



Equality Before the Law: Race and Ethnicity in Nebraska's Juvenile Justice System

All youth involved in the juvenile justice system deserve equal access to appropriate treatment in order to become healthy, law-abiding adults. Responding to problematic behaviors in an age-appropriate way is important to ensure all youth have the best opportunities to succeed. However, both in Nebraska and nationally, the data show disparate treatment based on race and ethnicity occurs throughout our juvenile justice system, with youth of color experiencing far different outcomes than their white peers for similar infractions.

This widespread racial disparity is referred to as disproportionate minority contact (DMC). DMC describes the over-representation of youth of color at every point in the juvenile justice system. Teenagers of all races and ethnicities self-report nearly identical levels of criminal behavior,¹ yet youth of color are more likely to be arrested and receive harsher treatment or punishments than their white peers. These inequitable outcomes can exacerbate disadvantages youth of color may face and create obstacles to healthy development, because research shows that youth who interact with the juvenile justice system are more likely to have future interactions with the criminal justice system as adults. Furthermore, a criminal conviction as a teenager can affect an individual's ability to secure steady employment as an adult and reach financial security.²

A major contributing factor to DMC is the front door to the juvenile justice system. Students of color are more likely than their white peers to arrive in the court through what is known as the "school-to-prison pipeline": police involvement in minor infractions of school rules, leading to arrests rather than punishments by school administrators. During the 2013-2014 school year, 16% of students in the United States were black, but 31% of school-related arrests were of black students. In comparison, 51% of students were white but only 39% of students arrested at school were white.³ Research shows that students of all races and ethnicities engage in classroom misbehavior at similar rates, but students of color are more likely to be disciplined at school than white students.⁴ Additionally, students of color are more likely than white students to be disciplined for subjective reasons such as "disrespect" or "perceived threat" but less likely to be disciplined for more objective reasons, such as possession of contraband.⁵

1. Terrence P. Thornberry and Marvin D. Krohn, "The Self-Reporting Method for Measuring Delinquency and Crime," *Criminal Justice*, 4(1), 33-83.

2. "Black Lives Matter: Eliminating Racial Inequity in the Criminal Justice System," *The Sentencing Project*, 2015.

3. "Data Snapshot: School Discipline," US Department of Education Office for Civil Rights, March 2014, <http://ocrdata.ed.gov/downloads/crdc-school-discipline-snapshot.pdf>.

4. John M. Wallace, Jr., Sara Goodkind, Cynthia M. Wallace, and Jerald G. Bachman, "Racial, Ethnic, and Gender Differences in School Discipline among U.S. High School Students: 1991-2005," 2009, *Negro Educ Rev.* <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2678799/>.

5. *Id.*

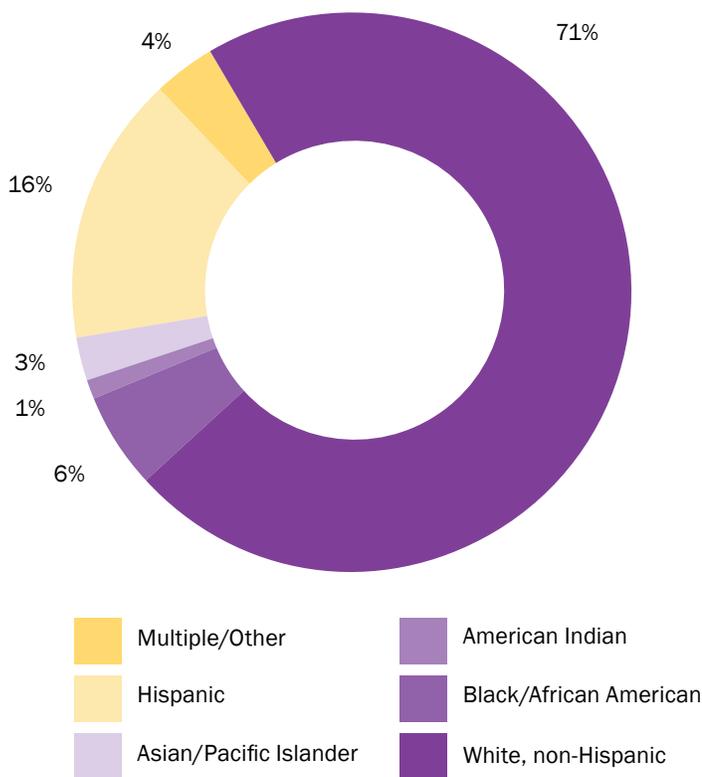
The school-to-prison pipeline increases youth contact with law enforcement, disrupts education by removing students from the classroom during instructional time, and leads to more students of color referred to the juvenile justice system.⁶ Unfortunately, research shows that discipline practices that include removing students from the classroom are associated with lower academic performance and higher dropout rates among the general student body: removing and arresting students does not improve classroom performance overall.⁷

Once a youth passes through the courthouse door, inequities in outcomes persist. Though teenagers of all races self-report criminal activity at similar rates when surveyed, adults involved in the juvenile justice system may be more likely to view youth of color’s behavior as worse than that of their white peers, or monitor them more closely. This tendency is commonly referred to as implicit bias and can contribute to higher rates of arrest, re-arrest, and disparities in sentencing for youth of color.⁸

What Do the Numbers Show?

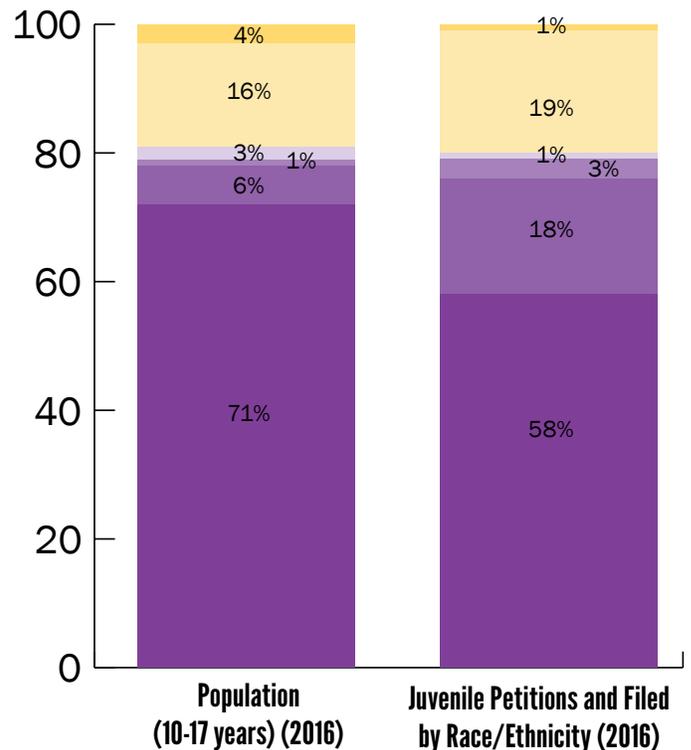
Population

Total Youth Population (10-17 years) (2016)⁹



Charges in Juvenile Court (2016)

Juvenile Court Cases (2016)^{10,11}



6. Libby Nelson & Dara Lind, “The school to prison pipeline, explained,” Justice Policy Institute, <http://www.justicepolicy.org/news/8775>.

7. “Rethinking Discipline,” School Climate and Discipline, January 4, 2017, <https://www2.ed.gov/policy/gen/guid/school-discipline/index.html#suspension-101>

8. Mark Soler, “Reducing Racial and Ethnic Disparities in the Juvenile Justice System,” National Center for State Courts, 2014, http://www.ncsc.org/~media/Microsites/Files/Future%20Trends%202014/Reducing%20Racial%20and%20Ethnic%20Disparities_Soler.ashx.

9. U.S. Census Bureau, 2016 Vintage Population Estimates by Age, Gender, and Race/Ethnicity.

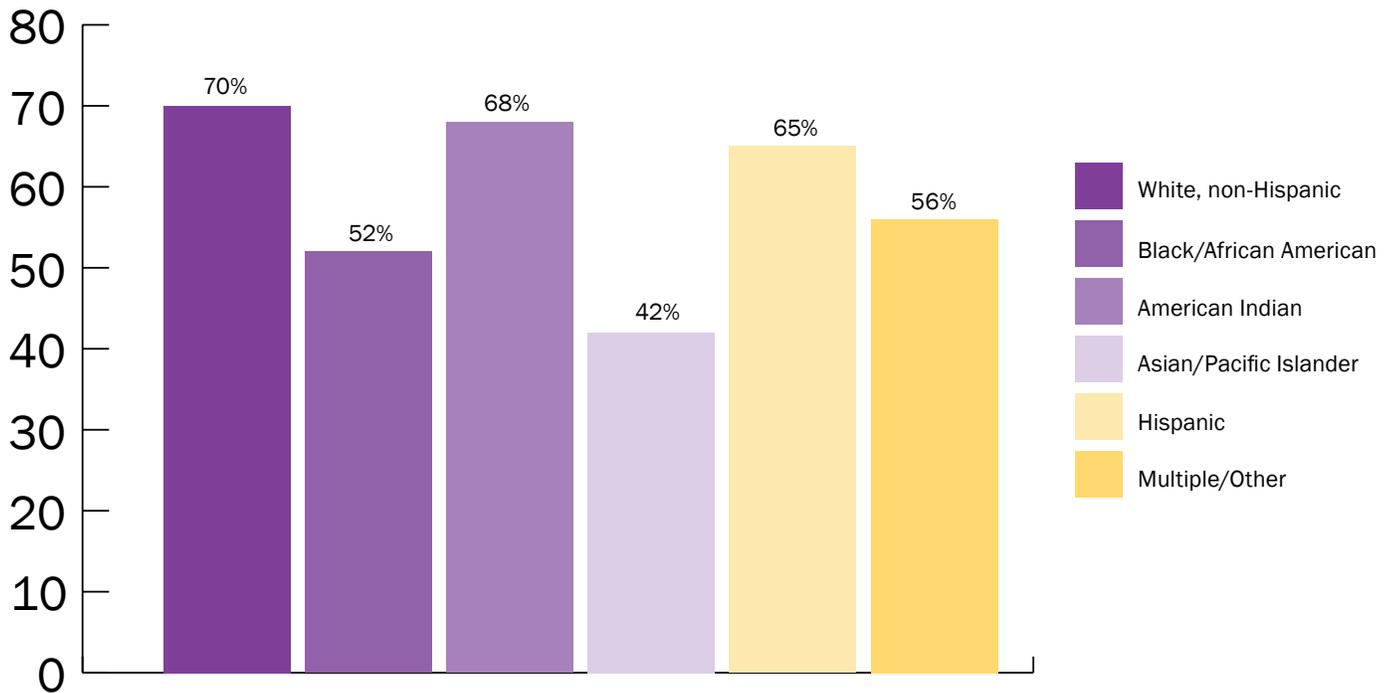
10. *Id.*

11. State of Nebraska Judicial Branch, Administrative Office of the Courts & Probation, Nebraska Juvenile Justice System Statistical Annual Report 2016, <https://supremecourt.nebraska.gov/sites/default/files/2016-juvenile-justice-system-statistical-annual-report-viewing.pdf>.

Most of the following data points presented are drawn from this report, which is gathered from the statewide electronic JUSTICE system. Individual court clerks across the state input information from case files, which is then aggregated yearly by the AOC.

Law enforcement, including county attorneys, control the front door of the juvenile court system by bringing charges and cases against youth. Once a charge is filed in juvenile court, the juvenile court judge can either dismiss or “admit” it (find it true and take jurisdiction over the youth). While black youth comprise only 6% of Nebraska’s youth population, 18% of all cases brought to juvenile court in 2016 involved black youth.¹² However, while cases involving youth of color were brought to juvenile court at a disproportionate rate, a higher percentage of these cases were dismissed by the courts.

Juvenile Petitions and Adjudications Admitted by Race/Ethnicity (2016)¹³



Disposition

Once a juvenile court case is admitted, the judge has jurisdiction over the youth and a vast array of options for how to respond. Youth in juvenile court do not receive straight sentences, but rather are exposed to a variety of possible outcomes based on the recommendations of probation officers, treatment goals, and the court’s perception of the youth’s individual rehabilitative needs. This means that a juvenile court adjudication can result in months or years on probation, time spent in a jail-like detention facility, court-ordered therapeutic or psychiatric treatment or medication, or even commitment to a group home or one of the state-run Youth Rehabilitation and Treatment Centers.

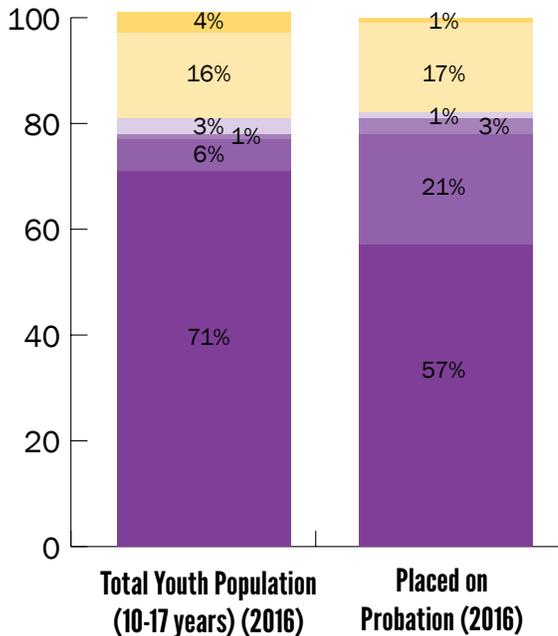
Probation

Being placed on probation is the most common outcome of juvenile court involvement. In nearly every juvenile court case in Nebraska, a probation officer is assigned to make recommendations for treatment and provide supervisory oversight for adjudicated youth. As a percentage of Nebraska’s total youth population, youth of color are more likely to be placed on probation than white youth.

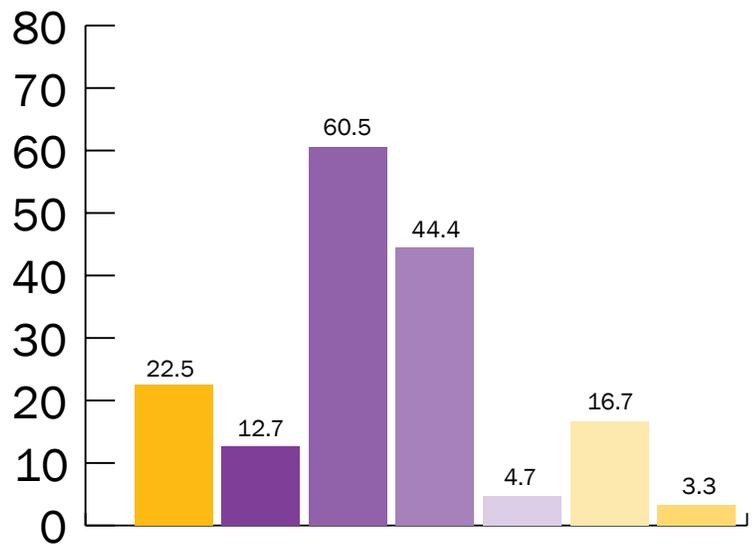
12. State of Nebraska Judicial Branch, Administrative Office of the Courts & Probation, Nebraska Juvenile Justice System Statistical Annual Report 2016, <https://supremecourt.nebraska.gov/sites/default/files/2016-juvenile-justice-system-statistical-annual-report-viewing.pdf>

13. Id.

Youth Placed on Probation (2016)^{14,15}



Youth Placed on Probation by Race/Ethnicity [Rate/1,000] (2016)^{16,17}



Out-of-Home Placement

Where possible, youth on probation should receive services and supervision in their own homes and communities. Spending time in any out-of-home placement has a significant impact on youth and where they will end up in the future; youth who remain at home with their families and other community support networks have lower rates of recidivism and are more likely to develop into healthy and productive adults.¹⁸ Removing youth from their support networks interrupts normal development and can have a variety of negative impacts as they transition into adulthood. Of particular concern is the use of solitary confinement, which can permanently damage developing brains, increases suicide rates, and is counterproductive to rehabilitative goals.¹⁹ Because of the long-term ramifications of removing youth from their homes, removal should only occur when an individual presents a danger to themselves or their communities and should include age-appropriate and necessary treatment.

All too often, however, Nebraska's youth have been removed to a variety of placement types, ranging from detention facilities, state-licensed group or foster homes, residential treatment centers, youth rehabilitation and treatment centers, shelter care facilities, to relative or kinship foster placement.²⁰ Already placed on probation at a rate disproportionate to their share of the total Nebraska youth population, Black and American Indian youth in particular are even more likely to be removed from their family home.

14. U.S. Census Bureau, 2016 Vintage Population Estimates by Age, Gender, and Race/Ethnicity.

15. State of Nebraska Judicial Branch, Administrative Office of the Courts & Probation, Nebraska Juvenile Justice System Statistical Annual Report 2016.

16. U.S. Census Bureau, 2016 Vintage Population Estimates by Age, Gender, and Race/Ethnicity.

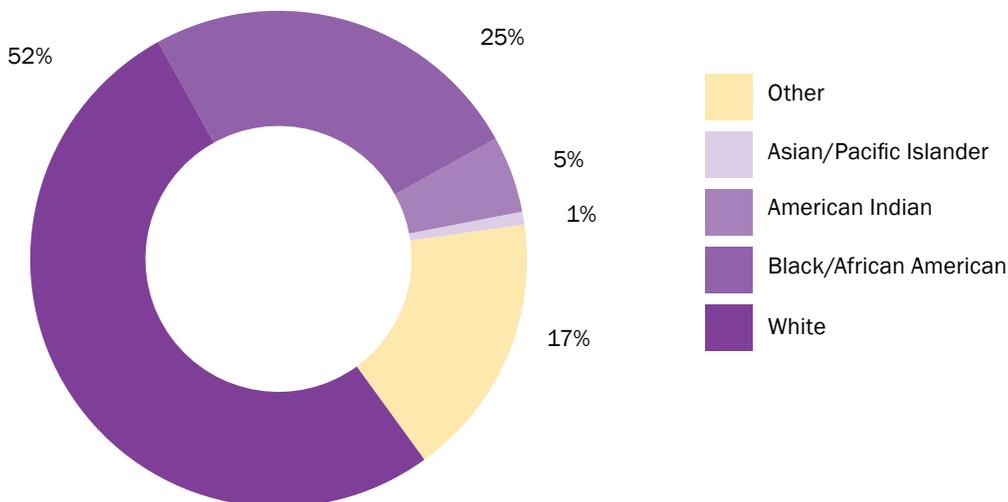
17. State of Nebraska Judicial Branch, Administrative Office of the Courts & Probation, Nebraska Juvenile Justice System Statistical Annual Report 2016.

18. "Stemming the Rising Tide: Racial & Ethnic Disparities in Youth Incarceration & Strategies for Change," The Burns Institute.

19. "Juvenile Solitary Confinement in Nebraska," ACLU of Nebraska, January 2016, <https://www.aclunebraska.org/en/publications/growing-locked-down>.

20. State of Nebraska Judicial Branch, Juvenile Services Division, Fiscal Year 2015-2016 Detailed Analysis.

Out-of-Home Placements of Youth Served Within the Juvenile Justice System (SFY 2015-2016)^{21,22}

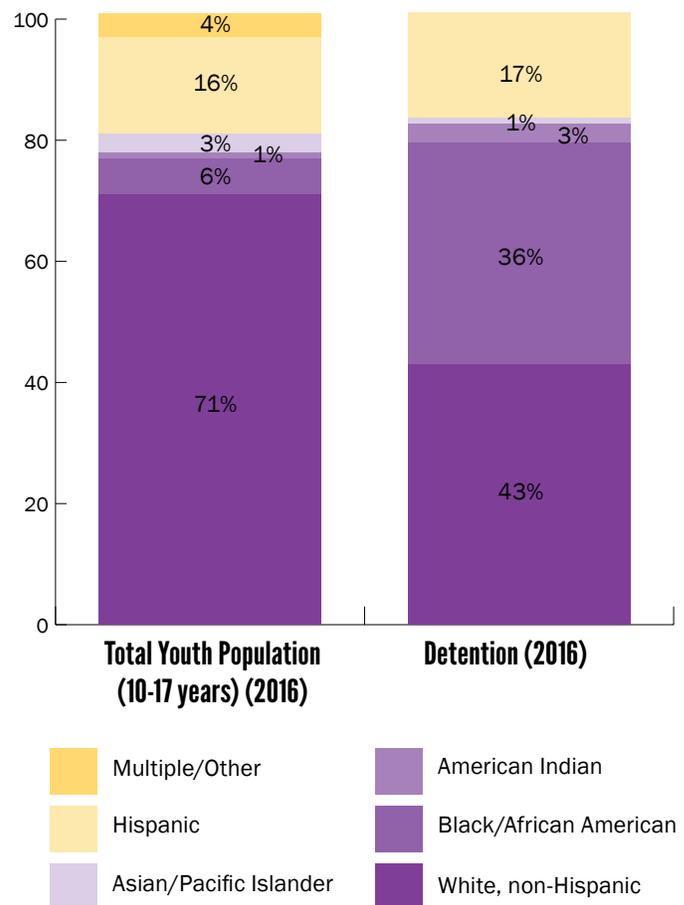


Detention

“Detention” in the juvenile court system means temporary confinement in a secure, jail-like facility; it is not meant to be used as a sentence. Detention should be used as a last resort, because the documented effects of incarceration on teenage development are tragic. An individual who spends time in detention as a teenager is more likely to be arrested and imprisoned as an adult. Additionally, detention can have lasting psychological and social impacts, including diminished educational outcomes from school interruption, stigma, and social isolation.²³ Youth who have been in detention are less likely to finish high school and more likely to be unemployed as adults. Nebraska statute forbids the use of detention without a judicial determination that the youth presents an immediate danger to self, others, or risk of flight from the jurisdiction.²⁴ However, implicit bias may play a role in determinations of whether or not an individual youth can be safely maintained in the home and community.

While black youth are only 6% of the total youth population in Nebraska, they made up 36% of Nebraska youth in detention in 2016. In contrast, white youth were once again underrepresented at 43% of the detention population, compared to 71% of the overall youth population.

Youth Admitted to Detention (2016)^{25,26}



21. State of Nebraska Judicial Branch, Juvenile Services Division, Fiscal Year 2015-2016 Detailed Analysis.

22. Juvenile Services Division treats Hispanic as an ethnicity. It is impossible to break number of Hispanic youth served apart from the rest of the racial breakdowns. During the 2015-2016 Fiscal Year, 19.6% of youth served within the juvenile justice system and placed in out-of-home care were of Hispanic origin.

23. “Disproportionate Minority Contact (DMC),” Coalition for Juvenile Justice, <http://www.juvjustice.org/sites/default/files/ckfinder/files/DMC%20factsheet%20draft%20-%20Final%20for%20Print.pdf>.

24. “Detained: Nebraska’s Problem with Juvenile Incarceration,” Voices for Children in Nebraska, July 2016, <http://voicesforchildren.com/wp-content/uploads/2016/06/Detention-Issue-Brief-7-2016.pdf>.

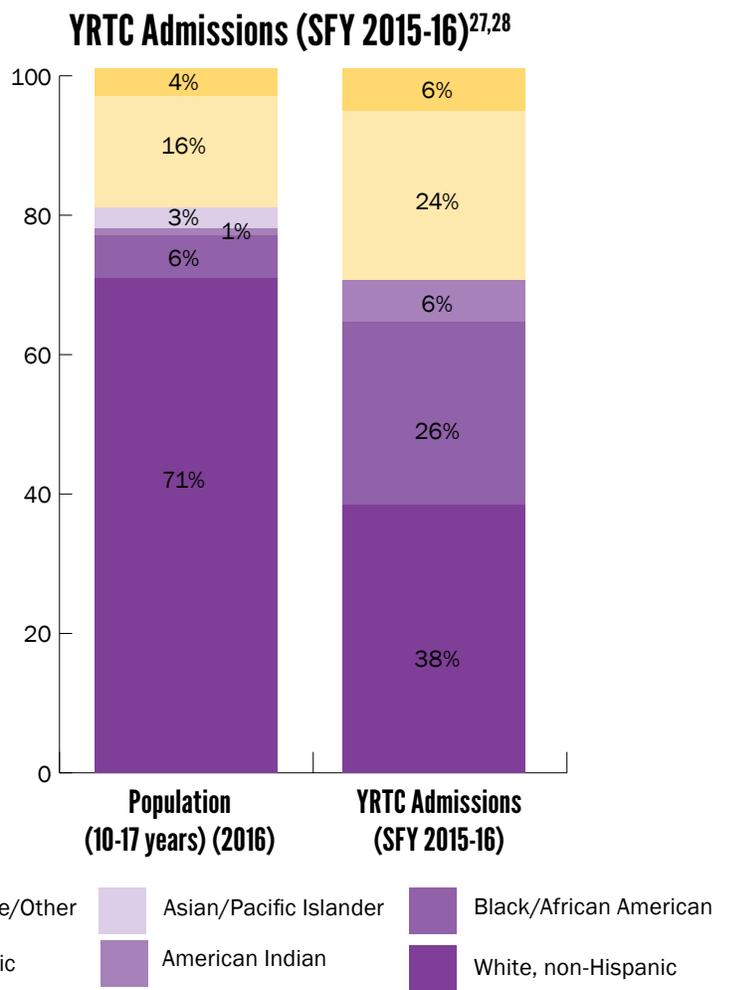
25. U.S. Census Bureau, 2016 Vintage Population Estimates by Age, Gender, and Race/Ethnicity.

26. Nebraska Juvenile Detention Facilities, 2016 Data.

Youth Rehabilitation and Treatment Centers

While Nebraska’s youth detention facilities are used for short-term stays, the Youth Rehabilitation and Treatment Centers (YRTC) are long-term, prison campus-like placements that are used when other placement options have been exhausted. Nebraska’s Youth Rehabilitation and Treatment Centers represent the placement of last resort.

In both YRTCs in Nebraska—Kearney and Geneva—all racial groups are overrepresented by comparison to their share of the total state youth population, except white youth, who are underrepresented. Similar to other points in the system, Black youth are most significantly overrepresented, at 26% of the youth committed to YRTC in 2016.



Conclusion

Addressing racial and ethnic disparities in our justice system is not easy. Public sentiment is easily focused on either on the individual youth behavior (i.e. the incorrect conclusion that certain youth engage in worse behaviors) or on individual bad actors (i.e. the incorrect conclusion that all outcomes are the result of certain racist people). Instead, we need to ask ourselves: what can we do to improve the system to meet all our children’s needs, not just some? If the data persistently show our system is not working for a particular population of youth, we have a societal imperative to recalculate our responses to achieve better outcomes for all.

To address Disproportionate Minority Contact in Nebraska’s juvenile justice system, we recommend:

- **Convene a statewide group to study and recommend solutions to reducing disproportionate minority contact in Nebraska’s juvenile justice system.** For too long, the data has shown disparate outcomes for youth based on race, without direct action taken to reduce their inequities. As recent reforms improve our system, some youth are being left behind. All children in our state deserve the equal protections of the law, and Nebraska stakeholders should work urgently to directly address the problem of persistent DMC. A statewide group to recommend solutions should be diverse and reflective of the communities most impacted by our juvenile justice system, dedicated to achieving equitable and just outcomes for all youth.

27. U.S. Census Bureau, 2016 Vintage Population Estimates by Age, Gender, and Race/Ethnicity.

28. DHHS, Division of Children & Family Services, Office of Juvenile Services, Youth Rehabilitation & Treatment Centers.

- Take steps to break down the school-to-prison pipeline as a front door to the juvenile justice system:** Youth of color are more likely to come through the front door of the juvenile court system, in part due to the school-to-prison pipeline. Addressing the factors that push students out of schools and into the courts would decrease the number of youth who have initial contact with the juvenile justice system and allow for more equitable treatment. Schools should reduce their reliance on police when disciplining students, instead handling discipline with school personnel whenever possible. This should include supportive discipline approaches such as trauma-informed classrooms or restorative justice, which allow teachers and students to work together to cultivate and practice social and emotional skills, helping students respond to similar situations differently in the future. Additionally, many youth who come into contact with law enforcement at school have mental or behavioral health issues.²⁹ Providing mental and behavioral health treatment within or in partnership with schools would allow teachers and administrators to better address students' behavioral needs, keeping the entire student population safe and engaged. One promising approach is the Connections program, a voluntary early-intervention behavioral health program that offers immediate therapeutic services for K-8 students in the Omaha, Millard, and Papillion-LaVista Public School. LB522 (2017) would have invested funding to bring this approach to schools and communities across the state. Finally, because students of color are more likely to be disciplined for subjective reasons, schools should limit the use of referral to law enforcement for objective reasons.
- Provide training on implicit bias for all decision-makers in the juvenile justice system:** All actors within the juvenile justice system, from police to judges and attorneys, should receive trainings on implicit bias and how to reduce the impact subconscious perceptions may have on the youth of color they serve. Trainings to address implicit biases could reduce disparities in arrest rates, decrease the number of youth of color who come into contact with the system, and reduce disproportional removals from home. Raising awareness about implicit bias should not be a one-time event; rather, adults engaged in juvenile court work should receive ongoing training and support in checking their biases and building relationships between racial, ethnic, and cultural communities.
- Continue working to ensure that the juvenile justice system provides a meaningful pathway to rehabilitation for all youth:** In recent years, policymakers and advocates have worked to address a number of issues that would make Nebraska's juvenile justice system better for all youth, including reducing detention populations, addressing solitary confinement, and limiting juvenile court system involvement for youth who have not engaged in criminal behavior. We must continue this work, ensuring every youth who walks through the courthouse doors receives an equitable and just response, regardless of race or ethnicity. By improving the system for all, communities are safer and youth are set on the path toward responsible citizenship.

29. Joe Coccoza, Karli J. Keator, Kathleen R. Skowrya, and Jacquelyn Greene, "Breaking the School to Prison Pipeline," January 2016, National Center for Mental Health and Juvenile Justice, <https://www.ncmhjj.com/wp-content/uploads/2016/09/English-Chronicle-2016-Jan.pdf>.



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