

JUVENILE DIVERSION IN NEBRASKA

CY 2022 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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Executive Summary

Eighty-seven counties and two tribes report having some type of juvenile pre-trial diversion services available to youth in their community during calendar year 2022. Of those 89 programs, 63 counties¹ reported referral data to the Nebraska Crime Commission by January 30, 2022.

In calendar year 2022, 3,841 youth were referred to a diversion program in Nebraska with 82% (3,136) enrolling after referral. Of the youth discharged from a diversion program during CY2022, 78% of the youth were discharged as successful.

The most common reasons for referral to a diversion program in CY2022 were assault, minor in possession of alcohol, marijuana possession, truancy, traffic offense, and shoplifting.

Compared to the population, Black youth are overrepresented in diversion. While Black youth make up only 6% of the total population, they account for 15% of diversion referrals and 11% of diversion enrollments. White youth are underrepresented in diversion. While white youth make up 83% of the total population, they account for 56% of the diversion referrals and 59% of the diversion enrollments. Eleven-year-olds followed by 17 year-olds were most successful in diversion. Black youth and youth of multiple races were discharged from diversion unsuccessfully at the highest rate at 28%.

¹ The Winnebago Tribe continues to serve youth in their juvenile diversion program but are not required to report diversion data to the Crime Commission in the absence of an active grant award. Therefore, the Crime Commission does not have CY2022 data for Winnebago Tribe. The Omaha Tribe has a Juvenile Healing and Wellness Court as a diversion program but did not serve any youth in CY2022.

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 pursuant Nebraska Revised Statute § 81-1427 (Reissue 2014). This 2022 diversion report serves to fulfill the statutory requirement.

Introduction to Juvenile Pretrial Diversion Programs

Juvenile pretrial diversion is a voluntary program available to youth referred to a city or county attorney with law violation or status offense. Generally, diversion is available pre-filing, diverting youth from involvement in the juvenile justice system and into a program offering a continuum of requirements and services. The result of successful completion is non-filing of the diverted case or dismissal, if filed. 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.

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.²

In Nebraska, a county or city attorney has statutory authority to develop a juvenile diversion program with the concurrence of their governing board.³ A county or city attorney's decision to utilize a diversion program and refer a youth to diversion is often based on factors generally including: 1) the youth's age, 2) the nature of the offense and the youth's role in the offense, 3) previous offenses, dangerousness or threat posed by the youth, and 4) recommendations of referring agency, victim, and advocates for the youth.⁴ 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 youth, and include program requirements such as a letter of apology, community service, restitution, educational or informational classes, curfew, and victim youth conferencing.⁵

The Nebraska Crime Commission partnered with Lancaster County and the University of Nebraska Omaha's Nebraska Center for Justice Research to create a risk and need assessment tool, called the Nebraska Screen and Assessment Tool (NSAT), for juvenile diversion programs in Nebraska. This tool has been made available to all Nebraska diversion programs to utilize to meet the requirements of NRS 43-260.04(5).

² Neb. Rev. Stat. § 43-260.03

³ Neb. Rev. Stat. § 43-260.02

⁴ Neb. Rev. Stat. § 43-260.04

⁵ Neb. Rev. Stat. § 43-260.04 -.06

Juvenile Pretrial Diversion Programs in Nebraska

Eighty-seven counties and 2 tribes offer a juvenile pretrial diversion program (Figure 1).

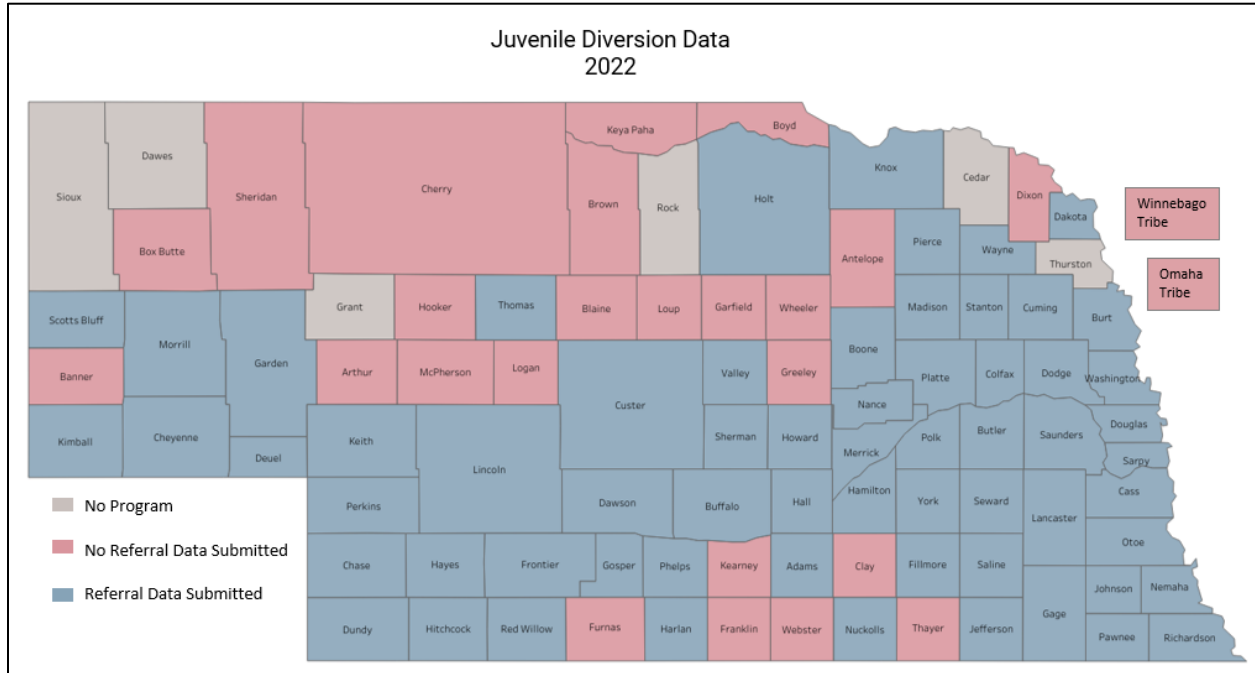


Figure 1

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.⁶ 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) as required by 78 NAC 8. Sixty-two counties reported the required 2022 diversion data into JDCMS.⁷ Twenty-four counties had no referrals to diversion in 2022 or did not report the data.⁸

Referrals to Diversion

From January 1, 2022 to December 31, 2022, 3,841 referrals⁹ (5,652 law violations and status offenses¹⁰) to a juvenile diversion program in Nebraska were reported to the Nebraska Crime Commission.¹¹

⁶ Neb. Rev. Stat. § 43-260.07

⁷ Douglas County did not report data pursuant to NRS 43-260.07 and 78 NAC 8 but did provide statistics upon request.

⁸ Banner, Box Butte, Sheridan, Arthur, Hooker, McPherson, Logan, Cherry, Keya Paha, Brown, Blaine, Loop, Garfield, Wheeler, Antelope, Greeley, Boyd, Dixon, Furnas, Franklin, Webster, Clay, Thayer, Kearney.

⁹ For purposes of this report, Douglas County referrals include the following data categories received from Douglas County Assessment Center (JAC) for youth with law violations referred for assessment by the Douglas County Attorney Office in CY2022: Total accepted (476), refused diversion (3), ineligible (72), Open Docket (6), Out of Jurisdiction (15), DHHS Involved (4), new charge –CA Request back (20), and Miscellaneous (14). Not included are informal diversion (306), assessment no show (93), refused assessment (53), and Nolle Pros (64).

¹⁰ This number includes status offenses referred to diversion, such as truancy, ungovernable, and runaway youth. Number also includes all law violations referred to Douglas County Juvenile Assessment Center for assessment. FY22 truancy and crossover data for Douglas County not included. 48 cases missing charge information.

¹¹ 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.

Characteristics of the Population

Race and Ethnicity

White youth had the highest rate of referrals to juvenile diversion (56% of referrals statewide), followed by Black youth (15%) (Table 1).

Table 1: Youth Referred to Juvenile Diversion by Race CY2022

	Number of Youth Referred	Percent of Youth Referred	Percent of Population ¹²
White	2163	56%	83%
Black	566	15%	6%
Hispanic ¹³	359	9%	
Unspecified	350	9%	-
Multiple Races	158	4%	5%
Other Race	122	3%	-
Native American	83	2%	2%
Native Hawaiian, Other Pacific Islander	22	1%	Less than 1%
Asian	18	Less than 1%	3%
Total	3,841	100%	100%

Effective July 1, 2022, the reporting of Race and Ethnicity in JCMS was split into two separate fields. The “Race” field removed “Hispanic” as an option. Ethnicity was collected by answering if the youth is “Hispanic/Latino” with dropdown options of yes, no, unspecified. The data in Table 1 and Table 2 reflect the data collected for 6 months with the race and ethnicity fields combined with “Hispanic” as a race option, and 6 months with the fields collected separately.

Table 2: Youth Referred to Juvenile Diversion by Ethnicity CY2022

	Number of Youth Referred	Percent of Youth Referred	Percent of Population ¹⁴
Hispanic/Latino	534	14%	18%
Not Hispanic/Latino	1320	34%	82%
Unspecified	218	6%	-
Missing ¹⁵	1769	46%	-
Total	3,841	100%	100%

¹² US Census data does not include “Other” or “Unspecified”.

¹³ Represents referrals only during January 1, 2022-June 30, 2022. “Hispanic” was removed as an option July 1, 2022.

¹⁴ US Census data does not include “Other” or “Unspecified”.

¹⁵ The number of missing in the Ethnicity table reflects the cases referred from January 1, 2022 – June 30, 2022, as well as the 610 cases from Douglas County.

Age

The age range of reported diversion cases for purposes of this report include from 6 years to 18 years of age. Sixteen-year-olds had the highest number of referrals to diversion in CY2022 with 882 statewide (Table 3).

Table 3: Youth Referred to Juvenile Diversion by Age CY2022

Age	Number of Youth Referred	Percent of Youth Referred	Percent of Population ¹⁶
Under 11	11	Less than 1%	8%
11	68	2%	9%
12	232	6%	10%
13	382	10%	10%
14	576	15%	11%
15	789	21%	12%
16	882	23%	13%
17	744	19%	13%
18	144	4%	14%
Total	3,841	100%	100%

¹⁶ US Census data for Under 11 only includes 10 years old

Enrollments after Referral

Statewide, 82% of youth referred to a juvenile diversion program in CY2022 enrolled after referral (3,136 youth). The reason youth did not participate include the referring attorney withdrew the referral, the diversion program declined admission after referral, the youth or parent refused to participate, or the youth transferred to another school or homeschool. Seventy-five percent of Hispanic youth and Native Hawaiian youth enrolled after referral. Seventy-six percent of Black youth enrolled after referral. White youth had the highest rate of enrollment (85%), after multiple race youth (88%) and youth marked as Other race (89%). The number and percent of youth enrolled for each demographic category are further broken down by demographic information below (Table 4).

Enrollments by Race and Age

Table 4: Youth Enrolled in Juvenile Diversion by Race & Age CY2022

Demographic		Enrolled	% Enrolled	Did Not Participate	% Did Not Participate	Missing Data
Race	Native American	66	80%	17	20%	
	Asian	25	78%	7	22%	-
	Black	432	76%	134	24%	
	Hispanic ¹⁷	269	75%	88	25%	2
	Multiple Races	139	88%	19	12%	
	Native Hawaiian	6	75%	2	25%	
	Other Race	108	89%	13	11%	1
	Unspecified	252	72%	98	28%	
	White	1839	85%	318	15%	6
Ethnicity ¹⁸	Hispanic/Latino	448	14%	74	11%	2
	Not Hispanic/Latino	1111	35%	179	26%	2
	Unspecified	153	5%	23	3%	-
	Missing	1422	45%	420	60%	8
Age	Under 11	17	71%	7	29%	-
	11	55	81%	13	19%	-
	12	195	84%	37	16%	-
	13	318	83%	63	17%	1
	14	460	80%	116	20%	-
	15	640	81%	149	19%	-
	16	716	82%	161	18%	5
	17	602	81%	139	19%	3
	18	133	92%	11	8%	-

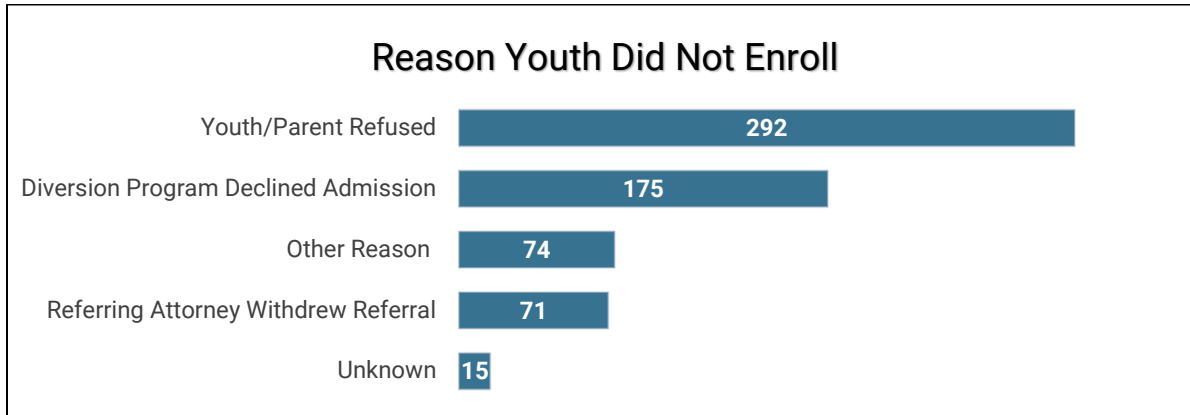
¹⁷ Represents cases referred only during January 1, 2022-June 30, 2022. "Hispanic" was removed as an option July 1, 2022.

¹⁸ Ethnicity only representative of cases referred during July 1, 2022-December 31, 2022. "Hispanic" was removed as a race option July 1, 2022.

Reason Youth Did Not Enroll

A total of 696 youth did not enroll¹⁹ 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 in the chart below (Chart 1).

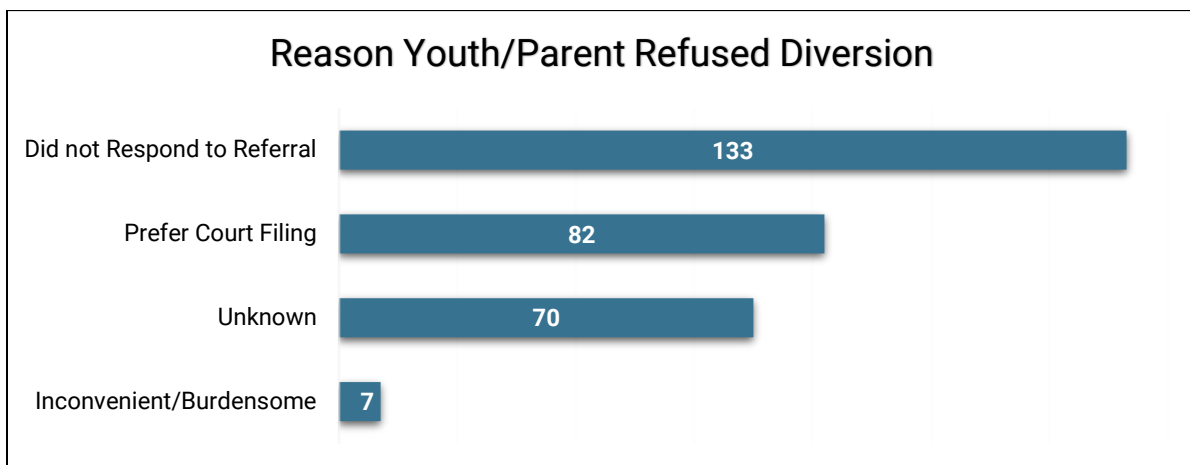
Chart 1: Reason Youth Did Not Enroll in Diversion CY2022



Refusals

Forty-two percent (292 youth) of the youth that did not enroll after referral refused to participate in juvenile diversion. The reasons for refusal are in the chart below (Chart 2).

Chart 2: Juvenile Diversion Refusal Reason CY2022



¹⁹ Three youth were missing enrollment data.

Discharges from Diversion

Of the youth referred to diversion from January 1, 2022 to December 31, 2022, a total of 2,960 cases were discharged from a formal juvenile diversion program in Nebraska after enrollment.²⁰

Success Rates

Statewide, 78% (2,307 youth) of the discharged cases successfully complete the diversion program, and 22% (653 youth) did not successfully complete the diversion program. 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 youth was moved to a higher-level intervention. Twelve cases were missing a discharge reason needed to determine success at program completion.

Eleven-year-olds followed by 17 year-olds were most successful in diversion. Black youth and youth of multiple races were discharged from diversion unsuccessfully at the highest rate at 28%.

Success by Race and Age

Table 5: Success Rates of Youth Discharged by Race & Age CY2022

Demographic		Successful	Unsuccessful	Unsuccess Rate	Missing
Race	Native American	45	16	26%	-
	Asian	16	5	24%	-
	Black	308	117	28%	-
	Hispanic	227	55	20%	3
	Multiple Races	87	34	28%	-
	Native Hawaiian	5	0	0%	-
	Other Race	81	19	19%	1
	Unspecified	170	62	27%	-
	White	1368	345	20%	8
Ethnicity ²¹	Hispanic/Latino	320	95	23%	
	Not Hispanic/Latino	770	242	24%	
	Unspecified	113	34	23%	
	Missing	1104	282	20%	
Age	Under 11	13	0	0%	-
	11	44	7	14%	-
	12	136	45	25%	-
	13	231	68	23%	1
	14	348	93	21%	-
	15	443	153	26%	1
	16	516	146	22%	7
	17	475	114	19%	3
	18	101	27	21%	-

²⁰ This number represents discharges either successfully or unsuccessfully; does not include youth that did not participate (696), open the time of this report (171) or missing discharge information (12). A note regarding Douglas County Data: There are limitations to this data. Progression and Diversion numbers include those who were referred for assessment prior to 1/1/2022. Similarly, some of the youth referred for assessment late in 2022 will not have progression and diversion numbers reflected until 2023.

²¹ Ethnicity only representative of cases referred during July 1, 2022-December 31, 2022. "Hispanic" was removed as a race option July 1, 2022.

Success Rates by Diversion Referral Type

Overall, juvenile diversion cases addressing excessive absenteeism from school have lower participation rates and successful completions than diversion cases for other status offenses and law violations. Truancy diversion program data does not include Douglas County truancy diversion.

Table 6: Truancy Diversion vs. Other Diversion Cases

	Referrals	Enrollments	% Enrolled	Successful Completion	Unsuccessful Completion	Success Rate
Truancy Diversion	477	366	77%	144	158	48%
Other Diversion	3364	2770	82%	2164	495	81%

Law Violations

Table 7 demonstrates the most frequent law violations referred to a juvenile diversion program in CY2022. Included within the law violations statistics are status offenses; violations criminalized only because of the age of the offender, including truancy from school, curfew violations, ungovernable, tobacco use and minor in possession. Forty-eight referrals to diversion were missing charge information.

Table 7: Law Violations Referred to Diversion CY2022

Law Violation	Number of Law Violations Referred
Assault Offenses ²²	755
Minor In Possession	566
Marijuana Possession	544
Truancy	511
Traffic Offenses ²³	478
Shoplifting	465
Possession Of Drug Paraphernalia	346
Criminal Mischief	275
Tobacco Use by Minor	204
Other Theft Offenses ²⁴	176
Trespassing	167
Disorderly Conduct	165
Disturbing the Peace	153
Ungovernable Juvenile	125
Remaining Law Violations (less than 100)	722
TOTAL	5,652

Chart 3 show the law violations by offense category, specifically criminal, status offense, and traffic. The different offenses classified as status offense are included separately. Twenty-one percent of diversion referrals were for a status offense, 50% of which were minor in possession of alcohol. Chart 4 shows diversion referral charges by offense type, specifically felony, misdemeanor, infraction, and status offense.

²² Includes assault, 3rd degree assault, assault by mutual consent, domestic assault, sexual assault violations, assault officer with bodily fluid, and assault officer/health care professional.

²³ Includes violations related to permits, licenses, license plates, registration, insurance, speeding, reckless driving, leaving the scene of an accident, school bus stop signal, and violation of traffic signals.

²⁴ Includes theft- unlawful taking; theft- receiving stolen property, theft by deception, theft of lost or mislaid item, and theft of services.

Chart 3: Juvenile Diversion Law Violations by Offense Category CY2022

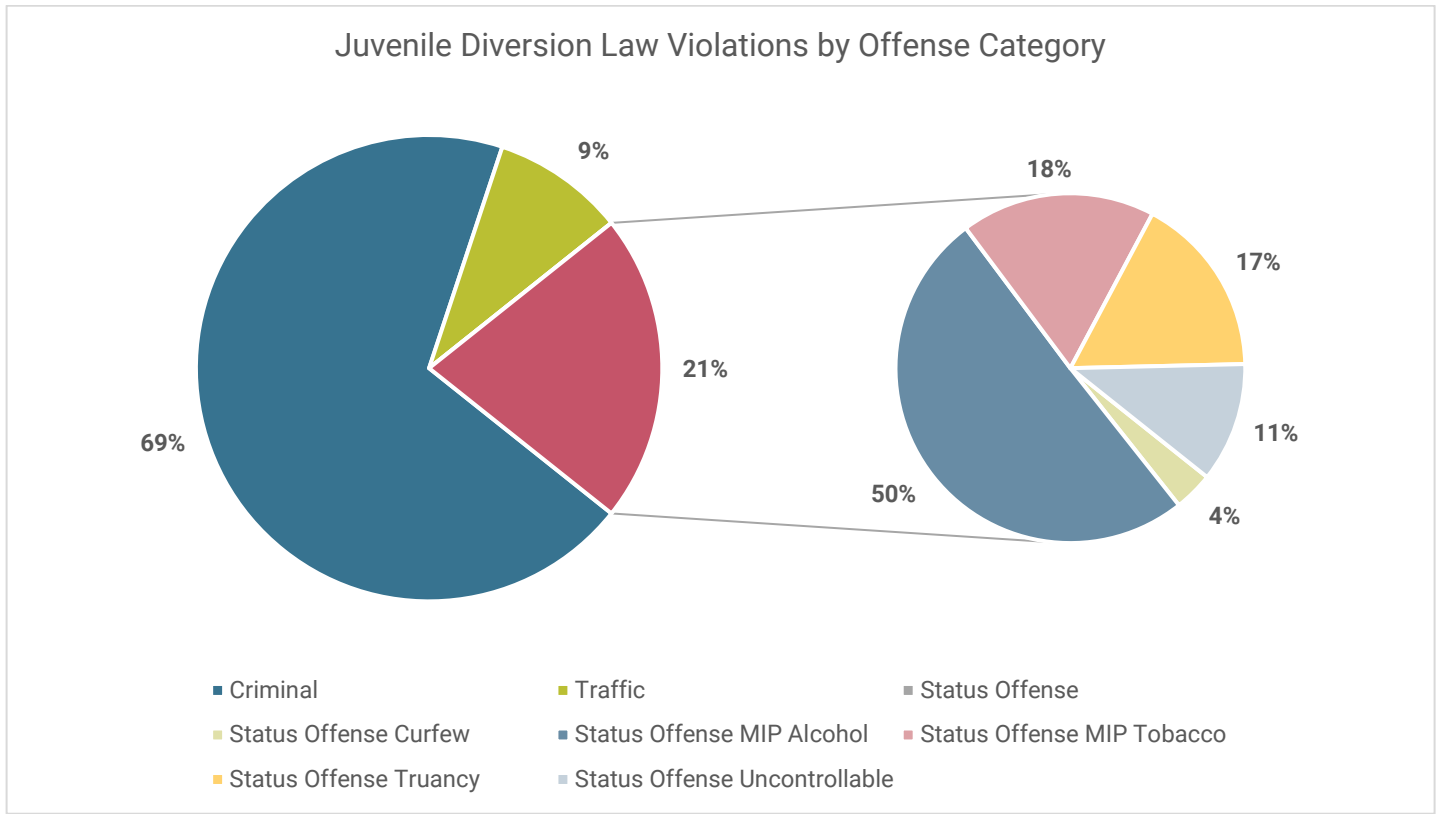
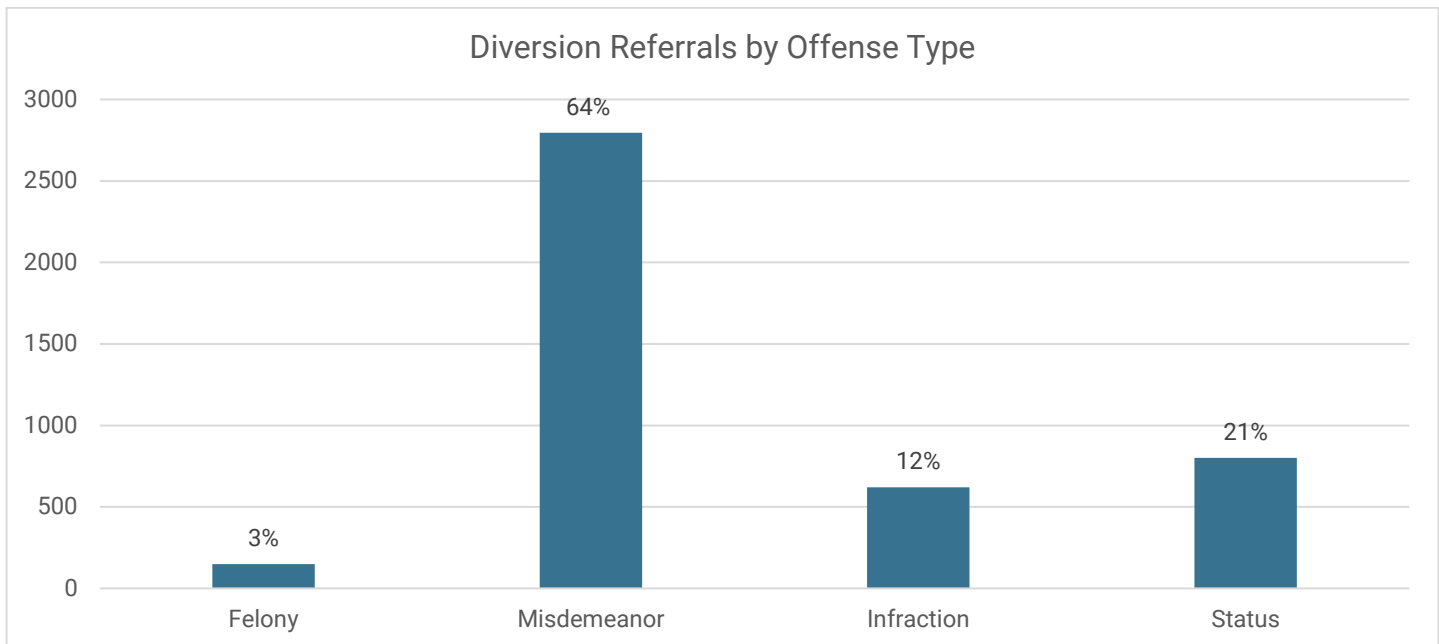


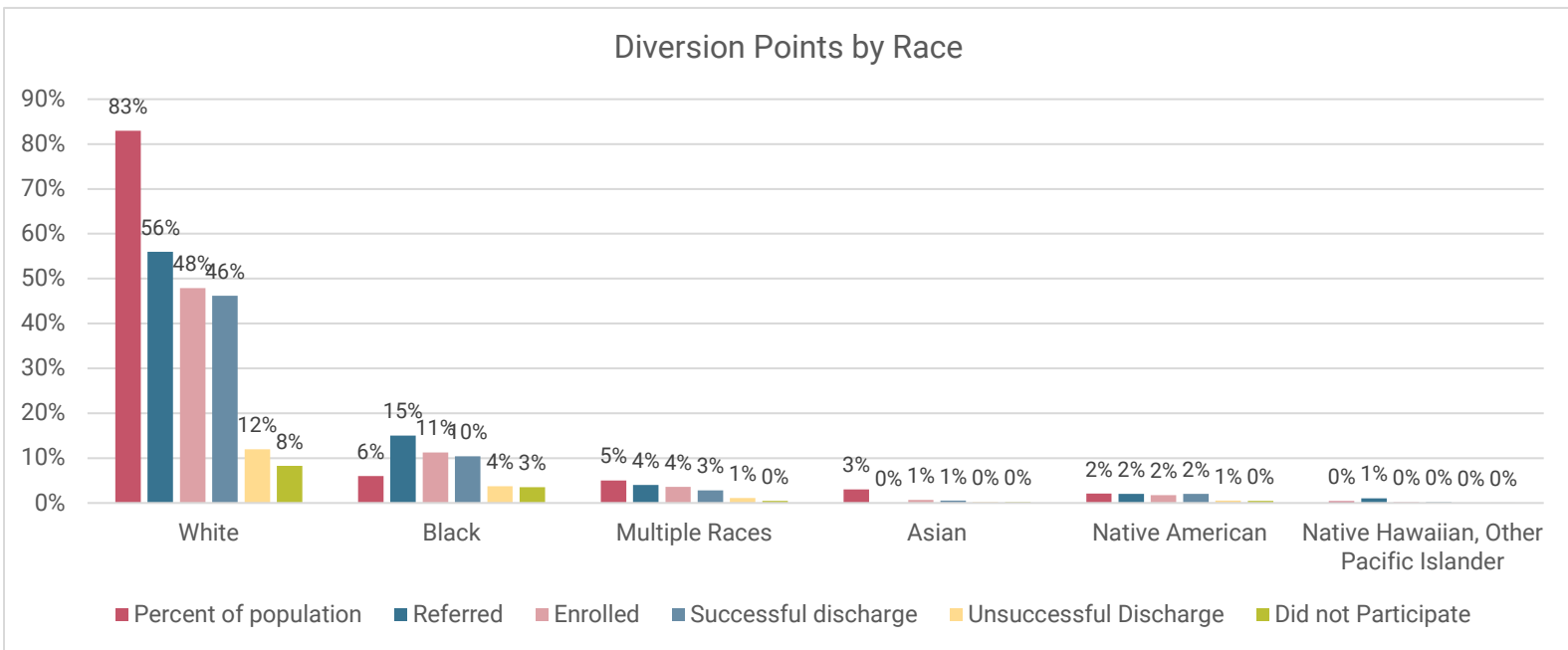
Chart 4: Juvenile Diversion Law Violations by Offense Category CY2022



Disparities in Diversion

Racial and ethnic disparities (R/ED) means that a minority group’s rate of contact at specific points in the juvenile justice system is disproportionately higher than the rate of contact of non-minority youth at the same system point. With this in mind, diversion data has been examined at referral, enrollment, discharge reasons by race and ethnicity. Chart 5 below shows the percent of youth by race and ethnicity at these diversion points as well as the percent of the population per the US Census 2022 estimates. Please note that diversion programs have the option to collect “Other” and “Unspecified” as race, but since the US Census does not, these were removed from this chart. Hispanic was collected as a race in the JCMS for the first half of the year and as a separate ethnicity in the second half so that option was excluded as well.

Chart 5: Diversion Points by Race



Based on a comparison to the percent of the population by race, while Black youth make up only 6% of the total population, they account for 15% of diversion referrals and 11% of diversion enrollments, roughly double the percent of the population. Diversion offices are provided referrals based on law enforcement citations screened by county attorneys so considering the race of the youth at these system points would also be vital to the R/ED discussion.

System Involvement

As stated above, the intent of diversion programs is to divert youth from becoming involved in the court system. While some cases are not eligible for diversion and require a court filing, many youths are provided the opportunity to participate in diversion.

Using the Nebraska Judicial Branch Juvenile Justice System Statistical Annual Report 2022²⁵, we looked at the number of diversion referrals compared to court filings and probation placements (see

²⁵ Retrieved from the Nebraska Supreme Court website on September 5, 2023 https://supremecourt.nebraska.gov/forms-publications?field_publication_report_type_tid=1

chart 6). We also looked at the type of offenses leading to diversion referrals and court filings (see chart 7).

Chart 6: Total Youth Diversion Referrals, Court Filings, and Probation Placements in 2022

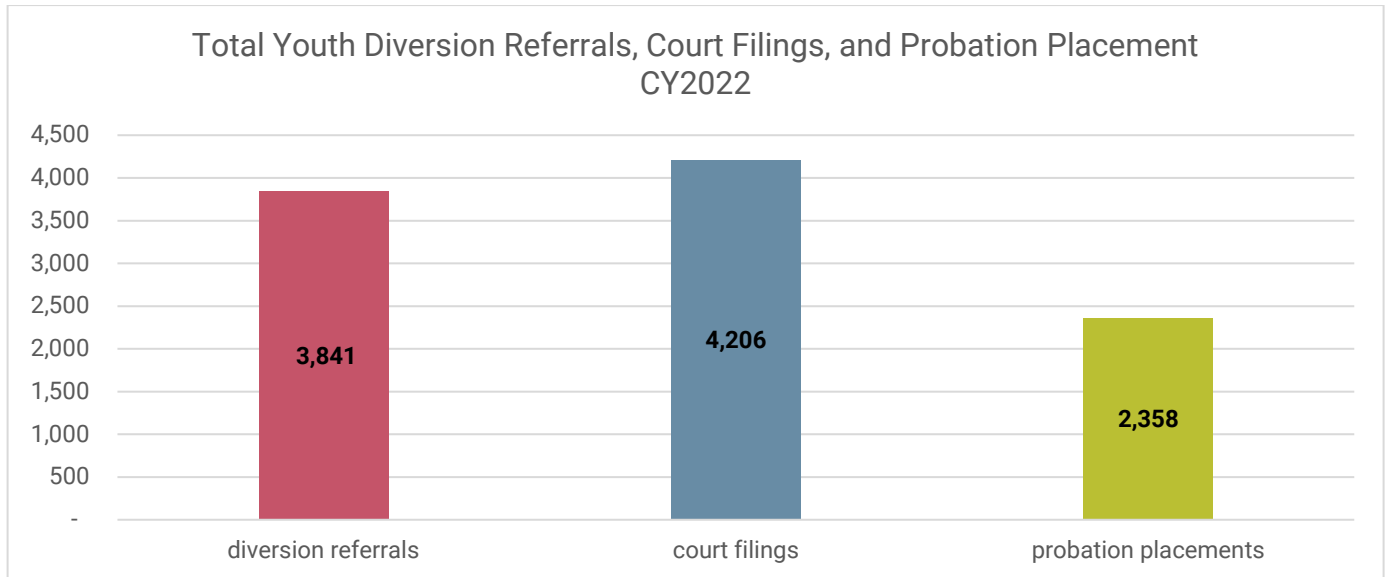
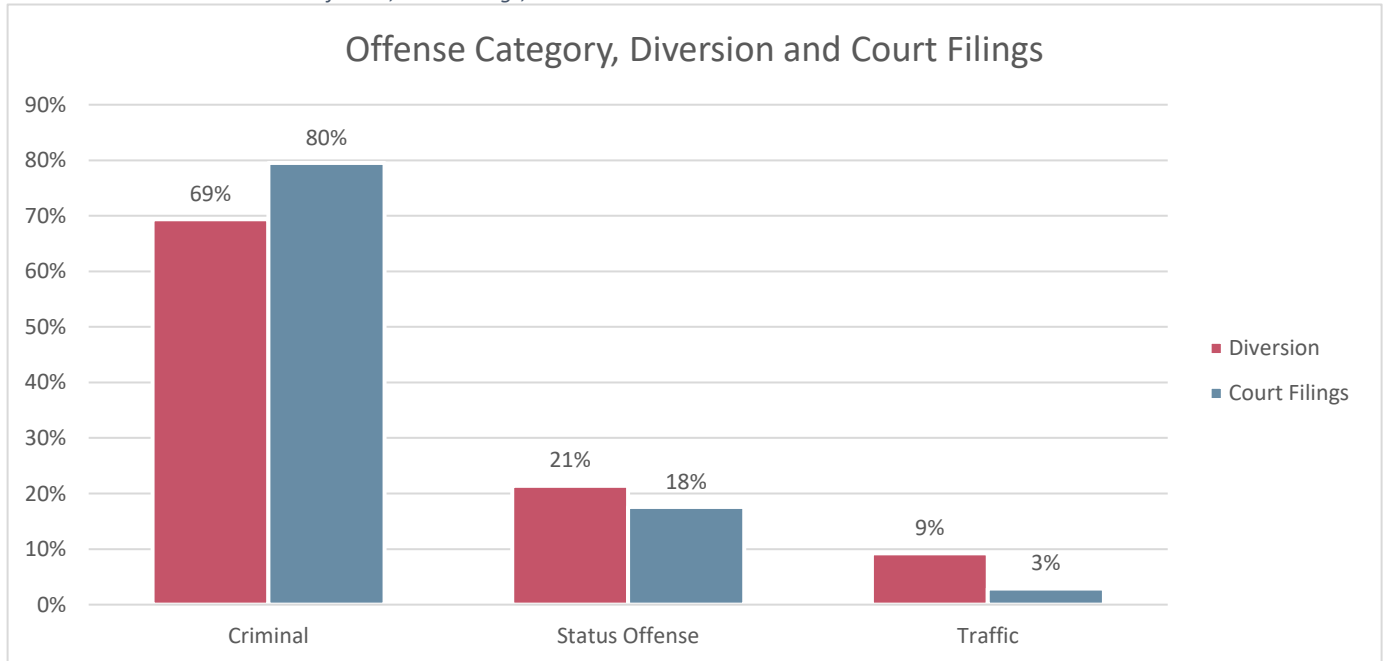


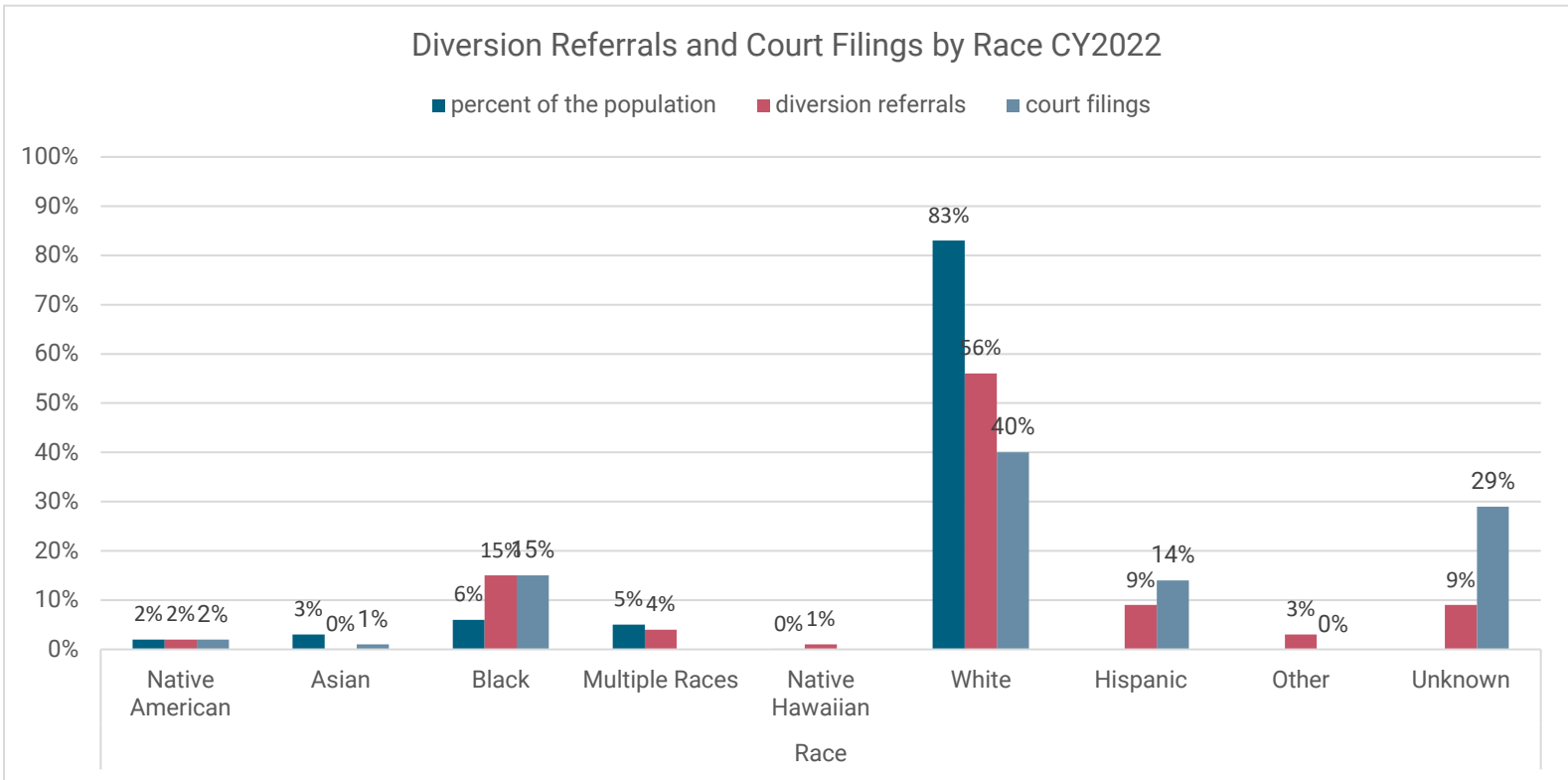
Chart 7: Total Youth Diversion Referrals, Court Filings, and Probation Placements in 2022



As R/ED should be considered at multiple juvenile justice system points, we also looked at diversion referrals compared to court filings by race and ethnicity. It should be noted that the US Census does not collect Hispanic as a Race, nor do they collect "Other" or "Unknown", but they were left in for a comparison between diversion referrals and court filings. As mentioned above, diversion data switched mid-year from collecting Hispanic as a race option to a separate ethnicity choice.

Similar to the diversion referrals, court filings for Black youth are more than double the percent of the population, but are the same between diversion referrals and court filings (Chart 8).

Chart 8: Diversion Referrals and Court Filings by Race in CY2022



Nebraska Screen and Assessment Tool (NSAT)

In an effort to standardize assessments of youth referred to juvenile diversion programs in Nebraska, the Crime Commission now has the Nebraska Screen and Assessment Tool (NSAT) created specifically for the juvenile diversion population. The NSAT is a risk and need assessment tool that includes a short risk screener, an optional hybrid design screener that can expand to assess need domains as necessary, and a full risk and need assessment. The NSAT was validated using data from Nebraska diversion programs with a nationally representative sample to determine the questions and weights relevant to our Nebraska youth and meet the needs of Nebraska juvenile diversion programs. After an initial implementation of the tool statewide, the tool will continue to be re-validated and modified accordingly to continue to make the tool more predicative.

During CY2022, the Nebraska Crime Commission partnered with Dr. Michael Campagna from UNO's Nebraska Center for Justice Research to assist in the implementation roll out of the NSAT to Nebraska juvenile diversion programs statewide. During this time, the tool was piloted by multiple diversion programs statewide, modified and adjusted based on user feedback. Resources and training materials were created, including the NSAT User Manual and interview guides. The Nebraska Crime Commission contracted with the Nebraska Office of the Chief Information Officer (OCIO) to create the online system for the tool securely located within the Nebraska Criminal Justice Information System (NCJIS). All diversion staff implementing the NSAT into their programs must participate in an initial training and annual booster trainings. To date, 51 individuals have been trained from 68 counties and 1 tribe, and the tool is now available to be implemented into all diversion programs statewide. See Appendix A for additional information regarding the Nebraska Screen and Assessment Tool.

Limitations within the 2022 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. Race and ethnicity were reported together as one field for half of 2022, and as separate data points for the second half of 2022.