



DISPELLING THE MYTH OF UNWARRANTED RACIAL DISPARITIES IN MINNESOTA'S CRIMINAL JUSTICE SYSTEM

Data consistently show a political narrative
at odds with the facts

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Dispelling the Myth of Unwarranted Racial Disparities in Minnesota’s Criminal Justice System

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Executive Summary

- The prevailing narrative about race in Minnesota’s criminal justice system is that there are disproportionate numbers of black and white offenders within the criminal justice system to that of the general public, and that these differences represent “unwarranted disparities” which are born out of policies and practices that unfairly treat people of color more harshly.
- The narrative has become foundational to nearly all criminal justice system policy development. If the narrative is based on misleading representations of the data, then the narrative represents a significant problem.
- This analysis attempts to answer whether black and white Minnesotans are treated equally in the criminal justice system. It uses a unique data set that has, until recently, not been available: offender data by race. Knowing who the offenders are by race allows those examining the issue to focus on those who are committing crimes, not on the massive proportion of the law-abiding population. The data from this focused examination is far more pertinent to answer the question at hand.
- Offender data and other traditional data sets from 2021 were used in this limited analysis which compared white and black adult offenders as they traveled through Minnesota’s criminal justice system.
- In direct conflict with the prevailing narrative, the disparities that followed criminal offenders through the system were frequently more favorable to black offenders and less favorable to white offenders at every stage, including incarceration.
- Minnesota’s criminal justice system is a system that deals with grossly disproportionate numbers of black offenders at the outset. Deflecting attention away from this fact and gutting accountability in a misguided effort to address “disparities” only subjects black communities to continued disproportionately high crime levels.



Introduction

The persistent refrain involving race in Minnesota's criminal justice system is that black Minnesotans are over represented throughout the system compared to the same cohort in the general population. This common narrative implies that black people are treated disparately within the system for no other reason but race. The narrative is misleading and harmful to all Minnesotans, especially black Minnesotans, because it creates misguided

criminal justice system policies that fail to hold black offenders accountable and subject black communities to disproportionately high amounts of crime.

Black Minnesotans are, in fact, disproportionately represented in the criminal justice system compared to their proportion of the general population. However, this disparate representation is warranted due to one undeniable yet stubbornly

dismissed fact: black Minnesotans commit a disproportionate amount of crime, especially serious crimes likely to result in incarceration. This fact is critical to acknowledge if a serious, fact-based evaluation of current criminal justice system disparities is to take place.

The data shows that blacks represent nine times more criminal offenders overall and 10 times more serious offenders than whites. If the system was systemically racist and the system practitioners were individually biased, those ratios would worsen for blacks at each subsequent stage of the criminal justice system. But they don't — and it isn't close. In direct conflict with the prevailing narrative, the disparities that follow criminal offenders through the system are frequently more favorable to black offenders and less favorable to white offenders.

Heather Mac Donald, policy fellow with the Manhattan Institute, summarized this in her 2015 testimony to Congress:

“The most dangerous misconception about our criminal justice system is that it is pervaded by racial bias. For decades, criminologists have tried to find evidence proving that the over representation of blacks in prison is due to systemic racial inequity. That effort has always come up short. In fact, racial differences in offending account for the disproportionate representation of blacks in prison. A 1994 Justice Department survey of felony cases from the country's 75 largest urban areas found that blacks actually had a lower chance of prosecution following a felony than whites. Following conviction, blacks were more likely to be sentenced to prison, however, due to their more extensive criminal histories and the gravity of their current offense.”¹

The data used in this analysis, especially offender data, is readily available, yet a great many criminal justice policymakers ignore it. They have

demonstrated a lack of interest in investigating or challenging the idea of “unwarranted racial disparities.” These policymakers seem content to parrot the established narrative that unfair racial disparities exist and therefore must be unwarranted. As a result, they continue to develop policies aimed at correcting problems that often don't exist. In turn they exacerbate many of the problems they want to eliminate, instead hoisting them onto the very people they claim to be helping.

Policies built around the narrative of “unwarranted racial disparities” deflect attention and resources

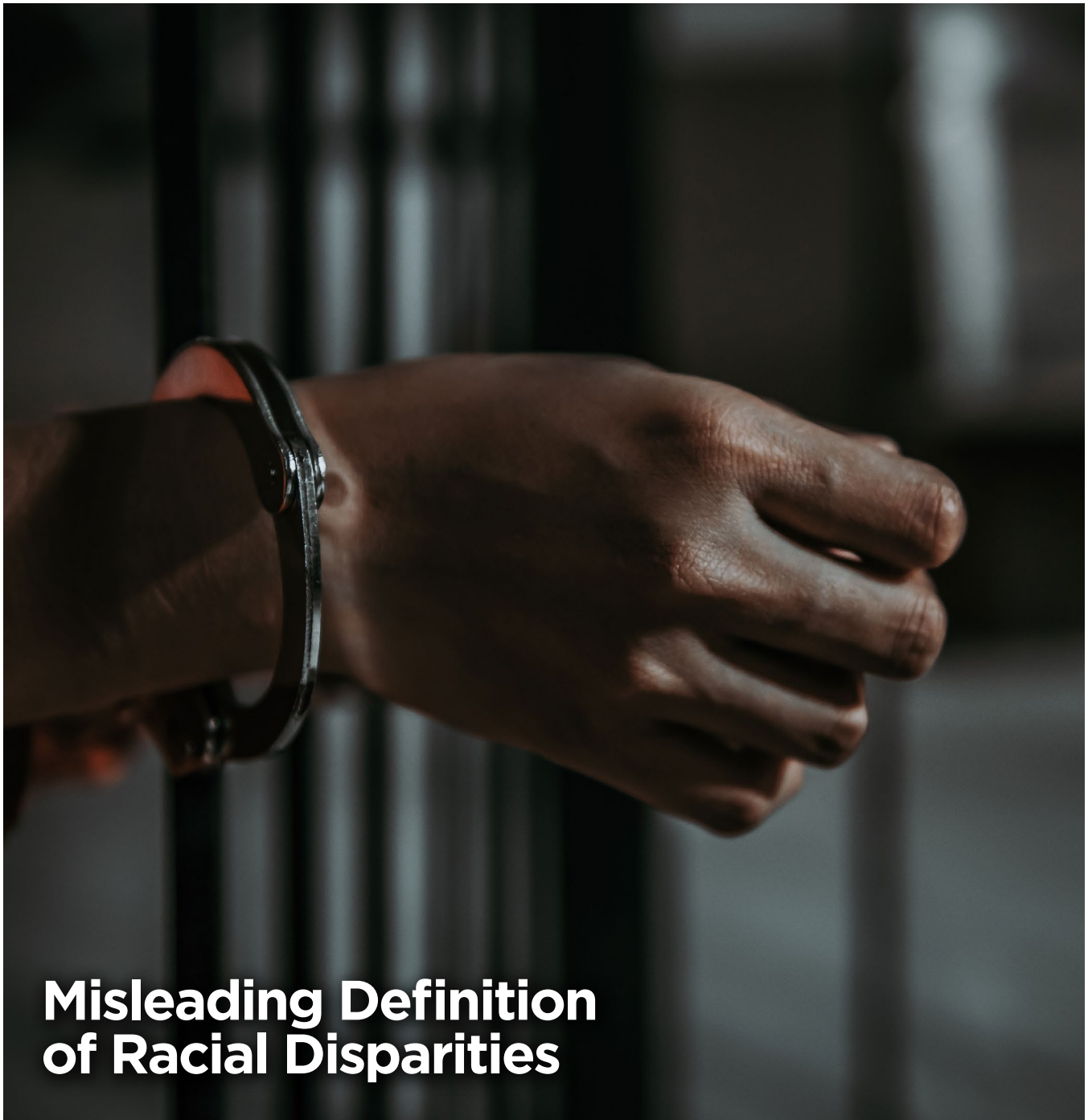
away from real problems, such as what drives the disproportionate levels of criminal offending in the black community. This deflection of attention makes it more likely that higher levels of criminal offending will continue in black communities. It is a sad reality that communities devastated by crime often lead to an overwhelmed criminal justice system, which reduces the likelihood that offenders in those communities will be held accountable. While this vicious cycle hurts all Minnesotans, it harms law-abiding black Minnesotans the most.

Solutions to address racial disparities that exist *inside* the

criminal justice system must focus on the causes of crime that exist *outside* the system. Racial disparities do legitimately exist within the criminal justice system, but they are the result of disparate racial criminal offense rates, seriousness of crimes committed, and criminal histories — not a biased system. It is illogical and self-destructive to address disparities created largely outside the system by altering accountability and consequences within the system.

This analysis offers support for those who want progress in reducing crime by reducing the drivers of disparate levels of criminal offending. ■

In direct conflict with the prevailing narrative, the disparities that follow criminal offenders through the system are frequently more favorable to black offenders and less favorable to white offenders.



Misleading Definition of Racial Disparities

The narrative of unwarranted racial disparities in the criminal justice system is pervasively entrenched in the criminal justice profession, academia, and even 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 influential non-profit whose mission is to end “overcriminalization”

and “over incarceration” of people of color, frequently makes declarative statements perpetuating the narrative of unwarranted racial disparities in the criminal justice system: “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 use of the *general* population rather than the *offender* population as the denominator in this calculation is misleading. It creates a narrative that unwarranted racial disparities are pervasive throughout the criminal justice system, and that the system must rectify this injustice through policies designed to treat offenders differently based on their race.

Such a narrative has become foundational to nearly all criminal justice system policy development. If the narrative is based on misleading representations of the data, as this analysis contends, then the narrative represents a significant problem.

Kevin Reitz, a professor at the University of Minnesota’s Law School, wrote a 2019 article for the *Berkeley Journal of Criminal Law* dealing in part with some of the flaws he observed in the calculations and conclusions drawn in the field of “incarceration scale.” While his article was not related to racial disparities, some of his concerns about the statistical relevance of the incarceration scale are also pertinent to the analysis of criminal justice system disparities. “As a statistical tool, incarceration rates hold tremendous power and

*rhetorical meaning...Accordingly, they should be treated with care. We should be wary about statistical uses that are nonsensical or misleading.”*⁵

Reitz noted that while statistical calculations can be “mathematically impeccable,” that does not necessarily make them relevant.

It is mathematically impeccable 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 indicates adult black Minnesotans are incarcerated 9.6 times more than adult white Minnesotans.

That calculation is technically accurate and the disparity it reflects should be something of profound societal interest to eliminate. However, this calculation is not helpful in determining whether the *criminal justice system* is responsible for creating or exacerbating the disparity. Unfortunately, the disparity is regularly relied upon as the basis for creating criminal justice system policies that 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. Eighty-five percent of black and 98 percent of white Minnesotans are law-abiding citizens. Using these general population sets as the denominator in the computation of criminal justice system racial disparities lead to misleading conclusions and misguided responses. It suggests the criminal justice system is unjustly plucking law-abiding citizens off the street, placing them in the system, and treating them disparately, all based on race. The narrative this creates undermines the criminal justice system, making it less effective and ultimately making all Minnesotans less safe. ■

If the narrative is based on misleading representations of the data, as this analysis contends, then the narrative represents a significant problem.



Methodology

This analysis involves black and white adult offenders, as this is the most frequent comparison made when examining racial disparities. It follows serious offenders (those most likely to go to prison) through the system in 2021 from identification as offenders, through arrests,

charging, sentencing, and incarceration.

It also represents a unique examination of criminal justice system data — 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 which 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 a variety of points to evaluate whether unwarranted disparities existed or were developed.

This analysis compared *offender data* against:

- 1) 2021 U.S. Census Bureau Data for adult Minnesotans, as used by the Minnesota Department of Corrections (DOC)
- 2) 2021 adult arrest data held by the Minnesota Bureau of Criminal Apprehension (BCA)
- 3) 2021 charging data held by the Minnesota District Courts
- 4) 2021 sentencing and incarceration data held by the Minnesota Sentencing Guidelines Commission, and
- 5) Imprisonment data for the end of 2022, held and reported by the DOC on January 1, 2023.

Comparing aggregate data from multiple sources has its limitations. To be clear, this analysis did not track individual people or cases through the system. 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 (murder, assault, robbery, rape, weapons, and

drugs) compared with serious crime arrests, serious crime charges, and serious crime sentences during the same period of time. Some differences in reporting should be noted — for example, the district court couples many crimes, such as assault and robbery, into a broad “Person Crimes” set, while the BCA reports these separately.

Also, the analysis is limited to a single year: 2021. This is due to statewide offender racial data being available from the BCA for the first time in 2021. The existence of this data will now allow for continued

examination of racial disparities over an extended period, allowing for 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 disparities in rates. Matt Vogel and Lauren Porter concluded in 2010 that nearly eight percent of black incarceration disparities could be accounted for by the difference in age structures between blacks and whites, citing that nationally “black populations have a larger portion of individuals at younger, or more ‘crime-prone,’ ages...”⁶

The 2021 data reflects criminal justice system activity during the aftermath of social unrest following the death of George Floyd and the ongoing response to the COVID-19 pandemic. It is acknowledged that subsequent years could reflect changes in the levels of crime and the disparities found in this analysis.

Finally, there are countless conclusions that can be drawn from statistical analysis. 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 the existence or creation of unwarranted racial disparities by that system. ■

If the criminal justice system were operating in a biased and systemically racist manner, it would stand to reason that the ratios would worsen for black offenders as they moved through each stage of the system. That isn't what the data shows.



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. Pro-active police action can also add to the offender data.

Using offender identification 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.

Despite representing just seven percent of Minnesota's adult population, blacks represent 27 percent of all criminal offenders.

For all offenses tracked by the BCA in 2021, blacks were nine times more likely to be criminal offenders than whites on a per capita basis.

Offender disparity became even greater as the seriousness of criminal offenses increased. For example, blacks were 10 times more likely to be serious crime offenders, 50 times more likely to be murder offenders, and 107 times more likely to be robbery offenders than whites, per capita (Chart 1).

If the criminal justice system were operating in a biased and systemically racist manner, it would

stand to reason that these ratios would worsen for black offenders as they moved through each stage of the system.

That isn't what the data shows. In fact, the disparities in arrest, charging, and incarceration rates consistently disfavored whites throughout each subsequent stage of the criminal justice system, with few exceptions.

Arrest Data:

Dramatically, the racial disparities in the offender category flipped in the arrest category.

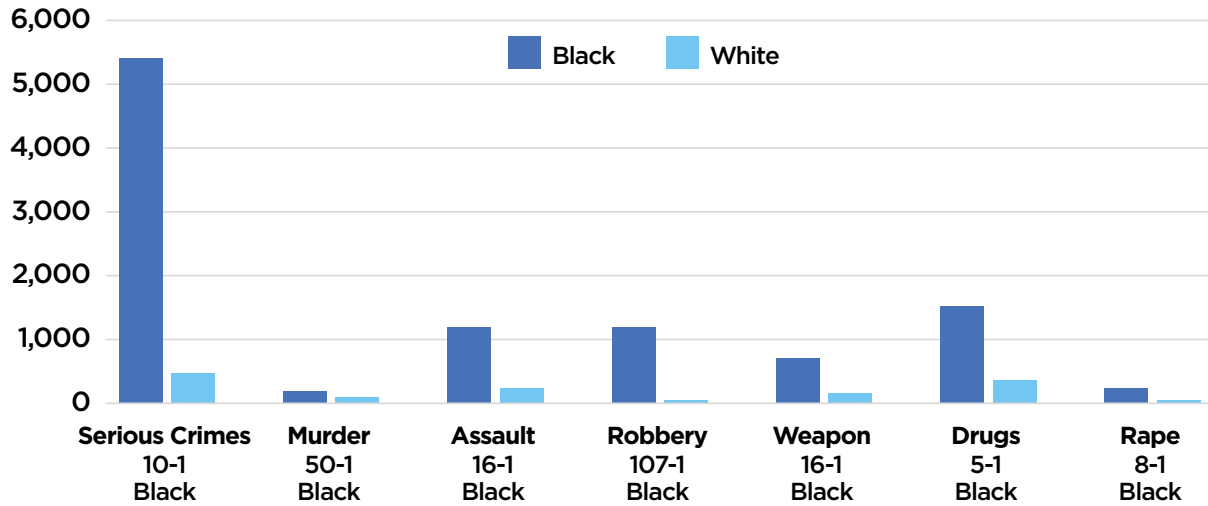
In 2021, white offenders in Minnesota were 1.7 times (70%) more likely to be arrested for all crimes than black offenders. The disparity of arrests disfavoring white offenders was consistent across nearly all crimes, with one notable exception: weapon crimes. Here, black offenders were 1.3 times more likely to be arrested than white offenders. This disparity likely reflects the level of gun violence in Minnesota's black communities and the resulting increased proactive law enforcement response in those areas.

When comparing serious crime arrests, white offenders were 1.6 times more likely to be arrested than black offenders. This disparity was most pronounced in the rate of robbery arrests, where

CHART 1

Minnesota Adult Criminal Offenders – 2021

Ratio Derived from Rate of Offenders per 100,000 Population

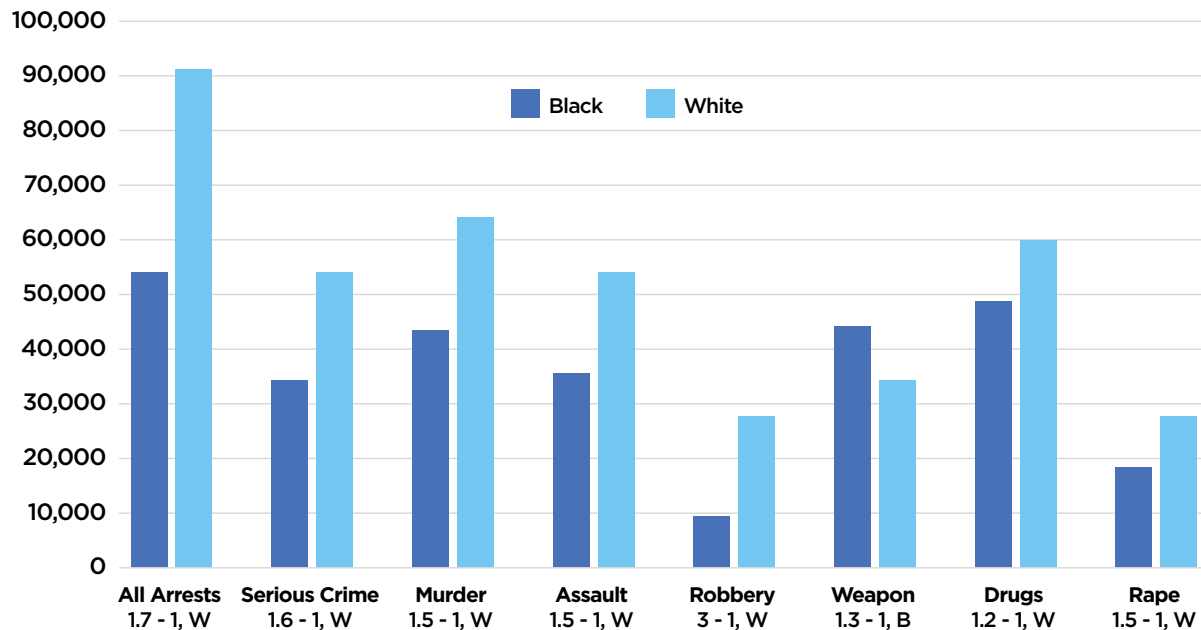


Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer

CHART 2

Minnesota Adult Arrests – 2021

Ratios Derived from Rate of Applicable Offender Sets



Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer

white offenders were 3 times more likely to be arrested than black offenders.

Notably, drug arrests, which are often the result of proactive police activity and arguably more susceptible to police bias, were also more likely to *disfavor* white offenders by a factor of 1.2.

This completely contradicts prevailing narratives that suggest drug enforcement has disproportionately and unfairly impacted black Minnesotans.

It is also timely given Minnesota's recent debate over the legalization of marijuana. During the debate one of the prevailing narratives, which is rarely even challenged anymore, is that the enforcement of marijuana laws has disparately placed black Minnesotans into the criminal justice system and into prison.

The Minnesota Department of Corrections' own fact sheet on drug offenses quietly corrects this misleading narrative. The fact sheet shows that in 2020, Minnesota had just 25 "non-white" inmates in prison for marijuana offenses, while the largest set of drug related inmates were there for methamphetamine convictions — 1,012 inmates of which 73 percent were white.⁷

Charging Data:

The pattern of disparities favoring black offenders and disfavoring white offenders continued at the charging stage in 2021.

White offenders were 1.8 times more likely to be charged with a serious offense than black offenders and outpaced black offenders in each category except for weapon offense charges.

White offenders were nearly twice as likely to be charged with murder. Of note regarding the murder data, there were more white murder offenders *charged* in 2021 than identified as murder offenders. This is likely the result of carryover charges resulting from offenses prior to 2021 and speaks to a limitation in comparing aggregate data sets.

Sentencing Data:

The pattern of disparities favoring black offenders and disfavoring white offenders continued at the sentencing stage in 2021.

Pronounce Sentences - Felony and Prison Sentences

In 2021, Minnesota District Courts *pronounced felony sentences* on 14,429 offenders. Of those sentenced, 8,217 were white offenders and 3,684 were black offenders. Only a small percentage of felony sentences resulted in prison or local confinement.

In terms of *pronounced prison sentences*, there were a total of 1,561 white offenders and 871 black offenders sentenced to prison in 2021. Chart 4 shows the rate of pronounced prison sentences for various crime categories and the ratio between black and white offenders.

As a ratio of serious offenders (those crimes most likely to result in a prison sentence), white serious offenders were 1.5 times more likely to receive a *pronounced prison sentence* than black serious offenders.

Of the categories listed, white serious offenders had a higher ratio in all categories except weapon and assault-related sentences. Black assault and weapons offenders were each 1.1 times more likely to receive a pronounced prison sentence. Some explanations for these disparities may be in the seriousness of offenses, the criminal histories of offenders, and in the sheer volume of these offenders in proportion to the population.

White robbery offenders were 3.7 times more likely to receive a pronounced prison sentence than black robbery offenders.

The sentencing stage also continued to negate the prevailing narrative of biased enforcement and prosecution of drug crimes in Minnesota. White drug offenders were two times more likely to receive a *pronounced prison sentence* than black drug offenders.

Presumptive vs. Actual Prison Commitments

Chart 5 shows the rate of presumptive prison commitments compared to the rate of actual prison commitments.

White serious offenders received a presumptive prison commitment 1.4 times more often than black serious offenders. The ratio of actual prison commitments increased to 1.5 - 1, which is identical

CHART 3

Minnesota Adult Criminal Charges - 2021

Ratios Derived from Rates of Applicable Offender Sets

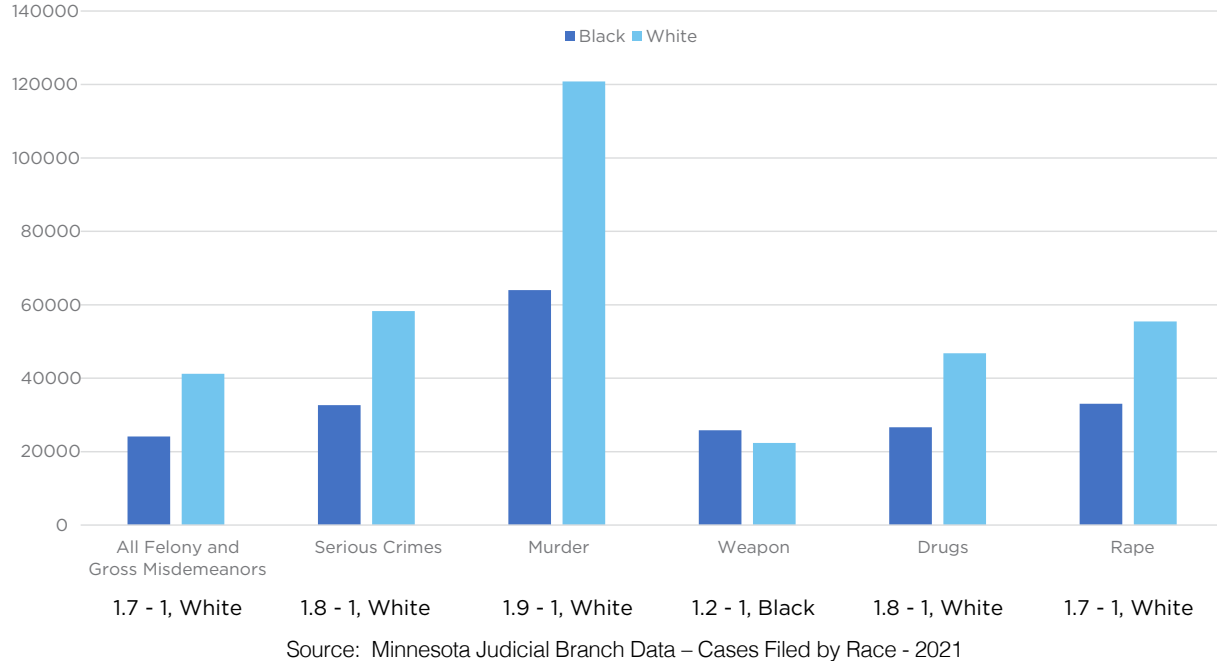
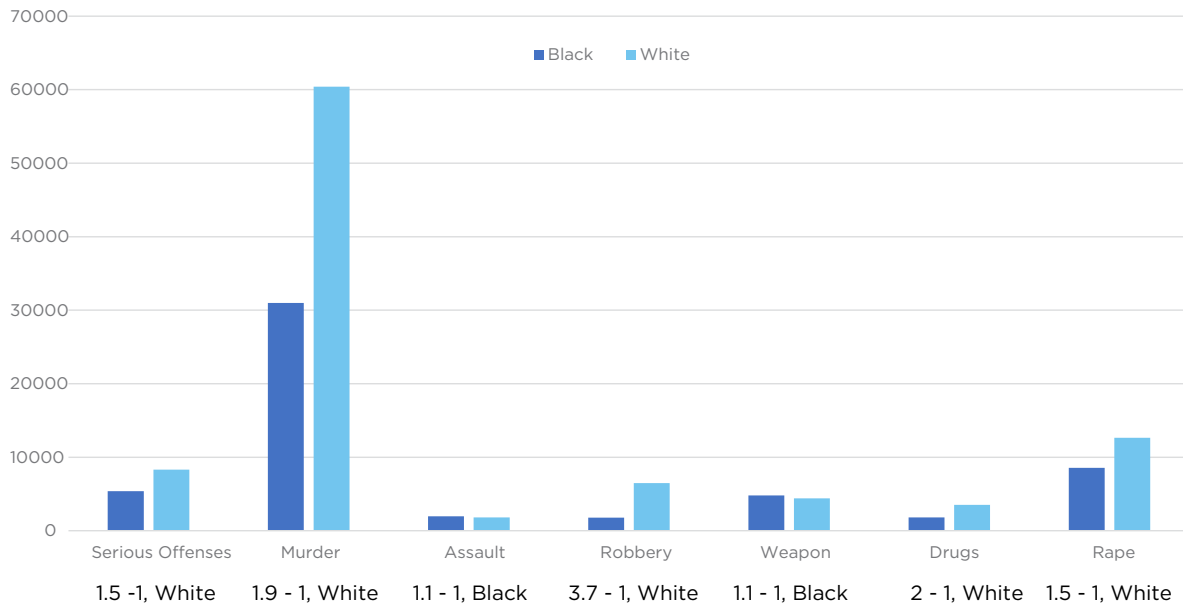


CHART 4

Minnesota Adult Pronounced Prison Sentences - 2021

Ratio Derived from Rate of Applicable Offender Set



Source: Minnesota Sentencing Guidelines Commission monitoring data, 2021 sentencing data as reported in the 2023 MSGC Report to the Legislature, and 2021 BCA offender data

to the ratio of *pronounced prison sentences* for serious offenders that disfavor white offenders.

Sentencing Departures

In evaluating whether the 2021 sentencing departures were consistent between black and white defendants, this analysis focused on the mitigated (downward) departures in the dispositional category (prison or not) and the durational category (length of sentence) shown in Chart 6.

The ratio of mitigated dispositional departures was virtually even, with white defendants 1.01 times (1%) more likely to receive a departure from a presumptive prison sentence.

The ratio of mitigated durational departure favored black defendants 1.66 - 1 — meaning black defendants were 1.66 times (66%) more likely to receive a reduction in time to serve compared to white defendants.

Aggravated (upward) departures were not included in this analysis as the actual numbers were very small, and both categories favored black defendants.

Incarceration

Chart 7 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 finally *total incarceration*.

White serious offenders were more likely to receive incarceration in all forms.

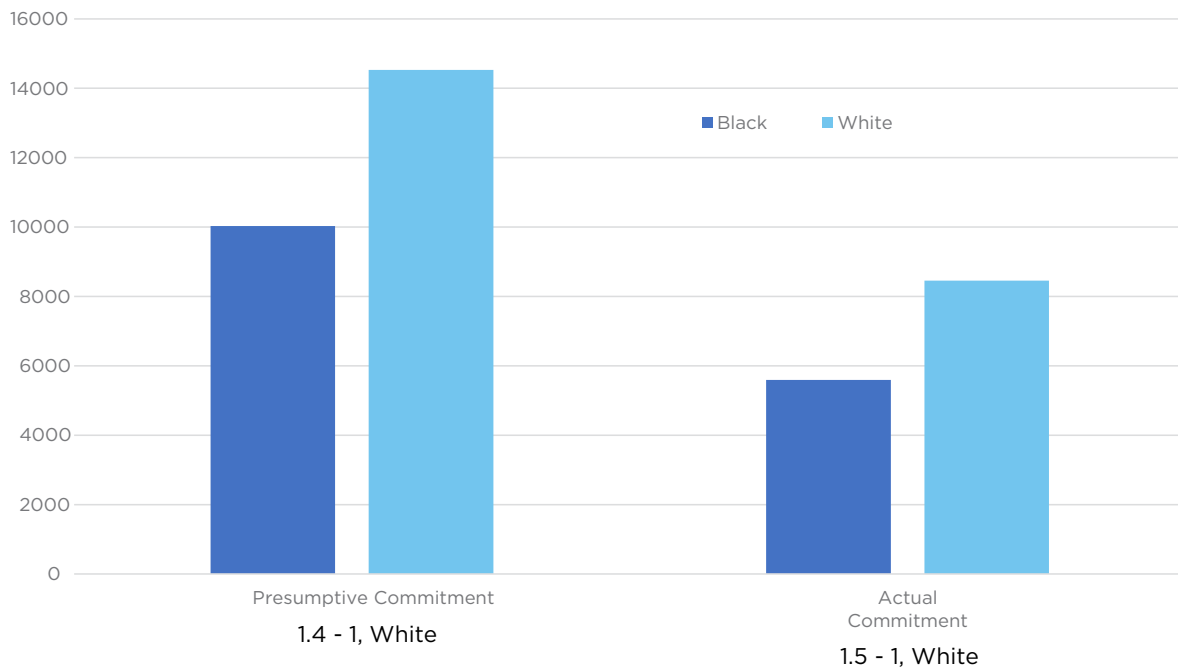
Offender vs. Prisoner

The next two charts provide a visual comparison showing the ratio of black to white as “offenders” (Chart 8), and “prisoners” (Chart 9). The ratios are nearly identical, which is what should be expected of a race neutral criminal justice system. ■

CHART 5

Minnesota Presumptive and Actual Prison Commitments - 2021

Ratios Derived from Serious Offenders Rates

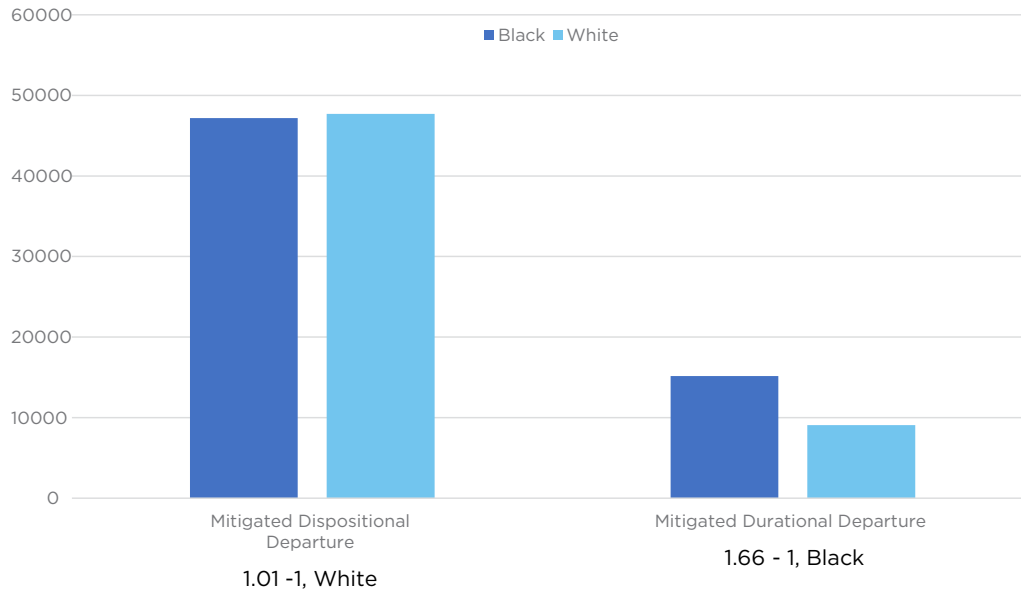


Source: Minnesota Sentencing Guidelines Commission monitoring data, 2021 sentencing data as reported in the 2023 MSGC Report to the Legislature, and 2021 BCA offender data

CHART 6

Minnesota Downward Sentencing Departures - 2021 Disposition and Duration

Ratios Derived from Presumptive Commitment Convictions Rates

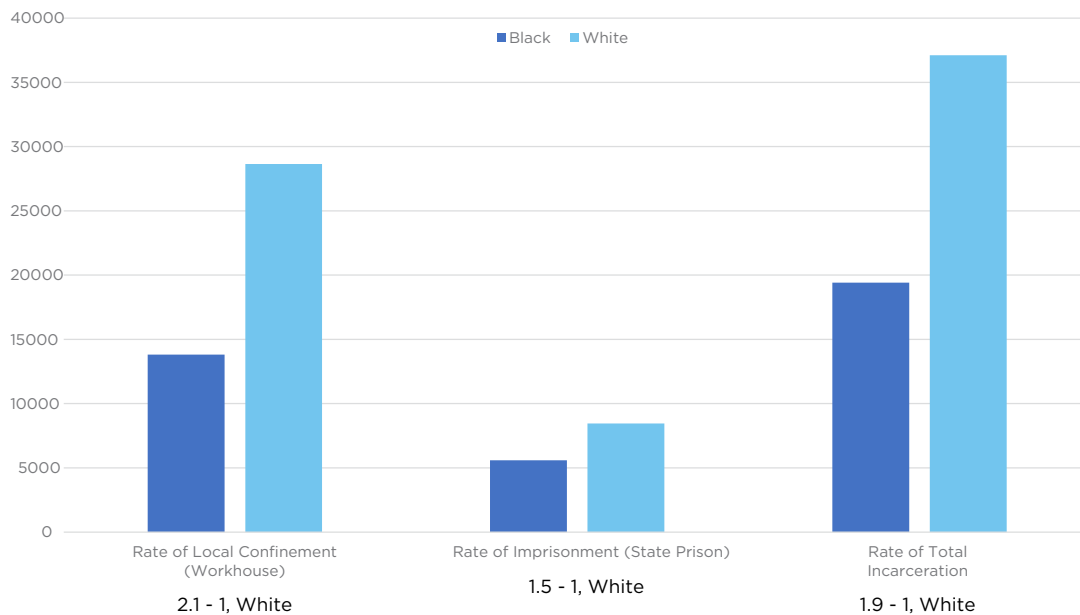


Source: Minnesota Sentencing Guidelines Commission monitoring data, 2021 sentencing data as reported in the 2023 MSGC Report to the Legislature

CHART 7

Minnesota Incarceration Rates - 2021

Ratio Derived from Rate of Serious Offenders

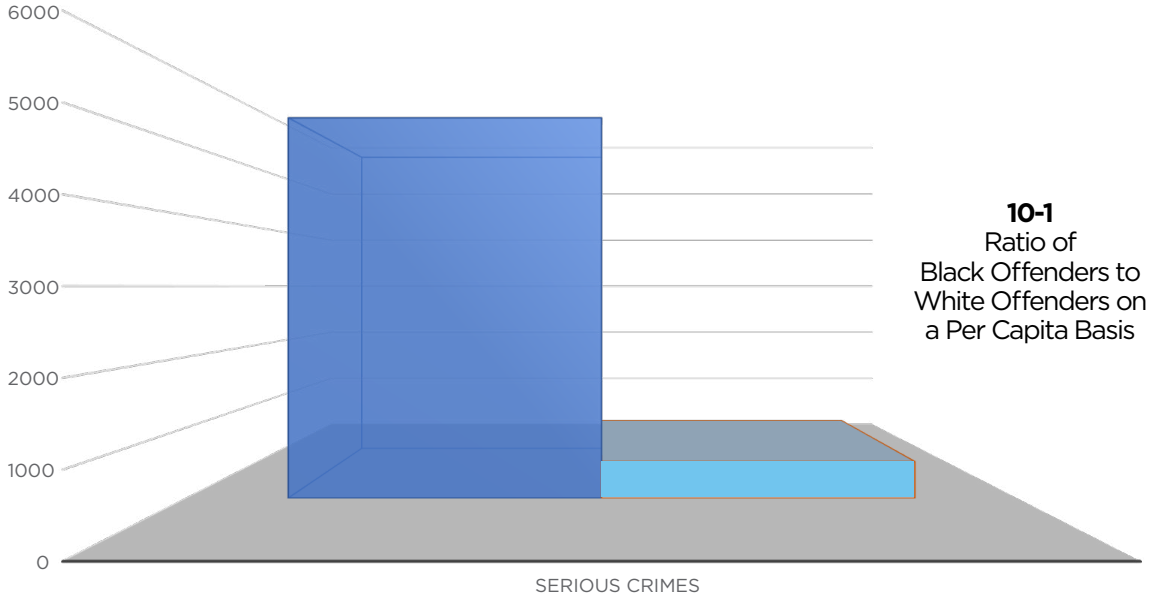


Source: Minnesota Sentencing Guidelines Commission monitoring data, 2021 sentencing data as reported in the 2023 MSGC Report to the Legislature, and 2021 BCA offender data

CHART 8

Minnesota Adult Criminal Offenders - 2021

Ratio Derived from Rate of Offenders Per 100,000 Population

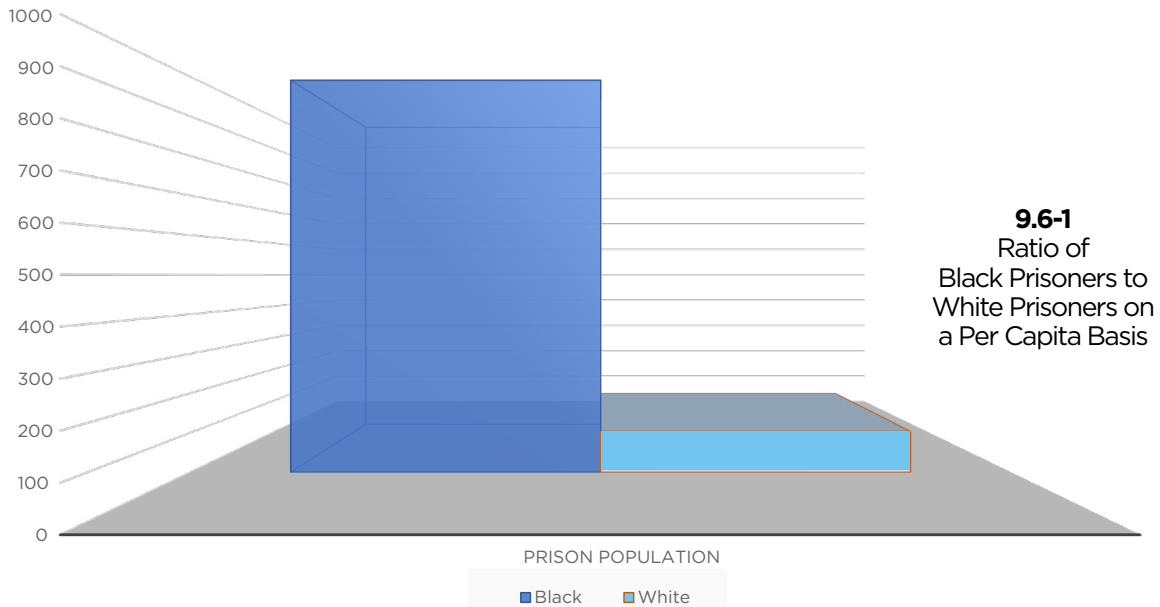


Ratio of Serious Offenders – Source: 2021 BCA Criminal Offender Data and the US Census Bureau

CHART 9

Minnesota Prison Population January 2023

Ratio Derived from Rate of Prisoners Per 100,000 Population



Source: January 2023 Minnesota Department of Corrections and the US Census Bureau.



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.

Analysis of Minnesota’s 2021 crime victims shows that black Minnesotans were 9.5 times more likely than white Minnesotans to be victims of serious crime (murder, aggravated assault, robbery, burglary, and rape).

Black Minnesotans are similarly 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.

The ratio between black and white victims is interestingly similar to that of the ratio between black and white offenders. It is precisely the findings in this victim analysis that emphasize the damage done to the black community when we

gut accountability in a misguided effort to address “disparities.”

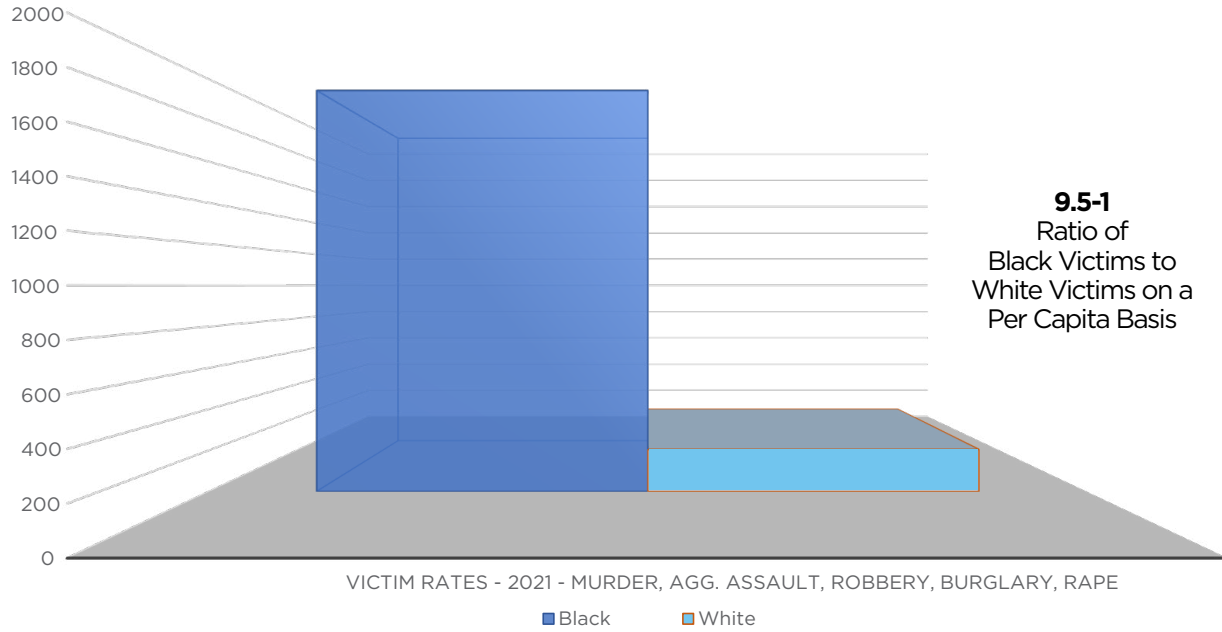
Rafael Mangual articulated this beautifully in his book *Criminal (In) Justice - What the Push for Decarceration and Depolicing Gets Wrong and Who It Hurts Most*.

“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.”⁸ ■

CHART 10

Minnesota Crime Victims - 2021

Ratio Derived from Rate per 100,000



Source: Minnesota Bureau of Criminal Apprehension, Crime Data Explorer



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 criminal offending.

This analysis offers clarity in determining whether the criminal justice system disparities that exist are justified. It constructs a fair and accurate analysis of racial disparities using newly accessible offender population data. When the offender population was used as a benchmark, the evidence was clear that in each stage of the criminal justice system in 2021, black offenders were frequently given more leeway than white offenders.

If the criminal justice system was treating black Minnesotans unjustly, then the 10-1, black-to-white offender ratio for serious offenses would have worsened as black offenders traversed through the system. It did not. In fact, the data show that not only did the ratio *not* worsen, in most examples the ratios flipped to *favor*

black offenders over 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: broken families, poor quality education, low employment levels, and low homeownership rates. This represents a long-term effort that should be implemented in concert with, not in place of, real time enforcement efforts — ensuring accountability through swift and sure enforcement and prosecution of criminal offenders. Implementing long term solutions at the exclusion of necessary, firm, real time enforcement will only ensure the black community will have to bear the burden of prolonged and devastating criminal offending — an outcome that is arguably counterproductive to the goal we all share.

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 favor black offenders over white offenders is a misguided effort. It weakens short-term accountability in the black community, and derails, delays, and underfunds efforts to apply long-term solutions toward the social disparities that arguably fuel the disproportionate amount of black criminal offending, and black victimization. ■

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