



National Institute of Justice

FY 2022 Report for Committees on Appropriations Native Hawaiians in the Criminal Justice System

**U.S. Department of Justice
Office of Justice Programs
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Background

On March 15, 2022, President Biden signed into law the Violence Against Women Act (VAWA) Reauthorization Act of 2022. This bipartisan legislation reauthorizes programs and activities under VAWA that aim to prevent and respond to domestic violence, sexual assault, dating violence, and stalking. The reauthorization of VAWA also authorizes new programs, expands economic support, and promotes housing stability for victims of domestic violence, sexual assault, dating violence, and stalking.

The National Institute of Justice (NIJ), in coordination with the Bureau of Justice Statistics (BJS), components of the Office of Justice Programs, U.S. Department of Justice, provides this report required by Public Law 117-103, Division W, Title XI, Section 1105(c), the Violence Against Women Reauthorization Act of 2022, which states:

Not later than 180 days after the date of enactment of this Act, the Attorney General, acting through the National Institute of Justice, in coordination with the Bureau of Justice Statistics, shall prepare a report on the interaction of Native Hawaiians with the criminal justice system. The report required under this subsection states:

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Attorney General, acting through the National Institute of Justice, in coordination with the Bureau of Justice Statistics, shall prepare a report on the interaction of Native Hawaiians with the criminal justice system.

(2) CONTENTS OF REPORT.—The report required under this subsection shall include—

(A) known statistics related to the percentage of persons who are Native Hawaiians out of the total of—

- (i) all persons arrested;
- (ii) all persons detained in Federal, State, and local jails;
- (iii) all persons subject to pretrial supervision;
- (iv) all persons subject to post-conviction supervision;
- (v) all persons incarcerated in Federal and State prisons; and
- (vi) all persons subject to post-release supervision;

(B) an explanation of why the statistics described in subparagraph (A) may not be comprehensive;

(C) recommendations on how data collection related to the statistics described in subparagraph (A) could be improved;

(D) a description of any culturally relevant programs available to Native Hawaiians who interact with the Federal criminal justice system; and

(E) a summary of any available data on the number of Native Hawaiians who are incarcerated and placed in Federal and private correctional facilities more than 200 miles from their place of residence.

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Data Sources and Availability

Data detailed in this report were drawn from several sources, including the Federal Bureau of Investigation (FBI), BJS, and the Federal Bureau of Prisons (BOP).

Criminal justice data on Native Hawaiians are not comprehensive because few data collections conducted by the federal government include instruments designed to specifically capture if respondents are Native Hawaiians. Moreover, BJS has found that many of the criminal justice agencies responding to federal data collections use records management systems that combine Native Hawaiians and Other Pacific Islanders (NHOPIs) into a single racial category. The 1997 Office of Management and Budget (OMB) standards¹ on collection and reporting of race and ethnicity specify that one category of race be “Native Hawaiian or Other Pacific Islander.” Even then, the OMB standards indicate that these standards “shall be used at a minimum for all federally sponsored statistical data collections that include data on race and/or ethnicity, except when the collection involves a sample of such size that the data on the smaller categories would be unreliable.”²

Given the small size of the NHOPI population, sample surveys such as the National Crime Victimization Survey are unable to reliably report on the NHOPI population. According to the 2020 Census, roughly 690,000 people identified as NHOPI alone but almost 900,000 identified as NHOPI in combination with another race. Further, not all agencies from which BJS collects data track race and ethnicity according to OMB standards. For example, there is no race category specifically for Native Hawaiian individuals in the BOP offender management data system. BOP captures four categories, one of which is Asian/Other Pacific Islander (AOPI).

In addition, under the OMB standards, if a person is reported as having Hispanic ethnicity, federal agencies must report that person as Hispanic regardless of race, unless the counts of each race category are sufficient to separate and present Hispanics and non-Hispanics. Because criminal justice populations rarely meet this standard, persons of Native Hawaiian and Other Pacific Islander race who are also of Hispanic ethnicity would be counted in the Hispanic category and not the Native American or Other Pacific Islander category.

Finally, BJS has documented issues with the measurement of race and ethnicity in the administrative data provided by federal, state, and local criminal justice agencies.³ In some cases, race and ethnicity are assigned to persons admitted to a correctional facility based on the admitting officer’s visual assessment, as opposed to self-report. Race and ethnicity for persons on probation, parole, or admitted to prison or jail may also be transferred from arrest or court documents, with no information on how they were originally assigned.

¹ See Office of Management and Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity, <https://www.govinfo.gov/content/pkg/FR-1997-10-30/pdf/97-28653.pdf>.

² Ibid. See page 58789.

³ Carson, E.A. 2018. *Prisoners in 2016*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, <https://bjs.ojp.gov/content/pub/pdf/p16.pdf>. See page 7.

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Available data on Native Hawaiians and Pacific Islanders are detailed below:

Arrests

Using the most recent data generated by the FBI's Crime Data Explorer, 5,213,213 persons were arrested in calendar year (CY) 2020. Native Hawaiians and Other Pacific Islanders represent 0.3% (13,857) of all persons arrested in CY 2020 (Table 1).⁴

*Jail detention*⁵

Jails are defined as facilities operated under the authority of a sheriff, police chief, or county or city administrator that can hold individuals beyond arraignment, typically exceeding 72 hours. This excludes temporary lockups that only hold persons for less than 72 hours, such as individuals pending bail or transport to jail, intoxicated persons waiting for release, or juveniles pending parental custody or shelter placement. At midyear 2020, a total of 549,100 individuals were held in local jails. An estimated 600 Native Hawaiians and Other Pacific Islanders, or 0.1% of individuals, were confined in local jails.

Pretrial supervision

Defined as a term of supervision by a probation agency as part of a court order,⁶ an estimated 3,500,000 adults were on probation at yearend 2018. Native Hawaiians and Other Pacific Islanders represent 0.2%, or 7,600, of persons on probation or under pretrial supervision.⁷

Post-conviction and post-release supervision

For the purposes of this report, post-conviction and post-release supervision is defined as parole or a similar term of supervised release in the community, to which persons are sentenced by a judge for a fixed period based on a determinate statute, that immediately follows a period of incarceration.⁸ Less than 0.1%, or 500, of those on parole in 2018 were Native Hawaiians and Other Pacific Islanders (see Table 1).

Federal and state prison

Prisons are long-term confinement facilities run by a state or the federal government that typically hold felons and offenders with sentences of more than one year. On December 31, 2021, an estimated 157,300 individuals were in the custody of the federal BOP. Of those, 1.3%, or 2,170 were categorized as Asian/Other Pacific Islander.⁹

⁴ Retrieved July 7, 2022, from <https://crime-data-explorer.fr.cloud.gov/pages/downloads>, Table 43 for arrests.

⁵ Minton, T.D. and Zeng, Z. 2021. *Jail Inmates in 2020 – Statistical Tables*. Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics. See Tables 2 and 3.

⁶ See [2018 Annual Probation Survey](#), Items and Definitions.

⁷ [Annual Probation Survey, 2018](#).

⁸ See [2018 Annual Parole Survey](#), Items and Definitions.

⁹ BOP captures four race categories: White, Black, Asian/Other Pacific Islander (AOPI), and Native American. There is no race category specifically for Native Hawaiian individuals. These individuals would be captured in the AOPI category.

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At the end of 2021, approximately 1.05 million individuals were incarcerated in state prisons across the United States. Two-tenths of one percent, or 2,641 of those individuals were classified as Native Hawaiians and Other Pacific Islanders.

Table 1. Number of Native Hawaiian and Other Pacific Islander individuals involved with the criminal justice system, based on most recently released national data, 2018-2021.¹⁰

	Number of Native Hawaiians and Other Pacific Islanders (NHOPI)	Total Persons	NHOPI Percent of Total
Arrests (2020) ¹¹	13,857	5,213,213	0.3%
Jails (2021) ¹²	700	636,300	0.1%
State Prisons (2021) ¹³	2,641	1,047,008	0.2%
Federal Prisons (2021) ¹⁴	2,170	157,314	1.3%
Parole (2018) ¹⁵	500	877,953	<0.1%
Probation (2018) ¹⁶	7,600	3,539,950	0.2%

*Legal residence*¹⁷

Data on the distance of AOPI individuals in BOP custody from their place of residence were provided by the BOP upon special request for this analysis and reflect the federal prison population as of July 30, 2022. Table 2 provides a summary of available data on the number of AOPI individuals in federal custody who were incarcerated more than 200 miles from their place of residence.¹⁸

At that time in 2022, there were 2,263 incarcerated AOPI individuals in federal custody.

- Of the 147 AOPI individuals housed in a high-security facility, 93 were more than 200 miles from their place of residence.
- Of the 491 AOPI individuals housed in a medium-security facility, 282 were incarcerated more than 200 miles from their place of residence.

¹⁰ Data sources: *Jail Inmates in 2021 – Statistical Tables*, Tables 2 and 3. [Annual Parole Survey, 2020](#); [Annual Probation Survey, 2020](#); [National Prisoner Statistics, 1978-2021](#); Crime in the United States, 2020. Retrieved July 7, 2022 from <https://crime-data-explorer.fr.cloud.gov/pages/downloads>, Table 43 for arrests.

¹¹ Data reference date: December 31, 2020.

¹² Data reference date: June 30, 2021.

¹³ Data reference date: December 31, 2021.

¹⁴ Data reflect individuals in BOP custody who are categorized as AOPI. Data reference date: December 31, 2021.

¹⁵ Data reference date: December 31, 2018.

¹⁶ Data reference date: December 31, 2018.

¹⁷ Place of residence is defined as the ZIP code of the last known residence for each individual in BOP custody. This data point is provided in the presentencing report and/or by the individual while in custody.

¹⁸ On July 30, 2022, no AOPI individuals were incarcerated in a private correctional facility.

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- Of the 804 AOPI individuals housed in a low-security facility, 374 were incarcerated more than 200 miles from their place of residence.
- Of the 444 AOPI individuals housed in a minimum-security facility, 244 were incarcerated more than 200 miles from their place of residence.
- Of the 235 AOPI individuals housed in a residential reentry center,¹⁹ 73 were incarcerated more than 200 miles from their place of residence.
- Of the 142 AOPI individuals pending²⁰ a security classification, 20 were incarcerated more than 200 miles from their place of residence.

Table 2. Distance from place of residence by facility security level for incarcerated AOPI individuals.

Facility Security Level	Number of Incarcerated AOPI Individuals	Incarcerated Within 200 Miles of Place of Residence	Incarcerated More Than 200 Miles From Place of Residence	Distance From Residence Unavailable
High	147	28	93	26
Medium	491	126	282	83
Low	804	167	374	263
Minimum	444	195	244	5
Residential Reentry Center	235	160	73	2
Pending Security Classification	142	114	20	8
Total	2,263	790	1,086	387

Note. Data as of July 30, 2022.

Culturally relevant programs available to Native Hawaiians²¹

¹⁹ For more information on BOP's residential reentry centers, see https://www.bop.gov/about/facilities/residential_reentry_management_centers.jsp

²⁰ Pending refers to those AOPI individuals who, as of July 30, 2022, had not been sentenced (i.e., pretrial, holdover, detainees) or had received their security classification.

²¹ The description of culturally relevant programs available to Native Hawaiians who interact with the federal criminal justice system is limited to the program offered in federal prison. The description does not reflect all potentially relevant programs offered across the federal criminal justice system.

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Currently, BOP offers one culturally relevant program to Native Hawaiians. The program, Pu'a Foundation Reentry Program,²² is a structured, curriculum-based productive activity offered to female offenders at the Federal Detention Center Honolulu. The trauma-informed program is grounded in Hawaiian culture and focuses on families affected by trauma and incarceration.

Recommendations for Improvement

NIJ will recommend to OMB that in the formal review of OMB's Statistical Policy Directive No. 15 (Directive No. 15), Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity,²³ that OMB should consider the inclusion of a stand-alone Native Hawaiian race category, separate from Other Pacific Islanders. This would allow the comparison of information and data across federal agencies, including the U.S. Census Bureau and other agencies that collect data on the noninstitutionalized population. If OMB introduces such a standard, it would apply to BJS and other federal statistical agencies. BJS expects that while this may be quickly incorporated into self-report surveys, it will likely take several years for state and local agencies to redesign their corrections systems' offender management software to allow for the separate reporting of Native Hawaiians. These changes to record management systems and data collection processes would allow for a more accurate description of Native Hawaiians in the criminal justice system.

²² See Federal Bureau of Prisons, [First Step Act Approved Programs Guide](#), August 2022.

²³ See [Office of Management and Budget, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity](#) (published October 30, 1997) and [Reviewing and Revising Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity](#) (published June 15, 2022).