



National Commission
on COVID-19 and
Criminal Justice

Racial Disparities and COVID-19

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Highlights

- + **Poor people of color, especially Black people, are overrepresented in the criminal justice system relative to their proportion of the U.S. population.**
 - Although racial disparities have narrowed in recent years, Black people are incarcerated in state prisons at a rate 5.1 times that of non-Hispanic White people. The incarceration rate for Blacks in jails is 3.5 times higher than that of White individuals.
- + **Minority populations in the United States experience higher rates of disease and illness, including those that elevate risk of COVID complications.**
 - 13% of Black adults have a diabetes diagnosis, compared to 8% of Whites; 12.6% of Black children have asthma, while the rate is 7.7% for White children; 42% of Black adults have hypertension, compared to 28.7% of White adults.
- + **People of color have experienced higher infection and mortality rates from COVID-19.**
 - Within counties, Latino and Black residents are three times as likely to contract the virus as their White neighbors.
 - Half of the people who died of coronavirus in the first seven months of 2020 were people of color and their relative death rates have risen faster as the pandemic has progressed.
- + **More analysis and study are needed, but the COVID-19 pandemic may have exacerbated racial disparities in the criminal justice system.**
 - As jail populations began to fall in March at the onset of the pandemic, there were increases in the proportion of people who were Black, who were booked on felony charges, who were male, and who were 25 or younger.
 - These changes in the population composition persisted even as jail populations began to rise again in early May.
- + **Only a few correctional systems have released data on the racial and ethnic breakdown of COVID-19 cases in facilities, making it nearly impossible to track the demographic impact of COVID-19 on the incarcerated and supervised populations.**
 - Leaders need COVID-19 infection and mortality data for justice-involved populations by race and ethnicity to obtain a full picture of how the virus has affected disparities in the justice system.

Racial Disparities and COVID-19

People of color in the United States, especially poor people of color, are disproportionately affected by crime, the criminal justice system, and COVID-19. More than seven months into the pandemic, data remains scarce. COVID-19 – in its impact as well as in approaches to try to curb its spread – has exposed and may have exacerbated existing racial imbalances in the criminal justice and healthcare systems.

This report reviews racial disparities in health and criminal justice outcomes and explores, as well as possible, how those same disparities have been affected by the COVID-19 pandemic. It also highlights the need for clear, consistent data regarding the impacts of COVID-19 on justice populations in order to inform decisions about how to address racial disparities during and after this health crisis.

RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM

People of color, particularly Black individuals, experience disparate treatment and outcomes in the criminal justice system. At every phase of the system, Black people are overrepresented and are much more likely to be subject to negative outcomes. This has long-term implications for their lives, their families, and their communities.

In interactions with the police, documentation of these encounters indicates that Blacks experience the criminal justice system differently than Whites. Research indicates that Black individuals are more likely to be stopped, seen as a threat, and subjected to threat or use of force by police.¹ Findings from a 2019 Pew Research Center survey show that perceptions among both Black and Whites are in line with this reality: 84% of Black adults say that White people are treated better than Black people by the police, and 63% of White adults agree.²

As individuals move through the criminal justice system, racial disparities persist. The United States Sentencing Commission found that between fiscal years 2012 and 2016,

¹ Kramer & Remster, Stop, Frisk, and Assault? Racial Disparities in Police Use of Force During Investigatory Stops (2018), <https://onlinelibrary.wiley.com/doi/abs/10.1111/lasr.12366>

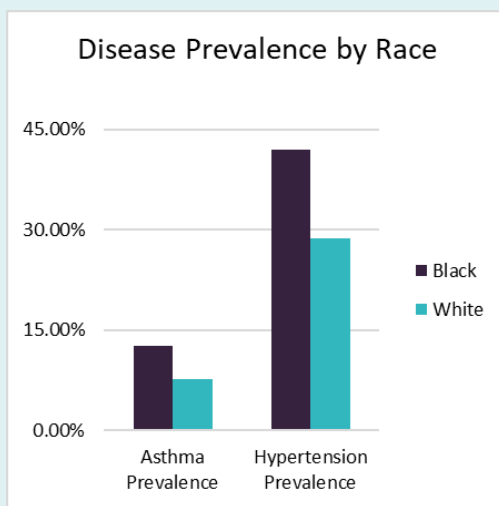
² Desilver, Drew et al, 10 Things We Know About Race and Policing in the U.S. Pew Research Center (June 3, 2020). <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/>

Black males received longer sentences in federal courts than comparable White males.³ Blacks were incarcerated in state prisons at a rate 8.3 times that of Whites as of 2000 but that disparity fell to 5.1 by 2016, according to an analysis by the Council on Criminal Justice.⁴ A report by the Sentencing Project found that Black men were incarcerated in local jails at 3.5 times the rate of Whites.⁵

RACIAL DISPARITIES IN HEALTH AND HEALTHCARE

In addition to racial disparities in the criminal justice system, people of color face disparities in access to healthcare and in health outcomes. While the Affordable Care Act (ACA) reduced uninsured rates across all racial and ethnic groups, disparities in coverage for communities of color persist.⁶ In 2017, 10.6% of Black Americans were uninsured, compared to 5.9% of Whites.⁷

FIGURE 1: RACIAL DISPARITIES IN PREVALENCE OF ASTHMA AND HYPERTENSION



Source: National Center for Health Statistics

³ United States Sentencing Commission, Demographic Differences in Sentencing (2017), <https://www.ussc.gov/research/research-reports/demographic-differences-sentencing>

⁴ Sabol, Johnson, and Caccavale, Trends in Correctional Control by Race and Sex. Washington, D.C.: Council on Criminal Justice (December 2019), <https://counciloncj.foleon.com/reports/trends-key-findings/overview/>

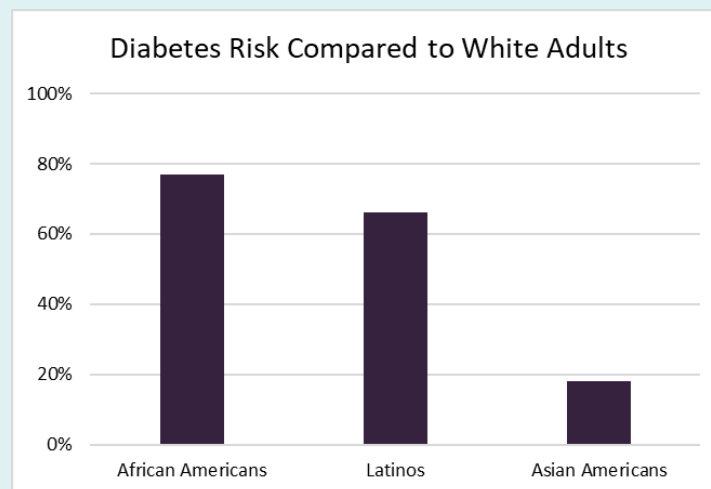
⁵ Sentencing Project, Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System, 2018, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

⁶ Artiga, Orgera, and Damico, Changes in Health Coverage by Race and Ethnicity since the ACA, 2010-2018 (2020), <https://www.kff.org/disparities-policy/issue-brief/changes-in-health-coverage-by-race-and-ethnicity-since-the-aca-2010-2018/>

⁷ Berchick, Hood, and Barnett, Health Insurance Coverage in the United States: 2017 (U.S. Census Bureau, 2018), <https://www.census.gov/library/publications/2018/demo/p60-264.html>

Minority populations experience higher rates of disease and illness, and often have worse outcomes. In 2017, 12.6% of Black children had asthma, while the rate for White children was 7.7%; 42% of Black adults had hypertension, compared to 28.7% of White adults (see Figure 1).⁸ And compared to White adults, the risk of having a diabetes diagnosis is 77% higher among African Americans, 66% higher for Latinos, and 18% higher among Asian Americans (see Figure 2).⁹

FIGURE 2: RISK OF DIABETES DIAGNOSIS BY RACE COMPARED TO WHITE ADULTS



Data source: Meng, Ying Ying, et. al (2016)

Major racial disparities are also reflected in the incidence of cancer. Minority racial and ethnic groups are less likely to be screened for cancer, and are therefore more likely to be diagnosed with late-stage cancer, which is more difficult to treat successfully.¹⁰ In addition, individuals who live in poverty – and are more likely to be members of minority groups – have different rates of behavioral risk factors for cancer, including obesity, smoking, and physical inactivity.¹¹ Environmental factors also play a role in cancer susceptibility; dense urban neighborhoods, for example, experience higher rates of

⁸ National Center for Health Statistics, Health, United States 2018 (2018),

<https://www.cdc.gov/nchs/data/abus/abus18.pdf#Highlights>

⁹ Meng, Ying, et al, Racial and Ethnic Disparities in Diabetes Care and Impact of Vendor-Based Disease Management Programs, (2016),

[https://care.diabetesjournals.org/content/39/5/743#:~:text=Diabetes%20disproportionately%20affects%20racial%2Fethnic.among%20Asian%20Americans%20\(1\).](https://care.diabetesjournals.org/content/39/5/743#:~:text=Diabetes%20disproportionately%20affects%20racial%2Fethnic.among%20Asian%20Americans%20(1).)

¹⁰ National Cancer Institute, Cancer Disparities, <https://www.cancer.gov/about-cancer/understanding/disparities>

¹¹ Ibid.

exposure to carcinogens.¹² Asthma, hypertension, diabetes, and cancer are confirmed or potential underlying medical conditions that increase the risk of severe illness due to COVID-19.¹³

RACIAL DISPARITIES IN COVID-19 RATES

As is the case with other diseases, people of color in the U.S. have experienced disproportionately higher infection and mortality rates for COVID-19. Even when controlling for income, counties with large non-White populations have significantly higher infection rates.¹⁴ Within counties, federal data shows that Latino and Black residents are three times as likely to contract the virus as their White neighbors.¹⁵ Half of the people who died of coronavirus in the first seven months of 2020 were people of color. In addition, deaths among people of color have risen at a higher rate than for Whites as the pandemic has progressed.¹⁶

These disparities are apparent on a national as well as local scale, as shown in Figure 4. In Chicago, Blacks make up more than 70% of the city's COVID-19 deaths, despite accounting for only 29% of the city's population.¹⁷ In Michigan as a whole, 14% of the residents are Black, yet Black individuals make up 33% of patients diagnosed with COVID-19 in the state.¹⁸

¹² Ibid.

¹³ Centers for Disease Control and Prevention, Coronavirus Disease 2019 (COVID-19), People with Certain Medical Conditions, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

¹⁴ Adhikari et al., Journal of the American Medical Association, Assessment of Community-Level Disparities in Coronavirus Disease 2019 (COVID-19) Infections and Deaths in Large US Metropolitan Areas (2020), <https://jamanetwork.com/journals/jamanetworkopen/article-abstract/2768723>

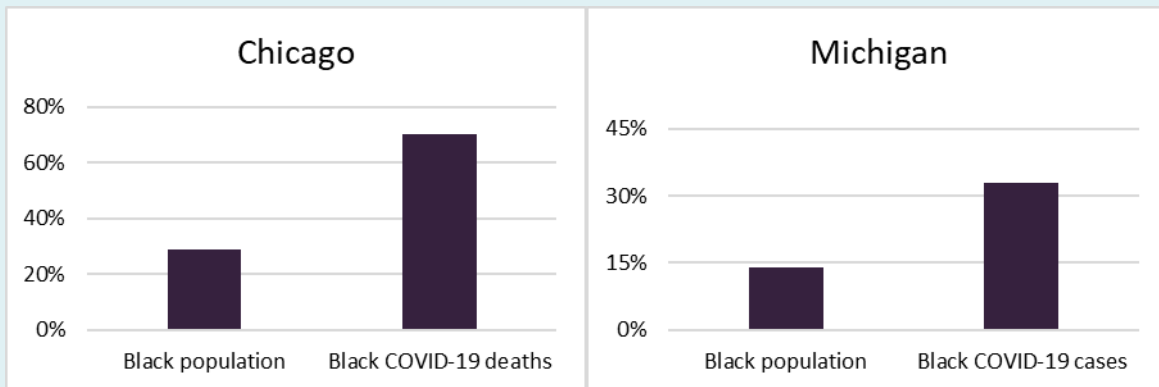
¹⁵ New York Times, The Fullest Look Yet at the Racial Inequity of Coronavirus (July 5, 2020), <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latinos-african-americans-cdc-data.html>

¹⁶ Flagg, Sharma, Fenn, and Stobbe, COVID-19's Toll on People of Color Is Worse Than We Knew (August 21, 2020), https://www.themarshallproject.org/2020/08/21/covid-19-s-toll-on-people-of-color-is-worse-than-we-knew?utm_medium=email&utm_campaign=newsletter&utm_source=opening-statement&utm_term=newsletter-20200824-2112&utm_source=The+Marshall+Project+Newsletter&utm_campaign=bdbec12714-EMAIL_CAMPAIGN_2020_08_24_11_19&utm_medium=email&utm_term=0_5e02cdad9d-bdbec12714-174540561

¹⁷ Chicago CBS Local, African Americans Make Up More Than 70 Percent Of Chicago's COVID-19 Deaths (Date Unknown), <https://chicago.cbslocal.com/black-chicagoans-make-up-70-of-coronavirus-deaths-in-chicago/>; Cook County Government Medical Examiner Case Archive, <https://datacatalog.cookcountyil.gov/Public-Safety/Medical-Examiner-Case-Archive/cieq-bs86>

¹⁸ Shah, Sachdeva, and Dodiuk-Gad, COVID-19 and racial disparities, [https://www.jaad.org/article/S0190-9622\(20\)30659-9/pdf](https://www.jaad.org/article/S0190-9622(20)30659-9/pdf); Michigan Data https://www.michigan.gov/coronavirus/0,9753,7-406-98163_98173--,00.html

FIGURE 3: RACIAL DISPARITIES IN COVID-19 DEATHS IN CHICAGO AND IN COVID-19 CASES IN MICHIGAN



Data sources: Chicago CBBS Local, Cook County Government Medical Examiner Case Archive; Shah, Sachdeva, and Dodiuk-Gad, Michigan Data

One factor explaining the racial disparities in COVID-19's infection and mortality rates may be that a higher percentage of White employees can work from home than Black employees, according to U.S. Bureau of Labor Statistics data.¹⁹ Jobs deemed essential during the COVID-19 pandemic are more likely to be in front-line industries, such as grocery and convenience stores, public transit, and trucking and warehouses. These positions, which mirror some of the employment opportunities more likely to be available to individuals exiting the criminal justice system,²⁰ are disproportionately held by workers of color.²¹ Also, as noted earlier, Black Americans have higher rates of preexisting health conditions such as hypertension, lung disease, and cancer, which has contributed to higher COVID-19 mortality rates for this population.²²

¹⁹ Table 1. Workers who could work at home, did work at home, and were paid for work at home, by selected characteristics, averages for the period 2017-2018 <https://www.bls.gov/news.release/flex2.t01.htm>

²⁰ Visher, Debus, and Yahner, Urban Institute Justice Policy Center, Employment after Prison: A Longitudinal Study of Releases in Three States (October 2008), <https://www.urban.org/sites/default/files/publication/32106/411778-Employment-after-Prison-A-Longitudinal-Study-of-Releasees-in-Three-States.PDF>

²¹ Gould & Wilson, Economic Policy Institute, Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality (June 2020), <https://www.epi.org/publication/black-workers-covid/>

²² Benitez, Courtemanche, and Yelowitz, Racial and Ethnic Disparities in COVID-19: Evidence from Six Large Cities (July 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3661084

RACIAL DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM DURING THE COVID-19 PANDEMIC

More research and analysis are needed, but initial data indicate that the COVID-19 pandemic may have exacerbated racial disparities in the criminal justice system. Stay-at-home orders, mask wearing, and other physical distancing mandates to mitigate the spread of the virus presented challenges for law enforcement officers and prosecutors in deciding how to effectively enforce these new rules. Some early data indicates that Black people may have been disproportionately arrested for physical distancing violations.²³ Anecdotal evidence indicates that law enforcement may be enforcing these orders more often in minority neighborhoods or for minority individuals.²⁴

Research conducted for the National Commission on COVID-19 and Criminal Justice (Commission) shows that through late August, the COVID-19 case rate for people in state and federal prisons was more than four times higher than the general U.S. population.²⁵ The same research found that the mortality rate within prisons (61.8 deaths per 100,000 people in prison) was twice as large as the mortality rate for the general population, after adjusting for the sex, age, and race/ethnicity of those incarcerated. Additionally, many of the largest documented COVID-19 clusters in the U.S. through early September were associated with correctional facilities.²⁶ While research into the underlying causes of this pattern is not yet available, limitations on the ability to implement physical distancing practices that are inherent to the conditions of incarceration seem to be a likely factor.

Only a handful of states have reported data on the racial makeup of COVID-19 cases among incarcerated people.²⁷ It is unclear whether state correctional agencies are collecting and not reporting these data, or not collecting demographic data on COVID-19 cases at all. The data that have been reported publicly do not paint a consistent picture. According to The Marshall Project, Black people in several state prisons in Michigan have

²³ Kaplan & Hardy, ProPublica, Early Data Shows Black People are Being Disproportionally Arrested for Social Distancing Violations (May 2020), <https://www.propublica.org/article/in-some-of-ohios-most-populous-areas-black-people-were-at-least-4-times-as-likely-to-be-charged-with-stay-at-home-violations-as-whites>

²⁴ Id.; Southall, New York Times, Scrutiny of Social-Distance Policing as 35 of 40 Arrested Are Black (May 2020), <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html>; Jouvenal & Brice-Saddler, Washington Post, Social distancing enforcement is ramping up. So is concern that black and Latino residents may face harsher treatment (May 2020), https://www.washingtonpost.com/local/public-safety/social-distancing-enforcement-is-ramping-up-so-is-concern-that-black-and-latino-residents-may-face-harsher-treatment/2020/05/10/b1bcf490-8fbd-11ea-9e23-6914ee410a5f_story.html

²⁵ Kevin Schnepel, Simon Fraser University, COVID-19 in US state and federal prisons (August 2020), Prepared for the National Commission on COVID-19 and Criminal Justice, <https://covid19.counciloncj.org/2020/09/02/covid-19-and-prisons/>

²⁶ Equal Justice Initiative, COVID-19's Impact on People in Prison, <https://eji.org/news/covid-19s-impact-on-people-in-prison/>

²⁷ Eileen Guo, As Covid-19 cases in prisons climb, data on race remain largely obscured (August 20, 2020), <https://www.statnews.com/2020/08/20/covid19-prisons-race-ethnicity-data/>

died from COVID-19 at a higher rate than the Black people in the state overall (48 percent to 40 percent).²⁸ Data from the Department of Corrections in Washington State, on the other hand, reveal percentages of confirmed COVID-19 cases by race that are not substantively dissimilar from the percentages of the total incarcerated population by race (see Table 1).²⁹

TABLE 1: RACE OF CONFIRMED COVID-19 CASES IN THE INCARCERATED POPULATION IN WASHINGTON STATE PRISONS

Race	Number of Individuals	Percentage of Confirmed Cases	Percentage of Total Incarcerated by Race
White	321	71.0%	69.5%
Black	68	15.0%	17.8%
American Indian/Alaska Native	33	7.3%	5.9%
Asian/Pacific Islander	15	3.3%	4.3%
Other	8	1.8%	1.6%
Unknown	7	1.6%	0.9%

Source: Department of Corrections, Washington State

²⁸ Chammah & Meagher, The Marshall Project, Is COVID-19 Falling Harder on Black Prisoners? Officials Won't Tell Us. (May 2020), <https://www.themarshallproject.org/2020/05/28/is-covid-19-falling-harder-on-black-prisoners-officials-won-t-tell-us>

²⁹ Department of Corrections, Washington State, <https://www.doc.wa.gov/corrections/covid-19/data.htm#demographics>

The populations of some correctional facilities, largely city or county jails, have been reduced in order to slow the spread of the coronavirus. Some data indicates that the demographics of those who remain incarcerated reflect more significant racial disparities than existed prior to such releases. The Public Safety Lab at New York University, for example, reported to the Commission that as jail populations dropped between mid-March and May 2, there were increases in the proportion of people who were booked on felony charges, who were male, who were 25 years old or younger, and who were Black. Data show that those changes persisted after jail populations began rising again.³⁰

A similar pattern appears to be occurring in the juvenile correctional population. According to surveys conducted in 34 states by the Annie E. Casey Foundation, the number of youth in detention facilities fell sharply in the first few months of the pandemic but then leveled off.³¹ In June and July, White youth were released from detention facilities at faster rates than youth of color. In terms of detention admissions, trends have varied across groups: between May and August, admissions fell 6% and 3% for White and Black youth while they rose 9% for Latinos and 31% for Native Americans.

Without demographic data for at least a representative sample of incarcerated populations nationwide who have been diagnosed with, or have died from, COVID-19, it is impossible to know with certainty the extent to which people of color in the corrections system are experiencing disparate outcomes in the current pandemic. Even with that data, a statistician at the University of Miami suggests that a lack of disparities in this kind of data may be due to the fact that, "Black individuals are so overrepresented in prisons that they have become a random sample of the overall Black population, while incarcerated white people tend to have more health problems than white people in the general population."³² This highlights the inherent complexity in understanding racial dimensions in health outcomes among incarcerated populations.

CONCLUSION

Racial and ethnic disparities among individuals and communities impacted by both the criminal justice and healthcare systems existed before COVID-19, and the pandemic likely has exacerbated them. Those disparities are evident and well-documented in the health impact and mortality rates of COVID-19. However, an absence of demographic data related to COVID-19 in criminal justice systems across the country makes it difficult to

³⁰ Harvey & Taylor, Impact Report: COVID-19, Jails, and Public Safety. Council on Criminal Justice, September 2020, https://cdn.ymaws.com/councilonci.org/resource/resmgr/covid_commission/covid-19_jails_and_public.pdf

³¹ Annie E. Casey Foundation, Growing Numbers of Latino and Native Youth in Juvenile Detention Buck Trend, September 23, 2020, <https://www.aecf.org/blog/growing-numbers-of-latino-and-native-youth-in-juvenile-detention-buck-trend/>

³² Eileen Guo, As Covid-19 cases in prisons climb, data on race remain largely obscured (August 20, 2020), <https://www.statnews.com/2020/08/20/covid19-prisons-race-ethnicity-data/>

draw conclusions about racial and ethnic disparities and related impacts of the pandemic. More than anecdotal evidence is needed to draw confident conclusions and to decide critical next steps for effectively addressing any impacts of COVID-19 on these disparities across the justice system.

Moving forward, local, state, and federal authorities will need COVID-19 infection and mortality data by race and ethnicity to fully understand how the virus has influenced disparities among justice-involved populations. While this data will be useful for COVID-19 decision-making and responses within each jurisdiction, it can also help to address some of the more entrenched challenges around data collection, sharing, and comparability across the justice system as a whole. More robust, consistent, and reliable data will not only help prevent the spread of COVID-19 within the criminal justice system, but may also shed light on some of the underlying causes and characteristics of racial disparities that existed pre-pandemic and may persist after the COVID-19 crisis subsides.