

# **COMMUNITY CORRECTIONS WORKING GROUP**



**Final Report  
December 2002**

December 31, 2002

The Honorable Mike Johanns  
Governor of the State of Nebraska  
PO Box 94848  
Lincoln, Nebraska 68509-4848

Dear Governor Johanns:

Greetings! Herewith is the Final Report (Report) of the Community Corrections Working Group (Working Group), including key policy and legislative recommendations.

In the fall of 2000, the Vera Institute of Justice (Vera) visited Nebraska to analyze the existence and status of community corrections in the state. As noted during the Working Group's initial retreat, Vera recommended that a group be formed to study the current structure of community corrections, develop a common definition of community corrections, share criminal justice data, and develop a plan. In September 2001, Vera received a grant from the Department of Justice to provide Nebraska with technical assistance in developing a statewide community corrections plan. Highly qualified individuals within Nebraska's criminal justice system were devoted to the discussion of an overall community corrections strategy for Nebraska, utilizing Vera's assistance as needed.

For the record, the criminal justice experts you requested be a part of the community corrections dialogue were:

Edward C. Birkel, Probation Administrator

Senator Patrick J. Bourne, representing District 8

Harold W. Clarke, Director of the Department of Correctional Services

Allen Curtis, Executive Director of the Nebraska Commission on Law Enforcement and Criminal Justice

Sheriff Tim Dunning, Douglas County Sheriff

The Honorable Karen B. Flowers, District Court Judge, 3<sup>rd</sup> Judicial District (Lancaster County)

William L. Howland, Office of the Attorney General

The Honorable John P. Icenogle, District Court Judge, 9<sup>th</sup> Judicial District (Buffalo and Hall Counties)

Steven King, Department of Correctional Services, Planning and Research

Linda Krutz, Chairperson of the Nebraska Board of Parole

Robert P. Lindemeier, president of the Nebraska Criminal Defense Attorneys Association

Senator Gerald Matzke, private law practitioner, former senator representing District 47

Senator Dwite Pedersen, representing District 39

Derek R. Vaughn, Deputy Douglas County Attorney, Nebraska County Attorneys Association

Gerald L. Soucie, Nebraska Commission on Public Advocacy

Joseph C. Steele, State Court Administrator

Senator Kermit A. Brashear, representing District 4

Staff were instrumental in the Working Group's efforts. Kristin Crawford of the Policy Research Office and Sally Reinhardt-Stewart, the Department of Correctional Services Legislative Liaison, ensured the meeting process was efficient and effective and

provided assistance in coordinating efforts with Vera. Other very hard working staff dedicated to and instrumental in the formation of a work product include:

Christopher “Spike” Eickholt, B.A., J.D.

James Pieper, B.A., J.D., Ph.D.

Julie L. Rogers, B.A., J.D.

Andrew Slain, B.A., J.D., M.A.

Kristen N. Stefka, B.A.

The Report submitted for your review is the result of just over a year of effort by the Working Group. An intensive 2-day retreat hosted by Vera was held September 27-28, 2001. During the retreat members were briefed on community corrections, or the lack thereof, in Nebraska and nationwide.

In December 2001, Steven King, Department of Correctional Services Planning and Research; Senator Roger Wehrbein, Chairperson of the Legislature’s Appropriations Committee; and I attended a Vera multistate meeting in New York City titled “State Budgets and Corrections”. The meeting facilitated subsequent noteworthy discussions about how enhanced community corrections might alleviate or “slow” the rising costs of correctional institutions.

Beginning with its first meeting in December 2001, the Working Group recognized the State of Nebraska’s fiscal situation and the need for a swift, effective strategy for both curbing the number of offenders in prison and strengthening alternatives to incarceration through community corrections.

Over the course of the seven (7) thoughtful and concentrated meetings held during 2002, the Working Group identified recommendations for adoption during the 2003 Legislative Session. The process by which the Working Group arrived at the recommendations included Vera Associates presenting information to the Working Group about various models of community corrections, structured sentencing, and sentencing commissions utilized by certain states to facilitate criminal supervision. The Working Group studied the models, gleaned therefrom many “best practices” of other jurisdictions, and put forth the effort to adjust the models to fit the systems currently operating in Nebraska and the legal requirements of the Nebraska Constitution.

Key to the Working Group recommendations is a Community Corrections Act which sets forth the development and implementation of a statewide community corrections plan, the formation of sentencing guidelines, and enhancement of criminal justice data analysis. Furthermore, the Working Group proposes probation and parole fees be collected to improve programming within the Office of Probation Administration

and the Office of Parole Administration. Funds raised by these fees will enable new programming to be funded within the current fiscal capacity.

While reviewing the Report, please keep in mind that these recommendations are a foundation from which to build a better system of community corrections and overall criminal justice policy in the State of Nebraska. The Working Group recognizes that such betterment does not begin or end with the Report, but is instead an ongoing process. Hence, we look forward to your response and suggestions to strengthen our criminal justice system.

Vera received an additional partial grant for this fiscal year from the Department of Justice to support sentencing and corrections reform efforts in Nebraska. For 2003, Vera will continue to provide technical assistance in developing criminal justice data among the several agencies.

Finally, I would like to convey my immense appreciation toward the members of the Working Group and the Working Group staff for their hard work and dedication. The countless hours of study and meeting time required persistent concentration and commitment. Indeed, the issues involved are contentious and complex. As you are well aware, two Special Legislative Sessions were convened during 2002 and the Working Group nonetheless realized the importance of the effort and took time to devote their expertise to it. The Working Group never faltered in their responsibility. I am proud of them each and all and truly grateful!

If you have any questions, please feel free to contact me.

Respectfully,

Kermit A. Brashear  
Chair of the Community Corrections Working Group

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**STATE OF NEBRASKA**  
**COMMUNITY CORRECTIONS**  
**WORKING GROUP**

**FINAL  
REPORT**

**December 2002**



**STATE OF NEBRASKA**

**COMMUNITY CORRECTIONS WORKING GROUP**

**FINAL REPORT**

**INTRODUCTION**

Nebraska is facing its second inmate population crisis in a decade. Even after the completion and occupancy of the new Tecumseh State Correctional Institution, the Department of Correctional Services (DCS) is at 133 percent of design capacity. If current policies remain unchanged, it is projected that DCS will be at 153 percent of capacity by 2005 and at 176 percent of capacity by 2008.<sup>1</sup>

Although it might be tempting to adopt a policy of “benign neglect” of this crisis, the state does not have that option. The United States Constitution has been interpreted by the federal courts to require minimum standards for the treatment of prisoners in order to prevent “cruel and unusual punishment.” Failure to address inmate overcrowding will result in federal litigation that will be expensive for the state to defend and could result in very costly remedies imposed by the courts.

When the state faced a similar inmate population crisis in the mid-1990s, we had both the funds and the political will to “build our way out.” The new Tecumseh State Correctional Institution was authorized and paid for during a time of fiscal surplus. A serious inmate population crisis was averted by the Tecumseh State Correctional Institution coming “on-line” in 2001.

The coming inmate population crisis, however, is arriving at a time when there are neither the funds nor the political will to “build our way out.” Even if the state had the desire to build another “Tecumseh” facility, it does not now have the capital construction funds available, nor will it in the near future.

Rather than attempting to “build our way out,” of the impending inmate population crisis, it is necessary for the state to “plan our way out”. Governor Mike

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<sup>1</sup> See Table 1.

Johanns convened the Community Corrections Working Group (Working Group) in order to begin such a planning process.

The Working Group undertook the task of developing a proposal to reduce reliance on incarceration and to encourage the development and use of “community corrections” or incarceration alternatives based in the community. The Working Group’s mandate is to propose programs that will maintain and enhance justice, reduce taxpayer cost, and ensure that public safety remains protected. It also seeks to educate the public as to the value and cost-savings of such programs.

To those ends, the Working Group is proposing a “Criminal Justice Reform Proposal” (Proposal) that will incorporate enhanced community corrections programs as its centerpiece. The Proposal will endeavor to limit the use of incarceration (the most expensive sentencing option) to those cases in which it is the best use of state resources. In those cases in which incarceration is not the best use of resources, community-based programs should be utilized, with appropriate regard for public safety.

Throughout this Report explanations are given for the inmate population crisis, the need to “plan our way out,” and the elements of and rationale for the Working Group’s proposed Proposal. Also discussed are the legal, legislative and economic issues presented.

## **FISCAL CRISIS IN NEBRASKA**

Over the last decade, the prison population in Nebraska has dramatically increased and the DCS has been one of the fastest growing line items in the state budget.<sup>2</sup> A larger prison population resulted in larger expenditures by DCS. In FY 96/97, the DCS budget was \$62.4 million.<sup>3</sup> In FY 02/03, the appropriated budget is \$121 million.<sup>4</sup> If this trend continues, the DCS budget will reach \$246.76 million, or nearly a quarter of \$1 billion, by FY 08/09.

The average cost per incarcerated inmate within DCS has reached \$22,750 per year. Compared to the average cost of \$330 per probationer and \$3,103 per parolee, incarceration costs the most in terms of correctional supervision.

Nebraska’s ability to meet these ever increasing costs has been severely impacted by the recent recession and decline in the state revenues. Nebraska is in need of a permanent strategy to manage this fiscal crisis and must rethink how it expends funds within the criminal justice system.

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<sup>2</sup> See Table 2.

<sup>3</sup> State of Nebraska Biennial Budget, 1997 Legislative Session.

<sup>4</sup> Legislative Fiscal Office, Summary of 2002 Special Session Budget Actions.

## **RETHINKING JUSTICE POLICY**

To address the fiscal impact of the increasing prison population on taxpayers, it is critical that Nebraska identify appropriate alternatives to centralized incarceration facilities and foster their utilization within a comprehensive community justice strategy. The Proposal is a first effort to meet this demand and it includes both a legislative package for immediate implementation and recommendations for future change in the criminal justice system.

### **KEY COMPONENTS OF THE “CRIMINAL JUSTICE REFORM PROPOSAL”**

The Proposal is the result of the Working Group’s collaboration in recommending legislative changes during the 2003 Legislative Session designed to address the impending state inmate population crisis and to advance development of “community corrections” and other alternatives to incarceration.<sup>5</sup>

Key components of the Proposal include strategies to reduce reliance on incarceration and encourage the use of alternatives through probation and parole. Central to the Working Group’s recommendations is the creation of a Community Corrections Council to oversee and ensure that a continuum of community corrections is developed for use by probationers and parolees. Probation and parole fees will be assessed for the support of enhanced programming and services. Sentencing guidelines will be created, a criminal justice data reporting and analysis process will be developed, and the Board of Parole will be given additional discretion in granting parole. Finally, a Correctional System Overcrowding Emergency Act will allow a planned process of inmate release on parole when the prison population is sufficiently over capacity in order to preempt federal court intervention.

Specifically, the following legislative changes are recommended for adoption by the 2003 Legislature:

#### Community Corrections Council (newly created)

- A proposed Community Corrections Act (Act) will create a Community Corrections Council (Council). For administrative purposes, the Council will be affiliated with the Crime Commission. The Council’s responsibilities will include developing and implementing statewide operation and use of enhanced

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<sup>5</sup> The language of the recommended Legislative changes appear at the end of this Report. Such language reflects the Community Corrections Working Group’s work but is not deemed “in bill form” as it has not gone through the official bill drafting process.

community corrections facilities and programs in which offenders will participate through probation and parole.

- The Supreme Court will promulgate, by court rule, guidelines for sentencing certain felony offenders under the Act.
- The current Community Correctional Facilities and Programs Act will be repealed in its entirety.

#### Commission on Law Enforcement and Criminal Justice (Crime Commission)

- The Crime Commission will develop a process for uniform data collection and analysis of Nebraska crimes and offenders to assist the Council and the Supreme Court in completing their responsibilities under the Act. To expand the Crime Commission's existing data collecting functions and ability to develop and analyze data, the Community Corrections Uniform Data Analysis Fund will be formed. A court fee of \$1.00 will be imposed to support the fund.

#### Probation

- Probation officers will be given the option of imposing administrative sanctions when a probationer has committed a technical or minor probation violation.
- Presentence investigations will be prohibited regarding convictions for a Class IIIA misdemeanor or lesser offense.
- The Board of Parole and the Office of Parole Administration will be given the authority to receive a copy of an offender's presentence investigation.
- Probation programming fees, or supervision fees, will be assessed to probationers as costs, unless an offender is indigent, and a fund to use these fees for probation programming will be created.
- Counties will be made responsible for the cost of transporting offenders to the incarceration work camp.

#### Parole

- Parole programming fees, or supervision fees, will be assessed to parolees as costs. The fees may be waived if an undue hardship results. A fund will be created utilizing these fees for parole programming.

- For an offender whose parole has been revoked due to a conviction for a felony committed while on parole, the Board of Parole will be given discretion to consider reparole.
- The Board of Parole, in its discretion, will be allowed to discharge an out-of-state offender from any Nebraska parole term when the discharge date in Nebraska has been reached.
- The Board of Parole will be given the discretion to consider drug offenders for parole whether or not they complete drug abuse treatment or counseling and whether or not they committed a drug or alcohol use violation while incarcerated.

#### Department of Correctional Services

- The Correctional System Overcrowding Emergency Act is proposed. The Act will require the Governor to declare an emergency when DCS is over 140% of design capacity.
- Upon an overcrowding emergency declaration, the Board of Parole will consider or reconsider paroling committed offenders eligible for parole. The Board of Parole will stop operating under the Overcrowding Emergency Act when the corrections system population is at operational capacity, or at 125% of design capacity.



## **WORKING GROUP'S CONSIDERATIONS**

In designing the Proposal, the Working Group took into account various criminal justice philosophies and developed definitions for identified key terms. A violent offender should be defined as a person whose current offense involves a threat of or actual harm to a victim. These offenses generally include homicide, sexual assault, robbery, assault, and other like crimes not here specified. An offender whose offense does not involve the threat of or actual physical harm, or the threat of causing intentional emotional harm to other people should be classified as a nonviolent offender.<sup>6</sup> In other words, *nonviolent* offender should be defined as a person whose offense involves neither harm nor threat of harm. Nonviolent offenses include property offenses (burglary, larceny, fraud, etc.); drug offenses; or public order offenses. Also, drug offenders convicted of possession generally should be treated differently than drug offenders convicted of the distribution of drugs.

In formulating details of the Proposal, the Working Group considered policies that would alleviate prison overcrowding and the rising costs of prisons in Nebraska by reducing the reliance on incarceration and encouraging the use of community corrections for offenders appropriate for alternatives to incarceration. To this end, the following issues were considered: public perspective; correction policies of various states; the definition of “community corrections”; community corrections programs in existence; legal considerations specific to Nebraska; sentencing structures; substance abuse treatment; mental health; re-entry; and the composition of Nebraska’s offenders on probation, in the prison system, and on parole.

### **PUBLIC PERSPECTIVE**

#### Public Opinion Regarding Corrections Policy in Nebraska

In 2000, DCS contracted with the University of Nebraska Department of Sociology, Bureau of Sociological Research, to obtain public opinion data from Nebraskans regarding correctional issues.<sup>7</sup>

The results indicate a general willingness to support alternatives to imprisonment for non-violent offenders and support for greater emphasis on rehabilitation in the correctional system.

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<sup>6</sup> Judith Greene and Vicent Schiraldi, “Cutting Correctly: New Prison Policies for Times of Fiscal Crisis” February 2002, Center for Juvenile and Criminal Justice, 33; available from [http://www.cjcj.org/cutting/cutting\\_main.html](http://www.cjcj.org/cutting/cutting_main.html); Internet.

<sup>7</sup> Nebraska Department of Correctional Services—NASIS 2000.

Prior to being questioned, respondents were provided “context” related to prison overcrowding and the cost of prison construction and operations. Community corrections programs were described as “cheaper alternatives” and as being provided by “local communities.” The results indicate public opinion about community corrections as “framed” by information regarding the cost of incarceration.

The results indicated that, given the “context” provided, alternatives to prison for non-violent offenders are widely supported. In order of support the survey indicated:

- “Work to repay victims” was the most widely supported at 94.1%;
- “Community service” was supported by 90%;
- “Day reporting and restitution centers” was supported by 84.3%;
- “Electronic monitoring” was supported by 84%;
- “Enrolling in and paying for drug and other rehabilitation treatment” was supported by 83.5%;
- “Fines” was supported by 80.4%; and
- “House arrest” was supported by 79.4%.

Additional “context” was then provided stating that 84% of former inmates “return to Nebraska communities within three years” and that various rehabilitative programs can be offered in the correctional system. Support was then assessed for various programming. In that context, all programs received broad support. In order of support the survey indicated:

- In-prison work programs were supported by 95.1%;
- Drug and alcohol treatment was supported by 93.7%;
- Mental health treatment was supported by 93.1%;
- Anger control classes were supported by 91.8%;
- Educational programs were supported by 89.2%; and
- Community work programs were supported by 89.1%.

Further “context” was provided stating that 62% of offenders test positive for drugs at the time of their arrest and that 85% of prisoners require significant treatment related to substance abuse. Following that statement, respondents agreed that the state should “continue to pay” for substance abuse treatment by a 73.6 to 36.4 margin. When informed that “not all offenders who require substance abuse treatment receive it,” respondents supported “provid[ing] more funds to expand this treatment” by a margin of 60.2 to 39.8.

A list of “goals” for the state correctional system was provided to respondents. When asked to choose the “most important,” respondents chose “protecting society by rehabilitating offenders” most frequently. When asked to rank each “goal” individually, however, each goal was ranked as “important” by a majority of respondents, with only “making an example of offenders” receiving less than 40% support in the “most important” category (31.1%).

Results indicated that the public viewed the state correctional system as “effective” in protecting the public (82.1 to 17.9), but “not effective” at rehabilitating offenders (57.8 to 42.2).

Respondents were then asked to select the area that was “most important” for the correctional system to explore. “Greater emphasis on rehabilitation” was chosen by the largest number (44.1%), followed by “alternatives to prison” (41.7%) and “building more prisons” (14.2%). When support for each area was asked individually, there was support for building more prisons (54.2% agreed that it was an “important area”), but this support was much less than support for “rehabilitation” (90.8% agreed) and “alternatives” (90.2% agreed).

### Nationwide Public Support for Corrections Alternatives

The willingness to support a decrease in incarceration costs by implementing alternatives to imprisonment for non-violent offenders is not unique to Nebraskans. Nationally, there is significant public support for carefully designed efforts to cut prison costs by reducing the use of incarceration for nonviolent offenders.<sup>8</sup> Public opinion regarding the use of imprisonment generally supports diverting nonviolent offenders from imprisonment into other forms of punishment and rehabilitation. Several state-based polls found that the public was more willing to cut corrections funding than funding for other state departments. Also, a poll released in January, 2002 found that public attitudes have become increasingly supportive of diverting nonviolent offenders from imprisonment, and that those attitudes have not changed since September 11, 2001.<sup>9</sup>

A January 2001 nationwide survey conducted by pollsters Belden, Russonello, and Stewart (BR&S), found that the public believes that rehabilitation should be the number one purpose of the justice system, that laws should be changed to reduce the incarceration of nonviolent offenders, and that various community sanctions and programs, such as drug treatment, community services, and restitution are preferable to simple imprisonment.<sup>10</sup> The statement, “We need to change the laws so that fewer nonviolent crimes are punishable by prison terms,” was agreed to by 62% of respondents while 77% of respondents found the following statement convincing, “many people in prison today are nonviolent drug addicts who need drug treatment, not a prison sentence.”

When given a choice over which budget items to cut, the public is increasingly choosing corrections over education, transportation, health and welfare and other state departments. A field Poll of Californians and a Pennsylvania State University survey of Pennsylvanians, both conducted in December 2001, found that citizens of these states are

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<sup>8</sup> Greene and Schiraldi, 5.

<sup>9</sup> Peter D. Hart Research Associates, “The New Politics of Criminal Justice, Summary of Findings” January 2002. Though a large majority of the research was done prior to the September 11 terrorist attacks, the research conducted from November 30 through December 2, 2001 assessed whether significant attitudes toward criminal justice had shifted since September 11.

<sup>10</sup> Greene and Schiraldi, 6.

more willing to cut spending on corrections to balance the state budget than to cut any other state program.<sup>11</sup>

A series of more elaborate surveys conducted around the country support the findings of the BR&S poll showing that the more the public is educated about non-incarceration options, the more supportive they are about such options. Studies in Alabama, Delaware, North Carolina and Oklahoma found that when people learned more about nonincarcerative sanctions, they overwhelmingly favored using them for nonviolent offenders and some carefully screened violent offenders.<sup>12</sup>

State corrections officials and prison wardens share the opinions expressed by the public. According to a national survey conducted by the U.S. Senate's Subcommittee on the Constitution, prison wardens preferred a balanced approach to public safety, one that relies less on the use of incarceration. Nine out of ten prison wardens believe that more alternatives to incarceration should be used, and wardens felt that, on average, half the prisoners in their institutions could be released without impacting public safety.<sup>13</sup>

## **CORRECTIONS POLICIES IN OTHER STATES**

Several other states are responding to the nation's current economic downturn and the public's current attitudes towards corrections by examining how to slow spending on corrections. Strategies used include closing prisons, cutting corrections staffs, and eliminating "nonessential" programs (educational, substance abuse treatment, and vocational programs). Other strategies have involved revisiting sentencing policies to cut corrections expenditures by reducing sentences and repealing mandatory minimums.<sup>14</sup>

Many states chose to take immediate action in an effort to cut costs in 2001 and 2002. For example, state legislatures in Louisiana, Connecticut, Indiana, and North Dakota removed some mandatory minimum sentences for specific nonviolent offenses. Iowa gave judges more discretion when sentencing certain felons. Louisiana, Texas, and Virginia made a greater number of inmates eligible for release. Treatment options for nonviolent drug offenders were enhanced in Idaho, Oregon, and Washington while Alabama and New Mexico eased habitual offender laws. In many of the states, incarceration costs coupled with rising prison populations were factors in passing such legislation.<sup>15</sup>

In the 1990s, North Carolina, Kansas, and Virginia reformed their sentencing systems. They acquired long term fiscal discipline by not only making far-reaching

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<sup>11</sup> Greene and Schiraldi, 6. Levey, Noam, *Prison Spending Cuts Endorsed, Poll Indicates Public Priorities During Shortfall*, San Jose Mercury News, December 28, 2001. and Richards, Gregory, *Poll: Pennsylvanians worried about economy*, Philadelphia Business Journal, December, 2001.

<sup>12</sup> Greene and Schiraldi, 7.

<sup>13</sup> Greene and Schiraldi, 7.

<sup>14</sup> Daniel F. Wilhelm and Nicholas R. Turner, "Is the Budget Crisis Changing the Way We Look at Sentencing and Incarceration?" Vera Institute of Justice, June 2002, 1.

<sup>15</sup> Wilhelm and Turner, 5-6.

substantive changes to sentencing and incarceration laws, but also by developing tools to manage corrections growth and to systematically link sentencing policy with available resources. Central in the three states is a sentencing commission, an independent government entity expert at sentencing and corrections research and analysis. All three states also implemented some form of structured sentencing.<sup>16</sup>

Since 2000, Arizona and California voters have approved initiatives diverting drug offenders from prison to treatment programs. More than 6 out of 10 voters affirmed the measures.<sup>17</sup> The California legislature predicts that implementing this proposition will save at least \$100 to \$150 million a year in prison costs and will avoid \$400 to \$450 million in prison construction costs<sup>18</sup>

Nebraska's efforts to slow corrections spending in 2002 consisted of immediate actions. These actions included the closing of the Hastings Correctional Center, the Nebraska Correctional Treatment Center—Lincoln, and eliminating certain corrections staff and programs. The funding to support the Community Correctional Facilities and Programs Act was cut in its entirety.

#### **“COMMUNITY CORRECTIONS” DEFINITION**

The Proposal incorporates an enhanced community corrections model which includes building a foundation of offender services at the local level and utilizing leadership and funding from the state level while broadening the use of specific and enhanced programming and treatment by the Office of Probation Administration and the Office of Parole Administration.

This model requires state and local cooperation to develop, implement, and administer intermediate sanctions directed towards a defined group of offenders within the community for whom imprisonment is inappropriate. Intermediate sanctions include but are not limited to: traditional or intensive probation or parole, community service, fines, electronic monitoring, residential treatment, halfway houses, drug courts, work release, and post-incarceration programs. The type of intermediate sanction deemed appropriate for a particular offender depends on the crime that the offender committed, an assessment of the future risk posed by the offender, offender accountability, rehabilitation, and due regard to public safety.

#### Community Corrections in Nebraska

The goal of community corrections in Nebraska is to tailor offender programs to meet local needs and reflect community values with increased cost-efficiency emphasizing local justice, citizen accountability, and public safety.

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<sup>16</sup> Wilhelm and Turner, 6-7.

<sup>17</sup> Greene and Schiraldi, 8.

<sup>18</sup> Wilhelm and Turner, 5.

Correcting behaviors through restitution, rehabilitation, reintegration, and restoration are key to the “citizen accountability” piece of community corrections in Nebraska. Opportunities for this success are greater in the local community, where offenders’ families, friends and social support network are found.<sup>19</sup> Efforts will not be focused, however, only on the individual offender. Community corrections implementation will be shared among offenders, victims, and other community members in order to more effectively reduce crime and ameliorate the problems that crime perpetuates.

The Working Group recognizes that local justice is ideal, but also realizes that local programming for the benefit of the state will not come about unless the state provides an adequate funding mechanism. However, there are certainly local justice programs in Nebraska, like drug courts, that save correctional costs at county and state levels.

The concept of “community corrections” in Nebraska encompasses the use of a wide range of sanctions that may be used in the community to appropriately punish criminal offenders. When used properly, these sanctions reduce the necessity of imprisonment while simultaneously maintaining public safety and accountability of offenders supervised in the community.<sup>20</sup> In Nebraska, sanctions may be “intermediate” or “graduated” in nature. Intermediate sanctions serve the place of a harsher sentence, generally jail or prison, and are generally grounded in existing programs such as traditional probation, intensive supervision probation (ISP), ISP with an incarceration work camp component, or following a term of incarceration, such as the use of parole. Graduated sanctions are incorporated within a given intermediate sanction (probation, ISP, or parole) or stand alone as a punishment for a given law violation. Typical graduated sanctions include fines, community service, restitution, or various types of treatment.<sup>21</sup>

The following is a broad descriptive list of various community corrections sanctions that are either intermediate or graduated in nature and are currently utilized in a number of states and jurisdictions. These various sanctions are designated by those currently utilized in Nebraska for adult offenders, and those that are not found in Nebraska.

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<sup>19</sup> M. Kay Harris, “Trends and Issues in Community Corrections Acts” Crime and Justice Research Institute; available from <http://www.cjri.com/Res/Rb/rbcomm.html>; Internet.

<sup>20</sup> Carter, Madeline M. and Peggy McGarry. The Intermediate Sanctions Handbook: Experiences and Tools for Policymakers, October 1993, National Institute of Justice, 38.

<sup>21</sup> Ostrom, Brian J. and Others, “Sentencing Digest: Examining Current Sentencing Issues and Policies” National Center for State Courts, 1998, 28.

## Sanctions Currently Used in Nebraska

**Traditional Probation** Traditional probation involves community-based offender supervision by a probation officer assigned to the offender. Offenders assigned to traditional probation demonstrate a lower level of risk than those sentenced to Intensive Supervised Probation.<sup>22</sup> During the period of probation, the offender is subject to conditions of probation determined by the court at sentencing. Common elements of this program include various levels of supervision, collateral contact with a supervising probation officer, substance abuse testing when appropriate, and a requirement that an offender obtain employment or remain in school.

**Intensive Supervised Probation (ISP)** ISP is designed to serve as an intermediate sanction between traditional probation and jail or prison for adults. By utilizing an automated targeting tool, select offenders who have been deemed appropriate may be sentenced to ISP. Offenders on ISP demonstrate a higher risk than those on traditional probation and are supervised accordingly. Common elements include electronic monitoring, frequent officer contact in person and by telephone, officer contact with employers and family members, substance abuse testing, and the requirement that the offender maintain employment or attend school. Due to the high risk and needs that are characteristic of those sentenced to ISP, caseloads per officer are small, often between 20 to 25 per year (compared to around 130 cases per traditional probation officer per year).<sup>23</sup>

**Specialized Supervision Units** Special needs probation is generally used for offenders who have committed crimes such as domestic violence, sex offenses, or driving under the influence, and for offenders who are mentally ill, developmentally disabled, and substance abusers. Supervision is provided by specially trained officers who provide more intensive and intrusive supervision than in routine caseloads. Supervision may include the provision of social and psychological services as well as victim services. The Domestic Violence Specialized Supervision Unit within the District 4 Probation Office in Omaha is the only such unit available in Nebraska.

**Electronic Monitoring (EM)** EM usually requires offenders to remain within their own home or stay within a certain distance of a signaling device that can alert authorities to their whereabouts 24 hours a day. EM is often combined with other forms of supervision and treatment programs. Currently in Nebraska, EM is used for offenders sentenced to ISP and for some offenders placed on parole.

**Fines** In Nebraska, fines are provided for statutorily and may be imposed based entirely on judicial discretion. Criminal classifications provide dollar amount ranges designating the maximum amount an offender may be fined. For example, when an offender is convicted of a Class IV misdemeanor, a judge may impose, in addition to probation or incarceration, a fine of up to \$500. The specific amount of the fine is specified by the judge at sentencing.

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<sup>22</sup> Office of Probation Administration, Biennial Report, 2000-2001, 25.

<sup>23</sup> *Id.*, 37.

**Community Service** Community service orders require the offender to perform services or manual labor for government, private, or nonprofit organizations for a set number of hours without payment.

**Restitution** Restitution is the payment by the offender of the costs of the victim's losses or damages to the victim. Payment may be made to the community in general (municipal, county, or state treasury) when there is no identifiable victim.

**Incarceration Work Camp** Work camps engage offenders in various highly structured activities while enhancing an offenders' work skills and general work ethics. Such activities include educational, vocational, cognitive, and behavioral programs. Work camp programs typically range from four to six months. In Nebraska, the offender is sentenced to a term of ISP and is ordered to complete the work camp as a condition of ISP.

**Drug Courts** Drug courts are a judicially and intensively supervised program designed for offenders who commit crimes because of their drug addiction. Upon entrance into drug court further proceedings in the offender's case are suspended, and he or she is required to fulfill a number of requirements and conditions aimed at overcoming his or her drug addiction and accompanying maladaptive behaviors. A system of immediate and graduated sanctions and rewards is utilized to assist the offender throughout the program as is random and frequent drug testing. Many drug court models exist and are fashioned to the local system. A successful participant will avoid prison time for his or her offense. Studies to date indicate that the successful participant is also less likely to return to the criminal justice system.

**Halfway Houses** The vast majority of halfway houses are for substance abusers, require residents to work, and have house rules including curfews. The offender must remain at the facility unless present at work, school, or treatment. Halfway houses are usually located in the community, and work release centers are usually attached to a jail or prison. (Though halfway houses do exist in Nebraska, they are a contracted service and are not formally part of the criminal justice system.)

**Day Reporting Centers** Day reporting is a program that provides full day intervention and treatment to offenders which includes frequent client contact, substance abuse counseling, drug testing, and formal scheduling. Such facilities or services provide programs similar to those offered by halfway houses without the costs and other challenges associated with a residential setting.<sup>24</sup> Day reporting may be utilized by offenders before or after conviction of a crime. Day reporting is currently operating in Douglas County.

**Work Release** Work release programs allow a limited group of inmates within the prison system to be employed in the community, and return to a state correctional facility

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<sup>24</sup> Intermediate Sanctions (FY 2000), Recommendations of Utah Sentencing Commission; available from [www.sentencing.state.ut.us](http://www.sentencing.state.ut.us); Internet.

during non-working hours. Inmates are given an opportunity to be employed in the community and earn competitive wages. Normally inmates who are near the discharge of their sentence or pending parole hearings are selected for work release.

**Parole** Parole is a program for inmates making a transition when released back into the community. Parole officers supervise parolee activity while assisting with the parolee's reintegration into society. The parolee's travel, residence, employment, associates, financial obligations, drug/alcohol use, and compliance with laws is monitored. Parolees may also be required to attend mental health counseling, sex offender counseling or substance abuse counseling. Electronic monitoring may be used to monitor a parolee's activities. Urinalysis tests are performed on parolees to deter drug and alcohol use. Violating a condition of parole may result in the parolee being returned to prison. The goal of parole is for each parolee to achieve a successful discharge from parole supervision and become a responsible member of society.

#### Sanctions Not Currently Used in Nebraska

**Means-Based Fines (Day Fines)** Day fines are fines calculated by considering both the severity of the crime and the discretionary income of the offender, with the calibration and calculation established by the court for all cases in which a fine is imposed. Offenders with more income and fewer familial obligations pay, for the same crime, a higher overall fine than those with lower incomes and greater familial obligations.

**Boot Camps** Boot camp programs are military-like training facilities usually targeted for young, nonviolent first-time offenders. They include an intense regimen, physical conditioning, manual labor, drill and ceremony, and military-style obedience. Typically a sentence to a boot camp is for three to six months, and most boot camp programs also include traditional forms of offender services such as adult education, vocational training, and treatment programs.<sup>25</sup>

**Day Centers or Residential Centers for Training** Day centers, or training centers, provide skills and training to enhance an offender's employability. Participation in treatment is mandated by the court with consequences including incarceration for non-participation.

**Mental Health and Substance Abuse Assessment and Treatment Centers within the Criminal Justice System** The purpose of mental health and substance abuse services for offenders is to reduce risk to public safety by dealing with the offenders "criminogenic," or crime-producing, needs. Each area program is required to provide certain services, either directly or by contracting with other public or private entities. Participation in such treatment is mandated by the court with consequences including incarceration for non-participation. Most programs provide a combination of mandated and optional services such as: outpatient services; emergency services; consultation and

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<sup>25</sup> Tonry, Michael. Intermediate Sanctions in Sentencing Guidelines, May 1997, National Institute of Justice, 8-13.

education services; case management; forensic screening and evaluation; inpatient psychiatric services; psychosocial rehabilitation programs; partial hospitalization services; adult developmental activity programs; drug education schools; inpatient hospital detoxification services; non-hospital or outpatient detoxification services.

## SENTENCING STRUCTURES

More and more offenders are being sentenced to DCS each year. Currently, DCS is over 130% of design capacity. If sentencing policies are not revisited and alternatives to incarceration are not created within the Office of Probation Administration and the Office of Parole Administration, it is expected that the DCS prison population will continue increasing to 153% of capacity by 2005 and to 176% of capacity by 2008.<sup>26</sup>

In terms of projections, two critical variables exist. One is “admissions” and the other is “length of stay.” In terms of reducing prison population, of the two, “admissions” is the variable that has the biggest effect. For example, if there is no change in admissions policy,<sup>27</sup> but the length of stay is reduced by two months, it is estimated that DCS will be at 161% capacity by 2007.<sup>28</sup> But if the length of stay remains the same, and admissions remain flat, the 2007 estimate is that DCS will be at 139% capacity.<sup>29</sup>

Indeed, a change in both variables produces the most significant effect on reducing the prison population. If admissions are *reduced* by 100 per year and the length of stay is reduced by one month, projections are that DCS could be at 101% design capacity by 2007.<sup>30</sup>

Furthermore, Nebraska’s prisons admit too many offenders who are mandatorily discharged within the first two years. Most of these offenders are non-violent, low-priority felons whose length of stay is minimal. For example, in calendar years 2000 and 2001, 306 inmates were sentenced to DCS for 18 months or less. Of those, 61.1% had a minimum sentence of 6 months or less. 98.7% had a minimum sentence of 12 months or less. It is these offenders that seem to be likely candidates for alternatives to incarceration since their stay within DCS is so minimal and their release into the community occurs so quickly.

If these trends continue, projections indicate that this prison population is increasing fast enough for the state to build another “Tecumseh” facility. In order to “plan our way out” instead of “building our way out” it is necessary to examine the sentencing structure in Nebraska.

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<sup>26</sup> See Table 1.

<sup>27</sup> No change in admissions policy means that admissions continues to increase by 100 each year.

<sup>28</sup> See Table 3.

<sup>29</sup> See Table 4.

<sup>30</sup> See Table 5.

The Working Group believes that sentencing practices in Nebraska should address the public's demand for punishment and the need for public safety while emphasizing accountability before offenders are incarcerated, while offenders are incarcerated, and as offenders re-enter society. Offenders should be sentenced as individuals, and judges should use the realm of resources available when sentencing an offender. A differentiation should exist between those offenders the community is "mad at" (for which intermediate sentences are most appropriate) and those the community is "scared of" (for which a sentence of incarceration is the most appropriate). Sentencing practices should take into consideration retribution, deterrence, rehabilitation, and restitution.

The Proposal includes designing a sentencing structure that utilizes the most secure and most expensive prison beds for the most dangerous and most violent offenders while diverting low-level, non-violent offenders to a suitable community corrections program or facility. The objective is to increase the certainty of an offender's prison sentence, address punishment and the need for public safety, and emphasize accountability while using an array of intermediate or graduated sanctions for non-violent offenses to decrease overall correctional costs.

### **Structured Sentencing and Intermediate Sanctions**

A structured sentencing system in many states or jurisdictions is synonymous with sentencing guidelines or a sentencing commission. In general, a sentencing commission may formulate sentencing guidelines, taking into consideration a continuum of intermediate sanctions available to the courts.

#### **Sentencing Commission Background**

A number of states use sentencing commissions to administer the states' criminal justice system. Common goals or reasons for these commissions include reducing disparity in punishments, achieving truth-in-sentencing and appropriate penalties, improving consistency, and efficiently managing public and correctional resources.

In most states, the members of commissions are comprised of members of all branches of government; state legislators, judges, law enforcement officials, prosecutors, public defenders, victims, advocates for victims, private attorneys and private citizens. Most states provide for gubernatorial appointment of the members.

These commissions are empanelled to develop guidelines for judges to follow when they sentence criminal defendants. Often the commissions will create and regularly review a "grid-" or "matrix-" type guide. The factors on the grid measure such things as the severity of crime, prior convictions of the defendant, and other relevant considerations.

Some states have empowered their commissions to create mandatory sentencing guidelines that require courts to impose punishments, leaving little discretion with the

judges. For instance, the North Carolina Sentencing and Policy Advisory Commission promulgates presumptive sentencing guidelines that are codified in the North Carolina code of criminal procedure. Under the North Carolina structured sentencing, there are ranges of punishments, and judges *must* impose punishments of prison for convicted felons whose offense is classified as a high offense or who have high prior records levels. Judges are required to follow the minimum sentencing from the sentencing range.

However, most states' commissions have advisory or presumptive sentencing guidelines, providing courts with more latitude in sentencing. For instance, the Pennsylvania Commission on Sentencing provides for offense gravity scores and levels of punishments that provide judges with loose guidelines to follow. Judges are also able to depart from the guidelines, by providing written justification for the departure.

### Examples of Mission Statements for Structured Sentencing Commissions

The National Institute of Justice published "Sentencing Commission Profiles" outlining how various states have dealt with developing and implementing structured sentencing and sentencing guidelines.<sup>31</sup> The following "examples" of the profiles include the "missions" or the goals and purposes of each state's sentencing guidelines or sentencing commission.

#### **North Carolina** ("Mandatory" Guidelines)

Mission:

Sentencing policies should be consistent and certain: similarly situated offenders should receive similar sentences. Sentencing policies should be truthful: judge-imposed sentences should bear a close and consistent relationship to time served. Sentencing policies should set resource priorities: incarceration should be used for violent and repeat offenders, while community-based programs should be used for nonviolent offenders with little or no prior record. Sentencing policies should be supported by adequate prison, jail, and community resources.

Authority:

North Carolina Sentencing and Policy Advisory Commission

#### **Kansas** ("Mandatory" Guidelines)

Mission:

Six goals are specified to achieve uniform sentencing in Kansas: (1) develop a set of guidelines that promote public safety by incarcerating violent offenders, (2)

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<sup>31</sup> Neal B. Kauder, Brian J. Ostrom, Meredith Peterson, David Rottman, A partnership of the National Association of Sentencing Commission, and Conference of State Court Administrators, and the National Center for State Courts, 1997.

reduce sentencing disparity to ensure the elimination of any racial, geographical, or other bias that may exist, (3) establish sentences that are proportional to the seriousness of the offense and the degree of injury to the victim, (4) establish a range of easy-to-understand presumptive sentences that will promote truth-in-sentencing, (5) provide state and local correctional authorities with information to assist with population management options and program coordination, and (6) provide policy makers with information that will enhance decisions regarding resource allocations.

Authority:  
Kansas Sentencing Commission

### **Pennsylvania (“Presumptive” Guidelines)**

Mission:  
In writing the sentencing guidelines, the Pennsylvania Commission on Sentencing strives to provide a benchmark for the judges of Pennsylvania. The sentencing guidelines provide sanctions proportionate to the severity of the crime and the severity of the offender’s prior conviction record. This establishes a sentencing system with a primary focus on retribution, but one in which the recommendations allow for the fulfillment of other sentencing purposes including rehabilitation, deterrence, and incapacitation.

Authority:  
Pennsylvania Commission on Sentencing

## **LEGISLATIVE AND LEGAL ISSUES**

Prior to considering the advisability of a sentencing commission in Nebraska, the Working Group considered issues unique to Nebraska as to how a commission could be organized.

### **Constitutional Issues**

#### **Separation of Powers**

The Constitution of Nebraska ensures that its three branches of government are to be separate.<sup>32</sup> Article II, Section 1 provides that:

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<sup>32</sup> Neb. Const. Art. II, § 1.

**The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial, and no person or collection of persons being one of these departments, shall exercise any power properly belonging to either of the others, except as hereinafter expressly directed or permitted.**

The powers of the state government are separated into the three departments, none of which shall exercise the powers belonging to the others. The separation of powers doctrine prohibits the Legislature from interfering with the courts' final judgments. Similarly, the doctrine prohibits the judiciary from encroaching on the prerogative of the executive branch, such as the power to pardon or parole.

This section of the Constitution "prohibits one department of government from encroaching on the duties and prerogatives of the others or from improperly delegating its own duties and prerogatives, except as the Constitution itself otherwise directs or permits."<sup>33</sup> The Nebraska Supreme Court has strictly construed this separation of powers and has rejected a notion of overlapping responsibility for running state government. Federal caselaw on the issue of separation of powers provides little guidance, as it has previously been rejected by the Nebraska Supreme Court. "[U]nlike our Constitution, the federal Constitution has no express provision which prohibits the officials of one branch of government from exercising the functions of the other branches."<sup>34</sup>

In interpreting the Nebraska separation of powers provision, the Supreme Court has stated that "Nebraska's Constitution contains an absolute prohibition upon the exercise of the executive, legislative and judicial powers by the same person or the same group of persons."<sup>35</sup> "It is more certain and positive than the provisions of the federal Constitution and those of some of the states, which merely definitely divided the three powers of government."<sup>36</sup>

The Court has guarded the separation of powers closely. "It is an imperative duty of the judicial department of the government to protect its jurisdiction at the boundaries of power fixed by the Constitution."<sup>37</sup> A proposal to create a sentencing commission similar to those in other states presents two potential conflicts with the separation of powers provision of the Nebraska Constitution.

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<sup>33</sup> *State v. Philipps*, 246 Neb. 610, 614, 521 N.W.2d 913 (1994).

<sup>34</sup> *Id.*

<sup>35</sup> *Laverty v. Cochran*, 132 Neb. 118, 271 N.W. 354 (1937).

<sup>36</sup> *Id.*

<sup>37</sup> *State ex rel. Sorensen v. State Bank of Minatare*, 123 Neb. 109, 114, 242 N.W. 278, 281 (1932).

## **1. The Legislature creates crimes and the penalties for violating criminal laws and cannot delegate this duty.**

No act is criminal unless the Legislature has made it so and no person can be punished for any act or omission unless the Legislature provides for such.<sup>38</sup> All crimes in Nebraska are statutory. No common law crimes exist. As punishment for criminal acts, the Legislature creates sentencing sanctions. Presently, the punishments for crimes are classified according to a degree, or class, of felony or misdemeanor. Each class has a range of possible sanctions of fines and imprisonment. Within each class, the Legislature has instructed courts to consider additional factors.<sup>39</sup>

The Legislature has the authority to amend the criminal procedure code to change the *sentencing process*. The Legislature could likely determine the manner in which it undertakes such a task, including delegating such to a commission. The Legislature may delegate to an administrative agency or commission the power to make rules and regulations to implement matters of public policy. The Supreme Court has endorsed delegation of legislative power in respect to matters that are highly technical or where the regulation requires a course of continuous and comprehensive decision-making.<sup>40</sup> The same would apply to the process of sentencing.

Determining which acts are criminal, as well as the appropriate punishments for such, is a core function of the legislative branch. It is the responsibility and prerogative of the Legislature to determine the crimes and potential penalties for violating them.

## **2. A member of one branch of government cannot simultaneously serve as a member of another.**

Creating a sentencing commission that is comprised of prosecutors, attorneys, and judges may present a constitutional problem. The Legislature may enact statutes to set forth the criminal law, but it may not delegate that function to representatives of the executive or judicial branches of government.

Article II, Section 1 prohibits one branch of government from improperly delegating its own duties and prerogatives. It also prohibits persons from serving two branches of government concurrently, as a check on the concentration of power. The Legislature cannot delegate too much of its lawmaking authority, nor can it share too much of this authority with the other branches of government.

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<sup>38</sup> *State v. Bjorklund*, 258 Neb. 432, 604 N.W.2d 169 (2000); *State v. Palmer*, 257 Neb. 702, 600 N.W.2d 756 (1999); *State v. Hauck*, 190 Neb. 534, 209 N.W.2d 580 (1973); *Lincoln Dairy Co. v. Finigan*, 170 Neb. 777, 104 N.W.2d 227 (1960).

<sup>39</sup> Neb.Rev.Stat. §29-2260.

<sup>40</sup> *Ponderosa Ridge LLC v. Banner County*, 250 Neb. 944, 554 N.W.2d 151 (1996); *Bamford v. Upper Republican Nat. Resources Dist.*, 245 Neb. 299, 512 N.W.2d 642 (1994), *cert. denied* 513 U.S. 874, 115 S.Ct. 201, 130 L.Ed.2d 131; *Anderson v. Tiemann*, 182 Neb. 393, 155 N.W.2d 322 (1967).

Finally, Article II, Section 1 prohibits one who exercises the power of one branch from being a member of another branch. The Nebraska Supreme Court has put this question plainly: Is a person a member of the executive branch, and does he exercise any power of the Legislature? Or, conversely, is a state senator a member of the legislative branch, and does he exercise any power of the executive? If the answer to either query is affirmative, then the scenario in question is unconstitutional.<sup>41</sup>

If we apply the query to the makeup of a proposed commission; would a judge as a member of the judicial branch exercise any power of the Legislature by promulgating sentencing guidelines for courts? The answer is probably yes, and it presents a constitutional problem. The Working Group, therefore, did not consider proposing a sentencing commission made up of various members of state government.

#### Options available without amending the Constitution

A commission can be created that has the appropriate diversity of membership and avoids an improper delegation of legislative authority, e.g. an advisory commission that does its work and then reports to the Legislature regarding possible legislation.

Alternatively, the Working Group determined that the Legislature could set parameters and instruct the Supreme Court to develop guidelines by court rule, similar to what the state did with Child Support Guidelines.

The Working Group concluded that sentencing guidelines issued by the Supreme Court as a court rule was preferable to legislative sentencing guidelines and therefore proposes an advisory committee to assist the Supreme Court in developing the guidelines.

#### **Nebraska's Structured Sentencing Under the Proposal**

Sentencing commissions can be an instrumental institution in developing and analyzing sentencing and criminal justice policies within a jurisdiction. The Working Group supports the concept of a sentencing commission. Because of the Constitutional considerations and fiscal concerns, the Working Group is not presently recommending an immediate creation of a sentencing commission in Nebraska. The Proposal recommends that the Supreme Court promulgate sentencing guidelines for nonviolent offenders to be set forth by court rule. An advisory committee selected by the Supreme Court would develop the guidelines. A sentence in accordance with the guidelines would constitute a rebuttable presumption.

Although the Working Group is not proposing the creation of a sentencing commission during the 2003 Legislative Session, the Working Group believes in the goals of improving Nebraska's criminal justice system by reducing disparity in

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<sup>41</sup> *State ex rel. Spire v. Conway*, 238 Neb. 766, 472 N.W.2d 403 (1991).

punishments, achieving truth-in-sentencing and appropriate penalties, improving consistency, and efficiently managing public and correctional resources. The Proposal begins to work towards those goals.

## **SUBSTANCE ABUSE TREATMENT**

The Working Group envisions that local and creative initiatives will be utilized under the Proposal to address the pervasive substance abuse problems of offenders within the criminal justice system. Initiatives include the continued development of drug courts, the incorporation of the many Substance Abuse Task Force recommendations, and the establishment and development of treatment centers across the state.

### Drug Courts

Currently several drug courts for adult drug offenders exist in Nebraska. They include the Central Nebraska Drug Court, Cheyenne County Drug Court, Douglas County Adult Drug Court, and Lancaster County Adult Drug Court. Each drug court is different in design and implementation. Because drug courts are so new to Nebraska, no data exists regarding their success.

An article published by the Vera Institute of Justice entitled “Do Drug Courts Save Jail and Prison Beds?” showed that completing a drug court program reduces the likelihood of rearrest, at least within the first two years after completion of the program, and drug courts provide reductions in detention.<sup>42</sup> These factors contribute to freeing up jail and prison beds, but these are only part of the equation. Bed savings may be adversely affected by using detention for drug court participant violations, targeting offenders bound for incarceration, and sentencing those who failed in drug court more harshly than those who have not participated in the program. Not enough is known about the interaction of these factors to accurately assess overall jail and prison bed savings.<sup>43</sup>

Additional evaluations and studies are needed to assess whether drug courts do rehabilitate the drug offender, reduce criminal recidivism, and save jail and bed space. If it is found that drug court programs are successful in these areas, the specific drug court programs structure should be identified.

The Nebraska Supreme Court has convened a Drug Court Committee to examine existing drug court programs in Nebraska, evaluate their success, and to recommend a structure of uniform procedures and practices to operate drug court programs within Nebraska. Such committee is comprised of judicial, administrative, and academic persons.

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<sup>42</sup> Reginald Fluellen and Jennifer Trone, Vera Institute of Justice State Sentencing and Corrections Program 2000, 6.

<sup>43</sup> Fluellen and Trone, 6.

The Working Group strongly supports the development of drug courts across Nebraska and awaits data showing the success of the programs.

#### Substance Abuse Treatment Task Force Final Report Summary<sup>44</sup>

In 1999, the Legislature created the Substance Abuse Treatment Task Force to study substance abuse treatment at the state level within the adult and juvenile criminal justice systems. The objective was to suggest future legislative and executive actions necessary to coordinate a statewide strategy to address gaps in the organization and delivery of substance abuse treatment.<sup>45</sup> The Final Report of the Substance Abuse Treatment Task Force was released January 2000.

The Working Group recognizes and supports the Substance Abuse Treatment Task Force's recommendations in the treatment of addiction, especially as it relates to the criminal justice system formalizing a statewide strategy for treatment of offenders. There is evidence that drug treatment, whether voluntary or coerced, reduces both drug use and crime for drug-using offenders.<sup>46</sup> The Proposal enhances probation and parole programs to include additional drug treatment.

Imperative to ensuring public safety and public health for Nebraska citizens is recognizing the connection between substance abuse and crime and addressing it effectively through treatment. Studies show that if ways are provided for probationers, parolees, or prisoners to gain access to quality substance abuse treatment, their future criminal activity is decreased by 67%.

In Nebraska, 25 to 40% of adult arrestees and 65 to 85% of incarcerated adult offenders need substance abuse treatment compared to only 7% of the general adult population. Based on estimates of need among adult offenders, 13,900 to 22,241 adult arrestees needed some level of substance abuse treatment in 1997.

In FY 99/00, the total amount of substance abuse treatment dollars in Nebraska was \$19.7 million. Of these dollars, only 4% was specifically allocated to the adult criminal justice system (via DCS). No substance abuse dollars were allocated to the courts or to probation. Thus, the need for substance abuse treatment among offenders does not match the funding available to provide treatment to offenders.

Limited system accountability, inconsistent communication and collaboration, inadequate resources, a limited number of certified counselors, minimal provision of any level of treatment services, and inconsistent assessment and treatment exist as primary barriers to effectively addressing chemical dependency in Nebraska's criminal justice system.

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<sup>44</sup> Adapted from the "Substance Abuse Treatment Task Force Final Report" prepared by Denise Herz and Melissa Vincent, January, 2000.

<sup>45</sup> Neb. Rev. Stat. § 83-4,148 through 83-4,152.

<sup>46</sup> Ostrom, Brian J. and Others, 32.

Research points to several factors that help predict recidivism of criminal behavior. These factors need to be formally (1) adopted by criminal justice personnel as well as treatment providers and (2) incorporated into the assessments and evaluations completed by the justice systems and treatment providers.

Treatment of addiction is as successful as the treatment of other chronic diseases such as diabetes, hypertension, and asthma as long as treatment “best practices” are implemented. It is estimated that for every \$1 spent on treatment, there is a \$4 to \$7 reduction in drug-related crime and criminal justice costs. Individuals who enter treatment under legal pressure have outcomes as favorable as those who enter treatment voluntarily.

#### Substance Abuse Task Force recommendations

##### Task Force:

- 1) Develop a statewide strategy for treatment that will be used to (1) design a future coordinated allocation of federal and state resources; and (2) establish a prescribed set of formal, standardized, and uniform directives, flow charts, and timetables for coordinating offender substance abuse treatment supervision and case management in the state.
- 2) Explore the development of legislative and administrative package to implement alternative sentencing practices, intermediate criminal sanctions, and other alternatives to incarceration that stress substance abuse treatment and offender accountability.

##### Criminal and Justice Agencies:

- 1) Adopt the statewide strategy for treatment produced by the Task Force
- 2) Ensure that offenders are properly evaluated for chemical dependency when they enter DCS.

##### Health and Human Services:

- 1) Modify the process for training and certification of substance abuse counselors to reduce unreasonable barriers to certification.

Justice Agencies and Health and Human Services collaboratively:

- 1) Develop and provide formal training for all justice personnel on substance abuse and develop and provide formal training for certified alcohol and drug abuse counselors and other state certified evaluators on criminogenic need and the justice system
- 2) Build a working partnership between criminal justice and the Division of Mental Health, Substance Abuse, and Addiction Services by assigning duties to an existing position within the Division to liaison with and advocate for substance abuse services within justice.

Funding:

- 1) Access more federal funding for treatment services within criminal and juvenile justice by establishing a federal grant coordination position under the Division of Mental Health, Substance Abuse, and Addiction Services for the exclusive purpose of obtaining and managing grant dollars earmarked for substance abusing offenders.
- 2) Fund a study on how current substance abuse treatment dollars are being expended and make recommendations on the reallocation of dollars, the new dollars needed and possible funding sources.

## **MENTAL HEALTH**

Agency coordination and collaboration is vital when dealing with mental health issues affecting criminal offenders.

According to the Bureau of Justice Statistics, only five percent of Americans have a serious mental illness, yet the National Mental Health Association estimates that nearly 16 percent of prison or jail inmates in the United States has a mental illness.<sup>47</sup> Such offenders recidivate at rates as high as 60%. Individuals who have committed less serious crimes and are in contact with the criminal justice system, usually because of inadequate treatment and support for their mental illness, are overwhelming the criminal justice system.<sup>48</sup>

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<sup>47</sup> Adam Rich "Mental Illness and the Criminal Justice System" *State Government News* May 2002, 14.

<sup>48</sup> Mental Health/Criminal Justice Consensus Project; available from [http://www.csgeast.org/programs/criminal\\_justice/CJMH%20page](http://www.csgeast.org/programs/criminal_justice/CJMH%20page); Internet.

## Mental Health in Nebraska

The behavioral health system in Nebraska includes treatment for mental health and substance abuse. The current public behavioral health system was established in 1974 with the enactment of LB 204. In that year, the Comprehensive Community Mental Health Services Act (CCMHSA)<sup>49</sup>, divided the state into six mental health regions, each with its own separate regional governing board consisting of one county board member from each county in the region. Each regional governing board either contracts for the provision of needed services or the region provides the services directly.<sup>50</sup> The CCMHSA has been modified since its enactment, with new acts and sections having been adopted over the past thirty years.

The public behavioral health system funds a wide variety of inpatient and outpatient mental health and substance abuse services, including emergency, residential, and nonresidential services. Services are provided by both governmental and private sector agencies and organizations.

The state owns and operates three hospitals for the mentally ill (regional centers), located in Norfolk, Lincoln and Hastings. The state operates a Medicaid managed care program, in which Medicaid funds are used to pre-pay a premium for health care coverage from a commercial insurance company for a defined segment of the state's Medicaid-eligible population, in this case primarily children. The state's Medicaid managed care contractor is ValueOptions. The state also has an "administrative services only" (ASO) contract with Magellan Behavioral Health for utilization management, technical assistance and training, and data management for the system.

Though the behavior health system in Nebraska is statewide and offers an array of services through private and public, inpatient and outpatient services, it currently provides very little emphasis on adult criminal behavior and Nebraska's criminal justice system.

The Working Group recommends ongoing strategy to incorporate the formalization of mental health services and programs within the criminal justice system.

## **REENTRY**

"Reentry" is defined as the process an offender goes through when leaving prison and returning to society. Prisoners in Nebraska as well as across the nation are returning to society, having spent longer terms in prison, with less preparation for life within the community, and little, if any, assistance in their reintegration.<sup>51</sup> Often such offenders have difficulties reconnecting with jobs and housing when they return and are

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<sup>49</sup> Neb. Rev. Stat. sections 71-5001 to 71-5014

<sup>50</sup> State mental health and substance abuse regions are described in Neb. Rev. Stat. section 71-5002(6).

<sup>51</sup> Travis, Jeremy and Amy L. Solomon and Michelle Waul, "From Prison to Home: The Dimensions and Consequences of Prisoner Reentry" The Urban Institute and Justice Policy Institute, June 2001, 1.

overwhelmed by substance abuse and health problems. It is unlikely they will get treatment services after their return to the community. Without treatment many of the offenders will return to prison for new crimes or parole violations.<sup>52</sup>

The increase of prisoner incarceration over the past 20 years in the United States has now turned public attention toward the consequences of releasing large numbers of prisoners back into communities. Reflecting the prison and jail populations they have just left, offenders on supervised release have serious psychological and social problems, including substance abuse and mental illness. This influx of parolees threatens to swamp already overburdened community programs.<sup>53</sup> Prisoner reentry has raised unanswered questions about public safety, how corrections systems should manage release volume, and how communities will be able to absorb and reintegrate the returning prisoners.<sup>54</sup>

High costs are associated with the cycle of incarceration and reentry apart from the fiscal implications of prison beds. First and foremost is public safety. Nearly two-thirds of released prisoners are expected to be rearrested for a felony or serious misdemeanor within three years of release.<sup>55</sup> Recidivism rates translate into many new victimizations each year, and the social costs are far reaching. Prisoner reentry carries the potential for extreme collateral consequences, including public health risks, disenfranchisement, homelessness, and weakened ties among families and communities.

Reentry in Nebraska is equivalent to the services available when an offender is paroled. The Proposal incorporates initiatives to manage reentry through the parole process. The enhancement of parole services is to focus on public safety, ensure that fewer crimes are committed, and save money by controlling the number of offenders going back to prison.

## **CRIMINAL JUSTICE SYSTEM POPULATION DATA**

### Correctional System Averages

Within the criminal justice system, offenders are generally categorized as probationers, under the supervision of the Office of Probation Administration; inmates, under the supervision of DCS; or parolees, under the supervision of the Office of Parole Administration.

The total number of adult cases processed through the probation system per year is around 37,000. In 2001, 88.6% of adult offenders under probation supervision were convicted of misdemeanor offenses compared to 11.4% felony offenses. Caseloads are

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<sup>52</sup> Hiller, Matthew L., Ph.D. and Others, "Kentucky Reentry Courts: Evaluation of Pilot Programs" University of Kentucky Center on Drug and Alcohol Research and State Justice Institute, 2002, ii.

<sup>53</sup> *Id.*

<sup>54</sup> Lynch, James P. and William J. Sabol, "Prisoner Reentry in Perspective" The Urban Institute and Justice Policy Center, 2001, 3.

<sup>55</sup> Travis and others, 2.

on average 130 per traditional probation officer with responsibility for 120 pre-sentence investigations per year per officer. ISP caseloads are 25 per officer with no investigation responsibilities. The total ISP cases for 2001 was 1,529. The average length is 427 days for a traditional probation term and 904 days for an intensive supervision probation term. Probation supervision includes those offenders transferred to Nebraska through the Interstate Compact.

Currently, DCS's actual population for all facilities is just over 4,000. The average stay in prison is 25 months. The design capacity of DCS facilities is 3,039. At present DCS is over 130% of design capacity.

The adult parole population is estimated at 587, with a 12.1 month average length of stay on parole during 2001 and a parole staff of 30. The majority of persons being supervised on parole in Nebraska are serving sentences for drug offenses. However, nearly every type of criminal offense is represented in the parole population.

Annual correctional supervision cost averages for 2001 was \$330 for traditional probation, \$1,569 for ISP, \$3,103 for adult parole, and \$22,091 for DCS adult institutions. Supervision deemed "community corrections"—probation and parole—are significantly less expensive than DCS institutions.

### Specific Analysis

After a preliminary analysis of DCS admissions data, in addition to probation and parole violators, the Working Group identified drug offenders and DUI offenders as the categories most responsible for continuing growth in admissions. Burglary and theft were also identified as having a lesser impact. All other crimes were lumped together into one other category.

Due to inconsistencies in reporting, the Working Group made decisions about what offenses fell into what crime categories to ensure the same crimes were being compared. Given the inconsistencies, the analysis undertaken by the group indicate the following:

- Crime and arrest rates are steady with the exception of drugs. Arrest for drug offenses have increased by 395% since 1987.
- The rate of sentencing to DCS per arrest for DUI increased over time from 4 admissions in 1987 to 73 admissions in 2001.
- More drug offenders are being admitted to DCS. In 1987, 136 offenders were admitted compared to 478 in 2001.



## **DETAILS OF THE CRIMINAL JUSTICE REFORM PROPOSAL**

Given the state's fiscal environment and the goal of efficient implementation of change to alleviate the continuous rising prison population, the Working Group recommends the following policies and changes in current law for introduction and passage during the 2003 Legislative Session.

The recommended legislative changes are divided into five categories: 1) Probation, 2) Parole, 3) the Community Corrections Act, 4) the Commission on Law Enforcement and Criminal Justice, and 5) the Department of Correctional Services.<sup>56</sup>

### **Probation**

#### Probation Violations

Currently in Nebraska, when a probationer commits a technical or minor violation of his or her probation, the only choice a probation officer has in recognizing the violation is to make a report to the sentencing court and the county attorney. Official action is then taken to revoke probation, and the offender is re-sentenced—in many instances to expensive incarceration at DCS. In 2001, 243 adult offenders revoked from probation were sentenced to prison. Of those sentenced to prison, 64% were due to technical violations, or failure to complete a term of probation such as reporting, completion of a treatment program, payment of fines, or positive urinalysis.<sup>57</sup>

Instead of every violation requiring a court appearance, the Working Group proposes authorizing the probation officer to implement certain administrative sanctions with the offender's requisite knowledge and consent without reporting to the sentencing court. Administrative sanctions include, but are not limited to, increased substance abuse testing, imposing a curfew, and requiring community service hours. When a probationer is reprimanded by a probation officer with additional sanctions, it is the expectation that the process will help probationers be successful, and avoid subsequent incarceration.

Administrative sanctions will enable probation officers to respond swiftly, certainly, and consistently to non-compliant behavior. The number of official revocations reported to the sentencing court will be reduced thereby allowing the sentencing court to concentrate on law violation revocations and higher risk offenders. Administrative sanctions promote effective community supervision in an efficient and effective manner.

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<sup>56</sup> The language of the recommended Legislative changes appear at the end of this Report. Such language reflects the Community Corrections Working Group's work, but is not deemed "in bill form" as it has not gone through the official bill drafting process.

<sup>57</sup> Office of Probation Administration, Biennial Report, 2000-2001

### Presentence Investigations

To encourage efficiency and proper use of resources, the Working Group proposes the prohibition of courts ordering presentence investigations in minor misdemeanor cases. In 2001, a total of 16,936 presentence investigations were completed by the Office of Probation Administration (Probation).<sup>58</sup> If Probation spends less time on minor misdemeanor cases, more attention can be given to high grade offender presentence investigations and on high risk offender supervision.

In order to ensure assessments within the presentence investigation are made available to all of those involved with an offender's supervision, authority to receive a copy of the presentence investigation by the Board of Parole or Parole Administration is clarified.

### Probation Programming Fee and Fund

In this state of fiscal crisis, Nebraska must "think smarter" about how to effectively provide cost savings in managing offenders throughout the criminal justice system. The Working Group proposes the creation of a fund to enhance programming within Probation. The objective of the fund would be to enhance existing supervision of offenders in the community in order to keep more offenders in the community instead of prison. The fund will be supported by Probation supervision fees. An enrollment fee of thirty dollars will be required of all probationers when the probation term begins. Thereafter a monthly programming fee will be imposed. Fees are set at twenty-five dollars per month for probationers placed on traditional probation and thirty-five dollars per month for probationers placed on intensive supervised probation. Probation programming fees are in addition to any service fee required paid by the probationer such as fees imposed for drug testing or electronic monitoring.

Payment of fees by the probationer shall be a condition of probation and may be waived by the court during periods that the requirement of payment would result in an undue hardship based on limited income, employment or school status, or physical or mental handicap.

### Incarceration Work Camp

Difficulties arise when an offender is expected to find transportation to the incarceration work camp on his or her own. To ensure the offender arrives at the designated incarceration work camp in a safe and timely fashion, the Working Group recommends that counties be responsible for offenders' transportation to the incarceration work camp.

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<sup>58</sup> *Id.*

## **Parole**

### Parole Programming Fee and Fund

Like the probation programming fund, the Working Group proposes a similar *parole* programming fund to enhanced programming within Parole Administration (Parole). This will improve Parole's ability to develop programming, allowing more offenders back into the community. Under the proposal, parolees are required to pay a monthly programming fee of twenty-five dollars per month to support the fund. Fees may be waived by a determination by the Board of Parole that payment constitutes an undue hardship because of limited income, employment or school status or physical or mental handicap. In lieu of payment of program fees, the parolee may perform community service as agreed upon by the supervising parole officer.

### Parole Eligibility

The Working Group proposes several amendments to current statutes regarding parole eligibility, giving the Board of Parole additional discretion in the granting of parole.

One recommendation is that restrictions be lifted on whether the Board of Parole may grant parole to an offender on re-parole. The decision to re-parole would be left to the discretion of the Board of Parole.

The Board of Parole, in its discretion, would be allowed to discharge an out-of-state offender from parole in Nebraska when such offender has reached his or her discharge date in Nebraska, under the Working Group's proposal. By clarifying the language in statute, the Board of Parole may forego requiring the state to expend resources to bring an offender back to Nebraska from a state that is housing and providing programming in its correctional system.

The Working Group believes that removing the requirement that inmates convicted of certain drug violations must complete treatment prior to becoming eligible for parole would allow offenders to be paroled, complete treatment as a term of parole, and live in and be supported by the community in which they live. Also, no longer would there exist a requirement that a prisoner with a drug or alcohol violation not be eligible for parole for 12 months. Again, it would be discretionary whether the Board of Parole grants release on parole in those situations. The Working Group expects all substance abuse treatment currently provided by the Department of Correctional Services to be continued and, at some time in the future, enhanced.

## **Community Corrections Act**

The Working Group is proposing the replacement of the current Community Correctional Facilities and Programs Act by a “Community Corrections Act” (Act). The proposed Act places the administration of a Community Corrections Council (Council) within the Commission on Law Enforcement and Criminal Justice. Because the Council would not be “housed” under any agency currently providing offender services, it would have the independence and objectivity to effectively establish a continuum of community corrections for use by Probation and Parole.

The Council would be made up of criminal justice leaders and would provide coordination of community corrections facilities and programs across the state. It would contract with entities to offer a wider array of community corrections services for offenders on probation and parole. The hope is that more community corrections facilities and programs will be established thereby giving judges more options in sentencing and giving the Board of Parole more options in granting parole. Thus, expensive prison beds would remain for those offenders determined to be unlikely candidates for successful supervision in the community.

Within the Act is a requirement that the Supreme Court develop **sentencing guidelines** by court rule. The intent is the sentencing guidelines will reduce disparity in punishments, improve consistency, and help to efficiently manage public and correctional resources by encouraging the use of community corrections.

Guidelines for the sentencing of felony drug offenses will be developed first, followed by other felony offenses. An advisory committee comprised of law enforcement representatives, county attorneys, district court judges, defense bar members, and others the Supreme Court deems appropriate will assist in the development of the sentencing guidelines.

## **Commission on Law Enforcement and Criminal Justice (Crime Commission)**

The Act includes the creation of a fund to support the development and implementation of a process for criminal data unification by assessing an additional \$1 court fee. The process for criminal data unification will be developed and maintained by the Crime Commission. Unification of data is needed within the criminal justice system. The current nonintegrated criminal justice data components from the several agencies are inconsistent and often incompatible. This restricts the meaningful exchange of information and makes it impossible to effectively analyze data to shape informed decisions. Though agencies, like DCS, Probation, Parole, the courts and the Crime Commission, may keep sound data, many challenges exist when trying to analyze the data across the agencies. A process for criminal data unification would help address these challenges. Competent data across the criminal justice system is needed so the policymakers can make informed decisions.

## **Department of Correctional Services (DCS)**

### Correctional System Overcrowding Emergency Act

The Working Group recommends that before prison overcrowding results in federal litigation, the State should impose its own set capacity of offenders within DCS. The procedure will provide for a *planned* process that preempts federal court intervention.

The Proposal creates a legislatively imposed prison cap requiring the Governor to declare an overcrowding emergency when the correctional system population is above 140% of *design* capacity. The Board of Parole is then to consider or reconsider those eligible for parole, and parole those deemed most appropriate. The Board of Parole stops operating under the Correctional System Overcrowding Emergency Act when the correctional system population is at 100% of operational capacity, which is the same as 125% of design capacity.

### Other 2003 Legislation

It is the understanding of the Working Group that Senator Jim Jensen will introduce during the 2003 session a “Substance Abuse Treatment Act” proposing to raise tax on beer, wine, and alcohol in order to fund additional substance abuse treatment programs within the Health and Human Services system as well as the criminal justice system. The Working Group deems more substance abuse treatment to be very important and is in favor of the enhancing the availability of substance abuse treatment in Nebraska.

### Beyond the Scope of the Working Group’s Focus

In discussions within the Working Group about how to approach systematic change within Nebraska’s criminal justice system, contemplating criminal justice as it relates to juveniles, misdemeanants, and county programs and facilities was addressed. Due to time constraints and the magnitude of simply focusing on the state correctional system and felony crimes, specific county issues are not addressed.



# **TABLES**



# **TABLE 1**

## **State of Nebraska Department of Correctional Services**

### **Projected Crowding\***

June 20, 2002

<b><u>Fiscal Year</u></b>	<b><u>Projected Population</u></b>	<b><u>% of Design Capacity**</u></b>	<b><u>Additional Capacity – NCCW***</u></b>
2002	3973	133%	
2003	4168	137%	
2004	4401	145%	138%
2005	4645	153%	145%
2006	4888	161%	152%
2007	5124	169%	160%
2008	5355	176%	167%

**Notes:** Actual population June 20, 2002 = 4029

\* Based on DCS June 30, 2001 population projection

\*\* Design capacity for DCS currently = 3039

\*\*\* Design capacity for DCS with expansion at Nebraska Correctional Center for Women (NCCW) = 3206



**TABLE 2**

**State of Nebraska  
Agency Expenditures and Appropriations  
(Operating Funds Only)**

State Budget Office

Department of Correctional Services

	<b>Actual FY96</b>	<b>Actual FY97</b>	<b>Actual FY98</b>	<b>Actual FY99</b>	<b>Actual FY00</b>	<b>Approp. FY01</b>
General Fund	66,663,610	68,282,967	67,986,926	76,623,211	85,106,313	97,392,253
Cash Fund	842,024	944,524	507,840	1,200,186	375,755	582,737
Federal Fund	3,028,655	642,155	453,073	499,309	1,664,317	442,896
Revolving Fund	5,737,694	6,428,559	7,910,491	7,366,080	8,428,230	10,850,127
<b>Total Agency</b>	<b>76,271,983</b>	<b>76,298,205</b>	<b>76,858,330</b>	<b>85,688,786</b>	<b>95,574,615</b>	<b>109,268,013</b>

**Sources:**

- Actual Expenditures for FY96, FY 97, FY 98, FY99 and FY00: "State of Nebraska Annual Budgetary Report for the Year Ended June 30, 2000," prepared by the Department of Administrative Services - Accounting Division -- less Capital Construction and Trust Funds.
- FY 2000-01 Appropriations: "State of Nebraska Executive Budget 2001-2003 Biennium," prepared by the Department of Administrative Services - Budget Division.



- FY 2000-01 Appropriations for Capital Construction: Department of Administrative Services - Budget Division, New Appropriations Table BUD0000.FY2000\_FY2001\_APP for Program Numbers 900 - 999.

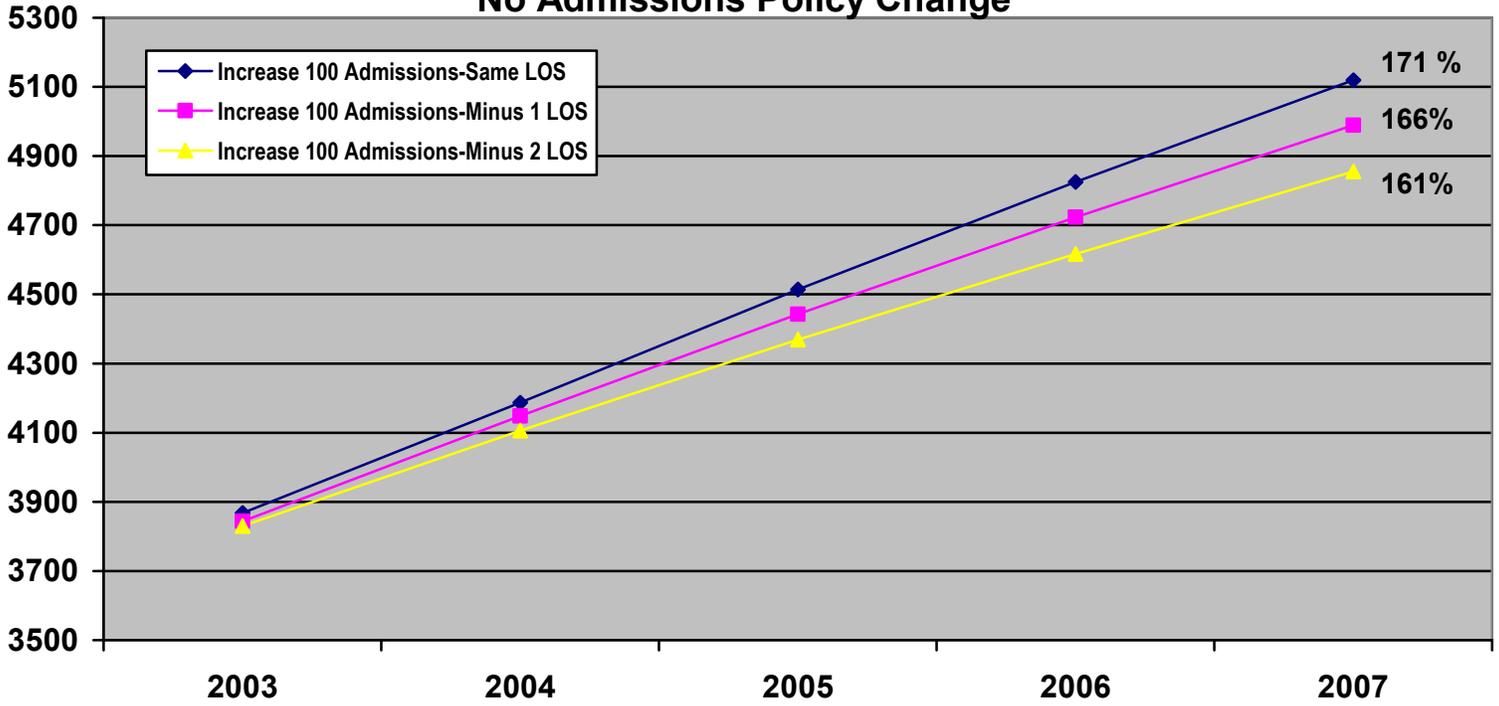
**Fund Definitions:**

- General Fund -- To account for activities funded by general tax dollars, primarily sales and income taxes.
- Cash Funds -- To account for the financing of goods or services provided by a State agency to individuals or entities outside of state government on a cost-reimbursement basis.
- Federal Funds -- To account for the financial resources related to the receipt and disbursement of funds generated from the federal government as a result of grants or contracts.
- Revolving Funds -- To account for the financing of goods or services provided by one State agency to another State agency on a cost reimbursement basis.



**TABLE 3**

### Prison Projections No Admissions Policy Change



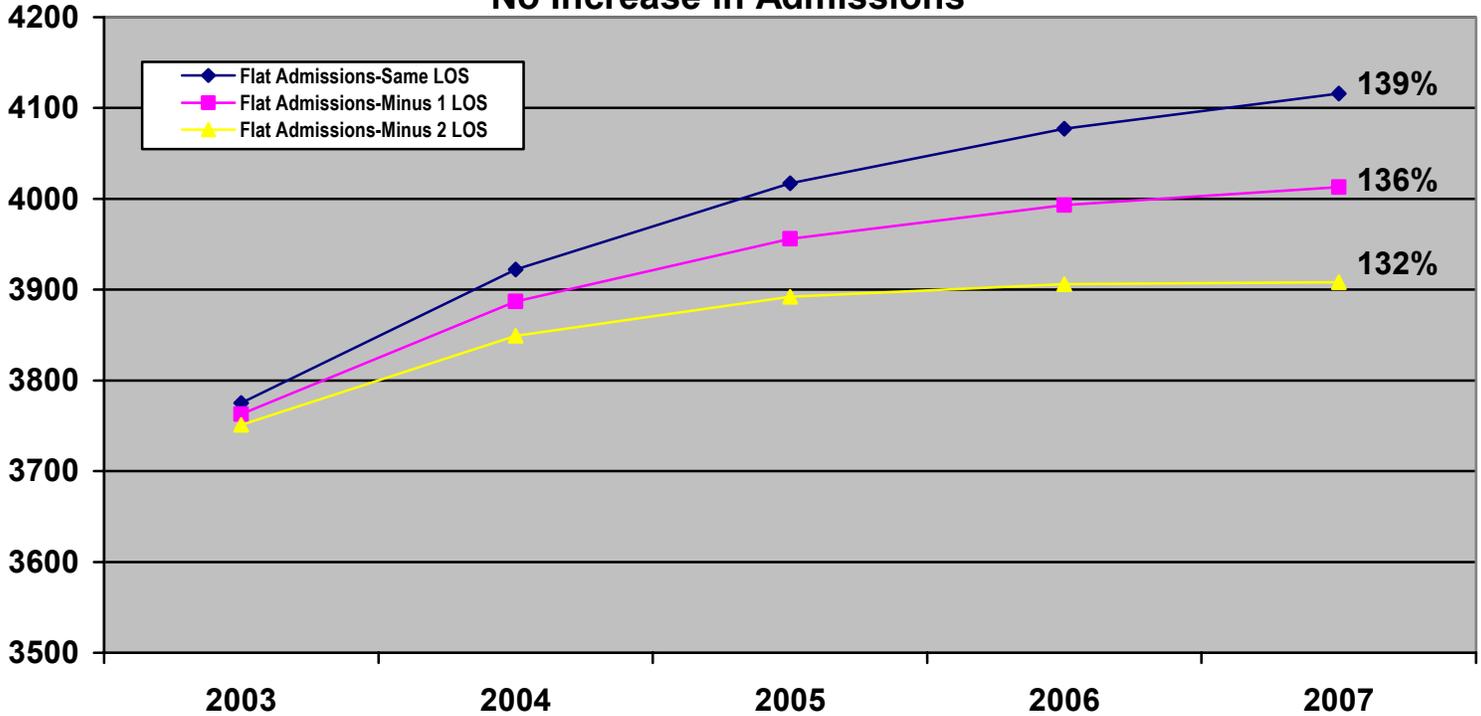
**Notes:** LOS = Length of Stay

\* “Official” projections of DCS are based on approximately 100 additional admissions per year and no change to LOS



**TABLE 4**

## Prison Projections No Increase in Admissions



**Notes:** LOS = Length of Stay

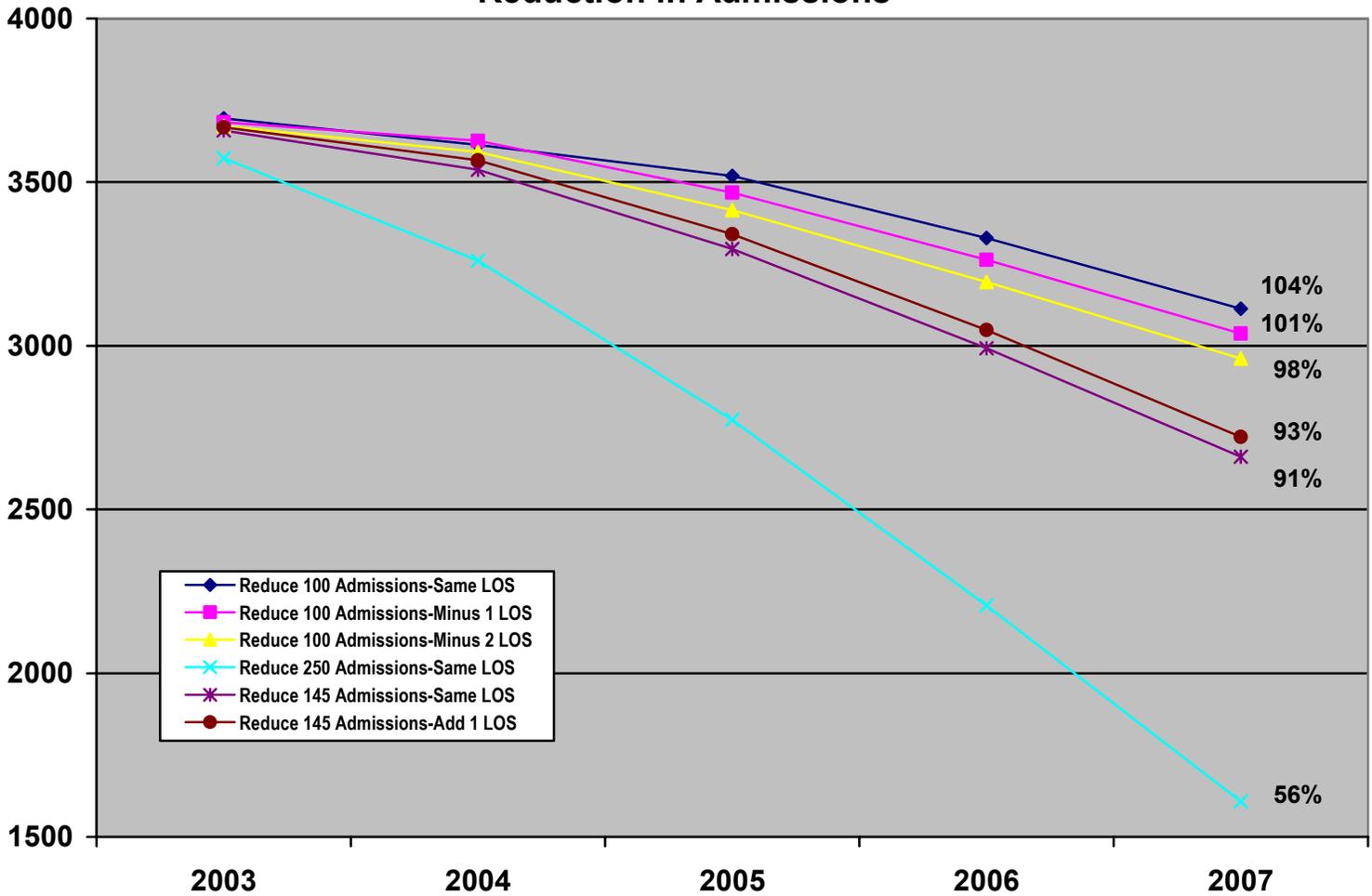
\* “Official” projections of DCS are based on approximately 100 additional admissions per year and no change to LOS.

\*\* “Flat Admissions” reflects a *decline* in admissions from what is currently projected.



**TABLE 5**

## Prison Projections Reduction in Admissions



**Notes:**

LOS = Length of Stay

\* “Official” projections of DCS are based on approximately 100 additional admissions per year and no change to LOS.

\*\* “Reduced Admissions” reflect *both* elimination of the projected increase *and* an actual reduction in admissions.

\*\*\* The reduced admissions numbers were derived from non-violent first time and multiple admissions with a maximum sentence of 2 years with the majority of releases occurring in the first 12 months (98.7)



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**Proposed Revisions/Modifications**  
**to Applicable**  
**Nebraska Statutes**



## Proposed Revisions/Modifications to Applicable Nebraska Statutes

### Probation

#### Probation Violations

*The following changes amend outdated or confusing language and have the effect of allowing the participation in a community correctional facility or program as a condition of probation.*

#### **§ 29-2262. Probation; conditions.**

(1) When a court sentences an offender to probation, it shall attach such reasonable conditions as it deems necessary or likely to insure that the offender will lead a law-abiding life. No offender shall be sentenced to probation if he or she is deemed to be a habitual criminal pursuant to section 29-2221.

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

(a) To refrain from unlawful conduct;

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

(c) To meet his or her family responsibilities;

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

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

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

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

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

(i) To ~~have in his or her possession~~ possess no firearm or other dangerous weapon ~~unless granted written permission if convicted of a felony; or, unless granted written permission by the court, to possess no firearm or other dangerous weapon if convicted of any other offense;~~

(j) To remain within the jurisdiction of the court, to notify the court or the probation officer of any change in his or her address or his or her employment, and to agree to waive extradition if found in another jurisdiction;

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

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

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

~~(m)~~ (m) To pay for court costs, fees, and tests to determine the presence of drugs or alcohol, psychological evaluations, offender assessment screens, and rehabilitative services required in the identification, evaluation, and treatment of offenders if such offender has the financial ability to pay for such services;

~~(n)~~ (n) To perform community service as ~~defined~~ outlined in sections 29-2277 through 29-2279 under the direction of the supervising probation officer;

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

~~(p)~~ (p) To participate in a community correctional facility or program as provided in section XX-XXX, the Community Corrections Act 47-610;

~~(q)~~ (q) To successfully complete an incarceration work camp program as determined by the Department of Correctional Services; ~~or~~

~~(r)~~ (r) To satisfy any other conditions reasonably related to the rehabilitation of the offender;

(s) To make restitution as defined by sections 29-2280 and 29-2281; and

(t) To pay for all costs imposed by the court including court costs and programming fees.

(3) In all cases in which the offender is guilty of violating section 28-416, a condition of probation shall be mandatory treatment and counseling as provided by such section.

*The following statute changes allow for probation officers to impose intermediate responses (additional conditions) to minor probation violations without a formal hearing.*

**§ XX-XXX. Terms, defined.**

As used in section 29-2266, unless the context otherwise requires:

(1) Substance abuse violation shall mean the probationer's activities or behaviors associated with the use of chemical substances or related treatment services resulting in a violation of an original condition of probation, including:

(a) Positive breath test for the consumption of alcohol if the offender is required to refrain from alcohol consumption;

(b) Positive urinalysis for the use of illicit drugs;

(c) Failure to report for alcohol or drug testing;

(d) Failure to appear for treatment evaluations or arranged sessions; and

(e) Failure to complete inpatient or outpatient treatment programming.

(2) Non-criminal violation shall mean the probationer's activities or behaviors which create the opportunity for re-offending or diminish the effectiveness of probation supervision resulting in a violation of an original condition of probation, including:

(a) Traffic violations;

(b) Failure to report to the supervising probation officer;

(c) Leaving the jurisdiction of the court or state without the requisite permission of the court or supervising probation officer;

(d) Failure to work regularly or attend training or school;

(e) Failure to notify the supervising probation officer of change or address or employment;

(f) Frequenting places where controlled substances are illegally sold, used, distributed, or administered;

(g) Associating with persons engaged in criminal activity or with persons having criminal histories;

(h) Failure to perform community service work as directed;

(i) Failure to pay fines, costs or restitution as directed; and

(j) Failure to adhere to any general or special condition of probation.

(3) Administrative sanction shall mean additional probation requirements imposed upon the probationer by the probation officer, with the full knowledge and consent of the probationer, designed to hold the probationer accountable for substance abuse and non-criminal violations of probation conditions, including:

(a) Counseling or reprimand by the probation officer;

(b) Increased supervision contract requirements;

(c) Increased substance abuse testing;

(d) Referral for substance abuse evaluation or other specialized assessment, counseling, or treatment;

(e) Imposition of a designated curfew;

(f) Community service for a specified number of hours;

(g) Travel restrictions;

(h) Prohibitions from associating with certain persons or places;

(i) Restructuring court imposed financial obligations; and

(j) Failure to pay costs or fees.

### **§ 29-2266. Probation; violation; procedure.**

(1) Whenever a probation officer has reasonable cause to believe that a probationer has committed violated or is about to commit violate a substance abuse violation or non-criminal violation, as defined in section XX-XXX, while on condition of his probation, but that the probationer will not attempt to leave the jurisdiction, and

will not place lives or property in danger, the probation officer shall undertake a course of action pursuant either to subsection (a) or (b) of this section:

(a) Impose one or more administrative sanctions as defined in section XX-XXX to achieve the probationer's compliance with the conditions of probation. The decision to impose administrative sanctions in lieu of formal revocation proceedings rests with the supervising probation officer and shall be based upon the probationer's risk level, the severity of the violation and the probationer response to the violation. If administrative sanctions are imposed, the probationer shall acknowledge in writing the nature of the violation and agree upon the administrative sanction. A copy of the report shall be submitted to the county attorney of the county where probation was imposed.

(b) ~~submit~~ Submit a written report to the sentencing court with a copy to the county attorney of the county where probation was imposed outlining the nature of the probation violation and request that formal revocation proceedings be instituted against the probationer

~~(a) Suspend any further proceedings;~~

~~(b) Instruct the probation officer to handle the matter informally without instituting formal revocation procedures; or~~

~~(c) Refer the matter to the county attorney.~~

(2) Whenever a county attorney receives a report from a probation officer that a probationer has violated a condition of his or her probation, a motion or information to revoke probation may be filed.

(3) Whenever a probation officer has a reasonable cause to believe that a probationer has violated or is about to violate a condition of his or her probation and that the probationer will attempt to leave the jurisdiction or will place lives or property in danger, the probation officer shall arrest the probationer without a warrant and may call on any peace officer to assist him. Whenever a probationer is arrested, with or without a warrant, he shall be detained in a jail or other detention facility.

(4) ~~(3)~~ Immediately after such arrest and detention, the probation officer shall notify the county attorney of the county where probation was imposed and submit a written report of the reason for such arrest as well as any violation of probation. After prompt consideration of such written report, the county attorney shall:

(a) Order the probationer's release from confinement; or

(b) File with the sentencing court a motion or information to revoke the probation.

~~(4) Whenever a county attorney receives a report from a probation officer that a probationer has violated a condition of his probation, he may file a motion or information to revoke probation.~~

(5) The probation administrator shall adopt and promulgate rules and regulations to carry out probation violation procedures.

**§ 29-2263. Probation; term; court; powers; probation obligation satisfied, when; probationer outside of jurisdiction without permission; effect.**

(1) When a court has sentenced an offender to probation, the court shall specify the term of such probation which shall be not more than five years upon conviction of a felony or second offense misdemeanor and two years upon conviction of a first offense misdemeanor. The court, on application of a probation officer or of the offender or on its own motion, may discharge an offender at any time.

(2) During the term of probation, the court on application of a probation officer or of the offender, or its own motion, may modify or eliminate any of the conditions imposed on the offender or add further conditions authorized by section 29-2262. This subsection does not preclude a probation officer from imposing administrative sanctions with the offender's full knowledge and consent as authorized by section 29-2266 (1).

(3) Upon completion of the term of probation, or the earlier discharge of the offender, the offender shall be relieved of any obligations imposed by the order of the court and shall have satisfied his sentence for his crime.

(4) Whenever a probationer disappears or leaves the jurisdiction of the court without permission, the time during which he keeps his whereabouts hidden or remains away from the jurisdiction of the court shall be added to the original term of probation.

**Presentence Investigations**

*This proposal prohibits courts from ordering presentence investigations to be completed in minor misdemeanor cases. It also requires that a copy of the presentence investigation go to the Board of Parole or Parole Administration upon request.*

**§ 29-2261. Presentence investigation, when; contents; psychiatric examination; persons having access to records; report transmitted; privileged; transmitted to Department of Correctional Services.**

(1) Unless it is impractical to do so, or with court approval of a stipulation of the State and the defendant that a presentence investigation is unnecessary, when an offender

has been convicted of a felony, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, or a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

- (a) Any written statements submitted to the county attorney by a victim; and
- (b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

- (a) He or she has attempted to contact the victim; and
- (b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation

officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the provisions of section 71-102, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 71-1,206.14, or (c) a practicing mental health professional licensed or certified in this state as provided in section 71-1,333. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted forthwith to the Department of Correctional Services. ~~or, when the defendant is committed to the custody of a specific institution, to such institution~~ Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the Department of Correctional Services.

(8) Notwithstanding subsection (6) of this section, the Nebraska Commission on Law Enforcement and Criminal Justice under the direction and supervision of the Chief Justice of the Supreme Court shall have access to presentence investigations and reports for the sole purpose of carrying out the study required under subdivision (7) of section 81-1425. The commission shall treat such information as confidential, and nothing identifying any individual shall be released by the commission.

### **Probation Programming Fee**

*The following proposed sections create a fund and require probationers to pay a programming fee.*

### **Section XX-XXX. Probation Programming Fees**

(1) Notwithstanding subsection (3) of this section, whenever a district or county court sentences an adult offender to probation, the court shall require the offender to pay a one-time administrative enrollment fee and thereafter a monthly probation programming fee as part of court costs.

(2) The court shall establish offender payment of administrative and monthly probation programming fees as follows:

(a) All adult offenders placed on probation shall pay a one-time administrative enrollment fee of thirty dollars. The fee shall be paid in one lump sum upon the onset of probation supervision.

(b) Offenders placed on traditional probation supervision shall pay a probation programming fee or twenty-five dollars per month, by the 10<sup>th</sup> day of each month, during the length of the probation sentence.

(c) Offenders placed on intensive supervision probation shall pay a probation programming fee of thirty-five dollars per month, by the 10<sup>th</sup> day of each month, during the length of the probation sentence.

(3) The court may waive payment of the monthly probation programming fees, outlined in subsection (2) of this section, in whole or in part if a determination is made at the time of sentencing that such payment would constitute an undue hardship on the offender due to limited income, employment or school status, or physical or mental handicap. Such waiver shall be in effect only during the period of time that said offender is unable to pay his or her monthly programming fee.

(4) When an offender on probation defaults in the payment of monthly probation programming fees or any installment thereof as established by subsection (2) of this section, the court may revoke the offender's probation for nonpayment, except an offender's probation shall not be revoked for nonpayment of monthly probation programming fees nor shall the offender be imprisoned for such if the offender is financially unable to make the payment and state so to the court in writing, under oath, and the court so finds.

(5) If the court determines that the default in payment specified in subsection (4) of this section was not attributable to a purposeful refusal to obey the order of the court or failure on the offender's part to make a good faith effort to obtain the funds required for payment, the court may enter an order allowing the offender additional time for payment, reducing the amount of each installment, or revoking the fees or the unpaid portion thereof, in whole or in part.

(6) In no event shall any one offender be required to pay more than one probation programming fee per month.

(7) The imposition of probation programming fees in this section are to be viewed separate and apart from those specific service delivery fees outlined within section 29-2262, subsection (m) and (o).

(8) Pursuant to this section, any adult offender received for supervision pursuant to section 29-2637 shall be assessed both a one time administrative fee and monthly

probation programming fee, during the period of time the offender is actively supervised by Nebraska probation authorities.

(9) The offender shall pay fees outlined within subsection (2) (a), (b), (c) of this section to the clerk of the court. The clerk of the court shall remit all fees so collected to the State Treasurer for credit to the Probation Program Cash Fund under section XX-XXX.

### **XX-XXX. Probation Program Cash Fund**

The Probation Program Cash Fund is created. All funds collected pursuant to subdivision (2) (a), (b), and (c) of section XX-XXXX shall be remitted by the clerk of the court to the State Treasurer for credit to the fund. The fund shall be utilized by the probation administrator for the purchase of services to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced probation based programs aimed at enhancing adult offender supervision in the community and treatment needs of offenders on probation. Such enhanced probation based programs include, but are not limited to, specialized units of offender supervision, related equipment purchases and training; victim assistance programs; and programs that address an offender's vocation, educational, behavioral or substance abuse treatment needs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

### **Incarceration Work Camp**

*The following change provides that counties are responsible for offenders' transportation to a incarceration work camp.*

### **§ 83-4,146. Costs.**

All costs incurred during the period the offender is committed to an incarceration work camp shall be the responsibility of the state, and the counties shall be liable ~~only~~ for the cost of transporting the offender to the incarceration work camp and for returning the offender to the appropriate court for reimposition of sentence or such other disposition as the court may then deem appropriate only if the offender is unsatisfactorily discharged from the incarceration work camp.

## **Parole**

*The following statute regarding good time calculation of inmates' good time is amended to strike the word "consulted" and replace it with "notified" and clarify the application of compliance with the personalized plan while on parole.*

### **§ 83-1,107. Reductions of sentence; personalized program plan; how credited; forfeiture; withholding; restoration.**

(1)(a) Within sixty days after initial classification and assignment of any offender committed to the department, all available information regarding such committed offender shall be reviewed and a committed offender department-approved personalized program plan document shall be drawn up. The document shall specifically describe the department-approved personalized program plan and the specific goals the department expects the committed offender to achieve. The document shall also contain a realistic schedule for completion of the department-approved personalized program plan. The department-approved personalized program plan shall be fully explained to the committed offender. During incarceration, the committed offender shall comply with the department-approved personalized program plan and the department shall provide programs to allow compliance by the committed offender with the department-approved personalized program plan.

Programming may include, but is not limited to:

(i) Academic and vocational education, including teaching such classes by qualified offenders;

(ii) Substance abuse treatment;

(iii) Mental health and psychiatric treatment, including criminal personality programming;

(iv) Constructive, meaningful work programs; and

(v) Any other program deemed necessary and appropriate by the department.

(b) A modification in the department-approved personalized program plan may be made to account for the increased or decreased abilities of the committed offender or the availability of any program. Any modification shall be made only after notice is given to the committed offender. Intentional failure to comply with the department-approved personalized program plan by any committed offender as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by the department

resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.

(2) The chief executive officer of a facility shall reduce the term of a committed offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year.

The total reductions shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

(3) While the offender is in the custody of the department, reductions of terms granted pursuant to subsection (2) of this section may be forfeited, withheld, and restored by the chief executive officer of the facility with the approval of the director after the offender has been ~~consulted~~ notified regarding the charges of misconduct.

(4) (a) Within thirty days after any offender committed to the department has been paroled, all available information regarding such paroled offender shall be reviewed and a paroled offender parole administration-approved personalized program plan document shall be drawn up. The document shall specifically describe the parole administration-approved personalized program plan and the specific goals parole administration expects the paroled offender to achieve. The document shall also contain a realistic schedule for completion of the parole administration-approved personalized program plan. The parole administration-approved personalized program plan shall be fully explained to the paroled offender. During the term of parole, the paroled offender shall comply with the parole administration-approved personalized program plan parole administration shall refer the paroled offender to such community programs to allow compliance by the paroled offender with the Parole Administration-approved personalized program plan.

Programming may include, but is not limited to:

(i) Academic and vocational education;

(ii) Substance abuse treatment;

(iii) Mental health and psychiatric treatment, including criminal personality programming;

(iv) Constructive, meaningful work programs;

(v) Community service programs; and

(vi) Any other program deemed necessary and appropriate by parole administration.

(b) A modification in the parole administration-approved personalized program plan may be made to account for the increased or decreased abilities of the paroled offender or the availability of any program. Any modification shall be made only after notice is given to the paroled offender. Intentional failure to comply with the parole administration-approved personalized program plan by any paroled offender as scheduled for any year, or pro rata part thereof, shall cause disciplinary action to be taken by parole administration resulting in the forfeiture of up to a maximum of three months' good time for the scheduled year.

(5) The parole administrator shall reduce the term of a paroled offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year. The total reductions shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.

~~(4)~~ (6) While the offender is in the custody of the board, reductions of terms granted pursuant to subsection ~~(5)~~ (2) of this section may be forfeited, withheld, and restored by the administrator with the approval of the director after the offender has been ~~consulted~~ notified regarding the charges of misconduct or breach of the conditions of parole. In addition, the board may recommend such forfeitures of good time to the director.

~~(5)~~ (7) Good time or other reductions of sentence granted under the provisions of any law prior to July 1, 1996, may be forfeited, withheld, or restored in accordance with the terms of the Nebraska Treatment and Corrections Act.

### **Parole Programming Fee**

*The following proposed sections create a fund and require parolees to pay a programming fee.*

### **XX-XXX. Parole Programming Fees**

(1) Unless otherwise provided by this section, whenever an adult offender is paroled, the Board of Parole shall require a parolee to pay a regular monthly parole programming fee.

(2) Parolees shall pay a parole programming fee or twenty-five dollars per month by the 10<sup>th</sup> day of each month, beginning the second month of parole supervision, during the length of the parole.

(3) The Board of Parole may waive payment of the monthly parole programming fee in whole or in part if a determination is made after a hearing that such payment would constitute an undue hardship on the parolee due to limited income, employment or school status or physical or mental handicap. Such waiver shall be in effect only during the period of time that offender is unable to pay his or her monthly programming fee.

(4) When program fees are waived, in whole or in part, the supervising officer, pursuant to rules and regulations adopted by the Board of Parole, may contract with the parolee to perform approved community service in lieu of payment of program fees at the rate of five dollars an hour. Parolees may be required to pay a participation fee in order to take advantage of community service programs. A parolee may not accumulate more than three months advance credit for community service. The use of community service alternatives does not preclude the imposition of other intermediate measures.

(6) If the Board of Parole determines that the default in payment specified in subsection (5) of this section was not attributable to a purposeful refusal to obey the order of the Board of Parole or failure on the parolee's part to make a good faith effort to obtain the funds required for payment, the Board of Parole may allow the offender additional time for payment, reducing the amount of each installment, or revoking the fees or the unpaid portion thereof, in whole or in part.

(7) In no event shall a parolee be required to pay more than one parole programming fee per month.

(8) The imposition of parole programming fees in this section are to be viewed separate and apart from specific service delivery fees.

(9) Pursuant to this section, any adult offender received for supervision pursuant to section 29-2637 shall be assessed a monthly parole programming fee, during the period of time the offender is actively supervised by Nebraska parole authorities.

(10) The offender shall pay fees outlined within subsection (2) of this section to the Parole Administration. The Parole Administration shall remit all fees so collected to the State Treasurer for credit to the Parole Program Cash Fund under section XX-XXX.

(11) The Board of Parole and the Parole Administration shall adopt and promulgate rules and regulations to carry out this section.

### **XX-XXX. Parole Program Cash Fund**

The Parole Program Cash Fund is created. All funds collected pursuant to subdivision (2) of section XX-XXXX shall be remitted by the Parole Administration to the State Treasurer for credit to the fund. The fund shall be utilized by the parole administrator for the purchase of services to augment operational or personnel costs associated with the development, implementation, and evaluation of enhanced parole

based programs aimed at enhancing adult offender supervision in the community and treatment needs of offenders on parole. Such enhanced parole based programs include, but are not limited to, specialized units of offender supervision, related equipment purchases and training; victim assistance programs; and programs that address an offender's vocation, educational, behavioral or substance abuse treatment needs. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

*The following strikes language to remove restrictions on reparole. The decision to reparole is therefore left to the discretion of the parole board.*

**§ 83-1,123. Parole; revoked; action of Board of Parole.**

(1) A parolee whose parole is revoked shall be recommitted to the department until discharge from the custody of the state becomes mandatory or until reparable by the board.

(2) The time from the date of the parolee's declared delinquency until the date of arrest for the custody of the board shall not be counted as any portion of the time served.

(3) A parolee whose parole has been revoked shall be considered by the board for reparole at any time in the same manner as any other committed offender eligible for parole, ~~except that no offender whose parole has been revoked as a result of a conviction of a felony committed while on parole shall receive another parole on the original sentence.~~

(4) Except in the case of a parolee who has left the jurisdiction or his or her place of residence, action revoking a parolee's parole and recommitting the parolee for violation of the conditions of parole must be taken before the expiration of the parole term less good time. A parolee who has left the jurisdiction or his or her place of residence shall be treated as a parole violator and, when apprehended, shall be subject to recommitment or to supervision for the balance of the parole term as of the date of the violation.

The following proposal allows the Board of Parole, in its discretion, to discharge an out-of-state offender from parole in Nebraska when such offender has reached his or her discharge date in Nebraska.

**§ 83-1,118. Board of Parole; parolee; discharge from parole; when; Department of Correctional Services; discharge from custody; notice of civil rights.**

(1) If in the opinion of the board a parolee does not require guidance or supervision, the board may dispense with and terminate such supervision.

(2) The board may discharge a parolee from parole at any time if such discharge is compatible with the protection of the public and is in the best interest of the parolee.

(3) The board shall discharge a parolee from parole when the time served in the custody of the department and the time served on parole equal the maximum term less good time.

(4) The department shall discharge a committed offender from the custody of the department when the time served in the facility equals the maximum term less good time.

(5) Upon completion of the lawful requirements of the sentence, the department shall provide the parolee or committed offender with a written notice regarding his or her civil rights.

The notice shall inform the parolee or committed offender that voting rights are not restored upon completion of the sentence. The notice shall also include information on restoring such civil rights through the pardon process, including application to and hearing by the Board of Pardons.

(6) The board may discharge an offender from parole when such offender is under the supervision of another state's correctional institution and such offender has reached the expiration date of his or her Nebraska parole term.

The following proposal removes the requirement that inmates convicted of certain drug violations must complete treatment prior to becoming eligible for parole.

**§ 28-416. Prohibited acts; violations; penalties.**

(1) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person knowingly or intentionally:

(a) To manufacture, distribute, deliver, dispense, or possess with intent to manufacture, distribute, deliver, or dispense a controlled substance; or (b) to create, distribute, or possess with intent to distribute a counterfeit controlled substance.

(2) Except as provided in subsections (4), (5), (7), (8), (9), and (10) of this section, any person who violates subsection (1) of this section with respect to: (a) A controlled substance classified in Schedule I, II, or III of section 28-405 which is an exceptionally hazardous drug shall be guilty of a Class II felony; (b) any other controlled substance classified in Schedule I, II, or III of section 28-405 shall be guilty of a Class III felony; or (c) a controlled substance classified in Schedule IV or V of section 28-405 shall be guilty of a Class IIIA felony.

(3) A person knowingly or intentionally possessing a controlled substance, except marijuana, unless such substance was obtained directly or pursuant to a medical order issued by a practitioner authorized to prescribe while acting in the course of his or her professional practice, or except as otherwise authorized by the act, shall be guilty of a Class IV felony.

(4)(a) Except as authorized by the Uniform Controlled Substances Act, any person eighteen years of age or older who knowingly or intentionally manufactures, distributes, delivers, dispenses, or possesses with intent to manufacture, distribute, deliver, or dispense a controlled substance or a counterfeit controlled substance (i) to a person under the age of eighteen years, (ii) in, on, or within one thousand feet of the real property comprising a public or private elementary, vocational, or secondary school, a community college, a public or private college, junior college, or university, or a playground, or (iii) within one hundred feet of a public or private youth center, public swimming pool or video arcade facility shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(b) For purposes of this subsection:

(i) Playground shall mean any outdoor facility, including any parking lot appurtenant to the facility, intended for recreation, open to the public, and with any portion containing three or more apparatus intended for the recreation of children, including sliding boards, swingsets, and teeterboards;

(ii) Video arcade facility shall mean any facility legally accessible to persons under eighteen years of age, intended primarily for the use of pinball and video machines for amusement and containing a minimum of ten pinball or video machines; and

(iii) Youth center shall mean any recreational facility or gymnasium, including any parking lot appurtenant to the facility or gymnasium, intended primarily for use by

persons under eighteen years of age which regularly provides athletic, civic or cultural activities.

(5)(a) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to manufacture, transport, distribute, carry, deliver, dispense, and prepare for delivery, offer for delivery, or possess with intent to do the same a controlled substance or a counterfeit controlled substance.

(b) Except as authorized by the Uniform Controlled Substances Act, it shall be unlawful for any person eighteen years of age or older to knowingly and intentionally employ, hire, use, cause, persuade, coax, induce, entice, seduce, or coerce any person under the age of eighteen years to aid and abet any person in the manufacture, transportation, distribution, carrying, delivery, dispensing, preparation for delivery, offering for delivery, or possession with intent to do the same of a controlled substance or a counterfeit controlled substance.

(c) Any person who violates subdivision (a) or (b) of this subsection shall be punished by the next higher penalty classification than the penalty prescribed in subsection (2), (7), (8), (9), or (10) of this section, depending upon the controlled substance involved, for the first violation and for a second or subsequent violation shall be punished by the next higher penalty classification than that prescribed for a first violation of this subsection, but in no event shall such person be punished by a penalty greater than a Class IB felony.

(6) It shall not be a defense to prosecution for violation of subsection (4) or (5) of this section that the defendant did not know the age of the person through whom the defendant violated such subsection.

(7) Any person who violates subsection (1) of this section with respect to cocaine or any mixture or substance containing a detectable amount of cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(8) Any person who violates subsection (1) of this section with respect to base cocaine (crack) or any mixture or substance containing a detectable amount of base cocaine in a quantity of:

(a) One hundred forty grams or more shall be guilty of a Class IB felony;

(b) At least twenty-eight grams but less than one hundred forty grams shall be guilty of a Class IC felony; or

(c) At least ten grams but less than twenty-eight grams shall be guilty of a Class ID felony.

(9) Any person who violates subsection (1) of this section with respect to heroin or any mixture or substance containing a detectable amount of heroin in a quantity of:

(a) Five hundred grams or more shall be guilty of a Class IB felony;

(b) One hundred grams or more but less than five hundred grams shall be guilty of a Class IC felony; or

(c) Twenty-eight grams or more but less than one hundred grams shall be guilty of a Class ID felony.

(10) Any person who violates subsection (1) of this section with respect to amphetamine, its salts, optical isomers, and salts of its isomers, or with respect to methamphetamine, its salts, optical isomers, and salts of its isomers, in a quantity of:

(a) Sixteen ounces or more shall be guilty of a Class IC felony;

(b) Seven ounces or more but less than sixteen ounces shall be guilty of a Class ID felony; or

(c) Three and one-half ounces or more but less than seven ounces shall be guilty of a Class II felony.

(11) Any person knowingly or intentionally possessing marijuana weighing more than one ounce but not more than one pound shall be guilty of a Class IIIA misdemeanor.

(12) Any person knowingly or intentionally possessing marijuana weighing more than one pound shall be guilty of a Class IV felony.

(13) Any person knowingly or intentionally possessing marijuana weighing one ounce or less shall:

(a) For the first offense, be guilty of an infraction, receive a citation, be fined one hundred dollars, and be assigned to attend a course as prescribed in section 29-433 if the judge determines that attending such course is in the best interest of the individual defendant;

(b) For the second offense, be guilty of a Class IV misdemeanor, receives a citation, and be fined two hundred dollars and may be imprisoned not to exceed five days; and

(c) For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, be fined three hundred dollars, and be imprisoned not to exceed seven days.

(14) Any person convicted of violating this section, if placed on probation, shall, as a condition of probation, satisfactorily attend and complete appropriate treatment and counseling on drug abuse conducted by one of the community mental health facilities as provided by Chapter 71, article 50, or other licensed drug treatment facility.

~~(15) Any person convicted of violating subsection (1), (2), or (3) of this section shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that any person convicted of violating subsection (4), (5), (7), (8), (9), or (10) of this section shall not be eligible for parole prior to serving the mandatory minimum sentence.~~

~~(16)~~ (15) A person knowingly or intentionally possessing a firearm while in violation of subsection (1) of this section or while in possession of money used or intended to be used to facilitate a violation of subsection (1) of this section shall be guilty of a Class IV felony.

*The following change strikes the requirement that a prisoner with a drug or alcohol violation not be eligible for parole for 12 months.*

**§ 83-1,110. Committed offender; eligible for release on parole; when.**

(1) Except as provided in subsections (3) and (4) of this section, every committed offender shall be eligible for parole when the offender has served one-half the minimum term of his or her sentence. No such reduction of sentence shall be applied to any sentence imposing a mandatory minimum term.

(2) Except as provided in subsections (3) and (4) of this section, every committed offender sentenced to consecutive terms, whether received at the same time or at any time during the original sentence, shall be eligible for release on parole when the offender has served the total of one-half the minimum terms. The maximum terms shall be added to compute the new maximum term which, less good time, shall determine the date when discharge from the custody of the state becomes mandatory.

~~(3) A committed offender who has been found guilty of a violation of the rules and regulations of the department for drug or alcohol use pursuant to sections 83-4,109 to~~

~~83-4,123 shall not be eligible for parole for twelve months following the imposition of the disciplinary action.~~

(4) (3) A committed offender shall not be eligible for parole if the offender refuses to comply with the department-approved personalized program plan as stipulated in section 83-1,107.



## **Commission on Law Enforcement and Criminal Justice**

### **Community Corrections Act**

*The proposed statutes replace the current Community Correctional Facilities and Programs Act and places the administration of a Community Corrections Council within the Commission on Law Enforcement and Criminal Justice. Within the Act is the requirement that the Supreme Court develop sentencing guidelines (§ XX-X12) by court rule.*

#### **§ 81-1423. Commission; powers; duties.**

The commission shall have authority to:

(1) Adopt and promulgate rules and regulations for its organization and internal management and rules and regulations governing the exercise of its powers and the fulfillment of its purposes under sections 81-1415 to 81-1426;

(2) Delegate to one or more of its members such powers and duties as it may deem proper;

(3) Coordinate and jointly pursue its activities with the Governor's Policy Research Office;

(4) Appoint and abolish such advisory committees as may be necessary for the performance of its functions and delegate appropriate powers and duties to them;

(5) Plan improvements in the administration of criminal justice and promote their implementation;

(6) Make or encourage studies of any aspect of the administration of criminal justice;

(7) Conduct research and stimulate research by public and private agencies which shall be designed to improve the administration of criminal justice;

(8) Coordinate activities relating to the administration of criminal justice among agencies of state and local government;

(9) Cooperate with the federal and other state authorities concerning the administration of criminal justice;

(10) Accept and administer loans, grants, and donations from the United States, its agencies, the State of Nebraska, its agencies, and from other sources, public and private, for carrying out any of its functions, except that no communications equipment shall be acquired and no approval for acquisition of communications equipment shall be granted without receiving the written approval of the director of the division of communications of the Department of Administrative Services;

(11) Enter into contracts, leases, and agreements necessary, convenient, or desirable for carrying out its purposes and the powers granted under sections 81-1415 to 81-1426 with agencies of state or local government, corporations, or persons;

(12) Acquire, hold, and dispose of personal property in the exercise of its powers;

(13) Conduct random annual audits of criminal justice agencies to verify the accuracy and completeness of criminal history record information maintained by such agencies and to determine compliance with laws and regulations dealing with the dissemination, security, and privacy of criminal history information;

(14) Do all things necessary to carry out its purposes and for the exercise of the powers granted in sections 81-1415 to 81-1426, except that no activities or transfers or expenditures of funds available to the agency shall be inconsistent with legislative policy as reflected in substantive legislation, legislative intent legislation, or appropriations legislation;

(15) Exercise budgetary and administrative control over the Crime Victim's Reparations Committee, ~~and the Jail Standards Board,~~ and the Community Corrections Council;

(16) Appoint and remove for cause the director of the Nebraska Law Enforcement Training Center; and

(17) Do all things necessary to carry out sections 81-1843 to 81-1848.

**§ 81-1425. Executive director; powers; duties.**

The executive director of the commission shall:

(1) Supervise and be responsible for the administration of the policies established by the commission;

(2) Establish a Jail Standards subdivision within the commission and establish, consolidate, or abolish any other administrative subdivision within the commission and appoint and remove for cause the heads thereof, and delegate appropriate powers and duties to them;

(3) Establish a Community Corrections subdivision within the commission;

(4) ~~(3)~~ Establish and administer projects and programs for the operation of the commission;

(5) ~~(4)~~ Appoint and remove employees of the commission and delegate appropriate powers and duties to them;

(6) ~~(5)~~ Make rules and regulations for the management and the administration of policies of the commission and the conduct of employees under his or her jurisdiction;

(7) ~~(6)~~ Collect, develop, and maintain statistical information, records, and reports as the commission may determine relevant to its functions, including but not limited to the analysis of statistical information set forth in XX-XX8;

(8) ~~(7)~~ Prior to August 1, 2001, review and analyze all cases involving criminal homicide committed on or after April 20, 1973. The review and analysis shall examine (a) the facts, including mitigating and aggravating circumstances, (b) to the extent such can be ascertained, the race, gender, religious preference, and economic status of the defendant and of the victim, (c) the charges filed, (d) the result of the judicial proceeding in each case, and (e) the sentence imposed. Upon the completion of such review, the report of such shall be transmitted to the Governor, the Clerk of the Legislature, and the Chief Justice of the Supreme Court. The review and analysis shall be updated as new cases of criminal homicide occur. The commission shall update such report annually to the parties named in this subdivision;

(9) ~~(8)~~ Transmit monthly to the commission a report of the operations of the commission for the preceding calendar month;

(10) (9) Execute and carry out the provisions of all contracts, leases, and agreements authorized by the commission with agencies of federal, state, or local government, corporations, or persons;

(11) ~~(10)~~ Perform such additional duties as may be assigned to him or her by the commission, the chairperson of the commission, or by law; and

(12) ~~(11)~~ Exercise all powers and perform all duties necessary and proper in carrying out his or her responsibilities.

**§ XX-XX1. Act, how cited**

Sections XX-XX1 to XX-XX9 shall be known and may be cited as the Community Corrections Act.

## **§ XX-XX2. Purpose of Act**

It is the purpose of the Community Corrections Act to provide for the development and establishment of community based facilities and programs in the State for adult felons and to encourage the use of such facilities and programs by sentencing courts and the Parole Board as alternatives to incarceration or reincarceration to help reduce prison overcrowding and enhance offender supervision in the community. It is the further purpose of the Community Corrections Act to serve the interests of society by promoting the rehabilitation of offenders and deterring offenders from engaging in further criminal activity. Such shall be accomplished by use of community corrections facilities and programs available to probationers and parolees while emphasizing offender culpability, offender accountability, and public safety, while reducing the reliance upon incarceration as a means of managing nonviolent offenders.

## **§ XX-XX3. Terms, defined**

For purposes of the Community Corrections Act:

(1) Community correctional facility or program shall mean a community-based or community-oriented facility or program which:

(a) is operated either by the State government or a contractor which may be a unit of local government or a nongovernmental agency;

(b) may be designed to provide residential accommodations for probationers or parolees;

(c) provides programs and services to aid offenders in obtaining and holding regular employment, enrolling in and maintaining academic courses, participating in vocational training programs, utilizing the resources of the community to meet their personal and family needs, obtaining mental health, alcohol, and drug treatment, and participating in specialized programs that exist within the community; and

(d) offers community supervision options, including, but not limited to, drug treatment programs and day reporting centers.

(2) Council shall mean the Community Corrections Council as created by this act;

(3) Chief shall mean the officer appointed by the Governor to act as the chief administrative officer of the council;

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

(5) Unit of local government shall mean a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.

**§ XX-XX4. Community Corrections Council; created; administration by Nebraska Commission on Law Enforcement and Criminal Justice; members; qualifications; terms; expenses.**

It is hereby declared to be the policy of the State of Nebraska that there shall be a coordinated effort to (1) establish community corrections programs across the state in order to divert adult felony offenders from the prison system, and (2) provide necessary supervision and services to felony offenders with the goal of reducing the probability of criminal behavior while maintaining public safety.

To further such policy, the Community Corrections Council is hereby created. For administrative and budgetary purposes only, the council shall be within the Nebraska Commission on Law Enforcement and Criminal Justice.

(1) The council shall consist of the following voting members:

(a) Nebraska Commission on Law Enforcement and Criminal Justice Executive Director,

(b) Department of Correctional Services Director,

(c) Board of Parole Chairperson,

(d) Parole Administrator,

(e) three members appointed by the Governor consisting of

(i) a representative nominated by the Nebraska Criminal Defense Attorneys Association who may be a member of the Commission on Public Advocacy or a Public Defender,

(ii) a representative nominated by the County Attorney's Association, and

(iii) a full-time officer or employee of a local law enforcement agency.

(2) The council shall consist of the following nonvoting members:

(a) State Court Administrator,

(b) Probation Administrator,

(c) Chairperson of the Judiciary Committee of the Nebraska State Legislature.

(3) The terms of office for members described under (1) (e) initially appointed shall be three years. Upon completion of the initial term of the board, the Governor shall appoint the representative from local law enforcement for a term of one year, the representative nominated by the Nebraska Criminal Defense Attorneys Association for a term of two years, and the representative nominated by the County Attorneys Association for a term of three years. Succeeding appointees shall be appointed for terms of three years. An appointee to a vacancy occurring from an unexpired term shall serve out the term of his or her predecessor. Members whose terms have expired shall continue to serve until their successors have been appointed.

(5) A chairperson of the council shall be elected by a majority of the council.

(4) The members of the council shall serve without compensation, but they shall be reimbursed for their actual expenses while engaged in the performance of their official duties as provided in sections 81-1174 to 81-1177.

**§ XX-XX5. Community Corrections Council; powers and duties; enumerated.**

The Community Corrections Council shall have the authority and responsibility:

(1) To develop standards for eligible community corrections facilities and programs in which offenders can participate through probation and parole, taking into consideration the following factors:

(a) qualifications of staff at the programs,

(b) suitability of programs,

(c) offender needs,

(d) usefulness of programs to the Office of Probation Administration and the Office of Parole Administration,

(e) probation population,

(f) parole population, and

(g) other applicable criminal justice data;

(2) To develop and implement a plan to establish statewide operation and use of a continuum of community corrections facilities and programs;

(3) To study and mandate the consistent use of offender risk assessment tools;

(4) To develop guidelines for eligibility of parolees in certain community corrections facilities and programs;

(5) To educate the courts about the availability and use of community corrections facilities and programs;

(6) To enter in contracts necessary, convenient, or desirable for carrying out the purposes of this act;

(7) To remove the chief with notice, for good cause shown, and after a hearing;  
and

(8) To perform such other duties as may be necessary to carry out the policy of the state regarding community corrections facilities and programs.

**§ XX-XX6. Chief; appointment; duties**

(1) The chief shall be appointed by the Governor.

(2) The chief shall have the responsibility:

(a) To supervise, develop, and oversee the actions and proceedings of the Community Corrections Council;

(b) By working in consultation with the Community Corrections Council, to ensure consistency between sentencing guidelines and the availability of community corrections facilities and programs; and

(c) To administer contracts entered into by the council with community correctional facilities or programs.

**§ XX-XX7. Community Corrections Council; develop and implement standards for community corrections programs and facilities.**

On or before January 1, 2004, the council shall, pursuant to this act:

(1) study, develop, and implement minimum standards for the development and use of community corrections facilities and programs; and

(2) develop and implement a plan for statewide use of community corrections facilities and programs.

**§ XX-XX8. Data collection; system.**

The Nebraska Commission on Law Enforcement and Criminal Justice shall develop and maintain a uniform data analysis system of crimes in Nebraska including,

but not limited to, the number of offenses, arrests, charges, probation admissions, probation violations, probation discharges, Department of Correctional Services admissions, Department of Correctional discharges, parole reviews, parole hearings, releases on parole, parole violations, and parole discharges. The data shall be categorized by statutory crime. The data shall be collected from the Supreme Court, including Court Administration and Probation Administration, Department of Correctional, Board of Parole, State Patrol, and individual counties. The council, executive director, and Supreme Court shall have access to such data to develop standards pursuant to XX-XX5 and XX-XX6, and to develop guidelines pursuant to XX-X11.

**§ XX-XX9. Sentencing judge; placement of offenders on probation.**

(1) A sentencing judge may sentence an offender to probation conditioned upon community corrections programming, pursuant to § XX-X11 and the guidelines developed by the Supreme Court.

(2) A sentence to a community corrections program shall be imposed as a condition of probation pursuant to section 29-2246 to 29-2279. The court may modify the sentence of an offender serving a sentence in a community corrections program in the same manner as if the offender had been placed on probation.

(3) Probation Administration shall utilize community corrections facilities and programs under the act as appropriate.

**§ XX-X10. Parole board; placement of parolee.**

(1) The Parole Board may parole an offender to a community corrections facility or program pursuant to guidelines developed by the Community Corrections Council.

(2) The Department of Correctional Services and Parole Administration shall utilize community corrections facilities and programs under the act as is appropriate.

**§ XX-X11. Sentencing guidelines; establishment; use.**

(1) In order to facilitate the implementation of the Community Corrections Act, the Supreme Court shall promulgate, by court rule, guidelines for sentencing of certain nonviolent criminal offenders. The guidelines shall provide that courts are to consider community corrections in sentencing designated offenders, with the goal of reducing dependence on incarceration as a sentencing option for such offenders.

(2) The guidelines shall specify appropriate sentences for the designated offenders in consideration of factors set forth by rule. The Supreme Court may provide in said rule that a sentence in accordance with the guidelines constitutes a rebuttable presumption.

(3) The guidelines shall, within one year of the effective date of this act, be first developed for felony drug offenses and thereafter for such felony offenses as the Supreme Court finds appropriate.

(4) The Supreme Court shall select an advisory committee to assist in the development of the guidelines. The committee shall include representatives of law enforcement, county attorneys, district court judges, defense bar members, and others the Supreme Court deems appropriate.

### **§ XX-X12. Administrative Procedure Act; not applicable**

Proceedings under the Community Corrections Act shall not be subject to the Administrative Procedure Act.

*The proposed language creates a fund to support the data system pursuant to the Community Corrections Act by assessing a \$1.00 court fee.*

#### **Section 1.**

The Community Corrections Uniform Data Analysis Fund is created. The Executive Director of the Commission on Law Enforcement and Criminal Justice shall administer the fund. The fund shall only be used to support operations relating to the implementation and coordination of the uniform data collection system pursuant to the Community Corrections Act. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

#### **Section 2.**

In addition to all other court costs assessed according to law, a uniform data analysis system fee of one dollar shall be taxed as costs for each case filed in each county court, separate juvenile court, and district court, including appeals to such courts, and for each appeal and original action filed in the Court of Appeals and the Supreme Court. The fees shall be remitted to the State Treasurer on forms prescribed by the State Treasurer within ten days after the end of each month. The State Treasurer shall credit the fees to the Uniform Data System Fund.

**§ 29-2709. Uncollectible costs; certification; payment; conditions.**

When any costs in misdemeanor, traffic, felony preliminary, or juvenile cases in county court, except for those costs provided for in subsection (3) of section 24-703, two dollars of the fee provided in section 33-107.01, ~~and the court automation fee provided in section 2 of LB 13 2d regular session (2002), and the uniform data system fee provided in section 2 of this act,~~ are found by a county judge to be uncollectible for any reason, including the dismissal of the case, such costs shall be deemed waived unless the judge, in his or her discretion, enters an order assessing such portion of the costs as by law would be paid over by the court to the State Treasurer as follows:

(1) In all cases brought by or with the consent of the county attorney, all such uncollectible costs shall be certified by the clerk of the court to the county clerk who shall present the bills therefor to the county board. The county board shall pay from the county general fund all such bills found by the board to be lawful; and

(2) In all cases brought under city or village ordinance, all such uncollectible costs shall be certified to the appropriate city or village officer authorized to receive claims who shall present the bills therefor to the governing body of the city or village in the same manner as other claims. Such governing body shall pay from the general fund of the city or village all such bills as are found to be lawful.

**~~§ 47-601. Act, how cited.~~**

~~Sections 47-601 to 47-618 shall be known and may be cited as the Community Correctional Facilities and Programs Act.~~

**~~§ 47-602. Purpose of act.~~**

~~It is the purpose of the Community Correctional Facilities and Programs Act to encourage flexibility in the development of community correctional facilities and programs by the Department of Correctional Services, units of local government, and nongovernmental agencies and to encourage the use of such facilities and programs by sentencing courts. It is the further purpose of the act to provide a procedure through which units of local government and nongovernmental agencies may provide adult correctional services to the department and to sentencing courts.~~

**~~§ 47-603. Terms, defined.~~**

~~For purposes of the Community Correctional Facilities and Programs Act:~~

~~(1) Community correctional facility or program shall mean a community-based or community-oriented facility or program which (a) is operated either by a unit of local government, the department, or a nongovernmental agency, (b) may be designed to provide residential accommodations for offenders, and (c) provides programs and~~

services to aid offenders in obtaining and holding regular employment, in enrolling in and maintaining academic courses, in participating in vocational training programs, in utilizing the resources of the community to meet their personal and family needs, in obtaining mental health, alcohol, and drug treatment, and in participating in whatever specialized programs exist within the community;

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

~~(3) Department shall mean the Department of Correctional Services;~~

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

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

~~(6) Offender shall mean any person who has been convicted of a felony or misdemeanor but shall not include any person who has been found to be a habitual criminal under section 29-2221, has been convicted of a crime of violence, or has been convicted of the knowing and intentional manufacture, distribution, delivery, or dispensing of a controlled substance in violation of the Uniform Controlled Substances Act; and~~

~~(7) Unit of local government shall mean a county, city, village, or entity established pursuant to the Interlocal Cooperation Act or the Joint Public Agency Act.~~

**~~§ 47-604. Unit of local government; establish facilities and programs; contracts; legislative intent.~~**

~~Any unit of local government may establish, maintain, and operate such community correctional facilities and programs as it deems necessary to serve the needs of any or all of the following:~~

~~(1) The unit of local government;~~

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

~~(3) Offenders sentenced to the facility or program by a sentencing court in accordance with the guidelines provided for in section 47-611.~~

~~Any unit of local government may contract for services with any nongovernmental agency or another unit of local government for the purpose of providing services to offenders.~~

It is the intent of the Legislature that units of local government not use jails for purposes of community correctional facilities and programs.

**~~§ 47-605. Unit of local government; establish corrections board; Attorney General; duties.~~**

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

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

**~~§ 47-606. Unit of local government or corrections board; standards for operation; placement of offender; sentencing court; powers and duties.~~**

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

~~(2) The unit of local government or, if established, the corrections board may accept, reject, or reject after acceptance the placement of any offender in a community correctional facility or program under the jurisdiction of the unit or board, pursuant to any contract or agreement with the department. If an offender is rejected by the unit of local government or the board after initial acceptance, the offender shall remain in the community correctional facility or program for a reasonable period of time pending receipt by the facility or program of appropriate orders from the sentencing court or the department for the transfer of such offender. The sentencing court may make appropriate orders for the transfer of such offender to the department and to resentence such offender and impose any sentence which might originally have been imposed without increasing the length of the original sentence.~~

**~~§ 47-607. Nongovernmental agency; establish facility or program; approval required.~~**

~~Any nongovernmental agency may establish, maintain, and operate a community correctional facility or program for the purpose of providing services to a unit of local government or to the department. The establishment of any community correctional facility or program by a nongovernmental agency shall be subject to approval by the county board of the county in which the proposed facility or program is to be located if not within the corporate limits of a city or village or the governing body of the city or village in which the proposed facility or program is to be located. Approval or denial of the establishment of such facility or program by the unit of local government shall be made only after consultation with the corrections board if one has been established.~~

**~~§ 47-608. Nongovernmental agency; contracts or agreements authorized.~~**

~~Any nongovernmental agency may enter into contracts or agreements to provide services with units of local government or the department. The contracts or agreements shall be entered into pursuant to guidelines or standards adopted by the department or by the governing board of the city or village or, if the facility or program is not within the corporate limits of a city or village, the governing board of the county in which the facility or program will be located. Such contracts or agreements shall provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned, transferred, or sentenced to such nongovernmental agency. The contracts or agreements shall also provide that, if a residential facility is maintained, the nongovernmental agency will perform periodic and unscheduled chemical tests to determine whether drugs are used by offenders in the facility.~~

**~~§ 47-609. Nongovernmental agency; standards for operation; placement of offender; sentencing court; powers and duties.~~**

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

~~(2) The nongovernmental agency may accept, reject, or reject after acceptance the placement of any offender in a community correctional facility or program under the jurisdiction of the agency, pursuant to any contract or agreement with a unit of local government or the department. If an offender is rejected by the nongovernmental agency after initial acceptance, the offender shall remain in the community correctional facility or program for a reasonable period of time pending receipt by the facility or program of appropriate orders from the sentencing court or the department for the transfer of such offender. The sentencing court may make appropriate orders for the transfer of such offender to the department and to resentence such offender and impose any sentence~~

which might originally have been imposed without increasing the length of the original sentence.

**§ 47-610. Sentencing judge; placement of nonviolent offenders.**

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

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

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

**§ 47-611. Guidelines for use of facility or program; agreement or contract; approval required; sentencing judge and probation officer; powers and duties.**

(1) ~~The chief probation officer of the affected probation district and the unit of local government or nongovernmental agency operating a community correctional facility or program shall recommend guidelines for the use of any such facility or program. Such guidelines shall be approved by the presiding judge of the district court judicial district in which the facility or program will be located and the probation administrator prior to the use of such facility or program by the sentencing judges. The presiding judge of the district court judicial district shall submit any proposed guidelines for the use of any facility or program operated by a nongovernmental agency to the governing body of all units of local government in the district for their review and recommendations.~~

(2) ~~Prior to entering into an agreement or contract with any nongovernmental agency, the governing body of the affected unit of local government shall submit such agreement or contract to the presiding judge of the district court judicial district in which the facility or program is located for review and recommendations.~~

(3) ~~Prior to the placement of an offender in any community correctional facility or program operated by a nongovernmental agency, the sentencing judge shall notify or~~

cause to be notified the law enforcement agencies of affected units of local government concerning the identity of the offender to be placed.

~~(4) A probation officer may include in the presentence report to the sentencing judge recommendations for the utilization of any community correctional facility or program which has been approved pursuant to this section.~~

~~(5) A probation officer shall supervise all community corrections clients that are sentenced to participate in community correctional facilities or programs as a condition of probation.~~

**~~§ 47-612. Director; establish facilities and programs; approval required; hearing.~~**

~~The director may establish community correctional facilities and programs as alternatives or as supplements to state correctional facilities for the custody, control, care, and treatment of offenders. For state facilities designed for community correctional programs, the department shall obtain approval of the city or village in which the facility will be located or, if the facility or program will be outside the corporate limits of a city or village, the county in which the facility or program will be located. The unit of local government shall hold a public hearing on the location of such facility prior to any such grant of approval.~~

**~~§ 47-613. Facility or program; minimum standards; director; powers and duties.~~**

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

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

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

~~(4) Prior to the placement of an offender in any community correctional facility or program operated by a nongovernmental agency, the director shall notify or cause to be notified the law enforcement agencies of the affected units of local government concerning the identity of the offender to be placed.~~

**~~§ 47-614. Funds for transitional placements; expenditure; conditions.~~**

Funds appropriated for transitional placements in community correctional facilities and programs shall be expended by the department only on the conditions that (1) the governing body of the affected unit of local government shall be notified of any proposed transitional placement within the unit of local government and (2) the governing body may accept, reject, or reject after acceptance any offender placed by the department in any community correctional facility within the unit of local government.

**§ 47-615. Offender; contract or agreement required; Department of Labor; provide assistance.**

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

(2) In a community correctional facility or program, the primary obligation for obtaining employment shall be on the offender, but the Department of Labor shall provide assistance in obtaining employment for offenders participating in a community correctional facility or program.

**§ 47-616. Offender; failure to comply; effect.**

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

**§ 47-617. Transfer of offender; procedure; sentencing court; powers.**

When the administrator of a community correctional facility or any other appropriate supervising authority has reason to believe that an offender placed in a community correctional facility has violated any rule or condition of his or her placement in that facility or any term of his or her probation under section 47-611 or cannot be

safely housed in the facility, the administrator or other authority shall certify to the sentencing court or the department the facts which are the basis for his or her belief and execute a transfer order to any sheriff, deputy sheriff, police officer, or officer of the Nebraska State Patrol which authorizes the sheriff, deputy sheriff, police officer, or officer of the Nebraska State Patrol to transport the offender to the county jail in the county in which the community correctional facility is located. The offender shall be confined in such county jail pending a determination by the appropriate court or executive authorities as to whether or not the offender may remain in the community correctional facility. An offender so confined may apply for bond only when he or she has been confined due to an alleged violation of a condition of probation contemplated by section 47-611.

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

**~~§ 47-618. Administrative Procedure Act; not applicable.~~**

Proceedings under the Community Correctional Facilities and Programs Act shall not be subject to the Administrative Procedure Act.



## **Department of Correctional Services**

### **Correctional System Overcrowding Emergency Act**

*The proposed statutes create a legislatively imposed prison cap.*

#### **§ XX-XX1.**

Sections XX-XX1 to XX-XX7 shall be known and may be cited as the Correctional System Overcrowding Emergency Act.

#### **§ XX-XX2.**

For purposes of the Correctional System Overcrowding Emergency Act:

(1) Design capacity means the total designed bed space in the correctional system of the State, as certified by the director.

(2) Violent offense means any one or more of the following crimes: first degree murder, second degree murder, manslaughter, first degree assault, kidnapping, first degree sexual assault, first degree arson, or robbery.

(3) Population means the actual number of inmates assigned to facilities operated by the department and shall not include inmates assigned to county operated correctional institutions.

(4) Director means the director of the department.

(5) Board means the Nebraska Board of Parole.

(6) Department means the Department of Correctional Services.

(7) Operational capacity means design capacity multiplied by 125%.

#### **§ XX-XX3.**

(1) The Governor shall declare a correctional system overcrowding emergency at any time at which the director certifies that the population of the correctional system is over 140% of design capacity.

(2) Upon declaration of a correctional system overcrowding emergency, the board shall forthwith consider or reconsider committed offenders eligible for parole who have not been released on parole.

(3) Upon such consideration or reconsideration, and for all other consideration of committed offenders eligible for parole while the correctional system overcrowding emergency is in effect, the board shall order the release of each committed offender unless it is of the opinion that his or her release should be deferred because:

- (a) It has determined that it is more likely than not that he or she will not conform to the conditions of parole;
- (b) It has determined that his or her release would have a very significant and quantifiable effect on institutional discipline; or
- (c) It has determined that there is a very substantial risk that he or she will commit a violent act against a person.

(4) In making the determination regarding the risk that a committed offender will not conform to the conditions of parole, the board shall take into account the factors set forth in section 83-1,114(2).

(5) The board shall stop operating under this section when the director certifies that the population of the correctional system is at operational capacity.

#### **§ XX-XX4.**

The department shall prepare an annual report on committed offenders who are paroled or granted controlled release pursuant to this act. Such report shall summarize each such former inmate's behavior since parole and generally evaluate the former inmate's success or lack of success in becoming a law-abiding member of society. The annual report shall be filed with the Executive Board of Legislative Council on or before December 31, with the first such report submitted by December 31 of the first year that prison inmates are paroled pursuant to this section. A notice of the filing of the report shall be submitted to each member of the Legislature when the annual report is filed with the Executive Board.