LR 171 Sentencing and Recidivism

Task Force Report

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Purpose of the LR 171 Task Force

The LR 171 Sentencing and Recidivism Task Force was created by the Nebraska Legislature to study issues pertaining to sentencing and recidivism and their relation to the current overcrowding issue at the Department of Corrections' facilities, as well as issues of sentencing equality and fairness. During the 2010 session, State Senators Brad Ashford (District 20) and Brenda Council (District 11) co-introduced LR171, which required the Executive Board of the Nebraska Legislature to appoint seven members of the Legislature to a task force to study the following specific issues:

1. The sentencing of juveniles and adults to Nebraska correctional institutions for rehabilitative purposes, including the associated fiscal impact;
2. The reentry of juveniles and adults into Nebraska communities upon being released from correctional facilities, including issues related to sufficiency and effectiveness of re-entry programs, number of spaces available for these programs and the effectiveness of these programs in reducing the rate of recidivism; and
3. Sentencing equality among individuals convicted of similar crimes statewide.

LR 171 as introduced called for the Task Force to take into consideration the heavy fiscal burden that Nebraska's high rate of capacity in its corrections system places on the state and called for the Task Force to offer recommendations of methods to lower the rate of capacity in our correctional system, in order to save state resources.

The LR 171 Task Force recognized at the outset that fiscal resources would limit the Legislature's ability to act upon the types of recommendations that the Task Force could make to the Legislature, so the Task Force focused on fiscally viable solutions and services that already have infrastructure in place and could be expanded with additional resources.

Issue 1: Rehabilitation

Compared to the estimated national recidivism rate of 41-70% [1], the 26.5% statewide recidivism rate reported by the Nebraska Department of Corrections (among inmates released in 2007) indicates that the Department's efforts at offender rehabilitation are having a positive effect. Webster's Dictionary defines rehabilitation as "a process to restore to customary activity by education and therapy." The Department appears to be doing a satisfactory job of rehabilitation, in altering the values and morals of the individuals placed under their supervision through the educational programs and services they provide.

According to the Association of State Correctional Administrators (ASCA), of which the Nebraska Department of Corrections is a member, recidivism rate is defined as "the number of inmates released from prison during a calendar year who have returned to a Department of Corrections prison system for a new conviction or technical violation

within 36 months after release." Within these parameters, Nebraska's rate of 26.5% shows that the state correctional system's rehabilitation programs are above average.

To achieve such a low recidivism rate, the Department has implemented an evidence-based approach to identifying the criminogenic needs that drive their inmates' behavior through the use of an offender needs assessment. All new inmates to the Department of Corrections receive the offender needs assessment within their first 90 days within the correctional system. Once an inmate's needs are assessed, Department staff implements a plan to identify and offer services to address the offending deficiency, as long as space allows. The types of programs and services offered by the Department include:

- Mental Health: residential and non-residential, psychiatric care, psychological evaluations and assessments;
- Substance Abuse: residential, intensive outpatient, and outpatient;
- Sex Offender Treatment: residential and non-residential
- Education: high school at Nebraska Correctional Youth Facility (NCYF), General Education Development (GED) instruction and testing; English as a Second Language (ESL); college correspondence courses available at the inmate's expense;
- Job Training and Employment: Cornhusker State Industries[2]

Thanks in large part to the success of these current programs and services, the State of Nebraska has a low recidivism rate relative to other states. Thus, the Task Force has no recommendations in this area.

Issue 2: Reentry Programs

To fulfill the provisions of LR171, the Sentencing and Recidivism Task Force focused its recidivism reduction and reentry study and recommendations on individuals under the supervision of the Probation Administration and the Department of Parole Services. Specifically, the Task Force pointed to the important role of Probation and Parole community corrections programs and rehabilitation services, primarily through the operation of Day and Evening Reporting Centers.

The Task Force narrowed its focus to reporting centers after testifiers at the August 13th, 2009 public hearing suggested that the State of Nebraska did not suffer from a lack of laws designed to help alleviate prison capacity rates or the implementation of reentry and rehabilitative programming to be used by offenders as they prepared to transition back to their respective communities. Rather, it was suggested that Nebraska's problems stemmed from a lack of statewide community corrections resources and other incarceration alternatives, and that in order to address this deficiency, the Legislature needed to increase resources and re-emphasize community corrections programs.

A reporting center is a community based facility operated by the Probation Administration that provides a wide range of on-site services and supervision to offenders who would otherwise be prison-bound. Services that offenders can receive from reporting

centers include substance abuse treatment, behavioral health services, vocational training, life skills training and other rehabilitation programs. Each reporting center has on location a Specialized Substance Abuse Services (SSAS) program, which combines drug treatment for felony drug offenders and early release parolees with the active intervention of a specially trained probation officer. Each SSAS officer maintains a caseload of no more than 24 offenders, and most SSAS locations contain 2 officers; thus, at each location an estimated total of 48 felony drug offenders are being diverted from the Department of Corrections.

Providing a one-stop location for community based supervision and services for offenders maximizes resources and personnel and allows offenders to be treated where they live so that they can continue providing for their families. The types of offenders who utilize reporting centers include probationers, SSAS participants, parolees and drug and specialty court participants. According to information provided by the Community Corrections Council, as of June 2010, reporting centers statewide received an average of 10,000 visits per month. If the efforts of reporting centers continue to be successful, they will significantly decrease the flow of individuals into state correctional facilities.

From a fiscal perspective, the intensive supervision programs -- (SSAS), Community-Based Intervention (CBI) and the Rural Improvement for Schooling and Employment (R.I.S.E.) -- that are available at reporting centers cost the state $2,981 per offender on average.[3] This is significantly less than the $5,625 yearly inmate per diem (which accounts only for food, clothes, and medical expenses) expended by the Department of Corrections.

The funding sources for reporting centers are collaboration between the state, counties and offenders. The state pays for the staffing of the Reporting centers through general funds, the county pays for the physical space of the Center and the cost of services are paid for by offender fees and state substance abuse voucher funds. Currently there are five Reporting centers spread among seven counties, with four counties sharing two reporting centers. These centers are currently located in Douglas County, Lancaster County, and Dakota County, with Sarpy/Otoe and Buffalo/Dawson Counties sharing facilities. (It should be noted that the Douglas and Lancaster County Judicial Districts have exceeded their service capacity and are in need of either an additional reporting center or additional staff to increase the capacity at the existing center; however, current funds do not allow for any type of expansion.)

It is the understanding of the Task Force that effectively addressing the growing need for these programs statewide would greatly decrease correctional costs as they relate to general fund expenditures.

It was mentioned several times during the August 2009 hearing by community corrections service providers and Probation and Parole representatives that the Legislature had passed community corrections legislation under LB 46 in 2003 (which was in response to the prison overcrowding crisis in the late 1990's). This bill created the Community Corrections Council, which was tasked with "developing and establishing

community-based facilities and programs in Nebraska for adult offenders and encourag[ing] the use of such facilities and programs by sentencing courts and the Board of Parole as alternatives to incarceration or re-incarceration, in order to reduce prison overcrowding and enhance offender supervision in the community."

To provide these community based services, LB 46 called for the creation of a Community Corrections Reporting Center in each judicial district of the State to ensure that programming and prison alternatives were available to judges and prosecutors statewide. As of this date, the Legislature has not provided the necessary funding for statewide implementation of these facilities.

During the 2010 legislative session, LR 171 Task Force chairman Sen. Pete Pirsch introduced LB 864, which was adopted into law and is now set forth in section 47-624.01 of the Nebraska Revised Statutes. LB864 required the Community Corrections Council to do the following:

- Collaborate with the Office of Probation Administration, the Office of Parole Administration, and the Department of Correctional Services in developing a plan for the implementation and funding of reporting centers in Nebraska.

- The plan shall include recommended locations for at least one reporting center in each district court judicial district that currently lacks such a center and shall prioritize the recommendations for additional reporting centers based upon need.

- The plan shall also identify and prioritize the need for expansion of reporting centers in those district court judicial districts which currently have a reporting center but have an unmet need for additional reporting center services due to capacity, distance, or demographic factors.

To ensure that the necessary community based alternatives to incarceration are available statewide, the LR 171 Task Force concludes that the reporting center expansion plan proposed by the Community Corrections Council and identified on page 5 of the "Recommendations for Reporting Center Expansion" should be implemented, and that an increase in offender fees as well as the possible one-time use of funds from the Probation Program Cash Fund for the initial implementation of the new facilities should be considered.

It should be noted that if the Legislature implements the reporting center expansion plan as recommended by the Community Corrections Council, it is estimated that the three year implementation cost for the reporting centers would be $7,222,872, with an annual general fund operation cost of $3,311,700. Currently, the Community Corrections Council spends $2 million in general funds to operate its existing reporting centers.[4]

Issue 3: Equality of Sentencing

In studying equality of sentencing, the Task Force reviewed as its primary source of information, the 2003 Nebraska Minority and Justice Task Force report and the testimony given at the August 13, 2009 Task Force hearing by Dr. Liz Neeley. Dr. Neeley testified on behalf of the Minority and Justice Task Force and provided an update of its current activities. The Nebraska Minority and Justice Task Force is a joint initiative of the Nebraska State Bar Association and the Nebraska Supreme Court which was created in 1999 to examine issues of racial and ethnic fairness within the Nebraska court and legal systems.[5]

While the Minority and Justice Task Force could not conclusively answer whether the State of Nebraska systemically creates racial disparities in the sentencing of its citizens, the report did acknowledge that there were some "idiosyncrasies in the system" that could be perceived as racial inequality in the arrest and detention of Nebraska citizens. Specifically, the report suggested that:

- Adult racial and ethnic minorities are disproportionately arrested and incarcerated in relationship to their percentage in the general population and compared to their white counterparts;
- Juvenile racial and ethnic minorities are disproportionately arrested and detained in relationship to their percentage in the general population and compared to their white counterparts; and
- There exists an insufficient exchange of information among Nebraska's law enforcement agencies and court systems, making an investigation of racial and ethnic bias difficult.[6]

Additionally, Dr. Neeley provided the Task Force with descriptions of additional initiatives that the Committee is pursuing, including:

- Collaboration with the Nebraska State Patrol and the Department of Motor Vehicles to draft, introduce and get enacted into law by the Nebraska Legislature, legislation that is believed to over time improve the Nebraska justice system's ability to examine racial and ethnic disparities by providing the justice system with the ability to collect a defendant's arrest information electronically via the bar code on their driver's license.

- Implementation of the pilot "failure to appear" project to be implemented in 2009 to decrease the rate of occurrence of the "failure to appear" before a judicial court, which leads to higher rates of detention among juveniles, incarceration for minor offenses for the non-compliant defendant, the issuance of misdemeanor arrest warrants and longer detention stays for present or future offenses. The project called for the Minority and Justice Committee to provide a reminder by post card or some other means of communication to individuals who have an upcoming hearing date. Data provided by Dr. Neeley showed that the failure to appear for white adults in Nebraska was 12.5 percent, while the rate was 27.4 percent for

black adults. This disparity is believed to contribute to the disproportionate arrest and incarceration of minorities in this state. Dr. Neeley provided that the project had seen a reduction of 18 percent in the failure to appear rate of black adults in Nebraska.[7]

This Task Force recognizes that this topic requires more in-depth study than its resources and capabilities allowed and concludes that the Legislature should collaborate with the Nebraska Minority and Justice Committee and provide appropriate resources for the further review of "sentencing equality" to determine if any systemic, racial inequalities exist within our sentencing and incarceration system, and if these inequalities are found to exist, to introduce the necessary legislation to correct them.

Task Force Recommendations

The LR171 Task Force focused on identifying ways that the state could increase rehabilitative programs statewide in order to reduce recidivism and accelerate offenders' successful reentry back into Nebraska communities, and to do so in a safe yet cost effective way. With this in mind, it is the recommendation of the Task Force that the following occur:

1. **The Reporting Center Expansion Plan as presented by the Community Corrections Council required under LB 864 be implemented;**
2. **That legislation be introduced to allow Probation and Parole offender fees to be increased up to $60 for the one-time fee, up to $50 for regular Probation and Parole, and up to $70 for intensive probation, with all offenders in an identified program paying the same fee.**
3. **That legislation be enacted to allow a one-time use of Probation and Parole offender fees to help offset the implementation cost of the Reporting Center Expansion Plan proposed by the Community Corrections Council.**
4. **The Legislature should collaborate with the Nebraska Minority and Justice Committee of the Nebraska Bar Association and the Nebraska Supreme Court for further review of the issue of sentencing equality to determine if there is any systemic racial inequalities that might exist, and if so found to recommend a solution to correct the inequality.**

This report is not intended to be the definitive study of the three issues contained within these pages. In fact, it should serve as a precursor to a more individualized review of each issue with the resources necessary to identify problems and provide possible solutions.

Sources Cited

[1]Chappell, Cathryn, Ph.D., "Post-Secondary Correctional Education and Recidivism: A Meta-Analysis of Research Conducted 1990-1999," University of Cincinnati, 2003 publication?

[2]Nebraska Department of Corrections, 2009 Annual Report

[3]Brokofsky, Ellen (Probation Administrator), "New Nebraska Probation Programs Built on Risk Reduction Principles," Exhibit 6, August 13th 2009, LR 171 Task Force Public Hearing.

[4]Community Corrections Planning Subcommittee, "2010 Recommendations For Reporting Center Expansion," November 2010

[5]Nebraska Minority and Justice Task Force, "Final Report", January 2003, pg. xx

[6]Nebraska Minority and Justice Task Force, "Final Report", January 2003, pg. xvii

[7]Neeley, Liz, Public Testimony, LR171 Task Force Public Hearing, August 13, 2009