

Nebraska Retirement Systems Committee

INTERIM STUDY REPORT 2015

LR 265 Traffic & Adult Pretrial Diversion & Collection of Court Costs for the Judges' Retirement System

This report was prepared by Kate Allen, Nebraska Retirement Systems Legal Counsel who would like to thank and acknowledge the assistance of Catherine Larsen, Committee Clerk who personally contacted attorneys to get survey responses, and the Nebraska Association of County Officials (NACO) who distributed the surveys to the county attorneys, with particular thanks to Elaine Menzel at NACO who formatted the surveys and also sent follow-up requests to improve the response rate.

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LR 265

Report on Traffic and Adult Pretrial Diversion & Collection of Court Costs for the Judges' Retirement System

LR 265 was introduced by members of the Nebraska Retirement Systems and Judiciary Committees. Because the study focused on pretrial diversion programs and court fees which are under the jurisdiction of the Judiciary Committee, the study was referenced to the Judiciary Committee.

The Nebraska Retirement Systems Committee's interest in this issue stems from the earmarking of a number of court fees for purposes of funding the employer contributions in the Judges' Retirement System. The Committee is seeking new sources of funding and working to understand the decline in court fee revenues.

A combined interim study report, which included LR 252, 265 and LR 311 was drafted for the Judiciary Committee. This LR 265 report is a segment of the Judiciary Committee report which also included LRs 252 and 311. LR 265 primarily examines:

1. the number of participants in traffic pre-trial diversion in recent years throughout the state;
2. whether or not court fees are assessed to participants in these programs,
3. if court fees are assessed, are they being credited to the court system,
4. if greater participation in these programs may be a factor in the declining court fee revenues; and
5. if any other factors have an impact on the amount of revenue generated by court fees.

[Appendix A – Text of LR 265]

BACKGROUND—COURT FEES

Court fees deposited into the State General Fund

According to legislative history, in 1972 the county court system was reorganized and placed under the direction of the Nebraska Supreme Court. All filing fees and costs were directed for deposit into the State General Fund and all operating costs of county courts were directed to be paid by the State.

Under Neb. Rev. Stat. 25-2712, all county court fees and costs are directed to the State Treasurer for deposit in the State General Fund. In addition, a small amount of revenue is generated by case filings in the district courts and in the Supreme Court and Court of Appeals. Revenue from court fees deposited into the State General Fund has been decreasing. In FY 10/11 revenue was \$9.2 million; in FY 14/15 it was \$8.5 million.

Court fees earmarked for Judges' Retirement Fund

Court fees were first earmarked for the Judges Retirement Fund in 1957 to fund the employer/state contributions to the Fund. The original \$1 fee was increased to \$5 in 2003. In 2005 a number of additional case filings were earmarked in order to generate more fees for credit to the Judges Retirement Fund. In 2009, in order to make up for the -27% investment losses due to the severe stock market drop, the \$5 fee was increased to \$6.

This chart lists the amount of fees earmarked for deposit in the Judges Retirement Fund and the court, cause of action, or docket fee to which the fee is assessed.

SECTION	FEE	COURT/CAUSE OF ACTION/DOCKET FEE
24-703	\$6.00	District, County, Supreme, Appeals, & Workers Comp Courts
25-2804	\$1.25	Small Claims
33-103	\$50.00	Supreme
33-103.01	\$50.00	Appeals
33-106.02	^\$4.00	District (docket fees)
33-123	^\$4.00	District (civil docket fees)
33-124	^\$4.00	County (criminal)
33-125	\$4.00	County (probate)
33-126.02	\$12.00	County (guardianship/conservatorship)
33-126.03	\$2.00	County (inheritance tax)
33-126.06	\$2.00	County (trust)

^ These fees will increase in 2017 to \$4 pursuant to LB 468, which passed in 2015.

Court Fees for other Programs

In addition to providing revenue for the Judges' Retirement System, court costs and fees also fund a number of other programs.

PROGRAM	FEE	STATUTE
Civil Legal Services Fee	\$1.00	25-3010
Court Automation Fee	\$8.00	33-107.03
Crime Victim Fee	\$1.00	25-3010
Dispute Resolution Fee	\$.75	33-155
Indigent Defense Fee	\$3.00	33-156
Law Enforcement Improvement Fee	\$2.00	81-1429
Legal Services Fee	\$5.25	33-107.01
Supreme Court Education Fee	\$1.00	33-154
Uniform Data Analysis Fee	\$1.00	47-633

Theories Regarding the Decline in Court Fee Revenue

There are several theories about the cause of declining revenues from court fees which include:

- Participation in traffic and adult pretrial diversion has increased in the last several years
- Fewer traffic citations are being written because in several of the last several years there were no new classes for law enforcement officers (new state patrol officers are generally assigned traffic citation responsibilities)

Fewer New Law Enforcement Officers -- Possible Impact on Court Costs

Due to budget limitations since 2009, there were no law enforcement training classes offered in 2009, 2010, or 2013, and thus no additional state patrol officers were hired in these years. According to information provided by the state patrol, new officers are generally assigned traffic duty and issue the majority of traffic citations. One of the theories to explain a decline in court revenues and participation in traffic pretrial diversion programs is because there were fewer traffic citations issued in those years. Below is a chart provided by the State Patrol that includes the number of traffic citations issued statewide by all police agencies in Nebraska 2002-2013, the total number of traffic stops from 2005-2014, the number of new state patrol officers each year, and the total number of state patrol officers in each year.

YEAR	Citations Statewide	Traffic Stops Statewide	New State Patrol Officers	Total State Patrol Officers
2015			35	413
2014		512,209		378
2013	141,654	492,134	0	409
2012	152,311	505,481	17	427
2011	166,759	516,081	11	433
2010	169,907	538,297	0	444
2009	153,824	483,268	0	468
2008	160,045	502,127	24	496
2007	135,663	407,432	21	484
2006	164,360	463,131	28	477
2005	160,597	488,250	0	473
2004	173,991		23	489
2003	182,625		83	486

Judges' Retirement System Funding Needs

After an initial increase in revenue from court fees in FY 10/11, the revenue has dropped each year. Despite the 2009 fee increase, the revenue from fees in FY 14/15 was less than the revenue collected in FY 08/09.

Plan Year	Total Court Fee Revenue	Decrease/Increase from Previous Year
FY 14/15	\$2,986,233	-\$105,481
FY 13/14	\$3,091,714	-\$136,208
FY 12/13	\$3,227,922	-\$172,537
FY 11/12	\$3,450,459	-\$49,929
FY 10/11	\$3,500,388	-\$43,776
FY 09/10	\$3,544,164	+\$152,790
FY 08/09	\$3,391,374	

According to the 2015 actuarial valuation report, revenue from court fees are assumed to remain flat (at best), and if the trend continues, revenue will continue to decrease over time. This is particularly challenging, because actuarial costs are developed as a level percentage of payroll. As a result, the dollar amount of employer/judges contributions will increase in future years while the revenue from court fees remains flat or decreases.

[See Appendix D – Cavanaugh Macdonald Consulting 30-year projection of court fees and additional state contributions (ARCs) 2015 Annual Actuarial Valuation of Judges’ Retirement System]

2015 Nebraska Retirement Systems Committee Legislation

In 2015, LB 602 was introduced by the Nebraska Retirement Systems Committee and referenced to the Judiciary Committee. As introduced, LB 602 made two changes to the Judges Retirement Act. The court fee dedicated to the Judges Retirement Fund was increased from \$6 to \$8 beginning July 1, 2015. And beginning October 1, 2015, an \$8 court fee was added to cases referred to pretrial diversion programs. The \$2 increase was estimated to generate an additional \$700,000 to \$1 million per year.

LB 602 was amended and advanced from the Judiciary Committee without the \$2 increase on court cases, however, it did retain the provision which attached a new \$6 fee to all pre-trial diversion cases.

Opposition was raised on the floor to the assessment of fees on pretrial diversion programs and general questions were raised about the number and types of cases involved in pretrial diversion. In response to these concerns, the bill was further amended to eliminate the fees on pretrial diversion and money was diverted to the Judges Retirement Fund that had been earmarked for the State General Fund.

Beginning July 1, 2015, \$2 will be diverted until 2017 when the amount diverted from the General Fund will be increased to \$4. The estimated revenue generated from the \$2 diversion is approximately \$660,000 and approximately \$1,320,000 when the amount is increased to \$4 in 2017. The provisions were incorporated into LB 468 and passed.

The chart below provides a breakdown of how much each dollar will generate based on the type of case according to information provided by the Court Administrator's Office using the FY13/14 revenue deposited into the state General Fund from court fees.

CASE	FY13/14 TOTAL GF REVENUE	FEE TO THE GF	GENERATED BY EACH \$1	NUMBER DOLLARS TO JUDGES	FY 15/16 DIVERTED TO JUDGES	FY 17 & ON DOLLARS TO JUDGES	AMOUNT DIVERTED TO GF
Civil	\$1,600,000	\$18	\$90,000	\$2	\$180,000	\$4	\$360,000
Criminal	\$1,445,000	\$18	\$80,000	\$2	\$160,000	\$4	\$320,000
Traffic	\$2,310,000	\$18	\$130,000	\$2	\$260,000	\$4	\$520,000
Probate	\$600,000	\$20	\$30,000	\$2	\$60,000	\$4	\$120,000
TOTAL					\$660,000		\$1,320,000

In response to the questions raised about pretrial diversion programs in general, and as a possible means of raising additional funds for judges' retirement – members of the Nebraska Retirement Systems Committee and the Judiciary Committee introduced LR 265 to explore these issues and the Judiciary Committee introduced LR 252 to specifically examine court fees and costs.

BACKGROUND – PRE-TRIAL DIVERSION PROGRAMS

There are three types of pre-trial diversion programs – juvenile, adult criminal offenses, and minor traffic. Either the city attorney or the county attorney is statutorily authorized to establish a pretrial diversion program in the county/city with the concurrence of the governing entity.

Juvenile pretrial diversion

The Director of Juvenile Diversion Program oversees development of juvenile diversion programs in counties and cities and prepares an annual report summarizing juvenile diversion programs. According to 2015 report, 62 counties have a juvenile diversion program but only 52 provided information to the Juvenile Diversion Administrator. Between July 1, 2013 and June 30, 2014, there were 3,546 juveniles referred to the program. No data was collected in this study on juvenile pretrial diversion since annual reports are issued by the Program.

Adult Criminal offenses

There is no centralized reporting or data collection system for these cases therefore there is limited information available regarding the number of counties or cities that offer adult pretrial diversion, what offenses are available for diversion, and participation rates.

Minor traffic violations

The Department of Motor Vehicle (DMV) approves curriculum for minor traffic violations and sets fees for the cost of driver safety program. There are six private providers that offer traffic diversion programs, covering varying jurisdictions including: Nebraska Safety Center, National Safety Center Nebraska, Traffic Safety Plus, Southeast Community College, Nebraska Safety Council and Lancaster County Community Corrections. Each provider must be recertified by the DMV each year.

The DMV requires each provider to become recertified each year and therefore has a record of which counties have traffic diversion programs. DMV does not collect data on the number of participants in each county/city. Each county/city is allowed to assess fees which are added to the costs of administering and operating driver safety programs, to promote drive safety, and to pay for administering other safety and education programs within such jurisdiction.

Some of the providers collect \$48 in court fees (which includes the \$6 fee earmarked for the judges' retirement fund) and some do not.

The DMV has promulgated rules and regulations outlining the requirements governing driver safety training programs as pretrial diversion in Title 150. Below are relevant provisions in Chapters 3 and 4 regarding the assessment of fees:

003.03B Fees Charged by Jurisdiction

Fees charged by the jurisdiction may include, but are not limited to such items as court costs, or other costs necessary for the jurisdictions' operation of a plan for diversion of minor traffic offenses.

004 County or City Attorney's Plan for a Jurisdiction

004.01 A county attorney who establishes a plan for pretrial diversion of minor traffic offenses in a jurisdiction shall provide an itemized breakdown of fees charged by a jurisdiction and fees received by a jurisdiction (see 003.03 of these regulations for details) to any provider seeking certification of a program

According to the DMV, all but 9 counties currently offer traffic pretrial diversion programs. The only counties that do not offer such programs are: Cherry, Dawes, Dixon, Filmore, Grant, Holt, Keya Paha, Pierce and Rock. (Approximately a dozen cities also offer traffic pre-trial diversion programs, but no survey data was collected from cities for purposes of this interim study.)

Traffic Pretrial Diversion Class Provider Survey Results

As noted previously, one of the theories proposed to explain the decline in court fees in the past several years is that more people are participating in traffic pretrial diversion programs. In order to explore this theory, a survey was created to gather participation numbers from the pretrial diversion program providers. According to survey responses, since 2012 the statewide number of traffic pretrial diversion class participants has decreased each year, though participation within each county has varied. Statewide, the total number of participants are:

2014	21,694
2013	24,126
2012	27,788

There were 3,662 fewer participants in 2013 compared to 2012, and 2,432 fewer participants in 2014 compared to 2013. Between 2012 and 2014, the total number of participants dropped 6,094. Among the counties with the highest number of participants, there were four patterns:

- participation decreased in both 2013 and 2014
- participation decreased in 2013 and increased in 2014
- participation increased in 2013 and decreased in 2014; and
- participation increased in both 2013 and 2014

Participation Decreased on Both 2013 and 2014

	<u>2012</u>	<u>2013</u>	<u>2014</u>
Douglas	12,420	10,283	7,338
Platte	249	171	133
Cuming	244	206	204
Stanton	172	116	107
Norfolk	146	87	93

Participation Decreased in 2013 and Increased in 2014

Lancaster	9,546	7,749	8,257
Adams	199	175	187
Colfax	145	139	150

Participation Increased in 2013 and Decreased in 2014

Dodge	660	750	631
Cass	387	563	544
Lincoln	277	403	354
Hall	137	146	142

Participation Increased on Both 2013 and 2014

Washington	217	238	304
Buffalo	184	199	208
Otoe	129	152	178
Howard	122	123	154

Survey Data on Collection of Court Costs Information

A second survey, created by legislative staff on traffic pretrial diversion programs was sent to every county attorney by the Nebraska Association of County Officials (NACO). Follow-up calls were made to county attorneys. There were no responses from 38 of the county attorneys to any of the questions.

According to the survey responses, in all but 14 counties, the traffic pretrial diversion provider collects court costs in addition to the fees collected to cover the cost of the traffic pretrial diversion program. However, there is a great deal of variation among county attorneys and courts whether

or not cases are filed and if court fees are assessed in addition to court fees collected as part of the costs to participate in traffic pretrial diversion.

In 15 counties, if court costs are collected by the provider, then court costs are not collected by the court. These counties include: Boone, Brown, Burt, Clay, Frontier, Garden, Gosper, Hooker, Kearney, Keith, Merrick, Nance, Sheridan, Sherman, and Thayer.

According to survey responses, in 19 counties court costs are collected by both the program providers and the courts. These counties include: Adams, Arthur, Blaine, Cedar, Cheyenne, Colfax, Cuming Dundy, Franklin, Garfield, Greeley, Johnson, Kimball, Pawnee, Platte, Polk, Red Willow, Wayne and Webster.

In Saline and Saunders, court costs are not collected by either the program provider or the court. In Cass, Douglas and Washington counties, providers do not collect court costs. It is unknown if court costs are collected by the court since the county attorney from these counties did not respond to the survey.

In Otoe, Sarpy and York counties, court costs are not assessed by the provider and the county attorney does not file cases in the court if a person enters pretrial diversion. According to survey responses, in Butler, Cass and Lancaster counties, if the person signs up for a traffic pretrial diversion program within 10 days after receiving the traffic citation and successfully completes the course, then no court costs are assessed. Lancaster noted that 90%-95% of persons receiving traffic citations sign up for traffic pretrial diversion classes within 10 days, successfully complete the classes and avoid paying any court costs. Butler and Cass did not provide any data on the number of those who sign up and complete the classes.

This is a chart of the counties in which providers do not collect court costs. In those counties starred with an asterisk, the county attorney did not provide information as to whether or not court costs are assessed by the court.

COUNTY	2012	2013	2014
Butler	97	118	86
*Cass	387	563	544
*Dodge	660	750	631
*Douglas	12,420	10,283	7,338
Lancaster	9,546	7,749	8,257
*Lincoln	277	403	354
*Madison	102	73	123
*Phelps	81	75	59
Saline	59	38	32
Sarpy	87	64	90
Saunders	143	102	109
*Stanton	172	116	107
*Washington	217	238	304
Wayne	84	58	42
York	61	59	77
TOTALS	26,405	22,702	20,167

Estimates of Additional Revenue from \$6 Fee on Diversion Participants

Based on the reporting by the county attorneys and providers, there were 26,405 participants in 2012, 22,702 participants in 2013 and 20,167 participants that were not assessed court fees. If a \$6 fee were assessed on each person participating in a traffic pretrial diversion program based on these participation numbers the following additional revenue for the Judges' Retirement System could have been generated:

2014	\$121,002
2013	\$136,212
2012	\$158,430

Even with declining traffic pretrial diversion participation, it appears at least \$100,000 additional revenue could be annually generated by a \$6 fee.

Indigents – Payment of Court Costs and Traffic Pretrial Diversion Costs

Of the county attorneys who provided responses -- three counties – Boone, Dundy and Kearney waive court costs for indigents. Dundy and Sarpy waive the cost of traffic pretrial diversion programs for indigents and in Saline, the county pays the cost of traffic pretrial diversion programs for indigents.

In the other 25 counties that responded, an indigent pays both court costs and the cost of participation in traffic pretrial diversion. These counties include: Arthur, Blaine, Cedar, Cheyenne, Clay, Cuming, Franklin, Frontier, Gage, Garden, Garfield, Gosper, Greeley, Hooker, Johnson, Keith, Kimball, Merrick, Pawnee, Platte, Rock, Sheridan, Sherman, Thayer, Wayne, and York.

[Appendix E – Chart of County Attorney & Provider Responses on Payment of Court Costs & Provider Data on Participation]

[Appendix F – County Attorney Responses on Traffic Diversion – Filing of Court Cases and Collection of Court Costs & Program Costs from Indigents]

ADULT PRETRIAL DIVERSION

There is no centralized reporting or data collection system for adult criminal pretrial diversion cases therefore there is limited information available regarding the number of counties or cities that offer adult pretrial diversion, what offenses are available for diversion, and the number of persons who participate in these programs.

2014 Data Collection

Prior to the 2014 legislative session, the Legislative Research Division, at the request of the Nebraska Retirement Systems Committee, contacted the four largest counties and the city of Omaha to gather some preliminary data on adult pretrial diversion. Here is the information gathered:

<u>Douglas</u>	144 cases were referred in 2014. No information was provided on assessment of court fees
<u>Hall</u>	Does not have adult pretrial diversion program
<u>Lancaster</u>	2,000 cases were referred in 2014. No information was provided on assessment of court fees
<u>Sarpy</u>	921 cases were referred in 2014 and there was intake on 543 cases. No information on assessment of court fees
<u>Omaha</u>	About 700 participants each year. Court costs are not collected

Adult Pretrial Diversion Survey

As part of LR 265, a survey drafted by legislative staff was sent to all county attorneys by the Nebraska Association of County Officials (NACO).

[Appendix E – Text of Adult Pretrial Survey of County Attorneys]

There were 54 responses or partial responses to the survey by county attorneys. Twenty-one of the counties offer adult pretrial diversion, though the offenses vary broadly. Those counties include: Arthur, Butler, Cass, Cedar, Colfax, Dundy, Douglas, Gage, Frontier, Lancaster, Madison, Otoe, Platte, Richardson, Sarpy, Scottsbluff, Sheridan, Sherman, Webster and York.

Five of the counties that offer adult pretrial diversion collect court costs; the remaining 16 counties who offer such diversion do not collect court costs, although Colfax noted that court costs are collected if the participant fails to complete diversion.

Thirty-three of the counties that responded do not offer adult pretrial diversion programs. Those counties include: Blaine, Boone, Box Butte, Boyd Brown, Cheyenne, Clay, Cuming, Dakota, Franklin, Garfield, Gosper, Greeley, Hooker, Howard, Johnson, Keith, Kimball, Knox, Loup, Merrick, Nance, Pawnee, Phelps, Pierce, Polk, Red Willow, Rock, Saline, Saunders, Thayer, Thomas, and Washington.

Eight counties including Colfax, Lancaster, Madison, Otoe, Platte, Sarpy, Scottsbluff and Sherman, provided information on the number of participants in adult pretrial diversion. According to the responses, there were 2,223 participants including 495 in Sarpy and 1,528 in Lancaster.

Indigents – Payment of Court Costs and Adult Diversion Program Costs

Included in the survey were a number of questions about who pays court costs and diversion program costs for indigents. Responses to these questions were received from 10 counties including: Butler, Colfax, Dodge, Gage, Madison, Otoe, Platte, Sarpy, Sherman and York.

Court Costs -- In Butler, Gage, Platte, Sherman and York costs are paid by the pretrial diversion participant. In Madison and Otoe, costs are paid by the pretrial diversion participant if he or she fails to complete the diversion program. In Dodge, court costs for pretrial diversion participants are waived.

Pretrial Diversion Program Cost – Program costs are treated in numerous ways according to the responses received. In Dodge, Sherman and York the participant pays program costs. In Butler, pretrial diversion program costs are either waived or paid by the participant on a sliding scale. In Colfax the cost varies on the participant’s ability to pay. In Gage the participant pays the program cost but scholarships are available based on need. In Otoe and Platte, program costs are waived. In Madison there are no fees for participation in the pretrial diversion program. In Sarpy program costs are waived and community service is added.

[Appendix F -- Selected Responses of Adult Pretrial Survey of County Attorneys]

CONCLUSION

Collection and payment of court costs varies in all counties due to the discretion of the courts and county attorneys

According to the participation numbers for 2012 through 2014, the number of people participating in traffic pretrial diversion has declined. Most traffic pretrial diversion program providers collect court costs and pay them to a variety of county offices. It is unknown whether these payments are being deposited into the court system for credit to appropriate programs – including the Judges’ Retirement System.

Court fee revenues should be monitored in 2015 to determine whether there is an increase in the number of traffic citations issued by the 35 new officers hired by the state patrol in 2014. It will also be interesting to note if the number of traffic pretrial participants increases as well.

In order to track participation in traffic pretrial diversion, it may be useful to ask the Department of Motor Vehicles if they would also ask the providers, as part of their recertification each year, to include the total number of people who participated in the traffic pretrial diversion program.

From the data provided by providers and county attorneys, it is estimated that a \$6 fee assessed for participation in traffic pretrial diversion would have generated at least \$120,000 in 2014, and even with declining participation numbers could generate a possible additional \$100,000 annually for the Judges Retirement System.

APPENDICES

APPENDIX A

Text of LR 265

LR 265

LEGISLATIVE RESOLUTION 265. Introduced by Davis, 43; Coash, 27; Ebke, 32; Groene, 42; Kolowski, 31; Kolterman, 24; Krist, 10; Mello, 5; Morfeld, 46; Pansing Brooks, 28; Seiler, 33; Williams, 36.

PURPOSE: The purpose of this resolution is to examine minor traffic violation, adult, and juvenile pretrial diversion programs authorized by counties and municipalities. The study shall include, but not be limited to, an examination of the following:

- (1) The pretrial diversion programs authorized by counties and municipalities and the approved private pretrial diversion program providers;
- (2) The costs for participation in pretrial diversion programs and the additional fees assessed by counties and municipalities including court costs;
- (3) The delivery of court costs collected by the court system for credit to appropriate funds;
- (4) The utilization of fees collected by counties and municipalities;
- (5) The treatment of indigent persons and uncollectible costs and fees; and
- (6) The feasibility of establishing a central reporting system of all pretrial diversion programs including the assessment, collection, and utilization of program costs and fees.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDRED FOURTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

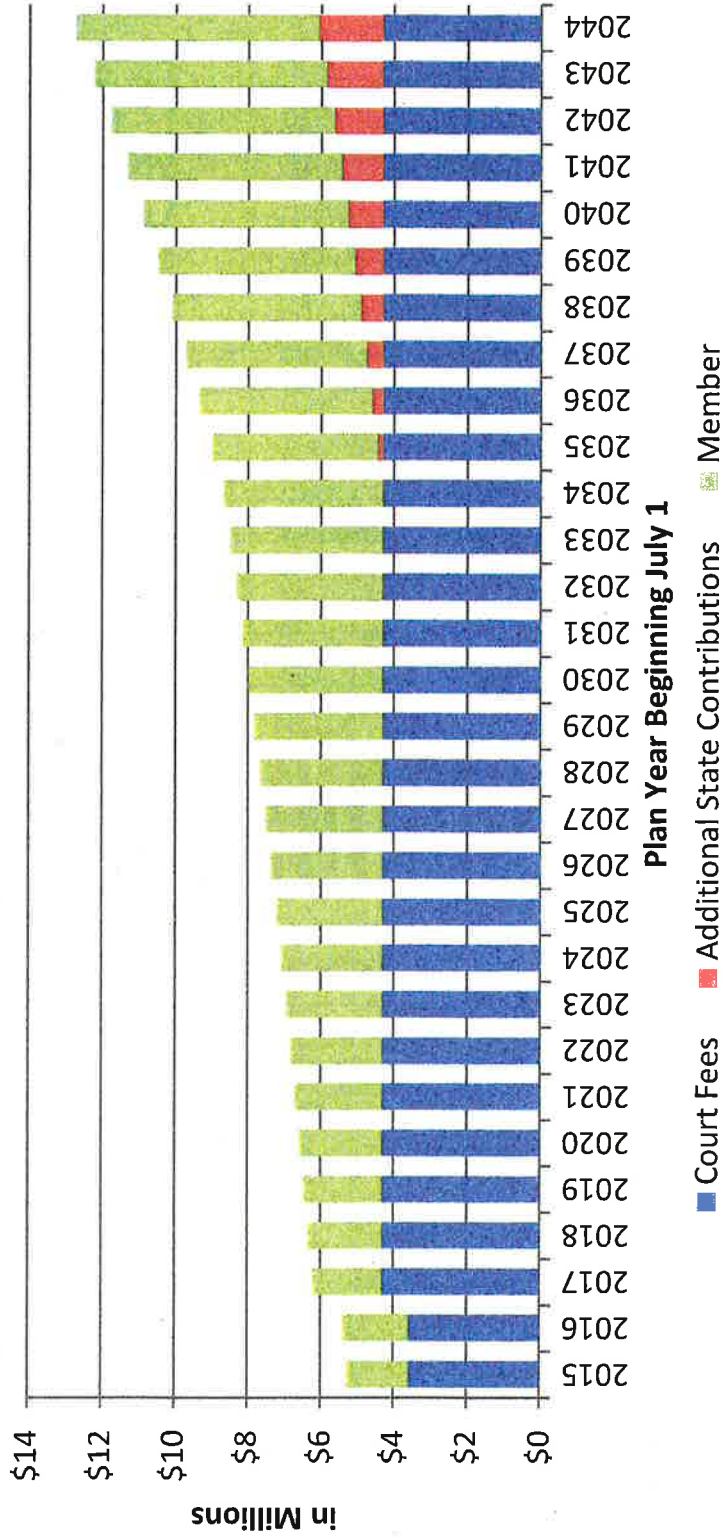
1. That the Judiciary Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.
2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

APPENDIX B

Cavanaugh Macdonald Actuarial Consulting
30-year Projections of Court Fees and
Additional State Contributions (ARCs)



Judges Retirement System

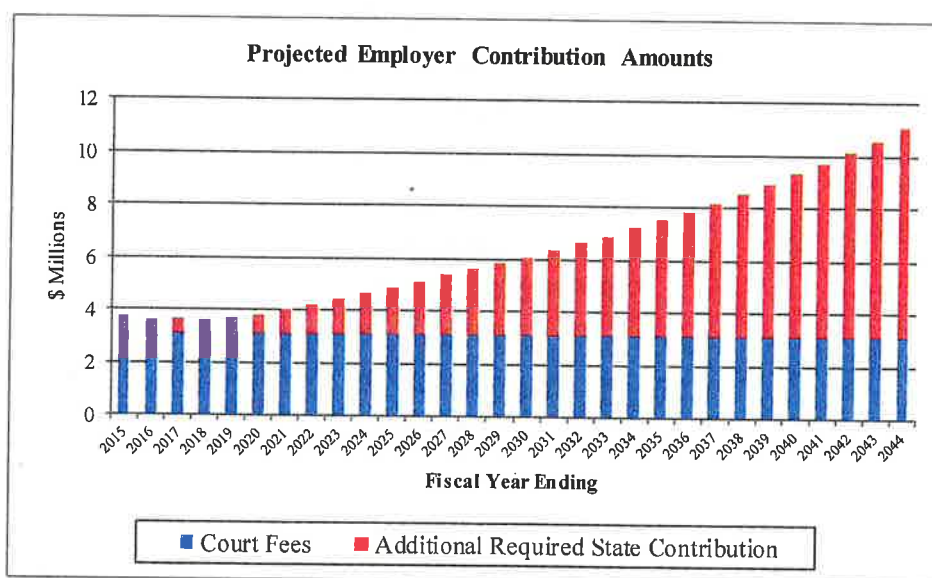


Assumes the expected 8% return is earned in all future years and any additional State contributions are made when due.



SECTION 1 – BOARD SUMMARY

The trend on the dollar amount of court fees creates a concern about the long term funding of the System. Specifically, the actuarial contribution rate is developed to fund the System's liabilities as a level percentage of payroll, with an assumption that payroll will increase 4% each year in the future. That means that, even if all actuarial assumptions are met, the dollar amount of the actuarial required contribution will increase each year as payroll increases. While the amount of member contributions will automatically increase as payroll increases, the court fees may not. Therefore, even if the court fees remain level rather than decline, the gap between the actuarial required contribution and the funding sources (member contributions and court fees) will result in an increasing amount of State appropriations in the future to meet the actuarial funding requirements. The following graph illustrates the relationship of increasing payroll versus recent court fees.



If the State wants to avoid this trend of increasing State contribution amounts, the financing mechanism for the Judges Retirement System should be reevaluated.

APPENDIX C

Chart of County Attorney & Provider
Responses on Payment of
Court Costs & Provider Data on Participation
In Traffic Pretrial Diversion

Traffic Diversion Provider & County Attorney Responses Payment of Court Costs & 2012 – 2014 Participation in Diversion

COUNTY	PROVIDER COLLECTS COURT COSTS	PROVIDER SUBMITS COURT COSTS TO	CASE ALSO FILED WITH COURT PRIOR TO STOP CLASS & CT COSTS ASSESSED	2012 PARTICIPANTS	2013 PARTICIPANTS	2014 PARTICIPANTS
Adams	YES	County Attorney	YES	199	175	187
Antelope	YES		NO RESPONSE	41	53	46
Arthur	YES	County Court	YES	2	0	1
Banner	YES		NO RESPONSE	19	22	39
Blaine	YES	County Court	YES	4	6	12
Boone	YES		NO	28	16	20
Box Butte	YES	County Attorney	NO RESPONSE	21	17	14
Boyd	YES	County Attorney	NO RESPONSE	6	15	15
Brown	YES		NO			
Buffalo	YES	County Attorney	NO RESPONSE	184	199	208
Burt	YES	County Court	NO	47	56	41
Butler	NO	County Attorney	NO—if sign up within 10 days & complete course, otherwise case is filed	97	118	86
Cass	NO	N.A.		387	563	544
Cedar	YES	County Court	YES	35	39	54
Chase	YES	N.R.	NO RESPONSE	19	19	21
Cheyenne	YES	County Treasurer	YES	33	65	59
Clay	YES	County Court	NO	38	29	46
Colfax	YES	Clerk County Court	YES	145	139	150
Cuming	YES	County Court	YES	244	206	204
Custer	YES	N.R.	NO RESPONSE	72	92	80
Dakota	YES	N.R.	NO RESPONSE	67	47	32
Dawson	YES	N.R.	NO RESPONSE	91	77	69
Deuel	YES	N.R.	NO RESPONSE	22	31	32
Dodge	NO	N.R.	NO RESPONSE	660	750	631
Douglas	NO	N.A.		12,420	10,283	7,338
Dundy	YES	County Court	YES	17	13	15
Franklin	YES	County Court	YES	7	2	5
Frontier	YES	County Treasurer	NO	16	18	20
Furnas	YES	County Attorney	NO RESPONSE	24	12	33
Gage	YES	County Court	YES/NO	63	65	142
Garden	YES	County Court	NO	12	15	24
Garfield	YES	County Court	YES	1	3	1

COUNTY	PROVIDER COLLECTS COURT COSTS	PROVIDER SUBMITS COURT COSTS TO	CASE ALSO FILED WITH COURT PRIOR TO STOP CLASS & CT COSTS ASSESSED	2012 PARTICIPANTS	2013 PARTICIPANTS	2014 PARTICIPANTS
Gosper	YES	County Court	NO	9	9	7
Greeley	YES	County Clerk	YES	3	10	14
Hall	YES	County Attorney	NO RESPONSE	137	146	142
Hamilton	YES	County Court	NO RESPONSE	51	74	69
Harlan	YES	N.R.	NO RESPONSE	24	28	8
Hayes	YES	N.R.	NO RESPONSE	13	7	7
Hitchcock	YES	N.R.	NO RESPONSE	19	24	14
Hooker	YES	County Court	NO	6	8	9
Howard	YES	County Attorney	NO RESPONSE	122	123	154
Jefferson	YES	County Attorney	NO RESPONSE	46	60	49
Johnson	YES	County Attorney	YES	49	32	50
Kearney	YES	County Court	NO	29	40	50
Keith	YES	N.R.	NO	50	114	96
Kimball	YES	County Court	YES	8	10	5
Knox	YES	N.R.	NO RESPONSE	11	16	16
Lancaster	NO	Lancaster County Court	* See note explanation provided below the chart	9,546	7,749	8,257
Lincoln	NO	N.R.	NO RESPONSE	277	403	354
Logan	YES	N.R.	NO RESPONSE	12	13	13
Loup	YES	N.R.	NO RESPONSE	6	7	5
Madison	NO	--	--	102	73	123
McPherson	YES	N.R.	NO RESPONSE	5	7	4
Merrick	YES	County Court	NO	75	68	64
Morrill	YES	County Court	NO RESPONSE	41	26	27
Nance	YES	County Court	NO	22	49	49
Nemaha	YES	County Attorney	NO RESPONSE	53	61	66
Nuckolls	YES	County Court	NO RESPONSE	3	1	8
Otoe	YES—only if case not filed before signing up for class	County Court	YES			
Pawnee	YES	County Clerk	YES	129	152	178
Perkins	YES	County Attorney	NO RESPONSE	40	44	32
Phelps	NO	N.R.	NO RESPONSE	33	10	15
Platte	YES	County Court	YES	81	75	59
Polk	YES	County Court	YES	249	171	133
Red Willow	YES	County Court	YES	17	11	13
Richardson	YES	N.R.	NO RESPONSE	73	76	56
Saline	NO	County Court	NO	87	64	90

COUNTY	PROVIDER COLLECTS COURT COSTS	PROVIDER SUBMITS COURT COSTS TO	CASE ALSO FILED WITH COURT PRIOR TO STOP CLASS & CT COSTS ASSESSED	2012 PARTICIPANTS	2013 PARTICIPANTS	2014 PARTICIPANTS
Sarpy	NO	County Court	Case not filed in court; sometimes if case already filed, then court costs collected. Court costs are user fees not bounty to court has no claim to fees when case diverted to east court docket.	87	64	90
Saunders	NO	County Court	NO	143	102	109
Scottsbluff	YES	N.R.	NO RESPONSE	85	161	139
Seward	YES	County Court	NO RESPONSE	110	70	108
Sheridan	YES	County Attorney	NO	14	10	9
Sherman	YES	N.R.	NO	27	27	34
Sioux	YES	N.R.	NO RESPONSE	3	2	2
Stanton	NO	N.R.	NO RESPONSE	172	116	107
Thayer	YES	County Court	NO	N.A.	55	50
Thomas	YES	N.R.	NO RESPONSE	12	13	17
Thurston	YES	N.R.	NO RESPONSE	17	19	11
Valley	YES	N.R.	NO RESPONSE	22	14	13
Washington	NO	N.A.		217	238	304
Wayne	NO	County Court	YES	84	58	42
Webster	YES	County Court	YES	18	22	16
Wheeler	YES	County Court	NO RESPONSE	3	5	10
York	NO	--	NO --do not file citations sent to pre-trial diversion	61	59	77
				27,788	24,126	21,694

Lancaster County

Clients who sign up for STOP class within 10 working days from ticket date avoid having their ticket filed and owing the \$48 court costs. Approximately 90%-95% of those receiving traffic citations register within 10 days and avoid paying court costs. (per Lancaster County Community Corrections)

Cass, Douglas & Washington Counties

The criteria of the program are dictated by the county attorney's office. National Safety Council Nebraska follows their guidelines for the collection of court costs. (per National Safety Council Nebraska)

Prepared by: Kate Allen, Retirement Committee Legal Counsel
Sources: Survey Responses from Traffic Diversion Providers & County Attorneys -- 2015

APPENDIX D

Chart of County Attorney Survey Responses
Traffic Pretrial Diversion
Filing Cases before Diversion &
Collecting Costs from Indigents

County Attorney Survey Responses – Traffic Pretrial Diversion Filing Cases before Diversion & Collecting Costs from Indigents

Jurisdiction	Case Filed PRIOR to Diversion	Court Costs Collected PRIOR to Diversion	County Directs Provider to Collect Court Costs	Where Does Provider Remit Court Costs	Who Pays Indigent Diversion Costs	Who Pays Indigent Court Costs	Comments Regarding Pre-trial Diversion Program
Arthur	Yes	Yes	Yes	County Court	Participant	Participant	
Blaine	Yes	Yes	Yes	County Court	Participant	Participant	
Boone	No	N.A.		N.A.	Participant	Waived	Interested in pre-trial diversion for adults. Rural areas don't have resources available; legislature needs to appropriate funding for programs in rural areas.
Cedar	Yes	Yes	Yes	County Court	Participant	Participant	
Cheyenne	Yes	Yes	Yes	County Treasurer	Participant	Participant	
Clay	Yes	No	Yes	County Court			
Cuming	Yes	Yes	Yes	County Court	Participant	Participant	
Dundy	Yes	Yes	Yes	County Court	Waived	Waived	
Franklin	Yes	Yes	Yes	County Court	Participant	Participant	Nice if there was state funding for indigents to take part in pre-trial diversion & authorization for courts to waive or reduce their court costs. Do not throw this on the backs of counties with a small bit of funding yet another mandate.
Frontier	Yes	No	Yes	County Treasurer	Participant	Participant	
Gage	No	Yes	Yes	County Court	Participant	Participant	
Garden	Yes	No	Yes	County Court	Participant	Participant	
Garfield	Yes	Yes	Yes	County Court	Participant	Participant	
Gosper	Yes	No	Yes	County Court	Participant	Participant	
Greeley	Yes	Yes	Yes	County Court	Participant	Participant	
Hooker	No		Yes	County Court			
Johnson	Yes	Yes	Yes	County Atty who forwards to Court	Participant	Participant	
Kearney	Yes	No	Yes	County Court		Waived	
Keith	Yes	No	Yes	County Atty who forwards to Court	Participant	Participant	
Kimball	Yes	Yes	Yes	County Court	Participant	Participant	
Merrick	Yes	No	Yes	County Court	Participant	Participant	
Nance	Yes			County Court			Taking the class online should not be more expensive since it does not require the presence of an instructor. Suggest court costs lessened if person choose to take traffic diversion.

Jurisdiction	Case Filed PRIOR to Diversion	Court Costs Collected PRIOR to Diversion	County Directed Program Collect Court Costs	Where Does Program ReMIT Court Costs	Who Pays Indigent Diversion Costs	Who Pays Indigent Court Costs	Comments Regarding Pre-trial Diversion Program
Pawnee	No			County Court	Participant	Participant	
Pierce	Yes						
Platte	Yes	Yes	Yes	County Court	Participant	Participant	Never had instance in which someone indicated they could not pay the costs as a part of their participation in the pretrial traffic diversion program; if someone wanted to secure a waiver of costs, the matter could be set for hearing on that issue.
Polk	Yes	Yes	Yes	County Court			
Red Willow	Yes	Yes	Yes	County Court			
Rock	No		No	County Court	Participant	Participant	The county does not participate in traffic diversion cases. It would be too cumbersome to manage efficiently and would negatively affect the caseload for our court, which would result in a further reduction of hours available from the court system.
Saline					County		
Sarpy	No		No	County Court	Waived	Participant	The program is county directed to provide behavior modification through education. Program fees are set not to exceed fines and costs. If citation is filed, as it is sometimes, then costs are assessed and paid to county court. Until the court and judge has some involvement, it would be inappropriate for judges' retirement to benefit. Likely a separation of powers issues and a conflict with prosecutorial discretion. Certainly the public perception would be that judges were personally benefitting when not involved.
Saunders	No		No	County Court			
Sheridan	Yes	No	Yes		Participant	Participant	
Sherman	Yes	No	Yes	County Atty who disperses them	Participant	Participant	
Thayer	Yes	No	Yes	County Court	Participant	Participant	
Wayne	No		Yes	County Court	Participant	Participant	
Webster	Yes	Yes	Yes				
York	No		No	County Court	Participant		

Prepared by: Kate Allen, Retirement Committee Legal Counsel
Sources: Survey Responses from County Attorneys - 2015

APPENDIX E

Adult Pretrial Diversion Survey
Sent to County Attorneys

Adult pre-trial diversion survey questions for County Attorneys

Two interim studies were introduced this session and referenced to the Judiciary Committee regarding pre-trial diversion programs. LR 311 was introduced by Senator Burke Harr to examine Second Chances, an Iowa diversion program for persons charged with operating while intoxicated. LR 265 was introduced by members of the Judiciary and Nebraska Retirement Systems Committees to examine fees collected under adult and traffic pre-trial diversion programs, with focus on court costs earmarked for the Judges Retirement System.

1. Has your county approved pre-trial diversion for adult crimes?

IF THE ANSWER IS NO, PLEASE SKIP TO QUESTION 18.

2. If YES, please identify each crime for which pre-trial diversion is offered.
3. What entity provides the pre-trial diversion program for each crime? Please list for each provider: the name of the organization, contact person's name, title, phone and e-mail address.
4. How many people participated in each pre-trial diversion course in 2014?
5. Is a case filed with the court before a person is offered the opportunity to participate in adult pre-trial diversion?
6. If YES, are court costs assessed at the time the case is filed?
7. If court costs are assessed, is the pre-trial diversion participant required to pay court costs before participating in the program?
8. What fees are assessed for participation in adult crime pre-trial diversion program?
Please check all that apply.
Program cost
Court costs
Other fees/costs (describe)
9. Please provide the cost for each pre-trial diversion program (the cost paid to the provider for offering the program).
10. If court costs are assessed by the provider, how often are court fees remitted to the county?

11. To which office does the pre-trial diversion provider remit any court fees that are collected?

- Clerk
- Treasurer
- Attorney
- Other (describe)

12. Are indigent persons eligible to participate in pre-trial diversion?

13. If indigent persons participate in adult pre-trial diversion, who pays their fees/costs?

- a. Program cost
 - Participant
 - Waived
 - County
 - Other (describe)

- b. Court costs
 - Participant
 - Waived
 - County
 - Other (describe)

- c. Other fees/costs assessed
 - Participant
 - Waived
 - County
 - Other (describe)

14. If any other fee/fees (besides program and court costs) are included in the cost of participating in the program, please describe the purpose of the fee/s.

15. If fee/fees (other than program and court costs) are assessed, where are the fees deposited?

- General Fund
- Separate Fund
- Other (describe)

16. How much was collected in 2014 for these additional fees?

17. If a person fails to complete the pre-trial diversion program, is he or she assessed court costs when the case is adjudicated?
18. Iowa currently operates a weekend diversion program that is an alternative to jail for people convicted of a first offense of operating a motor vehicle while intoxicated. Under the law in Iowa, a person convicted of first offense operating while intoxicated is sentenced to serve a minimum of two days of drinking drivers education training. The program is administered by community colleges and private entities and the costs of the program are charged to the individual.

Are you interested in this program as described for such individuals in Nebraska?

19. Are you interested in other expanded opportunities for DUI programs?
20. If YES, please describe
21. Are you interested in expanding diversion opportunities for other offenses in your jurisdiction?
22. If YES, please describe
23. Do you see barriers to providing current or additional opportunities for adult pre-trial diversion programs?
24. If you see barriers, please describe
25. To your knowledge do any cities within your county offer adult pre-trial diversion?
26. If YES, please list the city/cities that offer adult pre-trial diversion.
27. Are there any comments or additional information you would like to provide to the Committee regarding pre-trial diversion programs?
28. Please provide the name, title, phone and e-mail address of the person completing this form.

APPENDIX F

Chart – Selected County Attorney Responses
To Adult Pretrial Diversion Survey

County Attorney Responses to Adult Pretrial Diversion Survey – 2015

County	Adult	Types of Offenses	Court Case Filed	Court Fees Assessed	Court Fees Paid To	Indigents – Who Pays Court Costs & Diversion Program Fees	Support Iowa DUI Program	Expand DUI and Adult Diversion Programs
Arthur	YES							
Blaine	NO						YES	DUI - Counseling & treatment, method of expungement after the sentence has been served or completed.
Boone	NO							YES—Bogus check programs, non-alcohol/drug traffic offenses, some misdemeanors
Box Butte	NO							I don't believe adults should be allowed diversion - they should accept responsibility for their actions and choices.
Boyd	NO							
Brown	NO							
Butler	YES	Domestic violence and 19 year old MIP	YES	YES	Treasurer	Court costs are paid by participant. Program fees either waived or paid by participant on a sliding scale	NO	NO
Cass	YES							
Cedar	YES							
Cheyenne	NO							
Clay	NO						NO	NO
Colfax	YES	Most non-violent, non-felony offenses excluding any DWI offenses. Some domestic violence cases will be considered for this program. It is used on a very limited basis.	NO	NO - unless fail to complete diversion	No response	Cost either waived or paid by participant. Cost varies depending on the financial ability of the offender to pay.	YES	DUI -- key is to correctly assess people convicted of drunk driving 1st time for early intervention (more treatment) for those more likely to continue to abuse alcohol or drugs vs 1st time drunk driver who will most likely never drive drunk again. Always open to new opportunity and resources.

County	Adult	Types of Offenses	Court Case Filed	Court Fees Assessed	Court Fees Paid To	Indigents - Who Pays Court Costs & Diversion Program Fees	Support Iowa DUI Program	Expand DUI and Adult Diversion Programs
Cuming	NO						YES	Interested in program for 1 st DUI & other offenses (similar to juvenile diversion) that will lighten caseload & give person chance on 1 st offense to avoid court
Dakota	NO							
Dodge	YES	Minor offenses when it is a first time offense such as MIP, shoplifting, etc with other possible exceptions.	NO	N.A.	County Attorney	Court costs waived Participant pays diversion cost	NO	NO
Douglas	YES							
Dundy	YES							
Gage	YES	Misdemeanors as allowed by law, although in some situations felonies are considered.	YES & NO	YES	No response	Participant pays court costs. Participant. Also scholarships offered to individuals based on financial need	YES	YES for DUI --Problem solving courts similar to drug court we currently have. NO otherwise - already have it available for any crime allowed. Not interested in losing control of their successful program to a state agency or other entity.
Franklin	NO							
Frontier	YES							
Garfield	NO							
Gosper	NO						NO	I have a STOP program for traffic offenses, that is all I offer & all I intend to offer.
Greeley	NO							
Hooker	NO							
Howard	NO							
Johnson	NO						YES	NO
Keith	NO						YES—We would like more info on this kind of program	YES—We would like more info on this kind of program
Kimball	NO							

County	Adult	Types of Offenses	Court Case Filed	Court Fees Assessed	Court Fees Paid To	Indigents - Who Pays Court Costs & Diversion Program Fees	Support Iowa DUI Program	Expand DUI and Adult Diversion Programs
Knox	NO							
Lancaster	YES	^ see note below for details					YES	YES—low grade crimes of violence
Loup	NO						NO	NO
Madison	YES	Possession of marijuana, possession of drug para, MIP/MIC, misdemeanor thefts, shoplifting, criminal mischief, 3 rd degree assaults, trespassing	NO	N.A.	No response	Participant pays court costs if fail to complete diversion. No diversion fees charged	NO	YES - already do several offenses & have considered felony depending on circumstances.
Merrick	NO						NO	NO
Nance	NO						NO	NO
Otoe	YES	Possession of marijuana less than one ounce; possession of drug paraphernalia; open container; public intoxication; minor in possession of alcohol and theft by shoplifting			No response	Participant pays court costs if fail to complete diversion. Waived -- county pays diversion costs	NO	YES—anger management for disturbing the peace or minor assault; intensive domestic abuse counseling for DV cases.
Pawnee	NO						YES	YES—classes in lieu of license suspension or as alternative to mandatory sentencing then more participation for DUJIs. Treatment services more effective than increasing mandatory minimum sentences with DUJIs. Get rid of ALR & encourage rehab of underlying problems YES - petty offenses, drug offenses any 1 st time non-felony.
Phelps	NO							
Pierce	NO						NO	NO—people should be held accountable for wrongs.

County	Adult	Types of Offenses	Court Case Filed	Court Fees Assessed	Court Fees Paid To	Indigents – Who Pays Court Costs & Diversion Program Fees	Support Iowa DUI Program	Expand DUI and Adult Diversion Programs
Platte	YES	Theft; assault; no insurance; no ops; driving while suspended; criminal mischief; criminal trespass; MIP; contributing to delinquency; procuring; leaving scene of accident; reckless driving; marijuana; paraphernalia	YES	YES		Participant pays court costs. Diversion costs are waived	YES	YES – A nine-month program, drug and alcohol evaluation and required to complete the recommendations; random drug screens at participants' expense. Expand diversion to include felonies. Need to find way to make diversion self-sustaining or find funding to sustain the program.
Polk	NO							
Red Willow	NO							
Richardson	YES	In very limited circumstances of adults who are older than 18 but younger than 21 for MIP						
Rock	NO						NO	NO
Saline	NO						NO	NO
Sarpy	YES	DUI, zero tolerance, contributing MIP, possession of marijuana, negligent child abuse, criminal mischief, misdemeanor & felony, shoplifting-misdemeanor & felony, theft-misdemeanor & felony, unauthorized use of financial transaction device-misdemeanor & felony, DIP, unlawful sale of tobacco, forgery, unemployment fraud, cruelty to animals	YES	NO	Court when criminal case dismissed.	Court costs are waived. Diversion fees waived and community service is added. The county covers the cost.	NO	NO interest in expanded DUI diversion. County attorney is always looking for ways to expand diversion while still holding people accountable.
Saunders	NO						NO	NO

County	Adult	Types of Offenses	Court Case Filed	Court Fees Assessed	Court Fees Paid To	Indigents - Who Pays Court Costs & Diversion Program Fees	Support Iowa DUI Program	Expand DUI and Adult Diversion Programs
Scottsbluff	YES	MIP, Shoplifting, Criminal Mischief, Disturbing the Peace, Theft, Possession Marijuana (< 1 oz) possession of Paraphernalia						
Sheridan	YES							
Sherman	YES	Misdemeanor crimes except DUIs	YES	YES	Court Clerk	Participant pays court costs. Participant pays cost of diversion program.	NO	YES - It seems like Iowa program is less than what we have now. Additional education is always helpful. Interested in expanded DUI & other diversion. Most first offenders are not going to jail - doing probation & required to take impact panel & alcohol education class.
Stanton	NO							
Thayer	NO							
Thomas	NO						YES	YES
Thurston	NO							
Washington	NO							
Webster	YES							
York	YES	MIP	NO	YES	Clerk	Participant - court & program costs	NO	NO

~LANCASTER COUNTY: Eligible Felony offenses - Acquire Controlled Substance by Fraud, Arson, Third Degree Burglary, Criminal Mischief, Deliver of a controlled Substance (incidental delivery), Forgery, Fraud by use of a Computer, Insufficient Fund Checks, Insurance Fraud, Manufacturing of Marijuana (personal use), Possession of Controlled Substance (including possession of marijuana weighing more than 1 pound), Possession of Forged Instruments/Devices, Sales Tax Violation,

Eligible Misdemeanor and Infraction Offenses—After Price Tag, Altered Identification, Third Degree Conceal Merchandise, Criminal Mischief, Disturbing the Peace, Enter Motor Vehicle Without Permission, Failure to Comply, False Statement/Unemployment Benefits, Forgery, Fraud, Fraud by Use of Computer Hider Arrest (LM.C 908.020), Inhaling or Drinking Certain Intoxicating Substances, Inmate Disorderly House, Insufficient Fund Check, Insurance Fraud, Maintain Disorderly House, Minor Attempt to Purchase Alcohol, Minor in Possession Alcohol, Minor Misrepresent Age, Obstruct Government, Operations Physical Contact on Licensed Premises, Possession Drug Paraphernalia, Possession of Marijuana, Possession Stolen Property, Refuse to Comply, Sell Alcohol Without License, Sell Tobacco to Minor, Steal Goods, Theft, Trespass, Unauthorized Use of Financial Transaction Device, Unauthorized Use of Motor Vehicle, Vandalism, Violation of Lottery.

Prepared by: Kate Allen, Retirement Committee Legal Counsel
Sources: Survey Responses from County Attorneys - 2015

