

# JUVENILE DIVERSION IN NEBRASKA

2017 Annual Report to the Governor and Legislature

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NEBRASKA

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COMMISSION ON LAW ENFORCEMENT  
AND CRIMINAL JUSTICE

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## Introduction

The Director of Juvenile Diversion Programs of the Nebraska Commission of Law Enforcement and Criminal Justice is responsible for generating an annual report on diversion programs in Nebraska by Nebraska Revised Statute § 81-1427 (Reissue 2014). This 2017 diversion report serves to fulfill the statutory requirement.

### Introduction to Juvenile Pretrial Diversion Programs

Juvenile pretrial diversion is a voluntary program available to youth charged with a minor offense. Generally, diversion is available to youth pre-filing, diverting youth from involvement in the juvenile justice system and into a program offering a continuum of requirements and services. The end result of successful completion is dismissal, if filed, or non-filing of the diverted case. Pretrial diversion is a positive alternative to the juvenile justice system and can provide more appropriate methods of treating juveniles charged with an offense, providing better outcomes for youth.

Adolescent brain development research shows the part of a juvenile's brain responsible for risk assessment, consideration of consequences, and controlling impulses is not fully developed until the early 20's.<sup>1</sup> A high proportion of juveniles who come into contact with the juvenile justice system are not on a path to adult crime, but merely afflicted with adolescence.<sup>2</sup> Imposing additional rules on already troubled youth, heightened scrutiny of their behaviors, and punishing them for entirely predictable behavior when the behavior is most likely to subside without intervention shows to worsen outcomes for youth.<sup>3</sup> This understanding of developmental factors making adolescents different from adults shows youth are less culpable for their behavior, are more amenable to change and rehabilitation than adults, and should be treated differently than adults when they commit crimes.<sup>4</sup>

Well-designed community based programs and evidence based practices can effectively reduce adolescent recidivism without relying on punitive punishments of the criminal justice system. Programs hoping to deter and discipline, such as Scared Straight or boot camps, tend to worsen recidivism. Programs that increase surveillance on the youth, such as drug testing and electronic monitoring, tend to have little or no effect on recidivism.<sup>5</sup> Alternatively, programs providing therapeutic interventions aimed to help youth address anti-social attitudes, learn problem-solving and perspective-taking skills, along with family counseling and mentoring consistently reduce recidivism rates.<sup>6</sup> Programs should strive to provide therapeutic techniques aimed to increase

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<sup>1</sup> Coalition for Juvenile Justice, *Emerging Concepts Brief: What are the Implications of Adolescent Brain Development for Juvenile Justice?* (2006).

<sup>2</sup> Mark Lipsey, Keynote Presentation, *Evidence-Based Practice to Meet the Juvenile Justice Challenge* (Nebraska Community Aid and Juvenile Justice Conference, Lincoln, Nebr., October 29, 2014) (copy of PowerPoint presentation on file with Nebraska Crime Commission).

<sup>3</sup> Dick Mendel, Case Now Strong for Ending Probation's Place As Default Disposition in Juvenile Justice, Juvenile Justice Information Exchange (2016), <http://jjie.org/case-now-strong-for-ending-probations-place-as-default-disposition-in-juvenile-justice/227322/> (last visited May 2, 2016).

<sup>4</sup> Models for Change: Systems Reform in Juvenile Justice, The Resource Center Partnership, Benjamin Chambers & Annie Balck, *Because Kids are Different: Five Opportunities for Reforming the Juvenile Justice System*, (John D. and Catherine T. MacArthur Foundation 2014).

<sup>5</sup> Mark W. Lipsey et al., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (Washington, DC: Center for Juvenile Justice Reform, 2010).

<sup>6</sup> Dick Mendel, Case Now Strong for Ending Probation's Place As Default Disposition in Juvenile Justice, Juvenile Justice Information Exchange (2016), <http://jjie.org/case-now-strong-for-ending-probations-place-as-default-disposition-in-juvenile-justice/227322/> (last visited June 15, 2017); Mark W. Lipsey et al., *Improving the Effectiveness of Juvenile Justice Programs: A New Perspective on Evidence-Based Practice* (Washington, DC: Center for Juvenile Justice Reform, 2010).

positive behavior change through personal development, including skill building, counseling, and multiple coordinated services.<sup>7</sup>

There are many principles behind supporting the use of juvenile diversion programs that not only benefit the youth, but benefit families, communities, and the juvenile justice system. Those principles identified as priorities in diversion programs across the country include: 1) reducing recidivism; 2) providing services; 3) avoiding labeling effects; 4) reducing system costs; 5) reducing unnecessary social control; 6) increasing successful outcomes for youth; 7) assuring accountability; 8) reducing Disproportionate Minority Contact (DMC); and 9) avoiding collateral consequences of the juvenile justice system.<sup>8</sup>

The state of Nebraska has identified four goals of a juvenile pretrial diversion program: 1) to provide eligible juvenile offenders with an alternative program in lieu of adjudication through the juvenile court; 2) to reduce recidivism among diverted juvenile offenders; 3) to reduce the costs and caseload burdens on the juvenile justice system and the criminal justice system; and 4) to promote the collection of restitution to the victim of the juvenile offender's crime.<sup>9</sup>

In Nebraska, a county attorney has statutory authority to develop a juvenile diversion program with the concurrence of their county board.<sup>10</sup> A county attorney's decision to utilize a diversion program and refer a youth to diversion is often based on factors generally including: 1) the juvenile's age, 2) the nature of the offense and the juvenile's role in the offense, 3) previous offenses, dangerousness or threat posed by the juvenile, and 4) recommendations of referring agency, victim, and advocates for the juvenile.<sup>11</sup> Juvenile pretrial diversion programs in Nebraska are required to provide screening services for use in creating an individualized diversion plan that utilize appropriate services for the juvenile, and include program requirements such as a letter of apology, community service, restitution, educational or informational classes, curfew, and juvenile offender and victim mediation.<sup>12</sup>

As a result of LB482 in 2015, a county attorney cannot file a juvenile petition under Neb. Rev. Stat. 43-247(3)(b) until they have made reasonable efforts to refer a juvenile and family to community-based resources available to address the juvenile's behaviors, provide crisis intervention, and maintain a juvenile safely in the home.<sup>13</sup> This statutory requirement is another reason why county attorney support and development of juvenile diversion programs is vital in Nebraska.

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<sup>7</sup> University of Nebraska Juvenile Justice Institute & Nebraska Commission on Law Enforcement and Criminal Justice, *Evidence-Based Practices Brief #1: Therapeutic vs. Control Treatment Philosophies* (May 2017), <https://ncc.nebraska.gov/sites/ncc.nebraska.gov/files/doc/EB-NE%20Evidence-Based%20Practices%20Brief%201%20-%20May%202017%20surveillance%20techniques.pdf> (last visited June 15, 2017).

<sup>8</sup> Center for Juvenile Justice Reform, National Center for Mental Health and Juvenile Justice, National Juvenile Defender Center, National Youth Screening and Assessment Project & Robert F. Kennedy Children's Action Corps, *Juvenile Diversion Guidebook* (John D. and Catherine T. MacArthur Foundation 2011).

<sup>9</sup> Neb. Rev. Stat. § 43-260.03

<sup>10</sup> Neb. Rev. Stat. § 43-260.02

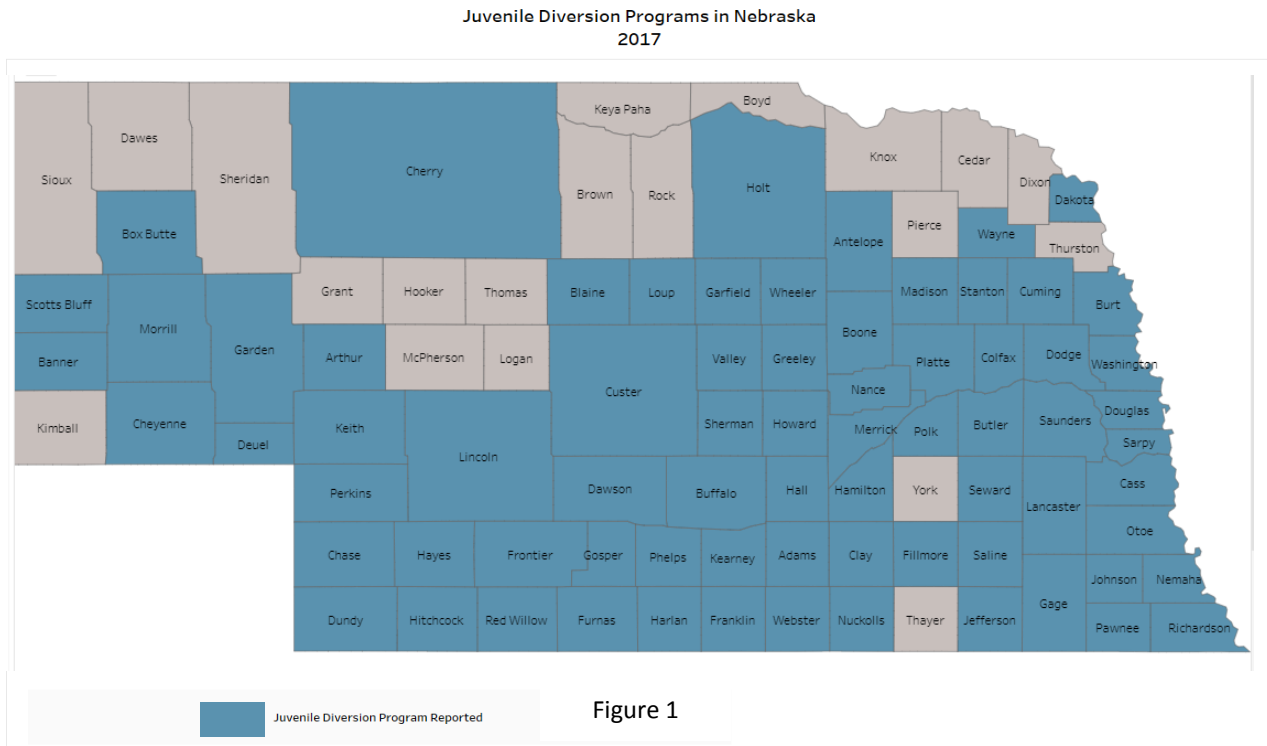
<sup>11</sup> Neb. Rev. Stat. § 43-260.04

<sup>12</sup> Neb. Rev. Stat. § 43-260.04 -.06

<sup>13</sup> Neb. Rev. Stat. § 43-276(2)

## Juvenile Pretrial Diversion Programs in Nebraska

An informal survey of all counties indicated there are currently 73 of the 93 counties reportedly offering some form of a juvenile pretrial diversion program (See Figure 1). The number of counties offering juvenile pretrial diversion services has increased from 57 counties in FY2013 to 62 counties in FY2014, 69 counties in CY2015, and 73 counties in CY2016. The Winnebago Tribe also reports having a Traditional Wellness Court and are developing a formal juvenile diversion program; however, their data was not available through the Juvenile Diversion Case Management System at the time of this report. No other tribe reported a diversion program in 2017.



## Juvenile Pretrial Diversion Data

Every county or city attorney of a county or city which has a juvenile pretrial diversion program is required to report juvenile diversion data to the Director of Juvenile Diversion Programs annually.<sup>14</sup> The juvenile pretrial diversion data reported in this report is based upon data reported directly to the Nebraska Crime Commission at the user level through the secure Juvenile Diversion Case Management System (JDCMS) on the Nebraska Criminal Justice Information System (NCJIS). Sixty-three counties reported the required 2017 diversion data into JDCMS. Thirteen counties did not report data into JDCMS because they did not have any diversion participants in calendar year 2017 to report, or did not comply with the statutory duty to report.

<sup>14</sup> Neb. Rev. Stat. § 43-260.07

## Referrals to Diversion

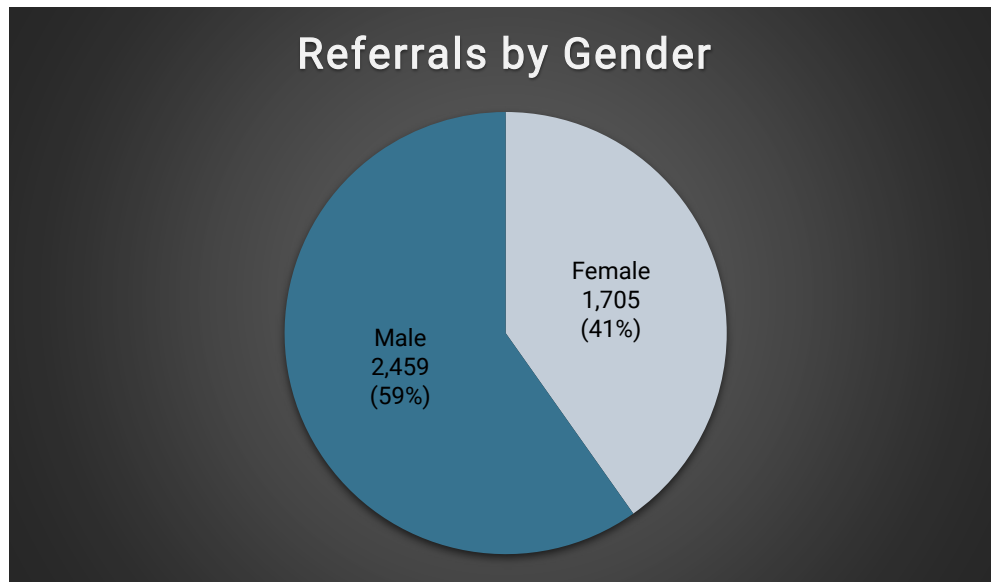
From January 1, 2017 to December 31, 2017, a total of 4,164 referrals (5,840 law violations and status offenses<sup>15</sup>) were made to a formal juvenile diversion program in Nebraska.<sup>16</sup>

## Characteristics of the Population

### Gender

Fifty-nine percent of the referrals (2,459) to juvenile diversion were male, 41% (1,705) were female (Chart 1).

Chart 1: Youth Referred to Juvenile Diversion by Gender CY 2017



### Age

Some diversion programs allow participation of individuals over the age of 17. The age range of reported diversion cases was from 6 years to 18 years of age.<sup>17</sup> A total of 3,890 juveniles 6 to 17 years of age were referred to a juvenile diversion program in CY2017.<sup>18</sup> Sixteen year olds had the highest amount of referrals to diversion in CY 2017 with 1,003 statewide (Table 1).

<sup>15</sup> This number includes status offenses referred to diversion, such as truancy and ungovernable. See page 12 for more information on truancy diversion.

<sup>16</sup> Because not all counties are complying with the statutory duty to report, there remains missing data. Data only represents what was reported to the Nebraska Crime Commission. Data includes individuals through 18 years of age.

<sup>17</sup> While many programs will accept referrals for individuals through age 20, not all counties enter participants over 18 years of age in JDCMS.

<sup>18</sup> Three cases had missing data on age at referral.

Table 1: Youth Referred to Juvenile Diversion by Age CY 2017

Age	Number of Youth Referred	Percent of Youth Referred
6	6	Less than 1%
7	3	Less than 1%
8	9	Less than 1%
9	9	Less than 1%
10	20	Less than 1%
11	72	2%
12	199	5%
13	344	8%
14	547	13%
15	781	19%
16	1,003	24%
17	897	22%
18	271	7%
Missing data	3	Less than 1%
<b>Total</b>	<b>4,164</b>	<b>100%</b>

As a result of LB264 in 2016, only juveniles 11 years of age or older at the time the act was committed can be subject to a filing under Neb. Rev. Stat. 43-247(1), (2), (3)(b), or (4). This has brought into question a youth’s eligibility for juvenile diversion when the statute makes juvenile diversion an option for county attorney’s for juvenile’s described in Neb. Rev. Stat. 43-247(1), (2), (3)(b), and (4).

*Race/Ethnicity*

White youth had the highest rate of referrals to juvenile diversion (61% of referrals statewide), followed by Hispanic youth (18%) and African American youth (15%).

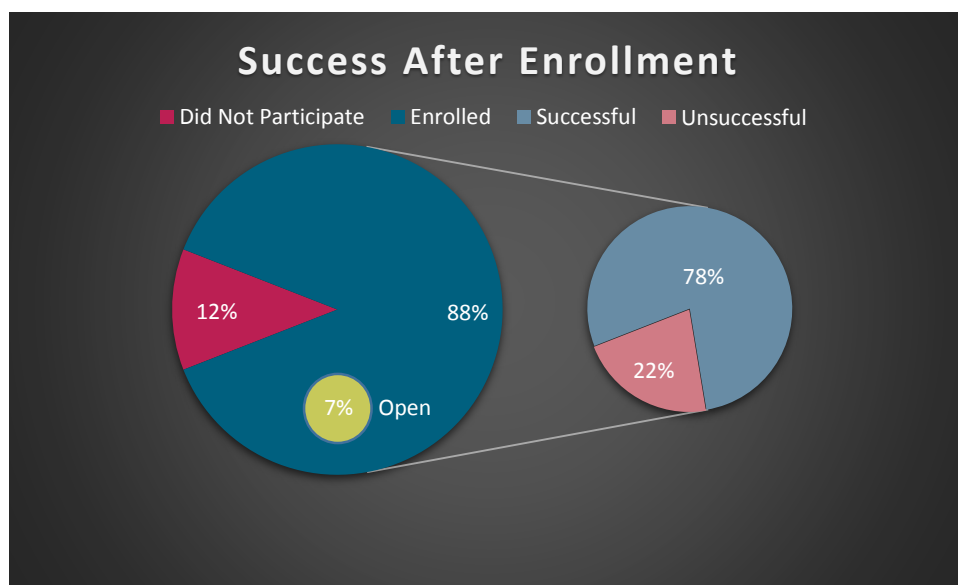
Table 2: Youth Referred to Juvenile Diversion by Race CY 2017

	Number of Youth Referred	Percent of Youth Referred
White	2,536	61%
Hispanic	748	18%
Black, African American	620	15%
American Indian, Alaska Native	71	2%
Asian	47	1%
Multiple Races	29	Less than 1%
Native Hawaiian, Other Pacific Islander	2	Less than 1%
Other Race	26	Less than 1%
Missing Data	85	2%
<b>Grand Total</b>	<b>4,164</b>	<b>100%</b>

## Success Rates

Statewide, 88% of youth referred to a juvenile diversion program in CY2017 enrolled after referral (3,683 youth). As of the date of this report, 78% (2,650 youth) of the closed diversion cases successfully complete the diversion program, and 22% (766 youth) of the closed cases did not successfully complete the diversion program.<sup>19</sup> The number of unsuccessful completions include situations such as: the youth had another law violation while in diversion, the youth did not comply with the diversion requirements, or parent withdrew youth after enrollment. As of the date of this report, 267 cases remained in open status<sup>20</sup>; meaning they enrolled after being referred in CY2017 and have not yet been discharged from the program (Chart 2).

Chart 2: Youth Success in Juvenile Diversion CY 2017



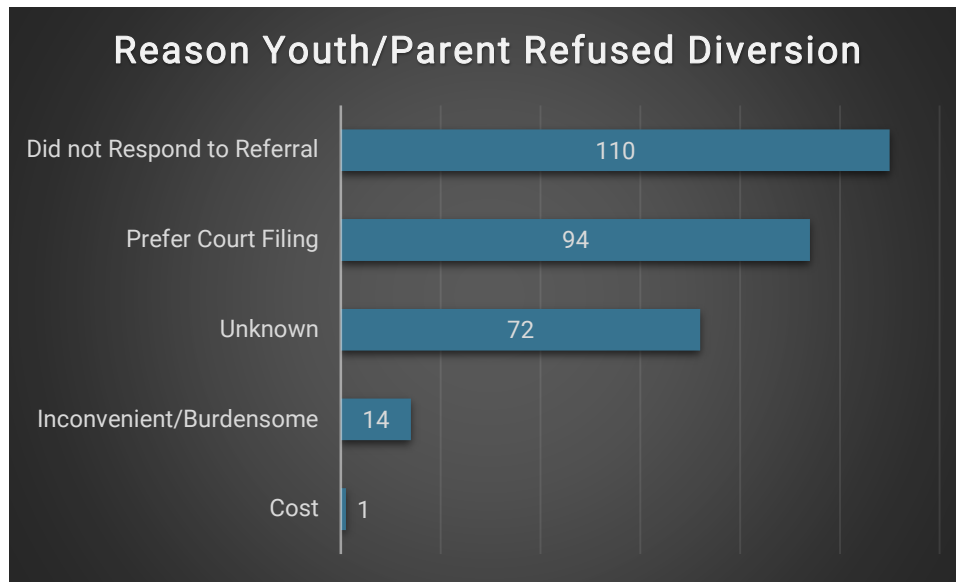
Statewide, 12% (491 youth) did not participate in the juvenile diversion program after referral. The reason youth did not enroll in juvenile diversion include the referring attorney withdrew the referral, the diversion program declined admission after referral, or the youth or parent refused to participate. Youth also might not have participated because another reason, such as they moved away, transferred schools, death, etc. Fifty-nine percent (291 youth) refused to participate in juvenile diversion. The reasons for refusal are further broken down in the chart below (Chart 3).

<sup>19</sup> This is the number of completions as of June 18, 2017. This number was calculated by only considering the cases referred in CY2017 and closed by the date of this report. The number of open cases was not included in this calculation.

<sup>20</sup> The number of open cases reflects truancy diversion cases in which youth are often enrolled for up to one or two semesters beyond referral date, compared to shorter traditional diversion programs.



Chart 3: Juvenile Diversion Refusal Reason CY 2017



For an in-depth analysis of juvenile diversion program success by county, please see the [Evidence-Based Nebraska Juvenile Diversion Programs 2012-2015 Report](#) publish by the University of Nebraska Omaha Juvenile Justice Institute.

*Success by Race, Age, and Gender*

Table 3: Success Rates of Youth Referred by Race, Age, & Gender CY 2017

Demographic		Successful	Unsuccessful	Did Not Participate	Open
Race/ Ethnicity	Am. Indian	41	7	9	14
	Asian	31	11	4	1
	Black	381	155	70	11
	Hispanic	425	169	77	77
	Multiple Races	11	13	2	3
	Native Hawaiian	1	0	1	0
	Other Race	20	3	3	0
	Unspecified	41	5	16	23
	White	1699	400	299	135
Age	6	2	0	1	3
	7	0	0	0	3
	8	3	0	2	4
	9	5	1	1	2
	10	11	3	3	3
	11	44	11	8	6
	12	130	30	24	14
	13	224	60	41	19

	14	338	116	55	38
	15	481	166	90	43
	16	642	194	108	59
	17	569	154	122	51
	18	200	27	22	22
	Missing Data	1	1	1	0
Gender	Female	1102	299	176	129
	Male	1548	464	305	138

## Law Violations

Over 100 different law violations were referred to a juvenile diversion program across the state in CY2017. The most common law violations referred to juvenile diversion were minor in possession (947 cases) and shoplifting (734 cases), same as previous years. Table 4 demonstrates the top 13 law violations referred to a juvenile diversion program in CY2017, with the remaining law violations having less than 100 referrals. Included in the law violations are status offenses, violations criminalized only because of the age of the offender, such as truancy, ungovernable, runaway youth, etc.

Table 4: Law Violations Referred to Diversion CY 2017

	Number of Law Violations Referred
Minor In Possession	947
Shoplifting	734
Marijuana-Possession	639
Truancy	569
Assault	476
Possession/Use Drug Paraphernalia	396
Traffic Offense	354
Criminal Mischief	265
Theft	200
Trespassing	178
Disturbing The Peace	160
Ungovernable Juvenile	118
Curfew	103

## Juvenile Diversion Activities

Juvenile Diversion programs reporting to the Nebraska Crime Commission through JDCMS have the ability to create case plans and monitor the progress of juvenile diversion requirements for each youth. There were over 40 different diversion requirements assigned in CY2017, with a total number of requirements assigned equaling 15,719. See Table 5 below for a breakdown of the most common diversion requirements assigned.

Table 5: Juvenile Diversion Requirements CY 2017

Diversion Requirement	Number of Times Assigned	Diversion Requirement	Number of Times Assigned
Perform Community Service	2028	Improve communication with parent/other family members	137
Pay Diversion Fee	1965	Increase/maintain positive peer relations	135
Write an apology letter	1020	Participate in mediation	115
Maintain school attendance, academic, and behavioral standards	891	Regularly attend extracurricular activity	115
Attend Drug and Alcohol Class	872	Identify one supportive adult	115
Submit to Drug and Alcohol Testing	754	Obtain Driver's License	111
Education/Program/Sessions	722	Reduce/Eliminate curfew violations	102
Avoid Criminal Activity/Police Contact	699	Demonstrate progress assuming responsibility (household, chores, self)	100
Accountability Check-In	667	Reduce/Eliminate unexcused absences	92
Complete written assignment	615	Complete Mental Health Evaluation	68
Attend Responsible Decision Making Class	578	Perform jury duty in teen court	65
Find a positive extracurricular activity	510	Pay Reduced Diversion Fee	54
Complete Drug/Alcohol Evaluation	322	Reduce/Eliminate tardies	49
Pay Restitution	315	Make Results of Drug/Alcohol Test available to Case Manager	36
Report in at designated curfew	304	Refrain from Gang Contact	35
Acquire/Maintain employment	275	Provide Results of Drug/Alcohol Evaluation to Case Manager	34
Pay Court Fee	255	Restitution Scholarship Awarded	23
Comply with evaluation recommendations	242	Pick up and complete a job application (keep a copy)	17
Attend Counseling	226	Provide Evaluation Results to Case Manager	17
Academic improvement	207	Attend Day Reporting	7

## Diversion Services Not Captured in Diversion Referral Counts

Many counties utilize other informal practices not always having readily available data, including warning letters, pre-diversion interventions, and diversion to the court. Other diversion programs statewide include focusing specifically on youth crossing over between the child welfare and juvenile justice systems, status youth who are ungovernable but have not committed a law violation, youth getting expelled or suspended from school, and teen courts.

There is currently no mechanism to track how many juveniles were eligible for a juvenile pretrial diversion program, but were not referred by the prosecuting attorney. Data is also not readily available in every county on how many referrals to a prosecuting attorney are not prosecuted at the attorney's discretion.

### *Warning Letters*

The prosecuting attorney will often issue a warning letter stating they will not be pursuing prosecution of the current charge and is allowing the youth to receive a warning in lieu of a diversionary intervention or court filing. Douglas County issued 269 warning letters after referral to the Juvenile Assessment Center (JAC) for assessment. Lancaster County reported 422 cases were not charged/received a warning letter after referral for assessment.

### *Early Assessment*

All youth are not the same and should not be treated the same. Youth intervention should be based on the risk level and individual needs, rather than "one size fits all" approach. Many programs utilize the process of referring the youth for assessment first to determine the best course of action. In fact, Nebraska statute requires diversion programs to provide screening services for use in creating a diversion plan utilizing appropriate services for the juvenile.<sup>21</sup>

Evidence based screening and assessment tools are recommended to identify the behavioral risks and rehabilitative needs for each youth. The goal is to make contact with the youth as quickly as possible for maximum impact with the youth, and determine the right type and dosage of intervention. This process may screen youth out of a referral to diversion when appropriate, recommending no intervention in some instances. This concept is very important because for many low risk youth, no intervention is the most effective intervention. Research has shown intervention programs targeting low-risk youth often worsen the outcomes for those youth, compared to high risk targeted programs.<sup>22</sup> In fact, low-risk youth receiving only a caution have shown better outcomes than those referred to a diversion intervention.<sup>23</sup>

In CY 2017, Lancaster County received 851 assessment referrals, assessing 792 youth through their early assessment program. A recommendation of a lesser intervention than diversion was made for 422 youth. Douglas County received 1,309 assessment referrals, assessing 1,132 youth at the Juvenile Assessment Center. Douglas County recommended nolle pros for 40 youth after assessment, rather than referral on to diversion.

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<sup>21</sup> Neb. Rev. Stat. §43-260.04(5).

<sup>22</sup> Dick Mendel, Case Now Strong for Ending Probation's Place As Default Disposition in Juvenile Justice, Juvenile Justice Information Exchange (2016), <http://jjie.org/case-now-strong-for-ending-probations-place-as-default-disposition-in-juvenile-justice/227322/> (last visited June 15, 2017).

<sup>23</sup> Id.

### *School Diversion*

The “School-to-Prison Pipeline” is a metaphor for how youth enter the juvenile justice system through incidences at school. Diverting school-based offenses from the juvenile justice system is an important diversionary system point which requires collaboration between schools, law enforcement, and the county attorney’s office.

#### *Program Examples<sup>24</sup>*

Project RESTORE in Lancaster County is an example of a school-based offense diversion program with the goal of avoiding unnecessary entry into the juvenile justice system and reducing school suspensions. Project RESTORE provides an opportunity for pre-referral diversion from court involvement for students ages 12 to 15 who would otherwise be referred to the County Attorney for an assault or disturbing the peace inside any Lincoln Public Schools middle or high school. This program will hold youth accountable for their behavior through restorative justice practices and encourages behavior change through interventions and referrals to appropriate programs. This is a voluntary and brief 60-day program. Upon successful completion, the violation will be removed from the youth’s record with no further legal action taken. In CY2017, Project RESTORE had 71 eligible referrals, 65 enrollments, 63 successful completions, and 1 unsuccessful completion.

SAMI is second school-based offense diversion program in Lancaster County with the ultimate goal of avoiding unnecessary entry into the juvenile justice system and reducing school suspensions. SAMI provides an opportunity for pre-referral diversion from court involvement for students from Lincoln High Schools who would otherwise be referred to the County Attorney for possession and/or under the influence of marijuana or alcohol. If the youth agrees to participate in a SKIP assessment, 3<sup>rd</sup> Millennium Classroom course for marijuana or alcohol prevention, and a back to school meeting, the youth’s suspension will be reduced and the violation will be removed from the youth’s record with no further legal action.

#### *Truancy Diversion Program Example*

The Lancaster County Truancy Diversion Program is a program at three middle schools and four high schools for youth who have missed 20 or more days of school and have been referred to the Lancaster County Attorney’s Office for a court filing. Instead of a formal court process, a juvenile court judge, school principal, public defender, county attorney, therapist, and school social worker meet weekly at the school to address the youth’s needs. The therapist and school social worker have extensive contact with the family through Functional Family Therapy and regular calls and visits. The judge or principal have weekly contact with the youth through an informal hearing after school. Upon successful completion of the truancy diversion program, the truancy filing is dismissed. In CY2017, the Lancaster truancy diversion program served 73 youth.

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<sup>24</sup> Project Restore, SAMI, and Lancaster Truancy Diversion Program counts are included in the 2017 diversion referral counts reported in this report.

## Diversion in Nebraska Moving Forward

Nebraska is dedicated to its motto of “equality before the law.” To that end, it is imperative juveniles be allowed to complete a diversion program, if the offense is one typically eligible in the state of Nebraska. All juveniles in Nebraska deserve to have equal access to juvenile diversion programs regardless of geography. All diversion programs should be equal in quality of programming offered and consistently follow best practice recommendations and Nebraska Statute.

Nebraska stakeholders continue to support and advocate for juvenile diversion programs statewide. Resources and training may be the obstacles barring equitable access. Nebraska has created a Statewide Diversion Advisory Subcommittee as part of the Nebraska Coalition for Juvenile Justice, and is committed to ongoing training. With the assistance of this subcommittee, the *Nebraska Juvenile Pretrial Diversion Guidelines* were released and additional toolkits and resources are in continuous development for use by diversion programs statewide. The Diversion Advisory Subcommittee will stay committed to working with diversion programs to monitor effectiveness and to develop and enhance quality diversion programs statewide.