

**KAREN ARNOLD-BURGER**

**CHIEF JUDGE**

**KANSAS COURT OF  
APPEALS**

**SEPTEMBER 13, 2023**

**RACE IN THE  
CRIMINAL  
JUSTICE SYSTEM  
KANSAS  
SENTENCING  
COMMISSION**

# RACE

- ▶ A race is a grouping or categorization of homo sapiens based on what are viewed as shared physical or social qualities by members of a society. People from different RACES are more than 99.9% the same in their DNA. To turn that around, less than 0.1% of all the DNA in our bodies accounts for the physical differences among people that we associate with racial differences.
- ▶ Race is a social construct, not a biological one. See, *Saint Francis Coll. v. Al-Khazraji*, 481 U.S. 604, 610, fn.4 (1987) (recognizing that racial classifications are sociopolitical, rather than biological, in nature.)

# SYSTEMIC RACISM

Discrimination or unequal treatment based on membership in a particular ethnic group (typically one that is a minority or marginalized), arising from systems, structures, or expectations that have become established within society or an institution

Examples:

Redlining

Education

Healthcare

Immigration Policy-1924 Quota

Criminal Justice System



COLORED

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# POST-RACIAL AMERICA?

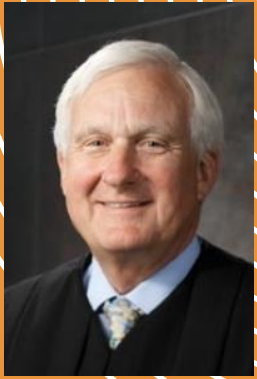
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Washington  
Supreme Chief  
Justice Steven C.  
González, at his  
swearing-in  
ceremony January  
2021.

**“We promise to follow through with our commitment to eradicate bias in the justice system. Not just to point it out and recognize that it exists, but to come up with actual solutions and changes, structural and small, so that we actually can do this thing that we say we care about.”**

”



**Rhode Island  
Supreme Court  
Chief Justice Paul  
A. Suttell, March 31,  
2021, Open letter to  
Rhode Islanders,  
“THIS WE BELIEVE”**

**Our geographically stunning coastline served as a brutal vertex along the Triangle Trade route resulting in the amassing of tremendous wealth among prominent Rhode Island slavers and unspeakable cruelty to those held in bondage. This nation’s “original sin” of slavery and its progeny, including racial discrimination and institutional racism, have roots in Rhode Island, and we are committed to confronting it within our judicial system. We want to instill confidence in the Black, Latino, Latina, LGBTQ and all under-represented communities that Rhode Island’s courts are their courts, and we will fulfill our constitutional mandate that they receive equal treatment under the law.**



Chief Justice of  
Supreme Court of  
Connecticut Richard A.  
Robinson, 2020  
Connecticut Legal  
Conference.

**It also takes courage to change a culture. I've been lucky to have learned from previous Chief Justices who displayed great courage in taking on certain aspects of our branch's own culture. . . It is time to stop generational baton passing and roll up our sleeves and do what's right, what is fair, and what is just. That's what leaders do. And both the branch and the entire legal community are in a unique position to bring about meaningful and lasting change.**





**Chief Justice of  
Supreme Court of  
Puerto Rico Maite D.  
Oronoz Rodríguez,  
2020 Brennan Lecture  
at NYU**

**While the problem of implicit bias is complex, there are measures that court administrators may take so that the judiciary is well-equipped to handle all cases in a fair and equitable manner, including those cases that implicate gender issues. Even though “[t]here is no smart pill that judges can take or “fail safe protocol” that can be followed, when it comes to gender there are icit bias in judicial decisions. Training can help judges understand the extent of their biases and promote self-correction. Furthermore, continuing judicial education and special protocols can enable judges to bring a gender perspective to adjudication.**

“

**CCJ and COSCA agree to continue and intensify our efforts to combat racial prejudice within the justice system, both explicit and implicit, and to recommit ourselves to examine what systemic change is needed to make equality under the law an enduring reality for all, so that the justice we provide not only is fair to all but also is recognized by all to be fair.”**

”

2020 VIRTUAL



**CCJ/COSCA**  
*Conference*

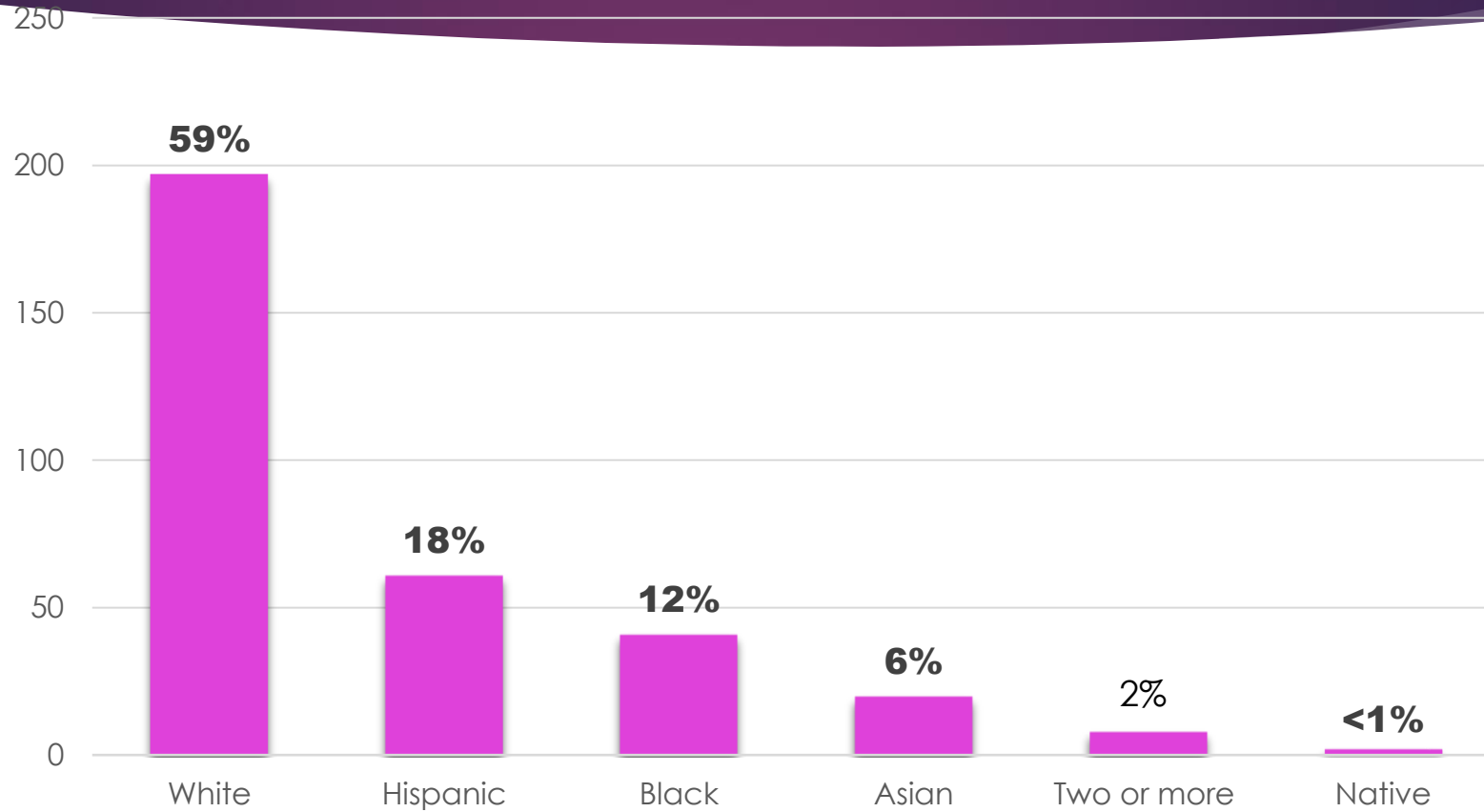


**“Label me a racist if you wish, but the cold fact is that African Americans comprise 12% of the nation’s population, but occupy nearly half the state and federal prison cells.”**

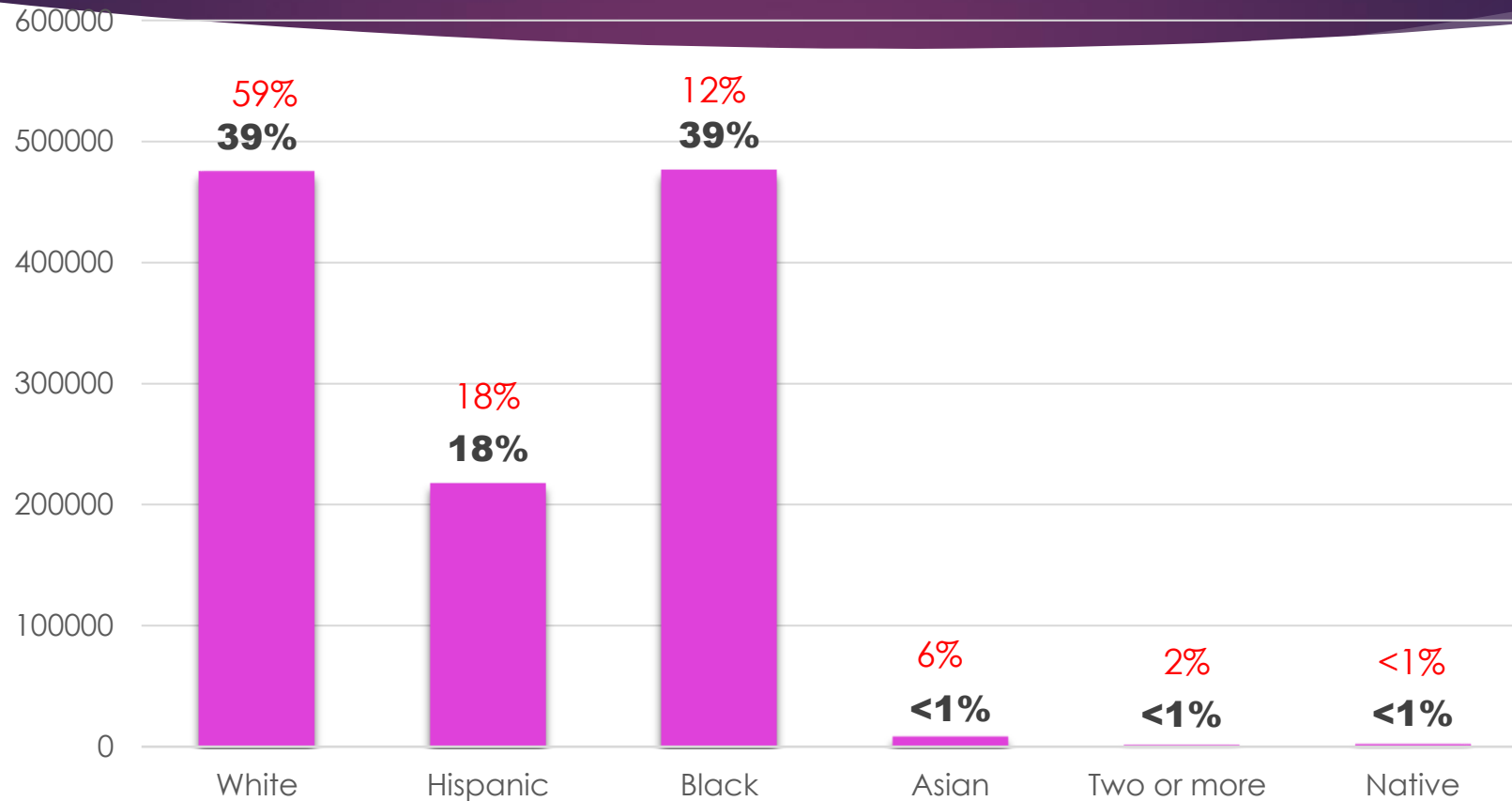
**CAPT. MARSHALL FRANK  
MIAMI-DADE PD**

**MEASURING SYSTEMIC  
RACISM IN OUR CRIMINAL  
JUSTICE SYSTEM**

# POPULATION DISTRIBUTION 2020



# PRISON DISTRIBUTION 2020



# KANSAS CENSUS JULY 1, 2022

15

## Race and Hispanic Origin

 White alone, percent	 85.9%
 Black or African American alone, percent (a)	 6.2%
 American Indian and Alaska Native alone, percent (a)	 1.2%
 Asian alone, percent (a)	 3.2%
 Native Hawaiian and Other Pacific Islander alone, percent (a)	 0.2%
 Two or More Races, percent	 3.3%
 Hispanic or Latino, percent (b)	 13.0%
 White alone, not Hispanic or Latino, percent	 74.3%

## Race

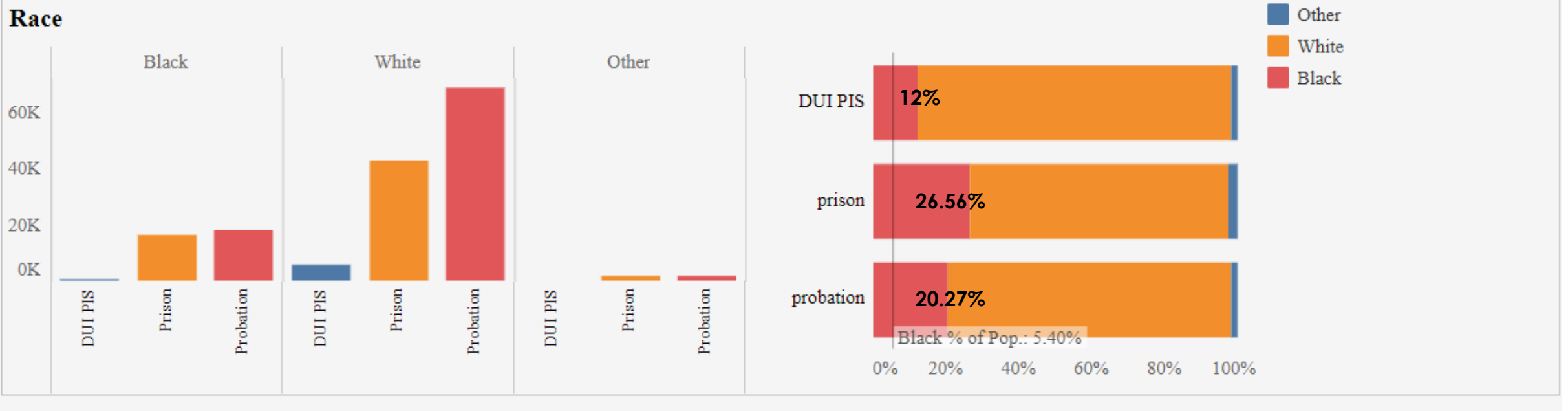
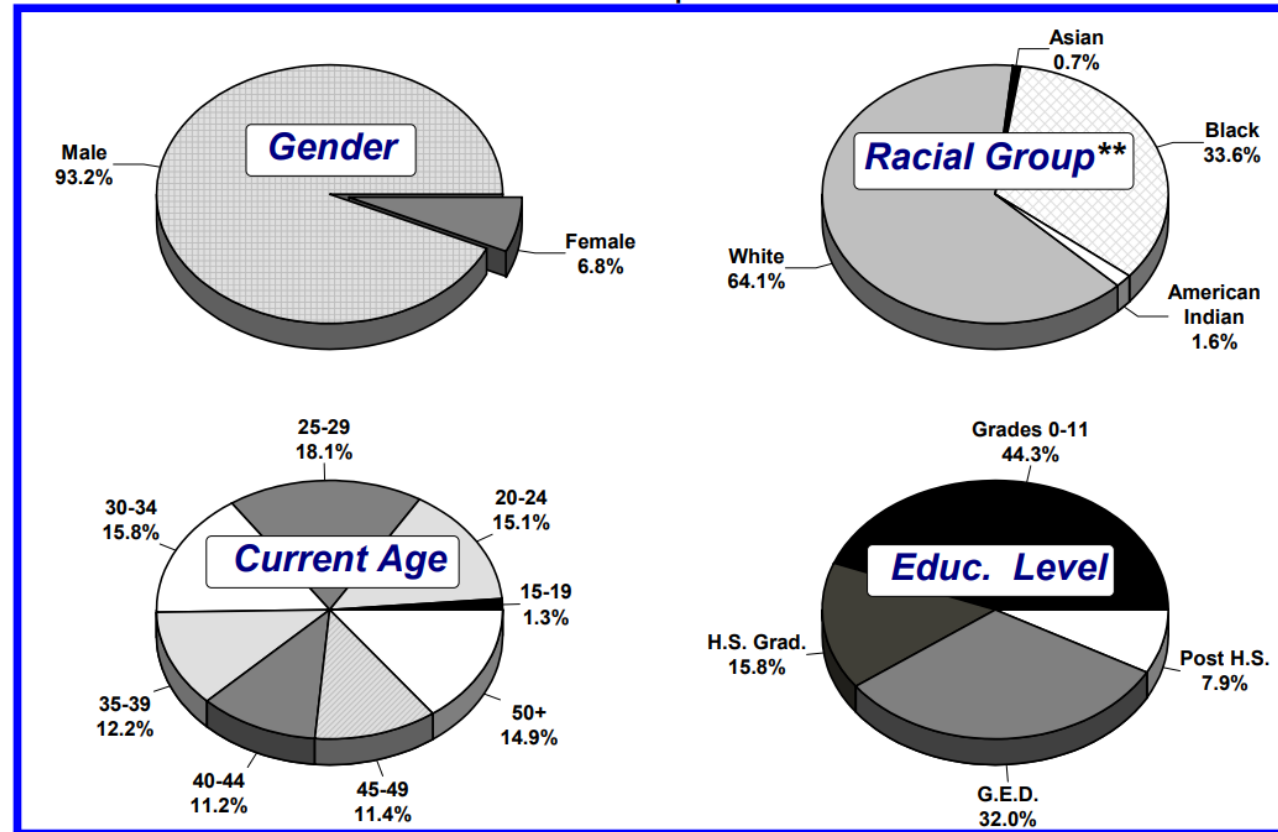


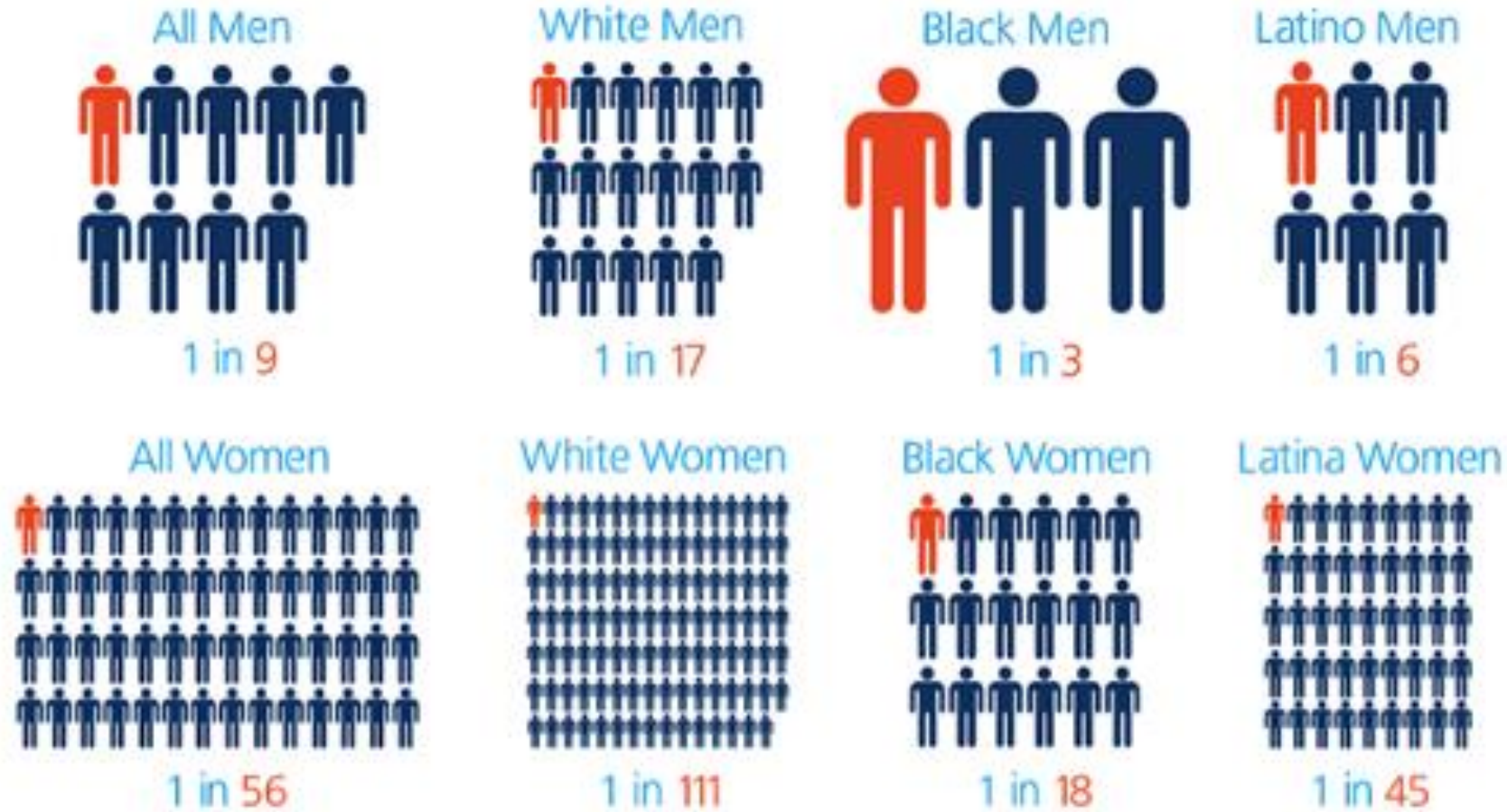


Figure 11  
Demographics: June 30, 2010  
Inmate Population\*



\*N=8,871 inmates. Information unavailable as follows: Current Age (n=0); Gender (n=0); Racial Group (n=0); Education Level (n=172). HG98 Chart Fig11-SP2010.pr4  
\*\*Not included as a separate racial category is "Hispanic" of which there were 891 inmates (872 of whom were in the "White" category, 15 in "Black," and 4 in other racial groups).

## Lifetime Likelihood of Imprisonment



Source: Bonczar, T. (2003). *Prevalence of Imprisonment in the U.S. Population, 1974-2001*. Washington, D.C.: Bureau of Justice Statistics

**PEOPLE THAT  
VIOLATE THE  
LAW SHOULD BE  
HELD  
ACCOUNTABLE  
REGARDLESS OF  
THEIR RACE**

**NO ONE IS CLAIMING THAT PEOPLE  
THAT VIOLATE THE LAW SHOULD NOT  
BE ARRESTED AND PUNISHED. AND IF  
BLACKS AND OTHER MINORITIES ARE  
DISPROPORTIONATLY VIOLATING THE  
LAW THEN THERE CAN BE NO SHAME  
IN THE DISPROPORTIONALITY IN  
PRISONS.**

**BUT SHOULDN'T WE TEST THAT  
UNDERLYING PRESUMPTION IN MORE  
THAN A "GUT" WAY?**

# DRUG USE IS NOT DISPROPORTIONATE

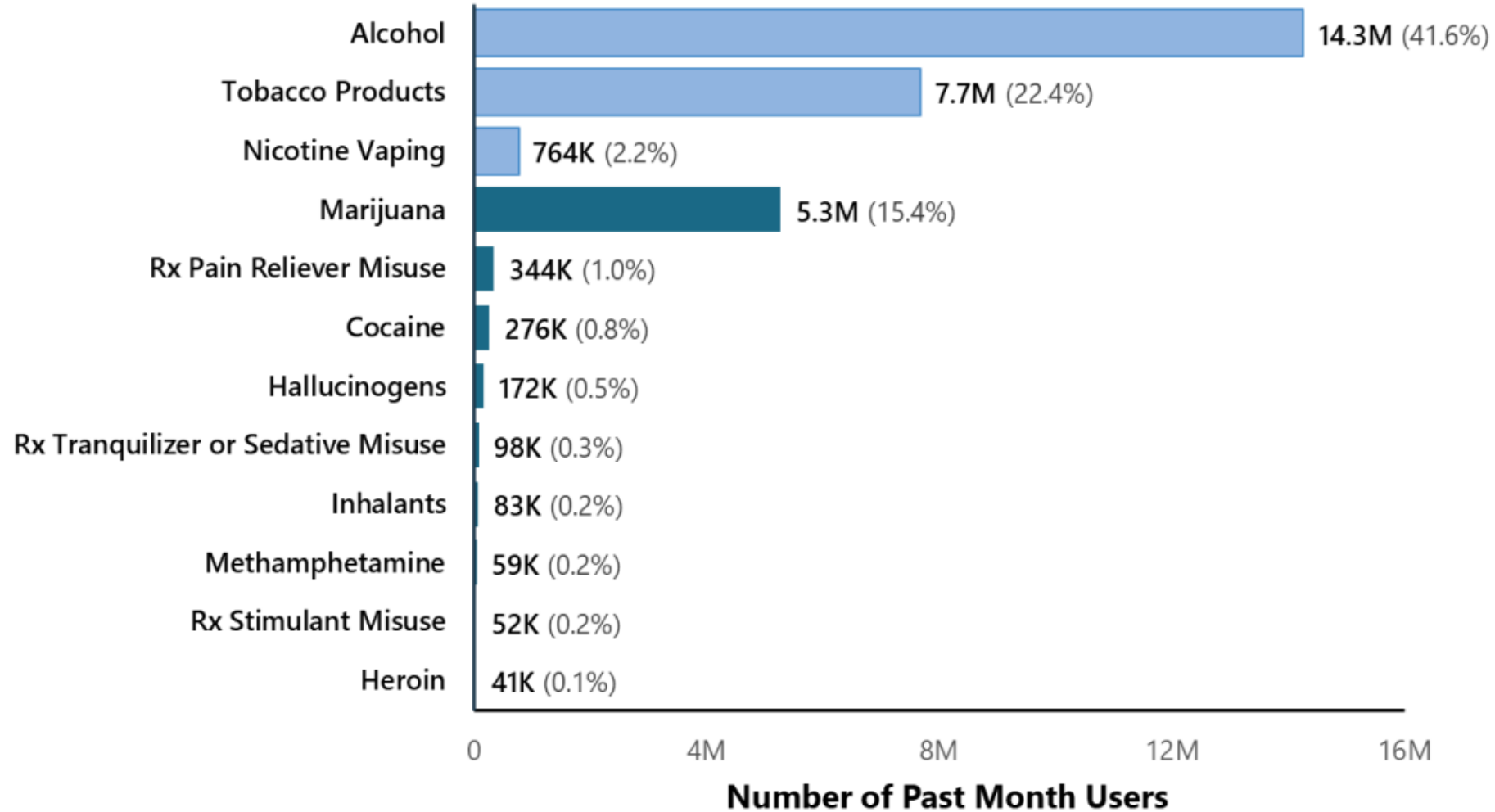
- ▶ **65% of crack cocaine users in this country are white (90% in jail for it are black)**
- ▶ **Based on self-reporting surveys, 77% of all illicit drug users are white, 13% black and 8% hispanic, figures which roughly match each group's share of the general population.**

# DRUG USE

**NOTE:** This means 10.1% of black people report using drugs in the last month and 8.2% of white people report using illegal drugs in the last month.

- ▶ **Illegal drug use in last month:**
  - ▶ **10.1% black**
  - ▶ **8.2% white**
  - ▶ **6.2% latino**
  - ▶ **3.6% asian**
  - ▶ **9.5% native american**
  - ▶ **7.3% pacific islander**
  - ▶ **14.7% two or more races**

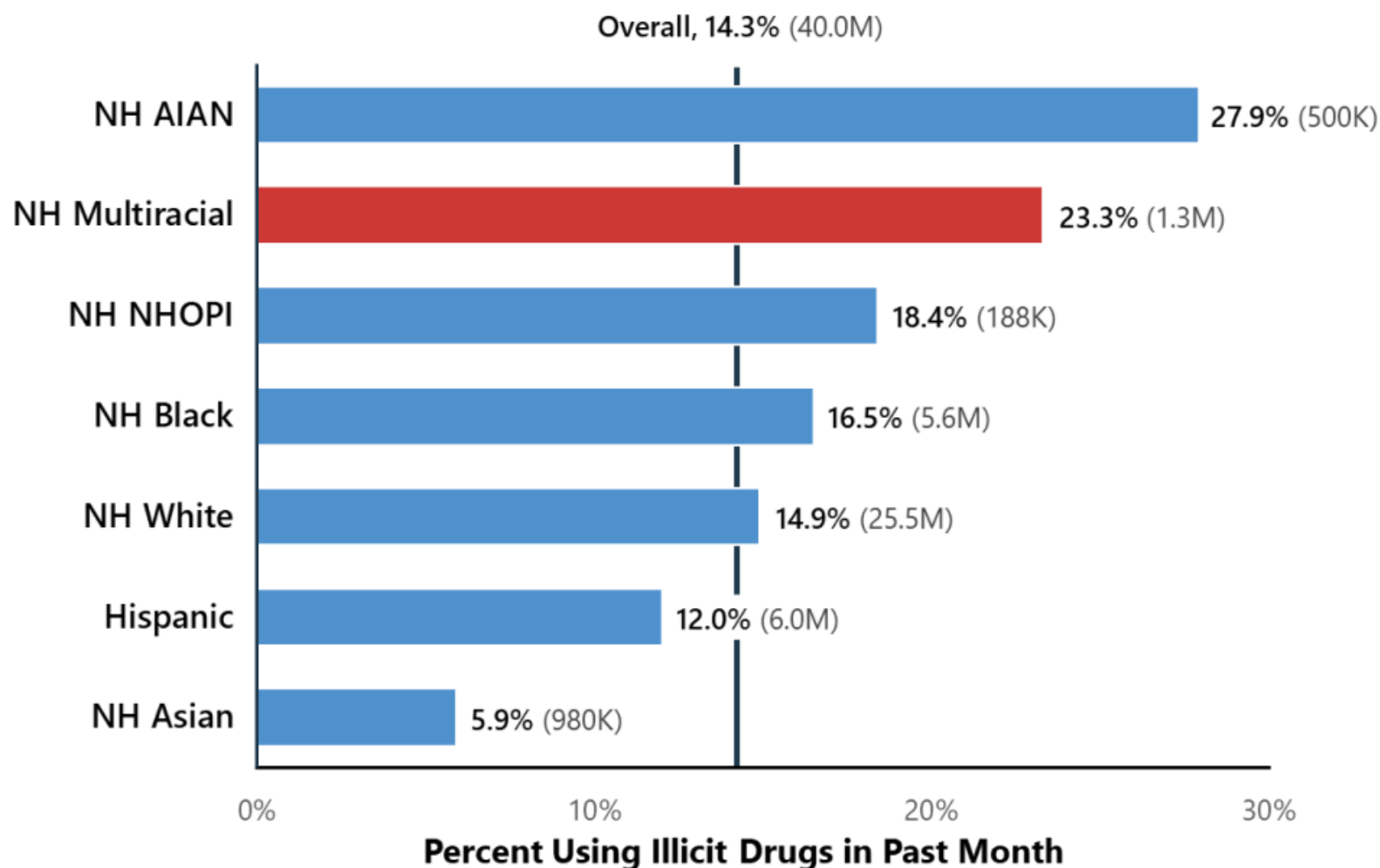
# Past Month Substance Use: Among Black People Aged 12 or Older



Rx = prescription.

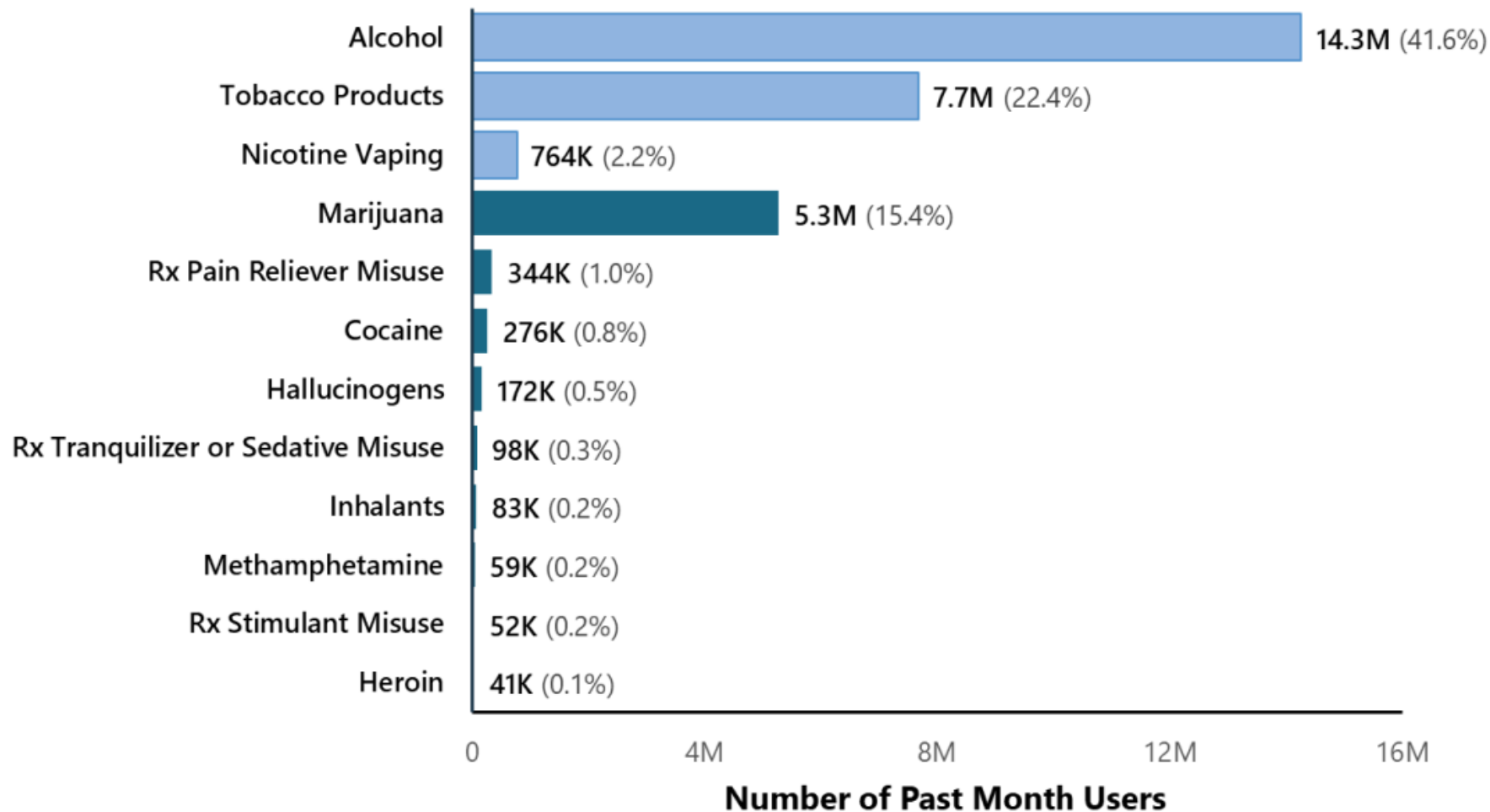
Note: The estimated numbers of current users of different substances are not mutually exclusive because people could have used more than one type of substance in the past month.

# Illicit Drug Use in the Past Month by Racial and Ethnic Groups: Among People Aged 12 or Older



- **Multiracial** people were **more likely** than Black, White, Hispanic, and Asian people to use illicit drugs in the past month

# Past Month Substance Use: Among Black People Aged 12 or Older

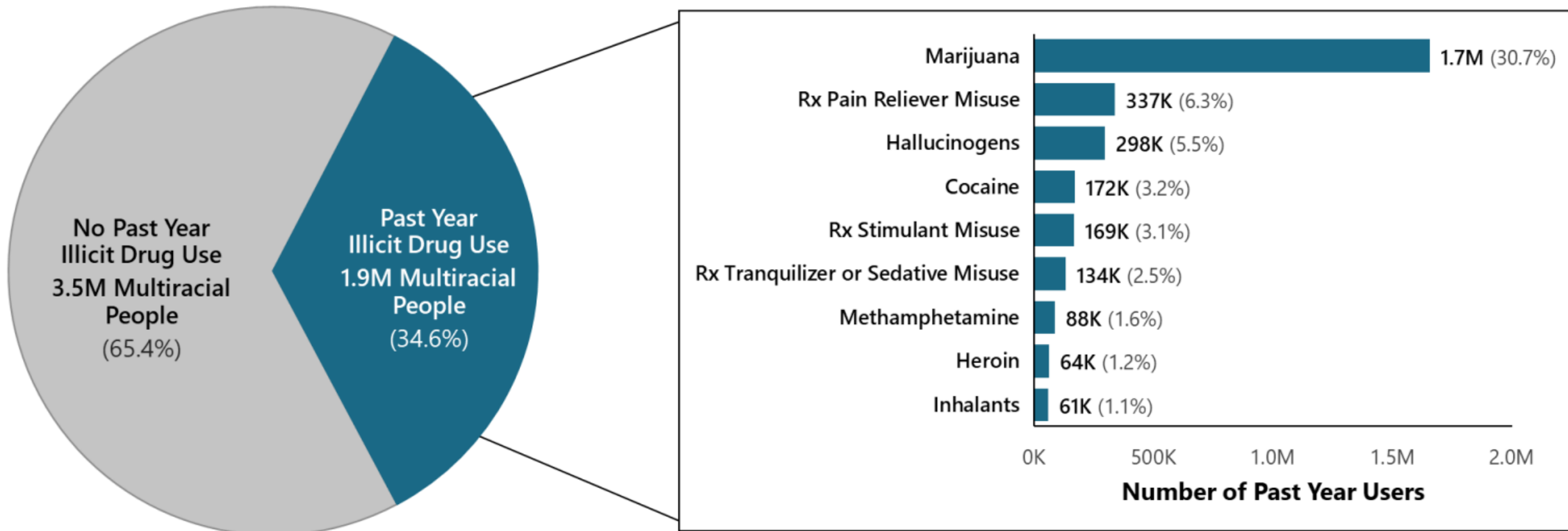


Rx = prescription.

Note: The estimated numbers of current users of different substances are not mutually exclusive because people could have used more than one type of substance in the past month.



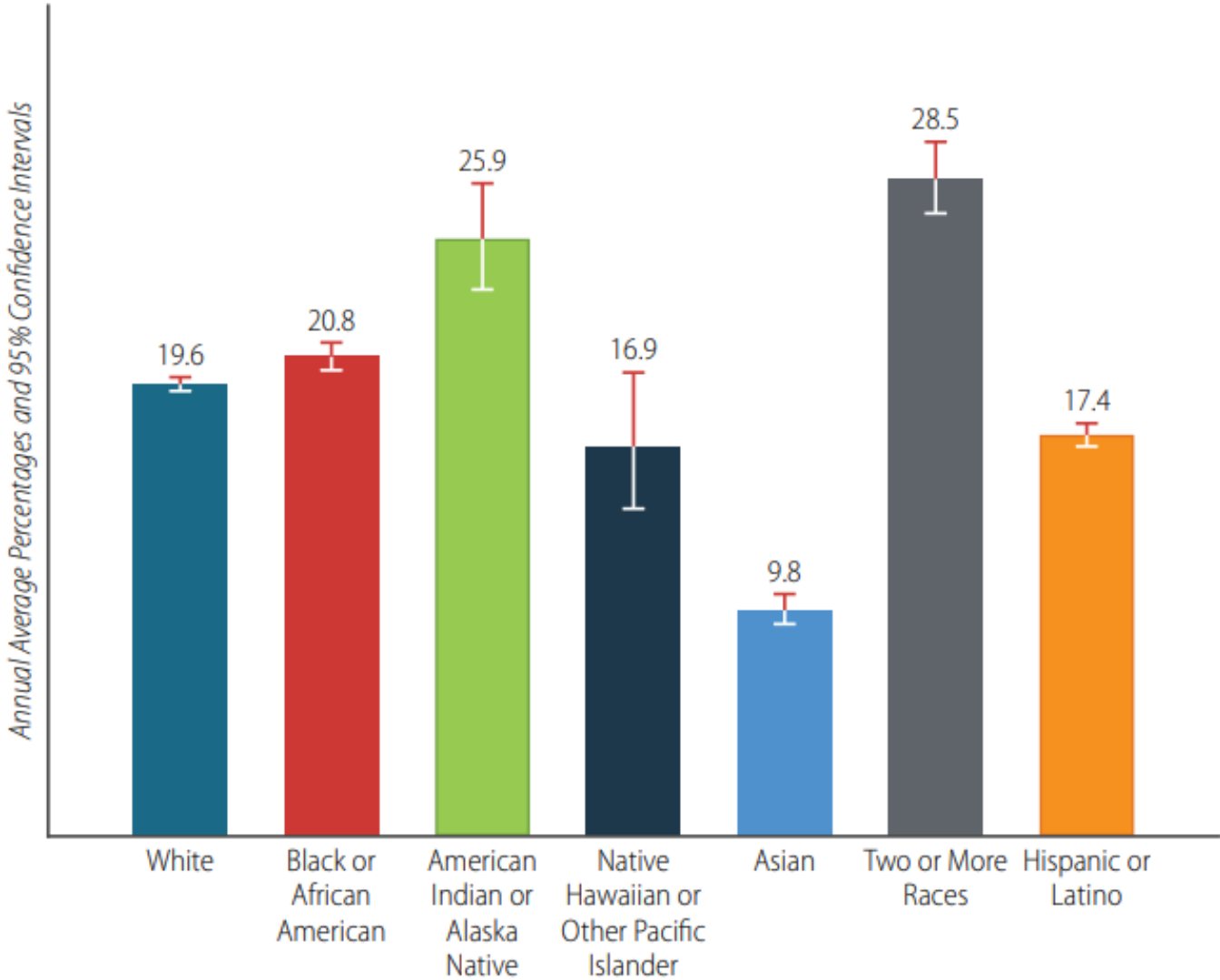
# Past Year Illicit Drug Use: Among Multiracial People Aged 12 or Older



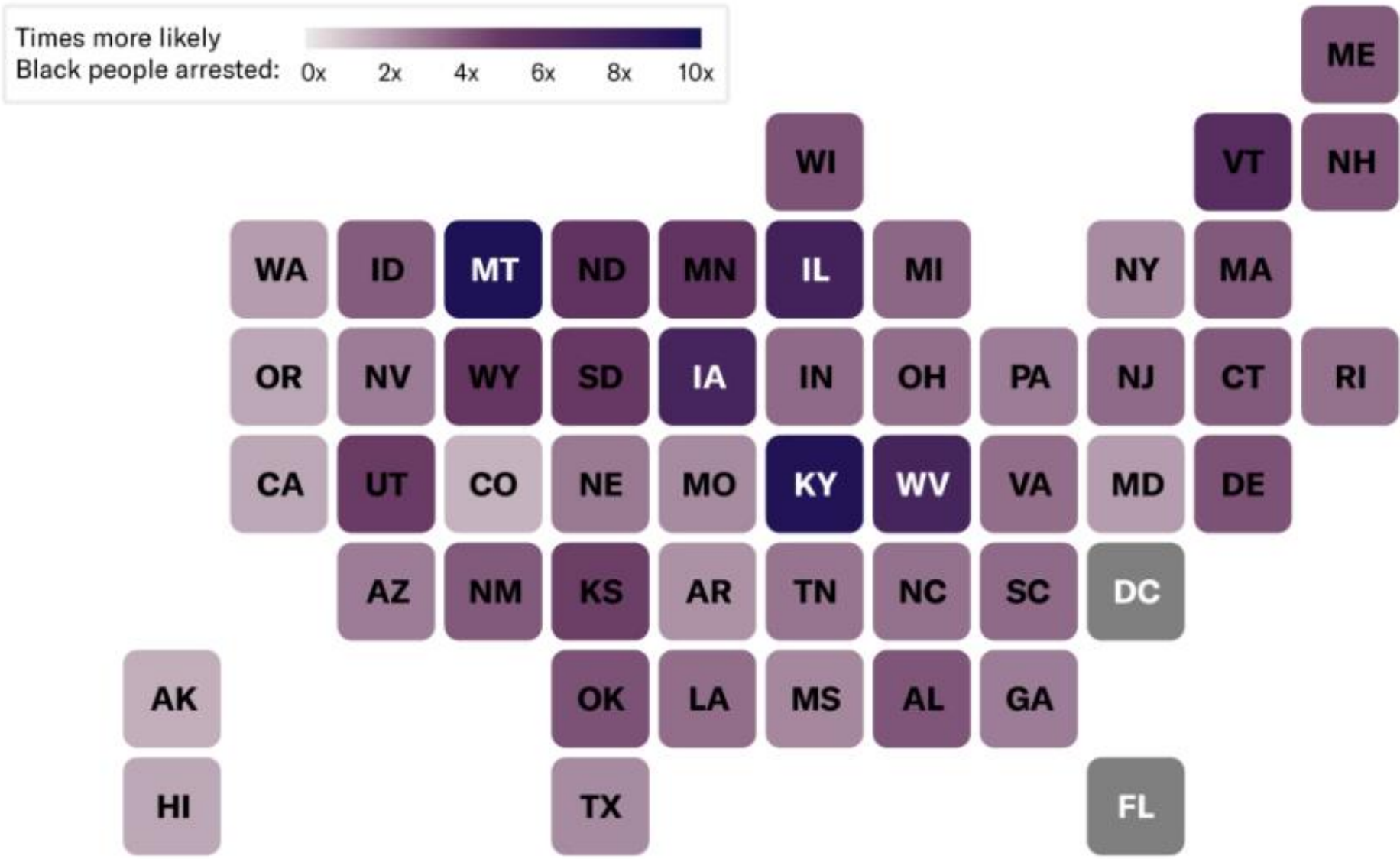
Rx = prescription.

Note: The estimated numbers of past year users of different illicit drugs are not mutually exclusive because people could have used more than one type of illicit drug in the past year.

**FIGURE 3.1** Illicit Drug Use in the Past Year among People Aged 12 or Older, by Race/Ethnicity: 2015–2019, Annual Averages



# RACIAL DISPARITIES IN MARIJUANA POSSESSION ARRESTS (2018)



**Source:** FBI/Uniform Crime Reporting Program Data and U.S. Census Data  
**Note:** Washington, D.C. and Florida did not provide data.

## States Ranked By Racial Disparity in Marijuana Arrests

Select a state for more detailed information.

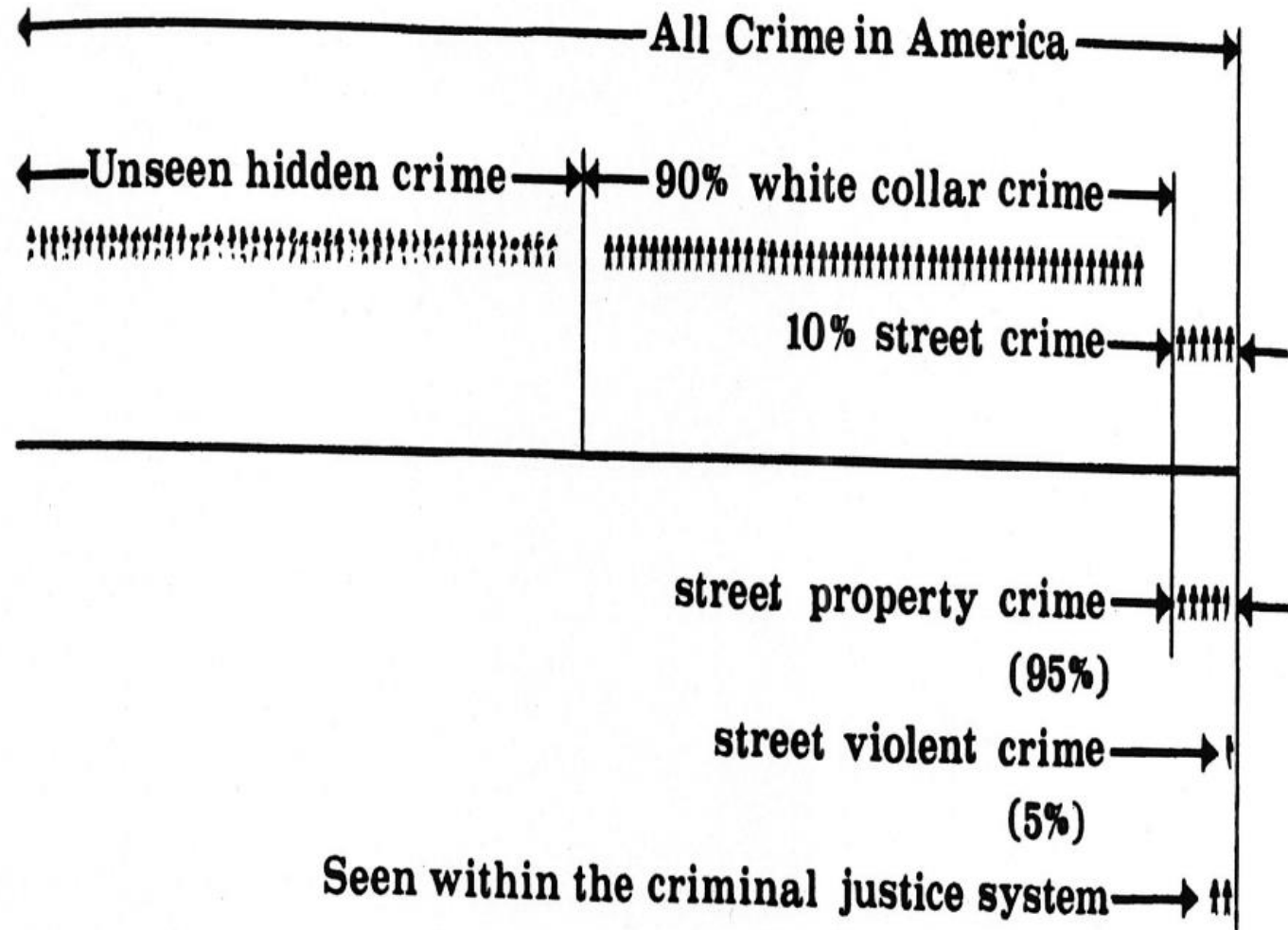
Times more likely Black  
people arrested in 2018

State

Showing: All states

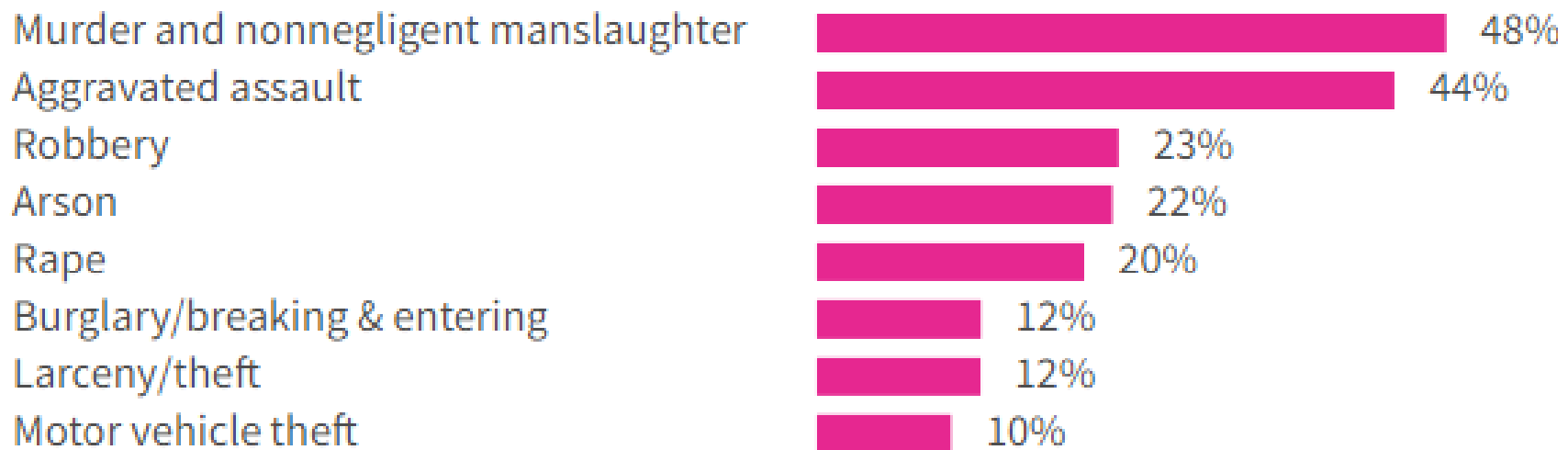
5.4x	Minnesota	Decriminalized in 1976
5.2x	Wyoming	
5x	South Dakota	
4.9x	Utah	
4.8x	Kansas	
4.2x	Oklahoma	
4.2x	Wisconsin	
4.2x	Delaware	Decriminalized in 2015

[See our methodology and limitations.](#)



# CLEARANCE RATES

**2021** ▼

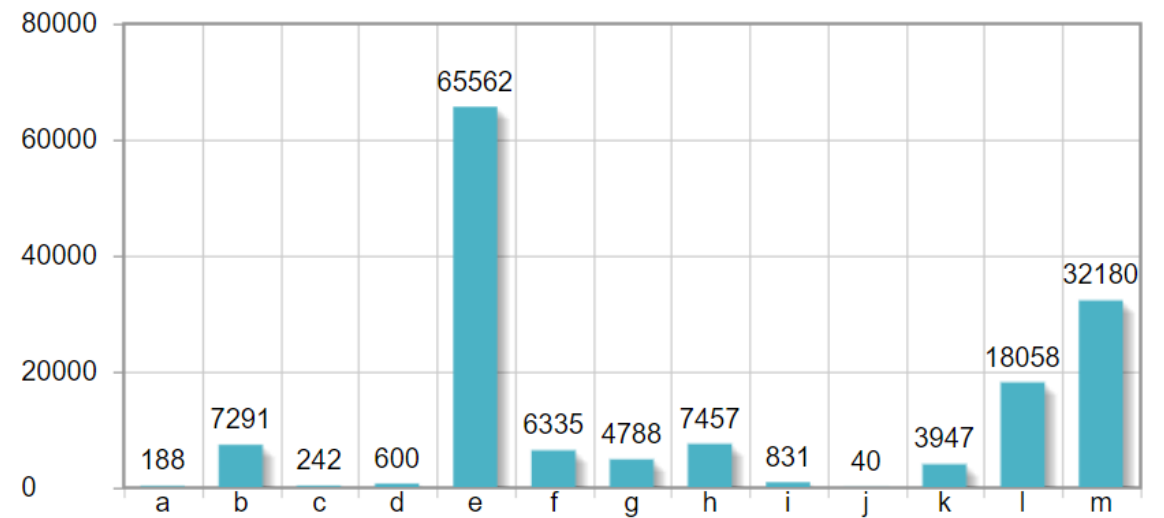


Source: [Federal Bureau of Investigation](#). 

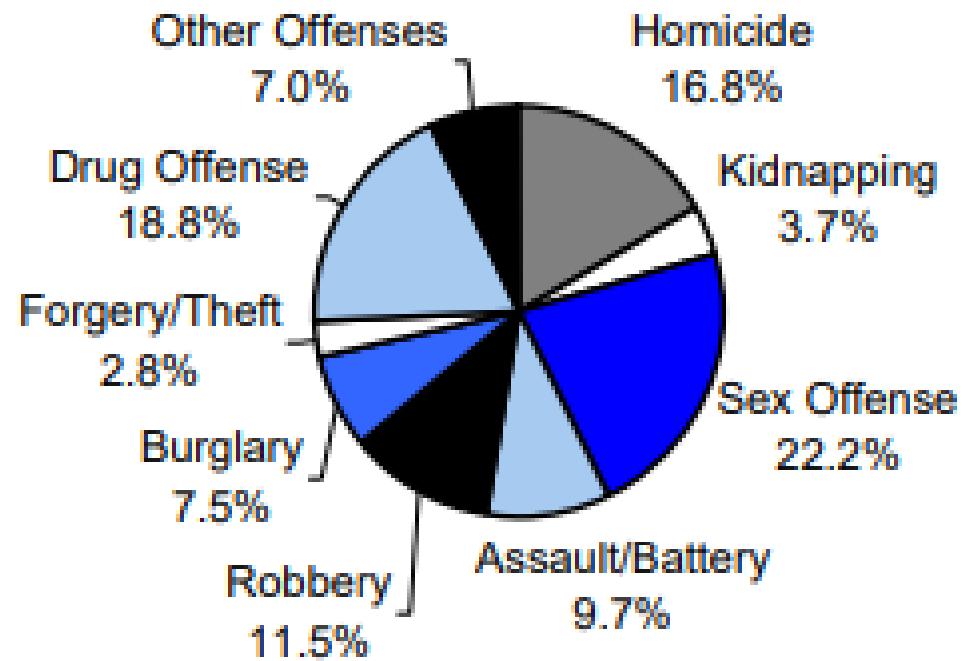
Chart Label	Offense	# of Inmates	% of Inmates
a	Banking and Insurance, Counterfeit, Embezzlement	188	0.1%
b	Burglary, Larceny, Property Offenses	7,291	4.9%
c	Continuing Criminal Enterprise	242	0.2%
d	Courts or Corrections	600	0.4%
e	Drug Offenses	65,562	44.4%
f	Extortion, Fraud, Bribery	6,335	4.3%
g	Homicide, Aggravated Assault, and Kidnapping Offenses	4,788	3.2%
h	Immigration	7,457	5.1%
i	Miscellaneous	831	0.6%
j	National Security	40	0.0%
k	Robbery	3,947	2.7%
l	Sex Offenses	18,058	12.2%
m	Weapons, Explosives, Arson	32,180	21.8%

## Offenses

Statistics are updated weekly. Last updated on Saturday, 2 September 2023



## Total (M + F)





**HOW DID WE GET HERE?**

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...**AROUND BLACKS**



...**NEVER RELAX!**

THE MYTH OF  
THE  
DANGEROUS  
BLACK MAN



# TRIBAL SAVAGES



## 13th Amendment

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

# BLACK CODES



# AMERICAN SLAVE LAWS



# Birth of a Nation

There is nothing more painful to me at this stage in my life than to walk down the street and hear footsteps...then turn around and see somebody white and feel relieved.

Rev. Jesse Jackson





# DEHUMANIZATION

- ▶ Philly Police Union President Calls Black Lives Matter Activists 'A Pack Of Rabid Animals'

▶ September 2, 2017



- ▶ Eric Trump describing protesters:

▶ *"Because when you watch the nonsense on TV, when you see these animals literally taking over our cities, burning down churches, this isn't America. That's not what Americans do."* June 20, 2022





**THUGS**



**ROWDY**



**ANIMALS**



**MISCHIEF**



**DESTROYING THEIR COMMUNITY**



**BOOZE FILLED REVELERS**



**DISGUSTING**



**DISTURBING**



**POLITICS**

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# **Trump Wanted Black Lives Matter Protesters to Be Shot, Says Former Defense Secretary**

"Can't you just shoot them?" the former president asked. "Just shoot them in the legs or something?"

BY RYAN BORT





DAILY NEWS

# Trump praises Jan. 6 rioters as 'patriots' and 'peaceful people'

f

Shant Shahrigian, New York Daily News

July 11, 2021 · 1 min read

# CONVICTIONS AND SENTENCING

# AMERICA'S PRISON POPULATION

1972



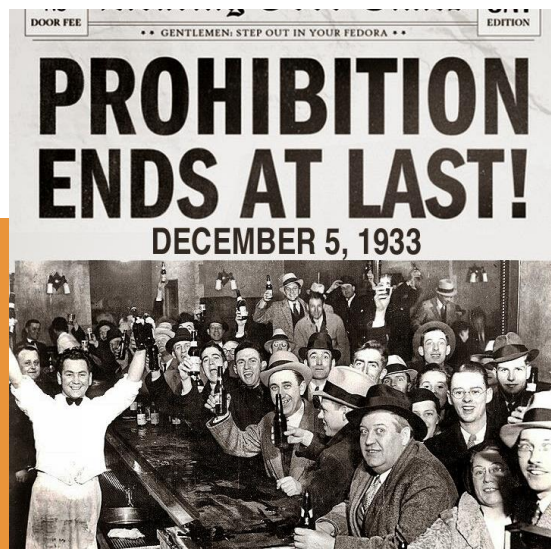
300,000



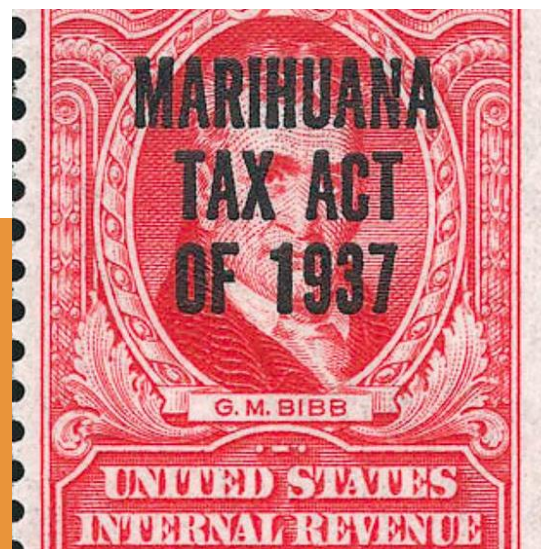
# WAR ON DRUGS



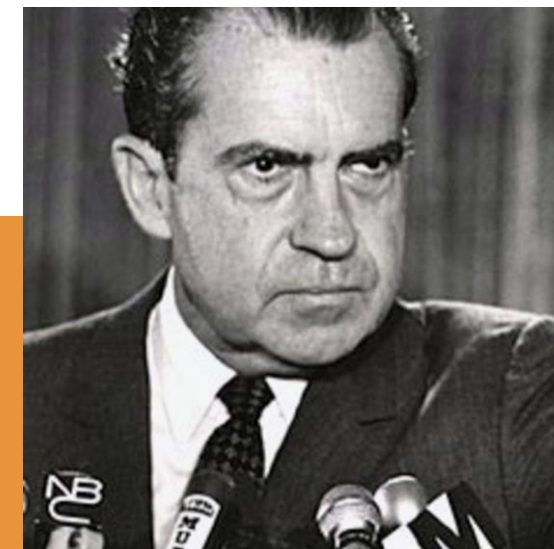
**SEARS SELLS  
COCAINE**  
1890



**PROHIBITION**  
1919-1933



**MARIJUANA TAXED**  
1937



**NIXON'S WAR ON  
DRUGS**  
1970



**“You want to know what this was really all about? The Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and Black people. You understand what I’m saying? We knew we couldn’t make it illegal to be either against the war or Black, but by getting the public to associate the hippies with marijuana and Blacks with heroin, and then criminalizing both heavily, we could disrupt those communities. We could arrest their leaders, raid their homes, break up their meetings, and vilify them night after night on the evening news. Did we know we were lying about the drugs? Of course we did.”**

**John Ehrlichman, 1994**





# THE WAR ON DRUGS



**ANTI-DRUG ABUSE ACT**

**1986**



**THE 1208 PROGRAM**

**1989**



**VIOLENT CRIME CONTROL AND  
LAW ENFORCEMENT ACT**

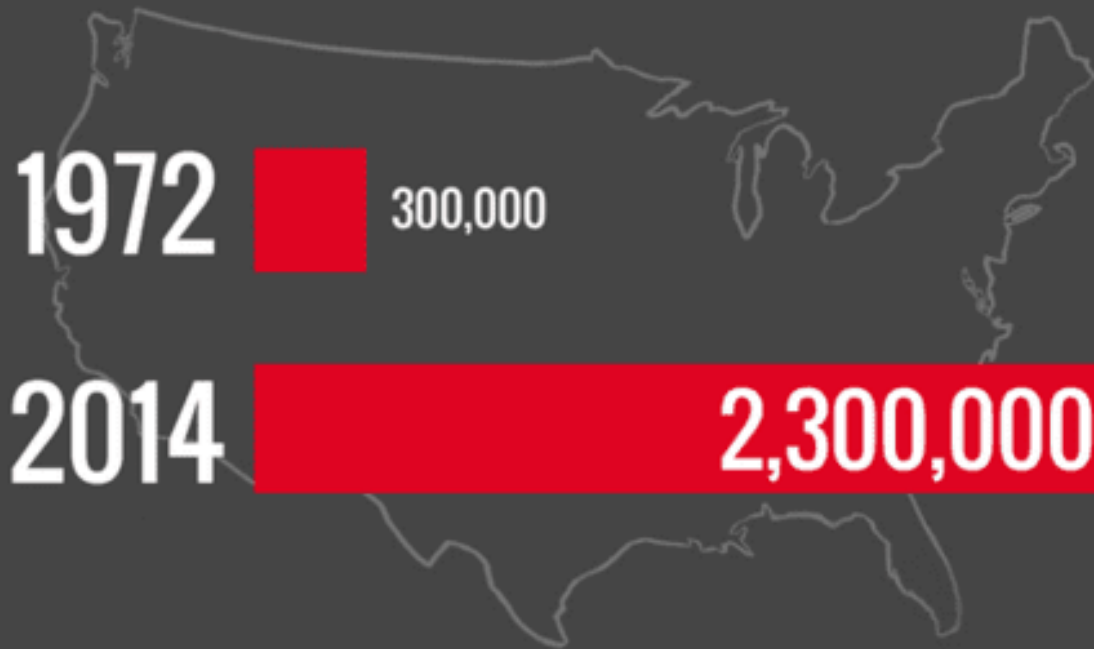
**1994**



**COURT OPINIONS**

**2005-2007**

# AMERICA'S PRISON POPULATION



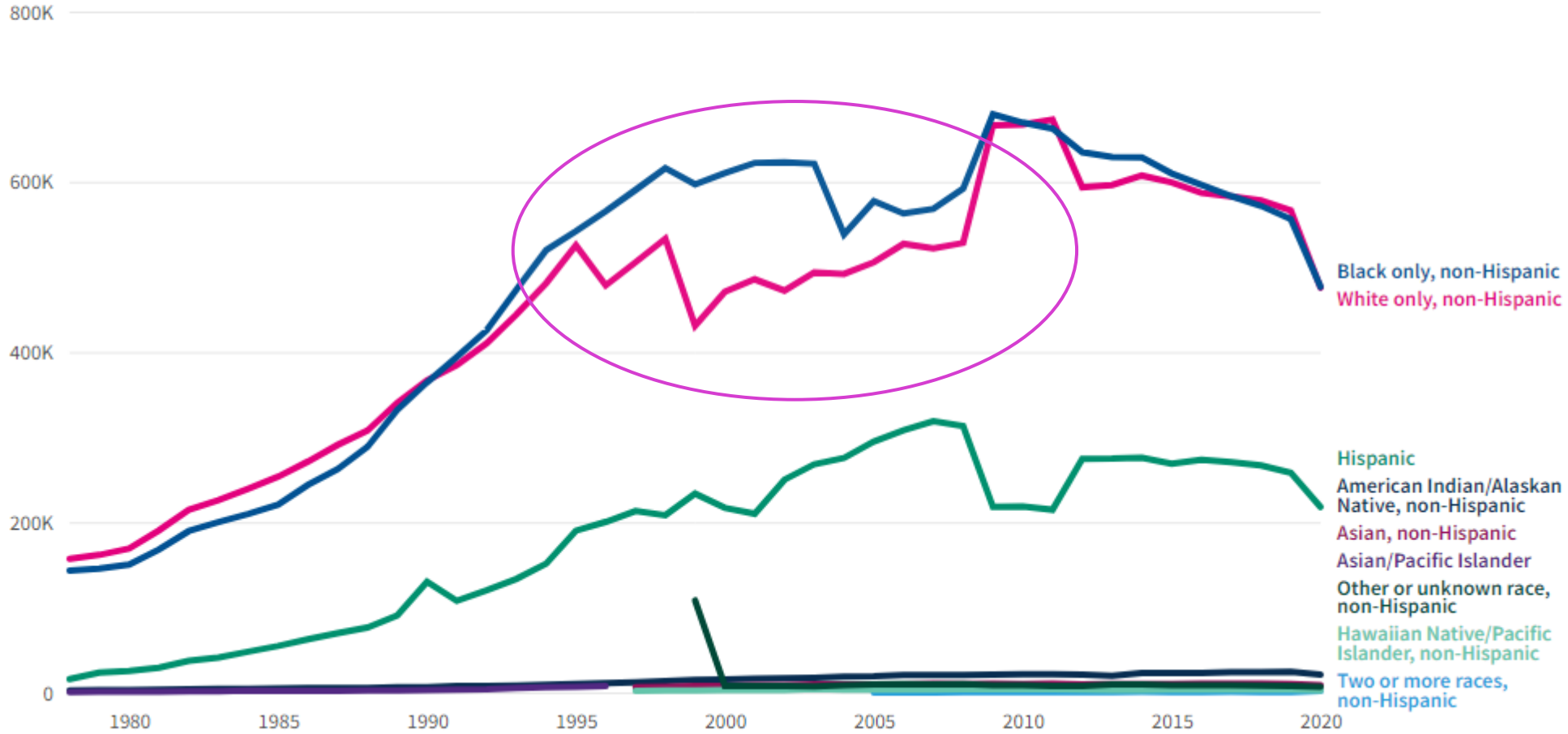
Source: Bureau of Justice Statistics

FRONTLINE

The Facts: U.S.  
Population  
Increase = 50%  
U.S. Prison  
Population  
Increase = 800%!

## Prisoners

Racial and ethnic groups as a percent of total prison population



# Report finds racial disparity in drug sentencing

K.C. Star June 8, 2000

WASHINGTON — The war on drugs unfairly aims at black people, the disproportionately high number of blacks incarcerated for drugs, about five times as many whites as blacks had used cocaine, the report

of borders... in of nations... not Munica... etran, not NATO... credibility vs... merica the plot... Do we trust this... lent to use all force necessary to... arrange... shot of Serb tanks (only... in a month of really smart bomb... ing) rolling back from Kosovo as... Wednesday and Saturday

## Legal system fails some African-Americans

Bias is reflected in conviction rates and sentencing

The tilt against the black poor, especially the bottom of the criminal justice ladder

Black defendants are 50 percent more likely than white defendants to be imprisoned for felony, twice as likely to be imprisoned for weapons offenses.

The Supreme Court gave indigent defendants a theoretical right to counsel but undermines the practical right. The court has accepted as "competent" judges attorneys who sleep at the trial, used heroin during a trial, were drunk in the court and were su...

# Support increasing for death-pe

WASHINGTON — "Whoops, sorry. Don't pull the switch. We healthy share of Americans resisted the idea of giving the government the power to execute. dence exonerating de came not from the cri but from outsiders—

K.C. Star Jan. 20, 2000

# Data on traffic stops sought

Racial profiling cited by lawmaker

By JOHN A. DVORAK  
The Kansas City Star

TOPEKA — The Kansas Legislature is stepping into a simmering national debate...

# Profiled and Pulled Over

Lawmakers propose new remedies to stop police abuses

BY HOPE VINER SAMBORN

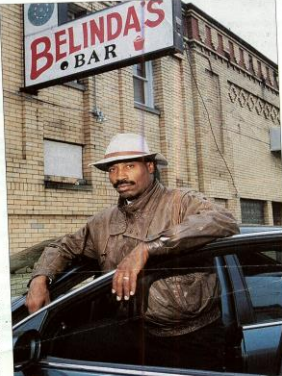
One Sunday evening, Peter Lawson Jones, a black Cleveland lawyer, was driving his new Mercury Sable slowly, stopping at each corner as he looked for a nightclub on the west side of the city.

Jones, who was unfamiliar with the predominantly white neighborhood, finally found the club. But he soon faced another problem. A white police officer got out of a parked patrol car and accused Jones of running a stop sign a few blocks away.

The officer soon learned that his detainee was a state representative from the suburb of Shaker Heights, and he did not issue a ticket. Jones says he was stopped only for "driving while black" in a predominantly white area.

Spurred on by the experience, Jones, a Democrat, introduced legislation in Ohio to study how often such stops occur. His is one of 18 bills that have been introduced in Congress by lawmakers, many of whom themselves have been subjected to racial profiling.

"People far too frequently across America are stopped because of race or ethnicity,"



PETER LAWSON JONES in the clothes he was wearing the night he was stopped for "driving while black" in Cleveland.

...tive in August th... guires federal law... enforcement person... refrain from racial... filing and to collect... formation on the... of individuals stop... The ABA Hon... Delegates approv... resolution in At... supporting pass... legislation nation... that would requir... lection of data cor... ing race and eth... of people stoppe... traffic offenses... Other recent... developments: ... Police chi... San Diego and San... Calif., and in Po... Ore., have ordere... officers to refrain... racial profiling... "The ACLU i... ing to combat pr... when it occurs by... lawsuits. Many... civil rights violat... In one instar... ACLU sued on be... a black public di... who, with his... was pulled over... Maryland police... apparent, reas... part of the sett... the court monit...

K.C. Star April 26, 2000

## Youth justice system treats minorities harsher, study says

For young people charged with a violent crime who have not been in juvenile prison previously, black

By HOY BUTTERFIELD  
The New York Times

WASHINGTON

# JUSTICE

K.C. Star Sept. 19, 1999

# Poll shows distrust of police, courts

By GROMER JEFFERS JR. and MARY SANCHEZ  
The Kansas City Star

For reasons both real and perceived, many blacks don't trust cops

**POLL**

### A BREAK FOR WHITES!

Blacks who think these criminal justice organizations are more fair to whites

and the media this year — and court systems have yet to embrace the concept of diversity. Blacks who travel through the criminal justice system often are confronted by white police, white prosecutors, white judges and mostly white juries.

...time, blacks are more

# **POLICE DECISION POINTS**

**Follow**

**Stop**

**Search**

**Arrest**

**NTA/Bond**



**A young man walks through chest-deep flood waters after looting a grocery store in New Orleans on Tuesday.**



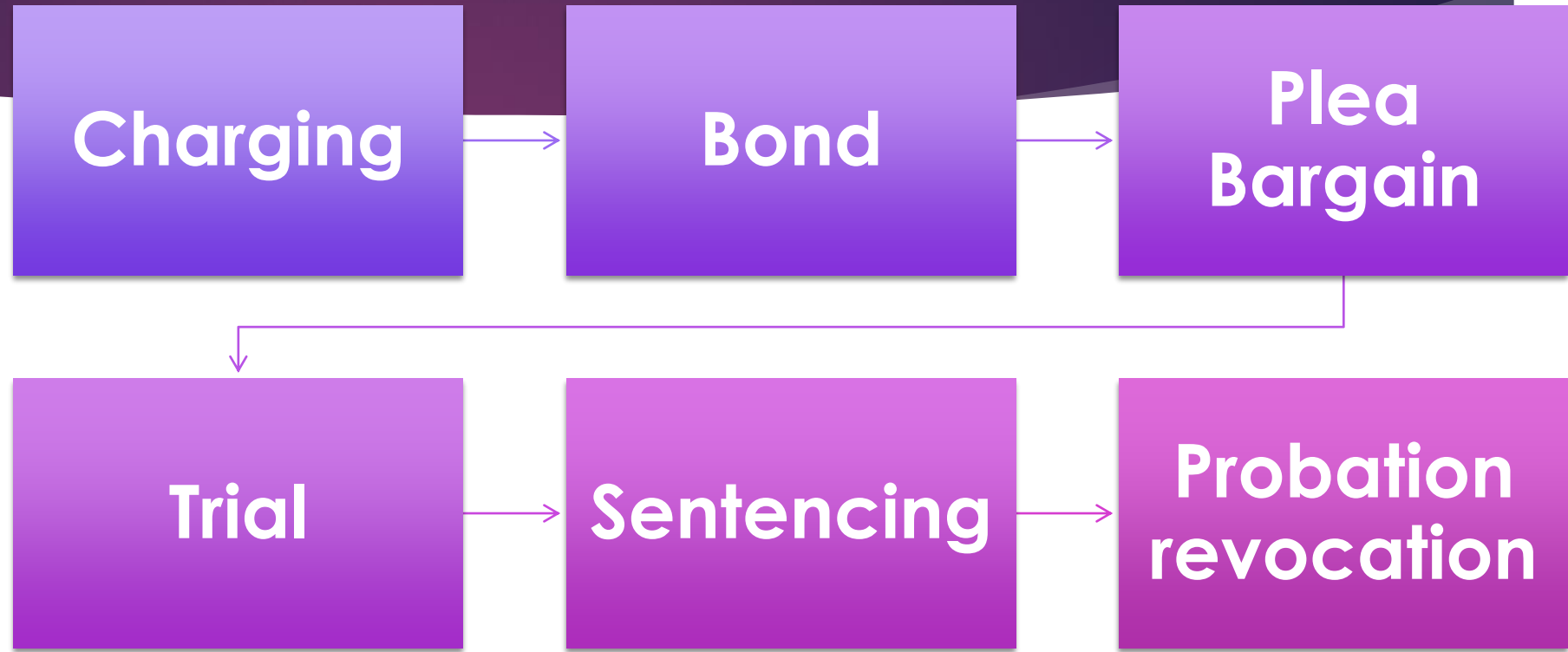
**Two residents waded through chest-deep water after finding bread and soda from a local grocery store in New Orleans, Louisiana.**

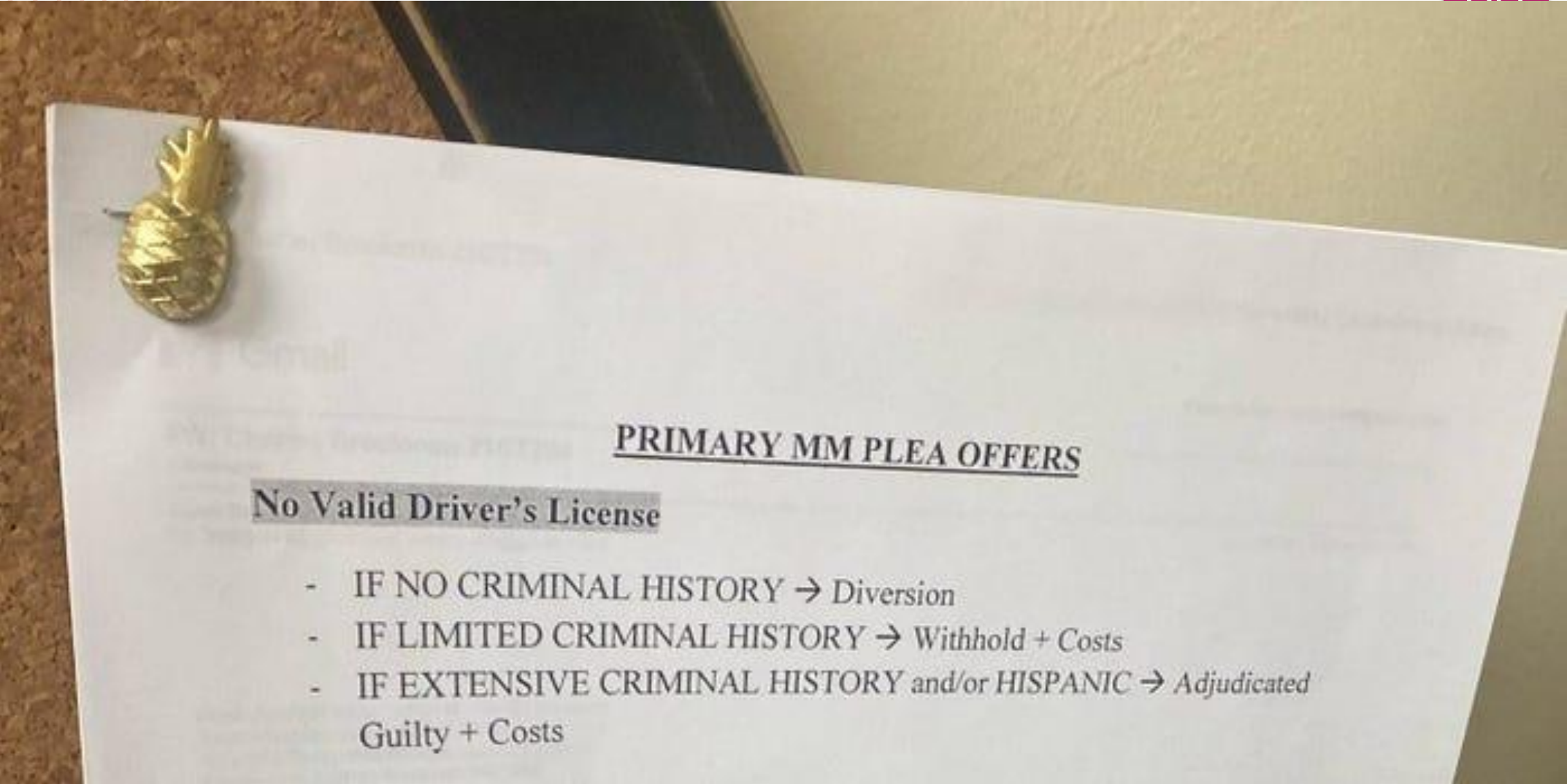
# Be Cool, Follow The Rules





**PROSECUTORIAL  
DECISION  
MAKING**





PRIMARY MM PLEA OFFERS

**No Valid Driver's License**

- IF NO CRIMINAL HISTORY → *Diversion*
- IF LIMITED CRIMINAL HISTORY → *Withhold + Costs*
- IF EXTENSIVE CRIMINAL HISTORY and/or *HISPANIC* → *Adjudicated Guilty + Costs*

# Prosecutor's Shoplifting Memo Draws Ethnic Line

By Brenda Spillman  
A Member of the Staff

The Roeland Park prosecutor should have authority to recommend that foreigners and members of minorities be excluded from a program to keep shoplifting convictions off the records of first offenders, according to a memo from City Attorney Frederick K. Cross.

In the memorandum issued early this year, Cross, who also is the city prosecutor, defined those defendants as "persons who are foreigners and where the ethnic background of the defendant is such that theft is readily tolerated."

Cross said today, however, that he subsequently had told Municipal Judge Francis L. Smith that the section outlining eligibility for the program should be deleted. The memorandum, dated February 15, 1979, was sent to *The Star* by an unknown source.

Cross said he made the amendment after representatives of Venture Stores Inc., told him that the eligibility requirements were unacceptable. Cross said the Venture Store at 4950 Roe Avenue had the largest number of shoplifting cases in the city.

"I didn't withdraw the memorandum, but I let the judge know what Venture thought and that I'd had a change of heart on it too," Cross said. "Unfortunately, right after that we had

two sisters in identical cases—we disposed of those on a diversionary program—but once again, they were female Chicanos.

"You can't imagine the female Chicanos that are brought before our court. They're completely disproportionate to their numbers in society," Cross said.

Judge Smith could not be reached for comment on the Cross memorandum or on how he handled first-offender cases.

Ms. Ann Connors, Venture's district security supervisor, said she could not comment on the company's reaction to the memorandum until she spoke with T.J. Wilbur, the district security manager. Wilbur was in St. Louis this morning, and Ms. Connors said she was not certain when she would be able to reach him.

Asked whether he was afraid that the eligibility section might be construed as a violation of civil rights laws, Cross said, "You can't live under professional paralysis for trying to solve problems. Ultimately it's up to the judge as to whether he wants to implement the thing. A lot of times he ignores my recommendations. If he accepts my recommendation, he rarely asks why I made it.

"If I have to make a recommendation, I'd rather go on my experience than on what the defense lawyer tells me. They'll always tell

you this is the first offense, but I have to go on my experience, especially in the case of Chicano females," Cross said.

He said he bowed to Venture's wishes in amending his recommendation because their experience was broader than his. "If that's the experience of Venture and they have 30 or 40 stores, then the least I can do is go with their experience rather than my own with this particular store."

Cross said Judge Smith so far had not followed the memorandum in working out diversionary programs for offenders and that the option "has never been denied to anyone who is a minority, so it hasn't worked out as it may appear."

Cross said the memorandum "can be made—in the hands of the press or opponents of the (city) administration—to appear to be prejudice against foreign born people, but the facts are the facts. I don't know the answer to it."

Cross said Asian and African students who are in this country on student visas also made up a disproportionate percentage of the shoplifting cases that came before the court.

"I don't know," he said. "Maybe it's tolerated in their countries. I wouldn't think so."

Cross said he was not worried that the

memorandum existed and that it bore his name. "I believe in being completely honest and what's going to go through my mind is, is this person to continue to be a threat to society. I'm not saying race or sex should be the basis of it, but I'm not going to close my eyes to it."

"Let's say you've got a perfectly lovely Chicano woman here and maybe she's got a baby in her arms—as in one case we had. You have the feeling that this isn't the first time she's shoplifted, just the first time she's been caught. I don't want to base it on the fact that she's a woman or that she's a Mexican American, but what do you do?"

Cross said the memorandum grew out of legislation that no longer allows instant expungement of criminal records when a court feels that a conviction would be damaging to a first-offender and work against the possibility of rehabilitation. Cross said the legislation was prompted by the insurance industry because instant expungement in traffic cases would prevent their access to accurate information for Good Driver and Assigned Risk Programs. It applied also to other offenses, he said, and "denies the prosecutor the ultimate rehabilitative tools he needs in those cases of first offenders where the interest of justice might dictate that no record should be reported . . ."

Cross said conviction records frequently hurt chances of employment, "and unemployment is a big problem too."

Under the program Cross has proposed, a defendant would plead guilty and be placed on probation for six months. Sentencing would be deferred during that period. At the end of the six months, the court could dismiss the case without prejudice, which means it could be refiled if the defendant subsequently is charged in another crime.

A defendant would have to post a bond in the amount of the fine that would have been levied if sentencing had not been deferred, Cross said. The bond would be forfeited at the end of the six months if the plea and conviction were set aside. That would amount to a defendant paying a fine even though his conviction was set aside, in cases where no jail term was levied, Cross said.

"It gave me a little bit of trouble too," Cross said. "To me that doesn't serve the purpose of a bond forfeiture."

The case would remain on record as a charge that had not been disposed of for two years after the charges originally were brought, Cross said. At the end of the two years, the entire record could be expunged, he said.

Appeal to Fellow Second District



**PUBLIC  
DEFENDER  
TRIAGE**

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**Evaluation of evidence**

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**Interpretations of client's  
behavior**

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**Photo line-ups and cross-  
race identification**

# The Halo Effect in Court



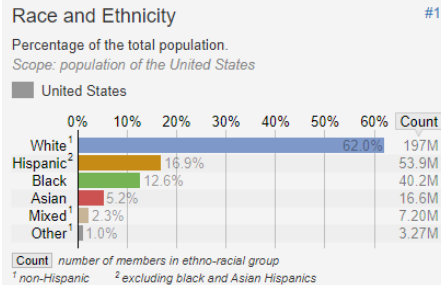
Subjects were more lenient when sentencing attractive individuals than unattractive ones, even though exactly the same crime was committed.

-M. G. Efran. "The Effect of Physical Appearance on the Judgment of Guilt, Interpersonal Attraction, and Severity"

# POLICING SKIN COLOR NOT CRIMINAL BEHAVIOR



## PROPORTIONALITY



## CRIMINAL BEHAVIOR

- Do not disproportionately use drugs
- Drug dealers are disproportionately white



## APPREHENSION

- Disproportionally
  - stopped
  - searched
  - arrested,
  - taken to jail



## LEGAL SYSTEM

- higher bonds
- fewer and less favorable plea offers
- longer sentences
- more probation violations



## COLLATERAL CONSEQUENCES

- Bias in risk assessments
- More disciplinary violations in prison.
- Unemployability
- Voting Rights

# SENTENCING REFORM

- **Emphasis on treatment rather than jail**
- **Diversion programs**
- **Mental Health/Police Partnerships**
- **Decriminalization of marijuana**
- **Eliminating 3 strikes laws**
- **Eliminating Crack/Powder disparity**
- **Allowing more movement in sentencing guidelines and eliminating mandatory minimums**

# Data collection is key





The background features a central intersection of four large, overlapping geometric shapes: a purple triangle pointing down from the top-left, an orange triangle pointing up from the top-right, a pink triangle pointing down from the bottom-right, and a magenta triangle pointing up from the bottom-left. A small, solid magenta circle is positioned on the magenta triangle. A dark purple horizontal bar is located at the top left of the image.

# **PRETRIAL DETENTION**

2020 VIRTUAL



CCJ/COSCA  
*Conference*

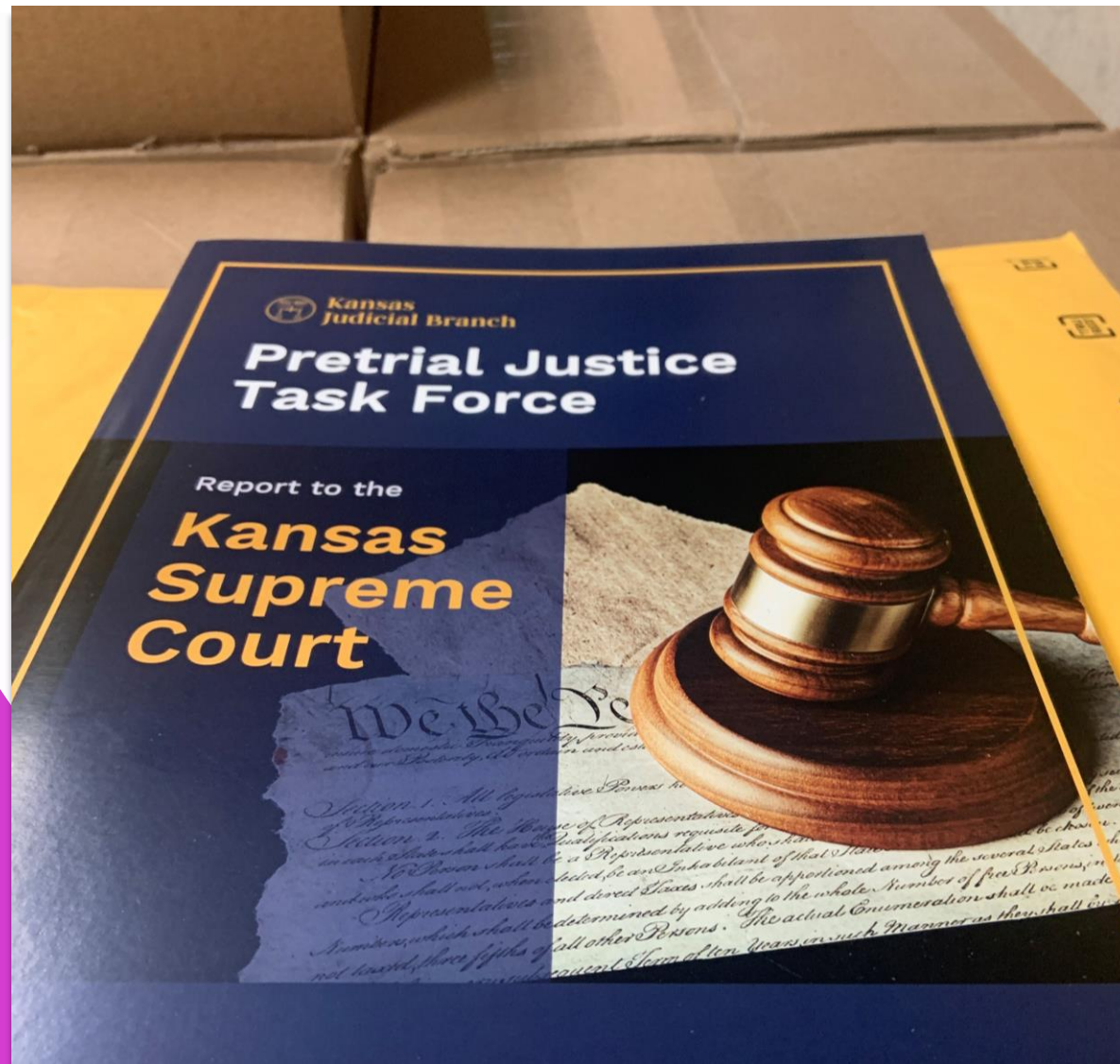
**Promote, collaborate, and accomplish the adoption of evidence-based assessment of risk in setting pretrial release conditions and advocate for the presumptive use of nonfinancial release conditions to the greatest degree consistent with evidence-based assessment of flight risk and threat to public safety and to victims of crimes.**

# KANSAS BY THE NUMBERS

**53%** of those detained in our county jails are not serving a post-conviction sentence, nor are they being held to answer to a motion to revoke their probation. These inmates are simply awaiting disposition of the current charges against them.



## PRETRIAL JUSTICE TASK FORCE REPORT





# JURY SELECTION



## JURY SELECTION

- ▶ Voter registration, drivers license records disproportionately exclude people of color from selection—up to 35%.
- ▶ Low pay, working people can't take off or obtain childcare.
- ▶ Bans those with felony convictions
- ▶ 39 of 50 states fail to provide access to jury data because private vendors deem it a trade secret

*“Ending racial discrimination in jury selection can be accomplished only by eliminating peremptory challenges entirely.”*

*- Thurgood Marshall*



# BATSON CHALLENGES

- ▶ Flowers was tried 6 times for same murders, same prosecutor, in Mississippi
- ▶ On the six trials combined; the State used peremptory challenges to strike 41 of the 42 black prospective jurors.
- ▶ In 6<sup>th</sup> trial, struck one prospective black juror, who was similarly situated to white jurors who were not struck.
- ▶ On average asked white jurors 1 question, asked Black jurors he struck 29 questions



District  
Attorney  
Doug Evans



Defendant  
Curtis  
Flowers



**“The Impact of Jury Race in Criminal Trials,” Shamena Anwar, Patrick Bayer, and Rand Hjalmarsson, Quarterly Journal of Economics 2012.**

**Juries formed of all-white jury pools convict black defendants 16% more often than white defendants...but this gap in conviction rates is entirely eliminated when the jury pool includes at least one black member.**