

Justice In Action Criminal Justice Reform Research Briefing

Research Chairs: Judy Kelly (Unitarian Church of Lincoln), Dr. Lisa Kort-Butler (Horizons Community Church), Rachel Mulcahy (New Visions United Methodist Church)

Hearing the Concerns of the People

“Our county jail was not designed to house people for the extended lengths of time that they are currently staying.”

“A jail expansion is inevitable within the next few years.”

“There is racism at every level of our criminal justice system.”

“We are denying the humanity of people who are suffering by putting them behind bars.”

Selecting the Priority of Criminal Justice Reform

At our annual Community Problems Assembly on November 10, 2022, the 300 Justice in Action network members present voted to make Criminal Justice Reform a priority.

Researching the Problem and Viable Solutions

The Criminal Justice Reform Research Committee held the following research interviews and meetings leading up to the Nehemiah Action Assembly with representatives from our faith communities. Our research interviews included:

- Alissa Ries, Spiritual Director and Director of Social Ministries, including Prison Ministry at Our Saviour’s Lutheran Church
- Joe Nigro, Former Lancaster County Public Defender
- Kristen Blankley, UNL Law Professor and Restorative Justice Specialist
- Emily Schoenleber, Juvenile Justice Program Specialist
- Ruth Karlsson, Director of Released and Restored Prison Ministry
- Kim Etherton, Director of Community Corrections Lancaster County (2)
- Sam Petto, ACLU Communications, Author of Debtors’ Prisons Report
- Lincoln Police Department Mental Health and Homelessness Team
- Vera Institute
- Kasey Parker, Director of the Mental Health Association of Nebraska
- Brad Johnson, Director of Lancaster County Corrections
- Kristi Egger, Current Lancaster County Public Defender
- Patrick F. Condon, Lancaster County Attorney
- Landon Parks, Deputy Director of Community Corrections
- Taryn Tolliver, Reentry Program Manager

The Problem Statement

County jails are the front door to mass incarceration. A growing number of people are placed or kept in the Lancaster County Jail for nonviolent offenses because the local system doesn’t have sufficient tools, discretion, or community-based alternatives to address their needs while maintaining public safety.

The Research

County jails are the front door to mass incarceration, where people who are wrestling with behavioral health issues or who are struggling with poverty are driven further into the criminal justice system.¹ Statewide data illustrates pretrial policies have driven jail population growth in Nebraska.² As the Lancaster County Jail approaches operational capacity,¹⁰ it is beholden on our community to address the ways in which we can have meaningful impact on limiting our reliance on jail as an option of only resort for people whose needs would be better served in the community or who may simply be unable to pay for diversion programming or bail. Even brief jail stays compound challenges and barriers for people to avoid further involvement in the criminal justice system, including job loss, housing insecurity, economic hardship, and strained relationships with family and friends.³ Research around the nation demonstrates the utility of community-based alternative practices for protecting public safety while reducing defendants' further or deeper contact with the criminal justice system, while also returning substantial cost savings to communities.

In our interviews with community stakeholders, we learned:

- The county jail is slowly approaching capacity. So far this fiscal year, the daily population is trending at a higher average daily population compared to the prior two years (see Figure 1).⁴ By some accounts, expansion is deemed “inevitable.” This is partly due to wait times and thus longer stays for behavioral health assessments, as well as continuing struggles faced by people to secure care, housing, and support in the community.
- There are also substantial racial disparities in the jail population, with people of color vastly overrepresented (see Figure 2).⁵ For example, while African Americans are about 4% of the county's population, in the third quarter of 2022 they represented one-third of the jail's population. This overrepresentation exists for most county- and city-level charge categories.
- In general, it costs more than \$100 per day to hold one person in Lancaster County Jail,⁶ which is one reason the county has invested in less expensive diversion programs. Recent population numbers show that about one-fifth of the county jail population are people serving sentences for misdemeanors and about 10% are people in pretrial misdemeanor status (see Figure 3).
- For those who do come into contact with the justice system and are arrested for a crime, Lancaster County Community Corrections operates several programs and problem-solving courts that successfully reduce recidivism among those who complete the programs.⁷ Data indicates that of the people who graduate from a diversion program, there is an over 80% success rate, meaning no new jail booking within three years of program discharge (see Figure 4). In our meeting with County Attorney Pat Condon, he expressed pride in the range and success of diversion programming. However, in general, diversion programs are being “underutilized” by the county.⁸ Moreover, people of color are underrepresented in Community Corrections' programming.⁹ For example, there are racial disparities in diversion eligibility that impact our African American and Indigenous neighbors.
- Lancaster County's diversion programs do have a financial cost to participants (see Figure 5). It is unclear at this point what barriers or downstream costs this incurs for people. These diversion programs also have strict eligibility criteria set by the County Attorney's office, some of which are tied to public safety concerns (e.g., violence) but also exclude a range of charges that appear to pose minimal to no threat to public safety

¹ Vera Institute, *Incarceration's Front Door: The Misuse of Jails in America* (2015).

<https://www.vera.org/publications/incarcerations-front-door-the-misuse-of-jails-in-america>

² Prison Policy Initiative, <https://www.prisonpolicy.org/profiles/NE.html>

³ Urban Institute, *Prosecutor-Led Diversion Strategies in Milwaukee County, Wisconsin* (2022).

<https://www.urban.org/research/publication/prosecutor-led-diversion-strategies-milwaukee-county-wisconsin>

⁴ Lancaster County Board of Corrections February 16, 2023, report,

<https://www.lancaster.ne.gov/AgendaCenter/ViewFile/Agenda/02162023-1777>

⁵ 3/10/2023 meeting with Brad Johnson, Lancaster County Corrections

⁶ 3/20/2023 meeting with County Attorney Pat Condon

⁷ 11/4/2022 presentation to the Lancaster County-City of Lincoln Justice Council

⁸ 1/12/2023 meeting with Kim Etherton, Community Corrections

⁹ 1/12/2023 meeting with Kim Etherton, Community Corrections

(e.g., prior misdemeanor cases). Additionally, beyond these criteria, some decisions may be made on a “case-by-case” basis, implying a possible round of review after assessing preliminary criteria.¹⁰

A January 2023 report from the Crime and Justice Institute, commissioned by Nebraska’s Justice Reinvestment Initiative, proposed several solutions for the state’s incarceration problems.¹¹ While not specifically about jail populations, the proposed solutions have implications for county-level efforts at criminal justice reforms. In particular, the Crime and Justice Institute recommended investing in community-based behavioral health services and expanding alternatives to incarceration:

- “By prioritizing programming that targets an individual’s criminogenic needs and improving access to treatment services, Nebraska can better address underlying issues driving criminal behavior. . . . These policies will increase diversion opportunities, reduce recidivism, and improve public safety—thereby decreasing the need for additional prison beds.”¹¹
- “The more diversion is used, the greater the reduction in prison population and related system costs, along with increased access to effective interventions to treat behavior driving criminal offenses.”¹¹

Diversion is a broad term referring to “exit ramps” that move people away from the criminal legal system, offering an alternative to arrest, prosecution, and a life behind bars. Although incarceration was historically believed to improve public safety, research suggests that it is ineffective in doing so and has a minimal impact, if any, on reducing crime. Diversion programs and related community-based options take many forms, providing communities an alternative to jail while addressing defendant accountability and public safety.^{12, 13} They aim to reduce jail incarceration by offering opportunities at different decision points to interrupt further involvement and lessen the impact of system involvement.¹⁴ Such programs focus on the root causes of criminalized behaviors (e.g., joblessness; housing instability; lack of educational resources; unmet physical and mental health needs; substance use) and center people’s humanity, working with community providers and support systems that keep individuals connected to health and social services, work, and their families. In doing so, diversion programs not only help improve long-term community safety and reduce crime but have also proven to be cost-efficient.¹⁵

The National Institute of Justice conducted a multisite evaluation of prosecutor-led diversion programs across the United States, including pre-filing, post-filing, and mixed models.¹⁶ Typically, prosecutors set eligibility requirements based on charge and criminal history; one city in the study (Milwaukee) used validated risk assessments in addition to these requirements. Overall, the evaluation research found diversion programs: (1) reduced the likelihood of eventual conviction and incarceration, (2) reduced re-arrest rates two years after program completion, and (3) produced dramatic cost and resource savings compared to traditional criminal case processing. The Urban Institute¹⁸ recently conducted an additional analysis of Milwaukee’s diversion programs and found a notable decline in their jail population. A recent analysis of diversion in Harris County (Houston), Texas, found it reduced reoffending rates by half while improving quarterly employment rates by almost 50% over 10 years.¹⁷ Additionally, those at the highest risk of recidivism—particularly young men of color with

¹⁰ Lancaster County Community Corrections, Diversion Eligibility (2023)

<https://www.lancaster.ne.gov/DocumentCenter/View/15236/Diversion-Eligibility---Charges>

¹¹ Crime and Justice Institute, Nebraska Criminal Justice Crisis: Urgent Challenges and Proposed Policy Solutions (2023).

<https://www.cjinstitute.org/assets/sites/2/2023/01/Nebraskas-Criminal-Justice-Crisis.pdf>

¹² Vera Institute, Diversion Programs Explained (2022). <https://www.vera.org/diversion-programs-explained>; Prison Policy Institute, Building exits off the highway to mass incarceration: Diversion programs explained (2021).

<https://www.prisonpolicy.org/reports/diversion.html>

¹³ U.S. Department of Health and Human Services, Approaches to Early Jail Diversion: Collaborators and Innovations (2019). <https://aspe.hhs.gov/reports/approaches-early-jail-diversion-collaborations-innovations-0>

¹⁴ Urban Institute, Prosecutor-Led Diversion Strategies in Milwaukee County, Wisconsin (2022).

<https://www.urban.org/research/publication/prosecutor-led-diversion-strategies-milwaukee-county-wisconsin>

¹⁵ Vera Institute, Diversion Programs Explained (2022). <https://www.vera.org/diversion-programs-explained>

¹⁶ National Institute of Justice, Multisite Evaluation of Prosecutor-Led Diversion Programs: Strategies, Impacts, and Cost-Effectiveness (2018). <https://www.ojp.gov/pdffiles1/nij/grants/251665.pdf>

¹⁷ Diversion in the Criminal Justice System (2021). <https://www.ojp.gov/pdffiles1/nij/grants/251665.pdf>

prior misdemeanor convictions—gained the most from diversion in terms of reduced recidivism and maintaining employment.

Lancaster County currently operates prosecutor-led diversion programs with success (see Figure 4). These programs include: General Diversion Misdemeanor, General Diversion Felony, Intensive Supervised Diversion (ISD) (for drug-related charges), Veterans Diversion, Treatment Diversion, and Mental Health Diversion. The county attorney’s office sets criteria for eligibility, and Lancaster County Department of Community Corrections screens individuals, operates programs, and supervises participants. Community corrections and jail staff may also identify people as candidates for pretrial release and/or diversion. Community Corrections reports using the Virginia Pretrial Risk Assessment Instrument,¹⁸ along with internal assessment of individuals’ risks and needs. Together these include variables such as criminal charges, prior criminal history and failure to appear, history of substance use, and housing and job instability. These assessments, in addition to the strict eligibility set by the county attorney’s office and case-by-case evaluations, “filter” participants into diversion programs. Some assessments may happen while a defendant is waiting in jail, but others require potential participants to submit online applications. Public defenders and/or defense attorneys may also help their clients apply for these programs. Such assessments help match participants to services and ensure some degree of public safety, but research also shows that narrow and/or discretionary requirements or assessment heavily based on criminal history may eliminate diversion opportunities, particularly for people of color and people experiencing poverty.¹⁹ Appeals for program eligibility are managed by Bar Association–appointed attorneys who act in an advisory capacity to the county attorney. Best practices indicate other professional expertise, such as behavioral health specialists, would be an important addition to this procedure.²⁰

We are also aware that participants in diversion, in addition to any bond or court costs, incur financial costs in order to participate in programming, similar to other programs around the country (see Figure 5).²¹ While the county attorney, public defender, and county corrections personnel implied that they will work with people on costs, such costs may remain a hidden barrier to participation or potentially cause additional “downstream” challenges for individuals who have financial obligations such as rent, bills, and family and medical expenses, as well as bonds, fines, and court costs.²² Moreover, research indicates that such “pay-to-play” diversion programs disproportionately exclude people of color and people and families experiencing financial challenges.²³

Notably, recent research of 35 jurisdictions found that increased community reliance on diversion and similar approaches did not impact crime rates; that is, despite concerns that such prosecutorial approaches would lead to increased crime rates, the research demonstrates they do not.²⁴ Research into jail population reduction policies around the country demonstrate the success of diversion and community-based alternatives to jail.²⁵ Additionally, the Urban Institute determined in their assessment of Milwaukee’s diversion programs that “regularly analyzing program data and jail data to identify racial [and income] inequity can shed light on issues

¹⁸ Pretrial Risk Assessment in Virginia (2009). <https://www.ojp.gov/ncjrs/virtual-library/abstracts/pretrial-risk-assessment-virginia>

¹⁹ Racial disparities in diversion: A research roundup (2023).

https://www.prisonpolicy.org/blog/2023/03/07/diversion_racial_disparities/

²⁰ Prison Policy Institute, Building exits off the highway to mass incarceration: Diversion programs explained (2021).

<https://www.prisonpolicy.org/reports/diversion.html>

²¹ Prison Policy Institute, Building exits off the highway to mass incarceration: Diversion programs explained (2021).

<https://www.prisonpolicy.org/reports/diversion.html>

²² Court Diversion Costs in Kansas Could Put a Price on Justice (2022). <https://www.pratttribune.com/2022/10/25/court-diversion-costs-in-kansas-could-put-a-price-on-justice/>

²³ Racial disparities in diversion: A research roundup (2023).

https://www.prisonpolicy.org/blog/2023/03/07/diversion_racial_disparities/

²⁴ Prosecutorial Reform and Local Crime Rates (2021). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3952764

²⁵ Broken Ground: Why America Keeps Building More Jails and What It Can Do Instead (2019).

<https://www.vera.org/downloads/publications/broken-ground-jail-construction.pdf>

of eligibility and equal access to programs.”²⁶ **Taken together, the research supports the use of diversion to reduce jail populations, reduce costs, reduce recidivism, and support participants’ well-being, all while protecting public safety.** In our own community, diversion programming has resulted in low recidivism among participants who graduate and cost savings over putting people in jail that exceeds 20 million dollars (see Figure 6).

Proposed Solution

Lancaster County is proud of the multitude of diversion programs in place, which are operated by Community Corrections. They have been shown to reduce recidivism and result in significant cost savings for the public as compared to holding someone in the county jail. However, our research indicates Lancaster County is not using our existing programs to their full capacity. We propose steps to expand participation in and accessibility to diversion programs, especially for our neighbors of color, who have been disproportionately underrepresented in diversion programs within Lancaster County. In proposing these solutions, we recognize the need for the county commissioners to ensure Community Corrections is adequately staffed and funded to meet increases in service use without passing those costs on to participants. The staff should be expanded strategically in ways that will best support the experiences of our neighbors of color to improve their participation and success rates. While we recognize the initial up-front cost of program expansion, the cost savings that come from keeping people out of jail would be significant in the long term. We present a four-point approach for increasing access to and utilization of existing Community Corrections diversion programs.

One: We propose the County Attorney’s office, in consultation with Community Corrections, increase the number of people participating in diversion programming by 50%. We recognize the need to alleviate pressure on the county jail, while better serving people whose prior misdemeanor mistakes might yield them ineligible and better serving our neighbors of color.

Two: We propose the County Attorney’s office, in consultation with Community Corrections and the county commissioners, reduce all diversion participation costs by 100%. We appreciate the county’s willingness to work with people to pay their participation fees and not dismiss them simply for difficulties paying. However, equitable and just access demands that such barriers to participation be alleviated and these policies codified to ensure consistency in the long term.

Three: We propose the county attorney’s office to establish a standing formal appeal board composed of behavioral health professionals, following the model of Lancaster County’s problem-solving courts, who will determine eligibility for diversion programs.

Four: We propose the county commissioners facilitate the creation and maintenance of a real-time, online, publicly available dashboard with community corrections and jail population data. Our research suggests this data is available in some forms, but it was challenging for us to see it all in one place. This dashboard would provide public oversight of the progress and results of diversion expansion. It would also monitor equity of access to diversion programming by reporting on demographic factors including age, race/ethnicity, and socioeconomic status.

As people of faith and community taxpayers, we value investing in rehabilitation over incarceration, in restoration over isolation, and in humanity over humiliation. In short, we believe in the power of grace and community.

²⁶ Urban Institute, Prosecutor-Led Diversion Strategies in Milwaukee County, Wisconsin (2022).
<https://www.urban.org/research/publication/prosecutor-led-diversion-strategies-milwaukee-county-wisconsin>

Figure 1. Average daily population of the Lancaster County Jail

The current fiscal year (in red) is trending at a higher average daily population compared to the prior two years.²⁷ Red (top) is FY23, blue (middle) is FY22, green (bottom) is FY21.

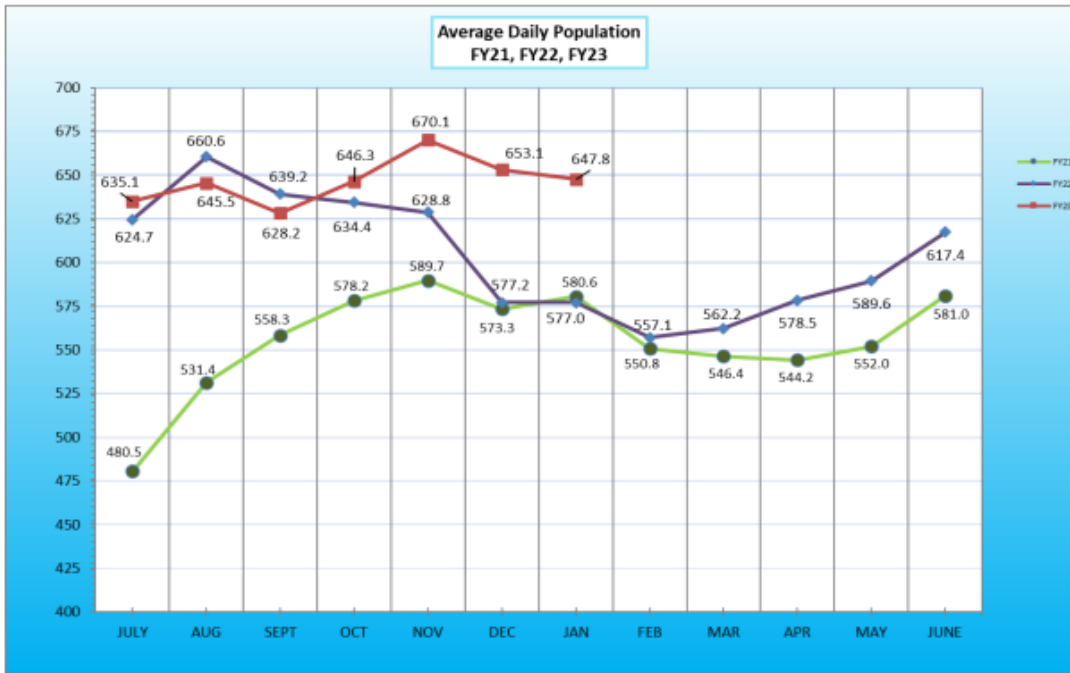


Figure 2. Racial Disparities in the Lancaster County Jail Population

Extensive disparities by race and ethnicity are also apparent in the county jail population (left table). For example, while African Americans are about 4% of the county’s population, in the third quarter of 2022 they represented one-third of the jail’s population. Similarly, American Indians are substantially overrepresented. This overrepresentation exists for most county- and city-level population categories (right table).²⁸

Race	Lancaster County	Adult Detention Facility
White	80.6%	45%
Black	4.3%	32%
Hispanic	7.4%	12%
American Indian/Alaska Native	1%	8%
Asian	4.8%	2%
Unknown	1.9%	1%

	Cnty PT Misd	Cnty PT Fel	Cnty SN Misd	Cnty SN Fel	City PT Misd	City SN Misd
Asian	1%	1%	2%	2%	0%	0%
Black	29%	35%	27%	31%	0%	50%
Hispanic	3%	13%	10%	13%	22%	25%
Native Amer/Alaskan	13%	7%	7%	10%	22%	0%
Unknown	3%	1%	1%	2%	56%	0%
White	50%	42%	54%	42%	0%	25%

²⁷ Lancaster County Board of Corrections February 16, 2023 report. <https://www.lancaster.ne.gov/AgendaCenter/ViewFile/Agenda/02162023-1777>

²⁸ Lancaster County Board of Corrections November 2022 report.

Figure 3. Lancaster County Jail Population Status

Proportionally, the largest county jail population generally consists of people who are pretrial felony status, who may be awaiting evaluation for behavior health concerns or awaiting trial. A smaller proportion are pretrial misdemeanor status. This corresponds with statewide data that illustrates pretrial policies have driven jail population growth in Nebraska.²⁹

<u>Population Status</u>			<u>Population Status</u>		
As of December 31, 2022			As of December 31, 2021		
Status	Total	Percentage	Status	Total	Percentage
County Pretrial Misd	57	9.0	County Pretrial Misd	48	8.47
County Pretrial Felony	389	61.4	County Pretrial Felony	339	59.79
City Pretrial Misd	10	1.6	City Pretrial Misd	5	0.88
County Sentenced Misd	118	18.6	County Sentenced Misd	120	21.16
County Sentenced Felony	54	8.5	County Sentenced Felony	46	8.11
City Sentenced Misd	5	0.8	City Sentenced Misd	7	1.23
Other	1	0.2	Other	2	0.35
	634			567	

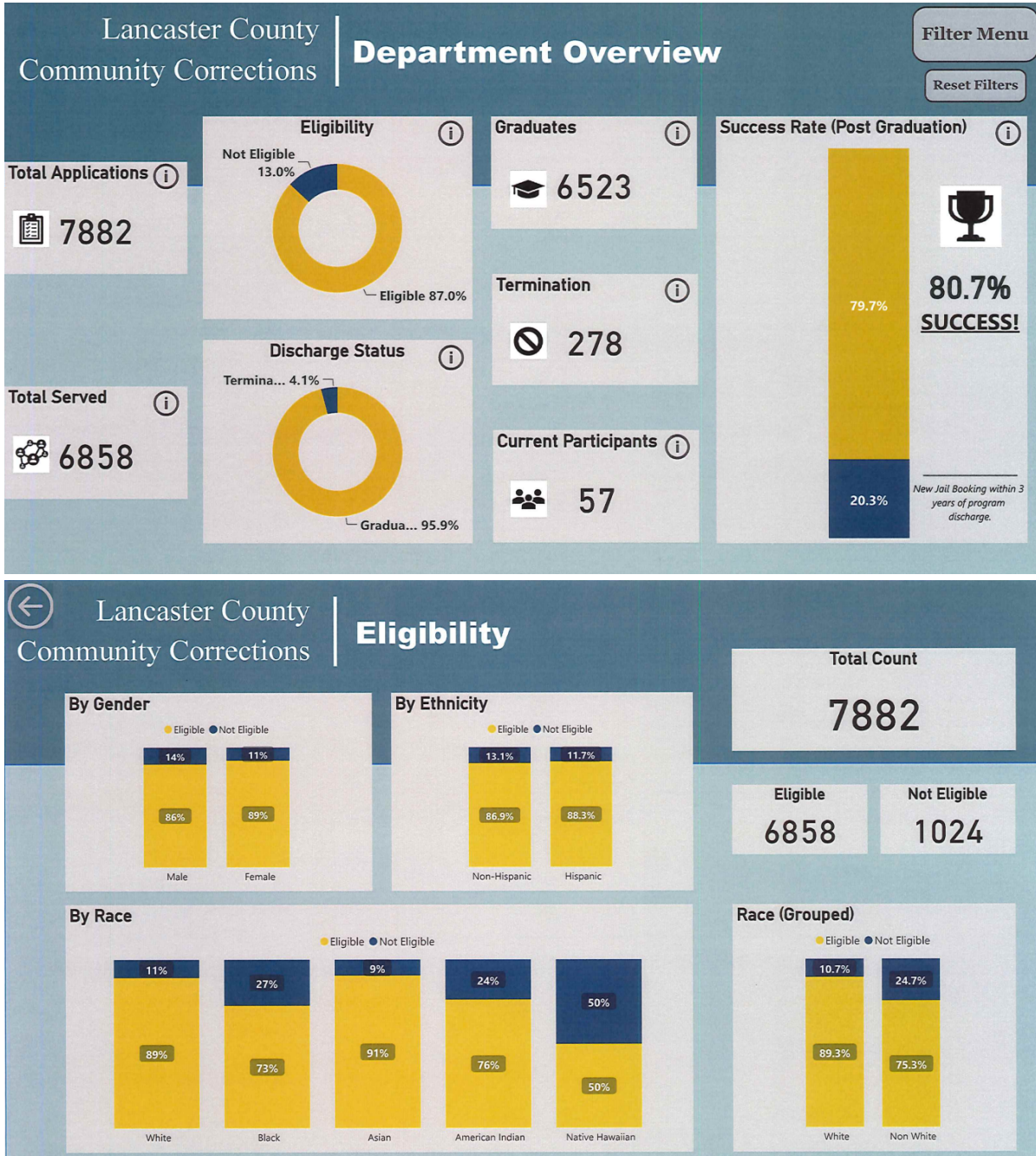
According to arrest statistics reported to the FBI, in 2021 the largest single primary arrest categories for LPD were drug abuse violations (mostly possession) and DUI, followed by felony assaults. For LSO, the largest arrest category were drug abuse violations (mostly possession), followed by simple assaults and domestic violence-related offenses.³⁰

²⁹ Prison Policy Initiative. <https://www.prisonpolicy.org/profiles/NE.html>

³⁰ 2021 arrest statistics, FBI, Crime Data Explorer (2023). <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/arrest>

Figure 4. Lancaster Community Corrections Diversion Success Overview³¹

Lancaster County Community Corrections boasts an over 80% success rate across general diversion programs, measured as graduated participants with no new jail bookings three-years post-discharge (top table). However, there are also notable racial disparities in eligibility, particularly for our Black and Indigenous neighbors (bottom table).



³¹ Lancaster County-City of Lincoln Justice Council meeting, November 4, 2022.
<https://www.lancaster.ne.gov/AgendaCenter/ViewFile/Item/6728?fileID=9312>

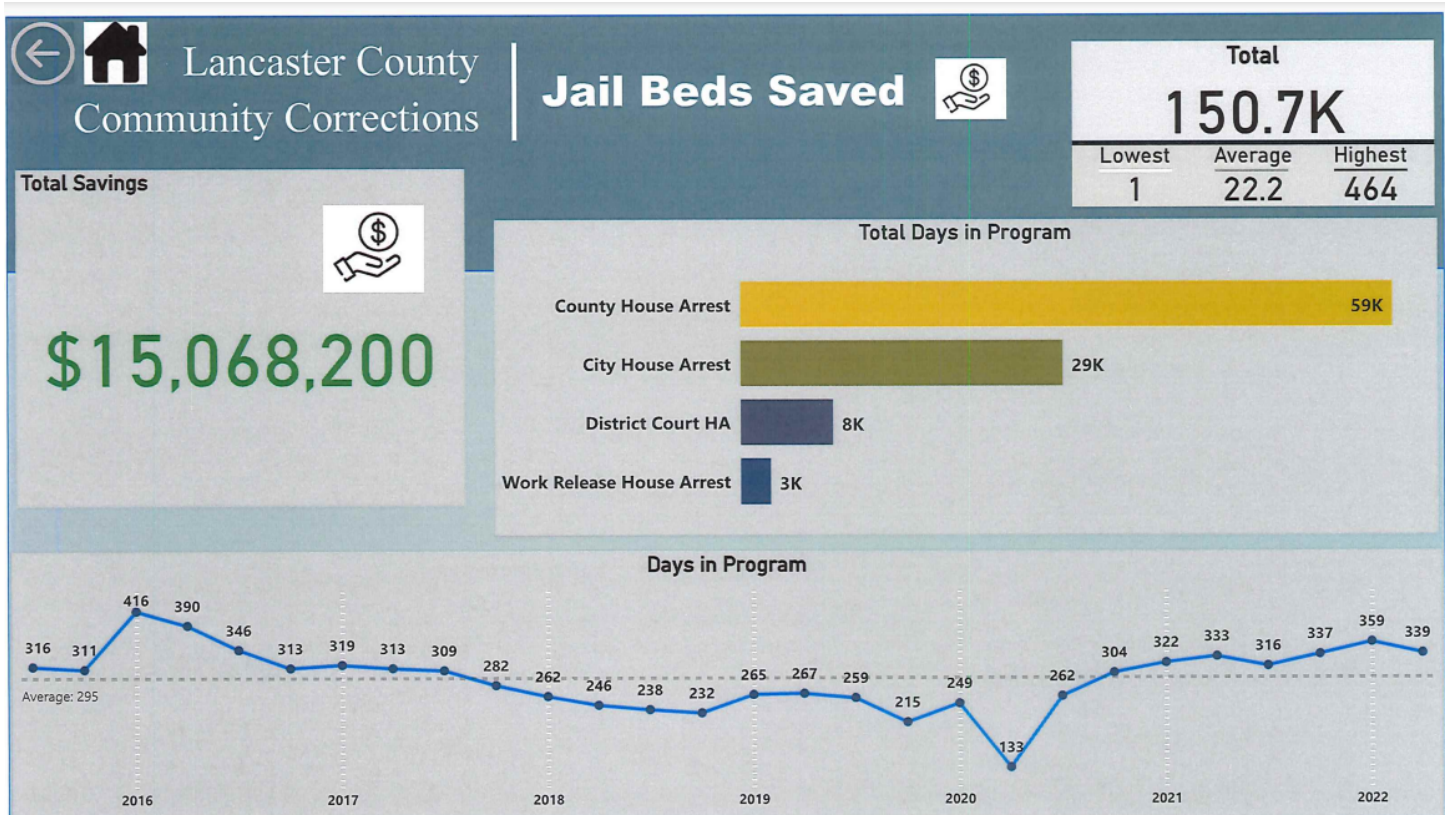
Figure 5. Diversion Programs offered by the Lancaster County Department of Community Corrections³²

	ISD	Treatment Diversion	MH Diversion	Veteran's Diversion	Diversion Misdemeanor	Diversion Felony
Cost	\$1,500	\$500	Same as General Diversion	\$60 Monthly	\$250 Non-Violent \$350 Violent \$60 2 nd charge \$40 3 rd charge	\$525
Min. Length (Months)	12	9	6 MSD 12 FEL	6 MSD 12 FEL	6	12
Community Service (Hours)	120	100	60 MSD 120 FEL	60 MSD 120 FEL	24	60
Graduation	Dismissal	Dismissal	Dismissal*	Dismissal*	Dismissal	Dismissal
Termination	Transfer Possible	Transfer Possible	Transfer Possible	Transfer Possible	Prosecuted	Transfer Possible

³² Lancaster County Department of Community Corrections, Diversion Services Programming Guide. <https://www.lancaster.ne.gov/DocumentCenter/View/15235/Diversion-Programming-Guide>

Figure 6. Lancaster Community Corrections Cost Savings Overview³³

In the past several years, across all of their programs, Community Corrections has saved the county more than 15 million dollars in jail bed costs, a substantial return on the investment.



³³ Lancaster County-City of Lincoln Justice Council meeting, November 4, 2022.
<https://www.lancaster.ne.gov/AgendaCenter/ViewFile/Item/6728?fileID=9312>