

Nebraska Criminal Justice Review

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Can we do better?

By Mel Beckman

In the past three months, five elderly men died in Nebraska prisons. Their names – **Leonard Svitak, Edward Poindexter, Thomas Nesbitt, Michael Pendell and Richard Holtan**. Their average age at death was 80 years old. Together, they served a total of 199 years in prison – for an average of 40 years each. This information, compiled from Corrections Department news releases, deserves reflection on our part. Why? Because although the men named above were convicted, it is you and I (citizens) who put them in prison and decided how long they should stay there. Legislators and judges were only our agents. Did they do justice right? Are we comfortable with what they did for us? If not, how can we do better?

We should think carefully about how we punish fellow citizens in Nebraska. This isn't being "soft" on crime. It is simply realizing that how it is done in other states and other countries is worth considering. Length of sentences for violent crime vary from state to state. The possibility for parole, or not, differs by location. Living conditions in prison can be very different in different places. The people of some states can support death by execution, others can only support life sentences. Some support neither way of punishing violent crime and want sentencing reform.

All who read this short opinion piece will have their own ideas about whether we Nebraskans did "right" by these five men. That's okay. Keep the conversation going. We don't want to take any hard position on crime and punishment and stop thinking. Nor should we let our emotions stifle our reasoning. How can we do better?

Edward Poindexter: Dying to be Free

by Erin McCoy Arellano

Free at last! Free at last! Thank God Almighty, [Ed] is free at last! ~ Martin Luther King, Jr. I Have a Dream speech 1963.

On December 15th, 2023, Edward Poindexter was laid to rest. At age 79, after over five decades in prison, he is finally free, but not the way he or his friends and family envisioned.

The man they knew, whom nieces and nephews fondly called Uncle Butch, was a Vietnam War veteran. Following his enlistment, he returned to his community and became an activist in North Omaha. He worked as an anti-drug leader at the Northside YMCA and became a delegate to the 1968 county Democratic convention. He was a leader in the Omaha Black Panther Party and later Omaha's National Committee to Combat Fascism ("A Tribute to Edward Alan Poindexter").

For the most part, outside of his neighborhood, the Edward Poindexter that the public heard about was a very different man. His name was splashed all over the headlines after being arrested, in 1970, for a bomb explosion that killed a police officer. Poindexter, who maintained his innocence throughout his imprisonment had pursued many avenues to freedom to no avail.

According to the tribute distributed at his funeral, Ed said that he died at age 26, just like his father did. His dad, Edward Sr., drowned in a lake and he, Edward Jr., drowned in an uncompromising legal system that wouldn't right its wrongs.

In prison, Poindexter remained the man he was, committed to educating himself and motivating others. During his first years in prison, he transferred to prison in Minnesota where he completed a bachelor's degree in human services from Metro State University of St. Paul (*Tribute*). He also completed coursework toward a master's degree, but money ran out before he finished.

Back in Nebraska, he worked on clearing his name, and that of his lifelong friend, David Rice. The two of them formed the Harambee African Culture Organization, a self-betterment club at Nebraska Department of Corrections that continues to provide an opportunity to explore the roots of African American culture and heritage, including the past, present and future. He wrote books meant to motivate and build self-esteem, all while maintaining the respect of other incarcerated individuals and prison staff. They all called him "Mr. Poindexter."

In 1993, the Nebraska Parole Board voted unanimously to commute both Edward Poindexter's and David Rice's sentences to time served, but the Pardons Board did not follow the recommendation. He was denied parole four times, the last time in 2014 ([TheJerichoMovement.com](https://www.thejerichomovement.com)). Sadly, he would have been considered again for parole this year, 10 years following his last denial.

Ed is not the only person who will die in prison before finding compassion. According to Dawn-Renee Smith, Deputy Director of Rehabilitative Services, there are currently 208 men and women in Nebraska who are 65 and older. One might consider this an age where these individuals are unlikely to be a threat if they were released. These numbers are not the fault of the Department of Corrections. NDCS doesn't pick and choose whom to incarcerate.

The problem lies in a community that isn't prepared to accept these men and women. Policies and laws exclude people who are formerly incarcerated from participating fully within the community or reject them outright in the name of community safety.

In Ed Poindexter's case, medical parole would have been

Continued on page 2

Continued from page 1: Edward Poindexter...

denied simply because he didn't meet the criteria for § 4-601. *Medical parole, eligibility, and conditions (A)*. His sentence of life imprisonment automatically disqualified him from medical parole even though he met the criteria for existing medical or physical conditions.

Unfortunately, even if the community could find the compassion to accept elderly and infirm individuals, compassionate release is currently more of a fantasy than a reality. Medical or compassionate release would indeed reduce the prison overcrowding issue. But what really happens to elderly individuals when they're released from prison? No work history. No SSI. No remaining family or support system. Add to this that they have ill health. And if their crime is such that most (if not all) nursing homes, retirement centers, and long-term care centers won't accept them, where should they go?

In Nebraska, our prison system does help individuals, before release, to set up appointments with Social Security, apply for Medicaid, and receive a three-month supply of medications until they get on their feet. Deputy Director Smith indicated that the department also works with its Vocational Life Skills (VLS) providers that support recently released individuals through reentry.

But what if they never get on their feet financially? Who helps them walk this path when they are no longer under state supervision, and they are without support or services? Leaving them in prison is the equivalent of laying them down on an ice floe to float away. But the way things are now, most people would continue to suffer outside prison. Is this compassionate?

Edward Poindexter was an exception. He had always had a support system and family who would have gladly welcomed him home. In his honor, and for all of the other Ed Poindexters, we must keep up the conversation about compassionate release, and we must make changes so that our communities are prepared to support people coming home from prison. Only then can we truly call ourselves compassionate.

Tender Mercies of the Pardons Board**By Jeanie Mezger**

People shadowed by a felony record often yearn for a pardon. They want to be able to apply for a job or for housing and not have questions arise about a long ago, much regretted past. They want to be eligible for a promotion or to get a higher security clearance. A pardon would let them breathe easier, knowing that a genealogy search by grandchildren will not disclose a painful event in family history.

Nebraska Board of Pardons has the authority to grant a full pardon or to commute a prison sentence—both during one's incarceration and after release—but the Board follows a self-imposed guideline that prevents almost all commutations. The guideline requires that a person must have completed their sentence for a misdemeanor at least 3 years ago, and for a felony at least 10 years ago. That eliminates people who are currently in prison.

In a startling decision at the January 29, 2024, Pardons Board meeting, the Board commuted Lavetta Langdon's prison sentence to "parole eligible." Ms. Langdon, 82 years old and currently incarcerated in the York facility, now waits for the Parole Board to make its decision. This was a big

deal because the Board ignored its own guideline and because a *woman* was the beneficiary.

Commutation requests as a group are generally denied as soon as the Board members are seated. People who come to the meeting may not even hear the name of the person they came to support.

When hearing requests for pardons, the Board quizzes applicants about details of crimes committed decades ago. At times, they seem to want to "re-try" the case; they look at old police reports and ask for details, shaking their heads when the applicant's memory doesn't match up with what they are reading. "You're not telling the whole story," they say. "This doesn't add up." The crime was dealt with years ago and the punishment decided.

According to the Nebraska Constitution, "*The Nebraska Board of Pardons has the power to remit fines and forfeitures, grant respites, grant reprieves, grant pardons, grant commutations, and grant warrants of discharge in all cases of conviction for offenses against the laws of the State of Nebraska except treason and cases of impeachment.*" The Pardons Board is not about punishment; it is about mercy.

An applicant, after delivering a loving and proud description of how well his son is doing in college, was asked by the board if he had told the son about his past as a meth user. Suddenly emotional, the man said his son looks up to him and he doesn't want to break his son's heart. A Board member said, "It seems there is some pride here. What if he were to use meth? How could you live with yourself?" The Board member insisted that telling the son was the best course, though surely the father knows the son better. Any parent knows that sometimes kids follow advice and sometimes they don't. Telling a child about lessons learned in the parent's younger years is no guarantee that the child will absorb the lesson and no guarantee that the parent-child relationship will not be harmed by the confession. The Board denied the pardon, withholding the gift of mercy from a man who recovered from his misdeeds and raised an admirable son. What more could we ask of him?

The Board seemed to appreciate a display of repentance more than a clear demonstration of a crime free life. Years without interaction with law enforcement should count for something.

The guideline that prevents almost all people who are currently incarcerated from being heard by the Pardons Board also prevents the Pardons Board from being part of the solution to prison overcrowding. People who have been incarcerated long enough to leave criminal intentions behind (how long would it take *you* to learn that lesson?) should be able to receive a commutation.

People in Nebraska deserve to have incarcerated community members back at work and back in the home. A Department of *Corrections* is about helping people *correct* their course. A prison that helps someone achieve that should celebrate their success and encourage that person to apply for a commutation. Are we really satisfied to leave them in overcrowded prisons longer than necessary?

Some would say that "necessary" means until the bitter end of the sentence, but when law allows the Pardons Board to commute sentences, "necessary" doesn't have to mean that.

Felony Murder Rule

by Jason Witmer

The Felony Murder Rule exemplifies a controversial aspect of criminal law, often provoking debate over its fairness and application. In a local case from the early 1980s, Derek Dixon (36413 TSCI) burglarized a home in which the elderly woman suffered a fatal heart attack. Despite lacking intent to cause harm, he was charged with murder under the Felony Murder Rule, receiving a life sentence without parole.

Undoubtedly, the victim's death was a profound tragedy, leaving lasting scars on her loved ones. However, applying the Felony Murder Rule in this case raises significant concerns regarding fairness and proportionality in sentencing. By holding individuals strictly accountable for deaths occurring during felonies, irrespective of intent or foreseeability, the rule can lead to excessively harsh punishments. In instances where death is unintended and unforeseeable—such as a heart attack triggered by fear or other factors, not including physical assault—the imposition of a life sentence without parole may seem disproportionate and unjust, failing to consider the defendant's circumstances or potential for rehabilitation.

Moreover, the discretionary nature of prosecutorial decisions in applying the Felony Murder Rule introduces another layer of complexity. Such discretion is susceptible to racial biases, resulting in disparities in charging and sentencing outcomes affected by the race of the defendant. This rule and its application raise serious questions about the fairness and impartiality of the criminal justice system, further highlighting the arbitrary and overreaching nature of the Felony Murder Rule. (*Racial Bias, Accomplice Liability, and the Felony Murder Rule: A National Empirical Study, April 19, 2023, Denver Law Review*, and *Data Transparency & The Disparate Impact of the Felony Murder Rule, Aug. 11, 2020, Duke Center for Firearms Law*).

While the Felony Murder Rule claims to hold individuals accountable for their actions, its application prioritizes punishment over justice. The case of the young man sentenced to life in prison for a felony that had no direct repercussion that could cause a death underscores the need for a reevaluation of this rule and a more nuanced approach to determining accountability in criminal cases. At a minimum, justice requires a balance between holding individuals accountable and ensuring that punishments are proportionate, fair, and reflective of the circumstances of each case.

However, the reality is that there is no justice in the use of the Felony Murder Rule. It is arbitrary, capricious, and a weapon meant to circumvent the legal standards to apply a death sentence carried out via enforcing a lifetime incarceration.

Punished for Presence: Unjust Justice and the Felony Murder Doctrine From a Female Inmate Perspective

By Terri L. Crawford, JD

As we prepare to honor women in March for Women's History we also recognize that there is much work that needs to be done to truly establish gender equality in all aspects of life.

The historical record shows us that women are generally left out of the conversation when it comes to incarceration and wrongful convictions. But what about when they, like male offenders, are punished for presence under the felony murder doctrine? Women face unique challenges both as directly impacted individuals and as the people who shoulder much of the financial and caretaking burden when loved ones are incarcerated. Women have become the fastest-growing segment of the incarcerated population, but despite recent interest in the alarming national trend, few people know what's happening in their own states. Examining these state trends is critical for making state-level policy choices that will dictate the future of mass incarceration. (Wendy Sawyer, *Prison Policy Initiative* – 2019).

So what is felony murder? In its starkest form, any participant in a specified felony that results in a death shall be punished as a murderer, no matter how accidental or unforeseeable the death, nor how diminished the defendant's connection to the death. These laws impose sentences associated with murder on people who neither intended to kill nor anticipated a death, and even on those who did not participate in the killing.

Data on the rule's effects on women are difficult to find. According to FBI statistics, women were convicted of less than 9% of all homicides in 2019. One California survey of 1,000 incarcerated individuals found that 72% of the women serving life sentences for murder had not committed the act itself, suggesting a disparate impact of the felony murder rule on women. We see further evidence of the impact in cases like Carolyn Moore's in Louisiana in 1985, Moore testified that she was coerced by a male abuser into participating in an armed robbery in which two people were murdered. While she was waiting in the car, her co-actor, Mark Miller, pulled the trigger—but she was given the same sentence he was given, life without parole. According to Moore's testimony, Miller had held her captive, beaten her repeatedly, and threatened to harm her children if she left him. More research is needed to understand both the rates at which women are charged and convicted of felony murder, as well as the impact of domestic violence, emotional, psychological, or financial coercion or other abuse on their participation in these offenses. (*The Appeal, Felony Murder Explained, March 2024*).

According to the Nebraska ACLU, in Nebraska, women offenders are in prison primarily for nonviolent crimes. Nearly half of women prisoners are in custody for drugs or theft. The most violent category, homicide, represents 6.6% of the female prisoner population. (ACLU Nebraska, *Nebraska Women In Prison, October 2017*). There are women at our York facility because of the felony murder rule who are being punished for their presence.

Continued on page 11

Barred: Why the Innocent Can't Get Out of Prison by Daniel S. Medwed

Book Review by Jeanie Mezger

The National Registry of Exonerations has recorded 3,481 exonerations since 1989. Nine of those were in Nebraska. With an average of 100 exonerations a year across the country, it is clear that there are innocent people in prison, and *Barred: Why the Innocent Can't Get Out of Prison* explains why.

Daniel S. Medwed, a professor of law and criminal justice at Northeastern University, has not written a very encouraging book. According to him, perhaps the biggest reason innocent people can't get out of prison is because of court procedures. Procedures determine which cases the court can hear, which evidence the court will admit, which arguments are allowed, and all the other arcane aspects of an innocence case. In the book's "Opening Statement," Medwed says:

Procedure is the door that allows entry to the corridors of power, where people with the capacity to determine a criminal defendant's fate reside. Without entry there's no chance of justice.

Barred is written in four parts: On Appeal, Postconviction Matters, Executive Function and A Path Forward. Each of the parts tells stories about people for whom the procedural barriers were difficult if not impossible to cross. He explains how habeas corpus is no magic bullet, how even DNA evidence is no sure thing, how courts routinely defer to previous court decisions. He discusses the "untapped potential of clemency," something Nebraska ought to consider.

In the final section, which begins wryly with "*I suspect you're not alone if you feel despondent at this stage of the book*," Medwed puts forth a strong argument for the deployment of internal review units or conviction integrity units. These are divisions of prosecutorial offices "*in which staff evaluate postconviction innocence claims in their county*." The possibilities he sees in conviction integrity units is heartening.

The book is not a dense academic essay; Medwed writes simply about complicated matters. Innocent people trying to find a way out of prison will appreciate his perspective.

Access to Prisons for the Ombudsman and Inspectors General Awaits Passage of LB 1321

By Joanna Lindberg

The future looks brighter for the Office of Public Counsel, which includes the State Ombudsman and Inspectors General for Corrections and Child Welfare, with the expected passage of LB1321.

When Legislative Resolution 298 was passed on February 28, it initiated an interim study of the structure and organization of the legislative functions that currently exist among legislative divisions and offices. The study is to be completed by December 31, 2024. It also set in motion a restoration of access to facilities and information for all three offices, which resulted from a temporary Memorandum of Understanding between the legislative and executive branches.

The legislative resolution and the Memorandum of Understanding became necessary because Attorney General Mike Hilgers wrote an opinion that the powers given to the office were in violation of the Nebraska Constitution provisions for separation of powers. Within days after the August 16, 2023 opinion was announced, the Ombudsman and Inspectors General offices lost access to the facilities and agencies needed to do their jobs.

The Inspectors General work to provide increased accountability, oversight, and improvement of the state's adult correctional, juvenile justice, and child welfare systems. This has been done by conducting formal investigations and reviews following a complaint. Upon completion of their review, a report is written and available to read on the Nebraska legislature website: https://nebraskalegislature.gov/reports/public_counsel.php

HOW TO FILE A COMPLAINT WITH THE OFFICE OF INSPECTOR GENERAL (OIG) FOR CORRECTIONS

Anyone may file a confidential complaint with the OIG regarding concerns related to the Nebraska correctional system. Complaints should pertain to the Department of Correctional Services, the Division of Parole Supervision, or their employees or contractors, and should allege possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations. Complaints may be filed by mail, email, or phone:

Email OIGCorrections@leg.ne.gov Phone 402-471-4215

Mailing Address: OIG Corrections | P.O. Box 94604 | Lincoln, NE 68509-4604

Poisoned inside and out: Landfill Land Swap and the Devastating Impact of Environmental Racism on Prison Populations

By Terri L. Crawford, JD

Prison Policy Initiative statistics show Nebraska has an incarceration rate of 601 per 100,000 people (including prisons, jails, immigration detention, and juvenile justice facilities). Translation, Nebraska locks up a higher percentage of its people than almost any democratic country on earth. (*Prison Policy Initiative, 2022*). According to an Omaha World-Herald article, North Omaha neighborhoods produce some of the highest incarceration rates found anywhere in the country as shown in a World-Herald analysis of Harvard University data. In a 2010 snapshot of people behind bars, more than a half dozen of North Omaha census tracts produced higher rates of male incarceration than any in South Central Los Angeles (*Omaha World-Herald, Henry Cordes – March 6, 2023*). We know through the research that there is a correlation between historically redlined areas and the rate of incarceration in those census tracts due to policies, practices and processes that coded neighborhoods, beginning in the 1930s, based on racial composition and racially restrictive covenants.

Now, Nebraska will be building a new 1,500-bed prison to replace Nebraska's aging penitentiary. According to news accounts it was originally planned to be built on the north-east edge of Lincoln, near the Lancaster Event Center. (*Lincoln Journal Star, August 2023*). Due to some controversy and backlash from residents who live nearby in several neighborhoods, there was a second announcement that state and city officials entered what has been described as a "land swap" agreement to move the site of the new prison away from one of the fastest-growing parts of northeast Lincoln to a city-owned site about seven miles away, just north of Interstate 80—and just east of the city landfill. This "land swap" joint announcement was made by Mayor Leirion Gaylor Baird and Governor Jim Pillen less than two weeks after the governor said the prison would be built near the Lancaster Events Center.

Why is this important? Here's why. Our national prison population, too frequently affected and neglected, often faces environmental harm because many prisons are intentionally built near or directly on abandoned industrial sites, places deemed fit only for dumping toxic materials. One-third (32%) of state and federal prisons are located within three miles of federal Superfund sites, the most seriously contaminated places requiring extensive cleanup. It is also well known that this proximity is linked to lower life expectancy and a litany of illnesses. It is ill advised to live, work or go to schools near Superfund sites. As a result of

being on or near wastelands and landfills, prisons constantly expose those inside to serious environmental hazards, from tainted water to harmful air pollutants. These conditions manifest in health conditions and deaths that are unmistakably linked to those hazards. (*Leah Wang, Prison Policy Initiative, April 20, 2022*).

For example, in western Pennsylvania a state prison located on top of a coal waste deposit has done permanent damage, causing skin rashes, sores, cysts, gastrointestinal problems, and cancer, with symptoms often appearing soon after arrival to the facility. (*Human Rights Coalition, 2014*).

The devastating health outcomes at one prison in Louisiana was a smoking gun for environmental injustice — or a smoking tire, in this case. Laborde Correctional Center's neighbor, an abandoned tire landfill, caught fire and burned *for four days* before the prison decided to evacuate. The state's environmental agency and the tire company are on the hook for failing to address compliance issues. (*The Intercept, March 2022*).

Nebraska has 17 active Superfund sites. Thirteen are currently in the cleanup phase, and four sites are in the site study phase. (*Nebraska Department of Environment and Energy aka DEE, website*). It is overwhelmingly evident from the research that people in prison tend to come from redlined, disadvantaged and criminalized communities. These are the same communities bearing the brunt of the burden of environmental injustice. Using the criminal legal system to move people from the environmental hazards deliberately imposed on redlined communities to similar or more extreme hazards in prisons, is a practice with enormous moral and fiscal costs..

We now know much more than we did about the potential exposure of incarcerated populations to harmful environmental conditions. Numerous studies now identify the proximity of prisons to potentially hazardous sites. For example, one shows that in nine western states of the United States, juvenile detention centers are in close proximity to hazardous waste (Superfund) sites. (*United States. Environ. Justice 2020, 13, 65–74*).

This dialogue is not about whether you believe building a new prison is a solution to our high numbers of incarcerated individuals. Rather, why did Nebraska choose a site next to a toxic landfill where the "inhabitants" have no choice but to live with environmental injustice.

Thank You, Supporters of the NCJR!

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Can I Trust GTL's Recent Request for Additional Personal Information?

by Erin McCoy-Arellano

Much of the business we conduct these days is done online. Requests for personal information are so common when setting up new accounts that we consider them routine and rarely give them a second thought. We hand over our most private and personal information – including biometrics – because these companies say they will keep our information safe. But can they?

In early February, a message popped up on the GTL GettingOut website and app. It stated: "The facility for the contact you selected requires additional verification of your account. Additional information is required for you to send a message." GTL calls it *Profile Verification*. Perhaps you questioned this too. The requested information seemed excessive: GTL asked for the last four of my SSN, my date of birth, front and back pics of my driver's license, and a verification pic of me.

They already have banking or credit card information so that I can pay for receiving calls and sending texts to my incarcerated loved one, not to mention depositing money in his trust fund account. I was certain that I had already provided some of this information but felt uncomfortable providing pictures of anything. Incarcerated individuals can still send emails. However, if the GTL demands are ignored, we will lose the privilege of responding.

Most companies warn their employees of the threat of cyber-attacks. IT departments train staff in how to identify

phishing and hacking attempts. We have all been told that to keep our data safe, we should never click links or open documents from someone we don't know. Perhaps that's why it was so easy to fill out the initial information requested of us by GTL when we set up our accounts, and why, now that they are asking for more, we are hesitant. I am pretty sure that had the Nebraska Department of Corrections simply made a statement that this change was coming, a lot of anxiety could have been avoided.

If the GTL request makes you uneasy, it should. GTL was cited in November 2023 by the Federal Trade Commission (FTC) for "failing to adequately secure data or notify customers that their data was breached." The FTC indicated that GTL not only used a cloud-based platform, but left information in *plain text* rather than encrypting it. Additionally, even after GTL was notified of the data breach, they waited nine months before notifying customers, and then notified only a fraction of those affected.

Because I understand the value of staying in contact with my loved one, I finally broke down and provided the information. I might still be hanging on if a significant event hadn't taken place in our family – the birth of my grandson. I knew that sending my son a picture of his new nephew, a picture that he can access whenever he wants to, yet is safely tucked away in his tablet, would be priceless to him. I just hope that it truly is safe.

Water Quality at York Facility (First in a series about women in prison)

By Joanna Lindberg

For nearly a decade, the people incarcerated at the Nebraska Correctional Center for Women (NCCW) have been raising concerns about the appearance, taste, odor and potential health effects of water at the York facility. For the same period of time, the Nebraska Department of Correctional Services (NDCS) has failed to respond adequately to those complaints. (*Lincoln Journal Star* and *York News-Times*, January 25, 2024) More than a dozen current and former inmates told reporters that they dealt with hair loss, nausea, rashes, and gastrointestinal issues like diarrhea, which they attribute to the murky water plagued by a pungent smell and littered with sediment.

In 2018, HDR, an Omaha engineering firm, studied the corrosion in the York prison water supply. These are the recommendations made to address the high levels of copper in the facility water.

Recommendation 1: Install reverse osmosis filters

The Department of Corrections installed reverse osmosis filtration systems, including one in each of the prison housing units, but most of the water in the prison — including water used for showering, laundry, other hygiene needs and water routed directly to in-cell sinks in some housing units — is not filtered through reverse osmosis systems.

Recommendation 2: A pilot chemical treatment of the water that included injecting orthophosphate and chlorine into the water supply.

HDR and prison officials moved forward with the chemical treatment over a handful of alternative approaches — even though chemical injections could only combat the corrosion, while some alternatives may have eliminated it altogether. The chemical injection system appears to pump inconsistent levels of chlorine and orthophosphate into the prison water supply, according to monthly chemical reports. The inconsistencies sometimes lead to excess orthophosphate, which the Department of Environment and Energy acknowledged can lead to "aesthetic issues" like "turbidity or color."

Recommendation 3: A total pipe replacement

This recommendation has proven in previous projects to be an effective method for reducing copper levels in drinking water supplies.

Continued on page 11

Calling All Artists: Art From The Inside, 2024 Exhibit

The 6th annual **Art From The Inside** exhibit will be held this September, with the opening reception **Friday, September 6th, 2024**. The purpose of the show is to create public awareness about incarcerated life through the artworks of the incarcerated and their loved ones.

The show is broadly themed around the experience of being incarcerated and any art form is accepted. Artwork should have a message. For example, conditions in NE prisons, your experiences, things you miss, or hopes for the future. Please include a short description of the piece and the message you want it to convey.

Anyone who is or has been incarcerated, or who is a friend or family member of someone incarcerated, is invited to share their experience through an art form of any type or genre.

Submissions must be received at 124 S. 9th Street, #9, Lincoln, NE 68508 by **Sunday, July 7th, 2024**.

If artwork is released from the prison through a loved one, any proceeds from sales will be sent to that person. If mailed to the studio, any proceeds will be donated to the Lincoln City Mission, unless otherwise specified.

Unsold work will be returned to the family or the artist's representative. If unsold artwork is to be released to a designated representative, please include the best and most complete contact information for this person.

For more information, a copy of the entry form, or questions, contact:

artfromtheinsideneb@gmail.com or write to:

G Dobos Studio, Studio #9
Mission Arts Building
124 S 9 Street
Lincoln, NE 68508

No entry fee for this exhibit. You can include your name or have your work exhibited anonymously.

Voting Rights Restoration

by Joanna Lindberg

In 2005, a group of Nebraska legislators wanted to repeal lifetime disenfranchisement for people with a felony record. When they were not sure they had the votes to pass, they compromised by offering a two-year wait after completion of their sentence. The two-year wait was not recognized as a best practice, nor was it adopted by other states, yet it was a vast improvement over lifetime disenfranchisement.

Maine and Vermont never took away the right to vote. In 2020, the District of Columbia (D.C.) eliminated felony disenfranchisement so that people with a record do not lose their right to vote and can vote even in prison, as in Maine and Vermont.

According to the Sentencing Project report, there has been positive movement towards reform:

- Since 1997, 26 states and D.C. have expanded voting rights to people who have committed a felony or amended policies to guarantee ballot access.
- 12 states have expanded voting rights to some or all persons on felony probation or parole.
- 14 states have increased accessibility for persons seeking rights restoration.

This link from the Sentencing Project gives a state-by-state breakdown of voting rights: <https://www.sentencingproject.org/reports/expanding-the-vote-state-felony-disenfranchisement-reform-1997-2023/>

The Voting Rights Restoration Coalition has worked tirelessly to support LB 20, a bill that would reinstate voting rights after completion of a felony sentence. On February 13, as part of the Dream.org Day of Empathy, (sponsored in Nebraska by RISE), coalition members called Senators off the floor asking for their support and asking them to speak in support of the bill when it comes to the floor.

April 18 is the last day of this legislative session. LB 20 is expected to pass.

LETTERS

Let them work!

By Michael McKenzie 081400 TSCI

For too long, Nebraskans have been footing the bill for having the most overcrowded prison system in the country. Our legislature has put forth many half-measures in the past, but all fall short.

LB 1021 has the potential to provide real solutions to the problems of crime, incarceration, recidivism, and victim impact. LB 1021 isn't a prison reform measure, but it is likely the most impactful bill affecting Nebraska prisons to be introduced in decades.

With businesses on board, LB 1021 benefits will have meaningful effects for every citizen, especially those impacted by crime, without releasing any inmate a single day sooner.

LB 1021, which presents businesses with the option of employing incarcerated Nebraskans, is intended to provide lower-cost employment solutions, as well as to provide incarcerated people of our state with the pride of contributing to Nebraska's economy, by earning a minimum wage that is appropriately apportioned, with 75% set aside to pay support and restitution obligations, build reentry savings, and enrich the Victims' Compensation Fund.

Our state's incarcerated people represent an untapped workforce. Each of these men and women are ready and eager to work at lower wages than the current labor force, just for the chance to earn experience, skills, and taxable income.

Contrary to popular belief, most incarcerated people do want to fulfill their obligations, support their families, victims, and their communities, and prepare for successful reentry. No job is a substantial barrier to these goals.

LB 1021 demolishes that barrier, allowing the incarcerated to build a valid job history, while engaging them meaningfully in their own reentry success.

LB 1021 empowers them to repay their debts to society and better prepare themselves to live as contributing citizens upon release. Having jobs gives them purpose and is the most effective method of accomplishing restorative criminal justice, not just for the incarcerated but also for their victims and their communities.

Unlike many other bills, this one can actually reduce recidivism and provide sorely needed relief to those most impacted by crime. Sadly, without outside pressure, LB 1021 is likely to be forgotten under the mountain of legislation introduced this session.

NSP Veteran Support Group, Unit 5 Bravo: "Shaking the Tree"

By Chabre Nathaniel Johnson 89075 NSP

I am currently the elected Commander of Veterans Service Gallery, Unit 5, at NSP. I was a submariner on the USS Virginia and received an honorable discharge from the US Navy. While incarcerated here, I became a peer facilitator for "Thinking for Change (T4C)" and now for "5-key Models for Reentry and Well-Being." The Commander position is not just a representation of one person. He brings with him the voices of 35 to 40 like-minded individuals, focused on the progress of incarcerated veterans as well as other (civilian) incarcerated individuals here at the Penitentiary.

We are not perfect by a long shot, but we always aspire to greatness for ourselves and for the benefit of the incarcerated community. The Veteran Service Gallery was created in 2016. Since then we have continued to carry ourselves as a group that understands people and their dynamic lives, prison politics on both sides of the table and the connection between staff, their daily stresses and incarcerated individuals.

We try to get regular communication with the Director of Corrections and administrative staff to address concerns. Many times we're left holding the proverbial ball, awaiting meeting. But, SOMETIMES, sometimes, we get a breakthrough. This year we hope to get a few breakthroughs that will benefit all.

By working with the Circle of Concerned Lifers' Club and Veterans Club, I think a plan of action can be accomplished that organizes more communication with senators, administration, and incarcerated individuals – more than has been accomplished previously. It's ok to "shake the tree" if it is something that can benefit everyone. We are searching for solutions and proactively making positive changes among ourselves. Get onboard! The only way we should go is up.

Abbreviations for NDCS Facilities:

CCC-L- Community Corrections Center - Lincoln
CCC-O - Community Corrections Center - Omaha
NCCW - Nebraska Correctional Center for Women
NCYF - Nebraska Correctional Youth Facility
NSP Nebraska State Penitentiary
OCC - Omaha Correctional Center
RTC - Reception and Treatment Center
TSCI - Tecumseh State Correctional Institution
WEC - Work Ethic Camp
NDCS—NE Dept of Correctional Services

LETTERS continued

Second Chances

By Todd L. Cook 047656 NSP

What is a "second chance?" We have all heard the phrase, and probably wished we had one, but what does it mean? In many ways, it's an opportunity to prove that the failings of our past do not define us. In other ways, a second chance is redemption, forgiveness, and restoration.

When people become justice involved, they are cast out of society because they have chosen a path that ignores the values, morals, and laws of that community. Understandably, there must be checks and balances when it comes to keeping people and property safe in a civilized society. However, we all make mistakes and if that society is indeed civilized, then maybe our humanity needs to be taken into account when deciding to grant a second chance.

The Legislature has the ability this session to pass a meaningful bill in this regard. LB 432 introduced by Senator Terrell McKinney creates the Second Look Act. It provides a person, based on their age at the time of the crime, with a review after serving 15 or 20 years. They may file a petition with a Commutation Review Committee, which conducts an evidentiary hearing, and then makes a recommendation to the Board of Pardons. This is not only warranted given our propensity to fail, it is mandatory given our ability to reinvent ourselves.

I'll leave you with a question: How would you like your mistakes handled? Condemned, or given a second chance?

NDCS Overcrowding

By Laverne Belt, Concerned Citizen

The taxpayers of Nebraska just spent \$200,000 of taxpayers hard-earned cash for the University to research why the Nebraska penal system is so overcrowded!

This is how I see it. There is plenty of blame to go around.

Politicians—pushed for a "Tough on Crime" mentality.

Senators—passed bills to be "Tough on Crime" and failed to carry out suggestions from prior research.

Judges—carried out the "Tough on Crime" laws.

Parole Board—failed to parole people when eligible.

Pardons Board—too scared to commute any sentences.

NDCS—didn't provide enough programming, used Lifers to keep a lid on facilities, had faulty classification system.

Public—didn't push Senators for more prison reform.

Parolees/Ex-Offenders—kept re-offending.

Criminals—committed too many crimes.

We've all contributed to the problem. We all need to contribute to the solutions.

Registry Continues to Grow

By Jeanie Mezger

Although there is no data showing that the Nebraska Sex Offender Registry contributes to the prevention of crimes of a sexual nature, the registry continues to grow.

Five years ago, 5,541 people were listed on the Nebraska Registry. Today, 7,069 are listed, a 27% increase. If that rate of growth continues, we will have nearly 9,000 registrants in 2028. In 2033, we will have over 11,000. How long until it includes someone from your family?

In 16 of the last 25 years, the Legislature added to the list of crimes that will put someone on the registry. If the Legislature continues to add to that list, the rate of growth will likely increase.

- 1998, LB 204
- 2001, LB 564
- 2004, LB 943
- 2005, LB 713
- 2006, LB 1199
- 2009, LB 97 and LB 285
- 2010, LB 147
- 2011, LB 61
- 2014, LB 998
- 2015, LB 292 and LB 605
- 2116, LB 934,
- 2018, LB 193
- 2019, LB 519 and LB630
- 2020, LB 881
- 2021, LB 1246

In 2018, 289 people for every 100,000 Nebraskans were listed on the registry. In 2023, that figure had increased to 360.

Distribution by duration for the 7,069 on the Nebraska Registry:

- 44% lifetime registrants
- 39% 25-year registrants
- 10% 15-year registrants
- 7% in-process and other

Because 83% of registrants are on for at least 25 years, the number of elderly people listed will only continue to grow. There is no way for people to be released from the Registry because of advanced age or infirmity. Elderly people—because of dementia or mobility problems or the extended illnesses that can affect the elderly—will be especially vulnerable to arrest for failure to register.

At the end of 2023, the Registry listed 278 Nebraskans as transient.

Understanding the Restorative Practice Continuum

By Monica Miles-Steffens, Assistant Director, UNO, Juvenile Justice Institute (JJI)

In courtrooms and conference spaces, board rooms and program sites, people are talking about restorative justice like never before. States are passing legislation, agencies are providing funding, and training is being requested. The focus is often on the implementation of restorative programs such as victim panels and formal conferencing processes. While these programs are essential, they are at the deeper end of a broader continuum of restorative practice strategies. Understanding the whole range of strategies can help establish a restorative culture and ensure the successful implementation of formal programs.

Consider, for example, a jurisdiction that wants to implement restorative justice conferencing as a diversion option. Facilitators are trained in the conferencing process and referrals begin, but in this case no other stakeholders are informed of how and why this option is different from traditional diversion. After time, the restorative conferencing is pushed to conform to more traditional diversion models for the ease of stakeholders. Outcomes are mediocre and the jurisdiction is left to wonder if restorative justice really works.

In this example, program implementation suffered because a more formal intervention was established before understanding the broader restorative continuum. The concept of a continuum of restorative practices was introduced by the International Institute for Restorative Practices (IIRP). The continuum begins informally with a focus on language, specifically affective statements, and affective questions. These are followed by impromptu conversations and circles, with the most formal end of the continuum being conferences.

Affective statements are a proactive strategy to draw out positive and negative feelings. They are intentional, specific, and create a safe space for dialogue. These statements are “I” statements. For example, rather than telling a youth,

“Good job on that test,” an affective statement would be, “I am proud to see all of your hard work studying reflected in your test grade.” Affective questions help guide dialogue and frame information in a restorative supportive way. For example, in the heat of the moment we might demand “Why did you do that?!” Instead, using this series of restorative questions has been proven to be more effective: What happened? What were you thinking of at the time? What have you thought about since? Who has been affected by what you have done and in what ways? What do you think you need to do to make it right?

Small impromptu conversations utilize affective statements and questions in the moment to reinforce or address behavior. These conversations give us language to approach situations immediately in a restorative and non-confrontational way. When there are situations that need more formal dialogue, circles can be a very effective strategy. Proactive circles can be used for checking in, relationship building, brainstorming, celebrations, and more. Responsive circles can be utilized to address violations of rules, norms, or other areas of conflict. Finally, formal conferencing strategies are utilized when one party has harmed another, with the goal of developing an agreement to repair the harm.

Understanding this continuum helps establish a common foundation for those wishing to implement restorative practices and align strategies effectively. IIRP promotes the 80/20 rule - 80 percent of our efforts should be proactive, reducing the need for formal interventions to 20 percent of our time. If you are interested in learning more about restorative practices, contact JJI at unojji@unomaha.edu

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- **FFI (Family & Friends of the Incarcerated)** Meetings monthly, 4th Saturday, 9:30am - 11:30.
 - Location: Underwood Hills Presbyterian.
 851 N 74th St. Omaha
- **Fearless—Nebraskans Unafraid:**
 - 2nd Thursday evening—Lincoln
 - 2nd Saturday morning—Omaha
 - 3rd Monday evening—Omaha

* For details, 402.403.9250;
nunafrd@gmail.com

Continued from page 3: Punished for presence...

Opponents of the felony murder rule agree these excessively punitive outcomes violate widely shared perceptions of justice. With one in seven people in U.S. prisons serving a life sentence, ending mass incarceration requires bold action to reduce extreme prison terms such as those prescribed for felony murder. These laws run counter to public safety, fiscal responsibility, and justice. Instead, the rule makes people responsible for acts they do not or cannot intend, know, or foresee. It does not enhance public safety because it has no effect on deterring potentially dangerous activity. In California, where the state Supreme Court referred to felony murder as “barbaric,” 2018 reform efforts led to a more expansive overhaul of the state’s rule. In Illinois, a successful push to reform the state’s felony murder law may lead to similar efforts nationwide. Maybe it’s time for Nebraska to follow this momentum toward reform.

Continued from page 6: Water Quality at York

Although water problems still linger, Corrections staff told the firm that replacing the prison pipes was “not a feasible alternative” due to the cost of such a replacement and the logistics of maintaining prison security during the replacement process.

The Inspector General of Corrections will be monitoring the water quality problem. Legislative aide Matt Howe for Senator Jana Hughes, who represents the York area, says they met with the Inspector General and are uncertain of the next steps in solving the water quality problem. Her office will be sharing more as they gain additional information and insight about this issue.

Sources: *Lincoln Journal Star* and *York News-Times*, January 5, 2024 & LJS Editorial Board January 12, 2024.

Criminalizing Homelessness – Grappling with LB1357

By Tim Sully, Development Director, Society of St. Vincent de Paul Omaha

The Society of St. Vincent de Paul (SSVP) Omaha, along with other concerned local non-profit and civic organizations, has been in the news recently, grappling firsthand with proposed Nebraska Legislative Bill 1357. LB1357, if passed, would criminalize homelessness, or at least make it illegal to “camp on property owned or controlled by a political subdivision not designated as a campsite.” A violation of such a proposed law would be a Class III misdemeanor.

Omaha World-Herald reporter, Christopher Burbach, has been following and writing about the development of LB 1357. For his articles, Burbach interviewed SSVP Omaha Executive Director, Jill Lynch-Sosa, along with a number of unhoused people who would likely be negatively affected by the bill’s passage. That group of homeless neighbors includes around a dozen people to whom Lynch-Sosa had given permission to camp – during the recent cold winter months – along the SSVP/Holy Family property.

As Lynch-Sosa mentions to the World-Herald, she does not believe creating a criminal offense would be helpful in dealing with the problem of homelessness. She indicates that the passage of LB1357 would simply create additional burdens for this population. As Lynch-Sosa states, “The people aren’t the problem. They’re just a symptom of a bigger issue, and the issue is we don’t have enough affordable housing. This community doesn’t have enough services to help these people get on their feet and get housed, nor does it have sufficient resources to help individuals and families remain housed.” And, to punctuate the growing need for such services, Lynch-Sosa shares that – in January 2024, alone – SSVP Omaha received around 4,000 requests from people needing

help with rent, utilities, and other expenses, in order to stay in their homes.

At the February 6 meeting of the Douglas County Board of County Commissioners in downtown Omaha, Lynch-Sosa and other non-profit leaders testified in support of the County resolution to oppose LB1357. That resolution was adopted by the commissioners.

Additionally, Lynch-Sosa, along with SSVP Conference Support Coordinator, Lily Reyes, brought six of the homeless neighbors who’d been camping on the Society’s property to a February 29 legislative hearing on LB1357, in Lincoln. Along with around 25 other people, Lynch-Sosa testified at that hearing, sharing her perspective regarding why the bill should not be passed. At Lynch-Sosa’s encouragement, five of the six homeless neighbors who were present also testified against the bill, in order to – as Lynch-Sosa says– “allow them the opportunity to share their voice and speak their truth, and to ensure that they are clearly heard by the legislature.”

Related, the Chairperson of the Society of St. Vincent de Paul Omaha’s “Voice of the Poor” Committee, Barb Slaven, will be heading back to Lincoln on March 13 to participate in the 2024 Housing Affordability & Justice Lobby Day – an advocacy event to address key housing issues in Nebraska.

The Society of St. Vincent de Paul Omaha partners closely with the Nebraska Criminal Justice Review (NCJR). Housed in the former Holy Family Catholic Church at 17th and Izard in downtown Omaha, the Society has been facilitating the publication of the NCJR newsletter since 2020. This is when the local Catholic Archdiocese closed Holy Family as a church and the Society assumed responsibility for continuing the ministries previously provided by Holy Family

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Mission: To improve public understanding of the criminal justice system in Nebraska and the needs of offenders and victims. To improve communication between those who administer and staff the criminal justice system, those who make plans and laws for it, those who are personally affected by it, and the community which pays for it and should be involved with it.

Submission Deadline: Monday of the week prior to publication months: March, June, September, and December.

Look for the **Nebraska Criminal Justice Review** Facebook page with a link to the quarterly newsletter. Stay informed, show you care.

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