

2020

RACIAL AND ETHNIC DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM IN NEBRASKA

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Recommended Citation

Nebraska Center for Justice Research, University of Nebraska at Omaha, "RACIAL AND ETHNIC DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM IN NEBRASKA" (2020). *Reports*. 92.

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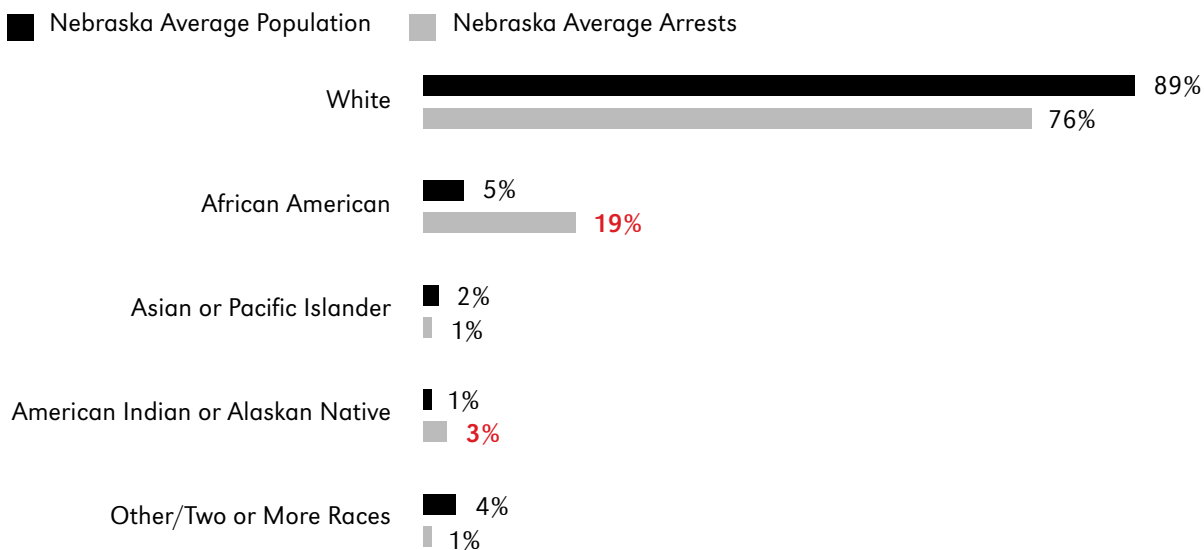
What are racial and ethnic disparities (RED)?

RED refers to racial and ethnic differences in contacts and experiences with the criminal and juvenile justice systems.^{1,2} Measuring the extent to which RED exist in the justice system is a first step toward identifying the ways to improve upon how well the system upholds the principle of equal treatment under the law.³ Prior research shows that RED are prevalent across multiple points of contact with the juvenile justice system in Nebraska.^{1,3} There is also a large body of evidence demonstrating RED in the adult criminal justice system nationwide.⁴ The purpose of this brief is to describe what the data show regarding racial disparities in the state of Nebraska and what is yet to be understood.

Are there racial disparities in arrests in Nebraska?

Relative to the racial makeup of the state population, there is significant disparity in the racial composition of the arrests in each year from 2014 to 2019.^{5,6} Inequity for African Americans is the largest contributor to the overall disparity. As shown in Figure 1, from 2014 to 2019, African Americans made up approximately 5% of the state population but accounted for 17.45–20.82% of arrests. American Indians/Alaskan Natives were also overrepresented in arrests (3.23–3.59%) relative to their portion the population (approximately 1%). Whites and Asians/Pacific Islanders are underrepresented in all six years.

Figure 1: 6-year (2014-2019) Average Arrests by Nebraska Population



*Red data labels indicate a group is significantly overrepresented

¹ Voices for Children of Nebraska (2017a).

² This phenomenon has also been termed “Disproportionate Minority Contact” (DMC).

³ Voices for Children of Nebraska (2017b).

⁴ The Sentencing Project (2018).

⁵ Arrest data for 2014-2016 were retrieved from the Nebraska Crime Commission at https://www.nebraska.gov/crime_commission/arrest/arrest.cgi; Arrest data for 2017-2019 (including county-level data) were retrieved from the Nebraska Crime Commission at <https://crimestats.ne.gov/public>.

⁶ All population demographics were retrieved from the U.S. Census Bureau 5-year estimates derived from the American Community Survey at <https://data.census.gov/cedsci/table?q=nebraska&tid=ACSDP1Y2019.DP05&hidePreview=false>.

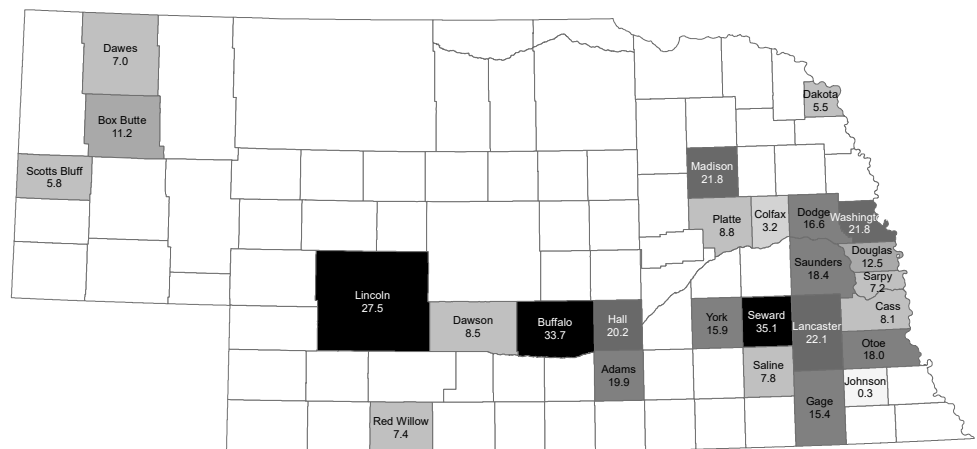
Do racial disparities in arrests vary across counties?

Although there are stark statewide racial disparities in arrests, a more nuanced picture emerges when examining the percentage of the population of each racial group that has been arrested within each county, as shown in the map below. Darker shading in this map indicates a higher percentage of the African American population has been arrested.⁶ County maps for other racial groups are included in the Appendix. From these maps it is apparent that African Americans and American Indians/Alaska Natives tend to experience greater contact with law enforcement in terms of arrest than do Whites and Asians/Pacific Islanders.

Are there racial disparities in incarceration in Nebraska?

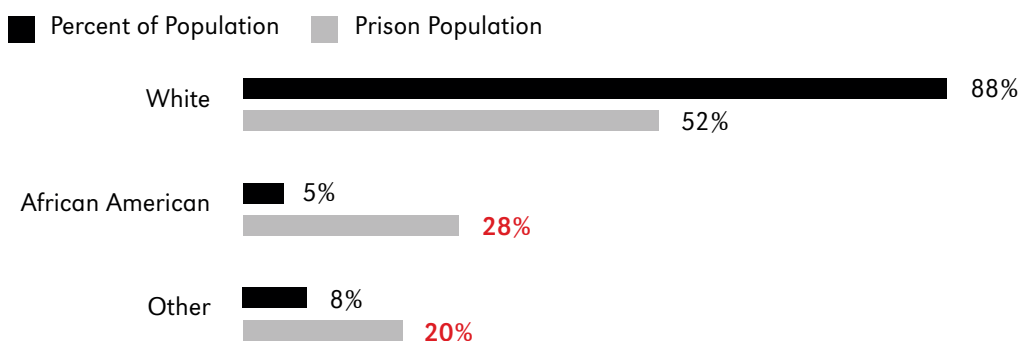
Incarceration data reveal an even greater degree of racial inequity than the arrest data.⁷ These data include all those incarcerated in state or federal correctional facilities on December 31, 2018. As with arrests, Whites are significantly underrepresented in the incarcerated population in Nebraska, making up 87.49% of the general population but only 52.39% of the incarcerated population. African Americans are significantly overrepresented, comprising 4.77% of the general population but 27.74% of the incarcerated population.

Figure 2: Percent of African American Population in County That Have Been Arrested, Nebraska, 2019



Counties with no data listed have suppressed data due to low counts.

Figure 3: Persons in State and Federal Correctional Facilities in Nebraska for 2018



*Red data labels indicate a group is significantly overrepresented

⁶ All population demographics were retrieved from the U.S. Census Bureau 5-year estimates derived from the American Community Survey at <https://data.census.gov/cedsci/table?q=nebraska&tid=ACSDP1Y2019.DP05&hidePreview=false>.

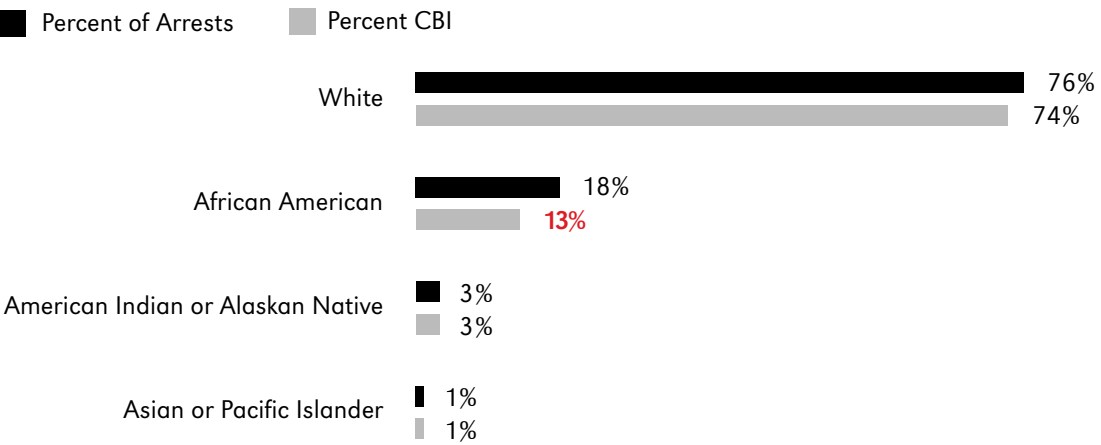
⁷ Incarceration data were retrieved from a report by the Bureau of Justice Statistics (Carson, 2020). Due to data limitations, all racial categories other than White and African American were collapsed into an "Other" category.

In addition to arrests and incarceration, there are several additional contact points between persons and the criminal justice system, as can be seen in Figure 7. We do not have data to explore RED at all of these contact points but we will explore three additional contacts.

Are there racial disparities in participation in community corrections in Nebraska?

Generally, the purpose of community-based correctional programs is “to divert target offenders from incarceration and reduce recidivism.”⁸ In Nebraska, the Community Corrections Division (CCD) of the Commission on Law Enforcement and Criminal Justice reports data for offenders served by probation, parole and the Department of Corrections. Examining racial disparities in participation in community corrections programs gives some insight into whether an offender’s race is related to the likelihood they will be diverted into these programs and may inform the CCD’s mission to “promote equity and fairness within Nebraska’s criminal justice system.”⁹

Figure 4: 3-year Average (2014-2016) Community Based Interventions by Arrests



**Red data labels indicates a group is significantly underrepresented*

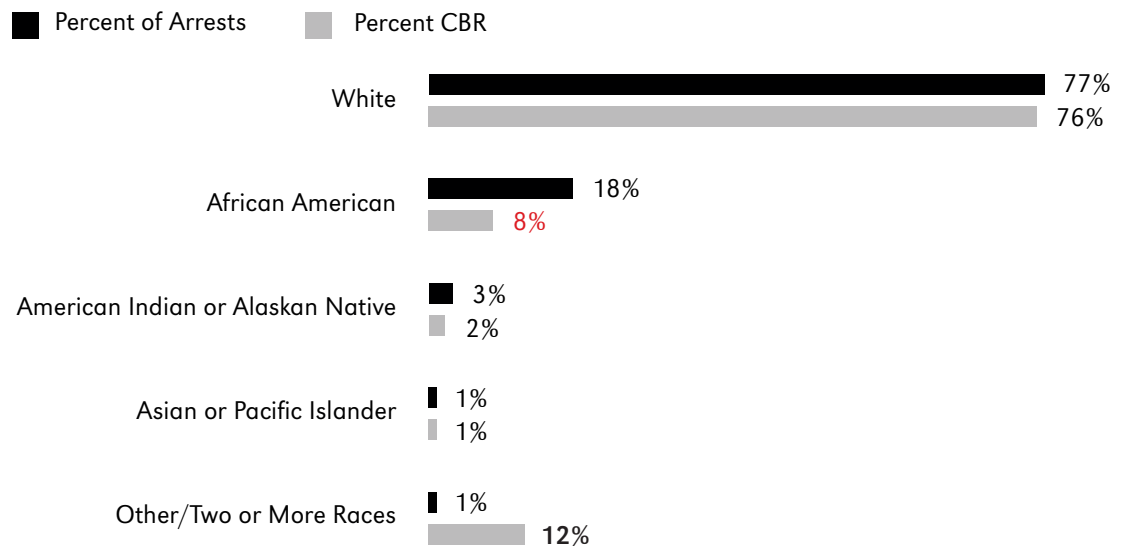
The 2014-2016 data reported by the CCD show that there are disparities in the racial makeup of those involved in three community corrections programs for which data were reviewed. First, Community Based Intervention (CBI) is the classification for high-risk probationers who receive intensive supervision and a wide range of services.^{10,11} There were racial disparities in CBI relative to the racial makeup of persons arrested within the same year. However, these disparities differ across racial groups and across the three years. One consistent finding over time is that African Americans are significantly underrepresented relative to their composition in arrests.

Community Based Resources is a probation classification for low-risk probationers who “require fewer resources to manage and supervise within the community.”¹² Figure 5 shows that the percentage of those classified under CBR was proportionate to those arrested for Whites, but was significantly different for all other racial groups. African Americans, American Indians/Alaska Natives, and those who fall under other/two or more races are underrepresented, and Asians are overrepresented.

⁸ Fisher and Holman (2017, p. 4).
⁹ Fisher and Holman (2017, p. 3).
¹⁰ Fisher and Holman (2017, p. 9).
¹¹ Probationers may be assigned to CBI if they are identified as high risk using a validated assessment tool or if they committed a domestic violence or sex offense. (Fisher & Holman, p. 9).¹³ Fisher and Holman (2017, p. 30).
¹² Fisher and Holman (2017, p. 11).

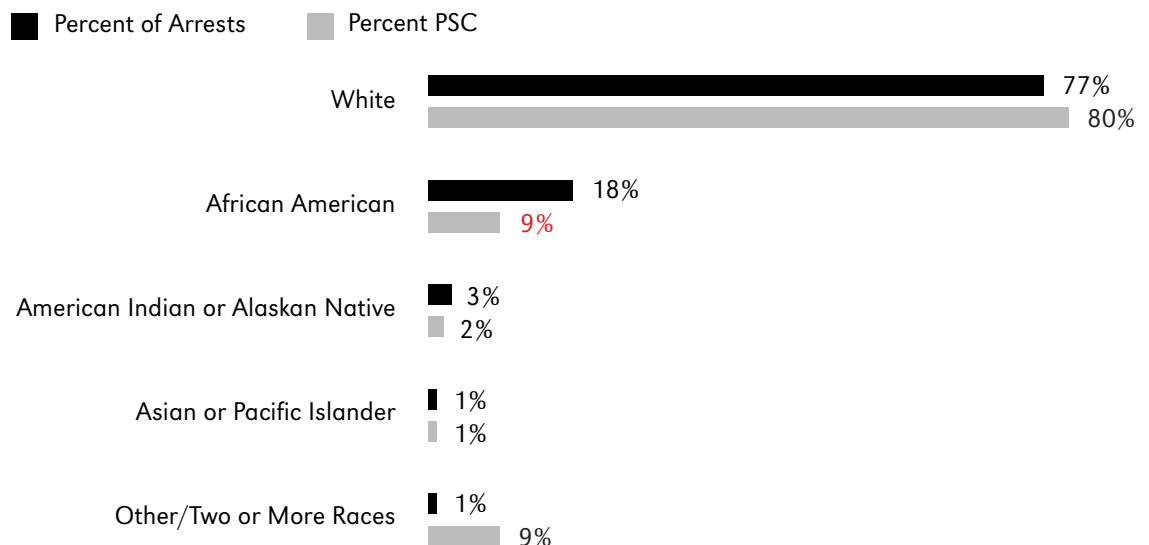
Finally, problem-solving courts (PSCs) are court programs that aim to “accommodate offenders with specific needs and problems that were not or could not be adequately addressed in traditional courts.”¹³ PSCs tend to focus on therapeutic treatment and positive outcomes and involve more hands-on involvement by judges.¹³ In Nebraska there are drug, DUI, mental health, veterans’, and re-entry courts, among others. As shown in Figure 6, relative to the racial makeup of those arrested, Whites, Asians/Pacific Islanders, and American Indians/Alaska Natives were proportionately represented in PSCs, but African Americans were significantly underrepresented and those who fall in the Other/Two or More Races category were significantly overrepresented.

Figure 5: 3-year Average (2014-2017) Community Based Resources by Arrests



**Red data label indicates a group is significantly underrepresented*

Figure 6: 3-Year Average (2014-2017) Participation in Problem-Solving Courts



**Red data labels indicate a group is significantly underrepresented*

¹³ Fisher and Holman (2017, p. 30).

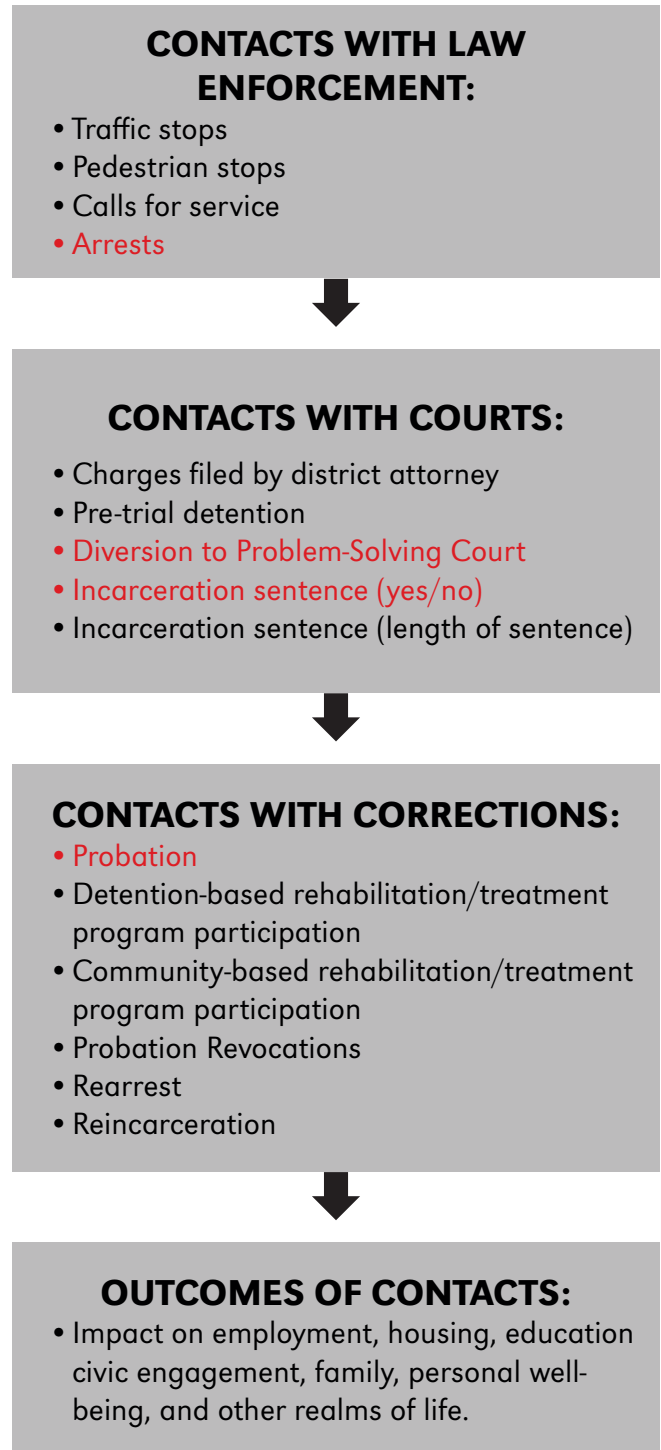
Conclusions, Limitations, and Unanswered Questions

The data show that there are significant racial disparities, relative to the state population in terms of arrest and incarceration — in which African Americans are overrepresented, and Whites are underrepresented — and in terms of CBI, CBR, and PSC involvement relative to the arrestee population — in which African Americans are underrepresented and Whites are overrepresented. Disparities with the population also exist in terms of contact with the justice system experienced by other racial groups. Unfortunately, we were not able to evaluate the presence of ethnic disparities (i.e., Latino/Hispanic vs. non-Latino/Hispanic) with the available data.

Given that the data show racial inequity across multiple points of contact with the criminal justice system, future research on RED should not be limited to one point of contact (e.g., contact with law enforcement) but instead should examine RED system-wide. Figure 7 displays the general process by which cases flow through the criminal justice system. Future research should aim to acquire and analyze data on the points of contact for which data are not presented here. Such an endeavor would be easiest to facilitate if there were a centralized and standardized source of criminal justice data in the state of Nebraska.

Along with estimating ethnic disparities and evaluating RED at additional contact points, future research should aim to identify the sources of RED in Nebraska. In other words, the question of why these disparities exist remains to be answered. For example, one potential cause of RED is that implicit bias affects how criminal justice system actors perceive people differently, depending on their race, and in turn, affects their decision-making.¹ Other potential sources of RED include sentencing guidelines, use of cash bail, and inadequate funding for indigent defense.⁴ Understanding the extent of RED and the source, is a first step to policy solutions that address RED.⁴

Figure 7: Criminal Justice System Process*



*The points of contact for which data are analyzed in this brief are red.

¹ *Voices for Children of Nebraska (2017a).*

⁴ *The Sentencing Project (2018).*

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Carson, A. (2020). Prisoners in 2018. *Bureau of Justice Statistics*. Retrieved from <https://www.bjs.gov/content/pub/pdf/p18.pdf>

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APPENDICES

Table 1. Arrests by Nebraska Population

	White	African American	Asian or Pacific Islander	American Indian or Alaskan Native	Other/Two or more races
Nebraska Population 2014 (%)	88.28	4.71	2.12	0.95	3.93
Arrests 2014 (%)	78.24	17.45	0.64	3.23	0.44
Standardized Residual	-26.76	147.02	-25.58	58.34	-44.07
Nebraska Population 2015 (%)	88.18	4.77	2.17	0.92	3.96
Arrests 2015 (%)	76.73	17.82	0.74	3.40	1.32
Standardized Residual	-26.76	146.67	-23.92	63.80	-32.66
Nebraska Population 2016 (%)	87.82	4.71	2.24	0.83	4.39
Arrests 2016 (%)	76.10	18.99	0.72	3.59	0.60
Standardized Residual	-31.13	163.63	-25.31	75.37	-45.03
Nebraska Population 2017 (%)	90.60	5.21	2.65	1.53	–
Arrests 2017 (%)	76.08	19.67	0.79	3.46	–
Standardized Residual	-37.46	155.26	-28.07	38.19	–
Nebraska Population 2018 (%)	90.44	5.28	2.74	1.54	–
Arrests 2018 (%)	76.17	19.47	0.84	3.51	–
Standardized Residual	-37.46	154.23	-28.64	39.72	–
Nebraska Population 2019 (%)	90.29	5.34	2.82	1.55	–
Arrests 2019 (%)	75.06	20.82	0.83	3.29	–
Standardized Residual	-41.19	172.13	-30.39	35.85	–

Notes: Negative values of the standardized residual indicate a group is underrepresented; positive values indicate a group is overrepresented. Bolded standardized residuals indicate $p \leq .001$; “Other/Two or more races” was not a category in 2017–2019 arrest data.

2014: $X^2 = 28329.08$, $df = 4$, $p = .000$;

2015: $X^2 = 28120.32$, $df = 4$, $p = .000$;

2016: $X^2 = 36093.64$, $df = 3$, $p = .000$;

2017: $X^2 = 27752.53$, $df = 3$, $p = .000$;

2018: $X^2 = 27589.52$, $df = 3$, $p = .000$;

2019: $X^2 = 33533.72$, $df = 3$, $p = .000$.

Table 2. Persons in State and Federal Correctional Facilities in Nebraska by Nebraska Population

	White	African American	Other
Nebraska Population 2018 (%)	87.49	4.77	7.74
Prison Population December 31, 2018 (%)	52.39	27.74	19.87
Standardized Residual	2807.69	1506.82	1070.38

Notes: Negative values of the standardized residual indicate a group is underrepresented; positive values indicate a group is overrepresented. Bolded standardized residuals indicate $p \leq .001$. "Other" category includes Hispanic, Asian, Native Hawaiian/Other Pacific Islander, American Indian/Alaska Native, Other, and Unknown.

$X^2 = 7887.98$, $df = 2$, $p = .000$

Table 3. Community Based Intervention by Arrests

	White	African American	Asian or Pacific Islander	American Indian or Alaskan Native	Other/Two or more races
Arrests 2014 (%)	78.24	17.45	0.64	3.23	0.44
CBI FY 14-15 (%)	73.37	12.31	0.74	3.24	10.34
Standardized Residual	-3.33	-7.42	0.79	0.02	89.62
Arrests 2015 (%)	76.73	17.82	0.74	3.40	1.32
CBI FY 15-16 (%)	74.27	12.37	0.86	2.75	9.75
Standardized Residual	-1.74	-7.97	0.93	-2.17	45.36
Arrests 2016 (%)	76.10	18.99	0.72	3.59	0.60
CBI FY 16-17 (%)	73.14	13.53	1.10	3.19	9.04
Standardized Residual	3.00	-5.75	3.55	-0.27	73.41

Notes: Negative values of the standardized residual indicate a group is underrepresented; positive values indicate a group is overrepresented. Bolded standardized residuals indicate $p \leq .001$.

2014: $X^2 = 8098.81$, $df = 4$, $p = .000$;

2015: $X^2 = 2129.58$, $df = 4$, $p = .000$;

2016: $X^2 = 5443.27$, $df = 4$, $p = .000$.

Table 4. Community Based Resources by Arrests

	White	African American	Asian or Pacific Islander	American Indian or Alaskan Native	Other/Two or more races
Arrests 2014 (%)	78.24	17.45	0.64	3.23	0.44
CBR FY 14-15 (%)	76.76	8.04	1.10	1.91	12.20
Standardized Residual	-1.59	-21.39	5.50	-6.99	167.39
Arrests 2015 (%)	76.73	17.82	0.74	3.40	1.32
CBR FY 15-16 (%)	76.73	8.42	1.13	1.88	11.85
Standardized Residual	0.00	-20.62	4.28	-7.63	84.88
Arrests 2016 (%)	76.10	18.99	0.72	3.59	0.60
CBR FY 16-17 (%)	75.74	8.81	1.51	2.21	11.73
Standardized Residual	-0.37	-21.14	8.45	-6.63	130.23

Notes: Negative values of the standardized residual indicate a group is underrepresented; positive values indicate a group is overrepresented. Bolded standardized residuals indicate $p \leq .001$.

2014: $X^2 = 28558.44$, $df = 4$, $p = .000$;

2015: $X^2 = 7706.50$, $df = 4$, $p = .000$;

2016: $X^2 = 17522.77$, $df = 4$, $p = .000$.

Table 5. Participation in Problem-Solving Courts by Arrests

	White	African American	Asian or Pacific Islander	American Indian or Alaskan Native	Other/Two or more races
Arrests 2014 (%)	78.24	17.45	0.64	3.23	0.44
PSC FY 14-15 (%)	79.45	9.05	0.64	2.13	8.73
Standardized Residual	0.42	-6.16	0.01	-1.87	38.09
Arrests 2015 (%)	76.73	17.82	0.74	3.40	1.32
PSC FY 15-16 (%)	79.73	9.27	0.68	1.83	8.49
Standardized Residual	1.10	-6.52	-0.22	-2.73	20.12
Arrests 2016 (%)	76.10	18.99	0.72	3.59	0.60
PSC FY 16-17 (%)	80.35	8.25	0.56	2.50	8.34
Standardized Residual	1.60	-8.09	-0.63	-1.89	32.89

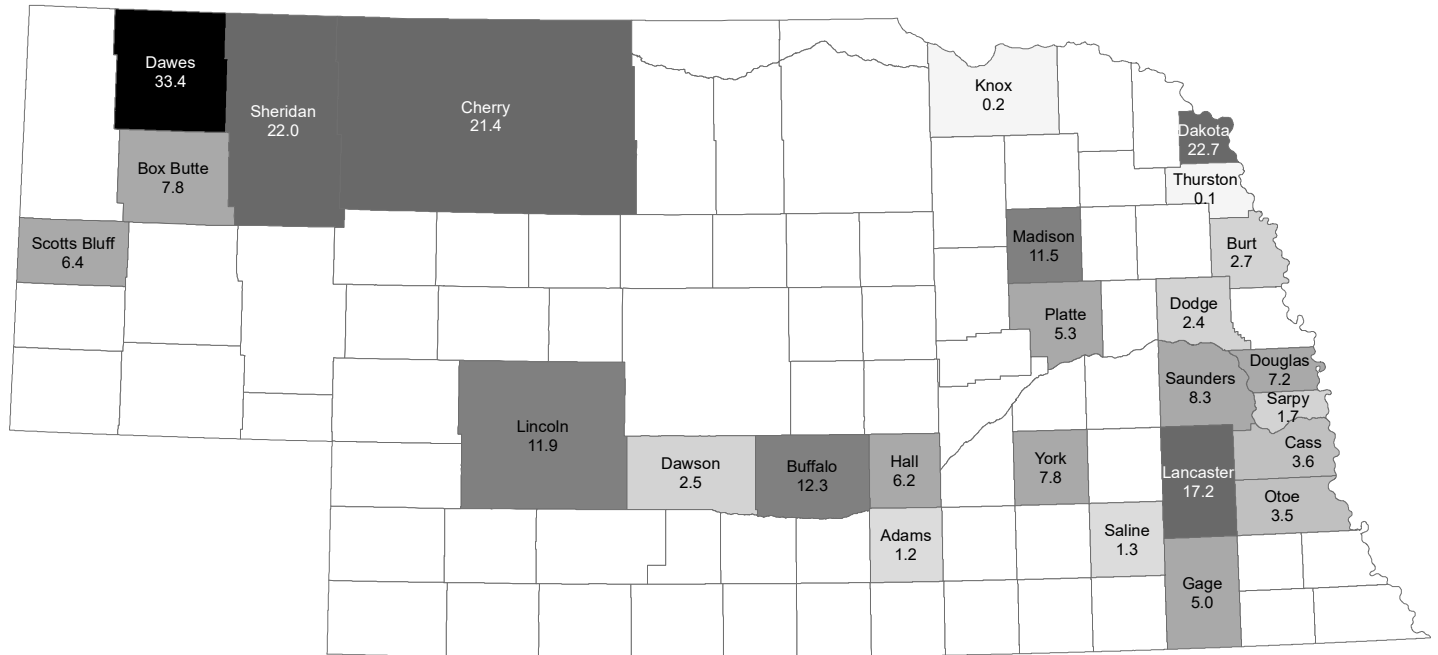
Notes: Negative values of the standardized residual indicate a group is underrepresented; positive values indicate a group is overrepresented. Bolded standardized residuals indicate $p \leq .001$.

2014: $X^2 = 1492.76$, $df = 4$, $p = .000$;

2015: $X^2 = 455.97$, $df = 4$, $p = .000$;

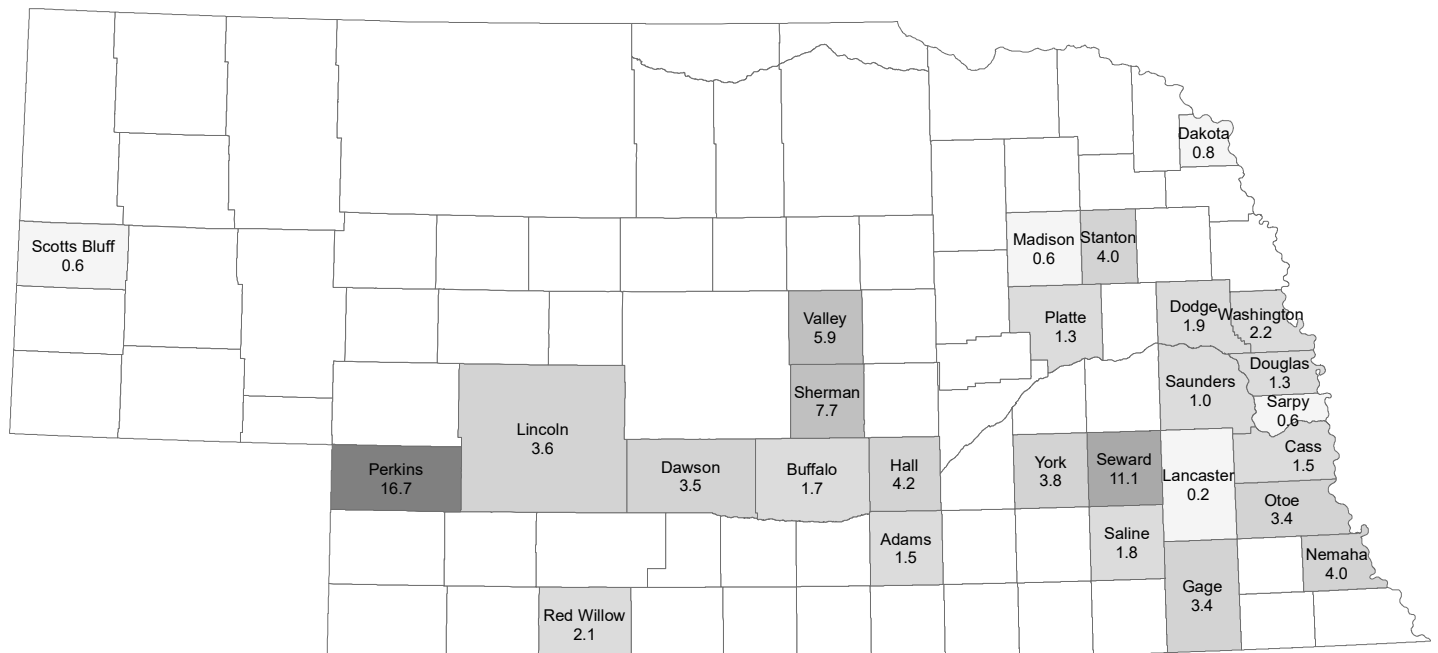
2016: $X^2 = 1151.83$, $df = 4$, $p = .000$.

Map 1: Percent of American Indian Population in County That Have Been Arrested, Nebraska, 2019



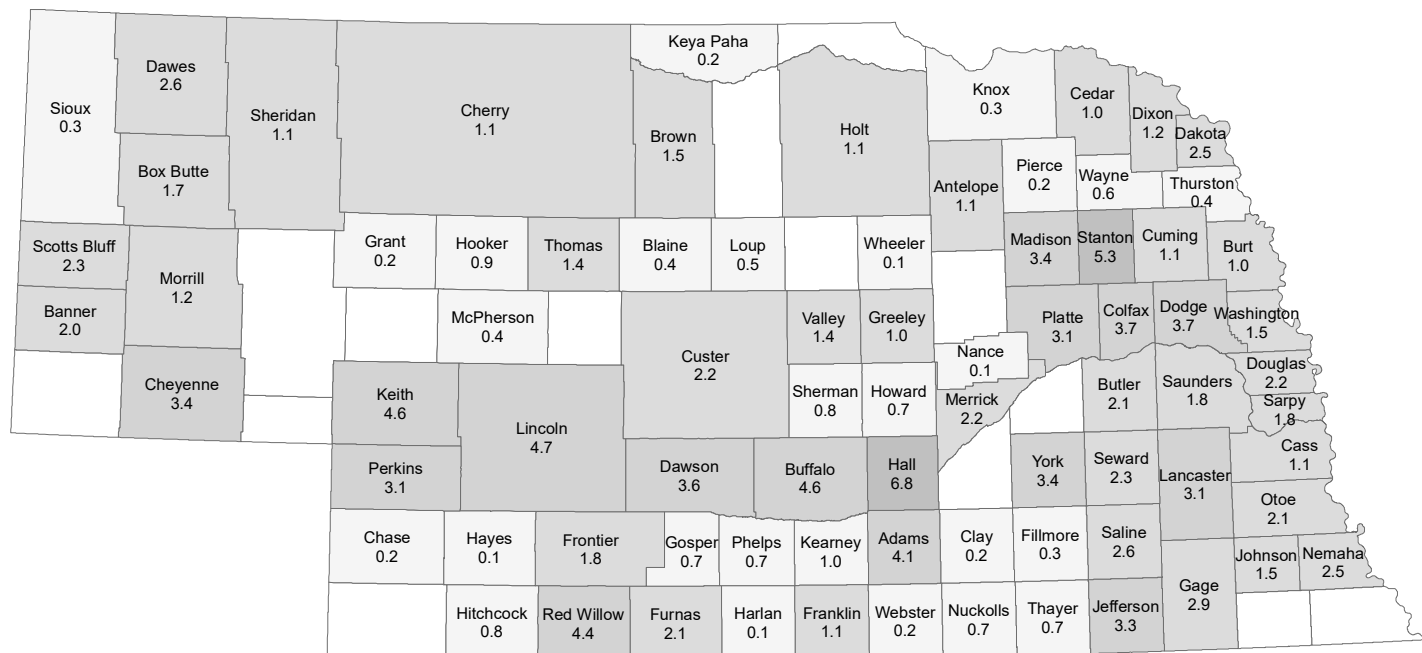
Counties with no data listed have suppressed data due to low counts.

Map 2: Percent of Asian Population in County That Have Been Arrested, Nebraska, 2019



Counties with no data listed have suppressed data due to low counts.

Map 3: Percent of White Population in County That Have Been Arrested, Nebraska, 2019



Counties with no data listed have suppressed data due to low counts.