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Minnesota's Offender Outcomes Devoid of Racial Bias

A political narrative at odds with the data

DAVID ZIMMER



David Zimmer is a policy fellow at Center of the American Experiment, where he writes about criminal justice and public safety.

Mr. Zimmer served 33 years in local law enforcement with the Hennepin County Sheriff's Office, retiring as a Captain. During his law enforcement career, Mr. Zimmer served as a deputy and a supervisor in areas including the Jail, Courts, Patrol/Water Patrol, Investigations, and Tactical Command. Mr. Zimmer was recognized as a collaborative law enforcement leader who earned the respect of stakeholders throughout the criminal justice system. He advocates for public policy that will ensure a consequential criminal justice system for all Minnesotans.

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Executive Summary

The prevailing narrative about race in Minnesota’s criminal justice system is that disproportionate representation between black and white offenders throughout the system is evidence of an unfair system that creates racial disparities.

This report analyses Minnesota criminal justice system data for black and white adult criminal offenders in 2022 to determine if the system created “disparities” between the races as offenders traveled from the identification stage through incarceration.

The outcomes between black and white offenders in 2022 demonstrate that while disproportions between the races exist, those disproportions do not equate to unwarranted “disparities” created by an unjust system. This is similar to the findings in American Experiment’s 2023 report examining 2021 data.

Analysis of the variables that led to the differences in outcomes showed those outcomes to be logical, justified, and consistent with our sentencing guidelines.

The disproportions were the result of a stubbornly ignored fact: Black Minnesotans committed a disproportionately large amount of crime, especially serious crimes most likely to result in a prison sentence.

In 2022, despite representing just seven percent of Minnesota’s adult population, black Minnesotans committed 35 percent of all serious crimes (those crimes defined as murder, felony assault, robbery, weapon crimes, felony drug crimes, and rape). In 2022, when adjusted for population share, serious criminal offenders in Minnesota were 11 times more likely to be black than white — up from the ratio of 10:1 in 2021. The ratios were even more disproportionate for felony assault (16:1), murder (33:1), and robbery (84:1).

This updated, 2024 report goes a step further and analyses a larger number of data sets, including some which, on their face, might be viewed as representing disparate outcomes. However, analysis of the variables that led to the differences in outcomes showed those outcomes to be logical, justified, and consistent with our sentencing guidelines.

This report pushes back on a pervasive and persistent political narrative often used as a premise for re-shaping public policy, and explains the disproportions that naturally exist in the criminal justice system.

This report serves as an important justification for re-evaluating the social justice efforts that seek to reduce consequences for black offenders, in hopes of eliminating “disparities.” Such misguided efforts serve to burden the law-abiding black community with disparately high crime rates and correspondingly high victimization rates.

Introduction

Black Minnesotans are disproportionately represented in the criminal justice system compared to their proportion of the general population. However, this disproportionate representation is largely due to an undeniable yet stubbornly dismissed fact: Black Minnesotans commit a grossly disproportionate amount of crime, especially serious crimes likely to result in incarceration such as murder, felony assault, robbery, weapon crimes, felony drug crime, and rape.

This fact is critical to acknowledge if a serious, fact-based evaluation is to take place regarding whether Minnesota's criminal justice system creates racial disparities.

In fact, it is more accurate to say the criminal justice system has responded to the disproportions by improperly attempting to “self-correct” these perceived “disparities.” This self-correction may be partially responsible for ensuring that in many areas white offenders receive more certain and more punitive outcomes than black offenders.

Minnesotans need a criminal justice system that focuses on uniformly responding to criminal behavior regardless of race. It should be focused on ensuring that all offenders face consistently swift, sure, and consequential responses. On these elements, the system is failing, and black law-abiding Minnesotans are paying the price with unduly elevated victimization rates.

Data in 2022 reflected the overall elevated crime rates following the civil unrest of 2020. The 2022 data showed that the ratio of serious criminal offenders in Minnesota remained significantly out of balance between blacks and whites. In 2022, when adjusted for population share, serious criminal offenders in Minnesota were 11 times more likely to be black than white — up from the ratio of 10:1 in 2021.

In direct conflict with the prevailing narrative, the disproportions that followed criminal offenders through the system in 2022 were frequently more favorable to black criminal offenders and less favorable to white criminal offenders — a disproportion that justifiably hasn't elicited calls of “disparate” treatment.

The data used in this analysis, especially offender data, has been readily available through the Minnesota Bureau of Criminal Apprehension (BCA) for the past two years, yet a great many academics and criminal justice policymakers continue to ignore it. Instead, they demonstrate a lack of interest in investigating or challenging the idea of “unwarranted racial disparities” and seem content to parrot the established narrative that because there is disproportionate involvement in the criminal justice system between black and white Minnesotans, that disproportion is proof of disparities created by a systemically racist system.

For example, Sen. Amy Klobuchar has said, “Systemic racism exists at every level of our justice system — we must right these wrongs. This isn't a time for half measures. It's a time for real change & action to hold police accountable and make our justice system more transparent.”¹

Many academics and criminal justice system policymakers have sold us on the need to “self-correct” a problem that really doesn't exist.

As a result, many academics and criminal justice system policymakers have sold us on the need to “self-correct” a problem that really doesn't exist. Policies built to fix a false narrative only serve to deflect attention and resources away from real problems, such as the disproportionate levels of criminal offenders in Minnesota's black community.

For example, when police policy is crafted under the erroneous belief that black criminal offenders are arrested disparately, those policies nearly always strive to decrease arrests as a way of “self-correcting the disparity.” The result is that the very communities besieged by crime, often black communities, suffer disproportionately. The same is true for misguided prosecutorial, judicial, and correctional policies, which, if built on the false premise that black offenders are disparately treated, only serve to weaken accountability over these offenders which in turn subjects Minnesotans, especially black Minnesotans, to more crime.

Communities devastated by crime often lead to an overwhelmed criminal justice system, which in turn reduces the likelihood that offenders in those communities will be held accountable. This vicious cycle hurts all Minnesotans, but it hurts law-abiding black Minnesotans, living in communities devastated by crime, the most.

So, efforts to reduce the disproportionate levels of black criminal offenders in Minnesota are desperately needed if we are to make these communities safer.

Racial disproportion does exist within the criminal justice system, but it is the direct result of disproportionate levels of criminal offenders, the seriousness of crimes committed, and criminal histories of offenders — not a biased system. It is illogical and self-destructive to address disproportions created largely outside the system by altering accountability and consequences within the system.

The Term “Disparities”

The narrative of unwarranted racial disparities in the criminal justice system is pervasively entrenched in the criminal justice profession, academia, and public health.

According to the United States Department of Justice, “‘racial disparity’ is defined as existing in the criminal justice system when the ‘proportion of a racial/ethnic group within the control of the system is greater than the proportion of such groups in the general population.’”²

The Vera Institute of Justice, an independent non-profit organization whose mission is to end overcriminalization and mass incarceration of people of color, frequently makes declarative statements perpetuating the narrative of unwarranted racial disparities in the criminal justice system, such as: “Discriminatory criminal justice policies and practices at all stages of the justice process have unjustifiably disadvantaged Black people, including through disparity in the enforcement of seemingly race-neutral laws.”³

The narrative is even found in Minnesota’s Department of Health literature. “Inequities exist in Minnesota in the disproportionate incarceration rates between whites and African

Americans...Structural racism in the criminal justice system (policing, policies, sentencing policy, etc.) has contributed to these disparities.”⁴

The term “disparity” is frequently misused when reporting differences in outcomes by race in the criminal justice system. Disparities reflect inequitable and unfair outcomes experienced by racial groups and suggest the cause is racial bias. Determining whether a disparity exists is subjective and requires thoughtful analysis. Disproportion reflects being out of proportion to a base population — or inequality — and is objective.

Differences in criminal justice system involvement between black and white Minnesotans do not automatically evince disparity. Rather, they most often reflect a disproportion in criminal offending. It is inaccurate to describe disproportions between black and white criminal offenders as “disparities” denoting bias and unwarranted outcomes. As this report demonstrates, data disputes such bias or inequity are at play.

The Accurate Denominator

A related misuse of data comes when the *general* population rather than the *offender* population is used as the denominator in the calculation of criminal justice system involvement by race.

The disproportionately high level of black criminal offenders in Minnesota per capita naturally carries over into disproportionately high levels of arrests, charges, convictions, and incarceration when computed using the general population as the denominator. This inaccurately drives the narrative that unwarranted racial disparities are pervasive throughout the criminal justice system, which the system must rectify through policies designed to treat offenders differently based on their race.

This narrative undermines the criminal justice system, making it less effective for everyone, and ultimately disparately harming law-abiding black Minnesotans by subjecting them to higher levels of crime. Thankfully some academics are beginning to acknowledge this.

In a 2022 University of Arkansas working paper titled “Which Police Departments Make Black Lives Matter, Which Don’t, and Why Don’t Most Social Scientists Care?” Robert Maranto described how elitist consensus can actually harm the intended beneficiaries: “...if elites reach policy consensus too quickly, intimidating their reasoned critics into silence, they may put in place policies which have counter-productive results.”⁵

Wilfred Reilly, an Associate Professor of Political Science at Kentucky State University, concluded in a 2021 article that policy changes generated from the social justice-led Black Lives Matter movement of 2020 demonstrably resulted in 2,874 excess deaths of black Americans nationwide in a single year.⁶

In their December 2023 paper “Race, class, and criminal adjudication: Is the US criminal justice system as biased as is often assumed? A meta-analytic review,” sociology professors Christopher Ferguson and Sven Smith of Stetson University concluded racial disproportions in our criminal justice system are the result of racially disproportionate offense levels, not “systems” that treat offenders differently based on race:

Overall results suggested that neither class nor race biases for criminal adjudications for either violent or property crimes could be reliably detected. ... Taken together, these results do not support beliefs that the US criminal justice system is systemically biased at current. Negativity bias and the overinterpretation of statistically significant ‘noise’ from large sample studies appear to have allowed the perception or bias to be maintained among scholars, despite a weak evidentiary base.

Ferguson and Smith described the danger of perpetuating the narrative that our criminal justice system is systemically racist:

The issue of racial and class justice as it relates to criminal adjudication is an important one. The social contract depends on faith in the criminal justice system as a neutral arbiter. Perceptions and experiences of bias in the criminal justice system reduce public confidence and lead to social discord. In recent years

it has become common belief within the scholarly community as well as the general public that the criminal justice system is biased due to race and class issues.

We note the possibility that overstating the case for sentencing disparities may itself cause harm to minority communities through increasing racial discord, creating fear and mistrust, and reducing community cooperation with criminal justice authorities, which may lead to the experiencing of more crime.⁷

The accurate method of evaluating whether the criminal justice system is creating “disparities” involves comparing all criminal justice system outcomes to the offender pool entering the system, not to the largely unrelated general population pool.

It is mathematically accurate to divide the number of adult black Minnesotans in prison by the number of adult black Minnesotans in the general population and come up with a sum. The result of that mathematical calculation, using 2022 data, indicates the black ratio of incarceration is 8.5 times more than adult white Minnesotans, per capita.

That calculation is technically accurate and the disproportion it reflects should be something of significant societal interest to eliminate. However, this calculation is not helpful in determining whether the *criminal justice system* is responsible for creating or exacerbating racial disparities. The fact is the criminal justice system is operating with remarkable color blindness given the magnitude of disproportionate offense rates entering the system.

Using the general population as the denominator in the computation and evaluation of criminal justice system racial disparities leads to misleading conclusions and misguided responses. It inaccurately and dangerously suggests the criminal justice system is unjustly treating Minnesotans disparately based on race.

Unfortunately, the disproportion in black and white rates of arrests, charges, sentences, and imprisonment — using the general population as the denominator — is regularly relied upon as the basis for creating criminal justice system

policies that improperly treat criminal offenders differently based on race.

A more accurate and relevant evaluation of “disparities” within the criminal justice system comes by comparing the proportion of a racial group within the control of the system to the *offender* population, not the *general* population — the vast majority of whom are law-abiding. (In 2022, at least 85.5 percent of black and 98 percent of white Minnesotans were law-abiding citizens.)

Using the general population as the denominator, academics would cite the technically accurate but misleading figure that in 2022, black Minnesotans were 8.5 times more likely to be in prison than white Minnesotans. However, when the more pertinent offender population is used as the denominator, the analysis shows that white offenders were ultimately 1.3 times *more* likely to be imprisoned than black offenders.

The criminal justice system does not create disproportions or disparities. It rightfully sets reasonable responses and consequences for offending, intended to be enforced irrespective of race. If disproportionate offending occurs, the duty of a healthy criminal justice system is to respond to that disproportion uniformly, while advocating for societal efforts to reduce the disproportional offending to reduce entry into the system.

Those societal efforts will only be enhanced by, not hampered by, a consequential criminal justice system.

Methodology

This analysis involved black and white adult offenders — the most frequent comparison made when evaluating the existence of “racial disparities.” It followed serious offenders of murder, felony assault, robbery, weapon crimes, felony drug crimes, and rape (those crimes most likely to lead to a prison sentence) through the criminal justice system in 2022 — from identification as offenders, through arrests, charging, sentencing, and incarceration.

The analysis used a new criminal justice system data set: offender data by race. The Minnesota Bureau of Criminal Apprehension (BCA) began collecting and reporting this data for the first time in 2021. This new data allows for a

more accurate determination of how the system is operating by using *offender* rather than *general population* data sets. Previous efforts have either used large *general population* data sets or relied on *arrestee population* data sets, which are a less complete reflection of criminal activity, and are arguably more susceptible to law enforcement bias.

A significant source of *offender* identification comes from offender descriptions provided by victims, witnesses, and reporting parties of crime, leading to a more reliable and unbiased data set than traditional *arrestee* data sets.

This analysis followed offenders through each step of the system to provide ample opportunity at various points to evaluate whether unwarranted disparities existed or were developed.

This analysis compared *offender data* against:

- 1) 2022 U.S. Census Data for adult Minnesotans, as used by the Minnesota Department of Corrections (DOC),
- 2) 2022 adult arrest data held by the BCA,
- 3) 2022 charging data held by the Minnesota Judicial Branch (MJB),
- 4) 2022 sentencing and incarceration data held by the Minnesota Sentencing Guidelines Commission, and
- 5) 2023 Minnesota Department of Corrections imprisonment data as recorded on July 1, 2023, offering the best representation of offenders sentenced in 2022.

Comparing aggregate data from multiple sources has its limitations and this report in large part did not track individual offenders or cases through the system (with the exception of analysis involving sentencing of serious offenders). However, a good faith effort was made to compare the closest relevant data sets as they traveled through the system during a consistent period. For example, serious crime offenders compared with serious crime arrests, serious crime charges, and serious crime sentences during the same period.

Also, the analysis is limited to a single year 2022 and builds off of 2021 data. This is due to statewide offender racial data

becoming available for the first time in 2021. The existence of this data will now allow for continued examination of racial disparities over an extended period, and even more meaningful conclusions in the future.

The data includes both male and female adult offenders.

Differences in the age demographics by race were not examined, though this could account for some of the differences in incarceration rates. Matt Vogel and Lauren Porter concluded in 2010 that nationally, over eight percent of the disproportion of black incarceration could be accounted for by the difference in age structures between blacks and whites, citing that “black populations have a larger portion of individuals at younger, or more ‘crime-prone,’ ages...”⁸

The 2022 data reflects criminal justice system activity at least one year removed from the immediate aftermath of social unrest following George Floyd’s death and the ongoing response to the COVID-19 pandemic. Subsequent years could reflect differences in the levels of crime and disproportion found in this analysis of 2022 data.

Finally, statistical analysis can yield countless conclusions. As noted above, comparisons can be mathematically accurate but arguably irrelevant or misleading. This analysis offers a good-faith effort to focus on following criminal offenders through the criminal justice system to evaluate whether that system creates unwarranted racial disparities.

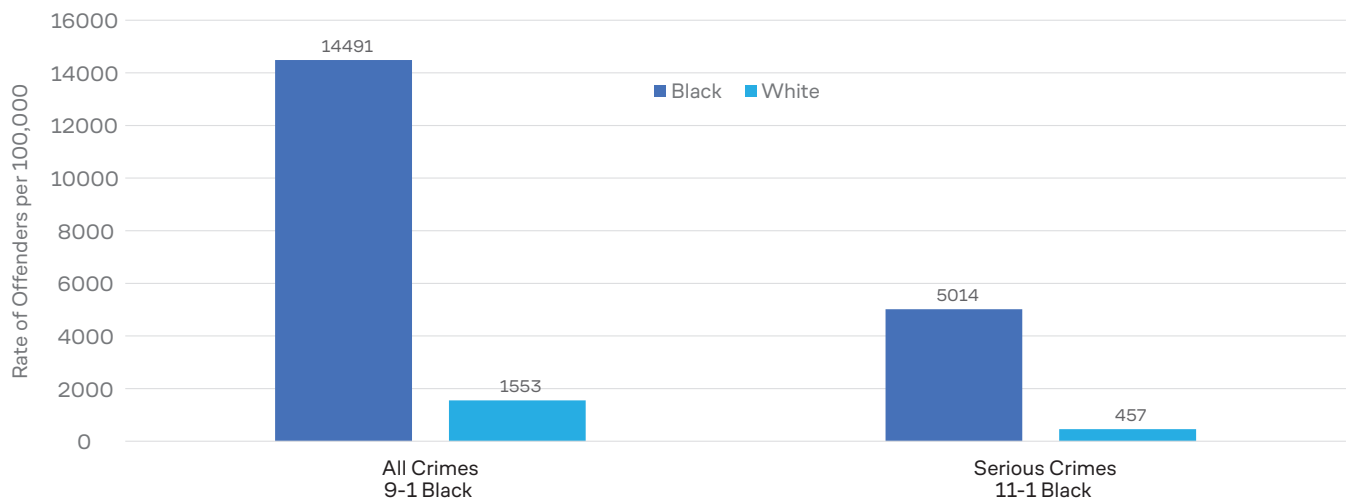
Data can be reported in many forms — percentages, rates, raw numbers, or ratios. For consistency, the data in this report was first computed into a rate by race, and then the rates were converted into a ratio, black to white, using the verbiage “X times more likely.”

The Data

Offender data

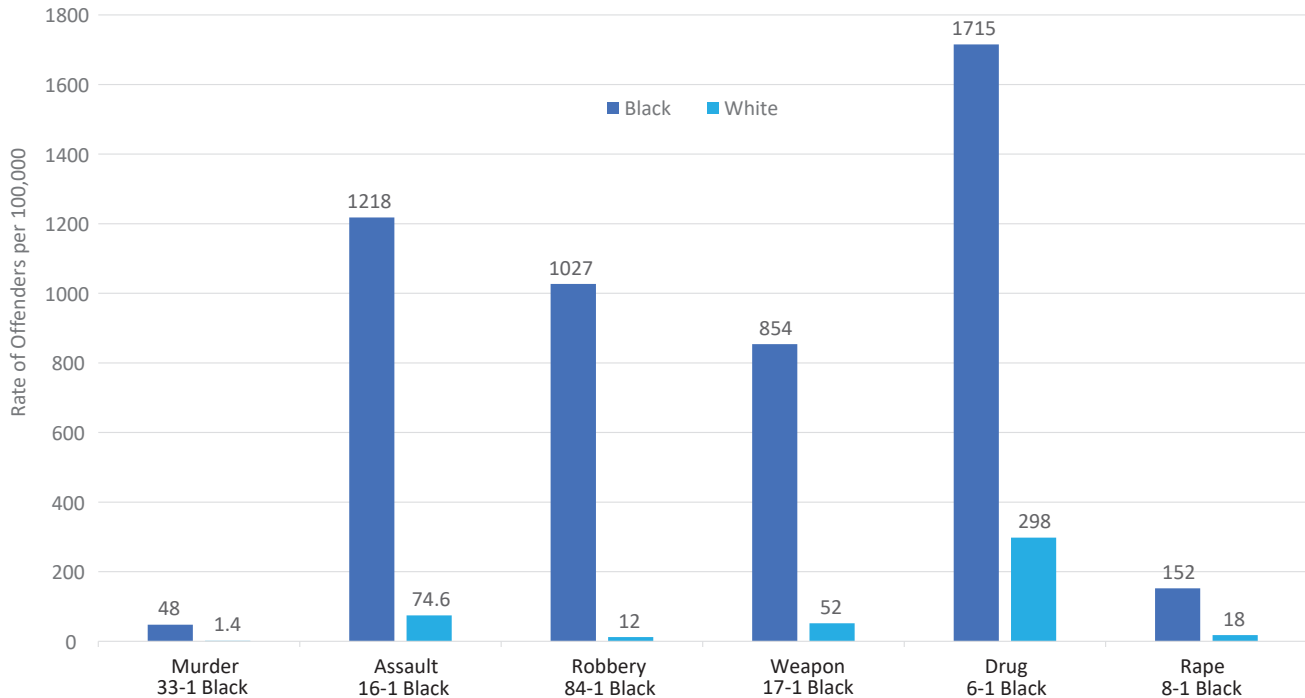
Offender identification represents activity at the earliest stage of the criminal justice system. The offender’s race is collected when victims, witnesses, or reporting parties contact the police to report a crime. Proactive police action can also add to the offender data.

Figure 1
Minnesota Adult Criminal Offenders -
2022 All Crimes/Serious Crimes
Ratio Derived from Rate of Offenders per 100,000 Population



Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer.

Figure 2
Minnesota Adult Criminal Offenders - 2022
 Ratio Derived from Rate of Offenders per 100,000 Population



Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer.

Using offender data rather than general population data allows for a more meaningful and relevant comparison involving subsequent criminal justice system action: arrests, charges, sentences, and incarceration.

In 2022, despite representing just seven percent of Minnesota's adult population, blacks represented 35 percent of Minnesota's serious offenders.

In 2022, when adjusted for population share, serious criminal offenders in Minnesota were 11 times more likely to be black than white (Figure 1).

Offender disproportion, black to white, became even greater as the seriousness of criminal offenses increased, with the felony assault ratio being 16:1, murder 33:1, and robbery 84:1 (Figure 2).

Having established these offender ratios, it would stand to

reason that if the criminal justice system was operating in a systemically racist manner, then these ratios would worsen for black offenders as they moved through each subsequent stage of the system.

As the data shows, this didn't happen. In fact, the disproportions in arrest, charging, and incarceration ratios consistently favored black offenders and disfavored white offenders throughout each subsequent stage of the criminal justice system, with very few exceptions.

Arrest data

Dramatically, the disproportionate ratio of black Minnesotans committing offenses flipped to a disproportionate ratio of white offenders being arrested.

An arrest frequently occurs in close proximity to an offense and, in such cases, usually occurs before a charging decision

has been determined by a county attorney. These are probable cause arrests by police. A warrant arrest is an arrest made after the county attorney has issued charges and a judge has issued an arrest warrant. Both types of arrests are represented in the arrest data reported by the BCA.

In 2022, white offenders were **1.7 times** (70 percent) more likely to be arrested than black offenders for all crimes committed (Figure 3).

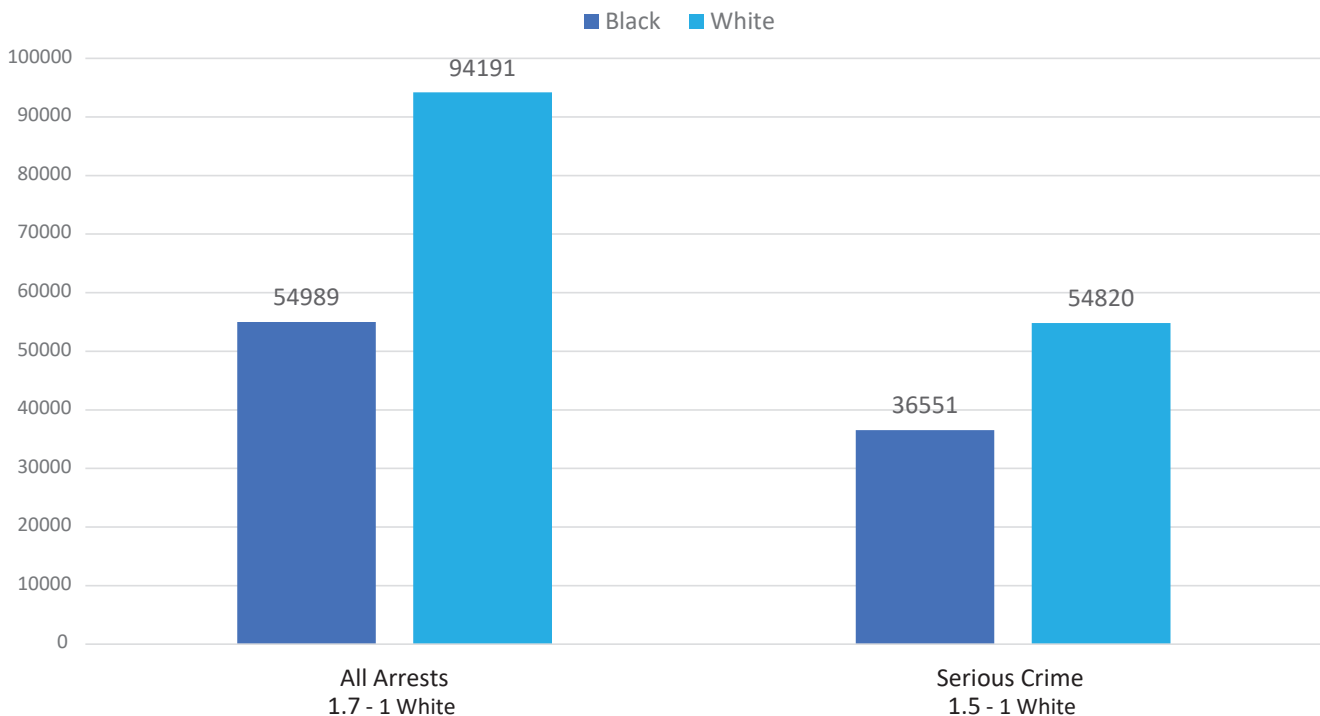
The disproportionate ratio of arrests favoring black offenders was consistent across nearly all serious crimes, with one notable exception: weapon crimes, where black offenders were **1.1 times** more likely to be arrested than white offenders. This disproportion likely reflects the elevated level of gun violence in Minnesota's black communities and the resulting increased proactive law enforcement response in those areas.

Analysis of serious crime arrests shows white offenders were **1.5 times** (50 percent) more likely to be arrested than black offenders. This disparity was most pronounced in the rate of robbery arrests, where white offenders were **1.9 times** more likely to be arrested than black offenders, followed by felony assault where white offenders were **1.5 times** more likely to be arrested than black offenders (Figure 4).

Notably, white offenders were **1.2 times** more likely to be arrested for a drug offense. Such arrests are often the result of proactive police activity and arguably more susceptible to police bias, yet the ratio of arrests disfavored white offenders. This completely contradicts prevailing narratives that suggest drug enforcement disproportionately and unfairly targets black Minnesotans.

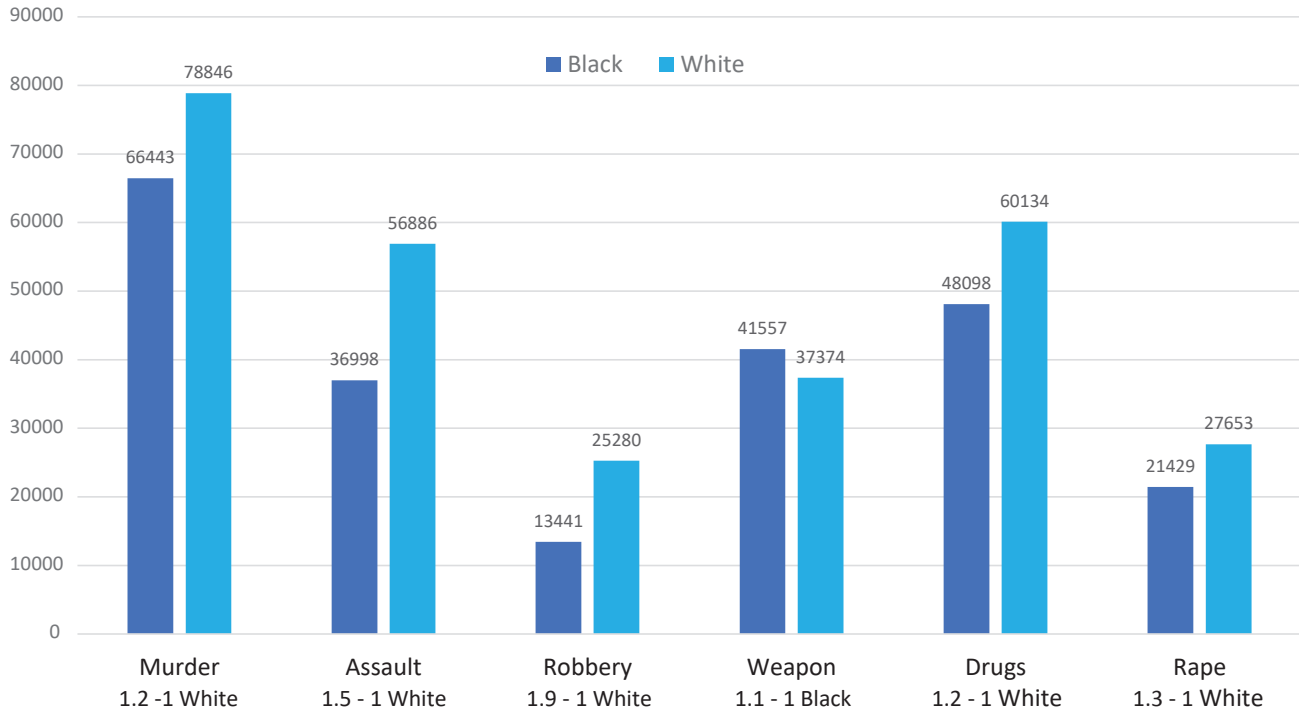
This is timely data given Minnesota's recent marijuana legalization. One of the narratives prevalent during the

Figure 3
Minnesota Adult Arrests - All and Serious Crimes 2022
Ratio Derived from Rate of Applicable Offender Sets



Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer.

Figure 4
Minnesota Adult Arrests - 2022
Ratio Derived from Rate of Applicable Offender Sets



Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer.

legalization debate, and one rarely challenged now, is that the enforcement of marijuana laws has disparately placed black Minnesotans into the criminal justice system and prison. Yet, the Minnesota Department of Corrections’ own fact sheet on drug offenses discredits this misleading narrative. The fact sheet shows that in 2023, Minnesota had just 11 “non-white” inmates in prison for marijuana offenses, while the largest set of drug-related inmates — 1,030 — were there for methamphetamine convictions, of which 72 percent were white.⁹

Charging data

In 2022, the pattern of disproportionate action favoring black offenders and disfavoring white offenders continued at the charging stage.

In Minnesota, the criminal charges analyzed in this report (serious offenses most likely to result in a prison sentence) are filed by the various county attorneys after they review

information and evidence gathered by police investigators.

In 2022 white offenders were **1.7 times** more likely to be charged with a serious offense than black offenders. Of the serious offenses of murder, felony assault, robbery, weapon crimes, felony drug crimes, and rape, white offenders were more likely to be charged than black offenders, in every category but weapon offense charges. The same was true in 2021 (Figure 5).

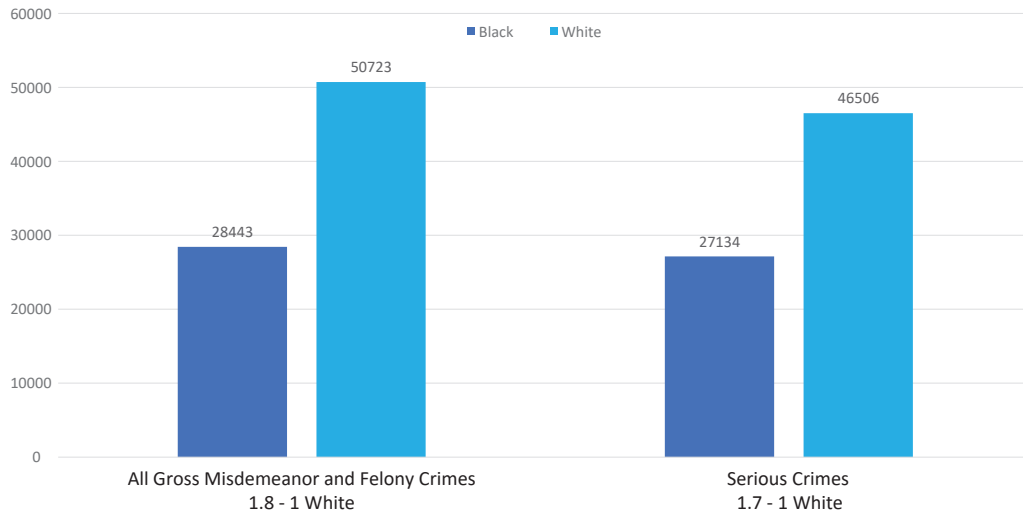
White offenders were **1.5 times** more likely to be charged with murder, **1.7 times** more likely to be charged with assault, and **1.9 times** more likely to be charged with robbery than black offenders (Figure 6).

Black offenders were **1.2 times** more likely to be charged with a weapons offense than white offenders. This outlier is likely a system response to the universally condemned level of gun violence plaguing Minnesota’s black communities,

Figure 5

Minnesota Adult Criminal Charging Rates by Cases Filed - 2022

Ratio Derived from Rate of Applicable Offender Sets

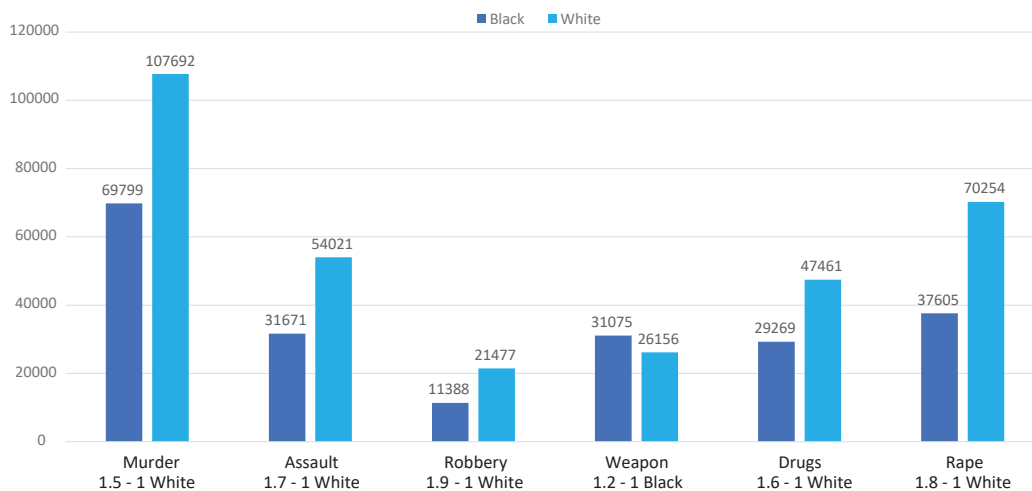


Source: Minnesota Judicial Branch Data – Cases Filed by Race - 2022.

Figure 6

Minnesota Adult Criminal Charging Rates by Cases Filed - 2022

Ratio Derived from Rate of Applicable Offender Sets



Source: Minnesota Judicial Branch Data – Cases Filed by Race - 2022.

Note: Charging Data — The data set used to signify a charge(s) was “Cases Filed” by race as reported by the Minnesota Judicial Branch. A case represents an individual offender and may include multiple charges. The case category — Murder, Felony Assault, etc. — is determined by the most serious charge. Given an offender is generally identified, arrested, and sentenced just once per criminal incident, using “Cases Filed” rather than individual charges filed offers a more consistent comparison.

Of note regarding the murder data, there were more white murder offenders charged in 2022 than identified as murder offenders in 2022. This also occurred in 2021, and it is likely the result of carryover charges resulting from murders occurring before 2022 and being resolved in 2022. This is one limitation in comparing aggregate data sets, but the circumstances are not unique to the race of an offender, and therefore don't affect the comparisons made.

and the propensity for violent crimes involving a dangerous weapon or firearm to result in more weapon crime charges.

Sentencing data

For 2022, the pattern of disproportionate outcomes favoring black offenders and disfavoring white offenders largely continued at the sentencing stage. The sentencing data allowed for far more precise analysis of outcomes involving those sentenced for serious offenses. This analysis carefully examines the data and explains why various disproportions were found.

There are a variety of factors at play in sentencing and in the racial breakdown of prison inmates: the rate of offending, the seriousness of the offense, whether a dangerous weapon or firearm was used in the commission of the offense, the criminal history of the offender, and whether the offender violated some type of supervision when the new offense occurred. When those factors are considered, they serve as ample justification for the sentencing disproportions disfavoring black offenders that were discovered.

General Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Murder, 2nd Degree (Intentional; Drive-By Shootings)</i>	11	306 261-367	326 278-391	346 295-415	366 312-439	386 329-463	406 346-480 ¹
<i>Murder, 2nd Degree (Unintentional)</i>		150	165	180	195	210	225
<i>Murder, 3rd Degree (Depraved Mind)</i>	10	128-180	141-198	153-216	166-234	179-252	192-270
<i>Murder, 3rd Degree (Drugs)</i>		86	98	110	122	134	146
<i>Assault, 1st Degree (Great Bodily Harm)</i>	9	74-103	84-117	94-132	104-146	114-160	125-175
<i>Agg. Robbery, 1st Degree</i>		48	58	68	78	88	98
<i>Burglary, 1st Degree (w/ Weapon or Assault)</i>	8	41-57	50-69	58-81	67-93	75-105	84-117
<i>Felony DWI</i>		36	42	48	54	60	66
<i>Financial Exploitation of a Vulnerable Adult</i>	7				46-64	51-72	57-79
<i>Assault, 2nd Degree</i>		21	27	33	39	45	51
<i>Burglary, 1st Degree (Occupied Dwelling)</i>	6				34-46	39-54	44-61
<i>Residential Burglary</i>		18	23	28	33	38	43
<i>Simple Robbery</i>	5				29-39	33-45	37-51
<i>Nonresidential Burglary</i>		12	15	18	21	24	27
<i>Theft Crimes (Over \$5,000)</i>	3				17-22	18-25	20-27
<i>Theft Crimes (\$5,000 or less)</i>		12	13	15	17	19	21
<i>Check Forgery (\$251-\$2,500)</i>	2						18-25
<i>Assault, 4th Degree</i>		12	12	13	15	17	19
<i>Fleeing a Peace Officer</i>	1						17-22

- ☐ Presumptive commitment to state imprisonment. First-degree murder has a mandatory life sentence and is excluded from the Guidelines under Minn. Stat. § 609.185. See section 2.E, for policies regarding those sentences controlled by law.
- ☐ Presumptive stayed sentence; at the discretion of the court, up to 364 days of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenses in the shaded area of the Grid always carry a presumptive commitment to state prison. See sections 2.C and 2.E.

The Minnesota Sentencing Guidelines

The Minnesota Sentencing Guidelines Commission (MSGC) was created by the Minnesota Legislature in 1978 to “establish rational and consistent sentencing standards that promote public safety, reduce sentencing disparity, ensure that the sanctions imposed for felony convictions are proportional to the severity of the offense and the individual’s criminal history.”¹⁰

Over decades, the MSGC has established sentencing guidelines for state judges that help ensure consistency in sentencing for crimes irrespective of race or the location of the offense. This resulted in the creation of several sentencing grids — general grid, sex offender grid, controlled substance grid — that rate the *Severity Level of Offense* on one axis and the *Criminal History Score* on the other axis. The grids that have been created have an established line that separates *Presumptive Commitments* to prison sentences from *Presumptive Stays* from prison sentences.

A judge who wishes to depart from the presumptive sentence

Sex Offender Grid

Presumptive sentence lengths are in months. Italicized numbers within the grid denote the discretionary range within which a court may sentence without the sentence being deemed a departure. Offenders with stayed felony sentences may be subject to local confinement.

SEVERITY LEVEL OF CONVICTION OFFENSE (Example offenses listed in italics)	CRIMINAL HISTORY SCORE						
	0	1	2	3	4	5	6 or more
<i>Criminal Sexual Conduct (CSC) 1st Degree</i>	A	144 144-172	156 144-187	168 144-201	180 153-216	234 199-280	360 261-360
<i>CSC 2nd Degree—1(a)(b)(c)(d)(e) 1a(a)(b)(c)(d)(h)(i) (e.g., contact & force with bodily harm)</i>	B	90 90 ¹ -108	110 94-132	130 111-156	150 128-180	195 166-234	255 217-300
<i>CSC 3rd Degree—1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., penetration & coercion/occupation)</i>	C	48 41-57	62 53-74	76 65-91	90 77-108	117 100-140	153 131-183
<i>CSC 2nd Degree—1a(e)(f)(g) (age) CSC 3rd Degree—1a(a)(a)(f) or 1a(b) with 2(1) (age)</i>	D	36	48	60 51-72	70 60-84	91 78-109	119 102-142
<i>CSC 4th Degree—1(a)(b)(c)(d) 1a(c)(d)(g)(h)(i) (e.g., contact & coercion/occupation)</i>	E	24	36	48	60 51-72	78 67-93	102 87-120
<i>CSC 4th Degree—1a(a)(b)(e)(f) (age) CSC 5th Degree—3(b) (subsequent)</i>	F	18	27	36	45 39-54	59 51-70	77 66-92
<i>CSC 3rd Degree—1a(b) with 2(2) Possession of Child Pornography Solicit Child for Sexual Conduct</i>	G	15	20	25	30 34-46	39 44-60	51 51-60 ²
<i>CSC 5th Degree—3(a) (nonconsensual penetration)</i>	H	12 ¹	14	16	18	24 24-24	24 ¹ 24-24
<i>Failure to Register as a Predatory Offender</i>	I	12 ¹ 12 ¹ -14	14 12 ¹ -16	16 14-19	18 16-21	24 21-28	30 26-36

¹ 12¹=One year and one day

- ☐ Presumptive commitment to state imprisonment. Sex offenses under Minn. Stat. § 609.3455, subd. 2, have mandatory life sentences and are excluded from the Guidelines. See section 2.E, for policies regarding those sentences controlled by law, including conditional release terms for sex offenders.
- ☐ Presumptive stayed sentence; at the discretion of the court, up to one year of confinement and other non-jail sanctions can be imposed as conditions of probation. However, certain offenders in the shaded area of the Grid may qualify for a mandatory life sentence under Minn. Stat. § 609.3455, subd. 4. See sections 2.C and 2.E.

Source: Minnesota Sentencing Guidelines Commission.

as listed in the sentence guideline must articulate the reason for the departure and report that to the MSGC.

The sentencing guidelines logically account for increases in the seriousness of the offense, the criminal history of the offender, and the offender's supervision status at the time of offense. These factors can significantly affect the disposition of a sentence (prison versus probation) and the duration of a sentence (length of sentence).

This section identifies examples where a cursory examination of outcomes might suggest black defendants were treated “disparately” at the sentencing stage. It then examines the data that logically justifies the disproportions noted.

This report used data reported by the MSGC to focus on those serious crime defendants who were ultimately charged and convicted of murder, felony assault, robbery, felony drug crimes, weapon crimes, and rape to evaluate whether Minneso-

ta judges were fairly and consistently sentencing black and white defendants. These sentenced defendants most closely represented the data sets of offenders, arrestees, and charged individuals, which were analyzed throughout this report.

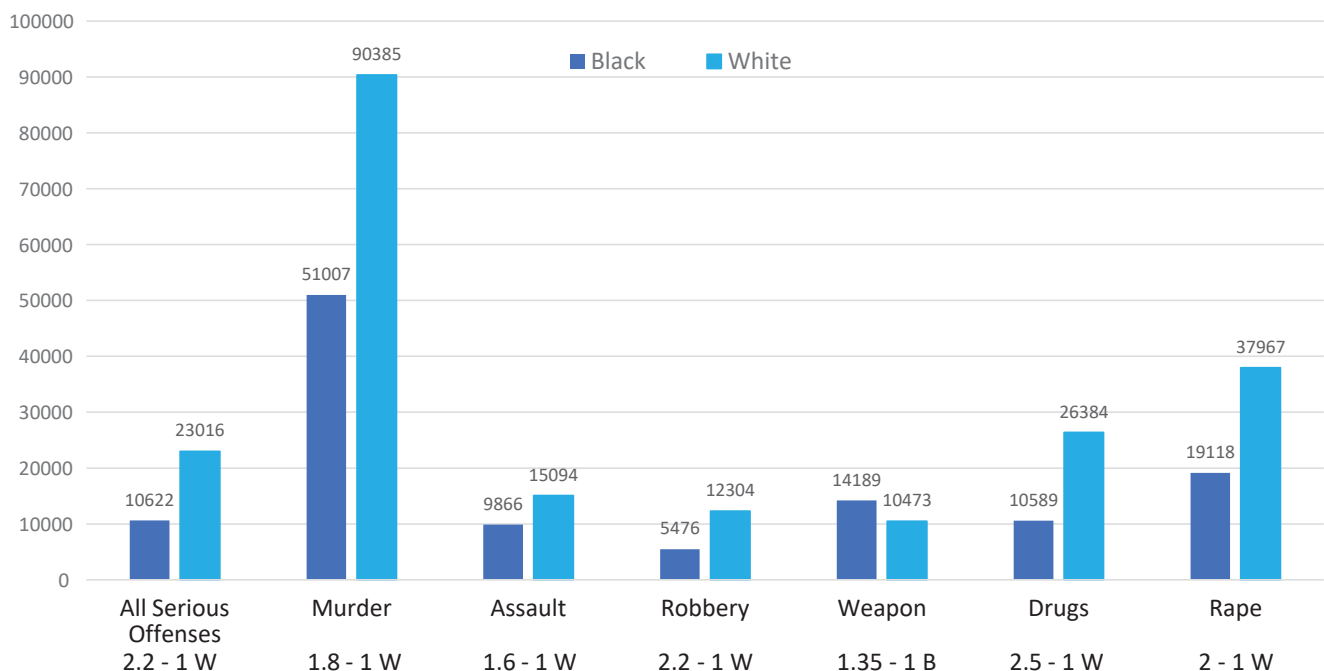
Pronounced sentences – felony and prison sentences

Felony sentences

In 2022, Minnesota District Courts *pronounced felony sentences* on **16,259 offenders**, up from 14,429 in 2021. Of those sentenced, 9,025 were white offenders and 4,309 were black offenders. Just over 25 percent of felony sentences resulted in actual prison sentences.

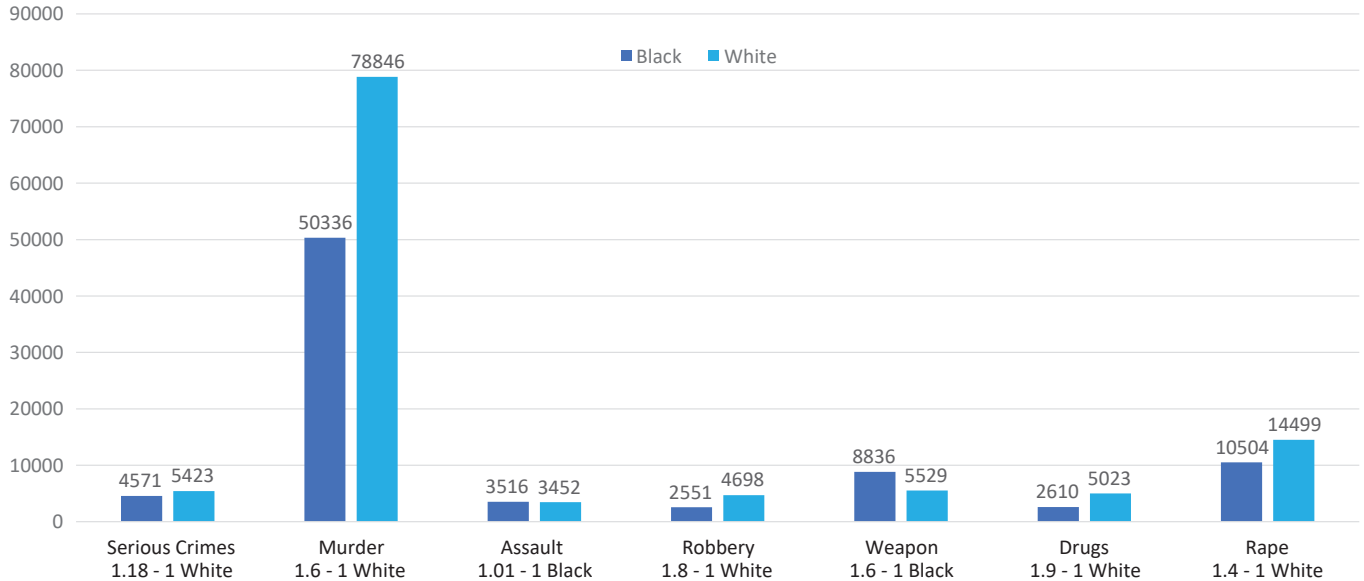
Figure 7 shows the ratio of white to black felony sentences as a rate of serious offenders. White offenders were convicted and sentenced at rates far exceeding those of black offenders in all categories but weapon crime offenses.

Figure 7
Minnesota Adult Pronounced Felony Sentences - 2022
Ratio Derived from Rate of Applicable Offender Sets



Source: Minnesota Sentencing Guidelines Commission monitoring data, 2022.

Figure 8
Minnesota Adult Pronounced Prison Sentences - 2022
Ratio Derived from Rate of Applicable Offender Sets



Source: Minnesota Sentencing Guidelines Commission monitoring data, 2022 sentencing data as reported in the 2024 MSGC Report to the Legislature, and 2022 BCA offender data.

Prison sentences

In terms of *executed prison sentences*, there were a total of 4,159 in 2022, up from 3,104 in 2021. There were 2,029 white offenders and 1,322 black offenders sentenced to prison in 2022.

Of the serious crimes analyzed, there were 904 white offenders committed to prison, and 717 black offenders committed to prison.

Figure 8 shows the rate and ratio of pronounced prison sentences, as a reflection of black and white serious offenders.

White serious offenders were **1.18 times** more likely to receive a *pronounced prison sentence* than black serious offenders.

Of the crime categories listed, white serious offenders had a

higher ratio of pronounced prison sentences in all categories except weapon and assault-related sentences, which was also the case in 2021.

Black felony assault offenders were **1.01 times** more likely to receive a pronounced prison sentence and black weapon crime offenders were **1.6 times** more likely to receive a pronounced prison sentence.

White robbery offenders were **1.8 times** more likely to receive a pronounced prison sentence than black robbery offenders, down from **3.7 times** in 2021.

The sentencing stage also continued to negate the prevailing narrative of biased treatment of drug offenders in Minnesota. White felony drug offenders were **1.9 times** more likely to receive a pronounced prison sentence than black felony drug offenders, down from **2 times** more likely in 2021.

Presumptive vs. actual prison commitments

Figure 9 shows the rate of presumptive prison commitments compared to the rate of actual prison commitments.

In 2022, white serious offenders were **1.18 times** more likely to receive presumptive prison commitment at sentencing, and **1.18 times** more likely to receive an actual prison commitment than black serious offenders. This is remarkably consistent and demonstrates an adherence to guidelines and a lack of bias.

Case-specific examination — sentencing

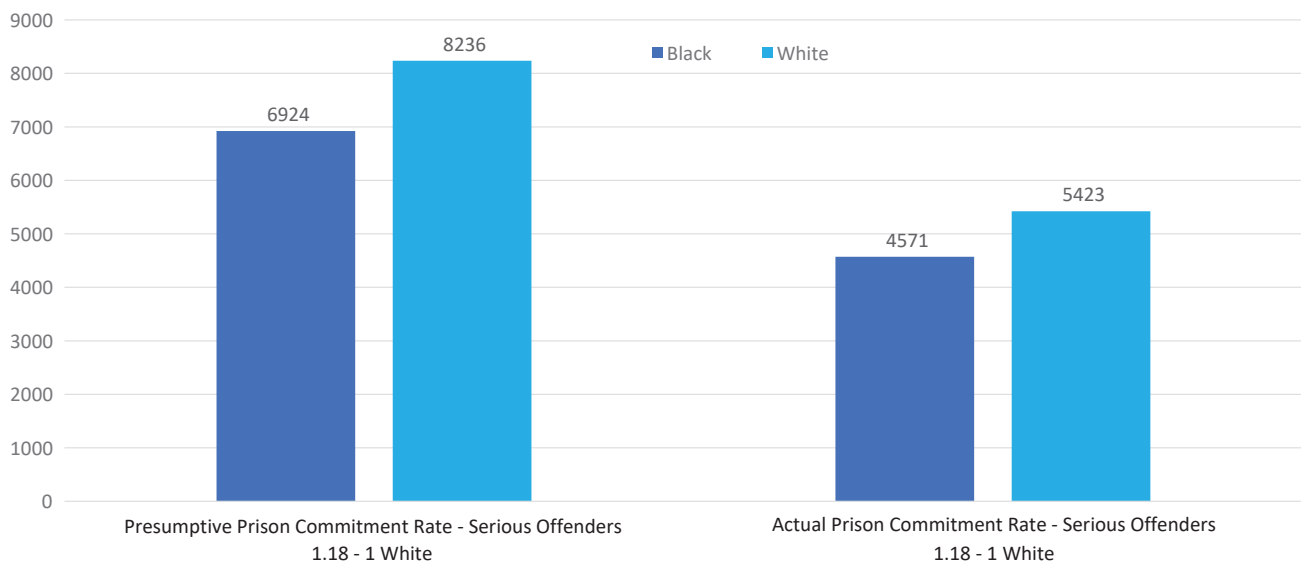
Given the case-specific data available at the sentencing stage, it makes sense to use these specific data sets as the denominator and offer further analysis of whether the system is sentencing black and white defendants consistently and equally.

The results of this case-specific analysis initially appeared

to suggest that some outcomes, such as the rate and length of prison sentences, disfavored black sentenced defendants. However, fully examining the variables that determine prison sentencing clearly explains why these disproportionate outcomes are justified, appropriate, and unbiased.

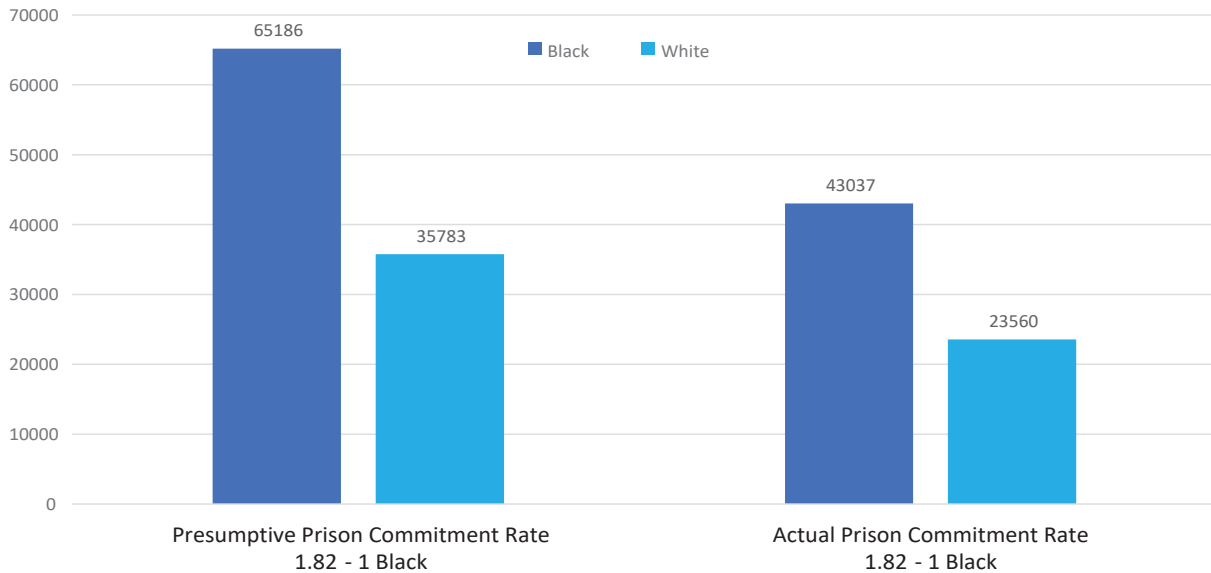
Judges in Minnesota are mandated to abide by the sentencing guidelines when pronouncing a sentence upon a convicted defendant. The guidelines take into account the severity level of the offense committed and the overall criminal history score (comprised of prior criminal convictions and the custody status of the defendant at the time of the offense, i.e., was the defendant under court or correctional supervision at the time of the offense). Another important factor that impacts sentencing is whether the defendant used a dangerous weapon or firearm during the commission of the offense, or whether the offense itself was the possession of a firearm by a prohibited person. This variable is critical as statutory mandatory minimum sentencing is in place for these offenses.

Figure 9
Minnesota Presumptive vs Actual Prison Commitment - 2022
Ratio Derived from Serious Offender Rates



Source: 2022 Minnesota Sentencing Guidelines Commission monitoring data and 2022 BCA offender data.

Figure 10
Minnesota Presumptive vs Actual Prison Commitment - 2022
Ratio Derived from Serious Crime Pronounced Sentence Rates



Source: 2022 Minnesota Sentencing Guidelines Commission Monitoring Data for serious crimes: Murder, Felony Assault, Robbery, Weapon Crimes, Drugs, and Rape.

The analysis of those black and white defendants who received pronounced sentences for serious crimes showed that black defendants convicted of serious crimes were more likely than white defendants to receive a prison sentence, and to receive a longer sentence. However, there were important, valid, and logical factors that determined these outcomes.

In 2022, black sentenced defendants did receive longer and more certain prison sentences on average. But these disproportionate outcomes disfavoring black sentenced defendants weren't the result of bias or systemic racism — they occurred because the severity level of their offenses, their criminal history scores, and the use of a weapon or firearm in the commission of their crimes were all significantly higher than white sentenced defendants (See Figures 14, 15, and 16).

This does not represent a “disparity” that unjustly impacts

black sentenced defendants; it represents a system operating logically and justly by increasing consequences for more severe crimes, repeat offenders, and those who use weapons or firearms in the commission of crime.

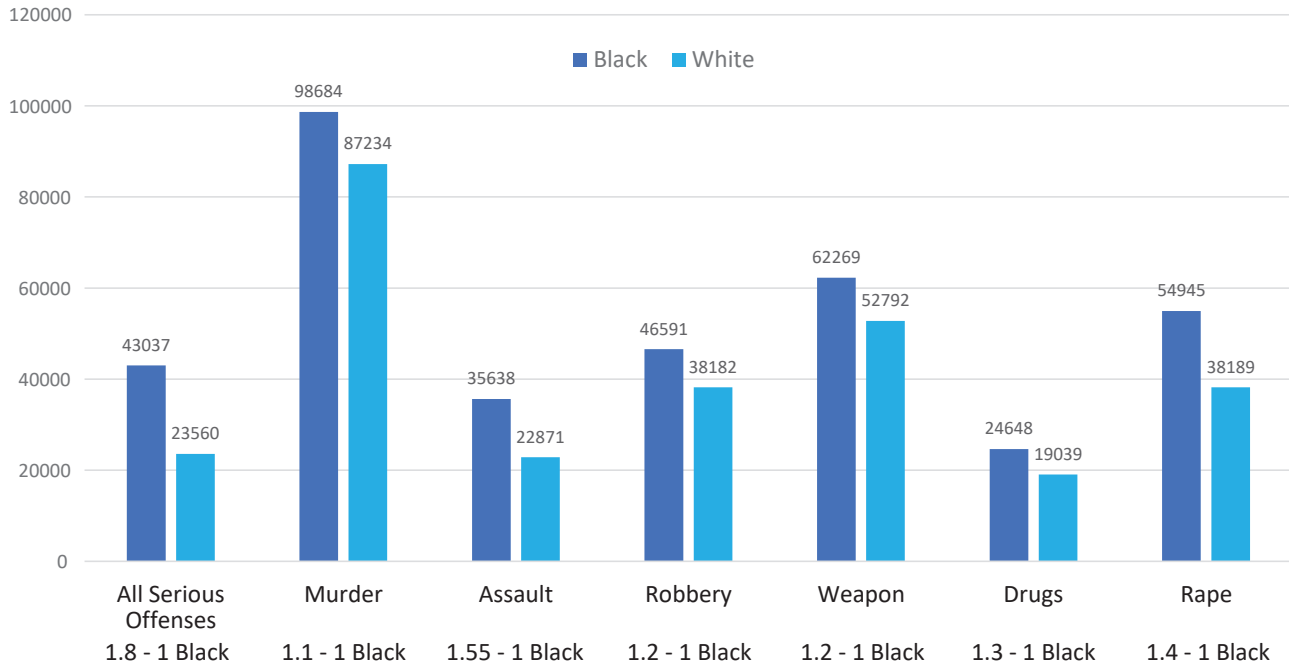
Prison commitments

Figure 10 illustrates the remarkable consistency between the black-to-white ratio of presumptive sentences as recommended by the Sentencing Guidelines, and the black-to-white ratio of actual prison sentences handed down by judges.

Figure 11 illustrates the adult prison commitment rate and corresponding black-to-white ratios, reflecting the number of sentenced defendants who received a prison commitment for each serious crime analyzed throughout this report.

In 2022, black serious crime defendants *who received a*

Figure 11
Minnesota Adult Prison Commitment Rate - 2022
 Ratio Derived from Rate of all Serious Crime Pronounced Felony Sentences



Source: 2022 Minnesota Sentencing Guidelines Commission monitoring data for serious crimes: Murder, Felony Assault, Robbery, Weapon Crimes, Drugs, and Rape.

pronounced felony sentence were **1.82 times** more likely to receive a presumptive prison commitment than white serious crime defendants who received a pronounced felony sentence. Correspondingly, those same black defendants were **1.82 times** more likely to receive an actual prison commitment than white serious crime defendants who received a pronounced felony sentence.

The consistency in these ratios is evidence of a system following the sentencing guidelines, which were designed to remove bias and inconsistency in sentencing. A biased system or judges would have, as the narrative suggests, increased the rate and ratio of actual sentences for black defendants above that of the presumptive sentences as determined by the sentence guidelines.

Sentencing departures

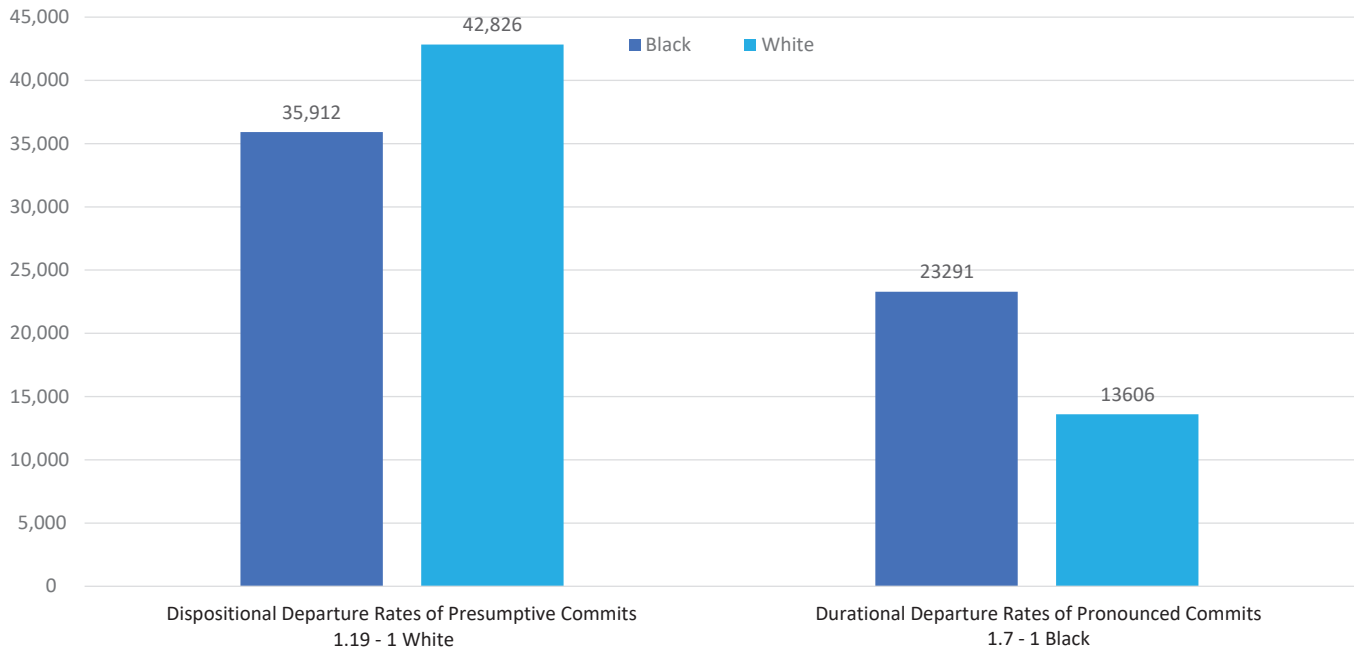
In evaluating whether the 2022 sentencing departures were

consistent between black and white serious crime defendants, this section focuses on the mitigated (downward) departures in the dispositional category (prison or not) and the durational category (length of sentence) as shown in Figure 12.

White serious crime defendants were **1.19 times** more likely to receive a mitigated dispositional departure from a presumptive prison sentence, while black serious crime defendants were **1.7 times** more likely to receive a mitigated durational departure reducing the amount of time the sentencing guidelines called for.

One explanation for the significantly higher durational departures for black serious crime sentences is an attempt by judges to self-correct perceived “disparities.” As the data shows, in 2022, judges were slightly less willing to depart from a prison sentence disposition involving black defendants but then may have engaged in attempting to

Figure 12
Minnesota Sentencing Departures - 2022
Disposition and Duration - Serious Crime Defendants



Source: 2022 Minnesota Sentencing Guidelines Commission monitoring data, 2022 sentencing data as reported in the 2024 MSGC Report to the Legislature.

“self-correct” the situation by departing from the durational sentencing guidelines and reducing the amount of time black defendants received.

Sentence Disposition and Length

In 2022, black serious crime defendants received pronounced prison sentences that, as an average of all serious crimes, were approximately 10 months longer than white serious crime defendants. Sentences are crafted using the Sentencing Guidelines Grid, which considers the Severity Level of the Offense, and the overall Criminal History Score (a combination of prior convictions and whether the defendant was under court of correctional supervision at the time of offense) and include mandatory minimum sentencing for crimes such as using a dangerous weapon or firearm during the commission of a crime.

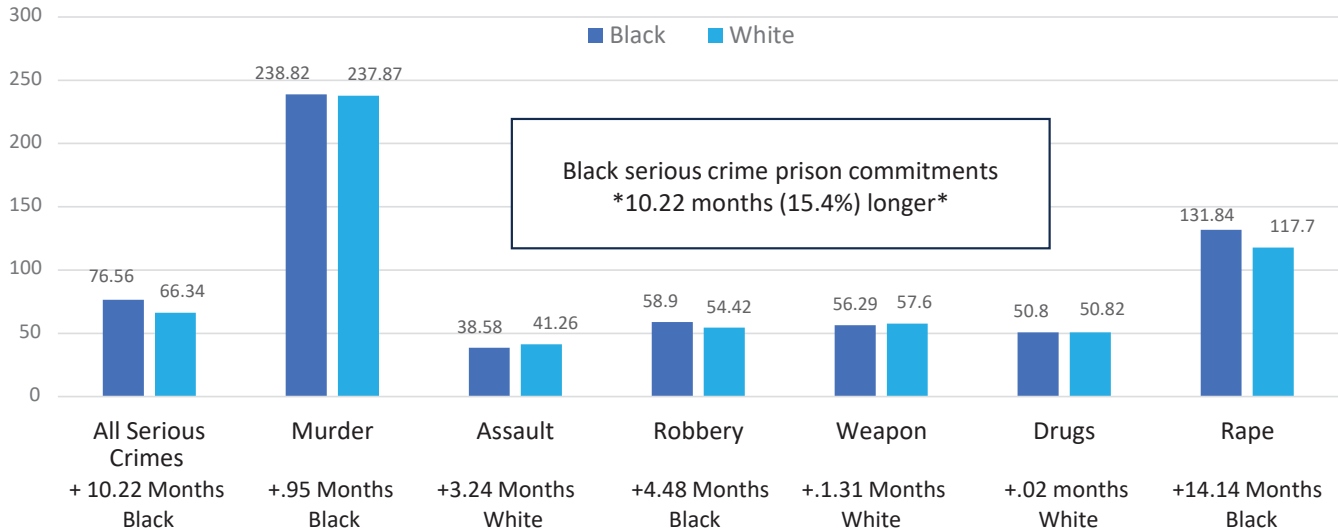
This section examines the length of sentences for the serious crimes cohort and explains the disproportion in sentencing observed.

As previously discussed, the sentencing policy developed by the Minnesota Sentencing Guidelines Commission has done a remarkable job of ensuring consistent, fair, and balanced sentencing.

Sentences logically give weight to the severity of the crime committed, the criminal history score of the defendant, and whether the defendant used or possessed a dangerous weapon or firearm during the commission of the crime.

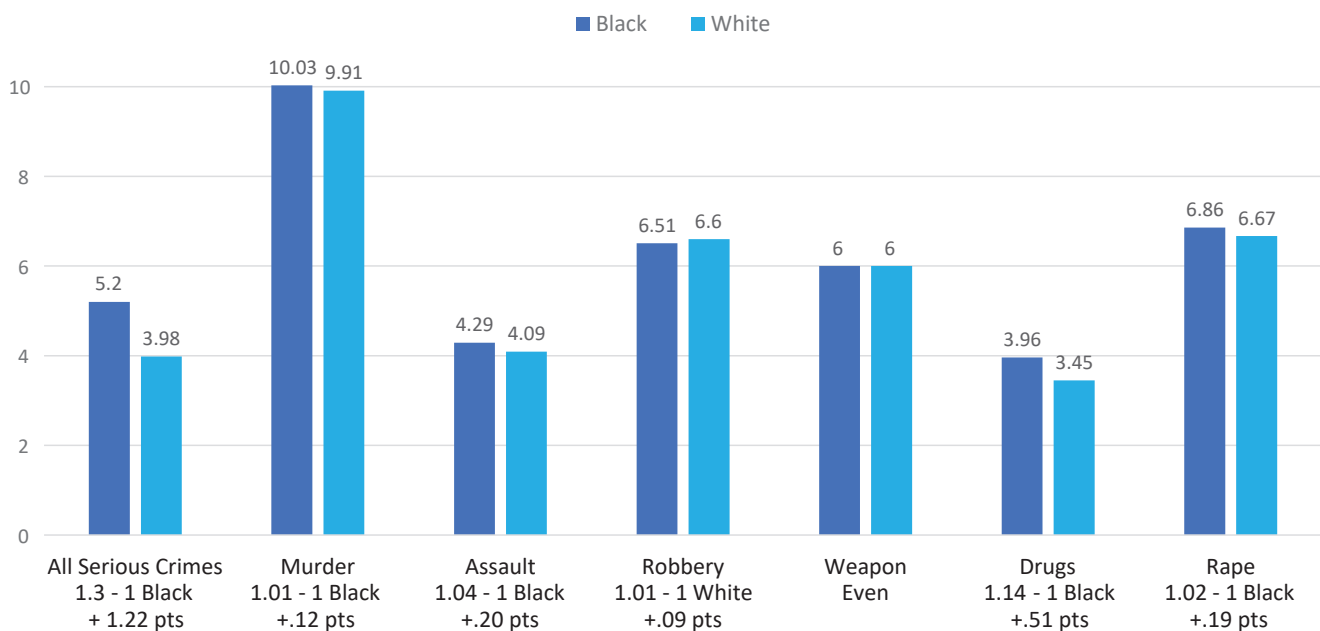
When those variables are considered in evaluating sentence disposition and duration, 2022 serious crime sentences were found to be remarkably consistent and justified.

Figure 13
Minnesota Average Adult Length of Prison Commitment - 2022



Source: Minnesota Sentencing Guidelines Commission monitoring data, 2022 serious crime sentences.

Figure 14
Minnesota Severity Level of Offense - 2022
 Derived from All Pronounced Serious Crime Felony Sentences

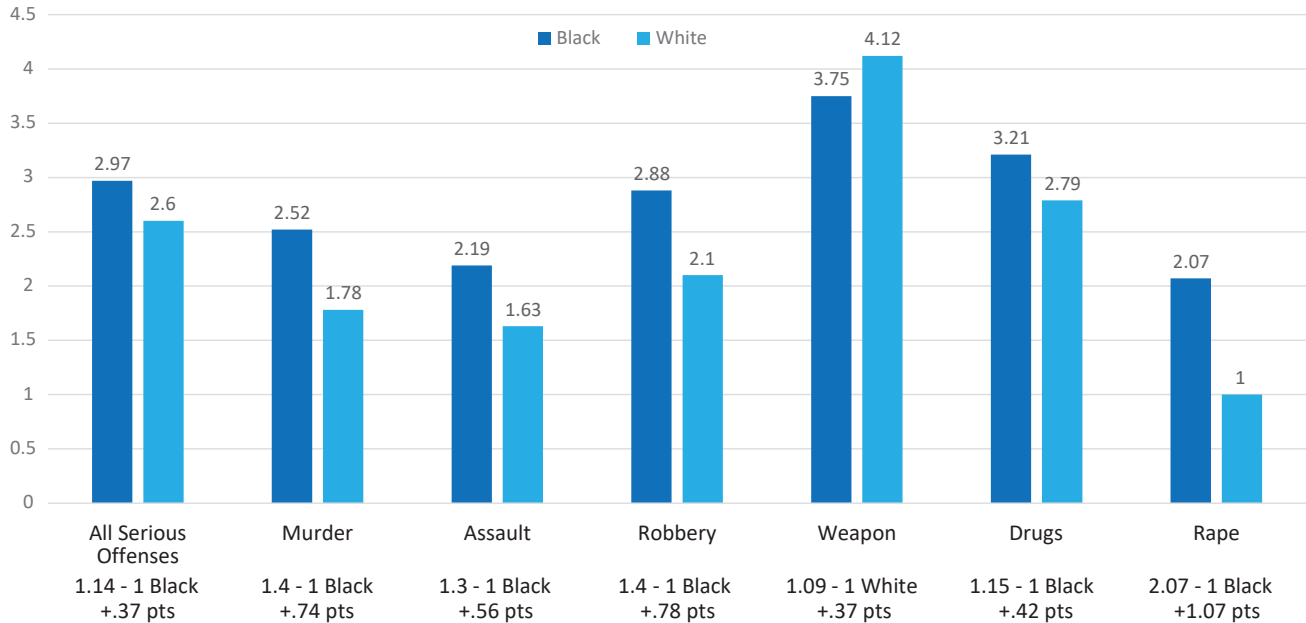


Source: Minnesota Sentencing Guidelines Commission monitoring data, 2022 serious crime sentences.

Figure 15

Minnesota Criminal History Score Average by Offense - 2022

Ratio Derived from all Serious Crime Pronounced Felony Sentences

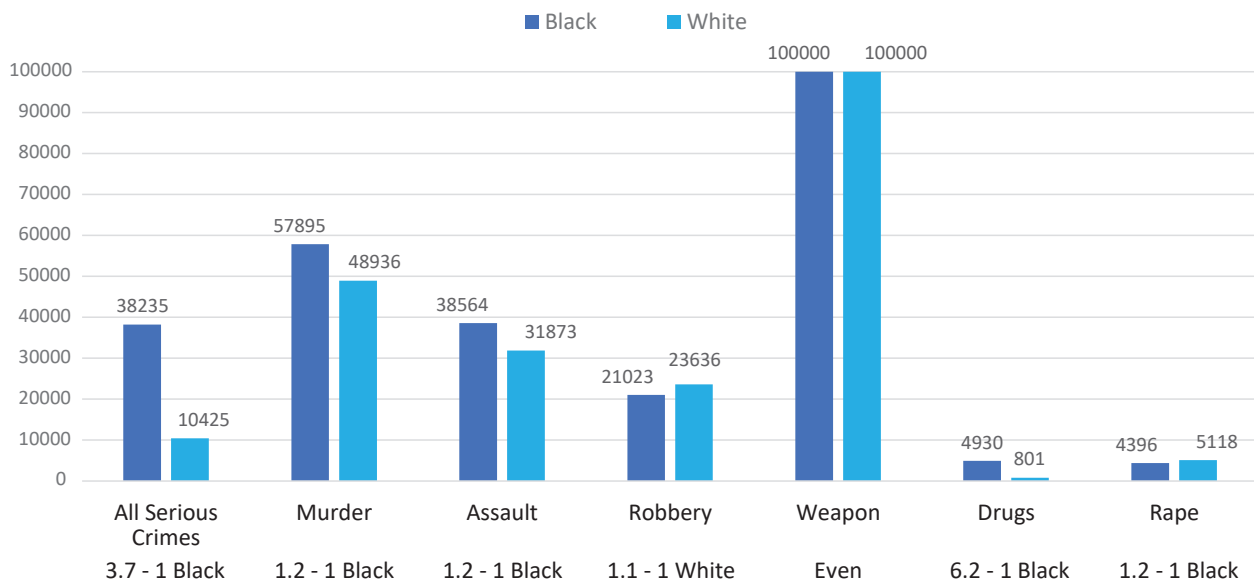


Source: Minnesota Sentencing Guidelines Commission monitoring data, 2022 serious crime sentences.

Figure 16

Minnesota Dangerous Weapon/Firearm Use in or Basis of Offense - 2022

Ratio Derived from Rate of All Serious Crimes Pronounced Felony Sentences



Source: Minnesota Sentencing Guidelines Commission monitoring data, 2022 serious crime sentences.

In 2022, black serious crime prison sentences averaged 76.56 months, while white serious crime prison sentences averaged 66.34 months. What accounts for the 10.22-month average difference? In 2022 black serious crime defendants were on average:

- **1.22 points higher in *Severity Level of Offense*** (Figure 14). A review of the Sentencing Guidelines Grid shows that a one-point increase in severity level, especially once the sentence is in the presumptive commitment range, far exceeds 10 months. For example, going from a severity level of eight to nine, with no prior offenses, increases the presumptive sentence by 38 months.
- **.37 points higher in *Criminal History Score*** (Figure 15). A review of the Sentencing Guidelines Grid shows that once again, for every additional criminal history point, the corresponding effect on the sentence equates to an increase of at least 10 months, especially once in the presumptive commitment range.
- **3.7 times more likely** to have used a *dangerous weapon or firearm* in the commission of the crime or possessed a firearm as a prohibited person, each of which carry mandatory minimum sentences that far exceed 10 months (Figure 16).

Given these facts, an average increase of 10.22 months is more than accounted for in the sentencing criteria that is logically applied for increased severity levels of crime, repeat offenders, and the use or possession of dangerous weapons or firearms as part of the crime sentenced.

It is important to understand that some criminal justice system practitioners and legislators have identified these sentencing factors (severity level, criminal history points, and mandatory sentences) as creating “disparities” that negatively impact black defendants. Of course, this argument is without merit as the factors don’t unfairly impact any defendant based on race but on behavior and action.

Regardless, the Sentencing Guidelines Commission has begun a two-year comprehensive review of the sentencing guidelines in 2024 to determine if changes, which would lessen the impact of these criteria, are warranted. Such

changes would represent the “self-correction” and misguided efforts that well-meaning, but ill-advised policy-makers engage in out of reflex. This report should serve as a tool to counter those reflexive responses.

Sentencing Conclusion

A great deal of effort is rightfully placed on ensuring sentencing is fair and effective. When the government incarcerates an offender, it should do so only when it can determine that the impact on the offender is outweighed by the benefit that incapacitating the offender has on society. Minnesota’s Sentencing Guidelines Commission has worked to ensure this is the case. The commission has also ensured that sentencing decisions are consistent and fair across the state and across racial lines.

The analysis of sentencing data plays an important role in the process used to modify our sentencing guidelines. This report highlights the remarkable job that Minnesota’s sentencing guidelines have had on ensuring consistency and fairness. The report should be used to counter the reflexive response to “self-correct” racial disproportions in sentencing that exist, as they exist for legitimate and logical reasons, not bias.

Making changes to our sentencing guidelines to “self-correct” racial disproportion in sentencing is misguided, and it ignores the logical enhancements that go along with increases in offense severity, increases in criminal history, and the use or possession of dangerous weapons or firearms. Ultimately it lays the burden of grossly inflated crime rates and victimization on the black community.

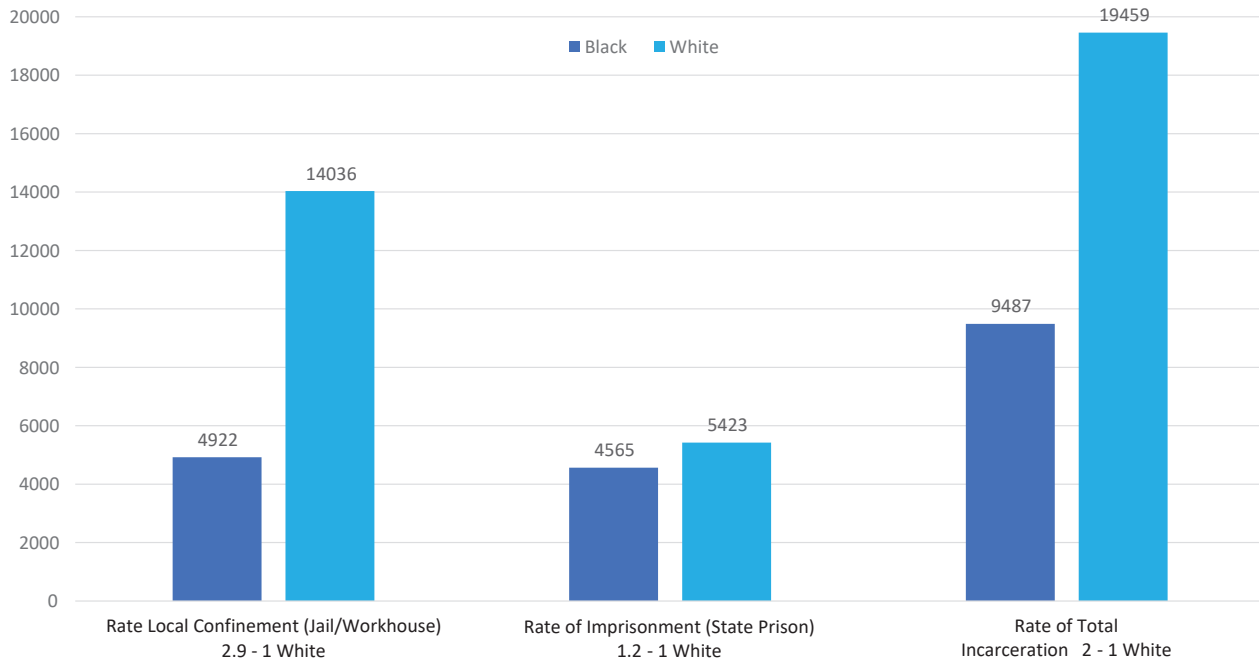
Incarceration

Figure 17 compares the rate of serious offenders who received some form of incarceration as a result of their conviction. The categories shown are rates of *local incarceration* (in a jail or workhouse), *state prison incarceration*, and *total incarceration*.

White serious offenders were two times more likely to receive some form of incarceration than black serious offenders.

Figure 17

Minnesota Incarceration Rates of 2022 Sentenced Serious Offenders Ratio Derived from Rate of Serious Offenders



Source: 2022 Minnesota Sentencing Guidelines Commission monitoring data and BCA offender data

Offender Versus Prisoner

The next two charts provide a visual comparison showing the ratio of black-to-white as “offenders” (Figure 18) and as “prisoners” (Figure 19).

It would stand to reason that if the criminal justice system was systemically racist, the ratio of black prisoners would be larger than the ratio of black offenders committing crimes. Not only is the ratio smaller, but the gap between the offender/prisoner ratio widened in 2022 (11:1 offender/8.5:1 prison), compared to the gap in 2021 (10:1 offender/9.6:1 prison).

Victimization

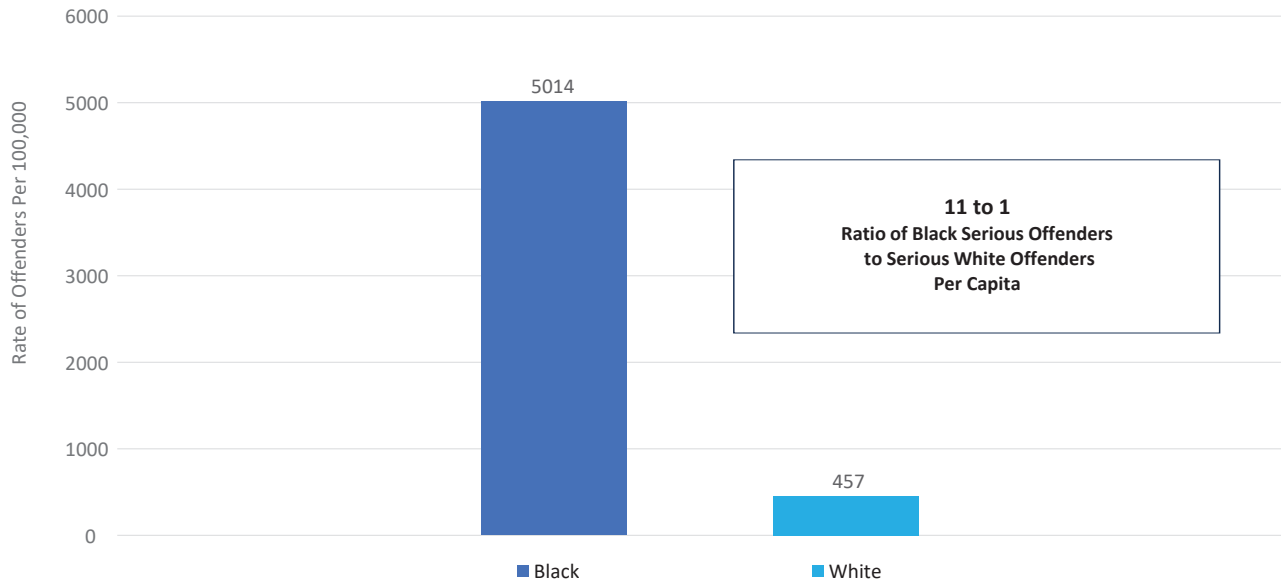
Given the disproportionate levels of crime perpetrated by black offenders in the black community, black Minnesotans are tragically victimized at disproportionate levels as well.

Figure 20 illustrates the analysis of Minnesota’s 2022 crime victim data showing that black Minnesotans were **5.5 times** more likely than white Minnesotans to be victims of serious crime. That ratio is down from 9.5 times in 2021.

Black Minnesotans were also “victimized” by the elevated levels of “crimes against society” that exist in predominantly black neighborhoods such as drug dealing and illegal weapon possession and sales. These crimes are traditionally viewed as “victimless” crimes, but the negative impact these crimes have on the communities where they take place are undeniable.

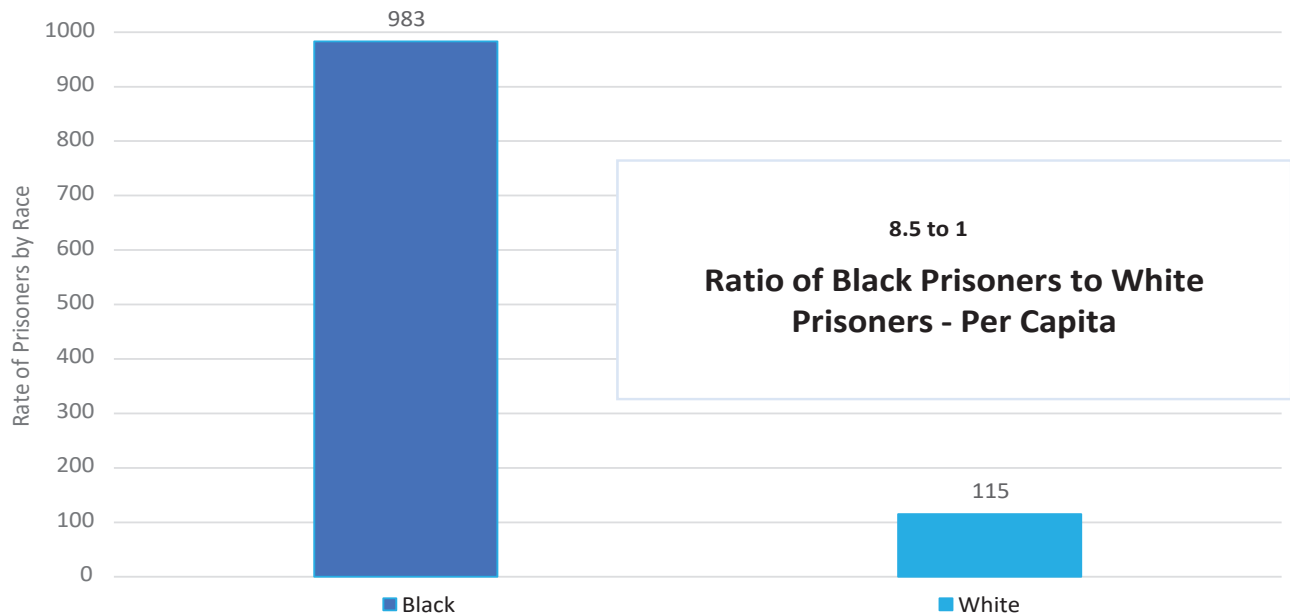
The elevated victimization rates in the black community emphasize the damage done to the black community when criminal justice system policies and practices are designed to reduce or eliminate consequences to crime in a misguided effort to address “disparities.”

Figure 18
Minnesota Adult Criminal Offenders - 2022
Ratio Derived from all Serious Offenders per 100,000 Population



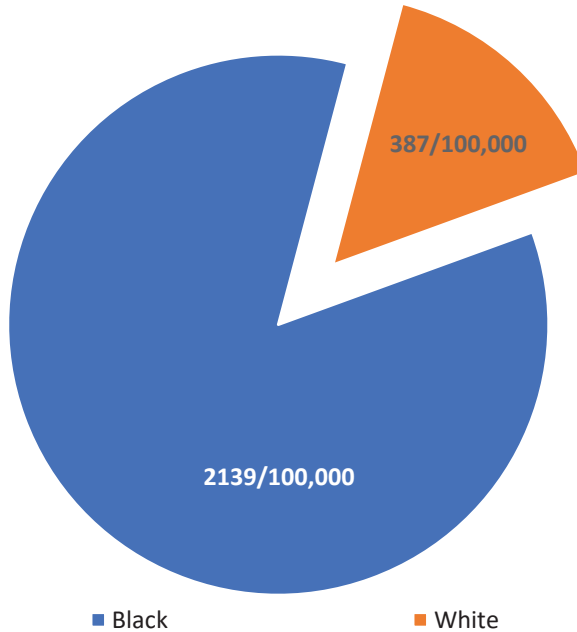
Source: 2022 BCA Criminal Offender Data and U.S. Census Bureau adult population figures by race as reported in the Minnesota Sentencing Guidelines Commission's 2024 Report to the Legislature.

Figure 19
Minnesota Prison Population July 1, 2023
Ratio Derived from Rate of Prisoners per 100,000 Population



Source: July 2023 Minnesota Department of Corrections Population Summary and the U.S. Census Bureau adult population figures by race as reported in the Minnesota Sentencing Guidelines Commission's 2024 Report to the Legislature.

Figure 20
Minnesota Crime Victims - 2022
Ratio Derived from Rate of Victimization by Race per Capita



5.5 to 1

Black Minnesotans were victimized more than 5.5 times the rate of white Minnesotans in 2022.

Victimization rates derived from murder, aggravated assault, robbery, burglary, and rape.

Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer.

Rafael Mangual articulated this in his book *Criminal (In) Justice – What the Push for Decarceration and Depolicing Gets Wrong and Who It Hurts Most*:

One of the most frustrating aspects of America’s necessary and important criminal justice reform debate is the cavalier attitude with which (usually, though not always) well-off advocates living in posh suburban enclaves or luxury city high-rises push policies whose downside risks will be borne by a tiny slice of our most vulnerable citizens living in places most of those advocates wouldn’t dare walk through by themselves on a summer night. When we evaluate criminal justice policy proposals like the mass decarceration programs... we should do so with that disparity in mind.¹¹

Conclusion

The narrative of *unwarranted racial disparities* in Minnesota’s criminal justice system is well entrenched. As a

result, nearly all criminal justice system policy development starts with the false premise that the system unfairly treats black Minnesotans at every stage of the criminal justice system.

This premise perpetuates policy development that sadly and ironically hurts black Minnesotans the most by failing to hold black offenders accountable, therefore subjecting black communities to disproportionately high levels of criminality.

This analysis clarifies whether racial disproportions in outcomes in Minnesota’s criminal justice system were warranted in 2022. It accomplished this by constructing a fair and accurate analysis of these racial disproportions using newly accessible offender population data. When the offender population was used as a benchmark, the evidence was clear that throughout each stage of the criminal justice system, black offenders frequently received less certain and less consequential treatment than white offenders.

If the criminal justice system was treating black Minneso-

tans unjustly, then the 11:1, black-to-white offender ratio for serious offense rates would have worsened as black offenders traversed through the system. It did not. In fact, the data showed that not only did the ratio *not* worsen, but in most categories the ratios were more favorable to black offenders than white offenders.

Attention and resources applied toward criminal justice system policy “reform” would be far more helpful if they were applied toward the drivers of crime in the black community: fractured families, poor quality education, high unemployment, and low homeownership rates, to name a few.

This represents a long-term effort that should be implemented in concert with, not in place of, real-time consequential enforcement efforts — such as ensuring accountability through swift and sure enforcement and prosecution of criminal offenders. Implementing long-term solutions at the exclusion of logical and consequential enforcement will saddle Minnesota’s black community with prolonged and devastating criminal offending rates — an outcome that is counterproductive to the common good.

It is time for policymakers to recognize that Minnesota’s criminal justice system is not creating unwarranted “disparities” disfavoring black offenders. Responding as if it does, and altering the system to reduce accountability for black offenders, is a misguided effort. It is one that harms the black community in the present while it derails, delays, and underfunds efforts to apply long-term solutions toward the social disparities that fuel the disproportionate amount of black criminality and black victimization.

Endnotes

- 1 Senator Amy Klobuchar, Social Media post on X, formerly known as Twitter, June 18, 2020 7:37pm <https://twitter.com/amyklobuchar/status/1273776975434448900>.
- 2 U.S. Department of Justice at <https://www.ojp.gov/ncjrs/virtual-library/abstracts/reducing-racial-disparity-criminal-justice-system-manual>
- 3 Vera Institute of Justice, Incarceration Trends – 2019. <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-minnesota.pdf>.
- 4 Minnesota Department of Health – Incarceration inequities and health - 2016. <https://www.health.state.mn.us/communities/practice/healthymnpartner-ship/narratives/docs/NarrIncarcerationInequities.pdf>.
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- 7 Ferguson, Christopher; Smith, Sven; "Race, class, and criminal adjudication: Is the US criminal justice system as biased as is often assumed? A meta-analytic review." (2023) *Aggression and Violent Behavior journal*. Science Direct. <https://doi.org/10.1016/j.avb.2023.101905>. Pages 1, 6, and 8.
- 8 Matt Vogel and Lauren Porter, Toward a Demographic Understanding of Incarceration Disparities: Race, Ethnicity, and Age Structure. (2016) <https://link.springer.com/article/10.1007/s10940-015-9265-6>.
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- 10 Minnesota Sentencing Guidelines Commission website. <https://mn.gov/sentencing-guidelines/about/#:::text=In%201978%2C%20Minnesota%20created%20the,must%20apply%20in%20felony%20sentencing>.
- 11 Mangual, Rafael A., *Criminal (In) Justice – What the Push for Decarceration and Depolicing Gets Wrong and Who It Hurts Most*. (2022) by Hachette Book Group, Inc. Page 10.



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