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Comment

NEBRASKA JAILS: CURE OR CAUSE?

"Confinement" to the average Nebraskan conjures up visions of the state penitentiary or at least one of the state reformatories or training schools. But to the inmates of those institutions, confinement usually commenced long before they entered those relatively progressive establishments. Those inmates, along with a larger number of confinees who have never been in a state correctional institution, have experienced life in Nebraska's "grass-root" correctional institution, the local jail. The jail in Nebraska, be it a county, city or village jail, is not unique, for conservative estimates place the number of jails in the United States at over 10,000.1 These jails have been the subject of severe criticism which is often ignored:

The endurance of the county and local jail is remarkable. Where else in our social history may be found an institution that has so well survived the pressures of public opinion? Where else may be found an institution that has so stubbornly defied physical change? Where else may be found an institution that may well continue to exist in the last half of the twentieth century precisely as it has in the preceding 160 odd years?...In all history it is doubtful if any other form of institution has been so successful in defying improvement as has the jail.2

Such a condemnation raises the question as to whether this generalization is applicable to the jails in Nebraska.

An inquiry into Nebraska's jails is warranted and long overdue. In an age when great steps are being made in penal reform on the state and federal level and when the issue of law and order is salient, the state cannot afford to allow a major segment of its correctional community to maintain the status quo if it is injurious to the state's welfare. This is especially true when that segment has daily contact with more individuals than have either state or federal institutions, and is the origin of first impressions toward law enforcement and the correctional system. To analyze the jail systems in the state, it is necessary to study the legal basis of the jail system as contained in the laws, how that system operates today, what about the system gives rise to concern and what can be done to improve the system. Throughout the analysis, a comparison to national statistics is meaningful to deter-

1 Casey, Catchall Jails, 293 ANNALS 28 (1954).
mine if the comments and recommendations of national and federal authorities are relevant in Nebraska.

I. STATUTORY PROVISIONS

The State of Nebraska has authorized the establishment of jails by counties, cities of the metropolitan class, cities of the primary class and cities of the first class. Therefore, there may exist in the state 119 authorized jails for the detention of both convicted prisoners and those persons confined pending disposition. But in addition to these authorized jails, the law also provides for the detention of offenders by policemen of cities of the second class in "the city prison." Further, the law authorizes construction of any necessary building for the use of the city, thus implying the existence of an authority to establish a jail. This is recognized in *Dunkin v. Blust* where the court held that the power of a municipality to build a jail is necessarily implied and incident to the expressed power to enforce and collect fines, which power both cities of the second class and villages possess. These two classifications contain 88 and 423 municipalities respectively, and raise the potential number of jails in the state to 630. It is also noted that statutory provisions exist for the establishment of a county workhouse on the site of the county jail. As the missions of the jail and the workhouse have become integrated and since no statistics exist on the workhouse, it will not be dealt with separately and the comments relating to the jail system will apply equally to a workhouse system.

The individual in charge of the municipal jail is not specified; but for the county jail the statutes merely direct that the sheriff

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6 Neb. Rev. Stat. § 16-239 (Reissue 1962). It is noted that cities apparently have the authority under the pertinent aforesaid statutes to construct more than one jail, whereas counties are restricted to one jail each.
7 This estimate is arrived at by adding the total number of governmental units involved, i.e., 93 counties, 1 city of the metropolitan class, 1 city of the primary class and 24 cities of the first class. Nebraska Legislative Council, Nebraska Blue Book 1966 at 511-12.
10 83 Neb. 80, 119 N.W. 8 (1908).
12 Nebraska Legislative Council, Nebraska Blue Book 1966 at 512.
shall have charge and custody.\textsuperscript{14} If the sheriff does not elect to act as jailer, a deputy shall so serve but the sheriff will be liable for any negligence or misconduct on the behalf of the jailer.\textsuperscript{15} Provision is made for the supervision or inspection of all jails by designated officials:

(a) the county grand jury \textit{may} examine the county jail and report its findings and recommendations to the court;\textsuperscript{16}

(b) the county board \textit{will} visit the county jail four times a year;\textsuperscript{17}

(c) the district judges \textit{shall} make the regulations for county and city jails (The former to be done "from time to time as they may deem necessary"\textsuperscript{18} and the latter at least annually.\textsuperscript{19} However, no requirement exists that the judges physically inspect the jails.);

(d) the sheriff \textit{shall} examine the county jail and prisoners monthly;\textsuperscript{20} and

(e) the Department of Health \textit{shall} inquire into all jails "from time to time."\textsuperscript{21}

Other than the Department of Health inquiry and the rules set out in the statutes as to the operation of the jails, the state has no other control over them nor does it have any effective procedure for monitoring their operation. This is not unusual, for less than one-third of the states provide statewide supervision or inspection of local jails.\textsuperscript{22} The statutes do require the county board to forward to the Auditor of Public Accounts a copy of the rules prescribed by the district judge.\textsuperscript{23} At one time the sheriff was required to file a copy of his annual jail report with the secretary of state, but this was revised in 1961\textsuperscript{24} and that copy now goes to the county clerk.\textsuperscript{25}

\begin{flushleft}
\textsuperscript{17} Neb. Rev. Stat. § 47-109 (Reissue 1968).
\textsuperscript{19} Neb. Rev. Stat. § 47-201 (Reissue 1968).
\textsuperscript{20} Neb. Rev. Stat. § 47-114 (Reissue 1968).
\textsuperscript{22} M. Richmond, \textsc{Prison Profiles} 151 (1965).
\textsuperscript{24} Neb. Laws c. 231, § 1, p.686 (1961).
\end{flushleft}
When the sheriff elects to act as jailer, he receives fees in addition to his basic salary\textsuperscript{26} based on the number of prisoners confined. A deputy appointed as jailer is entitled to those fees in lieu of the sheriff.\textsuperscript{27} For counties of over 200,000 population, the regulations differ to require a billing of the county for costs incurred in lieu of a set fee schedule.\textsuperscript{28}

The maximum sentence for jail confinement appears to be one year as it is in thirty of the states,\textsuperscript{29} but the statutes do not expressly set this limit. One section of the statutes in specifying who may be sentenced to a workhouse speaks of "offenses for which a jail sentence of one year or less may be imposed,"\textsuperscript{30} thereby implying that jail sentences in excess of one year may exist or be authorized. Jail inmates may be confined to serve out a fine they were unable to pay as the statutes provide for commitment to a jail until the fine and costs be paid.\textsuperscript{31} If the inmate is unable to pay, the fine may be eroded at the rate of six dollars for every day confined.\textsuperscript{32}

\textsuperscript{26} NEB. REV. STAT. § 33-117 (Reissue 1968). The statute provides for the following fees: "for guarding prisoners when it is actually necessary, four dollars per day, to be paid by the county; where there are prisoners confined in the county jail, three dollars shall be allowed the sheriff as jailer; for boarding prisoners, other than state prisoners, two dollars per day, except one dollar per day for the first and last day, in all counties where there is an average of less than fifty prisoners per day, computed on the basis of all kinds of prisoners, whether city, county, state, federal, or any other class, confined in the jail, and ninety cents per day where there is an average of more than fifty such prisoners per day...."

\textsuperscript{27} Scott v. Scotts Bluff County, 106 Neb. 355, 183 N.W. 573 (1921).

\textsuperscript{28} NEB. REV. STAT. § 33-117.01 (Reissue 1968). The statute provides that: "the county board shall provide proper quarters and adequate equipment for the preparation and serving of all meals... The county sheriff shall have full charge and control of the quarters and service, and shall prepare and furnish all meals and provide all washing, fuel, lights and clothing for prisoners at actual cost to the county.... All supplies... shall be purchased and provided, under the direction of the county board, by a person, other than the county sheriff or any of his deputies, designated by the county board." No additional fees for committing, guarding, confining or boarding prisoners are authorized.

\textsuperscript{29} NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CORRECTION IN THE UNITED STATES 141 (1966).

\textsuperscript{30} NEB. REV. STAT. § 23-417 (Reissue 1962).

\textsuperscript{31} NEB. REV. STAT. §§ 29-2206, -2404 (Reissue 1964).

\textsuperscript{32} NEB. REV. STAT. § 18-206 (Reissue 1962); NEB. REV. STAT. § 29-2412 (Reissue 1964).
II. SURVEY OF STATUS

To obtain statistical data for the State of Nebraska Governor's Commission on Law Enforcement and Criminal Justice, a law enforcement questionnaire was circulated during the Fall of 1968 to all county and municipal law enforcement agencies in Nebraska. One section of the questionnaire dealt with jails and the results provide the only detailed current information available on the status of the jails in the state. Two hundred and ninety-six questionnaires were completed and returned, seventy-six from counties and the remaining two hundred and twenty from municipalities, thus the results reflect the jail situation in approximately eighty per cent of the counties and forty per cent of the municipalities. Of those responding, one hundred and forty-four indicated their jails were used for the confinement of convicted as well as detained prisoners. The following statistics are based on the response of those one hundred and forty-four.

The picture presented by this survey of the average Nebraska jail is unfortunately in line with the national average and is therefore not a source of pride. The physical building is over fifty years old, having undergone no major physical improvements since its construction. Its capacity is less than ten inmates and allows for no segregation of prisoners by age, nature of offense, or conviction status. It has no facilities for physical recreation or exercise and there are no immediate plans for alteration or new construction. The staff is part-time, untrained and does not maintain a twenty-four hour surveillance over the facility. Less than twenty man-hours a week are devoted to jail activities. The inmate population is usually less than five and consists of males over twenty-five who will be confined for less than a month for an offense related to drunkenness. While confined their time will probably be spent just sitting or working around the jail.

While the foregoing is a generalization, it is not far removed from actual fact. Close attention should be given to the actual statistics while, at the same time, comparing them with national

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Although permission was granted by the consulting staff of the Commission to use the statistical data, the facts and conclusions contained herein are the result of the writer's own independent analysis of these materials and does not reflect the opinions of the Commission or its staff. Other than providing access to the survey results, no other assistance was provided by the Commission or its staff and nothing in this comment is to be construed as having the approval or endorsement of either the Commission, its staff or the State of Nebraska.
statistics to determine the applicability of national recommendations to the State of Nebraska. The physical ages of the buildings housing the jails are shown in Table 1.

<table>
<thead>
<tr>
<th>Age</th>
<th>National %</th>
<th>Nebraska %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-24 years</td>
<td>35</td>
<td>25</td>
</tr>
<tr>
<td>25-50 years</td>
<td>30</td>
<td>40</td>
</tr>
<tr>
<td>Over 50 years</td>
<td>35</td>
<td>35</td>
</tr>
</tbody>
</table>

The data collected further shows that forty-five per cent of the jails in the state are not only over twenty-five years old but have had no major physical improvement since built. Nor is change foreseeable in the near future as over ninety per cent reported no immediate plans for improvement. The status quo is not always bad, but it is cause for concern here. The status quo means that, for lack of a proper facility, over sixty per cent of the jails will continue to confine together the convicted prisoner and the individual being held awaiting questioning or arraignment. It also forces contact between the impressionable juvenile and the professional criminal. In addition, only nine per cent of the jail inmates will have access to physical recreation facilities.

The staffs of these jails consist mainly of untrained personnel as only eight per cent of the reported staff personnel have had special training in corrections. This is understandable as most combine their correctional billet with another job. More than eighty per cent of the staff members are engaged in jail administration on a part-time basis only. This is reflected in the fact that fifty-five per cent of the jails have less than twenty-four hour prisoner surveillance. Approximately seventy-five per cent of the departments reported that they devote less than twenty hours a week to jail administration.

The average inmate population is relatively small throughout the state's jails. Over sixty per cent reported an average population of one to five prisoners and over fifty per cent reported that the maximum number of prisoners at any given time during the past year fell within that one to five group. The average jail inmate population, on a per day, state-wide basis appears to be approximately 1,000. The only figures available to verify this estimate are the 1960 census statistics. The Bureau of the Census projected an estimated jail population of 498 for the state based on a twenty-five

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34 NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CORRECTION IN THE UNITED STATES 146 (1966).
percent sample as of April 1, 1960. The wide variance between these two estimates could be partially explained by the increase in population and an increase in criminal activity during the eight-year period. Two other possible explanations are that either on the day of the census the population was far below average or that an error was made in the census or survey reporting. Suffice it to say for purposes of this examination of the jail system that the average state-wide population exceeds 500. Another substantial difference in estimates occurs when the inmates are categorized by age. This variance is apparent in Table 2 where 1960 census statistics are again used.

<table>
<thead>
<tr>
<th>Age</th>
<th>1960 Census %</th>
<th>1968 Survey %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 16</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>16-20 years</td>
<td>10</td>
<td>25</td>
</tr>
<tr>
<td>21-29 years</td>
<td>20</td>
<td>31</td>
</tr>
<tr>
<td>30-50 years</td>
<td>50</td>
<td>30</td>
</tr>
<tr>
<td>Over 50</td>
<td>20</td>
<td>11</td>
</tr>
</tbody>
</table>

This trend toward a younger inmate is not highly improbable as the mean age of Nebraskans is dropping, therefore, this part of the survey may be more reliable. Both estimates show that young inmates may be subject to contact with older prisoners and if the 1968 figures are valid, there is a substantial increase in the number of juveniles that are potentially exposed to adult inmates.

The average jail sentence is much less than the usual one year maximum, for seventy per cent of the reporting institutions reported that at least seventy-five per cent of their inmates were serving

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36 Id.
37 NEBRASKA LEGISLATIVE COUNCIL, NEBRASKA BLUE BOOK 1966 at 671. However, the decrease in mean age is not as rapid as that reflected in Table 2.
38 At this point it should be noted that: "[w]hen a child under fourteen years of age is taken into custody the court or magistrate may place such child in the care of the sheriff, police officer or probation officer or other suitable person as the court or magistrate shall direct, who shall keep such child in some suitable place outside of the enclosure of any jail or police station. When any child under the age of sixteen years shall be detained in any institution to which adults are sentenced, it shall be unlawful to permit such child to have verbal, visual, or physical contact with such adults at any time." NEB. REV. STAT. § 43-212 (Reissue 1968). Therefore the term "juvenile" envisages a minor sixteen years of age or older.
sentences of less than a month. Considering both sentenced and
unsentenced prisoners, the survey shows eighty-five per cent of the
prisoners were confined in jail less than a month. This brief con-
finement is not unique for in 1950 the national statistics showed
that "[m]ore than 70 per cent of those committed to jail are held
for less than two months and over 40 per cent for less than twenty
days."39 Of these confinees, fifty-eight per cent of the reporting
jails submitted that fifty per cent or more were confined for drunk-
keness or related offenses. This correlates to the national picture
where "[f]ully 50 per cent of all commitments . . . are for drunken-
ness or other offenses directly related to alcohol."40 And while
confined, prisoners in over seventy per cent of the jails are either
idle or work only on jail maintenance.

III. AREAS OF CONCERN

The foregoing facts and statistics are loaded with potential
problem areas. Indeed, in many cases they are indicative of already
existing problems. But in examining these areas critically one
must keep in mind the forces which have established and main-
tained these conditions, and which will oppose any change. "Jails
mean jobs. Jails mean income. Jails mean power. Jails mean influ-
ence. Jails mean patronage. Jails mean votes."41 This insight
explains much of the problem and serves as a warning to those who
would attempt change.

One of the most controversial issues surrounds the office of
jailer. The statutes have laid the ground work for allowing the
sheriff to keep this post for himself or to designate a deputy who
will so act. Thus the correctional supervisors for the majority of
Nebraska inmates are not individuals selected for their experience
or training in penology but rather are "politicians." One important
facet of corrections is most certainly lost in the election turmoil:
continuity. The situation is further hindered by the jailer's wage
system. Rather than getting a flat salary for a responsible job, he
is reimbursed on a "piece-work" basis thus creating a very question-
able practice: the more prisoners the more fees. The practice is
even more questionable when it is remembered that the jailer/
sheriff is in a position to control the level of the jail population
through his power of arrest and confinement. In addition, although
the laws foresee reimbursing the jailer only to the extent of his
actual costs for caring for prisoners, it is possible that a profit can

40 M. ALEXANDER, JAIL ADMINISTRATION 311 (1957).
41 Wright, note 2 supra.
be realized by "efficient management." The fee system is a definite obstacle to reform. As long as it exists, there is no incentive for sheriffs to work for a decrease in jail populations and it is their support which is necessary to implement an effective change. Such a situation is not limited to this state but has been witnessed elsewhere.\footnote{Id. at 313; H. Barnes & N. Teeters, New Horizons in Criminology 844-47 (rev. ed. 1947).}

Another disturbing point is that the jail serves as a catchall. With the strong emphasis in penal reform programs to segregate and classify, the jails maintain the old practice of putting together the "undesirable elements."\footnote{As a result, one finds grouped together the: "drunks, prostitutes, sex deviates, murderers, rapists, dope addicts, dope peddlers, embezzlers, gamblers, insane, juvenile delinquents, first offenders, highjackers, confidence men, ex-convicts, chronic alcoholics, kidnappers, amnesia victims, traffic violators, disturbers of the peace, bums, vagrants, victims of economic reverses "without visible means of support," suspects held for investigation (illegally, in many instances), detained witnesses (when frequently the criminal himself has money for bail and a smart lawyer, and is free on the outside), immigration detainees, bank robbers, white slavers, procurers for prostitutes..." Casey, Catchall Jails, 293 Annals 28-29 (1954).} The results of such a practice are bound to be harmful. The indicated increase in juvenile inmates promises to deteriorate the situation by bringing more and more impressionable youngsters into contact with the wrong influences at a time when they desperately need strong corrective guidance. The theory that jails breed crime is not new. Specialists in the field feel that exposing an individual to experience in jail increases the probability that he will engage in further criminal behavior:

Everytime the apprehension of a child involves throwing him in contact with other young criminals who are confined together there is an increased stimulus in the education for crime. ... The institutional experience is thus a concentration of stimuli adapted to develop delinquent interests.\footnote{F. Tannenbaum, Crime and Community 71 (1939).}

The mixture of such a varied group in one institution is further aggravated by a lack of professional supervision, surveillance\footnote{The absence of continuous surveillance in a substantial portion of the jails is not only significant from a security standpoint but also from humanitarian and liability standpoints. Unobserved prisoners could become sick or injured and their health thereby endangered by their isolation and lack of aid. As the sheriff is charged with custody of the county jail and the prisoners therein, he could potentially be charged with negligence in not supervising and thereby contributing to the prisoner's injuries or illness. A New York court held a sheriff liable for the injuries sustained by a minor inmate as a result of other prisoners unlawful conduct and the liability was based on the}
and a meaningful daily routine. The high percentage of idleness is a tragic waste of valuable time that could be put to a constructive use with the introduction of modern procedures and a trained staff. No one gains by punishing the inmate by making him "sit out" his sentence. The high population of our jails and the complete absence of any real correctional program brings into question the value of confining so many offenders. A reduction in the number of inmates would certainly make the job of reforming the state jail system easier. Related to this is the high turnover of inmates—a problem that does not face federal and state institutions to such a degree and that complicates any proposed jail correctional program. Such a problem demands more highly trained personnel and a more coordinated local program, not less of both, which is the situation now.

Reference to a coordinated program brings up the last major area of concern: a total absence of central control and supervision of the jail system in the state. As mentioned above this is not unusual but certainly represents an antiquated practice of permitting every local government its own means of punishment, often not subject to public scrutiny. Were these institutions kept up-to-date and in line with state and federal reform programs the situation would be tolerable. But as the local jail, with few exceptions, has remained in the past, corrective state action appears to be mandatory. Present state supervision is limited to:

(a) alleged periodic inspections by the Department of Health inquiring into the methods and practices employed and the conditions thereof, which if done would be of limited value as the state correctional specialists are not in that department, but which in fact are non-existent.\(^4\) Department sheriff's negligence in providing adequate surveillance. Schnitzer v. County of Erie, 8 Misc. 2d 989, 168 N.Y.S.2d 217 (Sup. Ct. 1957). Although the negligence of sheriffs and other county officers in performing their official duties has been held not to state a cause of action against the county, Sitzel v. Hitchcock County, 139 Neb. 700, 298 N.W. 555 (1941); Edwards v. County of Onondaga, 39 Misc. 2d 443, 240 N.Y.S.2d 789 (Sup. Ct. 1963), recent authority can be found elsewhere holding that the doctrine of governmental immunity as it applies to the counties is abrogated and that counties may be held liable for the torts of officers, agents or employees under the doctrine of respondent superior. Klepinger v. Board of Commissioners—Ind. App.—, 239 N.E.2d 160 (1968).

The Department of Health may also exercise another control over the jail system inasmuch as the statutes state that: "[f]The plans for all new jail buildings, lockups, infirmaries or reformatories shall, before the adoption of the same by the state, county or municipal authorities, be submitted to the Department of Health for examination and approval." Neb. Rev. Stat. § 71-904 (Reissue 1966).
files do not indicate that state-wide inspections are conducted “from time to time.”

(b) possible monitoring of regulations, copies of which are allegedly filed with the Auditor of Public Accounts. The files of that office do not indicate that copies have been filed as required.

The overall supervision of the jail system is thus given to the district judges. It is not a judicial task to serve as a correction specialist. Although judges should have an understanding and appreciation of the correctional system, their selection is not based on their expertise in this field. The state does not call upon the supreme court to run its penal complex, nor should it delegate such a responsibility to other members of the state judiciary. Corrections is a highly specialized profession and the supervision of a jail system demands the full time attention of trained personnel as does a state penal system.

IV. RECOMMENDATIONS

Despite the many problems it generates, the local jail remains a vital factor in the overall correction system and needs to be both improved and preserved. Its presence is needed to provide protection for the public from an individual that acts contrary to accepted behavior. At the same time it can serve to isolate the inmate from the public and offer a period free from pressure in which he can become reoriented and better equipped to cope with his problems. It also offers an opportunity to subject an individual to the diagnostic process, to classify his problems and to initiate appropriate corrective or social measures.

To reform the jail system in the state several methods may be pursued, either individually or in conjunction with each other. The recommendations set out below are in some ways conflicting, in which case they are to be considered as alternative proposals; all seek an improvement of the system but in different ways. The ultimate goal desired will dictate which methods are implemented and the extent to which the changes are executed. Some improvements may be initiated immediately with no major revision of current procedures or statutes. Others, of necessity, will require extensive modification of state and local practices and regulations. As with any reorganization of a well-entrenched system, cost will be an important factor. However, some of the recommendations delineated below will be inexpensive in their implementation and will provide immediate and substantial savings. No other alternatives exist to the expenditure of funds as the extreme age of a sub-
stantial segment of the institutions will require construction in the near future even to maintain the status quo. The order of the following recommendations is based on the estimated expense and ease in instituting each with the least expensive and simplest modifications set out first. However, it should be noted that the most effective and needed recommendation, that concerning state supervision and control, should receive priority implementation to insure coordinated execution of the other reforms and modifications and to provide the necessary guidance and supervision in establishing a progressive correctional system.

1. Proper use of jails. The practice of using jails as a catchall must be abandoned. It is not a social welfare institution and consequently should not be used to house the itinerant, vagrant, immoral, homeless and alcoholic. These problems are more properly the responsibility of health or social welfare organizations, either public or private, and should be referred to them accordingly. Those individuals that must be confined should be dealt with in other than an indiscriminate or arbitrary manner. Attention must be given to segregating inmates by age, sex, and reason for confinement to minimize the adverse effects that accompany confinement and to further the aim of corrections.

2. Reduction of inmates. Closely related to insuring the proper use of the jail as a correctional institution is achieving a decrease in the inmate population. Reduced confinements would lighten the expense of maintaining a jail as well as facilitate the improvement of the system. This is particularly true in view of the substantial number of jails with such a small average inmate population. A conscious effort to reduce confinements could eliminate the necessity of maintaining some jails and would be of definite financial benefit. More important, reducing confinees would be beneficial for society since even in progressive institutions, the individual's criminality is likely to be increased.\footnote{Clemmer, \textit{Imprisonment as a Source of Criminality}, in \textit{Readings in Criminology and Penology} 518 (D. Dressler ed. 1964).} In considering how the inmate population may be decreased, we must consider both segments of that population—the sentenced and the unsentenced.

Those prisoners merely detained pending arraignment, trial, or questioning, should be carefully screened to identify those who are not a real threat to the community and who will most likely cooperate with the authorities if reasonably treated. A concerted effort to be more liberal with bail procedures, reducing it in some cases and completely abrogating it in others, is not a radical devia-
tion. Release of an individual suspected of a misdemeanor on his own recognizance is not a high risk, particularly in a small community or in light of modern efficient police operation. As the statistics have shown, the only offense of a substantial portion of inmates was drunkenness and often these offenders are repeatedly confined for their overindulgence. With the advances in medical science, alcoholism is viewed more as a disease than a crime. The alcoholic, therefore, should be subjected to proper medical and rehabilitative treatment, not incarceration. This has been recognized by the District of Columbia Circuit of the United States Court of Appeals. In the case of Easter v. District of Columbia, that court held a chronic alcoholic may be committed for treatment or released but he may not be punished for public intoxication nor may he be criminally confined because of a lack of rehabilitative and caretaking facilities.

Modified sentencing procedures can do much to empty the jails of inmates who really do not belong there and whose confinement serves no rational or constructive purpose. Increased use of parole and probation on the local level will diminish the requirement for jail sentences. Where some confinement is felt necessary, the use of work release or delayed sentencing programs could be initiated, allowing the individual to work at his regular job or at a meaningful government job and be confined only at nights or on weekends. The days of the debtors' prisons are supposedly over but confining an individual for failure to pay a fine is not significantly different: if confinement was not felt necessary for the man who could pay his fine, what purpose will it serve for the man who cannot pay? The ultimate expense is on the government, and hence, upon the taxpayer, who must pay the confinement costs. A more logical system

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48 361 F.2d 50 (D.C. Cir. 1966). However, the more recent holding by the United States Supreme Court in Powell v. Texas, 392 U.S. 514 (1968), would indicate that Easter is not universally accepted as Mr. Justice Marshall with three justices concurring refused to extend the holding in Robinson v. State of California, 370 U.S. 660 (1962), wherein a person could not be punished for the mere status of being a narcotics addict, and therefore ruled that conviction for public drunkenness of one compelled to drink did not amount to cruel and unusual punishment. In a concurring opinion, Mr. Justice White set out two prerequisites necessary for an extension of Robinson: (1) compulsion to drink and (2) inability to avoid public places when intoxicated. Inasmuch as proof of the latter was absent in Powell, Mr. Justice White held that the conviction did not offend the Constitution and for that reason did not require an extension of Robinson.

49 Such a program now exists in the state with the enactment of a permissive act authorizing establishment of work release programs. L.B. 970, 80th Neb. Leg. Sess. (1969). Progressive utilization of this act by the judiciary will go far in alleviating local jail problems.
would be to implement an installment payment plan for fines or to allow the individual to work for the government at a necessary job but without confinement. It is in this particular area where the use of jails can go far in causing more harm and crime than they cure or prevent. Often the basis for crime lies in poverty and need; to take the offender and lock him up away from his job and family only aggravates the condition. The offender emerges in more trouble than when he entered, probably more prone to commit a crime than before, and with new found techniques thanks to the "jail house educational system." With the alternatives to confinement that exist, there should be no need to confine the majority of misdemeanants as their presence offers no real threat to the community.

3. *Separate law enforcement and corrections.* The practice of having a politically elected law officer administering the corrections program on the local level must be discontinued. A mixture of politics, the fee system and law enforcement cannot produce a workable correctional program. This discontinuance will necessitate an increase in the sheriff's salary to compensate for a loss in revenue, but will allow the full time employment of the sheriff in his proper role. At the same time, it will permit employment of personnel selected for their training and qualifications in the correction field who can concentrate completely on the administration of a comprehensive correction program.

4. *State supervision and control.* One of the major deficiencies in the present jail system is a complete absence of a balanced statewide system or of any comprehensive planning or program. The only way these may be achieved is through state coordination. This need not mean complete state control but rather establishment of state standards and a means of supervising adherence to them as practiced in Virginia. This system was originally recommended in Connecticut but subsequently that state implemented a system whereby the Department of Correction has full control of and responsibility for the jails. The states of Alaska, Delaware and Rhode Island also have completely integrated correction systems under state control.

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The lack of any established jail standards places Nebraska with sixty per cent of the states. This void requires immediate action, whether it be issuance of standards or complete integration of the state correction system. Any system initiated should provide for the inspection of all jails and the periodic submission of statistical reports. One of the great difficulties in dissecting the jail system is the complete absence of statistical data from which to draw conclusions as to the status of the system and in determining where modifications are needed. The obvious state agency to supervise and coordinate the system is the Division of Corrections of the Department of Public Institutions. Such an arrangement would permit the efficient synchronizing of local and state correction programs, and would make available to the local jails the resources and skilled personnel that exist at the state level. A complete integration of the two systems would offer the additional advantage of mobility of personnel among the various institutions, permitting the establishment of an effective state training program in corrections. This would provide an input to a profession requiring well-trained personnel. Regardless of what system is adopted, establishment of standards or complete integration, a requirement will no doubt exist to assist the implementation of local reforms with state funds as the present limited budgets and funds on the local level are not adequate to initiate the necessary modifications.

5. Regional jail. To minimize state and local costs over the long run, though initially a substantial outlay of funds would be required, thought should be given to the establishment of a regional jail system. Such a system would consist of consolidating detention operations at one institution for a multi-county area. Such institu-

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66 The President's Commission on Law Enforcement and Administration of Justice, Task Force Report Corrections 80 (1967).
67 Establishment of a system whereby the state is responsible for misdemeanants as well as felons is not without precedent as Nebraska law already provides for state custody of certain misdemeanants wherein minor and adult females convicted of certain misdemeanors may be committed to the State Reformatory for Women, Neb. Rev. Stat. § 83-482 (Reissue 1966), and children adjudicated to be delinquent may be committed to the care and custody of the Department of Public Institutions, Neb. Rev. Stat. § 43-210 (Reissue 1968).
68 An encouraging note in this area is the recent enactment of a state act authorizing the creation of a Nebraska Law Enforcement Training Center to conduct appropriate training programs, L.B. 1346, 80th Neb. Leg. Sess. (1969). The responsibility for law enforcement and corrections should be separate and therefore this new agency should not serve both professions. However, a natural and necessary companion for this new center would be a corrections training center. Such a partnership could certainly share the same administrative staff and facilities without creating a complete union of the two disciplines.
tions should be so situated as to maintain small inmate populations of less than one hundred in the interests of efficient treatment and maintenance. These regional jails could be operated either by the state or at least supervised and subsidized by the state. A study conducted by the National Council on Crime and Delinquency concluded that such a system offers the best hope for improvement of the jail problem.

A regional jail system would also aid integration of the jail correctional system into the state system by centralizing facilities and personnel and promoting ease of control and supervision. Such institutions would be able to initiate efficient rehabilitation programs and employ a well qualified staff which would normally demand a salary beyond the means of individual municipal and county governments. One disadvantage must be kept in mind when considering the location of such regional jails. It would remove some offenders from the locale of their homes and jobs thereby complicating work release programs and the transition from confinement back into their old routines. The City of Omaha is presently studying a modified type of regional jail complex to include Douglas and Sarpy Counties, the City of Council Bluffs, Iowa, and a portion of Pottawattamie County, Iowa. It is also noted that the state statutes do make provisions at present for the construction and management of joint city and county jails. Recent legislation has also been enacted providing for the consolidation of county or township offices thereby possibly authorizing one jail staff to serve a multi-county area.

V. CONCLUSION

The State of Nebraska has an opportunity to be a leader in jail reform with its relatively small jail population to work with and its state corrections system as a nucleus around which to build. Eventually jail reform must be initiated and any delay will be costly to the state in terms of wasted lives and increased criminal problems. Every offender confined will shortly be released into the community. Whether he returns a better citizen or more prone to offend again depends to a considerable degree on his experience in jail. The means of releasing a better citizen are available to this state if it will take the initiative and proceed with positive reforms.

59 NATIONAL COUNCIL ON CRIME AND DELINQUENCY, CORRECTION IN THE UNITED STATES 154 (1966).
60 Id. at 155.
A key factor in initiating such reform is mobilizing public support. This is not an easy task for, to the community, the jail is shrouded in secrecy and the public possesses a negative attitude concerning its operation.\textsuperscript{63} It is viewed as a necessary evil providing security for the community. The only time it receives public attention is when adverse publicity is circulated: witness the publicity occasioned by the condition of the Hall County Jail.\textsuperscript{64} This public apathy or "circle of rejection"\textsuperscript{65} must be overcome both to gain popular support for a reform program and more importantly to aid corrections by eliminating the cause of inmates' feelings that they are rejected by society as an enemy. Public involvement is needed not only to implement a change to state statutes, but also to implement the reforms legislated, for the National Council on Crime and Delinquency feels that volunteers can fill a worthwhile role in short-term institutions.\textsuperscript{66} Such programs have been established elsewhere as in Royal Oaks, Michigan, where "Project Misdemeanant" utilized private citizens to assist offenders with their personal problems.\textsuperscript{67}

The Nebraska jail has its inherent disadvantages such as a rapid turnover of short-term inmates. However, a constructive program that takes advantage of its virtues (close to the community thereby facilitating work release; a minimum of security problems with a misdemeanant population; mainly social problems vis à vis criminal problems), earns public support, and one that employs modern correctional methods can erase the infamous image earned and held too long. A major challenge exists for the state to raise its institutions above the mediocre national level and to insure that the local jail acts as a cure for, not a cause of, lawlessness.

\textit{David R. Parker '70}


\textsuperscript{64} Grand Island (Neb.) Independent, Oct. 5, 1968, at 5, col. 1. The district judge brought to the attention of the county board the unsatisfactory condition of the jail as reflected by property damage, personal injury, use of alcohol and overcrowding. State assistance was sought to correct the situation.


\textsuperscript{66} \textit{National Council on Crime and Delinquency}, note 59 supra.