



# THE RACIAL DIVIDE OF PROSECUTIONS IN THE MARICOPA COUNTY ATTORNEY'S OFFICE

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# Introduction

Since 2018, the American Civil Liberties Union (ACLU) of Arizona has been working through its Campaign for Smart Justice to reduce Arizona's jail and prison populations and to challenge racism within the criminal legal system.

Arizona has the fifth highest incarceration rate in the nation and it disproportionately impacts Black and Latinx people. In 2017, Latinx people comprised 31% of Arizona's state population, yet comprised 37% of people admitted to prison. Black people were over-represented at an even higher rate, comprising five percent of the state population but 13% of prison admissions.<sup>1</sup>

Decarceration and challenging racism within the criminal legal system are equal and symbiotic goals for the ACLU of Arizona. It is imperative that any steps taken to end mass incarceration in Arizona come with an intentional effort to address the deeply rooted racism present in the state criminal legal system.

Racial disparities touch every aspect of the system, from arrest to sentencing to post-conviction collateral consequences. Without understanding and accounting for these racial disparities, any efforts to reform the criminal legal system could have unintended consequences that further drive systemic inequities.

The harsh regime of criminal prosecutions is at the core of the issue. To better understand the racial disparities created by the prosecuting decisions of Arizona's largest prosecuting agency, the ACLU of Arizona filed a public records request with the Maricopa County Attorney's Office in October of 2018. The request sought race and ethnicity data on criminal case dispositions over a span of five years.

The request was ignored for over seven months, prompting the ACLU of Arizona to sue the Maricopa County Attorney's Office in May of 2019 for violating Arizona's Public Records Law.

As a result of the lawsuit, the ACLU of Arizona obtained a dataset of all cases handled by the Maricopa County Attorney's Office from January 1, 2013 through December 31, 2017. The dataset contains 51,165 distinct cases in which a defendant was sentenced to either jail, probation, or prison for at least one day.

The ACLU of Arizona commissioned Melissa Kovacs of FirstEval to analyze the data.<sup>2</sup>

The results reveal concerning patterns of racial disparities in the prosecution practices of the Maricopa County Attorney's Office.<sup>3</sup>

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1 [Fwd.Us, Arizona's Imprisonment Crisis Part II: The Cost to Communities.](#)

2 The analysis detailed in this report examines prosecutorial data only, and does not address arrest data, police data, or judicial data.

3 The analysis refers to race and ethnicity as they are collected and defined by the Maricopa County Attorney's Office. Because of the small number of individuals falling within the Indigenous (4%), Asian (1%), and Other (1%) categories, these categories were not explored for differences by themselves, but were included when the data was examined in its entirety.



# Key Findings:

1. **Black and Hispanic<sup>4</sup> people prosecuted by the Maricopa County Attorney's Office spend significantly more time incarcerated than white people.<sup>5</sup>**
2. **When prosecuted for simple marijuana possession, Hispanic people are sentenced to significantly longer jail and prison sentences than their white and Black counterparts.**
3. **When prosecuted for personal possession of drug paraphernalia, Black people consistently receive longer prison, jail and probation sentences than white or Hispanic people.**
4. **White people are more likely to have cases dismissed or not filed than individuals of any other race.**
5. **When ordered to pay a fine, Hispanic people pay significantly higher fines than white people.**

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4 The analysis refers to race and ethnicity as they are collected and defined by the Maricopa County Attorney's Office.

5 When the word "significant" is used in this report, it refers to statistical significance determined at the  $\alpha=.05$  level. Other differences are described in this report that may not meet the .05 threshold but are notable and worth reporting. When a racial difference is statistically significant at the .05 level, it means that the probability of replicating analytical results that show a racial difference when there truly is no racial difference is less than 5%. This 5% threshold is standard practice in the social sciences.

# 1. Black and Hispanic people prosecuted by the Maricopa County Attorney's Office spend significantly more time incarcerated than white people.

On average, Black people spend 1,004 days incarcerated, about eight months longer than white people. Hispanic people spend an average of 990 days incarcerated, about seven months longer than white people.

White people and people in the “All Others” race category spend the least amount of time in custody.<sup>6</sup>

Sentences for Black and Hispanic people have higher standard deviations than those for white people and those in the “All Other” race category. This means that the amount of time Black and Hispanic people spend in jail and prison is less consistent, or standardized, than the amount of time white people spend in jail and prison.<sup>7</sup>

	Average Jail + Prison Sentence in Days	Standard Deviation
White	775	1,127
All Others	775	1,237
<b>Hispanic*</b>	<b>990</b>	<b>1,620</b>
<b>Black*</b>	<b>1,004</b>	<b>1,492</b>

*\* Indicates statistical significance from white people at the  $\alpha=.05$  level.*

6 FirstEval analyzed the average time spent in custody for all charges and crimes by race and ethnicity. The time spent in custody was determined by adding the number of days an individual spent in jail and prison combined.

7 More specifically, 95% of the data is found within +/- two standard deviation values around the mean. For example, 95% of white people have sentences that range from 0 – 3,029 days, while 95% of Black people have sentences that range from 0 – 3,988 days. And, 95% of Hispanics have sentences that range from 0 – 4,230 days. When the range is narrower, as it is for whites, it is more consistent and predictable.

## 2. Hispanic people are sentenced to significantly longer jail and prison terms for simple marijuana possession than their white and Black counterparts.

Hispanic people on average spend 298 days incarcerated for the charge of simple marijuana possession (ARS Code 13-3405 A1), almost two months longer than white people prosecuted for the same crime. This difference is statistically significant. On average, Black people spend four more days behind bars than white people for this charge.

	Average Jail + Prison Sentence in Days, Possession of Marijuana
White	242
Black	246
<b>Hispanic</b>	<b>298*</b>
All Others	**

\* Indicates statistically significant difference from white people at the  $\alpha=.05$  level.

\*\* Not enough data to report.

### 3. Black people consistently receive longer prison, jail and probation sentences for the charge of personal possession of drug paraphernalia<sup>8</sup> than white or Hispanic people.

Black people spend an average of 844 days on probation for the charge of personal possession of drug paraphernalia (ARS Code 13-3415A). That's about three more months than white people spend on probation for the same charge. When combining probation time with jail and prison time, Black people spend an average of 698 days serving time for this charge, almost two months longer than white people. On average, Hispanic people spend 9 more days on probation than white people and 8 more days serving time.

	Average Probation Sentences in Days, Drug Paraphernalia	Average Jail + Prison + Probation Sentences in Days
All Others	679	557
White	749	641
Hispanic	758	649
<b>Black</b>	<b>844*</b>	<b>698</b>

*\* Indicates statistically significant difference from white people at the  $\alpha = .05$  level.*

<sup>8</sup> "Drug paraphernalia" refers to any item used to ingest drugs, like a pipe or even rolling papers. It can also include the bag or container in which drugs are stored.

## 4. White people are more likely to have cases dismissed or not filed than individuals of any other race.

White people are significantly more likely to have their cases dismissed than Hispanic people. Among white people, 11.2 percent of them have cases dismissed whereas, among Hispanic people, just 8.4 percent of them have cases dismissed. Among Black people, 10.6 percent of them have cases dismissed.

	Percent of Cases Dismissed by Race/Ethnicity
White	11.2%
Black	10.6%
Asian, Indigenous, and Other*	8.6%
Hispanic*	8.4%

*\* Proportion of Hispanic and “Other” individuals’ cases with a plea statistically significantly differs from white people at the  $\alpha=.05$  level.*

White people are significantly more likely to have cases that are ultimately not filed compared to Hispanic, Black, and all other individuals. Among white people, 10.5% in the dataset ultimately did not have cases filed against them. Among Black people, 9.6% in the dataset ultimately did not have cases filed against them. Among Hispanic people, 9.4% in the dataset ultimately did not have cases filed against them. These differences are statistically significant.

	Percentage of Cases Not Filed
White	10.5%
Black*	9.6%
Hispanic*	9.4%
Asian, Indigenous, and Other*	8.3%

*\*Proportion of Hispanic, Black, and “Other” cases not filed statistically significantly differs from white people at the  $\alpha=.05$  level.*

## 5. When ordered to pay a fine, Hispanic people pay significantly more money than white people.

Hispanic people experience significantly higher fines than white people. On average, Hispanic people pay fine amounts \$246 greater than fine amounts for white people. This is true even after controlling for charge severity, presence of a plea, gender, and number of days someone's case remains in the system. On average, Black people pay fine amounts of \$70.47 more than white people.

	Average Fine
Hispanic*	\$2,348.98
Black	\$1,771.92
White	\$1,701.45
Asian, Indigenous and Other*	\$1478.13

*\* Hispanic average fine and Asian, Indigenous and Other average fine statistically significantly differ from white average fines at the  $\alpha=.05$  level.*



# To remedy the racial disparities in these prosecutorial practices, the ACLU of Arizona recommends the following:

## 1. IMPLEMENT POLICIES USING A RACIAL JUSTICE LENS

The Maricopa County Attorney's Office should prioritize addressing racial disparities in prosecutorial decisions by implementing bold policies that will reduce those disparities.<sup>9</sup> These policies should go beyond implicit bias training and result in measurable reductions in racial disparities. For example, the County Attorney can implement a policy to stop prosecuting simple drug possession charges, including paraphernalia charges, which the data shows have a disparate impact on Black and Latinx people. The County Attorney could also decline to prosecute any cases where arrests were tainted by racial profiling.

## 2. INCREASE TRANSPARENCY

The ACLU of Arizona had to sue MCAO for violating public records laws to obtain access to the race and ethnicity data analyzed for this report. No law enforcement agency can properly address racial disparities without regular and transparent collection and analysis of race and ethnicity data. The Maricopa County Attorney's Office just recently added a data dashboard to its website making some, but not all, case data information readily available to the public. This is a step toward greater transparency, but far more case data can and should be posted online, including information about case outcomes. Department policies and procedures should also be posted online.

## 3. WORK WITH LAW ENFORCEMENT TO REDUCE DISPARITIES

The Maricopa County Attorney's Office should share its data with police departments and work with them to reduce racial disparities at the arrest stage. The county attorney should create a "no-call list" of police officers who've committed misconduct, exhibited racist or biased views, been dishonest, or otherwise endangered their credibility and refuse to rely on the testimony or reports of these officers when seeking convictions.

## 4. REVIEW PAST CASES

The Maricopa County Attorney's Office should create an independent conviction integrity unit that can investigate cases where implicit bias, racism, or racial disparities may have led to an unjust sentence and take necessary steps to address it through post-conviction relief procedures or through stipulated resentencing.

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Polling conducted in February 2020 showed that 79% of likely Arizona voters agree that racism is a problem in the criminal justice system, and county attorneys should work to eliminate racial disparities.

# Notes on Methodology

The analysis in this report reflects a series of agreed-upon questions between FirstEval and the ACLU of Arizona. Within MCAO's data, multiple charges often exist for the same person related to a single criminal case incident. While racial categories belong solely at the individual person-level of data, multiple charges, and hence multiple sentences, can occur for the same individual for the same criminal case incident.

Regarding sentencing, the data do not distinguish whether sentences were to be served consecutively or concurrently. Concurrent sentences were assumed throughout this report when all charges were examined together.

Racial categories are described in this report as they appeared in the original dataset obtained from the Maricopa County Attorney's Office. Because of the small number of individuals falling within the "Indigenous," "Asian," and "Other" categories, these categories were not explored for differences by themselves, but were included when the data was examined in its entirety.

When appropriate, statistical significance is reported among racial categories. While statistical significance is a strong signal that a difference exists, it should not be considered alone when determining whether a difference exists with respect to sentencing and race. This report also shows the range of differences among racial categories and standard deviations, when appropriate and practical. Standard deviation is a measure describing how far away values are from the average. For example, if a sentence length has a high standard deviation, it means that individuals' sentence lengths are often not close to being average – they are either much higher or much lower than average. Specific to sentence length, a high standard deviation may indicate inconsistent sentences and/or inconsistent sentencing practices.

A small number of cases (<100) in the data provided by MCAO contained date errors and were excluded from analyses related to sentence length and time to case resolution but were kept in the data for analyses related to charge and race. For example, cases that show the disposition date as prior to the submitted date were considered errors.



For more information about the ACLU of Arizona Campaign for Smart Justice, visit [smartjusticeaz.org](https://smartjusticeaz.org).