

JUVENILE DIVERSION IN NEBRASKA

2018 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 (Nebraska Crime Commission) is responsible for generating an annual report on diversion programs in Nebraska by Nebraska Revised Statute § 81-1427 (Reissue 2014). This 2018 diversion report serves to fulfill the statutory requirement.

Introduction to Juvenile Pretrial Diversion Programs

Juvenile pretrial diversion is a voluntary program available to youth with a minor law violation or status 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 youth 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.¹ 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.² 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.³ 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.⁴

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.⁵ 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.⁶ Programs should strive to provide therapeutic techniques aimed to increase

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

² 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).

³ 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 March 1, 2019).

⁴ 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).

⁵ 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).

⁶ 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 March 1, 2019); 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.⁷

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.⁸

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.⁹

In Nebraska, a county attorney has statutory authority to develop a juvenile diversion program with the concurrence of their county board.¹⁰ 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.¹¹ 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.¹²

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.¹³ This statutory requirement is another reason why county attorney support and development of juvenile diversion programs is vital in Nebraska.

⁷ 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).

⁸ 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).

⁹ Neb. Rev. Stat. § 43-260.03

¹⁰ Neb. Rev. Stat. § 43-260.02

¹¹ Neb. Rev. Stat. § 43-260.04

¹² Neb. Rev. Stat. § 43-260.04 -.06

¹³ Neb. Rev. Stat. § 43-276(2)

Juvenile Pretrial Diversion Programs in Nebraska

An informal survey of all counties indicated there are currently 77 of the 93 counties reportedly offering some form of a juvenile pretrial diversion program (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, 73 counties in CY2016, and 73 counties in CY2017. The Winnebago Tribe also reports having a Traditional Wellness Court and a formal juvenile diversion program. No other tribe reported a diversion program in 2018.

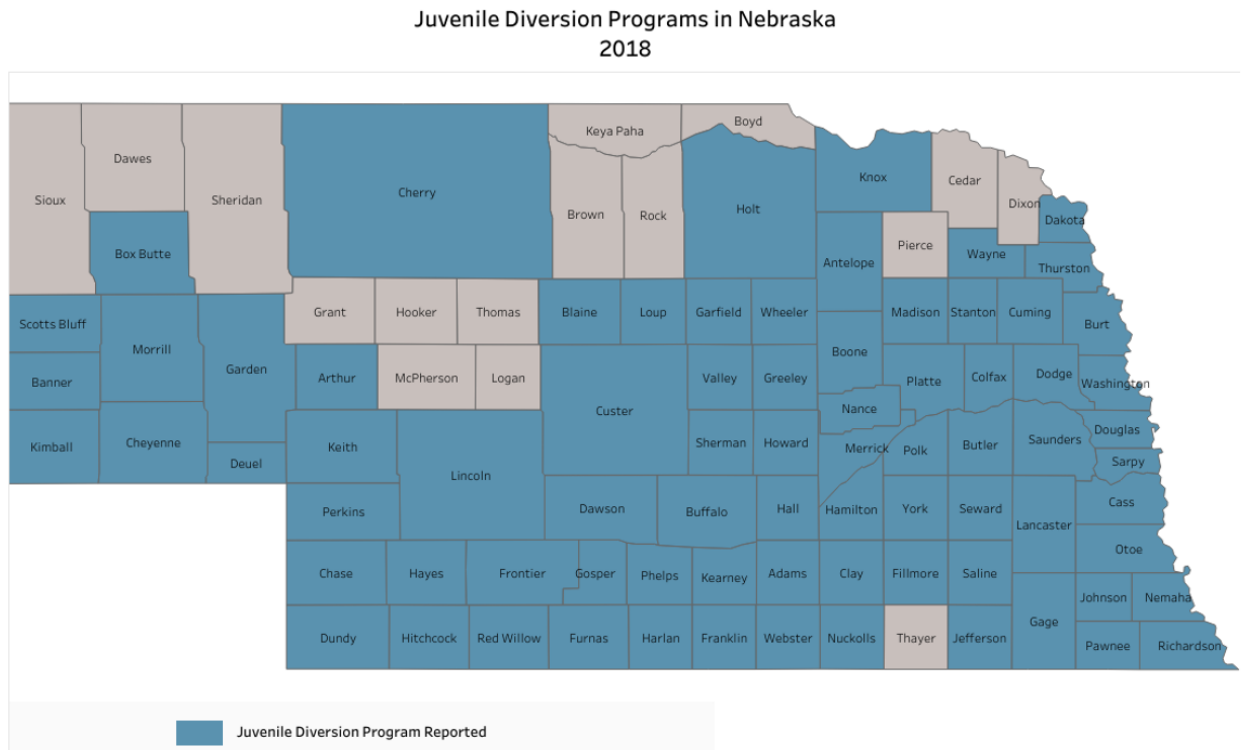


Figure 1

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.¹⁴ 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-seven counties reported the required 2018 diversion data into JDCMS. The Winnebago Tribe began utilizing JDCMS in late 2018, and are not reflected in the counts for this report.

¹⁴ Neb. Rev. Stat. § 43-260.07

Referrals to Diversion

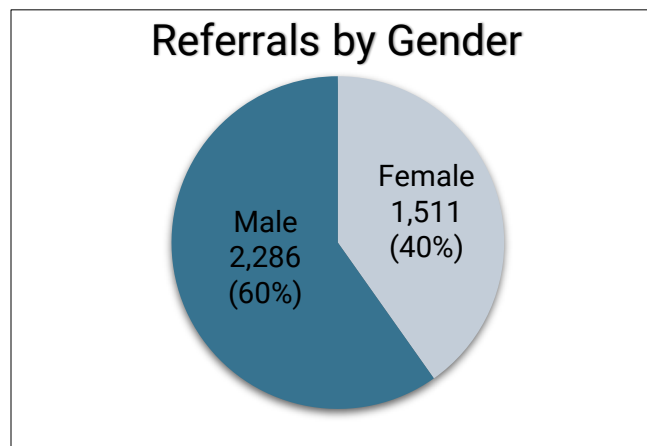
From January 1, 2018 to December 31, 2018, a total of 3,800 referrals (4,738 law violations and status offenses¹⁵) were made to a formal juvenile diversion program in Nebraska.¹⁶

Characteristics of the Population

Gender

Sixty percent of the referrals (2,286) to juvenile diversion were male, 40% (1,511) were female (Chart 1).¹⁷

Chart 1: Youth Referred to Juvenile Diversion by Gender CY2018



Race/Ethnicity

White youth had the highest rate of referrals to juvenile diversion (57% of referrals statewide), followed by Hispanic youth (22%) and African American youth (14%).

Table 1: Youth Referred to Juvenile Diversion by Race CY2018

	Number of Youth Referred	Percent of Youth Referred
White	2,173	57%
Hispanic	824	22%
Black, African American	514	14%
American Indian, Alaska Native	76	2%
Asian	43	1%
Multiple Races	43	1%
Native Hawaiian, Other Pacific Islander	3	Less than 1%
Other Race	41	1%
Unspecified	83	1%
Grand Total	3,800	100%

¹⁵ This number includes status offenses referred to diversion, such as truancy, ungovernable, and runaway youth.

¹⁶ 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.

¹⁷ Three referrals had unspecified gender.

Age

Some diversion programs allow participation of individuals over the age of 17. The age range of reported diversion cases for purposes of this report include from 5 years to 18 years of age.¹⁸ Sixteen year olds had the highest amount of referrals to diversion in CY2018 with 912 statewide (Table 2).

Table 2: Youth Referred to Juvenile Diversion by Age CY2018

Age	Number of Youth Referred	Percent of Youth Referred
Under 8	7	Less than 1%
8	7	Less than 1%
9	11	Less than 1%
10	11	Less than 1%
11	58	1.5%
12	179	5%
13	365	10%
14	522	14%
15	729	19%
16	912	24%
17	790	21%
18	209	5.5%
Total	3,800	100%

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). Youth under 11 years of age should be participating in a family intervention program that more aligns with the intent of making the minimum filing age 11 years. Twenty-five (69%) of the youth under 11 included in this data set were referred for truancy. A more in-depth analysis through program monitors is necessary to determine the filing and referral practices in each county for youth under the age of 11.

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

Enrollments After Referral

Statewide, 88% of youth referred to a juvenile diversion program in CY2018 enrolled after referral (3,342 youth).¹⁹ Enrollments are further broken down by demographic information below (Table 3).

Enrollments by Race, Age, and Gender

Table 3: Youth Enrolled in Juvenile Diversion by Race, Age, & Gender CY2018

Demographic		Enrolled	% Enrolled ²⁰	Did Not Participate	Missing Data
Race/ Ethnicity	Am. Indian	68	89%	8	0
	Asian	38	90%	4	1
	Black	454	89%	57	3
	Hispanic	705	87%	110	9
	Multiple Races	22	92%	2	0
	Native Hawaiian	3	100%	0	0
	Other Race	28	88%	4	0
	Unspecified	60	75%	20	0
	White	1,933	89%	227	13
Age	Under 8	5	83%	1	1
	8	5	71%	2	0
	9	11	100%	0	0
	10	8	73%	3	0
	11	48	83%	10	0
	12	165	92%	14	0
	13	315	87%	48	2
	14	450	87%	67	5
	15	652	90%	76	1
	16	796	88%	110	6
	17	694	89%	88	8
	18	193	94%	13	3
Gender	Male	2,020	89%	245	21
	Female	1,319	88%	187	5

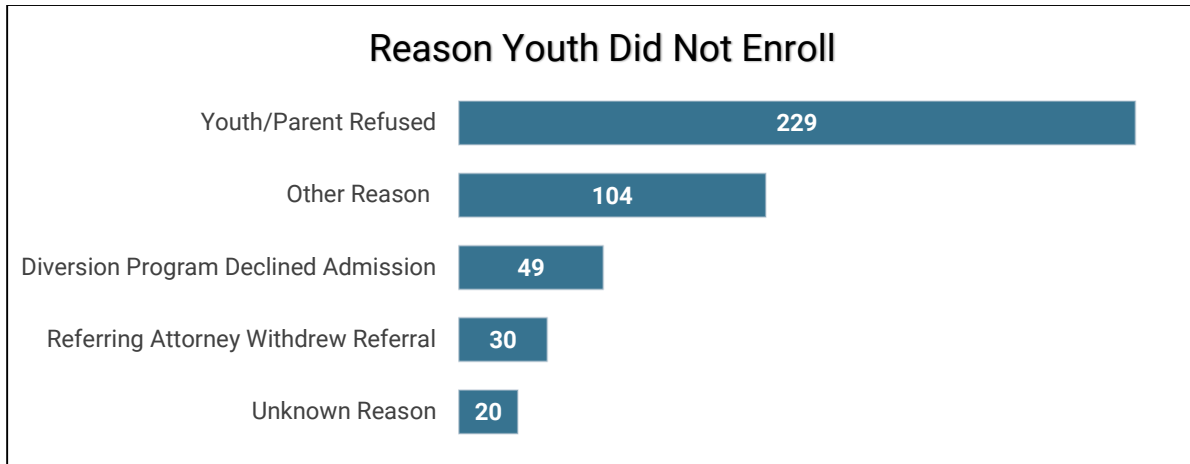
¹⁹ Twenty-six cases were missing enrollment data beyond referral.

²⁰ Percentages exclude missing data.

Reason Youth Did Not Enroll

A total of 432 youth did not enroll in juvenile diversion after referral. The reason youth did not enroll 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 for another reason, such as they moved away, transferred schools, graduated, death, etc. The reasons for not enrolling are broken down in the chart below (Chart 2).

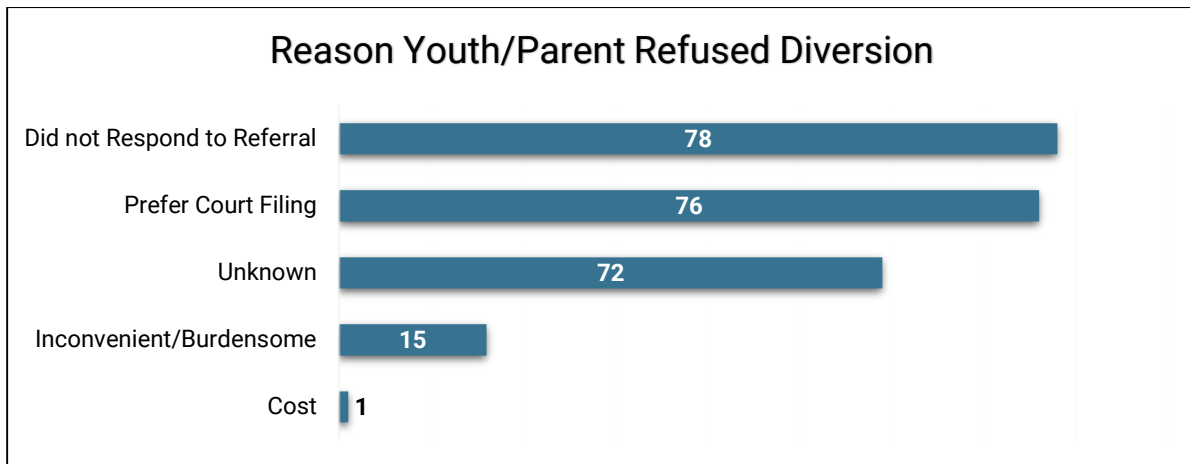
Chart 2: Reason Youth Did Not Enroll in Diversion CY2018



Refusals

Fifty-three percent (229 youth) of the youth that did not enroll after referral refused to participate in juvenile diversion. The reasons for refusal are further broken down in the chart below (Chart 3).

Chart 3: Juvenile Diversion Refusal Reason CY2018



Discharges from Diversion

From January 1, 2018 to December 31, 2018, a total of 3,068 cases were discharged from a formal juvenile diversion program in Nebraska.²¹

Success Rates

Statewide, 80% (2,469 youth) of the discharged cases successfully complete the diversion program, and 20% (600 youth) did not successfully complete the diversion program.²² 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.

Success by Race, Age, and Gender

Table 4: Success Rates of Youth Discharged by Race, Age, & Gender CY2018

Demographic		Success Rate	Successful	Unsuccessful	Did Not Participate
Race/ Ethnicity	Am. Indian	72%	42	16	7
	Asian	72%	31	12	2
	Black	73%	311	114	49
	Hispanic	76%	458	146	91
	Multiple Races	73%	16	6	1
	Other Race	83%	20	4	2
	Unspecified	89%	33	4	19
	White	84%	1,558	298	176
Age	9	67%	2	1	0
	10	60%	3	2	2
	11	89%	33	4	8
	12	82%	115	25	13
	13	82%	237	51	40
	14	75%	303	103	62
	15	78%	449	129	64
	16	81%	596	142	80
	17	82%	540	118	70
	18	88%	191	25	8
Gender ²³	Female	82%	969	214	154
	Male	80%	1,499	386	193

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

²¹ This number represents discharges either successfully or unsuccessfully; does not include youth that did not participate after referral.

²² One case had a discharge date in 2018 with no discharge reason and is therefore not included.

²³ One case had missing gender data.

Law Violations

Over 100 different law violations were referred to a juvenile diversion program across the state in CY2018. Table 5 demonstrates the top 13 law violations referred to a juvenile diversion program in CY2018, 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, curfew violations, ungovernable, and runaway youth.

Statewide, minor in possession had a 40% decrease, shoplifting had a 31% decrease, and marijuana possession had a 19% decrease in referrals from the previous year, moving truancy to the top referral to diversion in CY2018 with a slight increase (3%) from the previous year.

Table 5: Law Violations Referred to Diversion CY2018

Law Violation	Number of Law Violations Referred
Truancy	588
Minor In Possession	564
Marijuana Possession	517
Shoplifting	505
Assault	454
Possession Of Drug Paraphernalia	308
Traffic Offenses	255
Misuse Learners/School/Provisional Operators Permit Or License	75
No Operator's License	63
Speeding	27
Leave Scene Of Accident	20
No Valid Registration Or Proof Of Insurance	13
Violation Of A Traffic, Stop, Or Yield Signal	10
All Others	47
Criminal Mischief	187
Theft	157
Disturbing The Peace	133
Trespassing	129
Disorderly Conduct	111
Tobacco Use By Minor	109
Remaining Law Violations	721
TOTAL	4,738

Limitations within the 2018 data

Data entry errors with dates of birth, referral dates, and discharge dates cause cases to be excluded from the timeframe being reported at an unknown rate. Other issues discovered were duplicate youth, conflicting discharge reasons, no activity or data reported beyond the referral date, missing charges, and blank discharge reasons. When enrollment and/or discharge data is missing, we are unable to determine if the youth enrolled or completed the program successfully or unsuccessfully. Twenty-six cases were missing enrollment data beyond the referral date. Eighty-seven youth did not have a law violation reported. Ten counties did not report data because they did not have any diversion participants in calendar year 2018 to report, or simply did not comply with the statutory duty to report.

Diversion Services Not Captured in Diversion Referral Counts

Many counties utilize other informal practices not always having data readily available, 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 for low risk or low level offenses. Douglas County issued 386 warning letters²⁴ after referral to the Juvenile Assessment Center (JAC) for assessment. Lancaster County reported 287 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 the "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.²⁵

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 often the most effective approach. Research has shown intervention programs targeting low-risk youth often worsen the outcomes for those youth, compared to high risk targeted programs.²⁶ As a result, low-risk youth receiving only a warning have shown better outcomes than those referred to a diversion intervention.²⁷ As referenced above, issuing a warning letter is an appropriate and effective way to intervene with many low-risk youth, as a traditional diversionary intervention is not necessary in every case.

²⁴ Includes recommendations of nolle pros.

²⁵ Neb. Rev. Stat. §43-260.04(5).

²⁶ 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).

²⁷ Id.

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.

In 2018, the Director of Juvenile Diversion Programs worked with the subcommittee to develop a strategic plan with ten goals addressing expansion, advocacy, research and best practices in juvenile diversion. The Director of Juvenile Diversion Programs and the Diversion Advisory Subcommittee will stay committed to working with diversion programs to monitor effectiveness and to develop and enhance quality diversion programs statewide.