

JUVENILE DIVERSION IN NEBRASKA

2021 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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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 2021 diversion report serves to fulfill the statutory requirement.

Introduction to Juvenile Pretrial Diversion Programs

Juvenile pretrial diversion is a voluntary program available to youth referred to a city or county attorney with 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 result of successful completion is non-filing of the diverted case or dismissal, if filed. 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.²

In Nebraska, a county attorney has statutory authority to develop a juvenile diversion program with the concurrence of their county board.³ 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.⁴ 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.⁵

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.⁶ This statutory requirement is another reason why county attorney support and development of juvenile diversion programs is vital in Nebraska.

² Neb. Rev. Stat. § 43-260.03

³ Neb. Rev. Stat. § 43-260.02

⁴ Neb. Rev. Stat. § 43-260.04

⁵ Neb. Rev. Stat. § 43-260.04 -.06

⁶ Neb. Rev. Stat. § 43-276(2)

Referrals to Diversion

From January 1, 2021 to December 31, 2021, 3,529 referrals⁹ (5,030 law violations and status offenses¹⁰) to a juvenile diversion program in Nebraska were reported to the Nebraska Crime Commission.¹¹

Characteristics of the Population

Race/Ethnicity

White youth had the highest rate of referrals to juvenile diversion (57% of referrals statewide), followed by Hispanic youth (22%) and African American youth (13%).

Table 1: Youth Referred to Juvenile Diversion by Race CY2021

	Number of Youth Referred	Percent of Youth Referred
White	2025	57%
Hispanic	764	22%
African American	449	13%
Multiple Races	105	3%
Unspecified	64	2%
Native American or Alaska Native	63	2%
Asian	33	1%
Other Race	20	1%
Native Hawaiian, Other Pacific Islander	6	Less than 1%
Total	3,529	100%

Gender

Fifty-nine percent of the referrals (2,096) to juvenile diversion were male, 40% (1,422) were female (Table 2).

Table 2: Youth Referred to Juvenile Diversion by Gender CY2021

	Number of Youth Referred	Percent of Youth Referred
Female	1422	40%
Male	2096	59%
Non-binary	2	Less than 1%
Prefer not to say	1	Less than 1%
Unspecified	8	Less than 1%
Total	3,529	100%

⁹ 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 CY2021: Total accepted (319), refused diversion (1), ineligible (40), Open Docket (5), Out of Jurisdiction (10), DHHS Involved (2), new charge –CA Request back (7), and Miscellaneous (3). Not included are warning letters (192), assessment no show (55), refused assessment (31), and Nolle Pros (21).

¹⁰ 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. 60 cases missing charge information.

¹¹ 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.

Age

The age range of reported diversion cases for purposes of this report include from 5 years to 18 years of age. Sixteen-year-olds had the highest number of referrals to diversion in CY2021 with 797 statewide (Table 3).

Table 3: Youth Referred to Juvenile Diversion by Age CY2021

Age	Number of Youth Referred	Percent of Youth Referred
Under 11	15	Less than 1%
11	68	2%
12	178	5%
13	381	11%
14	563	16%
15	669	19%
16	797	23%
17	691	20%
18	167	5%
Total	3,529	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 juveniles 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.

Enrollments after Referral

Statewide, 83% of youth referred to a juvenile diversion program in CY2021 enrolled after referral (2,918 youth). The reason youth did not participate include the referring attorney withdrew the referral, the diversion program declined admission after referral, the youth or parent refused to participate, or the youth transferred to another school or homeschool. Enrollments are further broken down by demographic information below (Table 4).

Enrollments by Race, Age, and Gender

Table 4: Youth Enrolled in Juvenile Diversion by Race, Age, & Gender CY2021

Demographic		Enrolled	Did Not Participate	Missing Data
Race/ Ethnicity	African American	324	96	1
	Asian	26	4	-
	Hispanic	632	99	7
	Multiple Races	93	6	-
	Native American	57	5	1
	Native Hawaiian	6	-	-
	Other Race	18	2	-
	Unspecified	47	13	4
	White	1718	252	25
Age	Under 11	11	4	-
	11	61	7	-
	12	157	18	2
	13	315	53	9
	14	457	77	9
	15	544	87	5
	16	646	112	5
	17	574	108	5
	18	153	11	3
Gender	Female	1205	168	15
	Male	1743	307	23
	Non-Binary	2	-	-
	Other	2	-	-
	Unspecified	4	2	-

Discharges from Diversion

From January 1, 2021 to December 31, 2021, a total of 2,857 cases were discharged from a formal juvenile diversion program in Nebraska after enrollment.¹²

Success Rates

Statewide, 79% (2,250 youth) of the discharged cases successfully complete the diversion program, and 20% (607 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.). Sixteen cases were missing a discharge reason needed to determine success at program completion

Success by Race, Age, and Gender

Table 5: Success Rates of Youth Discharged by Race, Age, & Gender CY2021

Demographic		Successful	Unsuccessful	Missing
Race/ Ethnicity	African American	232	82	1
	Asian	24	5	-
	Hispanic	421	146	2
	Multiple Races	68	21	-
	Native American	35	20	-
	Native Hawaiian	6	0	-
	Other Race	16	8	-
	Unspecified	37	16	-
	White	1568	311	14
Age	Under 11	11	4	-
	11	54	11	-
	12	115	29	-
	13	197	59	1
	14	283	105	1
	15	392	116	3
	16	530	165	1
	17	528	84	6
	18	140	34	-
Gender	Female	916	251	5
	Male	1333	355	8
	Non-Binary	1	-	-

¹² This number represents discharges either successfully or unsuccessfully; does not include youth that did not enroll or participate after referral.

Success Rates by Diversion Referral Type

Overall, juvenile diversion cases addressing excessive absenteeism from school have lower participation rates and successful completions than diversion cases for other status offenses and law violations.

Table 6: Truancy Diversion vs. Other Diversion Cases

	Referrals	Enrollments	% Enrolled	Successful Completion	Unsuccessful Completion	Success Rate
Truancy Diversion	536	337	63%	144	210	41%
Other Diversion	3145	2581	82%	2106	397	84%

Law Violations

Table 7 demonstrates the most frequent law violations referred to a juvenile diversion program in CY2021. 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. Sixty referrals to diversion were missing charge information.

Table 7: Law Violations Referred to Diversion CY2021

Law Violation	Number of Law Violations Referred
Minor In Possession	599
Assault Offenses ¹³	571
Truancy	544
Traffic Offenses ¹⁴	527
Marijuana Possession	444
Shoplifting	346
Criminal Mischief	308
Possession Of Drug Paraphernalia	277
Tobacco Use by Minor	241
Trespassing	164
Other Theft Offenses ¹⁵	127
Disturbing The Peace	121
Ungovernable Juvenile	120
Remaining Law Violations (less than 100)	641
TOTAL	5,030

Limitations within the 2021 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.

¹³ Includes assault, 3rd degree assault, assault by mutual consent, domestic assault, and sexual assault violations.

¹⁴ Includes violations related to permits, licenses, registration, insurance, speeding, reckless driving, leaving the scene of an accident, and violation of traffic signals.

¹⁵ Includes theft- unlawful taking; theft- receiving stolen property.