

# Nebraska Criminal Justice Review

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## The Politics of New Prisons Part #1

By Marshall Lux, Nebraska Ombudsman—Retired

Last year I wrote an open letter criticizing the Nebraska Department of Corrections' proposal to build a huge new prison that will cost the state's taxpayers upwards to \$200 million to build (not to mention the hundreds of millions of dollars more that it will cost to operate over decades in the future). As I summarized the matter then, there are three basic problems with this proposal: (1) we can't afford it (in reality, the \$200 million projected construction cost is probably far too low); (2) if we did build it, we wouldn't be able to staff it because we can't even staff the prisons that we have now; and (3) Nebraska doesn't really need it, because we can deal with our prison overcrowding problems in other, more cost-effective, more intelligent ways, namely by adopting sentencing reforms that will reduce the influx of inmates into the system, and by enlarging the segment of our inmate population that we house outside of our prisons in much cheaper-to-operate community corrections facilities. Now, eighteen months further on, the new prison proposal is still alive...mostly because nothing has emerged as an alternative for dealing with the state's prison overcrowding issue.

There have been several significant developments since I wrote my open letter on this subject in 2019. Most importantly, we have been witness to the George Floyd protests this summer, which have inspired millions of Americans to throw their support behind the idea of "criminal justice reform" in this country. Clearly, this reform can come in many shapes and sizes, but one likely form would be changes in our sentencing laws in order to reverse our country's dubious history of overincarceration...the fundamental cause of prison overcrowding in places like Nebraska. Secondly, we have seen efforts in the Nebraska Legislature to enact reforms that would address our prison overcrowding consistently knocked down by the Ricketts administration. The time has come, I believe, to address the "politics" of this situation.

First of all, it is necessary to understand that this big-new-prison proposal has been a part of the Department of Corrections "hidden agenda" for several years now. Like any bureaucracy, the Department of Corrections wants to "grow" - to make corrections administrators' jobs easier by creating more alternative beds for the placement of inmates; to generate new management jobs (wardens, deputy wardens, etc.) for the Corrections leadership to use to reward loyal underlings in the Department; to justify large salary increases for the top Corrections administrators; and to generally expand the Department's already bloated budget. And, building new prisons is how the Department grows...or at least how it wants to

grow. This was true back in the late 1990's when the Department fought to get funding to build the new prison in Tecumseh (they would have rather seen the prison built elsewhere, but they were willing to take what they could get), and it is just as true today.

Secondly, when you realize what the Department's fundamental goal is - to build an expensive new prison - then you will understand that the prison overcrowding issue actually works in the Department's favor; but only so long as nothing is done to otherwise alleviate the overcrowding in the system. The overpopulation of the system is, in essence, the Department's main political leverage in carrying forward its basic strategy of manipulating the Legislature into approving the expenditure of hundreds of millions of taxpayer dollars to build a new maximum custody prison. The idea is that if the Legislature cannot come up with any other solution to the overcrowding problem, then the Senators will just "throw up their hands," and agree to build the new prison as the only available option (even if we can't afford, can't staff it, and don't really need it).

I realize that this strategy of using overcrowding as political leverage may sound "cynical" to some. But it is really the only way to explain why we have not seen the Department agreeing to take any other significant steps over the years to help resolve the overcrowding in the system. From the Department's perspective, the only solution is to spend millions of dollars to build a new prison...new prison, or nothing. And if that is not the case, then I would like to challenge the Department to come forward with other ideas for dealing with overcrowding issue; ideas that do not involve building a new prison.

I want to emphasize, however, that this strategy of using overcrowding as political leverage to justify a new prison is the goal of administrators at the top of the prison system, not of everyone who works in the Department. The ordinary facility administrators and prison employees lower in the DCS hierarchy - those who faithfully perform the system's day-to-day work - are simply trying to do their jobs as best they can, and are not implicated in this high-stakes political game. In fact, like the inmates, the prison workers bear the brunt of trying to make the system "livable" in spite of the unrelieved overcrowding. The real problem is the "politics of new prisons." The problem is literally "at the top," in the executive offices and board rooms of the Department of Corrections.

- To be continued.

One of the core principles of the American criminal justice system is the issue of culpability. More precisely, in the context of punishment, an individual's sentence should reflect his or her level of responsibility for the consequences of the offense for which he or she was convicted. In most cases, a judge is provided wide latitude in

## Amending Nebraska's felony murder rule: a small step in the right direction

By Tom Riley, Douglas County Public Defender

making the determination of a sentence to be imposed. For example, if the legislature has fixed the range of a penalty for a given offense to be anywhere from one to fifty years in prison, the sentencing judge should place great weight on the level of the person's participation in the offense and his or her intended consequences to their actions. Theoretically, a person who is less blameworthy should receive a less severe sentence.

Sadly, this concept is abandoned under Nebraska's felony murder rule, and its method of dealing with accomplices under the "aide and abettor" rule in Nebraska. Nebraska's version of the felony murder rule is found in Section 28-303 (2) and states in pertinent part that "A person commits murder in the first degree if he or she kills another person... in the commission of any sexual assault in the first degree, arson, robbery, kidnapping, hijacking of any public or private means of transportation, or burglary..."

While at first blush this statute may not seem to be draconian, its application frequently yields draconian results. This is especially true when one considers Section 28-206 of Nebraska's criminal code, which states "A person who aids, abets, procures, or causes another to commit any offense may be prosecuted as if he were the principal offender." Thus in the context of felony murder, the concept of level of culpability is literally thrown out the window because a judge has no discretion in sentencing for first degree murder. The sentence is life imprisonment regardless of the level of participation or the intended consequences of an individual's actions.

Under these rules, the person who agrees to drive a getaway vehicle in a robbery of a convenience store will pay the same price as the person who exits the vehicle, enters the store to steal money and shoots and kills the clerk. This is true even though the driver never entered the store, never used a weapon, and had no intent to harm anyone in the perpetration of the robbery. It is also true even if the driver was unaware that his co-defendant had a firearm when he entered the store. While no one would say that the driver should go unpunished for his actions, it is unreasonable to believe that he should be punished to the same degree as the person who actually shot the clerk.

The Nebraska Supreme Court has repeatedly held that there need not be an intent to kill in felony murder, only an intent to commit the underlying felony. The turpitude involved in the robbery takes the place of intent to kill. Felony murder is not on the same footing with other forms of first degree murder. Willfulness, deliberation, and premeditation are irrelevant considerations.

When an individual is charged with first degree murder (not felony murder) the jury is, in most cases, given the option to convict not only on first degree murder, but also the lesser offenses of second degree murder and manslaughter. Therefore, the jury is required to weigh the level of culpability before arriving at a verdict. In felony

murder cases, the jury has no such option. Nebraska law dictates that in a felony murder trial the jury either convicts on first degree murder or acquits the accused. One can come up with any number of hypothetical situations where a felony murder conviction results in an unduly harsh sentence of life in prison.

Therefore, by categorizing all felony murder as first degree murder, the Nebraska legislature has determined that even in the absence of any intent to kill, the individual convicted of felony murder will receive the same sentence as an individual who plans to commit, and does commit a murder.

Nebraska courts have refused to intervene and check the unfair results occasioned by many felony murder convictions. Thus, any relief will have to come through legislation. A number of states have addressed the inherent unfairness of broad sweeping felony murder rules like Nebraska's.

Some have abolished the felony murder rule entirely, operating under the belief that the more traditional approach to classifying homicide offenses by the level of intent to kill, in conjunction with the operation of the underlying offense e.g. sexual assault, robbery gives the jury and the sentencing judge more than sufficient sentencing ranges. Other states require an intent to kill to make a felony murder first degree, and classify cases where a death results as an unintended consequence of the felonious act as lesser degrees of homicide and not requiring a mandatory life sentence.

Indiana, Minnesota, Missouri, New Jersey, Oregon, and Virginia have classified felony murders as second degree murder. This appears to be a wise approach primarily because it does not require a mandatory life sentence. In Nebraska, the current penalty for second degree murder is a minimum of 20 years and a maximum of life imprisonment. If Nebraska changed the felony murder rule to second degree murder, the sentencing court could then apply the level of culpability approach that is vital to imposing a fair sentence. The getaway car driver in the abovementioned example would not be facing a mandatory life sentence, but rather would be sentenced based on his or her actions, not those of another person. This approach would also address cases like that of Shaheed Khaleel Hamza's where there was no intent to harm, much less kill, the deceased during the commission of a burglary. I cannot believe that the sentencing Judge in Mr. Hamza's case would have imposed a life sentence if he was allowed to exercise the discretion afforded under a sentence for second degree murder.

Reform of the criminal justice system is a daunting task and one that takes the courage to confront those who believe in the "lock em up and throw away the key" mentality that is far too prevalent in our society. Amending Nebraska's felony murder rule is one small step in the right direction, but one that is worth fighting for.

**“BLK. PRISONER”**

(spoken word)

*Dedicated to George Floyd & B.L.M. Movement,  
By Shaheed K. Biko Hamza  
s/n Derek w. Dixon #36413*

**Intro**

**BLK. Prisoner, Mind Revolutionary,-  
Prisoner to Pro-BLK.: criminal to visionary.  
Blk. Prisoner, Mind Revolutionary,-  
Prisoner to Pro-Blk; Friend not an adversary.**

**Verse #1**

Blk. Prisoner, Born into sin,  
Sentenced to a life bid, my 1st time in.  
Thinking about society, seeing it again,  
Walking with my brotha; my sister & all my friends.  
Decade after decades, boyz turn into men,  
Strong hearts never break, but every heart does bend.  
Racism & oppression, collaborate & blend,  
Killing destiny in beginnings, 'til beginnings be the end.  
Nobody give you nothing, when you got the darker skin;  
Don't even give you credit, when you start a new trend.  
We were taught to wear the mask; hide the hate & just pretend;  
Spit into the wind, when we encountered ignorance.  
Through non-violent tactics, we prayed for deliverance;  
Dr. King got murdered & non-violence —that ended it!  
Malcolm was Colin Kaepernick, a prophet in the midst.  
Blk. Prisoner, Blk, Fist, - By any means resist!

**Repeat Intro****Verse #2**

Like George Jackson, I'ma Soledad Brother;  
Go all out, in this world, in protection of my mother.  
Police brutality—when one dies, we all suffer;  
Even inside, police brutality is on my bumper.  
Righteous/Ruthless, - made me a juggler;  
My values & principles, the world tried to smother.  
But I don't give a damn, my Blk'ness aint undercover.  
Everyday, in the open, I'ma 'Never-Trump-er'.  
In solidarity, with everyone on the street,  
Fighting for humanity, revealing those behind the sheet  
(s).  
God is watching, He's the general against the beast,  
Who else could've mobilized, West Coast to the East?  
After 400 years, Freedom prophesized & you gone see,  
What I'm telling you —aint only coming just from me.  
To every single one, who lost their life R.I.P.  
I see you at the crossroads, even if on the inside—  
Is where I must D.I.E.

**Repeat Intro****Verse #3**

Mandela was a prisoner, for political reasons;  
Like Poindexter & Mutulu, lets free'em while they're still breathing.  
We lost Mondo, but showed 'em love, when he was leaving;  
He gave us everything he had, 'til his spirit was even bleeding!  
I understand that 'materialism' & 'blk-on-blk' are also "in season,"  
But pro-blk. Prisoners, consider this treason.  
My Blk. Fist wanna strike the globe to wake it up,

We need a third party politically, just to shake it up.  
Some of the tragedies we all seen, we couldn't just make it up.

Where do we go, when with the criminal justice system we can't take it up?

Dear God, if you're listening, we need you in this hour,  
And I know, I don't have to remind you, this is not just about 'Blk. Power.'

This is about Blk. Love, being loved by more than Blk. Folk.

This is about giving us a candidate, worthy of our Blk. Vote.

This is about our children, providing them safety and a realistic hope.

This is about a prisoner, writing a poem, just to cope.

**Repeat Intro****Verse #4**

It's always one in the crowd, abusing his authority.  
And I'm not just picking on white folk, 'cause often it's a minority.  
One person, does not allow me to stereotype a majority.  
But power is a disease, infecting those claiming superiority.  
No-matter how hard you try, a fantasy will always be a fantasy;  
And when you begin to believe it, by definition, that's another form of insanity!  
Police brutality has followed us from New York, Omaha to Cali;  
(Harassing us without justification);  
And that's why the Rebellion has become more than a rally.  
On the table is police accountability.  
Civil disobedience, with or without civility.  
Politics from the playbook of predictability,  
And the reality that death means indefinitely.  
America's secret shame is no longer kept  
In the highest echelons of Heaven 'Jesus wept,' (Because)-  
Being Blk. Places you in danger, while even driving a Lex.  
Collectively Blk.America; we're ready to ride or die for our respect!

In solidarity,  
The Blk. Prisoner

**Editor's note:** The author of this poem was sentenced to life in prison in 1985 after conviction for felony murder. You may recall that his NCJR article, "Wanted: a challenge to the felony murder doctrine," was printed in the March, 2020 issue of the NCJR.

## Preparing for Parole Board hearings

By Alex Ross

I helped many incarcerated people prepare for their Parole Board hearings as well as preparing for my own hearing. My suggestions should help those who are eligible soon. Incarcerated people have trouble succeeding in Parole Board hearings for multiple reasons:

1. NDCS gives almost no information or guidance to incarcerated people on how to prepare for a hearing. I asked my case manager how to prepare and he said, "Just go in and be honest." It was difficult to find any documented information about how to prepare even though I did spend time in the law library. Don't ask staff for help.
2. In prison, the incarcerated population and the staff usually consider themselves adversaries and so it is easy to see the Parole Board hearing as adversarial. Believe it or not, the Board of Parole would like to release more individuals but going to your hearing with a combative attitude will not help.
3. Many people in prison have deficient education and writing skills. That includes many of the Legal Aid personnel. In addition, it is actually against the regs to share information with co-incarceratees. I would never dream of writing such an important letter without at least three other people reading, criticizing, and clarifying my statements. Plan to spend a month or two in preparation and editing to craft an effective letter.
4. Letters to the Parole Board in Nebraska need to be received by them at least 30 days in advance of a hearing date. Many an inmate spends time and effort on a letter, only to have it ignored because the Parole Board didn't receive it in time.

On it's website, the Parole Board says: "***It is the mission of the Nebraska Board of Parole and the Division of Parole Supervision to continue its research, understanding and implementation of evidence-based approaches as it pertains to the release of clients who have appropriately been prepared for community supervision. The Board and the Division of Parole Supervision are dedicated to maintaining public safety, reducing recidivism and addressing the need of victims, while integrating clients into society through a balance of best practice supervision and treatment strategies.***" [Emphasis added.] Everything you say in the letter should address that statement!

Some items below are obvious but many need to be articulated carefully so the Parole Board will receive them positively. Be careful not to instruct the Board on "doing your job" or saying "it's obvious." The instructions the Prophet Micah gave to men "to walk humbly" should be always on the person hoping for a positive outcome. They *will* consider your letter seriously! I found when I got into my hearing that each member of the Board had read my three-page letter in detail. These are some of the issues the Parole Board will consider:

1. **Allocution to the Crime:** The Board wants to hear what you have to say about your crime. The only exception to this is if the matter is still actively on appeal or post-conviction. One sentence of saying "I'm sorry" will not do it. Be honest. Was it a mistake? Were you stupid about something? How do you assess the

possibility of recurrence? What are you actively doing to avoid the opportunity to repeat the crime? Have you had any communication with your victim or gone through a victim impact class, and what did that do for your perspective?

2. **Programming completed:** The Board will want to hear details about what programming did for you. Have the key concepts in mind, and a quick review of your materials is probably in order so you can articulate meaningful statements which indicate you learned something. Emotional regulation is the most important aspect you can address with them.

3. **Honestly address any issues of misconduct** you have been written up on. The Board has all of that information and they need you to come clean. If you were found guilty of those offenses, it is certainly not the time to mount another defense! Explain how it will not reoccur.

4. **Housing:** Do you have a good plan for a living space? How can you elaborate on the information they already have from NDCS?

5. **Work:** Do you have a job? If so, they want to see evidence of that in the form of a letter from your prospective employer. It should be on business letterhead and be more than a couple of sentences.

6. **Family and support:** Do you have family support? If so, elaborate on those relationships so the Board can have enough detail to act positively. In addition, it is very helpful to have those family members attend the meeting and speak if asked to. If your victim comes to the hearing to make a statement, the Parole Board will not release you without counterbalancing testimony. Since I did not know if my victim was attending, I asked several friends to attend in support, including family, friends from before I was incarcerated, and a volunteer in a program I attended while in prison.

7. **Spiritual involvement:** The Board takes this very seriously, since spiritual focus and involvement is strongly indicative of success on parole. A letter from a pastor or spiritual mentor would be very helpful.

8. **Generally speaking,** the Board does not want to hear about how you need to reunite with your family because they depend on you. They think you have already in some sense been unreliable, and reuniting you with your children might cause further pain. A better way to articulate this is that by serving your spouse, children, parents, etc. you will have a good and constructive purpose you look forward to fulfilling.

9. **Honesty and Humility** are the most important features necessary to allow the Board to release you before your jam date. Above all, remember that they would rather release you if things are good. Do not fall into the trap of hateful resentment that so many imprisoned people cannot shake!

## Shackled & Chained

By Antone L. Page #87234  
Tecumseh State Correctional Institution

Shackles and chains bind my body in its place  
My mind drifts. It drifts,  
From the depths of earth past the bounds of outer space

Shackles and Chains  
bind my body in its place  
My spirit separates from my body  
It stands in plain sight without a trace

Shackles and Chains  
The sounds of shackles and chains  
locking doors and slamming gates  
Binding my body  
But not my spirit to this place

As I, me, my spirit turns to observe  
the blank expression on my body's face

I, me, my spirit begins to levitate

Ascending past the bounds of outer space  
being drawn from the earth by the only one we know to create  
My human shell, cold, stiff, like steel  
Still.  
Still, in this place

My flesh binds my soul to its place  
The Shackles, The chains, My Mind, My Spirit  
My very soul begins to shake  
As the trumpet voice of the Triumphant commences to state

I am the Alpha and Eternal  
from my power there is no escape  
You are my chosen, I have made no mistake  
Give me your soul and among the stars accept your place  
The wrongs of your past become like glass  
I make a promise to erase open your heart give me your faith  
The shackles of flesh and the chains of sin I will surely break..

## Issues with the Nebraska Department of Correctional Services

By James M. Saylor #36500  
Lincoln Correctional Center

Nebraska inmates should be aware of two issues that have the attention of the Ombudsman's Office:

**Issue No. 1 Inmate mail** Based upon an article published in the Lincoln *Journal Star*, dated July 18, 2020, NDCS Director Scott Frakes wants to eliminate incoming personal inmate mail and replace such with photocopies. According to the article, a 90-day program to test the feasibility of photocopying incoming mail, and then providing inmates with copies instead of their actual mail, is currently underway at the Nebraska State Penitentiary.

The purported reason given for considering this change is to eliminate any possibility of inmates receiving drugs through the U.S. mail.

If inmates, their families, or their supporters agree that any change that would result in inmates receiving photocopies instead of their actual mail is unacceptable and would impose a serious hardship, then they should place their opposition in writing by sending a letter to the Ombudsman's office. Deputy Ombudsman for Corrections, James Davis, III, already has an open case on this issue. Everyone should thank James for his attention to this important issue and ask that the Ombudsman's Office pull out all the stops to save inmates' incoming mail.

**Issue No. 2: Impropriety by NDCS Medical Director Dr. Harbens Deol** You may have read or heard that NDCS violated the law in how it obtained the drugs used in the August 14, 2018 execution of Carey Dean Moore. In addition, there is a closely-related issue that is equally important and of which inmates should be aware.

According to documents released in the past month, the drugs used to execute Moore were secured by NDCS Medical Director Dr. Harbens Deol. Dr. Deol negotiated an agreement with a pharmacy located in Gretna, Nebraska—Community Pharmacy—that allowed NDCS to secure the drugs. In exchange, Dr. Deol awarded Community Pharmacy a two-year contract worth approximately \$500,000.

Dr. Deol is the doctor for all NDCS inmates. He was Cary Dean Moore's doctor, too. Now we know that Dr. Deol participated in putting Moore to death. Dr. Deol should not have participated in Moore's execution. As Medical Director, Dr. Deol should act to preserve inmates' lives, not take them. By participating, Dr. Deol crossed an ethical line and violated the trust of all his inmate patients. He is no longer fit to serve as the doctor for Nebraska's inmates—or to practice medicine. He should lose his license to practice medicine.

Deputy Ombudsman for Corrections, James Davis III, also has an open case on this issue. If you also believe that Dr. Deol should no longer serve as Medical Director because of the role played in the execution of Carey Dean Moore, please send a letter setting forth your views to: **James Davis III, Deputy Ombudsman for Corrections, State Capitol, P.O. Box 94604, Lincoln, NE 68509.**

**Editor's note:** In regard to the article, "*The Therapeutic Climate of a State Youth Correctional Facility: Excerpts From a Dissertation*", by Eric Meyer, PhD, printed in the June, 2020 newsletter: Unfortunately, some of the specific information regarding violence at the youth correctional facility is incorrect. There has never been a completed suicide at the youth correctional facility, nor is there any official record of the quantity of violence that occurred at the facility before or after the warden's arrival. It is fair to say the facility administrators could have noticed a difference in the qualities of violent behavior among the inmates. Much of this difference is suspected to be the effects of the positive collaborative efforts of the many correctional employees and volunteers of the implemented incentive program. We apologize for any misrepresentation.

## Policing the police: civilian oversight

By John Krejci

Judging by the hoards of police, sheriffs, a mayor, police union representatives, and their supporters, who showed up to oppose Senator Justin Wayne's LB 1222 calling for civilian oversight of police activities—one must conclude that they felt they had a lot to lose. And they do! Police fear transparency and full disclosure of their actions. Not to mention shining a light on false reporting and outright corruption and police cover up!

Police fear civilian oversight of their actions. Multiple and ongoing incidents of abuse and killing by law enforcement of unarmed citizens has made this a necessity. Black Lives Matter—now an international movement—has raised the need for civilian oversight of law enforcement. Advisory power is insufficient, civilian review boards require legal teeth—power to investigate and call for prosecution.

Fortunately, the Lincoln Police Department and mayor are ahead of the curve for reform. Omaha officials, especially their police union, much less so. The police chiefs of both cities seem open to dialogue, but more than cosmetic changes are needed. It is the system that is deficient—the problem isn't just a few “bad apple” cops! As I stated above, serious oversight is essential. Legal teeth, investigative power, access to police records, and most importantly, the power to call for sanctions are crucial. Limited liability and the powerful weapons of police unions must be scrutinized and constrained.

These are times of great fear, upheaval, and sadness, but also renewed hope. Our young men and women have risen up to accomplish what the previous generation has left unfinished.

The 112 page report, “The Task Force on 21st Century Policing,” took input from criminal justice experts, community leaders, law enforcement and civil liberty advocates. Several of their recommendations are:

1. Law enforcement agencies should have comprehensive policies on the use of force that include training, investigation, prosecution, data collection, and information sharing. These policies should also mandate external and independent criminal investigation in cases of police use of force resulting in death, or in-custody deaths.
2. Police should tamp down on militarization of law enforcement response to demonstrations and violence. (AN ASIDE: The Lancaster County sheriff is guilty of this!).
3. The report calls for “soft look” police uniforms

and officers to remove riot gear as soon as practical.

4. Police should issue more warnings and fewer summonses, focusing on de-escalation or alternatives to arrests or summonses. Police should use the latest non-lethal technology and fewer guns.

5. All law enforcement agencies should adopt and enforce policies prohibiting profiling based on race, ethnicity, national origin, age, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.

### These reforms are in addition to civilian oversight

Last month, the “Reader,” a weekly newspaper from Omaha, featured an excellent article by Chris Bowling that documented the poor record of the Omaha civilian review board. It had and still has no legal teeth, has heard few complaints, meets in secret, and has come up with few significant findings of abuse. Over 50% of recommendations have been warnings or recommended counseling. In 2016, most members resigned and the board has only recently been resurrected. Police internal affairs continue to have the final say.

Marshall Lux, retired Ombudsman, eloquently addressed the police oversight issue in an op-ed and a letter to state legislators. Total dependence on police and lack of real power of oversight resulted in civilian review boards being rubber stamps for investigative decisions.

Bottom line: the system needs to be changed. Changes are incumbent on city councils, county boards, the state legislature and Omaha and Lincoln mayors! The time is now!

### Mail pilot program launched at the State Penitentiary

**Editor's Note:** The following is excerpted from a July 17, 2020 news release by the Department of Correctional Services. Inmates in the pilot program are to receive copies of their incoming mail.

“A pilot program will soon launch at the Nebraska State Penitentiary (NSP), aimed at reducing the influx of drug-related contraband. All mail, including letters, cards, photos and other paper items, will be photocopied prior to distribution. The new process, which starts on July 20, 2020, will continue for 90 days.

Scott R. Frakes, director for the Nebraska Department of Correctional Services (NDCS) said evaluation of the program would include the amount of time it takes to photocopy all incoming mail, the impact on drug introduction and any associated costs. Similar programs have been implemented in a number of other state correctional systems, including West Virginia, Pennsylvania, Louisiana, Wyoming, Colorado and Arkansas.”



## There's No Such Thing as a "Blue Life." Why "Blue Lives Matter" Needs to Go Away

by Amanda Frost

The "Black Lives Matter" movement calls for racial justice, seeks an end to systemic racism and police brutality, and continues the legacy of the battle for civil rights begun in past generations. "All Lives Matter" is an infuriating retort in part because no one is saying, "*Only* Black Lives Matter." Those who declare "All Lives Matter" don't seem to call out (or *act*) as forcefully to affirm "Latino Lives Matter," "Indigenous Lives Matter," "Trans Lives Matter," etc., etc. to prove their "All Lives Matter" stance. Rather, by and large, it seems a subtle-whine of, "What about *me*?" Well, White people—since, again, by and large, this is a knee-jerk reaction of a subset of this particular demographic—no one has "forgotten" about us. (But where was this strong, "All Lives Matter" sentiment the last **400 years**...?)

As awful as, if not *more* offensive than, the "All Lives Matter" remark is the "Blue Lives Matter" comment. Some might demand to know how *this* could possibly be offensive. Simply put, because there is no such thing as a "blue life." It's an **occupation**. It refers to "cop lives" and is effectively putting an *occupation* on par with a human *life*. (Some try to lump "first responders" into this, even knowing EMTs and firefighters don't wear blue, but still the point remains.) At best, one might insist policing is a "calling;" however, one still *chooses* to answer a calling. The fight for civil rights is about securing equal rights for those facets of human identity beyond choice: race/ethnicity/skin color; gender/gender identity/sexual orientation (finally fully included thanks to the recent SCOTUS ruling), disability, etc. Nowhere is "occupation" included in this. It's insulting to equate "blue lives" with "Black lives" for many reasons, not least of which is "blue lives" are imaginary—that's right, we shouldn't have to remind anyone smurfs aren't *real*.

Many years ago, watching the television drama Law &

Order, I was struck profoundly by a scene in which one of the characters, a Black prosecutor-turned-defense attorney, responded to his former colleague's incredulity (disappointment?) that he would ever "switch sides." (While this also speaks to the adversarial nature of our "Just Us" system, that's for another day.) He relayed the story of his mentor telling him at the outset of his career that he would need to decide whether he was an attorney who happened to be a Black man or a Black man who happened to be an attorney. He said, "All these years I thought I was the former; turns out I was the latter." Black officers are Black before they join the force; they will be Black when they retire. They are Black when they make love and when they talk to their children. (Likewise, women officers are women when they are in uniform and when they are not. And I would encourage everyone to learn and/or learn more about the concept of intersectionality...) A BIPOC, a woman, *anyone* (a Muslim, a LGBTQ person—we can keep going...) shouldn't *have* to choose *if* they're an officer—or a member of any other occupation—who "happens to be" who they are...because people *are* who we *are*.

To those who say your own race (or gender or able-bodied-ness, or [**fill in the blank**]) never figures into your occupation or where you live or how you conduct yourself (or [**fill in the blank**]) as you go about your daily life—that you "just don't think about it"—well, then, take a long, hard look in the mirror (and your heart) and say hello to your privilege. It is waaayyy past time you introduced yourself, met it face to face, and started to acknowledge how often you ignore it—and how it impacts not only you but the systems and people around you. Just because you don't *recognize* it does not mean it's not there—*all* the time. If you "just don't ever think about it," it should be painfully obvious you've just not bothered to pay attention until now. And now is the time for change...

### Agenda: Reduction of Prison Population by 50% in 10 years

**Editor's Note:** The following are parts of a 27-part agenda, authored by Todd Cook #47656. Contributors are: Michael Sims #51850, C. Michael Anderson #31936, and Bernard Long #55360. All four are serving life sentences at the Nebraska State Penitentiary. From time to time, the NCJR will publish additional parts of the agenda.

#### Public school education regarding crime and punishment, and restorative justice

There are studies that establish that the certainty of getting caught is more of a deterrent than the length of the prison sentence that is possible for a crime. However, it was also established that most people that are committing crime are unaware of the punishments that are applicable to the conduct they are engaged in. As such, I believe reducing the overcrowding of our prison population starts with prevention. That begins with education in our public schools regarding crime and punishment. There should be a very specific class that is required learning that teaches our youth what is going to happen if they commit crime. They need to know that certain behavior is unlawful and that the outcomes are sometimes permanent. The accidental death of a person during the commission of a crime results in a sentence of life without parole. They don't need to intend to kill anyone for their decisions to result in their freedom being taken away for the rest of their lives. It is here that we need to focus the most attention to "solve" the overcrowding in our prison system. We are primarily dealing with symptoms rather than focusing on the problems.

Additionally, it would be worthwhile to educate our youth in restorative justice practices. After all, they are the future leaders of our community and shaping their perceptions regarding crime and punishment should be focused around alternatives to incarceration. (School superintendents would need to develop curriculum in this area.)

#### Open ankle monitor facilities, operated in the community, by the Nebraska Dept. of Correctional Services

Ankle monitor facilities would be available in a community-based setting where the general day-to-day movements of prisoners are controlled by electronic monitoring. These facilities could be established by purchasing an existing hotel chain or other non-secure location that is designed for overnight guests. The cost of creating such a facility would be substantially less than opening a customary correctional facility, and is relatively turn-key in its setup and operation. (The Legislature would need to appropriate funds and the Director of Corrections would need to designate this as a place of confinement pursuant to Neb.Rev.Stat. 83-173 and 83-176(2).)

## Petition to remove the sex offense registry

By Jeanie Mezger

Recently, a petition was circulated at the Omaha Correctional Center (OCC), asking that the state sex offender registry be taken down.

After the May 14 murder of Matteo Condoluci in Omaha, there is an increased urgency in the efforts to protect people whose addresses are on the registry. If Condoluci was murdered by someone who found his address on the registry, it is clear that the registry puts people in danger of vigilante violence.

Although some people refused to sign, the petition was signed by a large number of people at the OCC. One of the petitioners collected a list of reasons provided for refusing to sign, even though most agreed with the goal of the petition:

### Reasons given for not signing:

- *I've been repeatedly abused through this system whenever somebody knows my name and number. I don't want to put my name on this because I don't want anyone to hurt me again.*
- *They think we are all guilty and we are not. They are the liars.*
- *People would honestly rather kill us than give us a chance.*
- *Nothing changes. The legislators don't care. They just want punishment and to be re-elected.*
- *They value other lives, not ours. We are less than cockroaches to them.*
- *If anyone sees my name on this petition in here I will get my ass beat.*
- *Self-righteous rich folk don't know mercy and love so they don't care about us. They don't think anyone can be redeemed so I ain't gonna beg. They can go ahead and kill me again and again. It's what they like to do. They ain't worth my signature.*
- *If I sign it they will just make up more lies and laws to cover their lies. Then they will make up some other false crime to charge me with.*
- *The only way to be free is to leave NEBRASKA. I'm done with these liars and fakes. These lawyers, prosecutors, and judges aren't even human. The laws allow them to over-charge and over-sentence us whether we are innocent or not. I ain't signing. I'm leaving. Gonna pick up my family and leave this hellish state.*
- *Nobody cares about us or me. Evil laws created by evil people.*
- *I'm not signing because there is a lack of public understanding that not all sex offenders are sex offenders. You don't even have to have proof in this state to be convicted. Just by word of mouth. Not all S.O.s are*

*guilty of heinous crimes, yet we are all grouped together. I don't want my signature on anything to where they can see and continue to try to hurt me.*

- *The laws are so corrupt that they will find a way to manipulate this and hurt us even more. I would like to sign, but let's face it, I'm scared, hurt, tired of abuse, and I just can't handle any more.*
- *The petitioner adds: "Lastly, here is what a guy told me when I was in the yard asking for signatures: Dude, what are you doing? You're gonna get killed. Seriously, I watched a guy try to get a petition going at NSP (Nebraska State Penitentiary) and ten guys took him into the bathroom and beat the shit out of him. Be careful, brother, you playing with fire. Be happy you're at OCC because at other prisons they don't even allow you to make a petition."*

Those who are incarcerated for sex offenses know that their return home could put their families in danger. Taking the registry down is a sensible approach to protecting those families, especially since the registry cannot claim to improve public safety.

## News & Miscellaneous

By Mel Beckman, Editor, NCJR

### **Thank you to all the great people who help make the NCJR possible:**

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### **Past issues of the NCJR can be accessed at the Holy Family Ministries website:**

<https://www.holyfamilyomaha.org/our-work.html>(<https://www.holyfamilyomaha.org/our-work.html>)

1. Look for the **Nebraska Criminal Justice Review** link to the Creighton Digital Repository (CDR) where the NCJR is archived.
2. To browse issues from the most recent to oldest (Feb/2001), look for the Cogwheel (in grey box) directly above the issue list (to right)
  - Choose Descending order.
3. Select specific issue—Click on pdf link under NCJR rectangle (top left)



## Covid-19 in U.S. and Nebraska Prisons – An August Update

By Linda K. Ohri

Since March 2020, the Marshall Project website ( [www.themarshallproject.org](http://www.themarshallproject.org) ) has provided a regularly updated State-by-State Look at Coronavirus in Prisons. This reports on Covid-19 testing, positive and recovered cases and deaths among both prisoners and staff at prisons across the U.S. Report authors clearly describe the limits of their reporting relative to available data provided by state and federal officials, as well as from other sources. In particular the authors note that, “*understanding of the spread and impact of the virus is limited by the availability of testing*”, with 16 prison systems (including Nebraska and the Federal Bureau of Prisons) failing to routinely provide testing data.

Nationally, by Aug. 25, the Project reports “at least 108,045 people in prison had tested positive for the illness, a 6 percent increase from the week before.” This compares to 34,584 as of May 27<sup>th</sup> and represents a 212% increase in case numbers from May to August. This source notes that new U.S. cases among prisoners reached an all-time high in early August after slowing down in June. They indicate that 81,900 (76%) of Covid positive prisoners have been reported as recovered. By August 25, 928 U.S. inmates had died of Covid, with a rise of 4% just during the previous week.

By August 28, Nebraska overall has had 33,101 Covid-19 cases compared to 14,101 reported on May 31<sup>st</sup> (135% increase). ([www.statista.com/statistics](http://www.statista.com/statistics) )

As of the week of August 25<sup>th</sup>, Nebraska officially reported “at least 10 positive Covid cases” among Nebraska prisoners (89% lower rate versus Nebraska overall), with all 10 since recovered, and no deaths. Nebraska did report a Covid-19 testing rate among prisoners of 1,765 per 10,000 prisoners (this represents approximately 935 total tests for about 5300 prisoners).

On August 29th, the Omaha World Herald reported that 600 inmate at the Nebraska State Penitentiary (NSP) were being tested after one prisoner tested positive for COVID-19. Prisoners at three housing units were to be quarantined Testing was to be completed by the end of Friday (Aug. 29). On Sunday, August 30, Director Frakes indicated that 29 inmates (in four housing units) had tested positive. ([www.1011now.com/2020/08/30/](http://www.1011now.com/2020/08/30/) (<http://www.1011now.com/2020/08/30/>)) Initially, 332 out of approximately 600 inmates offered tests agreed to be tested. Remaining inmates were again offered testing, beginning August 30. As of September 4, the Omaha World Herald reported that 34 inmates had tested positive at the NSP; Another 13 were positive at the Diagnostic and Evaluation Center. The article reported that this brings the state total for Covid positive inmates to 57 since the beginning of the pandemic until Sept. 4th. ([www.Omaha.com](http://www.Omaha.com) (<http://www.Omaha.com>)). Three inmates with Covid-19 had previously been identified August 18th at the Phelps County Jail, a holding center for the NDCS. ([www.1011now.com/2020/08/18/](http://www.1011now.com/2020/08/18/) (<http://www.1011now.com/2020/08/18/>)). Due to potential close contact with other housing units, the entire NSP facility was placed under quarantine on September 30. The inmate visitation and volunteer programs will remain closed across the Corrections System.

Nationally, relative to staff testing, there continues to be limited data, as well as on positive and recovered cases. Nebraska data reported to the Marshall Project indicated that the positive case rate for NCS staff was “at least 20,” with no deaths, as of May 28th. Data on staff testing or recovered cases was not provided by the state of Nebraska. However, an Associated Press report on August 29 indicated that Nebraska Corrections System staff had a positive Covid-19 case increase of two, to a total of 63. ([www.sfgate.com](http://www.sfgate.com) ) One of the employees works at the Lincoln Correctional Center, while the other works at the Tecumseh State Correctional Institution. Over the pandemic period, prison staff cases have been reported at the Nebraska State Penitentiary, at the Lincoln Correctional Center, the Diagnostic and Evaluation Center, at Tecumseh, and at Douglas County Corrections.

**Reminder: The Marshall Project website provides a useful Covid-19 survival guide for prisoners at: [www.themarshallproject.org/2020/05/05/covid-19-a-survival-guide-for-incarcerated-people](http://www.themarshallproject.org/2020/05/05/covid-19-a-survival-guide-for-incarcerated-people)**

# LETTERS

## Stop punishing inmate families

By Michael B. McKinnie  
Florence, Arizona

Would it not make more common sense to allow inmates to send money to their families rather than be on the phone begging for store money? Why are we as a nation punishing innocent families for the wrong of one offender?

At some point in time, some of us offenders worked legitimate jobs and paid into the Social Security Insurance Plan, and some of us served this country honorably in time of war and peace. We earned those benefits. Taking away those benefits hurts our families, our economy and our country.

Now, in the worst depression since the 1930's, is the time to restore Social Security and full VA benefits to senior inmates so they can help their families and try to make amends for their wrongs. We need, as a nation, to start growing together and do what is right. Stop hurting and abusing one another.

Stop the hate, racism, sexism. We need to realize that child molesters were usually abused and molested themselves as children. Once some sex offenders know why they did what they did and realize their "deviant cycle", they first of all are horrified, and second of all, stop and have no more desire to abuse again.

Registering ex-sex offenders does not protect anyone. What it does do is create an opportunity for another crime, a worse crime, or a hate crime. Let's get off the HATE boat! Compassion and forgiveness will get us a lot farther as a people than hate.

Write to your senators and representatives and ask them to restore Social Security and full VA benefits to senior inmates.

## Regarding the parole of those eligible

By Robert Harden 65519  
Tecumseh State Correctional Institution

I was sentenced to 30 to 40 years. At the original review of my case at the Diagnostic and Evaluation Center, I was recommended for anger management. It is now 14 years later, less than one year away from parole eligibility, and I will not be given a final (review). CVORT (the Clinical Violent Offender Review Team) refuses to take me off (the recommendation) because I have 19 violent misconduct reports for using language, but none for assault.

The programming, that is not ordered by the court, is being used as a "get out of jail free" card by Tecumseh State Correctional Institution and the Parole Board. All programming is voluntary, not mandatory, unless ordered by the courts.

I, along with others who do not take programming or are not done due to unavailability, will be denied parole, leaving overcrowding an issue that will never be resolved, in part, until the Parole Board is disbanded.

## Announcing, Family Ties Transportation

By Michale Dixon 95900  
Lincoln Community Corrections Center

As a long-time NCJR subscriber, I am proudly able to announce that my husband, Eric Moore, and I, are both RISE graduates and currently RISE alumni. With the help of RISE support and Eric's hard work, we are finally able to announce to NCJR and its subscribers the grand opening of **Family Ties Transportation!**

Family Ties Transportation is based out of Omaha and

thrives on helping friends and family stay connected, by providing safe and reliable transportation to the prison facilities. Currently Family Ties is able to provide affordable transportation to the prisons in Lincoln, including NSP, CCCL, LCC, D&E and YRTC.

One inmate stated, "As an incarcerated parent, there is nothing more that I wanted than to have visits with my daughter, and through the years, my mother was not able to transport my daughter for a visit, due to her own health issues. With Family Ties I am now able to see my family whenever I want."

Sadly, being incarcerated, we all have dealt with the hardship of friends and family canceling or not being able to visit due to health issues, car trouble, or not being able to drive. With Family Ties Transportation, anyone can now have the opportunity to visit their friend or family on the inside. Help support and grow a company that thrives on "bridging families together."

**Contact info:** Facebook—familytiestransportation llc  
E-mail—familytiestransportationomaha@gmail.com  
Eric Moore: 531-220-2371.

## Lifers denied a chance for redemption

By David Ditter 32547 (40+ years)  
Tecumseh State Correctional Institution

The essential feature of a life sentence is that it imposes a terminal, unchangeable, once-and-for-all judgment upon the whole life of a human being and declares that person as being forever unfit to be a part of civil society again. Life sentences were enacted to deal with dangerous and incorrigible individuals who would be a constant threat to society, but more often than not, many lifers end up caught in a never ending punishment for a single deviant criminal act.

Society has a legitimate interest in ensuring that individuals are punished for committing crimes, especially serious felonies that result in long prison sentences being imposed. However, society has historically recognized, if not for the influence of politics, that there is a terminating point to retribution and that it should concern itself with rehabilitating & returning the individual to a productive role in the community. Continuing to incarcerate elderly lifers, who have substantially changed their lives while in prison by engaging in rehabilitative programming, expressing changed attitudes and genuine remorse for their prior actions, serves no public safety objectives.

As sentences get longer and politicized parole and pardons boards refuse to give long-time prisoners a chance to redeem themselves, prisons are becoming "homes" for a geriatric prisoner population. They are occupying cells well beyond the time when they posed significant danger to society for their crimes committed many decades earlier.

## Family and Friends of the Incarcerated- FFI-Omaha

We meet monthly, 4th Saturday (except December), to share and provide support for each other and to work toward making the correctional systems better for our Loved ones and the community. We invite community members, legislators and others to come talk with us about the work they are doing to make our correctional system as good as possible. During this pandemic time we are meeting on-line by zoom. You can share as much or as little as you feel comfortable with. Our next zoom meeting is Sept. 26th at 9:30 a.m. Email to [mabeck3636@cox.net](mailto:mabeck3636@cox.net) a week before the next meeting stating that you want to try it out. We'll send you the zoom number.

## A call for education

By Benjerm Frith 89610  
Omaha Correctional Center

***“How we treat citizens who make mistakes (even serious mistakes), pay their debt to society, and deserve a second chance reflects who we are as a people and reveals a lot about our character and commitment to our founding principles.” - Barack Obama***

The European Court of Human Rights has banned life without parole as an inhumane punishment that negates the value of prisoners' lives—thereby rejecting the notion that this punishment is warranted by retribution or public safety. In the U.S. and Nebraska, retribution and incapacitation are still the prevalent sentencing rationales. Retribution focuses on making the “victims” whole and “righting the wrong” done to them via punishment. Incapacitation is the act of removing the alleged or convicted “wrongdoer” from the community to protect the public. My question is, is it in the best interest of our society to continue to warehouse future citizens without offering meaningful rehabilitation? Meaningful rehabilitation consists of a slew of different resources, but here we will talk about the education kind, specifically: (1) higher learning (college); (2) vocational training (trades).

Education is the most important variable. Educating the most under-advantaged, poor, illiterate, marginalized groups in our society, those in jails and prisons, is likely the single most beneficial action we can take to alleviate mass incarceration. Education, relevant education, that is, not the trades and knowledge of yesteryear, but the skills of tomorrow. These education measures are needed to provide sustainable economic security for those incarcerated. A 2013 RAND Corporation study suggests that, with one year of higher learning, inmates have a 93% lower chance of recidivating than inmates who did not. Also, for every dollar spent on education four or five dollars is saved on re-incarceration.

Pursuant to a public records request, it was determined that the Nebraska Department of Correctional Services spends only \$1.8 million on education services out of the \$225 million yearly budget. This amount is spread out over its ten facilities. After staff salaries are factored in, this equates to a little over \$100 a year per person spent on education at the Omaha Correctional Center for its roughly 750 inmates. When this \$100 is compared to the low average housing cost of an inmate at \$30,000 a year, this equates to one third of one percent on education. After a short interview with an education worker at OCC, I've surmised this meager allowance provides a total of three education programs a year that consist of: 1) English as a Second Language; 2) GED or high school equivalent; and 3) Acellus or “tablet” courses that offer basic knowledge in a variety of subjects. I've been told that there are three groups of 15 people that meet 5 days a week quarterly. There is a minor problem: there are currently only 10 Acellus tablets available, and entry into the class is on par with getting a pardon, which is to say, next to impossible. In sum, ESL, Acellus and GED are the three educational programs the Department offers at OCC.

Now, thanks to the federal grants available to prisoners' education, community colleges and universities may “volunteer” to teach inmates. The courses that they are beginning to offer are a step in the right direction. For example, on August 5th at OCC, a memo was posted describing an Information Technology Technician Academy by Metro Community College. This is an accredited program teaching two IT courses a quarter. Something like this is EXACTLY what the Department should be offering, and it should be under the umbrella of vocational life skills AND education. Instead, we have sewing shops, print shops, and woodworking—all trades that will be next to obsolete in the coming years. But the people who program, engineer and repair computer systems and machinery will have security for the remainder of their lives.

The prison population is overcrowded. The Nebraska Department of Correctional Services is the second most overcrowded system in the country after Alabama and there has been recent news coverage of discussion about building another prison. Meanwhile, Nicole D. Porter, and the Sentencing Project reported that since 2011, at least 22 states have closed or announced closures for 94 state prisons and juvenile facilities, resulting in the elimination of over 48,000 prison beds and saving over \$345 million.

Many of the classrooms, computer labs and other education spaces already existing inside the Department are under-utilized and essentially off-limits to the would-be scholar. It seems, with the simple flip of a switch, the Administration could single-handedly ease recidivism rates by: (1) allowing inmates to teach each other in these spaces, e.g., Spanish, computer programming/literacy, typing, nutrition, etc.; (2) investing in the inmates' ability to access the tools of tomorrow, e.g. allow access to computer labs equipped with education programs, reference and research databases, word processing software and printing capabilities; and 3) offering relevant vocational training that could be used competitively in a global market economy.

It is true, the sentencing rationales in our society are inhumane, perverse, and backwards compared to many other modern societies. As the path forward demands progressive prison reform, it is of paramount importance that we awaken from our slumber, muster the courage, and resilience to exhaust all remedies in an effort to balance the scales. The battle is uphill, but forward nonetheless. The tools provided with a meaningful education will awaken purpose and hope in the hearts of the most hardened criminals, providing them with a path to escape their previous lifestyle. Together with compassion, understanding, and the belief that an individual can change, we can ease mass incarceration in our state, through the sustainable vehicle of education.

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