# OFFICE OF INSPECTOR GENERAL OF THE NEBRASKA CORRECTIONAL SYSTEM

# 2016/2017 ANNUAL REPORT


## Abstract

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



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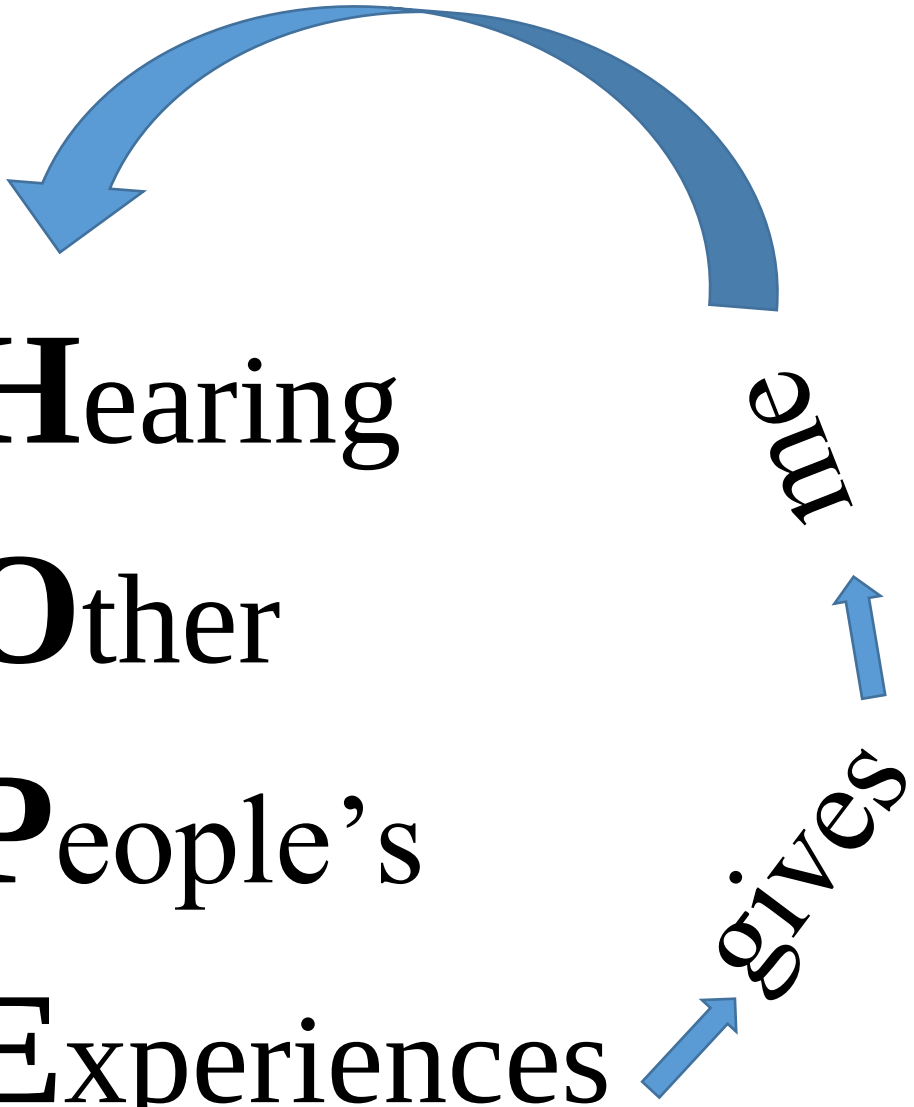


- Lawrence Posey

# Contents

## INTRODUCTION

This is the second annual report of the Office of Inspector General of the Nebraska Correctional System (OIG). In many ways, the second year of the office proved even more challenging than the first due to the increased awareness of stakeholders in the OIG and the increase in the knowledge base regarding the Nebraska Department of Correctional Services (NDCS) and the Office of Parole Administration (Parole) by the OIG.

The OIG was established in 2015 by the Nebraska Legislature in order to provide for increased accountability and oversight of the Nebraska correctional system. 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 NDCS and 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.

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.

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. The OIG has spent considerable time the past year visiting facilities, attending meetings related to correctional issues, visiting with senators and legislative staff, gaining a better understanding of correctional facilities and related programs, and reaching out to members of the community.

Nebraska law (Neb. Rev. Stat. § 47-902) charges the OIG with *"assisting in improving operations of NDCS and the Nebraska correctional system.*" As stated in last year's report, in some ways this has become the primary focus of the OIG.

Just like in last year's introduction, the OIG highly recommends that those interested in these issues and challenges first read the report of the Department of Correctional Services Special Investigative Committee that was published on December 15, 2014.[1] The report laid the groundwork for the creation of the OIG and many of the reforms that NDCS is moving forward on today. There will also be many 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.

[1] http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf

The OIG would like to thank the many people who assisted the office in the past two years, as well as the Nebraska Legislature, staff of the Ombudsman's office, and staff of the Office of Inspector General of Child Welfare. The OIG would also like to thank the inmates, parolees, staff and administration of NDCS and Parole, and other community members who assisted with the OIG's efforts and shared their opinions, insights and suggestions. In addition, the OIG would like to give a special thank you to an informal advisory group that has assisted with the efforts of the OIG. Their knowledge, responsiveness, insight and support are greatly appreciated.

Finally, it is important to share that at the beginning of this report is a page with the saying, "Hearing Other People's Experiences gives me HOPE." This was shared with the OIG in June 2016 by a former Alabama inmate named Lawrence Posey. Mr. Posey is a great example of someone who changed the course of their life and is motivated to help others.[2] It is interesting that Mr. Posey is from Alabama because Alabama is the only state that has a more overcrowded prison system than Nebraska and has faced a number of issues over the past few years, including severe understaffing and a difficulty in providing appropriate mental health treatment. Mr. Posey was released after 31 years in prison. Hearing his experience and the experiences of others can give us all hope. In the movie *The Shawshank Redemption*, it was said, "Fear can hold you prisoner. Hope can set you free." Hope is the key to remaining optimistic and positive during times of turmoil.

[2] Attachment 1: August 4, 2015 article in *The Daily Signal*

## HIGHLIGHTS OF THE REPORT

During the past year, the OIG has communicated on a regular basis with not only the Nebraska Department of Correctional Services (NDCS), the Office of Parole Administration (Parole), and the Board of Parole, but also with the Legislature's Department of Correctional Services Special Investigative Committee or LR 34 Committee and the newly formed Nebraska Justice System Special Oversight Committee or LR 127 Committee. The OIG examined virtually all parts of the correctional and parole systems during the past year and the results of that work are contained in this report.

Highlights of the report include:

- Recruiting and retention of staff is impacted by Nebraska's lack of a true step plan for pay increases (page 13);
- During the first half of 2017 the average amount of overtime throughout NDCS per month increased to 33,202 hours for protective services employees (correctional officers, corporals and caseworkers). This is an increase of 4.3% over 2016 and 50.5% over 2014 (page 13);
- One employee worked an extra 2888.75 hours of overtime in one year, which means they averaged over 90 hours per week for the entire year (page 14);
- The amount of money spent on overtime for protective services employees has increased from $3.3 million in FY2010-11 to nearly $9.3 million in FY2016-17 (page 14);
- Turnover of protective services employees continues to be high, although there is a projection for a slight decrease in 2017 versus 2016 (page 16);
- The turnover rates for all employees within NDCS has increased from 17.88% in CY2013 to 25.03% in CY2016 (page 16);
- Of 29 correctional officers or corporals who left NDCS in June and July 2017, 23 of those staff had worked 12 months or less. Of those 29 staff, 16 quit without providing two weeks of notice (page 16);
- As of June 30, 2017 there were 292 vacant positions in NDCS. There were 252 vacant positions in NDCS on June 30, 2016 (page 18);
- There are 52 vacancies in the NDCS Division of Health Services, which is one less vacancy than a year ago (page 18);
- A survey by the OIG to a sample of NDCS staff on contraband provided additional insight on illegal alcohol, drugs and other contraband (page 25);
- NDCS implemented measures to control and detect contraband, including partnering with law enforcement agencies to conduct large-scale searches (page 26);
- On August 14, 2017, NDCS was operating at approximately 162 percent of design capacity. Nebraska now has the second most overcrowded correctional system in the country according to this measurement (page 27);
- Anticipated changes to the population have not taken place as expected by the passage of Legislative Bill 605 in 2015 (page 28);

- NDCS, the Board of Parole and the Office of Parole Administration need to work together to present a plan to policy makers regarding the potential usage of the overcrowding emergency law (page 30);
- Policy makers need to determine what their goal is for the level of overcrowding within Nebraska's correctional system (page 31);
- Inmate-on-staff assaults increased in 2016 by a significant number (page 32);
- Restrictive housing has seen an increase in use since changes went into effect on July 1, 2016 (pages 38-39);
- NDCS has made changes to the programming offered to their inmate population (page 48);
- 100 additional beds are scheduled to open at the Community Corrections Center-Lincoln in September 2017 (page 53);
- NDCS faces significant competition for many health positions, including Mental Health Practitioners (page 58);
- The Tecumseh State Correctional Institute continues to face significant challenges after having a second riot in two years, including in the areas of staffing, safety, medical care and restrictive housing. However, they have seen improvements in the programming that they offer to their population (pages 68- 69);
- NDCS is expanding their mission specific housing, including a new veterans' unit at the Nebraska State Penitentiary (page 81);
- The Office of Parole Administration enters its' second year under the Board of Parole (page 84);
- The Board of Parole established parole board guidelines to assist them in the parole process (page 85);
- The OIG made many recommendations to NDCS and the Office of Parole Administration in this year's report (pages 87-88);
- NDCS and the Office of Parole Administration should put forward budget proposals that share their true needs regarding what their agency needs to significantly improve their role in the justice system in Nebraska (pages 98-99); and,
- A NDCS staff survey conducted by the OIG found the following (page 23):

| Survey Statement | 2015/16 | 2017 |
|---|---|---|
| Feels Safe Working for DCS | 64.4% | 38.3% |
| Would Recommend a Job with DCS | 32.6% | 19.4% |
| Would Not Recommend Job/DCS | 54.4% | 60.7% |
| Will Still be with DCS in 3 Years | 45.95% | 44.1% |
| DCS Moving in a Positive Direction | 16.4% | 16.9% |
| Not Moving in a Positive Direction | 21.6% | 60.5% |

## A LITTLE HISTORY

A legislative report on Nebraska's prison system included the following:

> *With conditions of confinement litigation on the increase, and an ever-increasing population, action must be taken to alleviate the situation. There are several reasons for such a position. First and foremost, public policy mandates such a response as appropriate in order to correct the problem. Secondly, further delay will almost certainly result in federal court intervention…Lastly, overcrowded conditions have led to a 46 percent increase in prisoner misconduct and incidents of violence. This is a trend that must be reversed.*
>
> *As outlined elsewhere in this report, the number of inmates…under the jurisdiction of the Department of Correctional Services has grown rapidly in recent years. However, for the most part, this growth has not been accompanied by growth in staffing or service levels provided by the Department.*[3]

This report was completed by the Legislature's Select Committee on Prison Overcrowding in 1990. As part of that Committee's work, then NDCS Director Frank Gunter testified and stated the following:

> *Prison administrators generally agree that when the prison population exceeds capacity, their ability to manage the inmate population begins to erode. As the number of prisoners increase, the following scenarios develop:*
>
> - *There is an increasing level of stress for both inmates and staff. Staff workload/caseload increases in all areas and at all levels…sick leave usage and staff turnover rates increase, and inmate disciplinary actions and litigation increase.*
> - *Staffing becomes inadequate which ultimately means less control of the inmate population. This lessening of control increases the probability of inmate problems and potential violence.*
> - *Services and programs within the prison become overextended and the physical plant deteriorates at a more rapid rate. Educational and vocational programs, staff and designed at a certain level, are now crowded or not available…Recreational program availability becomes increasingly limited. Medical and mental health services are severely strained…*
> - *Inmate idleness, always a source of significant concern, increases as the prison system loses the ability to provide even make-work job assignments…*

[3] Attachment 2: Report to the Legislature by the Select Committee on Prison Overcrowding, LR 222, January 1, 1990

> *As correctional policy makers, you have the opportunity to take a pro-active approach in dealing with the increasing prison population before it gets out of control.*[4]

Even though this was over 25 years ago, much of it applies today to Nebraska's correctional system. There was also a good analysis of parole challenges as well during this study. The OIG would encourage anyone interested in today's systems of corrections and parole to read the report and related documents from 1989-90.[5]

[4] Testimony by Frank Gunter to the LR 222 Committee on September 22, 1989
[5] Attachment 3: LR 222 Report Preliminary Analysis

## POTENTIAL NEEDS

In February 2016, the OIG completed an early assessment regarding the needs of NDCS. These were included in the 2016 report. Below is the information presented at that time along with any updates:

- STAFF SALARY INCREASES
  - Possible reclassification of positions (an example could be Correctional Nurses)
  - Step plan implementation
  - Consideration for extra duty pay or other incentive pay

*NOTE: While some positions received additional increases in their starting salary none of the items above have been implemented, other than a very humble start at rewarding experience. This could be expanded to focus on specialized positions and the rewarding for hazard pay.*

- STAFFING ANALYSIS
  - Currently taking place and will be finished up in July
  - Looking at front-line positions
  - Looking at growth in facility population and the lack of corresponding growth in staffing (in most cases) would lead one to believe that this could be significant

*NOTE: The staffing analysis was completed and a need for a number of additional front-line positions were identified by the Department. Front-line positions are the security positions that work with inmates on a daily basis.*

- CONSTRUCTION/REPLACEMENT
  - Need for more community beds
  - Need to replace or renovate living units within facilities, such as the Control Unit at NSP
  - Potential development of work release beds in the community

*NOTE: A 100 bed community corrections housing unit will come on-line this fall. The Department also received funding from the Legislature to merge the Diagnostic and Evaluation Center and the Lincoln Correctional Center and included in this project will be additional specialized treatment beds.*

- MAINTENANCE
  - Director Frakes recently said that NDCS has a $50 million maintenance backlog

*NOTE: The maintenance backlog continues.*

- PROGRAMMING
  - Work is being done by NDCS Deputy Director Rothwell to assess existing programs and to determine what programs should be offered throughout NDCS
  - Could result in reallocation of resources or identification of the need for additional resources to fund programming changes

*NOTE: While some additional programs have begun throughout the system, it is too early to understand their impact.*

- CORE SERVICES
    - Many of the facilities have a large variety of needs due to the growth in their populations including kitchen and eating space, day rooms, class rooms, recreation areas, health space, Cornhusker State Industries areas, and yard space.

*NOTE: This is still accurate*.

- NEXT LEVEL OF STAFFING ANALYSIS
    - The current staffing analysis was only focused on front line staff and it does not include other staff including maintenance, kitchen, central office, and other support team members. It is likely that some of these areas are also understaffed.

*NOTE: This is still accurate.*

- HEALTH SERVICES STAFFING/MODEL OF CARE
    - Dr. Bruce Gage, Chief of Psychiatry for the Washington State Department of Corrections, submitted a report that suggested that the NDCS Health Services Department should decide on a model of care for mental health and that could lead to a new staffing model. This may result in the need for additional staff.

*NOTE: The Division of Health Services has indicated to the OIG that this is a work in progress.*

## STAFFING

The 2016 report put it bluntly by stating, "NDSC is in a staffing crisis." For many years, NDSC has faced staffing issues. The 2016 report found that while recruitment numbers had increased, overtime, staff turnover, and staff vacancies had all increased.

### Recruitment

The 2016 report found that during fiscal year (FY) 2013-14, 462 individuals started their pre-service training program. This increased to 526 individuals in fiscal year FY2014-15 and 587 in FY2015-16.[6] In FY2016-17 548 employees started their pre-service training program. This includes 283 Correctional Officers and Corporals. 45 employees did not finish their training, including 21 Correctional Officers or Corporals. The approximate training cost for each individual was $5,792.82 which includes benefits.[7]

The OIG reviewed the starting salaries for correctional officers in Nebraska's neighboring states. The review found that Kansas ($13.61/hour) and Missouri ($13.86/hour) are significantly lower than Nebraska's starting wage for a correction officer ($16.74/hour) or a corporal ($18.16/hour). It may be possible to recruit from these states and possibly advertise near the facilities that are closest to Nebraska or directly contact employees from those facilities.

One difficulty that may impact recruiting is the fact that Nebraska does not have a true step plan for pay increases. In other words, a person who has been a sergeant for ten years receives the same pay as a new sergeant. It is clear in past surveys done by the OIG and NDCS that this is a significant factor in recruiting and retaining employees.

### Overtime

When looking at overtime data for protective services employees, last year's report withheld the average amount of overtime during 2015 due to the Tecumseh riot. Protective service employees are defined by NDCS as the positions of correctional officer, corporal and caseworker. As found in the 2016 report, the average amount of overtime throughout NDCS was 22,056 hours a month and the average amount of overtime throughout NDCS during 2016 was 31,838 hours per month. This was an increase of more than 44 percent. During the first half of 2017 the average amount of overtime throughout NDCS per month increased to 33,202 hours.[8] The amount of overtime in 2017 has increased by 4.3% compared to 2016 and increased by 50.5% compared to 2014. Table 1 shows the changes in overtime by those workers going back to 2014. The two facilities with the most significant overtime usage are the Tecumseh State Correctional Institute (Table 2) and the Nebraska State Penitentiary (Table 3).

[6] Attachment 4: Email from Erinn Criner to Doug Koebernick on August 1, 2016
[7] Attachment 5: August 1 Document from Erinn Criner to OIG
[8] Attachment 6: Total Overtime Spreadsheet

According to NDCS, the top 30 employees who worked the most overtime ranged from working an extra 966 hours in one year to working an extra 2888.75 hours in one year.[9] This means that one employee worked over 90 hours per week for the entire year. As stated in last year's report, when correctional employees work high amounts of overtime, morale, burnout, complacency and fatigue can take place and mistakes or errors on the job can be made.

The amount of money spent on overtime for protective services employees has increased for several years. Last year's report found that in FY2010-2011 $3.3 million was spent on overtime for these workers. It jumped to $7.7 million in FY2014-2015.[10] In FY2016-17 it increased to nearly $9.3 million.[11]

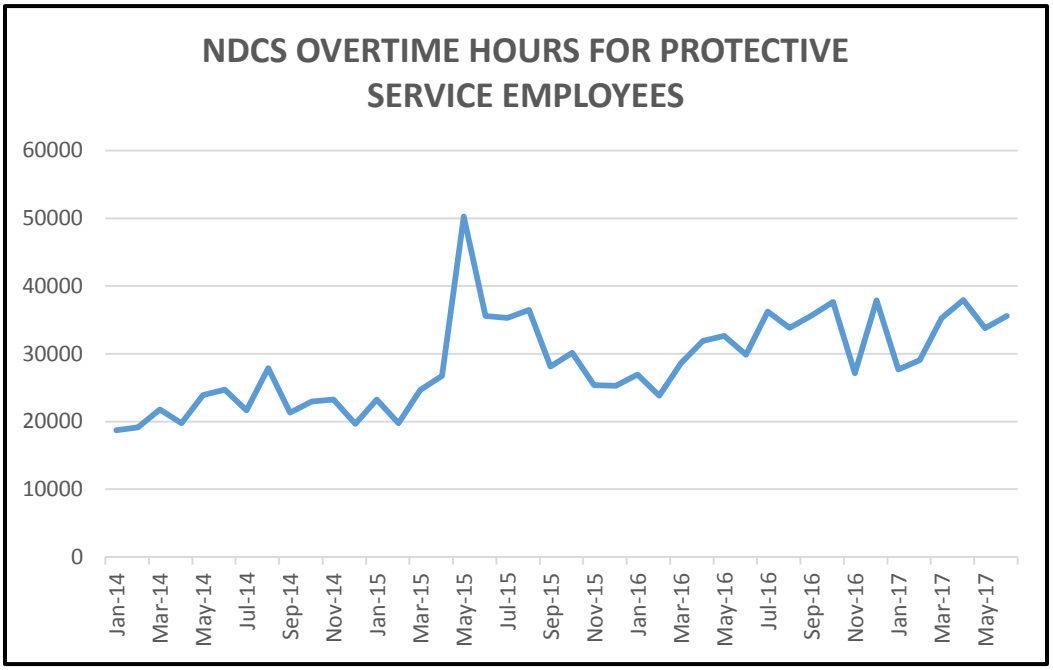


**TABLE 1**

[9] NDCS Top 30 Overtime Staff Data Sheet – this is not included as an attachment due to personal information being included on the document

[10] http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (pages 14-15)

[11] Attachment 7: August 1 Document from Erinn Criner to OIG on Overtime Costs

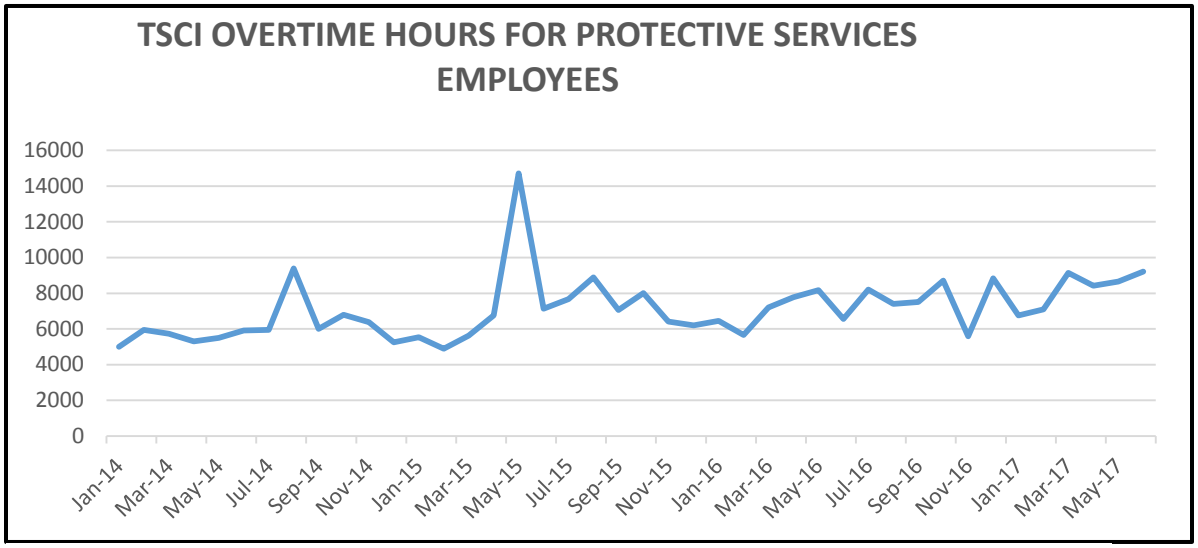


**TABLE 2**

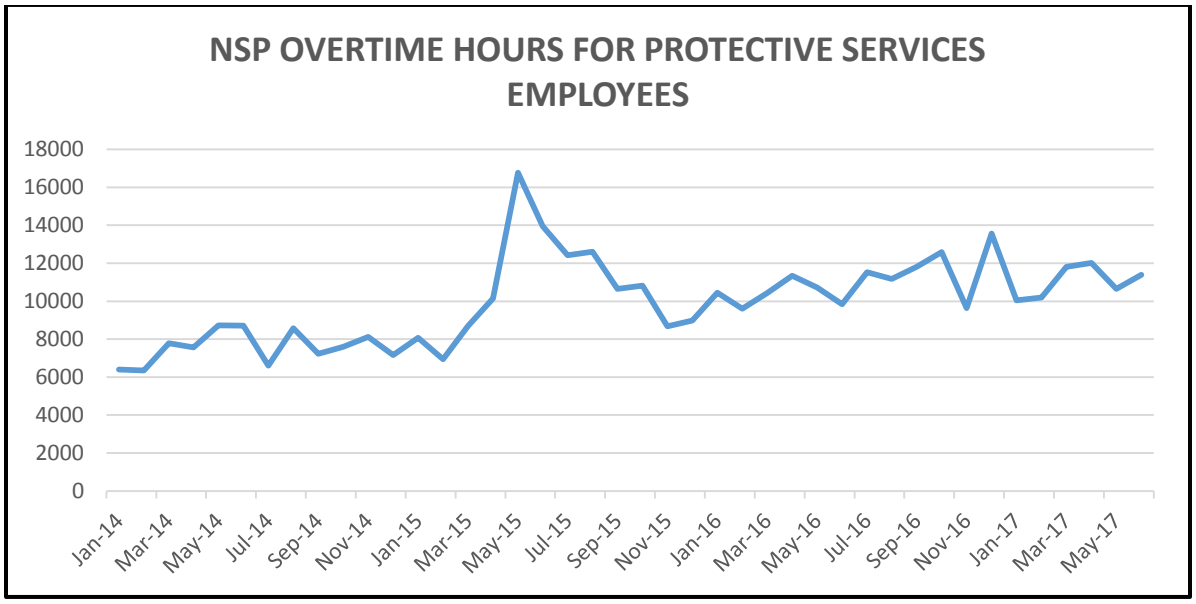


**TABLE 3**

## Turnover

Turnover of protective services employees significantly increased from 2010 to 2016. Turnover for these employees is projected to decrease slightly during 2017 based on the data from the first six months (Table 4).[12] However, the second half of 2016 saw a higher turnover rate than the first half of 2016.

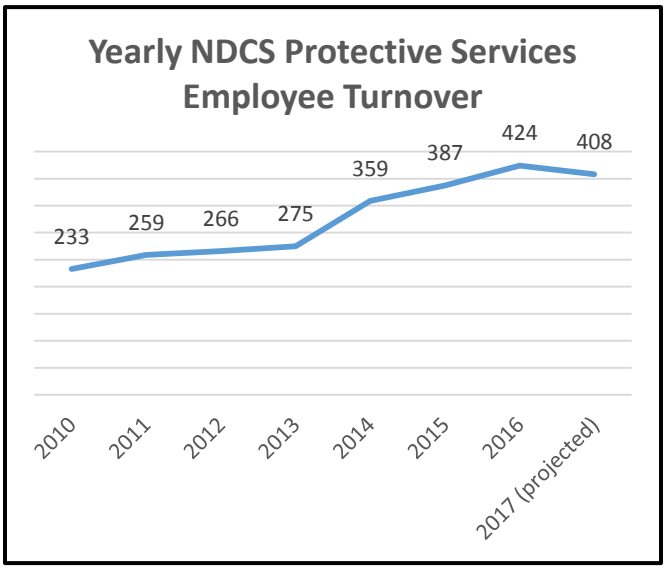


TABLE 4

In other data provided by NDCS, it indicates that there has been an increase in turnover throughout the agency as it increased from 17.88% in calendar year (CY) 2013 to 25.03% in CY2016 (Table 5).[13] The chart shows the turnover for each facility as well as for Cornhusker State Industries (CSI), Health Services and Central Office. While CSI had a turnover rate of only 4.35% in CY2016, the Nebraska Correctional Youth Facility (NCYF) had a turnover rate of over 38% in CY2016. Six of the ten facilities had turnover rates higher than 25% in CY2016. Turnover at TSCI actually decreased by over five percent but still was at 26.59% in CY2016.

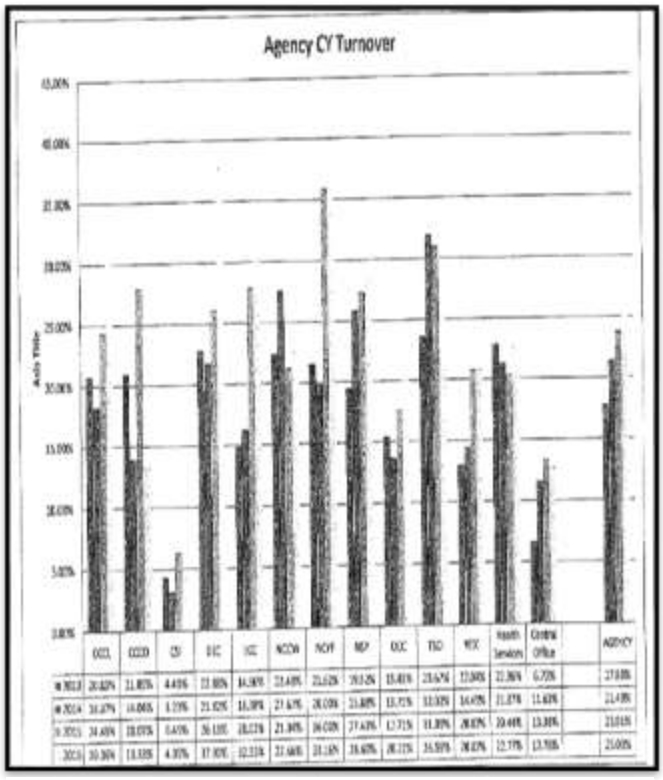


TABLE 5

One example of turnover impacting one facility can be found in recent information provided to the OIG by NDCS regarding protective services turnover in June and July of this year. The information shows that there were a total of 29 correctional officers or corporals who worked at TSCI and left employment during those two months. Of those 29 staff, 23 of those staff had worked 12 months or less. Of those 29 staff, 16 quit without providing two weeks of notice.

[12] Attachment 8: NDCS Turnover Document
[13] Attachment 9: NDCS Agency CY Turnover Chart

During one conversation with a former correctional employee, it was suggested to the OIG that NDCS should take a look at providing gender specific training and training updates for female staff. It was also suggested that NDCS consider creating some support groups for female staff in addition to any mentoring programs. These ideas may be worth a closer examination as they could assist with not only reducing turnover of female staff but may help with the recruiting of additional female staff. Recent data provided to the OIG by NDCS showed that in June 2017 there were 40 correctional officers, corporals or caseworkers who ended their employment with NDCS. Of those 40, 15 were female staff.

## Vacancies

As stated in the 2016 report, vacancy data for protective services staff is somewhat more difficult to track due to changes in the way NDCS defined the actual number of vacancies. Prior to June 4, 2015, it wasn't considered a vacancy if an individual was in training for a position.[14]
As a result, this report is focused on the number of vacancies during the past year. For the most part vacancies have been stable system wide during the past year. Of the four facilities with the most staffing challenges, there was an increase in vacancies then a decrease in vacancies at the Lincoln Correctional Center (LCC) and the Diagnostic and Evaluation Center(DEC). TSCI stayed fairly stable and NSP saw a rather significant increase in vacancies for these positions (Table 6). One important item to remember is that NDCS completed a staffing analysis for these positions last year and it identified the need for an additional 138 protective services positions. This vacancy data does not take that into account. In addition, the OIG and the LR 127 Committee heard from numerous staff about the need to establish or fill additional staff positions other than those identified in the limited staffing analysis. This could include a number of positions in such areas as administrative support, medical, recreation, maintenance and even higher ranked security and case management positions.

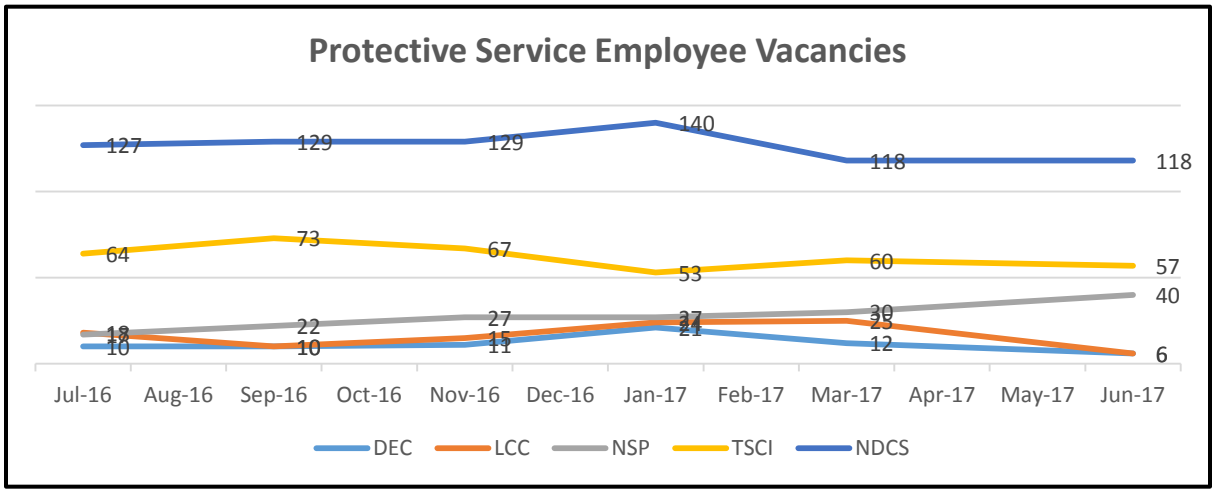


**TABLE 6**

[14] Training typically takes six weeks and is done in most cases outside of their particular facility.

The State of Nebraska compiles and publishes a quarterly State of Nebraska Vacancy Report. The latest version of this report is dated June 30, 2017.[15] This report shows every current vacancy, the date the vacancy took place, and salary information for that position. Just like last year, it shows that vacancies are throughout most areas of the correctional facilities and the total in this report was 292 positions listed as vacant. The June 2016 report reported that there were 252 vacancies at that time.[16]

## Health Services Staffing

In the 2016 report it was shared that there were approximately 34 staff vacancies in the behavioral and mental health areas and at least 19 medical positions were vacant. Recent information shared by NDCS showed that at that point in time there were the following vacancies:

- 14 total vacancies in Substance Abuse;
- 19 total vacancies in Mental Health;
- 15 total vacancies in Health Services;
- One vacancy in Pharmacy; and,
- Three total vacancies in Dental.

This is a total of 52 vacancies which is one less vacancy than last year at this time. This does not take into account the recent changes at TSCI regarding the ending of the contract that provided for private health services.

In 2016, NDCS received $1.5 million from the Legislature to fund various retention efforts. NDCS used some of this funding for efforts to assist with health services staffing, including hosting a Behavioral Health Symposium, providing a health care continuing education reimbursement and providing funding for licensed alcohol and drug counselor certification. The symposium was held in May and had a good turnout of staff and community members. At the end of March, five health services staff had been reimbursed $899 for their continuing education expenses. NDCS decided to reallocate the funds for the licensed alcohol and drug counselor certification for other purposes.[17] A final report on the use of these funds was published on September 5, 2017 and is attached to this report.[18]

## Staffing Analysis

As a reminder, a staffing analysis was completed by NDCS for protective services positions at each correctional facility in 2016. The analysis was a 311 page document that provided details on the needs related to protective services positions at each correctional facility. The final report found that there was a need for an additional 138 protective services positions within NDCS.

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[15] http://nebraskalegislature.gov/pdf/reports/committee/appropriations/vacancy_06-17.pdf
[16] http://nebraskalegislature.gov/pdf/reports/committee/appropriations/vacancy_06-16.pdf
[17] http://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Correctional_Services__Department_of/595_20170421-184706.pdf
[18] Attachment 10: NDCS Final Report on the Use of Retention Funds; April – June 2017

This was on top of the current number of protective services vacancies. As mentioned previously, it did not include an analysis of the staffing needs for the rest of the facilities and central office.

## Overcrowding

On August 14, 2017, NDCS was operating at approximately 162 percent of design capacity.[19] This is an increase of approximately two percent over last year. According to the Bureau of Justice Statistics, Nebraska had the fourth most overcrowded correctional system in the country on December 31, 2015 when it was operating at approximately 157% of design capacity. Only Alabama (186%), Illinois (165%) and Hawaii (164%) were operating at a higher level of their design capacity.[20] Earlier this year, a review of state data by the OIG found that only Alabama (176%) was operating at a higher level of their design capacity than Nebraska. Illinois (156%) and Hawaii (140%) have had decreases in their overcrowding situations.[21] Additional information on the inmate population and the overcrowding situation will be included later in this report.

## New Normal

In the 2016 report, there was a section titled "New Normal?" It discussed how when a situation gradually worsens each year becomes a new normal and the view (at least for some) becomes that it really is not that much worse 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 one would see that significant changes have taken place over that time period. Data shows this to be the case in overtime, turnover, overcrowding and other measurements. Last year's report stated the following:

> *The gradual worsening of these problems highlighted previously is something that needs to be remembered and focused on as change takes place in NDCS. It is important that people throughout NDCS take a step back and have a full understanding of the changes that have taken place over a period of five, 10 and even 20 years. This applies to vacancy rates, overtime rates, overcrowding, and turnover rates. NDCS, the Legislature, and other interested parties must look at change over a period of more than one or two years in order to accurately assess actual differences within NDCS.*[22]

This holds true again this year.

## The Staffing Future

It is clear that one year after the 2016 report declared that NDCS was facing a staffing crisis that the situation has not resolved itself. In fact, the report stated, "Should the current trends continue on overtime, vacancies, and departures, NDCS will only find itself in even more of a staffing

[19] This accounts for the 92 individuals who were state inmates but were residing in county jails.
[20] https://www.bjs.gov/content/pub/pdf/p15.pdf
[21] Attachment 11: OIG Memorandum to the Judiciary Committee on NDCS population
[22] http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (pages 19-20)

crisis and may witness what took place at BSDC[23], only on a much larger scale."[24] NDCS still is facing a significant staffing crisis.

In 2015, the Legislature provided $1.5 million to assist with employee retention efforts. The final report on this effort provides additional insight into how effective those funds were for NDCS. However, even if they were effective, NDCS did not request a continuation of that funding during the 2017 legislative session.

Last year's report discussed that one way to assist with changing the culture of an agency is to bring people into the agency from outside agencies. Compensation issues impact the hiring of members of the facility leadership teams and there has been no visible effort to address this predicament. The last time that NDCS hired a warden from outside the system was 1984. As last year's report said, "Going forward, the challenge for NDCS will be whether or not they have the ability, the resources, and the desire to bring in people from outside the system."[25]

During numerous conversations with staff, from new staff to seasoned staff, there are a couple of consistent themes that continually emerge. First, safety is the overriding concern. Staff want to feel safe and be safe and at some of the facilities they do not feel safe. This is a similar sentiment shared by some in the inmate population. They want to feel and be safe as well. Staff at many facilities feel fatigued by the number of hours that they have to work, by their need to always be on guard, and the fact that they may be covering more than one post or assignment. NDCS needs to have appropriate levels of staffing to address these concerns. They also need to have a workforce that is based on a quality of staffing as well, due to the significant challenges that these public servants face every single day.

Possibly the best assessment of the staffing situation was done by the Vera Institute of Justice in a report they provided to NDCS regarding restrictive housing in 2016. Their report primarily covered restrictive housing at NDCS but they expanded it to cover other important areas including staff shortages. In their section on staff shortages they wrote the following:

> *Understaffing and frequent staff turnover at NDCS are likely due to a number of factors, including the location of some facilities far from population centers, a pay structure that is uncompetitive and does not reward longevity, and stressful and perilous work environments due to overcrowding and lack of resources. This results in an increased workload, even for newer, less experienced staff. It has also led to the frequent use of mandatory overtime, which correctional officers told Vera can negatively affect staff morale and lead to increased attrition. Employees become frustrated with overtime,*

[23] BSDC is the Beatrice State Developmental Center. BSDC faced many difficulties about 10 years ago including a loss of federal funding and an investigation and oversight by the U.S. Department of Justice. Due to the deteriorating conditions at BSDC care for the residents diminished and resulted in serious injuries and deaths.

[24] http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (page 21)

[25] Ibid.

*which increases workplace stress and interferes with their personal lives, and often seek occupations with more set schedules elsewhere.*

*In addition to frustration from custody staff, Vera also heard that people hired as caseworkers were often surprised to find that their actual job duties were similar to custody staff, partly due to custody staff shortages. They reported dissatisfaction with their inability to run therapeutic programs, provide social services, and proactively engage people in programming and productive activities; instead, they spend much of their time escorting incarcerated people, managing counts, and responding to grievances. This likely contributes to high turnover of caseworkers as well, which negatively impacts facility functioning, staff morale, and institutional knowledge.*

*Incarcerated people also told Vera that they feel that correctional staff are treated poorly and that they wish case managers had more opportunities to facilitate programs and build rapport with the population...*

*Understaffing and high turnover reduce the department's ability to provide needed mental health services, heighten the risk of disruptions to treatment or failure to meet the needs of individuals, and add stress to staff that may have multiple competing responsibilities.*[26]

NDCS continues to face a staffing crisis and the stress caused by that is impacting the correctional system. A good example of this is a recent occurrence when Erinn Criner, the Human Talent Director for NDCS sent out an email to staff that said the following:

*Today, the Nebraska State Penitentiary and the Tecumseh State Correctional Institution are experiencing high vacancies, which results in more of our team members being required to work mandatory overtime.*

*We continue to actively recruit staff. The Omaha Correctional Center and Nebraska Correctional Youth Facility are providing 10 staff daily who will work in Tecumseh. Even with these staff members, we will still need additional volunteers for overtime to avoid mandatory overtime.*[27]

Staff are now being pulled away from other facilities to assist with Nebraska's major facilities and their staffing issues. One way to describe the situation is to call it a downward spiral. However, last year former Major Sue Burkey might have explained it best when she described a situation where eight people join hands in a circuit and two members of the group start the circuit by putting their fingers in an electrical outlet. At this point, all eight people are sharing the electricity that is running through their circuit. They all feel some slight discomfort from the

[26] http://www.corrections.nebraska.gov/pdf/Vera%20Institute%20Final%20Report%20to%20NDCS%2011-01-16%20v2.pdf (pages 18-19)

[27] Attachment 12: August 17, 2017 NDCS Email from Erinn Criner

electricity but handle it okay. Then one person leaves the circuit so the discomfort increases. As more people leave the discomfort turns to pain and pretty soon only two people are part of the circuit. It doesn't end well for either of those two people.

It continues to be clear that the Governor and the Legislature need to work with NDCS and the state employees' union to explore any and all options that are available to address the staffing crisis sooner rather than later.[28]

**On September 5, 2017, NDCS released their final quarterly report regarding the use of the $1.5 million that was appropriated to them by the Legislature for retention efforts in 2015. It is a detailed report with a considerable amount of information and data and adds to what is in this report. While NDCS never originally requested the funding, when they received it they attempted to be creative and thoughtful in the use of the funds. After they established their plans for the funds, they did show flexibility in its use and made changes as they proceeded. At the end of the report, NDCS shared the following:**

*"Outside of the direct impacts on retention and recruitment, the process of identifying potential uses, developing programs, and soliciting and reacting to feedback from employees has been beneficial. The focus on employee engagement and retention has also heightened awareness of the issue and sends the message to staff that the department and external stakeholders take this issue seriously. Addressing these issues through a one-time appropriation was challenging in terms of determining how the funds could be utilized most effectively. It quickly became clear, however, that the benefits in sending the right message to staff and encouraging professional development will serve the department well for years to come."*

[28] Senator Anna Wishart, whose legislative district contains four correctional facilities, introduced Legislative Resolution 172 to examine staffing issues. A hearing will be held on this resolution by the Judiciary Committee of the Legislature on October 20, 2017.

## STAFF SURVEYS

The OIG distributed two employee surveys during the past year using a Google survey format. The first took place in April 2017 and was sent out to all NDCS staff who had an email address. It follows up on a similar December 2015 survey distributed by the OIG. It is not considered a scientific survey and there was nothing that limited staff from responding to the survey on more than one occasion. No limits on this were set because it was highly likely that some staff would be sharing a computer to respond to the survey. The true goal of these surveys is to collect much needed information and insight from those surveyed.

### December 2015 NDCS Survey

The results of the 2015 survey included the following:

- 61.1 percent did not believe the starting salary for their position was appropriate;
- 45.2 percent did not look forward to coming to work on most days;
- 54.4 percent would not recommend a job at NDCS to a friend or family member;
- 55.4 percent felt they could approach a supervisor with a concern regarding their work environment;
- 68 percent said that salary advancement each year above the hiring wage would be the primary change that could take place to retain employees;
- 45.4 percent of employees stated that additional programming is needed for inmates;
- 50.7 percent of respondents didn't know which direction NDCS was headed; and,
- 0.8 percent of respondents agreed that the Legislature supports the employees of NDCS.[29]

### April 2017 Survey

A similar survey was emailed to NDCS employees in April 2017. A May 5, 2017 memorandum from the OIG to the members of the Nebraska Legislature stated the following:

> *There were a number of open ended questions at the end of the survey and staff could write as little or as much as they wanted to when responding to those questions. Those questions were the following:*
>
> - *Is there something that you believe the Department could do to better respond to the concerns and needs of the employees after a crisis?*
> - *In the last year, what have you seen as the most significant improvement within the Nebraska Department of Correctional Services?*
> - *What would you recommend be done to improve staff safety?*
> - *What changes do you think could be made to improve the outcomes for inmates within the correctional system?*
> - *How would you describe the organizational culture of the Nebraska Department of Correctional Services?*
> - *What intervention or tool would you use to improve communication within the Nebraska Department of Correctional Services? and,*

[29] Attachment 13: January 11, 2016 OIG Memo on Staff Survey Results

- *Do you have any other feedback about the operation of the NDCS?*

*At least 200 staff responded to each of those questions...*

*There are a few questions and their responses that I would like to highlight for you.*

- *The question about feeling safe found that 38.3% of this year's responders indicated that they feel safe in their work environment. In the last survey, 64.4% indicated that they felt safe in their work environment.*

- *This year the question about whether or not they would recommend a job to a friend or family member found that 19.4% either agreed or strongly agreed that they would recommend a job and 60.7% either disagreed or strongly disagreed that they would recommend a job. In the last survey, 32.6% indicated they would recommend a job and 54.4% indicated that they would not make that recommendation.*

- *This year, 44.1% of those who responded indicated that they would be working in the Department three years from now. In the last survey 45.9% indicated that they would be working in the Department three years from now.*

- *This year 62.1% of those who responded said that salary advancement each year above the hiring wage was the primary change that the Department could make to keep people from leaving the Department. Last survey found that 68% selected that answer.*

- *This year, 16.9% of those who responded either agreed or strongly agreed that the Department is headed in a positive direction and 60.5% either disagreed or strongly disagreed that the Department is headed in a positive direction. In the last survey, 16.4% said that Department was going in a positive direction, 21.6% said it was going in a negative direction, and 50.7% were not sure which direction the Department was going.*

- *This year, 6.7% of those who responded either agreed or strongly agreed that the Legislature is concerned about the employees of the Department and 75.7% either disagreed or strongly disagreed with that statement. The question was phrased differently in the last survey but only .8% of those who responded selected the response that the Legislature supported the employees and 44.2% of those who responded selected the response that the Legislature did not value the employees.*[30]

Similar surveys will continue to be conducted on a regular basis by the OIG as they provide an excellent means of communicating with staff. All NDCS staff now have email accounts so the next survey will reach a wider audience.

[30] Attachment 14: May 5, 2017 Memorandum from the OIG to the Nebraska Legislature

## Contraband Survey

After the emergence of a case where an inmate eventually died due to a drug overdose while residing at TSCI, the OIG decided to send out a survey to a random group of NDCS staff on June 8, 2017 regarding illegal drugs and alcohol in Nebraska's correctional facilities. A June 12, 2017 memorandum from the OIG to the Nebraska Legislature's Judiciary Committee and the LR 127 Special Committee stated the following:

> *On June 8th, I emailed a survey to a sample of Department staff at all ten facilities that asked three questions:*
>
> 1) *What additional steps should be considered to decrease the flow of illegal drugs into Nebraska's prisons?*
> 2) *What additional steps should be considered in order to decrease the amount of liquor or "hooch" that is made in Nebraska's prisons? and,*
> 3) *Do you have any other thoughts on the issue of illegal drugs and alcohol in Nebraska's prisons?*
>
> *The purpose of the survey was to educate myself on these issues and gain valuable insight from those who are actually working in the facilities. A secondary purpose was to obtain this feedback and share it with policy makers such as yourselves so you have a better understanding of this issue. I will also share this with Director Frakes as well. As of today, 100 staff had responded to the survey.*
>
> *The results of the first question came down to four main responses. First, staff suggested that the Department move toward having no contact visits. These are visits between visitors and inmates where no actual contact is involved between the two parties and the conversation is carried out over a phone. Second, staff suggested that the Department purchase more drug dogs and utilize them to a greater degree. Third, staff suggested that the Department conduct more searches of staff when they enter the facilities. One person wrote that they had been working with the Department for three years and had never been searched. Fourth, staff also suggested that there be increased prosecution/discipline for those that are caught bringing in illegal drugs or other contraband.*
>
> *The results of the second question were varied but some consistent themes that were shared include the need to conduct better searches of inmates and cells, increase discipline for inmates found with "hooch," and limit access to the ingredients, including garbage bags or other bags, for "hooch." There was also a number of staff who shared their thoughts regarding how the shortage of staff impacts their ability to carry out their job duties, including conducting appropriate searches and monitoring areas such as the kitchen.*
>
> *There were a number of comments as a result of the third question. Concerns about staff safety were expressed by several staff. The problems with K2 were discussed by several others. There were also a number of comments about increased discipline and prosecution and the need to hold staff accountable for their actions or lack of actions. Once again, concerns regarding staff shortages and inexperienced staff were also shared.*

*Overall, I believe there is quite a bit to be learned from these responses. If you would like to see the responses please let me know. I have created a spreadsheet with all of the responses that I can deliver to your office*.[31]

The results of this survey were also helpful in an investigative report on the death of the TSCI inmate. After the investigative report was provided to NDCS, NDCS issued a press release on July 28, 2017 that outlined tactics for controlling and detecting contraband. It included:

- An increase in searches of staff, inmates and visitors;
- Partnering with law enforcement teams to conduct large-scale searches;
- Utilizing the four canine units;
- Utilizing detection devices;
- Adding multiple camera systems to NDCS facilities over the past several years;
- Inmate and staff drug testing; and,
- Accountability for inmates, staff and visitors who violate contraband policies.[32]

On September 12, 2017 the Omaha World-Herald reported that NDCS and the Nebraska State Patrol conducted a contraband sweep at NSP from August 29 to September 1, 2017. The sweep discovered items including illegal alcohol, drugs, a mobile phone and at least three weapons. However, in the news article it said:

> *The mobile phone is the 15th found at the penitentiary this year, said Dawn-Renee Smith, spokeswoman for the Corrections Department. A total of eight additional phones have been recovered at other prisons, she said.*[33]

Using a NDCS information system, the OIG was able to find information that showed that 31 mobile phones have been found at NSP this year. In addition, looking at just one month of data for CCC-L showed that seven mobile phones were found at that facility in just the month of July. This information was shared with Director Frakes later that day.

[31] Attachment 15: June 12, 2017 OIG memorandum
[32] Attachment 16: July 28, 2017 NDCS Press Release
[33] http://www.omaha.com/news/crime/nebraska-state-penitentiary-sweep-turns-up-weapons-enough-drugs-to/article_7eea48e4-1d12-50e9-b83a-1ed6e774e49e.html

## INMATE POPULATION

As mentioned previously in this report, overcrowding of NDCS correctional facilities has changed little during the past year. On August 14, 2017, NDCS was operating at approximately 162 percent of design capacity.[34] This is an increase of approximately two percent over last year.

As mentioned previously, according to the Bureau of Justice Statistics, Nebraska had the fourth most overcrowded correctional system in the country on December 31, 2015 when it was operating at approximately 157% of design capacity. Only Alabama (186%), Illinois (165%) and Hawaii (164%) were operating at a higher level of their design capacity.[35] Earlier this year, a review of state data by the OIG found that only Alabama (176%) was operating at a higher level of their design capacity than Nebraska. Illinois (156%) and Hawaii (140%) have had decreases in their overcrowding situations.[36]

There are a number of factors that contribute to the number of inmates in a state correctional system. The court system sentences inmates to prison and they then enter the correctional system. Once they enter the correctional system, their length of stay may be impacted by their ability to become good candidates for parole by taking classes or programs and exhibiting good behavior. This can be somewhat influenced by NDCS. NDCS also has the ability to assist those who leave the correctional system from returning to it through their work in the reentry area. The Board of Parole also impacts the population of a state correctional system by their efforts to parole inmates and their decisions to return those who have been paroled to the correctional system for certain behavior once they are on parole.

On August 14, 2017, the only facility that was not operating over their design capacity was the Nebraska Correctional Youth Facility (NCYF). As shown in Table 7, all but three facilities were operating at over 165% of their design capacity, with the Diagnostic and Evaluation Center operating at 294% of its design capacity.

| Facility | Population | Design Capacity | Percentage of Design Capacity |
|---|---|---|---|
| DEC | 470 | 160 | 294% |
| WEC | 196 | 100 | 196% |
| OCC | 768 | 396 | 194% |
| CCC-L | 379 | 200 | 190% |
| NSP | 1342 | 718 | 187% |
| CCC-O | 163 | 90 | 181% |
| LCC | 507 | 308 | 165% |
| NCCW | 323 | 275 | 117% |
| TSCI | 1013 | 960 | 106% |
| NCYF | 50 | 68 | 74% |

TABLE 7

[34] Neb. Rev. Stat. § 83-961 defines Design Capacity as "the total designed bed space in facilities operated by the department, as certified by the director."

[35] https://www.bjs.gov/content/pub/pdf/p15.pdf

[36] Attachment 11: OIG Memorandum to the Judiciary Committee on NDCS population

## COUNCIL OF STATE GOVERNMENTS AND LB 605

Anticipated changes to the population have not taken place as expected by the passage of Legislative Bill 605 in 2015. In addition, there has not been an increase in inmates granted parole.

The Justice Reinvestment Implementation Coordinating Committee held a final meeting with a representative of the Council of State Governments (CSG) on August 22, 2017. The information shared with the Committee by CSG included:

- In 2015 justice reinvestment was projected to reduce the prison population by 1,021 inmates by FY2020;
- Nebraska's inmate population has only decreased by 142;
- NDCS admissions and releases are flat although LB 605 should have led to decreased admissions and increased releases;
- Reported crimes and arrests have decreased since 2011 in Nebraska although violent crime has increased 13% during this period of time;
- Total number of felony cases in the Nebraska judicial system have increased at a higher rate than expected;
- Sentencing data for felony convictions indicates a decrease in prison dispositions and an increase in jail and probation dispositions;
- Felony IV admissions have been 83% higher than projected;
- The Board of Parole has worked to release people with at least nine months of supervision and the parole grant rate is slowly increasing;
- Even with these efforts, there are many people who are denied parole for reasons that could be addressed;
- Parole revocations have increased 29% from FY2015, including a 70% increase in technical violators;
- Misdemeanant admissions to NDCS decreased from 106 in FY2015 to six in FY2017;
- Mandatory discharges are decreasing;
- Probation has seen an increase in the felony population that they supervise and has used reinvestment funds to open five new day reporting centers and to hire 68 additional staff;
- Nebraska should continue to look for ways to divert low-level, nonviolent felonies away from prison and increase opportunities for community supervision;
- Nebraska should ensure more people are ready for parole to allow for more timely releases from prison; and,
- Nebraska should accelerate work to reduce probation and parole revocations to prison.[37]

Mike Fargen, Chief of Information Services for the Nebraska Commission on Law Enforcement and Criminal Justice, also presented a variety of data on felony sentencing and prison trends. Among his findings were:

[37] Attachment 17: August 22, 2017 Powerpoint Presentation by Sara Friedman, Senior Policy Analyst at CSG

- The number of felony filings for dangerous drugs has increased significantly;
- Felony sentencing in quarter one of 2017 increased; and,
- There has been an increase in felony sentencing to jails and probation, especially for felony IV convictions.

The entirety of his presentation materials are attached to this report.[38]

Toward the end of the meeting, members of the Committee discussed the challenges facing both the jail and prison systems as it relates to individuals in their custody who face mental health challenges. Members of the Committee from Douglas County and Sarpy County shared that their jails have seen increases in their populations and that many of these offenders have mental illnesses or substance abuse issues. Douglas County Public Defender Tom Riley stated that the Douglas County Jail is the largest mental health facility in the state and it is unclear what to do with these populations. He then said, "All we do is talk about it, but there doesn't seem to be the political will to get something done."[39]

Along with the options spelled out by CSG, there are other possibilities that are being examined by the Judiciary Committee and others related to overcrowding. For instance, the Judiciary Committee introduced Legislative Resolution 114 to study Nebraska state law regarding geriatric or compassionate release. These are laws or possible laws that could result in the releasing, paroling or furloughing of inmates earlier than anticipated due to their age or illness. A hearing on Legislative Resolution 114 will take place before the Judiciary Committee on September 15, 2017.[40]

### Correctional System Overcrowding Emergency Act

In the 2016 report, the OIG made a recommendation to NDCS to "Work jointly with the Office of Parole Administration and the Board of Parole to present a plan to the Governor and the Legislature detailing how a correctional system overcrowding emergency would be administered." The correctional system overcrowding emergency is contained in state law and the specifics for how it would be administered are found in Neb. Rev. Statute 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*

[38] Attachment 18: August 22, 2017 Mike Fargen presentation materials
[39] Attachment 19: Paul Hammel, "Nebraska's work with prison form council ends," Omaha World Herald, August 23, 2017.
[40] Attachment 20: Legislative Resolution 114

*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.*

There have been individuals and groups that have expressed support for the calling of the overcrowding emergency by the Governor. Supporters anticipate that this would provide some significant relief to the overcrowding situation within NDCS and that there are a significant number of individuals who could safely transition back to their home communities. However, it is important that the public and policy makers know the impact of declaring this emergency, which is why last year's report made the above recommendation regarding NDCS working with the Office of Parole Administration and the Board of Parole to present a plan on how the emergency would be administered. As of August 14, 2017, NDCS has 718 inmates above their design capacity of 140%. Releasing 718 inmates would likely result in the need for more parole officers and reentry staff, as well as additional supports in the community. In addition, it is important to know who the 718 inmates would be that would be released if the emergency is declared. It is imperative that NDCS, the Office of Parole Administration and the Board of Parole work together to present a plan to policy makers so that the impact of declaring this emergency is understood.

## Population Goal

Since the Legislature passed the Correctional System Overcrowding Emergency Act in 2003 much of the focus regarding the level or goal of the inmate population in NDCS has focused on 140% of design capacity. In the last few years as the population has passed 150% and even 160% of design capacity of the correctional system, the focus on 140% of design capacity has become even more intense. However, the OIG would offer that the goal for the level of overcrowding within Nebraska's correctional system should not be to reach 140% of design capacity. 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.[41]

Nebraska's policy makers should establish a goal that they would like Nebraska's system to reach. Currently, Nebraska is over 1200 inmates above 125% of their design capacity. If Nebraska desires to have a system that is ranked in the middle of all of the states as far as overcrowding the goal would have to be closer to 100% of design capacity. This would require a significant change in public policy and would likely have to be a combination of building additional beds and reducing the number of inmates who enter the state correctional system. There would be many benefits related to reducing the population, many of which have been or will be described in this report.

[41] Attachment 11: OIG Memorandum to the Judiciary Committee on NDCS population

## ASSAULTS

### Inmate-on-Staff Assaults

During 2016, the issue of inmate-on-staff assaults emerged as a significant concern as public awareness regarding the assaults increased. Data provided by NDCS shows that there was a consistent increase in staff assaults, including ones that result in serious injuries, between 2013 and 2016 (Table 8).

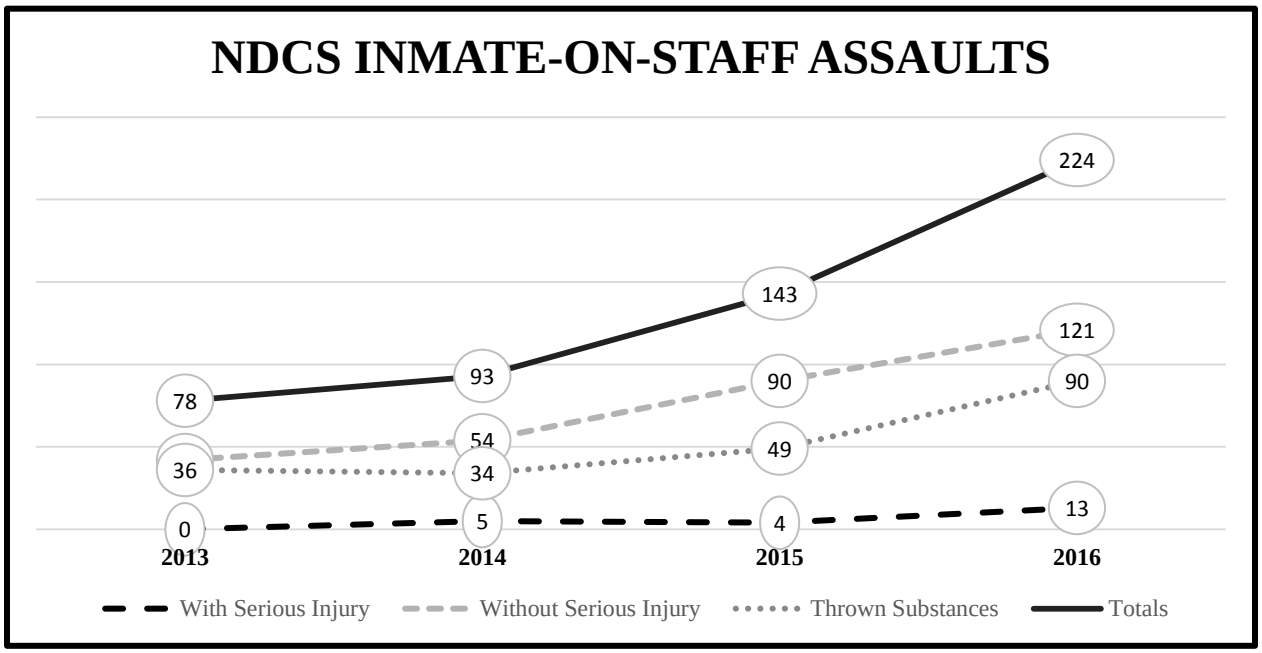


TABLE 8 SOURCE: NDCS

Serious injury is defined by NDCS as:

> *A serious injury is defined as an injury which requires urgent and immediate medical treatment and restricts the inmate's usual activity. Medical treatment should be more extensive than mere first aid (e.g. application of bandages to wounds or taking an x-ray). Examples of serious injury include stitches, setting of broken bones, treatment of concussion, partial/full loss of consciousness so as to cause person inability to defend oneself, being checked into the hospital, etc. Keep in mind that a trip to the hospital doesn't necessarily mean that there was serious injury. It depends on the treatment received after they were taken there that determines seriousness.*

### Inmate-on-Inmate Assaults

In contrast to inmate-on-staff assaults, inmate-on-inmate assaults actually decreased in 2016. The total number of reported assaults decreased from 233 in 2015 to 210 in 2016. The number of assaults that did not result in a serious injury decreased from 188 in 2015 to 180 to 2016. In 2014 there were actually fewer such assaults (170 assaults). The number of assaults that involved a

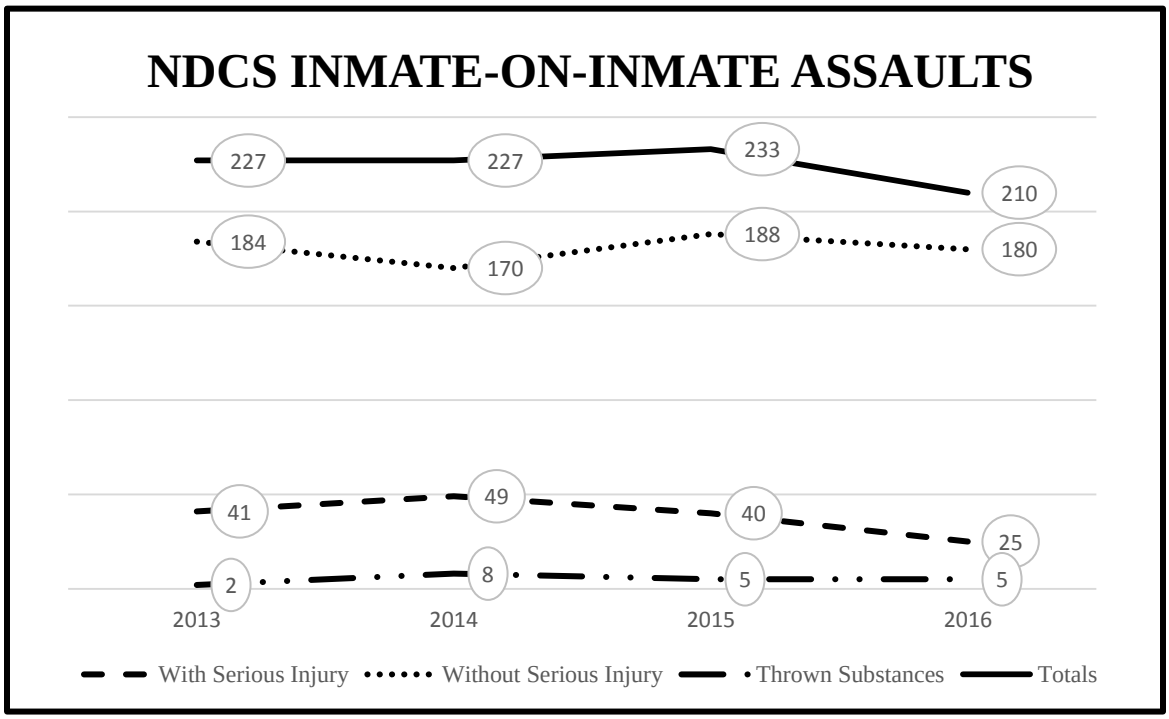


**TABLE 9** **SOURCE: NDCS**

serious injury decreased by 37.5% when comparing 2015 to 2016 as they decreased from 40 to 25 assaults. When compared to 2014, 2016 saw an even sharper decline of nearly 50% (Table 9).

## Updated Assault Data

At this time, the OIG is cautious about including recent assault data in the report. The reason for this is that the OIG needs to gain a better understanding of how assaults are being reported and tabulated by NDCS. NDCS has made some changes in an attempt to provide more accurate data but as part of that process it is unclear at this time whether or not a comparison between this year's data and previous years' data will be a true "apples to apples" comparison. NDCS has reported to the OIG that they have a researcher assigned to the task of combing through all assault and fight verification reports and determining if they are either fights or assaults and whether or not they resulted in a serious injury. It is a time intensive process and they have indicated that they expect to have a better report with more accurate data. At the time of the publishing of this report the NDCS report had not yet been presented. The OIG has found no fault with how NDCS is collecting and reporting their data but at this time no assault data for 2017 is included in this report.

The OIG will continue to make this a priority. In last year's report the OIG stated that a new tracking mechanism for assaults that were reported by NDCS to the OIG needed to be established by the OIG. Unfortunately, the amount of data and the number of assaults was quite extensive and as a result of the current workload of the office these changes were not implemented.

## RESTRICTIVE HOUSING

### Legislative Bill 598

LB 598 was passed in 2015 and included provisions related to restrictive housing practices by NDCS. The 2016 report described these portions of LB 598 which set the stage for restrictive housing reform:

> *Issue an annual report containing a long-term plan for the use of restrictive housing, with the explicit goal of reducing the use of restrictive housing, to the Governor and Legislature that includes the following:*
>
> - *The number of inmates held in restrictive housing;*
> - *The reason or reasons each inmate was held in restrictive housing;*
> - *The number of inmates held in restrictive housing who have been diagnosed with a mental illness as defined in section 71-907 and the type of mental illness by inmate;*
> - *The number of inmates who were released from restrictive housing directly to parole or into the general public and the reason for such release;*
> - *The number of inmates who were placed in restrictive housing for his or her own safety and the underlying circumstances for each placement;*
> - *To the extent reasonably ascertainable, comparable statistics for the nation and each of the states that border Nebraska pertaining to subdivisions (4)(a) through (e) of this section; and,*
> - *The mean and median length of time for all inmates held in restrictive housing;*
>
> *Establish a working group to advise NDCS on policies and procedures related to the proper treatment and care of offenders in long-term segregation or isolation. The Legislature also directed the Director to provide the work group with quarterly updates on NDCS's policies related to the work group's subject matter;*
>
> *Hold no inmate in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility and pursuant to rules and regulations adopted and promulgated by NDCS pursuant to the Administrative Procedure Act (beginning July 1, 2016); and,*
>
> *Adopt and promulgate rules and regulations pursuant to the Administrative Procedure Act establishing levels of restrictive housing as may be necessary to administer the correctional system. Rules and regulations shall establish behavior, conditions, and mental health status under which an inmate may be placed in each confinement level as well as procedures for making such determinations. Rules and regulations shall also provide for individualized transition plans, developed with the active participation of the committed offender, for each confinement level back to the general population or to society.*[42]

[42] http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (page 33)

## NDCS Restrictive Housing Report

As stated previously, LB 598 required NDCS to issue an annual report regarding restrictive housing. The report was released on September 15, 2016 and included information on past restrictive housing practices, current reforms being undertaken by NDCS, restrictive housing data, reasons for placement in restrictive housing, the needs and challenges of mentally ill inmates in a restrictive housing placement, length of stay data, protective management information, and some comparisons to efforts underway in other states. The next report is due this fall.[43]

## Legislatively Created External Restrictive Housing Work Group

The external work group was created in 2015 and has been led by Director Frakes. The 2016 report stated the following regarding this work group:

> *It is the observation of the OIG that the Work Group has not had the impact that the Legislature hoped for when it came to advising NDCS on policies and procedures related to the proper treatment and care of offenders in long-term segregation or isolation.*
>
> *The structure of the Work Group, as set out in Legislative Bill 598, was primarily made up of Department employees and there were only four members who were from outside NDCS (and two of them used to work for NDCS). This provided for an interesting dynamic in the group and there was not as much input from Department employees as the OIG would have liked to have seen.*[44]

These observations remain accurate in 2017. At the last meeting of the work group that was held at TSCI, only one of the four non-NDCS members attended the meeting. Many of the NDCS members were also absent. If this work group is going to assist NDCS and policy makers going forward, it likely needs a change in membership and should also establish goals and a mission or role. At this time, the work group does not seem to have either of those. It should also work more closely with the NDCS internal restrictive housing work group. Currently, there is little communication or connection between the two groups.

Despite these concerns, the OIG recognizes that the work group has an important role and as the changes for restrictive housing are made by NDCS they will likely become more involved, educated and active

## NDCS Internal Restrictive Housing Work Group

As restrictive housing practices began to change, NDCS created an internal work group. It consists solely of NDCS staff and is led by Warden Robert Madsen. They meet nearly monthly and currently (as shown in their meeting minutes) are focused on creating action plans for the recommendations contained in the 2016 Vera Institute of Justice report on restrictive housing.[45]

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[43] Attachment 21: NDCS 2016 Restrictive Housing Annual Report

[44] http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (page 34)

[45] http://www.corrections.nebraska.gov/pdf/Vera%20Institute%20Final%20Report%20to%20NDCS%2011-01-16%20v2.pdf

At the request of the OIG, Warden Madsen has provided a brief update on the activities of the internal work group at the last two meetings of the external work group. In addition, the OIG requested and is now receiving the meeting minutes from the internal work group. However, these meeting minutes have not been shared with the non-NDCS members of the external work group. The OIG requested to attend future internal work group meetings in May 2017 and although NDCS indicated that this would take place the OIG was not invited to meetings until September 2017. Inviting the non-NDCS members of the external work group to observe future internal work group meetings could be especially informative and helpful for both work groups.

### Restrictive Housing Changes

According to NDCS, the changes made to restrictive housing in 2016 were intended to adjust the manner in which restrictive housing operates by having it be a means of managing risk and not acting like a punishment. On July 1, 2016 two categories of restrictive housing were instituted. Immediate Segregation (IS) is the short-term housing of inmates (no more than 30 days) who have shown behavior that creates a risk to themselves or others. Longer Term Restrictive Housing (LTRH) is an intervention intended to change behavior of inmates whose own behavior results, or may result, in a risk to the safety of themselves or others. The internal and external regulations provide for a process of tracking those in restrictive housing and reviewing and continuing or discontinuing their stay there.

As part of that tracking and oversight process, a central office multidisciplinary review team (MRDT) has to approve the placement of an inmate in LTRH. The OIG attended a meeting of the MRDT and found it to be a detailed process that resulted in a good discussion on each case before MRDT.

As part of the changes to restrictive housing placements, an inmate has to meet one of six criteria in order to be placed in restrictive housing. According to NDCS the six criteria are:

- A serious act of violent behavior (i.e., assaults or attempted assaults) directed at correctional staff and/or at other inmates;
- A recent escape or attempted escape from secure custody;
- Threats or actions of violence that are likely to destabilize the institutional environment to such a degree that the order and security of the facility is significantly threatened;
- Active membership in a "security threat group" (prison gang), accompanied by a finding, based on specific and reliable information, that the inmate either has engaged in dangerous or threatening behavior directed by the security threat group, or directs the dangerous or threatening behavior of others;
- The incitement or threats to incite group disturbances in a correctional facility; and,
- Inmates whose presence in the general population would create a significant risk of physical harm to staff, themselves and/or other inmates.

Director Frakes indicated that he planned to review the accompanying regulations one year after they went into effect in order to determine whether or not changes needed to be made to them. At the last meeting of the external work group he asked for any suggestions for changes by the members. However, due to an Executive Order by Governor Ricketts that placed a freeze on the

promulgation of rules and regulations until the end of the year this will not take place in the near future.

## Vera Report

In 2015, the Vera Institute of Justice (Vera) began to work with NDCS to assist NDCS in decreasing its use of segregation. A report was issued on November 1, 2016. In the opening of the report Vera wrote the following:

> *Vera's assistance included conducting a yearlong assessment of how Nebraska uses segregation and identifying opportunities for change and innovation. While the assessment was still ongoing, NDCS began instituting dramatic reforms. In particular, the department developed and released a comprehensive new rule on restrictive housing in July 2016, in response to the requirements of a 2015 Nebraska law (LB 598). The rule aims to ensure that segregation is used only as a management tool of last resort, in the least restrictive manner possible, and for the least amount of time consistent with the safety and security of staff, inmates, and the facility. NDCS also recently ended the use of segregation as a disciplinary sanction for rule violations.*
>
> *This report presents the findings of Vera's assessment, which come from a period prior to the enactment of these reforms but provide a useful baseline against which NDCS can measure the impact of recent and future changes. Informed by this assessment, and by a review of the new restrictive housing rule, this report provides recommendations of additional strategies for safely reducing the department's use of segregation. It is Vera's hope that these recommendations will provide helpful guidance for NDCS to successfully build upon the promising steps it has already taken.*[46]

In their report, Vera offered many findings and recommendations. The findings included that disciplinary segregation was overused, administrative forms of segregation resulted in extended stays and restrictive conditions, some populations were overrepresented, some inmates were not having their mental health needs met, programming, recreational and congregative activity needs were not being met, and several others.[47]

As a result of their work, Vera put forward 25 recommendations. These recommendations included such things as:

- Support staff as they adjust to a disciplinary process that no longer includes Disciplinary Segregation as a sanction, and ensure that they have adequate alternative tools to respond to misbehavior and incentivize positive behavior;

[46] http://www.corrections.nebraska.gov/pdf/Vera%20Institute%20Final%20Report%20to%20NDCS%2011-01-16%20v2.pdf (page 3)
[47] http://www.corrections.nebraska.gov/pdf/Vera%20Institute%20Final%20Report%20to%20NDCS%2011-01-16%20v2.pdf (page 4-5)

- Identify potential unintended consequences that may arise from the elimination of Disciplinary Segregation—such as the overuse of Immediate Segregation in its place—and implement strong safeguards to protect against them;
- Enact firm policies that prohibit placing youth, pregnant women, and people with serious mental illness in any form of restrictive housing that limits meaningful access to social interaction, exercise, environmental stimulation, and therapeutic programming;
- Further strengthen procedural safeguards for placement in Longer-term Restrictive Housing (a segregation category established by the new rule), to ensure that it is truly used as a last resort, only when necessary, and for as short a time as possible;
- Improve the conditions of confinement in restrictive housing units to reduce the negative effects of segregation, including by increasing out-of-cell time and recreation, minimizing isolation and idleness, and providing opportunities for rehabilitative programming;
- Create a step-down program to encourage and facilitate successful transitions from restrictive housing to general population;
- Expand the capacity of mental health care services and ensure a therapeutic environment within Secure Mental Health Units;
- Continue to explore strategies to address staff vacancies, turnover, and burnout; and
- Expand vocational, educational, and therapeutic programming and activities for the entire population, including those in restrictive housing.[48]

These recommendations are the ones referred to earlier in the discussion regarding the work of the internal work group on restrictive housing.

### 2016 Update

In the 2016 report, the OIG found that NDCS was having some difficulties in tracking who was in restrictive housing and for how long they were there. Since that time, NDCS has improved their tracking system and the OIG has not found any cases of inaccuracies regarding this information.

### Restrictive Housing Population

One of the goals of the restrictive housing changes was to decrease the number of people 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. These 629 inmates represented 11.7% of the total NDCS inmate population.[49] According to the NDCS Restrictive Housing Report in 2016, the total number of inmates in restrictive housing units on July 1, 2016, was 304, and the total number of inmates in protective management units was 349. This represented 12.5% of the total inmate population in the system.[50] In August 2017, the total number of inmates in restrictive housing units was 389, and the total number of inmates in

[48] http://www.corrections.nebraska.gov/pdf/Vera%20Institute%20Final%20Report%20to%20NDCS%2011-01-16%20v2.pdf (pages 4-5)
[49] Attachment 22: November 24, 2014 Email between Dan Jenkins and Jeff Beaty
[50] http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr34_2015/lr34_appendixC-25.pdf

protective management units was 447. This represented 15.9% of the total inmate population in the system.[51] This has put a strain on the protective management and restrictive housing units.

## Double Bunking

As this segregated population has grown it would appear as though NDCS has had to turn to the double bunking of inmates in restrictive housing settings in order to accommodate the significant increase in inmates who are being placed in those settings.

In a recent report on the death of an inmate in the restrictive housing unit at TSCI, the OIG shared the following about double bunking:

> *Regardless, one of the more important questions that has arisen out of this death is whether or not NDCS should allow for double bunking in restrictive housing settings…The OIG met with several inmates who were double bunked in a restrictive housing unit and they all felt that it was not a positive situation. They provided a number of reasons why this was the case. In these situations, inmates live with each other for approximately 158 out of 168 hours in a week. The cell itself is 7" by 12'7" and is a total of 88 square feet. The men share a desk, a chair, a sink and a toilet.[52] In addition, the men are in these cells due to actions taken by them that resulted in their removal from the general population. The restrictive housing unit at TSCI is sometimes referred to as "segregation" for a reason, namely because inmates are placed there to be segregated or separated from the rest of the prison population due to the fact that their behavior has been troublesome, or dangerous to the wellbeing of others, including other inmates.*
>
> *The American Correctional Association (ACA), which accredits Nebraska's prisons, sets standards for housing in prisons. Their current standards state the following:*
>
> > *"4133 – Revised JAN. 2012. Written policy, procedure and practice provide that single occupancy cells/rooms, shall be available, when indicated for the following:*
> > 1) *Inmates with severe medical disabilities*
> > 2) *Inmates suffering from serious mental illness*
> > 3) *Sexual predators*
> > 4) *Inmates likely to be exploited or victimized by others*
> > 5) *Inmate who have other special needs for single housing*
> >
> > *When confinement exceeds 10 hours a day, there is at least 80 square feet of total floor space, of which 35 sq. feet is unencumbered."*[53]

[51] The OIG obtained this information from the Nebraska Inmate Case Management System (NICaMS) that is administered by NDCS

[52] Attachment 23: TSCI Cell Space Calculation Diagram

[53] Attachment 24: Excerpt from ACA Standards

*In the case of the restrictive housing cell at TSCI, it exceeds the 80 square feet of total floor space (88 square feet) and also has 57.4 square feet of unencumbered space. However, this standard is for a single occupancy cell so TSCI does not meet the ACA standard when they double bunk inmates in those cells.*

*A recent Vera Institute of Justice report to NDCS made the following recommendation:*

> *"Examine the impact of double-celling on the safety and well-being of individuals in double-celled restrictive housing units. Particularly if the assessment reveals negative impacts (such as more assaults or hospital admissions), develop a plan to reform double-celling practices. If double-celling is used, always ensure that individuals are carefully matched to minimize the risk of dangerous situations."*[54]

*The OIG asked for more information regarding the action taken by NDCS to address this recommendation. Director Frakes replied with the following:*

> *"AR 210.01 (pages 14/15) addresses the assignment of two inmates to one cell within Restrictive Housing. The Vera recommendation was considered… As per AR 210.01, the two Unit Managers conferred and agreed that the two inmates were safe to house together."*[55]

*A judge in a recent federal court case involving Alabama*[56] *included the following in his decision:*

> *"Admittedly, ADOC uses double-celling in some segregation units, which means putting two prisoners into a single segregation cell. At first blush, this practice might seem to mitigate the harmful effects of solitary confinement. However, double-celled segregation has an even more severe impact on the mental health of prisoners. Dr. Haney credibly explained that double-celled prisoners "in some ways ... have the worst of both worlds: they are 'crowded' in and confined with another person inside a small cell but—and this is the crux of their 'isolation'—simultaneously isolated from the rest of the mainstream prisoner population, deprived of even minimal freedom of movement, prohibited from access to meaningful prison programs, and denied opportunities for any semblance of 'normal' social interaction."*[57]

*The judge referenced the work of Dr. Craig Haney, a Professor of Psychology at the University of California-Santa Cruz, who has been studying prison segregation for over 25 years. Dr. Haney testified before a United States Senate Committee in 2012 and said the following:*

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[54] Attachment 25: May 1, 2017 letter from the OIG to Director Frakes
[55] Attachment 26: May 5, 2017 Email from Director Frakes to the OIG
[56] *Edward Braggs, et. al., v Jefferson S. Dunn, Commissioner of the Alabama Department of Corrections*
[57] https://www.themarshallproject.org/documents/3878591-Edward-Braggs-et-al-v-Jefferson-S-Dunn#.DSBrzKMIj

> *"[Doublecelled prisoners] are ... simultaneously isolated and overcrowded. They ... really can't relate in any meaningful way with whom they're celled, and so they basically develop a kind of within cell isolation of their own. And it adds to the tension, and the tensions then can get acted out on each other. It creates hazards for the people who are forced to live that way. It creates hazards for the correctional officers who have to deal with prisoners who are living under those kinds of pressures."*[58]

*In a 2012 report titled Boxed In: The True Cost of Extreme Isolation in New York's Prisons, Dr. Haney and Dr. Stuart Grassian, a psychiatrist who is also a long-time expert on prison segregation, wrote the following:*

> *"In Madrid v. Gomez, a case examining conditions of extreme isolation at California's Pelican Bay State prison where "[r]oughly two-thirds of the inmates [were] double celled," the court cited testimony from Professor Haney and Dr. Stuart Grassian in observing: [Double-celling] does not compensate for the otherwise severe level of social isolation .... The combination of being in extremely close proximity with one other person, while other avenues for normal social interaction are virtually precluded, often makes any long-term normal relationship with the cellmate impossible. Instead, two persons housed together in this type of forced, constant intimacy have an 'enormously high risk of becoming paranoid, hostile, and potentially violent towards each other.' The existence of a cellmate is thus unlikely to provide an opportunity for sustained positive or normal social contact."*[59]

*Despite extensive research, the OIG was unable to find any studies that showed that double bunking in restrictive housing units contributed to a positive environment or improved behaviors by inmates in such settings.*

*Another part of the double bunking issue is the safety of staff in these situations. During interviews with staff about* [redacted] *death, some of the staff shared that they do not agree with double bunking in a restrictive housing unit because it can create safety issues for them. They shared that having two inmates in those cells makes it more difficult to extract, move or work with one or both inmates…Recently, the OIG was in the restrictive housing unit at TSCI and interviewed an inmate (who was double bunked) in a separate interview room. When the inmate was returned to his cell, the staff opened the door and the other inmate charged out of the cell and attacked a staff member. Several staff responded and were able to restrain the inmate and place him on a gurney and remove him from the unit.*[60]

In their report on restrictive housing, Vera also stated:

[58] https://www.judiciary.senate.gov/imo/media/doc/CHRG-112shrg87630.pdf
[59] http://www.boxedinny.org/
[60] This quote is from a not yet released summary of a report regarding the death of an inmate by the OIG.

> *Overcrowding has also led to some restrictive housing units being double-celled, meaning two people are confined together in a very small cell for upwards of 22 hours per day. While there is little research on the effects of this practice, some journalists and advocates have noted that double-celling in segregation can have dangerous consequences.*[61]

Even though Vera did provide some lukewarm support for double bunking should certain conditions be met, they did acknowledge that there are potential concerns regarding its use. Some may argue that this practice has been going on for 20 or 30 years and therefore it is a practice that is appropriate. However, there are a number of restrictive housing practices that were used in the past and thought to be appropriate but correctional leaders now understand that they are no longer appropriate or even safe. Time will tell if this same change will take place in the years ahead regarding double bunking.

### Out-of-Cell Hours

In 2015, the Nebraska Legislature defined restrictive housing as "conditions of confinement that provide limited contact with other offenders, strictly controlled movement while out of cell, and out-of-cell time of less than twenty-four hours per week."[62] This works out to 4.34 hours per day of out-of-cell time. As restrictive housing practices evolve in Nebraska and throughout the country, NDCS and policy makers should review this requirement on a regular basis and determine whether this minimum level of out-of-cell time needs to be adjusted.

### Placements

As stated previously, there are six criteria for placement in longer term restrictive housing. Earlier this year, NDCS data showed that 41.9% of those placed in restrictive housing were there due to their presence in general population creating a significant risk of physical harm. 36.8% were placed there due to a serious act of violent behavior. 2.2% of those placed in restrictive housing were there due to having an active membership in a strategic threat group (STG) or gang.[63] Concerns have been expressed regarding the high number of individuals being placed in restrictive housing because they fit the criteria of creating a significant risk of physical harm should they reside in general population. Director Frakes has indicated that he believes that number should decrease and that NDCS is working to make that number much lower.

Another concern regarding these placement criteria is the use of the active STG criteria. Although it was a very small number earlier this year, in May it appeared that this might have grown. A May 22, 2017 memorandum from the OIG to the external work group stated the following regarding this situation:

> *Second, there appears to have been a rise in placing inmates in a restrictive housing setting because they are considered "Active Security Threat Group (STG)." According to*

[61] http://www.corrections.nebraska.gov/pdf/Vera%20Institute%20Final%20Report%20to%20NDCS%2011-01-16%20v2.pdf (page 18)

[62] Nebraska State Statute 83-170

[63] This document is not attached to the report due to it being a confidential NDCS document.

*NDCS Administrative Regulation 210.01, someone can be placed in immediate segregation for the following reason:*

> *"Active membership in a "security threat group" (prison gang), accompanied by a finding, based on specific and reliable information, that the inmate either has engaged in dangerous or threatening behavior directed by the security threat group or directs the dangerous or threatening behavior of others."*

*I have heard from numerous men in immediate segregation or longer term restrictive housing who have been told that they are in those placements because they are "active STG" yet they have not been told what the definition of "active STG" is and what it is that they have actually done. In the meantime, they stay in these placements and some of them are double bunked with another person for all but five to ten hours each week.*[64]

A recent report by the OIG to NDCS regarding a fire at TSCI discussed this same issue as it related to 17 inmates who were transferred from NSP to TSCI during the early morning hours of April 6, 2017. These inmates were identified as active STG and were placed in restrictive housing. The report included the following:

*The Ombudsman's office and the OIG have spent a considerable amount of time discussing these cases with the inmates, staff and administration. Several of the inmates have filed grievances regarding their placement in LTRH, including NDCS not following their own regulations regarding notices, other paper work and reviews. In some instances this appears to be the case.*[65]

*The OIG has monitored two of these cases more closely than others.* [redacted] *both agreed to allow the OIG to view all of their documents and to visit with them and their families regarding their cases. Mr.* [redacted] *was involved in the Violence Reduction Program and was working towards obtaining his GED while at NSP. By most accounts he was doing well in each program. He has been eligible for parole since 2014 and has a parole review scheduled for August 17, 2017. In the last year he has had three minor misconduct reports. He is concerned about how the placement will impact his ability to be paroled.*[66] *He also believes that he should be able to know more about what he has done to have him placed in LTRH. Nearly everything that he has received indicates that he is there due to his being identified as a high risk inmate based on active membership in an STG and that NDCS has specific and reliable information to that effect. However, in one response to an inmate interview request Deputy Warden Busboom indicated that he was placed there based on previous assaults and an altercation.*[67] *Also, he had already been punished for these past actions and because of this Mr.* [redacted] *believes placing him in LTRH for those reasons is a form of a double punishment and leaves him little hope that he will be let out of LTRH.*

[64] Attachment 27: May 22, 2017 Memorandum from the OIG to the External Work Group
[65] Inmate Interview Request from Inmate – not attaching due to confidentiality reasons
[66] April 6, 2017 Inmate Interview Request - not attaching due to confidentiality reasons
[67] April 7, 2017 Inmate Interview Request - not attaching due to confidentiality reasons

*Mr. [redacted] case is somewhat similar in that he also has been told that he is considered to be an Active STG member.[68] In one document, it states, "Given his past behavior, restrictive housing placement is necessary to mitigate the risk of his committing future serious assaults."[69] However, the OIG was unable to find any information that shows that Mr. [redacted] has ever committed an assault. In fact, in the past year he has not received one misconduct report. Since entering NDCS custody in 2012, Mr. [redacted] has never received a misconduct report that resulted in a loss of good time or a placement in segregation.*

*The OIG will continue to work on this issue in the future. One change that NDCS indicated that they will make is to provide more information to the inmate regarding the reason they are placed in Immediate Segregation or LTRH. This is a necessary change so that the inmate has some due process and the ability to counter any information or charges levied against them. Despite this, all 17 inmates from NSP are still in LTRH after more than four months have passed since being removed from their cells in the middle of the night.*

NDCS is working with the OIG on this issue and it is hoped that this will result in a better understanding, as well as changes, related to the use of this placement criteria. Table 8 provides data regarding the use of the six criteria that are used in making placements in the restrictive housing setting. The first column is data of all placements made between July 1, 2016 and March 31, 2017. The second column is a snapshot of existing placements on August 30, 2017. One of the goals of NDCS was to decrease the usage of criteria #6 (Presence in GP will create a significant risk of harm). This has significantly decreased from 42% to approximately 16%. There have been increases in those placed in that setting for a serious act of violent behavior and for maintaining an active membership in a strategic threat group (gang).

[68] April 6, 2017 Immediate Segregation Review and May 4, 2017 Disposition of Longer-Term Restrictive Housing Review - not attaching due to confidentiality reasons

[69] April 25, 2017 LTRH Referral - not attaching due to confidentiality reasons

| Restrictive Housing Placement Criteria Usage | Through March 31, 2017 | Snapshot on August 30, 2017 |
|---|---|---|
| Serious Act of Violent Behavior | 36.8% | 51.2% |
| Recent Escape or Attempted Escape | 0.5% | 1.3% |
| Threats of Actions of Violence | 12.5% | 17.9% |
| Active Membership in a STG (gang) | 2.2% | 12.3% |
| Incitement or Threats to Incite Group Disturbances | 6.0% | 1.8% |
| Presence in GP Will Create a Significant Risk of Harm | 42.0% | 15.6% |

TABLE 8

## Close Management Units

Over the past several months, NDCS has looked at establishing living units that are not restrictive housing and not general population. They have called these close management units and they exist at TSCI and NSP. The inmates placed in these units have been on lockdown status on a number of occasions and have had little out-of-cell time and programming as well as significant restrictions when it comes to movement and other activities. The OIG and primarily the Ombudsman's office has been following these changes and have heard from a number of inmates who were upset about their placement and their lack of activities, out-of-cell time and programs.

A May 22, 2017 memorandum from the OIG to the external work group stated the following regarding this situation:

> *First, since the March 2nd disturbance at TSCI, inmates have been housed in Unit 2B in a way that mirrors a restrictive housing setting. However, they are not considered as being in a restrictive housing setting by the Department. Neb. Rev. Statute 83-170 defines restrictive housing as the following:*
>
> > *"Restrictive housing means conditions of confinement that provide limited contact with other offenders, strictly controlled movement while out of cell, and out-of-cell time of less than twenty-four hours per week."*

> *For over two months, the men living in Unit 2B have had limited contact with others, have had their movements strictly controlled, and have very limited out-of-cell time. Yet, they are not counted as being in a restrictive housing placement.*[70]

In the last meeting of the external work group, the OIG suggested that a change needed to be made to NDCS regulations regarding these groups since many times they are acting as a restrictive housing unit (primarily out-of-cell time) but NDCS does not follow the regulations associated with a restrictive housing unit. The OIG suggested that if a housing unit is placed into a lockdown or other status and meets the definition of a restrictive housing unit then the restrictive housing regulations go into effect after a certain number of days. Just days prior to the publishing of this report, the OIG was notified by the Ombudsman's office that one of these units at TSCI was only allowing the inmates out of their cell 15 minutes a day. The OIG has requested to NDCS that they notify the OIG when a housing unit is placed in a lockdown status so that these can be more closely monitored in the future. It has been over six months since the riot at TSCI in March 2017 and since that time two housing units that are not considered restrictive housing units have been treated as such on many occasions.

## Summary

Much work remains to be done regarding restrictive housing at NDCS. The number of inmates in such a setting appear to be increasing. The double bunking of inmates in such a setting is a potential concern. The growth of close management units is a new development that needs to be monitored as it moves forward. In addition, there still exists legitimate concerns regarding mental health treatment, programming opportunities, general population transitions, the criteria used to determine such placements, and other concerns. James Davis, the Deputy Ombudsman of Corrections, shared his concerns regarding restrictive housing practices with the external work group in a May 22, 2017 letter.[71] It is necessary that the external work group become a more active participant in the oversight of restrictive housing practices and that NDCS is more transparent and engaging with this work group. In addition, NDCS asked for input on updating the Administrative Regulations for Restrictive Housing but any changes are on hold due to an Executive Order by Governor Ricketts that was previously described in this report.

[70] Ibid.

[71] Attachment 28: May 22, 2017 letter from James Davis to the External Work Group

## PROGRAMS

Programming is a key part of the correctional experience and a factor in inmate population. In the 2016 report, the OIG identified the following areas of concern and need:

> *First, required programs need to be identified early on and opportunities to participate in those programs need to be provided to inmates before their parole eligibility date. Second, appropriate levels of staffing are needed to administer programs throughout all the facilities and to build capacity of the programs. Third, the Board of Parole needs to have confidence in the programs being provided so that they will be more likely to parole inmates who have completed their programs. Fourth, more programs need to be available in the areas of education, substance abuse, behavioral health, and vocations/job-training.*[72]

Three reports were completed in 2016 that focused on programming within NDCS.

The CSG Justice Center issued a report in June 2016 that was a six month assessment of programming within NDCS. It recommended the adoption of a more evidence-based program assignment and sequencing strategy and the creation of a continuum of care in the community that is connected to programs found in NDCS. One of their most significant findings was that NDCS typically delayed the start of most programming until just prior to parole eligibility, or even later. In many cases, inmates were not even aware that they needed specific programs until they received a case review from the Board of Parole. They provided a strategy for effective programming, analyzed the programs currently in use, and presented a new programming model to NDCS.

Shortly after the release of that report NDCS Deputy Director Mike Rothwell presented a Program Statement to Director Frakes that built on the work of the CSG Justice Center. Deputy Director Rothwell presented his solution to the identified problems and discussed core programs that are needed, program staff needs, program management, funding and training.

In July 2016, Ada Alvarez, Program Analyst for NDCS, issued a report that provided a qualitative analysis of the Violence Reduction Program, Sex Offender Programming iHeLP and oHeLP, and the Residential Treatment Community. This was completed over a six month period and was the first of a three phrase report.

In a January 9, 2017 memorandum from the OIG to the Judiciary Committee, additional information was shared regarding NDCS programming efforts, including a November 4, 2016 update on clinical and non-clinical programming from NDCS Behavioral Health Administrator

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72 http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (page 39)

Dr. Alice Mitwaruciu and Deputy Director Rothwell, a further update from Deputy Director Rothwell on December 2, 2016, and an updated handout on programming within NDCS.[73]

In addition, 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 is 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.[74] NDCS is now including this data in the NDCS quarterly data sheets and this was provided to the OIG and placed on the NDCS web site in late July 2017.[75] This now will provide anyone who is interested in seeing any changes in programming within NDCS, such as are found in Tables 9 and 10.

| Program | March Waiting List | June Waiting List | March in Program | June in Program |
|---|---|---|---|---|
| Violent Reduction Program | 148 | 144 | 42 | 28 |
| Anger Management | 240 | 208 | 34 | 51 |
| Anger Replacement Therapy | 28 | 30 | 4 | 3 |
| Sex bHeLP | 41 | 56 | 15 | 4 |
| Sex iHeLP | 52 | 57 | 54 | 49 |
| Sex oHeLP | 93 | 115 | 39 | 36 |
| Substance Abuse Non-Residential | 150 | 150 | 140 | 158 |
| Substance Abuse Residential | 291 | 221 | 272 | 261 |
| GED (Education) | | | 405 | 401 |
| Destination Dads | | | 90 | 53 |
| Thinking For A Change | | | 49 | 36 |
| 7 Habits | | | 8 | 7 |
| Beyond Anger | | | 15 | 21 |
| Moral Reconation Therapy | | | 384 | 378 |

**TABLE 9**

Table 9 shows only three programs saw an increase in participants. Overall, there are 65 less participants in June versus March. However, it is important to track this data over a longer period of time due to the fact that start and end dates of classes could impact the data.

Programming is essential for the well-being of the inmates but also of the correctional system. Giving individuals the tools they need to address their problems, whether it be violence, sexual, substance abuse or other, is something that needs to be done. In the 2016 program reports and memorandums, it shows that NDCS is concerned about the need to provide more programming opportunities and to also focus on having individuals complete their programming before their parole eligibility date. As a staff member recently stated to the OIG during a visit to a correctional facility, "If someone has a violence issue and hasn't received any help with that issue then how can we be so surprised when they exhibit violent behavior while incarcerated."

[73] Attachment 29: January 9, 2017 memorandum from the OIG to the Judiciary Committee
[74] Attachment 30: NDCS Programming Data: Current Status 03.16.2017
[75] Attachment 31: NDCS Quarterly Data Sheet: April – June 2017

The New York State Bar Association completed a report in January 2016 by a Special Committee on Re-entry. The focus of the report was on the re-entry of individuals post-arrest and post-incarceration. They found that successful programs actually can "pay for themselves." [76] It also found that:

> *Typically, programs designed to enhance the prospects for successful re-entry begin in the latter stages of incarceration, and are substantially but inadequately enhanced shortly prior to release. This timeline is ill-suited to achieving meaningful and successful reintegration because it fails to deal with an individual's particularized needs early on and, further, provides inadequate time to form connections that will maximize the likelihood of successful re-entry. Instead, individualized consideration of re-entry should begin prior to actual incarceration, at the moment of arrest if possible, and programs consistent with that consideration should begin as soon as possible after incarceration begins.*[77]

This confirms what the work of CSG and NDCS found in 2016.

The shift that NDCS is attempting to make as far as programming changes can be demonstrated in a recent letter to the NDCS administration from Dr. Jeff Melvin, Behavioral Health Assistant Administrator for Sex Offender Services and Dr. Mitwaruciu. It described the changes that they are attempting to make in the sexual offender programs. They are eliminating b-HeLP, which is a nine week program for low-risk offenders after examining the need for such a program. They are also working on changes to their i-HeLP and o-HeLP programs (inpatient and outpatient sexual offender programs) that would increase the intensity of the programs while decreasing the length of the programs. Finally, Dr. Melvin shared that their team was "exploring options to get our 600 sexual offenders screened in a timely manner so that they can get into correct programming well before their parole eligibility dates. The decisions involve potentially high-stakes. We are working to be efficient but to also be mindful of community safety and not setting up a client for failure after discharge if released without adequate programming."[78]

[76] http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=61806 (page 13)
[77] Ibid.
[78] Attachment 32: September 7, 2017 Memorandum from Dr. Melvin and Dr. Mitwaruciu on sex offender programming

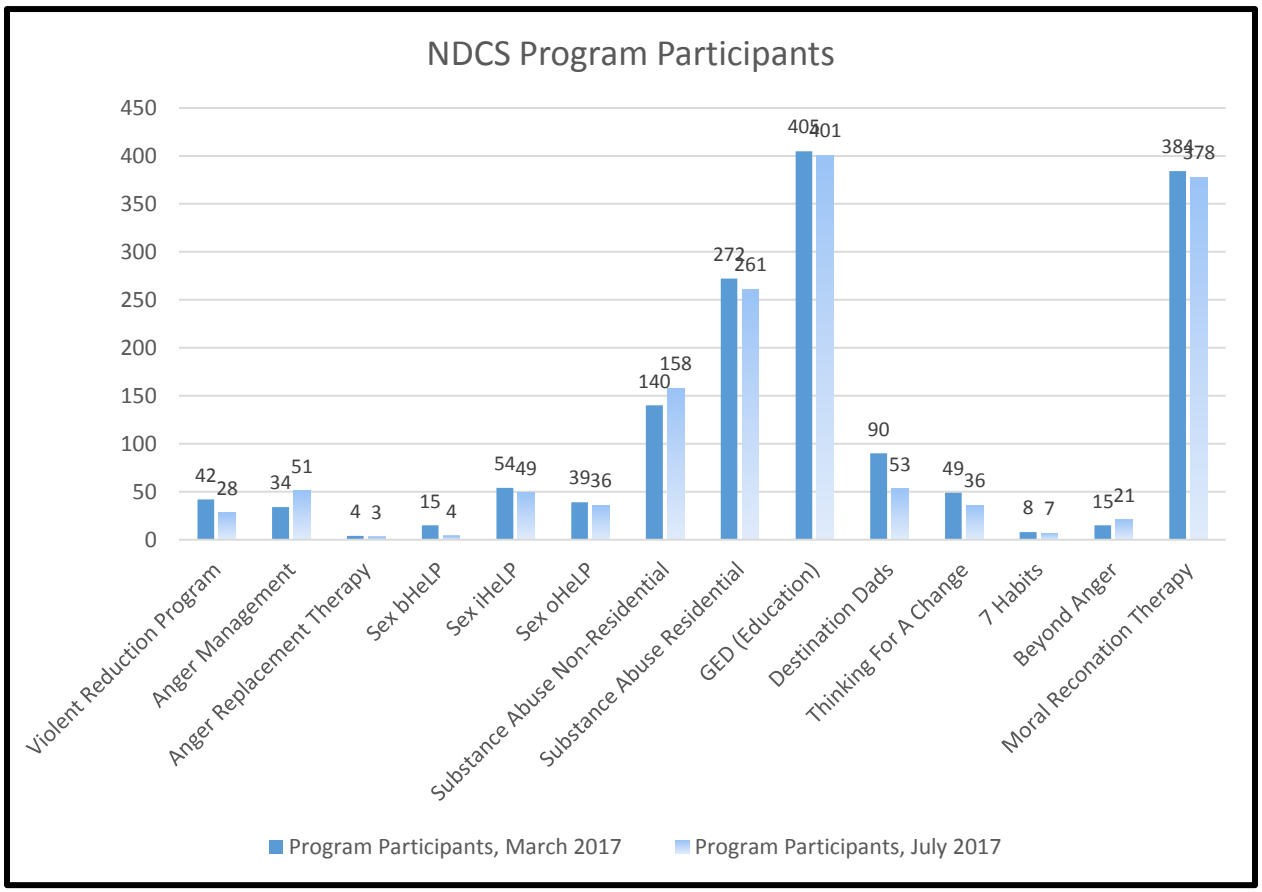


**TABLE 10**

## Family Programs

In Table 10, it shows that in June there were 53 inmates enrolled in a program called Destination Dads. This is a program run by Christian Heritage and is designed to connect parents with their children and strengthen those parental relationships.[79] It is currently being provided at five separate facilities. It is funded by an appropriation from the State of Nebraska.

In 2015, the Urban Institute released a report, "Toolkit for Developing Family-Focused Jail Programs."[80] It is part of The Urban Institute's Children of Incarcerated Parents Project that was funded by the National Institute of Corrections.[81] While it is focused on the impact and the need for programs for children of those arrested through pre-adjudication, there are valuable insights that can be gained from this effort. Strengthening the bonds between an incarcerated parent and their child can minimize trauma inflicted on the child and enhance parenting skills for when the incarcerated parent returns to their home community.

Although the Destination Dads program already is administered within NDCS facilities, as NDCS looks at expanding their programming efforts consideration should also be given to expanding family programs. Senator Patty Pansing-Brooks introduced Legislative Resolution

[79] http://www.chne.org/family_outreach/destination_dad.htmll
[80] Attachment 33: Toolkit for Developing Family-Focused Jail Programs: Children of Incarcerated Parents Project. June 2015. Bryce Peterson, Lindsey Cramer, Emma Kurs, and Jocelyn Fontaine.
[81] https://nicic.gov/coip

198 to study this issue. The Judiciary Committee was scheduled to hold a hearing on it on September 15, 2017.

## Inmate Jobs

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.

After the 2016 escapes at the Lincoln Correctional Center, NDCS reacted by not allowing anyone who has had an escape or attempted escape from a secure facility within the last ten years to work in an off-unit area. In addition, anyone who absconded or escaped from a community center or parole within the last three years will not be able to have a job in an off-unit area. They also changed the policy to not allow anyone who has a history of assaultive behavior within the last five years to work in an off-unit area. This created turmoil within the facilities, by both inmates and staff. It has since been changed so that those off-unit areas don't include kitchens and schools and the policy was changed to not allow anyone who has a history of assaultive behavior within the last three years to work in an off-unit area. Wardens can seek exceptions to this policy.

## Peers

In the 2016 report, there was information shared about the role of peer mentors and peer supports. A recommendation in the report focused on this and stated:

> *Expand the use of peer support programs by using inmates and people from outside NDCS. For example, consider using trained peers in restrictive housing settings or with individuals who turn down programming opportunities.*[82]

Peer mentors are people who are certified as peer support specialists and have shared life experiences that enhance their ability to relate and communicate with individuals in our justice or mental health systems. Peer mentors can be inmates who are trained to do this or they can be people outside of the correctional system. Peers can have an incredible value in Nebraska's justice system and are already a part of the correctional system as at least two of the vocational and life skills grant recipients emphasize this in their work. NDCS is moving forward in developing a peer program within their restrictive housing units. However, it is important that the inmates who participate as peer support specialists receive appropriate training. There are

82 http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (page 63)

numerous other ways that peer support specialists can be used in the correctional facilities that can result in positive outcomes for the inmate population and NDCS staff.

### Sentenced to Work Proposal

There is a lot of change taking place in the field of corrections in the United States and around the world. Recently, North Dakota corrections' officials spent time in Scandinavia and brought back ideas to use in their system. An international corrections' expert, Gary Hill, resides in Lincoln. Last year he presented some ideas on how to make changes to corrections in Nebraska to some policy makers and the OIG. His Nebraska Sentenced to Work Program is based on programs that operate in other countries and in the United States. His proposal would be a treatment community model that would also involve construction and the possible building of small houses that the inmates could not only build and sell but also live in as part of a small community corrections type center.[83] Programs and proposals such as this are starting to emerge in other countries and states and are worth examining as Nebraska moves forward. Mr. Hill also shared information with the OIG on what is taking place in Norway as far as their correctional system.[84]

[83] Attachment 34: February 19, 2016 Talking Paper on the Nebraska Sentenced to Work Program
[84] Attachment 35: "A Look at 'Normality' in Prison," Gary Hill

## COMMUNITY CORRECTIONS

NDCS has two facilities designed to house inmates who are eligible to work outside the NDCS facilities, the Community Corrections Center-Lincoln (CCC-L) and the Community Corrections Center-Omaha (CCC-O). These two facilities currently house both male and female inmates. Together they can house over 600 inmates but they are both essentially at double their design capacity in regards to inmate population.

### Expansion

In September 2017, CCC-L will expand by 100 male beds when a dormitory style housing unit is opened. This was funded by legislative action in 2016 at a cost of approximately $1.8 million. A second project that will result in the construction of a 160-bed female unit at that facility is underway and is expected to be completed in January 2019. This project will be a separate building that will also house the facility's food service, an expanded canteen and additional offices and program space. When this is completed NDCS will close the approximately 20 female beds at the CCC-O which will allow CCC-O to expand their male population by the same number. In addition, the current female unit at CCC-L will convert to a male unit which result in an expansion of male beds at CCC-L by approximately 90 beds. This project is projected to cost at least $26 million.

The OIG still has concerns regarding the elimination of female community custody beds in Omaha. According to NDCS data, over 30% of the women in Nebraska's correctional system are from the metro Omaha area and the closing of these beds will not allow these women to begin the transition process in their home community. When they are discharged from CCC-L they will then have to restart the employment process when they move to Omaha. If they were able to serve the end of their sentence in Omaha they would be able to rebuild relationships with children who many are expected to parent once they are released, and find other supports such as housing, treatment options, employment and education.

### Other Options

In 2016, 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. These included the establishment of smaller community facilities such as exist in the State of Washington or the contracting with county jails who have available work release beds. The OIG shared with NDCS that Hall County and Scotts Bluff County were definitely interested in working with NDCS on such an endeavor and that at least four other counties were interested in learning more about it. NDCS has been in discussions with Scotts Bluff County about some type of partnership but as of the date of this report nothing had yet been finalized.

One other possibility is to expand the role of the Office of Parole Administration in the future and have them work with community custody individuals who are eligible for work release. This could potentially lead to a smoother transition from NDCS custody to being on parole for those individuals. It might also require that the re-entry efforts of NDCS also be transferred to Parole.

Should this possibility be explored the first pilot project for Parole could be a smaller female facility in the metropolitan Omaha area.

### Work Release vs. Work Detail

In the 2016 report, there was a section that compared work release opportunities with work detail opportunities. Last year's report described the differences as follows:

> *At each community corrections center, inmates are assigned to either a work detail position or are on work release where they obtain a job in the community. Work detail positions are ones in which NDCS has a contract to fill either internally or with another state agency. The daily pay for these positions is $1.21, $2.25 or $3.78. Work release positions are actual jobs working in the community for a business. These positions pay regular wages.*
>
> *In order to be housed at a community corrections center, an inmate has to be classified as community custody. Most inmates qualify for work detail positions before qualifying for work release positions. In recent correspondence with an official at a center, they said that the goal is to have all inmates employed in work release positions 30 days or more before their final Board of Parole hearing or their tentative release date (mandatory discharge date). If an inmate has a work release position they are able to save more money for their eventual transition to the community.*[85]

One of the keys for work release inmates is that they actually pay rent of $12 per day to NDCS which helps pay for the costs of their incarceration at the community corrections centers. As the community custody beds expand it is important to track the number of work detail and work release opportunities.

### Transportation

A consistent concern expressed by inmates and staff at the community corrections centers is the difficulties involved with transportation for those who have work release jobs. Currently, inmates are mainly reliant on the public transportation system and this can create barriers to obtaining and maintaining employment. A program that allowed inmates to drive a state van that could deliver and pick up work release inmates from job sites was ended in 2013 after an inmate driving a state van was in an accident that killed a member of the public. This program had been in place since 1985. Inmates were also previously allowed to have their own vehicles at the community corrections center and drive them to and from the job site but that program was also ended.

As a result, transportation issues have grown for this population. One example of an inmate who was impacted by this was a woman who had a good job at a local business. They wanted to promote her and have her work earlier hours at a different location. However, due to the fact that

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85 http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (pages 41-42)

the public transportation system didn't start running until after she needed to be at work she had to turn down the opportunity to be promoted.

## Reentry

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 programs that were funded in the second grant cycle include: Associated Builders and Contractors, Hope of Glory Ministries, Mental Health Association, Metropolitan Community College, ReConnect, ResCare, TRADE – Center for People in Need, and Western Alternative Corrections. In October 2017 ResCare is ending their contract with NDCS. Over $7 million has been allocated to the grant program over a two year period.

The grant recipients are providing services in areas throughout Nebraska and they include a combination of programs, including housing, employment services, education, and vocational training. In addition, more services are being provided within the correctional facilities by these groups.

At a Vocational and Life Skills Advisory Committee meeting on September 12, 2017, a number of stakeholders met to discuss the program. NDCS shared that in FY2017 there were 2661 people who participated in these programs and since the program started 1483 people have successfully completed their program. Reentry grant recipients expressed their views that inmates have more hope as a result of these programs and that some have witnessed a positive shift in correctional staff toward reentry opportunities. Challenges that exist include competition for space and staff at correctional facilities as they attempt to bring more programs and opportunities to the facilities and the lack of email and internet access for inmates who are attempting to re-enter society and utilize these programs.

As part of the NDCS reentry effort, NDCS reentry specialists meet with inmates at least three times during their incarceration. These include contacts during the beginning, middle and end of their sentences. They work with the inmates to establish a reentry plan. The plan is intended to assist the inmate with determining where they are going to live, identifying the relationships that they have in their home community, deciding what type of employment they will seek, and realizing that they need to save money to assist with their reentry efforts. For those in restrictive housing near the end of their sentence, the specialists meet with them one-on-one 157 days prior to their discharge date to give them extra time to plan and prepare. Just like last year, the OIG's only concern about this program is the fact that there is a need for additional reentry specialists.

## VOCATIONAL/EDUCATION

Starting in June, the LR 127 Committee visited each correctional facility.[86] A constant theme heard from inmates was that they would like to have additional higher education and vocational education opportunities available to them. In the past, NDCS had a much greater array of higher education and vocational opportunities for inmates. However, due to budget restraints, these programs gradually decreased and only a few opportunities now exist.

In 2015, Nebraska Appleseed produced a report titled *Education for Adults in Nebraska Corrections: Decreasing Recidivism and Investing in Our Workforce.* The report focused on the important of education for inmates in preparing them for a life outside of the correctional system. In it they stated:

> *This reduced emphasis on education in the context of corrections seems myopic, because increased access to and completion of education has been shown to reduce recidivism for incarcerated adults. In a meta-analysis comparing the results of 50 studies, the RAND Corporation found that inmates who participated in correctional education programs had at least 36 percent lower odds of recidivating than those who did not participate in any correctional education programs.*[87]

NDCS has demonstrated an interest in establishing or expanding such programs but needs additional resources to move forward on them. It is likely that the LR 127 Committee will discuss this issue in their upcoming report. Considering how important vocational training and higher education might be in terms of reducing recidivism, the OIG would strongly urge the Committee to give careful consideration to this issue.

[86] The LR 127 Committee is comprised of seven senators who are looking at justice issues.

[87] Attachment 36: Nebraska Appleseed*, Education for Adults in Nebraska Corrections: Decreasing Recidivism and Investing in Our Workforce* (December 2015), page 3.

## MEDICAL

Last fall, NDCS hired Dr. Harbans Deol as the Medical Director and promoted Dr. Alice Mitwaruciu to the position of Behavioral Health Administrator. Dr. Deol held a similar position in Iowa and brings a great deal of experience to the position. He has been faced with many challenges as the Division of Health Services attempts to move forward in its role of providing care for its patients.

### Staffing

As stated previously in the report, the Division of Health Services faces staffing challenges. There has been success in the hiring of psychologists but at this time there are not any psychiatrists within NDCS. As stated earlier in the report, here are the most recent vacancies within the Division of Health Services:

- 14 total vacancies in Substance Abuse;
- 19 total vacancies in Mental Health;
- 15 total vacancies in Health Services;
- One vacancy in Pharmacy; and,
- Three total vacancies in Dental.

This is a total of 52 vacancies which is one less vacancy than last year at this time.[88] During the past two years, the OIG and the Legislature have been informed on numerous occasions regarding the need for salary changes for a number of positions. However, the ones that have been identified as needing the most attention have been Licensed Mental Health Practitioners, Substance Abuse treatment staff, and nurses.

### Licensed Mental Health Practitioner Salary

The Licensed Mental Health Practitioner (LMHP) position is a key part of the mission of the Division of Health Services. They provide a number of services to the NDCS population and as with most positions experience is beneficial. However, NDCS is continually losing LMHPs, including to the Nebraska Probation Administration. Recently, NSP lost two LMHPs to Probation and their compensation increased by a significant amount. The wage scale for LMHPs is determined by the Nebraska Department of Administrative Services and there are many who argue that this wage scale is set too low. One example of the wage discrepancy provided to the OIG is the wage provided for the position of Mental Health Technician at the Lincoln/Lancaster County Crisis Center. The Mental Health Technician position "performs specialized human service work in the Community Mental Health Crisis Center utilizing group process and individual skill building to assist clients in resolving a variety of mental health problems."[89] In order to be qualified for the position one would need to be a "high school graduate or equivalent

[88] These vacancies do not include any new vacancies at TSCI due to the fact that the private health contractor who was providing services at TSCI recently ended their contract with NDCS. NDCS is now attempting to run TSCI like other facilities and has had to hire an entire staff of nurses, physicians, and other positions.

[89] Attachment 37: 2016 Mental Health Technician Job Bulletin for Lincoln/Lancaster County

with at least 6 months experience/education in the delivery of mental health services."[90] The top of the salary hiring range is $22.78 per hour. A posting for a LMHP position within NDCS lists the starting salary as $21.70. However, the basic requirements for this position are:

> *Licensed as a Mental Health Practitioner or possess another license that allows the incumbent to provide the above mental health services as required by NE. Rev. Statute 38-2122. Master's Degree in Social Work, Counseling, Marriage and Family Therapy, Human Development, Psychology, Family Relations, Vocational Rehabilitation, Art Therapy, Divinity, Human Resources, Naturopathy, Mental Health or other field approved by the Nebraska Department of Health and Human Services in order to become a Licensed Mental Health Practitioner AND 3000 hours of post-degree supervised counseling experience.*[91]

In other words, a position in which you need to be a licensed professional with a Master's Degree and 3000 hours of post-degree supervised counseling experience could receive $1.08 per hour less than someone with a high school degree and six months experience. On top of that, the Mental Health Technician would receive step raises each year that they work while the LMHP with ten years of experience will be paid the same as a brand new LMHP. It was also shared with the OIG that Probation has a position of Treatment Probation Officer that is for someone who is an LMHP and it pays at least $7000 per year than an LMHP within NDCS.

It is imperative that NDCS and other state agencies work with the Nebraska Department of Administrative Services to assess the wage scale for this position and others and determine what can be done to address these apparent wage issues that are impacting the ability of NDCS to provide much needed services to their population.

### Facility Expansion

During the 2017 legislative session, the Legislature appropriated approximately $75 million to establish a Reception and Treatment Center that will connect the Lincoln Correctional Center (LCC) and the Diagnostic and Evaluation Center (DEC). It will establish a 32 bed skilled nursing facility that will be for seriously or chronically ill inmates. It will primarily replace the skilled nursing facilities at DEC and NSP. It will also establish 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. Inmates that will move into this unit will likely be moved from 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. The original plan for the expansion included additional health care beds but these were eliminated from the proposal presented to the Legislature. In some of the documents discussing this expansion it indicates that the expectation is that these additional 32 bed units will be constructed shortly after the project is completed.

[90] Ibid.

[91] Attachment 38: Nebraska Job Bulletin for Mental Health Practitioner at the Nebraska State Penitentiary

## The Future

The 2016 report stated the following regarding the future of the Division of Health Services:

> *In order to move the medical field of NDCS into the future, there are a number of analyses that need to be done by the Health Services Department. First, a complete staffing analysis needs to be completed to determine the true needs of each of their facilities and the central office. Second, a complete analysis of their technology needs to be completed so they can move strategically into the future with their technological purchases. Third, an assessment of their current medical equipment needs to be completed in order to determine whether or not they are operating their facilities with state of the art equipment that can provide appropriate care for their patients. Fourth, the Department needs to fully understand why staff are so difficult to recruit and retain and become more strategic in attracting and keeping their valuable staff.*[92]

The OIG communicated with Dr. Deol regarding the observations made in last year's report and he agreed that they are still valid today.

The OIG plans to take a longer look at the Division of Health Services since it is undergoing a number of changes, including a shift from privatized health services at TSCI. As part of this effort, the OIG will continue previous efforts to connect community behavioral health groups with NDCS in order to pursue possible opportunities to collaborate and build relationships that can result in better care and outcomes for individuals on the inside and the outside of correctional facilities. In addition, additional attention will be given to telehealth possibilities and the possibility of establishing some type of "ethics board" that would look at surgeries and other outside health appointments. A report with the findings of the OIG will be released no later than January 15, 2018 and it will also be included in next year's annual report.

92 http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (pages 47)

## DRIVER LICENSE ISSUE

During the 2017 legislative session, Senator Matt Hansen introduced Legislative Bill 258. LB 258 would have required NDCS to provide an opportunity for individuals about to be discharged from a correctional facility to receive a State Identification Card or Driver's License. Currently, individuals released from a correctional facility receive a state issued card identifying them as a "Recently Released Inmate."[93] The bill was introduced by Senator Hansen as a result of the difficulties that individuals were having regarding the obtaining of these documents. Without these documents, it made obtaining a job more difficult, as well as many other things including opening a bank account. The bill was heard by the Judiciary Committee and advanced to General File for debate by the entire Legislature. In the meantime, NDCS indicated that they would address the issue.

During the past two months, NDCS has met with the Department of Motor Vehicles and plans to continue to meet with them in the near future regarding this issue. They met to discuss a pilot project at CCC-L. The proposed process for the pilot is as follows:

> *Within first 30 days at CCCL, during the orientation phase of Work Detail, staff will assist inmates in identifying their license/ID status. If needing to obtain new or replacement ID a participant will be transported to the DMV West O location at 500 W O St, Lincoln, NE 68528. We believe we would be able to serve 10-12 participants at a time and would repeat the process bi-monthly or weekly depending on availability and need. The specific time will be coordinated between CCCL and the DMV, but we've discussed either an hour prior to the DMV opening or for an hour after closing. Each individual will be responsible for payment of the new or replaced ID (cost=$26.50, re-newed=$13.50) unless said person is indigent in which case accounting/CCCL are writing a procedure for. The address will be assigned the physical address of CCCL - 2720 West Van Dorn Lincoln, NE 68542 – participants will need to provide two documents for address verification, one of which can be an official letter from CCCL stating that the individual resides at that location. Participants will also need proof of social security or exemption and proof of identity.*[94]

It is anticipated that the pilot will begin in September 2017.

[93] Attachment 39: 2017 Statement of Intent for Legislative Bill 258

[94] Attachment 40: August 28, 2017 email between Scott Frakes and the OIG

## DIVERSITY OF NDCS WORKFORCE

The 2016 report found that NDCS faced challenges regarding their diversity of their workforce and that only 231 employees (10.4%) of the agency were minorities in 2014. The latest report by the Nebraska Department of Administrative Services found that in 2015 269 employees of NDCS were minorities.[95] This was over a 16% increase.

However, it is important to reiterate what was written in the 2016 report:

> *It is important that NDCS establish a program for the increased recruitment and employment of minority staff, including staff who speak Spanish and other languages that are prominent in the NDCS facilities. One reason for the need for the increased recruitment and retention of minority staff is that this can result in building a pipeline that results in more minorities being promoted into leadership positions in NDCS. Currently, there are very few minorities in NDCS leadership positions.*[96]

[95] Attachment 41: Excerpt from the State Personnel Division's 2016 Almanac

[96] http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (Page 55)

## AUDITOR'S REPORT

The 2016 report discussed a November 2015 audit of NDCS by the Nebraska State Auditor that was focused on the financial activity of NDCS. The report found a number of significant shortcomings, including communication issues, the overuse of manual processes, and a lack of accountability. It was the report's contention that this resulted in overpayments and excessive expenditures.[97]

Since that report, the OIG has been aware of several issues regarding the financial and business practices of NDCS, including inaccurate balances of inmate club accounts and delayed payments of bills. The OIG committed to requesting the Legislative Performance Audit Committee to consider a performance audit of certain business practices of NDCS and to follow-up on the concerns raised in the report by the Nebraska State Auditor.[98] Due to other requests, the Committee was unable to commit to such an audit. However, on July 6, 2017 the Nebraska State Auditor released another audit that was conducted at the request of NDCS. It audited the practices associated with the inmate trust funds, untimely payments to vendors, untimely journal entries, and inmate trust fund unclaimed property. It made several recommendations to NDCS in order for them to improve their business practices.[99]

### Inmate Welfare Funds

The Nebraska State Auditor had discussed the Inmate Welfare Fund and other inmate accounts in previous reports. In a 2015 Attestation Report, the Auditor stated:

> *Inmate welfare accounts receive revenue primarily from the sale of soft drinks to inmates, profits from the canteens, the interest therefrom, and other revenue at the Department's discretion. The welfare accounts are used to provide recreational activities and equipment for inmates at the facilities. The welfare accounts receive an allocation for each facility determined by revenues less television costs and based on inmate population.*[100]

Previous audits had found that this fund had a balance of well over $2 million. NDCS is making an effort to use these funds to improve the quality of life for inmates throughout the system. NDCS recently provided a spreadsheet to the OIG that provided details on the allocation of these funds. It includes the funding of exercise equipment, outdoor shade shelters, expansion of exercise yards, books, toys and fish tanks for visitation rooms, a dog kennel, ice machines, a drinking fountain, materials for a greenhouse and many more projects.[101]

Nebraska law gives direction to NDCS on how to spend the funds. In Neb. Rev. Statute 83-915.01 it states that "The fund shall be used to provide recreational activities and equipment for

[97] http://mediaassets.kmtv.com/cms/docs/corrections-audit-11022015.pdf?_ga=1.30158588.29216941.1473309533
[98] Attachment 42: February 6, 2017 letter from the OIG to Martha Carter, Legislative Audit Office
[99] http://www.auditors.nebraska.gov/APA_Reports/2017/SA100-07062017-July_1_2016_through_June_30_2017_Corrections_Inmate_Trust_Fund_CAFR_Early_Management_Letter.pdf
[100] http://www.auditors.nebraska.gov/APA_Reports/2015/SA46-11022015-July_1_2013_through_December_31_2014_Attestation_Report.pdf (page 7)
[101] Attachment 43: July 17, 2017 NDCS spreadsheet on inmate welfare fund spending provided to the OIG

inmates at all of the department's correctional facilities." The OIG would encourage NDCS to work with policy makers to determine whether or not the statute should be updated so that the funds are able to provide additional quality of life opportunities for inmates beyond what is currently in state law.

## Greenhouse

In addition to the money allocated for materials for a greenhouse, the OIG worked with NDCS earlier this year to attempt to find a greenhouse for one of the correctional facilities to use. At NSP, Warden Rich Cruickshank shared with the OIG his efforts to have inmates grow food in gardens at NSP for community food banks. After this conversation, the OIG contacted the Director of the Division of Behavioral Health within the Department of Health and Human Services regarding a greenhouse that was built at the Beatrice State Developmental Center several years ago. It was no longer being used and the OIG connected the Director of the Division of Behavioral Health with Director Frakes. Director Frakes indicated an interest in obtaining the greenhouse and is considering placing it at the Work Ethic Camp in McCook or the Nebraska Correctional Center for Women in York.

## INMATE LETTERS

During the past two years, the OIG has received numerous letters from inmates in the state correctional system. They come from all facilities and cover a multitude of issues. While the OIG has the intent to respond to all correspondence, keeping up with these letters has proven to be a challenge due to other demands of the position. However, each of these letters are read as they are received and they continue to play a significant role in educating the OIG about the correctional system. While many of the inmates shared personal circumstances or concerns that are more applicable to the work of the Ombudsman's office, they do present an idea of what is happening across the system. Many times the OIG would refer the individual to the Ombudsman's office but ask that person to keep them updated on their situation. Other letters did express concerns or raise issues surrounding the correctional system and fell under the domain of the OIG. The challenge of responding to all of them in a timely manner remains.

## TSCI UPDATE

In the 2016 report, the OIG decided to issue a separate report with an update on TSCI. It was delivered to the Public Counsel, Director Frakes and the members of the LR 34 Committee on December 1, 2016. The update discussed several issues at TSCI, including staffing, programming, restrictive housing and medical staffing. The final section in the report was titled "Challenges" and include the following:

> *As has been well documented, TSCI currently faces many challenges to operate in the manner in which the Department would like it to do so.*
>
> *Chief among these challenges is staffing. As stated in this update and in the annual report of the OIG, staffing includes positions throughout the entire facility. When I visited TSCI earlier this week they had nine staff who had called in sick. When a facility is already significantly understaffed this only adds to their issues of security and the providing of services to their population. During that visit many employees shared how this had impacted the facility during that day. There are attempts being made to address at least some of these staffing challenges but the recently implemented hiring freeze for some positions is now starting to impact the facility as well.*
>
> *Flexibility and space within the correctional system is also an issue that not only impacts TSCI but most of the other facilities. There are inmates at TSCI who would be good candidates to move to other facilities due to their programming needs or classification. However, since the system is operating at 160% of design capacity this is a barrier that impacts the appropriate movement of inmates throughout the system.*
>
> *A barrier that is hard to quantify but is nonetheless real is the fact that TSCI (like nearly every other correctional facility in Nebraska) continually asks employees to do more with less. The Warden and his leadership team expressed this concern during a recent meeting. Employees freely share their concerns and experiences regarding their being asked to do more with less. The staff are working a lot of hours and many of them volunteer for additional overtime so that they can assist their fellow employees. While they do their best in many cases to work as a team and provide coverage for each other, the stress of being short staffed and being asked to do more with less continually impacts them. This then impacts the inmates and the operation of the facility.*
>
> *Finally, a concern that has been expressed to me by several employees and inmates at TSCI is that despite attempts to make change take place at TSCI they do not think things have substantially changed since the riot in 2015. In fact, they talk as if they believe another disturbance could happen in the near future. They shared that if you look at the facility prior to May 2015, staff shortages existed, inmates did not receive much in the way of programming, and there was an overall sense of unease throughout the facility. Having started as the Inspector General after the riot, I am unable to state whether or not these concerns and observations are valid but I do believe that it is important that they be shared with policy makers and the leadership of the Department.*[102]

[102] Attachment 44: December 1, 2017 TSCI Update by the OIG

These same concerns exist today despite the best efforts of the staff at TSCI who are working hard to overcome these challenges and do their best to persevere despite the obstacles they face. Of particular interest is the following observation found in the final paragraph:

> *Finally, a concern that has been expressed to me by several employees and inmates at TSCI is that despite attempts to make change take place at TSCI they do not think things have substantially changed since the riot in 2015. In fact, they talk as if they believe another disturbance could happen in the near future.*

A few months after this update, a second riot took place on March 2, 2017 which resulted in a loss of control of part of the facility, property destruction and the loss of two lives.

### March 2nd Riot

On March 2, 2017, inmates took control over part of Housing Unit #2 for several hours. During the riot, property was destroyed, fires were started and two inmates were killed. The first fires were started at 1305 hours and all inmates were not cleared from all areas until 2243 hours. According to NDCS, approximately 40 inmates were a part of the riot and took over the mini-yard and one-half of the housing unit.

NDCS contacted the National Institute of Corrections (NIC) and asked them to conduct a critical incident review. The NIC consultants visited TSCI the week of March 20th and submitted a report to Director Frakes on May 15th.

The NIC report is an internal document that will not be attached to this report. This report was discussed by NDCS with the media in May. Some findings and recommendations of the report include:

- TSCI is a correctional facility that is bordering on a crisis condition where staff and inmates both expressed concerns about safety and the control of the facility;
- Staff expressed many concerns regarding their no longer being able to use the tools that they felt they needed to manage violent inmates;
- Data provided to the NIC team found an increase during the past year in assaults, reported drug or intoxicant abuse, serious offenses and less serious offenses and they believe that this data appeared to be "indicative of inmate management and control problems that would easily support the staffs' perception concerns;"
- Along with staff shortages is the problems associated with staff turnover, including the fact that 20% of all positions were staffed by individuals with less than one year of experience and over half of the staff had between one and five years of experience. Along with this is the fact that there is a significant racial demographic disparity between staff and inmates;
- NDCS should consider the establishment of "Step Down Units" in Housing Unit #2 (A & B) where inmates are placed after they leave restrictive housing. While there they should receive at least four hours of out-of-cell time per day for organized and structured activities in a safe environment;

- Some physical plants changes should be made including the replacing of porcelain plumbing fixtures, the adding of cuff/meal ports to all cell doors, and the addition of gas ports that are intended to introduce chemical agents to the unit;
- Increase efforts to control contraband;
- Improve communication strategies between all levels of staff and administration throughout the facility;
- Conduct a thorough security audit at the facility by either experienced agency security staff or an outside entity; and,
- Increase an appropriately managed variety of programs and organized activities for inmates, including cognitive programming, substance abuse treatment programming, academic and vocational education programming, outdoor activities, and carefully supervised club activities.

Observations from staff to the NIC team as to what may have prevented the March 2, 2017 riot included:

- Housing Unit #2A and #2B are usually short-handed because no one is available or willing to work in those units;
- More activities and program are needed to keep inmates busy;
- Not only do they need to enforce the rules but they need to communicate with the inmates;
- Illegal alcohol had become so pervasive that it became a normal or expected activity;
- Inmates who are found with illegal alcohol were not being punished; and,
- Staff communication needs to be improved.

Observations from inmates to the NIC team included:

- Idle inmates make the facility seem like a powder keg;
- The lack of cognitive programs is a cause of some resentment by the inmate population;
- When you put all the bad guys in one unit what should you expect to take place;
- No method for younger inmates to burn off their energy during the day; and,
- Need for additional substance abuse treatment programs.

One of the more interesting parts of the NIC report was their concern about there being a three and one-half hour wait for the response team to arrive and be ready to take action at TSCI. During that time period two murders took place and extensive damage was caused to the unit. As can be seen in the Action Plan, the NIC recognized the need to make changes in this area.[103]

As a result of the findings and recommendations and the submittal of the report, NDCS established an action plan that contained 14 action items. All of the 14 items are complete or on target as of August 17, 2017.[104]

[103] Attachment 45: August 17, 2017 TSCI Disturbance Action Plan
[104] Ibid.

As part of the assessment by the NIC team, Director Frakes requested the NIC to return to NDCS and provide security audit training for the staff at TSCI and other facilities (NSP, LCC, and DEC). As of August 24, 2017 NIC had not yet been contacted about coming back to Nebraska to provide this training.

As the events of March 2nd unfolded, a press release from NDCS that was distributed at 1550 hours stated, "This is not a riot."[105] Over the next few days after the incidents, the public, state senators and the media all weighed in on the use of the term "riot." It is interesting that before the event of March 2nd was even resolved NDCS was stating that this was not a riot. A press release at 1729 hours also indicated that all fires had been extinguished and all inmates had been secured. However, one newspaper reporter stated that they had witnessed inmates still unsecured and fires burning after that press release was issued.[106] As far as the riot, in 1996 the American Correctional Association defined the three categories of violence and disorder that may take place within a correctional facility. They stated that a riot takes place when a significant number of inmates takes control of a significant portion of a facility for a significant amount of time. A case can be made that the events at TSCI on March 2, 2017 met that definition.

## Programming

Last year TSCI indicated that they intended to expand the amount of programming available at the facility. One of the barriers to doing this either at TSCI or another facility is the availability of program staff, security staff and classroom space. Recently, TSCI provided the OIG with a spreadsheet that provides details on the amount and type of programming currently available at the facility. The spreadsheet lists 27 programs that are being offered, the location of the programs (general population, restrictive housing or protective custody), the number of inmates enrolled in the program and the instructor(s). The programs include such ones as DEFY Ventures, GED, substance abuse treatment, yoga, forklift training and many more.[107]

## Medical Care

In the December 1, 2016 TSCI update, it was shared that the Ombudsman's office and the TSCI leadership team both shared that the medical staffing at TSCI had faced challenges during the past several months. Prior to the update, the private provider of medical services was not only having difficulties hiring nurses but was also contracting with other contractors for other medical positions at TSCI. In May, Correct Care Solutions provided NDCS with a 60-day contract termination notice due to staff safety concerns.[108] As a result, Correct Care Solutions, who had provided medical care at TSCI since 2005, ended their contract on July 23, 2017. At that time, NDCS began to provide medical care to the inmate population, just as they do at the other nine correctional facilities.

[105] Attachment 46: March 2, 2017 NDCS Media Advisory
[106] http://www.theindependent.com/news/state/inmates-dead-after-disturbance-at-tecumseh-state-prison/article_ec794016-ffba-11e6-b0b1-03de06169a7c.html
[107] Attachment 47: August 2017 TSCI programming spreadsheet provided to the OIG
[108] http://www.omaha.com/news/nebraska/amid-safety-concerns-company-ending-medical-services-contract-for-tecumseh/article_17e8e24e-479e-11e7-95a7-af05ec215c6f.html

As mentioned elsewhere in this report, the OIG will be conducting a separate report regarding the Division of Health Services and as part of that report the transition that took place at TSCI regarding medical care will be more closely examined.

## Concerns about TSCI

There are a number of concerns regarding TSCI.

First, the facility still remains in a type of emergency situation due to the number of staff vacancies and as a result protective services employees work 12 hour shifts. This has been going on since May 2015.

Second, a previous attempt to turn SMU West into a maximum custody general population unit failed. The changes made to the close management units might end up having the same results as the inmates in those units continually live with a great deal of uncertainty. Part of the action plan states that post orders and an operational handbook need to be completed. This is necessary to provide those living in those units to know what to expect and gain a better understanding of this new unit. It has been over six months since the riot and these have not been completed.

Third, the change in medical care from the private provider to NDCS staff needs to be monitored. It is the sincere hope of all involved that this will result in better care for the inmate population at TSCI.

Fourth, the continuous stress of the last two years, the high number of inmate-on-staff assaults, and the constant lack of staff have only added to the problems that exist at TSCI.

## Summary

As referenced earlier, staffing at TSCI is not to close to the correct level, the number of individuals in restrictive housing and protective management units is high, close management units have been newly created, and medical care has shifted from a private provider to NDCS. These are all significant issues that impact the staff and inmates at TSCI. While there have been some positives at TSCI (additional programming) the facility still faces very significant challenges. During a recent Labor/Management meeting at TSCI, the following statements were included in the meeting minutes:

> *Warden Hansen commented staffing is as bad as it has ever been…Warden Hansen reported within the last two months a lot of staff have left that had started within less than a year. He stated money doesn't seem to be the issue. Staff are tired because of the hours…HR Manager Sherman reported veteran staff are leaving because of the long hours…*[109]

[109] Attachment 48: August 14, 2017 Labor/Management Meeting Minutes

## OIG INVESTIGATION REPORTS

During 2017, the OIG has begun to conduct investigations on various serious incidents or death. Nebraska law lays out how these are to be done and they include the writing of a report that is submitted to the Public Counsel for his review. Within 15 days of submitting the report to the Public Counsel it has to be provided to NDCS or Parole. Once it is submitted to that specific agency, the Director has 15 days to respond to the recommendations contained in the report and can either accept, reject or seek a modification of that recommendation. If they seek a modification then the OIG has 15 days to respond to the agency. So far in 2017, there have been three reports submitted to NDCS. There are currently three additional investigations that the OIG is moving forward on and will be submitting reports to NDCS before the end of 2017.

This section of the report will provide a short summary of the incident that was investigated and the recommendations made by the OIG to NDCS. It will also include the response from NDCS and any additional information. In most cases, summaries of the reports will be available on the web site of the Nebraska Legislature.

### Death of Daelan Lamere

At 0618 hours on May 27, 2017 a call was made regarding a medical emergency at the Tecumseh State Correctional Institute (TSCI) for the cell housing Daelan Lamere #79082 and XXXX XXXXXX. Staff responded and found Mr. Lamere non-responsive in the lower bunk and struggling to breathe. He was placed on a gurney and moved to the TSCI emergency room. He was transferred to the Johnson County Hospital in Tecumseh at approximately 0700 hours where it was decided that he needed to be moved to Bryan LGH West in Lincoln. Mr. Lamere tested positive for MDMA (ecstasy) and methamphetamines. On June 6, 2017 Mr. Lamere was pronounced dead by the Bryan LGH West medical staff at 2044 hours. Mr. Lamere was 22 years old.

The Department of Correctional Services (DCS) notified the Office of Inspector General (OIG) regarding the incident via an email from Jeff Wooten at 7:56am on May 30, 2017. The death of Mr. Lamere was reported to the OIG via an email by Scott Frakes at 6:36am on June 7, 2017 and a later email from Jeff Beaty at 11:25am on June 7, 2017.

The OIG found that staff appeared to conduct the appropriate cell checks and the response to Mr. Lamere's situation was handled appropriately beginning at 0618 hours. The OIG was unable to determine whether or not staff knew that response buttons had been pushed by two other inmates prior to 0614 hours.

The review was expanded to look more closely at the influx of illegal contraband, including drugs, into Nebraska's prisons. As explained earlier in this report, the OIG conducted a survey of NDCS staff regarding contraband in the prisons. The OIG also asked NDCS for data regarding how many staff and visitors were caught bringing illegal drugs or other contraband into a prison. The data for cases that they opened criminal investigations on were eight staff cases in 2016, zero staff cases in 2017, seven visitor cases in 2016, and four visitor cases in 2017.

Due to the inability to determine the level of responsiveness to Mr. Lamere's condition, the OIG submitted the following limited recommendations to NDCS:

1) Review the ability to "turn down the volume" as it relates to response buttons;
2) Utilize substance abuse treatment staff to initiate a drug awareness campaign to educate inmates and staff regarding the dangers of using illegal drugs;
3) Increase the frequency and thoroughness of searches of staff as they enter the prisons;
4) Utilize drug dogs on a more frequent basis at the entrances of the prisons in order to act as a deterrent and to catch any illegal drugs that are being brought into the prisons;
5) Consider working with law enforcement agencies to assist with staff searches so that an outside entity is conducting the searches on a random basis;
6) Review the search policy for visitors in order to determine whether or not it needs to be adjusted to conduct enhanced and appropriate searches of visitors;
7) Conduct a review of visitor and staff searches at each prison, including whether or not the searches are being done in the manner prescribed by DCS, whether they are fairly and uniformly administered, and whether the ability to conduct such searches is impacted by staffing levels; and,
8) Report any action taken on these recommendations to the OIG.

Director Frakes responded to the OIG that he accepted all of the recommendations contained in the report.

### May 25, 2017 Fire at TSCI

On May 25, 2017 a fire was started during the evening in the Special Management Unit (SMU) Lower E Gallery at the Tecumseh State Correctional Institution (TSCI). Inmate XXXXXX YYYYYYY started the fire after originally being let out of his cell at approximately 1851 hours in order to proceed down the gallery and use a different door to access the mini-yard for that gallery. Instead of proceeding directly to the mini-yard door, Mr. YYYYYYY spent time in the hallway and eventually assisted in passing envelopes from one cell to another. As a result, the staff in the SMU decided that he would lose his opportunity to utilize the mini-yard. Mr. YYYYYYY was upset by this decision and would not go back to his cell and instead roamed up and down the gallery. He would not lock down and he encouraged other inmates to put water under their doors, break sprinkler heads and kick doors. He then began to tie bed sheets from one side of the gallery to the other. At approximately 1914 hours another inmate passed him fire under the cell door and Mr. YYYYYYY used the fire to start a bigger fire after lighting a pile of papers that he had either retrieved from his cell or had been given to him by other inmates. The fire filled the gallery with smoke and the fire alarms began to sound at 1925 hours. At approximately 2000 hours Mr. YYYYYYY came to the entrance and asked to be taken to medical. He was eventually restrained by staff and taken to medical. At that time, staff extinguished the fire and over the next few hours brought several other inmates to the medical area. Mr. YYYYYYY was assessed by medical staff and was then placed in a restraint chair until approximately 2230 hours.

The OIG made several findings related to this incident, including:

- The lack of an immediate or even a timely response by staff to Mr. YYYYYYY from the time he was told to go back to his cell to the time that he set the initial fire and even beyond that. While there are safety concerns to consider in situations like these, an outside observer finds it difficult to believe that the appropriate response to an inmate roaming around a gallery for a period of time setting fires is to just let him do that;
- There was a considerable amount of time before some individuals were assessed by the medical staff despite being in a fire and smoke filled environment;
- The slower than expected responses by staff were likely impacted by the low staffing levels at TSCI. TSCI is understaffed to a considerable degree. Director Frakes shared that this took place on the second 12-hour shift where "staffing levels are lower in the unit" and that this resulted in "slowing the response time." Interviews between the OIG and staff also indicated that there was some miscommunication on who was supposed to respond to the incident and this slowed the response;
- TSCI and NDCS did not follow their own procedures by failing to contact the Tecumseh Fire Department or the Nebraska State Fire Marshal about the fire. They also did not contact the Nebraska State Patrol even though the crime of arson may have been committed;
- Corporal XXXX did an excellent job of videotaping the incident and explaining the events as they unfolded;
- Sergeant XXXX did an excellent job of communicating with Mr. YYYYYYY when force was used against him and he was placed in a restraint chair. He was calm and understanding and developed a good rapport with Mr. YYYYYYY, which was extremely important under the circumstances; and,
- TSCI staff did an excellent job of spending time in front of each cell door a number of times communicating with inmates after the fire was extinguished and the first inmate was moved to the medical area.

The OIG made the following recommendation to NDCS that were specifically related to process/policy improvements:

1) Review all policies regarding emergency situations where it involves possible dangerous and even deadly actions by an inmate in situations such as the one that Mr. YYYYYYY was involved. Determine whether action against an individual could have been taken in this case and in future cases in which would allow such situations to be handled in a more timely and responsive manner;
2) Review the incident and determine whether or not Mr. YYYYYYY's cell door should have been closed sooner than it was and whether or not the showers should have been turned off earlier than they were;

3) Always contact the fire department and the Nebraska State Fire Marshal in the case of a fire. In this case, review why those two entities were not contacted and address this lack of appropriate action as soon as possible;
4) Continue to improve the Immediate Segregation and Longer-Term Restrictive Housing placement policies, including the use of active STG in placing inmates in those placements;
5) Work with NDCS Health Services to determine whether medical staff could be moved closer to the location of a serious health incident so that triaging and more timely medical care could be provided;
6) Review an inmate in a restraint chair every 15 minutes in order to determine whether or not he could be safely removed from it rather than placing him or her there automatically for two hours;
7) Keep all video that relates to a serious incident for at least 90 days;
8) Review the Immediate Segregation and Longer-Term Restrictive Housing policies that allow for bedding and other supplies to be left in a gallery while inmates are allowed to walk through the gallery unattended; and,
9) Report all actions related to these recommendations to the OIG in a timely manner.

NDCS responded with the following:

*With regards to the specific recommendations made in your report, statute provides I may accept, reject or request, in writing, a modification. Below are the department's responses to the individual recommendations in the report. Please find below my response to each.*

1) *Accept - NDCS requires a critical incident review as a follow-up response to serious incidents. An critical incident review has been conducted and the department has implemented an action plan which includes conducting a review of the incident with staff to look at how else the incident could have been handled.*
2) *Accept - The department requires a critical incident review and action plan as followup for serious incidents.*
3) *Accept - As noted in the report, the fire department and Nebraska State Fire Marshall should be contacted in all situations where there is a fire in a facility. This recommendation has been implemented as paid of the critical incident review and action plan. Notification requirements in policy for fires were reviewed with all shift supervisors.*
4) *Reject - The department is continuing to review and revise its restrictive housing policies as part of the ongoing restrictive housing reform. However, this recommendation is rejected as it is unrelated to the subject of this OIG investigation and because there is insufficient evidence presented in the*

*report to support the recommendation.*

5) *Reject - it is not practical, safe or a medical best practice to have medical staff leave medical areas to respond to a small fire in a housing unit. There is no evidence presented in the report that the location of medical staff was in any way related to providing adequate treatment.*
6) *Accept - Current NDCS policy provides for 15 minute checks of inmates in a restraint chair and the department is specifically training staff that the two hour policy is the maximum amount of time and not the default.*
7) *Modify - The department does retain video of serious incidents for use in internal investigations and at the request of the inspector general or law enforcement. The problem in the recommendation as drafted is the lack of a definition of "related to". From the text of the report it appears that video from other housing units, corridors, stairways, etc. showing staff responding to the ERT call, suiting up for a cell extraction or medical staff treating inmates are all related to the incident. Technical storage limitations prevent storage of all video from a facility. NDCS would recommend modifying this recommendation to require NDCS to retain all video requested by the OIG (within a reasonable time period after discovery of the incident - e.g., two weeks) that is related to a serious incident or an ongoing investigation by the OIG.*
8) *Accept - Policy does not allow for bedding or other supplies to be left on the gallery unattended. This is a management issue and will be addressed with restrictive housing staff.*
9) *Reject - There are numerous reporting mechanisms in place to update the Office of the Inspector General on recommendations made in this report. NDCS will continue to be responsive to requests from the OIG.*[110]

The OIG responded to NDCS regarding the modification request for Recommendation #7 by rejecting the modification request and suggesting the following modification:

> *NDCS, the Nebraska State Patrol, the Office of Inspector General for Corrections, and any other relevant parties should meet within 60 days to discuss the policy for maintaining video of serious incidents that take place at facilities operated by NDCS.*[111]

The OIG shared that it was better for the OIG and NDCS to discuss this issue further and develop a better plan that works for everyone involved in NDCS investigations. NDCS accepted this modification.

[110] Attachment 49: August 31, 2017 Letter from Director Frakes to the OIG
[111] Attachment 50: September 1, 2017 Letter from the OIG to Director Frakes

## Death of Terry Berry

At approximately 7:45pm on Saturday, April 15, 2017, Terry Berry was found unresponsive in his cell that he shared with XXXX XXXXX in a restrictive housing unit at the Tecumseh State Correctional Institute (TSCI). He was not breathing and staff members initiated CPR. Mr. Berry was transported to the Johnson County Hospital and later to Bryan LGH West Hospital in Lincoln. He was removed from life support on April 19, 2017 and passed away.

The OIG made the following findings regarding the death of Mr. Berry:

- Once it was reported that Mr. Berry was unresponsive in his cell, NDCS staff acted appropriately in responding to the situation;
- Prior to that, there are legitimate concerns regarding the placement of Mr. Berry and Mr. XXXX in the same cell. First, there is a policy question that needs to be answered regarding the use of double bunking in a restrictive housing setting. Second, there is a concern that staff would tell inmates that they would be double bunked if they did not follow an order. Third, there is a concern that staff did not follow the proper procedures when determining whether or not the two men should have been placed in the same cell;
- The overcrowding of Nebraska's correctional system was a factor in the situation regarding Mr. Berry. Although Director Frakes declined to say after the death of Mr. Berry whether or not prison overcrowding had "prompted the double bunking," TSCI staff involved in the decision indicated that they had no choice but to double bunk because of a lack of single cells in the special management unit. Nebraska's correctional system is currently the second most crowded correctional system in the country at over 160% of design capacity. This overcrowding situation gives NDCS and Director Frakes very little flexibility when it comes to the housing assignment of inmates; and,
- Although understaffing did not play a direct role in Mr. Berry's situation, it may also have been a factor. TSCI was, and continues to be, understaffed throughout the facility. In addition to protective services staff, they are short caseworkers and that impacts the ability of those staff to develop a rapport with inmates who are in the protective management and restrictive housing units. Unit caseworkers have a number of duties, including the observation of inmates to detect abnormalities, problems, or unrest and the counseling of inmates to assist them in adapting to the prison environment. If there were more staff, there would have been a better opportunity for those staff to better articulate why Mr. Berry and Mr. Schroeder should not have been placed in the same cell together or possibly to work with them to encourage them to accept placements in other cells that were not located in the restrictive housing unit.

The OIG made the following recommendations to NDCS as a result of the investigation:

1. Immediately suspend the practice of double bunking in restrictive housing units until the NDCS Restrictive Housing Internal and External Work Groups have had the opportunity to review the policy of double bunking in restrictive housing units and issue a recommendation regarding the policy to the Director of NDCS;

2. Review the Restrictive Housing Assignment of Living Location worksheets that have been done since January 1, 2017 in order to determine if they were completed correctly;
3. Continue the efforts by NDCS to reduce the number of individuals in restrictive housing and protective management settings;
4. Examine the possibility of using peer mentors to work with inmates who choose not to follow orders to move to another cell;
5. Conduct a comprehensive review that examines why Mr. Berry was located at TSCI, whether or not he received the services and programming he needed in order to successfully begin to transition into the community, and whether or not a different placement would have been more appropriate for him as a result of his crime, age, behavioral challenges and sentence length; and,
6. Report any action taken on these recommendations to the OIG.

NDCS responded with the following response to the recommendations:

> *"With regards to the specific recommendations made in your report, statute provides I may accept, reject or request, in writing, a modification. Please find below my response to each.*
>
> 1. *Reject - NDCS has reviewed the use of double bunking and will continue to use it according to current policy.*
> 2. *Reject - NDCS added daily checks with individuals who are double-bunked to provide the opportunity to report problems.*
> 3. *Accept — The efforts underway to reduce the use of restrictive housing and protective management are ongoing.*
> 4. *Accept - NDCS is currently developing a peer mentoring program.*
> 5. *Reject — Between this report and the internal review, this issue has been addressed. Whether the forms were completed correctly in the past will be of little assistance moving forward. The policy and forms have been reviewed and found to be appropriate.*
> 6. *Reject - There are numerous reporting mechanisms in place to update the Office of the Inspector General on recommendations 3 and 4. NDCS will continue to be responsive to requests from the OIG."*[112]

## Summary

These investigative reports are truly in the beginning stages of their development. As time goes on and more reports are done, they will evolve and improve over time. The challenge with these investigations is the time and effort it takes to complete one. The OIG has limited resources and while there are many incidents that take place that could result in an investigative report, the OIG will have to be selective and thoughtful in deciding which ones to investigate in this manner.

[112] Attachment 51: August 18, 2017 Letter from Director Frakes to the OIG

## UPDATE ON ASSESSMENT TOOLS

Over the past two years, NDCS has undertaken two different projects to attempt to improve assessments of inmates. The new classification tool determines an inmate's custody level and the STRONG-R is a risk assessment instrument.

### Classification Tool

The purpose of a classification tool is to match the needs of an inmate with the resources in a correctional facility. As a result of the use of the tool, an inmate is classified as community, minimum, medium or maximum custody. At various times, the tool can be utilized to determine whether or not an inmate's classification has changed.

A 2016 review of the previous classification system found that there were two significant issues with the tool. It found that inmates' scores were routinely over-classified and that overrides took place approximately 40 percent of the time. As a result a new tool was developed and began to be used earlier this year.

It is too early to determine the impact of the new tool on classification decisions. However, some preliminary data shared with the OIG by NDCS indicates that more inmates are being classified at lower custody levels. As the tool is fully implemented and the results of the tool are analyzed, it should allow NDCS to better forecast their facility needs in the future. In other words, NDCS will have a much better idea of how many community, minimum, medium and maximum custody beds that they will need in their system.

### STRONG-R

#### Background

On July 1, 2016 NDCS began to implement a new risk and needs tool for their population called the STRONG-R (Static Risk and Offender Needs Guide – Revised). The STRONG-R is an actuarial risk assessment that is used to predict recidivism, determine custody levels, and determine the needs of inmates coming into the correctional system. An article by Dr. Zach Hamilton, the developer of STRONG-R, and others, was published last year in Criminal Justice and Behavior that provides much greater detail about the tool.[113]

At a legislative hearing last year Dr. Lisa Jones, former Director of NDCS Behavioral Health, testified that "The STRONG-R will allow us to focus more clinical resources on inmates identified with higher risks and needs and facilitate completing screening and making treatment recommendations up-front while the inmates are at our Diagnostic and Evaluation Center." At the same hearing, Director Frakes testified that "The STRONG-R will serve as the foundation for the adoption of many evidence-based practices across NDCS and parole, including the parole supervision matrix and the Parole Board guidelines."[114]

[113] CRIMINAL JUSTICE AND BEHAVIOR, 2016, Vol. 43, No. 2, February 2016, 230–263. The Development and Validation of the STRONG-R Recidivism Risk Assessment Zachary Hamilton, et al.

[114] http://www.legislature.ne.gov/FloorDocs/104/PDF/Transcripts/SpecialCommittees/Department percent20of percent20Correctional percent20Services percent20Special percent20Investigative percent20Committee percent20hearing percent20.April percent2018, percent202016.pdf

When Legislative Bill 605 was adopted, it required the Board of Parole to use a validated risk and need assessment to determine the risk of parolees to reoffend. As a result, the Board of Parole and the Office of Parole Administration are also using the STRONG-R.

## Possible Concerns

Last year, the Department of Correctional Services Special Investigative Committee recommended to NDCS that NDCS conduct assessments of all inmates by July 1, 2017.[115] As a result, NDCS established a goal of completing the majority of assessment by that date. Although they achieved their goal concerns were raised during the process by individuals within NDCS and also by Parole.

As NDCS was conducting a multitude of assessments prior to July 1, 2017 concerns were being raised by some of those involved with this process regarding the validity and actual use of the tool. One of the concerns expressed was that certain parts of the process have to be completed before the STRONG-R is actually completed. Chief among those parts of the process is the completion of the criminal conviction record (CCR). The OIG contacted many individuals involved in this process and received conflicting answers as to whether or not that was the case, including Dr. Zach Hamilton, the creator of the STRONG-R. Dr. Hamilton responded by saying that what the OIG asked is a mix of training and NDCS policy and that the representatives of Vant4ge (the company that owns the STRONG-R and has a contract with NDCS) could better answer that and other questions and he asked them to respond to the questions. They did not.

One NDCS staff member expressed a concern that the CCRs were being entered without complete information and that as part of a quality assurance process they found several that were entered incorrectly. The response to this staff member by a leadership team member was that while the CCRs do need to be done they don't have enough staff to run NCIC or CJIS because they did not have access to those databases or have been trained. They then said that they could go back later to work on the accuracy of the CCR and while it is important and necessary it is not necessary to reach the July 1 deadline.[116] This response is consistent with other inquiries and responses reviewed by the OIG. One email from one of the key leaders of this initiative stated that the team will complete the CCR first then complete the STRONG-R. This did not always take place.

In July, NDCS shared with the OIG that there were some concerns regarding the STRONG-R, including:

- Errors in how the "Severity Index" of specific crimes was coded in the software as those errors impacted the final risk and needs score calculations;
- Violations of city ordinances were not taken into account as part of the CCR; and,

[115] http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr34_2015/lr34_report.pdf (page 32)

[116] Information gathered for this part of the report is found a several documents that were provided to the OIG by many NDCS staff. At this time, the OIG is not releasing the documents to protect those that were raising these concerns.

- Lack of consistency in STRONG-R training.

In addition, Parole had shared a number of concerns with NDCS and Vant4ge regarding scoring errors, website issues, assessments being shown as being completed when they had not yet been completed, the lack of a needs report to assist them with their work, and training issues.

In July the OIG asked NDCS if there were any memorandums or other documents within NDCS that outlined any concerns about the validity of the STRONG-R. NDCS responded that they had no questions as to its validity and only shared documents completed by Dr. Hamilton with the OIG. However, an internal report had been completed by the staff member in charge of the quality assurance process on May 29, 2017. This document identified areas in need of addressing from the STRONG-R Implementation Team. The findings and recommendations included the following:

- First, that there was not an established person or group for those completing the assessments to contact if they had questions. This created a lack of consistency in solutions and answers to questions could vary depending on who was asked the question. They saw this as a threat to the fidelity of the tool and that "practice is of particular concern to the underlying validity of the STRONG-R."[117] The document made several recommendations including the development of a comprehensive master guide, the mobilization of the implementation team, and that two staff at each facility be identified as STRONG-R experts;
- Second, that there is not a clear understanding of the STRONG-R among NDCS and Parole staff and administration. They stated that this could be altered by the use of the previous recommendations; and,
- Third, that there was a lack of consistent training in the STRONG-R. At the outset of this project, the quality assurance auditors believed that all staff completing the CCR would "have the same training, the same access to information sources needed, and the same message of fidelity communicated to them" by the leadership team. This did not take place. Their report found that staff had received direction from their supervisors that "diminished the importance of the thoroughness and accuracy of the STRONG-R in favor of the completion of the assessment." They also stated that "an incomplete or inappropriately completed assessment has the potential to create more issues and do more harm than good." In the case of not completing or not fully completing a CCR, this would limit the ability of the interviewer to conduct an accurate interview which could lead to a "woefully inaccurate calculation of an inmate's risk of reoffending and thus their programming needs." They also found that up to that point "none of the CCRs reviewed either systemically or informally reviewed have been entirely inclusive of an inmate's criminal history or accurate in their details." They recommended that the master guide be completed, that all CCRs conducted prior to the adoption of the master guide "be

[117] While this internal document will be quoted in this section of the report, it will not be included in the attachments to the report. It was dated May 29, 2017 and is a nine page document.

reviewed and corrected" and that the initial plan of quality assurance audits could begin to proceed as planned.

In July staff from NDCS and Parole met with Vant4ge representatives, Dr. Hamilton and representatives of the Office of the Chief Information Officer. Parole expressed concerns about how incorrect assessments would result in invalid risk scores/needs reports. Vant4ge stated that only one percent of all assessments would be impacted by this issue. Parole later conducted additional quality assurance measures and follow-up analyses that looked at the impact of only one offense being mapped incorrectly (Parole believed at that point that there were at least 15 offenses being mapped incorrectly). Their initial test found that 20 percent of the individuals received a risk score that was different than their original score. Their second test found that 31 percent of individuals received a new score. As a result, Parole indicated that approximately one-third of all assessments that were being used by Parole for supervision purposes were questionable. They made three recommendations to NDCS as a result. At the July meeting NDCS staff took the position that redoing the assessments or updating the assessments would impact existing case plans that had already been completed by NDCS staff. As a result, Parole found that "Given the potential public safety ramifications of these issues, continuing with the assessment in its current format or retaining incorrect past assessments is an unacceptable course of action."[118] At a Board of Parole public meeting on September 12, 2017 Director Micek shared her continuing concerns about the current inability of the STRONG-R to assist her officers and making treatment and parole plans.

### Actions Taken by NDCS

As a result of these and possibly other concerns, NDCS has taken action to attempt to address them. These actions include:

- Providing specific CCR training to a small number of staff at each facility who will be the only ones completing the CCRs;
- Developing a guide and video related to the completion of the CCRs;
- Continued work on coding and computer issue related to criminal convictions in Nebraska and other states, as well as additional work on municipal code issues;
- Reestablishing the Implementation Team and other committees to improve the quality of the process;
- Establishing a new needs report that will assist staff in making better program recommendations; and,
- Revamping of the training so that it becomes more consistent.[119]

The STRONG-R is a work in progress and as concerns emerge it is important to have a process in place that can address them quickly and correctly.

[118] Internal July 20, 2017 STRONG-R Follow-Up Memorandum to Director Micek

[119] Information regarding this work was provided to the OIG by Deputy Director Mike Rothwell on September 7, 2017

## MISSION SPECIFIC HOUSING

In the Progress Summary of the NDCS 2015-2016 Strategic Plan, NDCS discussed mission specific housing and stated that this type of housing "focuses on individual needs and demographics to provide programming for specific populations" and that it "provides a unique opportunity to improve safety by setting expectations for behavior that are enforced by the culture of the unit."[120]

The NDCS Restrictive Housing Administrative Regulation further states that mission specific housing will be utilized to "(1) reduce the use of restrictive housing by providing a range of alternatives that address needs and reduce the behaviors that previously led to the use of restrictive housing, and (2) provide risk- and needs responsive options for individuals transitioning from restrictive housing, thus reducing lengths of stay for inmates not ready to return successfully and safely to the general prison population."[121]

Currently, NDCS has mission specific housing units that include units for active seniors, protective custody inmates, sex offender and substance abuse treatment participants, specific mental health treatment patients, faith participants, and veterans.

One of the underlying foundations of mission specific housing is that by housing inmates with similar interests and demographics a level of cohesiveness or unity can develop. This could be beneficial if it leads to a decrease in certain behaviors. Possibly the best example within NDCS of a successful mission specific housing unit is the veterans' unit at NSP. These men take great pride in the fact that they have their own living unit. The unit is clean and well-run. Problems within the unit are minimal. So far it is a significant success and as a result inmates at other facilities are asking questions on how to establish a similar unit at their facility.

The veterans' unit and the faith-based unit are positive examples of mission specific housing. The first mission specific housing unit established by NDCS was the protective management unit at TSCI. However, this is an extremely large unit and the common denominator for those inmates is that they checked into that unit because they sought a level of protection from the general population. In some ways, this mission specific housing unit and others should be defined or separated from mission specific housing units for veterans and other group with common interests and demographics.

The challenge for NDCS is that because of overcrowded conditions it is difficult to establish mission specific housing units because there simply is not enough flexibility or room to do so. If the overcrowding situation changes for the better, more opportunities for positive mission specific housing units will also increase.

[120] http://www.corrections.nebraska.gov/pdf/Strategic%20Plan%20Progress%20Summary%202015-2016.pdf (page 5)
[121] Attachment 52: Administrative Regulation 210.01 (page 4)

## INMATE COUNCILS

Over the past two years, NDCS has implemented inmate councils at each of their correctional facilities. Inmate councils are groups of inmates who are representative of their facility's population. The councils meet with administrators or other staff from the facility on a regular or semi-regular basis. During the past year, the OIG has participated in some type of meeting or forum with an inmate council from each facility. The arrangement with inmate councils regarding meeting times, who is on the council, etc. are all covered by each facility and no formalized NDCS policy exists regarding inmate councils. Some meet every two weeks and others meet much less regularly. The way the council meetings are run vary from facility to facility, as do the agendas and how individuals are selected for the councils.

In the 2016 report, the OIG made the following suggestion regarding inmate councils, "As NDCS moves forward on inmate councils, consider looking at more formalized examples from other states, such as New York."[122] After attending many inmate council meetings, the OIG plans to make this recommendation in this year's report. While some inmate council proceedings, especially at the Nebraska Correctional Youth Facility, were excellent, others were much more disjointed and less productive. At one facility, inmates contacted the OIG and asked the OIG to attend their next inmate council meeting due to the fact that of the last four meetings two were cancelled and administration never showed up at the other two meetings. When the OIG attended the meeting and the administration was not there the council members were quite bothered and expressed their disappointment and frustration. However, the facility where this took place has improved their council process and some progress has been made on that front.

In June 2017, over 400 inmates at TSCI signed a petition asking for a more formalized and productive inmate council. It appears as though some elements of the New York model are contained in their proposal. Their request has not been accepted. In their letter regarding the proposal they wrote the following:

> *The Inmate Population feels that this current Inmate Council programs, does not address the greater concerns and suggestions from the Inmate Population. The problem with these meetings are. There is only days notice of a meeting. The formality is much like a "Town Hall", which is informal. Suggestions and solutions to facility and department concerns are submitted but disregarded. Numerous questions are left unanswered. The Population has to wait for meeting minutes to be posted for responses, which come days prior to the next meeting. Due to the informal structure of these meetings, there are issues discussed, that are not disclosed in the minutes. Leaving the Population unaware of some issues discussed in these meetings. There was a few months where the meetings were canceled, due to incidents in those months. It was these months, where communications were vital in improving Inmate and Administration communication. As the serious issues that caused the instabilities in these incidents should have been addressed immediately. Starting in 2017, these meetings are now held once every 90*

122 http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (page 65)

*days. This does little to improve Inmate and Administration, Unit Management communications. As concerns, suggestions and solutions are presented daily.*[123]

As part of this petition process they provided TSCI Warden Brad Hansen and later Director Frakes with their proposed constitution and bylaws for an Independent Inmate Liaison Committee for Reform.[124]

Some of the concerns expressed by these TSCI inmate have also been shared with the OIG by inmates from other correctional facilities. While many seem to support the concept of the inmate councils, they would like to see a more formalized process where they would have additional input on who is on the council and how the councils will interact with the facility leadership. The OIG will be studying how this has been done in other states, specifically New York, and will include any findings and recommendations in the next annual report.

[123] June 9, 2017 letter from TSCI inmates to TSCI leadership regarding inmate councils
[124] Attachment 53: Independent Inmate Liaison Committee for Reform Constitution and Bylaws

## OFFICE OF PAROLE ADMINISTRATION

In 2015, the Legislature passed Legislative Bill 598 to transfer the administration of the Office of Parole Administration (Parole) from NDCS to the Board of Parole effective July 1, 2016. This resulted from a recommendation made by the Department of Correctional Services Special Investigative Committee in 2014. Prior to the transfer being made, Julie Micek was hired as the Director of Supervision and Services and Nicole Miller was hired as the Staff Attorney. The transition to the Board of Parole was made on July 1, 2016.[125]

### Parole Report

It has now been one year since Parole was placed under the Board of Parole. In the past year many changes and advances have taken place. The OIG visits with staff of Parole on a regular basis and also communicates with members of the Board of Parole when necessary. During the past year Parole has been extremely open and transparent with the OIG. In July, the OIG asked Director Micek to prepare a document that discusses the activities of the Office of Parole Supervision during the past year, along with any successes, challenges, and plans for the future. The document is attached to this report but some of the highlights of activities of Parole found in that report include:

- As a result of the analysis of CSG, the Board of Parole adopted parole guidelines and Parole adopted a validated risk and needs assessment tool, evidence-based practices in parole supervision, and new sanctions for parole violations;
- As a result of the passage of LB 598, a training program has been developed and several trainings have been provided to staff to assist them in their duties;
- A full study of the agency leadership's team to assess skills, abilities, strengths and limitations was completed;
- New web sites have been developed for the Board of Parole and the Office of Parole Administration;
- EPICS (Effective Practices in Community Supervision), a case management model that is based on effective intervention and use of core correctional practices, was implemented;
- New safety equipment for all parole officers including tactical/bullet proof vests, duty belts, handcuffs, OC spray has been purchased; and,
- Parole participated in two federal grants to secure housing opportunities for clients on parole;

Parole also laid out challenges they face, including the following that found are in the report;

- Although custodial jail sanction are operational, contracting with county jails has proven to be difficult, including the fact that no funding was specifically allocated for the cost of doing this. In addition Douglas, Lancaster and Sarpy Counties have not contracted with Parole;
- Parole is having difficulties enforcing conditions of parole for Lifetime Sex Offenders;

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

- Challenges regarding the implementation of the STRONG-R exist as the software and quality assurance (QA) surrounding the instrument have both been significant issues; and,
- Officers that were at or above the new minimum permanent hire rate when the new salaries went into effect July 1, 2017 did not receive a raise as advocated by the Board of Parole.[126]

## Parole Guidelines

In 2016, the Board of Parole established parole guidelines to assist them as they conducted inmate reviews and hearings. The guidelines were piloted at three facilities in late 2016 and began to be used at all ten facilities on April 1, 2017. According to the Board of Parole, the "guidelines incorporate the following weighted factors: offense severity; risk needs assessment performed by the Department; participation in core risk-reducing programming offered by the Department; institutional behavior; and Board member discretion as allowed under Neb. Rev. Stat. § 83-1,114" and "It is the Board's policy that if an offender refuses to participate in the Decision Guidelines process, he or she will not be considered for parole."[127] The Board utilizes a decision-making form that contains specific data and information related to the factors listed above.[128] The goal is that this information will allow the Board to make better informed decisions for inmates. Data from this effort is being collected and analyzed and will be reviewed by the OIG in the months ahead.

## Award

On August 28, 2017 the Office of Parole Administration's Research and Training Team received the President's Award from the American Probation and Parole Association. This award is presented annually to recognize excellence in the field of parole work. They were nominated by Rosalyn Cotton, Chair of the Board of Parole, for their work in implementing revisions of the past justice reinvestment legislation.[129]

## Summary

Parole has taken significant steps in the past year but many challenges remain as they attempt to move forward. It is important that their staffing levels continue to meet the needs of their agency as parole guidelines and other initiatives take place in the justice system.

[126] Attachment 54: August 2017 Report by Julie Micek (Parole) to the OIG
[127] Attachment 55: 2017 Nebraska Board of Parole Rules; Chapter 4: Parole Decisions
[128] Attachment 56: 2017 Nebraska Parole Board Guidelines Decision-Making Form
[129] Attachment 57: September 8, 2017 Media Release from Governor Pete Ricketts

## NDCS REPORTS

During the past few years, NDCS has published a number of reports, some of which are referred to in this report. To assist those who have an interest in learning more about Nebraska's correctional system, the reports and a link to each of them are listed below:

- Retention Funds – http://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Correctional_Services__Department_of/595_20170421-184706.pdf
- Vocational and Life Skills Report - http://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Correctional_Services__Department_of/490_20170626-151247.pdf
- Mandatory Discharge Report - http://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Correctional_Services__Department_of/577_20170201-125650.pdf
- Update on 2016 $1.8 Million Appropriation - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services__Department_of/628_20161230-121647.pdf
- 2016 Vera Institute of Justice Report on Restrictive Housing - http://www.corrections.nebraska.gov/pdf/Vera%20Institute%20Final%20Report%20to%20NDCS%2011-01-16%20v2.pdf
- Long Term Plan for Restrictive Housing - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services__Department_of/591_20160630-181951.pdf
- Strategic Plan Update - http://www.corrections.nebraska.gov/pdf/Strategic%20Plan%20Progress%20Summary%202015-2016.pdf
- Mandatory Overtime Reduction Report – http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services__Department_of/559_20151231-152325.pdf
- Behavioral Health Assessment - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services__Department_of/558_20151231-152218.pdf
- Culture Study, Part One - http://www.corrections.nebraska.gov/pdf/NDCS percent20Culture percent20Study percent20- percent20Part percent201.pdf
- Culture Study, Part Two - http://www.corrections.nebraska.gov/pdf/NDCS percent20Culture percent20Study percent20- percent20Part percent202.pdf
- CSG Justice Program Assessment - http://www.corrections.nebraska.gov/pdf/2016 percent20Nebraska percent20Council percent20of percent20State percent20Governments percent20Justice percent20Program percent20Assessment.pdf
- 2014 Master Plan Report - http://www.corrections.nebraska.gov/pdf/NDCS percent20Master percent20Plan percent20Final percent20Report.pdf

## RECOMMENDATIONS

Throughout the report there were many observations made by the OIG that resulted in these specific recommendations. The following are recommendations by the OIG related to the Nebraska Department of Correctional Services (NDCS):

- Consider the directing of front-line recruiting efforts at staff who are employed at correctional facilities in Kansas and Missouri due to their lower rate of pay for those positions;
- Study whether or not it is feasible and fruitful to provide gender specific training and ongoing supports to female staff;
- Include data on vacancies identified in the 2016 staffing analysis when compiling and sharing data on staff vacancies at each facility;
- Conduct a full staffing analysis of NDCS;
- Present a recommendation to the Governor and the Legislature regarding the need to request retention and recruitment funding from Legislature, including a plan on how those funds would be utilized if appropriated;
- Work jointly with the Office of Parole Administration and the Board of Parole to present a plan to the Governor and the Legislature by March 1, 2018 detailing how a correctional system overcrowding emergency would be administered;
- Invite members of the external restrictive housing work group to observe meetings of the internal restrictive housing work group;
- Determine whether or not the membership of the external restrictive housing work group needs to be adjusted, as well as whether or not the role or mission of the work group needs to be changed;
- Request an exception from the Governor's office to allow for the rules and regulations process to move forward regarding the Administrative Regulation for NDCS restrictive housing;
- Report all unit lock downs to the OIG in a timely manner;
- Audit Immediate Segregation and Longer Term Restrictive Housing practices to determine if the regulations and procedures are being followed by staff and the administration, including the timeliness and accuracy of paper work;
- Review restrictive housing practices in other states to determine whether the 24 hour out-of-cell time is still appropriate or needs to be adjusted;
- Assess the need for an expansion of family programs for inmates within NDCS;
- Continue to look for ways to expand peer supports throughout 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;
- Determine whether additional re-entry specialists are needed now and in the future due to changes being made by NDCS and Parole;
- Provide updates to the OIG and the LR 127 Committee regarding the medical care transition at TSCI in October 2017 and December 2017;

- Establish a long-term plan for higher education and vocational education opportunities and present it to the Governor and the Legislature;
- Request that the Department of Administrative Services review the wage scale for Mental Health Practitioners, Substance Abuse treatment staff, and any other positions identified by NDCS as needing an updated and more accurate wage scale;
- Work with policy makers to determine whether or not the inmate welfare fund state statute should be updated so that the funds are able to provide additional quality of life opportunities for inmates beyond what is currently in state statute;
- Review the operation of the inmate councils and determine whether or not a more formalized council should be utilized; and,
- Prepare a budget request for the Governor and the Legislature that fully addresses the needs of NDCS to carry out their responsibilities, including what is needed to recruit and retain all staff, infrastructure and building needs, programming needs, and any other needs identified by NDCS.

The following are recommendations by the OIG related to the Office of Parole Administration (Parole):

- Work with the Department of Correctional Services and the Board of Parole to present a plan to the Governor and the Legislature by March 1, 2018 detailing how a correctional system overcrowding emergency would be administered;
- Renew efforts to educate the Nebraska Legislature regarding the benefits of passing Legislative Bill 366;
- Continue to work with the Department of Administrative Services and policy makers to address the salary issues that still exist as Parole moves forward with its transition;
- Review the capabilities of having Parole expand their role to provide re-entry services and community corrections opportunities;
- Continue to work with the Office of Probation Administration to jointly use community resources, including the day reporting centers;
- Determine whether or not the STRONG-R or another needs assessment tool is the most appropriate tool for use by Parole; and,
- Prepare a budget request for the Governor and the Legislature that fully addresses the needs of Parole to carry out their responsibilities, including what is needed to recruit and retain all staff, programming needs, parole oversight needs, and any other needs identified by NDCS.

## OIG RESOURCES AND YEAR THREE GOALS

As the OIG enters the third 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 two years the demands on the OIG have 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.

The goals for year three of the OIG are to:

- Continue to work to establish better tracking and review systems for serious injuries, deaths and assaults;
- Attend an inmate council meeting at each facility;
- Increase interaction with NDCS staff;
- Provide detailed special reports or updates on specific issues;
- Learn more about issues impacting inmates and parolees by spending more time with those populations;
- Gain a better understanding of NDCS' Division of Health Services;
- Visit parole offices and go into the field with a parole officer;
- Maintain contact with each program that receives funding from the Vocational and Life Skills Program;
- Conduct follow-up surveys of NDCS employees and employees of the Office of Parole Administration;
- Review the operation of inmate councils in other state correctional systems;
- Conduct at least two surveys of inmates at two separate facilities; and,
- Always be open to suggestions for improvements.

## STATUS OF 2016 RECOMMENDATIONS

In the 2016 report, the OIG made 30 recommendations. At the request of the OIG the NDCS recently provided the OIG with an update or feedback on those recommendations. The OIG then responded to those updates or feedback. These can be found in the table below.

| 2016 Report Recommendation | Response from NDCS | Response from OIG |
|---|---|---|
| 1) Convene a work group on staff retention that includes people in positions throughout NDCS and individuals from outside NDCS; | 1) Various processes have been used to identify and implement strategies to improve retention. This concept has merit, but we have collected significant information from staff through the culture survey and the surveys conducted by the IG. Salary increases, leadership training, and various bonuses have had some impact on retention, but the overall effect is difficult to measure. HR is currently working with DAS to find new ideas. . | The OIG agrees that work has been done by NDCS on this issue. |
| 2) 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. For example, positions of Corporal I, Corporal II, and Corporal III could be created. To move from one tier to the other the individual would have to be in their position for a certain period of time, take outside classes, gain a special certification or accomplish goals established by NDCS. Health services staff could achieve something similar if they receive a form of health professional certification. | 2) A merit pay option was negotiated during the last bargaining session. We will push for funding in the next negotiation session. This is a mandatory subject of bargaining. | The OIG believes that it is vital that NDCS and NAPE continue to work on these issues outside of the normal negotiating window. |

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|---|---|---|
| 3) Provide additional pay for employees who participate in extra duties that require additional training; | 3) Subject of bargaining. | The OIG believes that it is vital that NDCS and NAPE continue to work on this issue outside of the normal negotiating window. |
| 4) Contact the Department of Administrative Services and begin the process of seeking a reclassification of correctional nurses (including Registered Nurses and Licensed Practical Nurses); | 4) There is no reclassification option that is applicable to my nursing staff. The concept of correctional health care remains a longer term option to recognizing the special work conditions/patient load. | Work needs to continue on recognizing the need to pay health services employees an appropriate level of pay. |
| 5) End the $250 bonus program that is part of the $1.5 million retention plan and use the remaining funds to provide bonuses to employees who did not receive the $500 bonus that was announced in August 2016; | 5) Didn't agree. | It remains to be seen whether or not the $250 bonus program had any impact on staffing. |
| 6) Place limits on the amount of overtime that an employee can work in one week; | 6) Subject of mandatory bargaining, not feasible under current staffing challenges | This is a long-term issue that continues to need to be discussed. |
| 7) Consider the banning of back to back 16 hour shifts by employees; | 7) " " " " | This is a long-term issue that continues to need to be discussed. |
| 8) Provide quarterly updates to the Legislature and the Inspector General for Corrections on turnover rates, vacancy rates, and overtime data for all classifications of positions; | 8) We are providing an updated quarterly data report beginning July 31st. If any of this information is not covered, it will provided upon request. | The new quarterly report is a significant improvement and is helpful and educational. |
| 9) Place a renewed focus on improving communication between behavioral health administration and staff; | 9) Done | Keep striving to build on the work that has been done. |
| 10) Review attempts in other correctional agencies to bring "new blood" into their agencies and develop short-term and long-term plans to do that for NDCS; | 10) With our turnover we are constantly bringing in "new blood". Compensation levels for most positions do not attract candidates from other states. | "New blood" is intended to refer to experienced staff/administrators from other correctional agencies. |

| | | |
|---|---|---|
| 11) Continue to develop more program options for inmates that would assist them in being paroled, including the development of programs provided in foreign languages; | 11) The work continues. | Significant work remains on this issue. |
| 12) Complete a staffing analysis for the entire Department of Correctional Services; | 12) Of no value at this time, and in light of the actions taken by the LR34 committee in this budget session – it could be years before there is any value in doing any further assessment. | This is critical and should be done as the Governor and the Legislature need to know what the true needs are of the Department. |
| 13) Provide regular updates to the Legislature and the Inspector General of Corrections regarding any changes that are made as a result of the Culture Survey; | 13) I'm not resourced to report on everything we are mandated to report on. I'm not going to add additional reporting on work that we initiated. | Fair response. |
| 14) Continually review placements of inmates in the county jail program to check that the inmates who are placed there actually are qualified to participate in the program; | 14) We do. | Spot checks have indicated no problems. |
| 15) Establish a goal to implement the restrictive housing peer support pilot program no later than October 1, 2017; | 15) I plan to meet the date in the AR. | NDCS has done work on this but the peers need to be trained. |
| 16) Convene a work group on communication that includes people in positions throughout NDCS and individuals from outside NDCS including former inmates. The focus would be to address how NDCS administration can communicate more efficiently and effectively with staff and inmates; | 16) We are not resourced to form all the work groups that I would to form. This is a good idea, but it hasn't risen to the top of the priority list. | The OIG still believes this would be helpful if done correctly. |

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| 17) Provide the Inspector General of Corrections and the members of the Nabarro Suicide Critical Incident Review Team with regular updates on the progress of the recommendations made in the Critical Incident Review. NDCS should also do this for all Critical Incident Reviews that are done in the future; | 17) Critical Incident Reviews are internal tool used to improve processes. We will provide copies of the finalized CIRs when requested, and be responsive to questions. I'm not willing to create an external reporting process for agency work tool. | At the time of this report, the OIG had no idea that there was such a significant number of CIRs being done by the Department. |
| 18) Provide additional transparency regarding accountability for the conditions that led to the escapes from the Lincoln Correctional Center on June 9, 2016; | 18) We shared all information with you. | Information was shared with the OIG regarding this. |
| 19) Develop a plan that would allow female inmates to be able to utilize community custody beds in the Omaha area after the female beds at the Community Corrections Center-Omaha cease to exist; | 19) As I continue to learn more about female offenders I'm convinced that our approach of consolidating female community beds is the smartest, most effective way to give female offenders a safe, therapeutic, and reentry focused transition. These are people that have experienced significant life trauma, have high mental health needs, and are not going to succeed simply by getting a minimum wage job in Omaha. The value of work release is having a chance to put enough money away to pay for housing and basic needs upon release. The value of a gender based therapeutic reentry center far outweighs going to work release out by the Omaha airport. | The OIG still has significant concerns about the impact of this policy decision. |
| 20) Review options pertaining to using county jails as work release placements for people who will be transitioning to areas near those county jails; | 20) Have an agreement with Scottsbluff – will continue to explore this idea. | No details have been provided to the OIG regarding the agreement with Scotts Bluff County. |

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| 21) Review the necessity and the effectiveness of all work detail contracts; | 21) With the huge expansion of community beds (250+), there will be ample opportunities for transition to work release. Engaging in detail work is an effective transition approach. | Agreed. |
| 22) Review how inmates in community corrections are determined to be eligible for work detail versus work release in order to determine whether or not changes could be made to make more inmates eligible for work release; | 22) Same response. | Agreed. |
| 23) Propose an increase in funding to the Vocational and Life Skills grant program; | 23) Not until we can show data that supports additional funding. | The OIG supports at least an incremental funding increase for this program. |
| 24) Expand the use of peer support programs by using inmates and people from outside NDCS. For example, consider using trained peers in restrictive housing settings or with individuals who turn down programming opportunities; | 24) We are on this path. | Much work remains but it is exciting that NDCS is moving forward on this effort. |
| 25) Reconvene the work group on travel orders and present a plan that has short-term and long-term solutions and related plans of action to the NDCS Director and the Medical Director no later than January 1, 2017; | 25) Dr. Deol was able to resolve the issue. | The OIG needs to visit with Dr. Deol to learn more about this effort. |
| 26) Work with the Inspector General to update the programming spreadsheet on a quarterly basis; | 26) We are close to having this ready for publication. | The programming report that is now being done is an excellent work product. |
| 27) Examine the benefits of establishing new positions in medical areas, such as medication aides or medical assistants, that would then allow other health services staff to focus on their more immediate responsibilities; | 27) Considered, but the compensation is so low that it is difficult to attract and retain people in these positions (Veteran's homes seeing very high turnover). | Fair response. |

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| 28) Work jointly with the Office of Parole Administration and the Board of Parole to present a plan to the Governor and the Legislature detailing how a correctional system overcrowding emergency would be administered; | 28) When the time is right | The time is right. |
| 29) Work with peer facilities in other states to establish video conferences or other communication opportunities for staff from those facilities to interact with comparable NDCS staff. The emphasis would be on communicating with staff who have gone through changes or situations similar to what is taking place in that particular NDCS facility; and | 29) This is happening in a variety of ways, and we will continue to build on the concept. | The OIG needs to visit with Director Frakes to learn more about this effort. |
| 30) Establish a two-year pilot program in order to provide "a specialized program to provide services for individuals with a developmental disability as defined by the Division of Developmental Disabilities." The program would require that the Department contract with a provider certified by the Division and that they track data related to the program and report it to the Governor and Legislature. An emphasis of the program would be to assist with the successful re-entry of this population into the community. | 30) We will have housing dedicated to cognitively impaired inmates by January, 2019, and programming to address their special needs. We will partner with HHS to develop evidence based approaches. This is an important issue, but we are not ready to focus on this project. | The OIG is encouraged that the Department believes this is an important issue. |

## REVIEW OF 2016 INNOVATIVE IDEAS

In the 2016 report, there was a section devoted to possible innovative ideas that had been brought to the attention of the OIG. Some have been explored further but most have not and could still have some merit. The innovative ideas in the 2016 report were:

- Reinstate physical standards for the hiring of correctional officers;
- Implement a minimum hiring age of at least 19 years old for correctional officers;
- Establish color coding in the medical areas so that inmates know where to go and that they have to adhere to that color. For example, if Inmate X needs to go to dental they follow the purple line and need to stay on the purple line. This could reinforce safety and security for those areas, or other areas to which it is applied;
- Consider the establishing of an employee advocate at all correctional facilities;
- Consider the establishing of a wellness nurse to assist staff and inmates with their wellness. For example, establish mission-related housing for inmates who have similar health issues and have the wellness nurse work with them to address their health conditions and place them in a situation where they can establish a new support system;
- One health care professional shared how they were asking terminally ill patients to journal about their experiences before and after the diagnosis so that they can share that work with future patients. The use of journaling can be done in many circumstances to assist people and to be a type of mentoring;
- Ask current inmates/potential mentors to prepare videos for new inmates that show them more about life in their new facility. It would give the new inmates ideas on what to expect and what they will experience as they begin living there. It also can assist with establishing positive relationships between the potential mentors and new inmates;
- Begin the process of studying how more fresh fruits and vegetables can be provided to inmates, possibly through relationships with the agricultural sector and the University of Nebraska. One possibility is to establish large gardens, greenhouses, etc. and have the inmates work in these areas in order to produce their own fruits and vegetables. In addition to improving diets it would provide job training opportunities for inmates. It could be called the G.O.O.D. program, Growing Our Own Dinner;
- Expand upon the new offerings at the Nebraska Correctional Center for Women: the yoga program and the Blue Room (a calming room for inmates in crisis);
- Partner with county jails to establish county jail reentry programs that are designed to keep people from acting in such a way that they return to county jails. NDCS could offer their new expertise on this issue to local counties;
- Explore the further use of pet therapy, including in restrictive housing settings;
- Consider the establishment of behavior incentive programs for inmate housing units based on positive examples from other jail and prison systems;
- Change the requirements for NDCS to receive county safekeepers. It is perceived by staff that some counties “dump” their problem inmates on NDCS and this only adds to the overcrowding issue at the Diagnostic and Evaluation Center;
- As NDCS moves forward on inmate councils, consider looking at more formalized examples from other states, such as New York; and,

• Consider having an outside entity complete a study of the costs and benefits of maintaining significant overtime versus hiring additional staff.[130]

130 http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (pages 64-65)

## CONCLUSION

At the beginning of this report, information was shared regarding the work of the Nebraska Legislature's 1989-90 Committee on Prison Overcrowding.[131] In 1989, Director Gunter shared with the Committee members that they had "the opportunity to take a pro-active approach in dealing with the increasing prison population before it gets out of control."[132]

He later said the following at the hearing:

> *[The] Nebraska criminal justice system is overburdened. Correctional populations have reached record numbers. The prison overcrowding problem facing Nebraska requires that the demand for correctional services and space be linked with capacity and resources. There is no single solution to control the size and nature of the correctional population.*[133]

He then laid out a plan to address many of the challenges that he was facing as the Director of the Nebraska Department of Correctional Services.

While the majority of this annual report focuses on NDCS, Parole has had challenges as they moved under the Board of Parole and will continue to do so in the future. They have also made excellent strides during a period of transition that was new to not only the employees of Parole but also to the members of the Board of Parole. It is key that Rosalyn Cotton (Chair of the Board of Parole) and Julie Micek (Director of Supervision and Services of the Office of Parole Administration) continue to work with the Governor and Legislature to identify the resources that they need to successfully fulfill their statutory responsibilities, as well as identify challenges that they face as they seek to move forward. More importantly, they need to present short-term and long-term plans to policy makers and the public so that the awareness level of what is needed to develop Nebraska's parole system into a highly successful and efficient system increases in the months and years ahead.

Much the same can be said about NDCS and its' Director, Scott Frakes. Director Frakes has likely testified before the Legislature and been in the public eye more than any other NDCS Director during any 30 month period. It is important that he continue to work with the Governor and the Legislature to identify the resources that he needs to successfully fulfill NDCS' statutory responsibilities. The challenges of staffing, population, facility limitations, infrastructure, health care, safety, a lawsuit by the American Civil Liberties Union, and others exist and Director Frakes should also present short-term and long-term plans to policy makers and the public that detail what he needs to grow NDCS into a highly successful and efficient correctional system. Whether or not he or others believe the resources are available to significantly upgrade and improve this system, it is imperative that he present this information to policy makers so they understand what it will take to address the challenges.

[131] Attachments 2, 3, and 58: Documents from the LR 222 Committee Report
[132] Attachment 58: Frank Gunter testimony to the LR 222 Committee
[133] Ibid.

It appears as though Director Gunter attempted to present a plan to address the challenges he faced in 1989. When he testified before the Committee, his plan included the following recommendations (and many more):

- Sentencing flexibility, mandatory sentencing guidelines and establishing a sentencing commission;
- Linking sentencing practices and sanctions with capacity;
- Modifying the parole and probation process by reducing offender parole eligibility and adding probation alternatives;
- Expansion of "front-end" interventions such as additional pre-trial diversion programs, intensive supervision probation, community corrections, client specific planning, and parole revocation alternatives;
- Capacity expansion, specifically a youth facility and a geriatric facility; and,
- Expansion of "back-end" interventions, including an expansion of good time laws, improved parole release measures, parole revocation flexibility, enhanced staff training, intensive drug treatment programs, funding of pre-release of inmates to halfway houses, and the continuing use of a force early release or emergency release mechanism.[134]

Director Gunter took a look at the front, middle and back ends of the system because all three parts were part of the problem that Nebraska was facing at that time. The same is true today. The challenges that have been and will be identified by the Board of Parole, the Office of Parole Administration and the Department of Correctional Services are ones that our state and others have faced and have had some luck resolving. Over the next year, these three entities can embrace and learn from Nebraska's history and continue their work to build a strong foundation for future change and improvement. By working with the Governor and the Legislature they can take the steps needed to solve the problems highlighted in this report in a united and cohesive fashion.

However, last year's OIG report shared that past and current employees of NDCS had described NDCS as a starving agency (and Parole at the time too since it was part of NDCS) that had not been able to ask for the resources it needed during prior gubernatorial administrations because of political pressure that included being told not to spend any extra money.[135] This past legislative session NDCS and Parole were allocated some additional resources but not near what they needed to move forward in a significant way. It is now up to them to inform policy makers what they need to meaningfully improve their part of the justice system. The impact that an improvement of these parts of the justice system can have on Nebraska is significant, as it is a public safety issue, a community issue, a family issue, a work force issue, and much more.

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[134] Ibid.

[135] http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20160915-141014.pdf (pages 12-13)