

Department of Legislative Services
Maryland General Assembly
2021 Session

RACIAL AND EQUITY IMPACT NOTE
Third Reader

Senate Bill 14
 Judicial Proceedings

(Senator Kelley, *et al.*)

Judiciary

Compensation to Individual Erroneously Convicted, Sentenced, and Confined
(The Walter Lomax Act)

Summary

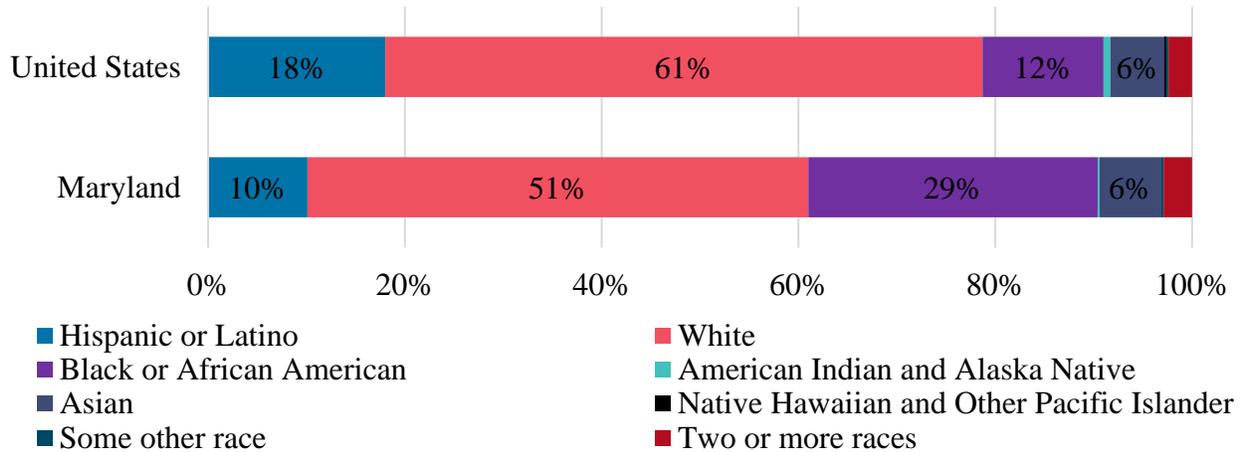
This bill makes several changes to existing provisions pertaining to payments by the Board of Public Works (BPW) to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. The bill applies retroactively to any application for compensation or benefits pending on or after the bill's effective date. Notwithstanding any prior compensation awarded, the bill must be construed to apply retroactively to allow a person to apply for modification of any compensation awarded by BPW between January 1, 1984, and July 1, 2005, inclusive.

Maryland Demographics

Race and Ethnicity of the Maryland Population

In 2019, Maryland's estimated population was just over 6 million individuals. Compared to the U.S. population overall, the State's population by race alone is more diverse. As shown in **Exhibit 1**, in Maryland, 44.5% of the population identify as non-White or multi-racial compared to 27.5% of the national population. In both the State and national population, the largest shares of the non-White population are individuals who are Black or African American, with 29.9% of the State population identifying only as Black or African American and another 1.4% identifying as more than one race including Black or African American. In both the State and the nation, approximately 6% of the population identified as Asian. Maryland's population is slightly less diverse than the U.S. population overall by ethnicity, however. In Maryland, 10.1% of the population identified as Hispanic or Latino compared to 18.0% of the U.S. population overall.

Exhibit 1
U.S. and Maryland Population by Race and Ethnicity
2019

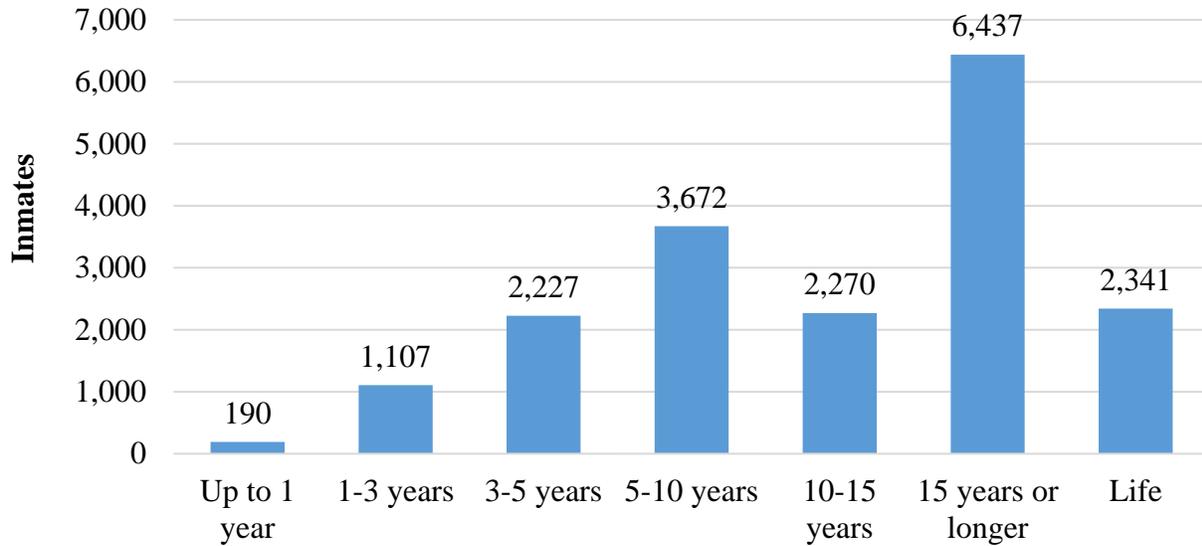


Source: University of Baltimore Schaefer Center

On July 31, 2019, there were 18,244 individuals incarcerated in Maryland under the jurisdiction of the Department of Public Safety and Correctional Services (DPSCS).¹ Of these, just over 8,700 were serving sentences of at least 10 years and 2,341 were serving life sentences, as shown in **Exhibit 2**, resulting in an average sentence length of 18.5 years.

¹ Maryland Department of Public Safety and Correctional Services. (2019). Operations: Maryland Department of Correction. <https://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/024500/024552/20200340e.pdf>.

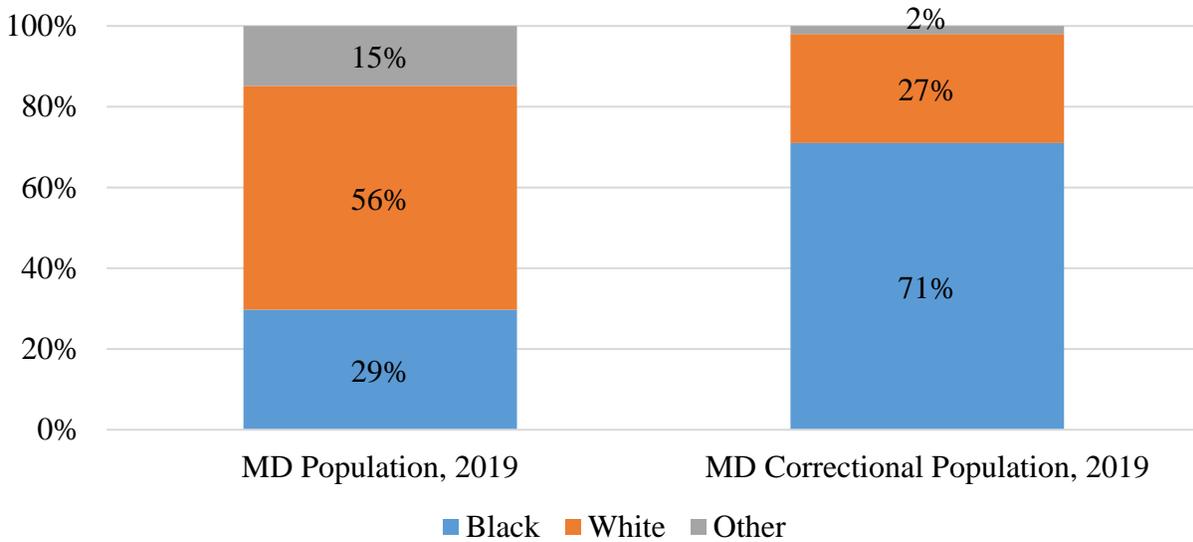
Exhibit 2
Length of Sentence for Maryland Correctional Population
July 31, 2019



Source: University of Baltimore Schaefer Center

The racial and ethnic data of persons serving the sentences in Exhibit 2 is not publicly available at this time. However, in 2019, DPSCS published a report documenting the number of convicted persons in Maryland’s correctional facilities. **Exhibit 3** shows that 71% of convicted individuals in Maryland’s correctional facilities are Black, 27% are White, and 2% consist of groups that are neither Black nor White.

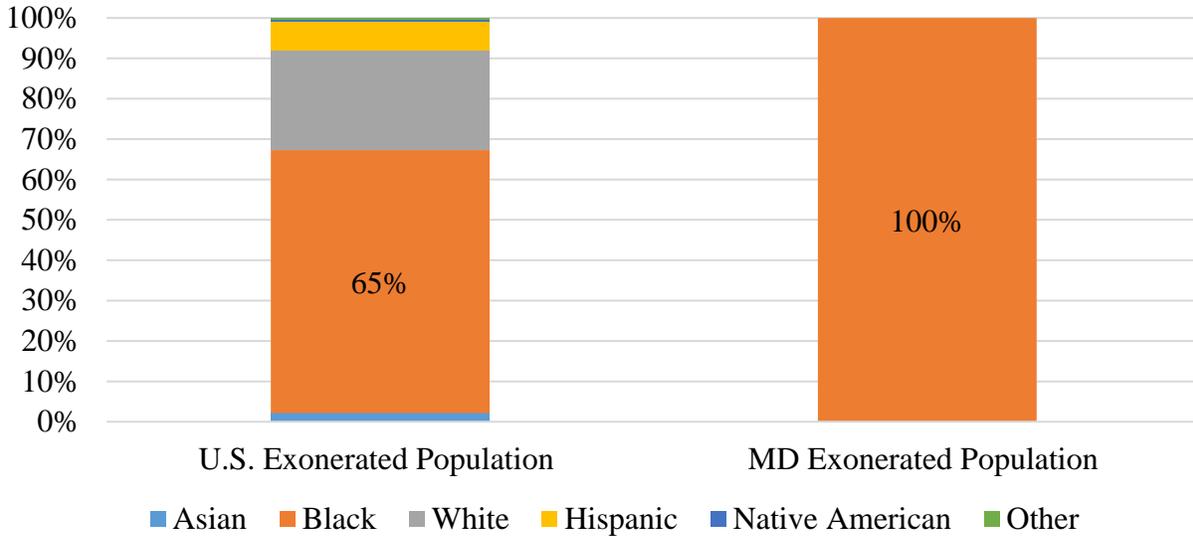
Exhibit 3
Race of Maryland Population and Offenders



Source: University of Baltimore Schaefer Center; Department of Public Safety and Correctional Services

According to a report from the National Registry of Exonerations, 281 convicted individuals have been exonerated in the United States since 2019. Of these exonerated individuals, 65% are African American or people identified as Black, 25% are White, 7% are Hispanic or Latinx, 2% are Asian or identify as Asian American, 1% are Native American, and less than 1% consist of groups that fall outside these categories. In Maryland, data collected by the National Registry of Exonerations show a total of 8 exonerations since 2019. All of these exonerated individuals in Maryland are African American or people identified as Black. **Exhibit 4** shows the findings from the National Registry of Exonerations report.

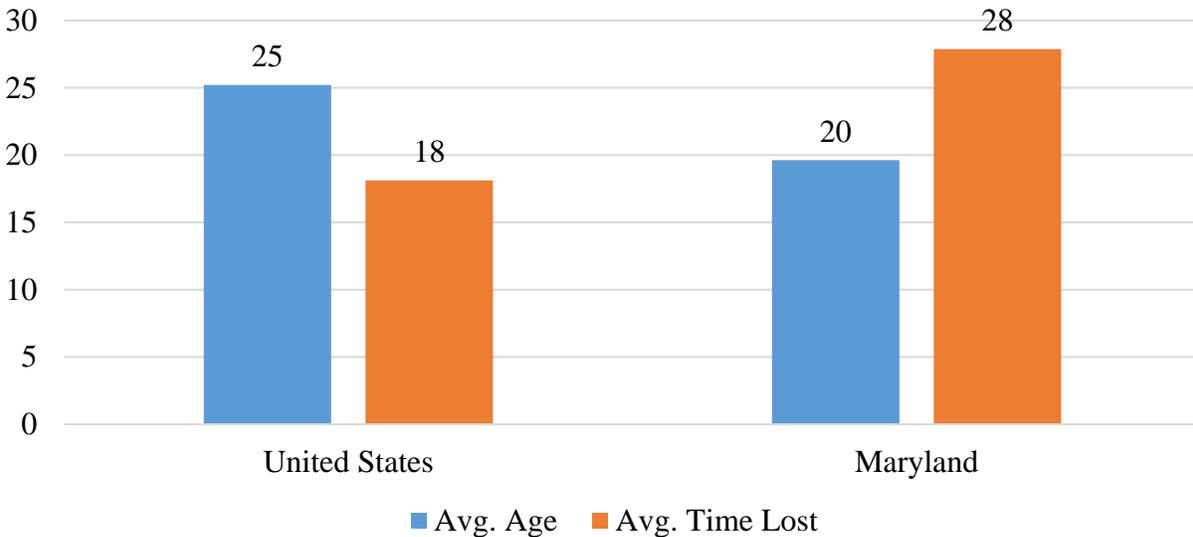
Exhibit 4
U.S. and Maryland Exonerated Populations by Race and Ethnicity
2019-2021



Source: The National Registry of Exonerations; Department of Legislative Services

Additionally, the National Registry of Exonerations report also provides the ages of exonerated individuals on the date of the reported crime and their estimated years lost starting from the time of conviction to exoneration. **Exhibit 5** shows the national and statewide mean ages of Black exonerees at the date of the reported crime and the mean difference between exonerees' year of conviction and exoneration. On average, Black exonerees across the U.S. were approximately 25 years old on the date of the reported crime. The mean difference between exonerees' year of conviction and exoneration was 18 years. In other words, a timespan of 18 years was the average time lost for Black exonerees after their conviction. In Maryland, Black exonerees' average age on the date of the reported crime was 20 years old and the mean difference between their year of conviction and exoneration was 28 years. Thus compared to the U.S., Black or African American exonerated individuals in Maryland are younger on the date of the reported crime and lose more years of lawful citizenship.

Exhibit 5
Average Age on the Date of Reported Crime and Years Lost for
U.S. and Maryland Exonerated Black Populations
2019-2021



Source: The National Registry of Exonerations; Department of Legislative Services

Racial and Equity Impact Statement for Senate Bill 14

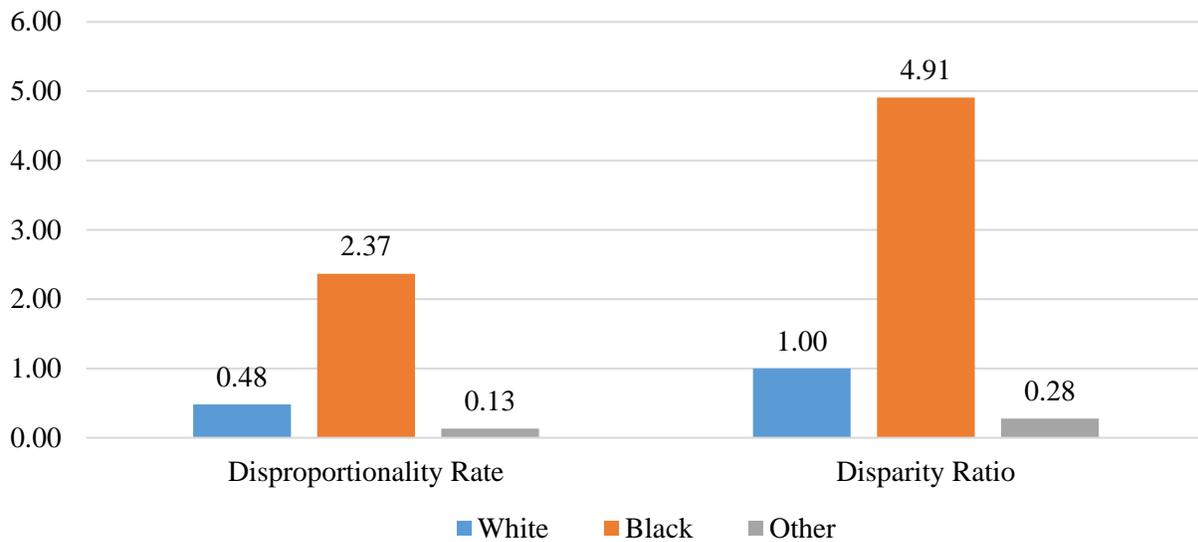
The statewide racial and ethnic demographics for the entire population, and as compared to the racial and ethnic demographics of individuals serving sentences as shown in Exhibits 1 and 3, suggest that notable disproportionality and disparities exist in Maryland’s correctional facilities. Likewise, these disparities are indicative of the disproportionality existing in Maryland’s exonerated population.

Senate Bill 14 makes several changes to existing provisions pertaining to individuals erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. Although there is insufficient data to assess the precise racial impact of Senate Bill 14, the new provisions in this bill could potentially affect current racial disproportionality rates and disparity ratios in Maryland.

Exhibit 6 indicates that the disproportionality rate of imprisonment for African Americans or people identified as Black is 2.37, which means they are more than twice as likely to be imprisoned as their proportion to their representation in the State population. Whites and other non-Black incarcerated racial groups have disproportionality rates of less than 1, at 0.48 and 0.13, respectively, which means they are less likely to be imprisoned than their proportion to their representation in the State population. Exhibit 6 also shows how racial disparity ratios vary among

the different racial groups in Maryland’s correctional population. The data reveals that incarcerated African Americans or people identified as Black are about five times more likely to be imprisoned than Whites. Conversely, other non-White incarcerated racial groups are much less likely to be incarcerated than Whites. Data was not available to analyze disproportionality rates and disparity ratios related to ethnicity.

Exhibit 6
Disproportionality and Disparity Metrics for Maryland Correctional Population 2019

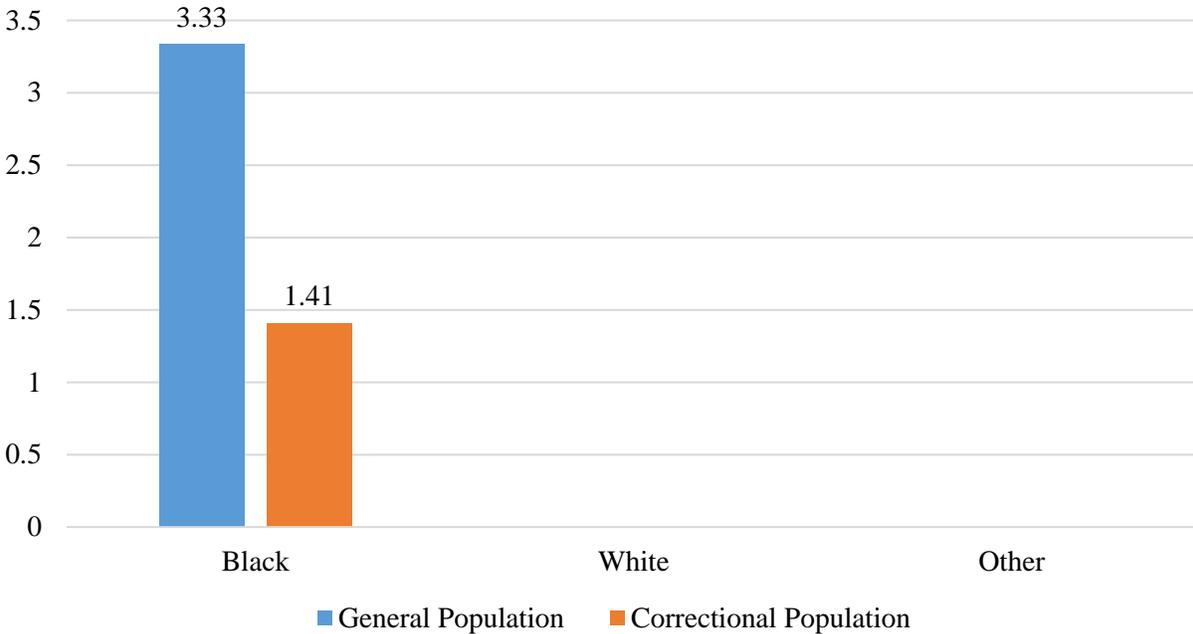


Source: Department of Legislative Services

With respect to the exonerated population in Maryland, **Exhibit 7** shows that the disproportionality rate of exonerated African Americans or people identified as Black is 3.33. This means that exonerated African Americans, or exonerated individuals identified as Black, are 3.33 times more likely to be exonerated relative to the proportion of African Americans in the State of Maryland. This result is expected given the prevailing overrepresentation of incarcerated African Americans or individuals identified as Black in Maryland’s correctional population.

Exhibit 7 also shows the disproportionality rate of exonerated African Americans or people identified as Black with respect to Maryland’s correctional population. Thus, compared to the proportion of African Americans represented in Maryland’s correctional population, exonerated African Americans, or exonerated individuals identified as Black, are 1.41 times more likely to be exonerated than they are represented in the State’s correctional population. Whites and other non-Black racial groups have disproportionality rates of zero.

Exhibit 7
Disproportionality Rates for Maryland’s Exonerated Population
2019



Source: Department of Legislative Services

Conclusion

In Maryland, racial and ethnic disparities exist throughout the criminal justice system. These disparities are not exclusive to Maryland but are prevalent throughout the American criminal justice system. National and statewide data reveal racial and ethnic disparities in sentence length and exonerations.

Documented data reports that African Americans or persons identified as Black are disproportionately and disparately impacted by imprisonment as well as years lost due to wrongful incarceration, more so than any other racial group. Thus, provisions relating to payments by BPW to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit will undoubtedly impact Black people in the State of Maryland.

Methodologies, Assumptions, and Uncertainties

Although some reports use disparity and disproportionality interchangeably, this racial and equity impact note distinguishes them. Disproportionality is the state of being out of proportion. It compares the proportion of one racial or ethnic group of a target population to the proportion of

the *same* racial or ethnic demographic group in the general population. Disparity, however, refers to a state of being unequal. A disparity describes an unequal outcome experienced by one racial or ethnic group of the target population as contrast against a different racial or ethnic group in the target population.

The information provided in this note is drawn from quantitative data analysis of available statistical datasets on crime and criminal justice collected by entities at the national and state level. Moreover, the information includes scholarly literature on racial and ethnic disparities in the U.S. criminal justice system.

Information Sources: University of Baltimore Schaefer Center; Bowie State University; Department of Legislative Services

Analysis by: Dr. Jasmón Bailey

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