



RACIAL EQUITY IMPACT NOTE

DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND ▪ GENERAL ▪ ASSEMBLY

2024 Session
SB0028

Crimes and Corrections - Penalties and Procedures (Violent Firearms Offender Act of 2024)

Bill Summary

This bill (1) alters provisions and penalties pertaining to several firearms-related offenses; (2) expands the definition of a “crime of violence” under § 14-101 of the Criminal Law Article; (3) requires the Commissioner of Correction to provide to each incarcerated individual a reentry kit containing specified items and information prior to release from a State correctional facility; and (4) specifies that a violation of a condition of probation, parole, or mandatory supervision involving the use or possession of a firearm is not a technical violation.

Racial Equity Impact Statement

Black offenders will be significantly impacted by provisions in the bill that (1) reclassify, from a misdemeanor to a felony, the use of a firearm in the commission of a crime of violence or felony and (2) increase penalties for subsequent violations of the prohibition on illegal possession of a firearm under the Public Safety Article. The bill would be impactful for Black defendants as they are nearly 11 times more likely than their white counterparts to be convicted of the former charge, and 13 times more likely to be convicted of the latter charge. Specifically, the bill’s changes will increase the length of incarceration for offenders and make reentry after incarceration more difficult. A definitional change in the bill of what constitutes “use of a firearm” for several offenses could reduce the conviction frequency for these offenses, but overall, the bill will likely perpetuate or increase the pronounced racial disparities evidenced by existing data. Additional data on charges, arrests, and related enforcement would be useful to understand the overall impacts of the bill.

Analysis

Section 4-204 of the Criminal Law Article prohibits the use of a firearm in the commission of a crime of violence (as defined under § 5-101 of the Public Safety Article) or a felony. The bill makes various changes to firearm related offenses and requires State correctional facilities to provide specified items to released prisoners as part of a reentry kit. Specifically, the offense related changes in the bill that this analysis will discuss are (1) the reclassification from a misdemeanor to a felony the offense of use of a firearm or certain high-capacity assault weapons in the commission of a felony or crime of violence; and (2) the increase in the maximum incarceration penalty from 5 to 10 years for a second or subsequent violation of § 5-133(b) of the Public Safety Article, which prohibits the possession of a regulated firearm by specified individuals.

Prior to October 1, 2018, using a handgun in the commission of a crime of violence or felony was defined as a crime of violence. Chapter 143 of 2018 altered the definition of a “crime of violence” by (1) replacing use of a “handgun” in the commission of a crime of violence or felony with use of a “firearm” in the commission of a crime of violence or felony and (2) creating an exception for using a firearm in the commission of possession with intent to distribute a controlled dangerous substance (CDS) under § 5-602(2) of the Criminal Law Article. By removing this exception, the bill adds use of a firearm in the commission of possession with the intent to distribute a CDS to the definition of a crime of violence. Chapter 26 of 2022 reclassified possession with intent to distribute cannabis as a misdemeanor.

The bill also specifies that a violation involving the use or possession of a firearm is not a technical violation. Under current law, a “technical violation” of a condition of probation, parole, or mandatory supervision is a violation that does not involve (1) an arrest or a summons issued by a District Court commissioner on a statement of charges filed by a law enforcement officer; (2) a violation of a criminal prohibition other than a minor traffic offense; (3) a violation of a no-contact or stay-away order; or (4) absconding.

Use of a Firearm in the Commission of a Crime of Violence

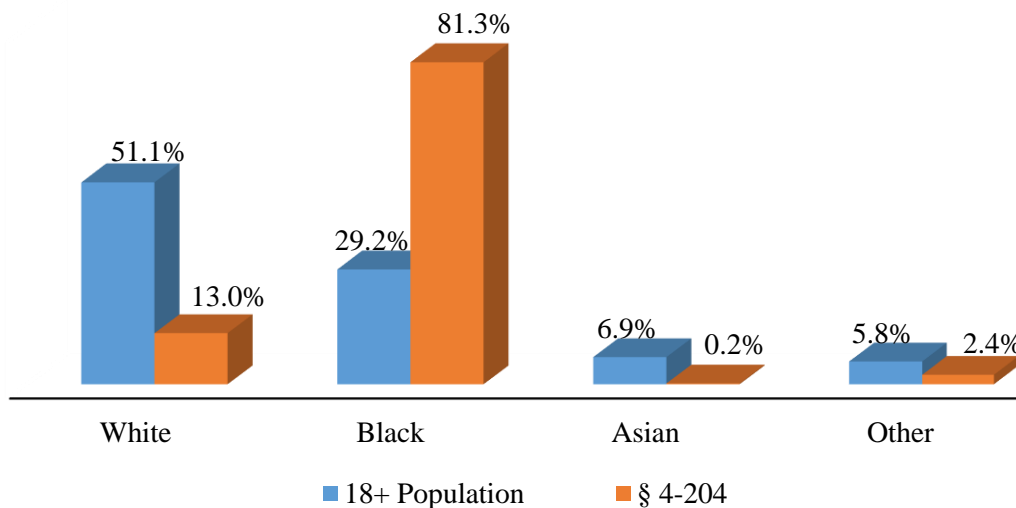
Reclassifying the use of a firearm in commission of a felony or crime of violence would likely exacerbate the inequities for Black offenders who are already charged and convicted under this statute at very high rates. Generally, individuals convicted of felonies often experience significant collateral consequences as a result, such as losing the right to vote, disqualification from obtaining certain professional licenses, and a prohibition on legal gun ownership, to name just a few of the adverse consequences of felony convictions. Specifically, felony charges are likelier to be filed in the circuit courts, and some persons may eventually serve longer incarceration periods due to more stringent penalty provisions applicable to some offenses for prior felony convictions.

Section 5-101 of the Public Safety Article defines a “crime of violence” as (1) abduction; (2) arson in the first degree; (3) assault in the first or second degree; (4) burglary in the first, second, or third degree; (5) carjacking and armed carjacking; (6) escape in the first degree; (7) kidnapping; (8) voluntary manslaughter; (9) maiming; (10) mayhem; (11) murder in the first or second degree; (12) rape in the first or second degree; (13) robbery; (14) robbery with a dangerous weapon; (15) sexual offense in the first, second, or third degree; (16) home invasion; (17) felony sex trafficking and forced marriage; (18) an attempt to commit offenses (1) through (17); or

(19) assault with the intent to commit offenses (1) through (17) or a crime punishable by imprisonment for more than one year.

According to the Maryland State Commission on Criminal Sentencing Policy (MSCCSP), in fiscal 2021 and 2022, the circuit courts convicted and sentenced 455 individuals for a total of 469 violations of § 4-204 of the Criminal Law Article. Of these individuals, 81% are Black and 13% are white. Individuals of other races or unknown races account for the remaining 6% of the total. **Exhibit 1** shows these percentages in relation to each group’s share of the State’s adult population.

Exhibit 1
Circuit Court Convictions for Use of Firearm in Commission of a Felony or Crime of Violence as Compared to Maryland’s Adult Population
Fiscal 2021-2022



Note: The number of individuals sentenced in the circuit courts differ from the total number of sentences due to individuals receiving sentences for multiple offenses.

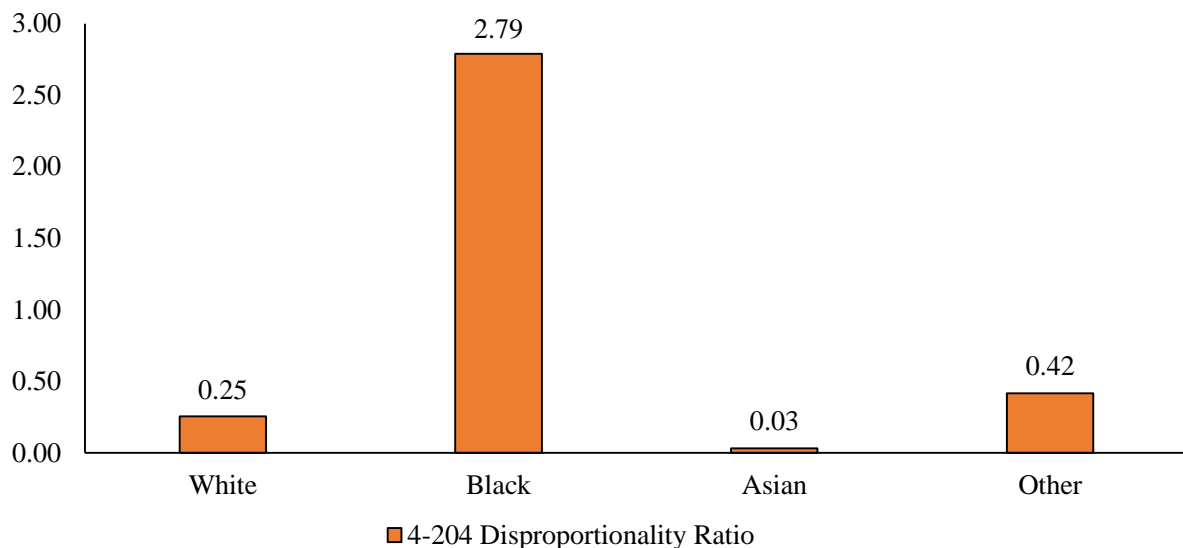
Source: U.S. Census Bureau; Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services.

Racial Disproportionality and Disparity in Circuit Court Convictions for Violations of § 4-204 of the Criminal Law Article

When compared to their share of the overall State population, Black offenders are significantly overrepresented in cases adjudicated by circuit courts for violating § 4-204. **Exhibit 2** shows the disproportionality ratios by race from the fiscal 2021 to 2022 circuit court sentencing data. The disproportionality ratio for the Black population is 2.79. This means that Black individuals are nearly three times more likely to be sentenced for this offense given their share of the adult population in the State. The disproportionality ratio for the white population is 0.25, which means

that white individuals are considerably less likely to be sentenced under the statute as compared to their share of the overall adult population.

Exhibit 2
Disproportionality Ratios
Circuit Court Convictions for the Use of Firearm
in Commission of a Felony or Crime of Violence
Fiscal 2021-2022

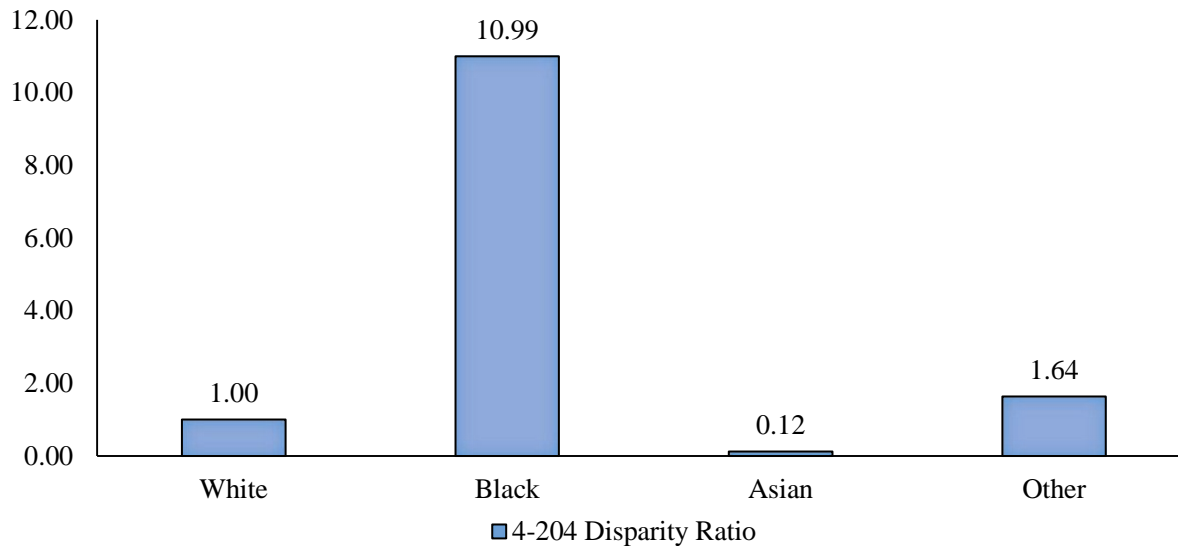


Source: Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

Exhibit 3 shows how racial disparity ratios vary by race for the circuit court sentencing data as well. The disparity ratio illustrates inequities in outcomes when comparing one or more racial or ethnic minority groups within a dataset to the white population within that same dataset. Within the universe of all individuals charged in the circuit court under § 4-204, a disparity ratio illustrates how specific racial groups compare to their white counterparts. In this instance, the disparity ratio for Black offenders is 10.99. This means that Black defendants are 11 times more likely to be sentenced for violations of § 4-204 relative to their white peers.

In addition to making this offense a felony, the bill specifies that the term “use a firearm” does not include the mere possession of a firearm. This will likely reduce the number of individuals charged under the statute since some incidents involving crimes of violence or other felonies are committed by individuals that were in possession of a firearm during the crime but did not actively use it to carry out the crime. However, given the significant disproportionalities and disparities shown in Exhibits 2 and 3, no available data suggests that this will have a meaningful mitigating effect.

Exhibit 3
Disparity Ratios
Circuit Court Convictions for Use of a Firearm in
Commission of a Felony or Crime of Violence
Fiscal 2021-2022



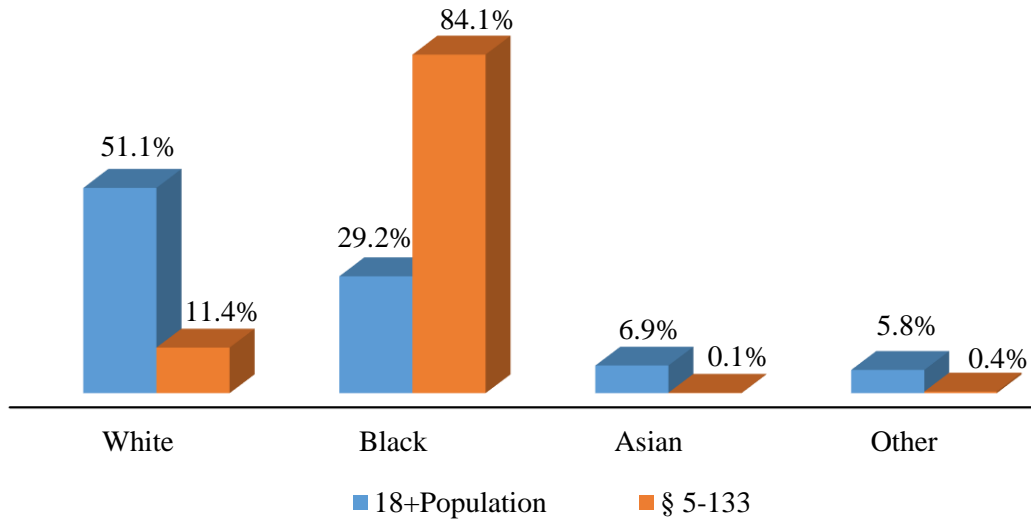
Source: Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

Illegal Possession of a Firearm

Section 5-133 of the Public Safety Article prohibits the possession of a regulated firearm by specified individuals. The bill increases the maximum incarceration penalty for a second or subsequent violation of this prohibition from 5 to 10 years. Generally, a person is prohibited from possessing regulated firearms, rifles, or shotguns if the person has been convicted of a specified disqualifying crime or crimes. Other disqualifiers exist for fugitives, habitual drunkards, specified juvenile delinquents, and individuals addicted to certain CDS and more.

Similar to convictions under § 4-204, the convicted population for illegal possession of a regulated firearm is largely comprised of Black offenders. According to MSCCSP data, circuit courts convicted 901 individuals for a total of 947 violations of § 5-133 in fiscal 2021 and 2022. Of these individuals, 84% were Black, 11% were white, and 5% were of other or unknown races. **Exhibit 4** shows these percentages in relation to each group's share of Maryland's adult population.

Exhibit 4
Circuit Court Convictions for Possession of a Firearm
Compared to Maryland’s Adult Population
Fiscal 2021–2022

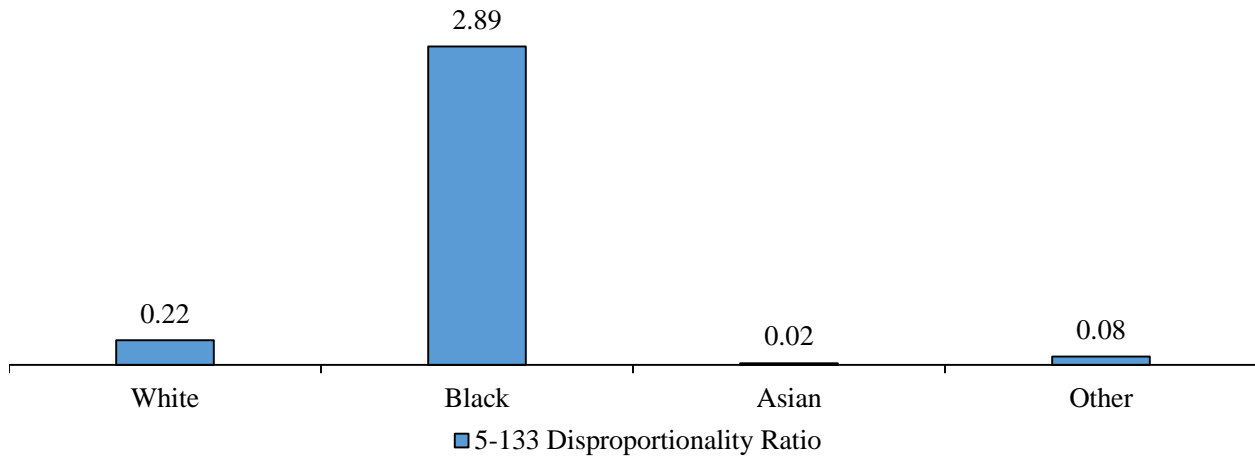


Note: The Circuit Court data does not distinguish between second or subsequent offenders as the penalty in existing law for this offense does not have a separate penalty for repeat offenders.

Source: U.S. Census Bureau; Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

Exhibit 5 shows the disproportionality ratios by race for circuit court convictions under § 5-133(b). The disproportionality ratio for the Black population sentenced under this statute is 2.89. This means that Black defendants are nearly three times more likely to be sentenced for violating § 5-133(b) given their share of the adult population in the State. The disproportionality ratio of 0.22 for white defendants means that white individuals are far less likely to be sentenced under this statute when compared to their proportion of the State’s adult population.

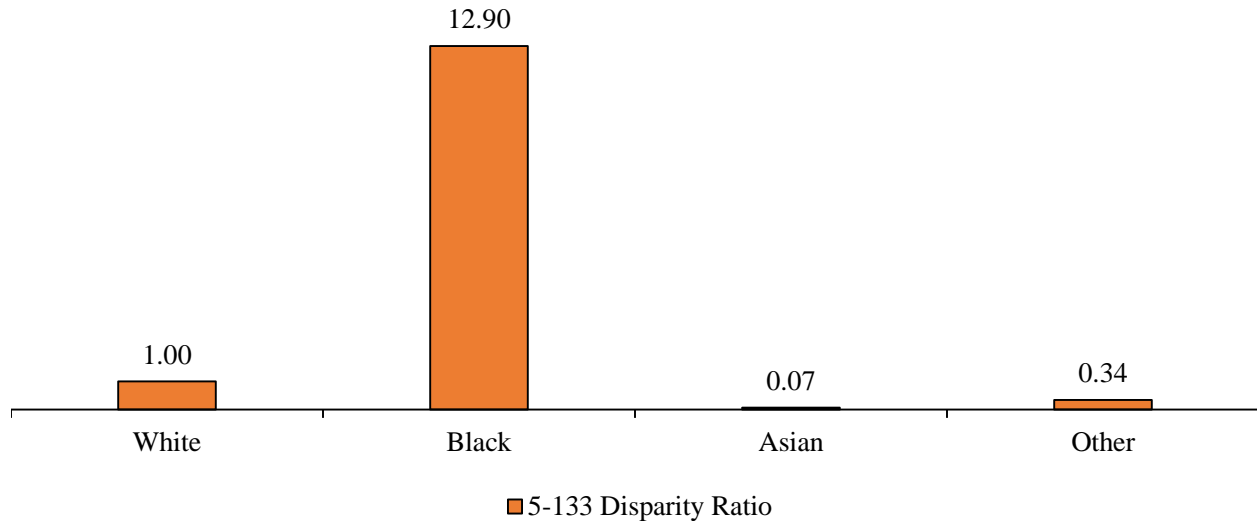
Exhibit 5
Disproportionality Ratios
Circuit Court Convictions for Prohibited Possession of a Firearm
Fiscal 2021–2022



Source: Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

Exhibit 6 shows how racial disparity ratios vary for circuit court convictions in fiscal 2021 and 2022. The disparity ratio for Black defendants is 12.9, which means that the Black defendants are 13 times more likely to be sentenced in the circuit court for violating the prohibition on illegal possession of a firearm under § 5-133(b) relative to their white peers.

Exhibit 6
Disparity Ratios
Circuit Court Convictions for Prohibited Possession of a Firearm
Fiscal 2021-2022



Source: Maryland State Commission on Criminal Sentencing Policy; Department of Legislative Services

While the circuit court data illustrates significant disparities and disproportionalities in convictions, it does not represent the complete picture without additional charge, arrest, conviction, and enforcement data. It does, however, confirm the overall overrepresentation of Black offenders in the State’s criminal justice system.

Conclusion

Sentencing data from MSCCSP confirms significant racial inequities for the two offenses addressed by the bill that were analyzed. These data show that significant disproportionate and disparate impacts exist currently for the Black offender population convicted and sentenced in fiscal 2021 and 2022 for use of a firearm in the commission of a crime of violence or felony and for the illegal possession of a firearm. A change in definition of “use of a firearm” may have a positive effect on the number of offenders sentenced by decreasing the number of charges that meet the new definition, but there is no data to suggest that it would be impactful enough to overcome the significant inequities exhibited in the sentencing data. While the sentencing data does not explain the actual causes of the overrepresentation of convicted Black offenders, it is indicative of systemic inequities observed generally in statewide criminal justice data. Additional reliable data on arrests, charges, convictions, and enforcement activities would provide a clearer picture.

Information Sources: Maryland State Commission on Criminal Sentencing Policy; U.S. Census Bureau; Department of Legislative Services.

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Published: 02/26/2024

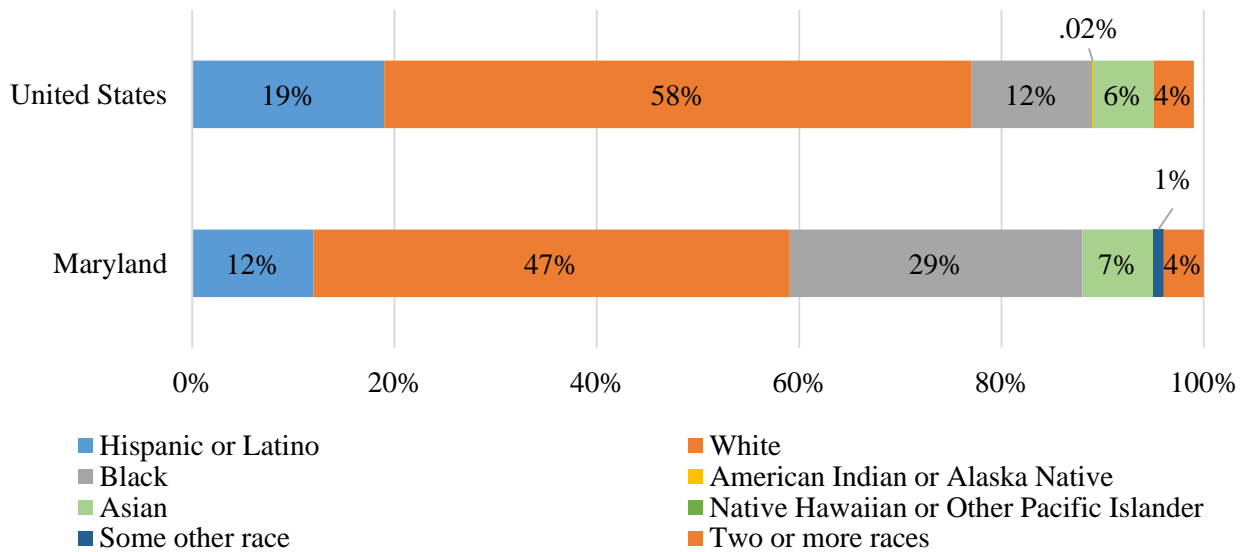
Appendix – Maryland Demographics

Race and Ethnicity of the Maryland Population

Maryland’s 2020 census population is 6,177,244, a 7% increase from the 2010 census count and approximately 2% higher than the 2019 census population estimates. In addition to an increase in population, Maryland’s racial demographics have become more diverse. Maryland is now a state in which racial minorities make up a majority of its total population. Notable changes relevant to this shift are the increase in groups who identify as “other” and “multiracial” (*i.e.*, two or more racial identities), which total 5% of the State’s population. Additionally, the change in demographics is due to the decrease in the number of individuals who only report “white” as their racial group. Despite this decrease, non-Hispanic whites remain the largest race demographic group in the State at 47% of the State’s population.

Compared to the U.S. population overall, Maryland’s population of individuals who identify as a single race is more diverse. Maryland is ranked as the fourth most diverse state by the U.S. Census Bureau’s [Diversity Index](#). As shown in **Exhibit 1**, in Maryland, 47% identify as white alone compared to 58% of the national population. Similarly, 51% of the population identify as non-white or multi-racial compared to 38% of the national population. In both the State and national populations, the largest shares of the non-white population are individuals who are Black, with 29% of the State population identifying only as Black and another 2.5% identifying as Black in combination with some other race. Maryland’s Asian population is 7%, which is slightly higher than the Asian share of the national population of 6%. The State’s overall population by ethnicity, however, is slightly less diverse than the U.S. population; 12% of the State’s population identified as Hispanic or Latino compared to 19% of the U.S. population.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2020



Source: U.S. Census Bureau, 2020 Census Redistricting Data (Public Law 94-171), Table ID P2, HISPANIC OR LATINO, AND NOT HISPANIC OR LATINO BY RACE.