

Nebraska Criminal Justice Review

Vol. 20 No. 4
December, 2020

A quarterly publication of Holy Family Ministries, Omaha, Nebraska, since 2000.

The politics of new prisons (Part 2)

By Marshall Lux,
Nebraska Ombudsman—Retired

The overcrowding of the Nebraska prison system remains an unresolved problem; a problem that our state has been struggling with for years. Back when I was Nebraska's Ombudsman, one of our main objectives in the Ombudsman's Office was to do whatever we were able in order to encourage the Department to try to alleviate the stresses and discomforts that were inherent for the inmate population due to the crowded conditions in Nebraska' prisons. I can report that we were able to get some cooperation in that effort...although not enough from the system's top administrators. But our real hope was that the overcrowding of the system would someday be resolved. To truly understand why that has not happened we need to look at the "politics of new prisons" in Nebraska.

In the previous *Nebraska Criminal Justice Review* (Sept. 2020), I explained how the Department of Corrections has been using the overcrowding issue as political leverage to try to back the Legislature into a corner, and compel the Senators to approve funding for the proposed big new maximum security prison that the Department desperately wants. The Department's only answer to overcrowding is..."more prisons." But, in fact, there have been some other ideas that have emerged in the Legislature in 2019 and 2020 that might help with the overcrowding issue. Unfortunately, however, they have all been "shot down" by the Department of Corrections and the Ricketts administration.

In 2019 Senator Steve Lathrop proposed LB 916, which would have funded the construction of a 300-bed community corrections facility in Omaha. In fact, this proposal was an excellent idea that could have helped to begin to relieve the system's overcrowding (and, as I understand it, LB 916 had real support from the Omaha community). However, when the bill was heard before the Legislature's Appropriations Committee earlier this year, the Department of Corrections opposed it, and it died in Committee.

Another idea came in the form of LB 1004. Under that proposal all Nebraska inmates sentenced after the effective date of the bill would have automatically become eligible for parole within two years of their mandatory discharge date (if they were not eligible at an earlier point in time under the law). In reality, LB 1004 was certainly the most important (if not the only) piece of criminal justice reform legislation to come out of the Nebraska Legislature in 2020. Although the bill was supported by the Nebraska

County Attorneys Association and by the Omaha Police Officers Association, Governor Ricketts vetoed the enactment on August 17, 2020.

I believe that the opposition to Senator Lathrop's LB 916, and the veto of LB 1004, make it clear that the Department of Corrections and Ricketts administration are not prepared to support any sensible reform that will ease Nebraska's prison overcrowding problem. And, if I am wrong about that, then I am willing to hear any proposal that they have to address the problem that does not involve building an expensive new prison. Anyway, as things now stand politically, it would seem that the Department and the administration are saying..."a new prison, or nothing." This is unfortunate, and shortsighted, but it is not necessarily the final answer.

Going forward, there are a couple of points that should be emphasized. First, the recent George Floyd demonstrations and the support that they have generated for criminal justice reform are, in essence, a "message from the future." Today, we are on the cusp of what could be a fundamental change in our society in terms of improving, not only racial justice, but also the contours our criminal justice system itself. How and when those criminal justice reforms come to Nebraska is unpredictable...but it will happen, as the result of an inevitable generational shift that will lead to a better, and more just America. The Department's proposal to build an expensive new prison is backward-looking, and would have us spending millions of dollars to build a facility which could very well be obsolete only a decade later, as society's approach to corrections changes.

Secondly, we must not lose sight of the fact that Governor Ricketts has only two years left in his term of office. In 2023 Nebraska will have a new governor who may look at all of these issues very differently; particularly the issue of how to deal with our prison overcrowding problem. It would be irresponsible, in my opinion, for the Legislature to agree to build an expensive new prison now (in 2021 or 2022, and thereby saddle the next Governor with the burden of dealing with the dire fiscal issues that such a commitment would inevitably produce. At the very least, the decision to commit to building an expensive new prison should be deferred until 2023.

Editor's Note: Part 1 of the above article can be seen by going to: www.holyfamilyomaha.org. Click on "The Social Hall." Select the high-lighted "Nebraska Criminal Justice Review." Scroll down.

When the over-growth began at the Nebraska Department of Corrections

By David Ditter 32547
Tecumseh State Correctional Institution

I read retired Ombudsman Marshall Lux's article on the front page of the September *NCJR* with much interest and recalled a letter that I sent to then-Senator **Diane Schimek** in 2003 (see below) that addressed many of the same issues, i.e., "generating new management jobs:," "expanding the Department's already bloated budget" and "manipulating the Legislature into approving the expenditure of hundreds of millions of taxpayer dollars". Senator Schimek, not surprisingly, did not respond to my letter.

The information in my 2003 letter is relevant because it reveals how the growth of the Nebraska Department of Correctional Services began when the law was changed in 1993 (LB-31) under then-Director Harold Clarke's tenure to become an expensive, unwieldy administrative heavy system, which has continued to expand ever since.

My 2003 letter

I am writing concerning "LB-31" that you, as the Chairperson of the Government, Military and Veterans Affairs Committee, pushed to a Legislative vote in 1993. Jane Grabenstein-Chandler testified for the Department of Corrections that: "This bill has no fiscal impact", which has proven to not be true. LB-31 (1993) was a huge bill that the Department of Corrections lobbied for, in which the Legislature ended up relinquishing a lot of its regulatory power over to the Department of Corrections, and as a direct result, the Department of Corrections has grown "top-heavy" with administration, while also increasing its budget needs.

Neb.Rev.Statute 83-177 was changed by LB-31 to "add" deputy and assistant superintendents in each of the Department's facilities, as the director determines, which continues to have an immense fiscal impact. Also be advised that each of the facilities' Wardens, Deputy Wardens and Associate Wardens has their own personal secretary. Additionally, the TSCI facility alone has four (4) Administrative Assistants to the Warden.

I am aware that the "EFFICIENCY IN GOVERNMENT ACT" that was passed during Ben Nelson's tenure as Governor required that certain "high level" positions in State Government be eliminated or combined with other positions, instead of refilling these positions, as a cost savings measure. Why can't this be applied to the Department of Corrections too? I think the Legislature needs to take a serious look at why the Department of Corrections needs so many Assistant Directors to run the Department and also so many different Associate Wardens & Administrative Assistants to run each prison facility?

I realize that the Legislature may be reluctant to micro-manage the Department of Corrections by requiring them to make cuts in certain areas, but the Department of Corrections under Director Harold Clarke's tenure has become an expensive unwieldy administrative hierarchy system that is deficient in flexibility, while focusing on ways (MR's, etc.) that will keep inmates past their parole eligibility dates. **The Legislature gave the Department of Corrections more deputy and assistant "superintendents" at the whim of the Director, along with more regulatory power in 1993, so the Legislature could certainly take this away from the Department?**

State senator expresses his view on priorities and a new prison

Editor's note: The quotes below are from a letter of Senator John McCollister (District 22) to the Public Pulse, *Omaha World Herald* (11-3-20).

"Building another conventional prison in Nebraska is an ill-considered, tax-wasting idea."

"Although reforms vary from state to state, all aim, to improve public safety and control taxpayer costs by prioritizing prison space for people convicted of serious offenses and investing some of the savings in alternatives to incarceration that are effective in reducing recidivism."

"Maintaining public safety is paramount, but sentencing and parole reform should head the list of ways of reducing overcrowding without building an expensive new prison."

In 1994, random prison cell assignments led to violence

Note: The information below is from a March 3, 1996 article by *Butch Mabin* in the *Lincoln Journal Star*. It was submitted to the *NCJR* by an inmate who sees that prison officials do look at the available information on each inmate before making a cell assignment, but is less certain that the officials ask the inmates themselves the important question of whether they are compatible.

In 1994, U.S. District Judge Richard Kopf ruled that top Nebraska corrections officials were disregarding the safety risks involved in randomly pairing newly-arrived inmates with inmates already at the prison. He ordered that prison officials base housing decisions on whether or not the inmates are compatible. Kopf said that classification information could easily be used to predict inmate compatibility.

The 1994 order came in response to lawsuits filed by inmates in 1987. Eventually, the cases were joined as a class action suit involving more than 500 prisoners. The corrections department ended the practice of randomly pairing inmates in the same cells but also appealed the order to the appeals court.

The appeals court wanted to know whether Kopf concluded the officials actually knew, or only should have known, that the random method often had violent consequences. In a 56-page order, Kopf said the prison officials were well aware of the dangers posed to inmates by the random method of selecting cellmates. Cell assignments were being made solely on the basis of best use of space.

Thank you to our incarcerated authors

Over the last 21 years, the *NCJR* has been privileged to publish 403 of your articles and letters. We appreciate you views and telling "how it is." Please continue to write for the *NCJR*.

Nebraska state prisons, their wardens and average daily populations

Editor's Note: The information on this page is from the website of the Nebraska Dept. of Correctional Services: <https://corrections.nebraska.gov>. The average daily population (ADP) is from the Department's 3rd Quarter, 2020 population summary. Design capacity—()

Omaha

OCC Omaha Correctional Center Barb Lewien
P.O. Box 11099, Omaha NE 68110. Phone: 02-595-3963.
Average daily population: 763. (460)

CCCO Community Corrections Center Omaha Ryan Mahr
2320 Avenue J, Omaha NE 68110. Phone: 402-471-0740
Average daily population: 176. (90)

NCYF Nebraska Correctional Youth Facility Loretta Wells
2610 N. 20th St. E. Omaha NE 68110. Phone: 402-595-2000
Average daily population: 66. (68)

Lincoln

NSP Nebraska State Penitentiary Michele Wilhelm
P.O. Box 22500 Lincoln NE 68542. Phone: 402-471-3161
Average daily population: 1,300. (718)

LCC Lincoln Correctional Center Taggart Boyd
P.O. Box 22800 Lincoln NE 68542. Phone: 402-471-2861
Average daily population: 529. (308)

DEC Diagnostic & Evaluation Center Taggart Boyd
P.O. Box 22800 Lincoln NE 68542. Phone: 402-471-3330.
Average daily population: 364. (160)

CCCL Community Corrections Center Lincoln James Jansen
P.O. Box 22200 Lincoln NE 68542. Phone: 402-471-0740
Average daily population: 625. (460)

York

NCCW Nebraska Corr. Cnter for Women Angela Folts-Oberle
1107 Recharge Road, York NE 68467. Phone: 402-362-3317
Average daily population: 252. (275)

Tecumseh

TSCI Tecumseh State Correctional Institution Todd Wasmer
P.O. Box 900 Tecumseh NE 68450 Phone: 402-335-5998
Average daily population: 1,026. (960)

McCook

WEC Work Ethic Camp Pam Morello
2309 N Highway 83 McCook NE 69001. Phone: 308-345-8405
Average daily population: 193. (100)

Note: In the 3rd quarter of 2020, 56 of the Department's prisoners were diverted to housing in county Jails: Buffalo (10), Dawson (5), Lincoln (18), Phelps (9), Platte (12), Scottsbluff (4).

Jan. to March average daily population: 5601
July to Sept. average daily population: 5353

Average daily population by most serious offenses

<u>Category</u>	<u>ADP</u>	<u>%</u>
Homicide	564	10.53%
Sex offenses	1024	19.12%
Assault	1209	22.58%
Robbery	301	5.62%
Weapons	583	10.89%
Restraint	21	0.39%
Arson	22	0.41%
Drugs	778	14.53%
Burglary	203	3.79%
Theft	220	4.10%
Motor Vehicle	223	4.16%
Fraud	46	0.85%
Morals	21	0.39%
Other	100	1.86%
Safekeepers	36	0.67%
Total	5,353	100%

Average daily population by classification and gender

Maximum custody, males	939
Maximum custody, females	93
Medium custody, males	1707
Medium custody, females	43
Minimum custody, males	1519
Minimum custody, females	93
Community custody, males	703
Community custody, females	136

Average age
37.95 years

Highlights of the 2019-2020 annual report of the Inspector General of the Nebraska correctional system

By Doug Koebernick, Inspector General

During the past five years, the Office of the Inspector General of Corrections has issued an annual report that provides important information regarding the correctional and parole systems. When the Legislature created the office they declared that it was their intent do four things: 1) establish a full-time program of investigation and performance review of the Nebraska correctional system; 2) Assist in improving operations of the system; 3) Provide an independent form of inquiry for system concerns; and 4) Provide for a process for investigation and review in order to improve policies and procedures of the system. My annual report is the result of these efforts. It can be found on the Legislature's web site at www.nebraskalegislature.gov. There are a multitude of issues covered in this report but I will briefly touch on a handful in this column.

During this past year, the system population has decreased from a peak of around 5700 offenders to a little over 5350 offenders today. The primary driver of this decrease is a decrease in admissions which is mainly the result of COVID. As the courts decreased their operations the number of people being tried and sentenced decreased. From March 1st to October 1st of this year, over 300 fewer people were admitted into the system compared to the same time period in 2019.

It will be interesting to watch this admissions data over the next six to twelve months and find out if we see a significant surge once the courts are operating at their regular capacity. Otherwise, we may learn that COVID caused a decrease in the number of cases – and maybe crimes – in impacted counties.

In the past year, I have worked with numerous individuals who were trying to move to a community setting prior to their release. It became apparent that there were concerns about the operation of this pipeline, including a significant waiting list to get to a community center, a significant list to get to the Work Ethic Camp, and about the management of the lists as there really seemed to be no rhyme or reason why Offender A was at the top of the list but Offender B was not, and also the work detail to work release process.

Another key issue related to this is the need for transitional plans for individuals who have served long sentences or who, because of institutional behavior, are not eligible for a community setting prior to their release. In addition, the report found that the Department should adjust their goal of having individuals complete their clinical programming prior to their parole eligibility date. It would make more sense to set this goal to having their programming completed 12 to 18 months prior to that date so they could then spend more time in a community or transitional setting prior to their release.

Along with this is the need for additional opportu-

nities for vocational education, job skills training and even access to higher education. While these happen to some degree in the system, there is definitely room for improvement. During this past year, I have had many individuals raise their concerns about their lack of preparedness for re-entering their community. They shared that they wished that they had more opportunities to receive additional education and employment skills. In addition, I have interviewed many correctional staff who raise the same concerns.

One way to begin to address these needs would be to bring in the community colleges to a greater extent, as well as other groups (such as labor unions) who would like to teach beneficial and sought after job skills that will result in employment upon one's release.

While positive steps have been taken to address front-line staff positions, the issue of wage compression has emerged as a result of these efforts. As those positions saw increases in pay, the positions above them that are not covered in union negotiations are sometimes getting paid less than the positions that they supervise. This is an issue that was raised in my 2019 report and should have already been addressed by the Department. The Department has put forward a plan this fall but I am encouraging them to share their plan with those impacted and not only explain the impact of the plan but also accept feedback from them.

A final issue that I want to discuss is racial disparity in our correctional and parole systems. The report did some preliminary research on racial data and found that there are definitely differences in race between the corrections population and the state's actual population. The report looked at the overrepresentation and underrepresentation of racial groups, as well as male and female data. For example, it found that Native American women are overrepresented and their prison population is six times their state population. The report recommended that further examination be conducted on this important issue in our two systems.

“The Salvation of the State is

Watchfulness in the Citizen”

Copying of prisoner mail

By Victor Hernandez 59455
Tecumseh State Correctional Institution

I am writing to tell you about the Department of Correctional Services' (NDCS) latest, on the photocopying of non-privileged mail. The announcement said:

Effective October 13, 2020, all non-privileged (personal) mail will be photocopied and you will receive copies of letters, drawings, cards, envelopes and pictures instead of the originals. Pictures will be copied in color and all other items will be copied in black and white.. Privileged mail will not be copied and will continue to be opened in your presence. The copying of personal mail is to eliminate contraband entering the facility via mail.

Personally, I could only file an internal grievance, even though in my opinion, the grievance process is a joke because it does not solve anything. This is what I wrote:

- A. *The photocopying of mail policy should only be reserved for those inmates who have a history of drug use.*
- B. *The photocopying of mail policy not only punishes inmates who have not received drug-related misconduct reports but it will deter family and friends from telling inmates about their private personal problems—information that is no one else's business. Knowing that their private thoughts are kept and possibly read by complete strangers will stop anyone from putting them in writing. Essentially, the photocopying of mail policy is telling family and friends of inmates, "if you don't want anyone else knowing about your problems, don't write letters to inmates."*
- C. *The photocopying of mail policy violates my family and friends' First, Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution.*
- D. *Before NDCS/ TSCI can seize my family and friends' mail, they must have probable cause to believe that my family and friends committed a crime or are committing a crime. They cannot seize people's mail based on mere suspicion.*
- E. *Before NDCS/ TSCI can seize my family and friends' mail, they must demonstrate that my family and friends' mail threatens the security, safety or good order of the facility.*
- F. *Inmates should not have to pay for envelopes and extra postage to have the original letters, drawings, cards, envelopes and pictures sent back to their family and friends.*
- G. *NDCS/ TSCI should pay to have the original letters, drawings, cards, envelopes and pictures sent back to their family and friends.*

At the Institutional Inmate Council, Warden Wasmer, Deputy Warden Busboom, Unit Administrator Sherman, Unit Manager Houseman, Unit Manager Schultz and Unit Manager Kinlund were asked,

"It is one thing to copy letters but why does this extend to store bought cards and especially pictures? Letters are coming in with parts missing, copies on one side of a two-side letter, pictures are blurred and are not being copied onto quality

paper. What happens with our cards/pictures once copied? We aren't getting yellow sheets showing the reason for their confiscation as per policy."

The facilitators answered:

This is a new process and we are making changes as needed. There was no plan to send items back, just to hold onto them for 60 days, then destroy. You now have the option to send the original letters out within the 60 days. If the quality of the letter/copies are not good, work with unit staff and they can get a better one."

NDCS seems to believe that they can seize the mail of the family and friends of prisoners without probable cause or legitimate penal interest. Prisoners having a right to send the original letters back to our family and friends, is not an option. The issue here is that NDCS enacted the photo-copying of personal mail. NDCS, then should bear the cost of the envelopes and postage to send the originals back, not the prisoners.

Without a doubt, the NDCS policy of photocopying of personal mail will generate more business \$\$\$ for JPAY.

A football fumble

A guy took his blonde girlfriend to her first football game. They had great seats right behind their team's bench. After the game, he asked her how she liked the experience. "Oh, I really liked it," she replied, "especially the tight pants and all the big muscles but I just couldn't understand why they were killing each other over 25 cents." Dumbfounded, her date asked, "What do you mean?" "Well, they flipped a coin, one team got it, and then for the rest of the game, all they kept screaming was, 'Get the quarterback! Get the quarterback!' I'm like, hello? It's only 25 cents!"

Past issues of the NCJR can be accessed at the Holy Family Ministries website:

<https://www.holyfamilyomaha.org>

1. Look for the **Nebraska Criminal Justice Review** link to the Creighton Digital Repository (CDR) where the NCJR is archived.
2. To browse issues from the most recent to oldest (Feb/2001), look for the Cogwheel (in grey box) directly above the issue list (to right)
-Choose Descending order.
3. Select specific issue—Click on pdf link under NCJR rectangle (top left)

Director Frakes: a wolf in sheep's clothing

By John Krejci

I'll try not to be the Grinch that stole Christmas, but there are a number of things that need to be said about Director Frakes and his tenure as Director of Corrections. He came here from the relatively liberal state of Washington. Good record, lots of experience, some innovative programs. There was hope for bettering corrections in Nebraska. He predecessor, Bob Houston, ran a rather loose ship. Bent a few rules, did a bit of "wheeling and dealing," but actually kept things moving ahead – until a couple of unfortunate incidents prompted his resignation before the roof caved in. But that is history.

With Frakes we expected real progress, reform by limiting growth of prison population, improvement of staff and inmate morale, and even opening up of yards and increasing of programming. However, despite extensive help from the Vera Institute, several year analysis and recommendations from the Council of State Governments—things have only deteriorated. Population has skyrocketed (at least gradually increased), staff morale has plummeted, due to understaffing and mandatory overtime, programming continues to be inadequate, there has been a riot, multiple assaults of guards and other prisoners, multiple inmate protests through petitions. I could go on. All this despite plans, new testing protocols, evidence-based evaluations, and private consultants. And some sensible reform legislation from the Legislature.

What has gone wrong? Seems the buck stops at Frakes office door. He talks a good game. Although he has been less than transparent with the legislature. He is good at not answering questions. He presents strategic plans, asks for money for new facilities and recruiting new hires; recently he shuffled wardens around, like chairs on the Titanic! But he and the governor have ignored the legislature's mandate to call a state of emergency and lower prison population to 140% capacity. He has made few sincere efforts to provide resources for inmates returning to society like job assistance, counseling, housing, and other supports. He hasn't failed—he has barely tried.

His latest initiative is to pry money from the legislature for a massive, private-public prison. Estimates from \$250 to \$400 million and more! Tight budget times should prevent this disaster – one hopes. He claims the penitentiary is too old and needs major overhaul. If he would follow advice from stakeholders, he would, instead release the elderly and sick, who present no danger to the public, and non-violent offenders, who could be better served in the community.

I suggested to him that several \$40,000 portable classrooms would alleviate the space problems for programming. He shot that idea down without a thought. There is space. After all, yards have not been fully used since Houston's time!

And now there is the COVID! A challenge in the best of times. Fortunately most inmates are young and relatively healthy. COVID is another reason to release the elderly and health compromised.

Director Frakes is correct that the courts send him too many new inmates. And true, he cannot control that. And parole's byzantine bureaucracy and oppressive policies, e.g. their most common reason for denying parole is "other," whatever that means," have been a continuing bottleneck at the prison gates.

In conclusion, I may be barking up the wrong tree. Perhaps the puppet master, hiding in the branches is actually Gov Ricketts! He pulls the strings, controls the department. His punitive attitude toward inmates is obvious whether it be his support for the death penalty or refusal to grant pardons. Good news is he'll be gone in 2022 and Frakes will probably return to Washington where he might be able to do some of the good he keeps promising.

However the Grinch will ruin prison Christmas 2020. There may be hope for 2022! Peace.

Nebraska's three-man Pardons Board: Equal to it's task?

By Mel Beckman, Editor, NCJR

Nebraska Governor Pete Ricketts, Secretary of State Robert Evnen and Attorney General Doug Peterson make up the current three-man team serving as Nebraska's Pardons Board. The Board's website (<https://pardons.nebraska.gov>) tells a bit of its history:

The Nebraska Board of Pardons was created through Article IV, Section 13, of the Nebraska Constitution. In 1911, the legislature created the State Prison Board...A Constitutional amendment adopted in 1920 created a Board of Pardons...This Board also handled matters pertaining to parole of inmates...The 1969 Legislature, pursuant to a constitutional amendment passed in 1968, created a separate Board of Parole. Pardon authority remained exclusively with the Board of Pardons.

The Board has the authority to pardon a person who has committed a crime, restoring his/her civil rights, like voting, or carrying a weapon. It can also commute a judge's sentence to a lesser term of years. The Constitution thus assigns the Board the role of showing some mercy on behalf of the state, giving a judicious "break" to those who seem to merit it, whether the offender is still in prison or after release.

Can a three-man team of busy elected officials do justice to this great task? **How about Board expansion?**

Nebraska Criminal Justice Review Readers' Survey

Please use this page (or make a copy of it) to give your opinion of the *Nebraska Criminal Justice Review*, and your suggestions for improving the publication.

Your gender

- Male
- Female

Your age

- 25 or below
- 26 to 40
- 41 to 55
- 56 and above

What is your interest in the newsletter?

- Currently incarcerated
- Relative or friend of a prisoner
- Employed in the criminal justice system
- Elected official
- Interested citizen

How much of the newsletter do you usually read?

- All of it
- Over half of it
- Less than half of it
- Very little of it

Is the newsletter useful to you?

- Yes, very useful
- Somewhat useful
- Not very useful

How would you rate it on accuracy?

- Very good Good
- Fair Poor

What do you like about the Nebraska Criminal Justice Review?

How could the newsletter be improved?

Do you know someone who would like to receive the NCJR?

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The Nebraska Criminal Justice Review is 21 years old

By Mel Beckman, Editor

With one year off during the course of publication since the year 2000, a total of 80 quarterly issues of the NCJR have been published. Initially, and until recently, the NCJR has been supported financially by Holy Family Parish and by generous contributors. Beginning this year it has continued as one of "Holy Family Ministries," under the wing of the Society of St. Vincent de Paul. Our mission statement can be found on page 12. This page illustrates a sampling of the criminal-justice-related topics covered during 21 years. We hope for your continued support in 2021.

Ending life sentences for youth under 18

Sexual offenders differ in level of risk

Restorative justice

Civil forfeiture of assets in drug busts

Nebraska's felony murder rule

The Tecumseh mother's day riot

After a prison sentence—what now?

The sex offender registry and families

Domestic violence

Restoration of voting rights after prison

Plus

Book reviews, poetry and art.

Letters and articles from men and women who are incarcerated.

Children of incarcerated parents

**Inmate child support debt rises to \$26,603,602
Requests for modification of court orders**

Nebraska's victim assistance program

Sex offender legislation

Major mental illness and corrections

Agenda: Reduction of Prison Population by 50% in 10 years

Editor's Note: The following are parts of a 27-part agenda, authored by Todd Cook #47656. Contributors are: Michael Sims #51850, C. Michael Anderson #31936, and Bernard Long #55360. All four are serving life sentences at the Nebraska State Penitentiary.

Engage with judges to reduce minimum terms at sentencing.

In order to decrease the prison population in a sustainable way, we must enlist the assistance of the judges who determine the appropriate punishments for crime. The Legislature may simply prevent judges from assessing a lengthy minimum term to provide for parole eligibility at an earlier date, or judges could be engaged to start the process on their own. In order for this to produce the desired outcome, i.e., reduced prison population, the Parole Board must grant parole at first eligibility on a consistent basis.

Reduce penalties for weapons offenses and allow concurrent sentencing.

Prior to the increase of the sentencing range for the use of a weapon to commit a felony, the maximum penalty was 20 years. Now it is 50 years and judges are handing out sentences in the range of 40 to 50 years. This charge is also mandatorily consecutive to any other sentence. In some instances, the weapons violation penalty is greater than the penalty for the original charge. With it being a consecutive term, some individuals are sentenced to 65 to 70 years when the original charge was a 20 year maximum. Making this retroactive would greatly reduce the prison population. The Legislature would need to enact law to accomplish this.

Reduce penalties for non-violent habitual offenders

The use of habitual criminal statutes has greatly impacted the overcrowding emergency. The primary goal of such legislation was to protect society from the most dangerous, repeat offenders. However, the application of these enhanced penalties was not narrowly focused on violent offenses and now encompasses any felony convictions that resulted in a 1 year incarceration for separate offenses. Eliminating the use of habitual offender enhancements on non-violent offenders is currently being discussed by the Legislature. Making this retroactive would greatly reduce prison population. The Legislature would need to enact law to accomplish this.

If I can do it, anyone can...

By Diane Good-Collins, Director the 180 Re-entry Assistance Program, Metro Community College

My name is Diane Good-Collins. I enrolled in my first college class through Metropolitan Community College (MCC) while incarcerated. I realized to change the trajectory of my life, I had to place myself on a level playing field with others who did not have a criminal history and that process began with education. When transitioning to the state work release center in Omaha, my tribe paid for continued studies at MCC; this deepened the desire to change.

When released in 2003, I was on my way to achieving my academic goals, however, there were many barriers to negotiate: housing, parole, employment, rebuilding relationships, maintaining sobriety, etc. I realized the deficiencies I had and worked to find supports but there were few. Some of the best supports I found were at MCC and the Castelar Oxford House. MCC gave me a part time job and my co-residents at the Oxford House gave me direction, accountability and support. Without MCC and Oxford, I am positive I would have returned to prison.

Barely out of prison and on parole, Nebraska Department of Correctional Services (NDCS) asked if I would be interested in mentoring incarcerated women. My mind was screaming, "No way!" I did not want to go back into the prison, yet I knew how difficult it was to transition into the community without support. If there was a chance to help someone succeed, I had to try.

At the same time, I was helping people with a criminal history get into GED classes or pursue higher education at MCC. Because I was on parole, I was not supposed to be "associating" with people with a criminal history. However, again, I felt it was my duty and worth the risk. If people choose to invest in themselves and live differently, they may not return to prison.

By 2005, I was volunteering regularly inside the Nebraska prisons with my husband, Steve Collins, who served 13 years in California and Nebraska prisons. We have provided worship services and spiritual guidance at Nebraska prisons with Release Ministry since.

In 2015, MCC formalized the 180 Re-entry Assistance Program (180 RAP). As Director of the Re-entry Program, I have the honor of leading a twelve-member team to connect the incarcerated and re-entry populations to education, training, employment and transition support, which increases their success upon release from jails, prisons and treatment centers. Many 180 RAP team members have lived experience, been previously incarcerated or have criminal histories.

Since 2015, the 180 RAP team has provided service and support to over 6,031 people. We have created the largest on campus Re-entry Center in the United States and shared this model with higher education institutions in Iowa, Texas, Indiana and Kansas.

I engage employers, agencies and people to destigmatize the re-entry population and increase opportunities and support. I participate in re-entry initiatives workgroups, reside on the American Correctional Association (ACA) Professional Education Council and was recently elected to serve on the ACA Delegate Assembly. This is not just my job; this is my life purpose. Education and willingness to do something different positioned me for a new life when released from prison. And, as I always say, if I can do it, ANYBODY can.

NEWS & MISCELLANEOUS

By Mel Beckman, Editor, NCJR

More volunteers needed

CrossOver Correspondents (a pen-pal program of CrossOver Prison Ministries) provide rays of hope to over 90 people in prison, despite the pandemic! There are presently 9 people in prison on our wait list needing to be assigned a volunteer. Perhaps you could fill that need! Contact La Verne Belt (belt_copm_tnt@msn.com) or call 402-453-9221.

FFI-Omaha

Family and Friends of the Incarcerated meets monthly, 4th Saturday (except December), to share and provide support for each other and to work toward making the correctional systems better for our loved ones and the community. We invite community members, legislators and others to come talk with us about the work they are doing to make our correctional system as good as possible.

During this pandemic time, FFI-Omaha meets online by zoom. One can share as much or as little as one feels comfortable with. The next zoom meeting is January 23, 2021, at 9:30 a.m. For information, **Email to ma-beck3636@cox.net a week before the next meeting** stating that you want to try it out. We'll send you the zoom number.

Policies & rules

Family members of the incarcerated are sometimes puzzled about what is allowed or not allowed by the Department of Corrections. The Department does publish information about the statutes and policies which govern it and those who are incarcerated. This is not to say that it is easy to arrive at the answer to any specific question but one's answer may be found by going to the Rules and Regulations section of the Department's website: corrections.nebraska.gov.

- Happy holidays to all -

LETTERS

Another real life example of felony murder's (draconian) effects

By Juan Castaneda 72833
Tecumseh State Correctional Institution

I have been incarcerated since I was 15 years old, literally. I am now nearing 28. My case involved the "felony murder" law that has been written about in the past two issues of the **NCJR**. I have never commented publicly about my case but am now willing to, without commenting as to the others involved.

I had a role as a lookout and participated in a botched robbery attempt that occurred on November 12, 2008. Those attempts resulted in two people dying, and one person being shot, who lived. Although I never killed anyone, never shot anyone, and never engaged in a plan to do so, I am in prison for "murder" under the state's felony murder law. Nobody was supposed to die and I was not complicit in murdering anyone, but I am currently in prison, literally, for murders I did not do. Because the deaths occurred in connection with robberies, I was charged with murder. As it stands now, I will be held accountable for murders I did not do, by being imprisoned until I am at least 69 years old. The State's felony murder law has enabled the state to hold me accountable for murder even though I never actually murdered anyone nor intended to.

Changing the State's felony murder law would be a step in a good direction so people are not unjustly held accountable for deaths they did not do and did not want to occur nor intend to cause. Based on what I have read and been told, there are also others in prison under the law, for murders they did not do nor want to happen. To address the problems, the felony murder law will have to be amended or abolished.

"Water clan" & "earth clan"

By Austin Edward Lightfeather #512205
Lancaster County Corrections

As a Choctaw Native American water clan Indian I have experienced my share of systemic racial discrimination. I am a light-skinned Native American. While living in Nebraska, I learned that the native population is of the earth clan territory; such as Lakota, Omaha, Sioux, Ponca, whereas my tribal territory is of: Mississippi, Louisiana, Texas, California and Oklahoma.

My tribe being the third largest tribe in the United States, I was blown away when other native tribes had never heard of the Choctaw Nation or were unfamiliar with us as the first code talkers to defend our land. When Omaha natives heard me discuss this, I explained how it hurts when you assume I am European. Some natives would say, "why don't you go back to Mississippi then," adding insult to injury. I would try to explain how I was adopted and don't know my family. I learned explaining yourself to ignorance makes one a fool.

This motivated me to teach uneducated natives what "water clan" is. We are the "first of the five" civilized tribes. We make up Chikosiwa, Choctaw, Cherokee, Pawnee and Washpee tribes.

What is life, Part #1

By Ray'Quan Zyair Burns 882627
Lancaster Co. Corrections
Lincoln, Nebraska

What is life...

When we're living in frequent evolution. All of these different issues but no proper solution, pollution with the atmosphere!

What is life...

When we're only living to die or in fear, can you hear? What's the community revolution in progress and brotherly love over oppressed destruction when every time one peers outside of their windows there's a swarthy being hovering over another swarthy being with an empty pistol! #Black lives matter, #all lives matter.

What is life...

When you're sentenced to life with no parole? What is life when you're living with no goals, Lord knows...

What is life



Christmas riddles

What is an elf's favorite sport?
North-pole vaulting!

Why didn't Rudolph get a good report card?
Because he went down in history!

What does an elf study in school?
The elf-abet!

What is a bird's favorite Christmas story?
The Finch Who Stole Christmas!

What do you get when you combine a Christmas tree with an I-Pad?
A pineapple!

What are the three stages of man?
He believes in Santa Claus. He doesn't believe in Santa Claus. He is Santa Claus!

Response to the message of the Public Defender

By Crescent "Willie" Tucker 34490
Nebraska State Penitentiary

Thank you for presenting the article on amending Nebraska's felony murder rule (Sept., 2020 *NCJR*)**. It is enlightening to have the Douglas County Public Defender's Office addressing the matter of culpability when felony murder criteria are concerned. As a primary recipient of the felony murder charge, thirty-eight years have elapsed since the beginning of my incarceration.

Nebraska statutes section 28-303 and 28-206 are equally a due process complication of life, liberty, and equal justice. The 5th, 8th, 9th and 14th amendments to Section 1 of the constitution are supposed to allow us all the opportunity to experience a second chance. Amending the felony murder rule by reducing the intent into the category of second degree (murder) will provide the concept of a second chance and will allow the participants to be accountable for their actions. This is a long overdue conversation that should have taken place in our state offices.

To have this conversation with the Judicial System will be a direct hit on this subject. And this direct hit, to minimize the felony murder rule by turning some of its criteria into second degree intent, will also put the decision making into its proper perspective and separate out the intent of the offense. Intent is what Nebraska's judicial system needs to determine the severity of each crime because not every crime with the felony murder criteria involves intent to commit a heinous crime.

The Public Defender's Office accommodation of intent, as other states have done with their second degree structure, is very much needed here, and with willingness to present this issue, there should be a better possibility for the judicial system to implement this retroactively. To introduce felony murder with a second-degree intent is well-needed in Nebraska courts.

Editor's Note: ** The Sept. 2020 article referenced above can be seen by going to: www.holyfamilyomaha.org. Click on "The Social Hall." Select the high-lighted "Nebraska Criminal Justice Review." Scroll down.

Carelessness of corrections officers during Covid 19 crisis

By Paul Castonguay 70764
Tecumseh State Correctional Institution (T.S.C.I.)

I'm writing this letter regarding staff here at T.S.C.I. and how they don't follow protocol for the Covid-19 crisis. For example, a staff member assigned at the Cornhusker State Industries (C.S.I.) Laundry, and supervising 60 to 70 inmates, still came to work for a week after a family member tested positive. He also took off his mask many times and had multiple contacts with inmates and staff. He had no remorse for the health of others.

Another serious matter is how the T.S.C.I. medical staff does not keep the inmates under quarantine for the whole time required, releasing some inmates back to work before they should, and some staff too. Our lives

are at risk and T.S.C.I. people don't seem to care because all their focus is to lock down the institution.

Covid-19 in the Lincoln Regional Center

By Jeanie Mezger

An informal report from a person at the Lincoln Regional Center (LRC) says about 40 residents under civil commitment on the first floor tested positive for COVID-19 November 21st. LRC staff on that floor are now wearing the personal protective equipment (PPE) that indicates they are finally taking precautions seriously. With a whole floor testing positive, their efforts are too late.

The eyes of Nebraska are watching the Department of Correctional Services (NDCS) to see how COVID-19 is handled in prisons. Families of those housed in crowded prisons are hyper-aware of the dangers of viral spread there.

Residents at Department of Health and Human Services facilities are not as visible because the population at the regional centers is much smaller than the prison population and because they are not part of NDCS. Prisons were already under a spotlight because of the overcrowded conditions that Nebraska has been talking about for years so turning that spotlight to COVID was natural.

Not so at the regional centers.

People under civil commitment at the Norfolk and Lincoln Regional Centers have completed their court-ordered prison sentences but instead of being released were subjected to a Mental Health Board hearing and transported to the Norfolk Regional Center. There, they begin a "treatment" program that will last for years and will be completed at the LRC.

When the lack of programming prevents people in Nebraska prisons from being paroled, there is a date at which they must be released. Those under civil commitment, though, are incarcerated indefinitely. They have no release date. When their programming stops because of COVID-19, all progress toward release is stalled.

On its website, NDCS reports the number of positive COVID tests in each facility. The Nebraska DHHS has a beautiful webpage that provides much information about COVID-19 in the state but none of the data is broken out .

**Nebraska Criminal Justice Review
Holy Family Ministries
1715 IZARD STREET
OMAHA, NE 68102**

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**NEBRASKA
CRIMINAL JUSTICE
REVIEW**

Published by Holy Family Ministries, 1715 IZARD STREET, OMAHA NE 68102. Views expressed in the *Nebraska Criminal Justice Review* do not necessarily represent the views of Holy Family Ministries, the members of our Advisory Committee, or anyone who contributes financially to the newsletter.

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Previous issues of the NCJR: Publication began in the year 2000. All past issues are online and may be read by going to www.holyfamilyomaha.org. Click on "The Social Hall." Select high-lighted "The Nebraska Criminal Justice Review." Scroll down. Browse issues.

Mission: To improve public understanding of the criminal justice system in Nebraska and the needs of offenders and victims. To improve communication between those who administer and staff the criminal justice system, those who make plans and laws for it, those who are personally affected by it, and the community which pays for it and should be involved with it.

Deadline for Submission of Material: The first day of publication months: March, June, September, and December. **Copying** of all or part of this publication is permitted, with proper credit given.



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