

Multnomah County District Attorney's Office
analysis of the 2019 W. Haywood Burns
Institute report on Racial and Ethnic
Disparities



November 2019

The Multnomah County District Attorney's Office remains fully committed to appropriately addressing racial and ethnic disparities in a thoughtful, systematic and meaningful way. Similarly, this office remains dedicated to improving our understanding and awareness of the racial and ethnic disparities that exist in our criminal justice system. In order for there to be meaningful change, we must actually change and remain committed to that ideal. To that end, the Multnomah County District Attorney's Office, working with our system partners, continues to benefit from a rich and collaborative, several year relationship with the John D. and Catherine T. MacArthur Foundation and its Safety and Justice Challenge to implement data-informed policies that reduce our reliance on jail and prison beds while simultaneously reducing the disparities within our local community justice system.

The Safety and Justice Challenge recently provided the public with an updated "*Racial and Ethnic Disparities in Multnomah County*" report. The original report, issued in 2016, resulted in a dedicated pursuit from this office to better identify outcomes for our communities, in particular for our minority communities. Since that report, my office and the community has benefited from careful and critical examinations of our public safety system through a lens of equity, fairness, safety and justice as we analyze the racial and ethnic disparities in Multnomah County.

There is a lot to learn from this most recent report, but whether disparities exist is not one of them; we know that fact to be true. In this report – compiled by the W. Haywood Burns Institute – we see an increase in disparities in some of seven decision points analyzed. The report also shows some modest, and some substantial, improvements in other areas including prosecutorial-specific data points. We are proud of that progress but recognize more work needs to be done to critically analyze where disparities are found, challenge each other with answering the question of why those disparities exist and then to focus on identifying and implementing additional solutions.

Like in 2016, the new report examines data for seven key parts of the criminal justice system **(1): Arrests; (2): Prosecutorial Charging; (3): Assignment of Counsel; (4): Jail Releases; (5): Case Processing/Diversion; (6): Disposition and Sentencing; and (7): Probation**. The Multnomah County District Attorney's Office's role in each decision point varies. With that premise in mind, we have carefully reviewed the report's analysis, methodology and findings for all decision points, but with an even stronger level of scrutiny of the decision points specific to our profession.

The following paragraphs contain analysis of certain decision points specific to our profession.

Decision Point 6: Disposition and Sentencing [Rate of Prison Referrals]

Here, the W. Haywood Burns Institute report concluded that in Multnomah County, the likelihood of receiving a prison sentence for people of color decreased substantially from 2014 to 2019. This is a remarkable accomplishment. It is consistent with Multnomah County's, and this office's, dedicated effort to reduce disparity in who receives a prison sentence.

Contributing to the reduction in disparities are the *post-sentence* diversion programs like the Multnomah County Justice Reinvestment Program (MCJRP), START Court, Mental Health Court and Veterans Court. Further, policy changes such as the adoption of the Juvenile Tier II and the Second Look Policy were implemented to help reduce the disproportionality of youth from communities of color being sentenced to prison. In the 2019 report, the only *post-sentence* diversion programs to be analyzed in this report include MCJRP and START Court.

There is always opportunity for improvement any time disparity is present. As we continue to work towards complete equity, we are proud of our efforts, which has helped reduce disparities in the rate of prison sentences from 2014 across all but one demographic studied in this report.

As stated in the 2019 "Racial and Ethnic Disparities in Multnomah County" report:

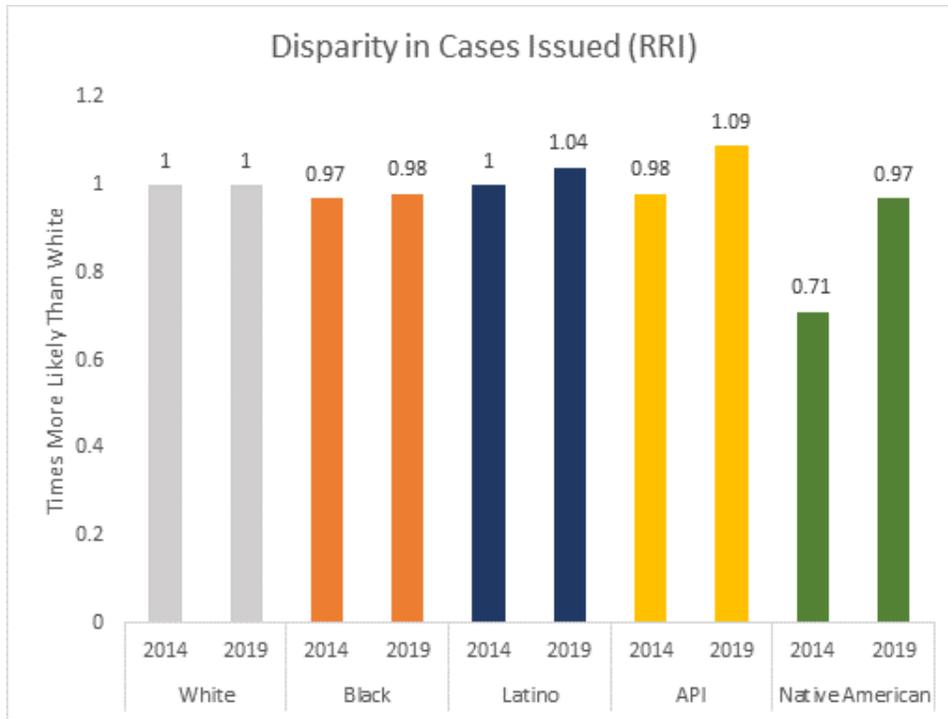
- As of 2019, Black adults were 1.1 times per 1,000 cases more likely than White adults to receive a **prison** sentence, which is a substantial decrease in the disparity in rate of prison sentences
- As of 2019, Latino adults and White adults have the same RRI rate 1.0, which means there is equality and they are receiving **prison** sentences at the same rate
- The number of convicted adults who are subject to **prison** increased for White adults from 2014 to 2019 and decreased for all other demographics studied
- In 2014, Black adults were 1.6 per 1,000 cases times more likely than White adults to receive a **prison** sentence

Additionally, as of 2019, Black, Latino and Asian Pacific-Islander adults are slightly more likely, but near parity, to receive a **jail** sentence than White adults. The report found that the RRI for Black, Latino and Asian Pacific-Islander adults to receive a jail sentence is 1.1 compared to 1.0 for White adults.

Decision Point 2: Prosecutorial Charging: Rate of Cases Issued for Prosecution

The Multnomah County District Attorney’s Office is guided by our legal and ethical duties when determining how to issue a case for prosecution. We acknowledge the enormous responsibility bestowed upon us to ensure our policies and practices are consistent and fair for all individuals.

The data in the 2019 W. Haywood Burns Institute report confirms the way we issues cases for prosecution is at or near equity across all demographics. This point is highlighted in the “Disparity in Cases Issued” chart below.



As stated in the 2019 “Racial and Ethnic Disparities in Multnomah County” report:

- The current rate demonstrates that Black and Native American adults were less likely than White adults to have their cases issued for prosecution

Decision Points 5 and 6: Case Processing / Diversion and Disposition and Sentences:

The Multnomah County District Attorney’s Office is proud to work with the court and others to offer about a dozen diversion and specialty courts that offer varying degrees of supervision and resources for individuals when placed on probation by a judge.

We believe these programs are beneficial to the community as they help reduce gaps within our public safety system, lessen the impact of the criminal justice system and helps provide individuals with needed services.

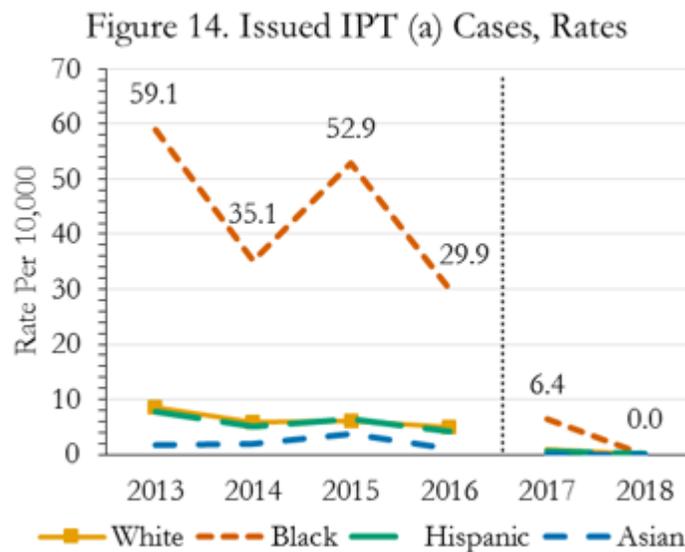
In this section of the report, we start to see the results of our dedicated efforts to offer more diversion programs. One of the many goals of a diversion program is to stop a person from being adversely impacted by the criminal justice system. A criminal justice system with more diversion programs will inherently see fewer convictions occurring.

We continue our effort to ensure equity across all demographics within our community. We have worked extremely hard towards achieving equity as it relates to conviction rates, and it appears that we are extremely close to obtaining that goal.

We work closely with the court to ensure that the diversion eligibility for all individuals is equal. Not all criminal offenses are eligible for diversion. For example, there are approximately 13 crime categories that are excluded from being eligible for MCJRP, the county's innovative prison diversion program. These exclusions include aggravated murder, murder, sex crimes and crimes committed against children under the age of 14.

The 2019 report identifies only cases diverted. It specifically notes that it cannot tell readers whether people of color are more or less likely than White people to be eligible for or offered diversion or whether people of color who are offered diversion are more or less likely than White people to enroll/participate in diversion.

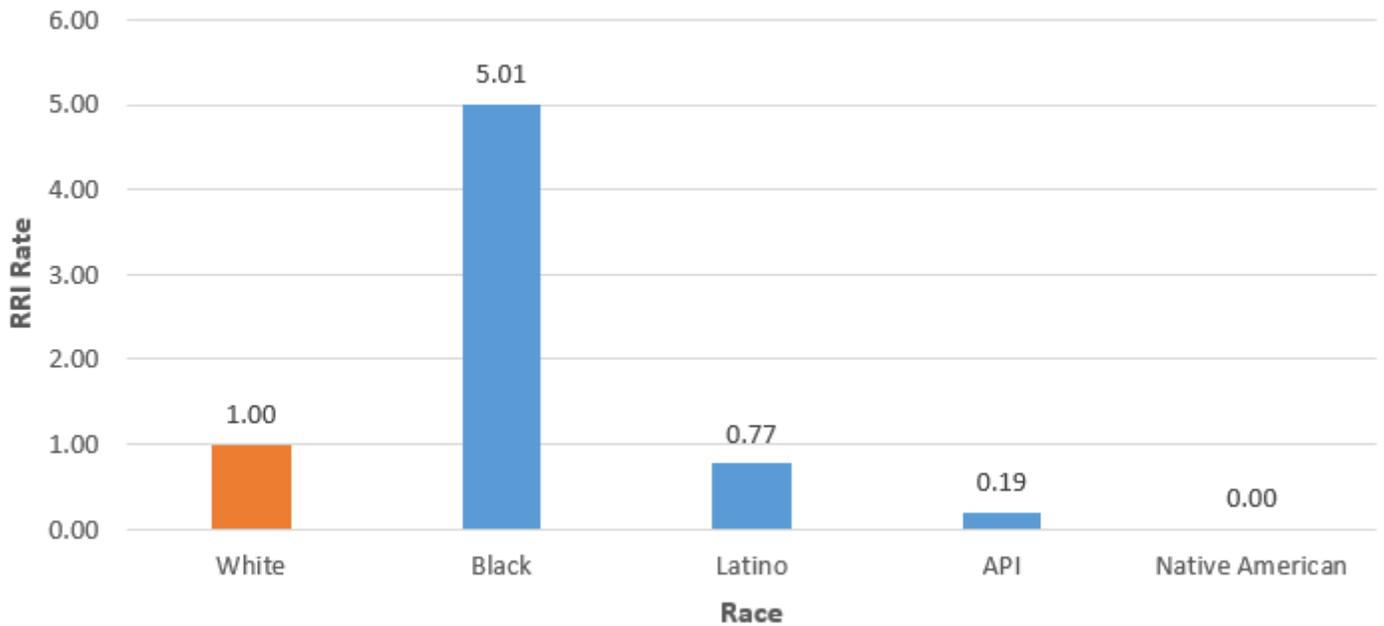
My office intentionally created new policies and collaborated with partners to implement new and innovative diversion programs to reduce disparities for certain crimes. With regard to our policy change, in 2017 this office changed the way we prosecute certain Interfering with Public Transportation (IPT) offenses. Specifically, we no longer prosecute IPTs for fare evasion exclusion. Additionally, the conduct-based IPTs we do issue are eligible for Community Court diversion. The graph below demonstrates the lowered rate of prosecution across all racial demographics, which is particularly noteworthy for Black adults.



(Source: MCDA report April 2019)

Furthermore, this office created a policy to defelonize most drug possession offenses and created the Treatment First Program, which offers diversion and treatment in lieu of conviction. The Multnomah County District Attorney's Office can and does, through policy, assist in the way cases that are referred to this office are handled in the criminal justice system. Notably, the chart below reflects that Black adults are over five times more likely to be eligible for the Treatment First diversion program than White adults, and participate at an equally high rate. There is disparity in the drug possession arrest rates for Black adults. The Treatment First Program is able to address disproportionality by diverting Black adults at a higher rate.

Treatment First/STOP Court Participation Rate Relative Rate Index (RRI)

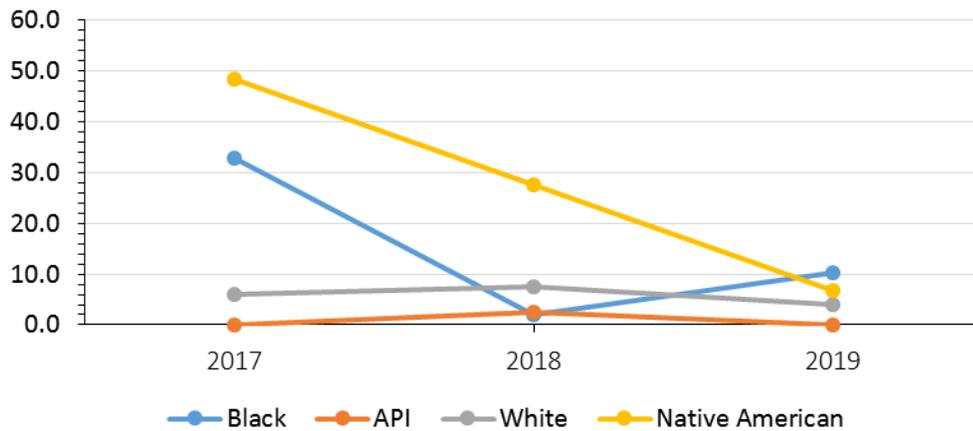


(Note: This graphic was created by the District Attorney's Office using data found in the 2019 W. Haywood Burns Institute report.)

As explained in the W. Haywood Burns Institute report, the data used relies on referral rates to the District Attorney's Office and therefore does not capture pre-booking diversion programs. Following the first Racial Ethnic and Disparities report, this office worked expeditiously to become the first jurisdiction in Oregon to implement the Law Enforcement Assisted Division (LEAD®) program.

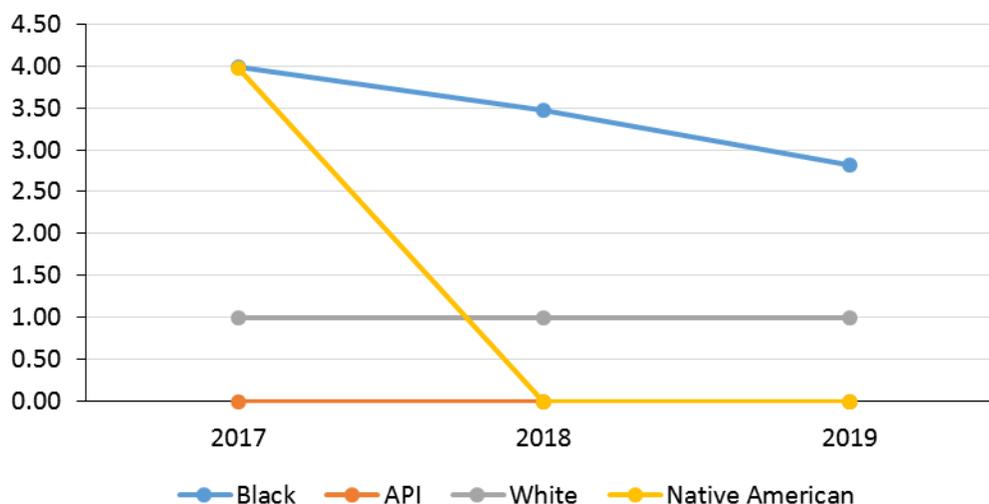
Established in 2017, the LEAD® program is a county-funded, **pre-booking** diversion program that allows law enforcement to divert an individual facing low-level drug offenses and to connect them with case managers using a harm reduction approach with the expectation that the individual entirely avoids jail or prosecution and instead receives needed services.

LEAD Referral Rates by Race per 100,000, 2017- October 1, 2019



(Source: MCDA program data)

LEAD Arrest Referrals by RRI, 2017- October 1, 2019



(Source: MCDA program data)

While the success of the LEAD® program is not specifically examined in this report, our own data shows that the program contributes to reducing disparity within the criminal justice system. Data indicates that Black adults were being diverted at a rate approximately four times higher than that of White adults in 2017. This diversion rate lowers to about three times more likely in 2019, where data collection is not yet complete. While there have not been any Native American arrest referrals in 2018 and 2019, Native Americans were also diverted around four times more than White adults in 2017.

There are also **post-plea** diversion programs like Multnomah County’s Community Court, the Treatment First Program, the Multnomah County Driving under the Influence of Intoxicants (DUII) Diversion Program, the Multnomah County Sanctions Treatment Opportunities Progress (STOP) Drug Court, Community Court and the Domestic Violence Deferred Sentencing Program. These post-plea diversion programs were examined in this report.

As a result of additional diversion opportunities, there may be more cases dismissed following successful participation in diversion, which helps to reduce the overall rate of conviction for everyone and to a greater extent people of color (as detailed in the bullet points below). We will also continue to use the data provided in W. Haywood Burns Institute report in a meaningful way to identify and improve, whenever possible, the number of eligible cases entered into diversion programs.

As stated in the 2019 “Racial and Ethnic Disparities in Multnomah County” report:

- The rate of convictions across all demographics (per 1,000 cases with a disposition) decreased from 2014
- In 2019, people of color were less likely than White adults to have their case result in a conviction
 - For every 1,000 White adult with a disposition, there were 590 convictions
 - For every 1,000 Black adult with a disposition, there were 536 convictions
 - For every 1,000 Latino adult with a disposition, there were 564 convictions
 - For every 1,000 Asian-Pacific Islander adult with a disposition, there were 525 convictions
 - For every 1,000 Native American adult with a disposition, there were 537 convictions

In summary, addressing the disparities in the criminal justice system will continue to take intentionality, time, resources and participation from all parties. There is no one-size fits all approach, but what is needed is a unified front from all system partners. The Multnomah County District Attorney’s Office is a committed partner of the Local Public Safety Coordinating Council, which helps coordinate local criminal justice policy and addresses racial and ethnic disparity issues in our community.

The Multnomah County District Attorney’s Office works intentionally to identify racial and ethnic disparities and to promptly address those matters. The members of this office strive to ensure all similarly situated individuals involved in the criminal justice system are treated fairly and with dignity and respect to obtain an equitable outcome. As District Attorney, I firmly believe we achieve that

expectation every day while being aware that improvements are possible with continued training, education and examination of potential policy adjustments system wide.

In order for there to be actual change, we must actually change and remain committed to that concept.

The Multnomah County District Attorney's Office is committed to the open and balanced administration of justice—one that honors and respects diversity in all of its forms. As an office, we move forward with a promise to continue the momentum underway that has already reduced some disparities – but also with a promise to do better. We must do better as an organization and as a system to proactively address policies and practices that will ensure our justice system is fair for everyone and to ensure that all members of that system are held accountable.