



Race and Prosecutions

2013- 2015

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

Jeff Rosen, District Attorney



Forward

Hard questions are coming from our community and from communities across America. These questions cut to the core of one of our most basic and important values - fairness. Are we being fair in the way criminal cases are prosecuted in our courts, and even before they get to court? Is our justice system fair to everyone? One study cannot answer these questions, and it can't provide solutions to all of the problems that it reveals. One study is a step, here in our District Attorney's Office and in our community, toward coming to grips with the troubling parts of our system where there is racial inequity. This study - which looks at race and our adult prosecutions from 2013-2015 - answers a few questions. It raises others. In the end, we hope that it takes an initial but purposeful step toward a system where there is more understanding and fairness. We are committed to asking hard questions of ourselves, and providing more solutions in the days to come.



Jeff Rosen
District Attorney
October 26, 2016

The Core Questions:

Is there racial unfairness in the way the DA's Office files criminal cases?

Our study found small differences in the filing rates of criminal cases against defendants of different races. The DA's Office files charges in about 89% of the misdemeanor cases reviewed and 73% of felony cases reviewed regardless of the race of the suspect of the crime.

Yet there are higher percentages of Black/African American defendants and of Hispanic/Latino defendants than those groups' percentages of the population, and a lower percentage of Asian/Pacific Islander defendants. The representation of White/Caucasians in the population of criminal defendants most closely matched that group's part of the County's racial makeup. Those differences in prosecutions are important to recognize so that we can begin to address as a broader community of law enforcement, educators, and community organizations the fact that the race of those arrested for crimes in our County does not mirror the racial makeup of the County as a whole.

Is there racial unfairness in the way we prosecute criminal cases once they are filed?

As the next step in this effort to study Race and Prosecutions in the County, and in partnership with BetaGov, a non-profit that helps government organizations to study and address issues, the DA's Office will be reviewing and studying the myriad of decisions that are made after a case is filed from how we make offers of resolution at early stages to the sentences we recommend after trials.

Why did you study Race and Prosecutions and what were you trying to find out?

This report is an effort to answer the questions the community has been asking and that we have been asking ourselves. We wanted to know - not estimate, not guess, not assume —how many people of different races and ethnic groups we are prosecuting. And we wanted to share that information with the public.

Our ability to do this kind of study is relatively new. In 2011, the Santa Clara County District Attorney's Office began entering the race and gender data received from police reports and booking information into our electronic case management system for all felonies and most misdemeanors. Before that, our knowledge of the race of adult criminal defendants was limited to our own anecdotal knowledge and the more limited collection of that data on some teams like the Family Violence Team.

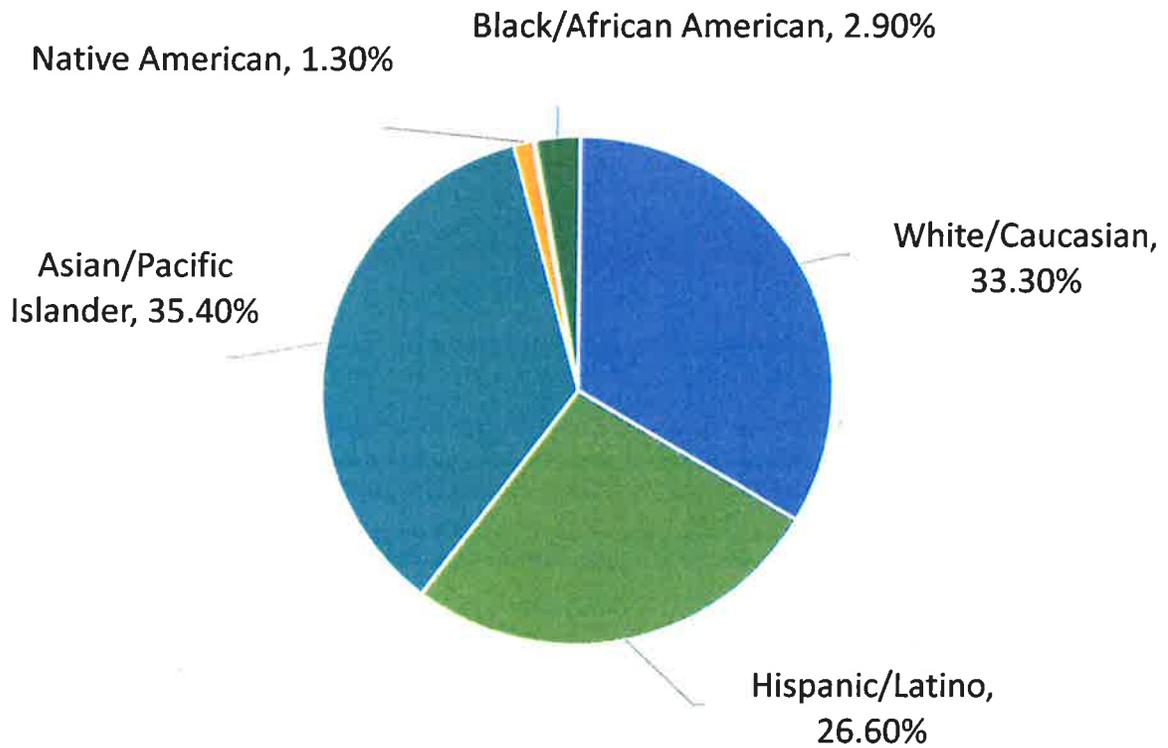
Santa Clara County has studied race and the Juvenile Justice System annually since 2012. This is an effort to take a similar lens of inquiry and analysis and turn it on ourselves to try to answer a key set of questions about race and our prosecutions of adults. Of course, answering some questions about race and prosecutions leads to the asking of more questions. This study is the beginning of what will be an ongoing review of these issues.

Background:

Demographic context:

Currently, Santa Clara County's racial and ethnic breakdown is:

**Race of Santa Clara County Residents
(2014 Census Data)**



While Santa Clara County is one of the wealthiest regions in the Country, it is also a region, like so many others, where there is a disparity of income among the households from different racial or ethnic backgrounds.

MEDIAN HOUSEHOLD INCOME BY RACIAL GROUP



Also, like many other communities, the high school dropout rates are very different for Black/ African American and Hispanic/ Latino students in Santa Clara County compared to White / Caucasian or Asian/ Pacific Islander students

Percent of Students Dropping out of High School by Race (2014 kidsdata.org)

Santa Clara County	Percent
African American/Black	16.3%
American Indian/Alaska Native	26.3%
Asian/Pacific Islander	9.7%
Hispanic/Latino	20.6%
White/Caucasian	3.2%
Other	8.0%

The statewide dropout rate for all students is 11.6% and Santa Clara County's dropout rate for all students is 11.1%.

For both the disparity in median household income and the differences in high school completion rates, this data from our County does not provide an answer to why there are disparities in criminal prosecutions among different ethnic and racial groups. Instead this data provides a context for the disproportionality in the criminal justice system that studies have shown is part of a broader set of disparities amongst racial groups in our County and in our country.

Findings and Observations:

How Prosecutions Begin – Filing Criminal Charges:

Prosecutions begin with a submission to the District Attorney's Office of police reports, documents, recordings, photos and other materials. Prosecutors then review those materials to determine whether or not 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.

The District Attorney's Office reviews those documents to determine

- whether a crime has been committed,
- whether we know who committed the crime,
- whether we can prove the case in court beyond a reasonable doubt, and,
- whether prosecuting the case is the right thing to do

Looking at the most important decision prosecutors make, whether or not to charge someone with a crime, we see that the racial makeup of suspects in cases the DA’s Office “rejects” or declines to prosecute is largely consistent with the racial makeup of the defendants the DA’s Office does prosecute.

Comparison of Percent in each racial group for which charges are filed (2015)

Percent of Misdemeanors Filed (2015)								
		White/ Caucasian	Black/ African American	Hispanic/ Latino	Asian/ Pacific Islander	Unknown	Other	Total
		88%	89%	91%	88%	85%	86%	89%
Percent of Felonies Filed (2015)								
		White/ Caucasian	Black/ African American	Hispanic/ Latino	Asian/ Pacific Islander	Unknown	Other	Total
		70%	76%	74%	72%	71%	64%	73%

The chart above shows the percentage of cases filed within each racial or ethnic group. Overall, 89% of all cases submitted for review as misdemeanors are filed, and that filing rate holds consistent across racial or ethnic groups. So, for example, White/Caucasian suspects have misdemeanor charges filed against them in 88% of the cases reviewed by the District Attorney’s Office, Black/African American suspects 89%, and Asian/ Pacific Islander suspects 88%. Hispanic/Latino suspects have charges filed 91% of the time against them, which is also closely aligned with the overall total of 89%.

While the numbers are not as close as they are in the misdemeanors in the percentage of felonies filed in 2015 across racial and ethnic groups, they are all still close to each other and close to the overall percentage of felonies filed at 73% with White/Caucasian suspects having felony charges filed against them 70% of the time on the low end and Black/African American suspects 76% of the time on the high end.

This is one area where further study would be helpful, as it raises additional questions. Does this data change when enhancements to crimes or special allegations are also considered? Does this data change when one considers the offers of resolution that are made for early pleas to similar crimes for similarly situated defendants?

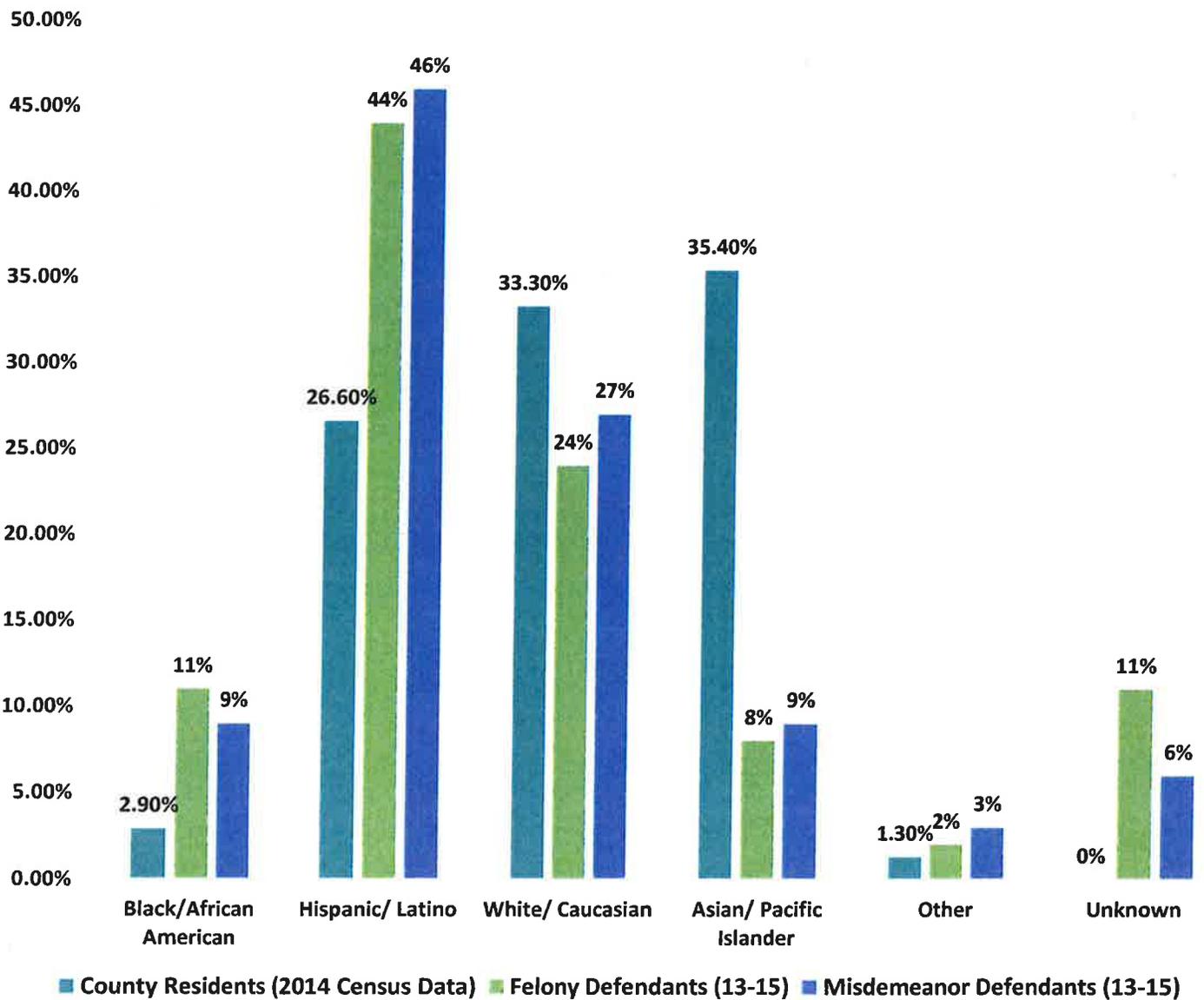
Racial composition of those prosecuted compared to the racial composition of the County:

The broadest measure examined was the percentages of our total prosecutions for adult felonies and misdemeanors¹ against people of different racial or ethnic groups. 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 database to tabulate these totals.

¹ This study only examines misdemeanors that are currently tracked by the District Attorney’s Office’s electronic case management system like DUIs, petty thefts, batteries, and the like. It does not examine citations like those for driving on a suspended license as these are not currently tracked electronically.

When compared to the racial make-up of our County, we prosecute 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.

Race of Felony & Misdemeanor Defendants 2013-15



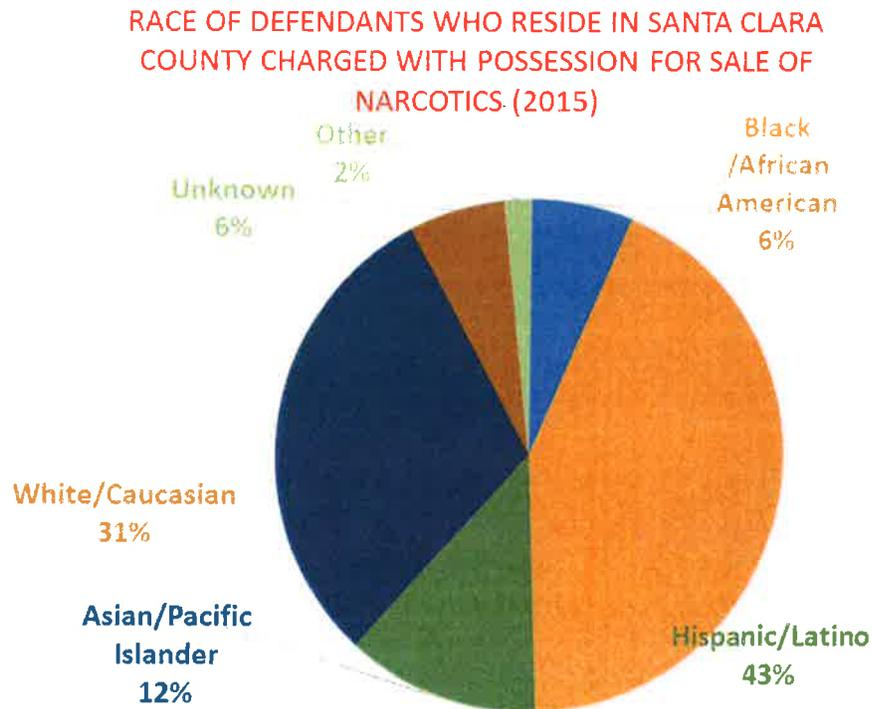
This kind of racial disparity in the criminal justice system is not unique to Santa Clara County. For example, a study released in 2015 showed that in San Francisco County, Black/ African Americans made up 6% of County residents, but comprised 40% of those convicted of crimes².

Could the disparity in prosecutions be due to adults from other counties with different racial makeups coming to commit crimes in Santa Clara County?

One area of speculation has been whether and to what degree people come from other areas to commit crimes in Santa Clara County. Does the race and ethnicity information change when we examine only those who reside in Santa Clara County who are prosecuted?

The general answer to that question is no, it does not. Looking at some of the most commonly charged felonies, we found that about 75% of those charged with those crimes were Santa Clara County residents. Looking only at those residents, we saw little or no change in the race of the perpetrators prosecuted when compared to the overall numbers for felonies.

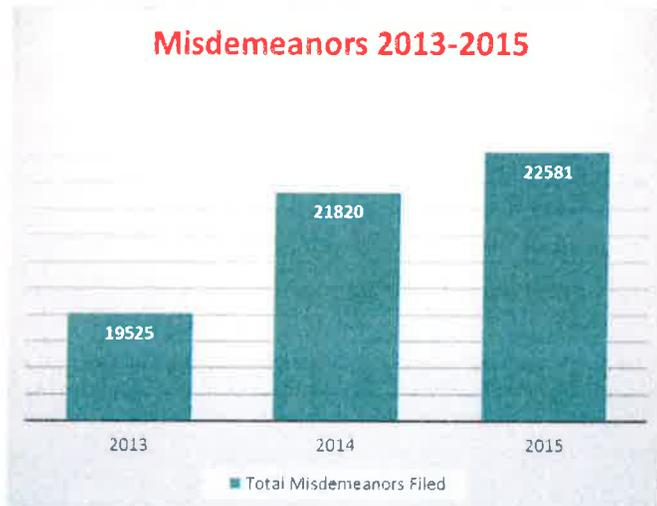
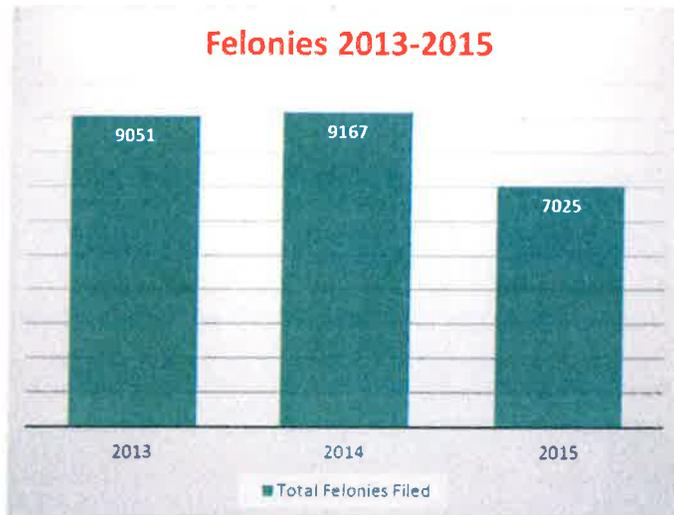
See for example the below racial breakdown of defendants charged with possession for sale of narcotics who reside in our County that is largely consistent with the overall racial breakdown of all felons charged in Santa Clara County.



² SAN FRANCISCO JUSTICE REINVESTMENT INITIATIVE: RACIAL AND ETHNIC DISPARITIES ANALYSIS FOR THE REENTRY COUNCIL, June 23, 2105, Burns Institute, p.2.

How did the passage of Proposition 47 in November of 2014 affect criminal filings?

The passage of Proposition 47 in November of 2014 decreased the number of defendants of all racial categories charged with felonies as the number of felonies charged in our County dropped by more than 2,000 in the year after the passage of the new law that reclassified five felonies into misdemeanors. Because of the racial disproportionality across all crime types, this change in the law has a disproportionate effect to reduce the number of Hispanic/Latino adults and Black/African American adults charged with felonies.



Is the racial composition of defendants charged with crimes similar for different types of crimes?

The percent of defendants prosecuted from different racial groups holds remarkably consistent across all crime types regardless of how the crime is reported; whether it be by car stop (DUI), face-to-face police encounter (being under the influence of narcotics), 911 call (Domestic Violence cases), detective investigation (Burglary cases), or involving resisting arrest³.

For example, the percentage of Hispanic/Latino defendants prosecuted across all crime types is about 45-50% of all defendants prosecuted – nearly double their representation in the County.

This is true for charges:

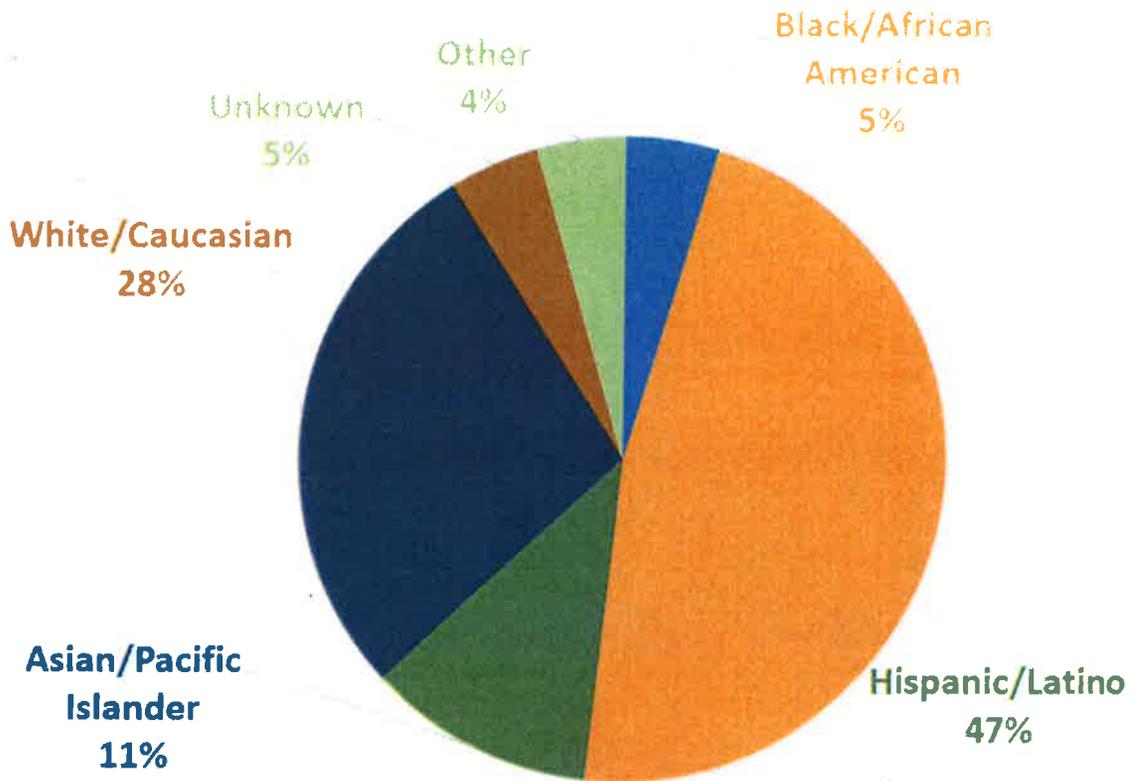
- a. where the case began with a car stop, like a DUI (47% of DUI misdemeanors),
- b. where the case began with a 911 call, like most domestic violence cases (50% of the most commonly charged domestic violence cases),
- c. where the case began with an in-person street encounter like being under the influence of a controlled substance (45%),
- d. where the case was solved by a police investigation, like most residential burglaries (53%)
- e. where the case involved resisting a police officer (50%)

That is not to say that Hispanic/Latino adults are more inclined to commit crimes, or that Hispanic/Latino adults are more likely to be arrested by the police. This data cannot be used to support either of these or any other conclusion because a further analysis that controlled for more variables like income levels, education, policing policies, or adverse childhood experiences for example would alter these results. What can be stated though is that the disproportionate composition of Hispanic/Latino defendants being prosecuted does not change when you look at different kinds of crimes that are investigated in completely different kinds of ways.

³ Not included in this study are major fraud, real estate fraud or other types of economic crimes. These crime types involve fewer charged cases per year and will require additional study to produce reliable data.

Below is an example that holds largely consistent across racial groups and crime types:

**RACE OF DEFENDANTS IN FILED DUI MISDEMEANORS
(2013-15) (POLICE CONTACT MOSTLY BY CAR STOP)**



Next Steps:

- Examine, in partnership with a non-profit organization BetaGov, other decision points like the sentences prosecutors recommend for similarly situated defendants (similar crimes, similar criminal histories) to see how and if race is affecting or not affecting those decisions.
- Improve collection of data. Missing from this data for example is the race of defendants charged with cases filed by a police officer citation like, driving on a suspended license, even though citations make up by our estimates as many as 25% of all cases prosecuted by the DA's Office.
- Analyze this data over time to see how it may change, and use this study as a benchmark for future analysis.
- Improve our outreach to Asian communities in our County, so that we are making sure that the relatively low prosecution of Asian defendants is not related to a reluctance to report crimes to the police.
- Share this information with the public to get different perspectives on what this data means, and on ways to improve fairness in criminal justice.

Conclusion

This study shows what everyone involved in the criminal justice system in Santa Clara County knew in an anecdotal way - that there were more Hispanic/Latino and more Black/African American defendants than reflect their representation in the population, and fewer Asian/Pacific Islander defendants. The study gives hard numbers to that general feeling and shows that the disproportionality cannot be explained by people coming from other counties to commit crimes. The study shows that for the most important decision prosecutors make, the decision to file criminal charges, the race of the suspect of the crime has not been a significant factor, and it shows that the racial composition of defendants charged with crimes is largely consistent across all types of crime.

This study is a start of what will be a periodic and more complete review of race and prosecutions, and the decisions that prosecutors make.

More study is needed, more input from the community is needed, and a continued self-examination on these and other questions. We are committed to all of these and to the sharing of this information with the public. Most importantly, we are committed to working harder to ensure the fair administration of justice for everyone in Santa Clara County.

APPENDIX SHOWING THE COMPLETE RESULTS OF THE STUDY

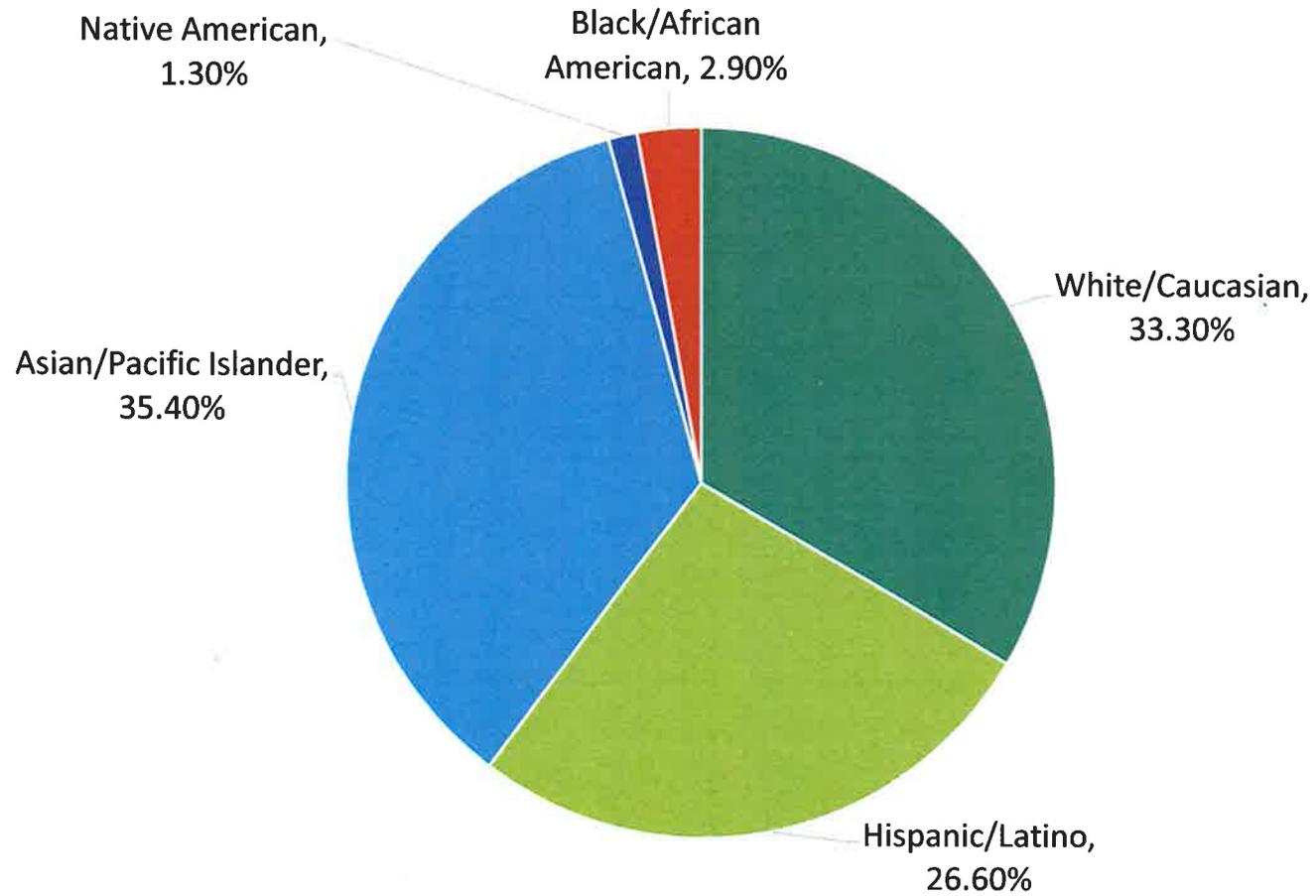
Race and Prosecutions Santa Clara County 2013-15

Santa Clara County District Attorney's Office

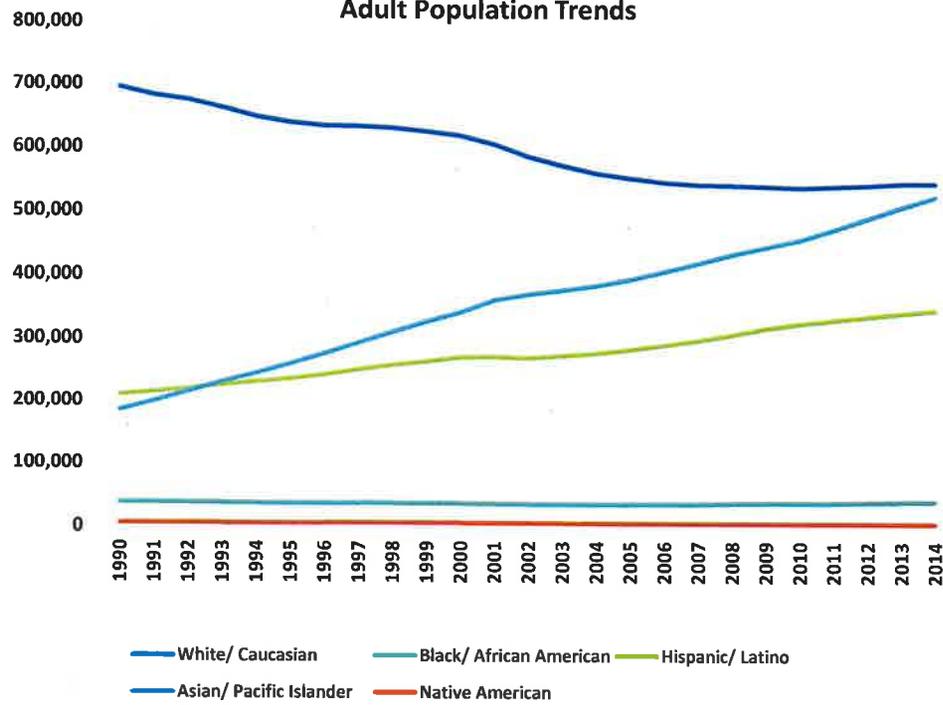
Demographic Context

The following slides address demographic, educational, income and immigration issues that affect Santa Clara County.

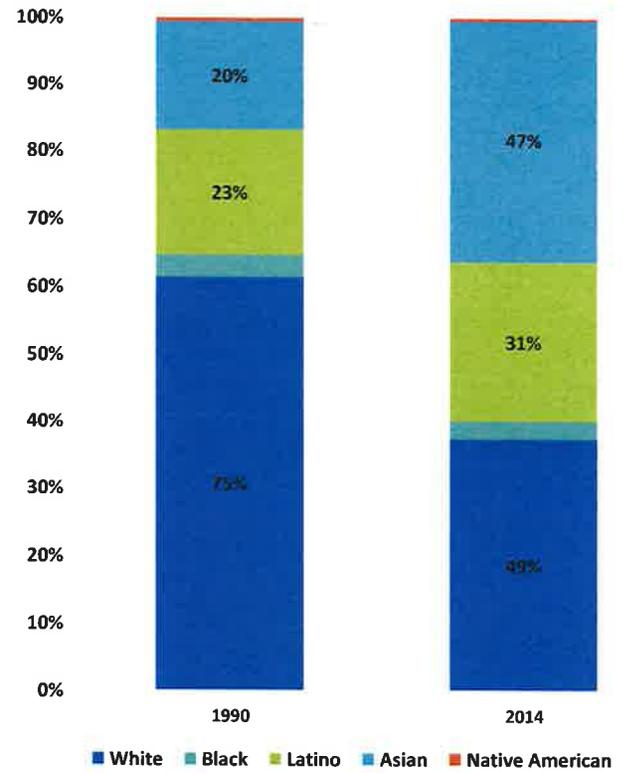
Race of Santa Clara County Residents (2014 Census Data)



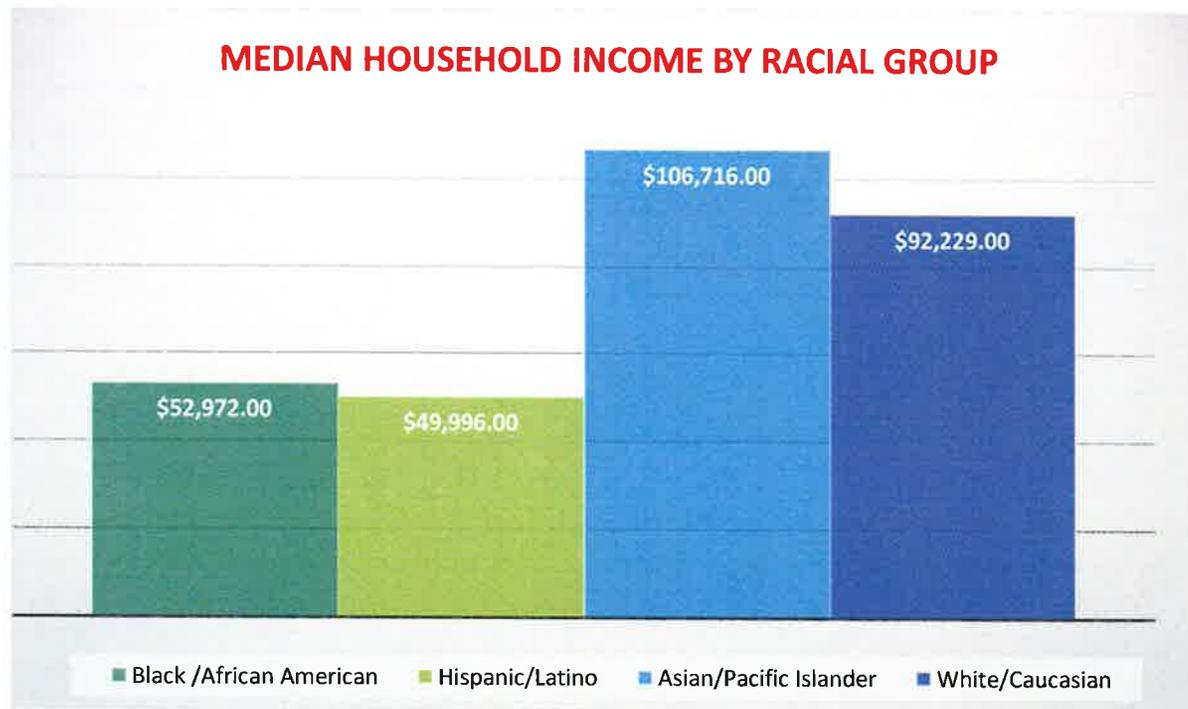
**Santa Clara County
Adult Population Trends**



Adult Population Shifts



MEDIAN HOUSEHOLD INCOME IN SANTA CLARA COUNTY (2010 Census Data)



Median Household Income for All Races Combined in Santa Clara County is \$85,002.

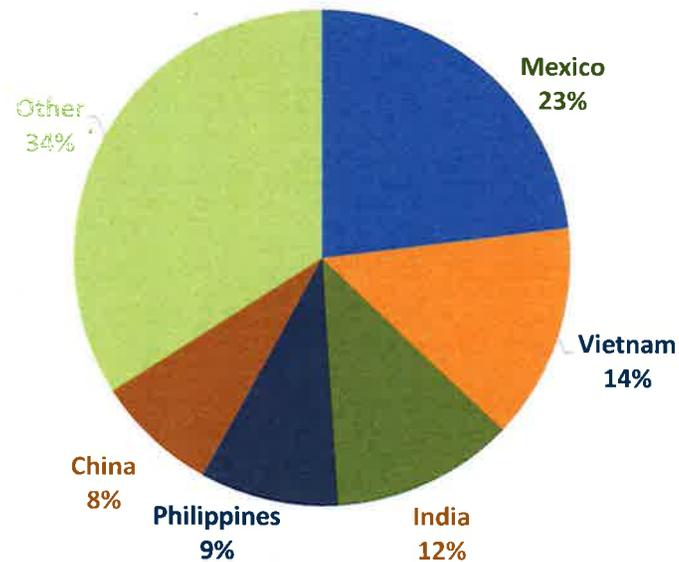
Percent of Students Dropping out of High School by Race (2014 kidsdata.org)

Santa Clara County	Percent
African American/Black	16.3%
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Hispanic/Latino	20.6%
White/Caucasian	5.2%
Other	8.0%

The statewide dropout rate for all students is 11.6% and Santa Clara County's dropout rate for all students is 11.1%.

**COUNTRY OF ORIGIN OF IMMIGRANT POPULATION
IN SANTA CLARA COUNTY
(37.1% of Santa Clara County Residents were born in another country)
(2010 Study by USC)**

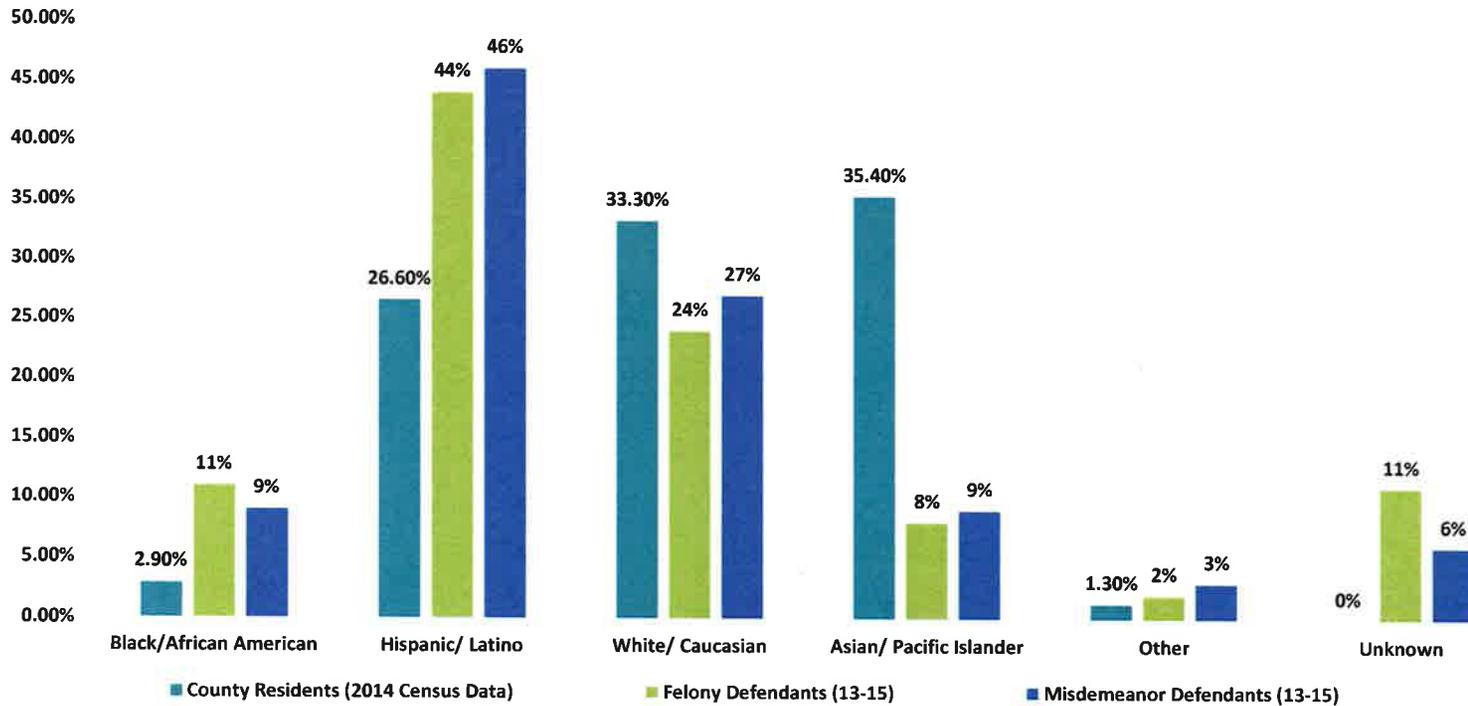
SANTA CLARA COUNTY



Filed and Non-Filed Cases By Race 2013-15

The following slides address the race of defendants and the number of cases in filed and non-filed felonies and misdemeanors from 2013-2015, with additional information about the most recent year, 2015.

Race of County Residents, Felony Defendants & Misdemeanor Defendants



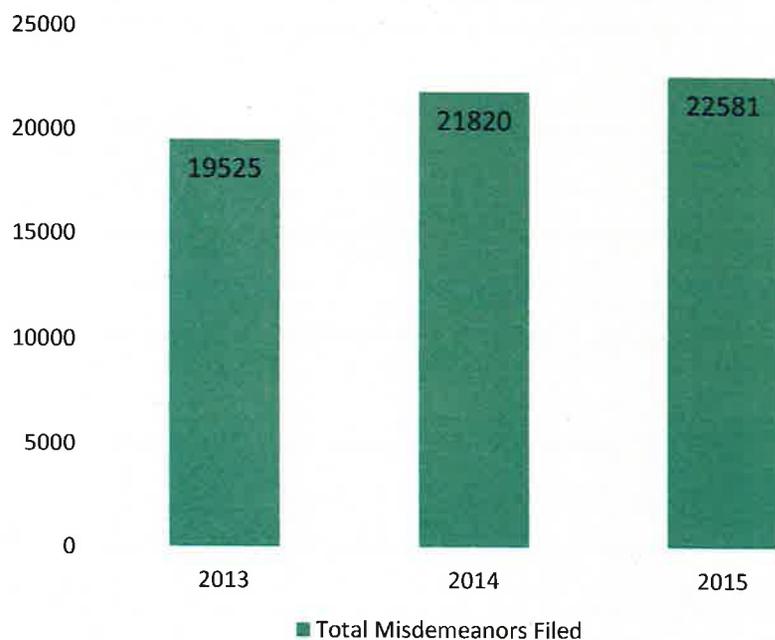
Note: Another way to think about the prosecution of defendants from different racial groups is to compare the number of cases filed against defendants in different racial groups with their numbers in the County and calculate a rate of prosecution by race per 1000 residents of different racial groups in the County. Doing this calculation for 2015 shows that White/Caucasian defendants are prosecuted at a rate of 14.3/1000 residents, Black/African American defendants at a rate of 70.4/1000 residents, Asian/Pacific Islander at a rate of 5/1000 residents and Latino defendants at a rate of 39.1/1000 residents.

Any such rate is necessarily problematic because it moves further away from the actual criminal action that an individual took, and is also a step removed from the police action of arresting or citing that individual for their act. The rate, though is useful, in highlighting what the prosecution of people in a racial group means within the community of that racial group.

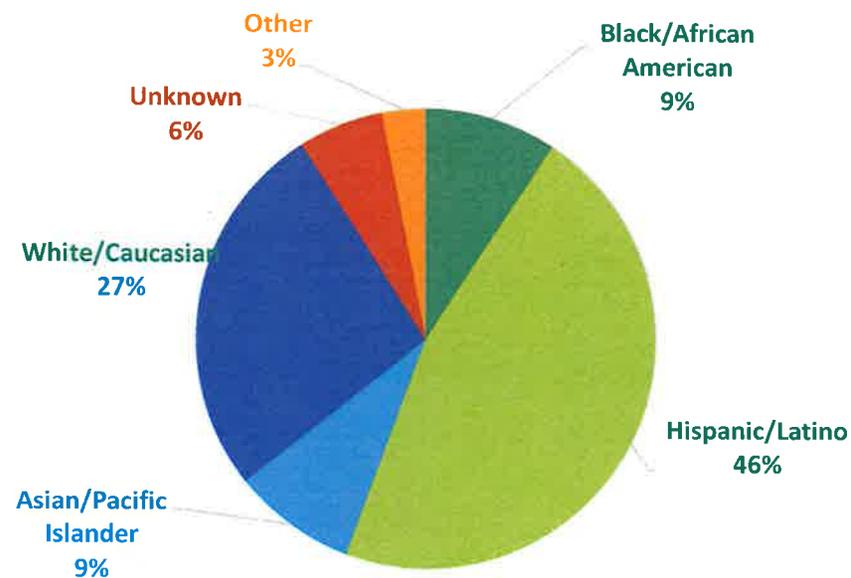
Race of Defendants in Filed Misdemeanors 2013-2015

Filed Misdemeanors 2013-2015

Total in 3 Years: 63,932



RACE BY PERCENTAGE



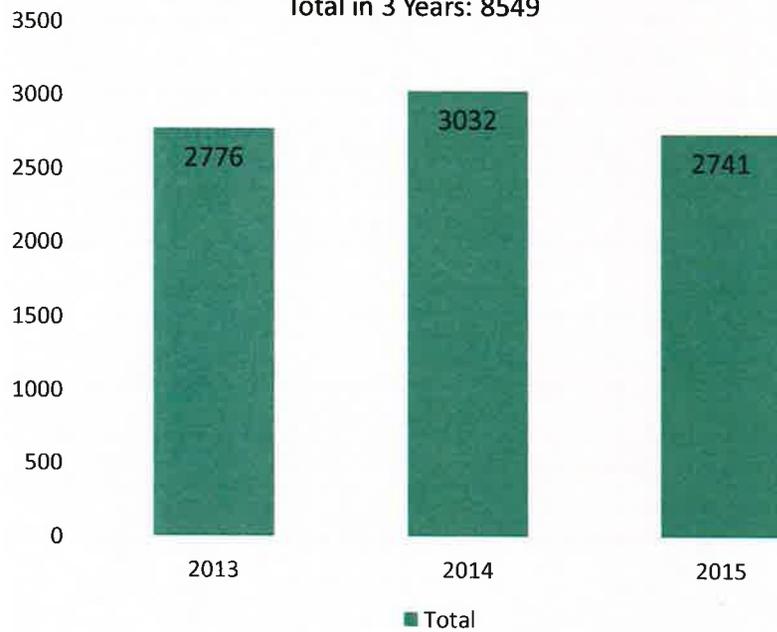
Total in 3 Years: 63,932

Note that this data does not include misdemeanors issued by citation only that resolve at arraignment (driving on a suspended license or driving without a valid license). Note also that the passage of Proposition 47 in November of 2014 reclassified 5 felonies as misdemeanors.

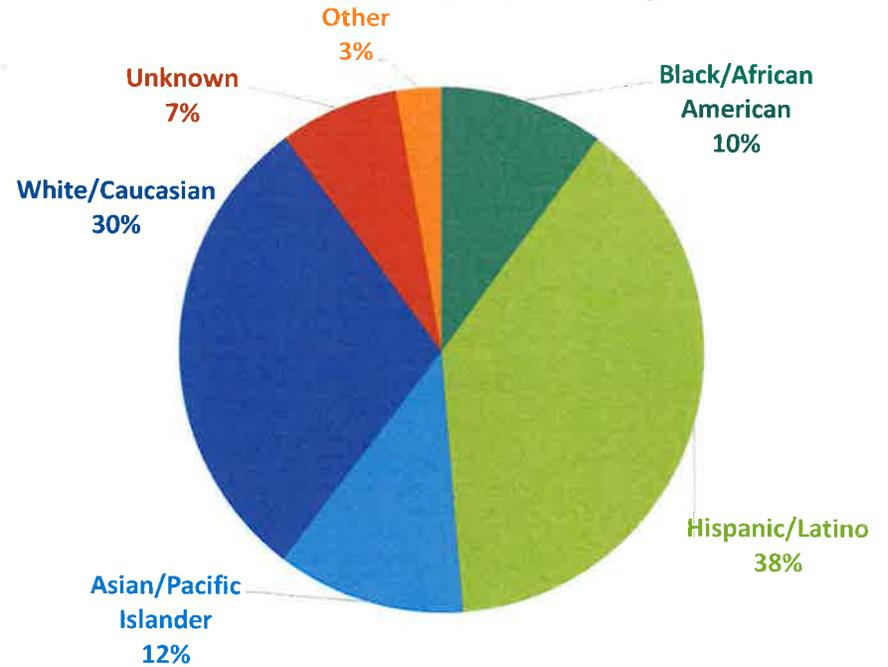
RACE OF SUSPECTS IN NON-FILED MISDEMEANORS FROM 2013-2015

Non-Filed Misdemeanors 2013-2015

Total in 3 Years: 8549

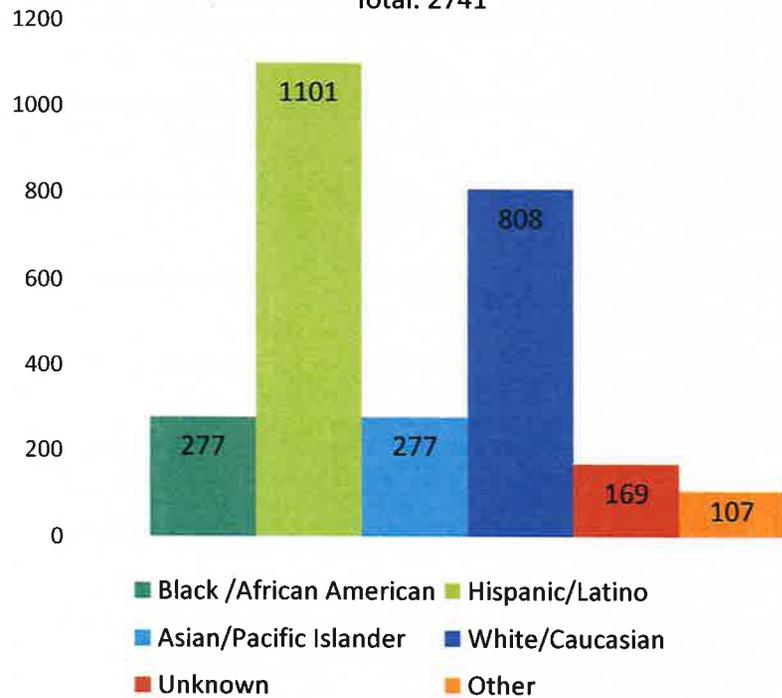


RACE BY PERCENTAGE

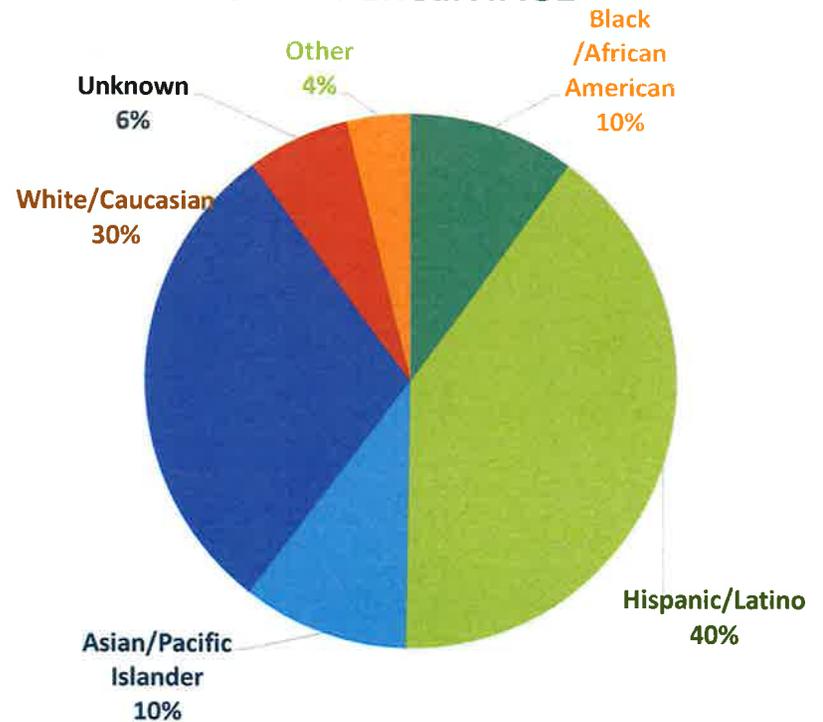


RACE OF SUSPECTS IN NON-FILED MISDEMEANORS 2015

2015 Misdemeanors
Total: 2741



RACE BY PERCENTAGE



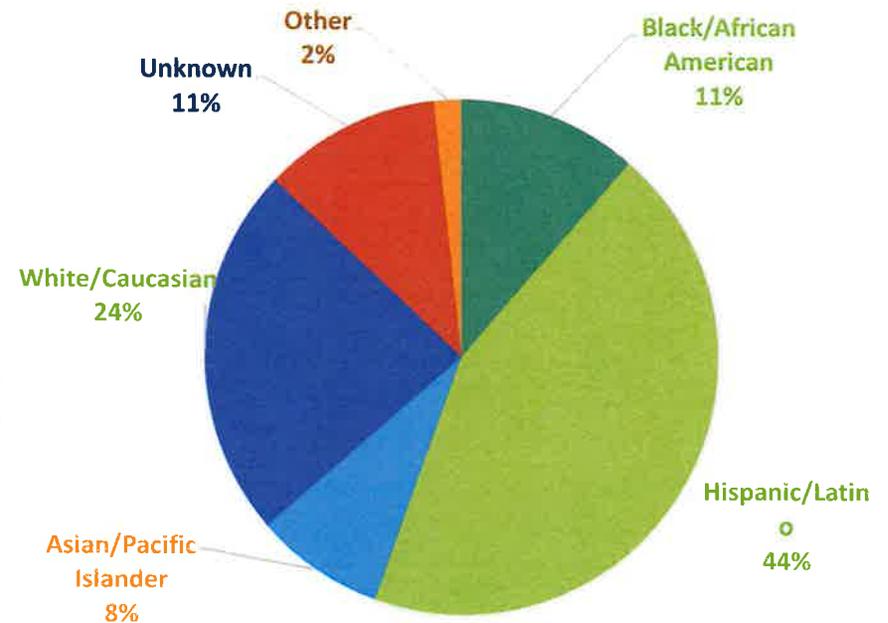
Race of Defendants in Filed Felonies 2013-2015

Felonies 2013-2015

Total in 3 Years: 25,243



RACE BY PERCENTAGE

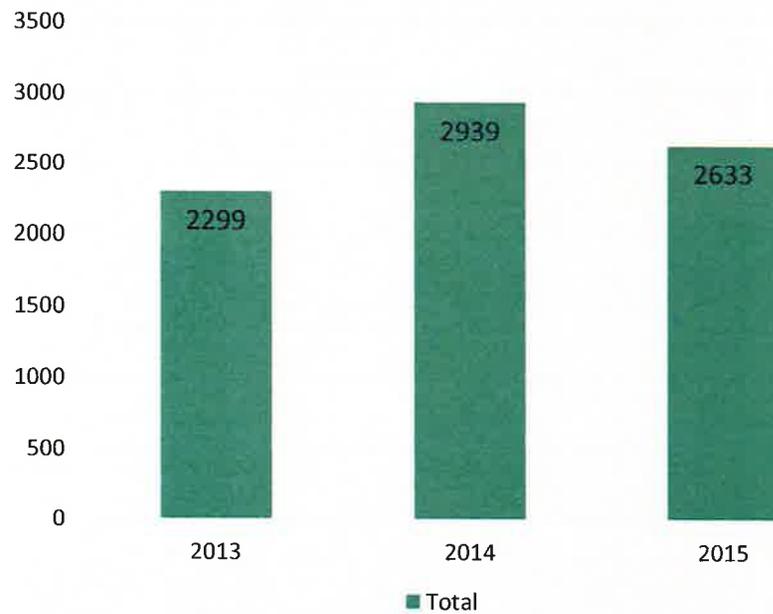


Note that the passage of Proposition 47 in November of 2014 reclassified five felonies as misdemeanors.

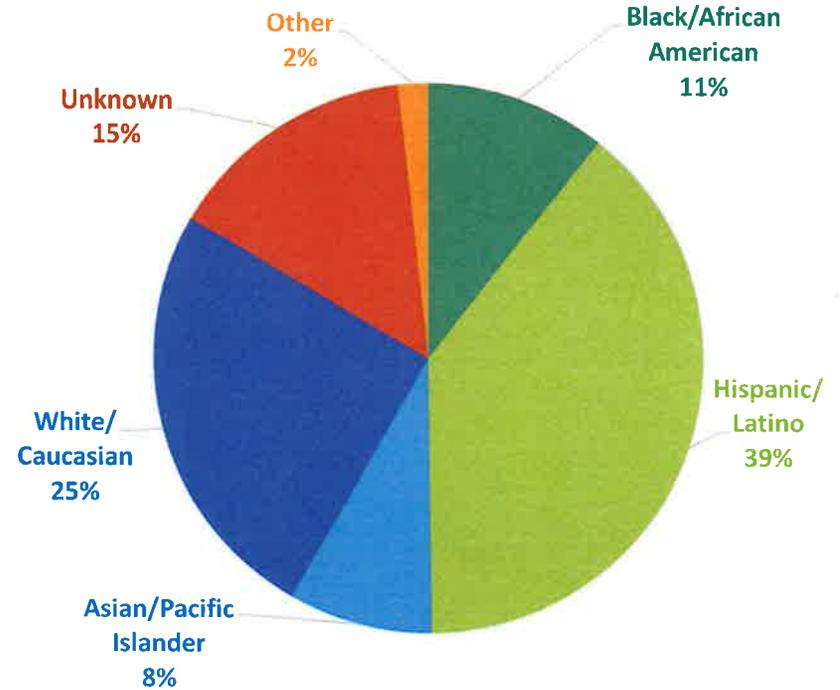
RACE OF SUSPECTS IN NON-FILED FELONIES FROM 2013-2015

Non-Filed Felonies 2013-2015

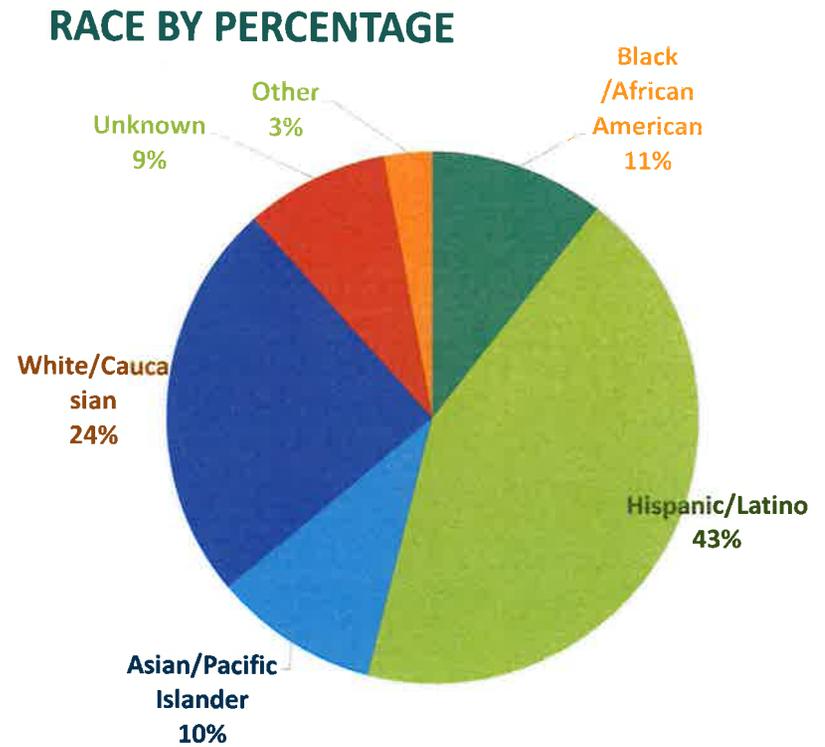
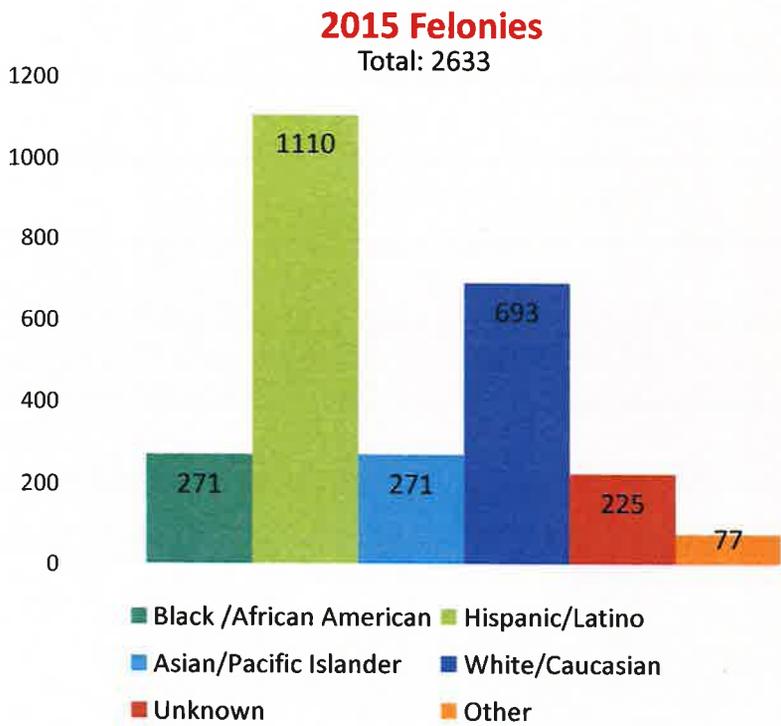
Total in 3 Years: 7,871



RACE BY PERCENTAGE



RACE OF SUSPECTS IN NON-FILED FELONIES 2015



Comparing percent of cases filed by race of Defendant (2015)

Percent of Misdemeanors Filed (2015)								
		White/ Caucasian	Black/ African American	Hispanic/ Latino	Asian/ Pacific Islander	Unknown	Other	Total
		88%	89%	91%	88%	85%	86%	89%
Percent of Felonies Filed (2015)								
		White/ Caucasian	Black/ African American	Hispanic/ Latino	Asian/ Pacific Islander	Unknown	Other	Total
		70%	76%	74%	72%	71%	64%	73%

Comparison of Percentage of Race in Filed and Non-Filed Felonies and Misdemeanors (2013-15)

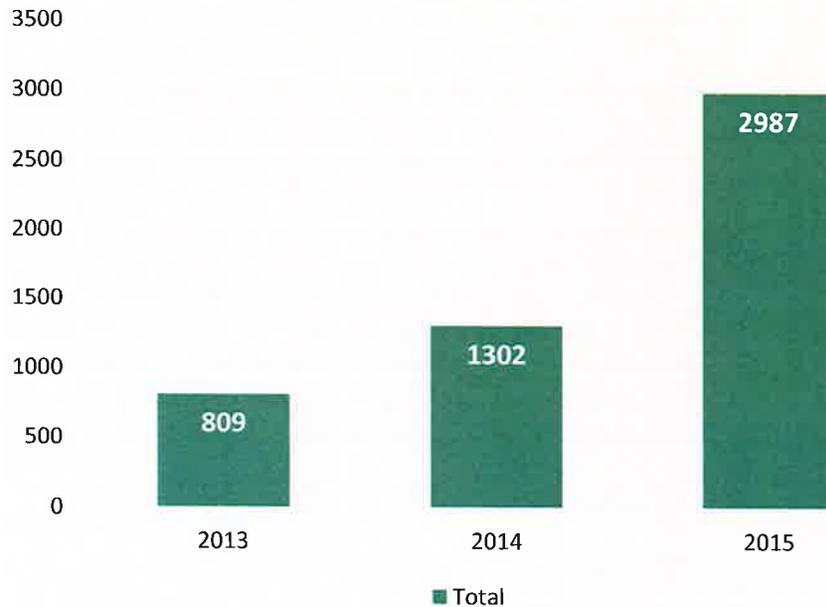
Race	Filed Felonies	Non-Filed Felonies	Filed Misdemeanors	Non-Filed Misdemeanors
Black/African American	11%	11%	9%	10%
Hispanic/Latino	44%	39%	46%	38%
White/Caucasian	24%	25%	27%	30%
Asian/Pacific Islander	8%	8%	9%	12%
Other	2%	2%	3%	3%
Unknown	11%	15%	6%	7%

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 2013-15.

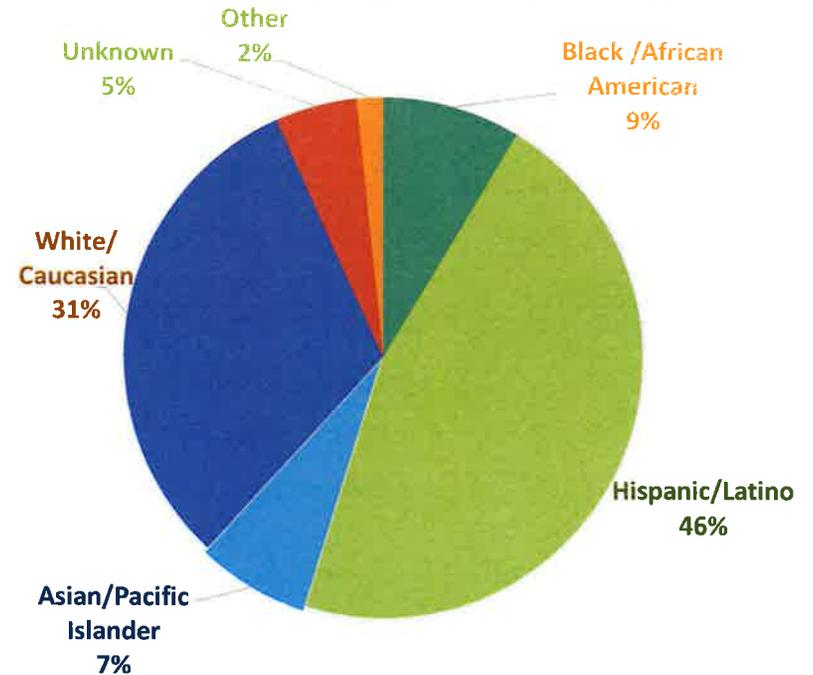
Drug Possession Misdemeanors; H&S 11377 (possession of methamphetamine)

Misdemeanor H&S 11377

Total in 3 years: 5,098



RACE BY PERCENTAGE

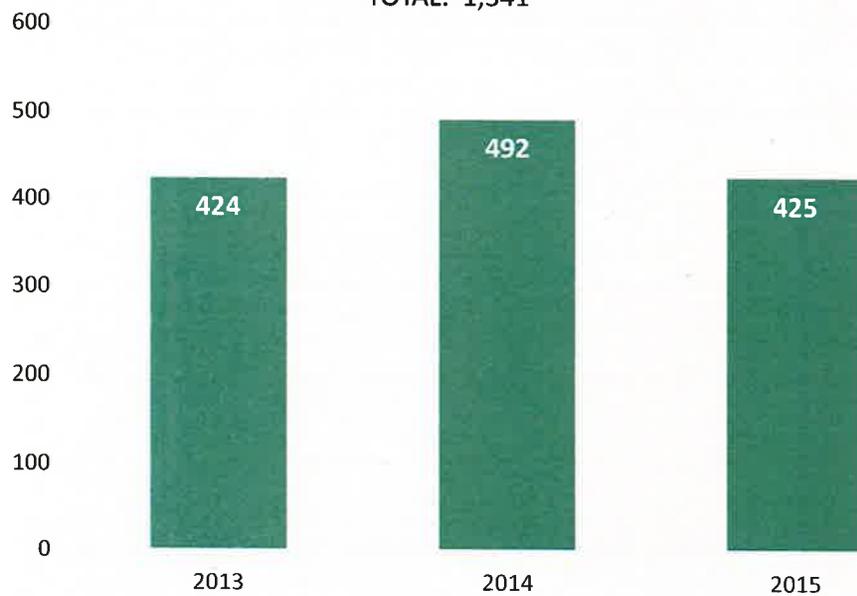


Note that after the passage of Proposition 47 in November of 2014, a violation of H&S 11377 could only be charged as a misdemeanor and not as a felony.

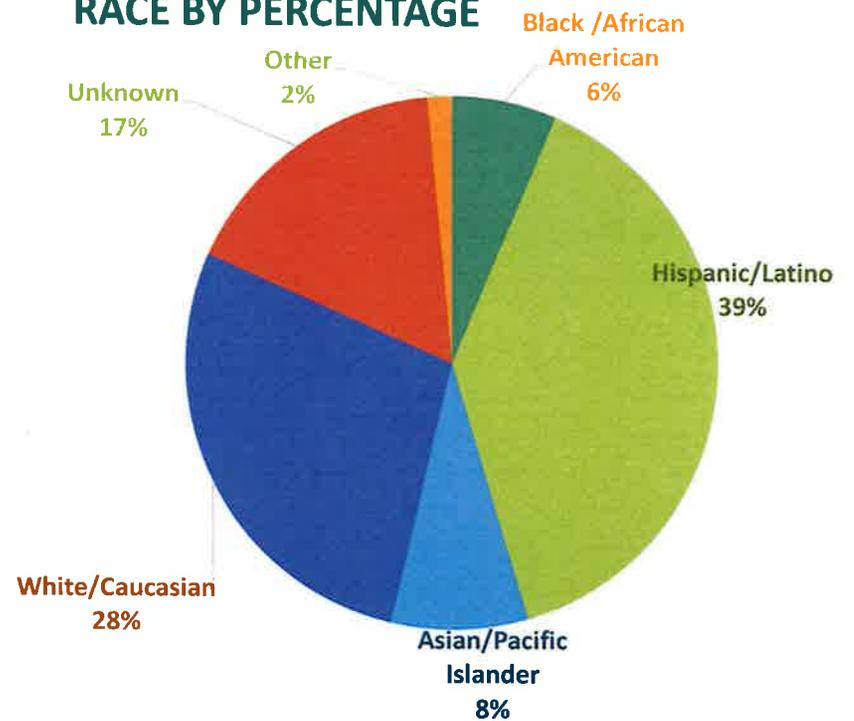
Felony Drug Sales (Methamphetamine 11378)

Felony Drug Sales 11378

TOTAL: 1,341

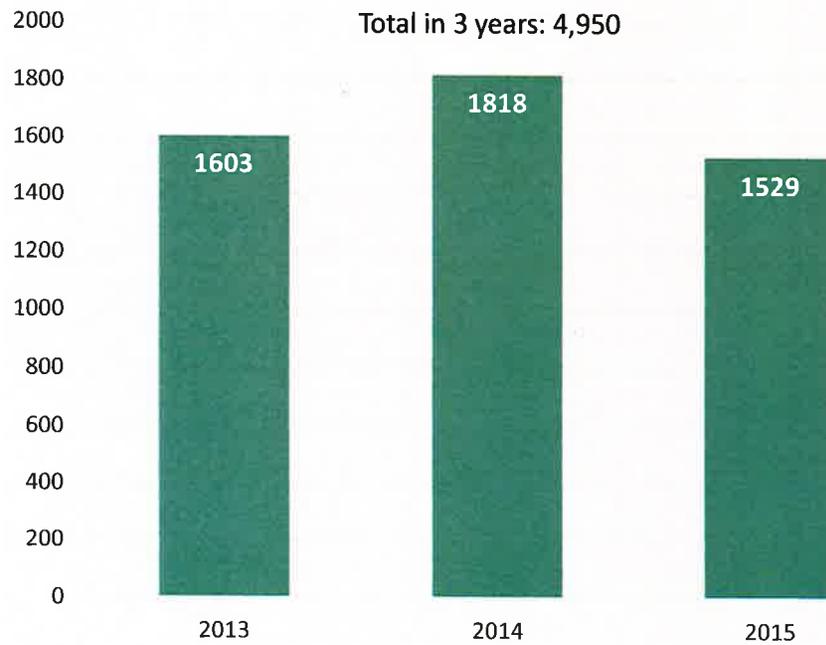


RACE BY PERCENTAGE

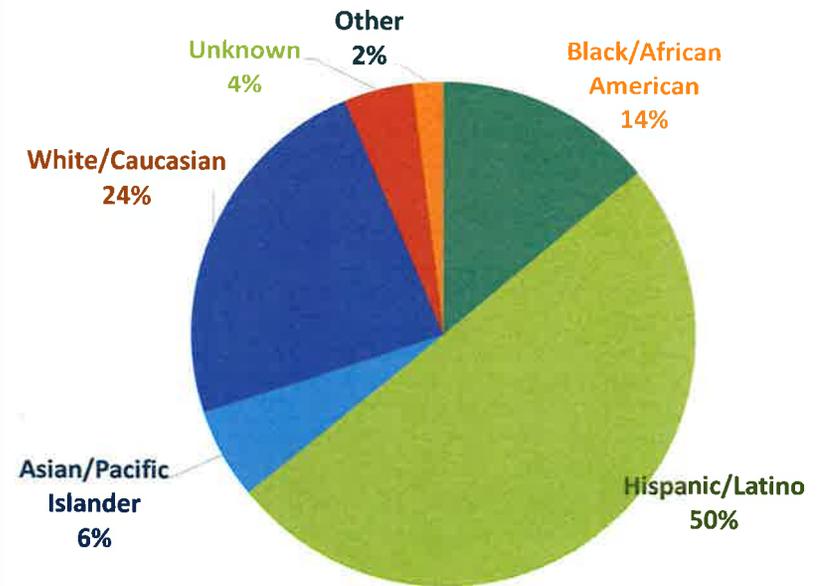


Resisting Arrest Misdemeanors; PC 148

Misdemeanors PC 148



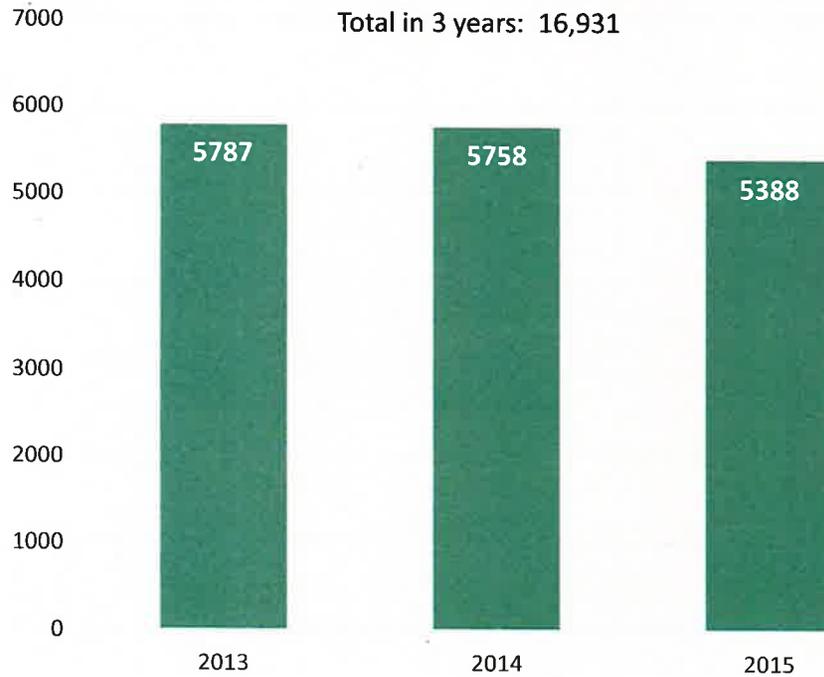
RACE BY PERCENTAGE



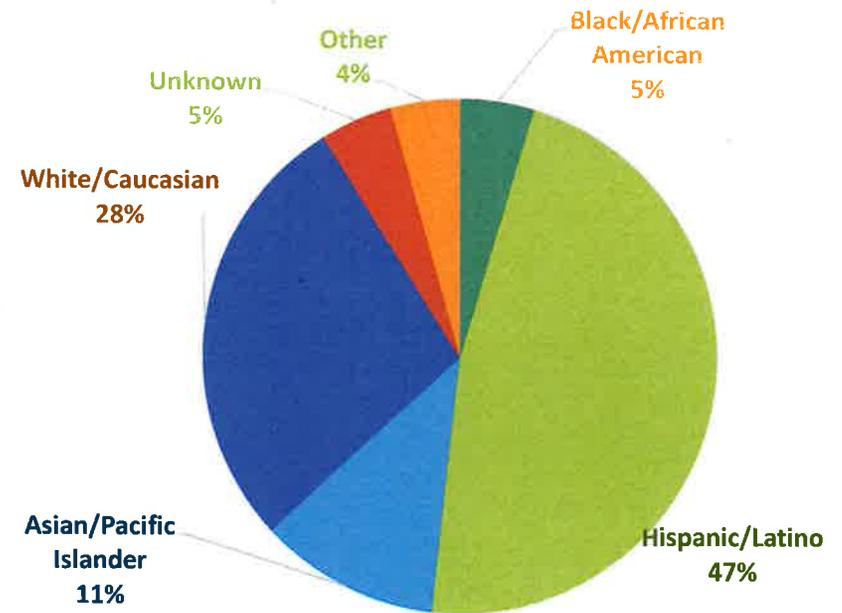
DUI Misdemeanors; VC 23152/23153; Police Contact By Car Stop

Misdemeanors VC 23152/23153

Total in 3 years: 16,931

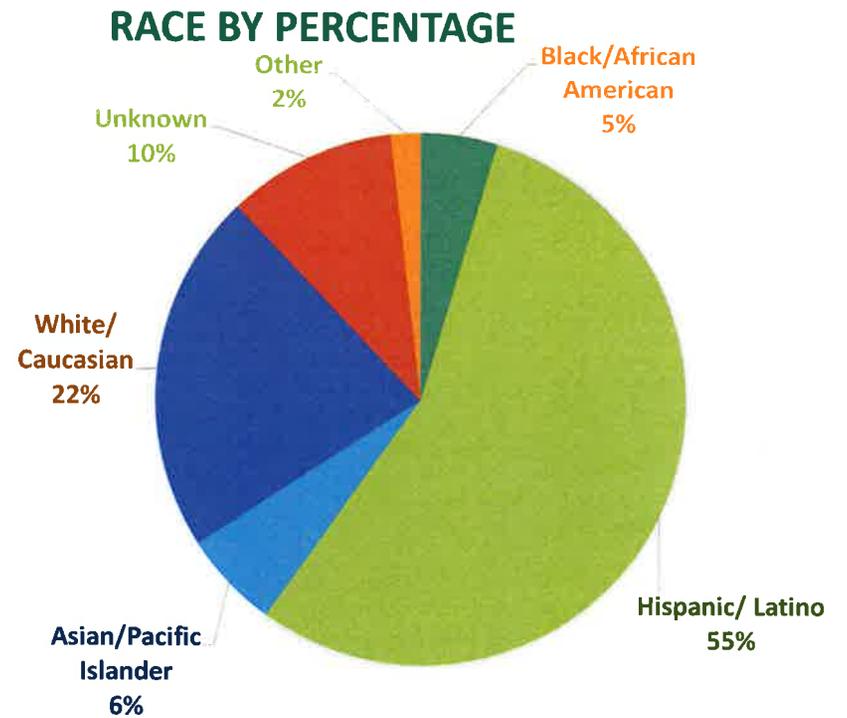
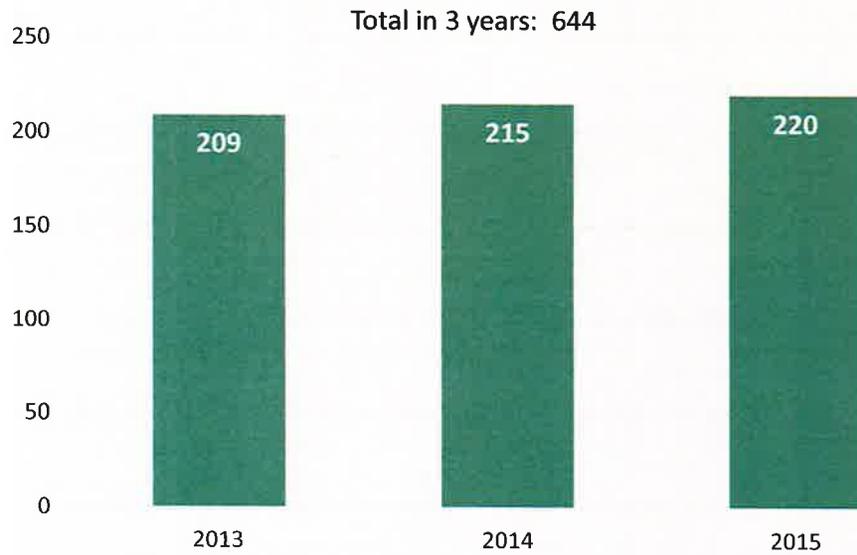


RACE BY PERCENTAGE



DUI Felonies; VC 21352/21353

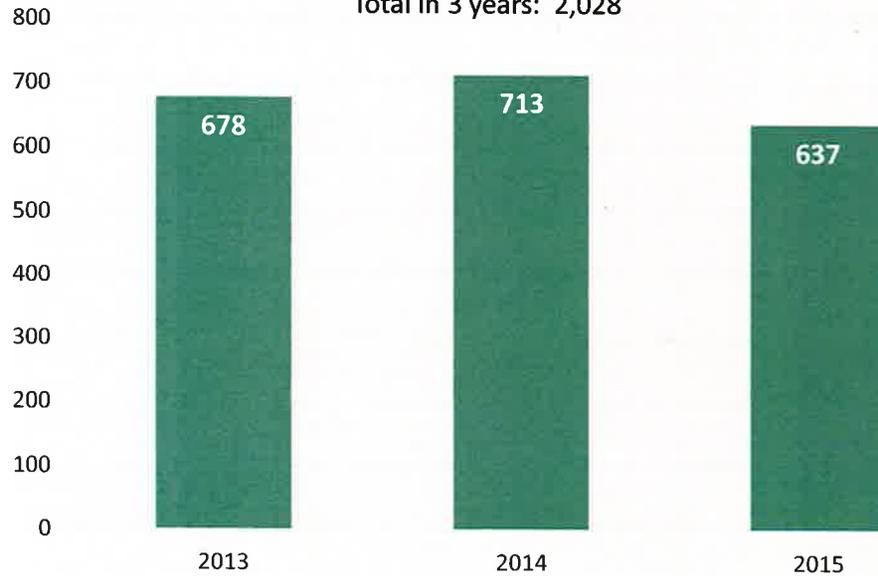
Felonies 23152/23153



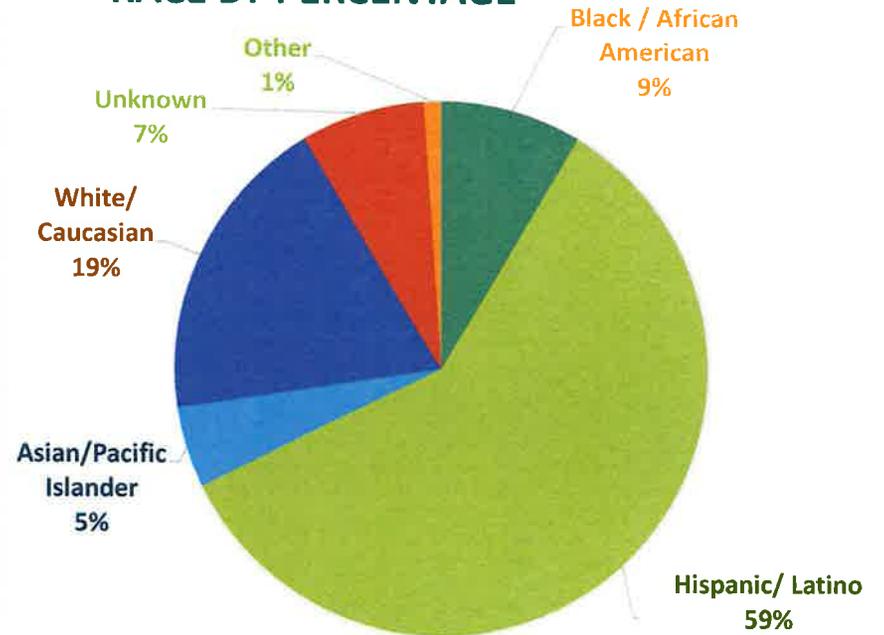
Car Theft Felonies; VC 10851

Felonies VC 10851

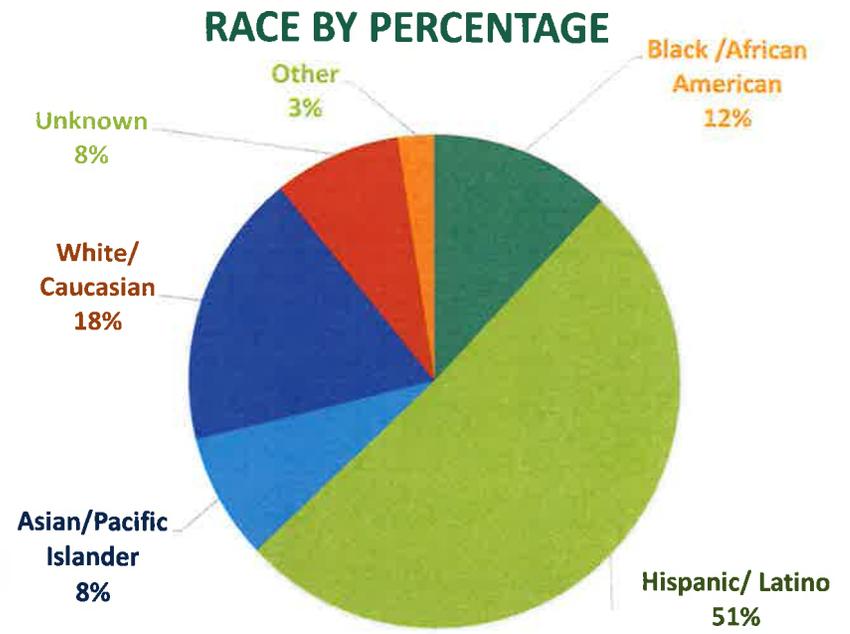
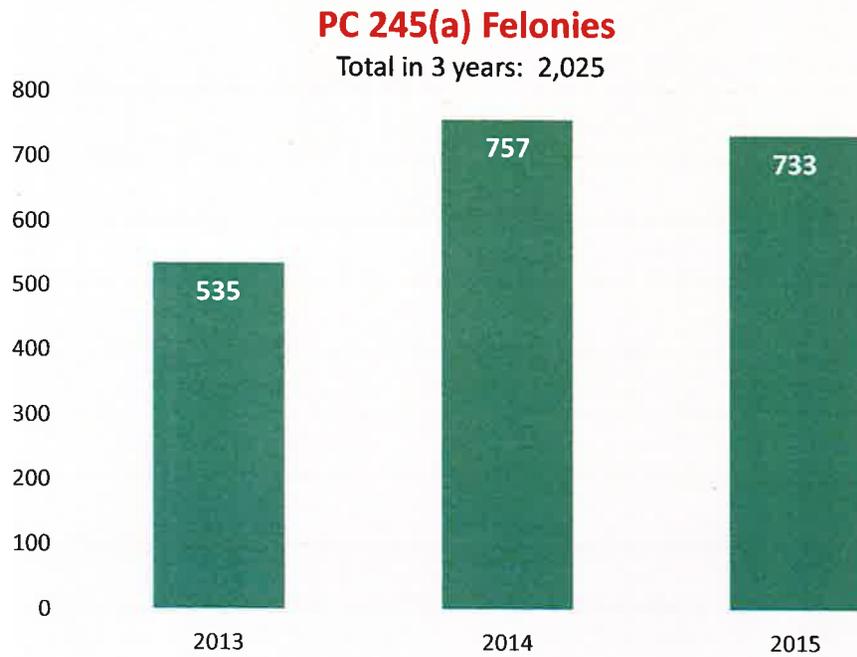
Total in 3 years: 2,028



RACE BY PERCENTAGE



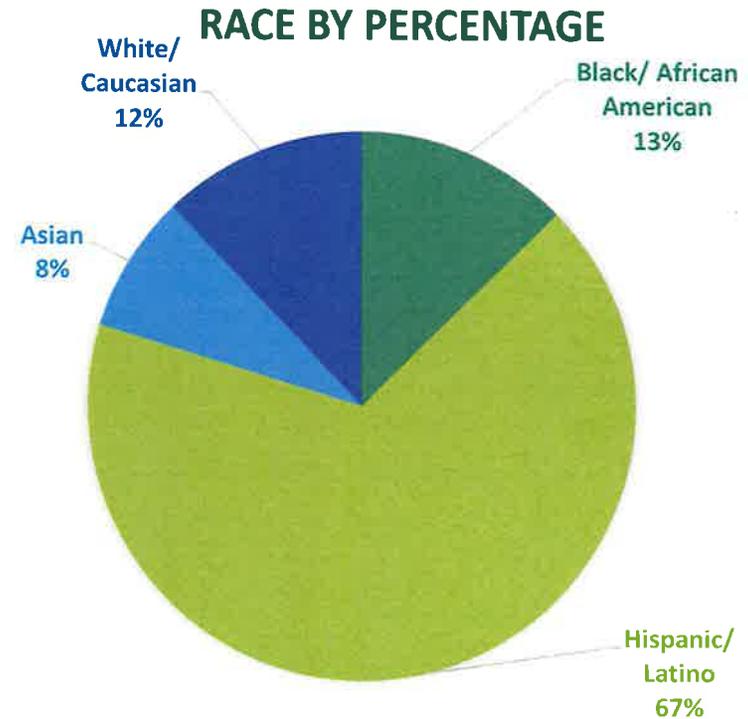
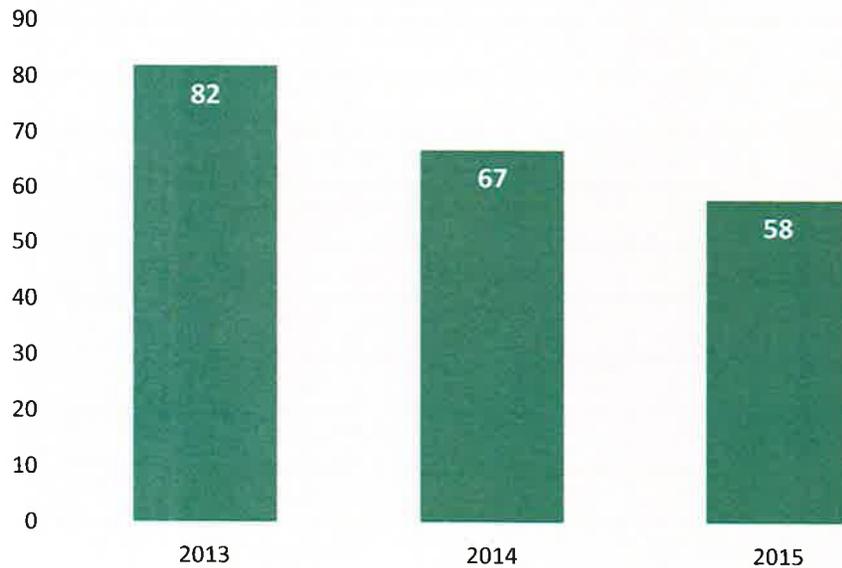
Assault With a Deadly Weapon or By Force Likely to Cause Great Bodily Injury Felonies; PC 245(a)



Homicide; PC 187

Homicide Defendants; PC 187

Total defendants charged in 3 Years: 207

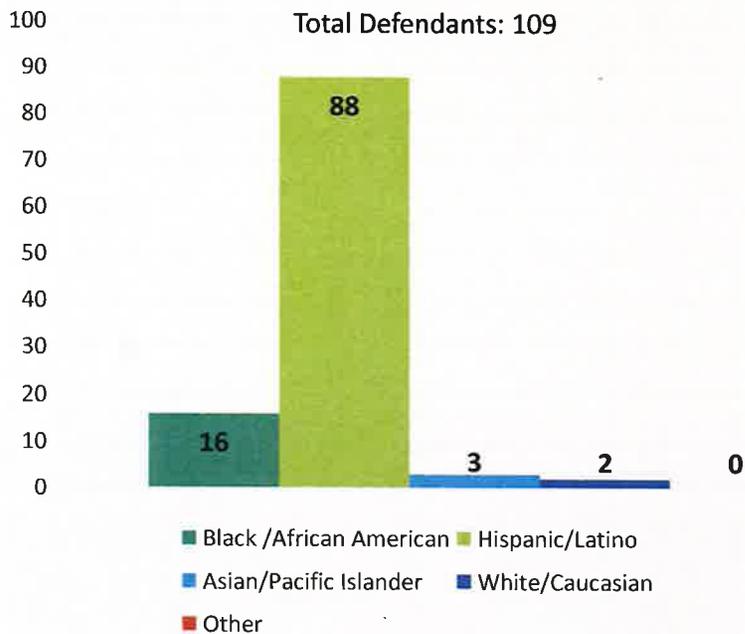


It should be noted that when two or more people are involved in a killing then this data reflects each of those charged, even though there may be only one homicide victim.

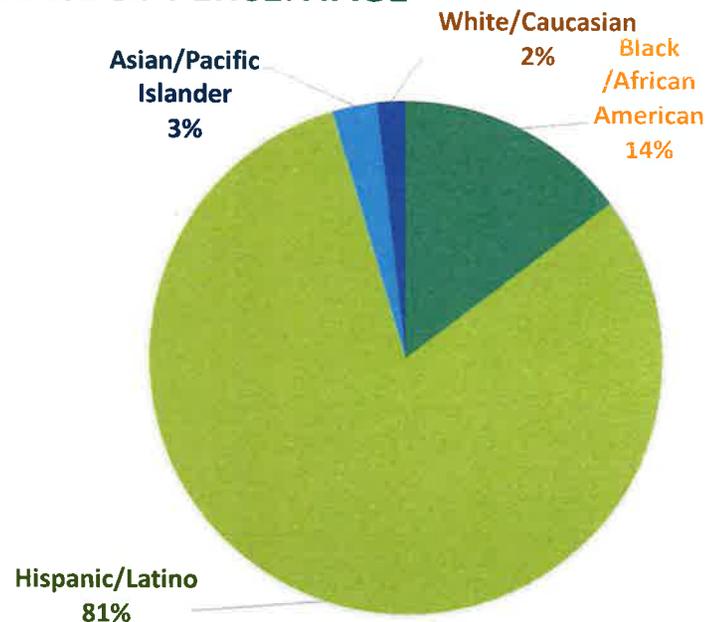
RACE OF DEFENDANTS CHARGED WITH GANG HOMICIDES 2013-2015

Race of Gang Homicide Defendants

Total Defendants: 109



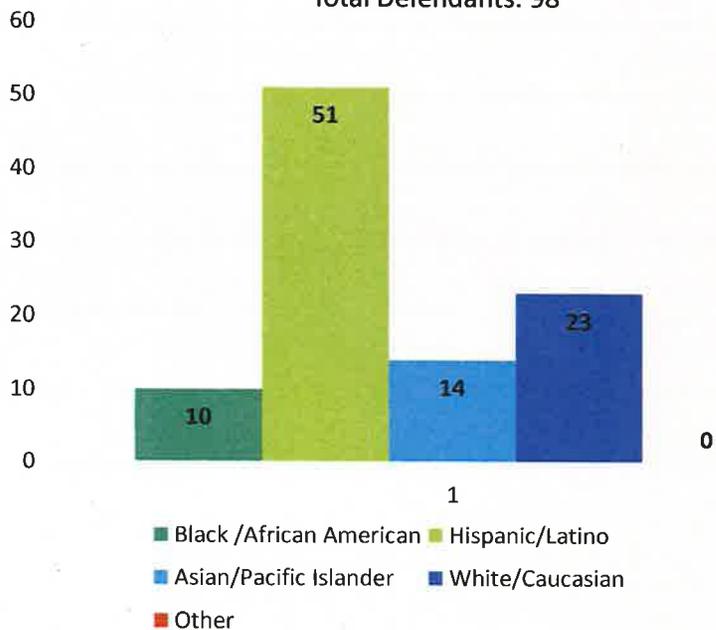
RACE BY PERCENTAGE



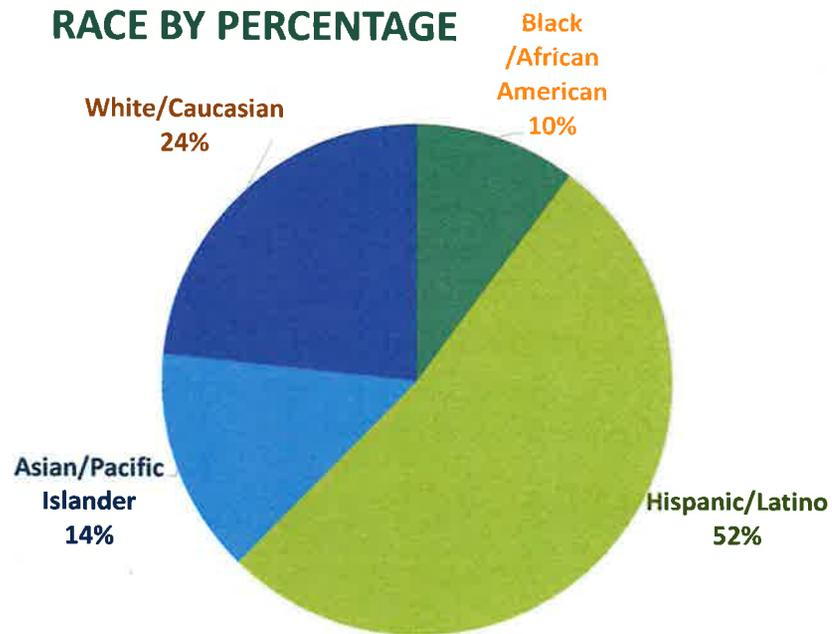
RACE OF DEFENDANTS CHARGED WITH NON-GANG HOMICIDES 2013-2015

Race of Non-Gang Homicide Defendants

Total Defendants: 98

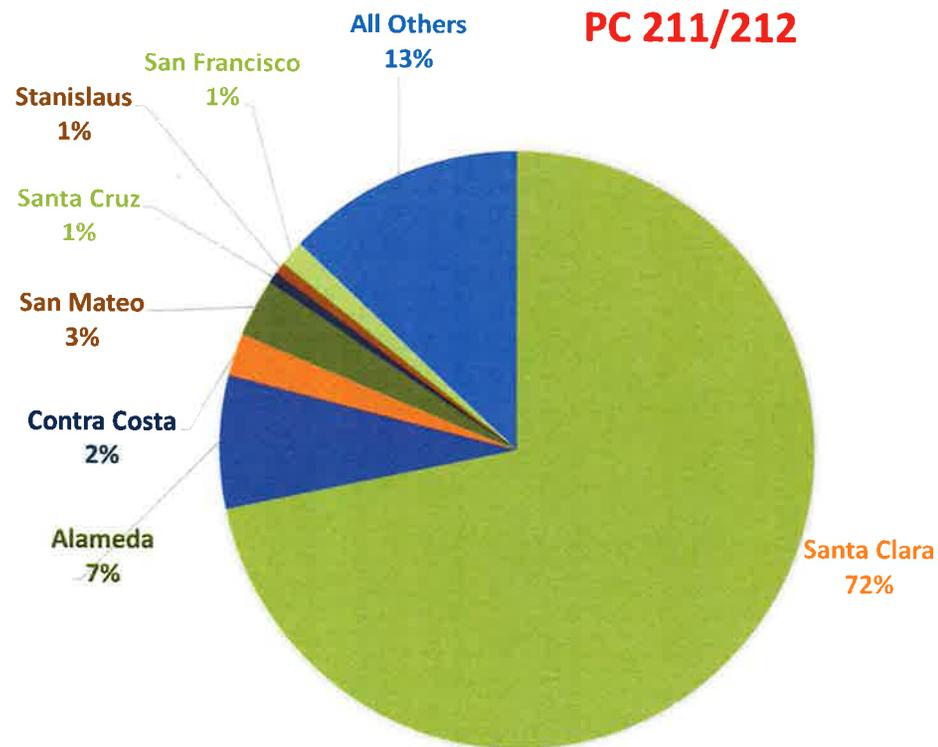


RACE BY PERCENTAGE



The following slides address the county of residence of defendants prosecuted in Santa Clara County and then examines how the racial composition of the defendants we prosecute changes when we only look at defendants who reside in Santa Clara County.

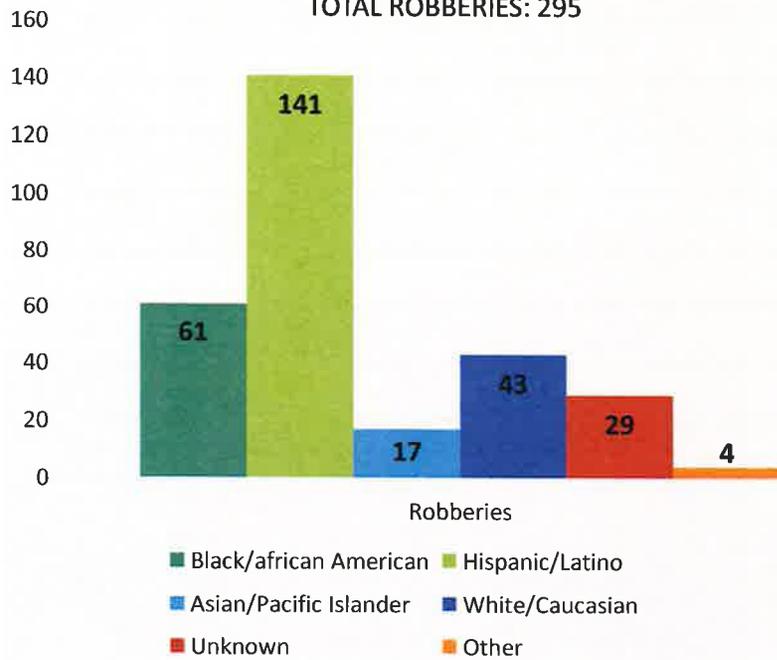
2015 Residence County of Defendant Robbery PC 211/212



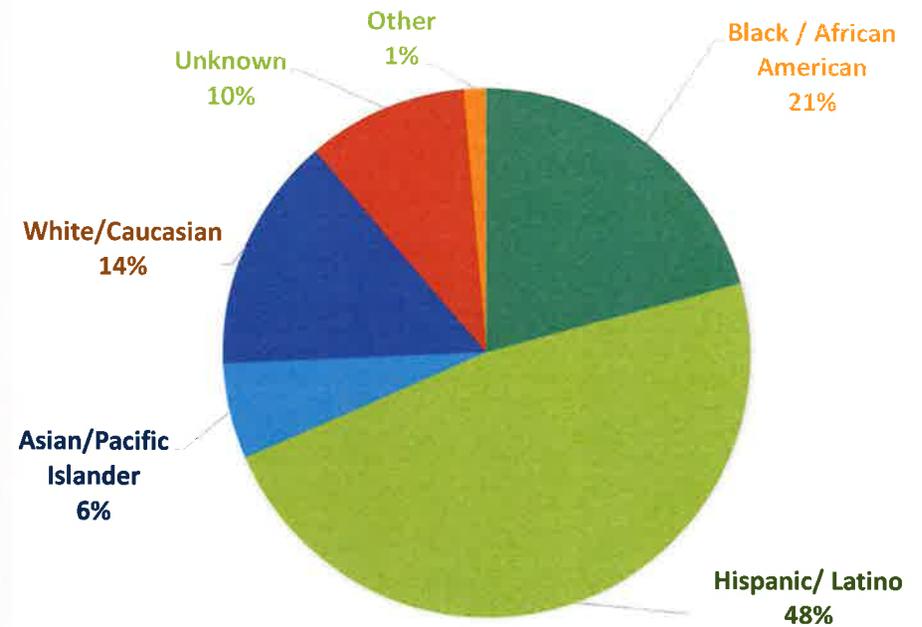
2015 Robberies (PC 211/212)

Race of Robbery Defendants (PC 211/212)

TOTAL ROBBERIES: 295

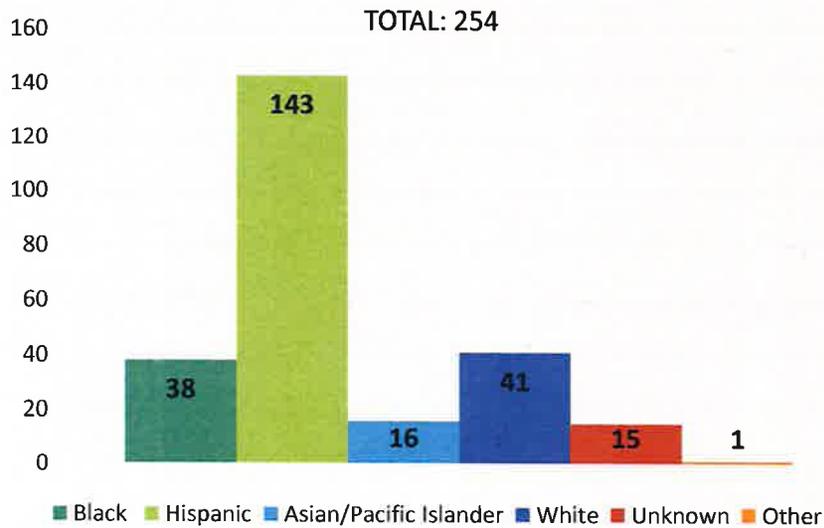


RACE BY PERCENTAGE

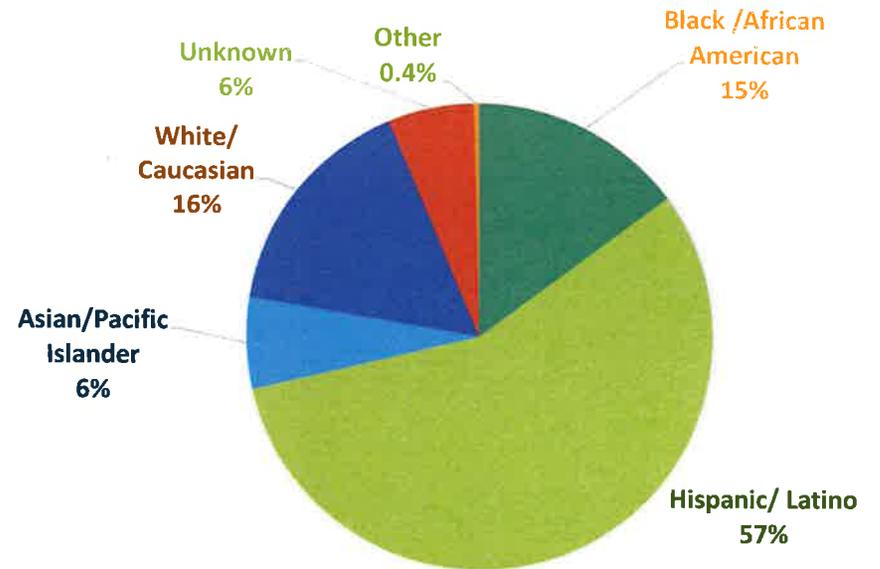


2015 Robbery PC 211/212 where residence of Defendant in Santa Clara County

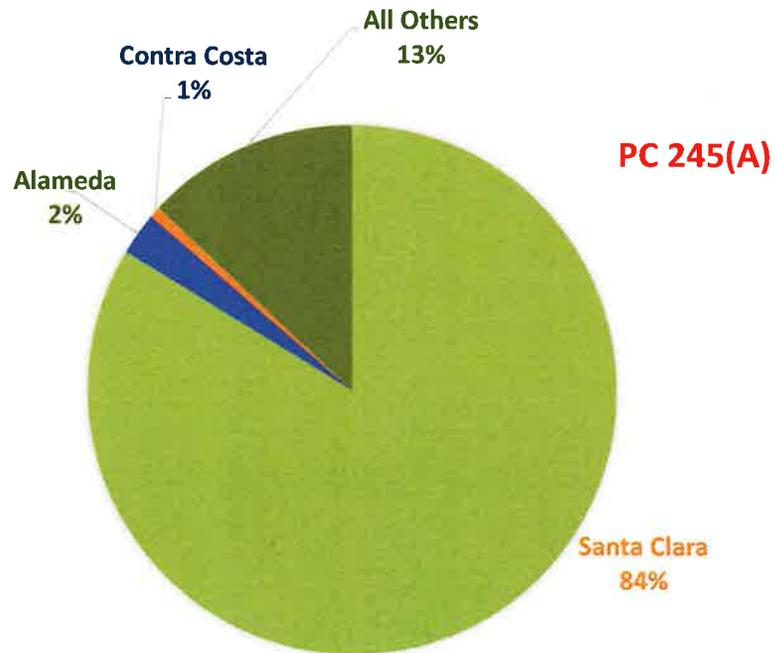
Race of PC 211/212 Defendants Residing In SCC



RACE BY PERCENTAGE



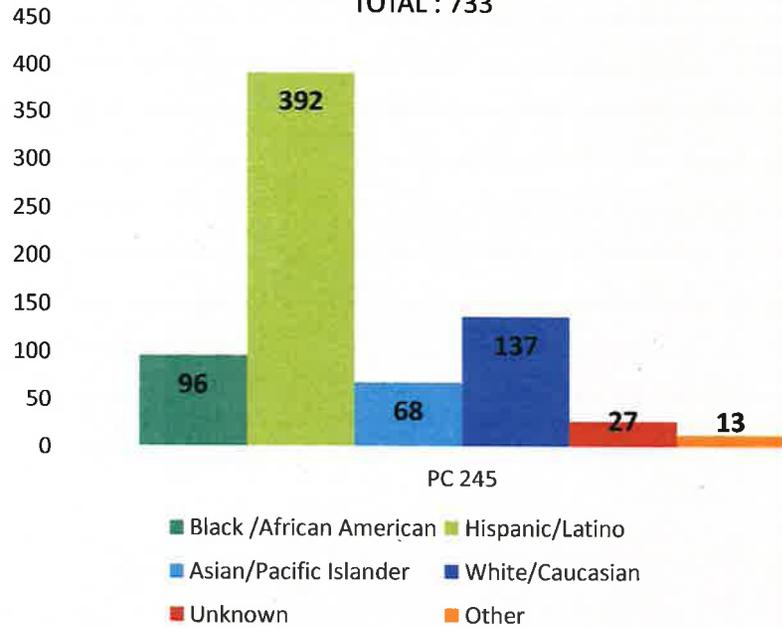
2015 Residence County of Defendant Assault with Deadly Weapon PC 245(a)



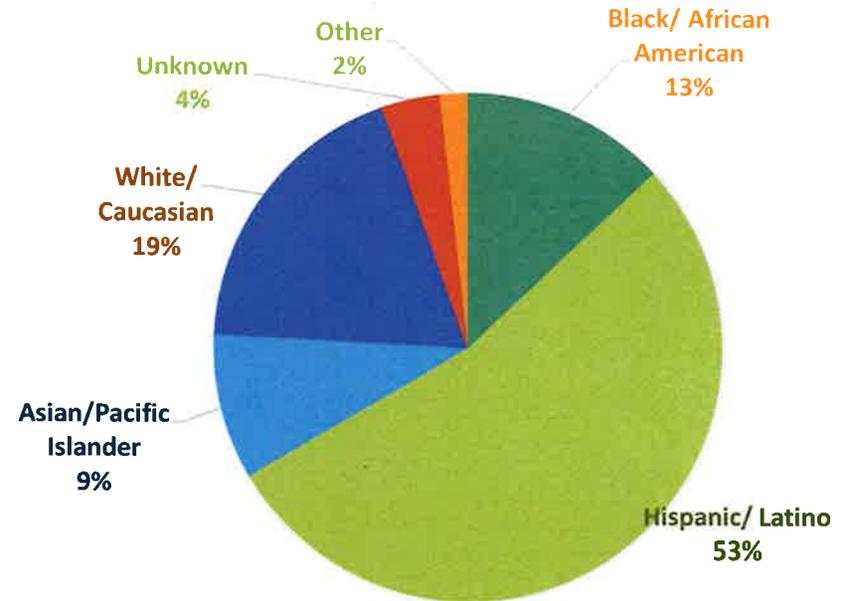
2015 Assault With a Deadly Weapon or By Force Likely to Cause Great Bodily Injury (PC 245)

Race of PC 245 Defendants

TOTAL : 733



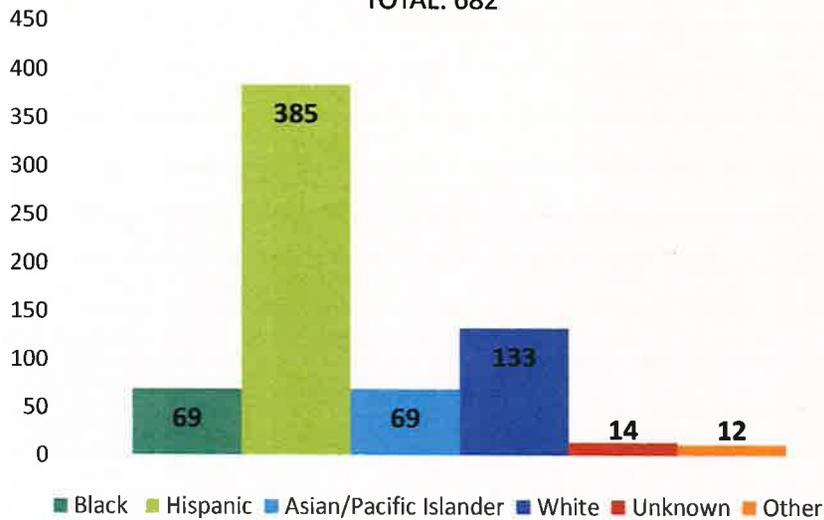
RACE BY PERCENTAGE



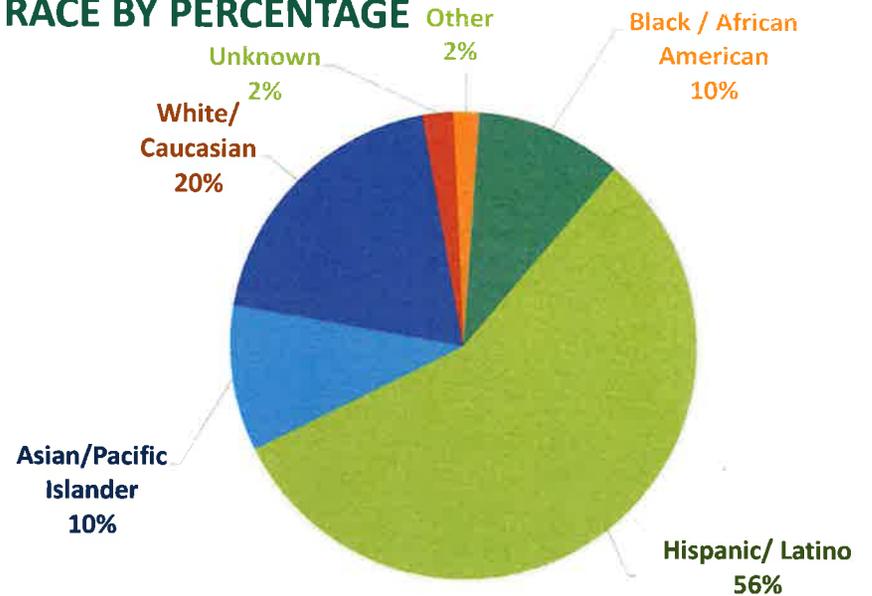
2015 Assault with Deadly Weapon PC 245(a) where residence of Defendant in Santa Clara County

Race of PC 245(a) Defendants Residing in SCC

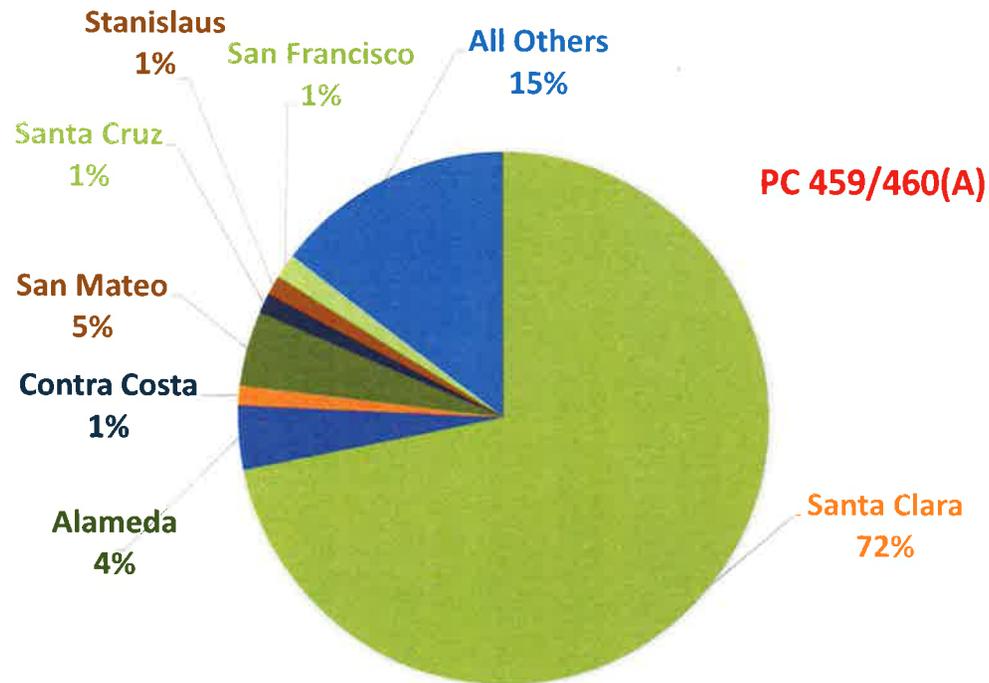
TOTAL: 682



RACE BY PERCENTAGE



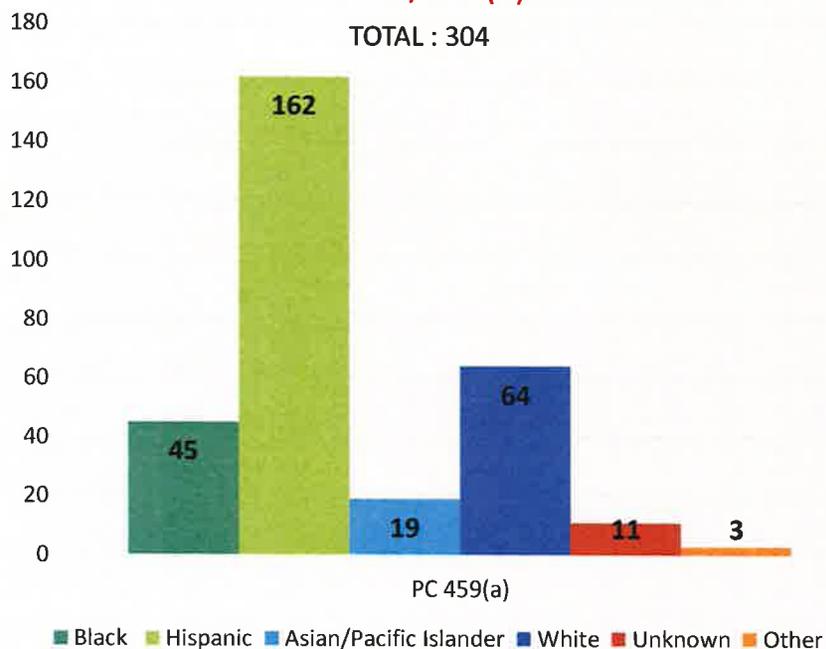
2015 Residence County of Defendant Residential Burglary PC 459/460(a)



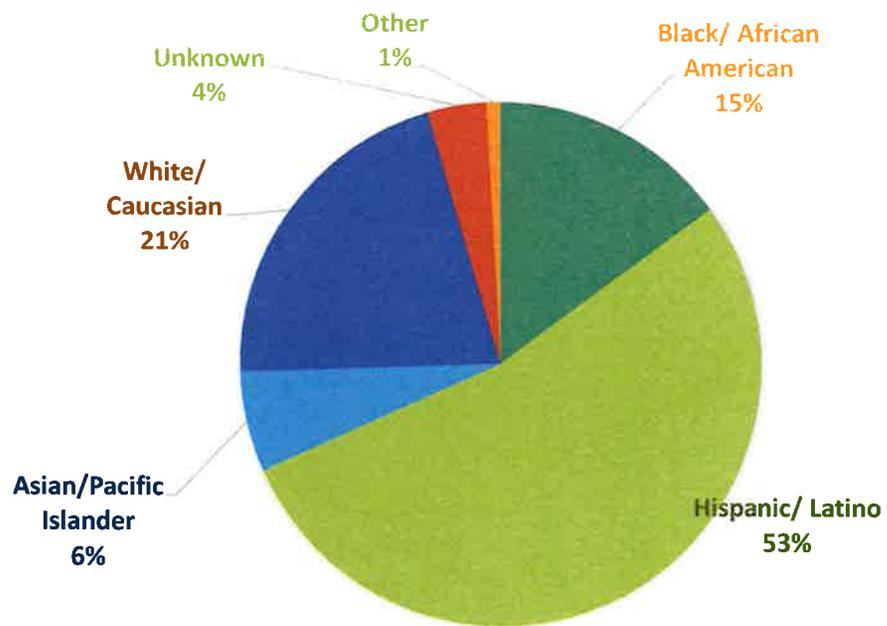
2015 Burglary (Residential); PC 459/460(a)

Race of PC 459/460(a) Defendants

TOTAL : 304



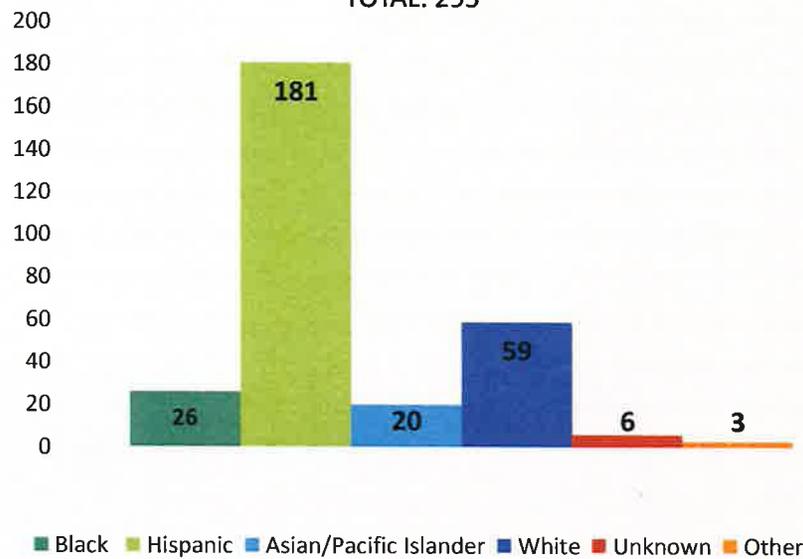
RACE BY PERCENTAGE



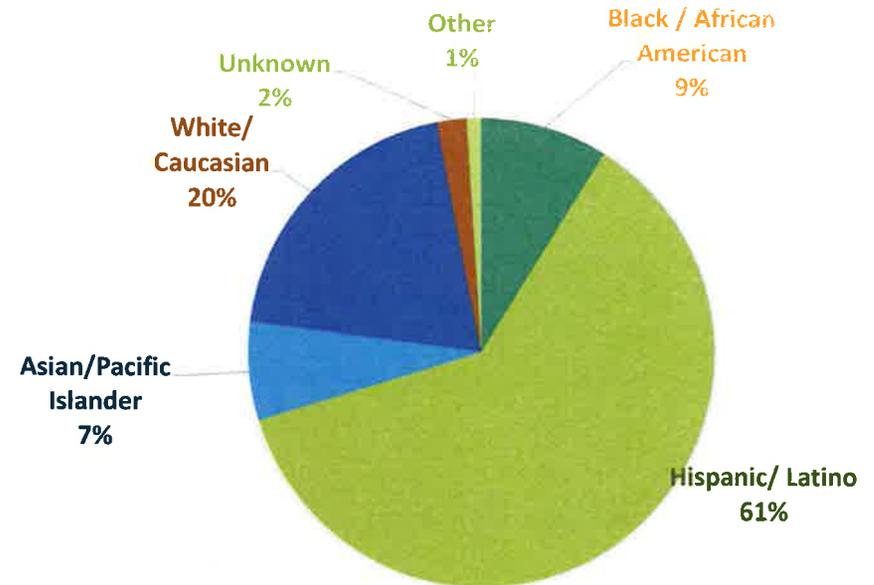
Residential Burglary PC 459/460(a) where residence of Defendant in Santa Clara County

Race PC 459/460(a) Defendants Residing in SCC

TOTAL: 295

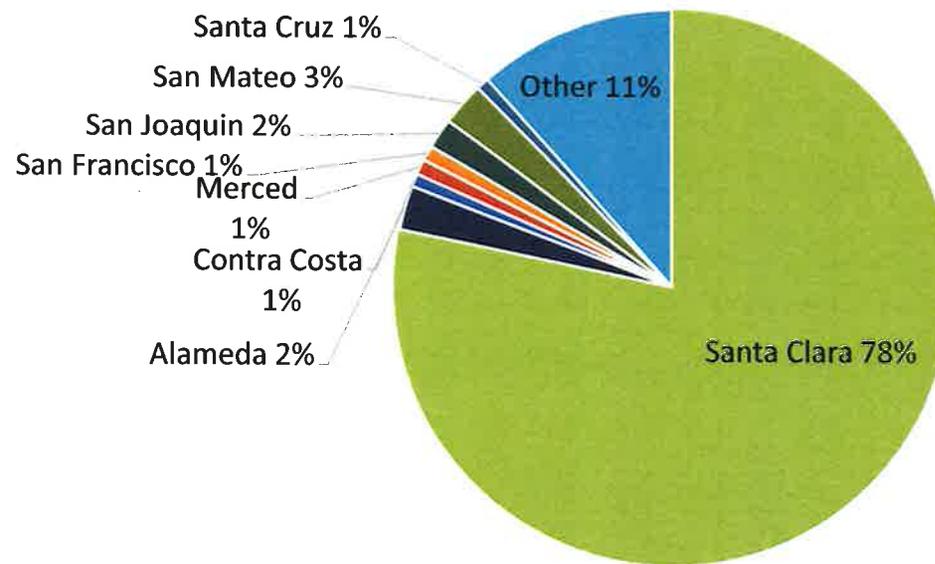


RACE BY PERCENTAGE



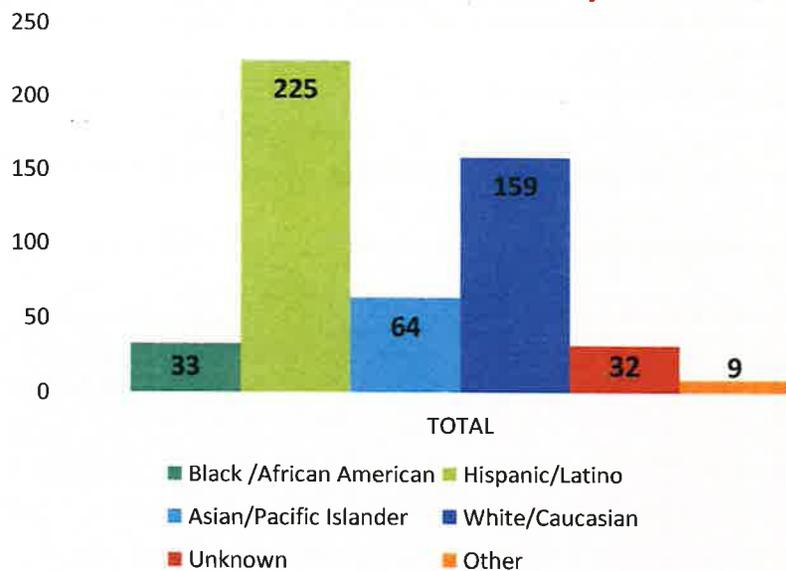
2015 Possession For Sale of Narcotics (HS 11351.5, 11351, HS11378 and 11378.5)

Defendant's County of Residence

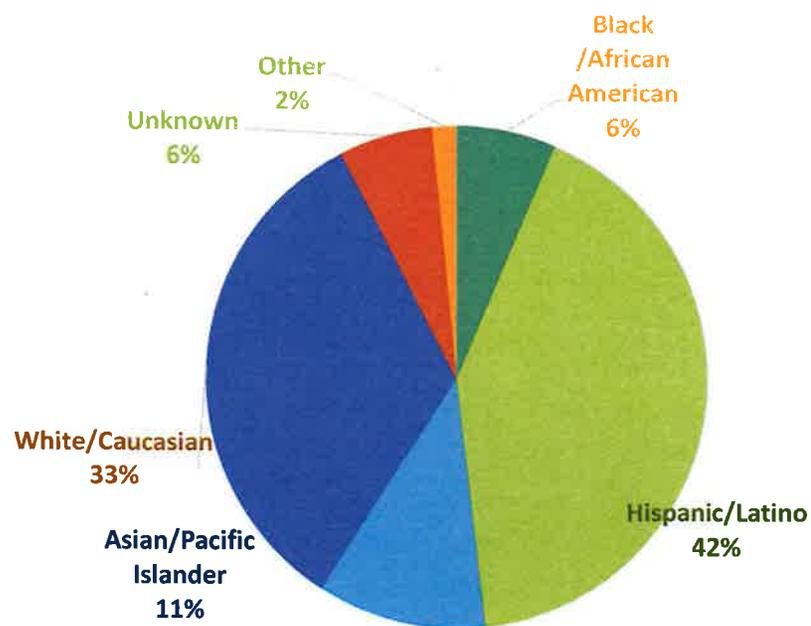


2015 Possession For Sale of Narcotics (HS 11351.5, 11351, HS11378 and 11378.5)

Number of Defendants by Race

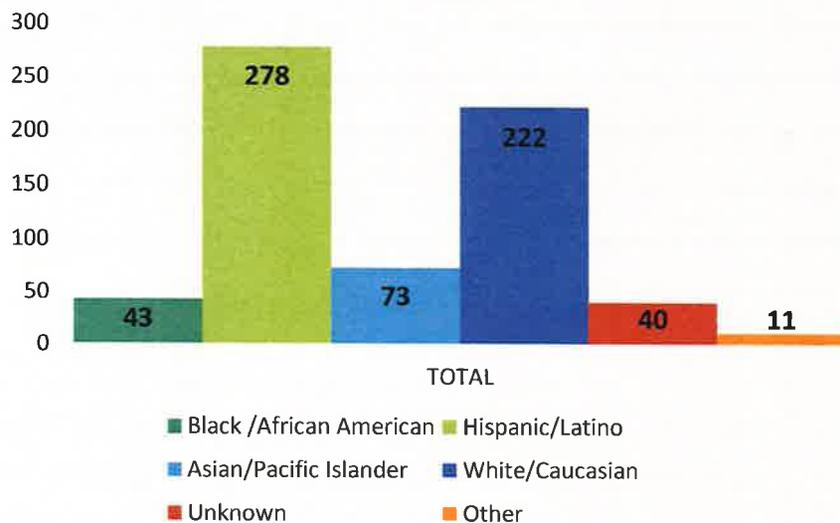


RACE BY PERCENTAGE

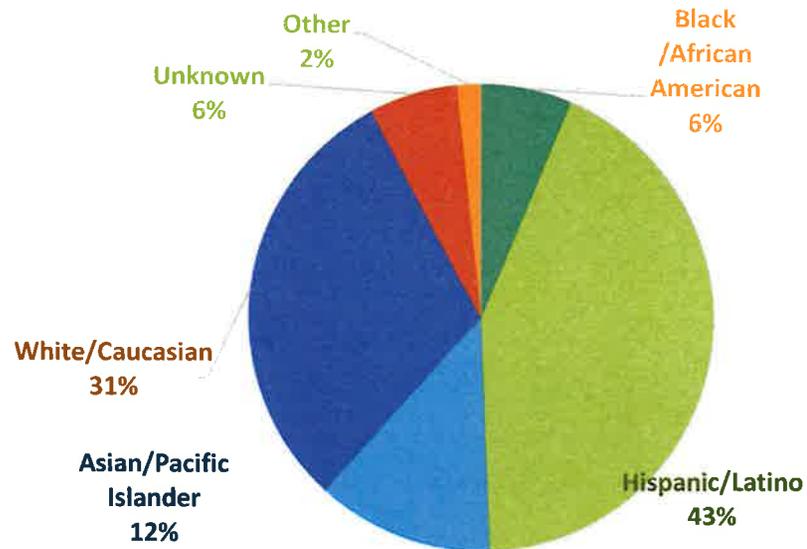


2015 Possession For Sale of Narcotics Where Defendants Are Residents of Santa Clara County (HS 11351.5, 11351, HS11378 and 11378.5)

Race of Narcotics Defendants Residing in SCC

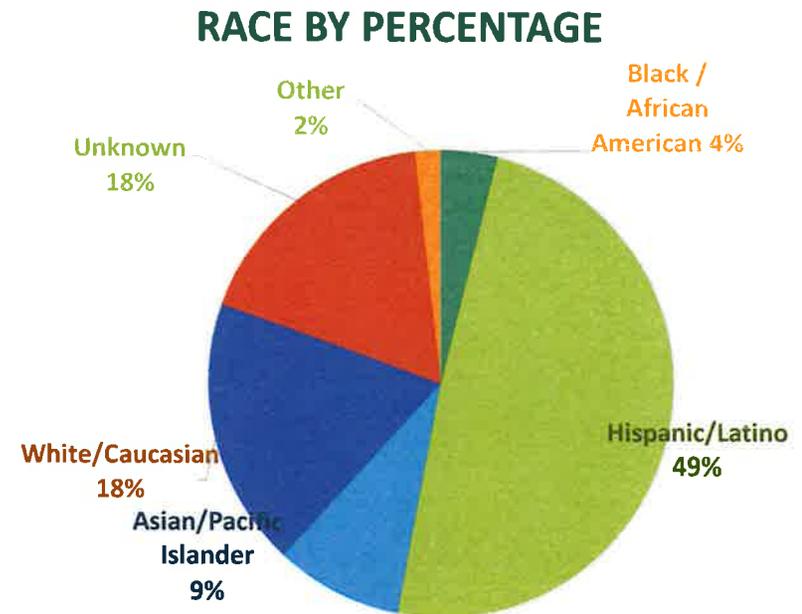
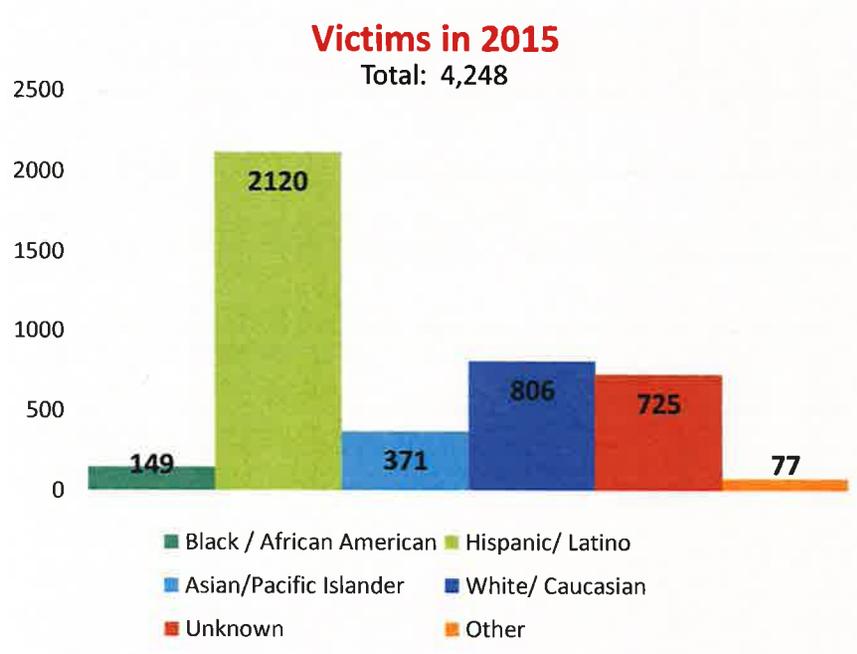


RACE BY PERCENTAGE



The following slide addresses the racial breakdown of victims of violent crime assisted by the DA's Office Victim Services Unit in 2015. It should be noted that there was a dramatic increase in victims served in the second half of 2015 after VSU moved in house to the DA's Office.

2015 Victims of Violent Crime assisted by DA's Office Victim Services Unit (where victim stated race at intake interview)

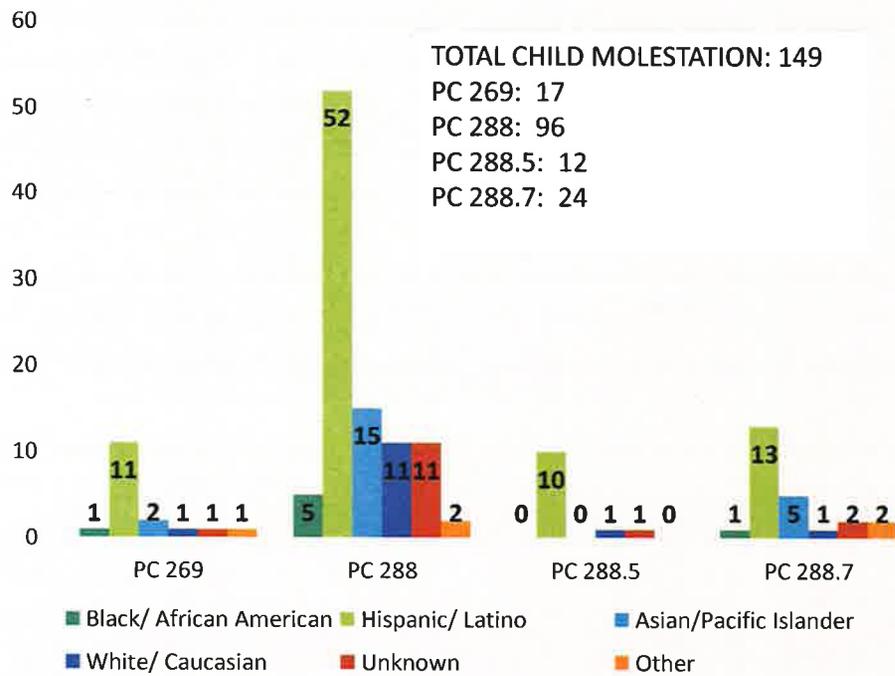


It should be noted that 20% of violent crime victims decline to state their race at intake interviews.

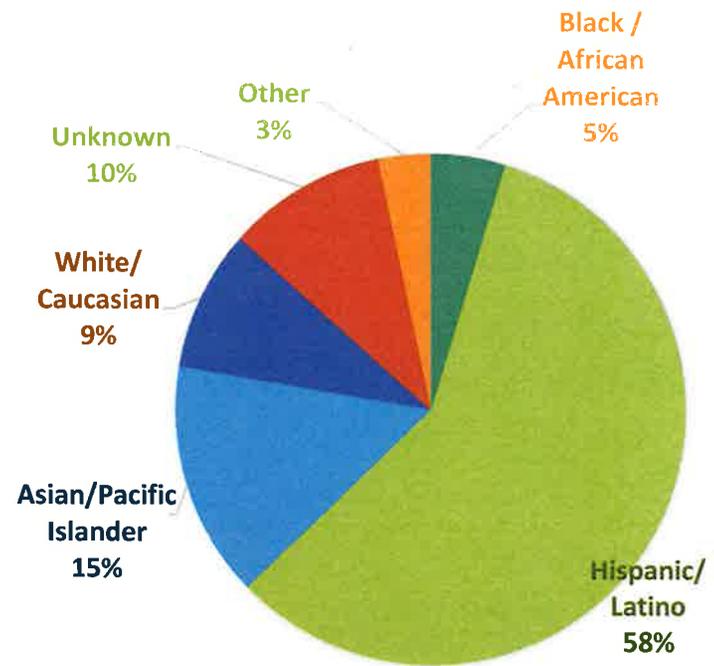
The following slides address additional crimes prosecuted by the DA's Office, looking only at the most recent year, 2015.

2015 Felony Child Molestation (PC 269, 288, 288.5, 288.7)

Race of PC 269, 288, 288.5, 288.7 Defendants

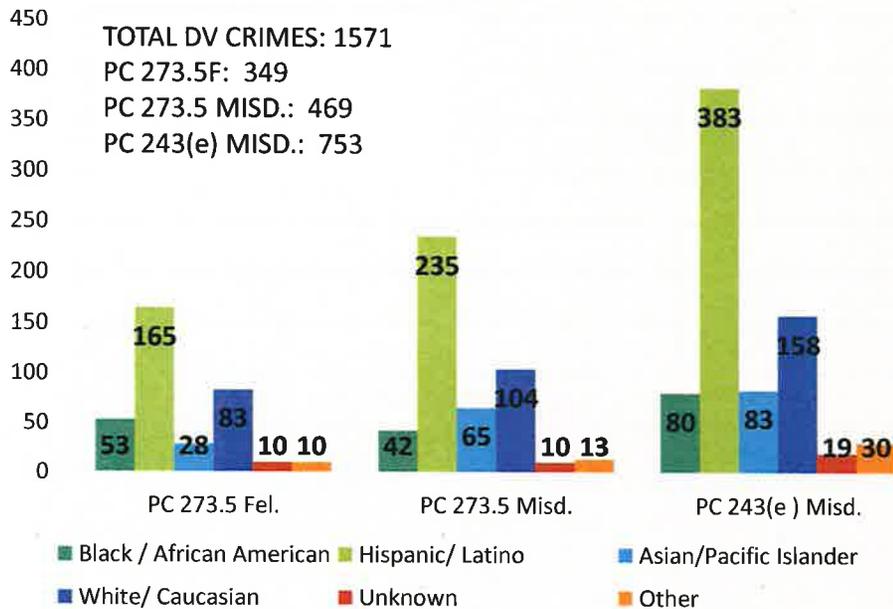


RACE BY PERCENTAGE

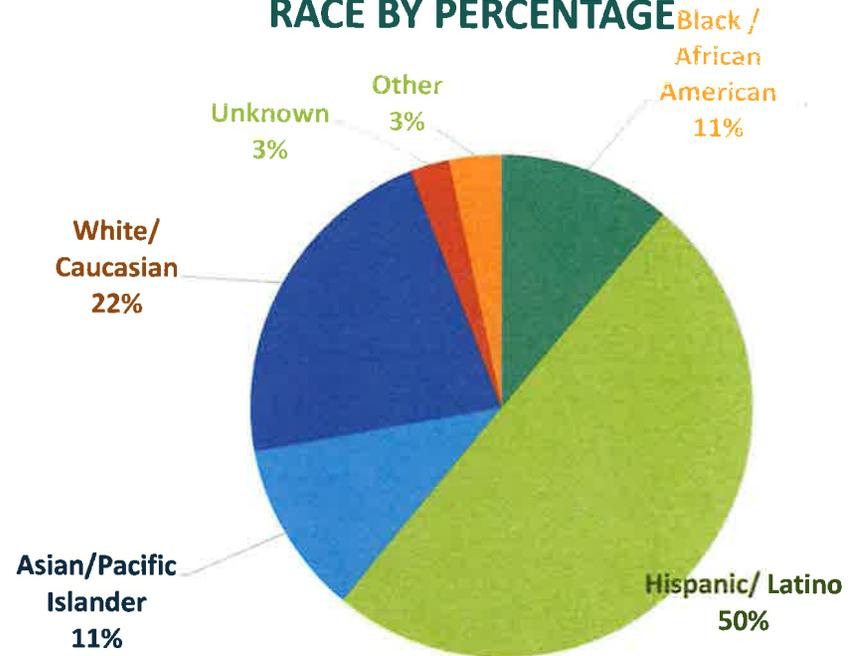


2015 Most Commonly Charged Domestic Violence Crimes (PC 273.5 Felony, 273.5 Misdemeanor, 243(e) Misdemeanor)—Initiated by 911 Call

**Race of PC 273.5F, 273.5M, 243(e)M
Defendants**

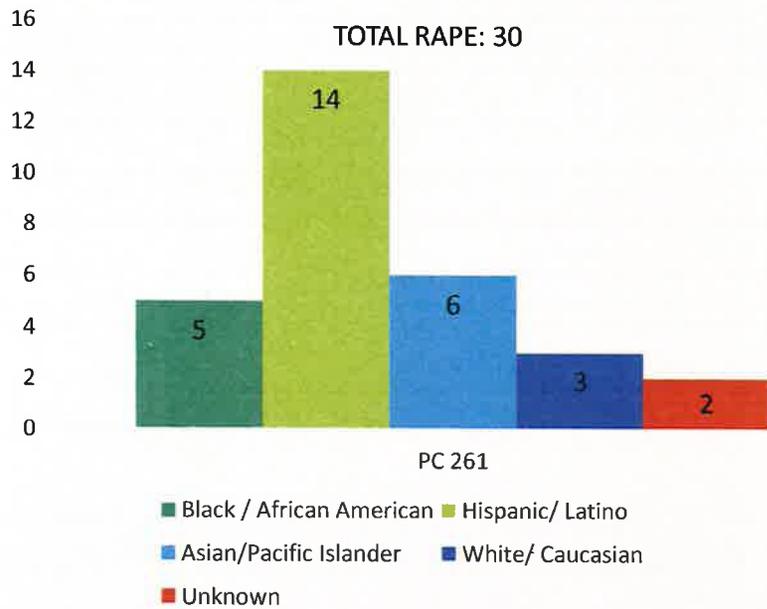


RACE BY PERCENTAGE

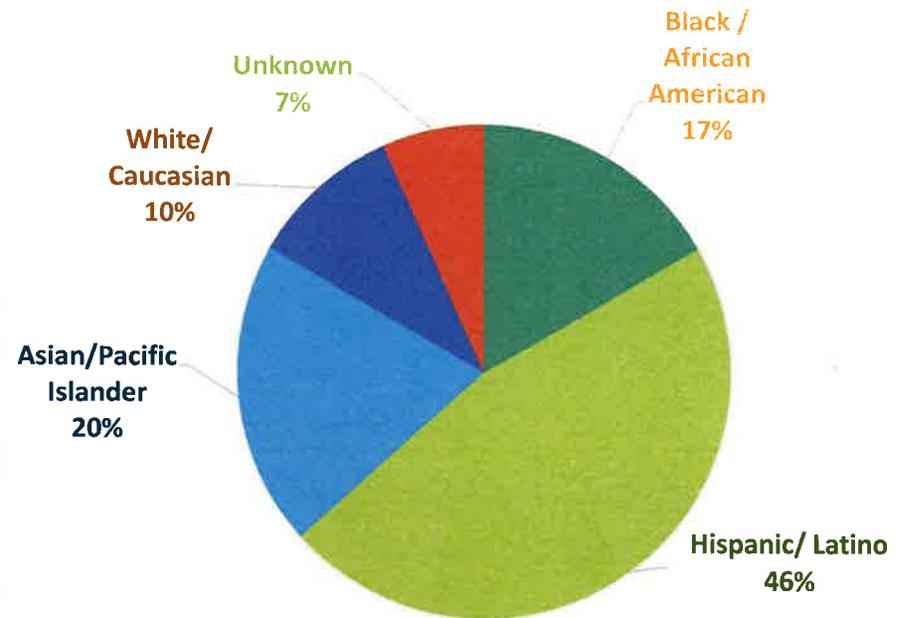


2015 PROSECUTED RAPES - PC 261

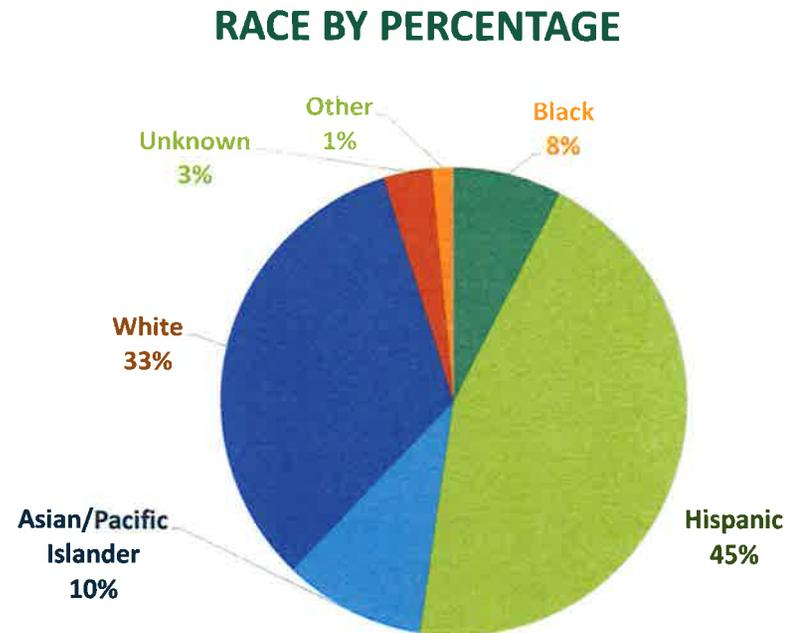
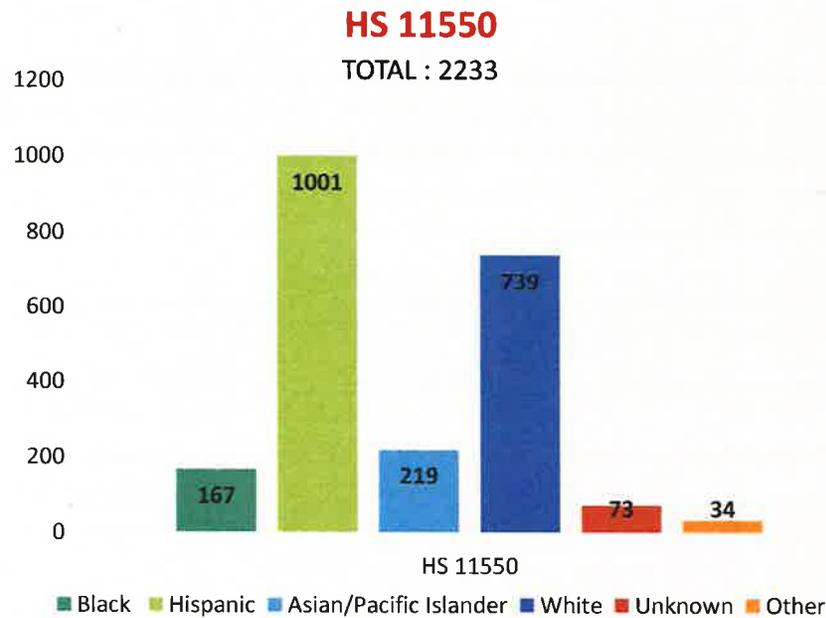
Race of PC 261 Defendants



RACE BY PERCENTAGE



2015 Under the Influence of Controlled Substance (HS 11550 Misdemeanor)—Police Contact Often Face To Face



Issues not addressed in these slides are many and future study may be able to address them. While this data does address a key decision point, the filing or non-filing of criminal charges, it does not address things more difficult to capture from our case management system like offers of resolution or the decisions about whether or not a case should proceed as a three-strike case.

Acknowledgements

The Santa Clara County District Attorney's Office thanks Laura Ridolfi from the Burns Institute for her helpful insights, contributions and suggestions that all made this study better and more complete.

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