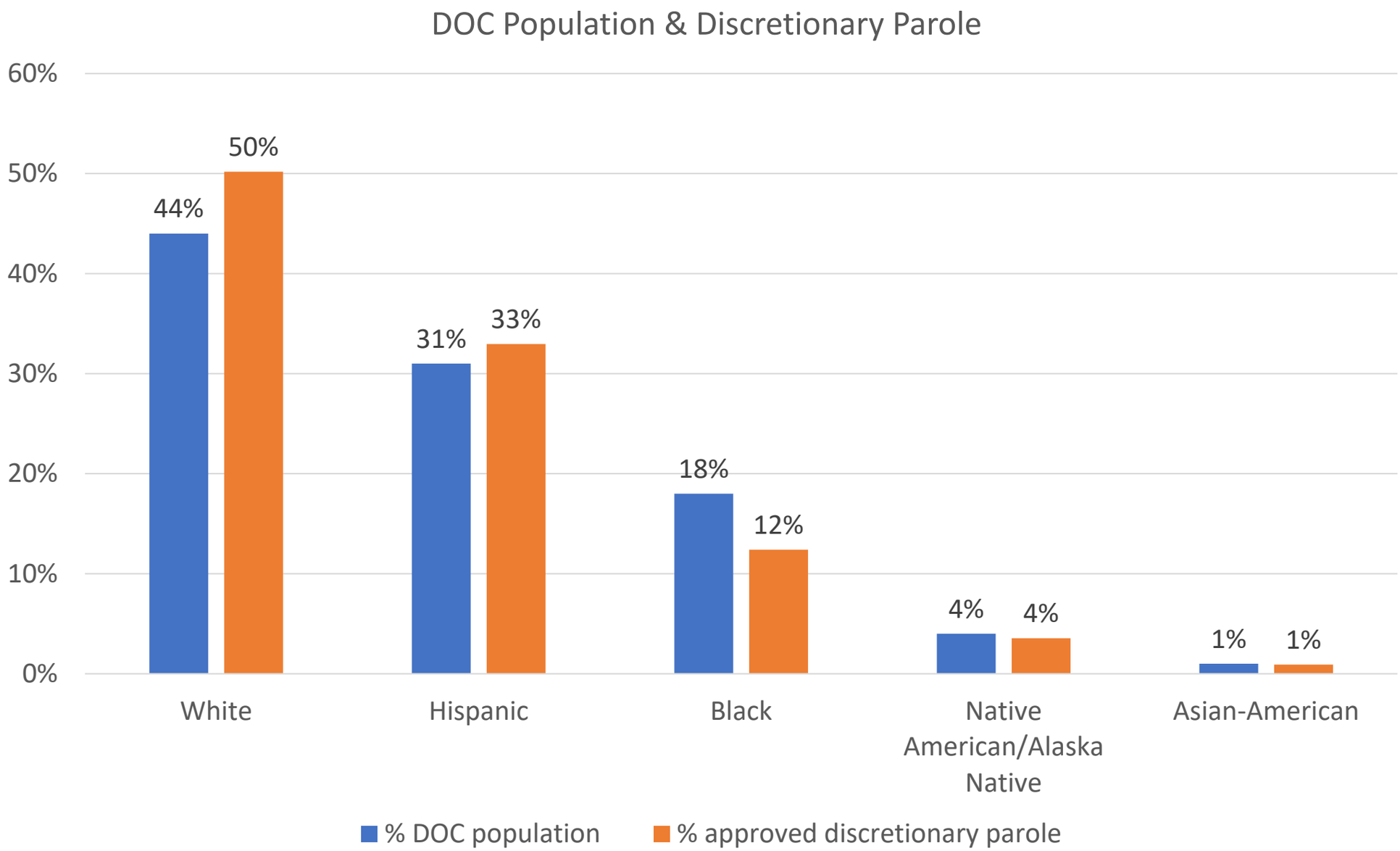
Probation Revocations

Probation Revocation Rates & Disparity, 2019



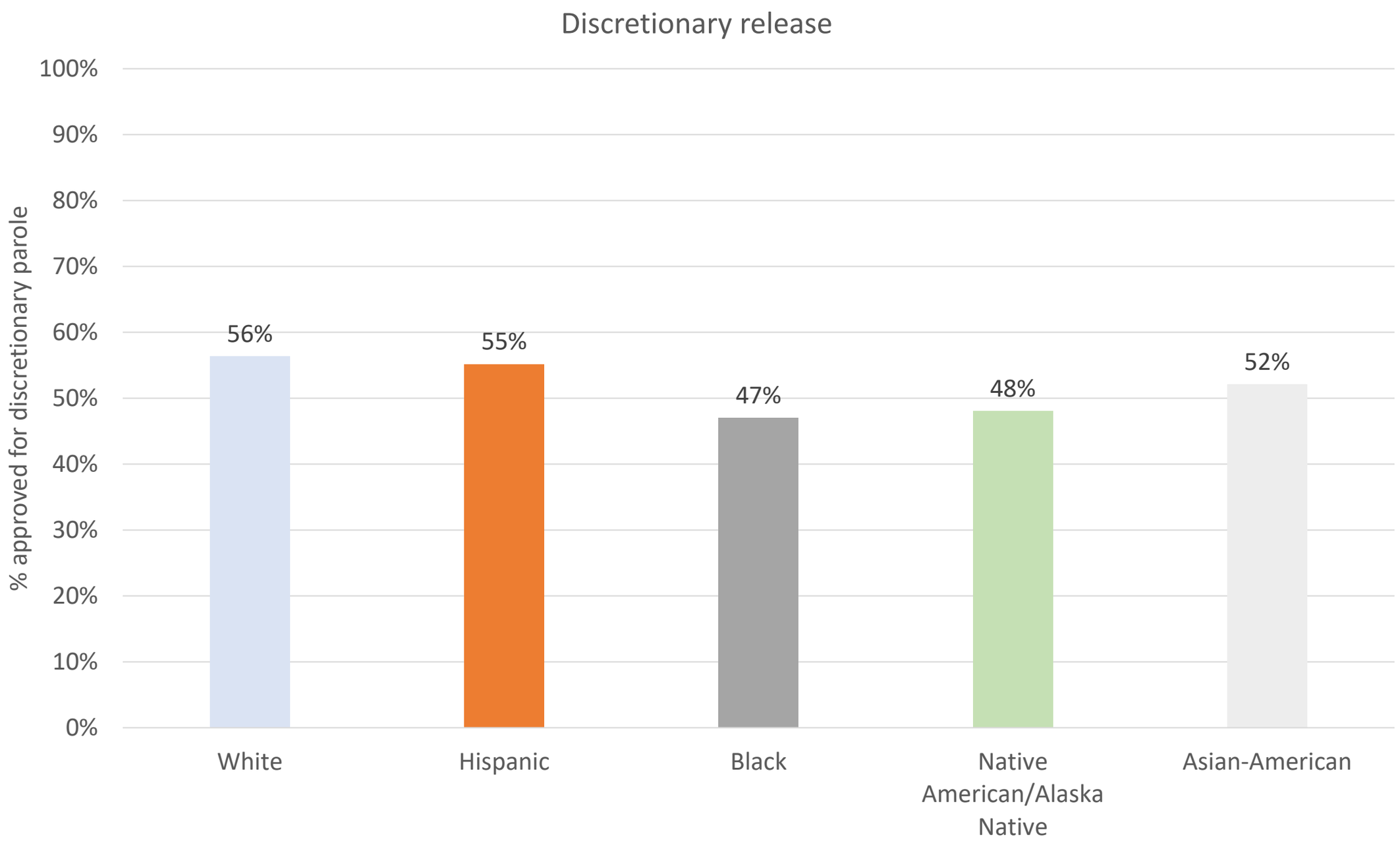
Parole Decisions

DOC Population & Parole Discretionary Release, 2019



Source: cdoc.colorado.gov/about/data-and-reports/statistics

Parole Discretionary Release Decision, 2019



Possible Solutions

From the Brennan Center for Justice

***Reducing racial/ethnic disparities in jails* (2015)**

1. Focus on low level offenses

- Once stopped, Black/African Americans more likely to be arrested
- 2014 study by National Bureau of Economic Research found charges more likely to be filed following arrest compared to previous decades

- ***Expand pre-arrest diversion programs***
- ***Expand pre-charge and pretrial diversion programs***

From the Brennan Center for Justice
***Reducing racial/ethnic disparities in jails* (2015)**

2. Focus on unnecessary use of pretrial detention

- Research shows length of pretrial detention is linked to longer post-sentence confinement in jail and prison
- Blacks more likely to be confined pre-trial
- Leads to loss of job, housing, healthcare

- ***Use risk assessment tools***
- ***Expand pretrial services programs***
- ***Divert low-level offenders***
- ***Eliminate money-based pretrial systems***

From the Brennan Center for Justice

***Reducing racial/ethnic disparities in jails* (2015)**

3. Consider the aggressive collection of criminal justice debt

- Racial disparities are reinforced by socioeconomic inequality
- ***Assess individuals' abilities to pay***

4. Everyone who exercises discretion: Undergo training to identify and confront implicit racial/ethnic bias

From the President's Task Force on 21st Century Policing

Law enforcement agencies should…

- Embrace a guardian mindset, promoting the dignity of all individuals and protecting everyone's Constitutional rights (Procedural Justice)
- Consider the collateral damage of any given safety strategy on public trust
- Strive to create a diverse workforce
- Infuse community policing and problem solving principles throughout the organizational structure
- Work with schools to develop alternatives to suspension/expulsion
- Ensure training occurs throughout an officer's career with procedural justice at the center/lessons to improve social interactions/lessons on addiction/ lessons on recognizing and confronting implicit bias

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Presented to the Sentencing Alternatives/Decisions & Probation Working Group of the Sentencing Reform Task Force (SRTF) of the Colorado Commission on Criminal and Juvenile Justice (CCJJ)

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