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**Capitol View
*Commentary by J.L. Schmidt***

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**A Draconian Ending for the 2022 Legislature**

Forgive me for not realizing sooner that the 2022 version of the Nebraska Legislature would end on a draconian note.

From its support of a veto of badly needed federal rental assistance funds to turning down an attempt to provide the same tax relief to middle class Nebraskans as it guaranteed to the richest, this Legislature showed its true colors in the waning days.

"Draconian" one of the more compassionate senators called it. Draco was an Athenian lawgiver whose harsh legal code punished both trivial and serious crimes with death.

But the real blow came with a rejection of prison reform (LB920) aimed at addressing the nation's worst overcrowding problem. The reforms were recommended by a working group of several state agencies and senators with national consultants.

They were derailed by the old fear for public safety ruse from a few senators who have likely never been to a prison to visit or known anyone who has spent time in one. They favor building a new prison, or two. Because of public safety.

Quick, Sen. Suzanne Geist of Lincoln, what is public safety? That was your defense for NOT doing something that could have addressed Nebraska’s dubious achievement of having the most overcrowded prison system in the country, holding about 1,700 more inmates than its prisons were designed to house.

Public safety is the government’s obligation – many believe the first obligation -- to keep people safe. I contend that’s all people, even those in prison. It’s become increasingly harder to keep that population safe in a corrections system that has staffing emergencies at four state prisons. That leads to longer shifts to cover the lack of staff and cutbacks in prison recreation and rehabilitation programs.

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The bill failed to advance and marked the ultimate failure of a cooperative effort by state lawmakers, the administration of Gov. Pete Ricketts and the state’s court system to come together with outside experts for a data-driven approach that could help solve the state’s prison woes.

Sen. Steve Lathrop of Omaha said what doomed the process in the end was the refusal of opponents — both in the Legislature and within the state’s law enforcement community — to consider any sentencing reforms that would have made a substantive impact on the growth trajectory of the state’s inmate population.

Lathrop is completing his third term after sitting out the four-year term limited break. He said he wouldn’t seek the fourth term for which he is eligible. With the state projected to add 1,300 inmates to its 5,500-inmate population between now and 2030, the state won’t just end up building one new $270 million prison, as Ricketts has proposed, but two, Lathrop said.

“Why don’t you stand up and say I’m for two prisons,” Lathrop said at one point in challenging those opposed to LB920.

Geist, who had served as one of the Legislature’s representatives in the criminal justice study last year, said she still shares many of its goals. Even though she led the opposition during floor debate, she vowed to work beginning next month with senators on both sides of the issue on a broader look at the state’s sentencing laws.

Lathrop asked senators to “take a leap of faith” and advance the bill so negotiations could continue with the governor and others before the second round of debate. But Geist did not accept that plan. She objected that the starting point of those negotiations would be Lathrop’s bill, not her plan that would have pared out several provisions in the bill she opposed. Lathrop needed 33 votes to continue debate. He got 26.

 “We brought people in for a data-driven process, and it was sidetracked by stories of catalytic converters and partisanship,” a disappointed Lathrop said afterward, referencing concerns about car parts theft that were voiced during debate.

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Nebraska’s prison system is not only the nation's most overcrowded, but in the past decade has also grown faster than any state in the nation. Nebraska was one of only two states to grow its prison population between 2010 and 2020, its 16 percent growth in that time contrasting to a 24 percent reduction nationwide.

The reduction nationally has been attributed to falling crime rates and states’ re-examination of the past get-tough-on-crime policies that have swelled inmate ranks nationally since the 1980s. At least 35 states have engaged in such criminal justice reinvestment efforts since 2007.

Three proposals in LB920 proved sticking points: an effort to cap minimum sentences to provide inmates more time on parole supervision; a proposal to make possession of very small amounts of drugs a misdemeanor; and a proposal to set standards for when judges would sentence those convicted of more than one crime to consecutive sentences.

Appropriations Committee Chairman Sen. John Stinner of Gering said that in 2014 Nebraska’s prisons were at 150 to 160 percent capacity. Despite the construction of hundreds of new beds since then, the population currently is at 155 percent capacity. At that continued rate, he said, the state would need to construct several more prisons in the next 20 years just to keep up.

“The fact of the matter is, we’re under an emergency [overcrowding] declaration. We’re the worst in the country and all we can do is talk about building a new prison,” Stinner said. “We talk about safety and keeping the public safe, but how about the workers and the inmates? This isn’t soft on crime. These are reforms that were put [in place] in other states.”

Well-said Senator Stinner. Thank you for your service, Senator Lathrop. You will both be missed.

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*J.L. Schmidt has been covering Nebraska government and politics since 1979. He has been a registered Independent for more than 20 years.*