



# Youth Mental Health Diversion

## Eligibility Guidelines & Program Description

### Formal Eligibility

The formal eligibility requirements of Youth Mental Health Diversion (YMHD) are intended to make youth who are amenable and open to the program eligible for the services offered through the program.

Juveniles who wish to participate in YMHD must:

1. Be between eleven (11) and seventeen (17) years of age at the time of the offense leading to the law enforcement referral to the Lancaster County Attorney's Office.
2. Accept responsibility for the offense and acknowledge the extent of their involvement.
3. Not currently under Juvenile Court jurisdiction under Neb. Rev. Stat. 43-247(1)(2) or (4).
4. Be willing to comply with all of the program's requirements.
5. Has screened positive for a mental illness or co-occurring mental illness and substance use disorder or already has a verifiable diagnosis.
6. Current allegation(s) can be correlated to mental illness.

### Eligibility of the Offense

If a juvenile meets the formal eligibility requirements stated above, a second test of eligibility of the offense must be met. All offenses are generally eligible for YMHD except those set forth below as ineligible or as eligible only on a case-by-case basis. The referring attorney reserves the right to prevent an eligible offense from progressing to YMHD after considering the facts, circumstances, and seriousness of the particular offense(s) and those criteria mentioned below.

### Ineligible Felony Offenses

The following felony offenses are not eligible for YMHD and juveniles charged with the following offenses will not be considered: arson (first degree), assault (first degree), bribery, child abuse, child enticement or pornography, flee to avoid arrest, gambling, kidnapping, murder, manslaughter, motor vehicle homicide, pandering, perjury, robbery, sexual assault, tampering with a witness, evidence or jury, or any sex offense (as defined at 34 U.S.C. §20911) or any offense relating to the sexual exploitation of children, or assault with intent to commit murder.<sup>1</sup>

### Case-by-Case Felony Offenses

The County Attorney retains the right to consider eligibility for the following violations on a case-by-case basis. Factors and criteria that should be considered in making the eligibility determination are detailed in the "Case-by-Case Determination" set forth below. Felony offenses that will be considered for YMHD on a case-by-case basis include: arson (second or third degree), fraud, manufacture, distribution, and possession of a controlled substance, including with intent to deliver, possession or use of a weapon or explosives, assault on an officer or health care professional.

---

<sup>1</sup> In compliance with Special Conditions of Department of Justice (DOJ) Office of Juvenile Justice and Delinquency Prevention Grant Award: Project Number: 2020-MO-BX-0015.

### **Ineligible Misdemeanor Offenses**

The following misdemeanor offenses are not eligible for YMHD and juveniles charged with the following offenses will not be considered: driving under the influence (including .02 violations), refusal to take chemical test, gaming violations, gambling, child pornography, and traffic offenses, including flee to avoid arrest and leaving the scene of an accident, or any sex offense (as defined at 34 U.S.C. §20911) or any offense relating to the sexual exploitation of children, or assault with intent to commit murder.<sup>2</sup>

### **Case-by-Case Misdemeanor Offenses**

The County Attorney retains the right to consider the following violations on a case-by-case basis. Factors and criteria that should be considered in making the eligibility determination are detailed in the "Case-by-Case Determination" set forth below. Misdemeanor offenses that will be considered for YMHD on a case-by-case basis include: assault, carrying a concealed weapon, firearm offenses, child abuse and neglect, contributing to the delinquency of a minor, domestic assault, protection order violations, intimidation by phone, motor vehicle homicide, obstructing justice, providing false information, public indecency, resisting arrest, and sexual assault (unless listed as ineligible above).

### **Infractions and Inchoate Offenses**

Infractions are generally eligible for YMHD. An offense which constitutes a conspiracy, accessory, attempt, or aiding and abetting is eligible only if the underlying offense is eligible.

### **Case-by-Case Determination**

Factors such as the predilection of the juvenile, the seriousness of the offense, and the response of the victim and community will be considered by the referring attorney. The referring attorney reserves the right to consider each case on an individual basis to determine eligibility.

Any offense that is eligible or considered on a case-by-case basis as eligible will also be reviewed in light of the factors and criteria set forth below. The factors and criteria below establish a balancing test by which public protection and security are weighed against practical rehabilitation of the juvenile and restoration of the victim and community.

### **Seriousness of the Offense**

In determining eligibility for YMHD, the factors listed below shall be considered to evaluate the seriousness of an offense.

1. The number of previous involvements with the law the juvenile has had, including incidents or repeat occurrences of criminal behavior or delinquency.
2. The length of time over which repeat offenses occurred and the similarity of the offenses.
3. Whether the offense involved violence or was committed in an aggressive, anti-social, or premeditated manner.
4. The number of victims involved in the offense.
5. The potential or actual harm to victims even if unintentional.
6. The monetary amount involved in the offense exceeds \$10,000.
7. The motivation for the commission of the offense.
8. The likelihood of future offenses, and the general amenable nature of the juvenile.

---

<sup>2</sup> In compliance with Special Conditions of Department of Justice (DOJ) Office of Juvenile Justice and Delinquency Prevention Grant Award: Project Number: 2020-MO-BX-0015.

### **Amenable Nature of the Juvenile**

In determining the amenable nature of the juvenile, the County Attorney shall consider:

1. The age of the juvenile and the ages and circumstances of any others involved in the offense.
2. The juvenile's willingness to participate in the diversion program.
3. The previous history of the juvenile, including whether he or she has been convicted of any previous offenses or adjudicated in juvenile court, and if so, whether such offenses were against a person or related to property or substance abuse.
4. The previous history of anti-social behavior, including patterns of physical violence, and whether treatable emotional or psychological problems contributed to commission of the offense.
5. The likelihood that the offense is significantly related to the juvenile's problems and the likelihood that participation in diversion would improve the juvenile's ability to cope with his or her problems.
6. The sophistication and maturity of the juvenile as determined by consideration of his or her home life, school performance and activities, emotional attitude and desires to be treated as an adult, patterns of living, and whether he or she has had previous contact with law enforcement agencies and/or courts and the nature of that contact.
7. Such other matters as the prosecuting attorney deems relevant to his or her decision.

### **Factors Weighing Against Diversion**

The County Attorney shall balance the seriousness of the offense and the amenable nature of the juvenile against the factors weighing against diversion set forth below:

1. The juvenile has been associated with or initiated into a gang or participated in gang activity.
2. The juvenile has a history of violence, aggression or crime against persons.
3. The juvenile has a history of anti-social or criminal conduct, indicating a particular resistance or reluctance to changing said conduct.
4. The victim(s) or affected community has strong objections to the juvenile being considered for diversion.

### **Victim Impact**

When a juvenile has committed an offense against an individual or offense that ultimately affects an individual, the YMHD team will actively seek the victim's input in the diversion process. The County Attorney may consider the victim's input when considering a juvenile's eligibility to participate in the diversion program.

### **Inclusion in the Program**

The final decision to accept or deny any juvenile as a participant in the diversion program shall be made by the County Attorney, in consultation with the YMHD Intake Team.

### **Administrative Review of Cases Denied Eligibility**

Juveniles who have previously participated in a law violation diversion program or have been adjudicated for a law violation in Juvenile Court do not have a right to appeal denial of YMHD.

Juveniles who have never previously participated in a law violation diversion program or been adjudicated for a law violation in Juvenile Court and have been denied eligibility for YMHD may contest this finding by requesting an administrative review. The juvenile or the juvenile's counsel must request an administrative hearing by filing written notice with the County Attorney. The County Attorney will schedule a hearing within three weeks of the request for the hearing.

Administrative reviews are heard by local attorneys who volunteer their time to review diversion eligibility decisions. The attorney conducting the review is appointed by the Lincoln Bar Association. The determination reached at the review hearing is advisory in nature and is conducted to determine whether the decision denying eligibility was arbitrary and capricious. The County Attorney is not bound by the finding of the hearing officer or the administrative review process.

### **Juveniles Terminated From the Program**

Juveniles who have received a diversion plan and signed the agreement to participate may be terminated from the program if he or she fails to meet the requirements of the program. The requirements of the program are broadly set forth below and specifically defined in the juvenile's individual diversion plan.

A juvenile may be terminated from YMHD for: (a) receiving any additional referrals or citations, (b) failing to notify the diversion program of any additional referrals or citations, (c) unexcused or repeated absence from required diversion activities, (d) inappropriate behaviors and conduct in any diversion activities, (e) inappropriate conduct and progress in school, (f) positive results of a drug test, (g) after evaluation been determined to not have a qualifying mental illness or co-occurring mental illness and substance use disorder, or (h) failure to complete the diversion plan as developed by the diversion team and agreed to by the juvenile.

Juveniles will be contacted by a member of the diversion team if they are not meeting the program's requirements and expectations. The juvenile will receive a letter warning him or her of possible termination from the program and will receive a summary of the requirements and expectations that are not being met. Each juvenile will be given an opportunity to review program requirements and expectations, and develop a plan with their diversion officer to complete the program. Any juvenile participating in the program that is experiencing difficulty completing any part of his or her diversion plan should contact YMHD staff immediately and request assistance.

If a participating juvenile commits an additional offense, a copy of his or her progress summary in addition to information from the partnering mental health provider will be sent to the County Attorney and to the juvenile. The County Attorney may request a copy of a juvenile's progress summary at any time. Conditions of individual diversion programs may not be modified without the approval of YMHD staff.

### **Acceptance of Responsibility**

Each participant must acknowledge his or her responsibility for the offense that brought him or her to YMHD. YMHD is a court-alternative voluntary program, and participants retain an on-going right to consult with an attorney at any time, provided however, that such consultation does not unreasonably delay, detract or otherwise undermine the intent and benefits of participation in the program. In the event that the juvenile participating in the program either withdraws from or fails to complete the diversion program, any and all admissions of responsibility made as a result of actions or activities required by the program shall remain confidential and not be used by the prosecution in the event that a Petition is subsequently filed, unless a release of information is signed upon admission to the program or is otherwise authorized by law.

### **Duration of the Program**

Each participant's diversion program shall be individually tailored to meet the needs of each juvenile participating in the program. The duration of the program depends on the nature of the offense committed, the extent of remedial action taken and required, the extent of involvement in the offense committed, and individual needs. The maximum time in the program shall be long enough to affect a change in the juvenile, but shall never exceed one (1) year. There is no minimum duration.

### **Withdrawal from Program**

Any juvenile participating in YMHD may withdraw at any time before the program is complete. However, if the juvenile withdraws without successfully completing all of the requirements of the program, the County Attorney may file a criminal complaint or juvenile petition to initiate court proceedings in the matter that originally led to the recommendation for participation in the diversion program. Juveniles who withdraw from the program will not receive reimbursement of fees paid into the program.

### **Completion of the Program**

Upon successfully completing the diversion program, the County Attorney agrees not to file any charges on the offense(s) that led to the recommendation for participation in the diversion program.

### **Program Requirements**

Terms and conditions of Youth Mental Health Diversion may include one or more of the following:

1. Participation in mental health or substance abuse evaluations.
2. Attend treatment or otherwise comply with treatment recommendations to successful completion.
3. Refrain from the use and/or possession of alcohol or controlled substances, unless prescribed by a physician.
4. Submit to alcohol and/or drug testing.
5. Complete all required community service by performing work of acceptable quality in a community service placement approved by YMHD.
6. Attend and participate in all educational classes assigned by YMHD.
7. Write a letter of apology, or participate in mediation, as required.
8. Refrain from or limit participation in certain social activities or situations.
9. Participation in pro-social activities.
10. Goal setting and measuring achievement.

11. Improved school attendance and academic performance.
12. Participation in and involvement with one or more community-based service agency programs.
13. Engage in medication management if recommended.
14. The juvenile and their parent/guardian will engage with Family Peer Support Specialist if recommended.
15. Participate in building their WRAP (Wellness Recovery Action Plan)
16. Pay all required fees, fines, and/or restitution, reimbursement, and personal or property damage costs, within a family's ability to pay, but not to exceed \$500.