

# Nebraska Criminal Justice Review

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Jeanie Mezger, Editor | Joanna Lindberg, Associate Editor | Mel Beckman, Consulting Editor | Linda Ohri, Publisher

## The Affordable Housing Crisis

by Ann O'Connor

When someone is released from incarceration, they face many obstacles reintegrating into the community. Many of the obstacles are not of their own doing. Chief among these obstacles is the major lack of affordable housing in the metropolitan area. Access to safe and affordable housing impacts one's ability to find employment, access to health services, transportation, and belonging in the community—everything necessary for a successful transition from incarceration to living in the community.

The lack of affordable housing is not an issue endemic just to the Omaha metro area but is a factor throughout the country. Several reasons have been posited for this lack, among them rising inflation, rising mortgage rates, and low wages. It is recommended that less than 30% of a household's income be spent on housing costs. However, in the metro area, 45% of renters spend 30% or more of their income on housing costs.

Those who have been released from incarceration often find employment that is typically at minimum wage or slightly above. Research has demonstrated that the average rent on an apartment in Omaha is more than \$1,000. Someone working 40 hours a week at minimum wage makes \$1,680 per month pre-tax which is \$21,840.00 per year. This is far below the \$40,000 yearly salary that one would need to earn to

spend 30% of their annual income on rent of \$1000 per month.

Last year, the city of Omaha published an Affordable Housing Plan aimed at addressing the rising need for affordable housing. The goal is to have households making less than \$50,000 annually spend 30% or less on their payments. The study reported that by 2030, nearly 30,000 housing units will be required in the city and that 60% of those units need to be considered affordable. According to the study, The Omaha and Council Bluffs area simply does not have enough quality affordable housing to meet the need. The consequences are significant especially for someone transitioning out of incarceration.

Affordable housing provides someone with quality, stable housing, and protects them from housing instability. However, with the affordability crisis, those leaving incarceration face harsh obstacles to obtaining housing. Without a safe place to live and search for work, access health care, and reconnect with their community, returning individuals face significant barriers to successful reentry even though they have met the requirements of the legal system. These unfair collateral consequences require strong new housing policies that provide returning individuals with a fair and reasonable second chance. Without effective affordable housing, the homelessness-to-jail cycle and unequal outcomes will likely persist.

## Request for Increased Financial Support in 2024 — NCJR

NCJR staff have always tried to cover most publication costs through our donations, but recently we are falling a little short. This is largely due to increased publication costs, but also in light of more accurate apportionment of expenses.

Therefore, we end 2023 with an appeal for increased financial support of the NCJR in the year ahead — for those who find it possible. As we all know, expenses have increased over the past few years, particularly for printing and mailing costs. We have been able to publish at costs of approximately \$6000 per year for the past several years. However, we believe that we need to increase direct contributions to approximately \$7000 annually to best ensure that we are able to maintain our historical record of being largely self-sustaining.

Thank you for any support you are able to provide!

We also offer our prayers for a blessed holiday season and New Year!

## IG and Ombudsman still available

By Jeanie Mezger

In August, Nebraska Attorney General Mike Hilgers issued an opinion about the constitutionality of the Inspector General office, and NDCS responded by narrowing access so the inspectors general and the ombudsmen have the same access that the general public has. Previously, the IG and Ombudsman offices had physical access to all NDCS facilities, and access to the NDCS electronic case management system.

Phone calls, emails, and letters to the IG and Ombudsman offices have slowed dramatically since that happened. Word has gone around inside some prison facilities that the IG office is “gone,” a claim made believable because the inspectors general are not as visible in the prisons as they used to be.

While access to the prisons has been made more difficult, these offices still need to hear from people about what they have seen and experienced inside the prisons or about the problems seen in the foster care system. They cannot help if they do not know.

To contact the Ombudsman and the Inspectors General offices:

### CALL

- In Lincoln: (402) 471-2035
- Toll Free: 1-800-742-7690
- TTY: (800) 833-7352

### WRITE

- Inspector General, NDCS (or Ombudsman or Inspector General, DHHS)  
State Capitol  
P.O. Box 94604  
Lincoln, NE 68509-4604
- [ombud@leg.ne.gov](mailto:ombud@leg.ne.gov)

## New NDCS Medical Director

By Jeanie Mezger

Director Rob Jeffreys appointed a new medical director for the Health Services division of NDCS on October 30, 2023, Jerry Lee Lovelace Jr., M.D., Ph.D. He will be responsible for medical, dental, psychiatry and behavioral health services.

From the news release announcing this appointment:

*Dr. Lovelace brings extensive experience to this role, with a background in pathology and internal medicine, as well as 24 years in primary care practice. Most recently, he served as the statewide medical director for Centurion* ➡ ➡

## NDCS Policy 205.02: Visiting restrictions on those who have committed crimes in which the victims were minor-aged children (under 19 years of age)

By Mel Beckman

When an incarcerated individual has been identified in Nebraska as having committed a crime victimizing a minor, his or her prison file will be stamped on the front cover, in red ink, with the words “contact with minor.” Various restrictions may then be imposed on that individual’s visiting privileges. Those restrictions are governed by Policy 205.02 F3 of the Department of Correctional Services:

***The warden shall have the authority to impose visiting restrictions on identified incarcerated individuals on a case-by-case basis. The warden will indicate restrictions on the ‘Crimes Against Minor-Aged Victims’ form (Attachment E). Designated team members will ensure the incarcerated individual signs and receives a copy of the form. If the no physical contact with minor age children restriction is imposed, additional actions may include restricting these incarcerated individuals to visiting children/youth at designated times and/or designated authorized areas, excluding visitors under the age of 19 from the incarcerated individual’s approved visiting list, and/or suspension of all visiting privileges until the incarcerated individual has received treatment intervention. The visits shall be closely monitored by visiting room team members, etc.***

To a person in prison, the loss of visiting rights is a serious matter. A number of questions should be asked about this policy.

1. Do the wardens, in fact, take time to make adjustments and exceptions to Policy 205.02 when presented with good reasons to do so?
2. Is the usual monitoring by officers in the visiting room not considered adequate for preventing harm to children and youth? If it is adequate, why is visiting restricted?
3. Should fathers or mothers who have offended against a child (but not their own) be refused visitation with their own young children, nephews, nieces? Would that not be more like punishment than the caution called for by the policy?

The NCJR invites your comments.

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*Health in Missouri for seven years, where he ensured comprehensive healthcare for more than 23,000 individuals in 22 corrections facilities throughout the state.*

Dr. Jeffrey Kasselmann served as interim director since the previous director resigned February 1, 2023

# Carceral Redlining – The Path to Prison through Policy, Practices and Processes

By Terri L. Crawford, JD

*It is a paradox for a society that talks about freedom and equality to be so comfortable with having the highest rate of incarceration in the world.*

- Bryan Stevenson, Equal Justice Initiative

Redlining, a discriminatory practice that began in the 1930s, involved the systematic denial of financial services, such as loans and insurance, to communities based on their racial or ethnic composition. This policy disproportionately affected Black and minority neighborhoods, leading to enduring consequences in housing through reinforced segregation; wealth inequity, denial of access to fair housing loans, the loss of an opportunity to build generational wealth; economic disinvestment in redlined neighborhoods and wealth extraction.

Redlining continues to have a devastating effect in these neighborhoods including a well worn path to mass incarceration. Carceral redlining is a system of incarceration policies and practices operating in racialized communities. It has been a major driver of mass incarceration. (Yellowhead Institute Policy Brief, Issue 68 - *Carceral Redlining: White Supremacy is a Weapon of Mass Incarceration for Indigenous and Black Peoples*, June 2020)

Redlines were drawn around certain communities which were then criminalized and, as such, targeted for incarceration. There is a general awareness that redlining and mass incarceration have had lasting and intergenerational effects on marginalized communities in the United States, and we are no exception in Nebraska. We all know that the United States incarcerates nearly two million people at any given time and has the highest incarceration rate of any country in the world.

However, did you also know that North Omaha produces some of the highest incarceration rates found anywhere in the country? Just prior to the start of the pandemic, Nebraska's Black prison incarceration rate was nearly 50% higher than the U.S. Black rate.

Overall, the rate is tenth highest among the states.

Black people make up about 5% of Nebraska's population but about 27% of the state's inmates. Nebraska's Black incarceration rate is 9.5 times the rate for White people. (*Bureau of Justice Statistics*, 2019-2021) It's the nation's sixth-widest disparity; only Wisconsin, Minnesota, New Jersey, Iowa and Connecticut have bigger disparities. Further, with a 10-to-1 disparity between Native American and White incarceration rates, Nebraska ranks second only to Minnesota.

In four North Omaha census tracts centered on 30th and Ames, 20% or more of the males who grew up in those tracts were incarcerated. Equally shocking, those eye-popping figures represent only those incarcerated on the actual day of the 2010 Census, not whether they were in jail or prison before or since. (*Bureau of Justice Statistics*, 2021; *Prison Policy Initiative*, 2023)

These policies have reinforced racial inequalities, hindered upward mobility, and contributed to social and economic disparities that persist today. Addressing these issues requires systemic reforms in housing policy, criminal justice, education, and healthcare to promote equity and justice.

Like redlining, mass incarceration grew over decades. However, public awareness, public anger, and public commitment have begun to change the trajectory. We all have a responsibility to assure that we do not subject another generation of young people of color to a destructive cycle of incarceration and poverty. The answers lie in solutions as far-reaching as the problem they address. Few tasks are more urgent.

## Volunteers Needed

The Circle of Concerned Lifers at Nebraska State Penitentiary is seeking full-time volunteers and interested guests to assist them in their efforts to educate and motivate their members, outside stakeholders, and lawmakers regarding subjects such as restorative justice, second chance legislation, financial literacy, adverse childhood experiences, resiliencies, aging out of crime, and many more. If you want to learn how you can get involved, please contact the NSP Club Supervisor, Mel Hall, at [melanie.hall@nebraska.gov](mailto:melanie.hall@nebraska.gov).

Thank you all for your support!

## Cross Over Prison Ministries

### Fundraiser

**Every month – First Wednesday, 4-8pm**

Grab your family and friends and join us at:

**Don & Millies  
(Saddle Creek & Farnam)**

**20%** of every dollar spent goes right back to our organization. See you there!

***Please tell the cashier when you order.***

## Gun Violence and Harm Reduction

By Jeanie Mezger

We have seen gun violence in the worst places—schools, churches, quiet streets—and we know there are no *good* places to see gun violence. Death by gunfire, both suicides and homicides, are excruciating experiences for the communities of the injured and dead. Until we can end gun violence, we should find ways to mitigate the harms caused. Here are two measures that can make a difference.

At a school in New Jersey, the school nurse hands out free gun locks. If someone asks for a gun lock, they get a gun lock. No questions asked, no records made. Gun locks are often available for free through law enforcement agencies but when someone is uneasy about walking into a police station—think of undocumented immigrants or people who have family members listed on a gang database—that person may forgo the free gun lock.

Public libraries in Des Moines, IA make free gun locks available with no need to interact with law enforcement. At this time, Omaha Public Library does not provide this service.

A gun lock can prevent a child from inadvertently firing a found gun; it can prevent someone from using a gun to commit suicide.

## Strategic Planning

Rob Jeffreys, Director of NDCS

A strategic plan provides a road map for where we need to go and how we will get there. This year, the Nebraska Department of Correctional Services (NDCS) released a new strategic plan, which reflects the four important areas of our work: people, programs, policies and physical plants.

By developing and supporting our people, following sound correctional policies, and investing in our physical plants, we provide program opportunities for our population to develop the tools and skills to successfully reenter their communities. It's how we keep people safe.

More than 90% of the individuals incarcerated in Nebraska prisons will return to the community at some point. Reentry truly begins at intake, and the goals in

The Centers for Disease Control reports that, in 2021, gun-related injuries caused 48,830 deaths, over half of them suicides. While that number is larger than ever before, the gun murder *rate* has dropped from 7.2 per 100,000 people in 1974 to 6.7 in 2021. The gun suicide rate has risen from a low around 2007-2008. Because the suicide-by-gun rates are rising, especially for minors, it seems obvious that a gun lock is a solid preventive measure.

No one knows how many guns are in circulation in the United States but an estimate of 350 million seems believable. Shootings will still happen but there are ways to prevent deaths. Stop the Bleed, led by the American College of Surgeons Committee on Trauma, provides classes to teach people of all ages how to step in during a crisis and stop injured people from bleeding to death. Bystanders who know how to stop the bleeding can save lives.

Stop the Bleed in Chicago and similar classes in Brooklyn are teaching young people how to stop bleeding: apply pressure, pack the wound, apply a tourniquet. When violence breaks out, the more bystanders who know what to do before EMTs arrive, the better.

At StoptheBleed.org, you can find a class near you or you can take the online class at the website.

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our strategic plan take a holistic approach to addressing barriers, providing a program-rich environment within our facilities and building essential skills for our reentrants.

I encourage you to take a look at our strategic plan by visiting: <https://corrections.nebraska.gov/public-information/statistics-reports/ndcs-reports>. A plan is only as good and the results it produces, and throughout the year, we will regularly report on our progress and the milestones we have completed towards these goals.

Fostering relationships with community partners and organizations who support our mission is a key part of this strategic plan. As Director of NDCS, I look forward to collaborating with many partners throughout the community as we work to take the lead in supporting our people and providing transformative rehabilitative services to our population.

### Thank You! Supporters of the NCJR

The Omaha Society of St. Vincent de Paul for their publicity activities for the NCJR, and our financial supporters:

Anonymous, Mary Barton, Jean Bates, Jerry Beckman, Shawn Fitzgerald, Robert & Marianne Gronstal, Lynn Sedlacek, Chris Walker-Dilley, Carl Wirth & Linda Ohri, Dan & Marjorie Schlitt

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\$6206.22 FYTD (corrected)

Fiscal Year— October, 2022—September, 2023

## The High Costs of Communicating While Incarcerated

By Terri L. Crawford, JD

*Fundamentally transforming rehabilitation, re-entry and recidivism one phone call at a time.*

By Uzoma "Zo" Orchingwa, Ameelio Founder

As we embark on the conversations surrounding prison reform let us not sidestep the fact that debate and dialogue around crime, punishment, and the American prison system have dealt with communication issues as a footnote, if at all. Can we have a full conversation about a larger prison communication story that became painfully apparent in the 1990s of a deeply inequitable pricing scheme that has seen the cost of inmate phone calls skyrocket?

The history of prison telephone access in the U.S. is itself a relatively recent vestige. Until the early 1970s, inmates of the state and federal prison systems were limited to one collect call every three months, granted at the discretion of correctional officials in response to a formal petition process. In 1973, the federal Bureau of Prisons called for an expanded telephone access program that would "permit constructive, wholesome community contact" while addressing security concerns through rudimentary call monitoring capabilities (*Department of Justice, 1999*).

Whatever the merits in the larger telecom world, incentives to competition within the prison telephone industry have proven fundamentally perverse. Armed with a uniquely effective monopoly sourcing power, county, state, and federal officials have entered into what amount to profit-sharing agreements with telephone service providers, exchanging exclusive service rights for large commissions paid back into state funds. (*Federal Communications Commission, 1996*).

Under such conditions, the incentives of price competition have worked in precisely the opposite direction, with companies offering the highest bids (in terms of rates and commissions) routinely awarded contracts, the costs of which are passed on to the (literally) captive market.

In January 2023, President Biden signed bipartisan legislation giving the FCC authority to rein in the rates and fees for audio and video communications between incarcerated people and their loved ones. The law requires the Commission to implement new rules covering these expanded services sometime after July 2024, but before January 2025.

With that said, there is good news on the horizon. A company by the name of Ameelio is changing the face (and voice) of what it means to communicate behind

the walls. Ameelio is a nonprofit technology company committed to transforming prison communications, disrupting the captive \$1.2 billion prison telecommunications industry, untangling the connection between incarceration and profit, and reducing recidivism.

Service delivery through Ameelio creates a technological vehicle that delivers free letters, postcards and video calling, which supports a meaningful opportunity for connections between incarcerated individuals and their loved ones on the outside. Ameelio has connected over 8,000 users to their incarcerated loved ones for free and have sent over 36,000 letters free of cost to date.

Beginning in 2021, the Iowa Department of Corrections replaced Google Meets with Ameelio's video communication platform, including electronic messaging, and voice calls. People can now communicate with any incarcerated person in Iowa completely free of charge, saving them millions annually. Colorado followed Iowa's lead and made Ameelio available systemwide to inmates and families.

Uzoma "Zo" Orchingwa, founder of Ameelio and graduate of Yale Law School and School of Management, is a visionary with a purpose. He asked the question, "What if we could address a racial and economic disparity through the use of fair and equitable service delivery and communications?" His answer was ...we can!

Alyssa Tamboura, a member of Ameelio's Board of Advisors and founder of Walls to Bridges, shares the vision. Ms. Tamboura states, "*The folks that are disproportionately affected by incarceration are Black, Brown, low-income. Free communication, I think, is in some sense a class justice and even racial justice issue, given the population.*"

Mass incarceration is expensive (\$182b spent annually), destructive (113m U.S. adults impacted), and ineffective (55% recidivism within 3 years). With a system so flawed, it is hard to know where to begin. Ameelio has identified a specific problem that they were determined to solve: prison communications costs.

If Ameelio has seen success for our neighbors in Iowa and Colorado, why wouldn't we seek the same success in Nebraska?

## LB50: Advocating on the Frontline

By Jasmine L. Harris, MPH, CHES

Working on legislation as an advocate is not for the faint of heart. When working on something with all one's being and with the right intentions, there is always the question of how much one is willing to concede on important issues. Not only does one have to ask how much to concede but also how much time and how much of oneself to dedicate to seeing the legislation come to fruition. And even in asking these questions, one must keep in mind that the majority of the time, the outcomes aren't anything one can control.

Since getting involved in policy advocacy, this is what I've had to grapple with repeatedly. Not only am I looking to center the voices of people who are impacted, ensuring they are able to share their stories and be involved, but also fight for what we know to be the best versions of policy that will work to reduce the number of people incarcerated, *and* create pathways of success for people as they leave incarceration. LB50 is one of these pieces of legislation that started off with the best intentions and smart on justice policies. The journey of getting this legislation passed not only pulled out every critic and analyst, but it also unearthed every emotion.

Even though what was signed into law may not have been exactly what we wanted, it showed us all the arguments, concerns, and pitfalls that need to be addressed as we move criminal legal reform forward in Nebraska.

I was able to be a part of LB50's process from the beginning when the Crime and Justice Institute was selected to come to the state in 2020 and review the data to reveal the points of contention in its criminal legal system. Recognizing from the beginning that there were no people impacted by the system included in providing suggestions in this process, I did what advocates do and ensured that I was in the ear of the people who would make room for these voices to be heard. So, even before the moment that recommendations were created for the Nebraska Justice Reinvestment Initiative task force, being an advocate on the frontline to ensure the best solutions possible were put forward was something I leaned into.

Fast forward from 2020 until now, LB50 endured many volleys that saw different iterations of what legislators were willing to consider. In its first iteration on the floor of the legislature in 2022 as LB920, criminal legal system reform saw the most hours of debate in Nebraska history. From early mornings to late nights, a rendezvous with tax reform and a push to ensure funding was set aside for reentry programs, but the efforts didn't pass. **LB50** landed us in the 108th Nebraska Legisla-

ture where many of the key individuals changed and we saw the most movement on this piece of legislation. We were set to pass the most meaningful criminal legal system reform package since 2015.

Was there give and take? Yes. Were there moments of standing firm? Yes. Did the law include all the smart-on-justice policies we know work? No. What it did include was *more than what we've had*.

I tell everyone who thinks about getting involved in policy advocacy, "If you're looking to get into something where you believe you'll have immediate success, this isn't the avenue where you'll see that. We're still pushing boulders up the hill that people started rolling over 20 years ago."

With the lawsuit filed by the attorney general regarding the constitutionality of the expanded and geriatric parole aspects of LB50, we wait to see if the fundamental pieces of this legislation will be able to be implemented for all who are currently incarcerated. We wait to hear the outcome but continue to advocate from the frontline for what we know is policy that works and creates the best opportunities for success.

## OIG: 2023 Annual Report

By Jeanie Mezger

In September, the Office of Inspector General (OIG) published its 2023 annual report on NDCS. The overview includes information about the budget (the NDCS budget has grown from \$132 million to more than \$353 million in the last twenty years), the new prison that will be located near I-80 and 70th Street in Lincoln, and the continuing expansion of RTC that will add 96 beds.

Other interesting bits from the report:

Of the 1,269 people released from January through July 2023, 477 were paroled, 294 are on post-release supervision, and 498 were discharged mandatorily (jammed out). The number of people who jammed their time is larger than the number paroled. The report does not indicate if people jammed out because they were unable to complete their required programming in time to parole or because they chose to forgo parole.

Of the 253 staff eligible for the \$10,000 hiring bonus that began in 2019, 39 have stayed at NDCS long enough to earn the whole bonus.

The number of open positions in Health Services is concerning. Positions for nurses, dentists, some behavioral health practitioners, psychologists and psychiatrists have vacancy rates of over 50%. Psychiatrists are at 100% vacancy.

Continued on Page 11

## Adverse Childhood Experiences

By Todd Cook 047656 NSP

Some of our life experiences are good, and some are bad. However, when those experiences result in chronic toxic stress, they become something more. If the events occurred before the age of 18, the trauma associated with psychological and physical abuse become Adverse Childhood Experiences, or ACEs.

Those with a single ACE score are 10 times more likely to have learning and behavior problems. More than one ACE, and children are 30 times more likely to have those same issues. And when a person has four or more, they are at serious risk of long-term adverse effects in relation to mental health, physical health, substance abuse, and criminal involvement.

Sixty-four percent of Americans have Adverse Childhood Experiences. Only one-third of kids grow up in families with no ACEs. That means two-thirds do have at least one adverse childhood experience.

Thirty states have begun to collect ACE data in order to develop state public health programs. Trauma-sensitive schools which teach mindfulness, meditation, resiliencies, and stress management are being used to combat the statistical reality that kids are subjected to all types of trauma before the age of 18.

Interestingly, research has found that two specific genes, named the Sensitivity gene and the Stress Vulnerability gene, are responsible for how well we deal with stress and indicate whether we could develop psychological challenges or addictive behaviors by age 25. Determining what variant a person has of the Sensitivity gene will establish how well that person will rebound from emotional trauma and distress. It can also establish how best to rehabilitate that person based on this particular variant.

Seventy-five percent of kids with the Stress Vulnerability gene will develop mental health problems and exhibit substance abuse disorders. However, supportive structure by programs can drastically decrease psychological disorders and addiction as adults. We need to address these issues in our public schools if we want to prevent people from becoming justice-involved.

The courts have taken notice of the importance of ACEs and childhood trauma by stating that there is “compelling scientific research regarding adolescent brain development which indicates that the area of the brain that governs reasoning and impulse control continues to mature into a person’s early to mid-twenties.” Further, “Brain development can also be delayed from emotional and physical trauma experienced during childhood.”

Case law has established that failing to present ACEs during the penalty phase of a criminal proceedings amounts to ineffective assistance of counsel. There have also been reductions of sentences under compassionate release proceedings and downward variances of the federal sentencing guidelines as a result of an expanded understanding of ACEs and the true mitigation they present.

In *United States v. Carter*, the U.S. District Court stated: “ACEs affect brain development in ways that make it difficult for people, both during childhood and as they grow up, to modulate their emotions, constrain their impulses, and

perform certain executive functions like planning ahead and balancing responsibilities.”

This conclusion is similar to the rationale provided by the U.S. Supreme Court in *Miller v. Alabama* where it prohibited mandatory life without parole sentences for juveniles. In speaking to this point, the U.S. District Court in *United States v. Johnson* proclaimed that: “Since *Miller*, a broader recognition of the importance of the Adverse Childhood Experiences Study, has also greatly affected our understanding of crime among young adults. Research into ACEs has shown that greater traumatic experiences in childhood correspond with riskier behavior and a greater likelihood of involvement in our criminal legal system.”

As a result, the courts have now started to require ACEs in presentence investigation reports due to the diminished culpability that arises from childhood trauma. This has also led to expanding protections to people above the age of 18 for those affected during their childhoods.

Yet, although the courts are taking the lead, the Legislature is actually in a better position to utilize the vast potential that this body of research has to offer. Specifically, by tapping into the very fabric of why people became justice-involved, it is possible to justify second chance legislation, expanding parole opportunities, granting commutations, and releasing elderly prisoners.

By learning more about what happened to the people that are in our legal system, we may start to understand some of the challenges that were outside of their control that contributed to their poor outcomes. In doing so, we can then begin to reform how we sentence them based on specific trauma needs, genetic make-up, and rehabilitation potential.

Finding out which gene a person carries, in relation to their ACE scores, and then formulating guidelines to ensure proper criminal penalties that provide specialty treatment in line with this information, will transcend our current legal system failures.

Policy makers are in a unique position where they can create new laws which aim to correct what has proven to be broken. We need to implement ACE-related sentencing laws in the form of trauma treatment (instead of incarceration), resilience-building rehabilitation programs, and community-based housing for ACE survivors. Proper support, not incarceration alone, will reduce recidivism and help heal the trauma rather than repress it.

Beyond that, mandating resilience-building curriculum in K through 12 will help prevent some from ever coming in contact with the legal system. That should be our ultimate goal, though we can’t ignore the importance that ACEs have on our currently incarcerated population. They deserve some consideration, especially in light of circumstances outside of their control which contributed to their criminal involvement. ACEs are the ticket to reform, and I hope you will now all agree.

***This speech, delivered by Todd Cook, President of the Circle of Concerned Lifers, reports the results of a survey of this group.***

# LETTERS

## Bridging the gap

By Jacobi Terry 214854 NCYF

My name is Jacobi Terry, incarcerated at the Nebraska Correctional Youth Facility. I've spent my time constructively, involved in various programs, Islamic religious studies, and furthering my education.

Before I arrived here, I was not aware of the wisdom of the Intentional Peer Specialists (I.P.S.). These men are putting forth tremendous effort to shine rays of hope over the younger generation, challenging their peers to see themselves in a different light. Not the light others perceive them in but contrary to the stigma the free-world shackles them with. Laron Jones, Michael Jackson and Lamont Arnold, just to name a few, have encouraged even me to be an example of what d' role-model looks like, exhibiting such attributes as courage, integrity, and optimism. The peer specialists are passionate about others' betterment and the chance that youth will cease their self-destructive habits.

Shouts out to all the mentors at NCYF. You are appreciated!!

## Frustration

By Chad Stoops 215546 Work Ethic Center

We have been under an overcrowding emergency since July 2020. Three and a half years later, we have passed LB 50, which will not be used until it makes its way through the courts. Again, the Dept of Corrections wants to build another prison. Soon they will want to build yet another one, unless we deal with the moral, social and economic issues that lead to recidivism. Prisons are needed, yes!

A balance is needed – avenues for nonviolent offenders and even community involvement outside prison.

I do not believe that the whole Legislature failed to consider Constitutional issues when passing LB 50. If it is not retroactive, then there was never any intention to reduce the prison population. We are thankful to the Legislature for seeing that, in the three years since the emergency there was never a sincere attempt to reduce prison overcrowding.

In 2003 we enacted the Correctional Treatment Act. We now use these programs to hold some inmates back from transitioning to lower custody, until you are at your last year. We should be accelerating nonviolent offenders out on parole, using electronic monitoring and appropriating money to support

housing, trade skills and a caseworker style of support system outside the penal correctional system. Stop allowing creation of more and more programs that are used to delay promotion through the system.

## Segregation is Not Mental Health Care

By Maya Shields 392474 NCCW

I want to touch on individuals who have major/severe mental health issues who are incapable of speaking for themselves. If they could speak for themselves, this is what they would say:

*Dear Reader, I have experienced traumatic events in my life that altered my brain chemistry. I now suffer from a variety of mental health issues. I have many triggers that I am aware of, and I struggle to verbalize this because when I do, I am not believed. This is all made worse by authority figures locking me away in a room for far too long. My reality distorts quickly in this environment. A reality that's not a reality. Quite confusing, isn't it? If that's confusing for you, imagine how it is in my mind. Now here I remain tortured, suffocating by my own mental deterioration. You see this and you do nothing. I cry out for you, keeping faith that one day you'll help. Some days I think, maybe she doesn't know how, but you have the power to figure it out.*

*Sincerely,  
the forgotten.*

The Ninth Circuit has ruled that incarcerated individuals with mental illnesses being housed in segregation is the mental equivalent of putting an "asthmatic in a place with little air to breathe." Using segregation as a substitute for mental health care *clearly* is at the very least a deliberate indifference and at most psychological torture.

Loneliness also creates a deep psychological wound that distorts our perception and misleads us. Loneliness makes us believe that those around care much less than they actually do; also makes us feel disconnected from those who are allowed to be around.

Take a moment to place yourself emotionally and mentally in the storm. You are locked away in a cage for 23 hours and, on top of that, you are experiencing psychological torture, loneliness, cognitive distortions, and disconnection from any type of society and don't forget to add a history of psychiatric problems. Our Eighth Amendment prohibits cruel and unusual punishment and that is true even when we are secured behind these walls. How can this prohibition be ignored without consequence or repercussion? The system thrives on cruel and unusual punishment. It thrives on misery, and it preys on the weak and has merged solitary confinement with mental health treatment.

I have witnessed incarcerated individuals enter these



# LETTERS continued.....

Continued from Page 8...Shields Letter..

segregation programs due to minor behavior issues, and after about 1-3 months they transform into unknown individuals. Allow me to specify why I labeled these individuals as unknown: due to loss of memory, loss of reality, homicidal/suicidal aggression, zombified state of mind, and over-medication, which is an understatement. Prior to these individuals entering these units they had aspirations, dreams, goals and desires to become an asset to the community. When these individuals entered these units there was an end goal to return to the general population in a timely manner. The mental anguish they endured counteracted all positive cognitive thinking. They remain now in these units believing this is their life.

We are them and they are us! We are no better and no different. Mental health is a serious matter and holding them in solitary confinement is highly unacceptable and a violation of our rights. When laws, rules, policy, or amendments are broken, there are consequences for not abiding by them, but it seems facilities don't have to abide by anything. We incarcerated individuals struggle with this battle every day. I feel people with severe mental health issues should reside in a facility with actual proper medical care and treatment.

I also feel that prison staff—just as they have to be maced and tazed to know what it feels like—should reside in solitary confinement as part of staff training to know what that feels like. Last but not least, segregation should be used only up to 14 days before moving people back to general population. These steps won't fix the issues immediately, but it has to start somewhere!

## Smoke & mirrors

By Luke LeFever 89914 Reception and Treatment Center

I read the Sept. NCJR with great interest. I ask myself, what do contributors and facilitators of the NCJR seek? Talking about these issues for more than a decade now has produced absolutely ZERO results. The public speaks out for change and the Legislature says changes will be made, by throwing away money at "Corrections". That's all it's ever been about. Both NDCS and the Legislature are corrupt. Full Stop.

I take offense when any ACLU member speaks on behalf of the inmate population, for which they have done nothing since Amy Miller left employment there. I would like to remind the truth seekers about the lawsuit she championed for inmates; Sabata V. NDCS (2020 WL 3047479). In that suit, the most

significant parts pertained to disability rights, mental health conditions, segregated confinement, and unavailable remedies-grievances. After the suit, conditions remained stable for a while, but within one year NDCS slowly reverted to operating same as pre-suit. Since Amy Miller's departure, the ACLU has allowed NDCS and the State of Nebraska to do as they please.

In December 2019, before covid-19 was anything, NDCS declared a "staffing crisis" that led to a "modified lockdown" operation in which inmates pay the price. Both TSCI and RTC still operate on a modified lockdown. Four years of this staffing crisis and nothing has changed. So I ask the public, how does building another prison which NDCS will not be able to staff address the staffing crisis? It will have cost more than half a billion of tax payer dollars over the past decade.

The Nebraska Attorney General is attacking the office of the Inspector General for Corrections, refusing that office access to the facilities, to inmate files, and to grievances, thus hiding from the public what's really going on. The same Attorney General was hell bent to invalidate LB50, which was a mild criminal justice reform bill by the legislature.

NDCS's willfully violating inmates' privileged legal mail rights has NOT done anything to stop illegal drugs in the facilities. Money does things to people, and drugs are money, no matter where the market is. In the meantime, NDCS has been using the false premise that lawyers would jeopardize their freedom or profession to send in drugs to inmates - as an excuse to violate Attorney-Client Privilege. That exceeds the very well-settled Supreme Court ruling that 1) Privileged mail must be opened in the presence of the inmate; 2) it can be inspected for contraband, and 3) then it is to be handed to the inmate. That's it – nothing more can be done, yet NDCS has been making copies of the originals and then destroying them, all the while using copiers that it is believed are sending copies to a server to be illegally read by NDCS.

The smoke and mirrors of the State of Nebraska and NDCS must be held accountable by the public, which foots the bill, and in the Federal courts — which I am doing.

## The Attorney General's interpretation of LB 50 and Rob Jeffreys' denial of it.

By Norman Haley 082112 TSCI

I am writing in response to Attorney General Mike Hilgers' interpretation of LB 50 and NDCS Director Rob Jeffreys' instruction—order—to all of the entities of the NDCS to disregard—violate—the law prescribed by it, based on his view of Hilgers' analysis.

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# LETTERS continued.....

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**First**, although Hilgers believes it is "likely" unconstitutional, he admits it is retroactive to all cases prior to its effective date of September 2, 2023.

**Second**, Hilgers believes it is "likely" unconstitutional—not that it is—because it violates the separation of powers clause under the Neb. Const. Art. 2, because he alleges that the Legislative intent was to commute the sentences of "all committed offenders under sentence or on parole", in which it had no power to do, even though the constitution does not limit this power to only the Board of Pardons. See Neb. Const. Art. 4. Sec. 13. The bill was not made for the Legislature to commute the sentences, but for the Board of Pardons to do it. Thus, the Legislature creates the law, the Executive executes it, and the Judicial makes sure it is constitutional.

**Third**, Hilgers severed section 57 from sections 47 & 48 to show they independently operate to have prospective effect—i.e., he removed part of LB 50 without the Legislature's permission, as if he was part of it, violating the separation of powers clause himself.

**Fourth**, Hilgers applied case law in his analysis, even though he cites that the Nebraska Constitution contains an explicit separation of powers clause, prohibiting any part of the legislative, executive, or judicial branches from "exercis[ing] any power properly belonging to either of the others except as expressly directed or permitted in this Constitution." Id. Art. 2 Sec.1, and thus the case law he uses is unconstitutional because the judicial branch used the legislative power to create it.

**Finally**, Jeffreys had no authority to direct the NDCS to ignore this bill and its effective date of September 2, 2023 by not applying it to all of the offenders' sentences, because his claim of it being unconstitutional has yet to be judicially determined, based on Hilger's analysis. It is funny, however, that Jeffreys did not ask if, at this time, he is bound by it.

Therefore, since the effective date, NDCS should have been evaluating which offender's sentences or PED (parole eligibility date) it applies to and adjusting them, instead of breaking the law under LB 50 by disregarding it, as if it was already judicially determined. Isn't it law until then? Yes, it is and he cannot "pump the brakes" on applying it. Since it is a constitutional law that is in full effect and they are bound by it—because the Executive Branch and the Board of Pardons, through the Governor, signed off on the bill and granted them the enacted power to pardon and commute all of the committed offenders under

sentence or on parole, by Hilger's own argument, and because there is no injunction or declaration to suspend it by a judge, (State v. Worm, 268 Neb. 74, 680 N.W.2d 151 (2004))—I am requesting restitution and/or resolution on this matter.

## 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

## One Brick at a Time: Civil Conversation

*By Jason Witmer, Policy Fellow ACLU-NE*

In a 2023 report from Solitary Watch and Unlock the Box, a startling reality came to light: each day, more than a hundred thousand individuals are held in solitary confinement in U.S. prisons and jails. This revelation prompted deep contemplation for my neighbor and me.

My neighbor was quick to point out that the same report also found that our home state of Nebraska had a solitary confinement population of only 337 individuals. Then, after scrutinizing a report released by the Nebraska Department of Correctional Services, which reported 218 people were in solitary confinement, he became resolute in his belief that our state was not as dire as assumed. He was convinced that Nebraska was taking necessary and reasonable measures to maintain safety, especially concerning those who seemed to defy all rules even within the correctional system.

That began the debate that edged into an argument. Then I paused. My neighbor was a good guy who took care of his family, and would often step out of his comfort zone to assist his neighbors. He knew I had a history with the legal and corrections system yet here we were, neighbors, I'd say even friends.

**Continued from Page 6.... 2023 Annual IG Report...**

In 2021, the Legislature commissioned the Nebraska Center for Justice Research at University of Nebraska Omaha to conduct a study of the classification process. The original completion date of fall 2022 was pushed back to March 2023, and the report had still not been submitted when the OIG published this annual report.

Though the number of people held in Long-term Restrictive Housing (more than 180 days) dropped from 185 in 2018 to 54 in 2021, the number rose again to 100 in late 2022. In August this year, "NDCS had taken steps to decrease the number of individuals in a restrictive housing placement for more than 180 days," and the number fell to 42.

After a sharp increase in inmate deaths during the pandemic in 2020-21 (30 in 2020 and 25 in 2021), the number of deaths "has failed to return to its previous average." In 2022, 19 people died in custody. In 2023, 19 had died by the time the report was prepared in early September.

The annual report includes: A) a list of all reports issued by the OIG since the office was created in 2015, B) a table of historical general fund appropriations, C) an October 2022 letter from Inspector General Doug Koebernick to the Judiciary Committee about staffing data and results of a staff survey, and D) a July 2023 letter from Koebernick to the Judiciary Committee about deaths in NDCS facilities.

Read the whole report here: <https://tinyurl.com/yckh9s48>

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**Continued from Page 10...One Brick...**

My passion and career path are to challenge systemic oppression and all its tools due to my belief that just treatment of everyone is the true course to a better and safer society. This means that when a person commits a heinous act, acting punitively to hold that person accountable only perpetuates a broken system. However, there are many—such as my neighbor—who believe society is justified to "lock 'em up and throw away the key" and not "to baby 'em" when they choose to commit crimes.

Arguing with my neighbor will accomplish little to nothing. We all hold implicit and unconscious biases that cause us, even "good people," to think and act negatively towards others. *People who do bad things are bad people.* Add to that confirmation bias, where one either seeks out or interprets information that conforms to their existing beliefs:

*Those people have already done bad things to innocent people and now they are acting*

*dangerously to others! Staff and other inmates would be at risk of being harmed—even killed! — if there were no repercussions such as solitary confinement to teach them not to behave like that and to keep others safe.*

And, yes, that's much of how the debate—more of an argument—between my neighbor and me went until I stepped back. It is frustrating when someone gets locked into a perspective with no room for any other information or viewpoint. While I was getting angry at him for being bullheaded, I too was making no room to understand the deeper roots of his stance, which often goes beyond what one hears and into a person's past, even if it is just what happened that morning. "Get to the carrot," as they say.

Here's my key point: I do not want to argue to be correct. I want to have a conversation about the facts, research, and perspectives of those who experienced the subject matter. I want to talk about best practices, do some critical thinking, and always recognize, challenge, and possibly circumvent implicit biases.

So, I patted my neighbor on the shoulder and changed the subject. A simple question regarding how his weekend had gone ended with him letting me know his son was skipping classes and doing who-knows-what.

He continued to talk.

I continued to listen.

Tomorrow, I will be more intentional in my approach to discussing the subject of solitary confinement and the harm it is doing to us all. Today, I began taking down that wall of implicit bias one brick at a time. All by being a supportive ear and a good neighbor.

I often have to remind myself that all fights are not won by throwing fists or harsh words. We do not live in a time where we have the luxury of squandering opportunities for progress by arguing.

**Meeting Announcements:**

- **FFI (Family & Friends of the Incarcerated)** Meetings monthly, 4th Saturday, 9:30am - 11:30.
  - Location: Underwood Hills Presbyterian. 851 N 74th St. Omaha
  - **No meeting in December.**
- **Fearless—Nebraskans Unafraid:**
  - 2nd Thursday evening—Lincoln
  - 2nd Saturday morning—Omaha
  - 3rd Monday evening—Omaha

\* For details, 402.403.9250; [nunafrd@gmail.com](mailto:nunafrd@gmail.com)

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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:** The first day of publication months: March, June, September, and December.

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