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Task Force on Prison Alternatives

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Final Report

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FOREWARD

On October 22, 1991, the Honorable E. Benjamin Nelson, Governor of Nebraska, appointed a Task Force on Prison Alternatives (Appendix A) to examine the increasing problem of overcrowding in the adult institutions under the jurisdiction of the Nebraska Department of Correctional Services. The Task Force was comprised of thirty-one knowledgeable persons (Appendix B) who were either directly involved in the criminal justice system or had a long history of being supportive of correctional treatment activities.

The charges given to the Task Force were direct and simple. First and foremost was the necessity of designing a strategy to reduce overcrowding. The second level of charges was to "establish goals in areas such as design and operational capacities of adult facilities; potential impacts of overcrowding; levels of literacy and substance abuse; and long term alternatives to incarceration."

Governor Nelson specifically directed that the Task Force was not intended to be a study commission, but should be action oriented. Toward that goal, we have directed our efforts.

ACKNOWLEDGEMENTS

The Task Force recognizes and appreciates the total cooperation and valuable assistance received from the Department of Correctional Services (D.O.C.) and its Director, Mr. Harold W. Clarke, and Assistant Director, Mr. Jack L. Falconer.

A special note of thanks is due Ms. Judy R. Nelson, Administrative Secretary, and Mr. N. Steven King, Planning/Research Manager for the Department of Correctional Services. The untold hours of work each performed in addition to their regular duties will never be calculated, but will always be sincerely appreciated. Without their efforts, the Task Force would not have accomplished its goals.

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INTRODUCTION

The problem of prison overcrowding has been a long and distressing one in the history of this country. There have been repeated periods of rapid prisoner population growth that caused serious overcrowding, but always these lasted only a short while and available space soon caught up with increased numbers. However, that is no longer happening. The nation has seen a rapid increase in prison population that has gone on for over a decade and shows no sign of abating. While construction has hurried unsuccessfully to catch up, we have become painfully aware of the statement frequently made by our predecessors, "You can not build your way out of prison overcrowding." Now, we seek alternatives that will serve the three basic purposes of incarceration:

1. Protection of the public.
2. Preparation of a person for return to society.
3. Punishment of the offender.

The Governor's Task Force on Prison Alternatives divided into four working committees. These committees, whose orientations are spelled out by their titles, are as follows:

o Front-end Committee - Chaired by Ms. Sharon Lindgren

Front-end interventions primarily focus on strategies that reduce the number of individuals admitted to prison and to reduce the length of their sentence. Such intervention strategies include the development of new forms of intermediate punishments, sentencing guidelines, and prison impact statements.

o Institutions Committee - Chaired by Senator Scott Moore

Institution interventions primarily focus on strategies that include capacity expansion. In addition, these strategies included an examination of the existing classification system, adequacy of existing programming, issues to reduce recidivism, use of existing resources within the state, and an examination of disciplinary procedures which could prolong the stay of individuals in the system.

o Back-end Committee - Chaired by Ms. Donna Polk

Back-end interventions include prison population control strategies designed to regulate the time inmates serve and to speed their release from prison. Back-end intervention strategies focus on good time policy changes and various forms of accelerated release and treatment in the community.

o Community Corrections Committee - Chaired by Mr. James D. McFarland

As the name implies, this committee examined the total concept of community-based correctional programs. An explanation of their operation and relative cost in several other states is presented along with consideration of the feasibility of implementing this program activity in Nebraska.

Each of these committees held independent meetings and reported to the Task Force as a whole at its periodic meetings. Each committee has prepared a very thoughtful analysis of their segment of the vexing problem of prison overcrowding and presents recommendations that will assist in a needed solution. The report of each committee is presented here as a separate section.

The activities and meetings of the Task Force were widely publicized, and in order to receive as much public commentary as possible, several public hearings were conducted at strategic locations in the state. These proved to

be educational to the public and the comments received were very beneficial to the Task Force (see Appendix C). In addition, interviews were conducted with inmates in all of the adult institutions. Inmates who did not testify were invited to write the Task Force and offer their suggestions. This input was beneficial in our deliberations since most Task Force members were not thoroughly familiar with institutional operations (see Appendix D).

During the course of our examination of the total problem, it has become quite evident that the state is faced with a serious problem that has no simple, "quick-fix" solution. The state is very fortunate to have adult institutions that are relatively new and modern, and to have them operated by a very competent, professional Department of Correctional Services. However, the severe overcrowding that now exists must be rectified or serious consequences may result. Most of the stop-gap measures that are available for relief have been implemented, and now the crisis is at hand. The reader is cautioned to remember that the problem we now face has been building for several years, and it will take several years to completely correct it. However, the Task Force offers some recommendations that will have an immediate, favorable impact and could forestall the possibility of legal challenge to a constitutional correctional system.

The state of Nebraska is faced with a prison crisis. Overcrowded and underfunded, the system simply cannot cope with ever-increasing prison populations. We are now at 152 percent of design capacity and it is evident that the current rate of incarceration is not going to decline unless procedures are implemented that divert convicted offenders from traditional imprisonment. It is also evident that we cannot build our way out of the prison crisis. However, the Task Force offers alternatives to incarceration that will allow the management and control of prison growth while maintaining

the integrity of the criminal justice system. By carefully developing sensible sentencing policies and a wide range of sanctions, and by implementing an aggressive public education program, we believe that offenders can be held accountable for their crimes and that government can meet its public responsibility.

The problems faced here are not experienced solely in Nebraska. Prison systems in 42 states are under court order for overcrowding or unconstitutional conditions. In many jurisdictions, inmates must be released at the same rate as new prisoners are admitted, or rules exist that prohibit incarcerating certain types of offenders. Because of the conditions of overcrowding and the expense of new prison construction and operation, the challenge is to move corrections beyond traditional walls and fences. The recommendations that are included in this report are designed to allow the state to meet this challenge. In reality, the broad alternatives viable in any jurisdiction relative to prison overcrowding are very few. The choices are: (1) build more prisons, (2) send fewer persons to prison, and (3) release more persons at a faster rate. To some persons in our society, none of these choices are palatable. The cold, hard fact remains: either the state must do something to reduce the overcrowding, or eventually the decision will be made by outside forces.

A program of prison population reduction, if properly done, will not endanger public safety. However, it must be a comprehensive action and cannot be done in piece-meal fashion if it is to be effective. The only approach that is totally comprehensive is a community corrections program. Legislation of this type was introduced in January 1992 by Senator Brad Ashford as Legislative Bill 1191 and reintroduced in January 1993 by Senator Ashford as LB 765 (Appendix E). Additional impetus is given to community corrections programs by the American Bar Association. They have designed a Model Adult

Community Corrections Act (Appendix F) which exemplifies the totality of this concept.

A committee of the Task Force carefully examined the entire community corrections concept and present their recommendation in Section V of this report. The implementation of a program similar to this should be given thoughtful consideration. Over a relatively short period of time, it would reduce the number of persons residing in traditional correctional facilities. It holds the promise, as demonstrated in other states, of reducing recidivism and, when properly operated, provides adequate public protection at a greatly reduced cost. Appendix G contains several news releases and fact sheets prepared by the International Association of Residential and Community Alternatives that very adequately state a positive position for community-based correctional programs. In addition, the American Correctional Association has published an excellent booklet entitled COMMUNITY CORRECTIONS: ACTS FOR STATE AND LOCAL PARTNERSHIPS. The Task Force recommends this be made available to all legislators and community leaders who are interested in the implementation of these programs. The booklet is available from the American Correctional Association, 8025 Laurel Lakes Court, Laurel, Maryland 20707-5075; phone number (301) 206-5059.

The immediate problem of overcrowding can be affected by having the Board of Pardons consider applying the good time reductions provided in LB816 to inmates serving specific terms, thereby reducing the current population. In addition, it would reduce the back-log of cases awaiting parole and the potential case load of parole officers. Another action that may be considered, is the early release of some older prisoners. The nationwide recidivism rate for persons over age 45 is 2.1 percent.

One of the problems that is beginning to surface as a result of prison overcrowding can be called "the trickle-down effect." In some counties, it is becoming a more usual practice for courts to sentence persons convicted of class IV felonies to county jail rather than to the Department of Correctional Services. This is starting to increase jail populations and county expenses, and compounds the problems facing the entire state.

All of the recommendations made by the Task Force merit consideration. Many will require legislative action but none are without precedent. Some may be controversial, but in all instances the Task Force remained cognizant of the purposes of incarceration: (1) Protection of the public, (2) Preparing an offender for release and subsequent lawful behavior, and (3) Punishment.

It is the hope of the Task Force that action will be taken and that we in Nebraska can prevent the "New Society" referred to in an article from the New York Times and reprinted in the Omaha World Herald that we present as Appendix H.

S E C T I O N I

THE PROBLEM

Viable solutions to prison overcrowding should be based on an understanding of the problem. Base line statistics and trends on the nature and extent of prison crowding are needed not only for crafting recommendations and educating the public, but also for evaluating the effectiveness of various solutions and forecasts in the years ahead.

Prison Population Growth in Nebraska

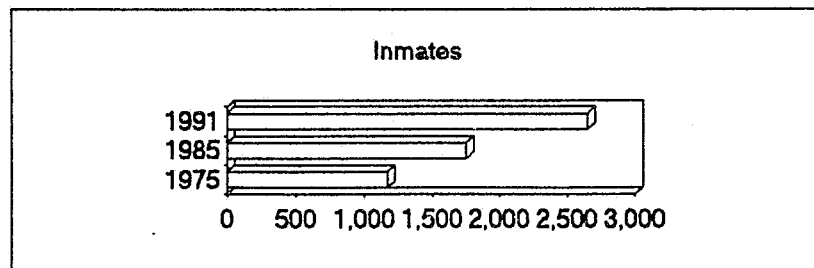
On October 22, 1991, as Nebraska's Governor E. Benjamin Nelson signed the initial letter to members of his newly appointed Task Force on Prison Alternatives, the state's prison system held 2,504 inmates, 147 percent of its designed capacity. One year later, Nebraska's prison system held 2,648 inmates in its five adult institutions and two community centers, 155 percent of its designed capacity. That compares with a prison population of 1,167 in 1975 and 1,750 in 1985, as shown in Figure 1. In other words, the state's prison population increased by 50 percent in the first ten years, and by another 50 percent in the next seven years.

Figure 1

Nebraska Prison Population

1975 - 1992

Year	Inmates
1975	1,167
1985	1,750
1991	2,648



The patterns of growth in Nebraska's prison population are shown in Tables 1 and 2.

Table 1

Total Prison Population - Nebraska vs. United States
(as of January 1 each year)

Year	Nebraska	% Increase	U.S.	% Increase
1982	1,405		354,814	
1983	1,487	5.8	395,802	11.5
1984	1,679	12.9	424,959	5.9
1985	1,733	3.2	446,244	5.0
1986	1,830	5.6	485,321	8.8
1987	1,885	3.0	522,744	7.7
1988	2,029	7.6	554,626	6.1
1989	2,178	7.3	597,603	7.8
1990	2,391	9.8	673,559	12.7
1991	2,382	-0.4	732,236	8.7
1992	2,539	6.6	776,059	6.0
		80.7%		118.7%
		(Increase since 1982)		(Increase since 1982)

Data compiled from Corrections Yearbook, published by Criminal Justice Institute, Inc.; based on January 1 prison population total each year; national data includes federal system.

Table 2

Historical Trends

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
<u>Adult Males</u>										
Inmate Count	1,638	1,691	1,642	1,807	1,890	1,949	2,101	2,222	2,330	2,460
Admissions	771	812	768	891	1,034	1,001	1,083	1,253	1,283	1,206
Length of Stay (mos.)	--	--	--	--	--	--	29	26	25	23
<u>Adult Females</u>										
Inmate Count	77	66	71	76	117	128	129	158	150	179
Admissions	74	68	49	76	103	116	108	153	135	141
Length of Stay (mos.)	--	--	--	--	--	--	16	16	20	16

Notes:

- 1) The Inmate Count is the EOY count at the end of each fiscal year; e.g., the 1992 adult male count was the number of adult male inmates in the system on 6/30/92.
- 2) Admissions are the total admissions for the fiscal year; e.g., the 1992 adult male admissions are the number of adult males admitted to the system between 7/1/91 and 6/30/92.
- 3) Length of Stay is the average number of months of incarceration for all those inmates released during the fiscal year.

Source: CGA Consulting Services, Inc., January 1993

As illustrated in Table 2, the number of adult males in the Nebraska prison system has grown steadily since 1985, averaging slightly more than 100 additional inmates each year. The driving force behind the growth in male inmates appears to have been the growth in admissions which increased steadily from 1985 through 1991, dropping off slightly in 1992. Data on the length of stay indicates a decline for adult males, 1989 through 1992, and a steady length of stay for females with the exception of 1991. The trend for males reflects the growing number of first time offenders, with relatively short sentences, who are currently being sent to the state system. The growth in the female population also appears to be driven by increases in admissions. These trends in the state's prison system are consistent with the trends in law enforcement, as shown in Table 3.

Table 3

Law Enforcement Trends: 1980-1991

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990	1991
<u>Population (000's)</u>	1,564	1,576	1,586	1,597	1,606	1,606	1,598	1,594	1,601	1,611	1,578	1,593
<u>Offenses</u>												
Index Offenses	66,680	64,769	61,737	59,259	55,215	58,325	59,970	63,946	64,636	64,470	66,198	69,583
- Offense Rate	42.64	41.10	38.93	37.11	34.38	36.32	37.53	40.12	40.37	40.02	41.94	43.68
<u>Arrests</u>												
Part I Arrests	12,282	12,190	11,846	11,172	11,653	12,191	12,333	12,892	12,763	16,551	13,781	13,534
- Part I Arrest Rate	7.85	7.73	7.47	7.00	7.26	7.59	7.72	8.09	7.97	10.27	8.73	8.50
Part II Arrests	39,086	38,862	41,405	43,078	43,422	46,294	47,547	49,951	51,628	56,845	63,649	67,516
- Part II Arrest Rate	24.99	24.66	26.11	26.97	27.04	28.83	29.75	31.34	32.25	35.29	40.33	42.38
Total Arrests	51,368	51,052	53,251	54,250	55,075	58,485	59,880	62,843	64,391	73,396	77,430	81,050
- Total Arrest Rate	32.85	32.39	33.58	33.97	34.29	36.42	37.47	39.42	40.22	45.56	49.06	50.88
<u>Staffing</u>												
Sworn Officers	2,451	2,453	2,463	2,485	2,555	2,587	2,552	2,596	2,663	2,722	2,825	2,865
- Officers/1,000 Pop.	1.57	1.56	1.55	1.56	1.59	1.61	1.60	1.63	1.66	1.69	1.79	1.80
Civilian Staff	893	839	943	986	941	983	983	989	1,036	1,094	1,069	1,089
- Civilians/1,000 Pop.	0.57	0.53	0.59	0.62	0.59	0.61	0.62	0.62	0.65	0.68	0.68	0.68
Total Staff	3,344	3,292	3,406	3,471	3,496	3,570	3,535	3,585	3,699	3,816	3,894	3,954
- Total/1,000 Pop.	2.14	2.09	2.15	2.17	2.18	2.22	2.21	2.25	2.31	2.37	2.47	2.48

Source: CGA Consulting Services, Inc., January 1993

As illustrated in Table 3, even though the rate of crime in Nebraska in 1990-91 was virtually the same as it was in 1980, attention is drawn to the fact that there has been a steady growth in crime from the mid-1980's through 1991. Even more dramatic has been the growth in arrests. Unlike reported crimes, arrests did not decline in the first half of the 1980's. They have, however, grown even more aggressively since the mid-decade. In 1985, the ratio of total arrests to reported crime was one-to-one. By 1991, this ratio had increased 116:100 -- there were 116 arrests made for every 100 reported index crimes in the state. Most of the increase in arrest activity in Nebraska during the past decade has been for Part II offenses, which include the less serious, mostly non-violent offenses, including all drug-specific crimes (e.g., possession for distribution or sale). The number of Part II arrests increased over 25 percent between 1980 and 1985. Part II arrests increased again - by almost 50 percent - between 1985 and 1991. This trend in Part II arrests is consistent with the growth in the number of first time offenders with shorter sentences being sent to Nebraska's prisons.

Sentenced Admissions for Drug Offenses in Nebraska's Prisons, Table 4, illustrates the dramatic increase in these offenses.

Table 4

Sentenced Admissions for Drug Offenses*
From FY 85 through FY 93 By Sex

Fiscal Year	Sex	Drug Offense	Number	Percent of Total Admissions
1985	Female	Dealing Drugs	3	0.5
	Male	Delivering Dangerous Substance	17	2.6
		Dealing Drugs	7	1.1
		Possession Controlled Substance	7	1.1
		Possession Marijuana > 1 lb.	<u>7</u>	<u>1.1</u>
	FY 85 Total	41	6.4	
1986	Female	Dealing Drugs	3	0.4
	Male	Delivering Dangerous Substance	26	3.3
		Dealing Drugs	25	3.2
		Possession Controlled Substance	17	2.2
		Possession Marijuana > 1 lb.	<u>12</u>	<u>1.5</u>
	FY 86 Total	83	10.6	
1987	Female	Dealing Drugs	9	0.9
		Possession Controlled Substance	6	0.6
	Male	Delivering Dangerous Substance	62	6.4
		Possession Controlled Substance	47	4.9
		Possession Marijuana > 1 lb.	10	1.0
	Dealing Drugs	<u>2</u>	<u>0.2</u>	
	FY 87 Total	136	14.0	
1988	Female	Possession Controlled Substance	10	1.0
		Dealing Drugs	9	0.9
	Male	Delivering Dangerous Substance	86	8.7
		Possession Controlled Substance	27	2.7
		Possession Marijuana > 1 lb.	6	0.6
	Dealing Drugs	<u>2</u>	<u>0.2</u>	
	FY 88 Total	140	14.1	
1989	Female	Possession Controlled Substance	19	1.8
		Dealing Drugs	12	1.1
		Possession Marijuana > 1 lb.	3	0.3
		Delivering Dangerous Substance	1	0.1
	Male	Delivering Dangerous Substance	106	10.0
		Possession Controlled Substance	75	7.1
		Possession Marijuana > 1 lb.	8	0.8
	Dealing Drugs	<u>2</u>	<u>0.2</u>	
	FY 89 Total	226	21.4	

Table 4
 Sentenced Admissions for Drug Offenses*
 From FY 85 through FY 93 By Sex
 Page Two

Fiscal Year	Sex	Drug Offense	Number	Percent of Total Admissions
1990	Female	Dealing Drugs	7	0.5
		Possession Controlled Substance	20	1.5
		Delivering Dangerous Substance	21	1.6
		Possession Marijuana > 1 lb.	3	0.3
	Male	Dealing Drugs	1	0.1
		Possession Controlled Substance	103	7.9
		Delivering Dangerous Substance	228	17.6
		Possession Marijuana > 1 lb.	<u>7</u>	<u>0.5</u>
	FY 90 Total	390	30.0	
1991	Female	Possession Controlled Substance	10	0.8
		Possession Marijuana > 1 lb.	2	0.1
		Possession Marijuana 1 oz - 1 lb.	2	0.1
		Delivering Dangerous Substance	13	1.0
	Male	Acquire Control Substance By Fraud	1	0.1
		Dealing Drugs	2	0.1
		Possession Controlled Substance	73	5.5
		Possession Marijuana > 1 lb.	11	0.8
		Delivering Dangerous Substance	219	16.4
		Acquire Control Substance By Fraud	<u>2</u>	<u>0.1</u>
	FY 91 Total	335	25.0	
1992	Female	Possession Controlled Substance	6	0.4
		Possession Marijuana > 1 lb.	2	0.2
		Possession Marijuana < 1 oz.	1	0.1
		Delivering Dangerous Substance	27	2.1
		Acquire Control Substance by Fraud	1	0.1
	Male	Dealing Drugs	1	0.1
		Possession Controlled Substance	67	5.2
		Possession Marijuana > 1 lb.	9	0.7
		Delivering Dangerous Substance	195	15.3
		Acquire Control Substance by Fraud	<u>1</u>	<u>0.1</u>
	FY 92 Total	310	24.3	
1993	Female	Possession Controlled Substance	1	0.3
		Possession Marijuana > 1 lb.	0	0.0
		Possession Marijuana < 1 oz.	0	0.0
		Delivering Dangerous Substance	13	3.9
		Acquire Control Substance by Fraud	2	0.6
	Male	Possession Controlled Substance	18	5.5
		Possession Marijuana > 1 lb.	0	0.0
		Possession Marijuana < 1 lb.	0	0.0
		Delivering Dangerous Substance	40	12.1
		Acquire Control Substance by Fraud	<u>1</u>	<u>0.3</u>
	FY 93 Total (through 9/30/92)	75	22.7	

Incarceration rates in Nebraska also increased during this same time period. This followed, although less dramatically, similar trends nation wide. Table 5 illustrates the increase in incarceration rates.

Table 5
Incarceration Rates (per 100,000)

	Nebraska -----	National Average -----
1982	97	154
1983	99	165
1984	91	179
1985	108	188
1986	100	201
1987	116	216
1988	123	224
1989	131	244
1990	136	260
1991	140	293
1992	161	326
	---	---
% Increase (1982 to 1992)	66%	111%

ORIGIN OF THE INMATE POPULATION

In FY 1992, 49 percent of the adult males and 58 percent of adult females were incarcerated from Metro-Omaha, as shown in Table 6, page 15. When combined with Metro-Lincoln, the total population of all adults from the two major urban areas exceeds 62 percent of the entire DCS adult system. This percentage increases to 74 when the southeastern region is included, and to 82 percent when the northeast region is included.

Therefore, while a predominantly rural state, a large majority of the inmates are being committed from the urbanized areas, bringing with them urban, rather than rural attitudes and values. In response to this, all but one of the adult facilities, the Hastings Correctional Center, are within the southeastern region, as shown in Figure 2.

Figure 2

Nebraska Correctional Facilities/Centers/Programs

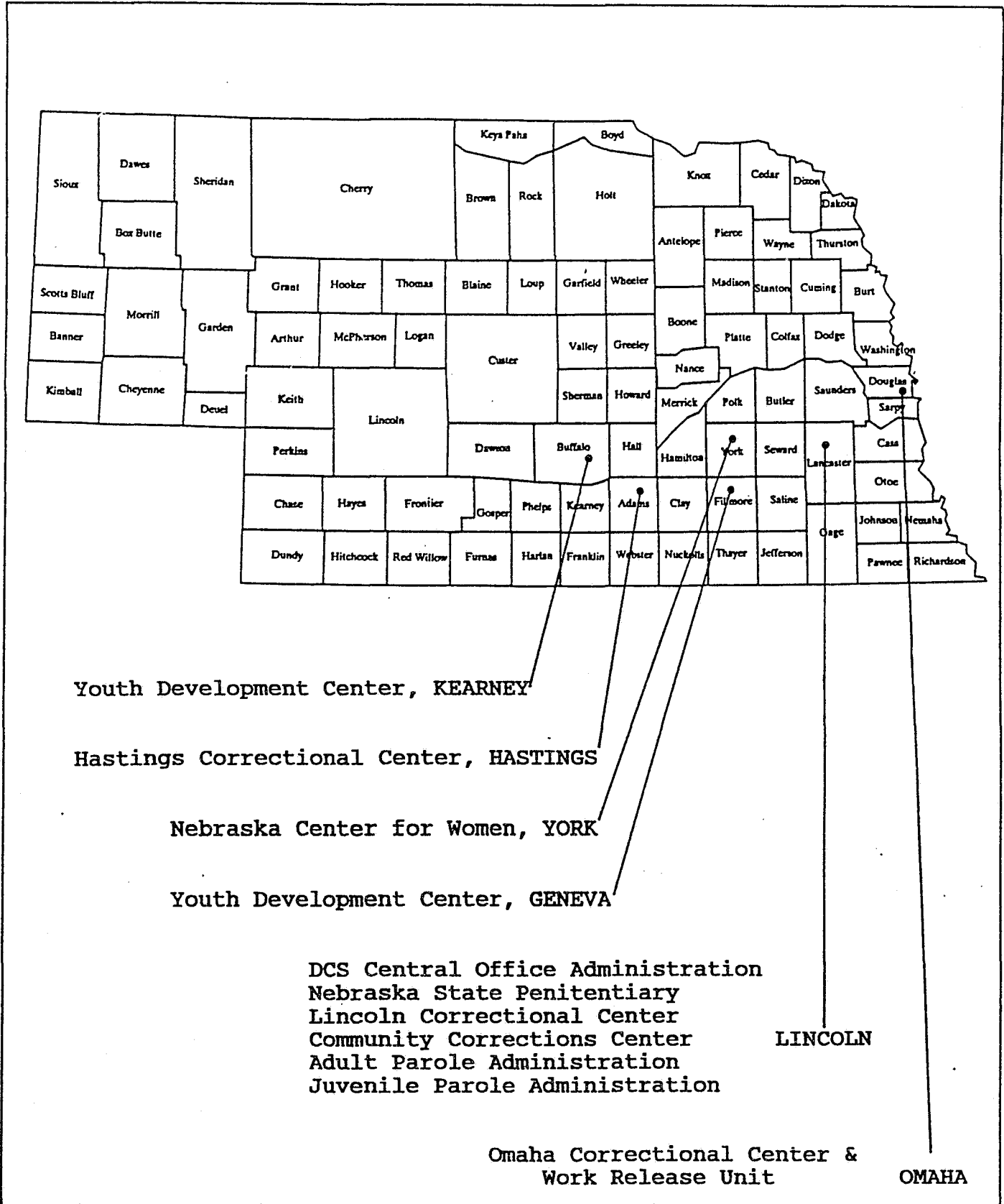


Table 6
 Total Adult Population - Areas of Commitment
 (Incarcerated as of June 1992; does not include Adult Parole)

<u>Males</u>			<u>Females</u>	
(49%)	1,205	Metro-Omaha	(58%)	102
(13%)	314	Metro-Lincoln	(11%)	19
(8%)	184	Southeast	(7%)	13
(12%)	284	South Central	(9%)	16
(5%)	121	Panhandle	(8%)	14
(1%)	24	North Central	(0%)	0
(12%)	306	Northeast	(7%)	12
(1%)	21	Out-of-State	(1%)	1
-	0	Missing Values	-	2
	2,459	VALID DATA		177
	2,459	Total		179
		2,638		

**PROFILE OF MALE AND FEMALE OFFENDERS ADMITTED TO
 NEBRASKA'S PRISONS DURING FISCAL YEAR 1991-1992**

During the 1991-1992 fiscal year, a total of 1,278 adult regular admissions were assigned to the Nebraska Department of Correctional Services (see Tables 7 and 8, pages 19 and 24). A descriptive summary of the characteristics for both male and female inmates is provided. A total of 127 females and 1,151 males were admitted.

MALE OFFENDERS

- o **Admission Type** - Of the 1,151 admissions, 769 (66.8%) were first time incarcerations and 378 (32.8%) were multiple offenders. Four inmate admissions were transfers from other states.
- o **Ethnicity** - Fifty-eight percent were White; 28.8% were Black; 8.6% were Hispanic; and 4.2% were American Indian. One admission listed his race as Other.

- o **Age at Admission** - Approximately 8% were under 20; 25.7% were between 20 and 24; 21.9% were 25 to 29; 20.8% admissions were between 30 and 34; 10% were between 35 and 39; and 13.1% were 40 and over. Thus, three-fourths of the admissions for FY 92 were 34 or younger, with the largest cohort being those in the 20 to 24 age group. The mean age at admission was 29.5 years, while the median, or 50th percentile, was 28 years.
- o **Marital Status** - The categories single and married represented 61.2% and 23% of admissions respectively; 11.5% were divorced. Of the remaining, 2.9% were separated, widowed, or common law married, and 1.5% had missing data for marital status.
- o **Commitment Area** - Over two-fifths (44.5%) were committed from the Metropolitan Omaha area, (Douglas and Sarpy counties), while 13.2% were committed from Lincoln (Lancaster County). Thus, the two major metropolitan areas together supplied 57.7% of the cohort, while 15.7% were committed from Northeast Nebraska, 11.4% from South Central Nebraska, 7.9% from Southeast Nebraska, and 6% were from the Panhandle. A total of 11 commitments were from North Central Nebraska and 4 were out-of-state commitments (1.0% and 0.3%) respectively.
- o **Custody** - On June 30, 1992, the custody level of the FY 92 cohort is as follows: 36.7% were assigned to maximum custody, 19.5% to medium custody, 29.4% to minimum custody, and 14.4% to community custody.

- o **Minimum Sentence** - Almost three-fourths or 72.2% of the FY 92 admissions are serving a minimum sentence of 2 years or less, with approximately two-fifths (38.8%) serving 1 year or less, and 33.4% are serving 1 to 2 years. The remaining 27.8% are serving minimums of more than 2 years. The overall mean minimum sentence was 30.6 months, while the median, or 50th percentile, was 18 months. The mean is based on a 50-year length of stay for those sentenced to life.
- o **Maximum Sentence** - Of the FY 92 admissions, 52.9% are serving a maximum sentence of 3 years or less, 16.4% are serving maximums of 1 year or less, 16.2% are serving maximums of 1 to 2 years, 20.2% are serving maximums of 2 to 3 years, 7.6% are serving between 3 and 4 years, 14.6% between 4 and 5 years, and the remaining 24.9% are serving over 5 years. The mean maximum sentence was 68.1 months, based on a 50-year length of stay for lifers. The median maximum sentence was 36 months.
- o **Violent Crime** - Over one-fourth, or 27.5% of FY 92 admissions were committed for violent crimes and 74.5% were committed for crimes not generally regarded as violent. For purposes of this study, violent crimes include murder, manslaughter, armed robbery or larceny from a person, assault and/or terroristic threats, kidnapping and/or false imprisonment, and forcible sexual assault.

- o **Minimum Sentence** - Almost three-fourths or 72.2% of the FY 92 admissions are serving a minimum sentence of 2 years or less, with approximately two-fifths (38.8%) serving 1 year or less, and 33.4% are serving 1 to 2 years. The remaining 27.8% are serving minimums of more than 2 years. The overall mean minimum sentence was 30.6 months, while the median, or 50th percentile, was 18 months. The mean is based on a 50-year length of stay for those sentenced to life.
- o **Maximum Sentence** - 16.4% are serving maximums of 1 year or less, 16.2% are serving maximums of 1 to 2 years, 20.2% are serving maximums of 2 to 3 years, 7.6% are serving between 3 and 4 years, 14.6% between 4 and 5 years, and the remaining 24.9% are serving over 5 years. As indicated, over one-half of the FY 92 admissions, 52.9% are serving a maximum sentence of 3 years or less. The mean maximum sentence was 68.1 months, based on a 50-year length of stay for lifers. The median maximum sentence was 36 months.
- o **Violent Crime** - 26% of FY 92 admissions were committed for violent crimes and 74% were committed for crimes not generally regarded as violent. For purposes of this study, violent crimes include murder, manslaughter, armed robbery or larceny from a person, assault and/or terroristic threats, kidnapping and/or false imprisonment, and forcible sexual assault.

- o **Crimes Against Persons v. Crimes Against Property** - All crimes of violence cited above are also crimes against the person. Since offense categorizations are identical, 27% of FY 92 admissions were committed for crimes against the person, and 28.1% were committed for crimes against the property. Crimes against property are defined as Arson, Burglary, Breaking and Entering, Grand Larceny, Receiving Stolen Property, Theft, and Petty Larceny. Nearly one-fourth (23.7%) were committed for drug possession or sales, and 19.8% were committed for some other offense type.
- o **Rank Order of Commitments** - The largest proportion of admissions were in the property offense category at 28.1%. Offenses against a person were second at 27.5%. Drug offenses ranked third in admissions at 23.7%. These three crime types account for 79.3% of all FY 92 admissions.
- o **Specific Offenses** - The largest proportion of admissions were for Delivering a Dangerous Substance (16.9%). This is followed by Burglary (12.9%). Theft was third at 11.1%. Driving under a Suspended License was fourth at 6.3%, and 1st Degree Sexual Assault was fifth at 6.2%. These 5 offenses account for 53% of all male admissions in FY 92. The rank ordering of admissions by most serious offense follows.

Table 7

Regular Admissions Fiscal Year 1992

Male Inmates

Offense	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Deliv. Dangerous Subs.	195	16.9	195	16.9
Burglary	149	12.9	344	29.9
Theft	128	11.1	472	41.0
Drive Under Susp. Lic.	72	6.3	544	47.3
1st Deg Sexual Assault	71	6.2	615	53.4
Possess Controlled Subs.	67	5.8	682	59.3
Robbery	66	5.7	748	65.0
Sexual Assault/Child	49	4.3	797	69.2
2nd Deg Forgery	33	2.9	830	72.1
2nd Deg Assault	29	2.5	859	74.6
1st Deg Assault	27	2.3	886	77.0
Criminal Mischief	18	1.6	904	78.5
Escape	16	1.4	920	79.9
Manslaughter	15	1.3	935	81.2
Conspiracy	13	1.1	948	82.4
3rd Deg Aslt PO/DCS	13	1.1	961	83.5
Aid in a Felony	10	0.9	971	84.4
Rec Stolen Property	10	0.9	981	85.2
3rd Deg Assault	10	0.9	991	86.1
Felony Poss Firearm	9	0.8	1000	86.9
Poss Marijuana > 1 lb.	9	0.8	1009	87.7
Terroristic Threat	9	0.8	1018	88.4
Aid and Abet	8	0.7	1026	89.1
Child Abuse	8	0.7	1034	89.8
Bad Check \$300-\$999	7	0.6	1041	90.4
MV Homicide	7	0.6	1048	91.1
1st Deg Murder	7	0.6	1055	91.7
2nd Deg Arson	7	0.6	1062	92.3
1st Deg False Imprisonmt	6	0.5	1068	92.8
2nd Deg Sexual Assault	6	0.5	1074	93.3
Breaking and Entering	5	0.4	1079	93.7
Firearm in Felony	5	0.4	1084	94.2
Assault Confined Person	4	0.3	1088	94.5
Bad Check \$1000+	4	0.3	1092	94.9
Bad Check \$75-\$299	4	0.3	1096	95.2
2nd Deg Assault PO/DCS	4	0.3	1100	95.6
2nd Deg Murder	4	0.3	1104	95.9
Accomp to Felony	3	0.3	1107	96.2
Criminal Non-Support	3	0.3	1110	96.4
Criminal Trespass	3	0.3	1113	96.7
Possess Defaced Firearm	3	0.3	1116	97.0
Resisting Arrest	3	0.3	1119	97.2
1st Deg Arson	3	0.3	1122	97.5
Contrib Delinquent Minor	2	0.2	1124	97.7
Discharge Firearm	2	0.2	1126	97.8

Table 7
 Regular Admissions Fiscal Year 1992
 Male Inmates
 Page Two

Offense	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Forge Instrument 300+	2	0.2	1128	98.0
Incest	2	0.2	1130	98.2
Oper MV and Arrest	2	0.2	1132	98.3
Vio Fin Tran Dev	2	0.2	1134	98.5
Abuse Disabled	1	0.1	1135	98.6
Acquire C/S Fraud	1	0.1	1136	98.7
Dealing Drugs	1	0.1	1137	98.8
DWI - 3rd Offense	1	0.1	1138	98.9
False Reporting	1	0.1	1139	99.0
Forge Ins 76-300	1	0.1	1140	99.0
Forge Inst < 75	1	0.1	1141	99.1
MV Violations	1	0.1	1142	99.2
No Account Check	1	0.1	1143	99.3
Obstruct Police	1	0.1	1144	99.4
Pandering	1	0.1	1145	99.5
Perjury	1	0.1	1146	99.6
Pos Burglary Tools	1	0.1	1147	99.7
Pos Conc Weapon	1	0.1	1148	99.7
Tax Violation	1	0.1	1149	99.8
1st Deg Forgery	1	0.1	1150	99.9
3rd Deg Sexual Assault	1	0.1	1151	100.0

FEMALE OFFENDERS

- o **Admission Type** - Of the 127 female admissions, 74% were first time incarcerations and 25.2% were multiple offenders. One admission was a transfer from another state.
- o **Ethnicity** - Nearly half of the admissions (54.3%) were White, while 33.9% were Black, 6.3% were Native American, and 4.7% were Hispanic. One admission listed her race as Other.
- o **Age at Admission** - Four admissions were under 20, 11.6% were between 20 and 24, 29.9% were 25 to 29, 21.3% were between 30 and 34, 17.3% were between 35 and 39, and 15 admissions were 40 and over. Thus, 71% of the admissions for FY 92 were 34 or younger, with the largest cohort being those in the 25 to 29 age group. The mean age at admission was 30.9 years, while the median, or 50th percentile, was 30 years.
- o **Marital Status** - The categories single and married represented 35.4% and 26.8% of admissions respectively. Twenty-seven of the 127 admissions (21.3%) were divorced. The categories widowed, separated, and common law marriages comprised 1.6%, 7.9% and 7.1%, respectively.
- o **Commitment Area** - Nearly half (54.3%) were committed from the Metropolitan Omaha area (Douglas and Sarpy counties), while 12.6% were committed from Lincoln (Lancaster county). Thus, the two major metropolitan areas together supplied 66.9% of the cohort. Over 9% were committed from the Panhandle, 8.7% from South Central Nebraska, 7.9% from Northeast Nebraska, and 6.3% from Southeast Nebraska. One admission was from out of state.

- o **Custody** - The June 30, 1992 custody level of the FY 92 cohort of admissions was: 25.2% maximum, 24.4% medium, 29.1% minimum, and 21.1% community.
- o **Minimum Sentence** - 79.5% of the FY 92 admissions are serving a minimum sentence of two years or less. 50.4% are serving one year or less, and 29.1% are serving one to two years. The remaining 26 (20.5%) are serving minimums of more than two years. The overall mean minimum sentence was 23 months, while the median, or 50th percentile, was 12 months. Length of stay for lifers was set to 50 years in order to calculate the mean and the median.
- o **Maximum Sentence** - 59.1% of the FY 92 admissions are serving a maximum sentence of three years or less. 26% are serving maximums of one year or less; and 17.3% are serving maximums of 1 to 2 years. 15.7% are serving maximums of 2 to 3 years. 9.4% are serving between 3 and 4 years, and 15.7% are serving between 4 and 5 years. The remaining 15.7% are serving maximums of over 5 years. The mean maximum sentence was 48.9 months. The median, or 50th percentile, was 36 months. Length of stay for lifers was set to 50 years in order to calculate the mean and median.
- o **Violent Crime** - 18.9% of the FY 92 admissions were committed for violent crime, and 81.8% were committed for crimes not generally regarded as violent. For purposes of this study, violent crimes include murder, manslaughter, armed robbery or larceny from a person, assault and/or terroristic threats, kidnapping and/or false imprisonment, and forcible sexual assault.

- o **Crimes Against Persons v. Crimes Against Property** - All crimes of violence cited above are also crimes against the person. Since offense categorizations are identical, the same percentage (18.9%) were committed for crimes against the person. 29.1% inmates were committed for drug crimes, and 22.8% were committed for crimes against property. Crimes against property are defined as Arson, Burglary, Breaking and Entering, Grand Larceny, Receiving Stolen Property, Theft, and Petty Larceny. 18.1% were committed for fraud; and the remaining 11% were committed for some other offense.
- o **Rank Order of Commitments** - The largest proportion of admissions (29.1%) were in the drug offense category. This includes both possession and distribution. Property offenses were second at 22.8%, and offenses against persons was third at 18.9%. Fraud was fourth at 18.1%. Forgery, Possession of a Forged Instrument, Bad Checks, and False Book Entries are all included in the fraud category. These four crime types (drug offenses, property offenses, offenses against persons, and fraud) account for 89% of all FY 92 admissions.
- o **Specific Offenses** - The largest proportion of admissions were for delivering a dangerous substance (21.3%). This is followed by theft (15.7%). Second Degree Forgery was third at 9.4%. The rank ordering of admissions by most serious offense is shown on the next page.

Table 8
Regular Admissions Fiscal Year 1992
Female Inmates

Offense	Frequency	Percent	Cumulative Frequency	Cumulative Percent
Deliver Dangerous Subs	27	21.3	27	21.3
Theft	20	15.7	47	37.0
2nd Deg Forgery	12	9.4	59	46.5
Possess Controlled Subs	6	4.7	65	51.2
Robbery	5	3.9	70	55.1
Bad Check \$300-\$999	4	3.1	74	58.3
Conspiracy	4	3.1	78	61.4
Drive Under Susp Lic	4	3.1	82	64.6
2nd Deg Assault	4	3.1	86	67.7
Child Abuse	3	2.4	89	70.1
Petty Larceny	3	2.4	92	72.4
Abuse Disabled	2	1.6	94	74.0
Aid and Abet	2	1.6	96	75.6
Burglary	2	1.6	98	77.2
Discharge Firearm	2	1.6	100	78.7
Manslaughter	2	1.6	102	80.3
MV Homicide	2	1.6	104	81.9
Possess Marijuana > 1 lb	2	1.6	106	83.5
Vio Fin Tran Dev	2	1.6	108	85.0
1st Deg Assault	2	1.6	110	86.6
1st Deg Forgery	2	1.6	112	88.2
2nd Deg Arson	2	1.6	114	89.8
Acquire C/S Fraud	1	0.8	115	90.6
CL III Misdemeanor	1	0.8	116	91.3
Forge Ins \$76-\$300	1	0.8	117	92.1
Forge Inst 300+	1	0.8	118	92.9
No Account Check	1	0.8	119	93.7
Poss < 1 oz Marijuana	1	0.8	120	94.5
Rec Stolen Property	1	0.8	121	95.3
Terroristic Threat	1	0.8	122	96.1
1st Deg Arson	1	0.8	123	96.9
1st Deg Murder	1	0.8	124	97.6
1st Deg Sexual Assault	1	0.8	125	98.4
3rd Deg Assault PO/DCS	1	0.8	126	99.2
3rd Deg Assault	1	0.8	127	100.0

RECIDIVISM

Another contributor to Nebraska's growing prison population is the rate of recidivism, or repeat offenders. Certainly, the effectiveness of the nations' prison systems are often gauged by the extent to which inmates engage in criminal activity after their release from prison. In Nebraska, recidivism is measured by criminal acts that result in conviction by a court when committed by inmates released from the Nebraska prison system during a specified base time period. In the Nebraska system this time period is three years from the inmate's release date. The recidivism rate is computed by dividing the number of convictions for new crimes by the number of releases. This rate represents the proportion of inmates who left the system during the specified time period who were re-incarcerated because of convictions for a new offense.

As illustrated in Table 9, the recidivism rate for Nebraska's prisons has been declining in recent years.

Table 9

Recidivism Rate for Nebraska's Prison System

Category	RECIDIVISM DATA*																	
	NUMBER RELEASED						NUMBER RECIDIVIST						RECIDIVIST RATE					
	FY 83-84	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 83-84	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89	FY 83-84	FY 84-85	FY 85-86	FY 86-87	FY 87-88	FY 88-89
Females																		
Paroles	34	24	22	31	70	58	2	5	1	7	11	5	11.8	20.8	4.5	22.6	15.7	8.6
Institut.																		
Discharges	22	26	28	27	26	29	5	5	7	9	3	3	22.7	19.2	25.0	33.3	11.5	10.3
Total	56	50	50	58	96	87	7	10	8	16	14	8	16.1	20.0	16.0	27.6	14.6	9.2
Males																		
Paroles	307	268	277	364	486	412	52	61	59	85	105	80	16.9	22.8	21.3	23.4	21.6	19.4
Institut.																		
Discharges	352	372	357	459	326	463	82	92	90	106	80	108	23.3	24.7	25.2	23.1	24.5	23.3
Total	659	640	634	823	812	875	134	153	149	191	185	188	20.3	23.9	23.5	23.2	22.8	21.5
Combined Male & Female																		
Paroles	341	292	299	395	556	470	56	66	60	92	116	85	16.4	22.6	20.1	23.3	20.9	18.1
Institut.																		
Discharges	374	398	385	486	352	492	87	97	97	115	83	111	23.3	24.4	25.2	23.7	23.6	22.6
Total	715	690	684	881	908	962	141	163	157	207	199	196	20.0	23.6	23.0	23.5	21.9	20.4

*Recidivism consists of new crime commitments only

STATE OF CROWDING

Only ten other states have an inmate population lower than the Nebraska Department of Correctional Services. Although small when compared to other state systems, Nebraska is operating one of the most crowded adult systems in the United States. Only California, Massachusetts, Maryland, Ohio and Pennsylvania report a higher degree of overcrowding. As can be seen in Table 10, the adult institutions are currently operating at approximately 152 percent of design capacity.

Table 10

February 23, 1993 Inmate Count for the Nebraska
Department of Correctional Services Adult Facilities

DESIGN CAPACITY	ADULT INSTITUTIONS	02/26/91	02/25/92	02/23/93	% of Design Capacity		
338	Nebraska State Penitentiary	546	561	557	164.79		
150 (488)	Medium Security Unit	186	207	220	(777)	(159.22)	
308	Lincoln Correctional Center	447	538	549	178.25		
160 (468)	LCC/Evaluation Unit	357	321	365	(914)	(195.30)	
240	Omaha Correctional Center	366	389	391	162.92		
152	Hastings Correctional Center	148	151	134	88.16		
139	Nebraska Center for Women	116	118	126	90.65		
	INSTITUTIONAL TOTAL	2,166	2,285	2,342			
	COMMUNITY CORRECTIONS CENTERS						
		*ND	**ER	***HR			
	CCC-L/M	84	-	38	138	131	122
129	CCC-L/M	26	-	3	27	26	29
	CCC/HRU - Men	33	1	52	98	93	86
90	CCC/HRU - Women	7	-	7	8	9	14
		150	1	100			
	COMMUNITY CORRECTIONS TOTAL	271	259	251			
1,706	INCARCERATED TOTAL	2,437	2,544	2,593	151.99		

When the community corrections centers are included, the design capacity of adult institutions within the Nebraska DCS system is 1,706 bed spaces. The February 23, 1993 inmate count was 2,593 adult offenders incarcerated in these facilities. By far, the single-most crowded institution was the Lincoln Correctional Center/Evaluation Unit, currently being occupied at 228 percent of design capacity. Only two facilities, the Hastings Correctional Center (HCC) and the Nebraska Center for Women (NCW), are now operated at slightly less than 100 percent of design capacity.

INMATE POPULATION FORECASTS

1992 Nebraska Department of Correctional Services Forecasts:

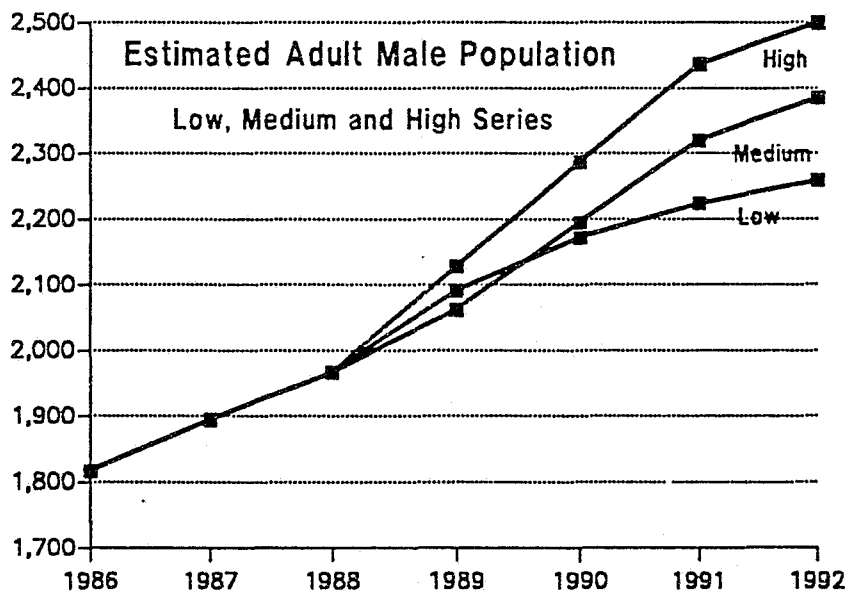
The estimates presented are based on computer projections provided by the Department of Correctional Services. The predictions were produced from a software package called IMPACT distributed by the Center for Decision Support, located in Washington, D.C. Predictions were made to the year 2002.

The major input variables which may be altered for analysis are anticipated new admissions and average length of stay. Population projections generated in June of 1988 computed the estimates based on the following variable configurations:

- o Admission growth based on the pattern of the previous five years;
- o Length of stay was held constant at that current year's value.

Based on those variables, the 1988 projections estimated a low, medium, and high predictive series for adult males (Figure 3). The June 30, 1992 male population of 2,455 indicates the accuracy of the 1988 forecast.

Figure 3



The current population forecast (June 1992) generated the baseline estimates of future inmate population by configuring the two variables in the following manner:

- o Admission growth based on a pattern of the last five years;
- o Length of stay was set at an average of the last five years.

Table 11

1992 Nebraska Prison Population Forecast

Year	Adult Males LOS = 26 Mo.	Adult Females LOS = 16 mo.
----	-----	-----
1992	2,459	179
1993	2,549	191
1994	2,657	207
1995	2,770	223
1996	2,881	238
1997	2,988	253
1998	3,091	267
1999	3,190	281
2000	3,285	294
2001	3,378	308
2002	3,470	321

*Length of Stay

Table 12

Historical Inmate Counts

Year	Adult Males	Adult Females
----	-----	-----
1982	1,529	58
1983	1,638	77
1984	1,691	66
1985	1,642	71
1986	1,746	65
1987	1,872	88
1988	1,906	89
1989	2,012	100
1990	2,208	114
1991	2,313	114
1992	2,459	179

*Length of Stay

PRISON COSTS

Spending on prisons is one of the fastest growing components of state budgets in Nebraska and across the country. Tougher crime laws and rigid sentencing requirements are exacting a continuing price. Criminal justice systems, including Nebraska's, have become difficult budget items. Funding for Nebraska's correctional institutions, centers, and programs currently equals 4.0 percent of the state's general fund budget.

In Fiscal Year 1968-1969, the Department of Correctional Services received \$3.75 million. Ten years later, in Fiscal Year 1978-1979, general fund support had increased by 451.9 percent, to a total of \$16.9 million. In Fiscal Year 1988-1989, general fund support to the Department of Correctional Services totaled \$40.1 million, an increase of 236.8 percent over the Fiscal Year 1978-1979. Currently, the department's general fund for Fiscal Year 1993-1994 is estimated to be \$61.2 million. Over the previous two decades, general fund support for the Department of Correctional Services has increased significantly. Nearly 89 percent of the department's general fund dollars goes toward operating adult institutions and adult parole (the remainder is for the juvenile centers and juvenile parole).

The average cost to maintain an adult inmate in a Nebraska prison for one year is currently \$18,345. As illustrated in Table 13, costs range by facility, primarily based on security level, from \$11,470 for a community correction facility in Lincoln, \$16,098 for a minimum security male facility in Omaha, to \$19,916 for the maximum security unit in Lincoln. As noted, the per-inmate cost in Nebraska has decreased since Fiscal Year 1988-1989. This decrease, as well as increases in the department's budget, are attributed to increases in the state's prison population.

Table 13

Per Capita Inmate/Student Costs FY 88-92

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES PER CAPITA INMATE/STUDENT COSTS - FACILITIES & PROGRAMS FY88 - FY92												
Facility/Program	Average Daily Population				Per Capita Yearly Cost				Per Capita Daily Cost			
	88-89	89-90	90-91	91-92	88-89	89-90	90-91	91-92	88-89	89-90	90-91	91-92
ADULT												
Nebraska State Penitentiary	653	711	743	768	\$18,946	\$18,985	\$20,803	\$19,916	\$51.91	\$52.01	\$58.99	\$54.56
Hastings Correctional Center	137	147	146	150	\$12,820	\$13,287	\$15,834	\$16,500	\$35.12	\$36.40	\$43.38	\$45.21
Lincoln Correctional Center	696	759	791	828	\$15,679	\$16,307	\$17,783	\$17,459	\$42.96	\$44.68	\$48.72	\$47.83
Omaha Correctional Center	299	349	366	400	\$15,693	\$15,399	\$16,983	\$16,098	\$42.99	\$42.19	\$46.53	\$44.10
OCC - Work Release Unit	93	100	108	110	\$3,981	\$9,190	\$7,839	\$8,056	\$24.61	\$25.18	\$21.48	\$22.07
Nebraska Center for Women	100	114	114	124	\$21,368	\$22,533	\$25,145	\$24,031	\$58.54	\$61.73	\$68.89	\$65.84
Community Corrections - Lincoln	132	144	160	158	\$9,950	\$10,492	\$10,924	\$11,470	\$27.26	\$28.75	\$29.93	\$31.42
Adult Parole Administration	431	475	567	635	\$2,022	\$1,993	\$1,829	\$1,889	\$5.54	\$5.46	\$5.01	\$5.18
JUVENILE												
Youth Development Center - Kearney	169	160	164	169	\$21,375	\$25,530	\$27,477	\$27,609	\$58.56	\$69.95	\$75.28	\$75.64
Youth Development Center - Geneva	68	73	71	71	\$29,921	\$30,910	\$34,276	\$35,135	\$81.98	\$84.68	\$93.91	\$96.26
Juvenile Parole Administration	219	242	263	284	\$2,854	\$2,649	\$2,826	\$2,675	\$7.82	\$7.26	\$7.74	\$7.33

Operating expenses are just one of the costs of incarceration. Construction represents another significant expense. Construction costs per security level, according to data from the Corrections Yearbook, 1992, published by Criminal Justice Institute, Inc., is as follows:

Security Level	Construction Cost per Bed
-----	-----
Maximum	\$75,010
Medium	\$56,435
Minimum	\$35,889

Also significant are the criminal justice costs of getting an offender to prison. Specific data on such costs is not available for Nebraska, although the Illinois Criminal Justice Information Authority estimates that each arrest in Illinois costs \$2,711 and that detaining (pretrial), trying, and convicting an offender who is sentenced to prison costs an additional \$7,589. If these costs are comparable in Nebraska, then combining these costs with the cost of incarceration, it is estimated that every offender leaving prison in Nebraska (assuming an average length of stay of two years) has cost approximately

\$47,990. Since many of these offenders have prior criminal histories for which significant resources were already expended, the true cost of each incarceration is much higher.

SUMMARY OF PREVIOUS EFFORTS ADDRESSING OVERCROWDING IN NEBRASKA

Prison overcrowding has been an urgent, complex public safety issue facing the state of Nebraska since the early 1980's. In the past six years, several previous efforts have been made by both the executive and legislative branches to address the problem. The following is a brief summary of those efforts.

1. Touche Ross - Analysis of Major Strategic Issues Facing the Department of Corrections (February 1987). Governor Kay Orr brought the consulting firm of Touche Ross & Company to Nebraska to do an analysis of major issues in state government. Their analysis of NDCS included recommendations that the state respond to the overcrowding situation in the adult correctional facilities.
2. Nebraska Criminal Justice Capacity Project (1987-1989). Sponsored by the Nebraska Legislature, and funded by the U.S. Bureau of Justice Assistance, the Nebraska Criminal Justice Capacity Project represented an attempt to examine the plight of Nebraska's overcrowded prisons, review available data, and to convert criminal justice statistics into information which could support good decision-making. The project was in operation from September 1987 until mid-1989 and produced a series of articles on relevant topics related to overcrowding of Nebraska's criminal justice system, and sponsored a two-day conference concerning prison overcrowding.

Findings and recommendations from the project included:

From the first issue, volume one of the Nebraska Criminal Justice Capacity Project (September 1988), titled Nebraska's Criminal Justice Capacity Project by Ron Bowmaster...

Nebraska is not immune to the capacity crises. The state correctional population has doubled in the past several years. For the first time the capacity of the women's facility has been exceeded. While the number of inmates in our institutions represent only one-tenth of one percent of the state population, the funding for these institutions equals 4.2% of the state general fund budget. Despite recent construction, the state's correctional system is operating at 134% of capacity. Compounding the capacity problem is the fact that the average length of stay is increasing. Even if annual rates of incarceration and release were to remain unchanged, the system would continue to grow beyond capacity. Nebraska's rate of admission is at the highest level in ten years.

From the second issue, volume 1, of the Nebraska Criminal Justice Capacity Project (October 1988), titled Causes of Prison Overcrowding, by Vincent J. Webb and Dennis E. Hoffman...

By any reasonable standard, Nebraska's prisons are overcrowded. All of the prisons hold more prisoners than they were designed to confine. None of the prisons meets the American Correctional Association's standard of 60 square feet of living space per inmate. These facts alone do not prove that prison overcrowding is a serious problem. The magnitude of the problem of prison overcrowding cannot be judged by facts about prison capacity or spatial density. What is important is that the sheer number of prisoners inside Nebraska's prisons is placing severe pressure on the staff, support services, and financial resources of the Department of Correctional Services. Additionally, current crowding levels in the state's prisons are heightening the chances for inmate violence and increasing the likelihood of a court order.

This issue goes on to state:

Crime levels in Nebraska have declined and achieved stability over the past few years, while incarceration rates have increased during the same time period.

Much of the increase in Nebraska's prison population can be traced to criminal justice policy. Six policy-related factors were identified as being responsible for the growth in Nebraska's prison population:

- o Increasing Admissions. Nebraska experienced a 40 percent increase in the number of persons given prison sentences of one or more years during the period 1980-86, a period when crime rates in Nebraska were on the decline.
- o Increased Probability of Imprisonment. The ratio of prison commitments to reported crimes in Nebraska increased from 35 state prison admissions per 1,000 serious offenses in 1980 to 39 admissions per 1,000 serious offenses in 1985.
- o Increased Use of Prison for Certain Offenses. Commitments for drug offenses, first degree sexual assault, and second degree forgery have increased significantly since 1978. For the period 1978-87, commitments for drug offenses as a percentage of all prison commitments increased from 5.8 percent to 9.3 percent; commitments for first degree sexual assaults increased from 3.0 percent to 14.6 percent; and commitments for second degree forgery increased from 0.8 percent to 5.5 percent.
- o Longer Prison Stays. From 1982 to 1986, the median length of stay in Nebraska's prisons increased from 13 months to 20 months.
- o Declining Parole Rates. Between 1969 and 1983, the parole rate (i.e., the percentage of hearings that result in paroles), was never lower than 70 percent. For the three year period 1983-1986, the parole rate declined to an average of just over 61 percent.
- o Policymaker's Views of Public Opinion. In a 1987 study, UNO researchers asked Nebraska correctional policymakers to identify the causes of prison overcrowding in the state. "Public Pressure for Imprisonment" was the most frequently cited cause.

The article stated that more offenders were being sentenced to prison, sometimes for offenses that would not have resulted in prison sentences prior to that time. The article went on to conclude that "Prison overcrowding can be reduced by modifying existing policies and by using innovative front-end, back-end, and capacity expansion strategies." The author noted that what Nebraska needed was a comprehensive sanctioning policy covering the full array of criminal sanctions, not just prison and probation.

Finally, it was the legislatively sponsored Nebraska Criminal Justice Forum, (November 15-16, 1988), as part of the Capacity Project, that Allen Breed, then Chairman of the Board of the National Council of Crime and Delinquency (NCCD), noted that Nebraska had a "crisis lurking," and argued that the state must act to address the seriousness of the problem. He recommended that the state seek collective answers to the prison overcrowding dilemma.

3. Nebraska's Prison Capacity Crises, prepared by the Legislative Research Division, then Deputy Director Ron Bowmaster, at the request of Senator Jerry Chizek, then Chairman of the Legislature's Judiciary Committee (April 1989).

The report notes:

Nebraska's correctional system is not under court order. There is, however, something to be feared from federal supervision, and hence something to be avoided. While there is no overcrowding threshold which might cause a court to act, Nebraska's system is operating at 134 percent of capacity, and shows no sign of relaxation. Certainly the court would look askance at a prison which operates at 150 percent of its capacity, but might not determine a violation of the Eighth Amendment exists. Still, the practical effect of such an overburdened system should raise concerns of possible constitutional violations and unsafe conditions for inmates and officers.

The report presented the following figures (Figures 4 and 5) illustrating: first, the growth in prison, parole, and incarceration rates; and second, the growth in general fund support for the Department of Correctional Services since 1968-1969.

Figure 4

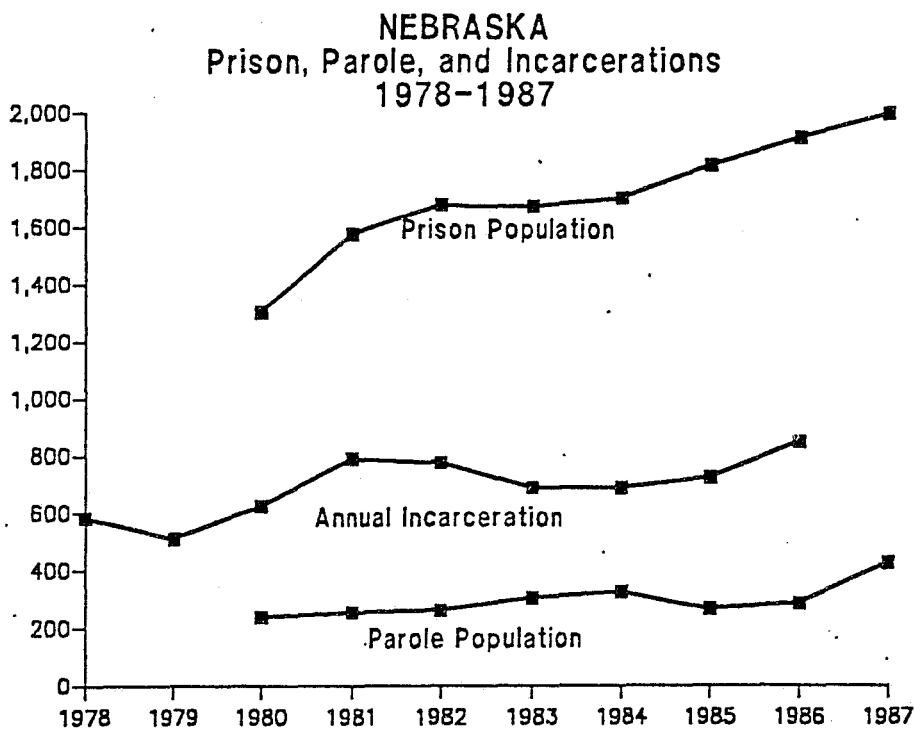
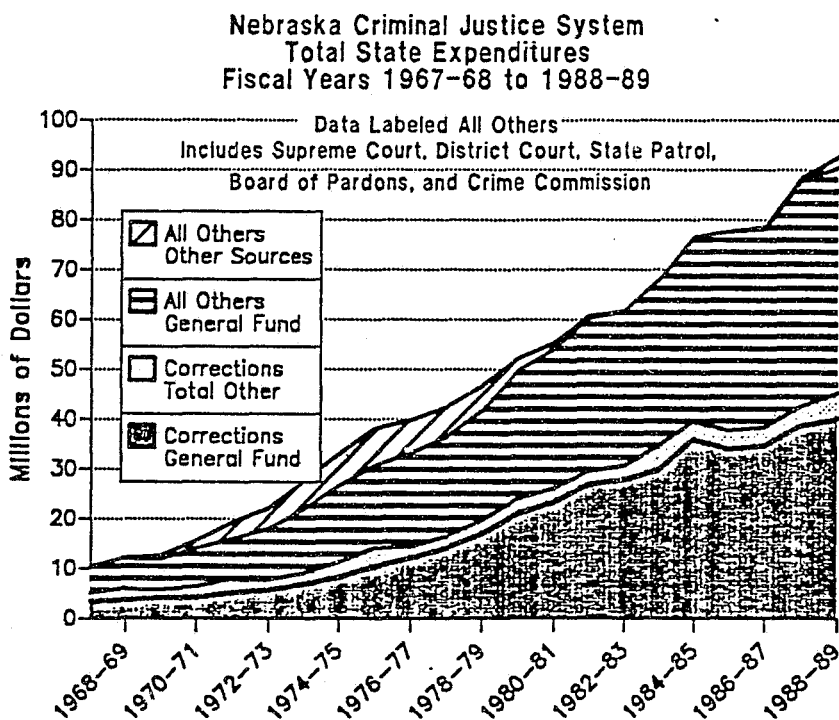


Figure 5



The final recommendations of the Legislative Research Division report to the Judiciary Committee included the following:

- o Opportunity should be built into the system...

Several front end strategies which are being tested in the state need to be expanded. Such programs include those which are designed to keep inmates out of the prison system, or those which reduce the length of sentence. The state could provide for increased use and coordination of community corrections programs to keep offenders in the community or ease them back into society.

- o Recommend allowing judges additional sentencing latitude for each individual case.
- o State policy should provide corrections officials with sufficient discretion to adequately and effectively manage inmate population.

Noting that the state in the spring of 1989 was at 134 percent of design capacity, the report declared:

"Unless the legislature reacts to the problem of prison overcrowding, there can be no doubt that the capacity of the state prison system will reach the point where it will operate in an unsafe manner."

4. Legislative Resolution 222 (LR222) - Report to the Legislature by the Select Committee on Prison Overcrowding, (January 1990). The Appropriations Committee, Ninety-first Legislature of Nebraska, 1989, in response to concerns expressed by legislators and then Governor Kay Orr, during a debate on proposed prison construction, introduced LR222. Although the prison construction package totaling \$6.6 million was approved by the Legislature, the Governor vetoed all but a \$450,000 40-bed addition to the Nebraska Center for Women. The purpose of LR222 was to "examine prison population issues and any potential alternatives to alleviate prison overcrowding." The report offered specific recommendations to reduce prison population. The report noted:

The state of Nebraska, though fortunate not to be under a federal mandate to relieve overcrowded conditions within its prison system, will be facing a series of lawsuits in 1990 directly relating to overcrowding. The most recent count of incarcerated adults in Nebraska stands at 2,344 (DCS December 5, 1989). That number pushes the system to over 140 percent of design capacity for the first time since the 1970's and makes the state a prime target for federal intervention.

Further into the opening remarks, the LR222 report notes population projections and increased use of mandatory minimum sentences for drugs, and states:

With conditions of confinement litigation on the increase, and an ever-increasing population, action must be taken to alleviate the situation. There are several reasons for such a position. First and foremost, public policy mandates such a response as appropriate in order to correct the problem. Secondly, further delay will almost certainly result in federal court intervention, which in turn will eliminate the state's ability to solve its own problems without outside interference in system control and design. Lastly, overcrowded conditions have led to a 46 percent increase in prisoner misconduct and incidents of violence. This is a trend that must be reversed.

Recommendations within the report were made with the assumption that certain policy goals were in place. The committee stated that the policy goals were based on the premise that the state's resources were limited and that the percentage of those resources which were to be utilized for criminal justice programs were to be allocated as efficiently as possible. The LR222 policy goals were:

- o protection of the public from violent offenders
- o reparation and restitution for victims of crime
- o rehabilitation of offenders and reduction of recidivism, including the expanded use of substance abuse and mental health programs
- o the maintenance of ties that offenders have to society, including jobs and family relations, where this does not present a danger to the public
- o attainment of 125 percent of design capacity by 1991 as a short-term goal to relieve overcrowding.

Specific recommendations of the LR222 committee to alleviate overcrowding included the following:

- o Increased staffing and streamlining of the parole process, including the implementation of Mutual Agreement Programming and Intensive Parole Supervision programs; thus increasing the likelihood that eligible inmates will be paroled sooner. No action was taken on this recommendation.
- o Adjustment of staffing levels and program availability at Department of Correctional Services facilities to reflect then current population levels and characteristics, including adjustments to security staffing; and medical, mental health, and substance abuse staffing and programs; necessary to relieve some of the stress within the system which overcrowding creates for staff and inmates. The Department of Correctional Services received most of the recommended security and medical staff.
- o Implementation of a state-wide intensive supervision probation program to divert offenders who would normally have been incarcerated but for the type of program proposed. The committee stressed what such legislation should contain: 1) judicial guidelines relating to offender eligibility and, 2) intent language stipulating that the program be used primarily to divert offenders from incarceration in order to avoid any further widening of the regular probation net. Intensive supervision probation (400 slots) was ultimately implemented.

- o Recommended that good time laws be amended to provide consistency in time earned toward parole eligibility and mandatory release and to decrease average length of stay; included the addition of parole officers. LB816 concerning good time calculations went into effect in July 1992.
- o Recommended construction of new housing units to add 510 spaces to the adult prison system; recognized immediate critical need within the system for additional bed space if population limitations were not imposed. The Department of Correctional Services has a total of 307 new beds coming on-line by mid-1993.
- o Recommended that the Legislature pursue adoption of a statute which requires that any bills which affect the correctional system must be accompanied by an appropriations bill. Such a requirement was intended to bring the issue of prison overcrowding to the forefront whenever an increase in criminal penalties was suggested, and it was intended to force decision-makers to consider the effect of a bill upon the criminal justice system as a whole. To date no such legislation has passed, although it has been introduced in previous legislative sessions, and is under consideration in the current session.
- o Recommended the formation of a Task Force on Prison Overcrowding in recognition of the long-range nature of many of the recommendations the LR222 committee made which it judged necessary to effectuate a permanent solution to the overcrowding situation. The proposed task force was intended to oversee the implementation of alternatives suggested in LR222, and recommend and set in motion additional long-term strategies not addressed by the LR222 committee. The present Task Force represents this recommendation.

SECTION II

This chapter was prepared by the "Front-end Committee" whose primary focus was on strategies that could reduce the number of persons admitted to the traditional prison setting or that could reduce the length of sentences for selected offenders.

This committee was composed of:

Sharon Lindgren, Chair
Brent Blackwood
William P. Blue
Senator Ernie Chambers
Judy Dresser
Julie Horney
John Icenogle
Dennis Keefe
Senator Douglas A. Kristensen
Carol Schoenleber
Terry Thompson
George Watson

As demonstrated in the previous section, the cause of the existing problem is the growing number of persons incarcerated in Nebraska. However, before examining the alternatives to incarceration that exist and their feasibility, it is necessary to examine why the prison population continues to increase.

In the previously cited report issued by the Nebraska Criminal Justice Capacity Project in October 1988, the causes of prison overcrowding in Nebraska were analyzed. In that report, five factors normally viewed as resulting in increases in prison populations were discussed. These were demographic shifts, increased crime rates, economic conditions, criminal justice policy, and public opinion. The report concluded:

. . . In Nebraska, the number of males in the high risk age group is projected to remain stable through the next decade. Therefore, demographic structure should not account for any sizeable increases in Nebraska's prison population.

Crime levels in Nebraska have declined and achieved stability over the past few years, while incarceration rates have increased during the same time period. As for economic conditions in Nebraska, unemployment in the state has declined at the same time that prison populations have increased.

Much of the increase in Nebraska's prison population can be traced to criminal justice policy.

Changes in criminal justice policy cited in the report included increasing admissions, increased probability of imprisonment, increased use of prison for certain offenses, longer prison stays, and declining parole rates.

One important example of such policy changes is the impact of the "war on drugs." Table 4, pages 11 and 12, shows the number of admissions to the Nebraska Department of Correctional Services from 1980 through 1993, and clearly indicates how much of the growth has been due to drug-related offenses. Department of Correctional Services statistics reflect that over 30 percent of new admissions to prison facilities are for drug offenses.

The report concluded with this statement: "Correctional policies in Nebraska that increase the use of incarceration reflect the view that incarceration is what the public wants." However, in rejecting that position, the report stated:

If the major justification for these criminal justice policies is that they reflect public opinion, then these policies may have a shaky foundation. Surveys of citizens in South Carolina, Michigan, and other states have found that the public is generally supportive of community alternatives to prison for non-violent offenders. Although no surveys have been conducted of Nebraskans' attitudes about the proper sentences for criminals, there is no reason to think that Nebraskans are tougher on criminals than citizens from the other states where surveys have been carried out.

These comments are applicable to the conditions that continue to exist within the criminal justice system, specifically within the correctional system, today.

Crime is sensationalized by the media, and used by politicians to further their careers. "Get tough" policies usually overstate the problems and ignore the facts. Changes in legislation are made with no consideration for the associated costs. Increased funding is provided for law enforcement and prosecution without any consideration of the effects upon other portions of the criminal justice system. Judges respond to the real or perceived pressure to impose more and longer sentences. And public opinion, in response to all of these factors, comes to reflect the false impression that unless more persons are incarcerated for longer periods of time, all citizens are at risk.

The cause of the problems being experienced by the Department of Correctional Services is not primarily caused by an actual increase in the crime or violence rate, but by misperceptions and a lack of facts. What is apparent is that policy changes have disproportionately increased the number of persons incarcerated when compared to the number of crimes committed.

RECOMMENDATIONS

The committee considered programs that could be implemented to reduce the number of persons in the custody of the Nebraska Department of Correctional Services, without increasing the risk to the general public. Although the main emphasis was placed on ways to reduce the number of persons committed to the department's custody, the committee considered changes that could be made in the assignment of inmates following their initial evaluation by the department. The committee also considered changes that could be made to overcome the perception that what the public wants is more incarceration, no matter what it costs.

Sadly, in most instances, this is not the first time that similar recommendations have been made. In 1988, a number of front-end alternatives were suggested and considered, but not implemented. Likewise, subsequent studies have reached similar conclusions to those set forth here, but no action has been taken.

In questioning whether the committee's work would actually be considered and implemented, it was suggested by some members of the committee that there may be only one way to achieve real change that would force policy makers to deal with the very real and substantial problems that exist within Nebraska's correctional system. That would occur if the state were to lose a major civil rights case challenging prison conditions and the federal courts would order those with the authority to implement the changes to do so. Hopefully, that will not be necessary.

The committee's recommendations are:

1. Enact Legislation Requiring System Impact Studies and Appropriations for All Legislation Having an Impact on the Criminal Justice System.

This recommendation is based on, but expands, the proposals contained in LB206 that was considered but not enacted by the Nebraska Legislature during the 1992 session.

Under this proposal, legislation would be enacted requiring that the Legislature conduct a "system impact study" and appropriate sufficient funds to offset the impact whenever legislation is enacted that would increase penalties, create new crimes, or increase funding to one portion of the criminal justice system. Until the required funding is appropriated, the changes would not go into effect.

The "system impact study" would include the effect upon state, county, and municipal governments caused by the changes being made in the criminal justice system.

At the current time, changes are made in sentences or crimes, but no consideration is given to whether this will increase government costs or prison populations. It is the committee's belief that a statute requiring that costs be calculated, and that appropriations be made, would inform members of the Legislature and the public of the costs associated with proposed changes.

Further, it would require that the criminal justice system be examined as a whole. Harsher criminal sanctions cause increases in the number of inmates incarcerated and the length of their incarceration. Increased funding for law enforcement and prosecution results in more convictions and increased prison populations. It also impacts the costs incurred by counties to provide representation for those charged with crimes and strains judicial resources. The enactment of legislation creating new crimes increases prosecution, defense, judicial, and correctional costs.

According to information provided to the committee, similar legislation has been enacted in other states, and has had a measurable impact, not only on prison populations, but on other aspects of the criminal justice system. Further, it should lead to the consideration and adoption of sanctions that are as effective, but less expensive, than incarceration in the traditional prison facilities operated by the Department of Correctional Services.

2. Increase Funding and Resources Available to the State Probation System.

The State Probation System is underfunded and understaffed. Probation officers are underpaid and required to handle caseloads that are unmanageable. Limitations on the number of persons who can be sentenced to intensive probation severely and unnecessarily restricts the use of that program. As a result of these conditions, probation is eliminated in many cases as a viable alternative to incarceration.

Upgrading the regular probation system would allow more persons to be placed in that program, thereby establishing space in intensive probation. Furthermore, by upgrading the intensive probation system and substantially increasing the number of persons who can be sentenced to intensive probation, people will be diverted from facilities operated by the Department of Correctional Services.

Contrary to popular opinion, sentencing a person to probation is not being soft on crime. Probation is not an easy sentence as long as the state provides sufficient resources to insure that the necessary supervision is provided.

Therefore, the committee supports the Probation System's current request for an additional eighteen (18) regular probation officers and ten (10) intensive probation officers. It also supports the request to upgrade probation officers' salaries.

The committee recognizes that Nebraska is facing budget shortfalls and cuts in many programs. However, it would be shortsighted not to provide the Probation Department with the staff and funding requested. By taking this action now, the amount that the state will soon have to spend to build prisons will be substantially reduced.

The efforts to upgrade the probation system should not stop with the approval of the Probation Department's current request. A plan should be implemented and funded to increase the number of regular and intensive probation officers over the coming years. It is recommended that the number of intensive probation officer positions authorized and funded be increased so that at least 800 persons can be assigned to intensive probation by the year 2000, and that comparable increases be made in the number of regular probation officers.

In order to insure that there are sufficient probation officers, and that their workloads are manageable, a maximum caseload standard for each regular and intensive probation officer should be enacted and enforced. This standard should be based on local experience and national standards. A maximum of fifty (50) cases for each regular probation officer was discussed by the committee, but it was determined that the ultimate decision should be left to persons more experienced in probation.

Further, a probation officer's ability to provide supervision and the determination of who is sentenced to prison or probation is affected by the presentence report prepared by the officers. Reasonable limits and caseload standards should also be established for this probation function.

It must be recognized that probation will not be a viable alternative in many cases until sufficient, adequate treatment programs are made available. The committee recommends that, at a minimum, alcohol and drug treatment programs should be established in each probation region. This can be done either as separate facilities, or as part of the community treatment programs subsequently proposed in this report.

The probation department should have access to a range of intermediate sanctions (such as those recommended under the section on community correction programs) for dealing with probation violations. It is important that options other than resorting to prison incarceration be available when a person sentenced to probation has a technical violation or a violation related to alcohol or drug abuse.

There should be strong efforts to insure that the use of intensive supervision does not result in "widening the net" or placing on intensive supervision those offenders who previously would have been placed on regular probation. The probation department should continue its careful screening to insure that intensive supervision is in fact used as an alternative to incarceration -- that the offenders in this program are people who without this program would have been sent to prison.

3. Establish Community Corrections Programs.

Many policies in the criminal justice system appear to be based on the belief that once incarcerated, a person is no longer a problem and will never pose a future threat to the community. This is an erroneous belief and communities throughout the state must take an interest in the care and treatment of persons convicted of a crime. Often this interest can best be served by keeping the offender in the community.

Community Corrections Programs have been successfully implemented in a number of states. The primary advantage of these programs is that they restrict a person's actions while keeping that person in the community as a functioning member of society. Community correctional facilities are cheaper to construct, and cost considerably less per person to operate than traditional incarceration. Further, under most programs, persons assigned to a community correctional facility are required to work and to pay for a portion of the costs incurred for their custodial care and treatment.

The committee supports the enactment of the legislation that has been proposed as LB765 with some reservations.

The first concern was expressed by the judges who are members of the committee. They felt that judges would not have sufficient information regarding either the defendant or the programs available prior to sentencing. This information is necessary in order to decide whether a particular defendant should be placed in a community corrections facility. It was their view, and the other members of the committee agree, that a viable alternative in cases where information is lacking, would be to allow judges to continue sentencing persons to the custody of the Department of Correctional Services. Corrections would then serve as a central clearinghouse for information on the programs available, and the department would determine the appropriateness of community placement after the initial evaluation.

The second concern was the shifting of cost and liability from the state to the counties. It was felt that counties would be reluctant to participate in the program, unless they were assured that the state's problem with overcrowding in its correctional facilities was not merely being shifted, along

with the costs, to the counties. It would be unrealistic to expect the counties to voluntarily assume and resolve the problems that the state is currently experiencing in its correctional facilities. It would also be unfair to shift the burden of paying for those problems from the state to the counties when the state is the entity responsible for the implementation and enactment of many of the policies that result in the existing problems.

At the present time, Neb. Rev. Stat. 83-176(2) (Reissue 1987) provides:

The Director of Correctional Services may designate as a place of confinement of a person committed to the department any available, suitable and appropriate residence facility or institution, whether or not operated by the state, and may at any time transfer such person from one place of confinement to another. . .

Under this statute, the department already has the authority to assign inmates in its custody to community correctional facilities, but does not do so. This contributes to the overcrowding problems. The department's reluctance to exercise its authority in this area is based largely on the responses it has received in the past from members of the judiciary and the public when it has tried various programs involving community placement. Therefore, if a community corrections program is to be successful, the department must have a mandate requiring it to utilize the various facilities located throughout the state. The committee believes an intensive educational program will elicit support of the judicial, legislative and executive branches of state government.

Therefore, the committee's third recommendation regarding community corrections legislation is that such legislation must include a requirement that inmates sentenced to less than a maximum of five years of incarceration for non-violent felonies be placed in a community corrections program, absent

a determination by the Director of the Department of Correctional Services that such placement is inappropriate.

In addition, although this committee was not assigned the task of studying back end alternatives, the subcommittee would propose that similar requirements be imposed on the assignment of inmates to community corrections facilities as they near the end of their incarceration. In general, the committee recommends that any legislation creating a community corrections system require that the department place inmates in a community corrections facility for eighteen months prior to their release, either because of completion of their sentence or parole, unless the director of the department finds that such placement is inappropriate. This would insure that most inmates would have an opportunity to participate in the programs offered in community corrections, and that the transition back into society would be facilitated.

Fourth, the committee recommends that any legislation enacting a community corrections program require, at the minimum, that treatment for drug and alcohol abuse be available at each center; that each inmate be required to be employed; and that each person assigned to the community corrections program be required to pay some portion of the costs of his or her care and treatment.

There should be strong efforts to insure that the establishment of community corrections programs do not lead to "widening the net" since it is possible that such programs could be filled with offenders who currently would be placed on regular probation. While community programs might be appropriate for some of those offenders, we encourage a policy that will make certain these programs would in fact lead to a decrease in prison populations.

Community based programs should also be available for use as sanctions for probation and parole violators, when violations do not involve new felonies. Many people are currently incarcerated for violations that do not necessitate incarceration for public safety reasons simply because there are no other options for sanctioning.

4. Judges Should be Provided with Sufficient Information to Make Sentencing Reviews Meaningful.

In 1983, a Nebraska Supreme Court Committee on Sentencing Guidelines recommended against sentencing guidelines for the state of Nebraska, and this committee concurs with that finding. It was feared that sentencing guidelines could result in longer sentences and worsen the overcrowding problem. Further, it was felt that such guidelines would not be acceptable to the Nebraska Judiciary.

However, the Supreme Court Committee did recommend that statistical information regarding sentencing in the state of Nebraska be disseminated to judges on a regular basis; that sentencing conferences or seminars be held for judges on a regular basis; and that legislation which would enable sentencing judges to review and modify their own sentences within a limited period of time be enacted.

In an apparent response to the final recommendation, the Legislature passed what is now Neb. Rev. Stat. 29-2308.01 (Reissue 1989). This statute gives the sentencing court the power to reduce any sentence within 120 days after: (a) the sentence is imposed; (b) probation is revoked; or (c) a mandate is returned from the appellate court affirming the judgement. No hearing is required.

This statute has had little, if any, impact on the population of the Department of Correctional Services. Since no hearing is required and no information is usually available to the court indicating any activity on the part of the defendant since sentencing, such motions are routinely denied.

In order to give the court needed information to support any change in sentence, it is recommended that the Department of Correctional Services provide the sentencing judge with the classification studies for each individual. With this information, the courts will have some basis for determining whether or not a particular sentence should be modified.

It is further recommended that judges receive information from the Department of Correctional Services, on a regular basis, dealing with population, population projections, and sentence comparisons for each judge. This should include information that clearly relates sentencing practices to prison population.

Finally, judicial education programs on sentencing and sentencing philosophy should be held on a regular basis. On occasion, such programs should be held at facilities operated by the Department of Correctional Services.

5. No Persons Convicted of Misdemeanors Should be Placed in the Custody of the Department of Correctional Services.

The persons convicted of misdemeanor offenses do not comprise a large portion of the population at the facilities operated by the Department of Correctional Services. In many instances, there is no reason for a person convicted only of misdemeanors to be placed in the department's custody even if the combined sentences equal or exceed one year. However, caution must be exercised to prevent an overcrowding situation in county jails.

The subcommittee recommends that legislation be considered that would prohibit a person serving only misdemeanor sentences to serve those sentences in a facility operated by the department, but providing that if the person has also been convicted of a felony and placed in the custody of Corrections, any misdemeanor sentences could be served while in the department's custody. In some unusual instances, such as the need for protective custody, misdemeanants might be confined by the Department of Correctional Services for short periods of time.

6. Education of Policy Makers and the Public Regarding the Causes of Prison Overcrowding and the Alternatives Available.

Repeatedly in this report, the committee has cited "public perception" as one of the causes of overcrowding and as an obstacle that must be overcome in order to successfully implement many of its suggestions. As a result of the public hearings held by the Task Force, it is not clear that the public wants more institutional lock-ups or would reject the alternatives being proposed. At times, it appears that "public perception" may be based more upon the policy makers' mistaken belief that being "hard on crime" will fulfill the citizens' desire to be secure, and in reality is designed to further political careers.

In order to overcome this, it is necessary to educate the public and the policy makers to the fact that punishments, other than traditional incarceration, are a viable alternative that involves no additional risks to society. All members of the Task Force should work to inform all citizens of Nebraska of the problems that exist in the correctional system, the potential costs of the various alternatives, and the solutions we propose.

SECTION III

This section was prepared by the "Institutions Committee" whose primary role and responsibility centered on: 1) the extent that overcrowding exists in the Nebraska Department of Correctional Services' institutions, and the problems caused by that overcrowding, 2) programming availability and needs at Department of Correctional Services institutions, 3) conditions of confinement lawsuits and the status of the Nebraska prison system in relation to recent lawsuits, and 4) the need for additional prison capacity, including the utilization of existing facilities and alternative methods of providing additional prison space.

This committee was composed of:

Senator Scott Moore, Chair
Senator Gerald Chizek
Senator Ernie Chambers
Senator John Lindsay
Debra Gilg
John Rochford
Sharon Lindgren
Jean Lovell
Richard Powell

Over the past 20 years, the nation has made significant changes in who and how offenders are sentenced by the courts. Almost every jurisdiction across the United States has adopted a "get tough" philosophy on crime. The resultant shifts in policy have been readily apparent. Prison populations have skyrocketed. In 1970, there were 96 prisoners per 100,000 Americans and a total prison population of 196,429. By 1990, the rate of imprisonment had grown to 293 per 100,000 citizens and the actual number of prisoners had grown to 771,243 (Bureau of Justice Statistics, May 1991). This represents a nearly four-fold increase in the use of imprisonment in two decades.

According to data compiled by the National Council on Crime and Delinquency, prison populations were not the only area of growth for America's correctional system. Between 1980 and 1990, probation, parole, and jail populations have grown even faster than prison populations (see Figure 6 and Table 14). By 1990, one out of every 46 adult Americans was under some form of correctional supervision. This is twice the rate of correctional control that existed in 1980, and nearly three times the level in 1974.

Figure 6

Correctional Populations
Percent Change 1980-1990

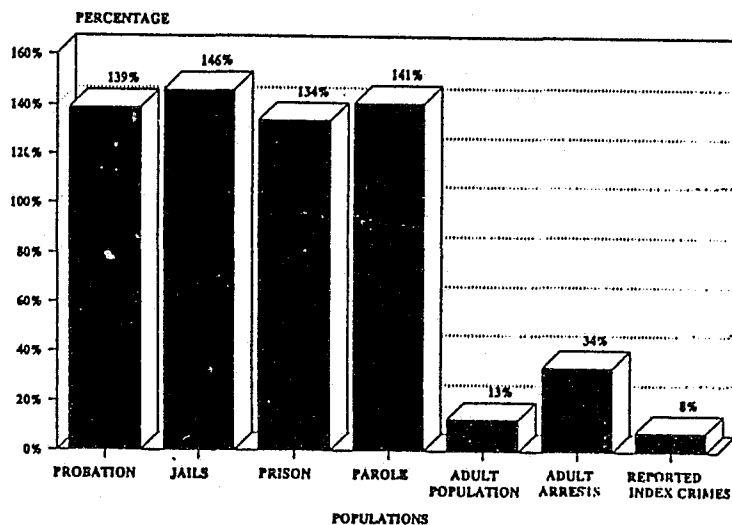


Table 14
 Correctional Populations
 Percent Change 1980-1990

	1980	1990	% Change
Probation	1,118,097	2,670,234	139%
Jails	163,994	403,019	146%
Prison	329,821	771,243	134%
Parole	220,438	531,407	141%
Totals	1,832,350	4,375,903	139%
Adult Population	162.8 million	184.7 million	13%
Adult Arrests	6.1 million	8.2 million	34%
Reported Index Crimes	13.4 million	14.5 million	8%

Prison crowding is arguably the most urgent, and yet the most complex, public safety issue facing the state of Nebraska. That the situation is urgent is obvious from the magnitude of the problem. The state's prison population has more than doubled in the past 15 years. The tremendous growth had been fueled by changes in sentencing, intensified efforts against illegal drugs, and other public policy decisions. Today, Nebraska's prisons hold 2,593 inmates in space designed to house 1,706. This translates to a bed deficit of 887, or a system operating at 152 percent of design capacity.

The number of adult inmates in the Nebraska state correctional system has grown steadily, averaging more than 100 additional inmates each year. The driving force behind the growth in inmates appears to have been the growth in admissions. The result of such growth is one of the most crowded prison systems in the country. According to data in Corrections Yearbook, 1992, published by Criminal Justice Institute, Inc., Nebraska operates the nation's sixth most crowded prison system, behind only Massachusetts, California, Ohio, Maryland and Hawaii.

Population forecasts indicate that present trends will continue. Projections through the year 2002 indicate a bed deficit of between 1,204 and 1,778, depending on the projected impact of good time changes as outlined in Legislative Bill 816 which was passed in 1992. Clearly, unless the state radically changes policy and/or intermediate sanctions are put in place, the state will continue to operate a crowded prison system that may lead to court intervention or a major prison disturbance.

RECOMMENDATIONS

Specific items discussed by the subcommittee include the following:

- o substance abuse programs
- o education programs
- o prison privatization
- o renovation of existing space for prison use
- o inmate classification
- o mental health programs
- o work programs
- o prison litigation
- o immediate needs of Department of Correctional Services' institutions by facility
- o population projections

The Institution Committee recommendations are:

1. Court Order Avoidance.

The state of Nebraska must recognize the increasing probability of court intervention in its prison system. Two class action lawsuits on conditions of confinement have already been before the court since 1990 (Kitt v. Ferguson, and Gunter v. Jensen). In the most recent, Gunter v. Jensen, the department lost a section of the case. This case is currently being appealed, but may be

an indication of the continued erosion in the department's ability to adequately cope with the increasing levels of overcrowding. The Department of Correctional Services should identify specific characteristics of the current prison system that make the state more susceptible to losing a conditions of confinement lawsuit. Steps which could be taken to strengthen the state's position, which would require additional appropriation or legal authority, should be presented to the Legislature for consideration.

The committee notes the 1991 U.S. Supreme Court case, *Wilson v. Seiter*, which appears to set a higher standard for plaintiffs to meet when alleging that conditions of confinement are unconstitutional. This case may decrease the likelihood of the state falling under a court order due to conditions of confinement within the current prison system. However, the issue of court order avoidance is still an immediate concern and should receive priority consideration in the total task force recommendations.

2. Internal Administration.

A. Criteria Used for Inmate Classification - The committee recommends that the Department of Correctional Services evaluate criteria used for inmate classification. The committee recognizes that classification can have a significant impact on population movement within a correctional system. The department should review the appropriateness of its current instrument in areas outlined for study in the June 1993 Carter Goble & Associates, Inc. technical assistance report.

B. Disciplinary Procedures - The committee recognizes the necessity and role of sanctions within a correctional setting; however, it is recommended that feasible, effective administrative disciplinary sanctions, other than taking away good time, be utilized so that an offender's length of stay will be affected as little as possible.

3. Departmental Programs.

The committee recognizes recidivism as one of the contributing factors to prison overcrowding. The committee recommends that the department identify steps which can be taken, while the inmate is in custody, to reduce his or her propensity to continue to commit crimes and be returned to prison. This ultimately could increase public safety.

The committee also notes the great increase in the number of inmates incarcerated for drug offenses and the high percentage of inmates either reporting or assessed as having significant drug/alcohol treatment needs. This increase has not been accompanied by a corresponding increase in the substance abuse program capacity within the department.

Correctional industries programs run by the department provide meaningful activity for the inmates while in the institutions and training for employment when the inmates are released. These activities are self-supporting through the department's revolving fund. Any initiatives to expand these activities utilizing the revolving funds available are encouraged.

4. Prison Capacity Expansion.

A. General Capacity Expansion - The extent to which prison capacity may need to be expanded is dependent upon the state's response to the Task Force recommendations. Intermediate sanctions or prison alternatives can significantly impact present and future prison capacity requirements. The committee feels that since incarceration is the most expensive form of correctional sanction, capacity expansion should only be pursued if the state fails to implement effective alternative strategies. Failure to implement alternative strategies will, as Table 15 demonstrates, most certainly require extensive capacity expansion.

Table 15

Estimated Costs of Providing Additional Housing If No
 Alternatives to Incarceration Are Implemented

Current and Projected Population and Design Capacity:

Current Population:	2,607	Projected Population (1996):	2,810
Design Capacity:	1,706	Design Capacity (1996):	2,013
Population as % age of Design Capacity:	152%	Population as % age of Design Capacity:	140%

Cost Projections

Construction Costs -

System at 100% of Design Capacity by 1996:	\$52,482,450
System at 120% of Design Capacity by 1996:	\$25,944,900

Assumptions used: Projected population in 1996 was estimated using the IMPACT computer software package adjusted for the effects of LB816 which increased the amount of good time granted inmates. Design capacity in 1996 is adjusted for the completion of the new housing units at OCC, LCC and the Penitentiary, and assumes that the Airpark facility will be closed. Cost projections for construction assumes 35 percent of beds built will be maximum security at \$86,000 per bed and 65 percent will be medium/minimum at \$55,000 per bed. This does not include additional per diem and medical costs.

Note: This estimate is based on LB816 impact at maximum effect. Actual projected population could be 3,119 by 1996, causing the system to be at 154 percent of capacity. Construction costs would then be \$69,200,000 for a system at 100 percent of design capacity, and \$44,000,000 for a system at 120 percent of design capacity. Actual capacity needs could be greater if judicial sentences are ultimately adjusted to offset LB816. Also, any additional legislation that impacts corrections will require additional capacity.

If it is decided that additional capacity (stand alone facility) is needed, the committee recommends that the state review facility location in the central or western part of the state.

B. Segregated Housing - The committee recognizes that an immediate need exists for more segregated and protective custody capacity within the Department of Correctional Services. Given current fiscal constraints and also consideration of efficient resource utilization, the committee does not recommend the construction of a new separate segregation unit. However, the committee does recommend that additional segregation capacity be made available through the creative utilization of existing facility space. This has been outlined in the Carter Goble & Associates, Inc. report to the department.

C. Work Release Unit - Given current and projected crowding problems within Nebraska's prison system, the committee recommends that the Community Corrections Center-Lincoln (Work Release Unit) remain open. The committee recognizes that the facility was not originally designed as a correctional facility, and that rent and maintenance requirements make it significantly less efficient to run than a new facility; however, the committee cannot endorse the state's plan to close this facility given current and future crowding problems.

D. Prison Privatization - The committee considered the issue of prison privatization and recommends that no action be taken in this area until sufficient data is available to carefully weigh the efficiency, effectiveness and critical concerns that such action would elicit.

The committee would be remiss if we did not acknowledge the cooperation received from the Department of Correctional Services in an endeavor to change some unpleasant living circumstances caused by the crowded conditions in the adult male institutions. When the committee brought these to the attention of department administrators, action was taken that corrected these complaints, and this resulted in more healthful living conditions. This alone brought about relief from circumstances that were causing stress, and even though overcrowding was not affected, it did enhance living conditions.

S E C T I O N I V

This section was prepared by the "Back-end Committee" which focused on strategies that are designed to regulate the time inmates serve and methods to speed release from prison while maintaining adequate public protection.

This committee was composed of:

Donna Polk, Chair
Allen Curtis
Gary Hannibal
Gary Lacey
James D. McFarland
Ray Myers
Terry Thompson
Ron Tussing

The American Prison System was originally established as a way of using incarceration as a means of punishing persons who committed crimes. However, in the 1960's and 70's, several trends in Constitutional law began to reshape the way society responded to crime and, in particular, how it should treat the criminal. Beginning with the creation of the Law Enforcement Assistance Administration, the American Criminal Justice System embarked on a revolutionary course that ushered in a new way of thinking about what to do with those who commit crimes. The pendulum began to swing away from the old mentality of punishment and retribution, and in its place a growing sense of optimism emerged. Prisons were now called correctional facilities, and the focus shifted from detention and punishment to detention during rehabilitation. New, modern and more humane facilities were constructed. Academic education, vocational training and counseling programs were given top priority.

Perhaps the most unique and promising innovation of this period was the move towards community based corrections. Even though probation and parole had been used for many years, they were expanded and community based treatment programs were developed as a means of diminishing the dependence on the more expensive alternative of total incarceration. Local municipalities were encouraged to divert those convicted of crimes into programs that were specifically designed to deal with the problems that were manifested through criminal behavior. Recidivism was seen as a failure to properly address the underlying causes of crime, rather than blaming the criminal for refusing to follow the prescribed rules of society.

In less than 15 years, the American Correctional System was at the threshold of becoming the envy of the world in terms of how it responded to crime. However, by the mid 1980's, public policy began to change and the

political arena once again found its way back to the old theme of total incarceration with longer and longer sentences. Hundreds of millions of dollars were invested in catching, prosecuting and incarcerating drug dealers, users and anyone associated with the industry of illegal drugs. Sentences for "drug crimes" were increased in an irrational and almost hysterical fashion. "Drug free" zones were created that doubled the penalty for anyone caught selling drugs within 1000 feet of a school. Behavior that five years earlier would have been treated with a fine, probation or short jail sentences, was suddenly being defined as representing the single greatest threat to American society. As a result, every jail and correctional facility has experienced an avalanche of incoming prisoners, many with long sentences and severe release restrictions.

Lost in the President's "War on Drugs," was the fact that there was only so much jail space, and with the huge sums of money being invested for interdictions, apprehension and prosecution, the state and federal coffers were being drained of money that would be needed to respond to the increase of prisoners being brought into the correctional system. Treatment and rehabilitation has been replaced with increased security and population management. To compound the problem, the Nebraska correctional system, along with others, has experienced, and will continue to experience, significant budget reductions.

The "Back-end Committee" defined its task as offering ideas and plans that will help ease the institutional population crisis without further eroding the gains that were achieved in the last 20 years of growth. It was the position of the committee that by improving the ability of existing programs to discharge their primary functions and by creating new, relatively inexpensive programs, a significant increase in the number of inmates being released from custody could be realized. However, the committee was painfully

aware that unless inmates could be released in numbers proportionate to those being admitted, it would be just a matter of time before the population became unmanageable.

With this background, and being fully cognizant of budgetary constraints, the committee offers the following recommendations.

RECOMMENDATIONS

1. The Governor Support and Propose Legislative Action That Creates A Community Corrections Act.

The trend over the past ten years has been for local municipalities to get rid of their crime problems by sending a significantly higher percentage of those convicted of crimes to prison. According to Harold Clarke, Director of the Department of Correctional Services, the single greatest increase in new admissions into the correctional system has been due to the "War on Drugs." In 1992, 23 percent of all inmates admitted were convicted of drug crimes. These ranged from the profiteering hustler to those who were either desperate for money or addicted to drugs. All of these people, in addition to the majority of those incarcerated for all other crimes, will be released from custody at some point in time. They generally return to their homes, or at least to the community from which they were expelled. It is in the best interest of local municipalities to participate in the process of preparing those who are incarcerated for return to their homes. Incarceration effectively prevents an inmate from either exercising whatever social skills were present before being incarcerated, or from developing new, more effective skills for living in mainstream society. The Community Corrections Act (Appendix E) which is modeled after the highly successful Colorado plan, would create a systematic and collaborative relationship between the Nebraska Department of Correctional Services and local communities. Under coherent and

coordinated programs those who are incarcerated would be able to return to their communities under a treatment plan that would be designed to improve their level of social competence.

Perhaps the greatest advantage of the Community Corrections Act would be its anticipated impact on the prison population crisis. The Department of Correctional Services would have more resources to rely upon and, since local municipalities would be investing in re-integrating inmates into their communities, fewer beds would be required at the institutional level. By rejuvenating the half-way house concept, community based counseling, job training and intensified parole supervision, inmates would be released at an increased rate proportionate to the number of community based alternatives available under this plan.

One critical feature of this plan is the need for some incentive for local municipalities to participate. Financial resources would need to be made available to communities to set up and operate the programs. In addition, communities will need to be motivated to participate. As in the Colorado plan, it is recommended that all inmates be statutorily referred to the community corrections program within 18 months of his/her minimum release date. By having this element in the plan, a significant number of people would be eligible for the program immediately following sentencing. At the institutional level, inmates would be eligible for release into the community corrections program a full 18 months earlier than is now possible. Although community programs would not be required to accept every referral, it is anticipated that a sufficient number would be accepted at the 18 month eligibility date to make a significant impact on the population crisis.

Parole violations impact on the population problem, primarily because of the high number of violators who are returned to custody. Although Nebraska's recidivism rate (20.4 percent) is substantially lower than many of the surrounding states, this number reflects several hundred people being returned to custody every year. In addition, the 20.4 percent recidivism rate does not include "technical" violations, i.e., failure to maintain a residence, drug use, etc. Although technical violations are not accounted for in the recidivism rate, these violations account for several hundred more people being returned to custody each year. The Community Corrections Act would allow many of those returned because of technical violations to be dealt with at the community level. Just as inmates would be referred to a review board when they are within 18 months of their eligibility date, parole violators would likewise be referred to the review board for possible referral to community services. By having a mechanism such as this, the Department of Correctional Services could realize a significant reduction in the number of inmates in custody.

2. The Governor Propose Legislation to Establish a Therapeutic Community and Special Minimum Security Program for Youthful Offenders.

In Fiscal year 1991-92, over 33 percent of all offenders admitted into the correctional system were under the age of 25. Profiles reveal that these young offenders tend to be under-educated, poorly motivated and lacking any measurable grasp of, or appreciation for, a work ethic. They are more likely to be from racial minorities and from environments where there is little opportunity for growth. These young people are often angry, alienated and disdainful of rules and authority. Having rejected mainstream values and

reciprocal living for the pleasure of the moment, these young people, many of whom are under the age of twenty, have developed a nihilistic outlook on life. They regard truth as the opiate of weaklings and suckers, and because to them there is no truth, they become masterful liars and con-artists. There is generally little value for life, including their own, and an insatiably hedonistic appetite for whatever they desire. Impulse control is conspicuously deficient and frustration tolerance woefully under-developed. Since there are few internal restraints on their impulses, these offenders are likely to engage in a broad range of anti-social activities, including violence. Foresight and cause and effect thinking is often seriously lacking, and although usually of average intelligence, they tend to use their intellectual abilities to justify their behavior and to wrestle concessions from those who would otherwise hold them accountable for their actions. They do not learn from their mistakes, and as a consequence adopt maladapted styles of living.

In spite of their protestations to the contrary, these young offenders have few, if any, significant attachments or loyalties. When it comes to relationships, they tend to be emotionally shallow and interpersonally exploitive. Although often quite charming and verbally persuasive, they are extremely unreliable. Their word is of little value, and promises to do better are just that -- promises. They rarely stick to any activity that requires sustained effort, discipline and delayed gratification, but they will demand full benefit of compensation for marginal or incomplete performance. Their lives tend to be parasitic and self-indulgent, and they are often predatory loners. They take no responsibility for their behavior, and whenever possible, find someone or something to blame for the way they are. Although they may have a conscience, it is usually poorly integrated and fails to act as a deterrent to their anti-social impulses.

The above profile represents the way many, if not most, of the young offenders are when they enter the correctional system. They were this way before they got to prison, and unless radical steps are taken with them while they are incarcerated they will exit the correctional system and return to the streets in essentially the same shape, except they will be more sophisticated, angrier and more dangerous.

Proposed Action: Over the past twenty years, a great deal has been learned about crime, criminal thinking, and what can be done to penetrate the heretofore mutually antagonistic dichotomy of prisoner/captor. Criminals are not inhuman or subhuman. Although both structurally and functionally different in many respects, most criminals are otherwise just like everyone else. In the work place, employees perform better and take greater pride in their work when they have a personal investment in the goals and mission of the business. When the work is relevant to the employee, he/she is more likely to believe in the work and invest more time, effort and energy in doing a good job. Prison inmates are no different. When they define a program or activity as relevant and meaningful to them, they will invest in it. Most inmates get out of prison on, or at least close to, their earliest date of eligibility. Getting out is relevant to them, even if they dislike the hoops that they have to jump through to get there. Although they are not necessarily driven by a desire to change, they will participate in self-help programs, educational pursuits, etc. in an effort to achieve their goal, which is to be set free.

A treatment model that has, over the years, demonstrated a higher degree of efficacy than any other type of prison based treatment program is the Therapeutic Community.

Many states, including New York, New Jersey, Florida and Arizona have had Therapeutic Communities (T.C.) in their correctional facilities for years. The Federal Bureau of Prisons operated several T.C.'s, including the Maximum Security Facility in Marion, Illinois. "Stay-n-Out" is a prison-based T.C. that has operated in New York State for many years, and has been used as a model for other states. The Gateway Foundation, which is located in Chicago, has operated a T.C. in the Cook County Jail system since the early 80's. The NOVA Therapeutic Community in Omaha is a direct descendent of a T.C. called "Asklepieon," that operated in the Marion Maximum Security Facility and now provides substance abuse counseling and educational services for the Department of Correctional Services. The effectiveness of the T.C. is grounded in its philosophy and culture. The primary goal of the T.C. is to foster substantive change through immersion in a collective milieu, or family, committed to social competence. The T.C. is based on social learning and facilitates change through active participation in a community whose survival depends on each of its members working together towards a common goal. As a self-help model, the T.C. program is typically staffed with ex-inmates, or in the addictions field, recovering addicts. Staff act as real role-models with whom the inmate can more readily identify. All facets of the program member's life is considered important and vital. Education, work, taking pride in oneself, acceptance of responsibility and developing respect for rules, authority and discipline are essential components of the T.C. Moral, as well as ethical standards and expectations, function as the "glue" that holds the community together. Program members work together, and rather than being clients, patients or inmates, they are family members.

The Special Minimum Security Program (called "Boot Camp" by many) is a relatively new alternative to incarceration. It has grown in popularity in the federal system, and some states have adopted this approach. Its primary attraction appears to be due to two factors. One, large numbers of people can be worked within a highly structured but otherwise open setting. These programs can be run without extraordinary security and they are efficient and substantially less expensive to construct and operate than more secure facilities. Because those who are sent to them are classified as presenting a much lower risk to public safety, it is considered a relatively safe alternative to incarceration.

The second advantage to the Special Minimum Security Program is its regimentation and emphasis on discipline, which has already been noted as being one of the major deficits in the functional make-up of the younger offender: Proponents of these programs, as with the Therapeutic Community, believe that through tough discipline, rigorous training and groups working toward a common goal, lasting change can be achieved.

The committee proposes that this model be combined with the Therapeutic Community described above, to form a highly regimented correctional program for younger offenders who do not pose a risk to public safety but who would otherwise be incarcerated with older, more serious offenders.

The young offenders would be admitted to the Diagnostic and Evaluation Center for classification purposes and to determine treatment needs. If the inmate's classification is sufficient for referral to this program, he/she would be sent there as opposed to being housed in one of the secure facilities. In addition, inmates whose initial classification prohibited them from going to this program and are reclassified at a later date, could be so directed. Lastly, because it is important that those involved in the program have a meaningful investment in being there, incentives would need to be built

into the program that would make going through it preferable to just doing time.

This alternative would dove-tail into the Community Corrections Program. In fact, private vendors could operate the program on a contractual basis with the Department of Correctional Services, or the Department could administer the program but subcontract with outside vendors for particular services.

3. The Parole Administration, in Concert with the Board of Parole, Expand Those Early Release Programs That Have Already Been Implemented. These Include, But Are Not Restricted To, Extended Leave, The Mentor Program, and Intensive Parole Supervision.

It is also recommended that the Board of Parole and the Parole Administration make better use of those community based programs that already exist as a vehicle for releasing inmates from custody earlier than would otherwise be possible.

On its own initiative, the Parole Administration and the Board of Parole have, in recent years, initiated several programs that allow inmates to be released prior to their date of eligibility. These programs have been extremely creative and are reasonably safe and cost effective. Expanding these programs would, of course, require more supervision, quality control and some expenditure of funds. However, the cost of expanding these programs, when compared to the cost of maintaining inmates in custody, is significantly less.

Urban Nebraska has a wealth of community based programs that are competent to work with the needs and problems of those men and women who are under the jurisdiction of the Department of Correctional Services. Where available, many are located in or around the inmate's home area, which, if utilized, would return them to their communities. Also, if services in the

community can effectively work with the problems that inmates have without increasing the risk to public safety, there is less need to establish in-house programs that duplicate what is already available. We must remain aware that large sections of the state are quite devoid of the necessary services to provide the programs needed in a community based correctional operation. Therefore, these services would need to be provided before a community based program could be effective. Even so, this type of operation would be considerably less expensive and more successful than total incarceration.

Proposed Action: The Parole Administration and Administrator of Mental Health Services should be encouraged to establish a state-wide consortium of service providers who would assist the Department of Correctional Services in developing a diversion protocol. This protocol would match identified problems with available services and provide a set of instructions that would give the Department of Correctional Services access to the appropriate service. Locally based service providers have reported that they would be more than willing to make their services available to corrections. If the Department of Correctional Services and Parole Administration were to take a pro-active approach to forming a state-wide network of services, inmates who do not represent a significant threat to public safety could be diverted to community based services under the supervisory control of the Parole Administration. Space would then be made available for new admissions into the system, and low risk inmates who have identified problems could get the help they need.

4. The Board of Parole

The primary task of the Back-end Committee was to develop a strategic plan that, if implemented, would safely increase the number of inmates being released from custody proportionate to the number of new admissions into the correctional system. The need to keep pace with the rate of new admissions is manifest in the practical reality that there is only so much space legally available. If the current trends in sentencing continue, the state of Nebraska will be in a crisis situation that will invite federal intervention.

As it reviewed the state of affairs relative to release practices, the back-end committee examined the Department of Correctional Services' current protocol for releasing inmates from the various institutions. Of particular interest and concern was the Board of Parole.

Throughout the testimony during the Task Forces' public hearings, a recurrent theme dealt with the value and credibility of the Board of Parole. Several members of the public, as well as the inmate population, expressed concern about the ability of the Board to make professional decisions. In addition, confidential interviews with Department of Correctional Services staff, ranging from administrative to line personnel, revealed a lack of confidence in the Board of Parole's ability to discharge its function in a professional and responsible manner.

Recent, highly publicized incidents involving the Board of Parole appear to give credence to the above concerns and raise the issue relative to the Board's ability to discharge its function in a manner that allows for the expeditious discharge of those inmates who are eligible for release without increasing the risk to public safety.

The committee recognized that any strategic plan and set of programs designed to ease the overcrowded conditions of the institutions would necessarily involve the Board of Parole. Therefore, before new initiatives could be pursued with any degree of anticipated success, it was considered both prudent and mandatory that the committee examine the Board of Parole in terms of its structure and functional ability to respond to the demands being placed upon it.

Deficits in functioning can generally be traced to either a breach in structural integrity or to problems in structural design. Accordingly, the committee decided to examine the processes by which the functions of the Board of Parole are governed: namely, Legislative Regulation and Organizational Policy and Procedure. The following are those areas that were found to be of particular concern to the committee. We also present recommendations that we believe would help improve the capacity of the Board of Parole to participate in the Department of Correctional Services' attempt to ease overcrowding conditions.

The Board of Parole bears a tremendous responsibility. It must decide who is to be released from custody, when and under what conditions. This responsibility is magnified substantially by the need to ensure public safety. Determining the level of risk is by no means an easy task and one that requires the highest degree of expertise. The Board of Parole is the only body within the entire state correctional system that does not require demonstrated knowledge, skill and expertise prior to appointment. Under current Legislative Regulation, the Governor can appoint virtually anyone he/she chooses, as long as the candidate meets one or more of the following criteria:

- Must be of "good character and judicious temperament."
- One member will be appointed as Chair.
- One member must be of a minority group.
- One member must have professional experience in corrections.

The Department of Correctional Services provides the Board of Parole with a wealth of information relative to those inmates appearing for parole consideration. Having "good character and a judicious temperament" does not necessarily equip an appointee with the requisite skills needed to determine the level of risk when considering an inmate for parole. When one considers how heavily taxed the correctional system is due to overcrowding, it would be logical to assume that the Board of Parole does not have the luxury of time when it pours over the large quantity of relevant data that must be considered before a vote can be taken. When the numbers to be considered were few, the Board could be more leisurely and vigilant in its deliberations. However, with inmate numbers rising at a steady rate, those appointed to the Board must be of the highest caliber in terms of knowledge, skill and expertise relative to the tasks and responsibilities they face. Any uninitiated, uninformed and/or inexperienced Board member may have very good intentions, but putting the tools and power of the office in the hands of someone who does not know how to properly use those tools will slow the process, increase the risk of error and invite disaster. Therefore, the committee recommends the following:

The Governor, following collaboration with the Director of the Department of Correctional Services, propose a change in the Legislative regulations relative to the selection of Parole Board members. Specifically, the Governor should propose the following:

- A. The number of Board members remain the same.
- B. Each position on the Board be determined by specific qualifications needed to discharge the responsibilities of the Board. For instance, since risk management is of the highest order, having someone who is skilled in either forensic or criminal psychology would be invaluable to the Board of Parole. Also, since institutional performance is considered relevant in the Parole process, it would seem practical to have on the Board someone who can factor in the relative value of institutional behavior. This could be a Superintendent or Warden, Institutional Psychologist, etc.
- C. That a job description be developed to include pre-screening qualifications for each of the Board positions and that vacancies be filled based on the type of expertise needed.

By developing a more restrictive set of qualifications for Board membership and by increasing the standards of excellence necessary for Board membership, the Governor will lose some measure of discretion. However, recent events regarding members of the Board would indicate that it would be to the Governor's advantage to insure that only the most qualified and professionally competent persons be appointed.

As matters now stand, as long as the Board does not violate Legislative Regulation, it appears as if it can set its own policies and procedures, goals and operating priorities. According to current policy, no one, not even other Board members, including the Chair, can question the vote of another Board member, or the rationale the Board member used in arriving at his/her vote.

The Board of Parole, by policy, defines itself as a "Quasi-Judicial" body. One common complaint about the Board of Parole is the tendency of the Board, or its members, to "re-try" cases, exact punishment or determine among

themselves and their "own consciences" if an inmate has been sufficiently punished. Theoretically, when a judge sentences an individual to a term of years that has a minimum and a maximum, that judge has deliberately established the minimum time when the offender can be released from custody. The Board has the responsibility to weigh the seriousness of the crime in relation to the sentence and what the inmate has done and/or failed to do while incarcerated.

Another common complaint about the way in which the Board of Parole conducts itself, is that it is often adversarial and antagonistic towards inmates and those testifying at Parole hearings. Parole hearings frequently become a forum for Parole Board members to exercise their own idiosyncratic ideas, ideological preferences and even biases towards particular types of offenses. Board members have been known to digress from the primary purpose of the hearing and introduce irrelevant, confusing and at time antagonistic lines of questioning. Hearings go beyond the amount of time otherwise necessary to fulfill their primary function and, as a result, the process slows down at a time in which judicious speed and objectivity are necessary.

Legislative Regulation requires that one member of the Board of Parole must be appointed as the Chairperson, but that individual has no authority over the other Board members. The position seems to be largely ceremonial and carries little authority in terms of being able to determine the scope and direction of the Board, or how Board members are to conduct themselves both in and out of the hearing room.

The Board of Parole has its own organizational structure, independent of the Department of Correctional Services, with its own budget and operating protocol. As a result, there is a fair amount of duplication and redundancy.

The Parole Administration is a division of the Department of Correctional Services and interacts continuously with the Board of Parole. However, the Parole Administration has no authority over the Board of Parole, and although it schedules Parole hearings and assigns those inmates to be heard, the Board of Parole can and has cancelled scheduled hearings in order to engage in other activities. Such duplication, redundancy and separateness is not only costly in terms of fiscal impact, but creates unnecessary administrative confusion, overlap and conflict.

Taking all of this into consideration, it is recommended that:

- A. The Governor order a detailed internal audit of the Board of Parole. This audit should focus on internal policies and procedures, fiscal impact of current Board operations, and the fiscal and organizational feasibility of integrating the Board of Parole into the Department of Correctional Services.
- B. If the internal audit so dictates, the Governor should propose legislation that would place the administration of the Board of Parole under the direction and authority of the Director of the Department of Correctional Services. This would decrease duplicate spending and eliminate administrative redundancies.

It is further recommended that the Board of Parole Chairperson continue to be administratively accountable to the Director of the Department of Correctional Services in terms of operating procedures, scheduling, and the day-to-day activities of the Board. It is not recommended that the Board or its members lose their autonomy in terms of their ability to discharge their primary functions as Board members, however, it is recommended that the Board be more accountable to the Department of Correctional Services in terms of their scheduling priorities.

- C. Legislation be proposed that would prohibit the Board of Parole from establishing any of its own pre-release criteria that would conflict with departmental criteria or sentencing guidelines.
- D. A Quality Assurance or "Code of Conduct" Policy be established to specifically increase individual accountability. Board members should be required to account for their behavior, and when a conflict of interest occurs, be required to abstain from any and all discussion and/or vote. Violations of the policy would be subject to disciplinary action.
- E. The Board of Parole be defined as less of a "Quasi-Judicial" body, and more of an administrative oversight committee. The task of the Board of Parole is not to dispense justice, or pass judgement, but rather to determine the readiness of an inmate to return to society based on specific, pre-determined criteria. Voting should be restricted to objective criteria, not one's "own conscience."

In addition, it is recommended that the adversarial nature of the Board of Parole be purged from the hearing process and that Board members restrict their inquiries to objective criteria relative to the fitness of the specific inmate to return to society. It is not unreasonable to expect the Board of Parole to conduct itself according to established rules of conduct and procedural limits. Ideology and bias should be strictly prohibited from the hearing process.

S E C T I O N V

This section was prepared by the "Community Corrections Committee" who focused on the desirability of implementing a community based corrections program in Nebraska, and the potential benefits that could result from this change in policy.

This committee was composed of:

James D. McFarland, Chairman
Deborah Gilg
Dennis Keefe
Jean Lovell
Carol Schoenleber
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OVERVIEW

Prison overcrowding is a crisis facing every state in the nation. Prison facilities in the various states are operating in excess of design capacity, sometimes in excess of 200 percent of capacity. At last count, over 40 states had at least one major institution under court order or a consent decree¹ resulting from successful lawsuits brought by prison inmates challenging overcrowding conditions as a violation of their rights under the Eighth Amendment to the United States Constitution. As of February 23, 1993, the State of Nebraska Department of Correctional Services was at 152 percent of design capacity.² The Nebraska State Penitentiary in Lincoln, Nebraska, was operating at 159 percent of design capacity, and the Lincoln Correctional Center was at 195 percent of design capacity.³ Lawsuits brought by prison inmates in the State of Nebraska concerning prison overcrowding are currently pending in state and federal courts.

The expense of incarcerating criminal offenders is causing significant problems for legislators trying to balance state budgets. In New York, for example, the state spends \$30,000 per year to house a prisoner (a figure that does not include new construction costs).⁴ The national average cost per inmate is approximately \$21,000 per year, approximately the same cost for sending a student to Harvard University.⁵ In fiscal year 1991, the United States spent approximately \$20.1 billion on building and operating prisons. The additional costs of taking care of approximately three million criminal offenders on probation and parole totalled \$26.2 billion.⁶ It is a readily apparent truth that we cannot build our way out of the prison overcrowding problem.

As an alternative to prison incarceration, at least eighteen states have now enacted community corrections acts to divert non-violent offenders from prisons into community corrections facilities and programs.⁷ In general, these acts are designed to keep the non-violent offender within the community in correctional facilities and programs as an alternative punishment to warehousing minor offenders in the state's prison system. Community corrections facilities and programs include victim restitution, intensive supervision, drug or alcohol treatment, community service, house arrest, electronic monitoring, victim and offender reconciliation, halfway houses, job training, and other similar programs.

The purpose of this section is to review the effectiveness of community corrections acts in other states. Particular consideration will be given to community corrections acts passed the neighboring states of Colorado. Past legislative efforts at community corrections facilities and programs in Nebraska will be reviewed. Recommendations for future legislative efforts considering the unique aspects of the Nebraska criminal justice system will complete the report.

PROBLEMS IN CRIMINAL JUSTICE

When Greg Browning was peacefully washing his car in his home driveway in Maryland one Saturday morning, he was confronted by a large, muscular man who shouted, "I'm going to steal your car. And you know what? You can't do a thing to me!" In the struggle that followed, the large man threw Greg to the ground, breaking Greg's arm. Hearing the commotion, Greg's wife, Joan, called the police and watched the man drive away in their car. During the police chase that followed, the car thief eluded the police by cutting through the grounds of a local high school. Shortly thereafter, however, he skidded into a parked car on a side street. The police arrested a stunned car thief at the scene of the accident and took him to jail.

Despite assurances they would be kept informed of the progress of the case against the young man, the Brownings did not hear from either the police or the Maryland district attorney's office. They discovered that a preliminary hearing on the matter had been held without their knowledge. When they expressed their frustration about not being informed of the progress of the case to the district attorney's office, the assistant district attorney told them bluntly, "You need to understand something: this is not your case. You just happened to be the victims. This was an offense against the state, and that's how we handle it!"

The Brownings never received restitution from the car thief for the broken arm suffered by Greg or for the damage to their car. They later discovered that the car thief was released, without their knowledge, and was placed in the custody of his mother on the condition that he wouldn't bother the Brownings again.⁸

Ann Stearns discovered that someone was forging her checks when she received bank notices charging her \$30 for every bounced check. Not knowing who was forging these checks, Ann contacted the local police in Roanoke, Virginia. Within a short time, the police had arrested the previously unknown forger. It was her son, Tim, an overweight, shy, lonely and self-conscious young man. Tim had forged the checks to purchase \$5 bags of marijuana to give to school mates to buy their friendship.

When Ann tried to drop the charges against her 18-year-old son, the prosecutors refused. A warrant had been issued and the matter was state's business.

Tim was sentenced to prison. Ann had a nervous breakdown. Tim was raped and beaten in prison when he resisted his older and stronger attackers. This non-violent, confused teenager was subjected to prison rape as a punishment for forging checks.⁹

On July 14, 1988, Brian Smith was released from the Florida prison system after serving six months, less than one-fifth of his two and a half years' prison sentence. In 1983, he had been placed on probation for auto theft, drug possession, and assault. He later served three months in prison for probation violation because of illegal ownership of a .357 Magnum revolver. He later served another three months for probation violation because of battering his girlfriend and fracturing her cheekbone. In 1986, he had been given another five years' probation with no prison time at all after he and his father assaulted his father's girlfriend, tied her arms and legs, and set fire to her house. The father's girlfriend had somehow managed to escape the fire. In August of 1987, Brian Smith's wife called police to report that her husband was in a rage and was threatening her and her two-year-old son Josh. The police arrived at the home and were confronted by a combative Smith who was swaying and cursing, and reeking of alcohol. When Smith struck one of the officers, he was arrested and charged with battery of a law enforcement officer and resisting arrest. For these crimes, he was sentenced to two and a half years for which he only served six months. He was released in 1988 because Florida's prisons, like many in the country, are crowded far beyond capacity.

The killings began shortly after Brian Smith's release from prison. On July 26, 1988, Richard Simmerman was found shot to death on the floor of a convenience store at which he worked. On August 2, Hal Ramsay was killed in a robbery at the Continental Inn. On August 7, Charles Muhia was murdered in a holdup at the Sizzler Restaurant where he worked. Police arrested Brian Smith and charged him with three counts of first-degree murder and three counts of armed robbery. The St. Petersburg Times newspaper reported as follows:

Smith, now accused of murdering three store clerks...was traded for a newcomer. Smith out of prison; a burglar or a thief. That's the formula for Florida corrections today. It's a formula for disaster. Because law makers have failed to make intelligent choices about which criminals need imprisonment and which criminals can safely and more effectively be punished through alternative sanctions, the prisons operate on a gate valve. One in; one out....So the violent criminal, in many cases, is released¹⁰ to make room for an offender who likely poses no threat to society.

These unfortunately true stories illustrate the problems with our criminal justice system in the United States. In the case of Greg and Joan Browning, the victim and the community had no real voice in the prosecution of the offender. The state, through the sole discretion of the prosecutor, controlled the decision in prosecution. Victims rarely receive restitution for their injuries and the community has no active part in the prosecution or punishment of offenders. In the case of Ann Stearns and her son, Tim, a non-violent and non-dangerous offender was prosecuted and incarcerated with hardened criminals. All too often non-violent offenders enter prisons and later emerge as violent and hostile ex-cons. On the other hand, in the case of Brian Smith, a violent offender is released from prison to make room for a drug offender, a burglar, or a thief. Once released, the violent offender then continues his acts of violence at the expense of innocent and unsuspecting victims.

PRISON OVERCROWDING IN AMERICA

The United States now leads the world in its rate of incarceration. Currently, the approximately 1.2 million people behind bars in America far surpasses South Africa which has the second-highest rate.¹¹ With an incarceration rate of 455 people per 100,000, the United States imprisons ten times more people per capita than Japan or than any of the nations of Western Europe.¹²

During the decade of the 80's, the nation's prison population increased by almost 134 percent.¹³ Of the 1.2 million persons in U.S. prisons and jail, more than 670,000 were in state prisons and 408,000 were in local jails.¹⁴ There are even more persons on probation or parole. In 1989, more than 2.5 million adults were on probation and more than 400,000 were on parole.¹⁵ All together, there were 4.1 million adults under correctional custody or supervision at the end of 1989, one in every forty-six adults in the United States.¹⁶ The statistics since 1980 disclose a population increase of 126 percent for probation, 107 percent for parole, and 114 percent for jails and prisons.¹⁷ Almost all prisons and jails are operating over their capacity limits.

As a result of prison overcrowding, there have been numerous lawsuits challenging overcrowding conditions in our jails and prisons. At least 28 percent of all local jurisdictions in 1990 were under court order to limit the number of persons incarcerated.¹⁸ Thirty-seven states in 1990 were under court order for failing to provide safe and humane conditions for inmates in these prisons and jails.¹⁹

Concurrent with the dramatic increase in prison overcrowding has been the exorbitant increase in the per capita costs of incarceration. The estimated cost of building a medium security prison in 1992 was more than \$56,435 per bed.²⁰ Annual operating costs for prisons range from a low of \$19,575 per bed to a high of \$41,284 per bed, according to one 1989 study.²¹ Correctional expenditures are now the second largest spending item in state and local budgets!²²

The tremendous increase in the total cost of incarceration, however, has not resulted in any significant decrease in the rate of crime. The "get tough on crime" philosophy is apparently bankrupt. Although the number of Americans

behind bars has more than doubled since 1980, the reported incidence of crime has fallen by only 3.5 percent and violent crime has not decreased at all!²³ In fact, only approximately one in five prison inmates has been convicted on a serious charge, and some of those convictions did not involve crimes of violence.²⁴ In the state of New York, for example, more than 60,217 people are now incarcerated.²⁵ This represents nearly a five-fold increase over the 12,500 incarcerated in 1973.²⁶ There has not, however, been anything like a five-fold decrease in crime during that period.²⁷

It is clear that nationwide the significant increase in the cost of corrections has not resulted in any significant decrease in crime, nor has it occurred because of the increase in crime. More offenders are being imprisoned for a longer period of time at an even greater cost to the taxpayers. Yet, crime continues unabated.

PRISON OVERCROWDING IN NEBRASKA

As of February 23, 1993, the design capacity for the Nebraska correctional system was 1,706.²⁸ The incarcerated total in the Nebraska correctional system at that time was 2,593, 151.99 percent of design capacity.²⁹ The Nebraska State Penitentiary in Lincoln, designed for 488 inmates, at that time contained 777 inmates, 159.22 percent of design capacity.³⁰ Worse yet, the Lincoln Correctional Center, with a design capacity of 468, had an incarceration total of 914, 195.30 percent of design capacity.³¹

The projected increase in prison population for Nebraska is extremely problematic. It is estimated, that the prison population could increase to 3,119 by 1996.³² The estimated construction cost to house 3,119 inmates in 1996 at 100 percent of design capacity is \$69 million.³³ Even the estimated construction cost to maintain a system at 120 percent of design capacity by

1996 is \$44 million.³⁴ This does not include additional per diem and medical costs. Cost projections for additional prison construction assume that 35 percent of the beds built will be maximum security at \$86,000 per bed and 65 percent will be medium/minimum security at \$55,000 per bed.³⁵ These cost estimates are, if anything, conservative.³⁶ There is no adjustment for inflation, and construction costs are on the conservative end of estimates used for prison construction quoted in national publications.³⁷

Like other states, Nebraska has three basic alternatives for reducing overcrowding in its prison system. First, Nebraska can build more prison space. Second, Nebraska can reduce the number of incoming prisoners. And third, Nebraska can reduce the length of prison sentences. The alternatives having the least financial costs associated with them are, of course, reducing the number of incoming prisoners and reducing their length of stay.

COMMUNITY CORRECTIONS ACTS

The eighteen states presently have community corrections acts and include the neighboring states of Colorado, Kansas, and Minnesota.³⁸

In general, community corrections acts are statutes that encourage political subdivisions and local private agencies to join in partnerships with the state to share resources in developing locally based facilities and programs. Such facilities and programs are designed to relieve prison overcrowding, make better use of correctional resources, and assure public safety by reintegrating offenders into the community. Funding for the programs comes from the state in return for agreement by the local political

subdivision or private organization to divert carefully selected non-violent offenders from prison. Community corrections facilities and programs include victim restitution, intensive supervision, community service, house arrest, electronic monitoring, victim and offender reconciliation, alcohol and drug abuse treatment, diversion centers, job training, and other similar programs.

There are a number of advantages of community corrections facilities and programs over prison incarceration. These advantages are:

1. There is a cost savings to the state since it is less expensive for states to fund local community corrections than it is for them to warehouse offenders in prisons. Hence, the diversion of offenders to community corrections facilities and programs reduces the cost for prison construction and maintenance.
2. Community corrections victim-restitution programs provide compensation to victims from the offender who has harmed them.
3. Community service work by offenders saves many thousands of dollars for local communities.
4. The rate of recidivism for non-violent offenders completing community corrections programs is significantly less than the rate of recidivism for offenders paroled or released from prisons.
5. Many community corrections programs provide job training so that the offender can obtain employment after completion of the programs.
6. Community corrections programs are much more successful at drug and alcohol rehabilitation of offenders than are programs in the state prison systems.
7. Community corrections programs allow the offender to maintain contact with community support groups such as family, church, and employment to assist in the redemptive and rehabilitative process.

Arizona's Community Punishment Act in 1990 diverted almost 700 non-violent offenders from prison into community punishment programs.³⁹ The average cost of these programs was \$5,110 per year per offender.⁴⁰ The average cost in Arizona to imprison an offender in 1990 was \$16,100 per year.⁴¹ Thus, there was an approximate \$10,000 savings for each non-violent offender diverted at a calculated savings of \$7 million for the state of Arizona that year.⁴²

Other states have realized similar cost savings as a result of diverting non-violent offenders into community corrections programs. In fiscal year 1991-1992, the state of Michigan housed an average of 691 non-violent offenders in residential probation centers.⁴³ These offenders would have otherwise been sent to prison.⁴⁴ The cost of such residential probation was \$12,548 per year per offender, roughly half of the \$24,302 per year per offender cost to Michigan to incarcerate offenders in prison.⁴⁵ Electronic monitoring was even less expensive at \$2,373 per year per offender.⁴⁶ Community supervision costs in Michigan averaged \$7,150 per year per offender, roughly 30 percent of the annual \$24,302 per offender cost of incarceration in prison.⁴⁷ Even residential substance abuse treatment in Michigan at \$20,075 per year per offender was less than the cost of incarceration in prison.⁴⁸ As another example, the state of Minnesota in 1990 diverted 1,551 non-violent offenders into their community corrections program under the Minnesota Community Corrections Act.⁴⁹ These offenders were supervised with a budget of \$2 million, an average of \$1,290 per offender per year.⁵⁰ This average cost was significantly less than the \$28,000 per year average cost of incarcerating an offender in the Minnesota prison system.⁵¹

In addition to the cost savings of supervising non-violent offenders in community corrections facilities and programs, there is also the cost benefit realized by victims who receive restitution from offenders. For example, in fiscal year 1988-1989, the Arizona Intensive Probation Supervision program collected over \$700,000 in victim restitution.⁵² In Kansas in 1987, community corrections act offenders paid \$361,302 in restitution to crime victims.⁵³ Victims, of course, never would receive restitution if these offenders had been incarcerated in prison instead of being diverted to community corrections programs.

Community service work by offenders also result in cost savings. For example, the intensive probation supervision offenders in Arizona in 1990 performed almost 250,000 hours of community service valued at approximately \$830,000.⁵⁴

The reduced rates of recidivism result in significant cost savings as well. Although these cost savings are difficult to calculate, the reduction in the number of offenders who return to prison after their release clearly results in a savings to taxpayers. The recidivism (repeat offender) rate nationally is averaging approximately 60 percent.⁵⁵ In contrast, Virginia's community corrections program has a recidivism rate of only 4 percent.⁵⁶ The average recidivism rate for community corrections programs in all states is computed at approximately 9 percent,⁵⁷ significantly less than the national rate.

Job training is much more accessible to offenders in community corrections programs than to incarcerated inmates. Work release programs are much more available under community corrections acts. Likewise, alcohol and drug rehabilitation programs can be implemented much more readily for offenders in community corrections programs. The educational, employment, and drug rehabilitation aspects of community corrections are a primary reason why the rate of recidivism is significantly less for community corrections programs than it is for prison incarceration.

There are many other benefits to community corrections programs beyond the ones previously mentioned. As an example, community corrections offenders in Georgia paid more than \$200,000 in restitution for fiscal year 1986.⁵⁸ There were additional cost benefits beyond restitution, however. The state also collected \$1,293,000 for room and board costs, \$905,000 in taxes, \$680,000 in fines and court costs, and \$539,000 for support of the offenders' families.⁵⁹

While statistical data varies from state to state, just as community corrections acts vary from state to state, the data so far collected from these states clearly establishes that community corrections acts have positive effects. These states have significantly reduced their costs of correctional services. Victims receive restitution and compensation. Communities receive benefits from community service work. Families receive support from their family members in community corrections programs. Finally, individual offenders in community corrections programs are more likely to rehabilitate themselves through successful drug/alcohol programs and job training/education programs so that they do not become repeat offenders.

COLORADO COMMUNITY CORRECTIONS ACT

One of the successful community corrections acts which may be suitable as a model for Nebraska was passed in our neighboring State of Colorado in 1974. No funds were appropriated in the initial year; however, in later years, the Colorado legislature appropriated funding for the Act. The Colorado legislature currently appropriates \$21 million annually for the Community Corrections Act programs.⁶⁰

The Act originally was designed to divert non-violent felony offenders convicted of certain classes of offenses into community corrections programs. More recently, the Act was amended to include in community corrections programs, inmates prior to release on parole or as a condition of parole.⁶¹

The Department of Public Safety (DPS) administers the Community Corrections Act program in Colorado. Community Corrections Act funds may be used to operate almost any type of program; however, the DPS does have a list of minimum services that counties or non-governmental agencies are required to provide. These services may be residential, but they must provide drug

testing, substance abuse and mental health treatment options, employment assistance, and financial counseling. Counties may also spend a portion of funds for programs in jails.⁶²

To be eligible for community corrections funds, county commissioners must create a community corrections board. This board may be advisory or functional. The local community corrections boards develop the service plans to submit to DPS, and they retain the right to accept or reject offenders whom they feel they cannot properly serve. The board develops a plan for providing local services. The board submits the plan to DPS, which has final approval over every plan. The department then contracts with the board to provide the services. The board, in turn, contracts locally for such services.⁶³

The community corrections programs in Colorado serve primarily two groups of offenders. One group is referred to as "Diversion" offenders who are placed directly in community programs by judges at the time of conviction. A second group is referred to as "Transition" offenders. This group of offenders have served time in prison, but then have been placed in community programs prior to their release on parole or as a condition of parole. Services are provided to assist these "Transition" offenders in their reintegration to local communities. In 1990, over 1,100 "Diversion" offenders and over 640 "Transition" offenders were in community corrections programs in Colorado.⁶⁴ The average cost per day per offender in community corrections programs in Colorado was approximately \$30 in 1990, or approximately \$10,950 per year per offender.⁶⁵ This average cost of community service programs was approximately one-half of the average cost of prison incarceration for each offender.

PREVIOUS LEGISLATIVE PROPOSALS IN NEBRASKA

In the 1991 session of the Nebraska legislature, Senator Doug Kristensen introduced Legislative Bill 729, a bill modeled after the Minnesota Community Corrections Act. The Minnesota Community Corrections Act was the first community corrections act passed in the United States and was enacted in 1973. Like the Minnesota Act, LB 729 proposed community corrections programs administered under the supervision of the Department of Correctional Services. Funds were to be distributed to local communities that applied for contractual grants from the Department of Correctional Services in return for providing community corrections programs for non-violent offenders.

Also, in the 1991 legislative session, Senator Brad Ashford introduced Legislative Bill 709. This bill was modeled after the Arizona Community Punishment Act. Like the Arizona Act, LB 709 proposed that community corrections programs be administered through the state Probation Administration. The bill proposed the establishment of a community punishment grant program to provide funding for counties or groups of counties which develop programs to reduce the prison overcrowding. The bill proposed an appropriation of \$5 million for fiscal year 1991-1992.

Both LB 729 and LB 709 were referred to the judiciary committee of the Nebraska legislature for public hearing. Primarily because of budget constraints, neither bill advanced from the judiciary committee to the floor of the Nebraska legislature for consideration in 1991.

In 1992, Senator Ashford introduced LB 1191, a bill modeled after the Colorado Community Corrections Act. LB 1191 provided that local government and non-governmental agencies could establish, maintain and operate community-based correctional facilities and programs. The bill authorized the Nebraska Department of Correctional Services to contract for services with

local government or non-governmental agencies which had established such institutional or programmatic alternatives to secure detention under the jurisdiction of the department. In general, community-based treatment programs appear significantly less expensive than prison incarceration in Nebraska. Assuming that such facilities and programs were made available by local governmental and non-governmental agencies, the Department of Correctional Services would realize substantial cost savings. Actual savings depend on the number of individuals diverted from incarceration and the cost of such community corrections programs in comparison to department expenditures.

If enacted, LB 1191 would have allowed the Department of Correctional Services to place Work Release inmates in community-based facilities or programs. DCS believed that the prison overcrowding would have been relieved. With DCS prison population at 154 percent of capacity, relief from overcrowding was a critical need. Although the placement of work release inmates in facilities outside DCS would not affect the current operations, DCS estimated that it would be able to move inmates from costly prison cells (\$51.90 average cost/day) to less costly community facilities (\$26.51 average cost/day).⁶⁶ DCS estimated that they could divert 126 work release inmates to community-based facilities and programs.⁶⁷ The estimated cost of the work release prison avoidance program was calculated at \$718,452.⁶⁸

Additionally, LB 1191 allowed a non-violent offender whose parole had been revoked to be diverted to community corrections facilities/programs instead of prison, thereby further relieving prison overcrowding. These inmates would be able to remain in the community and work while living in a structured or programmed environment. DCS estimated that 240 inmates could be diverted to these types of facilities or programs.⁶⁹ The estimated cost of such a parolee revocation prison avoidance program would have been \$665,494.⁷⁰

Thus, the total estimated costs for funding LB 1191 was \$1,383,946. It was impossible to determine the initial or eventual cost savings of LB 1191. The reduction in prison overcrowding would definitely alleviate the need for and cost of additional prison construction. A reduced prison population would certainly result in reduced administrative and supervisory costs for the Department of Correctional Services. Furthermore, depending on the relative success of the community corrections facilities and programs established, there would be significant cost savings and financial benefits in such areas as victim restitution, reimbursement for room and board costs at the community facilities, taxes paid by offenders in community programs, fines and court costs paid by such offenders, reduction in welfare benefits to families receiving support from such offenders, and reduced numbers of offenders being incarcerated because of reduced rates of recidivism. As indicated by the legislative fiscal analyst, the cost savings would be inestimable but quite large.

LB 1191 was referred to the government, military and veterans affairs committee of the Nebraska legislature in the 1992 legislative session. It was not advanced from committee to the floor of the legislature for consideration in part to await the results of the study and review being conducted by the Governor's Task Force on Prison Alternatives.

SPECIAL PROBLEMS IN IMPLEMENTING A COMMUNITY CORRECTIONS ACT IN NEBRASKA

As a result of not having a community corrections act like the other eighteen states who have enacted such legislation, and as a result of a unique state-wide probation system, Nebraska confronts special problems with respect to the implementation of a community corrections act. There are several concerns that need to be addressed.

First, there is no guarantee that Nebraska judges would sentence non-violent offenders to community corrections facilities or programs. Nebraska judges may be reluctant to utilize such programs if it is left to their sole discretion. It may be advisable to mandate or establish a presumption that all non-violent class III and IV felony offenders and class I misdemeanor offenders should be sentenced to correctional facilities and programs if such facilities and programs are available in the particular court district. To rebut such a presumption, the judge should be required to explain why such an offender should be incarcerated.

Second, there is a concern of whether local communities will voluntarily establish community corrections programs. There might not be sufficient financial incentive for them to do so. There was, however, considerable discussion at public hearings conducted by the Task Force, particularly at the Ogallala hearing, regarding how a community corrections program could be an economic development benefit to local communities.

Finally, the unique state-wide probation system in Nebraska would have to coordinate any intensive supervision programs administered by a community corrections facility/program in a particular area of the state. The intensive supervision program currently administered by the state probation system would have to be revised in such instances. Consideration will have to be given to determine whether a community corrections act in Nebraska might disrupt an already functioning state-wide probation system. However, the compatibility of both correctional efforts exists and they could be integrated.

In sum, it is apparent that the mere enactment of a community corrections act will not guarantee successful community based corrections facilities/programs. Community leaders must be motivated to establish such facilities

and programs in their community. Judges must be convinced that community corrections programs are beneficial alternatives to prison incarceration and departments of state government must be willing to adapt and accommodate to the community corrections programs established if such an Act is passed in Nebraska.

RECOMMENDATIONS AND CONCLUSIONS

1. The Governor's Task Force on Prison Alternatives Recommends That the Governor and the State Legislature Enact a Community Corrections Act for the State of Nebraska.

With the impending crisis caused by prison overcrowding in Nebraska and the dramatically increased costs of incarceration, a community corrections act, perhaps modeled after the Colorado Act, would provide some relief to prison and jail overcrowding and reduce the administrative and supervisory costs for non-violent offenders. A community corrections act which takes into consideration the special problems and unique needs of the Nebraska criminal justice system, should be immediately considered by the legislature with the support of the Governor's office and the Nebraska Department of Correctional Services.

Since a community corrections act cannot be effective unless it is implemented properly, the Task Force, along with the Governor's office and Department of Correctional Services, should communicate and work with the judiciary, county officials, and community leaders to generate support for, and commitment to, such community corrections programs.

It should be remembered that community corrections acts are just one aspect of relieving prison overcrowding and reducing the administrative and supervisory costs in corrections. A reduction in such overcrowding and costs cannot be achieved without comprehensive changes in sentencing practices.

2. Therefore, it is Also Recommended That There Be A Moratorium On Legislation Creating New, Non-probationable Offenses or Mandating Increased Sentences for Non-violent Offenders.

Additional legislation creating new non-probationable offenses or mandating increased sentences for non-violent offenders will negate any reductions in prison overcrowding or cost savings resulting from a community corrections act.

3. It is Recommended that Current State Statutes are Changed From Mandatory Sentences for Non-violent Offenses to Allow Probation or Sentences to Community Based Correctional Programs as an Alternative.

REFERENCES

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- ³Id.
- ⁴Omaha World Herald, July 21, 1992, at 8, col. 1.
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- ⁶Omaha World Herald, supra note 4.
- ⁷Mary K. Shilton, Community Corrections Acts for State and Local Partnerships 6 (1992).
- ⁸Charles Colson and Daniel Van Ness, Convicted 17-20 (1989).
- ⁹Id. at 20-22.
- ¹⁰Id. at 22-25.
- ¹¹Omaha World Herald, supra note 4.
- ¹²Id.
- ¹³Mary K. Shilton, supra note 7.
- ¹⁴Id.
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- ¹⁶Id.
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- ¹⁸Id. at 2.
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- ²¹Mary K. Shilton, supra note 7.
- ²²Id. at 3.
- ²³Tom Wicker, The Punitive Society, The Justice Report 7 (Fall, 1991).
- ²⁴Id.

²⁵Id at 20.

²⁶Id.

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²⁸Nebraska Department of Correctional Services Inmate Count, supra note 2.

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³⁰Id.

³¹Id.

³²Institutions Subcommittee Report to the Governor's Task Force on Prison Overcrowding, app. 1 (April 10, 1992).

³³Id.

³⁴Id.

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³⁸Id. at 53-92.

³⁹Charles W. Colson, Reform is Good Business, The Justice Report 3 (Winter, 1991).

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⁴¹Id.

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⁴³Letter from Roberto Rivera, Senior Research Analyst at Justice Fellowship, to James McFarland (June 29, 1992).

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⁴⁵Id.

⁴⁶Id.

⁴⁷Id.

⁴⁸Id.

49 Id.

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51 Id.

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53 Charles W. Colson, supra note 8, at 84.

54 Charles W. Colson, supra note 41.

55 Hearing on LB 1191 Before the Committee on Government Military and Veterans Affairs, 92nd Nebraska Legislature, 2nd Session (February 13, 1992) (statement of Harold W. Clarke, Director, Nebraska Department of Correctional Services).

56 Charles W. Colson, supra note 8, at 84.

57 Hearings on LB 1191, supra note 57.

58 Charles W. Colson, supra note 8, at 82.

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60 Mary K. Shilton, supra note 7, at 56-58.

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62 Id.

63 Id.

64 Colorado Community Corrections Advisory Council, Five Year Plan for Community Corrections 5 (April, 1990).

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66 Nebraska Department of Correctional Services Estimate (February 13, 1992).

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69 Id.

70 Id.

CONCLUSION

The different sections of this report offer recommendations relative to the specific area each of the committees examined. The recommendations clearly indicate that a problem of some magnitude exists and can only be solved by taking a different course of action than that which has been followed.

The Task Force has maintained contact with the representatives of Carter Goble Associates who are under contract to assist the Department of Correctional Services in planning a departmental master plan. We believe that the recommendations offered in the Task Force report are consonant with significant portions of their master plan.

The Front-end Committee recommends action that would enact legislation requiring system impact studies and appropriations for all legislation having an impact on the criminal justice system; options for the courts; changes in probation; and a program of public education.

The Institutions Committee recommends actions that could protect the Department of Correctional Services should a conditions-of-confinement lawsuit occur; that changes in inmate classification and disciplinary procedures be evaluated and recommended changes be implemented; and that consideration be given to institutional expansion, especially the immediate need for segregated and protective custody beds. It is also recommended that the Air Park facility remain in operation and eventually convert to a treatment program for chemically dependent inmates.

The Back-end Committee recommends that special minimum security programs for low risk, youthful offenders be established; that special facilities and programs be established for drunk driving offenders who are currently received by the Department of Correctional Services; that community-based

correctional services be developed; and that a study be conducted that would lead to changes in the administration, structure, and operation of the Board of Parole.

The Community-Based Corrections Committee carefully examined the impact of community-based programs in several states, and recommends that a program of this nature be started in Nebraska. Since community-based correctional programs are very comprehensive, their recommendation, by its very nature, includes many of the suggestions offered by the Front-end and Back-end Committees.

Obviously, there are many actions available in these recommendations that would help to reduce institutional overcrowding. Some of these are long range and controversial. All of the changes that would recognize less stringent conditions of confinement or different programmatic activity will be objectionable to some people. However, changes must occur. The recommendations that hold the most long-range promises are those that are community-based.

The old adage, "crime is a local problem and must be solved at the local level," is particularly applicable in this situation. Persons who are incarcerated in our state institutions generally return to their home communities once they are released. This requires readjustment to family, work, and community environment. If this process can be avoided for some, through locally operated programs, the community will benefit.

Community-based programs are more successful and much less expensive than any other correctional process yet devised. Most assuredly, it is not a panacea and is not to be used for all offenders. But for those convicted of less serious offenses, where subsequent danger of the public is lowest, this activity offers the greatest hope for favorably impacting Nebraska's most precarious correctional situation.

It will take some time to put a program of this nature into effect and the overcrowding problem must be addressed now. One immediate solution is to increase parole rates and adopt procedures that make more persons eligible for parole. Action by the Board of Pardons making the provisions of LB816 applicable to many who were confined prior to its passage would also reduce the population.

To reduce the number coming to the institutions at the present time, an increase in the use of intensive supervision probation should be implemented. This will require an increase in that budget but it is much less expensive than the cost of incarceration. It is appropriate that consideration be given to implementing, at the earliest possible time, those Task Force recommendations that will immediately reduce the overcrowded conditions that now exist in Nebraska's prison system.

EPILOGUE

It is obvious to those who give any consideration to the problem that prison overcrowding is only the most visible symptom of a society's criminal justice system that is struggling to meet overwhelming challenges. A continuation of the expansion of traditional law enforcement, courts and prisons is comparable to treating bullet wounds with band-aids: it partially hides the wound but doesn't treat the problem.

Until a comprehensive attack is made against the root causes of crime, we will continue to wage a losing battle. However, society is not yet ready to make the necessary effort that will prevent the portion of crime that is caused by the social conditions which prevent education, training, housing, employment, and medical care from being properly available to all segments of our population. Until that is accomplished, the only viable prevention to crime is to prevent the return to criminal behavior by those who reach the corrections system. This can be best accomplished by the thoughtful implementation of the recommendations presented in this Task Force report.

APPENDIX A

Governor's Appointment of the
Task Force on Prison Alternatives

STATE OF NEBRASKA

EXECUTIVE SUITE
P.O. Box 94848
Lincoln, Nebraska 68509-4848
Phone (402) 471-2244



October 22, 1991

E. Benjamin Nelson
Governor

Dear

Thank you for agreeing to serve as a member of the Governor's Task Force on Prison Alternatives. It is imperative that we work together in seeking workable alternatives to incarceration in Nebraska, and your willingness to assist in this effort is commendable.

A list of the Task Force membership is enclosed. I have asked former Governor Frank Morrison and Professor G.L. Kuchel to serve as Co-Chairs. Rod Armstrong, Director of the Governor's Policy Research Office, and Harold Clarke, Director of the Department of Corrections, will coordinate staff assistance to the Task Force.

My charge to the Task Force addresses several concerns, the most immediate of which is to avoid a federal court order. Short-term strategies to reduce overcrowding will be among the first orders of business.

Beyond this immediate concern, I would like the Task Force to discuss and establish goals in areas such as design and operational capacities of adult facilities; potential impacts of overcrowding; levels of illiteracy and substance abuse; and long-term alternatives to incarceration.

Some of your time during initial meetings will be spent reviewing information and projections that describe the nature and extent of prison overcrowding in Nebraska. However, this is not intended to be a study commission, as there have already been two recent studies addressing the issue. The time has come for action, and I expect the Task Force to be oriented in the direction.

I anticipate two meetings of the Task Force by the end of 1991. The first is scheduled for 1:30 pm on November 8 in Lincoln. You will receive an agenda and notification of the meeting location in the near future. A second meeting will be scheduled for early December. I would like to have the Task Force complete its work by October 1, 1992.

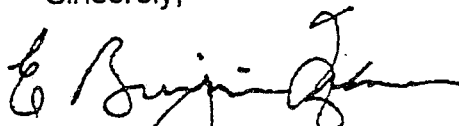
Task Force
October 22, 1991
Page 2

For those of you traveling from outside Lincoln, you will be eligible for expense reimbursement for mileage and meals subject to State policy and procedures. Forms will be available at Task Force meetings for your use in documenting these expenses.

The issue of prison overcrowding is critical. To adequately address the problem we must be willing to approach it from different perspectives. Prison construction is one option, but not the only option. I have enclosed a paper prepared by Harold Clarke that frames the issues very well.

I am asking, as you proceed to address the issues at hand, that you keep an open mind and a willingness to explore all options before you. Let me express my appreciation, and that of all Nebraskans, for your willingness to devote your time and expertise in developing workable solutions to the crisis we face.

Sincerely,



E. BENJAMIN NELSON
Governor

EBN:RA:lt

Enclosure

APPENDIX B

Appointed Members of the Task Force

Governor's Task Force on Prison Alternatives

Co-Chairmen:

G. L. Kuchel
Professor of Criminal Justice, University of Nebraska at Omaha

The Honorable Frank B. Morrison Sr.
Former Governor of Nebraska

General Membership:

Rod Armstrong
Governor's Policy Research Office

Ronald L. Bartee
Chairman, Nebraska Board of Parole

Brett Blackwood
Nebraska Area Director, Prison Fellowship

William D. Blue
Judge, Lancaster County Court

Ernie Chambers
Nebraska Legislator, District No. 11

Gerald Chizek
Nebraska Legislator, District No. 31

Harold W. Clarke
Director, Nebraska Department of Correctional Services

Allen Curtis
Chief, Lincoln Police Department

Judy Dresser
President, Hastings Campus, Central Nebraska Community College

Debra Gilg
County Attorney, Keith County

Gary Hannibal
Former Senator, Omaha

Julie Horney
Professor of Criminal Justice, University of Nebraska at Omaha

John P. Icenogle
Judge, Buffalo County District Court

Dennis Keefe
Public Defender, Lancaster County

Douglas A. Kristensen
Nebraska Legislator, District No. 37

Gary Lacey
County Attorney, Lancaster County

Sharon Lindgren
Attorney, Lincoln

John C. Lindsay
Nebraska Legislator, District No. 9

Jean Lovell
Executive Director, Commission on Law Enforcement and
Criminal Justice

James D. McFarland
Attorney, Lincoln

Scott Moore
Nebraska Legislator, District No. 24

Ray Myers
Program Director, NOVA Therapeutic Community

Donna Polk
Multi-Cultural Awareness Center, Lincoln

Richard L. Powell
Optometrist, Lincoln

John Rochford
Administrator, Budget Division, Department of Administrative Services

Carol Schoenleber
Administrator, Nebraska Probation Department

Terry Thompson
Police Officer, Omaha

Ron Tussing
Superintendent, Nebraska State Patrol

George Watson
Professor of Criminal Justice, Chadron State College

APPENDIX C

Summary of Public Hearings Minutes*

*Complete handouts and testimony are filed with the Nebraska Department of Correctional Services and are available for review.

GOVERNOR'S TASK FORCE ON PRISON ALTERNATIVES

Public Hearings
February, March and April 1992

In an effort to allow citizens to express their ideas and suggestions concerning prison overcrowding and alternatives to incarceration, members of the public were invited to speak at three public hearings held February 28, March 13 and April 3, 1992. Task Force members present are listed at the end of this report, and attached are sign-in sheets identifying a number of those persons who attended and spoke at the hearings.

Dr. Kuchel, Co-Chair of the Task Force, and Steve King, Planning/Research Manager for the Department of Correctional Services opened the hearings with the following information to participants:

DR G. L. KUCHEL: I am a professor of criminal justice at the University of Nebraska at Omaha. Along with Former Governor Frank Morrison, I have been given the job of co-chairing the Task Force which is titled, "The Governor's Task Force on Prison Alternatives." We will be in three Nebraska cities for the purpose of hearing citizen opinions about the solutions to the problem of overcrowding that faces the Department of Correctional Services here in the state of Nebraska. One of the difficult issues facing Nebraska today is the crowding in the state's prisons. The Nebraska prison population has increased some 87 percent since 1987, while capacity for holding those individuals has increased by only 33 percent. The prison system is starting to show signs of dysfunction, and the projections on prison populations are very, very bleak. In a little while I'll have someone talking about those. In response to the prison overcrowding, Governor Nelson appointed a 31-member task force on prison alternatives. This was done in October of 1991, and in his letter to the task force members, he gave us our charge. It says that we should address several concerns, the most immediate of which would be to avoid a federal court order because of overcrowding in our adult institutions, so obviously we are concentrating only on adult institutions and adult prison populations with this particular task force. Also, we should look at short-term strategies to reduce overcrowding. Beyond those immediate concerns, he would like the task force to discuss and establish goals in areas such as design and operational capacities of adult facilities, potential impacts of overcrowding, levels of illiteracy and substance abuse, and long-term alternatives to incarceration. He recommended that the task force be oriented to come up with specific action alternatives. In other words, we are not a study group, we are an action oriented group, and we will give to the Governor our best ideas about plans that can be followed.

Since November, the task force has met, we have divided into three sub-committees that address the entire population capacity question. Each sub-committee is currently addressing major forms of intervention that will impact on overcrowding. Those sub-committees are: the front-end sub-committee, their primary focus is going to be on strategies to reduce the number of individuals admitted to prison, and to reduce the length of their sentences. Such intervention strategies could include the development of new forms of intermediate punishment, sentencing guidelines, or prison impact statements. There is an institutions sub-committee. They will be looking at primarily strategies that include an examination of the existing classification system, the adequacy of existing programming, issues to reduce recidivism, use of existing resources within the state that are not now being utilized, and an examination of the disciplinary procedures which could prolong the stay of individuals within the system. The third sub-committee is what we have called the back-end sub-committee, which includes population control strategies designed to regulate the time that inmates serve, and to speed up their release from prison. Back-end intervention strategies could focus on good time policy changes, and various forms of accelerated release. To date, the sub-committees have met several times, they have been very busy, and they continue meeting, gathering and reviewing data relative to their respective intervention strategies. We anticipate having the final report completed by September 15, 1992.

STEVE KING: What you have (addressing handouts that were available to the public, see attached) is data compiled by the Nebraska Department of Correctional Services, which we hope will allow you to see graphically some of the problems that the state is now facing, and which the Governor has asked the task force to address. Prison overcrowding in Nebraska is a serious problem. In 1980 we had 1,342 inmates, currently we have 2,576. The one graph shows that our population has increased by 85 percent since 1991. That has now gone up to almost 100 percent. During that time, our capacity, or our ability to house these inmates, has only increased 33 percent, and that capacity varies from institution to institution, depending on inmate custody classification. In other words, whether or not they are classified as maximum, medium, minimum or community. The first table shows you the percent of design capacity. On the left column, you see the facility's design capacity, e.g. the Nebraska State Penitentiary, which is a maximum security institution has a capacity for 488 inmates. Ideally, when you operate a prison, you would like to put one inmate in one cell. The institutions were originally designed for single celling, for security and control reasons, and it is best to operate your prison systems with single capacity. Right now, the inmate count at the Nebraska State Penitentiary is 773 inmates - 158 percent of the capacity of that facility. When you look at the Lincoln Correctional Center, which is the Department's intake center, you can see that we are

operating at 177 percent to 195 percent of capacity in the two main housing areas. When you look at the Omaha Correctional Center, originally designed to hold 240 inmates, we have 397 inmates, and are at 165 percent of capacity. Throughout the Department, we have the capacity for 1,706 inmates and currently have 2,576. That gives us the capacity of 151 percent. What this means for the Department is a lessening in the Department's ability to adequately and safely control our inmate populations. We have had, and are experiencing, increased stress and dysfunction throughout the system. We have been forced to continually push more and more inmates into a system without adequately increasing the capacity. Capacity for the state is an expensive proposition. A medium security facility for the state would cost us \$55,000 per bed to build. A maximum security facility on the average would cost the state \$86,000 per bed to build. This includes all of the ancillary support services, the kitchen, the medical, the supply, and so forth. It also includes all of the hardware and all of the things that go into making a prison what a prison is. Beyond those construction costs, it will cost the state approximately \$18,000 to \$19,000 a year to house an inmate. If the state wishes to continue to house inmates, then the state must face the task for paying for the housing of those inmates, or the state must look at alternatives to incarceration, and that is currently the problem that is before the Governor's Task Force.

From the Department's perspective, we face two rather grim possibilities. If the state continues to increase inmate population without adding additional resources, and these are resources in the form of programs, staff and additional housing capacity, then the Department faces increased dysfunction and the possibility of inmate disturbances and/or court intervention. Currently, nationwide 40 states have had court intervention in either a single institution or an entire system. When that happens, the court steps in through a court monitor or court master, in many cases, and specifically decrees that certain things will happen. In many instances, the court has set the system's capacity. They have come into systems that are severely overcrowded and have indicated that that capacity cannot exceed a range from about 95 percent of capacity to about 120 percent of capacity. If the courts intervene, the state will lose the flexibility to make decisions. The court can dictate immediate inmate release, the court can dictate additional capacity, and so forth.

Another area that the number of inmates coming into the system has impacted beyond capacity is the lack of adequate programming. More and more, the Department is being faced with warehousing inmates, and we do not find warehousing inmates acceptable. In 1985, 6.3 percent of our population were admitted for drug-related offenses. In 1986 and 1987, both President Reagan and then President Bush launched the nation's war on drugs. Federal resources were poured into the states and had a significant impact on prisons and prison populations. The 6.3 percent of the admissions in 1985 grew to 30 percent by 1990. Length of stay for drug related offenses also significantly increased. In 1985, the state cut the Department's chemical dependency program. In 1986, they mandated

that the inmates be given substance abuse programming. Currently, the Department's substance abuse programming is insufficient or lacking. Last year the state, because of budget shortfalls, mandated budget cuts throughout the state's system, and the Department is experiencing a current 2 percent cut in funds this year, a 3 percent cut in funds next year, forcing a close to vocational educational programming. The Department, faced with the necessity of continually taking or housing new inmates as they come into the system, must do so with inadequate resources, and programming for those inmates.

Future population projections through 1996 indicate that we will have 3,782 inmates. Despite additional beds that are coming on line, the Department projects that by 1996, without any relief, a population at 188 percent of capacity. The message that we have carried forward to the legislators, the Governor, and this task force, is that the Department cannot continue to operate at excessive capacity levels and therefore we cannot operate at 188 percent of capacity.

I would like to read testimony that was given in 1989 before the appropriations committee. At that time, the Department of Correctional Services provided budget testimony addressing the serious problems caused by prison overcrowding. The Nebraska prison system, in 1989, had a population of 2,184 inmates - 132 percent of capacity. Prior to 1989, we had had legislative studies that indicated that there was a crisis lurking in the corrections, and that something needed to be done. Population projections issued in June of 1988 estimated that the number of adult prison inmates would reach 2,553 by the end of 1992. If you look on your sheets, we are already at 2,576, so we are exceeding our population projections. Nebraska's prison population, we noted in 1989, had skyrocketed in the last ten years, that there was little evidence that the use of prison would soon recede. We noted that the Council on Crime and Delinquency had indicated that prison population would minimally increase by 50 percent through 1995, and that those populations would continue to increase well into the next century. In 1989, we testified that there was a crisis lurking in the state's prisons, and that Nebraska must act to avoid the possibility of major prison disturbances and/or court intervention. At that time, 27 states nationwide were under court intervention, and as I have just indicated, there are now 40. In 1990, we withstood an overcrowding test in the courts, brought by the inmate population, and in 1991, the Department appeared again before the court in a class action lawsuit, concerning overcrowding which is still pending. In 1991, the Standards and Accreditation division of the American Correctional Association conducted independent accreditation audits of the department's two maximum security institutions, the Lincoln Correctional Center and the Nebraska State Penitentiary. During these audits, auditors voiced concern with the level of overcrowding, inmate idleness and lack of programming, and the facility's ability to meet minimum mandated standards, and yet the number of inmates in our prisons has continued to increase.

Since that time, Nebraska's prison system has struggled with the ability to maintain and meet three critical operation elements: to operate the Department in a safe and secure manner, to maintain an adequate quality of life, and to provide for and maintain inmate rights under the U.S. Constitution, federal and state law. We indicated at that time that failure to meet these requirements puts the public, correctional staff and prison inmates at increasing levels of risk, and the state at increased liability. We indicated, at that time, also, that there was a necessity to match demand with adequate resources, and we recommended specifically that the state look at alternatives to incarceration, as well as increased capacity. I think that it is important to understand that there is a cost to this, both a cost if you want to build, there is a cost if you release inmates to society, and ultimately that is one of the things that the task force is dealing with, as it weighs what should be done to address the overcrowding crisis.

Speakers and members of the public participating the the hearings included ex-offenders, families and friends of ex-offenders, law enforcement officials, judges, community and economic development officials, probation officers, clergymen, civic representatives, and the general public.

Following is a summarization of public ideas concerning overcrowding and alternatives to incarceration:

- Development or expansion of community-based mental health and alcohol/drug treatment programs for offenders, to include education and vocational programs.
- Expansion of work release, probation, intensive supervision, house arrest and electronic monitoring programs for non-violent offenders, enabling them to work, pay restitution and participate in required programming.
- Equitable sentencing of criminal acts.
- Pre-release programs should be developed or enhanced to assist inmates with reintegration into society to help reduce recidivism.
- Development or expansion of educational, vocational, industries, mental health and alcohol/drug abuse treatment programs within institutions.
- Alternative sentencing to military service for non-violent offenders.
- Actively involve offenders in development of personal long- and short-term goals to facilitate change and reintegration back into society.
- Parole Board should not impose additional requirements whereby the offender must serve many years beyond their earliest eligibility date if they have displayed positive behavior and have successfully participated in required programming.

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Public Hearings - February, March and April 1992
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- The Parole Board should become more familiar with individual cases to make sound decisions on parolability.
- Utilize Ryan High School, located in Omaha, Nebraska, as a work release center or educational and mental health programming facility.
- Increase in mental health programming for sexual abuse and substance abuse within institutions.
- Require an appropriations bill be attached to any corrections legislation which would increase prison population and cost of incarceration to the state.
- Educate the public on the economic reality of incarceration, alternatives, and their associated costs.
- Increase community involvement with programs for offenders and their families.
- Development of a work release program where non-violent offenders could work in conjunction with area farmers to learn job skills and participate in required programming.
- Incarcerate high risk youthful offenders in an institution separate from low and medium risk juveniles and from adult offenders.
- Focus prevention dollars towards juveniles to deter them from substance abuse and criminal activity, such as DARE-type programs.
- Development of specialized foster homes for juveniles with substance abuse problems.
- Those communities expressing interest in being considered as a viable site for construction of a new institution are:
 - Box Butte County (Alliance, NE)
 - Dawson County
 - Ogallala, Nebraska
 - McCook, Nebraska

In addition to members of the public speaking at the hearings, a number of people submitted written statements which were previously sent to Task Force members.

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Public hearings were held on the following dates, with identified Task Force members and Corrections staff in attendance:

February 28, 1992 - Omaha, Nebraska - 1:30 p.m. - Omaha Public School Board Room.

Task Force members present: Dr. G. L. Kuchel, Co-Chair, Former Governor Frank Morrison (Co-Chair), Brent Blackwood, Kevin Duffy for Senator Gerald Chizek, Harold Clarke, Dennis Keefe, Sharon Lindgren, Jean Lovell, Ray Myers, Donna Polk, and Carol Schoenleber.

Corrections officials and staff present: Jack Falconer, Karen Shortridge, Larry Tewes, Steve King, Judy Nelson.

March 13, 1992 - Kearney, Nebraska - 1:30 p.m. - University of Nebraska-Kearney Student Union.

Task Force members present: Dr. G. L. Kuchel, Co-Chair, Former Governor Frank Morrison (Co-Chair), John Rochford, Carol Schoenleber, Senator Douglas Kristensen, Judge John Icenogle, Harold Clarke.

Corrections officials and staff present: Jack Falconer, Larry Tewes, Steve King, Judy Nelson.

April 3, 1992 - Ogallala, Nebraska - 1:30 p.m. - Keith County Courthouse.

Task Force members present: Dr. G. L. Kuchel (Co-Chair), Former Governor Frank Morrison (Co-Chair), Deborah Gilg, Dr. George Watson, Harold Clarke.

Corrections officials and staff present: Jack Falconer, Steve King, Judy Nelson.

Submitted by,

Judy Nelson
Judy Nelson, DCS Administrative Secretary

May 18, 1992
Date

APPENDIX D

Summary of Inmate Hearings Minutes*

*Complete testimony is filed with the Nebraska Department of
Correctional Services and is available for review.

GOVERNOR'S TASK FORCE ON PRISON ALTERNATIVES

Inmate Hearings April 1992

Each inmate giving testimony was given a letter from Dr. Kuchel explaining the Task Force, its purpose, and its request for ideas concerning overcrowding and alternatives to incarceration. Inmates giving testimony and Task Force members present are listed at the end of this report.

Inmate hearings are being retained on tape. Following is a summarization of inmate ideas concerning overcrowding and alternatives to incarceration:

- Development or expansion of community-based facilities for non-violent offenders, such as DWI, Driving on Suspended License, such as halfway houses, intensive supervision, drug/alcohol treatment centers, house arrest, electronic monitoring, or work release centers, to include extensive counseling programs.
- Alternative sentencing to in-house counseling or drug/alcohol programs for treatment prior to incarceration.
- Alternative sentencing to military service for non-violent offenders.
- Equitable sentencing of crimes.
- Placement of first-time offenders in prison for a 30/60-day period to scare them from committing more crimes.
- Sentencing of offenders done by a sentencing board, rather than one judge, for more equitable sentencing and proper placement in programs or facilities.
- Pre-release programs need to be developed or enhanced to assist inmates with reintegration into society to help reduce recidivism. Participation in such programs could begin six months prior to being paroled or released and include instruction on money management, time management, parenting skills, job skills and placement, maintaining a residence, transportation information, and people skills.
- Counselors should work with offenders to develop an individualized plan to identify long- and short-term future goals, and steps necessary to achieve those goals.
- Alternative sentencing of parole revocation due to minor offenses to community-based programming or facility rather than reincarceration.
- Placement of high risk and violent juvenile offenders in a separate facility from adult offenders.
- Separation of long-term offenders from short-term offenders; placement of offenders with sentences of 5 years or less in facility away from maximum custody offenders.

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- Development of standard guidelines for Parole Board to follow in the parole decision process. Parole Board needs to take minimum terms more seriously and grant parole to those who exhibit positive behavior through behavior, involvement in programs, and lack of misconduct reports.
- Eliminate Parole Board and turn parole decision over to Corrections. Corrections staff have day-to-day contact with offenders and are better equipped to know how successful an offender may be upon release.
- Extensive mental health, education and vocational programs need to be available within the institution addressing behavior modification, drug and alcohol dependency, self-esteem, illiteracy, job skills training, and survival skills.
- Grant parole status to those offenders who are eligible and have displayed positive behavior while incarcerated.
- Development of counseling and support groups for offenders' families.
- Increased support of religious programs within institutions.
- Incentive points offered for successful participation in education, vocational and counseling programs, and for positive behavior. This would help the offender move through the system quicker and give them the incentive to do so.
- Misconducts for petty infractions take away good time and slow down or stop movement through the system.
- Reevaluation of DCS classification system to assist offenders who display positive behavior to move through the system more quickly.
- Establishment of an "honor dorm" for those inmates who exhibit positive behavior and wish to live in a clean and quiet area, separated from those who do not.
- Receive good time in lieu of money for participation in industry programs.
- Require successful completion of GED, counseling and treatment programs mandatory prior to parole or release.
- Make Pell Grants available to inmates who wish to participate in college education programs; require C+ average to continue program.
- Make the new good time bill (LB 816) which is effective July 1992 retroactive. Inmates were informed this statutorily could not be done.
- Additional programming for long-time and elderly offenders to assist them in bettering themselves.

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- Additional prison industry programs enabling inmates to keep busy, learn a trade, and earn money for family, restitution, maintenance fees, etc.
- To decrease idleness, additional activities such as bingo, choir, movie channel, etc. would be helpful.
- Development of programs to educate youth and society about prison life and the judicial system.
- Development of prevention programs for youth which address drugs, alcohol, and criminal behavior.

Inmate Concerns

- A number of inmates in the various institutions addressed levels of overcrowding and its impact on inmate safety.
- Overcrowding has lessened the Department's ability to control the inmate population, causing concerns for inmate and staff safety.

Inmate Complaints Concerning Incarceration

- Double-celling and overcrowding is decreasing the amount of space inmates have to get away from each other, which increases noise, tension and fights.
- At LCC, some units are experiencing problems with food service concerning timeliness and temperature.
- Offenders would like to be able to purchase typewriters and personal computers and keep them in their rooms.

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Inmate hearings were held at the following institutions:

NEBRASKA CENTER FOR WOMEN, April 13, 1992, 1:30 - 4:30 p.m.

Task Force Members Present: Dr. G. L. Kuchel, Frank Morrison, Terry Thompson, Donna Polk, Brent Blackwood, Gary Hannibal, Dennis Keefe

DCS Staff Present: Karen Shortridge, Larry Wayne, Pam Hromadka

NCW Inmates Who Testified:

Lataunya Hunt #3213	Theresa West #3263	Sandra Alcaraz #3052
Trudie Bruce #3150	Lisa Wilson #2643	Tammie Covington #3085
Penny Goings #3243	Cheryl Neely #3144	Kathleen Anthony #2593
Elizabeth Blank #3188	Scheryle Woodall #2404	Barbara Keithley #3206
Latasha Bolton #3204	Jacqueline Brick #2146	

OMAHA CORRECTIONAL CENTER, April 15, 1992, 1:30 - 4:30 p.m.

Task Force Members Present: Dr. G. L. Kuchel, Greg Lemon, Gary Hannibal, Brent Blackwood, Terry Thompson, Carol Schoenleber, Ray Myers, Deborah Gilg, Harold Clarke, Donna Polk, Terry Thompson

DCS Staff Present: Karen Shortridge, Steve King, Bob Houston, Diane Sabatka, Rich Leech, Charlie West

OCC Inmates Who Testified:

Bryan Kennedy #41272	Harold Mildrexler #39784	Mark Wallen #42111
Yahya Ali #42166	Gary Ashby #29690	Larry Bussey #39905
Ruben Hardy #42943	Anthony Huff #39985	Frank Medlock #39620
Fred Myers #32340	John Sobieszczyk #42257	Shane Adams #41785
Lee Coffin #42129	Robert Farrell #42091	Orlando Jackson #42370
Roosevelt Logan #38422	Calvin Lyncook #38015	Fred Owens #39228
Roy Perez #39907	Randy Portsche #42968	Doneral Reed #38268
Billy Thompson #40056	Robert Brooks #42840	Sandy Kerns #29810
John Reed #32764		

OCC Inmates Declining Testimony:

David Adams #39517 Herbert Johnson #41862

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LINCOLN CORRECTIONAL CENTER, April 17, 1992, 8:30 - 11:30 a.m.

Task Force Members Present: Dr. G. L. Kuchel, Frank Morrison, Dennis Keefe, Sharon Lindgren, Terry Thompson, Harold Clarke

DCS Staff Present: John Dahm, Karen Shortridge, Barb Hall, Jack Falconer, Steve King

LCC Inmates Who Testified:

Robert Record #30637	David Ware #35781	Clinton Turner #36301
Scott Patz #36114	Clarence Dennis #31684	Greg Tyrrell #38807
Robert Lott #42676	Ramiro Escamilla #43043	Kevin McGee #43017
Rande Nelson #42994	Larry Gladfelter #43022	Dean Williams #40524
George Shepard #41131	Glenn Sayers #40498	Roger Cunningham #40718
Greg Sullivan #40161	Terry Kuntzelman #38894	Sam Green #38907
John Andreas #37030	James Saylor #36500	Richard Wright #42873
Timothy Suer #42419	Michael Knight #41722	Terry Reynolds #39074
Earl Labat #38285		

LCC Inmates Declining Testimony:

Greg Otte #40105	Floyd Yarborough #30773	Michael Hunt #34534
Alchico Wilson #38400		

NEBRASKA STATE PENITENTIARY, April 17, 1992, 1:30 - 4:30 p.m. and
April 22, 1991, 8:30 a.m. - 12:30 p.m.

Task Force Members Present: Dr. G. L. Kuchel, Frank Morrison, Harold Clarke, Gary Hannibal, Jim McFarland, Terry Thompson, Ray Myers, Dennis Keefe, Jean Lovell, Sharon Lindgren

DCS Staff Present: Jack Falconer, Steve King, Frank Hopkins, Mike Kenney, Mario Peart, Win Barber

NSP Inmates Who Testified:

Keith Marion #30210	Mark Andersen #38434	Duane Sanders #33269
Gary Keithley #32977	Charles Grier #40816	James Ferrell #35408
James Martinez #37531	Decabooter Williams #39600	Donald Laws #35819
Juneal Pratt #30206	Charles Peterson #42071	Darwin Robinson #34034
Sylvester Jones #34085	Larry Christensen #40523	Reginald Bennett #31895
Steven Jacob #41659	Laddie Dittrich #27778	Mark Larkin #41581
Frank Vasquez #33225	Rupert Dick #41976	Wilfred Nielsen #31801
David Rice #27768	Clayton Kern #36658	Lionel Brown #39728
Samuel Brown #31514	Michael McGuire #35216	Myron Wyatt #39366
Dale Dinges #31382	Marquis Washington #38084	Edward Dewitt #41222

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NSP Inmates Declining Testimony:

Gary Clark #37936 Nathaniel Deckard #29257 Kenneth Freeman #38206
Tracy Etherington #41388

Written statements and information from the following offenders during inmate hearings are included as part of this report:

Sandy Kerns #29810 John Sobieszczyk #42257 Roy Perez #39907
Robert Brooks #42840 Harold Mildrexler #39784 Earl Labat #38285
Terry Reynolds #39074 John Andreas #37030 George Shepard #41131
David Rice #27768
Lataunya Hunt #3213

Submitted by:

Judy Nelson
Judy Nelson, DCS Administrative Secretary

May 18, 1992
Date

APPENDIX E

LB 765 - Nebraska Community Corrections Act
introduced January 1993

LEGISLATURE OF NEBRASKA

NINETY-THIRD LEGISLATURE

FIRST SESSION

Legislative Bill 765

Introduced by Ashford, 6

Read first time January 21, 1993

Committee: Government, Military and Veterans Affairs

A BILL

- 1 FOR AN ACT relating to corrections; to amend section 29-2262, Revised
- 2 Statutes Supplement, 1992; to adopt the Community
- 3 Correctional Facilities and Programs Act; to harmonize
- 4 provisions; and to repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 18 of this act shall be known and
2 may be cited as the Community Correctional Facilities and Programs
3 Act.

4 Sec. 2. It is the purpose of the Community Correctional
5 Facilities and Programs Act to encourage flexibility in the
6 development of community correctional facilities and programs by the
7 department, units of local government, and nongovernmental agencies
8 and to encourage the use of such facilities and programs by
9 sentencing courts. It is the further purpose of the act to provide a
10 procedure through which units of local government and nongovernmental
11 agencies may provide adult correctional services to the department
12 and to sentencing courts.

13 Sec. 3. For purposes of the Community Correctional
14 Facilities and Programs Act:

15 (1) Community correctional facility or program shall mean a
16 community-based or community-oriented facility or program which (a)
17 is operated either by a unit of local government, the department, or
18 a nongovernmental agency, (b) may be designed to provide residential
19 accommodations for offenders, and (c) provides programs and services
20 to aid offenders in obtaining and holding regular employment, in
21 enrolling in and maintaining academic courses, in participating in
22 vocational training programs, in utilizing the resources of the
23 community to meet their personal and family needs, in obtaining
24 mental health, alcohol, and drug treatment, and in participating in
25 whatever specialized programs exist within the community;

26 (2) Corrections board shall mean the governing body of any
27 unit of local government or a board which may be appointed by the
28 governing body of any unit of local government to carry out the act;

1 (3) Department shall mean the Department of Correctional
2 Services;

3 (4) Director shall mean the Director of Correctional
4 Services;

5 (5) Nongovernmental agency shall mean any person, private
6 nonprofit agency, corporation, association, labor organization, or
7 entity other than the state or a political subdivision;

8 (6) Offender shall mean any person who has been convicted
9 of a felony or misdemeanor but shall not include any person who has
10 been found to be an habitual criminal under section 29-2221 or has
11 been convicted of a crime in which a deadly weapon was used; and

12 (7) Unit of local government shall mean a county, city,
13 village, or joint entity established pursuant to the Interlocal
14 Cooperation Act.

15 Sec. 4. Any unit of local government may establish,
16 maintain, and operate such community correctional facilities and
17 programs as it deems necessary to serve the needs of any or all of
18 the following:

19 (1) The unit of local government;

20 (2) Offenders who are assigned by the department to the
21 facility or program on a contractual basis; and

22 (3) Offenders sentenced to the facility or program by a
23 sentencing court in accordance with the guidelines provided for in
24 section 11 of this act and pursuant to a contract or agreement
25 entered into between the presiding judge of the judicial district in
26 which the facility or program will be located and the unit of local
27 government.

28 Any unit of local government may contract for services with

1 any nongovernmental agency or another unit of local government for
2 the purpose of providing services to offenders.

3 It is the intent of the Legislature that units of local
4 government not use jails for purposes of community correctional
5 facility and program.

6 Sec. 5. The governing body of any unit of local government
7 may establish, by resolution or ordinance, a corrections board which
8 may be advisory or functional. If a corrections board is established
9 by resolution or ordinance, the governing body may delegate to such
10 corrections board any powers necessary to accomplish the purposes of
11 the Community Correctional Facilities and Programs Act.

12 The Attorney General shall provide advice and technical
13 assistance to corrections boards. Corrections boards may also call
14 upon the department for advice and technical assistance.

15 Sec. 6. (1) A unit of local government or, if established,
16 a corrections board may establish and enforce standards for the
17 operation of a community correctional facility or program and for the
18 conduct of offenders in the facility or program. The unit of local
19 government or, if established, the corrections board shall, in
20 conjunction with the department or the judges of the judicial
21 district in which the facility or program will be located, establish
22 procedures for screening offenders who are to be placed in any
23 community correctional facility or program operated by the unit of
24 local government. Such procedures may include the use of an
25 objective risk assessment scale to classify offenders in terms of
26 their risk to the public.

27 (2) The unit of local government or, if established, the
28 corrections board may accept, reject, or reject after acceptance the

1 placement of any offender in a community correctional facility or
2 program under the jurisdiction of the unit or board, pursuant to any
3 contract or agreement with the department or a judicial district. If
4 an offender is rejected by the unit of local government or the board
5 after initial acceptance, the offender shall remain in the community
6 correctional facility or program for a reasonable period of time
7 pending receipt by the facility or program of appropriate orders from
8 the sentencing court or the department for the transfer of such
9 offender. The sentencing court may make appropriate orders for the
10 transfer of such offender to the department and to resentence such
11 offender and impose any sentence which might originally have been
12 imposed without increasing the length of the original sentence.

13 Sec. 7. Any nongovernmental agency may establish,
14 maintain, and operate a community correctional facility or program
15 for the purpose of providing services to a unit of local government,
16 to a judicial district, or to the department. The establishment of
17 any community correctional facility or program by a nongovernmental
18 agency shall be subject to approval by the county board of the county
19 or the governing body of the city or village in which the proposed
20 facility or program is to be located. Approval or denial of the
21 establishment of such facility or program by the unit of local
22 government shall be made only after consultation with the corrections
23 board if one has been established.

24 Sec. 8. Any nongovernmental agency may enter into
25 contracts or agreements to provide services with units of local
26 government, a judicial district, or the department. The contracts or
27 agreements shall be entered into pursuant to guidelines or standards
28 adopted by the department or by the unit of local government or

1 judicial district in which the facility or program will be located.
2 Such contracts or agreements shall provide for strict accountability
3 procedures and practices for the conduct and supervision of offenders
4 assigned, transferred, or sentenced to such nongovernmental agency.
5 The contracts or agreements shall also provide that, if a residential
6 facility is maintained, the nongovernmental agency will perform
7 periodic and unscheduled chemical tests to determine whether drugs
8 are used by offenders in the facility.

9 Sec. 9. (1) A nongovernmental agency may establish and
10 enforce standards for the operation of a community correctional
11 facility or program and for the conduct of offenders in the facility
12 or program. The agency shall, in conjunction with the department or
13 the judges of the judicial district in which the facility or program
14 will be located, establish procedures for screening offenders who are
15 to be placed in any community correctional facility or program
16 operated by the agency. Such procedures may include the use of an
17 objective risk assessment scale to classify offenders in terms of
18 their risk to the public.

19 (2) The nongovernmental agency may accept, reject, or
20 reject after acceptance the placement of any offender in a community
21 correctional facility or program under the jurisdiction of the
22 agency, pursuant to any contract or agreement with a unit of local
23 government, the department, or a judicial district. If an offender
24 is rejected by the nongovernmental agency after initial acceptance,
25 the offender shall remain in the community correctional facility or
26 program for a reasonable period of time pending receipt by the
27 facility or program of appropriate orders from the sentencing court
28 or the department for the transfer of such offender. The sentencing

1 court may make appropriate orders for the transfer of such offender
2 to the department and to resentence such offender and impose any
3 sentence which might originally have been imposed without increasing
4 the length of the original sentence.

5 Sec. 10. (1) A sentencing judge may sentence a nonviolent
6 misdemeanor offender to a nonresidential community correctional
7 facility or program operated by a unit of local government or a
8 nongovernmental agency. A sentencing judge may sentence a nonviolent
9 felony offender to a residential or nonresidential community
10 correctional facility or program operated by a unit of local
11 government or a nongovernmental agency. Such facilities and programs
12 may be utilized for persons who are awaiting sentence, for persons
13 who have been sentenced, including sentences for probation, and for
14 nonviolent offenders whose parole has been revoked.

15 (2) A person charged with a nonviolent misdemeanor offense
16 and sentenced to probation may be required by the court as a
17 condition of probation to participate in a nonresidential community
18 correctional facility or program operated by a unit of local
19 government or a nongovernmental agency.

20 (3) A person charged with a nonviolent felony offense and
21 sentenced to probation may be required by the court as a condition of
22 probation to participate in a residential or a nonresidential
23 community correctional facility or program operated by a unit of
24 local government or a nongovernmental agency.

25 Sec. 11. (1) The probation administrator and the unit of
26 local government or nongovernmental agency operating a community
27 correctional facility or program shall recommend guidelines for the
28 use of any such facility or program. Such guidelines shall be

1 approved by the presiding judge of the judicial district in which the
2 facility or program will be located and the State Court Administrator
3 prior to the use of such facility or program by the sentencing
4 judges. The presiding judge of the judicial district shall submit
5 any proposed guidelines for the use of any facility or program
6 operated by a nongovernmental agency to the governing body of all
7 units of local government in the district for their review and
8 recommendations.

9 (2) Prior to entering into an agreement or contract with
10 any nongovernmental agency, the presiding judge of the judicial
11 district shall submit such agreement or contract to the governing
12 body of any affected unit of local government for its review and
13 recommendations.

14 (3) Prior to the placement of an offender in any community
15 correctional facility or program operated by a nongovernmental
16 agency, the sentencing judge shall notify or cause to be notified the
17 law enforcement agencies of affected units of local government
18 concerning the identity of the offender to be placed.

19 (4) The district probation officer shall include in the
20 presentence report to the sentencing judge recommendations for the
21 utilization of any community correctional facility or program which
22 has been approved pursuant to this section.

23 (5) An offender sentenced directly to a residential
24 community correctional facility shall, if the sentencing judge
25 directs, be subject to not more than one year of supervision under
26 the direction of the district probation officer after release from
27 such facility. The district probation officer shall supervise all
28 community corrections clients that are sentenced to participate in

1 community correctional facilities or programs as a condition of
2 probation.

3 Sec. 12. The director may establish community correctional
4 facilities and programs as alternatives or as supplements to state
5 correctional facilities for the custody, control, care, and treatment
6 of offenders. For state facilities designed for community
7 correctional programs, the department shall obtain approval of the
8 unit of local government in which the facility will be located. The
9 unit of local government shall hold a public hearing on the location
10 of such facility prior to any such grant of approval.

11 Sec. 13. (1) Each community correctional facility or
12 program operated by a unit of local government or a nongovernmental
13 agency with which the department contracts for services shall meet
14 approved minimum standards established in rules and regulations
15 adopted by the department.

16 (2) Pursuant to a contract with a unit of local government
17 or a nongovernmental agency operating a community correctional
18 facility or program, the director may transfer any offender to such
19 community correctional facility or program if in his or her judgment
20 the correction of such offender will be better served by such
21 transfer and if the unit of local government or the nongovernmental
22 agency consents.

23 (3) Prior to entering into any agreement or contract with
24 any nongovernmental agency, the director shall submit such agreement
25 or contract to the governing body of any affected unit of local
26 government for its review and recommendations.

27 (4) Prior to the placement of an offender in any community
28 correctional facility or program operated by a nongovernmental

1 agency, the director shall notify or cause to be notified the law
2 enforcement agencies of affected units of local government concerning
3 the identity of the offender to be placed.

4 Sec. 14. Funds appropriated for transitional placements in
5 community correctional facilities and programs shall be expended by
6 the department only on the conditions that (1) in any county with a
7 corrections board, the board shall be notified of any proposed
8 transitional placement within the county and (2) the board may
9 accept, reject, or reject after acceptance any offender placed by the
10 department in any community correctional facility within the county.

11 Sec. 15. (1) A sentence, assignment, or transfer of an
12 offender to a community correctional facility or program operated by
13 a unit of local government or a nongovernmental agency shall be
14 conditioned on the entrance of the offender into a contract or
15 agreement with the unit of local governmental or nongovernmental
16 agency. This requirement shall apply to, but not be limited to,
17 offenders directly sentenced to a community correctional facility or
18 program and to offenders transferred to such a facility or program
19 from the department. The contract or agreement may provide for a
20 percentage or amount of money received from employment of the
21 offender to be set aside to pay family support if appropriate, to
22 establish a savings account or fund to be utilized by the offender
23 upon release, and to be used for any other requirements which the
24 parties deem necessary, including reimbursement to the appropriate
25 unit of local government or nongovernmental agency to help defray the
26 cost of residential services for such offender.

27 (2) In a community correctional facility or program, the
28 primary obligation for obtaining employment shall be on the offender,

1 but the Department of Labor shall provide assistance in obtaining
2 employment for offenders participating in a community correctional
3 facility or program.

4 Sec. 16. If an offender fails to remain within the limits
5 of his or her confinement or to return within the time prescribed to
6 a community correctional facility to which he or she was assigned or
7 transferred or if any offender who participates in a community
8 correctional program leaves his or her place of employment or, having
9 been recommended by the director or the probation administrator to be
10 returned to a correctional institution, neglects or fails to do so,
11 the offender shall be deemed to have escaped from custody and all
12 reductions in sentence authorized by sections 83-1,107 and 83-1,108
13 shall be forfeited.

14 Sec. 17. (1) When the administrator of a community
15 correctional facility or any other appropriate supervising authority
16 has reason to believe that an offender placed in a community
17 correctional facility has violated any rule or condition of his or
18 her placement in that facility or any term of his or her probation
19 under section 11 of this act or cannot be safely housed in the
20 facility, the administrator or other authority shall certify to the
21 sentencing court or the department the facts which are the basis for
22 his or her belief and execute a transfer order to any sheriff, deputy
23 sheriff, police officer, or officer of the Nebraska State Patrol
24 which authorizes the sheriff, deputy sheriff, police officer, or
25 officer of the Nebraska State Patrol to transport the offender to the
26 county jail in the county in which the community correctional
27 facility is located. The offender shall be confined in such county
28 jail pending a determination by the appropriate court or executive

1 authorities as to whether or not the offender may remain in the
2 community correctional facility. An offender so confined may apply
3 for bond only when he or she has been confined due to an alleged
4 violation of a condition of probation contemplated by section 11 of
5 this act.

6 (2) If the sentencing court determines that the offender
7 should not remain in the community correctional facility, the court
8 may make appropriate orders for the transfer of such offender from
9 the county jail to a correctional facility operated by the department
10 and to resentence such offender and impose any sentence which might
11 originally have been imposed without increasing the length of the
12 original sentence.

13 Sec. 18. Proceedings under the Community Correctional
14 Facilities and Programs Act shall not be subject to the
15 Administrative Procedure Act.

16 Sec. 19. That section 29-2262, Revised Statutes
17 Supplement, 1992, be amended to read as follows:

18 29-2262. (1) When a court sentences an offender to
19 probation, it shall attach such reasonable conditions as it deems
20 necessary or likely to insure that the offender will lead a
21 law-abiding life.

22 (2) The court, as a condition of its sentence, may require
23 the offender:

24 (a) To refrain from unlawful conduct;

25 (b) To be confined periodically in the county jail or to
26 return to custody after specified hours but not to exceed (i) for
27 misdemeanors, the lesser of ninety days or the maximum jail term
28 provided by law for the offense and (ii) for felonies, one hundred

1 eighty days;

2 (c) To meet his or her family responsibilities;

3 (d) To devote himself or herself to a specific employment
4 or occupation;

5 (e) To undergo medical or psychiatric treatment and to
6 enter and remain in a specified institution for such purpose;

7 (f) To pursue a prescribed secular course of study or
8 vocational training;

9 (g) To attend or reside in a facility established for the
10 instruction, recreation, or residence of persons on probation;

11 (h) To refrain from frequenting unlawful or disreputable
12 places or consorting with disreputable persons;

13 (i) To have in his or her possession no firearm or other
14 dangerous weapon unless granted written permission;

15 (j) To remain within the jurisdiction of the court and to
16 notify the court or the probation officer of any change in his or her
17 address or his or her employment;

18 (k) To report as directed to the court or a probation
19 officer and to permit the officer to visit his or her home;

20 (l) To pay a fine in one or more payments as ordered;

21 (m) To work, in lieu of or in addition to any fine, on
22 public streets, parks, or other public property for a period not
23 exceeding twenty working days. Such work shall be under the
24 supervision of the probation officer or a law enforcement officer in
25 the jurisdiction in which the work is performed;

26 (n) To pay for tests to determine the presence of drugs or
27 alcohol, psychological evaluations, and rehabilitative services
28 required in the identification, evaluation, and treatment of

1 offenders if such offender has the financial ability to pay for such
2 services;

3 (o) To perform community service as defined in section
4 29-2277;

5 (p) To be monitored by an electronic surveillance device or
6 system and to pay the cost of such device or system if the offender
7 has the financial ability;

8 (q) To participate in a community correctional facility or
9 program as provided in section 10 of this act; or

10 ~~(q)~~ (r) To satisfy any other conditions reasonably related
11 to the rehabilitation of the offender.

12 (3) In all cases in which the offender is guilty of assault
13 or battery and the victim is the offender's spouse, a condition of
14 probation shall be mandatory counseling as provided by the Protection
15 from Domestic Abuse Act.

16 (4) In all cases in which the offender is guilty of
17 violating section 28-416, a condition of probation shall be mandatory
18 treatment and counseling as provided by subsection (12) of section
19 28-416.

20 Sec. 20. That original section 29-2262, Revised Statutes
21 Supplement, 1992, is repealed.