"The Salvation of the State is Watchfulness in the Citizen."

OFFICE OF INSPECTOR GENERAL OF THE NEBRASKA CORRECTIONAL SYSTEM 2019/2020 ANNUAL REPORT

Abstract

An annual report regarding the Nebraska Department of Correctional Services and the Nebraska Division of Parole Supervision. The report is a summary of the year's activities of the Office of Inspector General along with numerous observations, findings, and recommendations.

Doug Koebernick

dkoebernick@leg.ne.gov

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INTRODUCTION

This is the fifth annual report of the Office of Inspector General of the Nebraska Correctional System (OIG). The OIG was established in 2015 by the Nebraska Legislature in order to provide for increased accountability and oversight of the Nebraska correctional and parole systems. It was based on a recommendation of the Department of Correctional Services Special Investigative Committee, which was established by the adoption of Legislative Resolution 424 during the 2014 legislative session. The OIG identifies and examines systemic issues of the Nebraska Department of Correctional Services (NDCS) and the Division of Parole Supervision (Parole) and also investigates incidents resulting in death or serious injury that occur within the Nebraska correctional system. The OIG is affiliated with the Legislature's Office of Public Counsel, commonly known as the Ombudsman's office.

The Office of Inspector General of the Nebraska Correctional System Act is found in **Neb. Rev. Stat. §** 47-901 – 47-919. On September 16, 2015, Doug Koebernick was appointed as the first Inspector General of Corrections. In March 2017 Mr. Koebernick attended the Inspector General Institute sponsored by the Association of Inspectors General. He was awarded the designation of Certified Inspector General after completing the program. He has attended continuing education conferences and has maintained his certification. Mr. Koebernick was recently re-appointed by the Public Counsel to a second five-year term.

The OIG generates an annual report with its findings and recommendations to the members of the Judiciary Committee, the Clerk of the Legislature and the Governor by September 15th of each year. **Neb. Rev. Stat. §** 47-918 requires this annual report:

> *On or before September 15 of each year, the Inspector General shall provide to each member of the Judiciary Committee of the Legislature, the Governor, and the Clerk of the Legislature a summary of reports and investigations made under the Office of Inspector General of the Nebraska Correctional System Act for the preceding year. The summary provided to the Clerk of the Legislature shall be provided electronically. The summaries shall include recommendations and an update on the status of recommendations made in prior summaries, if any. The recommendations may address issues discovered through investigations, audits, inspections, and reviews by the office that will (1) increase accountability and legislative oversight of the Nebraska correctional system, (2) improve operations of the department and the Nebraska correctional system, (3) deter and identify fraud, abuse, and illegal acts, and (4) identify inconsistencies between statutory requirements and requirements for accreditation. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.*

As in years past, the OIG has spent considerable time visiting facilities, attending meetings related to correctional issues, visiting with senators and legislative staff, visiting with the residents and staff of the ten correctional facilities in order to gain a better understanding of correctional facilities and related programs, and reaching out to members of the community. However, this has been impacted by the COVID-19 pandemic.

As shared in past reports, Nebraska law (**Neb. Rev. Stat. §** 47-902) charges the OIG with *"assisting in improving operations of NDCS and the Nebraska correctional system.*" The OIG is fully committed to that responsibility and this report provides information related to those efforts. There will be attachments to this report that will hopefully provide additional information for the reader and be useful to them in whatever role they play in the justice system in Nebraska. In addition, there will be references to past reports that also contain a great deal of information.

The OIG would like to thank the inmates, parolees, staff and administration of NDCS and Parole, the Ombudsman's office and other community members who assisted with the OIG's efforts and shared their opinions, insights and suggestions during the past year. The OIG works continually with the staff of NDCS to understand the correctional system and their partnership in this effort is greatly appreciated. The OIG would also like to thank the members of the Nebraska Legislature and their staff who are engaged in correctional and parole issues.

Last year's report was intended to be slightly different than past reports as it was going to be streamlined by making many references to past reports. Although that was the intent, it still was a lengthy and detailed report. This year's report again attempted to meet that goal but as the reader will learn this was not achieved. As shared in last year's report, as the OIG has become more accessible and known, the workload has continued to increase while the resources available to the OIG have remained the same. This has had some impact on the work of the OIG, including the drafting of this report.

HIGHLIGHTS OF THE REPORT

During the past year, the OIG examined many parts of the correctional and parole systems and the results of that work are contained in this report. As in past reports, the correctional system is the focus of the majority of this report.

Highlights of the report include:

- Recommendations made by the OIG begin on page 133.
- There are three emerging issues that are highlighted in the report: pipeline to community, wage compression of NDCS staff and the need for additional vocational education and job skills programs (page 13).
- On July 29, 2020 the wait list for approved community transfers of male inmates was at 261 individuals (page 13).
- NDCS has undertaken an effort to address issues involved with the current transfer list after working with the OIG (page 14).
- Contraband remains a very serious issue at CCCL (page 18).
- NDCS made significant progress on salaries of some staff but these recent contractual changes has made wage compression with the positions above the positions that received recent raises even more of an immediate concern and also highlighted the fact that many other positions are in need of pay raises in order to recruit and retain staff (pages 20-22).
- Additional efforts need to be taken to assist incarcerated individuals with obtaining vocational education and employment/job skills prior to their release (pages 22-23).
- Changes made in staffing include a slight increase in the number of individuals trained, a recent decrease in overtime (possibly related to the COVID-19 pandemic), an increase in overtime expenditures, a slight projected decrease in turnover of protective services positions for 2020, a projected decrease in overall turnover, a slight decrease in turnover rate, a slight decline in total vacancies, and a significant increase in behavioral health staff vacancies (beginning on page 28).
- Bonuses and contractual changes were implemented for some NDCS positions in 2019. The contractual changes were positive steps in the right direction but long overdue and are increasing the wage compression concern (page 39).
- The OIG has concerns regarding the implementation of the career pathways program at Peru State College that was funded during the 2020 legislative session (pages 42-44).
- TSCI and NSP continue on modified operations that started in late 2019 and took place after Director Frakes declared a staff emergency at each facility (page 45).
- Black inmates are over-represented in units at TSCI and NSP (pages 48-49).
- Since the COVID-19 pandemic started, the inmate population at NDCS has declined. This is primarily due to a decrease in admissions from counties. This has also reduced the NDCS design capacity rate to around 150% (page 53).
- Racial disparities regarding incarceration exist for certain categories of incarcerated individuals, including Black men being incarcerated around six times their state population and Native American women being incarcerated at over six times their state population (page 56). There are also differences in the incarceration rates by race when comparing parole and prison populations (page 58).
- The amount of good time lost by incarcerated individuals continues to increase (page 61).

- The attempt by NDCS in 2019 to transfer inmates to their "home" states has not resulted in any increase of interstate transfers. Many inmates were contacted who were not eligible for the program or were from states or even a country that is not a party to the program. Some inmates on "death row" also received the letter (page 63-64).
- A proposal to build and then operate a large medium/maximum custody would appear to face long odds of being funded due to the upcoming budget shortfall and competition with other budget priorities (page 72).
- NDCS has a number of other facility needs that have yet to be addressed (page 73-77).
- NDCS has facilities that do not maintain body cameras which can be very beneficial in reviewing staff/inmate interaction and other serious incidents. In fact, body cameras should be the expectation and not the exception within correctional facilities (page 78).
- The use of restrictive housing has decreased during the past year and appear to reflect a commitment by NDCS to change their past practices (pages 80-83).
- The OIG was not notified of inmate deaths in the manner prescribed in state law during the past year and shared those concerns on more than one occasion with NDCS. This was eventually resolved due to the persistence of the OIG (pages 92-95).
- Programming has been expanded by NDCS and they currently have 28 different clinical programs spread throughout the ten correctional facilities (page 96).
- Domestic violence has been discontinued in the past by NDCS but efforts should be taken to review whether or not this should be reinstated. Over 800 individuals currently in NDCS have been recommended for domestic violence programming (pages 96-98).
- Significant changes are being made regarding the administration of the substance abuse treatment program (page 101).
- Clubs and social groups can have a positive influence on incarcerated individuals and play an important role in the correctional facilities (page 103).
- One inmate who escaped from CCCO wrote a letter to the OIG shortly before he escaped (page 106).
- "Death row" inmates expressed concerns to the OIG who met with them during the past year. These concerns were forwarded to the appropriate individuals and some changes have been made (page 108).
- The OIG will complete a separate report related to the COVID-19 pandemic in the future (page 122).
- The Division of Parole Supervises utilized an outside entity to conduct a thorough analysis of the progress that their agency has made since it became an independent agency in 2016 (pages 124-125).
- There has been a decrease in paroles granted in 2020 (page 126).

RECALLING THE NEW NORMAL

In past reports, there were two continual challenges facing NDCS: overcrowding and understaffing. The OIG has continually tried to lay out how these two challenges impact other parts of the correctional system. While these two issues have been the ones that have risen above others, there has been some improvement in both of those areas. In addition, there has also been positive changes in the number of individuals maintained in a restrictive housing setting and positive changes in the delivery of clinical programming. These are all positive steps that will be discussed in the report. However, these changes need to be examined over the long-term and not just the short-term.

In each OIG annual report there have been sections titled "New Normal." These sections discussed how when a situation gradually worsens over time each year becomes a new normal and the view (at least for some) becomes that it really is not that much worse (or better) than last year. However, if one were to take a step back and compare the current year to the situation five or ten years ago, then one would see that significant changes have taken place over that time period. This applies to data throughout the correctional system, including such data as vacancy rates, turnover rates, population, and many more. Positive steps should be acknowledged. They should also be viewed in the long-term context and examined to see if those gains are sustainable and how they compare to the same data in previous years.

While the OIG acknowledges improvements within the system each year in the annual report, when the Nebraska Legislature passed the law establishing the OIG, Nebraska State Statute 47-902 provided their legislative intent. This statute states that:

> *It is the intent of the Legislature to:*
>
> *(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska correctional system;*
>
> *(b) Assist in improving operations of the department and the Nebraska correctional system;*
>
> *(c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the supervision and release of persons in the Nebraska correctional system. A lack of responsibility and accountability between individuals and private agencies in the current system make it difficult to monitor and oversee the Nebraska correctional system; and*
>
> *(d) Provide a process for investigation and review in order to improve policies and procedures of the correctional system.*

As a result, the OIG is focused on providing oversight of the system in order to assist with improving the function of the Nebraska correctional system and the Nebraska parole system. However, it is clear that most of the attention of the OIG is focused on the function of the correctional system. The OIG typically does not receive complaints or requests for investigation regarding positive events within NDCS. As a result, many interactions with NDCS are the result

of the OIG reviewing a situation or systemic issue that someone believes was improper or needs to be improved.

As in past years, the OIG asked the leadership of NDCS to consider providing information regarding their system prior to the completion of the OIG annual report. The OIG asks for this each year so that NDCS has an opportunity to share any information that they believe would be helpful in the writing of the report.[1] This also is aimed at providing NDCS with the opportunity to share positive steps that have taken place within the system. The OIG also offers a similar opportunity to the NDCS Human Resources Director as it relates to staffing and human resources issues.[2] NDCS did not respond to these offers by the OIG. In fact, this may be the first year that the NDCS Director did not choose to meet with the OIG prior to the release of the report, despite being asked twice if he would like to meet. This is usually a good opportunity for the Director to receive a heads up on the report and for the OIG and the Director to discuss any issues that may need some discussion. It is the hope of the OIG that communication between the Director and the OIG will be enhanced during the upcoming year as the COVID crisis hopefully diminishes.

[1] A July 7, 2020 email from the OIG to Director Frakes stated: "In the past, I have offered to receive any information or updates that you think would be beneficial if included in the annual report. I believe there are numerous initiatives taking place within NDCS that I am not aware of and would like to again offer you the opportunity to provide me with additional information/updates that would be helpful to policy makers and the public."

[2] A July 20, 2020 email from the OIG to Erinn Criner stated: "I would also be open to receiving any other information that you feel is important for my office to have for the upcoming annual report in order to be accurate and comprehensive. I am more than open to sitting down with you or any other staff at NDCS to ensure this."

OMBUDSMAN AND INSPECTOR GENERAL RELATIONSHIP

As shared in past reports, the relationship between the Ombudsman's office and the OIG has evolved since the creation of the OIG. There has been confusion from some regarding the roles of the two offices. The Inspector General for Corrections was initially hired by the Public Counsel or Ombudsman, and reports to the Ombudsman and to two senators, the Chair of the Judiciary Committee and the Chair of the Executive Board.

The OIG was established by the Nebraska Legislature in order to provide for increased accountability and oversight of the Nebraska correctional system. The main responsibilities of the OIG are to identify and examine **systemic** issues of the Nebraska Department of Correctional Services, and to also investigate incidents resulting in death or serious injury that occur within the Nebraska correctional system.

The Ombudsman's Office is an independent complaint-handling office within the Nebraska Legislature for the use of citizens who have complaints about the actions of all administrative agencies of state government, that is, the bureaucracy of state government. In regards to correctional issues, the Office has staff who focus on **individual** complaints which can come from inmates, correctional staff and members of the public.

The OIG and the Ombudsman's office attempt to communicate constantly in order to share their respective experiences regarding correctional and parole issues. In some ways, it is a partnership in which both offices assist the other in understanding any trends, issues or concerns in those systems. They make every attempt to not duplicate their efforts. At times, their efforts may overlap, but this ends up being a positive factor for each office, as they share information and grow their respective oversight capacities through collaboration. Since March 2020, the two offices have held a weekly meeting to facilitate this effort.

Recently, it was suggested by NDCS administration that the OIG and the Ombudsman needed to better coordinate their efforts because the two offices had contacts with NDCS regarding the same individual. However, in this case the Ombudsman's office had received complaints from the incarcerated individual regarding a number of issues. They looked into those individual issues and made inquiries regarding them. The OIG was involved in one issue related to this individual but only after NDCS asked the OIG for assistance. After the OIG assisted them, NDCS did not follow through so the OIG was contacted by the individual to find out about the status of that effort. As a result, the OIG again contacted NDCS regarding that one specific issue. While it was true that the two offices were in communication with the same individual and working with NDCS to some degree regarding that individual, they did not overlap or interfere with each other. This is a good example of how the roles of the two offices may become misinterpreted but in reality there is a necessity many times to overlap. The OIG, while charged with reviewing systemic issues, needs to engage in individual issues in order to understand how those individual issues impact the system. Finally, as a result of the limited resources of the OIG, the Ombudsman's office plays a key role in examining systemic issues and their efforts are welcome and needed. Their expertise and experience are appreciated.

As stated previously, the OIG does become involved in individual cases. These cases can involve correctional staff, incarcerated individuals, parole staff, parolees, and family members of

impacted individuals. Many times individuals contact the OIG because they have exhausted their resources and have heard about the work of the OIG to understand and enhance the correctional system. If possible, the OIG refers individuals to the Ombudsman's office if it is an individual casework issue that needs to be handled by that office. Despite doing that, the number of cases that are reviewed by the OIG has increased during the past five years. In most cases, if an individual writes to the OIG the case is opened utilizing the front-line staff of the Ombudsman's office and their case management system.[3] If the case is referred to the Ombudsman's office by the OIG it is not included in the OIG's cases. Figure 1 shows the data regarding cases completed by the OIG in this manner.

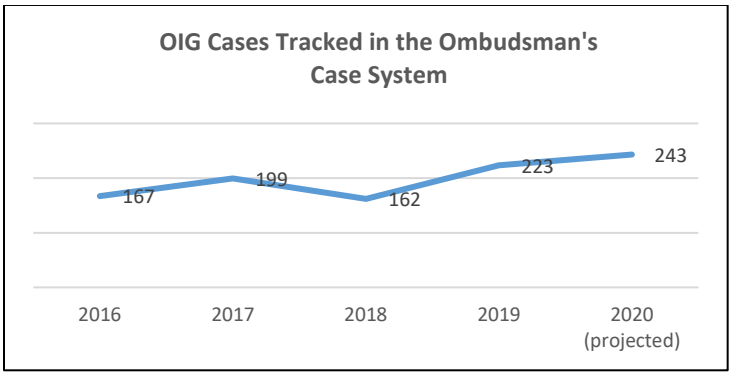


FIGURE 1: SOURCE OIG

However, the OIG also has numerous cases that result from telephone calls, emails, contacts at meetings or during visits to correctional facilities. These are not accounted for in the above chart but are quite numerous. Tracking of these additional cases in the same manner as the cases previously discussed that flow through the front-line staff of the Ombudsman's office should be a priority of the OIG in the future.

[3] The OIG does not have any support staff so the Ombudsman's support staff play a vital role in assisting the OIG in this area. Unlike the OIG, the Inspector General of Child Welfare has their own case management system that was designed for their specific cases due to having additional resources to manage their system.

PRIORITY ISSUES

There are three continuing or emerging issues that the OIG has determined should be highlighted in this year's report: the pipeline/transitions to the community, employee wage compressions issues, and the need for additional vocational education and job skills programs.

Community Pipeline

During the past several years, the OIG has been in contact with numerous individuals regarding issues related to community corrections. During the past year, the OIG has been bombarded with contacts from individuals, primarily at WEC and OCC, about their attempts to move forward and be transferred into a community corrections center prior to their release.

Lack of Beds Impacting Wait List Decisions

In February, Director Frakes testified before the Appropriations Committee in opposition to a legislative bill that would establish a 300 bed community corrections facility. He had indicated at the hearing that NDCS did not need any additional community beds and that he would have more information later this fall when he released his budget request on what NDCS' needs would be going forward.[4] As the OIG heard from individuals who were on the approved transfer list and who had been classified as community custody, the OIG reviewed the list and found that the number of individuals on it who were waiting to go to CCCO or CCCL was quite high, sometimes numbering well over 200 individuals. In addition, there was another large list of individuals who had been approved for transfer to WEC (minimum custody B) who were waiting in the pipeline. In August, NDCS shared that on July 29, 2020 the wait list for approved community transfers of male inmates was at 261 individuals.

This places the NDCS staff who manage the wait list and transfers in an ongoing difficult position. They have individuals who are ready to go to community and have done everything asked of them but they have to wait until a spot opens. Individuals may wait for months for a spot to open up. At that point, NDCS staff need to determine who should get that spot and although there is nothing in NDCS policy that dictates in which order individuals should be prioritized, they have to do their best to get people into the correct settings to assist with their ongoing success. The list is constantly in flux which is necessary but also would add to uncertainty. When looking at who is next to transfer, NDCS staff look at their sentence structure, length of sentence, protective custody issues, non-clinical programming needs, and even the ability of the facility they are leaving to fill that soon to be vacant bed. The most challenging part of all of this, as explained to the OIG, is that NDCS is facing a lack of available community bed space.

At DEC, they select which individuals are going to be transferred next. Since they have control over this they can communicate with those on the list. Staff at other facilities typically know little about how the list is managed or when individuals are going to be moved. As a result they are also put into a difficult position because they are unable to answer questions posed to them by those on the list. Those that are asking the questions do not know if they are not being told the

[4] "*…yes, we need to build beds, just not community custody beds. And I don't need an appropriation right now to figure out what the next steps are and-- and come and tell you what we do need to build. So that's why I'm here today, to say we don't need to invest in this and that there will be-- I'll be putting forward a request in the coming biennium.*" Director Scott Frakes at the February 5, 2020 Appropriations Committee hearing

truth or if the staff member truly doesn't know and this can create conflict. As a result, the OIG recently recommended to NDCS that the staff in these facilities (primarily WEC, OCC and NSP) be communicated with on a regular basis and be empowered to answer questions about the process and individual cases.

The OIG has been closely reviewing the list and how decisions are made. Individuals have contacted the OIG and shared that they are on the list and that they have been told that the priority for transfers is determined by one's potential release date. However, they have witnessed people in similar situations as them move to community despite having a potential release date that is much more into the future than their date. The OIG has verified these claims on a number of occasions and has continually sought insight from NDCS regarding these actions and the process involved with determining how the list is managed. NDCS staff who manage the list expressed a willingness to take a longer look at the issues involving the list and it is the understanding of the OIG that they have undertaken an effort to identify and address these concerns.

The OIG was contacted by one individual who had been approved for community placement and had a release date of January 2021. He had been asking questions of his unit staff about his transfer as he wanted to be able to take domestic violence programming while at a community corrections center prior to his release but was unable to obtain any answers. The OIG brought this case to the attention of NDCS staff in August and he was transferred seven days later.

There is one group that is not really impacted by the management of the list: incarcerated women. When CCCL added a new female unit, NDCS overbuilt by a significant number of beds. As a result, it is typically running at about 80% of its capacity and includes women with release dates as late as 2022 and 2023.

Work Detail to Work Release Pipeline

There is also a pipeline issue for those in the community corrections centers who are on work detail (jobs within NDCS or jobs contracted with other state agencies with low pay).[5] Individuals who are eligible for work release opportunities (actual jobs in the community with regular pay and possibly benefits) are waiting longer to actually be given the opportunity to be on work release. As a result, they spend less time earning a better living that would help them prepare for the future. It also impacts others aspects of their transitional opportunities including furlough opportunities that typically allow them to build better relationships with their family and community. As will be described later in this report one individual who escaped from CCCO might have done so due to his inability to get to work release status after being approved for that status.

Table 1 shows what percentage of incarcerated individuals at the two community corrections centers are on work detail and work release.

[5] Inmate pay will be discussed later in the report.

CCCL Male	Total	Percentage
Release	183	38%
Detail	300	62%
Total	483	
CCCL Female		
Release	57	43%
Detail	77	57%
Total	134	
CCCO Male		
Release	79	45%
Detail	98	55%
Total	177	

TABLE 2: SOURCE NDCS

Long Term Transitions

Many individuals have contacted the OIG who are serving lengthy sentences of at least ten years. They have shared that they know that many things have changed in the community and that they are concerned about their ability to have a thoughtful, well-planned and successful transition. Last year while visiting CCCO, Warden Mahr shared with the OIG and Senator Steve Lathrop the importance to have such plans for those who have served long sentences. We met an individual who was spending a considerable amount of time at CCCO due to his need to have such a transition. He had been a violent inmate who had served a long sentence but had made significant changes in his life and his outlook on life. However, the move back to the community was difficult and full of challenges. Currently, many individuals go back into their community straight from higher custody levels because they are unable to move through the system and get approved for community custody. This occurs for multiple reasons but this is an area that needs further exploration and understanding.

NDCS Goal for Program Completion and Community Custody Placement

In addition to long term transitions, other individuals just seek a longer period of time to transition, even if they have relatively short sentences. Currently, NDCS has a goal of providing clinical programming so that it is completed prior to one's parole eligibility date. If this goal was adjusted so that all clinical programming was completed at least 12 to 18 months prior to one's parole eligibility date, this would create a greater incentive for individuals to participate and complete programming as well as provide them with a longer opportunity in community custody. If someone has a flat sentence or is not eligible for parole, the goal should be for them to have completed all clinical programming 12 to 18 months prior to their release.

McCook Work Ethic Camp

As stated previously the OIG received multiple contacts from individuals who reside at the Work Ethic Camp[6] in McCook. Most individuals are sent to WEC due to a substance abuse treatment need and being required to complete either the Intensive Outpatient Program (IOP) or the Outpatient Program (OP). This is a clinical program that is typically viewed as necessary by the Board of Parole prior to parole being granted. In order to be placed at WEC an individual has to be classified as 3B which is basically a low risk minimum custody individual. They raised numerous issues, including:

- Inconsistencies on who gets transferred including individuals with release dates further in the future being transferred before individuals with dates that are sooner;
- Being informed after they took OP or IOP that they now had to take a non-clinical program such as Thinking for a Change before they would be approved for a transfer to community. In some cases, individuals indicated that they didn't know that they had been recommended for the program or they had been told it was removed from their recommendations in the past;
- Being asked to sign a document indicating that they understood that not participating in the Thinking for a Change program would result in them not being supported for an early reclassification or transfer to community corrections;[7]
- Unit staff being unable to answer questions about their transfer;
- Lack of video visitation even though many of the men are from the eastern half of the state; and,
- Once they completed any program they then had to wait in limbo for an unknown time at a facility with limited opportunities to stay busy. WEC does not have an indoor recreational area and little in the way of extra activities. In the past the OIG has recommended that NDCS build a multi-purpose building so that there would be an indoor recreation

INMATE X's STORY

There are many individual stories that could be shared in this report that would highlight the need to make continued improvements to the system.

One story is about Inmate X. Inmate X came to the attention of the OIG in January 2020 after he reached out to the OIG and shared that he was spending his time in a maximum custody unit at TSCI after having his parole revoked. The OIG looked into his situation and found that he was near 70 years old and had a long sentence due to theft and being a habitual criminal. He was sentenced in 1996 to 4 to 8 years for theft but 30 to 60 years for being a habitual criminal. He was paroled in 2011 and it was revoked in 2012. He was paroled in 2013 and it was revoked in 2014. In late 2015 he was paroled again but it was revoked in June 2019 due to a shoplifting charge. He received a ten day jail sentence for that charge but was sent back to NDCS and placed in TSCI in a housing unit for older men (the OIG asked for details on programs available in this unit but the TSCI Warden failed to respond to this request).

The short version of this is that he is likely going to be paroled in late September. However, he is going to go out to the community from a maximum custody setting. While at TSCI for over the past year, he shared that he didn't receive any new tools to help him succeed when he leaves NDCS.

Even after the OIG pointed out that he would be leaving NDCS custody in the fall and met all the criteria to receive a classification of community custody to the NDCS Deputy Directors, nothing changed. TSCI staff twice recommended that this take place but no action was taken after that. As a result, he sits at TSCI as he awaits his parole. This is taking place despite him seeking assistance and being a model prisoner.

If an individual like Inmate X can't receive programs to assist him and then access community, it is possible that more problematic individuals have even more difficulty moving forward.

[6] The OIG would recommend that the name of the Work Ethic Camp be changed to reflect what the facility actually is as Work Ethic Camp is its original name when it was under Probation.

[7] Thinking for a Change is a non-clinical program that is not required in order to be paroled by the Board.

space as well as room for additional community college classes and other job skills training opportunities.

As far as the non-clinical program issue, the OIG appreciates that NDCS wants to provide additional programming to incarcerated individuals. In fact, the OIG has recommended in the past that programs such as these be provided earlier in a sentence instead of later and NDCS was set to implement that on a small scale earlier this year. The concern that the OIG expressed regarding this programming being done at WEC is that it may keep individuals from moving to community for at least three more months. If the non-clinical programs could be provided at the same time as the clinical programs at WEC this would provide individuals with additional transition time in the community setting. The non-clinical programs are also offered in the community setting so they could be taken there as well. While there are studies that indicate taking these non-clinical programs can impact recidivism, an argument could be made that spending the additional time in a community corrections center working and building relationships with your community, church and family might result in a greater impact on recidivism.

Too Close To Release

Individuals also shared that there are unwritten policies, especially at OCC, regarding when they are able to get transferred to community, including not allowing transfers if they are within 60 or 90 days of their potential release. There have been numerous cases brought to the attention of the OIG in which individuals were led to believe by the Board that they needed to get to community prior to their being approved for parole. However, once they finish any needed programming there are situations in which they are deemed too close to their parole hearing to be transferred. The individuals then are concerned that since they are not at community they won't get paroled. The OIG has contacted the Board of Parole on several occasions to share the concerns of these individuals.

Transfer List and Race

The OIG received a complaint from two individuals alleging that white individuals receive preference when it comes to the movement of people off of the transfer list. This complaint was just recently shared with the OIG so the OIG has only done some preliminary viewing of the data related to this allegation. So far, race does not appear to be a factor in determining who on the list is transferred. However, the OIG will take a longer look at this data to see if there are any trends. One preliminary observation is that it appears white males are represented at a higher rate as far as being placed on the list and being at a minimum custody setting. It is important that the OIG examine this further and NDCS should also consider reviewing this as well.

Educational Release

Concerns were also brought to the attention of the OIG regarding a lack of clarity on how to gain educational release, including how it is difficult to plan for signing up for classes and paying the educational bill when an individual is given no idea when they will actually get to community and participate in an educational release program.[8]

[8] The simple version of educational release is that it is similar to work release except that you leave the community corrections center to attend classes and pursue a certification or degree.

The Flip Side of the Community Pipeline

While there are many individuals who are seeking a transfer to a community corrections center there are also individuals who are already there that violate rules and create safety issues. The OIG monitors reports at each facility and the number of serious incidents that take place at CCCL is significant. Drugs, cell phones and other contraband are found on a very regular basis. There are numerous reports of inmates who are passed out or incoherent or vomiting due to being high on K2. Meth is found on a consistent basis. This behavior creates safety issues for staff and other incarcerated individuals. It also leads to conflict as individuals must pay for the drugs or phones and if they do not pay for those items then they are in debt. This can lead to assaults or other detrimental behavior.

This is particularly the case at CCCL and not as much as at CCCO. This may be the case for a number of reasons, including the number of individuals who reside in the facility (CCCL is more than triple the size of CCCO). Also, the actual size of the facility and the layout at CCCL may also be a factor, especially for the male population. The main entrance at CCCL is small and cramped. As a result, the Warden at CCCL initiated a project to set up a separate entrance for those returning to the facility from the community. This will allow for better searches of individuals. There are also staff who feel that the failure of CCCL to discipline individuals who are found with this contraband or exhibit other negative behaviors also has an impact. They believe that CCCL may give individuals more chances than those at CCCO. This has not been quantified but anecdotally it does appear that CCCO has more of a "one strike and you are out" policy than CCCL. The OIG has had discussions with the Warden and the Deputy Warden at CCCL about these ongoing contraband issues and they are concerned about its impact on the facility and those who reside and work there. It should be mentioned that there have been recent changes as far as introducing substance abuse programs at both CCCL and CCCO so this is a change that will hopefully result in positive outcomes.

In the past, the OIG has talked about the need to right-size facilities. Even with the expansion of CCCL and the additional meeting space and kitchen/dining space, there are still male units that are running at double their capacity. If these rooms and units held half the number of men that they now have this would create a less stressful and chaotic environment. Staff would be able to work more closely with the men and also be able to better monitor their activities. It would not be as easy to hide contraband or intoxication if there were half the number of men in those units and rooms. In these crowded conditions, staff and facility administration are placed in very difficult positions.

As a result of this, those that are waiting to get to community resent those that have this opportunity and are not making the best of it. They also share their resentfulness when people are returned to OCC or NSP but then get another chance at community before others on the transfer list. There are likely many individuals who reside at the facility who would have better outcomes if these incidents and behaviors did not occur at the rate that they do. Some staff are upset because they don't think enough is being done to address this behavior and they also feel that NDCS is doing a poor job of transferring the correct people to the community corrections center.

In the past, Director Frakes and his leadership team have held town halls at facilities. The time may be right for town halls during each shift at CCCL where staff can be candid and open about

their concerns and also share their suggestions on how to improve the living and working conditions at CCCL. The same could be done for the inmate population. The OIG would be more than happy to participate in such a constructive dialogue.

Other Community Options

In the past, the OIG presented information to Director Frakes and the Legislature regarding other options for inmates who have been classified as community custody and are eligible for work release opportunities. This information has been included in past reports and in testimony before the Legislature and includes utilizing excess work release units in county jails that are near the home of those using that program or establishing a network of smaller community based work release facilities in communities such as Norfolk, North Platte, Scottsbluff, Kearney and Grand Island. During this past legislative session, a proposal to use a facility such as the Bristol Station in Hastings to house individuals who are classified as community custody but who have not reached their parole eligibility date was offered. The Ricketts Administration shared that they could do this without a law change so the bill was not advanced. Another bill was introduced to expand the number of community custody beds by building a 300 bed facility. In the past, the OIG has advocated for a stand-alone treatment facility where individuals could receive clinical treatment in a therapeutic environment that is free from distractions and contraband. For instance, this is not the case at the residential substance abuse program at NSP. This may better prepare individuals for a placement in a community corrections center.

Summary

This community pipeline is an important component of the success of the correctional system. It is not a stand-alone problem as there are many factors that come into play in order to make it successful. Even though Director Frakes said that "Building more community custody beds would give NDCS a substantial excess that would not go utilized-- or that would go un--unutilized" at a legislative hearing earlier this year, the fact that there are overcrowded units and a significant backlog to get to WEC, CCCO and CCCL shows that there may in fact be more of a need for changes in this area than was previously understood.[9] In addition, as the population of the system returns to its pre-COVID state and then increases after that, this will likely result in a greater demand for that part of the system.

Wage Compression

In the 2019 OIG Annual Report, the issue of wage compression emerging as an area of concern was discussed. The report stated:

> *Wage compression is emerging as an area of concern as a result of the State of Nebraska providing additional pay and incentives to the unionized, non-salary staff. When this takes place, salaries for those staff start to catch up to supervisory salaries and when the non-salaried staff work overtime their pay increases. Meanwhile, the salaried staff may work more than 40 hours but are typically not compensated for that effort. In addition, NDCS needs to review the salary structure of wardens, deputy wardens, other administrative positions and more to determine how those rates of pay compare with competitors. It is key that NDCS not only promote the best and the brightest but that they*

[9] February 5, 2020 Appropriations Committee hearing

also are in a position to recruit the best and the brightest from outside the system. It is encouraging that two wardens were recruited from outside the NDCS system in recent years,[10] but the rates of pay for other positions should be reviewed so that they can recruit for those positions and also retain people in those positions, no matter if they were internal or external candidates. In 2015, the Director of NDCS was hired and his salary was 51% higher than the previous NDCS Director. At the time, the pay increase was supported by Governor Ricketts and explained in a news story regarding his hiring:

> *Ricketts said he saw no contradiction between his goal of limiting government and the steep increase in pay for the Department of Correctional Services director. He called Frakes' higher salary an "investment" in improving an agency plagued with problems. Those problems range from overcrowding to early releases of prisoners and a lack of programs to help inmates change in their lives. "We have to invest prudently and wisely to make sure we're doing a better job," Ricketts said. Getting someone who can chart a new course for state corrections should help Nebraska slow the growth of government, he said. It also should help boost public trust in government. "We're paying Director Frakes commensurate with his skills and his experience," Ricketts said." Frakes has more than 32 years of experience in corrections, starting as a corrections officer and moving his way up. He comes from a system that has embraced prison reforms such as the reduced use of solitary confinement and increased community supervision.[11]*

The NDCS Director's salary is now nearly $190,000. Comparable positions in Iowa and Kansas pay approximately $140,000 and $150,000 respectively. Harold Clarke, who leads the Virginia Department of Corrections, and has led state correctional agencies in Nebraska, Washington and Massachusetts is currently paid $156,060. The difference in pay between Nebraska and other states could be used as an example when it comes to paying other salaried positions within NDCS so that high quality individuals with experience can fill these important positions.

Since that time the Director's salary was raised to $250,000. Meanwhile, positions such as case managers, unit managers, lieutenants and captains have fallen further behind due to additional salary changes for positions they supervise. While those additional salary changes are definitely a positive and NDCS should be commended for making those take place after years of neglect, other positions have been negatively impacted.

The OIG testified before the Appropriations Committee earlier this year and stated the following regarding the wage compression issue:

> *As far as staff salaries, if you go back and look at each of my annual reports I have strongly advocated for changes in pay for staff, including recruitment and retention bonuses, step plans, and other incentives. It took a very long time but I am glad that*

[10] Both from private prison systems

[11] https://www.omaha.com/news/nebraska/new-nebraska-corrections-director-frakes-getting-big-salary-bump-over/article_c837053e-0612-556a-8409-d94c55605af4.html

action was taken this year to address the pay for front line staff. As a result, I am here to support this increase in the Department's budget.

However, I think it is necessary to share that these steps only address salary issues for corporals, sergeants and case workers. There are many other job classifications that need to be addressed. I have provided you with an excerpt from my last annual report and it shares a great deal on what has been done on staffing. It also discusses my concern, and the concern of many staff, about wage compression. The unionized, non-salary staff have been receiving additional pay and incentives and, as a result, their salaries are catching up to, and by some accounts, have passed those above them. In my annual report I recommended to the Department that the Department "review the issue of wage compression between salary and non-salary staff, as well as the salary structure of wardens and other administrative positions." If this is not done, I fear that people who are currently Lieutenants, Case Managers and even Unit Managers may voluntarily demote so that they can receive a better rate of pay. Concerns have also been expressed to me over the past few years about the competitiveness of other salaries, such as for substance abuse counselors, mental health practitioners and others.

It was shared with me yesterday that Nurse Supervisors in the prisons receive a lower salary than the nurses they supervise. These ongoing salary issues need to be addressed sooner rather than later and I would contend that the Department actually should be requesting more funds in this request and make a commitment to address these concerns this year.

As a result of questions raised by the members of the Appropriations Committee the OIG followed up with additional information for them after the hearing. It included the following on this issue:

At the hearing, I shared information about additional staff salary issues that were a top priority in my opinion. I shared salary information about the unit staff (unit case workers, unit case managers and unit managers) and how wage compression that has resulted from changes to pay for FOP members (in this example, case workers) has impacted those in other positions. After that hearing I heard from several Department employees who shared their stories with me, including a veteran captain who supervises less experienced sergeants who make more money than he does. The contacts really opened my eyes.

As a result, I wanted to express to you that this is an even bigger concern than I realized at the time. Staff have shared examples of supervisors being paid less than those they supervise as a result of the latest contract. They have told me that when they have brought these concerns to the leaders of the Department of Correctional Services and the Department of Administrative Services that they have been told that since there is nothing in the budget they can't address these wage compression issues. Of course, if the Department does not request a budget deficit then there will be no funds available in the budget. As a result, there are experienced staff that are either (1) looking to demote; (2) looking for other positions inside or outside the Department; or (3) becoming less happy

with their current position. When veteran staff leave then less experienced staff promote but in this case there is a disincentive to promote.

In the hearing I shared some examples of other positions that have salary challenges, including mental health practitioners, nurse supervisors and substance abuse counselors. I failed to mention the many staff represented by NAPE who work in maintenance, recreation, kitchen and many other locations who have not received similar increases. Many of these individuals are in positions in which security staff are assigned to those areas. However, when there is a shortage of staff the security staff are pulled into a different area and a position such as recreation specialist has to do both jobs. Currently a recreation specialist is required to have a college degree or year for year experience and they receive $17.04/hour. Often times, they end up filling in for security staff who are now hired at a rate of $20/hour. The requirements for a corporal are that they have to be 18 years of age, have a high school education or equivalent and must be able to legally possess a firearm and ammunition. The role of corporal is important but so are the roles of these other positions.

I thought it was important to bring this issue to your attention because there is a perception that the recent contract addressed staff salary issues. However, as shared above and in my testimony, there is still a lot of work to be done in this area and I would argue that it is important that it be addressed sooner rather than later.

In the 2019 OIG Annual Report, the OIG did make a recommendation to NDCS regarding this issue. A response was received to this recommendation in July 2020.

2019 REPORT RECOMMENDATION	**NDCS RESPONSE/UPDATE**
NDCS needs to review the issue of wage compression between salary and non-salary staff, as well as the salary structure of wardens and other administrative positions	Compensation review is an ongoing process, complicated by working with 3 different unions and a significant number of Rules and Regulations covered staff. This has been a "work in progress" since 2015.

As stated earlier, NDCS should be commended for making recent changes to salaries for some staff. These were necessary changes that will hopefully impact recruitment and retention. However, the “work in progress” needs to become “work completed” as wage compression and other salary issues need to be addressed sooner rather than later.

Vocational Education/Employment and Job Skills

In 2017, the LR 127 Committee report included the following two statements:

The Department and the Legislature should work together to increase opportunities for inmates to acquire vocational or other skills during incarceration that will help ensure their success upon reentry to the community.

The LR 127 Committee believes that the desire expressed by inmates for more work and vocational skills opportunities should be pursued. There is reason to believe that

increasing such opportunities will assist in both managing the inmate population, and in preparing inmates for a successful return to the community. Both of these outcomes are essential to the success of Nebraska's justice system.[12]

The OIG has consistently remained in agreement with these statements. The only change that has been observed by the OIG since then regarding this has been some slight changes due to the grants provided through the Vocational and Life Skills Grant Program. In past reports, multiple suggestions and ideas have been shared regarding this need, including some from incarcerated individuals. The 2018 OIG Annual Report shared some of these ideas:

When visiting correctional facilities the OIG meets a number of incarcerated individuals who have many ideas on how to improve the correctional system. One such individual is David W. He has been in the correctional system for a number of years, but has put his time in prison to good use. He is aware of a number of initiatives that have taken place in other states, and has shared those with the OIG. One of these initiatives is The Last Mile project in San Quentin State Prison in California.[13] *The program trains inmates in the technological arena so that they can build skills that are needed when they return to society. In 2014, The Last Mile started an inclusive computer coding curriculum so that participants can learn how to become computer programmers. According to The Last Mile there is anticipated to be a shortage of over one million software engineers by 2020. They overcame the challenge of not having the internet in their facility by creating a programming platform that simulates a live coding experience. The Last Mile continues to expand their curriculum and has branched out to other correctional facilities in California. San Quentin is also the home of the San Quentin Prison University Project which received a National Humanities Medal in 2015 for their work educating inmates. A RAND Corporation study showed that "inmates who took classes had a 43 percent lower likelihood of recidivism and a 13 percent higher likelihood of getting a job after leaving prison."*[14]

Another initiative the inmate shared with the OIG is the Hudson Link program. This program provides college education, life skills and re-entry support in New York and in the past 20 years has awarded over 600 degrees utilizing nine colleges. It is located in six correctional facilities in the State of New York. The recidivism rate for those who go through this program is less than two percent and the cost of the program is approximately $5000 annually per inmate.[15]

One suggestion provided to the OIG was for the Legislature to create an Education and Employment Work Group. The Work Group would consist of NDCS staff, but more importantly, representatives of the Nebraska Department of Labor, businesses community, higher education (especially community colleges), formerly incarcerated individuals, reentry organizations and others interested in these areas. The Work Group would then be assigned tasks, including the assessing of the current state of education

[12] https://nebraskalegislature.gov/pdf/reports/committee/select_special/cso/2017_lr127.pdf (pages 27-28)
[13] https://thelastmile.org/
[14] "Turn Prisons Into Colleges." New York Times. March 7, 2018
[15] http://www.hudsonlink.org/

and employment training within NDCS, reviewing leading edge efforts happening in other states and making recommendations to the Governor and the Legislature by the end of 2019. An example of this effort that should be reviewed is the work of Senator Dwite Pedersen in 1991. Senator Pedersen, along with Senator John Lindsay, introduced Legislative Resolution 477 that year and convened a group of stakeholders that reviewed the activities of the Correctional Industries program within NDCS and conducted a number of analyses of the program and related issues. The OIG would urge those interested in this area to review the LR 477 Report.[16]

Another idea comes from former Governor Tommy Thompson of Wisconsin. Earlier this year, Governor Thompson put forward a proposal to create a "Second Chance Skills Institute" in Wisconsin by converting a prison (or possibly building a new one) into a job and skills training facility for future parolees. The Institute would work with state government, employers, unions, businesses and others to identify needed skills and to provide instruction and support. Governor Thompson wrote an article on his idea and one the more interesting quotes from the article was this, "Looking back, I regret not spending more time considering, 'What does tomorrow look like for that parolee, and can we work together to help provide the necessary tools to reap a new opportunity.'"[17] *One possible location for such an institute could be the conversion of the 600 minimum beds at NSP. These overcrowded dormitories which were supposed to be temporary housing decades ago could be "right-sized" and made into a specialized unit that inmates would strive to enter. Other possibilities could be to convert part of OCC into such a facility or build a stand-alone facility in either Douglas, Lancaster or Sarpy Counties. If a stand-alone facility were to be built it could end up being a facility that is actually two facilities in one. One part could be the job and skills training institute and the other part could a therapeutic facility in which clinical programming could be delivered in a therapeutic setting to minimum custody inmates before their parole eligibility date. Should this be considered by policy makers there would be a number of options available to move forward on this proposal.*

During the past several months, the OIG has visited on the telephone with approximately 100 incarcerated individuals who were nearing their release or their move to a community corrections center. While many of these conversations started as a discussion about their desire to be transferred to a community facility, oftentimes they changed into discussions about their plans upon release and what they received during their incarceration to help them be prepared for a successful transition back into their community or a new community. During these conversations many of them shared that they felt ill-prepared for a successful transition. Many of them came into the system at a young age. They have little to no job skills or actual work experiences. When asked if they gained any job skills or skills to be a good employee or to pursue a career they struggled to name anything that has assisted them in that, unless they were fortunate enough to gain a job with Cornhusker State Industries. Too many men shared that they figured if they don't find a good job they would end up falling back into the trade or lifestyle that ended up with their entering the correctional system because they believe they will have no choice if they want to provide for themselves and their family.

[16] LR 477 Report
[17] "Tommy Thompson: Help solve Wisconsin's coming labor shortage by rehabilitating prisoners"

During a recent visit to LCC, the OIG visited with incarcerated individuals who shared similar concerns. They pointed outside the LCC windows where there was a laundry area and a woodworking area. They said that some are lucky to get jobs out there but they shared that they need more than that to succeed in today's world.

In September 2020 over 500 incarcerated individuals at OCC submitted a petition to NDCS seeking computer access for individuals. The petition apparently made this request due to the need to be able to properly utilize computers when released. When the OIG and the Ombudsman's representatives were in Colorado in 2019 the individuals in restrictive housing units had computer access, including limited access to the internet. This is not the case in the Nebraska system.

These issues are brought up over and over again, but not only with incarcerated individuals. NDCS staff also bring up these issues and there have been many who wish that those who are incarcerated would be given more opportunities to gain additional education, even higher education, and employment and life skills.

A review of state law regarding the rehabilitation of incarcerated individuals shows that providing these individuals with these tools has been a priority of the Nebraska Legislature and the Governors of Nebraska who signed these bills containing this language into laws. These state laws include the following (emphasis added):

> *83-171. Department of Correctional Services; created; duties.*
> *There is hereby created a Department of Correctional Services which shall:*
>
> *(1)* ***Maintain and administer facilities required for the custody, control, correctional treatment, and rehabilitation of persons committed to the department*** *and for the safekeeping of such other persons as may be remanded to the department in accordance with law;*
>
> *(2)* ***Develop policies and programs for the correctional treatment and rehabilitation of persons committed to the department****;*
>
> *83-173. Director of Correctional Services; duties.*
> *The Director of Correctional Services shall:*
>
> *(1) Supervise and be responsible for the administration of the Department of Correctional Services;*
>
> *(2) Establish, consolidate, or abolish any administrative subdivision within the department and appoint and remove for cause the heads thereof and delegate appropriate powers and duties to them;*
>
> *(3)* ***Establish and administer policies and programs for the operation of the facilities in the department and for the custody, control, safety, correction, and rehabilitation of persons*** *committed to the department;*

83-182. Director; establish programs.
The director shall establish appropriate programs for each facility designed as far as practical to prepare and assist each person committed to the department to assume his or her responsibilities as a useful citizen. In developing such programs, the director shall seek to make available to each person capable of benefiting therefrom academic or vocational training, participation in productive work, *religious and recreational activities, and such therapeutic measures as are practicable. No person shall be ordered or compelled to participate in religious activities;*

83-182.01. Structured programming; evaluation.
(1) Structured programming shall be planned for all adult persons committed to the department. ***The structured programming shall include any of the following: Work programs, vocational training, behavior management and modification, money management,*** *and substance abuse awareness, counseling, or treatment. Programs and treatment services shall address:*

(a) Behavioral impairments, severe emotional disturbances, and other mental health or psychiatric disorders;

(b) Drug and alcohol use and addiction;

(c) Health and medical needs;

(d) Education and related services;

(e) Counseling services for persons committed to the department who have been physically or sexually abused;

(f) ***Work ethic and structured work programs;***

(g) The development and enhancement of job acquisition skills and job performance skills*; and*

(h) Cognitive behavioral intervention.

Structured programming may also include classes and activities organized by inmate self-betterment clubs, cultural clubs, and other inmate-led or volunteer-led groups.

(2) ***The goal of such structured programming is to provide the skills necessary for the person committed to the department to successfully return to his or her home or community or to a suitable alternative community upon his or her release from the adult correctional facility.*** *The Legislature recognizes that many inmate self-betterment clubs and cultural clubs help achieve this goal by providing constructive opportunities for personal growth.*

(3) If a person committed to the department refuses to participate in the structured programming described in subsection (1) of this section, he or she shall be subject to

disciplinary action, except that a person committed to the department who refuses to participate in structured programming consisting of classes and activities organized by inmate self-betterment clubs, cultural clubs, or other inmate-led or volunteer-led groups shall not be subject to disciplinary action.

(4) Any person committed to the department who is qualified by reason of education, training, or experience to teach academic or vocational classes may be given the opportunity to teach such classes to committed offenders as part of the structured programming described in this section.

(5) ***The department shall evaluate the quality of programs funded by the department. The evaluation shall focus on whether program participation reduces recidivism****. Subject to the availability of funding, the department may contract with an independent contractor or academic institution for each program evaluation. Each program evaluation shall be standardized and shall include a site visit, interviews with key staff, interviews with offenders, group observation, if applicable, and review of materials used for the program. The evaluation shall include adherence to concepts that are linked with program effectiveness, such as program procedures, staff qualifications, and fidelity to the program model of delivering offender assessment and treatment. Each program evaluation shall also include feedback to the department concerning program strengths and weaknesses and recommendations for better adherence to evidence-based programming;*

83-183. Persons committed; employment; wages; use; rules and regulations.
(1) ***To establish good habits of work and responsibility, to foster vocational training, and to reduce the cost of operating the facilities, persons committed to the department shall be employed, eight hours per day, so far as possible in constructive and diversified activities in the production of goods, services, and foodstuffs to maintain the facilities, for state use, and for other purposes authorized by law.*** *To accomplish these purposes, the director may establish and maintain industries and farms in appropriate facilities and may enter into arrangements with any other board or agency of the state, any natural resources district, or any other political subdivision, except that any arrangements entered into with school districts, educational service units, community colleges, state colleges, or universities shall include supervision provided by the department, for the employment of persons committed to the department for state or governmental purposes. Nothing in this subsection shall be construed to effect a reduction in the number of work release positions…*

It is important to note that Nebraska State Statute 83-182.01 also discusses an important subject other than job and educational skills when it states: "The Legislature recognizes that many inmate self-betterment clubs and cultural clubs help achieve this goal by providing constructive opportunities for personal growth." Countless individuals both inside and formerly inside our correctional facilities have stressed the importance of these groups in changing them as individuals. These are important parts of the rehabilitative experience that need to be better understood. While clinical programs are important, opportunities such as the clubs provide individuals with additional skills and insights about themselves and where they can go and want to go as people.

It comes back around to the LR 127 Committee's findings in 2017:

> *The Department and the Legislature should work together to increase opportunities for inmates to acquire vocational or other skills during incarceration that will help ensure their success upon reentry to the community.*
>
> *The LR 127 Committee believes that the desire expressed by inmates for more work and vocational skills opportunities should be pursued. There is reason to believe that increasing such opportunities will assist in both managing the inmate population, and in preparing inmates for a successful return to the community. Both of these outcomes are essential to the success of Nebraska's justice system.*[18]

If the Legislature still supports this and the state laws that have been passed by prior legislatures, they need to work with NDCS to find out what the needs of NDCS and those that it rehabilitates truly are and then provide NDCS with the resources needed to expand these efforts. NDCS needs to be a willing and honest partner with the Legislature should this take place.

[18] https://nebraskalegislature.gov/pdf/reports/committee/select_special/cso/2017_lr127.pdf (pages 27-28)

STAFFING

Past OIG reports found that "NDCS is in a staffing crisis" and each report reported a number of statistics related to staffing throughout the system and at each facility. This report will provide updated data in each of those areas.

Recruitment

The 2016 OIG report found that during fiscal year (FY) 2013-14, 462 individuals started their pre-service training program for NDCS. This peaked in FY2017-18 at 661 individuals. Of the 555 individuals who started training in the recent fiscal year 498 individuals finished it and 398 of those individuals were protective services staff. These numbers are all slightly higher than in the previous fiscal year.

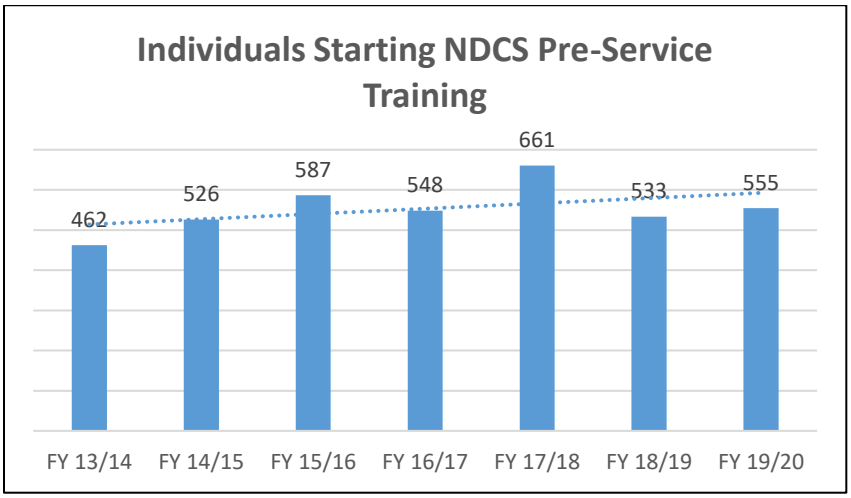


FIGURE 2: SOURCE NDCS

FTE History

During the past ten years, the number of full-time employees utilized by NDCS has actually decreased although it did increase slightly in 2019.

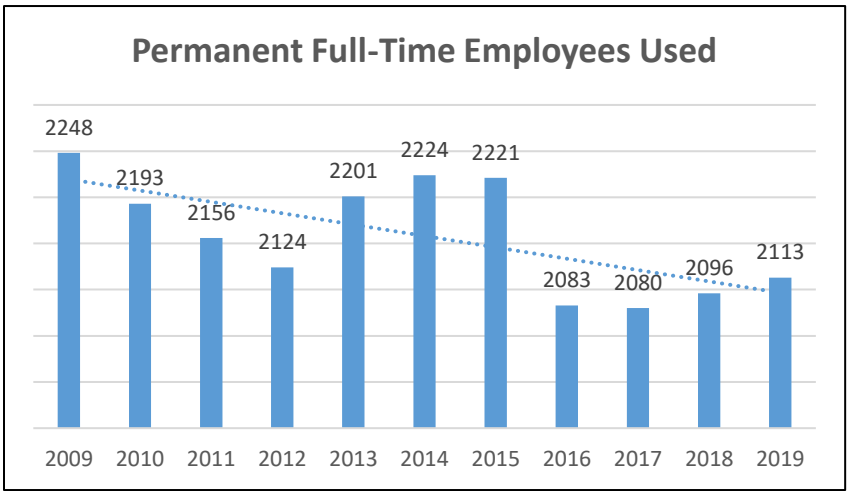


FIGURE 3: SOURCE 2020 DAS PERSONNEL ALMANAC

Demotions

A recent issue presented to the OIG by staff was the number of individuals who received or requested demotions within NDCS. Demotions could be the result of discipline, a desire to move to a different facility, a wish to try a new area within NDCS or a number of other reasons. Some staff have demoted from a salary position to a non-salary position so that they can receive overtime pay and possibly have more control over their work schedule. The OIG first requested data for last year's report and there was a slight increase during the recent fiscal year.

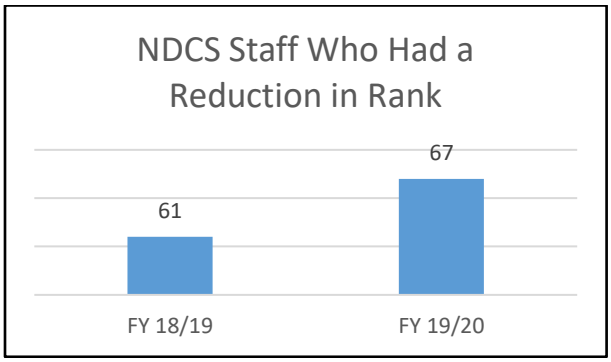


FIGURE 4: SOURCE NDCS

Staff Overtime

In past reports, the overtime data that has been reported has covered protective services employees. Protective service employees are defined by NDCS as the positions of correctional officer, corporal and caseworker. Previous reports found that the average amount of overtime throughout NDCS steadily grew for these employees. Figure 5 shows the changes in overtime hours worked by those staff going back to 2014. During that period overtime hours worked has continued to increase as demonstrated by the trend line in the chart.[19] However, recent months in 2020 have seen a significant decrease in the use of overtime throughout the system at all facilities. This decrease has occurred at each facility and appears to have started to decrease in February with a significant decrease at all facilities except NCCW in June. In fact, total overtime for protective services employees was approximately 41,385 hours in May 2020 but dropped to approximately 30,350 hours in June 2020. This decrease has taken place at each facility despite most facilities not experiencing a decrease in staff vacancies. Some of the change can likely be explained at NSP due to an increase in staff and at NSP and TSCI due to the changes to a 12 hour day. However, having it take place throughout the system indicates that there is likely another factor or factors involved in this decrease. The OIG inquired of Director Frakes about this decrease and he shared that there have been fewer roster vacancies throughout the system due to a noticeable decrease in unscheduled leave and vacation leave. It appears as though this would be a side effect of COVID-19 as staff have less opportunities for activities outside of their employment. This data will continue to be tracked to see if when COVID-19 changes if overtime changes as well.

[19] There is a significant spike in overtime rates during the summer of 2015. This took place as a result of the TSCI riot in 2015.

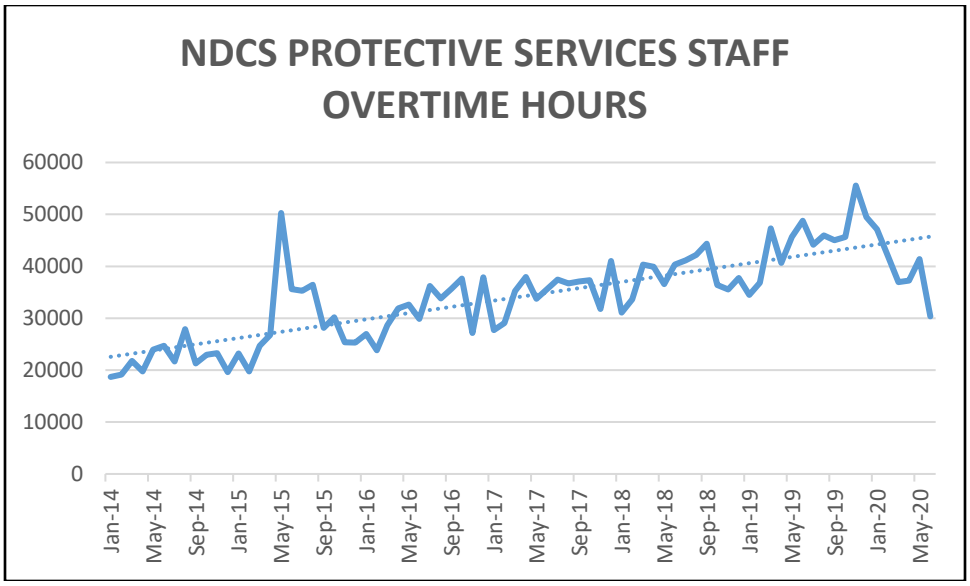


FIGURE 5: SOURCE NDCS

Another way to review the overtime data is to compare it from year to year. The next chart (Figure 6) compares 2017-2020. Unlike in 2019, 2020 is demonstrating a decrease in the use of overtime in the majority of the months though all but one month is higher than the same months were in 2017.

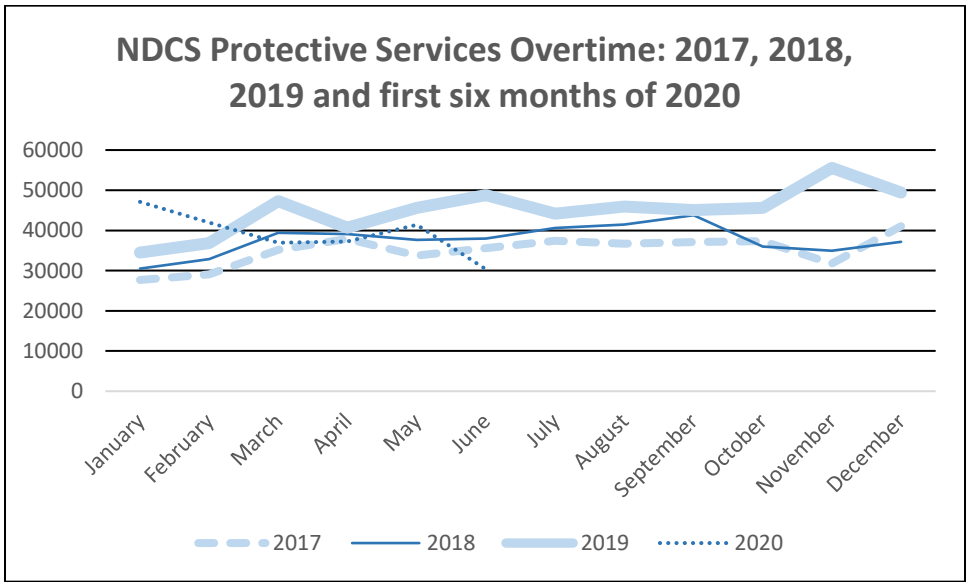


FIGURE 6: SOURCE NDCS

The OIG began tracking total overtime for all NDCS employees in 2018. This number had grown significantly as well. It is likely that it had increased due to staff that are not protective services staff stepping up and assisting the understaffed facilities which needed more staff positions filled. The chart (Figure 7) demonstrates, again, that overtime hours are decreasing within NDCS and are back to levels not seen since 2017 and early 2018.

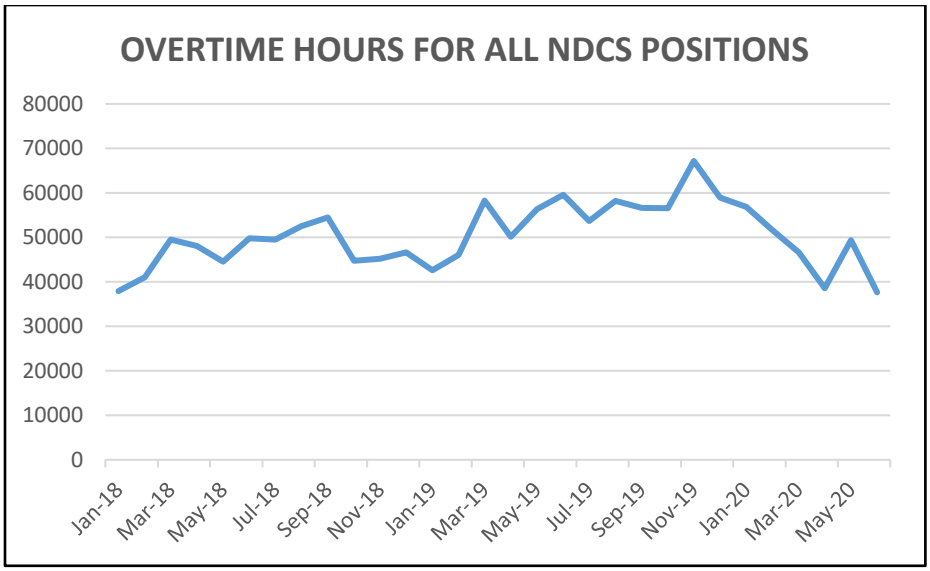


FIGURE 7: SOURCE NDCS

The 2019 Report included overtime data at each facility. This data can be provided upon request from the OIG. These reports count all overtime, including voluntary overtime and mandatory overtime.[20]

Overtime costs for all NDCS employees has almost tripled since FY2006-07, increasing from $5.3 million in FY2006-07 to over $17 million in the most recent fiscal year, according to the 2020 Department of Administrative Services Personnel Almanac (Figure 8). In that same fiscal year, the Department of Health and Human Services had the second highest expenditures for overtime at $8.26 million.

[20] As shared in past reports, when staff work overtime hours they can either do so in a mandatory or voluntary manner. The simple difference is that mandatory overtime occurs when employees are required by NDCS to work extra hours that they were not scheduled to work, and where they do not typically have a choice in working those hours. Voluntary overtime hours are those worked by an employee as a result of their independent decision to do so. The view on mandatory and voluntary overtime is that there is a real difference, but at some facilities it is difficult to differentiate between the two categories. At some facilities many individuals choose to work voluntary overtime in an effort to keep from receiving mandatory overtime. They also choose to work voluntary overtime due to their desire to assist their fellow employee who does not have the support around them that they likely desire. Employees may also work voluntary overtime hours in the hope that someone will do the same when there is not the appropriate staffing levels and they need to avoid working overtime. As a result, the OIG decided in the past to only track total overtime hours for NDCS.

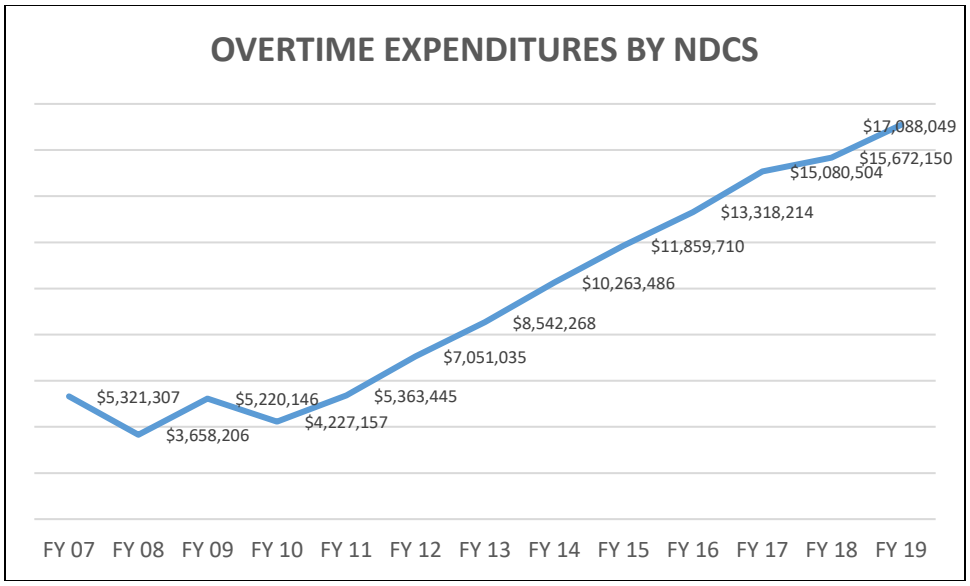


FIGURE 8: SOURCE 2020 DAS PERSONNEL ALMANAC

Turnover

Turnover of protective services employees[21] significantly increased from 2010 to 2017 but has been slowly decreasing since then. The projected number of protective services positions to be turned over in 2020 is lower than the past five years.[22]

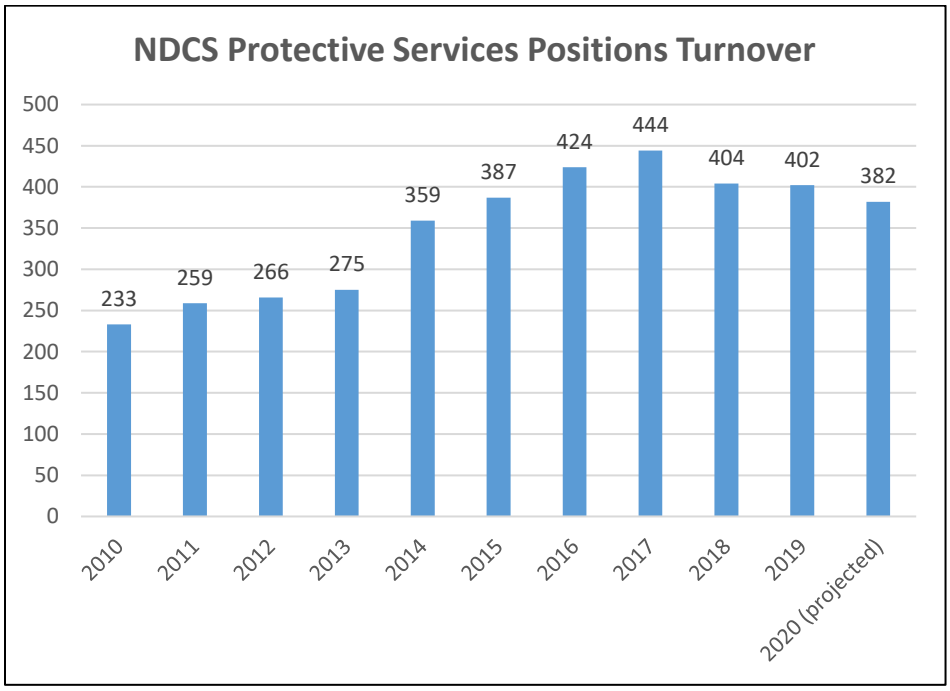
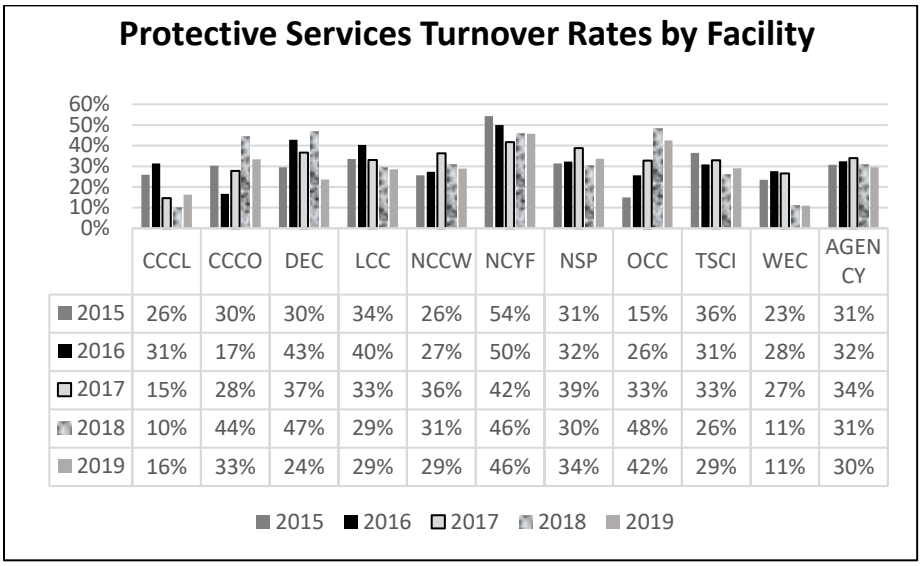


FIGURE 9: SOURCE NDCS

[21] Correctional Officers, Corporals, Sergeants, Caseworkers

[22] Past projections based on the first six months of data have generally been a bit low due to higher turnover rates in the second six months of the year.

NDCS also measures turnover rates by these positions at each facility.[23] The chart (Figure 10) below shows fluctuations at each facility during the past five years.



	CCCL	CCCO	DEC	LCC	NCCW	NCYF	NSP	OCC	TSCI	WEC	AGENCY
2015	26%	30%	30%	34%	26%	54%	31%	15%	36%	23%	31%
2016	31%	17%	43%	40%	27%	50%	32%	26%	31%	28%	32%
2017	15%	28%	37%	33%	36%	42%	39%	33%	33%	27%	34%
2018	10%	44%	47%	29%	31%	46%	30%	48%	26%	11%	31%
2019	16%	33%	24%	29%	29%	46%	34%	42%	29%	11%	30%

FIGURE 10: SOURCE NDCS

There is also projected to be a decrease in the turnover of all NDCS positions as this turnover data is moving closer to the data from 2015 (Figure 11).

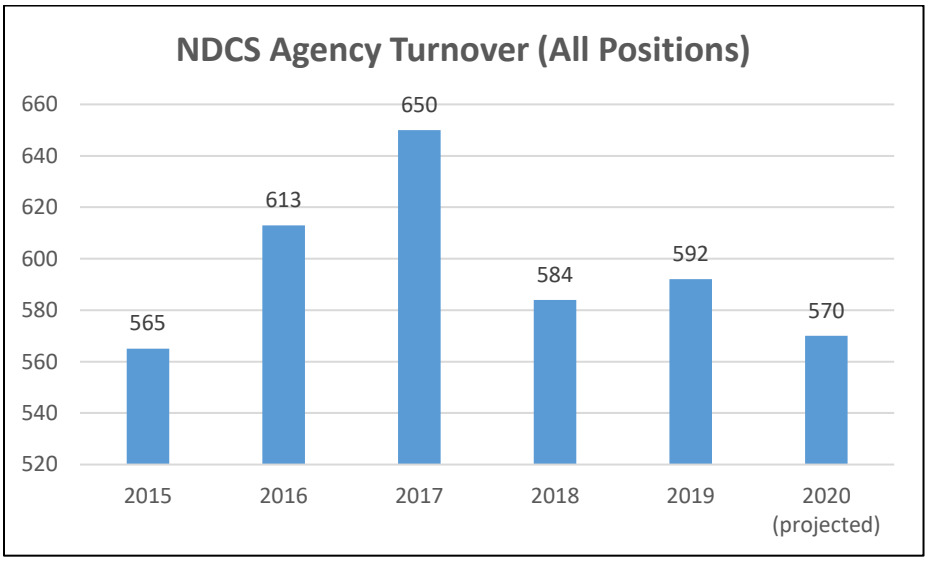


FIGURE 11: SOURCE NDCS

The 2020 DAS State Personnel Almanac is consistent with this data by showing a slight decrease in the total turnover rate for NDCS, although it is still higher than the rate from 2010 to 2015. For this year's report, the OIG added two additional rates in order to provide additional

[23] OCC has had a significant increase in turnover due to positions being hired at OCC but working at NSP and TSCI. Turnover from those two categories are reflected in the OCC turnover rate in recent years.

perspective. The chart below (Figure 12) contains the Department of Health and Human Services turnover rate along with the Nebraska state agency turnover rate. The graph shows similarities in increases and decreases.[24]

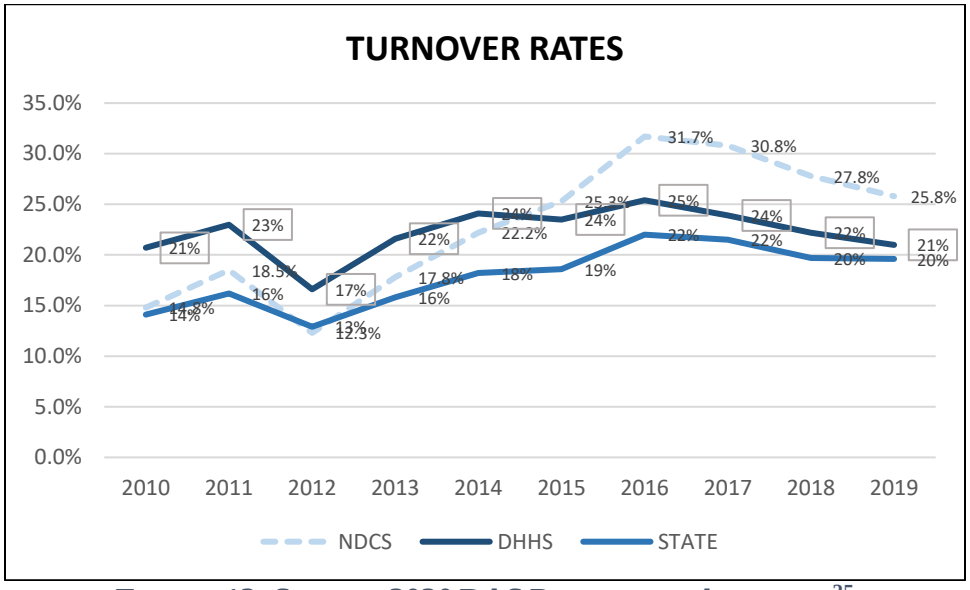


FIGURE 12: SOURCE 2020 DAS PERSONNEL ALMANAC[25]

Staff Exit Surveys

NDCS does offer exit surveys to employees who leave their employment with NDCS. 64 individuals participated in the exit survey between July 1, 2019 and June 30, 2020. There were over 500 individuals who left employment with NDCS during that time period. The survey is done on-line and has multiple areas that are covered in it through questions and scaled responses. It also provides an opportunity for written comments at the end.

A review of literature on exit interviews found that there are many methods that can be used to conduct these surveys. In fact, it has been demonstrated that some of the most productive exit interviews are a combination of methods. For example, conducting a face-to-face interview using a second-line or third-line manager before someone actually leaves their position and then followed up by an online survey. Gallup recommends a more personal and in-depth exit interview but on-line surveys can provide more anonymous and honest feedback. Once these are done there needs to be an attempt to analyze and share the data and then to follow up on what is found with meaningful action steps. The literature discusses how an effective exit interview program should be assessed and measured by the positive change that results from the program.

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[24] It is important to note that NDCS and DHHS are the two largest agencies in the state so their turnover rates would significantly impact the total agency turnover rate.

[25] In the 2018 OIG Annual Report, the OIG shared that NDCS and the Nebraska Department of Administrative Services (DAS) calculated turnover rates in two different manners. NDCS bases their turnover rate on the number of authorized FTEs for NDCS. DAS bases their turnover rates on the number of people actually employed by an agency on December 31st of each year. As a result, DAS' data results in higher turnover rates than those reported by NDCS. The OIG recommended to NDCS that they adjust the way they measure turnover to be consistent with DAS but this was rejected. The reason behind this recommendation was that it was based on a review of how many agencies or businesses track turnover rates and that using this measurement would also make the comparison between Nebraska's turnover rate for state correctional positions and other state's turnover rates for state correctional positions more of an "apples to apples" comparison.

It shouldn't be an exit interview just for the sake of a company being able to say that they did an exit interview.

NDCS started exit interviews at TSCI in October 2015 and added the rest of the agency in January 2016. Since that time the response rate has typically been low. The OIG has also been contacted by numerous staff since 2016 about their desire for personal exit interviews. It is good that NDCS started this process five years ago but they should consider a revamp of their exit interview process and then set up a system to report the outcomes and action items that result from an enhanced exit interview program.

Vacancies

As stated in past reports, vacancy data for protective services staff is somewhat more difficult to track due to the way NDCS defines the actual number of vacancies. For this year's report, the total number of vacancies as reported to the OIG by NDCS on June 30, 2020 are contained in the two charts below.

The first chart (Figure 13) contains the number of vacancies at each facility and are split into two groups: protective services and other. The second chart (Figure 14) has the total for each category but it also includes the same data from June 30, 2019. This shows that improvements were made in protective services staff but there was also an increase in the "other" category.

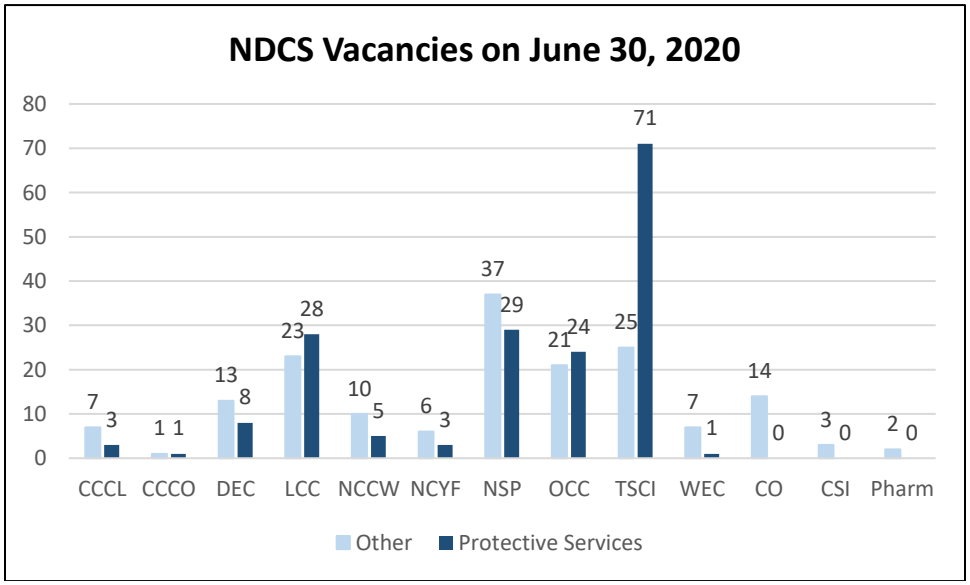

FIGURE 33: SOURCE NDCS

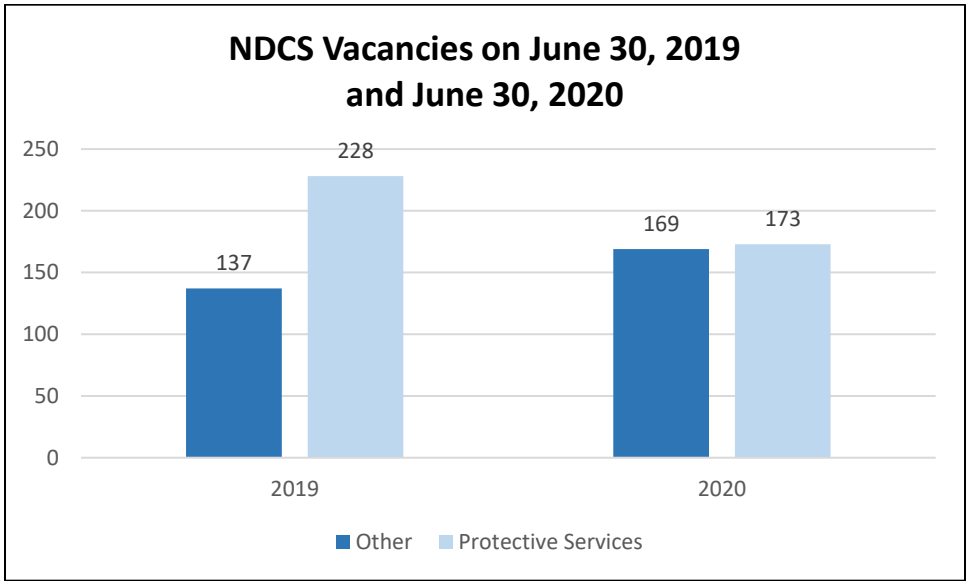

FIGURE 14: SOURCE NDCS

The State of Nebraska also compiles and publishes a quarterly State of Nebraska Vacancy Report.[26] The latest version of this report is dated June 30, 2020. This report shows every current vacancy, the date the vacancy took place and salary information for that position. Using this data there is a slight decrease in total vacancies (Figure 15).

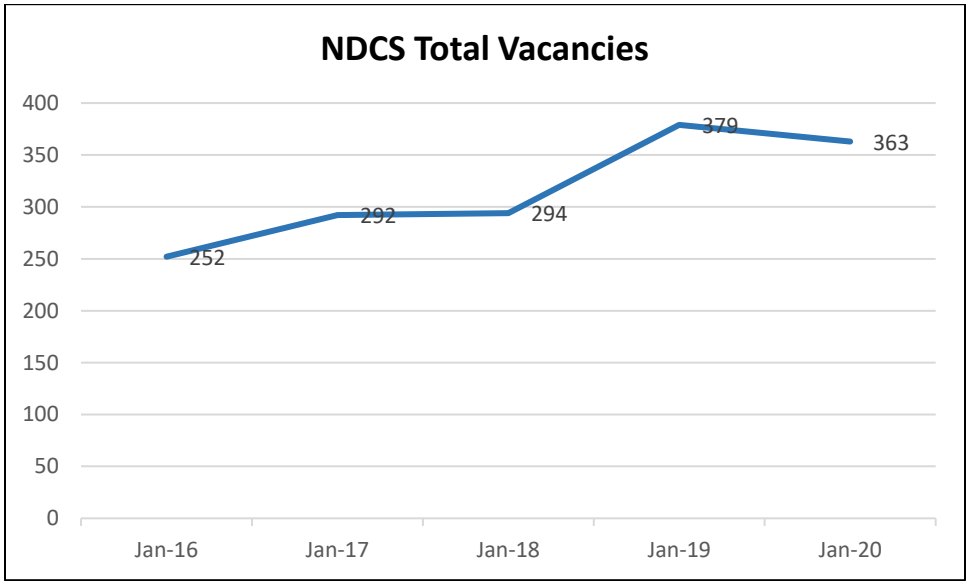

FIGURE 15: SOURCE STATE OF NEBRASKA VACANCY REPORTS

[26] Found at https://nebraskalegislature.gov/reports/appropriations.php

Health Services Staffing

NDCS publishes quarterly data reports.[27] The reports have a variety of data that was requested by the OIG and the Legislature. NDCS used to publish monthly data reports but those were discontinued. In 2017, NDCS began to publish the quarterly data reports. Included in these reports are behavioral health staff vacancies. The OIG utilized the data from the second quarterly data reports from 2018, 2019 and 2020 to note any changes in those vacancies. The two charts below show the vacancies by position for each year and the total vacancies for each year (Figures 16 and 17). They demonstrate a significant increase in behavioral health staff vacancies.

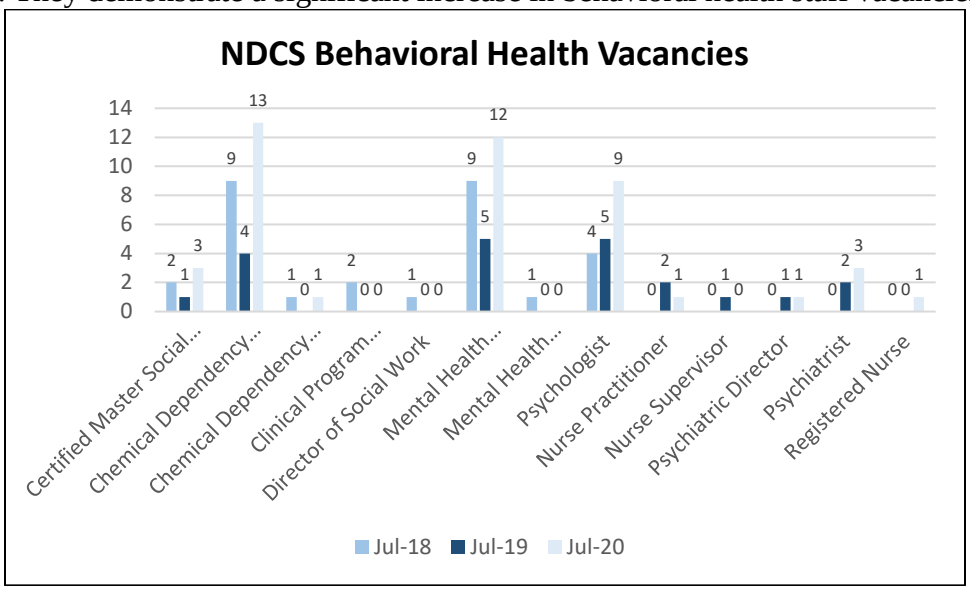

FIGURE 46: SOURCE NDCS

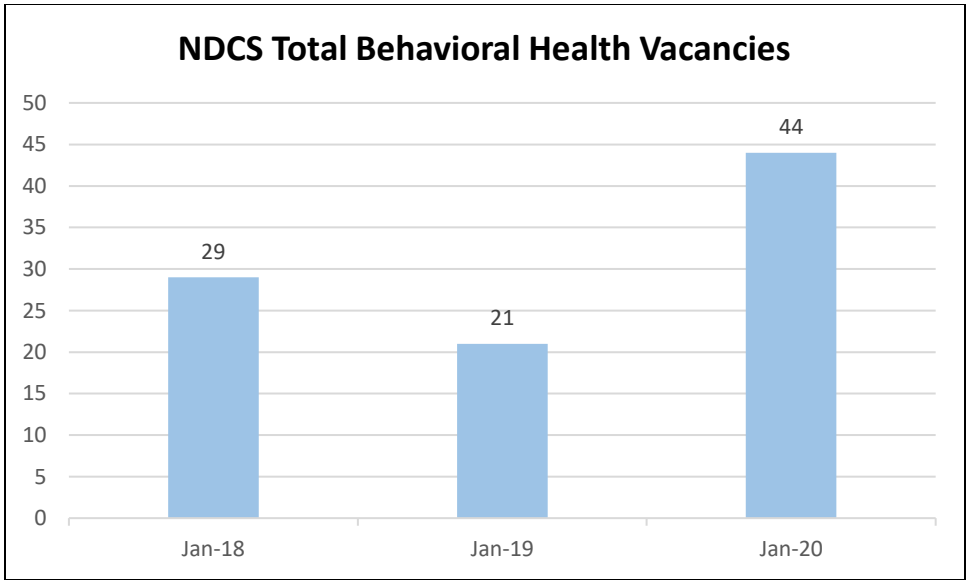

FIGURE 57: SOURCE NDCS

[27] They are found at https://www.corrections.nebraska.gov/public-information/statistics-reports/ndcs-reports although the second quarterly data report has not been placed on the web site for 2020.

NDCS Recruitment and Retention Efforts

Since 2016 NDCS has attempted a variety of initiatives to impact the recruitment and retention of staff, including bonuses, longevity raises, and transporting employees from one location to another. These have been documented in past OIG reports. The 2019 OIG Annual Report provided a great amount of detail on past efforts.

In October 2019 NDCS announced that they would be providing $10,000 bonuses for corporals hired at TSCI, NSP and LCC.[28] In addition, all staff who were still employed at NSP at the end of 2019 received a $500 retention bonus. The $10,000 bonus has continued to be in effect and was also expanded to DEC.

In addition, a new labor contract was signed in December 2019 that provided for salary increases and the use of a step plan to reward longevity for some positions within NDCS.[29] In the very first OIG Annual Report the following was recommended to NDCS:

> *Present salary proposals to the Department of Administrative Services that would either result in longevity pay or the establishment of a tiered plan system where an employee can be rewarded for reaching certain work goals, achievements or certifications.*[30]

The contractual changes in 2019 were positive steps in the right direction but long overdue. If these had been enacted three or even four years earlier NDCS potentially could have averted or possibly slowed down the significant staff shortages that have taken place over the past few years. As mentioned earlier in this report, the next significant step that needs to be taken is to address the wage compression issue that has resulted from these positive steps.

Staffing Analysis

In 2018, the Nebraska Legislature passed legislation requiring NDCS to conduct a department-wide staffing analysis of all positions so that policy makers could gain a better understanding of the staffing needs of the agency.

Nebraska State Statute 83-906 states:

> *The Department of Correctional Services shall conduct a department-wide staffing analysis of all positions, including a specific analysis regarding behavioral health staffing, in an effort to make a comprehensive determination of staffing needs. Concurrently, the department shall make short-term recommendations for needed staffing, including, but not limited to, facility administrative and support positions, in order to improve the effectiveness of staffing.*
>
> *The staffing analysis shall be completed and a report of its findings and subsequent staffing recommendations submitted electronically to the Legislature no later than*

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[28] https://journalstar.com/news/state-and-regional/govt-and-politics/nebraska-to-offer-10-000-bonuses-to-help-fill-prison-jobs-moves-to-temporary-12/article_704d2d2e-5394-588a-8e29-b1713d47732e.html

[29] https://journalstar.com/news/state-and-regional/govt-and-politics/nebraska-officials-corrections-union-reach-pay-agreement/article_d2cc02e4-1d07-510a-af54-4c1e15a47c6f.html

[30] Page 62 of the 2016 OIG Annual Report

September 15, 2020. Subsequent updates of the staffing analysis shall be completed and shall be submitted electronically to the Legislature on or before September 15, 2026, and at least every six years thereafter or more frequently at the discretion of the department.

The OIG anticipates that this will be a very thorough and comprehensive analysis that will assist NDCS in identifying their staffing needs so that the Governor and the Legislature can address those needs.[31]

Diversity of Work Force

Past OIG reports found that NDCS faced challenges regarding the diversity of their workforce. NDCS has seen improvement in this area over the past few years, specifically from 2017 to 2018.

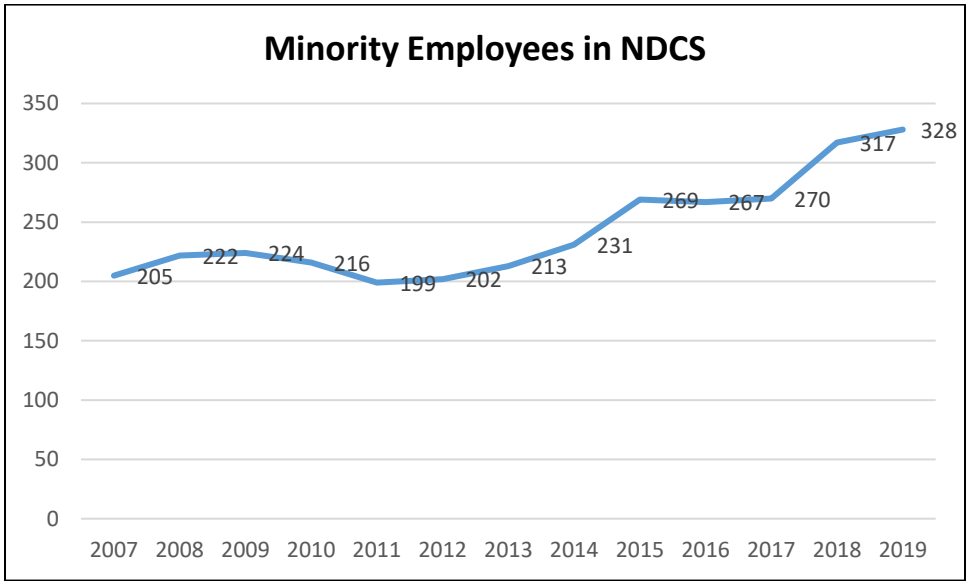

FIGURE 68: SOURCE 2020 DAS PERSONNEL ALMANAC

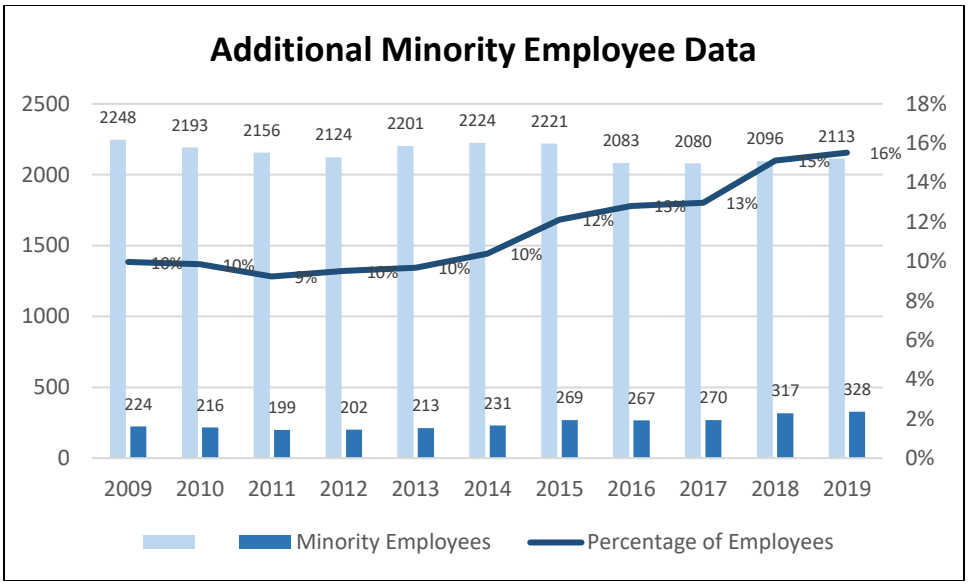

FIGURE 19: SOURCE 2020 DAS PERSONNEL ALMANAC

DAS breaks this data down by race in the Personnel Almanac. Figure 20 below provides this data breakdown.

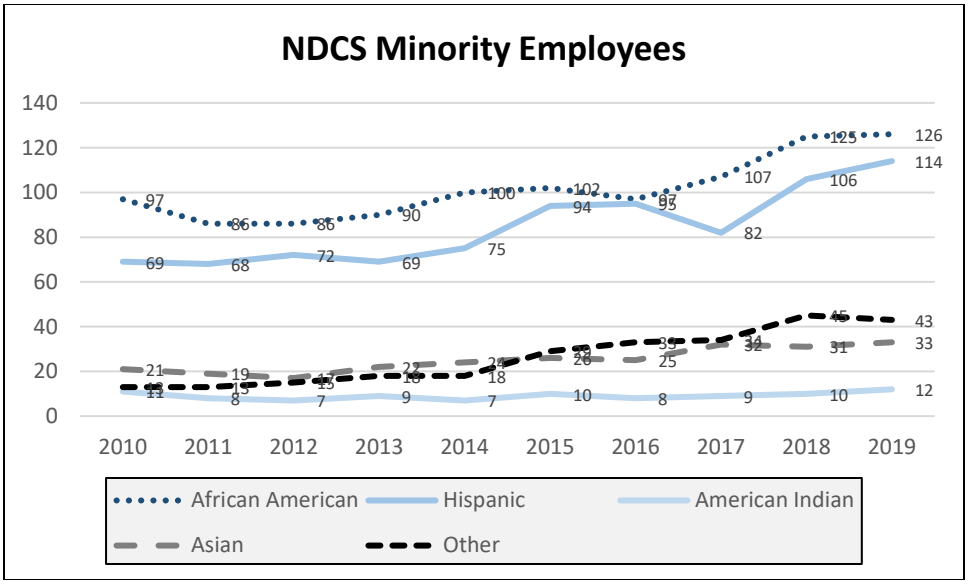

FIGURE 20: SOURCE 2020 DAS PERSONNEL ALMANAC

As stated in previous reports, it is key that NDCS continue to build upon their efforts to increase the recruitment and retention of minority staff, including staff who speak Spanish and other languages that are spoken by inmates in the NDCS facilities. One reason for the need for NDCS to increase recruitment and retention of minority staff is that this can build a pipeline that results in more minorities being promoted into leadership positions in NDCS. There continue to be few minorities in leadership positions in NDCS.

Tuition Assistance Expenditures for Staff

One of the selling points that NDCS utilizes during employee recruitment is the ability of NDCS staff to utilize tuition assistance. For at least ten years NDCS has been the state agency that expends the most amount of funds on tuition assistance. While it is still the top agency in this regard (Health and Human Services is second, just ahead of Transportation), the amount expended has continued to decrease (Figure 21).

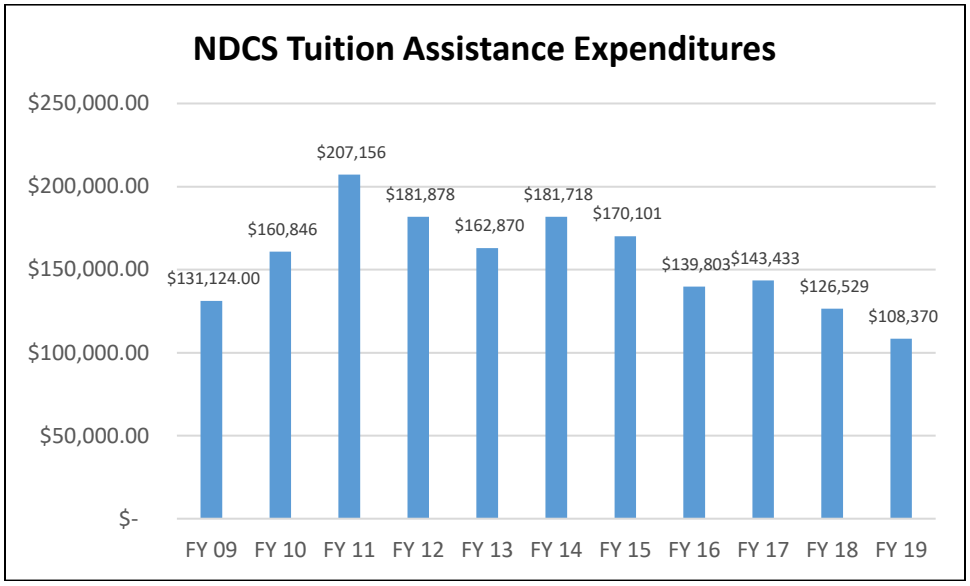

FIGURE 217: SOURCE 2020 DAS PERSONNEL ALMANAC

Peru State College Program

As part of the Governor's budget request during the 2020 legislative session, NDCS received approximately $500,000 to begin to partner with Peru State College's criminal justice program to establish the "Corrections Workforce Development Pathways." Eventually the funding for this program will be approximately $1,000,000 per year. NDCS will provide start-up, recruiting and scholarship funding and Peru State College will develop the program. The OIG recently requested additional information regarding this program from Director Frakes. He shared that the two entities will be working together in the near future to develop the program. The OIG offered to observe or participate in this process but the offer was neither accepted nor declined. He shared that students will receive a $15,000 scholarship each year for up to four years. Students would eventually receive paid internships at TSCI during the school year and have the opportunity to work at TSCI in the summer. They expect to recruit 15 students each year and to maintain a cohort of 45 students in a few years. The first students will receive scholarships in spring 2021.

During the public hearing before the Appropriations Committee the OIG expressed concerns about this proposal. In the past the OIG had recommended using the community colleges to instruct correctional staff throughout the system. The 2018 OIG Annual Report included:

> *NDCS could also reach out to the community colleges in Nebraska and discuss setting up a career track for NDCS positions through the creation of new correctional staff classes or other programs at a community college.*

The OIG also recommended that NDCS *"Meet with the leaders of Nebraska's community college community to discuss the possibility of working with them to establish career tracks and other classes or training programs to recruit, develop and grow the NDCS work force."*

In response to that recommendation, NDCS shared in 2019 that they were *"currently working with Doane College, and DOL - exploring potential pilot programs."* The OIG inquired about this response in September 2019 and was told the following:

> *We are just now putting the finishing touches on these agreements with the colleges.*[32] *This project has not yet been announced to staff. I would prefer not to include this in your report, until the details are conveyed to staff from the director.*
>
> *As far as the relationship with DOL, we are in the early stages of discussions with the parties that need to be involved.*[33]

On December 5, 2019 the OIG asked for an update on these projects. On December 10, 2019 the OIG was informed that he would receive an update that week on the projects and on December 16, 2019 the OIG was informed via email that "There are no further updates to either of these projects at this time."[34] The OIG asked for additional information but was told that the projects were in different stages but no specific information was provided to the OIG. In January 2020 the OIG asked the Department of Labor for information on their partnership with NDCS. The next day the Commissioner of Labor, John Albin, provided the OIG with a two page summary of their efforts with NDCS. He also shared that they had a partnership with Parole as well.[35]

On August 27, 2020 the OIG asked for an update on these projects from NDCS. NDCS responded that these projects had been placed on hold. The OIG asked for information on why these projects were placed on hold and requested copies of all draft agreements or signed agreements with those entities in order to gain a better understanding of these projects. NDCS responded that other priorities including the Peru project were why they were placed on hold. Despite previous correspondence from NDCS stating that they were "putting the finishing touches on these agreements" in September 2019 the OIG was informed that there were no agreements. This would appear to indicate that either the OIG was told inaccurate information in September 2019 about the agreements having the "finishing touches" put on them or that NDCS is not willing to providing any draft agreements or agreements to the OIG.

During this time, NDCS generated the proposal for the program at Peru State College and it was presented to the Legislature in January 2020. No information was shared with how it would work with the agreements that had been made with Doane and Perdue.

The OIG's three main concerns regarding this program are:

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[32] The OIG was later informed that the two colleges were Doane and Perdue.

[33] September 5, 2019 Email between OIG and NDCS Human Services Director

[34] December 16, 2019 Email between OIG and NDCS Human Services Director

[35] Attachment A: DOL Summary of NDCS/DOL Partnership and Parole/DOL Partnership

1) The program is solely focused on one college and one correctional facility. It is not designed to assist other facilities with staffing issues.
2) The Department has not indicated that there would be any type of repayment option should a student utilize the scholarships and either not accept employment or leave their employment with NDCS. Sound public policy would dictate that safeguards be put in place that would provide an incentive for a student to be employed with NDCS for a certain period of time or else some of the funds would need to be paid back to NDCS.
3) NDCS/Peru State should prioritize the recruitment of a diverse population to participate in the program. Peru State College is located in an area of the state that is not very diverse and at the time of this report, Peru State College only had three faculty members in the criminal justice program.[36]

Director Frakes has good goals for this program as he shared with the OIG earlier this year when he wrote:

> *The value of this program as it relates to recruitment comes from the quality of employees/supervisors/leaders it produces. To change the culture of TSCI/NDCS, we have to invest in building top quality leaders. Graduates of this program should ultimately run prisons, be Deputy Directors, and someday run the agency. A lofty goal, but achievable.*

While the OIG recognizes the need to think "outside the box" to solve the staffing issue at TSCI, it remains to be seen whether the smallest state college in Nebraska that is based in a county in which the population is 98.35% white is the correct place to house a program that will recruit the future leaders of NDCS. For instance, compare their size and work with the similar program at the University of Nebraska which has a dual program located at Omaha and Lincoln. Their program has at least 17 full-time professors and numerous other instructors and adjunct professors. It is a nationally ranked program that is also the home of the Juvenile Justice Institute and the Nebraska Center for Justice Research. It currently has internship programs with over 50 criminal justice agencies.[37] This is not a knock on Peru State's program but it does point out that there are legitimate challenges that need to be addressed by NDCS and Peru State College as they attempt to move forward and develop this program.

[36] https://www.peru.edu/cj

[37] https://www.unl.edu/criminal-justice/

NSP AND TSCI UPDATES

Much has been discussed in past annual reports and other OIG reports about the situations at NSP and TSCI. The two facilities have had the most significant staffing challenges over the past five years. In addition, they both have had a number of significant incidents. While NSP has seen positive changes in staffing due to the bonus program and the bussing of staff from OCC, TSCI is continually struggling on the staffing front. It is not uncommon for TSCI to be below minimum or critical staffing levels multiple times during a week. NSP also continues to have shifts below the minimum staffing levels but not to the degree of TSCI.

On October 24, 2019, NSP went on modified operations in order to begin to implement a new schedule. In order to do this Director Frakes had to declare a staffing emergency as required under existing labor contracts. As part of this new schedule many staff were moved from eight hour to 12 hour shifts. Along with this, movement within the facility was ended around 6pm each evening and started later in the morning. Due to these changes, the facility needed less staff during the 7pm to 7am shift which allowed for higher staffing levels from 7am to 7pm. At the time of this change, Director Frakes stated, "Broad use of 12-hour shifts is not a long term plan. But it will permit time to implement the new hiring and retention initiatives, onboard new groups of employees and stabilize the staffing situation."[38] The next day Director Frakes appeared before the Judiciary Committee and discussed this action and other correctional activities. At the hearing, Chairman Lathrop and others emphasized the need to take even more decisive action regarding staffing, including significant raises for staff.

Chairman Lathrop and Director Frakes had a dialogue during the hearing regarding the action taken at NSP by NDCS and Director Frakes:

> *LATHROP: OK. Do you have a time line for turning around the staffing issues? What-- what should we-- if we are to provide oversight of the Department of Corrections on this committee and in the Legislature, what time line can we expect that your staff will no longer be working mandatory overtime?*
>
> *SCOTT FRAKES: No, I'm-- I'm more focused on being able to return to a more traditional operating day and stopping the mandatory 12-hour shifts and I'm looking at less than six months.*
>
> *LATHROP: In six months, what will-- what will-- what will happen and what won't change?*
>
> *SCOTT FRAKES: In six months, we will have filled enough positions that we can operate the facility consistent to where we were a few months ago in terms of the length of the average day and the activities that we would normally do. And there should be a corresponding reduction in mandatory overtime as well, but I-- I can't give you a number off the top of my head, and be able to return to the voluntary 12-hour shifts that were in place two days ago, the 8-hour shifts that were in place two days ago, and people going back into their bid positions…*

[38] NDCS October 24, 2019 Press Release

LATHROP: All right, I'll move on. To be clear, you believe we'll be back to three eight-hour shifts within six months and that we won't be on modified operations or we won't be below critical staffing levels? That's-- that's a measure that we can hold you to in six months?

SCOTT FRAKES: Yes.

Senator Wendy DeBoer had the following exchange with Director Frakes regarding the timeline of returning to a normal operation at NSP:

DeBOER: And this, you think, will be restricted for the next six months?

SCOTT FRAKES: It'll be—

DeBOER: Restricted for the next six months? You think you'll be on this system for six months?

SCOTT FRAKES: Hoping we can get out sooner, but I wanted to give a number, you know, over-promise-- no, under-promise, over-deliver-- is that the right expression? So—

DeBOER: Is this something that you think there's any possibility you could be done with, in, say, four months, you could shift back?

SCOTT FRAKES: I think that's overly optimistic, but I'd like to hope I get there in less than six months, yeah.

DeBOER: So somewhere between four to six-plus months, you'll be operating on the 12-to-12 schedule?

SCOTT FRAKES: As long as the turnover slows down and we have the success that I expect to have with the hiring recruitment bonuses, yes.

DeBOER: OK.

SCOTT FRAKES: You know, those are-- I-- those are things I don't control; those are things that I'm trying to do everything I can to influence.

This exchange took place 10 months ago. In late November 2019, it was announced that a staffing emergency had been declared for TSCI and that facility would go to the same schedule as NSP starting the first week of December. TSCI also continues on this same schedule and the staffing emergency in both facilities is still in place despite the change in schedule, hiring bonuses, referral bonuses and increases in pay for some staff. Remarkably, the two inmate populations at each facility have so far accepted the ongoing restrictions, along with other changes due to the COVID-19 pandemic, rather well. It remains to be seen whether this will

continue but conversations with inmates and staff at both facilities indicate that this is an increasing concern.

Related to that, at that same legislative hearing, Director Frakes was asked about the impact that the emergency declaration would have on the amount of stress on the inmate population and the facility. As a result, the following exchange took place between Director Frakes and Senator Ernie Chambers:

> *SCOTT FRAKES: I guess I'm not communicating clearly. I'm saying that what I'm doing by reducing the amount of operational hours is no more stressful than the current practice of unpredictable scheduling.*
>
> *CHAMBERS: Now you made it possible for me to ask the question. We should be able statistically to look six months from now at the number of disciplinary write-ups, the amount of solitary time given, and we would see no substantial difference between this period of time that, however we label it, emergency or whatever, and the time when there was no emergency.*
>
> *SCOTT FRAKES: Think that's a reasonable hypothesis.*
>
> *CHAMBERS: OK. And if there are more, then could we conclude that the existence of this state of emergency could contribute to it?*
>
> *SCOTT FRAKES: Could be a contributing factor.*
>
> *CHAMBERS: And if there is no difference substantially, then we could say that the state of emergency was a state of emergency and that's all that it was, in terms of the behavior and the interaction between the inmates to inmates, inmates to staff.*
>
> *SCOTT FRAKES: I'm not going to draw large conclusions from any one piece.*
>
> *CHAMBERS: OK.*

To demonstrate whether or not there was any impact by the reducing of the operational hours of the two facilities, NDCS could examine the statistics discussed in this exchange and report those findings to the Judiciary Committee.

There are many other aspects of NSP and TSCI and challenges facing each facility that have been discussed in the past and will be discussed in the future. For this report, the only other issue that will be highlighted now will be the racial make-up of some specific housing units at each facility.

One observation that was shared in the 2019 OIG Annual Report was that there were a disproportionate share of NDCS inmates in Housing Units 2 and 3 at NSP who were Black. These two units used to have a broader mix of inmates but as a result of some housing units being changed to mission specific housing units (for example, Housing Unit 5 has a religious

unit and a veterans unit in it) NDCS filled Housing Units 2 and 3 with what they considered a more challenging population. The charts below show the racial make-up of these units during the past three years.

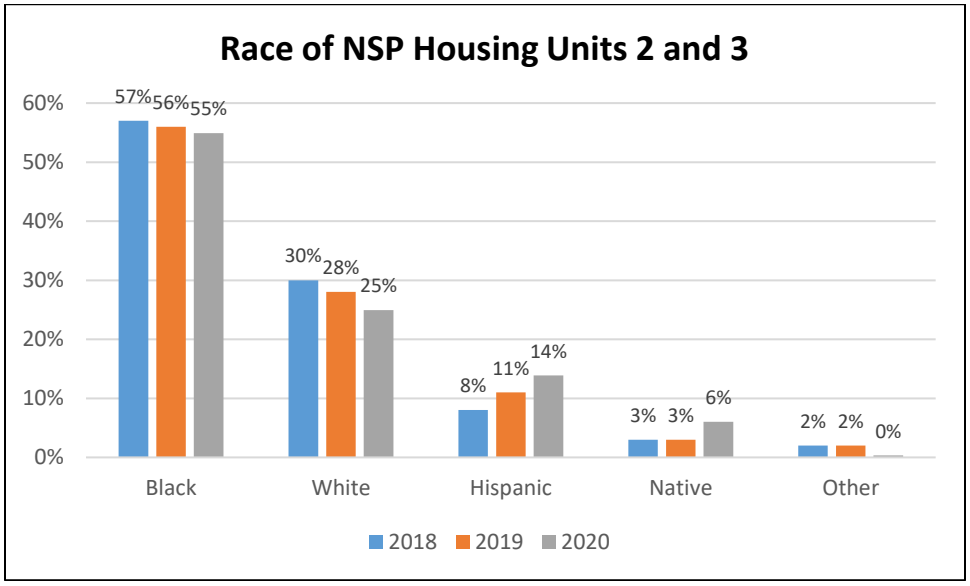

FIGURE 22: SOURCE NDCS

8

The OIG also found that of the 317 inmates in those two units, only 41 of them have jobs that are actually outside their housing units.

At TSCI, Units 2B and 2C are somewhat similar in nature to the two units at NSP described above but with additional restrictions. They are both considered general population units by NDCS but 2B has a number of restrictions on movement and other activity and 2C has even more as it is considered a transitional unit or program for challenging inmates, many of whom were recently in restrictive housing. Both of these units also have a disproportionate share of Black inmates, especially in 2B.

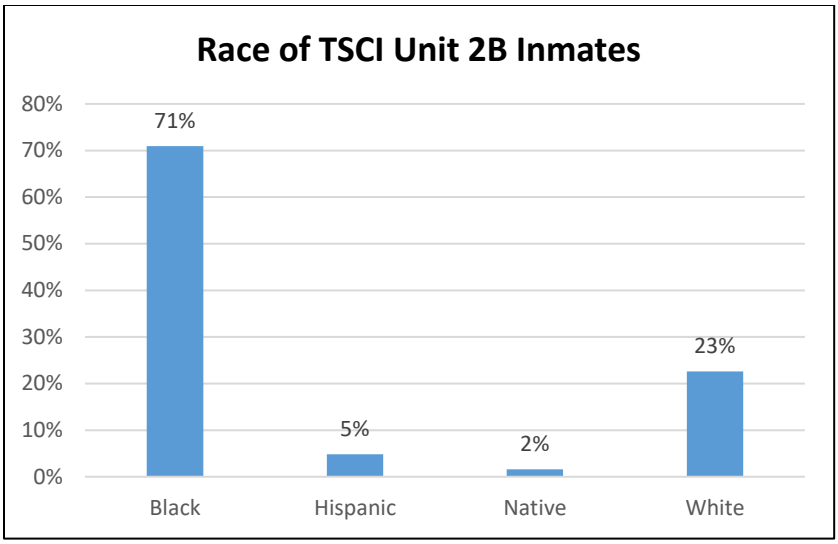

FIGURE 23: SOURCE NDCS9

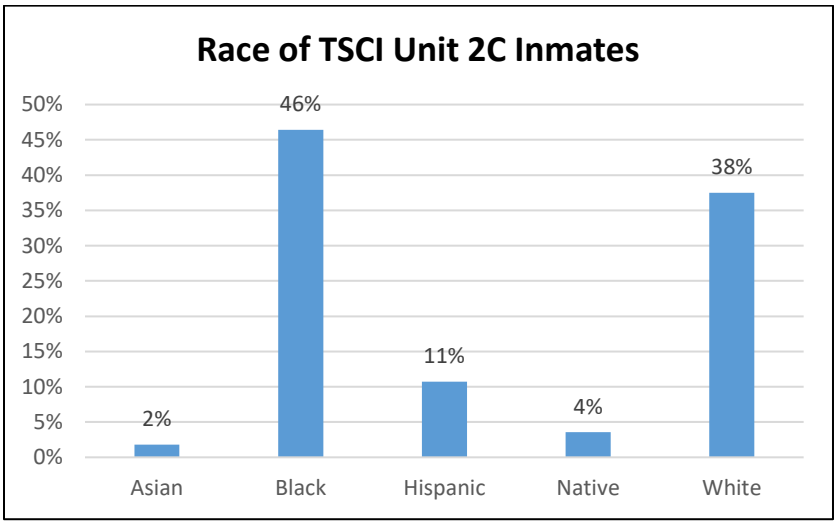

FIGURE 24: SOURCE NDCS

In order to give some perspective to this data, Figure 25 contains the population of Nebraska by race.

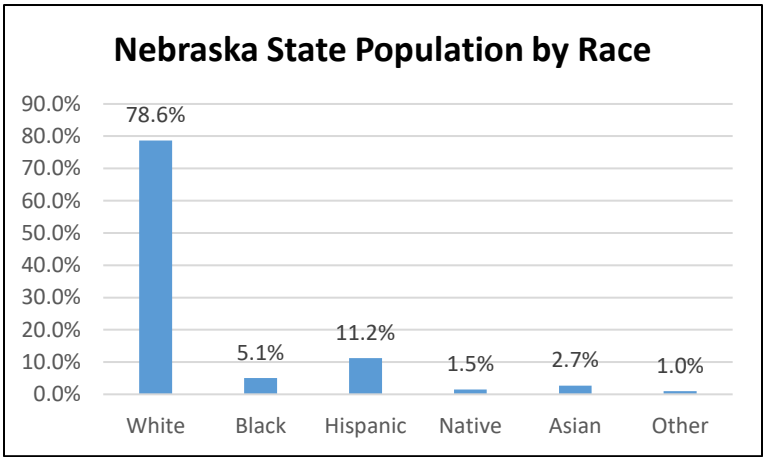

FIGURE 25: SOURCE NDCS

SURVEYS

In the past, the OIG has made use of the Google survey format to distribute a number of surveys to NDCS staff. The surveys were never considered scientific but they had the goal of collecting much needed information and insight from those surveyed. While none were conducted by the OIG during the past year, similar surveys should be conducted in the future in order to gain additional insight and suggestions from NDCS staff.

In addition, and has been discussed in past reports, the OIG could gain valuable insight and feedback from inmates should a survey be done of that population. Scotland's correctional agency has conducted prisoner surveys in the past.[39] It is a wide ranging survey that covers many topics, including:

- Visits and contacts with friends and family;
- Childhood experiences;
- Hygiene and Fitness in the correctional setting;
- Safety;
- Food and canteen;
- Literacy levels;
- Release preparations;
- Programming;
- Family issues;
- Alcohol and drug use;
- Atmosphere in prison; and,
- Medical care.

The John Howard Association in Illinois has distributed and collected surveys from inmates housed in the majority of Illinois' prisons. In 2018 and 2019 they collected 12,780 surveys which represented 42% of all inmates held in the prisons in which they distributed surveys. The survey had questions or statements on the following:

- Safety;
- Staff treatment of inmates;
- Inmate treatment of inmates;
- Availability of mental health treatment;
- Medical services;
- Counseling;
- Fairness of disciplinary process;
- Educational programs;
- Clinical programs;
- Contraband and gang activity;
- Living conditions; and,
- Many other areas.[40]

[39] http://www.sps.gov.uk/Corporate/Publications/Publication-6399.aspx

[40] https://www.thejha.org/dashboard

The OIG has considered conducting such surveys in the past but a lack of resources has made this difficult. However, this is something that NDCS should consider taking on. It would be a way to assess conditions and beliefs at each facility and to measure them from year to year.

Staff surveys and inmate surveys are both valuable tools that could not only assist NDCS in identifying and addressing areas of concern, but also to identify and build upon areas of achievement.

INMATE POPULATION

In early March 2020, the population of NDCS was nearing 5700 inmates and it appeared as though it was going to continue to grow at a continual rate. However, as a result of the COVID-19 pandemic, admissions into NDCS have been severely impacted which has resulted in a decrease of around 300 inmates. As a result NDCS is operating at approximately 150% of its design capacity, which is lower than the 157% design capacity rate a year ago.[41] The primary beneficiary of this decrease has been the male intake facility, the Diagnostic and Evaluation Center (DEC). In March 2020 it had over 500 inmates residing there and this had dropped nearly 200 inmates but is now at 393 inmates. The Nebraska Correctional Center for Women has had a decrease of over 50 inmates and the Nebraska State Penitentiary has had a decrease of around 100 inmates. In addition, the number of state inmates who are housed under contracts with county jails has decreased from around 100 inmates to less than 50 inmates.

The charts below show the gradual changes in the total population of inmates under the jurisdiction of NDCS, as well as the change in the design capacity under which the system has been operating.

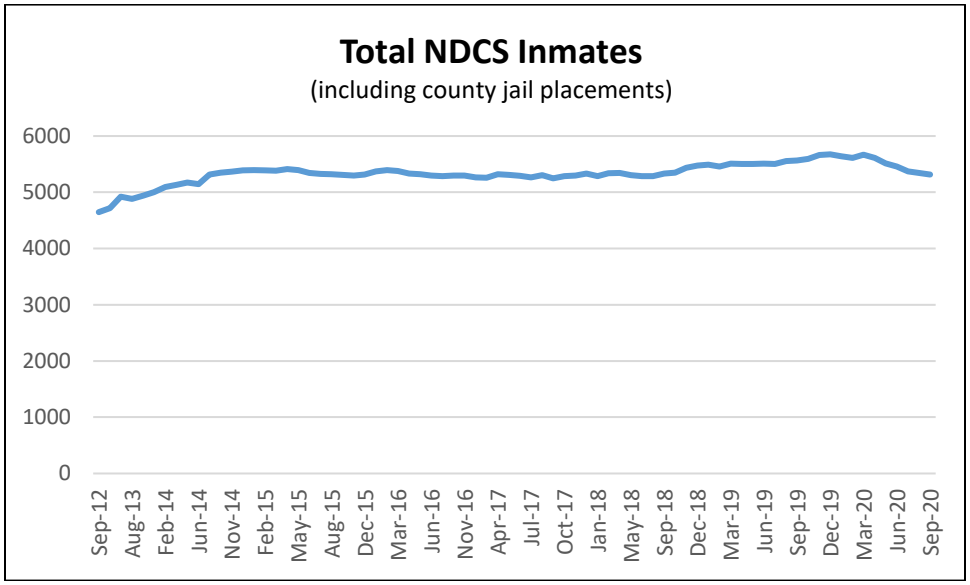

FIGURE 26: SOURCE NDCS

[41] When the additional 100 minimum custody unit opens later this year at NSP this will impact the design capacity. If those 100 beds were on-line now NDCS would be operating at around 146% of design capacity.

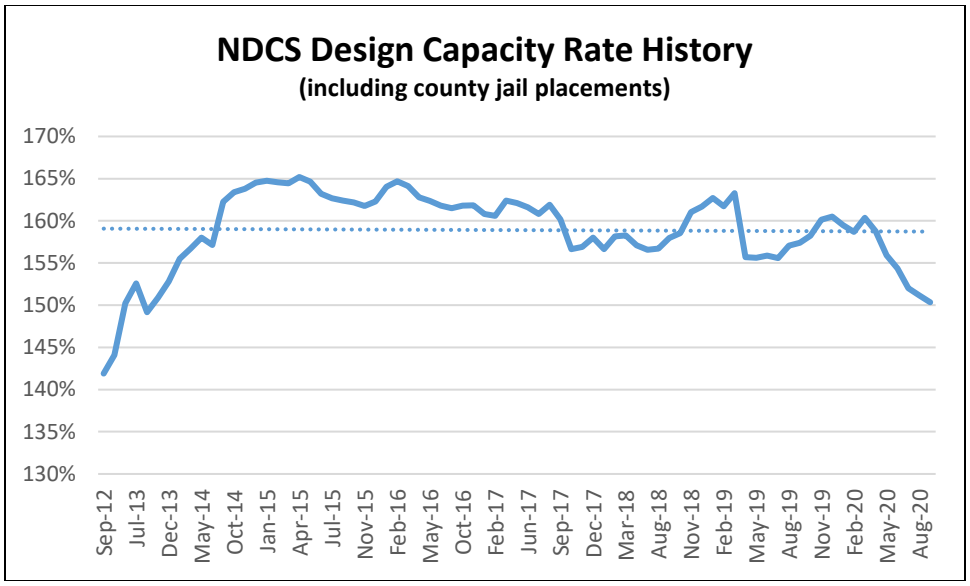

FIGURE 27

The 2019 OIG Annual Report contained the following regarding future population projections:

> *NDCS is expected to release new population projections by the end of 2019 due to signing a contract with a company to provide those projections. These projections will be important due to the fact that 384 new beds have been funded for LCC and an additional 100 beds have been funded at NSP. The projections will likely enable policy makers to determine whether any impact regarding design capacity will be realized. In other words, will the population continue to grow at a rate higher than those 484 beds? If so, then the system would actually be more crowded at the end of the construction of those beds. These projections will provide important and much needed information for NDCS and policy makers.*

While NDCS did receive a report during this past year with future projections for population increases, COVID-19 has significantly impacted those projections due to a decline in admissions from county justice systems. It is unclear at this time how future admissions to NDCS will be impacted as the impact of COVID-19 lessens and county justice systems gear back up. In 2021, NDCS should consider contracting for an update of those projections.

Incarceration Rates

As explained in the past two OIG Annual Reports, there has been a perception on the part of some that since Nebraska's correctional system is overcrowded that Nebraska must be incarcerating individuals at a higher rate than other states. During the past few years Nebraska has generally has had about the 15th lowest incarceration rate when quantifying the number of people incarcerated in state prisons per 100,000 residents. In 2018, the number of people incarcerated in Nebraska's prisons per 100,000 residents increased slightly from 273 individuals to 280 individuals.

The national average continues to decrease. In 2016 the national average was 471 people incarcerated per 100,000 residents and in 2018 it was 431 people incarcerated per 100,000 residents in 2017.[42]

Nebraska has a lower incarceration rate than any of its bordering states as seen in Figure 28.

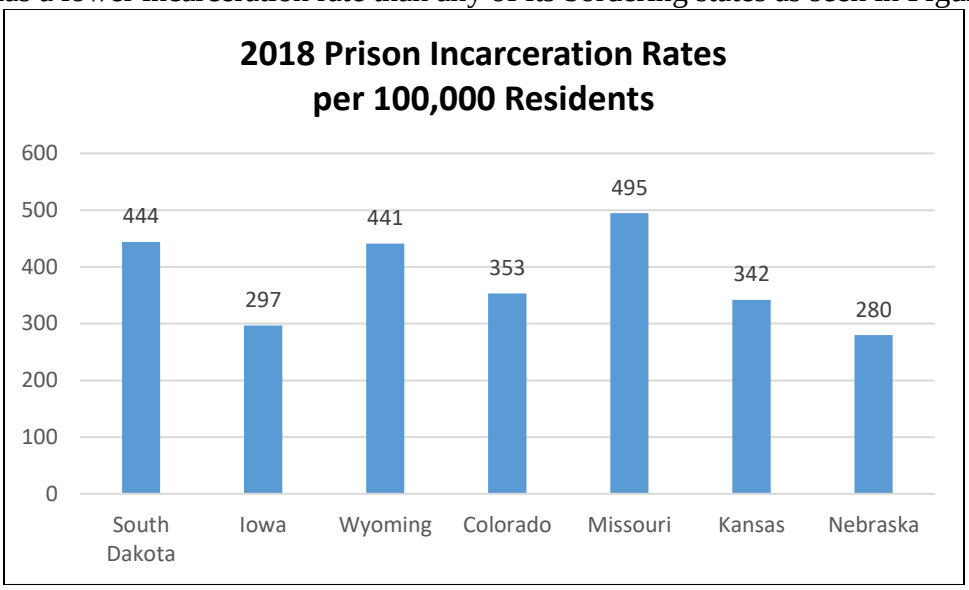

FIGURE 2810: SOURCE U.S. BUREAU OF JUSTICE STATISTICS

While Nebraska does compare well against our neighboring states there are other states that do have lower incarceration rates, including some included Figure 29. Reviewing the systems of those states may be worth the effort as incarceration rates are part of the prison population equation.

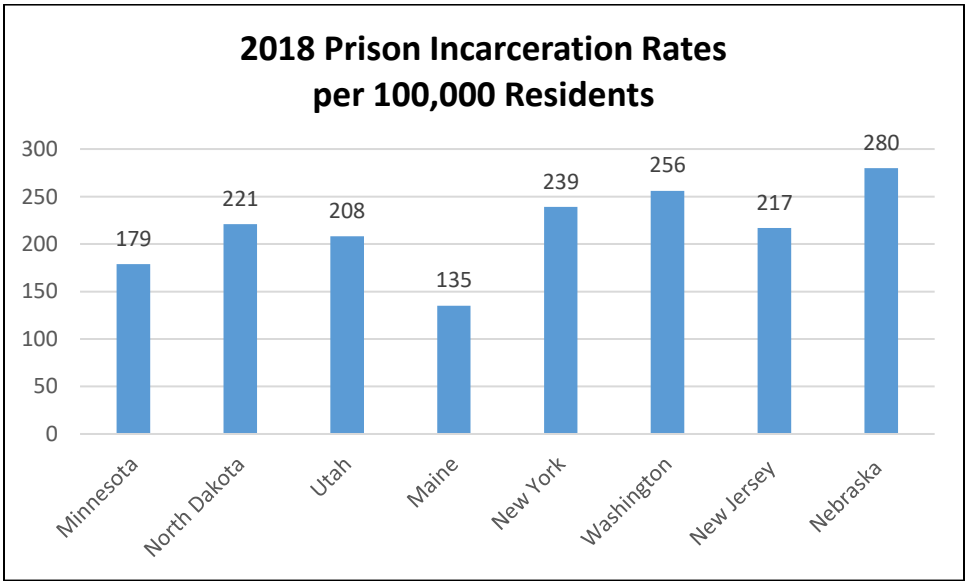

FIGURE 119: SOURCE U.S. BUREAU OF JUSTICE STATISTICS

[42] www.sentencingproject.org

As explained in the 2019 OIG Annual Report, there has been a significant growth in prison population rates across the country during the past several decades. However, they are beginning to decline slightly during the past decade.

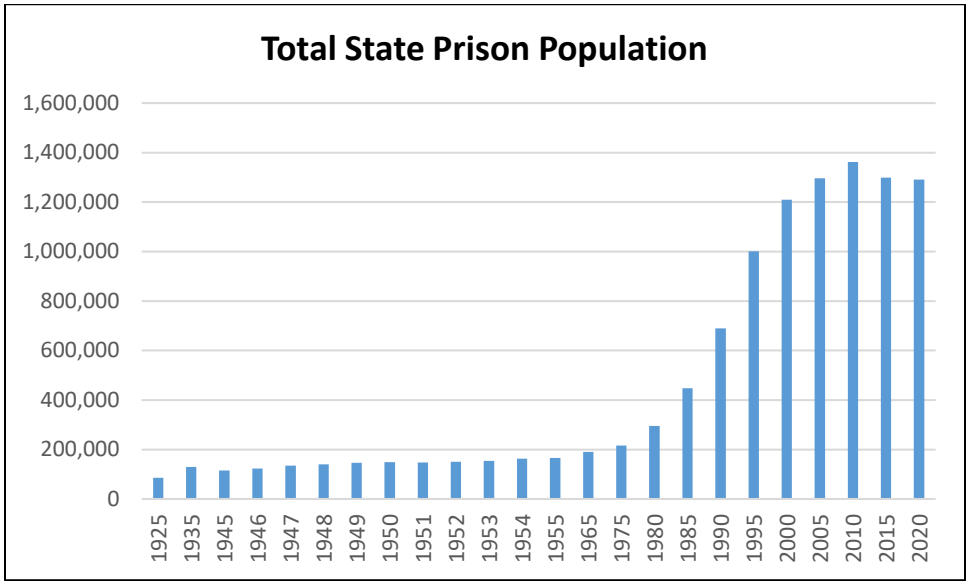

FIGURE 30: SOURCE BUREAU OF JUSTICE STATISTICS

Racial Disparity

Within incarceration rate data there are discrepancies found when comparing different groups of people. Men are traditionally incarcerated at a much higher rate than women. As shared in last year's report, Nebraska has traditionally had a high racial disparity when comparing incarceration rates of Black and white individuals (over eight times higher) but a lower racial disparity when comparing incarceration rates of Hispanic and white individuals. The first chart (Figure 31) on racial disparities compares the overall population of Nebraska by race with the combined male and female NDCS population and it shows that there are definite disparities.

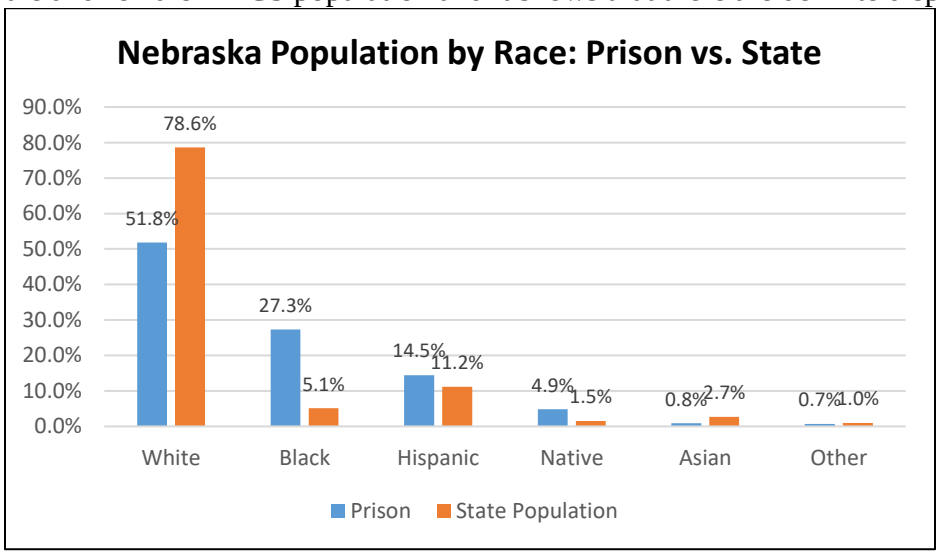

FIGURE 31: SOURCE BUREAU OF JUSTICE STATISTICS

Earlier this year, the OIG reviewed some data regarding the racial disparities. Data was available through the NDCS information system for females but the male data was not as easily identifiable. The charts below (Figures 32 and 33) review the total female population in NDCS as well as specific facilities with male inmates.

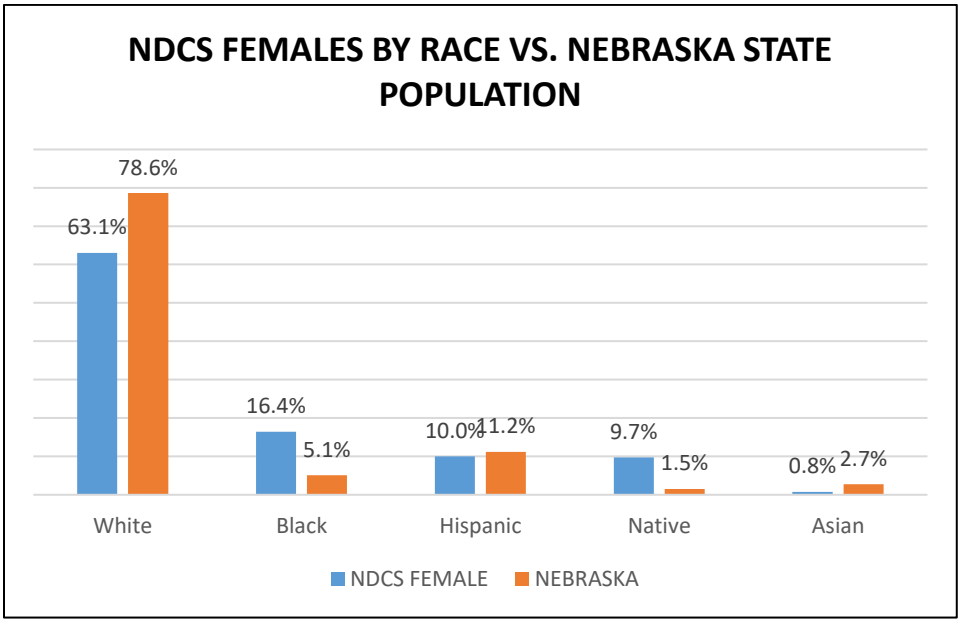

FIGURE 32: SOURCE BUREAU OF JUSTICE STATISTICS

White women are underrepresented but Black women are over incarcerated by over three times when looking at the state population. Hispanic women are nearly equally represented but Native American women are over-incarcerated at the highest rate of any population group (incarcerated at over six times their state population).

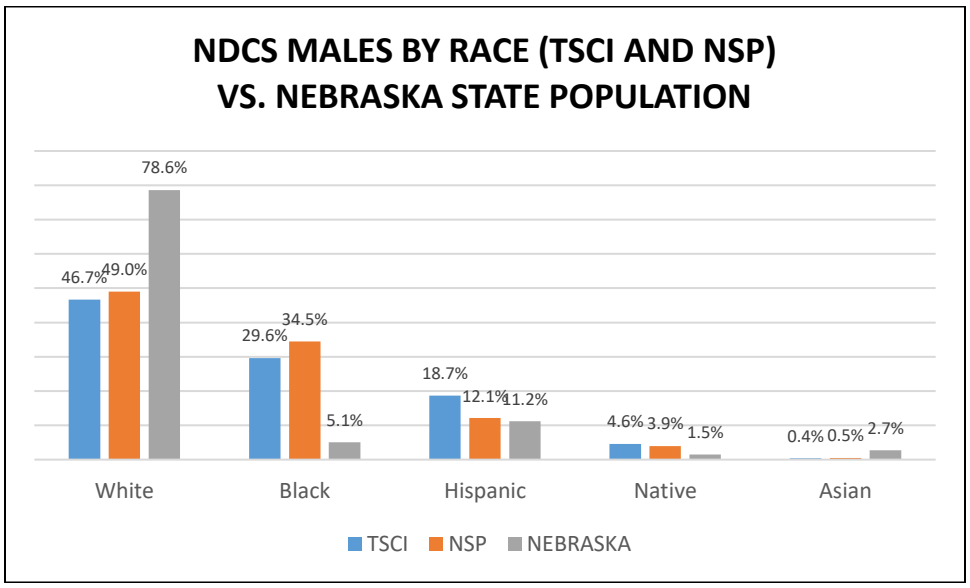

FIGURE 33: SOURCE BUREAU OF JUSTICE STATISTICS

When looking at the racial breakdown of men in Nebraska's two largest prisons – the Tecumseh State Correctional Institution (TSCI) and the Nebraska State Penitentiary (NSP) versus the state population, Figure 33 shows that the under-represented races are white and Asian. The over-represented races are Black (about 6x and 7x), Hispanic (about 1.5x at TSCI and just slightly elevated at NSP) and Native American (about 3x overall).

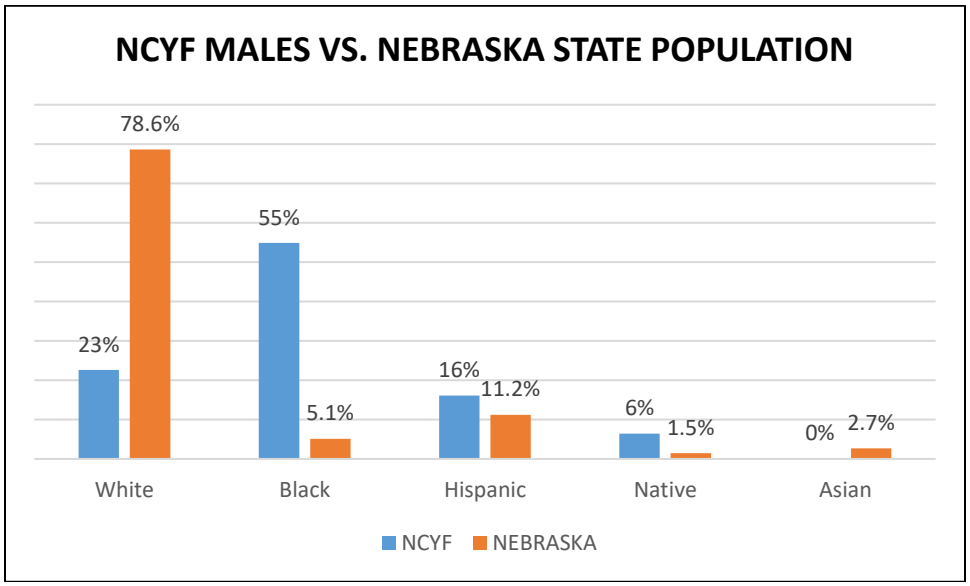

FIGURE 124: SOURCE BUREAU OF JUSTICE STATISTICS

When looking at the racial breakdown of the Nebraska Correctional Youth Facility in Omaha (62 males) that is administered by NDCS versus the state population, Figure 34 demonstrates under-representation and over-representation for this small data set. There was an expectation that the over-representation of Black youth in this data would be high but not that high (10 times their state population).

It is typically helpful to make comparisons to national data. In this case, 2017 data found that nationally Blacks represented 12% of the population but made up 33% of the prison population, whites represented 64% of the population but only 30% of the prison population and Hispanics represented 16% of the population but 23% of the prison population.[43]

This quick glance into racial disparity data revealed that it needs to be examined more thoroughly. For example, the OIG found that disparities also exist when comparing the parole and prison populations in Nebraska (Figure 35). It may be prudent to examine additional racial data regarding custody levels, work release, work detail, paroles granted and other data. The OIG does plan to look more closely at the Native American women disparity and gain a better understanding of the Native American women who are currently incarcerated.

[43] https://www.pewresearch.org/fact-tank/2019/04/30/shrinking-gap-between-number-of-blacks-and-whites-in-prison/

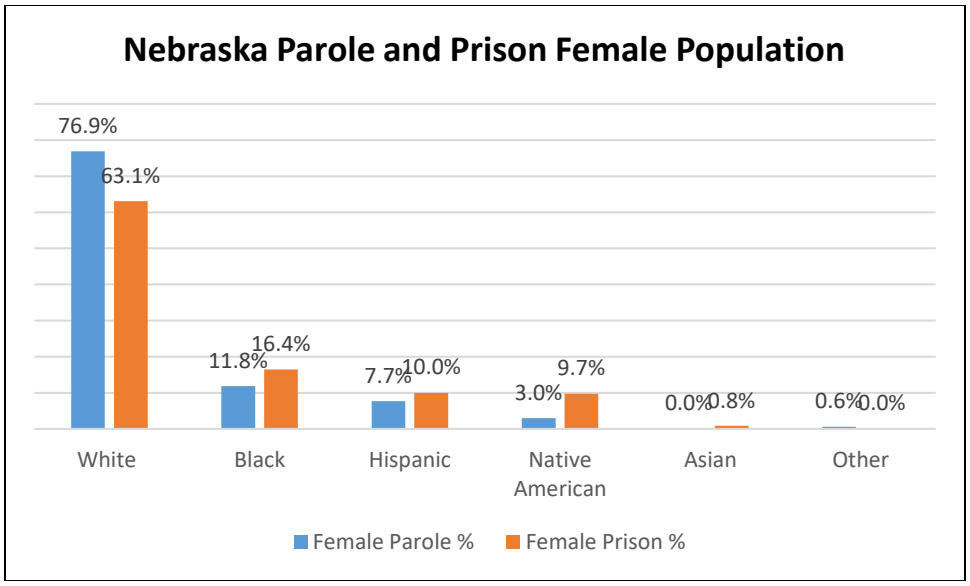

FIGURE 35

Crime Rates in Nebraska

When examining the changes in incarceration rates and prison population researchers will also compare these statistics to crime rates. The Nebraska Crime Commission tracks crime rates in Nebraska going back to 2000.[44] These crime rate statistics include six measurements: Actual Total Offenses, Actual Violent Offenses, and Actual Property Offenses, and the number of each of those types of offenses per 1000 people living in Nebraska. In 2019, the overall offenses were lower than in years past although violent offenses did increase.

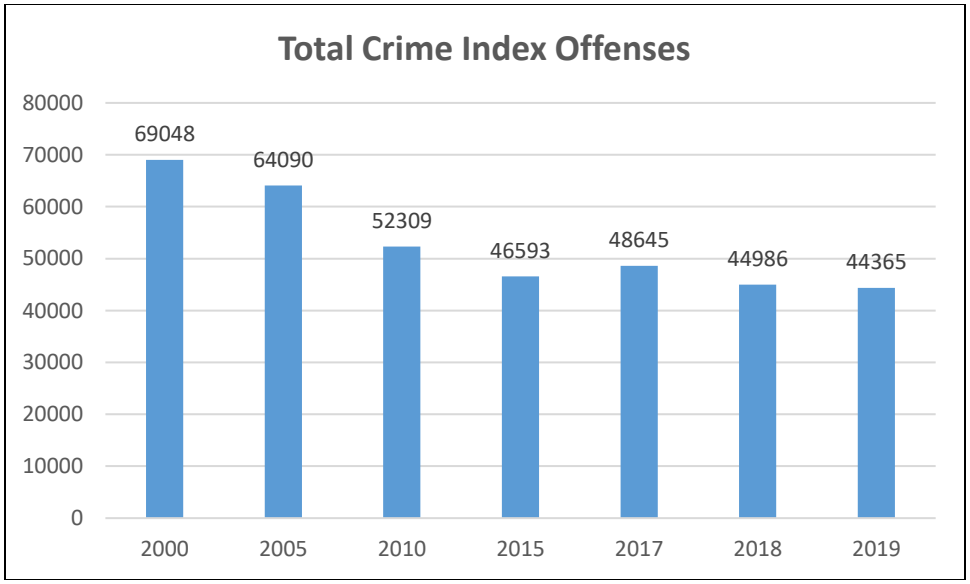

FIGURE 36: SOURCE NEBRASKA CRIME COMMISSION

[44] Attachment B: **Crime in Nebraska (2019)** by the Commission on Law Enforcement and Criminal Justice

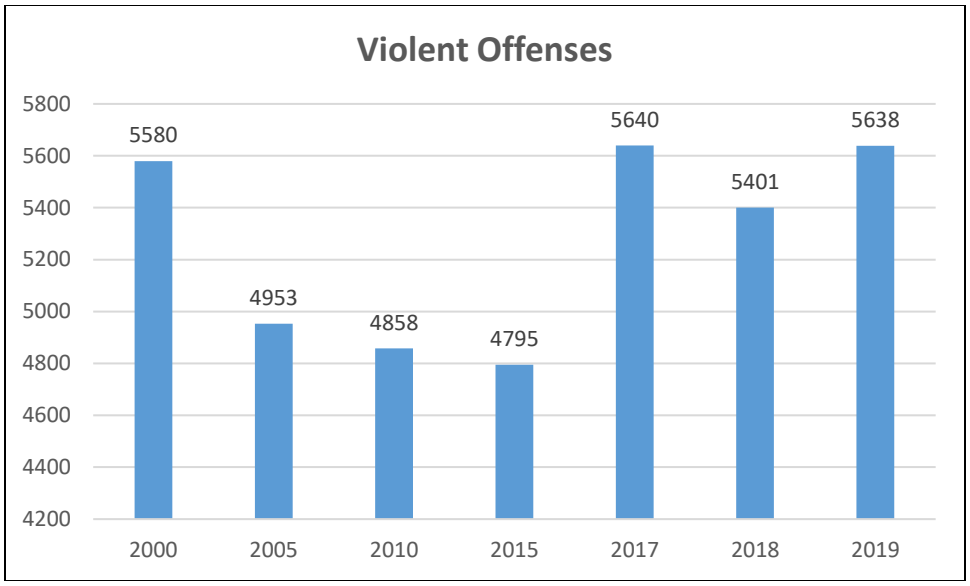

FIGURE 37: SOURCE NEBRASKA CRIME COMMISSION

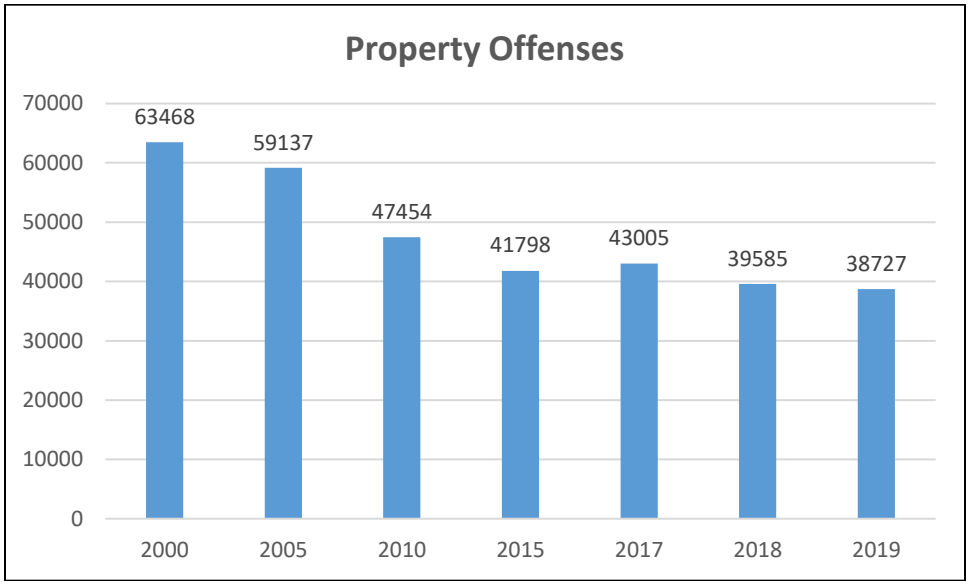

FIGURE 38: SOURCE NEBRASKA CRIME COMMISSION

Good Time Lost/Restored

In the 2018 OIG Annual Report, data on good time (or sentencing credits) was first presented in the annual reports after the OIG compiled data on good time and provided it to the Legislature since it also a factor in prison population. As described in a 2014 report on good time laws by the Nebraska Center for Justice Research:

> *Sentencing credit laws provide opportunities for inmates to gain a reduction in their prison sentence, and such laws have at least four intended goals: 1) reducing prison populations; 2) promoting prosocial behavior during imprisonment by offering inmates incentive for good behavior and/or deterring them from engaging in antisocial behavior;*

3) reducing recidivism by providing offenders incentive for good behavior and participation in rehabilitative programming; and, 4) lowering correctional costs.[45]

The report was an analysis of the administration and effects of the good time law in Nebraska, and made many findings and observations, including:

> *We found that losing good time had no effect on whether inmates subsequently committed misconduct, or the number of misconducts inmates subsequently committed. These findings also held when we examined the effect of losing good time on the prevalence and incidence of inmates' subsequent Class I misconducts. However, we did find that inmates who lost good time were more likely to perpetrate subsequent violent misconduct than inmates who did not lose good time. Thus, we can conclude that removing good time credits in response to prison rule violations had no effect on inmates' subsequent misbehavior in general, but removing good time credits did amplify inmates' odds of engaging in additional violence in prison.*
>
> *We observed no meaningful difference between the recidivism rates of offenders who lost good time and had none of their good time restored and the matched sample of offenders who did not lose good time. Therefore, we can conclude that removing good time credits amplified offenders' odds of recidivism, particularly among those offenders who lost good time and had some or all of their good time restored.*[46]

It concluded with:

> *Altogether, the findings from this study of the administration and effects of Nebraska's good time laws suggest that Nebraska prison officials' decisions to remove good time are primarily being made in an equitable manner, but that removing good time credits in response to prison rule violations has little impact on offender behavior, whether in prison or upon release. Sentencing credit laws such as Nebraska's good time law exist in most states, but this is only one of a handful of studies of the administration or effects of these laws. More studies of sentencing credit laws are sorely needed. The need to understand the use and effects of sentencing credit laws is clear, and it is only through continued evaluation of these laws that policy makers can better understand how and whether these laws work to achieve their intended goals.*[47]

In 2014, the Legislature's Department of Correctional Services Special Investigative Committee described the purpose of good time laws with the following:

> *The purpose of good time laws is to help corrections officials to better manage prison populations by creating incentives for inmate's good behavior. In effect, good time laws enable correctional officials to influence inmate behavior by giving them the discretion to significantly lengthen inmates' terms of incarceration by taking away good time credits*

---

[45] https://www.unomaha.edu/college-of-public-affairs-and-community-service/nebraska-center-for-justice-research/documents/examining-the-effects-of-nebraska-good-time-laws.pdf (page ii)

[46] Ibid. (pages 30-31)

[47] Ibid. (page 34)

that the inmates would otherwise receive. In other words, good time laws were enacted, not to give a "gift" to inmates, but for the purpose of providing correctional officials with a tool for managing inmate behavior.[48]

The Committee made the following finding at that time:

In 2014, the Department of Correctional Services Special Investigative Committee found that NDCS had significantly reduced the amount of good time lost. The Committee found the following: It is the conclusion of the Committee that the liberalization of the good time law, done at the request of the administration was in direct response to overcrowding. Similarly, the decision by NDCS to take less good time away from inmates who have violated rules within the institution was likewise directly influenced by overcrowding. Such was the testimony of Director Houston when he appeared before the Committee. The conclusion is also supported by common sense.[49]

Since both reports were written, NDCS has significantly increased the amount of good time taken away from incarcerated individuals (Figure 39).

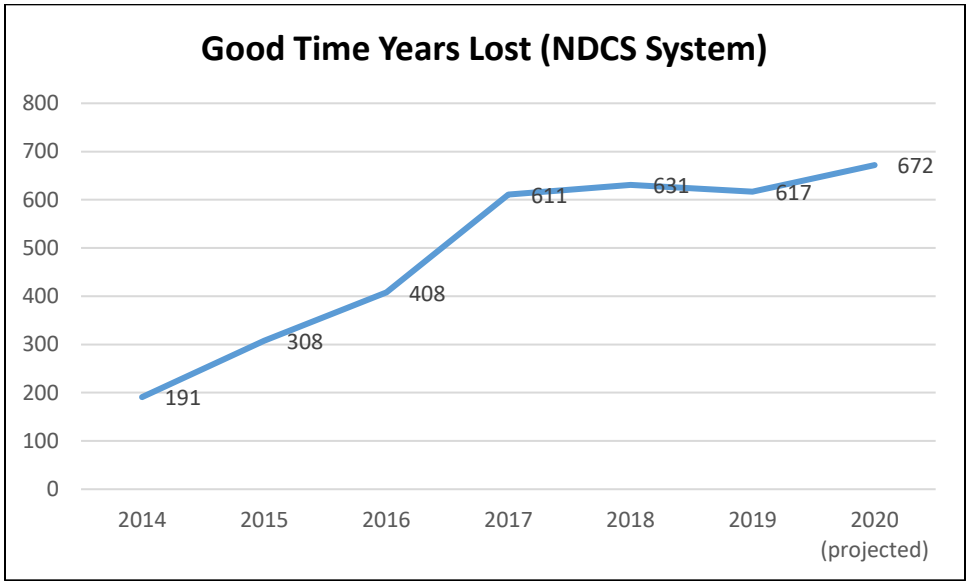

FIGURE 39: SOURCE NDCS

The loss of good time (and the related restoration of good time) impacts prison population data. As good time is taken away, that adds to the length of the incarceration of the individual who lost it. If good time is restored, then that decreases the amount of time that the person would be incarcerated. The 2018 OIG Annual Report showed a decrease in the restoration of good time (Figure 40).

[48] https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf
[49] https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf

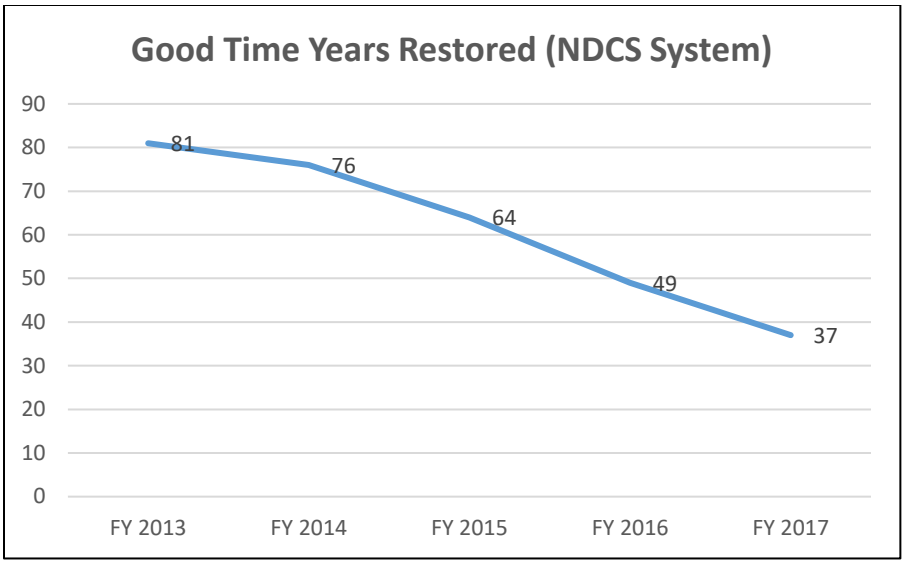

FIGURE 40: SOURCE NDCS

Nebraska State Statute 83-1,107 is the law governing good time in the correctional system. The current law provides the following as guidance:

> *(2)(a) The department shall reduce the term of a committed offender by six months for each year of the offender's term and pro rata for any part thereof which is less than a year.*
>
> *(b) In addition to reductions granted in subdivision (2)(a) of this section, the department shall reduce the term of a committed offender by three days on the first day of each month following a twelve-month period of incarceration within the department during which the offender has not been found guilty of (i) a Class I or Class II offense or (ii) more than three Class III offenses under the department's disciplinary code. Reductions earned under this subdivision shall not be subject to forfeit or withholding by the department.*
>
> *(c) The total reductions under this subsection shall be credited from the date of sentence, which shall include any term of confinement prior to sentence and commitment as provided pursuant to section 83-1,106, and shall be deducted from the maximum term, to determine the date when discharge from the custody of the state becomes mandatory.*
>
> *(3) While the offender is in the custody of the department, reductions of terms granted pursuant to subdivision (2)(a) of this section may be forfeited, withheld, and restored by the chief executive officer of the facility with the approval of the director after the offender has been notified regarding the charges of misconduct.*

While the UNO report stated that "prison disciplinary committees may designate good time removed in response to a conviction for assault or injury to a person as non-restorable," there is a view point of some that NDCS cannot take away good time and say that is in non-restorable.[50] Legislation that was recently introduced would clarify this but it has not been resolved. As a result, there is a significant amount of good time that has been lost that NDCS will not consider restoring. Many individuals lose this good time for assaults and other serious infractions but consideration could be given to restoring it if it is a number of years since that incident and the individual has achieved certain benchmarks regarding their behavior and involvement with programming. This could possibly provide an incentive for better behavior and ultimately a more thoughtful and positive transition plan.

Since much has changed regarding the use of this tool by NDCS since the LR 424 Report and the UNO Report, a new report should be completed to give an updated assessment of the use of good time, including recommendations on how to improve its use and provide incentives related to the restoration of good time.

Interstate Transfer of Inmates

In November 2019, NDCS sent out the following letter to 601 incarcerated individuals:

> *November 13, 2019*
>
> *A review of the Nebraska Department of Correctional Services (NDCS) electronic database indicates that Nebraska is not your "home" state. This may mean that you were born in another state, that you lived outside of Nebraska prior to your incarceration, or that you were living in another state when you were arrested in Nebraska.*
>
> *We recognize that completing all or part of your sentence in your "home" state would allow you to be closer to your family and friends. Having strong, supportive relationships is important both during and after your incarceration. So, we would like to offer you the opportunity to be considered for an interstate transfer to your "home" state at no cost to you.*
>
> *If you are interested in pursuing this opportunity, you may use interoffice mail to send an Inmate Interview Request form to "NDCS Chief of Operations/Interstate Transfer." In your request, tell me your "home" state and that you are willing to start the interstate transfer process. This request has to be approved by NDCS and your "home" state.*
>
> *This could be an excellent opportunity for you and I encourage you to take advantage of it. Please send your request by December 31, 2019.*
>
> *Diane Sabatka-Rine*
> *Chief of Operations*[51]

[50] https://www.unomaha.edu/college-of-public-affairs-and-community-service/nebraska-center-for-justice-research/documents/examining-the-effects-of-nebraska-good-time-laws.pdf (page i3

[51] https://journalstar.com/legislature/nebraska-seeking-inmate-volunteers-for-free-transfer-to-home-state-prisons/article_188b84cb-8074-5af7-b8bd-3942a95987f6.html

A news story about this letter reported that these individuals were contacted because their home state was not Nebraska and that if they applied and were approved for an interstate transfer to another correctional system they could complete their sentences closer to family members or friends.

As a result of this effort by NDCS, the OIG requested information from NDCS about this effort. The OIG learned the following:

- The recipients of the letter were from a computer generated list that included anyone who either listed their home address outside of Nebraska or had provided no home address at the time of their intake;
- The $2500 fee associated with the transfer would be waived as would transportation costs for anyone who decided to transfer by the end of 2019;
- The list was not pre-screened by NDCS prior to the distribution of the letter. As a result, there were individuals on death row,[52] individuals from Mexico, and individuals from nine states that do not participate in the Interstate Corrections Compact who received the letter;
- Nebraska typically only transfers inmates to other states if that state has an inmate who would like to transfer to Nebraska;
- NDCS has a policy regarding the criteria for who is not eligible to be transferred, including individuals who are in restrictive housing. The letter was distributed to a number of individuals in restrictive housing; and,
- There were currently 13 individuals from Nebraska who are currently transfers who are serving their sentences in another state.

Despite this well publicized effort, NDCS has yet to transfer one inmate to another state system since the letter was distributed. In March 2020 the OIG learned that 173 individuals who had received the letter expressed an interest to NDCS in pursuing the transfer and 156 individuals who had not received the letter also expressed an interest in pursuing the transfer option. At that time, there had been no one approved for a transfer.

Population Goal

During legislative hearings and in past reports, the OIG has discussed the need by policy makers to determine the population goal for the state correctional system. Is the goal 150%, 140%, 125% or even 100% of design capacity? The 2017 OIG report stated that:

> *"Even at 140% of design capacity, the system will remain stressed and overcrowded. According to the Bureau of Justice Statistics, even if Nebraska reached a population level of 140% of design capacity, it would still be the fifth most crowded system in the United States."*

[52] During this effort, NDCS was contacted by the news media and asked if anyone from death row had received the letter. They originally denied that anyone on death row had received the letter.

As shared in the past, there would be many benefits related to reducing the population. Reducing the overcrowding situation would not only make Nebraska's prison system more manageable and likely more safe, but it would also provide more beneficial outcomes for those who are in the correctional system and eventually leave the system and reenter society.

Nebraska needs to decide sooner rather than later what is the acceptable level of overcrowding for the state correctional system. However, Nebraska's policy makers have not come to any conclusions on what this level or should be or even if there should be a determination for this level of overcrowding.

CORRECTIONAL SYSTEM OVERCROWDING EMERGENCY ACT

The Correctional System Overcrowding Emergency Act was enacted into state law in 2002 and the specifics for how it would be administered are found in **Neb. Rev. Stat.** § 83-962, which reads as follows:

> ***83-962. Correctional system overcrowding emergency; Governor; declaration; when; effect.***
>
> *(1) Until July 1, 2020, the Governor may declare a correctional system overcrowding emergency whenever the director certifies that the department's inmate population is over one hundred forty percent of design capacity. Beginning July 1, 2020, a correctional system overcrowding emergency shall exist whenever the director certifies that the department's inmate population is over one hundred forty percent of design capacity. The director shall so certify within thirty days after the date on which the population first exceeds one hundred forty percent of design capacity.*
>
> *(2) During a correctional system overcrowding emergency, the board shall immediately consider or reconsider committed offenders eligible for parole who have not been released on parole.*
>
> *(3) Upon such consideration or reconsideration, and for all other consideration of committed offenders eligible for parole while the correctional system overcrowding emergency is in effect, the board shall order the release of each committed offender unless it is of the opinion that such release should be deferred because:*
>
> *(a) The board has determined that it is more likely than not that the committed offender will not conform to the conditions of parole;*
>
> *(b) The board has determined that release of the committed offender would have a very significant and quantifiable effect on institutional discipline; or*
>
> *(c) The board has determined that there is a very substantial risk that the committed offender will commit a violent act against a person.*
>
> *(4) In making the determination regarding the risk that a committed offender will not conform to the conditions of parole, the board shall take into account the factors set forth in subsection (2) of section 83-1,114.*
>
> *(5) The board shall continue granting parole to offenders under this section until the director certifies that the population is at operational capacity. The director shall so certify within thirty days after the date on which the population first reaches operational capacity.*

The Legislature passed a law based on the recommendation of the OIG (LB 841) during the 2018 legislative session that required the development of a report by NDCS, the Division of Parole Supervision and the Board of Parole to describe how the emergency would be administered. The

report was issued in December 2018. It was a short report with little to no data or information about future needs should the emergency be declared. It also provided the Legislature and the public with no idea regarding what the impact would be if the emergency was declared and carried out. The report gave the impression that there would be no change as a result of the declaring of an overcrowding emergency on July 1, 2020.

A week prior to the declaration of the overcrowding emergency by Governor Ricketts, the OIG distributed the following email to the members of the Legislature's Judiciary Committee to give them a better idea of what to anticipate with the declaration:

> *Dear Judiciary Committee Senators,*
>
> *As we approach the upcoming declaration of the Correctional System Overcrowding Emergency by Governor Ricketts on July 1, 2020 I thought it may be helpful for me to provide the Committee with information about this issue.*
>
> *It is important to review what the law states regarding this upcoming action by the Governor. In 2002, the Correctional System Overcrowding Emergency Act was passed by the Nebraska Legislature. The Act at that time allowed the Governor to declare an overcrowding emergency, should he or she choose to do so, when the Director of NDCS certified that the inmate population was over 140% of design capacity. In 2015 the law was changed to mandate that the Governor declare such an emergency if those conditions exist starting on July 1, 2020. As we approach the emergency declaration date, the correctional system is operating at over 150% of the design capacity (to get to 140% of design capacity the population would have to decrease by approximately 500 offenders). It is also important to note that the system contained about 260 more incarcerated individuals earlier this year prior to COVID-19 impacting admissions into the prison system.*
>
> *At the time of the passage of this law Nebraska's prison population was growing and it was thought it would soon exceed this capacity threshold. If it did the Act was intended to bring down the population to a more manageable level. When it eventually did exceed 140% of design capacity Director Robert Houston certified that it was beyond that threshold, but he informed Governor Heineman that they could handle the overcrowded system. As a result no emergency was declared at that time and no emergency has ever been declared up until now.*
>
> *Once the emergency is declared, the law sets out the following:*
>
> *1) The Board of Parole "shall immediately consider or reconsider committed offenders eligible for parole who have not been released on parole." NOTE: This is currently a pool of approximately 800-850 individuals who are past their parole eligibility date. These are the only people potentially impacted by the declaration of the emergency. The pool does not include those sentenced to life sentences or flat sentences or to individuals participating in the post-release supervision program (currently more individuals are released to that supervisory program than to parole*

supervision).

2) The Board shall order the release of those offenders unless they have determined that the offender will not conform to the conditions of parole, that the release of the offender will "have a very significant and quantifiable effect on institutional discipline" or if there "is a very substantial risk that the committed offender will commit a violent act against a person."

3) Once they start releasing individuals, the law says that the Board will continue granting paroles until the correctional system reaches 125% of design capacity. To reach 125% of design capacity the Board would have to parole over 1000 individuals. Earlier I mentioned that the pool of people for the Board to consider is only about 800-850 individuals which means if they paroled every single person past their parole eligibility date, they could not reach the goal.

At this time, to answer a question that I constantly get asked, I do not foresee a significant release of individuals after the Governor declares the overcrowding emergency. I concur with a conclusion reached by Shakur Abdullah when he wrote the following for a 2009 edition of the Nebraska Criminal Justice Review:

"If the Governor were to declare an overcrowding emergency, it still doesn't mean that the Board of Parole has to parole anybody. Given the statute's language, even under a declared overcrowding emergency, the Board of Parole wouldn't have to release anybody, if it is of the opinion that such releases should be deferred because of a whole host of reasons enumerated in the statute."

The Board has already given everyone in the parole eligibility pool consideration for parole, in many cases they have received consideration for parole multiple times. The Board has not looked positively on their parole in the past for various reasons so why would they change course now. In addition, with some new beds scheduled to come on-line in the next few years (100 minimum custody beds at the Nebraska State Penitentiary later this year and 384 high security beds at the Lincoln Correctional Center in a couple of years) this might result in something similar to what previous Director Bob Houston said about being able to handle the overcrowding situation. The one thing that might influence a release is that the declaration of this emergency will give the Board some "cover" to parole individuals who have had community opposition. The fact that not many individuals will be impacted by an emergency declaration also goes back to the Act itself. The Act, while having the intention to reduce population to what was thought to be a more manageable level, might not be written in such a way to actually lead to that goal. Also, as previously mentioned, the pool of individuals identified in state law to be considered is quite small compared to the entire inmate population - post-release supervision was added in the past few years and was not even a consideration in 2002.

I thought it was important to share this information with you because there is a perception by many that hundreds of incarcerated individuals will be released starting on July 1, 2020.

In addition, I am attaching a report prepared in 2018 by the Department and the Board of Parole that was the result of the Legislature passing a law to require that they submit a report regarding the possible implementation of the overcrowding emergency. I think it is worth a review in order to better understand the process.

Please let me know if you have any questions about any of this information.

Doug Koebernick, Inspector General of Corrections

When the declaration was made on July 1st, the following was reported in the *Omaha World-Herald*:

> *Rosalyn Cotton, the chair of the Nebraska Board of Parole, said her agency has already been stepping up hearings with inmates to determine whether they're ready for an early release. She said the Parole Board will further ramp up parole hearings — which currently review about 130 inmates a month. But Cotton said Thursday that there was no specific target or goal for how much to increase those reviews. But both Cotton and Frakes, as well as Gov. Pete Ricketts at a later press conference, said it's a misconception that the overcrowding emergency will result in the release of dozens of inmates.*[53]

So far, paroles granted in 2020 are not very different from paroles granted in 2018 or 2019 but there has been a slight uptick in 2019 and 2020. This data will be provided later in this report.

[53] https://omaha.com/news/local/prison-overcrowding-emergency-begins-july-1-in-nebraska-will-much-change/article_8509ee94-9cfb-525c-bb9f-535066a97f44.html

FACILITIES

New Construction

In recent legislative sessions the Department has received new funding for building projects.

1. A $75 million project at DEC and LCC was funded in 2017. It will establish a Reception and Treatment Center that will connect the Lincoln Correctional Center (LCC) and the Diagnostic and Evaluation Center (DEC). It will include a 32 bed skilled nursing facility that will be used for seriously or chronically ill inmates, and will primarily replace the skilled nursing facilities at DEC and NSP. It will also include a 32 bed secure behavioral health unit that will be intended to meet the needs of inmate with acute mental health or behavioral health needs. The inmates who will reside in this unit will likely be moved from a mental health treatment unit at LCC. The expansion will also include a new kitchen for the two facilities as well new space for administrative and staff support, visitation, intake and release, and other custody operations.[54]

2. Using funds that went unspent for the 160 bed unit at CCC-L NDCS is constructing a 100 bed minimum security dormitory at NSP. Ground was broken last year on this project and it should be finished later this year.

3. The Legislature appropriated $49 million during the 2019 legislative session to fund a 384 bed high security unit at LCC. Ground was recently broken on this project.

Existing Facilities

As explained in past reports each of the ten correctional facilities face challenges with the way that they are currently constructed. Some of them have an antiquated physical plant that presents challenges to maintaining safety and security. Others have significant overcrowding issues and several have building maintenance issues.

As has been reported in the past, NDCS is facing a maintenance backlog of approximately $60 million in projects.[55] This presents additional challenges since NDCS is only addressing a small fraction of those projects each year. As the facilities continue to age, even more infrastructure issues will emerge which will add to that backlog.

In response to the recommendation in the 2018 OIG Annual Report to "Provide a plan for addressing the maintenance backlog of over $60 million in projects to the Governor and the Legislature no later than December 1, 2018" NDCS responded by stating that is was being addressed through the budget process. The OIG made the same recommendation the next year and the response in July 2020 from NDCS was "The 10 year Capitol plan, the 309 process and the biennial budget process provide the framework and process." However, in 2016 the OIG found that the maintenance backlog was around $50 million. If the backlog has increased by $10

[54] https://corrections.nebraska.gov/sites/default/files/files/41/fy17_strategic_plan_progress_report_0.pdf (pages 18-19)

[55] According to the Legislative Fiscal Office in 2019 the total maintenance backlog was $61,946,129 which includes: Deferred Repair $45,061,239; Energy Conservation $2,401,760; Fire/Life Safety $5,648,630; ADA $2,334,500; Corrections Capital Program 913 - Security System Upgrades $2,500,000; and, Corrections Capital Program 914 - Infrastructure and Maintenance $4,000,000.

million in a few years then that would indicate that the current process to address it is not working. As a result, the OIG will again offer this same recommendation.

There are also numerous core support needs for facilities throughout the system that have been written about in previous reports. In addition, the OIG has given public testimony on these needs before the Nebraska Legislature.

Future Projects

On February 18, 2020, NDCS distributed the following press release:

> *February 18, 2020 (Lincoln, Neb.) – Today, Scott R. Frakes, director of the Nebraska Department of Correctional Services (NDCS) announced he would soon be issuing a request for information (RFI) in order to identify possible options for the construction, maintenance and creation of new prison capacity.*
>
> *"In particular, this will allow for the exploration of a public-private partnership that could provide certain benefits to the state including an accelerated timeline to build and a long term lease agreement, with the potential to own any new facility at the end," said Dir. Frakes.*
>
> *"This is a first step to examine what options are out there," he added. "We will be focusing on medium to maximum custody options in a location that has the population to support required staffing."*
>
> *A report authored by the JFA Institute projected that male admissions to NDCS would increase at an average rate of 2.5 percent each year over the next decade. The female population could be expected to increase at an average of 2.0 percent annually during the same time frame.*
>
> *Despite having a low rate of incarceration, ample good time laws and the passage of LB 605, incarcerations continue to rise in the state.*
>
> *"This report now gives us a more solid projection of growth," noted Dir. Frakes. "It's a tool that will help inform responses to the RFI, with best estimates of how to meet Nebraska's current and future needs."*
>
> *Factors to be considered would include male and female custody levels, bed space requirements, programming, medical and core service needs.*
>
> *"Properly-sited and properly-sized new capacity will allow for phased-in construction. As some of our existing locations reach the end of their life spans, any new facility could be expanded," said Dir. Frakes. "It's not just a matter of predicting future needs, but it is about building space that provides the flexibility to accommodate needs as they evolve."*
>
> *"Part of what the RFI will help inform is the optimum location to meet staffing needs and delivery of services. The other thing is that modern prisons incorporate the latest*

technologies, energy efficiencies and accommodations that don't require the same level of staffing as older prisons."

Director Frakes said at this point, he did not have initial projections concerning the cost of any new construction projects. Build-lease partnerships have been explored and utilized by other states as a means to cover immediate construction costs and spread the payments over time.

"The RFI process does not obligate us in any way. Ultimately, once all options are weighed, we will have those discussions with the legislature to help make an informed choice that best meets the needs of the state and best serves its citizens."

On March 16, 2020, NDCS put forward a request for information regarding this proposal.[56]

Less than two weeks prior to the initial announcement, Director Frakes had testified before the Appropriations Committee in opposition to a legislative bill that would establish a 300 bed community corrections facility. He had indicated at the hearing that NDCS did not need any additional community beds and that he would have more information later this fall when he released his budget request on what NDCS' needs would be going forward.[57] However, thirteen days later he had identified the need for a large medium/maximum custody facility that would need to be built by a private company and leased to NDCS. NDCS received responses from 13 companies and their responses can be found on the Department of Administrative Services web site.[58]

Since Director Frakes testified before the Appropriations Committee and NDCS released the request in March, much has changed regarding the financial situation of the State of Nebraska. The impact of COVID-19 on the State of Nebraska's budget situation is not known but the current General Fund Financial Status[59] projects a shortfall of almost $800 million at the end of the next biennium. Action taken by the Unicameral in August on property taxes, a historic project at the University of Nebraska Medical Center and business tax incentives was a significant commitment of tax dollars.

Should NDCS present a plan to build a large medium/maximum custody facility when it releases its upcoming budget request, it will have a price tag in the hundreds of millions of dollars plus an annual operational cost that runs in the tens of millions of dollars. This would need a significant and long-term financial commitment from the State of Nebraska to make it a reality. With the State of Nebraska facing an $800 million budget shortfall, and possibly more, such a proposal would face incredibly long odds of being funded. This should be acknowledged by NDCS and any supporters of building such a facility when it is proposed. Should this be proposed, the

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[56] http://das.nebraska.gov/materiel/purchasing/RFI%203016/RFI%203016.html

[57] "*…yes, we need to build beds, just not community custody beds. And I don't need an appropriation right now to figure out what the next steps are and-- and come and tell you what we do need to build. So that's why I'm here today, to say we don't need to invest in this and that there will be-- I'll be putting forward a request in the coming biennium."* Director Scott Frakes at the February 5, 2020 Appropriations Committee hearing

[58] http://das.nebraska.gov/materiel/purchasing/RFI%203016/RFI%203016.html

[59] https://nebraskalegislature.gov/FloorDocs/Current/PDF/Budget/status.pdf

Nebraska Legislature will have to weigh the costs of constructing it against the many other priorities and needs of the state.

There are a vast number of other needs of the correctional system that continue to go unaddressed. In the February 5, 2020 hearing, Director Frakes touched on this to some extent when he said when discussing design capacity:

> *Now did we do the other pieces that we need to do so that we can pass the straight-face test and say design doesn't really matter, it's the operational capacity? Are the dining halls big-- I think it was either the senator or-- or Koebernick talked about-- dining halls big enough? Are the programming spaces, etcetera, big enough? And that's been an area where we haven't done everything that we need to do. So that's part of the long-term goal is to address those issues that would really allow us to say there's 1,350 people housed in the Nebraska State Penitentiary and there's all the infrastructure and space to do that. It's not a great example because that campus is too dang small.*

In addition, the top budget priority item in the fall of 2018 was to address some of the operational shortfalls of the Nebraska State Penitentiary but this budget request was later rescinded.

Also, the September 2016 update of the NDCS Strategic Plan provided information regarding these challenges when it states:

> *The wisdom of investing money into existing facilities rather than building a new prison is captured in the Master Plan document. Many of the existing facilities were constructed during a period of time when programming and core support space were not seen as necessary or beneficial. Relocating a percentage of the population to a new facility will not address the need for improvements in most of the existing NDCS facilities. Reducing the number of inmates in our existing facilities will drive up the overall cost of operations, without significant improvement to the quality of operations. The right answer is to improve core support services and make small adjustments to bed space in existing facilities. This will provide operational capacity consistent with our population needs.*[60]

On January 9, 2020, the OIG presented a memorandum to Senators Stinner and Lathrop regarding the potential system needs. This was done to ensure that the Chair of the Appropriations Committee and the Chair of the Judiciary Committee understood that there are many possible needs, in addition to the current projects and the $60 million maintenance backlog, for the correctional and parole systems. The memorandum shared the following from the OIG:

> *During the past several months, I have spent a number of days in the various facilities of the Department of Correctional Services, including touring all ten with Senator Lathrop. As a result of those visits and conversations with individuals within the system, I have*

[60] https://corrections.nebraska.gov/sites/default/files/files/39/ndcs_strategic_plan_2015_-_2018_updated_september_2016.pdf (page 5)

identified a number of potential needs of the Department. Some of these needs have been identified in some manner in previous reports but others may be relatively new. I am attaching this list. It is not a comprehensive list but I do believe that they are at least ideas that merit some study or consideration. I believe the list would be much longer and more comprehensive if those that work for the Department were allowed to share their creative ideas with the Legislature but it is a good starting point.

POTENTIAL SYSTEM NEEDS

FACILITY UPGRADES/EXPANSION

Expand Diagnostic and Evaluation Center by 192 beds

Past recommendations have been to expand DEC due to it running regularly at over 300% of its design capacity. Expansion would allow for a less chaotic and safer environment in which men are first evaluated and assessed prior to moving to another facility. As part of this, a special unit for short term offenders (or parole violators) who need clinical programming prior to release could be created. This would allow for treatment from the staff already at the soon to be Reception and Treatment Center to provide important rehabilitative programs to men who normally would not receive such programming due to their short sentence structure. Whether 192 beds is the appropriate number of beds is unclear. The cells at DEC that house four individuals are very crowded and were designed for two individuals. The cells designed for a single individual now have two individuals. Adding additional beds would right size the living units and begin to meet the standards of the American Correctional Association.

Fund Phase Two of the Reception and Treatment Center

Currently, LCC and DEC are being merged to create the Reception and Treatment Center. As part of this project a 32 bed skilled nursing facility and a 32 bed mental health unit are being created. Phase two (and what was in the original plan) of the project would be to add additional specialized units that could be used for elderly inmates and other inmates with special needs, including county jail safekeepers awaiting a placement in the regional center. This would add at least 96 additional mission specific beds.

Expand the Nebraska Correctional Youth Facility (NCYF) by 68 beds

The original plans for NCYF provided for space on the south side of the facility to double the capacity of the facility. Doing this would allow for young offenders to stay in an environment specifically designed for young offenders for a longer period of time where they can have receive additional treatment and programs that are specifically designed for that population.

Expand Community Corrections Beds

Past plans have projected a need for additional male community beds. Additional beds are needed in the Douglas/Sarpy County area as well as in other communities throughout the state. Small work release/transitional centers could be established in communities such as Norfolk, Grand Island, North Platte, Scottsbluff and other locations where men and women who are near the end of their sentence could spend the last months of their sentence transitioning back into their home community by finding employment and

reconnecting with family and other supports. Consideration should also be given for having community corrections opportunities for women outside of Lincoln.

Parole Revocation Facility
Review the possibility of creating a small facility for parole violators who instead of being returned to DEC could be placed in a parole-run facility in which they receive immediate and specific interventions which would then allow them to be paroled back into the community. This may increase their chance of success and also reduce the population being directed to DEC.

Clinical Treatment Facility
Establish a stand-alone treatment facility in a population center that would be designed to provide clinical programs prior to moving to either minimum or community custody. Treatment could be more comprehensive and have limited interruptions or distractions, along with the chance that there would be less contraband available to those in treatment. The size of this facility could vary from 200 on up.

It is also important to note that each time beds are added to the system there is also the opportunity to begin to "right-size" facilities so that they could operate as they are designed. If a housing unit is designed to hold 100 and it now holds 200 it is stretched thin and this impacts most aspects of living. Reducing that to 150 or even 100 would allow for a higher quality of living and better working conditions for staff.

FACILITY CORE SPACE NEEDS
Nebraska State Penitentiary (NSP)
Last year the Department stated that their highest construction priority was to enhance the core space at the Penitentiary at a cost of around $15 million. This would have changed and expanded many spaces, including education, dining, kitchen and programming. During the session the Department shifted and said building 384 high security beds was their top priority and this project was taken off of the table. The need for these enhancements still exists. There is also a previously identified need of additional indoor recreational space at the facility.

The minimum housing units are currently running at double of their design capacity and were built as temporary units. These units were designed so that they could be utilized as programming space, etc. upon the end of their residential lifespan. This should be reviewed as an important need of NSP.

Work Ethic Camp (WEC)
WEC would benefit from a multipurpose facility that would include indoor recreational space and additional space for classes, programming and job training. Currently, the men at WEC have no indoor recreational space and when it is cold, hot, raining or snowing they are mostly kept in their living quarters which are operating above their design capacity. Building a multipurpose facility would allow for more involvement from the local community college for vocational training and educational classes which would benefit the men as they move forward to community custody.

Nebraska Correctional Center for Women (NCCW)
Like NSP and WEC, NCCW could use additional indoor recreational space as their current space is extremely small for a facility with over 300 women. In addition there is a need for additional classroom and programming space. There is also a need for separation for women who are in protective custody. All of these things would allow NCCW to function better and provide an enhanced quality of living.

Community Corrections Center-Omaha (CCCO) Classroom
Four years ago, it was shared that the Warden had requested a modular classroom at CCCO so that they could provide more classes and programs. Recently the Department contracted to bring a classroom to CCCO.

Omaha Correctional Center (OCC) Office Addition
Currently, there are CSI and maintenance staff who have office space in the main programming building at OCC. Building a separate stand-alone building near the CSI facilities on the north side of the campus would allow the office space to be better utilized for other needs of the inmate population.

FACILITY OPERATIONS
Changes to the operations in various facilities could be made so that the following take place:

- *Expansion of re-entry efforts inside NDCS facilities;*
- *Increase in use of vocational education/community colleges/higher education inside each facility;*
- *Establishing long-term transitional programs/units for higher custody individuals so that they could eventually transition into lower custody facilities instead of entering the community directly from a medium or maximum custody setting;*
- *Expand the use of peers (from inside to outside) to assist with delivering programs and to also working with individuals who have a multitude of issues, including those who reject clinical program opportunities;*
- *Establishing an electronic cell check system so that all cell checks are electronically entered to increase safety and accountability. The Department piloted this for three months in a restrictive housing setting and it was deemed a success. This is a recommendation from past critical incident reviews and IG reports;*
- *Utilizing inmate tablets for inmate interview requests (kites) that are now all on paper and not tracked or recorded. The tablets also have other uses including video programs and are not being fully utilized;*
- *Fully implement electronic health records sooner rather than later. There is some discussion that the current appropriation for this is not enough to fully fund and implement it;*
- *Establish a text message alert system for family members at specific facilities. Text messaging could be utilized to inform families about such events as changes in visitation or the scheduling of a family council meeting at the facility; and*

- *Setting up video visitation at WEC in McCook so that inmates who are from the eastern part of the state can maintain contact with their families. The system could be set up so that visitors could go to a facility in Lincoln or Omaha and then have a video visit with the individual at WEC. This could also be done for the women at the York facility.*

OTHER

- *Expand funding for UNO so that they could work with the Department and other justice entities on additional projects as originally imagined.*
- *Provide additional funding to the Inspector General for staff so that IG efforts could be enhanced and additional reports/investigations could be conducted.*

There are likely other potential needs of the system that could be identified in the future.

ASSAULTS, CAMERA COVERAGE AND THE USE OF BODY CAMERAS

During the past few years, the issue of inmate-on-staff assaults has emerged as a significant concern as public awareness regarding the assaults increased. The OIG, as a result of having access to the NDCS information system and due to the reporting of many assaults to the OIG by NDCS Central Office, does continually review reports and videos of assaults on staff and inmates. The most accurate source of the actual events of the incident are when it is captured on a body camera. A staff member's body camera has close up video and audio of the incident. The institutional cameras do not have audio. In addition, the OIG, as expressed in past reports, has learned that there are many blind spots in facilities where the institutional cameras do not cover specific areas.

To assist with the accurate capture of inmate on inmate and inmate on staff assaults, NDCS should continually enhance their efforts to cover blind spots in their facilities with their institutional cameras and increase the use of body cameras. Currently, LCC does not have any body cameras in their facility. However, they have units in which there are frequent incidents with inmates who are suffering from a mental illness. Body cameras in those settings would likely assist the facility in not only capturing those incidents, but also in training staff on how to better respond to, as well as de-escalate potentially volatile situations.

NDCS responded to the OIG's recommendation of increasing the use of body cameras by indicating that "the cost/benefit ratio does not support the expansion of BWCs (body cameras) within NDCS. When asked for more information about the cost/benefit ration, Director Frakes responded by stating: "My reference was the colloquial use of the term "cost/benefit. Expanded use of the technology will require a budget request, and we have other technology needs that are a much higher priority (video camera systems, radio systems)."

While the competing areas within the NDCS budget are a reality, there are numerous reasons to support the expansion of the use of body cameras in prison. One retired correctional staff member put it well when he wrote:

> *No longer will departments solely be limited to purely post hoc prolonged staff reports, inmate statements, medical narratives, etc. We can now go to the video tape, literally. Transparency and accountability of already steadfast staff, with the addition of body camera audio and video, will make our work environments safer for everyone -- most importantly, staff.*[61]

The OIG continually receives numerous reports from incarcerated individuals alleging misconduct by NDCS staff. In some cases, body camera footage shows that either the alleged event was not as described by the individual or in some cases never took place. In other cases, the body camera provides key video and audio that shows that a possible act of misconduct or at the very least poor judgement took place. In these instances, the allegation can be addressed. As part of that, staff can be coached to handle situations in a better manner. In addition, incarcerated individuals learn that the body camera doesn't lie and that they can't make false allegations. In this era of law enforcement accountability, body cameras in correctional facilities should begin

[61] https://www.corrections1.com/body-cameras/articles/why-all-cos-should-wear-body-cameras-LTyLr5enSR3IHMDD/

to be the expectation and not the exception. When incidents are caught on just the institutional camera there may be no actual proof of what happened during an incident. There is no “close-up” video or audio and there is usually only one or two angles. Having one, two or even three body cameras capturing an incident can provide a vast amount of information and evidence related to an incident.

RESTRICTIVE HOUSING

During the past year, NDCS has seen a significant decrease in the number of individuals housed in their restrictive housing units. On September 8, 2020, the Long-Term Restrictive Housing Work Group met. This is a group established in Nebraska State Statute 83-4,114 which states:

> *(5)(a) There is hereby established within the department a long-term restrictive housing work group. The work group shall consist of one member of the Judiciary Committee of the Legislature appointed by the Executive Board of the Legislative Council who shall be a nonvoting, ex officio member and the following voting members:*
>
> *(i) The director and all deputy directors who have oversight over inmate health services or correctional facilities. The director or his or her designee shall serve as the chairperson of the work group;*
>
> *(ii) The behavioral health administrator within the department;*
>
> *(iii) Two employees of the department who currently work with inmates held in restrictive housing as designated by the director;*
>
> *(iv) Additional department staff as designated by the director; and*
>
> *(v) Six members appointed by the Governor who have demonstrated an interest in correctional issues. Of these members at least one shall be an individual who was previously incarcerated in Nebraska's correctional system. The remaining members shall consist of individuals who are mental health professionals, have been employed in a restrictive housing unit in a correctional facility, have advocated for the rights of incarcerated individuals, or have otherwise been engaged in activities related to Nebraska's correctional system.*
>
> *(b) The work group shall advise the department on policies and procedures related to the proper treatment and care of offenders in long-term restrictive housing.*
>
> *(c) The director shall convene the work group's first meeting no later than September 15, 2015, and the work group shall meet at least semiannually thereafter. The chairperson shall schedule and convene the work group's meetings.*
>
> *(d) The director shall provide the work group with quarterly updates on the department's policies related to the work group's subject matter and with any other information related to long-term restrictive housing that is requested by members of the work group.*
>
> *(e) The work group shall terminate on December 31, 2021.*

At their meeting, the Work Group was provided data and information regarding restrictive housing practices within NDCS. As these materials were presented to the Work Group, it became apparent that there was a significant amount of data and information that would further inform the OIG regarding the use of restrictive housing within NDCS. As a result, the OIG will compile

a supplemental report to the annual report that is focused on restrictive housing after taking time to review that data/information as well as the upcoming NDCS restrictive housing report that is to be issued no later than September 15th.[62] The supplemental report will provide additional information that is typically contained in this report and will supplement the information that is provided as part of this section. As a result, this part of the annual report will be somewhat abbreviated.

Legislatively Created External Restrictive Housing Work Group

An external work group was created in 2015 thru the passage of Legislative Bill 598. The group has been led by Director Frakes since their first meeting on September 15, 2015.[63] Last year's OIG Annual Report stated:

> *In the past three OIG reports concerns were expressed about this group not having the impact that the Legislature anticipated when it came to advising NDCS on policies and procedures related to restrictive housing practices. Members had left the group and the number of people attending the few meetings of the group had dwindled. There also was little overlap between the work of the Internal Restrictive Housing Work Group and the external work group.*

These concerns are still valid.

The 2019 OIG Annual Report also stated:

> *At that meeting (August 2019 meeting), Director Frakes announced that he planned to update the rules and regulations for restrictive housing. These went into effect in 2016 and have not been changed since that time. The OIG has previously submitted suggestions for possible changes to these rules and regulations, including:*
>
> - *Further defining the programming plan (for those in restrictive housing) by adding: "As much as possible, programming shall be focused on the individual needs of the inmate in the restrictive housing setting. Having a program that is focused on the specific needs of that individual will allow them to reenter general population more quickly and more successfully, as well as stay in general population in the future." This language would establish an emphasis on specific and individualized programming for inmates in restrictive housing instead of a one size fits all programming approach where an inmate might take the same program over and over and over again;*
> - *Add a definition of "closed custody" since that has not been defined;*
> - *Expand the definition of active STG (active involvement in a gang) so that "active" means X number of days of active gang involvement instead of having it be open-ended;*

[62] It can be found at https://nebraskalegislature.gov/FloorDocs/106/PDF/Agencies/Correctional_Services__Department_of/602_20200915-113847.pdf.

[63] This was the first corrections-related meeting attended by the OIG.

- *Establish a peer mentor program in at least three facilities by no later than July 1, 2020;*
- *Add language regarding the MDRT process that would state: "The MDRT shall vote on each decision and the vote shall be a part of the restrictive housing record of an inmate so that the Director and other LTRH participants are able to better understand the decision that was made by the MDRT." Currently no vote is recorded or accounted for, when, by having such a record the Director or other parts of the LTRH system will be able to better understand whether or not there was consensus among the MDRT;*
- *Add additional language that states the following: "If a living unit within a correctional facility does not allow inmates to be out of their cell for an average exceeding six hours per day over a five day period than that living unit shall be designated as meeting the definition of a restrictive housing. Once that designation is made the living unit shall follow all regulations related to restrictive housing and any data that is collected for other restrictive housing units will also be collected for this living unit. Once a living unit that receives this designation allows inmates to be out of their cell for an average exceeding six hours over a five day period the designation shall be removed. The applying and removing of this designation shall be reported to the Deputy Ombudsman for Corrections and the Inspector General for Corrections;" and,*
- *Add a prohibition to double bunking in a restrictive housing setting.*

In recent weeks, the members of the work group received updated NDCS policies on restrictive housing. Despite Title 72 stating that "all policy directives…related to restrictive housing shall be shared with the Deputy Ombudsman for Corrections and the Inspector General" the OIG had to request these documents from NDCS prior to the work group's meeting on September 8, 2020. While parts of this updated policy, Policy 210.01, were discussed at the meeting, none of the suggestions from the OIG regarding Title 72 were included in policy changes. At the meeting, Senator Wendy DeBoer asked if the rules and regulations would be updated and despite assurances by Director Frakes in past years about the need to update the rules and regulations for restrictive housing he indicated that they would not be updated despite the need to update terms used in restrictive housing and having conflicting guidance in the two documents.

The OIG has three other concerns related to the Work Group.

First, under state law the group is required to meet at least two times per year. Prior to their meeting on September 8, 2020 they last met in August 2019 despite the law being very clear. While it is true that COVID-19 impacted many things, there was still time to meet between September 2019 and February 2020, especially since there were new members to the group, including Senator Wendy DeBoer. In addition, a meeting could have been held via video if there had been a desire to follow state statute.

Second, under state law the Director is directed to "provide the work group with quarterly updates on the department's policies related to the work group's subject matter and with any other information related to long-term restrictive housing that is requested by members of the work

group." This has never taken place during the five years of existence of the group despite there being continual updates and changes to policy by NDCS and it being a requirement in state law.

Third, under state law "the work group shall advise the department on policies and procedures related to the proper treatment and care of offenders in long-term restrictive housing." However, as Senator DeBoer explained at the recent meeting, the meeting on September 8th was a meeting at which NDCS presented information to the group for the first time in over a year. The lack of updates or meetings or even the appearance of trying to inform and involve the work group about restrictive housing practices has not allowed this part of the state law to be followed either. One way to provide more information to the members was brought up by Senator DeBoer at the meeting and that was to put together a survey for restrictive housing inmates and staff and gain their input about restrictive housing. This is an excellent idea which could lead to greater insight not only for the members but also for NDCS.

Restrictive Housing Population

One of the goals of the restrictive housing changes was to decrease the number of people placed in such a setting. In November 2014, the total number of inmates in restrictive housing units was 319 and the total number of inmates in protective management units was 310. In August 2018 the numbers had increased to 414 inmates in restrictive housing units, and 473 inmates in protective management units. In September 2019, there were approximately 350 inmates in restrictive housing units and approximately 500 inmates in protective management units. In September 2020, there were approximately 220 inmates in restrictive housing units and approximately 460 inmates in protective management units.

Since the fall of 2016 the number of individuals kept in a restrictive housing unit for at least 180 days had increased as well. In September 2016 there were 62 individuals who had been in a restrictive housing unit for at least 180 days. In early 2018 it had increased to 185 individuals but had decreased to 158 individuals by August 2018. NDCS has continued to reduce this number and on September 1, 2019 it was at 119 inmates. On September 1, 2020 it was down to 56 individuals which puts it back to the level found in 2016. However, 20 of these 56 individuals have been in restrictive housing for over 1000 days. On September 1, 2019 only 10 individuals had been in restrictive housing for over 1000 days. Of those 56 individuals, NDCS indicates that 12 have a serious mental illness. In comparing the information provided for that population there are some differences for those who were there in 2019 and those there in 2020 as far as the recording of their mental illness.

These decreases in restrictive housing populations are significant and appear to reflect a commitment by NDCS to change their past practices and return to the levels prior to 2017.

Close Management Units/Mission Specific Housing's Impact on Restrictive Housing

Last year's OIG report laid out how the population in restrictive housing was being impacted to some degree by changes in other types of housing units. In 2017 NDCS had established a new category of living units that were not restrictive housing, and yet not general population. They called them "close management units" and they existed at TSCI and NSP. These were Units 2B at TSCI and 4B at NSP. In 2019 these were changed as the two units were merged and turned

into a new type of unit at 2C in TSCI. The OIG will release a report regarding the establishment and the functioning of this unit later this fall.

LCC made changes to units with mentally ill inmates and continue to make more changes. Previously, inmates in these units had very little out-of-cell time and were considered in the restrictive housing population. Somewhat recent changes converted restrictive housing beds to limited movement beds and changed the secure mental health unit to a skilled mental health facility. There have been concerns about the out of cell time for men in these units and this will be discussed in the supplemental report on restrictive housing.

Double Bunking

In the past three OIG reports the OIG recommended that NDCS end the practice of double bunking in restrictive housing units for a number of reasons, including the safety of the two cellmates and the impact on their mental well-being. The previous Warden at TSCI had ended the practice of double bunking there but it continues to take place at NSP. The current Warden at TSCI has indicated that he is not opposed to the idea of double bunking in restrictive housing.

Every three years each correctional facility is audited by the American Correctional Association (ACA). At the most recent external audit of NSP in 2018, the ACA found that NSP did not comply with the following standard:

> *ACA Standard 4-4141: All cells/room in segregation provide a minimum of 80 square feet, of which 35 square feet is unencumbered space for the first occupant and 25 square feet of unencumbered space for each additional occupant.*

The following is directly from the 2018 audit:

> *FINDINGS:*
> *The restrictive housing at NSP do not provide the minimum square footage in either total cell space (80 sq. ft) or unencumbered space (35 sq. ft).*
>
> *FACILITY RESPONSE:*
> *Waiver Request*
> *NSP was granted a waiver from the Commission during the panel hearings in 2015. NSP restrictive housing in the Control Unit has 62 square feet, with 37.10 square feet of unencumbered space.*[64] *There has been no change in the architectural design of the 59-year-old Control Unit. As in the past, there is no reasonable option to increase the size of cells in this building.*
>
> *Restrictive housing cells in Housing Unit #4 also fall short of the minimum 35-square feet of unencumbered space per inmate. These cells are 78 square feet in size and are duel occupancy with a total of 45.13 square feet of unencumbered spaces. Divided by two occupants each individual has 22.56 square feet of unencumbered space.*
> *While NSP continues to operate over its rated capacity, efforts are made each day to maintain the highest quality of life, health and safety for inmates and staff. Every step is*

[64] These cells only contain one inmate.

taken to mitigate the effects of the increased population in an active, professional and caring fashion. Architectural modifications to increase the size of cells are not feasible given the physical layout/construction of the housing units; therefore, a waiver is being respectfully requested for this standard.

AUDITOR'S RESPONSE:
The auditor agrees with, and support of, the waiver request. There was no indication of any negative effects on the inmates in these housing units. Rather, the observation of these inmates indicated satisfaction with the space afforded.

In the 2018 NSP Supplemental Report, the OIG recommended that the practice of double bunking end "so that the ACA standards will be met." In July 2019 NDCS responded by stating "ACA standards do not prohibit double bunking in restrictive housing." In the 2018 NSP Supplemental Report, the OIG never indicated that the ACA standards stated that but rather focused on the compliance with the square foot standard described previously. This was shared with NDCS in August 2019. In July 2020, Director Frakes responded to this recommendation that had been in the 2019 OIG Annual Report. He again stated, "ACA standards do not prohibit double bunking in restrictive housing." The OIG responded with the following:

The point on this that has been in past reports is not that they prohibit double bunking but that by double bunking in the current cells at NSP this violates ACA standards as far as square footage per inmate. This can be found in greater detail on page 69 of the 2019 OIG Report where it states: In the 2018 NSP Supplemental Report, the OIG again recommended that the practice of double bunking end "so that the ACA standards will be met." In July 2019 NDCS responded by stating "ACA standards do not prohibit double bunking in restrictive housing." In the 2018 NSP Supplemental Report, the OIG never indicated that the ACA standards stated that but rather focused on the compliance with the square foot standard described previously. This was shared with NDCS in August 2019.

When this was presented to Director Frakes he responded in an email with "No further comment on double bunking, but thanks for the clarification."[65] As mentioned in last year's report, it is important to note that at an External Restrictive Housing Work Group meeting on December 17, 2015, Director Frakes stated in regards to restrictive housing practices: "If it is determined that the Department is not in compliance with the ACA standards we will look into what will need to be done. The goal is to have 100% compliance with ACA standards."[66]

The OIG agrees with Director Frakes and will continue to recommend that the practice of double bunking in restrictive housing be ended so that the ACA standards will be met.

The Role of Intelligence

NDCS has a division within its agency specifically devoted to intelligence gathering ("Intel"). As was reported last year, this division has developed and grown over the past few years and became much more involved with day to day operations of NDCS, especially in determining

[65] Email exchange between Director Frakes and the OIG on July 13, 2020
[66] Meeting minutes from the December 17, 2015 External Restrictive Housing Work Group meeting

who enters and leaves restrictive housing units. Concerns regarding the operation of this division have been shared with NDCS over the past few years. In 2018, the OIG recommended that NDCS review the operations of Intel and possibly utilize outside entities to assist with this effort, in order to determine whether changes need to be made to improve this division, so that it more closely adheres to standards of fairness. This was not acted upon. There has been turnover in this division in 2020 and it remains to be seen what impact this will have on the operation of the division.

Peer Support Pilot Program

NDCS, as required by their rules and regulations, established a peer support pilot program at NSP in 2018. The intent of the program is to train qualified inmates to be peer support mentors for their fellow inmates, especially those in restrictive housing. This was an idea promoted by members of the original external restrictive housing work group, and supported by Director Frakes. The program at NSP continues to operate well as a result of a commitment to it by the peers and the NSP leadership. The program has been implemented at TSCI and LCC but they are still in the early stages at those facilities.

The Challenge Program

The Challenge Program (TCP) was started in 2017 by NDCS and was revised in 2019. During that time period concerns regarding the operation of the program had been expressed by the Ombudsman's office and the OIG and suggestions on improving it had also been shared by both offices with NDCS. TCP will be discussed in greater detail in the OIG supplemental report.

Blue Rooms

During the past few years, a "blue room" has been in operation at NCCW. It is a cell that was turned into a room which female inmates can visit during times of stress or agitation.
It is based on similar efforts in other states, and is configured so that when the inmates go there they watch videos during which they feel as though they are walking through a nature setting. The room is painted blue, and also has a mural. The furniture is comfortable and adds to the calming and safe environment. The intent of the room is to calm the person down who is in there. One of the benefits of this is that it could keep the inmate involved from having to enter a restrictive housing setting by giving them some time to calm down and get their emotions under control. It is a positive attribute of the facility and those who led the way on this effort should be commended.

The OIG recommended that these "blue rooms" could be expanded to other facilities throughout the correctional system. NDCS has created "blue rooms" in other facilities and they are being used.

During a visit to a state correctional facility in Colorado that only serves individuals with a mental illness in 2019, the OIG observed that they had similar rooms. However, they left a bit to be desired so information on Nebraska's efforts was shared with Colorado by the OIG after that visit.

Programming Needs

The 2018 OIG Annual Report had stated that there was limited programming available for inmates in restrictive housing and that most of the programming available were individual programs which could have been repeated many times by frequent visitors to restrictive housing. At that time, the OIG suggested that consideration should be given by NDCS to reviewing the short term programming that is offered to inmates in order to make it more individualized and effective and that if NDCS was going to continue the practice of placing inmates in restrictive housing for long periods of time, then consideration should be given to providing more intensive programs to this population. NDCS has made positive strides in this area and it will be discussed further in the OIG supplemental report.

Serious Mental Illness

A consistent challenge for NDCS is how to treat inmates with a serious mental illness, particularly those who have been placed in restrictive housing. The Legislature passed Legislative Bill 686 during the 2019 legislative session. It banned the placement of individuals with a serious mental illness in a restrictive housing setting beginning on March 1, 2020. This mirrored a recommendation from the Vera report and the implementation of it will also be discussed in the OIG supplemental report.

Colorado

In April 2019, the OIG visited three correctional facilities with James Davis and Jerall Moreland from the Ombudsman's office and Kasey Moyer and Jason Witmer from the Mental Health Association. Mr. Davis, Ms. Moyer and Mr. Witmer were all members of the External Restrictive Housing Work Group at the time of the visit. The visit took place after the OIG participated in a webinar on changes to restrictive housing practices in Colorado. The OIG reached out to Rick Raemisch, the Executive Director of the Colorado Department of Corrections to learn more about their efforts and was invited to visit Colorado.

The purpose of the fact-finding visit to Colorado was to gain a better understanding of the extent of their restrictive housing reforms and to learn whether there were lessons to be learned that could apply to Nebraska's restrictive housing system.

As shared in last year's report, key observations of the group were:

- All inmates were provided at least four hours of out-of-cell time each day, or at least the opportunity for that time. If they chose not to utilize the time it was documented.
- Within the restrictive housing system there were different levels of care/security and inmates promoted through those levels.
- As an inmate promotes or progresses through those levels, they receive more congregate time with other inmates, eventually being in activities with up to 16 individuals.
- It is expected that no one will be in that setting for longer than one year and that during that year an individual will receive at least one cognitive program.
- Inmates at all levels have the opportunity to take classes (even with chrome books and the internet) that cover a variety of subjects.

- Leadership at the facilities shared that it was important to have buy-in from the staff about their restrictive housing efforts and that training for restrictive housing begins early in the training process.
- The mental health facility also has levels to promote to and congregate activities.
- The physical plants at CSP and SCC are more conducive to the out-of-cell congregate activities than at TSCI or NSP in Nebraska.
- Colorado provides extensive reports on their efforts and these reports are available to the public.
- The leadership at all three of the facilities were open and transparent regarding the past and current challenges in their facilities.
- A main theme from the leadership teams were that once the decision was made to commit to reform they needed to instill the correct culture in their facilities, educate and engage the staff and the inmates, and understand that there would be negative occurrences and challenges along the way.

The trip was informative and valuable. The OIG recommended that NDCS leaders and Legislative leaders make a joint visit to Colorado to learn more about their experiences and believes that this would still be an excellent fact-finding trip to pursue.[67]

Summary

Last year's report shared the following:

> *Restrictive housing is a complex matter. It is necessary to utilize it at times because a correctional agency is charged with the safety and security of the inmates and staff and individuals need to be separated from the general population for those reasons. However, more and more evidence points to the negative impacts on the individuals placed in those settings and there are questions regarding the effectiveness of restrictive housing. Correctional systems across the country are looking more closely at their restrictive housing systems and initiatives in other cities and states. National organizations such as the Vera Institute of Justice are closely studying this subject. While the OIG has concerns about the length of time that individuals are placed in restrictive housing, the reasons for those placements, the lack of interaction within that setting and the impact of that setting on one's health, physical and mental, there is also an understanding that two well-meaning people may have different views on how a restrictive housing unit should operate.*
>
> *There have been some positive steps taken to improve Nebraska's restrictive housing system. Additional programming and the presence of mental health staff is a strong positive. The review system, at first glance, seems like a thoughtful and sound system, but there are parts of it that are not correctly administered. Bringing peers into the system is a constructive step. Director Frakes' direct involvement in some cases is appreciated.*
>
> *However, as shared in last year's report, the OIG is concerned about Nebraska's restrictive housing system. The role of the Intelligence Division in deciding who enters*

[67] Reports from the Colorado Department of Corrections can be found at https://www.colorado.gov/pacific/cdoc/departmental-reports-and-statistics

and leaves restrictive housing needs to be better understood. The lack of a pathway out of restrictive housing for many individuals needs to be rectified. Having ten individuals in that setting for over 1000 days is problematic. Many times it seems that individuals who appear to be excellent candidates for removal from restrictive housing are not removed unless the OIG or the Ombudsman's office intervenes. The growth of individuals placed in restrictive housing for more than 180 days was decreased only after the tripling of this increase was made public by the OIG. NDCS has not utilized the statutorily created External Restrictive Housing Work Group in an effective manner and has not consistently followed up on issues raised in those meetings. Staff in these settings can become fatigued and negatively impacted by that environment.[68] Reviews by facility and central office staff should follow the NDCS regulations and be more meaningful. In this case, a meaningful review "means an impartial review of the relevant facts, opportunity for input by the affected inmate, specification of the reason(s) for the confinement, and a fair opportunity to achieve the desired result."[69] If more meaningful reviews begin to take place this could be measured by the attendance of inmates at the facility level reviews.

As more is learned about the impact of restrictive housing on the inmates placed there, additional changes in the use of restrictive housing and restrictive housing practices will take place across the country and in Nebraska. It is important that as changes are made and the system is improved that stakeholders of the system be welcomed to contribute to these changes by NDCS.

The OIG acknowledges the changes that have been made by NDCS regarding their restrictive housing practices. Many of these changes are similar to recommendations made to NDCS over the past five years by the OIG and the Ombudsman's office. Both offices spend (or did until COVID-19 altered that) a considerable amount of time in restrictive housing units talking to staff and incarcerated individuals. The Ombudsman's office has numerous individual cases with those that reside there while the OIG takes on some cases in order to learn about restrictive housing as a systemic issue.

With that said, concerns still exist and concerns will always exist in such a setting. NDCS, and all correctional systems, face significant challenges related to the administration of their restrictive housing units. There are numerous individuals who have spent significantly long periods of time in that setting. This impacts most of them in negative ways. Staff have challenges in those settings and need to have the tools and the number of staff to be able to do their best in that environment. Body cameras should be worn by all staff who work in these units, for their protection and for accountability. Changes in policy and operations of these units should be transparent and provided to the OIG and the Ombudsman's office. In the past, NDCS involved both of these offices in discussions about the operation of the units and changes that were being made. This level of transparency and cooperation has virtually ceased.

The supplemental report will elaborate on these and other issues facing the restrictive housing system as well as make recommendations for improving the restrictive housing system. The

[68] Vera has begun researching this important issue - https://www.vera.org/projects/restrictive-housing-impact-officer-wellbeing
[69] August/September 2018 Article from the *Correctional Law Reporter* (see 2019 OIG Annual Report)

report will also highlight the changes that have been made to the system and provide a response to those changes.

CONTRABAND

Contraband in correctional facilities may consist of a number of categories of items, including drugs, weapons and cell phones. Preventing the introduction of and the detecting of these items can assist staff in preventing the illegal use of drugs, the committing of other crimes and various violent activities. Contraband can be used in a number of ways, including as substitute currency within the correctional facility. The sources of contraband can also vary. Items can be thrown over fences, dropped by drones, smuggled in by visitors or staff, created out of items already in the facility, or stolen from the facility.

Over the past few years NDCS has implemented several efforts to reduce the smuggling of contraband into state prisons. These efforts have been included in past reports. A new effort was started earlier this year and that was the copying of mail going to incarcerated individuals at NSP. This is an effort to reduce the flow of liquid K2 that can be placed on paper products then either smoked or licked by someone in order to receive a high.

Contraband Tracking

In the 2018 OIG Annual Report, it was reported that NDCS did not have a system of tracking contraband items. Since that time, contraband discoveries are included in monthly facility reports. One issue found in 2019 with this data collection is that NDCS indicated that when large quantities of contraband are found (for example, a soccer ball thrown over a fence may have several phones and drugs) those are turned over to the Nebraska State Patrol. In 2019, the OIG requested data from the Nebraska State Patrol regarding the contraband seized and turned over to their agency but has not received it. NDCS has informed the OIG that they do not receive that information either. As a result, the OIG recommended in 2019 that "NDCS should collect data on contraband turned over to the Nebraska State Patrol that is not shared with NDCS or the OIG." NDCS responded to this recommendation in July 2020 by sharing that: "A process to capture this information was to be developed, but fell to the side due to leadership changes and COVID-19. The project is being resumed and should be operational by September."

Contraband Continues

Despite the efforts described above, contraband is still a significant problem in the correctional system. However, it varies from facility to facility. Some facilities have issues with K2 while others have more issues with illegal alcohol. Weapons are a typically a problem at NSP or TSCI and cell phones are found in a number of facilities. Some facilities appear to have few problems with contraband.

The OIG will be releasing a report later this fall that closely examines an incident in which a staff member at a facility was alleged to have brought in contraband and was arrested by the Nebraska State Patrol. This report will have a number of findings and recommendations.

DEATHS AT NDCS

Each year there are a number of deaths that take place at NDCS. The OIG is required to review these deaths and the circumstances surrounding them. Nebraska State Statute 47-905 states:

> *The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury.*

During the past year, the OIG raised concerns with NDCS regarding their adherence to this state law, specifically on the "as soon as reasonably possible" part of the law.

In November 2019, a death took place of a person in the custody of NDCS. The next day the OIG learned about the death after receiving a press release on the death. As a result, the OIG sent the following to the appropriate administrative staff:

> *In Nebraska State Statute 47-905, it states that:*
>
> *"The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury."*
>
> *In this case, you notified my office about 24 hours after the death and at the same time as the media was notified. This would not appear to follow the language in the state statute. It is important to note, that after the death of Mr. E, the death was promptly reported to the following individuals:*
>
> - *Coroner's office;*
> - *Nebraska State Patrol;*
> - *Warden Q;*
> - *Director Frakes;*
> - *Chief of Operations P;*
> - *Deputy Director R;*
> - *Deputy Warden T;*
> - *Deputy Warden U;*
> - *Associate Warden V;*
> - *Acting Unit Administrator W;*
> - *Records staff;*
> - *Unit Administrator X;*
> - *Public Information Officer Y;*
> - *Major Z;*
> - *Mr. E's mother;*
> - *Captain A;*
> - *Captain B*
> - *Captain C;*

- *Investigator D.*[70]

I would recommend that the Department add the Office of the Inspector General to the list of notifications in order to adhere to state law.

Thank you for your consideration of this recommendation.

No response was received by the OIG.

A few months later in March there was a death on March 2nd. The OIG again was notified about the death at the same time a press release was sent out on the death the next day. As a result the following was sent to the appropriate NDCS staff:

Thank you for the notice. I would be negligent if I did not make the recommendation again that the Department add the Office of the Inspector General of Corrections to the list of notifications in cases of inmate deaths in order to adhere to state law. As I have shared before, Nebraska State Statute 47-905 states that:

"The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General ***as soon as reasonably possible after the department learns of such death or serious injury.****"*

In this case, you notified my office about 21 hours after the death and at the same time as the media was notified. This would not appear to follow the language in the state statute. It is important to note, that after the death of Mr. XXX, the death was promptly reported to many individuals or entities, including:

- *The PIO at TSCI;*
- *Johnson County Attorney;*
- *Nebraska State Patrol;*
- *The Major at TSCI;*
- *NDCS Central Office; and,*
- *Svoboda Funeral Home.*

It should be simple to change the policy so that an email be sent out to my office as part of this process. This would allow the Department to follow the law.

I appreciate the notification today but I do think that it is important to make this recommendation regarding this state statute.

Again, no response to this request was received by the OIG.

[70] Names have been changed to letters as their identities are not important in this case.

A week later the OIG received a notification of a death about 16 hours after the death. As a result the following email was sent to Director Frakes and the NDCS Legal Counsel:

> *After past deaths I have recommended to Ms. Strimple that the OIG be added to the list of individuals or entities to be notified after the death of an inmate. I shared this because Nebraska State Statute 47-905 states that:*
>
> *"The department shall report all cases of death or serious injury of a person in a private agency, department correctional facility or program, or other program or facility licensed by the department to the Inspector General* ***as soon as reasonably possible after the department learns of such death or serious injury.****"*
>
> *In more than one case, my office was notified quite a bit after the death of the individual and sometimes at the same time as the media. This would not appear to follow the language or the intent in the state statute. When reviewing these deaths, I have found that the Department contacts multiple individuals or entities within an hour or so after the death, including the facility, central office, various Department individuals, the State Patrol, the County Attorney, a funeral home and others. Adding this Office to that list would be more in line with what the law states regarding death notifications. This could be done via telephone or email.*
>
> *I bring this to your attention due to the fact that my past communications regarding this have not been responded to by Ms. Strimple.*
>
> *Thank you for considering this recommendation.*

Director Frakes responded by stating, "Your concerns are noted." The OIG responded with the following:

> *If any changes are made could you please let me know? Also, if they are I think it is important to discuss the way that this notification would take place so please let me know how I can help with this. I will continue to attempt to work with the Department on this and other issues and it is my sincere hope that the intent of the law will be followed as this is a very simple fix.*

No response was received as a result of this request.

A few weeks later the OIG learned on a Tuesday that there was a death on the previous Friday that had not been reported to the OIG. As a result the following was sent to the Legal Counsel:

> *I heard yesterday that an inmate died at NSP on Friday. I looked up the individual's name and it appeared that might have been the case. My office has not received any notification regarding the death.*
>
> *As you know, state statute is very clear on the notification of serious injuries and deaths to my office. I have shared my concerns on the Department not following the law on more*

than one occasion with Ms. Strimple. I have made simple and easy to follow recommendations so that the Department would comply with the law. These have not been acknowledged. This case is the latest of several - and probably the most blatant.

I am sharing this with you because you are the legal counsel for the Department. It is clear that Ms. Strimple has no concern about not following the law and the failure to do so appears intentional. However, I know that you care about the law and that you understand the need for the Department to comply with the law.

Please consider taking action so that the Department will comply with state law.

No response was received by the OIG. However, it should be noted that since this email, NDCS has notified the OIG in a much timelier manner regarding the deaths of the inmates and that is appreciated and it also allows NDCS to comply with state law.

Suicides

Since the 2019 report, suicides within NDCS have taken place. The OIG is in the process of reviewing these suicides as well as previous ones and will issue a report on them in the future.

Suicide Work Group Efforts

As reported in the 2018 OIG Annual Report, after two suicides and multiple suicide attempts in 2018, NDCS established a work group to look at suicides. The OIG was asked to participate and became an active member of the work group. The work group met several times and made several recommendations. The following recommendations were made with the intent of implementing them:

- Creating a brochure on suicide that will be distributed to inmates and in visiting areas for friends and family;
- Making changes to the staff training manual;
- Streaming a suicide prevention video in all facilities;
- Utilizing an additional screening tool at transfer times and intake; and
- Advertising a telephone number that people can call when they are concerned about a loved one who is in a state correctional facility so that staff can initiate action related to the contents of the call.

There were several other excellent ideas discussed but it was decided then that these were the ones that should be addressed at the current time. The work group took their work seriously and their work product was excellent. However, the OIG found in 2019 that only one of these changes was implemented – the establishment of a telephone number to call for people concerned about their friends or family members. At that time, the OIG found that the telephone number was not being operated correctly and it was recommended that NDCS address this and they did at that time.

Since suicides in correctional facilities is an ongoing issue, NDCS should re-instate the work group and see if the steps taken in the past two years need to be updated or enhanced.

PROGRAMS

As shared in previous OIG reports, programming is a key part of the correctional experience and can have a major influence on overpopulation. The programming at NDCS can be divided into three categories: clinical, non-clinical and other.

Clinical

Clinical programming is provided by a trained clinician and focuses on three main areas: violence/anger, substance abuse and sexual offender treatment. Programming has been expanded by NDCS and they currently have 28 different programs spread throughout the ten correctional facilities.[71]

Programming can not only help to provide inmates with what they need to make better life choices, but it can also assist a housing unit, facility or correctional system in operating in a more safe and efficient manner. If inmates receive programming that assists them with making better decisions, then it impacts those around them, which then impacts a facility and eventually a correctional system.

Programming can also influence the number of inmates in the correctional system. Many times an inmate will not be paroled if they need certain clinical programming and they have yet to receive it. In addition, some programs can assist inmates in changing their behavior so that they will make better decisions, and receive fewer misconduct reports, which can also impact their good time and their chances for parole or for movement through the system. There are times when an inmate is recommended for a clinical program in order to be paroled, but is not allowed to participate in that programming due to their behavior.

NDCS continues to take steps to expand access to clinical programming.

Sex Offender Program

Last year, the inpatient sex offender program at LCC was moved to OCC. The OIG expressed concerns regarding this move. So far the move appears to be working well but the OIG has been limited due to COVID to actually go talk to the participants and staff of the program to gain a true understanding of the impact of the change.

Domestic Violence Programming

As shared previously, currently inmates that enter NDCS have their needs assessed. One recommendation that could result from this assessment is the need for domestic violence programming. NDCS used to provide this program but they no longer do. Instead, inmates with a need for this program are not able to participate in a domestic violence program until they are paroled, and only then if it is a condition of their parole, or participating in work release. Inmates with this identified need who “jam” their sentence do not have to take it once they are released. Parole does offer domestic violence programming in both their Omaha and Lincoln offices. These classes have room for 12 students at a time. If an individual wishes to take it in the community through a community provider it can last up to 36 weeks and the cost is between $60 and $100 per session. NDCS is not involved with these programs. Currently, over 800

[71] Attachment C: Chart with current clinical programs being offered throughout NDCS

incarcerated individuals have been assessed by NDCS and determined to have a need for domestic violence programming.

Earlier this year, a formerly incarcerated individual was charged with murdering someone who he had a relationship with that had ended earlier. A review of his records learned that he had been previously incarcerated and had been recommended for domestic violence programming. However, like numerous other individuals, he had not taken the program prior to his release. About a year later he is alleged to have committed a murder against someone who he had dated.

In the past, the OIG has recommended that NDCS consider re-starting domestic violence programming within their long-term facilities. In July 2020 NDCS responded by stating:

> *Providing domestic violence treatment/programming in prison has not been shown to be effective. DV is best addressed in a community setting. We will continue to offer anger management and the Violence Reduction Program as our clinical interventions for violence.*

In 2017, the National Institute of Justice issued a report on the effectiveness of programs. In it, they wrote:

> *Due to the absence of research on the effects of DV programming on prison misconduct or post-release employment, there is no evidence as to whether this intervention affects either outcome. A fairly large number of evaluations have assessed DV's relationship with recidivism and, similar to the literature on mental health interventions, the results have not been favorable.* [72]

Nebraska has used the Duluth Model and this report found that a 2004 report indicated that the Duluth Model "did not reduce reoffending."[73] It further stated:

> *Why have DV programs been ineffective at reducing recidivism? In a recent study, Radatz and Wright (2015) argue that this failure is largely due to a lack of adherence to the principles of effective correctional intervention. Although some DV programs use a cognitive-behavioral approach, Radatz and Wright (2015) suggest that, in general, these programs may not be adequately aligned with the risk, need, and responsivity principles. In particular, feminism-based programs such as the Duluth model emphasize altering patriarchal attitudes. Instead, as Radatz and Wright contend, DV programs should focus more on addressing known criminogenic needs such as antisocial attitudes, substance abuse, and social support.*[74]

It appears as though they are saying more than just that domestic violence programming isn't effective. This may be interpreted that there is more to it, including the type of programming model and the delivery of that model.

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[72] https://www.ncjrs.gov/pdffiles1/nij/250476.pdf (page 19)
[73] Ibid.
[74] Ibid.

In 2013, the Washington State Institute for Public Policy was charged by the Washington Legislature with updating "its systematic review of the national and international literature on the effectiveness of DV treatment programs" because "the Institute had previously found that DV treatment has little or no significant impact on repeat domestic violence (recidivism)."[75] Their study found the following:

> *In updating our review of the literature, we identified 11 rigorous evaluations—none from Washington—testing whether DV treatment has a cause-and-effect relationship with DV recidivism. Six of those evaluations tested the effectiveness of Duluth-like treatments. We found no effect on DV recidivism with the Duluth model. There may be other reasons for courts to order offenders to participate in these Duluth-like programs, but the evidence to date suggests that DV recidivism will not decrease as a result.*
>
> *Our review indicates that there may be other group-based treatments for male DV offenders that effectively reduce DV recidivism. We found five rigorous evaluations covering a variety of non-Duluth group-based treatments. On average, this diverse collection of programs reduced DV recidivism by 33%. Unfortunately, these interventions are so varied in their approaches that we cannot identify a particular group-based treatment to replace the Duluth-like model required by Washington State law. Additional outcome evaluations, perhaps of the particular DV programs in Washington State, would help identify effective alternatives to the Duluth model.*[76]

While there may be some studies that show the Duluth Model is not effective, none of these studies have looked at whether or not this is true in Nebraska. Even if the Duluth Model wasn't effective in Nebraska, that does not mean, according the findings of the Institute, that other models may not be effective in our correctional system. If these programs are not effective it raises the questions of why does NDCS assess for that need and why does Parole offer them in the community?

NDCS and Parole should do the following: 1) Review formerly incarcerated individuals in NDCS who had a domestic violence program recommendation and did not receive any such programming and determine their recidivism rates; 2) Review those formerly incarcerated individuals in NDCS who had a domestic violence program recommendation and did receive any such programming and determine their recidivism rates; and, 3) Review the five programs highlighted by the Institute's report and determine if they could play a part in the programming being offered within NDCS in the future.

Violent Offender Programming

Beginning in 2018, NDCS changed the way that the Violence Reduction Program (VRP) was delivered. It is believed that the intent behind the changes was to create a more efficient delivery of the program that would allow for more individuals to utilize the program.

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[75] https://www.wsipp.wa.gov/ReportFile/1119/Wsipp_What-Works-to-Reduce-Recidivism-by-Domestic-Violence-Offenders_Full-Report.pdf

[76] Ibid.

During the past year, the OIG has learned more about the origins of VRP and how the originators intend the program to be administered so that it is effective. In 2013, Stephen Wong and Audrey Gordon published a paper in Psychology Crime and Law that described how the program is intended to be administered for the best results.[77] When NDCS announced the change to the program they issued a memorandum outlining the changes.[78] In order to better understand these changes, as part of this section parts of the memorandum will be used and then quotes from the Wong/Gordon paper will follow, and then there will be a reaction from the OIG.

> ***NDCS Change:*** *VRP will move to a six month fixed schedule program consisting of 52 sessions total and is anticipated to run from January through June and July through December each year.*
> ***Wong/Gordon Paper:*** *The VRP also recognises the heterogeneity of violence-prone offenders and acknowledges that one size does not fit all. For example, the VRP uses a goal-based rather than session-based approach in treatment delivery. Since everyone is not expected to progress at the same rate, those who complete certain programme requirements (intermediate goals) can progress while others may need more time.*
> ***More from Wong/Gordon Paper:*** *The VRP is primarily designed for delivery in a group format supplemented by individual work when necessary. However, the VRP can also be delivered in a one-on-one format to participants who are not yet amenable to group programming, such as those who are behaviourally unstable, rejected by the group, held in isolation, have intermittent acute mental health problems or are cognitively compromised: all of which are specific responsivity issues. In line with the responsivity principle, the VRP is flexible enough to accommodate these issues as it is organised in a goal oriented rather than a session-oriented format: in short, many roads can lead to Rome. In sum, the VRP is designed to meet the treatment needs of a heterogeneous group of violence-prone forensic clients and can be implemented in a variety of mental health and prison settings. Individual or group delivery length is based on client responsivity. For example, individuals with attentional or cognitive deficits may require shorter but higher frequency sessions.*
> ***OIG Reaction:*** *Moving to a rigid six month schedule does allow for a solid plan for getting people into the program and moving them through in a timely manner. However Wong and Gordon designed the program to be flexible and to be able to adapt to different individuals and their pace and ability. They also indicate in their paper that the typical length of the course is eight months, not six months and that psychopathic offenders typically need more than eight months.*
>
> ***NDCS Change:*** *VRP will move from a closed group to a semi-open group allowing individuals to transition in and out of group at pre-determined phases to allow for more transition/flexibility for transfers between institutions when absolutely necessary. AND VRP will be manualized to insure consistency amongst various groups and institutions*

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77 https://www.researchgate.net/profile/Stephen_Wong13/publication/263609156_The_Violence_Reduction_Programme_A_treatment_programme_for_violence-prone_forensic_clients/links/572fdf9d08ae744151904e42/The-Violence-Reduction-Programme-A-treatment-programme-for-violence-prone-forensic-clients.pdf

78 Attachment D: November 21, 2017 NDCS Memorandum on VRP changes

(e.g. session 6 at NSP will be the same as session 6 at TSCI and LCC – manuals will be distributed).
Wong/Gordon Paper: *The VRP can be run as a closed programme with all intakes admitted at about the same time. However, it is sufficiently flexible to accommodate some participants taking short 'breaks' from the programme or being re-admitted for a 'refresher' that can be fast-tracked through the programme or even admission at various points in the programme.*
OIG Reaction: *It would appear as though Wong/Paper could go along with this change because it is a flexible model although it would not be ideal.*

NDCS Change: *Elimination of the inpatient model allowing VRP participants to live in various locations as opposed to the need to all live on the same gallery giving the institutions more housing flexibility to manage the population's needs.*
Wong/Gordon Paper: *In essence, a central VRP principle is that ideally, treatment should take place 24 hours a day and 7 days a week and not just within formal treatment groups or individual therapy sessions. Observations of the behaviours of offenders in informal day-to-day contacts and interactions with all staff and peers are crucial in assessing the veracity of apparent behavioural changes as allied staff often have more opportunities to observe offenders relative to core treatment staff. As such, the VRP recognises the important roles of both the clinical/treatment and the allied staff in monitoring and addressing the offender's negative behaviours and in facilitating and rewarding positive behaviours. It is recognised that staff have their prescribed roles and are different in their training and experience. Nonetheless, all staff should work as a coherent team towards a common goal of violence reduction rather than in silos, as the latter can lead to giving offenders contradictory messages, staff splitting, or worse, undermining one another's efforts.*
More from Wong/Gordon Paper: *Where feasible, a 24-hour-a-day and 7-days-a-week treatment approach is highly desirable. VRP staff training entails training both core clinical/treatment staff as well as allied staff (as much as possible), who will likely have significant meaningful contacts with the treatment participants.*
More from Wong/Gordon Paper: *The VRP, like MST and ACT, also emphasises the importance of social influences in an offender's treatment environment. All VRP and allied staff (e.g., mental health staff, correctional officers, work supervisors, teachers, probation officers) are potential agents of change. Allied staff often have more day-to-day contact with the offenders than core treatment staff and can model pro-social behaviours and support skill generalisation to everyday situations. The VRP similarly emphasises the importance of all staff working collaboratively 24 hours a day, seven days a week to support VRP objectives.*
More from Wong/Gordon Paper: *Offenders are then provided with opportunities and strongly encouraged to practice and generalise these skills to their day-to-day functioning and interactions with staff and peers.*
OIG Reaction: *Wong/Gordon indicate that the program is designed to be involved in the offender's lives 24 hours per day while they are in the program. In order to do this, other staff who interact with the program participants need to be trained and involved in the treatment environment. These staff have more contact with the participant than the facilitators of the program and when the participants go back to their housing unit they*

need to practice what they have learned but when they do that they need to have staff providing them with reactions that are consistent with the model. From everything known about the program operation at NDCS this is not taking place.

NDCS Change: *VRP phase 3 will be reduced in duration due to the NDCS now having re-entry staff and social work in place to assist individuals with discharge planning, re-entry plans, and relapse prevention. VRP phase 2 will continue to have the greatest amount of dedicated time as this is the skill building phase of treatment.*
Wong/Gordon Paper: *Phase 3 focuses on over-practice of skills learned in Phase 2, formulating a relapse prevention plan, and the generalisation of learned skills across situations to mitigate future risk of violence.*
OIG Reaction: *It is the understanding of the OIG that the re-entry staff and the social workers are not trained in the VRP model.*

While the reasoning behind the NDCS changes is understood, the quotes from the creators of the program generates some hesitation about whether or not these changes will result in the same or better results. The authors picture the program to be delivered not just a couple of hours a week during a class and just by the mental health staff who facilitate the program. They expect it to envelope the participants and that all allied staff will be trained in the model so they can reinforce what is being learned in the class. They also created a program that allows for flexibility and different learning paces and even for some individual sessions along the way to assist those who have difficulties. These are important components to the program.

Substance Abuse Program

One of the most important clinical programs in the correctional system is the substance abuse treatment program. In the past, concerns have been expressed to the OIG about the type of programming being provided and how it does not meet the needs of the individuals that go through the program. Prior to the submission of last year's report, the OIG met with Director Frakes to go over the potential contents of the report. Upon expressing concern about the state of the substance abuse treatment program and the need to update it, Director Frakes shared that NDCS was reviewing the program and would be assessing its effectiveness. Changes are being made and they appear promising. The OIG plans to continue to learn more about these changes. Last year, the OIG recommended that NDCS include community treatment providers in the discussion as relationships between NDCS and community providers could be very effective and continues to support this recommendation.

Data/Analysis

In 2017, the OIG met with NDCS staff and an arrangement was made so that NDCS would provide the OIG with average population data for program participation on a quarterly basis for 18 different programs. This was in conjunction with NDCS efforts to continually track some of this data in an electronic database. The OIG received the first quarterly report from NDCS on March 29, 2017, and NDCS is now including this data in the NDCS quarterly data sheets that are produced by NDCS after an arrangement was made between NDCS, the OIG and Senator John McCollister. Instead of recreating the data for this report, it is attached as a document to the

report for the review of the reader.[79] This is helpful data. In addition, the OIG has access to the NDCS information system and can review data.

A Program Analyst for NDCS (Ada Alvarez) issued a report in July 2016 that provided a qualitative analysis of the Violence Reduction Program, the Sex Offender Programming (inpatient and outpatient) and the Residential Treatment Community.[80] This was completed over a six month period and was the first of a three phrase report. Unfortunately, the analyst left the employment of NDCS and due to changes made in the delivery of programming the report is no longer relevant. As a result, the second and third phases of the report were not completed and the first phase actually needs to be redone. At this time, NDCS has no immediate plans to conduct this analysis. This effort, if initiated, could provide important information for NDCS.

For example, the Alvarez report made many findings in 2016 about VRP, including:

- Not all facilitators had gone through the formal training;
- There was no quality assurance in VRP;
- Inmates indicated they wanted an increase in intensity of the program and more one-on-one time with the facilitators;
- Unit staff wanted to be trained in how to deal with volatile inmates;
- Inmates wanted to live in a therapeutic and less stressful environment while in VRP; and,
- Facilitators wanted a unit just for VRP participants.

And made several recommendations, including:

- Dedicated staff just for VRP;
- Create a training curriculum about the program for unit staff; and,
- Create permanent unit staff positions dedicated to the VRP unit with intense training specific to VRP so that knowledge is obtained about the program and the expectations and so that trust and rapport can be built with the participants.

This was just one part of this excellent and comprehensive report. NDCS should finish this project and also do an analysis of the Alvarez report to determine if any action was taken as a result of that report and the effectiveness of any changes.

Non-clinical Programs

Non-clinical programming does not need to be provided by a trained clinician, but those that do provide it must have received the appropriate training. The two most significant non-clinical programs currently being provided at NDCS are Moral Reconation Therapy (MRT)[81] and Thinking for a Change (T4C).[82] These are both evidence-based cognitive behavioral programs that generally assist individuals in making better decisions. These programs are not required by the Board of Parole in order to qualify for parole but they are recommended by NDCS, primarily through the use of the STRONG-R.

[79] Attachment E: NDCS Quarterly Data Sheet, April-June 2020
[80] https://www.corrections.nebraska.gov/sites/default/files/files/46/2016_clinical_programs_evaluation-phase_1.pdf
[81] https://www.ccimrt.com/
[82] https://nicic.gov/thinking-for-a-change

Other: Clubs/Social Groups/Non-NDCS Programs

As briefly mentioned previously in the report, there are a number of other groups that meet within NDCS facilities that are not considered to be NDCS programs. However, many of them have a significant value to institutional life and culture, and are desired by the inmate population. Some are groups run by the inmates themselves, and others may be run by volunteers or other groups from outside the facilities. There are many examples of positive events taking place that have the purpose of providing supports, guidance or some type of skill to those willing to participate. Last year's report shared that these opportunities have declined over the years due to changes in yard practices and security measures. They were definitely impacted by the changes at NSP and TSCI toward the end of 2019. NDCS has acknowledged the value of these non-NDCS programs throughout the system in the past and it is hoped that they will continue to support these programs and work to expand them.

REENTRY SERVICES

The Vocational and Life Skills Program was established by the Legislature in 2014. It is a grant program that contracts with community groups to provide reentry services for individuals who are about to leave or have left the custody of NDCS. The first grant cycle began in early 2015, and the second began on July 1, 2016. The third grant cycle began on July 1, 2018. The most recent grant cycle began on July 1, 2020. Approximately $7 million is provided to grant recipients during a two year grant cycle. The grant recipients are offering services in areas throughout Nebraska, including a combination of programs, such as housing, employment services, education, and vocational training. In some cases additional services are being provided within the correctional facilities by these groups. More information can be found in one of the quarterly reports required in state law.[83]

As part of the NDCS reentry effort, NDCS reentry specialists are directed to meet with inmates at least three times during their incarceration. These include contacts during the beginning, middle and end of their sentences. The purpose is to work with the inmates to establish a reentry plan. Parole has also created its own reentry positions that go into the correctional facilities to work with inmates that are about to be paroled.

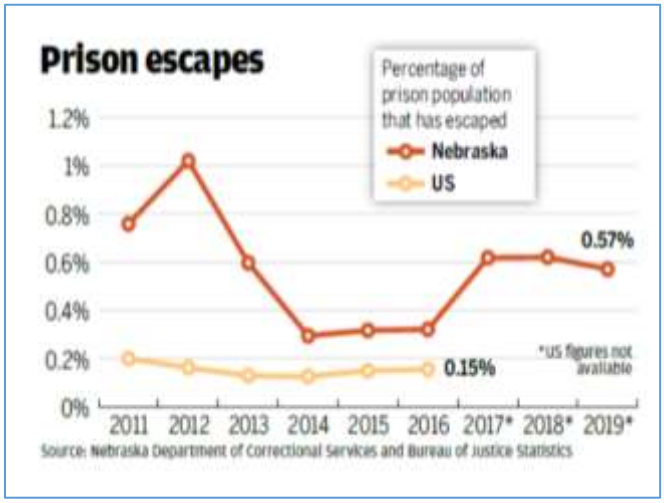
[83] https://nebraskalegislature.gov/FloorDocs/106/PDF/Agencies/Correctional_Services__Department_of/490_20200914-084611.pdf

ESCAPE UPDATES

Community Corrections Escapes

Over the past few years there has been more attention paid to individuals who reside in the community corrections centers in Omaha and Lincoln who either don't return from work release or leave the facility and do not return. As this became more of an issue the OIG recommended to NDCS that they notify the OIG and the public regarding these escapes. This was recommended because it was thought that public notification would bring attention to their escapes and could also gain assistance from the public as their return to custody was sought. NDCS implemented this recommendation.

A recent news story in the Lincoln Journal-Star provided updated data and information on this issue.[84] The story accurately portrayed that these escapes or walkaways as they are sometimes referred to happen at the two community corrections centers in Omaha and Lincoln. The story provided data that is found in the figures below.



FIGURES 41 AND 42: SOURCE LJS NEWS STORY

In most cases, the individual returns or is caught by authorities. As stated in last year's report, the OIG has reviewed many of these cases and found that the circumstances behind each one can be quite varied. In many of these cases, the individuals are charged with escape and receive an additional sentence. The OIG would agree with the statements made by NDCS in this story about the escapes. NDCS does generally notify about these escapes in a timely manner which is appreciated.

After the story ran, the OIG did share with Director Frakes that the office had not been notified about a recent escape. As a result, the OIG requested the data and information that was provided to the reporter of the story so that the OIG could determine if there were other escapes that were not provided to the OIG. This request was not responded to prior to the completion of this report.

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[84] https://journalstar.com/news/local/crime-and-courts/nebraska-inmates-walk-away-at-high-rate-in-lincoln-and-omaha/article_6452868e-bf3f-58fb-858c-ad63f97214d0.html

In July, the OIG received a letter from an individual at CCCO.[85] The individual expressed their frustration that they had been approved for work release but had been told that they wouldn't be allowed to pursue employment until November at the earliest. He shared that he had a family that he needed to provide for and was frustrated about his inability to do that in a work detail position. When the OIG looked up the information on this individual it was realized that he had just escaped from CCCO. He is still on escape status. When the OIG inquired about the status of this individual it was learned that since his release date was in 2021 he was on the list to go to work release status but that there were many individuals ahead of him on that list. The list is always fluctuating and adjusting as people are paroled and as people enter the facility.

[85] Attachment F: Letter from Matthew Layman to the OIG

COUNTY JAIL PROGRAM

NDCS continues to contract with a number of county jails to house state inmates. NDCS pays a contracted rate to each county jail for each inmate housed there, and the original purpose of this program was to assist with the overpopulation issue. Although NDCS previously announced that the program would end on June 30, 2017, it did not, in fact, end as planned. NDCS has not requested funding for this program after June 30, 2017 but instead uses other correctional funds from other sources for this purpose. NDCS suggested to the OIG in the past that they hoped to end the use of this program when the new housing unit was opened at CCC-L but this only slightly impacted the population in the county jail program. However, there has been a reduction in the use of the contracted jail beds during the past few months. This may be a result of the COVID-19 pandemic as the NDCS population has decreased. It may also indicate that the funds that were being used for that program were either being depleted or switched to another use.

ISDP (Inmates Sentenced to the Death Penalty) CONCERNS

As shared in last year's report, a group of inmates who are on death row contacted the OIG to express concerns regarding their living conditions. The OIG met with half of the inmates on death row at TSCI after receiving their request. They voiced concerns about their living conditions including:

- Being split into two groups and the impact that this has on their out-of-cell time;
- Their outdoor recreation area is dissimilar from the general population yard including the fact that they do not have weight machines;
- Cells in their unit were stripped out so that would have other uses but those were not completed;
- Due to their being in the Special Management Unit with restrictive housing inmates when there is no movement in that unit due to actions of those inmates they are impacted and have their movement restricted, including no access to their own yards;[86]
- Being housed in that type of unit has an impact on their mental health conditions;
- The rule book for ISDP is not consistent with the post orders for that unit; and
- Law library access has decreased.

It was a productive meeting and the OIG forwarded these concerns to the appropriate NDCS executives for their review. The OIG recently visited their unit and learned that has been some changes for the better but they would still like more interaction with TSCI leadership.

[86] In addition to an outdoor yard for congregate activities, each cell opens up to a private space that has an exterior opening.

NDCS STRATEGIC PLANS

In October 2015, NDCS released their first strategic plan for 2015-2017.[87] This was an eight page document. It was the result of a state law that required NDCS to utilize a strategic planning process for future budget requests.

In 2016 a Progress Summary was released regarding the 2015 plan.[88] It contained additional information and updates of the previous plan. It also revealed that each "Leading Goal" would include three outcome measures that would be metric documents that provide snapshots of the status of outcomes and goal completions.

In September 2016 another strategic plan for 2015-2018 was released but it was nearly identical to the first strategic plan.[89]

In October 2017 the NDCS Strategic Plan Progress Report for Fiscal Year 2016-2017 was released.[90] The plan contained data on the Violence Reduction Program, the Vocational and Life Skills Program, mission specific housing beds, and restrictive housing population and general information on non-clinical programs and other NDCS initiatives. It did not include any information or updates on the six year capital construction plan or many specifics regarding 33 measurements related to the "Leading Goals" mentioned in the first two plans.

In September 2018 the 2019-2023 Strategic Plan was released by NDCS.[91] The plan shared planned outcomes of NDCS. Many outcomes are listed in the plan, including that NDCS will reduce the number of workplace injuries by 50%, that one-third of process improvement projects will originate from QDIP boards, that 100% of NDCS team members will achieve 3.2 or higher on performance evaluations, and that agency turnover will be reduced to 18%. However, in many cases there were few specifics on how these outcomes would be achieved. The plan did provide updates on construction projects including future projects.

In December 2018 the NDCS Strategic Plan Progress Report for Fiscal Year 2017-2018 was released.[92] It reiterates the five strategic goals that had been previously called "Leading Goals" and shares that each goal includes outcomes with multiple measures to ensure consistency and progress. There is more data regarding the goals in this report but there again was no information on the six year capital construction plan shared in the first strategic plan.

In the 2019 OIG Annual Report, the OIG recommended that the next strategic plan provide detailed information about each of the outcomes, strategies and measurements associated with the strategic goals to provide a more complete picture of what is taking place within NDCS. The OIG also recommended that if goals are shared in the plan that details should be provided on how those goals are going to be achieved by NDCS. As of September 2020, NDCS had not

[87] https://www.corrections.nebraska.gov/sites/default/files/files/39/ndcs_strategic_plan_2015.pdf
[88] https://www.corrections.nebraska.gov/sites/default/files/files/39/strategic_plan_progress_summary_2015-2016.pdf
[89] https://www.corrections.nebraska.gov/sites/default/files/files/39/ndcs_strategic_plan_2015_-_2018_updated_september_2016.pdf
[90] https://www.corrections.nebraska.gov/sites/default/files/files/41/fy17_strategic_plan_progress_report_0.pdf
[91] https://www.corrections.nebraska.gov/sites/default/files/files/41/2019-2023_strategic_plan_final.pdf
[92] https://www.corrections.nebraska.gov/sites/default/files/files/270/2017-18_strategic_plan_progress_report.pdf

released any additional strategic plans, updates or progress reports.[93] The OIG would repeat the recommendations regarding the strategic plans that were made in the 2019 OIG Annual Report.

These plans provided limited information to the public and policy makers and are quite different than what NDCS used to deliver in the past. At one time, NDCS submitted annual reports that provided a considerable amount of information to policy makers and the public. The last report of this nature took place in 2014.[94] It provided a large amount of data and specific information about each facility along with other information. In addition, NDCS used to provide monthly data reports and those were eliminated and eventually replaced with the quarterly data reports mentioned earlier in this report.

As mentioned previously, the OIG visited three correctional facilities in 2019 and as part of that visit met with leadership of the Colorado Department of Corrections. They shared that they have numerous reports and other information located on their web site that could be accessed to provide a better understanding of the efforts of their department.[95] There are many informative documents and reports that are contained on their web site, including detailed performance plans,[96] data reports, residential treatment reports, administrative segregation reports, annual statistical reports,[97] and many other items that provide a great deal of detail about their operations. Other states have similar efforts that Nebraska could review in order to provide additional information to the public and policy makers.

One of the more interesting parts of the Colorado web site was an invitation to participate in a virtual conversation with Executive Director Dean Williams last month to discuss their COVID-19 prevention and mitigation efforts. Participants could submit questions to the Executive Director who was joined by the Department's Chief Medical Officer.

[93] https://www.corrections.nebraska.gov/public-information/statistics-reports/ndcs-reports

[94] https://www.corrections.nebraska.gov/sites/default/files/files/46/2014_ndcs_annual_report_reduced.pdf

[95] https://www.colorado.gov/cdoc

[96] https://operations.colorado.gov/performance-management/department-performance-plans/corrections

[97] https://drive.google.com/file/d/1Sbiu6bl7NVZ7BL-ij3u_TyrmbUOAoWKS/view?usp=sharing

NDCS RESEARCH DIVISION/QUALITY ASSURANCE

The 2019 OIG Annual Report shared information about the NDCS Research Division. Last year, Dr. Abby Carbaugh, NDCS Research Director, shared a description of their roles and responsibilities:

> *Research Division Roles and Responsibilities: I also wanted to provide you with a short summary of the work that happens within the Research Division and the responsibilities of each of my teammates.*
>
> *1. Research Director: The Research Director is responsible for the supervising all members of the Research Division and, when necessary, ensuring work is completed in their absence. The Research Director is also responsible for running high-level, complex analyses to ensure the Agency Director and his leadership team have the information available to them to aid in daily facility management and departmental strategic planning purposes; producing legislatively required statistical reports related to mandatory discharges and restrictive housing; and serving as a representative on a number of internal (e.g., Multidisciplinary Review Team, IT Governance Committee) and external (Seamless System of Services, CJIS Advisory Committee) workgroups. The Research Director also works in collaboration with external researchers interested in studying various aspects of NDCS to ensure their research questions and methodologies meet appropriate ethical standards, and to provide assistance in producing datasets and contextualization for the quantitative data provided.*
>
> *2. IT Business Systems Analyst: The IT Business Systems Analyst is primarily responsible for the development and maintenance of user requests for reports/iBots to be built in OBIEE, or for basic information requests. This person also is the point of contact for national reporting, such as ASCA's PBMS data (no longer active), BJS annual reports, Social Security Administration monthly reports, and other national data collection programs. The person in this role also monitors location history records for their accuracy, and performs other data auditing tasks, as needed.*
>
> *3. Data Auditor: The Data Auditor is charged with identifying discrepancies in data entry and generating reports to assist staff in cleaning up records with missing, illogical, or otherwise erroneous data. The person in this role also helps ensure information is easy to find by eliminating redundant or outdated reports and ensuring the dashboards are clear and concise. A secondary function of this position is to assist the IT Business Systems Analyst in responding to data requests and creating automated reports for end-users.*
>
> *4. Program Analyst: The Program Analyst works closely with the clinical and non-clinical program staff to monitor program data entry, as well as maintain OBIEE reports regarding waiting lists, enrollments, and completions. The person in this role is in charge of compiling the data for the Quarterly Programs Report and incorporating feedback from the Program Managers regarding any*

interpretations of trends or procedural changes that have occurred since the last report. As the need arises, this person assists in responding to one-off data requests, though, the primary job responsibilities revolve around program-related requests.

5. Research Analyst: The Research Analyst works on projects that involve more in-depth analysis and reporting. Typically, the person in this role uses reports and tools outside of OBIEE (e.g., Access, Excel, Stata) to complete their analyses. Generally, the person in this role focuses on broad departmental topics, such as staffing issues (e.g., assaults on staff, vacancies and turnover rates), risk assessment (e.g., STRONG-R risk distributions, generating lists of people with reassessments coming due), and population trends. As the need arises, this person assists in responding to one-off data requests, though, the primary job responsibilities revolve around more in-depth analyses of issues related to strategic planning.

6. Ph.D.-level Intern: This position is currently vacant. When it is filled, the person in this role assists with higher-level causal data modeling, and developing the logical sequences for analyses for requests that are complex or involve data with subtle nuances that could be overlooked if not all factors are accounted for. In addition to some of the day-to-day tasks, the majority of this person's time is expected to be spent working on an in-depth research project of NDCS's population, programs, or services, that would meet his or her dissertation requirements. NDCS benefits by receiving a solid evaluation project, the student benefits by receiving access to data for their dissertation and agency staff who can provide clarifications and context for the data, and both parties benefit by building a relationship that can be leveraged for future research needs.

This team is built to provide NDCS with analysis and data of key issues and correctional trends and to aid policy makers with a better understanding of the functioning of NDCS. While the above descriptions indicate that much work is being done by this research team, the sharing of this work, or at least some of it, would provide additional transparency and information. As mentioned before, there was a 2016 report that was done by a previous staff member that was to be one of three reports on programming.[98] This report provided a great deal of insight into that area of NDCS. The Research Division appears to be staffed in such a way to deliver more work products like that. If they need additional staff to enhance their efforts this should be a need that is given thoughtful consideration by the Governor and the Legislature.

The OIG does appreciate the information provided by Dr. Carbaugh and continually looks forward to working with her team to gain a better understanding of NDCS issues.

In recent years, NDCS also created key positions within Central Office, including quality assurance positions, grievance coordinator, volunteer coordinator, Intel administrator and

[98] All NDCS reports that are accessible to the public can be found at https://www.corrections.nebraska.gov/public-information/statistics-reports/ndcs-reports.

training specialist. For example, the grievance coordinator was created because "A position is needed to provide a more effective grievance system to ensure inmates have an appropriate, in-agency avenue to address issues/concerns…and enhance resolution of issues at lower levels reducing inmate dissension and litigation costs." [99]

NDCS should provide an update on the activities of these new positions, including whether or not they have met the goals for the positions. For instance, there should be a significant amount of information that demonstrates the effectiveness of the quality assurance positions.

[99] https://das-nebs.ne.gov/public/faces/brdIndex.jsp# (page 64)

COVID-19

Like all other state agencies, NDCS was confronted with the challenge of the COVID-19 pandemic earlier this year. At the time of the emergence of the pandemic NDCS had approximately 2200 employees and 5700 incarcerated individuals that worked or resided in ten correctional facilities. Each of the ten facilities had countless individuals who went in and out of the facilities each day, including staff, visitors, contractors, volunteers, contracted individuals or groups, oversight bodies, the Board of Parole, law enforcement, fire and rescue and many others. At the community corrections centers incarcerated individuals also came and went each day as they worked, went on day trips, sought jobs, took places, or participated in programs. As a result, NDCS was given a more difficult task of trying to handle the COVID-19 pandemic than most other state agencies.

It is necessary that the OIG will compile a report that focuses completely on the response to COVID-19 by NDCS. However, it is unclear at this time when would be the appropriate time to complete and submit such a report but it would likely be in 2021. However, it is appropriate that the OIG does provide some information regarding the NDCS response at this time but particularly in the role played by the OIG during this time, including the OIG's interaction with NDCS. This will not be a complete rundown of OIG activities but it should present the reader with some idea of what the OIG did during this time of the unknown and the unprecedented.

Early on, the OIG recognized that COVID-19 might veer NDCS and others into uncharted territories and that it would be a difficult time for NDCS and that they would receive a great deal of attention as they sought to address this crisis. On March 12, 2020, the OIG sent Director Frakes this email:

> *If you could include me in your planning for the virus (as an observer) or even provide me with timely updates or briefings I would surely appreciate it.*

This was shared with Public Counsel Rogers, Senator Mike Hilgers and Senator Steve Lathrop and the OIG also shared with them:

> *I thought it was important to reach out to Director Frakes to simply request transparency with my office on their planning since it will impact thousands of people. I am hopeful for a positive response.*

No response was received.

On March 13, 2020 the OIG contacted the NDCS Chief of Staff regarding a potential COVID case at NCCW. As part of that email the OIG stated, "I would like to request that you contact me when that does happen (referring to a time when an individual who has COVID symptoms or is quarantined)."

No response was received to that request.

On March 13, 2020 the OIG contacted the NDCS Chief Medical Director to inquire whether newly incarcerated individuals were being screened or quarantined at intake and learned that

they were screened by medical personnel. A plan to quarantine individuals that were entering the system from outside the state system was put in place in April but no quarantine measures were put in place for those entering other facilities until later.

On March 15, 2020 the OIG contacted the NDCS Chief Medical Director to inquire about vulnerable populations being isolated. It was learned that elderly inmates in Unit 1 at NSP had been isolated. As a result, the OIG asked specific questions of NSP and learned that this involved only 24 vulnerable men who could still leave their unit for programming parole board meetings and medical issues. These men still had contact with health porters and other men who resided in that unit.

On March 16, 2020 the OIG contacted the NDCS Chief Medical Director and after sharing the Bureau of Prisons guidelines stated "If there is anything I can do to help in your efforts to keep your 5700 patients safe please let me know. By the way, I 100% support ending visitation and volunteer visits. I have ended my visits to the facilities even." Dr. Deol responded by stating:

> *"Thanks for sharing this with me. We are doing all the items BOP listed. We will continue to monitor inmates over 60 with chronic diseases as well. I have limited travel orders so we can keep inmates safe. We do screening at reception centers and will continue the approach. I had conference call this morning with providers and nurse managers regarding this. Masks, gowns and gloves are here for health staff. I have ordered 20 thermometers for screening by medical staff. I will keep in touch with you if anything* change."

On March 19, 2020 the OIG contacted the NDCS Chief Medical Director and shared that the staff hand sanitizer at TSCI did not have alcohol in it after the OIG was contacted by concerned TSCI staff. This was also shared with Director Frakes on March 20, 2020 after Director Frakes informed the OIG about an upcoming webinar on corrections and COVID. As part of this email exchange the OIG offered to try to obtain hand sanitizer with alcohol in it and provide it to NDCS for use by staff. The OIG also asked if staff could bring in their own hand sanitizer because some had been told they could not do that. Director Frakes indicated he would communicate with staff on this. The OIG also informed Director Frakes that not every incarcerated individual was receiving the free bar of soap. On March 23, 2020 Director Frakes announced that NDCS would be making their own hand sanitizer.

On March 20, 2020 the OIG contacted Director Frakes and Dr. Deol and recommended that work at home practices be put in place wherever possible. This was a recommendation from a webinar that was hosted by Dr. Deol that the OIG watched. The OIG made this recommendation after watching the webinar and observing that the NDCS Central Office parking lot was nearly full while visiting the office. Director Frakes indicated that he would respond to the OIG request later and after the OIG followed up with him on April 30th that information was provided to the OIG.

On March 25, 2020 the OIG was contacted by a Douglas County resident who asked that the OIG share with Director Frakes that there were cases of COVID in the Douglas County Jail and the person was concerned that someone would be transferred from there to the state who had COVID. The Director shared that Douglas County was keeping them informed.

On April 3, 2020 the OIG contacted Director Frakes and put forth ideas on how to create temporary housing should there be a COVID outbreak. At the end of the email the OIG stated:

> *Like I said, I know that you are thinking of all of these ideas. I am willing to do whatever I can to keep the inmates and staff safe and to slow the spread so if there is something that you think that I can do to assist you with your efforts please let me know.*

No response was received to this email.

On April 4, 2020 the OIG contacted Director Frakes and Dr. Deol and shared it had been suggested to the OIG that NDCS should consider ending transfers between all facilities until those being transferred could be assessed and then quarantined for 14 days before making contact with other inmates in that particular facility. The OIG even shared that if NDCS instituted such a measure that the OIG would publicly support it.

On April 4, 2020 the OIG contacted the NDCS Chief of Staff and inquired why there was no mention of the use of taking people's temperatures as part of the screening when they entered facilities. No response was received but soon after NDCS shared that their thermometers had been stolen.

On April 8, 2020 the OIG contacted the NDCS Chief of Staff and requested a copy of a memo that Director Frakes announced in a video released by NDCS. The OIG also requested all previous memos sent out regarding COVID and all future ones. No response was received.

On April 12, 2020 the OIG contacted the NDCS Chief of Staff with the following request:

> *Pursuant to the Office of Inspector General of the Nebraska Correctional System Act (Neb. Rev. Stat. 47-901 -- 47-920), please provide me the following related to COVID-19:*
>
> *1) Any reports or information related to the positive case of the employee at NSP.*
> *2) A listing of all staff who have reported, and report in the future, to the Department that they are self-isolating, self-quarantining, or are awaiting COVID-19 test results. For privacy reasons I am open to accepting the date of the notification and the name of the facility that they work in.*
> *3) Timely notification when an incarcerated individual is self-isolated, self-quarantined, or tested for COVID-19.*
>
> *I realize that new processes may take time to put together--both for internal and external purposes. If it is most efficient and less time consuming to share whatever internal tracking you have, or will develop, to notify me, please do so. The purpose of this request is to assist me with investigative reports on incidents that take place as a result of the COVID-19 crisis.*

Please acknowledge this request by no later than April17, 2020. If you or anyone in the Department would like to talk to me about this request, I am more than open to having a meeting via telephone regarding it. A meeting such as that may be most efficient.

On April 13, 2020 the OIG contacted Dr. Deol and shared that incarcerated individuals had been contacting the OIG with COVID related concerns, including that men were playing full court basketball games in gyms, that workers in the shops and kitchens would like additional masks due to their masks becoming soaked in sweat, and social distancing concerns.

On April 17, 2020 the OIG received the memos requested on April 8th but no response or acknowledgement to the request on April 12th. The OIG was informed by an assistant to the Chief of Staff that he had been out of the office and would start working on my requests. As part of the April 8th and April 12th requests for COVID memos and staff/inmate COVID tracking, NDCS agreed to provide these documents once a week to the OIG so that the OIG could stay on top of the activities of NDCS as they related to COVID. After a short period of time, NDCS stopped providing them in the manner that was agreed upon and the time between the providing of these documents increased. For example, on July 13th the OIG received the staff/inmate COVID tracking documents from June 19th to July 8th but did not receive the ones from that date through August 15th until September 14th. These are tracking logs that likely go to the leadership team on a daily basis but does not provide them to the OIG in a timely manner despite this being agreed to between the OIG and NDCS earlier this year. The tracking logs were provided in response to the OIG request for "*Timely notification when an incarcerated individual is self-isolated, self-quarantined, or tested for COVID-19."* Receiving the logs two months after they were put together is not timely nor helpful. Despite these requests, NDCS has not notified the OIG when an inmate or staff member tests positive. Instead, the OIG learns about it from reading a news story or being contacted by media who received a press release indicating a positive test result.

As previously mentioned, NDCS issues a press release whenever staff members or incarcerated individuals test positive for COVID. NDCS used to include the OIG on press releases but ended that practice in April 2020 despite the OIG requesting to be put back on the press release list. As a result, the OIG has had to use other means to access those press releases. Since April 26, 2020, NDCS has issued at least 46 press releases that provide information about NDCS staff testing positive for COVID. In mid-July, these press releases began to be released later in the evening. Since July 21st, these press releases all came out after 9pm except for three releases. Most of them were released after 10pm. The OIG compared these release to other NDCS releases and most of the other releases were sent out during regular office hours.

On April 17, 2020 the OIG contacted the NDCS Chief of Staff and made the following request:

As part of my review of the COVID response, I would like to request the following:

1) Video of the cafeterias at OCC, NSP and TSCI during the lunch meal times on April 14, 2020;
2) Video of the front entrance areas where screenings take place from 10am to 4pm on April 14, 2020 at OCC, NSP and TSCI;

3) Video of the inside of the gymnasiums at OCC and TSCI between 10am and 4pm on April 14, 2020;
4) Video of the turnkey area at NSP and LCC from 7am to 10am on April 14, 2020; and,
5) A bar of the soap that has been provided at no cost to the inmates.

I know that this is a busy time for the Department so I would ask that you provide this to me by May 15, 2020. I believe that should provide the Department with plenty of time to collect these videos and the soap.

Thank you for your assistance with this request. Please contact me if you have any questions or think there are other means to respond to this request that would be more effective and efficient.

Even though these videos were burned onto discs in late April and early May at the facilities the OIG did not receive them until more than two months later.

About this same time the OIG learned that NDCS press releases and agency wide emails were not being sent to the OIG despite this taking place for a number of years. Requests to receive those were denied by NDCS.

On April 23, 2020 the OIG contacted the NDCS Chief of Staff and requested a copy of the pandemic plan and any updates to the plan. The OIG received a response that said, "The flu pandemic plan – correct" and the OIG responded by asking for the plan currently being utilized for the current pandemic crisis. The OIG received a redacted version of the current plan a few days later and then requested an un-redacted pandemic plan as well as previous versions. On May 1, 2020 Director Frakes provided Public Counsel Rogers with a letter and the plans. In that letter, Director Frakes wrote:

NDCS has done an exceptional job of slowing the spread of COVID-19 within our facilities, and we will continue to do so. An important part of our success is ensuring we communicate accurate and understandable information to all stakeholders…

All of the information requests leading up to that point were attempts by the OIG to receive accurate information.

On April 30, 2020 the OIG contacted Chief of Operations Sabatka-Rine and made a recommendation about clearing up confusion regarding close contact and proper PPE. Several staff had been contacting the OIG because they didn't understand how this was being defined and the OIG shared with the Chief of Operations that there had been conflicting messages from NDCS regarding this. As a result, NDCS shared a video with staff to try to clarify the differences in the type of asks and how close contact is determined. The OIG responded with an email that included the following:

I think what would be really helpful is if the leadership at NSP went out and engaged with staff and observed and ***listened*** *during the next couple of days. I know they are busy*

and overwhelmed but getting out there - especially in the units where there are positive cases - would send a really good message - from the Major on up.

There are staff who believe they had a lot of contact with positive staff and yet they didn't find out about the positive case until they showed up at work - and it wasn't because they were identified by HR as a close contact. Although I know that you can't reveal the name of the positive case I have looked at this and it appears as though the Department may ask whether an employee is willing to disclose symptoms or a positive test result to others (without exerting pressure on the employee). If the employee is comfortable with that and agrees to this then this voluntary disclosure could take place. If this is a possibility for the Department, then the Department can reach out to those in their area and tell them, ""Corporal X is allowing us to tell his co-workers that he has tested positive. Do you have any concerns about the extent of your contact with him? If so, we would like you to talk to Medical Provider Y or the County/Regional Health Department." If this sounds like a thoughtful idea I would suggest you have your legal team get all over it and see if that is actually allowable and workable. It sure would send a message to staff that the Department cares about their health and safety and is being overly thorough in their attempt to identify contact between positive cases and other staff.

I would also suggest that you share the pandemic plan (minus any confidential or security information) with your staff. There is so much good stuff in that plan and it will show them that you have planned for this and that it is a work in progress. It would also allow them to hold the Department accountable when actions taken do not follow the plan. For instance, the plan talks about social distancing and defines that yet we have full court basketball games taking place which seems contrary to the definition of social distancing. At least provide it to the leadership of the two unions so they know what the plan looks like - it is a good and evolving plan and I think more positive can come out of sharing it then not….I really do want to make sure your team and the incarcerated individuals are safe. In early March I offered to participate in any way with the Department on the planning for this crisis (even as just an observer) and if that was not acceptable I requested timely updates and information. I made this offer/request because I thought it would have been helpful for the agency. I offer these suggestions for that same reason.

On May 11, 2020 the OIG contacted the NDCS Chief of Operations again after being contacted by multiple staff at more than one facility who shared that the thermometers that were being used as part of the screening were not accurate. Staff were reporting temperatures of 89 to 93 on a regular basis or that multiple people in a row would have the exact same temperature. The OIG shared that the directions for the thermometers indicated that they could only be used for up to three continuous readings within a short period of time and that they shouldn’t be used in an environment with strong electromagnetic interference (for instance, possibly near an x-ray machine at the entrance where screenings take place). It is the understanding of the OIG that new thermometers were provided to each facility a few weeks later.

In late May there was a COVID outbreak at CCCO. During that time the OIG requested information from Dr. Deol and Warden Mahr and received responses to those requests.

On June 10, 2020 the OIG contacted Director Frakes and asked for specific COVID testing data and information. A response was received that same day from the NDCS Chief of Staff but it was not responsive to the request so the OIG revised the request. No response was received. On July 17, 2020 the OIG again contacted Director Frakes and requested this data and information and that was provided to the OIG.

The point of sharing all of these interactions is to show that the OIG was attempting to be engaged in the events related to the COVID pandemic and to monitor the situation. Sometimes the attempts to receive information were successful. Other times they were not. In addition, during this time the OIG was in constant communication with a number of people involved in the correctional system who expressed their insights and concerns which greatly enhanced the OIG's understanding of the events related to the handling of the COVID pandemic by NDCS. The OIG does want to acknowledge that most requests for COVID information that went to individual facilities was generally responded to in a prompt and thorough manner and that was greatly appreciated.

The OIG also looked more closely at specific issues and data related to the COVID situation. For instance, early on during the pandemic NDCS announced that one step that they would take to limit potential spread was to limit transfers between facilities. As a result, the OIG utilized the NDCS information system to track transfers since February, as shown in the graph below (Figure 43).

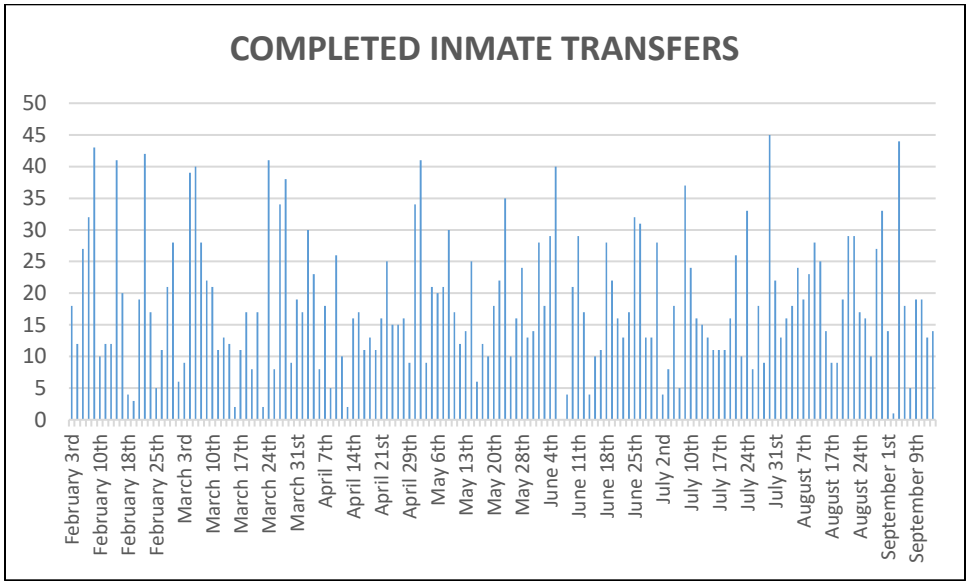

FIGURE 4313: SOURCE NDCS

The OIG recently ran a comparison of transfer data that compared February-August 2019 to February-August 2020. This comparison actually demonstrated a significant increase in transfers during 2020 (Figure 44). The OIG also determined that not all transfers are captured in this data when looking at some recent transfers from WEC. The OIG contacted NDCS for clarification on how these transfers are tracked and why some are treated differently but NDCS did not respond to that request.

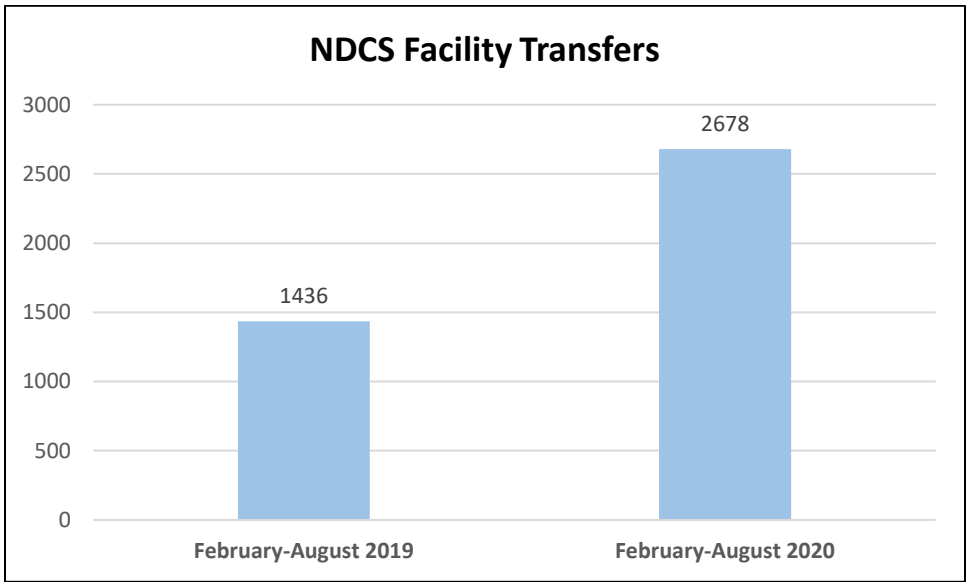

FIGURE 44: SOURCE NDCS

Recently, the outbreaks at NSP and DEC took place and the OIG made inquiries about the events related to the outbreaks but mostly to facility staff. However, the OIG did share concerns with Director Frakes and NSP leadership regarding the increasing tension level at NSP as they were locked down and receiving low quality meals. The men in the "internal" part of NSP who are confined two men to a cell did not leave their cells, receive showers or provided cleaning supplies for their cells for over four days. The OIG advocated for showers for those men as well as for cleaning supplies. The OIG also recommended that increased communication take place with them to lower the tension level. The OIG also recommended that each 100 bed dormitory unit in the "external" portion of NSP be allowed to go out into the yard as their own quarantined group for an hour. At the end of the hour they could sanitize all surfaces and let the next group out. This was started a couple of days later and also assisted with a reduction of the tension level among that population.

In addition, the OIG tracked the movement of incarcerated individuals who were transferred from each of those facilities shortly before the outbreaks took place. The OIG sought information on whether these individuals were tested and quarantined once it was realized that they had just left a possible COVID hot spot. The first group that had transferred from NSP (16 inmates) before their outbreak were offered testing but it is not known how many were actually tested. There were nearly 40 individuals who transferred either shortly before the outbreak at DEC or a few days later and just prior to the second outbreak at DEC. For instance there were five men who transferred to OCC on September 9th. Three of them were placed in a segregation unit and two were placed in Housing Unit 3. The OIG also shared with NDCS that the Department of Health and Human Services had provided testing for staff on-site rather than having them find testing in the community.

The OIG has also been contacted by national media organizations during the crisis who have attempted to receive information from NDCS, including the updated numbers of COVID cases

and related information. According to the Associated Press, the only two state correctional systems in the country who have not responded to their requests have been Wyoming and Nebraska.

As stated earlier, the OIG will complete a COVID report in the future. It will include as much as possible about the actions of NDCS is responding to this crisis. For instance, it will share that the initial pandemic action plans were well done and mirrored CDC guidelines and that the various steps that were taken such as closing visitation may not have been popular but were thoughtful reactions to the crisis. The OIG will be requesting meetings with NDCS leadership and others, as well as request multiple documents to paint a complete picture of how this crisis was handled by NDCS.

CENTRAL OFFICE WORK ENVIRONMENT

As shared in last year's report, there have been a number of individuals who have left employment from the NDCS central office and there were from various areas within the central office. Individuals have continued to reach out to the OIG during their employment or after their employment and have expressed concerns about the work environment in central office.

The two primary concerns that were discussed in last year's report have again been expressed to the OIG. First, that in many areas they are short-staffed. NDCS' responsibilities have expanded yet the number of employees providing support in those areas has not increased. To some, this impacted the ability to carry out their duties and responsibilities in a timely, efficient and productive manner. Second, multiple people expressed concerns about the environment in which they are employed, including a top-down management style where input is discouraged. They also have shared other concerns about the environment with the OIG.

Last year's report recommended that the Governor or Director Frakes bring in an independent and external review team to review the employment conditions in the central office area. This review could have determined whether the issues raised with the OIG actually existed and if so to what extent did they exist, and whether or not action could be taken to address those issues so that the work culture could improve. The OIG was not informed by either of them that any action was taken regarding this recommendation. Based on the events of this past year and the contacts made with the OIG about the work environment, the OIG would again encourage the Governor or Director Frakes to conduct such a review.

DIVISION OF PAROLE SUPERVISION

In 2015, the Legislature passed Legislative Bill 598 to transfer the administration of the Division of Parole Supervision (Parole) from NDCS to the Board of Parole effective July 1, 2016. The transition to the Board of Parole was made on July 1, 2016.[100] The Director of Parole Supervision is Julie Micek.

It has now been four years since Parole was placed under the Board of Parole. Many changes have taken place and the OIG visits with staff of Parole on a regular basis and also communicates with members of the Board of Parole when necessary. Parole has been fairly open and transparent with the OIG. Whenever the OIG reaches out to Rosalyn Cotton, Chair of the Nebraska Board of Parole and Julie Micek, Director of Supervision and Services, they respond quickly and thoroughly and honestly. Their assistance and approachability is sincerely appreciated.

Each year, the OIG has asked Director Micek if she would like to provide any pertinent information to the OIG relative to the annual report. In the past she has provided a report that discussed the activities of the Division of Parole Supervision during the past year, along with any successes, challenges, and plans for the future. This year, Director Micek met with the OIG and also provided a copy of a recent report that assessed the administration transfer of Parole. The report was completed by William Burrell, Corrections Management Consultant. Mr. Burrell was the consultant during the transition and has a wide range of expertise in the area of parole and corrections.

Burrell Report

First, the OIG wants to commend Chairperson Cotton and Director Micek for requesting the report from Mr. Burrell. As he stated about Chairperson Cotton, "Being open to allowing an outside consultant unfettered access to your agency is a hallmark of a courageous executive."

Second, the OIG needs to acknowledge that this is another professional report by Mr. Burrell which did an excellent job of laying out where Parole is and how it got here, as well as what it needs to move forward in the future. Included in this effort was a wide range of interviews with key stakeholders.

The report will soon be released by Parole but there are some key findings and recommendations made by Mr. Burrell that the OIG would like to highlight:

- Steps were taken to increase the salary of parole officers but this has caused a wage compression issue with parole supervisors that needs to be studied and addressed;
- Internal training has been developed (used to be done by NDCS) and it is considered by staff to be better and more appropriate;
- Core evidence-based practices have been put into place for a wide variety of the efforts of Parole;
- The use of ORAS as the assessment tool has been beneficial and well-received by staff;
- Enhanced reporting and tracking of data has taken place;

[100] The transition report can be found at http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Parole_Board/585_20160603-101354.pdf

- The pace of change and the constant change was impacting the system and Parole responded accordingly by slowing or stopping some of the initiatives;
- Parole staff believe that an opportunity for improvement would be for NDCS to return the offender reentry function to Parole.
- Parole staff also shared that if the environment consisted of lower caseloads that this would result in an increased focus on quality supervision;
- Parole officers also expressed frustration with their supervisors, including with inconsistency of messaging, better and more communication and would like to have more face-to-face meetings and ride-alongs;
- There is a need for additional treatment throughout the system, including for those on parole; and,
- Performance indicators have shown a decrease in revocations and violations.

Data

The OIG recently received data from Parole that is very detailed and thorough. In the coming weeks the OIG will comb through this data and follow-up with questions for Parole in order to gain a better understanding of it.

On September 13, 2020 the *Omaha World-Herald* published a story about a decrease in parole numbers during the overcrowding emergency.[101]

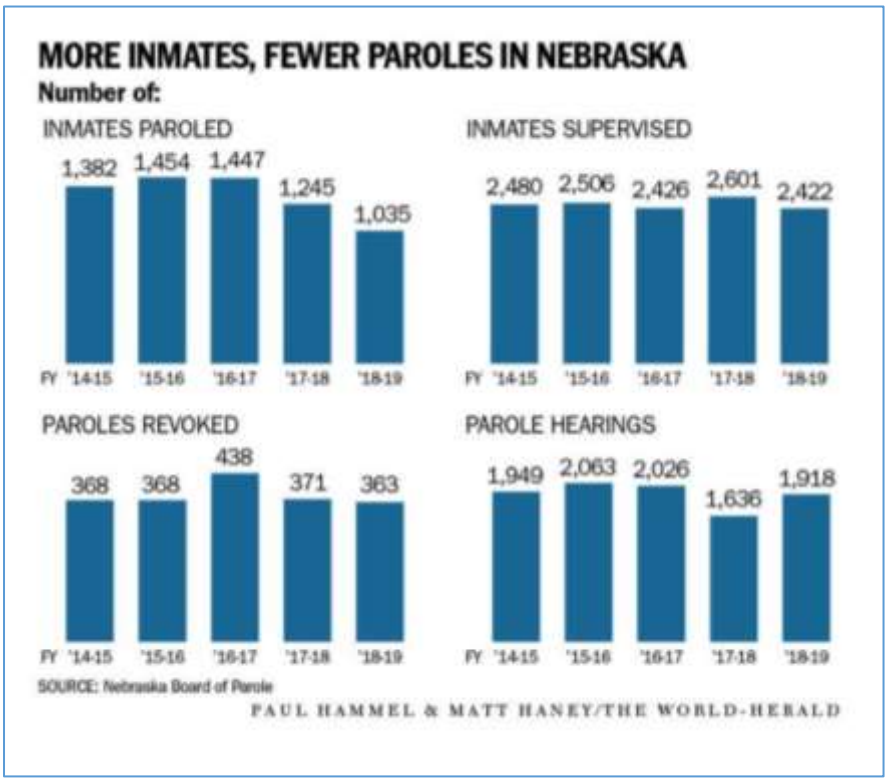

FIGURE 45: SOURCE OMAHA WORLD-HERALD ARTICLE ON 9/13/2020

[101] https://omaha.com/news/state-and-regional/crime-and-courts/state-law-calls-for-prison-overcrowding-emergency-but-parole-approvals-are-down/article_e40235cd-821d-5177-9581-4f4ca9586a52.html

The OIG recently compared parole data for the past three years using the NDCS information system. For the time period between January and August the current year has fewer parolees than the past two years (Figure 46). However, the OIG also reviewed the number of paroles granted since the July 1, 2020 overcrowding emergency declaration and found that for that time period paroles granted had increased when compared to that same time period in 2018 and 2019 (Figure 47). The OIG will continue to monitor this data and work with Parole to gain a better understanding of any changes.

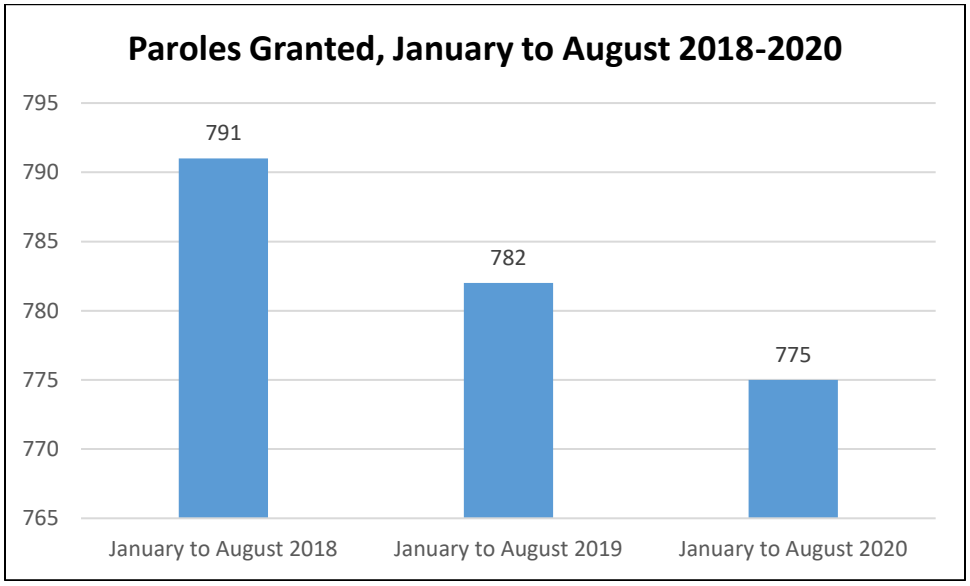

FIGURE 46: SOURCE NDCS

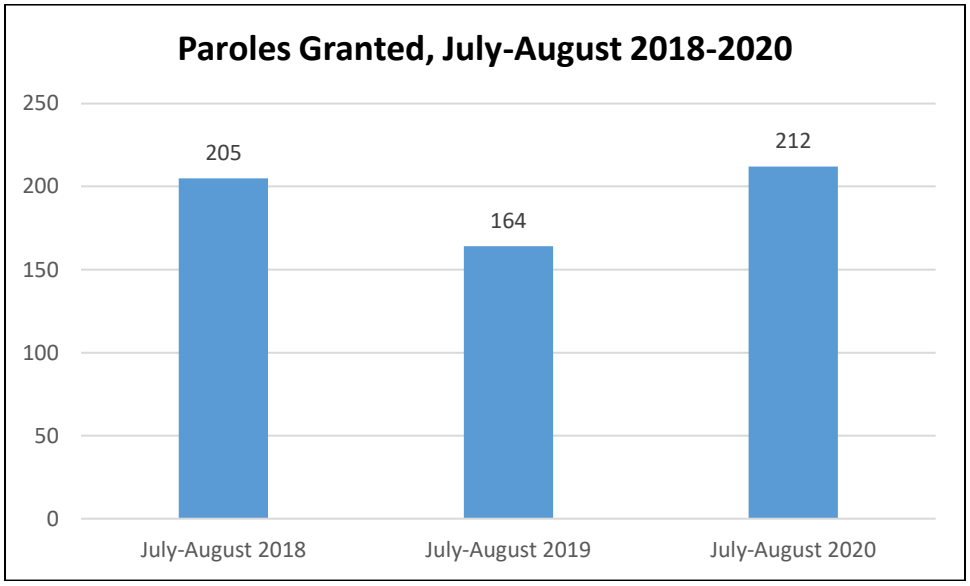

FIGURE 47: SOURCE NDCS

Summary

As shared in past reports and in the Burrell Report, the Division of Parole Supervision has taken significant steps in the past few years but challenges will remain as they attempt to continue to move forward. In the past year, the OIG again has not been contacted by either a Parole staff member or a parolee with any concerns regarding Parole and its practices. There have been concerns raised about the lack of oversight and engagement by parole officers in the field and those have been shared with Director Micek. This is an issue which the OIG will continue to monitor with Parole.

OTHER RELEVANT ISSUES

Crime Commission Role

The OIG has been asked many times why the prison population is increasing and many other questions related to the population issue. The answers to these questions need to come from a number of sources, including NDCS, Parole, Probation and the Courts. However, the entity that is best set up to work with all of these sources and produce work products that inform policy makers and the public is the Nebraska Commission on Law Enforcement and Criminal Justice, commonly referred to as the Nebraska Crime Commission. The Commission has been provided with resources to assist with these issues and needs to take the lead on informing policy makers, the OIG, and others.

PREA Cases

During the past year, the OIG has reviewed complaints directed to NDCS related to the Prison Rape Elimination Act. The OIG found that there were multiple cases where either a report was not completed or the individual who made the complaint was not even interviewed by a PREA investigator.

OIG Access to NDCS Records

Nebraska State Statute 47-913 states:

> *The department shall provide the Public Counsel and the Inspector General with direct computer access to all computerized records, reports, and documents maintained by the department in connection with administration of the Nebraska correctional system, except that the Public Counsel's and Inspector General's access to an inmate's medical or mental health records shall be subject to the inmate's consent.*

In 2019, the OIG learned that the access provided to the OIG did not meet the requirements found in this statute. After numerous exchanges, eventually the access provided to the OIG was expanded. However, earlier this year the OIG again learned that the access provided did not meet the requirements found in state statute so another attempt was made to rectify this. At this time, should NDCS make changes by adding additional tabs/information to their computer information system the OIG is solely reliant on NDCS to change the access granted to the OIG. Under this statute, the Public Counsel (Ombudsman's office) also has that same access. They only recently received the same level of access as the OIG despite repeated contacts with NDCS.

Plan by Incarcerated Individuals at the Nebraska State Penitentiary

A group of incarcerated individuals have worked together to present a plan to reduce overcrowding and improve the environment within the correctional system.[102] They have shared their plans with numerous stakeholders, including policy makers. Since they put out their plan they have also begun to advocate for the repurposing of the Youth Rehabilitation and Treatment Center in Geneva should it not house juveniles in the future. They would like NDCS to consider utilizing this facility for long-term minimum custody individuals.

[102] Attachment G: Cut 50 Proposal

LEAP

In order to gain input from individuals throughout the justice community, the OIG will form advisory groups consisting of a number of individuals, including formerly incarcerated individuals, current or former NDCS or Parole staff, community members, providers, etc. The first group that will be formed this year is the Lived Experienced Advisory Panel (LEAP) which will consist of individuals who have lived experience within the criminal justice system. The OIG will select the members and meet with them on a regular basis to gain their input on key issues facing incarcerated and formerly incarcerated individuals and to also gain feedback on the work of the OIG. Once this group is formed and begins to meet the OIG will utilize that experience and establish the second group.

Involuntary Medication Orders (IMO)

An emerging issue is the increase of IMOs for individuals with a serious mental illness who reside within NDCS. The Ombudsman's office is examining the perceived increased use of IMOs and how these are administered. The OIG did do some work on this issue after learning about situations in which significant force was used at facilities to administer IMOs to individuals. At this point, the OIG has asked the Ombudsman's office to keep the OIG apprised of their efforts in order to gain a better understanding of this important mental health issue.

NSP Housing Unit 6 Assault

The OIG opened an investigation into a brutal assault of a staff member at NSP in Unit 6. Much of the work related to this investigation has been completed and it is anticipated that this report will be released by the end of 2020.

Incarcerated Individual Wages

In the 2017 OIG Annual Report, the following was stated regarding the pay for incarcerated individuals:

> *A consistent message from many inmates throughout the system is the request for meaningful employment opportunities. Employment can reduce idle time and boredom as well as provide structure, opportunity and money. However, there are currently not enough employment opportunities to meet the demand according to NDCS staff and inmates. For the employment opportunities that exist, they range from spending a few minutes a day cleaning the bathroom on a unit that pays in the vicinity of a dollar a day to making more than minimum wage working for an outside company that contracts with NDCS to have something made within a correctional facility. Many inmates would like to work in a shop, school, library or a kitchen.*

As a result of this finding the following recommendation was made to NDCS:

> *Establish a work group of staff, inmates and outside interests to review the inmate job system, including a review of inmate pay rates, job classifications, and any other issues identified by the work group or NDCS.*

In 2018, NDCS responded to the recommendation with the following:

> *To fully impact the inmate work program, we will move away from the current practice of providing "employment" to every inmate in the system. This will allow for improved compensation for those who are employed and decreased waitlists for people who want jobs. This is a significant cultural change - one that I will pursue when I believe the time is right.*

In 2019, the OIG received an update from NDCS regarding the 2017 recommendation:

> *Based on statutory requirement to offer employment to all inmates, meaningful revision of the inmate employment system will require legislative changes.*

NDCS did not seek any statutory changes during the 2020 legislative session and it is unclear what changes would even need to be made based on the current law but the OIG will seek an update from Director Frakes on whether or not the "time is right" to improve compensation and how the law would have to be amended to meet this need.

Driver's Licenses

Nebraska State Statute 83-903 was amended in 2018 to include:

> *Prior to the discharge of an individual from a department correctional facility, the department shall provide such individual with an opportunity to obtain a state identification card or renew a motor vehicle operator's license.*

This went into effect on July 1, 2020 and progress on this requirement should be monitored and reported to the Legislature by NDCS.

OIG and Lancaster County Jail

As part of the work of the OIG, various reports are reviewed by the OIG. Earlier this year, the OIG reviewed a report that indicated an incarcerated individual was found with illegal drugs at a state correctional facility. The individual had recently been transferred into the state system from the Lancaster County Jail. The report indicated that the individual was selling "bumps" of meth for $50 and that several individuals had bought and used these "bumps." The report further shared that the individual received the meth from another individual who brought it into the Lancaster County Jail. The OIG learned that the Lancaster County Jail had not been provided this information so the information was shared via the Ombudsman's office with Lancaster County Jail since it was considered an immediate public safety and jail safety issue. Shortly thereafter the Lancaster County Jail was able to address the issue and eliminated this safety concern.

No Implementation of Video Visitation

In March, Director Frakes announced that visitation had been ended at all facilities. In a video about the impact of COVID on NDCS, he stated that they were working with JPAY to implement video visiting where possible but that he did not expect it to be operational for two months.[103] As a result the OIG emailed Deputy Director Spindler and shared that under the terms

[103] https://www.facebook.com/watch/?v=830820487427942&extid=WKhwGtR40ddyhffA

of the contract between NDCS and JPAY NDCS is required to contact JPAY in writing if it chooses to utilize their video visitation services. The OIG requested a copy of the written request submitted by NDCS. Later that day the OIG received a copy of the email from NDCS to JPAY requesting the start to this process. The email was sent after the OIG requested the written request. Previously, NDCS had only contacted JPAY verbally which did not meet the terms of the contract.

Even though NDCS has provided incarcerated individuals tablets from two vendors (JPAY and GTL), due to the contract with JPAY only JPAY can provide extra services via the tablet (GTL is used for telephone calls only).[104] In March the OIG asked for any updates on the progress of video visitation and in June followed up with a progress request. The OIG was informed that NDCS does not have the necessary capacity to implement video visitation at TSCI, NCFY or CCCL and that this will be looked at closer when operations return to normal. This leaves seven facilities where it appears that it could be implemented but the OIG was told that NDCS will review the including of video visitation services in their next contract which would begin in August 2022.

As a result, it does not appear that video visitation will be implemented at NDCS until 2022 at the earliest despite Director Frakes indicating it would be done within two months.

Digital Kites/Grievances

Related to the tablets mentioned above, one of the potential uses of these tablets would be to digitize inmate interview requests (commonly referred to as "kites") and inmate grievances. In May 2019, the OIG asked Deputy Director Spindler if any progress had been made on utilizing the GTL tablets to submit kites from inmates. She responded that NDCS was assessing the GTL system to determine if it would meet NDCS' grievance process requirements and needs. Once that assessment was done they could then determine whether this system would also work for kites. The OIG asked to be notified when this was determined but followed up in November 2019 for an update. The OIG was informed that no information was available due to other priority projects and initiatives and that an update would not be available any time soon. The OIG was informed in September 2020 that NDCS has been in contact with GTL about this being implemented in the future but no time table was provided to the OIG.

GTL tablets can be used for many services that would benefit NDCS and their inmate population, including paperless grievances, commissary requests, video visits and messaging that includes photo attachments, multimedia content, law library access, ebooks, educational content and job and life skills content.[105] At this time, GTL tablets are only being used for telephone calls.

If the grievance and kite process was digitized, there would likely be higher levels of accountability and responsiveness and possibly fewer abuses of those two procedures by incarcerated individuals. Many times the OIG is contacted by individuals who allege that kites

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[104] This would also mean that anyone who has not purchased a JPAY tablet would not have video visitation services on a tablet. GTL tablets were provided to all incarcerated individuals to use for telephone calls but not everyone has a JPAY tablet.
[105] https://www.gtl.net/gtl-tablet-solutions/

and grievances were discarded by staff. Digitizing this process would allow the OIG and NDCS to accurately investigate those claims.

Serious Injuries/Assault Data

As shared in previous reports, the OIG is hesitant to publish any data on assaults or serious injuries that take place within NDCS due to the tracking, recording and verifying of this data. For instance, a serious injury is defined as an injury that requires urgent and immediate medical treatment would be more extensive than just first aid. NDCS has shared in the past that examples of serious injuries would include stitches, broken bones, concussions and other treatments or injuries. In the past the OIG has shared that there have been staff with concussions that missed time at work that were not considered to have serious injuries by NDCS and during the writing of this report the OIG looked at a case where an inmate was injured and had to go to the hospital for stitches because the bleeding could not be stopped. The NDCS document pertaining to this injury labeled it a non-serious injury. Should the OIG be comfortable with the accuracy of this data in the future it will be included in future reports.

RECOMMENDATIONS

Throughout the report there were many observations made by the OIG that resulted in these specific recommendations.

- State law should be changed to require that the annual report of the OIG be completed no later than November 1st of each year.
- The OIG needs to use the Ombudsman's case system to track all cases handled by the OIG and not just those that arrive via the mail.
- NDCS should establish a goal that the majority of incarcerated individuals receive and complete their clinical programming 12 to 18 months prior to their parole eligibility date or release date.
- The name of the Work Ethic Camp should be changed to reflect its current role in the correctional system.
- The OIG and NDCS should study the role of race as it relates to the transfer list and different custody stages within the system.
- Director Frakes and his leadership team should hold town halls for each shift of workers at CCCL and the incarcerated individuals at CCCL in order to receive candid and open input on the conditions at the facility.
- NDCS needs to address the issue of wage compression between salary and non-salary staff, as well as the salary structure of wardens, other administrative positions and positions highlighted in the 2020 Report by requesting additional funding.
- The Department and the Legislature should work together to identify the resource needs of the Department in order to increase opportunities for inmates to acquire vocational or other skills during incarceration that will help ensure their success upon reentry to the community.
- NDCS should revamp their exit interview process and then set up a system to report the outcomes and action items that result from an enhanced exit interview program.
- As part of the career pathways program at Peru State College, NDCS should initiate a repayment option for students that are not employed at TSCI for a certain number of years and they should also prioritize the recruitment of a diverse population to participate in the program.
- To demonstrate whether or not there was any impact by the reducing of the operational hours of NSP and TSCI in 2019, NDCS should examine the statistics discussed in the Frakes/Chambers exchange at the October 25, 2019 Judiciary Committee hearing and report those findings to the Judiciary Committee.
- NDCS should conduct inmate surveys regarding the conditions in their correctional facilities. This could be started by conducting exit surveys first.
- In 2021, NDCS should contract for an update of the recently completed inmate population projection report due to the number of changes in 2020.
- NDCS should implement a program to provide inmates with an opportunity to have good time that was designed "non-restorable" restored should they exhibit certain behaviors.
- NDCS or the Legislature should contract with the Nebraska Center for Justice Research for an updated report that assesses the use of good time in the correctional system.
- NDCS should provide a plan for addressing the maintenance backlog of over $60 million in projects to the Governor and the Legislature no later than September 15, 2021.
- The OIG should submit a separate report on restrictive housing in late 2020/early 2021.
- NDCS should reinstate the suicide work group to see if the steps taken in the past two years need to be updated or enhanced.
- NDCS and Parole should do the following: 1) Review formerly incarcerated individuals in NDCS who had a domestic violence program recommendation and did not receive any such programming and determine their recidivism rates; 2) Review those formerly incarcerated individuals in NDCS who had a domestic violence program recommendation and did receive any

such programming and determine their recidivism rates; and, 3) Review the five programs highlighted by the Institute's report and determine if they could play a part in the programming being offered within NDCS in the future.

- NDCS should finish the three-part programming report started by Ada Alvarez and also conduct an analysis of the Alvarez report to determine if any action was taken as a result of that report and the effectiveness of any changes.
- NDCS should review how other state correctional systems provide data and information to the public and policy makers and consider changes to their system.
- NDCS should provide an update on the activities of the positions named on pages 112 and 113 of the OIG Report, including whether or not they have met the goals for the positions.

Status of Past NDCS Recommendations

During the past three years, the OIG has made numerous recommendations to NDCS. In the past NDCS provided the OIG with updates to those recommendations. Due to the COVID crisis the OIG only presented a small number to Director Frakes for his response. Most of those responses have been incorporated in this report.[106]

[106] Attachment H: NDCS Recommendations Spreadsheet, July 2020

OIG RESOURCES

As the OIG enters the sixth year of the existence of the Office, there are a number of goals and expectations for the work ahead. One of the challenges facing the OIG is the lack of additional staff to assist with the work. Over the past five years the demands on the OIG have significantly increased and the result is that the OIG has to prioritize issues and understand that there will be issues or parts of the correctional and parole systems that will not be able to be closely examined due to a lack of time or resources. There are significant issues that are not reviewed or investigated due to the lack of resources for the OIG. Should the Legislature decide to provide an additional staff member(s) to assist the OIG the investment will be well-spent.

CONCLUSION

As shared in the past, completing an annual report is a quite an endeavor. It is always an eye opening look at all of the activity that is taking place within and around our correctional and parole systems in Nebraska. It is also a report that is likely to have left many issues untouched due to the significant number of issues in the correctional and parole systems.

As in prior reports, this report has been filled with information and data in an attempt to share as much with the reader as is possible so that they understand the activities of NDCS and Parole. It has been the hope of the OIG that these annual reports will not only provide such an understanding but can also be a resource for those interested in these areas. This report continues to build upon the previous reports as a resource manual of sorts.

The OIG wants to thank everyone who contributed to this report. These contributors number in the hundreds as there are numerous individuals who are interested in this important subject matter and want to share their experiences and insights.

Nebraska Department of Labor

Services provided to Nebraska Department of Correctional Services

Attachment A

The Nebraska Department of Labor customizes employment services according to the need of each correctional facility. The main program provided in-facility is the Workforce Academy. The curriculum (below) for the Workforce Academy is demonstrated through a class or workshop setting according to the availability of each facility. Individuals learn job search techniques necessary to gain sustainable employment and also are provided with up-to-date job market information such as high demand industries and occupational wages. Furthermore, individuals begin the job search process by completing templates for applications, resumes, and cover letters. Prior to completing the Workforce Academy, NDOL Workforce Coordinators provide information on state and federal employment programs available to individuals upon their release, such as in-person or virtual one-on-one career coaching at local NDOL offices, WIOA on-the-job training opportunities, Work Opportunity Tax Credit (WOTC) and Federal Fidelity Bonds.

WORKFORCE ACADEMY

Workforce Sessions conducted by Nebraska Department of Labor (NDOL) in coordination with Reentry Programs and Workforce Partners.

NEBRASKA
Good Life. Great Connections.
DEPARTMENT OF LABOR

Part	Topic	Description	Workshop Goal	Workforce Activities/Content
1	PREPARING FOR EMPLOYMENT	*Job Search Techniques*	Participants learn about Nebraska's labor market and complete required documentation for employment.	• NEworks Registration • Skills/Assessments • Application and Resume • Cover Letter • Labor Market Information
2	GETTING A JOB	*Overcoming Barriers*	Participants learn to how to successfully pursue employment opportunities.	• Best Practices • Interview Skills • Job Fair Etiquette • Workforce Programs
3	KEEPING A JOB	*Successful Work Habits*	Participants learn how to navigate the work environment with applicable skills employers value and expect from employees.	• Workplace Behavior • Digital Literacy • Decision Making • Conflict Resolution

Participants who complete all activities receive a Certificate of Completion.

Current Facility Partnerships

Program: Workforce Academy and Reemployment Services

Nebraska Correctional Center for Women
Commencement Year: 2018
Frequency: 1x per month
Participants are selected per release date by caseworker and sign-up independently.
Facility contact: Lori Keller

Work Ethic Camp
Commencement Year: 2017
Frequency: 1x per month
Participants are selected per release date by caseworker.
Facility contact: Tyler Gowan

Community Corrections Center - Omaha
Commencement Year: 2017
Frequency: 2x per month in partnership with Metropolitan Community College's 180 Reentry Assistance Program
Participants are selected by facility staff per work release date.
Metropolitan Community College contact: Marji Voovart

Community Corrections Center - Lincoln
Commencement Year: 2016
Frequency: 1x per month
Participants are selected by facility staff per release date and participants sign-up.
+ Increased class capacity in May of 2019 to 15-20 participants per class.
Facility contact: Shaun Settles

Upcoming Partnership Efforts

Partnership: Nebraska Department of Correctional Services

- Quality pre-apprenticeship program at Nebraska State Penitentiary in partnership with registered apprenticeship with Associated Builders and Contractors
- Workforce Academy Curriculum and/or self-guided employment readiness workbook at Tecumseh State Correctional Institution

Partnership: Nebraska Department of Correctional Services, Nebraska Probation and Nebraska Parole Board

- Workforce Innovation Opportunity Act (WIOA) – work experience and on-the-job training opportunities with subsidized wages for employers.

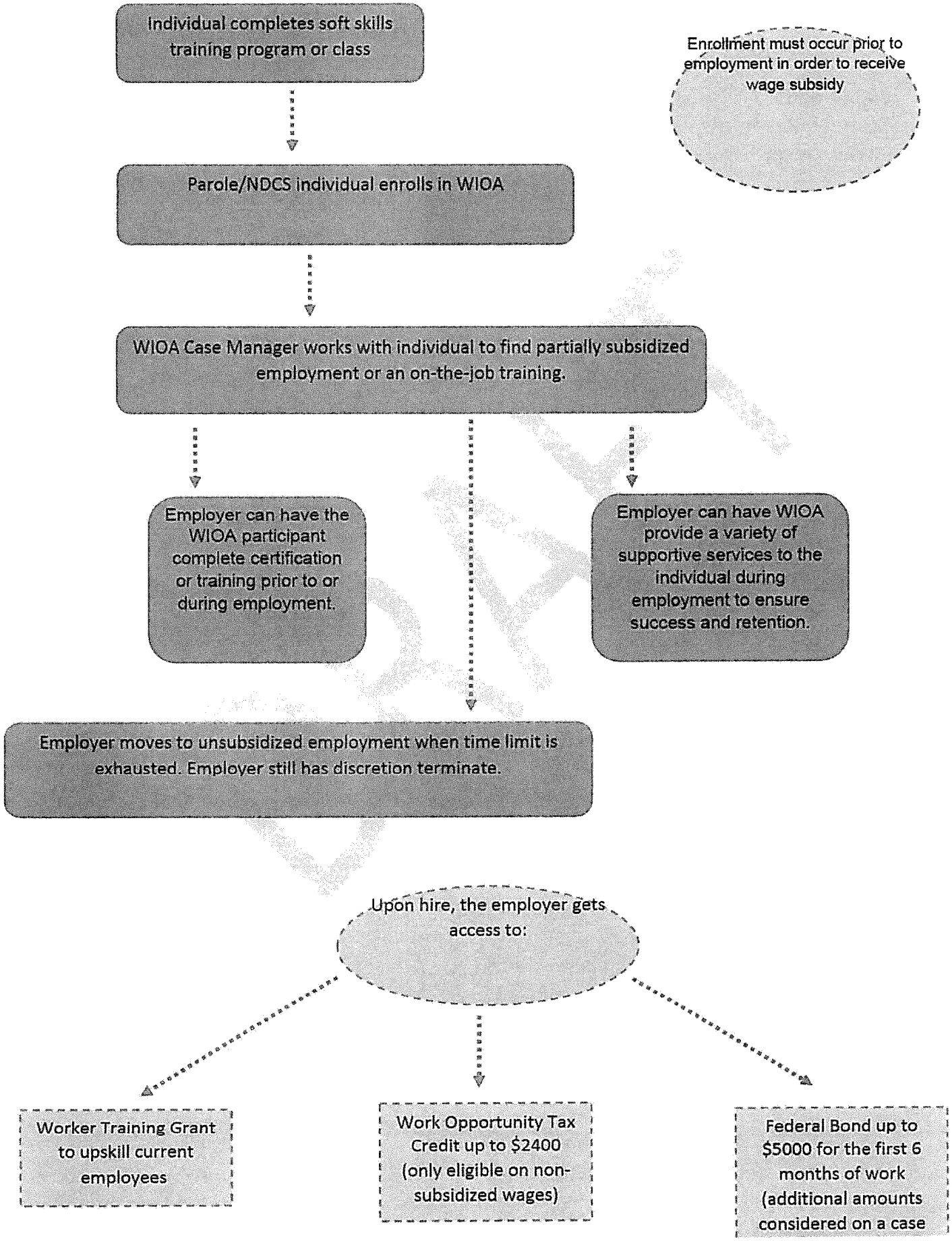
Additional NDOL Services Available and Offered

- **Program: Re-Employment Services – assistance from NDOL Workforce Coordinators to prepare for employment and secure sustainable job opportunities; inclusive of skill assessments and NEworks profile registration.**

- **Program: Work Opportunity Tax Credit (WOTC) – up to $2,400 in federal tax credit for hiring individuals who have been convicted of a felony within one year from the date of conviction or release from prison.**

- **Program: Federal Fidelity Bonds – insurance coverage for employers who hire self-attested ex-offenders; available in $5,000 increments of coverage for the first six (6) months of employment should the employee commit a dishonest crime such as theft, embezzlement and larceny.**

Service Delivery Model for Parole/NDCS to Employment



Attachment B

CRIME IN NEBRASKA (2019)

FOR RELEASE: JULY 1, 2020

Updated July 6, 2020

NEBRASKA

Good Life. Great Service.

COMMISSION ON LAW ENFORCEMENT
AND CRIMINAL JUSTICE

CRIME IN NEBRASKA (2019)

Issued by:

Nebraska Commission on Law Enforcement and Criminal Justice (Nebraska Crime Commission)

301 Centennial Mall South | P.O. Box 94946 | Lincoln, Nebraska 68509-4946

Phone: (402) 471-2194 | Fax: (402) 471-2837

ncc.nebraska.gov

PLEASE NOTE: Some agencies were excluded from these trends due to incomplete reporting over the two-year period. Caution should be used when comparing the percent changes presented within this report. A slight shift in the volume of crimes or arrests may result in a large percent change for some offenses, arrests, and/or population groups.

STATEWIDE CRIME SUMMARY

The number of crimes reported to Nebraska law enforcement agencies in 2019 decreased 1.4%. There were 44,365 crimes reported in 2019, compared to 44,986 crimes reported during the same period in 2018, resulting in a decrease of 621 crimes. These numbers include only the crimes of Murder-Manslaughter, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny-Theft, Motor Vehicle Theft, and Arson, which serve as the *Crime Index* used to measure crime statewide.

Violent crimes (Murder-Manslaughter, Forcible Rape, Robbery, and Aggravated Assault) increased 4.4% in 2019. There were 5,638 violent crimes reported in 2019, compared to 5,401 reported in 2018, resulting in an increase of 237 violent crimes.

Property crimes (Burglary, Larceny-Theft, Motor Vehicle Theft, and Arson) decreased 2.2% in 2019. There were 38,692 property crimes reported in 2019, compared to 39,585 reported in 2018, resulting in a decrease of 858 property crimes.

Crime Index Offenses, 2018 – 2019

	2018	2019	CHANGE
VIOLENT CRIMES	**5,401**	**5638**	**+4.4%**
Criminal Homicide	46	50	+8.7%
Forcible Rape	1,244	1203	-3.3%
Robbery	735	791	+7.6%
Aggravated Assault	3,376	3594	+6.5%
PROPERTY CRIMES	**39,585**	**38,727**	**-2.2%**
Burglary	5,152	4,595	-10.8%
Larceny-Theft	29,379	29,072	-1.0%
Motor Vehicle Theft	4,825	4,891	+1.4%
Arson	229	169	-26.2%
COMBINED TOTAL	**44,986**	**44,365**	**-1.4%**

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POPULATION GROUPS

The following population groups saw changes in their 2019 crime rates:

- Populations of 400,000 and over increased 5.3% overall (violent +9.8% / property +4.6%)
- Populations of 399,999 to 100,000 decreased 2.5% overall (violent +6.6% / property -3.7%)
- Populations of 99,999 to 5,000 decreased 8.7% overall (violent -5.3% / property -9.1%)
- Populations of 4,999 and under decreased 24.4% overall (violent -21.6% / property -24.7%)
- County areas decreased 5.2% overall (violent -1.7% / property -5.7%)
- State properties decreased 10.8% overall (violent -5.9% / property -11.4%)

Crime Index Offenses by Population Group, 2018 – 2019

POPULATION GROUP		YEAR	Murder-Manslaughter	Forcible Rape	Robbery	Agg. Assault	**Violent (Total)**	Burglary	Larceny - Theft	Motor Vehicle Theft	Arson	**Property (Total)**	**Grand Total**
POLICE DEPARTMENTS	400,000 AND OVER	2018	22	403	456	1,747	**2,628**	1,848	11,343	3,123	83	**16,397**	19,025
		2019	25	379	519	1,962	**2,885**	1,684	12,307	3,153	0	**17,144**	20,029
		CHANGE	+13.6%	-6.0%	+13.8%	+12.3%	**+9.8%**	-8.9%	+8.5%	+1.0%	-100%	**+4.6%**	+5.3%
	399,999 TO 100,000	2018	6	284	162	594	**1,046**	1,182	6,694	431	44	**8,351**	9,397
		2019	5	323	166	621	**1,115**	988	6,566	454	43	**8,051**	9,166
		CHANGE	-16.7%	+13.7%	+2.5%	+4.5%	**+6.6%**	-16.4%	-1.9%	+5.3%	-2.3%	**-3.7%**	-2.5%
	99,999 TO 5,000	2018	8	360	93	638	**1099**	1,323	8,086	793	42	**10,244**	11,343
		2019	9	332	87	613	**1041**	1,200	7,244	800	68	**9,312**	10,353
		CHANGE	+12.5%	-7.8%	-6.5%	-3.9%	**-5.3%**	-9.3%	-10.4%	+0.9%	+61.9%	**-9.1%**	-8.7%
	4,999 AND UNDER	2018	1	38	7	79	**125**	87	546	62	4	**699**	824
		2019	1	29	0	67	**97**	49	440	36	1	**526**	623
		CHANGE	0%	-23.7%	-100%	-13.9%	**-21.6%**	-43.7%	-19.4%	-41.9%	-75%	**-24.7%**	-24.4%
OTHER	COUNTY AREAS	2018	8	142	16	305	**471**	699	2,528	408	13	**3,648**	4,119
		2019	8	132	17	308	**465**	670	2330	426	13	**3,439**	3,904
		CHANGE	0%	-7%	+6.3%	+1%	**-1.7%**	-4.1%	-7.8%	+4.4%	0%	**-5.7%**	-5.2%
	STATE AREAS	2018	1	17	1	15	**34**	15	188	8	43	**254**	288
		2019	2	9	2	19	**32**	6	189	21	9	**225**	257
		CHANGE	+100%	-47.1%	+100%	+26.7	**-5.9%**	-60%	+0.5%	+162.5%	-79.1%	**-11.4%**	-10.8%
TOTAL		2018	**46**	**1,244**	**735**	**3,378**	**5,403**	**5,154**	**29,385**	**4,825**	**229**	**39,593**	44,996
		2019	**50**	**1,204**	**791**	**3590**	**5,635**	**4,597**	**29,076**	**4,890**	**134**	**38,697**	44,332
		CHANGE	**+8.7%**	**-3.2%**	**+7.6%**	**+6.3%**	**+4.3%**	**-10.8%**	**-1.1%**	**+1.3%**	**-41.5%**	**-2.3%**	-1.5%

PLEASE NOTE: Some agencies were excluded from these trends due to incomplete reporting over the two-year period. Caution should be used when comparing the percent changes presented within this report. A slight shift in the volume of crimes or arrests may result in a large percent change for some offenses, arrests, and/or population groups.

ARRESTS

There were 66,355 arrests made in 2019, compared to 71,477 in 2018, resulting in an overall decrease of 7.2%. The five categories with the highest number of arrests in 2019 were: Drug Abuse Violations (12,200); Simple Assault (8,786); Larceny (7,454); Driving Under the Influence (6,410); and Liquor Law Violations (3,256).

The number of adult arrests (age 18 and over) in 2019 was 57,716, compared to 62,831 in 2018, resulting in a decrease of 8.1%. The number of juvenile arrests (age 17 and under) in 2019 was 8,639, compared to 8,646 in 2018, a decrease of 0.1%.

Total Arrests in Nebraska, 2018 – 2019

	ADULT ARRESTS			JUVENILE ARRESTS			ALL ARRESTS		
	2018	2019	CHANGE	2018	2019	CHANGE	2018	2019	CHANGE
Murder-Manslaughter	34	32	-5.8%	8	2	-75.0%	42	34	-19.0%
Forcible Rape	189	212	+12.2%	50	52	+4.0%	239	264	+10.5%
Robbery	192	236	+22.9%	140	130	-7.1%	332	366	+10.2%
Aggravated Assault	1,503	1,576	+4.9%	66	63	-4.5%	1,569	1,639	+4.5%
Burglary	415	416	+0.2%	102	97	-4.9%	517	513	-0.8%
Larceny	6,166	5,857	-5.0%	1,568	1,597	+1.8%	7,734	7,454	-3.6%
Motor Vehicle Theft	311	288	-7.4%	160	183	+14.4%	471	471	0.0%
Simple Assault	7,365	7,126	-3.2%	1,538	1,660	+7.9%	8,903	8,786	-1.3%
Arson	49	45	-8.2%	37	25	-32.4%	86	70	-18.6%
Forgery and Counterfeiting	320	287	-10.3%	5	2	-60.0%	325	289	-11.1%
Fraud	1,305	1,174	-10.0%	80	75	-6.3%	1,385	1,249	-9.8%
Embezzlement	58	62	+6.9%	10	8	-20.0%	68	70	+2.9%
Stolen Property Offenses	725	595	-17.9%	111	131	+18.0%	836	726	-13.2%
Vandalism	1,716	1,604	-6.5%	535	643	+20.2%	2,251	2,247	-0.2%
Weapons	1,014	1,021	+0.7%	100	120	+20.0%	1,114	1,141	+2.4%
Prostitution	128	98	-23.4%	0	0	N/A	128	98	-23.4%
Sex Offenses	368	336	-8.7%	82	71	-13.4%	450	407	-9.6%
Drug Abuse Violations	12,569	11,027	-12.3%	1,335	1,173	-12.1%	13,904	12,200	-12.3%
Offense Against Family and Children	1,224	1,209	-1.2%	200	189	-5.5%	1,424	1,398	-1.8%
Driving Under the Influence	6,759	6,347	-6.1%	81	63	-22.2%	6,840	6,410	-6.3%
Liquor Law Violations	3,638	2,688	-26.1%	651	568	-12.7%	4,289	3,256	-24.1%
Disorderly Conduct	2,116	2,090	-1.2%	439	420	-4.3%	2,555	2,510	-1.8%
Vagrancy	26	12	-53.8%	0	0	N/A	26	12	-53.8%
All Other Offenses (except traffic)	14,641	13,378	-8.6%	1,348	1,367	+1.4%	15,989	14,745	-7.8%
TOTAL	**62,831**	**57,716**	**-8.1%**	**8,646**	**8,639**	**-0.1%**	**71,477**	**66,355**	**-7.2%**

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A REVIEW OF HATE CRIMES

With the passage of Legislative Bill 90 in 1997, commonly referred to as the Hate Crime Bill, the Nebraska Crime Commission (NCC) developed a system to report hate crimes. The FBI has defined a hate crime as a "criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, sexual orientation, ethnicity, gender, or gender identity." Nebraska law enforcement agencies voluntarily submit quarterly reports to the NCC which document the details of hate crimes that have been committed within the jurisdictions of those reporting agencies. Some of the details documented include: the type of crime committed, a general description of the location in which it occurred, and the type of bias or motivation of the offender.

In 2019, 138 law enforcement agencies participated in submitting hate crime data to the Crime Commission (128 all 12 months, 10 partial months). In total, there were 51 incidents reported by 21 agencies statewide that involved crimes motivated by hate or bias. In comparison, 2018 had 128 agencies participate in submitting hate crime data, reporting a total of 30 incidents from 11 agencies statewide, resulting in an overall increase of 70%.

Types of Bias/Motivations in Hate Crimes, 2018 – 2019

	2018	2019
RACIAL	**16**	**36**
Anti-White	4	22
Anti-Black or African American	12	10
Anti-American Indian	0	3
Anti-Multiple Races / Groups	0	1
ETHNICITY / NATIONAL ORIGIN	**2**	**6**
Anti-Hispanic or Latino	1	5
Anti-Arab	1	0
Anti-Other Race / Ethnicity / Ancestry	0	1
RELIGIOUS	**2**	**3**
Anti-Jewish	2	0
Anti-Catholic	0	1
Anti-Islamic (Muslim)	0	2
Anti-Protestant	0	0
Anti-Other Religion	0	0
SEX/GENDER	**6**	**4**
Anti-Gay (Male)	2	1
Anti-Lesbian, Gay, Bisexual or Transgender (Mixed Group)	4	2
Anti-Bisexual	0	1
DISABILITY	**4**	**2**
Anti-Physical Disability	0	0
Anti-Mental Disability	4	2
TOTAL	**30**	**51**

PLEASE NOTE: Caution should be used when comparing the percent changes presented within this report. A slight shift in the volume of crimes or arrests may result in a large percent change for some offenses, arrests, and/or population groups.

A REVIEW OF HATE CRIMES

The general locations where hate crimes occurred in 2018-2019 are provided in the table below:

Location of Hate Crimes in Nebraska, 2018 – 2019

	2018	2019
Government/Public Building	0	2
Commercial (bar, restaurant, store, etc.)	7	11
Public Area (street, park, etc.)	6	13
Residence	16	15
School / College	0	6
Other	1	4
TOTAL	**30**	**51**

The types of offenses used in hate crimes in 2018-2019 are provided in the table below:

Types of Offenses Used in Hate Crimes in Nebraska, 2018 – 2019

	2018	2019
CRIMES AGAINST PEOPLE	**12**	**27**
Kidnapping	0	1
Aggravated Assault	2	3
Simple Assault	6	14
Intimidation	4	9
CRIMES AGAINST PROPERTY	**18**	**24**
Burglary	2	2
Larceny-Theft	2	6
Motor Vehicle Theft	1	0
Fraud Offenses	1	0
Destruction / Damage / Vandalism of Property	12	8
Shoplifting	0	4
Other	0	4
TOTAL	**30**	**51**

PLEASE NOTE: Caution should be used when comparing the percent changes presented within this report. A slight shift in the volume of crimes or arrests may result in a large percent change for some offenses, arrests, and/or population groups.

	DEC	LCC	NSP	TSCI	OCC	NCYF	NCCW	WEC	CCCL	CCCO
SU - Residential			XX	XX	XX		XX			
SU - R2P2			XX		XX					
SU - IOP		XX		XX	XX			XX	XX	XX
SU - OP								XX	XX	XX
SO - iHeLP					XX					
SO - oHeLP			XX	XX			XX			
MH - VOP - VRP		XX	XX	XX	XX					
MH - VOP - AMHRN		XX	XX	XX	XX	XX				
MH - ANGER MGT							XX			
MH - DBT	XX						XX			
MH - Medication Mgt		XX			XX		XX			
MH - Anxiety Reduction			XX							
MH - ART						XX				
MH - METEOR			XX							
MH - Living in Less Restrictive Environments				XX						
MH - START NOW							XX			
MH - VICTIM IMPACT						XX				
MH - Mindfulness-based Parenting						XX				
MH - Mindful Living						XX				
MH - Art Therapy						XX				
MH - Coping Skills		XX	XX				XX			
MH - Wellness							XX			
MH - Trauma Yoga							XX			
MH - Current Events		XX								
MH - Core Topics		XX	XX			XX				
MH - Ted Talks	XX									
MH - Path to Fulfillment							XX			
MH - Mood Mgt		XX	XX				XX			
Individual Therapy	XX	XX	XX	XX	XX	XX	XX	XX	XX	XX

Attachment C

Attachment D

TO: **NDCS STAFF**

FROM: **Behavioral Health Services**

DATE: **11/21/2017**

SUBJECT: **SHIFT FROM VRP TO VRP-INFORMED PROGRAMMING**

**Implementation of changes to the current VRP will start with groups beginning in January 2018.*

VRP Changes/Additions:

- VRP will move to a six month fixed schedule program consisting of 52 sessions total and is anticipated to run from January through June and July through December each year.
- VRP will move to a more psychoeducational style group potentially reducing the amount of facilitator and/or CVORT resources spent on VRP. This will also potentially reduce the amount of documentation necessary for VRP overall.
- VRP will move from a closed group to a semi-open group allowing individuals to transition in and out of group at pre-determined phases to allow for more transition/flexibility for transfers between institutions when absolutely necessary.
- VRP group size will increase from 12 to 14 participants.
- VRP will be manualized to insure consistency amongst various groups and institutions (*e.g. session 6 at NSP will be the same as session 6 at TSCI and LCC – manuals will be distributed*).
- Elimination of the inpatient model allowing VRP participants to live in in various locations as opposed to the need to all live on the same gallery giving the institutions more housing flexibility to manage the population's needs.
- VRP phase 3 will be reduced in duration due to the NDCS now having re-entry staff and social work in place to assist individuals with discharge planning, re-entry plans, and relapse prevention. VRP phase 2 will continue to have the greatest amount of dedicated time as this is the skill building phase of treatment.
- There will no longer be a requirement for CVORT to review individuals at the end of each phase and at the end of treatment. Facilitators and/or treatment teams will make determinations regarding successful completion of phases and treatment overall with the option to refer back to the CVORT as they deem is appropriate.
- VRP offerings will begin at OCC in January 2018.
- Training of VRP facilitators will all be completed within the NDCS as needed.

PLAN FOR 2018

- NSP: one VRP group is anticipated to run from January-June 2018, and two VRP groups are anticipated to run from July-December 2018. Additionally, the August 2017 VRP cohort will complete during 2018.
- TSCI: two VRP groups anticipated to run from January-June 2018 and two to run from July-December 2018.
- LCC: one VRP group anticipated to run from January-June 2018 and a second to run from July-December 2018.
- OCC: one VRP group anticipated to run from January-June 2018 and a second to run from July-December 2018.

NEBRASKA

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DEPT OF CORRECTIONAL SERVICES

Attachment E

NDCS Quarterly Population Summary
April - July 2020

Population and Demographics

Average Daily Population (ADP), by Facility

Facility	ADP	Operational Capacity	% Operational Capacity	Design Capacity	% Design Capacity
CCC-L	627	560	111.96%	460	136.30%
CCC-O	173	135	128.14%	90	192.22%
DEC	397	275	144.36%	160	248.12%
LCC	539	468	115.17%	308	175.00%
NCCW	287	318	90.25%	275	104.36%
NCYF	67	70	95.71%	68	98.52%
NSP	1,362	1,139	119.57%	718	189.69%
OCC	771	666	115.76%	396	194.69%
TSCI	1,047	976	107.27%	960	109.06%
WEC	198	200	99.00%	100	198.00%
Total	**5,468**	**4,807**	**113.75%**	**3,535**	**154.68%**

**ADP totals are rounded to the nearest integer*

County Jail ADP

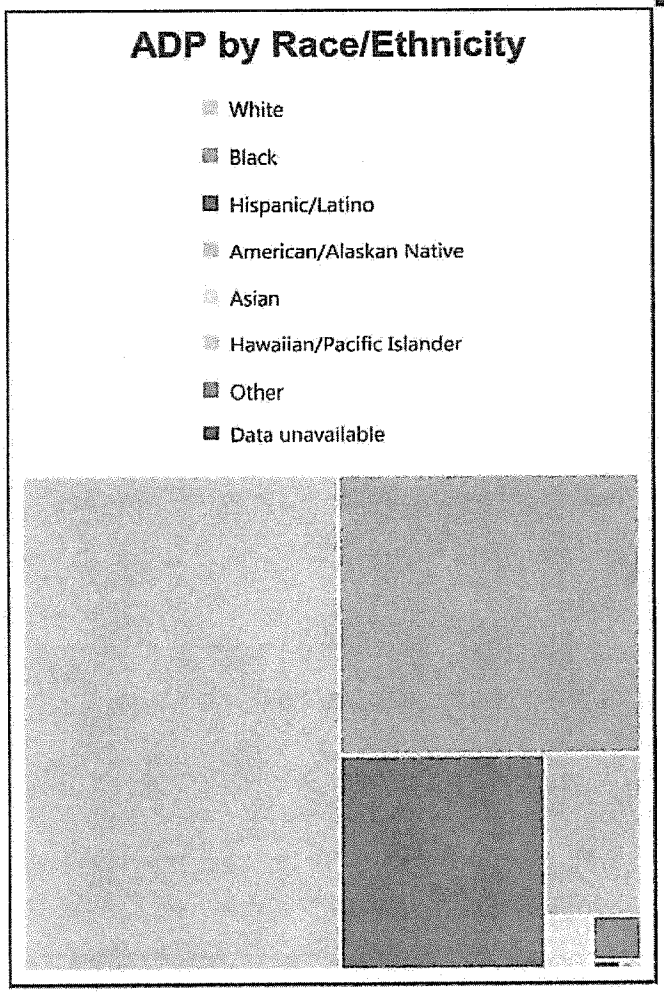
County	ADP
Buffalo	12
Dawson	7
Lincoln	19
Phelps	16
Platte	23
Scotts Bluff	6
Total	**83**

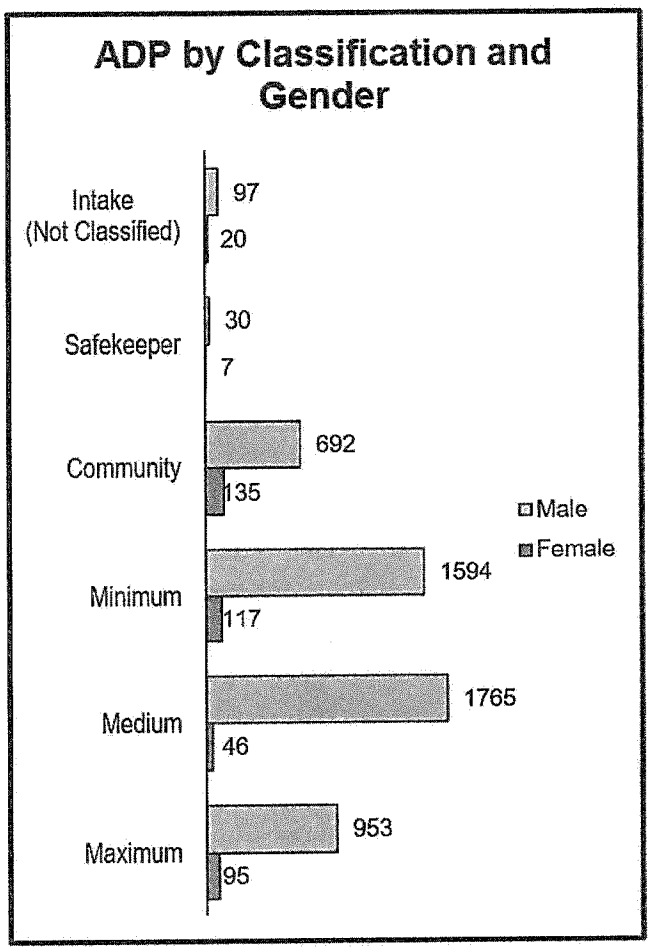
ADP by Gender

Gender	# Inmates
Female	419
Male	5,132
Total	**5,552**

Average Age

37.62 Years



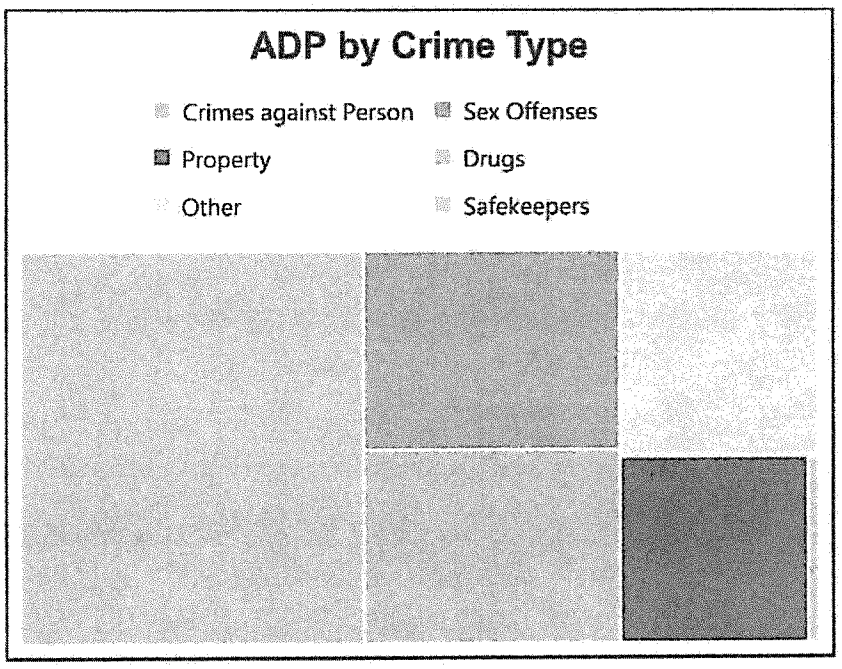


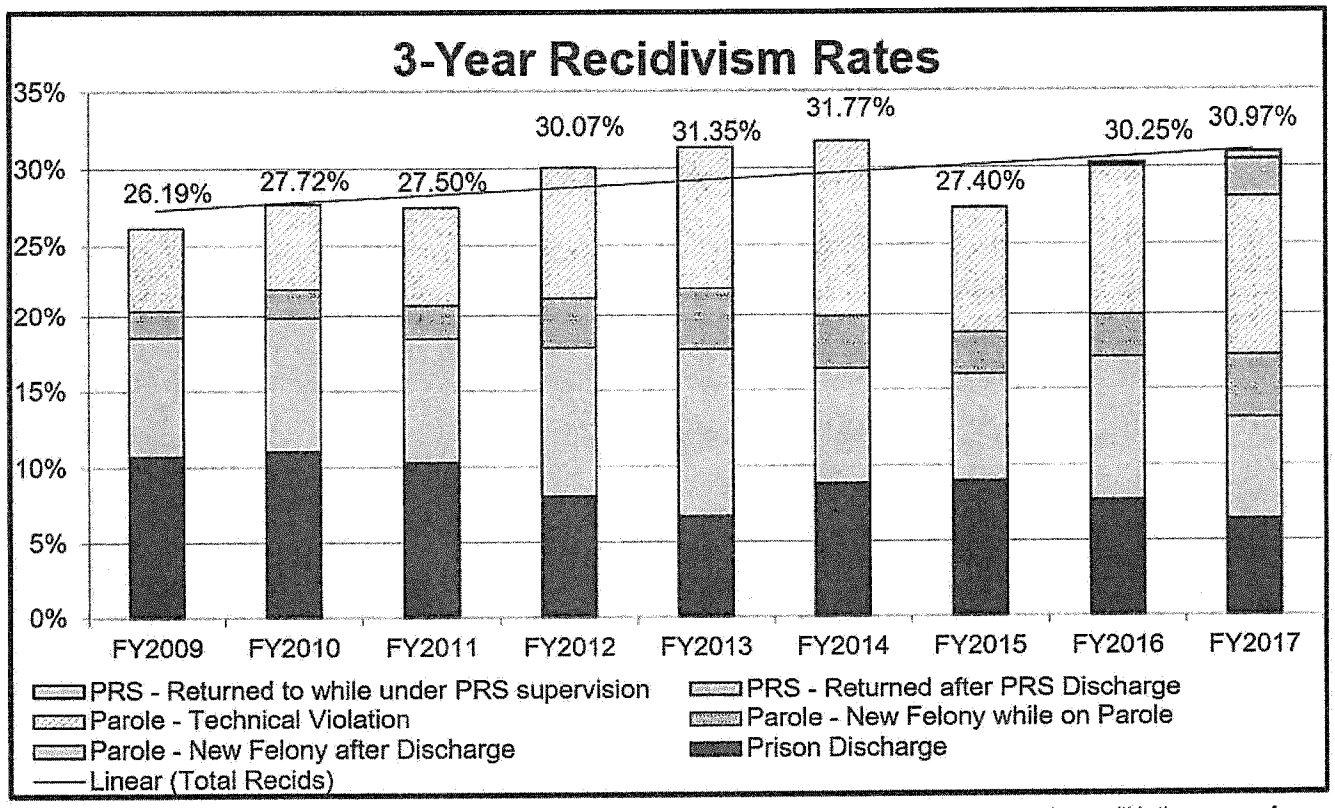
Population and Demographics (cont.)

ADP by Most Serious Offense

Category	ADP	%
Homicide	566	10.20%
Sex Offenses	1065	19.18%
Assault	1157	20.84%
Robbery	336	6.05%
Weapons	585	10.53%
Restraint	23	0.41%
Arson	24	0.42%
Drugs	849	15.29%
Burglary	214	3.85%
Theft	264	4.75%
Motor Vehicle	259	4.67%
Fraud	61	1.10%
Morals	15	0.27%
Other	100	1.80%
Safekeepers	36	0.65%
Total	**5,551**	**100%**

**MSO totals are rounded to the nearest integer*





"Recidivism" is defined as a return to NDCS custody as the result of a parole revocation or an admission on a new sentence within three years of a person's release from prison.

NEBRASKA

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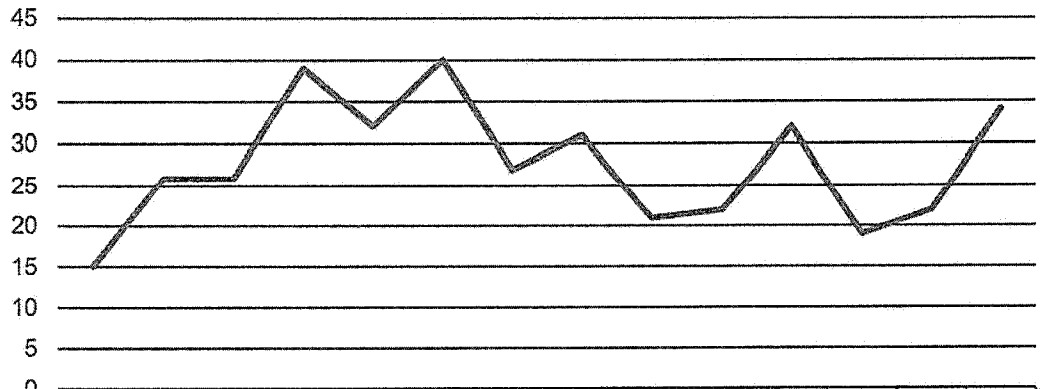
DEPT OF CORRECTIONAL SERVICES

NDCS Quarterly Population Summary
April - July 2020

Reentry and Discharge

Parole Revocations, by Month



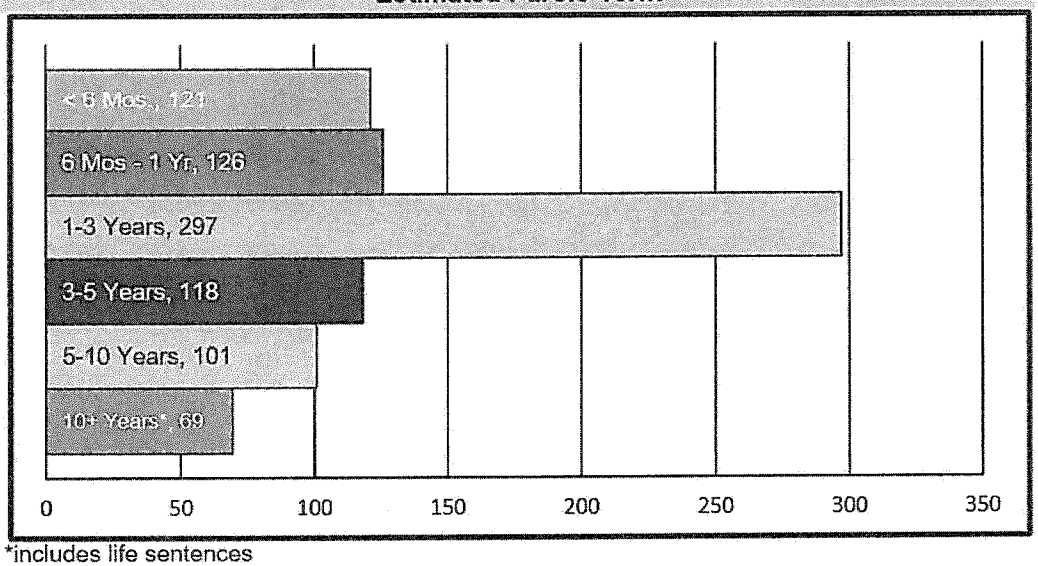
	May Q4 FY19	June Q4 FY19	July Q1 FY20	Aug Q1 FY20	Sept Q1 FY20	Oct Q2 FY20	Nov Q2 FY20	Dec Q2 FY20	Jan Q3 FY20	Feb Q3 FY20	Mar Q3 FY20	April Q4 FY20	May Q4 FY20	June Q4 FY20
Revocations	15	26	26	39	32	40	27	31	21	22	32	19	22	34
Male	11	24	24	32	32	37	24	28	17	19	27	16	20	33
Female	4	2	2	7	5	3	3	3	4	3	5	3	2	1
Technical	9	13	13	12	6	16	15	12	4	4	10	11	9	20
New Law Violation	6	13	13	27	26	24	12	19	17	18	22	8	13	14

Inmates Housed Past Parole Eligibility Date (PED), by Facility

Count

Facility	ADP
CCL	112
CCO	35
DEC	84
LCC	86
NCW	29
NCY	3
NSP	171
OCC	143
TSC	127
WEC	36
Total	**826.84**

Estimated Parole Term

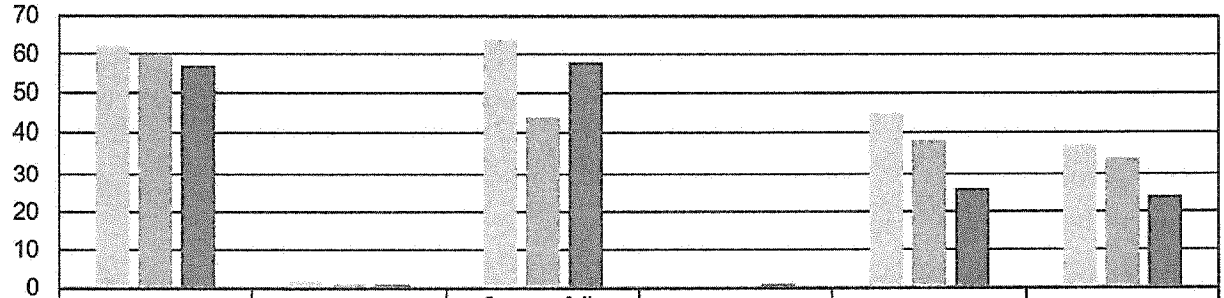


*includes life sentences

"Parole Eligibility Date" (PED) is the date at which it is possible to release a person into the community under parole supervision. "Estimated Parole Term" refers to the length of time people who are housed past their PED could be expected to spend in the community under supervision if released immediately.

Reentry and Discharge (cont.)

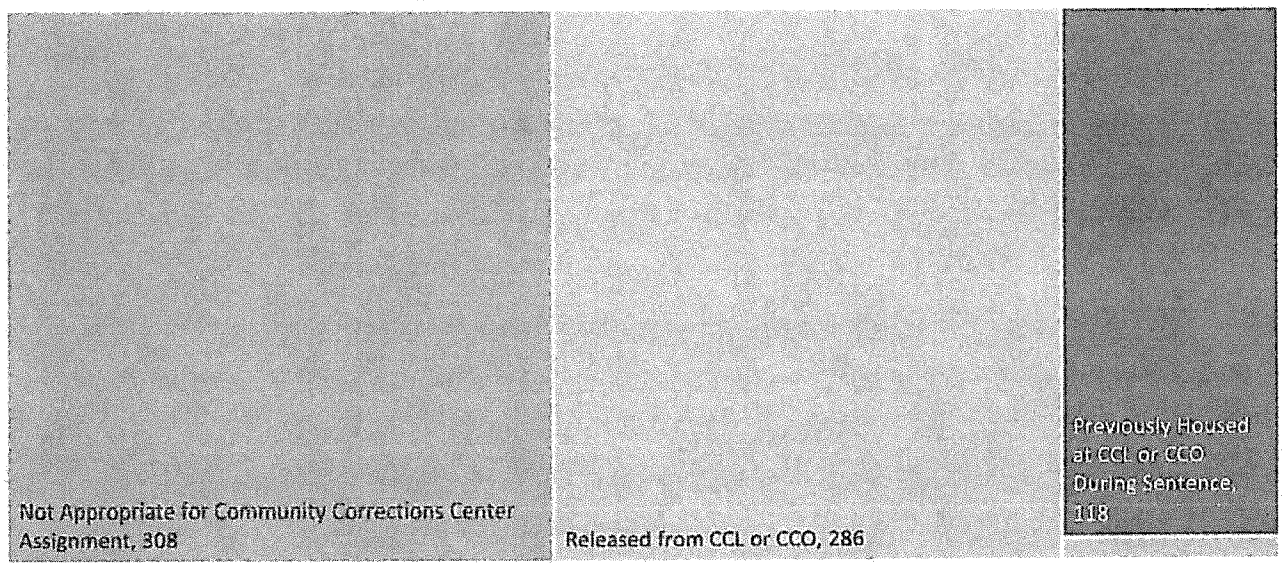
Mandatory Discharges, by Type



	Released to Post-Release Supervision	Deceased	Successfully Completed Sentence on Parole	Released to Other Jurisdiction	Flat Sentence	Mandatory Discharge
Apr	62	2	64	0	45	37
May	60	1	44	0	38	34
Jun	57	1	58	1	26	24

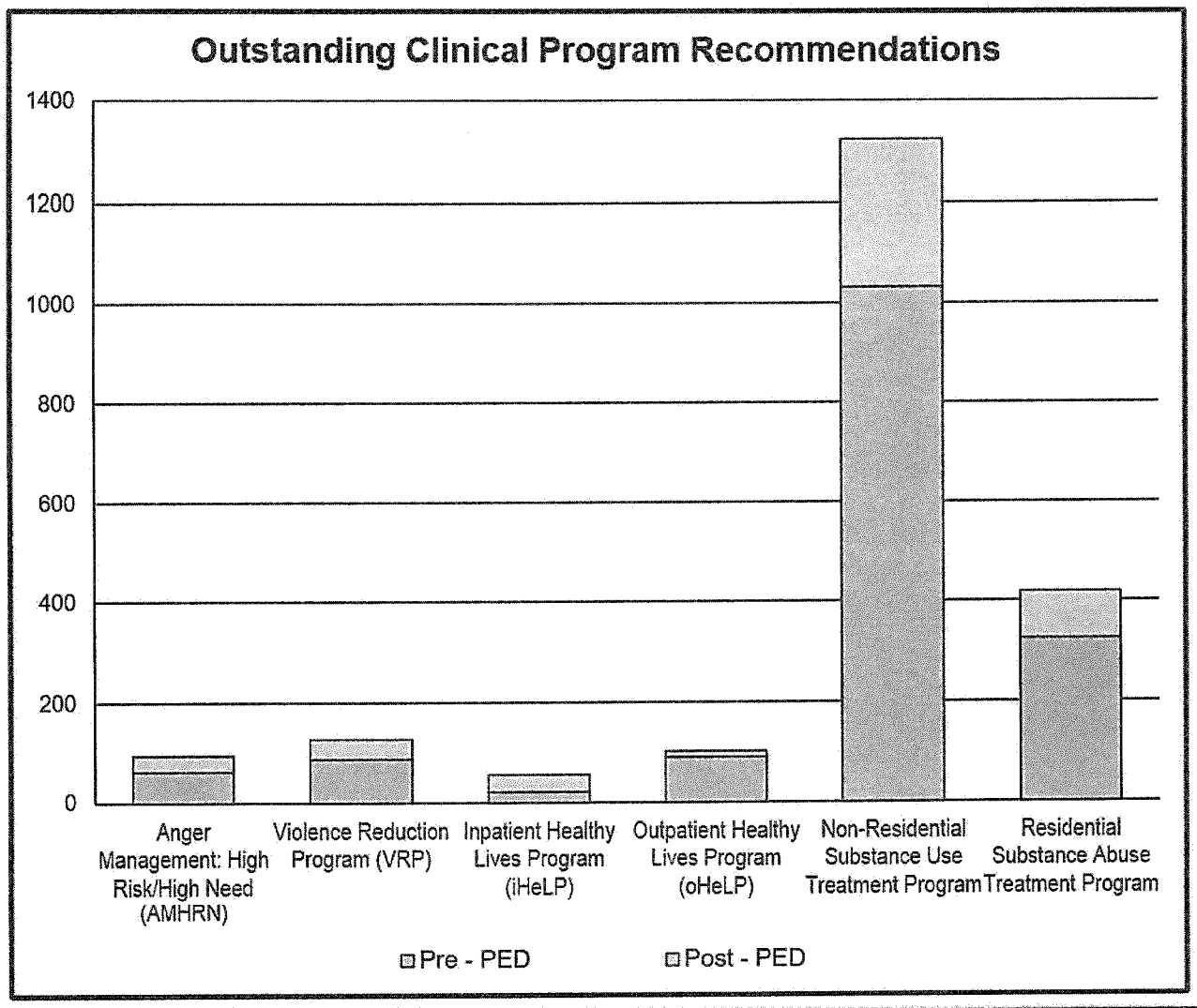
"Post-Release Supervision" occurs after a person discharges from NDCS custody and is a term of community supervision under the Office of Probation Administration. "Flat Sentence" refers to people with the same minimum and maximum sentence lengths, which does not allow for a period of parole during their term of incarceration. "Mandatory Discharge" indicates people who completed their sentence in an NDCS facility and discharged directly into the community.

Transitions through Community Corrections Prior to Release



The graphic above considers all individuals who paroled or discharged during the quarter and identifies whether they were able to transition through Community Corrections Center - Omaha or Community Corrections Center - Lincoln prior to their release.

Programming Information - Outstanding Recommendations



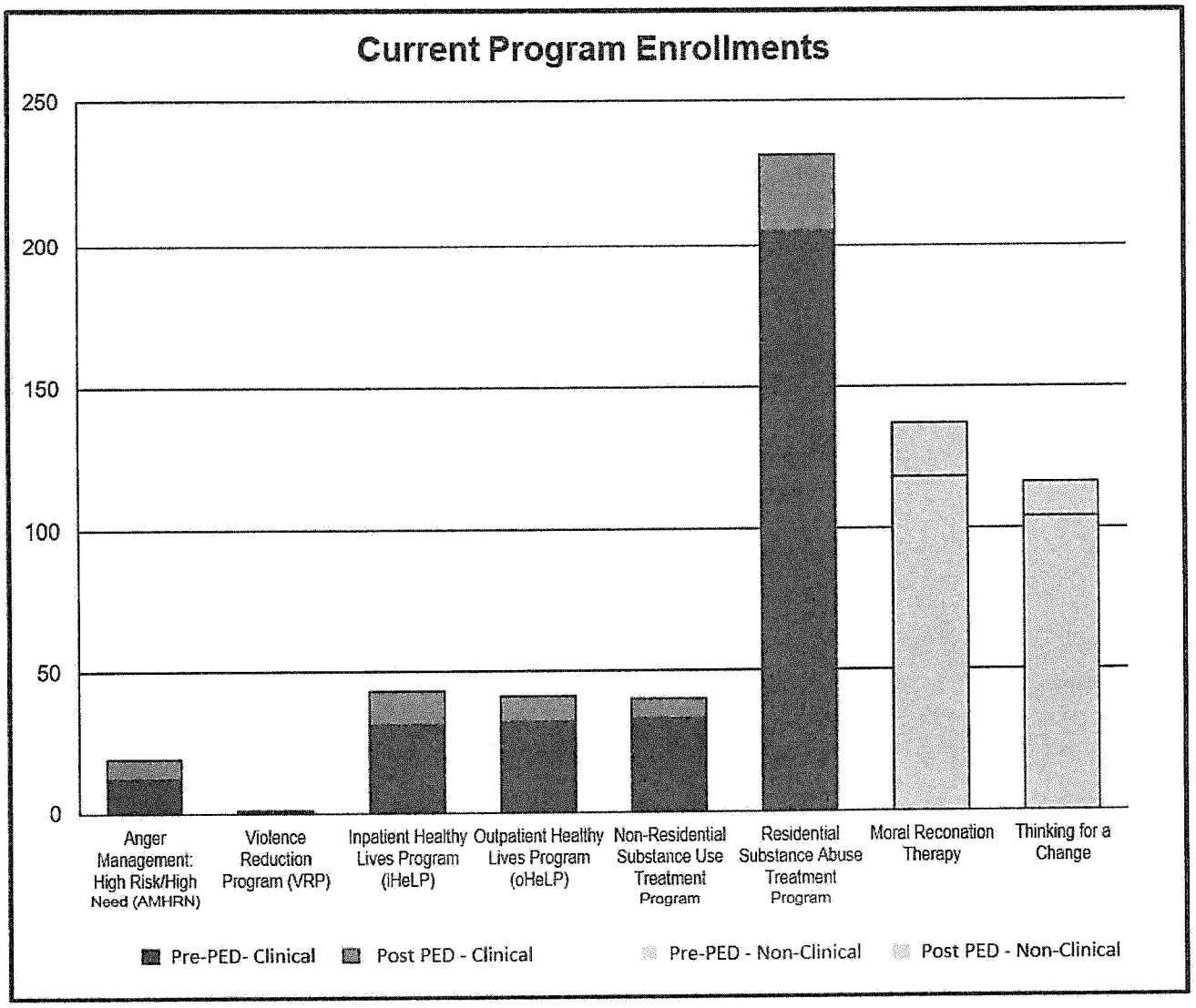
People Past PED with Outstanding Clinical Program Recommendations

Time to Tentative Release Date

Program	≤ 6 Months	6 Months to 1 Year	1 to 3 Years	3 to 5 Years	5 to 10 Years	10 or More Years*
AMHRN	4	7	10	6	5	1
VRP	0	6	15	6	8	4
iHeLP	3	3	8	7	3	9
oHeLP	3	1	2	3	1	1
Non-Res.	47	41	107	45	30	20
Res.	18	11	31	13	12	8

*includes individuals serving life sentences

Programming Information - Current Enrollments

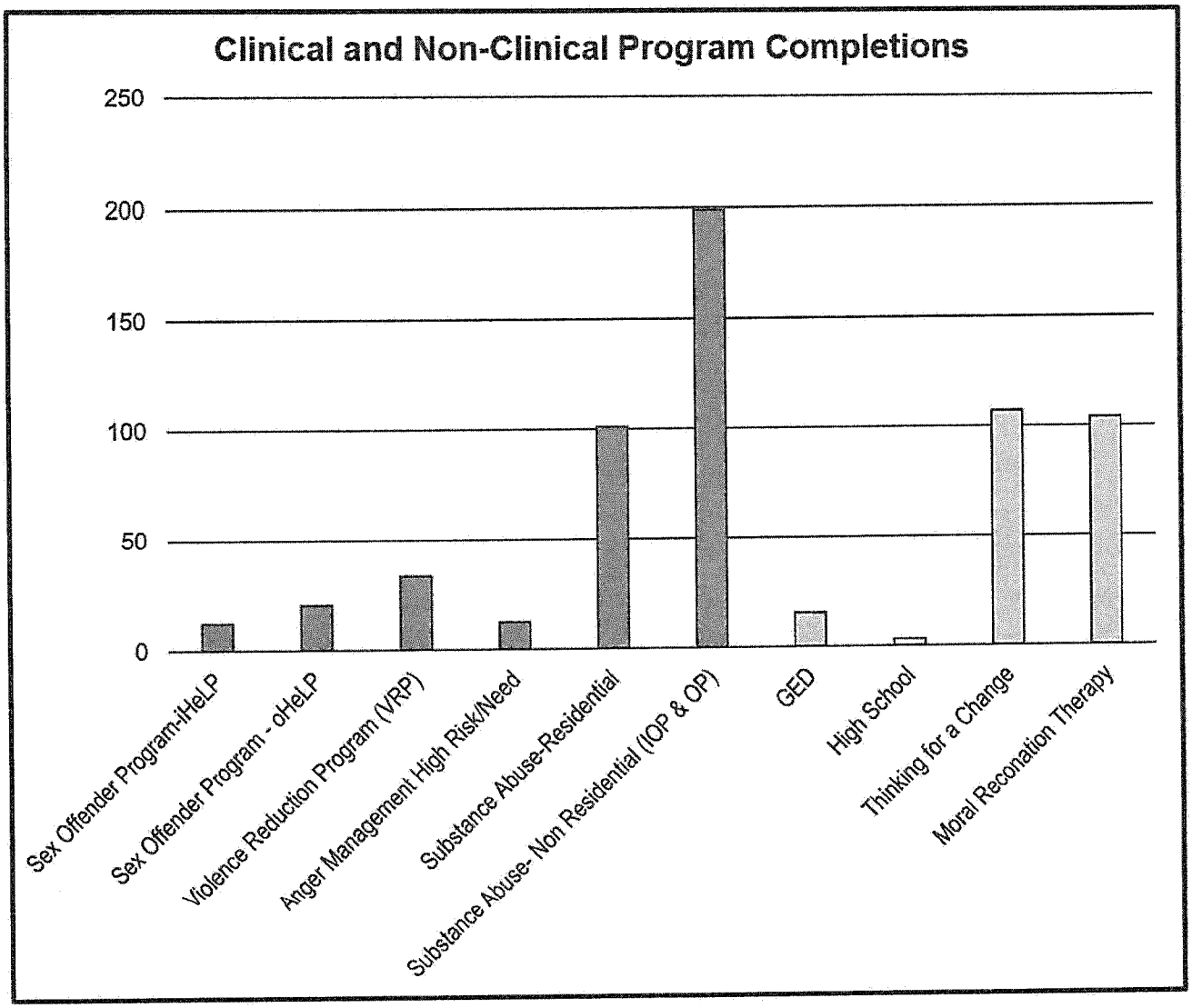


People Past PED Currently Enrolled in Clinical Programming
Time to Tentative Release Date

Program	≤ 6 Months	6 Months to 1 Year	1 to 3 Years	3 to 5 Years	5 to 10 Years	10 or More Years*
AMHRN	1	0	2	2	2	0
VRP	0	0	0	0	0	0
iHeLP	1	2	5	2	2	0
oHeLP	3	2	2	2	0	0
Non-Res.	0	1	3	1	1	1
Res.	5	8	7	3	1	2

*includes individuals serving life sentences

Programming Information - Program Completions



NEBRASKA

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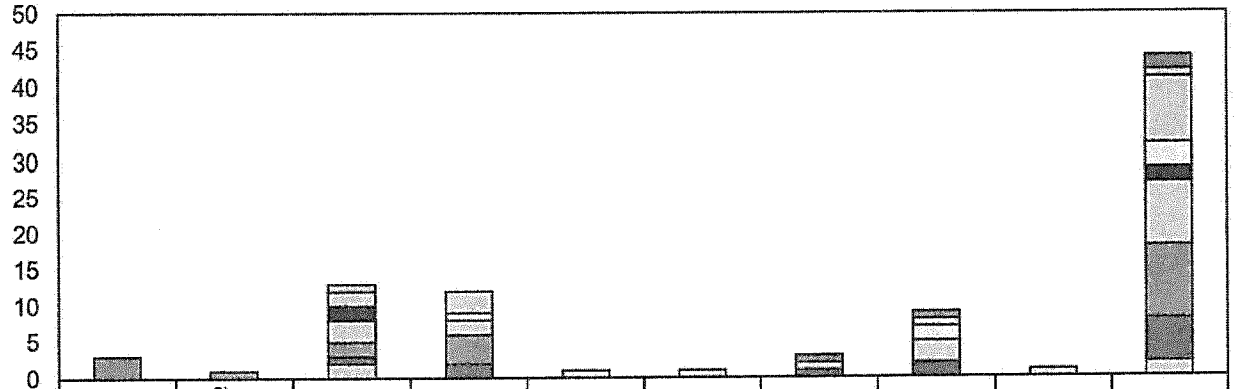
DEPT OF CORRECTIONAL SERVICES

NDCS Quarterly Population Summary
April - July 2020

Staffing

Behavioral Health Vacancies



	Certified Master Social Worker	Chem Dependency Counselor Supervisor	Chem Dependency Counselor	Mental Health Practitioner II	Nurse Practitioner	Psychiatric Director	Psychiatrist/ Clinical	Psychologist/ Licensed	Registered Nurse	Grand Total
DEC	0	0	0	0	0	0	1	1	0	2
CCC-L	0	0	1	0	0	0	0	0	0	1
LCC	0	0	2	3	1	1	0	1	1	9
NCCW	0	0	0	1	0	0	0	2	0	3
NCYF	0	0	2	0	0	0	0	0	0	2
NSP	0	0	3	2	0	0	1	3	0	9
OCC	3	1	2	4	0	0	0	0	0	10
TSCI	0	0	1	2	0	0	1	2	0	6
WEC	0	0	2	0	0	0	0	0	0	2

Calendar Year-to-Date Turnover (through Jun. 30, 2020)

	T/O YTD	Auth FTE	T/O Rate
Total Turnover Rate for Protective Services:	191.00	1,380.50	13.84%
Total Turnover Rate for Nurses:	0.00	70.50	0.00%
Total Turnover Rate for Education:	4.00	27.50	14.55%
Total Turnover Rate for Other:	90.00	1,028.50	8.75%
Total Projected Annual Turnover Rate for Protective Services:			27.67%
Total Projected Annual Turnover Rate for RN's & LPN's:			0.00%
Total Projected Annual Turnover Rate for Education:			29.09%
Total Projected Annual Turnover Rate Other:			17.50%
Total Agency Turnover Rate:	285.00	2,507.00	11.37%
Total Projected Agency Turnover Rate:			22.74%

RECEIVED BY
JUL 15 2020
OMBUDSMAN'S OFFICE

Attachment F

Dear Doug Koebernick 7/7/2020

My name is Matthew Layman # 89705. I am at the Omaha community correctional facility. I came here under the impression I would be placed on workrelease at my one year date. I have ~~done~~ done my programing and followed the rules and bettering myself in every way. I got married and have a nine month old son. My wife and son need me to help suport them.

Well a couple weeks ago I was placed on 4B Custody and then told I can't go get a job in there questimation till November or December. How is it that I followed all the rules and bettered myself in everyway I was told and then when its time to finally get to go get a job that I can't cause they let every one who has less time than me cut me on the list. ~~I to~~

I have spent my whole life in and out of these places and when I finally have a chance to change it I can't.

I'm 4B custody and told ~~a~~ I am on workrelease but can't go get a job. I'm asking that you help me with this problem and get me to go out and work and suport my family. ~~and~~ I need this sir and I'm asking that you look into this so called list they have at CCC-O. Thank You

Sincerly,

Matthew Ly

Matthew S. Layman 89705
2320 E Avenue J
Omaha, NE 68110

Attachment G

Agenda: Reduction of Prison Population by 50% in 10 years

- Commutation of Life Sentences - pg. 3
- Parole Granted to those Eligible - pg. 3
- Reduce Lengthy Sentences By Pardons Board - pg. 3
- Use More Community Corrections Centers - pg. 4
- Use More House Arrest Placements - pg. 5
- Renovate Hastings and Other Previously Available Alternatives - pg. 5
- Engage with Judges to Reduce Minimum Terms at Sentencing - pg. 5
- Reduce Penalties for Weapons Offenses and Allow Concurrent Sentencing - pg. 6
- Reduce Penalties for non-violent Habitual Offenders - pg. 6
- Eliminate Mandatory Sentencing for Felony Murder - pg. 6
- Allow a Prisoner to Establish Rehabilitation and Earn Resentencing - pg. 7
- Provide Ankle Monitor Placement in Mental Health Association Housing - pg. 8
- Open Ankle Monitor Facilities Operated by NDCS in the Community - pg. 9
- Partner with Compassion In Action, Prison Fellowship and Rise for Alternative Housing Placements - pg. 9
- Give Earned Time per Program Completed (Rise, RTC, Healing Circle, Restorative Justice etc)(6 months off sentence for 6 month program)(Retroactive) - pg. 10
- Give Earned Time per Course Completed (T4C, MRT etc)(1 month off per program) (Retroactive) - pg. 10
- Give Earned Time per GED Completed (1 year off upon completion) (Retroactive)- pg. 10
- Give Earned Time per College Course Completed (3 months off) (Retroactive) - pg. 10
- Give Earned Time to Peer Support Volunteers (1 year off for every year as a volunteer) (Retroactive) - pg. 10
- Give Earned Time to Peer Support Participants (1 month off for every month involved in peer support) (Retroactive) - pg. 10
- Give Earned Time for Employment (3 months off for every year at the same job) (Retroactive) - pg. 10
- Give Earned Time for Self-Betterment Club Involvement (3 month off for every year)(Retroactive) - pg. 10
- Give Earned Time for 1 year of no misconduct reports (6 months off for every year)(Retroactive) - pg. 10
- Grant Furloughs for 1 year of no misconduct reports (for all prisoners) - pg. 11
- Psychological Evaluations Given at Start of Sentence for Baseline - updated for Release Possibilities (for all prisoners) - pg. 11
- Elderly Prisoner Release - pg. 12
- Public School Education of Crime and Punishment and Restorative Justice - pg. 12
- Total Approximate Reduction and Conclusion - pg. 13

Stake Holders

Governor

Attorney General

Secretary of State

Director of Corrections

Parole Board Members

Senators

Prisoners

Community Leaders

ACLU

Mental Health Association of Nebraska

Compassion In Action

Rise Executive Team

Prison Fellowship Academy

Judges

Prosecutors

Defense Attorneys

Law Enforcement

Educators

Supporting Statements:

- Commutation of Life Sentences

The recidivism rates of individuals that have served lengthy sentences (20 years or more), and life sentences specifically, is less than 2% nationally. This group contains some of the hardest working prisoners as it relates to rehabilitation, community activism, and demonstrated changes in their lives. Prior to the "tough on crime" era, people convicted of first degree murder were given commutations and released in about 17 calendar years (on average). They were allowed to work at the Governor's Mansion, go to work release and have regular furloughs. Nothing has changed that makes these prisoners more dangerous or threatening now than they were before. As such, they deserve the same opportunities afforded to the lifers of the 60's, 70's, 80's and early 90's. By keeping these low-risk offenders in prison, we are not serving public safety because they are no longer a danger after the life-changes and other facts that establish their low-risk status. A release valve of this nature will prevent indefinite bed space being held down without continued cause. For this to effectuate a change in the prison population, the Nebraska Board of Pardons will need to engage in an honest review of applications for commutation and only deny those that are obviously against public interests. (Approximately 265 prisoners in Nebraska serving life without parole - 2016)(Approximate reduction in 10 years - 130 people)

- Parole Granted to those Eligible

There are approximately 900 to 1,200 prisoners currently eligible for parole (number varies). By requiring parole at first eligibility, upon completion of programming or outside alternatives being set up, there will be a constant release valve that will maintain a reduced prison population. This will require the Nebraska Board of Parole to grant parole to everyone that meets the minimum standard of eligibility and only deny those that are obviously against public interests. Alternatively, the Legislature may enact a mandatory parole system to accomplish this goal. (Approximate reduction in 10 years - 1,200 people)

- Reduce Lengthy Sentences By Pardons Board

The Nebraska Board of Pardons is currently the only agency that has the power to reduce validly entered sentences. By accepting applications, and reviewing them based on the merits of rehabilitation, pro-social behaviors and favorable institutional records, the Board may be able to reduce and eliminate some of the already existing sentences that are no longer needed to protect the public due to these quantitative factors. (Approximately 408 prisoners in Nebraska serving virtual life sentences - 2016)(Approximate reduction in 10 years - 200 people)

- Use More Community Corrections Centers

Community Corrections offers a reduced cost of incarceration, fewer staffing concerns and operational benefits that do not exist in a maximum security prison. By using more of these lower custody facilities, the Department will free up bed space at the more expensive maximum security rate and reduce the overall cost of housing the same amount of prisoners. Currently, a person is only eligible for work release when they are within 12 months of release or if they are given a Final Parole Hearing. This needs to be changed to allow anyone that is low-risk to be housed at community corrections.

There are additional benefits to this change such as prisoners being able to work in the community for longer which allows them to save and establish a network prior to release. They will be paying taxes, room and board, as well as earning valuable work experience while still being monitored by the Department.

Educational release is equally valuable and currently unobtainable for anyone serving a longer sentence. The fact that a lack of education is the number one reason that people come to prison means this should be available to anyone interested. College courses are no longer taught in most facilities, and no degree programs are on-sight except through very expensive correspondence courses that most prisoners are unable to afford.

Also, programming needs and waiting list considerations may be more easily met if the programming is available outside of the Department. Being housed in these lower custody facilities will provide additional options for prisoners to complete their programs and earn release, thus reducing the population.

By giving longer term prisoners the same advantage of community corrections as was previously available in the 60's, 70's, 80's and early 90's, it provides hope and proper incentive to reduce the violence and other destructive behavior at the maximum security levels. Without hope or possibilities, some of these long-term offenders do not maintain appropriate mental health and determine that they have no incentive to change. Opening up the possibility of a better living environment is a pro-social behavior creator and will protect custody staff, reduce the pursuit of contraband and enable more rehabilitation by this long-term prison demographic.

Finally, by housing prisoners with life sentences in community corrections, the overall cost of long-term incarceration is cut in almost half. The membership of the Circle of Concerned Lifers Organization is a perfect example. There were 71 members (not all serving life) with a combined 1,426 years collectively served, at a cost of approximately $42 million. By having

those 71 members serve half of their sentences in community corrections, there would have been a $17 million dollar savings. This is almost half of the overall cost and definitely a reasonable budgetary consideration when the recidivism rates of these lifers demonstrate that they are the least likely to reoffend if released. As such, it would better serve the public to house them safely at this lower custody level. (The Legislature would need to appropriate funding for more community beds and the Director of Corrections would need to allow custody promotions for all prisoners regardless of sentence structure). (Approximate reduction in 10 years - 300 people)

- Use More House Arrest Placements

The use of house arrest placements are available through the use of ankle monitors and parole officers. There may require additional parole or probation officers in certain areas, however, the cost of such would still be less than the cost of housing these low-risk individuals in a correctional facility. The Parole Board and the Director of Corrections would need to partner in their efforts to select and approve the correct candidates for such a placement. Time structure should not be used as an exclusionary factor, only risks to the public and recidivism considerations. (Approximate reduction in 10 years - 200 people)

- Renovate Hastings and Other Previously Available Alternatives

The need for additional bed space requires that the Department, Legislature and Community Leaders engage in revisiting areas that previously provided correctional options. An example of the same is the facility in Hastings that was closed rather than renovated. This would give a platform to build from that does not currently exist and begin to implement programs that succeeded in the past. There is also a reduced cost of renovation rather than new construction, which is a benefit to tax payers and a shorter time frame to completion. (The Legislature would need to appropriate funds).

Other alternatives include regional centers that are closed, housing developments no longer being used and any placement that could be renovated rather than requiring completely new construction.

- Engage with Judges to Reduce Minimum Terms at Sentencing

In order to decrease the prison population in a sustainable way, we must enlist the assistance of the Judges that determine the appropriate punishments for crime. The Legislature may simply prevent judges from assessing a lengthy minimum term to provide for parole eligibility at an earlier date, or judges could be engaged to start the process on their own. In order for this to produce the desired outcome, i.e., reduced prison population, the parole board must grant parole at first eligibility on a consistent basis. (Approximate reduction in 10 years - 300 people)

- Reduce Penalties for Weapons Offenses and Allow Concurrent Sentencing

Prior to the increase of the sentencing range for the use of a weapon to commit a felony, the maximum penalty was 20 years. Now it is 50 years and judges are handing out sentences in the range of 45 to 50 years. This charge is also mandatorily consecutive to any other sentence. In some instances, the weapons violation penalty is greater than the penalty for the original charge. With it being a consecutive term, some individuals are sentenced to 65 to 70 years when the original charge was a 20 year maximum. Making this retroactive would greatly reduce the prison population. (The Legislature would need to enact law to accomplish this). (Approximate reduction in 10 years - 100 people)

- Reduce Penalties for non-violent Habitual Offenders

The use of habitual criminal statutes have greatly impacted the overcrowding emergency. The primary goal of such legislation was to protect society from the most dangerous, repeat offenders. However, the application of these enhanced penalties were not narrowly focused to violent offenses and now encompass any felony convictions that resulted in a 1 year incarceration for separate offenses. Eliminating the use of habitual offender enhancements on non-violent offenders is currently being discussed by the legislature. Making this retroactive would greatly reduce the prison population. (The Legislature would need to enact law to accomplish this). (Approximate reduction in 10 years - 100 people)

- Eliminate Mandatory Sentencing for Felony Murder

Felony murder statutes are a tool given to prosecutors to enhance murder convictions that would otherwise result in a sentence with a parole eligibility. These 1st Degree Murder convictions are sometimes less violent in the factual basis of the crime and the death of the individual may even be accidental. However, due to circumstances where the crime occurred during the course of a felony, the offender receives a mandatory life without parole sentence. Judges have spoken out regarding the lack of discretion at sentencing as it relates to the facts of the case and the defendant individually. The use of a discretionary sentencing scheme is paramount in handing out appropriate punishments for criminal behavior. Each crime is different in its factual basis, criminal intent and depravity or lack thereof.

Applying an inferred intent based off the death of a person due to an underlying felony is to say that every person that commits crime, regardless of circumstances, is culpable of premeditated homicide if someone dies. There are examples that show how absurd this is. One case resulted in a person serving a life sentences for a burglary of $50 that caused a person to have a heart attack and die from fright. The perpetrator did not lay a hand on the victim but the person died during the burglary and he received life without parole as a 20 year old kid. Another example is

a robbery where the victim was shot due to an accidental discharge of the firearm. This person received life without parole at the age of 18.

In the first example, under these circumstances, separating the facts of the case would have resulted in a charge of burglary (a class IV felony - up to five years) and manslaughter (up to 20 years - an accidental death during an unlawful act); and in the second example, a conviction for robbery (up to 50 years) and manslaughter (up to 20 years - an accidental death during an unlawful act). Both of these young men would have been released from prison if their crimes were either a) separated based on the facts; or b) sentenced under a discretionary sentencing scheme. As such, eliminating the mandatory sentencing scheme at the very least is warranted, if not eliminating the felony murder provisions all together. Making this retroactive would greatly reduce the prison population. (The Legislature would need to enact law to accomplish this). (Approximate reduction in 10 years - 30 people)

- Allow a Prisoner to Establish Rehabilitation and Earn Resentencing

Vinter and Others v. United Kingdom is a case where the European Court of Human Rights decided in 2013 to ban life without parole sentences in member nations. The Court held that all prisoners should have the "right to hope." All of the convicted persons in this case had committed murders and even though the circumstances of their crimes were said to be grotesque, sadistic and torturous, they were deemed to be capable of reform.

A resource that is more fully capable of explaining the merit of providing a meaningful opportunity for this "right to hope" is a book written by Marc Mauer and Ashley Nellis called **The Meaning of Life**. Their analysis of abolishing life sentences goes into international standards, prison overcrowding and inhumane treatment of persons that are provided with no hope of reentering society. I strongly recommend that everyone reading this Agenda that is interested in prison reform read this book.

For my part, I will say that everyone that is convicted of crime has the ability to reform. This means they should have an opportunity to be resentenced after establishing this rehabilitation. Most people "age out" of crime eventually and there is no threat to public safety in releasing those individuals. The only thing we are accomplishing by maintaining their "lawfully entered sentences" is to compound mass incarceration well past the point of necessity. If the concept of removing someone from society is to protect the general public from their criminal acts, then it stands to reason that once that behavior has ceased, they should be returned to society. By allowing them to be resentenced, we will provide that "right to hope." (The Legislature would need to enact law to accomplish this and the Director of Corrections would need to allow programming opportunities for all prisoners regardless of sentence structure). (Approximate reduction in 10 years - 300 people)

- Provide Ankle Monitor Placement in Mental Health Association Housing

The Mental Health Association of Nebraska (MHA) has trained several inmates in the methods of Intentional Peer Support. The group at the Nebraska State Penitentiary were given an Official Proclamation from Governor Ricketts acknowledging our hard work in this area and August 12th is now Intentional Peer Support Recognition Day.

In furtherance of this partnership, MHA has interest in housing some of the trained individuals at their established peer support houses. These facilities are locked in the evenings and offer a structured environment. Only those trained in peer support would be eligible for this placement, however, they would continue to provide their services to the Department of Corrections (NDCS) and assist MHA in taking Intentional Peer Support (IPS) to other institutions across Nebraska and to other states. Ankle monitors may be used for added public safety if the Department so desires and regular contact with NDCS staff would be established.

The benefits of this alternative to corrections placement are substantial, although the number of individuals eligible are limited. For starters, NDCS would not require additional staffing or other services that are currently required to house these peer supporters. The cost of incarceration would all but be eliminated and these individuals would be resources available on a community level rather than an isolated institutional level.

The benefits to MHA are also substantial given the additional trained staff at their locations. These live-in peer support specialists would establish a "norm" in the house that currently does not exist and provide MHA with a resource in their efforts to expand IPS to other state correctional facilities. Having lived in and provided peer support in correctional facilities, these specialists are invaluable to the success of expansion and first-hand knowledge of what makes IPS work in prison. The effort to offer IPS in corrections is relatively new and Nebraska was first in earning international certification of its prisoners. We can place Nebraska on the frontlines of expansion and generate a huge support system for the more than 1.5 million Americans currently incarcerated across our country.

Alternatively, MHA has interest in partnering with NDCS to offer a state run facility designed around IPS. The specialists trained by MHA would reside there and offer live-in peer support to other correctional clients, or those in transition, however, NDCS would manage security. This arrangement would offer a more structured environment with social interactions designed for peer support and the services they provide. (The Legislature would need to appropriate funds and the Director of Corrections would need to allow custody promotions to all prisoners regardless of sentence structure. The Director of Corrections would also need to designate

MHA housing as a place of confinement for peer supporters pursuant to Neb.Rev.Stat 83-173 and 83-176(2)). (Approximate reduction in 10 years - 25 people)

- Open Ankle Monitor Facilities Operated by NDCS in the Community

Ankle monitor facilities are available in a community based setting where the general day-to-day movement of prisoners are controlled by electronic monitoring. These facilities could be established by purchasing an existing hotel chain or other non-secure location that is designed for overnight guests. The cost of creating such a facility would be substantially less than opening a customary correctional facility and is relatively turn-key in its setup and operation. (The Legislature would need to appropriate funds and the Director of Corrections would need to designate this as a place of confinement pursuant to Neb.Rev.Stat 83-173 and 83-176(2)). (Approximate reduction in 10 years - 40 people)

- Partner with Compassion In Action, Prison Fellowship and Rise for Alternative Housing Placements

The MHA model is available for expansion using the graduation of persons completing training with Compassion in Action, Prison Fellowship and Rise. If these groups would be willing, they could establish housing options outside of corrections that are specifically geared towards accepting individuals that have completed their programming. The funding for such housing could be privately funded or in partnership with the State.

If such an option is established, the benefits of this alternative to corrections placement are substantial, although the number of individuals eligible are limited. For starters, NDCS would not require additional staffing or other services that are currently required to house these prisoners. The cost of incarceration would all but be eliminated and these individuals would be resources available on a community level rather than an isolated institutional level.

Additionally, Prison Fellowship is always looking for housing options for its graduates. This would give them a way to continue their efforts, solve the housing issues inside prison for their graduates and help reduce prison overcrowding.

As for Compassion in Action and Rise, their partnership with NDCS, and the long established connections to assisting reentry are the groundwork that establish a potential opportunity to expand their services and better focus their resources to the people they are trying to help. (The Legislature would need to appropriate funds and the Director of Corrections would need to allow custody promotions to all prisoners regardless of sentence structure. The Director of Corrections would also need to designate this as a place of confinement pursuant to Neb.Rev.Stat 83-173 and 83-176(2)). (Approximate reduction in 10 years - 75 people)

- Give Earned Time per Program Completed (Rise, RTC, Healing Circle, Restorative Justice etc)(6 months off sentence for 6 month program)(Retroactive)
- Give Earned Time per Course Completed (T4C, MRT etc)(1 month off per program) (Retroactive)
- Give Earned Time per GED Completed (1 year off upon completion) (Retroactive)
- Give Earned Time per College Course Completed (3 months off) (Retroactive)
- Give Earned Time to Peer Support Volunteers (1 year off for every year as a volunteer) (Retroactive)
- Give Earned Time to Peer Support Participants (1 month off for every month involved in peer support) (Retroactive)
- Give Earned Time for Employment (3 months off for every year at the same job) (Retroactive)
- Give Earned Time for Self-Betterment Club Involvement (3 month off for every year)(Retroactive)
- Give Earned Time for 1 year of no misconduct reports (6 months off for every year)(Retroactive)

Granting earned time or sentence reduction credits is not a new concept (see the federal prison system) but it must be expanded in a meaningful way. The above stated criteria is designed to give incentives to everyone incarcerated to seek programming opportunities with a specific reward for doing so. This obviously must be available to all prisoners equally, not based off time structure limitations as it is now. The expansion of all programs will create challenges for corrections, however, the goal of reducing overcrowding will ultimately make these programming options less crowded as the population is reduced as a result.

The behavior and violence concerns of the incarcerated population would be reduced by giving them a method of reducing their sentences and offer a reliable gauge of those ready for parole and those that are not even trying. The benefits to NDCS would be tremendous if more of their correctional clients were programming rather than engaging in the destructive activities that they use to pass the time. Most prisoners need something to care about and earned time would fill that void.

Furthermore, if this plan of earned time is going to work, the parole board must be required to grant parole at a person's first eligibility, or a mandatory parole system needs to be implemented.

I believe a study of how many people would be eligible for parole immediately if this were applied retroactively is warranted. The fact that several hundred individuals have been

diligently pursuing programming for decades serves as merit to their reentering society. At the very least, this would create more people available to transition to community corrections, which as previously discussed, will reduce the cost of incarceration, lessen staffing concerns and provide operational benefits that do not exist in a maximum security facility.

In this regard, the Legislature would need to pass a retroactive earned time credit or sentence reduction credit provision. Currently, the NDCS is unable to produce this result without statutory authority. (Approximate reduction in 10 years - 300 people)

- Grant Furloughs for 1 year of no misconduct reports (for all prisoners)

The use of furloughs is highly underrated in motivating prisoners to conform to lawful conduct. In the 60's, 70's, 80's and early 90's, the use of furloughs for all prisoners served as a behavior modification tool that was hugely successful. This was available from every facility, including maximum security. If the warden or director wanted to allow someone to go out on a furlough, they were authorized to do so. Currently, if the director wants to let someone out on a furlough that is serving a life sentence, all he is required to do is notify the sheriff of the county were the prisoner will be residing. As such, there is nothing but a policy decision by NDCS preventing this valuable tool from being re-implemented to help reduce the violence and negative behavior by persons sitting in their prison system.

It goes back to the "right to hope" and how important it is to provide people with something to motivate them to conform. The style of corrections that had the lowest overcrowding rates, least amount of recidivism and fewer volatile incidents would serve us well in producing a more conducive environment for change. Without these opportunities, the prison population is stagnant and under-motivated to rehabilitate. For the safety of the public and better use of the facilities, it makes sense to treat the people under your charge in a more humane way. In doing so, you will cultivate a better person after they finish their term. (The Director of Corrections and the Parole Board would need to partner is granting furloughs for all prisoners regardless of sentence structure).

- Psychological Evaluations Given at Start of Sentence for Baseline - updated for Release Possibilities (for all prisoners)

Understanding that public safety is the number one priority, the use of psychological evaluations could be better utilized at the beginning, and during a prisoner's sentence, to establish a baseline. The evaluation process that is currently used does not allow a person serving life or long sentences to be evaluated for any reason until that person is getting considered for parole or custody promotion. If movement is available for all prisoners through custody levels based off behavior rather than sentence structure, the use of psychological evaluations would need to be expanded from its current availability.

Additionally, a person serving a life sentence needs access to the services of psychological evaluations for purposes of requesting a commutation (to establish merit), however, NDCS policy prevents this. Beyond that, the person requesting a commutation is not allowed any resources from NDCS such as recommendations, progress reports or other supporting documentation to be supplied to the Pardons Board. Expanding access to these evaluations, and other records, would offer a more fair and equal opportunity for release of the people left without a parole date who need them to establish their quantifiable, demonstrated and genuine rehabilitation. (The Mental Health Department of NDCS would need to engage in such evaluations and the Director of Corrections would need to allow NDCS staff to provide such supporting documentation to the Pardons Board). (Approximate reduction in 10 years - 50 people)

- Elderly Prisoner Release

The "aging out" of crime factor should make this obvious, yet, there are hundreds of incarcerated individuals that are left to die in prison well past the point of being a threat to society. The use of elderly prisoner release, and medical release, is available, however, it's under-utilized. If the concept is to reduce the prison population, we must begin by evaluating every prisoner from a current "threat to society" standard, not a "validly entered sentence" standard. We may have perceived a sentence was necessary to protect the public, but the minute that sentence is no longer needed for such purposes, it should be changed. The Legislature is able to enact laws that require a resentence of anyone that has reached a certain age (55 is said to be elderly in prison). The health, programming and current threat level of the person could be evaluated more accurately at this resentencing and provide an additional release valve to reduce unnecessary incarceration. (The Legislature would need to enact law to accomplish this goal). (Approximate reduction in 10 years - 300 people)

- Public School Education of Crime and Punishment and Restorative Justice

There are studies that establish that the certainty of getting caught is more of a deterrent than the length of a prison sentence that is possible for a crime. However, it was also established that most people that are committing crime are unaware of the punishments that are applicable to the conduct they are engaged in. As such, I believe reducing the overcrowding of our prison population starts with prevention. That begins with education in our public schools regarding crime and punishment. There should be a very specific class that is required learning that teaches our youth of what is going to happen if they commit crime. They need to know that certain behavior is unlawful and that the outcomes are sometimes permanent. The accidental death of a person during the commission of a crime results in a sentence of life without parole. They don't need to intend to kill anyone for their decisions to result in their freedom being taken away for the rest of their lives. It is here that we need to focus the most

attention to "solve" the overcrowding in our prison system. We are primarily dealing with symptoms rather than focusing on the problems.

Additionally, it would be worthwhile to educate our youth in restorative justice practices. After all, they are the future leaders of our community and shaping their perceptions regarding crime and punishment should be focused around alternatives to incarceration. (School Superintendents would need to develop curriculum in this area). (Approximate reduction in 10 years - 500 people)

(Total approximate reduction in 10 years - 4,150 people)

Conclusion:

For any of these ideas to work, we must have a full cooperation from all of the stake holders. The reduction of a prison term is not saying that politicians are soft on crime or don't care about public safety, quite the opposite. It's more about compassion for our humanity that strengthens the position that clemency, commutation and smarter sentencing laws make better policy. If we continue to do what is being done, we will be building a new prison every few years and our "solution" will never really be more than a prolonged problem. It's time to change the strategy of criminal justice and a more restorative justice opportunity awaits those that are brave enough, courageous enough and willing enough to wade through the mess that we have in corrections today. I hope you will all join us in this sustained effort to make our justice process what it was designed to be, i.e., rehabilitative, restorative and protective of public interests.

(Current proposed legislation that is in line with this Agenda that is being considered in the 2020 Nebraska Unicameral include: LB968; LB985, LB1004, LB1117; LB1181; and LR281CA. Thanks to everyone that is involved with these proposals. We ask that all of you support their efforts).

Thank you

Todd Cook - Author of Agenda

Michael Sims - Contributor

C. Michael Anderson - Contributor

Bernard Long - Contributor

2019 REPORT RECOMMENDATION	NDCS RESPONSE/UPDATE
NDCS needs to review the issue of wage compression between salary and non-salary staff, as well as the salary structure of wardens and other administrative positions	Compensation review is an ongoing process, complicated by working with 3 different unions and a signifcant number of Rules and Regulations covered staff. This has been a "work in progress" since 2015.
NDCS should develop a long-term plan for addressing and financing their maintenance backlog and for the development of appropriate and needed core support services throughout the system.	The 10 year Capitol plan, the 309 process, and the biennial budget process provide the framework and process.
NDCS should expand the use of body cameras, especially at LCC.	The cost/benefit ratio does not support expansion of BWCs within NDCS.
NDCS should end the practice of double bunking in a restrictive housing setting in order to comply with ACA standards.	ACA standards do not prohibit double bunking in restrictive housing.
NDCS should collect data on contraband turned over to the Nebraska State Patrol that is not shared with NDCS or the OIG	A process to capture this information was to be developed, but fell to the side due to leadership changes and COVID-19. The project is being resumed and should be operational by September.
NDCS should reinstate domestic violence programming.	Providing domestic violence treatment/programming in prison has not been shown to be effective. DV is best addressed in a community setting. We will continue to offer anger management and the Violence Reduction Program as our clinical interventions for violence.
NDCS should review the effectiveness of the delivery of the substance abuse treatment programs and consider working jointly with community treatment providers to improve and enhance the program. The review should also examine any issues with attracting and retaining staff for the program	Efforts are underway to initiate a research project on our substance abuse treatment program. With your help, the agency was (is) in the process of forming a relationship with NABHO, and we've met twice. The June meeting was cancelled due to the pandemic. We will resume the conversation as soon as it is safe to do so.
Nebraska should take steps to enact state policies that encourage the hiring of previously incarcerated individuals	Not an NDCS issue
NDCS' next strategic plan should provide detailed information about each of the outcomes, strategies and measurements associated with the strategic goals to provide a more complete picture of what is taking place within NDCS. If goals are shared in the plan then details should be provided on how those goals are going to be achieved by NDCS.	Strategic plans are high level documents, providing broad framework and guidance, rather than specific direction. The agency's policies, procedures, and other working documents are the tools used to create and carry out the work that supports the priorities in the Strategic plan.

Attachment H