

A Review of Criminal Justice Reform as it Applies to LB 605

A brief comparison of Court dispositional JUSTICE and Probation data vs. Nebraska Department of Correctional Services data

The passage of LB 605 was intended to promote Criminal Justice reform. Priorities of the reform included the reduced reliance on prison as a sentence, and increased utilization of probation. This legislative initiative has been in place just under three years and JUSTICE sentencing data suggests significant progress is being made:

- The number sentenced to prison has decreased despite a small increase in felony filings.
- The offenses for which persons are sentenced to prison are shifting from lower level to higher level felonies.
- Probation, as a sentence, has increased.
- There is more work to do.

As a point of reference, an understanding of the Nebraska Department of Correctional Services (NDCS) inmate population is needed. NDCS has consistently conveyed that the prison population has not gone down at the rate expected and, in fact, has increased. In 2016, NDCS data indicates 2,399 admissions. In 2017, NDCS data reports 2,535 admissions.* The end result is 136 more individuals entered into prison in 2017 as compared to 2016.

In 2016 there were 2,071 discharges from NDCS. There were 2,236 discharges in 2017, representing 165 more individuals discharged in 2017 compared to 2016.** This represents an 8% increase in individuals released from NDCS between 2016 and 2017.

Based on the numbers above, it would appear that there would be a net decrease of 29 individuals from 136 more admissions and 165 more discharges, which reflects a slight improvement.

However, to understand the real progress made toward Justice reform, it is important to assess beyond just NDCS admissions and discharges. The following is intended to demonstrate the progress:

According to JUSTICE data, felony filings increased slightly by .8% from 13,859 to 13,972 between 2016 and 2017. Taking a different and deeper view by individual offense class, the distribution is as follows:

- Felony IV experienced a 4% increase.
- Felony IIIA experienced a 2% increase.
- Felony III experienced a 30% decrease.
- Felony IIA experienced a 10% increase.
- Felony II experienced a 3% increase.
- Felony I experienced a 5% increase.

JUSTICE dispositional sentencing data indicates there is an impact to prison reform reflected in a decrease from 1,780 sentenced to prison in 2016 to 1,454 sentenced to prison in 2017, or 326 fewer dispositions to prison. This represents an 18% reduction overall.

A positive second indicator is represented by the decrease in Felony IV, Felony IIIA, and Felony III sentenced to prison. In 2016 Felony IV, Felony IIIA, and Felony III represented 66% of the dispositions being sent to prison, while in 2017 Felony IV, Felony IIIA, and Felony III represented 41% of the dispositions being sent to prison. The Felony IV drop in sentences to prison of 284 individuals, or 46%, between 2016 and 2017 is of particular interest with the legislative intent of LB 605 surrounding presumptive probation.

While one might assume 326 fewer sentences to prison would have resulted in a greater decrease in the overall prison population, significant factors help to explain why this has not been the case. These factors include:

- In 2016 Felony II and Felony IIA represented 30% of the total population sentenced to prison.
- In 2017 Felony II and Felony IIA represented 53% of the total population sentenced to prison.
- Felony IIA experienced a 71% increase in cases sentenced to prison in 2017 over 2016.
 - Primary contributing offenses include:
 - Attempt of a Class II felony - 109% increase
 - Burglary - 22% increase
 - Delivery of a controlled substance - 70% increase
 - Assault 2nd degree – 77% increase
- Felony II experienced a 28% increase in 2017 over 2016.
 - Primary contributing offenses include:
 - Delivery of hazardous drug – 10% increase
 - Attempt of a Class I felony - 32% increase
 - Robbery – 62% increase

The contributing factors listed above are important to note as many of the drug and assaultive penalties were elevated from Class III to a Class IIA and Class II felony as part of LB 605. This statutory change would subsequently result in a dispositional shift which would presumably increase in the length of time an individual would remain in prison. Simply put, the more serious the offense, the greater likelihood of a longer sentence.

A third indicator is the increased utilization of probation as a viable sentencing alternative. There was a 22% increase in probation as a dispositional sentence between 2016 and 2017, growing from 1,842 to 2,231.

- Primary contributors include:
 - Felony IV – 22% increase
 - Felony IIIA – 27% increase
 - Felony III – 50% decrease
 - Felony IIA – 93% Increase
 - Felony II –32% increase

While there was a sharp decrease in Felony III's placed on probation, this is again correlated to penalty changes associated with LB 605 which increased and/or decreased certain offenses to either a Class IIA or Class IIIA felony. The 22% increase in probation sentences does not include the additional responsibility of the post-release supervision population.

Again, the above information gleaned from this JUSTICE and Probation data suggests that significant progress toward Justice reform has been demonstrated.

More Work to be done:

The admitted and unfortunate delays early on of full implementation in Parole reform and availability of correctional programming at NDCS likely serves, as contributing factors, to the prison population stagnation. This is further evidenced by the NDCS average daily inmate population of 5,372 in 2016 and 5,353 in 2017, or only a .5% decrease.

As previously mentioned, NDCS reported 2,399 sentenced admissions in 2016, while JUSTICE data reports 1,780 dispositions to prison, or 74% of the total admission population. NDCS indicates there were 2,535 sentenced admissions to prison in 2017. JUSTICE data indicates 1,454 cases were sentenced to prison in 2017. This represents 57% of the total admissions.

Why is there such a contrast between JUSTICE dispositional data and NDCS data concerning admissions to prison? A clearer understanding between the admissions data reported by NDCS versus the number of dispositions to prison reported by JUSTICE requires additional exploration. However, one reason for some of the differences in the totals between what NDCS reported as admissions and what JUSTICE reports as dispositions to prison is the different definitions used between IT systems. For example, interstate transfers, 90-day evaluators, and county safe keepers are included by NDCS as admissions, but has nothing to do with sentencing. Similarly, if an individual is placed on probation but is later revoked and sent to prison, only the original disposition was included in the JUSTICE data so as not to count the same individual twice. While a separate conversation for another time, this type of disparity further supports the need for the creation of a unique identifier applied to all individuals in the criminal justice system that carries across branches.

In conclusion, it is important to note that the impact of LB605 has not yet been fully realized. We should expect Justice reform efforts to take 2 or more years as old and new cases continue to process through the criminal justice system. However, the current sentencing data reflects very encouraging progress consistent with the legislative intent.

*Per DCS: counts include sentenced offenders, interstate transfers, 90-day evaluators, and county safe keepers; excludes lifetime sex offenders; this counts new admissions to the system only and does not include parole violators who are returned to prison

**Per DCS counts include only people who completed their sentence during the CY; it does not include counts of people released to parole supervision