**Since the Civil Rights Movement, the stated purpose of collecting agency data on race and ethnicity has been to document inequality.[1] 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. . . ."[2] 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

|     | Data Element | Definition | Values |
| --- | --- | --- | --- |
| 6 | **Race**<br><br>*(Select all that apply)* | Party's identification with one or more social groups | White<br>Black or African American<br>American Indian or Alaska Native<br>Asian<br>Native Hawaiian or other Pacific Islander<br>Other |
| 6a | **Race source** | The source or agency where the race data was collected | Court (direct inquiry)<br>Driver's license<br>Law enforcement<br>Jail<br>Corrections/Probation<br>Prosecutor<br>Petitioner<br>Another state agency<br>Unknown |
| 6b | **Race self-identified or observed** | 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<br>Observed or perceived |
| 7 | **Ethnicity** | Party's identification with an ethnicity | Hispanic/Latinx<br>Non-Hispanic/Latinx |
| 7a | **Ethnicity source** | The source or agency where the ethnicity data was collected | Court (direct inquiry)<br>Driver's license<br>Law enforcement<br>Jail<br>Corrections/Probation<br>Prosecutor<br>Petitioner<br>Another state agency<br>Unknown |
| 7b | **Ethnicity self-identified or observed** | 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<br>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[3], 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

## 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.
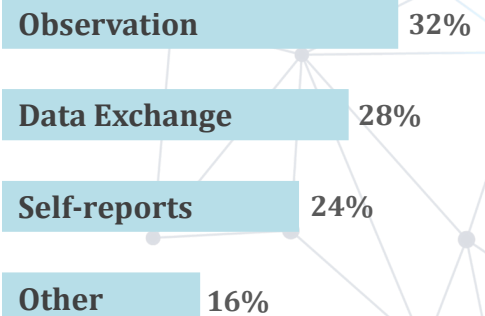
### Self-identified or observed race?

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 Asian, American Indian, 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/or ethnicity.[4]

## ARE RACE AND ETHNICITY DATA COLLECTED?
Data from 30 jurisdictions

No
30%

Yes
70%
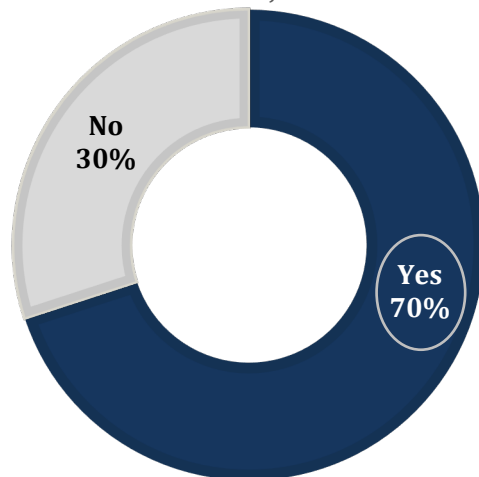
## HOW ARE THESE DATA COLLECTED?

| | |
|---|---|
| Observation | 32% |
| Data Exchange | 28% |
| Self-reports | 24% |
| Other | 16% |

## 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 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.[5]

Individuals of Hispanic/Latinx ethnicity may not identify with one of the commonly used racial categories. Because people of Hispanic/Latinx ethnicity can be of any race, common approaches to surveying this population use two separate questions - one about Hispanic/Latinx ethnicity and one about race which does not include Hispanic/Latinx as a race category. 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.[6]

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.[7]

It is important to note that while some individuals may identify as, for example, Latinx and White, or Latinx and Black, other people identify racially *and* ethnically as Hispanic/Latinx.[8] The two-question approach to race and ethnicity data collection leaves people in the latter situation without an applicable race option.

One option gaining popularity is to combine race and ethnicity into one category and allow users to select all options that apply.[9] This "select all that apply" option ensures that people of mixed racial/ethnic heritage or who identify as ethnically Hispanic/Latinx and racially with another group can accurately report both their racial and ethnic identities. It also allows individuals who identify both ethnically and racially as Hispanic/Latinx to choose only that option. A second method is to retain the two-question approach and add Hispanic/Latinx as a race option for those who also identify ethnically as Hispanic/Latinx.

Similarly, 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.[10] 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.[11]

# Endnotes

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