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Gun law shifted hundreds of gun cases from federal courts – at state taxpayer expense

Henry J. Cordes

Jan 13, 2022

Nebraska gun law helped spark nation-leading prison growth

Gang members arrested in Omaha for years lived in fear of having their gun crime cases taken “across the street” — slang for moving from the county courthouse to the federal courts.

That shift meant the offenders would be subject to federal gun laws, which carried more severe penalties than used to be available under Nebraska law. And they would do their prison time in some federal facility, far from Nebraska.

 A Flourish chart

But such federal gun prosecutions dropped by almost two-thirds after the Legislature in 2009 passed a new state law that stiffened Nebraska's penalties for gun crimes. With the change, hundreds of gang and gun cases that previously would have been prosecuted federally went through state courts instead.

In effect, those offenders traded a federal prison cell for a state one — at Nebraska taxpayer expense.

Nebraska's prison system is now the most overcrowded and fastest-growing in the nation. And that 2009 gun crimes law served as a major driver.

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Since its passage, inmates whose most serious crime was a gun offense have been stacking up in state prisons, shooting up more than 800%. And part of that increase is the result of the federal-to-state prison shift the law helped induce.

At one point, so many new gun and gang offenders were coming into Nebraska prisons that state corrections officials pleaded with prosecutors to reverse course.

The shift of gun cases into state courts didn't just exacerbate Nebraska's prison overcrowding crisis and cost state taxpayers millions. In the state prisons, those offenders could also more easily maintain their gang ties.

"The whole thing was a bit of a bait and switch," said Hank Robinson, a former University of Nebraska at Omaha criminologist. "I'm not sure (state senators) understood when someone was sent away in the federal system, they landed in prison with a bunch of people from Illinois and Oklahoma and New Jersey, not with a bunch of fellow gang bangers from Omaha."

Mike Friend, the former state lawmaker who introduced the gun crimes bill in the Legislature, acknowledged such shifts appeared to have occurred. But he defended the bill as an appropriate response to a serious public safety issue.

He also said it's not surprising county attorneys in the state would choose to prosecute such cases locally.

"County attorneys are tasked with protecting their community, and they will use the tools they have available to them," Friend said.

It's been common across the country over the last two decades for local gang and gun crimes to be prosecuted federally under the U.S. Justice Department's Project Safe Neighborhoods program.

Launched in 2001 in an effort to stem gun violence, the program brings street-level gun cases in front of federal prosecutors, who often have legal tools unavailable on the state level, including some tough federal prison terms.

The program is built on cooperation between law officers and prosecutors on the federal and state level.

In Omaha, prosecutors from Douglas County and the U.S. Attorney's Office pore over police reports and cases involving guns. The prosecutors and police agencies then work cooperatively to share information and assign cases for prosecution.

 A Flourish chart

Though the vast majority of cases where guns are used to kill or maim have always been tried in state courts, numerous federal laws deal particularly with firearms possession.

Federal law has long barred convicted felons, drug users or addicts, drug dealers, people with restraining orders or people with prior misdemeanor domestic violence convictions from possessing firearms or ammunition.

During the program's early years, if there was an opportunity in Nebraska to take a case into the federal courts, it was almost never turned down.

"If the case did not rise to the level of a murder or public spectacle, it was just as easy for (local prosecutors) to let the feds take the case," said Robinson, who while at UNO in 2007 co-authored a federal evaluation of the program. "They could be confident they were getting a good outcome."

But that calculus soon changed.

In response to a rash of gang-related shootings in Omaha, Friend in 2009 introduced the bill creating new gun crimes and stiffer penalties.

Backers specifically said one of the intents behind Legislative Bill 63 was to make the state's laws on gun possession and other gun crimes more closely mirror federal ones.



Paying the Price: Nebraska gun law helped spark nation-leading prison growth

Henry J. Cordes

For example, the bill extended Nebraska's felon in possession law to also cover domestic abusers. And it made the penalty even more severe than under federal law, with a three-year mandatory minimum sentence. That was one of numerous new mandatory minimums under the law.

During the public hearing on the bill, Douglas County Attorney Don Kleine said he felt local prosecutors should be given the tools to handle such prosecutions.

"I'm a strong believer in relying on local government as much as we can — local prosecution rather than the federal government — to handle such crime," Kleine said.

UNO's Robinson was one of few voices opposing the bill. He called the increased penalties unnecessary for dealing with the problem. He projected the longer sentences under the measure would cost the state more than \$15 million a year.

He said that estimate also didn't include the cost of new inmates coming into state prisons who previously would have gone to federal prison. With the gun crime penalties roughly equalized, he predicted that shift would occur.

In the end, that's exactly what happened.

For the three years before the law passed, Nebraska averaged just over 150 federal gun indictments a year. Within three years of the law's passage, that figure had dropped to 56.

Why did the federal numbers drop so sharply?

"It had a lot to do with the state statute," said Joe Jeanette, law enforcement coordinator for the U.S. Attorney's Office in Nebraska. With the new mandatory minimums in Nebraska law, he said, local prosecutors could see they could get as much time or more for gun offenders through the state system.

Within five years of the law's passage, the number of inmates coming into Nebraska's prison system whose most serious offense was a gun crime swelled from roughly 50 a year to more than 200.

 A Flourish chart

Kleine does not dispute that more gun cases in Douglas County have been taken into the state system. He said that conforms with how most other local crimes are handled.

It's difficult to determine exactly how many gun cases in Nebraska were shifted in that way.

But if Nebraska had continued to average 150 federal gun indictments a year, there would have been about 660 more such indictments between 2010 and 2020. That also would have translated into roughly 660 fewer gun offenders landing in Nebraska prisons. It's rare for such federal cases not to end in conviction.

The Nebraska Department of Correctional Services saw the direct results of the shift.

“It became very discouraging,” said Bob Houston, who at the time was the department’s director. “Not only do they now stay in Nebraska, but they are on the Nebraska prison yard, where they can continue their gang ties.”

Houston and Robinson, who as it happened in 2012 had taken a job as a state prison administrator, both recalled holding meetings with prosecutors and law enforcement officials around that time to again encourage the return of more cases to federal court.

“We asked them directly, ‘Please, can we start sending some of these the federal direction?’ ” Robinson said. “It was something we actively pursued as a strategy to help mitigate overcrowding.”

Jeanette and Kleine also recall such conversations.

“I understand what Houston and Robinson were saying,” Kleine said. “Sometimes that is a good idea to keep them out of the (state) system if we can.”

Houston said the prosecutors seemed receptive to the idea. “They all get it,” Houston said.

But the entreaties didn’t have a big impact, at least initially. Federal gun indictments did tick up in the next few years, but were still half of previous levels.

However, the last three years have seen a dramatic change. Federal gun prosecutions have jumped 100%, back above 2009 levels and to their highest since 2006.

Jeanette and Kleine both said the dramatic change was not part of a conscious decision to reverse the previous shift.

Jeanette said there was an unrelated decision several years ago to prosecute more robberies under federal gun laws.

Bank robberies often are prosecuted federally, but now those involved in strings of armed store robberies could be taken into federal courts. Some of those offenders are gang members, Jeanette said, as gangs often use such robberies as initiation rites or to gain cash.

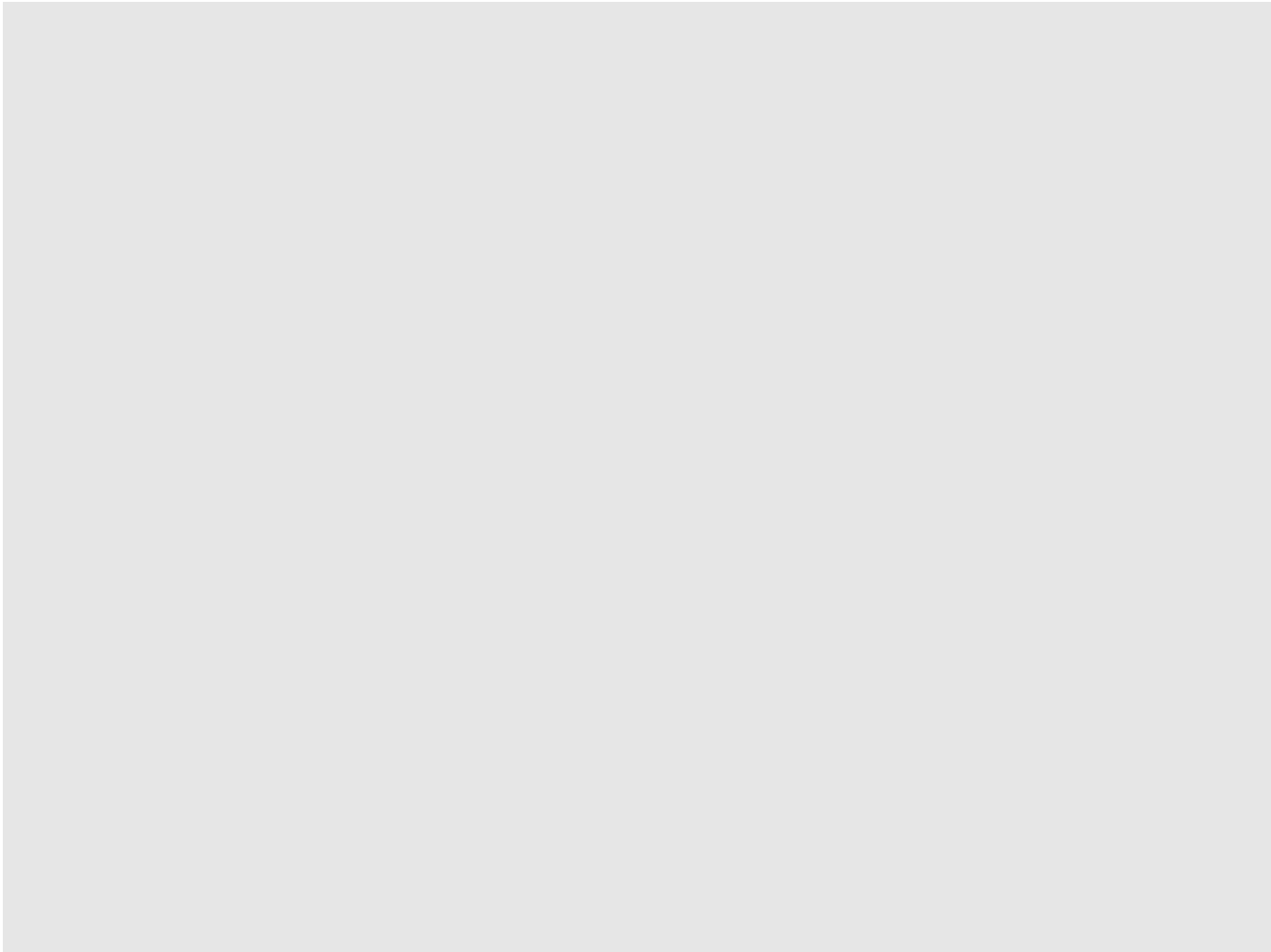
Jeanette said he's also noticed some small rural counties increasingly asking for federal prosecution of gun cases, likely to avoid the cost of having to prosecute the cases themselves. In small counties, law enforcement budgets can be limited.

Jeanette also thinks that over time, local law enforcement has grown to appreciate the value of sending a gang member far, far away from Nebraska.

“If they are 350 to 1,000 miles away,” he said, “it’s not so easy to preserve those gang ties.”

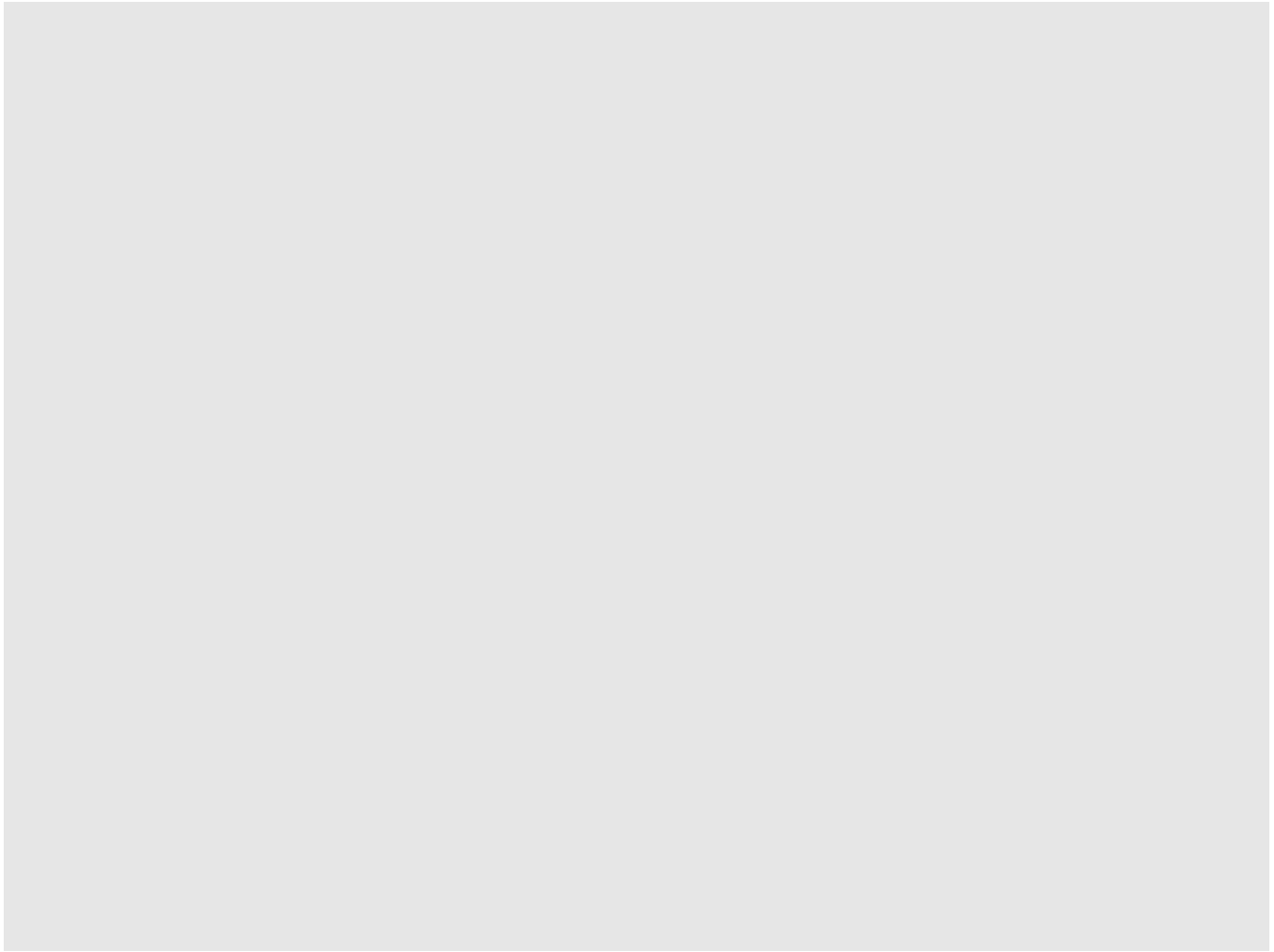
Nebraska's 10 state prisons from least to most crowded

10. Nebraska Correctional Youth Facility



82.6% of design capacity
KILEY CRUSE, THE WORLD-HERALD

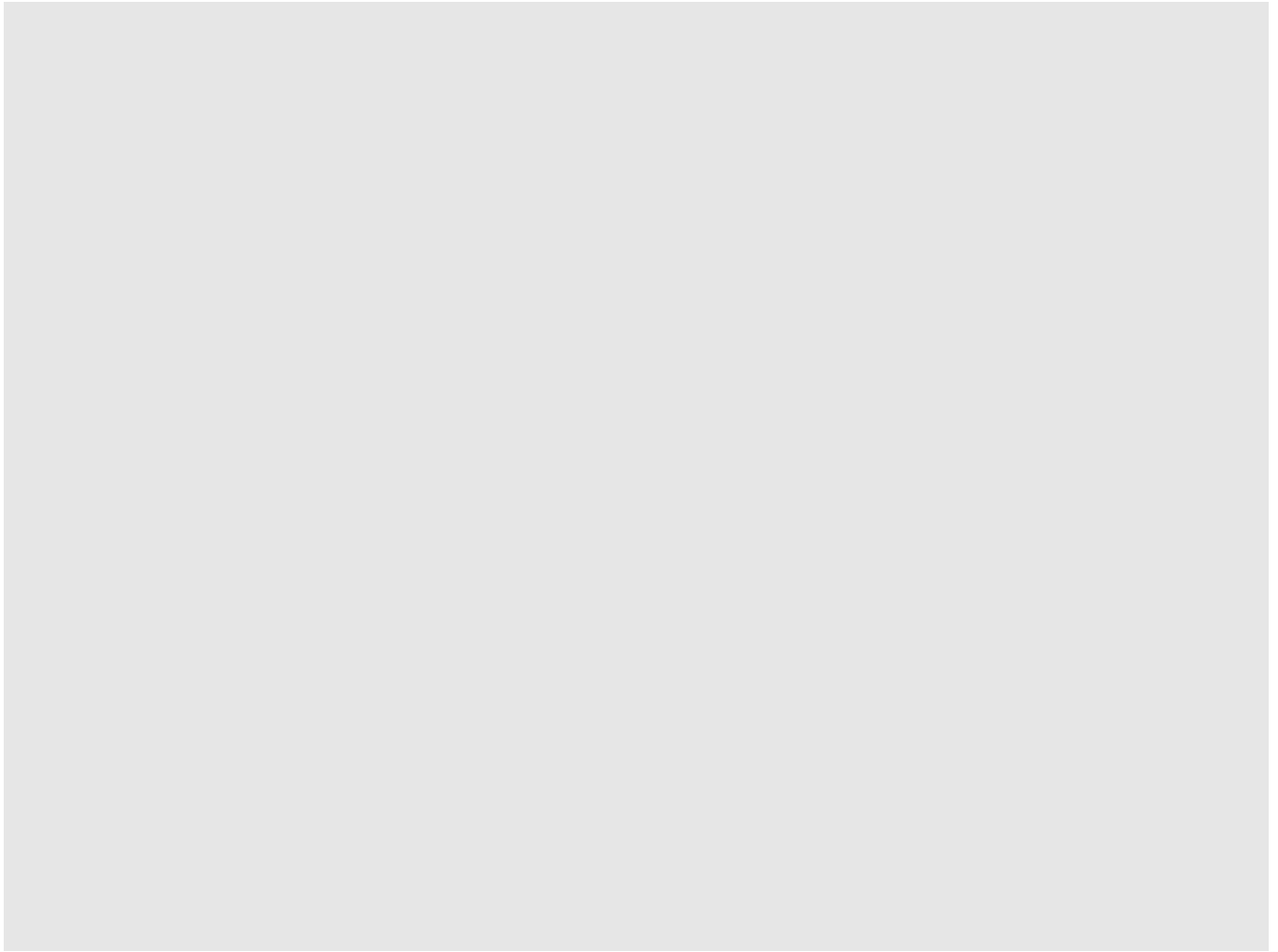
9. Nebraska Correctional Center for Women



98% of design capacity

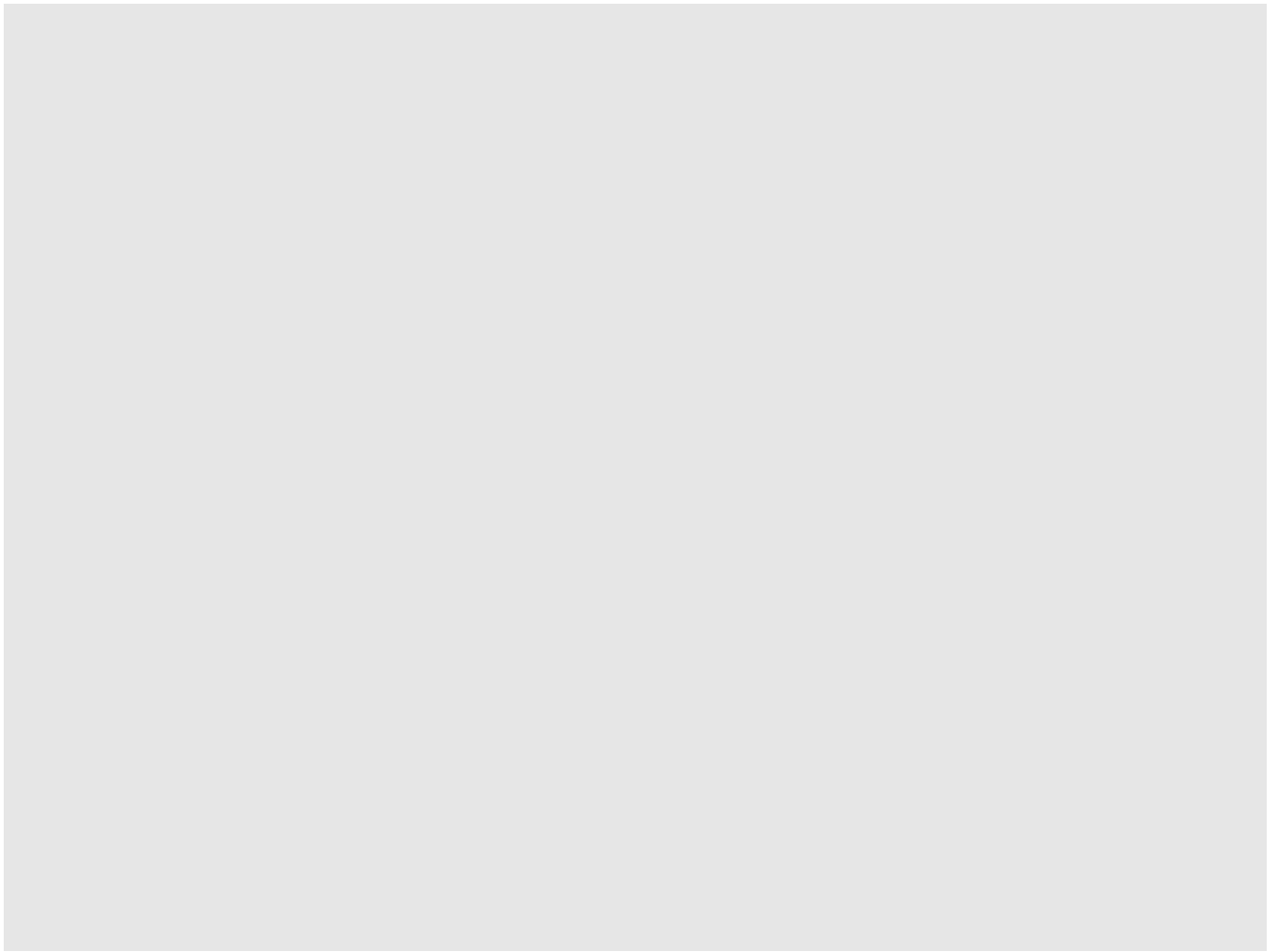
THE WORLD-HERALD

8. Tecumseh State Correctional Institution



107.3% of design capacity

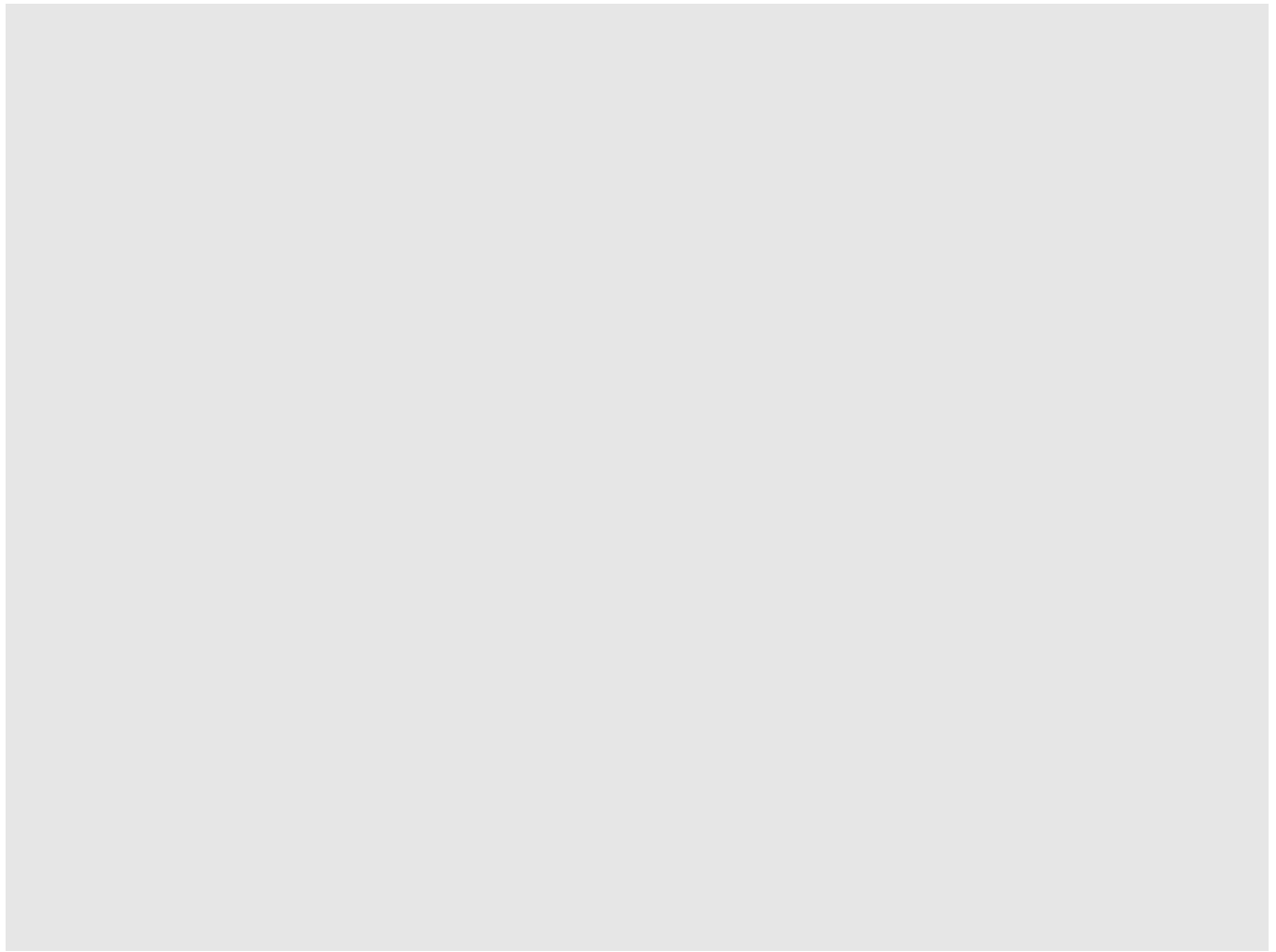
7. Community Corrections Center-Lincoln



132.4% of design capacity

REBECCA S. GRATZ, THE WORLD-HERALD

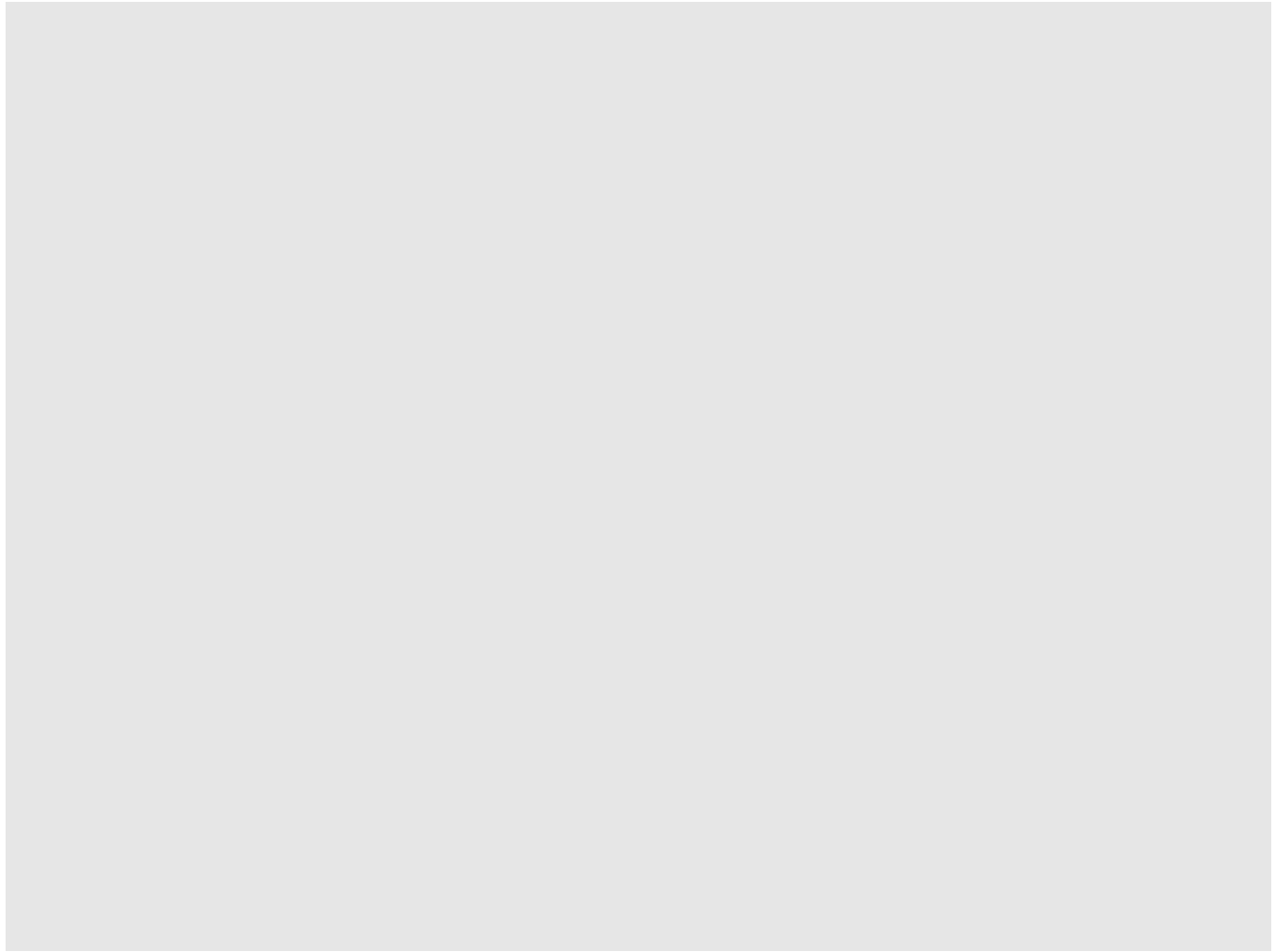
6. Nebraska State Penitentiary



157.5% of design capacity

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

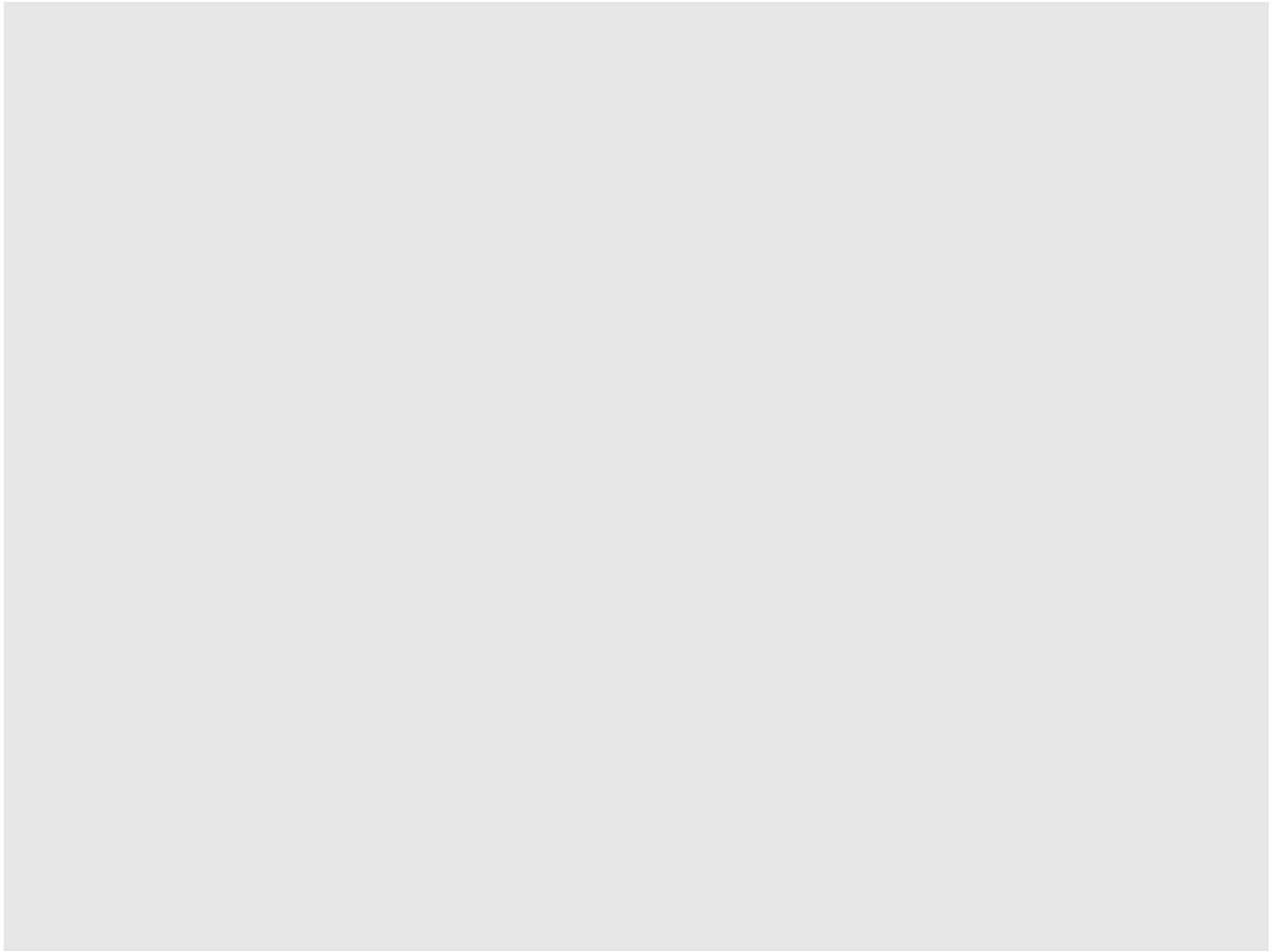
5. Lincoln Correctional Center



168.2% of design capacity

THE LINCOLN JOURNAL STAR

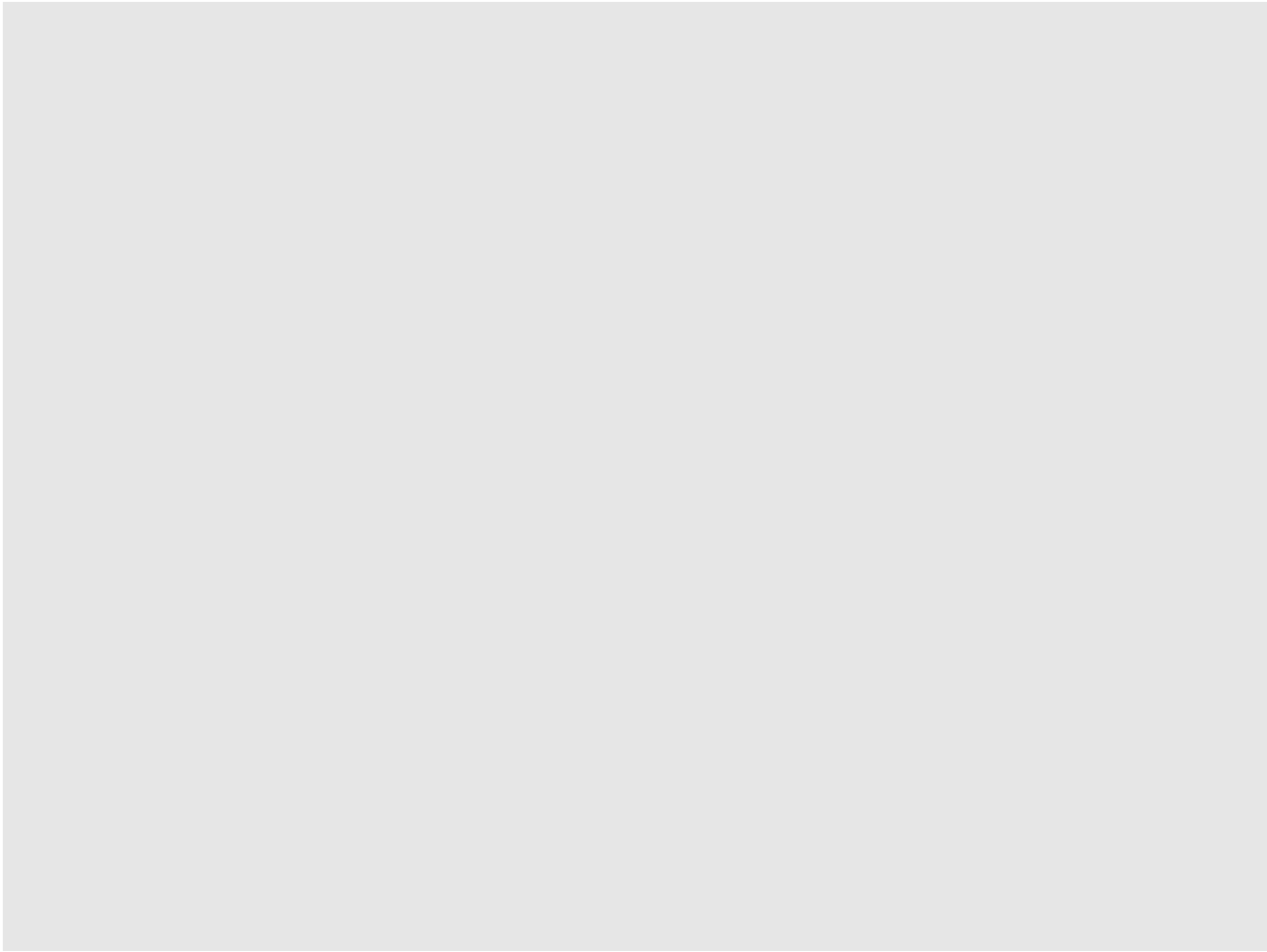
4. Work Ethic Camp



186.1% of design capacity

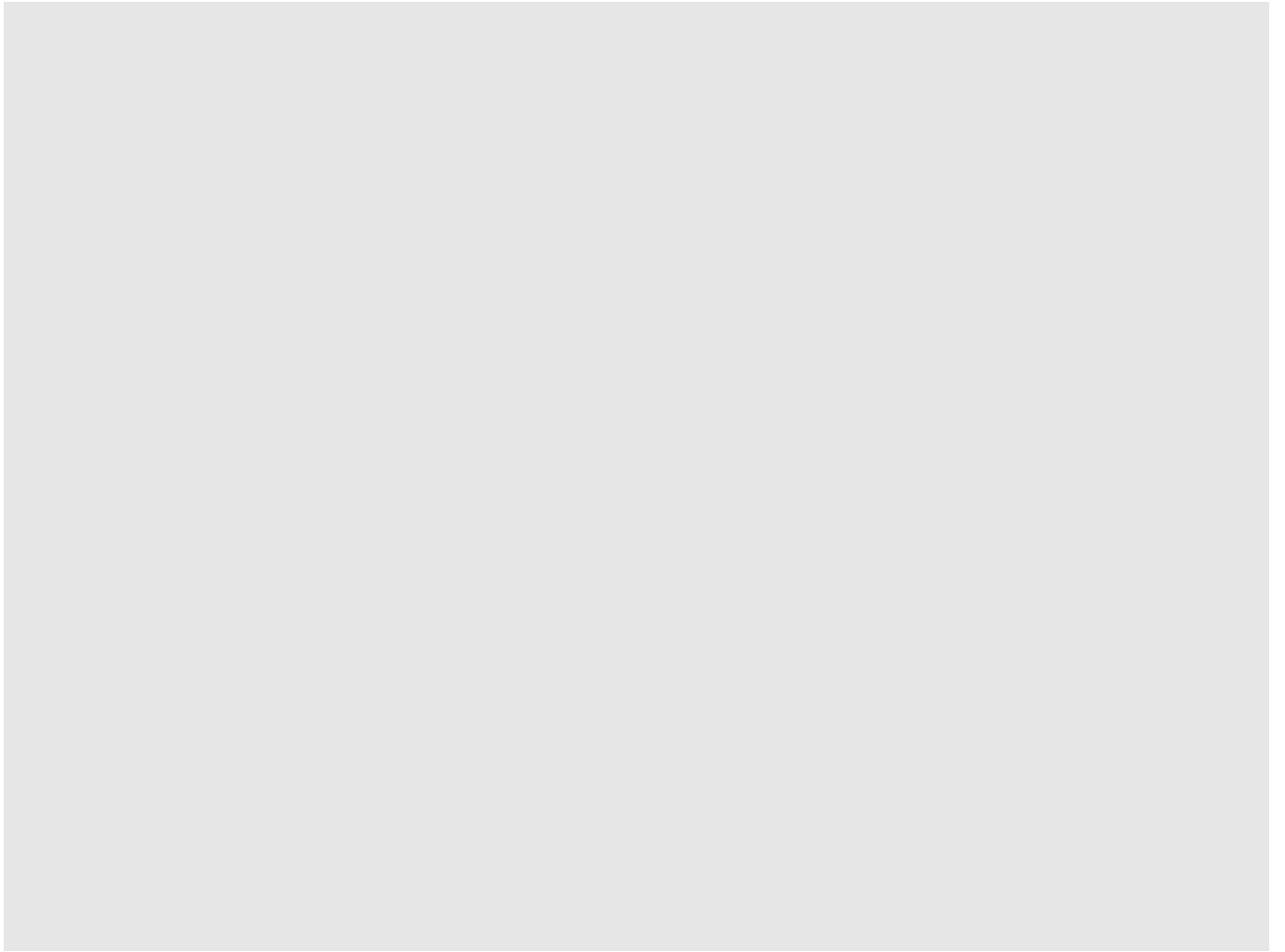
JAMES R. BURNETT, THE WORLD-HERALD

3. Community Corrections Center-Omaha



191.7% of design capacity

2. Omaha Correctional Center



193.6% of design capacity

1. Diagnostic and Evaluation Center



261.4% of design capacity

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This story by The Omaha World-Herald is part of a collaboration with Flatwater Free Press examining Nebraska's prison crisis.

PAYING THE PRICE, AN OCCASIONAL SERIES

The World-Herald is examining the causes and impact of Nebraska's prison overcrowding, which is the worst in the nation.

Previously: **<https://bit.ly/Nebraskaprisons>**

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