

# policy STUDY

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## Controlling Costs and Protecting Public Safety in The Cornhusker State

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“Henceforth the world will only be  
A wider prison-house to me—”

—from *O Pioneers!* by Nebraska writer Willa Cather<sup>1</sup>

## I. INTRODUCTION

The words above are spoken by a character in *O Pioneers!* as she is walking away from the State Penitentiary in Lincoln, Nebraska. Unfortunately, for much of the past two decades, those words have not just been literary flourish; they have been a depressingly accurate assessment of the criminal justice system in Nebraska, Cather’s adopted home. For much of this period, Nebraska suffered from a crisis of prison overcrowding and rapidly increasing corrections costs. Worst of all, it was not clear that this incarceration-focused model, which vastly expanded the size and cost of state government – and turned Nebraska into a “wider prison-house” – was keeping the Nebraska public as safe as it could.<sup>2</sup>

Government often grows far beyond its traditional core functions, but most people in Nebraska would acknowledge that public safety is a legitimate and core governmental function, and taxpayer funds are necessary to sustaining the government’s role in it. Because public safety is one of the few core functions of government, it is especially critical that policymakers hold criminal justice agencies accountable for their performance and seek to maximize taxpayers’ return on their investment.

Locking up dangerous violent offenders for long periods, though costly, is undoubtedly a sound use of taxpayers’ dollars. The growth in Nebraska’s prison population and costs, however, is largely the result of increased incarceration of nonviolent offenders for short periods of time. In 2007, slightly over half of those admitted to Nebraska prisons were nonviolent offenders.<sup>3</sup> Is this revolving door, through which offenders may leave worse than they entered and with diminished employment prospects, delivering the best public safety return on Nebraskans’ tax dollars?

The Nebraska criminal justice system must be subjected to the same scrutiny that is warranted for all other government programs, particularly in the face of a budget shortfall of approximately \$968 million.<sup>4</sup> Policymakers in Nebraska should not measure success in corrections by the size of the system and the amount of money spent. Indeed, corrections systems can grow commensurate with their failure rate, as offenders leaving the system reenter. Thus, the key question should not be how many people are in prison, but how much public safety and victim restitution is obtained for each dollar spent.

Prisons are certainly a vital part of an overall crime-fighting strategy, but “thinking outside the cell” regarding offenders who are not a danger to the public can both save Nebraskans money and make them safer. By the middle of the last decade, the Nebraska legislature began to realize this. Former Nebraska State Senator and Speaker of the Legislature Kermit Brashear reflected on Nebraska’s ostensibly “tough-on-crime” policies and concluded that they had ultimately been counter-productive. “What we found,” he said, “was the political mantra of ‘lock ‘em up’ had long-term financial consequences and still wasn’t achieving results.”<sup>5</sup>

**Nebraska Corrections By the Numbers**

2005 index crime rate per 100,000:	3719.7	2009 index crime rate per 100,000:	3,043.1
2005 violent crime rate per 100,000:	287.3	2009 violent crime rate per 100,000:	281.6
1995 corrections spending:	\$72 million	2010 corrections spending:	\$180.7 million
1995 incarceration rate: 185 per 100,000 adults		2009 incarceration rate: 245 per 100,000 adults	
2006 prison population	4,706	2011 projected prison population	5,273
2007 re-conviction rate within 3 years of prison	25.5%	2009 parole revocations to prison	289
2005 DUI admissions to prison	124	2009 DUI admissions to prison	223
2009 average time on parole	9.69 months	2009 parole success rate	65%

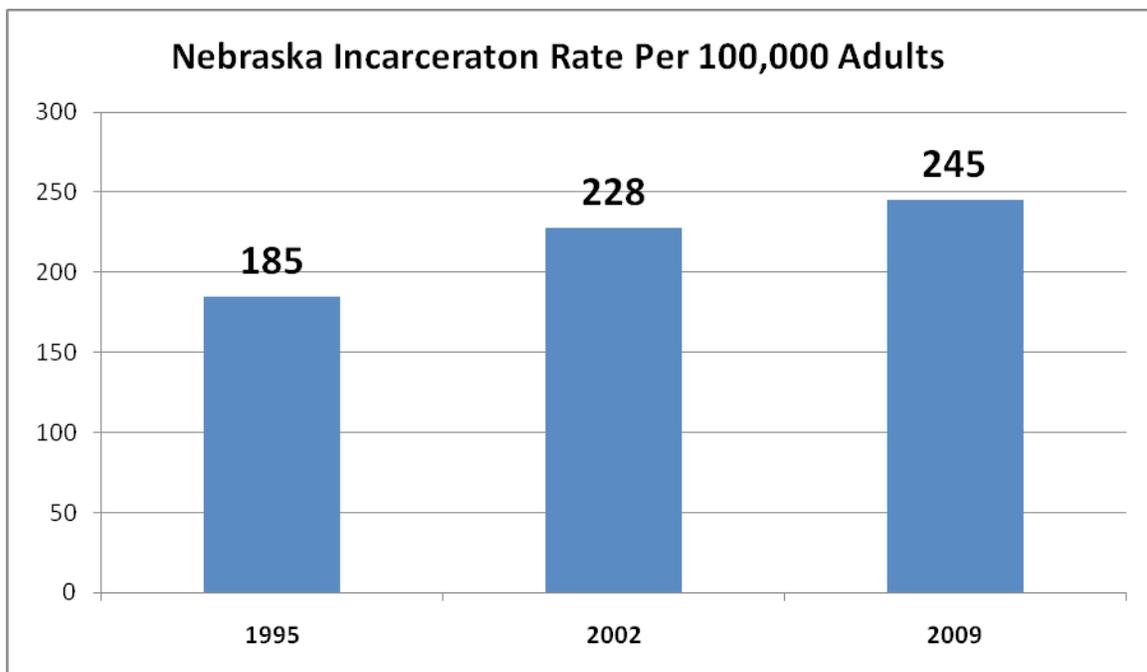
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State leaders, including Brashear, then-Governor Mike Johanns, and then-Department of Correctional Services Director Harold Clarke began to pursue an aggressive reform agenda, which, six years later, has demonstrated successes. This is not to suggest, however, that Nebraska no longer faces significant criminal justice challenges – it certainly does. Fortunately, there are many solutions consistent with the principles of limited government, fiscal responsibility, and public safety that have proven successful in empirical research and in practice on a limited basis in Nebraska and in other states, such as Texas.

These include such measures as geriatric parole, expanding problem-solving courts, and creating clear criteria so that existing community-based residential corrections beds are used for diverting appropriate offenders from prison rather than as an add-on for offenders who can be safely supervised on basic probation. Also, spreading the use of evidence-based practices, such as graduated sanctions in probation, can increase compliance and thereby reduce probation revocations. This paper includes a list of such recommendations to further improve corrections in Nebraska, address the state’s estimated \$968 million budget shortfall, and ensure that public safety is not compromised.

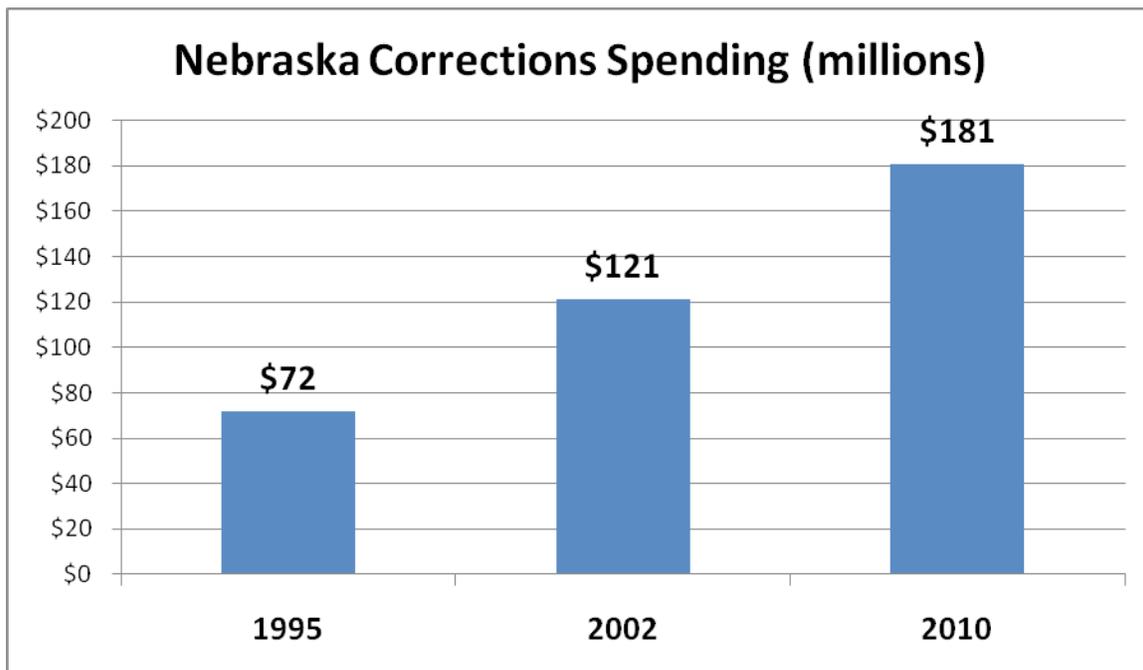
## II. Nebraska’s Corrections Challenges and Opportunities

Between 1995 and 2005, the Nebraska population grew by less than ten percent, but the state prison population grew by 34 percent.<sup>7</sup> Dating back to the 1980s, state corrections facilities in Nebraska routinely suffered from overcrowding problems, and in 2001, state prisons operated at 164 percent of capacity.<sup>8</sup> The Nebraska Legislature attempted to remedy this problem by opening a new medium- and maximum-security prison for adult males in southeast Nebraska – Tecumseh State Correctional Institute – but by 2006, the Department of Correctional Services (DCS) was operating at 140 percent of capacity, and it was hard to understand how building Tecumseh five years earlier had done much to alleviate the overcrowding issue.<sup>9</sup> Pursuant to legislation enacted in 2003, Governor David Heineman was statutorily authorized to declare a “state of emergency” and parole prisoners once prisons were operating at 140 percent of capacity, but the governor did not exercise this authority.<sup>10</sup> Nebraska, therefore, faced the looming threat of a federal lawsuit (which could have charged that the overcrowded prison conditions constituted “cruel and unusual punishment”), and subsequent federal judicial interference in the state system.



The astonishing growth in the prison population between 1995 and 2005 was accompanied by equally astonishing growth in corrections expenditures. Spending tripled during this period from \$72 million to \$206 million.<sup>12</sup> From 1995 to 2004, total state expenditures in Nebraska increased by only 52 percent, but corrections expenditures increased by 119 percent.<sup>13</sup> A portion of the spending necessarily was directed towards the increased staffing needs at facilities such as the Nebraska Correctional Youth Facility which opened in 1998, the Work Ethic Camp

which opened in 2001, and the Tecumseh State Correctional Institution which also opened in 2001. In 1998 and 2004, NDCS and the women’s facility in York, respectively, both added capacity, and thus required staffing increases also. Nebraska taxpayers currently pay for a ratio of one corrections employee for approximately every two prison inmates.<sup>14</sup>



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The dramatic increase in the Nebraska prison population – and the commensurate dramatic increase in corrections spending – was a result of several factors. The “truth-in-sentencing law” passed by the Nebraska Legislature in 1993 was a key cause.<sup>16</sup> In Nebraska, offenders who were given determinate sentences due to truth-in-sentencing were ineligible for parole.<sup>17</sup> The introduction of mandatory minimum sentences was also a key factor.<sup>18</sup>

Fundamentally, however, these policies reflected a broad philosophical shift in corrections: the use of incarceration, rather than community supervision alternatives, as a sanction for low-risk offenders.<sup>19</sup> As the lengths of sentences began to increase, “the parole release rate and the use of probation declined.”<sup>20</sup> In 2007, 28 percent of offenders were incarcerated for various non-violent property offenses.<sup>21</sup> When coupling this 28 percent with the 29 percent who were incarcerated for drug offenses that year, over half the inmates in Nebraska in 2007 were incarcerated for non-violent crimes. This emphasis on incarceration was presented as a “tough-on-crime” approach that reflected a conservative sensibility. In reality, however, it was neither tough on crime nor particularly conservative.

While prisons are the right place to keep violent and dangerous offenders behind bars for long periods, a truly “tough” set of policies would have held nonviolent offenders accountable, not just by incarcerating them, but by putting them into treatment and rehabilitation programs where they would be forced to reckon with their substance abuse, mental health, and behavioral problems. A truly “conservative” set of policies would have insisted that the criminal justice system not just be large and expensive, but that it achieve superior results with minimal cost to Nebraska taxpayers.

### III. Current Policy Options

There has been significant progress across the nation in identifying cost-effective correctional alternatives. A useful tool for policymakers is the cost-benefit tool developed by the Washington State Institute for Public Policy (WSIPP) that identifies programs that cost-effectively reduce crime and those that do not.<sup>22</sup> The Institute has used this tool to develop a corrections portfolio for policymakers that reflects an allocation among prisons and alternatives that, based on empirical research incorporated into their meta-analysis, is projected to achieve the greatest crime reduction per dollar spent.<sup>23</sup>

The rigorous approach is based on WSIPP's meta-analysis of peer reviewed research concerning the outcomes of each the particular correctional strategy.<sup>24</sup> By identifying those strategies that produce the most positive return on investment, the WSIPP tool enables policymakers to take a portfolio approach in allocating corrections spending, spending on prisons insofar as it is the most cost-effective strategy, such as for incapacitating dangerous violent and sex offenders for long periods, and selecting other strategies that are often more cost-effective for suitable nonviolent offenders.<sup>25</sup> It also helps policymakers identify which in-prison treatment, educational, and work programs deliver a positive return on investment. The analysis takes into account both the costs to taxpayers and the cost to victims associated with various crimes.<sup>26</sup>

For example, WSIPP has found vocational education in prison produces a \$20,714 net benefit per participant, treatment-oriented intensive probation produces a \$19,118 net benefit, mandatory drug treatment in the community yields a \$11,856 net benefit, and adult drug courts produce a net benefit of \$8,514.<sup>27</sup> It also identifies those program for which there is insufficient research to draw a conclusion and those, such as Scared Straight for juvenile offenders, that produce a negative return on investment because they actually increase recidivism.<sup>28</sup>

Many of the most promising policy approaches for enhancing public safety and controlling costs were endorsed by the American Legislative Exchange Council (ALEC) last year in the form of model legislation unanimously approved by ALEC's Public Safety and Corrections Committee.<sup>29</sup> ALEC is a non-profit organization that includes a third of the nation's state legislators, whose mission is "to advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty, through a nonpartisan public-private partnership of America's state legislators, members of the private sector, the federal government, and general public."<sup>30</sup> The four key model bills that were approved, which can be obtained from ALEC, are:

- The "Recidivism Reduction Act." This piece of model legislation aims to reduce recidivism by requiring a to-be-determined percentage of offenders be supervised in accordance with "evidence based practices." It also mandates a to-be-determined percentage of offender programming funding allocation to "evidence based practices."
- The "Swift and Certain Sanctions Act." This model bill requires community corrections agencies to adopt graduated incentives to reward and/or sanction individuals on parole or probation for compliance or violation.
- The "Community Corrections Performance Measurement Act." This model bill establishes a system for objectively and quantitatively measuring community corrections agencies in several key performance areas. NDCS currently utilizes 27 performance indicators that are tracked on a monthly basis.
- The "Community Corrections Performance Incentive Act." This model bill aims to incentivize corrections officers to reduce crimes committed by probationers. It does this by giving probation departments a share of the savings to the state gained from reduced incarceration costs.

These approaches are among those highlighted in the following policy options and are described in greater detail in the June 2010 issue of *Inside ALEC* magazine that focuses on public safety.<sup>31</sup>

**Drug Courts.** Drug courts are a proven alternative to incarceration for low-level drug offenders. They offer intensive judicial oversight of offenders combined with mandatory drug testing and escalating sanctions for failure to comply. Drug courts drew bipartisan support last year from White House Office of National Drug Control Policy Director Gil Kerlikowske, Congressman John Boozman (R-AR), Senator Lisa Murkowski (R-AK), Senator Barbara Mikulski (D-MD) and Senator Richard Shelby (R-AL).<sup>32</sup>

According to the National Association of Drug Court Professionals, the average recidivism rate for offenders who complete a drug court program is between 4 percent and 29 percent, in contrast to 48 percent for those who do not participate in a drug court program.<sup>33</sup> Similarly, the Government Accountability Office reported recidivism reductions of 10 to 30 percentage points below the comparison group.<sup>34</sup>

Drug courts have been found to be cost-effective, as their cost can be less than \$3,000 per participant and their estimated net savings, taking into account both reduced corrections spending and avoided victims costs, range an average of \$11,000 per participant.<sup>35</sup>

Eight of the twelve judicial districts in Nebraska currently feature a drug court.<sup>36</sup> Policymakers should consider whether additional drug courts may be warranted or whether it is possible to increase the capacity of existing courts. Also, Nebraska should explore developing criteria to better identify those offenders who could most benefit from drug courts, with the goal of ensuring that limited drug court space is prioritized and that the

lowest-risk drug offenders who can succeed on basic probation do not take slots in drug courts that can be better used in other cases as appropriate alternatives to incarceration.

**Hawaii HOPE Court.** Like many states, Hawaii faced a problem of probationers not keeping their appointments and declining to take mandatory drug tests. Probationers could commit numerous infractions before action was taken, leading to revocations to prison that might have been avoided had swift and sure sanctions been used to send a message upon initial violations. The state addressed this challenge by creating Hawaii's Opportunity Probation with Enforcement (HOPE) Drug Court where offenders are ordered to treatment and must call in every morning to determine if they must report to the court to take a drug test. If they fail, they are jailed for several days, usually on weekends in order to preserve employment. Although participants can ultimately be imprisoned for multiple failures, it is rare because the immediate accountability of a short jail stay deters future drug use.

This court has proven in a randomized controlled trial to reduce positive drug screens by 91 percent and cut both revocations and new arrests by two-thirds.<sup>37</sup> According to UCLA researchers, for a group of methamphetamine-using probationers, dirty drug tests declined 80 percent after entering the HOPE program.<sup>38</sup> Similarly, for the 685 probationers who were in the program for at least three months, the missed appointment rate fell from 13.3 percent to 2.6 percent and "dirty" drug tests declined from 49.3 percent to 6.5 percent.<sup>39</sup> Research has also found that HOPE reduces new crimes by more than 50 percent.<sup>40</sup>

A pilot HOPE Court was launched in Clark County (Las Vegas), Nevada, in November 2009. Nebraska does not feature a court similar to the HOPE court.

**Performance-Based Probation Funding.** In December 2008, Arizona became the first state to implement performance-based adult probation funding pursuant to Senate Bill 1476.<sup>41</sup> Under this incentive-based approach, probation departments receive a share of the state's savings from less incarceration when they reduce their revocations to prison without increasing probationers' convictions for new offenses. Probation departments are required to reinvest the additional funds in victim services, substance abuse treatment, and strategies to improve community supervision and reduce recidivism.

California enacted similar legislation in 2009 entitled the California Community Corrections Performance Incentive Act (Senate Bill 678).<sup>42</sup> Also in 2009, Illinois enacted Senate Bill 1298 that allows counties to obtain additional state funds for local probation programs if they agree to reduce their prison commitments by 25 percent compared to their previous three-year average.<sup>43</sup>

The Pew Center on the States Public Safety Performance Project recommends that a performance-based probation funding system should appropriate 30 percent of savings for new conviction and revocation rates to probation departments and an additional 5 percent if the probation department demonstrates improvement in employment, drug test results, and victim restitution collection. Although quantitative results of Arizona's policy are not yet available, probation departments in the state supported the measure and are pleased with the possibility of additional funding.

Ohio adopted a somewhat similar funding policy called RECLAIM (Reasoned and Equitable Community and Local Alternative to Incarceration of Minors) that gives money to counties that treat juveniles who would otherwise be incarcerated and deducts funds for low-risk juveniles who are sent to state facilities.<sup>1</sup> The policy has been highly successful, as the recidivism rate for moderate risk youth placed through RECLAIM was 22 percent, compared with a 54 percent rate for such offenders in state lockups.<sup>44</sup>

In 2009, the first year of its incentive funding plan, Arizona saw a 12.8 percent decrease in revocations of probationers to prison, including decreases in all but three of the state's 15 counties.<sup>45</sup> There was also a 1.9 percent reduction in the number of probationers convicted of a new felony.<sup>46</sup> In Mohave County, the probation department in 2009 reduced its total revocations by 101 and the percent of its probation caseload revoked for a new felony dropped from 4.6 percent to 1.1 percent.<sup>47</sup> This saved the state \$1.7 million in incarceration costs that otherwise would have been incurred and Mohave County officials are expecting the state to fulfill its end of the bargain by appropriating 40 percent of the savings to the County in the next budget.

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1 No funds are deducted for public safety beds, which include juveniles adjudicated for aggravated murder, attempted aggravated murder, murder, attempted murder, kidnapping, rape, voluntary manslaughter, involuntary manslaughter, felonious sexual penetration, and aggravated arson.

How did Mohave County achieve these results? In short, they implemented evidence-based practices—those techniques that research has shown reduce the risk of criminal behavior. Assistant Probation Chief Alan Palomino noted: “First we looked at our revocation process and at who we were revoking. There were a lot of technical violators who missed appointments or were just not doing exactly what was required of them on their probation. We looked at ways to motivate them toward cooperation and buying into their own probation process.”

The enhancements to their approach to probation in Mohave County included:

- Training probation officers to utilize motivational interviewing, which is a method of therapy that identifies and mobilizes the client’s intrinsic values and goals to stimulate behavior change. Motivation to change is elicited from the client, and not imposed from without. It is assumed that ambivalence or lack of resolve is the principal obstacle to be overcome in triggering change. In an example of motivational interviewing, an officer may ask a probationer questions designed to elicit self-motivational statements such as, “What are you afraid might happen if things continue as they are?” and “What might be some advantages of changing your behavior?”<sup>48</sup> Motivational interviewing has been designated by the National Institute of Corrections as one of eight evidence-based practices that contribute to reduced recidivism.<sup>49</sup>
- Separating the minimum-risk offenders from the medium- and high-risk populations and varying supervision and caseload levels for each group with one officer handling minimum-risk offenders in each city within the county.
- Better identification of the needs of each offender, such as substance abuse programs, educational programs, and anger management.
- Implementing Moral Recognition Therapy, which is a cognitive educational program that helps probationers understand that their own choices have put them into their situations and that they are accountable for their actions.
- Immediate consequences for violations and positive accolades for accomplishments.

In some ways, the Arizona measure is similar to the budgetary provision that the Texas Legislature adopted in 2009 that created the Commitment Reduction Program (CRP) within the juvenile justice system. In 2009, the Legislature cut funding for the Texas Youth Commission (TYC) from \$314 million in 2008 to \$210 million in 2010 and \$205 million in 2011, primarily due to a decline in population.<sup>50</sup>

Effectively, part of the savings—\$45.7 million—was allocated for the CRP through which county juvenile boards that choose to participate may obtain additional funds for community-based programs in exchange for agreeing to target fewer commitments to TYC. Rider 21 to the General Appropriations Act requires that the Texas Juvenile Probation Commission (TJPC) pay TYC \$51,100 for each youth committed to TYC in excess of 1,783 youths per year.<sup>51</sup> However, it appears this provision will not be invoked since TYC commitments have fallen approximately 40 percent this year as juvenile probation departments are on pace to meet and, in many cases, come in far under, their targets.<sup>52</sup> This is particularly notable given that commitments were already at historically low levels.

Though the CRP, departments submit funding plans to TJPC that are linked to the number of youths they pledge to divert from TYC. For example, if a department’s three-year average of commitments to TYC is 25, they can obtain their full share of new funding by pledging to divert five youths from TYC, a figure that is based on the statewide goal of 1,783 or fewer commitments. The department can also obtain partial funding by pledging to divert fewer than five youths.<sup>2</sup>

Plans for new or expanded programs must include supporting evidence or documentation that the new program or service has had positive outcomes in other jurisdictions. Similarly, plans for enhanced supervision or specialized caseloads must include evidence of success. Evidence of positive outcomes must also be provided for proposed residential services as well as a description of how the family of a supervised youth will be incorporated into the rehabilitative efforts.

Departments will be evaluated according to the following performance measures:<sup>53</sup>

- Number of juveniles served,

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<sup>2</sup> The Commitment Reduction Program does not place a legal cap on the number of youths committed to TYC. Judges may still commit youths for any felony offense or violations of probation. The county juvenile board, which includes the judges in the county who hear juvenile cases, decides whether to participate in the program.

- Percent of juveniles completing the program(s),
- Percent of juveniles with improved outcomes (e.g., reduction in substance use or increase in school attendance),
- Number of juveniles committed to TYC,
- Number of juveniles certified to stand trial as adults,
- Re-offending (recidivism) as measured by one-, two-, and three-year re-referral/re-arrest and incarceration rates for all juveniles participating in the program,<sup>3</sup> and
- Cost per youth diverted.

The guidelines specify that maximum diversion funding shall not exceed the rate of \$140 per juvenile diverted per day or \$51,100 annually. The majority of the funds will support non-residential programs that cost much less than this maximum amount, though this figure still compares favorably to the \$99,000 annual cost of TYC commitment in 2009.<sup>54</sup> Under the guidelines, departments that exceed the targets for TYC commitments for 2010 to which they agreed will have their share of this new funding reduced or eliminated in 2011.

Nebraska policymakers should consider to what extent they can expand performance-based probation funding to incentivize performance in the state's various probation districts, and they may look to the programs in Arizona, Texas, and Ohio, as helpful models.

**Mandatory Probation and Treatment Requirements for Certain Drug Possession Offenders.** A 2002 poll found that 60 percent of Ohioans support drug treatment in lieu of incarceration.<sup>55</sup> In 2000, more than 60 percent of California voters passed Proposition 36, requiring that drug possession offenders be redirected from prison into treatment. According to a UCLA study, this measure saved the state \$1.4 billion over five years, dramatically reducing incarceration costs for minor drug offenders.<sup>56</sup> In Arizona, which also implemented this policy more than a decade ago, a study by the Arizona Supreme Court found that 77 percent of drug offenders were drug-free after participating in treatment.<sup>57</sup>

National research also supports the efficacy of treatment. The Drug Abuse Treatment Outcome Survey of 10,000 participants found that residential treatment resulted in a 50 percent reduction in drug use and 61 percent reduction in crime while outpatient treatment resulted in a 50 percent reduction in drug use and 37 percent reduction in crime.<sup>58</sup>

The American Psychiatric Association defines addiction as "a chronically relapsing disorder that is characterized by three major elements: (a) compulsion to seek and take the drug, (b) loss of control in limiting intake, and (c) emergence of a negative emotional state when access to the drug is prevented" and attributes relapse to physical changes in the brain.<sup>59</sup> Of course, this does not mean relapse should not result in sanctions, including the possibility of incarceration, but outpatient or residential treatment may still be appropriate in many of these cases. Dr. Nora Volkow, Director of the National Institute on Drug Abuse, stated, "Research findings show unequivocally that drug treatment works and that this is true even for individuals who enter treatment under legal mandate."<sup>60</sup>

Nebraska has been admirably aggressive in implementing treatment requirements. One of the causes of Nebraska's corrections crisis in recent years was the state's incarceration-focused approach to drug offenses – including methamphetamine abuse, which is a major concern in the state.<sup>61</sup> (In 2005, there were 252 methamphetamine labs were reported in the state; the number of reported labs is now lower but has been rising since 2009.<sup>62</sup>)

Whereas in 1996 drug offenders accounted for 22 percent of new prison admissions, by 2005 they accounted for 29 percent.<sup>63</sup> In response to these problems, Nebraska enacted LB 46, which created the Nebraska Community Corrections Council (CCC). The CCC was comprised of state legislators and several criminal justice stakeholders in Nebraska. It began tackling the corrections problem by developing a set of sentencing guidelines for felony drug offenders<sup>64</sup>, but these sentencing guidelines were not implemented because the Supreme Court of Nebraska decided that the enactment of the guidelines was a not a function for the CCC and the judiciary – it was a legislative function.<sup>65</sup>

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3 There are many ways to measure recidivism. Typically, the re-incarceration rate for a program will be the lowest rate, followed, respectively, by the re-adjudication rate and the re-arrest rate, as not all arrests lead to adjudications and not all adjudications lead to incarceration.

The CCC, however, simply changed its focus to mandatory treatment requirements. The CCC found that opportunities for treatment and rehabilitation were inadequate, and this was unacceptable because it encouraged a system in which drug offenders who wanted to quit abusing drugs were repeatedly incarcerated and essentially positioned to fail. On the recommendation of the CCC, the legislature remedied this problem by instituting Specialized Substance Abuse Supervision (SSAS).<sup>66</sup>

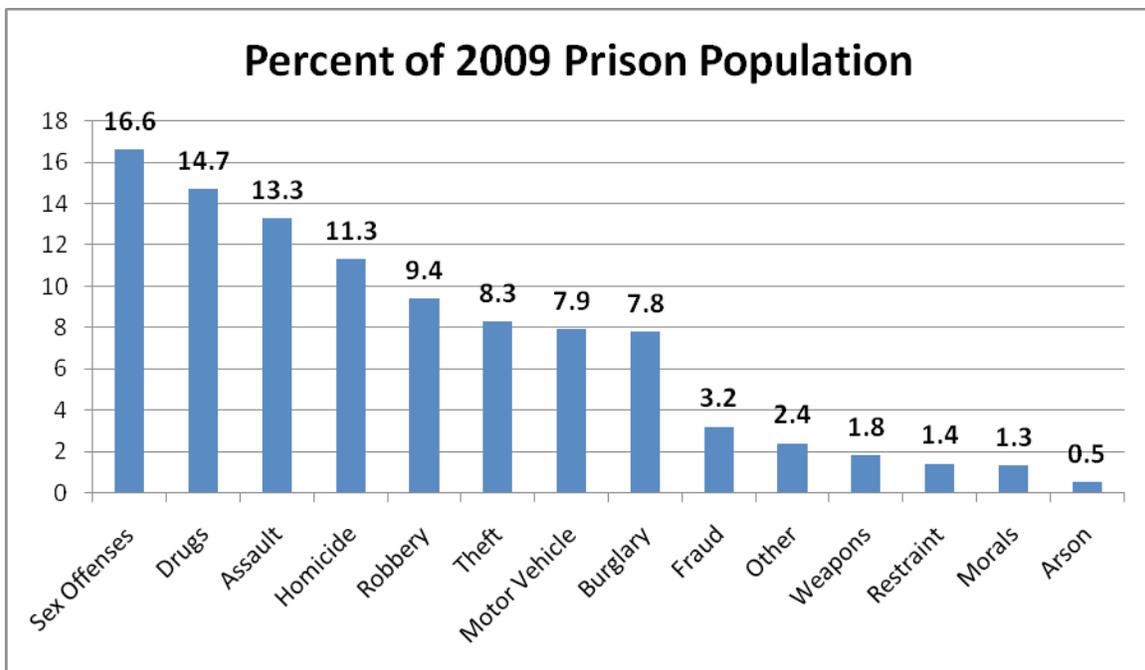
SSAS centers provide extensive drug testing and drug treatment services, but they also provide offenders with educational, occupational, and behavioral (e.g., conflict resolution and relapse prevention) courses, all of which provide a superior model for handling drug offenders than a model which emphasizes only incarceration. In 2009, the Vera Institute of Justice, which helped pioneer the SSAS centers, published a report on the centers.<sup>67</sup> The report concluded that the centers had so far been successful at reforming offenders.<sup>68</sup>

SSAS is a program of extensive supervision for both early-release parolees and for felony drug offenders who would otherwise be sent to prison. It operates under the direction of the Nebraska Office of Probation Administration (OPA) in five sites that serve eight counties.<sup>69</sup> Offenders are considered suitable for SSAS if they meet the following criteria:

- Be in a “contemplative state of change...in one or more criminogenic needs”;
- Exhibit antisocial behavior patterns;
- Exhibit a need for drug/alcohol treatment;
- Not be diagnosed with mental illness (or, if diagnosed, then be receiving treatment for the illness);
- Be serving a probation term of 18 months or more<sup>70</sup>

Various offender services – cognitive-behavioral treatment, GED classes, and drug testing are the most frequently used – are provided to the offender at Day/Evening Reporting Centers (DRCs). The DRC personnel, the parole officer, and a specialized SSAS supervisor all work together to monitor the offender and ensure that he or she stops using drugs and does not return to prison. Offenders remain in the program until they have met its completion requirements: a 22-week cognitive-behavioral program, treatment for substance abuse, and the establishment of a community support system. After completing these requirements, offenders serve out the rest of their sentences under supervision. If the offender fails to meet a condition of supervision, then graduated sanctions – rather than an immediate return to prison – are applied.

The SSAS model represented a sea-change for Nebraska corrections. It is a promising program, and Nebraska policymakers should consider opportunities to expanding the geographic reach of the program and the number of DRCs.



**Graduated Sanctions for Probationers.** Graduated sanctions are a proven approach to reducing revocations. In a system of graduated sanctions, each technical violation is met with a swift and certain response, such as increased reporting, a curfew, or even “shock-nights” in the county jail. This approach has been recommended by the American Bar Association based on evidence that it reduces re-offending and revocations to prison for technical violations.<sup>72</sup>

One study found that a graduated sanctions program involving frequent drug testing reduced recidivism from 27 percent to 19 percent.<sup>73</sup> A graduated sanctions approach addresses the longstanding problem of a probationer being allowed to repeatedly violate the terms of probation with a response until so many violations accumulate that the probationer is revoked to prison.

Despite the effectiveness of graduated sanctions, they can be difficult to apply in a state like Nebraska where jail space is not always available and many rural areas may lack the resources to implement certain sanctions.<sup>74</sup> In Ohio, for example, a probationer can insist on a judicial hearing before any new condition of probation is imposed in response to a violation, and in a rural area, this makes it especially challenging to swiftly impose sanctions.

In contrast to Ohio, in Oregon and Maine, a probation officer can impose most types of sanctions without returning to the judge. Given that offenders who are employed are three times less likely to recidivate,<sup>75</sup> Oregon uses weekend jail time for some technical violators who are employed but do not pose a threat to public safety. For unemployed parolees, the state’s use of work crews has proven to be effective in reducing recidivism.<sup>76</sup> Additionally, Georgia implemented a policy authorizing the sentencing judge to designate the maximum type of sanction the probation officer may impose, which has resulted in a 70 percent decline in the average number of days that probation violators spent in local jails awaiting disposition of their violation cases and a significant reduction in the time that probation officers spend in court hearings.<sup>77</sup>

In addition to sanctions, positive incentives for good behavior can be offered. Among the incentives in a grid used by the Harris County Adult Probation Department (Houston, Texas) are double time towards the completion of the probation term, reduced reporting, bus tokens, and written commendations.<sup>78</sup> The general rule-of-thumb in the corrections community is that one negative reinforcement should be matched by four positive reinforcements.

In Nebraska, where the state, through the Office of Probation Administration, rather than the counties, assumes responsibility for probation, the legislature has a unique opportunity to impact probation practices. Legislators should consider whether Nebraska can expand the use of graduated sanctions.

**Mental Health Courts.** Mental health courts are specialized courts where the judge oversees the supervision and treatment of the offender. A mental health court diverts certain mentally ill offenders from traditional sentencing, redirecting them into appropriate mental health treatment. A clinical case manager screens offenders for participation in the court using an instrument designed to identify individuals with serious mental disorders. Defendants with conditions, such as major depression and schizophrenia, that are on Axis I of the *Diagnostic and Statistical Manual of Mental Disorders* are typically eligible.

Rather than simply issuing a sentence and going to the next case, the judge coordinates mental health services for the offender and monitors compliance. Smaller probation caseloads are typically used, allowing case managers to effectively monitor participants’ compliance with the treatment plan.

A RAND Institute study of mental health courts found that “the leveling off of mental health treatment costs and the dramatic drop in jail costs yielded a large cost savings at the end of [its] period of observation.”<sup>79</sup> For example, in the Washoe County Mental Health Court in Reno, Nevada, the 2007 class of 106 graduates went from 5,011 jail days one year prior to mental health court to 230 jail days one year after, a 95 percent reduction.<sup>80</sup> Strikingly, the cost to the system was reduced from \$566,243 one year prior to mental health court to \$25,290 one year after.<sup>81</sup>

An evaluation of the Santa Barbara County Mental Health Court found that the participants in the mental health court averaged fewer “jail days after treatment than they had before, with a greater reduction in jail days for participants in the mental health court [than for those in the] traditional judicial system.”<sup>82</sup> The *American Journal of Psychiatry* reported that “participation in the mental health court was associated with longer time without any new criminal charges or new charges for violent crimes.”<sup>83</sup> Similar results have been achieved in the Delaware Mental Health Court. Of the 64 offenders who participated in the first three years of the program, 57 completed the program, of which 53 did not recidivate within six months of completion.

Mental health courts are relatively inexpensive to create compared to the potential benefit. Merrill Rotter, the Medical Director and Co-Project Director of the Bronx Mental Health Court, notes that some of the programs “cost as little as \$150,000 while others cost multiples of that.”<sup>84</sup> Nebraska policymakers who have been exceptionally forward-thinking in the implementation of drug courts should also consider how the expansion of mental health courts would benefit the state.

**Electronic Monitoring.** Electronic monitoring has proven to be effective in supervising offenders. Among the types of electronic monitoring, GPS is the most advanced because, while radio frequency monitoring allows the supervising authority to determine if the offender is at home, GPS tracks an offender wherever they go. This tool enables the supervising agency to determine if the offender is at work, attending treatment, in a prohibited zone, violating a curfew, or traveling out of state.

A Florida study found GPS has a “prohibitive” effect on absconding.<sup>85</sup> Offenders in the study were 89 percent to 95 percent less likely to be revoked for a new offense if they were on electronic monitoring.<sup>86</sup> This may be because monitored offenders realize they will be caught for violations. The most sophisticated GPS systems even have crime scene correlation, which allows police to determine if any monitored probationer or parolee was at the scene of a crime.

The NDCS currently utilizes electronic monitoring and GPS technologies, but policymakers should consider whether the use of electronic monitoring could be expanded, particularly as an intermediate sanction for other low-risk community supervision offenders who abscond but do not commit another offense. It is important to note, however, that electronic monitoring and GPS are only tools. The tools make supervision more efficient, but they are unlikely to replace the necessary human relationship that is involved in community corrections.

**Geriatric Parole.** Given that elderly inmates consume a disproportionate share of growing prison health care costs, and the continued graying of the prison population in Nebraska and other states, this is an important area for Nebraska policymakers to examine.

Studies have shown that offenders over 60 have a minimal recidivism rate.<sup>87</sup> For example, since Oklahoma adopted a geriatric release law in 2000, 135 inmates have been released with none recidivating.<sup>88</sup> While inmates who are dangerous should not be released simply because they are old, screening such inmates to identify those who no longer pose a risk or could be safely placed in a correctional nursing home is a sound approach.

Geriatric parole legislation signed in September 2010 by California was estimated to possibly save the state \$200 million a year.<sup>89</sup> Nebraska policymakers should carefully consider supporting legislation in their state that would expand geriatric parole and likely help to achieve significant cost savings.

**In-Prison Work Programs.** Policies that enhance the employment of offenders can reduce recidivism, thereby protecting public safety and helping to control the prison population. Without a marketable skill, inmates face particular difficulty finding employment upon release, increasing the odds that they will resume a criminal lifestyle. An ex-offender who is gainfully employed is much less likely to commit another crime and a Washington State Institute for Public Policy study found that correctional industries programs reduce recidivism by 6.4 percent.<sup>90</sup> Nebraska policymakers should strongly consider expanding in-prison work programs where possible.

**Portfolio of High Return-on-Investment Adult Offender and Juvenile Offender Programs to Reduce Crime  
Results from WSIPP Benefit-Cost Analysis (August 2010), 2008 Dollars**

Program Name	Number of Studies Meta Analyzed	Program Cost Per Participant	Victimizations Avoided Per Program Participant			Taxpayer Benefits Per Program Participant			Victim Benefits Per Program Participant
			Mean	Standard Error	Per \$/1000 Program Cost	Mean	Standard Error	State Percent of Benefits	
<b>Adult Programs</b>									
Vocational Education in Prison	4	\$1,296	0.26	0.05	0.20	\$2,965	\$610	47%	\$7,070
Education in Prison (basic or post-secondary)	17	\$1,055	0.22	0.08	0.21	\$2,525	\$922	47%	\$5,961
Cognitive Behavioral Programs in Prison	27	\$517	0.19	0.07	0.36	\$2,080	\$722	47%	\$5,100
Correctional Industries in Prison	4	\$457	0.16	0.03	0.36	\$1,907	\$374	47%	\$4,592
Drug Treatment in Prison	21	\$1,758	0.16	0.06	0.09	\$1,883	\$649	47%	\$4,592
Drug Treatment in Community	6	\$629	0.14	0.06	0.23	\$2,000	\$867	42%	\$4,804
Drug Courts (adults)	67	\$4,792	0.09	0.02	0.02	\$2,044	\$382	44%	\$4,376
<b>Juvenile Programs</b>									
Multi-dimensional Treatment Foster Care	3	\$7,418	0.76	0.30	0.10	\$7,363	\$2,994	50%	\$24,068
Family Integrated Transitions	1	\$10,795	0.40	0.24	0.04	\$3,867	\$2,307	50%	\$13,050
Coordination of Services	14	\$379	0.07	0.05	0.19	\$723	\$534	45%	\$2,135
Functional Family Therapy	7	\$3,134	0.68	0.19	0.22	\$6,692	\$1,858	45%	\$20,623
Aggression Replacement Training	4	\$1,449	0.32	0.16	0.22	\$3,195	\$1,565	45%	\$9,731
Multi-systemic Therapy	10	\$7,076	0.36	0.12	0.05	\$3,641	\$1,258	45%	\$11,027

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**Employers' Liability for Hiring Ex-Offenders.** Many employers will not hire ex-offenders because of the liability risk associated with negligent hiring. In a national study on this topic, the Urban Institute noted, "The high probability of losing coupled with the magnitude of settlement awards suggest that fear of litigation may substantially deter employers from hiring applicants with criminal history records."<sup>92</sup> That fear is not without basis. Employers lose 72 percent of negligent hiring cases with an average settlement of more than \$1.6 million.<sup>93</sup>

Nebraska can address this by immunizing employers from being sued simply for hiring an ex-offender. Litigation is particularly unjustified where the conduct giving rise to the suit has no connection to the ex-offender's criminal background. At the least, Nebraska can statutorily eliminate punitive damages in such suits. Punitive damages are based on violating public policy, but public policy should encourage the employment of ex-offenders.

## IV. Conclusion

Nebraska has implemented significant programs that are diverting suitable offenders from prison who can be safely dealt with in the community, particularly the SSAS initiative and its focus on rehabilitation and reentry through the DRCs. Furthermore, the CCC has been a positive force for reforming the corrections system, limiting costs, and improving public safety outcomes. Nonetheless, legislators, prosecutors, and other stakeholders recognize that Nebraska's troubled fiscal situation requires additional policy strategies to ensure that limited corrections dollars are spent in a way that maximizes results. If Nebraska continues along the reform path, the potential savings could be extraordinary.

In Texas, for example, policies that strengthened alternatives to incarceration not only correlated with significant decreases in crime, they also helped taxpayers avoid over \$2 billion in costs that would have been incurred had Texas constructed more than 17,000 prison beds that a 2007 projection of the Legislative Budget Board (LBB) had indicated would be necessary.<sup>94</sup>

Moreover, until 2009, when the LBB performed its regular projections of the Texas prison population, it would assume a 6 percent increase in direct sentence commitments, as this was the norm.<sup>95</sup> In 2009, however, direct sentenced commitments to Texas prisons fell 6 percent.<sup>96</sup> Because Texas did not restrict the offenses for which a person could be sent to prison, this 12 percent net change in prison admissions has been attributed to judges and prosecutors having greater confidence in probation and the increased availability of short-term sanctions and treatment beds in the community that had come online by 2009 as a result of the decision to fund those alternatives in the 2007 legislative session.<sup>97</sup>

Arizona, too, has seen similar successes by implementing a program that allows a portion of savings achieved through incentive funding programs to be reinvested in communities that successfully reduce recidivism. Arizona witnessed a 14.5 percent decrease in probation revocations to prison in 2009, the first year of implementation.<sup>98</sup> Costs avoided are calculated as a result of reduced revocations to prison, and 40 percent of the savings are allocated to local probation departments.<sup>99</sup> Counties can use the funds to increase the availability of substance abuse treatment; increase the use of risk reduction programming; and support nonprofit victim services organizations in efforts to increase the amount of restitution collected.<sup>100</sup>

In Kansas, similar policies have also reduced the need for increased prison capacity because they have contributed substantially to a 7 percent drop in the prison population, a 50 percent reduction in parole revocations, and a 36 percent reduction in new crimes committed by parolees.<sup>101</sup>

It is difficult to estimate the cost savings to Nebraska taxpayers (because prison building costs vary in Texas, Arizona, Kansas and Nebraska), but the cost of constructing the 1,000 beds in Nebraska's most recently-opened prison, the Tecumseh State Correctional Institution, was \$73 million.<sup>102</sup> The cost of building a new prison in the near future would likely be even higher today, and it is a cost that Nebraskans, now confronting a \$968 million budget shortfall, cannot afford to pay.<sup>103</sup>

As Governor Dave Heinemen has explained, "Nebraska's prison population is projected to grow in the coming years, and the concept we've embraced through community corrections is that there are better solutions to this challenge than to simply build another maximum-security prison."<sup>104</sup> There are many options supported by evidence that policymakers can consider to control costs and protect public safety. Additional data would also likely assist policymakers in making sound decisions. By implementing targeted policy reforms supported by research, Nebraska can avoid becoming – as its famous writer put it – "a wider prison-house."<sup>105</sup>

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103 *See supra* n. 4.

104 *Case Study, supra* note 3, at 5.

105 *See supra* n. 1.

# Leading the Way: Platte Institute Board of Directors

**Warren Arganbright:**  
 Director and noted north central Nebraska lawyer and water resources activist. He has practiced throughout Nebraska and South Dakota and has represented the Niobrara Council since its creation.



Valentine

**Pete Ricketts:**  
 Director and President of Platte Institute. He is the founder of Drakon, LLC, an asset management company in Omaha, Nebraska. He is also a member of the TD Ameritrade Board of Directors.



Omaha

Scottsbluff

**Travis Hiner:**  
 Director and a long-time business and community leader in the Scottsbluff-Gering area, Hiner has been the president and chairman of the board for Hiner Lease Co. since 1976. He got his bachelor's degree and MBA in Business Administration from UNL.



North Platte

A non-profit foundation, the Platte Institute relies on the resources and innovative thinking of individuals who share a commitment to liberty and the best possible quality of life for Nebraskans.

**Michael Groene:**  
 Director and farm equipment sales representative. He is co-founder of the Western Nebraska Taxpayers Association.



**Gail Werner-Robertson:**  
 Director and prominent Omaha businesswoman and philanthropist.



**John S. McCollister:**  
 Executive Director

He recently capped a 35 year career with McCollister & Co. and served five terms on the publically elected Metropolitan Utilities District Board of Directors.



## Our Mission

Advance public policy alternatives that foster limited government, personal responsibility and free enterprise in Nebraska. By conducting vital research and publishing timely reports, briefings, and other material, the Platte Institute will assist policy makers, the media and the general public in gaining insight to time-proven free market ideas.

**Berk Brown:**  
 Director of Communications

His journalistic work earned him 13 awards from both the Nebraska Press Association and the Minnesota Newspaper Association prior to joining the Platte Institute in January of 2008.

