

Adult Pre-Trial Diversion 2024 Addendum to Justice In Action's Criminal Justice Reform Research Briefing

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In our second round of house meetings last fall (2023), Justice in Action continued to hear the concerns of the people about cracks in our local criminal justice system. We heard concerns about the lack of restorative programs and the difficulty of transitioning from jail or prison back to the community. Some shared the difficulty of finding suitable housing or applying for jobs with a misdemeanor or felony on their record.

Updated problem statement: County jails are the front door to mass incarceration. No one is incarcerated in a prison without first stepping into a county jail. A growing number of people are being locked up in the Lancaster County Jail, many for nonviolent offenses, while the County Attorney underutilizes community based alternatives. This results in expensive, unnecessary costs to Lancaster County taxpayers, creates a crisis for the poor, overwhelmingly hits Black and Indigenous populations the hardest, and puts public safety at risk.

The Adult Pre-Trial Diversion Action Committee (formerly the Criminal Justice Reform Research Committee) has continued its efforts to find ways to reduce the population at the Lancaster County Jail, address disparities in corrections by race and wealth, and promote rehabilitation while maintaining public safety. After receiving a “yes” from County Commissioner Rick Vest at last year’s Nehemiah Action we worked with him and the County IT team to establish a data dashboard¹ that tracks population numbers and demographics in the county jail and in Community Corrections programming. In that time, under the direction of the newly appointed director of Community Corrections Jeff Kilpatrick, his department established its own comprehensive dashboard. These two data points² have offered the public additional insight into the population under supervision in the county.

We remain focused on finding solutions for reducing the jail population by increasing the number of people diverted from jail and served by Community Corrections programs. For example, last year, when the Jail Director requested an additional 1 million dollars³ to pay for Lancaster County defendants to be housed in other counties’ jails,⁴ more than 75 Justice in Action members showed up and spoke at the County Board of Commissioners meeting to express concern. In recent months, the County Board agreed to provide Community Corrections the funds to hire additional staff. Additionally, the County contracted⁵ with Omaha-based HDR Consulting and the Nebraska Center for Justice Research at UNO to assess the reasons behind the increase in jail population and to identify alternatives that can help reduce the population.

From our research, Justice in Action firmly believes that expanding access to and enrollment in the County’s successful diversion programs is an appropriate alternative to jail. Our County’s Community Corrections problem-solving programs have received national recognition⁶ for “using innovative practices to improve outcomes for people with behavioral health needs in the criminal justice system.” We want our community to build on that success.

¹ County Corrections and Community Corrections Jail Dashboard.

<https://experience.arcgis.com/experience/dff1b0084a284f6c92142d3a4f0b209f/page/Page/?views=Jail>

² Lancaster County Department of Community Corrections. <https://www.lancaster.ne.gov/192/Community-Corrections>

³ Lancaster County 2024 Proposed Budget Summary. <https://www.lancaster.ne.gov/ArchiveCenter/ViewFile/Item/865>.

⁴ McCarty, Joseph. “Crowded Lancaster County jail to house some inmates at another facility.” KLKN TV, June 30, 2023.

<https://www.klknv.com/crowded-lancaster-county-jail-to-house-some-inmates-at-another-facility/>

⁵Reist, Margaret. “Lancaster County will hire two groups to help find solutions for jail overcrowding.” Lincoln Journal Star, December 26, 2023.

https://journalstar.com/news/local/government-politics/lancaster-county-hires-groups-to-solve-jail-overcrowding/article_e999ec98-a057-11ee-9c76-b711b3eb34b0.html

⁶ <https://www.1011now.com/2023/11/25/lancaster-county-community-corrections-receives-national-recognition/>

In the last quarter of 2023,⁷ the jail population numbers dropped to a pace similar to 2022, but the jail itself remains above operational capacity and still disproportionately houses our Black and Indigenous neighbors. The average length of stay remains above 2019 levels. Nearly 70% of people held in the jail are pre-trial cases, with the largest proportion as pre-trial felony cases. The County’s jail dashboard consistently indicates that crimes associated with substance use are the most common charges on which people are held in jail. The Community Corrections dashboard demonstrates a persistent gap between people referred into Community Corrections and those who are admitted to Community Corrections. For example, in the fourth quarter of 2023, 751 people were referred to Community Corrections but only 604 people were ultimately admitted to programming.⁸

Justice in Action has had ongoing meetings with community officials to track progress and barriers to increasing the number of people diverted from jail and served by Community Corrections programs, including Lancaster County Commissioner Rick Vest, Director of Community Corrections Jeff Kilpatrick, Lancaster County Public Defender Kristi Egger and County Attorney Pat Condon.

We learned that in January 2024, the county attorney’s office revised eligibility criteria, effectively separating the criteria for pre-trial diversion⁹ and the criteria for problem-solving programs.¹⁰ Ultimately, however, we learned that individuals may be given consideration on a case-by-case basis, and these data are effectively unavailable to the public. Similarly, although the Federal Department of Justice¹¹ has recognized that eliminating fees contributes to the success of low-income individuals in completing programs, reduces racial disparities, and enhances public safety by reducing recidivism, Lancaster County continues to charge fees to program participants.

As the gatekeeper for pre-trial diversion and problem solving programs, Justice in Action clergy and steering committee members met with County Attorney Condon in March to make specific asks to increase eligibility for diversion. He was a “no” on all items.

Justice in Action Asks of County Attorney Pat Condon on March 14, 2024	Condon Response	
	Yes	No
With the goal of increasing eligibility of applicants, will you commit to allowing people with prior Class III and Class IV felonies to participate in pre-trial diversion programs?		☑
With the goal of increasing eligibility of applicants, will you commit to expanding eligibility by allowing anyone with misdemeanors in their past to participate in pre-trial diversion?		☑
Will you commit to dropping the 90-day application rule for entrance to pre-trial diversion?		☑
Will you commit to eliminating all costs to diversion?		☑

Nonetheless, we will continue to pursue these changes as a means of connecting people with support they need in the community while promoting long-term cost savings and public safety. We are also exploring the possibility of new programs; researching other types of pre-trial diversion programs that have had success in counties like ours.

⁷ Lancaster County Department of Corrections, Board of Corrections Meeting, February 15, 2024.

https://www.lancaster.ne.gov/AgendaCenter/ViewFile/Agenda/_02152024-2004

⁸ Lancaster County Department of Community Corrections. <https://www.lancaster.ne.gov/192/Community-Corrections>

⁹ Lancaster County Attorney’s Office & Lancaster County Department of Community Corrections. Pre-Trial Diversion Eligibility Criteria. Effective January 1, 2024.

<https://www.lancaster.ne.gov/DocumentCenter/View/21518/2024-Pre-Trial-Diversion-Eligibility-Criteria?bidId=>

¹⁰ Lancaster County Attorney’s Office & Lancaster County Department of Community Corrections. Problem Solving Program Eligibility Criteria. Effective January 1, 2024.

<https://www.lancaster.ne.gov/DocumentCenter/View/21519/2024-Problem-Solving-Program-Eligibility-Criteria?bidId=>

¹¹Office for Access to Justice, US Department of Justice (2023).

<https://www.justice.gov/d9/2023-11/doj-access-to-justice-spotlight-fines-and-fees.pdf>