

Report on the Distribution and Use of
County Justice Reinvestment Grant Funds
2016/2017

NEBRASKA

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**COMMISSION ON LAW ENFORCEMENT
AND CRIMINAL JUSTICE**

Table of Contents

County Justice Reinvestment Grant Program Distribution	1
Title 74.....	2
Data Reported by County.....	3
Objectives Sought for Grant Funds.....	5
Estimated Savings and Reduction in Jail Inmates.....	6
Conclusion.....	7
Appendix A: Nebraska Revised Statutes §81-1426.01	
Appendix B: Title 74, Chapter 1, Nebraska Administrative Code, County Justice Reinvestment Grant Program	



County Justice Reinvestment Grant Program Distribution

The County Justice Reinvestment Grant Program was created in 2015 by LB 605, and is codified in Neb. Rev. Stat. §81-1426.01. The statute requires the Nebraska Commission on Law Enforcement and Criminal Justice (Commission) to adopt and promulgate rules and regulations to create the program and govern the distribution of grant funds. These rules and regulations are found in Title 74, Chapter 1, of the Nebraska Administrative Code. The funds for the grant program are designated to be used to help offset increased jail costs due to the changes made to the criminal code by LB 605, specifically referring to the increased use in custodial sanctions by Probation Administration and sentencing changes to the criminal code in Neb. Rev. Stat. §28-105, which now requires all sentences for maximum terms of imprisonment of less than one year to be served in the county jail.

The Commission is required by Neb. Rev. Stat. §81-1426.01 to report annually to the Governor and Legislature on the distribution and use of funds for grants appropriated under the County Justice Reinvestment Grant Program. The report must include, but is not limited to, the objectives of the counties seeking the grant money and the data reflecting estimated savings and reduction in jail inmates submitted by the counties in their application for grant funds.¹ This report is in fulfillment of that statutory requirement.

Under the Justice Reinvestment Initiative with the assistance of the Counsel of State Governments (CSG), many changes were made to Nebraska's criminal justice system and criminal code. Two specific changes are discussed here due to their effect on the population of inmates held in county jails.

The Nebraska criminal code was changed to require all sentences for maximum terms of imprisonment of less than one year to be served in county jails, and requires all sentences of post-release supervision to be served under the jurisdiction of the Office of Probation Administration.² As found in Neb. Rev. Stat. §29-2246, Probation includes post-release supervision, and a probationer means a person sentenced to probation or post release supervision. Post-release supervision is defined as meaning the portion of a split sentence following a period of incarceration under which a person found guilty of a crime upon verdict or plea is released by a court subject to conditions imposed by the court and subject to supervision by the office [of Probation Administration].³

New statutory language found in Neb. Rev. Stat §29-2204.02 requires courts to impose a sentence of probation if the criminal offense is a Class IV felony, unless (a) the defendant is concurrently or consecutively sentenced to imprisonment for any felony other than another Class IV felony; (b) the defendant has been deemed a habitual criminal pursuant to section 29-2221; or (c) there are substantial and compelling reasons why the defendant cannot effectively and safely

¹ Neb. Rev. Stat. 81-1426.01 (6) – (7)

² Neb. Rev. Stat. 28-105.

³ Neb. Rev. Stat. 29-2246 (13).

be supervised in the community, including, but not limited to, when a court considers sentence for an offender convicted of either a misdemeanor or felony for which mandatory or mandatory minimum imprisonment is not specifically required, the court may withhold sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character, and condition of the offender, the court finds that imprisonment of the offender is necessary for protection of the public, and specific grounds that shall be accorded weight in favor of withholding a sentence of imprisonment.⁴

Further, Neb. Rev. Stat. §29-2252 requires the Probation Administrator to develop a matrix of rewards for compliance and positive behaviors and graduated administrative sanctions and custodial sanctions for use in responding to and deterring substance abuse violations and technical violations. Custodial sanctions of up to 30 days in jail are designated as the most severe response to a violation in lieu of revocation and custodial sanctions of up to three days in jail are designated as the second most severe response in statute. These custodial sanctions are used both for individuals sentenced to probation by the court, and those individuals who are being supervised on post-release supervision by Probation Administration.⁵

Sentences to jails of those convicted of a Felony IV have increased beyond the initial projections of CSG. Additionally, custodial sanctions used by Probation have caused an increase in the average daily population in county jails.

Title 74

Through the CSG Justice Reinvestment Initiative, the County Justice Reinvestment subcommittee working group was formed. Members of the Commission staff attended these meetings to work with county jail representatives, including Information Services Division staff, Jail Standards Division staff, and Community Corrections Division staff, county sheriffs, CSG staff, representatives from the Nebraska Association of County Officials (NACO), Probation Administration, a representative from the Nebraska Department of Correctional Services (NDCS), Lancaster County Public Defender Joe Nigro, the state coordinator for the Justice Reinvestment Initiative Amy Prenda, and Doug Koebernick, the Inspector General of the Nebraska Correctional System. Many issues were discussed, and early drafts of the rules and regulations were shared with this working group for their input.

Rules and Regulations required by Neb. Rev. Stat. 81-1426.01 were written by the Community Corrections Division staff, and were heard in public hearing initially on July 22, 2016. Only one county jail representative attended this public hearing before the Crime Commission. Following Attorney General's office review, additional changes were made to Title 74, and a second hearing was held December 2, 2016 before the Commission. The regulation was approved by the Governor on December 16, 2016, and became law December 21, 2016. Title 74 outlines the purpose of the fund, defines key terms, establishes funding eligibility, details the apportionment

⁴ Neb. Rev. Stat 29-2260 (2) and (3).

⁵ Neb. Rev. Stat. §29-2268.

formula to be used to distribute the grant funds, explains the application process and the process the Commission used for review of applications received, provides opportunity for further review in the event of a denial of application for grant funds, and establishes the ongoing annual data reporting requirements for counties who have received funds from this grant program.

The application was posted on the Commission’s website and all counties were informed of the open application and availability of funds in January 2017. The application period was open until 5 p.m., February 15, 2017. Three applications were received at the Commission from Lancaster, Sarpy, and Dakota counties.

Data Reported by County

Note: for purposes of reporting data for this report, fiscal year 15-16 is from 8/30/15 to 6/30/16, as LB 605 did not take effect until 8/30/15.

Lancaster County Jail

Current Total Population: 616 (as of February 2017)

Average Daily Population:

FY 15-16: 573.1

FY 14-15: 275.97

FY 13-14: 245.13

FY 12-13: 257.84

Custodial Sanction Holds for Probation:

FY 15-16: 65 Individuals have been held on a custodial sanction for a violation of probation, serving a total of 962 days collectively.

Additional Information: Lancaster County Corrections reported receiving the first inmate sentenced on a violation of Post Release Supervision. This individual was booked into custody on December 21, 2016, and is scheduled for release on May 22, 2017, and will serve approximately 151 days in custody. Prior to the passage of LB 605, this individual would have most likely been on Parole, and if a violation of parole had occurred, the parolee would have been returned to custody at a state prison. Because individuals who are on post-release supervision are supervised by probation, there will likely be an additional increase in custodial sanctions from this population.

Sarpy County Jail

Current Total Population: 136 (as of January 2017)

Average Daily Population:

FY 15-16: 101.7

FY 14-15: 84.69

FY 13-14: 95.24

FY 12-13: 87.34

Additional information: The data submitted by Sarpy County did not indicate how many individuals were being held because of custodial sanction holds from their overall numbers. Their numbers are the sum of custodial sanction holds and inmates serving sentences in the Sarpy County Jail.

Dakota County Jail

Current Total Population: 114 (as of February 2017)

Average Daily Population:

FY 15-16: 91.14

FY 14-15: 87.39

FY 13-14: 84.33

FY 12-13: 79.70

Additional Information:

The data submitted by Dakota County indicates in FY 15-16, 14 individuals were held on a custodial sanction for probation, serving a total of 264 days.

Probation Administration

At the request of the Crime Commission, Probation Administration submitted the following data on custodial sanctions imposed on individuals for the time period 8/30/15 through 6/30/16:

County	Number of Custodial Sanctions Imposed (Individuals)	Number of Days Served
Dakota County	14	149
Lancaster County	168	2531
Sarpy County	13	170

Objectives Sought for Grant Funds

Lancaster County submitted a proposal which detailed an Enhanced Sentence Conversion project which is projected to be able to accommodate an estimated 36-42 individuals per year. An individual would start into the program with the District Court sentencing judge identifying them following a review of the individual's Pre-Sentence Investigation (PSI). Each participant who agrees to participate in the program will be required to release the PSI, including the Level of Service/Case Management Inventory (LS/CMI) findings contained within the PSI to jail staff coordinating the project. The LS/CMI is a validated risk/needs assessment tool that is utilized for those individuals who are initially screened as higher risk to reoffend (those with felony offenses, or domestic violence or sexually based offenses), and is used specifically to determine the degree of risk the individual presents to recidivate.

The release of the PSI would allow Lancaster County Corrections to create an Individualized Program Plan (IPP) to address the top criminogenic risk factors for recidivism for that individual. The plan includes meeting with a caseworker within 30 days of beginning their sentence. Thirty days prior to release from the institution, if indicated, participants will begin the first four weeks of the Matrix Model Substance Abuse Treatment Program. The Matrix Model is an evidence based substance abuse treatment strategy which imposes a longer duration of treatment for those with methamphetamine addiction and long term alcohol abuse. The first four weeks of this program are completed while the individual is incarcerated and focuses on early recovery skills. Upon release, the 12 week relapse prevention segment begins. Housing must be approved, and cannot be with others who are actively using drugs or alcohol. Family education, individual sessions and on-going attendance at 12 step meetings or other support groups for recovery are required. If a higher level of substance abuse treatment is recommended, placement at a local inpatient treatment facility will be secured. All program participants will be placed on a drug testing schedule, averaging no fewer than three times per week, including periodic home visits and random alcohol tests. Electronic monitoring will be used.

Also included in the Enhanced Sentence Conversion program is Moral Reconciliation Therapy (MRT) to address pro-criminal attitudes of participants, focusing on beliefs, attitudes, and behaviors, assessment of current relationships, reinforcement of positive behavior and habits, positive identity formation, enhancement of self-concept, decrease in hedonism and development of frustration tolerance, and development of higher stages of moral reasoning. Participants meet once or twice weekly and all steps of MRT can be completed in approximately three to six months.

Participants will also be required to be working toward completion of a General Education Diploma (GED) or employment, through partnerships with the local community college and vocational rehabilitation. Individuals with mental health needs will also have access to diagnostic assessments and services including individual therapy, medication evaluation, and medication management. Behavioral health specialists will also provide assistance in accessing housing

vouchers for permanent housing, and assistance with applications for local, state, and federal assistance programs, and personal documents needed by participants.

Local Mental Health Associations will provide peer support for participants to develop a Wellness Recovery Action Plan (WRAP), to be used to compliment programming offered through the Enhanced Sentence Conversion Program. Participants will be expected to identify wellness tools to assist them in their recovery and long-term health, wellness, and behavioral change.

Sarpy County is proposing to implement a House Arrest Program for post-adjudicated inmates with electronic monitoring and alcohol monitoring, similar to their current monitoring of pre-adjudicated defendants, through the use of Global Positioning Satellite (GPS) and alcohol monitoring. The goal proposed would be to have an average of ten (10) inmates on house arrest at a time, as a cost efficient way to help lower Average Daily Population (ADP) in the jail. The house arrest program would monitor inmates in their homes, while also allowing some inmates to be on a work release program to allow them to keep their jobs while simultaneously serving their sentences.

Dakota County's proposal is an enhancement of their current community corrections, house arrest, and work release programs, and is modeled after a 24/7 Sobriety Program currently in use as a pilot program by the Douglas County Sheriff's Office. The program will utilize current personnel to increase the number of house checks and work checks for individuals on house arrest and work release. Drug and alcohol testing would also be required for participants to be eligible for the program, along with GPS and alcohol monitoring.

Estimated Savings and Reduction in Jail Inmates

Lancaster County: Data not supplied

Sarpy County: reduction in inmates is estimated at 10 fewer post-adjudicated inmates will be housed in the jail, because they will be on an electronic monitoring, house arrest program.

Dakota County: Data not supplied

Conclusion

Challenges exist with the current methods of data collection and reporting. There is no standardized data collection method utilized by all county jails. The Jail Standards Division of the Commission maintains JAMIN, an interface that may be used by jails to upload their data to the Commission, but it is not currently used by all jails in the state. For jail data to be standardized, statute based charge codes need to be developed and implemented state wide.

Based on the increase reported by the three county jails and probation, there is an indication that the population of county jails is increasing as a result of the passage of LB 605 (2015). Unfortunately, the Commission does not have a clear or representative picture of the statewide impact of these changes, due to the very small number of jail administrators who applied for the grant funds that the Legislature made available. As the Commission continues to collect annual data from the three jails receiving funds from the grant program, the population increase in those jails will continue to be monitored.

Appendix A

81-1426.01.

County Justice Reinvestment Grant Program; created; grant recipient; duties; report.

(1) There is created a separate and distinct budgetary program within the commission to be known as the County Justice Reinvestment Grant Program. Funding shall be used to provide grants to counties to help offset jail costs. It is the intent of the Legislature to appropriate five hundred thousand dollars to the County Justice Reinvestment Grant Program.

(2) The annual General Fund appropriation to the County Justice Reinvestment Grant Program shall be apportioned to the counties as grants in accordance with a formula established in rules and regulations adopted and promulgated by the commission. The formula shall be based on the total number per county of individuals incarcerated in jails and the total capacity of jails.

(3) Funds provided to counties under the County Justice Reinvestment Grant Program shall be used exclusively to assist counties in the event that their average daily jail population increases after August 30, 2015. In distributing funds provided under the County Justice Reinvestment Grant Program, counties shall demonstrate to the commission that their average daily jail population increased, using data to pinpoint the contributing factors, as a result of the implementation of Laws 2015, LB605. The commission shall grant funds to counties which have an increase in population compared to the average daily jail population of the preceding three fiscal years. In calculating the average daily jail population, counties shall only include post-adjudication inmates who are serving sentences or inmates serving custodial sanctions due to probation violations. Counties may apply for grants one year after August 30, 2015.

(4) No funds appropriated or distributed under the County Justice Reinvestment Grant Program shall be used for the construction of secure detention facilities, secure treatment facilities, secure confinement facilities, or county jails. Grants received under this section shall not be used for capital construction or the lease or acquisition of facilities. Any funds appropriated to the County Justice Reinvestment Grant Program to be distributed to counties under this section shall be retained by the commission to be distributed in the form of grants in the following fiscal year.

(5) In distributing funds provided under the County Justice Reinvestment Grant Program, recipients shall prioritize use of the funds for programs, services, and approaches that reduce jail populations and costs.

(6) Any county receiving grants under the County Justice Reinvestment Grant Program shall submit annual information electronically to the commission as required by rules and regulations adopted and promulgated by the commission. The information shall include, but not be limited to, the objective sought for the grant and estimated savings and reduction in jail inmates.

(7) The commission shall report annually to the Governor and the Legislature on the distribution and use of funds for grants appropriated under the County Justice Reinvestment Grant Program. The report shall include, but not be limited to, the information listed under subsection (6) of this section. The report submitted to the Legislature shall be submitted electronically.

(8) The commission shall adopt and promulgate rules and regulations to implement this section.

Source: Laws 2015, LB605, § 87.

Appendix B

Title 74, County Justice Reinvestment Grant Program

Chapter 1, Distribution of County Justice Reinvestment Grant Funds

Nebraska Commission on Law Enforcement and Criminal Justice

Nebraska Administrative Code
 Alphabetical Table of Contents

Title 74 Nebraska Commission on Law Enforcement and Criminal Justice

- County Jail Reinvestment Grant Program

Chapter 1 -Distribution of County Justice Reinvestment Grant Program Funds

Subject	Statutory Authority	Code Section
Acceptance of Funds	81-1426.01	009
Application Process	81-1426.01	007
Apportionment Formula	81-1426.01	006
Definitions	81-1426.01	004
Funding Eligibility	81-1426.01	005
Purpose	81-1426.01	001
Reference	81-1426.01	003
Reporting Requirements	81-1426.01	011
Request for Further Review	81-1426.01	010
Review of Grant Application	81-1426.01	008
Scope	81-1426.01	002

Title 74-County Justice Reinvestment Grant Program

Chapter 1-Distribution of County Justice Reinvestment Grant Program Funds

001. Purpose: To establish procedures governing the distribution and management of the County Justice Reinvestment Grant program funds by the Nebraska Commission on Law Enforcement and Criminal Justice. Counties may apply for grants one year after August 30, 2015.

002. Scope: Applicable to all counties within the State of Nebraska operating an adult detention facility requesting and receiving funds distributed by the Commission with the intent to offset jail costs as set out in Neb. Rev. Stat. §81- 1426.01 Cumulative Supplement 2015.

003. Reference: Neb. Rev. Stat. §81-1426.01

004. Definitions: The following terms and definitions will be utilized for purposes of this chapter:

004.01 Average Daily Jail Population means the total number of individual post-adjudicated inmates days divided by 365. The total number of inmate days is a cumulative total of all days served by individual inmates during the fiscal year.

004.02 Custodial Sanctions are sanctions imposed by the court as outlined in Neb. Rev. Stat. §29-2266, consisting of up to three days in jail or up to thirty days in jail , as imposed by the court.

004.03 Post-adjudication inmates mean inmates being held in the county jail who are serving sentences or custodial sanctions.

004.04 Commission is the Nebraska Commission on Law Enforcement and Criminal Justice.

004.05 County Justice Reinvestment Grant Program Funding Formula is an apportionment based on the specific jail's percentage of the entire state jail inmate population.

004.06 Applicant is any county in the state of Nebraska that is eligible to apply for County Justice Reinvestment Grant Program Funds.

004.07 Executive Director is the individual who is responsible for the supervision of the policies as established by the Commission and has the powers and duties as outlined in Nebraska Revised Statute §81-1425.

004.08 Staff Review Team shall be made up of four employees of the Commission, to include the Community Corrections Division staff.

004.09 Request for Application is the announcement and solicitation for County Justice Reinvestment Grant Program applications that is distributed as aid by the Commission as outlined in the chapter. The Request for Application includes, but is not limited to program specifications and application procedures.

005. Funding Eligibility

005.01 All counties with adult detention facilities may apply if they are eligible to receive funds as specified in this section.

005.02 Counties are eligible to receive funds when

005.02(A) Counties show an increase in population indicated by submission of data

005.02(B) The increase in average daily jail population is a direct result of changes specified in Neb. Rev. Stat. 81-1426.01, and

005.02(C) Counties show the prioritization of funds received from the grant program for specified programs to reduce jail inmate population.

006. Apportionment Formula

006.01 Once eligibility criteria have been met, the apportionment formula will be based on the following:

006.01(A) The county's percentage of inmate population relative to the total capacity of jails in the state of Nebraska. Each county will receive the percentage of grant dollars directly proportional to that county's percentage of jail inmates of the total jail inmate population in the state.

006.01(B) Each county must identify and submit to the Commission its average daily post adjudicated inmate population for the three previous fiscal years prior to the effective date of Neb. Rev. Stat. §81-1426.01.

006.01(C) If the county shows an increase in its average daily post-adjudicated inmate population over the three previous fiscal years as determined in 006.01(B), they are eligible for an award of funds from the County Justice Reinvestment Grant Program.

007. Application Process

007.01 Notification of the availability of funds shall be announced by the Commission through a Request for Application. Such notification will include application requirements and instructions. Funding amount will be calculated by the County justice reinvestment grant program formula.

007.02 Applicants must submit an application for funds that demonstrate the applicant is eligible for County Justice Reinvestment Grants by identifying how funds will be used, the objective sought for the grant, the estimated savings and reduction in jail inmates, and how the applicant is prioritizing the use of the funds for programs, services, and approaches that reduce jail populations and costs.

007.03 Applications must be received by the Commission by the deadline specified in the request for application.

008 Review of Grant Application

008.01 All grant applications that were received by the appropriate deadline outlined in the Request for Application shall receive initial review by the Staff Review Team. Upon completion of the staff review, funding recommendations and summary comments will be sent to the Executive Director of the Commission.

008.01(A) In order to make a determination of eligibility for grant award, the staff review team will be looking for data that shows an increase in average daily jail population of post-adjudicated inmates, the county's prioritization of the use of funds for programs, services, and approaches that reduce jail populations, the objective sought for the grant, and the estimated savings and reduction in jail inmates.

008.01(B) In the event that there are questions arising from the application, the staff review team shall contact the applicant to request further information.

008.02 The Executive Director will conduct a final review of the grant application to ensure that the applicant is eligible to receive funds. The Executive Director shall take the grant proposal and recommendations from staff review under advisement and make the final funding decision.

008.03 Upon issue of the final decision, the Executive Director or his or her designee will notify applicants within ten (10) working days of the final decision.

009 Acceptance of Funds

009.01 Applicants who are approved to receive aid from the Commission will be required to accept the grant award subject to the conditions outlined in this chapter and specified by the Commission.

009.02 Applicants who are required to meet contingencies articulated by the Commission will have thirty (30) days from the notification of application approval to satisfy the requirements. Exceptions to the thirty (30) day deadline may be allowed on an individual basis, approved by the Executive Director of the Commission.

009.03 After contingencies have been approved by the Executive Director of the Commission, the applicant will be notified within ten (10) working days of the approval.

009.04 Once all the steps have been taken to award and approve all grant applications, applicants who have been awarded funds will adhere to all reporting requirements as outlined in this chapter and in Neb. Rev. Stat. 81-1426.01 Cumulative Supplement 2015.

010 Request for Further Review

010.01 Applicants may request further review of the reinvestment grant award by the Crime Commission. Review is limited to the following grounds: Partial denial of reinvestment award requested, or full denial of reinvestment award requested.

010.02. The basis for review shall be limited to one or more of the following grounds: The decision being reviewed was biased, arbitrary, or prejudiced against the applicant county, the decision being reviewed was reached without following procedures outlined in this chapter, or the decision being reviewed was reached without adherence to statutory requirements as specified in the County Justice Reinvestment Grant Program act, (81- 1426.01).

010.03 Notice of a request for review must be made in writing and submitted to the Executive Director within ten (10) working days of receipt of the denial of reinvestment award requested. Notice of a request for further review shall identify the basis of the request, and will inform the Executive Director of the intent to file a full written request for further review.

010.04 A full written request for further review will detail the basis for the review, and include an explanation of why the reinvestment grant application satisfies the requirements of this chapter. The full written request for further review will be submitted to the Crime Commission within (20) working days of the notice of request for further review.

010.05 The burden of demonstrating that the Executive Director's award decision should be reversed is on the party filing the request for further review. The burden of proof shall be by a preponderance of the evidence.

010.06 Should the applicant filing the request for further review fail to meet deadlines established in section 010 of this chapter, the request for further review will be considered waived or the reinvestment grant decision shall be final.

010.07 The hearing shall be conducted before the Commission at its next available quarterly meeting. The Commission will take into consideration the written request for further review of the appellant, all recommendations for funding made during the application review process and testimony from parties made during the further review hearing. The final request decision shall be determined by a majority vote of the Commission.

010.08 All decisions made by the Commission shall be final.

011. Reporting Requirements

011.01 Jail Data Collection: it is the responsibility of each county jail to collect data to be submitted to the commission annually. Data must be used in order to identify the contributing factors that increase the average daily jail population. In calculating average daily jail population, counties shall only include post adjudication inmates.

011.02 Data reports submitted to the Commission must contain, but are not limited to, the prioritization of the use of funds, objectives sought for the grant, and estimated savings and reduction in jail inmates.

012 If any one section of this chapter or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

