



Race and Prosecutions

2020 Update

A Report of the Santa Clara County
District Attorney's Office
Jeff Rosen, District Attorney



Introduction

As I write this, a white Minneapolis police officer has been charged with the murder of George Floyd, an African American man. As I write this, three white Georgia men are being prosecuted for the murder of Ahmaud Arbery, an African American man. My Office is prosecuting a man who threatened a couple he believed had something to do with the COVID pandemic because they were Chinese. My Office is prosecuting another man for running over a family with his car because he thought they were Muslim. Undocumented immigrants in our County are too afraid to report crimes. As I write this, I am grieving that racism and inequality are widening the rift between vulnerable members of our community and those of us that they rely upon to protect them from criminal injustice.

When the fires of protest have died down, there has to be something of worth within the ashes. George Floyd's legacy should be one of serious reflection about racism within the criminal justice system and must result in deep reform. Such reforms are sparked by anger, frustration, and heartbreak, but they must be born from a deep self-reflection, an honest self-appraisal of those of us who are part of this powerful and vital system. There should be no pointing fingers outward. Prosecutors, police officers, and, of course, this District Attorney need to ask ourselves if we are a part – intentionally or not - in these destructive and despicable racial injustices.

We have the power to do much good and – sadly – much harm in our communities. Prosecutors have the power to charge crimes, the power to influence sentences, the power to advocate for victims of crime, and the power to influence public policy. We are increasingly aware that the power of the criminal justice system can often lead to unintended consequences. In order to understand whether an office is operating justly and fairly, we need to use the power of data to examine ourselves and ask difficult questions. This report, now in its fourth year, examines race in the criminal justice system. It seeks to discover whether racial disparity exists in our County, to what extent, and whether it is caused by any of our own practices.

Each year we adapt to address these realities. Last year we sent the office's leadership team to Montgomery, Alabama on a civil rights tour, to educate ourselves on the legacy of racism and the struggle for civil rights and how that impacts our criminal justice system today. This experience deeply impacted our leaders and taught them to keep race in the forefront of how we do our work.

For the last three years my office's Crime Strategies Unit has studied data across several disciplines: prosecution data, police data, public health data and demographic data. We seek to determine whether any of our policies, practices or programs have led to or exacerbated injustice in our community. We know that communities of color have been disproportionately housed in jails and prisons throughout the Country. We also know that our County's defendant population is not reflective of the community, insofar as there is a persistent over-representation of Black/African American and Hispanic/Latino people charged with crimes.

Through multiple community partnerships our prosecutors, victim advocates, investigators and support staff work to bridge the divides and find answers to the difficult issues. Our office continues to diversify, actively recruiting and hiring prosecutors who reflect the diversity of our community. We remain embedded in communities through our Community Prosecution Unit, and we continue to study smarter approaches to Crime through our Crime Strategies Unit.

The data in this report is not a roadmap to fixing the problem of racial inequity in our system. It would be immoral to reduce George Floyd or anyone who has suffered injustice to a data point. Ratios of ethnicity in Santa Clara County do not make up an honest portrait of our vibrant and diverse neighborhoods. Make no mistake: there is a problem of disproportionality within the criminal justice system of Santa Clara County. This report is an acknowledgement of that problem and a diagnosis of its depth, and an urgent reminder that we have much work to do.

The DA's Office has done a host of things over the last ten years through diversion, narcotics charging, and the support of statewide reforms that have worked to reduce the number of crimes charged overall. This month, I am announcing reforms and launching new initiatives which will also yield dramatic changes to the number of cases filed, and the severity of those cases. We will be changing the way we file enhancements to crimes that dramatically lengthen sentences. We will get out of the business of prosecuting cases and having our criminal courts address cases involving the suspension of a drivers' license for failure to pay fees or failing to appear to pay a fee, moving those cases to traffic court where other driver's license related infractions are handled. These two reforms, which are among many others, affect very lengthy sentences and affect the thousands of people behind on payments to the DMV, and will both have outsized effects on the groups that now are overrepresented in our prisons, and in our criminal courts.

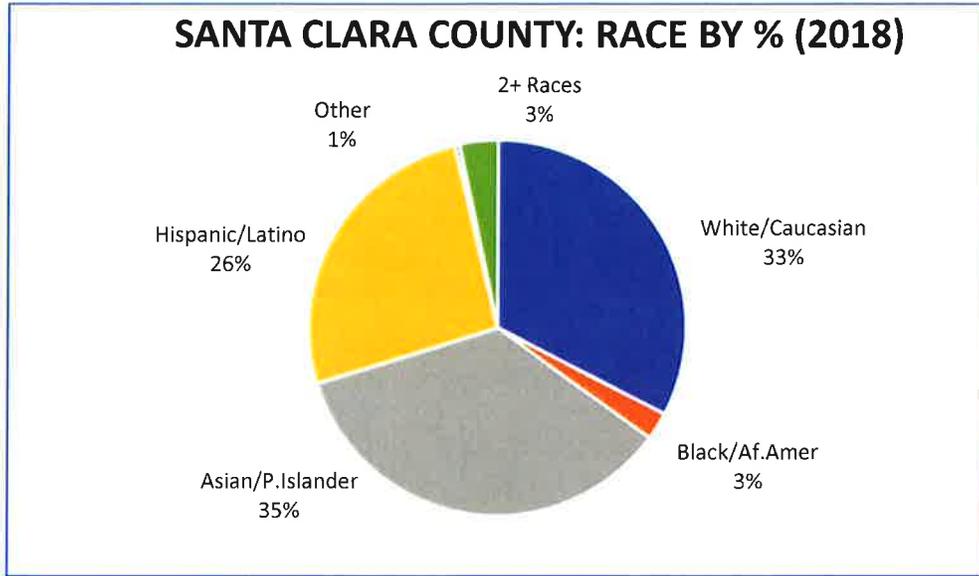
Alongside our partners and our community, we remain committed to finding a way to use our power to make our community safe and fair, for everyone.

Jeff Rosen

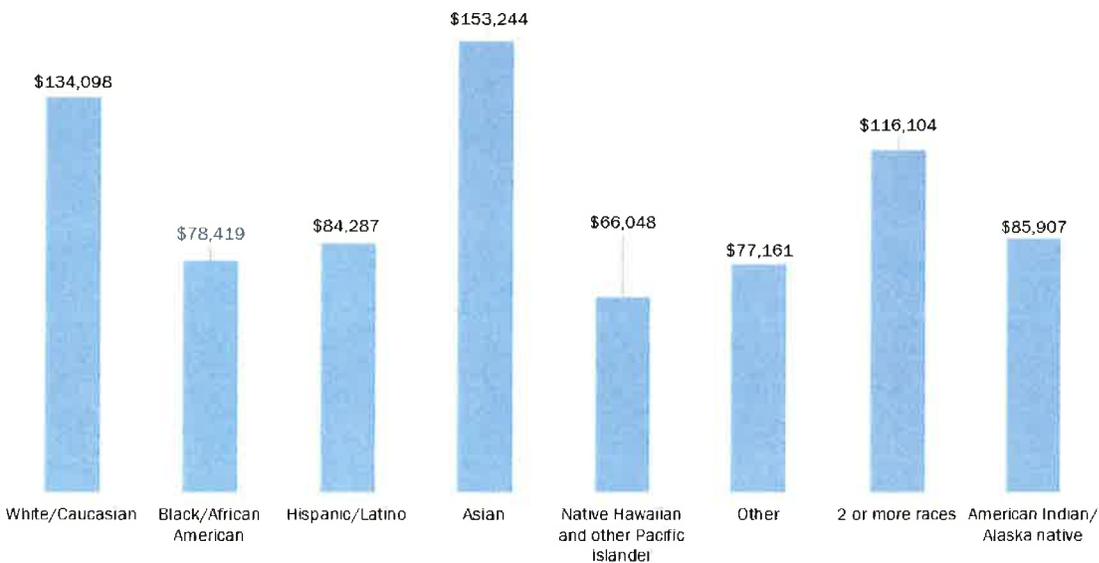
District Attorney

Demographics of Santa Clara County

Santa Clara County is the largest county in Northern California, with nearly 2 million residents. The County is racially and ethnically diverse, with nearly equal percentages of White/Caucasian, Hispanic/Latino and Asian/Pacific Islander residents. There is a very small Black/African American population, compared to other cities in Northern California. Santa Clara County overall has the highest median income of any California county.



There are large disparities in household income across racial groups in our County. White and Asian residents have a significantly higher median household income than Black/African American and Hispanic/Latino residents.

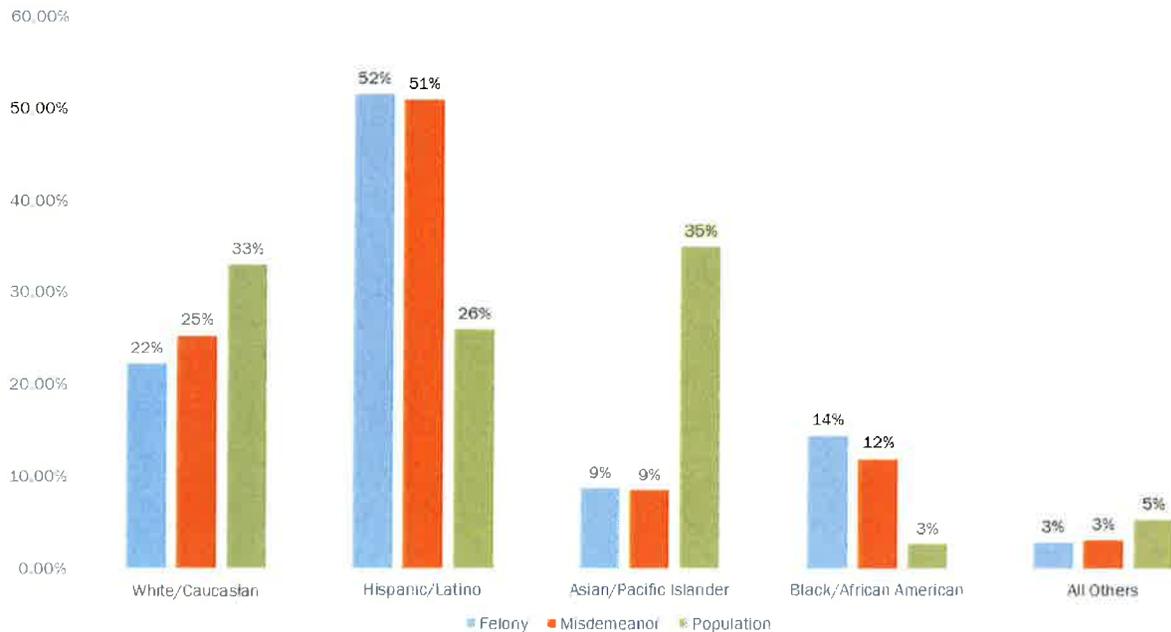


¹ US Census, 2018 American Community Survey

Race of Prosecuted Defendants:

When examining the defendant population of Santa Clara County, racial disproportionality exists in the juvenile and adult populations, in differing degrees. As discussed here, race and ethnicity are based on the defendant's self-identification at booking or arrest. "Unknown" does not mean that a person does not know their racial or ethnic identification, but rather that that information was not entered into the electronic dataset. In 2019, as in the prior years of the Race and Prosecution report, the data revealed that the District Attorney's office prosecuted a higher percentage of Hispanic/Latino and Black/ African-American defendants compared to their representation in our community. We prosecute a lower percentage of Asian/ Pacific Islander defendants compared to their representation in the community. White/ Caucasian defendants are prosecuted in a percentage that is closest to their makeup of our County.

Felony and Misdemeanor Defendants: 2019



Analysis of Racial Disparity by Crime Type

In the appendix to this report, several commonly-charged crimes are examined, revealing that racial disparity exists across multiple crime types, but more pronounced in more serious crimes. As we looked at crimes that are typically initiated by police contact (Under the Influence of Drugs [HS 11550], Driving while Intoxicated [VC 23152]) and compared to crimes that are typically called in by civilians (violent crimes), the numbers still reflected a disproportionately low number of charged Asian/Pacific Islander defendants, varying percentages of White/Caucasian defendants, and a clear higher representation of Black and Latino defendants.

² US Census, 2018 American Community Survey 5-Year Estimate

The crime category which mirrors the population the closest by race is “White Collar” Crime, meaning cases where the primary charge was a non-violent, often financial crime. In those cases, 23% of defendants were White, 14% Asian, and 25% Hispanic/Latino.

The greatest disproportionality for Black/African American defendants were in robbery cases (23% of charged cases), resisting arrest (16%), residential burglary (13%) and second-degree burglary (24%).

The greatest disproportionality for Hispanic/Latino defendants were felony DUI (72%), residential burglary (58%), murder/attempted murder (58%) and corporal injury on a spouse (56%).

Criminal Prosecution:

Prosecutions begin when investigating agencies submit criminal cases to the District Attorney’s office for review. These case submissions often include police reports, documents, recordings, photos and other materials. Prosecutors review those materials to determine whether to file criminal charges. That means that the suspects who are being considered for the potential filing of criminal charges are those who the police agencies arrest or investigate.

One of the most important decisions prosecutors make is whether to charge someone with a crime. So we examined whether there was a difference in the rate at which charges were filed against a suspect based on race/ethnicity. As seen below, in 2018 the percentage of cases charged was nearly constant across all races. A slightly lower percentage of reviewed cases involving Asian/Pacific Islander defendants were issued compared to other races.

2018 Charging Rates by Race/Ethnicity			
	# of Rejected Cases	# of Charged Cases	% Charged
White/Caucasian	2149	9584	81.6
Black/African American	972	4667	82.3
Hispanic/Latino	3626	18862	83.8
Asian/Pacific Islander	829	3040	78.6
Other	110	1019	90.2

Juvenile Race Data:

The Crime Strategies Unit and the Community Prosecution Unit at the DA’s office have worked hard to identify and address the racial disparity we see among the young people within the criminal justice system. The DA’s Community Prosecutors work on Juvenile-based programming and intervention, with the aim of decreasing recidivism and preventing the county’s youth from crime, arrest, convictions and incarceration.

To understand some of the other societal factors affecting racial disparity, we looked at existing data on some of these factors. One major source was The California Healthy Kids Survey (CHKS), which is a statewide survey of student sentiment. This report also looked at studies published by the Santa Clara County Juvenile Justice Commission along with internal D.A. Office data to

determine whether early inequities existed in the data. Fighting at school and Self-Reported gang membership exist in higher percentages for African American and Hispanic/Latino youth.

Physical Fighting at School, by Race/Ethnicity ³

Santa Clara County Race/Ethnicity	Percent			
	0 Times	1 Time	2 to 3 Times	4 or More Times
African American/Black	78.5%	11.2%	5.6%	4.7%
American Indian/Alaska Native	88.7%	4.1%	6.2%	1.0%
Asian	92.6%	5.4%	0.9%	1.1%
Hispanic/Latino	85.6%	8.1%	3.3%	3.0%
Native Hawaiian/Pacific Islander	85.9%	8.4%	4.4%	1.3%
White	84.2%	13.6%	1.2%	1.0%
Multiracial	86.4%	8.7%	2.7%	2.2%
Other	90.8%	4.1%	2.2%	2.9%

Self-Report Gang Membership, by Race/Ethnicity ⁴

Santa Clara County Race/Ethnicity	Percent	
	Yes	No
African American/Black	7.4%	92.6%
American Indian/Alaska Native	1.7%	98.3%
Asian	2.2%	97.8%
Hispanic/Latino	6.6%	93.4%
Native Hawaiian/Pacific Islander	3.8%	96.2%
White	3.4%	96.6%
Multiracial	4.0%	96.0%
Other	3.2%	96.8%

Education

High school dropout rates are much higher for African-American/Black and Hispanic/Latino students in Santa Clara County compared to White/Caucasian or Asian/Pacific Islander students. In California, the average percentage of students not completing High School is 10.7%.

Percent of Students Not Completing High School, by Race/Ethnicity: 2018 ⁵	
Hispanic/Latino	10.8%
African-American/Black	16.2%

³ WestEd, [California Healthy Kids Survey](http://www.kidsdata.org). California Department of Education (Jul. 2017), at www.kidsdata.org

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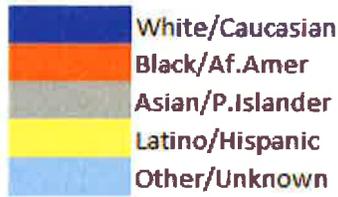
⁵ California Dept. of Education, California Longitudinal Pupil Achievement Data System (CALPADS) (Nov 2018), at <https://www.cde.ca.gov>

Filipino	3.2%
White	7.2%
Asian-American	3.2%
2+ Races	8.7%

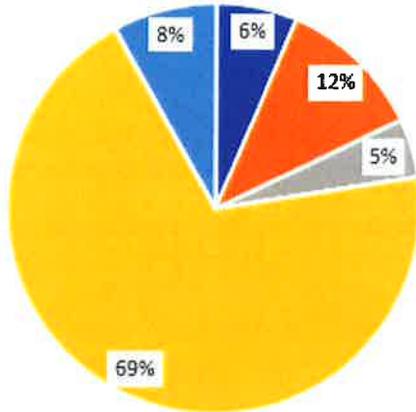
Juvenile Prosecutions:

The District Attorney’s Office is committed to addressing racial inequity in the Juvenile system, including collaborating with the Juvenile Justice Commission, the Probation Department, the Juvenile Court and multiple Community Partners. Juvenile Crime prevention is the primary focus of the DA’s Community Prosecution Unit, but there is much work to be done.

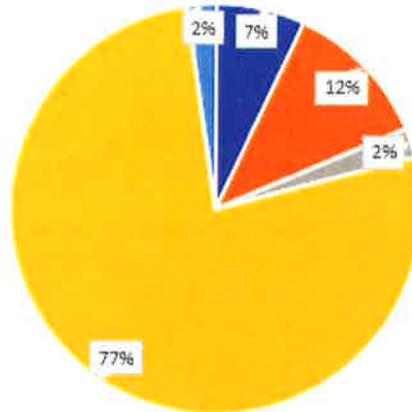
The Crime Strategies Unit looked at the racial/ethnic composition of juveniles charged with felony offenses, and found disparity that was more pronounced than in adult court. The data show the racial composition of charged minors in juvenile court and show a clear over-representation of Hispanic/Latino youth in the charged juvenile population. Hispanic/Latino youth were charged at a rate nearly double their representation in the community, while Black/African American youth were charged at a rate several times their percentage in the population. While much has been done in our County to reduce the number of juveniles charged with offenses, and to reduce the population at juvenile hall, racial disparities in those who are charged persist.



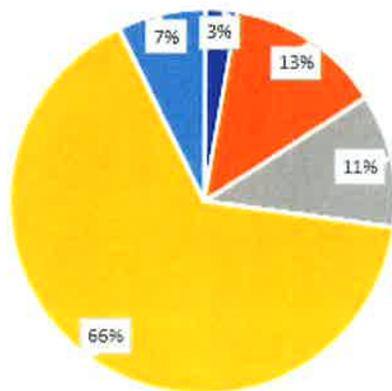
Robbery - Charged Juveniles
2019



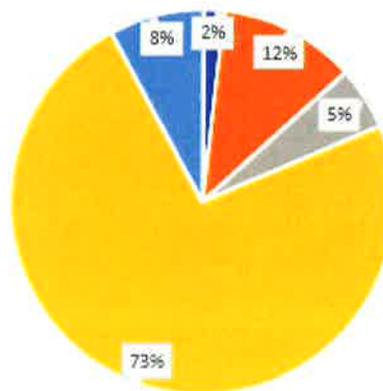
Carjacking - Charged Juveniles
2019



Residential Burglary -
Charged Juveniles 2019



Stolen Vehicles - Charged
Juveniles 2019

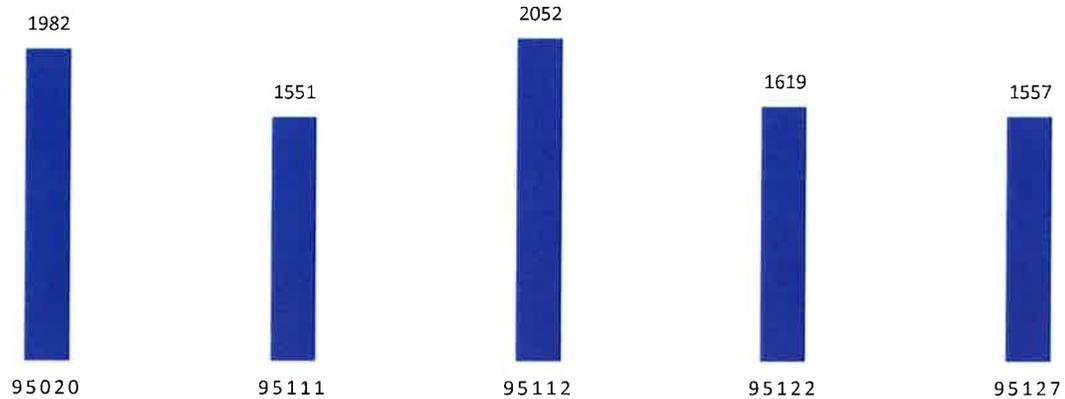


Zip Code Analysis

In both the adult and juvenile populations, there are five primary zip codes that represent the largest number of the criminally charged. In 2017, the adult and juvenile population's top five zip codes of residence for individuals charged with a crime were: 95020 (Gilroy), 95112 (Downtown San Jose), 95111 (Southeast San Jose), 95122 (East San Jose) and 95127 (East San Jose/Foothills). We know our most vulnerable populations live in a small geographic area of our

County. Understanding these communities helps us understand how to address crime and racial disparity.

TOP DEFENDANT ZIP CODES: 2018



The Santa Clara County Public Health Department compiles robust data about education, employment, health and safety for each of the zip codes in the County. Looking more closely at our defendant zip codes, we find that defendants most commonly reside in poorer, more dangerous, and less healthy neighborhoods. One particularly important statistic involves the share of the population who feel that crime is a major problem. In the County overall, 42% of residents feel that crime is a problem, whereas that number is nearly double that, 81%, in East San Jose. In Downtown and East San Jose, the median household income is far below the County average, with twice the number of residents living below the poverty line.

In examining data from the Santa Clara County Department of Public Health’s surveys, and data from the United States Census Bureau, we can see some of the differences in these regions:⁶

	County Overall	95020 (Gilroy)	95112 (Downtown San Jose)	95111 (Southeast San Jose)	95122 (East San Jose)	95127 (East Foothills)
Median household income	106,761	90,144	60,569	66,549	66,606	84,239
Unemployment Rate	5.7%	6.0%	7.7%	7.5%	8.0%	6.8%
Families w/ children below Poverty Line	7.4%	13.1%	14.0%	17.7%	17.9%	10.8%
Children below Poverty Line	9.7%	18.4%	15.9%	22.4%	20.2%	15.0%
Adults with fair or poor self-rated health	19%	85%	74%	69%	62%	72%
Adults reporting neighborhood crime is somewhat or a major problem	42%	63%	66%	75%	81%	63%

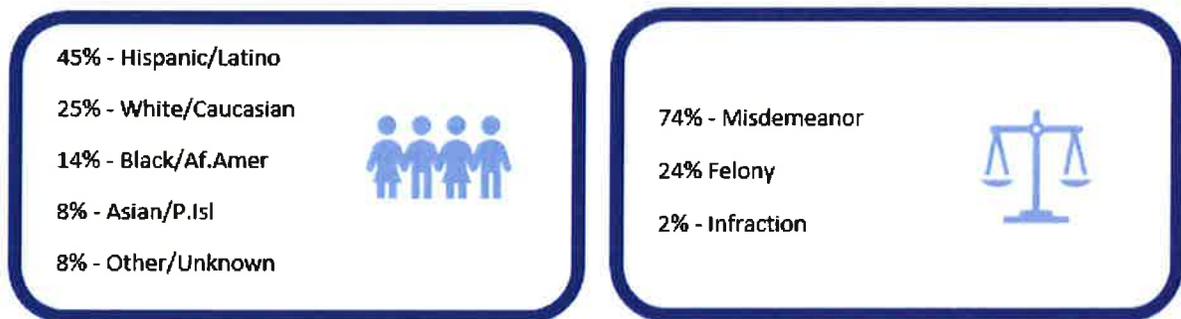
⁶ US Census Bureau, American Community Survey 2014-2017, and Santa Clara County Dept. of Public Health Zip Code Profiles (2016), available at: <https://www.sccgov.org/sites/phd/hi/hd/Pages/zipcodes.aspx>

What Can Be Done About County Inequality and Specific Zones of Crime?

The Community Prosecution Unit is specifically embedded in Gilroy, Downtown San Jose and East San Jose, working to understand the needs of the neighborhoods where most of our defendant population resides. Tremendous work is done by Community Prosecutors, Investigators, Victim Advocates and the Crime Strategies Unit to develop crime prevention policies in those communities. Prevention efforts are an important part of the District Attorney's role in addressing crime.

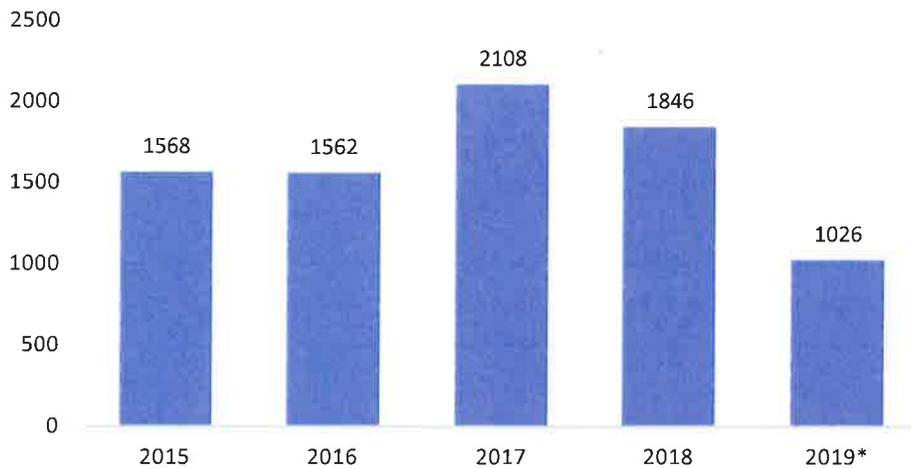
Homeless Defendants: San Jose Police Department Cases (2015 – 2019)

The District Attorney's Office examined several thousand cases referred for prosecution by San Jose Police Department (SJPD), and found that the D.A.'s office prosecuted 8,209 SJPD cases between 2015 and September 2019, where the defendants were likely homeless [a listed address of "transient", "unknown" or at a homeless shelter.] Most of these cases (74%) involved misdemeanors, and the primary race of the charged SJPD transient defendants was Hispanic/Latino (45%).



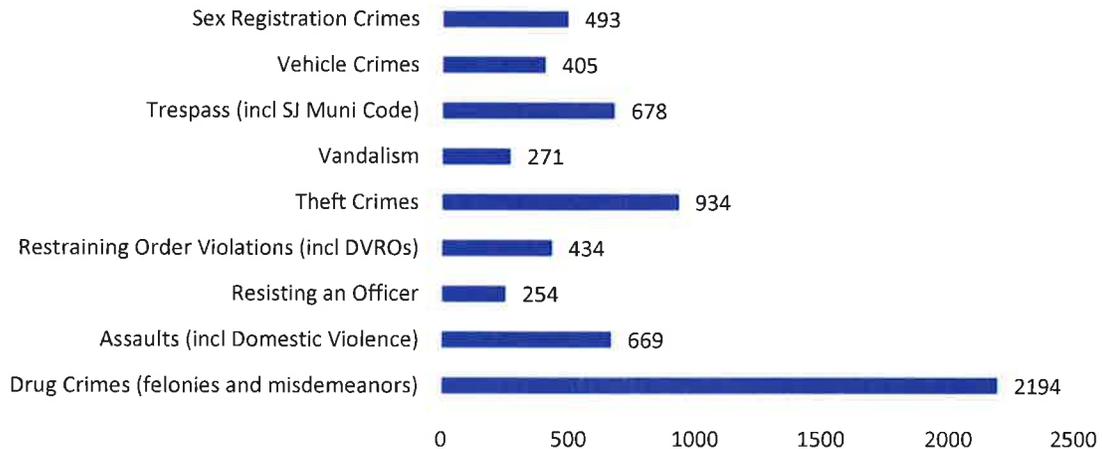
Charged crimes against transient defendants from SJPD average 1,707 per year or 4.3% of all crimes charged by the DA's Office – note that per the latest SCC Homeless Census, homeless people account for 0.5% of residents in Santa Clara County. Among victims of violent Crime served by the DA's Office's Victim Services Unit, 9% were homeless. This is far greater than the percentage of homeless in our community, and the percentage of crimes committed by homeless people.

Charged SJPD Transient Defendants



The most commonly-charged crimes were drug-related felonies and misdemeanors, followed by theft, trespass and assaultive crimes.

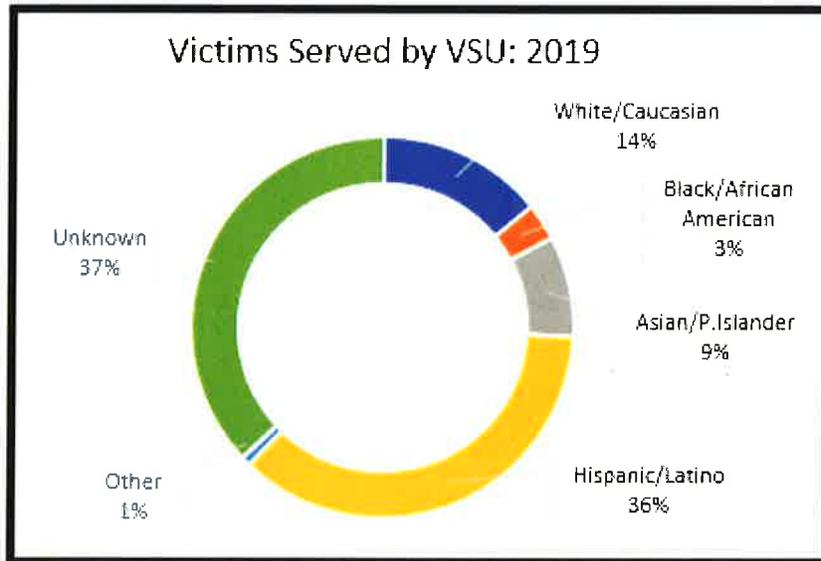
Number of Transient Defendants Charged 2015-2019 (largest categories only - SJPD cases)



VICTIM SERVICES UNIT

The Victim Services Unit at the District Attorney's office provides support to crime victims in a multitude of ways, from financial to emotional support. Many victims did not provide their race/ethnicity at the time of receiving services (37% of the victims served were of unknown race). But of the known races served by VSU, the majority were Hispanic/Latino, followed by White/Caucasian victims.

	# of Victims	
White/Caucasian	748	14%
Black/African American	166	3%
Asian/P.Islander	456	9%
Hispanic/Latino	1934	36%
Other	43	>1%
Unknown	1966	37%
	5313	



Conclusion and Next Steps

The District Attorney’s Office is committed to enacting a host of reforms to our policies, practices, training, outreach, and more now and in the months to come.

In the last ten years, the DA’s Office has done some big things to address these issues, and these reforms have had big effects in shrinking the number of cases our office prosecutes. My support and the voters’ passage of Proposition 47 that changed 5 crimes to misdemeanors had a big effect on reducing the number of felonies our office prosecutes. Our policy that began in the summer of 2019 to refer misdemeanor drug cases to treatment rather than to filing criminal charges unless someone had three or more in a year takes the court and our office out of the role of being the middle man between someone who needs drug treatment, and the treatment they need. More than that, though these policies had the effect of reducing the total number of first felony cases and then misdemeanor cases our office prosecutes, which had an outsized effect on Latino and African-American defendants because of those defendants’ over-representation in our criminal justice system. From these policies, as well as the diversion for low level misdemeanors that I instituted shortly after taking office, and alternative resolutions for a host of other low level crimes that (for example) began to treat first time prostitutes as the victims of their pimps rather than as criminals, the total number of criminal cases my office prosecutes has fallen by 24.6 % in the last ten years. Based on this Report, we know that 60%

of those cases would have been filed against Latino and African American defendants, even though those groups comprise closer to 1/3 of the population in the County.

The reforms the DA's Office is announcing this month will continue that work, by changing policies, practices, training, and outreach in ways that address the racial inequities where we can affect them, within the criminal justice system.

We are living in a critical moment. It is a moment where our country has turned its attention to whether the criminal justice system can be made fairer for everyone. It is a moment where I, the prosecutors who work for me, and our community want to make changes. I will not let this moment pass. The changes discussed here will further address the disparities that this report highlights, and there are more to come.



Jeff Rosen
District Attorney

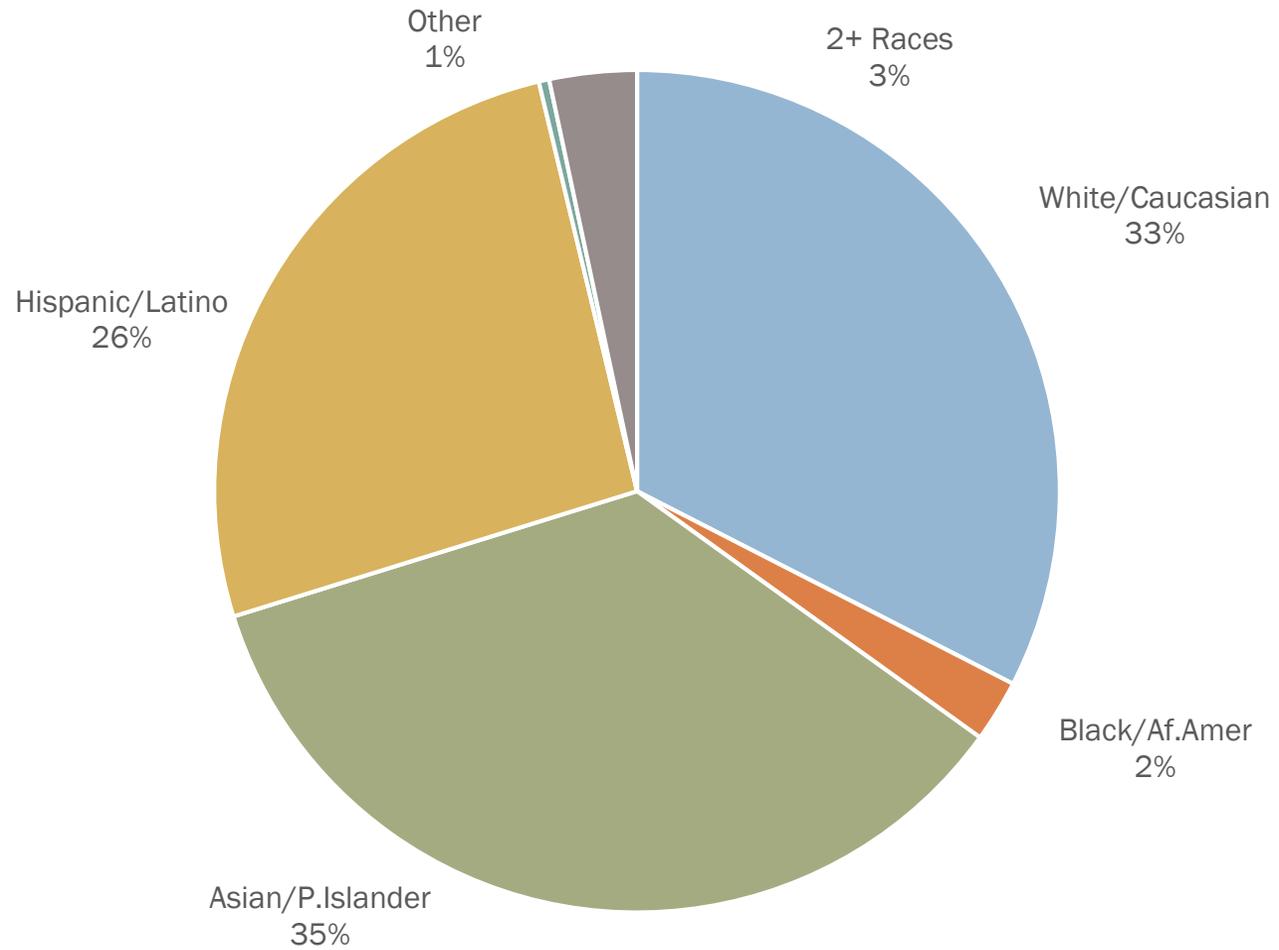
RACE AND PROSECUTIONS REPORT

2014-2019



OFFICE OF THE
DISTRICT ATTORNEY

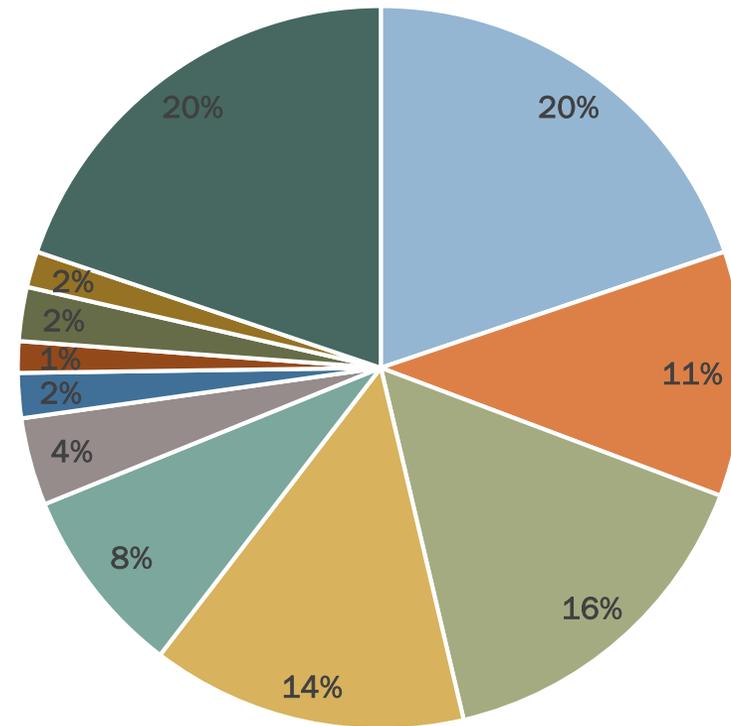
RACE OF SANTA CLARA COUNTY RESIDENTS



Source: US Census Bureau, 2018 American Community Survey

COUNTRY OF ORIGIN OF IMMIGRANT POPULATION SANTA CLARA COUNTY

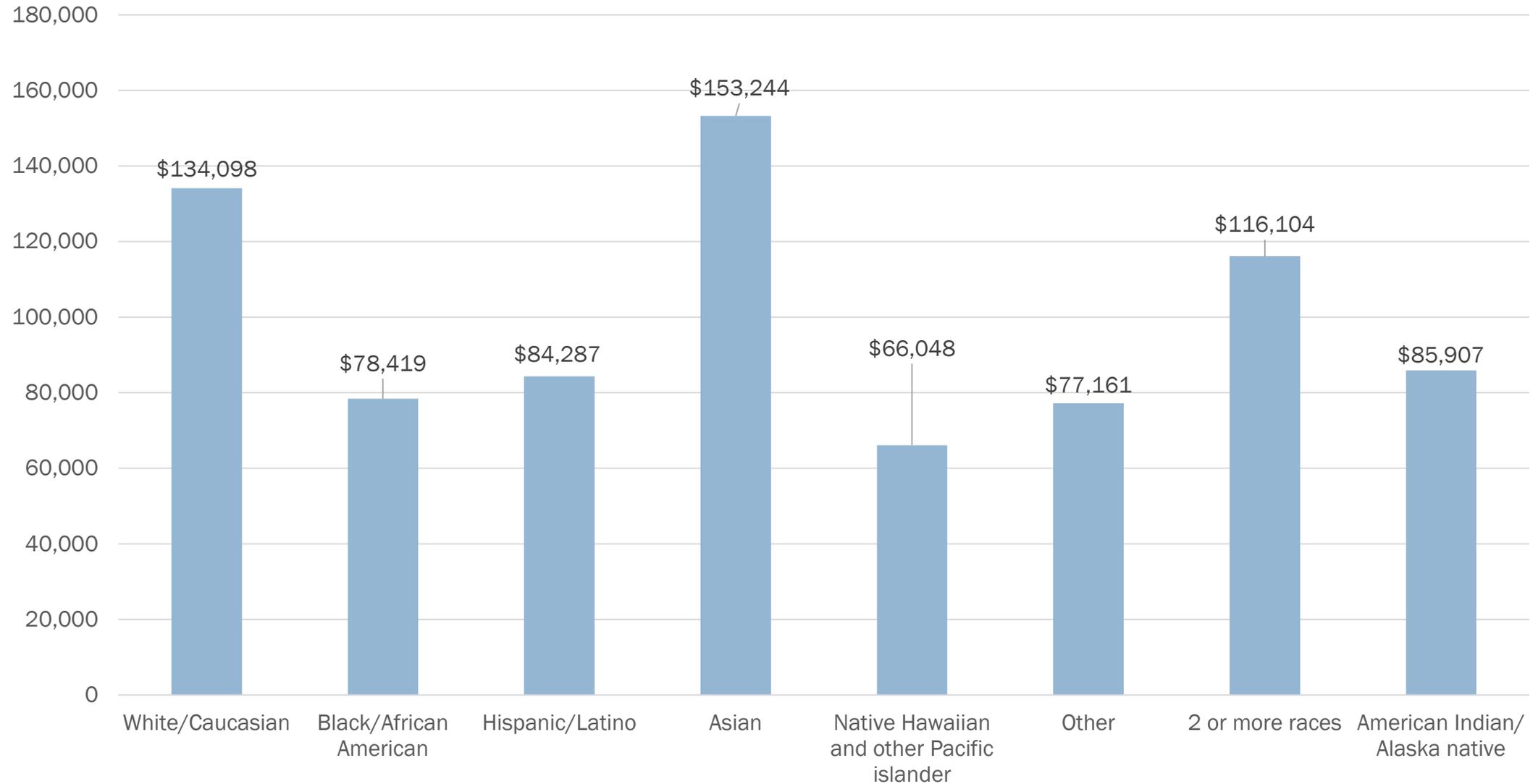
Top 10 Countries of Origin for Immigrants in Santa Clara County



■ Mexico ■ China ■ India ■ Vietnam ■ Philippines ■ Taiwan ■ Iran ■ Russia ■ Korea ■ Japan ■ Other

38% OF SANTA CLARA COUNTY RESIDENTS WERE BORN IN ANOTHER COUNTRY (2016 STUDY BY New American Economy)

MEDIAN HOUSEHOLD INCOME IN SANTA CLARA COUNTY



Source: 2014-2018 American Community Survey 5-Year Estimates

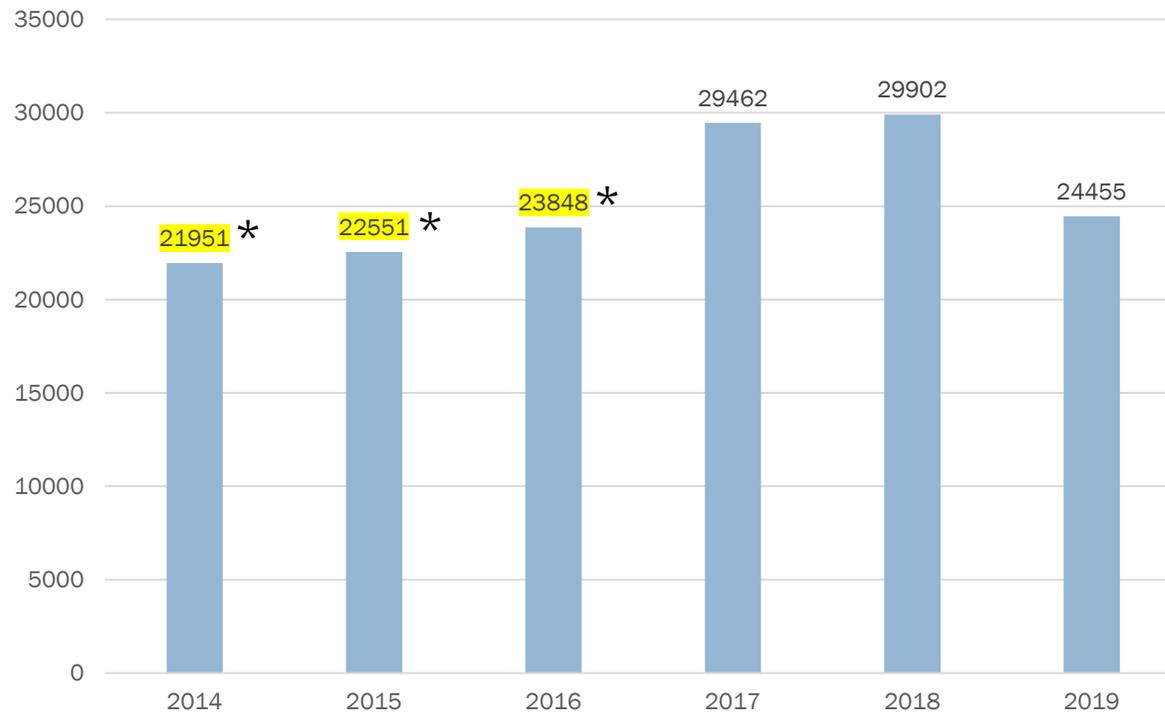
PERCENT OF STUDENTS DROPPING OUT OF HIGH SCHOOL BY RACE

Percent of Students Not Completing High School, by Race/Ethnicity: 2016-17	
Hispanic/Latino	5.80%
African American/Black	2.70%
Pacific Islander	2.10%
White	0.90%
Asian American	0.40%
2+ Races	1.4%

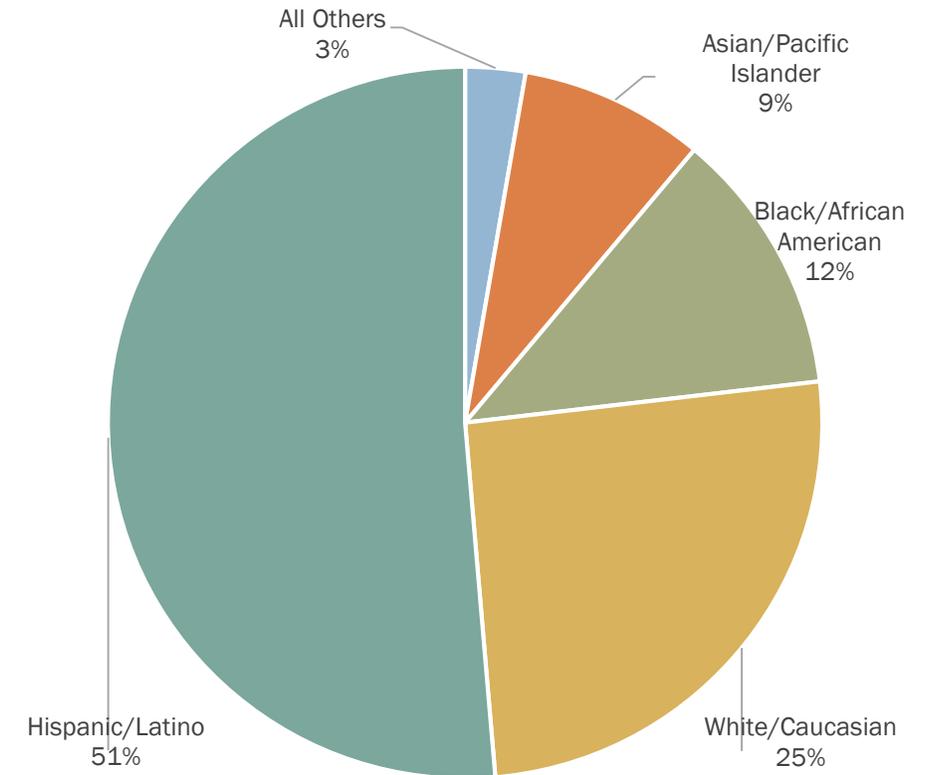
2016-17 Santa Clara County dropouts by ethnic designation by grade
California Department of Education Data Reporting office

RACE OF DEFENDANTS IN FILED MISDEMEANORS 2014-2019

2014-2019 Filed Misdemeanors



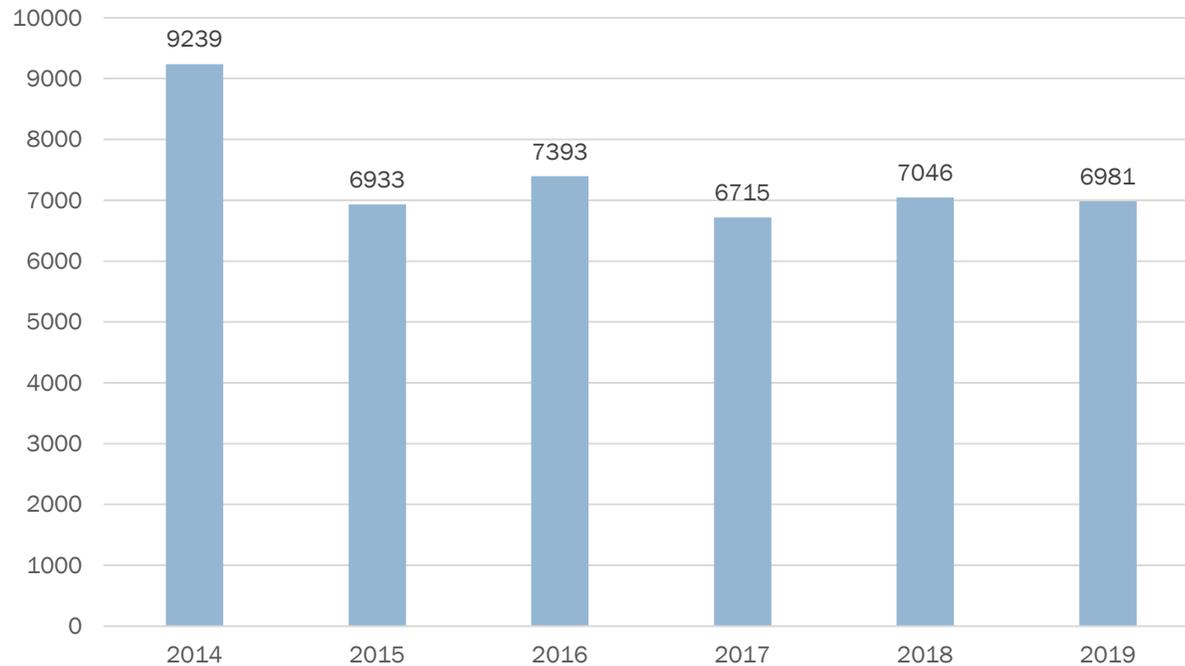
RACE BY PERCENTAGE: 2019



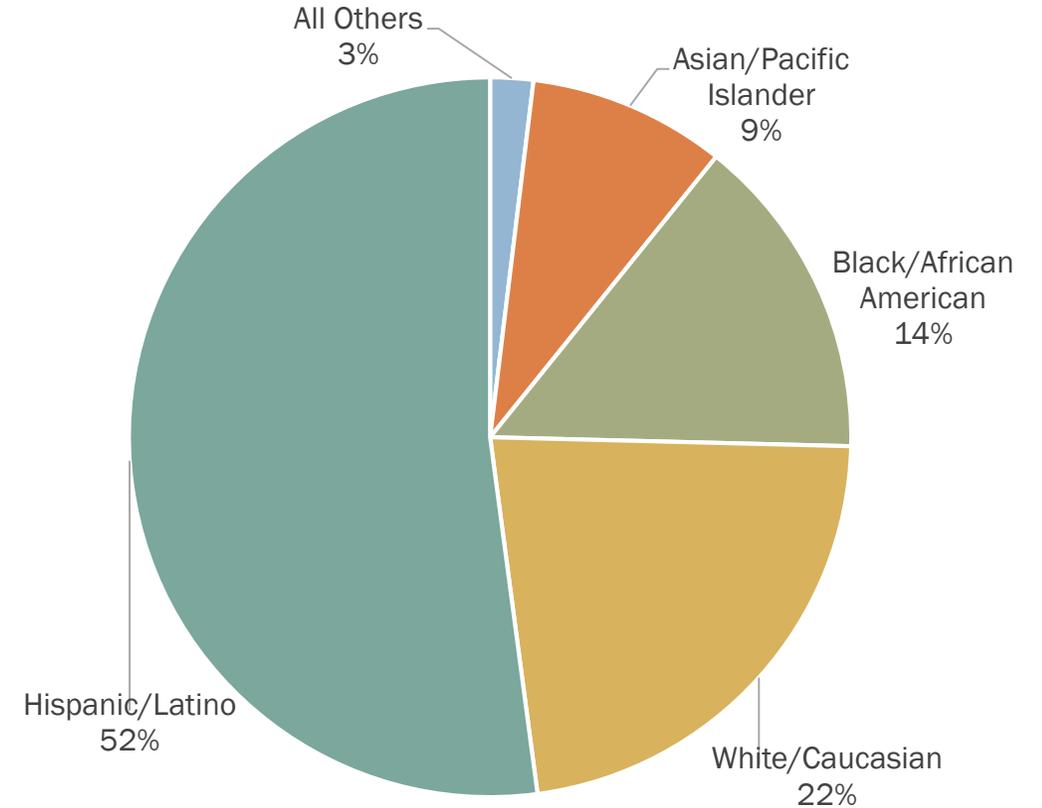
* The number of filed misdemeanors reported before 2017 are lower than the actual number of filed misdemeanors, because our record management system did not previously track cases filed by citation. The 2017-2019 data now reflect all misdemeanors, including those filed by citation.

RACE OF DEFENDANTS IN FILED FELONIES 2014-2019

2014-2019 Filed Felonies

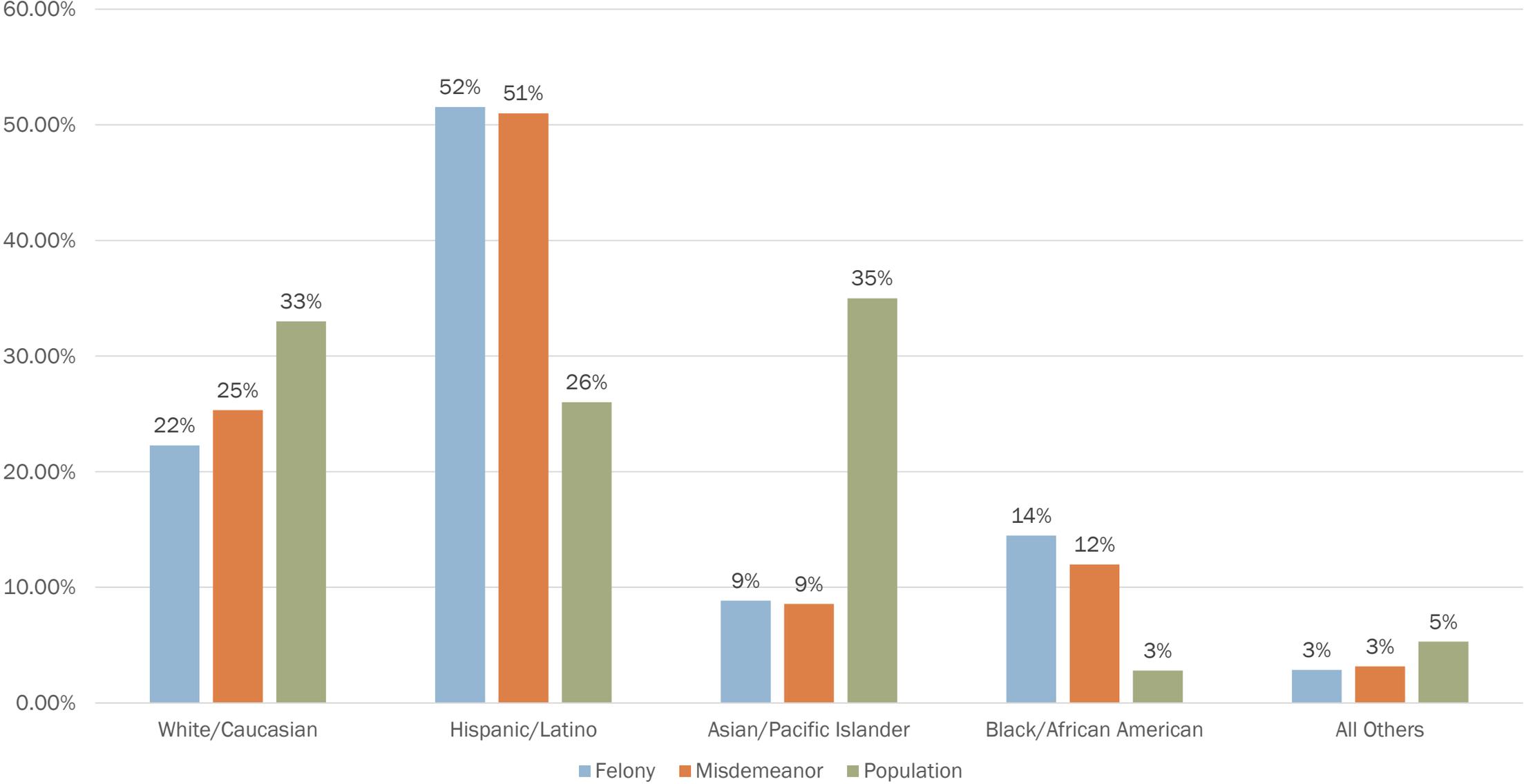


RACE BY PERCENTAGE: 2019



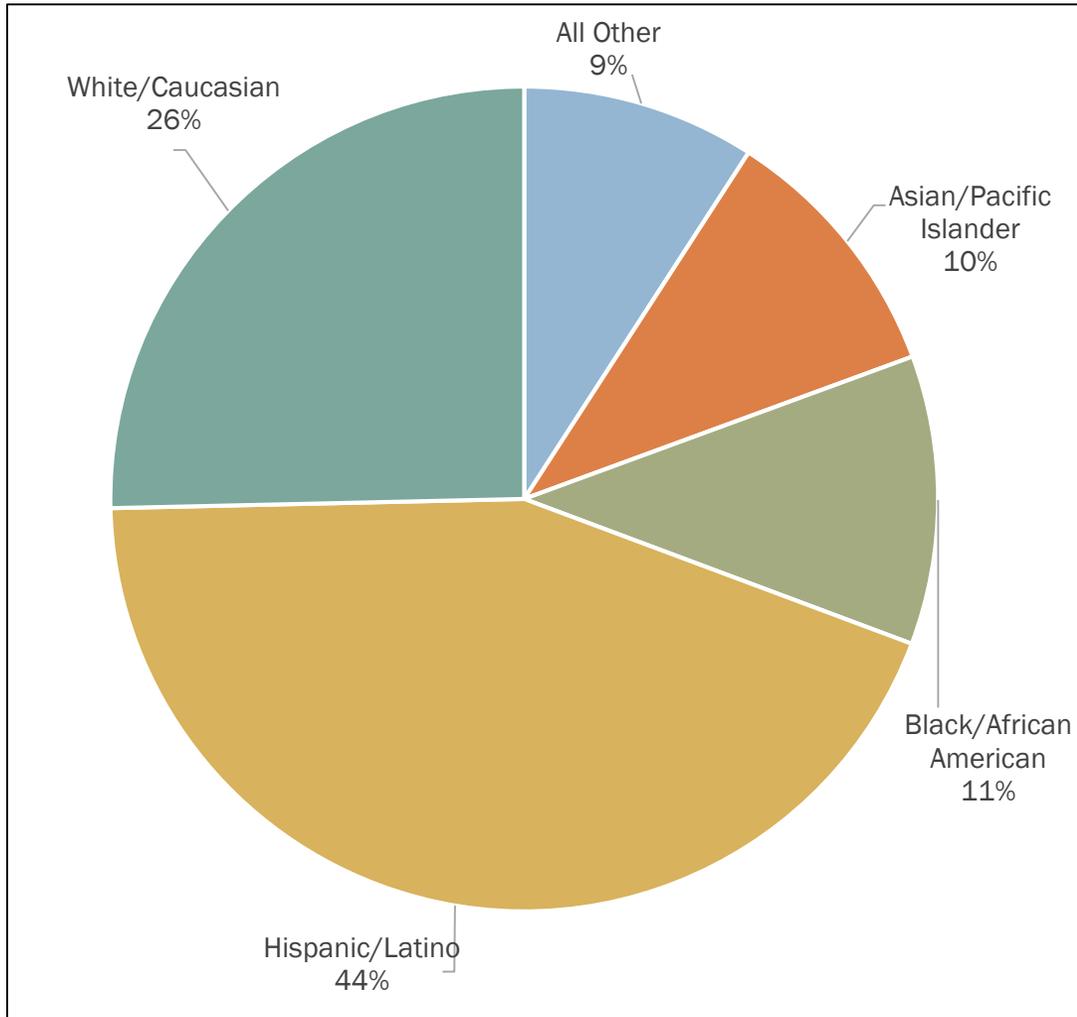
Note that the passage of Proposition 47 in November of 2014 reclassified five felonies as misdemeanors.

Felony and Misdemeanor Defendants: 2019

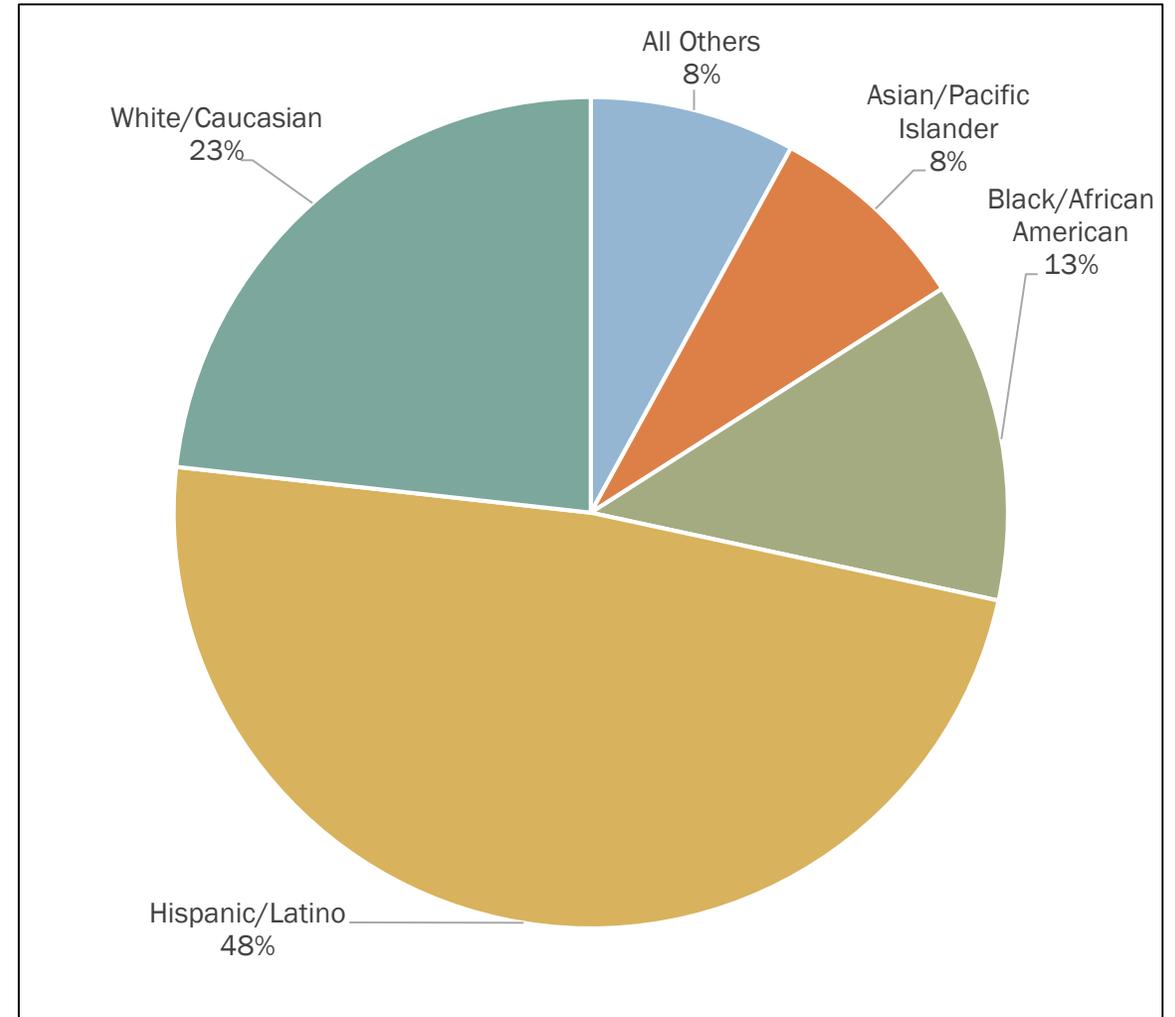


Approved and Rejected Cases by Race: 2019

APPROVED CASES BY RACE



REJECTED CASES BY RACE



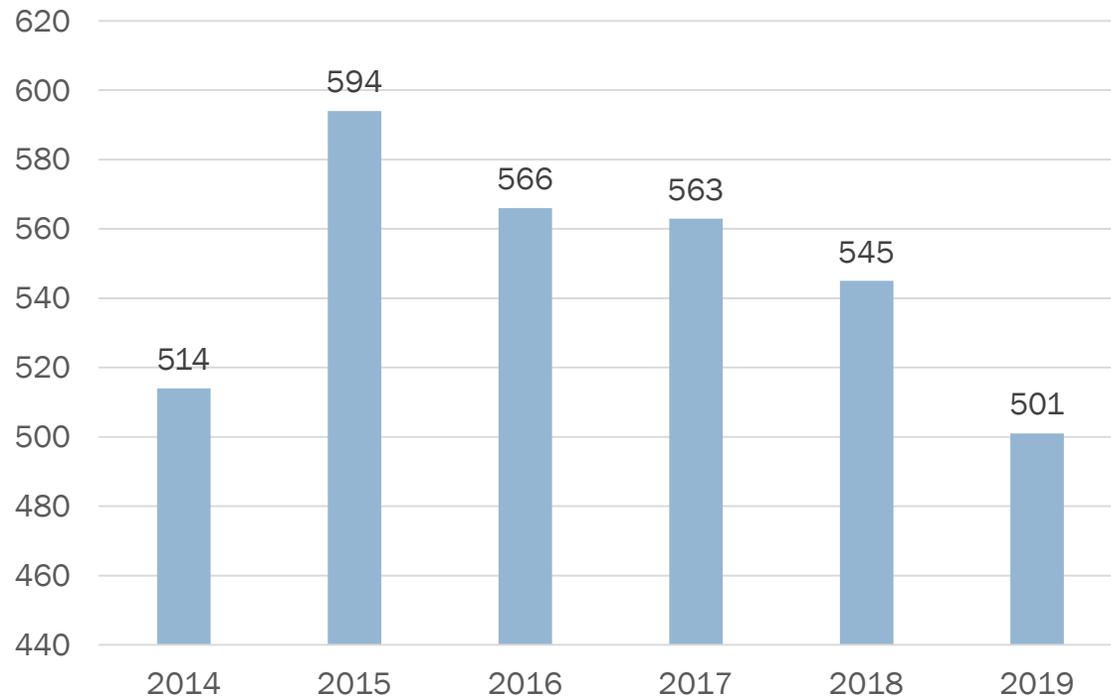


OFFICE OF THE DISTRICT ATTORNEY

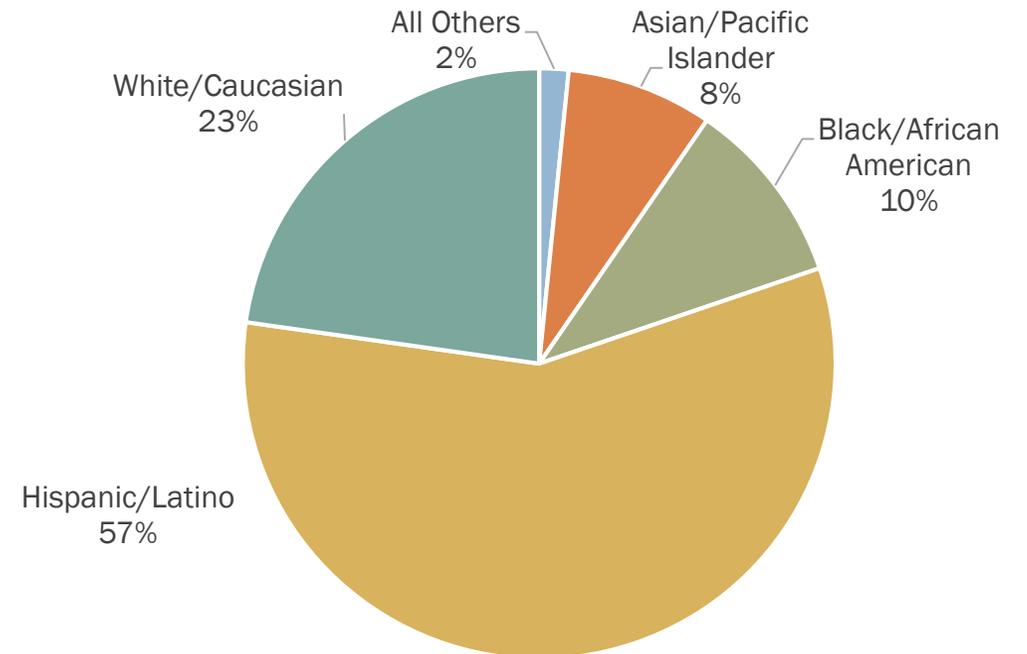
- The following slides address different crime types that the District Attorney's Office prosecutes and examines the race of the defendants prosecuted across different crime types from 2014 to 2019.
- The number of filed misdemeanors reported before 2017 are lower than the actual number of filed misdemeanors, because our record management system did not previously track cases filed by citation. The 2017-2019 data now reflect all misdemeanors, including those filed by citation.

Assault With a Deadly Weapon or By Force Likely to Cause Great Bodily Injury Felonies; PC 245(a)

PC 245(a)

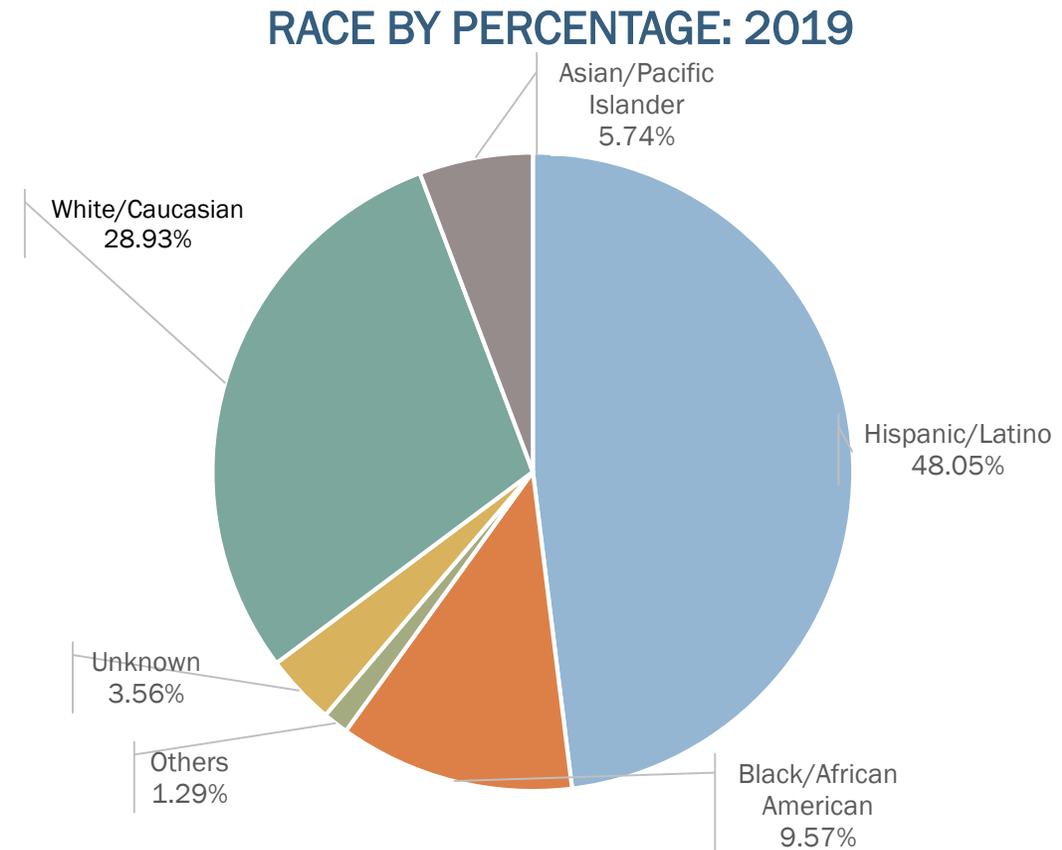
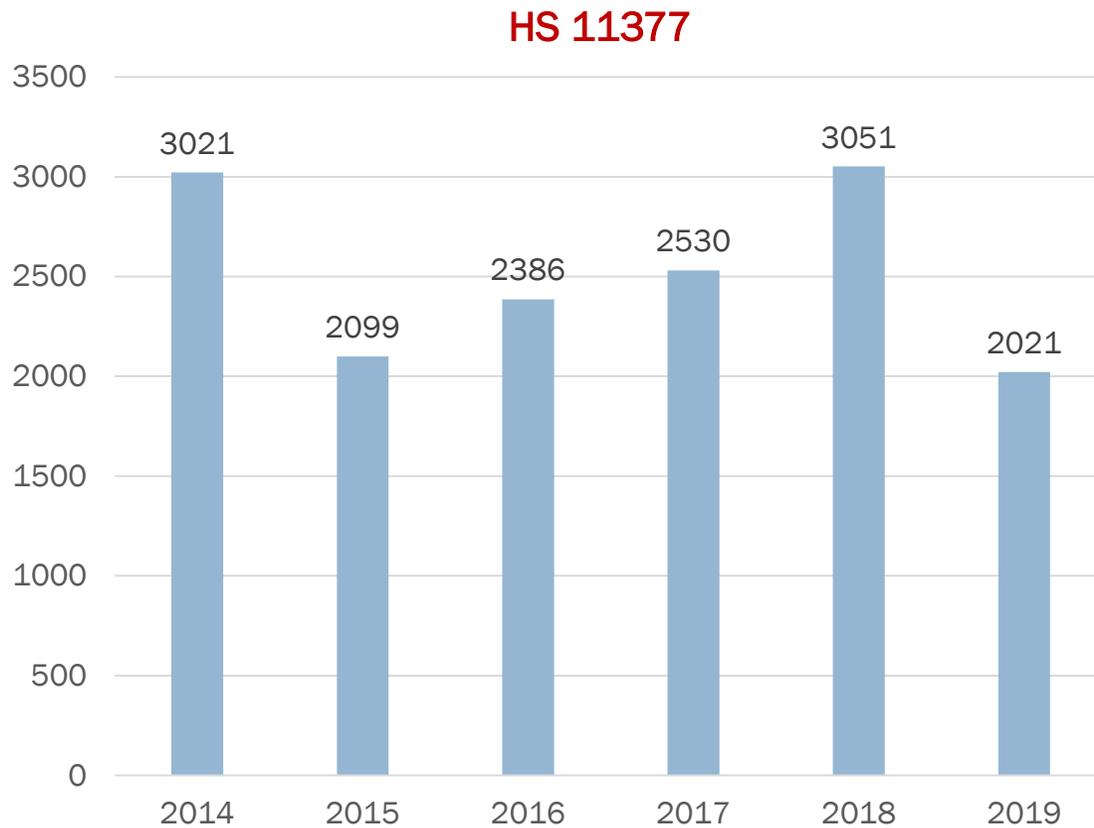


RACE BY PERCENTAGE: 2019



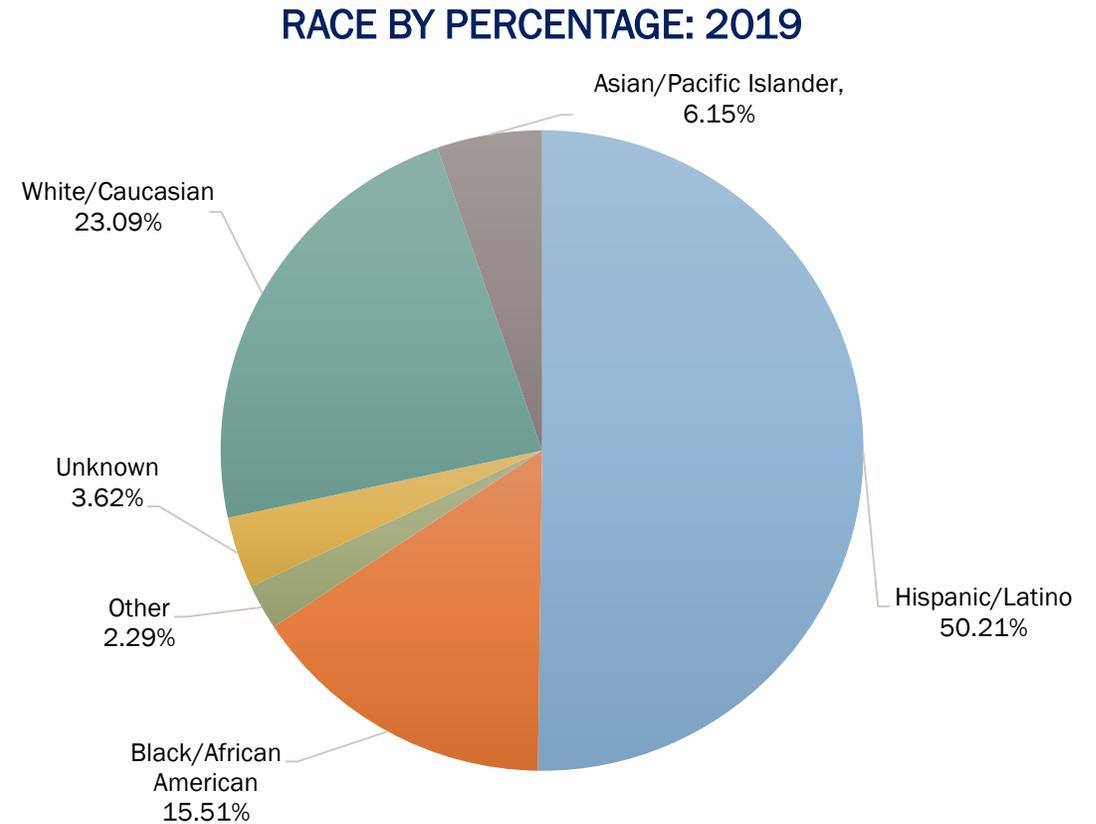
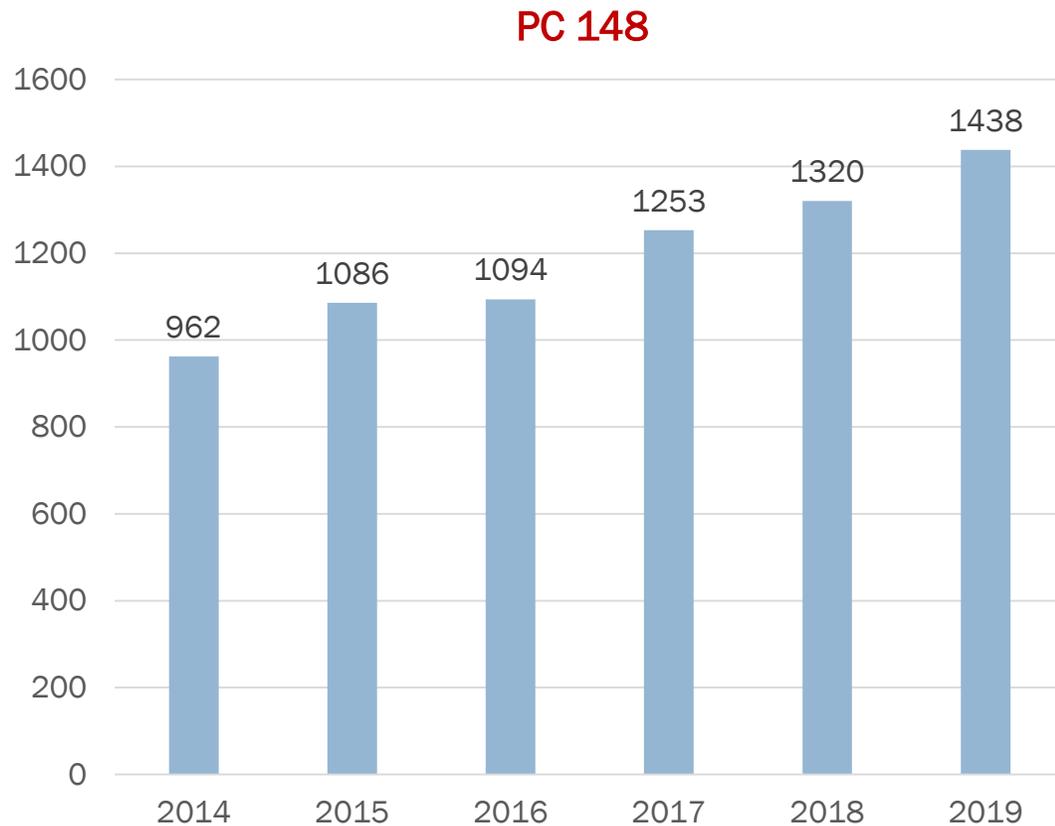
This information reflects the following: 245(a)(1), 245(a)(2) and 245(a)(4) PC

Drug Possession Misdemeanors; H&S 11377 (possession of methamphetamine)



* Note that after the passage of Proposition 47 in November of 2014, a violation of H&S 11377 could only be charged as a misdemeanor and not as a felony. Also, in 2019 the office modified its policy for charging drug possession misdemeanors, resulting in far fewer cases being issued for that charge.

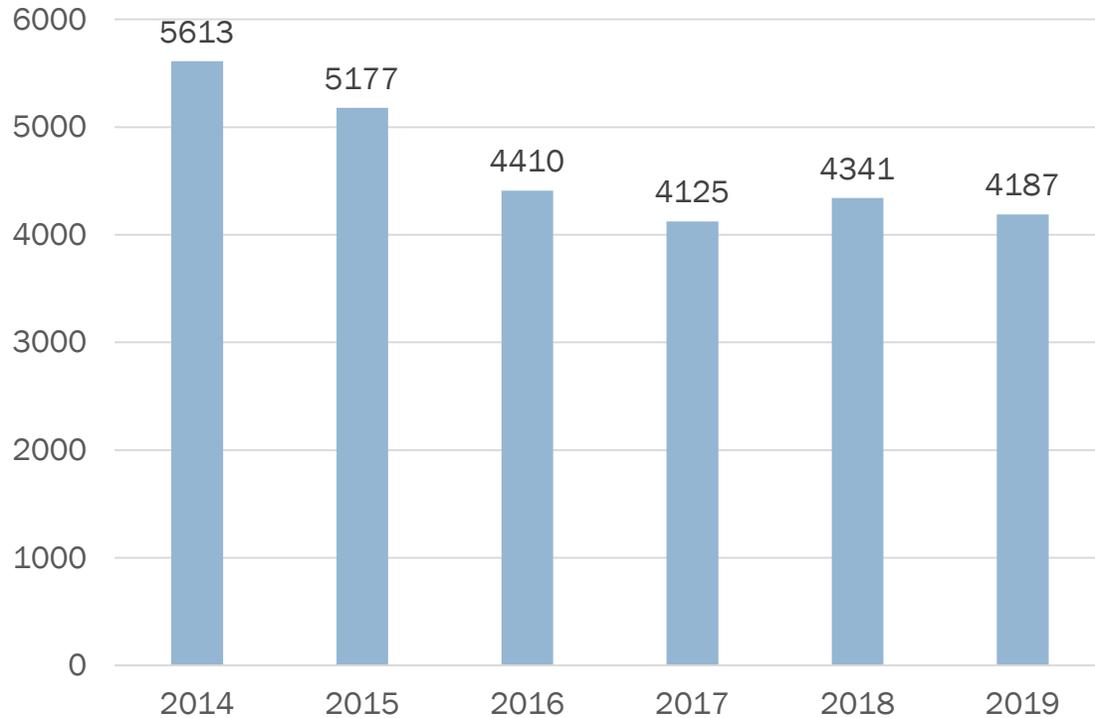
Resisting Arrest – multiple categories PC 148



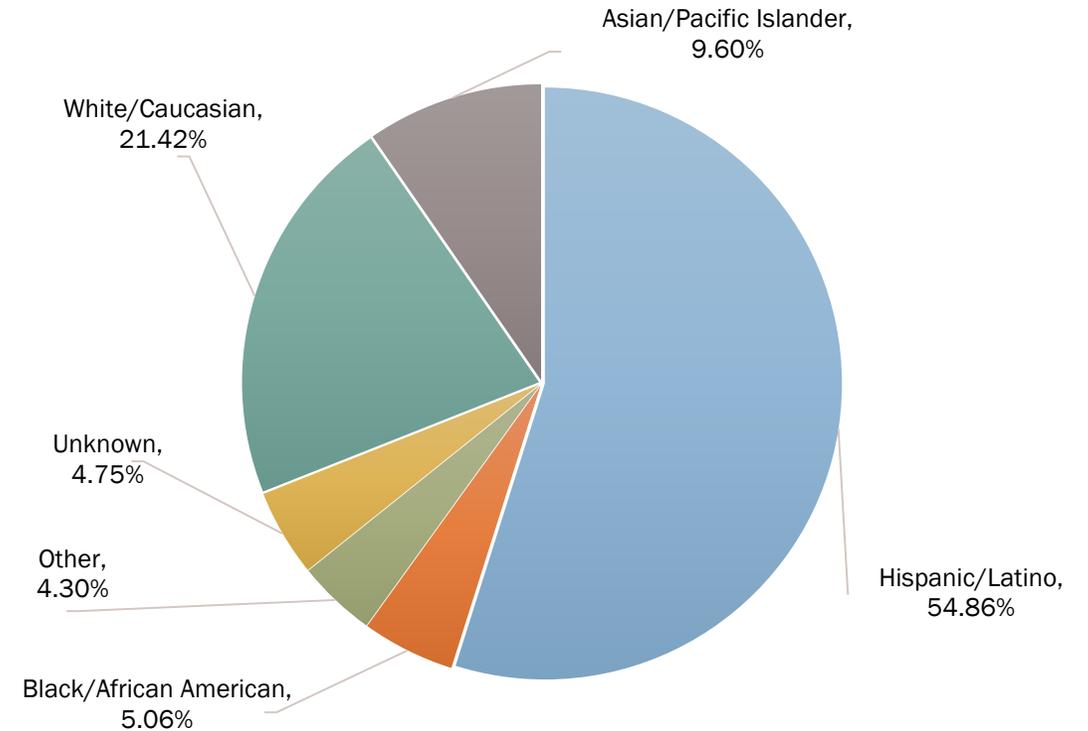
This information reflects the following: 148(a)(1), 148.3(a), 148.4(a)(1), 148.4(a)(2), 148.5(a), and 148.9 (a)

DUI Misdemeanors; Police Contact by Vehicle Stop VC 23152/23153

VC 23152/23153

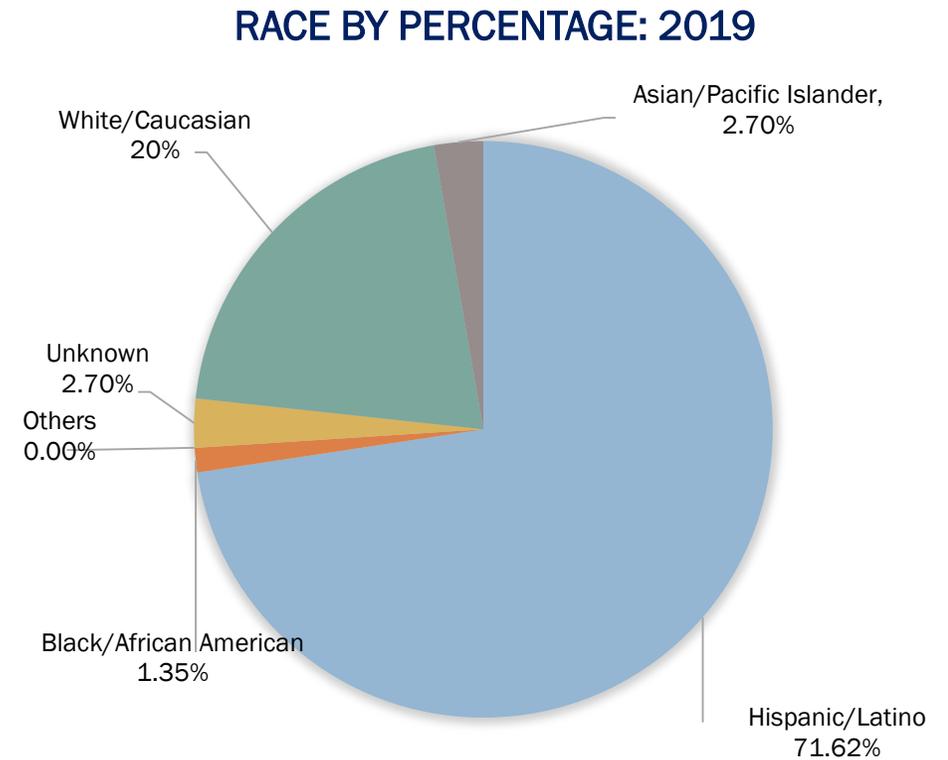
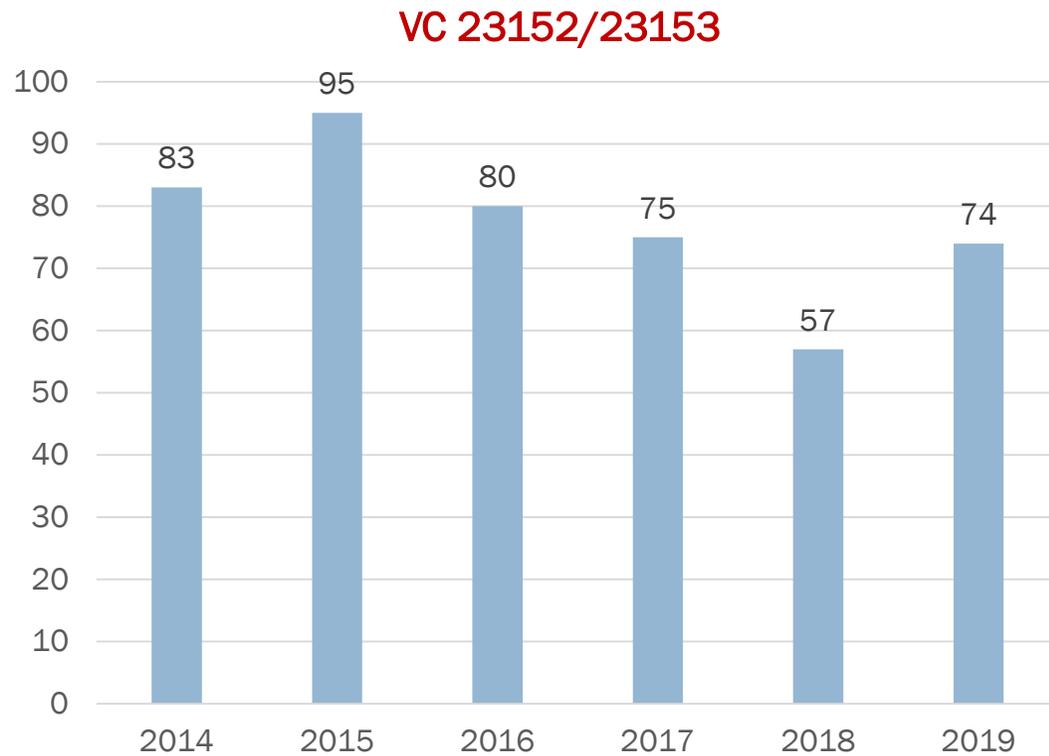


RACE BY PERCENTAGE: 2019



This information reflects the following: 23152(a), 23152(b), 23153(a), 23153/23566(a), 23152(c), 23152(e) and 23152(f)

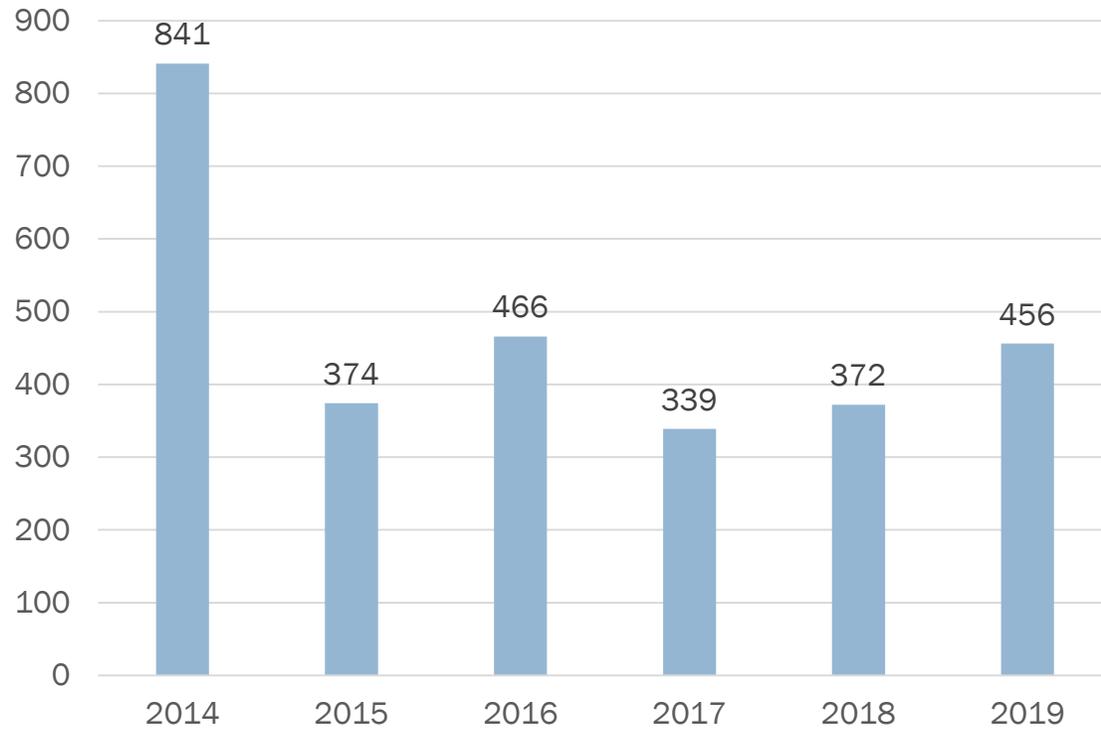
DUI Felonies VC 23152/23153



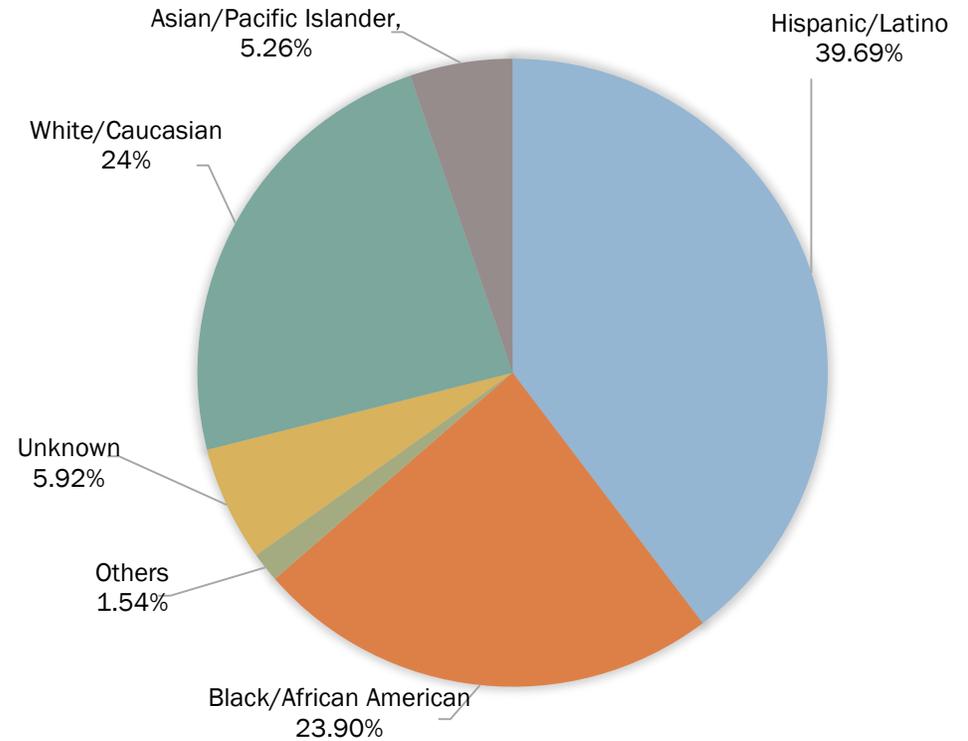
This information reflects the following: 23152/23550(a), 23152/23550.5(a)

Second-Degree Burglaries (commercial & auto burglary) PC 460(b)

PC 460(b)

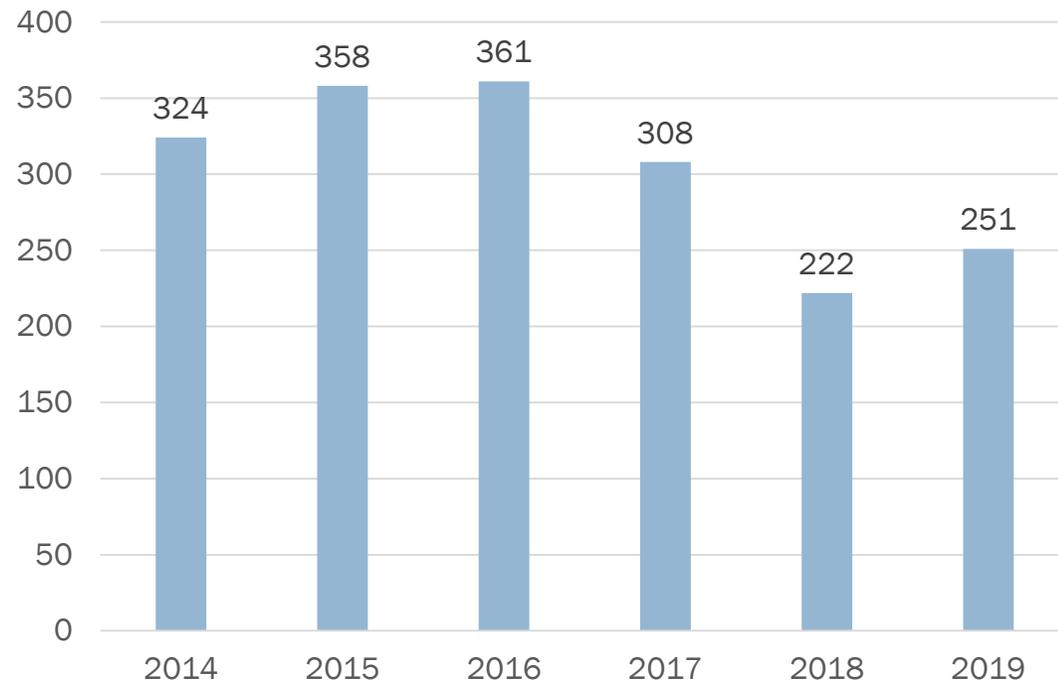


RACE BY PERCENTAGE: 2019

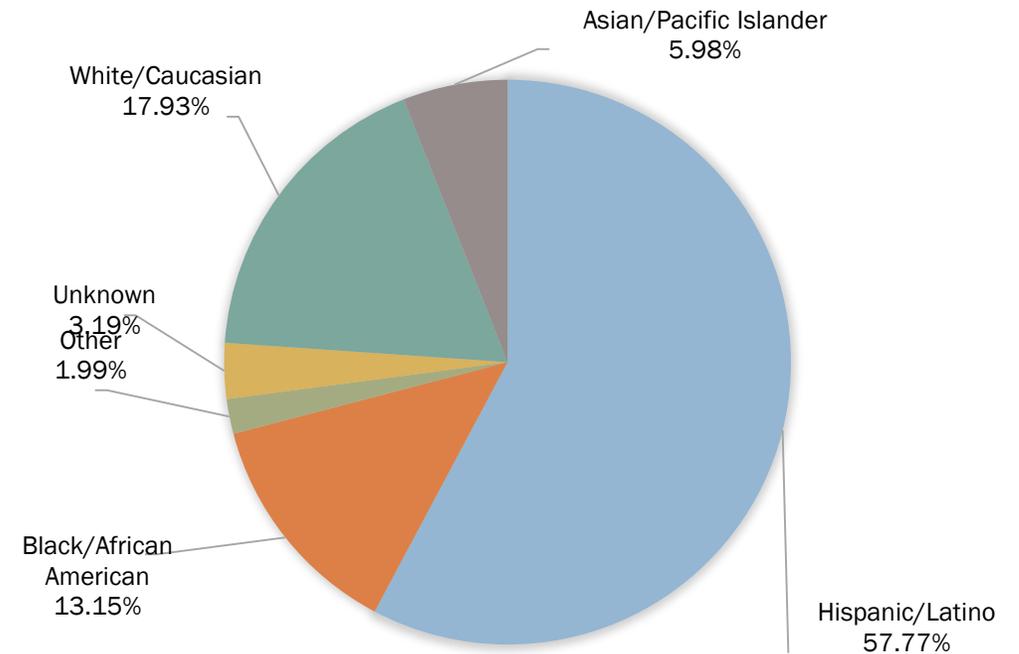


Residential Burglaries PC 460(a)

PC 460(a)

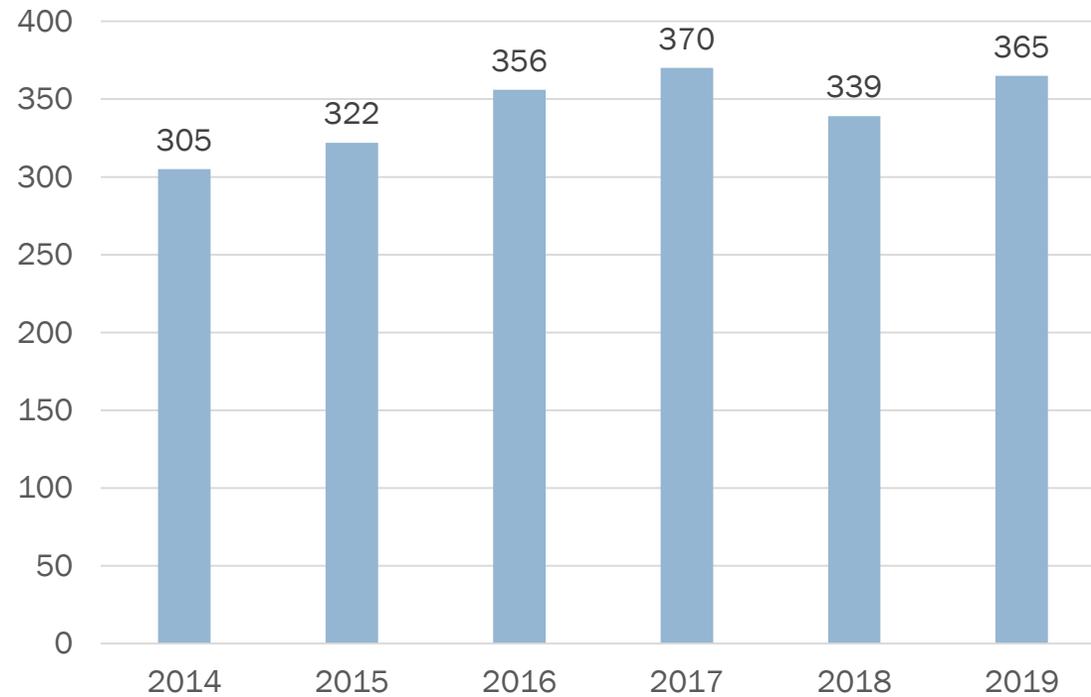


RACE BY PERCENTAGE: 2019

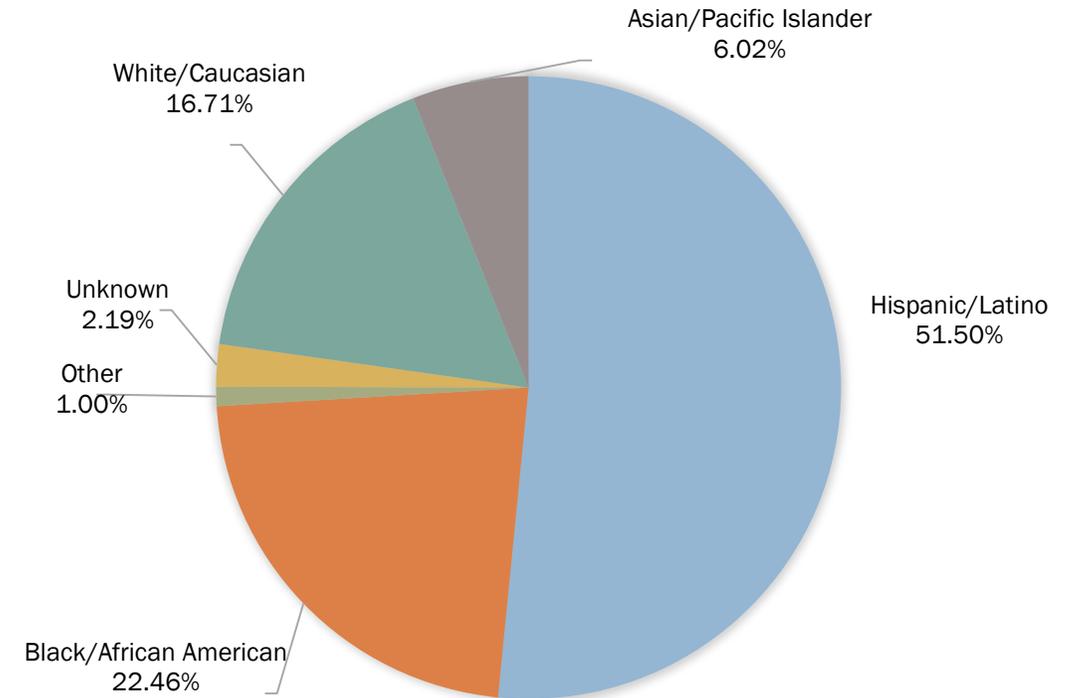


Robbery PC 211

PC 211

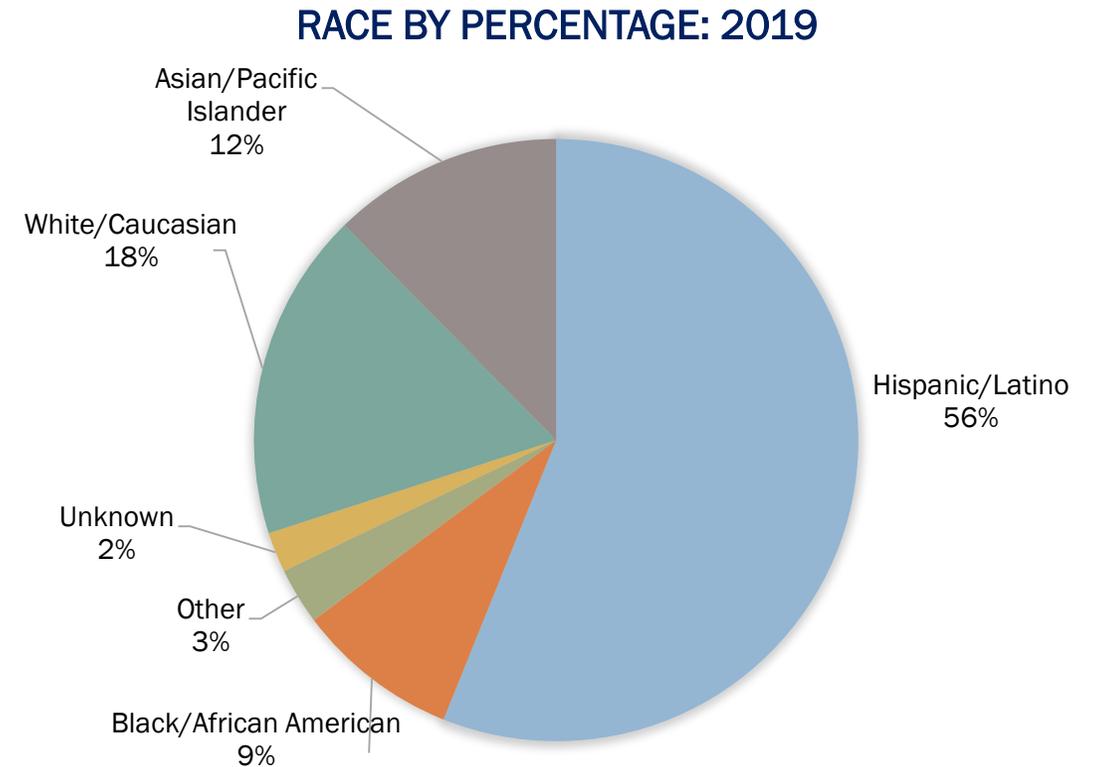
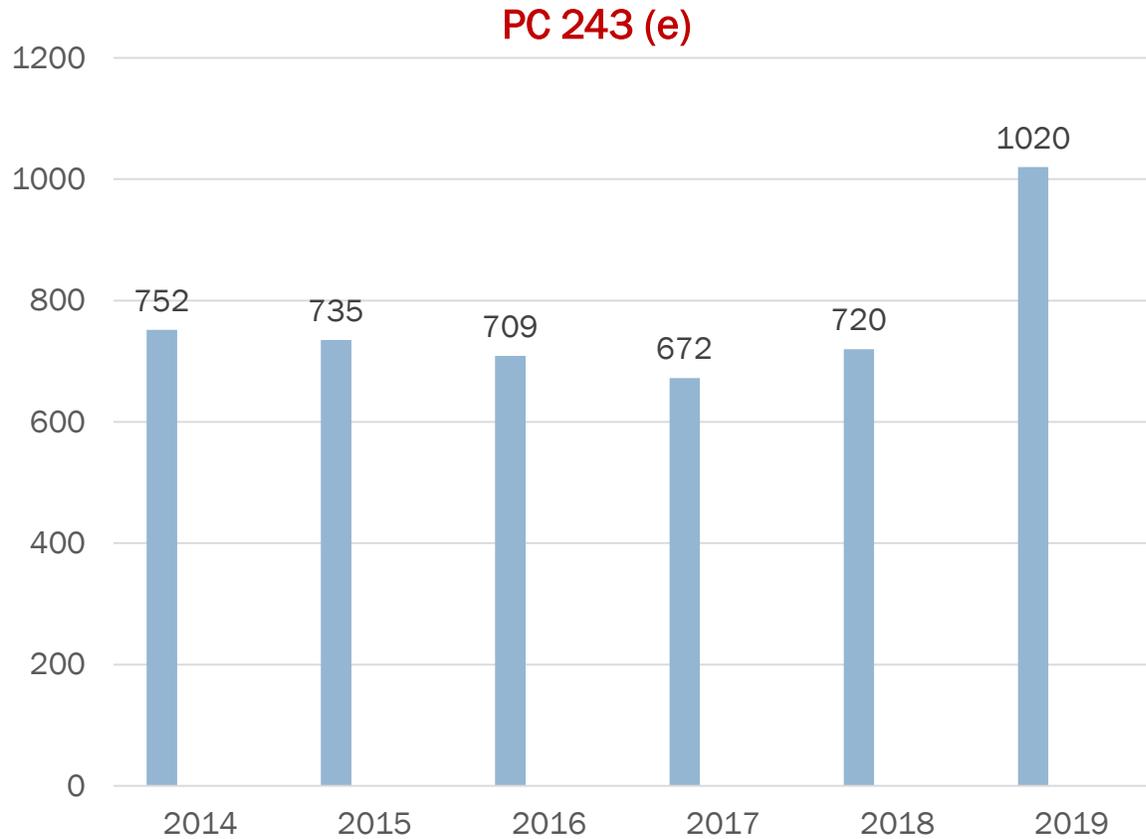


RACE BY PERCENTAGE: 2019



This information reflects the following: 211-212.5(a), 211-212.5(b), 211-212.5(c) and 211-213(a)(1)(A)

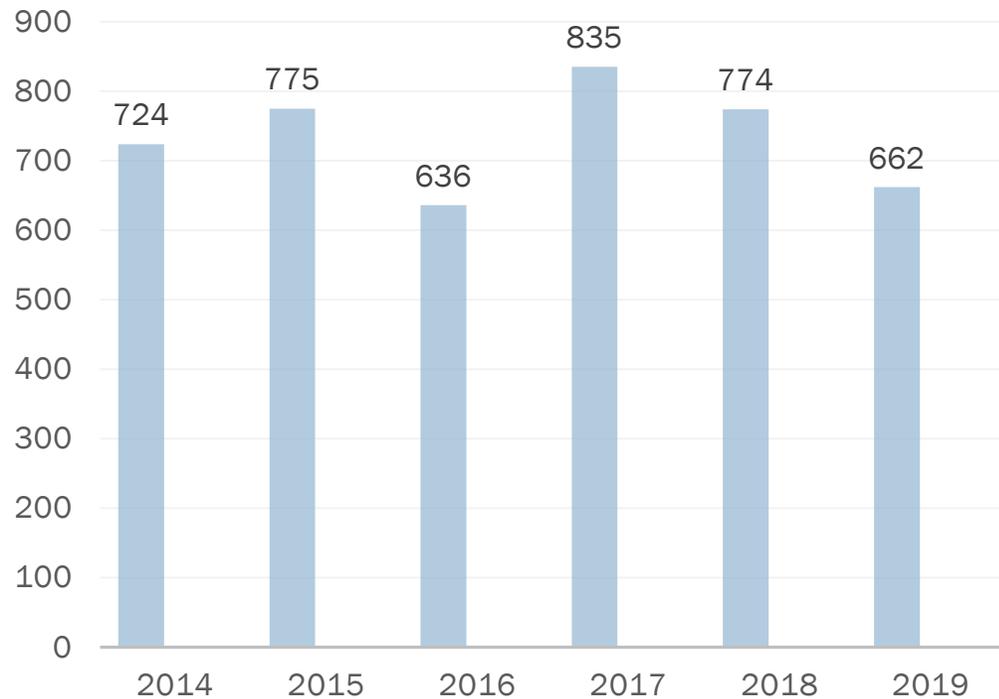
Misdemeanor Domestic Violence PC 243(e)



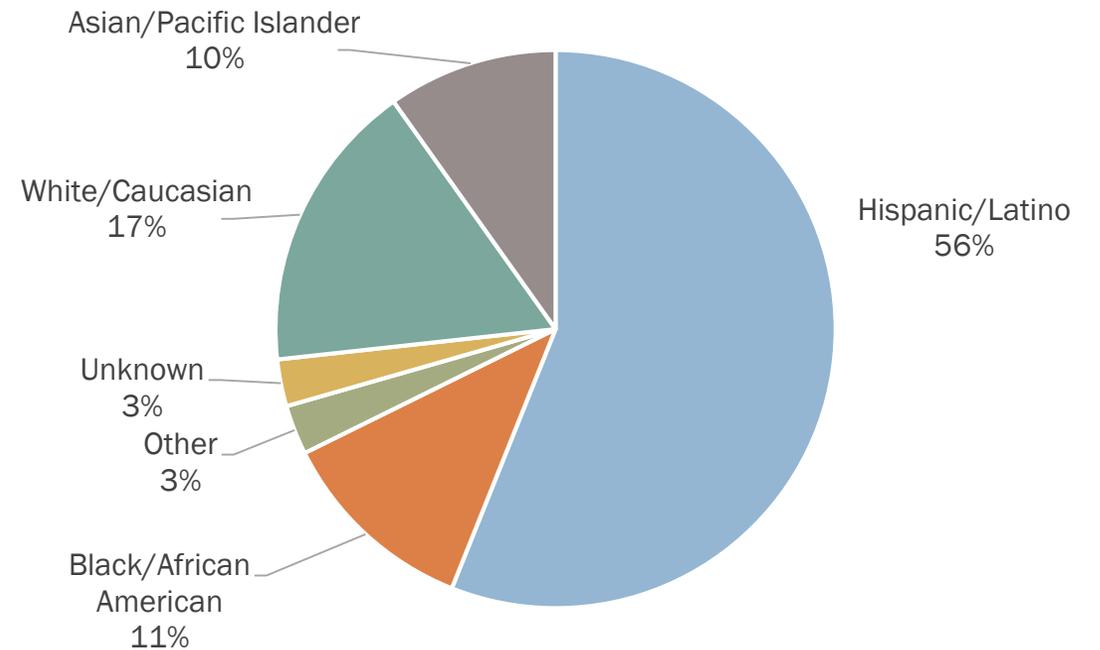
The number of filed misdemeanors reported before 2017 are lower than the actual number of filed misdemeanors, because our record management system did not previously track cases filed by citation. The 2017-2019 data now reflect all misdemeanors, including those filed by citation.

Corporal Injury on a Spouse PC 273.5

PC 273.5



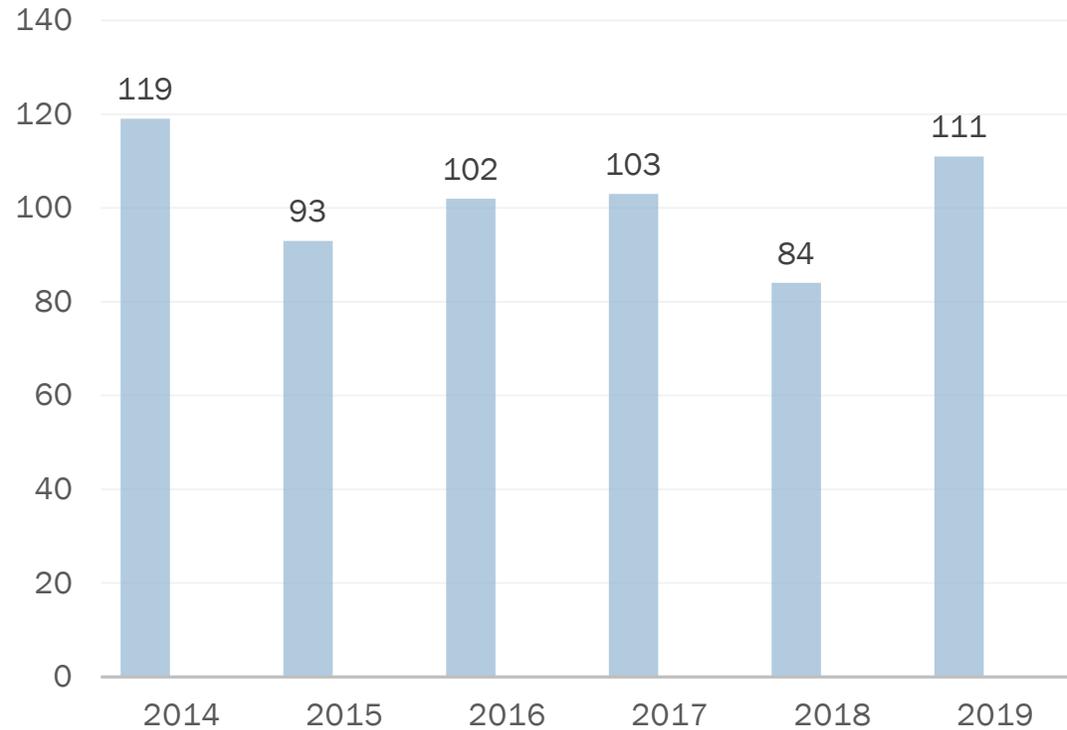
RACE BY PERCENTAGE: 2019



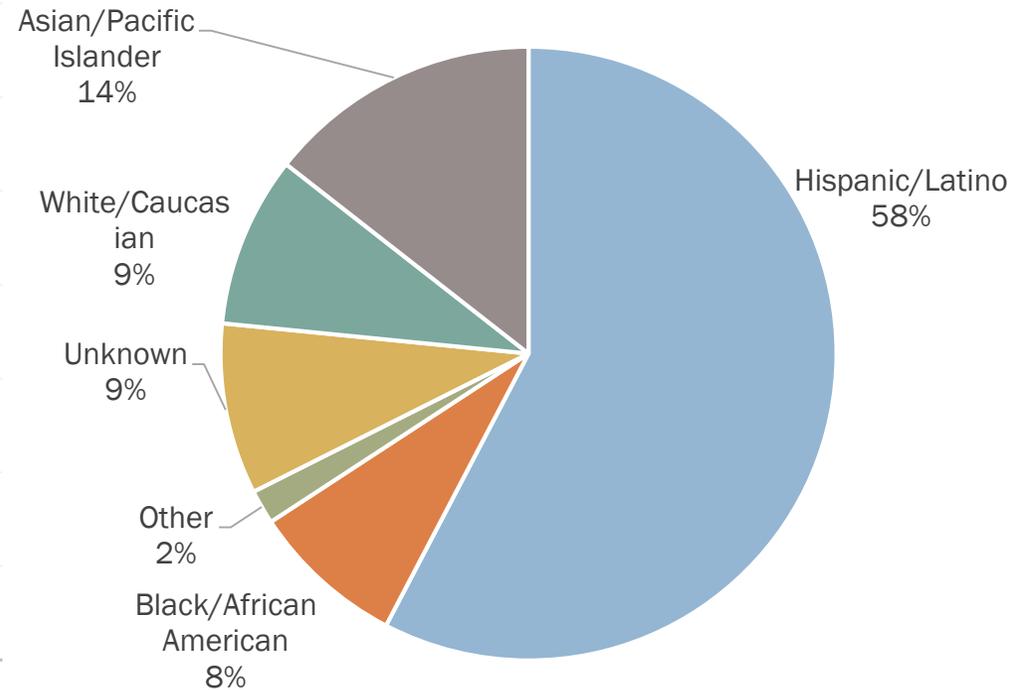
This information reflects the following: Misd & Felony level of 273.5(a), 273.5(e)(1), 273.5(f)(1), 273.5(f)(2) and 273.5(e)(2)

Homicide & Attempted Murder PC 187

PC 187

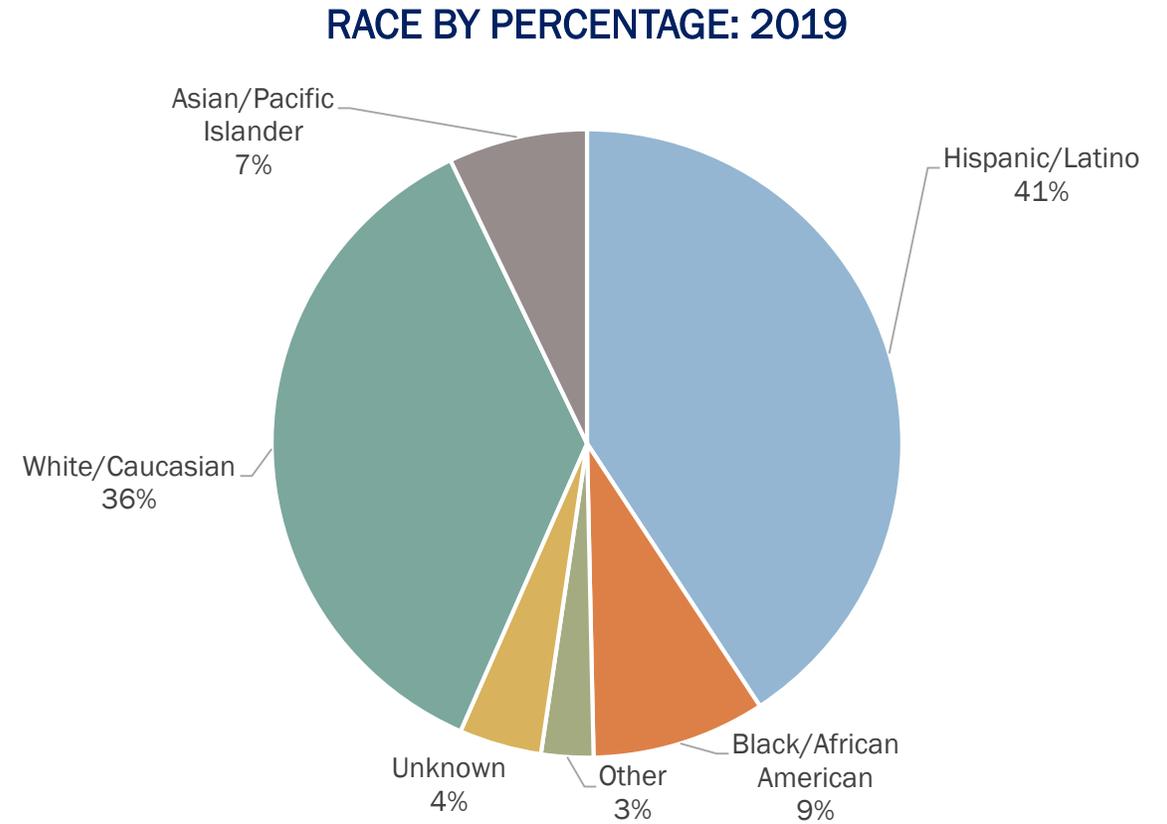
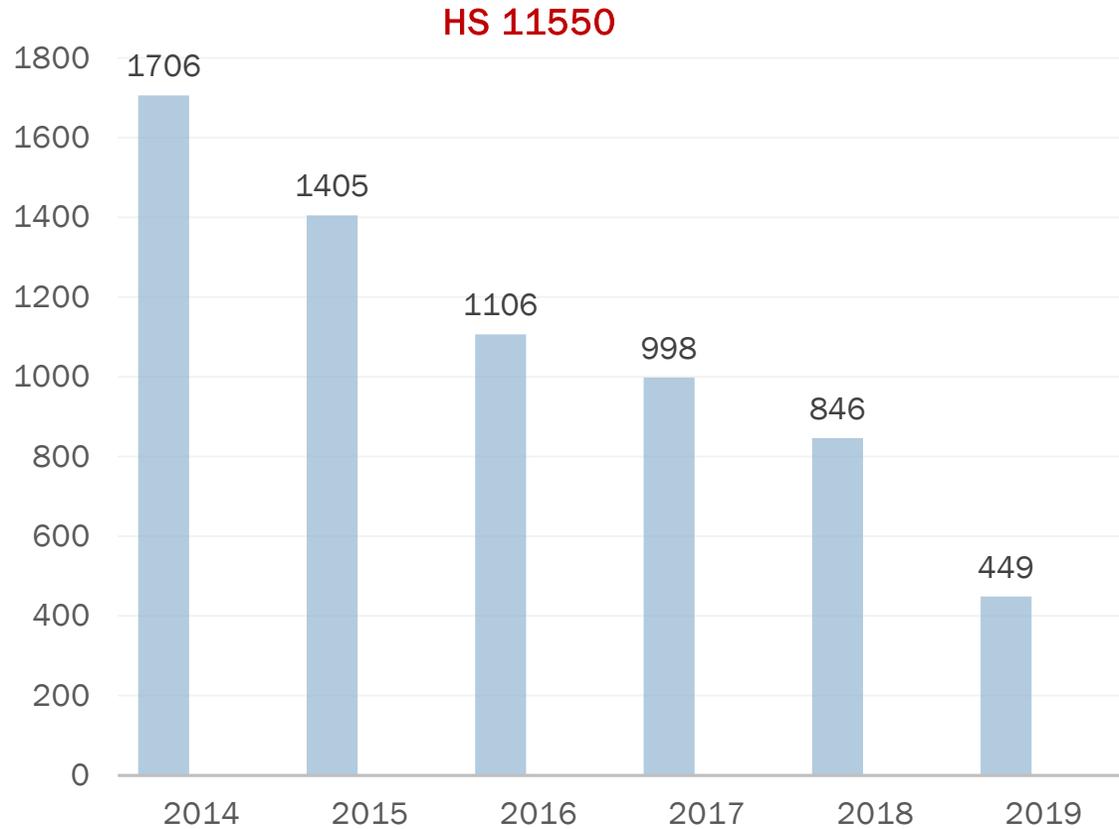


RACE BY PERCENTAGE: 2019



It should be noted that when two or more people are involved in a killing then this data reflects each of those charged, even though there may be only one homicide victim. This information reflects the following: 187, 664(a) 187 and 664(e) 187 PC.

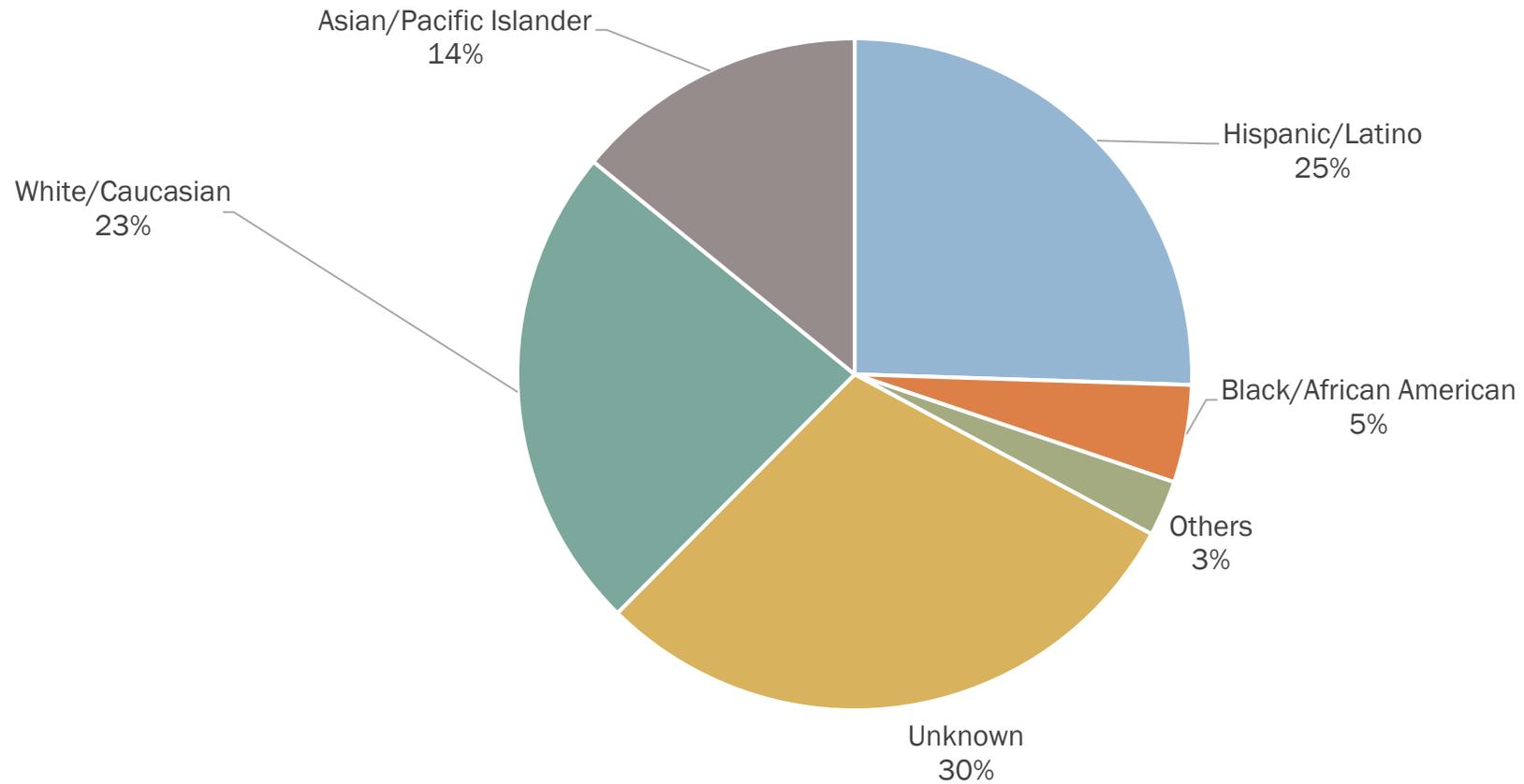
HS 11550 Misdemeanor Under the Influence of Controlled Substance [Police Contact Often Face To Face]



This information reflects the following: 11550(a)(1) and 11550(e)

White Collar Crime: 2019

[Insurance Fraud, Workers Comp. Fraud, Elder Abuse]





OFFICE OF THE DISTRICT ATTORNEY

- The following slide addresses the racial breakdown of victims of violent crime assisted by the District Attorney's Office Victim Services Unit in 2019. It should be noted that there has been a dramatic increase in victims served since 2015, after VSU moved in-house to the District Attorney's Office.

2019 Victims of Violent Crimes assisted by DAO-VSU (where victim stated race at intake interview)

