

Collecting Race & Ethnicity Data

A Court Statistics Project Data Governance Special Topic

June 24, 2020



Since the Civil Rights Movement, the stated purpose of collecting agency data on race and ethnicity has been to document inequality.¹ According to the U.S. Census Bureau, race and Hispanic origin “data are used in planning and funding government programs that provide funds or services for specific groups . . . to evaluate government programs and policies to ensure they fairly and equitably serve the needs of [the Hispanic population and all racial groups] and to monitor compliance with antidiscrimination laws, regulations, and policies.”²

Should courts collect race and ethnicity data?

Decisions about whether to collect race and ethnicity data are best addressed by a court’s data governance committee. Courts collect data for many reasons, including to inform policy decisions and to measure court performance on constructs like timeliness and access and fairness. According to the [Data Governance Policy Guide](#), questions to ask about any potential data collection include:

- ◆ Are these data actionable?
- ◆ What will the court do with these data?
- ◆ What will change if the court has these data?
- ◆ What will happen if the court does not collect these data?
- ◆ Are the courts the right place to collect these data?

Thinking that it would be “nice to know” is not sufficient reason to gather data, especially since tradeoffs often exist between the quantity and quality of data. Because race data can be sensitive, these questions should also be considered:

- ◆ What is the business need for these data?
- ◆ Who needs access to these data?
- ◆ How can access to these data be limited to those with a legitimate business need for it?
- ◆ If the court collects these potentially sensitive data, do laws or court rules require release in response to a public records request? Under what circumstances?
- ◆ Who would be harmed if there were a data breach?
- ◆ What measures are in place to protect these data in the event of a data breach (encryption, separation of key elements)?

Several of these questions require communication and cooperation with the IT department, who should be represented on the data governance committee. The role of the data governance committee is to make decisions on what data are considered sensitive; the role of IT is determining the best way to protect sensitive data.

Are there national standards regarding race and ethnicity data?

The [National Open Court Data Standards](#) (NODS) recommends collection of race and ethnicity in all case types. NODS uses racial and ethnic designations broader than those defined by the Census (see Figure 1 below), but consistent for uses of comparison. When comparing, for example, the use of specific court services or programs by race to the racial makeup of the geographic area served by the court, consistency between these two sets of data is critical to an accurate depiction of inequities in court access.

Table 1: NODS race and ethnicity data elements

Race	Party's self-identification with one or more social groups	White Black or African American American Indian or Alaska Native Asian Native Hawaiian or other Pacific Islander Other
Ethnicity	Party's self-identified ethnicity	Hispanic/Latinx Non-Hispanic/Latinx

Figure 1: Census race/ethnicity questions

→ NOTE: Please answer BOTH Question 8 about Hispanic origin and Question 9 about race. For this census, Hispanic origins are not races.

8. Is Person 1 of Hispanic, Latino, or Spanish origin?

No, not of Hispanic, Latino, or Spanish origin

Yes, Mexican, Mexican Am., Chicano

Yes, Puerto Rican

Yes, Cuban

Yes, another Hispanic, Latino, or Spanish origin — Print origin, for example, Argentinian, Colombian, Dominican, Nicaraguan, Salvadoran, Spaniard, and so on. ↕

9. What is Person 1's race? Mark one or more boxes.

White

Black, African Am., or Negro

American Indian or Alaska Native — Print name of enrolled or principal tribe. ↕

Asian Indian Japanese Native Hawaiian

Chinese Korean Guamanian or Chamorro

Filipino Vietnamese Samoan

Other Asian — Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on. ↕

Other Pacific Islander — Print race, for example, Fijian, Tongan, and so on. ↕

Some other race — Print race. ↕

Although NODS uses racial and ethnic categories consistent with the U.S. Census, individual courts should consider expanding the categories they collect to fit the needs of their community. Identifying issues of access and fairness, need for interpreters, and equitable representation in court programs may require a more nuanced approach, depending on the needs of the community. The Census includes items related to specific ethnic origins, and courts may wish to do the same (see Figure 1). In cases where courts can designate their own race and ethnicity categories, these more nuanced options should be considered in the context of the demographic makeup of the community. For example, collecting specific Tribal affiliation may be important. These specific categories can then be mapped to the more general NODS race and ethnicity categories.

How can a court collect race and ethnicity data?

The NODS User Guide expands: “Self-identification is preferred for race, ethnicity, and gender. In some jurisdictions, a proxy for self-identified race and gender may be based upon the perception of the criminal justice officer or court official who had the first contact with the individual.”

Some jurisdictions rely upon observation for race data. This can be useful from a research perspective but is less accurate than self-identification. Self-identification can occur in several ways:

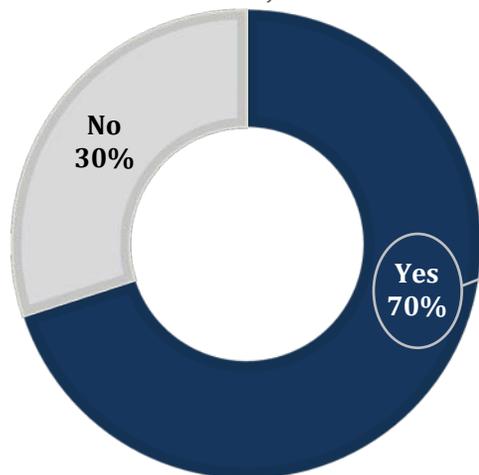
- As part of case filing, on a cover sheet, or as part of an electronic filing system. This is only self-identification if the litigant is completing the form, or
- As part of a check-in system.

A court can also collect race/ethnicity as part of a data exchange, such as with the State Drivers’ License Agency. In a data exchange, the information may be based upon observation by someone from that agency rather than self-identification.

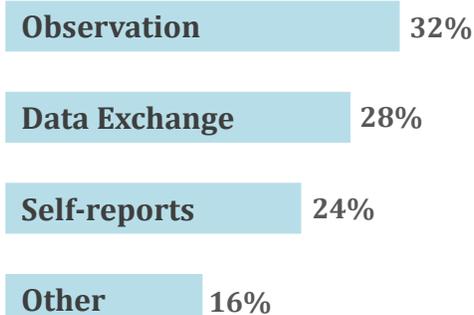
In a recent informal survey of data specialists, 70% of 30 jurisdictions (primarily states) responding indicated that their courts collect race and ethnicity data, though most do not collect it for all case types. The most common method of collection was observation based on the physical characteristics of an individual, followed by obtaining the information through a data exchange and through self-report. If a court is considering asking individuals to self-identify race and ethnicity, ask affected communities for their input as to the method and the options. Always make providing race/ethnicity optional.

ARE RACE AND ETHNICITY DATA COLLECTED?

Data from 30 jurisdictions



HOW ARE THESE DATA COLLECTED?



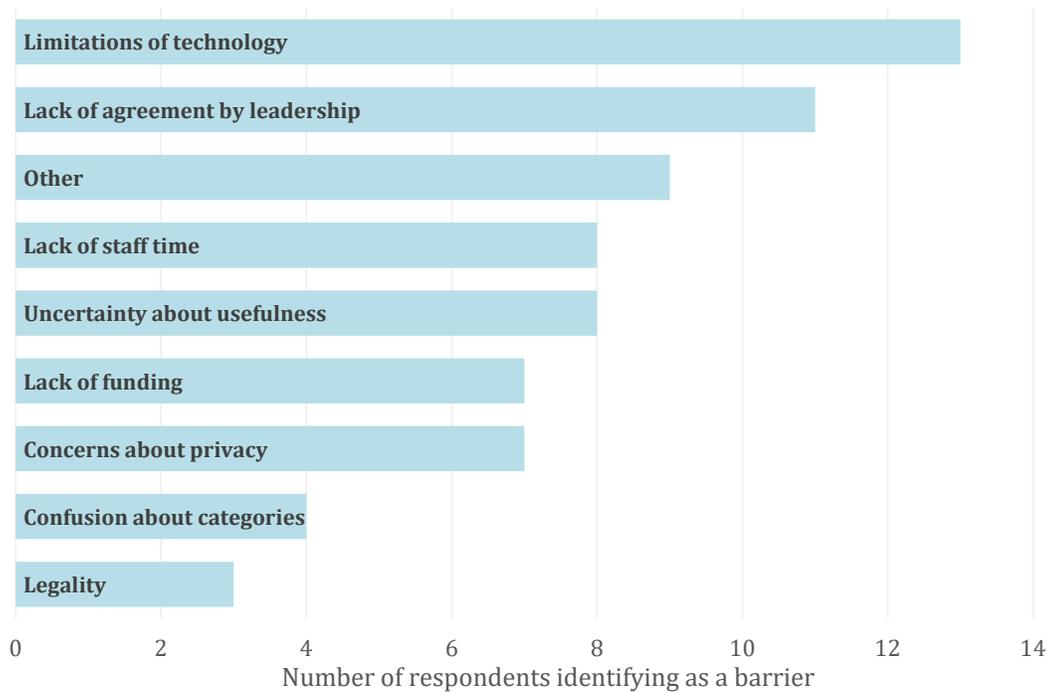
Does a court have to release race and ethnicity data?

If the court receives race data from another agency, whether and how it can be released should be addressed in the data-exchange agreement. If the data are collected by the court, release is governed by the data governance policy, in compliance with statutes and other court rules.

What are barriers to data collection?

The two most common barriers identified to collection of race and ethnicity data were limitations of the technology system and lack of agreement by leadership.

BARRIERS TO DATA COLLECTION



Other concerns expressed included concerns that inferences will be made from incomplete data given that information about race and ethnicity is often not provided. Courts that rely on observation have concerns about the validity of the information.

Race and Ethnicity – Broader Considerations

Members of some racial or ethnic groups may not fit into the existing categories or may fall under a category that does not accurately reflect the inequalities they experience. In the 2010 Census “some other race” was the third most common race selection behind White and Black.³

Individuals of Hispanic/Latinx ethnicity may not identify with one of the currently available racial categories. Because people of Hispanic/Latinx ethnicity can be of any race, recent approaches to surveying this population use two separate questions — one about ethnicity and one about race. To provide a complete picture of the issue, we present the pertinent statistics from both a race and ethnicity standpoint.

In the 2010 census:

- ◆ 97% of the individuals who selected only “some other race” also identified as ethnically Hispanic/Latinx.
- ◆ 37% of the individuals who identified as ethnically Hispanic/Latinx selected “some other race” on the race question.⁴
- ◆ One method of addressing this issue is to ask for nationality in addition to ethnicity. This approach was preferred by the majority (54%) of Hispanic adults surveyed about how they self-identify.

One method of addressing this issue is to ask for nationality in addition to ethnicity. This approach was preferred by the majority (54%) of Hispanic adults surveyed about how they self-identify.⁵

Individuals of Middle Eastern and North African descent are categorized as “White” in the U.S. Census designations, although that grouping may not match their racial self-identification or experience.⁶ Organizations representing people of this heritage advocate for the inclusion of a new, separate, Middle East/North Africa (MENA) racial category to disaggregate this group from the white racial category. This change would allow for analyses of race-related data to inform policy decisions involving this group more accurately.⁷

Endnotes

- 1 Strmic-Pawl, H.V., Jackson, B.A., & Garner, S. (2018). Race counts: Racial and ethnic data on the U.S. Census and the implications for tracking inequality. *Sociology of Race and Ethnicity*, 4(1), 1-13. Retrieved from: <https://doi.org/10.1177/2332649217742869>
- 2 United States Census Bureau. (2018). Questions planned for the 2020 Census and American Community Survey: Federal legislative and program uses. Pp. 7 & 9. Retrieved from: <https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acr.pdf>
- 3 United States Census Bureau. (2011). 2010 Census shows America's diversity. Retrieved from: https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn125.html
- 4 United States Census Bureau. (2011). Overview of race and Hispanic origin: 2010. Retrieved from: <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>
- 5 Lopez, M.H. (2013). Hispanic or Latino? Many don't care, except in Texas. Retrieved from: <https://www.pewresearch.org/fact-tank/2013/10/28/in-texas-its-hispanic-or-favor/>
- 6 Krogstad, J. M. (2014). Census Bureau explores new Middle East/North Africa ethnic category. Retrieved from: <https://www.pewresearch.org/fact-tank/2014/03/24/census-bureau-explores-new-middle-eastnorth-africa-ethnic-category/>
- 7 Center on Poverty and Inequality. (2018). Will you count? Middle Eastern and North African Americans (MENA) in the 2020 Census. Retrieved from: <http://civilrightsdocs.info/pdf/census/2020/Fact-Sheet-MENA-HTC.pdf>