RACIAL IMPACT STATEMENTS

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About the Fellow

Mykelle Richburg is a Master of Public Administration/Nonprofit Management student at George Washington University. She became interested in racial disparities in the criminal justice system as a psychology and criminology major at Howard University. Her background includes coordinating a service trip to St. Croix to assist with hurricane relief and organizing the Sadie T.M. Alexander Conference for Black Women in Economics.

This summer, Mykelle observed racial disparities in Montgomery County, with a focus on community policing. She hopes that this information can improve community relations with the police, which will help reduce racial disparities within community policing.

Acknowledgements

EXECUTIVE SUMMARY

Background

Racism has been a systemic feature of American society and all its institutions since this nation's inception. Often times, racial biases and views stem from implicit and institutional bias which can have an impact on disparities in policing. Racial disparities can be defined as numerical differences in outcomes between racial groups, such that one group is disproportionately represented compared to others and/or the population. The racial disparities African Americans and other minorities face during police encounters can be explained by bias-based policing. Bias-based profiling occurs when, whether intentionally or unintentionally, an officer applies his or her own personal, societal, or organizational biases or stereotypes when making decisions or taking police action, and the only reason for that decision or action is because of a person's race, rather than due to the observed behavior of the individual. Racial Impact Statements are formal documents designed to evaluate the current or predicted impact of policies, programs, and budget decisions on racial disparities.

This study's findings show how Racial Impact Statements can be a vital tool for preventing institutional racism and for identifying new options to remedy long-standing inequities. Policymakers may also be able to modify existing legislation that can affect minorities negatively.

Summary of Recommendations

- Implement the use of Racial Impact Statements for existing and prospective policing policies.
- Further develop and implement trainings designed to mitigate the influence of bias-based policing.
- Create a database that tracks bias-based interactions
- Evaluate the effectiveness of anti-bias based trainings and identify areas of improvement

AIMS OF THE REPORT

- **Outline** racial disparities in community policing
- **Identify** how racial disparities have impacted community policing in Montgomery County
- **Provide** background on how racial disparities have previously been addressed in Montgomery County
- **Research** racial equity assessments and tools that other jurisdictions have used
- **Give** recommendations on racial equity assessment tools that Montgomery County should incorporate into reducing racial disparities within community policing

Definitions

- **Racial disparities** are defined as numerical differences in outcomes between racial groups, such that one group is disproportionately represented compared to others and/or the population.
- **Implicit bias** are attitudes or stereotypes that can influence our beliefs, actions and decisions, even though we're not consciously aware of them and don't express those beliefs verbally to ourselves or others. One of the most well-demonstrated types of implicit bias is the unconscious association between black individuals and crime.
- **Community-oriented policing** is a philosophy of policing that emphasizes community involvement in crime prevention efforts, in contrast to the focus of traditional policing on law enforcement and order maintenance.
- **Racial Equity Impact Assessments** are systematic examinations of how different racial and ethnic groups will likely be affected by a proposed action or decision. They are used to minimize unanticipated adverse consequences in a variety of contexts, including the analysis of proposed policies, institutional practices, programs, plans and budgetary decisions.

BACKGROUND

Racial Disparities

Racism has been a systemic feature of American society and all its institutions since this nation's inception (Edwards, 2018). The different biases, attitudes, and values to these institutions can also have a negative impact on others. Often, racial biases and views stem from implicit bias and institutional bias, which can have an impact on disparities in policing (Weir, 2016). Implicit biases are attitudes or stereotypes that can influence ones beliefs, actions and decisions, even if one is not consciously aware of them and don't express those beliefs verbally to themselves or others. One of the most well-demonstrated types of implicit bias is the unconscious association between black individuals and crime (Weir, 2016). As a result of implicit biases, minorities are subject to more discrimination in comparison to their white counterparts.

Within the criminal justice system, racism is evident from sentencing to mass incarceration to police shootings. Police officers sometimes bring negative attitudes and or stereotypes to minority communities that can adversely affect their decisions and the fairness of their enforcement actions (Edwards, 2018). Minorities are often more likely to be searched at routine traffic stops and arrested. In a study where participants were shooting at targets, researchers found that participants shoot armed targets more often and more quickly if they're black rather than white, and refrain from shooting more often when the target is white. The most common mistakes are shooting an unarmed black target and failing to shoot an armed white target (Weir, 2016).

Racial disparities can be defined as numerical differences in outcomes between racial groups, such that one group is disproportionately represented compared to others and/or the population (Kahn 2016). The Racial Equity in Government report finds that racial disparities "today reflects both our country's past and present: the government's historical promotion of slavery and Jim Crow and the different treatment of people of color that continues to persist as a result of implicit and explicit bias." Within community policing, minorities such as African Americans and Latinos tend to be disproportionately affected by racial disparities. More specifically, African Americans are more likely than white Americans to be arrested; once arrested, they are more likely to be convicted; and once convicted, they are more likely to experience lengthy prison sentences. (Weir, 2016). African American adults are also 5.9 times as likely to be incarcerated than whites and Hispanics are 3.1 times as likely (Weir, 2016). The probability of being black, unarmed and shot by police is about 3.5 times the probability of being white, unarmed and shot by police. (Weir, 2016). African Americans are also more likely to be killed by the police compared to their counterparts. In an analysis of accounts of more than 12,000 police homicides from 1980 to 2012 contained in the FBI's supplementary homicide

report, young African American men (ages 15-19) were 21 times more likely to get killed by police than their white counterparts (Gabrielson, Jones, & Sagara, 2014). Data that is available suggests that Maryland has a very high number of police-involved civilian deaths relative to other states. Findings from the 2015 ACLU Briefing Papers on Police encounters show that at least 109 people died in police encounters in Maryland between 2010-2014. 69 percent of those who died in a police encounter (75 people) were Black. Blacks make up 29 percent of Maryland's population (ACLU, 2015). Out of the 109 deaths, ten of those deaths occurred in Montgomery County, which was the fourth highest in deaths from police encounters in Maryland.

Racial Profiling/Biased-Based policing

The racial disparities African Americans and other minorities face during police encounters can be explained by bias-based policing. Bias-based profiling occurs when, whether intentionally or unintentionally, an officer applies his or her own personal, societal, or organizational biases or stereotypes when making decisions or taking police action, and the only reason for that decision or action is because of a person's race, ethnicity, background, gender, sexual orientation, religion, economic status, age, culture or other personal characteristics, rather than due to the observed behavior of the individual or the identification of the individual as being, having been or about to be engaged (Bradenton, 2019). Often, bias based profiling often leads to allegations of violations of constitutional and/or civil rights. It undermines legitimate law enforcement efforts and causes distrust of law enforcement. (Eustis, 2019).
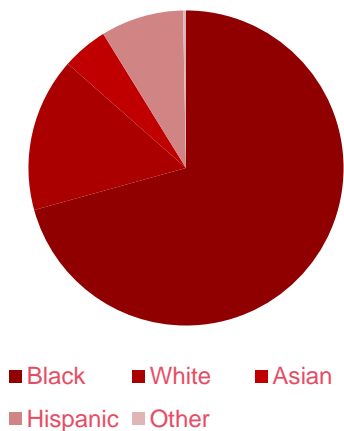
Community policing

The Office of Community Oriented Policing Services defines community policing as a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime. Community policing requires the active building of positive relationships with members of the community − on an agency as well as on a personal basis (COPS, 2015).The approach that community policing takes requires collaboration from all members of the community. Community policing helps reinforce accountability and creates a space for innovative ways to improve community relations with the police.
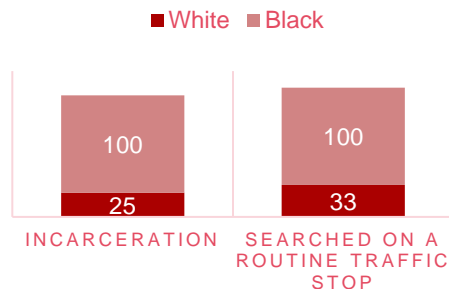
RACIAL DISPARITIES IN MONTGOMERY COUNTY

In Montgomery County, African Americas make up 19.8% of the population, yet in comparison to their White Counterparts they are:

- **More likely to be incarcerated**: Relative risk index of a white person being incarcerated relative to a Black person: Black (100%) White (25%)

- **More likely to be arrested**: Blacks were 19.8% of the population and 43.9% of arrests. Blacks were 21.3 percent of the school age population and 58 percent of juvenile justice intake.

- **Less likely to make up the police force:** 15.8% of Montgomery County Police Department is Black, 70.7% is white; and,

- **More likely to be searched on a routine traffic stop:** Relative risk index of a white person being searched to a Black person: Black (100%) White (33%)
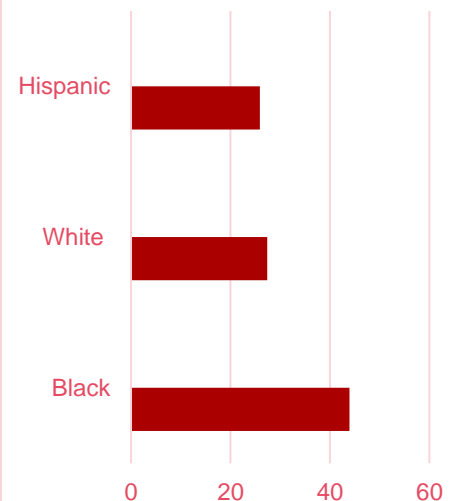
Mongtomery County Police Department Police Demographics (2017)

Legend: Black, White, Asian, Hispanic, Other

RELATIVE RISK INDEX OF A WHITE PERSON HAVING A BAD OUTCOME...

Legend: White, Black

	White	Black
INCARCERATION	25	100
SEARCHED ON A ROUTINE TRAFFIC STOP	33	100

Arrests in 2017

	Value
Hispanic	~26
White	~27
Black	~44

(x-axis: 0, 20, 40, 60)

Current Work in Montgomery County

Currently, the Montgomery County Council is working to pass Racial Equity and Social Justice Legislation that will address racial disparities. Additional efforts underway in the County include:

- The Government Alliance on Race and Equity (GARE) is a national network of governments working to achieve racial equity and advance opportunities for all. Montgomery County is a member of this alliance. The goal of the organization is to further policies and tools that support racial equity such as the use of an "equity lens" to evaluate who benefits from public policies, regulations and practices as well as to develop of assessment tools and plans to inform local decision-making.

- In January 2019, the County Council passed the Law Enforcement Trust and Transparency (LETT) Act. The goal of this legislation is to ensure that when a police officer is involved in the death of an individual, investigations into that officer's conduct are independent, impartial and transparent. The LETT Act serves to eliminate potential conflicts of interest and help improve the public's trust in law enforcement.

- Additionally, Councilmember Hans Riemer, along with Councilmember Will Jawando introduced legislation that would create a Police Advisory Commission. Members of the commission will focus on improving community policing, de-escalation training and reviewing traffic stop encounters. The commission would consist of criminal justice policy experts, employees and community members and aims to provide recommendations to the County Council and the County Executive.

- The Council tasked the Office of Legislative Oversight with describing racial disparities by race and ethnicity across the county. Findings from the Racial Equity Profile will be used to assist the County Council with developing Racial Equity and Social Justice Education legislation.

Racial Impact Statements

The Racial Equity Profile defines Racial Impact Statements as "formal documents designed to evaluate the current or predicted impact of policies, programs, and budget decisions on racial disparities." Racial Impact Statements can be a vital tool for preventing institutional racism and for identifying new options to remedy long-standing inequities (OLO, 2018). Policymakers may also be able to modify existing legislation that affects minorities negatively (Sentencing Project, 2017). Policymakers are also able to analyze the future implications of possible policies. Before conducting a Racial Equity Impact Assessment, The Annie E. Casey Foundation identified the following questions that should be kept in mind:

- Who are the racial/ethnic groups in the area? For this policy/program/practice, what results are desired, and how will each group be affected?
- Do current disparities exist around this issue or closely related ones? How did they get that way? If disparities exist, how will they be affected by this policy/program/practice?
- For this policy/program/practice, what strategies are being used and how will they be perceived by each group?
- Are the voices of all groups affected by the action at the table?
- Do the answers to the above questions work to close the gaps in racial disparities in culturally appropriate, inclusive ways? If not, how should the policy/program/practice be revised? If so, how can it be documented in order to offer a model for others?

Racial Equity tools are analytical approaches for applying a racial equity lens to decision-making. In the Racial Equity Profile, the Office of Legislative Oversight recommended that Montgomery County develop tools to apply a racial equity lens to proposed budgets and legislation. Racial Impact Statements provide a valuable analytical tool to help determine whether proposed changes contribute to existing disparities. For example, to promote racial equity in the face of looming cuts to social services, it may prove beneficial to first analyze the effect of the proposed legislation on minorities prior to enacting it (Fathi, 2011). By forcing legislators to confront the racial implications of proposed legislation, impact statements can elicit discussion of potential repercussions prior to the enactment of policies with racially disparate effects.

Findings

A handful of states have implemented the use of Racial Impact Statements before codifying future laws or regulations regarding criminal justice issues affecting minorities.

Iowa

Iowa was the first state in the nation to implement the use of Racial Impact Statements after findings showed that Iowa had the highest disparities for sending blacks to prison (Mauer, 2007). Legislation requires that in addition to preparing a correctional impact statement for proposed policy changes, a correctional impact statement must be attached to "any bill, joint resolution, or amendment which proposes a change in the law which creates a public offense, or significantly changes an existing public offense (Mauer, 2008). In addition to the correctional impact statement, the legislative services agency should also conduct a racial impact analysis that examines the impact of sentencing or parole changes on racial and ethnic minorities. As a result of racial impact statements, only six out of 26 bills that disproportionately affected minorities passed while 14 out of 35 bills that were found to have positive outcomes on minorities became laws (Mauer, 2008). Out of all the states that requires racial impact statements, Iowa also has the most Racial Impact Statements.

Oregon

Lawmakers in Oregon required that racial impact statements be used when considering legislation regarding criminal justice and child welfare. As a result, the use of racial impact statements in Multnomah County, Oregon led to a greater than 50% reduction in the number of youths detained, and a near complete elimination of racial disparities in the proportion of delinquency referrals resulting in detention (Sentencing Project, 2014).

Connecticut

In Connecticut, legislators passed a law that states racial impact statements "shall be prepared with respect to certain bills and amendments that could, if passed, increase or decrease the pretrial of sentenced population of correctional facilities of the state (Faithie, 2011)." The legislation was written to decrease a major racial disparity "where one of eleven African American men between the ages of eighteen and sixty-four was in jail in 2000 (Ct., 2009)."

New Jersey

New Jersey became the fourth state in 2018 to implement racial impact statement legislation to provide an opportunity for lawmakers to address the state's high rate of racial disparity in incarceration (Sentencing Project, 2018). Legislation requires that racial and ethnic impact statements include a statistical analysis of how the change in policy would affect racial and ethnic minorities (New Jersey, 2018). Additionally, the law would amend public distribution of notices to appear in the

Register for adoption, amendment, or repeal of any rule to include a racial impact statement (New Jersey, 2018).

Similar Jurisdictions

Minnesota

The Minnesota Sentencing Guidelines Commission collects information on the predicted impact upon racial minorities of proposed legislation and provides this information to the legislature alongside the fiscal impact note (Erikson, 2014). Minnesota is the only state where the Minnesota Sentencing Guidelines Commission (MSGC), not the legislature, initiated the idea of racial impact statements and conducts the process. In 2008, the commission conducted a "racial impact analysis for proposed legislation that would have increased the classification of the hallucinogenic Salvia to a schedule IV drug (Fathi, 2011). After cross-references found data that Minnesota's black population comprised of 25% of the offender population despite making up only 4.3% of the entire population. The report found a potential disparity if blacks "heavily represented the general population in use or sale of a drug." Through these findings, the Commission hopes that the state legislature uses this to rethink a policy that could be detrimental to blacks (Erikson, 2014).

Other states that are currently working on legislation to enact racial impact statements include Illinois, Kentucky, Mississippi, New York, Oklahoma and Vermont. Maryland proposed legislation in 2012, but it did not successfully pass.

Recommendations

Given the racial disparity in Montgomery County that Blacks are 19.8 percent of the population but make up 43.9 percent of police arrests, the County should undertake the following actions to address racial equity with respect to policing:

Implementing the use of Racial Impact Statements for existing and prospective policing policies. Racial Impact Statements can prohibit any harm to minorities as a result of analyzing legislation before it is passed. Racial Impact Statements can also improve current legislation and find more equitable solutions for minorities. Montgomery County can use Racial Impact Statements to measure baseline arrest rates by race/age/sex/zip code before the legislation is enacted and measure it after new community policing measures have been implemented. Additionally, Racial Impact Statements can be generated from community input, which will enhance community policing. The Racial Impact Statements generated from the community can help provide ideas for culturally appropriate initiatives, which can help reduce bias-based policing and improve relations.

Developing and implementing trainings designed to mitigate the influence of bias-based policing. Studies have proven that it is possible to control for the effects of implicit racial bias on individual decision-making by providing training and educational opportunities. Yearly trainings should be administered that focus primarily on bias-based policing (Sentencing Project, 2018). These courses should allow officers to gain an understanding of their constituents socially and culturally. The goal of training and education should be to reduce, and eventually eliminate, bias-based interactions. The classes should reduce and eventually eliminate any bias-based interaction that tend to target minorities. The Relias Academy provides certification courses on racial and biased policing that "discuss the various aspects of such prejudices, and how officers can operate effectively without being influenced by local prejudices (Relias, 2019)." Officers should also take an Implicit Association test.

Creating a database that tracks bias-based interactions. The creation of this database will reinforce accountability and transparency within the County. The interactions should be monitored regularly, and the findings used to assess the impact of the trainings. The data should reveal what is needed in terms of area of improvements in terms of the training. Community members should be informed of the data collected and should give feedback on how effective the training is regarding improving community relations. Currently there is no information available that tracks instances of biased interactions.

Future Research

In addition to implementing Racial Impact Statements, the council should consider other racial equity assessment tools such as a Risk-Needs-Responsivity (RNR) model. The RNR model determines the risk of the convicted offender and assigns them to a treatment program based on their risk level (National Center for State Courts, 2011). Rehabilitation, treatment and sentencing should be based on an individual's risk of recidivism level (low, medium, or high). Studies have shown that use of Risk-Needs-Responsivity has helped reduce recidivism. In one study, evaluators Bonta, Wallace-Capretta and Rooney found that low risk offenders who received minimal levels of treatment had a recidivism rate of 15% and low-risk offenders who received intensive levels of services had more than double the recidivism rate (32%). In the same study, the high-risk offenders who did not receive any intensive treatment services had a recidivism rate of 51%, but the high-risk offenders who did receive intensive services had almost half the recidivism rate (32%) (Bonta et. al, 2000). The risk principle calls for intensive treatment services to be reserved for the higher risk offender.

Conclusion

In order to improve community relations, we must include community input in the creation of Racial Impact Statements. Racial Impact Statements help eliminate sources of bias and prejudice which helps reduce disparities and discrimination regarding community policing. With the enactment of Racial Impact Statements, Montgomery County has a chance to influence the outcome of laws and ensure equity amongst all its constituents.

Appendix

Racial Impact Statement for HF2557: Public Safety Personnel Protection Act
Minnesota Sentencing Guidelines Commission
March 22, 2016

By providing the following information on race, the Sentencing Guidelines Commission (MSGC) seeks to enrich the discussion on how racial minorities in Minnesota are affected by changes in sentencing policy. If a significant racial disparity can be predicted before a bill is passed, it may be possible to consider alternatives that enhance public safety without creating additional disparity in Minnesota's criminal justice system. Just as with the fiscal impact notes, the agency does not intend to comment on whether a particular bill should be enacted. Rather, it is setting out facts that may be useful to the Legislature, whose members frequently express concerns about the disparity between the number of minorities in our population and the number in our prisons.

According to the 2010 U.S. Census (the most recent census data available), 86.1 percent of Minnesotans 18 years of age or older were white. The remaining 13.8 percent were: 4.3 percent black; 3.7 percent Hispanic; 3.7 percent Asian; 1 percent American Indian; and roughly 1.2 percent who identify themselves with two or more races or another race. (Figure 1-Bar 1.)

By comparison, 2014 MSGC monitoring data show the following racial make-up of the felony offender population: 58.5 percent white; 25.8 percent black; 5.0 percent Hispanic; 2.7 percent Asian; and 8.0 percent American Indian. (Figure 1-Bar 2.) Racial disparities may therefore be said to exist in Minnesota's black, Hispanic, and American Indian felony offender populations.

According to the Minnesota Department of Corrections, the racial composition of the prisons on January 1, 2016, was as follows: 46.4 percent white; 35.5 percent black; 6.3 percent Hispanic; 2.6 percent Asian; and 9.2 percent American Indian. (Figure 1-Bar 4.) Racial disparities may therefore be said to exist in Minnesota's black, Hispanic, and American Indian prison populations.

Bill Description

This bill expands the responders covered in the offense of obstructing legal process, arrest or firefighting. It establishes a 24-month mandatory minimum for the existing felony offense and creates a new felony offense, with a 12-month mandatory minimum, for what are now misdemeanor and gross misdemeanor offenses.

Racial Disparity Impact

If enacted, the bill will result in an increase in the number of offenders sentenced for felonies and an increase the number of offenders receiving an either an executed prison sentence or a jail sentence. To estimate the racial impact, MSGC assumes that the racial distribution of offenders sentenced for the new felony-level obstruction will be similar to the racial distribution of offenders currently sentenced for the misdemeanor/gross misdemeanor obstruction offense, according to data received from the Judicial Branch. Of the expected additional offenders receiving felony sentences if this bill is enacted, 56.1 percent are expected to be white, 21.4

percent are expected to be black, 6.2 percent are expected to be Hispanic, 1.3 percent are expected to be Asian offenders, and 13.4 percent are expected to be American Indians. (Figure 1-Bar 3.) Due to a lack of data regarding the criminal histories of the additional offenders receiving felony sentences, the racial distribution of the prison beds projected to be newly occupied is not estimated.

Compared to the racial disparities now existing in Minnesota's felony populations, it appears the bill, if enacted, will exacerbate the existing racial disparity of the felony offender population for American Indian offenders and, to a lesser extent, Hispanic offenders. Any exacerbation of racial disparities within the prison population is not estimated.

Figure 1. 2010 MN Census, 2014 Felony Offenders, and 2016 Prison Population Compared to Projected Additional Felony Offenders
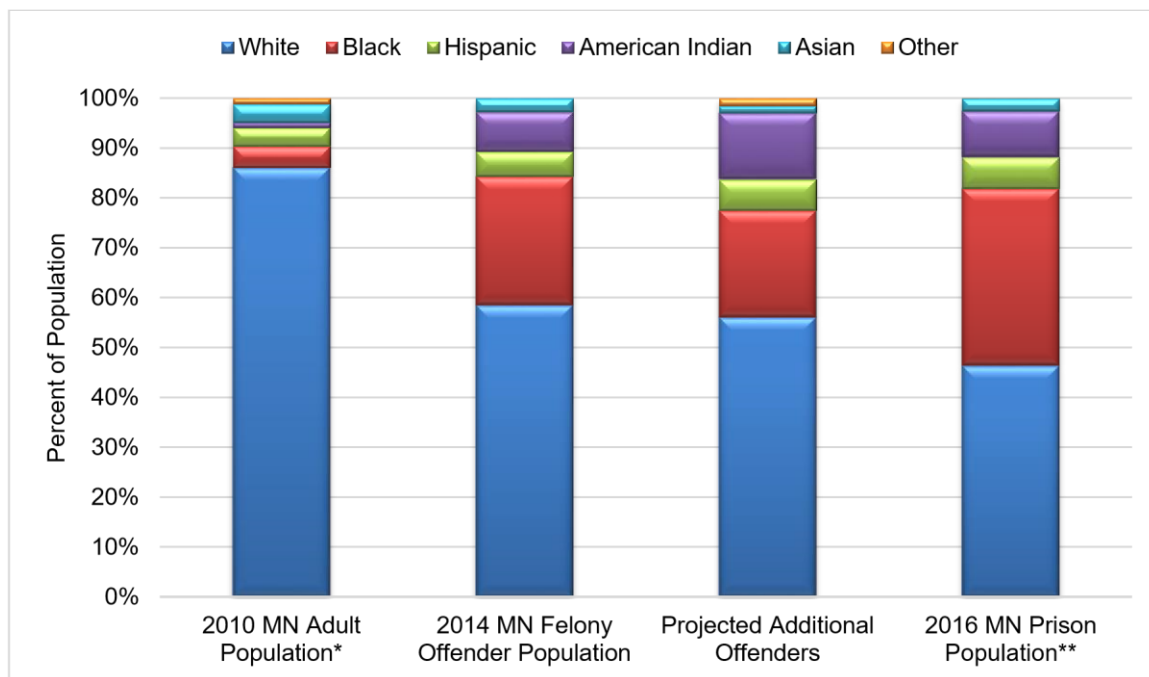
* U.S. Census Bureau; Census 2010, Summary File 1, Table 11; generated by Sarah Welter, Kathleen Madland, and Jill Payne (November 2013).
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