

Nebraska's Justice Reinvestment Approach:

Reducing prison overcrowding and expanding probation and parole supervision

MAY 2015

Overview

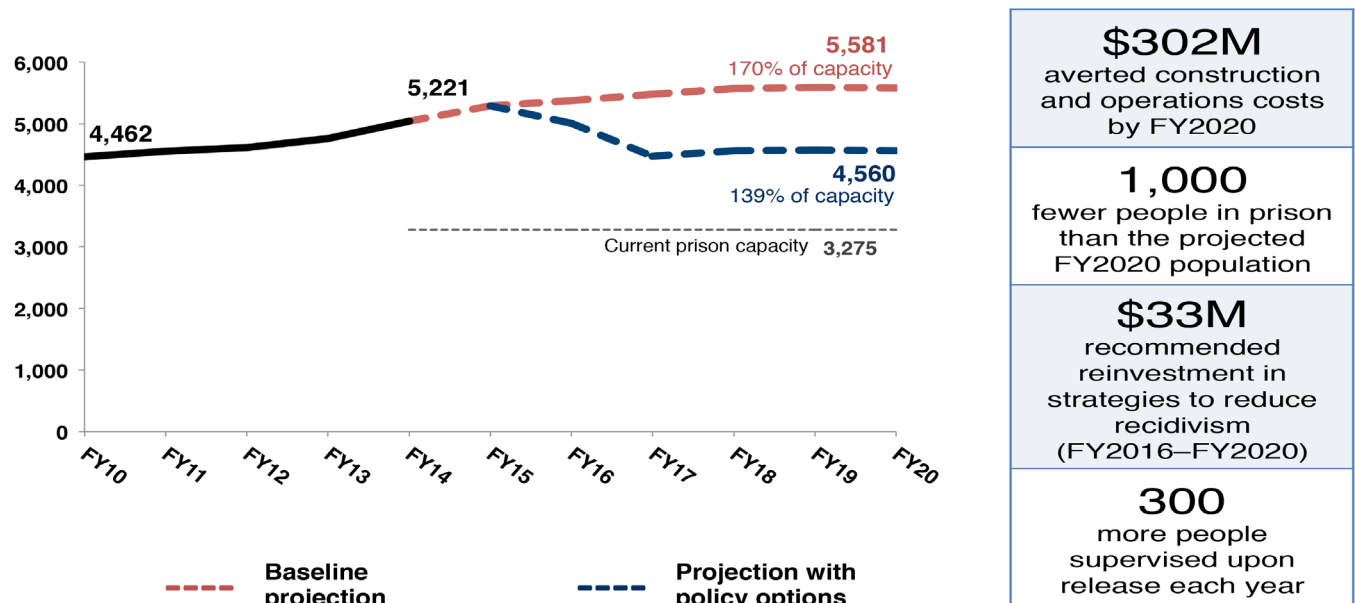
Nebraska's prisons are overcrowded, prison admissions are outpacing releases, and spending on corrections has increased substantially over the past decade. Moreover, many people leave prison without supervision, and those who do receive supervision upon release are overseen by a system that struggles to effectively monitor its parole population.

To address these challenges, Nebraska policymakers from across the political spectrum enacted Legislative Bill (LB) 605, which expands the use of probation in lieu of incarceration, ensures that more people receive supervision upon release from prison, and bolsters supervision practices to reduce recidivism. Signed on May 27, 2015, the law was the result of "justice

reinvestment," a data-driven approach designed to reduce corrections spending and reinvest a portion of savings in strategies that reduce recidivism and increase public safety. LB 605 is expected to ease Nebraska's prison overcrowding—reducing the projected prison population by 1,000 people—and ensure that an additional 300 people per year are supervised upon release from prison. [See Figure 1]

The state received intensive technical assistance from the Council of State Governments (CSG) Justice Center, in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance (BJA). With continued support, Nebraska leaders are now working to implement the legislation and track the impact of these new policies.

FIGURE 1. PROJECTED IMPACT OF LB 605 ON NEBRASKA'S PRISON POPULATION'



SUMMARY

Summary of the Justice Reinvestment Process

CHALLENGE

Nebraska's prisons are overcrowded, with facilities at 159 percent of capacity as of December 2014.² From FY2004 to FY2013, corrections spending increased 20 percent from \$131 million to \$157 million, and the prison population grew 19 percent during the same period.³ The Nebraska Department of Correctional Services (NDCS) forecast showed that the prison population would increase 7 percent by FY2020, from 5,221 people (159 percent of capacity) to 5,581 people (170 percent of capacity).⁴ A state proposal released in October 2014 estimated a cost of \$262 million to add 1,100 beds to Nebraska's prison systems.⁵

FINDINGS

In June 2014, the state established the bipartisan, interbranch Justice Reinvestment Working Group to study Nebraska's criminal justice system. The 19-member working group found that (1) Nebraska's overcrowded prisons house a large number of people convicted of nonviolent, low-level offenses; (2) the state's felony sentencing system fails to ensure that people sentenced to prison receive a sufficient amount of post-release supervision or pay victim restitution; and (3) the parole supervision system has not fully adopted evidence-based practices and lacks the resources necessary to handle a growing parole population. To address these challenges, the working group recommended that a justice reinvestment policy framework be translated into legislation.



“This set of reforms can reduce the pressures on our system in ways that maximize our resources and ultimately strengthen public safety for all Nebraskans.”

— SENATOR HEATH MELLO

SOLUTIONS

Sponsored by Senator Heath Mello and co-sponsored by Senators Bob Krist and Les Seiler, LB 605 codifies the justice reinvestment policy framework developed by the working group.⁶ This legislation includes policies to use probation for people convicted of low-level offenses, ensure post-release supervision for most people upon release from prison, improve parole supervision, and address victims' needs. LB 605 passed unanimously with a vote of 45–0 in the Nebraska Unicameral Legislature. To support implementation of the justice reinvestment legislation, the state made upfront investments of \$3.2 million for FY2016 and \$12.1 million for FY2017 for additional probation officers, community-based programs and treatment, improvements to parole supervision, quality assurance measures, and financial assistance to county jails.



“Our goal is to improve our approach to justice by ensuring meaningful supervision and holding offenders more accountable. This package puts Nebraska's system on the right course for the future and our public safety.”

— GOVERNOR PETE RICKETTS

Summary of LB 605 Policies

Use probation rather than incarceration for people convicted of low-level offenses, and increase penalty thresholds for property offenses.

- Use probation, rather than prison or jail, for people convicted of nonviolent, low-level offenses.
- Prioritize probation resources for felony probationers who are at the highest risk of reoffending.
- Respond to major probation violations with short periods of incarceration, followed by continued probation supervision.
- Require that misdemeanor sentences calling for incarceration be served in jail rather than prison.
- Update property offense penalty thresholds to account for inflation.

Enhance felony classifications, ensure post-release supervision for most people upon release from prison, and address victims' needs.

- Reclassify felonies according to whether they involve violence and/or are sex offenses to ensure that more serious offenses are clearly distinguished from lower-level nonviolent offenses.
- Sentence people convicted of the lowest-level felony offense classes (Class III, IIIA, and IV) to periods of incarceration followed by post-release supervision.
- Adopt Nebraska Parole Board guidelines to place more people on parole supervision from all other felony classes (Class IA–D, II, and IIA).
- Enhance collection of victim restitution from people sentenced to prison.

Improve parole supervision to reduce recidivism.

- Adopt a risk assessment tool to assess parolees' risk of reoffending.
- Adopt evidence-based practices in parole supervision to change criminal thinking and behavior.
- Respond to parole violations with swift, consistent, and proportionate sanctions.
- Respond to major parole violations with short periods of incarceration followed by resumed supervision.

Looking Ahead

Although the projected impact of LB 605 is significant, Nebraska's prison population is expected to continue to far exceed its capacity, even with the successful implementation of this bill. Additional policy changes and/or increasing prison capacity will be necessary to further reduce prison overcrowding.

Implementing LB 605 will require continued bipartisan, interbranch support. State agencies, including the Office of Probation Administration (OPA), the Supreme Court, NDCS, and the Parole Board, will need to engage in administrative rulemaking to establish procedures for implementing various aspects of LB 605.

“We in the judicial branch look forward to working with the legislature, governor, and other Nebraskans in implementing the justice reinvestment strategies.”

— CHIEF JUSTICE
MICHAEL HEAVICAN



The Supreme Court and OPA will develop procedures for transitioning probationers to lower levels of supervision intensity before discharging them, when appropriate; they will also establish a prompt court review process for imposing sanctions of short periods of incarceration for serious probation violations. The state court administrator, OPA, and NDCS will develop rules to facilitate the implementation of policies regarding restitution collection, reentry planning for people who are to receive post-release supervision, and incorporating custodial sanctions in the current violation and rewards matrices. Additionally, the Parole Board, in consultation with NDCS, will adopt and promulgate

rules and regulations to reduce the number of people who reach their maximum prison sentence and return to the community unsupervised.

The CSG Justice Center will continue to work with officials from across Nebraska's criminal justice system to assist in implementing the new policies and tracking their outcomes. The state has the opportunity to request funding from BJA to support additional capacity-building efforts, such as workforce training, enhancing data collection and performance measurement, and efforts to ensure the proper implementation of evidence-based practices.

Sustainability Policies in LB 605

The Justice Reinvestment Working Group identified additional policies to assess, track, and ensure the sustainability of the recidivism-reduction strategies outlined in the policy framework. LB 605 includes the following policies:

- Establish an oversight committee to assess on an ongoing basis the impact of provisions of LB 605.
- Evaluate the quality of prison- and community-based programs and use results to improve outcomes.
- Track and report restitution collection within OPA and NDCS.
- Launch a process for reaching agreement between county governments and the state on sharing overhead costs associated with probation operations.⁷
- Enable academic institutions and state agencies to access Nebraska State Patrol criminal history data for research purposes.⁸

Endnotes

1. Abby L. Vandenberg, NDCS Design Capacity and Average Daily Population—FY1982–FY2023.
2. Nebraska Department of Correctional Services (NDCS), *December 2014 Monthly Data Sheet* (Lincoln: NDCS, December 31, 2014).
3. 98th Legislature, *State of Nebraska FY2003–04/FY2004–05 Biennial Budget* (Lincoln: Legislative Fiscal Office, August 2003); 103rd Legislature, *State of Nebraska FY2013–14/FY2014–15 Biennial Budget* (Lincoln: Legislative Fiscal Office, August 2013); NDCS, *FY2004 Annual Report and Statistical Summary* (Lincoln: NDCS, 2004); NDCS, *FY2013 Statistical Report* (Lincoln: NDCS, 2013).
4. NDCS, *December 2014 Monthly Data Sheet*; Abby L. Vandenberg, NDCS, *Design Capacity and Average Daily Population: FY1982–FY2023* (Lincoln: NDCS, July 24, 2014). The prison population has been projected to grow from 5,221 people at the end of December 2014 to 5,581 people by FY2021.
5. NDCS, Dewberry, and Carlson West Povondra Architects, *2014 Master Plan Report* (Lincoln: NDCS, October 27, 2014); Legislative Bill 237, which would appropriate almost \$262 million to fund the master plan, was introduced in 2015 but did not advance.
6. Additional information is available in the CSG Justice Center's report, "Justice Reinvestment in Nebraska: Analysis and Policy Framework." The full report is available at csjusticecenter.org/jr/ne/.
7. Neb. Rev. Stat. § 29-2259(4)-(5) requires county governments to provide probation officer workspace.
8. The CSG Justice Center was unable to access criminal arrest data for analysis purposes because of confidentiality restrictions contained in Neb. Rev. Stat. § 29-3523.



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The CSG Justice Center is a national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government. The CSG Justice Center's work in justice reinvestment is done in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance. These efforts have provided data-driven analyses and policy options to policymakers in 21 states. For additional information about Justice Reinvestment in Nebraska, please visit csjusticecenter.org/jr.