

# JUVENILE DIVERSION IN NEBRASKA

2020 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-four counties and one tribe report having some form of juvenile pre-trial diversion services available to youth in their community during calendar year 2020. Of those 85 programs, 68 counties and Winnebago Tribe reported referral data to the Crime Commission by January 30, 2021 (Figure 1).

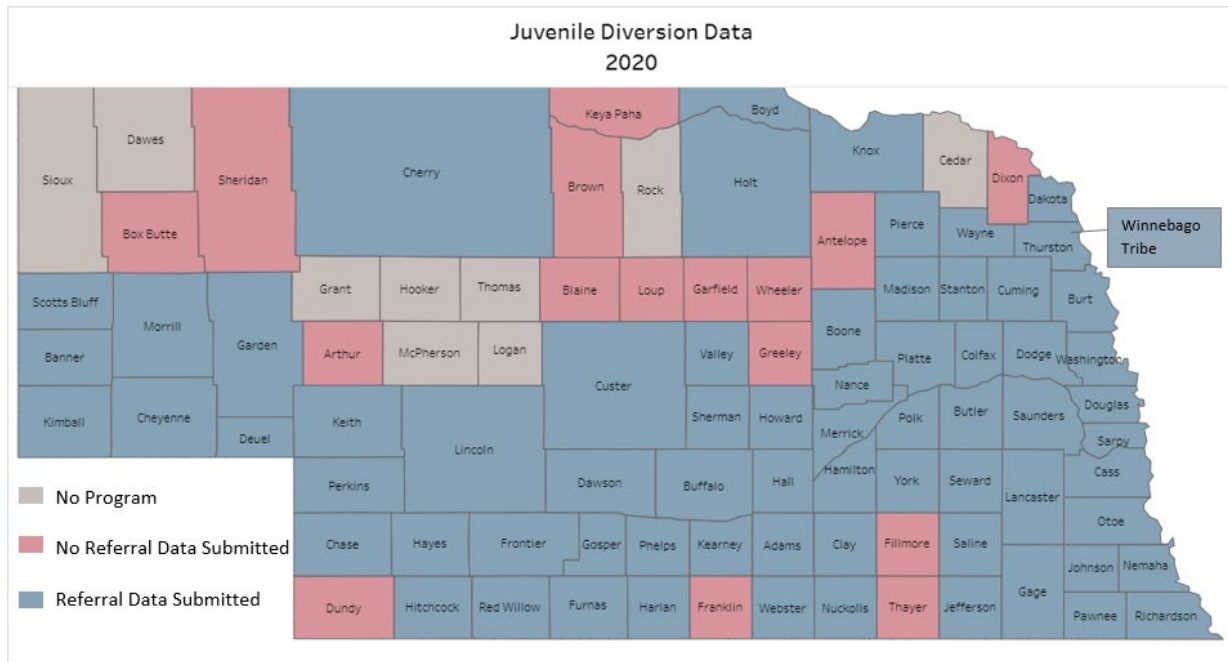


Figure 1

In calendar year 2020, 3,003 youth were referred to a diversion program in Nebraska with 2,486 enrolling after referral. Of the youth discharged from a diversion program during CY2020, 84% of the youth were discharged as successful.

The five most common reasons for referral to a diversion program in CY2020 were Minor in Possession of Alcohol, Shoplifting, Traffic Offense, Truancy, and Assault.

## 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 2020 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.

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.<sup>1</sup>

In Nebraska, a county attorney has statutory authority to develop a juvenile diversion program with the concurrence of their county board.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> This statutory requirement is another reason why county attorney support and development of juvenile diversion programs is vital in Nebraska.

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<sup>1</sup> Neb. Rev. Stat. § 43-260.03

<sup>2</sup> Neb. Rev. Stat. § 43-260.02

<sup>3</sup> Neb. Rev. Stat. § 43-260.04

<sup>4</sup> Neb. Rev. Stat. § 43-260.04 -.06

<sup>5</sup> Neb. Rev. Stat. § 43-276(2)

## Juvenile Pretrial Diversion Programs in Nebraska

An informal survey indicated there are currently 84 counties<sup>6</sup> and 1 tribe reportedly offering some form of a juvenile pretrial diversion program (Figure 2). The number of counties offering juvenile pretrial diversion services continues to increase each year.<sup>7</sup> The Winnebago Tribe also reports having a formal juvenile diversion program. No other tribe reported a diversion program in 2020.

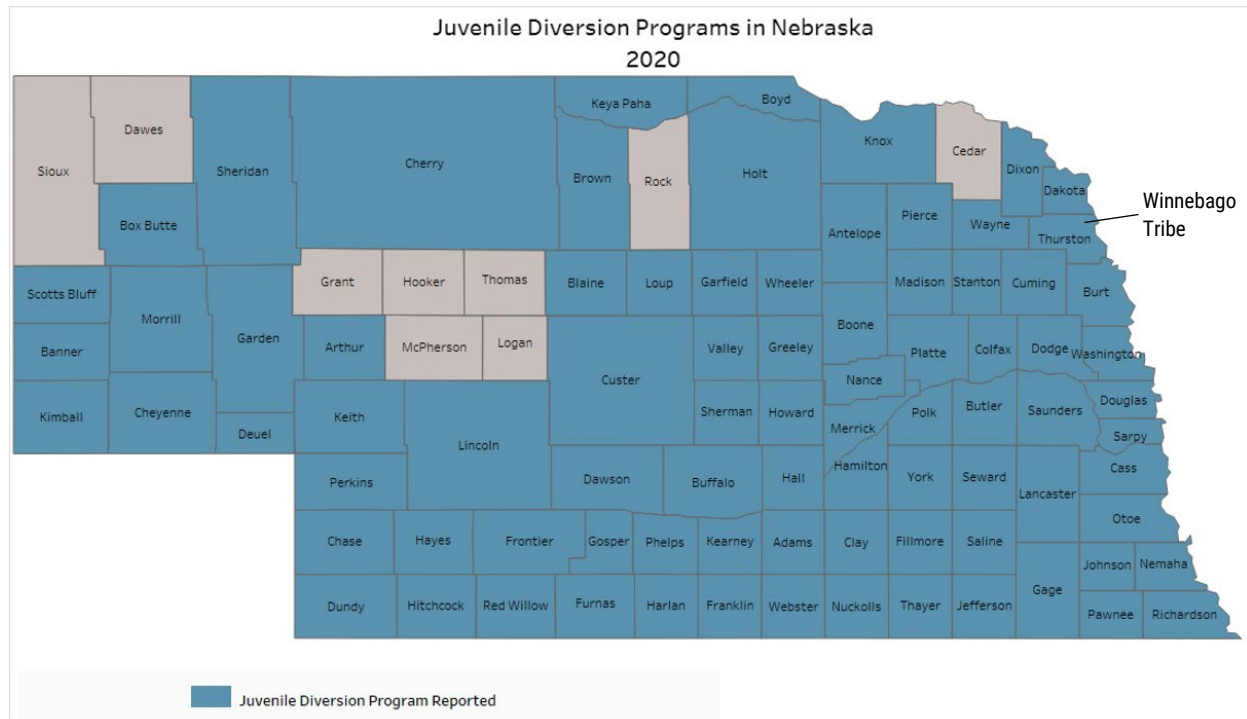


Figure 2

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.<sup>8</sup> 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-eight counties and one tribe reported the required 2020 diversion data into JDCMS. Seventeen counties had no referrals to diversion in 2020, or did not report the data.<sup>9</sup>

<sup>6</sup> Hooker, Thomas, McPherson, Logan Counties joined the Custer County collaborative in 2020 to begin receiving services through Healing Hearts and Families beginning July 2021. They did not have formal diversion programs established in 2020.

<sup>7</sup> 57 counties in FY2013, 62 counties in FY2014, 69 counties in CY2015, 73 counties in CY2016, 73 counties in CY2017, 77 counties in CY2018, and 80 counties in CY2020

<sup>8</sup> Neb. Rev. Stat. § 43-260.07

<sup>9</sup> Antelope, Arthur, Box Butte, Brown, Dundy, Fillmore, Garfield, Greeley, Thurston, Blaine, Dixon, Franklin, Keya Paha, Loup, Sheridan, Thayer, Wheeler.

## Referrals to Diversion

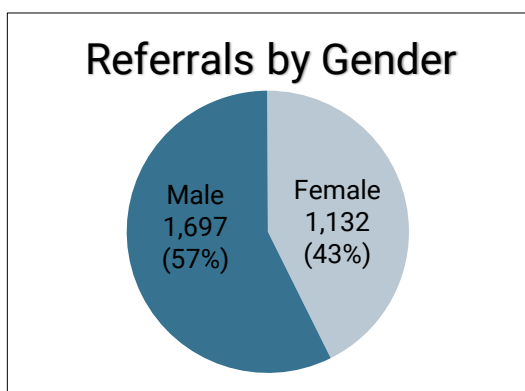
From January 1, 2020 to December 31, 2020, 3,003 referrals<sup>10</sup> (4,140 law violations and status offenses<sup>11</sup>) were made to a formal juvenile diversion program in Nebraska.<sup>12</sup>

### Characteristics of the Population

#### Gender

Fifty-seven percent of the referrals (1,697) to juvenile diversion were male, 43% (1,304) were female (Chart 1).<sup>13</sup>

Chart 1: Youth Referred to Juvenile Diversion by Gender CY2020



#### Race/Ethnicity

White youth had the highest rate of referrals to juvenile diversion (59% of referrals statewide), followed by Hispanic youth (20%) and African American youth (13%).

Table 1: Youth Referred to Juvenile Diversion by Race CY2020

	Number of Youth Referred	Percent of Youth Referred
White	1770	59%
Hispanic	598	20%
African American	387	13%
Multiple Races	85	3%
Unspecified	58	2%
Native American or Alaska Native	57	2%
Asian	26	1%
Other Race	18	1%
Native Hawaiian, Other Pacific Islander	4	Less than 1%
<b>Grand Total</b>	<b>3,003</b>	<b>100%</b>

<sup>10</sup> 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 CY2020: Total accepted (479), refused diversion (1), ineligible (50), Open Docket (4), Out of Jurisdiction (17), DHHS Involved (9), new charge –CA Request back (17), and Miscellaneous (13). Not included are warning letters (263), assessment no show (74), refused assessment (36), and Nolle Pros (44).

<sup>11</sup> 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. 116 cases missing charge information.

<sup>12</sup> 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.

<sup>13</sup> Two referrals had unspecified gender.

## Age

The age range of reported diversion cases for purposes of this report include from 5 years to 18 years of age. Seventeen year olds had the highest amount of referrals to diversion in CY2020 with 741 statewide (Table 2).

Table 2: Youth Referred to Juvenile Diversion by Age CY2020

Age	Number of Youth Referred	Percent of Youth Referred
Under 10	13	Less than 1%
10	9	Less than 1%
11	55	2%
12	141	5%
13	266	9%
14	365	12%
15	502	17%
16	701	23%
17	741	25%
18	210	7%
Total	3,003	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. Fourteen (64%) of the youth under 11 included in this data set were referred for truancy. Two youth were referred for ungovernable juvenile, two for trespassing, and one each for assault, burglary, criminal mischief, and marijuana possession. 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.

## Enrollments after Referral

Statewide, 83% of youth referred to a juvenile diversion program in CY2020 enrolled after referral (2,486 youth).<sup>14</sup> 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 CY2020

Demographic		Enrolled	% Enrolled	Did Not Participate	Missing Data
Race/ Ethnicity	African American	305	79%	80	2
	Asian	16	62%	10	0
	Hispanic	463	77%	123	12
	Multiple Races	75	88%	10	0
	Native American	45	79%	11	1
	Native Hawaiian	4	100%	0	0
	Other Race	17	94%	1	0
	Unspecified	25	43%	31	2
	White	1536	87%	224	10
Age	10 and Under	5	70%	6	0
	11	71	89%	6	0
	12	151	82%	25	1
	13	336	76%	59	4
	14	511	79%	70	5
	15	704	82%	87	2
	16	855	83%	111	9
	17	673	85%	107	5
	18	155	90%	19	1
Gender	Female	997	76%	179	10
	Male	1489	88%	310	16

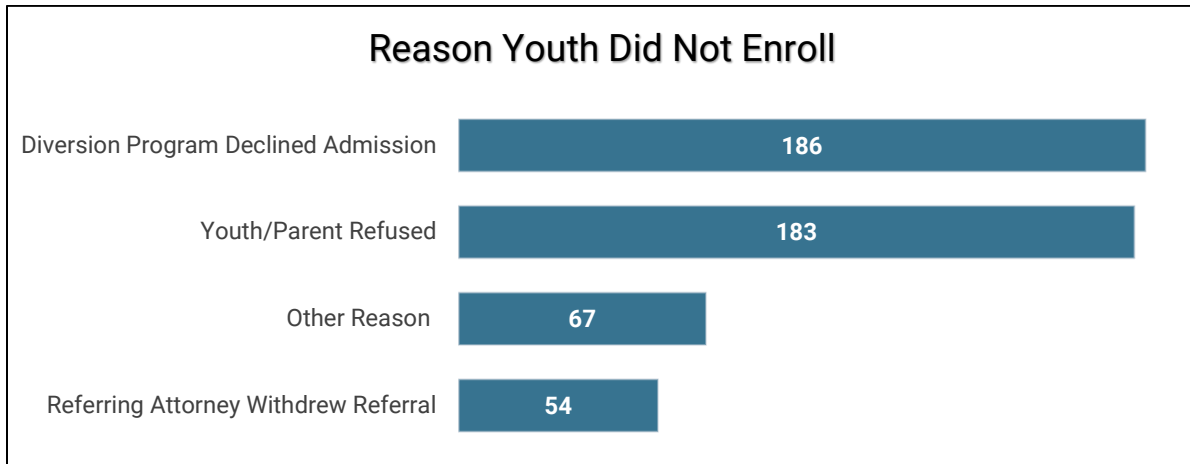
<sup>14</sup> Twenty-eight cases were missing enrollment data beyond referral.



### Reason Youth Did Not Enroll

A total of 490 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).

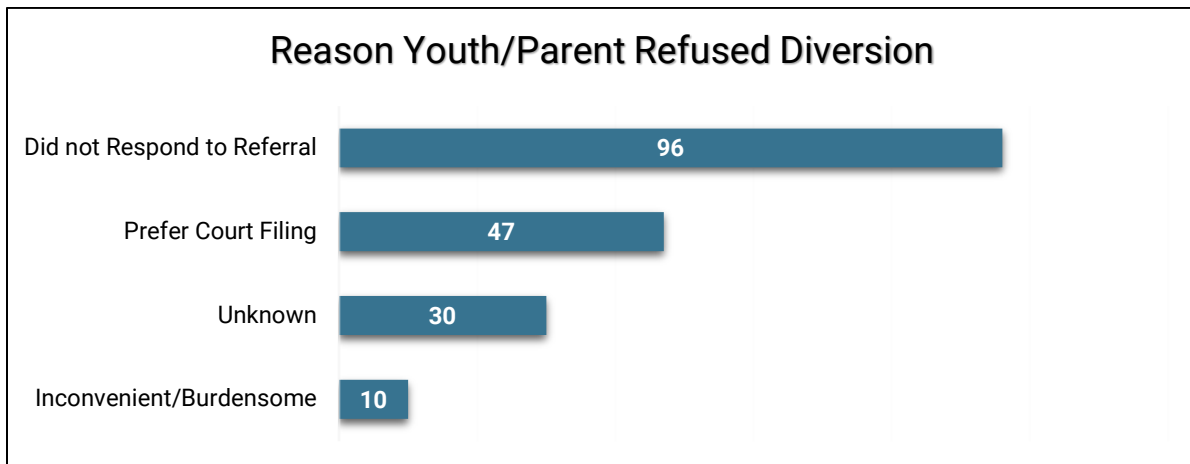
Chart 2: Reason Youth Did Not Enroll in Diversion CY2020



### Refusals

Fifty-five percent (183 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 CY2020



## Discharges from Diversion

From January 1, 2020 to December 31, 2020, a total of 2,737 cases were discharged from a formal juvenile diversion program in Nebraska after enrollment.<sup>15</sup>

### Success Rates

Statewide, 84% (2,309 youth) of the discharged cases successfully complete the diversion program, and 16% (428 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, youth was moved to a higher-level intervention, or other reason (moved away, death, etc.).

### Success by Race, Age, and Gender

Table 4: Success Rates of Youth Discharged by Race, Age, & Gender CY2020

Demographic		Success Rate	Successful	Unsuccessful
Race/ Ethnicity	African American	78%	273	79
	Asian	85%	17	3
	Hispanic	83%	472	100
	Multiple Races	73%	66	24
	Native American	77%	37	11
	Native Hawaiian	100%	5	0
	Other Race	90%	19	2
	Unspecified	74%	20	7
	White	87%	1400	202
Age	10 and Under	90%	9	1
	11	87%	45	7
	12	86%	91	15
	13	80%	218	53
	14	80%	288	74
	15	81%	402	93
	16	84%	531	102
	17	89%	586	76
	18	95%	139	7
Gender <sup>16</sup>	Female	85%	945	173
	Male	84%	1363	255

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.

<sup>15</sup> This number represents discharges either successfully or unsuccessfully; does not include youth that did not enroll or participate after referral.

<sup>16</sup> One unspecified gender not included in Successful Completion.

## Law Violations

Table 5 demonstrates the most frequent law violations referred to a juvenile diversion program in CY2020. 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.

Statewide, the most common violations referred to diversion remained consistent as previous years with the order changing slightly. Overall, law violations have gone down from previous years, with large decreases including truancy cases going from 750 in CY2019 to 386 in CY2020, and Marijuana possession down from 488 to 289.

Table 5: Law Violations Referred to Diversion CY2020

Law Violation	Number of Law Violations Referred
<b>Alcohol Offenses</b>	<b>605</b>
Minor In Possession	571
Contributing to a Minor	17
Open Container	12
Driving Under the Influence	5
<b>Drug Offenses</b>	<b>579</b>
Marijuana Possession	289
Possession Of Drug Paraphernalia	241
Possession/Delivery Of Controlled Substance	25
Unlawful Acts Relating to Drugs	24
<b>Shoplifting</b>	<b>391</b>
Truancy	386
Traffic Offenses <sup>17</sup>	375
Assault <sup>18</sup>	367
Criminal Mischief	222
Tobacco Use By Minor	143
Obstructing Police	100
Trespassing	199
Ungovernable	87
Other Theft Offenses	220
Disorderly Conduct	95
Remaining Law Violations	371
<b>TOTAL</b>	<b>4,140</b>

### Limitations within the 2020 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.

<sup>17</sup> Includes violations related to permits, licenses, registration, insurance, speeding, reckless driving, leaving the scene of an accident, and violation of traffic signals.

<sup>18</sup> Includes 3<sup>rd</sup> degree assault, assault by mutual consent, domestic assault, and sexual assault violations.