

JUVENILE DIVERSION IN NEBRASKA

2019 Annual Report to the Governor and Legislature

May 2020

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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 (Nebraska Crime Commission) is responsible for generating an annual report on diversion programs in Nebraska by Nebraska Revised Statute § 81-1427 (Reissue 2014). This 2019 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 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 youth'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 youth 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 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.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 youth, and include program requirements such as a letter of apology, community service, restitution, educational or informational classes, curfew, and victim youth conferencing.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 youth and family to community-based resources available to address the youth's behaviors, provide crisis intervention, and maintain a youth 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 indicated there are currently 80 counties and 1 tribe 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, and 77 counties in CY2018. The Winnebago Tribe also reports having a formal juvenile diversion program. No other tribe reported a diversion program in 2019.

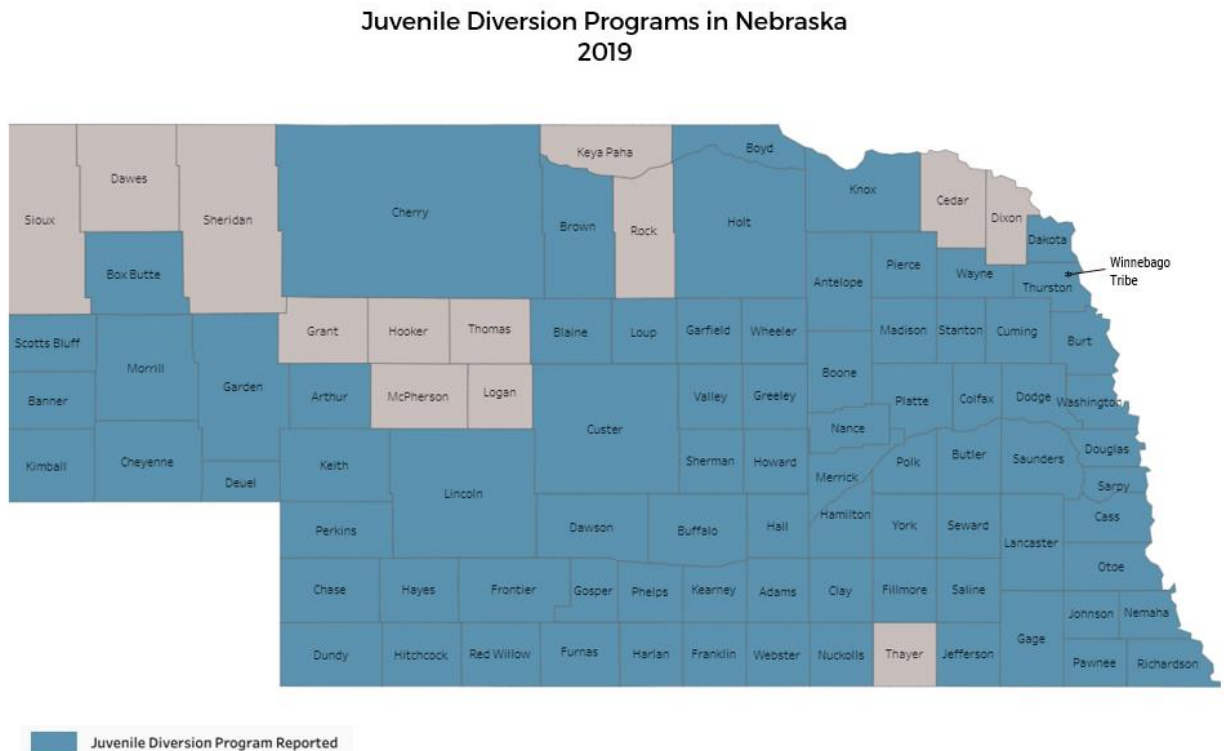


Figure 1

Three additional counties also indicated they offer an informal diversion program with a desire to move to a formalized program. Strategic planning is in progress to assist areas of Nebraska with low juvenile population and few law enforcement referrals to county and city attorneys to have a juvenile diversion option without sustaining a formalized program.

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-five counties and one tribe reported the required 2019 diversion data into JDCMS. Fifteen counties had no referrals to diversion in 2019, or did not report the data.

¹⁴ Neb. Rev. Stat. § 43-260.07

Referrals to Diversion

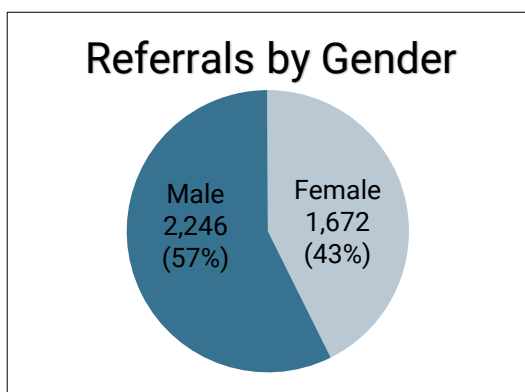
From January 1, 2019 to December 31, 2019, a total of 3,920 referrals (4,901 law violations and status offenses¹⁵) were made to a formal juvenile diversion program in Nebraska.¹⁶

Characteristics of the Population

Gender

Fifty-seven percent of the referrals (2,246) to juvenile diversion were male, 43% (1,672) were female (Chart 1).¹⁷

Chart 1: Youth Referred to Juvenile Diversion by Gender CY2019



Race/Ethnicity

White youth had the highest rate of referrals to juvenile diversion (54% of referrals statewide), followed by Hispanic youth (23%) and African American youth (15%).

Table 1: Youth Referred to Juvenile Diversion by Race CY2019

	Number of Youth Referred	Percent of Youth Referred
White	2,134	54%
Hispanic	886	23%
African American	606	15%
Multiple Races	74	2%
Native American or Alaska Native	73	2%
Unspecified	55	1%
Asian	53	1%
Other Race	32	1%
Native Hawaiian, Other Pacific Islander	7	Less than 1%
Grand Total	3,920	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 Two 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 6 years to 18 years of age.¹⁸ Sixteen year olds had the highest amount of referrals to diversion in CY2019 with 968 statewide (Table 2).

Table 2: Youth Referred to Juvenile Diversion by Age CY2019

Age	Number of Youth Referred	Percent of Youth Referred
Under 8	17	Less than 1%
8	7	Less than 1%
9	2	Less than 1%
10	5	Less than 1%
11	77	2%
12	171	4%
13	377	10%
14	568	14%
15	784	20%
16	968	25%
17	774	20%
18	170	4%
Total	3,920	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. Thirty (94%) of the youth under 11 included in this data set were referred for truancy. Two youth (one seven-year-old and one 10-year-old) were referred for criminal mischief. 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, 89% of youth referred to a juvenile diversion program in CY2019 enrolled after referral (3,486 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 CY2019

Demographic		Enrolled	% Enrolled ²⁰	Did Not Participate	Missing Data
Race/ Ethnicity	African American	549	91%	55	2
	Asian	50	94%	3	0
	Hispanic	775	88%	108	3
	Multiple Races	70	95%	4	0
	Native American	68	93%	5	0
	Native Hawaiian	7	100%	0	0
	Other Race	32	100%	0	0
	Unspecified	31	56%	24	0
	White	1904	89%	224	6
Age	Under 8	16	94%	1	1
	8	7	100%	0	0
	9	2	100%	0	0
	10	5	100%	0	0
	11	71	92%	6	0
	12	151	88%	20	0
	13	336	90%	37	4
	14	511	90%	55	2
	15	704	90%	78	2
	16	855	88%	113	0
	17	673	87%	98	3
18	155	91%	15	0	
Gender	Female	1500	90%	168	4
	Male	1984	89%	255	7

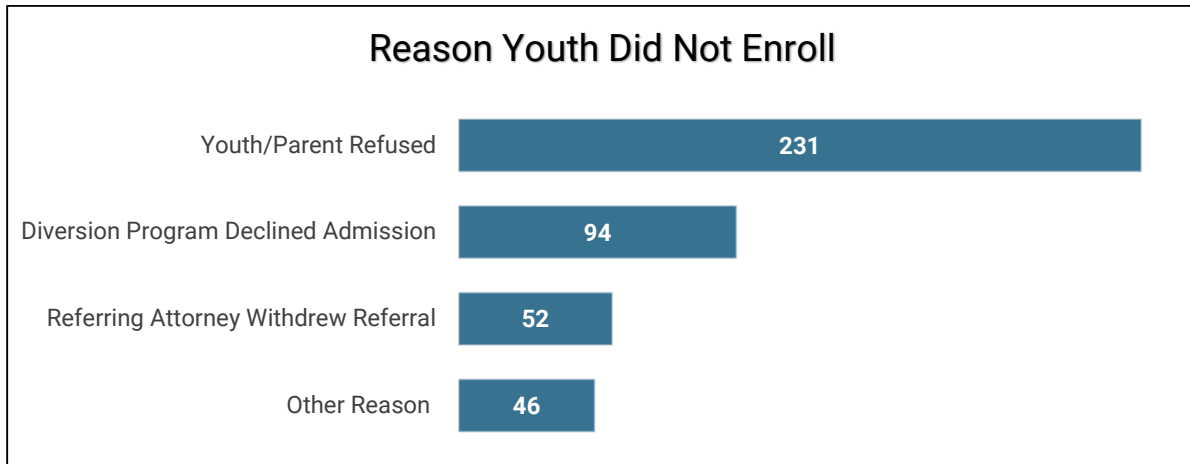
¹⁹ Eleven cases were missing enrollment data beyond referral.

²⁰ Percentages exclude missing data.

Reason Youth Did Not Enroll

A total of 423 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).

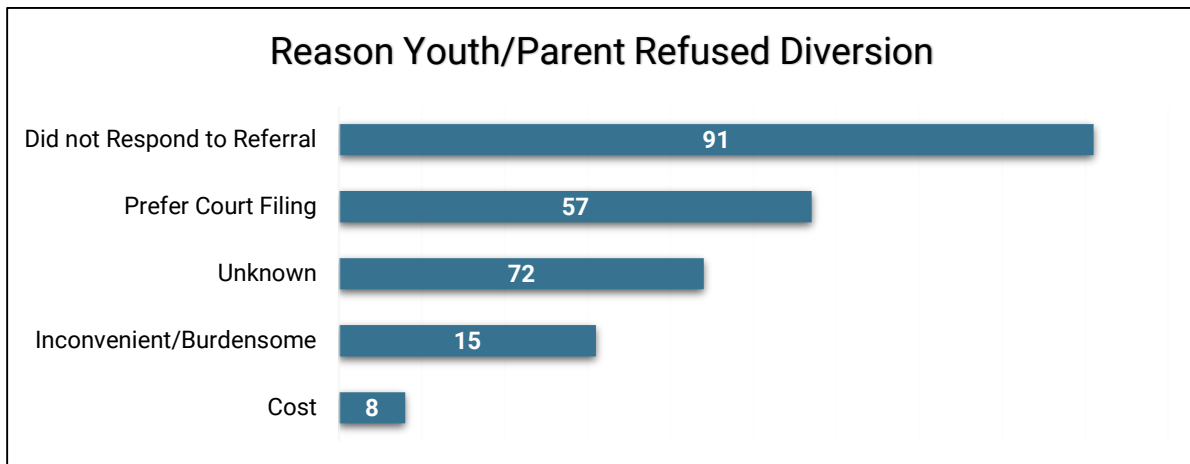
Chart 2: Reason Youth Did Not Enroll in Diversion CY2019



Refusals

Fifty-five percent (231 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 CY2019



Discharges from Diversion

From January 1, 2019 to December 31, 2019, a total of 3,138 cases were discharged from a formal juvenile diversion program in Nebraska after enrollment.²¹

Success Rates

Statewide, 79% (2,478 youth) of the discharged cases successfully complete the diversion program, and 21% (658 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, parent withdrew youth after enrollment, or other reason (moved away, death, etc.).

Success by Race, Age, and Gender

Table 4: Success Rates of Youth Discharged by Race, Age, & Gender CY2019

Demographic		Success Rate	Successful	Unsuccessful	Did Not Participate
Race/ Ethnicity	African American	72%	369	141	47
	Asian	72%	31	12	4
	Hispanic	78%	513	144	88
	Multiple Races	51%	24	23	4
	Native American	66%	52	27	3
	Native Hawaiian	80%	4	1	0
	Other Race	93%	27	2	0
	Unspecified	76%	31	10	21
	White	83%	1427	298	196
Age ²³	Under 9	100%	1	0	1
	9	100%	1	0	0
	10	67%	4	2	0
	11	87%	52	8	3
	12	84%	140	27	18
	13	74%	221	79	33
	14	76%	348	108	46
	15	77%	459	141	67
	16	78%	590	166	95
	17	83%	527	110	86
	18	89%	134	17	14
Gender ²⁴	Female	79%	1029	276	133
	Male	79%	1448	382	230

For an in-depth analysis of juvenile diversion program success by county, please see the Evidence-based Nebraska Reports 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 enroll or participate after referral.

²² Two cases had a discharge date in 2019 with no discharge reason and is therefore not included.

²³ One case had an incorrect year of birth and is therefore not included.

²⁴ One case had an unknown gender that successfully completed.

Law Violations

Table 5 demonstrates the most frequent law violations referred to a juvenile diversion program in CY2019. Statewide, the 5 most common violations referred to diversion remained the same as previous years; truancy, minor in possession, marijuana possession, assault and shoplifting.

Table 5: Law Violations Referred to Diversion CY2019

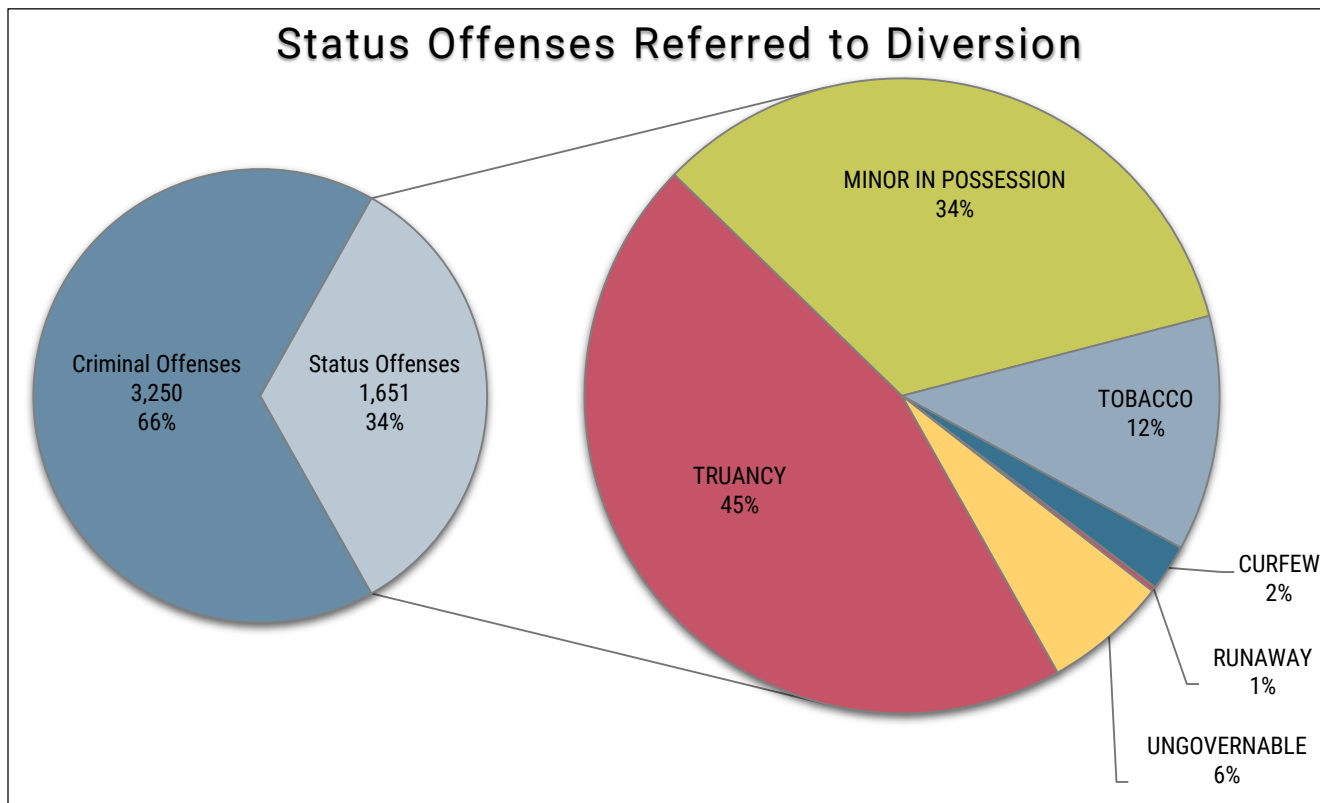
Law Violation	Number of Law Violations Referred
Truancy	750
Alcohol Offenses	601
Minor In Possession	556
Contributing to a Minor	23
Misrepresenting Age	5
Open Container	11
Zero Tolerance	2
Driving Under the Influence	4
Drug Offenses	863
Marijuana Possession	488
Possession Of Drug Paraphernalia	316
Possession/Delivery Of Controlled Substance	42
Unlawful Acts Relating to Drugs	17
Assault ²⁵	465
Shoplifting	462
Traffic Offenses ²⁶	348
Criminal Mischief	225
Tobacco Use By Minor	198
Disturbing The Peace	165
Trespassing	105
Ungovernable	104
Theft	98
Disorderly Conduct	82
Remaining Law Violations	451
TOTAL	4901

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, tobacco use and minor in possession. Chart 4 demonstrates the breakdown of status offenses included within the law violations referred to diversion.

²⁵ Includes 3rd degree assault, assault by mutual consent, domestic assault, and sexual assault violations.

²⁶ Includes violations related to permits, licenses, registration, insurance, speeding, reckless driving, leaving the scene of an accident, and violation of traffic signals.

Chart 4: Status Offenses Referred to Diversion CY2019



Limitations within the 2019 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.

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 youths 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 370 warning letters²⁷ after referral to the Juvenile Assessment Center (JAC) for assessment. Lancaster County reported 336 cases were not charged/received a warning letter in 2019.

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 youth.²⁸

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 programs targeting higher-risk youth.²⁹ As a result, low-risk youth receiving only a warning have shown better outcomes than those referred to a diversion intervention.³⁰ 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.

²⁷ Includes recommendations of nolle pros.

²⁸ Neb. Rev. Stat. §43-260.04(5).

²⁹ 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).

³⁰ Id.

Diversion in Nebraska Moving Forward

Nebraska is dedicated to its motto of “equality before the law.” To that end, it is imperative youth be allowed to complete a diversion program when appropriate. All youth 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 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 2019, the Director of Juvenile Diversion Programs worked with the Juvenile Justice Institute to evaluate the effectiveness of the screening and assessment tools currently utilized by diversion programs across the state, as well as the use of drug testing in diversion programs. The result of those evaluations has continued to move Nebraska diversion programs forward to become more evidence-based and utilize best practices. The assessment evaluation report and drug testing brief can be found on the Juvenile Justice Institute’s Evidence-based Nebraska page.

Future projects include updated Juvenile Diversion Guidelines, strategic planning on achieving diversion in every county, and implementing Nebraska specific screening and assessment tools to be utilized statewide by all diversion programs. This will be an extraordinary accomplishment in continuing to improve Nebraska diversion programs in providing the best programming necessary on an individual youth level.