

JUVENILE DIVERSION IN NEBRASKA

2016 Annual Report to the Governor and Legislature

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Darrell Fisher, Executive Director
Amy Hoffman, Juvenile Diversion Administrator
Nebraska Crime Commission

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 2016 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 before formal adjudication, diverting youth from involvement in the juvenile justice system and into a program that offers a continuum of requirements and services. The end result of successful completion is dismissal 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 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 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 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. Programs that hope 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. 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

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 May 2, 2016).

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).

consistently reduce recidivism rates.⁵ Programs should strive to provide therapeutic techniques aimed to increase positive behavior change through personal development, including skill building, counseling, and multiple coordinated services.⁶

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.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

Juvenile Pretrial Diversion Programs in Nebraska

An informal survey of all counties indicated there are currently 73 of the 93 counties reportedly offering a juvenile pretrial diversion program (See Figure 1)¹². The number of counties offering juvenile pretrial diversion services has increased from 57 counties in FY2013, and 62 counties in FY2014, and 69 counties in CY2015. The Winnebago Tribe and Santee Sioux Tribe also report a

⁵ 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).

⁶ 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).

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

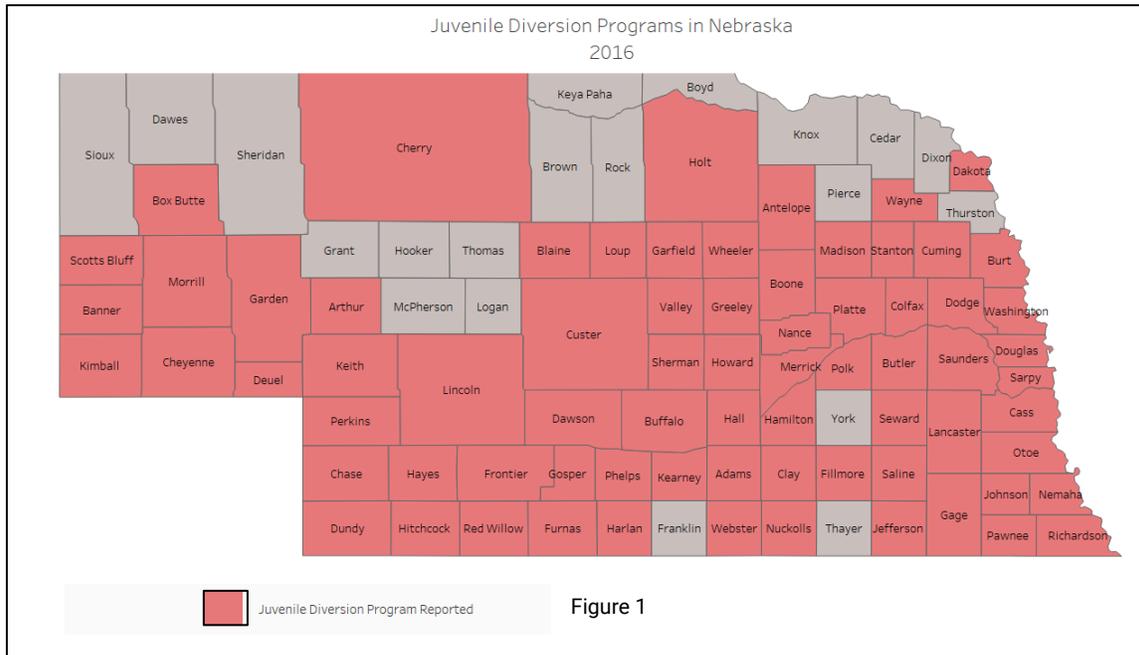
⁹ Neb. Rev. Stat. § 43-260.02

¹⁰ Neb. Rev. Stat. § 43-260.04

¹¹ Neb. Rev. Stat. § 43-260.04 -.06

¹² At the time of this report, three counties became inactive due to staff turnover but are included in the count.

juvenile diversion program; however, their data was not available through the Juvenile Diversion Case Management System at the time of this report.



According to the 2010 Census data, there are 177,953 juveniles in Nebraska ages 12-18.¹³ Of that juvenile population, 94% 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 9,463 juvenile arrests reported in calendar year 2016, 94% of the reported arrests took place in counties that offered a juvenile diversion program.¹⁴ In calendar year 2016, Probation Administration served 2,830 youth placed on juvenile probation.¹⁵ Low risk level youth, according to the Youth Level of Service/Case Management Inventory (YLS/CMI) assessment, accounted for 56% of the youth placed on juvenile probation in CY 2016.¹⁶ If more low-risk juvenile offenders could be diverted and not placed on juvenile probation, juvenile probation officers may have more time to work with higher risk juvenile offenders, providing the juvenile justice system with a significant cost savings, and keeping youth from entering the juvenile justice system. Research has shown that low risk level youth placed on probation are more likely to reoffend compared to youth referred to diversion programs.¹⁷

¹³ Nebraska Commission on Law Enforcement and Criminal Justice, *2016 Community-Based Juvenile Services Aid Request for Proposal (RFP)*, www.ncc.ne.gov.

¹⁴ Nebraska Commission on Law Enforcement and Criminal Justice.

¹⁵ Nebraska Office of Probation Administration, *Nebraska Juvenile Justice System Statistical Annual Report 2016*, <https://supremecourt.nebraska.gov/sites/default/files/2016-juvenile-justice-system-statistical-annual-report-viewing.pdf> (June 7, 2017).

¹⁶ Nebraska Office of Probation Administration.

¹⁷ 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).

Juvenile Pretrial Diversion Data

Juvenile diversion data is required to be reported to the Director of Juvenile Diversion Programs annually by every county attorney or city attorney of a county or city which has a juvenile pretrial diversion program.¹⁸ The juvenile pretrial diversion data figures are based upon data reported directly into the Juvenile Diversion Case Management System (JDCMS) at the user level. Of the reported diversion programs, 65 counties reported the required diversion data into the Juvenile Diversion Case Management System (JDCMS). Six counties did not have any diversion participants in calendar year 2016 to report, one county developed a new program in 2017 after the reporting period, and one county did not comply with the statutory duty to report. As the quality and quantity of data entry continues to improve, measuring success across many different variables will be available.¹⁹

Availability of Diversion

From January 1, 2016 to December 31, 2016, a total of 3,952 individuals (5,512 law violations²⁰) were referred to a formal juvenile diversion program in Nebraska.²¹ Approximately 46% of all referrals were to a program in one of the three larger metropolitan areas of the state: 20% of referrals in Douglas County, 14% in Lancaster County and 12% in Sarpy County (Table 1).

Table 1: Referrals to Juvenile Diversion CY 2016

County	Number of Youth Referred	Percent of Youth Referred
Douglas	790	20%
Lancaster	555	14%
Sarpy	466	12%
Remaining Counties	2,141	54%
Total	3,952	100%

Other counties in the top five for referrals were Buffalo County with 8% of the total referrals to diversion (298 youth), and Hall County with 7% of the total referrals (273 youth). Madison County and Platte County accounted for 4% and 3% of the referrals, 172 youth and 126 youth respectively. The remaining counties each referred less than 100 youth to juvenile diversion in CY2016.

Of the 3,952 cases referred, 98% were referred from the local prosecuting attorney. Law enforcement, schools, other county, and other referral sources accounted for one percent or less of referrals (Table 2).

¹⁸ Neb. Rev. Stat. § 43-260.07

¹⁹ For an in-depth analysis of Nebraska juvenile diversion program data from 2012 to 2015, please see the Evidence-Based Nebraska Report published by the University of Nebraska Omaha Juvenile Justice Institute. https://www.unomaha.edu/college-of-public-affairs-and-community-service/juvenile-justice-institute/_files/documents/Diversion%20Report.pdf.

²⁰ This number does not include truancy diversion cases entered as a truancy program type in JCMS. See page 9 for more information on truancy diversion.

²¹ Because not all counties are complying with the statutory duty to report, there remains missing data. Data includes individuals through 20 years of age.

Table 2: Source of Referrals to Juvenile Diversion CY 2016

Referral Source	Number of Youth Referred	Percent of Youth Referred
County Attorney	3584	91%
City Attorney	292	7%
Other County	24	1%
Law Enforcement	22	1%
School	3	Less than 1%
Missing Data	26	1%
Grand Total	3,952	100%

While diversion programs have the ability to choose a referral source other than the county or city attorney, the prosecuting attorney must still review the case for legal sufficiency before an individual may qualify to participate in a diversion program.

Characteristics of the Population

Age

Some diversion programs allow participation of individuals over the age of 17. The age range of reported diversion cases was from 7 years to 20 years of age.²² A total of 3,266 juveniles 7 to 17 years of age were referred to a juvenile diversion program in CY2016.²³ Seventeen year olds had the highest amount of referrals to diversion in CY 2016 with 881 statewide (Table 3).

Table 3: Youth Referred to Juvenile Diversion by Age CY 2016

Age	Number of Youth Referred	Percent of Youth Referred
7	2	Less than 1%
8	5	Less than 1%
9	5	Less than 1%
10	16	Less than 1%
11	67	1%
12	150	3%
13	246	5%
14	399	9%
15	618	15%
16	877	22%
17	881	24%
18	280	8%
19	243	7%
20	159	5%
Missing data	4	Less than 1%
Total	3,952	100%

²² Not all counties enter participants over 18 year of age in JDCMS even if they serve participants over the age of 17.

²³ Four cases had missing data on age at referral.

Race/Ethnicity

White youth had a higher rate than any other group referred to juvenile diversion, accounting for 66% of referrals statewide. Native Hawaiian and other Pacific Islander youth had the lowest rate (less than 1%), followed by Native American, Asian, and multiple races youth with the lowest rate of referrals, accounting for 1% of referrals each (Table 4).

Table 4: Youth Referred to Juvenile Diversion by Race CY 2016

	Number of Youth Referred	Percent of Youth Referred	Statewide Population ²⁴
White	2607	66%	80%
Hispanic	607	15%	10%
Black, African American	531	13%	5%
American Indian, Alaska Native	45	1%	1%
Asian	37	1%	2%
Multiple Races	23	1%	2%
Native Hawaiian, Other Pacific Islander	5	Less than 1%	Less than 1%
Other Race	19	Less than 1%	
Missing Data	78	2%	
Grand Total	3,952	100%	

Success Rates

Statewide, 87% of youth referred to a juvenile diversion program in CY2016 enrolled after referral (3,433 youth). As of the date of this report, 84% (2,657 youth) of the closed diversion cases successfully complete the diversion program, and 16% (489 youth) of the closed cases did not successfully complete the diversion program.²⁵ The number of unsuccessful completions include situations such as: the youth had another law violation while in diversion or the youth did not comply with the diversion requirements. As of the date of this report, 287 cases remained in open status; meaning they were referred in CY2016 and have not yet been discharged from the program.

Many youth do not have the opportunity to succeed because they do not enroll in diversion. Statewide, 13% (519 youth) did not participate in the juvenile diversion program after referral.²⁶ An analysis of counties with a significant number of youth not participating in diversion after referral needs to be completed. Although further analysis is necessary, it is anticipated reasons 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. A field to

²⁴ United States Census, 2016 Nebraska State and County QuickFacts, <https://www.census.gov/quickfacts/NE>

²⁵ This is the number of completions as of June 6, 2016. This number was calculated by only considering the cases that were referred in CY2016 and closed by the date of this report. The number of open cases was not included in this calculation.

²⁶ Number includes youth/parent refusing diversion, diversion program declining admission after referral, or referring attorney withdrew referral.

indicate the reason the parents and youth chose not to participate in diversion was added to the JDCMS, allowing for further analysis in future reports.

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

White and Hispanic youth had the highest success rates in diversion (86% and 78% successful). Youth 11 and under, and youth 16 and over had the highest success rates in diversion (87% to 100%). Females had higher success rates than males, 86% compared to 83%. American Indian and Black youth had the lowest success rates in diversion, with 31% and 24% unsuccessful completions. Twenty percent of 12 and 13 year olds were unsuccessful in diversion (Table 5).

Table 5: Success Rates of Youth Referred by Race, Age, & Gender CY 2016

Demographic		Did Not Participate		Open		Successful		Unsuccessful	
Race/Ethnicity	Am. Indian	10	22%	3	7%	22	69%	10	31%
	Asian	3	8%	3	8%	27	87%	4	13%
	Black	57	11%	39	7%	330	76%	105	24%
	Hispanic	90	15%	59	10%	390	85%	68	15%
	Mult. Races	1	4%	7	30%	15	100%	0	0%
	Native Haw.	1	20%	0	0%	4	100%	0	0%
	Other Race	3	16%	1	5%	13	87%	2	13%
	Unspecified	56	72%	1	1%	20	95%	1	5%
	White	298	11%	174	7%	1836	86%	299	14%
Age	7	1	50%	1	50%	0	0	0	0
	8	1	20%		0%	4	100%	0	0%
	9		0%	1	20%	4	100%	0	0%
	10	4	25%	3	19%	9	100%	0	0%
	11	8	12%	13	19%	40	87%	6	13%
	12	14	9%	14	9%	97	80%	25	20%
	13	37	15%	18	7%	152	80%	39	20%
	14	55	14%	35	9%	251	81%	58	19%
	15	82	13%	52	8%	392	81%	92	19%
	16	109	12%	56	6%	612	86%	100	14%
	17	147	17%	46	5%	585	85%	103	15%
	18	29	10%	22	8%	199	87%	30	13%
	19	18	7%	14	6%	187	89%	24	11%
	20	14	9%	12	8%	121	91%	12	9%
Missing Data	0	0%	0	0%	4	100%	0	0%	
Gender	Female	189	12%	116	7%	1074	86%	174	14%
	Male	328	14%	171	7%	1583	83%	315	17%

Law Violations

Over 100 different law violations were referred to a juvenile diversion program across the state in CY2016. The most common law violations referred to juvenile diversion were minor in possession (980 cases) and shoplifting (818 cases). Table 6 demonstrates the top 13 law violations referred to a juvenile diversion program in CY2016, with the remaining law violations having less than 100 referrals.

Table 6: Law Violations Referred to Diversion CY 2016

	Number of Law Violations Referred
Minor In Possession	1029
Shoplifting	925
Marijuana Possession-Less Than 1 Oz	603
Narcotic Equipment-Possession-Paraphernalia	418
Traffic Offense	365
Criminal Mischief	328
Assault	266
Theft By Unlawful Taking	249
Truancy, Juvenile	162
Trespassing	161
Assault - 3rd Degree	155
Disorderly Conduct	136
Disturbing The Peace	125

Diversion Services Not Captured in Diversion Referral Counts

Many counties utilize other informal practices that do not always have readily available data, including warning letters, pre-diversion interventions, and diversion to the court. School based interventions and truancy diversion data was not reflected in the referrals to diversion counts used in this report. Other diversion programs statewide include focusing specifically on youth crossing over from the child welfare system to the juvenile justice system, status youth that 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 that 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 filing. Douglas County issued 285 warning letters after referral to the

Juvenile Assessment Center (JAC) for assessment; Lancaster County Attorney's office issued 238 warning letters.

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. 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 that target low-risk youth often worsen the outcomes for those youth, compared to high risk targeted programs.²⁷ In fact, low-risk youth receiving only a caution had better outcomes than those referred to a diversion intervention.²⁸

School Diversion

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

Project RESTORE in Lancaster County is an example of a school-based offense diversion program with the ultimate goal of avoiding unnecessary entry into the juvenile justice system. 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 program works in collaboration with Lancaster County Attorney, the Lincoln Police Department (LPD), the Lincoln Public Schools (LPS), and the Lincoln/Lancaster County Human Services (LLCHS). This is a voluntary and brief 60-day program. Upon successful completion, the arrest will be removed from the youth's record and no further legal action will be taken. In CY2016, Project RESTORE had 82 referrals, 47 enrollments, 46 successful completions, and 1 unsuccessful completion.

Truancy Diversion

Many diversion programs also serve youth with excessive absenteeism. Some programs have separate truancy diversion programs established. A feature of the JDCMS is an option to have a case type as "truancy," rather than diversion, which excludes those cases from the diversion data. There were 22 diversion cases that listed truancy as the law violation in CY2016 that were not duplicated in the truancy data within JDCMS. There were 303 cases entered for truancy diversion, and 184 cases entered for truancy intervention that were excluded from the diversion counts

²⁷ 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).

²⁸ Id.

referenced in this report.²⁹ These cases could have included an early intervention with families before they reached the amount of absences necessary for a county attorney referral, as well as county attorney referrals to diversion after 20 or more absences.

Having truancy cases separated from diversion cases allows for the evaluation of effectiveness of programs based on their program type and goal of increasing school attendance. Additionally, separating truancy data from diversion data ensures a youth with a truancy issue is not utilizing their “shot at diversion,” and later ineligible if they have a law violation in the future.

The Lancaster County Truancy Diversion Program is a program at three middle schools and three 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 their 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. In CY2016, the Lancaster truancy diversion program served 56 youth.

Diversion in Nebraska Moving Forward

Nebraska is dedicated to its 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. 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 subcommittee is also working to develop a Diversion Academy training curriculum for diversion programs to utilize. The Diversion Advisory Subcommittee will stay committed to working with diversion programs to monitor effectiveness and to develop and enhance quality diversion programs statewide.

²⁹ Truancy diversion is intervention at the point when the youth has the necessary amount of absences resulting in a referral to the county attorney’s office. Truancy intervention is intervening with the youth and family in an attempt to increase attendance and avoid a referral to the county attorney.