

Racial Impact Statements for Nebraska

A Roadmap and Examples

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Overview

Recent research from the University of Nebraska-Omaha has found that racial minorities in Nebraska continue to be overrepresented in arrests and incarcerations.¹ The study shows that Black Nebraskans make up only five percent of the population, but account for 19 percent of arrests and more than 25 percent of the prison population. While the sources of these disparities are complex, studies have found evidence that state-level legislative decisions can have significant—and often unforeseen—impacts on racial disparities in criminal justice.²

Racial impact statements are intended to provide lawmakers with information about how proposed laws may disproportionately impact members of racial groups. Racial impact statements work similarly to financial impact statements, but rather than estimating the costs and savings associated with a proposed law, racial impact statements estimate the effect laws may have on racial disparities.³ Racial impact statements are becoming more prevalent across the country. A 2019 report by the Sentencing Project identified five states—Iowa, Connecticut, Florida, Oregon, and New Jersey—that have implemented racial impact statements and another eight states that have proposed the use of racial impact statements.⁴ The requirements for racial impact statements can be through proposed legislation, resolutions, rules, or independent action by sentencing commissions.

Drafting Racial Impact Statements

The Social Science Data Lab at Creighton University prepared drafts of racial impact statements for four bills proposed in the 2019-2020 Nebraska Legislative Session: LB 54, LB 176, LB 739, and LB 582. We developed the format for these drafts by considering several factors:

- (1) **Accessibility and readability:** Existing research on racial impact statements notes that statements must be concise and straightforward. Each of these statements are less than two pages long.
- (2) **Data availability:** The draft statements shown here use publicly available existing data from the Nebraska Crime Commission or other appropriate sources. State agencies would likely be able to provide more detailed data in a shorter time period than what we have used in these drafts.
- (3) **Time, staffing, and cost considerations:** The drafts were constructed in a way that considered the time/cost limitations of staff working for the Legislative Research Office and other state agencies. We estimate that these statements could be compiled in approximately one working day, depending on access to data.

Below, we discuss each aspect of our draft racial impact statements and considerations we made when drafting them.

¹ [UNO report shows racial disparity in arrests, prison population in Nebraska](#) – Omaha World Herald.

² Smith, Justin M. 2017. “Racial Impact Statements, Knowledge-Based Criminology, and Resisting Color Blindness.” *Race and Justice* 7(4):374-97.

³ Mauer, Mark. 2009. “Racial Impact Statements: Changing Policies to Address Disparities.” *Criminal Justice* 23(4).

⁴ Porter, Nicole. 2019. [“Racial Impact Statements.”](#) The Sentencing Project.

Racial Impact Statement

The racial impact statement should provide a concise summary of (1) whether a racial disparity related to the proposed law exists, (2) which (if any) racial group may be disproportionately impacted by the law, given the current disparity, and (3) whether the proposed law is likely to increase, decrease, eliminate, or have no effect on the given disparity.

In some cases, proposed legislation may disproportionately impact racial groups that are overrepresented in crimes, but not impact the underlying racial disparity. For example, in LB 54, we write that due to the racial disparity in weapons violations—where Black residents are overrepresented in arrests—easing concealed carry laws would likely disproportionately *decrease* the number of Black Nebraskans arrested for weapons violations. However, if arrest rates remain the same, it would not impact the racial disparity in arrests. In other words, arrests may decrease—but the disparity in who gets arrested would not. For LB 582, we used the same data to show that expanding the definition of stolen firearms would disproportionately increase the number of Black residents arrested, due to the same disparity in weapons violations arrests.

Other bills, such as LB 739, could eliminate the actual disparity, regardless of the actions of those enacting the law. Hispanic and Black inmates are overrepresented among those in the restricted housing population with a severe mental illness, so the removal of all people with mental illnesses from restrictive housing would eliminate the disparity.

Bill Summary

The bill summary in a racial impact statement should be a concise statement of what the bill proposes. As with Financial Impact Statements, this bill summary provides the interpretation of the bill that guides the Racial Impact Statement.

Prior Research

This section includes brief discussion of other peer-reviewed or policy research related to the racial impact or disparities associated with the proposed laws. The four sample racial impact statements have varying levels of prior research—which is to be expected given the diversity of proposed laws in each legislative session. For example, there is a vast literature on mandatory minimum sentences (LB 176) at the state and federal-level and how they disproportionately impact racial minorities. However, there exists no prior research on how the specific changes to concealed carry laws proposed in LB 54 might impact racial groups differently. The draft RIS for the proposed bill on restrictive housing relied heavily on a series of reports from Yale Law School and the Association of State Correctional Administrators, which are referenced in this section.

The “Prior Research” can be found by searching for academic or policy reports online. The National Criminal Justice Reference Service offers a database of peer-reviewed study abstracts for free.⁵

Data and Methods

Racial impact statements in other states vary widely in the data and methods used: from simple descriptive statistics to advanced forecasting and modeling. However, the methods are largely dependent on the data that is available from the state or other resources. We chose the following analytic strategies:

⁵ NCJRS: <https://www.ncjrs.gov/app/abstractdb/AbstractDBDetails.aspx?id=181053>

Comparing Racial Percentages of Arrests to the General Population

For LB176, LB54, and LB754, the current percentage of racial groups arrested for a crime were compared to the percentage of that group in the overall population. In the draft racial impact statements attached here, we use data from the Nebraska Crime Commission to determine the racial makeup of people arrested for a certain category of crime. Then, we compare those percentages to the most recent data on the [racial makeup of Nebraska from the U.S. Census](#).⁶ This approach was also used in the aforementioned UNO report on racial criminal justice disparities.

Comparing Racial Percentages within the Prison Population

In LB739, which pertains to laws on restrictive housing in prison, we identify racial disparities among subpopulations within the Nebraska state prison system. This bill would specifically limit people with diagnosed mental illnesses and other vulnerable populations from being placed in restrictive housing. In this case, the baseline for comparison is the percentage of racial groups in the overall prison population *and* the overall prison population with a mental illness. Therefore, we assess whether a racial disparity exists within the prison population—rather than comparing to the general population.

Limitations: Racial Measurement

One key consideration when drafting these statements is that different organizations—even those within the state—measure race in different ways. For example, the U.S. Census considers “Hispanic and/or Latino/a” an *ethnicity*, rather than a racial classification. The Nebraska Crime Commission data that we use on LB 54, LB 176, and LB 582 does not include a racial classification for Hispanic, but data from the Nebraska Department of Corrections, included in the ASCA-Yale report, does have a racial category for Hispanic. If there are differences or limitations in how data classifies race, these should be noted.

Limitations: Data Availability

Often, there is no ideal data available to assess the racial impacts of a proposed law. For example, LB 54 eases concealed carry laws to allow for guns to be transported legally in cases inside of vehicles. There is no data on the racial makeup of people charged with illegally transporting guns specifically. Instead, Nebraska Crime Commission classifies data in the broad category of “Weapons” violations. We opted to use this data—as it provides lawmakers some context on potential racial impacts.

Similarly, Nebraska does not make sentencing data publicly available. Therefore, racial impact statements that may affect sentencing policies must rely on data that is somewhat removed, such as data on arrests or incidents. For example, LB 176 focuses on eliminating mandatory minimum sentences for Class IC and ID felonies. Currently, there is no data on the racial breakdowns of people sentenced (not simply arrested or charged) for those felonies in Nebraska. Again, we resort to using broad data on arrests for “Drug Abuse Violations” from the Nebraska Crime Commission, even though Class IC and ID felonies refer to specific drug types and amounts. It is possible that more precise data within specific state agencies could be provided to the Legislative Research Office and used for more precise racial impact statements.

We include simple bar charts to aid in a quick interpretation of the data.

⁶ Some researchers restrict the baseline Census data to those ages 18 to 59, since children or senior citizens are less likely to be arrested for crimes (and juvenile arrests are categorized separately). However, this data is not readily available from the Census website and would require extra time to download and analyze. That said, this would be a simple yearly task—and the state could also draw on resources like the Nebraska State Data Center to help obtain those benchmark numbers.

Examples of Racial Impact Statements

Racial Impact Statement for LB 54

Racial Impact Statement

Adding exemptions to existing concealed carry laws that could lower the number of concealed carry arrests may have a disproportionate impact on Black Nebraskans due to their overrepresentation in weapons-related arrests. Black residents make up only 5.2 percent of the state's population, but they account for 28.9 percent of weapons arrests. Therefore, additional exemptions to the concealed carry law could disproportionately reduce the number of Black residents arrested in Nebraska. However, if the arrest trends stay the same, the racial disparity will persist.

Bill Summary

This bill changes provisions relating to carrying a concealed weapon by adding an exemption from a concealed carry violation for someone who is lawfully possessing, carrying, transporting, shipping or receiving a firearm for a lawful purpose. The proposed amendment requires that the firearm be unloaded and stored in a case or the firearm manufacturer's original packaging.

Prior Research

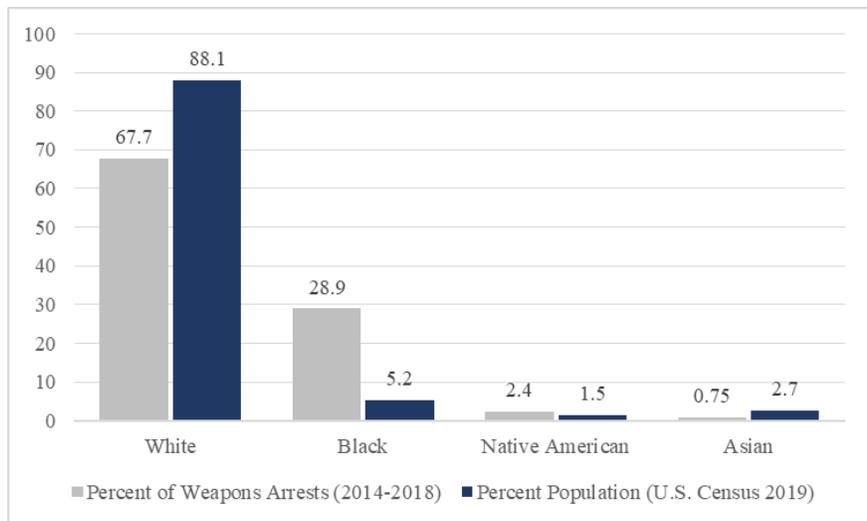
We could not locate any existing research on racial disparities related to these specific exemptions to concealed carry laws.

Data and Methods

This analysis uses arrest data from the Nebraska Crime Commission from 2013-2018⁷ on the broad category of "weapons" arrests. This is overly broad, as it does not specify who has been charged for concealed carry violations specifically. Further, it is not possible to pinpoint arrests that may have been avoided had firearms been stored or transported. Instead, we compare the racial demographics of people who have been arrested to the latest U.S. Census estimates of the state population.

Figure 1. Racial Disparities in Weapons Arrests in Nebraska

Figure 1 shows a disparity in weapons arrests in Nebraska. Although Black residents make up only 5.2 percent of the state's population, they account for 28.9 percent of weapons arrests. Therefore, attempts to add exemptions to existing concealed carry laws may reduce the number of Black Nebraskans arrested for this crime.



⁷ Nebraska Crime Commission. Arrests Data Query. https://www.nebraska.gov/crime_commission/arrest/arrest.cgi

Racial Impact Statement for LB 176

Racial Impact Statement

Reducing mandatory minimums for drug cases would have a disproportionate impact on Black and Native American Nebraskans due to their overrepresentation in drug abuse violations. Black residents comprise just 5.2 percent of the state population according to the latest U.S. Census data but make up 19.2 percent of those arrested for drug abuse violations. Likewise, Native Americans make up 1.5 percent of the state population and 2.1 percent of drug abuse violations. Changes to mandatory minimums could lower the number of Blacks and Native Americans subject to those sentences, but if arrest trends remain the same, racial disparities will still exist.

Bill Summary

This bill amends section 28-105, Revised Statutes Cumulative Supplement, 2018. It would eliminate certain mandatory minimum penalties and repeal the original section. It proposes to eliminate the five-year mandatory minimum for Class IC felonies and the three-year mandatory minimum from Class ID felonies. Both penalties would become regular minimum sentences.

Prior Research

In recent years, there has been a broad focus on eliminating mandatory minimums across the U.S. at both the federal and state level. This year, U.S. House of Representatives introduced a bill to eliminate mandatory minimums for all drug offenses at the federal level. Nearly 30 states have made state-level reforms to mandatory minimum laws in the last several years.

Policy research has identified significant racial disparities related to mandatory minimums at the federal level. One study uses federal data from arrests through sentencing and find that Black defendants receive sentences that are almost 10 percent longer than White defendants arrested for the same crimes.⁸ They find that the disparity stems from the filing of charges carrying a mandatory minimum sentence. A 2017 report by the U.S. Sentencing Commission on mandatory minimum penalties in the federal criminal justice system found that Hispanic offenders represented the largest group of offenders (40.4%) convicted of an offense carrying a mandatory minimum penalty in 2016, but were underrepresented when considering their portion of the total federal offender population (52.4%).⁹ Comparatively, Black and White offenders were overrepresented in mandatory minimum sentencing. Black offenders were the largest group (35.5%) subject to the mandatory minimum penalty at sentencing, despite making up only 20% of the total offender population.

Research on state-level mandatory minimums is rare but has also found racial disparities. A study of sentencing decisions in Pennsylvania found that Hispanic males were more likely to receive mandatory

⁸ Rehavi, M. Marit, and Sonja B. Starr. 2014. "Racial Disparity in Federal Criminal Sentences." *Journal of Political Economy* 122(6):1320–54.

⁹ United States Sentencing Commission. 2017. *An Overview of Mandatory Minimum Penalties in the Federal Criminal Justice System*. Washington, DC.

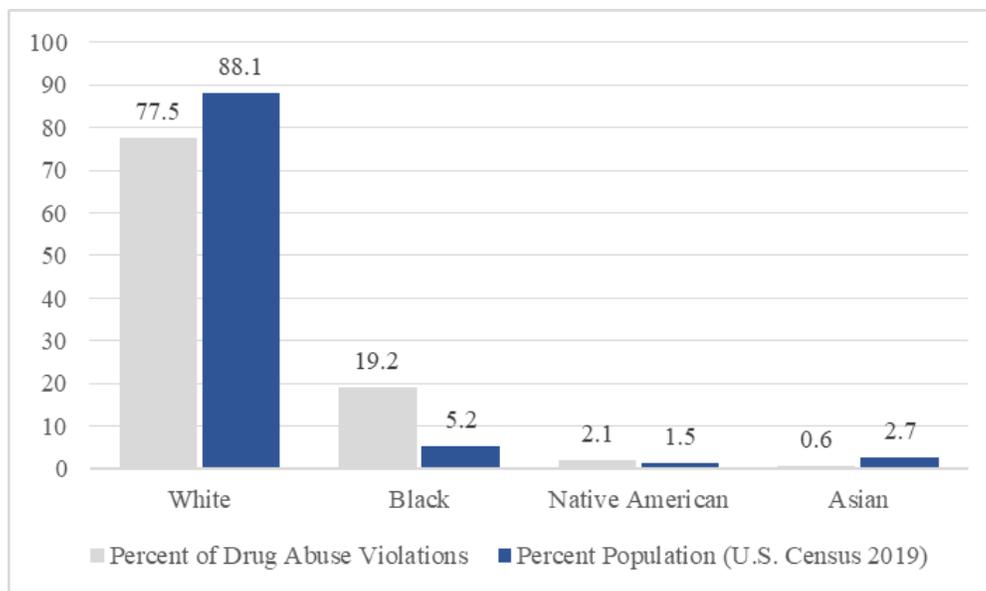
minimums and that Black-White differences in mandatory application increase in counties with a larger percent of Black residents.¹⁰

Data and Methods

The lack of available data on sentencing from the Department of Correctional Services makes it difficult to determine the racial impact of this proposed law. For example, publicly available arrest data does not separate Class IC and Class ID felonies and instead relies on broad categories of “Drug Abuse Violations.” Drug violations—such as possession of illegal substances—can vary in felony categorization based on the type and amount of drugs involved. Further, arrest data does not reflect the sentence lengths of people who were arrested.

Figure 1 shows that Black residents are overrepresented in “drug abuse violations” arrests: Black residents comprise just 5.2 percent of the overall population according to the latest Census data but make up 19.2 percent of those arrested for drug abuse violations. Native Americans are also slightly overrepresented. Therefore, reducing mandatory minimums for drug cases is likely to impact Black and Native American Nebraskans who disproportionately face those sentences.

Figure 1. Racial Disparities in Drug Abuse Violations in Nebraska



¹⁰ Ulmer, Jeffery T., Megan C. Kurlychek, and John H. Kramer. 2007. “Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences.” *Journal of Research in Crime and Delinquency* 44, no. 4 (November 2007): 427–58. <https://doi.org/10.1177/0022427807305853>

Racial Impact Statement for LB 739

Racial Impact Statement

Based on data from 2019, Hispanic and Black inmates with mental illness are overrepresented in restrictive housing compared to their prevalence in the overall prison population. Therefore, LB739 would eliminate that racial disparity by preventing those with a diagnosed “serious mental illness” from being placed in restrictive housing. There are no racial data regarding juveniles or pregnant women in restrictive housing, which the bill would also restrict.

Bill Summary

This bill would change procedures and requirements for use of restrictive housing of inmates. Under the proposed law, no inmate who is a member of a vulnerable population would be placed in restrictive housing. The bill defines “vulnerable population” as an inmate who is eighteen years of age or younger, pregnant, or diagnosed with a serious mental illness, a developmental disability, or a traumatic brain injury. The bill would also provide procedures and requirements for decisions regarding placement in restrictive housing, and it would allow for appeals of such decisions to the courts under the Administrative Procedure Act.

Prior Research

The Association of State Correctional Administrators and the Liman Center at Yale Law School have collected data and published several reports related to racial disparities in the use of restrictive housing.¹¹ ¹² They find persistence racial disparities across the country in the use of restrictive housing. Further, a report funded by the National Institute of Justice in 2018 noted “significant racial disparities” in both the use of restrictive housing and the length of time spent in restrictive housing.¹³

Data and Methods for Racial Impact Analysis

The data for this statement comes primarily from the Nebraska’s response to the ASCA-Liman Restrictive Housing survey in 2018 and 2019. This data provides detailed breakdowns of restrictive housing population based on race, juvenile status, serious mental illness, and pregnancy. The state of Nebraska also publishes a “Restrictive Housing Annual Report”, which estimates the average daily population in restrictive housing—rather than a one-time snapshot, which is what is provided in the ASCA-Liman data.

Based on the ASCA-Liman data from 2018 and 2019, Nebraska did not have any juveniles in restrictive housing at the time of the survey. However, the Restrictive Housing Annual Report did note the average daily population of juveniles in restrictive housing was 4.30 in 2019 and 2.69 in 2018.¹⁴ These data are

¹¹ Association of State Correctional Administrators and the Liman Center at Yale Law School. 2018. [“Reforming Restrictive Housing: The 2018 ASCA-Liman Nationwide Survey of Time-in-Cell.”](#)

¹² Association of State Correctional Administrators and the Liman Center at Yale Law School. 2019. [“Time-in-Cell: A Snapshot of Restrictive Housing.”](#)

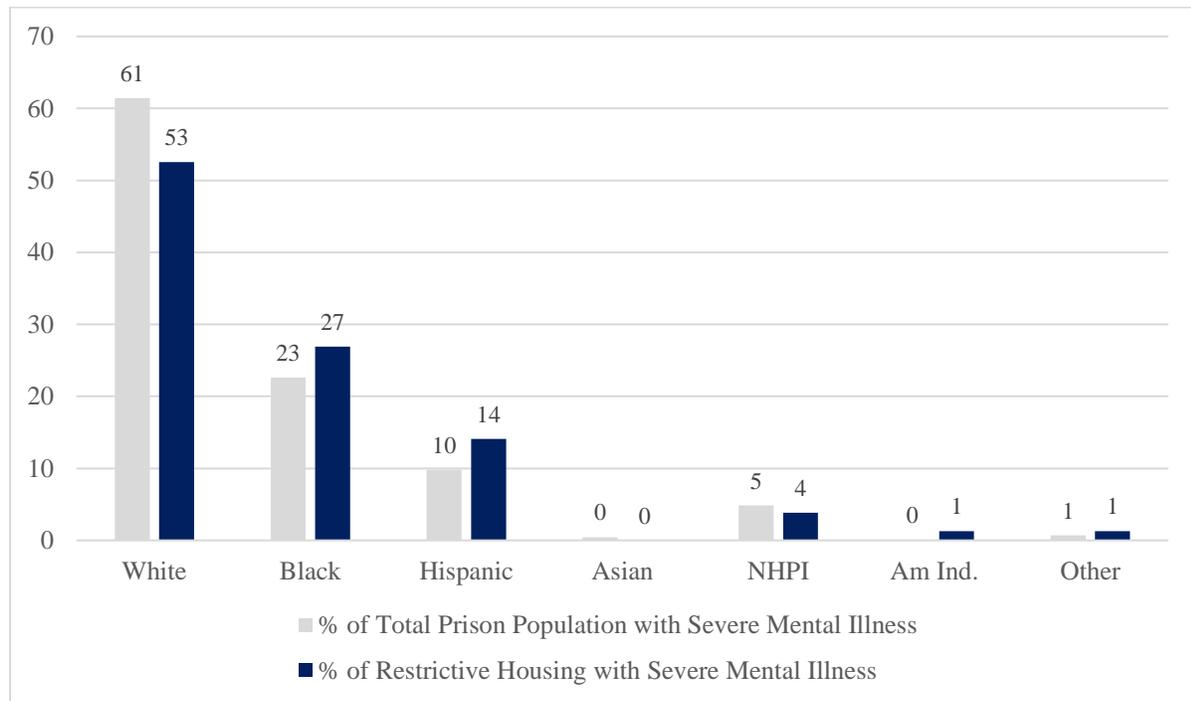
¹³ Tasca, Melinda and Jillian Turanovic. 2018. [“Examining Race and Gender Disparities in Restrictive Housing Placements.”](#) National Institute of Justice Project Summary, Washington, D.C.

¹⁴ Nebraska Department of Correctional Services. 2019. [“2019 Restrictive Housing Annual Report.”](#)

not broken down by race to determine racial impact and the small numbers would make it difficult to identify trends. Likewise, the ASCA-Liman reports found that Nebraska reported no pregnant inmates in restrictive housing in 2018 and 2019.

The ASCA data from 2019 provides detailed data on race and severe mental illness. Figure 1 compares the racial demographics of the total prison population with severe mental illness and the restrictive housing population with severe mental illness. This graph shows that Black, Hispanic, and Native American population are overrepresented in restrictive housing with mental illness, compared to their percentages in the total population with mental illness. For example, while Hispanics make up only 10 percent of the population with a severe mental illness, they comprise 14 percent of those in restrictive housing with a mental illness. Black residents comprise 23 percent of the total prison population with a severe mental illness, but 27 percent of restrictive housing residents with a mental illness.

Figure 1. Racial Demographics of Prison Population with Mental Illness and Restrictive Housing



Racial Impact Statement for LB 582

Racial Impact Statement

Changing the requirements for stolen firearms violations could disproportionately increase the number of Black residents arrested if existing racial disparities in weapons-related arrests persist. Black residents make up only 5.2 percent of the state’s population, but account for 28.9 percent of weapons-related arrests whereas White residents make up 88.1 percent of the population but account for 67.7 percent of arrests.

Bill Summary

“This bill is designed to protect the property rights of gun owners by ensuring that the possession or resale of stolen firearms can be more readily punished under the law. Current law requires a person to have actual knowledge or belief that a gun is stolen in order to be convicted of a crime relating to receiving a stolen firearm. This bill would make it possible to obtain a conviction if the person who gets the stolen firearm should have known, or had reasonable cause to believe, that the gun was stolen.”¹⁵

Prior Research

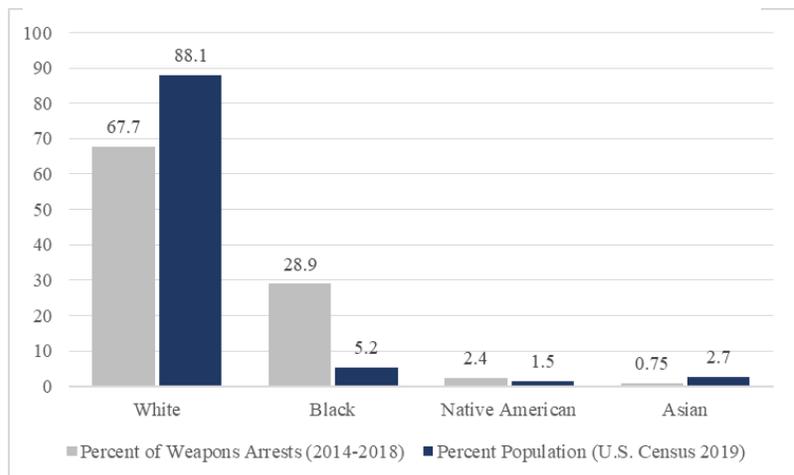
We could not locate existing research on how expanding laws on stolen firearms would differentially impact racial groups.

Data and Methods

This analysis uses arrest data from the Nebraska Crime Commission from 2013-2018¹⁶ on the broad category of “weapons” arrests. This is overly broad, as it does not specify who has been charged for being in possession of a stolen firearm, specifically. Below, we compare the racial demographics of Nebraskans who have been arrested for Weapons crimes to the latest U.S. Census estimates of the state population.

Figure 1 shows a disparity in weapons arrests. Black residents make up 28.9 percent of those arrested for weapons violations, but just 5.2 percent of the overall population. There is a less pronounced disparity among Native Americans—who make up 2.4 percent of weapons arrests and just 1.5 percent of the state population. If the proposed bill increased the number of people charged with weapons violations and the arrest disparity remained, this law would have a disproportionate impact on Black residents.

Figure 1. Racial Disparities in Weapons Arrests in Nebraska



¹⁵ [Statement of Intent filed with LB 582.](#)

¹⁶ Nebraska Crime Commission. Arrests Data Query. https://www.nebraska.gov/crime_commission/arrest/arrest.cgi

About the Social Science Data Lab at Creighton University

The Social Science Data Lab at Creighton University is a group of faculty members who specialize in research topics and methods relevant to pressing social issues. The lab's aim is to develop connections with local community members and organizations to conduct research that has a positive impact on our city and state. The SSDL was launched in the summer of 2020 with the publication of its first sponsored report in collaboration with Family Housing Advisory Services, [*Understanding Evictions in Omaha*](#).



More information on the SSDL can be found on www.socialsciencedatalab.com.

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