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The Future of Nebraska's Prisons By Jordan Cash

Last May, the Supreme Court ruled 5-4 that California's overcrowded prisons violated constitutional protections against cruel and unusual punishment, and that the state would have to reduce its prison population by 33,000 in order to correct this constitutional breach.^[1] With Nebraska's prison capacity drifting around 140 percent,^[2] this raises the issue of whether Nebraska could be next to face a situation similar to that of California.

Experts on the subject appear to generally agree that Nebraska is in good shape in the short term. California's long train of litigation and court orders over its prisons led to the Supreme Court ruling. According to Marc Levin, director of the Center for Effective Justice at the Texas Public Policy Foundation and author of a policy study on Nebraska Criminal Justice Reform published by the Platte Institute last February, Nebraska is not in danger of a similar lawsuit, but the ruling should be instructive to Nebraska on the importance of managing prison overcrowding.^[3]

Former Speaker of the Legislature Kermit Brashear noted that Nebraska averted a California-like situation with the implementation of the Nebraska Community Corrections Council (CCC) in the early 2000s.^[4] The CCC was a group that brought criminal policy makers from many diverse groups to find community based punishments and avoid sending more offenders to jail, as well as finding ways to reduce recidivism.^[5] The group has since been abolished with the implementation of LB 390, which moved its functions to the control of the Nebraska Commission and Law Enforcement Division, as well as a part of its budget to the Nebraska Supreme Court.^[6]

While Nebraska may not be next to face a California type situation, its criminal justice system is in need of further reforms. Prisons remain at around 140 percent capacity, a number that seems unlikely to fall even as reforms such as early-parole are implemented to try and solve the problem.^[7] Brashear also commented that the break-up of the CCC from LB 390 may make it even harder to keep community corrections facilities working efficiently, as it becomes more dispersed once again.^[8]

An overcrowded prison population at 140 percent capacity does not contain prison costs, an important consideration in this era of economic instability.

One possible solution is to review community level corrections. California is currently looking to county jails as a way to alleviate overcrowding; something that Mr. Levin

said could also work in Nebraska, as most people in county jail are there for low level misdemeanors and simply being held for bail. Some transitions from state to county facilities, particularly for low level offenses, would be a first step to decreasing prison overcrowding at the state level.^[9] State Sen. Brad Ashford, chair of the Legislature's Judiciary Committee, also noted that further reducing recidivism-which is fairly low in Nebraska at 26.5 percent, compared to the national average of 41-70 percent^[10]-would be the best way to combat prison overcrowding.^[11]

Other options include those detailed by the Platte Institute's policy study, including a renewed focus on drug courts, geriatric parole, and mental health courts as ways to reduce the prison population. Specifically, making low level drug offenses a health issue as an alternative to incarceration. On recidivism, probation reform could be enacted for immediate and graduated punishment when probation is violated. A UCLA study showed this decreased violations by 80 percent. Also, linking probation funding to performance, with the probation department receiving additional funds when the recidivism rate goes down could help decrease probation violations. In Arizona, when a program like this was enacted, the rate of probationers violating the terms of their probation and being sent to prison decreased by 12.8 percent.^[12]

These are just a few of the options for Nebraska to address the overcrowded prison population. The bottom line is that if Nebraska does not address this issue now, it will become a major issue in the future, putting Nebraska at risk for lawsuits and threatening the state's financial stability. Nebraska is in a good position for prison reform, especially when, as of 2007, over half of the offenders in Nebraska's prisons were non-violent offenders.^[13] The solutions are out there, and now is the time for Nebraska to implement them and lead the way in prison reform.

^[1] "High court's Calif. Ruling could lead to overhaul" (May 24, 2011). Accessed June 9, 2011: <http://www.foxnews.com/us/2011/05/24/high-courts-calif-ruling-lead-overhaul/>.

^[2] Marc Levin and Vikrant Reddy, "Controlling Costs and Protecting Private Safety in The Cornhusker State." Policy Study, Platte Institute for Economic Research (February 2011), 3.

^[3] Author interview with Marc Levin, June 16, 2011.

^[4] Author interview with Kermit Brashear, June 24, 2011.

^[5] Nebraska Community Corrections Council, accessed June 6, 2011, <http://ccc.nebraska.gov/about.html>.

^[6] Nebraska Community Corrections Council, accessed June 6, 2011,

<http://ccc.nebraska.gov/index.html>.

[7] Paul Hammel, "Nebraska's efforts to alleviate prison overcrowding fall short" in *Omaha World Herald*, 1B-2B, June 19, 2011.

[8] Author interview with Kermit Brashear, June 24, 2011.

[9] Levin, June 16, 2011.

[10] LR 171 Sentencing and Recidivism Task Force Report, January 1, 2011. Accessed June 25, 2011, <http://www.nlc.nebraska.gov/epubs/L3790/B073-2011>.

[11] Ashford, June 24, 2011.

[12] Levin and Reddy, 4-11.

[13] *Ibid.*, 4.



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