

Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces

Meeting Materials

October 23, 2020

**Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces (DAC-IPAD)
19th Public Meeting**

**October 23, 2020
Preparatory Materials
of
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- Tab 2** National Defense Authorization Act for Fiscal Year 2020, section 540I.
Assessment of racial, ethnic, and gender disparities in the military justice system.
(3 pages)
- *Directives to the Secretary of Defense and to the DAC-IPAD from FY20 NDAA section 540I requiring a study of racial, ethnic, and gender disparities in the military justice system. For the DAC-IPAD, the study is specifically to focus on sexual offenses and is due to Congress in December 2020.*
- Tab 3** DAC-IPAD Request for Information Set 18A, Topic: Assessment of Racial and Ethnic Disparities in the Military Justice System (3 pages)
- *Request for sexual offense data submitted to the Military Services by the DAC-IPAD chair in preparation for the racial disparities study. The requested data includes 33 data elements for each subject and victim for cases closed in FY19. Responses are requested by September 7, 2020.*
- Tab 4** Race and Ethnicity Data Tables (18 pages)
- *Data tables for inclusion in the race and ethnicity study as prepared by DAC-IPAD staff for discussion of placement within the report.*

**Defense Advisory Committee on Investigation, Prosecution, and Defense
of Sexual Assault in the Armed Forces (DAC-IPAD)
19th PUBLIC MEETING AGENDA**

October 23, 2020

Teleconference

Dial-In: 410-874-6300, Web Pin: 328 916 161

- | | |
|--------------------------------|--|
| 11:00 a.m. – 11:10 a.m. | Public Meeting Begins – Welcome and Introduction

<i>– Designated Federal Officer Opens Meeting</i>
<i>– Remarks of the Chair</i> |
| 11:10 a.m. – 11:30 a.m. | DAC-IPAD Staff Presentation on Background of Race and Ethnicity Report Tasking and Methodology
<i>(20 minutes)</i>

<i>– Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor</i> |
| 11:30 a.m. – 12:30 p.m. | DAC-IPAD Staff Presentation on Data Results for Race and Ethnicity Report
<i>(1 hour)</i>

<i>– Mr. Chuck Mason, DAC-IPAD Attorney-Advisor</i> |
| 12:30 p.m. – 12:45 p.m. | DAC-IPAD Staff Presentation on Contents of Draft Report
<i>(15 minutes)</i>

<i>– Ms. Eleanor Vuono, DAC-IPAD Attorney-Advisor</i>
<i>– Mr. Chuck Mason, DAC-IPAD Attorney-Advisor</i>
<i>– Ms. Nalini Gupta, DAC-IPAD Attorney-Advisor</i>
<i>– Ms. Marguerite McKinney, Analyst</i> |
| 12:45 p.m. – 1:00 p.m. | Meeting Wrap-Up and Public Comment
<i>(15 minutes)</i> |
| 1:00 p.m. | Public Meeting Adjourns |

National Defense Authorization Act for Fiscal Year 2020

SEC. 540I. ASSESSMENT OF RACIAL, ETHNIC, AND GENDER DISPARITIES IN THE MILITARY JUSTICE SYSTEM.

(a) **In General.**--The Secretary of Defense shall provide for the carrying out of the activities described in subsections (b) and (c) in order to improve the ability of the Department of Defense to detect and address racial, ethnic, and gender disparities in the military justice system.

(b) **Secretary of Defense and Related Activities.**--The activities described in this subsection are the following, to be commenced or carried out (as applicable) by not later than 180 days after the date of the enactment of this Act:

(1) For each court-martial conducted by an Armed Force after the date of the enactment of this Act, the Secretary of Defense shall require the head of the Armed Force concerned--

(A) to record the race, ethnicity, and gender of the victim and the accused, and such other demographic information about the victim and the accused as the Secretary considers appropriate;

(B) to include data based on the information described in subparagraph (A) in the annual military justice reports of the Armed Force.

(2) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall issue guidance that--

(A) establishes criteria to determine when data indicating possible racial, ethnic, or gender disparities in the military justice process should be further reviewed; and

(B) describes how such a review should be conducted.

(3) The Secretary of Defense, in consultation with the Secretaries of the military departments and the Secretary of Homeland Security, shall--

(A) conduct an evaluation to identify the causes of any racial, ethnic, or gender disparities identified in the military justice system;

(B) take steps to address the causes of any such disparities, as appropriate.

(c) DAC-IPAD Activities.--

(1) In general.--The activities described in this subsection are the following, to be conducted by the independent committee DAC-IPAD:

(A) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces *accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report* made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.

(B) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces *against whom charges were preferred* pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

(C) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces *who were convicted of a penetrative sexual assault offense or contact sexual assault offense* in all cases completed in each fiscal year assessed.

(2) Information from federal agencies.--

(A) In general.--Upon request by the chair of the committee, a department or agency of the Federal Government shall provide information that the committee considers necessary to conduct reviews and assessments required by paragraph (1), including military criminal investigation files, charge sheets, records of trial, and personnel records.

(B) Handling, storage, and return.--The committee shall handle and store all records received and reviewed under this subsection in accordance with applicable privacy laws and Department of Defense policy, and shall return all records so received in a timely manner.

(3) Report.--Not later than one year after the date of the enactment of this Act, the committee shall submit to the Secretary of Defense, and to the Committees on Armed Services of the Senate and the House of Representatives, a report setting forth the results of the reviews and assessments required by paragraph (1). The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

(4) Definitions.--In this subsection:

(A) The term "independent committee DAC-IPAD" means the independent committee established by the Secretary of Defense under section 546 of the Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291; 128 Stat. 3374), commonly known as the "DAC-IPAD".

(B) The term "case" means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouses or intimate partner for which an investigation has been opened by a criminal investigative organization.

(C) The term ``completed'', with respect to a case, means that the case was tried to verdict, dismissed without further action, or dismissed and then resolved by non-judicial or administrative proceedings.

(D) The term ``contact sexual assault offense'' means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

(E) The term ``penetrative sexual assault offense'' means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.

**Defense Advisory Committee on Investigation, Prosecution, and
Defense of Sexual Assault in the Armed Forces (DAC-IPAD)**

Request for Information

RFI Set 18A, Questions 1-3

Topic: Assessment of Racial and Ethnic Disparities in the Military Justice System

Date of Request: August 7, 2020

I. Purpose

- A. The DAC-IPAD is a federal advisory committee established by the Secretary of Defense pursuant to section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (Public Law 113-291), as amended.
- B. The mission of the Committee is to advise the Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.
- C. The DAC-IPAD requests the below information to facilitate its required assessment of racial and ethnic disparities in the military justice system pursuant to section 540I of the National Defense Authorization Act of 2020.

II. Requested Response Date

Suspense	Question(s)	Proponent
7 Sep 20	1-3	Military Services – Provide an Excel workbook with three (3) worksheets: (1) Unrestricted Report SA FY19; (2) Preferred SA FY19; and (3) Convicted SA FY19.

III. Assessment of Racial and Ethnic Disparities in the Military Justice System

Question 1: The DAC-IPAD requests the Military Services use information from the Services’ case management systems to identify the race and ethnicity of members of the Armed Forces who were the subject of a penetrative sexual assault offense or contact sexual assault offense allegation in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in fiscal year 2019; the DAC-IPAD also requests the race and ethnicity of the victims of these offenses.

Question 2: The DAC-IPAD requests the Military Services use information from the Services’ case management systems to identify the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in fiscal year 2019; the DAC-IPAD also requests the race and ethnicity of the victims of these offenses.

Request for Information
RFI Set 18, Questions 1-3 – continued

Question 3: The DAC-IPAD requests the Military Services use information from the Services' case management systems to identify the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in fiscal year 2019; the DAC-IPAD also requests the race and ethnicity of the victim of the offense.

Please provide completed Excel workbook to the DAC-IPAD by September 7, 2020.

III. Assessment of Racial and Ethnic Disparities in the Military Justice System (cont.)

Additional information concerning Military Services' submission. The Excel workbook consists of three worksheets titled: (1) Unrestricted Report SA FY19; (2) Preferred SA FY19; and (3) Convicted SA FY19.

Each worksheet should include the following columns, populated with information responsive to the column headings for each case. Note that items 1-27 were requested in RFI 18; items 28-33 address the six additional data points requested in this updated RFI 18A:

1. DoD_ID#
2. Name_Last
3. Name_First
4. M. I.
5. Gender
6. Race
7. Ethnicity
8. Service
9. Pay_Grade
10. Command
11. Court_Type (GCM, SPCM, SCM, Non-BDC JA-SPCM)
12. Date_Report_SA (date of unrestricted report of sexual assault offense)
13. Date_Preferral (date charges preferred)
14. Date_Referral (date charges referred)
15. Verdict_Date (date of findings)
16. Composition (MJ alone, Members, Officer/Enlisted)
17. AltDisbo_Y/N
18. AltDispo_Type (NJP, Separation in Lieu, Resignation in Lieu, Withdrawn)
19. AltDisbo_Date (date of alternative disposition)
20. Disposition_Type (conviction/acquittal)
21. Date_Disposition (date of disposition)
22. Offense_Charged (list of all charges/specifications on charge sheet)
23. Offense_Type (penetrative/contact sex assault offense)
24. Pleas_Findings (pleas/findings for each charge/specification)
25. Discharge (BCD, DD, Dismissal)

Request for Information
RFI Set 18, Questions 1-3 – continued

- 26. Sentence (sentence at court-martial, by charge (if applicable))
- 27. CA_Sentence (sentence approved by convening authority)
- 28. Age of the subject at the time of the alleged offense
- 29. Age of the victim at the time of the alleged offense
- 30. Race of the victim
- 31. Ethnicity of the victim
- 32. Gender of the victim
- 33. Military rank of the victim or indicate if a civilian

IV. Definitions

(A) The term “case” means an unrestricted report of any penetrative sexual assault offense or contact sexual assault offense made against a member of the Armed Forces pursuant to Department of Defense Instruction 6495.02, including any unrestricted report involving a spouse or intimate partner for which an investigation has been opened by a criminal investigative organization.

(B) The term “completed”, with respect to a case, means that the case was tried to verdict, dismissed without further action, dismissed and then resolved by nonjudicial or administrative proceedings, or no legal action taken at all.

(C) The term “contact sexual assault offense” means aggravated sexual contact, abusive sexual contact, wrongful sexual contact, and attempts to commit such offenses under the Uniform Code of Military Justice.

(D) The term “penetrative sexual assault offense” means rape, aggravated sexual assault, sexual assault, forcible sodomy, and attempts to commit such offenses under the Uniform Code of Military Justice.

R&E DATA PRESENTATION – 23 OCT 2020

Table X. Service Response to RFI

	Sexual Offense Unrestricted Report	Sexual Offense Charge(s) Preferred	Sexual Offense Conviction at Court-Martial
Army	1164	173	72
Navy	610	104	9
Marine Corps	487	84	16
Air Force	440	117	31
Coast Guard	127	22	1
Total	2828	500	129

Table X. Racial and Ethnic Categories

Race	Ethnicity
American Indian/ Alaskan Native	Hispanic or Latino
Asian/Native Hawaiian/ Pacific Islander	Not Hispanic or Latino
Black/African American	Unknown
Mixed	
White	
Unknown	

R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Racial Composition (FY 2018)

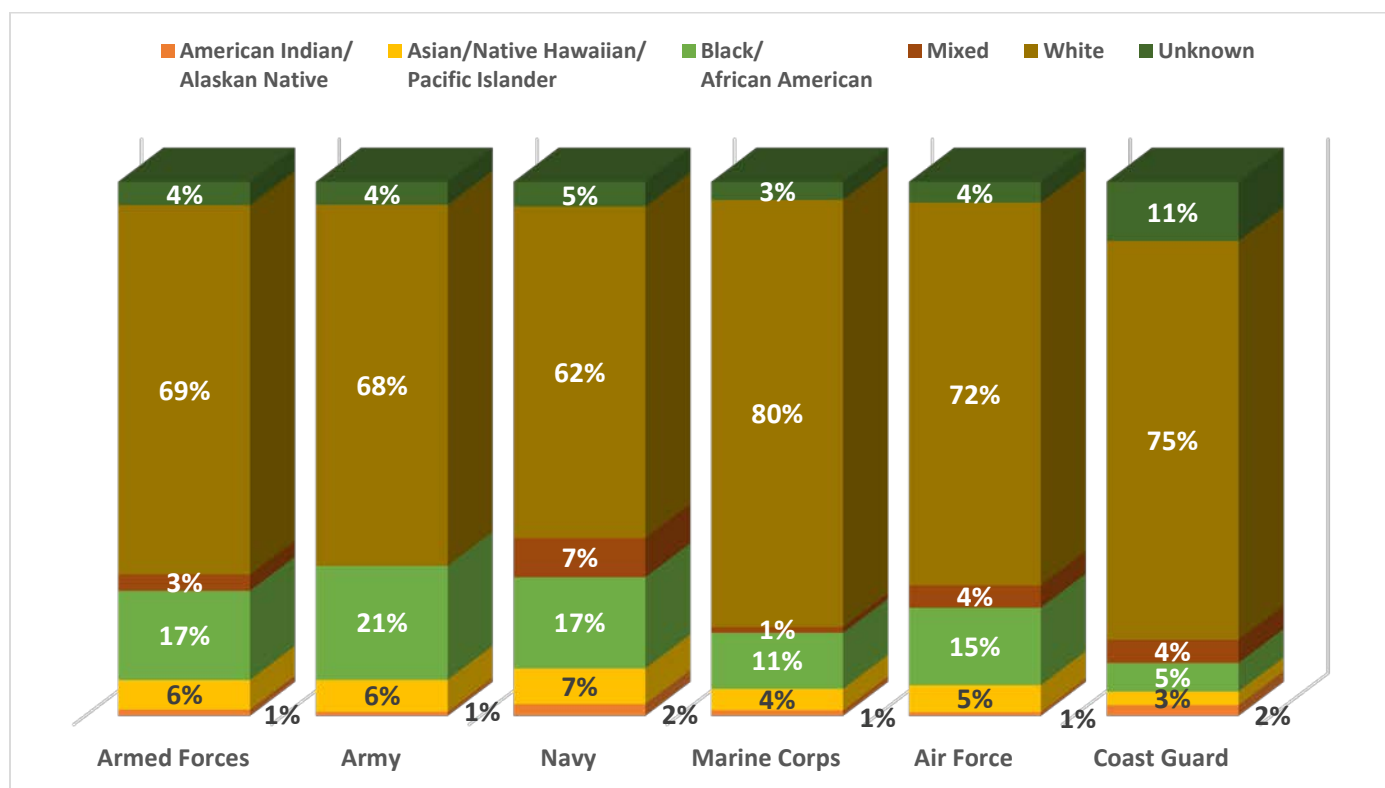
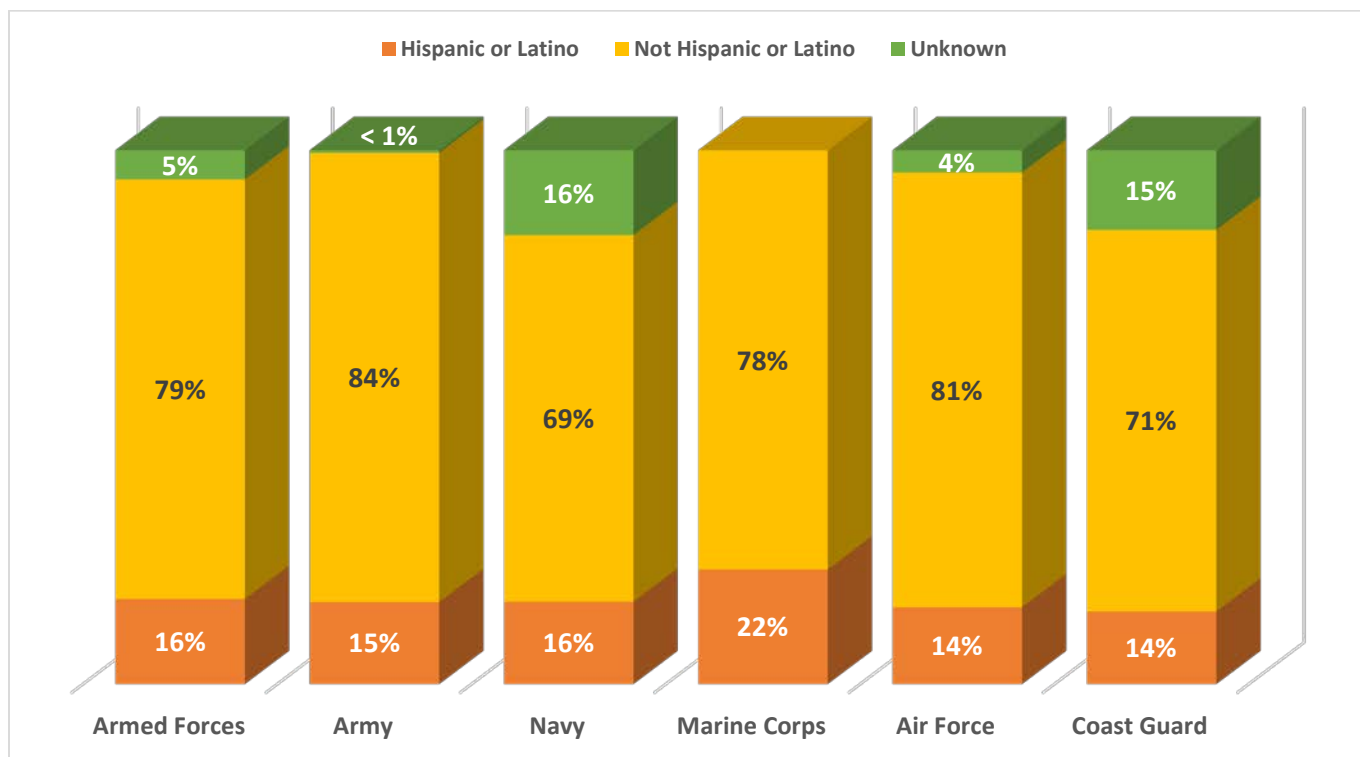


Figure X. Ethnic Composition (FY 2018)



R&E DATA PRESENTATION – 23 OCT 2020

Table X. Army: Race Categories

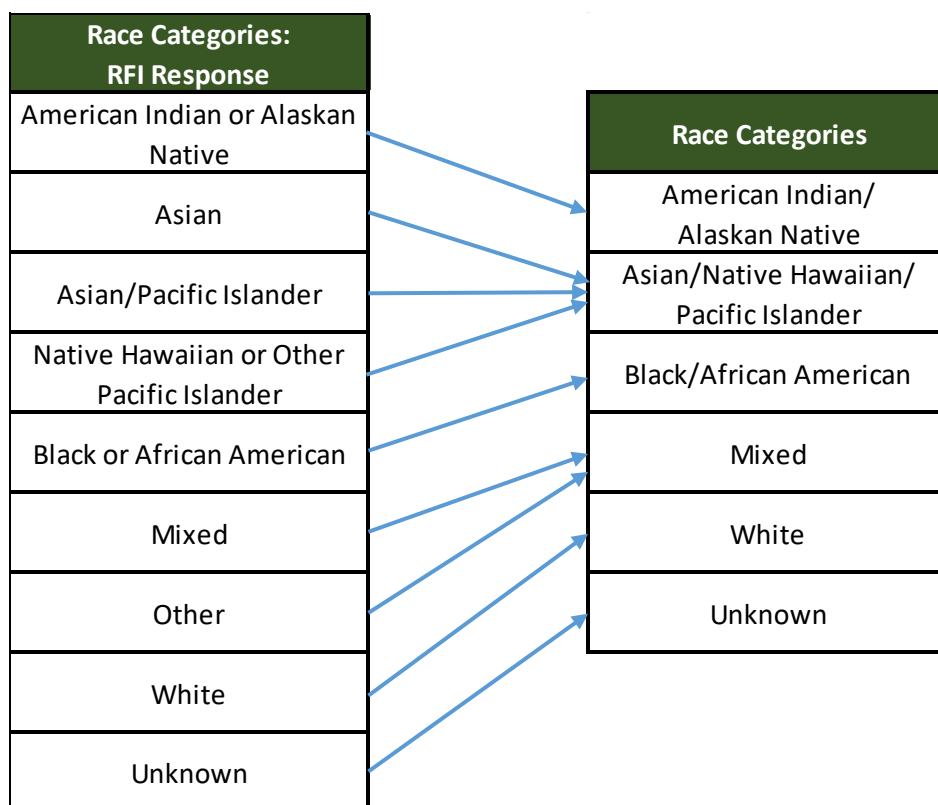
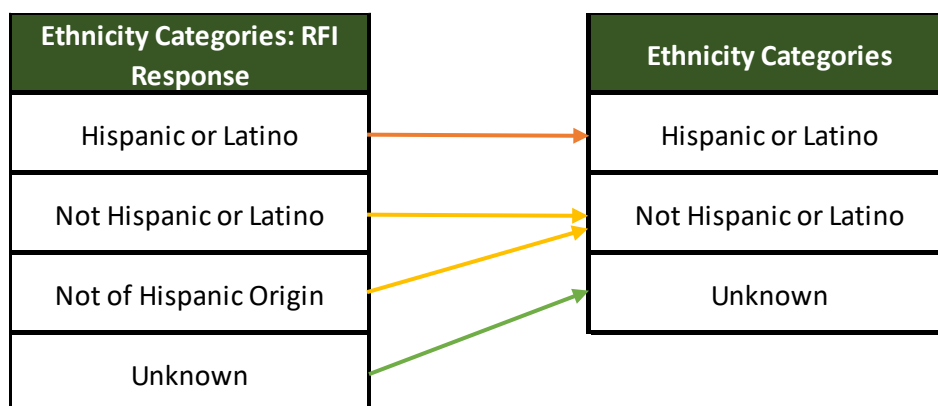


Table X. Army: Ethnicity Categories



R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Army: Racial and Ethnic Composition (FY 2018)

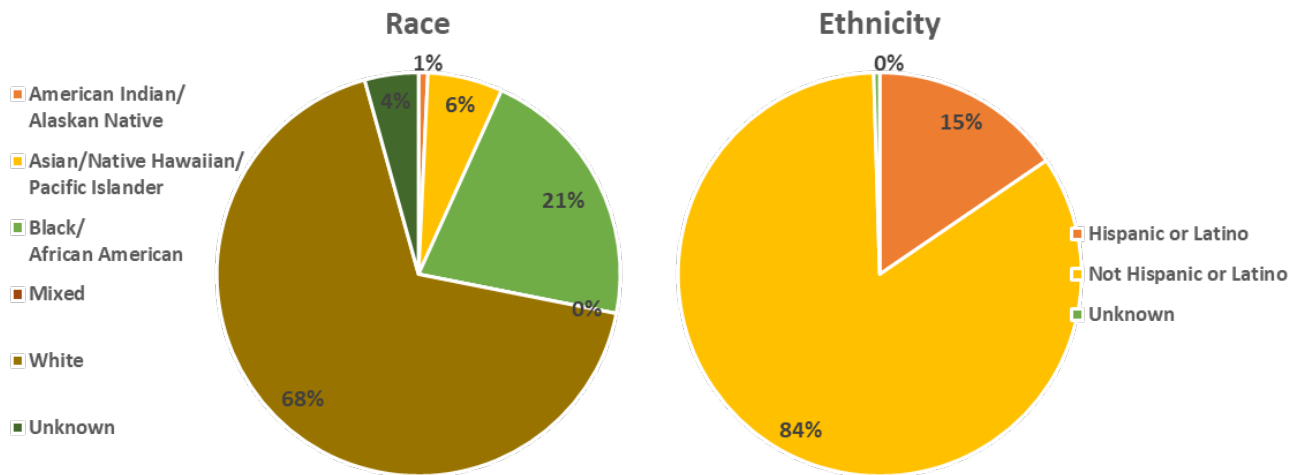


Figure X. Army: Race of the Subject (RFI – FY 2019)

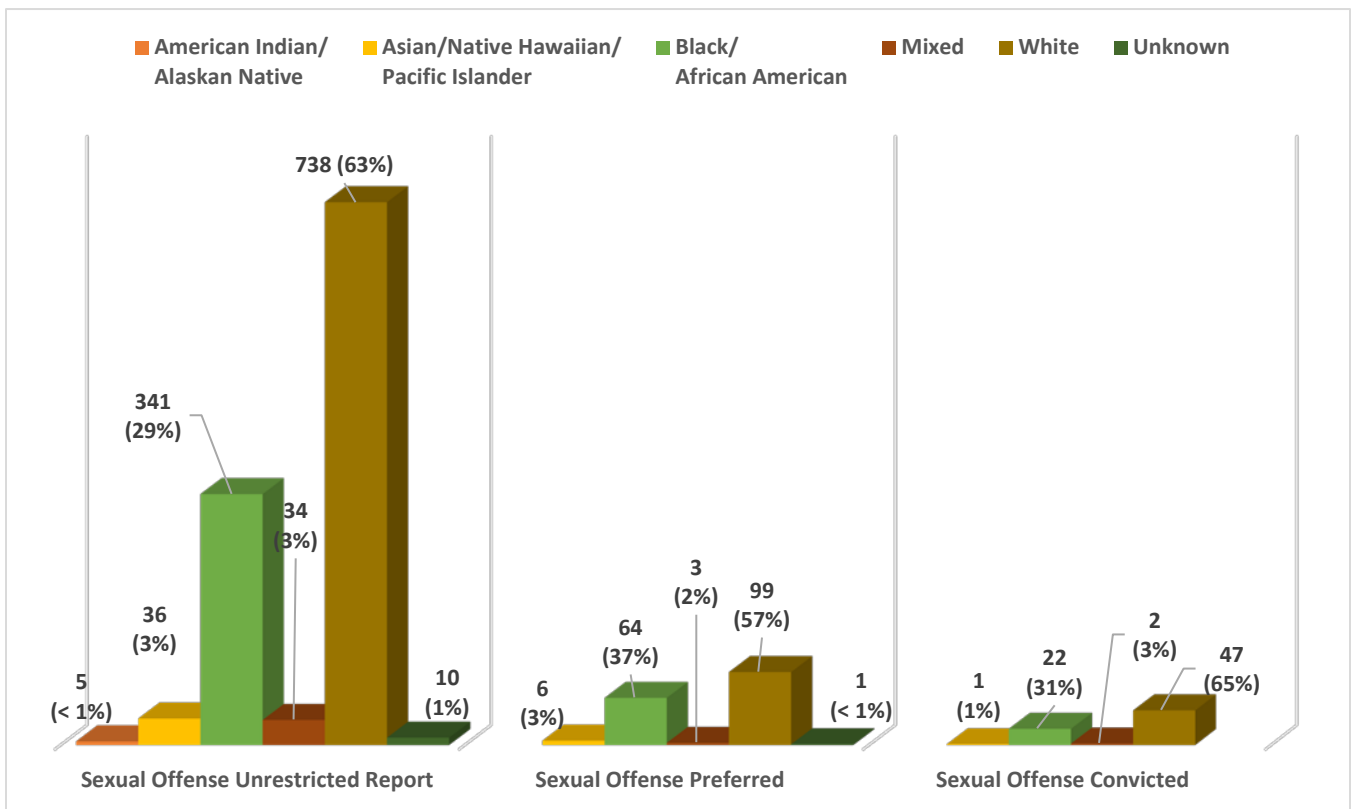
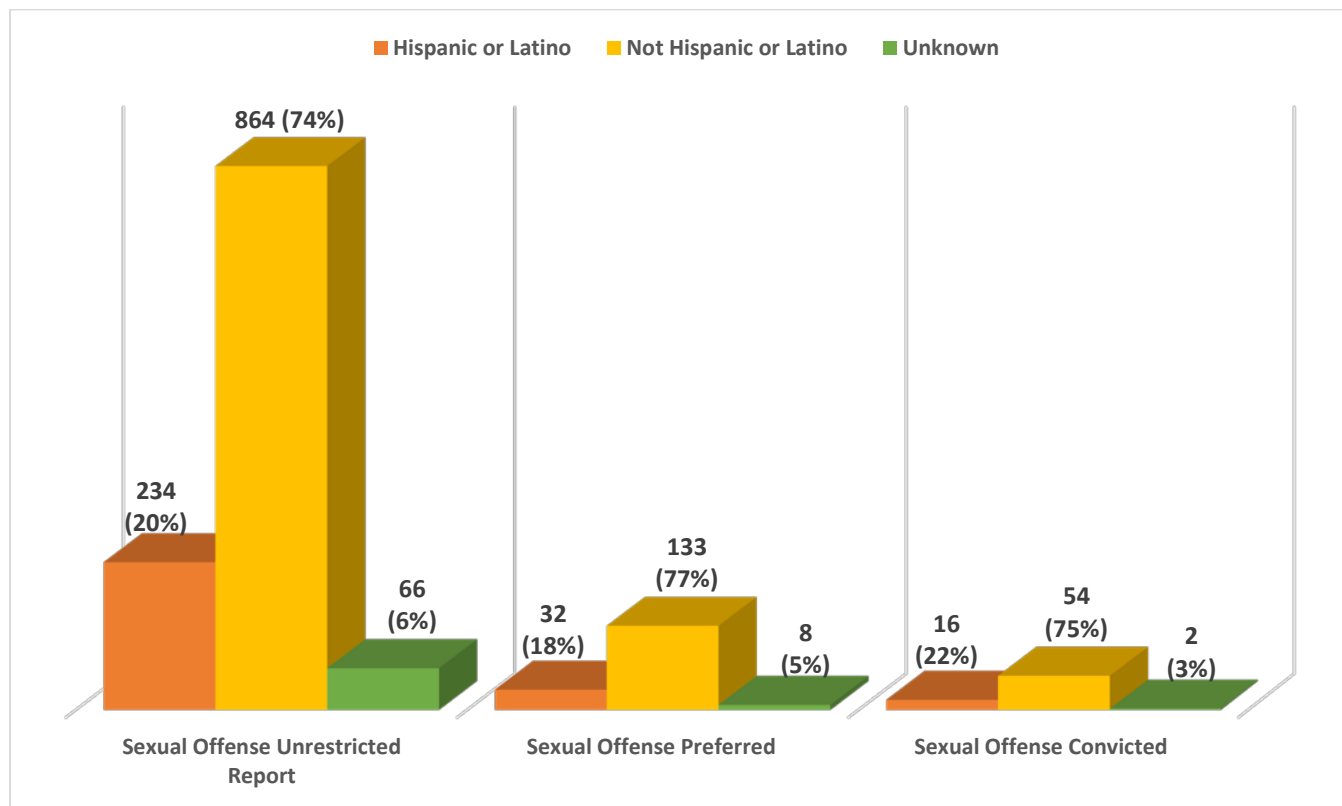


Figure X. Army: Ethnicity of the Subject (RFI – FY 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Table X. Navy: Race Categories

Race Categories: RFI Response		Race Categories
American Indian/ Alaskan Native	→	American Indian/ Alaskan Native
Asian/Pacific Islander	→	Asian/Native Hawaiian/ Pacific Islander
Black	→	Black
Mixed	→	Mixed
White	→	White
Unknown	→	Unknown

Table X. Navy: Ethnicity Categories

Ethnicity Categories: RFI Response		Ethnicity Categories
Hispanic	→	Hispanic or Latino
Not Hispanic	→	Not Hispanic or Latino
Unknown	→	Unknown

R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Navy: Racial and Ethnic Composition (FY 2018)

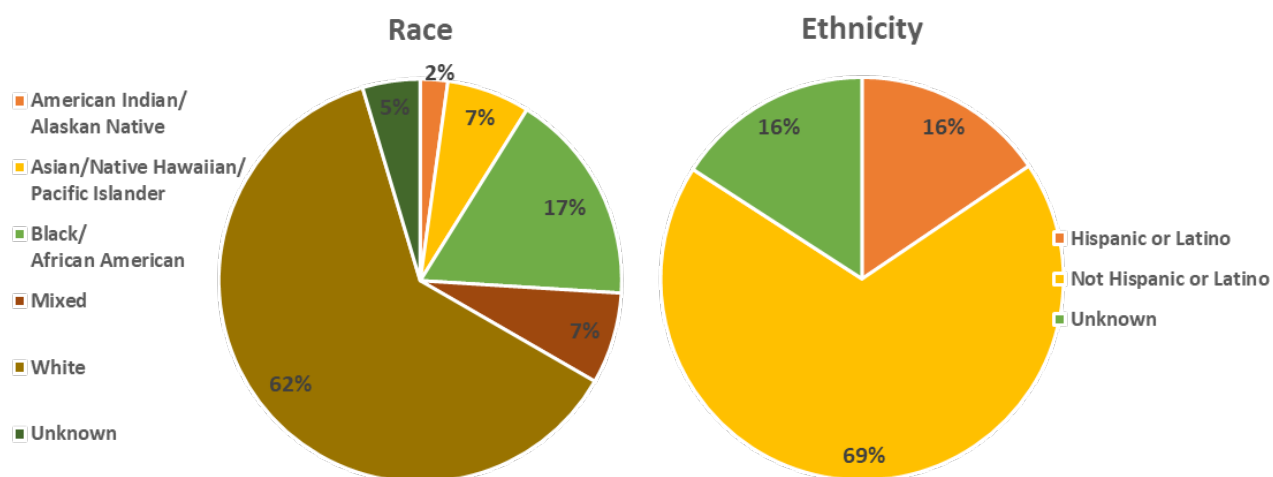
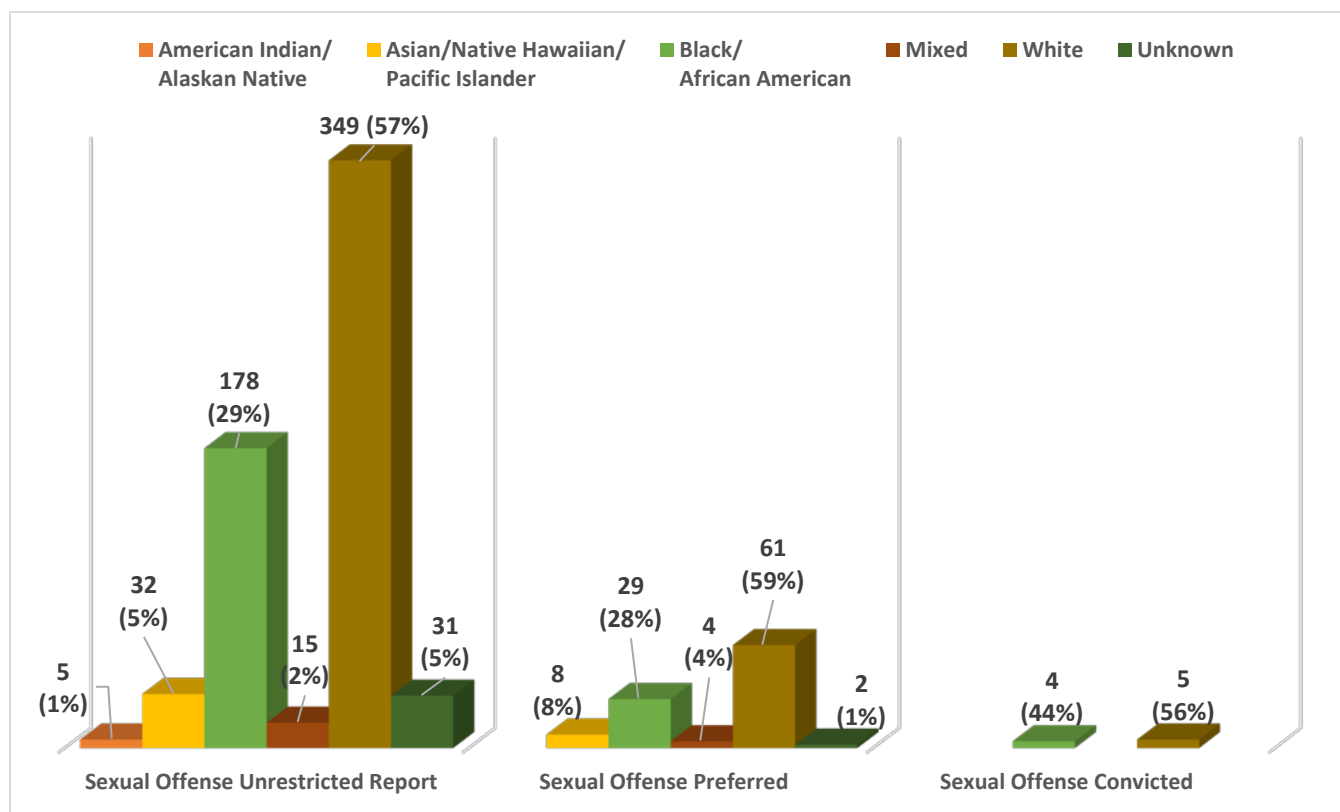
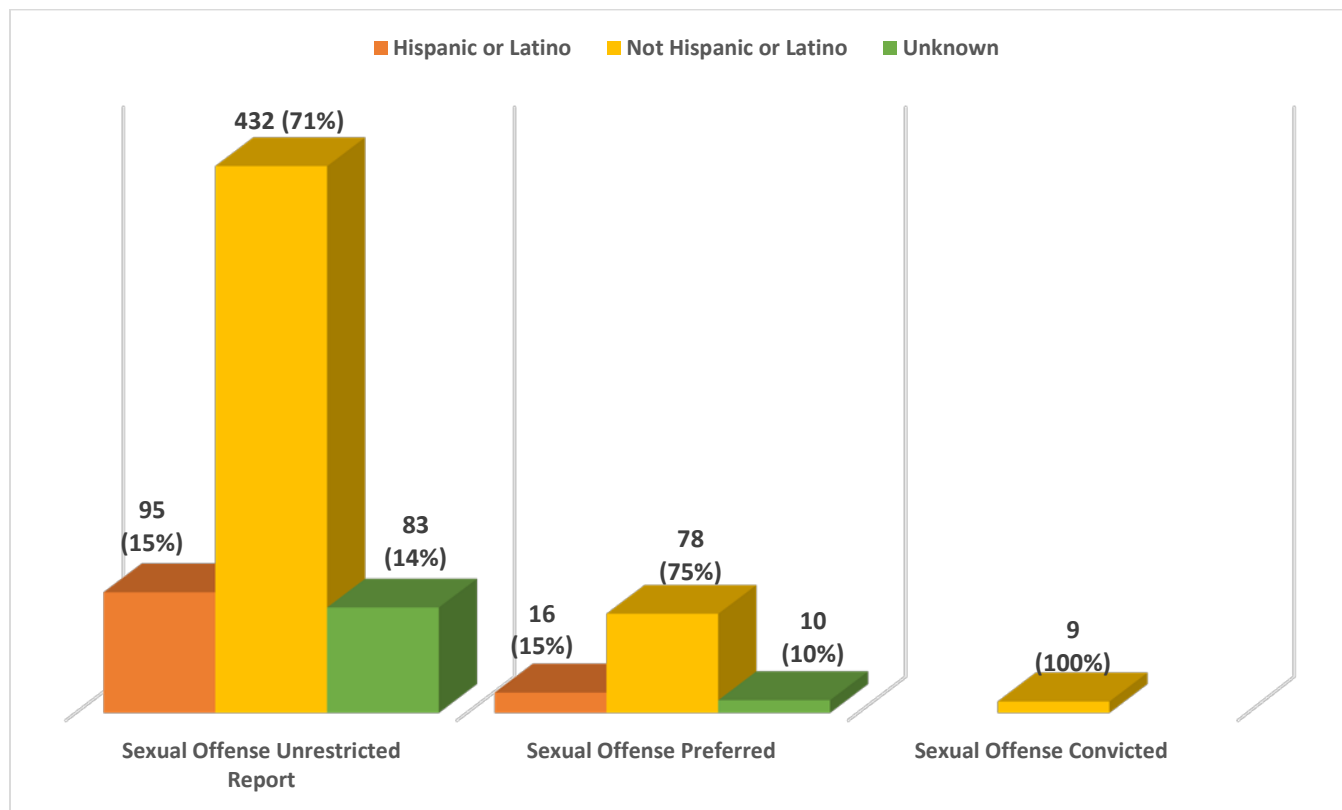


Figure X. Navy: Race of the Subject (RFI – FY 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Navy: Ethnicity of the Subject (FY – 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Table X. Marine Corps: Race Categories

Race Categories: RFI Response		Race Categories
American Indian/ Alaskan Native	→	American Indian/ Alaskan Native
Asian/Pacific Islander	→	Asian/Native Hawaiian/ Pacific Islander
Black	→	Black
Mixed	→	Mixed
White	→	White
Unknown	→	Unknown

Table X. Marine Corps: Ethnicity Categories

Service Categories: RFI Response		Ethnicity Categories
Hispanic	→	Hispanic or Latino
Not Hispanic	→	Not Hispanic or Latino
Unknown	→	Unknown

R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Marine Corps: Racial and Ethnic Composition (FY 2018)

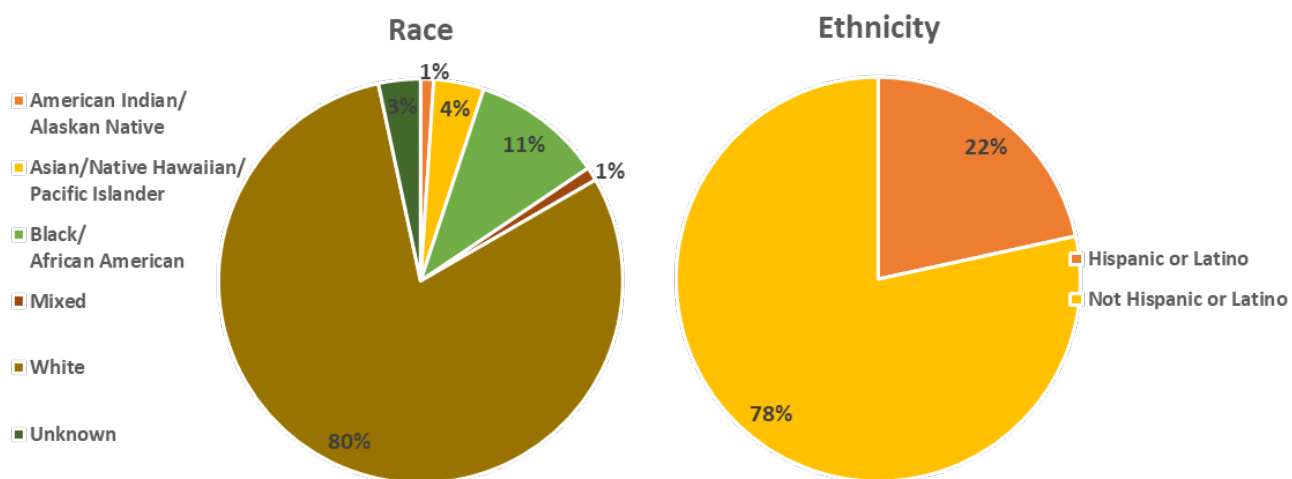
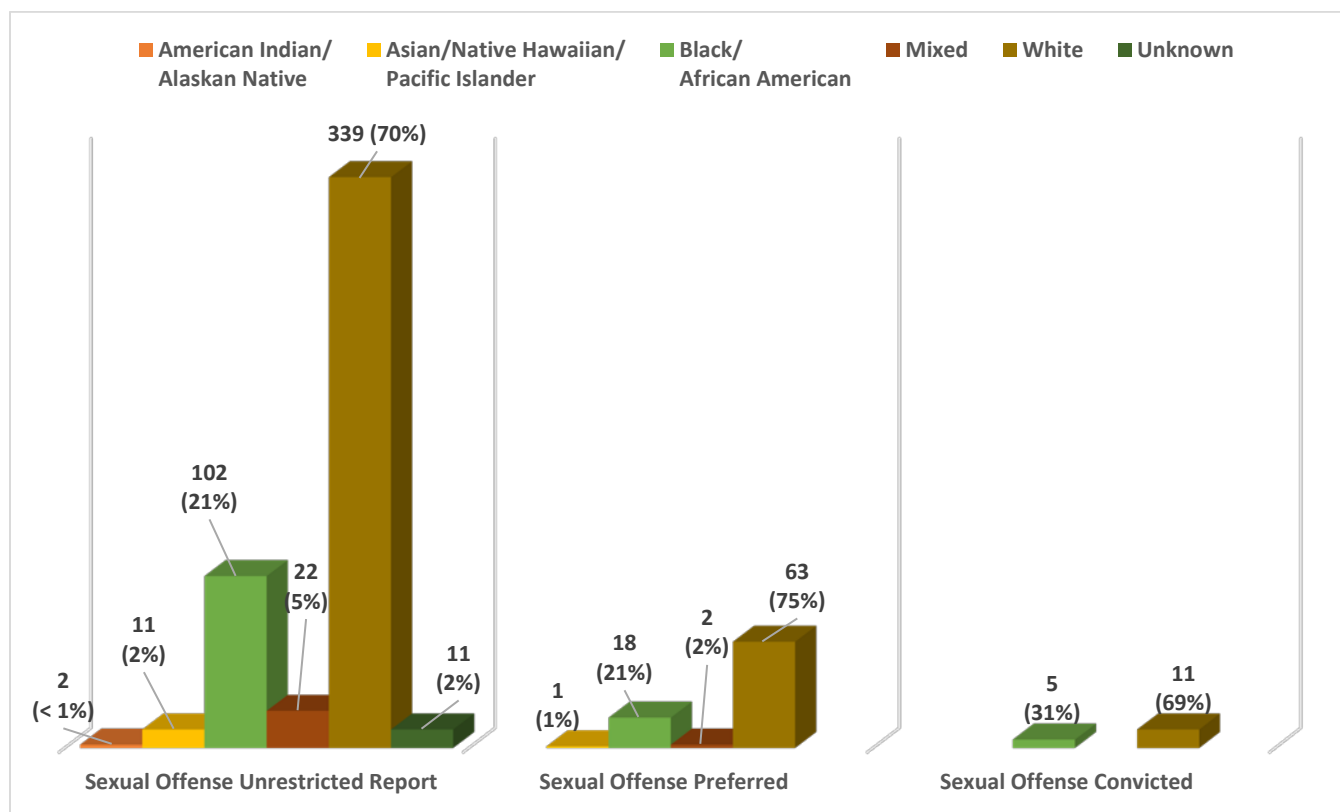
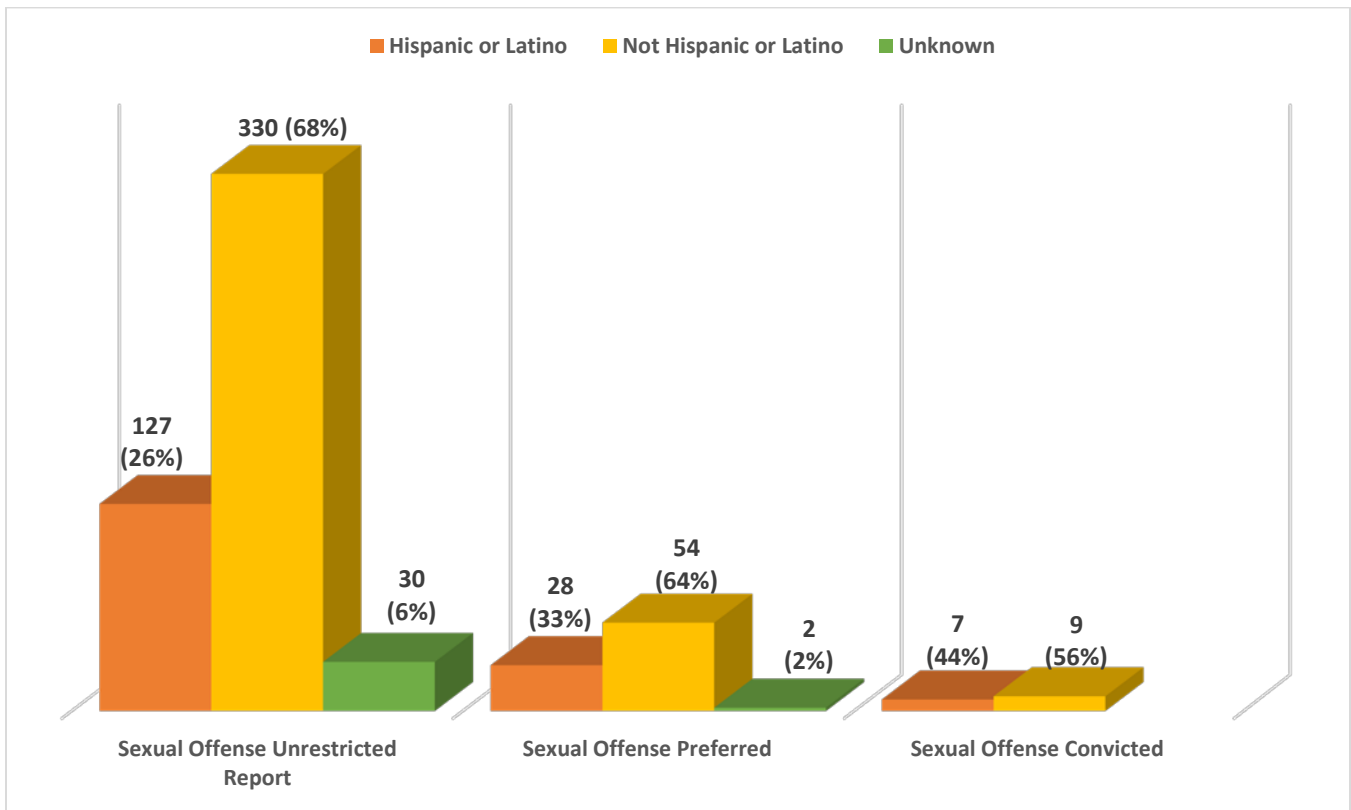


Figure X. Marine Corps: Race of the Subject (RFI – FY 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Marine Corps: Ethnicity of the Subject (RFI – FY 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Table X. Air Force: Race Categories

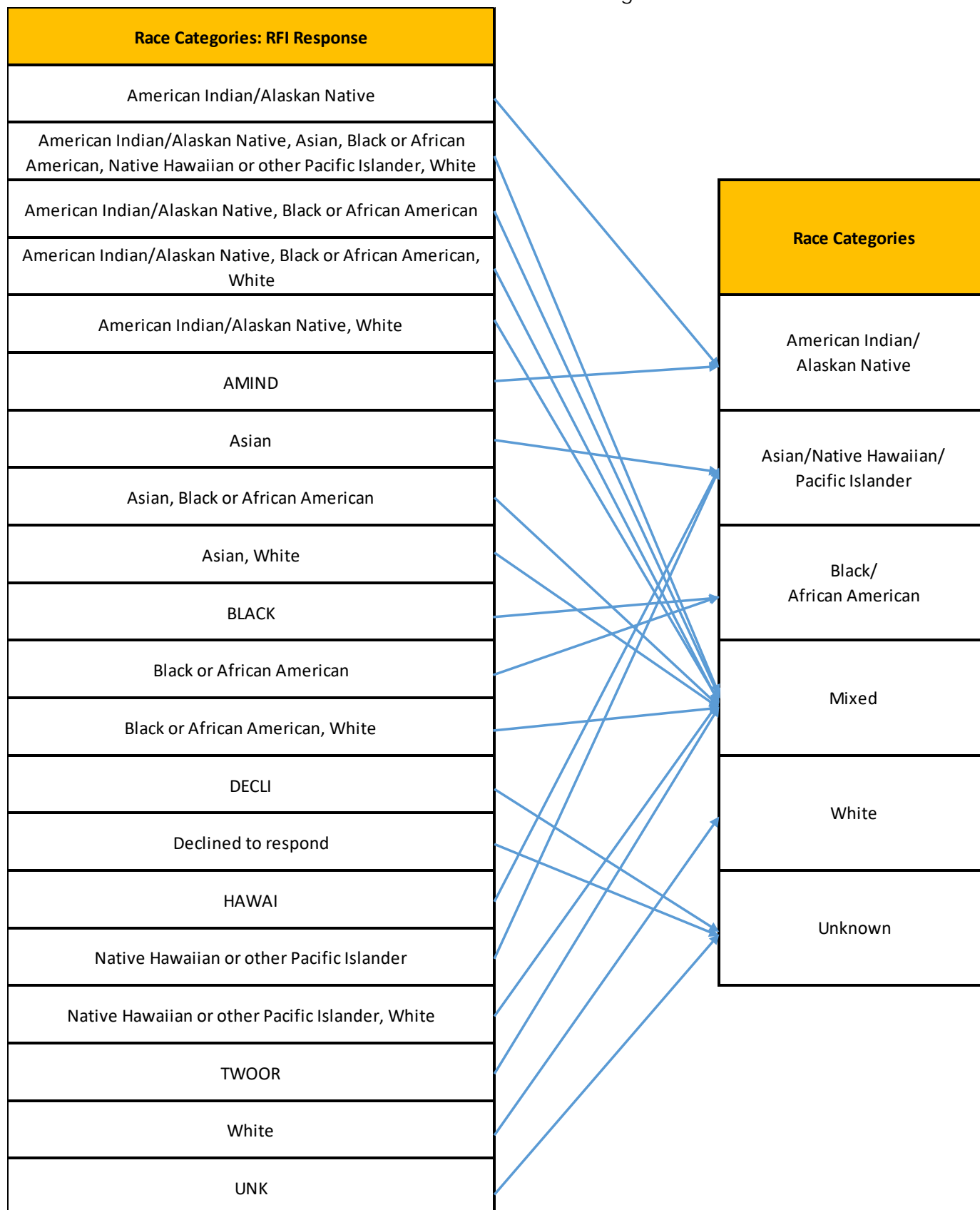
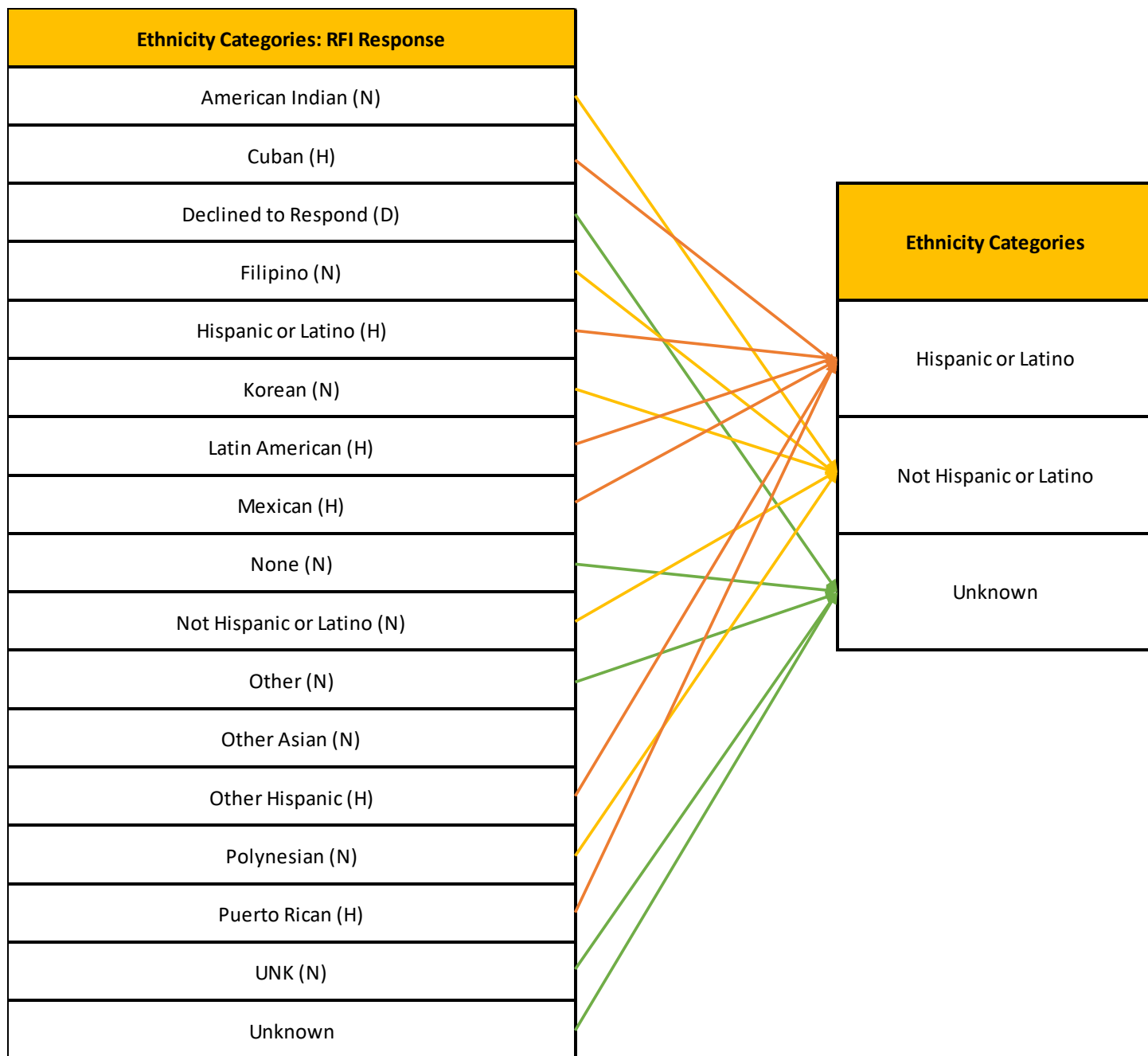


Table X. Air Force: Ethnicity Categories



R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Air Force: Racial and Ethnic Composition (FY 2018)

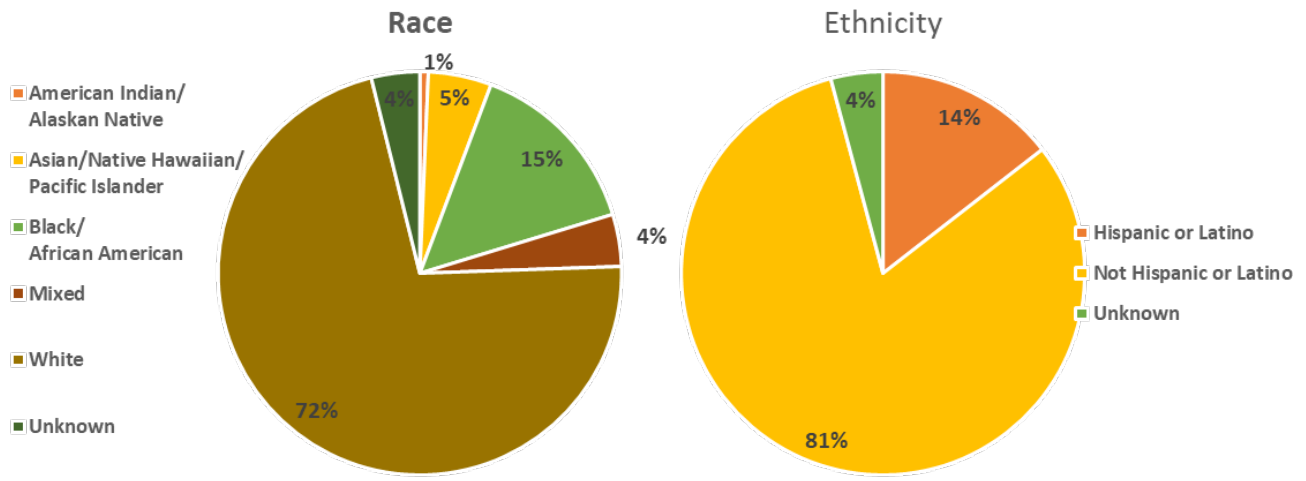
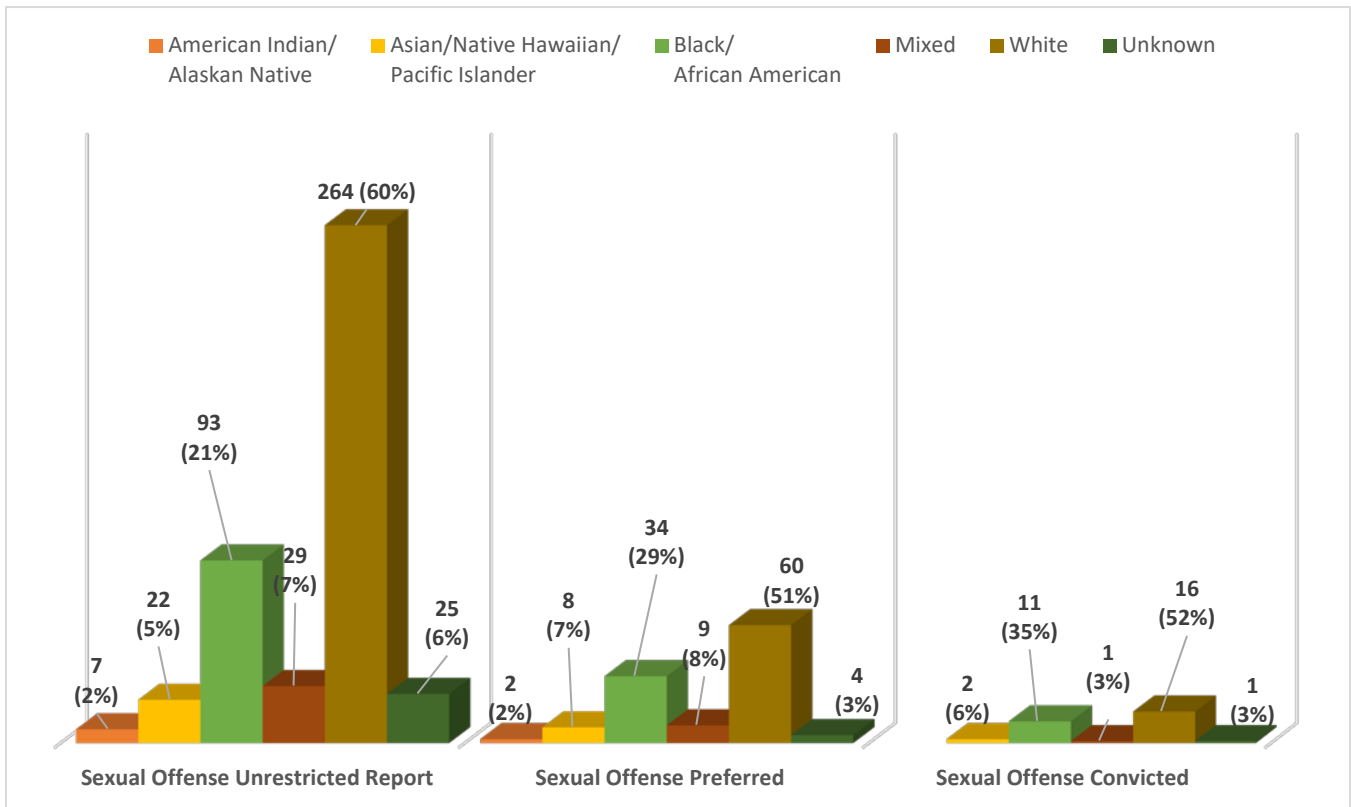
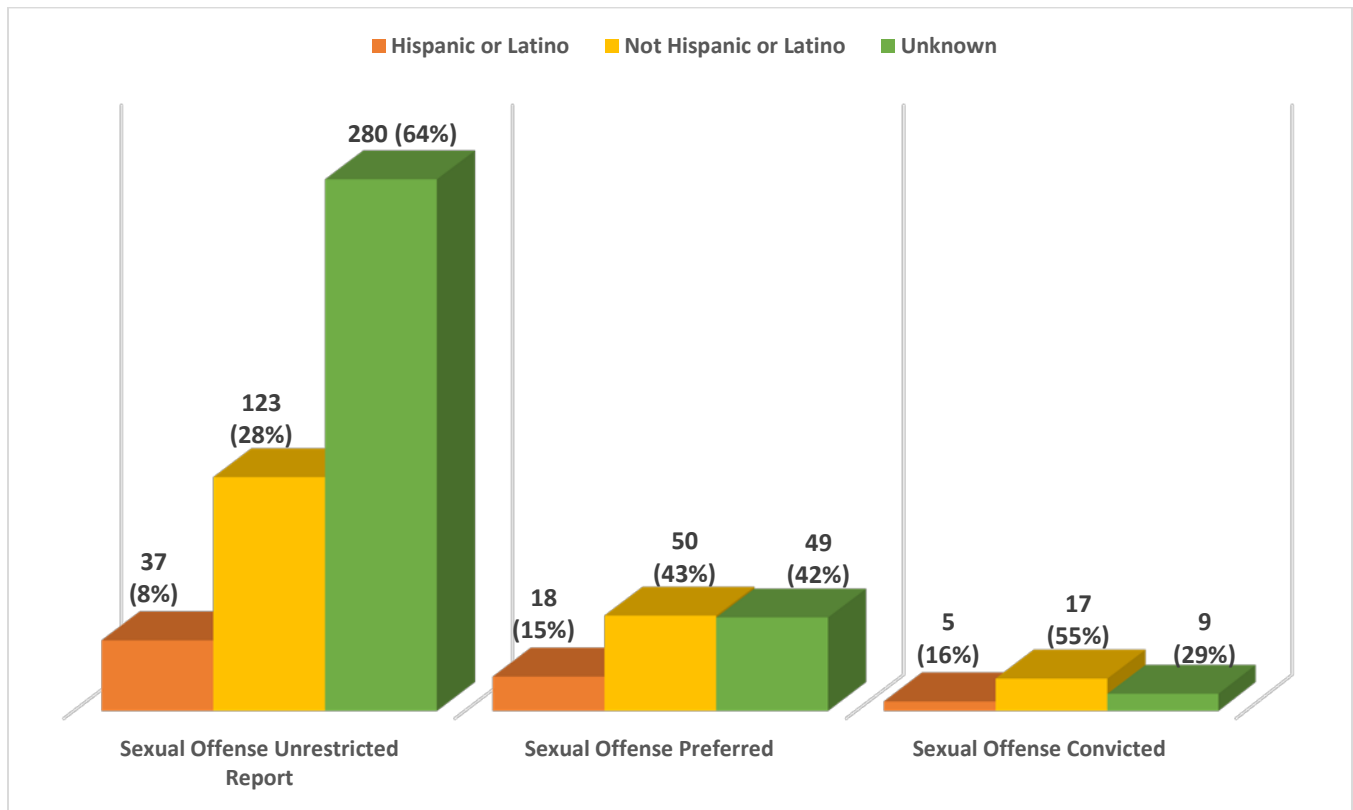


Figure X. Air Force: Race of the Subject (RFI – FY 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Figure 53. Air Force: Ethnicity of the Subject (RFI – FY 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Table X. Coast Guard: Race Categories

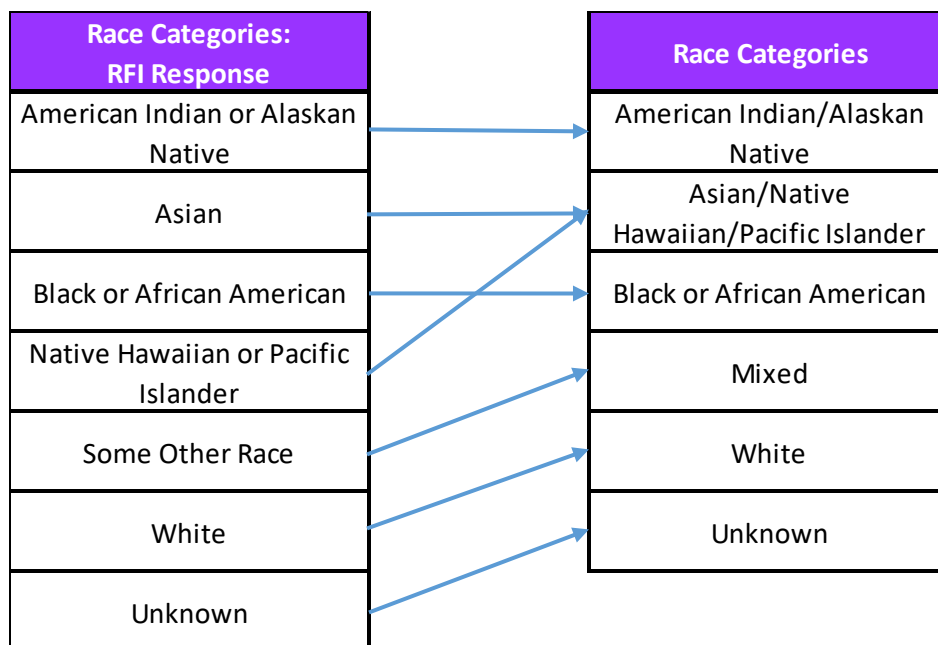
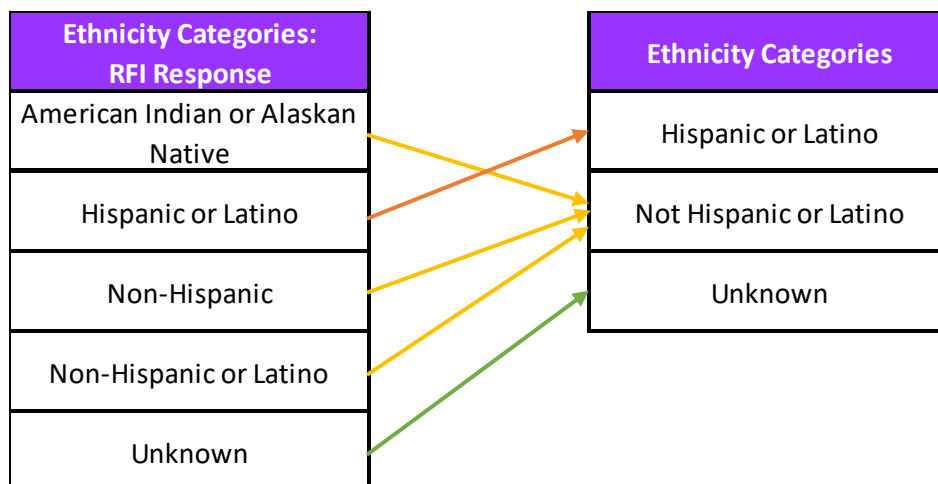


Table X. Coast Guard: Ethnicity Categories



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Figure X. Coast Guard: Racial and Ethnic Composition (FY 2018)

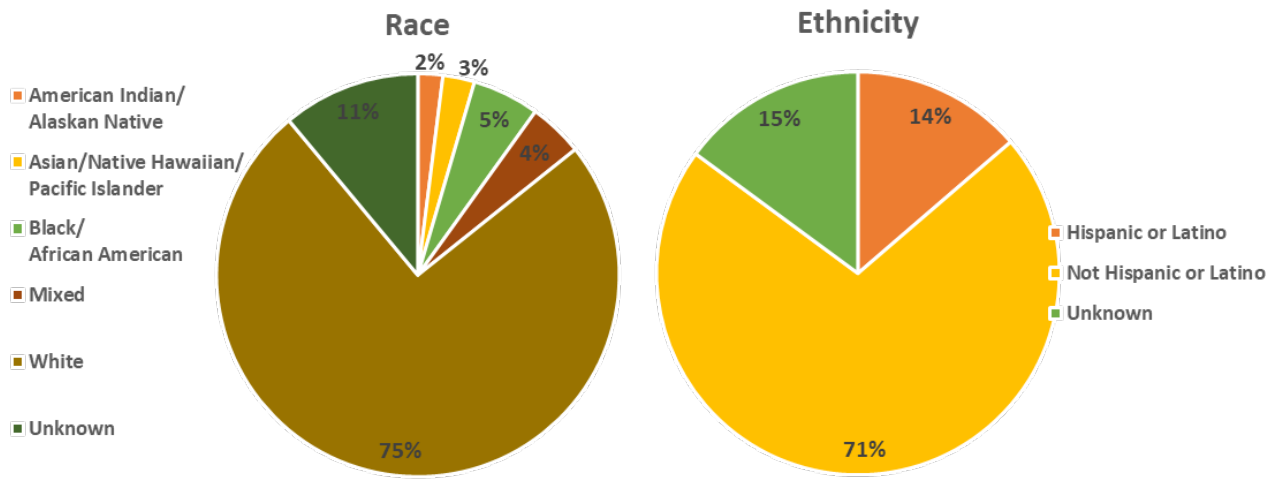
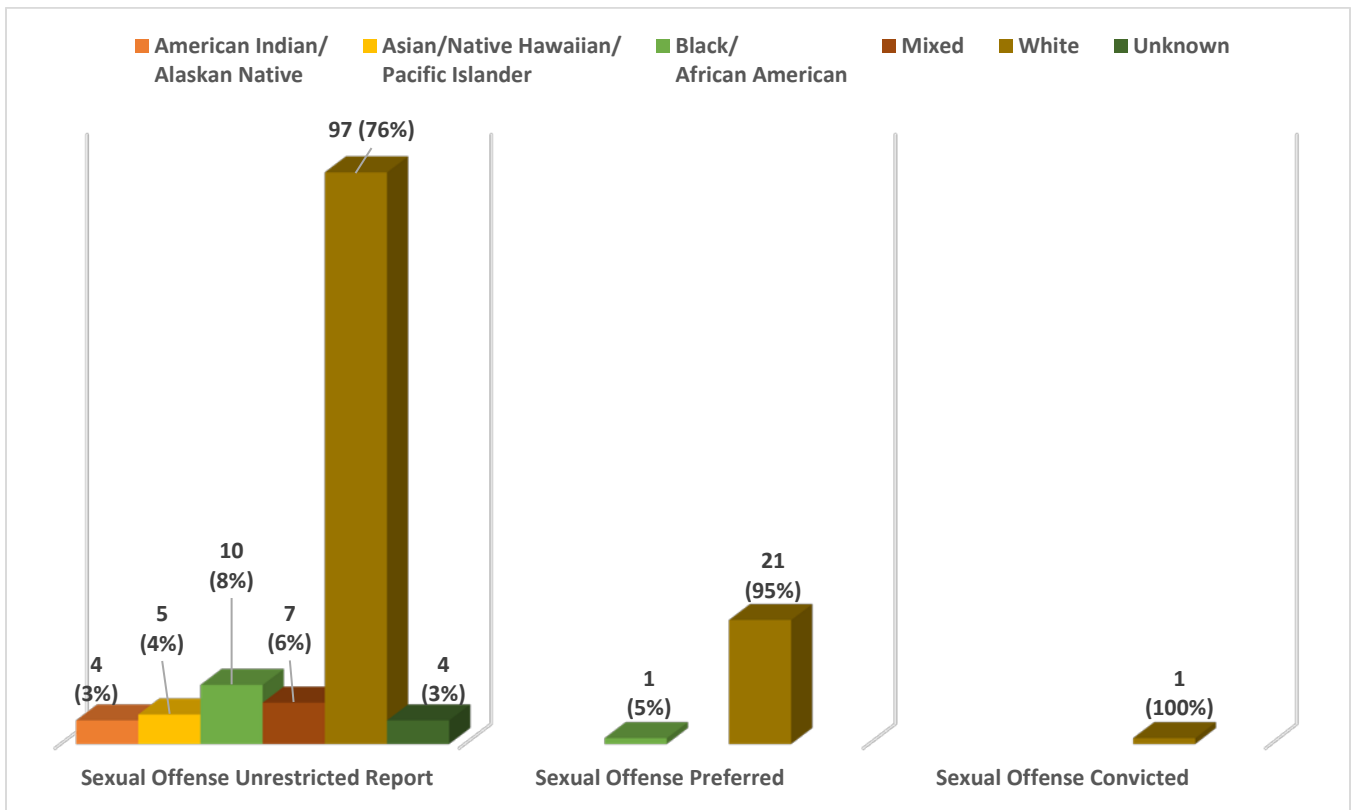


Figure X. Coast Guard: Race of the Subject (RFI – 2019)



R&E DATA PRESENTATION – 23 OCT 2020

Figure X. Coast Guard: Ethnicity of the Subject (RFI – FY 2019)

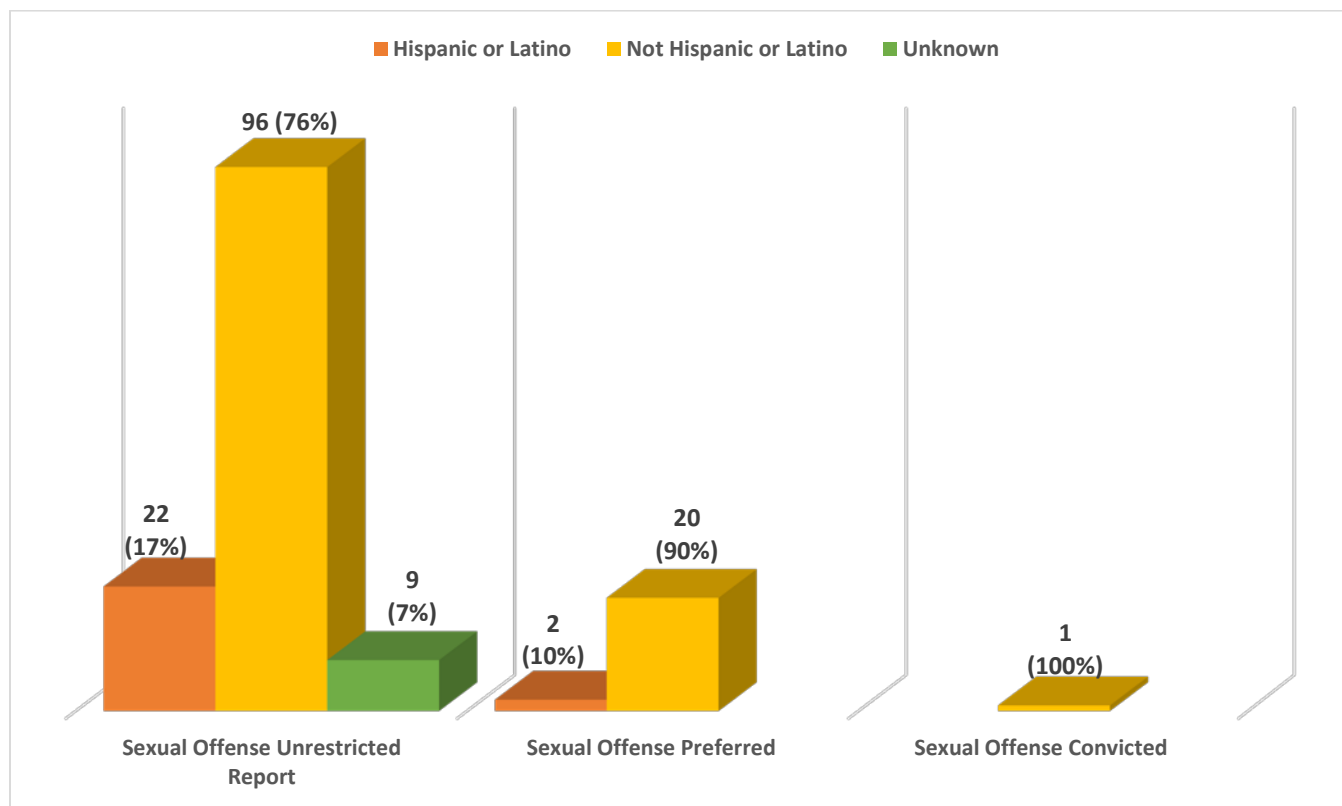


Figure X. Racial Composition: Subject/Victim Correlation – Sexual Offense Unrestricted Report

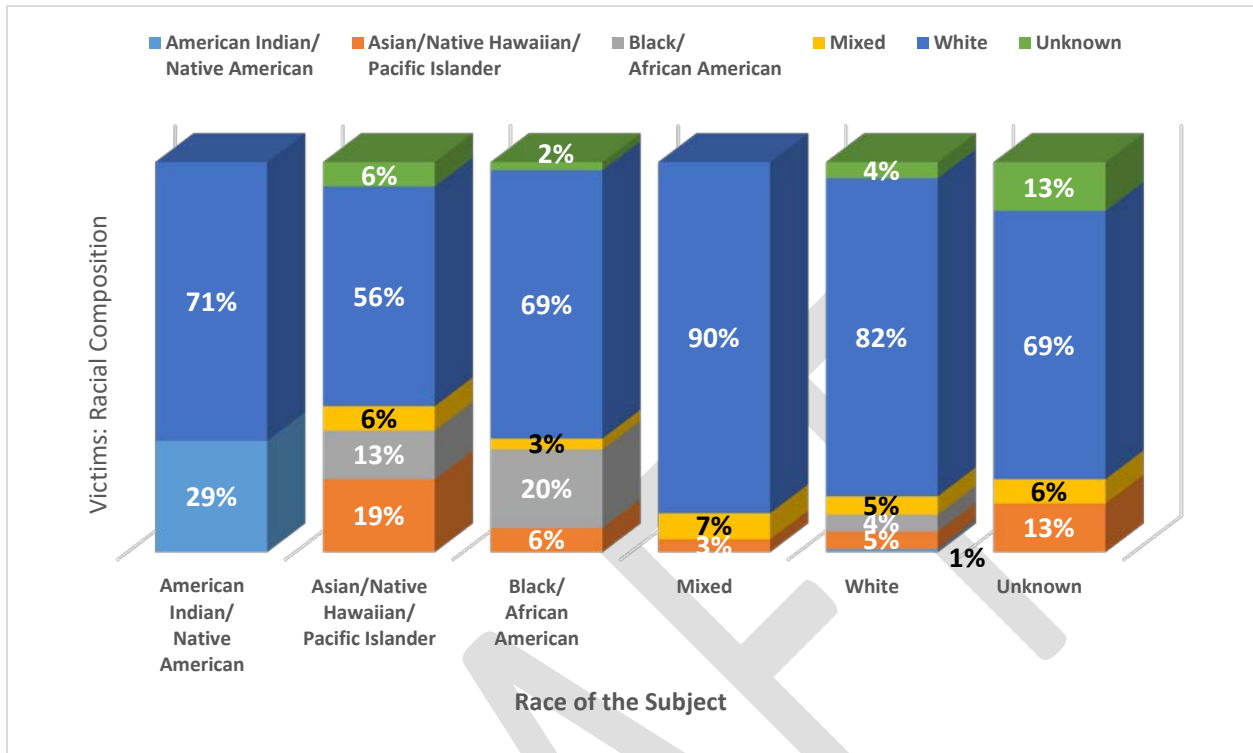


Figure X. Racial Composition: Subject/Victim Correlation – Sexual Offense Preferred

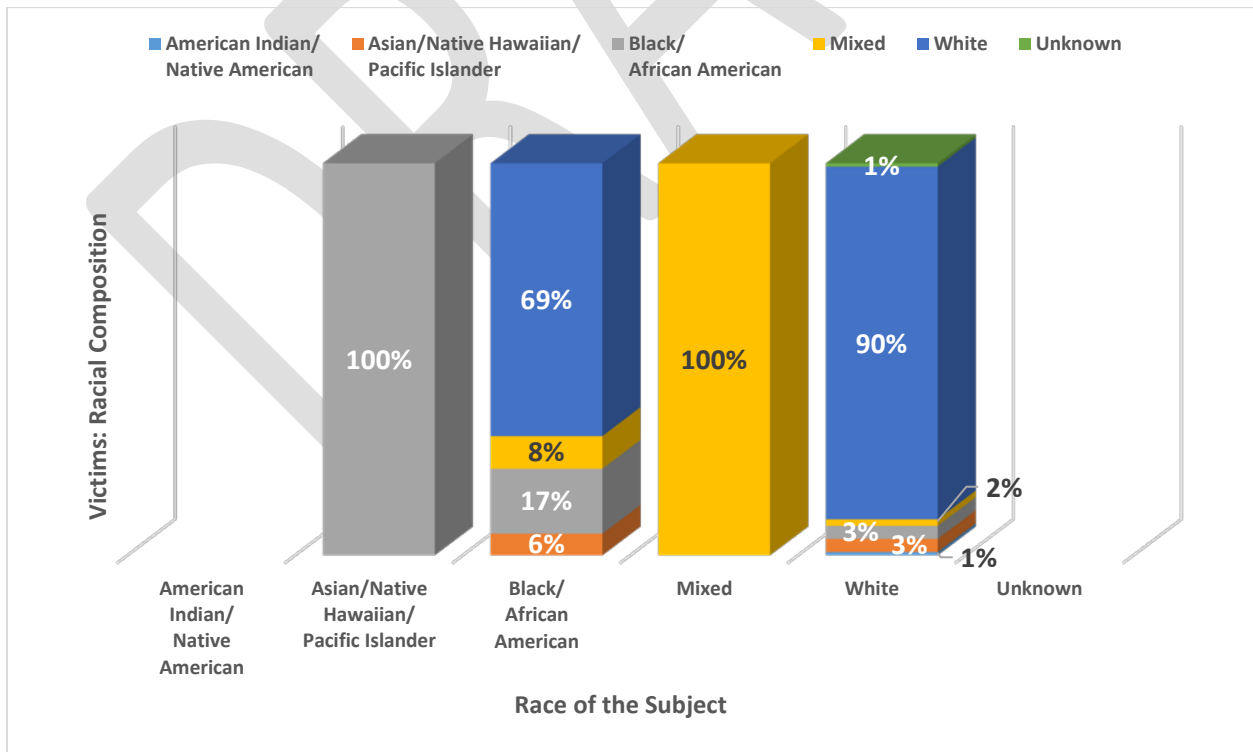


Figure X. Racial Composition: Subject/Victim Correlation – Sexual Offense Convicted

