



BUILDING PUBLIC CONFIDENCE

Ending Racial Profiling in Nebraska

August 2014

INTRODUCTION

In February 2001, President George W. Bush, promised to end racial profiling in America:

In so doing we will not hinder the work of our nation's brave police officers. They protect us every day — often at great risk. But by stopping the abuses of a few, we will add to the public confidence our police officers earn and deserve.

Racial profiling violates our nation's basic constitutional commitment to equality before the law. Racial profiling is also contrary to effective law enforcement. Profiling hurts and humiliates the individuals who experience it, and does irreparable damage to the relationships between law enforcement and the community.

There are best practices to eradicate the perception of profiling. By following those practices, law enforcement will direct its resources where they are truly necessary, ensure that our communities are safe, and reaffirm the core principles of the Constitution.

The numbers in Nebraska are clear. Since data collection began in 2002, the Crime Commission has reported several types of disproportionate treatment of black and Latino drivers:

1. Higher numbers of stops of drivers of color
2. Higher rates of taking drivers of color into custody instead of just issuing a ticket, and
3. Higher rates of searching cars of minority drivers.

They arrested Jim in front of his young child and choked him until he urinated on himself. “I still don’t know who they were looking for. It wasn’t me, but I was the one who paid the price.”

Jim is a younger African American man who lives in Omaha. In the fall of 2011, Jim was parked with his young child in the backseat. Without any explanation at the time or afterwards, a police officer approached the car, opened the back door where the child was, and started looking around the car.

Jim asked what was going on. The officer demanded his license and registration, put the documents in his belt, and ordered Jim out of the car. As he was obeying and exiting the car, the officer grabbed Jim and slammed him up against the car. A second officer arrived and Jim was handcuffed, and held in a chokehold to the point of urinating on himself.

Jim heard the officers ask each other, “What are we going to charge him with?” Eventually he was charged with resisting arrest, obstructing an administrative order and not having a valid registration for the car. Today, he still doesn’t know why the officer approached his car or the identity of the individual being searched for by police.

These examples of biased policing make no sense because blacks, Latinos, and whites use drugs at roughly the same rates and are committing similar rates of traffic violations.

Systemic reform is necessary, not in just a few police agencies, but statewide. Nebraska has over a decade's worth of data demonstrating widely prevalent racial profiling. It is time to act: we must acknowledge that racial profiling does exist in our state, and we must take concrete steps to end this counter-productive and illegal practice.

To serve and protect is not a suggestion. It is a mandate that law enforcement must apply equally to all communities. Otherwise, there will only be more corrosion between civilian populations and the police. ACLU of Nebraska urges statewide reform as well as agency-by-agency review of their efforts to end racial profiling.

54 year old John lost his trucking job after his arrest while police were looking for a 29 year old. "We had nothing in common...except they were looking for a black man."

John was an out-of-state commercial truck driver. He is 54 years old and African-American. While driving through Nebraska, John stopped at a rest area in Lincoln County. A man came up to the window of his truck and asked John to get out of the truck. John asked why and the officer answered by opening the door, pulling him out, handcuffing and arresting John for obstructing a police officer.

According to the police reports, highway patrol troopers had been chasing "a young black male, about 6 feet tall" wearing black pants and a black sweatshirt. Lincoln County Sheriff deputies began searching the rest area near the spot where the suspect had fled from, including questioning individuals parked at the rest stop for information.

Ultimately, the suspect was apprehended in the rest stop facility around the same time that John was arrested. The suspect was 29 years old, while John is 54. Before charges were dismissed, John spent the night in jail and the officers towed his truck from the rest area. John had to pay the tow charges and spend several nights at a hotel while he waited for his court hearing, and a bus ticket to get home.

The officers called John's trucking company to report the fact the truck had been towed and report on its whereabouts. The officers told his boss about the charge pending against John, who promptly fired him, even though the charges were dismissed. He was unemployed for seven weeks before he found another job.

WHAT THE EXPERTS SAY

Police organizations agree that even the perception of racial profiling can be corrosive and needs to be addressed to establish trust between civilians and law enforcement.ⁱ The Department of Justice recommends every police chief or sheriff conduct periodic internal audits to ensure self-evaluation and awareness of the need to end profiling.ⁱⁱ The NAACP has expressed the problem succinctly:

“The majority of law enforcement officers are hard working men and women, whose concern for the safety of those they are charged with protecting is often paramount, even when their own safety is on the line. However, if and when even one of their colleagues engages in racial profiling, whether it be conscious or subconscious, the trust of the entire community can be, and will be, lost.”ⁱⁱⁱ

Profiling is not limited to big cities or to isolated departments. Profiling is pervasive in American policing across the board. The Rights Working Group and ACLU have documented racial and ethnic profiling in 22 states ranging from West Virginia to Minnesota to California.^{iv}

There is a perception on some people’s part that minorities are more likely to carry contraband. The Department of Justice has amassed empirical studies to disprove this belief.^v In study after study from across the nation, the probability of finding drivers with contraband was the same for blacks, whites or Latinos.^{vi}

“The police found nothing—because there was nothing to find. I’m a businessman, but since the officer warned me I was being let off this time, I have been worried about being targeted again in the future.”

Bill is a businessman who owns a manufacturing company in a small southeastern Nebraska town. He is African American. In 2011 he was returning home from an out of town trip shortly before midnight. Several city police cars were parked just outside of town at a very well lit corner. One of the officers began following Bill, trailing him for about a mile before pulling him over because the officer “couldn’t tell what state he was from on the license plate.” Bill was not given any ticket for an offense, and the only thing that could have been obscuring his license plate was his alumni license plate holder from his college.

The officer told Bill to return to the police vehicle with him and ran the plates, which immediately came back clear. Despite that, the officer asked Bill repeatedly whether there were any drugs or weapons in his vehicle, with Bill denying there were each time. When the officer asked to search the vehicle, Bill refused. The officer took his drug dog around the vehicle. On the second time around the dog stopped by the driver’s door. Bill insisted that the officer call a supervisor to be present if the officer was going to search his car. The officer did and a Sergeant came out to the scene himself. Once the Sergeant arrived, the search ensued, but nothing was found. The officer continued to insist that his dog “never lies” even though he couldn’t find anything “this time.”

Bill was incensed by what happened. He feels threatened by the officer’s statements and worries he will be targeted by the officer in the future, given the statements about “this time.” He believes he was racially profiled by the officer when he drove through the well-lit area. He said he has been followed by officers many times in his small town but has never been pulled over. He has no criminal history and has never had any problems with the police. In fact, he is a businessperson known throughout the community and has even made donations to city projects in the past.

Oscar dared to suggest he might have been pulled over because he's black. "The officer punished me by keeping me on the road for 45 minutes. I missed an important business meeting and trust police even less now."

Oscar is a middle-aged African American white collar worker in Omaha. In 2012, while driving to a business meeting, Oscar was pulled over on I-80 in Omaha. He says the deputy followed him for nearly two miles before pulling him over and informing him he was "following too close," though Oscar insists there was not even a car in front of him. Oscar challenged the deputy for actually pulling him over because he was black. He reports he is frequently pulled over in Omaha and Sarpy County and is just tired of being treated like a suspect.

The deputy kept Oscar waiting for 30-45 minutes while he ran the license and registration, so Oscar was late for a business meeting. Oscar believes that the license check didn't really need to take that long, but that the deputy was "punishing" him for daring to suggest he'd been racially profiled.

Oscar accepted the ticket but then phoned the deputy's supervisor to complain about the deputy's rudeness, the length of the stop, and the faulty reason for the stop. The supervisor listened and then informed Oscar that he was "siding with his deputy" and refused to investigate further. Oscar says "How can a minority male succeed in life if every time he sets foot in his car, he's a target?" He doesn't know what else to do since his effort to file an internal affairs complaint was immediately thwarted.

As the most recent federal guidelines on racial profiling state, "Racial profiling in law enforcement is not merely wrong, but also ineffective. Race-based assumptions in law enforcement perpetuate negative racial stereotypes that are harmful to our rich and diverse democracy, and materially impair our efforts to maintain a fair and just society."^{vii}

These concerns drove the passage of legislation in Nebraska in 2001 to investigate and prohibit racial profiling. Nebraska Revised Statute 20-501 states: "Racial profiling is a practice that presents a great danger to the fundamental principles of a democratic society. It is abhorrent and cannot be tolerated. An individual who has been detained or whose vehicle has been stopped by the police for no reason other than the color of his or her skin or his or her apparent nationality or ethnicity is the victim of a discriminatory practice."

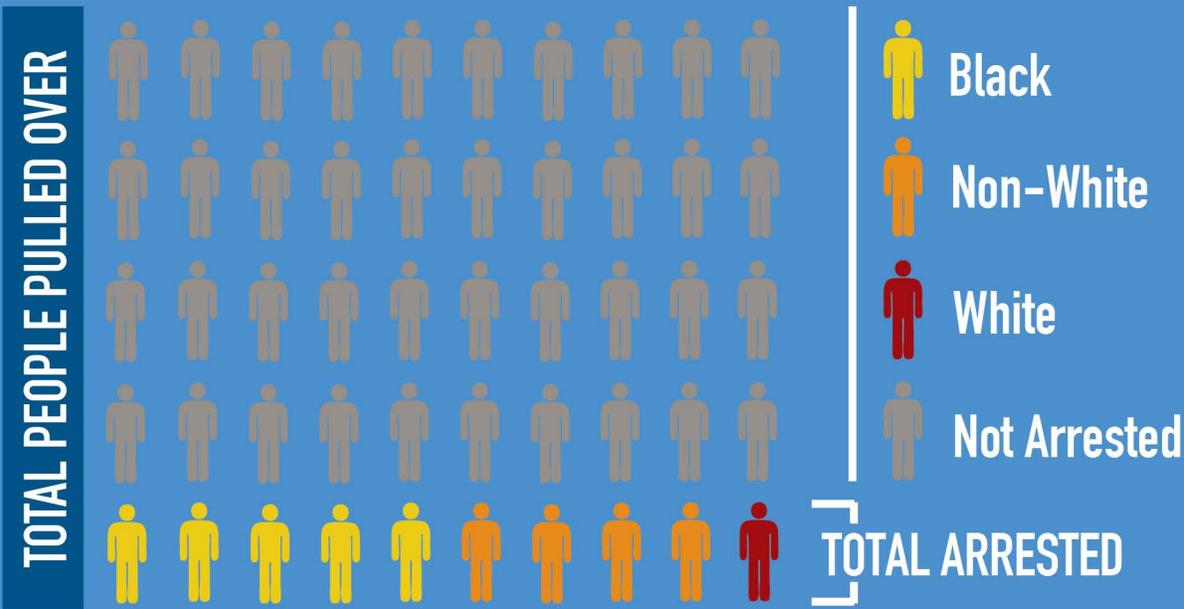
In order to end racial profiling, the Unicameral has ordered every law enforcement agency—whether state patrol, county sheriff or city police—to record information about every traffic stop, regardless of whether that stop resulted in any formal action.^{viii} Agencies have been submitting data recording the reason for the stop, the race of the driver, and the disposition of the stop since 2002. Data is analyzed and presented annually by the Nebraska Crime Commission.

Nebraska's data collection statute has moved us much farther down the road to solutions. We are one of nineteen states collecting such race data. Unfortunately, passive collection of data is useless without action to address the findings.

RACIAL PROFILING

NEBRASKA

CUSTODIAL ARRESTS VS TICKETS



Source: "Traffic Stops in Nebraska - A Report to the Governor and Legislature on Data Submitted by Law Enforcement" (April 2014) - Nebraska Crime Commission

ACLU

Chances of Being Searched

Black Driver
1 in 29

White Driver
1 in 50

Hispanic Driver
1 in 28

Non-White Drivers are **72%** more likely to be searched than white drivers.

WHAT THE NUMBERS SAY IN NEBRASKA

The reported data unambiguously establishes serious problems with racial profiling in Nebraska. Disturbingly, the numbers have stayed the same over the twelve-year period despite efforts to improve continuing education for police and heightened awareness about the societal problem of profiling. The most recent report was issued earlier this year and demonstrates the same patterns of disparate treatment.^{ix}

The national studies cited above demonstrate that offenses—whether minor traffic infractions or serious crimes such as drug possession—happen at equal rates across all races. This is true in Nebraska as well. The Crime Commission data demonstrates that across the racial categories, black, Hispanic and white drivers are committing traffic code and criminal code violations in similar numbers.^x So no one race is responsible for more crimes on the road—yet minorities experience more consequences than white drivers.

There are three distinct ways in which non-white drivers are treated differently in Nebraska:

- (1) Higher numbers of stops of drivers of color,
- (2) Higher rates of taking drivers of color into custody instead of just being issued a ticket, and
- (3) Higher rates of searching cars of minority drivers.

MORE STOPS OF DRIVERS OF COLOR

The Crime Commission's statewide aggregate data says there is no problem of racial profiling—the number of all stops by race roughly matches census data for each race.^{xi} But once individual jurisdictions are examined, serious disparities emerge.

Black drivers in Omaha are stopped by Omaha Police Department almost twice as often as they should be: the black population of the area is 11.3%, yet black drivers were 22.3% of the stops.^{xii}

Michael's first drive through Nebraska resulted in his car being torn apart, his Quran being ripped, and a new fear of police...all for speeding five miles over the limit, though he didn't even get a ticket.

Michael Omair is a US citizen, having come legally to the US from Jordan. He became a citizen over 30 years. He lived in New York and worked as a limo driver until summer 2008, when he decided to move to Denver and start his own business. The move brought him through Nebraska on I-80. Just outside of Omaha, he was pulled over.

He was in the flow of traffic. A Douglas County Sheriff cruiser followed him for a couple of minutes, then passed him, made eye contact through the window (and thus observed in the daylight that Michael is Arabic), and then dropped back and pulled him over. Michael was told he'd been speeding and while the deputy looked at his license and registration, he began asking, "Where was I coming from, where was I going? Why was all this luggage in the car?" The deputy told Michael to get out of the car and come to his cruiser.

In the cruiser, he asked Michael if he'd ever been arrested, had a record, had any drugs on him, and whether he was carrying a lot of cash. Michael said all of these questions were repeated over and over again while he kept saying "no." The deputy got his SSN, then asked to search his car. Michael said no, and the deputy radioed for a K9 unit. The deputy ordered Michael to stand outside away from the car, did a pat down search, and then they waited for the dog.

Continued...

When the dog arrived, it jumped up on his car, scratching Michael's late model Lincoln Navigator. The police said this was the dog alerting and that they were therefore going to perform a search. Michael had to sit in a cruiser during the search, which took over two hours. "Every 10 or 15 minutes they would walk back to me and ask me what my name was, whether I had drugs, money, etc., and I kept answering no. They took my luggage and belongings and threw them out of the car and onto the street as if they were throwing garbage. They opened the hood and disconnected everything including my airbag. They pulled out the third row seat and the glove compartment and the icebox that was mounted in-between the two captain chairs in the second row. After they finished, they threw my belongings back into my car, disorganized, leaving my photo albums ripped up. I was asked to go back into my car. When I got back to the car, I realized the extent of the damage done to my car. The plastic clips on the door panels were broken and remained loose. The floor panel around the carpet was loose, the third row seat was loose. As I drove off, the car was shaking, the back seat was making noise, the passenger side mirror was loose and the air bag light was on. The worst thing was a Quran that I had for 35 years in a leather case and in great condition, had been vandalized and ripped apart."

No ticket was issued, though they told him he was pulled over for going 5 miles over the speed limit. "I have a phobia about officers now and I never did before. Many of my family members are uniformed back in New York, firefighters and police, and in a way I don't blame these guys for doing their job. But not this way. This was wrong. Now when I see cops on the road I feel nervous and scared." Michael concludes, "My wife is Italian, our 3 kids were raised Catholic! I'm American! This was wrong."

ACLU of Nebraska filed a lawsuit for Michael. It is still pending in Douglas County District Court.

Black drivers in Lincoln are stopped by Lincoln Police Department almost three times as often as they should be: the black population of the area is 3.5%, yet black drivers were 9.6% of the stops.^{xiii}

MORE ARRESTS OF DRIVERS OF COLOR

Being arrested rather than getting a ticket has serious consequences for the driver. Arrest includes impounding of the car, being booked into jail and posting bond, disruption or loss of one's job, and humiliation. Many times the officer on the scene is exercising discretion about whether to issue a ticket or make an arrest. The Crime Commission's numbers demonstrate that this discretionary point permits unconscious bias to creep in.

If you are a white driver, you have a 1 in 48 chance of being arrested. Combining all non-white races, drivers of color have a 1 in 13 chance of being arrested.^{xiv}

MORE SEARCHES OF DRIVERS OF COLOR

Searching a car also has serious consequences for the driver. While all races are equally likely to possess contraband, police will only locate drugs if they choose to search a car—and if only minorities are searched, then only minorities will be found with drugs. This can then reinforce unconscious bias where an officer feels as if all searches of minorities are justified by locating drugs. Searches can involve dismantling portions of the car, embarrassing disruption of private luggage, and even property damage.

Some individual agencies have a significant problem with searches. In 2013, the Dawson County Sheriff's office searched Hispanics (population 2.4%) at a higher frequency than general searches (1.9%).^{xv} The Crime Commission's statewide numbers also demonstrate that this discretionary point also is a significant source of biased policing.

If you're a white driver, you have a 1 in 50 chance of being searched. If you're a black driver, you have a 1 in 29 chance of being searched. If you're a Hispanic driver, you have a 1 in 28 chance of being searched. Combining all non-white races, drivers of color have a 1 in 30 chance of being searched.^{xvi}

RECOMMENDATIONS

Nebraska has studied this issue for twelve years. It is time to take action to address the problems that are now well established.

ANTI- BIAS TRAINING

Nebraska was one of the last states to mandate continuing education for law enforcement officers. Since 2012, we now require every officer to take a minimum of 20 hours of education per year.^{xvii} The law does not require the trainings to be in any specific topical areas, but anti-bias training should be part of every officer's annual education.

The Nebraska Law Enforcement Training Center (NLETC) is currently the primary statewide resource for officer continuing education, though individual agencies may also provide in-house training or attend national conferences. The trainings announced by the NLETC through 2016 offer no anti-bias training.^{xviii}

The Nebraska Law Enforcement Training Center and every individual agency should prioritize at least one annual training for every officer that is specifically designed to address racial profiling.

COMPLAINT PROCESS CHANGES

As described in the ACLU report issued earlier this year, complaints about police are very difficult to make in Nebraska because many agencies lack accessible or transparent processes.^{xix} While anecdotally, many drivers of color report having episodes where they believe they were pulled over because of the color of their skin, the number of actual reported complaints of racial profiling are extremely low. In 2013, the agencies reported only 21 complaints.^{xx}

Ramon is a US citizen, but he was held for four days under suspicion of being illegal. His crime that attracted police attention? A quarter-sized boxing medal that was a "windshield obstruction."

Ramon Mendoza is a naturalized US citizen in his late forties. He is dark complected and has an accent. While he is a naturalized citizen, his wife and children were all born as US citizens. On March 5, 2010, he was pulled over by the police in Papillion. He believes he was pulled over because he was racially profiled because of his complexion and the large Mexican flag folded and on display in the back window. When the police pulled him over, they told him it was because he had a "windshield obstruction." The "obstruction" was his son's boxing medal, approximately the size of a quarter and hung from a ribbon. He did not have a license so he was arrested, and this arrest cascaded. Papillion Police took Ramon to the Sarpy County Correctional Center and he was given into the care of Sarpy County Sheriff's deputies.

County deputies repeatedly told Ramon he was going to be "given ten years in federal prison and then be deported back to Mexico." He told them he was an American citizen, but they wouldn't believe him and held him for four days. Ramon's wife and son came to the jail every day with a copy of his SSN card, his certificate of citizenship, his birth certificate and marriage certificate and his American passport, but no one at the jail would talk to them, look at the documents, or give them information about how to handle the situation. His wife was told only that Ramon was being held on an immigration detainer and that the immigration authorities would be picking him up soon. When she told them Ramon was a citizen, they only replied there was nothing they could do and she would have to take it up with the immigration authorities.

Continued...

After four days, Sarpy County learned from federal authorities that Ramon was a US citizen and they let him go. He appeared a few weeks later on the misdemeanor charge of driving on a suspended license and was charged a small fine.

Since he was pulled over, Ramon has been fearful of police and subject to panic attacks. ACLU of Nebraska has filed in federal court. The case is now pending.

In the twelve years of study, the Crime Commission identified 171 complaints of racial profiling.^{xxi} Complaints are received by the agency in question—the Crime Commission currently takes no role in gathering or investigating complaints. Of the 171 complaints, not a single one resulted in a report of any disciplinary action or finding of racial bias. This raises two serious questions: (1) whether people who experience racial profiling feel free to come forward with a complaint, and (2) whether agencies repeatedly exonerating their own

officers are appropriately investigating themselves.

The legislature has empowered the Crime Commission to develop a complaint process for racial profiling allegations.^{xxii} The Commission should establish a separate statewide complaint process and widely publicize the availability of this independent complaint mechanism. Meanwhile, individual agencies should review the recommendations of national policing organizations to improve their own internal affairs process per the ACLU report issued earlier this year.

BODY WORN CAMERAS AND DASH CAMS

Many complainants to the ACLU express despair that anyone will believe them if they speak up against an officer. This is just one reason why cameras—whether a dash cam or body-worn camera—are an aid to police and the public: they clearly establish exactly what occurred. The use of cameras is increasingly considered a best practice among law enforcement as a means of protecting officers from baseless allegations of abuse and as proof beyond “he said, she said.” According to the Department of Justice, the use of cameras provides effective video evidence and increases officer safety by deterring violent behavior.^{xxiii} Nebraska still has law enforcement agencies that have not installed—or not kept in working order—dash cams to capture traffic stops. Every agency should have dash cams, and every agency should begin seeking funding for body-worn cameras.

CONCLUSION

Racially disparate treatment determines who ends up behind bars. The significant barriers posed once someone has a felony conviction are being imposed disproportionately on minority Nebraskans since initial police contact is biased. Racial profiling diverts police attention from more effective law enforcement techniques and erodes public trust in the police. When individuals or whole communities fear the police, they are less likely to call law enforcement when they are witnesses to a crime or have helpful information. Creating a climate of fear compromises public safety. Nebraska needs movement at the statewide level and at each local law enforcement agency to demonstrate a commitment to end racial profiling.

-
- ⁱ Police Executive Research Forum, “Racially Biased Policing: A Principled Response,” page 36. (2001) Available online: <http://www.cops.usdoj.gov/Publications/RaciallyBiasedPolicing.pdf>
- ⁱⁱ Id.
- ⁱⁱⁱ NAACP, “The End Racial Profiling Act Introduced in Both the US House of Representatives and the Senate.” Available online: <http://www.naacp.org/action-alerts/entry/the-end-racial-profiling-act-introduced-in-both-the-u.s.-house-of-rep>
- ^{iv} ACLU and Rights Working Group, “The Persistence of Racial and Ethnic Profiling in the United States A Follow Up Report to the U.N. Committee on the Elimination of Racial Discrimination,” (2009). Available online: https://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf
- ^v U.S. Department of Justice, “A Resource Guide on Racial Profiling Data Collection Systems: Promising Practices and Lessons Learned,” page 10. (2003) Available online: <https://www.ncjrs.gov/pdffiles1/bja/184768.pdf>
- ^{vi} U.S. Department of Health and Human Services, “Results from the 2011 National Survey on Drug Use and Health: Summary of National Findings,” (2012). Available online: <http://www.samhsa.gov/data/nsduh/2k11results/nsduhresults2011.pdf>
- ^{vii} U.S. Department of Justice, “Guidance Regarding the Use of Race by Federal Law Enforcement Agencies,” page 1. (2003) Available online: http://www.justice.gov/crt/about/spl/documents/guidance_on_race.pdf
- ^{viii} Nebraska Revised Statute 20-504 (3)
- ^{ix} “Traffic Stops in Nebraska,” (2014). Available online: http://www.ncc.ne.gov/pdf/stats_and_research/2013DataFinal.pdf
- ^x Id. at 20, Table D.
- ^{xi} Id. at 13, Table A1.
- ^{xii} Id. at 16, Table C1.
- ^{xiii} Id. at 17, Table C2.
- ^{xiv} Id. at 40, Table 40.
- ^{xv} “Traffic Stops in Nebraska,” Id., page 24, Table E3.
- ^{xvi} Id. at 42, Table 5.
- ^{xvii} Nebraska Revised Statute 81-1414.07
- ^{xviii} Training Calendar August 2014-July 2016. Available online: http://www.nletc.state.ne.us/NLETC_Course_Calendar/CourseCalendar.aspx
- ^{xix} ACLU of Nebraska, “For the Good of the Public: How Nebraska Police Complaint Processes Fail the Public,” (2014). Available online: http://aclunebraska.org/images/attachments/206_ACLU%20of%20NE%20LLE%20Complaint%20Report%20-%20FINAL.pdf
- ^{xx} “Traffic Stops in Nebraska,” Id., page 29, Table 1.
- ^{xxi} Id.
- ^{xxii} Nebraska Revised Statute 20-504(4)
- ^{xxiii} U.S. Department of Justice, “A Primer on Body-Worn Cameras for Law Enforcement,” (2012). Available online: <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>