EQUALITY BEFORE THE LAW: Race and Ethnicity in Nebraska's Child Welfare System

All children in Nebraska deserve a safe and loving home, and intervention when their home environment becomes unsafe. Child welfare systems should always seek to promote the safety and well-being of the children it serves. Research consistently shows that children of color are not treated equitably within child welfare systems. Longer stays in foster care, high placement instability, institutional placements, and aging out of care without a family are more prevalent among children of color and correlated with poor long-term outcomes, including homelessness, physical and mental health issues, financial instability, physical and sexual violence, and incarceration.

Equality of opportunity for all children and those who are in the care of the state is important to the future of Nebraska, and structural inequity bears a serious financial and social cost. In this report, we discuss existing literature regarding race equity in child welfare systems and examine longitudinal data on involvement in the system by race and ethnicity in Nebraska. The data suggest that though system reform efforts have produced some positive trends in our overall population, disproportionalities for children of color, particularly American Indian and Black children, have largely persisted.

DEFINING TERMS

Race and ethnicity in the United States is a complex issue, and it is essential to clearly define the terms that this report utilizes. For the purposes of this report, we have adapted the standards that guide our primary data sources into the following categories:[1]

American Indian: A person having origins in any of the original peoples of North and South America (including Central America and Alaska) and who maintains tribal affiliation or community attachment.

Asian: A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent.

Black or African American:[2] A person having origins in any of the Black racial groups of Africa.

Hispanic: A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race.

White: A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

1. Data sources for this report include the Nebraska Department of Health and Human Services (DHHS), the Adoption and Foster Care Analysis and Reporting System (AFCARS), and the U.S. Census Bureau. We acknowledge that the listed groups are not the ideal method of classification, but have chosen to use language that offered clarity and applicability to available data. We also use the term families or children of color in this report to refer to all groups except for White, non-Hispanic individuals, with the understanding that experiences vary significantly between and within each subgroup.
2. In this report, we have chosen to use the term "Black" to refer to this definition, which we believe to be more accurate in discussing the data, particularly because there is a growing population of Nebraskans who have recently emigrated from the African continent who may not identify as "African American."

1. A Brief History of Race in Child Welfare Policy

Explicit and implicit discrimination against children of color, Black and American Indian children in particular, was prevalent at the start of the centralized child protection system in our country. In fact, it was not until the 1930s that public child welfare services began to provide services for non-White children.[7] Even so, overt discrimination continued decades later: adoption efforts often exclusively targeted White children, non-White children were needlessly removed from their families, and maltreated Black youth were often mislabeled as "delinquent" and forced from a treatment-based system to a punitive system.[8]

Public pressure grew for more equitable treatment, and the 1970s was marked by major federal legislation that began to reform the system. Congressional hearings documented a widespread and disturbing practice of removing American Indian children from their homes without due process of the law, without tribal input or presence, and oftentimes placing them into non-Indian homes.[9] The passage of the Indian Child Welfare Act (ICWA) in 1978 sought to address this long history of the systematic separation of American Indian children from their families, tribes, and culture. Stronger standards for care were instituted beginning with ICWA to protect the unique rights of American Indian children who are members of a sovereign nation, or eligible for such membership.

In 1994, the Multiethnic Placement Act (MEPA) was signed into law, explicitly requiring that any agency receiving federal funds must not delay, deny, or otherwise discriminate on the basis of race, color, or national origin in making a foster care or adoptive placement of a child.[10] The passage of MEPA also supported much-needed efforts to increase diversity among foster and adoptive families.

The passage of ICWA and MEPA represented important first steps to correct an explicitly discriminatory system at the highest levels of policy, but despite these efforts, significant inequity persists in the data. Discrimination in child welfare is only one piece of a deeper history of oppression that historical trauma research links to negative health outcomes that last for generations.[11] The cumulative effects of centuries of discrimination against communities of color are deeply embedded in systems and require continued effort.

3. Child Welfare Information Gateway, "Racial Disproportionality and Disparity in Child Welfare," U.S. Department of Health and Human Services, Children's Bureau, November 2016.
4. Dominique Apollon et al., "Moving the Race Conversation Forward: How the Media Covers Racism, and other Barriers to Productive Racial Discourse," Race Forward, January 2014.
5. Richard Rothstein, The Color of Law: A Forgotten History of How Our Government Segregated America (New York: W.W. Norton & Company Ltd., 2017).
6. Kelly Welch, "Black Criminal Stereotypes and Racial Profiling," Journal of Contemporary Criminal Justice 23, no. 3 (2007):276-288.
7. Brenda G. McGowan, "Historical Evolution of Child Welfare Services," in Child Welfare for the Twenty-first Century: A Handbook of Practices, Policies, and Programs, eds. Gerald P. Mallon and Peg McCartt Hess, (New York: Columbia University Press, 2005), 25-26.
8. Ibid., 28-29.
9. Tim Connors, "Our Children are Sacred: Why the Indian Child Welfare Act Matters," Judges Journal 50, no. 2 (2001): 36.
10. Child Welfare League of America, "The Multiethnic Placement Act: Minority Children in State Foster Care and Adoption," Briefing to the U.S. Commission on Civil Rights, September 21, 2007.
11. Nathaniel V. Mohatt et al, "Historical Trauma as Public Narrative: A Conceptual Review of How History Impacts Present-Day Health," Social Science & Medicine 106 (2014):126-136.

2. Inequity in Nebraska's Child Welfare System

Nationally, children of color are more likely to come into contact with the child welfare system and to face disparate treatment once they are in the system.[12] In the following sections, we disaggregate data from certain decision points in the state child welfare system over time. This analysis is key to better understanding how recent trends, such as an overall decline in out-of-home placement, or an increase in parental substance use, might manifest differently by race and ethnicity.

This report uses rough measures to compare interactions with the system by race and ethnicity. For maltreatment and removal, we compare system involvement with overall child population using a rate ratio (RR) to capture a rate of disproportionality.[13] Where it applies, an RR of 1.0 reflects proportionate representation, and a rate higher than 1.0 reflects overrepresentation. The remaining sections provide an overview of disparities that children of color experience within the child welfare system.

2.1 Substantiated Maltreatment [16]

In Nebraska, when the statewide hotline receives an allegation of child abuse or neglect that meets the criteria for child maltreatment or risk thereof, it is screened in for an initial assessment. During this process, a decision will be made as to whether credible evidence exists to support the fact that child abuse or neglect, as defined by state law, has occurred. These findings are referred to as substantiated maltreatment, and provides insight into the "front door" of our state child welfare system.
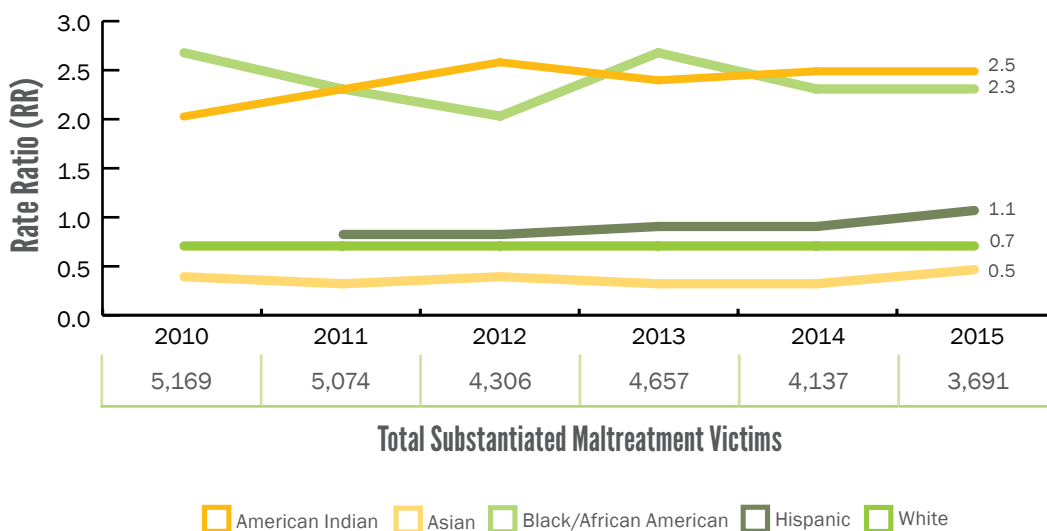
EXPLANATORY FRAMEWORKS

Across the country, inequity is inescapable for children of color, from the prenatal care they receive *in utero* to the resources that are available in their neighborhood school. Disproportionality and disparity have been at the forefront of child welfare research in recent years, and experts have largely centered on four explanatory frameworks:[14]

- Disproportionate risk and need among families of color who are more likely to experience vulnerable circumstances such as poverty

- Bias and discrimination among individual actors within child welfare systems and its supporting systems, such as law enforcement agencies or schools

- System factors that produce inequitable access to services for children of color, such as improper assessment tools or workforce issues

- Variation in geographic context that produces differences in access to resources

This existing body of research points to a number of factors from each model that may lead to an explanation. Debate and research among experts continue to reveal a complicated relationship between race and maltreatment.[15] Though the data presented in this report does not offer evidence to support one model over the other, continued discussions of strategic solutions should consider these frameworks to move forward and fulfill our promise to children in the care of our state.

Rate Ratio of Substantiated Maltreatment by Race/Ethnicity (2005-2015)

	2010	2011	2012	2013	2014	2015
Total Substantiated Maltreatment Victims	5,169	5,074	4,306	4,657	4,137	3,691

Legend: American Indian, Asian, Black/African American, Hispanic, White

12. Megan Martin and Dana Dean Connelly, "Achieving Equity," Center for the Study of Social Policy. Fred Wulczyn et al., "Within and Between State Variation in the Use of Congregate Care," Chapin Hall Center for State Child Welfare Data, June 2015.

13. Child Welfare Information Gateway, "Racial Disproportionality and Disparity in Child Welfare."

14. John Fluke et al., "Research Synthesis on Child Welfare Disproportionality and Disparities," Papers from a Research Symposium convened by the Center for the Study of Social Policy and the Annie E. Casey Foundation on behalf of the Alliance for Racial Equity in Child Welfare, September 2010.
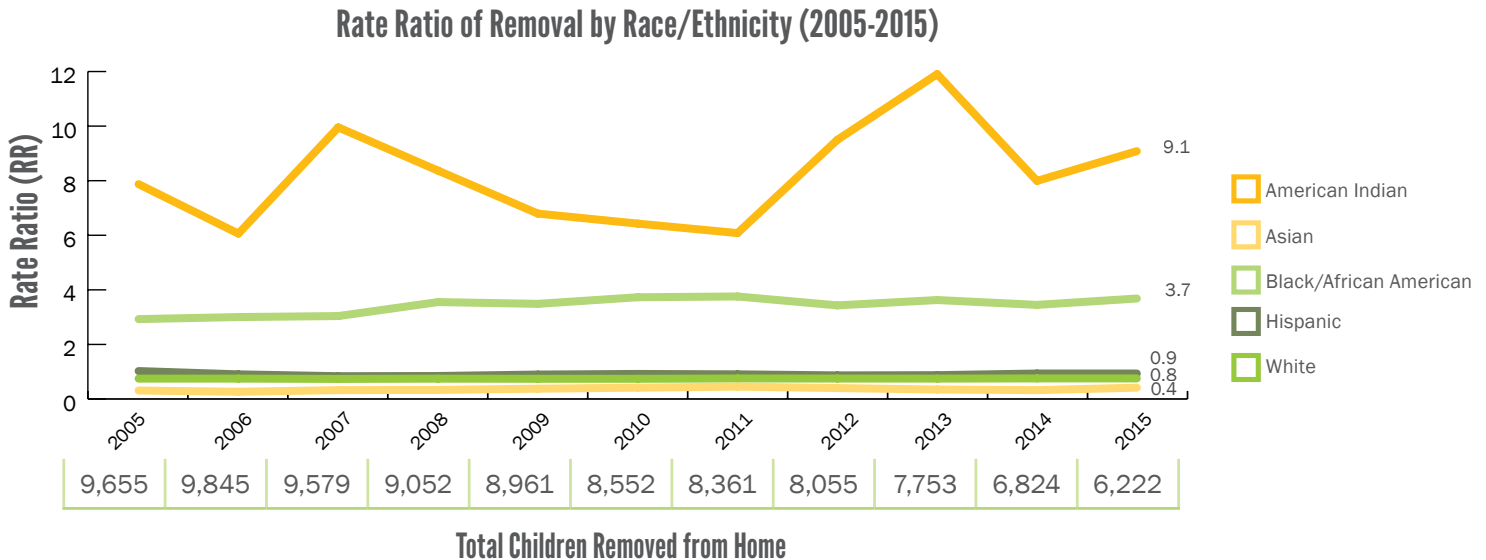
15. Andrea J. Sedlack, Karla McPherson, and Bernali Das, "Fourth National Incidence Study of Child Abuse and Neglect (NIS-4): Supplementary Analyses of Race Differences in Child Maltreatment Rates in the NIS-4," Office of Planning, Research and Evaluation and the Children's Bureau, March 2010.

16. Voices for Children analysis of data from DHHS and the U.S. Census Bureau. Rate is calculated by comparing the number of substantiated victims of maltreatment of each subgroup with their overall population under 18.

Overall, substantiated maltreatment has declined in Nebraska since 2010, but the disaggregated data show that this trend has not uniformly affected children of color. The data suggest that at the initial stage of system involvement, multiple and compounding systemic barriers for children of color are substantial. American Indian and Black children are overrepresented among maltreatment victims by a rate twice as high as their overall child population.

2.2 Removal from Home [17]

An effective child welfare system should properly weigh the trauma of separating a child from their family against the safety and risk factors that are presented. For many years, Nebraska children were removed from their homes at a significantly higher rate than the national average, at about 14 removals per 1,000 children in 2005.[18] In recent years, Nebraska has taken careful steps to safely reduce the state's overreliance on foster care by enhancing in-home services and supports. Overall rates of out-of-home placement have declined significantly since then, to eight removals per 1,000 children a decade later.[19]

Rate Ratio of Removal by Race/Ethnicity (2005-2015)

Year	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Total Children Removed from Home	9,655	9,845	9,579	9,052	8,961	8,552	8,361	8,055	7,753	6,824	6,222

Legend:
- American Indian
- Asian
- Black/African American
- Hispanic
- White

(2015 values: American Indian 9.1, Black/African American 3.7, 0.9, 0.8, 0.4)

The data show that although overall removals have decreased by nearly 3,500 in the past decade, significant differences for some racial subgroups remain, and have even steadily increased over time. Today, Black children are overrepresented in foster care by 3.7, and American Indian children by 9.1 times their rate in the general child population.

2.3 Placement Type [20]

Children do best in families whenever possible. Although the research shows that family placements offer the greatest developmental returns for children and youth, not all children in out-of-home care are placed in such environments.[21] Strong evidence also exists to support the prioritization of relative or kinship homes, where children demonstrate improved outcomes when compared to non-relative placements.[22] Both options, whether with kin or strangers, allow children to form family relationships with adults that are able to offer support and mitigate stress. Congregate placements, though sometimes necessary in an emergency or for specialized treatment, are not only detrimental to child well-being, but also extremely costly for taxpayers.[23]

Supervised independent living is an option for youth who are 16 and older and remain in care when efforts towards permanency with a family have been unsuccessful or is no longer in a child's best interest. Navigating adulthood without the support and stability of a family home can be extremely difficult, and has been linked to low educational attainment, poverty, and even criminal justice involvement in adulthood.[24]

17. Voices for Children analysis of data from AFCARS and the U.S. Census Bureau. Rate is calculated by comparing out-of-home placements of each subgroup with their overall population under 18.
18. Annie E. Casey Foundation, "Children 0 to 17 in Foster Care," Kids Count Data Center.
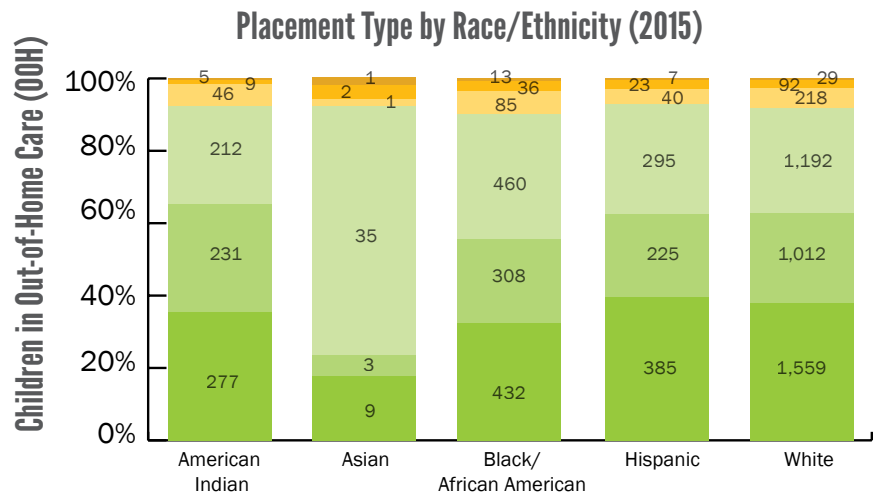19. Ibid.
20. Congregate placements include group homes and institutions that require separation from the home and a group living experience.
21. Kate Shatzkin, "Every Kid Needs a Family: Giving Children in the Child Welfare System the Best Chance for Success," Annie E. Casey Foundation, 2015.
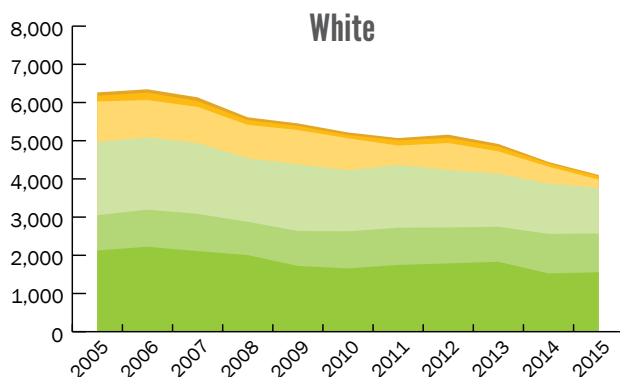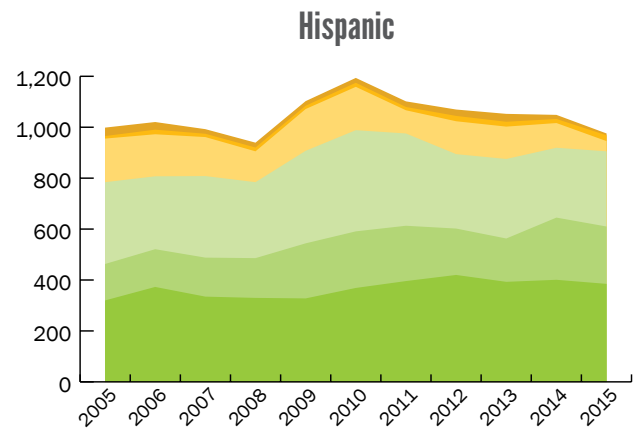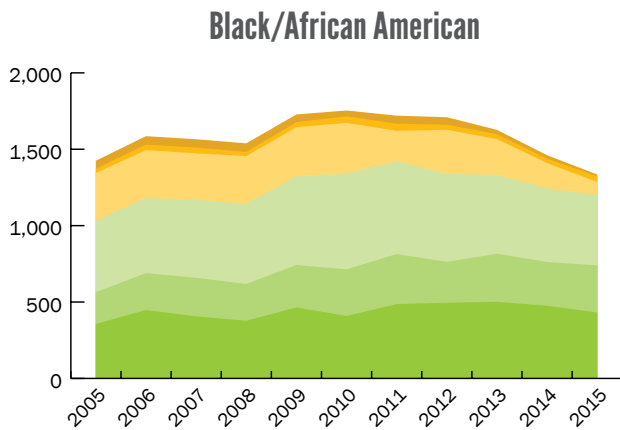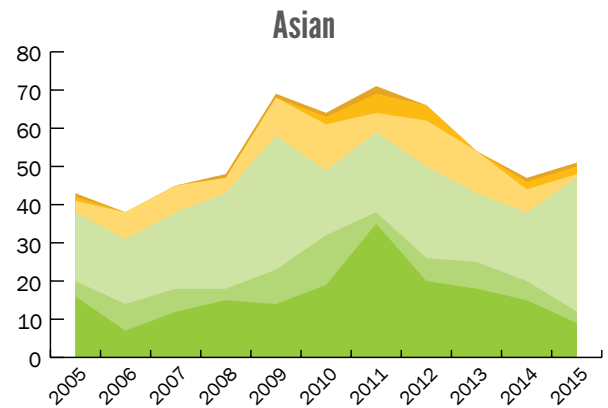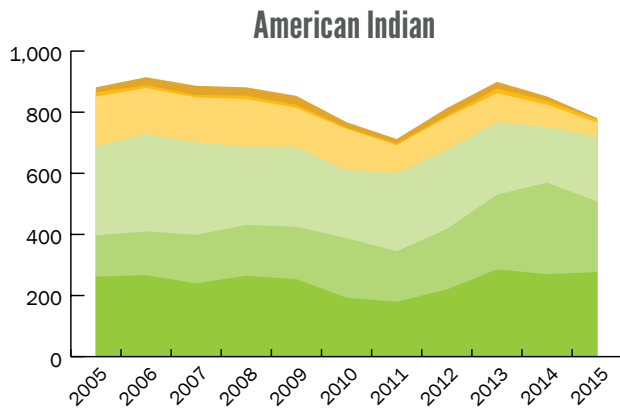22. Marc Winokur, Amy Holtan, and Deborah Valentine, "Kinship Care for the Safety, Permanency, and Well-Being of Children Removed from the Home for Maltreatment," Cochrane Database of Systematic Reviews 1 (2014).
23. Shatzkin, "Every Kid Needs a Family."

Child welfare agencies are charged with the important responsibility of protecting maltreated children, but faced with institutional environments, placement instability, or significant mental and behavioral health issues that are inadequately treated, many children cope by running from care. Children who are missing from foster care are at significant risk of experiencing serious harm, such as homelessness, sexual exploitation, substance abuse, and criminal victimization.[25]

Placement Type by Race/Ethnicity (2015)

Placement Type by Race/Ethnicity (2005-2015)

American Indian

Asian

Black/African American

Hispanic

White

Legend:
- Missing from Care
- Independent Living
- Congregate Placement
- Non-relative Home
- Relative Home Placement
- Pre-adoptive or Trial Home

24. Mark Courtney et al., "Midwest Evaluation of the Adult Functioning of Former Foster Youth: Outcomes at Age 26," Chapin Hall at the University of Chicago, 2011.
25. Ching-Hsuan Lin, "Children Who Run Away from Foster Care: Who are the Children and what are the Risk Factors?" Children and Youth Services Review 34 (2012): 807-813v.

Today, most children in out-of-home care are in a family home, and many with relatives and kin. Although the use of congregate placements has been significantly reduced in the last decade, Black and American Indian children are still overrepresented in such placements.

The number of children in supervised independent living has declined by nearly 100 since 2005. Today, Black and Hispanic youth are moderately overrepresented among children who will need enhanced supports as they transition into adulthood. Efforts to address this disparity must focus on strengthening permanency for older youth while also strengthening independent living supports and services.

Overall, the number of children missing from care in Nebraska has declined significantly in the past decade, and rates of overrepresentation among children of color along with it. Still, current data show that Black children are overrepresented among children missing from care, and are most at risk for experiencing the dangerous consequences associated with it.

DATA LIMITATIONS

This report relies on the best available historical data that were available, but several limitations in the data are worth noting in interpreting the data in this report.

Hispanic identity is distinct from other subgroups in that it is treated as an ethnicity in policy, even though many people may view it differently, or as a combination of an ethnicity and a racial background. As a result, the data presented for White children may include White, Hispanic children, among other combinations. This blurring presents significant limitations in the data, where in some instances, "underrepresentation" for Hispanic children may be masked by their inclusion in other categories.

Children who are found to be ICWA-eligible based on tribal affiliation may be distinct from children who are racially identified as American Indian. As such, the present data presented for American Indian children may not fully capture the experiences of children who have a cultural and familial connection to a tribe, but are identified within another subgroup.
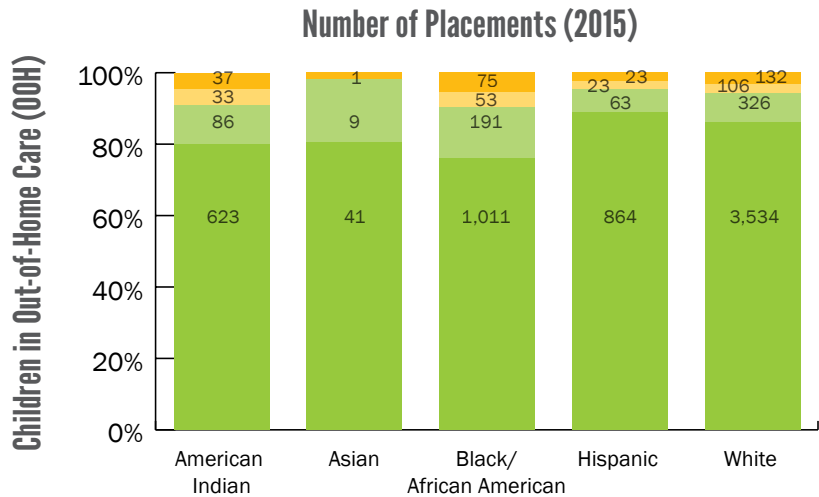
Native Hawaiian or Pacific Islander children represent a very small portion of the child population in Nebraska. An analysis of this subgroup was omitted from this report due to the small sample size.

A number of children have been categorized as "other" or "unable to determine" over the years. As early as 2010, the "unable to determine" subgroup for children in out-of-home care included over 900 children, though the numbers have significantly declined since then, to only 197 children in 2015. The use of this category may contribute to "underrepresentation" of the various subgroups in past years.
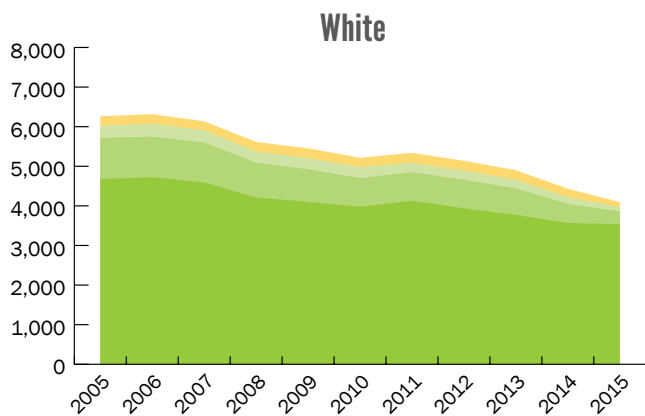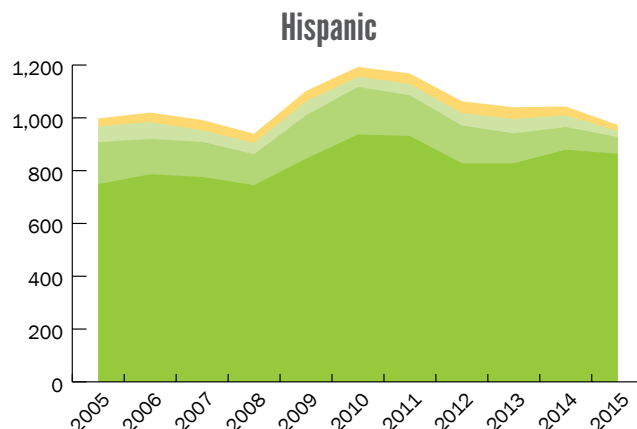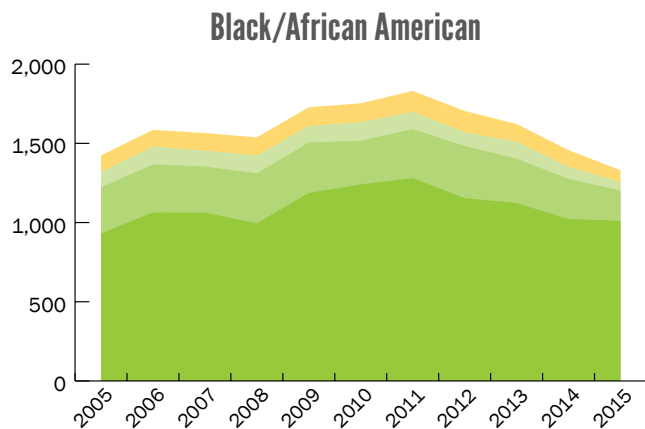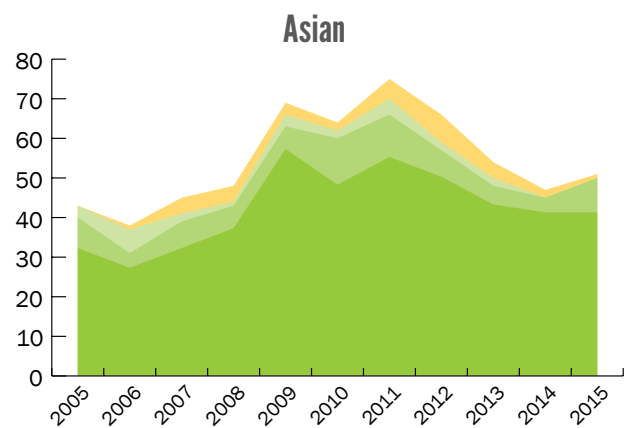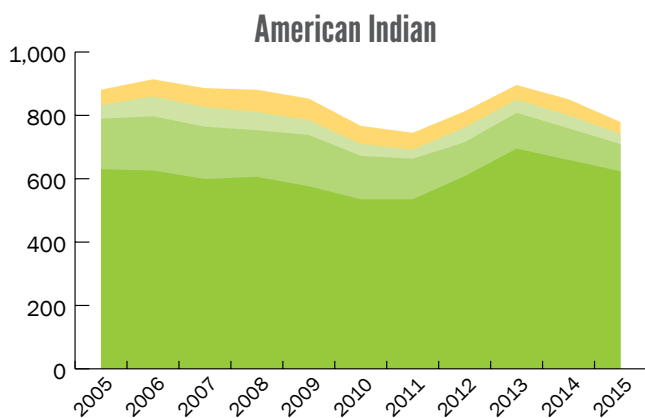
Finally, racial and ethnic categorizations in child welfare cases overwhelmingly rely on caseworkers to use their best perception of the identity of the child, and typically do not rely on self-identification. As a result, the data may be subject to shifts in caseworker education and awareness about racial and ethnic identity over time.

2.4 Placement Instability

When children are removed from their homes and placed into foster care, creating and maintaining stability in placement is crucial. With each disruption in a foster care placement comes a new environment, new relationships, and potentially a new school or neighborhood. Research links placement instability to behavioral issues,[26] and even to poor long-term educational outcomes.[27]

Number of Placements (2015)

Children in Out-of-Home Care (OOH)

	American Indian	Asian	Black/African American	Hispanic	White
10+	37	1	75	23	132
7-9	33		53	23	106
4-6	86	9	191	63	326
1-3	623	41	1,011	864	3,534

Number of Placements by Race/Ethnicity (2005-2015)

American Indian

Asian

### Black/African American

Hispanic

White

Consistently, Black and American Indian children are overrepresented among children experiencing multiple placements. In the most extreme circumstances, although Black children accounted for 21% of children in foster care and American Indian children accounted for just 13% in 2015, they accounted for 31% and 15%, respectively, of children who had experienced 10 or more placements in a single foster care episode.

26. David Rubin et al., "The Impact of Placement Stability on Behavioral Well-Being for Children in Foster Care," Pediatrics 119, no. 2 (2007).
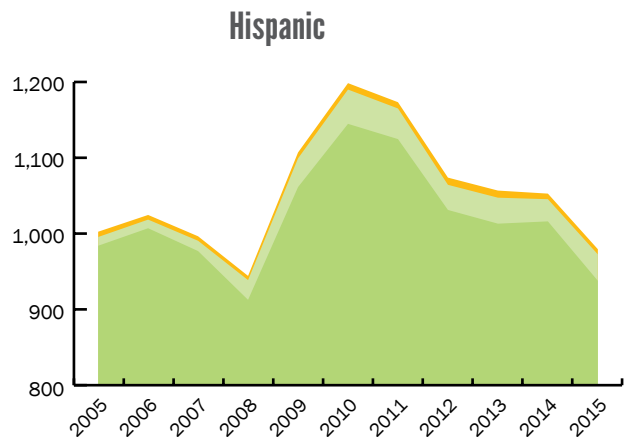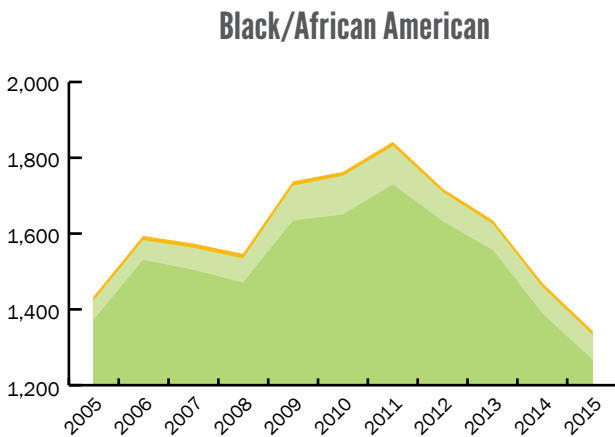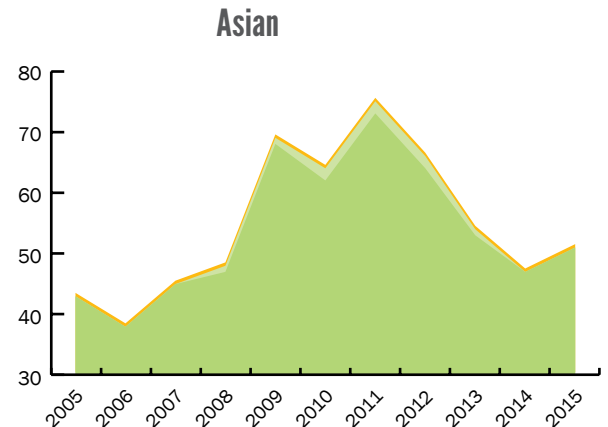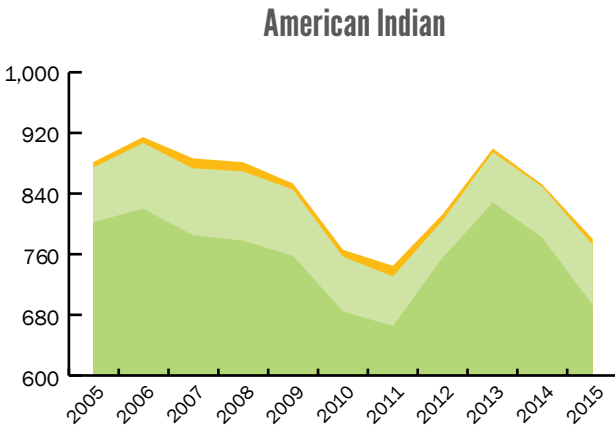27. Peter Pecora et al., "Addressing the Effects of Foster Care: Early Results from the Casey National Alumni Study," Casey Family Programs, December 2003, 43.

Legend: 1-3 | 4-6 | 7-9 | 10+
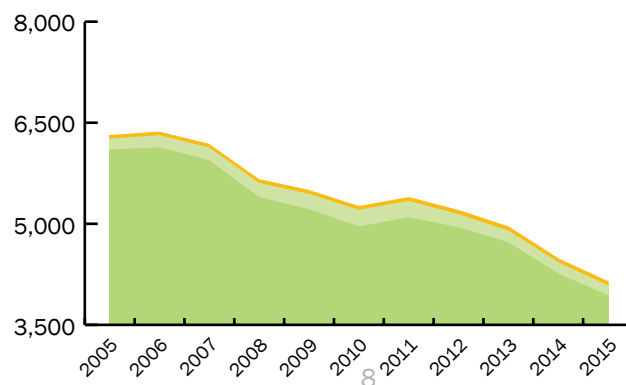
2.5 Multiple Removals

Research overwhelmingly suggests that being removed from one's parental home, in and of itself, negatively affects mental health and overall well-being. The stress of this disruption can manifest in adulthood and academic performance.[28] While similar to the previous section, this data point is not limited to disruptions within a single foster care "episode," and more wholly captures a child's lifetime experience with the trauma of removal from their home.

Number of Removals (2015)
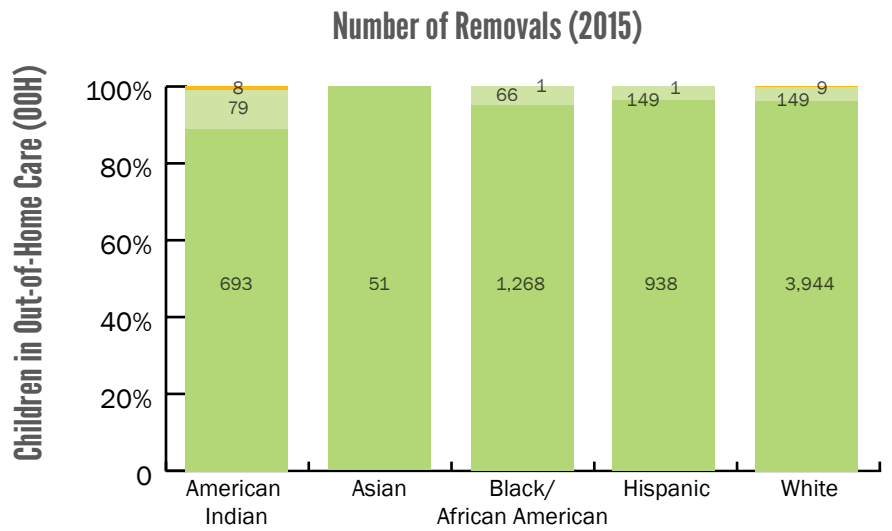
Number of Removals by Race/Ethnicity (2005-2015)

American Indian

Asian

Black/African American
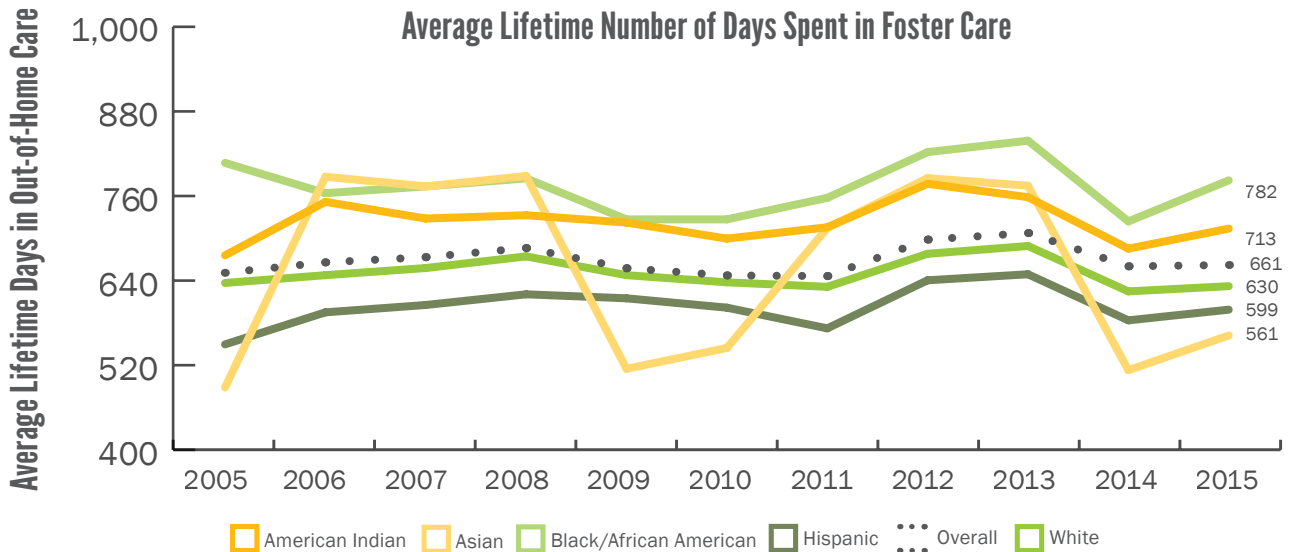

Hispanic

White

Legend:
- 5+
- 3-4
- 1-2

28. Delilah Bruskas, "Children in Foster Care: A Vulnerable Population at Risk," Journal of Child and Adolescent Psychiatric Nursing 21, no. 2 (2008).

The data show that American Indian children are consistently overrepresented among children who have experienced multiple removals. This measurement, which may include children who have had multiple cases closed and returned to their parents only to be removed again, or children who were in the process of reunification in a trial home visit and later removed, show that disparities deepen further into the system. The recurrence of removal for a child would seem to suggest that the services provided initially or after reunification were inadequate in maintaining family stability—especially so for American Indian children.

2.6 Time in Out-of-Home Care

Out-of-home care is intended to be temporary—most children are reunited with their families, but when that is not possible, a plan for achieving timely permanency through adoption or guardianship with a family is best practice. Longer stays in out-of-home care often result in multiple placements, which increases the likelihood that a child will age out of care without achieving positive permanency with a family.[29]

Average Lifetime Number of Days Spent in Foster Care

Legend: American Indian, Asian, Black/African American, Hispanic, Overall, White

On average, Black and American Indian children in foster care have consistently spent more days in out-of-home care than their peers over the course of their lifetimes. Though federal and state efforts to reduce time in care for children, the data still show that children of color in out-of-home care spend a significant portion of their childhood not knowing where to call home.

Inequity Across Nebraska's Child Welfare System*

	Population under 18	Substantiated Maltreatment Victims	Removal from Home	Family-Based Placement	Relative Placement	Congregate Placement	Independent Living	Missing from Care	1-3 Placements	4-6 Placements	7-9 Placements	10+ Placements	1-2 Removals	3-4 Removals	5+ Removals
American Indian	1.4%	6.0%	12.5%	11.8%	15.1%	13.3%	6.5%	9.6%	12.0%	14.3%	17.1%	15.2%	11.7%	28.2%	47.1%
Asian	1.8%	1.2%	0.8%	1.1%	0.2%	0.3%	1.4%	1.9%	0.8%	1.5%	0.0%	0.4%	0.9%	0.0%	0.0%
Black/ African American	5.8%	14.3%	21.5%	21.5%	20.1%	24.6%	25.9%	25.0%	19.5%	31.7%	27.5%	30.9%	21.4%	23.6%	5.9%
Hawaiian/ Pacific Islander	0.0%	0.1%	0.4%	0.2%	0.7%	0.3%	1.4%	0.0%	0.4%	0.2%	0.5%	0.0%	0.4%	0.0%	5.9%
Hispanic	16.7%	18.1%	15.7%	16.4%	14.7%	11.6%	16.5%	13.5%	16.7%	10.5%	11.9%	9.5%	15.8%	12.9%	5.9%
White	83.1%	59.7%	65.9%	66.3%	66.0%	63.0%	66.2%	55.8%	68.3%	54.2%	54.9%	54.3%	66.6%	53.2%	52.9%

* AFCARS treats Hispanic as an ethnicity as opposed to a race. As a result data from this source will not add to 100%.
Those who are Hispanic can identify as any race with Hispanic origin.

29. U.S. Department of Health and Human Services, "A Report to Congress on Adoption and Other Permanency Outcomes for Children in Foster Care: Focus on Older Children," Children's Bureau, 2005.

3. Discussion and Next Steps

Over the course of a decade, the data show there has been and continues to be a pattern of inequity for Black and American Indian children across key decision points in Nebraska's child welfare system. In recent years, the overall system has seen praiseworthy improvements as the direct result of leadership and collaboration among stakeholders, including an overall reduction in out-of-home placements, implementation of promising practices such as Alternative Response, and an enhanced emphasis on in-home services and care. Still, the data at hand suggests that to date, system improvements have done little to change racial and ethnic disparities.

Beginning with the incidence of substantiated maltreatment, both Black and American Indian children are represented at *twice* their rate in the overall child population, while White and Asian children are underrepresented. At the next decision point, removal from home, overrepresentation magnifies: Black children are removed at nearly *four* times, and American Indian children at over *nine* times, than would be expected based on their overall population size. Disaggregated data on the primary reasons for removal offers some insight into areas for increased investment and effort. Still, while in care, overrepresentation in placement instability, long-term care, non-family placements, and multiple removals, for the same populations continue.

Progress is not out of reach—data over the course of a decade is a testament to the fact that changes to policymaking, practice, and agency culture can produce positive results for children and families. Without intentional dialogue that includes directly impacted communities and steps to address deeply embedded disproportionality and disparity, however, the system will continue to fail some of our most vulnerable children.

3.1 Recommendations

1. Follow the data. While the data in this report offers a statewide overview of disproportionality, individual communities and agency leaders with the appropriate expertise should further examine the implications of disproportionality in their locality. Creating depth of understanding of the observed trends, whether in a particular racial or ethnic group, or by geography, must preface any statewide efforts to reduce disproportionality.

2. Conduct a systems racial impact analysis. The Department of Health and Human Services, in concert with key agencies, particularly those involved in the initial assessment stage, should complete a thorough assessment of how existing policy and practice contributes to disproportionality and disparity from prevention through permanency. This should include an audit of investigation protocols, assessments, training manuals, foster parent recruitment tools, and other key decision points within the continuum.[30] Central to this discussion is meaningful engagement and trust-building with families and communities that are most affected by the policies and practices of the child welfare system. This effort must focus on listening and learning from communities to shape continued reform.

3. Invest in targeted prevention and family-friendly services. Reducing disproportionality in the child welfare system cannot be effective without intervention well before a family experiences a crisis. Out-of-home care is costly to children, families, and taxpayers—robust investments in early intervention programs and family preservation services with proven success for high-risk families and families of color would yield long-term social and fiscal savings. Investments in such services must be culturally responsive and led by communities.

30. Kristen Weber and Sarah Morrison, *"The Institutional Analysis: Uncovering Pathways to Improving Public Systems & Interventions for Children and Families,"* Center for the Study of Social Policy, 2015.