



Race and Prosecutions

2018 Update

A Report of the Santa Clara County

District Attorney's Office

Jeff Rosen, District Attorney



Introduction

Racial disproportionality in our criminal justice system remains a stark and vexing problem. While we do not have a solution for it yet, we are determined to continue to study the issue in hopes to understand it better. One day, we hope to see a system that is as humanly fair and free of bias as possible.

To continue the process of getting there, the Santa Clara County District Attorney's office has greatly expanded the collected data for our Race and Prosecutions Report for 2018, the third such collation. In this year's report, the District Attorney's Office continues to examine race in our criminal justice system, and looks at other data that may be connected to involvement in the criminal justice system: income inequality, juvenile safety, education and early life inequality.

Newly-collated for this report we report income, unemployment and poverty stats on the five zip codes where the greatest number of defendants come from. We have included data on health from those zip codes, data on housing over crowdedness from those zip codes, and on the perceptions of safety by the residents in those zip codes.

We have also expanded the race-based data we collect on youth crime, victimhood and even perception of safety in our community and schools.

Previously we had reported drop-out rates by race in our County. Now the youth data is greatly expanded to also include perceptions of safety at school by racial groups in our County, physical fighting at school by race, self-identification as gang-affiliated by race in our youth.

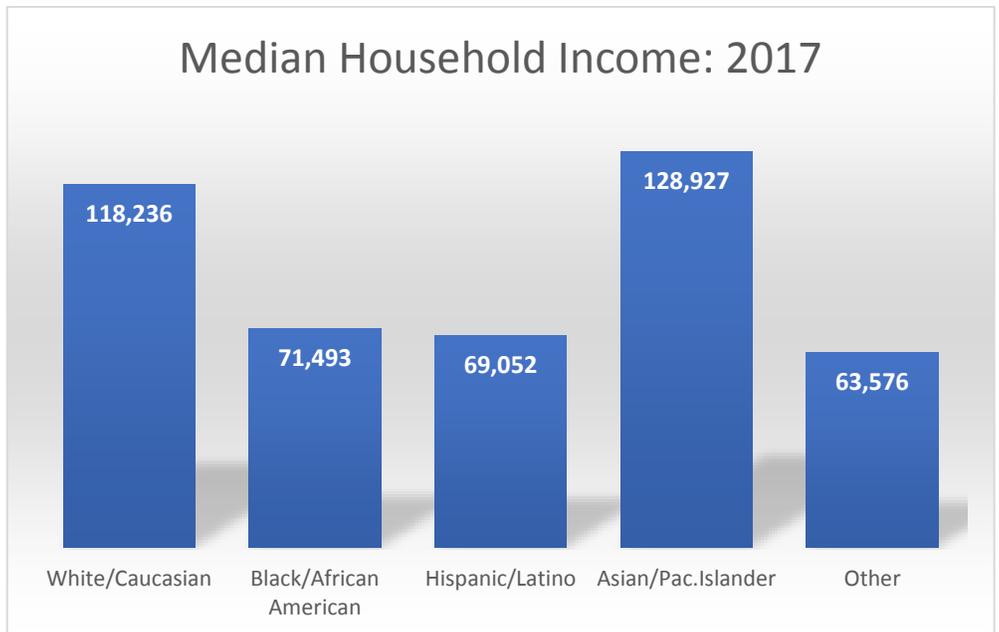
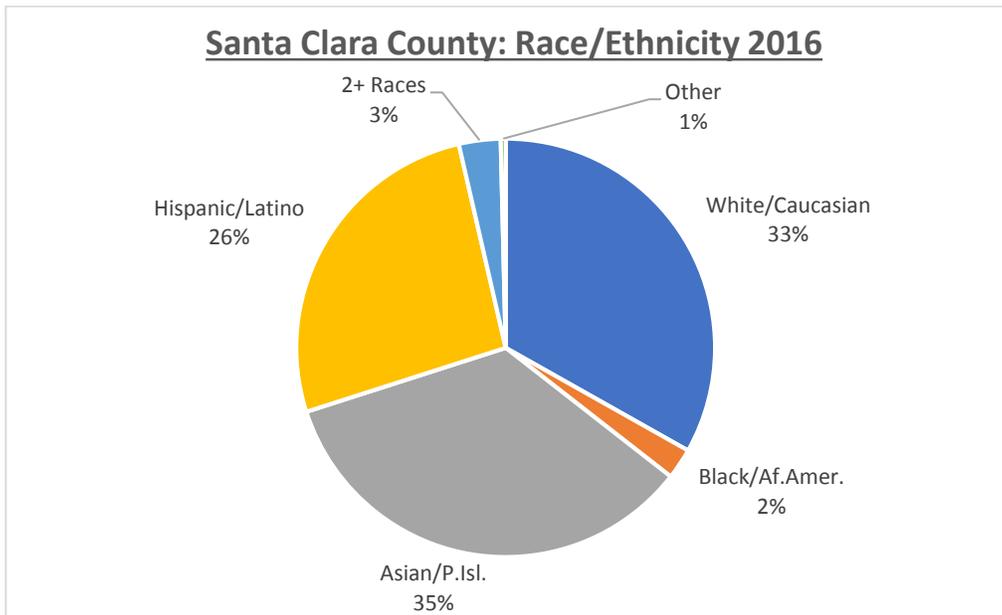
Our ongoing effort to study racial disproportion began in 2016, with the Santa Clara County DA's Office first comprehensive report on Race and Prosecution Data. The report sought to determine whether racial disproportionality exists in the County's defendant population, and to explore the racial disparities that did emerge. The 2016 report showed that racial disproportionality between the percent of defendants from different racial and ethnic groups compared to Census data about our county's racial composition exists across all crime types, and in cases investigated by the police in all different ways.

In 2017 the DA's Office partnered with the non-profit research organization BetaGov to study internal office procedures, in an effort to identify whether decisions made within the DA's office led to further disproportionality. This random control trial study did not find any disproportionality or bias in the decisions made by deputy district attorneys at the charging stage of a case.

Our goal is to build each year on our understanding of racial disproportionality, eventually creating a long-term and layered database of statistics that we can use to tackle and diminish it.

Demographics of Santa Clara County

Santa Clara County is the largest county in Northern California, with nearly 2 million residents. The 15 cities in the county are diverse and have widely different racial compositions. Santa Clara County overall has the highest median income of any California county, and ranks 4th in the state for employment. The county's wealth is not evenly distributed among and between cities or races, as seen in the charts below:

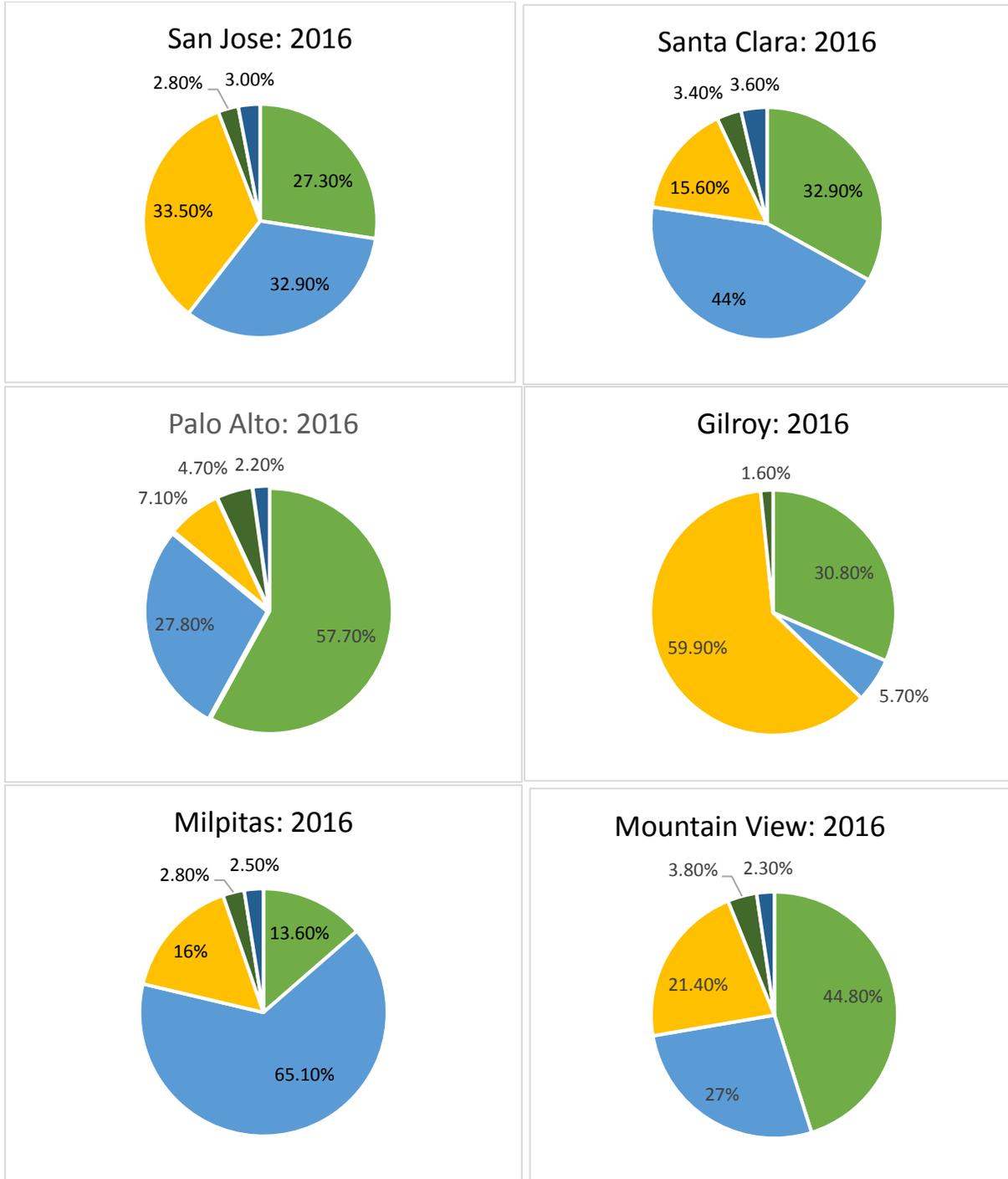


¹ US Census, 2016 American Community Survey

² US Census, 2017 American Community Survey 5-Year Estimate

A side-by-side comparison of the racial composition in the County's largest cities shows how each city has a slightly different racial and ethnic breakdown from the County average. San Jose's demographics are the most like Santa Clara County as a whole, but Gilroy, Milpitas, and Palo Alto each have a single race with 50% or more of the population.

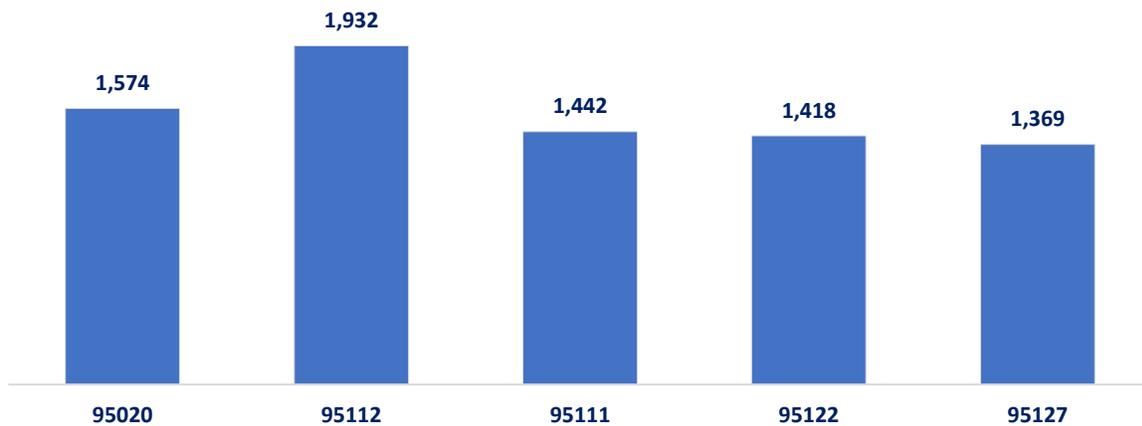
■ White ■ Asian ■ Hispanic ■ Two or More Races ■ Black



Zip Code Analysis

In both the adult and juvenile populations, there are 5 primary zip codes that represent the lions' share 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).

Charged Defendants by Zip Code (2017)



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. Perhaps unsurprisingly, Santa Clara County ranks among the highest in the nation for income inequality.³

³ <https://www.mercurynews.com/2018/02/15/income-inequality-in-the-bay-area-is-among-nations-highest/>

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:⁴

	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%

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

The District Attorney’s Office uses this zip code data to set policy in addressing the unique needs in these parts of the County. The Community Prosecution Unit is specifically stationed in Gilroy, Downtown San Jose and East San Jose, working to understand the needs of those neighborhoods and to set crime prevention policies in those communities. Prevention efforts are an important part of the District Attorney’s role in stemming the flow of new criminal behavior. The efforts of the Community Prosecution Unit have been instrumental in addressing the unique needs of these neighborhoods.

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.

The District Attorney’s Office reviews submitted case 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

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

⁴ 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>

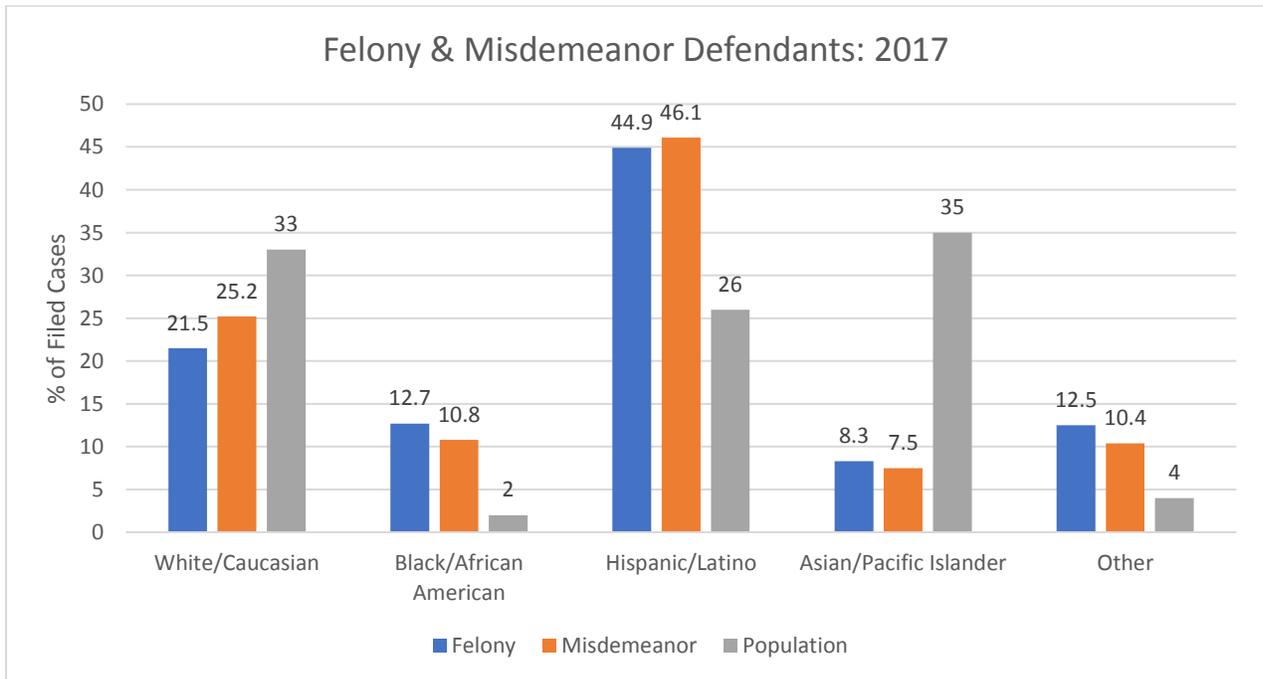
against a suspect based? on race/ethnicity. As seen below, the percentage of cases charged was nearly constant across all races and ethnicities.

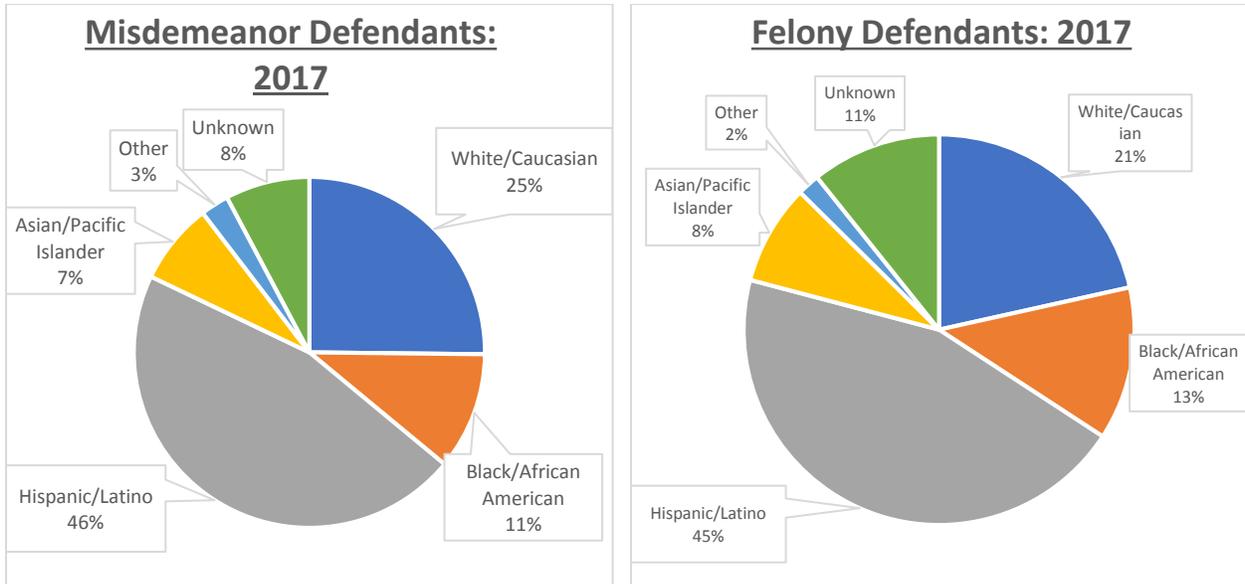
	% Felonies Charged	% Misdemeanors Charged
White	83.8	86.3
Black/ African Amer.	82.6	86.9
Hispanic	86.7	87.5
Asian/ Pacific Islander	82.5	79.8
Other	80.3	80.4
Unknown	73.5	76.6

Race of Prosecuted Defendants:

Clear racial disparities appear in the relative percentages of prosecuted defendants as compared to their representation in the community. To see this troubling pattern, we examined the percentages of our total prosecutions for adult felonies and misdemeanors 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.

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.





Youth Indicators of Racial Disparity:

Long before racial inequity presents in the adult criminal population, there are complex social factors that seem to contribute to early disparities in education, safety, wealth and health among minority communities in Santa Clara County. The Crime Strategies Unit and the Community Prosecution Unit at the DA’s office have worked hard to identify and address the root causes of 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 root causes of 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.

Perceptions of School Safety, by Race/Ethnicity:

Santa Clara County Race/Ethnicity	Percent				
	Very safe	Safe	Neither safe nor unsafe	Unsafe	Very unsafe
African American/Black	25.6%	45.5%	19.8%	3.3%	5.7%
American Indian/Alaska Native	33.7%	45.8%	18.3%	0.7%	1.6%
Asian	25.7%	50.5%	19.5%	2.6%	1.8%
Hispanic/Latino	30.8%	38.9%	24.8%	3.1%	2.3%
Native Hawaiian/Pacific Islander	13.1%	47.7%	29.3%	5.4%	4.5%
White	25.3%	42.6%	27.0%	3.7%	1.4%
Multiracial	27.0%	41.4%	26.0%	4.3%	1.3%
Other	39.5%	43.3%	12.8%	3.0%	1.5%

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As seen in this table, youth in Santa Clara County report feeling mostly safe in school. However, the youth who reported feeling the most unsafe were Hispanic/Latino (5.4% were unsafe/v. unsafe), Pacific Islander (9.9% felt unsafe/v. unsafe) and African American/Black (9% felt unsafe/v. unsafe). Some of that perception may be related to the other indicators of school safety seen in the following charts: Fighting at school and Self-Reported gang membership, which exist in higher percentages for African American and Hispanic/Latino youth.

Physical Fighting at School, by Race/Ethnicity ⁶

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%

⁵ WestEd, [California Healthy Kids Survey](http://www.kidsdata.org). California Department of Education (Jul. 2017), at www.kidsdata.org

⁶ WestEd, [California Healthy Kids Survey](http://www.kidsdata.org). California Department of Education (Jul. 2017), at www.kidsdata.org

Self-Report Gang Membership, by Race/Ethnicity ⁷

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%.

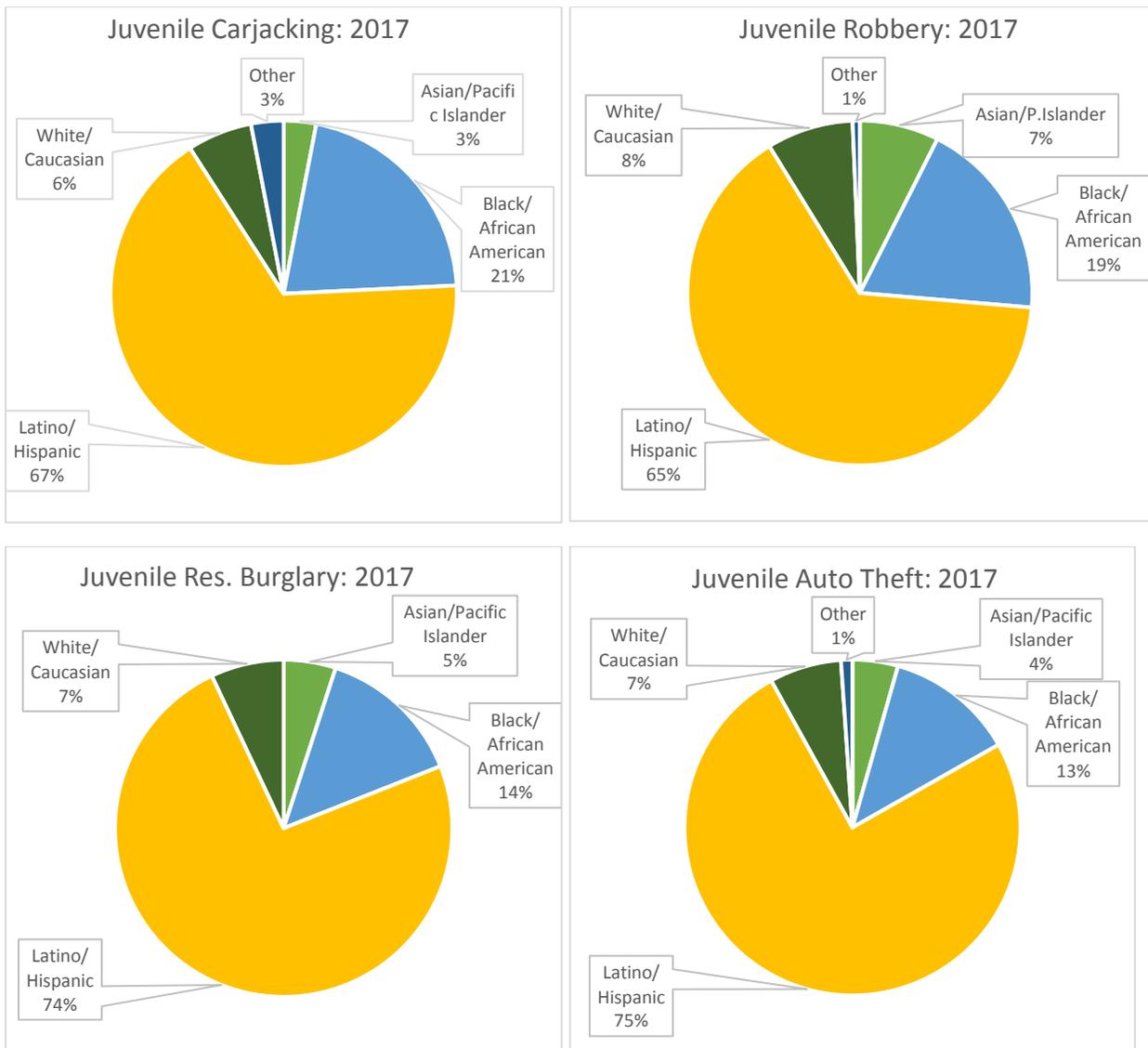
Percent of Students Not Completing High School, by Race/Ethnicity: 2016 ⁸	
Hispanic/Latino	20.8%
African-American/Black	14.9%
Filipino	4.6%
White	4.5%
Asian-American	3.1%
2+ Races	6.2%

Juvenile Prosecutions:

A major focus of the Crime Strategies Unit in 2018 has been to better understand why some juvenile crime in Santa Clara County seems to be increasing. 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 charts below depict the racial composition of charged minors in juvenile court:

⁷ WestEd, [California Healthy Kids Survey](http://www.kidsdata.org). California Department of Education (Jul. 2017), at www.kidsdata.org

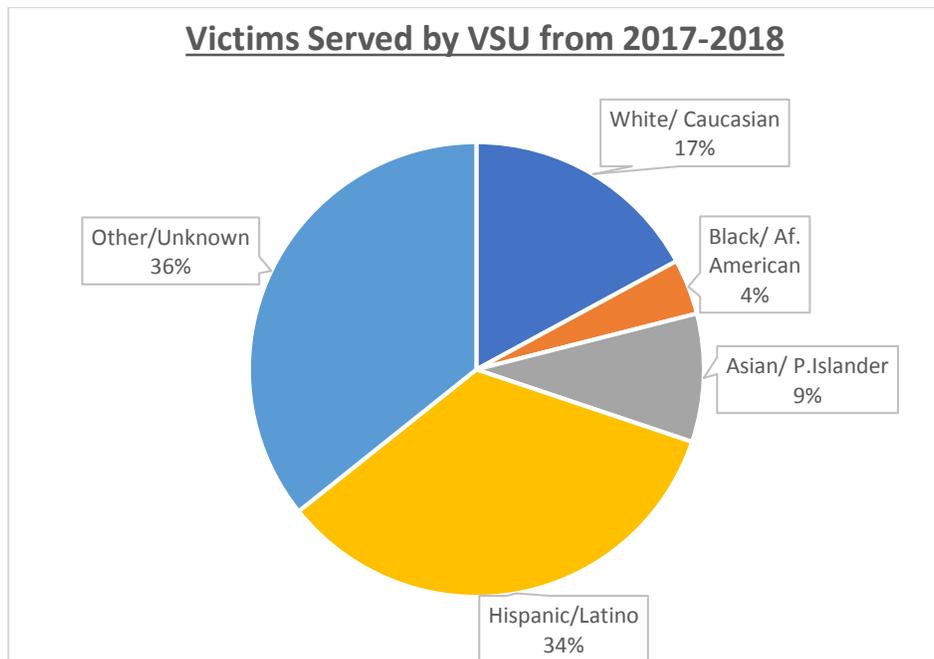
⁸ California Dept. of Education, California Longitudinal Pupil Achievement Data System (CALPADS) (May 2016), at www.kidsdata.org



Clearly, racial disparity exists in every charged category of filed juvenile cases. This is a focus of the Juvenile Justice Commission, the Probation Department, the Juvenile Court and the District Attorney’s Office. Much work has been done to discuss and address these issues in schools and in the juvenile justice system, with much more to be done.

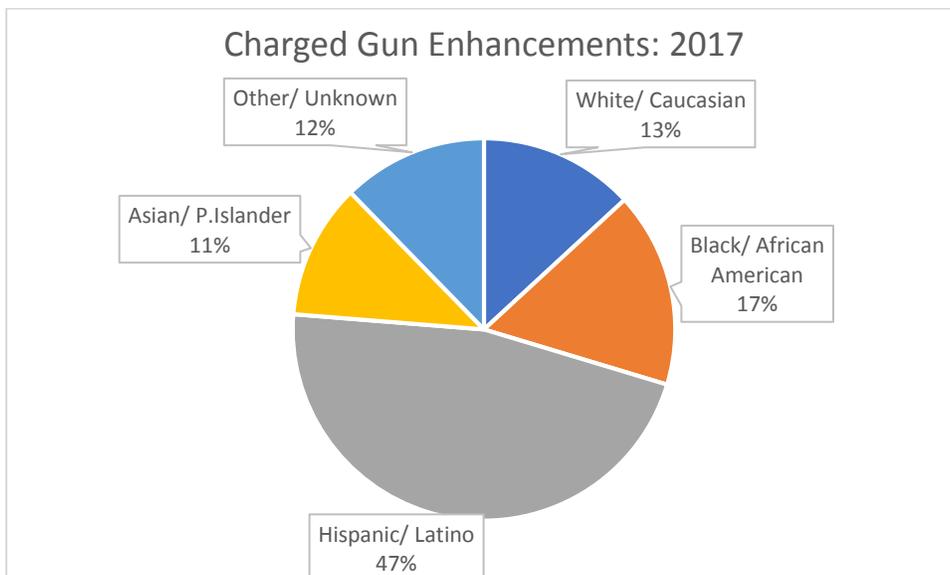
Victim Services

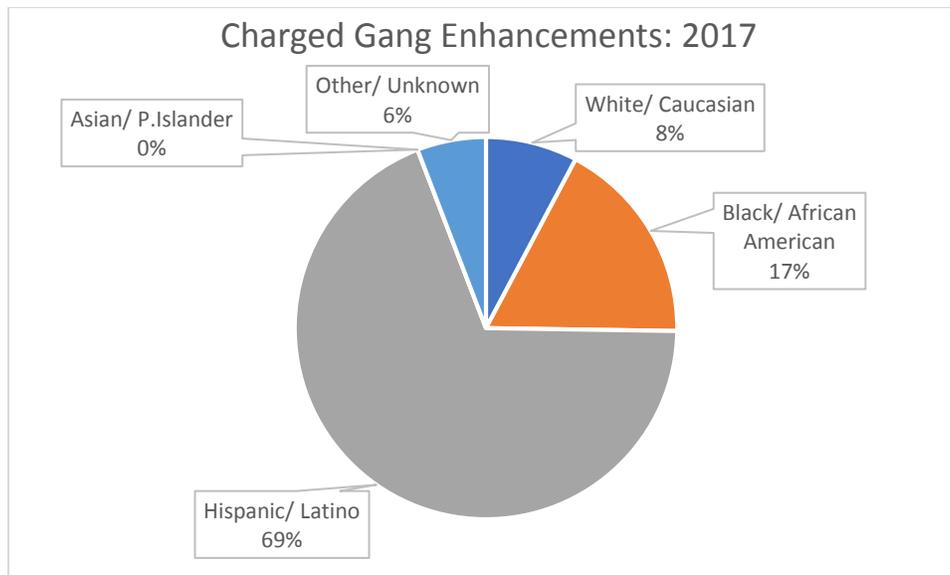
Between 2017 and 2018, the D.A. Office’s Victim Services Unit served nearly 10,000 victims of crime, rendering an array of services from counseling to restitution. This unit, comprised of victim advocates and support personnel, resides at the D.A.’s office and provides a critical support network to those who have been impacted by crime. In order to understand the needs of the served victim population, VSU began collecting self-reported demographic information on the victims served. White and Asian/Pacific Islander are the two populations who seem under-represented in the victim services population, even though those populations are not necessarily less-likely to be victims of crime. This suggests that outreach to these groups may yield greater participation in the justice process and/or the receiving of valuable support services.



Gun and Gang cases:

One area where the racial disparities are particularly pronounced is in cases where a gun was used or where a criminal street gang enhancement was alleged, under Penal Code 186.22. As seen, the Hispanic/Latino and Black/African-American defendants are largely over-represented in both categories, relative to their share of the population.





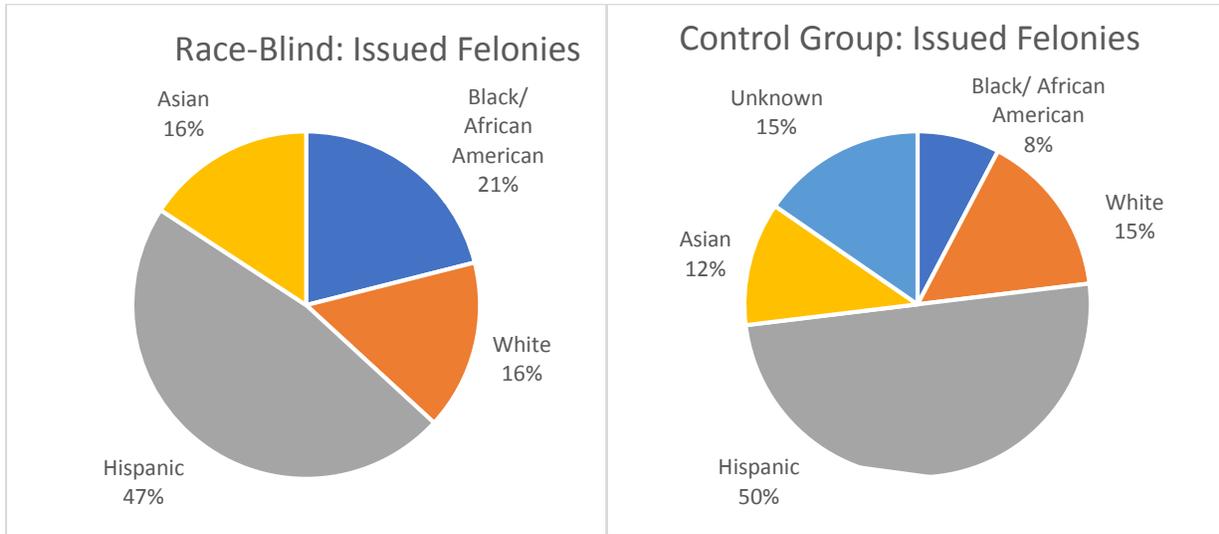
What is the DA’s Office Doing to Understand and Address Racial Disparity?

Upon releasing the first “Race and Prosecutions” report in 2016, the District Attorney’s office began taking a more systematic approach to studying its own data. In October 2016, D.A. Rosen created a Crime Strategies Unit, designed to find data-driven solutions to crime, and to study internal and external prosecution data.

BetaGov Trial

The D.A.’s Office partnered with the nonprofit BetaGov to study whether human bias may play a role in charging decisions. After consulting with statisticians and academics from BetaGov, the D.A.’s Office developed a race-blind controlled trial of issuing and negotiating practices to see if it revealed any implicit bias in prosecution practices. The trial involved removing racial identifiers from prosecutors’ consideration when deciding whether to file criminal charges. Racial identifiers (names, references to race) were redacted from the police reports, and three categories of felony cases were included in the sample: Felony Assault (PC 245), Robbery (PC 211) and Vehicle Theft (VC 10851). Prosecutors were first asked to make a race-blind charging decision, then were asked to make a race-blind settlement offer. During the study, half of the reviewed cases were redacted (race-blind) and half were not redacted (control group) to allow the study to compare the results. The study is ongoing, but in the initial review, the issuing rates on felony cases seem to be statistically similar to the control group. The one exception was for African-American/Black defendants where more felonies were issued in the race-blind than in the control group.

Importantly, cases that required review of photos, surveillance video or police body-worn camera video needed to be removed from the trial, as did cases where a decision to file criminal charges needed to be done quickly. These restrictions limited the sample size and may have affected the outcomes.



There were 74 cases in the initial study. Conducting this trial proved challenging. The process of removing racial identifying information is time-consuming and sometimes impossible due to the nature of the case. As the study progresses, a much more robust sample size will reveal whether measurable human bias enters at the charging stage of a criminal case.

Prevention and Outreach

The Community Prosecution Unit at the DA’s Office continues to work with youth, communities of color and justice System Partners to address social root causes of crime. Our community prosecutors work in the zip codes most affected by crime and social inequality in order to prevent crime through early advocacy and support. We continue to invest in this program as preventing crime is as important as prosecuting crime in Santa Clara County. This team will continue to partner with the Crime Strategies Unit to understand the data behind race and prosecution.

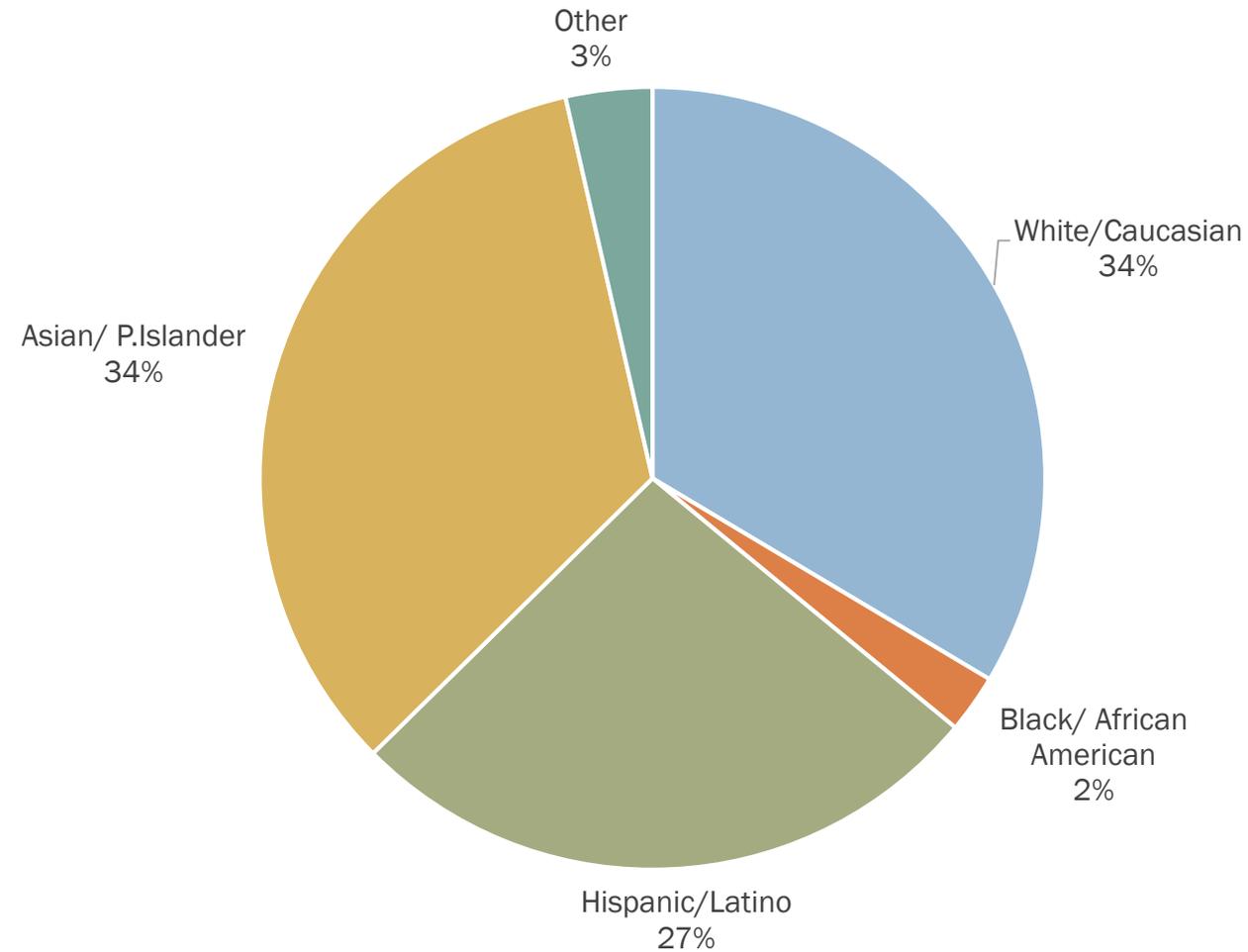
RACE AND PROSECUTIONS REPORT

2013-2017



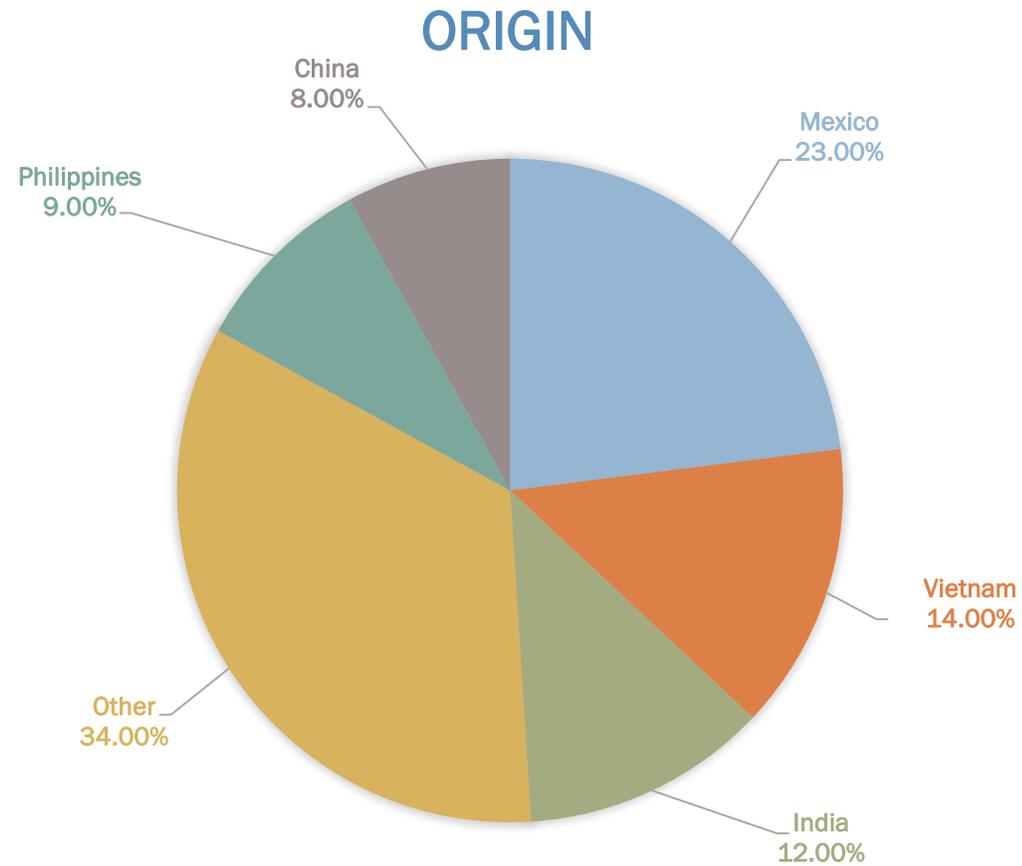
OFFICE OF THE
DISTRICT ATTORNEY

RACE OF SANTA CLARA COUNTY RESIDENTS



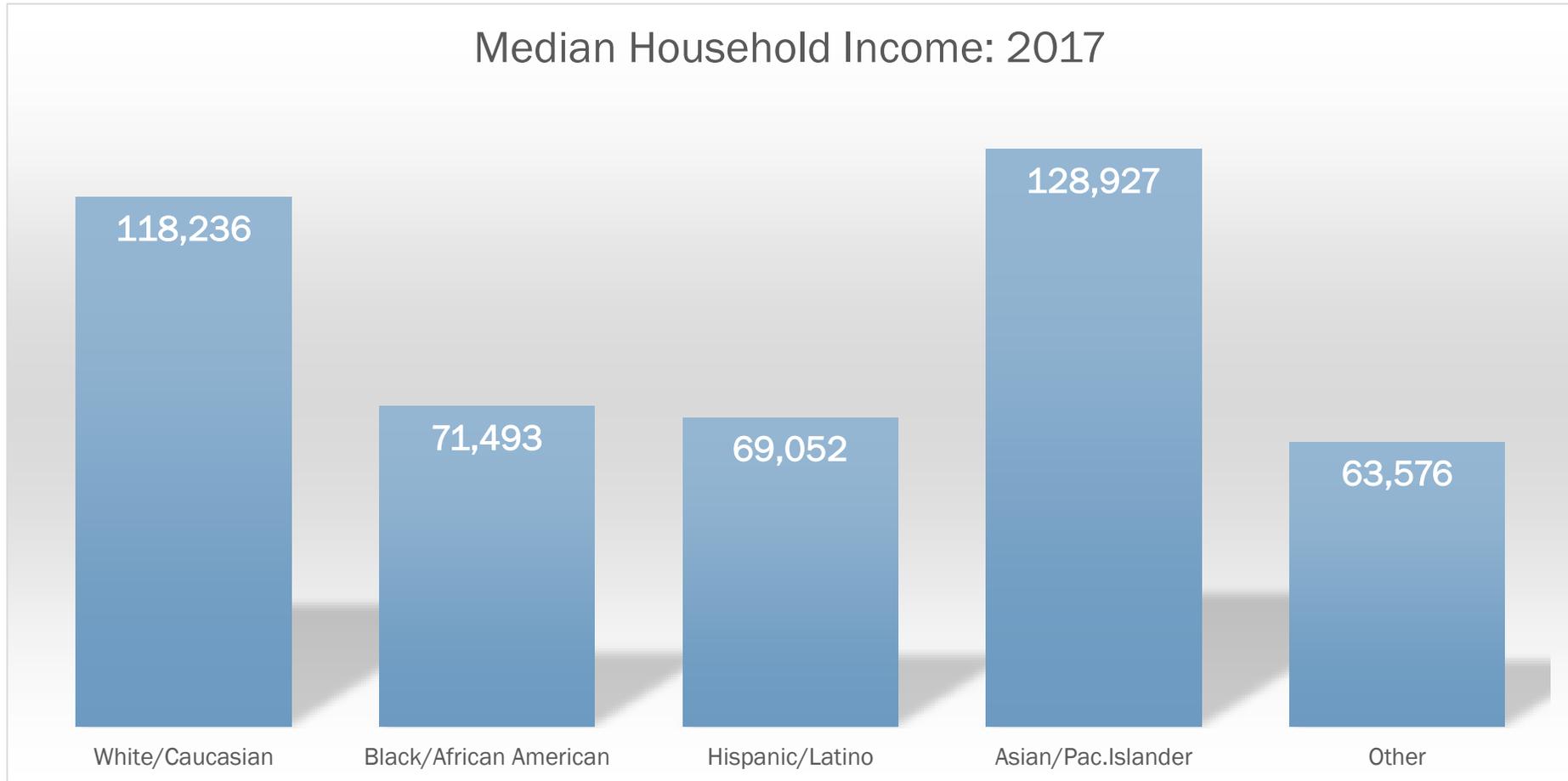
Source: US Census Bureau, 2015 American Community Survey

COUNTRY OF ORIGIN OF IMMIGRANT POPULATION SANTA CLARA COUNTY



37.1% OF SANTA CLARA COUNTY RESIDENTS WERE BORN IN ANOTHER COUNTRY (2010 STUDY BY USC)

MEDIAN HOUSEHOLD INCOME IN SANTA CLARA COUNTY



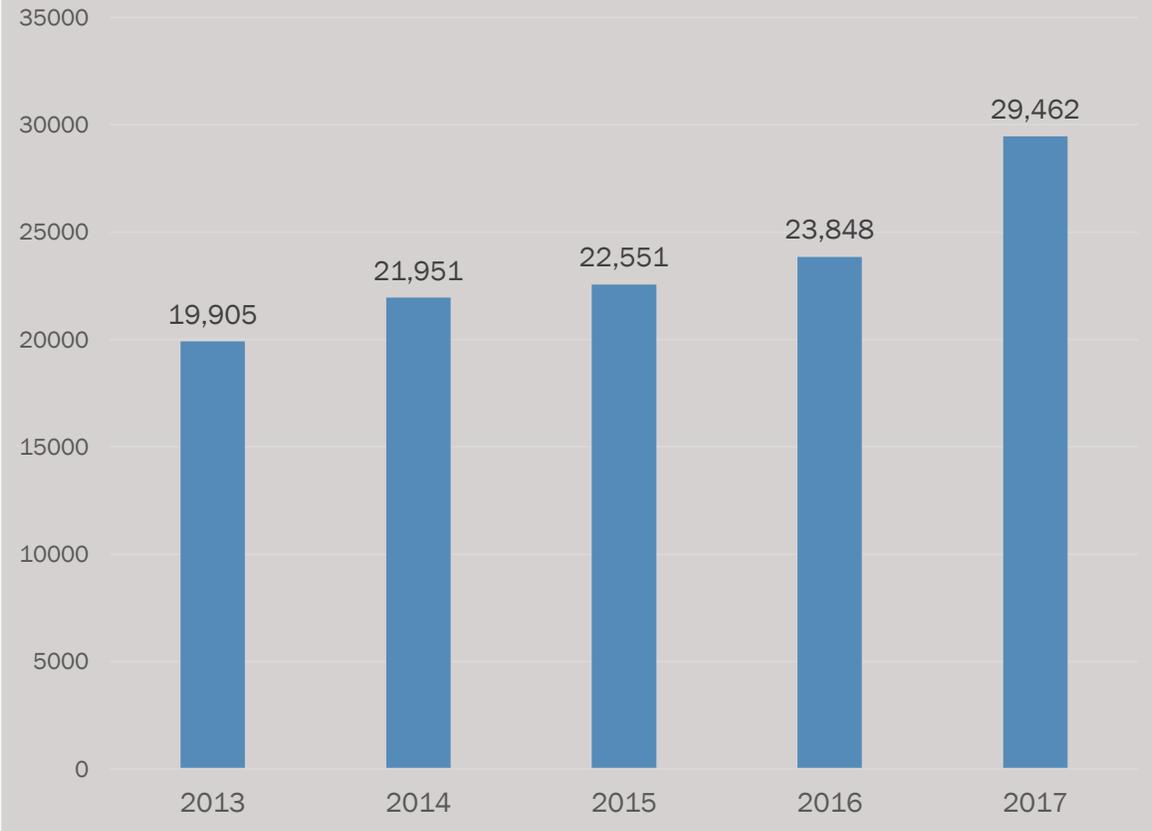
2017 American Community Survey, US CENSUS DATA

PERCENT OF STUDENTS DROPPING OUT OF HIGH SCHOOL BY RACE

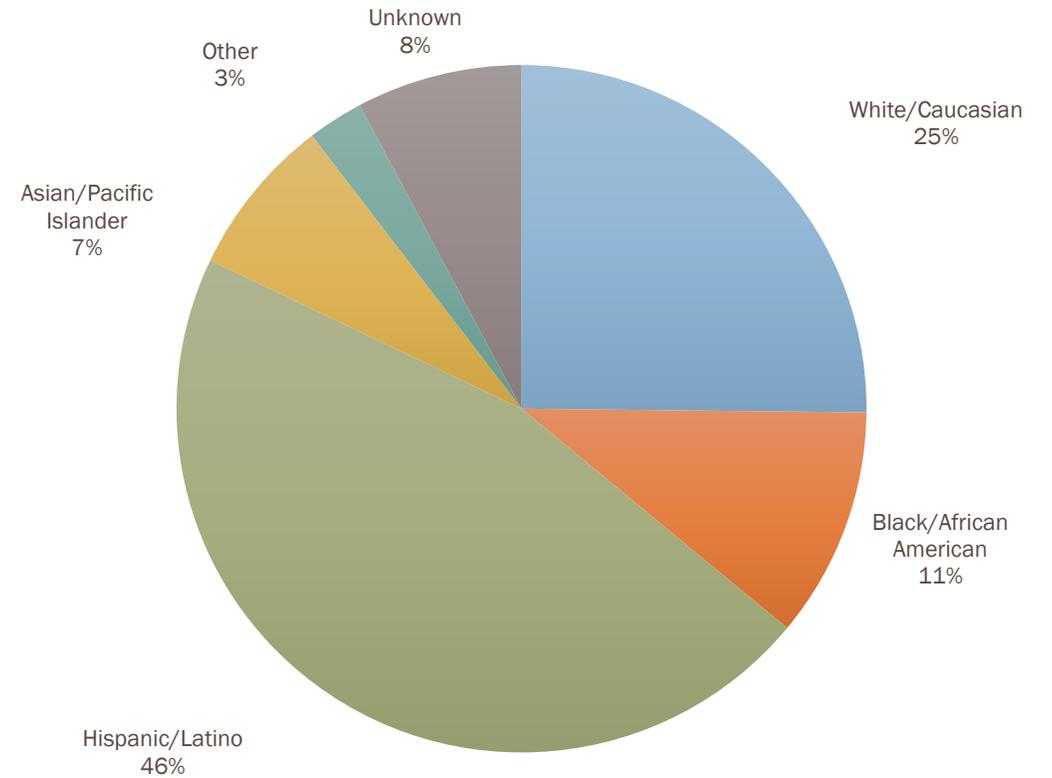
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African American/Black	14.9%
Filipino	4.6%
White	4.5%
Asian American	3.1%
2+ Races	6.2%

RACE OF DEFENDANTS IN FILED MISDEMEANORS 2013-2017

Filed Misdemeanors 2013-2017

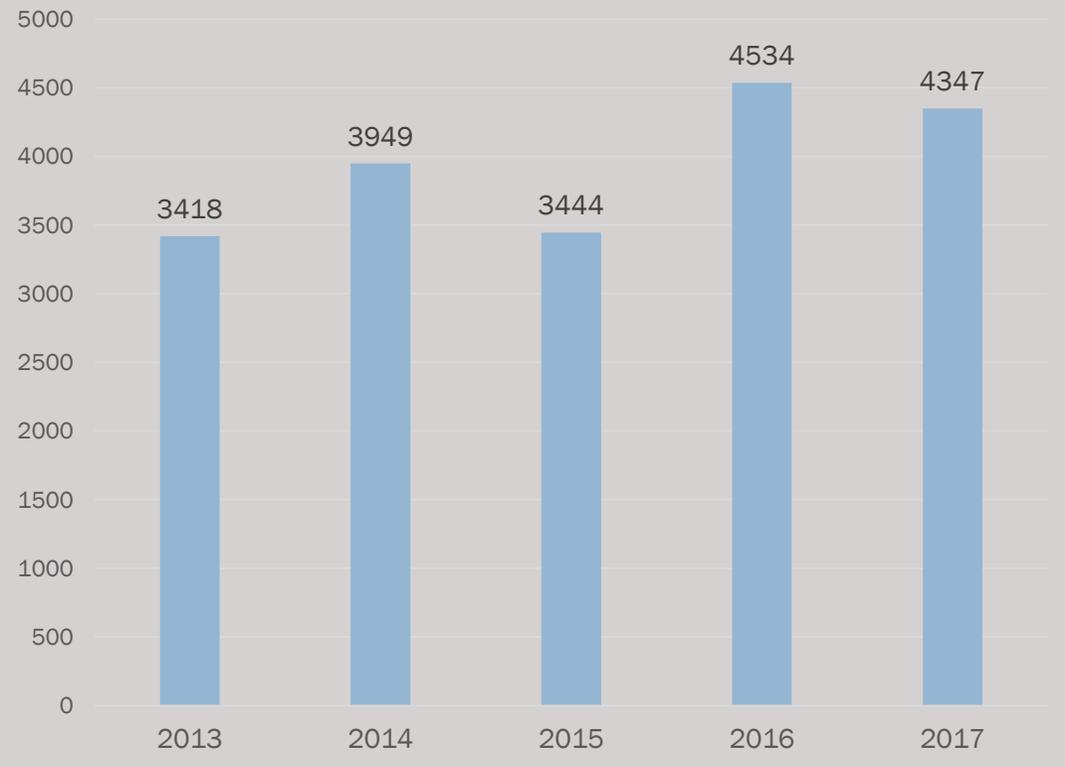


RACE BY PERCENTAGE: 2017

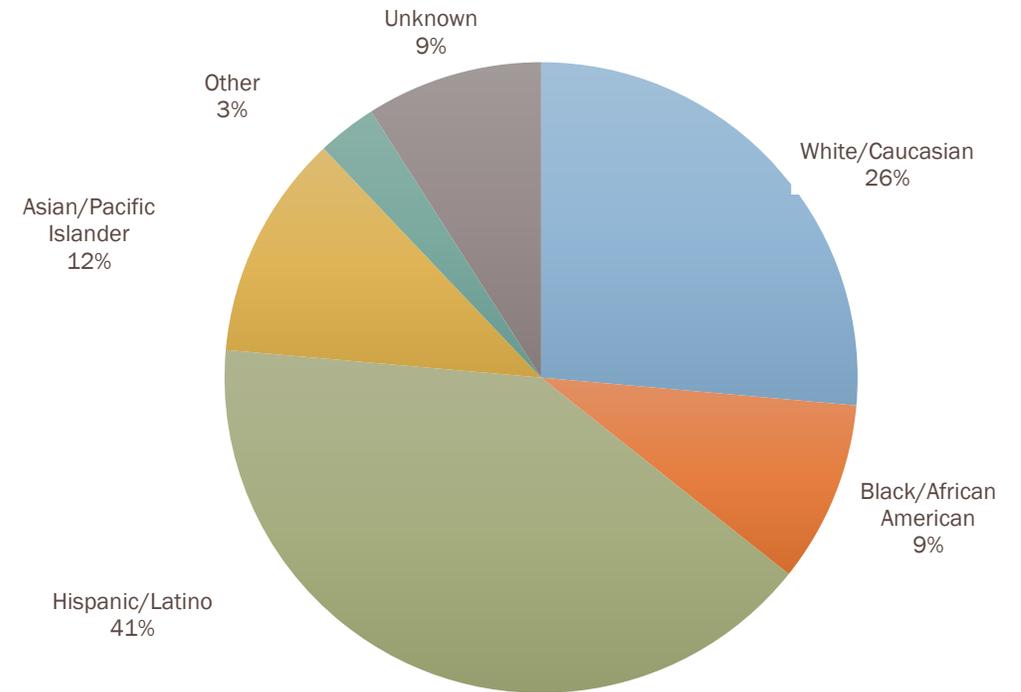


RACE OF SUSPECTS IN NON-FILED MISDEMEANORS FROM 2013-2017

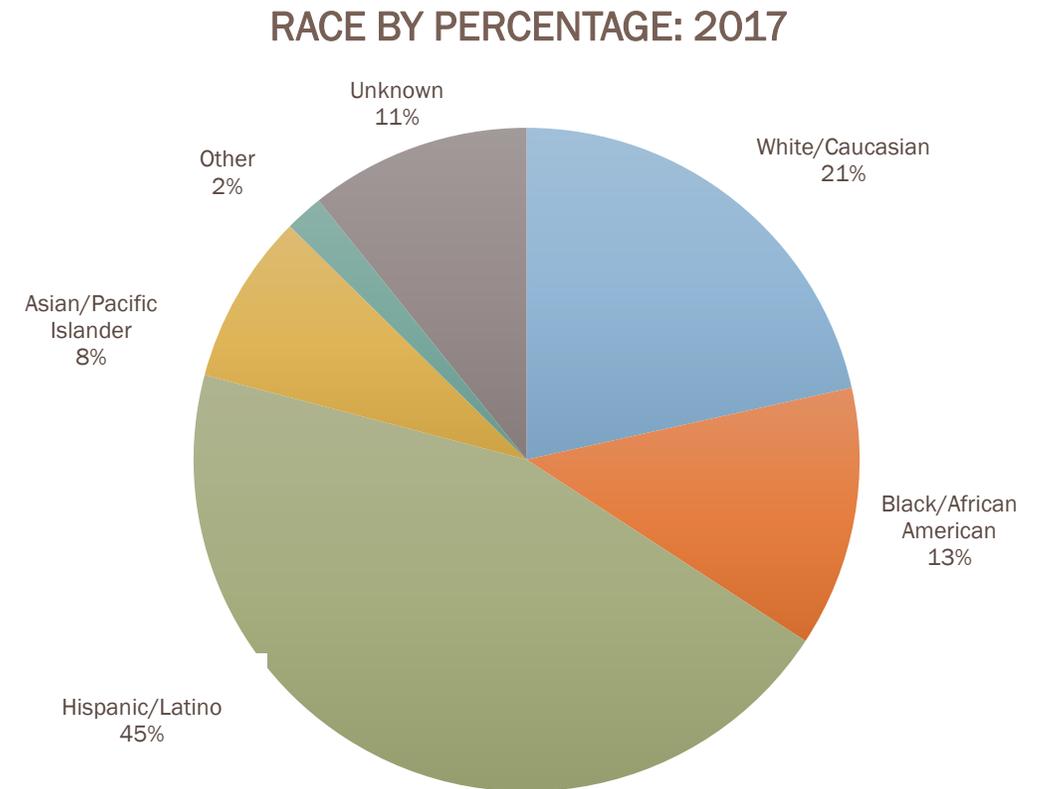
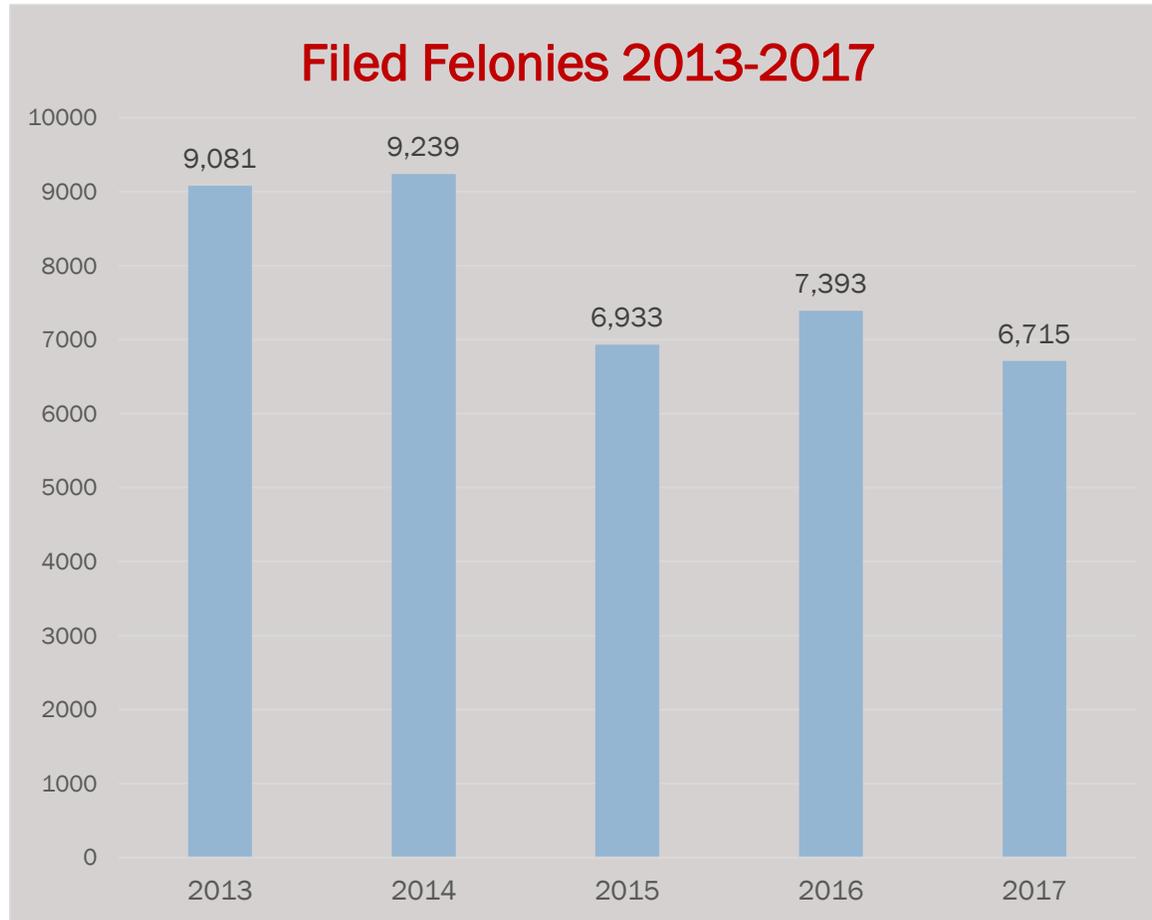
Non-Filed Misdemeanors 2013-2017



RACE BY PERCENTAGE: 2017

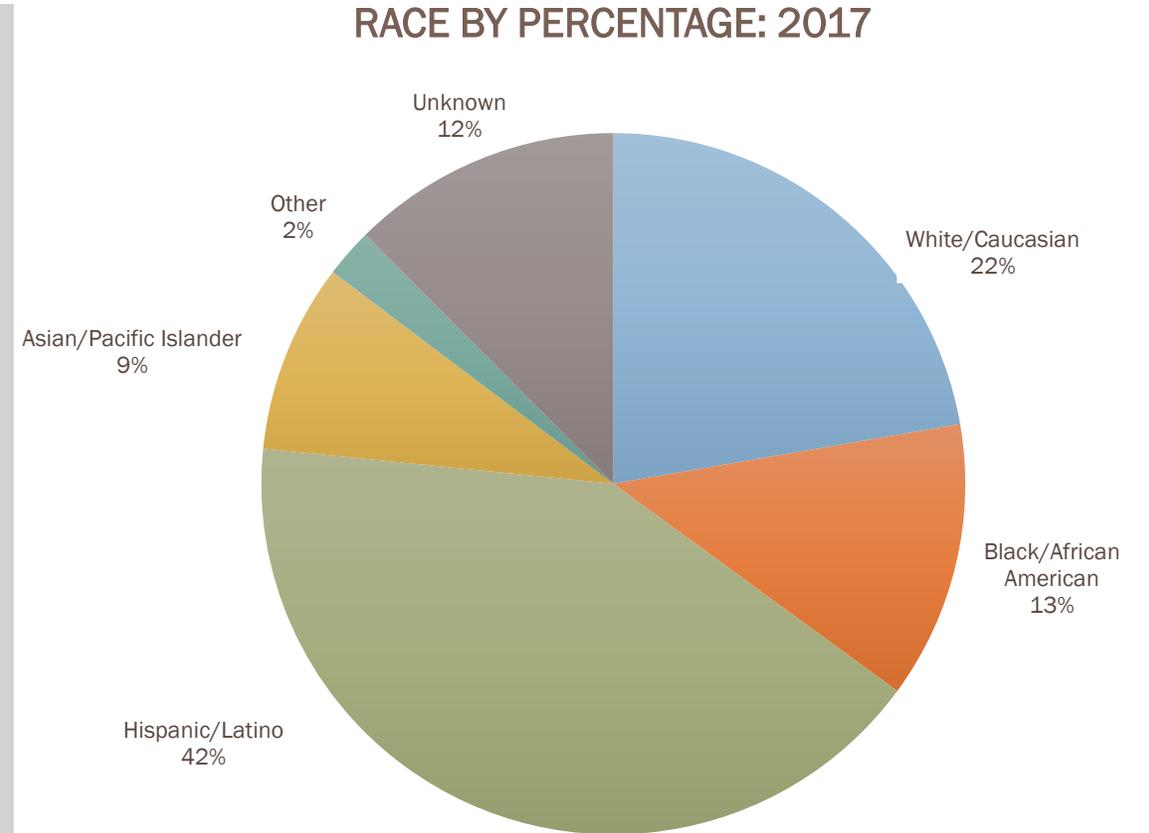
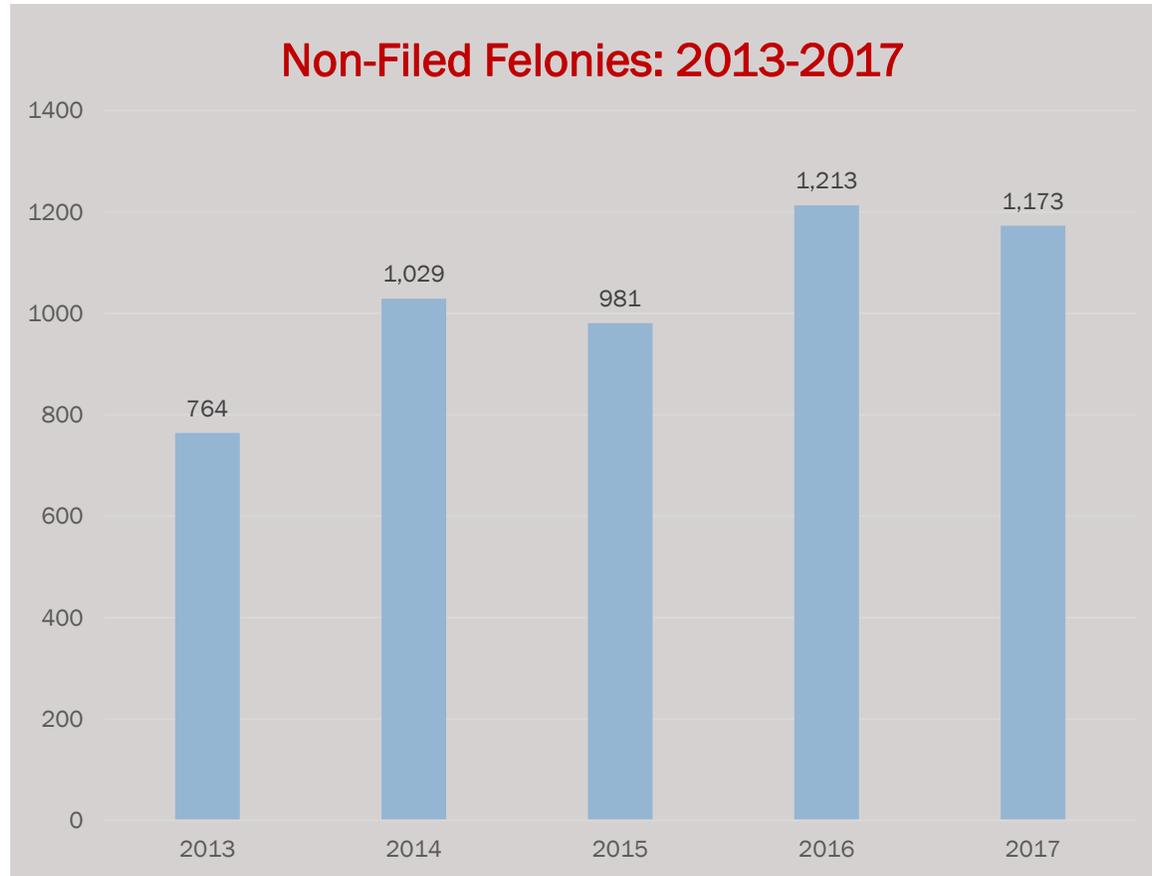


RACE OF DEFENDANTS IN FILED FELONIES 2013-2017



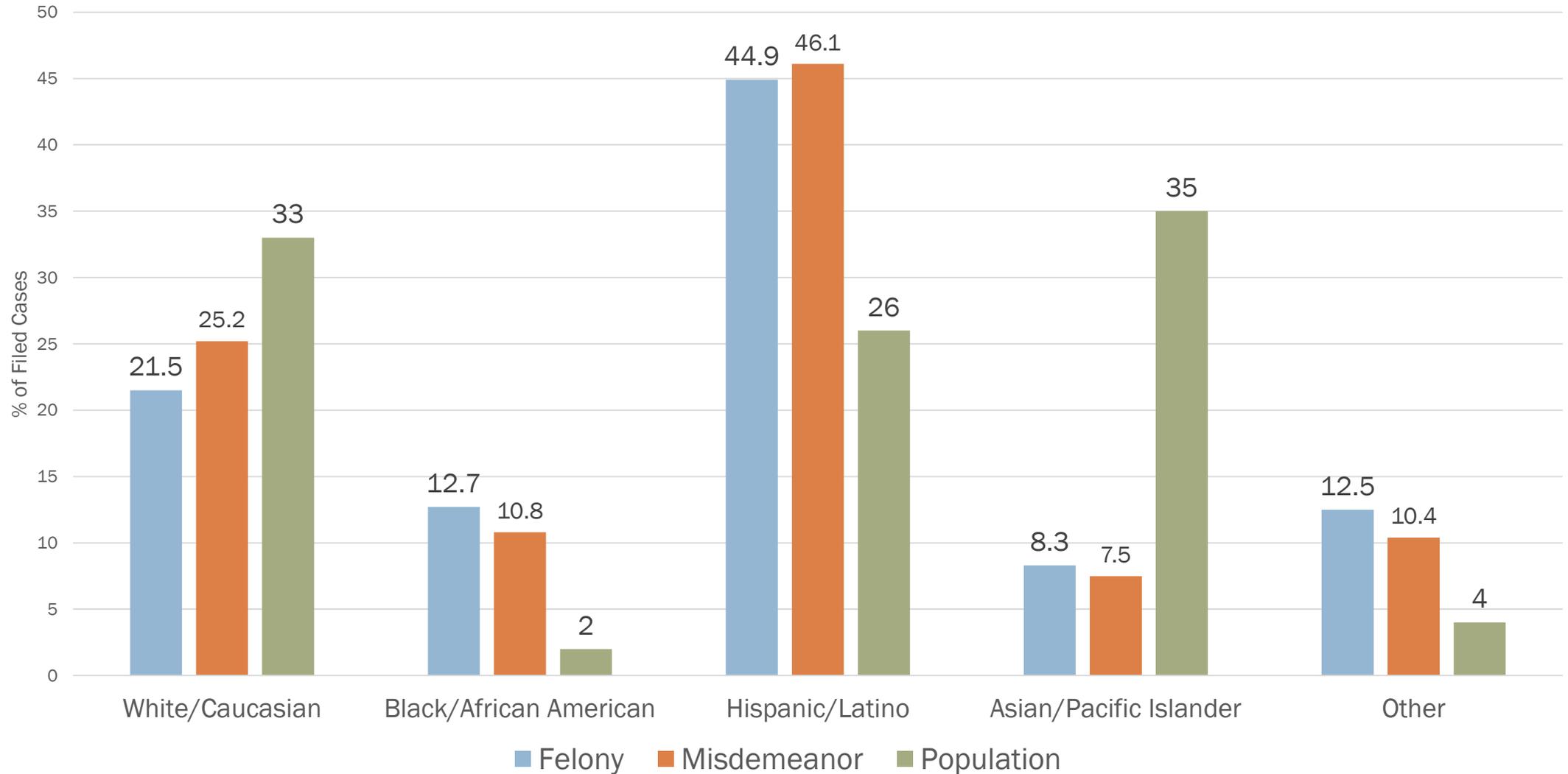
Note that the passage of Proposition 47 in November of 2014 reclassified five felonies as misdemeanors.

RACE OF DEFENDANTS IN NON-FILED FELONIES 2013-2017



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

Felony & Misdemeanor Defendants: 2017



2017 Comparison of Percentage Race in Filed and Non-Filed Misdemeanors and Felonies

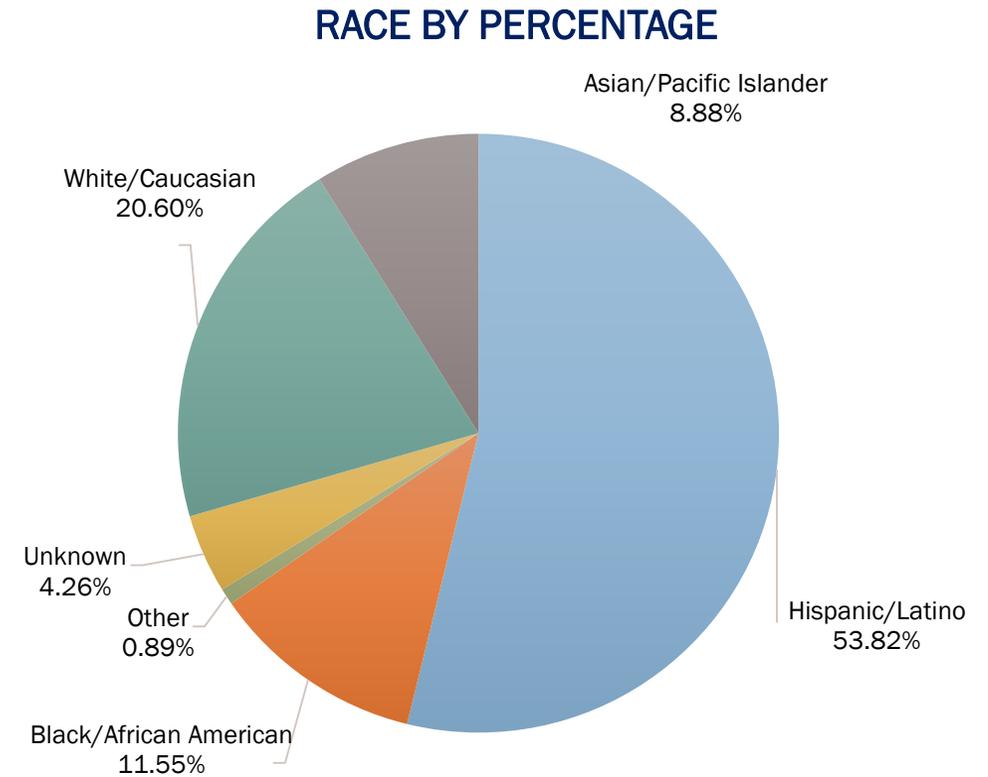
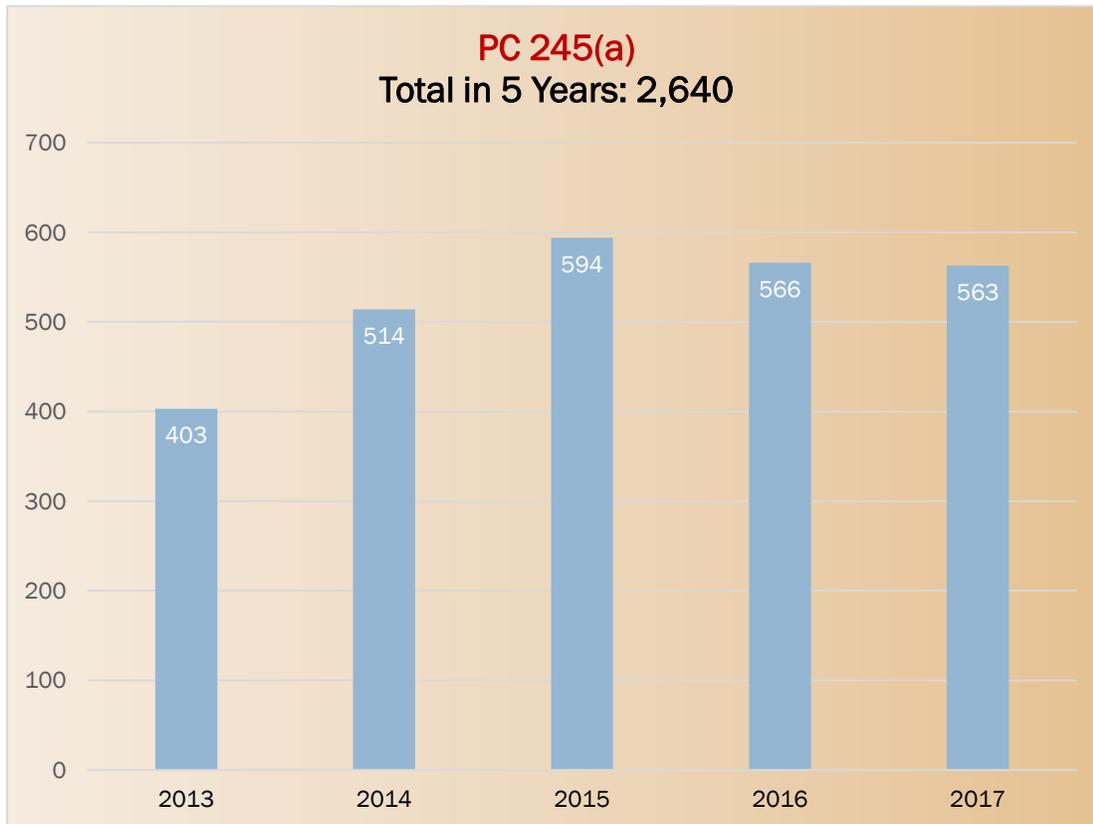
Race	Filed Misdemeanors (%)	Non-Filed Misdemeanors (%)	Filed Felonies (%)	Non-Filed Felonies (%)
Black/African American	11	9	13	13
Hispanic/Latino	46	41	45	42
White/Caucasian	25	26	21	22
Asian/Pacific Islander	7	12	8	9
Unknown	8	9	11	12
Other	3	3	2	2



OFFICE OF THE DISTRICT ATTORNEY

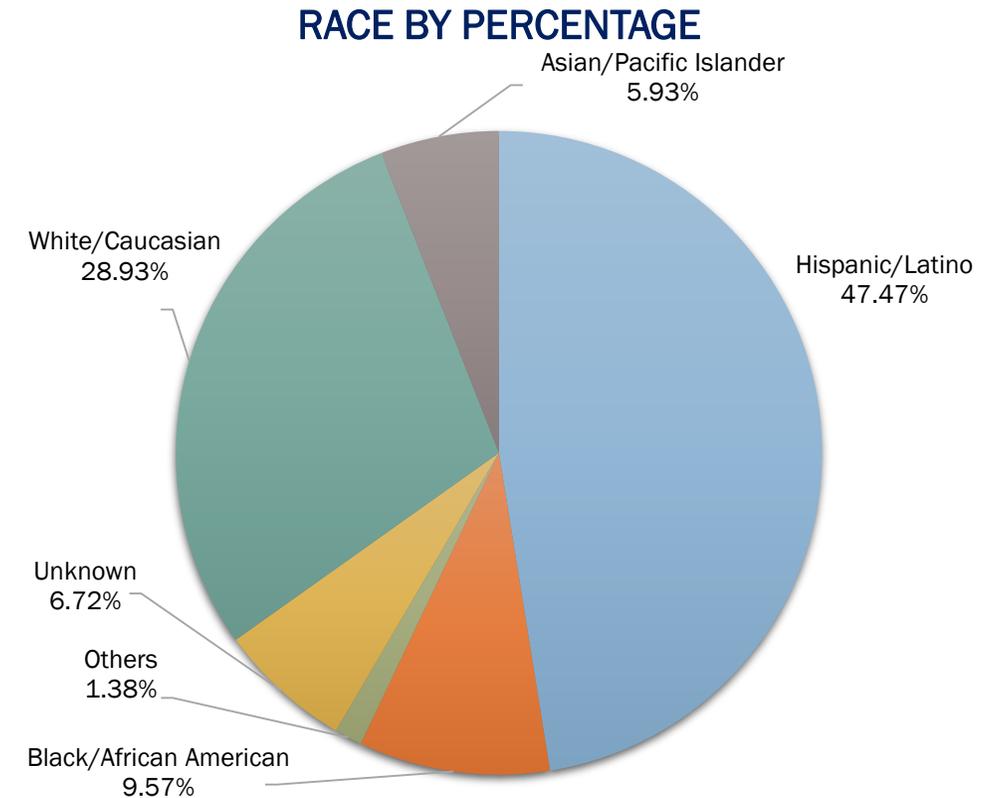
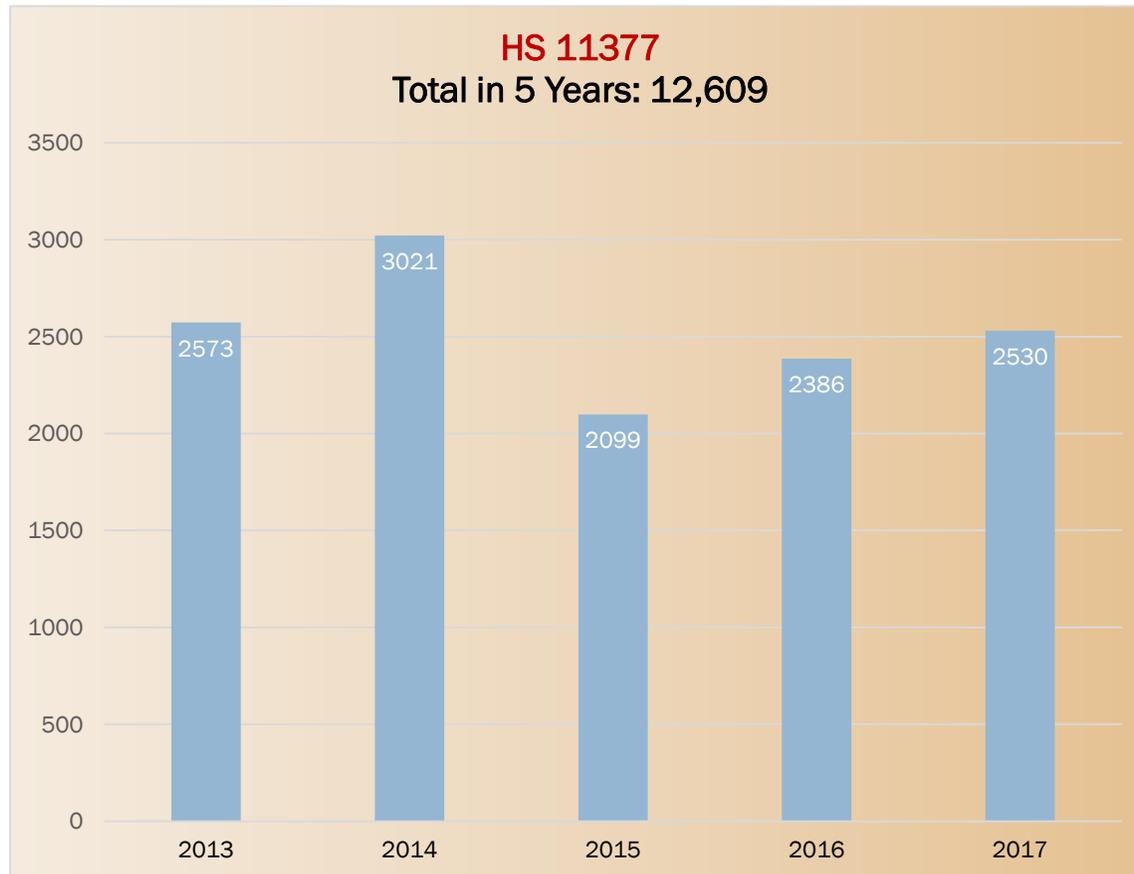
- The following slides address different crime types that the District Attorney's Office prosecutes and examines the race of the defendants prosecuted across different crime types from 2013 to 2017.

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



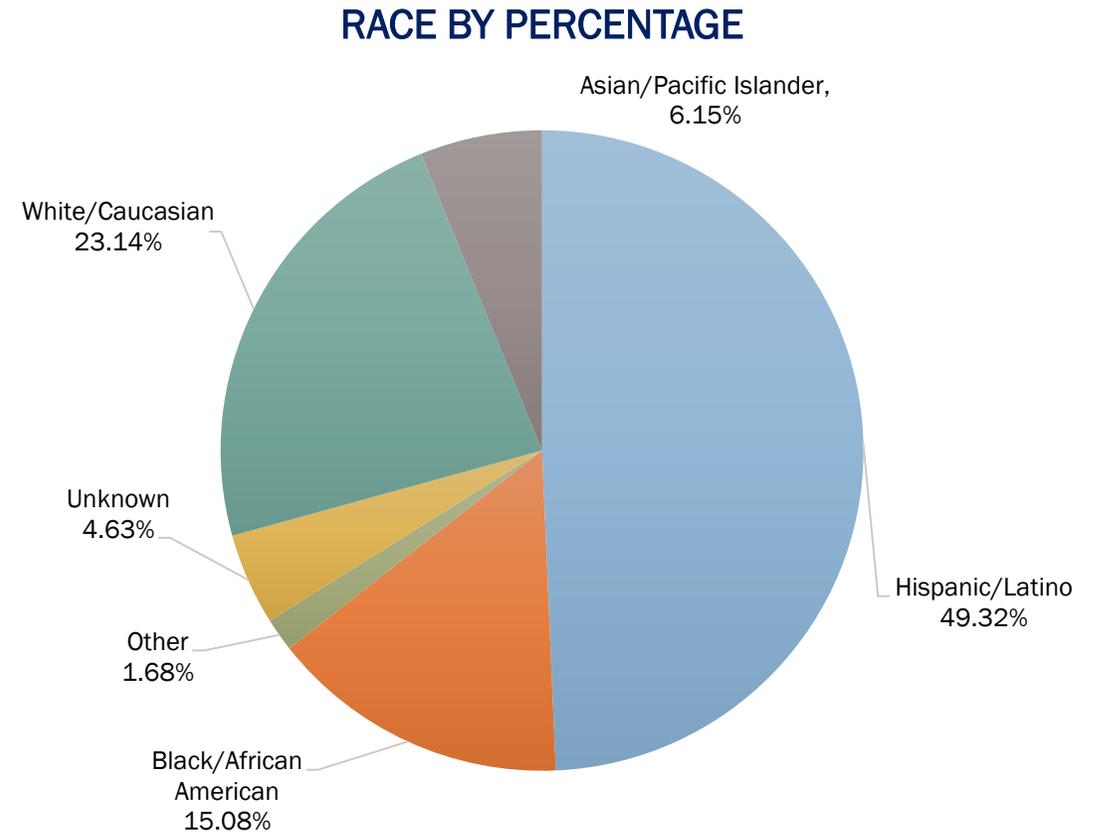
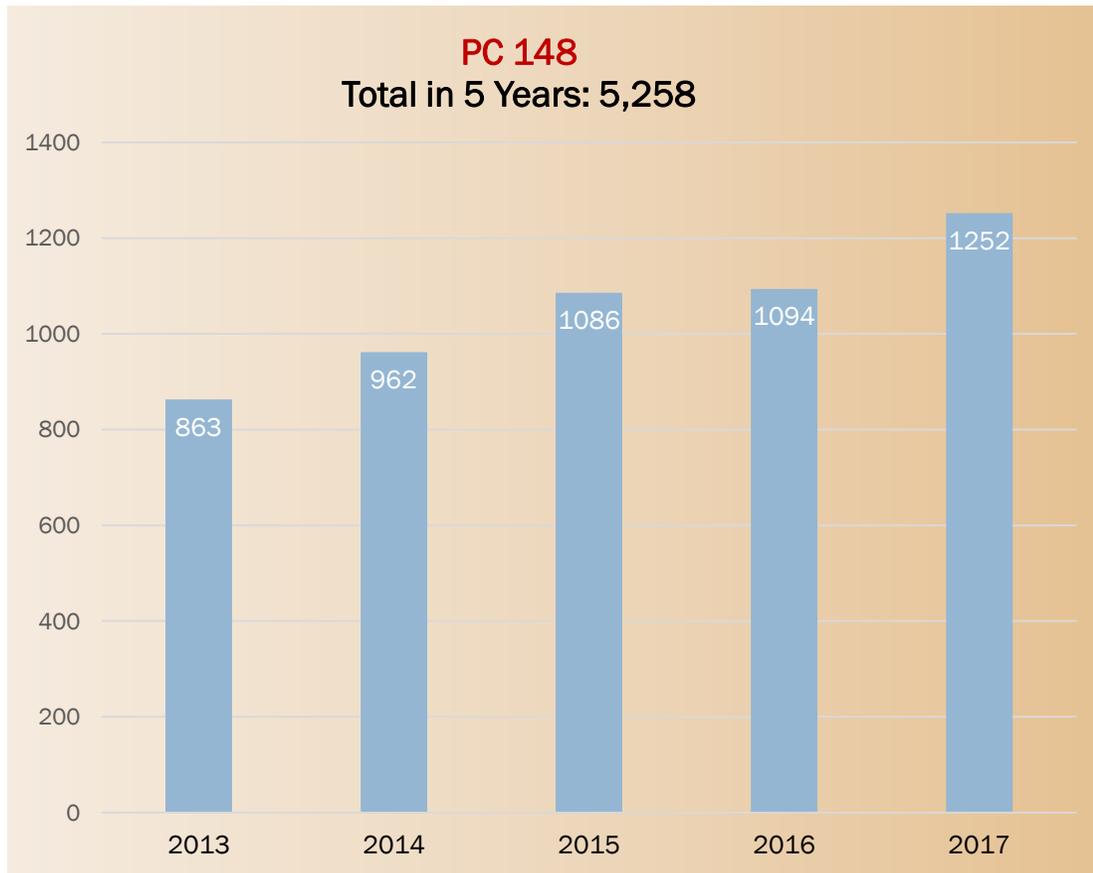
This information reflects the following: 245(a)(1), 245(a)(2), 245(a)(3) and 245(a)(4) PC

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



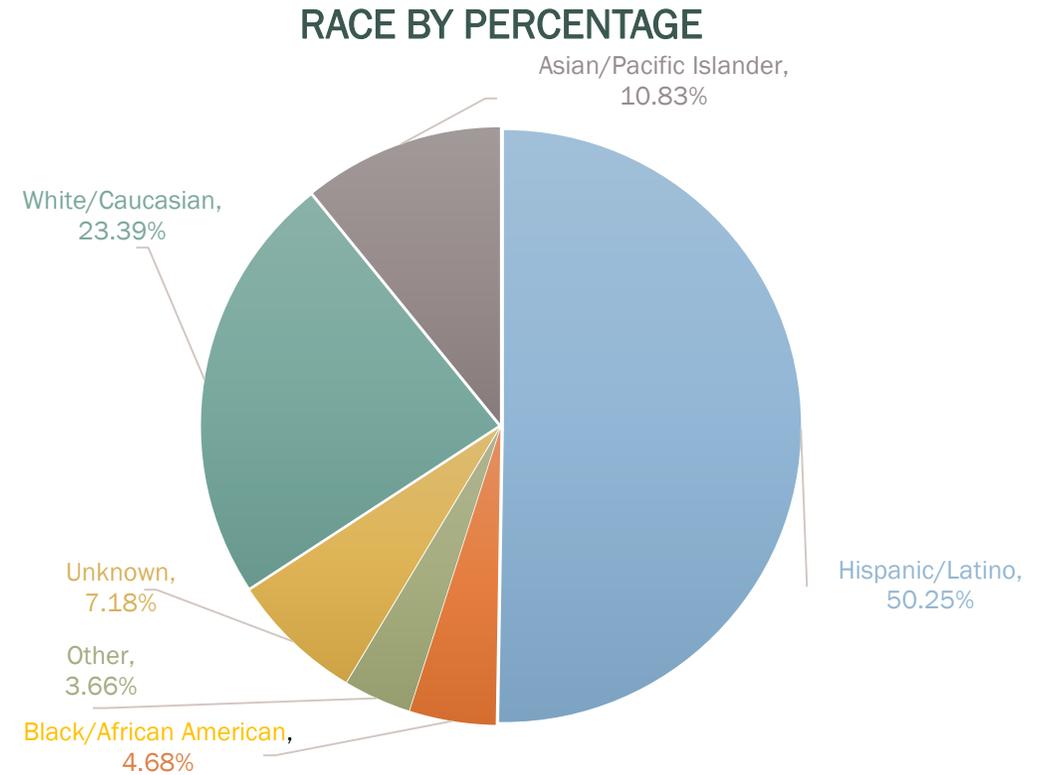
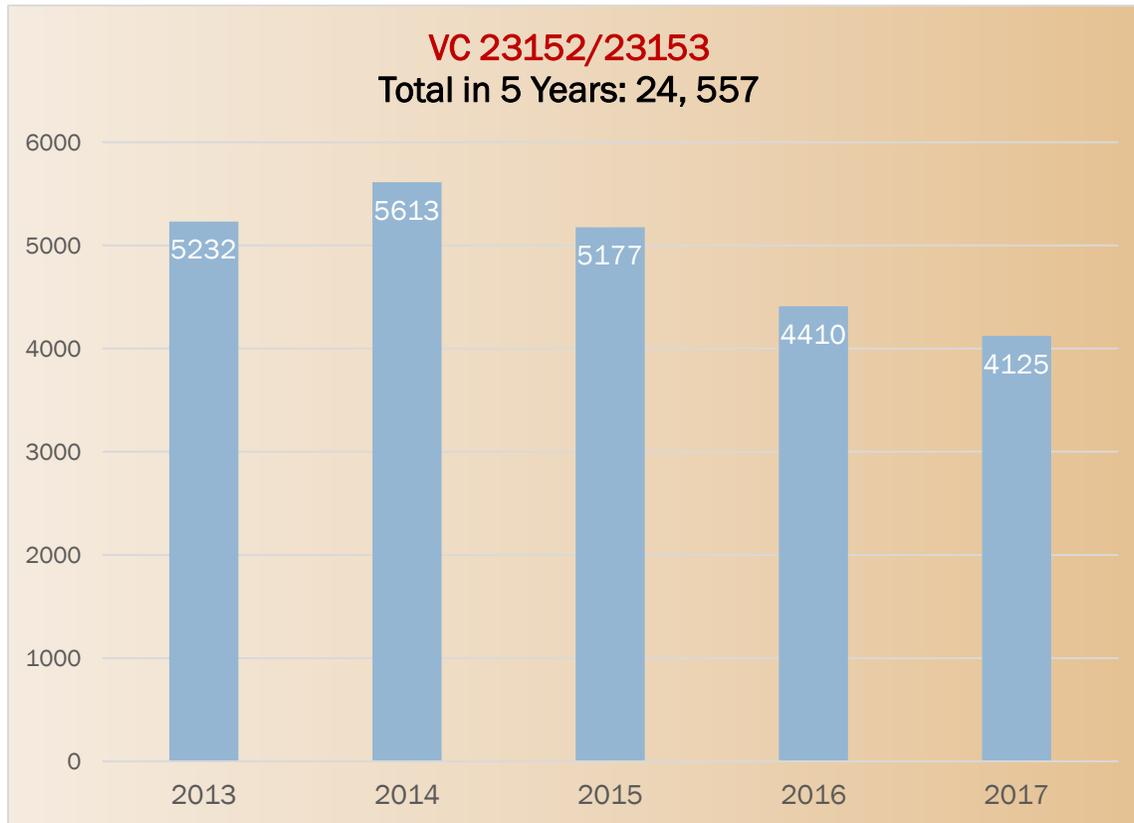
Note that after the passage of Proposition 47 in November of 2014, a violation of H&S 11377 could only be charged as a misdemeanor and not as a felony.

Resisting Arrest PC 148



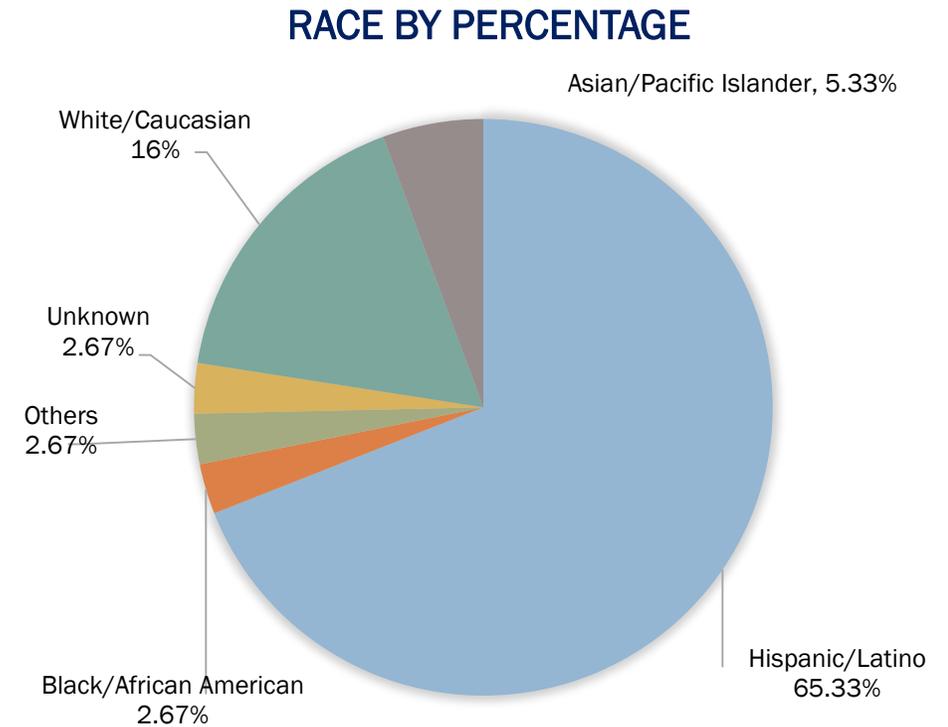
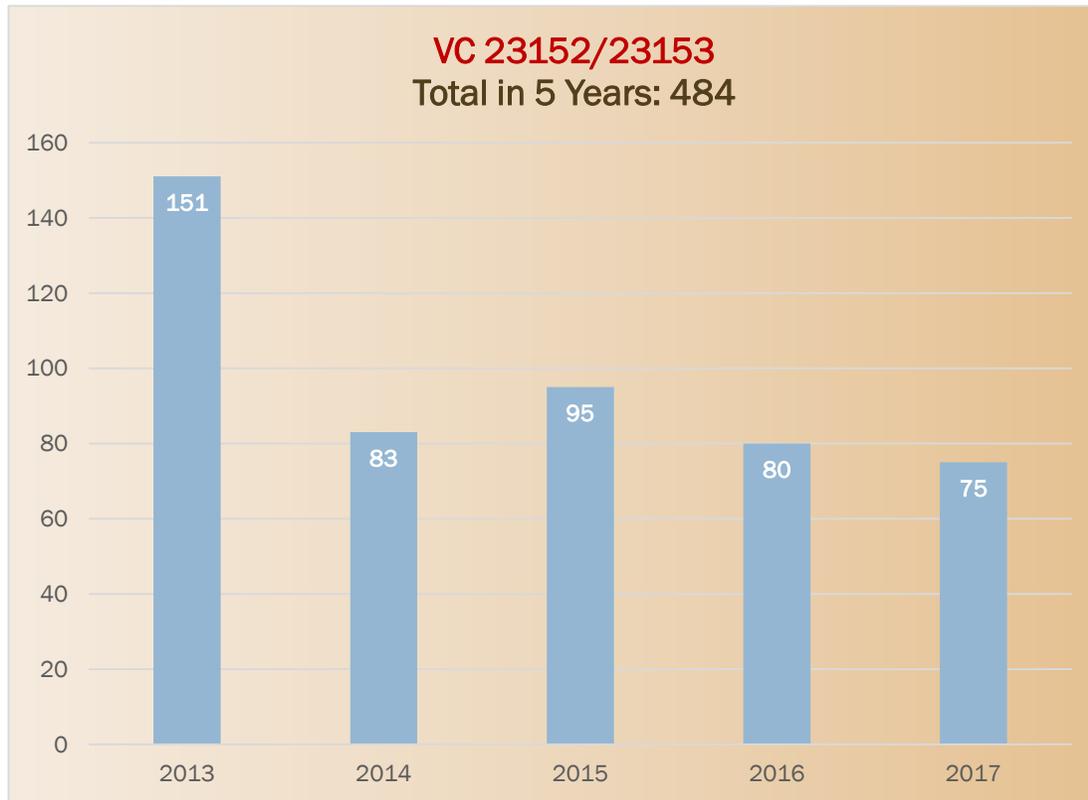
This information reflects the following: 148(a)(1), 148.3(a), 148.4(a)(1), 148.4(a)(2), 148.5(a), and 148.9

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



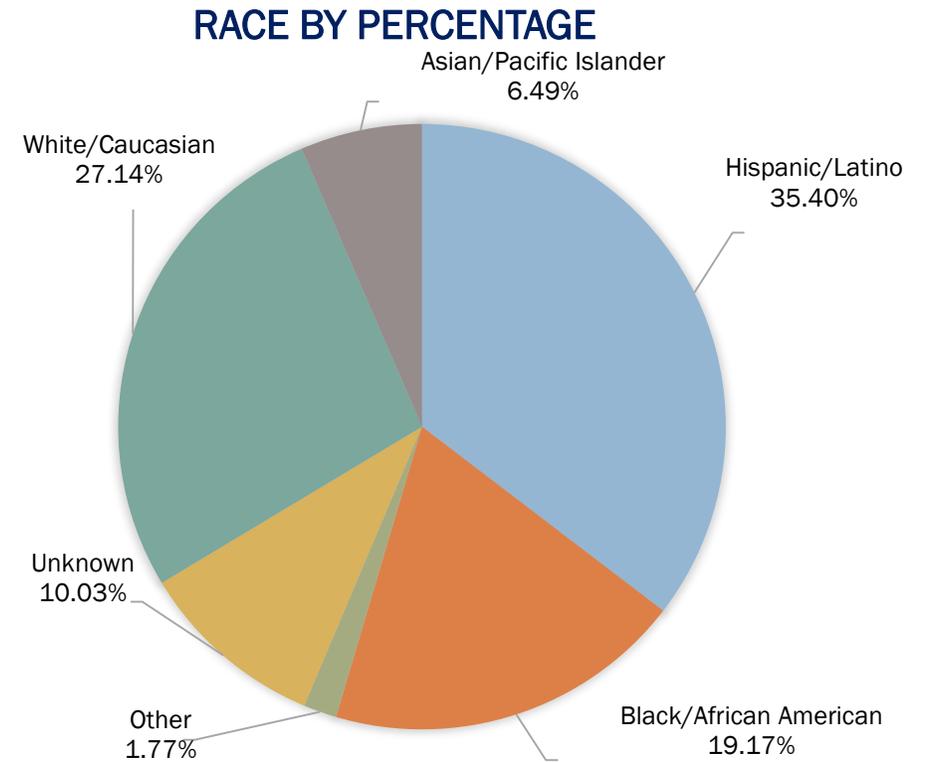
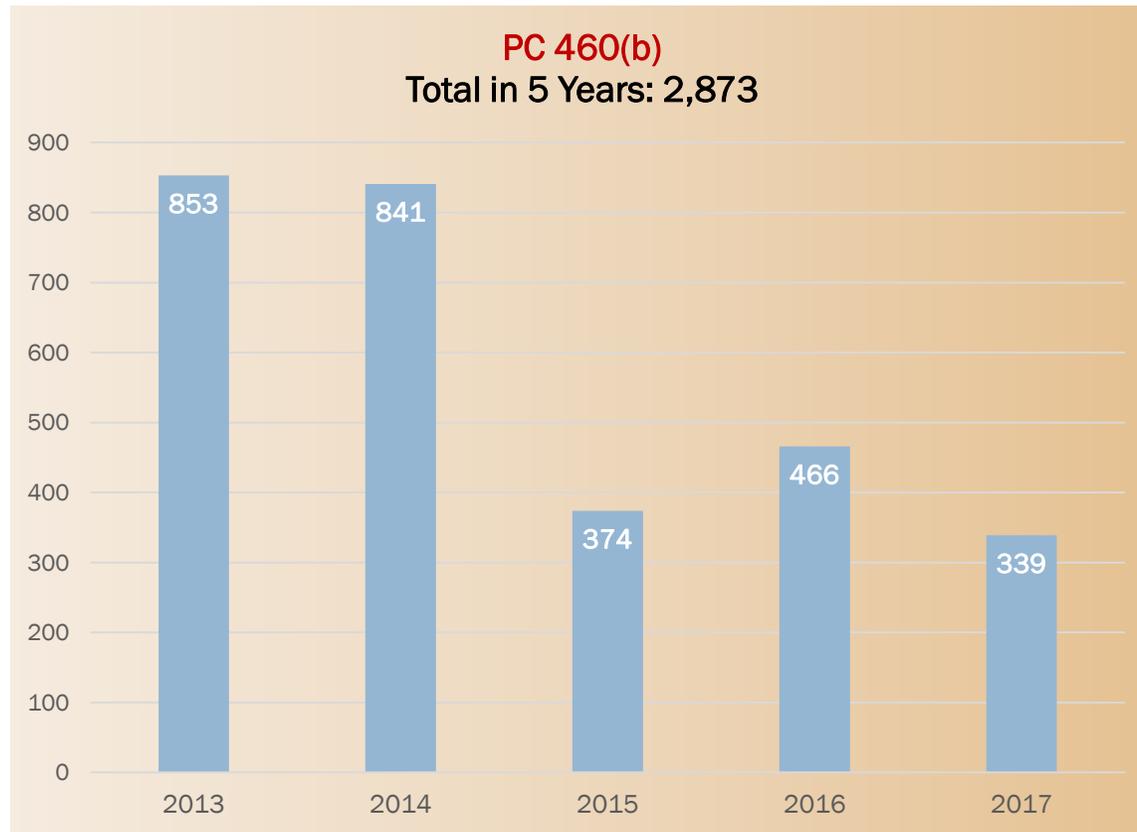
This information reflects the following: 23152(a), 23152(b), 23153(a), 23153/23566(a), 23152(c), 23152(e) and 23152(f)

DUI Felonies VC 23152/23153

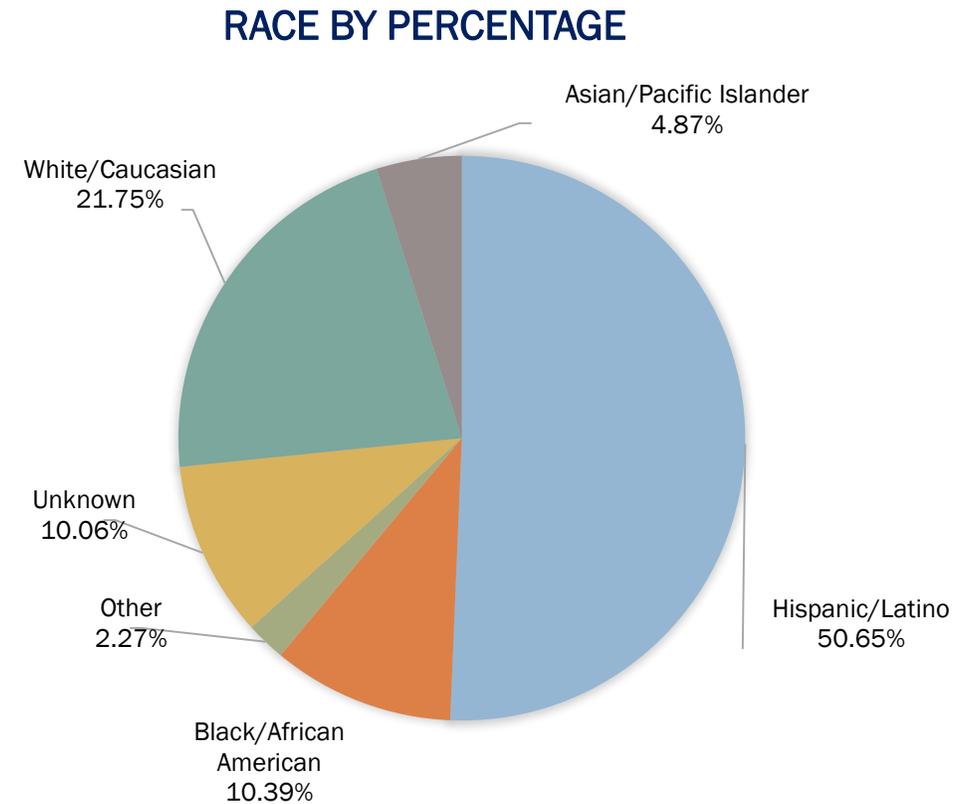
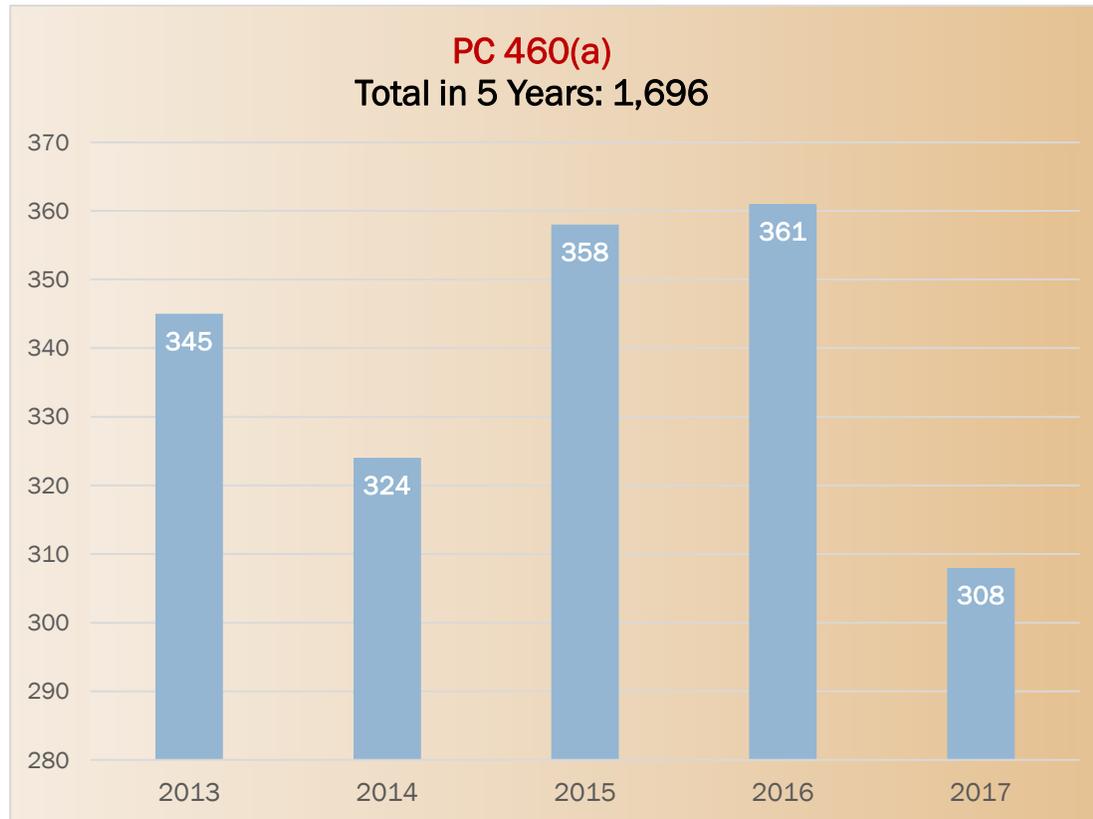


This information reflects the following: 23152/23550(a), 23152/23550.5(a)

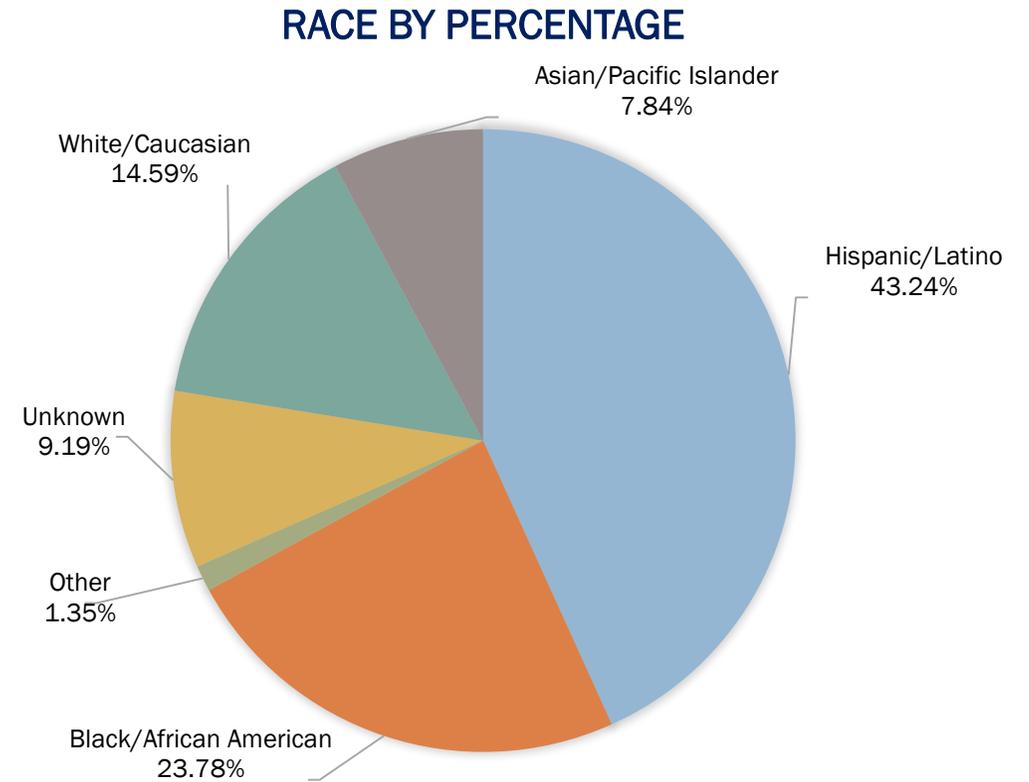
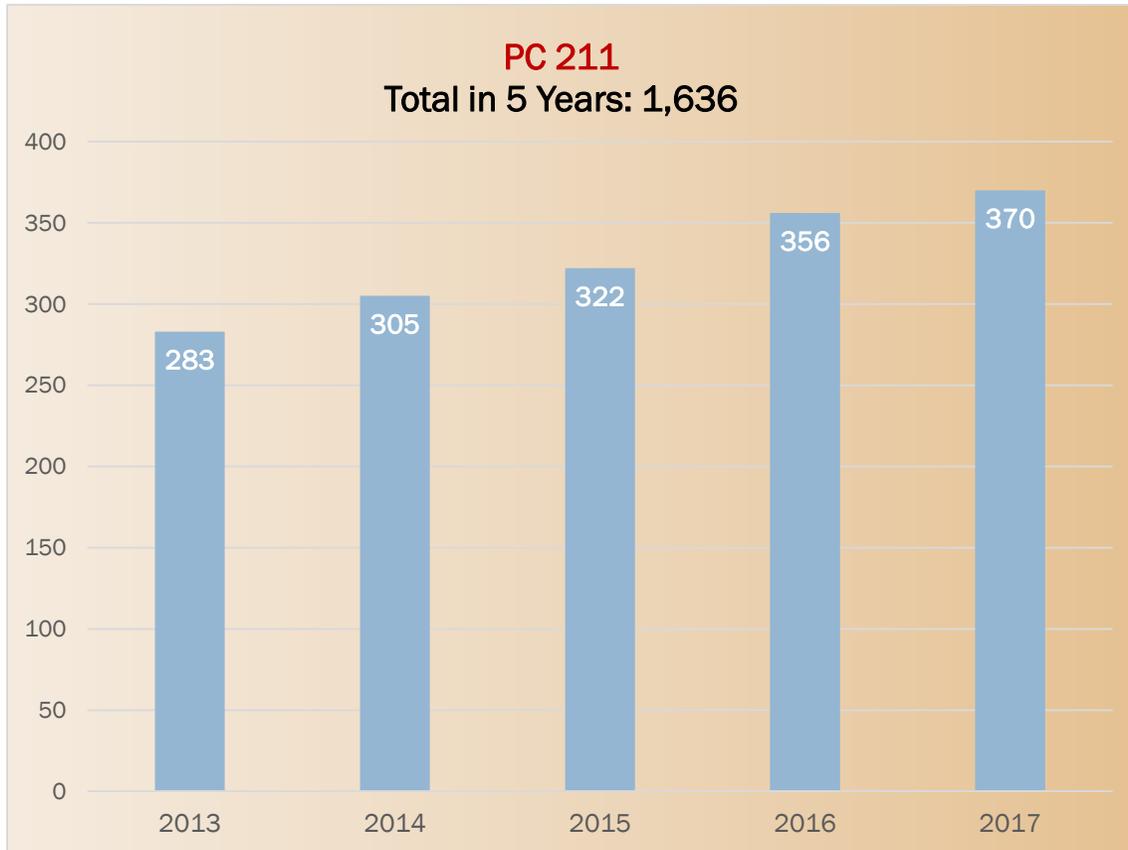
Commercial Burglaries PC 460(b)



Residential Burglaries PC 460(a)

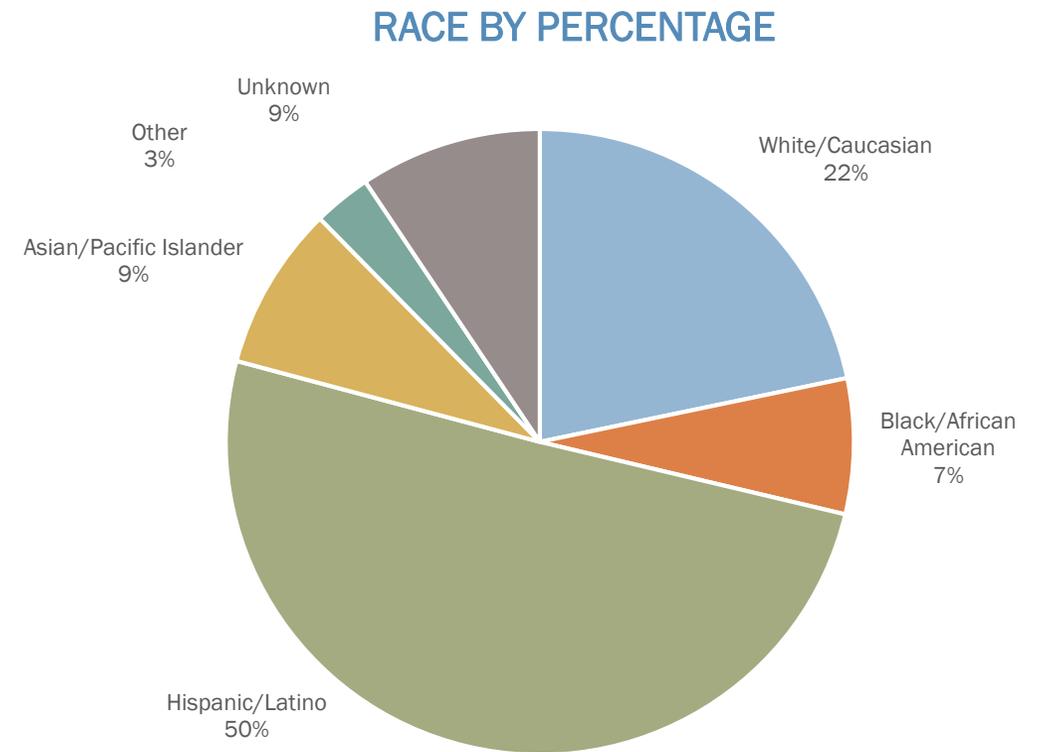
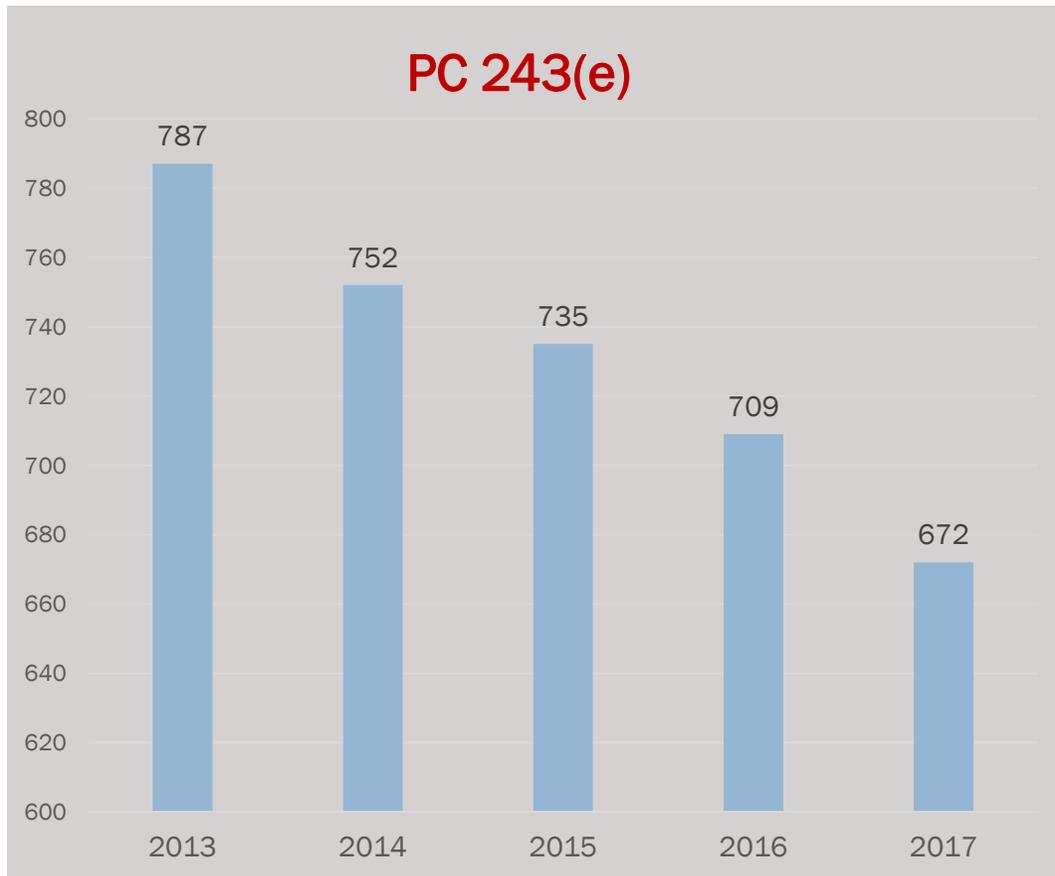


Robbery PC 211

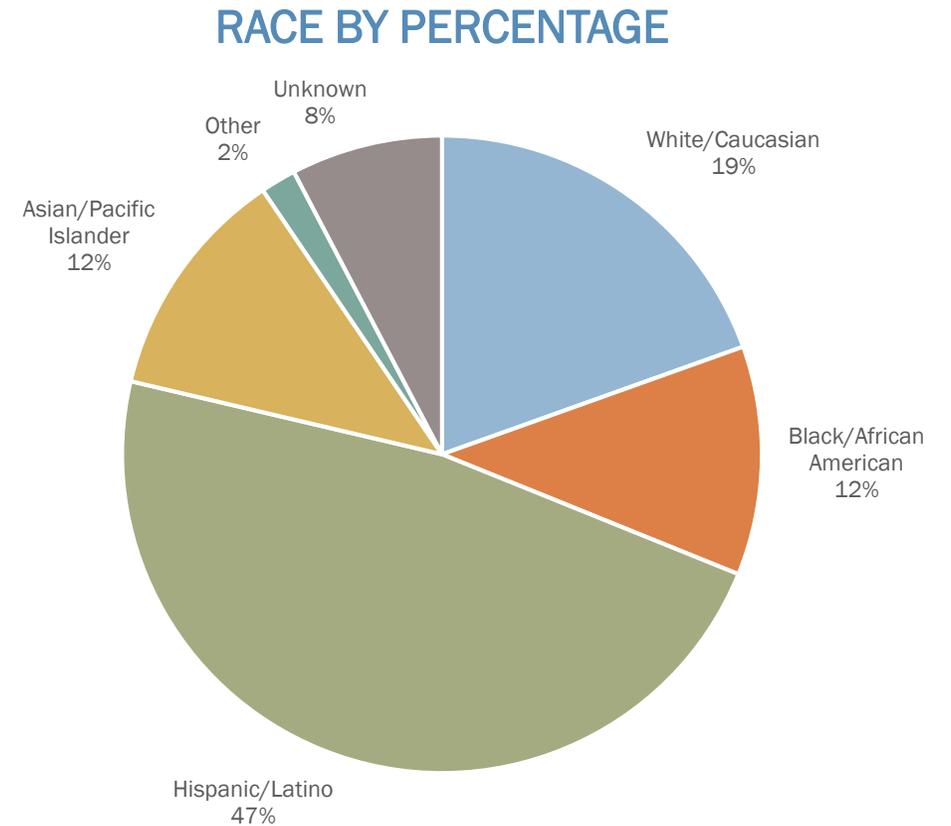
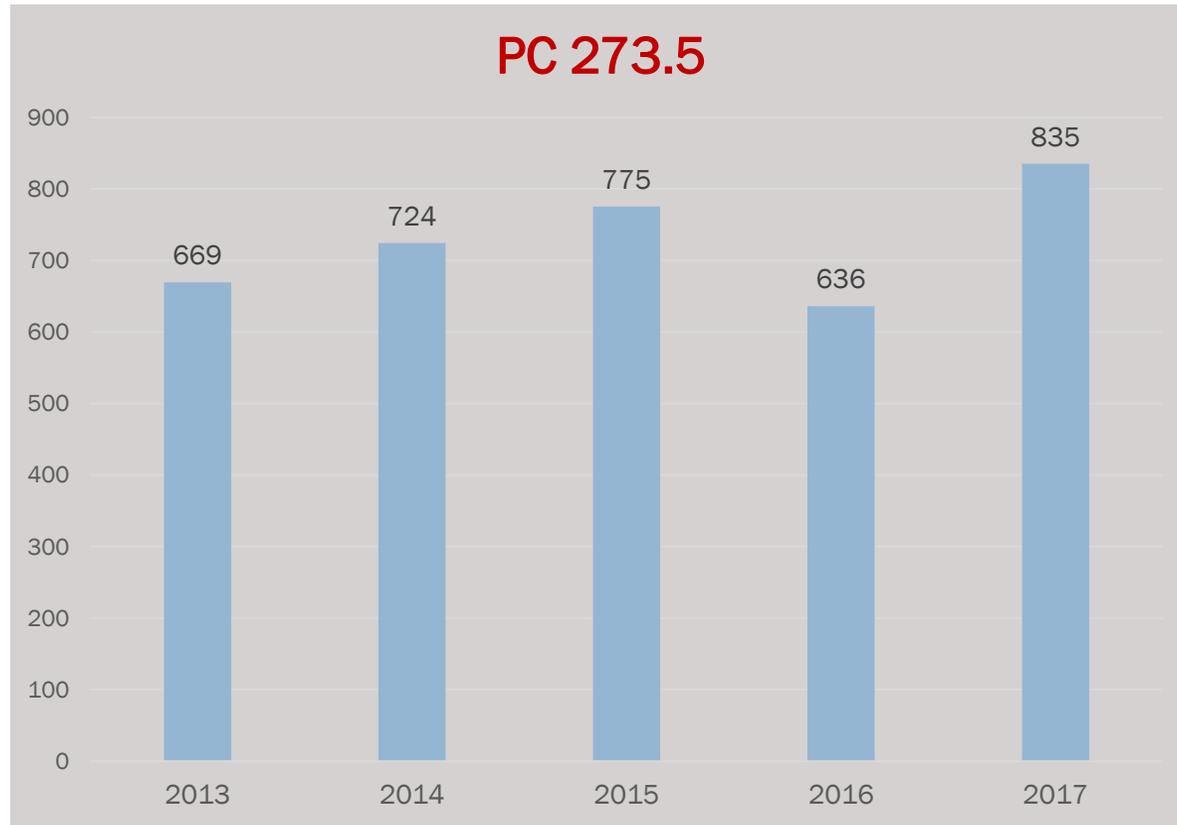


This information reflects the following: 211-212.5(a), 211-232.5(b), 211-212.5(c) and 211-213(a)(1)(A)

Misdemeanor Domestic Violence PC 243(e)

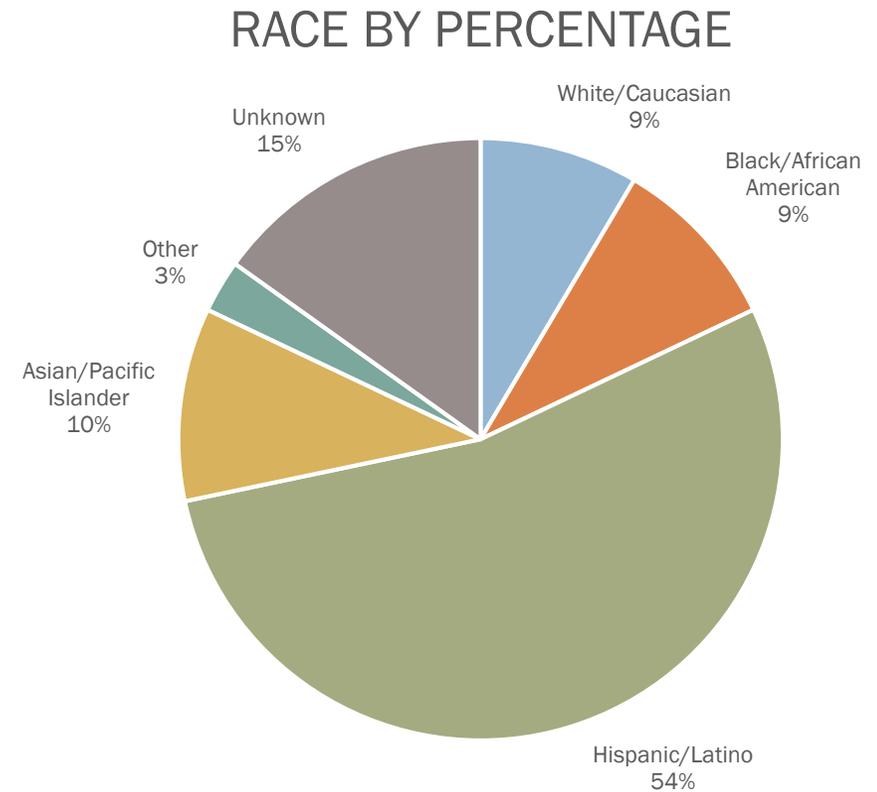
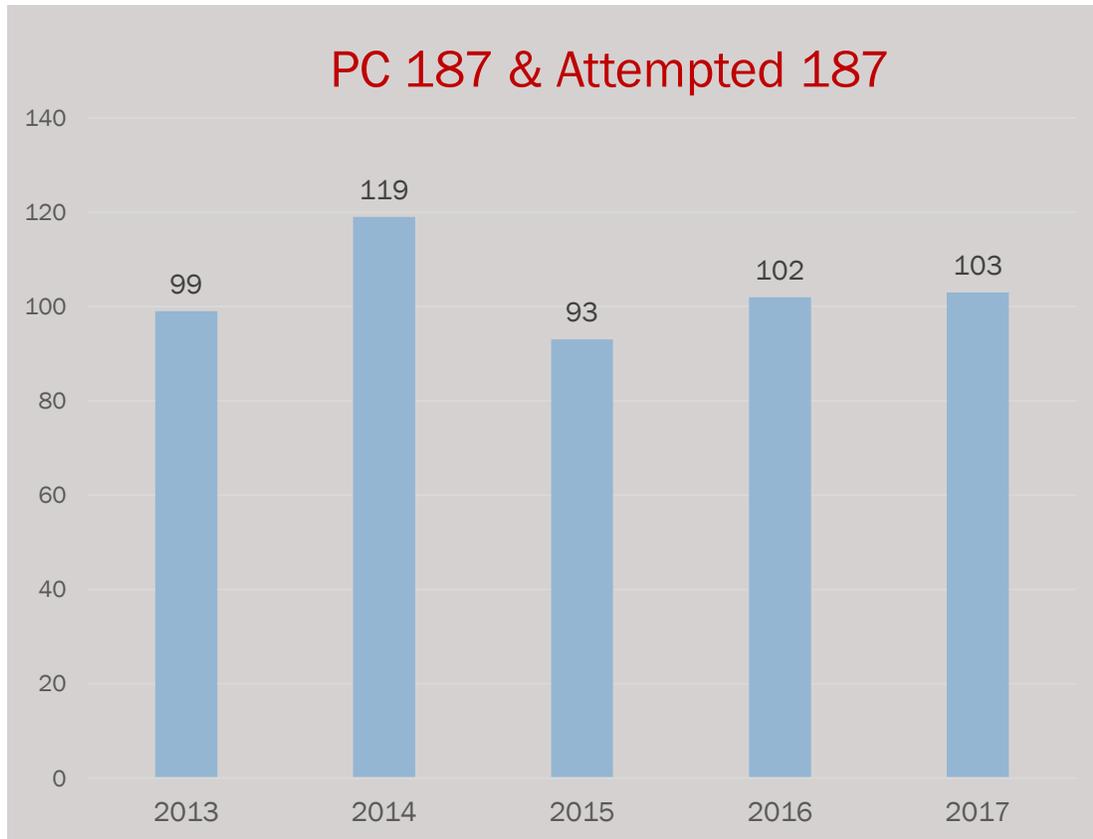


Corporal Injury on a Spouse PC 273.5



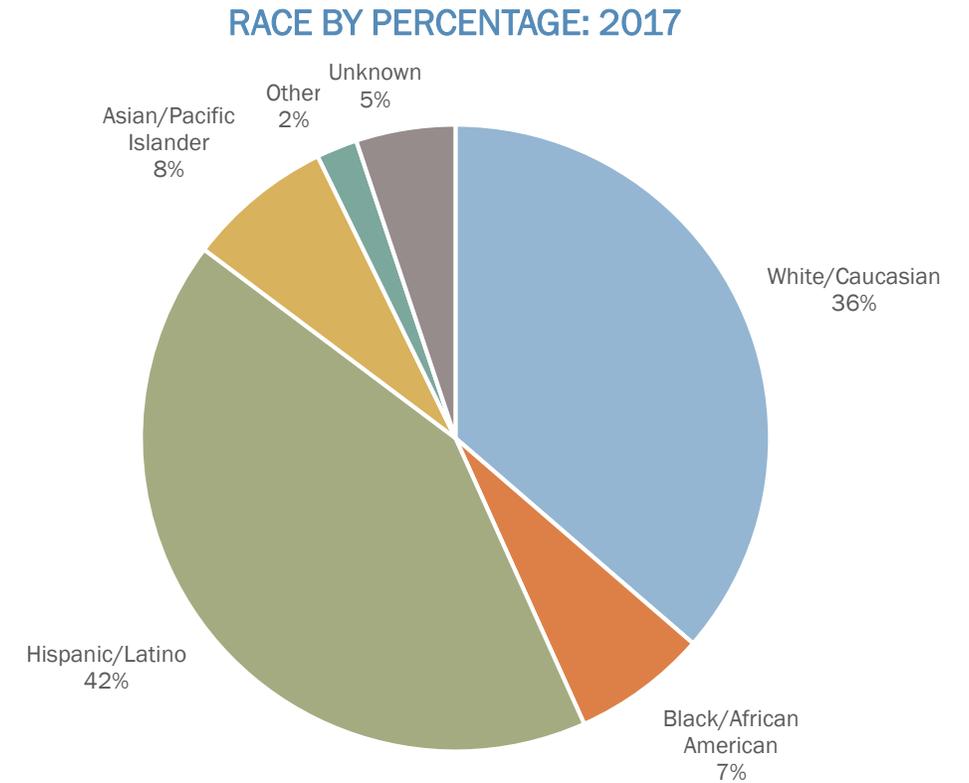
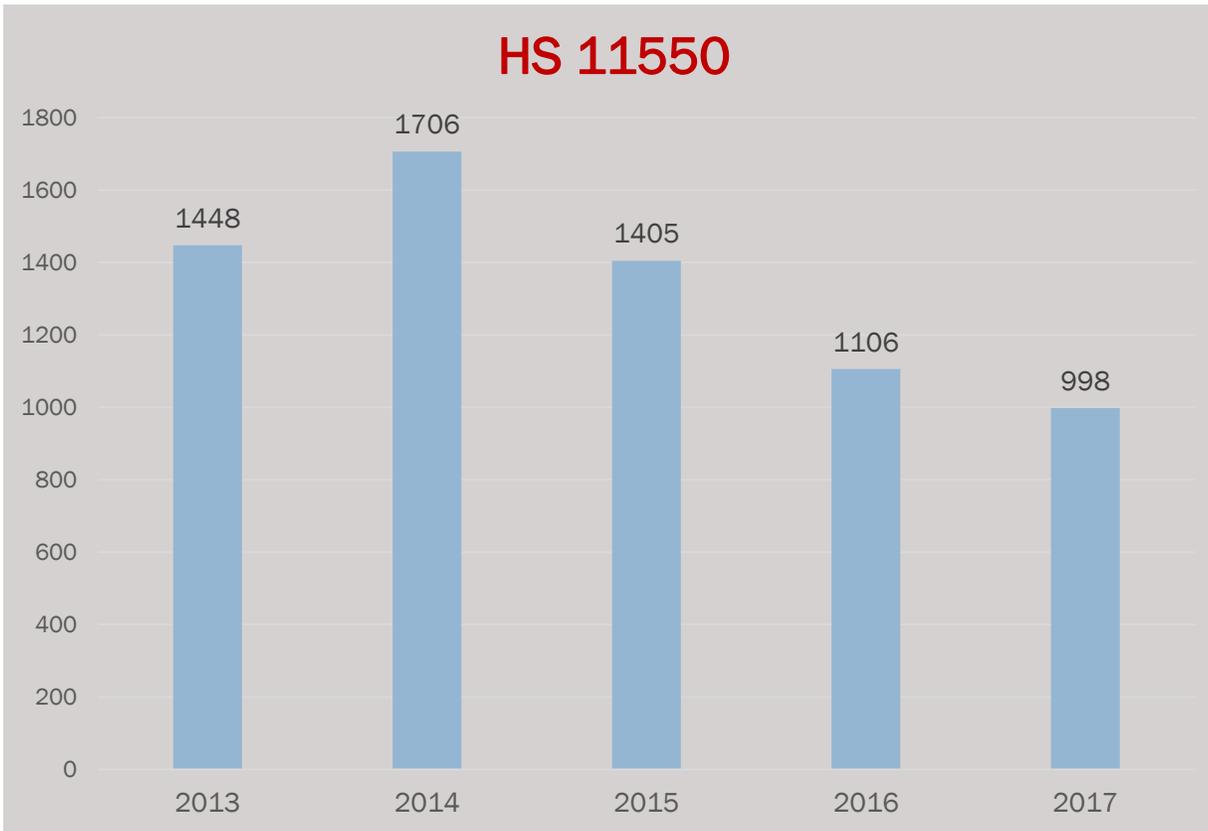
This information reflects the following: Misd & Felony level of 273.5(a), 273.5(e)(1), 273.5(f)(1), 273.5(f)(2) and 273.5(e)(2)

Homicide & Attempted Murder PC 187



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.

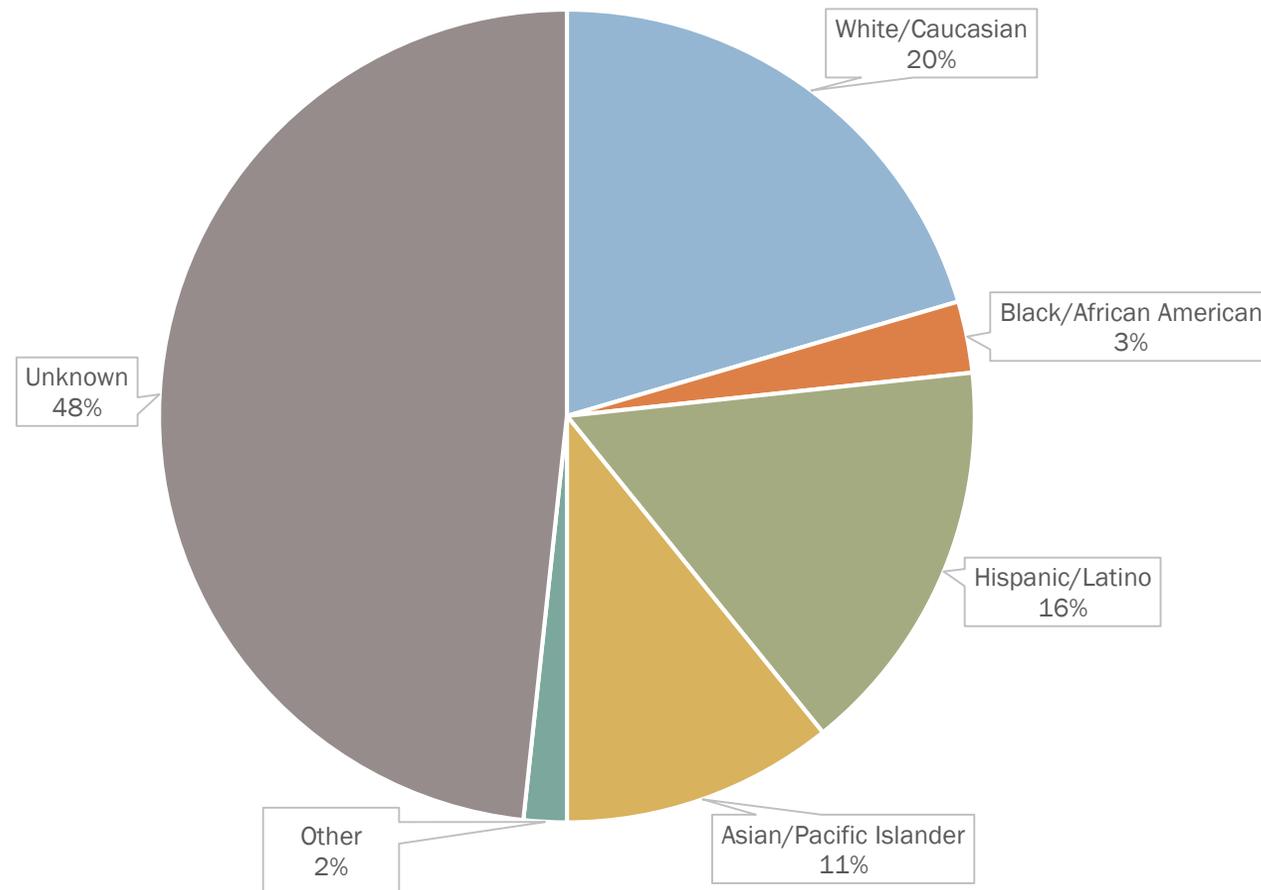
HS 11550 Misdemeanor Under the Influence of Controlled Substance [Police Contact Often Face To Face]



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

White Collar Crime: 2016

[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 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 District Attorney's Office.

2017-2018 Victims of Violent Crimes assisted by DAO-VSU (where victim stated race at intake interview)

