



Nebraska's Statehouse-to-Prison Pipeline

Reviewing 5 Years of Criminal Justice
Legislation in Nebraska

Fall 2021



About this Report

“Five years ago, we published our first formal analysis detailing how the Nebraska Legislature’s actions were impacting Nebraska’s overcrowded prison system and our communities. This update picks up where that issue brief left off, examining new criminal legal statutes and amendments between 2017 to 2021. Although this report identifies areas of progress, too many concerns noted five years ago have either worsened or remained largely unchanged. More than any time in recent history, the time is right for a smart justice approach. We hope all community members and policymakers find this information helpful in charting a new path.”

Spike Eickholt, J.D. ACLU of Nebraska Government Liaison and of Counsel
Riley Wilson, J.D. candidate 2023, ACLU of Nebraska Law Clerk



Introduction

The ACLU of Nebraska is a nonprofit, nonpartisan organization that works to defend and strengthen the individual rights and liberties guaranteed in the United States and Nebraska Constitutions through policy advocacy, litigation and education. For over 50 years, the ACLU of Nebraska has been a constant guardian of and advocate for freedom and liberty. The ACLU of Nebraska intentionally prioritizes the needs of historically unrepresented and underrepresented groups and individuals who have been denied their rights, including people of color, women, LGBTQ Nebraskans, system-impacted Nebraskans, students and people with disabilities.

Nebraska's criminal justice legal policies have created a system of mass incarceration that hurts our communities and disproportionately impacts Nebraskans with low incomes and Nebraskans of color. A continual concern is that the existing conditions of confinement violate the Eighth Amendment's protection against cruel and unusual punishment and do not provide for meaningful transition back into our communities. The ACLU is leading the way to rethink and reform these policies and conditions through our Campaign for Smart Justice to protect individual rights, reduce the taxpayer burden and make our communities safer.

Existing "tough on crime" policies, particularly around punitive drug policies, have failed to achieve public safety while putting an unprecedented number of people behind bars and eroding constitutional rights. This system diminishes economic opportunity, family stability and civic engagement during and after incarceration. In many instances, a criminal record becomes a lifelong barrier to accessing basic human needs and ensuring individual and family stability.

Since the ACLU of Nebraska's inaugural release of "The State House to Prison Pipeline" report in 2017, authored by Anna Holmquist and Spike Eickholt, our country and state have seen a renewed emphasis on criminal legal reform and an increased desire to identify new solutions to persistent problems. But what has not changed is the concerning and dire crisis of mass incarceration in Nebraska.

Nebraska's Growing Prison Population

While there has been a steady, though modest, decrease in incarceration throughout the United States¹, Nebraska has failed to foster a similar trend. The state's prison population has grown 21% between 2011 and 2020, leaving nearly every Nebraska Department of Correctional Services (NDCS) facility operating above capacity.² Moreover, while Nebraska's prison admissions have dropped — in part due to the COVID-19 pandemic³ — our prison incarceration rate remains higher than similarly situated states. Iowa presently incarcerates roughly 245 per 100,000 residents in its state prisons.⁴ Nebraska incarcerates 278 per 100,000.⁵

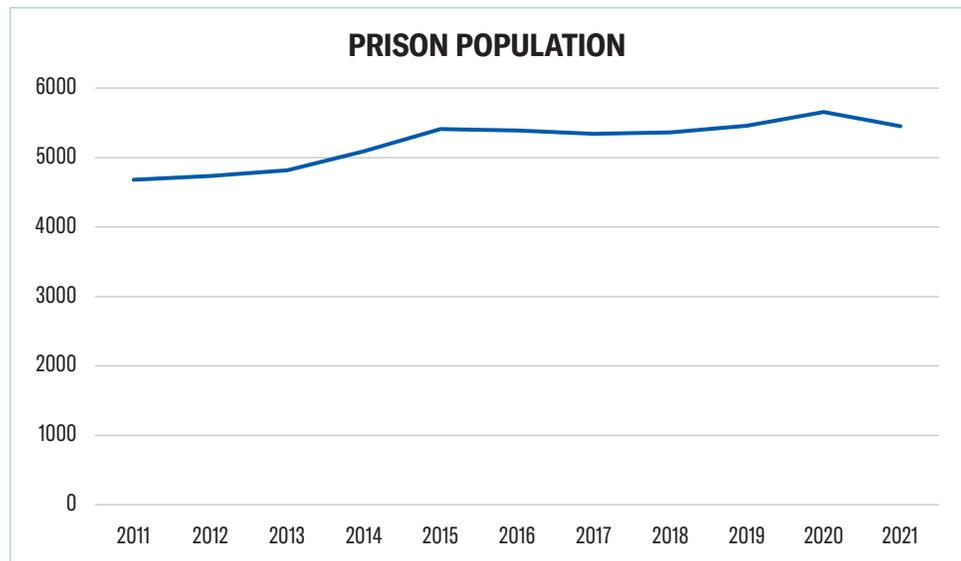


Chart 1: Prison population numbers increased by 21% over 2011–2020, followed by a one-year 3.6% decline into 2021 due to COVID-19.⁶

The Pandemic's Impact

This report focuses on the last five years of legislative action and its impact on our prisons. At the time of this writing, Nebraska's prison population is roughly 2% higher than its 2017 population.⁷ It is important to note that number might be significantly higher but for the COVID-19 pandemic, which led to a host of changes in Nebraska's criminal legal system⁸, created system backlogs⁹ and tempered additional surges in our prison population.

While Nebraska's prison population dipped slightly, an ACLU analysis of incarceration during COVID-19 shows other states achieved significant reductions to their jail and prison populations without significant negative impacts on public safety.¹⁰ For example, Colorado's jails dropped to 47% capacity in late 2020 compared to 81% before the pandemic.¹¹

Unlike its sister states and the Department of Justice under the Trump administration¹², Nebraska did not utilize medical or humane release policies or even increase parole for those who were already eligible.¹³ Nebraska families and our prisons and jails continue to be negatively impacted by needless tragedy due to these decisions.¹⁴

Methodology

This report looks at the last five years of policy proposals before the Nebraska Legislature related to the creation of new crimes and enhanced penalties for existing crimes (see entire listing in **Appendix A**). Although it is far from the sole cause of our current challenges, recent legislative action contributes to mass incarceration, racial injustice and taxpayer burdens in Nebraska. Research included a review of legislative journals from the relevant period, using the subject index to locate all bills relating to crimes, punishments, criminal procedure, criminal code, correctional facilities, people who are imprisoned and the NDCS. Special attention was paid to bills referred to the Judiciary, Transportation and Telecommunications Committees.

Findings

A smart justice look at the last five years of state legislative activity shows decidedly mixed results. On one hand, state senators seem to be moderating their approach to creating new crimes and they have adopted several smart reform measures that have no doubt prevented our prison crisis from growing even more dire than it is today. On the other hand, state senators across the political spectrum have led efforts that create new crimes and broaden existing crimes, contributing to the continuous influx of Nebraskans into our severely overcrowded and understaffed prison system.

When considering the last five years of legislative action, it is important to note that smart justice efforts must be a shared responsibility and that other officials and interest groups can either help or hinder these efforts. In recent years, key stakeholders have advocated for creating new crimes and boosting existing penalties. Current and past attorneys general and governors have supported many of the bills described in this report that contributed to mass incarceration. Local prosecutors and advocacy groups have also supported efforts to boost penalties and broaden crimes. Any effort to counter this trend will similarly require support from these same actors to leave behind unsuccessful approaches and chart a new path.

New Crimes

In the last several legislative sessions, the Legislature has generally been more tempered in enacting new crimes and enhancing penalties for existing crimes. As leaders struggle with the state's severe prison overcrowding and understaffing crisis, there has been an appreciation among many policymakers across the political spectrum to be more measured in creating new offenses or increasing penalties for existing crimes.

However, there have been several legislative proposals and enactments regarding the creation of new crimes and enhanced penalties over the last five years. For example, in 2018, senators created a new felony offense for a juvenile committing a crime to possess a firearm before the age of 25 (LB 990). Also in 2018, senators broadened the crimes of intimidation by phone call (LB 773) and assault on a healthcare provider (LB 913). In 2019, several new crimes were created, including bringing an electronic communication device into a prison (LB 686); possessing counterfeit airbags (LB 7); sexually assaulting someone who is in police custody (LB 519); and engaging in revenge porn (LB 630). In that same year, senators broadened or increased penalties for existing crimes, including tampering with witnesses or evidence (LB 496) and suffocation or strangulation (LB 141). In 2020, the Legislature created a new felony of sexual assault of a student by school personnel (LB 881) and slightly broadened the crime of possession of a stolen firearm (LB 582).

Finally, in the 2020 election, Nebraska voters approved a ballot initiative to provide for casino gambling. In 2021, the Legislature made some statutory revisions to accommodate voters' decision. Included in the enacted regulatory statutes were increases in penalties and the creation of a number of new offenses relating to illegal gambling (LB 561).

It is important to note that the pace and scope of such legislation have been more moderate compared to the previous 10 years of legislative activity. While recent amendments to the criminal code contribute to increasing the scope of the statehouse-to-prison pipeline, when compared to earlier legislative sessions, most of these new provisions are more limited in scope and were arguably meant to address gaps in existing policy. Others, however, must be acknowledged as addressing behavior that was already illegal under state law.

Smart Justice Reforms

To its credit, the Legislature has enacted some of the smart justice recommendations and reforms we highlighted in our initial 2017 report, including additional bond reform in LB 881 in 2020, which limited courts'

ability to set money bonds for low-level offenses and provided for a simpler process to discharge unpaid fines or court costs for Nebraskans who are financially struggling. LB 881 also amended the law to allow for more people convicted of crimes to seek set asides following completion of their sentences, which is an important reform necessary for people’s meaningful reentry back into society. Finally, the Legislature also appropriated more money for alternative courts and problem-solving courts in 2018 and 2020, which — with appropriate safeguards — can be critically important to ensuring better outcomes for individuals, advancing our shared public safety goals, and easing taxpayer burdens.

Stalled Reform Efforts

In recent legislative sessions, several senators have proposed legislation to repeal duplicative criminal statutes, right size penalties or enhance judicial discretion. Unfortunately, these efforts have largely been stalled by reflexive opposition from prosecutors, law enforcement and Gov. Ricketts’ administration.¹⁵ The legislative stagnation of significant reform has resulted in preventing any sizable decrease in our prison numbers, as have persistent practices of prosecutors¹⁶ and a lack of educational and economic opportunity and reentry support.

As we documented in our original report, the lawmaking practice of continually creating new crimes and broadening existing crimes is a contributing factor to the increase to the prison population.¹⁷ NDCS Director Scott Frakes recently acknowledged this factor when he stated people continue to enter the prison system with lengthy sentences that are driving prison numbers up.¹⁸ Moreover, a Nebraska analysis from the Crime and Justice Institute shows prison sentences have increased significantly over the last decade — more than 25% before COVID-19¹⁹, as the number of people entering our prisons with mandatory minimums more than doubled.²⁰

This predicament has set back any substantive efforts to manage the crises in our prison system. Nebraska is in a statutorily declared prison overcrowding emergency²¹ and four prison facilities are now under emergency staffing plans, meaning lengthy shifts for protective staff and inadequate programming for system-impacted Nebraskans.²² The understaffing crisis has continued to expand in recent months, and has been termed “dire” and “alarmingly worse” in the Office of Inspector General of the Nebraska Correctional System’s most recent annual report.²³

The Impact on Nebraskans of Color

We cannot address mass incarceration without centering racial justice. An additional problematic feature of Nebraska’s overcrowded prisons is that a persistent and pronounced disproportionate number of Black, Latinx and Indigenous people are incarcerated.²⁴ This inequitable rate remains constant across the years examined in this report. As seen in the chart below (Chart 2), Black, Latinx and Indigenous Nebraskans are disproportionately represented in Nebraska prisons compared to general state demographics. The U.S. Census Bureau estimates that Black people make up roughly 5% of Nebraska’s population²⁵, yet at the time of this writing, 28% of those in Nebraska’s prisons are Black.²⁶

Similarly, Latinx individuals make up 11.4% of Nebraska’s population²⁷, yet are over-represented in Nebraska prisons at 14.5%.²⁸ Indigenous Nebraskans make up 1.5% of Nebraska’s population²⁹ and are overrepresented more than threefold in Nebraska prisons.³⁰

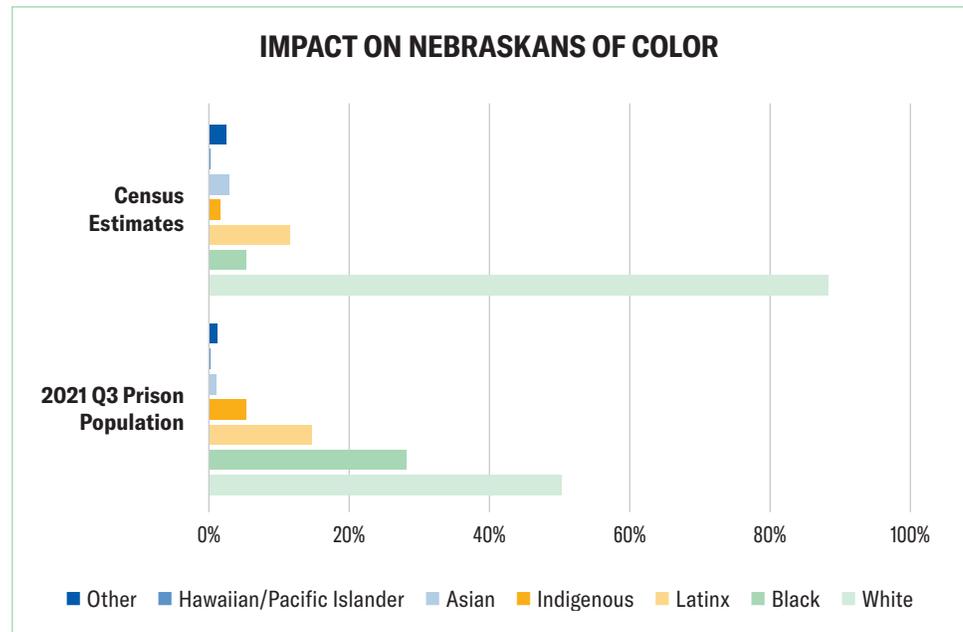


Chart 2: Prison population numbers show significant racial disparities compared to state demographics, with Black and Indigenous Nebraskans most grossly overrepresented.

A recent analysis by the Sentencing Project ranks Nebraska 8th among our sister states in terms of racial disparities.³¹ The author rightly notes that, “If we continue to ignore or tolerate these disparities, the United States is unlikely to achieve the serious, sustainable reforms that are needed to end mass incarceration. Overall, the pace of criminal justice reform has been too slow as well as too modest in its goals.” The human costs of mass incarceration are not shared by all Nebraskans equally. They are disproportionately borne by Nebraskans of color at every stage of our broken criminal justice system.³²

Morally and Fiscally Unsustainable

Nebraska continues to struggle with severe prison overcrowding. Despite an infusion of ever-increasing taxpayer dollars and ballooning correctional budgets³³ fueling decades of construction, modifications and expansion of existing prison facilities³⁴, Nebraska’s prison system remains among the most overcrowded in the nation. Some of the state’s prisons are holding between two or three times as many people as they were designed to hold.³⁵ As detailed in our 2018 report “Blueprint for Smart Justice Nebraska,”³⁶ the cause of this crisis is multifaceted as are potential solutions. One thing is clear: continuing the status quo is both morally and fiscally unsustainable. State spending on our prisons has outpaced funding growth in all other major state funding areas, such as human services and education, for more than two decades running.³⁷

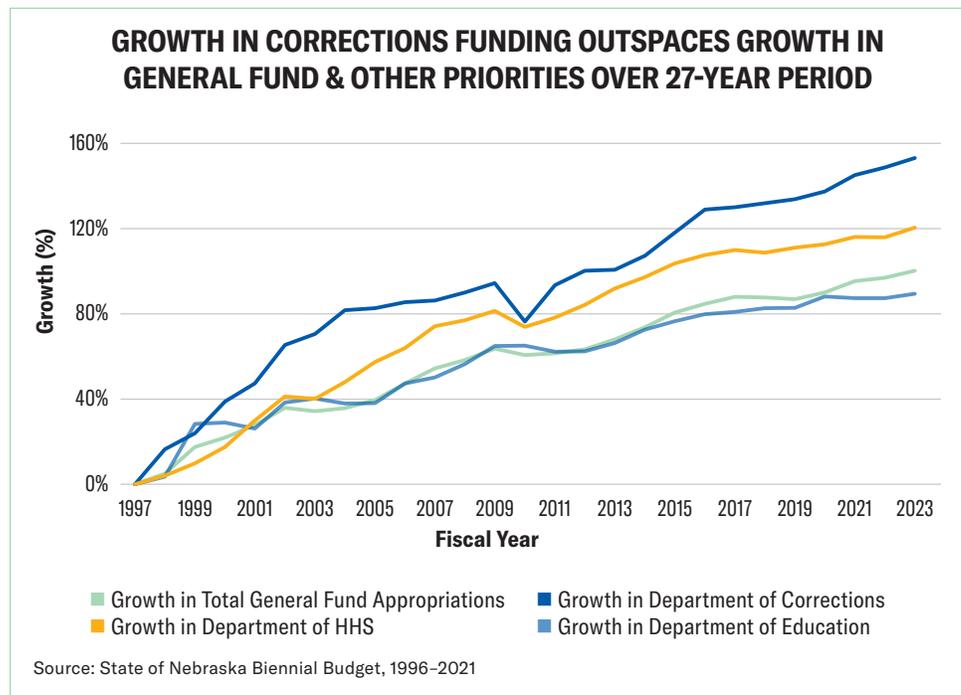


Chart 3: Growth in prison spending has outpaced major priority areas and overall budget growth for decades, often by double digits. Information and presentation have been repurposed from data provided by the OpenSky Policy Institute.

Conclusions & Recommendations

There is presently a debate among state leaders as to whether to commit \$230 million toward construction of a massive new prison or whether to engage in meaningful reform to reduce the population in our current prisons. This appropriation would be among the most expensive and complex earmarks in state history.³⁸

In the spring of 2021, state senators rightly rebuffed a demand from Gov. Ricketts to approve and fully fund the new prison and instead set aside a smaller amount of funds that could later be used for prison construction with their later approval.³⁹ They also organized a working group of leaders from all three branches of government to work with national experts to explore criminal legal reform.⁴⁰ The full results of a comprehensive study of our criminal legal system presently being done by the Crime and Justice Institute, a national nonpartisan organization that has helped our sister states chart a more sustainable path, is expected to be released to the public in late 2021 or early 2022.⁴¹ Although we are hopeful the process' recommendations will meet the urgency of the moment, early secrecy is troubling. Gov. Ricketts sought to withhold presentations that the Crime and Justice Institute provided to a task force of public officials, and the information was only made public by leading members of Nebraska's Judicial branch after the ACLU of Nebraska and Omaha World-Herald submitted multiple requests to a host of public officials involved in the efforts, citing Nebraska's strong public records laws.⁴²

In 2022, state senators must make the pivotal decision of either funneling millions of dollars into building and operating a new prison or charting a new and better path with meaningful smart justice reform that has worked in other states and the federal system.

It is imperative that all Nebraska stakeholders seize new opportunities for smart justice reform and revisit and implement past policy recommendations. These include, but are not limited to, the following:

Stop Establishing New Crimes and Increasing Penalties

Nebraska lawmakers should adopt a "first, do no harm" approach regarding our prison system. They need to be very skeptical when considering any legislation that creates new crimes or increases penalties. Similarly, senators should be cognizant in creating new crimes that overlap or duplicate existing crimes. Such duplication can lead to prosecutorial overcharging and layering of multiple crimes for singular criminal acts, which lead to inflated sentences.

Enact Sentencing Reform

Nebraska lawmakers should modernize our “get tough on crime” mandatory minimum sentencing laws. As detailed in this report, mandatory minimums have contributed directly to the growth in our prison population. Mandatory minimums contribute directly because mandatory sentences are lengthier and people serving mandatory minimums are not parole eligible and cannot earn good time on their time. Mandatory minimums and habitual criminal laws also contribute indirectly because they are often used as leverage to get defendants to plead to charges that will result in significant sentences. Nebraska needs to continue its focus on reforms to indeterminate sentences, which drive overcrowding in Nebraska as well.

One other component of sentencing reform should include amendments to the law, which provide people with an incentive to seek rehabilitation by participating in programming and services within the prison system. A structural incentive system for reform could be created by which people are made parole-eligible earlier in their terms of incarceration. Until the mid-1990's Nebraska had a “one-third” sentencing rule in which, for most offenses, a minimum term of an indeterminate sentence could not be more than one-third of the statutory maximum imposed. In such a system, people are automatically eligible for parole earlier in their sentences and, if paroled, are supervised for a longer period of time. This can provide for more meaningful programming along with more comprehensive rehabilitation and supervision on parole. Recent efforts to bring back a version of the one-third rule have stalled due to opposition from prosecutors and one gubernatorial veto. An amendment to Nebraska’s sentencing law to provide for effective reform effort and rehabilitative transition from prison should be a priority for policymakers.

Invest in Alternatives

One way to reduce the prison population is to send fewer people to prison. Nebraska lawmakers should continue to devote a laser focus to front-end criminal legal diversion programs that have proven successful in other states. These reforms include, but are not limited to, problem-solving courts and mental health and substance abuse treatment options. The Legislature should continue its investment in problem-solving courts, such as drug courts, mental health courts, and veterans’ courts. Existing pretrial diversion programs should be broadened to allow for more participants and remove barriers to these programs. These alternatives are demonstrably more cost-effective than mass incarceration and participants generally have better outcomes.

Innovate Probation and Parole

Nebraska policymakers should consider additional innovations in probation and parole. For instance, some states utilize presumptive probation and parole, which has helped address mass incarceration challenges.⁴³ California developed a concept of “non-revocable” parole, which is a lower level of supervision for people who commit nonviolent offenses.⁴⁴ This level of monitoring saved the state a significant amount of money in unnecessary prison beds and lower monitoring costs. Similarly, Nebraska lawmakers can look to broaden furlough and supervised release laws to allow for the release of Nebraskans who are incarcerated but not parole eligible. People who are not parole-eligible cannot be within the supervision of the Office of Parole; they can, however, be supervised in the community by NDCS.

Expand Humane Release Programs

Priority should be placed on revisiting and expanding humane and medical release programs. Elderly and sick Nebraskans who are released for medical reasons are often better served in the community. Expanded use of these programs would result in cost savings and much needed relief for understaffed facilities since managing these Nebraskans’ medical needs is often costly and staff intensive. The pandemic laid bare how narrow and ineffective these programs in Nebraska are when trying to secure opportunities for release for vulnerable Nebraskans in a severely overcrowded congregate setting with little access to care amid the pandemic.

Continue Bond Reform

Nebraska lawmakers, judges and prosecutors must continue to reform our bond system to ensure an end to ‘debtors’ prisons’ once and for all. Many Nebraskans who are detained in jails are presumed innocent and cannot make bond or post-conviction cannot pay fines and fees. Senators should continue to build on their efforts to address this through continuing reform, which began in 2017 and has continued through 2020, to avoid unnecessary incarceration in our jails. Judicial branch education and bench cards should be explored on these topics as proven reform assets. Prosecutorial accountability and transparency measures should also be reconsidered. These reflexive, broken systems are an ever-increasing burden on local property taxes.

Invest in Reentry

Nebraska lawmakers must establish and invest in a robust reentry agenda to ensure meaningful support for returning citizens to improve individual outcomes and lower recidivism. The “end” of the pipeline should provide a meaningful way for people to complete their sentences and move on with their lives in a constructive way. These legislative efforts can include broadening set-aside and expungement laws to ensure more meaningful opportunities for system-impacted Nebraskans with criminal records. Other key reentry supports include removing barriers to education and employment through an expansion of “ban-the-box” legislation and occupational licensing reform. Nebraska lawmakers should remove barriers to civic engagement and revisit the arbitrary two-year ban on system-impacted voting rights and at the very least ensure sound data and practices to prevent further wrongful disenfranchisement from otherwise eligible voters. Finally, the state should provide access to public benefits so system-impacted Nebraskans can seek assistance to meet basic needs upon reentry.

Follow the Data

Officials should work earnestly — and transparently — through the Crime and Justice Institute process to utilize a Nebraska-specific data-driven process and to learn more about successful reform efforts in other states and on the federal level. Numbers released so far and those already available to the public all indicate a massive new prison is an ill-conceived idea at best. Reform and community investments should be rooted in a clear-eyed examination of Nebraska’s incarceration trends, corresponding taxpayer burdens, and the ongoing staffing crisis.

Undoubtedly, the status quo is unsustainable and does not advance our shared public safety goals. Neither does a new prison. Building a massive new prison is the most expensive and least effective way to address our state’s public safety needs. More than any time in recent history, the time is right for the Nebraska Legislature to lead on smart justice strategies that work, that save taxpayer resources and that are grounded in human rights and racial justice.

Appendix A

Introduced Bills that Increase Penalties and/or Create New Crimes or Broaden Crimes

2017

- LB 102 Change a penalty relating to tampering with witnesses or informants
- LB 107 Prohibit sexual assault of a patient, client, or student as prescribed
- LB 114 Change provisions relating to motor vehicle lighting requirements
- LB 162 Change provisions relating to criminal mischief and change and provide additional penalties for bribing or tampering with witnesses, informants, or jurors
- LB 202 Create the offense of obstructing government operations by refusing to submit to a chemical test authorized by search warrant
- LB 435 Change provisions relating to escape
- LB 556 Change provisions relating to firearms and create the offenses of use of a facsimile or non-functioning firearm to commit a felony and possession of a firearm by a prohibited juvenile offender
- LB 577 Create offense of assault on a peace officer, firefighter, or out-of-hospital emergency care provider by ambush
- LB 593 Create the offense of criminal trespass to vehicles
- LB 623 Change and eliminate provisions and penalties relating to assault on an officer, certain employees, or a health care professional
- LB 638 Provide enhanced criminal penalties based upon a person's employment as prescribed

2018

- LB 691 Adopt the Nebraska Virtual Currency Money Laundering Act and define and redefine terms under the Nebraska Money Transmitters Act
- LB 773 Change provisions relating to prohibited uses of scanning devices and encoding machines and intimidation by telephone call and prohibit intimidation by electronic communication*
- LB 763 Prohibit obstruction of a public power district employee
- LB 797 Change penalties for second and third degree arson
- LB 913 Change provisions relating to assault with a bodily fluid against a public safety officer*
- LB 925 Change provisions relating to certain sex crimes and crimes against children
- LB 990 Create the offense of possession of a firearm by a prohibited juvenile offender*

* *Italics indicate bill was enacted into law.*

2019

- LB 7 *Adopt the Counterfeit Airbag Prevention Act*
- LB 141 *Provide for the offense of assault by strangulation or suffocation*
- LB 143 Prohibit throwing or dropping dangerous instruments on motor vehicles
- LB 164 Prohibit electronic transmission or online posting of certain photographs or videos, redefine sexual exploitation, and provide for a registrable offense under the Sex Offender Registration Act
- LB 198 Change provisions relating to use of a deadly weapon to commit a felony and prohibit use of a facsimile firearm to commit a felony
- LB 475 Create the offense of sexual extortion, redefine sexual exploitation, and provide for a registrable offense under the Sex Offender Registration Act
- LB 519 *Change civil and criminal provisions relating to certain sexual offenses, human trafficking, and child abuse*
- LB 484 Change provisions relating to assault on certain employees and officer
- LB 496 *Change penalties for tampering with witnesses, informants, jurors, or physical evidence and change provisions relating to discovery in criminal cases*
- LB 582 *Change provisions relating to possession of a stolen firearm*
- LB 630 *Change provisions relating to unlawful intrusion, sexually explicit conduct, theft, extortion, intimidation by telephone call or electronic communication, and the Sex Offender Registration Act*
- LB 686 *Change provisions relating to Class IV felonies, post-release supervision, competency to stand trial, restrictive housing, and the long-term restrictive housing work group, create a criminal offense relating to electronic communication devices in correctional facilities, change possession of a deadly weapon by a prohibited person provisions, and provide for deferred judgments by courts*

2020

- LB 749 Adopt the Nebraska Anti-Terrorism Act
- LB 757 Prohibit certain fraudulent acts under the Nebraska Criminal Code and the Insurance Fraud Act
- LB 766 Prohibit sexual assault of a minor by an authority figure, change statute of limitations for failure to make a report of child abuse or neglect, and change provisions relating to sexual offenses
- LB 792 Allow for the combination or aggregation of cocaine, base cocaine, heroin, amphetamine or methamphetamine amounts for two or more controlled substance violations
- LB 793 Change penalty and statute of limitation provisions relating to public assistance violations
- LB 881 *Change provisions relating to criminal and civil procedure*
- LB 893 Change provisions relating to emergency care providers and provide for community paramedicine and critical care paramedics

- LB 913 Change arson, trespass, and graffiti provisions
- LB 991 Create the offense of sexual assault of a student and prohibit related enticement conduct by school officials
- LB 1048 Create the offense of sexual assault by a school employee and provide notification to the Commissioner of Education
- LB 1210 Create the offense of sexual exploitation of a student

2021

- LB 104 Allow aggregation of pecuniary losses for criminal mischief offenses
- LB 111 Change provisions relating to various offenses involving public safety
- LB 204 Change provisions of the Sex Offender Registration Act
- LB 206 Change provisions and penalties relating to arson, trespass, and graffiti
- LB 227 Adopt the Doxing Prevention Act and change and provide penalties and a civil action for false reporting
- LB 301 Change drug schedules and penalties and adopt federal drug provisions under the Uniform Controlled Substances Act
- LB 315 Change penalties for assault by strangulation or suffocation and domestic assault
- LB 437 Change provisions relating to public assistance and medicaid fraud
- LB 561 Rename and change powers and duties of the State Racing Commission and provide regulation and enforcement regarding sports wagering and other gambling activities at licensed racetrack enclosures*
- LB 661 Prohibit assault on a public transportation driver and clarify provisions relating to assault on officers, emergency responders, certain employees, and health care professionals

Appendix B

Chart 1

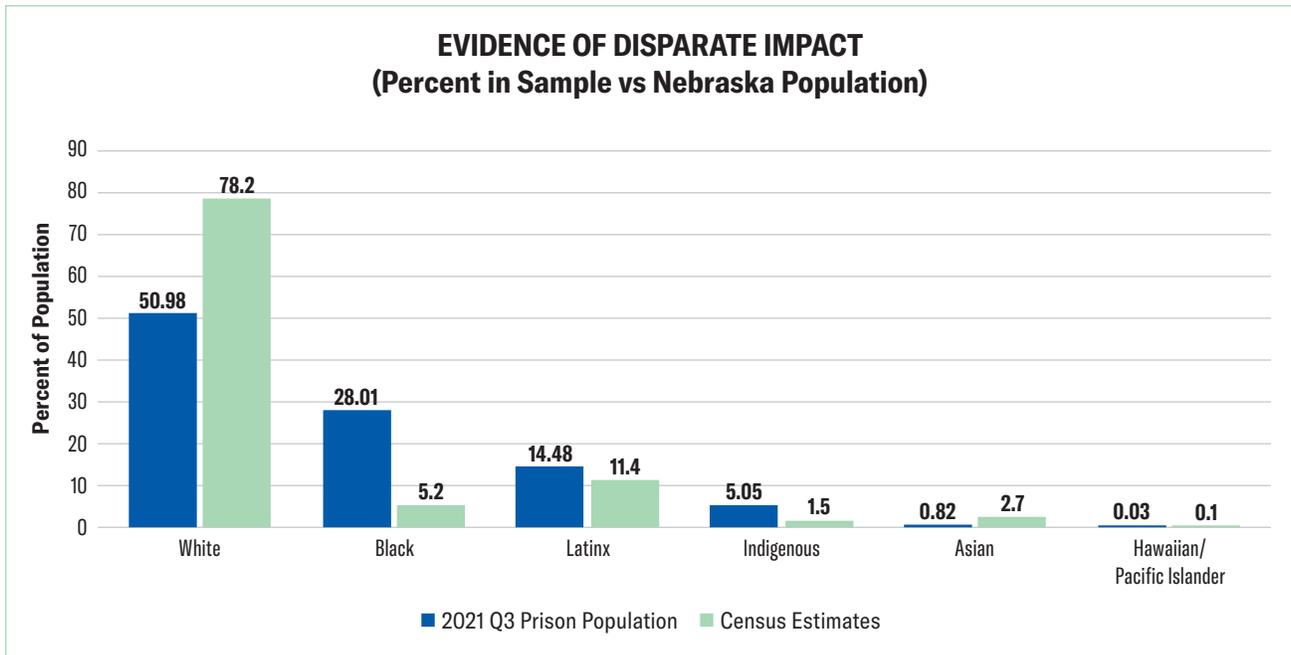
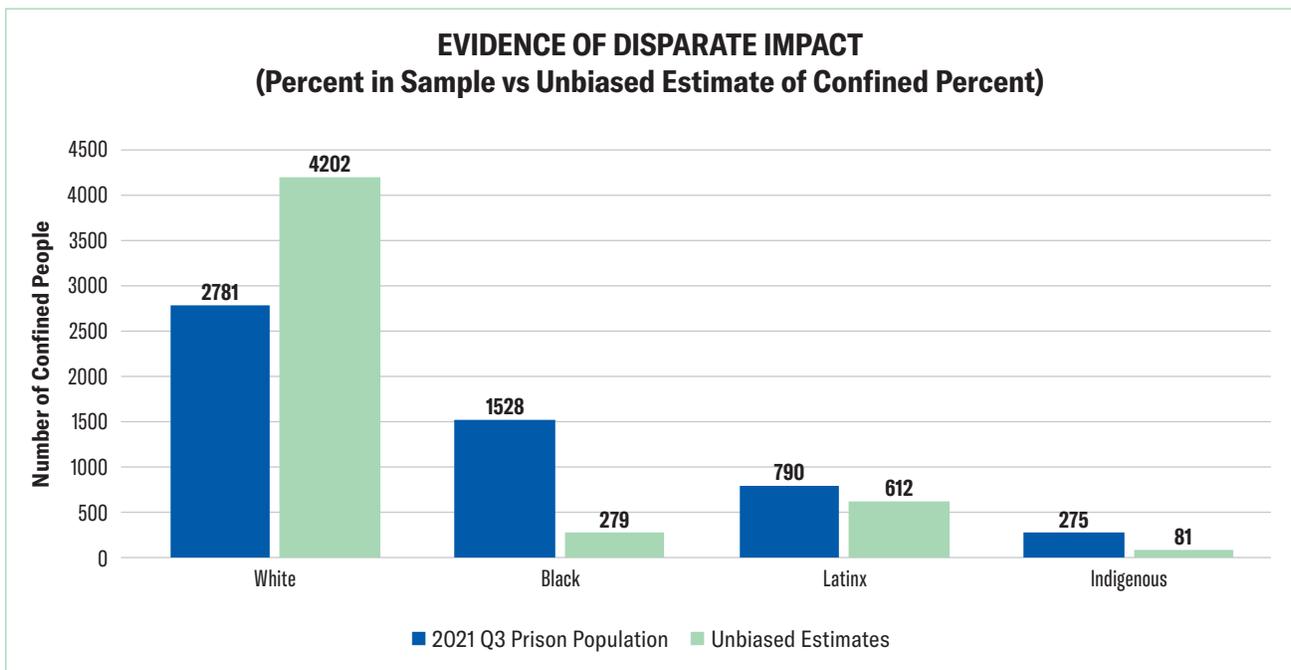
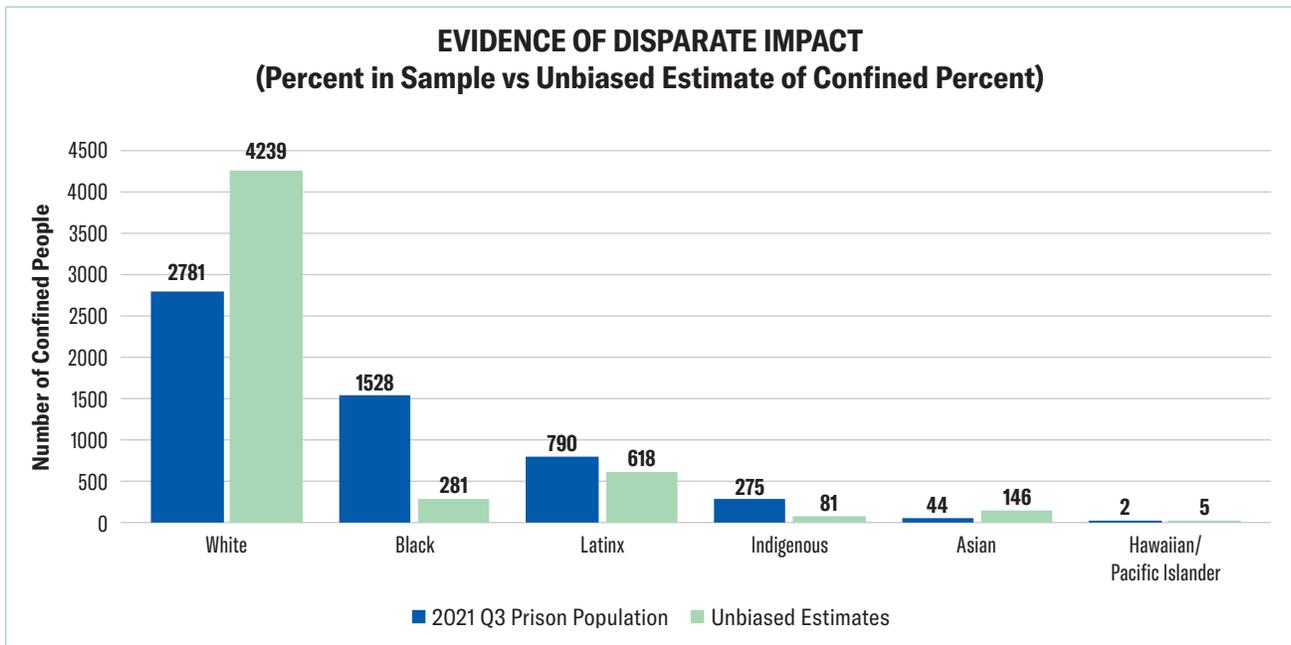


Chart 2



Note that 1.96% of the data was recorded as Asian, Hawaiian/Pacific Islander, Other or Missing. Those data are not included in this calculation.

Chart 3



Note that 1.74% of the data was recorded as Other or Missing. Those data are not included in this calculation.

Table 1: Population Race/Ethnicity by Sample Race for Chi-Square Test of Statistical Significance

	White	Black	Latinx	Indigenous	
Sample	2781 (50.98%) 4202	1528 (28.01%) 279	790 (14.48%) 612	275 (5.05%) 81	5374
Nebraska Population	1,533,896 (78.2%)	101,998 (5.2%)	223,611 (11.4%)	29,423 (1.5%)	1,888,928
	1,536,677	103,526	224,401	29,698	1,894,302

$\chi^2(3) = 6245.42, p < .001$

Red Text = actual number/percent of incarcerated people by race

Yellow Text = number/percent of the Nebraskan population by race

Blue Text = number of incarcerated people of each race you would expect to see if incarceration rates were in line with the census stats

The chi-square statistic is significant, which means that the difference between the percentage of racial minorities in the Nebraska population is significantly different (i.e., not due to chance) from the percentage of racial minorities in prison. The p value is less than .001, which means that there is less than a 1 in 1000 chance that the difference is due to chance.

Note that 1.96% of the data was recorded as Asian, Hawaiian/Pacific Island, Other, or Missing. Those data are not included in this chi-square calculation.

Table 2: Population Race/Ethnicity by Sample Race for Chi-Square Test of Statistical Significance

	White	Black	Latinx	Indigenous	Asian	Hawaiian/ Pacific Islander	
Sample	2781 (50.98%) 4239	1528 (28.01%) 281	790 (14.48%) 618	275 (5.05%) 81	44 (.82%) 146	2 (.03%) 5	5420
Nebraska Population	1,533,896 (78.2%)	101,998 (5.2%)	223,611 (11.4%)	29,423 (1.5%)	52,961 (2.7%)	1962 (.10%)	1,943,851
	1,536,677	103,526	224,401	29,698	53,005	1964	1,949,271

$\chi^2(5) = 6446.64, p < .001$

Red Text = actual number/percent of incarcerated people by race

Yellow Text = number/percent of the Nebraskan population by race

Blue Text = number of incarcerated people of each race you would expect to see if incarceration rates were in line with the census stats

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ENDNOTES

- 1 John Gramlich, *America's incarceration rate falls to lowest level since 1995*, PEW RES. CTR. (August 16, 2021), <https://www.pewresearch.org/fact-tank/2021/08/16/americas-incarceration-rate-lowest-since-1995/>.
- 2 *Nebraska Criminal Justice Reinvestment Working Group: Justice Reinvestment Initiative Presentation #1*, CRIME & JUST. INST. 4–5 (Aug. 10, 2021), https://www.aclunebbraska.org/sites/default/files/field_documents/08-10-21-mtg-pp.pdf [hereinafter *Presentation #1*].
- 3 *Id.* at 11–12.
- 4 Rod Boshart, *Pandemic Bends Curve on Iowa's Prison Population*, THE GAZETTE (Aug. 25, 2021, 6:00 AM), <https://www.thegazette.com/state-government/pandemic-bends-curve-on-iowas-prison-population/>.
- 5 NEB. DEP'T CORR. SERVS., NDCS QUARTERLY POPULATION SUMMARY: JULY – SEPTEMBER 2021 (2021), https://www.corrections.nebraska.gov/sites/default/files/wysiwyg/quarterly_data_sheet_cy2021_q3.pdf [hereinafter *POPULATION SUMMARY*].
- 6 *Id.*
- 7 NEB. DEP'T CORR. SERVS., NDCS CAPACITY AND AVERAGE DAILY POPULATION – FY1982-FY2030 (YTD), https://www.corrections.nebraska.gov/sites/default/files/ndcsdailypopulation_0.jpg [hereinafter *NDCS CAPACITY*].
- 8 Todd Cooper, *Douglas County Courthouse Officials Seek to Reduce COVID-19 Risk After Mistrial*, OMAHA WORLD-HERALD (July 24, 2020), https://omaha.com/news/local/crime-and-courts/douglas-county-courthouse-officials-seek-to-reduce-covid-19-risk-after-mistrial/article_40e983e2-0ee9-56cc-a2b9-df6f745c5161.html.
- 9 Todd Cooper, *Some Suggest Nebraska Judges and Attorneys Should Get COVID Vaccine to Speed Justice*, OMAHA WORLD-HERALD (Feb. 22, 2021), https://omaha.com/news/local/crime-and-courts/some-suggest-nebraska-judges-and-attorneys-should-get-covid-vaccine-to-speed-justice/article_76e95c62-575b-11eb-b4b6-834810fed2ee.html#tracking-source=article-related-bottom.
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