
STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL
OF THE NEBRASKA CORRECTIONAL SYSTEM



2022 ANNUAL REPORT

The Office of Inspector General of the Nebraska Correctional System (OIG) provides accountability and oversight of the state’s correctional system. Established by the Legislature in 2015, the office investigates complaints and critical incidents, identifies systemic issues, and provides recommendations for improvement. The OIG serves as an extension of the Legislature’s oversight, and, as such has no direct authority or control over the agencies within its jurisdiction. The Nebraska Department of Correctional Services (NDCS) and the Division of Parole Supervision and their staff are required to cooperate with OIG investigations.

Pursuant to the Office of Inspector General of the Nebraska Correctional System Act (Neb. Rev. Stat. § 47-901 et. seq.), this annual report summarizes the work of the OIG over the past year, and provides updates on various observations and recommendations the office has made in recent years.

As always, we want to acknowledge those who have assisted this office, including the Nebraska Legislature, the Office of Public Counsel (Ombudsman), and the Office of Inspector General of Child Welfare. In particular, we thank the many individuals who have shared their own insights on the Nebraska correctional system. We could not do this work without you.

HOW TO FILE A COMPLAINT

Anyone may file a confidential complaint with the OIG regarding concerns related to the Nebraska correctional system. Complaints should pertain to the Department of Correctional Services, the Division of Parole Supervision, or their employees or contractors, and should allege possible misconduct, misfeasance, malfeasance, or violation of a statute or of rules and regulations. Complaints may be filed by mail, email or phone.

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INTRODUCTION

The Office of Inspector General of Corrections (OIG) began issuing annual reports in September 2016 after the creation of the office in September 2015. These reports have evolved over time. They first were treated as a resource for the public and policy makers to bring awareness of what was taking place in the correctional and parole systems. They covered a multitude of topics, and each one built on the work of the previous reports.

With the addition of staff, the annual report is now shifting its focus. It will continue to focus on key areas of the correctional and parole systems, but as the office's capacity has increased, many of the key issues confronting the systems are being addressed in greater detail in individual reports. As a result, there is not as much of a need to publish an annual report that is a sort of encyclopedia of correctional and parole issues.

Last year's annual report focused on the crisis in the correctional system as it continued to struggle to recruit and retain staff. These staffing challenges put the system's goal of protecting public safety in jeopardy. The OIG found examples of maximum-security units going unattended for hours at time, along with immense stress placed on staff due to being stretched so thin. The annual report followed a staff-specific report in June 2021.¹

This year's annual report will provide updates on a number of areas, including population, staffing, classifications, programs, medical care, mental health treatment and more. It will also

OIG Staff

Doug Koebernick

Inspector General

Zach Pluhacek

Assistant Inspector General

Crystal Jones

Executive Intake Assistant

¹ This and other previous OIG reports are referenced throughout this annual report, and are available (along with this one) on the Legislature's website at https://nebraskalegislature.gov/reports/public_counsel.php.

provide brief updates on each facility as well as review OIG investigative reports issued during the past year.

In late August, NDCS Director Scott Frakes announced he was stepping down from his position on October 7, 2022. This will mark the first time the OIG has worked with a different director. Our hope is that the content of this report is useful to the next director and governor, senators, and others with an interest in correctional issues.

Highlights of This Report

OVERCROWDING AND FACILITY EXPANSION

- NDCS remains in an overcrowding emergency; however, the size of the population has been uncharacteristically steady over the past year. **(Page 10)**
- Adding 384 high-security beds to the system in late 2022 will increase the Department's design capacity. This will decrease and will likely address the Department's current maximum-custody bed needs, but will not eliminate the overcrowding emergency. **(Page 11)**

STAFFING

- Two facilities – Tecumseh State Correctional Institution and the growing Reception and Treatment Center – remain under staffing emergencies with modified operational schedules. These two facilities house roughly half of the Department's male population. **(Pages 29 and 34)**
- Protective services (security) staffing numbers have improved, and vacancies reduced, after NDCS announced substantial pay raises in late 2021. **(Page 16)**
- Vacancies have increased for non-security staff positions, primarily in the medical and behavioral health fields, which are critically low on staff. **(Page 20)**
- The number of overtime hours worked within NDCS has remained fairly consistent with past years, but expenditures exceeded \$22 million in the past fiscal year. **(Page 21)**

POPULATION MANAGEMENT AND DEMOGRAPHICS

- A study of the NDCS classification system, used to assign security levels to the population, is being conducted by the Nebraska Center for Justice Research and should be completed this year. This data will be helpful in determining the Department's long-term needs and best utilization of existing facilities. **(Page 48)**
- The percentage of women approved for community custody (27 percent) is more than twice the percentage of men approved for community custody (12 percent). **(Page 46)**

TREATMENT AND PROGRAMMING

- NDCS has begun the process of contracting with an outside entity to conduct evaluations of its programming. **(Page 50)**
- The Department's main clinical program for addressing those at risk of committing violence has not been following the evidence-based model for that program, so the extent to which it is effective is unclear. **(Page 54)**
- The Department does not provide domestic violence programming to any incarcerated individual. **(Page 55)**
- Complaints about medical care within NDCS prompted the OIG to initiate an ongoing investigation into whether the Department is meeting the community standard of care as required under state statute. **(Page 66)**
- Mental health services at the state's community corrections centers are not sufficient. **(Page 73)**

OTHER

- The use of restrictive housing has increased slightly after decreasing in the past few years. **(Page 68)**
- A handful of issues merit specific attention by the Legislature as they likely will require legislative engagement or action to fully address. **(Pages 85-87)**

OIG UPDATES

The Office of Inspector General has been settling into a new routine following a year of significant changes in 2021.

STAFF CHANGES

The office now has two full-time staff – the Inspector General and assistant inspector general – as well as an executive intake assistant who splits her time between the OIG for Corrections and the Office of Inspector General of Nebraska Child Welfare. In August, Crystal Jones replaced Noah Karmann as executive intake assistant. Crystal previously performed intake duties for the Office of Public Counsel (Ombudsman), and her familiarity with correctional issues and working with incarcerated people has made her an excellent addition to the OIG team. Noah was promoted to assistant inspector general for child welfare. The OIG is fortunate to have outstanding, hard-working staff who are dedicated to the mission of the office.

FACILITY VISITS

As COVID-19 prison cases decreased, the OIG greatly increased its number of visits to NDCS facilities. Enhanced interactions with NDCS staff and incarcerated individuals has benefitted the office's investigations and responsiveness to complaints, as well as its general oversight responsibilities.

CASE MANAGEMENT

In 2022, the Ombuds and the OIG implemented an updated digital case management system developed by the Legislature Technology Center. The new system has greatly improved functionality, has eased the ongoing transition away from paper files, and has helped streamline the OIG's process of referring complaints to the Ombuds when they are more appropriately handled by that office.

CERTIFICATION

The Inspector General is required under statute to obtain certification by the national Association of Inspectors General (AIG), or a similar organization.² Inspector General Doug Koebernick received his initial certification from the AIG in 2016 and will renew his certification at a continuing education conference in October 2022. The OIG for Corrections expects all investigative staff to obtain the appropriate certification, as well, following one year of service. Assistant Inspector General Zach Pluhacek attended the AIG's Inspector General Institute in March 2022 and is now a Certified Inspector General Investigator.

Complaints and Investigations

OIG investigations are typically prompted by reports of deaths or serious injuries, or by complaints by incarcerated people, correctional staff, or others who interact with the prison system. The extent to which each case is investigated depends on the substance of the complaint or report, the allegations (if any), and ongoing review of the information obtained by the OIG. Most cases do not result in a formal report; many are resolved informally or combined with other cases involving similar systemic issues.

To date, the number of cases logged by the OIG in 2022 is similar to 2021, and much higher than in previous years, despite case management and operational changes that have resulted in a greater number of complaints being referred to the Ombuds. So far in 2022, the OIG referred at least 90 formal complaints to the Ombuds. This does not include the many people who are informally referred to the Ombuds when they contact the OIG for assistance.

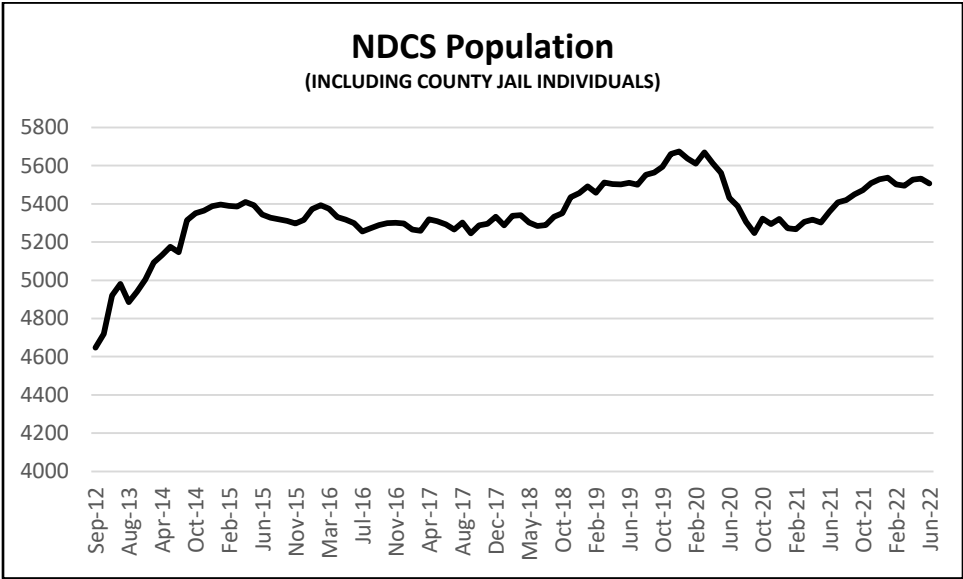
Further detail on the types of issues addressed in complaints to the OIG can be found throughout this report.

² Neb. Rev. Stat. § 47-904.

CORRECTIONAL POPULATION

Total Population

In spring 2020, just prior to the COVID-19 pandemic arriving in Nebraska, the total population in NDCS custody reached approximately 5,700. As a result of the pandemic and its impact on the justice system, the incarcerated population declined to under 5,300 by the end of 2020. Many believed that as courts began to operate more normally during the past year, the population figure would return to its previous level; however, the population has hovered around 5,500 people since November 2021, with slight variations.



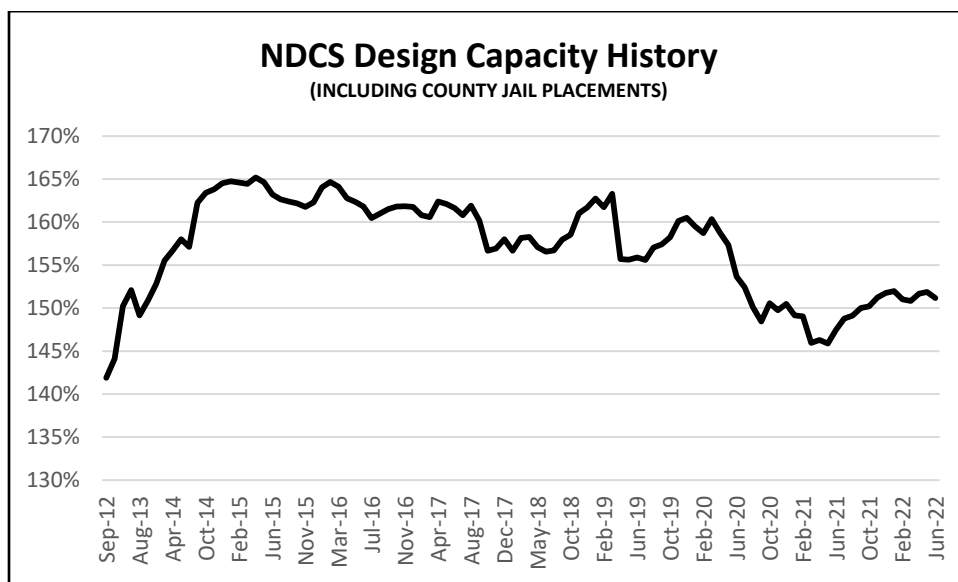
Design Capacity

Design capacity is the total designed bed space in facilities operated by NDCS, as certified by the director.³ Currently, the Department remains in an overcrowding emergency due to the incarcerated population exceeding 140 percent of design capacity as of July 1, 2020, a date which is specified in statute. This emergency remains in effect until the population decreases or

³ Correctional System Overcrowding Emergency Act, Neb. Rev. Stat. § 83-960 et. seq.

capacity increases to the point where it matches the system’s “operational capacity,” which is 125 percent of design capacity.

After peaking at slightly over 165 percent of design capacity in 2015, crowding within Nebraska’s prisons had stabilized until the coronavirus pandemic. Due to some increase in capacity at two facilities, and the overall population decrease during the pandemic, the system is now operating at 150 percent of design capacity. When a new, 384-bed, high-security unit opens at the Reception and Treatment Center in Lincoln, the OIG projects the system will be operating at approximately 137 percent of design capacity. This is assuming the size of the NDCS population remains consistent. Should it return to the pre-pandemic level of 5,700, then the system would be operating at approximately 142 percent of design capacity. If the population increases to 6,000, it would be operating at approximately 150 percent of design capacity.

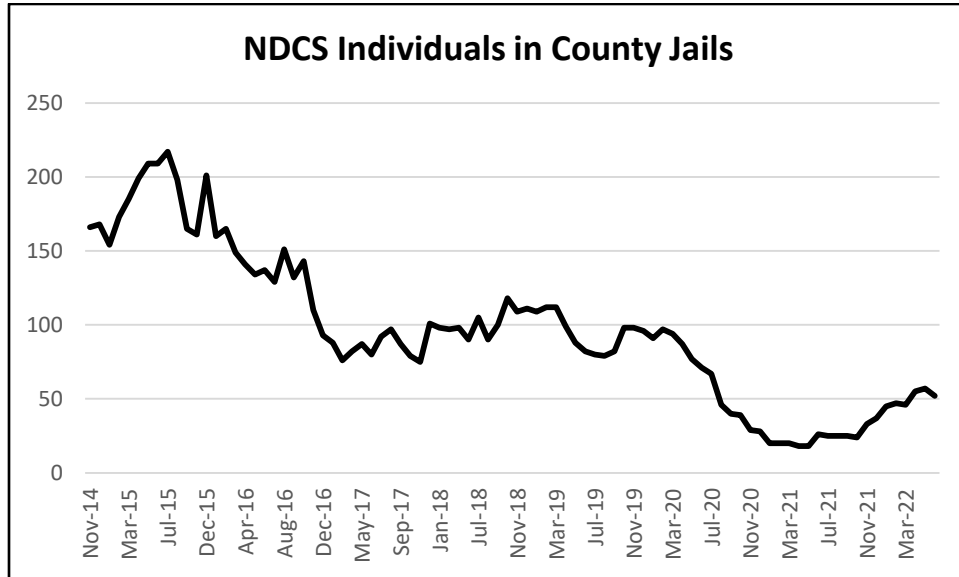


County Jail

NDCS continues to contract with a number of county jails to house state incarcerated individuals despite funding for this effort ending on June 30, 2017. The Department now uses funds from other sources in its budget to pay a contracted rate to each county jail for each incarcerated individual housed there. The original purpose of this program was to help ease crowding in the

state prisons, particularly at the Diagnostic and Evaluation Center (DEC), the Department’s intake facility for men.⁴

At one point, approximately 200 male incarcerated individuals from NDCS were being housed in county jails. The use of the county jails decreased to around 20 male incarcerated individuals at one point but increased to around 60 male incarcerated individuals as of August 2022.

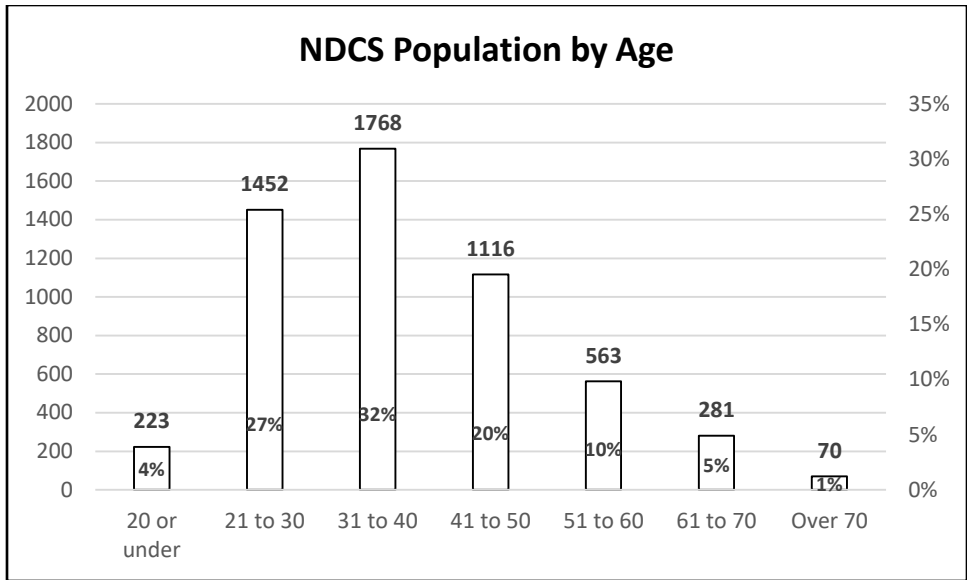


The OIG has recommended in the past that if the county jail program continues or expands, NDCS should seek specific funding and set clear criteria for who would be placed in county jails, how placement decisions would be made, and how long these individuals could remain in a county jail. NDCS has not sought specific funding for this program nor set clear criteria for placement decisions.

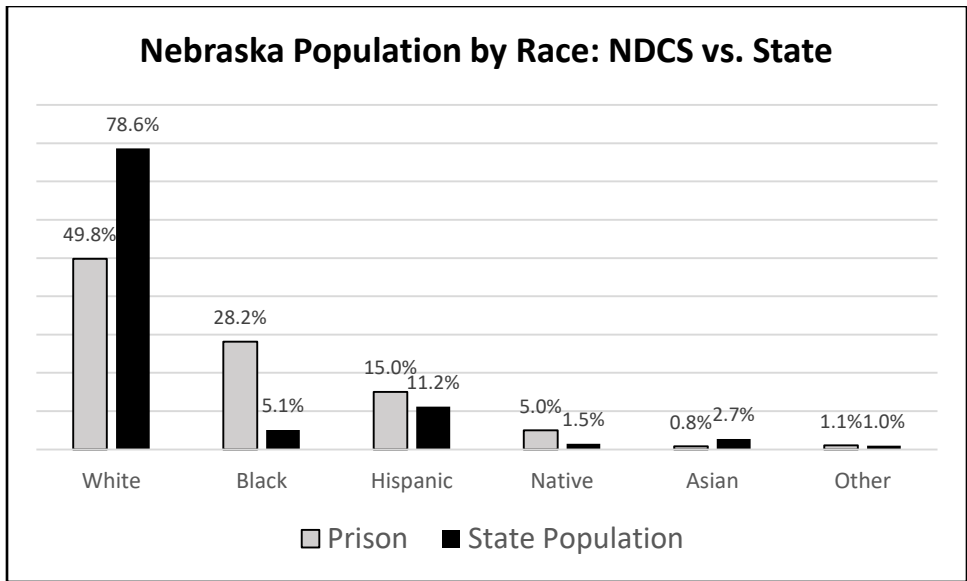
Demographic Data

Nearly 60 percent of the incarcerated population is between the ages of 21 and 40 years old. Four percent of the incarcerated population is 20 years old or younger, and 1 percent is over age 70.

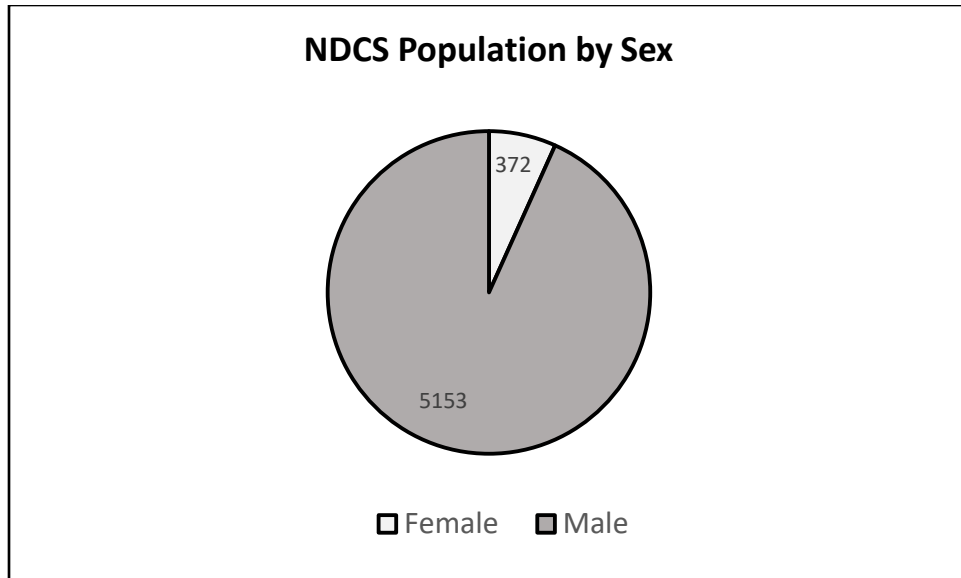
⁴ Now known as RTC South.



The racial makeup of the NDCS incarcerated population has changed slightly in the past year, with nonwhite populations seeing slight increases. Overall, the racial demographics of Nebraska’s prison system continue to differ significantly from the state as a whole.



In Nebraska, men make up 93.2 percent of those incarcerated in the state correctional system. This is comparable with other jurisdictions. In fact, the federal Bureau of Prisons’ population consists of 93.1 percent men.



Previous Recommendations

- In its 2020 annual report, the OIG recommended that NDCS contract for an update of a recently completed incarcerated individual population projection report, due to the number of changes in 2020. This would still be valuable information, given recent fluctuations in the prison population and other factors. It is possible this information will be included in the facility master plan which was funded by the Legislature in 2020. Earlier this year, Director Frakes told the Legislature he expected the plan to be completed in August 2022. However, the plan has yet to be shared with the Legislature or the OIG.
- Also in 2020, the OIG recommended that NDCS should implement a program to provide incarcerated people with an opportunity to have “good time” sentence reductions restored, even if those reductions were deemed “non-restorable” by the Department, based on conditions such as good behavior.
- The OIG also encouraged NDCS or the Legislature to contract with the Nebraska Center for Justice Research for an updated report assessing the use of good time in the correctional system. Neither of these recommendations was accepted by NDCS, but remain worthy of consideration.

- In 2018, the OIG recommended that NDCS conduct exit interviews of incarcerated individuals who are released from community corrections centers. NDCS responded that it would pilot that in 2019 at CCCL in the female unit. NDCS has not implemented this recommendation.

STAFFING

After nearly seven years of an ever-growing staffing crisis, significant action was taken last year to raise some NDCS salaries by a substantial amount. This was a result of negotiations with the two unions which represent departmental employees. Some positions gained increases of up to 40 percent as a result of these contracts, which made Nebraska a national leader in pay for specific positions, such as entry-level protective services staff. This has enabled NDCS to much more easily compete with the county jails in Lancaster, Douglas and Sarpy counties, as well as prison systems in other states. However, these agencies are likely to increase their pay rates, as witnessed by Sarpy County

recently raising its starting wage for corrections officers from \$22.06 an hour to \$27 an hour.

Nebraska raised pay for its corrections staff after the years-long staffing crisis had reached unhealthy and unsafe levels. NDCS reached a then-record number of

staff vacancies in March 2021, at 391, which by June 2021 had further skyrocketed to 527 unfilled positions. Staffing emergencies were declared at the Diagnostic and Evaluation Center and Lincoln Correctional Center (DEC and LCC, now combined into the Reception and Treatment Center), adding to emergencies which had been in place at the Tecumseh State Correctional Institution (TSCI) and Nebraska State Penitentiary (NSP) since 2019.

In reports at the time, the OIG emphasized the need to “craft a plan for immediate and long-term recruitment and retention of correctional staff which takes into account the potential for continued workforce shortages.”⁵

While the recent pay raises have greatly improved recruitment and retention in the short term, the OIG remains apprehensive about the Department’s ability to continue this momentum, fill a

While the recent pay raises have greatly improved recruitment and retention in the short term, the OIG remains concerned about the Department’s ability to continue this momentum, fill a sufficient number of remaining vacancies throughout the Department, and maintain safe staffing levels in the long term.

⁵ 2021 OIG Annual Report.

sufficient number of remaining vacancies throughout the Department, and maintain safe staffing levels in the long term. Until 2020, NDCS had success recruiting staff but struggled to retain them at sufficient levels. Retention must be a critical focus of the state, the Department and the next Director of Corrections going forward, particularly as other states and agencies raise their own correctional salaries.

The OIG special report in June 2021, as well as that year's annual report, contain specific recommendations for the Department that remain relevant for the future:

- Engage with staff impacted by wage compression to gain a better understanding of their concerns and demonstrate a commitment to addressing this issue;
- Examine the efficacy of the state's \$15,000 bonus program for corporals to determine whether it should be retained, modified or replaced and whether or not it impacts the hiring and retention of other key positions within NDCS;
- Engage with behavioral health staff to gain a better understanding of their concerns and to demonstrate a commitment to addressing the vacancies in that area;
- Develop an action plan to address the behavioral health vacancies;
- Determine what action can be taken to decrease the reliance on contracted medical positions; and
- Examine statistics related to incarcerated individuals conduct and rehabilitative outcomes at NSP and TSCI and report to the Legislature whether the staffing emergencies impacted those performance measures.

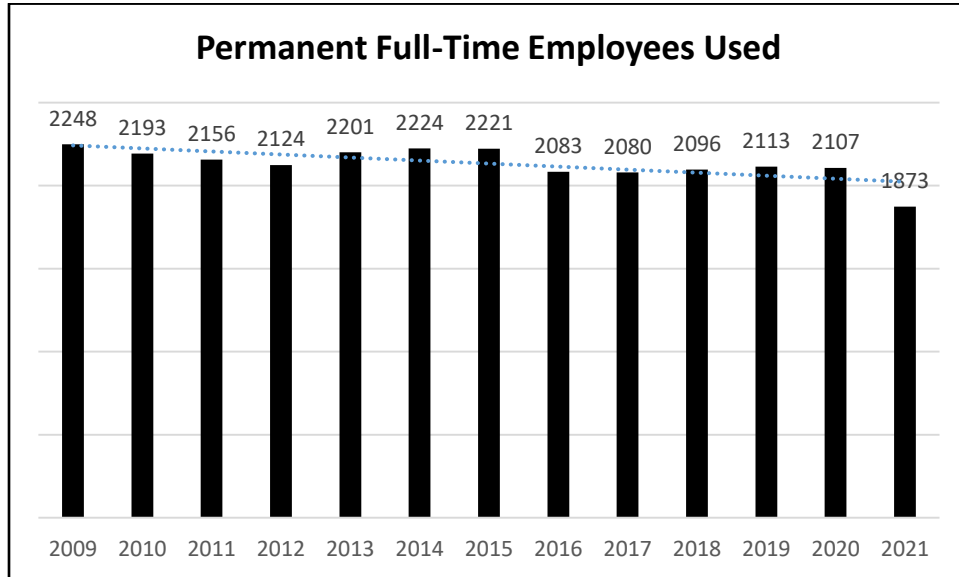
The OIG has seen no indication that NDCS is pursuing any of these efforts.

General Staffing Data

Data in this section was provided either by NDCS Human Resources or contained within the 2022 DAS Personnel Handbook.⁶

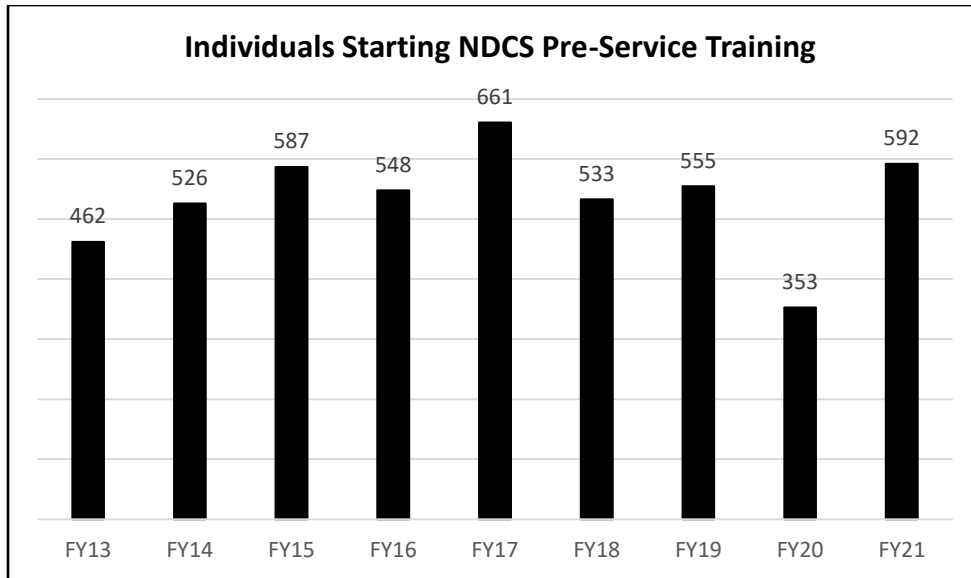
⁶ <http://govdocs.nebraska.gov/epubs/P2000/B004-2022.pdf>

As briefly described previously, NDCS staff vacancies increased dramatically in 2021, which was a result of continued high turnover rates and fewer people applying for positions with the Department. The number of full-time employees decreased by over 200 from 2020 to 2021.



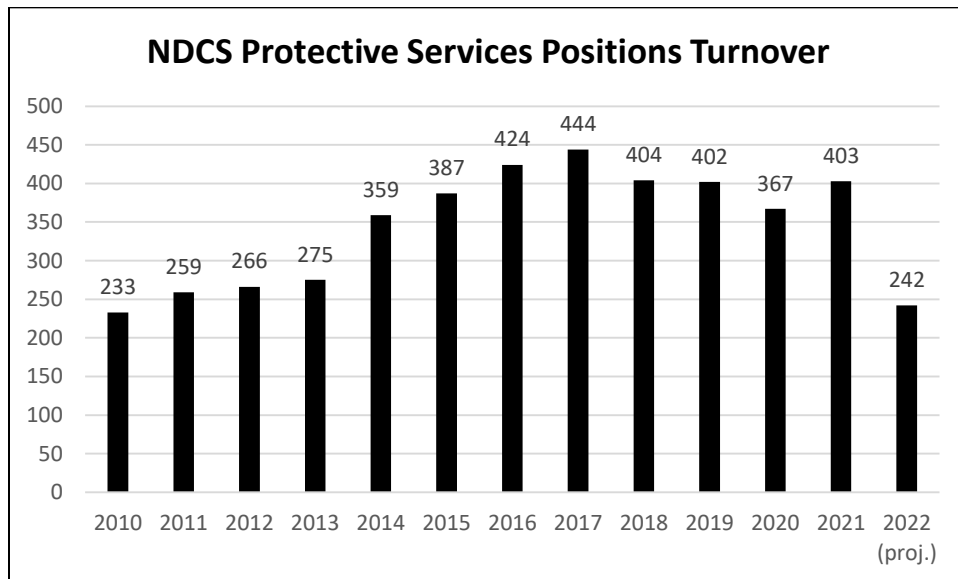
Updated data should show a significant increase when released by the Department of Administrative Services next year. However, it is unclear if NDCS will have made up all of the ground lost since 2014, when the Department had 2,224 full-time employees.

The number of individuals who started pre-service training for NDCS decreased by over 200 from FY 2019 to FY 2020, but has rebounded well in FY 2021.

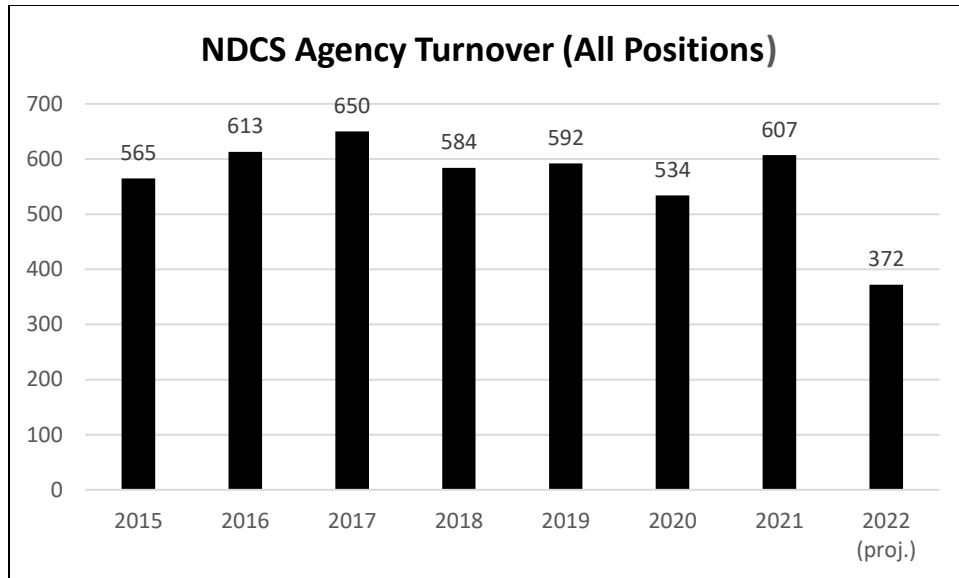


TURNOVER

Turnover increased from 2020 to 2021. So far in 2022, there has been a large decrease in turnover, specifically in protective services positions, from 403 positions that turned over in 2021 to a projected 242 positions in 2022.⁷



⁷ The category of “protective services” includes caseworkers, corporals, and sergeants.



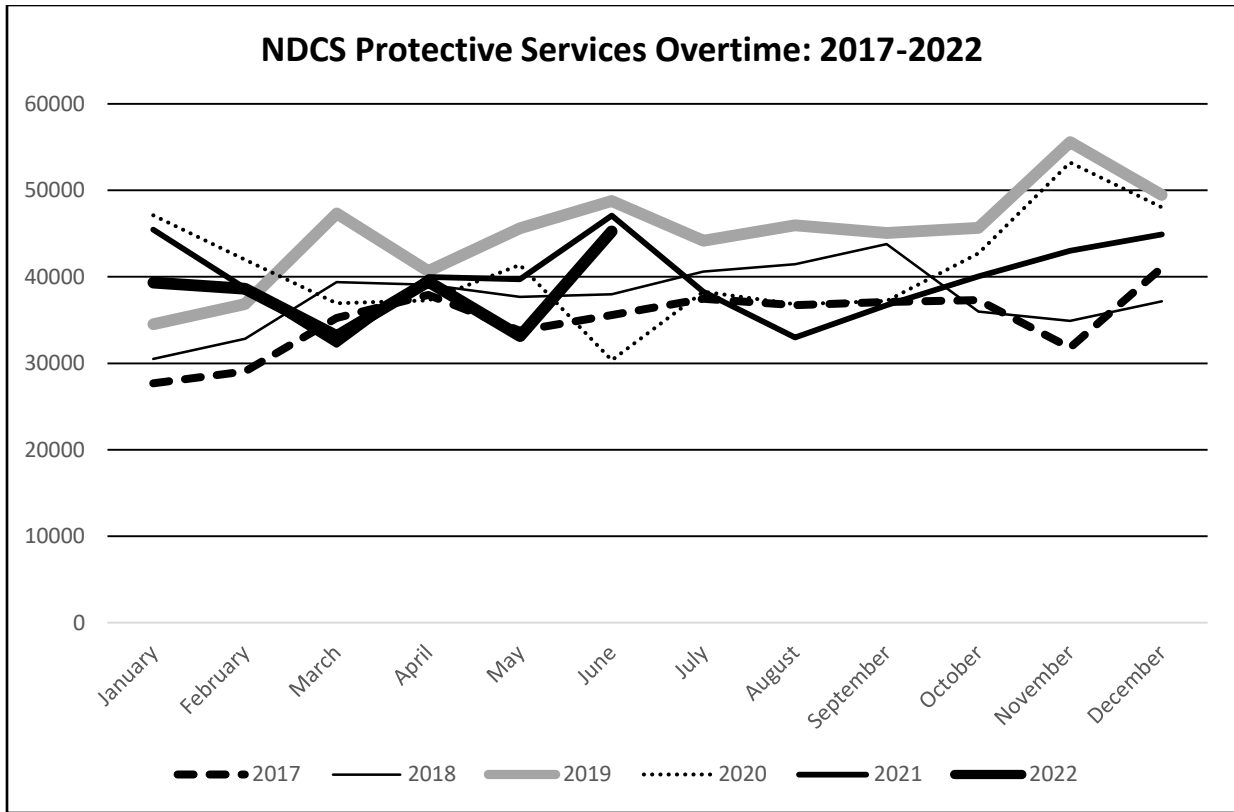
Despite the improvements in reducing turnover in recent months, since the beginning of 2015, over 4,500 staff have left employment with the Department. If just 10 percent of those staff had remained, NDCS could have avoided its significant staffing problems in recent years.

VACANCIES

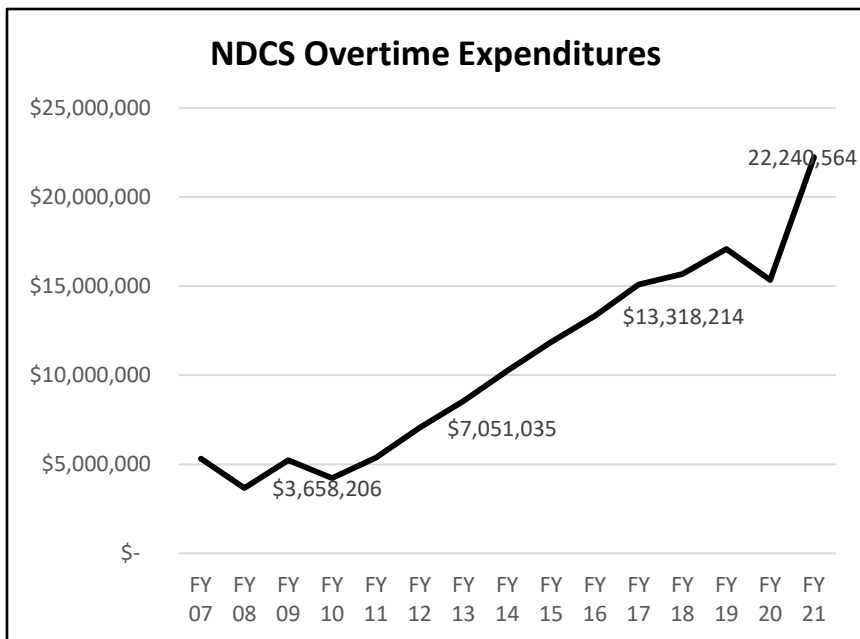
According to NDCS data, the number of vacant protective services positions decreased during the past year, from 390 on August 1, 2021, to 154 on June 30, 2022. This is a significant, positive change. However, vacancies actually rose for other positions within the Department, from 182 last August to 229 in June of this year. As noted later in this report, more than half of those vacancies are in the medical and behavioral health area of the department.

OVERTIME

Overtime data for the first six months of 2022 for protective services workers is similar to past years. The chart below provides a month-by-month comparison since 2017, with overtime hours in 2022 slightly below the number in 2021. Additionally, non-protective services staff averaged close to 9,700 hours of overtime each month during the first six months of 2022, which is a slight decrease from the same period in 2021.



As expected, overtime expenditures increased significantly, to over \$22 million in the most recent fiscal year. This is most likely due to changes in the contract with the Fraternal Order of Police (FOP) union granting FOP-represented employees double pay for their overtime hours,



and increasing opportunities for staff who were previously considered salaried workers to earn overtime pay. These costs are likely to decrease in the next year due to the elimination of the double-pay agreement and steps taken by NDCS to limit overtime over the past several months.

Past OIG reports included data on the top overtime earners in NDCS. Due to the double overtime pay, the amount of overtime paid out to individuals significantly increased this past fiscal year. The top 10 overtime earners were paid between \$81,511.69 and \$125,940.10. This is just overtime pay and is in addition to their non-overtime salary.

EXIT SURVEYS

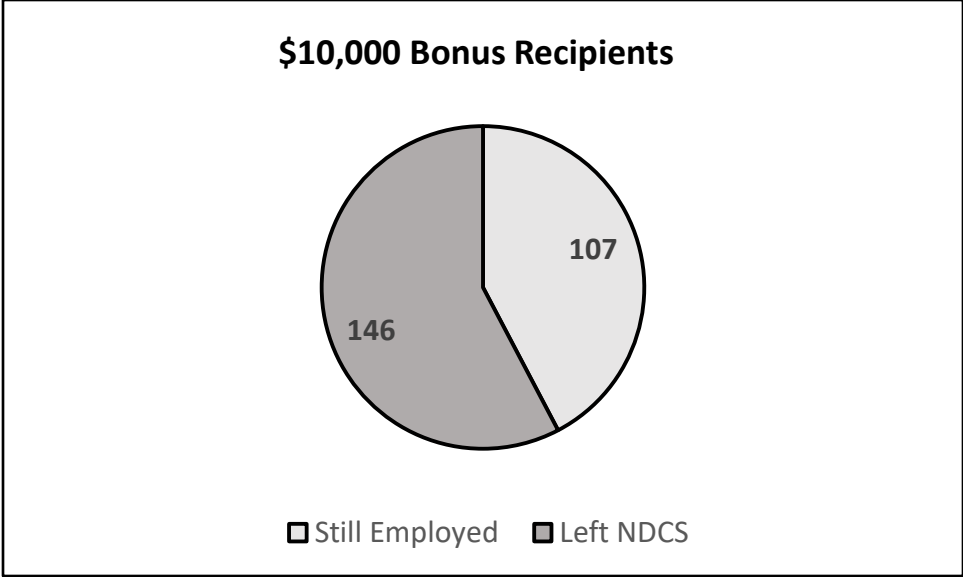
NDCS offers exit surveys for departing employees. This topic was explored at some length in the 2020 OIG Annual Report, as the OIG has repeatedly expressed concerns about how this process was conducted and the limited extent to which it was valued by the Department. The OIG recommended that the Department revamp its exit interview process. In FY 2020, 66 individuals (12 percent) who left employment completed some portion of the exit interview, and fewer than half of those filled out the comments section. In FY 2021, 100 individuals (20 percent) who left employment completed some portion of the exit interview.

Over half who responded in 2021 indicated they were dissatisfied with their current job. The top reasons for leaving were supervision, salary, too much overtime, and too little recognition. About 65 percent of respondents indicated they would consider returning to work at NDCS in the future, and nearly 60 percent said they would recommend NDCS to someone else as a good place to work. About 70 percent of those who responded had been on the job three years or less. Fifty-four (54) people provided written comments. The OIG believes there is value in this process and that it could still be improved.

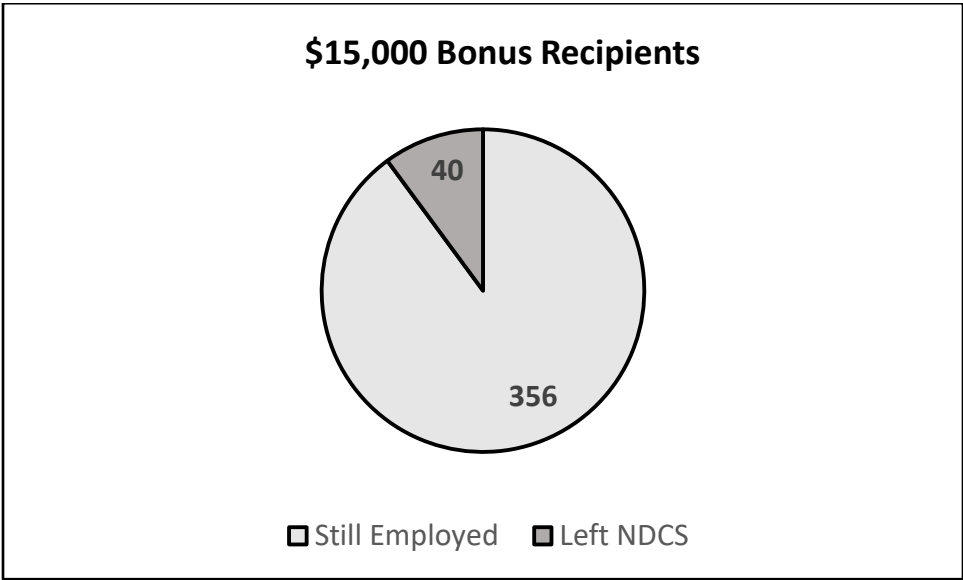
BONUS PROGRAM

During the past several years, NDCS has tried using various bonuses to incent individuals to accept positions.⁸ In October 2019, the Department increased its hiring bonus to \$10,000 for specific protective service positions at facilities in need of those staff. Since then, 252 staff were hired who were eligible for the bonus. As of June 2022, 106 (or 42 percent) were still employed by NDCS.

⁸ Current and future changes regarding bonuses can be found at <https://corrections.nebraska.gov/employee-benefits>.



The bonus was increased to \$15,000 for corporals at the Reception and Treatment Center (RTC), Tecumseh State Correctional Institution (TSCI), and the Nebraska State Penitentiary (NSP) in July 2021, and remains at that rate today. Since it was initiated, 85 percent of those corporals are still employed with NDCS.



The Department also increased its staff referral bonus beginning on July 31, 2021. This is a \$10,000 bonus for existing staff who recruit new corporals for RTC, TSCI and NSP. Payments are to be made over a three-year period, and there is no limit on the number of people whom one can refer. Payments end if the recruit ends their employment with NDCS.

NDCS has made 293 of these payments for a total of over \$185,000. The Department also implemented a \$7,500 bonus for staff who transferred to TSCI after July 31, 2021, and 12 staff transferred and received the bonus.

Other bonus programs include:

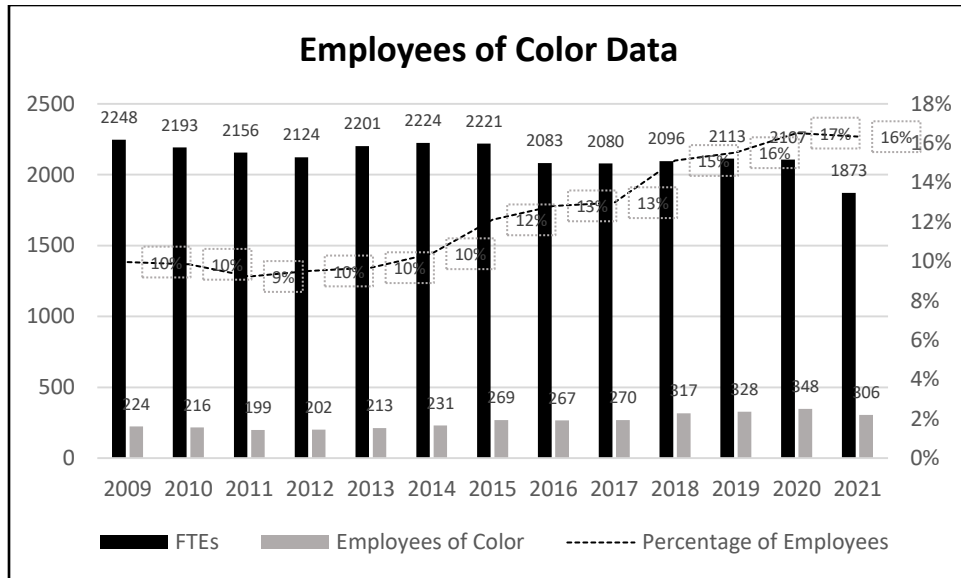
- Up to \$5,000 hiring bonuses for registered nurses, licensed practical nurses and staff care technicians;
- \$2,000 hiring bonuses for food service positions; and
- \$1,000 referral bonuses for nurses.

In addition, NSP staff received a one-time, \$500 retention bonus in December 2019, and TSCI staff received the same retention bonus in January 2020. This came at a cost of approximately \$350,000.

As noted earlier in this section, the OIG has recommended that NDCS evaluate the impact of the \$15,000 bonus program. Given the cost to taxpayers, expanding such an evaluation to include these other bonuses would be valuable, to determine whether the bonuses were deciding factors for people joining NDCS.

STAFF RACIAL DEMOGRAPHICS

Despite a decrease in the total number of employees of color, the percentage of this workforce stayed relatively flat due to the overall decrease of total staff in 2021. Based on discussions with facility wardens, the OIG anticipates this total will increase when data for 2022 is released next year.



PERU STATE COLLEGE

The OIG recommended in 2018 that NDCS meet with leaders of Nebraska’s community colleges to discuss working with them to establish career tracks and other classes or training programs for correctional staff. The Department responded that it was working with the Department of Labor and Doane College and exploring potential pilot programs. Despite efforts from the OIG to identify these pilot programs, NDCS never provided details, and these efforts apparently did not materialize.

However, at the request of NDCS the Legislature funded a scholarship program to start a partnership with Peru State College. This program is for a small group of students who have yet to become full-time staff. The program is maturing, and when fully implemented in FY 2023, it will potentially include up to 45 students at an annual cost of approximately \$1 million. The OIG intends to visit Peru State College this fall to learn more about the program.

NDCS still should consider working with the community colleges to establish career tracks or other programs for those who do not participate in the Peru State College program.

Health Services Staffing

While overall staffing data illustrates a positive trajectory for NDCS, the status of medical and behavioral health staffing remains deeply concerning.

MEDICAL

As of June 2022, NDCS had 190 filled health services positions and 118 vacant positions, meaning over 38 percent of the

positions were vacant.⁹ A sampling of these positions can be seen in the adjacent table. In many fields, half or more than half of the positions were vacant. The OIG reviewed online listings for these jobs and discovered that, despite more than half of the dental assistant positions being vacant, these positions were not being

	Total Positions	Filled	Vacant
Registered nurse (RN)	53	28	25
Licensed practical nurse (LPN)	34	16	18
Physician	6	3	3
Dentist	5 full-time, 2 part-time	2 full-time	3 full-time, 2 part-time
Dental assistant	5	3	2

advertised. This was corrected after being brought to the Department’s attention.

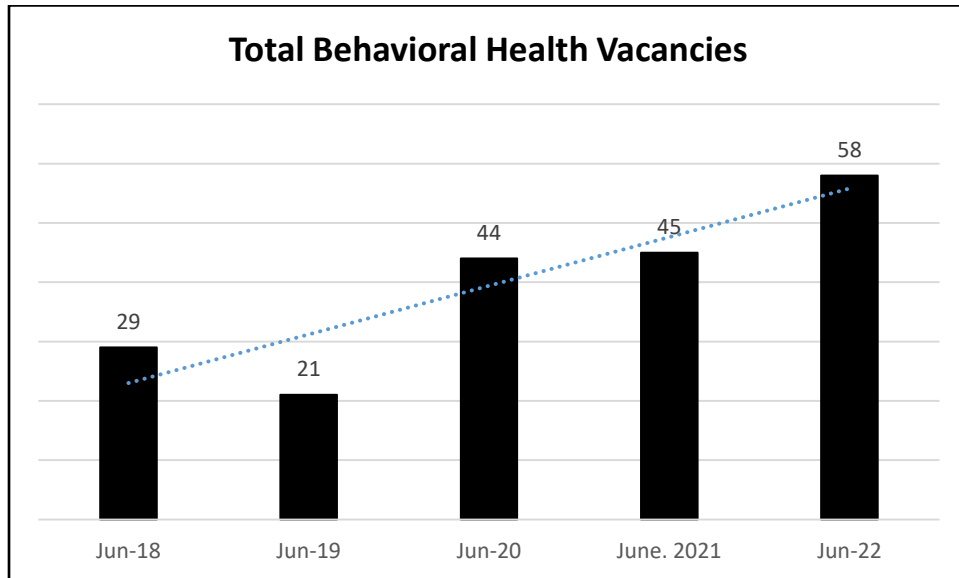
State law requires the NDCS medical director to “ensure that each facility has at least one designated medical doctor on call at all times and that each facility housing more than five hundred incarcerated individuals has at least one full-time medical doctor assigned to that facility as his or her primary employment location.” The NDCS medical director is not in compliance with this statute. In addition to recent doctor vacancies at other facilities, the Community Corrections Center-Lincoln has never had a doctor, despite expansions which have increased its population to over 500 incarcerated individuals. NDCS has never sought legislation to change this requirement in statute.

Encouragingly, other NDCS health services positions are filled or nearly filled, including nurse practitioners, physician assistants, nurse supervisors, nursing directors, social workers and various pharmacy positions.

⁹ Health services includes medical, dental, vision, and behavioral health positions.

BEHAVIORAL HEALTH

NDCS issues a quarterly report with data on behavioral health staff vacancies. The report released in June 2022 indicated there were 58 total vacancies in behavioral health services, up from 45 vacancies in June 2021 and almost triple the 21 vacancies in June 2019. The vacancies this year included 14 for behavioral health practitioner I and 17 for behavioral health practitioner II, as well as 12 psychologists and four psychiatrists.



NDCS has flexibility in determining the salaries of psychologists and psychiatrists. Behavioral health practitioner salaries are negotiated with the Nebraska Association of Public Employees (NAPE/AFSCME), the main state employee union, which represents many frontline NDCS staff who are not in protective services positions covered by the FOP.

The OIG made two recommendations in 2021 regarding behavioral health staffing:

- Engage with behavioral health staff to gain a better understanding of their concerns and to demonstrate a commitment to addressing the vacancies in that area; and
- Develop an action plan for addressing the behavioral health vacancies.

Staff in this field who spoke with the OIG said administrators have not positively engaged with them, and that they would like to see a greater commitment from NDCS to address their concerns and the vacancies.

The RTC opened a new mental health unit in July 2022, two months after an “official opening” event with speeches by Gov. Pete Ricketts and Director Frakes, and tours for state senators and the news media. This unit houses up to 32 men with serious mental illnesses, including some of the most acutely mentally ill people in the correctional system, but has not had a permanent psychologist since it opened.

FACILITY-SPECIFIC UPDATES

Reception and Treatment Center (RTC)

The RTC in west Lincoln consists of the former Diagnostic and Evaluation Center and Lincoln Correctional Center. One side (the former DEC) serves as the intake facility for adult men entering NDCS custody; the other (the former LCC) is a medium- and maximum-security prison with units designated for mental health services, protective management, restrictive housing, and general population. It is the third-largest facility within NDCS but may soon be the largest, with the opening of a new, 384-bed, high-security unit on the north side of the existing facility. It currently houses over 1,000 men, with a total design capacity of 468. The new high-security unit will increase its design capacity to 852, and bring the total population at RTC to about 1,400 men.

STAFFING

The RTC remains in a staffing emergency. However, as of June 2022, this facility had roughly half the number of vacant staff positions (66) compared with the previous year (130).¹⁰ The RTC gained 29 staff and lost just three in June 2022, whereas in June 2021, the facility gained just one staff person and lost 12. The positions with the most vacancies in June of this year were corporal (15), caseworker (16), and food service worker (10).

The OIG recommended last year that NDCS develop a detailed plan for how it will staff the merged RTC and its new additions. This was not completed by NDCS.

MODIFIED OPERATIONS

Due to the staffing emergency, with 12-hour shifts and inconsistent coverage on weekends, operations within the RTC remain more limited than in previous years. The facility runs close to normal four days per week, but with a compressed schedule for Fridays through Sundays, during which time movement is much more limited and the main yard is closed. While this is an

¹⁰ These facility-specific staffing updates do not include data on all medical or behavioral health staff. NDCS includes figures for these health services positions under central administration, not individual facilities, so the OIG does not have a complete breakdown of these positions by facility.

improvement from the total lockdowns of late 2021, these modified operations continue to impact programs, visitation, the overall routine of the facility and the quality of life of the incarcerated population.

EXPANSION STATUS

In May, NDCS unveiled a \$125 million expansion at the RTC, including a new, 32-bed mental health unit and a 32-bed skilled nursing facility (SNF), as well as the 384-bed, high-security unit. The mental health unit and the SNF opened over the summer. However, due to construction delays, the high-security unit remains vacant.

When completed, the high-security unit is expected to operate similarly to the “Intervention/Improvement Unit” (IIU) on Housing Unit 2C at TSCI. This unit is a step down from restrictive housing in terms of security level, offering slightly more out-of-cell time and freedom of movement than restrictive housing. The OIG has completed an investigation of complaints related to the IIU and will soon submit a report with findings and recommendations to Director Frakes. As the opening of the 384 new beds will allow the TSCI unit to be repurposed, the recommendations mostly relate to the operation of the new RTC unit.

FUTURE PLANS

The Legislature has appropriated \$18 million for a further, 96-bed expansion of the RTC to include housing for geriatric individuals as well as those with mental health and other special needs.

While initial plans for these additional units placed them in a single wing of the prison with the new secure mental health unit, the skilled nursing facility (SNF), and dining and administrative areas, a more recent program statement for this “Phase 3” expansion shows the newest units tucked into separate areas of the complex. In that plan, the geriatric unit is located near the new

SNF, but the mental health and special needs housing is at the far end of the former DEC, and not adjacent to or near the newly opened secure mental health unit.

The OIG recently recommended that NDCS avoid designs for future expansion of the RTC which contribute to the facility's already-mazelike layout. This was part of an overall



Figure 1: The additions in "Phase 3" of the RTC expansion project are shown in light blue or gray in a black and white printout. While the planned geriatric unit at the center of this image is near the new skilled nursing facility (not indicated), the mental health and special needs units would be located at the far end of the facility, away from the recently added high-security mental health unit. Courtesy of Carlson West Povondra Architects and HDR.

responded.

The OIG investigated this incident and found that leaving the unit unattended, coupled with fire detection systems not immediately activating, likely contributed to the severity of injuries. The

recommendation to improve fire safety at the RTC following a fire at the facility in October 2021 which resulted in serious injuries. Director Frakes accepted this recommendation in a response to the OIG.

OCTOBER 2021 FIRE

On Oct. 23, 2021, a person held in the restrictive housing unit at what was then called LCC, now the east wing of the RTC, set fire to his mattress using a broken TV cord. The fire went undetected by staff for several minutes because the only staff person assigned to the area had left to assist elsewhere in the facility. Thick, dark smoke filled the gallery, resulting in serious injuries to the incarcerated person and a correctional sergeant who

physical layout of the RTC also impedes emergency response and does not allow for easy removal of smoke from living units in the event of a fire. Additionally, the OIG determined that NDCS utilizes chronic mental health beds for individuals (such as the person who started this fire) who do not require the defined level of care for those beds, but who engage in serious misconduct and cannot legally be held in long-term restrictive housing.

The OIG recommended that the Department develop “a specific plan to ensure all housing units at NDCS facilities are consistently monitored in the event of a staffing crisis.” Director Frakes rejected this recommendation. He also rejected recommendations to use chronic care mental health housing only for incarcerated individuals who require that form and level of care, and to update policy to provide better procedural protections for people placed in these mental health units. The Director did accept a recommendation to improve fire safety at RTC, as mentioned in the previous part of this annual report.

LEADERSHIP CHANGES/ASSISTANT WARDEN ARREST

The RTC has seen significant changes in leadership in the past year. In November, Assistant Warden Craig Gable was named warden at TSCI, replacing Todd Wasmer. Wasmer briefly served as assistant warden at RTC before leaving the Department. In February, Assistant Warden Sarah Nelson Torsiello was arrested and charged with sexual abuse of an inmate. As a result, both assistant warden positions were filled by other staff on an interim basis.

In late summer 2022, Deputy Warden Cathy Sheair began stepping back into a role as assistant warden. Shawn Freese, deputy warden at OCC, was chosen to replace her as deputy

OIG Report

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A summary of the OIG’s report on this investigation is available on the Legislature’s website. Click on the “Reports” tab and select “Public Counsel.”

[NebraskaLegislature.gov](https://www.nebraska.gov/legislature)

warden at RTC. The prison's other assistant warden position continues to be filled on an interim basis by longtime Unit Administrator Rich Randazzo.

Nebraska State Penitentiary (NSP)

NSP in south Lincoln is the state's oldest prison and currently houses the most people of any NDCS facility, about 1,300 men.¹¹ It was designed to house 818 individuals. It consists of an "internal" side with five maximum- and medium-security housing units, including restrictive housing and mission-specific housing; and an "external" side with four minimum-security units, including an inpatient substance abuse treatment unit.

STAFFING

The staffing emergency at NSP ended in July after being in effect for more than two and a half years. The previous month, it had 33 vacancies, down from 100 a year earlier. There were also 12 new hires in June and three resignations, following back-to-back months of 28 new hires each month.

MODIFIED OPERATIONS

The lifting of the staffing emergency allowed NSP to return to normal operations, allowing programs and other activities to resume much as before.

IMPACT OF NEW RTC UNIT

NSP is one of three institutions in the Department which regularly house men in maximum security. As a result, the opening of the new 384-bed unit at the RTC will allow some men to be moved to that facility and likely will have an impact on the environment at NSP.

RISE COHORT

In March 2022, NSP set aside an entire 40-bed gallery in one of its maximum-security housing units for men participating in an entrepreneurship pilot program through the nonprofit group RISE. When facility operations allowed, the men took part in daily lessons from a RISE staff

¹¹ The RTC's population is expected to match or exceed NSP's following the planned opening of a 384-bed high-security unit this fall.

member assigned to the facility, and ultimately crafted plans for businesses they would form once released from prison. The program concluded in August, with two-dozen men competing in a pitch contest followed by a graduation ceremony attended by friends and family. NSP and RISE are working to keep men who have completed the program together in the same housing unit, while also preparing a new group for a second round of classes. The timing of the next cohort is uncertain and depends in part on the opening of the new RTC unit.

RISE has a data-sharing agreement with NDCS through which it hopes to evaluate the program's impact on behavior, recidivism and participants' calculated risk levels. Participants who spoke with the OIG said they enjoyed the program and felt it gave them purpose and something to do while incarcerated. NSP administrators spoke positively about the program, as well.

MAINTENANCE

In 2020, the OIG recommended that the Department develop a plan to address the more than \$60 million in identified deferred maintenance needs. A significant portion of those funds would be directed at addressing the infrastructure needs of NSP. Limited funding was again provided to NDCS to begin to address this deferred maintenance, but the Department has presented no long-term or short-term plan to tackle the growing maintenance deficit.

Tecumseh State Correctional Institution (TSCI)

TSCI is the system's second-largest facility, with slightly over 1,000 men in maximum and medium security. It was designed to house 960 people. It consists of a large "special management unit" for restrictive housing, secure mental health housing, and people sentenced to the death penalty (also known as "death row"), as well as three other living units for general population, protective management and "controlled movement."

STAFFING

It is unclear when the staffing emergency at TSCI, which has been in place since December 2019, will end. The facility had 77 vacancies in June 2022, down from 130 the previous fall. TSCI staffing is still boosted by a detail from Omaha with 80 positions, seven of which are vacant. Those individuals commute each day in a state vehicle. This detail was initially intended

to be small and temporary, but it appears it will provide a significant share of TSCI's staff for the foreseeable future. This comes at an extra cost to the state due to gas and other transportation costs, as well as staff being paid for their time on the road.

MODIFIED OPERATIONS

TSCI has been under modified operations, off and on, for various reasons, since the deadly riot on Mother's Day in 2015.¹² Most recently, the ongoing staffing emergency has left TSCI almost completely locked down every weekend since last year. This facility recently resumed some limited movement on Fridays. Prior to that, the population at TSCI was locked in their cells three straight days each week.

IMPACT OF NEW RTC

Like NSP, TSCI regularly houses men in maximum security and likely will be impacted by the opening of the new 384-bed unit at the RTC. In addition to some in the general population, men currently living in the controlled movement unit on Housing Unit 2C at TSCI are expected to be transferred to the new RTC unit.

CENTRAL CANTEEN

Canteen services for nearly every NDCS facility are being consolidated into a single operation at TSCI. The canteen allows incarcerated people to buy food, stamps, and personal items that are not provided by the state. The new central canteen at TSCI is located in a warehouse inside the prison and is operated by Cornhusker State Industries and incarcerated workers. The change to a central canteen is described in more detail in the "Cornhusker State Industries" section of this report.

TABLET ISSUES

People committed to NDCS are able to acquire electronic tablets to manage their prison accounts, communicate with family, listen to music, and other features. In February 2022, TSCI required everyone housed at the facility to return their tablets from one of its two vendors, JPay, after men at the prison found a way to connect the tablets to a wireless Internet "hotspot"

¹² More information on the riot can be found in a special report from the Ombudsman's office - https://nebraskalegislature.gov/pdf/reports/public_counsel/2015ombud_tsc_riot.pdf.

provided by a smuggled cellphone. The tablets were confiscated for approximately two months while NDCS worked with JPay to update each device.

NDCS has since ended its contract with JPay and migrated those services over to its other tablet provider, GTL. This subject and the related issues are documented in more detail in the “Support Services” section of this report.

HOME BUILDER PROGRAM

The Home Builders Institute (HBI), a national organization that provides technical education in the building industry, has a partnership with NDCS to offer classes to men in prison. HBI uses a warehouse at TSCI, adjacent to the new central canteen, to teach general construction and electrical concepts. This program had been on hiatus due to staffing shortages at the facility, but recently resumed operations. However, it is not being utilized to its full potential.

The OIG visited the HBI warehouse in early September 2022 and learned there were approximately two people enrolled in the program, despite having capacity for at least a dozen per class. Participants said people struggle to get applications for the program and face delays or barriers getting approved by NDCS. If TSCI is unable to identify a suitable number of eligible incarcerated individuals for the HBI program, the Department may want to consider relocating the program to a different facility with a CSI warehouse, such as OCC.

PRISON FELLOWSHIP ACADEMY

TSCI is in the process of setting aside one of its housing unit galleries for the Prison Fellowship Academy, a Bible-based program focused on “holistic life transformation.” This program will be similar to one offered at NSP.

LEADERSHIP CHANGES

In November 2021, former TSCI Warden Todd Wasmer was demoted and replaced by then-RTC Assistant Warden Craig Gable. The circumstances behind Wasmer’s demotion will be described in a future report by the OIG.

In June 2022, Associate Warden Megan Cruickshank took a leave of absence from TSCI to spearhead a career coaching pilot project aimed in part at retaining current staff within NDCS.

Daniel Sloup, the Department's classification administrator, is serving as interim assistant warden in her place.

Omaha Correctional Center (OCC)

OCC houses about 750 men in a medium- to minimum-security environment near Eppley Airfield. It consists of four housing units for people in general population, sex offender treatment, and inpatient substance abuse treatment, as well as a small restrictive housing unit. The facility was designed to house 396 people.

STAFFING

While OCC did experience staffing shortages in 2021, they were not as significant as those at the three largest men's institutions. This facility had 18 vacancies as of June 2022, which is difficult to compare with previous years because it includes vacancies for the TSCI detail. OCC had four resignations in June, which is consistent with previous months in 2022.

LEADERSHIP CHANGES

Deputy Warden Shawn Freese left in September 2022 to become deputy warden at the RTC. Longtime Associate Warden Edward Fabian retired from NDCS in May 2022. He was replaced as associate warden by OCC Major Seth Perlman.

Nebraska Correctional Center for Women (NCCW)

NCCW in York is a women's prison with two general population housing units for women classified for maximum, medium, and minimum-security, including a nursery for new mothers and their children and a substance abuse unit. A separate unit houses women in protective custody, as well as those with special mental health or disciplinary issues. NCCW also serves as the intake facility for all women entering NDCS custody. As of Sept. 7, there were 271 women living at NCCW, slightly below its design capacity of 275.

STAFFING

In June there were 17 vacancies at NCCW. A year prior to that, the vacancies typically numbered in the low 20s. The facility had five new hires in June, with a total of 10 resignations in May and June, and seven resignations total from January through April.

BIPU

As mentioned in the OIG's 2021 Annual Report, NCCW changed how it operates its former restrictive housing unit, including increasing the amount of out-of-cell time for those women, so it no longer qualifies as restrictive housing under state statute. The unit is now called the Behavior Intervention and Programming Unit (BIPU). The OIG reviewed the operations of the BIPU as part of an investigation into complaints about the Department's use of "controlled movement units," which also includes the IIU at TSCI. A report on this investigation will soon be submitted to Director Frakes.

Nebraska Correctional Youth Facility (NCYF)

NCYF is located in Omaha near OCC. It houses mostly teenagers and young men who were adjudicated as adults. It is a minimum-, medium-, and maximum-custody facility, with educational and programming opportunities, as well as mental health staff.

Prior to 2021, the design capacity of NCYF was 68, and the operational capacity was 70. A change in the use of one unit has increased the design capacity to 76 and operational capacity to 95, according to the Department. In FY 2020, the average daily population there was 62.8 individuals but in the most recent NDCS quarterly data report it was 74. Last year, the facility added second beds to most of its cells, meaning NCYF could potentially hold twice its design capacity. The OIG has been told there is an ongoing attempt to keep individuals at the facility for a longer period of time before transferring them elsewhere.

A challenge at the facility has been the number of serious incidents or disturbances in recent months. The OIG has reviewed these incidents but these have not resulted in the need for more thorough investigations.

STAFFING

NCYF had 11 vacancies in June, including five for caseworkers. The number of vacancies has been fairly consistent during the past year. There were no resignations in June and two new hires. NCYF is a small facility, and while 11 vacancies seems minimal, it is impacting the operations of the facility and the morale of the staff. This was recently described in an internal NDCS facility report.¹³ It is important to monitor the staffing at this facility as it could enter the cycle where more staff leave because of the staff shortage. This results in additional staff leaving and a downward spiral, as has been observed at other facilities.

PEER PROGRAM

In June 2021, six older incarcerated individuals who had some background as peer supports or mentors were moved to NCYF to work with the younger population. This was an innovative step and it continues to be allowed at the facility. However, concerns have been shared that those in the program believe it could be more impactful if they were given additional latitude. When asked if those from NDCS Central Office who approved the program have met with them during the past year to gain additional input, the men shared that this has not happened but would be welcomed.

Work Ethic Camp (WEC)

WEC is located in McCook and was originally operated by Probation Administration. It was eventually transferred to NDCS to assist with crowding in the correctional system. The facility was designed to house 100 people, but it usually operates with more than 185 men and at times nears 200, meaning it is close to 200 percent of its design capacity. People assigned to live at WEC are classified 3B, a lower level of minimum custody. Many of these men later transfer to a community corrections center.

¹³ The wardens at each NDCS facility files a monthly report with their respective deputy director. Copies of these reports are shared with the OIG but are not available to the general public.

STAFFING

The facility had nine staff vacancies in June, including three behavioral health practitioners and three corporals. This is slightly less than the number of vacancies during the past year, but like NCYF, it is a small facility that is more easily impacted when there are vacancies. There were three new hires in June and no resignations.

PROGRAMMING AND FACILITY USE

The OIG routinely receives complaints from men who are sent to live at WEC for several months prior to going to community corrections. While the facility provides some substance abuse treatment, a handful of nonclinical programs and limited jobs, its location (far away from many visitors) and minimal services results in significant idle time for the population.

The OIG has previously recommended to the Legislature and the Department that WEC could be put to better use, the facility itself improved, and the name changed to better reflect its role. The NDCS website describes WEC as “an individualized program in a time frame appropriate for the individual’s needs and sentence structure.” However, the programs currently offered at WEC are available in other facilities, the eligibility criteria for placement at WEC are similar to community corrections, and many men living there as of early September had actually been waiting for transfers to community corrections for several months.

In August, the OIG received a letter from a man at the RTC in Lincoln who requested a transfer to WEC, noting that his family lives in western Nebraska, including a 5-year-old son and 6-year-old daughter. He is considered low risk and has maintained good behavior the past two years. “I want to be near my family so that I can build a relationship with them,” he wrote. This man would be eligible for WEC, except for a departmental policy which requires people to be closer to their release date in order to be transferred there.

The OIG has previously recommended that NDCS should add educational and job training space at WEC, as well as an indoor recreation area for men to use, particularly during cold and hot months. This facility also could be used in collaboration with the community college system to provide valuable vocational training, as well as to house people from the western side of the state who would benefit from maintaining ties to their families. During a recent visit, some staff

expressed a belief that WEC could be utilized to build affordable housing for communities in that part of the state. This is a creative suggestion that would increase job skills that are in high demand while helping local communities and families. Another idea would be to contract for training space in the community.

LEADERSHIP

NDCS programs administrator Steve Fannon is currently serving as acting warden at WEC.

Community Correctional Center-Lincoln (CCC-L)

CCC-L houses roughly 500 men and 100 women who have been approved for work detail or work release, the lowest levels of security within NDCS. People on work detail may receive approval to leave the center for specific purposes, including jobs for government entities. Those on work release are expected to obtain private employment and/or attend school, and regularly leave the center for those and other purposes. CCC-L is located near the RTC, across from Pioneer's Park.¹⁴ The facility was designed to house 460 people; most of its men's units are at double their capacity, while more than a third of women's beds are empty.

STAFFING

In June, CCC-L only had three vacancies, compared with 14 last August. Those three vacancies were for two behavioral health practitioners and one food service specialist.

STRATEGIC REENTRY TEAM

In July 2022, staff at CCC-L began participating in weekly "Strategic Reentry Team" meetings where they discuss members of the population who are having difficulties. "They could be struggling with drugs, family, Mental Health, finding an apartment, MR's, etc.," Warden James Jansen wrote in an email to staff. "We will meet and discuss what is happening with the ones brought up. Then more importantly we will discuss what is being done to help them or what needs to be done to help them succeed."

¹⁴ While people assigned to the center may leave for many reasons, they must receive approval to do so. An OIG report on so-called "walkaways" (also known as escapes) was released earlier in 2022 and focused largely on CCC-L. A summary of that report is included in the Reentry/Community/Parole section of this annual report.

The OIG observed one of these meetings in August, which included staff from case management, security, social work, reentry, medical, substance abuse treatment, and facility administration. (Mental health staff provided written input but were not able to attend due to being occupied at another facility.) Attendees discussed more than 30 individuals who had been identified due to misconduct, substance abuse, mental health, or other issues. For example, one man was working as a gardener but did not have money to buy enough clothes, so he was wearing his dirty clothes to work each day. Staff said they would look into getting him some donated clothes.

This is a positive effort by the warden at CCC-L, and it was encouraging to see staff actively participating in these discussions.

WORK-RELEASE ORIENTATION

The transition from a secure prison setting to community corrections can be very difficult for many people. For some, it is because they have been incarcerated for a long time and must adapt to the freedoms, responsibilities, and changes in the outside world. For others, it is due to misconceptions about the rules and life in community corrections.

Staff and administrators at CCC-L have spearheaded an effort to prepare more people for this transition by visiting minimum-security prisoners at NSP and women at NCCW who are likely to make the move. This is an excellent initiative, which has also involved nonprofit groups such as the Mental Health Association of Nebraska and the Center for People in Need. However, it is a limited effort at this time. NDCS would benefit from expanding this effort to reach all facilities with minimum-security populations on a regular basis, and to involve representatives from the Community Correctional Center-Omaha, as well.

JOB SEARCH COMPUTERS

While low unemployment has made it easier for many people with criminal records to obtain jobs, facilitating and streamlining this process for those in community corrections has been a long-running effort at CCC-L. In spring 2022, after years of discussions, the center was able to establish a computer lab with Internet access so residents could search and apply for jobs without needing to leave the center. (This issue was noted in the OIG's 2022 report on walkaways, which is described in more detail later in this report.)

A small number of individuals have been able to use the computers, under supervision. However, the facility continues to encounter issues with firewalls and access to certain websites. Facility leaders have been working with the Office of the Chief Information Officer to resolve the issues and are in contact with the Department of Labor about providing additional job seeking assistance at the facility.

UNIT ADMINISTRATOR ARREST

In April 2022, Unit Administrator Nikki Peterson was arrested and accused of sexually abusing an inmate. This was a significant event for the center, as Peterson was one of the four top-ranking leaders there and had worked for the Department for many years.

Community Correctional Center-Omaha (CCC-O)

CCC-O is a smaller community corrections center which only houses men. It is designed to house 90 individuals but typically houses approximately 170 to 180 men on work detail or work release. It is located across the street from OCC.

CCC-O has multiple connections with groups in the community, including ReConnect, Inc., Metro Community College, RISE, Heartland Workforce Solutions and others. These groups help CCC-O residents transition into the community, and some assist with finding appropriate employment. A modular classroom building, which was first contracted for in 2019, was added last year for education programming and has been an asset for the facility.

STAFFING

This facility had four vacancies in June, which was near the average for the past year. Typically, CCC-O has been one of the more fully staffed facilities in the correctional system, due to its location in Omaha, its size and its mission.

GED ISSUE

In 2022, the OIG received complaints from people at CCC-O who were not being allowed to pursue work release opportunities due to being told that they had to participate in General Educational Development (GED) classes. They also shared that this was impacting their ability

to participate in furloughs, in which they could visit family. While pursuing education is usually positive, these men questioned why they had to complete this requirement when they were in their 50s or 60s, and had been in the prison system for lengthy periods of time without anyone telling them this was a requirement.

There is no NDCS policy requiring these men to pursue a GED. CCC-O has a point system in its facility-specific procedures which results in individuals being allowed certain community incentives if they reach certain levels of points. In these cases, the men were not receiving any points because they were not participating in the educational program, despite it not being a requirement.

The OIG brought this issue to the attention of Deputy Director Dawn-Renee Smith and Warden Shaun Settles. Warden Settles shared that he and CCC-L Warden James Jansen discussed it and decided that a zero in the GED portion of the scoring should not cancel all furlough privileges. They recommended this to Deputy Director Smith. She indicated that GED should not impact furloughs or work release, so it is anticipated that these complaints will be resolved.

CLASSIFICATION AND FACILITY NEEDS

Classification is the process by which NDCS assigns custody levels (maximum, medium, minimum, community) and makes other decisions related to a person's placement within the correctional system. These decisions have a broad impact as they largely determine the kinds of programming and other services an individual can access, and the overall environment where each person will be housed. This can also provide an indication of facility needs.

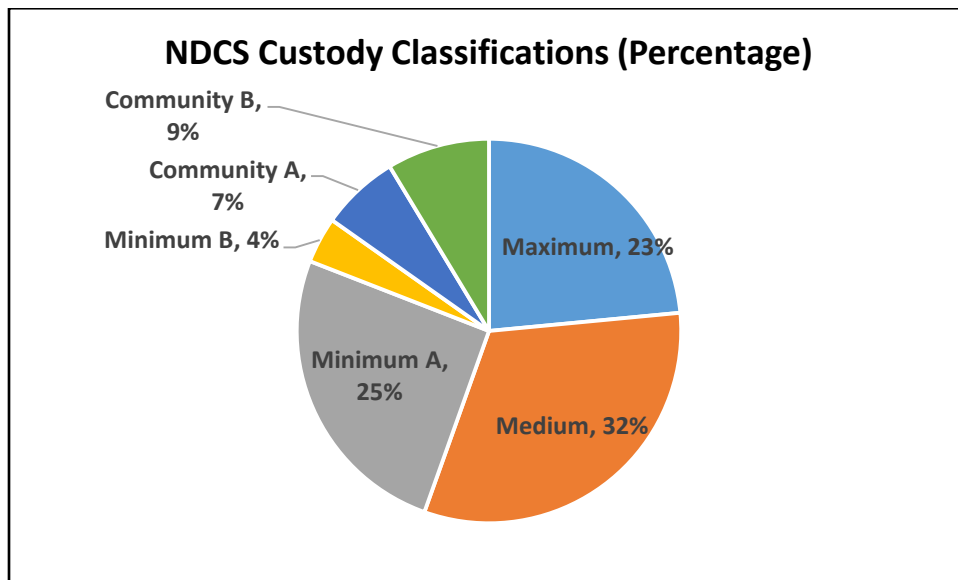
All NDCS incarcerated individuals undergo initial classification upon admission to the Department. Follow-up "reclassification" takes place every year to six months, depending how close the person is to their release date. Exceptions to this schedule can be made due to significant events, such as a person completing a recommended clinical program or being set for a parole hearing.

In addition to determining custody level, NDCS uses other classification processes to determine who should be in protective custody or long-term restrictive housing, to vet requests for off-unit work assignments (e.g. kitchen or shops), and to restore "good time" credits for sentence reduction.¹⁵

Current Custody Levels

Custody levels in the system range from work release status (community custody B) to maximum custody (1A). Since 2016, the percentage of incarcerated individuals at each custody level has stayed relatively stable with the exception of a decrease in maximum custody classifications and a relatively close corresponding increase in community custody classifications. During this time, 260 community custody beds have been added to the system, so as individuals filled those beds, this naturally increased the number of people classified as community custody.

¹⁵ More information on the Department's classification processes can be found in NDCS Policy 201.01, "Inmate Classification," which is available online at <https://www.corrections.nebraska.gov/public-information/rules-regulations/ndcs-policies>, under "Classification."



While the total community custody classification rate has increased to approximately 16 percent, there is a significant difference between the male and female populations who are classified as community custody. Twenty-seven percent of women are classified as community custody, while 13 percent of men are classified as community custody. This is likely due to the fact that NDCS built a community corrections unit specifically for women that has the capacity to hold 160 women. (However, at this time, only about 100 women are living there.)

Maximum-Security Needs

Soon, 384 new maximum-security beds will open at the RTC. It remains to be seen what impact this will have on custody classification levels, specifically on maximum custody classifications. Despite adding these high-security beds, Director Frakes has advocated for adding an additional 400 maximum custody beds to the system with the building of a new prison. As stated above, maximum custody classifications make up 23 percent of all classifications. With the potential of adding a total of nearly 800 maximum custody beds, it is necessary to gain a better understanding of the maximum custody needs of the system.

As of July 26, 2022, a total of 1,214 people in NDCS custody were classified as maximum security. This included:

- 90 women housed at NCCW;
- 14 housed at NCYF;
- 183 at NSP;
- 380 at TSCI;
- 45 in the east part of the RTC, formerly the Lincoln Correctional Center; and
- 502 in the south part of the RTC, formerly the Diagnostic and Evaluation Center.

A vast majority of the 502 individuals housed in the south part of the RTC were automatically classified as maximum custody because they had not yet gone through the Department's formal classification process or are awaiting transfer to another facility. In other words, more than 40 percent of the Department's maximum-custody population is only maximum custody by default, not based on a completed security assessment. Once these individuals and those at the women's and youth facilities were subtracted from the total, it leaves the Department with 618 men classified as maximum custody.

TSCI has 181 beds in its "special management unit" which house people in immediate segregation, restrictive housing, acute/sub-acute mental health care, or who have been sentenced to the death penalty. Housing Unit 2C was retrofitted with sliding cell doors for higher security, and that contains 64 beds. This adds up to 245 high-security beds at TSCI. With the new 384-bed unit at RTC, just between these two facilities, the Department will have 629 beds which are appropriate for housing people requiring maximum security. This does not include additional beds which currently hold maximum custody prisoners at the State Penitentiary, or in other parts of TSCI or the RTC.

Complaints

Due to its widespread impact on people incarcerated within NDCS, as well as management of the facilities, custody classification is among the most common subjects of complaints to the OIG and the Office of Public Counsel (Ombuds). So far in 2022, classification has been the single most common subject of complaints to the OIG.

In the 2021 annual report, the OIG noted that digitization of the custody classification process appears to be a positive step by NDCS in that it should make classification data more accessible. However, departmental staff and incarcerated people have since shared many concerns with the OIG about how the system was implemented. These concerns include:

- Despite being a computer-based system, the classification tool relies heavily on subjective measures (e.g. suspected “security threat group” involvement) and arbitrary departmental rules which lack any basis in evidence;
- The new system is inflexible and does not account for differences in the operations of each facility; and
- Case management staff feel they have little-to-no say in recommending people for different custody levels, and that such decisions are made on a top-down basis by administrators who have never interacted with the individuals being assessed.

The OIG has shared many of these concerns with NDCS Deputy Director Dawn-Renee Smith, who oversees classification for the Department.

An additional issue related to classification that has resulted in numerous complaints to the OIG and the Ombuds is the role that the NDCS intelligence division, or information it provides, plays in classification, placement, and related decisions. During the past several months, the OIG has engaged with NDCS to learn more about how intelligence information is entered, stored and shared with outside agencies. It has been an arduous process that is part of an ongoing investigation, and has yet to result in clear answers to the questions raised.

UNO Study

In 2021, the Legislature commissioned a study of the Department’s classification process. Funding for the study was included in the mainline budget bill (LB 380). The study is being conducted by the Nebraska Center for Justice Research, a nationally recognized research center based at the College of Public Affairs and Community Service at the University of Nebraska Omaha. This study was recommended by the OIG as senators sought additional information about the needs of the correctional system.

The timeline of the study indicated that technical reports were to be provided to NDCS in January 2022 and April 2022 with a final report and presentation due in September or October 2022. The OIG requested copies of the technical reports and an update on the status of the report from NDCS and was informed that no technical reports were completed and that the project has a new completion date of March 2023.

Race Study

The OIG's 2020 Annual Report contained data showing racial disparities within the correctional system and mentioned allegations of racism in classification decisions. The OIG recommended that this office and NDCS study "the role of race as it relates to the transfer list and different custody stages within the system." NDCS did not respond to this recommendation.

During the past year, the OIG has collected additional information related to race in the system and reviewed a racial disparity report from the Iowa Department of Corrections. The purpose of Iowa's report was "to track various data elements of incarcerated individuals by race to provide transparency of DOC supervision policy and practice, to inform and respond to noted disparities."¹⁶ The Iowa agency created a racial disparity policy, and the report followed up on the policy to ensure transparency of their practices.

The OIG is committed to conducting a similar examination in Nebraska, with or without the participation of NDCS. This will be a priority for this office in the coming year.

¹⁶ https://doc.iowa.gov/sites/default/files/documents/2020/11/final_racial_disparity_report.pdf (Page 1).

PROGRAMS AND MENTAL HEALTH

NDCS offers general mental health care as well as specific clinical programming to address behavioral health issues such as violence, substance abuse, and sexual misconduct. The Department also provides nonclinical programs derived from evidence-based models, and other programming which may or may not be informed by research.

General mental health services are offered on an inpatient and outpatient basis. NDCS operates high-security, acute mental health units for inpatient treatment at the RTC and TSCI. The Department also has a less structured chronic care mental health unit at the RTC. NCCW houses women in acute and chronic care settings within units that also house women in protective custody or on behavioral restrictions.

All programming is optional. However, participation in clinical programming is required for many people in order to obtain release on parole, and the Department regularly requires people to complete clinical or nonclinical programs in order to leave restrictive housing, advance to lower levels of security within the prisons, or be approved for community custody/work release.

The acute behavioral health staffing shortages within NDCS was documented in the staffing section of this annual report. The information in this section pertains to specific programs and services offered by the Department. Programming and mental health account for a substantial number of complaints to the OIG, and individuals with serious mental illnesses who have complaints understandably consume a significant amount of the office's time.

Program Evaluations

This year, the Legislature updated state statute to require that NDCS contract with an academic institution in Nebraska to conduct ongoing evaluations of its clinical and nonclinical programs.¹⁷ This requirement is consistent with past recommendations by the OIG, including this office's

¹⁷ LB 896.

2021 annual report which found that the Department was not complying with the state law that was passed in 2015.¹⁸

After an OIG inquiry about the status of this contract, NDCS responded several days later that the Department officials had a meeting the day prior to their response with a team from the Nebraska Center for Justice Research, but that no contract was in place to begin conducting the evaluations.

The Legislature has appropriated taxpayer dollars to NDCS with the understanding that its clinical programs are to be evaluated to determine if they are available, effective, appropriately staffed, and delivered in a timely manner. If a program does not adhere to the evidence-based model, we do not know if it is effective. In the most recent edition of the Corrections Managers' Report, Professor David Farabee of the University of California, Los Angeles, noted as follows:

"Crime is a vexing problem and its true costs are immeasurable. Meeting this challenge in an effective and humane way is an urgent goal that we all share. But overstating the effectiveness of an intervention or class of interventions is an impediment to this goal. Such claims make their way into policy and practice, and the resulting programs often lumber along for years unchecked. This is not a victimless act. Every dollar spent on ineffective crime prevention programs is one less spent on finding interventions that actually help offenders and make the public safer."¹⁹

The OIG also regularly receives complaints from people within NDCS is that they are unable to access recommended programs due to their current housing assignment. The program evaluations required under statute should provide more insight and analysis of this issue, and should be a priority for the incoming director.

In the meantime, the Department may want to consider setting aside one or more galleries for targeted programming for individuals with inpatient or outpatient treatment recommendations

¹⁸ Prior to enactment of LB 896, Neb. Rev. Stat. § required NDCS to evaluate the quality of the programs it offers, focusing on these programs' effects on recidivism. The Department was allowed to contract with an outside entity for these evaluations, subject to available funding; however, the evaluation requirement was in place regardless. The OIG previously requested records from these evaluations and found that this requirement was not being fulfilled. LB 896 was introduced and passed without opposition as a result of the Department's noncompliance with existing statute.

¹⁹ This excerpt comes from an article that first appeared in the Offender Programs Report and was republished in the August/September 2022 edition of the Corrections Managers' Report. These reports can be purchased by visiting www.civicresearchinstitute.com.

who are unable to live where those programs are traditionally offered. Such a targeted programming unit could rotate programs and populations on a regular basis in order to be responsive to emerging needs. This “unit” could be located at TSCI or the RTC, which have vacant galleries that have previously been used for secure mental health or restrictive housing.

Substance Abuse Treatment

Substance abuse treatment is by far the most common form of structured clinical programming within the Department of Corrections. About 1,500 people, or one-quarter of the NDCS population, were enrolled in or recommended for at least one drug treatment program as of Sept. 13, and 658 people had successfully completed one of these programs since Jan. 1. In many cases, people are recommended for more than one such program, or are required to retake a program after relapsing. (Note: The “Enrolled” data in the chart below only includes people who have actually begun taking a program. For example, NSP was between RSU-90 cohorts at the time of this report.

Program	Facilities offered ²⁰	Enrolled	Completed in 2022 YTD	Outstanding Recommendations
Intensive Outpatient (IOP)	NSP, TSCI*, OCC*, NCCW*, WEC, CCC-L, CCC-O*, NCYF*	34	306	1,107
Outpatient (OP)	WEC, CCC-L, CCC-O, NCYF*	34	202	636
Residential Substance Use – 90 (RSU-90)	NSP, TSCI*, OCC, NCCW	45	88	667
Relapse Group	NSP, TSCI, WEC, CCC-L	5	32 ²¹	2

²⁰ The NDCS website indicate these programs are offered at the listed facilities. However, there is an asterisk (*) next to several because based on departmental data, no one is currently enrolled in those programs at these facilities.

²¹ This data is from the Nebraska Inmate Case Management System (NICaMS) reporting dashboard, as of Sept. 13, 2022. The dashboard also lists 42 successful completions during this time for substance use treatment programs labeled “Residential” and 22 for “Residential Relapse Prevention Program.”

However, substance abuse treatment programs are not available at every NDCS facility, nor are they accessible to people in every custody level in the facilities where they are offered.

In December 2021, the OIG investigated an incident where a man in the limited movement unit at the State Penitentiary was intoxicated, began choking on his own vomit, and became unresponsive. Staff used CPR and a defibrillator in attempts to revive him, and an ambulance took him to the emergency room. He ultimately recovered at the hospital and returned to NDCS.

This man, who is 22 years old but has been in prison since he was 17, later told the OIG he developed substance abuse issues while in community corrections in 2020, due to a lack of activity during COVID-19 quarantines. He received his first drug-related misconduct report at the Community Corrections Center-Lincoln, was suspected of bringing in synthetic marijuana, and was ultimately kicked out of the center after swinging at a corporal.

He was recommended for outpatient substance abuse treatment in March 2021, but did not immediately begin the program, which was not offered at his new facility. Two months later, a case manager found him vomiting “all over himself, the bed, and the floor” in a minimum security unit at NSP. He appeared to be choking, his eyes were rolling into the back of his head, and he began spitting vomit and swinging at staff who attempted to help him. He was sent to restrictive housing and labeled as a threat to staff safety. According to the staff summary of his testimony at a misconduct report hearing following that incident, he said:

“When I was kicking and swinging, it’s because I was choking on my own throw up. I was under the influence. I didn’t mean to assault anyone. I was trying to breath (sic), I was choking.”

He transitioned from restrictive housing to the limited movement unit, where the December incident took place, and is now in protective custody at the RTC. He has yet to receive drug treatment, which is not available at the RTC.

This is an anecdotal example, and the OIG expects the program evaluations mentioned in the previous section will provide a more comprehensive understanding and recommendations related to substance abuse and treatment in NDCS facilities.

Violence and Aggression Reduction Treatment

Several NDCS programs include elements aimed at reducing aggression or violence, but the two main clinical programs aimed at this risk area are the Violence Reduction Treatment program and Anger Management High Risk/Need. As of Sept. 13, more than 600 people within NDCS were recommended for or enrolled in one of these programs, and slightly over 100 had completed one of the programs since the start of the year. They are offered in the higher-security men’s facilities, and anger management is available at NCCW.

Violence and aggression reduction treatment programs are led by the same clinicians who are responsible for general mental health services in the prison system. As noted in the staffing section of this report, vacancies in this area are a significant concern.

Program	Facilities offered	Enrolled	Completed in 2022 YTD	Outstanding Recommendations
Anger Management High Risk/Need	NSP, TSCI, RTC, OCC*, NCCW	26	58	141
Violence Reduction Program (VRP) ²²	NSP, TSCI, RTC, OCC, NCCW	49	45	421

VRP TO VRT

One of the most significant treatment programs offered within NDCS is targeted at individuals considered at high risk for violence. This program was originally called the Violence Reduction Program (VRP), and is still casually referred to by that name by many staff and clinicians. VRP is a three-phase, evidence-based model that is internationally recognized and widely used.

However, several years ago, the Department cut the length of time provided for the program approximately in half, from 12 to six months. As a result, the program was no longer following the evidence-based model, and was renamed. It is now referred to as “Violence Reduction Treatment - Informed.”

²² While this program is still labeled as “VRP” in NDCS data, this is no longer an appropriate name for this program for reasons explained in the “VRP to VRT” section of this report.

The Department’s clinical treatment manager for violent offender services said the main reason for the change was to increase the number of people completing the program, and that NDCS did not remove a significant amount of material from the VRP model. However, the shorter time frame leaves less time for participants to process the information, feels “more like a class than therapy,” and makes many more reluctant to fully participate, which is important for the program’s viability. Other aspects of the model which are not followed by NDCS include having all participants live on the same housing unit and involving custody staff in the program.

“Enhancing capacity for clinical programming and evidence-based programs to reduce recidivism” was among the accomplishments cited for Director Frakes in the news release announcing his resignation. Considering the Department’s departure from the VRP model and its critical staffing shortages in the behavioral health field, it is unclear how much of the programming within NDCS remains evidence based. The program evaluations mentioned previously, and required by the Legislature, should help answer this question.

Considering the Department’s departure from the VRP model and its critical staffing shortages in the behavioral health field, it is unclear how much of the programming within NDCS remains evidence based.

DOMESTIC VIOLENCE PROGRAMMING

Departmental clinicians have recommended domestic violence programming for more than 500 people currently in the state prison system. However, NDCS has not offered such a program since 2015. Instead, some people receive the program from community providers through an agreement with the Division of Parole Supervision, or pay for it themselves. The result is some people — it is unclear how many — ending their sentences without ever having access to this program.

The OIG has recommended reinstatement of the domestic violence treatment program since 2019, for public safety reasons.²³ In addition to those who never receive the program, people

²³ 2019 OIG Annual Report.

who wait until reaching community corrections to undergo treatment might already have regular access to their domestic partners.

The OIG also recommended in 2020 that NDCS and Parole should review recidivism rates for formerly incarcerated individuals who had a domestic violence program recommendation, and compared those who did and did not receive the program; and review five domestic violence programs that were highlighted in a specific report on such programming and determine if they could play a part in the programming being offered within NDCS in the future.²⁴ This was not initiated by either agency.

In August 2022, the Flatwater Free Press, a nonprofit news organization, published a story about a woman who was murdered by a man who had been recommended for domestic violence treatment but never received it while in NDCS custody.²⁵ Around the time the Inspector General was contacted for that story, the OIG learned the Board of Parole had begun requiring at least some men to fully complete the program before they would be released on parole. This partly addresses the safety concern, but it happened abruptly, delayed the transition for those involved and for people waiting to transfer into community corrections behind them, and does not apply to all people being released from NDCS. The domestic violence program available through parole takes several months to complete, although the exact timeline depends on how many sessions a person takes each week.

Flatwater Free Press reported the following:

“Nebraska prison officials have offered shifting rationale for why it doesn’t exist. They have said that domestic violence programming in prison isn’t effective, and works better when offered to a person out on parole or post-release supervision. During a recent interview, they also blamed state standards that dictate what’s required from domestic violence programs – standards they say make it impossible to offer them in prison.”²⁶

²⁴ https://www.wsipp.wa.gov/ReportFile/1119/Wsipp_What-Works-to-Reduce-Recidivism-by-Domestic-ViolenceOffenders_Full-Report.pdf

²⁵ <https://flatwaterfreepress.org/failing-hailey-long-waits-difficulty-of-domestic-violence-rehab-may-have-led-to-norfolk-tragedy/>

²⁶ <https://flatwaterfreepress.org/failing-hailey-long-waits-difficulty-of-domestic-violence-rehab-may-have-led-to-norfolk-tragedy/>

The OIG contacted the Nebraska Coalition to End Sexual and Domestic Violence to learn more about the state standards.²⁷ The Coalition shared with the OIG that they have not taken such a position and that the current standards are built on a community response model. They are supportive of providing this programming within a correctional setting.

NDCS should offer this program in a timely fashion to individuals in its custody.

Sex Offender Treatment

Two clinical programs offered within NDCS are aimed at people who are assessed to be at risk of sexual violence or sexual misconduct. Inpatient Healthy Lives Program (iHeLP) is an inpatient program for high-risk individuals that is offered exclusively on a particular unit at OCC. Outpatient Healthy Lives Program (oHeLP) is an outpatient program for more moderate-risk individuals and is available primarily at OCC as well, although the Department periodically has cohorts in other facilities. The data below shows enrollments, completions and outstanding recommendations for those who have agreed to participate as of Sept. 14:

Program	Facilities offered	Enrolled	Completed in 2022 YTD	Outstanding Recommendations
Inpatient Healthy Lives Program (iHeLP)	OCC	29	16	193
Outpatient Healthy Lives Program (oHeLP)	OCC, NSP, RTC, TSCI	48	19	406

OCC has an open yard and no protective custody setting, so some men are reluctant or refuse to go there out of concern for their personal safety. One man in this situation wrote the OIG in June, asking for help taking the program one-on-one with a psychologist at TSCI due to having safety concerns at OCC. The OIG inquired with the Department’s clinical program manager for sex offender services and received the following response:

“We had been told by a previous ADA Coordinator and a legal counselor (both no longer work for the department) that in order to say we are providing iHeLP in another location, we have to provide the same opportunities and

²⁷ The Coalition publishes the standards referred to by the Department.

treatment activities as the traditional iHeLP unit (group therapy, individual therapy, treatment unit peer activities, etc.). Because we cannot offer that in multiple locations, we have had individuals work on specific iHeLP treatment objectives during one-on-one therapy sessions. Therefore, they would not be considered to complete the traditional iHeLP treatment, but can at least address the behavior and do as much as possible to reduce risk.”

The man who wrote the OIG has been eligible for parole since 2014. As the OIG was compiling this report, he was still living at TSCI in the protective management unit, and had recently refused a transfer to OCC for the iHeLP program.

As mentioned in the “Program Evaluations” section above, one solution to this issue could be establishing a targeted programming unit which rotates through different clinical programs, responding to special needs as they emerge.

LRC PROGRAM

People convicted of certain sex offenses are screened by the Lincoln Regional Center (LRC) upon admission to NDCS. Those who are open to treatment and otherwise meet the Regional Center’s criteria are placed on a list to be offered LRC’s sex offender treatment program when they get closer to their release date. The Department treats this as an alternative to iHeLP and/or oHeLP. In other words, some current NDCS incarcerated individuals are able to reside at LRC and undergo the LRC clinical program instead of taking the programming offered within the prison system. This is separate from any civil commitment to the Lincoln or Norfolk regional centers a person might receive following their prison sentence.

In May 2022, the OIG received a complaint from someone who was concerned that men in NDCS’ custody were being sent to the Regional Center against their will and without due process.²⁸ The OIG interviewed men at LRC and treatment providers, and found the complaint to be unfounded. The men said the environment at LRC was more regimented in many ways but was also much more conducive to treatment, and each said they had taken the program voluntarily despite it being a longer program than what is offered at NDCS.

²⁸ There are due process protections for state prisoners being transferred to a mental hospital without their consent. This was the subject of a U.S. Supreme Court decision involving a man from Nebraska who was sent to LRC in 1975, (*Miller v. Vitek*, 436 U.S. 407). The current process is outlined in statute, including Neb. Rev. Stat. § 83-180.

After this investigation, the OIG offered two suggestions to Director Frakes for how NDCS might make more effective and efficient use of the LRC program.²⁹ He did not respond.

Statutory Requirements

Nebraska's Sex Offender Registration Act requires that anyone convicted of a registerable offense and committed to NDCS "shall attend appropriate sex offender treatment and counseling programming offered by the department" or risk being civilly committed after prison.³⁰ Mental health providers working for NDCS have told the OIG that the clear statutory language related to sex offender treatment has protected the quality of those treatment programs compared with clinical treatments for substance abuse, violence and aggression.³¹

Statute also requires that drug offenders committed to the Department "shall attend appropriate treatment and counseling on drug abuse,"³² and that the Department "shall provide substance abuse therapy ... prior to the first parole eligibility date of the committed person."³³ However, it allows the Board of Parole to waive the requirement for individuals "if the board finds that the department did not provide adequate access or availability to the committed person," provided the person agrees to complete therapy as a condition of parole.³⁴

The OIG is not aware of any similar, specific requirements related to treatment for violent or aggressive behaviors. While NDCS is supposed to craft a personalized program plan for each person admitted to the Department, and provide programs for them to comply with the plan, the Department may modify the plan to account for "the availability of any program."³⁵

²⁹ See Attachment 1: OIG memo to Director Scott Frakes, July 11, 2022

³⁰ Neb. Rev. Stat. § 29-4014.

³¹ Rules and regulations promulgated by the Nebraska State Patrol offer more specifics on what makes a program "appropriate." Title 272, Neb. Admin. Code, Chap. 19, describes an appropriate sex offender treatment program as "a program which provides sex offender specific treatment and must include pre-treatment assessment of static and dynamic risk factors, empirically validated or informed treatment interventions that target an individual's dynamic risk factors and a plan for on-going services and support beyond the active phase of treatment."

³² Neb. Rev. Stat. § 28-416.

³³ Neb. Rev. Stat. § 83-1,110.01.

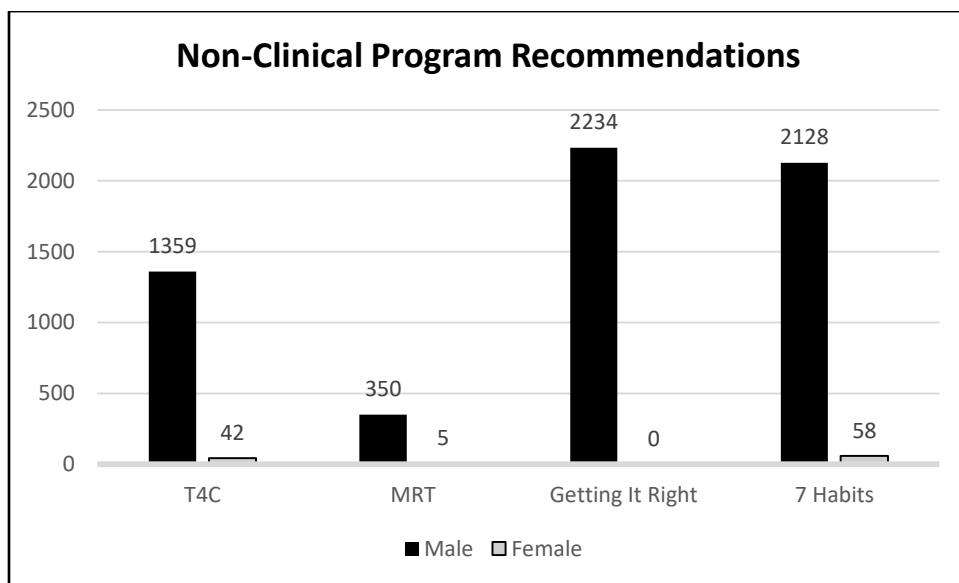
³⁴ Neb. Rev. Stat. § 83-1,110.01.

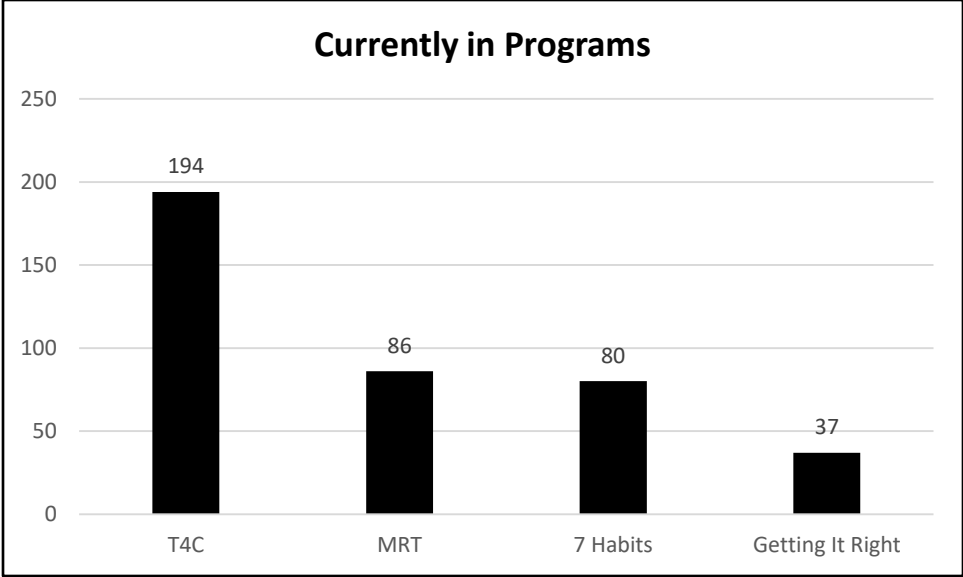
³⁵ Neb. Rev. Stat. § 83-1,107.

Non-Clinical Programs

Non-clinical programming does not need to be provided by a trained clinician, but providers must receive appropriate training. Prior to 2022, the most significant non-clinical programs being provided were Moral Reconciliation Therapy (MRT) and Thinking for a Change (T4C). Getting It Right and 7 Habits on the Inside are two other non-clinical programs that are receiving more of an emphasis in 2022.

These programs are not required by the Board of Parole in order to qualify for parole but they are recommended by NDCS, primarily through the use of the STRONG-R assessment tool. (The STRONG-R is a risk-needs assessment tool, which is different from the Department's classification tool but looks at similar factors.) A number of individuals have been recommended for each of these programs and there are classes taking place in them at various facilities.





SECURITY

A significant share of the OIG's day-to-day work involves investigating serious injury incidents and deaths, as well as complaints from incarcerated people and staff regarding issues related to safety and security in the prisons. In some cases, information from these complaints and investigations is immediately relayed to appropriate officials within NDCS, allowing them to take action to address time-sensitive security issues. The OIG then monitors the Department's response. However, in other cases, the nature of the incident or allegations, or the presence of possible systemic issues, prompts the OIG to conduct a full investigation of its own.

Video Footage

Footage from institutional, handheld and body-worn cameras is extremely valuable in investigating deaths, serious injury incidents, and complaints. This footage is regularly used as evidence in grand jury investigations and trials for people accused of committing additional, violent crimes while in prison. In many cases, it disproves allegations against correctional staff; it also provides the OIG and correctional administrators with a window into how staff conduct themselves.

NDCS facilities produce a significant amount of video footage, but the quality varies widely, particularly when it comes from mounted institutional cameras. These cameras do not capture audio.

Staff are generally required to use handheld cameras to record planned uses of force, such as forced cell extractions. These incidents routinely result in complaints to the OIG or Ombuds, or involve serious injuries and require investigation by the OIG. Handheld cameras capture audio, which is sometimes as valuable as the video.

Often, particularly with spontaneous uses of force, the best evidence comes from body-worn cameras. These cameras capture audio, can be activated with the push of a button, and offer close-up footage and audio of an incident.

In the past year, the OIG has encountered the following:

- In an alleged Prison Rape Elimination Act violation, staff did not save a copy of the security footage after reviewing the incident;
- In an overdose death, camcorder footage of the man's final minutes of consciousness, in which staff are heard debating supervisors' orders to place the man in restrictive housing, was not turned over to State Patrol investigators in time for the grand jury investigation. The State Patrol was not aware of the footage until after the OIG brought its existence to the attention of facility administrators;
- Assaults and other serious incidents which were not collected on video due to staff not wearing body cameras because their facility has a limited supply or due to the fact that a facility, such as RTC, does not have any body cameras at all; and
- New camera systems at a facility which produce such large files that NDCS had to purchase new equipment to comply with State Patrol subpoenas and requests from the OIG.

The OIG recommended in 2019 and again in 2020 that NDCS review camera coverage with the facilities and increase the use of body-worn cameras. Director Frakes rejected the body camera recommendation, but the Department has taken steps to improve coverage from fixed cameras in several facilities. The OIG continues to support expansion of body-worn cameras, particularly with the addition of the new high-security housing unit at the RTC. This facility currently has no body-worn cameras.

The OIG also believes the retention and storage of all NDCS camera footage merits attention from the Department, and possibly the Legislature. It is unclear whether state statutes requiring law enforcement agencies to have specific, written policies if they want to use body-worn cameras apply to NDCS.³⁶ These policies must require retention of footage for at least 90 days, or longer if the footage may be needed as evidence. Additionally, the records retention schedule for NDCS posted on the Nebraska Secretary of State's website is more than 10 years old.

³⁶ Neb. Rev. Stat. § 81-1452 et. seq.

Alleged Staff Misconduct

In the past year, the OIG received inquiries from members of the Legislature and news media related to the arrests of two high-ranking NDCS employees, former LCC Assistant Warden Sarah Nelson Torsiello in February and former CCC-L Unit Administrator Nikki Peterson in April. Both are accused of engaging in sexual activity with men in NDCS custody. The criminal proceedings related to these two cases are ongoing, and the OIG has not released any investigative findings or recommendations.

These are not unusual occurrences, although the arrests noted above were noteworthy due to the high-ranking individuals involved. In 2020, after a food service worker was arrested at NSP, the OIG recommended the Department provide annual updates to the Governor, Legislature and OIG on the number of departmental staff who are arrested and/or prosecuted for their activities within NDCS, or asked to leave due to alleged inappropriate or illegal actions.³⁷ Director Frakes rejected this recommendation.

The OIG made several other recommendations in that report related to security and the gathering and tracking of intelligence and investigative information.

BODY SCANNER

One recommendation from the 2020 report encouraged the Department to install a body scanner at NSP as part of a Department-wide pilot project, and to consult with the main protective services union, the Fraternal Order of Police (FOP), and other staff as part of that process. Director Frakes rejected this recommendation, but the Department later purchased a body scanner for the RTC without communicating with the FOP. The body scanner has been sitting unused in the front entrance of the facility for months, and to the OIG's knowledge, NDCS has yet to complete a policy so it can be activated.

³⁷ https://nebraskalegislature.gov/pdf/reports/public_counsel/2021_OIG_Summary_Staff_Arrest_Report.pdf

Drug Testing

NDCS and prison systems throughout the country continue to struggle with identifying synthetic cannabis and other emerging illegal substances. In April 2022, the OIG released a summary of an investigative report that looked at two separate issues raised by an incarcerated individual, including an allegation of misconduct against correctional staff regarding testing of materials that allegedly contained illegal narcotics.

The individual that filed the complaint was charged with and found guilty of drug or intoxicant abuse by the institutional disciplinary committee (IDC) at CCC-L. The IDC's basis for finding him guilty was that it was "based on body of report inmate was found in possession of item and non-negative tru narc test." As a result, he initially lost 30 days of good time and had a 30 day furlough restriction. He appealed the decision because he was lied to about the positive results because the test result was blank. He lost the appeal despite the appeals board acknowledging that it was blank.

It was eventually found that the actual test result was "Inconclusive" and that when inconclusive results occur it is recommended that further testing should be done on the sample. In this case it was viewed as a positive test and no further testing was done to confirm it. The OIG then communicated with Deputy Director Robert Madsen and the result of this communication was that the misconduct report was also dismissed. NDCS committed to changing policy related to this but they also began to use a different drug testing tool.

OIG Report

In late 2021, the OIG received reports of problems with the disciplinary process at CCC-L. The allegations included issues with how misconduct allegations were being documented and that facility staff were relying on inconclusive test results to substantiate drug-related misconduct reports.

The OIG investigated these complaints and found that CCC-L was violating departmental policy in processing cases and that NDCS policy related to drug testing was insufficient.

A summary of the OIG's report on this incident is available on the Legislature's website. Click on the "Reports" tab and select "Public Counsel."

[NebraskaLegislature.gov](https://www.nebraska.gov/legislature)

MEDICAL CARE

State statute requires that people incarcerated in state prisons receive care that meets the community standard.³⁸ Within NDCS, the level of care varies by facility. The Department operates skilled-nursing facilities (SNFs) at NSP, the RTC, TSCI and NCCW, which provide services similar to those found in a typical nursing home. Care at other departmental facilities is available in facility clinics. Due to limited services available in community corrections centers, people living in these settings are often sent to nearby facilities for treatment. (This is particularly noteworthy for women at the Community Correctional Center-Lincoln, who must return to NCCW in York, sometimes for long periods of time, to receive certain services.)

Like nursing homes, NDCS sends its patients to outside providers for specialist visits, surgical procedures, and critical emergent care. The Department contracts with Blue Cross Blue Shield of Nebraska to administer invoicing for outside medical services. According to the Department of Administrative Services state contracts database, this contract has totaled \$885 million dollars since it began, although it is unclear if that is since the begin date listed on the site (April 2020) or the original start of the contract in 2017.

Complaints

Medical care within NDCS is one of the most common subjects of complaints to the OIG and the Ombuds. These complaints often take significant time to investigate, due to their complexity, federal privacy protections, varying response times by NDCS to requests for information, and the Department's continued reliance on paper records, which is contrary to statute.³⁹ This year, the OIG notified Director Frakes and NDCS Medical Director Harbans Deol that the office has opened investigations related to medical and dental care, due to numerous complaints from incarcerated individuals alleging that the Department was not meeting the community standard

³⁸ Nebraska Correctional Health Care Services Act, Neb. Rev. Stat. § 83-4,153 et. seq.

³⁹ Neb. Rev. Stat. § 83-173 requires that the Director of Correctional Services establish and administer policies which ensure "complete and up-to-date electronic records," including medical records, are maintained for everyone committed to the Department. This requirement has existed in statute since 2015.

of care as required in statute. These investigations are ongoing, but as part of its work, the OIG requested data related to departmental medical staff and vacancies.

New SNF

As mentioned in the Facility-Specific Updates section of this report, the ongoing expansion at the Reception and Treatment Center in Lincoln includes a new SNF. It also includes a new clinic and offices for medical staff at that facility. This is a significant improvement compared with the previous facilities at the RTC.

Deaths

The OIG is required to investigate all deaths in Department correctional facilities.⁴⁰ These investigations are separate from grand jury investigations, which look for potential criminal wrongdoing, and internal departmental reviews. The primary goal of the OIG's investigations is to identify possible systemic changes or other areas of improvement for NDCS and its employees. However, information from grand jury proceedings is helpful and often necessary in order for the OIG to fully complete its own review.

Since mid-2020, 52 people have died in the Department's custody. All but one were men. A significant majority of these deaths were due to natural causes, and the OIG has produced reports on 13 such deaths in the past year. Summaries of 12 of those reports are attached to this annual report.⁴¹ A report will soon be provided regarding a death at NCCW to Director Frakes and a summary of that report will be made available after his review.

Also forthcoming is a report on the deaths attributed to COVID-19. Over a one-and-a-half-year period from mid-2020 to mid-2022, the coronavirus pandemic accounted for more than one-third of all deaths within NDCS. Understandably, these deaths involved many similar situations. The OIG will therefore consolidate its investigative findings and recommendations into a single report.

⁴⁰ Neb. Rev. Stat. § 47-905.

⁴¹ See Attachment 2: Summary of Reports on Death Investigations.

RESTRICTIVE HOUSING TERMS

Solitary confinement – status of confinement of an inmate in an individual cell having solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons. (Neb. Rev. Stat. § 83-170.)

Restrictive housing - 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 24 hours per week. (Ibid.)

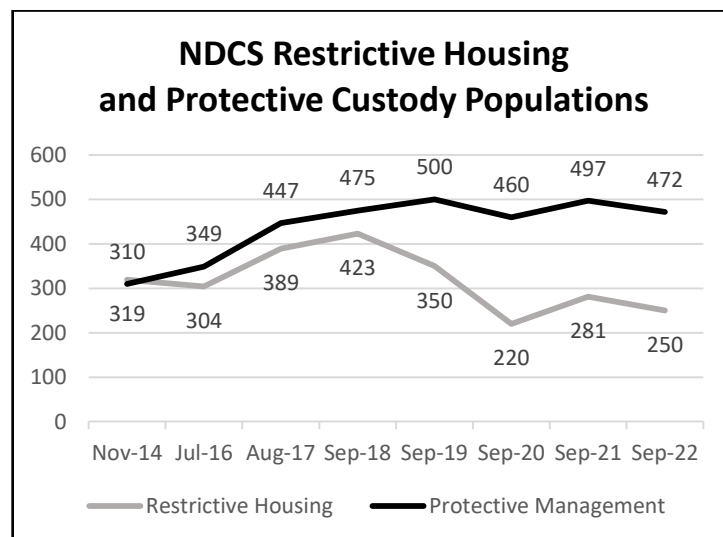
Protective custody - status of an inmate who is housed in a safe location to reduce the risk of harm by others. Used to meet the needs of inmates who cannot be safely housed in general population units, with the goal of helping reduce the Department’s use of restrictive housing. (Title 72, Neb. Admin. Code, § 002.10.)

Level of care – amount and type of intervention identified by NDCS as necessary to treat a person’s mental health needs. People assigned a level of care of 3 or higher are deemed ineligible for restrictive housing by the Department, while those with 2 or below are able to be placed in restrictive housing, despite having a mental illness. (NDCS Policy 115.50; Title 72, Neb. Admin. Code; and Neb. Rev. Stat. § 83-173.03.)

RESTRICTIVE HOUSING

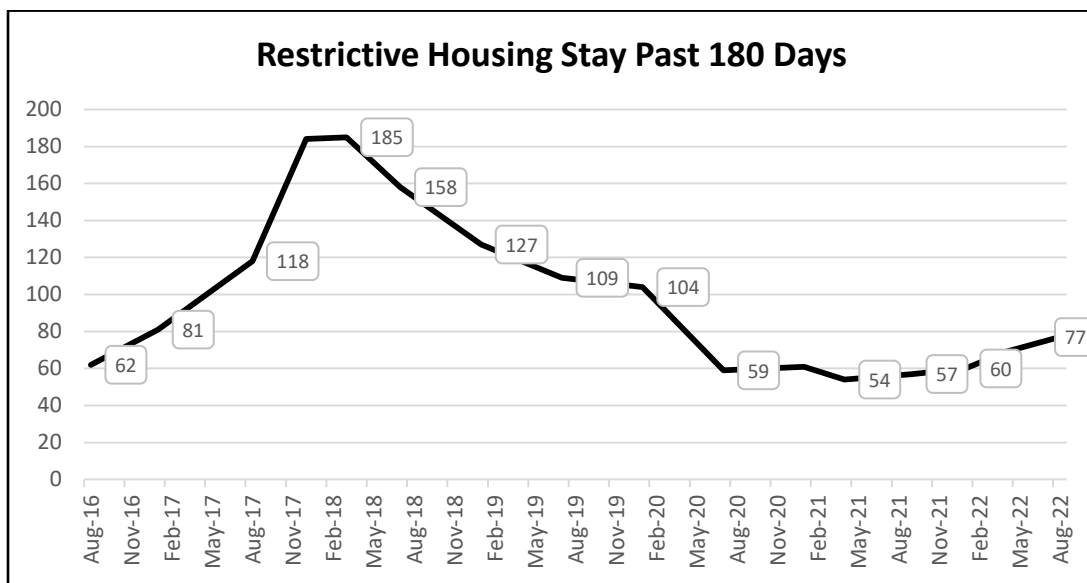
As shared in previous OIG reports, in 2015 and 2016, statutory and operational changes were made in attempts to decrease the number of people placed in restrictive housing, and to improve conditions for those living in restrictive housing, particularly those in long-term placements. During the past eight years, the number of individuals in protective management increased and has stayed relatively stable the past five years. The number of individuals in restrictive housing increased until late 2018 before decreasing. More information on the possible reasons for the decrease was provided in previous OIG annual reports.

While some progress appears to have been made in this area, there are still concerns such as extended lengths of stay, double bunking and out-of-cell opportunities that do not appear to place Nebraska at the forefront in the development of restrictive housing standards.



Another key data point that the OIG has followed since 2016 is the number of individuals who are in restrictive housing for over 180 days. This number was around 60 in 2016 and grew significantly before peaking at around 185 in early 2018. At that point, concerns were raised regarding this increase, and the number steadily declined over the next three years. This number began to increase again in 2022.

As of August 2022, there were 77 individuals who had been in a restrictive housing placement for over 180 days. Of those, 41 were in such placement over one year, 20 were in such placement over two years and 15 were in such placement over 1,000 days.



Last year's OIG annual report noted that there were six individuals in a restrictive housing placement who had a serious mental illness with a level of care that made them ineligible for placement there. After the report was issued, Director Frakes shared that these individuals were actually in mental health units but were being monitored using the same computer application which tracks restrictive housing placements. The OIG suggested that future reports make a distinction for such individuals, and NDCS has done that for following reports. The OIG also requested data on out-of-cell time for those six individuals, and found that at least two of the men had not been receiving the legally required out of cell time. The OIG requested a meeting to further discuss those concerns and how those individuals could get more out-of-cell time, but this offer was not accepted.

Double Bunking

In the past, the OIG has recommended that NDCS end the practice of double bunking in restrictive housing units for a number of reasons, including the safety of the two cellmates and the impact on their mental health.⁴² This practice primarily occurs at NSP, and due to the size of the restrictive housing cells, NSP does not comply with the American Correctional Association's standard on double bunking. Currently, there are 25 individuals at NSP who are on restrictive housing status. Meanwhile, there is a housing gallery in the restrictive housing unit at TSCI that is entirely empty, as well as empty cells in the restrictive housing unit at the RTC. NDCS could move all or half of their restrictive housing population into individual cells in other facilities to eliminate double bunking at NSP.

Restrictive Housing Work Group

The Legislature formed an external long-term restrictive housing work group in 2015 with the passage of LB 598. The group was led by Director Frakes and included NDCS staff and members of the public. The work group ended this past year due to a sunset provision, which was not extended, partially due to the fact that the group's work did not meet the goals of the Legislature when it was passed and signed into law.

Rules and Regulations

For the first time since 2016, despite significant statutory and operational changes since then, NDCS updated the rules and regulations for restrictive housing by holding two hearings in late 2021.⁴³ The first took place on Nov. 17, and due to an error, a second hearing was held Dec. 27. NDCS received input on the proposal from a number of people, including the Public Counsel (Ombuds) and the Inspector General. Many of the suggestions were not accepted by NDCS. These suggestions and the NDCS response were provided to the Legislature on Feb. 11, 2022.⁴⁴

⁴² The OIG first raised this issue in an investigative report about an individual who was murdered by his cellmate while in a restrictive housing setting. See https://nebraskalegislature.gov/pdf/reports/public_counsel/2017berry.pdf.

⁴³ Title 72, Neb. Admin. Code.

⁴⁴ See Attachment 3: Ryan Gilbride letter to Senator Dan Hughes, Feb. 11, 2022.

The Inspector General made 12 recommendations, many of which have been provided to NDCS in the past when they discussed making changes to the rules and regulations.⁴⁵

NDCS will release its annual report on restrictive housing on Sept. 15, the same date as the deadline for this OIG annual report. Additional insights on the rules and regulations, as well as other data and information on restrictive housing, likely will be included in that report.

Mission Specific Housing/Less Restrictive Settings

Examples of a less restrictive setting are the Intervention/Improvement Unit (IIU) on Housing Unit 2C at TSCI, the Behavior Intervention and Programming Unit (BIPU) at NCCW, and the mental health units at RTC and TSCI. These units hold many individuals who may have typically been placed in a restrictive housing unit or have recently left a restrictive housing unit.

In late 2019, the IIU was established as a maximum security, controlled movement unit for adult men who “have a demonstrated history of institutional behavior that is disruptive to the effective operation of the facility,” according to the program overview for the unit. In July 2021, NDCS converted the restrictive housing unit at the Nebraska Correctional Center for Women (NCCW) in York into what is now referred to as the BIPU. It remains the highest-security housing unit at that facility, and holds individuals who meet criteria similar to those for the IIU, as well as people in immediate segregation or who might otherwise be placed in restrictive housing or an acute mental health unit.

An OIG investigatory report will soon be provided to Director Frakes regarding the operations of these two units, with recommendations that relate largely to the 384-bed, high-security unit that will soon be opening at the RTC.

The Department’s annual report on restrictive housing has not included information on controlled movement units. Additionally, state statute references the term “general population” but does not provide a definition. While this is addressed in greater detail in the upcoming report

⁴⁵ See Attachment 4: OIG letter to Ryan Gilbride, Nov. 17, 2021.

on the IIU and BIPU, the OIG is mentioning them here due to this being a possible area for legislation in the coming year.

National Data

Each year, the Arthur Liman Center publishes a report comparing states' data and practices regarding restrictive housing. The most recent report was released in August 2022 and has a great deal of information on this subject, although just 35 states responded.⁴⁶

Relevant findings included:

- Nebraska's 3.4 percent of its population in restrictive housing is the same as the national average;
- Nebraska data indicates a sharp decline in the use of restrictive housing, but this is primarily due to changes in protective custody housing units, which previously counted them as restrictive housing units;
- Nationwide, there has been a significant decrease in the use of restrictive housing;
- Compared with Nebraska, nine states (of the 26 who reported this data) had more individuals in restrictive housing for longer than one year; and
- 30.6 percent of Nebraska's incarcerated male population has a serious mental illness, and 24.2 percent of the male restrictive housing population has a serious mental illness.

⁴⁶ https://law.yale.edu/sites/default/files/area/center/liman/document/time_in_cell_2021.pdf

COMMUNITY CORRECTIONS, REENTRY AND PAROLE

NDCS operates two community correctional centers where individuals who are beginning to transition back into the public are able to leave for work and other limited activities. The Department also employs reentry specialists and social workers who assist people in finding housing and making other arrangements for after they are released.

People who are released from Nebraska prisons generally fall into one of three categories: they receive discretionary parole and are supervised by a parole officer; they are released and undergo a mandatory period of supervision by a probation officer; or they complete their sentence without being approved for parole and are released without supervision. The OIG's oversight extends to the Division of Parole Supervision, but not the Office of Probation Administration.

Walkaways

In February 2022, the OIG issued a report on escapes from the Department's community corrections centers after seeing an increase in the number of these so-called "walkaways," particularly from CCC-L, the previous year. The main finding from this investigation was that NDCS concentrates too many of its community corrections incarcerated individuals in one place, making it challenging for staff to police behavior, and creating a stressful and counterproductive environment for this population at a critical time in their reentry. The OIG recommended that NDCS right-size the population at CCC-L and pursue providing similar transition opportunities at other locations, including outside of Lincoln and Omaha. Director Frakes rejected this recommendation.

MENTAL HEALTH SERVICES

Another issue raised in the walkaway report was the relative lack of mental health services at NDCS community correctional facilities. The report included a recommendation that the Department develop a specific plan to provide all community corrections incarcerated individuals with appropriate and beneficial mental health treatment. In response, Director Frakes

committed to no specific action other than a review of access to mental health services at community corrections. This review was completed May 10, and while it does contain some minor action items, it does not address the absence of substantive mental health treatment in these facilities.

The OIG continues to receive complaints from staff and residents of these facilities, who say the Department has essentially no capacity for routine mental health care in community corrections, aside from substance abuse treatment. Individuals with serious mental illnesses are generally limited to one brief visit from a provider each month. These individuals also continue to face hurdles obtaining access to see outside providers. For people without serious mental illnesses, access to therapy is virtually nonexistent.

GENDER DISPARITY

The OIG also found that while men and women walked away at approximately the same rate, the punishments for men were significantly harsher. The OIG encouraged the NDCS Appeals Board to conduct a review of the Department’s disciplinary records, including but not limited to escapes, and use this information to help improve equity in administrative sanctions. Director Frakes rejected this recommendation.

OTHER RECOMMENDATIONS

While the director did not outright accept any of the five recommendations from the walkaway report, two recommendations have essentially been implemented:

- **Electronic monitoring.** CCC-L assigned a full-time corporal position to manage the facility’s GPS-enabled

OIG Report

The OIG investigation into “walkaways” from the state’s community corrections centers also broadly examined the conditions and practices of those facilities, particularly CCC-L. The OIG examined the impact of COVID-19, the penalties for those who escaped, crowding and staffing levels, support services such as mental health treatment, and security procedures at the facilities.

A summary of the OIG’s report on this investigation is available on the Legislature’s website. Click on the “Reports” tab and select “Public Counsel.”

[NebraskaLegislature.gov](https://legislature.gov)

electronic ankle monitors (EMs). This includes placing EMs on people who are assigned them, replacing and removing EMs as needed, monitoring the system and working with the vendor.⁴⁷ The new position reflects an OIG recommendation that NDCS devote sufficient staff resources to monitoring EMs. NDCS and the Division of Parole Supervision have also changed EM vendors since the publication of the OIG report, due to persistent equipment failures under the previous vendor. The new EMs are provided by BI, Inc. under a contract which took effect in May 2022.

- **Role of community corrections staff.** The OIG report raised concerns about unarmed correctional staff pursuing escapees through neighborhoods that surround community corrections facilities, and recommended the Department review its related policies. Director Frakes responded that existing policy “language and intent is clear”⁴⁸; however, he issued a policy directive three days later clarifying that corrections staff should generally remain on facility grounds when responding to emergencies, and that staff who assist in the surrounding community should do so at the request of law enforcement and with warden approval.⁴⁹ The Department has since revised its policies to reflect this change.⁵⁰

Transitional Housing

For several years, the OIG has heard complaints about the quality and availability of housing for people leaving the prison system. Recently, the OIG conducted formal investigations into complaints and serious injury incidents at “transitional housing facilities.”⁵¹ Because these facilities are not operated by or under contract with NDCS, the OIG issued a memo summarizing

⁴⁷ Memo from Wardens Shaun Settles and James Jansen to NDCS Deputy Director Dawn-Renee Smith, Re: Electronic Monitoring, March 29, 2022.

⁴⁸ Director Scott Frakes response to OIG report on escapes from community corrections facilities, Feb. 14, 2022.

⁴⁹ NDCS Policy Directive 022-002, Re: Policy 203.01, “Security and Control.”

⁵⁰ NDCS Policy 203.01, “Security and Control” (2022).

⁵¹ The extent of the OIG’s oversight responsibilities are somewhat unclear as they relate to the Division of Parole Supervision or people whose housing is paid for by the state following their release from prison. This is due to legislation which separated Parole Supervision from NDCS and the emerging nature of the transitional housing issue.

its investigations, findings and recommendations to the Legislature's Judiciary Committee.⁵² The memo highlighted specific concerns, including:

- A lack of full accounting for the Legislature and taxpayers regarding the number and location of these houses and the dollars spent;
- A lack of consistent verification that these facilities maintain basic standards (health, safety, liability protections) as well as comply with state and local laws;
- Duplication of effort among various agencies in enforcing what standards do exist;
- A lack of verification that these facilities actually offer the conditions, programming and level of supervision they claim to provide; and
- An overall lack of accounting for the state's current and projected transitional housing needs.

The OIG encouraged the Legislature to consider the following recommendations:

- Create an independent clearinghouse for information related to verified transitional houses, including cost and usage data, and adherence to core standards;
- That this entity be tasked with improving communication and coordination among the various providers, state agencies and other entities with interests in transitional housing;
- That this entity provide or facilitate routine assessments of the conditions, supervision, amenities, and rehabilitative programs offered by these facilities; and
- That this entity provide an annual report to the Legislature summarizing this information and its activities.

One thing the memo does not explain is the distinction between transitional housing, halfway houses and supportive housing. While each serves a similar purpose, they are not the same.

Many "halfway houses" are technically mental health substance use treatment centers and are supposed to be licensed by the Department of Health and Human Services' Division of Public Health. These are 24-hour, structured environments which must provide shelter, food, counseling, supervision, diagnosis and treatment.

⁵² See Attachment 5: OIG memo to Judiciary Committee, July 5, 2022.

Transitional and supportive housing, on the other hand, are mostly unregulated. Transitional housing facilities might offer limited nonclinical help or programming referrals to people with substance abuse or mental health issues, but they mainly provide housing with varying levels of supervision and support services for people in the criminal justice system. Supportive housing facilities are similar to transitional housing facilities but don't necessarily require involvement in the criminal justice system.

The OIG continues to meet with various stakeholders about this issue leading up to the 2023 legislative session.

Parole

Supervision of people on parole is handled by the Division of Parole Supervision under the direction of the Board of Parole. (The Division was transferred from NDCS in 2016 as a result of LB 598, which passed the previous year.) The Director of Parole Supervision is Julie Micek. The Chairperson of the Board of Parole is Rosalyn Cotton.

The OIG visits with Parole staff on a regular basis and communicates with members of the Board of Parole as necessary. The number of complaints received by the OIG regarding the Division of Parole Supervision is minimal, and many of these are more focused on the actions of the Board of Parole rather than the Division of Parole Supervision. Under state law, the OIG's oversight includes the Division but not the Board of Parole; as such, the office does not pursue complaints related to Board actions.

The Board of Parole and the Division of Parole Supervision submit an annual report that provides information regarding the parole process, data, priorities and other key information.⁵³

Halfway-back Program Statement

During the 2021 legislative session, the Legislature provided funding to NDCS to prepare a program statement and do site selection for a new "halfway-back" community corrections center

⁵³ <https://parole.nebraska.gov/sites/parole.nebraska.gov/files/doc/CY%202021%20Annual%20Report%20Final.pdf>

in Omaha. In February 2022, Director Frakes informed the Appropriations Committee when asked about the status of the program statement that they were close to finishing it. In late August, the program statement was provided to the OIG which provided details on creating a 96 bed community transition housing facility at a total cost of over \$29 million.⁵⁴ The program statement indicated that the facility would be administered and staffed by the Division of Parole Supervision. When contacted by the OIG, the Division indicated that they were unaware of this program statement and had not been contacted by the company who completed the statement.

⁵⁴ It is unclear why the project chose 96 beds as the capacity of the facility. During the same legislative session, funding was provided to NDCS to also establish 96 specialty beds at the RTC.

SUPPORT SERVICES

Tablets

As mentioned in the TSCI facility update section of this report, people committed to NDCS are able to acquire electronic tablets to manage their prison accounts, communicate with family, listen to music, and other features. This year, the Department's decision to end its agreement with one of its two tablet providers resulted in a significant number of complaints to the OIG, Ombuds and correctional staff.

Previously, two tablets were used. One tablet, provided through an agreement with the correctional telecommunications company GTL, was for phone calls. The remaining features were available on separate tablets, which people could purchase through a company called JPay.

In February 2022, TSCI required everyone housed at the facility to return their tablets from one vendor, JPay, after men at the prison found a way to connect the tablets to a wireless Internet "hotspot" provided by a smuggled cellphone. The tablets were confiscated for approximately two months while NDCS worked with JPay to update each device.

On June 6, in response to questions from the OIG, NDCS Deputy Director Robert Madsen informed the OIG that the Department would be entering into an expanded agreement with GTL effective Aug. 1, at which point JPay tablets would no longer be allowed. The Department notified the prison population of this on the same day, without providing advance notice to staff or any significant details about the change. On that same day, JPay was notified via email from NDCS to end all tablet sales immediately.

Frontline NDCS staff, the OIG and the Ombuds were immediately assailed with questions from the prison population about the transition and what would happen with the content on their JPay tablets. For many, this included significant amounts of music they had purchased with their own funds. For some, it included their children's graduation photos and other personal content. Corrections staff, the OIG and the Ombuds had few answers at the time and were unable to obtain specific information about the change from NDCS administration.

On June 15, the incarcerated population was notified that any funds remaining in their JPay accounts as of July 31 would be forfeited. At this point, NDCS was still planning to prohibit JPay tablets after the change.

On June 24, the Department announced that people who currently owned JPay tablets would be allowed to keep their devices; however, the JPay tablets would no longer be under warranty, eligible for technical support, or able to receive further updates or downloads once the transition to GTL was complete.

The change to GTL has since taken place, although the company continues to address technical issues related to the transition, including the surge in bandwidth necessary to support the amount of data used by the new tablets. It remains unclear to the OIG how NDCS will prevent the remaining JPay tablets from being misused going forward. While the old tablets received security-related updates as part of the transition process, the fact that JPay is no longer providing technical support for the tablets means no future updates will be available should these tablets become compromised in an unforeseen way.

The previous time NDCS changed its tablet provider, in 2017, the OIG, NDCS staff and the incarcerated population were made aware that changes were going to be made over a year in advance, and an implementation work group including facility staff, the Inspector General and a member of the Ombudsman’s office was created by NDCS to assist with the extended transition to a new provider. Four years

GTL Tablet Service	Cost
Phone	3.25 cents/minute
Video visit	\$2.50 for 10 minutes; \$6.25 for 25 minutes
Music	\$19.99/month
Other content	3 to 5 cents/minute (\$1.80 to \$3/hour)
Emails	20 cents for 1,500 characters (40 cents for photo, 50 cents for video) ⁵⁵
Money transfer	\$2.95 to \$4.95 fee, plus 3.5 percent for deposits made using a credit card

⁵⁵ Phone calls and messages (include pictures and video) exchanged via the GTL tablets are subject to monitoring by NDCS intelligence staff.

before that, the same member of the Ombudsman's office was also invited to actively participate in the implementation process. Neither office was engaged by NDCS during this most recent transition.

Legal mail

In an effort to limit the flow of synthetic marijuana and other contraband into prisons, NDCS no longer allows the populations at high-security facilities to receive original copies of most types of mail. Letters from friends and loved ones, birthday cards and photographs are instead delivered as photocopies, while originals are stored for 30 days, during which time incarcerated people may mail out the originals at their own expense. The Department adopted this process in 2020 at NSP and has since extended it to other facilities.

In May 2021, NSP began using a similar process for incoming privileged mail, such as correspondence from attorneys, elected officials, and others who may communicate confidentially with incarcerated individuals. Under this new process, privileged mail is opened and photocopied, and the originals shredded, all in the presence of the individual recipient. At the time, in response to inquiries from the Ombuds and OIG, this practice was described as a pilot project at NSP.

In April 2022, the OIG and Ombudsman began receiving complaints after the new privileged mail process was expanded to TSCI. Generally, the complainants alleged that the privileged mail process may enable NDCS to eavesdrop on confidential communications, infringing on inmates' constitutionally protected attorney-client privilege; and that NDCS acted outside the scope of its authority in implementing the processes.

The OIG examined incoming mail procedures at NSP and TSCI, met with individuals involved in processing inmate mail, and reviewed relevant statutes, rules and regulations, and departmental policies, and found no evidence to indicate the Department is systematically monitoring the substance of privileged communications.

However, NDCS did not utilize the rules and regulations process to adopt these changes and had not notified the Nebraska State Bar Association, the Nebraska Judicial Branch, or other stakeholders.⁵⁶ The OIG believes utilizing the rules and regulations process as outlined in the Administrative Procedure Act would help ensure these parties have adequate notice and the opportunity to provide input on the changes.

Book Orders

In April 2021, NDCS implemented a new policy regarding the ordering of books that was to go into effect on May 3, 2021. The policy was changed to limit the ordering and receiving of books via Amazon. The rationale behind this change, as explained in an April 15, 2021 memo from NDCS to the incarcerated population, was that it would provide more efficient processing of book orders. A new memo was issued on April 23, 2021 that changed the provider from Amazon to the Edward R. Hamilton Company. This was after concerns were expressed by incarcerated individuals about how switching to only Amazon would limit their choices. However, the decision to move to Edward R. Hamilton was much more limiting.

The Ombuds received multiple complaints about this change, including that it limited people's ability to order religious books. As a result, changes were made to allow the ordering of some religious books from other vendors. During exchanges between the Ombuds and a deputy director, she explained the true reason behind the change was "to limit potential avenues of contraband introduction."

The Human Rights Defense Center filed suit against NDCS in February 2022 because NDCS had prevented them from sending legal books that they provide to incarcerated individuals. A settlement was reached in which NDCS approved the Human Rights Defense Center as an approved book vendor. It also expanded the list to include Record Research, Inc., The Hit Pointe and Noble Knight Games. Record Research, Inc. appears to only sell musical yearbooks. The Hit Pointe specializes in used and out-of-print materials for the role-playing game "Dungeons &

⁵⁶ Title 68, Neb. Admin. Code, Chapter 3.

Dragons.” Noble Knight Games also sells books associated with role-playing games. NDCS has since updated its incarcerated individuals ordering policy.⁵⁷

⁵⁷ NDCS Policy Directive 022-006, (March 23, 2022), re: Policy 113.23, “Inmate Orders.”
https://www.corrections.nebraska.gov/system/files/rules_reg_files/113.23_2021_2.pdf

CORNHUSKER STATE INDUSTRIES

Cornhusker State Industries (CSI) is a division of NDCS whose mission statement is:

“Use work as a tool to prepare incarcerated men and women for successful reentry back into our communities. We provide meaningful work experience by building quality products, providing services and creating value for our external customers. Work skills are supplemented with training, education and certifications so CSI workers can effectively translate their abilities into post-release success.”⁵⁸

Information on CSI’s role in canteen distribution is discussed elsewhere in this report. This has been a significant change for CSI during the past year. CSI also has started a third cohort at the Home Builders’ Institute program at TSCI, which is also discussed elsewhere in this report.

This issuance of new State of Nebraska license plates in 2023 has already led to a significant increase in license plate production. This process is administered by CSI at NSP.

During the past year, CSI has added 10 jobs for inmate T-shirts at OCC, which is beneficial for those who receive those positions. CSI also has had challenges like most businesses of receiving inventory which has created some issues that it has had to overcome, as well as adapting to limited facility operations at RTC, TSCI and NSP.

⁵⁸ <https://csi.nebraska.gov>

RECOMMENDATIONS FOR LEGISLATURE

While this report covers a wide range of topics related to Nebraska’s correctional system, the OIG believes a select few merit special attention and consideration by the Legislature in the upcoming session.

Strategic Plans

NDCS will soon have new leadership. Particularly in times like this, the Legislature provides much of the continuity for the state’s correctional system. This requires open lines of communication between the executive and legislative branches of government.

In 2015, the Legislature enacted new requirements to ensure better oversight of NDCS and to keep the Legislature better informed about the Department’s short-term and long-term plans.

Two of those requirements include:

- For the bienniums ending in 2019 and 2021, NDCS was required to submit a “strategic plan that identifies the main purpose or purposes of each program, verifiable and auditable key goals that the department believes are fair measures of its progress in meeting each program’s main purpose or purposes, and benchmarks for improving performance on the key goals.” This also required the Department to “report whether the benchmarks are being met and, if not, the expected timeframes for meeting them.”
- NDCS also needed to report to the Judiciary and Appropriations committees, no later than September 15 each year from 2017 through 2021, on “the progress towards the key goals identified that occurred in the prior twelve months.” The Department was also required to present the report at a joint hearing of the two committees.⁵⁹

Despite these requirements, the Department last released a strategic plan in 2018. In 2021, the OIG recommended that NDCS provide a comprehensive update to the Governor and the Legislature no later than December 31, 2021. This was not completed by NDCS.

⁵⁹ Neb. Rev. Stat. § 83-918.

The Legislature should consider updating Neb. Rev. Stat. § 83-918 to once again require the Department to produce biennial strategic plans, along with progress reports in non-biennial years. It may be worth extending this requirement to the Division of Parole Supervision, as well.

Mental Health

Many people in Nebraska's prisons experience serious mental illness and are considered at high risk to reoffend without adequate treatment. However, behavioral health staffing within NDCS is critically low, which raises questions about the ongoing quality and consistency of mental health services in the Department. This issue is important not only for the welfare of the prisoner population, but also for the safety of correctional staff and the public.

NDCS has some ability to address this issue on its own. The extent to which that happens is up to the Department and its next leader. Based on past experience, the OIG believes some assistance and encouragement from the Legislature might be necessary.

Transitional Housing

Because transitional housing affects at least three different agencies (Corrections, Parole, and Probation) and involves a variety of complex legal issues, legislation will likely be necessary to appropriately resolve the issues identified in this report and in the memo to the Judiciary Committee. As noted previously, the OIG believes the following merit consideration:

- That an independent clearinghouse be created for information related to verified transitional houses, including cost and usage data, and adherence to core standards;
- That this entity be tasked with improving communication and coordination among the various providers, state agencies and other entities with interests in transitional housing;
- That this entity provide or facilitate routine assessments of the conditions, supervision, amenities, and rehabilitative programs offered by these facilities; and
- That this entity provide an annual report to the Legislature summarizing this information and its activities.

Restrictive Housing

As NDCS reduces its use of long-term restrictive housing, a growing number of people are being housed in highly controlled settings which just barely skirt the legal definition of restrictive housing. This information is essential in assessing the status of restrictive housing in Nebraska, and is explored in greater detail in an OIG investigative report that will soon be submitted to Director Frakes. (A public summary report will be released in the future.)

The Legislature should consider amending statute to require that data related to controlled movement units and secure mental health units be included in the Department's Restrictive Housing Annual Report.

CONCLUSION

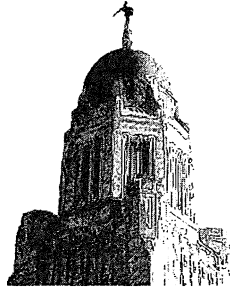
Each year, the goal of the annual report from this office is to provide policymakers and the public with a better understanding of Nebraska's correctional system and ways the system can be improved. The report does not cover every area of either the correctional or parole systems as there are many issues not mentioned in this document which still merit attention. Their omission from this report should not indicate that they are any less important to this office than items which were included.

The OIG wishes to again thank the hundreds of individuals who contributed to this report. Nebraska's correctional system is of great interest and concern to many people, and we appreciate those who are willing to share their experiences and insights.

ATTACHMENT 1

DOUG KOEBERNICK
Inspector General

ZACH PLUHACEK
Assistant Inspector General



STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL OF CORRECTIONS
State Capitol, P.O. Box 94604
Lincoln, Nebraska 68509-4604
402-471-4215

July 11, 2022

Scott Frakes
Nebraska Department of Correctional Services
P.O. Box 94661
Lincoln, NE 68509-4661

Director Frakes:

I wanted to share some thoughts related to the sex offender treatment program at the Lincoln Regional Center being offered to men who have yet to complete their sentences within NDCS. My office received a complaint about the program this spring from someone who was concerned men were being sent there involuntarily. Our investigation found that the complaint was unfounded. However, after looking into the program, Zach Pluhacek had a couple of ideas he wanted to share for your consideration:

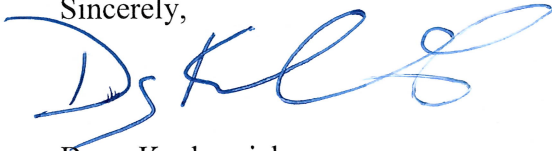
1. Reclassifying these men before they return to NDCS could be helpful. This would allow them to continue to progress through the system, or potentially complete their sentences at LRC. LRC has a level that operates similarly to work release, and if the men (who are generally near their PED or jam date) are found eligible for 4A custody and signed off by the Parole Board, LRC might be able to keep them there (assuming NDCS, including legal counsel, believes that is appropriate). My understanding is LRC would be open to this and would actually prefer to keep them. The reclassification could possibly be done by someone from Central Office or RTC, has the potential to save NDCS a bed, and might result in a smoother transition for these men.

2. More men might agree to take the LRC program if they receive more information at the time it is offered. My understanding is LRC gives them lots of information when they are initially screened at RTC (a time when they're getting loaded up with other info, too), but when the time comes for them to actually go to LRC, some refuse. In some cases this might be because they don't remember anything about the program, especially those doing long numbers. One man I spoke with said his unit staff gave him very little detail when they asked if he wanted to go, so he refused. Then he changed his mind the next day after getting details from a fellow inmate. Having a point person who is familiar with the

programs at NDCS and LRC be the one to make that final offer might help the Department better leverage this resource.

I am hopeful that these suggestions are helpful in the work of NDCS. At this time we do not intend to produce a report on the LRC program, although we likely will mention it in the annual report as part of an update on clinical programming.

Sincerely,

A handwritten signature in blue ink, appearing to read 'DKL', with a large, stylized initial 'D' and a long, sweeping horizontal stroke extending to the right.

Doug Koebernick

STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL OF CORRECTIONS

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Summaries of Reports on Death Investigations

SUPPLEMENT FOR 2022 ANNUAL REPORT
SEPTEMBER 15, 2022

Doug Koebernick, Inspector General
Zach Pluhacek, Assistant Inspector General

INTRODUCTION

This supplemental report to the 2022 OIG Annual Report contains summaries of OIG investigative reports on deaths within NDCS. These deaths took place in late 2020, 2021 and early 2022, but the investigations were completed within the past year. The OIG continues to investigate additional system deaths from this period, and reports on those investigations will be issued at a later date.

In each of the cases noted below, the OIG reviewed records of the individual's medical treatment, other records related to their incarceration, and reports from the grand jury investigations into their deaths, and offered no critical findings or recommendations for systemic reform or case-specific action at this time.

RONNIE MAIN

DOB: 5/22/1949

In NDCS Custody Since: 12/29/1983

DOD: 8/4/2020

Ronnie Main, 71, was diagnosed with coronary artery disease and chronic obstructive pulmonary disease. On Aug. 4, 2020, he was eating lunch at a table in the Housing Unit 1C dayroom at the Tecumseh State Correctional Institution (TSCI) when he began having difficulty breathing. An inmate medical porter, thinking Main was choking on food, initially performed the Heimlich maneuver on Main. That did not work, and Main had become unresponsive, so the porter and medical staff began performing CPR. This was unsuccessful, and Main was pronounced dead by the facility physician. Ultimately it was determined that Main had experienced a heart attack as a result of his medical conditions.

LARRY FRENCH

DOB: 8/7/1935

In NDCS Custody Since: 1/10/2019

DOD: 08/15/2020

Larry French, age 85, died Aug. 15, 2020, one week after losing his balance and falling in his room at TSCI. His death certificate lists his cause of death as acute bronchopneumonia due to blunt force injuries to his chest from the fall, which happened Aug. 7. NDCS determined that a

stroke caused the fall as well as his death. French had undergone aortic valve replacement surgery a week before the fall.

HECTOR MEDINA-LIBORIO

DOB: 1/13/1985
In NDCS Custody Since: 7/31/2013
DOD: 10/7/2020

A corporal doing routine checks found Hector Medina-Liborio, 35, unresponsive in the skilled nursing facility (SNF) at the Diagnostic and Evaluation Center (DEC) on Oct. 7, 2020. Medical staff responded, and he was pronounced dead shortly after 7 p.m. At that point, Mr. Medina-Liborio had been in the SNF for more than a year after being diagnosed with bile duct cancer.

ALAN STACK

DOB: 8/21/1961
In NDCS Custody Since: 8/21/2019
DOD: 11/19/2020

Alan Stack, 59, died in his sleep at Bryan Medical Center West Campus. In July 2020, 11 months after he entered NDCS custody, he reported a sore throat, which eventually worsened to the point where he lost 10 pounds and stopped taking medications because it hurt to swallow. He had a mass in his throat and was diagnosed with stage IV squamous cell cancer. He tested negative for COVID-19 on Sept. 22, 2020, and refused subsequent tests. He was assigned to the Nebraska State Penitentiary (NSP) but spent most of his final month of life in treatment at the hospital. His cause of death was oropharyngeal bleeding as a result of squamous cell carcinoma of the tongue.

ROBERT WARD

DOB: 2/12/1950
In NDCS Custody Since: 4/18/2003
DOD: 11/20/2020

Robert Ward, 70, died in the skilled nursing facility at TSCI on Nov. 20, 2020, two days after being admitted with decompensating congestive heart failure. TSCI was on lockdown due to a COVID-19 outbreak at the time. Ward had refused COVID-19 testing one week earlier. According to the transcript from his grand jury investigation, Dr. Jeffrey Kasselmann told the

grand jury “We did not know,” if he had COVID. “We treated had (sic) him as if he did.” Ward had a history of heart and lung disease, emphysema and high blood pressure, and had signed a do-not-resuscitate order. Kasselmann testified that nurses would make rounds twice per day and were concerned about Ward due to his heart rate and decreasing blood oxygen. His medical charts indicate he had difficulty breathing at times, as well. TSCI Dr. Jeffrey Damme attributed the death to congestive heart failure due to kidney failure.

TODD SHADE

DOB: 4/13/1973

In NDCS Custody Since: 3/7/1995

DOD: 11/29/2020

A nurse found Todd Shade, 47, dead in his room at the skilled nursing facility (SNF) at TSCI on Nov. 29, 2020. Shade was diagnosed with squamous cell cancer of the tonsil in 2017, signed a do-not-resuscitate order in January 2019, and had lived in the SNF for more than a year at the time of his death. His cause of death was found to be respiratory failure due to myositis and cancer of the tonsils.

JAMES FORSBERG

DOB: 3/29/1934

In NDCS Custody Since: 1/17/1995

DOD: 12/24/2020

James Forsberg, 86, died in a recliner chair in his room in the skilled nursing facility at TSCI on Dec. 24, 2020. NDCS Nurse Elizabeth Hopson was present at the time. Forsberg had been in the SNF for three days after being admitted due to pneumonia. He tested negative for COVID-19 on Dec. 14, and had a history of type 2 diabetes, coronary disease, hypertension, high cholesterol and thyroid disease. His cause of death was found to be pneumonia due to coronary artery disease.

BRYCE KUMMER

DOB: 7/15/1958

In NDCS Custody Since: 12/08/2020

DOD: 1/4/2021

A nurse found Bryce Kummer, 62, unresponsive and not breathing in his room inside the SNF at DEC. At the time, Mr. Kummer was awaiting trial in Platte County but was being held by NDCS as a “safekeeper” due to his various medical issues, which included organ transplant (kidney and pancreas) failure, pneumonia, acute encephalopathy, acute respiratory failure with hypoxia and hypercapnia, Addison’s disease, and altered mental status. He had previously been taken to the emergency room at Bryan Medical Center West Campus, three days after he was admitted to NDCS custody, after nursing staff at DEC found him “laying on his bed being much less responsive than normal” and with low blood sugar, but was returned to DEC later that day. He tested negative for COVID-19 in the emergency room, and had signed a do-not-resuscitate order. NDCS Dr. Robert Cunard signed his death certificate, attributing his death to end-stage Alzheimer’s-type dementia.

HAROLD B. WILSON

DOB: 11/25/1955
In NDCS Custody Since: 10/17/1986
DOD: 1/18/2021

Fellow inmates found Harold B. Wilson, 65, unresponsive in his cell in Housing Unit 1 at the Nebraska State Penitentiary on the morning of Jan. 18, 2021, after he failed to wake up for his dialysis appointment at the skilled nursing facility. A unit case manager called for an emergency response team, and staff attempted to revive Wilson on the unit and then again while escorting him to the front entrance on a gurney. Lincoln Fire and Rescue arrived and declared him dead. Wilson had been in NDCS custody since 1986 and had a series of medical conditions. His certified cause of death was polymicrobial urosepsis (sepsis caused by a urinary tract infection).

PATRICK RUSSELL

DOB: 7/22/1956
In NDCS Custody Since: 6/4/1974
DOD: 4/25/2021

Patrick Russell, 64, died at Bryan Medical Center West Campus 11 days after he was admitted to the hospital with pneumonia-like symptoms. He had most recently been incarcerated at the former Lincoln Correctional Center for more than a decade. Mr. Russell was in treatment for stage IV lung cancer. He also had tested positive for COVID-19 in November 2020, but later

tested negative and ultimately received two shots of the Moderna vaccine in February and March 2021. He tested negative again in April, but doctors speculated he might have COVID-19 pneumonia or drug-induced pneumonitis, which can develop as a consequence of chemotherapy. His certified cause of death was acute cardiac respiratory arrest due to as a consequence of acute hypoxic respiratory failure.

LAWRENCE ORTIZ

DOB: 8/24/1929
In NDCS Custody Since: 2/13/1971
DOD: 10/4/2021

A nurse found Lawrence Ortiz, 92, dead in his room in the SNF at the Nebraska State Penitentiary. Mr. Ortiz had been diagnosed with end-stage chronic obstructive pulmonary disease (COPD), and had spent the last several years of his incarceration in and out of the SNF and the hospital due to a variety of health issues. In September 2020, he was hospitalized at Bryan Medical Center West Campus for complications related to COVID-19, but returned to the prison, recovered and later tested negative for the virus. He received his first dose of the Moderna coronavirus vaccine in February 2021 and a second dose the following month. His health issues continued — including chronic pain, difficulty breathing, confusion and disorientation — and he eventually agreed to remain in the SNF for comfort care rather than return to the hospital. Mr. Ortiz had previously signed a do-not-resuscitate order.

KRISTOPHER PRIGGE

DOB: 11/6/1986
In NDCS Custody Since: 4/3/2019
DOD: 1/2/2022

Kristopher Prigge, 35, died at Bryan Medical Center after experiencing a brain bleed due to chronic myelogenous leukemia. He had been diagnosed with IgA nephropathy (kidney disease) in the community several years before he was admitted to NDCS. In early November 2021, after complaining for a few weeks about pain and bruising to his left elbow, he was seen by a doctor and said he had recently started developing bruises despite no recent trauma. Mr. Prigge was admitted to the hospital a week later, on Nov. 10, 2021, after lab results indicated he was experiencing acute kidney failure.

At the hospital, he was administered the chemotherapy drug Gleevec until his white blood cell count, which had been high, returned to normal levels. He was released from the hospital on Dec. 2, 2021, and taken the Diagnostic and Evaluation Center SNF with prescriptions for a diuretic, a beta blocker and a proton-pump inhibitor, but no chemotherapy drug. A few weeks later he was placed back on the chemo drug after his white blood cell count jumped again. A week after that, he was readmitted to Bryan Hospital with an even more critically high white blood cell count. His condition continued to decline, and a head scan on Dec. 31 found lesions consistent with metastatic lymphoma. Doctors deemed his condition no longer survivable, but he was kept on life support until family could see him.

NEBRASKA

Good Life. Great Mission.

DEPT OF CORRECTIONAL SERVICES



Pete Ricketts, Governor

ATTACHMENT 3

February 11, 2022

Senator Dan Hughes
Executive Board of the Legislative Council
Nebraska State Capitol
P.O. Box 94604
Lincoln, NE 68509-4604

RE: Title 72, Chapter 1 – Restrictive Housing

Dear Senator Hughes,

As required under Neb. Rev. Stat. § 84-907.04 of the Nebraska Administrative Procedure Act, please see the enclosed summary of the testimony offered at the public hearing and agency responses. The public hearing on the proposed changes to these regulations was held December 27, 2021 at the Nebraska Department of Correctional Services Central Office.

Please contact me at (402) 479-5735 or ryan.gilbride@nebraska.gov if you have any questions regarding this matter.

Sincerely,


Ryan Gilbride
Agency Legal Counsel

Enclosure

Scott R. Frakes, Director
Dept of Correctional Services
P.O. Box 94661 Lincoln, NE 68509-4661
Phone: 402-471-2654 Fax: 402-479-5623

corrections.nebraska.gov

HEARING SUMMARY

REGULATION: Title 72, Ch. 1 – Restrictive Housing
 DATES: November 17, 2021 and December 27, 2021

Name/Affiliation of Person Commenting	Comments	Department Response
<p>Julie Rogers Office of Public Counsel/Ombudsman</p>	<p>Section 001.05 – It is unclear whether the proposed language of “policies, procedures, and tools” encompasses each of the types of materials omitted from the original regulation. The changes could lead to less transparency.</p>	<p>The proposed changes reflect updates to Nebraska Department of Correctional Services (NDCS) terminology. NDCS has updated the term “administrative regulations” to “policies” in order to clarify between agency promulgated regulations and agency-wide policies. NDCS has updated the term “operational memoranda” to “procedures” to order to clarify between agency-wide policies and specific facility procedures. The term “policy directives” is interchangeable with “policies.” The term “forms” is encompassed by the term “tools.” The term “guidance documents” has been removed as this term is defined in Neb. Rev. Stat. § 84-901. These changes do not lead to less transparency. The amended language to the chapter provides all policies and procedures related to restrictive housing shall be shared with the Office of Public Counsel, the Inspector General for the Nebraska Correctional System, and the Legislature upon request. The Policies may also be available to the public, unless such availability would create a security risk. Moreover, pursuant to Neb. Rev. Stat. § 83-1,135.04, in the event</p>

<p>NDCS issued a guidance document regarding restrictive housing, the guidance document would be made available to the public unless such availability constituted a safety and security risk; and NDCS would be required to provide notice to the Deputy Public Counsel for Corrections and the Inspector General of the Nebraska Correctional System of any guidance document not made publicly available.</p>		
<p>The proposed changes better clarify the definition of a mental health unit than the previous definition. This distinguishes between two distinct types of mental health units: 1) units which provide for acute mental health needs; and 2) units which provide for chronic mental health needs. Based on an agency determination of whether their needs are acute or chronic, all Level III or above inmates would fit into one of the two defined units.</p>	<p>Section 002.01 – The intent and impact of omitting the current definition of Secure Mental Health Housing (SMH) while adding the proposed definitions of Acute Mental Health Unit (AMHU) and Chronic Care Mental Health Unit (CCMHU) are unclear. There are questions whether all seriously mentally ill inmates would fit into either AMHU or CCMHU, and, if not, where the remaining inmates will be housed.</p>	
<p>NDCS agrees and the definition of general population will not be removed.</p>	<p>Section 002.05 – The definition of “General Population” should not be removed.</p>	
<p>Neb. Rev. Stat. § 83-173.03(3) provides that the applicable definition of “serious mental illnesses” is the definition provided in Neb. Rev. Stat. § 44-792. Thus, for purposes of this chapter, “serious mental illnesses” means, on and after January 1, 2002, any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the</p>	<p>Section 002.08 – The definition of “Mental Illness/Mentally III” should not be removed. It appears this definition was omitted because of the inclusion of the definition of “Vulnerable Population” as proposed herein at § 002.15. The omitted definition is from Neb. Rev. Stat. § 71-907 and is not the same language as used in Neb. Rev. Stat. § 44-792.</p>	

		<p>person with the serious mental illness. Serious mental illness includes, but is not limited to (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder, (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder.</p>
	<p>Section 004.03(D) – While the omitted language refers to the completed peer mentor pilot project, NDCS should continue the project; and should keep the language in the regulations if NDCS intends to continue the program beyond the pilot.</p>	<p>NDCS expanded the Intentional Peer Support (IPS) program after the pilot and plans to continue the program. The IPS program helps individuals recover from mental illness, addiction, or trauma with the assistance of someone who has similar life experiences. The program is presented through a partnership with the Mental Health Association of Nebraska. The language is not necessary for promulgation.</p>
	<p>Section 004.04(D) – Appeals pertaining to inmate placement in immediate segregation and longer-term housing restriction should be in regulation, not policy. Concepts impacting inmate due process rights, such as appeal rights, should be included in regulations.</p>	<p>The proposed changes incorporate the right to appeal placement in immediate segregation and assignment to longer-term restrictive housing as a classification action. The only change is updating the term “Department Administrative Regulations” to “departmental policy.” NDCS Policy will provide for appeal rights, as required by the promulgated regulation. That policy will be made available to Office of Public Counsel, the Inspector General for the Nebraska Correctional System, the Legislature upon request, and the public absent, a security risk pursuant to § 001.05.</p>
	<p>Section 004.08(B)(V) – The Ombudsman’s Office opposes the elimination of mission</p>	<p>The mission specific veterans’ unit has not been eliminated. Section 004.08(B) is not</p>

	<p>specific housing for inmates who are veterans. The unit is a success and, if changed, should be expanded.</p>	<p>intended to provide an all-inclusive list of all potential mission specific housing. Section 004.08(B) merely provides examples of certain housing units which may be included, but the types of mission housing units which might be available are not limited to the examples provided.</p>
	<p>Section 006.04(B) – The language “the inmate shall be given an opportunity to meet with a mental health provider” should not be omitted. This language does not seem to be encompassed in the proposed changes for § 006.04(A). It is also not encompassed in the ability of an inmate to decline talking with a provider. The proposed changes could make it more difficult for people in restrictive housing to receive attention from mental health providers.</p>	<p>The proposed changes to § 006.04(A) requires inmates with a serious mental illness whose current level of care does not require residential treatment be seen for a one-on-one cell consult with a mental health provider every 7 days. The proposed changes to § 006.06 provides additional mental health contacts/assessments shall be conducted based on requests by staff, requests by the inmate, and individual treatment plans. NDCS finds these two provisions, taken together, address the issue of providing an inmate with the opportunity to meet with a mental health provider. The eliminated language is unnecessary and redundant considering an inmate with a serious mental illness is required to have a consult with a mental health provider at least once every 7 days and may request additional consultations/assessments. An inmate may also have additional consultations/assessments if determined necessary in the treatment plan.</p>
	<p>Section 006.07(A) – The use of a “behavior/programming plan” in any mission specific housing should not be removed because it supports the movement of an</p>	<p>All inmates in the AMHU or CCMHU will have individual treatment plans created collaboratively with his/her clinical staff which will include identification of needs</p>

	<p>inmate through custody levels and provides an obligation for custody and mental health to work together for positive outcomes with the inmate. As defined, the behavior plan provides a document for the inmate that identifies changes and opportunities for behavioral change.</p>	<p>and plans to address programming. Not every inmate assigned to the AMHU or CCMHU will require a behavioral/programming plan.</p>
	<p>Section 006.09 – The elimination of language from this section is concerning and confusing. It is unclear whether the AMHU and CCMHU take place of the omitted SMH, and, even if they are, monitoring and reviews have been eliminated.</p>	<p>Proposed changes to this language eliminate unnecessary directions to staff which are better suited for inclusion in agency-wide policies and facility procedures. These policies and procedures will be made available to Office of Public Counsel, the Inspector General for the Nebraska Correctional System, the Legislature upon request, and the public, absent a security risk pursuant to § 001.05.</p>
	<p>Section 008.02(A) and (C) – The citation to NDCS polices within the regulations is confusing and unclear. The term “Policy” is proposed to replace “Administrative Regulation.” NDCS could essentially change its regulations through changing the policy without promulgation.</p>	<p>These changes reflect updates to NDCS terminology. NDCS has updated the term “Administrative Regulation” to “Policy” in order to clarify between agency promulgated regulations and agency-wide policies. NDCS would not be able to change promulgated regulations through policy. NDCS would be required to develop specialized reentry plans and make formal referrals as provided in §§ 008.02(A) and (C) regardless of changes to the referenced policy.</p>
	<p>Section 008.03(C) – The “treatment-based” language should not be omitted. Some inmates with significant mental disorders that do not qualify as a serious mental illness will continue to be held in segregation. Inmates</p>	<p>Removal of this language would not result in inmates, who have “significant mental disorders” but do not meet the definition of “serious mental illness,” be offered treatment-based interventions where they</p>

	<p>with significant mental disorders, including those inmates with “cognitive disabilities,” who cannot be managed in general population should be offered treatment-based interventions where they are housed especially prior to discharge.</p>	<p>are housed prior to discharge. Mission-specific housing, which is listed in § 008.03(C), includes residential treatment and responses to cognitive disabilities under proposed § 002.08.</p>
	<p>Section 010.01 to 010.08 – It is understood that the elimination of language from this section was intended to avoid duplication with statutory language. However, the report of the number of inmates that were in restrictive housing at any point 60 days or less prior to release or parole or the general public is not in either cited statute.</p>	<p>Requirements of the annual report are provided in Neb. Rev. Stat. § 83-4,114 and § 83-173.02. NDCS agrees the statutes do not require the report contain the number of inmates in restrictive housing at any point 60 days or less prior to release or parole to the general public. Thus, the language is not required.</p>
<p>Carol Dennison/MaryLee G. Moulton/Toni Monette League of Women Voters of Nebraska</p>	<p>It is hard to determine how NDCS's definition of Restrictive Housing differs from the National Commission on Correctional Health Care (NCCHC)'s definition of solitary confinement.</p>	<p>The applicable definitions of restrictive housing and solitary confinement for the proposed changes are provided under Neb. Rev. Stat. §83-170. The terms have distinct meanings under Nebraska law. Neb. Rev. Stat. § 83-170(13) defines 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. In contrast, Neb. Rev. Stat. § 83-170(14) defines solitary confinement as the status of confinement of an inmate in an individual cell having solid, soundproof doors which deprive the inmate of all visual and auditory contact with other persons. Moreover, no inmate shall be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility pursuant to Neb. Rev. Stat. § 83-173.03.</p>

	<p>What degree of human interaction and amount of programming will an individual experience in the range of restrictive housing options?</p>	<p>The degree of human interaction and amount of programming that an individual experiences in the range of restrictive housing is determined on a case-by-case basis, balancing the interaction and programming needs of the individual with safety and security needs. Under § 004.06 of the proposed changes, NDCS is required to create program delivery formats for high security environments to allow program participation while ensuring the safety of participants and staff. This shall include the development of congregate classroom space where possible and use of resources to reduce risk and address needs. Under § 004.07 of the proposed changes, risk assessments and the results of mental health testing, when appropriate, shall be used to guide coordinated interventions, assignments to programming, and other applicable resources.</p>
	<p>We are concerned about the effects of longer-term restrictive housing on persons younger than the age of 21. Consideration should be given during the assessment process for individuals younger than 21 for the length of time in immediate segregation and restrictive housing.</p>	<p>Neb. Rev. Stat. § 43-245 defines juvenile as any person under the age of eighteen. Neb. Rev. Stat. § 83-4,134.01 and Neb. Rev. Stat. § 83-4,134.02 govern the placement of juveniles in room confinement in NDCS facilities and requires certain considerations be given prior to placement. Among other requirements, these statutes provide room confinement of a juvenile can only be used when less-restrictive alternatives have been exhausted and the juvenile poses an immediate/substantial risk of harm to self or others; a juvenile must</p>

		<p>be immediately released from room confinement when the risk of harm has been resolved; and a juvenile can only be held in room confinement for a period that does not compromise or harm his/her mental or physical health. As to inmates between the ages of 19 and 21, no inmate shall be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility pursuant to Neb. Rev. Stat. § 83-173.03.</p>
	<p>Are inmates evaluated at intake or during their incarceration to determine their need for mental health services?</p>	<p>Inmates are evaluated at intake and throughout their incarceration to determine their need for mental health services. Pursuant to Title 72 Neb. Admin. Code, ch. 4, § 002, all inmates receive a full mental health screening within the first two weeks of intake to determine if they are mentally ill as defined in Neb. Rev. Stat. § 71-907; and mental health screening, evaluation and treatment recommendations may be made at any point during an inmate's incarceration and/or amended, if clinically appropriate. In addition, all inmates in restrictive housing shall receive a mental health screening within 14 days of placement under §006.03.</p>
	<p>Could early diagnosis and appropriate mental health interventions reduce the needs for more restrictive housing?</p>	<p>Yes, therefore NDCS conducts evaluations at intake and throughout incarceration.</p>
	<p>How often are those who are mentally ill assigned to restrictive housing while on psychotropic medications?</p>	<p>Neb. Rev. Stat. § 83-173.03 does not require NDCS track such information.</p>

	<p>A prisoner's designated family member should be included in mental disorder treatment meetings to develop and maintain connections with family and community to aid in transition.</p>	<p>Neb. Rev. Stat. § 83-173.03 does not require a prisoner's designated family member be included in mental disorder treatment meetings. NDCS retains the authority to withhold mental health and psychological records of the inmate when appropriate under Neb. Rev. Stat. § 83-178. Under NDCS Policy 115.03, access to an inmate's mental health or psychiatric records may be denied if any treating physician, psychologist, or mental health practitioner determines in his/her professional opinion that the release of the records would not be in the best interests of the patient. Moreover, NDCS would not release an inmate's mental health records or information to a family member without the express written consent of the inmate.</p>
	<p>Grouping those with developmental disabilities together with those with mental health diagnoses can emphasize medical over educational methods of treatment for those with developmental needs.</p>	<p>NDCS does not emphasize medical over educational methods of treatment for those with developmental needs. Inmates with developmental disabilities and those diagnosed with a serious mental illness are grouped together only to the extent such inmates are members of a vulnerable population as defined by Neb. Rev. Stat. § 83-173.03.</p>
	<p>How is the 24 hours out of cell time per week under Neb. Rev. Stat. § 83-170 allotted?</p>	<p>The 24 hours sets the bar for defining restrictive housing – it is not prescriptive. If a person does not get at least 24 hours of out of cell time per week, their conditions of confinement will be managed under the promulgated rules.</p>

<p>Terri Crawford League of Women Voters of Greater Omaha</p>	<p>Research on solitary confinement has shown numerous physiological and psychological reactions are suffered by inmates after only seven days in solitary confinement.</p>	<p>NDCS will not place any inmate in solitary confinement as required under Neb. Rev. Stat. § 83-4,114.</p>
<p></p>	<p>Alternatives to restrictive housing should be considered in every case possible, such as short-term cell restrictions, loss of privileges, etc.</p>	<p>No inmate will be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility as required by Neb. Rev. Stat. § 83-173.03.</p>
<p>Spike Eickholt ACLU Nebraska</p>	<p>The proposed changes to the regulations overall fail to fully effectuate legislative intent in Nebraska.</p>	<p>The proposed changes are consistent with Neb. Rev. Stat. § 83-173.03. The changes establish levels of restrictive housing as may be necessary to administer the correctional system; 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 determination; and 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.</p>
<p></p>	<p>We are concerned with the development of mission-specific housing, such as Secure Mental Health Units, that may become a type of restrictive housing/solitary confinement for the mentally ill, in contravention with recent legislative reforms.</p>	<p>The recent legislative reforms provide that nothing in Neb. Rev. Stat. § 83-173.03 prohibits NDCS from developing secure mental health housing to serve the needs of inmates with serious mental illnesses.</p>
<p></p>	<p>Nebraska seems on a course to continue solitary confinement for those incarcerated with severe mental illness under simply another label without meaningful reform that ends solitary confinement for vulnerable</p>	<p>NDCS will not place any inmate in solitary confinement pursuant to Neb. Rev. Stat. § 83-4,114. The terms restrictive housing and solitary confinement have separate, distinct meanings under Nebraska law. Neb. Rev.</p>

	<p>populations required by state statute.</p>	<p>Stat. § 83-170(13) defines 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. In contrast, Neb. Rev. Stat. § 83-170(14) defines solitary confinement as the status of confinement of an inmate in an individual cell having solid, soundproof doors which deprive the inmate of all visual and auditory contact with other persons.</p>
	<p>We support efforts to improve access to mental health treatment but are trepidatious about the new categories of Acute Mental Health Unit (AMHU) at 72 NAC 002.01 and Chronic Care Mental Health Unit (CCMHU) at 72 NAC 002.04. We are concerned these designations have the potential to allow vulnerable populations to be placed in an alternative type of longer-term restrictive housing.</p>	<p>NDCS has the authority to create the AMHU and CCMHU under Neb. Rev. Stat. § 83-173.03(3). NDCS is not prohibited from developing secure mental health housing to serve the needs of inmates with serious mental illness under that statutory subsection.</p>
	<p>There seems to be a continued use of restrictive housing for members of vulnerable populations.</p>	<p>Nothing in Neb. Rev. Stat. § 83-173.03 prohibits NDCS from developing secure mental health housing to serve the needs of inmates who are members of a vulnerable population. Vulnerable population means an inmate who is eighteen years of age or younger, pregnant, or diagnosed with a serious mental illness as defined in section 44-792, a developmental disability as defined in section 71-1107, or a traumatic brain injury as defined in section 79-1118.01. Neb. Rev. Stat. § 83-173.03(4).</p>

	The elimination of § 006.09(A) through § 006.09(E) does not provide clearly delineated regulatory oversight.	The removed language constitutes staff direction more appropriately included in agency policy or facility procedures rather than promulgated regulations.
	NDCS should limit anytime an individual is in restrictive housing to the bare minimum.	No inmate will be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility as required by Neb. Rev. Stat. § 83-173.03.
	There is nothing wrong with duplicative language in regulation and statute. The NDCS employees will look to regulation and not necessarily look to statute.	Duplicative language is unnecessary and burdensome. NDCS teammates are capable of consulting statutes and regulations when performing their assigned duties. NDCS Policy cites both to statute and regulation.
	The data collection and reporting language for the use of restrictive housing and the annual report under § 010.01 through § 010.09 should not be eliminated.	The requirements of the annual report are provided in Neb. Rev. Stat. § 83-4,114 and § 83-173.02 with the exception of § 010.08.
Doug Koeberrick State of Nebraska - Office of Inspector General of Corrections	Section 002.02 – Expand the definition of “Behavior/Programming Plan” by adding “As much as possible, programming shall be focused on the individual needs of the inmate in the restrictive housing setting. Having a program that is focused on the specific needs of the individual will allow them to reenter the general population more quickly and more successfully, as well as stay in the general population in the future.” This will establish an emphasis on specific and individualized programming for inmates instead of one size fits all programming.	The suggested additional language does not constitute a definition of the term “Behavior/Programming Plan.” Moreover, NDCS provides specific and individualized programming for inmates. NDCS does not provide one size fits all programming for inmates.

	<p>Section 002.03 – Amend the definition of the “Central Office Multidisciplinary Review Team” by doing the following: Do not include “with input” but rather outline the specific member of the team, including keeping the Behavioral Health Administrator and adding “or their designee.” Language should also be added to make it clear that it is the intent of the Department that this review team have a consistent makeup of its members so that there is consistency when it comes to decision making.</p>	<p>NDCS elects to include the “with input” language in the definition and not list specific members because NDCS requires the flexibility to seek input from other experts in the agency and add members at the discretion of the Chair or the Director. The proposed language regarding consistent makeup of the members does not constitute a definition of “Central Office Multidisciplinary Team.”</p>
	<p>Section 003.03(D) – add language similar to this “in the last X days.” X could be 90, 180 or another number chosen by NDCS. This would actually define active since currently there is no clear definition of active.</p>	<p>NDCS requires the flexibility in determining “active” membership without arbitrary limitation to a specified number of days.</p>
	<p>Section 004.03(B)(v) – add the following: “As part of the Director’s review, after an inmate has been in restrictive housing for 365 consecutive days, 730 consecutive days, and 1095 consecutive days, the Director shall meet with the inmate either in person or via video teleconferencing prior to approving the recommendation of a continued placement in restrictive housing by the MDRT.”</p>	<p>NDCS finds the MDRT and Director review set forth in the proposed changes at § 004.03(B)(v) sufficiently addresses review of longer-term restrictive housing.</p>
	<p>Section 004.03(B)(vii) – strike “The Inspector General may provide this information to other appropriate sources as requested.” This is not needed. Also, the current regulation uses “will” and not “may” but “will” is included in the document.</p>	<p>NDCS agrees to strike the sentence. NDCS does not find the removal of the sentence to be a substantial change.</p>

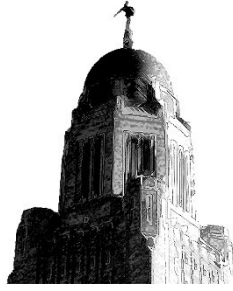
	<p>Language should be included in the rules to indicate that peer mentoring is a high priority for the Department as far as its use in the restrictive housing units. This would include defining the peer mentor program and the training requirements of peer mentors, as well as describing the intent of its use throughout the system.</p>	<p>The IPS program continues. The language regarding the program was removed from the proposed changes as unnecessary.</p>
	<p>Section 004.04(B) – add the following: “Failure to adhere to these timelines will result in the removal of the inmate from immediate segregation.” This would create an incentive to follow the timelines in this section.</p>	<p>NDCS declines to insert the suggested language. The timelines are required, and no additional incentive is necessary.</p>
	<p>Section 004.04(C) – This is not an accurate revision of the current regulations so that is confusing and should be changed. The following language should be added: “The MDRT shall vote on each decision and the vote of each member shall be part of the restrictive housing record of an inmate.” This would provide an increased level of transparency and accountability.</p>	<p>NDCS does not understand the comment regarding how the revision is inaccurate. NDCS declines to insert the suggested language as no vote is required to be recorded. The MDRT is not designed to be a vote taking body. Inmates may appeal any decision by the MDRT to the Director.</p>
<p>John Elise, PhD</p>	<p>The changes seem to be meant to weaken the code and reduce transparency.</p>	<p>The changes do not weaken the code or reduce transparency. The changes remove unnecessary language, update terminology and comply with Neb. Rev. Stat. § 83-173.03.</p>
	<p>Many of the reports and requirements have been changed from mandates to “may” statements, especially the sharing of reports with the Deputy Ombudsman for Corrections, which has been eliminated.</p>	<p>The only requirement in the proposed regulations changed from a “shall” to a “may” is found in § 003.06 regarding mission specific housing. That change was made to provide NDCS greater flexibility in housing inmates who are members of a</p>

			vulnerable population, in a protective custody status, or have other special needs. The changes made to the requirements set forth in § 010 remain requirements under Neb. Rev. Stat. § 83-173.02 with the exception of the report of the number of inmates in restrictive housing at any point 60 days or less prior to release or parole or the general public. That particular requirement is not mandatory by statute. Moreover, NDCS is required to share all policies and procedures related to restrictive housing with the Office of Public Counsel and the Inspector General for the Nebraska Correctional System under § 001.05.
	The composition of the MDRT has been significantly changed, including the elimination of the research division.	The composition of the MDRT has not been significantly changed. As set forth in § 002.03, the changes will provide necessary flexibility as to whom from respective areas of NDCS may serve as team members. The research division has not been eliminated.	
	The prior § 002.05, which states that all inmate housing allow out-of-cell time without the use of constraints, a minimum of 6 hours out-of-cell time required per day, and regular access to programming areas outside the living unit, has been eliminated.	NDCS has reinserted the definition of general population.	
	The prior definition of mental illness from § 002.08 has been eliminated.	The applicable definition for mental illness under Neb. Rev. Stat. § 83-173.03 is serious mental illness as defined in Neb. Rev. Stat. § 44-792. The applicable definition for serious mental illness is provided in the proposed changes at § 002.13.	

	The Peer Mentoring Pilot program has been eliminated.	The IPS program continues. The language regarding the program was removed from the proposed changes as unnecessary.
	The prior § 004.08(B)(v) regarding veterans housing has been eliminated.	Housing for inmates who are veterans has not been eliminated. Section 004.08(B) is not intended to provide an all-inclusive list of all potential mission specific housing. Section 004.08(B) merely provides examples of certain housing units which may be included, but the types of mission housing units which might be available are not limited to the examples provided. Not every inmate will require a specialized unit.
	The prior § 006.09(A) regarding monitoring and/or physical observation has been eliminated. The section should be kept.	The removed language constitutes staff direction more appropriately included in agency policy or facility procedures rather than promulgated regulations.
	Regular review of each inmate's assignment to restrictive housing from prior §§ 006.09(C) and (D) has been eliminated.	All assignments to longer-term restrictive housing are regularly reviewed at any point in time and at least every 90 days by the MDRT pursuant to § 004.03(B)(ii) through § 004.03(B) (vi).
	Reentry planning from prior §§ 008.01(B), (C), and (C)(i) has been significantly weakened.	Reentry planning remains paramount to the mission of NDCS. The regulations now simply refer to the statutes which provide reentry planning protocols.
	The elimination of the specific minimal requirements of the annual report on the use of restrictive housing from prior §§ 010.01-09 is offensive.	The requirements of the annual report are provided in Neb. Rev. Stat. § 83-4, 114 and § 83-173.02.

DOUG KOEBERNICK
Inspector General

ZACH PLUHACEK
Assistant Inspector General



STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL OF CORRECTIONS
State Capitol, P.O. Box 94604
Lincoln, Nebraska 68509-4604

November 17, 2021

Ryan Gilbride
NDCS
P.O. Box 94661
Lincoln, NE 68509

Dear Mr. Gilbride:

Attached are the comments from the Office of Inspector General of Corrections for the proposed changes to the Title 72 Restrictive Housing rules and regulations. Many of these suggestions have been provided to the Department in the past starting in 2018 when input was sought from my office by Director Frakes. Please contact me should you have any questions regarding these comments.

Sincerely,

Doug Koebernick

OIG COMMENTS FOR THE PUBLIC HEARING ON THE RESTRICTIVE HOUSING RULES AND REGULATIONS CHANGES

1. Expand the definition of “Behavior/Programming Plan” in 002.02 on page 1 by adding: “As much as possible, programming shall be focused on the individual needs of the inmate in the restrictive housing setting. Having a program that is focused on the specific needs of that individual will allow them to reenter the general population more quickly and more successfully, as well as stay in the general population in the future.” This would establish an emphasis on specific and individualized programming for inmates instead of one size fits all programming.
2. Amend the definition of the “Central Office Multidisciplinary Review Team” in 002.03 on page 1 by doing the following: Do not include “with input” but rather outline the specific members of the team, including keeping the Behavioral Health Administrator and adding “or their designee.” Language should also be added to make it clear that it is the intent of the Department that this review team have a consistent makeup of its members so that there is consistency when it comes to decision making.
3. In 003.03(D) on page 4 add language similar to this: “in the last X days.” X could be 90, 180 or another number chosen by NDCS. This would actually define active since currently there is no clear definition of active.
4. In 004.03(B)(v) on page 5 add the following: “As part of the Director's review, after an inmate has been in restrictive housing for 365 consecutive days, 730 consecutive days, and 1095 consecutive days, the Director shall meet with the inmate either in person or via video conferencing prior to approving the recommendation of a continued placement in restrictive housing by the MDRT.”
5. In 004.03(B)(vii) on page 5 strike “The Inspector General may provide this information to other appropriate sources as requested.” This is not needed. Also, the current regulation uses “will” and not “may” but “will” is not included in this document.
6. On page 6 all information on the peer mentor pilot is stricken. However, language should be included in the rules to indicate that peer mentoring is a high priority for the Department as far as its use in the restrictive housing units. This would include defining the peer mentor program and the training requirements of peer mentors, as well as describing the intent of its use throughout the system.
7. In 004.04(B) on page 6 add the following: “Failure to adhere to these timelines will result in the removal of the inmate from immediate segregation.” This would create an incentive to follow the timelines found in this section.
8. 004.04(C) on page 6 is not an accurate revision of the current regulations so that is confusing and should be changed. Also, as part of that I would recommend that language be added that says “The MDRT shall vote on each decision and the vote of each member shall be part of the restrictive housing record of an inmate.” This would provide an increased level of transparency and accountability. Currently no vote is taken or accounted for and by having one the Director and others would understand whether or not there was a lack of consensus or whether there was consensus. In addition, I would

recommend not to include “All attendees must be approved by the chairperson” because this could take away the independence of the specific members of the review team.

9. In 004.08(B) on page 7 I would recommend taking out “whenever possible” and would also point out that by deleting the previous definition of “general population” this makes it less clear how these units should be operating.
10. In 010 “Data Collection and Reporting” on page 12, I would recommend keeping the existing language so that is clear to the public what is being provided in the annual report. I would also recommend adding other reporting requirements to this section that have been discussed and agreed to by NDCS in previous LTRH work group meetings, including data and information on the mission, programming data, staffing data, staffing requirements, data on TCP and closed custody units, etc. These can be found in the past LTRH work group meeting minutes and would provide for additional sharing of key information regarding the use of restrictive housing by NDCS.
11. I would also recommend that the regulation also include the following: "If a living unit within a correctional facility does not allow inmates to be out of their cell for an average exceeding 3.4 hours per day over a seven day period than that living unit shall be designated as meeting the definition of a restrictive housing. Once that designation is made the living unit shall follow all regulations related to restrictive housing and any data that is collected for other restrictive housing units will also be collected for this living unit. Once a living unit that receives this designation allows inmates to be out of their cell for an average exceeding 3.4 hours over a seven day period the designation shall be removed. The applying and removing of this designation shall be reported to the Public Counsel and the Inspector General for Corrections."
12. I would also recommend adding language that restricts the use of double bunking in a restrictive housing setting when the use of double bunking violates any American Correctional Association standards, such as is currently the case at the Nebraska State Penitentiary.

DOUG KOEBERNICK
Inspector General

ZACH PLUHACEK
Assistant Inspector General



STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL OF CORRECTIONS
State Capitol, P.O. Box 94604
Lincoln, Nebraska 68509-4604

Memorandum

To: Judiciary Committee
From: Doug Koebernick, Inspector General
Re: Transitional Housing
Date: July 5, 2022

I wanted to provide you all with some information and updates about the status of transitional housing for people being released from the correctional system. My office has investigated a handful of incidents and complaints related to these facilities over the past few years, and we are aware some members of the Legislature and the public have questions and/or concerns about transitional housing, as well.

Background Information

As you may know, many individuals have difficulty obtaining suitable housing when they leave prison. For some it is an issue of affordability or access due to their criminal history. For others it is related to Parole or Probation wanting them to live in a more controlled environment rather than return to places where they were previously involved in criminal activity.

Transitional houses, halfway houses and other related facilities are operated by private nonprofits or for-profit businesses, and vary widely in terms of size, conditions, and the level of services they provide. Some are hotel or apartment-style buildings with dozens of rooms; others are houses with a handful of bedrooms that might sleep multiple people in each room. Some offer virtually no programming or supervision, while others have round-the-clock staffing with intensive clinical and nonclinical programs. For many people on parole or probation, it is a condition of their release or the terms of their supervision that they reside in a specific home and comply with the rules of the facility.

NDCS reentry staff, Probation and Parole help individuals identify and apply for homes that might fit their needs or be willing to accept them, but it is ultimately up to the transitional houses themselves to decide which individuals they accept. (Many facilities refuse to take people with certain convictions, e.g. sex offenses, or tend to focus on those with specific needs. Waitlists are also a consideration for some facilities.)

The vast majority of these facilities are not under contract with the state, but receive payment on a per-diem basis in the form of “vouchers” paid by Parole, Probation, and in some cases the Department of Corrections through its Vocational and Life Skills Program (VLS) which recently utilized extra or unused state-appropriated VLS dollars for housing vouchers. Rates vary, but in some cases are as high as \$90 per day/\$2,700 per month.

General Concerns

There is no central regulatory or oversight authority for these homes. Many house a mix of parole and probation clients, as well as others, including people involved in the federal correctional system or self-payers who may not be under any community supervision. This has created somewhat of a patchwork of expectations as far as basic standards and conditions, programming and reimbursement rates, and communication.

Relatedly, the OIG has been unable to obtain a complete and accurate count of these facilities across the state. We estimate the figure to be between 100 to 200, possibly more. Parole, Probation and NDCS lists appeared to be missing at least a small number of the facilities used by these agencies. Similarly, we are unaware of a comprehensive accounting/breakdown of the dollars paid to these facilities by state agencies.

The OIG’s oversight responsibilities and authority related to these homes is also unclear. While housing paid for by NDCS and likely Parole appear to fall within our jurisdiction, the OIG does not have oversight over Probation, and our authority to physically inspect these facilities is not clearly established in statute. Despite this and the office’s limited resources, the OIG has investigated a handful of serious incidents and complaints from these facilities.

OIG Investigations

The following cases provide examples of the kinds of investigations my office has conducted related to transitional housing.

Case #1: In April 2021, as one of these facilities in Lincoln was being evacuated due to a fire alarm, staff found a man who was on parole barricaded inside his room. The staff person was able to see inside, and found the room in disarray and the man covered in blood with deep cuts

on his arm. The Lincoln Police Department and Lincoln Fire and Rescue were called. The man agreed to leave his room, and was taken to the hospital and placed in emergency protective custody.

The OIG later learned that this man had been using methamphetamine and was locked inside his room for four or five days, unbeknownst to staff at the facility or his parole officer. During that time, he became convinced a motorcycle gang was coming to kill him. He told the OIG he tried to throw a block through a window to escape before attempting to take his own life by cutting himself with a knife.

In conversations with facility management and parole officials following this incident, it became clear that there was a lack of understanding about the demands and expectations related to running a transitional housing facility. At one point, months after this incident, Parole abruptly stopped sending people to the facility. Facility management made several attempts to work with Parole to meet their expectations, and eventually negotiated an agreement that would allow them to resume housing parole clients.

The OIG has heard from numerous transitional housing facilities who have had similar experiences in recent years. An incident takes place or a complaint is made, and the facility is suddenly suspended from receiving new clients for a period of months. In some cases, the decision to suspend placements was made based on unfounded or unsubstantiated information. This causes a significant disruption to the facilities, but is essentially the only option available to the placing agency as it investigates.

Case #2: In April 2022, the OIG visited a different transitional housing facility in Lincoln after receiving a complaint from a resident about conditions and lack of supervision. The complainant alleged the house was infested with bed bugs; that it had virtually none of the supervision, amenities or supports outlined in the home agreement; and that he witnessed a fellow resident openly drinking whiskey inside on the night the complainant arrived to stay there.

The facility appeared clean during an unannounced visit by the OIG; however, the only person supervising the house was a man who had recently been released from parole himself. We learned that the house was zoned as a single family dwelling despite having as many as 14 residents, and that those men were all expected to share 1 and 1/2 bathrooms. The OIG contacted the city's Building & Safety Department due to concerns that this was not compliant with city code. When the OIG followed up a few weeks later, we learned the facility had applied for "reasonable accommodation" shortly after our complaint was filed, preventing the city from taking action against them.

The OIG is aware that state funds (“vouchers”) are being used to pay for many or most of the residents to live there. It is unclear to us whether local officials are aware of this arrangement, based on Lincoln Journal Star coverage of a recent Lincoln-Lancaster County Planning Commission meeting regarding the “reasonable accommodation” request. The OIG was not present at the meeting, but the article seems to imply that the residents pay their own rent and are responsible for supervising themselves. My office recently tried to contact management for the home but was unable to leave a message due to the voicemail box being full.

Findings and Recommendations

A lack of consistent regulation and oversight has created accountability and communication gaps with these transitional housing facilities. While their operators are generally well-meaning and provide an essential service, the nature of these operations and the significant taxpayer dollars being spent merits better controls and supports.

Our specific concerns include:

- A lack of full accounting for the Legislature and taxpayers regarding the number and location of these houses and the dollars spent;
- A lack of consistent verification that these facilities maintain basic standards (health, safety, liability protections) as well as comply with state and local laws;
- Duplication of effort among various agencies in enforcing what standards do exist;
- A lack of verification that these facilities actually offer the conditions, programming and level of supervision they claim to provide; and
- An overall lack of accounting for the state’s current and projected transitional housing needs.

My office is happy to provide additional observations and examples about the operations of these facilities and their interactions with the state in order to support these conclusions. Normally these details would be included in a full investigative report by my office. Given our limited resources and the scope of our work, and out of respect for your time, I will just say that you are welcome to inquire further.

We believe legislation may be necessary to address many of these issues. Specifically, we recommend the following be considered:

- That the state create an independent clearinghouse for information related to verified transitional houses, including cost and usage data, and adherence to core standards;
- That this entity be tasked with improving communication and coordination among the various providers, state agencies and other entities with interests in transitional housing;
- That this entity provide or facilitate routine assessments of the conditions, supervision, amenities, and rehabilitative programs offered by these facilities; and

- That this entity provide an annual report to the Legislature summarizing this information and its activities.

Attached to this memo are two handouts. The first is a report completed by the Coordinated Re-Entry Initiative in April 2020 which reviewed transitional housing in Nebraska and identified key gaps and needs. The second is a recent article in the Lincoln Journal-Star regarding the transitional house in our second investigative example.

Again, should you have any questions, feel free to contact myself or Zach Pluhacek in our office.



**COORDINATED
RE-ENTRY INITIATIVE**
Unite and move forward.

April 1, 2020

NE Transitional Housing: Gaps and Needs Research Findings

Developed by:

Category One Consulting

Executive Summary

Introduction

The Coordinated Re-Entry Initiative is an initiative focused on building and supporting a coordinated state-wide response designed to better assist individuals in achieving stability after incarceration. In order to achieve this mission, the Coordinated Re-Entry Initiative identified six priority areas as the most critical to address based on impact and feasibility of implementation: system coordination, mental health & substance use, housing resources, pre-trial release, assessment usage, and employment resources. In order to make progress on these priority areas, the Coordinated Re-Entry Initiative established separate task forces that are responsible for driving progress for their priority area.

Research Overview

The Housing Resources Task Force sought research support in answering questions related to their first 2020 goal which states: *We will know all available transitional living opportunities, gaps for individuals exiting jails and prisons across the state of Nebraska, and quality of transitional living environments to determine current need.* Four core research questions were identified focusing on understanding what transitional housing options currently exist, what are the needs individuals have, where are there gaps, what programs lead to the greatest success.

Data Collection

Three main data collection methods were used. A housing audit consisting of gathering information directly from housing providers along with searching websites online; an analysis of archival data provided by releasing, monitoring, and other housing agencies; and a brief literature review spanning both academic and popular sources. Data was cataloged, themed, and analyzed using descriptive statistics and presented using data visualization when beneficial.

Timeline

A 13-week timeline was followed to plan, collect, analyze, and develop the final report in order to provide the Housing Resources Task Force the research results in a timely manner.

Summary of Findings

The findings cover all four research questions including what currently exists (170 housing providers), what the needs are (84% are high-risk individuals with high substance use needs), where there are gaps (individuals housed with programming are completing PRS at a lower rate than individuals housed without programming) and what programs lead to the greatest success (supportive housing, halfway houses, and peer-led groups showing promise).

Key Takeaways

Three key takeaways were identified including takeaways related to providers being in the right cities, additional programming being needed, and different housing options being needed to focus on different needs.

Recommendations

Based on the findings, the task force is recommended to partner with providers, seek input from individuals using transitional services, and continue to research best practice.

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Research Overview

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In order to support task force progress, Category One Consulting (C1C) partnered with the Housing Resources Task Force, which is focused on increasing access to safe, stable, and affordable housing—both transitional and longer-term housing, to conduct a small scale research study. The Housing Resources Task Force sought research support in answering questions related to their first 2020 goal which states: *We will know all available transitional living opportunities, gaps for individuals exiting jails and prisons across the state of Nebraska, and quality of transitional living environments to determine current need.* Details regarding this research study and the process that was followed are included below.

Research Questions

This research project aimed to address four main research questions, which are listed below. These questions were generated by the Housing Resources Task Force during an initial research discovery session.

- What are the relevant transitional housing resources available across the state of Nebraska?
 - What types of services or assistance do the different housing resources provide?
 - What are the key characteristics of the transitional housing resources (e.g., location, number of beds, people served, duration of stay)?
- What are the housing needs for individuals re-entering the community after incarceration?
- Where are there gaps in housing services based on what is available and the largest needs?
- Are there certain characteristics or services of transitional housing programs that lead to greater success and reduced recidivism?

Data Collection

Data was collected from three main sources, including archival data, a housing audit, and a brief review of relevant literature. Each data collection source is described below.

Archival Data

- Archival data from releasing agencies (including the Nebraska Department of Correctional Services (NDCS), Douglas County Jail, Lancaster County Jail, and Sarpy County Jail), monitoring agencies (including the Administrative Office of Probation and the Administrative Office of Parole), and the Metro Area Continuum of Care for the Homeless (MACCH) was collected and analyzed to better understand the need for transitional housing.
- Due to the timeframe and scope of this research, only existing data that is readily available and able to be provided within the specified timeframe was assessed. As a result, data requested from the Center for Children, Families, and the Law was unable to be provided due to data system issues during the allotted timeframe. In addition, data from Douglas County Jail and the Administrative Office of Parole was limited.
- Archival data was analyzed primarily through descriptive statistics including frequencies, means, and standard deviations. Data visualizations were developed where possible to enhance the consumability of the results.

Housing Audit

- An audit of transitional housing options in Nebraska was conducted in order to document transitional housing providers along with their contact information and facility details including location, bed capacity, eligibility requirements, exclusion criteria, and available services.
- A list of housing providers and their affiliated contact information was provided to C1C by task force members. C1C used the list to gather information directly from providers. C1C also conducted an online search to gather additional information using Situation Analysis findings, housing provider names provided by the Administrative Office of Parole, and online resources listing transitional housing providers in Nebraska as additional resources.
- A spreadsheet was filled out with as many details as could be found online for the transitional housing providers identified through this search. Information regarding the location, number of beds, duration of stay, and services provided was documented and cataloged in the spreadsheet. Data visualizations were developed when beneficial.

Literature Review

- A brief literature review spanning both academic and popular media sources was also conducted to better understand transitional housing needs for individuals re-entering the community after release.
- The literature review was used to gather supplemental information not gained through the other data sources regarding the average need for transitional housing and beneficial services.
- The supplemental literature review was conducted to identify the average number of individuals who need transitional housing services upon re-entry, the average length of stay in transitional housing, and the types of services typically offered to increase success.

Timeline

A 13-week timeline was followed to complete the study. The timeline for each step of the research process is depicted below.

Stage	1/10	1/17	1/24	1/31	2/7	2/14	2/21	2/28	3/6	3/13	3/20	3/27	4/3
Complete Discovery	X												
Develop Research Plan		X	X	X									
Conduct Data Discovery					X								
Develop Data Request					X	X							
Submit Data Request						X							
Conduct Housing Audit						X	X	X					
Analyze Data									X	X			
Review Literature									X	X			
Create Final Report											X	X	
Share Results													X

Research Findings

The findings for the research study are included below. All findings are organized by research question, with all relevant data sources included below each question.

Research Question 1: Transitional Housing Availability

This section addresses the first research question identified by the Housing Resources Task Force, along with two sub-questions, which are all listed below.

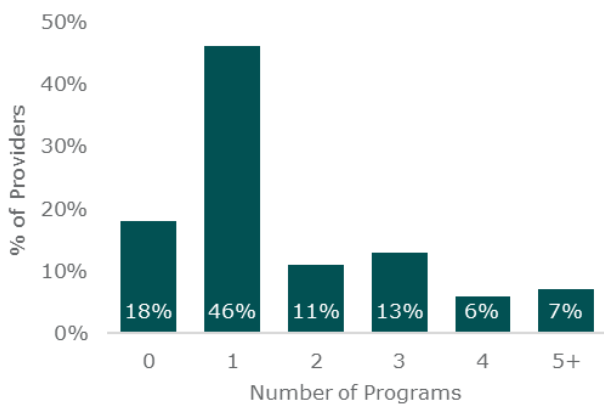
- What are the relevant transitional housing resources available across the state of Nebraska?
 - What types of services or assistance do the different housing resources provide?
 - What are the key characteristics of the transitional housing resources (e.g., location, number of beds, people served, duration of stay)?

This question was primarily answered through the information gained during the housing audit, which involved contacting transitional housing providers whose contact information was provided by task force members using a list of transitional housing providers that the Administrative Office of Parole shared, and conducting additional research online.

Through these methods, information was collected on a total of **170 transitional housing providers**. An additional 35 housing providers were named; however, two are now closed and the remaining 33 could not be found online. While all of the housing providers that were found provide some form of transitional housing services, not all identified housing providers matched the definition used by this task force for transitional housing, which is *“A program designed to provide safe and secure housing and appropriate supportive services to facilitate movement to independent or permanent supported housing. The housing is short-term, up to 24-months. In addition to providing safe housing for those in need, other services/programming and accountability are provided to help participants become self-sufficient.”*

Based on the information that could be found through this research, approximately 82% of the housing providers offered at least one service that could benefit an individual transitioning back into the community after release. The majority of these single-service housing providers provide peer support for substance use. The number of providers quickly drops to 36% when looking at housing providers with two or more identified services. Details regarding the number of programs offered and the type of programming offered are depicted in the figures below.

Number of Programs Offered



Type of Programming Offered

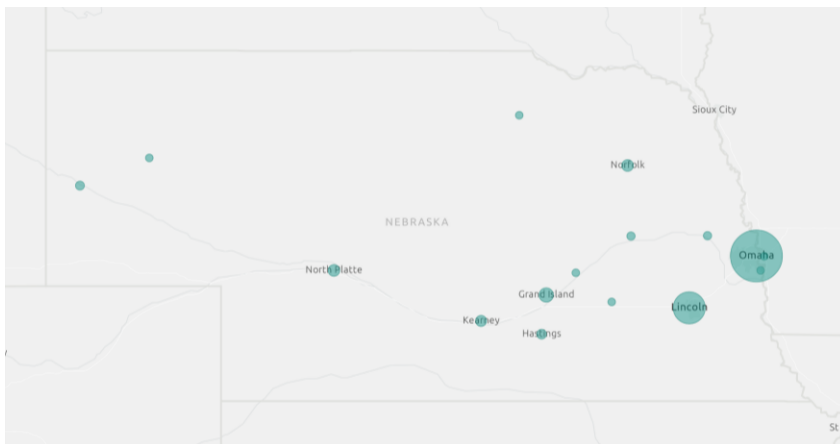
Program Type	%	Program Type	%
Substance Use	62%	Health Care Assistance	6%
Mental Health	21%	Basic Needs	5%
Employment	17%	Religious/Spiritual	5%
Case Management	13%	Anger Management	4%
Life Skills	12%	Parenting/Family	4%
Housing	9%	Financial Assistance	3%
Budgeting	9%	Transportation	3%

It is important to note that these results are solely based on what was shared by the housing providers themselves or what could be found online. Therefore, some providers may offer more programming and additional types of programming than what is shown in this report.

Results show that programming and services related to substance use was the most common type of programming available with 62% of housing providers offering some sort of substance use services. This was followed by services related to mental health, employment, case management, and life skills making up the top five most common types of programming available.

Housing providers identified through the housing audit cover 16 cities across Nebraska. In addition to identifying location, data regarding bed capacity was also gathered when available. The map below shows where the housing providers are located, with the size of the circle corresponding to the number of housing providers in that city. The corresponding table lists the number of providers that were identified in each city, along with the total reported bed capacity. Since bed capacity could not be found for all providers, the third column indicates the percentage of providers the bed capacity is based on (e.g., only 56% of Omaha providers reported their bed capacity, suggesting that the actual bed capacity may be close to double the number reported). Given these limitations, the total bed capacity should be interpreted carefully.

Map of Housing Providers



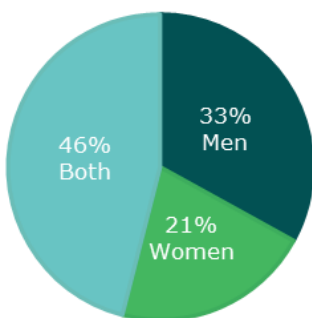
Bed Capacity by City

Location	# of Providers	Total Bed Capacity	% Reporting
Omaha	86	682	56%
Lincoln	38	387	50%
Grand Island	10	117	60%
North Platte	7	98	86%
Kearney	6	18	33%
Norfolk	7	56	57%
Hastings	4	33	25%
Fremont	3	67	100%
Bellevue	1	16	100%

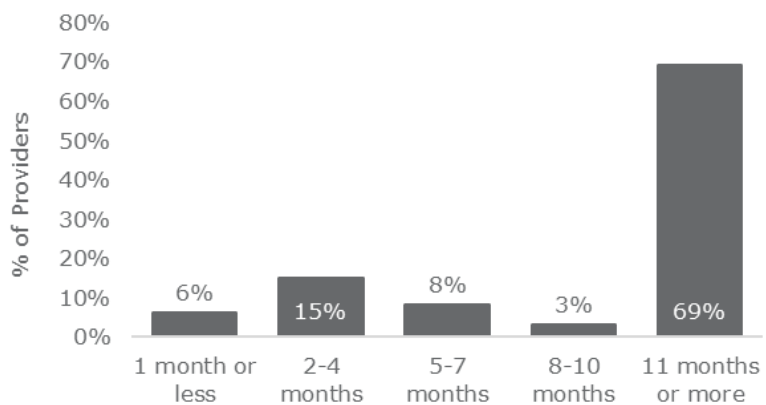
Note: Seven cities did not have any reported bed capacity; therefore, the table only shows those where bed capacity was noted. Cities not listed (followed by number of identified providers) are Scottsbluff (3), Columbus (2), Alliance (1), Central City (1), Council Bluffs (1), O’Neill (1), York (1).

Nearly half of the providers that were identified serve both men and women, with one-third serving only men, and around one-fifth serving only women. The duration of stay often varies based on individual need, however, the graph below depicts the maximum duration of stay provided.

Who They Serve



Duration of Stay



Questions were also asked to identify meals, security features, and exclusion criteria. For the providers that shared data related to meals, only 30% reported providing meals while 70% indicated that meals were not provided. Not enough data were provided or could not be found regarding security features and exclusion criteria for the majority of providers. For the 19% that did share their exclusion criteria, the majority were related to the exclusion of individuals on the sex offender registry (21 providers indicating this exclusion). In addition, six providers indicated they do not accept active gang members and two providers reported not accepting individuals with a history of arson or a violent offense.

Research Question 2: Housing Needs

This section addresses the second research question identified by the Housing Resources Task Force, which is listed below.

- What are the housing needs for individuals re-entering the community after incarceration?

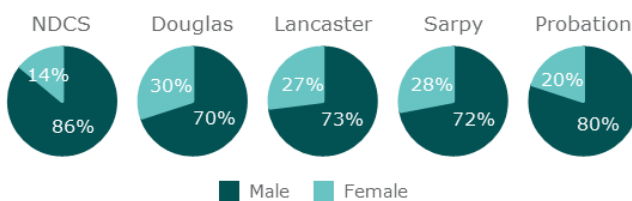
This question was primarily answered through archival data collected from releasing, monitoring, and other housing related agencies. Data from the following agencies are included in this section: NDCS, Douglas County Jail, Lancaster County Jail, Sarpy County Jail, the Administrative Office of Probation, and MACCH. The Administrative Office of Parole was only able to provide data relating to the transitional housing providers they use due to the research timeline. Agencies provided data regarding all released individuals for 2017-2019. All data insights provided are based on a combination of all three years, except for the number of individuals released in 2019.

As these numbers show, there are a lot of individuals being released each year who could need transitional housing services. Some demographic data is provided below. **The average age of individuals being released across all agencies is 32-37 years old**, with individuals being released from the jails (32-34 years old) being on the lower end of the age range compared to individuals being released from NDCS or serving on probation (36-37 years old).

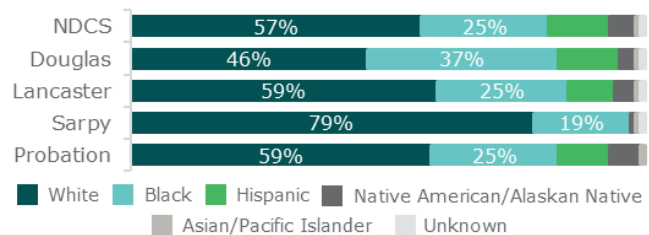
Number of Individuals Released in 2019

NDCS	Douglas	Lancaster	Sarpy
2,531	20,460	9,496	3,025

Gender



Race



While numbers for individuals released are high, the average length of stay for the jails is 20.5 days (as reported by Sarpy and Lancaster County Jails) with a median of just two days. This suggests that approximately 50% of individuals were incarcerated for two days or less, which may decrease their need for transitional housing. However, there may still be cases of homelessness or housing instability among individuals with shorter stays, so housing support may still be needed.

NDCS Release Relationship Reported

Unknown	Family	Transitional Housing	Self	Friend or Significant Other
52%	19%	19%	5%	4%

According to NDCS records, nearly 20% of individuals releasing from NDCS facilities release to a transitional housing facility; however, since 52% are classified as “unknown” it is possible there could be more individuals entering into or needing transitional housing than the 20% reported.

In addition to understanding the number of individuals who may need transitional housing, data was gathered regarding individual characteristics that may signify programming needs, high risk individuals, or may make it more difficult to find adequate housing.

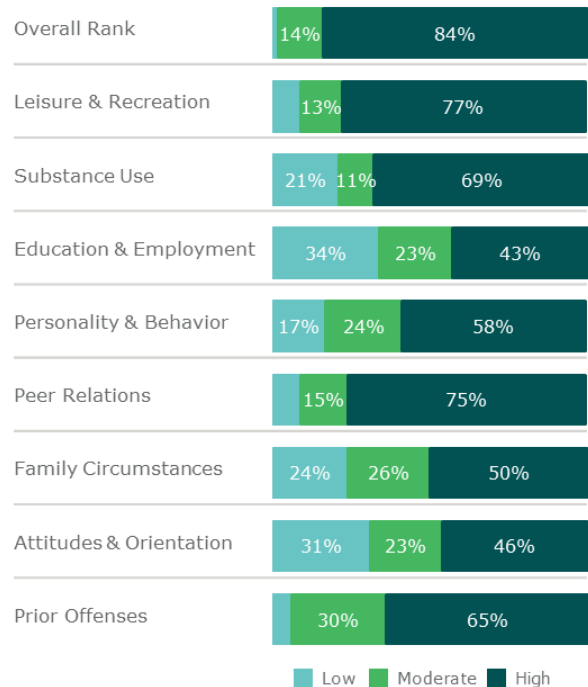
Results show relatively consistent charges among the top ten charges for the county jails and probation (NDCS criminal history data could not be gathered for comparison). These charges could signify individuals who may be more difficult to house given some restrictions on individuals with violent offenses such as assault, domestic assault, weapons, and sex offenses.

Top 10 Charges

Douglas County	Lancaster County
1. Motor Vehicle	1. Controlled Substances
2. Controlled Substances	2. Motor Vehicle
3. Other	3. Other
4. Failure to Appear	4. Assault
5. Theft/Shoplifting	5. Theft/Shoplifting
6. Driving Under the Influence	6. Warrants
7. Weapons	7. Driving Under the Influence
8. Assault	8. Disorderly Conduct
9. Financial Responsibility	9. Non-Support
10. Domestic Assault	10. Weapons

Sarpy County	Probation
1. Fugitive from Justice	1. Controlled Substances
2. Motor Vehicle	2. Theft/Shoplifting
3. Driving Under the Influence	3. Attempt of a Felony
4. Controlled Substances	4. Domestic Assault
5. Domestic Assault	5. Terroristic Threats
6. Theft/Shoplifting	6. Driving Under the Influence
7. Assault	7. Motor Vehicle
8. Contempt of Court	8. Assault
9. Failure to Appear	9. Weapons
10. Child Abuse	10. Sex Offense

LS/CMI Risk/Need Assessment



Data provided by the Administrative Office of Probation from the Level of Service/Case Management Inventory (LS/CMI) shows that most individuals on Post Release Supervision (PSR) have high risks/needs, with the highest risks in leisure & recreation, peer relations, substance use, and prior offenses.

Data provided by NDCS and Lancaster County Jail show similar results in terms of substance use as an ongoing need with Lancaster County Jail reporting nearly 30% of individuals indicating they have previously gone through substance use treatment and 15-20% reporting current use of drugs and alcohol. NDCS results mirror this need with 13% of individuals recommended for residential substance use treatment. In addition to substance use treatment, approximately 5% of individuals were recommended for inpatient or outpatient sex offender programs, and 2% were recommended for violence reduction or anger management programming.

MACCH data showed similar patterns among individuals experiencing homelessness in terms of alcohol and drug use, along with high rates of mental health needs and physical disabilities.

NDCS Recommended Programming

Program	%
Violence Reduction/Anger Management	2%
In/Outpatient Sex Offender Program	5%
Residential Substance Use Treatment	13%

Lancaster Substance Use

Intake Question	% Yes
Using Drugs	20%
Using Alcohol	15%
Previous Treatment for Substance Use	26%

MACCH Conditions at Entry

Condition	%
Mental Health Issue	33%
Alcohol Use	7%
Drug Use	8%
Both Alcohol & Drug Use	12%
Chronic Health Condition	11%
HIV/AIDS	1%
Developmental Disability	5%
Physical Disability	23%

Research Question 3: Housing Gaps

This section addresses the third research question identified by the Housing Resources Task Force, which is listed below.

- Where are there gaps in housing services based on what is available and the largest needs?

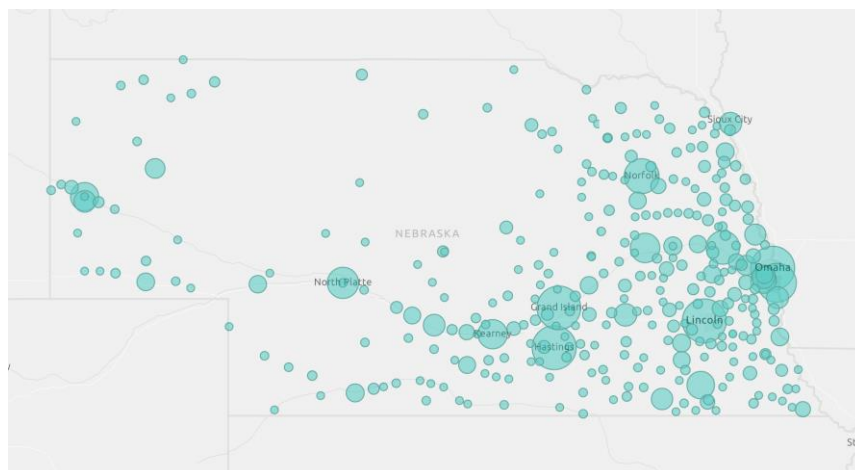
This question was answered through a combination of the housing audit and the archival data in order to assess what is available in conjunction with what the needs are.

Overall, the data does not show any major unmet needs; however, it does suggest that there is room for improvement. One potential gap area can be seen on the map below depicting where individuals releasing from NDCS are from, which can be compared to the earlier map of where housing providers are located. The comparison of these maps suggests that there may be a need for expansion in more rural cities to allow more individuals to return to their home communities.

While it may not be healthy for all individuals to return to their home communities after incarceration, there may be some individuals who could benefit from being closer to their support system but do not have the transitional housing options available to do so.

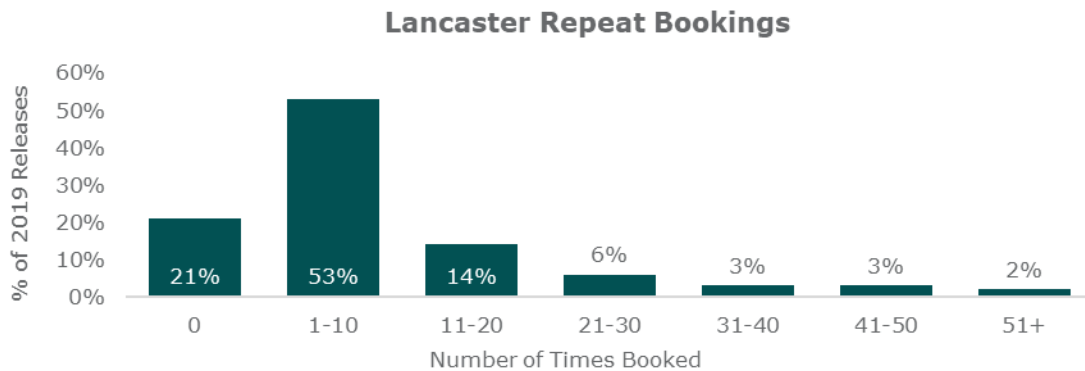
The comparison of the two maps does suggest that overall current transitional housing is offered in the highest need cities; however, based on the map below cities such as Scottsbluff, Kearney, Hastings, Beatrice, Columbus, Fremont, and Sioux City may be areas in need of more options.

Address Prior to Incarceration

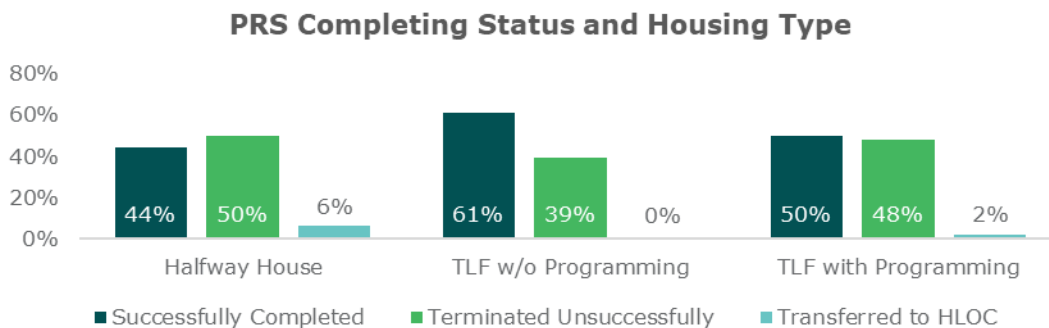


Another potential gap can be seen in the number and types of programs offered in current transitional housing facilities. Overall, the housing providers are addressing what the data show to be the highest need (i.e., substance use), but also suggests that individuals would benefit from additional services in order for there to be a more holistic approach to their needs.

Lastly, the data does suggest that there is a gap in getting the right people into transitional housing along with the effectiveness of current programming. Lancaster County Jail provided criminal history data that shows 26% of individuals released in 2019 have been previously incarcerated ten or more times at that facility, with 53 individuals having been incarcerated over 100 times. This high rate of return indicates that additional services may be needed for these individuals to address the needs that are causing the instability.



In addition, Post Release Supervision (PRS) rates of completion indicate that individuals who are living in a Transitional Living Facility (TLF) with programming are successfully completing at a lower rate than those in a TLF without any programming. While the difference between the two groups is relatively small, it does suggest that there may be a gap between the programming offered and the programming needed. A small percentage were also transferred to a higher level of care (HLOC).



Research Question 4: Programs & Services for Success

This section addresses the fourth research question the Housing Resources Task Force identified, which is listed below.

- Are there certain characteristics or services of transitional housing programs that lead to greater success and reduced recidivism?

While some data was gathered from transitional housing providers that shared information for the housing audit, there was not enough objective data available regarding programming success rates to answer this question through that source. Therefore, this question is answered solely through the literature review.

The literature agrees that housing is a critical need for success for individuals re-entering and that success is often hard to achieve due to federal laws prohibiting certain individuals from public housing,^{1,2} landlord discretion,³ and a lack funds to cover rent. While there is no disagreement relating to the need for housing, there is also no common solution for addressing these needs.

Ultimately there is no one right way to do transitional housing as different people have different and varying levels of need. Although there is no one right answer to addressing housing needs, the Urban Institute provides a few helpful considerations.⁴

- **Supportive Housing Needed for Behavioral Health and the Jail/Homelessness Cycle.** Individuals struggling with behavioral health and cycling in and out of jail need deeper levels of support in order to gain stability. One study found that supportive housing for these groups significantly decreased the length of stay in local jails and the rate of readmission into shelters.⁵
- **Halfway Houses Beneficial for Medium- and High-Risk Individuals.** One study found that while the halfway house model showed beneficial outcomes for individuals who are medium- or high-risk for recidivating, it may have a detrimental effect on individuals who are low-risk.⁶
- **Peer-Led Models Demonstrate Effectiveness.** Researchers studying the effectiveness of peer-led treatment models for addressing substance use found positive results. In their research, they specifically examined Oxford Houses and found them to be related to reduced recidivism and reduced substance use.⁷

The main premise that all literature sources endorse is the importance of helping individuals find stable housing, both short-term and long-term, as early as possible to reduce periods of instability.

Summary of Findings

Key Takeaways

The following three key-takeaways were identified through this research.

- **Providers in the Right Cities.** Results indicate that we have providers in the right cities. However, individuals may benefit from some additional housing options in current cities and expanding into a few other cities, especially in rural areas, to meet the need for individuals returning to their home communities.
- **Additional Programming Needed.** Over 50% of providers only indicated offering one program. Increasing programming offered would allow for a more holistic approach, which is needed to help individuals obtain and maintain stability after incarceration.
- **Different Housing for Different Needs.** It is important to consider the individual's unique needs when determining what transitional housing provider will be best. Research suggests that a one-size-fits-all approach will not work.

Recommendations

The following three recommendations are being made based on this research.

- **Partner with Providers.** A lot of information was gathered regarding housing providers; however, more depth is needed. Consider interviewing a few providers and touring some facilities to gain additional information.
- **Seek Input from Individuals Using Transitional Housing.** Interviews will provide deeper insights into critical needs, what's working, what isn't working, and program quality. Interviewing individuals who have experience living in transitional housing will provide rich information unavailable in other sources.
- **Continue to Research Best Practices.** Continue to research best practices regarding transitional housing develop to begin to develop a model for moving forward. Use this report and other information to determine a strategy for improvement.

Sources

- ¹ <https://www.prisonpolicy.org/reports/housing.html>
- ² <https://nextcity.org/daily/entry/housing-first-former-prisoners-homelessness>
- ³ <https://www.urban.org/sites/default/files/publication/32056/411767-Release-Planning-for-Successful-Reentry.PDF>
- ⁴ <https://www.urban.org/sites/default/files/publication/24206/412957-Examining-Housing-as-a-Pathway-to-Successful-Reentry-A-Demonstration-Design-Process.PDF>
- ⁵ <https://www.urban.org/sites/default/files/publication/28351/412024-The-Corporation-for-Supportive-Housing-s-Returning-Home-Initiative-System-Change-Accomplishments-after-Three-Years.PDF>
- ⁶ http://www.superiorcourt.maricopa.gov/AdultProbation/docs/Ohio_CBF_study.pdf
- ⁷ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2888149/>

TOPICAL ALERT TOP STORY

Opponents score victory in complaints over sober living house in Lincoln with 14 residents

Matt Olberding

Jun 23, 2022

The city of Lincoln generally does not allow more than three unrelated people to live together unless they are in some sort of licensed care setting, such as a group home or foster home.

However, the federal Fair Housing Act says cities cannot discriminate against people with disabilities, which courts have determined includes recovery from substance-abuse problems.

That formed the crux of the decision the Lincoln-Lancaster County Planning Commission faced Wednesday in weighing whether to recommend granting "reasonable accommodations" to three properties that house people recovering from alcohol or other substance abuse.



This house on B Street is home to up to 14 men who are recovering from substance-abuse issues.

Lancaster County Assessor's Office

The houses offer sober living environments for those with drug and alcohol problems, but they do not provide counseling services, nor do they provide oversight of the residents. They are not licensed.

Attorneys for the organizations argued that means they don't qualify as group homes, which the city regulates.

Instead, the homes were seeking a waiver from the city's rules as to what constitutes a family.

People are also reading...

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 - 4 Flood defeats Pansing Brooks in House race**
-

One of the homes, at 1923 B St., houses up to 14 men in a 3,200-square-foot house that has five bedrooms and two bathrooms. It's run by Oxford House, a national organization with homes across the U.S., including several in Lincoln.

Many of those homes also have more residents than would normally be allowed under city code, but the organization was seeking an accommodation for the one on B Street because neighbors made a formal complaint to the city.

Scott Moore, an attorney representing Oxford House, said the operations are "run like a family," with residents responsible for paying their own rent, doing household tasks and holding each other accountable. They also make decisions on who lives in the house and whether someone should be kicked out for not following the rules.

Ryan Watson, an attorney representing Michael House, another operation seeking accommodations for houses at 5203 Walker Ave. and 315 N. 35th St., said having more people in a house increases the chances of success.

"The more you have, the greater accountability you create," he said.

 **Planners OK 2 potential Lincoln redevelopment projects**

📄 Redevelopment plans for Gold's Building could rely on special taxing authority

Having more people also makes the operation more financially feasible, Watson said.

Opposition was largely focused on the house at 1923 B St., with more than a dozen people sending letters to the Planning Department and roughly 10 people testifying in opposition at the hearing.

While some expressed concerns about parking issues and the potential for crime, many also said they felt Oxford House was trying to take advantage of the situation.

Vishnu Reddi, president of the Near South Neighborhood Association, said it seemed like "a commercial opportunity in a residential district."

Neighbors also expressed concerns about the amount of people living in the house.

"I do not believe it's reasonable to accommodate 14 adult males in a house with five bedrooms and two bathrooms," said Heather Westra.

Only two people spoke in opposition to the Michael Houses.

That seemed to play a role in how commissioners voted, as did the fact that Michael House owns the homes its clients rent and also provides more oversight.

📄 City seeking to sell Aging Partners building in downtown Lincoln

📄 Native group says it's 'disappointed' in mayor's approval of Lincoln development

In the end, the Planning Commission voted 4-2 to recommend denial of the Oxford House application, with Tracy Corr, Maribel Cruz, Gloria Eddins and Cindy Ryman-Yost voting no and Dick Campbell and Cristy Joy voting yes.

Because it failed to get five yes or no votes, the application will come back before the Planning Commission on July 13.

The commission voted 5-1 in favor of recommending the accommodation for the two Michael Houses, with Corr the only one voting against.

In other business Wednesday, the commission recommended approval of a plan to surplus city-owned property on the southeast corner of the intersection of 27th Street and Leighton Avenue so that it can potentially be sold.

The commission also recommended approval of a zoning change and use permit for the 1.2 acres of land that restricts how a future owner can develop it to essentially 20 residential units and up to 15,000 square feet of space.

25 of Lincoln's grandest old houses

Fairview



For 15 years, Fairview at 4900 Sumner St. was the Lincoln home of William Jennings Bryan, a nationally known political leader and orator. Bryan held lawn parties, public receptions and political rallies at Fairview. Designed by Lincoln architect Artemus Roberts and built in 1902-03, the house is a fine example of the Queen Anne style in transition and incorporates Neo-Classical Revival elements in its design.

Nebraska State Historical Society