Justice Reinvestment Initiative in Vermont

Results of the Racial Equity in Sentencing Analysis

This presentation includes information presented to the Executive Working Group on November 17, 2021

CSG | Justice Center
THE COUNCIL OF STATE GOVERNMENTS

Sara Bastomski, Research Manager

David A. D'Amora, Senior Policy Advisor

Madeleine Dardeau, Senior Policy Analyst

Angela Gunter, Senior Research Associate

Lorretta Sackey, Policy Analyst

Justice Reinvestment Initiative
Vermont

Overview

1	**Introduction**
2	Analytic Approach
3	Results
4	Policy Recommendations

National research indicates that while racial disparities in incarceration have declined since 2000, they remain a persistent and pervasive feature of the U.S. criminal justice system.

5x

Nationally, Black people are 5 times more likely to be incarcerated in state prison than White people.

7x

Nationally, Black people are 7 times more likely to be incarcerated in federal prison than White people.

E. Ann Carson, *Prisoners in 2019* (Washington, DC: Bureau of Justice Statistics, 2020); William J. Sabol, Thaddeus L. Johnson, and Alexander Caccavale, *Trends in Correctional Control by Race and Sex* (Washington, DC: Council on Criminal Justice, 2019).

Incarceration for drug offenses is one area in which disparities are particularly pronounced nationally.

Though rates of drug use and sales are similar for Black and White people, Black people are arrested 3–4 times more frequently than White people for drug offenses.

Nationally, Black people are up to 9 times more likely to be incarcerated in state prison for drug offenses, relative to White people.

The Council of State Governments Justice Center, September 22, 2020, Vermont Justice Reinvestment Working Group Racial Disparity Analysis, Presentation to the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel Subcommittee; Ojmarrh Mitchell, and Michael S. Caudy. "Examining Racial Disparities in Drug Arrests." *Justice Quarterly* 32, no. 2 (2015): 288–313; Jonathan Rothwell, "Drug Offenders in American Prisons: The Critical Difference Between Stock and Flow" (Washington, DC: Brookings Institution, 2015); Jeremy Travis, Bruce Western, and F. Stevens Redburn, "The Growth of Incarceration in the United States: Exploring Causes and Consequences" (Washington, DC: National Research Council, 2014).

National research shows that differences in sentencing outcomes are one important driver of such disparities.
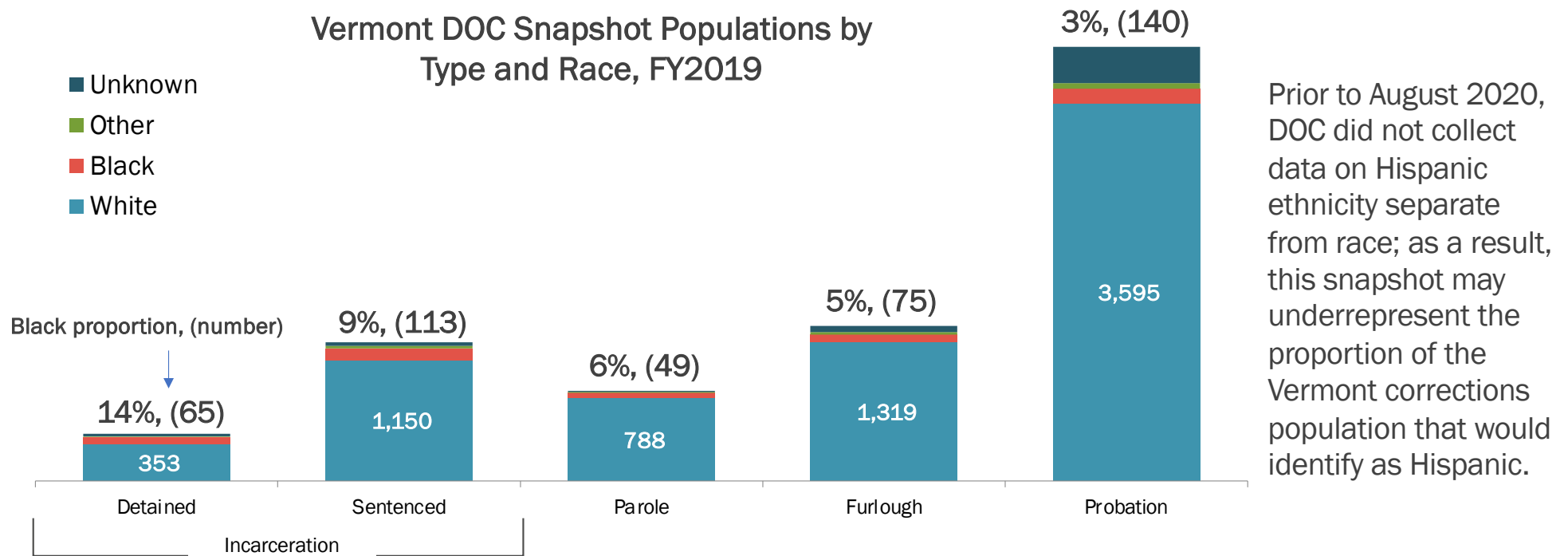
A large body of work documents that Black defendants, on average, are more likely to receive harsher sentences, *relative to comparable White defendants*.

While this difference varies by type of crime and jurisdiction, it is typically found to be statistically significant.

Travis W. Franklin, "The State of Race and Punishment in America: Is Justice Really Blind?," *Journal of Criminal Justice*, 59 (2018): 18–28; Ryan D. King and Michael T. Light, "Have Racial and Ethnic Disparities in Sentencing Declined?," *Crime and Justice* 48, no. 1 (2019): 365–437; Michael T. Light, "The Declining Significance of Race in Criminal Sentencing: Evidence from US Federal Courts," *Social Forces* (2021), https://doi.org/10.1093/sf/soab018; Ojmarrh Mitchell, "A Meta-Analysis of Race and Sentencing Research: Explaining the Inconsistencies," *Journal of Quantitative Criminology* 21, no. 4 (2005): 439–466.
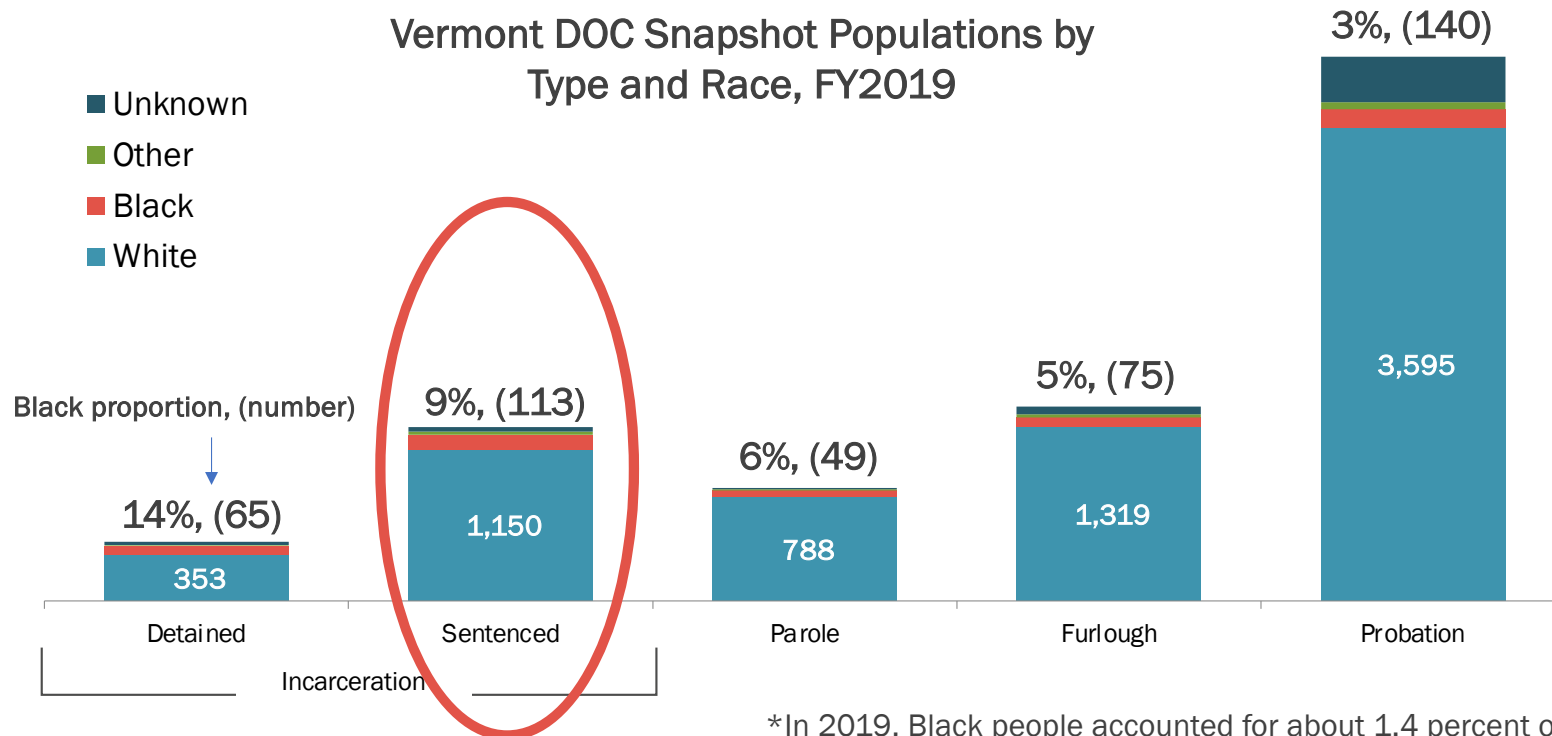
As shown in past CSG Justice Center analysis, Black people are disproportionately represented in all corrections populations in Vermont.

Vermont DOC Snapshot Populations by Type and Race, FY2019

Legend:
- Unknown
- Other
- Black
- White

Black proportion, (number)

3%, (140)

3,595

9%, (113)

1,150

14%, (65)

353

6%, (49)

788

5%, (75)

1,319

Detained | Sentenced | Parole | Furlough | Probation

Incarceration

Prior to August 2020, DOC did not collect data on Hispanic ethnicity separate from race; as a result, this snapshot may underrepresent the proportion of the Vermont corrections population that would identify as Hispanic.

*In 2019, Black people accounted for about 1.4 percent of Vermont's general population.

Specifically, Black people are over 6 times more likely to be incarcerated in Vermont, relative to White people.

Vermont DOC Snapshot Populations by Type and Race, FY2019

Legend:
- ■ Unknown
- ■ Other
- ■ Black
- ■ White

Black proportion, (number)

14%, (65)
353
Detained

9%, (113)
1,150
Sentenced

6%, (49)
788
Parole

5%, (75)
1,319
Furlough

3%, (140)
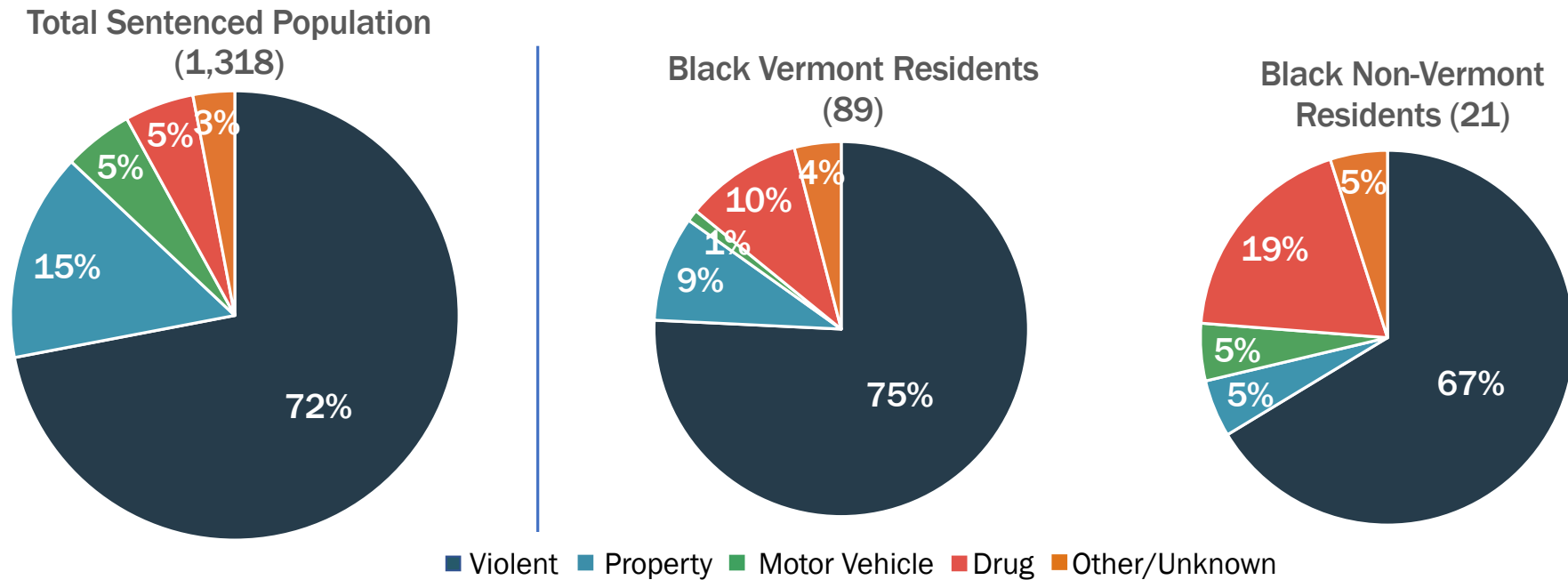3,595
Probation

Incarceration

Prior to August 2020, DOC did not collect data on Hispanic ethnicity separate from race; as a result, this snapshot may underrepresent the proportion of the Vermont corrections population that would identify as Hispanic.

*In 2019, Black people accounted for about 1.4 percent of Vermont's general population.

Black people are also disproportionately incarcerated for drug offenses relative to Vermont's total sentenced population.

Vermont DOC Sentenced Incarceration Snapshot Population by Offense Type for Black Vermonters and Non-Vermonters FY2019

Total Sentenced Population (1,318)

- 72% Violent
- 15% Property
- 5% Motor Vehicle
- 5% Drug
- 3% Other/Unknown

Black Vermont Residents (89)

- 75% Violent
- 9% Property
- 1% Motor Vehicle
- 10% Drug
- 4% Other/Unknown

Black Non-Vermont Residents (21)

- 67% Violent
- 5% Property
- 5% Motor Vehicle
- 19% Drug
- 5% Other/Unknown

Legend: ■ Violent ■ Property ■ Motor Vehicle ■ Drug ■ Other/Unknown

CSG Justice Center analysis of data from the Vermont Department of Corrections.

The Council of State Governments Justice Center | 8

Stakeholder engagement throughout Justice Reinvestment II also highlighted the need for a more in-depth analysis of racial disparities in Vermont.

- For example, stakeholders have frequently reported to CSG staff a perception that any racial disparities in Vermont's criminal justice system - particularly for drug offenses – are due to crimes committed by people from *out-of-state*.

- As such, any identified racial disparities do not reflect the unequal treatment of Vermonters by the state's criminal justice system.

Overview

1   **Introduction**

2   Analytic Approach

3   **Results**

4   **Policy Recommendations**

Racial disparities in the criminal justice system compound at each decision-making point and are driven by a number of system factors.

Criminal Justice System Factors

- Statutes
- Policies and Practices
- Implicit and Explicit Bias
- Use of Discretion

Arrest → Jail → Court Processes → Probation / Prison → Parole

National Academies of Science, Engineering, and Medicine, *Proactive Policing: Effects on Crime and Communities,* (Washington, DC: National Academies Press, 2018); Stan Orchowsky, Administering "Race Neutral" Justice: What Works? Presentation to the National Criminal Justice Association, Cambiare Consulting, Sep. 17, 2019, https://www.cambiareconsulting.com/resources.
National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences,* (Washington, DC: The National Academies Press, 2014).

This analysis strategically focuses on disparities in sentencing that can be addressed by policy and practice changes within the criminal justice system.

Specifically, it examines three key decision-making points in the Vermont court system.

Case Inflow → **Conviction** → **Incarceration**

Analysis question 1: Are there racial disproportionalities in the volume of felony and misdemeanor cases filed?

Analysis question 2: Are there racial disparities in conviction across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

Analysis question 3: Are there racial disparities in incarceration sentences across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

The primary data source for this analysis is the Vermont Judiciary, with additional information from the Department of Public Safety.

Source	Judicial System (Criminal Division)	Department of Public Safety
Timeframe	2014–2019	Lifetime records
Objective	Examine case processing and sentencing outcomes by race (including conviction, incarceration, and incarceration length)	Develop criminal history measure for sentencing analysis.

It is important to note that this analysis focuses on disparities at sentencing between Black and White defendants only.
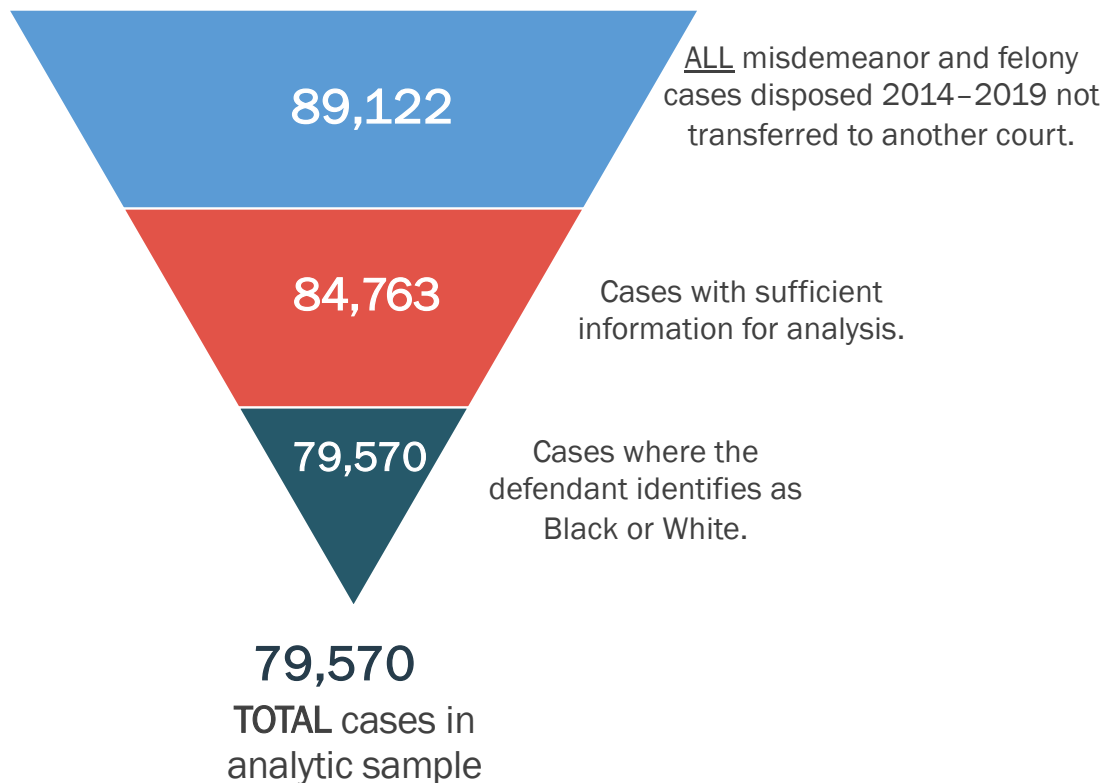
This is the result of two primary limitations:

Sample Size

- The methods used in this analysis require a minimum sample size. Other racial and ethnic groups in the initial dataset did not contain enough individuals for an appropriate sample size.

Data Availability

- The Vermont Judiciary does not receive data from law enforcement on Hispanic ethnicity separate from race. Prior to August 2020, DOC also did not collect data on Hispanic ethnicity separate from race. As a result, the data used for this analysis likely underrepresents the proportion of people who would identify as Hispanic, which limits any conclusions regarding Hispanic disparities in Vermont's criminal justice system.

The analytic sample includes 79,570 individual cases of which 6 percent are Black and 94 percent are White.

89,122 — ALL misdemeanor and felony cases disposed 2014–2019 not transferred to another court.

84,763 — Cases with sufficient information for analysis.

79,570 — Cases where the defendant identifies as Black or White.

79,570
TOTAL cases in analytic sample

Defendant Characteristics
(N = 79,570)

Race	Black	6%
	White	94%
Gender	Female	28%
	Male	72%
Residence at Case Filing	Vermont	91%
	Out-of-State	9%
Average Age at Case Filing	34.4 years	

CSG Justice Center staff used two quantitative methods to examine racial disparities in sentencing in Vermont.

Relative rate index

- Method used to examine whether different groups experience an outcome at similar rates
- Often used to compare justice system trends (e.g., incarceration rates)

Regression analysis

- Statistical method for examining the relationship of one variable to another and assessing group differences
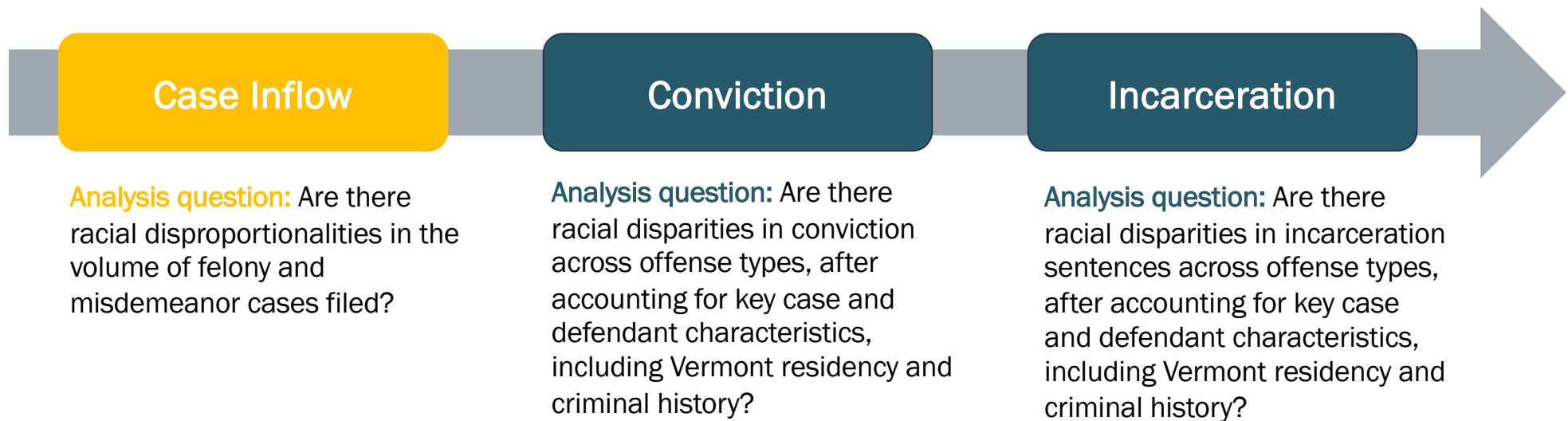- Helps determine what factors do or do not play a role in any observed differences

Overview

1	**Introduction**
2	**Analytic Approach**
3	**Results**
4	**Policy Recommendations**

Relative Rate Index Results

Case Inflow → **Conviction** → **Incarceration**

Analysis question: Are there racial disproportionalities in the volume of felony and misdemeanor cases filed?

Analysis question: Are there racial disparities in conviction across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

Analysis question: Are there racial disparities in incarceration sentences across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

A relative rate index (RRI) compares events or outcomes between groups.

By using RRI, we can calculate the rate at which Black people are represented at a point in the justice system and then compare that rate to White people at the same point.

RRI for Defendant Representation in Misdemeanor Cases by Race, 2019

In 2019, Black people are 3.5x more likely to be defendants in misdemeanor cases than White people.

An RRI over "1" indicates disproportionality.
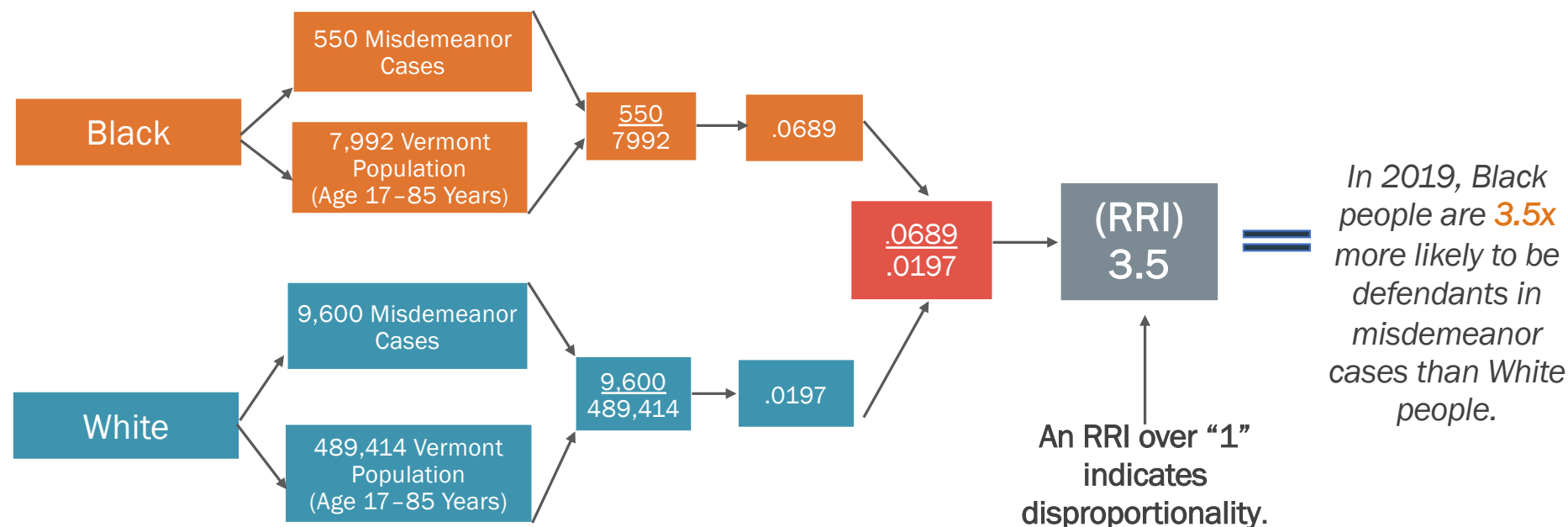
In Vermont, Black people are disproportionately represented as defendants in misdemeanor cases relative to White people.

Black-White Relative Rate Index
Misdemeanor Cases 2014—2019
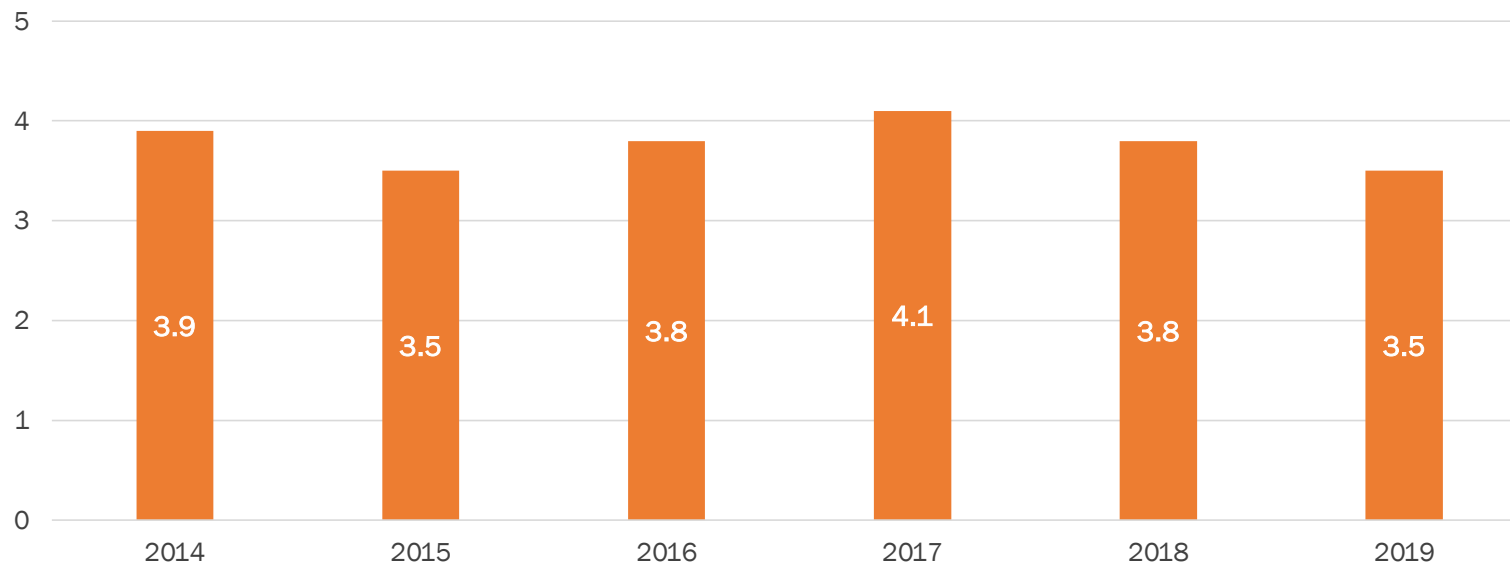
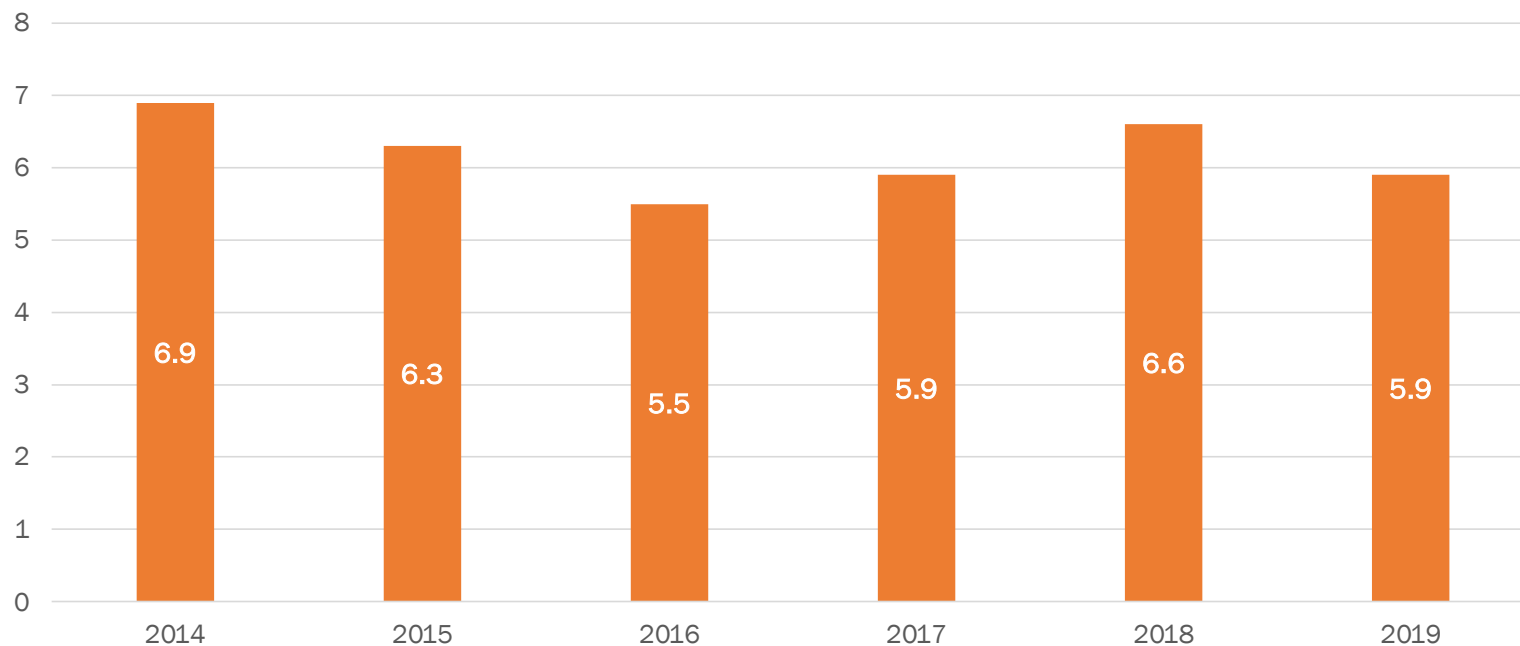*In 2019, Black people were 3.5 times more likely than White people to be defendants in a misdemeanor case.*

These results are not adjusted for additional case or defendant characteristics.
N=62,610

CSG Justice Center analysis of Vermont's Judiciary disposition data

Similarly, Black people are disproportionately represented as defendants in felony cases relative to White people.

Black-White Relative Rate Index
Felony Cases 2014—2019
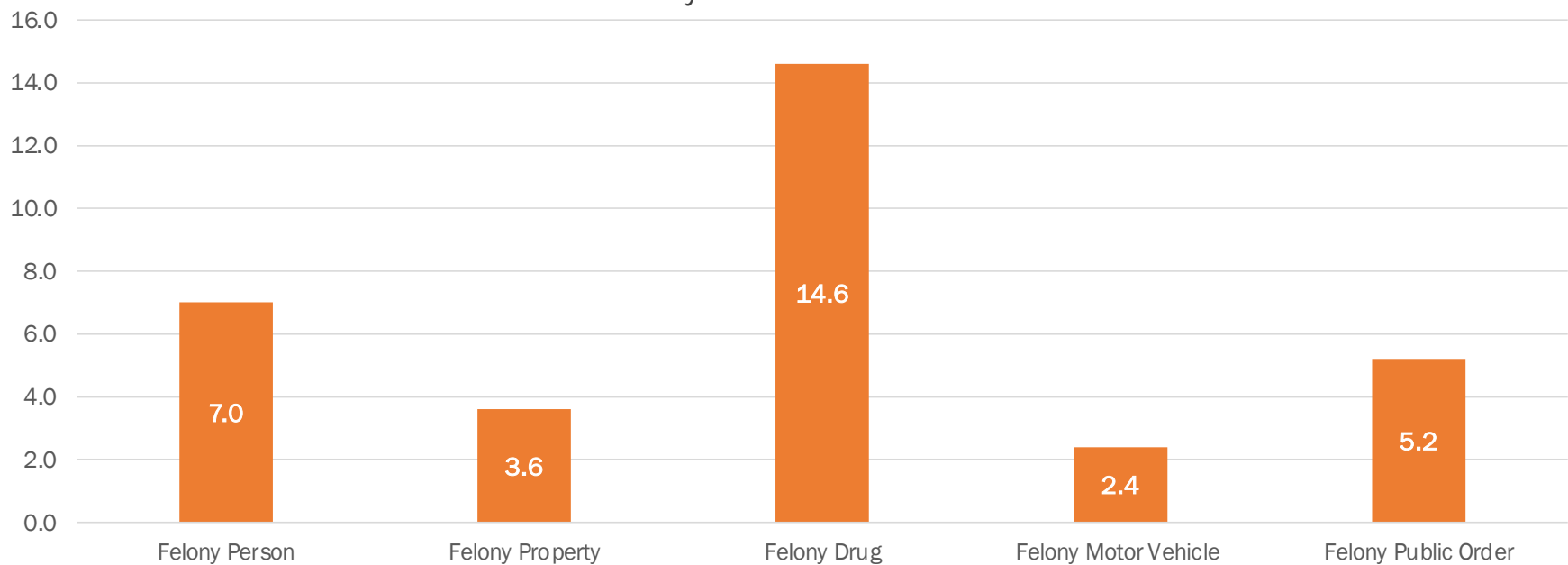

In 2019, Black people were 5.9 times more likely than White people to be defendants in a felony case.

These results **are not** adjusted for additional case or defendant characteristics.
N = 16,960

Specifically, Black people were over **14 times** more likely than White people to be defendants in a felony drug case each year.

Average Annual Black-White Relative Rate Index
Felony Cases 2014—2019

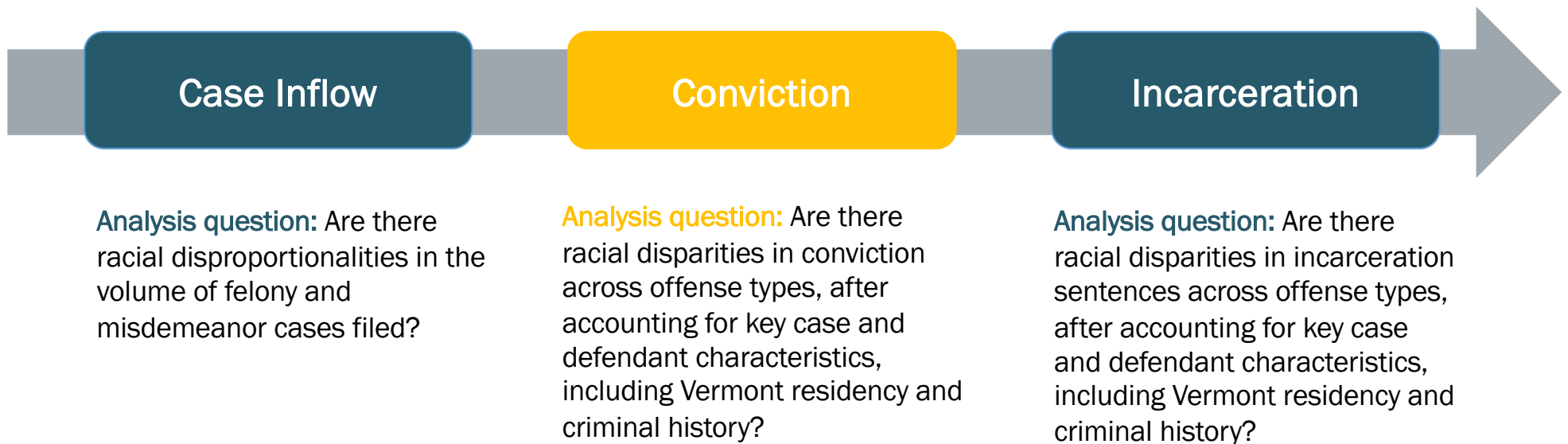|	Felony Person	Felony Property	Felony Drug	Felony Motor Vehicle	Felony Public Order
Value	7.0	3.6	14.6	2.4	5.2

These results **are not** adjusted for additional case or defendant characteristics.
N = 16,960

CSG Justice Center analysis of Vermont's Judiciary disposition data

Regression Results

Case Inflow → **Conviction** → **Incarceration**

Analysis question: Are there racial disproportionalities in the volume of felony and misdemeanor cases filed?

Analysis question: Are there racial disparities in conviction across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

Analysis question: Are there racial disparities in incarceration sentences across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

Regression analysis makes it possible to compare outcomes between two groups, after accounting for group differences.

By using regression, we can account for key observable differences—such as type of offense and Vermont residential status—to make an "apples to apples" comparison between Black and White defendants.

Before regression

After regression

Results expressed as *percentage points*

Using regression, this analysis examined three case processing outcomes.

Likelihood of conviction

- Alternatives include case dismissal or acquittal

Likelihood of "straight" incarceration (if convicted)

- Alternatives include sentences to probation, pre-approved furlough, a split sentence, or a suspended or deferred sentence

Length of incarceration (if sentenced to incarceration)

- Outcome examined in cases for which a minimum and maximum sentence were available.

The regression analysis controls for important case and defendant characteristics.

Case Characteristics
Offense type/severity (For most severe offense filed)
Total charges filed
Disposition year
County

Defendant Characteristics
Race
Sex
Age
Vermont resident or out-of-state resident (At case filing)
Criminal history*

*In addition to the main analysis results presented, we ran a secondary set of analyses that restricted the data to Vermont residents only and accounted for all control variables listed here as well as defendants' in-state criminal history. Criminal history information was analyzed for Vermont residents only and therefore could not be accounted for in the main analysis, which includes data from both Vermont residents and out-of-state people. Results from secondary analyses will be available in our accompanying report.

To provide rigorous results, CSG Justice Center staff completed two complementary sets of regression analyses.

This presentation focuses on the primary results of the analysis. Secondary results are shown **only** when they were substantively different from those in the primary analyses.

Primary Results

- ✓ Vermont and out-of-state residents
- ✓ Accounts for all control variables, except for criminal history

Secondary Results

- ✓ Vermont residents only
- ✓ Accounts for all control variables and in-state criminal history

*Comprehensive results from secondary analyses will be available in our accompanying report.

CSG Justice Center staff examined outcomes across 10 offense categories; however, this presentation _only_ presents offenses where a statistically significant Black-White difference was identified.
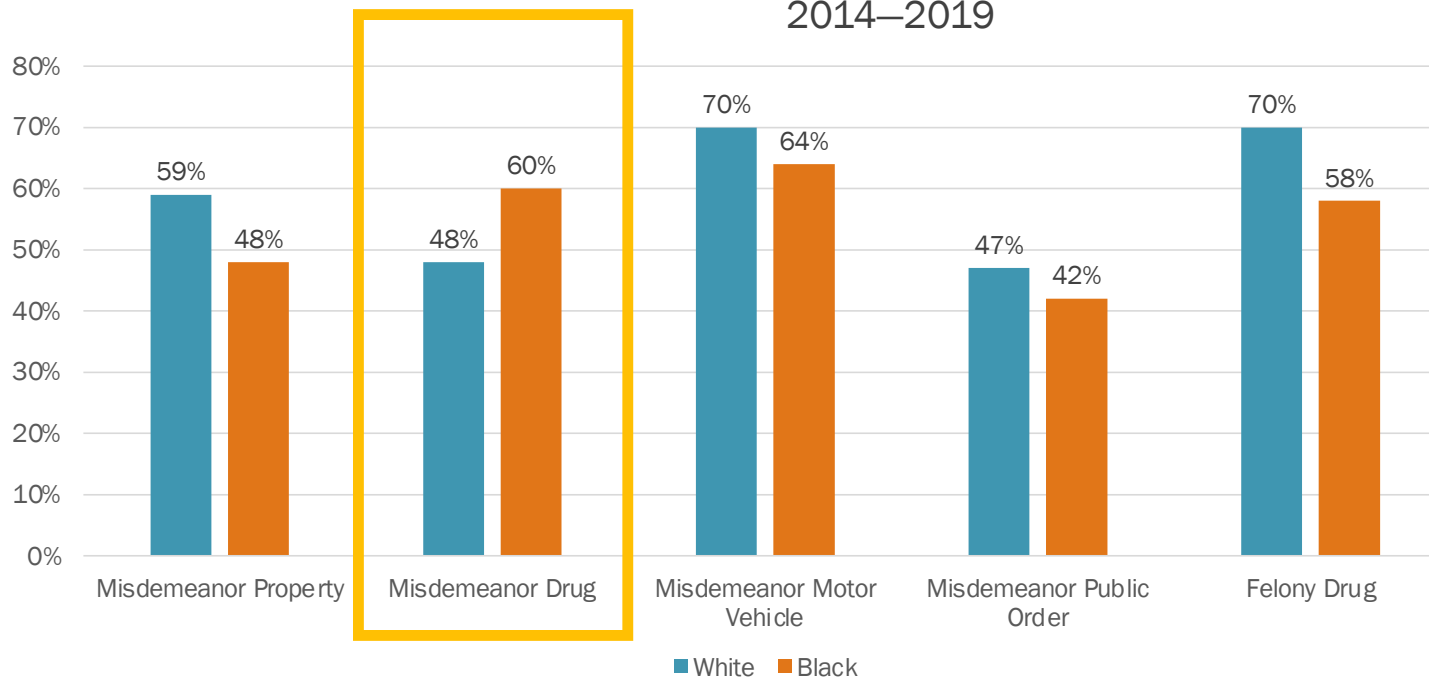
Offense Category	
Misdemeanor Person	Felony Person
Misdemeanor Property	Felony Property
Misdemeanor Drug	Felony Drug
Misdemeanor Motor Vehicle	Felony Motor Vehicle
Misdemeanor Public Order	Felony Public Order

**Statistical significance** means that we have sufficient evidence to rule out the possibility that an observed difference is due to random chance.

Note: Misdemeanor and felony weapons cases were excluded because there were too few cases to analyze.

Results of conviction analysis indicate that this particular decision-making point is *not* a major driver of Black-White incarceration disparities.

Probability of Conviction by Offense Type and Race 2014—2019

Results here are mixed: Black people are *more likely* to face conviction for misdemeanor drug offenses, but *less likely* to face conviction for four other offense categories.

These results do __not__ substantively change when the analysis is restricted to Vermont residents only and accounts for criminal history.
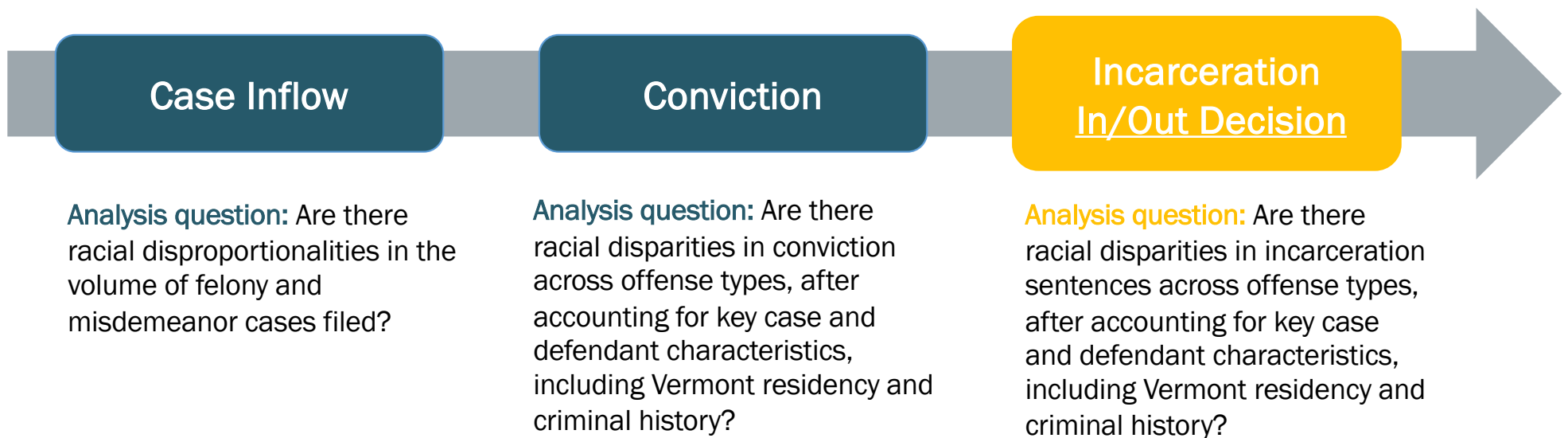
*These results are adjusted for the case and defendant characteristics summarized earlier and are statistically significant.
N=79,514
CSG Justice Center analysis of VT Judiciary disposition data.

Regression Results

Case Inflow

Conviction

Incarceration In/Out Decision

Analysis question: Are there racial disproportionalities in the volume of felony and misdemeanor cases filed?

Analysis question: Are there racial disparities in conviction across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

Analysis question: Are there racial disparities in incarceration sentences across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

After adjusting for key characteristics, Black people are more likely to face incarceration for certain felony offenses.

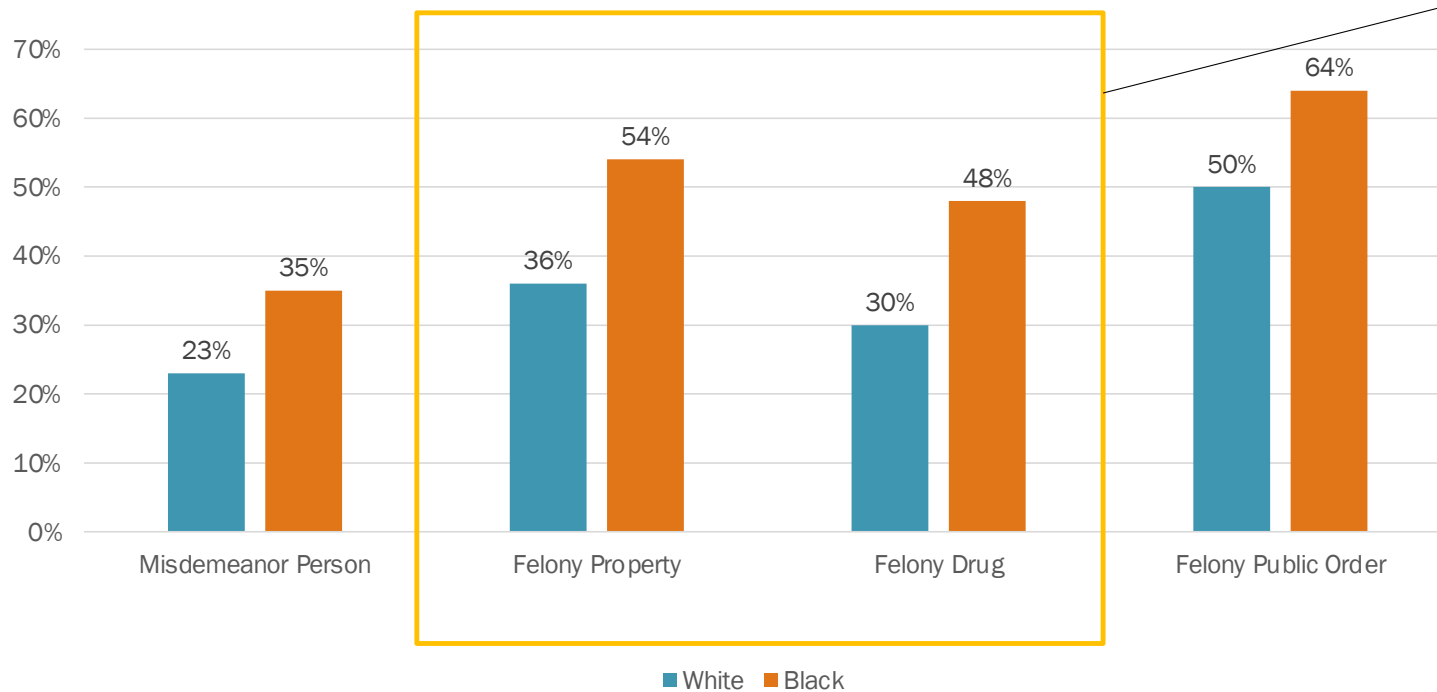## Probability of Incarceration by Offense Type and Race 2014—2019
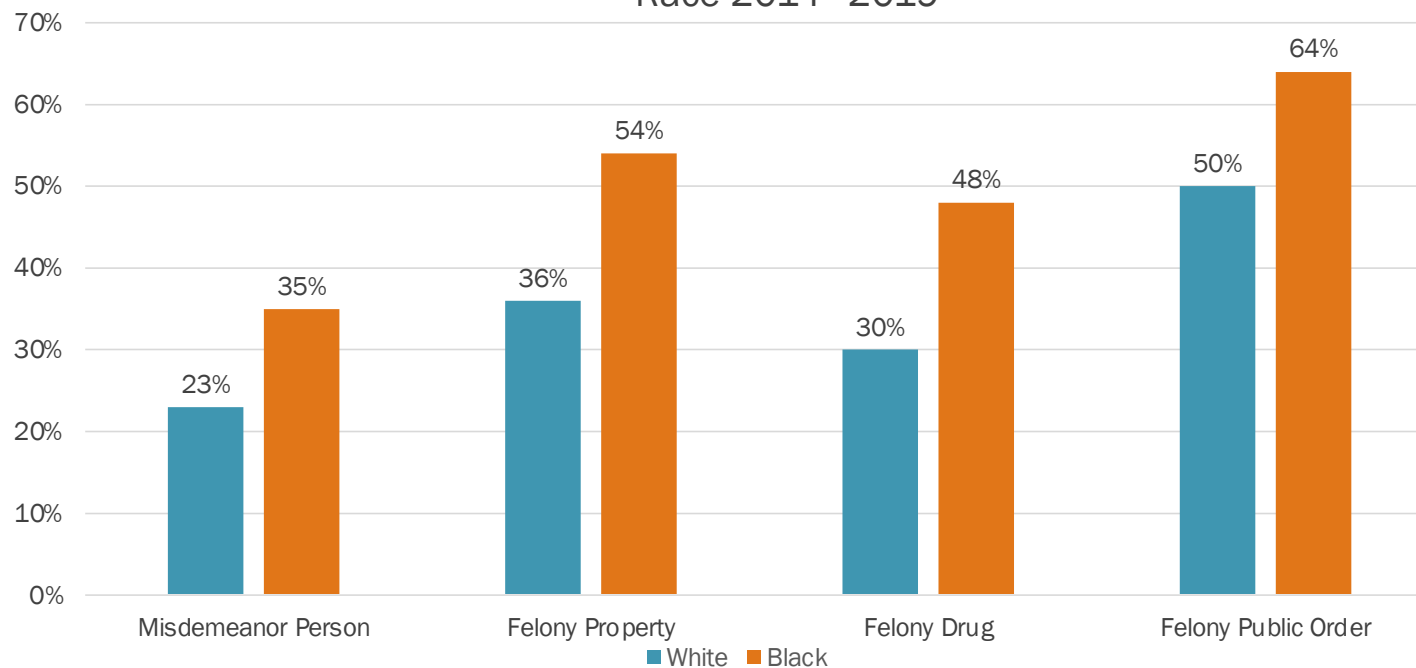
*These results do **not** substantively change when the analysis is restricted to Vermont residents only and accounts for criminal history.*

These results are adjusted for the case and defendant characteristics summarized earlier and are statistically significant.

In particular, Black people are more likely to be incarcerated for felony drug and property offenses.

Probability of Incarceration by Offense Type and Race
2014—2019

Black people are **18 percentage points** more likely to be incarcerated for felony drug and property offenses.

*These results do **not** substantively change when the analysis is restricted to Vermont residents only and accounts for criminal history.*

Offense Type	White	Black
Misdemeanor Person	23%	35%
Felony Property	36%	54%
Felony Drug	30%	48%
Felony Public Order	50%	64%

■ White   ■ Black

N=49,594
CSG Justice Center analysis of VT Judiciary disposition data.

For felony drug cases in which a Black defendant is sentenced to incarceration, the most common top filed charge is cocaine possession or sales.
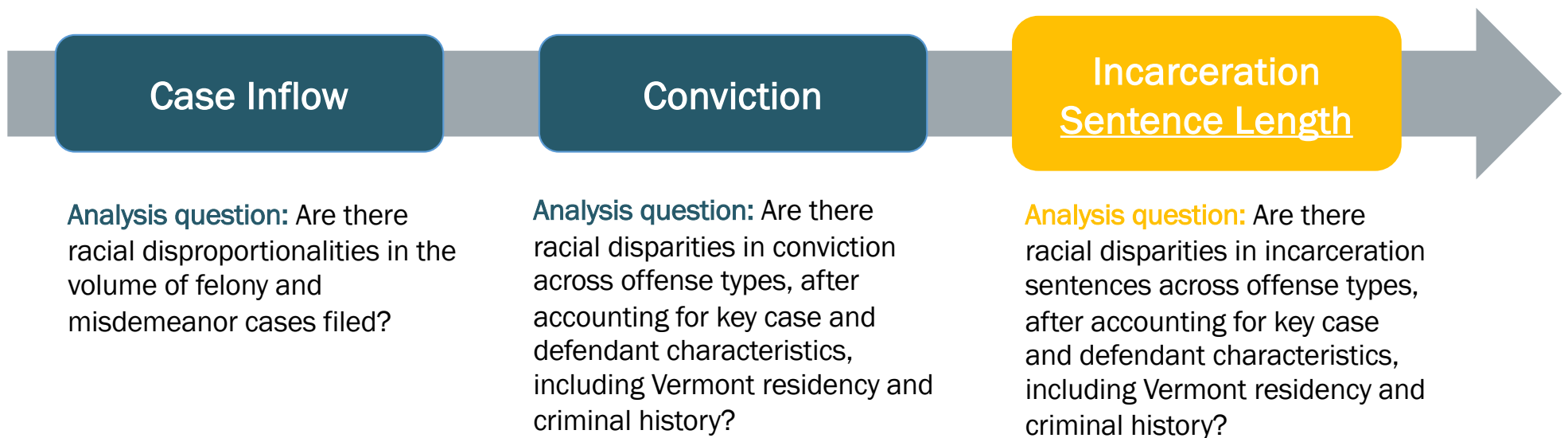
Most Common Felony Drug Offenses, by Defendant Race

For Cases Resulting in Incarceration (N=565)

| White Defendants (N=436)	Freq. (Pct.)
Heroin—possession 200 mgm or more	63 (15%)
Heroin—sale less than 200 mgm	52 (12%)
Heroin—sale or delivery 200 mgm or more	46 (11%)
Cocaine—possession 2.5 gm or more	31 (7%)
Cocaine—sale less than 2.5 gm	30 (7%)

Black Defendants (N=129)	Freq. (Pct.)
Cocaine—possession 2.5 gm or more	30 (24%)
Cocaine—sale less than 2.5 gm	21 (16%)
Heroin—trafficking	17 (13%)
Heroin—sale less than 200 mgm	16 (12%)
Heroin—possession 1 gm or more	7 (5%)

CSG Justice Center analysis of VT Judiciary disposition data.

Regression Results

Case Inflow

Conviction

Incarceration Sentence Length

Analysis question: Are there racial disproportionalities in the volume of felony and misdemeanor cases filed?

Analysis question: Are there racial disparities in conviction across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

Analysis question: Are there racial disparities in incarceration sentences across offense types, after accounting for key case and defendant characteristics, including Vermont residency and criminal history?

After examining the 10 offense categories detailed above, we did not find any consistent, statistically significant Black-White differences in incarceration sentence length.

Minimum Incarceration Sentence Length in Days for Felony Property Offenses by Race
Adjusted for Criminal History, 2014—2019

Days (y-axis, 0 to 450)

White: 406
Black: 308

NOT STATISTICALLY SIGNIFICANT

■ White ■ Black
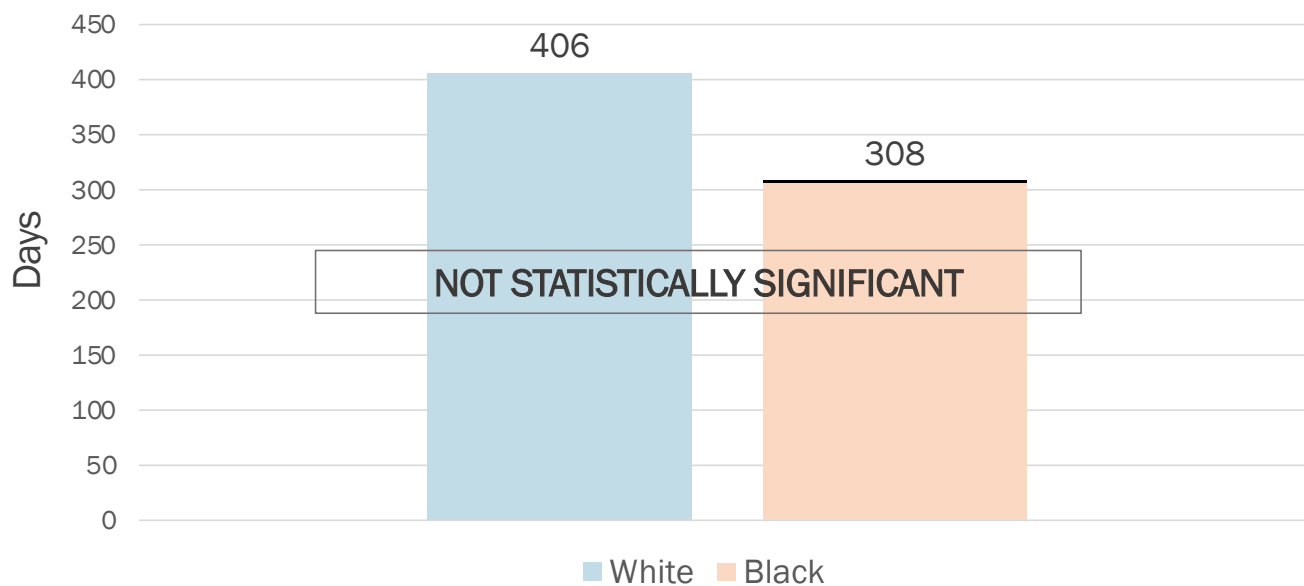
These results are restricted to Vermont residents only and are adjusted for case and defendant characteristics summarized, as well as criminal history.

N=10,062 Source: CSG Justice Center analysis of VT Judiciary disposition data.

Analysis results indicate that there are observable and substantively important Black/White disparities in contact with criminal courts and sentencing outcomes in Vermont.

Overrepresentation in criminal cases:

- Results show that Black people in Vermont, on average, are overrepresented in criminal court cases. In 2019, Black people in Vermont were 3.5 times more likely to be defendants in a misdemeanor case and 5.9 times more likely to be defendants in a felony case.

Conviction:

- Results of conviction analysis indicate that this particular decision-making point is *not* a major driver of Black-White incarceration disparities.

Analysis results indicate that there are observable and substantively important Black/White disparities in contact with criminal courts and sentencing outcomes in Vermont.

Incarceration (In/Out Decision)

- Results show that on average, Black people are more likely to face incarceration for four offense categories. The disparity for felony drug and property cases is particularly pronounced: Black people are 18 percentage points more likely to face incarceration in such cases, relative to White people.

Incarceration (Sentence Length)

- There was no evidence that suggests there is a Black/White disparity in minimum incarceration sentence length imposed, in Vermont.

These results provide key insights that Vermonters can use to adjust criminal justice policies and practices to improve racial disparities.

6x   In Vermont, Black people are **6 times more likely to be incarcerated**, relative to White people.
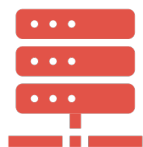
Disparities are present in the cases coming to Vermont courts: annually, Black people are over **14 times more likely to be a defendant in a felony drug case** and over 7 times more likely to be a defendant in a person case, relative to White people.

Once before the court, Black people are <u>not</u> more likely to be convicted, for most offenses, or sentenced to longer incarceration terms for any offense. Importantly, however, there are statistically significant racial disparities in who receives an incarceration sentence, particularly for felony property and drug offenses.

These results <u>do not change</u> when we examine only Vermont residents and account for criminal history, indicating that racial disparities at sentencing exist <u>independent</u> of these two factors.

Overview

1   **Introduction**

2   **Analytic Approach**

3   **Results**
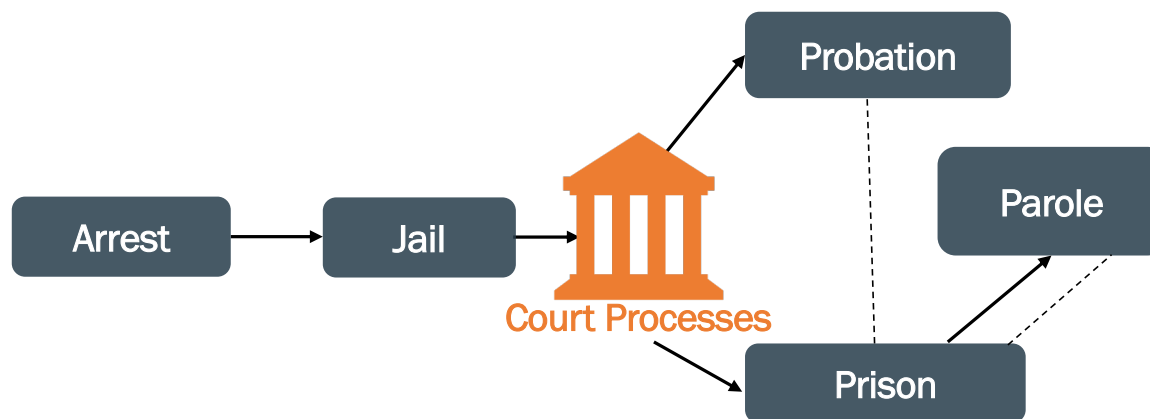
4   **Policy Recommendations**

Informed by the results of this analysis, Vermont can enact targeted reforms that address the cumulative impact of racial disparities at sentencing.

The following recommendations address disparities at sentencing identified in this analysis by focusing on criminal justice system factors that can be changed within the system itself.

Criminal Justice System Factors

- Statutes
- Policies and Practices
- Implicit and Explicit Bias
- Use of Discretion

Arrest → Jail → Court Processes → Probation / Prison → Parole

National Academies of Science, Engineering, and Medicine, *Proactive Policing: Effects on Crime and Communities,* (Washington, DC: National Academies Press, 2018); Stan Orchowsky, Administering "Race Neutral" Justice: What Works? Presentation to the National Criminal Justice Association, Cambiare Consulting, Sep. 17, 2019, https://www.cambiareconsulting.com/resources.
National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*, (Washington, DC: The National Academies Press, 2014).

In November 2021, the working group reviewed the results of a racial equity in sentencing analysis and adopted recommendations for addressing identified disparities.

Analysis results included the following:

- In Vermont, Black people are 6 times more likely to be incarcerated than White people.

- Disparities are present in the cases coming to Vermont courts: annually, Black people are over 14 times more likely to be a defendant in a felony drug case.

- Once before the court, Black people are not more likely to be convicted for most offenses or sentenced to longer incarceration terms for any offense. Importantly, however, there are statistically significant racial disparities in who receives an incarceration sentence, particularly for felony property and drug offenses.

Working Group Recommendation (2022): Consider policy recommendations to reduce racial disparities identified in the racial equity in sentencing analysis.

Recommendation 1

Vermont is currently considering a classification structure for drug offenses. The legislature should apply a racial equity lens to the classification process for drug offenses by
- Reducing lower- to mid-level felony drug possession offenses to misdemeanors; and
- Reevaluating the threshold of the highest level of possession and sales to better reflect significant amounts of drugs intended for distribution.

Recommendation 2

To address racial disparities in incarceration for felony drug and property offenses for similarly situated defendants, Vermont should pursue either non-binding sentencing guidance or presumptive probation for certain offenses to support judicial discretion related to incarceration decisions.

Working Group Recommendation (2022): Consider policy recommendations to reduce racial disparities identified in the racial equity in sentencing analysis.

Recommendation 3

Vermont should require the collection and reporting of race and ethnicity data in the Attorney General's Pretrial Services and Court Diversion Report, as well as in any other statewide diversion programs, for the purpose of identifying and addressing disparities in program access and use by county.

Recommendation 4

State's attorneys should explore the use of internal guidance to increase consistency in charging and plea-bargaining decisions. Guidance should focus on when and what to charge, particularly for drug-related cases, as well as provide a framework for guiding discretion during the plea-bargaining process. To monitor implementation of internal guidance, offices should regularly collect and examine charging and plea-bargaining data as well as consider establishing a process for internal review prior to charging.

Working Group Recommendation (2022): Increase collection, analysis, and availability of race and ethnicity data.

Data-related recommendations include the following:

- Expand availability of Hispanic ethnicity data to law enforcement and the courts.

- Invest in staffing and system improvements necessary to increase future data collection and analysis capacity.

- Collect and analyze sentencing data statewide as well as by judicial district.

- Identify opportunities to publish racial disparity data, including an annual report to benchmark and monitor progress.

- Engage impacted communities in the collection of quantitative and qualitative data as well as the development and implementation of policy changes related to racial disparity.

- Use data and community engagement to inform judicial training to support consistent decision-making.