



Why Alabama Lets More Convicted Felons Serve Their Time in the Community

Josh Siegel / August 04, 2015

BIRMINGHAM, Ala.—Lawrence Posey has been there, done that. No, he's been there, done worse.

"Believe it or not, all of us are wired up wrong," Posey tells his pupils, as a gold necklace with a Tweety Bird pendant dangles above his chest.

"I had some loose screws and all that stuff. I still have a few bolts that need tightening, you know."

As if to reassure them, Posey exhales a pig-squeal laugh that sounds like the most genuine thing in the world.

"For the most part, we are all in the workshop," he says.

One thing Posey has done that the others haven't is shoot at and nearly kill a police officer. That offense got Posey, who was 26 years old at the time, a life sentence to prison.

But because God "showed up and showed out" and blessed him "royally," Posey says, he managed to be paroled after serving 31 years and six months in the "hellhole."

The 15 or so men and women in his class are lucky, like their teacher, not to be behind bars. But most of them are here because they've possessed, consumed or dealt drugs—less serious, nonviolent offenses.

Outside prison's unforgiving walls, the group is here to learn from Posey, now 59, how to face and move on from their past sins.

They don't seek forgiveness, necessarily. Before coming here, many experienced plenty of prison and lost the respect of friends and family from whom they could have asked forgiveness.

Instead, they strive for change.



PART 1: Cost of Incarceration

How Overcrowding Has Forced Alabama to Confront Its Prison Problem

PART 2: Life Beyond Bars

Why Alabama Lets More Convicted Felons Serve Their Time in the Community

PART 3: Power to Free

Why 3 Men With All the Power Will Soon Parole More Prisoners in Alabama



Advocates of criminal justice reform say community-based approaches such as Posey's class often are more effective than prison in rehabilitating inmates.

(Photo: Bob Miller for The Daily Signal)

In late June, as part of The Daily Signal's examination of criminal justice reform in Alabama, a reporter sat in on Posey's class, called "Thinking for a Change."

The class is just one offering of the community corrections program in Jefferson County, the state's most populous. Birmingham, the state's largest city, is the county seat.

Under a plan to reduce overcrowding in Alabama's prisons, convicted felons would have greater opportunities to serve their sentences in their home communities rather than prison.

And more offenders returning from prison would come through here, to ease their transition to normal.

Advocates of criminal justice reform say that community-based treatment, available only to nonviolent offenders, provides a more effective outlet to actually serve their needs—to rehabilitate them.

Many of these offenders have a drug problem or mental health issue that prison could exacerbate since it is a place where positive energy and inspiration are hard to find.

Sentencing Outside Prison

"People often ask me, what is the story of the criminal justice reform bill?" says Bennet Wright, director of Alabama's Sentencing Commission. "It's really a community supervision reform."

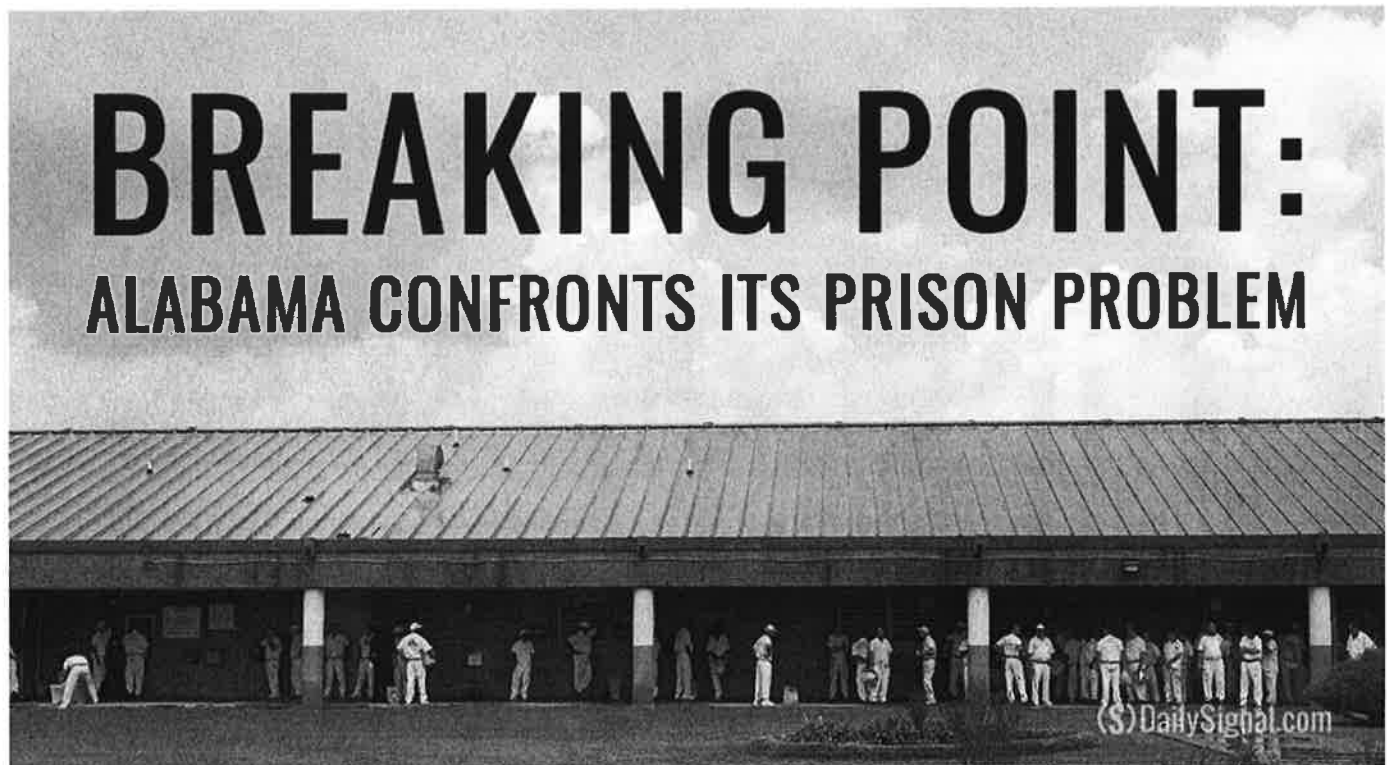
Wright explains:

The idea is that prison and community-based treatment are two wildly different environments. Just think about it. If you are surrounded by hardened criminals, you are basically doing social networking. That's how we did criminal justice for a long time: 'I am going to send you to prison to make you better.' There's definitely certain people that need to go. But if someone really is in need of programs and treatments, prison is not the ideal setting for them to get that.

In a community corrections program, adopted and run at the county level, the offender must attend counseling and treatment programs at a facility during the day. In most cases, he or she has the freedom to go home at night.

The criminal justice reform legislation, passed by the Alabama legislature and signed in May by Gov. Robert Bentley, creates a new class of felonies for the least serious nonviolent crimes. These offenders rarely would go to prison. Instead, a judge would have greater discretion to sentence them directly to community corrections.

In addition, because the new law mandates that all those released from prison be supervised in some form, more offenders will serve the back end of their sentences in community corrections.



To meet the growing demand, the reform legislation doubles the \$5.5 million currently designated annually for community corrections and provides another \$8 million for mental health and substance abuse treatment.

Proponents hope the spending will encourage more counties to launch community corrections programs, which generally are funded with federal, state and local tax money.

Today, community corrections programs exist in only 45 of Alabama's 67 counties, so it's not a sentencing option available everywhere in the state—especially in poorer jurisdictions.

For offenders from Jefferson County, where the community corrections program is considered a model for the state, the reform effort would mean at least one good thing: More of them will meet and learn from Lawrence Posey.

'Play Out the Tape'

Posey's class is like group therapy, except that in this case the therapist might as well be treating himself, as well as his clients.

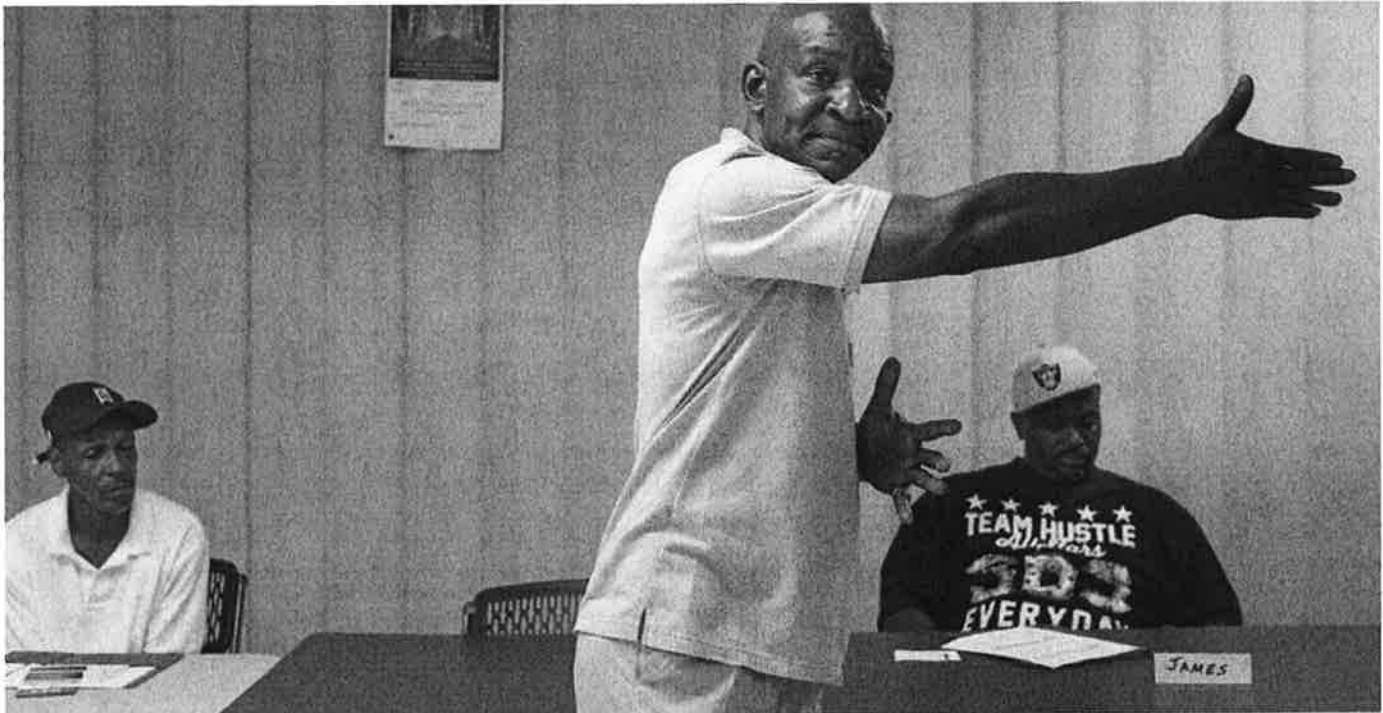
When Posey shakes hands, smacks shoulders and calls members of his class by their first names, he's letting them know he's here with them. He constantly wears a Bluetooth earpiece so they know he's available to mentor them whenever.

This day, Posey opens by writing out an acronym in pink letters: HOPE (Hearing Other People's Experiences).

"Hearing other people's experiences gives us hope—feel me?" he says, and the class repeats the phrase.

Before they can embrace their freedom, Posey wants these men and women to revisit the moment when they lost it.

By returning to the moment they committed a crime, the offenders must confront the criminal mindset that agitated the moment, and learn to hate it. Once they know to reject criminal thinking, they can accept rational, normal thoughts and create new moments that don't result in a prison sentence.



Posey, who served 31 years of a life sentence for attempted murder, tries to connect with inmates on a personal level. (Photo: Bob Miller for The Daily Signal)

Everyone here has had the criminal moment.

Posey will gladly tell you about his.

He pokes his shiny scalp with an index finger to recall the thinking that inspired him to attempt murder:

I went to prison, and spent 31 years and six months in that hellhole, because I was a damn fool. You can't be more foolish than I was. If a fool like me can see the light, then, boy, I know that anybody with breath in their body can. That's the absolute truth.

Though prison is dark, Posey found light.

Posey found light in education, and he used course offerings in prison to get a degree.

He found it in religion, and the crucifix hanging from his neck began to mean something.

He found a little-used law library, learned to litigate and began building a case to leave prison.

And he turned his findings into opportunity, eventually benefiting from a special petition allowing judges to reconsider sentences of life without parole for certain violent offenders.

Posey recalls:

I had a change of heart. See, not everybody is as fortunate as I am to make it here. Life without parole—that means you ain't ever gonna get out of prison. You gonna die. But God said not so, I got something for him to do. And he really showed up and showed out. Cause I ain't been out four years quite yet, and he blessed me royally. All you gotta do is change directions. It will work for you, too.

“Change directionsss,” Posey repeats, dragging out the “s.”

Decisions With Consequences

There are plenty of chances to change directions—to turn their lives around— Posey tells the class, because decisions happen every day.

Every person in this class decided to come: the kid who missed prom because he robbed a store with a toy gun, the woman who blames her bad decisions on having a well-off “momma and daddy do everything for me,” the father who volunteered to be here because he wants to win his children back.



‘It hurts’: Kenneth Jackson, 22, recently released from prison after a robbery conviction, says he ‘missed out on a lot.’ (Photo: Bob Miller for The Daily Signal)

Though they get to live at home during their time here, everyone sent to community corrections is still considered an inmate. So if they don't decide to show up for this 9 a.m. class, they can be punished—even if a return to prison is rare.

“Your life depends on decisions,” Posey says. “Whether they are good or bad, they have consequences. A lot of times if we stop and think about it, we would make better decisions.”

Posey has a phrase for this decision-making process:

You better play out the tape; if we play out the tape, we will make a better decision. If we had to play out the tape with some choices we made to be here, we would have made some different choices. If our best thinking got us here, we weren't thinking too good, right? That's deep.

The nationally developed curriculum Posey uses describes this lesson a bit more elegantly:

“Using important thinking skills such as brainstorming and imagining the consequences of your actions,” the PowerPoint slide reads.

‘Curriculum With Credibility’

Posey’s unique brand of teaching is what makes the class effective.

And Posey is not here by accident.

Foster Cook, a small man with a big heart and heavy Southern accent, directs Jefferson County’s community corrections program.

As part of the program, which is formally called Treatment Alternatives for Safer Communities, Cook has made it a point to hire ex-felons—known as “peers”—to teach the offenders who come through here.

When inmates from Jefferson County leave prison, Posey or another assigned peer is usually who picks them up and drives them home.

“

I missed out on a lot. I missed graduating high school. I missed prom. Now I am out, but I done missed a lot, you feel me? It kind of hurts.

KENNETH JACKSON, 22-YEAR-OLD
RECENTLY RELEASED PRISONER

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Posey is one of Cook’s favorite projects. The program director’s cheeks brighten when he talks about him.

“He has credibility and authority that I don’t have,” Cook, 69, says of Posey, who is still on parole.

Cook is quick to emphasize that Posey—and the 11 ex-offenders employed here—do more than simply relate to the inmates with real talk and street cred:

They bring credibility to it, but they are actually doing something. They are not just saying, ‘I remember when I was in prison. Remember those old boys down there? I whooped them.’ You could go on and on talking about your story. That’s not what they are there for. They are there to deliver this curriculum with credibility. Because it works.

Posey and the other employees, who have to be at least two years removed from prison to be hired here, are schooled to teach the “Thinking for a Change” course.

“Thinking for a Change” is a cognitive behavior training program developed by the National Institute of Corrections at the U.S. Justice Department.

The program, created in 1998 with the aim to help offenders make better decisions by encouraging self-reflection, social skills and problem-solving, has proven effective in reducing recidivism.



Ralph Hendrix (left) and Foster Cook lead Jefferson County's community corrections program with an eye toward reducing recidivism. (Photo: Josh Siegel/The Daily Signal)

In 2011, Cook began offering the course in Jefferson County. Upon being hired in 2012, Posey traveled to Baltimore to learn how to teach it.

The course, meant for those considered at a medium to high risk to commit a crime again, is the first thing offenders do after entering Jefferson County's community corrections program.

The class runs Monday through Friday for four weeks. Participants receive bus money to get to class and a free meal to sustain themselves through it. They also get help in finding housing. Most don't try to find employment initially; research says it's better they take care of personal business first.

Everyone immediately takes a risk assessment to determine his or her case plan.

Besides "Thinking for a Change," Jefferson County's Treatment Alternatives for Safer Communities offers mental health programs and drug courts and a veterans court.

These "therapeutic courts" allow offenders to get treatment under the supervision of a special judge, who tracks their progress and can give them more punishment if they fail.

In Jefferson County, if an offender makes it through one of these courts, he or she can have charges dismissed.

'No Crystal Ball'

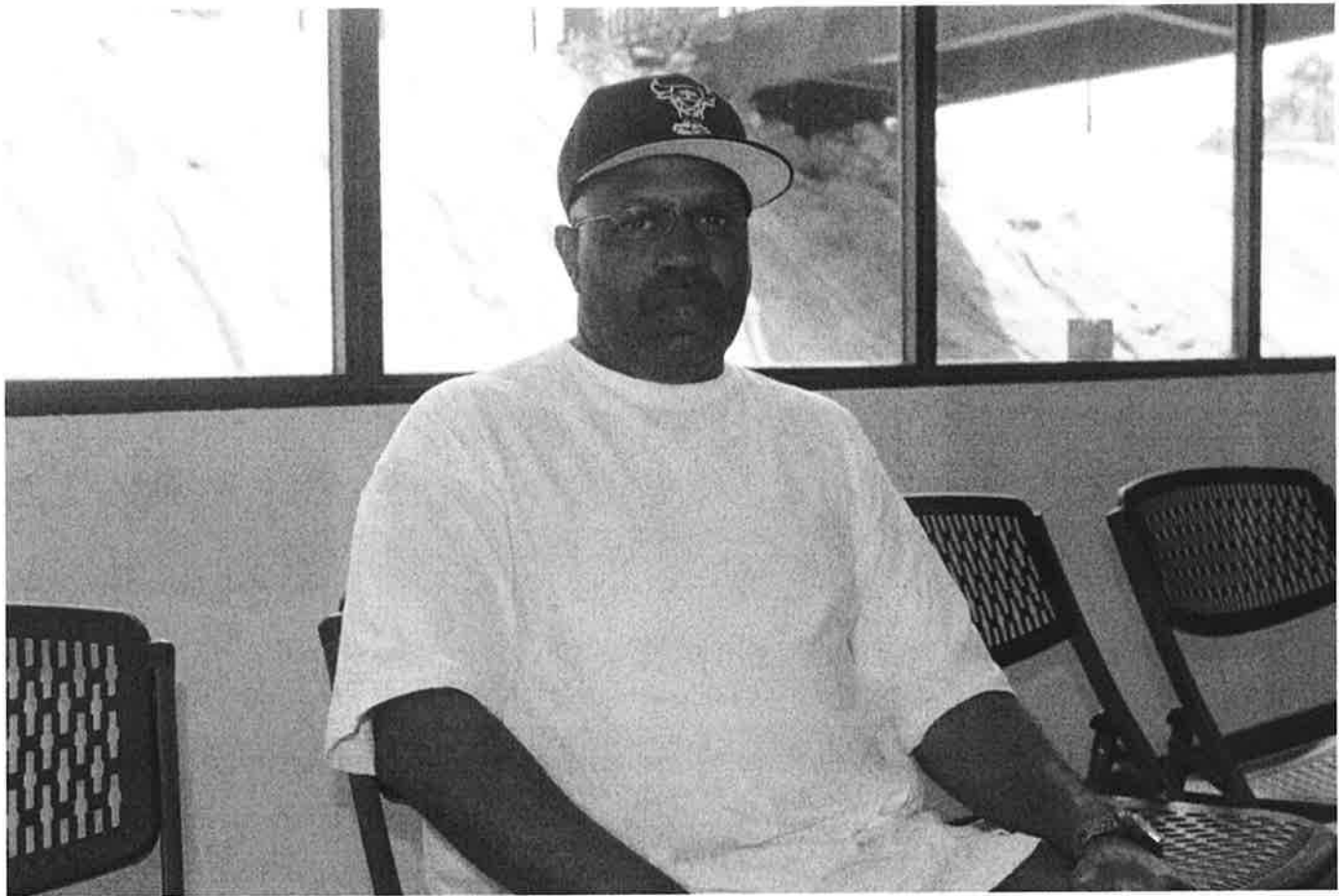
Cook, employed by the University of Alabama-Birmingham's Department of Psychiatry since 1978, is the man responsible for making Jefferson County's community corrections program so comprehensive.

Cook, in aggressively soliciting federal and state dollars to boost the programming, says he has secured more than \$65 million in grants and contracts since 1990.

In launching the nation's oldest alternative treatment program in 1973, Jefferson County was the first to partner the criminal justice system with mental health treatment.

The White House recognized the initiative in the 1990s for confirming that community-based treatment can reduce recidivism dramatically.

Today, as of July 23, Jefferson County is serving 672 offenders. The number includes 580 who were sentenced directly to community corrections and 92 who have done time in prison and are serving the rest of their sentence here.



Ernest Briggins, 57, says it's 'ridiculous' he got 30 years for selling some crack when he never did a violent crime. He's finishing his sentence in community corrections. (Photo: Josh Siegel/The Daily Signal)

In 2013-14, of those who came to Jefferson County from prison through the reentry program, 80 percent successfully completed their treatment plan.

In addition, 90 percent remained off drugs and alcohol after six months, and 69 percent were employed or attending school in that same period.

Cook credits his program's success to a quality that it tries to teach offenders: relationship-building.

For a judge to sentence a felon to community corrections, he must be confident in his decision to let the offender do the time in the community—and not behind bars.

"Judges have to trust you and believe you are credible," Cook says. "Unless you have a relationship with the judges, you can't do what we need to do. You have to deliver what you promised."

Judges, who understand the costs of prison better than most by sending men and women there, say they want to be sure before delivering an alternative sentence.

But they can't be so sure.

"One of our problems is we don't have a crystal ball; we don't know," says Laura Petro, a judge in Jefferson County Circuit Court who is comfortable enough with Cook that she is eating lunch with him on a summer day.

Petro says:

Last year, I had two or three people on the community corrections docket die of heroin overdoses. This year, two of my community corrections people murdered people. We do the best we can with the information we have. But really, the best information we are getting is from community corrections, after they've been monitoring them for a while. We are dependent on them to give us options.

Bar Set to 'Another Level'

Cook wants to provide more options.

As part of the criminal justice reform bill's emphasis on community supervision, he submitted a first-of-its-kind proposal to the state to serve more offenders.

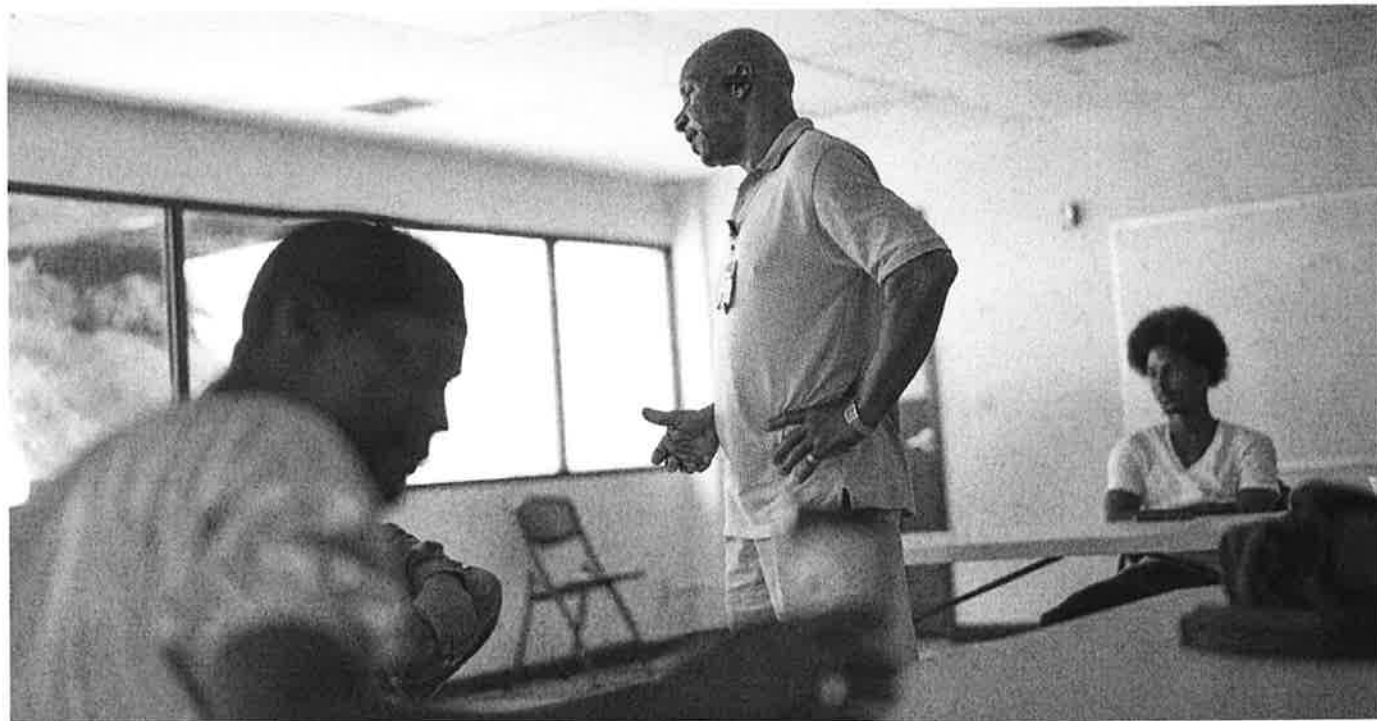
The plan would require every single incarcerated man and woman from Jefferson County to be served by Cook's alternative treatment program when he or she returns home from prison.

This way, every offender re-entering society would receive the same kick-start: Each would get a risk-needs test, a case plan and access to the county's alternative treatment services.

Each would have a chance to take the "Thinking for Change" course—and, if he or she is lucky, interact with Lawrence Posey.

"I've been doing this for 41 years; I know exactly what these programs look like and how they ought to operate," Cook says matter-of-factly, without cockiness.

"The bar is set at another level now."



Posey constantly wears a Bluetooth earpiece so the men and women in his class know he's available to help at any time. (Photo: Bob Miller for The Daily Signal)

The higher bar goes beyond Cook's proposal, which, like the reform legislation itself, has not yet been funded.

The new law requires more demanding standards for community corrections.

It enforces accountability, mandating that such programs reduce recidivism by a specific amount.

It forces community corrections to use the risk-needs assessments to determine how intensely to devote supervision resources to each offender. (Jefferson County already does this.)

Making an Accurate Diagnosis

Currently, Alabama has no standards for community corrections programs to measure results, such as forcing adherence to scientifically proven methods to reduce recidivism.

There is also no way to ensure accountability for how jurisdictions use funding, but that is supposed to change under the reforms.

The bolstered supervision process reinforces just how serious the consequences are.

“

I never had no violence in my life. I never hurt nobody. But I sold a piece of dang crack rock and got 30 years. Ridiculous.

ERNEST BRIGGINS, INMATE AT JEFFERSON COUNTY
COMMUNITY CORRECTIONS

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Research shows that offenders are more likely to commit new crimes within the first year of release from incarceration. Yet about one-third of those who left Alabama prisons in fiscal year 2013—most were in for lower-level offenses—had no supervision.

“If I come in with an offender, that offender needs to be diagnosed correctly,” says Wright, the Sentencing Commission director.

Wright explains:

It's like if you were to walk in with your doctor and say, 'Hey, Doc, I've got some chest problems.' You probably don't want him to just saw off your chest and do open heart surgery. You want a full diagnosis. It's one thing to say this person has a high risk of recidivism. It's another thing to say, well, he has a substance abuse problem. If we get that treated, his likelihood to commit [another] crime goes down. That is what the [state] Senate bill encourages. It encourages everyone to make a full and accurate diagnosis of the felony offender and make the best use of the resources so that person doesn't commit another crime.

In Alabama, around half of all offenders complete their sentence in prison and then are released without supervision.

With no one on the outside to show them another way, they often return to where their troubles began.

In class, Posey is explaining how going back to the same “people, places and things” makes it convenient—almost too easy—for an ex-felon to strike again. And that means another date with prison.

“We’ve all had this experience,” says Posey says.

He may have been convicted of attempted murder, but it was far from his first offense.

One Father's Story

“I know I have experienced it exactly,” confesses Darrel Darden, a broad-chested three-time felon in Posey's class.

Darden's misdeeds led to his missing a lifetime of experiences with his four children. Finally in control of his life again, he has volunteered to be here.

After serving 15 years of a 25-year sentence in prison, Darden was paroled in May.

The terms of parole don't require him to attend Jefferson County's reentry program or Posey's class—only that he report once a month to a parole officer.

But Darden, now 53 and in and out of prison since 1992, blew his previous chances at freedom. He says he won't let this one go.

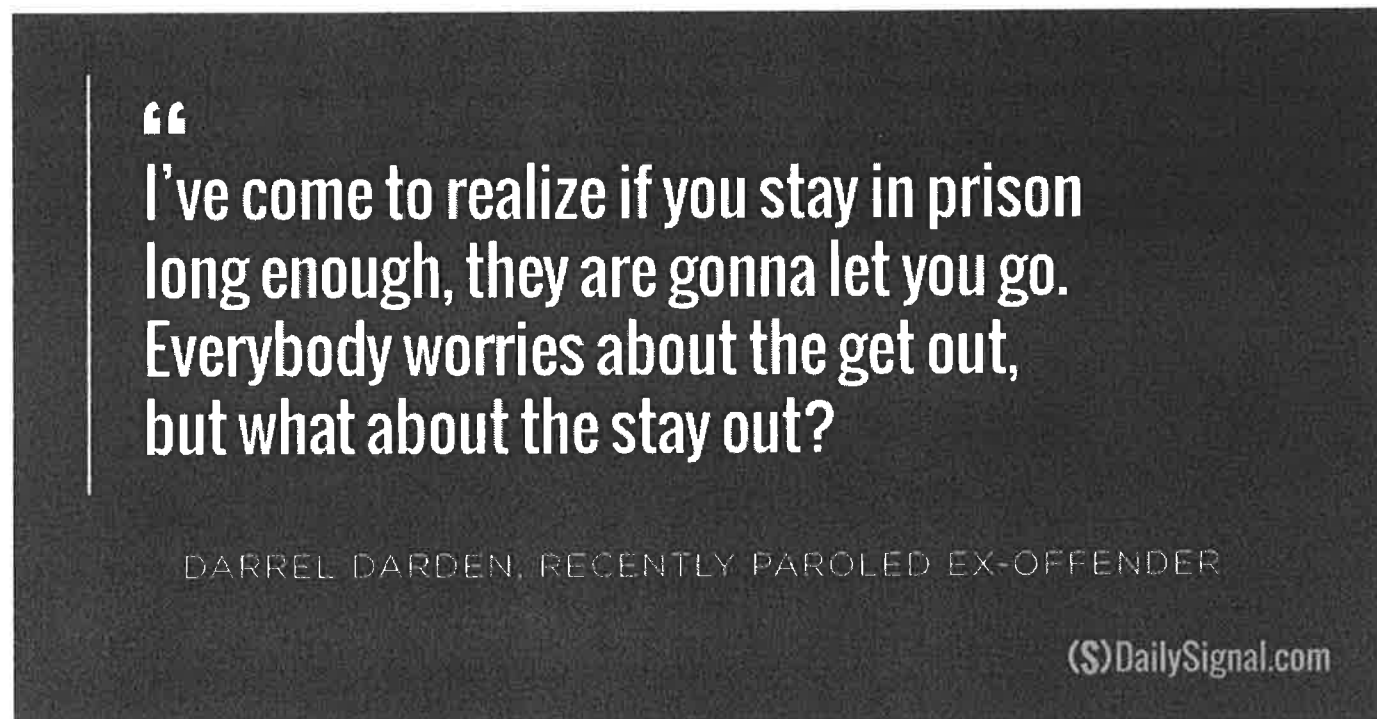
Because he had completed his two previous sentences in prison, Darden was not supervised upon release.

So now, he has taken upon himself to ensure that somebody—and some place—watches over his transition, and mentors him along the way.

"I want a different way of life from what I normally led when I got out of prison," says Darden, whose most recent conviction was for third-degree burglary and possession of a controlled substance. He adds:

You have to change yourself in order for your environment to change. You can't sit at home on the couch and say, 'Oh, Lord, please help me to change, please help me to change.' Nah, you have to go out and do something. That's why the word of God says, 'Faith without works is dead.'

For Darden, change began to come during his most recent time in prison. He arrived already planning his exit.



While incarcerated, he helped run all of the drug treatment programs. In all his years in prison, he earned only one disciplinary action.

"I went in prison trying to get out of prison," Darden says. "I didn't get there to stay there. That's why I took every program the state had to offer. They call you an inmate. They call you a convict. I never wanted to be labeled that. I never want to think that way. I never wanted to institutionalize mentally."

He does want to be labeled a father. But his four children don't know him as that.

It's About the 'Stay Out'

When he was present, Darden says, he taught his children lessons he thought they should know. He can't be sure they learned:

When my boys were young, I taught them how to be men. I taught them how to open doors for a young lady. I taught them how to be respectful, how to not sag your pants. I took them and gave them the basics of being a man. But to actually see me being that man, I was absent and that hurts me today. That's pretty devastating.

The children are young adults now. Darden knows some things about them, for instance what they're doing. His oldest daughter is a cosmetologist. The youngest finishes high school next year. His two sons have graduated college.

Because of the distance he put between himself and his children, he doesn't know how they got there.

He's willing to take baby steps to be accepted as part of their future:

Sometimes it's too late to be a father. But I can be a friend, and then that friendship can develop to me being a dad, me being their father again.

That's why Darden has come to Posey's class, even if his children don't know he's here.

He's betting that by his doing the right things, they will recognize him eventually.

"I have goals," Darden says. "I have short-term goals, medium-range goals and long-term goals. When I reach my medium-range goal, they will know I am here."

Convinced, he says it again: "They will know that I am here."

The goal is to be a counselor. Kind of like Posey. So he's here, observing. His mentor watches back, making sure Darden remains on track.

"I've come to realize if you stay in prison long enough, they are gonna let you go," Darden says. "Everybody worries about the get out, but what about the stay out?"

Prisons

REPORT TO THE LEGISLATURE
BY THE SELECT COMMITTEE
ON PRISON OVERCROWDING

LR222

January 1, 1990

Legislative Resolution 222

Members of the Select Committee on Prison Overcrowding

Senator Gary Hannibal
Chairman
District #4

Senator Dennis Baack
District #47

Senator David Bernard-Stevens
District #42

Senator Ernie Chambers
District #11

Senator Jerry Chizek
District #42

Senator Jennie Robak
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Senator Gary Hannibal

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SELECT COMMITTEE ON PRISON OVERCROWDING

LR 222

December 31, 1989

Voted to advance report to the Legislature


VOTE:

Aye: Hannibal, Baack, Bernard-Stevens, Scofield and Robak

Nay: Chambers

No Response: Chizek

PASSED



Senator Gary Hannibal
Chairperson



Lisa A. Metzger
Committee Clerk

LEGISLATIVE RESOLUTION 222. Introduced by Appropriations Committee: Warner, 25th District, Chairperson; Ashford, 6th District; Hannibal, 4th District; L. Johnson, 15th District; Langford, 36th District; Moore, 24th District; Schimek, 27th District; Scofield, 49th District; Wehrbein, 2nd District.

PURPOSE: The purpose of this resolution is to examine prison population issues and any potential alternatives to alleviate prison overcrowding. Such study shall specifically: Identify the causes of Nebraska's prison overcrowding, including the impact of (1) institutional rules and their issuance, promulgation and enforcement and the institutional disciplinary system, (2) infractions and punishments which lengthen an inmate's stay, and (3) training, competence, supervision, and pay of guards and other employees who have contact with inmates; the current use of pretrial diversion, probation, and parole; sentencing practices, including the impact of race and gender on sentencing, and the range of sanctions available to sentencing judges; and potential alternatives to incarceration in adult and juvenile facilities.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE NINETY-FIRST LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Executive Board of the Legislative Council shall appoint a select committee on prison overcrowding and related issues. The Chairpersons of the Appropriations, Judiciary, and Government, Military and Veterans Affairs Committees shall submit the names of two of their respective committee members to the executive board, which shall appoint them and one member of the executive board to the select committee. The select committee shall elect a chairperson from among its membership and may appoint a project director.
2. The select committee shall draft a study plan defining the objectives of the study and may designate a project team from among legislative offices.
3. The select committee shall strongly consider obtaining the services of one or more persons or firms with nationally recognized expertise in the field of criminal justice to aid in carrying out the purposes of this resolution.
4. The study shall include in its findings (a) an estimate of how much, if any, capacity needs to be added to the facilities of the Department of Correctional Services if no new alternatives to incarceration are implemented and (b) an estimate of how much, if any, capacity needs to be added to the facilities of the Department of Correctional Services if any of the alternatives to incarceration recommended by the study are implemented.
5. The select committee shall develop a long-range plan relating to prison overcrowding and related issues and shall, prior to January 1, 1990, make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.

PART I. CURRENT AND FUTURE STATUS

Legislative Resolution 222 was introduced on May 23, 1989 by the Appropriations Committee in response to concerns expressed by legislators and the Governor during debate on proposed prison construction. Although the prison construction package totaling \$6.6 million was approved by the Legislature, the Governor vetoed all but a \$450,000 40-bed addition to the Nebraska Center for Women. The purpose of LR 222 is to examine prison population issues and any potential alternatives to alleviate prison overcrowding. This report, read in conjunction with preliminary analyses and recommendations prepared by the research staff of the Select Committee on Prison Overcrowding, assesses the current and future status of prison overcrowding, and offers recommendations to reduce current and projected populations within the control of the Department of Correctional Services.

The problem of prison overcrowding is one shared by Nebraska and a majority of states in the nation. The Federal Bureau of Prisons, overseer of the national prison system, recently reported its facilities have reached a level of 156 percent of design capacity with no relief in sight. The Bureau of Prisons plans to increase capacity by 109 percent within the next five years; however, even with these changes the system is still projected to be operating at 130 percent of capacity. Presently, 45 states are under some form of federal court order to relieve overcrowding conditions. The State of Nebraska, though fortunate not to be under a federal mandate to relieve overcrowded conditions within its prison system, will be facing a series of lawsuits in 1990 directly relating to overcrowding. The most recent count of incarcerated adults in Nebraska stands at 2,344 (DCS December 5, 1989). That number pushes the system to over 140 percent of design capacity for the first time since the 1970's and makes the state a prime target for federal intervention.

At first glance, it appears that Nebraska's incarceration rate (123 per 100,000 population) is much lower than the national average of 224. However, this rate is moderated by the state's lower than average crime rate: 39th of 50 states. A more accurate way to measure Nebraska's propensity to impose criminal sanctions is to compare the number of people under criminal sanction to the number of people arrested per year. When this comparison is used, Nebraska ranks 35th nationally in arrest to incarceration rates and 24th nationally if all forms of control, including jail, probation, parole and prison, are used. The great majority of those under sanction in Nebraska are on probation. However, our probation average of 938 probationers per 100,000 population is much lower than Midwest and national averages. Parole is another area where Nebraska deviates somewhat from the national average. The number of people on parole in Nebraska averages 31 per 100,000 population whereas the Midwest average is 106 and the national average is 201. Current good time law, parole board policy and practice, and a lack of available funding to enable the parole board to streamline its administration could account for this discrepancy.

Racial diversity within Nebraska prisons is comparable to other states in relation to the demographics of state population, with minorities being over-represented in the criminal justice system. By sex, Nebraska incarcerates females at a slightly higher rate than Midwest and national averages. Nebraska's female prison population is 5.7% of its total prison population; the Midwest average is 4.9% while the national average is 4.8%. Nebraska is following the national trend as its total female prison population has increased from an average monthly population of 47 in 1981 to an average monthly population of 100 in 1989.

As previously stated, our state is not alone in its overcrowding problem. Of twelve Midwestern states, only North Dakota is operating below capacity and is projected to exceed capacity by 1990. The State of Iowa, which until recently had a population cap, is exceeding its capacity and is considering more construction.

Nebraska's problems are similar to those of other states. Furthermore, a comparison of statistics demonstrates that Nebraska's position is in many respects an enviable one. We enjoy a comparatively low crime rate and are fortunate not to be under a federal court order to relieve overcrowding. Overall, there has been nothing inherently wrong in what we as a State have done to arrive at the current situation. Our system has served us relatively well; however, we emphasize the term "relatively". Notwithstanding the favorable statistics, population projections estimate that Nebraska will reach 219 percent of design capacity by 1994 at the current incarceration rate. Additionally, admissions for drug offenses, which were six percent of total admissions in 1985, are now nearing 36 percent of total admissions for fiscal year 1990. Mandatory minimum sentences for cocaine and crack-related offenses, which have increased the time an offender must serve from one year to three or five years, will more than likely exacerbate the situation. With conditions of confinement litigation on the increase, and an ever-increasing population, action must be taken to alleviate the situation. There are several reasons for such a position. First and foremost, public policy mandates such a response as appropriate in order to correct the problem. Secondly, further delay will almost certainly result in federal court intervention, which in turn will eliminate the State's ability to solve its own problems without outside interference in system control and design. Lastly, overcrowded conditions have led to a 46 percent increase in prisoner misconduct and incidents of violence. This is a trend that must be reversed.

PART II. POLICY GOALS

Any committee recommendation is made with the assumption that certain policy goals are in place. These are based on the premise that the state's resources are limited and that the percentage of those resources which must be utilized for criminal justice programs should be allocated as efficiently as possible. The policy goals are:

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

PART III. EXECUTIVE SUMMARY OF RECOMMENDATIONS TO ALLEVIATE OVERCROWDING

1. DEPARTMENT OF CORRECTIONAL SERVICES STAFFING AND PROGRAMS

The Committee recommends adjustment of staffing levels and program availability at Department of Correctional Services facilities to reflect current population levels and characteristics, including adjustments to security staffing; and medical, mental health, and substance abuse staffing and programs. (See Appendix A for more detailed information.)

Costs for FY 1990-91 are estimated to be as high as \$4 million, if the entire Department of Correctional Services deficit request relating to population growth is approved; after FY 1990-91 the costs to maintain staffing would be dependent upon what other measures, if any, are taken to alleviate prison overcrowding.

Impact on overcrowding: No affect on actual population, but better management of the prison would be achieved. This would in turn relieve some of the stress within the system which overcrowding creates for staff and inmates.

2. PAROLE BOARD ADMINISTRATION

The Committee recommends increased staffing and streamlining of the parole process, including the implementation of Mutual Agreement Programming (MAP) and Intensive Parole Supervision (IPS) programs, thus increasing the likelihood that eligible inmates will be paroled sooner. (See Appendix B for a more detailed summary.)

Cost estimates for full implementation vary from \$135-235,000 annually for a MAP coordinator and IPS personnel.

Impact on overcrowding: Intent is to alleviate some overcrowding within the system due to more inmates being paroled upon eligibility.

3. INTENSIVE SUPERVISION PROBATION

The Committee recommends implementation of a state-wide intensive supervision probation program to divert offenders who would normally have been incarcerated but for this type of program. Non-violent offenders with limited criminal histories would be targeted. The Committee stresses that legislation must contain: 1) judicial guidelines relating to offender eligibility and 2) intent language stipulating that the program be used primarily to divert offenders from incarceration in order to avoid any further widening of the regular probation net. (See Appendix C for a more detailed summary.)

Cost estimates for full implementation vary from \$750,000 to \$1.25 million annually for probation officers and support staff

Impact on overcrowding: Reduction of the number of inmates by 11 percent of current design capacity

4. GOOD TIME STATUTES

The Committee recommends that good time laws be amended to provide consistency in time earned toward parole eligibility and mandatory release and to decrease average length of stay. The average length of stay in a Nebraska prison is 29 months, compared to a Midwest average of 25 months and a national average of 23 months. Amending the good time laws may shorten length of stay, depending upon the change. The change is also recommended in order to deter future situations involving the overlap of mandatory release and parole eligibility dates. The changes are recommended with the caveat that the Committee recognizes that any change to good time should not contribute to the revolving door phenomenon within the criminal justice system. (See Appendix D for a more detailed summary.)

Cost estimates for full implementation: Up to \$300,000 annually for additional parole officers

Impact on overcrowding: 12 to 15 percent reduction of total population

5. JUVENILE SERVICES - ALTERNATIVE PROGRAMS AND DIVERSION

The Committee endorses the creation of alternative programs for youth which would provide incentives to local communities to divert youths who would ordinarily be committed to the Youth Development Centers. Local governments could tailor the programs to the specific needs of their areas and rural areas could be organized on a regional basis, with cost-sharing required between state and local governments. The Committee encourages the endorsement of legislation currently being developed which would create alternatives and also be acceptable to the State's judiciary.

Impact on overcrowding: Decrease reliance on YDC's for youth placement

6. JUVENILE SERVICES - YOUTH DEVELOPMENT CENTER STAFFING

The Committee recommends additional staffing to open another cottage at the Youth Development Center at Kearney to reduce or eliminate the practice of releasing youths before they have completed programming at the facility. While this recommendation is in recognition of the immediate needs of youths currently being held in Kearney, the Committee maintains that this short-term necessity should not discourage the long-term goals associated with the diversion of youths whenever possible. (See Appendix E for a more detailed summary.)

Cost estimate for full implementation: \$315,000 annually for operations and staff

Impact on overcrowding: Would increase capacity by 36 juveniles until community centers can be created and decentralization can be accomplished

7. CONSTRUCTION

The Committee recommends the construction of new housing units as outlined in the Department of Correctional Services' Spring 1990 deficit request to add 510 beds to the adult prison system. Although it endorses the construction of additional beds, the Committee also recognizes that there are societal issues which must be addressed on all fronts in order to truly combat the source of criminal behavior; however, there is a recognized immediate critical need within the system for additional bed space if population limitations are not imposed. (See Appendix F for a more detailed summary.)

Cost estimate for full implementation: \$13,241,000 for construction; \$3,288,404 for annual operating costs

Impact on overcrowding: Will increase design capacity by 30 percent

8. MANDATORY APPROPRIATION REQUIREMENT FOR BILLS IMPACTING THE CORRECTIONAL SYSTEM

The Committee recommends that the Legislature pursue adoption of a statute similar to one in Tennessee which requires that any bills which affect the correctional system must be accompanied by an appropriations bill. For example, bills which would increase penalties for certain crimes would be required to appropriate funds for the costs additional prisoners would create for the State. The size of the appropriations bill would correspond to the amount of additional funds it would require to house the estimated increase in prisoners and additional costs incurred by the Department of Corrections. Such a requirement would bring the issue of prison overcrowding to the forefront whenever an increase in criminal penalties is suggested, and would force decision makers to consider the effect of a bill upon the criminal justice system as a whole.

9. TASK FORCE ON PRISON OVERCROWDING

As a response to the current capacity crisis, and in recognition of the long-range nature of many of the recommendations which are necessary to effectuate a permanent solution to the overcrowding situation, a Task Force on Prison Overcrowding is recommended. Such a task force, appointed by the Governor, would oversee the implementation of alternatives suggested in this report as well as recommend and set in motion additional long-term strategies not addressed by this committee but which the task force may deem necessary to investigate, such as sentencing guidelines, privatization, decriminalization of certain penalties, diversion of prisoners to local jails, emergency release mechanisms, and analyses of the institutional disciplinary and personnel systems.

Task force members should be carefully selected to involve criminal justice practitioners, judges, members of the Executive and Legislative branches of government, corrections practitioners, academics, special interest groups relating to prison overcrowding, and concerned citizens. It is suggested that the membership of the task force encompass a wide array of interests relating to the prison overcrowding problem. The successful implementation of any long-range strategy will require the coordinated involvement of all agencies and actors within the criminal justice arena. Any modification of the current criminal justice structure, particularly alternatives to incarceration, will require a solid base of political support and constituent approval for its success. Therefore, the involvement of key players from the criminal justice spectrum would be necessary to assist in such a transition and would serve to keep lines of communication open as the system and the public adjust to the new alternatives and changes to the status quo.

The task force, if acceptable as a committee recommendation, should be organized as quickly as possible in order to oversee implementation of changes that may be underway during the current legislative session as a result of LR 222 Committee recommendations and also as a public acknowledgement by the government of the current crisis. A legislative resolution creating the task force and urging its immediate formation will be drafted. The \$50,000 appropriated for the Select Committee was never expended and could be utilized by the task force to further the intents and purposes outlined in LR 222.

DEPARTMENT OF CORRECTIONAL SERVICES STAFFING AND PROGRAMS

1. Introduction

As outlined elsewhere in this report, the number of inmates, juveniles, and parolees under the jurisdiction of the Department of Correctional Services has grown rapidly in recent years. However, for the most part, this growth has not been accompanied by growth in staffing or service levels provided by the Department. There are two exceptions to this statement. The first is the correctional industries program: three new industries buildings were approved in the 1989 legislative session. Second, prisoner per diems (marginal costs for each inmate for food, clothing, inmate wages and medical expenses) have been increased but have always lagged behind population growth. Growth in staffing and programs other than those mentioned above has been minimal. As an example, from fiscal year 1983-84 to October 1989, the total number of offenders under the jurisdiction of the Department of Correctional Services has increased by 32 percent while the total number of employees has actually decreased by 2 percent.

The federal courts have consistently held that when an offender is placed in prison, the state assumes the responsibility of providing for that person's basic human needs including providing adequate food, shelter, clothing, medical services, safety and recreation. What leads to prisons being placed under court order is not overcrowding in and of itself. Rather, it is when the court finds that those basic needs are not being provided as a result of the overcrowding. An overcrowded prison is never an ideal prison but studies have shown that adequately staffed, well-administered, well-designed prisons can operate successfully under severely crowded conditions (Punishing Smarter, John J. Dilulio, 1989). Most of Nebraska's adult institutions were built in the late seventies and early eighties and are designed around and managed under the unit management concept, which is considered by most experts to be the best method of prison management.

2. Conclusion

In order to avoid a court order in the near future, staffing and program levels in the Nebraska prison system need to be upgraded so that adequate levels of the basic services mentioned above can be provided. Section 3 will provide a categorical breakdown of suggested program and staffing adjustments to deal with the overcrowding problem

3. Program Adjustments

Medical and Mental Health Services

An estimated 25.75 employees are needed in the medical services area including the following: nurses to provide on-duty medical staff on shifts not currently covered; additional mental health counselors to reduce waiting periods for mental health and substance abuse programs; chemical dependency counselors to provide comprehensive substance abuse programs at facilities not currently offering them; and additional personnel to conduct evaluations at the Diagnostic and Evaluation Center, the most crowded DCS facility. Additional funds are also needed to cover expenses for medical services, pharmaceuticals, and other medical supplies for the additional inmates.

<u>Cost:</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
Additional Personnel	\$176,162 (1/4 year)	\$ 704,646
Medical Expenses	<u>404,978</u>	<u>607,467</u>
Total	\$581,140	\$1,312,113

Security

An estimated 39.8 employees are needed to provide additional security in areas currently not covered by any security personnel and areas that are the most overcrowded. Although this number may seem high it should be remembered that it takes 4.2 employees to provide the equivalent of 1 person on duty 24 hours a day, 7 days a week.

<u>Cost:</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
Additional Personnel	\$245,242 (1/4 year)	\$980,969

Parole

An estimated three adult and one juvenile parole officers are needed to supervise increased parole populations.

<u>Cost:</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
Parole Officers	\$24,360 (1/4 year)	\$97,441

Food Service, Food and Clothing Expense, and Miscellaneous:

An estimated three food service managers are needed to provide supervision for the greater number of inmates preparing food in the kitchens of the Work Release Center and the Penitentiary in Lincoln. In addition, there are certain fixed costs associated with adding each inmate to the system for things such as food and clothing. DCS's budget in this area has not kept pace with the population increase. And, finally, funds are needed to purchase additional beds for inmates.

<u>Cost:</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
Food Service Workers	\$ 17,547	\$ 70,187
Food, Clothing, etc.	247,245	659,343
200 beds	-----	75,000
Total	<u>\$264,792</u>	<u>\$804,530</u>
<u>TOTAL COST ESTIMATE:</u>	<u>FY 1989-90</u>	<u>FY 1990-91</u>
	<u>\$1,115,534</u>	<u>\$3,195,053</u>

PAROLE

Background

Parole is a program which allows an offender to serve a portion of his or her sentence under supervision in the community. Most offenders, even those with life sentences, can expect to be released before serving their entire sentence. Parole provides the mechanism for reintegrating these offenders into a community environment.

The Parole program was established in 1969 under LB 1307. At this time, the Parole Board was created for the purpose, in part, of determining the time of release on parole of committed offenders eligible for release, to fix the conditions of parole, revoke parole and determine the time of discharge from parole. (See Neb. Rev. Stat. section 83-192). The Parole Board is autonomous from the Department of Correctional Services.

LB 1307 also created the Office of Parole Administration within the Department of Correctional Services. The purpose of Parole Administration is to administer parole services in the community (See Neb. Rev. Stat. 83-1,100-83-1,104).

A committed offender becomes eligible for release on parole when the offender has completed his or her minimum term less any reductions granted. (Neb. Rev. Stat. section 83-1,110).

Currently, 520 offenders are on parole. Those offenders are supervised by 12 parole officers statewide. Six (6) parole officers are assigned to Omaha and six (6) are assigned to the Lincoln region which includes the remainder of the state. The average caseload for each parole officer is 42-43 parolees. The Department of Correctional Services anticipates that the number of offenders on parole will increase to more than 700 by 1991. Nevertheless, a comparison of the number of offenders on parole in Nebraska to midwest and national statistics indicates that Nebraska has far fewer offenders on parole than other states. The rate of parole per 100,000 in population in Nebraska is 31 as compared to 106 in the midwest and 201 nationally. Nebraska's lower parole population can, in part, be explained by the length of parole sentences which, on the average, are shorter in Nebraska than nationally. However, this does not entirely explain the difference in the use of parole.

The length of parole sentence particularly does not explain the difference in the use of parole when one considers that Nebraska currently has 778 committed offenders who are eligible for parole but have not been paroled. 243 of the 778 offenders have had hearings set by the Parole Board for next year. Of the 778 offenders, 185 have had their parole revoked and been returned to prison. Of the 593 remaining offenders who are eligible for parole, several reasons may account for their continued incarceration. First, the good time laws appear to operate in such a way as to keep some offenders in prison. Second, Parole Board policy and practice may operate to keep offenders in prison, or at a minimum, slow the process. Finally, the lack of resources and options for may operate to keep offenders in prison.

It should be noted that the Parole Board cannot parole an offender until that offender becomes statutorily eligible for release. As indicated earlier, an offender is eligible for release on parole once the offender has completed his or her minimum term less any reductions in sentence, such as good time, that have been granted. This report does not consider changes to the existing statutory scheme regarding the time at which an offender may become eligible for release. The Legislature may want to consider providing greater flexibility in the statutes, but for the purposes of this report it's sufficient to examine why the state has nearly 800 offenders, otherwise eligible for parole, still sitting in prison.

GOOD TIME

Good Time is discussed in greater detail elsewhere in this report; however, its effect on the use of parole merits a brief discussion here.

It appears that good time may operate to keep some offenders in prison. Mandatory good time (Neb. Rev. Stat. section 83-1,107) is deducted from an offender's maximum term for the purpose of determining the offender's mandatory release date and from the minimum sentence for the purpose of determining the offender's parole eligibility date. Meritorious good time, on the other hand, is deducted solely from the offender's maximum term. The effect of this is that, for some offenders, the mandatory release date gradually moves closer to the parole eligibility release date. This particularly may have an impact on offenders with short sentences who may opt to wait for their mandatory release date rather than be released on parole. To illustrate the operation of good time on release, statistics from FY 1988-89 indicate that 548 prisoners were paroled, while 491 waited for their mandatory release date.

There are, of course, other offenders who may simply choose not to be paroled because of the conditions and supervision of parole, but instead opt for mandatory release. The Department of Correctional Services does operate a furlough program called Extended Leave that enables the Department to release offenders, who are otherwise not eligible for parole, early. An offender may not become eligible for parole prior to his/her mandatory release date for a couple of reasons. First, the operation of the good time laws reduces the mandatory release date faster than the parole eligibility date. For example, on a sentence of 7-9 years with good time, an offender becomes eligible for parole after serving 5 years and 1 month. That same offender's mandatory release date is 4 years, 11 months. On a 3-4 years sentence, the offender's parole eligibility date and mandatory release date would be the same. In addition to this, an offender who receives a flat sentence that is the minimum will reach his/her mandatory release date quicker than the parole eligibility date. To illustrate, an offender with a flat sentence of one year would be eligible for parole after serving 10 months, but is eligible for mandatory release after serving 8 months.

The extended leave program permits an offender to serve the last six months of his or her sentence under strict supervision in the community if the offender is not eligible for parole. If the offender is technically eligible for parole, but has not been paroled, the offender can serve the last nine months on extended leave.

The extended leave program is a strict supervision program administered by Parole Administration. It requires a minimum of one face to face contact per week, collateral contacts (contacts with employer, family, school, etc.) and a weekly itinerary. House arrest is also built into the program; therefore an offender must be at home unless his/her itinerary indicates otherwise.

At the present time, 40 offenders are on extended leave.

PAROLE BOARD PRACTICE AND POLICY

An offender may also be eligible for parole but not entitled to parole under Parole Board policy. For example, the offender may have too many misconducts or may not have participated in the appropriate programs (drug treatment, mental health treatment, etc.), or may not have an established program (employment, school) upon release. In addition, some policies of the Parole Board appear to slow the parole process. Following is a discussion of those policies.

A. Public Notification of Release

Parole Board policy requires the notification, 30 days prior to the parole hearing, of county officials and of the public in the county where the offense was committed. Notification to the public must be published in the local newspaper. The effect of this policy is that the Parole Board cannot release an inmate quickly. Release will always take a minimum of 30 days and typically takes longer. The purpose of the policy is to allow the public an opportunity to appear before the Board and provide input as to whether the offender should be released. While the purpose has merit, it may be possible to provide greater flexibility in the policy. For example, the severity of the crime, the length of the sentence, the past conduct of the offender, etc. may be appropriate criteria upon which to publicize 30 days in advance. However, for lesser offenses or where there is not a substantial public interest, 30 days for publication may not be as necessary.

B. Disciplinary Reports

In some situations, the Parole Board will defer cases with disciplinary reports depending on whether there has been a loss of good time. If a parole hearing is scheduled and the offender has a misconduct report, the offender will likely be paroled unless the sanction resulted in a loss of good time. In this case, the offender's parole often will be deferred. This practice occasionally operates inconsistently. For example, an offender with a more restrictive sanction for misconduct, but no loss of good time, may be paroled under this practice, while an offender that loses good time, but has a sanction that is less strict, will not be paroled. As an illustration, the Department of Corrections has had offenders paroled directly out of segregation because of no loss of good time, while offenders who have lost good time but are in the general population have been denied parole.

C. Program Participation

The Parole Board has a policy which permits it to deny parole or the setting of a parole hearing for any offender sentenced under section 28-416 (drug law) if the offender has a misconduct report eighteen (18) months prior to parole eligibility if the misconduct relates to drugs or alcohol. This policy has the potential to create a substantial logjam in paroling offenders sentenced under the drug law.

Related to this is the issue of participation in treatment. Section 28-416 mandates that an offender shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that an offender who has violated the provisions relating

to cocaine or crack is not eligible for parole prior to serving the mandatory minimum sentence. There is some question as to what the phrase "appropriate treatment and counseling" means. Is the legislative intent to require inpatient treatment and counseling, or can the treatment and counseling be done on an outpatient basis in a program such as AA?

With respect to offenders sentenced under this law, the Department of Corrections is making every effort to assure that these offenders receive a space in the inpatient treatment program at the Lincoln Correctional Center. Section 28-416 is the only statutory section, however, that mandates treatment. Nevertheless, there is some concern that offenders may not be receiving parole because of their failure or inability to participate in treatment programs. Correctional officials do indicate that they have waiting lists for the mental health treatment program.

D. Life Sentences

A recent policy change may have significant impact in the future but is not currently a problem. First degree murderers with a life sentence are only eligible for parole after the Pardons Board commutes their sentence. The Parole Board has, in the past, reviewed lifers after 15 years. However, effective in June 1988, the policy was changed so that offenders sentenced after July 1986, cannot be reviewed for parole until they've served 30 years.

LACK OF RESOURCES

The lack of resources may also be operating to keep offenders in prison. For example, in his testimony before the Committee, Ron Bartee indicated that the lack of funding affects the ability of the Parole Board to review cases quickly. The Parole Board, according to Bartee, lacks a computerized, streamlined process for paperwork, lacks sufficient office space and personnel. Bartee also has mentioned the need for more personnel to supervise parolees and the need for more drug treatment for parolees.

What can be done to alleviate the problem?

Obviously, one option is to provide the Parole Board with additional resources to assist them in handling a greater number of cases. But, there are other options as well such as Intensive Parole Supervision and Mutual Agreement Programming.

1. Intensive Parole Supervision

The Department of Correctional Services under Parole Administration currently operates an intensive parole supervision (IPS) program, initiated with a federal grant. The program has provided a mechanism to parole offenders who six to nine months ago would not have been paroled. In the past, the Parole Board has been reluctant to parole an offender who does not have an established program (employment, school, etc.) at the time of the his/her release. It's extremely difficult for most offenders to establish a program from prison. IPS allows offenders to establish their program within 90 days after release. If the offender does not find employment or enter school, the parole can be revoked. With the use of this program, the Parole Board has shifted and has been willing to parole offenders without a employment.

Intensive Parole Supervision is exactly like intensive probation supervision with the exception that Parole Administration supervises the program. It is a strict supervision program requiring that offenders have one face to face contact per week and collateral contacts. An itinerary is not required unless the offender does not have a program. Currently, the Department has 60 offenders on IPS.

The Legislature should consider continuing this program as a General Fund expenditure and should expand it. The cost of the program is in obtaining additional personnel. The Department estimates that one parole officer can handle 30 IPS cases. Assuming this, the costs are as follows:

Per 30 offenders, one (1) parole officer is needed, one-half (1/2) surveillance officer and one-fourth (1/4) clerical support.

Parole Officer: \$32,078 (includes 7,520 for support)--Lincoln region

\$29,738 (includes 5,520 for support)
--Omaha

Surveillance Officer: \$31,252 (including support)--Lincoln region

\$28,912 (including support)--Omaha

Clerical: (Based on Secy I position) -- \$16,448

To expand this program, it is not anticipated that legislation is necessary. General Fund support is necessary.

2. Mutual Agreement Programming

Mutual Agreement Programming (MAP) is an approach to corrections that is designed to encourage humanity and efficiency in the criminal justice system. MAP recognizes some very basic interests of offenders: (1) it provides specific information to the offender as to when he/she can expect to be released from prison; and (2) it tells the offender what specifically he/she must do to achieve release on parole. MAP is based on the principles that:

- (1) offenders can and should help determine their individual rehabilitative needs;
- (2) The period of imprisonment can and should help offenders acquire the skills, self-discipline, and self-respect necessary to be productive citizens;
- (3) Institutional and parole authorities should explicate and coordinate their goals, programs and expectations so that an offender's behavior during imprisonment can contribute to and be recognized as contributing to his/her readiness for release;
- (4) The conditions and date of parole should be made explicit so offenders know what is expected of them to earn release, and when release will occur if they fulfill their obligations.

MAP is a mechanism to expedite the parole process, to bring greater rationality to the parole board's decision-making process, and to facilitate long-term planning as to what services, facilities and equipment must be provided by correctional authorities. It can also facilitate planning for the offender's return at the community level so that programs are available upon the offender's release.

MAP refers to collaboration between the offender, corrections personnel and to the Parole Board to develop and design a program to meet the offender's individualized needs while in prison. The result is a legally binding contract that articulates parole release criteria and specifies a definite parole date contingent on successful completion of specific conditions and objectives. The MAP program is not designed to achieve release for an offender prior to the earliest parole date for which the offender would otherwise be eligible. It is designed to expedite the parole process and to give the offender goals to work towards. The goals are typically in the areas of work assignments, education, skill training, and treatment.

The program is not designed for every offender. Offenders with very violent backgrounds and long sentences may not be appropriate for the program. Generally, the program is targeted at offenders who (1) are of at least medium custody status, (2) are within twenty-four (24) months of parole eligibility or

discharge at the time the contract becomes effective, (3) have an interest in participating, and (4) are capable psychologically of participating. If an offender violates the terms of the contract, the contract is terminated.

Implementation of the program would require one position to serve as the coordinator. The program would not require any legislation, however a resolution indicating legislative intent that a program be established would be advisable. The resolution should be directed to the Department of Correctional Services and the Parole Board.

3. Options for Parole Revocation

Finally, the Legislature should consider the implementation of parole revocation alternatives in which sanctions, such as intensive parole supervision, electronic monitoring, or detention and diversion centers, are imposed for technical violations of parole rather than returning these offenders to prison. As indicated previously, FY 88-89 figures indicated that 185 parolees had been returned to prison for violating parole.

SUMMARY

Just as it's important to have a range of options available to judges and correctional authorities, so too is it important to have options available to the Parole Board and Parole Administration. Following are recommendations for reducing the prison population through the use of parole:

1. Increase resources to Parole Board
2. Expansion of Intensive Parole Supervision Program
3. Implementation of Mutual Agreement Programming
4. Revision of good-time laws
5. Implementation of parole revocation alternatives in which sanctions, such as intensive parole supervision, electronic monitoring, or detention and diversion centers, are imposed for technical violations of parole rather than returning the parolee to prison.

INTENSIVE SUPERVISION PROBATION PROGRAMS

One of the many programs that have been tried in other states as an alternative to incarceration is Intensive Supervision Probation (ISP). ISP provides a logical intermediate level of supervision between the minimal level provided by regular probation and the high (and expensive) level of supervision provided by a sentence to jail or prison. While the regular probation officer has a caseload of 100 probationers the ISP officer's caseload is usually in the range of 10-25. With such a low number of cases the officer can meet with the probationer 2-5 times a week and also conduct random home visits and random drug testing. An ISP program can also include electronic monitoring, drug and alcohol counseling, restitution, community service and house arrest with the sentence tailored to the offender and the offense committed in the same manner as is now done in regular probation programs. In most ISP programs the officer, court, offender, local government, and community service providers work together to set up the probation program. One of the advantages of ISPs is that the offender stays in the community, retains his or her job and continues to pay taxes and support the family as well as paying for part of the cost of the program if financially able.

At the request of the LR 222 staff, the Department of Correctional Services did a study of their inmate population to determine the number of offenders currently being incarcerated who would be likely candidates for ISP programs. The study started by eliminating those that had been classified as medium or maximum security upon admission to the department. Of the pool of inmates left for possible diversion, those that had prior commitments to the department, or were committed for violent offenses or dealing drugs were eliminated from consideration for diversion. The study found that given these criteria 303 offenders could be diverted from incarceration this fiscal year if diversion programs were in place now with that number rising to 370 by FY1993-94. An important caveat, noted in the study as well as here, is that the offenders' criminal record is not directly accounted for in the study (the records are indirectly taken into account because they are reviewed by the department when the offenders receive their security classification). As an example an offender who served prior jail time for a violent offense would not necessarily have been eliminated from consideration for diversion by the process used. Thus, the estimated numbers of those which could be diverted were reduced by 33%, resulting in a potential 202 being diverted this year rising to 246 by FY1993-94.

If such an ISP program were implemented, with the number of inmates discussed above diverted, the projected overcrowding at DCS facilities could be reduced from 219% of design capacity by FY 1993-94 to 208% of design capacity by that year. The cost to the state of operating an ISP program to divert up to 246 offenders a year from prison would be \$750,000 to \$1.25 million general fund dollars per year. This assumes that 60% of those placed on ISP are actually diverted from prison, with 40% being diverted from regular probation and jail. These projections also assume a 23% failure rate of those on ISP programs. The cost could be reduced if statutory changes are made to ensure that ISP candidates are being diverted from incarceration at the DCS instead of from the general offender population. For example, in Montana only those that originally receive prison sentences are considered as candidates for ISP programs. The advantage of limiting ISP programs to prison diversion are cost savings and the possibility of diverting larger numbers from prison. The advantage of leaving ISP programs open to participation by the general offender population is the potential for alleviating jail overcrowding and a greater opportunity for judges to provide an appropriate punishment for the crime and offender involved. Leaving the ISP programs open would also provide better programming and supervision for some offenders who are now being sentenced to regular probation because of a lack of better options.

Nebraska has had a pilot ISP program in place in Lancaster County since September of 1988. The project is funded through a federal grant and employs 2 officers and 1 staff person, with the county providing the office space and supplies (as is the norm throughout the state's probation system). Officers carry a caseload of 15 offenders each and electronic monitoring is utilized with the program. The pilot project in Lancaster County has been in operation only a short time, so an in depth evaluation is difficult, however, the program has been successful in the limited number of offenses committed by offenders participating in the program, none of which have involved violence. Due to the discretion granted judges in sentencing, no statutory changes were required to implement the pilot ISP program in this state. However, if a program were implemented on a statewide basis it would be advisable to make statutory changes to regulate and promote the use of ISPs.

Intensive supervision probation programs are in place in a majority of states already, and although many have not been in place long enough for long term results of the programs to be evaluated, initial studies of ISPs are for the greatest part positive. A 1988 survey by "Corrections Compendium", a trade journal for correctional employees and policymakers, came up with the following information on ISPs:

34 states utilizing ISPs consider them successful in keeping people out of prison, 2 states consider them ineffective

Of 327 participants who completed New Jersey's ISP program, only 14 were convicted of new offenses

Costs varied, but were always half or less than the states' cost for incarceration,

Florida estimates 72% of participants were diverted from prison, while Georgia estimated 59% were diverted

Other studies of ISP programs have shown that comparisons using offenders carefully matched for characteristics indicate that those placed in ISPs are less likely to be rearrested than similar offenders placed in prison (Petersilia & Turner 1986), and that because of the use of random drug testing, curfews, and close supervision, ISP programs have been particularly effective for those with drug abuse problems (Erwin & Bennett 1986).

There are, of course, disadvantages to ISPs. They broaden the criminal justice net with their close supervision of offenders, creating more opportunities for criminal activity to be detected. And thus have the potential to raise criminal justice costs by increasing the detected offense rate. Offenders that are left in the community and placed in ISPs, no matter how carefully screened, present a greater danger to the community than those that are incarcerated. Nevertheless, properly administered ISPs are proving themselves to be a rational, cost effective alternative to incarceration.

GOOD TIME

Neb.Rev.Stat. sections 83-1,107 and 83-1,107.01 are the source of the good time laws for the State of Nebraska. Current law provides that an offender may have his or her sentence reduced for "good behavior" and "faithful performance of his assigned duties". The difference is in how these statutes are applied to an offender's term.

For good behavior, the term shall be reduced by two months the first year, two months the second year, three months the third year, and four months for each succeeding year of the offender's term. This time is deducted from both the offender's minimum term to determine the date of parole release eligibility, and from the offender's maximum term, to determine the date when the offender is required to be discharged from the institution.

For faithful performance of his assigned duties, an offender receives an additional two months' reduction of sentence per year, to be deducted from the maximum term.

The good time received for good behavior and faithful performance is not actually different. If a prisoner receives good time for one, he or she will receive good time for the other. However, there is a difference when the time is actually computed. Since "good behavior" good time is deducted from both the minimum and maximum terms, and "faithful performance" good time is deducted from the maximum term, there are many cases in which an offender's mandatory release date and parole eligibility release date may be extremely close or even overlap. Thus an offender may elect to wait for mandatory release rather than be under parole supervision, especially if there is little or no difference between release dates. (See also the Parole Section of this report).

This problem could be alleviated by either amending "faithful performance" good time so that credits would apply to both minimum and maximum terms or by combining the two forms of good time and applying an equal amount of time to be deducted from both minimum and maximum terms.

Good time is one of the oldest methods utilized to reduce overcrowded prisons. The New York Legislature first introduced the concept in 1817 as a reaction to the overcrowded conditions within the state's only prison ("Overcrowded Time: Why Prisons Are So Crowded And What Can Be Done", 1982, the Edna McConnell Clark Foundation). Since good time is awarded for good behavior, some states have learned that a 'get tough' philosophy relating to good time, in which good time has been reduced or eliminated, has only led to an increase in population and tension since the inmates have no reason to avoid trouble.

Any change in good time laws would apply prospectively to those individuals incarcerated after the effective date of the act. It would require Board of Pardon approval for the change in good time to apply retroactively. Although absolute numbers are difficult to predict, a change in the good time laws could affect length of stay by as much as two to five months for inmates incarcerated after the effective date of the act.

It must be noted that a change in good time may upset inmates who have been incarcerated under a more stringent law. Presently, there are three different forms of good time being applied to inmates.

Divertible population: Average length of stay would be reduced from two to five months, depending upon the change in good time, thereby reducing prison populations by 9 to 13.7 percent when fully implemented. This would be based upon the premise that judges would not begin to give stiffer sentences in order to compensate for the additional good time.

Cost: Approximately \$300,000 for additional parole costs.

MERITORIOUS GOOD TIME

In addition to good time for good behavior, good time given for educational, vocational or even employment achievements could be considered. Department of Correctional Services statistics show that 39 percent of the inmates have less than 12 years of schooling, with 7 percent having less than an eighth grade education. By providing good time credits for educational achievement, it would encourage inmates to achieve more than just credit for good behavior, and by increasing their education, increase their chances of obtaining employment in the outside. According to the Bureau of Governmental Research and Service, University of South Carolina (January 1987, No. 35), "In addition, prison officials are very supportive of programs which allow inmates to reduce their sentences by participating in educational and vocational programs. While the rehabilitative effects of such programs have been overestimated in the past, it is both legally and practically important to provide opportunities for meaningful activity to inmates who will eventually return to the community. Apart from the possibility of rehabilitation, corrections officials find such programs to be indispensable for managing a prison. The dangerous inmates are often those who have lost all hope and have no incentives to obey prison rules."

During the past year, approximately 492 inmates participated in some form of educational program offered through DCS. LCC, OCC and NSP have the widest array of programs and contract with Metro and Southeast Community Colleges for teaching assistance. York offers fewer college courses, but is expanding its horticultural and clerical arts courses. Hastings offers the least opportunities, but has contracted with Hastings Central Community College to expand its programs as its population increases.

DCS Educational Five Year Plan Committee is studying projected educational needs and will report its findings in March of 1990.

Total diverted population: Dependent upon the time given for the educational achievement. What should be considered are the other benefits that are difficult to assess in terms of cost, such as the inmate's feeling of self worth, his or her ability to adapt to the outside, and, just as important, another stabilizing factor for the prison in terms of a reduction in inmate idleness.

Cost: Current educational costs to the system amount to \$1.2 million annually. Possible enhancement of programs may be necessary if good time provides incentive for more participation.

CONSTRUCTION

The following estimates for construction and operating costs for new housing facilities were prepared by the Department of Correctional Services. If all the proposed facilities are constructed, 510 beds will be added to the DCS adult system, thus increasing design capacity 30 percent. Much of the proposed construction would be dorm-style housing, which is generally considered inferior to individual cells for prison management purposes. But, given the political realities concerning this state's budget, the dorm-style housing provides an effective compromise between no construction and much more expensive single or double cell housing (for example, compare the cost of the 80 bed single cell housing unit at the penitentiary versus the 150 bed dorm-style unit at the Omaha Correctional Center, listed below).

- Omaha Correctional Center: 150 Bed Housing Unit

A minimum security, dorm-style housing unit within the perimeter of the Omaha Correctional Center is proposed. The building is slated for completion in August of 1991. Construction Cost: \$1,738,400. Annual Operating Cost: \$822,718.

- Nebraska State Penitentiary - Control Unit

An 80 bed control unit within the perimeter of the Nebraska State Penitentiary to replace the current 36 bed unit is proposed. The control unit is where inmates with disciplinary problems are placed. Due to the housing shortage, the old control unit, built in 1955, would probably be converted into a regular housing unit. Completion date is estimated in August of 1992. Construction Cost: \$4,813,672
Annual Operating Cost: \$543,840

- Nebraska State Penitentiary - 80 Bed Housing Unit

A regular 80 bed housing unit within the perimeter of the Nebraska State Penitentiary is proposed. This would be a maximum security single cell facility. Completion is estimated in December of 1992. Construction Cost: \$3,156,000
Annual Operating Cost: \$541,514

- 200 Bed Housing Unit

Funds are requested for a minimum security dorm style housing unit which could be built on DCS-owned land adjacent to the Lincoln Correctional Center or elsewhere with a slightly higher cost for land acquisition. Costs for this facility are higher than the proposed Omaha Correctional Center Unit because the 200 bed facility would be a "stand-alone" prison with its own kitchen, visiting area, etc. The project is slated for completion in October of 1992.

Construction Cost: \$3,532,980

Annual Operating Cost: \$1,380,332

PRELIMINARY ANALYSIS & RECOMMENDATIONS
TO THE
SELECT COMMITTEE ON PRISON OVERCROWDING

November 16, 1989

Members of the Select Committee on Prison Overcrowding

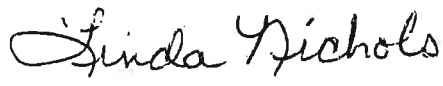
Dear Committee Member:


This Preliminary Analysis and Recommendations to the Select Committee on Prison Overcrowding was compiled by a research staff comprised of individuals from Fiscal, Research and individual Senator's offices.


The summary of recommendations are divided into short and long term strategies. Topics analyzed include good time, emergency release mechanisms, parole, commutation of sentences, intensive supervision probation programs, substance abuse treatment programs, community corrections, jails, shock incarceration and juvenile detention.

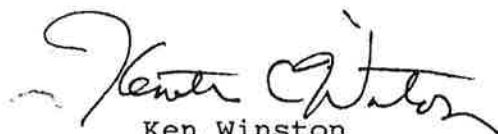
We respectfully submit the enclosed materials for your consideration.


Sincerely,


Linda Nichols
Legislative Aide
Senator Gary Hannibal


Greg Lemon
Fiscal Analyst
Legislative Fiscal
Office Division


Robin Kimbrough
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Research


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* Note: This study was revised 1/1/90 solely for typographical and technical changes, none of which were substantive in nature.

I. PRELIMINARY ANALYSIS AND RECOMMENDATIONS TO THE SELECT COMMITTEE ON PRISON OVERCROWDING

SECTION 1. INTRODUCTION

As of October 31, 1989, the incarcerated adult population of the Department of Correctional Services (DCS) stood at 2,325. Since June, the total prison population has jumped by 229 inmates. The total population of DCS is fast approaching 140% of design capacity and estimates project the population to reach 219% of design capacity by fiscal year 1993-94.

One of the consequences of rapid population growth and overcrowding has been the increase in reports of inmate misconduct and major incidents throughout DCS facilities. There were 1,174 reports of inmate misconduct from May-August 1989 compared to 802 such reports in 1988 during the same time period. There were 27 major incidents in 1989 (i.e., escape attempts, arson or assaults that result in injury), compared to 16 in 1988. Increased misconduct has been most severe within the facilities currently under the most strain. Lincoln Correctional Center at 162% of design capacity reports a 46% increase in misconduct. NSP at 147% of design capacity reports a 49% increase in misconduct in the past year.

The problem presented to the research staff of the Select Committee on Prison Overcrowding was to find a way to relieve the current overcrowding situation while at the same time avoiding construction of new prison space and avoiding a federal court order mandating relief. Given the current statistics and population projections, the problem of prison overcrowding is virtually impossible to solve without new construction unless the state undergoes a drastic overhaul of its current classification of penalties within the criminal code. This is an unlikely prospect given today's political climate. A more viable and rational alternative is the consideration and acceptance of a range of alternatives to incarceration for certain nonviolent offenders, reformation of laws relating to good time, parole eligibility, emergency release measures, rehabilitation of substance abusers within the offender population, and enhancement of staffing and DCS programs in order to maintain service levels as population increases.

In arriving at our recommendation for alleviating prison overcrowding we have assumed certain policy goals are in place. These are based on the premise that the state's resources are limited and that the percentage of those resources which must be utilized for criminal justice programs should be allocated as efficiently as possible. These goals are:

- Protection of the public from violent offenders
- Reparation and restitution for victims of crime
- Rehabilitation of offenders, including the expanded use of substance abuse and mental health programs
- The maintenance of ties that offenders have to society, including jobs and family relations, where this does not present a danger to the public

Given the committee mandate, and the aforementioned policy goals, there search staff of the Select Committee on Prison Overcrowding has prepared the following report for your consideration.

SECTION 2. EXECUTIVE SUMMARY OF RECOMMENDATIONS

The following is a summary of the programs and changes we feel are feasible and realistic in order to begin to solve the problem of prison overcrowding in the state of Nebraska. If adopted, these changes may not meet the committee's mandate of avoiding both a court order and construction of new prison beds, but would provide a more rational and efficient method of dealing with the state's offenders than construction alone.

A. Short Term Measures (Six months or less for implementation)

1. Restoration of good time credits which have been administratively revoked by DCS for immediate release of 50-60 inmates
2. Passage of emergency release legislation which would mandate release of prisoners when populations reach a critical level
3. Streamline the parole process and develop programs to help offenders meet parole requirements
4. Commutation of sentences on a case-by-case basis by the Board of Pardons
5. Expansion of staffing and programming at existing DCS facilities

B. Long Term Measures (More than six months to implement)

- Implementation of a statewide intensive supervision probation and parole programs to reduce the incarcerated population from 219% to 208% of design capacity by fiscal year 1993-94 at an estimated cost of \$1.5 million annually. (Federal monies may be available to carry out projects that demonstrate innovative alternatives to incarcerating non-violent offenders)

- Amending good time provisions and implementing a good time program based upon educational or vocational achievement to further reduce the population to 178 to 183% of design capacity by fiscal year 1993-94 at an estimated cost of \$300,000 annually.
- Creation of correctional facilities in local communities (restitution centers) where offenders would reside while maintaining his or her job and ties to the community to further reduce the population to 169 to 174% of design capacity within five years at a cost of \$950,000 annually.
- Expanded substance abuse and mental health treatment programs for offenders while under the jurisdiction of the Department of Correctional Services

C. JUVENILE SERVICES

Preliminary analysis of data gathered from offender files at the Youth Development Center in Geneva indicates that Nebraska may be over-utilizing institutional placement for juvenile offenders. This may be due, in large part, to a lack of alternatives available for placement within the community. We would recommend the Legislature create incentives for the creation of community programs for juvenile offenders. As these alternative programs are implemented, it may be possible to close either Kearney or Geneva and consolidate functions of the YDC's at the remaining facility. When the local programs are implemented, the role of the Division of Juvenile Services could be expanded to provide oversight and coordination of these programs in a state and local partnership.

SECTION 3. CONCLUSION

As the complex problem of prison overcrowding has been analyzed, it becomes clear that the problem is more societal than correctional in nature. There is no one simple answer to the problem of prison over-crowding nor the larger problem of crime and society's response to it.

The recommendations for change contained in this analysis should not be considered as separate ideas but as a single strategy which incorporates a spectrum of options to be put into action within the next two years at most.

Other states which have made serious changes in the numbers and methods by which they incarcerate their citizens have been most effective when they include representatives from all sides of the incarceration problem, and have the full cooperation of all branches of government so that the strategy is applied in a systematic, uniform manner. A direct cause of the overcrowding problem has been due to these very forces working against each other, notwithstanding the good intentions behind every statute, regulation and theory. According to Allen Breed, Chairman of the

National Council on Crime and Delinquency, "No one wants crime, but the pretense that incapacitation alone will solve the crime problem is simplistic and misleading". Accountability and responsibility for the crime problem as well as the problem of prison overcrowding must begin with the recognition that with every law there is a cost well beyond that which is documented in the fiscal note.

A more detailed analysis of the programs and recommendations outlined above and other alternatives to incarceration follows.

II. JUVENILE DETENTION SYSTEM

This paper will focus on the Juvenile Detention System. More specifically, it will propose alternatives to the incarceration of youths within the two large detention centers located at Geneva and Kearney. The reason for the proposal is twofold. First, the possible cost savings resulting from the placement of juvenile inmates in less expensive probation programs thereby closing one of the facilities. Second, future cost savings realized by lower recidivism rates resulting from the placement of youths in better structured probation and parole programs with more emphasis on guidance to help them become more productive members of society.

CURRENT STATUS

The state operates 3 programs; 2 youth detention centers and the parole administration. In 1988, it took \$5,455.626 to house, supervise, counsel and instruct the daily average of 220 youths in the youth detention centers (YDC). These numbers average out to \$23,720 per year per youth, or 67.73 per day per youth. The parole administration spent \$660,979 in 1988 on an average daily population of 237 youths or \$2,784 per year per youth and \$7.63 per day per youth.

BASIS FOR ALTERNATIVE DIRECTION

The basis of this alternative direction comes from a study instigated by the School of Social Work, University of Michigan entitled Reinvesting Youth Corrections Resources: A Tale of Three States. The study reviewed the restructured juvenile systems of Massachusetts, Utah and Georgia. In short, all three states closed down long-standing, large juvenile facilities in favor of intensive supervision and other treatment programs. Their actions resulted not only in immediate cost savings (Massachusetts mostly shifted its budget to cover the new costs), but more importantly, it reduced the recidivism rate among those released.

SYNOPSIS OF OTHER PROGRAMS

MASSACHUSETTS

Massachusetts has the distinction of opening the first youth correctional facility, the Lyman School, in the United States in 1846. Students substantially destroyed the facility by fires and riots during its first decade of existence. Undaunted, the state rebuilt the facility and others as well to better control the large number of delinquent youths. However, over the next 126

years, internal documents and local media coverage uncovered many stories of abuse, riots, deaths and scandals throughout the system. These accounts graphically illustrated a corrupted and essentially bankrupted system which continually drained money but produced little favorable results.

In 1969 Jerome Miller became the first commissioner of the newly-created Department of Youth Services. Within his first two years of office he closed all of the facilities and decentralized the administration to oversee community-based alternative programs. Today, the same 45 private, non-profit agencies receive half of the Department's \$46 million dollar budget. The Department appropriates these services through a "Purchase of Service" account which permits the Department to better meet the needs of its clientele. Statistically, the Massachusetts Department of Youth Services serves approximately 2,000 juveniles a day. The system places two-thirds of these committed youths at home to fulfill their sentences. Others stay in foster homes, group homes, secured treatment centers or participate in the "Homeward Bound" program.

The major reason for Massachusetts's success is the development of the "Outreach and Tracking" and "Tracking Plus" programs. Under these programs, caseworkers closely monitor their clients with no caseworker handling more than 6 cases.

Massachusetts also created a detailed classification system to oversee the entrance of youths into the secure treatment programs. A three person panel reviews the youth's entire case history to determine the proper level of treatment. A detailed classification grid which ranks the severity of the offense and assigns a corresponding range of proposed terms in the secured treatment setting. In a Violent Offender Project, youths undergo a 3-step treatment process of (1) secured treatment phase; (2) non-secure residential phase; and (3) follow by intensive casework supervision when placed back into the community. The Department obtained favorable results from this effort when it compared youths placed in this system with a controlled group placed simply in secured treatment then released:

*All of the project participants went to a community residential program upon release from secure treatment. Only 42% of the control group was placed in such a program before returning home.

*Seventy-nine percent of project participants were able to find unsubsidized employment, as compared to 29% of the control group.

*Seventy-five percent of project youths continued in an educational program after being released from the secure setting, compared to 46% of the control group.

*Finally, a preliminary review of comparative recidivism rates undertaken in 1985 indicated that only one third of the project participants had been

rearrested for subsequent delinquent activity.

As a result of these efforts briefly explained, the following resulted: (1) In 1973, 129 youths were bound over for trial as adults, in 1985, only 12 while the number of serious youth offenders has increased; In 1969, the state maintained 4 institutionalized facilities and 630 beds, today only 36 need such placement in secured facilities; most importantly in 1972, 35% of the state's Department of Correction inmates were youth offenders, in 1985, only 15% were.

UTAH

For over a century, Utah principally relied on a century-old, 450 bed training school which housed runaways to felons. A 1976 study commissioned by the state legislature revealed the system's inadequacies (overcrowding, abuse, lack of alternative programs, etc. . .). In 1980, a task force recommended severe changes to deal with youth crimes including:

1. Establish, through statute, a Division of Youth Corrections to give visibility to and accountability for youth corrections programs.
2. Establish specific criteria to be followed for the use of secure care.
3. Develop regional, community-based, non-secure observation and assessment programs to replace those currently operating at the Youth Development Center.
4. Decentralize youth corrections.
5. Build three small (30-bed) regional secure facilities to replace the Youth Development Center.

The Division of Youth Corrections (DYC) began providing rehabilitative programs in 1981 for youths between 10 to 18. The courts maintain control in deciding whether to place a youth either in assessment and observation, placement in a community program or a secured setting. Today, the DYC has two 30-bed high security facilities for violent and chronic offenders, three regional, non-severe observation and assessment centers; and a wide range of community-based programs. Both private providers and county government entities contract for these community services.

The National Council on Crime and Delinquency surveyed the success of Utah's system in terms of not compromising public safety and found "substantial declines in the rate of offending for chronic and serious juvenile offenders (who were) placed in well-structured community programs."

GEORGIA

As with Massachusetts and Utah, Georgia has turned away from treating children like miniature adults and has taken great strides in developing alternative programs along with a separate, more competent juvenile system. These efforts included the creation of circuit-wide juvenile court judgeships with separate juvenile court judges in 62 of the state's counties, new legislation which gives judges a variety of programs and treatments to place juveniles including the suspension of driver licenses; and deinstitutionalization of the system as a whole.

The state accomplished many of its goals by first creating a system-wide planning board for juvenile justice. The board provided incentives for deinstitutionalization of status offenders, removal of juveniles from jails, establishing a network of alternative programs, and the expansion of delinquency preventive programs. The program has received \$10 million in federal need money over the past nine years to help in accomplishing these goals.

Georgia has obtained impressive results with these changes. In 1975, the state detained 2,000 juveniles in adult jails. In 1986, the jails held only 73 juveniles with sight and sound separation from adults. In 1970, Georgia institutionalized 92% of the children. By 1985, the state placed 59% of its youths in alternative programs.

The state has also established guidelines for the future development of its juvenile systems. Key components have shown up in the other states as well including a separate and distinct juvenile justice system, maintaining a variety of treatments and programs, keeping children safe from mentally or physically abusive environments, establishing accountability of the juvenile to the victim, sentencing youths in proper proportion to the magnitude of their crime, and decentralizing the system to provide more individualized and competent treatment from trained personnel.

OTHER PROGRAMS

There are many programs the state and counties can utilize to more effectively handle this problem.

Observation and assessment facilities: These provide for temporary, closely supervised residential placement while the youth's needs are evaluated and a treatment plan developed. Length of stay in Utah, for example, can be for up to 90 days.

Residential community programs: They provide 24-hour supervision and treatment. This option takes many forms, including emergency shelters, foster care, proctor advocates, and group homes. Restitution is often an important component of noninstitutional placement programs.

Emergency shelters: These are used as a front-end diversion from the juvenile justice system for runaway and ungovernable youth. Their goal is to involve parents, who often have given up on the child, through reconciliation and crash courses in parenting.

Foster care and proctor advocates: These feature home-like settings and often house juveniles whose parents don't want them at home. Utah's Proctor Advocate program may place one or two problem juveniles in the proctor's home. The proctor acts as a parent. A counselor also works with these youths and provides support and advice to the parent. A caseworker may see his charge three to seven times a week and will have a caseload of five to eight children. The youth, proctor, and caseworker determine a treatment plan that is treated as a contract with the youth.

Group homes: These take care of a much larger number of juveniles, perhaps as many as 25. Residents earn privileges by staying out of trouble, performing their assigned responsibilities, participating and having a good attitude. But residents often object to locating group homes in their neighborhoods, causing some to be located in areas distant from the juveniles' homes. In addition to being sometimes poorly trained, staff are usually overworked and underpaid, causing high turnover and another source of instability in the juvenile's life.

In-home placement: The least expensive alternative, this placement often includes a tracking component as well as an individualized treatment program. Caseworkers are assigned to make request contacts with their charges to ensure that juveniles are attending school, meeting job responsibilities, and honoring curfews. In addition, restitution may be required by the juvenile.

Tracking Plus: Small, highly structured residential facilities to house youth for brief periods of time and give more unsettled juveniles stabilization prior to being given an opportunity to return home.

Comprehensive Juvenile Service Centers: Educational, vocational, counseling and employment-related services; about 1/2 to 1/3 the cost of institutionalization.

Violent Offenders Project: Returns juveniles to system via a secured treatment phase to a non-secured residential phase followed by intensive supervision.

Family Treatment: Highly skilled therapists deal directly with the family to preserve the unit.

Proctor Advocate: One on one counseling for the more seriously delinquent youth. Discussed on page 11.

Drug and Alcohol Outpatient Services: Non-residential assessment and outpatient counseling for both individuals and groups. Includes both tracking and daily contact.

Home Detention: The cheapest method. Also provides the benefit of maintaining the family structure.

Holdover Facilities: To maintain supervision over a youth for a short period of time (72 hours max) until proper placement can be determined.

Family Crisis Intervention Programs:

Runaway Programs:

Broward County, Florida, is experimenting with two tracking programs. An intensive supervision feature with a one-to-ten caseworker load requiring seven random face-to-face contacts between caseworker and juvenile offender each week. Juveniles must telephone their caseworker to get permission to go anywhere. Highly intensive supervision requires four face-to-face contacts daily at work, home or school. These offenders wear an electronic monitor on their wrist, which, when a caseworker phones, must be attached to the phone within 30 seconds.

PROPOSED CHANGES

Without having studied the severity of charges against those housed in Kearney but having reviewed several files at Geneva, it would be realistic as well as feasible to reduce the numbers at both facilities dramatically given the results obtained in Massachusetts and Utah.

Establishing guidelines similar to other states such as Utah, Massachusetts or Florida, Nebraska could reduce confinements to a maximum of 30 beds each for serious male and female offenders. To accomplish this feat, the state should provide counties with funds necessary to create and operate these programs as LB 663 proposed last year. Most counties have foster care, group homes and detention centers already. The state need only provide incentives (funding) for the development of these new programs (house arrest plus, intensive probation supervision, community services centers).

The state would gain monetarily. The following calculations are simplistic and they do not take into account the various and unknown expenses which will arise. However, they do exemplify the possible cost savings. For example, if the juvenile population is reduced (the male and female total) to the current population at Geneva, then the budget from Kearney, \$3.5 million, can be diverted to other programs.

The cost of other programs vary but even if we place cost between \$20-25 per youth per day for the remaining 150 residents, the state could save 2.15 to 2.5 million at first glance. These figures, however, need to take into account additional funds counties will need to administer these programs and the needs of the state to oversee the funding, but even with these factors added, the state will receive some financial benefit from the change.

A second financial benefit the state can receive is long range. The under-current to all successful programs is the aggressiveness which agencies pursue their charges. There is an apparent connection between the attention youth offenders receive and their rate of recidivism. This relationship can be compared to the difference between someone having a stable home life or a disruptive one. The ones with stable lives do not end up in jail as often. More aggressive programs which instigate more contact between youths and counselors/probation officers establish a pseudo stable home life.

Again to obtain this goal, it may require the state to invest more funds into manpower and other resources. Counties must develop programs such as job placement, educational opportunities or other guidance tools to dissuade youths from re-entering the system at a later time.

THE SYSTEM

A Placement Board; 3 member panel: Its function is to to decide the proper placement of youths in programs which will most benefit them. For less populated area counties would be able to use each others facilities.

State Funding: Funding by the state should allow for the greater diversity of choosing programs. In Massachusetts, the Department of Youth Services has 45 non-profit agencies from which to choose.

County Participation: As described in LB 663, counties should care for their troubled youth. The state should provide incentives for smarter punishments.

Background Analysis: The system must provided for detailed background analysis so that all youth can be better placed. Also, such information will aid in future funding and program development.

Federal Grants Money: Money is available and should be used. The counties or the state can investigate this area on a need basis, or it can strictly be a service provided by the state.

Purchase of Service Account: This system allows for diversity in the selection of programs. It permits the system to adjust to the clientele involved.

CONCLUSION

From the accumulated information found in several publications inclusive of many more studies, the following paragraph best summarizes the approach a state should take in regard to juvenile delinquency:

A diverse group of states has found that intensive, individualized services provided in small, family-like residential settings or in the juvenile's own home yield comparable or reduced recidivism rates. The success of these programs appears to depend on how well they are managed, their diversity, and their intensity, all of which may be affected by state funding decisions.

The only question then becomes, "is the state willing to change?"

To expand upon the recommendations mentioned in the Executive Summary, the following proposals are offered for your consideration:

- I. Close Kearney
 - A. Remodel Geneva -- Two/30-bed dorms and a spare 30-bed dorm.
- II. Expand Duties Within Division of Juvenile Services
 - A. Legislation to create a Juvenile Parole Juvenile Probation and Parole Administration (JPPA).
 1. Current JPA head oversees all new operations.
 2. Someone familiar with incarceration alternatives to be hired as Director of Youth Programs to oversee programs instituted throughout the six newly created districts.
 3. Six districts are created headed by district managers who oversee programs instituted by counties to handle the return of youth from Kearney and Geneva as well as future charges.
 - a. Districts
 - i. Douglas
 - ii. Lancaster
 - iii. Northeast
 - iv. Southeast
 - v. Central (Grand Island, Kearney, Hastings)

vi. West (North Platte, Scottsbluff)

- b. Counties within the districts may join by agreement to operate their Juvenile Services Unit under approval of the JPPA Panel.
- c. District Managers shall be shall be nominated by the JPPA Panel (Assistant Director of Juvenile Services, JPPA Administrator, and the Director of Youth Programs) for approval by the Governor.
- d. In hiring, great deference will be given to current directors and administrators of both the Geneva and Kearney facilities.

B. Legislation to Require Counties to Create Alternative Programs to Incarceration.

- 1. Counties within one year of effective date of legislation must appoint an Area Juvenile Services Manager (Area Manager) who will deal directly with the State District Manager and the Director of Youth Programs in providing programs for juveniles.
- 2. The JPPA Panel must approve all requests for programs developed by districts for funding purposes.
- 3. Counties/Districts shall create District Panels consisting of the District Manager, the County/District Area Manager and two other individuals experienced in juvenile prosecution, detention or rehabilitation recommended by either the District Manager or the Area Manager and approved by the JPPA Panel.
- 4. District panel will review juveniles case history, recommendations from local juvenile officials and sentencing judge to determine placement of youth based on guidelines developed by the JPPA Board.

C. Legislation to Provide Funds.

- 1. State will provide funds and incentives to Counties/Districts to implement these new programs. LB 663 contains such a proposal.
- 2. Programs must meet guidelines established by the JPPA Board consisting of the Director of Juvenile Services, JPPA Administrator, Director

of Youth Programs and a combinations of lawyers, judges or social workers recommended to or by Board, with at least one such individual from each sector, which would bring the total number of this Board up to seven.

3. The guidelines established by the Board will provide the criteria which juveniles will be reviewed under by the District panels for placement within the proper program or facility.
 4. The purpose of the guidelines should be pointed toward incarceration alternatives and providing guidance and supervision of youths in readjusting behavior to become productive members of society again.
 5. The JPPA Panel will serve as a supervisor to the District panels to aid in decision making if necessary.
- D. Legislation to Create a 3-member Search Committee to seek a Director of Youth Programs to oversee the development of programs within the Division of Juvenile Services and advise on the development of programs throughout the state.
1. Individual sought must have extensive experience in the development of juvenile services and in state juvenile operations.
 2. Final approval rests within the Governor but the Governor may not approve any individual unless the 3-member search committee submits the name.

III. THE STATE PROBATION SYSTEM

The state probation system has a unique funding and administrative structure. After the merger of the municipal and county court systems in 1985 all probation officers in the state and their support staff have been supported by state funds for their salaries, travel and training. The counties provide offices and equipment for officers and staff to use. The probation system operates under the supervision of the state probation administrator, who is employed by a state agency referred to as the Supreme Court. This agency actually includes the state's entire court and probation system, including the Supreme Court, District Courts, Separate Juvenile Courts, and County Courts. The probation system itself is further broken down into 20 geographic districts, each headed by its own chief probation officer.

Nebraska law provides that if an adult offender commits a misdemeanor or felony for which mandatory imprisonment is not specifically required the sentencing court may withhold sentence of imprisonment and grant probation (29-2260). Class I, IA, IB, II, and III felonies and, 2nd or subsequent driving while intoxicated offenses all carry mandatory prison or jail sentences in this state, while Class IV felonies and all other types of misdemeanors do not (28-105, 28-106).

When an offender receives a sentence of probation the court has broad discretion in imposing the conditions of probation. The law governing probation conditions enumerates 16 different sanctions or programs that the court may require, including the expansive last clause "to satisfy any other conditions reasonably related to the rehabilitation of the offender" (29-2262). More limitations are placed on probation sentencing practices by probation officers' caseloads and available programming than by statute. Probation officers work with the court, the offender, and service providers in the community in developing a probation plan for the offender.

The state currently employs 172 probation officers. Caseloads for the officers often exceed 100 probationers per officer at any given time. Although this is in line with the national average caseload estimated at 114 probationers per officer in 1988, these high caseloads can result in face to face contact of as little as an hour per month between probationer and probationer officer. Obviously, regular probation is not a very appropriate sanction as an alternative to incarceration for the more serious offender if the policy goals of the protection of the public and the rehabilitation of offenders are to be met.

IV. INTENSIVE SUPERVISION PROBATION PROGRAMS

One of the many programs that have been tried in other states as an alternative to incarceration is Intensive Supervision Probation (ISP). ISP provides a logical intermediate level of supervision between the minimal level provided by regular probation and the high (and expensive) level of supervision provided by a sentence to jail or prison. While the regular probation officer has a caseload of 100 probationers the ISP officer's caseload is usually in the range of 10-25. With such a low number of cases the officer can meet with the probationer 2-5 times a week and also conduct random home visits and random drug testing. An ISP program can also include electronic monitoring, drug and alcohol counseling, restitution, community service and house arrest with the sentence tailored to the offender and the offense committed in the same manner as is now done in regular probation programs. In most ISP programs the officer, court, offender, local government, and community service providers work together to set up the probation program. One of the advantages of ISPs is that the offender stays in the community, retains his or her job and continues to pay taxes and support the family as well as paying for part of the cost of the program if financially able.

At the request of the LR 222 staff, the Department of Correctional Services did a study of their inmate population to determine the number of offenders currently being incarcerated who would be likely candidates for ISP programs. The study started by eliminating those that had been classified as medium or maximum security upon admission to the department. Of the pool of inmates left for possible diversion, those that had prior commitments to the department, or were committed for violent offenses or dealing drugs were eliminated from consideration for diversion. The study found that given these criteria 303 offenders could be diverted from incarceration this fiscal year if diversion programs were in place now with that number rising to 370 by FY1993-94. An important caveat, noted in the study as well as here, is that the offender's criminal record is not directly accounted for in the study (the records are indirectly taken into account because they are reviewed by the department when the offenders receive their security classification). As an example, an offender who served prior jail time for a violent offense would not necessarily have been eliminated from consideration for diversion by the process used. Thus, the estimated numbers of those which could be diverted were reduced by 33%, resulting in a potential 202 being diverted this year rising to 246 by FY1993-94.

If such an ISP program were implemented, with the number of inmates discussed above diverted, the projected overcrowding at DCS facilities could be reduced from 219% of design capacity by FY 1993-94 to 208% of design capacity by that year. The cost to the state of operating an ISP program to divert up to 246 offenders a year from prison would be \$750,000 to \$1.25 million general fund dollars per year. This assumes that 60% of those placed on ISP are actually diverted from prison, with 40% being diverted from regular probation and jail. These projections also assume a 23% failure rate of those on ISP programs. The cost could be reduced if statutory changes are made to ensure that ISP candidates are being diverted from incarceration at the DCS instead of from the general offender population. For example, in Montana only those that originally receive prison sentences are considered as candidates for ISP programs. The advantage of limiting ISP programs to prison diversion are cost savings and the possibility of diverting larger numbers from prison. The advantage of leaving ISP programs open to participation by the general offender population is the potential for alleviating jail overcrowding and a greater opportunity for judges to provide an appropriate punishment for the crime and offender involved. Leaving the ISP programs open would also provide better programming and supervision for some offenders who are now being sentenced to regular probation because of a lack of better options.

Nebraska has had a pilot ISP program in place in Lancaster County since September of 1988. The project is funded through a federal grant and employs 2 officers and 1 staff person, with the county providing the office space and supplies (as is the norm throughout the state's probation system). Officers carry a caseload of 15 offenders each and electronic monitoring is utilized with the program. The pilot project in Lancaster County has been in operation only a short time, so an in-depth evaluation is difficult; however, the program has been successful in the limited number of offenses committed by offenders participating in the program, none of which have involved violence. Due to the discretion granted judges in sentencing, no statutory changes were required to implement the pilot ISP program in this state. However, if a program were implemented on a statewide basis it would be advisable to make statutory changes to regulate and promote the use of ISPs.

Intensive supervision probation programs are in place in a majority of states already, and although many have not been in place long enough for long term results of the programs to be evaluated, initial studies of ISPs are for the greatest part positive. A 1988 survey by "Corrections Compendium", a trade journal for correctional employees and policymakers, came up with the following information on ISPs:

- 34 states utilizing ISPs consider them successful in keeping people out of prison, 2 states consider them ineffective
- Of 327 participants who completed New Jersey's ISP program, only 14 were convicted of new offenses
- Costs varied, but were always half or less than the states' cost for incarceration,
- Florida estimates 72% of participants were diverted from prison, while Georgia estimated 59% were diverted

Other studies of ISP programs have shown that comparisons using offenders carefully matched for characteristics indicate that those placed in ISPs are less likely to be rearrested than similar offenders placed in prison (Petersilia & Turner 1986), and that because of the use of random drug testing, curfews, and close supervision, ISP programs have been particularly effective for those with drug abuse problems (Erwin & Bennett 1986).

There are, of course, disadvantages to ISPs. They broaden the criminal justice net with their close supervision of offenders, creating more opportunities for criminal activity to be detected; and thus have the potential to raise criminal justice costs by increasing the detected offense rate. Offenders that are left in the community and placed in ISPs, no matter how carefully screened, present a greater danger to the community than those that are incarcerated. Nevertheless, properly administered ISPs are proving themselves to be a rational, cost effective alternative to incarceration.

Appendix A Intensive Supervision Probation Calculations & Assumptions

ESTIMATE OF INTENSIVE SUPERVISION POPULATION

	Diverted from DOCS	Diverted from Jail or Probation	Carryover Population 18 Mo. Sent.	TOTAL
First Year (89-90)	202	135	0	337
Second Year	226	151	168	545
Third Year	246	164	188	598
Fourth Year	246	164	205	615
Fifth Year (93-94)	246	164	205	615

A number of assumptions were made when estimating the potential ISP population. It was assumed that 67% of the potential population divertable from the DOCS would actually be diverted upon closer review of their records, and that 40% of the total ISP population would be diverted from regular probation or jail. It was also assumed that the average length of ISP sentence would be 18 months. All assumptions were made based on studies of ISP programs in other states and the pilot ISP project here in Lancaster County.

NUMBER OF OFFICERS NEEDED (1 officer/15 probationers)

	Number Officers	Cost \$31,143 per	.33 staff per officer	cost \$15,752 per
First Year	22	698,985	7	116,669
Second Year	36	1,131,524	12	188,866
Third Year	40	1,242,255	13	207,348
Fourth Year	41	1,276,858	14	213,124
Fifth Year	41	1,276,858	14	213,124

15 probationers per ISP officers is the ratio used in Lancaster County and is in the same range as the ratio used in other states. The cost estimate of \$31,143 per officer is based on last years request from the Supreme Court for ISP officers plus a salary inflation factor, no inflation factor is used for the second through fifth year cost estimates.

Nebraska Probation System's
Pilot Project Report on
INTENSIVE SUPERVISION/ELECTRONIC MONITORING
August 31, 1989

Development

In 1987, the state district probation office in Lincoln, Nebraska introduced intensive supervision probation as a sentencing alternative. It was intended to fill a void between regular probation supervision and incarceration. It came at a time when the detention facilities, state and local, as well as probation, were overburdened.

Intensive supervision is accomplished using experienced supervision probation officers. Since the state district probation office in Lincoln already had a specialized supervision unit, it seemed natural for experimentation.

At the same time, Lancaster County was looking for alternatives to incarceration as a result of an ever-increasing jail population. The county was also exploring electronic monitoring possibilities.

In early 1988, the State Probation System and Lancaster County combined to request a grant from the Nebraska Crime Commission for the pilot project of intensive supervision/electronic monitoring. This was to be housed within the state district probation office in Lincoln.

In September of 1988, the project was initiated for a period of one year. We have now almost completed that first year and will be continuing into the second year with the support of the Nebraska Probation System and Lancaster County.

Objectives

The Nebraska Probation System is dedicated to fulfilling a mission which includes the protection of the community, accountability of the offender and rehabilitation to make a productive citizen. It was hoped that intensive supervision/electronic monitoring could provide a much higher level of supervision than previously possible with the resources of regular probation. This, then, would offer the necessary protection to society for the higher risk client and the time for rehabilitation for the client with high needs.

Project Design

Several different intensive supervision/electronic monitoring programs were studied throughout the United States for ideas that could properly fit into the court and the probation system in Lancaster County. After a year of study, it was decided that the screening of offenders in the presentence investigation process was the best way to decide who could be eligible for the project.

Such factors as offense, past history, job status, availability of telephone, and motivation toward help are taken into consideration. The probation office does the screening of individuals and a recommendation is given to the appropriate judge prior to sentencing.

If the offender is placed on the intensive supervision/electronic monitoring program, the court indicates what specific criteria are to be completed within the period of probation (treatment, restitution, community service, etc.) in addition to the length of probation and the number of days on electronic monitoring. The pilot project and grant are designed so that people placed on this project do a minimum of 30 days or a maximum of 180 days of electronic monitoring at the beginning of probation. This allows the intensive supervision officers to establish the offender's program expeditiously.

Each intensive supervision officer has 15 offenders on his/her caseload. As a comparison, the intensive supervision officer will spend approximately 10 hours per month per offender whereas a regular probation officer will have approximately 150 offenders and spend approximately one hour per month per offender.

The intensive supervision probation officer is equipped with a pager. The officer is on call 24 hours per day in the event the offender violates electronic monitoring (a device monitors the offender's movement). The intensive supervision probation officer checks employment, treatment, and home situations weekly and administers chemical testing randomly on a weekly basis.

Each six months the offender is reevaluated as to his/her risk in the community and their progress on intensive supervision. In some instances offenders may remain on intensive supervision for the duration of probation because of high risk and/or high needs. However, the potential exists for some offenders who have done well and present a lower risk to be reduced to regular probation supervision.

To continue this pilot project beyond the first year, the offender on this program is required to pay for participation. This is standard across the United States in similar programs. Each offender's financial status is calculated by the intensive supervision officer and a sliding scale has been established for payments of \$1.00 per day to \$9.00 per day.

From September 1988 to December 1988, the necessary steps were taken to establish this project. These steps included the hiring of experienced personnel, the development of policies and procedures, and the communication of its existence to the community. Additionally, the electronic monitoring equipment was ordered and installed.

Project Statistics

Since December 1988 there have been 45 participants in the project. Based on the sliding scale, \$14,752.00 have been assessed with a collection of \$4,970.00. The monies collected are to help defray the expense of the project. The offender is allowed the entire period of probation to pay these monitoring fees.

If this were an exclusive felony penitentiary diversion program, an intensive supervision officer could provide monitoring for 15 offenders per year. Using the Department of Corrections' statistics, at \$18,000 per year per offender would cost the state \$270,000. One intensive supervision officer would cost the state \$25,000 per year with the counties providing office space, supplies and equipment. This is a savings of \$240,000 to the state.

We have, however, experimented with both felony and high grade misdemeanor cases to test the impact on both the penal system and the local jails. An estimate of incarceration days not having to be dealt with by correctional units is 3,880 days. This figure is conservative because the days of electronic monitoring were counted rather than the usual numbers of days incarcerated which would be higher or the number of days on probation which would also be higher.

The number of violations occurring during the pilot project has been seven. The following is a list of reasons for these violations:

1. Refusal to submit to a chemical test
2. Positive chemical test (3)
3. Additional offense (bad check)
4. Additional offense (shoplifting)
5. Absconded (later apprehended)

It was originally thought that the potential existed for a higher violation rate than regular probation. This was thought possible because of the increased number of contacts. However, up to this point this does not seem to be the case.

The following is a listing of the various offenses committed by persons placed in this project:

1. Attempted criminal mischief
2. Assault/3rd degree
3. Forgery/2nd degree
4. Attempted delivery of controlled substance
5. Delivery of controlled substance
6. Possession of controlled substance
7. Insufficient fund check
8. Burglary
9. Use of a weapon to commit a felony
10. Revocation of probation
11. Driving while intoxicated/3rd offense
12. Driving while intoxicated/2nd offense
13. Sexual assault/3rd degree
14. Suspended license/2nd offense
15. Theft by receiving stolen property
16. Sexual assault of a child

Conclusion

After two years of planning and implementing, there are still many avenues to be explored and corrections to be made. However, it is believed that there is a solid base for this type of programming in the future with a wide range of possibilities.

In most parts of the United States, the programs started with intensive supervision probation without the electronic monitoring equipment. Many of those jurisdictions have now added electronic monitoring as a helpful tool. It is the philosophy of this project that the electronic monitoring equipment is only a tool.

The strength of this project is the experience of the probation officers and the availability of those probation officers to do an efficient job. This, plus the use of discretion as to how the program is used, could offer at a minimal cost a successful alternative to an already overloaded corrections system.

Stephen W. Rowoldt
Chief Probation Officer
State Probation District #15
Lincoln, Nebraska

Lancaster County Adult
Probation Department

Policy and Procedures
Intensive Supervision Project
December 1988

GOALS

1. To establish another sentencing alternative for County and District Judges in Lancaster County.
2. To provide a cost effective alternative to a standard jail sentence.
3. To establish a program with a higher level of supervision that would allow an offender to live and work in the community when normally they would have been sentenced to a period of incarceration.
4. To establish a treatment or counseling program for the offender who would not normally have had the opportunity to receive such services if incarcerated.
5. To provide an increased awareness for the public of the appropriateness of community-based corrections.
6. To provide a level of public safety that is equivalent to current measures already in use.

I. CLIENT RESPONSIBILITIES

A. Contact Standards

1. The client will be required to meet with the ISP officer at least two times each week for at least the first six months. These face to face contacts can include one office appointment and one home contact or as directed by the ISP officer. The ISP officer will also make random home visits each month. A minimum of one random home visit will be required each month. The ISP officer shall also make either scheduled or unscheduled contacts at the client's place of employment, residence, or other appropriate field locations.

B. Collateral Contacts

1. The ISP officer will also be required to make at least one collateral contact each week. Such contacts are to be made with counselors, family members, employers, etc. These contacts can be made in person, in writing, or by telephone.

C. Written Contacts

1. Each client will be required to fill out a written monthly report no later than the 7th day of each month.

D. Travel

1. While under EM, clients will not be allowed to car pool to work or to any other activities. All transportation must be provided by the client or his/her spouse while under ISP.
2. Clients will also not be allowed to travel outside the county or outside the state unless an extreme emergency arises. These emergencies shall be limited to deaths in the family, medical, and employment-related matters. All leaves will be verified by the ISP officer before the client is allowed to leave. The client must also provide a complete record of his whereabouts during the period of leave. Travel permits will be carried by the clients at all times and will be required for both out of county and out of state travel. The client will need to obtain these permits in an office setting only. The ISP officer will inform the closest law enforcement agency as to the client's arrival and destination within the jurisdiction.

E. Employment

1. Clients will be required to be employed on a full time basis or be actively seeking employment full time. If the client is not working by the time they are placed in the ISP program, they will be required to attend a job seeking program, attend school, and actively seek employment.
2. Clients will also be required to provide written verification in the form of employer contact sheets if they are not employed by the time they are placed in the program.
3. Clients must notify employers within one week of being placed on ISP/EM that they are in the program.
4. After the client has been placed in the ISP/EM program, the ISP officer will contact the client's employer in order to verify employment and work schedules.
5. Clients will be required to bring in check stubs to verify employment and income for the purposes of their budget sheets.

F. Community Service

1. All community service work will begin after the EM period has been successfully completed.
2. All community service work must be completed through a community service agency that has been either ordered by the court or approved by the State Probation Office.
3. All community service hours will be set up by the client after the program has been approved by the ISP officer.
4. All clients required to complete community service will have to complete a minimum number of hours each month.

G. Alcohol and Controlled Substance
Monitoring and Treatment

1. All ISP clients will be prohibited from using or having in their possession, alcohol and/or controlled substances while under Intensive Supervision and EM (Unless prescribed by a licensed physician).

2. All ISP clients convicted of a drug-related offense or having a history of substance abuse, shall be required to participate in any necessary treatment program as determined by the court or supervising officer.
3. All ISP clients will be required to submit to random testing to determine any usage of controlled substances or alcohol. Clients will be tested at a minimum of one time per week while in the program.
4. All ISP clients will be required to consent to a search-seizure of their person, place, or vehicle, by any law enforcement officer or probation officer, with or without a warrant, day or night, to determine the presence of alcohol and/or controlled substances.
5. All ISP clients must also refrain from frequenting any establishment whose primary source of business is the sale of alcohol (i.e., liquor stores, bars, night clubs, etc.)

H. Associations

1. All ISP clients must avoid social contact with those individuals having criminal records or on probation or parole except by special permission of the probation office. This shall include no contact with the victims of their offenses as well as those individuals who are known to abuse or use illegal drugs, or abuse alcohol.

I. Living Arrangements

1. All ISP clients will be required to live in an approved setting as determined by the probation office.
2. No ISP client will be allowed to move within the county unless approved by the ISP supervisor.
3. ISP clients will not be allowed to maintain residence with any individuals who consumes or abuses alcohol and/or controlled substances or who possesses the same.
4. ISP clients shall not allow any individual into their residence who has been using alcohol or controlled substances or who are in possession of the same.

J. Restitution/Court Costs/Fines/Electronic Monitoring Fees

1. All ISP clients who have been ordered by the court to pay any type of monetary obligation will be required to fill out monthly budget forms. These forms must be turned in to the ISP officer no later than one week after the proceeding month has elapsed.
2. No ISP client will be able to take out a loan without notifying the ISP officer first.
3. No ISP client with an outstanding monetary balance will be allowed to leave the state or county until the said case has been staffed by the ISP unit.
4. All ISP clients who have been ordered by the court to pay any monetary obligations will be required to make consistent monthly payments to the appropriate court. Such payments shall be made no later than the last working day of each month.
5. Each client will be responsible for submitting a receipt from the appropriate court regarding their payments. This must also be done by the last working day of each month.

K. Revocation/Violation Reports

Absconders

1. Any ISP/EM client who absconds shall have a violation report submitted to the court by the next working day after they have been discovered to be missing. The ISP officer shall make every reasonable attempt to locate the client before submitting the violation report to his supervisor.

New Offenses

2. Immediately upon notification of a new criminal offense and/or a serious traffic offense, a violation report will be submitted to the court upon receipt of the police reports.

Technical Violations

3. When in the discretion of the supervising probation officer, a client is not meeting standards or is in technical violation of supervision and/or EM, a staffing will be conducted among the supervising officer and all ISP officers to determine if a violation report should be submitted to the court.

IN THE COURT OF LANCASTER COUNTY, NEBRASKA
THE STATE OF NEBRASKA

Plaintiff }
vs } Doc. Page
Defendant }

ORDER OF PROBATION

THIS MATTER COMES ON FOR HEARING on this day of, 19.....
The state is represented by (deputy) County Attorney of
Lancaster County, Nebraska and the defendant is represented by

THE COURT FINDS that the defendant was found guilty on the day of, 19..... to the
charge of
and was therefore adjudged guilty of the offense.

IT IS THEREFORE ORDERED that the defendant is sentenced to Probation for a period of
with days being served on Electronic Monitoring, under the Supervision of the Sixth Probation
District under the following terms and conditions, and subject to further order of the Court:

The defendant shall:

1. Refrain from unlawful or disorderly conduct, or acts injurious to others.
2. Avoid social contact with those persons having criminal records, or on probation/parole except by special permission of the probation officer.
3. Report in writing and/or in person during the term of probation as directed by the Court or probation officer.
4. Truthfully answer inquiries of the probation officer and allow the probation officer to visit at all reasonable times and places.
5. Be employed, or provide proof that employment is being sought, or attend school.
6. Reside in the County of Lancaster and obtain permission of the probation officer before any change of address or employment.
7. Not have in his possession any firearms or illegal weapons.
8. Not use any narcotic drug, cannabis or controlled substance as defined by law except by prescription or have possession of same.
9. Not use, consume, possess, or have on the premises, any alcoholic beverages.
10. Submit to search and seizure of Premises, Person, or Vehicle by any law enforcement officer, or Probation Officer, with or without a warrant, day or night, to determine presence of alcoholic beverages or controlled substances.

Continued on Page Two (2)

IT IS FURTHER ORDERED that during the term of his probation, the Court upon application of the Probation
Officer or the Defendant, or upon its own Motion, may modify or eliminate any of the above conditions or
add further conditions. Upon violation of any condition of probation, the Defendant may be brought before
this Court for further proceedings as provided by law.

BY THE COURT:

.....
Judge

RECEIVED a copy of the above Order on this day of
19..... I hereby accept probation and agree to abide by all the conditions set forth. I understand that the
violation by me of any of the above conditions is cause for revocation of probation and sentencing under
the appropriate section of the Nebraska statutes.

.....
Defendant

IN THE
THE STATE OF NEBRASKA

COURT OF LANCASTER COUNTY, NEBRASKA

Plaintiff }
vs
Defendant }

Doc. Page

ORDER OF PROBATION

CONTINUED ORDERS OF PROBATION:

- 11. Submit to any test requested by a law enforcement officer or probation officer to determine the usage of alcoholic beverages or controlled substances.
- 12. Submit to at least one (1) urinalysis per month while on Intensive Supervision.
- 13. Attend and satisfactorily complete any treatment or counseling as directed by the probation officer. This may include psychiatric counseling, an alcohol/drug evaluation, inpatient or outpatient treatment and an aftercare program if treatment is recommended.
- 14. Be responsible for paying Intensive Supervision Electronic Monitoring fee, to be determined by the Adult Probation Office. The fee will be paid no later than the last working day of each month, and will be paid directly to the Clerk of the Court.
- 15. Abide by all of the policies and procedures of the District 6 Intensive Supervision Unit.
- 16. Within 24 hours of being placed on Electronic Monitoring, each defendant will submit to the probation office, a list of visitors they will be allowed to see while under Electronic Monitoring. This list will be approved by the probation office.
- 17. Pay the following not later than A. Court Costs
B. Fine C. Restitution D. Other
- 18. Satisfy the following additional conditions which are reasonably related to the rehabilitation of the defendant.

.....
.....
.....
.....
.....
.....
.....

Dated at Lincoln, Lancaster County, Nebraska
this day of, 19.....

.....
Judge of the Court

.....
Defendant

STATE OF NEBRASKA
 Adult Probation Office
 Room 211
 129 North 10th Street
 Lincoln, Nebraska 68508



Supervision Unit
 (402) 471-7761

ELECTRONIC MONITORING SLIDING SCALE FEE

INCOME	DEPENDANTS				BASED ON TOTAL FAMILY GROSS INCOME
	1	2	3	4	
0 - 6,000.00	1	1	1	1	\$17,000.00 and up-\$9.00 per day
7,000.00	2	2	1	1	
8,000.00	3	3	2	2	
9,000.00	4	4	3	3	
10,000.00	5	5	4	4	
11,000.00	6	6	5	5	
12,000.00	7	7	6	6	
13,000.00	8	8	7	7	
14,000.00	9	9	8	8	
15,000.00	9	9	8	8	
16,000.00	9	9	9	8	
17,000.00	9	9	9	9	
18,000.00	9	9	9	9	

You will be assessed _____ per day for Electronic Monitoring Fees while you are under electronic monitoring. This sum will need to be paid in full by _____. Your fees will be based on your total family income which includes your income and your spouse's income. Taken into consideration is the total number of dependents which are supported by this income. You as a client are considered as one dependent. If your income falls between one of the previously determined income levels it will be rounded to the nearest thousands.

I understand that I must pay these fees to the _____ Court and they must be paid on or before the above mentioned date.

 Probationer Date

 Witness Date

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

Identification of Divertible Males and Females
By Fiscal Year 1990 through 1994

Identification of divertible males and females by fiscal year was completed in the following manner:

1. Future yearly admissions using the medium series projections from the Impact software program were established for each fiscal year, minus a constant evaluator and safekeeper number. Future yearly admissions by fiscal year for males and females were as follows:

Fiscal Year	Future Yearly Admissions*	
	Male	Female
1990	1,170	117
1991	1,294	135
1992	1,418	153
1993	1,418	153
1994	1,418	153

*Evaluator and safekeeper admissions, using Fiscal Year 1989 admission date, was held constant and subtracted to arrive at the male and female admission totals given.

2. Using Fiscal Year 1989 admission data, the custody level placement of all admissions was examined for both males and females. The review showed that, of the FY 1989 admissions, 31 percent of the males were placed into minimum custody, while 13 percent of the males went into community custody. The figures for females were 23 and 33 percent respectively.

Custody Level as a Percentage of All Admissions		
Sex	Minimum	Community
Male	31.16%	13.06%
Female	23.30%	33.01%

Using the rationale that potentially divertible individuals would have to come from the minimum and community custody population, these percentages were held constant and used each fiscal year to establish a population to work within in further identifying a potentially divertible population. This baseline population was identified by fiscal year as follows:

Potentially Divertible Population

<u>Fiscal</u> <u>Year</u> -----	<u>Minimum Custody</u>		<u>Community Custody</u>		<u>Total</u> -----
	<u>Male</u> ----	<u>Female</u> -----	<u>Male</u> ----	<u>Female</u> -----	
1990	365	27	153	39	584
1991	403	31	169	45	648
1992	442	36	185	51	714
1993	442	36	185	51	714
1994	442	36	185	51	714

3. The next step involved a broad examination of the potentially divertible population identified in Step 2. This broad examination was conducted to make across-the-board elimination of certain offenders because they fell into one of the following identifiable groups:

- Multiple Offender (previously in prison)
- Committed an offense against the public health and safety (e.g. use of a firearm to commit a felony; possession of explosives; possession/threat with a destructive device)
- Committed a family relations offense (e.g. incest, child abuse)
- Committed arson
- Committed an offense against another person (e.g. murder, assault, kidnapping)
- Committed an inchoate offense (e.g. accessory to a felony)
- Offenses involving integrity of government (e.g. escape)

These individuals (both male and female) were identified as a percentage of the previously identified minimum and community inmates from the FY 89 admission data. These percentages of inmates considered non-divertible were held constant for all fiscal years and varied from male to female and minimum to community calculations. These identified non-divertible inmates were then subtracted from the appropriate male/female and minimum/community figures to obtain a 'Divertible' population figure.

The percentages used were as follows:

Minimum Custody-Males

-- 29.90% Multiple Offenders
-- 0.34% Health & Safety Offense
-- 1.00% Family Relations Offense
-- 0.34% Arsonists
-- 10.00% Delivering/Dealing Drugs
-- 6.90% Offenses Against Persons
-- 1.70% Inchoate Offenses

Community Custody-Males

-- 15.60% Multiple Offenders
-- 1.64% Inchoate Offenses
-- 4.92% Offenses Against Persons
-- 21.31% Delivering/Dealing Drugs
-- 0.82% Family Relations Offense

Minimum Custody-Females

-- 33.30% Multiple Offenders
-- 4.20% Family Relations
-- 12.50% Delivering/Dealing Drugs

Community Custody-Females

-- 20.59% Multiple Offenders
-- 8.82% Offenses Against Persons
-- 8.82% Delivering/Dealing Drugs
-- 2.94% Family Relations Offenses
-- 2.94% Integrity of Government Offenses

Applying the percentage against the data provided in Number 2, above yields the potential divertible population by fiscal year. The results, according to the calculations for both males and females, are as follows:

Fiscal Year	Total Male/Female Minimum/Community Custody Population		(-) minus		Total Non-Divertible Male/Female Minimum/Community Custody Population		(=) equals		Total Divertible Male/Female Population		% of Total Minimum & Community Custody to Level Persons Divertible
	Total Minimum Custody	Comm. Custody	(-) minus	Total Non-Divertible Minimum Custody	Comm. Custody	(=) equals	Total Divertible Minimum Custody	Comm. Custody	Total Divertible Minimum Custody	Comm. Custody	
Males											
1990	365 (T = 518)	153		183 (T = 252)	69		182 (T = 266)	84		51.4%	
1991	403 (T = 572)	169		201 (T = 275)	74		202 (T = 297)	95		51.9%	
1992	442 (T = 627)	185		222 (T = 304)	82		220 (T = 323)	103		51.5%	
1993	442 (T = 627)	185		222 (T = 304)	82		220 (T = 323)	103		51.5%	
1994	442 (T = 627)	185		202 (T = 304)	82		220 (T = 323)	103		51.5%	
Females											
1990	27 (T = 66)	39		13 (T = 29)	16		14 (T = 37)	23		56.1%	
1991	31 (T = 76)	45		15 (T = 34)	19		16 (T = 42)	26		55.3%	
1992	36 (T = 87)	51		19 (T = 40)	21		17 (T = 47)	30		54.0%	
1993	36 (T = 87)	51		19 (T = 40)	21		17 (T = 47)	30		54.0%	
1994	36 (T = 87)	51		19 (T = 40)	21		17 (T = 47)	30		54.0%	

Combining the Male and Female data, the total potential divertible minimum and community custody inmates is derived. This information looks as follows:

Fiscal Year	Divertible Minimum		Total Divertible Min. Male & Females	% of Total of Minimum Admissions		Divertible Community		Total Divertible Comm. Males & Females	% of Total Community Admissions
	M %	F %		M %	F %				
1990	182 (49.9%)	14 (51.9%)	196	50.0%	84 (54.9%)	23 (59.0%)	107	55.7%	
1991	202 (50.1%)	16 (51.6%)	218	50.2%	95 (56.2%)	26 (57.8%)	121	56.5%	
1992	220 (50.2%)	17 (47.2%)	237	49.6%	103 (55.7%)	30 (58.8%)	133	56.4%	
1993	220 (50.2%)	17 (47.2%)	237	49.6%	103 (55.7%)	30 (58.8%)	133	56.4%	
1994	220 (50.2%)	17 (47.2%)	237	49.6%	103 (55.7%)	30 (58.8%)	133	56.4%	

Therefore, the potential total divertible population, both male and female, for fiscal years 1990 through 1994, is:

Fiscal Year	Total Potential Divertible Population
-----	-----
1990	303
1991	339
1992	370
1993	370
1994	370

	1,752

To obtain the two capacity goals by 1994 as cited earlier, the following total number of offenders must be diverted each year:

Design Capacity	Operational Capacity
-----	-----
503 offenders per year must be diverted, includes recidivists	419 offenders per year must be diverted, includes recidivists

Comparing the optimum, potential total divertible population with design and operational capacity goals indicates that even if all potential 'divertible' offenders were diverted, neither goal would be met. If all 1,752 of the identified potential divertible population were diverted, the Department's adult prison system by FY 1994 would house, based on projections, between 2,402 and 2,479 inmates, or 140 to 145 percent of design capacity. This translates into a bed deficit of between 686 and 763 beds.

Conclusion

In summary, the above identification of potentially divertible offenders indicates that not enough individuals can be diverted to meet either the design capacity or operational capacity goals. If all identified offenders are diverted, the Department of Correctional Services will still be forced to operate a prison system at 140-145 percent of design capacity in FY 1994. Several factors exist which can potentially make the bed deficit even greater.

1. Consideration of "Divertable" offenders does not take into account the process of plea bargaining. This process is extensively used and typically results in charges being filed for a less serious offense, and the shortening of sentences given. Plea bargaining could significantly reduce the number of offenders who would qualify for diversion.

2. An examination of criminal histories of the 'divertible' offenders could further reduce the available number. In Hoffman and Webb's review of 1987 admission data for potentially divertible offenders, over one-half of the divertible individuals identified had been previously arrested for a felony, 30 percent had prior arrests for violent crimes, 60 percent had spent time in jail, 47 percent had already been on probation, 20 percent had a prior commitment to a juvenile correctional institution, over 77 percent had prior community sanction placed against them, and finally, the number of prior felony arrests ranged from 1 to 35 (Hoffman and Webb, "Prison Overcrowding in Nebraska: The Feasibility of Intensive Supervision Probation" in Nebraska Policy Choices, 1988).
3. Diversion goals established above are based on a five-year plan from the current fiscal year - 1990 to 1994. Delay of diversion by one year would impact the figures given by 400 (operational capacity) to 500 (design capacity) people. Implementation delay will minimally result in an overcrowded prison system in 1994 at 164% of capacity, or a deficit of 1,105 beds.
4. The projection software (Impact) used in this analysis automatically flattens the last two years of a 5-year projection. Impact has been criticized in the past for yielding projections which are too conservative. Conservative projections will result in an overcrowding problem of greater than anticipated magnitude in FY 1994.

A more critical review of the 1,752 potentially divertible individuals identified above, would without doubt result in a significant reduction in the number of individuals actually diverted. A reduction in the number of actual offenders diverted by 40 percent (701 offenders) would result in a prison population of 3,103 inmates by FY 94 or 181 percent of capacity, a bed deficit of 1,387.

V. RESTITUTION AND MEDIATION

A. Diversion Impact

Restitution and mediation by themselves are unlikely to have a significant impact on the number of individuals sent to prison. They are more likely to be components of other correctional strategies which may have a diversionary impact, including intensive supervision and house arrest. However, they are important concepts in the overall spectrum of criminal justice.

Victims are often alienated by the criminal justice system and offenders have little sense of the harm they have caused. Monetary recovery for the losses suffered by victims is one component of a restitution and mediation process. Restitution and mediation can also help to humanize the process for victims by providing an opportunity for them to have input into the system as well as making offenders take responsibility for their actions.

B. Restitution Centers

One restitution approach which may have an impact on prison populations is the use of a restitution center, a type of half-way house or community residential center. According to the Rand Corporation, about 30 states currently operate centers of this type. The state of Texas has a system of restitution centers for non-violent felony offenders who would otherwise be sent to prison. They are required to pay victim restitution, some of the costs of room and board, and put some of their earnings toward supporting any dependents they may have. The cost of this system is approximately \$28 per day per offender; in 1986, this was offset by about 1500 offenders generating approximately \$2 million in restitution, family support and the center operating costs.

The Department of Corrections estimates there would be approximately 266 offenders who could potentially be diverted in 1990. Restitution centers have the potential to increase this number, since probation, even with intensive supervision, might be inappropriate for some offenders who might be appropriately supervised at a restitution center. The cost and operation of restitution centers appears to be similar to the work-release centers currently operating in Nebraska. Their current per capita cost per day is \$25.85 or approximately \$9,500 per year. This compares with costs of approximately \$50 to \$60 per day per capita, \$15,000 to \$18,000 per year, in the secure correctional facilities. At \$9,500 per offender per year the annual cost for 100 offenders would be \$950,000. (Corrections is obtaining construction costs for such a facility).

The work-release centers have a philosophy similar to a restitution center, requiring payment for room and board, family support and may include payments to the Crime Reparations Board as a type of restitution. A restitution center would differ in that offenders could be sentenced directly to the center rather than as a pre-release step in the process of moving from a secure facility to living without controls in society. Other states facilities apparently have a greater focus on providing restitution to crime victims than is done in the work release centers. Some studies indicate that offenders sentenced to restitution centers have a lower recidivism rate than the general prison population.

A typical sentence to a restitution center would require the offender to live for six months at the center. If the offender successfully accepts his or her responsibility there, he or she would then be allowed to go on intensive supervision or another type of probation for the remainder of the sentence.

C. Nebraska Statutes Concerning Restitution

Nebraska law allows offenders to be sentenced to make restitution, as part of a sentence, Neb. Rev. Stat. section 29-2281 et. seq., or as a condition of probation, section 29-2262(p). There is anecdotal evidence which indicates that sentencing judges are reluctant to sentence offenders to make restitution because Article VII, Section 5 of the Nebraska Constitution requires all fines and penalties to be paid for the support of the public schools. Therefore, sentences to make restitution appear to be occurring only as a condition of probation at the present time. An Attorney General's opinion may be needed to determine whether a constitutional amendment is needed to allow greater use of sentences to restitution.

The Department of Corrections indicates that they currently require offenders employed in the private sector to sign an agreement which provides for payment of a certain portion of their income into the Crime Victim's Reparations Fund. Neb. Rev. Stat. section 83-183.01. They do not require restitution to individual crime victims due to their concern about the above-described constitutional issue.

The Crime Victim's Reparations Board indicates that more than \$60,000 has been paid by offenders into the Crime Victims Reparations Fund. However, at this point they are not disbursing the funds to crime victims due to the fact that section 81-1837 is being construed as requiring the money to be returned to the offender if it is not being paid to the victim of that offender's crime. They are seeking legislation to clarify this statute. It appears that legal obstacles are preventing greater use of restitution at the present time.

D. Victim Offender Reconciliation

Victim and Offender Reconciliation Projects (VORP) have been established in several communities as an outgrowth of the

Mennonite Church's efforts to support sentences which better serve both victim and offender. The VORP uses conflict resolution techniques which bring the victim and offender together with a trained mediator to attempt to work out a number of issues. These include enabling victims to express their pain, anger, fears and frustrations directly to the person who caused them. They also have an opportunity to get answers to questions about the offense, such as "Why did you victimize me?" and "Have you been watching me?" In addition, the victim and the offender try to work out a restitution plan, including the form and schedule of repayment. Victims and offenders must agree to meet in order for the process to work.

This program is intended to provide psychological healing and financial reimbursement for the victim. It is also intended to make the offender realize that another human being was affected as a result of his or her offense and make the offender take responsibility for his or her actions. Although the VORP works closely with the court system in order to receive referrals, it is operated independently of the court system in order that the mediator be neutral rather than be seen as an arm of the correctional system.

There are several advantages to this method. First, it puts the needs of the crime victim first. Secondly, since it is operated by a private entity, it does not require government funding. Third, it takes offenders out of the criminal justice system, thereby reducing the amount of legal resources needed. It appears to be an effective and low-cost alternative for non-violent property offenders, and although some violent offenses have been handled, it probably is not a reasonable alternative for chronic felony offenders.

E. Mediation

The Columbus, Ohio Night Prosecutor Program uses a similar mediation approach. It is generally used as a kind of pretrial diversion for relatively minor offenses. Victims and offenders meet with trained mediators to try to work out a plan of restitution. Both parties are given an opportunity to tell their side of the case. The mediator then tries to help the parties negotiate a restitution plan. If they are unsuccessful, the case may be then referred for prosecution. The program director states that it saves money by reducing the workload of the prosecutors office and the court system. It provides opportunities for victims to help shape their own remedies through the negotiation process. The director also claims that it reduces future crime by helping offenders deal with the root causes of their crime. This process also reduces criminal stigma by helping keep minor offenders out of the mainstream criminal justice process.

Restitution and mediation probably will not have an immediate impact on the state prison population, but the concepts upon which they are based have the potential for significant changes in the correctional system.

F. Recommendations

1. Establish restitution centers in Lincoln and Omaha to house 75 offenders in Omaha and 25 offenders in Lincoln. Cost \$950,000 annually for operations plus construction costs.
2. Request Attorney General opinion as to whether restitution is a fine or penalty within the meaning of Art. VII, Sec. 5 of the Nebraska Constitution.
3. Encourage the establishment of victim offender reconciliation projects by non-government entities.
4. Change Nebraska law to allow money contributed by offenders to Crime Victims Reparations Fund to be paid to victims.

VI. COMMUNITY CORRECTIONS ACTS

The Community Corrections Act (CCA) is one option Nebraska, the Department of Correctional Services (DCS) and its communities throughout the state might consider when addressing prison overcrowding. Escalating prison population numbers, attributed to more stringent law enforcement and longer mandatory sentencing, suggests that Nebraska must seek diverse and varied solutions to the problem. One such avenue Nebraska might consider is the CCA. But before addressing the pros and cons of the CCA, it would be beneficial to examine the basic premise of the CCA and the Minnesota Model.

Community Corrections Acts are basically organized so that local (usually county) governments can voluntarily participate with state governments to form a working partnership in the planning, management, resources, and responsibilities of offenders in the correctional system. It assists participating units in establishing correctional services in their communities, determines facilities needed, and examines funding options. However, some state control is exerted through state review and approval of corrections plans developed by local units.

Many different types of funding arrangements can be made between local units and the state. Currently, almost fifty percent of the states with Community Corrections Acts use a formula subsidy based on per capita income, crime rates, population or at risk population to allocate funds. Other states use direct grants, state contracts, separate and specific appropriations for each selected program and specific requests from the private sector. However, a fundamental procedure in most states is to reward counties by allocating funds for programs that keep offenders in the community or house offenders with jail sentences less than five years in local jails. On the other hand, the state is reimbursed by the local unit if they decide to send an offender to the state penitentiary or state institutions - a chargeback procedure. It should also be noted, that most states prohibit expenditure of community corrections funds for capital construction, but would rather have funds invested into the correctional system for better programming or re-invested, similar to Minnesota's Community Correction Act.

Minnesota's Act, a model several states have copied, was enacted in 1973 (Chap. 40 Minnesota Stat.). Under the Minnesota Act, any county or group of counties that have an aggregate population of 30,000 or more may elect to participate, but participating is not mandatory and no penalty is administered for not participating. Each participating unit appoints a local corrections advisory board to develop a community corrections system. This board consists of at least 18 to 20 members which

could include a sheriff, ex-offender, public defender, academic administrator and others.

In Minnesota's system two or more counties may combine to form participating units. If this occurs the State Commissioner may decide to increase the size of the local board, as long as the participating counties agree on the legalities of membership. Additionally, if the population of an ethnic minority group in a participating unit exceeds the percent of that ethnic minority in the states population as a whole, then at least 2 members of that board must be of that ethnic group. Also this local board must develop a plan for use of the State subsidy that has no specific kind of programming and is left up to the discretions of the board. However, the State Commissioner must approve the local plans, but the rules governing state approval for subsidy is very general and is targeted at assuring participation.

Minnesota allocates subsidy by a complex formula. It, unlike some other states (i.e. Washington) considers the subsidy a grant and not a reimbursement. In this formula each unit is required to maintain its current local correctional service spending prior to the Act. Any increases are usually attributed to inflation and are expected to be matched by the local unit if they intend to receive any increased subsidy. The formula uses four factors to determine subsidy: (1) Per capita income; (2) Per capita taxable property value; (3) Percentage of population in crime prone years (15 to 35); and (4) Per capita county expenditure for correctional purposes in the prior year. Then, the above factors are divided by the county average. Each is then divided by four and the quotient, "Computation Factor" is multiplied by a dollar value by the DCS to reflect statewide per capita correctional expenditures. Finally, the last step is to multiple this number by the county's total population to arrive at subsidy amount. In fact, this formula is used to compute a participating units resources and needs, so that the subsidy is equally distributed across the state. However, participating units are charged by the state for the cost of confining each offender that has a mandatory sentence penalty of less than five years or similarly charged for non-institutional correction services provided by the state. These charges are then deducted from the county's subsidy. However, if the penalty is more than five years no chargeback is applied. It should be mentioned, counties that are not participating are not charged for the offender sentenced to state institutions, but they also do not receive any state subsidy besides the allocated funds given prior to the Act.

Besides Minnesota, several other states as of July 1989, including Kansas, Colorado, Iowa, Missouri, Indiana, and Ohio from the midwest have adopted some form of the Community Corrections Act to help reduce prison overcrowding. All of these Acts are primarily based on the following four basic policies:

- 1) Transferring the responsibility of supervision from state to local level-forming a partnership between groups. 2) It can help reduce the number of commitments to state

penal institutions.

- 3) It encouraged local units to develop a more coordinated system of services to offenders.
- 4) The transition for prisoners into the community is generally more effective.

Besides these four policies listed above, some secondary, but equally important reasons as to why states adopted the CCA include:

- 1) It is cost-effective because many programs were able to bring money into participating communities and employed offenders directly and indirectly contributed financially to the community through taxes, fines, restitution, and programming.
- 2) It is almost fiscally impossible to build out of the current crisis.
- 3) Constant contact and evaluation of prisoners by officers provides more public safety.
- 4) Correctional departments can develop a better understanding of the prison population characteristics and can also create a data base to assist in profiling offenders.
- 5) Programs can be designed to serve all types of offenders through a screening procedures.
- 6) States were able to re-evaluate their current correctional system, improving communications between corrections and local governments.
- 7) More importantly, offenders could remain with their families.

Most state's agreed that the Act worked effectively, but emphasized the important fact that this act, through several programs, helped reduce a portion of the prison population. Furthermore, it was also stated that an Act like the CCA might take two or more years to fully implement, so it efficiently works. However, in Nebraska's case, it could be less because the current corrections department has already implemented some significant programs that the CCA addresses.

As mentioned earlier, participating local units (counties, local advisory boards or even private entities) are allocated state funding to develop local programs. These local programs could include halfway houses, drug and alcohol treatment facilities, heavy fining, restitution (very common), job placement, counseling, probation, parole, ISP, facility construction, financial counselling, and other programs to help rehabilitate the offender back into society or house the offender

if required. No one specific program is required under the Act, but it was suggested that two or more be combined in an attempt to alleviate the prison population. In glancing at the variety of programs above, it is evident that diversity in community corrections programming is an essential ingredient. Every person is uniquely different and certain factors in an offenders life should receive special attention to increase their successful reintegration into society. Furthermore, it seems that three critical factors determine if an offender will succeed or fail: (1) Job security; (2) Family stability; and (3) The ability to control a problem such as drug or alcohol abuse. A CCA could assist in providing programs that address these factors, plus at the same time, be publicly acceptable.

For the most part, the positive side of the CCA has been emphasized throughout the report, but now some drawbacks to the CCA must be addressed.

- 1) The CCA will not solve the prison overcrowding problem itself and should be used with other policies such as sentencing guidelines.
- 2) Lack of adequate funding to implement a new program (although, generally CCA are more cost efficient than incarceration.)
- 3) Creating effective structured programs.
- 4) Program is blamed if participant recidivates.
- 5) Lack of trained officers to properly manage programs.
- 6) If programs are improperly used to widen the net (extending control over people who do not need it).

These problems emphasize the underlying fact, that the prison problem is complex and there is no one solution to this problem. With so many diverse players, maybe one option is to attack this dilemma with as many as possible alternatives, which CCA programs provide.

As of now, Nebraska has no specific law that addresses the management or administration of correctional services similar to the Minnesota Act described. It would take major statutory changes to implement an act that formed partnerships between local governments and state correctional services. However, if a CCA was implemented, several Nebraska Statutes could be revised so a flexible, practical, and acceptable cost-effective alternative would work, so that the public and offender would equally benefit.

The CCA is one alternative Nebraska policy makers, DCS and its communities must seriously consider to battle the increased enforcement and mandatory sentencing measures surfacing from the "GET TOUGH" and "WAR ON DRUGS" campaigns. Community Corrections Acts provide several programming options, some of which are

summarized in this staff report, yet also allows policy makers to be experimental, and creative when designing new, diverse, publicly acceptable, cost-efficient and effective programs that encourages appropriate treatment for the offender and helps ease prison overcrowding. It is inevitable that Nebraska starts to look at alternatives to curb the prison crisis, and one might be the Community Corrections Act.

VII. SUBSTANCE ABUSE AND THE OFFENDER: TREATMENT & INCARCERATION

The trend to incarcerate drug offenders has increased nationally as well as within the State of Nebraska. According to the Department of Correctional Services, sentenced admissions for drug offenses (with the drug offense as the most serious offense) have increased from 6.3 percent of total admissions in 1985 to 21.4 percent of total admissions in 1989. (See Attachment A) If the first three months of the 1990 fiscal year are any indication of what the state may expect in increased admissions, it is predicted that sentenced admissions for drug offenses will reach a whopping 35.9 percent of total admissions by June, 1990.

In tandem with stepped up law enforcement efforts and increased incarcerations, LB 592 (1989) created mandatory minimum sentences for cocaine and crack-related drug offenses, thereby increasing the time an offender must serve from a minimum of one year to three or five years, depending upon the severity of the offense. Therefore, it is clear that increased incarcerations and mandatory minimum sentences will exacerbate what is already an overcrowded situation.

According to the Bureau of Justice Statistics, 54% of state prison inmates reported that they were under the influence of drugs or alcohol or both at the time they committed the offense for which they were currently sentenced. A third of State prisoners, a quarter of convicted jail inmates, and two-fifths of the incarcerated youth said they had been under the influence of an illegal drug at the time of their offense. (Drugs and Crime Facts, 1988. U.S. Department of Justice, Bureau of Justice Statistics) The Bureau also reported that in 1986 persons sentenced for drug trafficking made up 26.1% of State prison inmates with no known prior sentence to probation or incarceration. This was a larger proportion than any other offense.

In a Report to the Nation on Crime and Justice (Bureau of Justice Statistics, Second Edition, NCJ105506, March 1988) the U.S. Department of Justice provided a survey which compared drug use among offenders versus non-offenders. Between 75 and 78 percent of jail and prison inmates reported they had ever used either marijuana, cocaine, heroin, barbiturates, or amphetamines. Only 37 percent of the general population reports having used one of the aforementioned drugs. Prison inmates also used alcohol more than their counterparts in the general population. The Bureau of Justice Statistics reported that almost half the inmates - but only one-tenth of all persons 18 and older in the general population - drank an average of any ounce of alcohol or more on a daily basis. Two out of five inmates reported they were under the influence of drugs or were very drunk around the time of the offense. Nearly one-half of the convicted offenders incarcerated for a violent crime had used alcohol before the crime. Among property offenders, more than 4 in 10 convicted

inmates had used alcohol just before the current crime. Nearly 3 in 10 convicted drug offenders had used alcohol before the current crime. Thirty-five percent of property offenders and thirty-eight percent of the robbers had been under the influence of drugs, mainly marijuana, at the time of the crime.

Although in many cases it is not known if an offender's abuse of alcohol and drugs preceded his or her first criminal act - some studies have shown that the criminal behavior preceded the drug abuse - it can be shown that criminal involvement increases as drug usage increases. A study of Baltimore addicts showed that the typical addict committed a crime every other day. (Bureau of Justice Statistics, NCJ-105506, March, 1988)

CURRENT SUBSTANCE ABUSE TREATMENT PROGRAMS IN NEBRASKA'S PRISONS

Application of national statistics to the current situation in Nebraska would mean that at least 1,250 of the 2,325 inmates under Department of Correctional Services supervision were under the influence of alcohol and/or drugs when they committed the crime for which they were incarcerated. Yet of those 1,250 inmates, only 140 per year will be eligible to undergo intensive in-patient treatment. The rest may participate in out-patient, once a week meetings sponsored by Alcoholics Anonymous and NOVA, but the effectiveness of this form of treatment is questionable in light of the fact that private in-patient programs throughout the state are at least 28 days in duration, and many health professionals are calling for programs to last as long as a year for optimum results.

Department of Corrections Mental Health/Sexual Offender Treatment Programs

Lincoln Correctional Center - In-Patient Substance Abuse Program*
(See Attachment B)

This program has currently been expanded to 35 beds. The original Chemical Dependency Program was closed in November of 1985 due to cost-cutting measures mandated by the Legislature during a Special Session. Thirteen staff, including three administrative support staff, were laid off; three clinical staff, including one psychologist, were retained.

The program is a 90-day treatment program, similar to the 30-day treatment program utilized by other non-offender treatment programs available to the general public. The reason the program's duration is ninety days rather than thirty is because the program does not encompass 100% of the inmate's attention span and time during each day (inmates have other duties, i.e., jobs which may take some of their time. This would not be the case in other non-offender in-patient treatment programs.) Secondly, there is not enough staff available to take on more workload and therapy sessions than is required of them at present. Currently, only two and one-half mental health

positions are assigned to actually treat the 35 inmates. Staff burnout has been cited as a problem due to the intensity of counseling required for this sort of therapy.

The In-Patient Substance Abuse Program involves three phases with each program designed to build upon what was learned in the previous phase. The Short-Term Program (Phase I) is a 90-day voluntary program which is designed to introduce inmates to the philosophies of Alcoholics Anonymous and Narcotics Anonymous. The program combines group therapy with an educational program. Twenty of the 35 beds have been allotted for Phase I. The Extended Program (Phase II) is a 90-day voluntary program, designed to build on the concepts acquired in Phase I. Ten beds are allotted toward this program. The remaining five beds are allotted for the Long-Term Program (Phase III). It may last up to six months and permits the inmate to gain more insight into his problem as well as provide responsibility and leadership as a role model for newer program participants. The Mental Health philosophy incorporates both the classic Alcoholics Anonymous Step treatment as well as the idea that all aspects of an inmate's thinking and behavior must be examined and challenged for inner change to occur.

Inmates are segregated from the general correctional center population in terms of where they sleep, but interact with the general population throughout their days. Segregation is a treatment concept which allows participants to confront each other's behavior, and give and seek feedback on a much broader and in-depth basis than if inmates had only limited association with each other. Additionally, mental health staff offices are present on the unit.

Inmates who participate in this program are also limited to the types of jobs they may have in the institution, due to the demands on their time for education and therapy. The Department has been able to work out all scheduling conflicts, except for cooks, but this is an ongoing problem. A telemarketing program has been initiated through LCC, York and Hastings in which inmates do telemarketing work for the TGY Corporation, a farm implement dealer. There is a night shift available for inmates who are participating in the in-patient programs within the Mental Health unit.

There are 90 inmates now housed within the mental health program wing, 16 of whom are inmates not undergoing therapy but are housed in the wing due to lack of space elsewhere within LCC. The other 74 are 35 substance abuse and 39 sexual offenders. This lack of equality in numbers can lead to treatment program problems where a certain number of inmates must be moved within the wing during the day. An unequal number creates problems within the institution in terms of capacity and space.

How does one become a patient? The Lincoln Correctional Center is classified as a medium/maximum security facility. A person who receives a short sentence for a non-violent type of crime will probably be classified to the Omaha Correctional

Center, Hastings, or one of the Community Correctional Centers (i.e., Air Park or Omaha). If so assigned an inmate would have no access to treatment at Hastings at this time, and access to a limited form of treatment at the Nebraska Center for Women. However, federal grants are in the works at this time to permit additional monies to be disbursed to York and Hastings for eight weeks of drug education, which is currently available at Community Correctional Centers. The problem is that this is drug education, i.e. a didactic approach, rather than intensive therapy. The Omaha Correctional Center has group therapy available through its own mental health groups as well as Nova (which is substance abuse based). However, it, too, does not have in-patient therapy available to the inmates. The Nebraska Center for Women has an on-going substance abuse treatment program; however, the program is run by unit staff who are not certified substance abuse counselors. On November 17th, the Center for Women will receive funds through a federal grant for an individual from the Nova Treatment Center in Omaha to facilitate the substance abuse program. This would provide two additional hours per week of therapy, and would require that inmates participate in an initial eight-week education program as well as an on-going two hour per week program until their release from prison. The program is voluntary. There is no treatment program available at Hastings at the present time, but a vendor is being sought now that a federal grant is available.

If a patient is older, and has received a longer sentence for a violent crime, he will probably be classified to the Penitentiary. NSP has four mental health staff available for group therapy a couple of times a week. This is not substance abuse oriented, but rather a panoply of problems all being treated at the same time. Inmates must volunteer to receive treatment. Recently Mental Health has initiated a night therapy group for those inmates who are unable to attend day sessions due to work demands.

The most common way a person can be approved for the rehab program at LCC is to volunteer. Only 15% of the people who do apply have the opportunity to enter the in-patient Substance Abuse Program because so many will be classified and sent away to other corrections facilities. Classifications are based upon 1) offense, 2) history of past violence, 3) length of sentence and 4) current or prior substance abuse.

In addition to the aforementioned increased admissions and lengths of stay for drug offenders, LB 405 (1986) mandates that any person convicted of the manufacture, delivery or possession of a controlled substance with intent to deliver shall only become eligible for parole upon satisfactory attendance and completion of appropriate treatment and counseling on drug abuse. (See Attachment C) It is not clear what type of treatment is meant by "appropriate treatment and counseling on drug abuse", and there has been a divergence of opinion between the Department of Correctional Services and the Parole Board as to the interpretation of 28-416 as well. Although inmates who would be impacted by 28-416 are automatically screened for admission into

the Substance Abuse Program upon their arrival at the Evaluation Unit, they may not be accepted for treatment because of their classification to another facility or because they do not fit the criteria established for the In-Patient program. Since Lincoln Correctional Center has the only in-patient facility within the Department, and if in-patient treatment is required for inmates who are affected by 28-416, the size and staffing of LCC as well as the other facilities within the Department of Corrections would be inadequate to meet both current and future inmate needs.

According to the Parole Board, no inmate has been denied parole due to failure to obtain treatment unless the inmate has absolutely refused to participate in the program available within the facility to which he or she has been classified. However, due to the fact that treatment for substance abuse varies from facility to facility, and given the fact that the number of drug-related incarcerations are on the increase, the numbers of inmates who must be treated and counseled for substance abuse will overload the current system of treatment programs.

Both the substance abuse and sexual offender programs have waiting lists of individuals who fit the criterion established for the program. There is one inmate on a waiting list to enter the sexual offender program. There are sixteen inmates on the waiting list for substance abuse rehabilitation. Even with additional beds, however, the current staffing pattern and allocated space cannot handle any more program participants.

Beyond substance abuse, there is no intensive treatment available to inmates convicted of shoplifting or writing bad checks, even though these types of behavior are treatable from a psychological standpoint. Considering the fact that several inmates are serving time for such behavior, particularly women, it would seem to be an area to be explored if in fact the mental health program could be expanded. In 1988, 45 women were being held at York for offenses based on fraud. Sixty-nine females were classified minimum security.

Costs of In-Patient Substance Abuse Treatment:

2 mental health counselors + 10 unit staff

(Estimates: \$25,195 (mental health counselor wages and benefits)

 x2
\$50,390

\$22,709 (unit staff) x 10 = \$227,090

50,390

Total \$277,480

This is for approximately 140 inmates per year, not including any costs that would be incurred for segregating space within each institution to carry out the rehabilitation program. Cost per inmate is approximately \$2,000. Private in-patient programs throughout the state vary from \$5,000 to \$7,000 for 30-day programs.

Costs of Substance Abuse Treatment Educational Programs (Out-Patient) vary. NOVA is contracted with the Nebraska Center for Women to facilitate a substance abuse treatment program for \$4,000 per year, using one person for four hours per week of group sessions.

SENTENCED ADMISSIONS FOR DRUG OFFENSES*
FROM FY 85 THROUGH FY 90 BY SEX

Fiscal Year	Sex	Drug Offense	Number	Percent of Total Admissions
1985	Female	Dealing Drugs	3	0.5
		Male	Delivering Dangerous Substance	17
		Dealing Drugs	7	1.1
		Possession Controlled Substance	7	1.1
		Possession Marijuana > 1 lb.	<u>7</u>	<u>1.1</u>
		FY 85 Total	41	6.3
1986	Female	Dealing Drugs	3	0.4
		Male	Delivering Dangerous Substance	26
		Dealing Drugs	25	3.2
		Possession Controlled Substance	17	2.2
		Possession Marijuana > 1 lb.	<u>12</u>	<u>1.5</u>
		FY 86 Total	83	10.6
1987	Female	Dealing Drugs	9	0.9
		Possession Controlled Substance	6	0.6
	Male	Delivering Dangerous Substance	62	6.4
		Possession Controlled Substance	47	4.9
		Possession Marijuana > 1 lb.	10	1.0
		Dealing Drugs	<u>2</u>	<u>0.2</u>
FY 87 Total	136	14.0		
1988	Female	Possession Controlled Substance	10	1.0
		Dealing Drugs	9	0.9
	Male	Delivering Dangerous Substance	86	8.7
		Possession Controlled Substance	27	2.7
		Possession Marijuana > 1 lb.	6	0.6
		Dealing Drugs	<u>2</u>	<u>0.2</u>
FY 88 Total	140	14.1		
1989	Female	Possession Controlled Substance	19	1.8
		Dealing Drugs	12	1.1
		Possession Marijuana > 1 lb.	3	0.3
		Delivering Dangerous Substance	1	0.1
	Male	Delivering Dangerous Substance	106	10.0
		Possession Controlled Substance	75	7.1
		Possession Marijuana > 1 lb.	8	0.8
		Dealing Drugs	<u>2</u>	<u>0.2</u>
FY 89 Total	226	21.4		
1990	Female	Dealing Drugs	5	1.9
		Possession Controlled Substance	4	1.5
		Possession Marijuana > 1 lb.	1	0.4
	Male	Delivering Dangerous Substance	53	19.9
		Possession Controlled Substance	32	12.0
		Possession Marijuana > 1 lb.	<u>1</u>	<u>0.4</u>
FY 90 (July, Aug., Sept.)	96	35.9		

*Most serious offense.

MODIFIED IN-PATIENT SUBSTANCE ABUSE PROGRAM
LINCOLN CORRECTIONAL CENTER
(revised November 16, 1988)

INTRODUCTION

The majority of inmates incarcerated in the Department of Correctional Services have alcohol and/or drug abuse problems which directly or indirectly affect their behavior. To facilitate the most efficient and effective delivery of services for inmates with major substance abuse problems, the In-Patient Substance Abuse Program involves combining educational and therapeutic aspects into a comprehensive three-phase program.

GOAL STATEMENT

The In-Patient Substance Abuse Program provides a total learning environment allowing inmates to abstain from the use of alcohol and drugs and offers them assistance in dealing with their substance abuse problems. Alternative ways of dealing with life problems and situations is an integral part of the program in keeping with the departmental philosophy of returning inmates to society as productive citizens.

PROGRAM ADMISSION

Applicants are selected based on the extent of their problem with alcohol and/or other drugs, their basis of motivation and seriousness of purpose, their ability to function in a group setting, an absence of severe pathological indication, their anticipated release date and their institutional behavior. Failure to meet the above criteria is sufficient cause for rejection of an applicant. In addition, an applicant may be temporarily rejected if a substantial conflict between the program schedule and the applicant's school or work schedule exists. When the conflict is resolved, the applicant may be reconsidered for programming pending the availability of space.

Admission to the program is voluntary. Admission is usually initiated through referrals from the Parole Board, case management, unit staff, mental health staff and self-referrals. Inmates sentenced under Nebraska Statute 28-416 are automatically screened for admission into the In-Patient Substance Abuse Program upon their arrival at the Evaluation Unit. Upon receipt of a referral a screening interview is conducted with the inmate. During this interview additional information is acquired and the program is explained to the inmate more thoroughly. Upon admission the applicant is given a contractual agreement to sign which lists the conditions with which he must comply in order to successfully reside in and complete the program. The Substance Abuse Treatment Team has the authority to accept or deny an inmate admission into the In-Patient Substance Abuse Program.

HOUSING ON D-UNIT

Inmates admitted to the In-Patient Substance Abuse Program at the Lincoln Correctional Center will be housed on the D-2 side of D-Unit and separated from the inmates in the In-Patient Sex Offender Program who occupy the D-1 side of D-Unit. This will hold true except for the commons area containing the pool tables which are available to inmates on both D-2 and D-1 simultaneously. This separation of inmates is advantageous to both programs. It allows the exclusive use of the open areas on each side, such as the dining areas and the television viewing areas, for program activities without interference from others. It also encourages the exchange of ideas of mutual interest within each group, especially at meal times.

New clients are admitted to D-Unit for participation in the In-Patient Substance Abuse Program when space becomes available. Arrangements for housing of inmates on D-Unit are completed in the usual manner through Unit Supervisors. Similarly inmates who are terminated from the program are removed from D-Unit in the customary fashion.

TREATMENT

The In-Patient Substance Abuse Program is a three-phase program with each phase designed to build upon the previous phase. Inmates are initially accepted into the Short-Term Program (Phase I) and may later request admission into the Extended (Phase II) and finally the Long-Term (Phase III) Programs. Admission and acceptance into each successive program is determined by the Substance Abuse Treatment Team.

The primary treatment modality is the group process which is supplemented by a highly structured educational program utilizing lectures, films, tapes, guest speakers, as well as reading and writing assignments. Steps of the Alcoholics Anonymous/Narcotics Anonymous Programs are fostered along with attendance at A.A./N.A. meetings within the facility, the program and as part of the After-Care Program.

PROGRAMMING

I. Short-Term Program (Phase I)

A. Purpose Statement:

The Short-Term Program is a voluntary 90-day program consisting of approximately 20 of the 35 beds allotted to the In-Patient Substance Abuse Program. It is designed to introduce inmates with substance abuse problems to the philosophy of Alcoholics Anonymous/Narcotics Anonymous. The program combines educational components with group therapy in an effort to provide inmates with an understanding of and insight into the dynamics of their substance abuse problem.

B. Inmate Requirements:

1. The candidate must be approved for acceptance by the Substance Abuse Treatment Team who will base much of their decision on the candidate's motivation for treatment, verbalization of a substance abuse problem and Misconduct Reports received within the past 90 days.
2. The candidate must be willing to sign a contractual agreement.

C. Inmate Duties:

1. He will commit to active participation in the Short-Term Program for a minimum of 90 days during which time he will abstain from the use of alcohol and illicit drugs.
2. He will maintain a minimal attendance rate of 90% at assigned program activities which may include, but are not necessarily limited to, A, B or C group, lectures, film group, unit review and rap sessions.

3. He will be responsible for maintaining journals which will be submitted to his primary counselor once a week.
4. He will be responsible for working on and completing Steps One, Two and Three of the 12 Steps of Alcoholics Anonymous.
5. He will be responsible for attending A.A. or N.A. meetings at least once a week.
6. He will be responsible for attending a 12 week rotating group designed to introduce the components of relaxation techniques, anger skills and criminal thinking errors.
7. He will be responsible for reading the first five chapters from the "Big Book" of Alcoholics Anonymous as well as any other specified reading assignments.

II. Extended Program (Phase II)

A. Purpose Statement:

The Extended Program is a voluntary 90-day program consisting of approximately 10 of the 35 beds allotted to the In-Patient Substance Abuse Program. This phase of the program is designed to build on those concepts acquired in the Short-Term Program. This program provides continuity and increased opportunities for learning to those inmates who are in need and desirous of receiving further intensive in-patient substance abuse programming in a therapeutic environment.

B. Inmate Requirements:

1. The candidate must have successfully completed the Short-Term Program and request to be in the Extended Program. The length of time taken by the inmate to complete the Short-Term Program will be considered.
2. The candidate must be approved for acceptance by the Substance Abuse Treatment Team who will base much of their decision on the inmate's past attendance and the team's perception of the quality of the inmate's program participation.
 - a. Any Misconduct Reports received while the candidate was a member of the Short-Term Program will also be considered in the Treatment Team's decision.
 - b. The Treatment Team will take all of the candidate's treatment needs into consideration when making their decision. It may be determined that a candidate would most benefit from placement in another treatment program.

3. The candidate must be willing to sign a new contractual agreement.

C. Inmate Duties:

1. He will commit to active participation in the Extended Program for a minimum of 90 days during which time he will abstain from the use of alcohol and illicit drugs.
2. He will continue to maintain a minimal attendance rate of 90% at assigned program activities which may include, but are not necessarily limited to, A, B or C group, lectures, film group, unit review and rap sessions.
3. He will continue to be responsible for maintaining journals which will be submitted to his primary counselor once a week.
4. He will be responsible for working on and completing Steps Four and Five of the 12 Steps of Alcoholics Anonymous.
5. He will be responsible for attending institutional A.A. meetings at least once a week. He will continue to attend A.A. or N.A. meetings on the unit which he will facilitate on a rotating basis.
6. He will be responsible for attending a specialized Re-Lapse Prevention Group.
7. He will be responsible for reading the remainder of the "Big Book" of Alcoholics Anonymous and discussing it in Re-Lapse Prevention Group.
8. He will be responsible for reading between one and three books from the approved substance abuse reading list and presenting an oral review in the unit review meeting. The number of books to be read will be determined by the inmate and his primary counselor.
9. He will be responsible for assisting in film group.
10. He will be responsible for facilitating rap sessions and relaxation groups on a rotating basis.

III. Long-Term Program (Phase III)

A. Purpose Statement:

The Long-Term Program is a voluntary program lasting up to six months and consisting of approximately three to four of the 33 beds allotted to the In-Patient Substance Abuse Program. This phase of the program is designed to enable the inmate to further internalize the A.A./N.A. philosophy as a way of life and to provide an opportunity for the inmate to continue gaining insight into his substance abuse problem. Emphasis is placed on responsibility, leadership and assisting others by providing program stabilization and appropriate role modeling for the newer program participants.

B. Inmate Requirements:

1. The candidate must have successfully completed both the Short-Term and the Extended Programs and request to be in the Long-Term Program. The length of time taken by the inmate to complete these programs will be considered.
2. The candidate must be approved for acceptance by the Substance Abuse Treatment Team who will base much of their decision on the inmate's past attendance and the team's perception of the quality of the inmate's program participation.
 - a. Any Misconduct Reports received while the candidate was a member of the Short-Term or Extended Programs will also be considered in the Treatment Team's decision.
 - b. The Treatment Team will take all of the candidate's treatment needs into consideration when making their decision. It may be determined that a candidate would most benefit from placement in another treatment program.
3. The candidate must be willing to sign a new contractual agreement.
4. The candidate must have been involved (either presently or at some time during Substance Abuse Treatment) in all groups that were recommended by the Substance Abuse Treatment Team.
5. Involvement in the Inmate Program Committee will be considered when making the decision as to whether or not the candidate should be accepted into the Long-Term Program.

C. Inmate Duties:

1. He will commit to active participation in the Long-Term Program for up to six months during which time he will abstain from the use of alcohol and illicit drugs.
2. He will maintain a minimal attendance rate of 95% at assigned program activities which may include, but is not necessarily limited to, A, B or C group and unit review.
3. He will continue to be responsible for maintaining journals which will be submitted to his primary counselor once a week.
4. He will be responsible for working on and completing Steps Six through 12 of the 12 Steps of Alcoholics Anonymous.
5. He will be responsible for attending institutional A.A. meetings at least once a week. He will continue to attend and help facilitate A.A. or N.A. meetings on the unit, unless excused by his primary counselor

6. He will be responsible for attending a specialized Re-Lapse Prevention Group.
7. He will be responsible for completing reading assignments from the approved substance abuse reading list and presenting an oral review in the unit review meeting. The number of books to be read will be determined by the inmate and his primary counselor.
8. He will verbalize a willingness to be hired as a Substance Abuse Program assistant, who will be responsible for:
 - a. Assisting in the Out-Patient Aftercare Group(s).
 - b. Giving lectures.
 - c. Facilitating film group.
 - d. Any other duties assigned by the Substance Abuse Treatment Team.
9. He will be seen by the Substance Abuse Treatment Team every 90 days to evaluate his progress in treatment.

CRITERIA FOR PROGRAM COMPLETION

When an inmate has successfully completed all of the requirements of his contractual agreement he may be considered by the Substance Abuse Treatment Team for program completion. Those inmates who successfully complete the program are awarded a Certificate of Completion which they receive at the time they are physically transferred off D-Unit. An inmate will receive a Certificate of Completion for each successfully completed phase of the In-Patient Substance Abuse Program.

CRITERIA FOR DISMISSAL

It is our firm expectation that participants in the In-Patient Substance Abuse Program attend and participate in all program activities. Unexcused absences may result in dismissal from the program. Receipt of a Misconduct Report, highly disruptive group/unit behavior, or repeated lack of cooperation or participation may also result in dismissal.

All clients are subject to urinalysis testing on a random basis during the time they are members of the In-Patient Substance Abuse Program. Positive urinalysis results will constitute grounds for immediate dismissal from the program. Refusal or failure to provide a urine specimen is also grounds for dismissal.

AFTER CARE

Those inmates who successfully complete the In-Patient Substance Abuse Program and are returned to the general prison population are strongly encouraged to attend .A./N.A. meetings regularly and to attend and participate in the Out-Patient Aftercare Group(s) regularly.

LINCOLN CORRECTIONAL CENTER
AGREEMENT FOR PARTICIPATION IN THE
SHORT-TERM INPATIENT SUBSTANCE ABUSE PROGRAM
(PHASE I)

1. I will participate actively in the Short-Term Program for a minimum of 90 days.
2. I will remain free of alcohol and illegal drugs for the duration of the Program. I agree to have a Urinalysis taken by staff at their discretion. Positive results will result in dismissal from the Program.
3. I will maintain the confidentiality of the Group.
4. I will attend and be on time for all Program Activities. Any absence which has not been approved by my primary Substance Abuse Counselor could result in a Misconduct Report.
5. I will complete all written assignments and submit my Journals to my primary Substance Abuse Counselor once a week.
6. I will complete the First Three Steps of the Twelve Steps of Alcoholics Anonymous.
7. I will attend A.A. or N.A. meetings at least once a week.
8. I will complete the reading assignments from the "Big Book" of Alcoholics Anonymous, namely the First Five Chapters, and other reading assignments as specified.
9. I will behave in a responsible manner on the Unit and I will expect to be held accountable for my own behavior at all times.
10. I will adhere to the behavioral objectives as outlined in my individualized Inpatient Substance Abuse Treatment Plan.
11. I understand that the receipt of any Misconduct Reports and/or failure to follow through with this Contractual Agreement may result in my termination from the Program.
12. I understand that by signing this document I am giving the group facilitators permission to confront my past criminal behavior and any current deviant behavior both individually and in groups.

NAME _____

NUMBER _____

WITNESS _____

DATE _____

§ 28-416

CRIMES AND PUNISHMENTS

active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than two hundred milligrams of codeine per one hundred milliliters or per one hundred grams;
- (2) Not more than one hundred milligrams of dihydrocodeine per one hundred milliliters or per one hundred grams;
- (3) Not more than one hundred milligrams of ethylmorphine per one hundred milliliters or per one hundred grams;
- (4) Not more than two and five-tenths milligrams of diphenoxylate and not less than twenty-five micrograms of atrophine sulfate per dosage unit;
- (5) Not more than one hundred milligrams of opium per one hundred milliliters or per one hundred grams; and
- (6) Not more than five-tenths milligram of difenoxim and not less than twenty-five micrograms of atropine sulfate per dosage unit.

Source: Laws 1977, LB 38, § 65; Laws 1978, LB 748, § 50; Laws 1980, LB 696, § 2; Laws 1985, LB 323, § 2; Laws 1985, LB 406, § 3; Laws 1986, LB 1160, § 1.
Effective date July 17, 1986.

28-416. Prohibited acts; violation; penalty; parole eligibility. (1) Except as authorized by this article, 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) 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 IV felony.

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

(4) 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.

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

(6) 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;

OFFENSES AGAINST PROPERTY

§ 28-515

(b) For the second offense, be guilty of a Class IV misdemeanor, receive 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.

(7) 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.

(8) 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.

Source: Laws 1977, LB 38, § 76; Laws 1978, LB 808, § 2; Laws 1980, LB 696, § 3; Laws 1985, LB 406, § 4; Laws 1986, LB 504, § 1.
Effective date July 17, 1988.

A party claiming that the sale of a controlled substance was exempt has the burden of proof that an exemption was applicable. *State v. Taylor*, 221 Neb. 114, 375 N.W.2d 610 (1985).

28-432. Complaint, pleading, or proceeding; burden of proof.

A party claiming that the sale of a controlled substance was exempt has the burden of proof that an exemption was applicable. *State v. Taylor*, 221 Neb. 114, 375 N.W.2d 610 (1985).

ARTICLE 5

OFFENSES AGAINST PROPERTY

Section.

28-515. Theft of services; penalty.

28-507. Burglary; penalty.

Evidence of any act of physical force by which the obstruction to entering is removed, such as opening a closed screen door to enter an apart-

ment, is sufficient to prove a breaking under this statute. *State v. Sutton*, 220 Neb. 128, 368 N.W.2d 492 (1985).

28-515. **Theft of services; penalty.** (1) A person commits theft if he or she obtains services, which he or she knows are available only for compensation, by deception or threat or by false token or other means to avoid payment for the service. Services include labor, professional service, telephone service, electric service, cable television service, or other public service, accommodation in hotels, restaurants, or elsewhere, admission to exhibitions, and use of vehicles or other movable property. When compensation for service is ordinarily paid immediately upon the rendering of such service, as in the case of hotels and restaurants, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to intention to pay.

(2) A person commits theft if, having control over the disposition of services of others to which he or she is not entitled, he or she diverts such

VIII. MODERATING PRISON LENGTHS OF STAY

A. GOOD TIME LAWS

Sections 83-1,107 and 83-1,107.01 Neb. Rev. Stat. (See Attachment A) are the source of the good time laws for the state of Nebraska. Current law provides that an offender may have his or her sentence reduced for "good behavior" and "faithful performance of his assigned duties". The difference is in how these statutes are applied to an offender's term.

For good behavior, the term shall be reduced by two months the first year, two months the second year, three months the third year, and four months for each succeeding year of the offender's term. This time is deducted from both the offender's minimum term to determine the date of parole release eligibility, and from the offender's maximum term, to determine the date when the offender is required to be discharged from the institution.

For faithful performance of his assigned duties, an offender receives an additional two months' reduction of sentence per year, to be deducted from the maximum term.

The good time received for good behavior and faithful performance is not actually different. If a prisoner receives good time for one, he or she will receive good time for the other. However, there is a difference in how the time is actually computed. Since "good behavior" good time is deducted from both the minimum and maximum terms, and "faithful performance" good time is deducted from the maximum term, there are many cases in which an offender's mandatory release date and parole eligibility release date may be extremely close or even overlap. Thus an offender may elect to "jam out" rather than be under parole supervision, especially if there is little or no difference between release dates. (See also the Parole Section of this report).

This problem could be alleviated by either amending "faithful performance" good time so that credits would apply to both minimum and maximum terms or by combining the two forms of good time and applying an equal amount of time to be deducted from both minimum and maximum terms.

Good time is one of the oldest methods utilized to reduce overcrowded prisons. The New York Legislature first introduced the concept in 1817 as a reaction to the overcrowded conditions within the state's only prison ("Overcrowded Time: Why Prisons Are So Crowded And What Can Be Done", 1982, the Edna McConnell Clark Foundation). Since good time is awarded for good behavior, some states have learned that a 'get tough' philosophy relating to good time, in which good time has been reduced or eliminated, has only led to an increase in population and tension since the inmates have no reason to avoid trouble.

Any change in good time laws would apply prospectively to those individuals incarcerated after the effective date of the act. It would require Board of Pardon approval for the change in good time to apply retroactively. Although absolute numbers are difficult to predict, a change in the good time laws could affect length of stay by as much as two to five months for inmates incarcerated after the effective date of the act.

It must be noted that a change in good time may upset inmates who have been incarcerated under a more stringent law. Presently, there are three different forms of good time being applied to inmates.

Divertible population: Average length of stay would be reduced from two to five months, depending upon the change in good time, thereby reducing prison populations by 9 to 13.7 percent when fully implemented. This would be based upon the premise that judges would not begin to give stiffer sentences in order to compensate for the additional good time.

Cost: Approximately \$300,000 for additional parole costs.

MERITORIOUS GOOD TIME

In addition to good time for good behavior, good time given for educational, vocational or even employment achievements could be considered. Department of Correctional Services statistics show that 39 percent of the inmates have less than 12 years of schooling, with 7 percent having less than an eighth grade education. By providing good time credits for educational achievement, it would encourage inmates to achieve more than just credit for good behavior, and by increasing their education, increase their chances of obtaining employment in the outside. According to the Bureau of Governmental Research and Service, University of South Carolina (January 1987, No. 35), "In addition, prison officials are very supportive of programs which allow inmates to reduce their sentences by participating in educational and vocational programs. While the rehabilitative effects of such programs have been overestimated in the past, it is both legally and practically important to provide opportunities for meaningful activity to inmates who will eventually return to the community. Apart from the possibility of rehabilitation, corrections officials find such programs to be indispensable for managing a prison. The dangerous inmates are

often those who have lost all hope and have no incentives to obey prison rules."

During the past year, approximately 492 inmates participated in some form of educational program offered through DCS. LCC, OCC and NSP have the widest array of programs and contract with Metro and Southeast Community Colleges for teaching assistance. York offers fewer college courses, but is expanding its horticultural and clerical arts courses. Hastings offers the least opportunities, but has contracted with Hastings Central Community College to expand its programs as its population increases.

DCS Educational Five Year Plan Committee is studying projected educational needs and will report its findings in March of 1990.

Total diverted population: Dependent upon the time given for the educational achievement. What should be considered are the other benefits that are difficult to assess in terms of cost, such as the inmate's feeling of self worth, his ability to adapt to the outside, and, just as important, another stabilizing factor for the prison in terms of a reduction in inmate idleness.

Cost: Current educational costs to the system amount to \$1.2 million annually. Possible enhancement of programs maybe necessary if good time provides incentive for more participation.

C. REINSTATEMENT OF LOST GOOD TIME

Historically, corrections officials over the years have released inmates by reinstating good time the inmate had lost for misbehavior. According to the Department of Corrections, 114 inmates could be released immediately if their good time were reinstated. Of those 114, the Department feels that approximately 50-60 could be safely released as an emergency release measure, if necessary. There is no statutory requirement or mandate that these individuals be released. It is entirely within the discretion of the Department of Corrections. Section 83-1,107 (Neb. Rev. Statutes) provides that reductions of terms may be forfeited, withheld and restored by the chief executive officer of the facility.

In January of 1989 the Department released 73 inmates by reinstatement of good time. Since that time 101 inmates have had their good time credits restored.

TOTAL DIVERTED POPULATION: 50 - 114

COST: \$0 However, there are additional, unmeasurable costs to the system when emergency release mechanisms are utilized. Reinstatement of good time may send a mixed message to the prison population. And, as with any release, a decision as to who may or may not pose a danger to the general public is difficult and unexacting.

D. EARLY RELEASE PROGRAMS

In addition to reinstatement of good time, some states have implemented some form of an automatic release mechanism based on population. In Michigan the Emergency Powers Act was created to help alleviate a serious overcrowding situation. When prison population exceeds rated design capacity for 30 consecutive days, the governor declares a state of emergency. At that point the fixed minimum sentences of prisoners are reduced by 90 days, thus making some prisoners eligible for parole. If this does not reduce the population to below 95 percent of capacity, minimum sentences are reduced by an additional 90 days. Prisoners with life sentences or fixed sentences for serious convictions involving the use of a firearm are not eligible.

Other forms of emergency release are early release under court order and use of a prison population cap. According to Keon S. Chi in Prison Overcrowding Emergency Powers Act: The Michigan Experience (Innovations, Council of State Governments, 1984) states such as Alabama, Maryland, Oklahoma and Tennessee, all under court order to ease overcrowding, release prisoners through special legislative resolutions or by administrative measures. Iowa set a statutory ceiling on prison beds. Once the population exceeded the ceiling, prisoners were released by parole boards. Ohio and Georgia also select inmates for early parole. In Ohio the least serious offenders have priority.

Although a study of recidivism rates in Washington showed that rates of the early release groups were low or lower than comparison groups, the study also concluded that "unless care is made in selecting who is released early, the risk to public safety can become excessive." State Legislatures and Corrections Policies: An Overview (National Conference of State Legislatures, 1989).

These controversial options are, at best, extremely short-term answers. According to Chi: "While the EPA has helped Michigan's prison system stay within its rated design capacity, it has not been viewed as the answer to the state's overcrowding problem for the long term...Prison overcrowding cannot be effectively reduced with back end control alone. Input, including sentencing practices, must be considered along with parole releases."

The Pardons Board has the power to grant "respites, reprieves, pardons or commutations" (Section 83-170 Neb. Rev. Stat.) The Board receives 15-30 applications for pardons and commutations of sentences on a quarterly basis. Approximately eight to ten pardons are granted per year. As another option, the Pardons Board could commute sentences of prisoners in order to alleviate overcrowding conditions. The Pardons Board is made up of the Governor, the Attorney General and the Secretary of State.

Total possible diverted population: Dependent upon the form of release. If a cap is set, the number of inmates above the cap could be released.

Cost: Increased cost to parole board and parole system, depending upon the number released. (Approximately \$2,022 per inmate)

MANAGEMENT

§ 83-1,107

mining the amount of credit to be allowed defendant for time spent in jail. State v. Tweedy, 196 Neb. 246, 242 N.W.2d 626.

3. Miscellaneous

Jail time is commonly understood to be the time an accused spends in detention pending trial and sentencing. State v. Fisher, 218 Neb. 479, 356 N.W.2d 880 (1984).

Authority to give credit for time served in custody lies with district court under this section. Under section in effect in 1970, only Director of Corrections had authority to allow

credit for time spent in custody as a result of the criminal charge for which a prison sentence is imposed or as a result of the conduct on which such a charge is based. State v. Al-Hafeez, 208 Neb. 681, 305 N.W.2d 379 (1981).

This section does not prohibit a second trial for offenses arising out of the same conduct, nor does it specifically indicate any direct federal-state application. State v. Pope, 190 Neb. 689, 211 N.W.2d 923.

This section is not retrospective. Housand v. Sigler, 186 Neb. 414, 183 N.W.2d 493.

83-1,107. Chief executive officer; reduction of sentence; provisions; how credited; reductions forfeited; when; good time credit forfeited; recommendation of Board of Parole. (1) The chief executive officer of a facility shall reduce for good behavior the term of a committed offender as follows: Two months on the first year, two months on the second year, three months on the third year, four months for each succeeding year of his term and pro rata for any part thereof which is less than a year. The total of all such 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:

(a) From his minimum term, to determine the date of his eligibility for release on parole; and

(b) From his maximum term, to determine the date when his discharge from the custody of the state becomes mandatory.

(2) While the offender is in the custody of the Department of Correctional Services, reductions of such terms 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 regarding the charges of misconduct.

(3) While the offender is in the custody of the Board of Parole, reductions of such terms may be forfeited, withheld, and restored by the Parole Administrator with the approval of the director after the offender has been consulted regarding the charges of misconduct or breach of the conditions of his parole. In addition, the Board of Parole may recommend such forfeitures of good time to the director.

(4) Good time or other reductions of sentence granted under the provisions of any law prior to August 24, 1975, may be forfeited, withheld, or restored in accordance with the terms of this act.

Source: Laws 1969, c. 817, § 38, p. 3092; Laws 1972, LB 1499, § 7; Laws 1975, LB 567, § 2.

Note: "This act" includes sections 83-185, 83-187, 83-188, 83-1,101, 83-1,105 to 83-1,107, 83-1,108, 83-1,110, 83-1,111, 83-1,120, and 83-1,123.

1. Reduction of term
2. Applicability of section
3. Miscellaneous

1. Reduction of term

When an indeterminate sentence is imposed, a prisoner's earliest parole eligibility date is determined by crediting good behavior time on the basis of his minimum, not his maximum, term. *Ebert v. Black*, 216 Neb. 814, 346 N.W.2d 254 (1984).

The good time reductions provided in this section are used to determine eligibility for release on parole or supervision and are subject to forfeiture. *Wycoff v. Vitek*, 201 Neb. 62, 266 N.W.2d 211 (1978).

The good time reductions provided in this section are used to determine eligibility for release on parole or supervision and are subject to forfeiture. *Brown v. Sigler*, 186 Neb. 800, 186 N.W.2d 735.

2. Applicability of section

Neither mandatory good time earned pursuant to this section nor meritorious good time earned pursuant to section 83-1,107.01 is automatically forfeited upon revocation of parole. Such forfeiture must occur upon recommendation of the chief executive officer of the facility to which the offender is entrusted or the parole administrator, depending upon who has custody at the time of revocation, subject to approval of the director of the Department of Correctional Services. Once forfeited or withheld, good time credits may be restored to the offender in like manner. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Pursuant to this section and section 83-1,107.01, the Board of Parole merely has the right to make recommendation of forfeitures of good time when the offender is in the custody of the Board of Parole. The discretion referred to by statute vests solely in the chief executive officer of the facility when the offender is in the custody of the Department of Correctional Services and in the parole administrator when the offender is in the custody of the Board of Parole, in each instance subject to the approval of the director of the Department of Correctional Services. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

The good time provisions of LB 567 are not to be retroactively applied to those who were initially incarcerated prior to its effective date, regardless of whether the incarceration is on a

consolidated sentence made up of crimes committed both before and after LB 567's effective date, without Board of Pardons approval. *Boston v. Black*, 215 Neb. 701, 340 N.W.2d 401 (1983).

This section through section 83-1,111 applies retroactively to prisoners only with approval of the Board of Pardons. *Johnson & Cunningham v. Exon*, 199 Neb. 154, 256 N.W.2d 869.

This section governs eligibility for parole or release under supervision rather than for absolute discharge as under previous statutes. *Von Bokelman v. Sigler*, 186 Neb. 378, 183 N.W.2d 267.

The reduction of sentence for good behavior and faithful performance of duties is a statutory right and cannot be eliminated or withheld for failure to perform work which a prisoner is unable to do because of physical infirmity not caused by his misconduct, nor as punishment except for flagrant or serious misconduct. *Sawyer v. Sigler*, 320 F.Supp. 690.

3. Miscellaneous

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63.

Prisoner's statutory right to good time may not be taken away from him without following minimum appropriate due process procedures. *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963, 41 L.Ed.2d 935.

The decision to impose discipline is discretionary with the chief executive officer of a penal facility and imposition of a greater penalty for infraction of a prison rule than would have been sustained by a citizen prosecuted in a court of law for a similar offense is neither an abuse of that discretion nor a violation of the U.S. Constitution. *Glouser v. Parratt*, 605 F.2d 419 (8th cir. 1979).

Fighting and threatening an officer's life would amount to flagrant or serious misconduct for which statutory good time may be withheld. Certain activities which would not, or which are best left to judgment of adjustment committee, are outlined. *McDonnell v. Wolff*, 342 F.Supp. 616.

83-1,107.01. Reduction of sentence for faithful performance of duties; computed; reduction forfeited for misconduct; consultation with offender. (1) In addition to the reductions provided in section 83-1,107, an offender shall receive, for faithful performance of his assigned duties, a further reduction of five days for each month of his term. The total of all such reductions shall be deducted from his maximum term to

determine the date when his discharge from the custody of the state becomes mandatory.

(2) While the offender is in the custody of the Department of Correctional Services, reductions of such terms 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 regarding any charges of misconduct.

(3) While the offender is in the custody of the Board of Parole, reductions of such terms may be forfeited, withheld, and restored by the Parole Administrator with the approval of the director after the offender has been consulted regarding the charges of misconduct or breach of the conditions of his parole. In addition, the Board of Parole may recommend such forfeitures of good time to the director.

Source: Laws 1975, LB 567, § 3; Laws 1976, LB 621, § 2.

Neither mandatory good time earned pursuant to section 83-1,107 nor meritorious good time earned pursuant to this section is automatically forfeited upon revocation of parole. Such forfeiture must occur upon recommendation of the chief executive officer of the facility to which the offender is entrusted or the parole administrator, depending upon who has custody at the time of revocation, subject to approval of the director of the Department of Correctional Services. Once forfeited or withheld, good time credits may be restored to the offender in like manner. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Pursuant to section 83-1,107 and this section, the Board of Parole merely has the right to make recommendation of forfeitures of good

time when the offender is in the custody of the Board of Parole. The discretion referred to by statute vests solely in the chief executive officer of the facility when the offender is in the custody of the Department of Correctional Services and in the parole administrator when the offender is in the custody of the Board of Parole, in each instance subject to the approval of the director of the Department of Correctional Services. *Malone v. Benson*, 219 Neb. 28, 361 N.W.2d 184 (1985).

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63.

83-1,108. Board of Parole; reduction of sentence for good conduct; provisions; forfeiture. (1) The Board of Parole shall reduce for good conduct in conformity with the conditions of his parole, a parolee's parole term by two days for each month of such term. The total of such reductions shall be deducted from his maximum term, less good time reductions granted under the provisions of sections 83-1,107 and 83-1,107.01, to determine the date when his discharge from parole becomes mandatory.

(2) Reductions of the parole terms may be forfeited, withheld, and restored by the Board of Parole after the parolee has been consulted regarding any charge of misconduct or breach of the conditions of his parole.

Source: Laws 1969, c. 817, § 39, p. 3092; Laws 1972, LB 1499, § 8; Laws 1975, LB 567, § 4.

Sentencing judge's announcement he considered possible effect of statutes permitting prison authorities to ameliorate sentences did

not violate constitutional due process, and sentences were not excessive. *State v. Houston*, 196 Neb. 724, 246 N.W.2d 63.

IX. PAROLE

Background

Parole is a program which allows an offender to serve a portion of his or her sentence under supervision in the community. Most offenders, even those with life sentences, can expect to be released before serving their entire sentence. Parole provides the mechanism for reintegrating these offenders into a community environment.

The Parole program was established in 1969 under LB 1307. At this time, the Parole Board was created for the purpose, in part, of determining the time of release on parole of committed offenders eligible for release, to fix the conditions of parole, revoke parole and determine the time of discharge from parole. (See Neb. Rev. Stat. section 83-192). The Parole Board is autonomous from the Department of Correctional Services.

LB 1307 also created the Office of Parole Administration within the Department of Correctional Services. The purpose of Parole Administration is to administer parole services in the community (See Neb. Rev. Stat. 83-1,100-83-1,104).

A committed offender becomes eligible for release on parole when the offender has completed his or her minimum term less any reductions granted. (Neb. Rev. Stat. section 83-1,110).

Currently, 520 offenders are on parole. Those offenders are supervised by 12 parole officers statewide. Six (6) parole officers are assigned to Omaha and six (6) are assigned to the Lincoln region which includes the remainder of the state. The average caseload for each parole officer is 42-43 parolees. The Department of Correctional Services anticipates that the number of offenders on parole will increase to more than 700 by 1991. Nevertheless, a comparison of the number of offenders on parole in Nebraska to midwest and national statistics indicates that Nebraska has far fewer offenders on parole than other states. The rate of parole per 100,000 in population in Nebraska is 31 as compared to 106 in the midwest and 201 nationally. Nebraska's lower parole population can, in part, be explained by the length of parole sentences which, on the average, are shorter in Nebraska than nationally. However, this does not entirely explain the difference in the use of parole.

The length of parole sentence particularly does not explain the difference in the use of parole when one considers that Nebraska currently has 778 committed offenders who are eligible for parole but have not been paroled. 243 of the 778 offenders have had hearings set by the Parole Board for next year. Of the 778 offenders, 185 have had their parole revoked and been returned to prison. Of the 593 remaining offenders who are eligible for parole, several reasons may account for their continued incarceration. First, the good time laws appear to operate in such a way as to keep some offenders in prison. Second, Parole Board policy and practice may operate to keep offenders in prison, or at a minimum, slow the process. Finally, the lack of resources and options for may operate to keep offenders in prison.

It should be noted that the Parole Board cannot parole an offender until that offender becomes statutorily eligible for release. As indicated earlier, an offender is eligible for release on parole once the offender has completed his or her minimum term less any reductions in sentence, such as good time, that have been granted. This report does not consider changes to the existing statutory scheme regarding the time at which an offender may become eligible for release. The Legislature may want to consider providing greater flexibility in the statutes, but for the purposes of this report it's sufficient to examine why the state has nearly 800 offenders, otherwise eligible for parole, still sitting in prison.

GOOD TIME

Good Time is discussed in greater detail elsewhere in this report; however, its effect on the use of parole merits a brief discussion here.

It appears that good time may operate to keep some offenders in prison. Mandatory good time (Neb. Rev. Stat. section 83-1,107) is deducted from an offender's maximum term for the purpose of determining the offender's mandatory release date and from the minimum sentence for the purpose of determining the offender's parole eligibility date. Meritorious good time, on the other hand, is deducted solely from the offender's maximum term. The effect of this is that, for some offenders, the mandatory release date gradually moves closer to the parole eligibility release date. This particularly may have an impact on offenders with short sentences who may opt to wait for their mandatory release date rather than be released on parole. To illustrate the operation of good time on release, statistics from FY 1988-89 indicate that 548 prisoners were paroled, while 491 waited for their mandatory release date.

There are, of course, other offenders who may simply choose not to be paroled because of the conditions and supervision of parole, but instead opt for mandatory release. The Department of Correctional Services does operate a furlough program called Extended Leave that enables the Department to release offenders, who are otherwise not eligible for parole, early. An offender may not become eligible for parole prior to his/her mandatory release date for a couple of reasons. First, the operation of the good time laws reduces the mandatory release date faster than the parole eligibility date. For example, on a sentence of 7-9 years with good time, an offender becomes eligible for parole after serving 5 years and 1 month. That same offender's mandatory release date is 4 years, 11 months. On a 3-4 years sentence, the offender's parole eligibility date and mandatory release date would be the same. In addition to this, an offender who receives a flat sentence that is the minimum will reach his/her mandatory release date quicker than the parole eligibility date. To illustrate, an offender with a flat sentence of one year would be eligible for parole after serving 10 months, but is eligible for mandatory release after serving 8 months.

The extended leave program permits an offender to serve the last six months of his or her sentence under strict supervision in the community if the offender is not eligible for parole. If the offender is technically eligible for parole, but has not been paroled, the offender can serve the last nine months on extended leave.

The extended leave program is a strict supervision program administered by Parole Administration. It requires a minimum of one face to face contact per week, collateral contacts (contacts with employer, family, school, etc.) and a weekly itinerary. House arrest is also built into the program; therefore an offender must be at home unless his/her itinerary indicates otherwise.

At the present time, 40 offenders are on extended leave.

PAROLE BOARD PRACTICE AND POLICY

An offender may also be eligible for parole but not entitled to parole under Parole Board policy. For example, the offender may have too many misconducts or may not have participated in the appropriate programs (drug treatment, mental health treatment, etc.), or may not have an established program (employment, school) upon release. In addition, some policies of the Parole Board appear to slow the parole process. Following is a discussion of those policies.

A. Public Notification of Release

Parole Board policy requires the notification, 30 days prior to the parole hearing, of county officials and of the public in the county where the offense was committed. Notification to the public must be published in the local newspaper. The effect of this policy is that the Parole Board cannot release an inmate quickly. Release will always take a minimum of 30 days and typically takes longer. The purpose of the policy is to allow the public an opportunity to appear before the Board and provide input as to whether the offender should be released. While the purpose has merit, it may be possible to provide greater flexibility in the policy. For example, the severity of the crime, the length of the sentence, the past conduct of the offender, etc. may be appropriate criteria upon which to publicize 30 days in advance. However, for lesser offenses or where there is not a substantial public interest, 30 days for publication may not be as necessary.

B. Disciplinary Reports

In some situations, the Parole Board will defer cases with disciplinary reports depending on whether there has been a loss of good time. If a parole hearing is scheduled and the offender has a misconduct report, the offender will likely be paroled unless the sanction resulted in a loss of good time. In this case, the offender's parole often will be deferred. This practice occasionally operates inconsistently. For example, an offender with a more restrictive sanction for misconduct, but no loss of good time, may be paroled under this practice, while an offender that loses good time, but has a sanction that is less strict, will not be paroled. As an illustration, the Department of Corrections has had offenders paroled directly out of segregation because of no loss of good time, while offenders who have lost good time but are in the general population have been denied parole.

C. Program Participation

The Parole Board has a policy which permits it to deny parole or the setting of a parole hearing for any offender sentenced under section 28-416 (drug law) if the offender has a misconduct report eighteen (18) months prior to parole eligibility if the misconduct relates to drugs or alcohol. This policy has the potential to create a substantial logjam in paroling offenders sentenced under the drug law.

Related to this is the issue of participation in treatment. Section 28-416 mandates that an offender shall only become eligible for parole upon the satisfactory attendance and completion of appropriate treatment and counseling on drug abuse, except that an offender who has violated the provisions relating

to cocaine or crack is not eligible for parole prior to serving the mandatory minimum sentence. There is some question as to what the phrase "appropriate treatment and counseling" means. Is the legislative intent to require inpatient treatment and counseling, or can the treatment and counseling be done on an outpatient basis in a program such as AA?

With respect to offenders sentenced under this law, the Department of Corrections is making every effort to assure that these offenders receive a space in the inpatient treatment program at the Lincoln Correctional Center. Section 28-416 is the only statutory section, however, that mandates treatment. Nevertheless, there is some concern that offenders may not be receiving parole because of their failure or inability to participate in treatment programs. Correctional officials do indicate that they have waiting lists for the mental health treatment program.

D. Life Sentences

A recent policy change may have significant impact in the future but is not currently a problem. First degree murderers with a life sentence are only eligible for parole after the Pardons Board commutes their sentence. The Parole Board has, in the past, reviewed lifers after 15 years. However, effective in June 1988, the policy was changed so that offenders sentenced after July 1986, cannot be reviewed for parole until they've served 30 years.

LACK OF RESOURCES

The lack of resources may also be operating to keep offenders in prison. For example, in his testimony before the Committee, Ron Bartee indicated that the lack of funding affects the ability of the Parole Board to review cases quickly. The Parole Board, according to Bartee, lacks a computerized, streamlined process for paperwork, lacks sufficient office space and personnel. Bartee also has mentioned the need for more personnel to supervise parolees and the need for more drug treatment for parolees.

What can be done to alleviate the problem?

Obviously, one option is to provide the Parole Board with additional resources to assist them in handling a greater number of cases. But, there are other options as well such as Intensive Parole Supervision and Mutual Agreement Programming.

1. Intensive Parole Supervision

The Department of Correctional Services under Parole Administration currently operates an intensive parole supervision (IPS) program, initiated with a federal grant. The program has provided a mechanism to parole offenders who six to nine months ago would not have been paroled. In the past, the Parole Board has been reluctant to parole an offender who does not have an established program (employment, school, etc.) at the time of the his/her release. It's extremely difficult for most offenders to establish a program from prison. IPS allows offenders to establish their program within 90 days after release. If the offender does not find employment or enter school, the parole can be revoked. With the use of this program, the Parole Board has shifted and has been willing to parole offenders without a employment.

Intensive Parole Supervision is exactly like intensive probation supervision with the exception that Parole Administration supervises the program. It is a strict supervision program requiring that offenders have one face to face contact per week and collateral contacts. An itinerary is not required unless the offender does not have a program. Currently, the Department has 60 offenders on IPS.

The Legislature should consider continuing this program as a General Fund expenditure and should expand it. The cost of the program is in obtaining additional personnel. The Department estimates that one parole officer can handle 30 IPS cases. Assuming this, the costs are as follows:

Per 30 offenders, one (1) parole officer is needed, one-half (1/2) surveillance officer and one-fourth (1/4) clerical support.

Parole Officer: \$32,078 (includes 7,520 for support)--Lincoln region

\$29,738 (includes 5,520 for support)
--Omaha

Surveillance Officer: \$31,252 (including support)--Lincoln region

\$28,912 (including support)--Omaha

Clerical: (Based on Secy I position) -- \$16,448

To expand this program, it is not anticipated that legislation is necessary. General Fund support is necessary.

2. Mutual Agreement Programming

Mutual Agreement Programming (MAP) is an approach to corrections that is designed to encourage humanity and efficiency in the criminal justice system. MAP recognizes some very basic interests of offenders: (1) it provides specific information to the offender as to when he/she can expect to be released from prison; and (2) it tells the offender what specifically he/she must do to achieve release on parole. MAP is based on the principles that:

- (1) offenders can and should help determine their individual rehabilitative needs;
- (2) The period of imprisonment can and should help offenders acquire the skills, self-discipline, and self-respect necessary to be productive citizens;
- (3) Institutional and parole authorities should explicate and coordinate their goals, programs and expectations so that an offender's behavior during imprisonment can contribute to and be recognized as contributing to his/her readiness for release;
- (4) The conditions and date of parole should be made explicit so offenders know what is expected of them to earn release, and when release will occur if they fulfill their obligations.

MAP is a mechanism to expedite the parole process, to bring greater rationality to the parole board's decision-making process, and to facilitate long-term planning as to what services, facilities and equipment must be provided by correctional authorities. It can also facilitate planning for the offender's return at the community level so that programs are available upon the offender's release.

MAP refers to collaboration between the offender, corrections personnel and to the Parole Board to develop and design a program to meet the offender's individualized needs while in prison. The result is a legally binding contract that articulates parole release criteria and specifies a definite parole date contingent on successful completion of specific conditions and objectives. The MAP program is not designed to achieve release for an offender prior to the earliest parole date for which the offender would otherwise be eligible. It is designed to expedite the parole process and to give the offender goals to work towards. The goals are typically in the areas of work assignments, education, skill training, and treatment.

The program is not designed for every offender. Offenders with very violent backgrounds and long sentences may not be appropriate for the program. Generally, the program is targeted at offenders who (1) are of at least medium custody status, (2) are within twenty-four (24) months of parole eligibility or

discharge at the time the contract becomes effective, (3) have an interest in participating, and (4) are capable psychologically of participating. If an offender violates the terms of the contract, the contract is terminated.

Implementation of the program would require one position to serve as the coordinator. The program would not require any legislation, however a resolution indicating legislative intent that a program be established would be advisable. The resolution should be directed to the Department of Correctional Services and the Parole Board.

3. Options for Parole Revocation

Finally, the Legislature should consider the implementation of parole revocation alternatives in which sanctions, such as intensive parole supervision, electronic monitoring, or detention and diversion centers, are imposed for technical violations of parole rather than returning these offenders to prison. As indicated previously, FY 88-89 figures indicated that 185 parolees had been returned to prison for violating parole.

SUMMARY

Just as it's important to have a range of options available to judges and correctional authorities, so too is it important to have options available to the Parole Board and Parole Administration. Following are recommendations for reducing the prison population through the use of parole:

1. Increase resources to Parole Board
2. Expansion of Intensive Parole Supervision Program
3. Implementation of Mutual Agreement Programming
4. Revision of good-time laws
5. Implementation of parole revocation alternatives in which sanctions, such as intensive parole supervision, electronic monitoring, or detention and diversion centers, are imposed for technical violations of parole rather than returning the parolee to prison.

X. SHOCK INCARCERATION PROGRAMS

Shock Incarceration Programs (SI's) did not obtain the results first taunted by correctional officials upon their inception. SI's fail on two fronts; costs and recidivism.

According to a study by the National Institute of Justice (NIJ) entitled - Shock Incarceration: An Overview of Existing Programs - greater demands on custodial and/or rehabilitation staff in many SI's resulted in higher daily costs per inmate as compare to regular prisoners. However, the reduced lengths of stay for inmates sentenced to these programs did lower average daily costs over the years. How much lower these costs become will depend on the type of program the state runs. Such aspects as length of stay, activities, educational programs, number of personnel, and number of youth involved, may allow a state to expend only 1/3 to 2/3 the amount it would normally expend on regular prisoners. These costs, however, well exceed the costs of ordinary and even intensive probation programs. The study indicates that another problem is that those in power do not always send the appropriate offenders to these facilities. The type of offender the study speaks of is one who would normally receive longer prison terms. The offender is usually non-violent, under 21, and has not yet received a prison sentence. Quite often, the majority of those sentenced to such facilities should have been placed in a probation program initially. This misuse of the facilities results in increased total correctional costs.

A report entitled Juvenile Justice Reform: State Experiences, included a study done by William Barton and Jeffrey Butts of the Center of the Study of Youth Policy at the University of Michigan which found that significant cost-savings with community-based programs. In-home placements in Wayne County (which includes Detroit) cost \$26 a day or \$63 less than commitment in a facility. The Juvenile Justice Report did not include the cost of Boot Camps/SI's in comparison, but given the national average percentile discussed above, in-home placement and other similar programs would be approximately 50% less.

Also while the cost of operating these facilities is less than typical jail facilities, the state must still supervise these youth on some probationary program after release. The more successful programs include more extensive guidance/release programs which further increase the total cost. A study of juvenile systems in the state of Florida indicates that training schools costs reached \$7,260 per child per year while the least expensive of 10 options cost \$2,790. The report which included the study did not indicate whether post-release program costs figured into the total.

The more important area of evaluation the rate of recidivism. The state of Maryland found that community programs, assessment teams and other concepts resulted in a lower rate of recidivism, "a figure substantially lower than that for training schools." A Florida study found that nine of its programs had rankings superior to training schools in measures of 1-year recidivism rates. Short term studies reported in the NIJ study also indicate that such facilities in Georgia, Oklahoma and Louisiana did not reduce the recidivism rate when compared to youths who spend their sentences in standard detention facilities.

Shock incarceration in the traditional sense commonly entails the placement of a first-time youth offender in an adult jail setting. Similar problems have arose in states which use this sentencing alternative. First, judges will often sentence youth offenders who should not or need not go into this type of program. Second, the recidivism rate does not decrease; in fact, it is often much higher than ordinary probation programs. According to the National Institute of Justice, its findings suggest that states should exhibit great caution in exposing youth to confinement when they can be placed in supervisory programs.

In conclusion, SI's make for great video, but unless such programs receive proper structuring and management followed up by re-entry programs, the recidivism rate along with the costs involved would not justify the development of such programs.

XI. THE USE OF LOCAL JAILS AS A PRISON ALTERNATIVE

One option which might be employed to provide some relief to the prison overcrowding problem is the use of local jails as alternative housing facilities for DCS inmates. A 1988 survey by the department indicated that 76 beds may be available to house DCS inmates. Costs per inmate for placing the inmates in jail would be comparable to costs for placing them in prison. Lastly, there are no statutory constraints on placing inmates in local jails.

At first glance the use of jails to alleviate prison overcrowding seems like a promising alternative that would be easy to implement and have an immediate impact. However, there are a number of drawbacks to the use of jails for the housing of long term inmates. The first and foremost of these is that jails are designed as short term holding facilities. With the possible exception of the largest facilities they do not offer the vocational and educational programs, physical and mental health services, and exercise and recreation facilities of DCS prisons. Because of the lack of programming inmate lawsuits would undoubtedly be alleging that in the jails the inmates are housed under conditions that have been found unconstitutional under the Eight Amendment as cruel and unusual punishment as the courts define it, or, in the alternative, that they are being discriminated against because inmates housed in DCS facilities have greater programming opportunities than those housed in local jails.

Another problem with the use of jails to alleviate prison overcrowding is that local jails would undoubtedly place the incarceration of their own offenders over that of DCS inmates. As populations fluctuate in local jails and they fill up with local inmates jail administrators DCS would be sent back to DCS to relieve the local's own overcrowding problem. Although we should not dismiss the possibility of utilizing jails to alleviate prison overcrowding, due to their shortcomings as holding facilities for long term inmates they should only be utilized as an emergency measure when all other alternatives are exhausted.

XII. PRIVATE PRISONS

One of the many options explored by the staff of the LR222 committee to deal with overcrowded prison conditions was private construction and management of prison facilities. Although there is much literature in this area, much of it has been put out by groups with a vested interest in the issue, such as prospective operators of private prisons or government employees unions interested in saving their jobs or expanding their membership. While private operators promote their product as a substantial cost saver, actual comparisons of the cost of operating the few private prisons up and running in this country have shown savings to nonexistent or small at best. One of the major concerns about the operation of private prisons is liability. When the state incarcerates offenders it assumes responsibility for their basic human needs such as food, clothing, medical care, and safety. If these needs are not met the operator of the prison may be held liable by the courts for deprivation of constitutional rights. Lawsuits by prisoners on these grounds are quite common, and contracting out for prison services would not protect the state from liability should the private contractor be unable to satisfy the judgement. Due to the complex legal issues surrounding private prisons the American Bar Association has urged states to exercise great caution in contracting out for correctional services.

The main advantage of private prisons seems to be that they can be constructed and brought up to operation faster due to the lower level of regulation of the construction process in the private sector. However, this is counterbalanced by the complex legal issues mentioned above and the problem of the motivation of the service provider. The private prison is run for profit, with no motivation (other than possible contractual obligations) to provide services to rehabilitate the offender and reduce recidivism, whereas the state does have an interest in keeping people from returning to prison, as almost everyone inside and outside of government will agree, the tax dollars could be better spent elsewhere.