

Justice Reinvestment in Nebraska

Analysis and Policy Framework



JANUARY 2015

Overview

Nebraska's prisons are overcrowded—state corrections officials report that these facilities are at 159 percent of their capacity.¹ Many people sentenced to prison are double-bunked or sleeping on cots in common areas, and others are being housed in county jails.

From FY2004 to FY2013, the prison population increased 19 percent.² Corrections spending increased 20 percent during this period, from \$131 million in FY2004 to \$157 million in FY2013.³

Even though reported crime and arrests declined between 2004 and 2013, prison admissions increased and are now outpacing releases.⁴ If this growth continues unchecked, prisons will become even more crowded, swelling from 159 percent of capacity (5,221 people) as of December 31, 2014 to a projected 170 percent of capacity (5,581 people) by FY2020.⁵

In October 2014, the Nebraska Department of Correctional Services (NDCS) released a Master Plan proposal to add 1,100 prison beds at an estimated cost of \$262 million, which would bring the prison population down to 128 percent of capacity by FY2019.⁶ But with construction neither scheduled nor funded, state leaders are seeking first to understand the root causes of Nebraska's growing prison population and then evaluate whether simply building prisons will provide the best return on the state's public safety investment.

In 2014, Governor Dave Heineman, Chief Justice Michael Heavican, Speaker Greg Adams, and other state policymakers from both parties asked the Council of State Governments (CSG) Justice Center to use a data-driven “justice reinvestment” approach to help the state slow prison population growth, reduce corrections spending, and reinvest a portion of savings in strategies that can reduce recidivism and increase public safety.

Projected 5-Year Outcomes of Justice Reinvestment Policy Framework

Reduce prison overcrowding

10%
Decrease in
Prison
Population

Avert prison construction and operations costs

\$306.4
Million

Invest in recidivism-reduction strategies

\$32.8
Million

Support victims of crime

Potential for
\$2.8 Million
In Restitution
for Victims

Reduce the number of people released from prison without supervision

70%
Fewer
Unsupervised
Releases

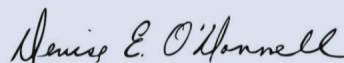
Assistance provided by the CSG Justice Center was made possible in partnership with The Pew Charitable Trusts and the U.S. Department of Justice's Bureau of Justice Assistance.

Passed by the Nebraska Unicameral Legislature and signed into law in April 2014, Legislative Bill 907 (LB 907) established the bipartisan Justice Reinvestment Working Group to study Nebraska's criminal justice system.⁷ The 19-member working group, which was co-chaired by the leaders of the three branches of government and included state lawmakers, judiciary members, corrections officials, county and defense attorneys, and local law enforcement executives, met four times between June and December 2014 to review analyses conducted by the CSG Justice Center and discuss policy options to avert growth in the prison population and increase public safety.

In preparing its analyses, the CSG Justice Center reviewed an extensive amount of data, drawing on information systems maintained by the NDCS, Nebraska Crime Commission, Administrative Office of the Courts, Office of Probation Administration (OPA), State Data Center, and others. In total, the CSG Justice Center analyzed three million individual data records across these databases, including: felony sentencing, prison admissions and releases, probation and parole supervision, risk assessment, restitution orders and collections, and parole-release decisions. To understand the context behind the numbers, the CSG Justice Center conducted nearly 200 in-person meetings and conference calls with county attorneys, defense attorneys, district court judges, victim advocates, NDCS staff and administrators, legislators, law enforcement executives, county leaders, and others.

Since 2010, the U.S. Department of Justice's Bureau of Justice Assistance (BJA) has supported the Justice Reinvestment Initiative (JRI), which has assisted state and local governments as they generate cost-effective, evidence-based policies to produce meaningful cost savings for states while maintaining a focus on public safety. In a public-private partnership with The Pew Charitable Trusts, BJA provides technical assistance and financial support for these system-wide criminal justice reform efforts.

We at BJA are pleased to support the work in Nebraska described in this report and culminating in the state's Justice Reinvestment Policy Framework, a pivotal achievement of the state's Justice Reinvestment Working Group. We look forward to working with Nebraska stakeholders to adopt and implement the policy changes described in this report.



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Summary of Challenges and Policy Framework

CHALLENGE I. OVERCROWDED PRISONS. Nebraska's overcrowded prisons house a large number of people convicted of nonviolent, low-level offenses.

STRATEGY I. Use probation for people convicted of low-level offenses

FINDINGS	POLICY OPTIONS
1. Nebraska's property offense statutes have not kept pace with inflation, causing lower-level property offenses to increasingly result in prison sentences.	A. Update property offense penalties to account for inflation.
2. People sentenced to prison for misdemeanors serve an average of six months before release, a length of stay more typical of a county jail term.	B. Require that misdemeanor sentences to incarceration be served in jail rather than prison.
3. People convicted of Class IV felonies are often sentenced to short prison terms that allow for little or no post-release supervision or treatment.	C. Use probation, rather than prison or jail, to hold people convicted of nonviolent, low-level offenses accountable.
4. Successful probationers are often not transitioned off of supervision, which limits the system's ability to focus on higher risk probationers.	D. Prioritize probation resources for felony probationers who are at the highest risk of reoffending.
5. Probation officers lack an effective option, short of revocation, to respond to the most serious probation violations.	E. Respond to major probation violations with short periods of incarceration followed by supervision.
6. Only people convicted of drug offenses have access to Nebraska's Specialized Substance Abuse Supervision (SSAS).	F. Expand access to SSAS to include people with substance use treatment needs who are convicted of non-drug offenses.

CHALLENGE II. LIMITED POST-RELEASE SUPERVISION. Nebraska's felony sentencing system fails to ensure that people sentenced to prison receive post-release supervision or pay victim restitution.

STRATEGY II. Ensure post-release supervision, and address victims' needs

FINDINGS	POLICY OPTIONS
1. Existing felony classifications lack consistency, with violent and sex offenses scattered across all classes.	A. Classify felony offenses according to whether they involve violence or are sex offenses.
2. People with short prison sentences are often released without supervision.	B. Provide periods of incarceration followed by post-release supervision for people convicted of Class III, IIIA, and IV felonies.
3. Nebraska lacks parole guidelines to ensure that people convicted of the most serious felonies receive post-release supervision.	C. Require that individuals convicted of the most serious offenses be supervised after release from prison.
4. Restitution is rarely ordered and collected from people sentenced to prison.	D. Expand use and improve collection of victim restitution from people sentenced to prison.
5. Detailed impact estimates for proposed modifications to the "good time" policy have not been conducted even though contemplated changes would bring major ramifications across the criminal justice system.	E. Evaluate current prison good time policies and estimate the impacts of proposed modifications.

CHALLENGE III. INSUFFICIENT SUPERVISION. Nebraska’s parole supervision system lacks the resources necessary to handle a growing parole population, has not fully adopted evidence-based practices, and is not positioned to respond effectively to parole violations.

STRATEGY III. Improve parole supervision to reduce recidivism among individuals released from prison

FINDINGS	POLICY OPTIONS
1. Nebraska does not use a risk assessment tool to measure parolees’ risk of reoffending and needs.	A. Adopt a risk assessment tool to assess parolees’ risk and needs.
2. The parole supervision system does not base supervision intensity or program and treatment recommendations and requirements on assessed risk and need.	B. Adopt evidence-based practices in parole supervision to change criminal thinking and behavior.
3. Current responses to parolee violations are inconsistent and inefficient.	C. Respond to parole violations with swift and certain sanctions.
4. Parole officers lack effective options, short of revocation, to respond to the most severe parole violations.	D. Respond to major parole violations with short periods of incarceration followed by supervision.

Nebraska Justice Reinvestment Policy Framework

These challenges were presented to the Nebraska Justice Reinvestment Working Group. With help from the CSG Justice Center and input from stakeholders from across the state’s criminal justice system, the working group then developed a policy framework to hold people convicted of the lowest-level felonies accountable with supervision and treatment; reduce the number of people released from prison without supervision and support victims; and strengthen parole supervision to reduce recidivism.

To hold individuals convicted of the lowest-level, nonviolent felonies accountable, the policy framework ensures utilization of Nebraska’s already effective probation system. The working group emphasized that expanding supervision can achieve success only if the state invests in community-based treatment and supervision resources. Working group members also agreed to address

the state’s high number of people released from prison without supervision by requiring mandatory post-release supervision for the lowest felony classes and adopting parole guidelines to ensure supervision for higher felony classes. To reduce recidivism further, the framework recommends implementing evidence-based practices within the parole supervision system. To ensure that these policy changes achieve their intended results, seven additional sustainability policies were recommended, including establishing an oversight committee to monitor and evaluate implementation of the Justice Reinvestment Framework.

The working group sent forward these policies to be adopted by criminal justice agencies and, where necessary, developed into legislation and considered by the legislature during the 2015 session.

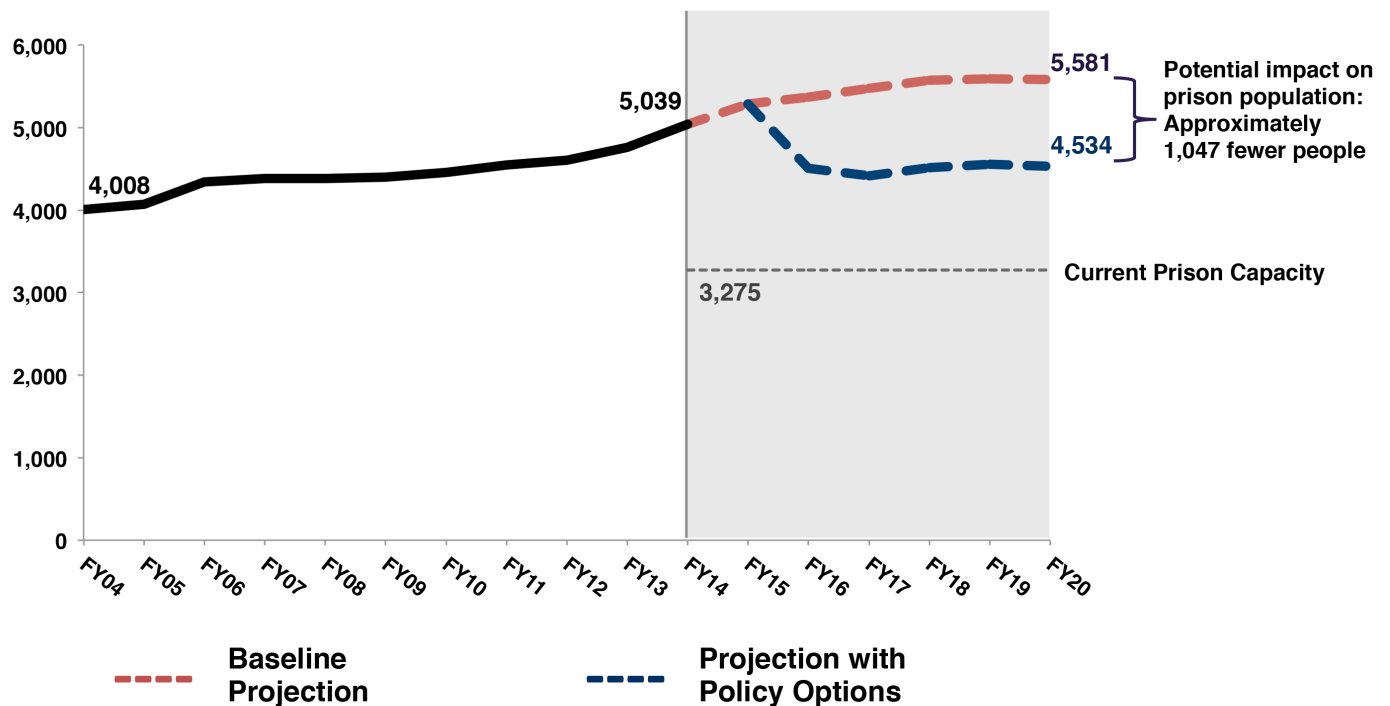
Projected Impact

As a package, the policies described in this report have the potential to generate significant savings and lower recidivism for Nebraska. By averting the projected growth in the state prison population, effective implementation of the policy framework will help the state avoid up to \$261.6 million in construction costs and \$44.8 million in operating costs that would otherwise be needed to accommodate the forecasted growth between FY2014 and FY2020. While the NDCS currently projects the prison population to reach 5,581 people by FY2020, the policy framework is projected to avert the forecasted growth by more than

1,000 people without significantly impacting county jail populations and bring the state prison population below current levels, or down to 138 percent of capacity. (See Figure 1) Additional steps may be necessary to further reduce prison overcrowding.

As a result of improvements to the criminal justice system, this policy framework estimates a reduction in recidivism and establishes a goal of reducing the number of people released from prison without supervision by 70 percent.

FIGURE 1. PROJECTED IMPACT OF JUSTICE REINVESTMENT POLICY FRAMEWORK ON NEBRASKA'S PRISON POPULATION⁸



Reinvestment

To achieve these outcomes, a portion of the expected savings must be reinvested in evidence-based strategies to reduce recidivism. Cost savings and proposed levels of reinvestment are based on projected

impacts to the prison population as calculated by the CSG Justice Center in comparison to the NDCS population forecast. (See Figure 2)

FIGURE 2. SUMMARY OF JUSTICE REINVESTMENT POLICY FRAMEWORK AVERTED COSTS AND REINVESTMENTS⁹

		FY2016	FY2017	FY2018	FY2019	FY2020	Total
Averted Costs	Operational Costs Averted	\$4.0M	\$9.1M	\$10.4M	\$10.6M	\$10.6M	\$44.8M
	New Construction Costs Averted	2014 Master Plan Report recommended construction of 1,100 beds by FY2019 at a cost of \$261.6M					\$261.6M
	Total Averted Costs	\$4.0M	\$9.1M	\$10.4M	\$10.6M	\$10.6M	\$306.4M
Reinvestments	Increase the number of probation officers	\$0.1M	\$0.9M	\$2.0M	\$2.5M	\$2.5M	\$8.0M
	Community-based programs and treatment to reduce recidivism	\$2.0M	\$5.0M	\$5.0M	\$5.0M	\$5.0M	\$22.0M
	Improve parole supervision	\$0.3M	\$0.3M	\$0.3M	\$0.3M	\$0.3M	\$1.5M
	Sustainability policies	\$0.5M	\$0.2M	\$0.2M	\$0.2M	\$0.2M	\$1.3M
	Total Reinvestment	\$2.9M	\$6.4M	\$7.5M	\$8.0M	\$8.0M	\$32.8M
Net Savings		\$1.1M	\$2.7M	\$2.9M	\$2.6M	\$2.6M	\$273.6M

Nebraska Felony Sentencing Options and Supervision Types

Probation: Adult probation is a sentencing option for people convicted of misdemeanors and felony offenses not subject to mandatory minimum sentences. At the close of FY2014, there were 12,312 active probationers in Nebraska, of whom 70 percent had been sentenced for misdemeanors and 30 percent for felonies.¹⁰ The Office of Probation Administration (OPA), which is overseen by the Nebraska Supreme Court, is responsible for the certification, training, and oversight of the state's 196 adult probation officers as well as the state's juvenile probation system. County governments provide workspace for probation officers.

Felony probationers receive community-based supervision from probation officers, and may also be required to serve up to 180 days of jail time as part of the probation sentence. District courts may order that this jail time, or some portion thereof, be served before supervision begins, after the supervision term, or at any point during supervision, including for use as a sanction for violating the terms of one's probation.

Felony probationers are assessed using the Level of Service/Case Management Inventory (LS/CMI), a risk and need assessment tool. OPA bases supervision intensity, program requirements, and treatment needs on the results of the assessment, as well as on reassessments conducted every six months and the individual's offense type. Probationers placed by OPA on to Community-Based Intervention (CBI) receive the most intensive supervision level and are supervised by officers with the lowest caseloads. Below CBI, there are multiple risk- and need-based Community-Based Resource (CBR) supervision levels, followed by administrative probation, which is the least intensive level of supervision. Across all supervision levels, probation officer caseload sizes vary based on probationer risk and need.

Specialized Substance Abuse Supervision (SSAS): SSAS is a structured treatment program overseen by OPA that provides intensive supervision to probationers and parolees with a felony drug conviction, who score high or very high on the LS/CMI and have substance use treatment needs. Judges and the Board of Parole may recommend that individuals receive SSAS, but OPA ultimately determines who receives SSAS based largely on results of the LS/CMI assessment. There were 396 SSAS probationers and 84 SSAS parolees at the close of FY2014.¹¹ SSAS was expanded under LB 907 and now serves probationers and parolees in and around the 11 cities with reporting centers, including Lexington, South Sioux City, Omaha, Grand Island, Kearney, Lincoln, Nebraska City, Bellevue, Gering, Columbus, and Norfolk. (See Box: Nebraska's Community-Based Services, page 15)

Problem-Solving Courts: Some criminal defendants are admitted to problem-solving courts, which are an alternative to traditional courts that are focused on treatment. At the close of FY2014, Nebraska had 14 adult problem-solving courts, including drug, young adult, and DUI courts, serving a total of 564 people.¹² Problem-solving court participants are supervised by probation officers and are eligible for probation services.

Jail and Prison Terms: If the court sentences an individual to one year or more of confinement, whether for a felony or misdemeanor, that sentence is served in prison. Sentences of less than a year for both misdemeanors and felonies are served in county jail. As a result, prison and jail populations include a blend of people convicted of misdemeanors and felonies.

Parole: Release to parole supervision is a discretionary decision made by the Board of Parole after the individual has served his or her minimum sentence in prison, minus good time reductions. (See Box: Nebraska Terminology, page 11) The Parole Administration, a division of NDCS, is responsible for supervising individuals released from prison to parole supervision. At the end of FY2013, 39 parole officers supervised 1,611 parolees.¹³

Parolee needs are assessed through the Parole Supervision Inventory, an NDCS-developed case management tool that has not been validated. Using this tool, parole officers periodically evaluate parolee progress across eight factors—housing, employment, education, social supports, substance use, mental health, sex offender, and other—and identify necessary follow-up. Parole officer caseload sizes and supervision intensity do not vary by parolee risk and need.

CHALLENGE 1: OVERCROWDED PRISONS. Nebraska's overcrowded prisons house a large number of people convicted of nonviolent, low-level offenses.

FINDINGS AND ANALYSIS

Nebraska has a low but increasing incarceration rate.

- Nebraska's incarceration rate ranked 38th nationally in 2013, with 263 people in prison per 100,000 residents, compared to the U.S. rate of 478 per 100,000.¹⁴

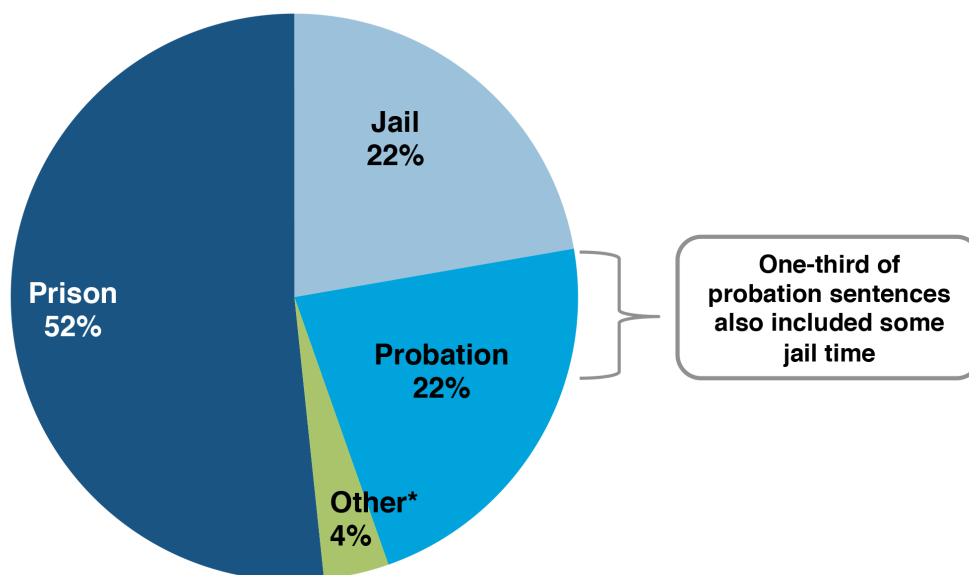
- Nebraska's incarceration rate increased 14 percent between 2004 and 2013, the seventh largest percentage increase among all states. Nationally, the incarceration rate declined 2 percent between 2004 and 2013.¹⁵

Most felony sentences are to prison or jail, while only a small percentage are to probation.

- During FY2012 and FY2013, 74 percent of felony sentences in Nebraska were to a term of incarceration, of which 52 percent were to prison and 22 percent were to jail. Probation accounted for just 22 percent of felony sentences during that same period.¹⁶ (See Figure 3)

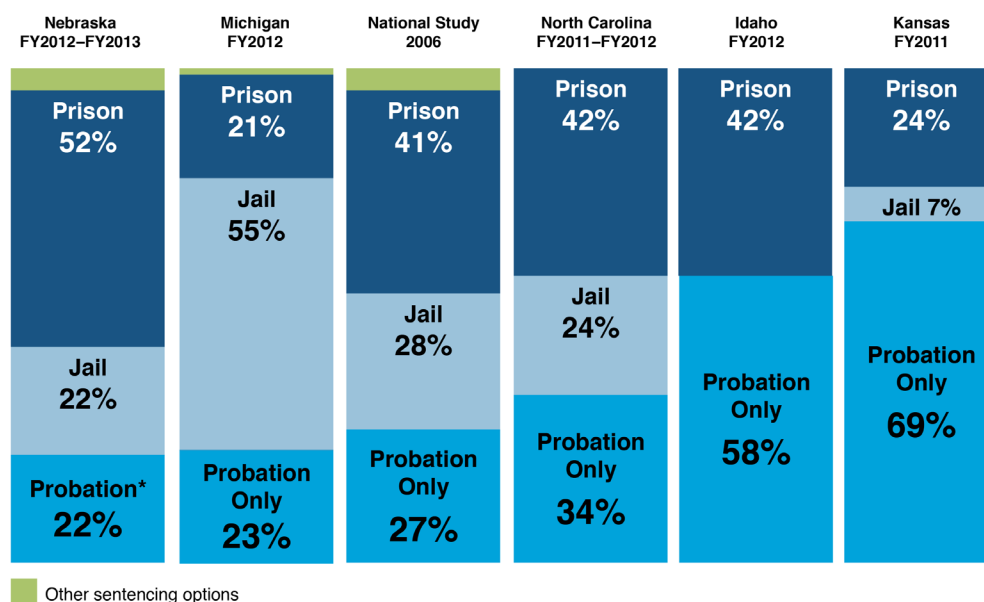
- In contrast, 27 percent of felony sentences were to probation nationally in 2006, the most recent year for which data are available.¹⁷ (See Figure 4)
- Nebraska has one of the nation's lowest rates of adults on probation. In 2013, Nebraska's rate of adults on probation was 11th lowest in the country, with 960 probationers per 100,000 residents compared to the U.S. rate of 1,605 probationers per 100,000 residents.¹⁸

FIGURE 3. FELONY SENTENCING DISTRIBUTION, FY2012–FY2013¹⁹



*Other sentencing options included fines, community service, and house arrest.

FIGURE 4. NATIONAL AND SELECT STATE FELONY SENTENCES TO PRISON, JAIL, AND SUPERVISION²⁰



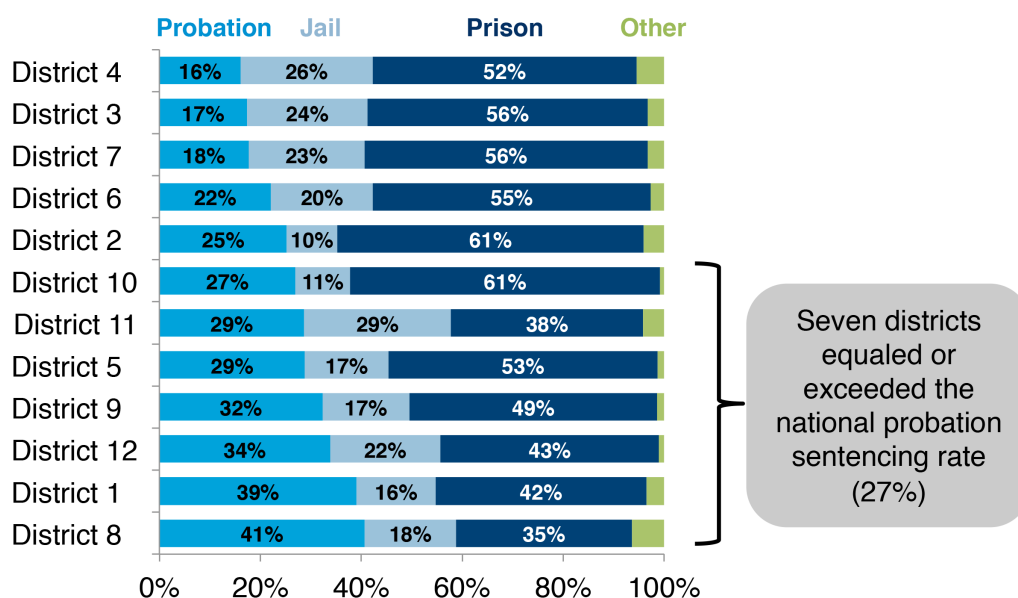
Nebraska's urban judicial districts use probation for a smaller share of felony cases than other districts.

- Judicial Districts 3 and 4 are Nebraska's two highest-volume judicial districts, and together comprised 45 percent of the state population in 2013. Just 17

percent and 16 percent of felony sentences in Judicial Districts 3 and 4, respectively, were to probation in FY2012 and FY2013.²¹ (See Figure 5)

- By comparison, 41 percent of felony sentences during that time period were to probation in Judicial District 8, which is located in rural central Nebraska.²²

FIGURE 5. FELONY SENTENCING IN NEBRASKA BY JUDICIAL DISTRICT, FY2012–FY2013²³



Sentences for people convicted of the same felony classes and with similar criminal histories vary widely across judicial districts.

- In FY2012 and FY2013, felony sentences in Judicial Districts 3, 4, and 8 were distributed similarly across all felony classes. For instance, Class IV felonies, the lowest felony offense class, accounted for between 51 and 53 percent of felony sentences in these districts.²⁴ (See Box: Nebraska's Felony Sentencing Structure, below)
- Despite their similar felony dockets, sentencing varied widely between these judicial districts. Prison

and jail made up a combined 78 percent of Judicial District 4's sentences, compared to 53 percent of sentences in Judicial District 8.²⁵

- Sentencing also varied widely for people with similar criminal history scores. In a sample of individuals whose presentence risk assessment criminal history scores were matched to sentencing outcomes, 45 percent of those who scored low in Judicial District 4 were sentenced to probation, compared with 67 percent of people who scored similarly in Judicial District 8.²⁶ (See Box: Understanding Risk Assessment, page 14)

Nebraska's Felony Sentencing Structure

Felony offenses are divided into nine classes, with applicable sentencing ranges set by statute. Mandatory minimums apply to some felony classes (IC and ID) as well as specific offenses within other felony classes, such as repeat driving under the influence (DUI). Mandatory minimums of at least 10 years also apply for "habitual criminals," defined as those with at least two previous prison commitments. Otherwise, district court judges impose sentences based on the statutorily defined sentencing range for the felony class.

Courts may impose indeterminate sentences by setting differing minimum and maximum terms of imprisonment. Courts also have discretion to impose flat, or determinate, sentences with equal minimum and maximum terms.

Neb. Rev. Stat. § 28-105. Felony Sentencing Ranges

	Minimum Term of Incarceration	Maximum Term of Incarceration
Class I	Death	Death
Class IA	Life imprisonment	Life imprisonment
Class IB	20 years	Life imprisonment
Class IC	5 years*	50 years
Class ID	3 years*	50 years
Class II	1 year	50 years
Class III	1 year	20 years, \$25,000 fine, or both
Class IIIA	None	5 years, \$10,000 fine, or both
Class IV	None (May not exceed 20 months)	5 years, \$10,000 fine, or both

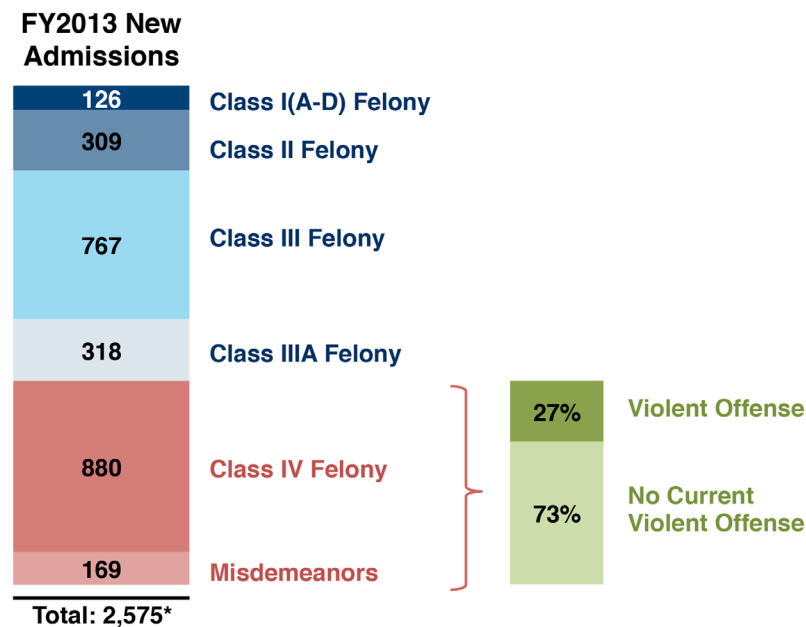
*Mandatory minimum sentence of incarceration; not eligible for probation.

A significant number of people convicted of low-level, nonviolent felonies are sentenced to prison or jail rather than probation.

- In FY2013, more than 40 percent of the 2,575 new admissions to prison were for Class IV felonies (880) and misdemeanors (169).²⁷

- Seventy-three percent of people admitted to prison for misdemeanors or Class IV felonies committed nonviolent offenses.²⁸ (See Figure 6)
- People sentenced to prison for misdemeanors in FY2013 served an average of just six months (including jail credits) before release.²⁹

FIGURE 6. NEBRASKA'S NEW PRISON ADMISSIONS BY OFFENSE TYPE, FY2013³⁰



*Felony classification data was not available for six FY2013 new admissions.

Nebraska Terminology

Good Time: Good time refers to time deducted from a sentence to incarceration. Under Nebraska's good time law, most prison sentences are cut in half upon admission to prison although this good time may be revoked for misconduct. Sentences are reduced by an additional 3 days each month once an individual has been in prison for 12 months, except when an individual engages in certain misconduct. This results in a parole eligibility date roughly halfway through the original minimum term and a mandatory discharge date about halfway through the maximum term. For those convicted of offenses with mandatory minimums, good time begins accruing only after the mandatory minimum is served.

Parole Window: The parole window is the period of time between an individual's parole eligibility date and mandatory discharge date. The Board of Parole may grant parole at any point during the parole window. Individuals granted parole receive parole supervision for the duration of the remaining parole window.

Jammers/Jam-outs: Jammers are individuals who serve their entire maximum sentence, minus applicable good time, and leave prison on their mandatory discharge date without being paroled. These individuals are released into the community—or "jam out"—without supervision.

Short Maxes: Short maxes are sentences to prison that result in a jam out date within one year.

Nebraska's low felony theft threshold is contributing to the number of prison admissions and costing the state millions each year.

- Theft of goods valued at \$500 or more is a felony in Nebraska, punishable with periods of probation, jail, or prison. Thefts below that threshold constitute misdemeanors, which are also punishable with jail time and other penalties.
- When the \$500 felony theft threshold was set in 1992, it was equivalent to \$850 in 2014 dollars.³¹ With inflation, however, the value of the felony theft threshold is falling, and thefts that once would have been considered misdemeanors are now felonies.

- Nebraska is part of a shrinking minority of states with such a low felony theft threshold. Georgia, Rhode Island, North Dakota, and Arkansas increased their felony theft thresholds from \$500 to \$1,000 or \$1,500 between 2011 and 2014. In 2014, 33 states had a felony theft threshold greater than Nebraska's \$500 threshold.³²
- Each year, Nebraska sentences about 175 people to prison for theft of goods valued at \$500 to \$1,500 with an average length of stay of one year. It costs the state an estimated \$1.1 million to incarcerate the people sentenced to prison each year for theft in this range.³³

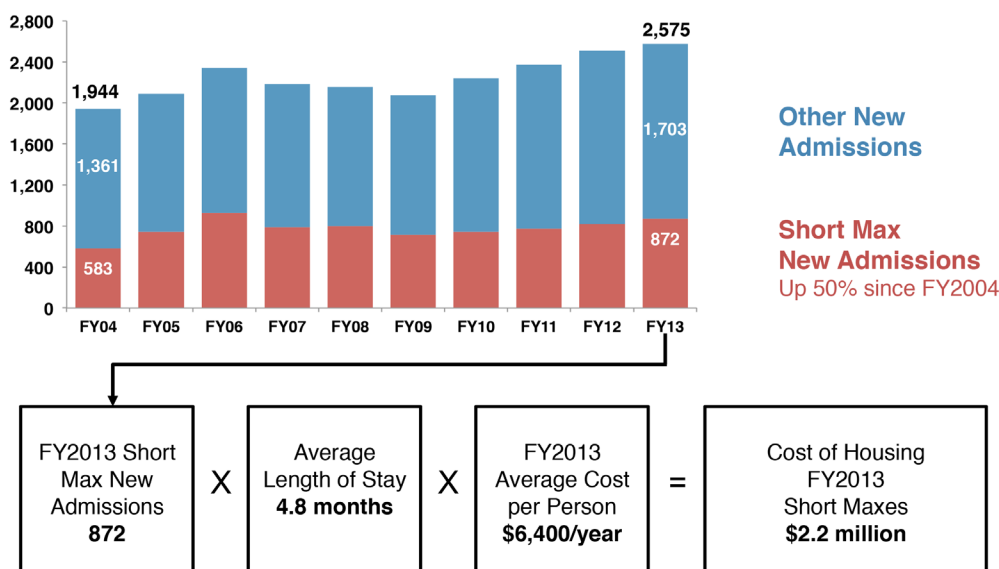
People with short sentences are consuming scarce space and prison resources, while receiving little or no treatment or post-release supervision.

- Roughly one-third of new prison admissions between FY2004 and FY2013 were for "short-max" sentences that, with jail credits and good time applied, would last no more than one year before the mandatory discharge date was reached.³⁴ (See Box: Nebraska Terminology, page 11, and Figure 7)
- On average, people with short maxes become parole eligible at three months and serve about five months in prison before release.³⁵ This short timeframe and

waitlists for prison treatment and other programs make enrollment unlikely and completion nearly impossible.

- The narrow window between parole eligibility and mandatory release also leaves little opportunity for the Board of Parole to act and, even when parole is granted, leaves little time for meaningful parole supervision to take place.
- People with short maxes are twice as likely to jam out as people with longer sentences. (See Box: Nebraska Terminology, page 11) From FY2004 to FY2013, 76 percent of short maxes resulted in unsupervised release compared to 35 percent of other prison sentences.³⁶

FIGURE 7. NEBRASKA'S NEW ADMISSIONS TO PRISON, FY2004–FY2013³⁷



Average probation terms hold individuals accountable more effectively, for longer than low-level felony sentences to prison, and at a fraction of the cost.

- Consistent with the national average, Nebraska's average felony probation term is three years.³⁸
- The average probation term provides a much longer period of accountability than comparable sentences to prison. The

average probation terms in FY2012 were 2.6 to 3.2 years for Class IV, IIIA, and III felonies compared to average lengths of stay in prison of 1.0 to 2.2 years, including jail credits.³⁹

- Probation supervision costs about \$800 annually per person, compared with \$7,124 annually per person for prison.⁴⁰ Treatment and other programming do add to probation costs, but these costs are still significantly lower than a comparable prison term. (See Figure 8)

People sentenced to probation have lower recidivism rates than people sentenced to prison for similar offenses.

- Across all risk levels, the recidivism rates in Nebraska for people sentenced to probation for felonies were the same or lower than for people sentenced to prison,⁴¹ which comports with broader research finding probation supervision coupled with

treatment programming reduces recidivism more effectively than prison.⁴²

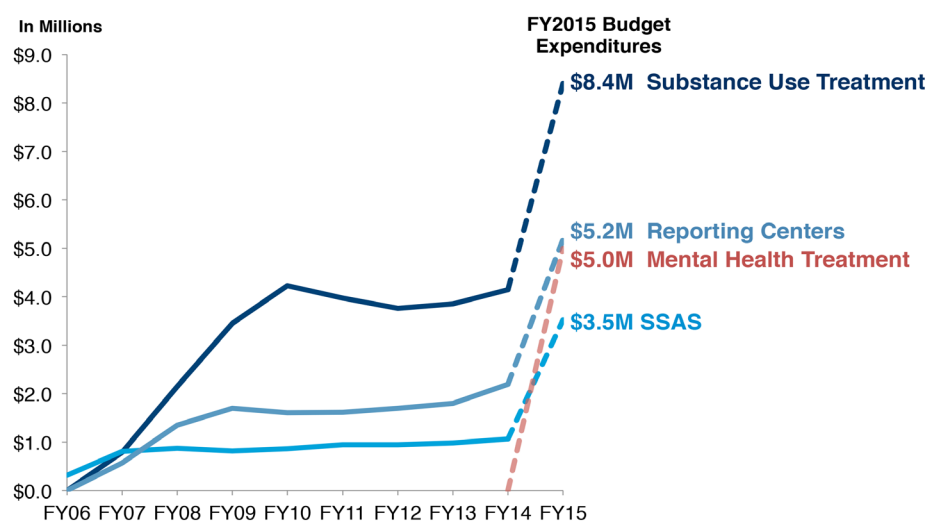
- Twenty-six percent of people sentenced to prison for Class IV felonies and released in FY2010 were readmitted to prison within two years. By comparison, just 17 percent of people sentenced to probation for Class IV felonies in FY2011, the most analogous data available, were admitted to prison within two years.⁴³

Nebraska's probation system is well equipped to deliver effective supervision, but some judges are hesitant to utilize probation.

- Although the state has invested \$22 million in reporting centers, SSAS, and substance use and mental health treatment since 2006, more than 50 percent of district court judges responding to a survey said they sometimes or frequently sentence individuals to prison rather than probation because of a perceived lack of community-based services.⁴⁴ (See Figure 8 and Box: Nebraska's Community-Based Services, page 15)

- District court judges responding to the survey described the effectiveness of probation officers working with probationers in favorable terms, with 53 percent indicating they were extremely satisfied and another 42 percent indicating they were somewhat satisfied.
- When asked to characterize the probation system, 74 percent of judges responding said that probation was improving due to evidence-based practices.⁴⁵
- Of people leaving probation from FY2011 to FY2013, 70 percent had successfully completed their terms.⁴⁶

FIGURE 8. NEBRASKA COMMUNITY CORRECTIONS FUNDING, FY2006–2015⁴⁷



Probation officers report that adjusting the intensity of supervision in relation to a person's risk of reoffending can be challenging.

- Administrative policies instruct probation officers to transition probationers to lower supervision levels when their assessed risk score decreases and increase probationers' supervision levels if their risk score increases. (See Box: Nebraska Felony Sentencing Options and Supervision

Although probation officers have authority to react swiftly and decisively with a variety of administrative responses to violations of conditions of probation, the process to impose short periods of incarceration, or “custodial sanctions,” is more cumbersome.

- The OPA has adopted a matrix of intermediate and graduated sanctions that identifies varied administrative responses to violations based on the type and severity of the violation, the individual's risk level, number of previous violations, and other factors.
- However, there remains a significant gap between the severity of the most serious sanctions in the matrix and full revocation, which carried an average minimum term of 2.3 years for probationers revoked to prison from FY2011 to FY2013.⁴⁹

Types, page 7) During a series of focus groups, probation officers indicated that some probationers' criminal histories prevent them from transitioning to lower levels of supervision before the conclusion of their probation term.

- Probation officers also reported not transitioning people to lower levels of supervision because of logistical burdens associated with moving probationers to a new officer's caseload.⁴⁸
- Judges do have statutory authority to impose up to 180 days of jail at any point during probation sentences including for use as a sanction, bridging the gap between administrative sanctions and full revocations for some cases. The statute does not, however, prescribe when, for what purpose, or under what circumstances the time should be served—whether that be prior to the start of probation, during the probation term, or following probation supervision. Judges surveyed report having tried all of those approaches.⁵⁰
- During focus groups, probation officers said judges take a variety of approaches to impose jail time during probation. Some impose prescheduled days to be served each month unless waived, while others reserve a block of time to be imposed should violations occur. In either case, court hearings are required before jail time may be imposed, delaying the imposition of the custodial sanction by several days or even weeks.⁵¹

Understanding Risk Assessment

Risk assessment tools help sort individuals into low-, medium-, and high-risk groups. They are designed to gauge the likelihood that an individual will come in contact with the criminal justice system again, either as a result of a new arrest and conviction or reincarceration for violating the conditions of supervision. These tools usually consist of 10 to 30 questions that are designed to ascertain an individual's history of criminal behavior, attitudes and personality, and life circumstances.

Risk assessments can be administered at any time during a person's contact with the criminal justice system—during the pretrial period, while on probation, after admission to a correctional facility, prior to release, and during post-release supervision. These assessments are similar to actuarial tools used by insurance companies to rate risk: they predict the likelihood of future outcomes according to their analysis of past activities (e.g., criminal history) and present conditions (such as behavioral health or addiction). Objective risk assessments have been shown to be more reliable than any professional's individual judgment, but are not absolutely predictive.⁵²

The reliability of risk assessment tools must be routinely reexamined, or validated, to ensure accuracy. Such validation studies should examine the instrument's ability to identify groups of individuals with different probabilities of reoffending, inter-rater and intra-rater reliability, fairness across all populations, and practicality and efficiency of use.⁵³

Nebraska's Community-Based Services

Reporting Centers and Service Centers: The Office of Probation Administration funds and operates reporting centers and service centers throughout the state for people on probation, participating in problem-solving courts, or on parole supervision. Eleven reporting centers across the state, including three funded by LB 907, offer evidence-based services, such as cognitive behavioral treatment, and classes on financial management, domestic violence, parenting, and other topics. Four service centers across the state offer similar, but more limited, rehabilitative services in geographic areas not served by reporting centers.

TeleServices: Probationers can remotely access 34 services, such as anger management, employment skills development, GED classes, and cognitive behavioral treatment not otherwise available in their communities at 40 TeleServices sites statewide.

Fee-for-Service Voucher Program: Probation clients, problem-solving court participants, and parolees who cannot afford necessary treatment may receive subsidized substance use evaluations as well as outpatient, intensive outpatient, and short-term residential treatment through a fee-for-service voucher program. These subsidized services are provided based on probation and parole officer recommendations and are funded through a combination of state appropriations and probation and parole fees.

Mental Health Services: Probation and parole officers connect clients to mental health care providers in the community. Subsidies for mental health care services were not available before the passage of LB 907. Through that legislation, the state appropriated \$5 million for mental health care services, with an emphasis on serving SSAS and problem-solving court participants. Although this funding is a significant investment, mental health care remains unaffordable for many probationers and parolees, and unavailable in some rural areas.⁵⁴

Strategy 1: Use probation for people convicted of low-level offenses

POLICY OPTIONS

1 (A) Update property offense penalties to account for inflation.

- Reserve felony penalties for those offenses involving property valued at \$1,500 or more. For theft, offenses involving less than \$500 in property would be Class II misdemeanors; \$500–\$1,499 would be Class I

misdemeanors; \$1,500–\$4,999 would be Class IV felonies; and \$5,000 or more would be Class III felonies.

- Align penalties for other property offenses to be consistent with the revised felony theft framework. (See Figure 9, page 16)

RATIONALE:

Penalty thresholds for theft offenses were last adjusted in 1992. Because the value of the dollar decreases over time with inflation, the thresholds codified in statute must be adjusted periodically. The current low penalty threshold for property offenses contributes to costly use of correctional resources, with the state spending an estimated \$1.1 million to incarcerate people sentenced to prison each year for the lowest level felony thefts alone.⁵⁵

Recognizing the impact of inflation on these penalty thresholds, other states have increased their property offense penalty thresholds in recent years leaving Nebraska in the minority of states with such a low threshold. In Georgia, for instance, the felony threshold was increased to \$1,500 in 2012, and theft in the range of \$1,500 to \$5,000 is now punishable by up to five years in prison or, at the judge's discretion, as a misdemeanor.⁵⁶

FIGURE 9. CURRENT AND PROPOSED PROPERTY OFFENSE PENALTIES⁵⁷

	Current**	Offense Class	Proposed
Theft*, Insurance Fraud*, Criminal Impersonation*, Identity theft*, Bad Check and No Account Check*, Unauthorized Use of a Financial Device	More than \$1,500	Felony III	\$5,000+
	\$500-\$1,500	Felony IV	\$1,500-\$4,999
	\$200-\$499	Misd. I	\$500-\$1,499
	Less than \$200	Misd. II	Less than \$500
Forgery	\$1,000+	Felony III	\$5,000+
	\$301-\$999	Felony IV	\$1,500-\$4,999
	Up to \$300	Misd. I	\$500-\$1,499
	N/A	Misd. II	Less than \$500
False County Claim	\$1,000+	Felony IV	\$1,500+
	\$101-\$999	Misd. II	\$500-\$1,499
	Less than \$100	Misd. III	Less than \$500
Possession of Forged Instrument	\$1,000+	Felony IV	\$5,000+
	\$301-\$999	Misd. I	\$1,500-\$4,999
	Up to \$300	Misd. II	\$500-\$1,499
	N/A	Misd. III	Less than \$500
Third-Degree Arson	More than \$100	Felony IV	\$1,500+
	Up to \$100	Misd. I	\$500-\$1,499
	N/A	Misd. II	Less than \$500
Bingo, Lottery, and Raffle Offenses*	More than \$300	Felony IV	\$1,500+
	Up to \$300	Misd. I	\$500-\$1,499
	N/A	Misd. II	Less than \$500
Supplemental Nutrition Assistance Program Violations, Public Assistance, Food Instrument or Benefits Violations	\$500+	Felony IV	\$1,500+
	Less than \$500	Misd. III	\$500-\$1,499
	N/A	Misd. IV	Less than \$500
Theft (Lost, Misplaced, or Misdemeanor), Criminal Mischief	\$1,500+	Felony IV	\$5,000+
	\$500-\$1,499	Misd. I	\$1,500-\$4,999
	\$200-\$499	Misd. II	\$500-\$1,499
	Less than \$200	Misd. III	Less than \$500
Hacking	\$1,000+	Felony III	\$5,000+
	Less than \$1,000	Felony IV	\$1,500-\$4,999
	N/A	Misd. I	\$500-\$1,499
	N/A	Misd. II	Less than \$500
Promoting Gambling*	\$1,000+	Misd. I	\$1,500+
	\$300-\$999	Misd. II	\$500-\$1,499
	N/A	Misd. III	N/A
	Less than \$300	Misd. IV	Less than \$500

* Penalties are enhanced for subsequent offenses; enhancements vary by offense, and would not be impacted by Policy Option 1(A).

** Penalty thresholds for some grouped offenses currently vary slightly from these ranges (e.g., less than \$200 rather than \$200 or less).

1 (B) Require that misdemeanor sentences to incarceration be served in jail rather than prison.

- Require that misdemeanor sentences, including those with a term of one year or more, be served in county

RATIONALE:

People sentenced to prison for misdemeanors served an average of less than six months in FY2013, a term more typical of a sentence to jail than to prison.⁵⁸ Furthermore, misdemeanor prison sentences are exposing people convicted of the lowest-level offenses

jails and reserve prison space for people convicted of felony offenses.

to people incarcerated for more severe felonies, a practice that has been demonstrated to increase the likelihood of future criminal behavior for lower risk individuals.⁵⁹

1 (C) Use probation, rather than prison or jail, to hold people convicted of nonviolent, low-level offenses accountable.

- Create a statutory presumption that people convicted of nonviolent Class IV felonies will be sentenced

RATIONALE:

Probation is significantly underutilized as a sentencing option in Nebraska, particularly in urban areas, despite the probation system's demonstrated ability to hold people convicted of crimes accountable. Probationers remain under the supervision of trained officers, are assessed for risk of reoffending, are provided with programming and treatment based on assessed need, and are less likely to recidivate than those sentenced to prison. Probation supervision that incorporates

to probation rather than incarceration.

- Allow judges to override the statutory presumption in limited circumstances, such as when the defendant is simultaneously convicted of a more severe felony.

treatment programming based on risk, need, and responsivity (the "Risk-Need-Responsivity principle"⁶⁰) can reduce recidivism by as much as 30 percent.⁶¹

Because probation is not suitable for every defendant, judges would have authority to override the statutory presumption and sentence a defendant to incarceration after entering findings into the record as to why probation is not appropriate.

1 (D) Prioritize probation resources for felony probationers who are at the highest risk of reoffending.

- Retain existing policies for the assessment of probationers for risk of reoffending and classification to Community-Based Intervention (CBI), the most intensive level of supervision, or Community-Based Resource (CBR), which offers low through moderate levels of supervision.
- Transition misdemeanor probationers placed on CBI to CBR after 12 months and felony probationers after 18 months. Enable overrides of this policy for probationers

who are found to have committed major violations of their conditions of supervision. Existing policies for transitioning probationers from CBI to CBR based on risk of reoffending will remain in effect, allowing for these transitions to take place sooner when appropriate.

- Discharge probationers after six months of successful CBR supervision (e.g., no reported major violations of supervision conditions) for misdemeanor sentences and after 12 months for felony sentences, if any required restitution is paid in full. If not paid in full, transition probationer to administrative supervision until restitution is paid or the probation sentence is completed, whichever occurs sooner.

RATIONALE:

One of the most effective ways to reduce recidivism is to focus supervision resources on people who pose the greatest risk of reoffending. Effectively transitioning probationers down to lower levels of supervision after demonstrated compliance will free resources to be

focused on those who can most benefit from intensive supervision. Transition and discharge target dates also provide probationers the opportunity and incentive to demonstrate they can succeed under less intensive supervision.

1 (E) Respond to major probation violations with short periods of incarceration followed by supervision.

- Provide greater structure and consistency to the use of 180 days of jail time that judges currently have authority to include in probation sentences.
- Provide judges with the authority to impose custodial sanctions for probationers who are at a high risk of reoffending, who commit a serious violation of the conditions of their probation, and who have already exhausted other sanctioning options.

RATIONALE:

Courts are permitted under statute to confine felony probationers who violate the conditions of their probation supervision in jail for periods not to exceed 180 days. There is no statutory guidance provided, however, regarding how the 180 days of confinement time may be incrementally distributed during the probation term. As a result, there is considerable variation in how confinement time is applied.

OPA has established an intermediate and a graduated sanction matrix that guides officers in the application

- Allow custodial sanctions of up to 3 days in jail for violations or up to 30 days for probationers who commit the most serious violations after receiving lower level sanctions and shorter custodial sanctions.
- Establish probation policies and probation officer training to ensure that these confinement periods are used as the most severe response short of revocation on the violation sanction matrix.
- Preserve the court's authority to impose longer periods of incarceration for probationers who are convicted of a new criminal offense while on supervision and sentenced to prison or jail.

of a range of responses increasing in intensity for probationers who violate the conditions of their supervision. There is a significant gap, however, between the most serious community-based response and the subsequent response, which is revocation of probation and incarceration. From FY2011 to FY2013, the average minimum sentence length for probationers revoked to prison was 2.3 years.⁶² Short periods of incarceration would bridge the gap between existing sanctions and full revocation.

1 (F) Expand access to SSAS to include people with substance use treatment needs who are convicted of non-drug offenses.

- Clarify admission criteria for SSAS to include both having a high risk of reoffending as determined by a validated risk assessment and high substance use

RATIONALE:

Validated assessments for risk and criminogenic need provide a better measure than offense of conviction to identify who will most benefit from the type of intensive supervision and substance use and cognitive behavioral therapies delivered by SSAS. Eliminating offense-based

needs that would be best addressed through intensive supervision and treatment.

- Expand criteria for SSAS beyond just individuals convicted of a drug offense to also include those convicted of other offenses who meet specific risk and need criteria.

criteria for SSAS will allow the program to benefit probationers and parolees whose underlying conviction was not a drug offense but who are at high risk of reoffending because of substance use.

Challenge 2: LIMITED POST-RELEASE SUPERVISION.

Nebraska's felony sentencing system fails to ensure that people sentenced to prison receive post-release supervision or pay victim restitution.

FINDINGS AND ANALYSIS

Broad statutory sentence ranges and a lack of judicial information sharing leave judges with little direction as to the type or length of sentence appropriate for a given defendant.

- Within most felony classes, the range of possible sentences is broad. For example, a Class III felony is punishable by 1 to 20 years in prison, and a Class II felony sentence range is 1 to 50 years. (See Box: Nebraska's Felony Sentencing Structure, page 10)
- Nebraska's existing felony classifications lack consistency, with violent and sex offenses scattered across all felony classes.

Nebraska's parole windows are narrow and allow little opportunity for meaningful post-release supervision.

- For Class IV felonies, the average minimum term was 46 percent of the maximum term in FY2004 and grew to 49 percent of the maximum term in FY2013. The amount of time between the minimum and maximum

Flat sentences to prison, as currently set by courts, eliminate the possibility of post-release supervision.

- In FY2013, 17 percent of people newly admitted to prison (449 people) received a sentence with a parole window of one month or less, or no parole opportunity

- Whatever the sentence imposed, judges are keenly aware of how good time impacts the length of stay in prison. All but one judge surveyed (97 percent of respondents) said they account for good time's impact on length of stay when setting prison sentences.⁶³
- Policymakers have proposed modifications to or the repeal of Nebraska's good time laws, but detailed estimates for how such changes would impact the rest of the criminal justice system have not been conducted.
- District court judges are not provided information about statewide sentencing practices, including how judges sentence individuals with similar criminal histories that committed a given offense.

terms—the parole window—is also narrowing for Class II, III, and IIIA felonies, reducing the potential period of post-release supervision.⁶⁴ (See Box: Nebraska Terminology, page 11)

- In FY2013, the average parole window was 11 months for people admitted to prison for Class IV felonies and 14 months for Class III felonies.⁶⁵

at all.⁶⁶ The slim or nonexistent parole windows of these “flat sentences” ensured that these individuals would leave prison without supervision if released.

- In FY2013, 57 percent of flat sentences were for terms of one year, which equates to a 6-month length of stay in prison after good time is applied.⁶⁷

Risk of reoffense is not a key consideration in the Board of Parole's two-stage process for making parole decisions.

- Nebraska's Board of Parole periodically holds "board reviews" with individuals in prison, sometimes well before their parole eligibility date, to monitor progress and gauge suitability for parole.
- During board reviews for individuals at or near parole eligibility, the board may schedule a parole hearing to determine whether or not to grant parole. With parole eligibility dates often so close to mandatory discharge dates, people not granted a parole hearing are likely to jam out and leave prison without supervision.
- Potential parolees are assessed using an NDCS-developed risk assessment tool, however, the tool has

not been validated since 2006, and the results of this assessment are not uniformly used by the Board of Parole to inform parole release decisions.⁶⁸ (See Box: Understanding Risk Assessment, page 14)

- Offense of conviction is a strong indicator of whether the Board of Parole will grant a parole hearing and whether an individual will ultimately receive post-release supervision. For instance, of those who received board reviews when they were at or near parole eligibility, just 12 percent of people convicted of sex offenses were granted parole hearings from FY2004 to FY2013, compared with 74 percent of people convicted of drug offenses.⁶⁹ Individuals not granted parole consideration ultimately leave prison without supervision.

The number of people granted parole has increased in recent years, but people who are at the highest risk of reoffending and others convicted of some of the most serious offenses continue to jam out.

- In FY2004, the Board of Parole granted parole 1,054 times. By FY2013, the board granted parole 1,749 times, a 66-percent increase.⁷⁰
- Despite the increase in paroles being granted, many people complete their sentences without receiving any parole supervision usually for one of two reasons: either they have short parole windows or flat sentences, allowing little to no parole opportunity, or they were deemed to pose a public safety concern and thus denied parole.

- People convicted of drug and property offenses, which typically carry shorter sentences with narrower parole windows, accounted for 50 percent of the FY2004 to FY2013 population who exited prison without supervision.⁷¹
- Drug and property offenses account for the majority of Class IV felony prison sentences, which is the offense class with the highest return to prison rate. Almost one-third of people sentenced to prison for Class IV felonies who were released in FY2010 were reincarcerated within three years.⁷²
- People convicted of sex offenses and person offenses also represented a significant portion of jam-outs (33 percent), likely because of Board of Parole resistance to grant parole to people convicted of these categories of offenses.⁷³

Restitution is rarely ordered for or collected from people sentenced to prison as compared with probation.

- Judges imposed restitution orders on just 6 percent of people sentenced to prison in FY2013 compared with 22 percent of people sentenced to probation.⁷⁴
- In the survey of district court judges, several respondents indicated that they rarely include restitution orders in sentences to prison because of statutory language requiring judges to consider the defendant's ability to pay restitution.⁷⁵

- The average restitution order for people sentenced to prison in FY2013 was \$3,177, but 75 percent of those prison restitution orders had gone completely unpaid as of July 2014, and just 15 percent had been paid in full.
- OPA has had much greater success at collecting restitution. An average of \$5,342 in restitution was imposed on 246 probationers in FY2013, and 36 percent of those orders were paid in full by July 2014, 34 percent were partially paid, and 30 percent were still completely unpaid.⁷⁶

Victim Restitution and Compensation

Courts order restitution as part of a sentence when it is demonstrated that the victim sustained pecuniary losses (such as medical expenses, lost wages, or stolen or damaged property) as a result of the crime. Restitution can be vitally important to victims because they may lack the resources to pay for all the losses they sustained as a result of the crime committed against them. In addition, collection of restitution can provide the victim with assurance that the person who committed the crime is being held accountable for his or her actions.

Court-ordered restitution does not guarantee that the person ordered to pay it will do so, but it creates a process through which victims can legally pursue restitution that is owed to them.

Victims of crime may also apply to the Nebraska Crime Victims Reparations Program for financial assistance for expenses incurred as a direct result of the crime, such as funeral costs, lost wages, and mental health treatment. Reparations are funded through state and federal appropriations and deductions from inmate wages.⁷⁷

Strategy 2: Ensure post-release supervision, and address victims' needs

POLICY OPTIONS

2 (A) Classify felony offenses according to whether they involve violence or are sex offenses.

- Enhance the rationality of Nebraska's felony classifications by more uniformly grouping offenses by the severity of the conduct involved.
- Move violent and sex offenses now categorized as Class IV felonies to the existing Class IIIA felony category. (See Figure 10)
- Create a new Class IIA felony classification to distinguish violent and sex offenses now penalized as a Class III felony from nonviolent and non-sex offenses contained in that class.

FIGURE 10. PROPOSED CHANGES TO FELONY CLASSIFICATIONS AND SENTENCE LENGTHS

Felony Class	Proposed Changes Based on Policy Option 2(A)	Proposed Sentence Lengths Based on Policy Option 2(B)
Classes I, IA, IB, IC, ID	Unchanged	Unchanged
Class II	Unchanged	Unchanged
Class IIA	Newly created felony class consisting of current Class III felony violent and sex offenses	1 to 20 years
Class III	Consists of all current Class III felony offenses except violent and sex offenses	Flat sentence plus mandatory supervision
Class IIIA	Expand to include additional violent and sex offenses currently designated as Class IV felonies	Flat sentence plus mandatory supervision
Class IV	Retain as the class containing the lowest-level nonviolent, non-sex offenses	Presumptive probation as described in Policy Option 1(C) or a flat sentence plus mandatory supervision (for those subject to a judicial override)

RATIONALE:

Adjusting penalty classifications for some sex and violent offenses will ensure that more severe offenses are clearly distinguished from lower-level nonviolent offenses.

This policy also lays the groundwork for effective implementation of policy option 2(B), as described below.

2 (B) Provide periods of incarceration followed by post-release supervision for people convicted of Class III, IIIA, and IV felonies.

- Enhance the predictability of length of stay in prison and ensure post-release supervision for Nebraska’s three lowest felony classes by providing for split sentences of defined periods of incarceration and mandatory post-release supervision. (See Figure 11)

- Order mandatory post-release supervision at the time of sentencing to ensure that every person sentenced to prison for Class III, IIIA, and IV felonies reenters the community under supervision.
- Deliver mandatory post-release supervision through the state’s probation supervision system.

FIGURE 11. PROPOSED FELONY SENTENCE RANGES AND MANDATORY POST-RELEASE SUPERVISION

	Prison Sentence Ordered	Prison Length of Stay (LOS)*	Mandatory Post-Release Supervision Period	Total (Max. Prison LOS + Supervision)	FY2004–FY2013 Average Prison LOS
Class III Felony**	1 to 4 years	6 months to 2 years	Up to 2 years	4 years	1.67 years
Class IIIA Felony**	Up to 3 years	Up to 1.5 year	Up to 1.5 years	3 years	1.25 years
Class IV Felony**	Up to 2 years	Up to 1 year	Up to 1 year	2 years	1 year

*Assuming 50-percent good time reduction
**Felony class as reconstituted under Policy Option 2(A)

RATIONALE:

The Board of Parole has granted parole to an increasing number of people in recent years, but one-third of people released from prison in FY2013 still left without supervision.⁷⁸ The prevalence of narrow parole windows and flat sentences reveals an interest in ensuring that people sentenced to prison serve out predictable terms. Unfortunately, flat sentences also provide certainty that the people receiving such sentences will be released unsupervised, regardless of their risk of reoffending or potential threat to public safety.

This policy option allows for split sentences with defined periods of incarceration and supervision that will provide front-end decision makers with the predictability they seek over length of stay in prison, while also ensuring that all Class III, IIIA, and IV felony prison sentences culminate in post-release supervision.

Mandatory post-release supervision will be delivered through Nebraska’s probation system to ensure that everyone convicted of a Class III, IIIA, and IV felony is held accountable with the appropriate level of supervision intensity. The probation system has already demonstrated

its effectiveness, with 70 percent of people leaving probation between FY2011 and FY2013 successfully completing their terms. Furthermore, probation has achieved lower recidivism rates than prison, and the system already utilizes the evidence-based practices necessary to accommodate this population.⁷⁹

The recalibration of offense classes under Policy Option 2(A) above will ensure that this split sentencing framework

applies only to those offenses best suited for determinate periods of incarceration and supervision. The creation of the new Class IIA penalty classification under Policy Option 2(A) will allow judges the ability to continue sentencing people convicted of violent and sex offenses to prison for lengthier periods and will retain the role of the Board of Parole in determining when such individuals should be released.

2 (C) Require that individuals convicted of the most serious offenses be supervised after release from prison.

- Adopt parole guidelines that ensure that all parole-eligible people sentenced to prison for Class I(A-D),

II, and IIA felonies receive a minimum of nine months of post-release supervision.

- Utilize risk assessment information in parole-release decision making.

RATIONALE:

While policy option 2(B) ensures that all people sentenced to prison for Class IV, IIIA, and III felonies receive mandatory post-release supervision, this policy also ensures that people convicted of more serious offenses that fall in the newly created Class IIA as well as Class II and I(A-D) categories receive

post-release supervision, provided they are eligible for parole. These individuals would be supervised, as they are now, by parole officers. Collectively, this policy option and the creation of split sentences under Policy Option 2(B) are projected to reduce future jam-outs by 70 percent by FY2020.

2 (D) Expand use and improve collection of victim restitution from people sentenced to prison.

- Clarify that sentencing courts may include restitution orders in sentences to prison or jail.
- Specify that potential wages paid while incarcerated and potential deposits into the defendant's institutional trust account may be considered when the sentencing court calculates the amount of restitution to be paid.

- Adopt a uniform sentencing order that clearly directs NDCS to collect restitution from all people committed to NDCS facilities that owe restitution.
- Require NDCS to deduct 25 percent on a monthly basis from deposits into institutional trust accounts and from wages earned in prison or while on work release until restitution obligations are satisfied.

RATIONALE:

Few people sentenced to prison are ordered to pay restitution to their victims and fewer still actually fulfill their restitution obligations.⁸⁰ Judges report not ordering restitution when sentencing a defendant to incarceration because of statutory language directing the judge to consider the defendant's ability to pay when setting the amount of restitution.⁸¹

This policy would make clear that judges may order that defendants sentenced to incarceration pay restitution and will clarify that institutional wages, work release earnings, and trust account deposits are sources of potential future income that may be considered when determining the amount of restitution to be paid. Clearer sentencing orders and new NDCS policies will ensure that restitution is collected from these sources and remitted to victims.

2 (E) Evaluate current prison good time policies and estimate the impacts of proposed modifications.

- Establish a task force of criminal justice system representatives to assess good time statutes and departmental policies, evaluate reform proposals, and generate impact estimates.

RATIONALE:

Prior to and during Nebraska's justice reinvestment process, state leaders proposed modifications to or repeal of existing good time statutes. Others argued for preserving the statutes as currently constructed, while still others pressed for keeping existing statutes but altering how they are administered in prisons. State policymakers have not, however, been provided with detailed estimates of how these proposals would impact

- Direct the task force to evaluate potential impacts to sentencing by surveying criminal justice system stakeholders, study how good time is applied as a behavior management tool inside correctional facilities, and analyze how reforms would impact correctional costs, demand for prison beds, and public safety.
- Submit the results of the study to the legislature and governor.

felony sentencing practices, behavior management within prisons, correctional costs, and the prison population. Evaluation of Nebraska's good time policies will ensure that policymakers and criminal justice stakeholders better appreciate the role these policies play and provide a clearer understanding of how modifications would impact the system.

CHALLENGE 3: INSUFFICIENT SUPERVISION. Nebraska's parole supervision system lacks the resources necessary to handle a growing parole population, has not fully adopted evidence-based practices, and is not positioned to respond effectively to parole violations.

FINDINGS AND ANALYSIS

Nebraska's parole supervision system does not use a validated risk assessment to determine supervision intensity or program and treatment recommendations and requirements.

- The tool used by parole officers to identify parolee needs is not an actuarial risk assessment tool and

does not measure parolees' risk of reoffending or key needs like criminal thinking or attitude, which are closely tied to recidivism. (See Boxes: Nebraska Felony Sentencing Options and Supervision Types, page 7, and Understanding Risk Assessment, page 14)

Responses to parole violations can be inconsistent and ineffective.

- Nebraska's parole supervision system uses a matrix to inform appropriate sanctioning responses for parole violations. The use of the matrix is not mandatory for parole officers, however, and remains subject to review by the Board of Parole, which can overrule

administratively imposed sanctions in favor of revocation.

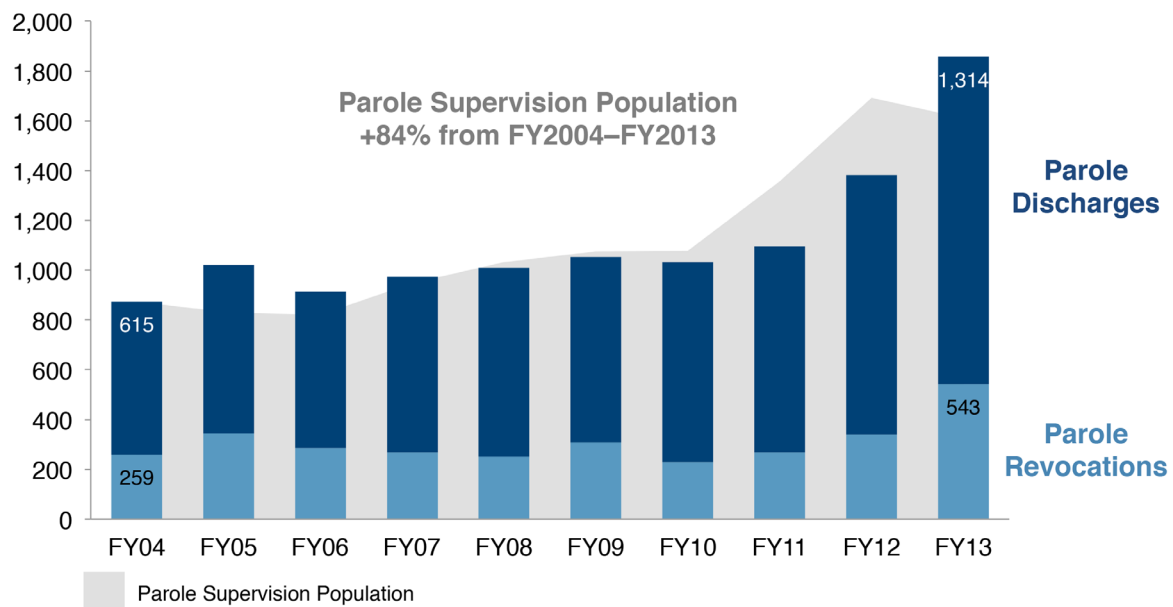
- Parole officers do not have authority to impose short periods of incarceration in response to violations and must instead resort to full revocation when administrative sanctions have failed to deter violations.

When the parole supervision population swelled in recent years, revocations to prison increased.

- The parole population nearly doubled between FY2004 and FY2013, increasing 84 percent, from 874 to 1,611 people on parole.⁸² (See Figure 12)
- In FY2013, 17 percent of all admissions to prison were parole revocations, up from 10 percent in FY2004.⁸³

- People revoked from parole are still a small overall share of the prison population because of their short and declining length of stay. The median length of stay for parolees revoked to prison decreased from 6.7 months in FY2004 to 4.9 months in FY2013.⁸⁴
- Of the total prison population in FY2013 (4,928 people), 8 percent (393 people) had been revoked from parole.⁸⁵

FIGURE 12. PAROLE SUPERVISION POPULATION AND PAROLE TERMINATIONS BY TYPE, FY2004–FY2013⁸⁶



Half of parole violators are released from prison without supervision.

- In FY2013, half of people revoked to prison were re-paroled and received ongoing community supervision.

- The remaining half reached their mandatory discharge date and were released from prison without any further supervision in the community.⁸⁷

Strategy 3: Improve parole supervision to reduce recidivism among individuals released from prison

POLICY OPTIONS

3 (A) Adopt a risk assessment tool to assess parolees' risk and needs.

- Require the use of a validated actuarial risk and need assessment and ensure that individuals are assessed

upon release to parole supervision and reassessed regularly.

- Revalidate the adopted risk and need assessment tool regularly.

RATIONALE:

Adoption of an assessment tool would allow the Parole Administration to base supervision intensity, program requirements, and treatment delivery on assessed risks and criminogenic needs. This would allow the department to better prioritize resources for people with

the highest needs and risk of reoffending. Currently, people on parole supervision are not assessed for risk and need. Instead, the Parole Administration uses an unvalidated case management tool to inform supervision intensity.

3 (B) Adopt evidence-based practices in parole supervision to change criminal thinking and behavior.

- Adopt parole supervision policies differentiating caseloads based on the assessed risk and need of parolees and provide the most intensive supervision to people assessed as having the highest risk and need.

- Adopt parole supervision policies that prioritize delivery of programming and treatment to people assessed as having the highest risk of reoffending and the greatest needs.
- Implement new pre- and in-service training for parole officers regarding risk-based differentiation of caseloads, officer contacts, and program and treatment prioritization.

RATIONALE:

Research shows that concentrating supervision and treatment resources on people with the greatest needs and risk of reoffending has the greatest impact on recidivism. Furthermore, requiring intense supervision for low-risk people has been shown to be counterproductive, with recidivism rates actually increasing. People assessed as having a low risk for reoffending are more likely to have supports in their lives—such as jobs, friends, and family—that have been

shown to be positive influences. Intensive supervision and treatment can disrupt these influences.⁸⁸

Currently, Nebraska's parole system does not utilize a validated risk and need assessment and is therefore unable to direct resources in a systematic way. With the adoption of a risk assessment under Policy Option 3(A), NDCS will be well situated to adopt policies ensuring the most effective use of finite resources.

3 (C) Respond to parole violations with swift and certain sanctions.

- Direct NDCS to enhance the existing graduated violation sanction and rewards matrix to factor in the

parolee's assessed risk of reoffending and the seriousness of the violation.

- Provide officer training and agency oversight to ensure the consistent statewide application of the matrix.

RATIONALE:

This policy will ensure sanctions and incentives are predictable, proportionate, and applied consistently statewide. Such systems of sanctions and incentives, can deter unwanted behaviors and encourage good behaviors if perceived as fair, just, and neutral by parolees. Research has found that supervision

outcomes are best when responses are swift, consistent, and proportional, and when positive behavior is reinforced with incentives. Although they may be effective independent of one another, they work best in concert.⁸⁹

3 (D) Respond to major parole violations with short periods of incarceration followed by supervision.

- Utilize custodial sanctions of 30 days in prison, after good time reductions, for parolees who are at a high risk of reoffending, who commit a serious violation of the conditions of their parole, and who have already exhausted other sanctioning options.

RATIONALE:

Custodial sanctions will allow parole officers to respond more swiftly and decisively to certain violations of parole supervision. Currently, officers must request that the Board of Parole institute a full revocation when parolees exhaust the spectrum of graduated sanctioning options. Revocation requires a hearing before the Board of Parole, which can occur a month or more after the violation took place. Custodial sanctions, which would not require a hearing, could begin more promptly and allow

- Permit parolees who commit a serious violation to be revoked to prison if they have already received two custodial sanctions.
- Establish policies and training for parole supervision officers to ensure that these confinement periods are designated as the most severe response on the violation sanction matrix.
- Preserve judges' authority to impose longer periods of incarceration for parolees who are convicted of a new criminal offense while under supervision and sentenced to prison or jail.

greater opportunity for parolees to return to supervision as opposed to waiting for a revocation hearing and potentially being released without supervision.

People revoked to prison may remain in prison for the duration of their sentences and be released without supervision. In contrast, people receiving custodial sanctions would return directly to parole supervision, provided time remains on their sentences.

Sustainability

The Justice Reinvestment Working Group identified seven additional policies to assess, track, and ensure the sustainability of the recidivism-reduction strategies outlined in the Justice Reinvestment Policy Framework:

- Establish an oversight committee to measure and assess policy impacts of the Justice Reinvestment Policy Framework on an ongoing basis.
- Evaluate the quality of prison- and community-based programs and use results to make adjustments to improve outcomes.
- Track and report restitution collections within the OPA and NDCS in order to establish a baseline against which future collections may be measured.
- Require criminal justice agencies to complete fiscal impact statements for proposed criminal justice legislation that include, to the extent feasible, prison population projections and the estimated cost of adding capacity.⁹⁰
- Create a sentencing information database to help judges appreciate variations in sentencing practices within their districts and as compared to others across the state.⁹¹
- Launch a process for reaching agreement between county governments and the state on the overhead costs associated with probation operations.⁹²
- Enable access to State Patrol criminal history data for research purposes.⁹³

ENDNOTES

- ¹ Nebraska Department of Correctional Services (NDCS), *December 2014 Monthly Data Sheet* (Lincoln: NDCS, December 31, 2014).
- ² NDCS, *FY2004 Annual Report and Statistical Summary* (Lincoln: NDCS, 2004); NDCS, *FY2013 Statistical Report* (Lincoln: NDCS, 2013).
- ³ 98th Legislature, *State of Nebraska FY2003–04/FY2004–05 Biennial Budget* (Lincoln: Legislative Fiscal Office, August 2003); 103rd Legislature, *State of Nebraska FY2013–14/FY2014–15 Biennial Budget* (Lincoln: Legislative Fiscal Office, August 2013).
- ⁴ U.S. Department of Justice and Federal Bureau of Investigation, “Unified Crime Report Data Online,” accessed December 1, 2014, <http://www.ucrdatatool.gov/Search/Crime/State/StateCrime.cfm>; Council of State Governments (CSG) Justice Center analysis of NDCS FY2004–FY2013 prison admissions and releases data.
- ⁵ NDCS, *December 2014 Monthly Data Sheet*; Abby L. Vandenberg, *NDCS Design Capacity and Average Daily Population—FY1982–FY2023* (Lincoln: NDCS, July 24, 2014).
- ⁶ NDCS, Dewberry, and Carlson West Povondra Architects, *2014 Master Plan Report* (Lincoln: NDCS, October 27, 2014).
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- ⁸ Abby L. Vandenberg, *NDCS Design Capacity and Average Daily Population—FY1982–FY2023*; Cumulatively, the policy framework is expected to create demand for an additional 32 jail beds statewide in FY2020.
- ⁹ NDCS, Dewberry, and Carlson West Povondra Architects, *2014 Master Plan Report*; Per diem rates for averted operational costs developed by CSG Justice Center in consultation with NDCS on December 10, 2014.
- ¹⁰ Nebraska Office of Probation Administration (OPA) probation supervision and problem solving court data. “Active” means probationers under current supervision and not on absconder or administrative status. Felony probationer count includes SSAS participants.
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- ¹² *Ibid.*
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- ¹⁴ E. Ann Carson, *Prisoners in 2013* (Washington, DC: Bureau of Justice Statistics, September 30, 2014), <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=5109>.
- ¹⁵ CSG Justice Center analysis of FY2004 and FY2013 Bureau of Justice Statistics incarceration data.
- ¹⁶ CSG Justice Center analysis of FY2012–FY2013 JUSTICE sentencing data; JUSTICE is the Nebraska state trial courts case management system.
- ¹⁷ Sean Rosenmerkel, Matthew Durose, and Donald Farole, *Felony Sentences in State Courts, 2006—Statistical Tables* (Washington, DC: Bureau of Justice Statistics, December 2009), <http://www.bjs.gov/content/pub/pdf/fssc06st.pdf>.
- ¹⁸ Erinn J. Herberman and Thomas P. Bonczar, *Probation and Parole in the United States, 2013* (Washington, DC: Bureau of Justice Statistics, October 2014), <http://www.bjs.gov/content/pub/pdf/ppus13.pdf>.
- ¹⁹ CSG Justice Center analysis of FY2012–FY2013 JUSTICE sentencing data.
- ²⁰ *Ibid.*; Office of Community Alternatives, *Statewide Dispositions—Fiscal Year 2012* (Michigan Department of Corrections, November 2012); Sean Rosenmerkel, Matthew Durose, and Donald Farole, *Felony Sentences in State Courts, 2006—Statistical Tables*; Michelle Hall, Amy Craddock, and Ginny Hevener, *Structured Sentencing Statistical Report for Felonies and Misdemeanors, Fiscal Year 2011/12* (North Carolina Sentencing and Policy Advisory Commission, February 2013), http://www.nccourts.org/Courts/CRS/Councils/spac/Documents/statisticalrpt_fy11-12.pdf; Idaho Department of Corrections FY2012 admissions data; Kansas FY2011 sentencing data. The data provided in this figure are the latest data that were available to the CSG Justice Center at the time of this report’s publication.
- ²¹ CSG Justice Center analysis of FY2012–FY2013 JUSTICE sentencing data.
- ²² *Ibid.*
- ²³ *Ibid.*
- ²⁴ *Ibid.*
- ²⁵ *Ibid.*
- ²⁶ *Ibid.*; CSG Justice Center analysis of OPA presentence investigation data.
- ²⁷ NDCS, *FY2013 Statistical Report*; New admissions to prison do not include people revoked from parole and readmitted to prison.
- ²⁸ CSG Justice Center analysis of NDCS FY2013 prison admissions data.
- ²⁹ CSG Justice Center analysis of NDCS FY2013 prison releases data.
- ³⁰ CSG Justice Center analysis of NDCS FY2013 prison admissions data.
- ³¹ Bureau of Labor Statistics, “BLS Inflation Calculator,” accessed August 7, 2014, <http://data.bls.gov/cgi-bin/cpicalc.pl>.
- ³² CSG Justice Center analysis of state felony theft statutes, August 2014.
- ³³ CSG Justice Center analysis of JUSTICE sentencing data and NDCS FY2013 average annual cost per prison inmate.
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- ³⁵ CSG Justice Center analysis of NDCS FY2013 prison admissions and releases data.
- ³⁶ CSG Justice Center analysis of NDCS FY2004–FY2013 prison releases data.
- ³⁷ CSG Justice Center analysis of NDCS FY2004–FY2013 prison admissions data.
- ³⁸ CSG Justice Center analysis of OPA data; Sean Rosenmerkel, Matthew Durose, and Donald Farole, *Felony Sentences in State Courts, 2006—Statistical Tables*.
- ³⁹ CSG Justice Center analysis of OPA FY2013 probation placement

data and NDCS FY2013 prison admissions data.

⁴⁰ OPA, *Nebraska Probation Biennial Report*, 2010–2011, (Lincoln: OPA 2011) https://supremecourt.nebraska.gov/sites/supremecourt.ne.gov/files/probation/pdf/Biennial%20Report%202010-2011_Final.pdf; NDCS FY2014 average annual cost per prison inmate.

⁴¹ CSG Justice Center analysis of prison admissions and releases data and OPA presentence investigation data.

⁴² Stephanie Lee, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, and Laurie Anderson, *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes*, (Olympia: Washington State Institute for Public Policy, April 2012).

⁴³ CSG Justice Center analysis of prison admissions and releases data and OPA presentence investigation and probation placement data; This comparison between prison and probation recidivism rates does not control for assessed risk level.

⁴⁴ OPA data.

⁴⁵ CSG Justice Center survey of Nebraska district court judges, October 2014.

⁴⁶ CSG Justice Center analysis of OPA FY2011–FY2013 terminations data; Nebraska’s probation system began tracking successful completions in FY2011.

⁴⁷ OPA data.

⁴⁸ CSG Justice Center focus groups with probation officers, August 5–7, 2014.

⁴⁹ CSG Justice Center analysis of NDCS FY2011–FY2013 prison admissions data and OPA FY2011–FY2013 probation terminations data.

⁵⁰ CSG Justice Center survey of Nebraska district court judges, October 2014.

⁵¹ CSG Justice Center focus groups with probation officers, August 5–7, 2014.

⁵² Christopher Lowenkamp and Edward Latessa, “Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders,” *Topics in Community Corrections* (2004) 3–8; Edward Latessa, “The Challenge of Change: Correctional Programs and Evidence-Based Practices,” *Criminology & Public Policy*, 3, no. 4 (2004), 547–560; Marshall Clement, Matthew Schwarzfeld, and Michael Thompson, *The National Summit on Justice Reinvestment and Public Safety: Addressing Recidivism, Crime, and Corrections Spending* (New York: CSG Justice Center, 2011).

⁵³ Inter-rater reliability means that two different staff members would score the same individual the same way on the risk instrument. Intra-rater reliability means the same staff person would score the same individual the same way repeatedly with no change in circumstances.

⁵⁴ CSG Justice Center focus groups with probation officers, August 5–7, 2014.

⁵⁵ CSG Justice Center analysis of JUSTICE sentencing data and NDCS FY2013 average annual cost per prison inmate.

⁵⁶ Ga. Code Ann. § 16-8-12.

⁵⁷ Neb. Rev. Stat. §§ 28-518, 28-631, 28-638, 28-639, 28-611-611.01,

28-620, 28-603, 23-135.01, 28-604, 28-504, 9-262, 9-352, 9-434, 9-652, 68-1017-1017.01, 71-2228-2229, 28-514, 28-519, 28-1344-1345, 28-1102-1104.

⁵⁸ CSG Analysis of NDCS FY2013 prison releases data; Six-month misdemeanor length of stay includes jail time.

⁵⁹ Christopher Lowenkamp and Ed Latessa, “Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders.”

⁶⁰ Edward Latessa, *From Theory to Practice: What Works in Reducing Recidivism?* (Cincinnati: University of Cincinnati Press, 2007); The Risk-Need-Responsivity principle contends that matching the level of service to the individual’s risk of reoffending should be based on static factors (e.g., age at first arrest or gender) and dynamic factors (e.g., substance abuse or antisocial attitudes). High-risk individuals should receive more intensive intervention. The need principle asserts that criminogenic needs should be assessed and targeted in treatment. High-risk individuals should receive intensive treatment, while low-risk individuals should receive minimal or no treatment. The responsivity principle maintains that a rehabilitative intervention should be tailored to the learning style, motivation, abilities, and strengths of the individual.

⁶¹ Stephanie Lee, Steve Aos, Elizabeth Drake, Annie Pennucci, Marna Miller, and Laurie Anderson, *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes*.

⁶² CSG Justice Center analysis of NDCS FY2011–FY2013 prison admissions data and OPA FY2011–FY2013 probation terminations data.

⁶³ CSG Justice Center survey of Nebraska district court judges, October 2014.

⁶⁴ CSG Justice Center analysis of NDCS FY2004–FY2013 prison admissions data.

⁶⁵ CSG Justice Center analysis of NDCS FY2013 prison admissions data.

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ CSG Justice Center focus group with Nebraska Board of Parole, October 17, 2014.

⁶⁹ CSG Justice Center analysis of Nebraska Board of Parole FY2004–FY2013 hearing data.

⁷⁰ *Ibid.*; Parole grant totals include people previously revoked from parole to prison and reparaoled.

⁷¹ CSG Justice Center analysis of NDCS FY2004–FY2013 prison releases data.

⁷² NDCS, *Three-Year Recidivism Data Report for FY2010 Prison Releases* (Lincoln: NDCS, April 7, 2014).

⁷³ CSG Justice Center analysis of NDCS FY2004–FY2013 prison releases data and Nebraska Board of Parole hearing data.

⁷⁴ CSG Justice Center analysis of JUSTICE sentencing data; Because of limitations in the JUSTICE database, restitution paid pre-sentencing is not included in this analysis, which may lead to underreporting.

⁷⁵ CSG Justice Center survey of Nebraska district court judges, October 2014.

⁷⁶ CSG Justice Center analysis of JUSTICE sentencing and restitution data.

⁷⁷ For more information about victim restitution, see Nebraska Crime Commission, “Crime Victim Services/Reparations,” accessed December 1, 2014, http://www.ncc.nebraska.gov/services_programs/victim_services.htm.

⁷⁸ NDCS, *FY2013 Statistical Report*.

⁷⁹ CSG Justice Center analysis of prison admissions and releases data and OPA FY2011–FY2013 releases data.

⁸⁰ CSG Justice Center analysis of JUSTICE sentencing and restitution data.

⁸¹ CSG Justice Center survey of Nebraska district court judges, October 2014; Neb. Rev. Stat. § 29-2281.

⁸² CSG Justice Center analysis of NDCS FY2004–FY2013 parole supervision data.

⁸³ CSG Justice Center analysis of NDCS FY2004–FY2013 prison admissions data.

⁸⁴ CSG Justice Center analysis of NDCS FY2004–FY2013 prison releases data.

⁸⁵ CSG Justice Center analysis of NDCS FY2013 prison snapshot

population data.

⁸⁶ NDCS FY2004–FY2013 parole snapshot population and releases data.

⁸⁷ CSG Justice Center analysis of NDCS FY2013 prison releases data.

⁸⁸ Christopher Lowenkamp and Ed Latessa, “Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders.”

⁸⁹ Eric Wodahl et al., “Utilizing Behavioral Interventions to Improve Supervision Outcomes,” *Criminal Justice and Behavior* 34, no. 4 (2011): 386–405.

⁹⁰ Kentucky adopted similar requirements in 2013, which are now codified at Ky. Rev. Stat. § 6.949.

⁹¹ Idaho, which has a similar sentencing system, established a database accessible by the judges and general public at <http://sentencing.isc.idaho.gov/>.

⁹² Neb. Rev. Stat. § 29-2259(4)-(5) requires county governments to provide probation officer workspace.

⁹³ The CSG Justice Center was unable to access criminal arrest data for analysis purposes because of confidentiality restrictions contained in Neb. Rev. Stat. § 29-3523.



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