Since the Civil Rights Movement, the stated purpose of collecting agency data on race and ethnicity has been to document inequality. 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 . . . .” 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. (Conference of Chief Justices & Conference of State Court Administrators, 2020) 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. The NODS data elements in Table 1 have been expanded to allow for the collection of both self-identified and perceived, or observed, race and ethnicity data. This is in recognition of the fact that courts may collect one or both but should know and clearly indicate what is collected.
Table 1: NODS race and ethnicity data elements

<table>
<thead>
<tr>
<th>Item #</th>
<th>Data element</th>
<th>Definition</th>
<th>Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Race-self identified</td>
<td>Party’s self-identification with one or more social groups</td>
<td>White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or other Pacific Islander, Other</td>
</tr>
<tr>
<td>6a</td>
<td>Race-perceived</td>
<td>Identification of the Party with one or more social groups as perceived by person providing the information</td>
<td>White, Black or African American, American Indian or Alaska Native, Asian, Native Hawaiian or other Pacific Islander, Other</td>
</tr>
<tr>
<td>7</td>
<td>Ethnicity-self identified</td>
<td>Party’s self-identified ethnicity</td>
<td>Hispanic/Latinx, Non-Hispanic/Latinx</td>
</tr>
<tr>
<td>7a</td>
<td>Ethnicity-perceived</td>
<td>Party’s ethnicity as perceived by person providing the information</td>
<td>Hispanic/Latinx, Non-Hispanic/Latinx</td>
</tr>
</tbody>
</table>

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.
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 do we 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, ask affected communities for their input as to the method and the options. Always make providing race/ethnicity optional.

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.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


