

FY 2014 Annual Report to the Governor & Nebraska Legislature

Juvenile Diversion in Nebraska

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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. This fiscal year 2014 diversion report is fulfilling this statutory duty. The director is also responsible for fostering, promoting, researching, and assessing juvenile pretrial diversion programs and developing new programs in collaboration with cities and counties.

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 before formal adjudication and diverts the youth from involvement in the juvenile justice system and into a program that offers a continuum of requirements and services. The end result of successfully completing a juvenile diversion program is dismissal or non-filing of the diverted case. Juvenile pretrial diversion programs are based on the belief that not all cases are best handled through formal processing. Pretrial diversion is a positive alternative to the juvenile justice system and can provide more appropriate methods of treating juveniles charged with an offense, and provide better outcomes for the youth.

Adolescent brain development research shows that the part of a juvenile's brain that is 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 Over-involvement with the juvenile justice system can make things worse for those juveniles.³ This understanding that the developmental factors that make adolescents different from adults shows that 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. The justice system should not exempt youth from punishment, but

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 *Id.*

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).

should consider the developmental stage of adolescents when juveniles are facing criminal prosecution. Programs and practices should teach youth about the consequences of their wrongdoing in a developmentally informed way, give youth opportunities to restore damage they have caused, and the tools to learn from their mistakes and make better choices in the future.⁵ The most effective programs seek to meet the youth's development needs by promoting contact with prosocial peers and adult role models, actively engaging parents and family members, offering tools to deal with negative influences, and engaging youth in educational programming and employment that will prepare them for adulthood.⁶

There are five principles for supporting the use of diversion that are identified as priorities in diversion programs across the country: 1) reducing recidivism; 2) providing services; 3) avoiding labeling effects; 4) reducing system costs; and 5) reducing unnecessary social control.⁷

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.⁸

In Nebraska, a county attorney has statutory authority to develop a juvenile diversion program with the concurrence of their county board.⁹ A county attorney's decision to utilize a diversion program and refer a youth to diversion is often based on factors that generally include: 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.¹⁰ Juvenile pretrial diversion programs in Nebraska are required to provide screening services for use in creating an individualized diversion plan that utilizes 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.¹¹

⁵ *Id.*

⁶ *Id.*

⁷ 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).

⁸ Neb. Rev. Stat. § 43-260.03

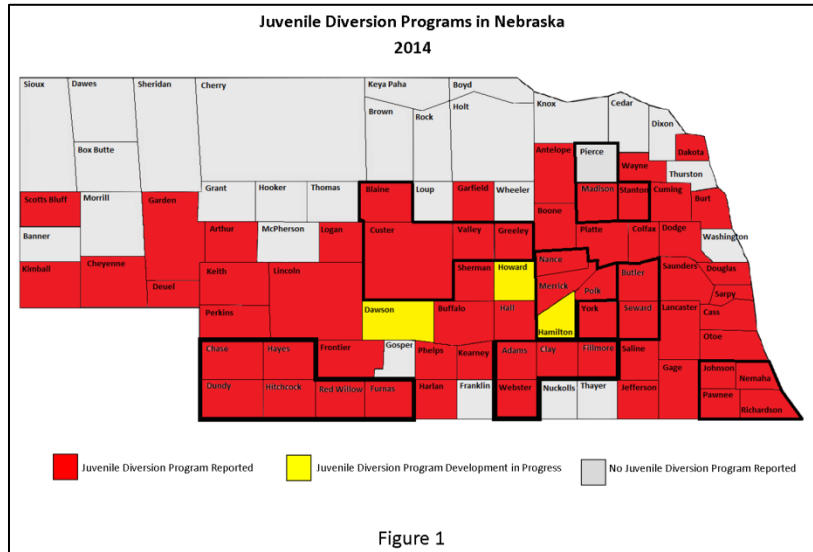
⁹ Neb. Rev. Stat. § 43-260.02

¹⁰ Neb. Rev. Stat. § 43-260.04

¹¹ Neb. Rev. Stat. § 43-260.04 -.06

Juvenile Pretrial Diversion Programs in Nebraska

An informal survey of all counties indicated there are currently 62 of the 93 counties reportedly offering a juvenile pretrial diversion program (See Figure 1). Of the reported diversion programs, 52 counties reported the required diversion data into Juvenile Diversion Case Management System (JDCMS).¹² The remaining counties either did not have any diversion participants in FY2014, or are not complying with the statutory duty to report. Three counties are currently developing their diversion program.¹³



According to the 2010 Census data, there are 177,953 juveniles in Nebraska ages 12-18.¹⁴ Of that juvenile population, 156,877, or 88% of the juveniles have access to a juvenile diversion program in Nebraska. The ultimate goal is for 100% of the juvenile population to have equal access to juvenile pretrial diversion in Nebraska. Of the 10,534 juvenile arrests in calendar year 2013, 10,175 of the arrests took place in counties that offered a juvenile diversion program.¹⁵ Although approximately 97% of reported juvenile arrests happened in counties that offer a juvenile diversion program, only 34% of those juvenile arrests resulted in a referral to diversion.¹⁶ In calendar year 2013, Probation Administration served 5,199 youth. Juveniles with liquor and status offenses accounted for 1,241 of those served. Low risk level youth according to the JCBI assessment accounted for 32% of the youth served.¹⁷ An argument could be made that low level juvenile offenders placed on juvenile probation may be better served in a juvenile diversion program by allowing juvenile probation officers to work with more serious juvenile offenders, providing the juvenile justice system with a significant cost savings, and keeping youth from entering the juvenile justice system.

¹² Box Butte County had 7 referrals during FY2014 but has since ceased to make referrals to a formal diversion program and is not included in the 62.

¹³ Dawson, Hamilton, Howard.

¹⁴ Nebraska Commission on Law Enforcement and Criminal Justice, *2015 Community-Based Juvenile Services Aid Request for Proposal (RFP)*, www.ncc.ne.gov.

¹⁵ Nebraska Commission on Law Enforcement and Criminal Justice. Note: Not all departments report arrest data.

¹⁶ Calendar year 2013 diversion referrals: 3,464.

¹⁷ Nebraska Office of Probation Administration.

Many counties practice informal diversion, warning letters, and pre-diversion. These statistics are currently not tracked in all counties. There is currently no mechanism to track how many juveniles were eligible for a juvenile pretrial diversion program in Nebraska, but were not referred by the prosecuting attorney. Data is also not collected on how many referrals to a prosecuting attorney are not prosecuted at the county attorney's discretion.

Juvenile Pretrial Diversion Data

Availability of Diversion

From July 1, 2013 to June 30, 2014, a total of 3,546 individuals (4,633 law violations) were referred to a formal juvenile diversion program in Nebraska.¹⁸ Roughly 54% of all referrals were referred to a program in one of the three larger metropolitan areas of the state: 26% of referrals to diversion in Douglas County; 15% in Lancaster County and 13% in Sarpy County (Table 1).

Table 1: Referrals to Juvenile Diversion FY2014

County	Number of Youth Referred	Percent of Youth Referred
Douglas	921	26%
Lancaster	535	15%
Sarpy	472	13%
Other	1,618	46%
Total	3,546	100%

Other counties in the top five for referrals were Hall County with 8% of the referrals to diversion (301 youth), and Buffalo County with 6% of the total referrals (211 youth). Platte County accounted for 3% of the referrals (118 youth), and Madison County accounted for 3% (115 youth). The remaining counties each referred less than 100 youth to juvenile diversion in FY2014.

Youth were generally referred to juvenile diversion by the local prosecuting attorney. Of the 3,546 cases referred, 64% were from a county attorney, 21% were from a city attorney, and 15% were from law enforcement. Schools, other county, and other referral sources accounted for less than one percent of referrals (Table 2).

¹⁸ Because not all counties are complying with the statutory duty to report, there remains missing data.

Table 2: Source of Referrals to Juvenile Diversion FY2014

Referral Source	Number of Youth Referred	Percent of Youth Referred
City Attorney	736	21%
County Attorney	2268	64%
Law Enforcement	518	15%
Other	7	Less than 1%
Other County	12	Less than 1%
School	1	Less than 1%
Missing Data	4	Less than 1%
Grand Total	3,546	100%

Characteristics of the Population

Some diversion programs allow participation of individuals over the age of 17. The age range of reported diversion cases was from 8 years to 21 years of age.¹⁹ A total of 2,794 juveniles ages 8 to 17 years of age were referred to a juvenile diversion program in FY2014. Eighteen year olds accounted for a majority of the referrals over the age of 17 with 473 referrals. A total of 148 nineteen year olds, 80 twenty year olds, and 51 twenty-one year olds were referred to a diversion program in FY2014 (Table 3).

Table 3: Youth Referred to Juvenile Diversion by Age FY 2014

Age	Number of Youth Referred	Percent of Youth Referred
8	1	Less than 1%
9	8	Less than 1%
10	13	Less than 1%
11	36	1%
12	89	3%
13	198	6%
14	318	9%
15	541	15%
16	758	21%
17	825	23%
18	473	13%
19	148	4%
20	80	2%
21	51	1%
Total	3,546	100.00%

¹⁹ Not all counties enter 17-21 year olds in JDCMS.

Race

White youth were referred to juvenile diversion at a higher rate than any other group, accounting for 64% of referrals statewide. Native Hawaiian and other Pacific Islander youth had the lowest rate (0.1%), followed by Native American, Asian and other race youth with the lowest rate of referrals, accounting for 1% of referrals each (Table 4). Counties with the highest levels of diversity according to the United States Census reported more diversity in referrals to diversion.²⁰ For example, 31% of the cases referred to diversion in Douglas County involved African American / Black youth while statewide only 13% of the referrals involve Black youth. Statewide, roughly 17% of referrals involve Hispanic youth, but comprise 77% of referrals in Colfax County, 40% of referrals in Hall County and 26% of referrals in Platte County (Table 5).

Table 4: Youth Referred to Juvenile Diversion by Race FY 2014

	Number of Youth Referred	Percent of Youth Referred
American Indian, Alaska Native	36	1%
Asian	36	1%
Black, African American	470	13%
Hispanic	597	17%
Multiple Races	13	Less than 1%
Native Hawaiian, Other Pacific Islander	2	Less than 1%
White	2282	64%
Other Race	32	1%
Missing Data	78	2%
Grand Total	3,546	100.00%

Table 5: Percent of Youth Referred by Race and County FY 2014

County	American Indian, Alaska Native	Black, African American	Hispanic	White
Colfax	2%	2%	77%	19%
Douglas	1%	31%	14%	51%
Hall	1%	6%	40%	52%
Platte	1%	0%	26%	72%

²⁰ United States Census, 2013 Nebraska State and County QuickFacts, <http://quickfacts.census.gov/qfd/states/31000.html>

	Statewide	Douglas County	Platte County	Colfax County	Hall County
Hispanic	9.9%	11.7%	15.8%	43%	25%
Black/African American	4.8%	11.6%			

Success Rates

Statewide, 84% of youth referred to a juvenile diversion program enrolled after referral in FY2014 (2,972 youth). Of those youth that enrolled, 81% successfully completed the program in FY2014 (2,220 youth). Seventeen percent (512 youth) did not successfully complete the diversion program. The rate of unsuccessful completions include situations such as: the youth had another law violation while in diversion, youth did not comply with the diversion requirements, and the referring attorney withdrew the referral. At the end of FY2014, 7% (204 cases) remained in open status. Table 6 demonstrates the rate of enrollment and successful completions in the counties with over 100 referrals.

Many youth do not have the opportunity to succeed because they do not enroll in diversion or are not offered the opportunity. Statewide, 16% (574 youth) did not participate in the juvenile diversion program after referral.²¹ An analysis of counties with a significant number of youth not participating in diversion after referral needs to be completed. Although further study should be completed, we anticipate that some of the reasons that parents and youth choose not to participate in diversion and opt for the juvenile justice system may include: 1) the cost of participating is too high, 2) the program requirements and time commitment are too burdensome, 3) language barriers, 4) transportation problems, etc. The rate of nonparticipation also includes the diversion program refusing admission due to ineligibility.

An in-depth analysis of success rates by county would be beneficial. Although the state has made an effort to use a common definition of successfully completing the diversion program, individual diversion programs and requirements vary across the state. A county conducting pre-screens which result in “warning” letters for very low risk youth, may appear to have a lower success rate because the very low risk youth (that are most likely to be successful in diversion) are not participating. On the other hand, a county that does not do a thorough pre-screening before admittance into the diversion program may also appear to have a lower success rate because the youth that should have been pre-screened out of participation are being terminated from the program. Success rates will also vary based on the diversion plan requirements. An evaluation of diversion plans would be beneficial to determine whether certain objectives result in higher success rates, and ultimately, lower recidivism rates.

In some counties, low risk youth are pre-screened out of a formal referral to or an enrollment in diversion and often issued only a warning letter. Currently, Douglas County is the only data set we have for warning letters. Not all of these situations are currently being tracked, and a

²¹ Number includes youth/parent refusing diversion, youth receiving a warning letter in Douglas County, or diversion program declining admission after referral.

more in depth analysis to measure the effectiveness of a pre-diversion phone call or warning letter would be beneficial.

Table 6: Success Rates of Youth Enrolled by County FY 2014

County	Referred	Enrolled	Percent Enrolled	Successful Completed	Unsuccessful
Buffalo	211	150	71%	81%	19%
Douglas	921	755	82%	83%	17%
Hall	301	252	84%	80%	20%
Lancaster	535	422	79%	73%	27%
Madison	115	112	97%	82%	18%
Platte	118	104	88%	90%	10%
Sarpy	472	326	69%	76%	24%

Asian youth and White youth had the highest success rates in diversion (78% and 65% successful). American Indian youth and Black/African American youth had the lowest success rates after referral with only 50% and 58% successfully completing diversion. American Indian youth had the highest rate of not participating after referral (22%), followed by Hispanic youth (13%) (Table 7).

Table 7: Success Rates of Youth Referred by Race FY 2014

	Did Not Participate	Open	Successful	Unsuccessful	Warning Letter
American Indian, Alaska Native	22%	6%	50%	17%	6%
Asian	8%	0%	78%	8%	6%
Black, African American	9%	4%	58%	25%	4%
Hispanic	13%	6%	63%	17%	2%
White	12%	8%	65%	12%	3%

Law Violations

Over 100 different law violations were referred to a juvenile diversion program across the entire state in FY2014. The most common law violations referred to juvenile diversion were minor in possession (855 cases) and shoplifting (676 cases). Table 8 demonstrates the top 13 law violations referred to a juvenile diversion program in FY2014, with the remaining law violations having less than 100 referrals.

Table 8: Law Violations Referred to Diversion FY 2014

	Number of Law Violations Referred
Minor In Possession	855
Shoplifting	676
Narcotic Equipment-Possession-Paraphernalia	368
Marijuana Possession-Less Than 1 Oz	347
Traffic Offense	255
Criminal Mischief	242
Theft By Unlawful Taking	228
Assault - 3rd Degree	212
Assault	152
Marijuana-Possession	142
Disturbing The Peace	131
Trespassing	128
Disorderly Conduct	115

Juvenile Diversion Advisory Subcommittee

Nebraska is dedicated to it's motto of "equality before the law." To that end, it is imperative that juveniles be allowed to complete a diversion program, if the offense is one that is typically eligible in the State of Nebraska. 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.

Statewide Diversion Capstone Project

Members of the Nebraska Coalition for Juvenile Justice Diversion Advisory Subcommittee traveled to Georgetown University in September 2014 to participate in a diversion capstone certificate program. Following the certificate program, the members returned to Nebraska tasked with a capstone pilot project to implement in Nebraska. Participants in the capstone certificate program included Bob Denton, District Six Probation; Dr. Anne Hobbs, Juvenile Justice Institute; Amy Hoffman, Nebraska Crime Commission; Cynthia Kennedy, Nebraska Crime Commission; Denise Kracl, Colfax County Attorney; Shakil Malik, Douglas Deputy County Attorney; Elaine Menzel, Nebraska Association of County Officials; Monica Miles-Steffens, Probation Administration; and Vicky Thompson, Cedars Northbridge Juvenile Diversion.

The pilot project proposal submitted by the Nebraska team is to work with three pilot locations to assist in the establishment or enhancement of juvenile diversion programs. Pilot locations proposed include the Winnebago Tribe, York County, and the Nebraska panhandle as a region.

Diversion in Nebraska Moving Forward

Nebraska stakeholders continue to support and advocate for juvenile diversion programs statewide. 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. The Diversion Advisory Subcommittee will stay committed to working with diversion programs to monitor effectiveness and to develop and enhance quality diversion programs statewide.