

**Since the Civil Rights Movement, the stated purpose of collecting agency data on race and ethnicity has been to document inequality.<sup>1</sup> Courts have an affirmative responsibility to provide justice in a way that is both fair and perceived as accessible and fair for all.**

## Should courts collect race and ethnicity data?

In 2020, the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA) noted that “courts in many states, with the encouragement, support, and guidance of CCJ and COSCA, have initiated efforts . . . to collect, maintain and report court data regarding race and ethnicity that enables courts to identify and remedy racial disparities. . . .”<sup>2</sup> Decisions about the specifics of data collection and use of the 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?

The potential to better serve all segments of the community provides a compelling reason for courts to collect race and ethnicity data.

## Are there national standards regarding race and ethnicity data?

The [National Open Court Data Standards](#) (NODS) includes 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. The NODS data elements added data fields in 2021 (see Table 1) to allow for the collection of the source of the race and ethnicity data and whether the race/ethnicity is self-identified or observed. This is in recognition of the fact that courts should clearly indicate what is collected and how.

**Table 1: NODS race and ethnicity data elements**

	<b>Data Element</b>	<b>Definition</b>	<b>Values</b>
6	<b>Race</b>	Party's 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
6a	<b>Race source</b>	The source or agency where the race data was collected	Court (direct inquiry) Driver's license Law enforcement Jail Corrections/Probation Prosecutor Petitioner Another state agency Unknown
6b	<b>Race self-identified or observed</b>	An indicator for whether the race source relies upon self-identification by the party or an observation from someone else (e.g., law enforcement)	Self-identified Observed or perceived
7	<b>Ethnicity</b>	Party's identification with an ethnicity	Hispanic/Latinx Non-Hispanic/Latinx
7a	<b>Ethnicity source</b>	The source or agency where the ethnicity data was collected	Court (direct inquiry) Driver's license Law enforcement Jail Corrections/Probation Prosecutor Petitioner Another state agency Unknown
7b	<b>Ethnicity self-identified or observed</b>	An indicator for whether the ethnicity source relies upon self-identification by the party or an observation from someone else (e.g., law enforcement)	Self-identified Observed or perceived

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 and can be mapped to American Indian or Alaska Native. A court that serves a large diverse community of Pacific Islanders may want to add Native Hawaiian, Samoan, or Marshallese. These specific categories can then be mapped to the more general NODS category of Pacific Islander.

**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. ↴

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**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. ↴

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<input type="checkbox"/> Asian Indian	<input type="checkbox"/> Japanese	<input type="checkbox"/> Native Hawaiian
<input type="checkbox"/> Chinese	<input type="checkbox"/> Korean	<input type="checkbox"/> Guamanian or Chamorro
<input type="checkbox"/> Filipino	<input type="checkbox"/> Vietnamese	<input type="checkbox"/> Samoan
<input type="checkbox"/> Other Asian — Print race, for example, Hmong, Laotian, Thai, Pakistani, Cambodian, and so on. ↴	<input type="checkbox"/> Other Pacific Islander — Print race, for example, Fijian, Tongan, and so on. ↴	

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Some other race — Print race. ↴

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## What questions should be considered prior to collecting race & ethnicity data?

The data governance committee should consider who has access to race and ethnicity information and how it will be used based on state law and court rules. The answers to these questions will help guide how the information is collected, stored, and accessed.

- What questions does the court want to answer with this information?
- Who needs access to this information?
- How will information be provided to those who need access?
- How can access be limited to those with a legitimate business need for it?
- Who would be harmed if there were a data breach?
- What measures are in place to protect the data in the event of a data breach?

## How can a court collect race and ethnicity data?

The NODS User Guide states: “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.”

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.

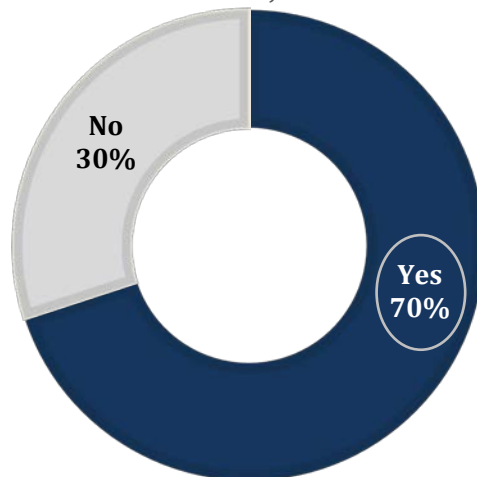
In two recent informal surveys of data specialists, 70% of 30 jurisdictions (primarily states) responding indicated that their courts collect race and ethnicity data, though most do not collect it for all case types. The most common method of collection was observation based on the physical characteristics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

### Self-identified or observed race?

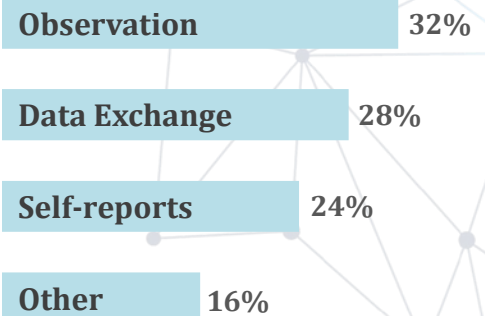
In most cases, observed race and self-identified race will be consistent. In cases where someone’s race or ethnicity is ambiguous or not readily apparent to an observer, self-identified race will capture the individual’s actual racial or ethnic heritage while observed race and ethnicity will capture the assumptions others make based on a person’s appearance and other factors. While self-identified race and ethnicity are more accurate from an objective standpoint, observed race may better capture disparities in treatment based on visual cues. People of bi- or multi-racial heritage and people of Hispanic/Latinx ethnicity are the groups most likely to experience disparities in their self-identified and observed race and ethnicity.

## 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/ethnicity 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?

Common barriers identified to collection of race and ethnicity data include:

- a lack of staff time;
- limitations of technology systems (e.g., interoperability of systems, outdated values for race and ethnicity categories);
- confusion about race and ethnicity categories; and
- concerns about data being misused or misinterpreted.

Courts that rely on observation have concerns about the validity of the information. Within states, the lack of reliable and standardized reporting is a significant barrier.



## 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

## 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 Conference of Chief Justices and Conference of State Court Administrators. (2020). *Resolution 1: In support of racial equity and justice for all*. Retrieved from: [https://ccj.ncsc.org/\\_data/assets/pdf\\_file/0017/51191/Resolution-1-In-Support-of-Racial-Equality-and-Justice-for-All.pdf](https://ccj.ncsc.org/_data/assets/pdf_file/0017/51191/Resolution-1-In-Support-of-Racial-Equality-and-Justice-for-All.pdf)

3 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>

4 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](https://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn125.html)

5 United States Census Bureau. (2011). *Overview of race and Hispanic origin: 2010*. Retrieved from: <https://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>

6 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/>

7 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/>

8 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>