

The Criminal Justice System's Disparate Impact on Black Americans

California Task Force to Study and Develop Reparation Proposals
for African Americans

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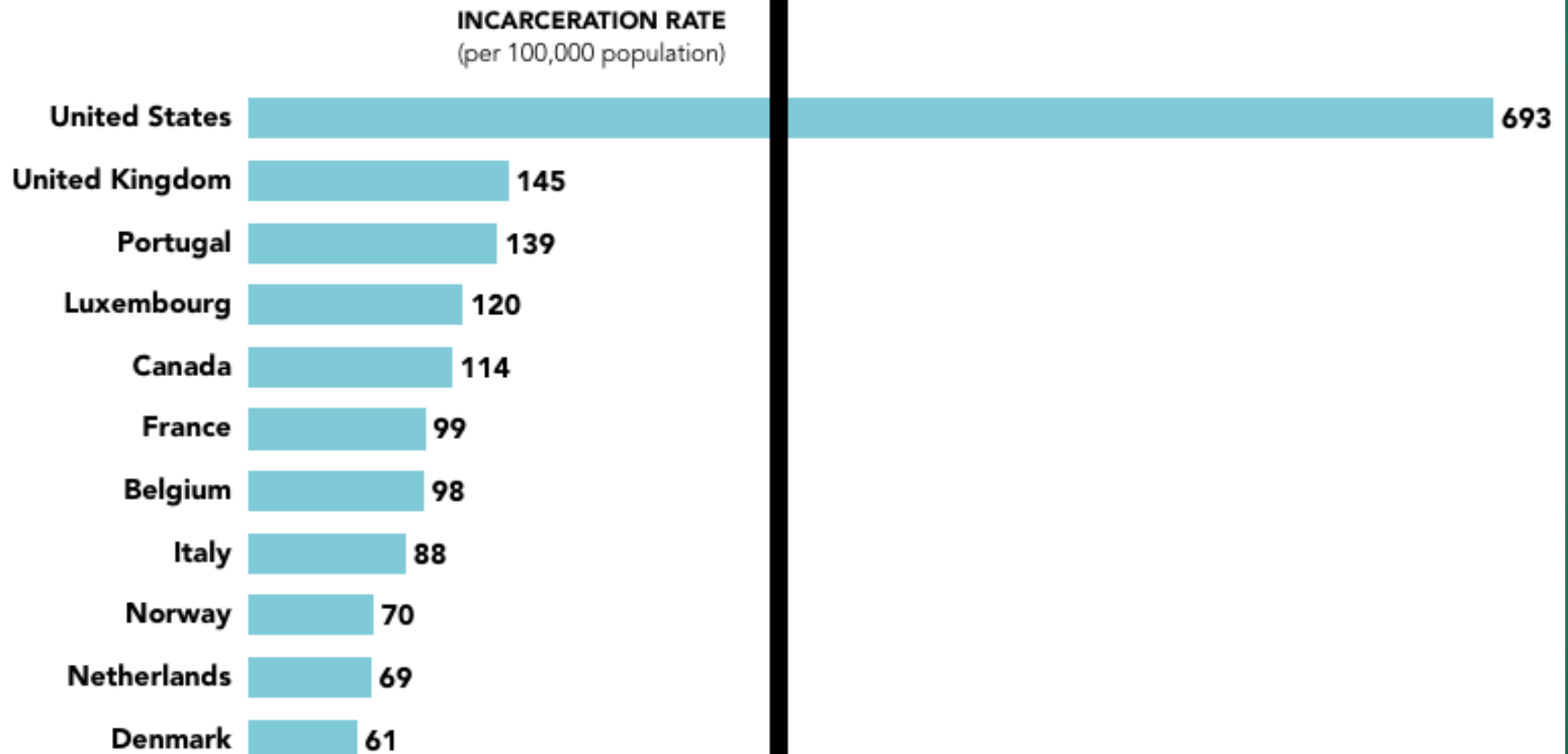
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Criminal Law and Punishment in America

An Overview

INCARCERATION RATES

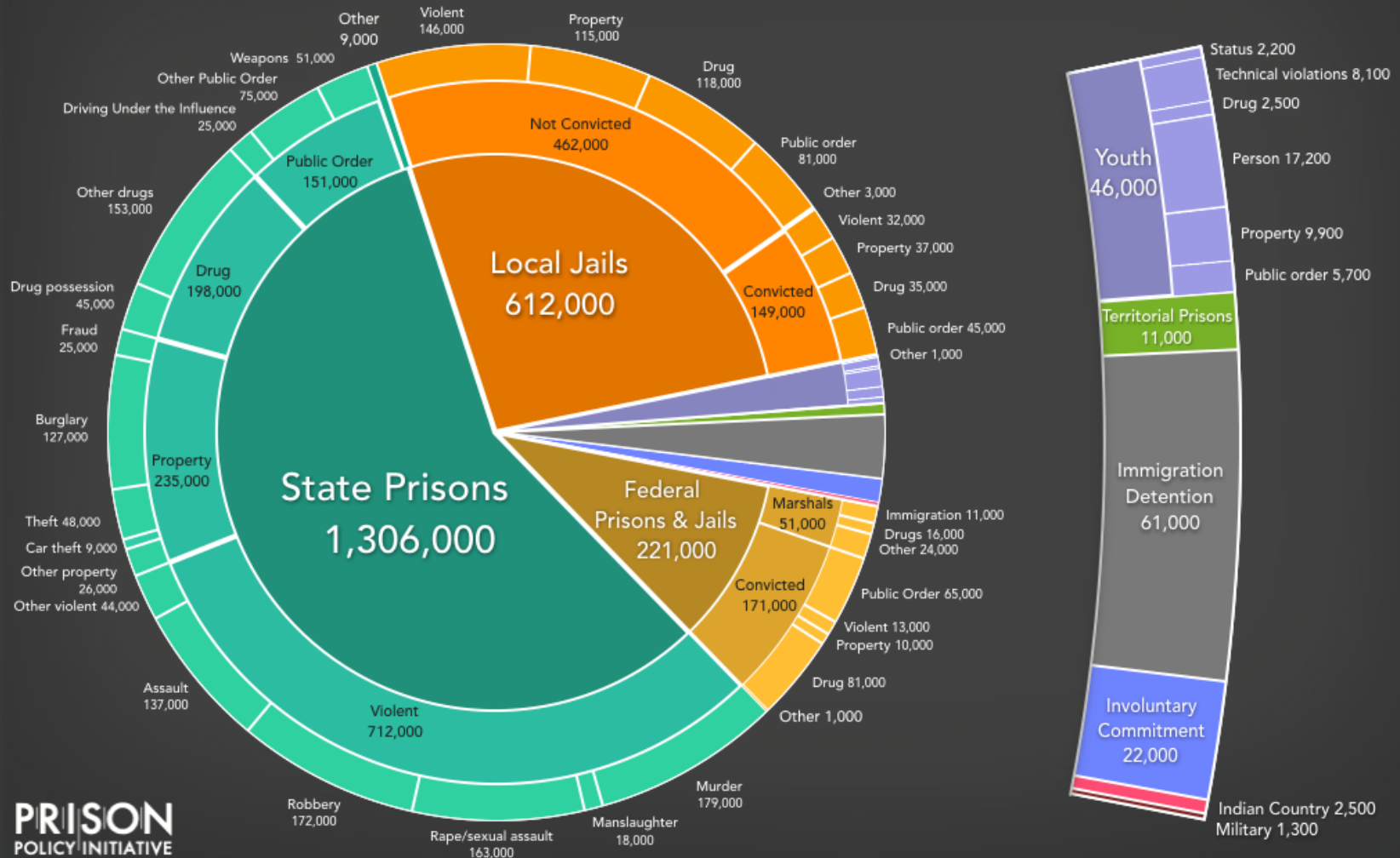
AMONG FOUNDING NATO MEMBERS



Source: <http://www.prisonpolicy.org/global/2016.html>

How many people are locked up in the United States?

The U.S. locks up more people per capita than any other nation, at the staggering rate of 698 per 100,000 residents. But to end mass incarceration, we must first consider *where* and *why* 2.3 million people are confined nationwide.

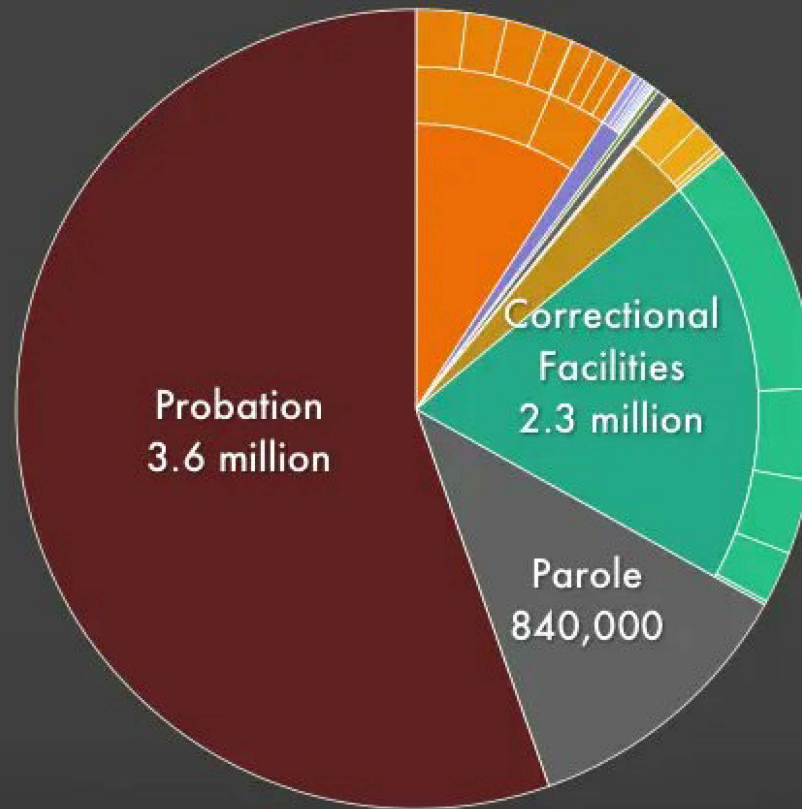


PRISON
POLICY INITIATIVE

Sources and data notes: See <https://www.prisonpolicy.org/reports/pie2019.html>

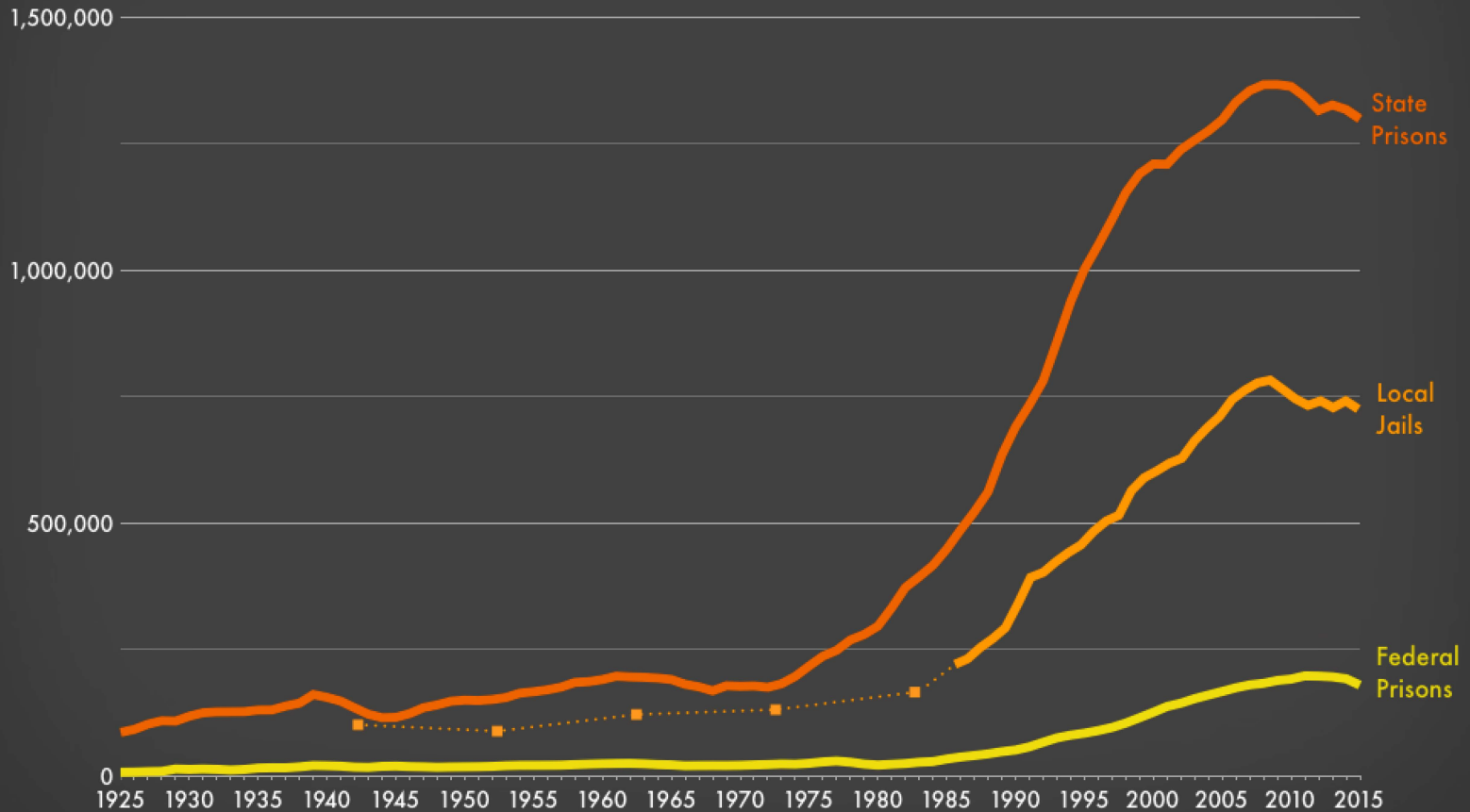
Incarceration is just one piece of the much larger system of correctional control

The U.S. justice system controls almost 7 million people, more than half of whom are on probation.



STATE POLICY DRIVES MASS INCARCERATION

(Number of people incarcerated by federal, state or local governments, 1925 – 2015)



MORE THAN 60% of people in prison are people of color



Policing



"Daddy, when can I stop being worried?"

Study of Traffic Stops

Pierson et al., A Large-Scale Analysis of Racial Disparities in Police Stops Across the United States, 4 Nature Human Behaviour 736-745 (2020)

Analysis of 100 million traffic stops conducted across the country.

Black people much more likely to be pulled over than White people

But **Black drivers were less likely to be stopped after sunset**, when a 'veil of darkness' masks one's race, suggesting bias in stop decisions (the darker the sky, the less pronounced the disparity)

Black people are more likely to be searched after a stop, but White people more likely to be found with illicit drugs

Study of LAPD Traffic Stops

Ben Poston and Cindy Chang, LAPD Searches Blacks and Latinos More. But They're Less Likely to Have Contraband than Whites, LA Times, Oct. 8, 2019

- 24% Black Drivers and Passengers Searched
- 15% of Latino Drivers and Passengers Searched
- 5% of white Drivers and Passengers Searched
- Slightly more likely to find drugs, weapons, or other contraband among White people (20% for searches of White people, compared to 17% for searches of Black people, 16% for searches of Latinos)

Frank R. Baumgartner, Derek A. Epp & Kelsey Shoub, *Suspect Citizens: What 20 Million Traffic Stops Tell Us About Policing and Race* (2018)

Black people are almost twice as likely to be pulled over as White people — even though White people drive more on average

Black people are more likely to be searched following a stop

“Just by getting in a car, a Black driver has about twice the odds of being pulled over, and about four times the odds of being searched.”

Black people were more likely to be searched despite the fact they're less likely to be found with contraband as a result of those searches.

ACLU, Black,
Brown and
Targeted, A
Report on
Boston Police
Department
Street
Encounters from
2007-2010 (Oct.
2014)

- Of stops that didn't involve a citation or arrest, 63% were of Black people (who make up 24% of the population)
- Stops not explained by crime rates, alleged gang affiliation, prior arrest records, or non-race factors; instead, stops were “driven by a neighborhood's concentration of Black residents; as the Black population increased as a percentage of the total population, so did the number of police encounters”

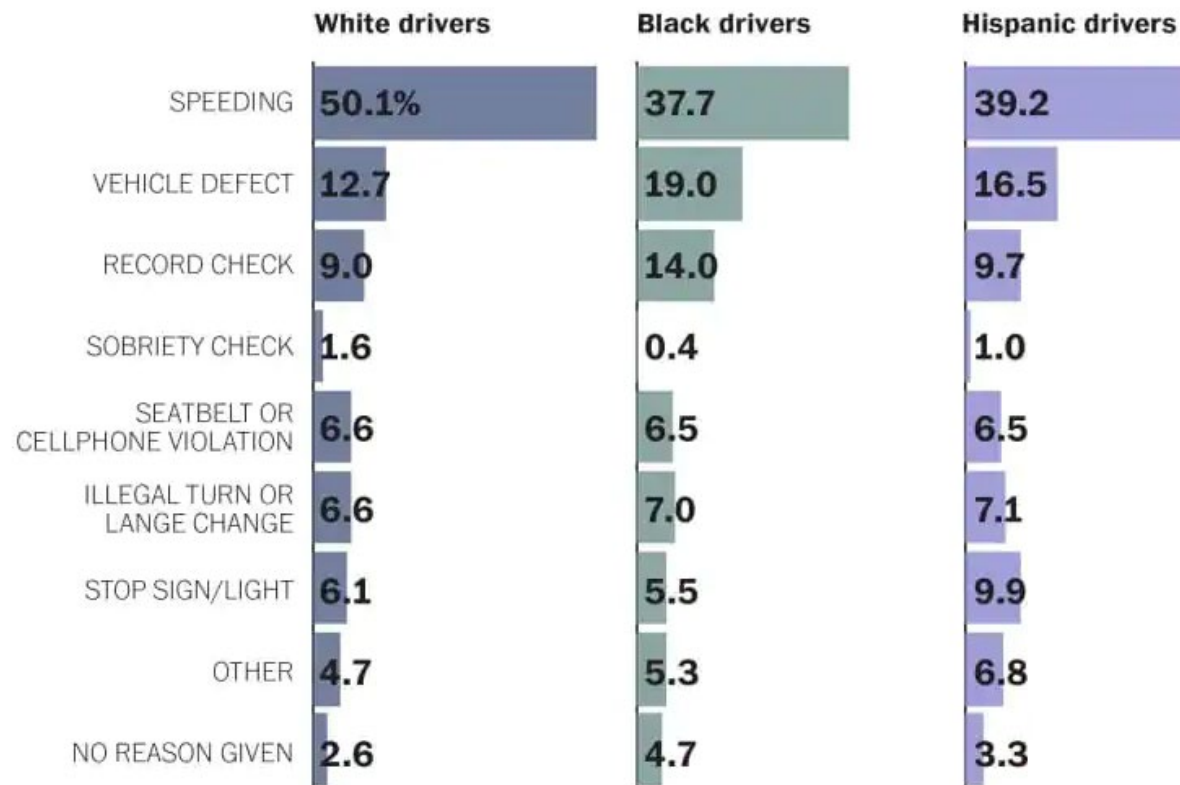
Vehicle Stops

Lynn Langton and Matthew Durose, Department of Justice, Police Behavior during Traffic and Street Stops, 2011 (Oct. 27, 2016)

- Black drivers 30% more likely to be pulled over than White drivers
- Black drivers more likely to be pulled over for alleged mechanical or equipment problems or record checks
- White drivers more likely to be pulled over for noticeable traffic violations such as speeding
- Black drivers less likely to be told why they were pulled over

Reasons Given for Traffic Stops in 2011

Reasons given for traffic stops in 2011, by race



Pedestrian Violations

Topher Sanders, Kate Rabinowitz, Benjamin Conarck, Walking While Black, ProPublica, November 16, 2017

Black residents of Jacksonville 3x as likely to receive a citation for a pedestrian violation than White residents

Black residents received 55% of all pedestrian tickets in Jacksonville (they are 29% of population)

Residents of the city's three poorest zip codes were 6x as likely to receive a citation as those in the 34 most affluent zip codes

Disparities
in Arrest
Rates for
Other
Low-Level
Offenses

Disorderly conduct

Trespass

Loitering

FIGURE 6A.

Rates of Drug Use and Sales, by Race

At the state level, blacks are about 6.5 times as likely as whites to be incarcerated for drug-related crimes.

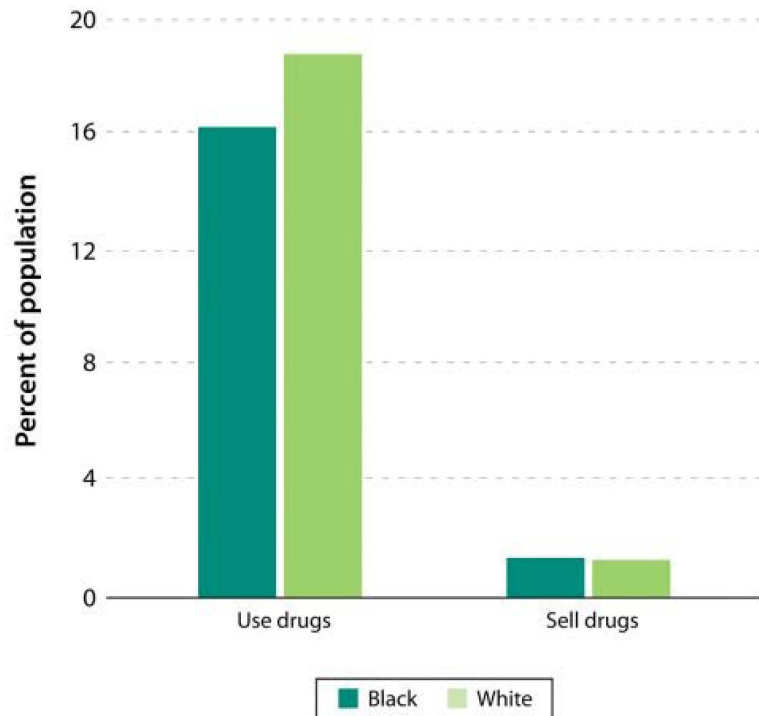
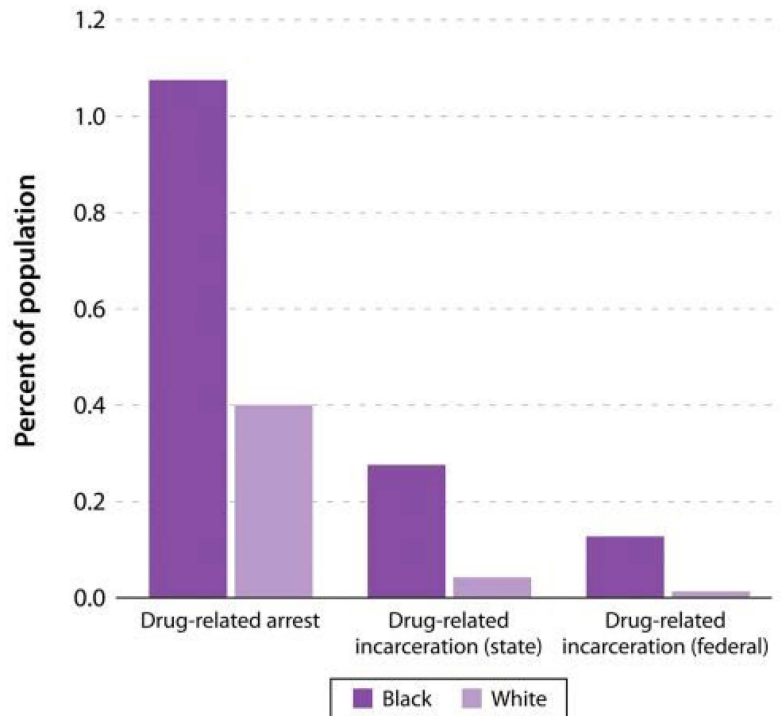


FIGURE 6B.

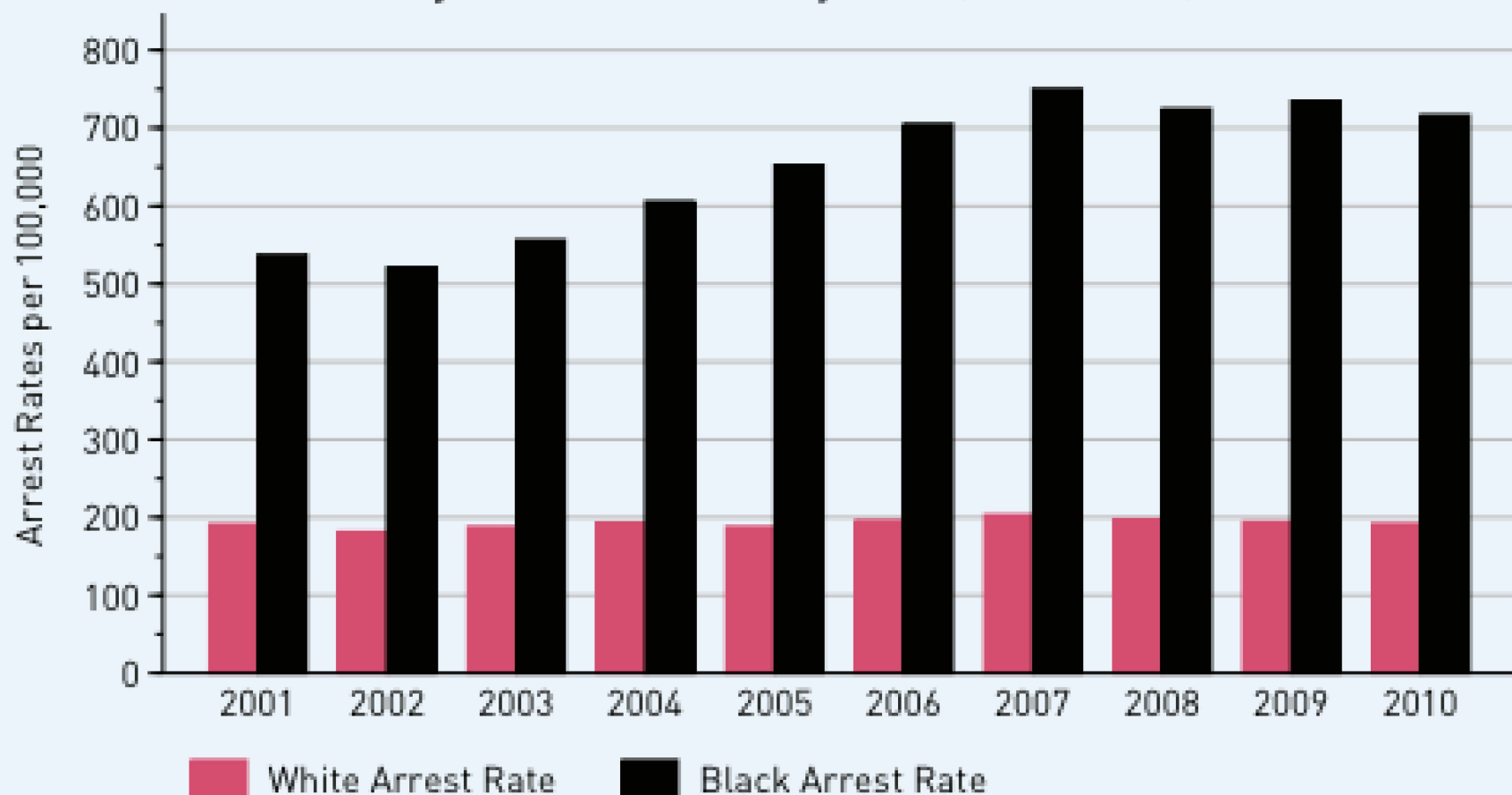
Rates of Drug-Related Criminal Justice Measures, by Race



Source: BLS n.d.c; Carson 2015; Census Bureau n.d.; FBI 2015; authors' calculations.

FIGURE 10

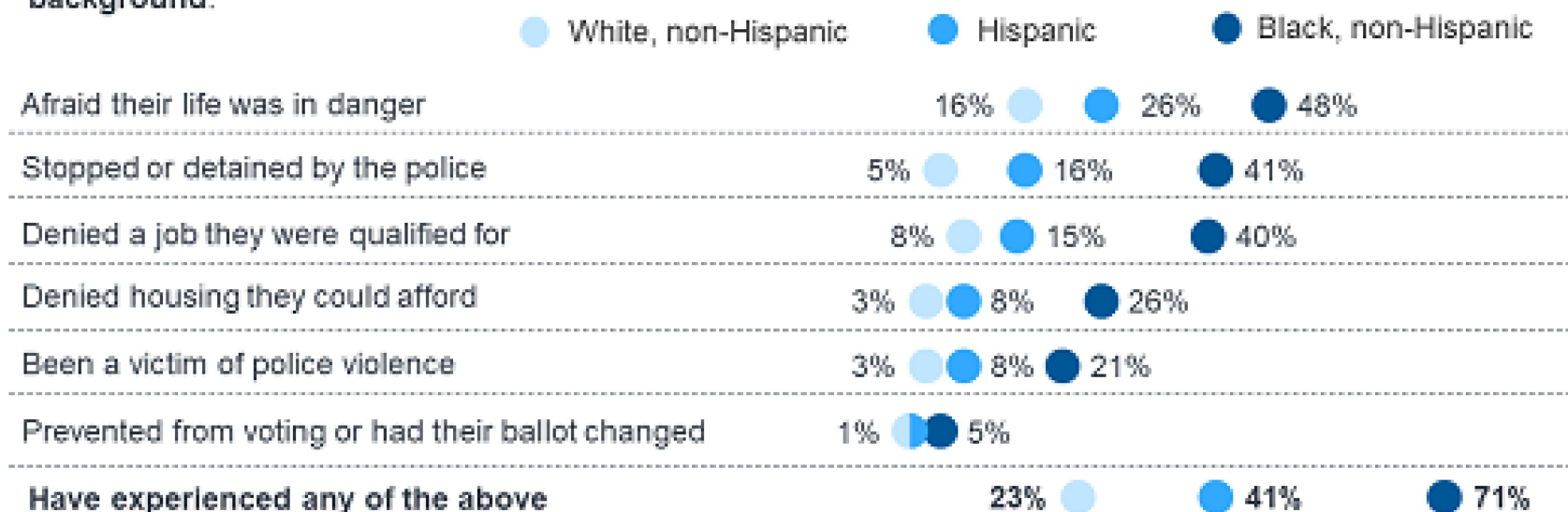
Arrest Rates for Marijuana Possession by Race (2001-2010)



Source: FBI/Uniform Crime Reporting Program Data and U.S. Census Data

Black Americans More Likely Than Hispanics or Whites to Experience Incidents of Racial Discrimination or Violence

Percent who say they have **EVER** experienced each of the following because of their race or ethnic background:

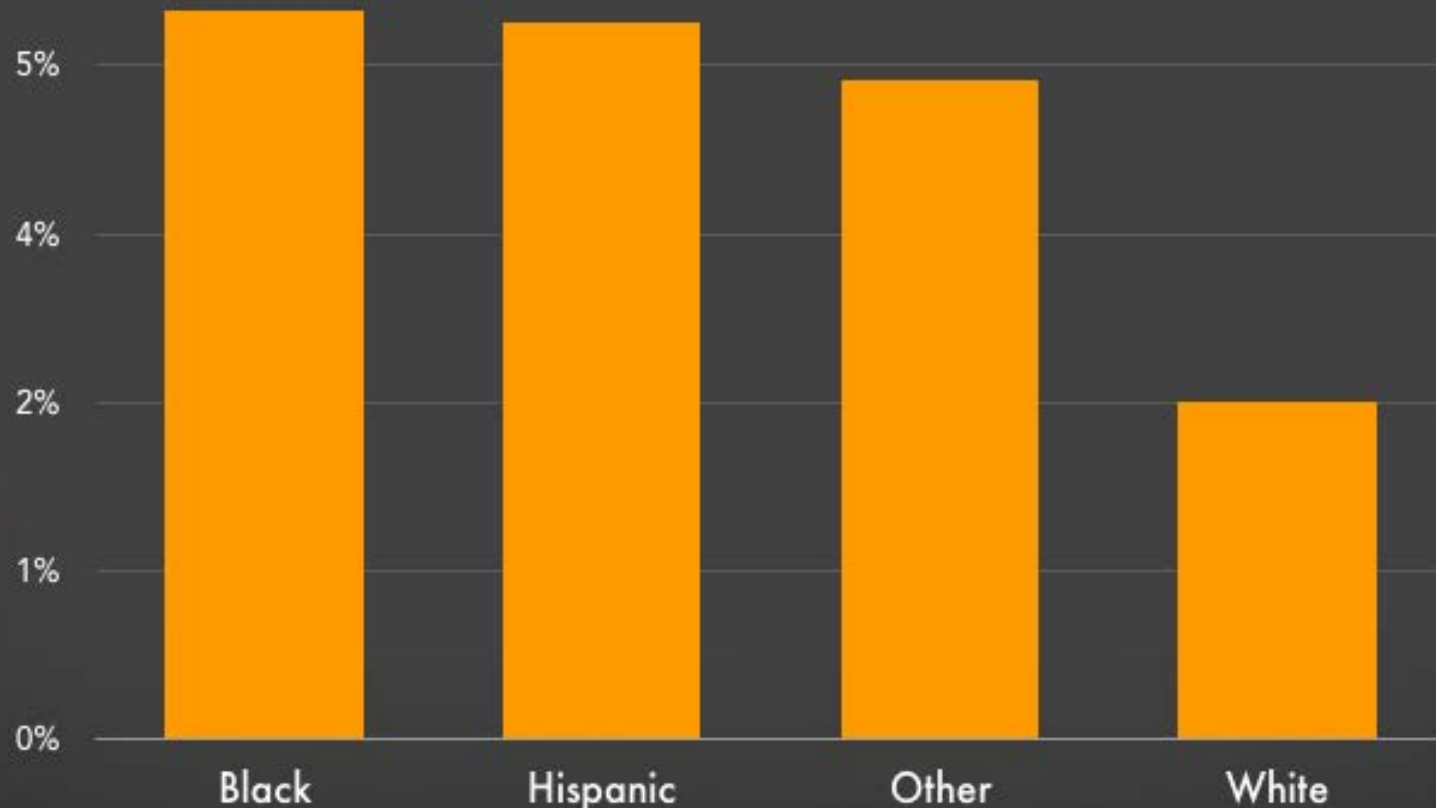


SOURCE: KFF Health Tracking Poll (conducted June 8-14, 2020). See topline for full question wording.

Police are twice as likely to use force against people of color

Percentage of respondents, by race, who reported that (a) their most recent police contact in 2015 was initiated by police and (b) police threatened or used force against them during that interaction

People who experienced the threat or use of force when they were most recently approached by police



Risk of Being Killed by Police

Edwards et al., Risk of Being Killed by Police in Use-of-Force in the U.S. by Age, Race/Ethnicity, and Sex, Proceedings of the National Academy of Sciences (Aug. 2, 2019)

Black men face a 1 in 1000 chance of being killed by police over the life course

Black men are about 2.5 times more likely to be killed by police over the life course than are White men

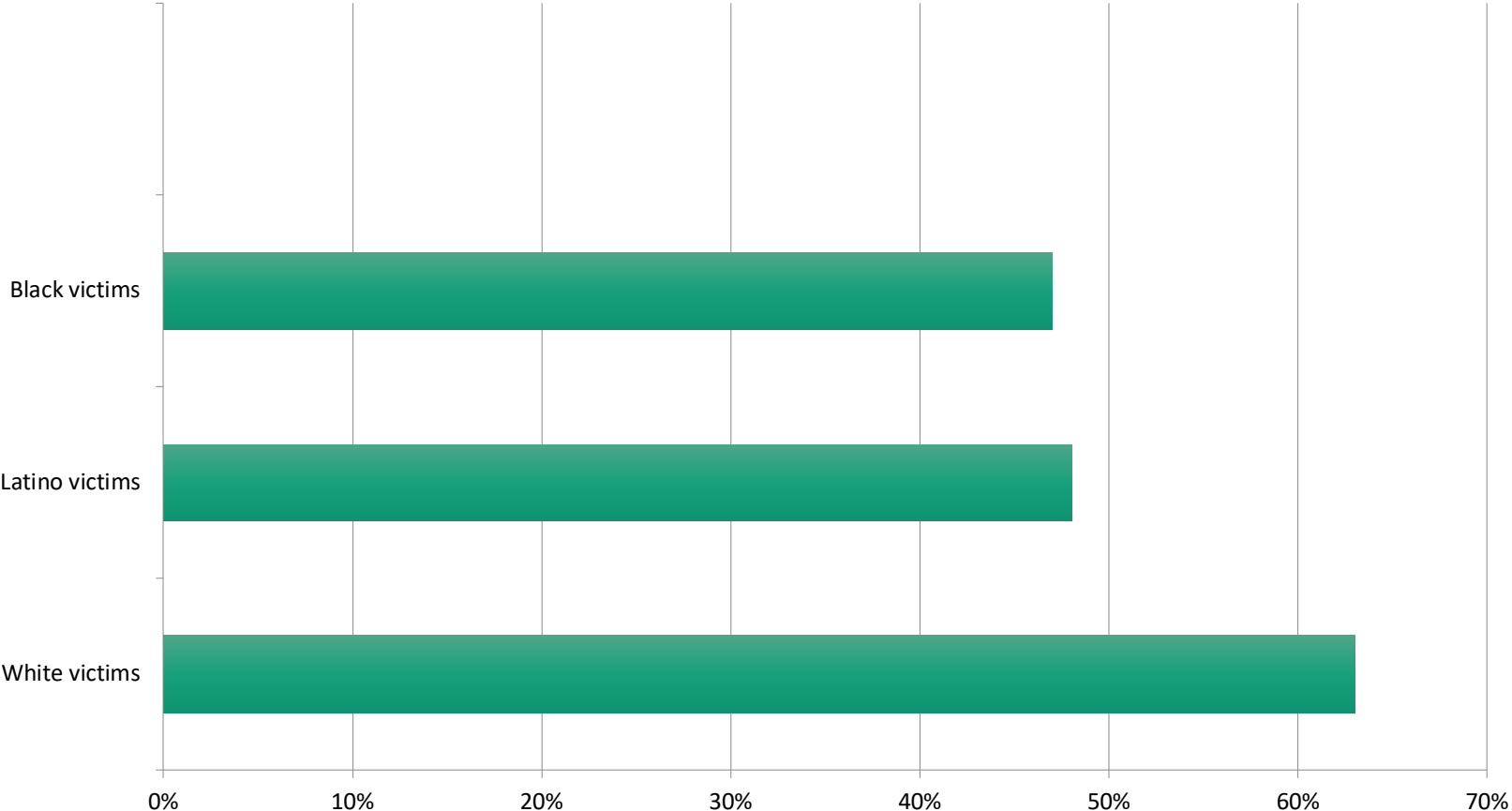
Black women are about 1.4 times more likely to be killed by police than are White women

Cody T. Ross, A Multi-Level Bayesian Analysis of Racial Bias in Police Shootings at the County-Level in the United States, 2011-2014, PLOS, Nov. 5, 2015

- The probability of being Black, unarmed, and shot by police is about 3.49 times the probability of being White, unarmed, and shot by the police
- Racial bias in shootings “is most likely to emerge in police departments in larger metropolitan counties with low median incomes and a sizeable portion of Black residents, especially when there is high financial inequality in that county”
- There is no relationship between county-level racial bias in police shootings and crime rates . . . Meaning that the racial bias observed in police shootings in this data set is not explainable as a response to local-level crime rates”

Clearance Rates in Homicide Cases (from

Wesley Lowery et al., Where Killings Go Unsolved, Washington Post, June 6, 2018)



Charging Practices



Pretrial Detention

- In large urban areas, Black felony defendants are 25% more likely than White defendants to be held pretrial when charged with similar crimes
- Across the country, Black and Brown defendants are at least 10-25% more likely to be detained or have to pay money bail than White defendants
- Young Black men are 50% more likely to be detained pretrial than White defendants
- Black and Brown defendants receive bail amounts that are twice as high as bail set for White defendants (and are less likely to afford it)

-Wendy Sawyer, How Race Impacts Who Is Detained Pretrial, Prison Policy Initiative, Oct. 9, 2019

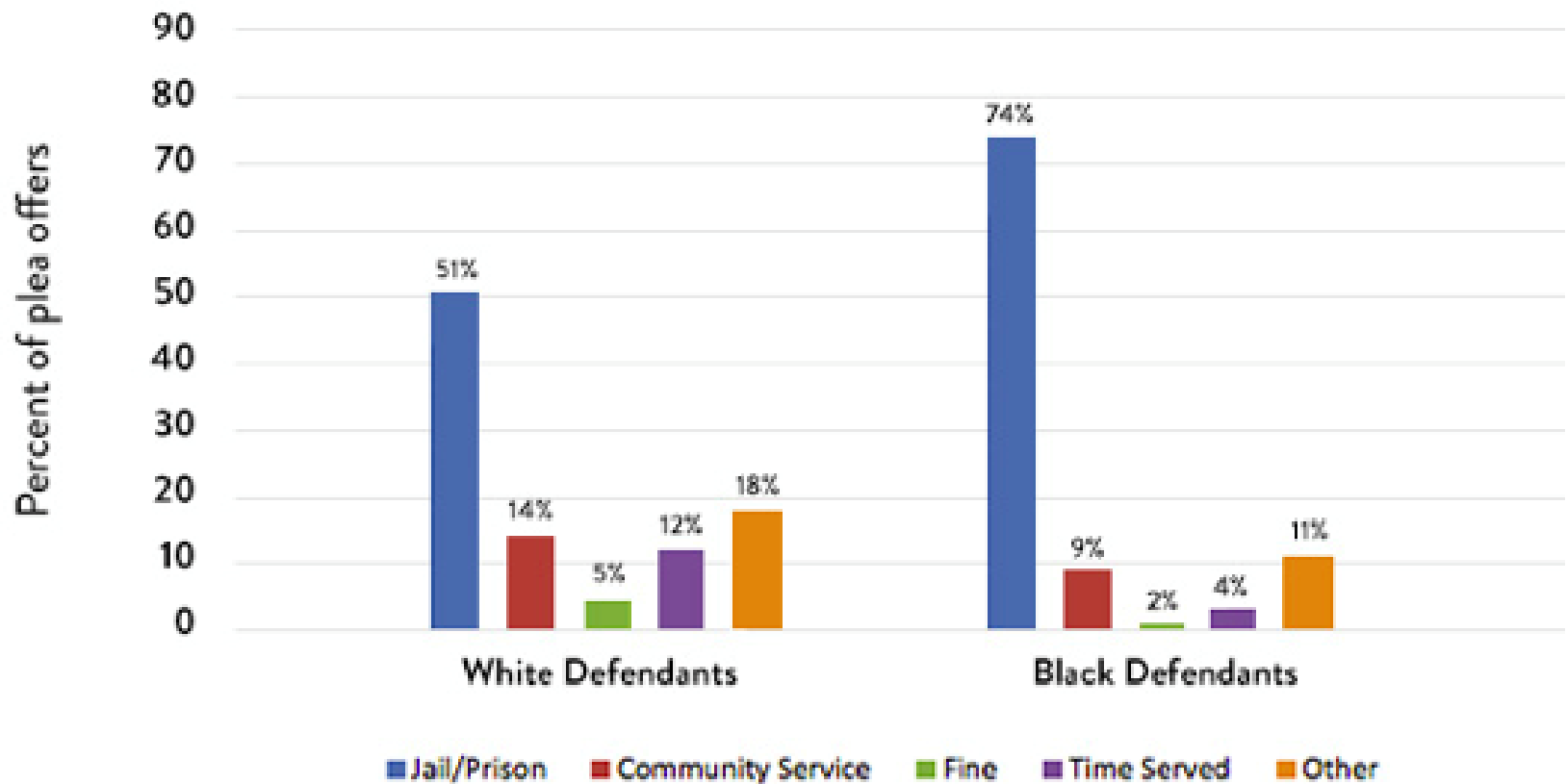
Bargaining Disparities

Carlos Berdejó, Criminalizing Race: Racial Disparities in Plea Bargaining, 59 Boston College L. Rev. 1187 (2018)

White defendants 25% more likely than Black defendants to have serious charge dismissed in plea bargain

White defendants 75% more likely than Black defendants to have misdemeanor charges dropped, dismissed or reduced to avoid incarceration

Plea Offer Types for Felonies



Source: Vera Institute of Justice

Mandatory Minimum and Habitual Offender Charges

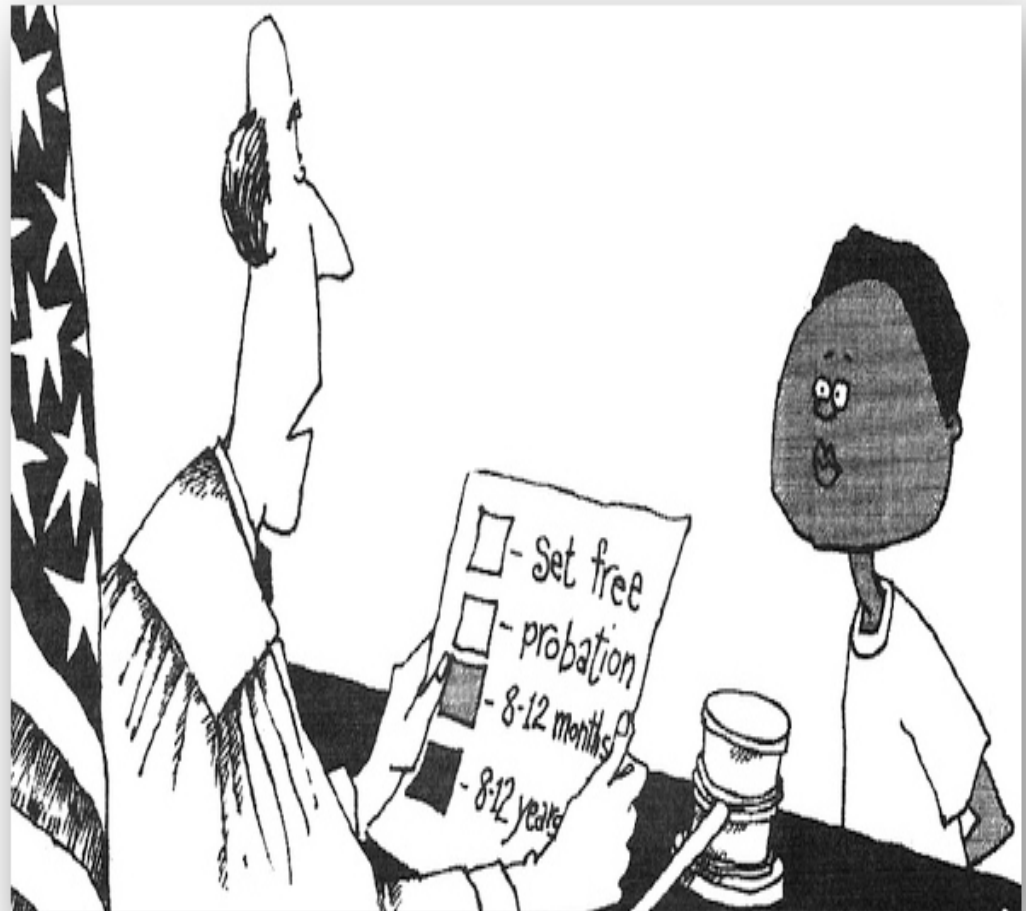
Federal prosecutors almost twice as likely to bring charges carrying mandatory minimums against Black defendants as against White defendants accused of similar crimes

- -Sonja B. Starr & M. Marit Rehavi, Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of *Booker*, 123 Yale L.J. 2 (2013)

Black defendants with multiple prior convictions are 28% more likely to be charged as habitual offenders than White defendants with similar criminal records

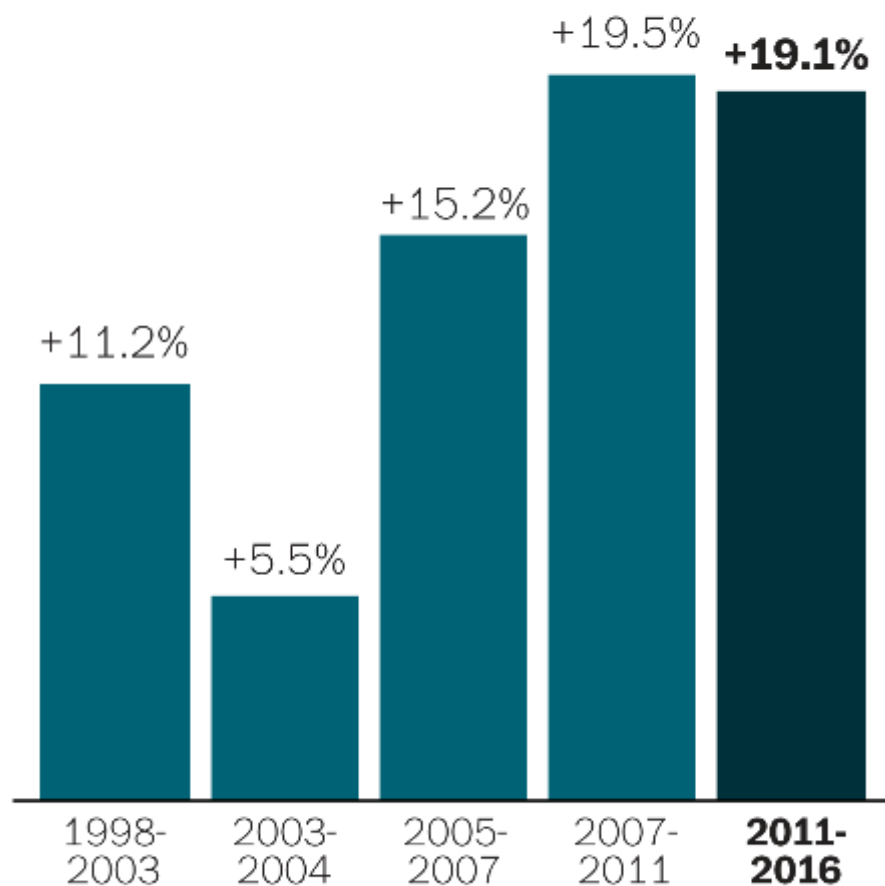
- -Matthew S. Crow & Katherine A. Johnson, Race, Ethnicity, and Habitual-Offender Sentencing: A Multi-level Analysis of Individual and Contextual Threat, 19 Crim. J. Policy Rev. 63 (2008)

Sentencing



Same crimes, different times

Percentage difference in sentence length for black men, versus white men with similar backgrounds who commit the same crimes, by time period



Skin Tone Disparity

Jennifer L. Hothschild & Vesla Weaver, *The Skin Color Paradox and the American Racial Order*, 86 *Social Forces* 643 (2007)

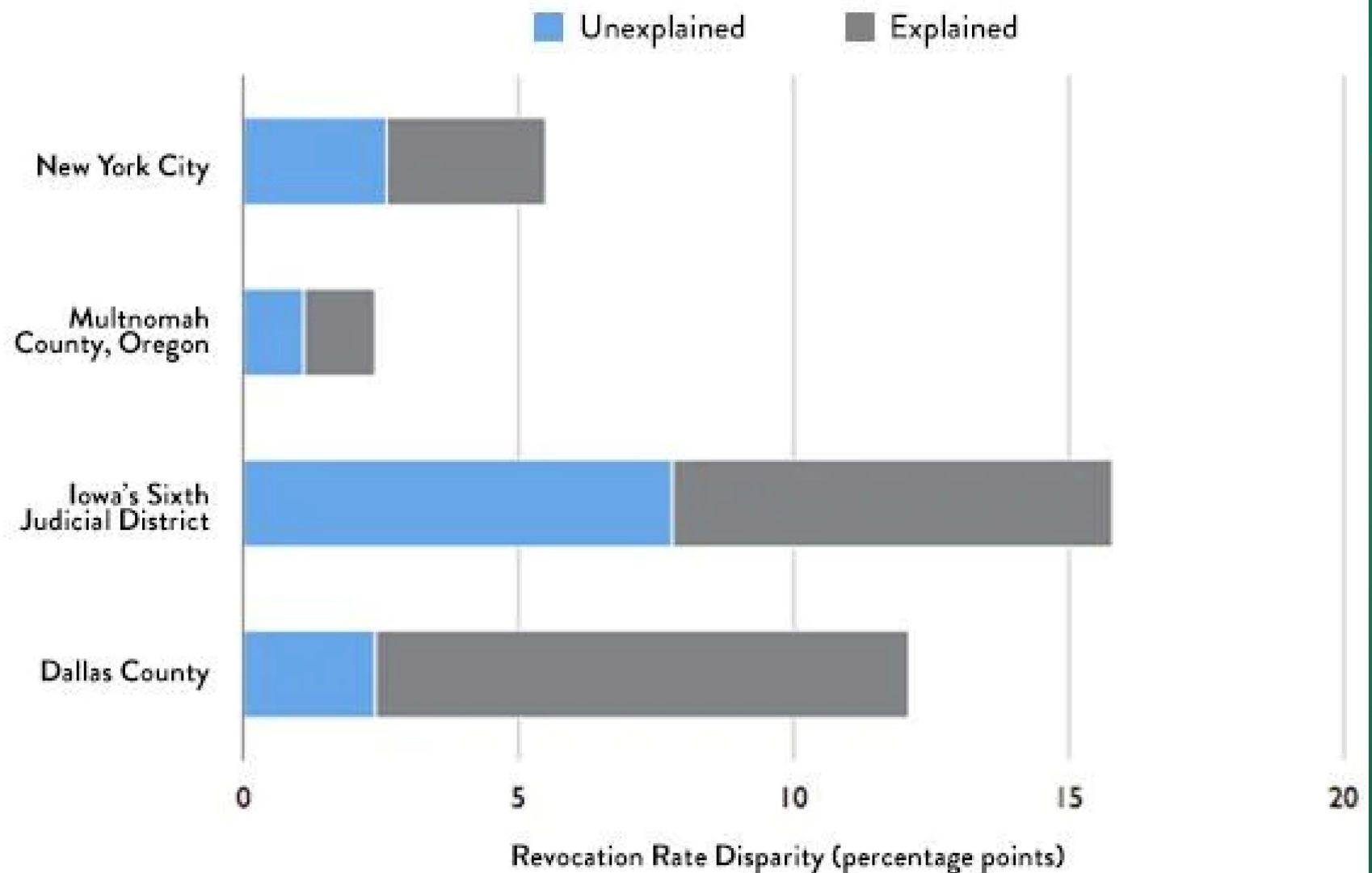
- 67,000 people with first-time felonies in Georgia 1995-2002
- Average sentence for White men – 2,689 days
- Average sentence for Black men – 3,079 days
- Variation among Black men
 - Light-skinned Black men received on average sentences 3.5 months longer than White men
 - Medium-skinned Black men received sentences about a year long than White men
 - Dark-skinned Black men received sentences about a year and half longer
- Controlling for type of offense, socioeconomic status and demographic indicators, light skinned Black people received sentences statistically indistinguishable from those of White people while medium- and dark-skinned Black people received sentences 2.7% longer
- 2015 Study (Traci Burch, *Skin Color and the Criminal Justice System: Beyond Black-White Disparities in Sentencing*, 12 *J. Empirical Legal Studies* 395 (2015) has similar findings

Juvenile Offenses

Black youth comprise 53% of the minors transferred to adult court (even though they're 14% of population)

Black students more than 4x as likely to be suspended as White students

Revocation Disparity Between Black and White Parolees



Parole and Clemency

- 2016 study: 1/6 Black or Latino men released after first parole hearing compared to 1/4 White men
- 2008 study of parole board decisions found Black people “spent longer time in prison awaiting parole compared with white offenders” and “racial and ethnic differences remained as an influence on parole decision-making after controlling for legal, various individual demographic and community characteristics
- White people were almost four times as likely to receive a pardon than minorities in federal prison according to 2011 ProPublica study

-These are all cited in Radley Balko, There's Overwhelming Evidence that the Criminal Justice System is Racist. Here's the Proof, Washington Post, June 10, 2020

Treatment While Incarcerated

Black prisoners more likely to be held in solitary confinement than White prisoners