

2018 REPORT OF THE NEBRASKA JUSTICE SYSTEM SPECIAL OVERSIGHT COMMITTEE OF THE LEGISLATURE

Prepared in accordance with Legislative Resolution 127 (2017)

Submitted to the Judiciary Committee and to the Appropriations Committee
of the 105th Nebraska Legislature on December 14, 2018

Committee Members:

Sen. Laura Ebke, Chair
Sen. Kate Bolz
Sen. Tom Brewer
Sen. Suzanne Geist
Sen. Mike Hilgers
Sen. Dan Hughes
Sen. Justin Wayne

Committee Staff:

Tim Hruza, Legal Counsel
Dick Clark, Legal Counsel
Laurie Vollertsen, Committee Clerk

INTRODUCTION

This report marks the second in as many years completed by this Committee in furtherance of Legislative Resolution 127 (2017). The report is the fourth in a series of reports issued by special investigative or oversight Committees of the Nebraska Legislature charged with the important task of assessing the state of Nebraska's adult criminal justice system and the challenges seen by the various state agencies that operate the system.¹ Considering the extensive efforts made over the years by the Legislature, there is no doubt that monitoring and improving the criminal justice system has been a priority for the Nebraska Legislature.

In preparing last year's report, this Committee visited all ten of Nebraska's correctional facilities, meeting with inmates and employees of the Department at each stop. The Committee also visited Probation offices and the offices of the Board of Parole and Parole administration in Omaha and Lincoln. Those efforts, along with a public hearing last fall, led the Committee to make a number of observations and recommendations for improvements that might help these agencies address various challenges they face. A number of the recommendations made, or certain aspects of some of them, were introduced, passed, and signed by Governor Ricketts during the second session of the 105th Legislature earlier this spring. And while this Committee believes the legislation passed last session will result in some improvements, the Committee understands there is more work to do.

It is with this in mind that the LR 127 Committee has determined to focus this Report on reviewing its past recommendations and providing a road map of focused and specific issues and recommendations for future legislatures to consider. This Report, then, will begin with a review of the recommendations made by the LR 127 Committee in its 2017 Report, and conclude with an acknowledgement of the biggest challenges the system continues to face and some suggestions the Committee believes will continue to address those challenges.

I. Review of Past Recommendations of the LR 127 Committee and Progress Made in Furtherance of Those Recommendations

The 2017 Report of the LR 127 Committee identified seven recommendations, some more specific in the policy approaches suggested than others, but all tailored to address the prominent and easily identified challenges faced by the Nebraska criminal justice system. The following is a brief review of the recommendations made in last year's report, and the work done in furtherance of those recommendations over the past legislative session.

¹ The first of the special committee reports was submitted by the LR 424 Committee in 2015 and reviewed the state of the Nebraska Department of Correctional Services in the wake of a series of tragedies that occurred when an inmate named Nikko Jenkins was released to the community after serving his prison sentence. A copy of the LR 424 Committee's report can be found online at https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf. The second report was issued by the LR 34 Committee in 2016 and built on the LR 424 Committee's report by diving deeper into some of the issues and concerns identified in that first report. A copy of the LR 34 Committee's Report can be found online at https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr34_2015/lr34_report.pdf. The most recent report was completed by this Committee in December of 2017, and further advanced the Legislature's oversight efforts. The first LR 127 Committee Report can be found online at https://nebraskalegislature.gov/pdf/reports/committee/select_special/cso/2017_lr127.pdf.

A. The Legislative, Executive, and Judicial branches of Nebraska government must continue to work collaboratively to effectively address overcrowding in Nebraska’s prisons.

There is no question that Nebraska has acknowledged—and has been working to address—the fact that its prison system faces challenges related to overcrowding in its facilities. Each iteration of the Legislature’s special oversight committee related to the Department of Correctional Services has identified overcrowding as a concern.² Indeed, this Committee found in its report last year that “[o]vercrowding in Nebraska’s prison system has been a concern for some time,” citing the fact that the Nebraska’s Inspector General for Corrections had identified Nebraska as the fourth most overcrowded prison system in the country in 2015 and had moved the state into the second position by 2017.³ As discussed in more detail later in this report, overcrowding continues to pose a challenge for Nebraska’s prison system.

Overcrowding in Nebraska’s prison system gives rise to certain challenges, and exacerbates others. As the Committee explained in its report last year, “when the prison population exceeds the capacity of the facility, management of inmates becomes a challenge,” and the safety and security of both staff and inmates can be threatened when such circumstances give rise to challenges such as policing dangerous contraband.⁴

Based on the serious risks posed by continued overcrowding, this Committee recommended that “the Legislature continue to actively monitor the progress of LB 605 and be ready and willing to make changes if they become necessary.”⁵ Although this recommendation is broad on its face, the Committee did recommend considering options such as revising the parameters of the county jail program to relieve pressure on the system, and to promote innovation in the use of parole. With respect to those two more specific provisions in the Committee’s recommendation, legislation introduced in 2018 attempted to further these goals.

LB 841 was introduced by Sen. Pansing Brooks and, after substantial amendment that consisted of the addition of a number of provisions from other bills, became the Judiciary Committee’s priority legislative package that worked to further improvement in Nebraska’s criminal justice and correctional systems.⁶ In part, the bill worked to address the specific goals identified in the Committee’s first recommendation from last year by promoting innovation in the use of parole. Notably, LB 841 included a provision which adjusted Nebraska’s statute that allows for the parole of inmates based on their suffering a terminal illness. The adjustment to previous

² See, e.g., LR 34 Report (2016), available online at https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr34_2015/lr34_report.pdf; see also, LR 424 Report (2015), available online at https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf.

³ LR 127 Report (2017), pg. 12, available online at https://nebraskalegislature.gov/pdf/reports/committee/select_special/cso/2017_lr127.pdf (hereinafter “LR 127 Report”).

⁴ *Id.* at 14.

⁵ *Id.* at 16.

⁶ LB 841 (2018), slip copy available online at <https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB841.pdf>.

language was crafted in a way to ensure that medical parole was available to those inmates who would benefit from being paroled and who were not likely to pose a threat to the community due to their medical condition and other factors as determined by the Board of Parole. Based on information provided by the Department of Correctional Services, the bill is predicted to apply to up to six to ten inmates per year.⁷ While this may not be a large number of inmates, even a slight reduction of the prison population through the use of this innovative approach to parole can work to address Nebraska's prison overcrowding problem in a way that also prioritizes the safety of the community when inmates are paroled.

It is also worth noting that a bill was introduced last session that would have provided statutory guidelines for the Department's use of county jails to house inmates. The bill was initially considered for inclusion in LB 841, but was eventually removed from the package after compromise language could not be crafted. Nevertheless, the discussion about the use of the program was valuable, and further discussion in the future should be considered.

B. The Legislature, the Department of Corrections, and the Board of Parole should develop a framework for a response to a declaration of a Correctional System Overcrowding Emergency pursuant to Neb. Rev. Stat. § 83-960.

As this Committee explained in its 2017 report, Nebraska's Correctional System Overcrowding Emergency Act⁸ gives rise to important implications and considerations in managing Nebraska's prison system if it continues to be overcrowded.

Under the Act, if the prison population exceeds 140 percent of design capacity on or after July 1, 2020, the Board of Parole must immediately consider all parole-eligible inmates for parole and should parole each parole-eligible inmate unless the Board is of the opinion that it is more likely than not that the inmate will not follow conditions of parole, that the inmate's release would have a very significant and quantifiable effect on institutional discipline, or that there is a very substantial risk that the inmate will commit a violent act against a person.⁹ Statute would further require the Board of Parole to "continue granting parole"¹⁰ until the prison population is reduced to 125 percent of design capacity.¹¹

Because of the potential for a number of inmates to be considered for parole as the result of an overcrowding emergency, this Committee recommended that proper planning be conducted to better understand the implications of such an event. This Committee reasoned that such planning is necessary for "[s]tate leaders [to] know the cost of an overcrowding emergency, [to] know how the Board of Parole might approach administration of an overcrowding emergency, and [to] know how that approach might impact public safety and the corrections system."¹²

⁷ See LB 852 Fiscal Note, available online at https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=34350.

⁸ Neb. Rev. Stat. 83-960 *et seq.*

⁹ Neb. Rev. Stat. 83-962(3).

¹⁰ Neb. Rev. Stat. 83-962(5)

¹¹ Neb. Rev. Stat. 83-961(6)

¹² LR 127 Report (2017), *supra* note 3, at 17.

The Committee is happy to report that the passage of LB 841 put in motion the planning process we believe to be essential to managing a potential overcrowding emergency. LB 841 included a statutory requirement that the Board of Parole and the Department of Correctional Services prepare and submit a report to the Legislature on or before December 1, 2018.¹³

C. The Legislature should work with the Department of Correctional Services to ensure that the Department has all of the tools necessary to address issues related to recruitment and retention of Department staff.

Staff turnover in the Department, combined with a number of vacancies in various positions, has resulted in many staff members expressing concern for their safety and frustration with continued mandatory overtime.¹⁴ As reported in this Committee's 2017 report, the Department of Correctional Services had almost 150 protective services vacancies in October 2017, and another 52 staff vacancies in the areas of substance abuse services, mental health services, health services, pharmacy services and dental services.¹⁵ In total, the Department had 301 vacant positions in all areas.¹⁶

Based on numbers reported to the Legislature's Appropriations Committee in June 2018, the Department had a total of 294 vacant positions in all areas.¹⁷ Based on numbers received from the Department, as of June 20, 2018, the Department had nearly 120 protective services vacancies,¹⁸ and, as of June 2018, had 29 behavioral health clinical vacancies.¹⁹

As this Committee clearly acknowledged in its 2017 report, addressing staffing challenges is complex. Incentives and changes to terms and conditions of employment necessarily include a number of different interests, from labor unions to the legislative and administrative budgeting process. Nevertheless, the Committee opined last year that such incentives as longevity pay, performance bonuses, and promotions should be implemented based on the feedback received from staff during the Committee's visits. The Committee also noted that some benefit had been seen from the Department's implementation of retention bonus initiatives. The Committee continues to believe that more effort should be made to continue to find ways to implement such retention-focused programs.

D. The Department of Correctional Services should continue its efforts to ensure complete and adequate staffing levels at all of its facilities.

¹³ LB 841 (2018), slip copy available online at <https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB841.pdf>.

¹⁴ LR 127 Report (2017), *supra* note 3, pg. 18.

¹⁵ *Id.* at 18.

¹⁶ *Id.*

¹⁷ State of Nebraska Agency Vacancy Report (June 30, 2018), at pg. 96, available online at https://nebraskalegislature.gov/pdf/reports/committee/appropriations/vacancy_06-18.pdf.

¹⁸ NDCS Presentation to LR 127 Committee (Sept. 26, 2018), attached hereto as Exhibit A.

¹⁹ NDCS Quarterly Data Sheet April – June 2018, available online at https://corrections.nebraska.gov/sites/default/files/files/39/ndcs_quarterly_data_sheet_april_-_june_2018_revised.pdf.

The Committee’s recommendation that adequate staffing levels be prioritized was based on feedback received during the Committee’s visits to the Department’s ten facilities across the state. During those visits, it was repeatedly expressed to the Committee that staff at various facilities felt as though there was a need for more staff members to manage the inmate population and ensure the safety of both employees and inmates. And, as noted in the 2017 report, although budgetary efforts have been made in recent years to address staffing issues, this Committee agreed with the Department’s own assessment that further analysis of system-wide staffing needs should be conducted as such an analysis is “essential to the Legislature’s and the Department’s long-term planning efforts.”²⁰

In furtherance of this recommendation, LB 841 included a requirement that the Department conduct a system-wide staffing analysis.²¹ As such, Nebraska statute will now require the Department to conduct an analysis and provide it to the Legislature in advance of the next biennial budget cycle, with the report required on or before September 15, 2020.²² Statute will require supplemental analyses every six years, or every third biennial budget cycle, thereafter.²³

E. The Department of Correctional Services should continue to prioritize its efforts to provide adequate and timely programming opportunities to inmates to ensure they are appropriately prepared for reentry into the community, and to ensure they are parole-ready to alleviate overcrowding.

As this Committee recognized in its last report, “[n]early all inmates serving a term of incarceration will ultimately reenter the community.”²⁴ For this reason, it is vital that those serving time are given an opportunity to rehabilitate themselves and gain valuable skills while incarcerated. And as this Committee previously opined, ensuring that adequate programming is provided to inmates serves the dual purpose of readying inmates for reentry into the community while also working to address overcrowding issues.²⁵

With respect to specific recommendations made, this Committee recommended that the Legislature and the Department explore community-based programming options.²⁶ In furtherance of that objective, LB 841 included a provision that affords the Director of the Department of Correctional Service discretion to allow certain inmates the ability to leave their correctional facility to participate in substance abuse evaluations or treatment, attend rehabilitative programming or treatment, seek residency or employment in anticipation of reentry, or participate in structure programming.²⁷ Whether and to what extent the Director chooses to use this option remains to be seen, but its inclusion as part of LB 841 is promising.

²⁰ LR 127 Report (2017), *supra* note 3, pg. 23.

²¹ LB 841 (2018), slip copy available online at <https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB841.pdf>.

²² *Id.*

²³ *Id.*

²⁴ LR 127 Report (2017), *supra* note 3, pg. 25.

²⁵ *See id.*, pgs. 24–26.

²⁶ *Id.*, pgs. 25–26.

²⁷ LB 841 (2018), slip copy available online at <https://nebraskalegislature.gov/FloorDocs/105/PDF/Slip/LB841.pdf>.

F. *Nebraska should continue efforts to review Nebraska’s criminal code and should work to ensure that crimes and sentencing statutes are appropriately defined and applied.*

Last year’s report reiterated the recommendation of the LR 34 Committee that a comprehensive review of Nebraska’s criminal code be conducted in collaboration with attorneys and other criminal justice stakeholders in an effort to ensure that the system is as effective and efficient as possible. This Committee continues to believe that such an endeavor would be a valuable pursuit for future Legislatures. As previously acknowledged, considering criminal code reform can work to “address[] prison overcrowding, [while] also ensuring public safety, ensuring the safety of corrections staff who manage the prison population, and ensuring good outcomes for those citizens who find themselves working through the system and back into society.”²⁸

G. *The Department of Correctional Services should continue to look for opportunities to provide meaningful work and vocational skills training for inmates during incarceration to increase institutional morale, establish a sense of purpose for inmates, and prepare them for reentry to the community.*

Based on feedback from both inmates and staff during last year’s visits to correctional facilities, the Committee felt it important to emphasize the value of expanding vocational skills training and work programs for inmates. Not only do such programs and opportunities provide inmates with a way to pass time while incarcerated, but they also serve as important tools in rehabilitation and reentry efforts of the Department by teaching valuable skills that might translate to employment upon an inmate’s release.

LB 841 and other legislation passed in the last year did not directly address expanding these programs, but it is worth noting that a provision of LB 841 did allow for inmates to explore employment opportunities after release. Specifically, LB 841 included a provision that grants the Director the discretion to allow inmates to leave a facility temporarily to seek employment opportunities in advance of their release from prison. This provision may not expand work opportunities or vocational skills training in the way the Committee envisioned in its recommendation last year, but it does highlight the value of such training in providing marketable skills for inmates planning to reenter the community and find employment upon release.

II. Findings, Observations, and Recommendations Moving Forward²⁹

Since the publication of the Committee’s first report in December 2017, members of the LR 127 Committee have worked to review and analyze the adult criminal justice system in furtherance of the Legislative Resolution 127’s charge. These efforts have been both made both in the collective and individual manner. The Committee conducted a number of informal informational sessions during the interim with stakeholders from various state agencies, and held a public hearing to obtain feedback. Individually, members of the Committee have spent time over

²⁸ LR 127 Report (2017), *supra* note 3, pg. 26.

²⁹ Because this a legislative report, many proposed reforms make reference to potential statutory changes that would be initiated by legislation. The committee acknowledges that it may also be possible to achieve some of these policy goals via administrative rulemaking.

the past year visiting correctional facilities, attending inmate programming events at various facilities, working with colleagues throughout the Legislature on issues that impact criminal justice, and assessing legislative proposals that might affect the system.

As a result, the Committee has had the opportunity to reassess the system in the wake of its 2017 report and the legislative efforts made since, and — in addition to reiterating the recommendations made in last year’s report that have yet to be completed — has determined to use this report to highlight a handful of specific issues the Committee believes are essential to making progress when addressing the system’s challenges. The following are those issues and policy recommendations the LR 127 Committee believes are paramount for future Legislatures to pursue when considering how best to improve the criminal justice and correctional system in Nebraska.

1. Prioritize Legislation that Continues Efforts to Address Overcrowding in Nebraska’s Prison System

There is no question that the challenges posed by overcrowding in Nebraska’s prison system are pervasive. Each time a legislative committee has taken on review or oversight of the adult criminal justice system, the committee has reported concerns with respect to the ongoing overcrowded conditions. Last year, this Committee recognized the challenges posed by continued overcrowding, but also acknowledged that any consideration about overcrowding should be approached within the context of the important discussion about “design capacity” and “operational capacity” and how each impact management of the system.³⁰ But regardless of that definitional discussion in the context of Nebraska’s Overcrowding Emergency Act, the fact remains that Nebraska’s prison facilities house more inmates than are ideal for their size, and this gives rise to a number of challenges. For that reason, this Committee believes it absolutely vital that future legislatures make continued efforts in conjunction with the Department, members of the judiciary, and other stakeholders to address overcrowding.

Based on numbers provided by the Department of Correctional Services, as of September 6, 2018, the inmate population numbered 5,276.³¹ The Department’s most recently reported data — from its report for the quarter ending in September 2018 — notes that the system sits at an inmate population of 5,253, or about 156 percent of its design capacity.³² And although individual facilities may not be at or over capacity, others, such as the Diagnostic and Evaluation Center, boast numbers far above their designed capacity. *See Figure 1.*

³⁰ LR 127 Report (2017), *supra* note 3, pgs. 11–12.

³¹ NDCS Presentation to LR 127 Committee (Sept. 26, 2018), attached hereto as Exhibit A.

³² NDCS Quarterly Data Sheet: July–September 2018. Nebraska Department of Correctional Services. Available online at https://corrections.nebraska.gov/sites/default/files/files/229/ndcs_quarterly_data_sheet_july-september_2018_0.pdf.

Average Daily Population (ADP), by Facility					
Facility	ADP	Operational Capacity	% Operational Capacity	Design Capacity	% Design Capacity
CCC-L	465	300	155.02%	300	155.02%
CCC-O	171	135	126.96%	90	190.43%
DEC	485	275	176.28%	160	302.98%
LCC	474	468	101.21%	308	153.79%
NCCW	295	318	92.74%	275	107.25%
NCYF	63	70	90.20%	68	92.85%
NSP	1,338	1,139	117.49%	718	186.37%
OCC	779	666	116.90%	396	196.60%
TSCI	997	976	102.19%	960	103.89%
WEC	186	200	93.17%	100	186.35%
Total	5,253	4,547	115.53%	3,375	155.65%

Figure 1. From NDCS Quarterly Data Sheet: July – September 2018. Nebraska Department of Correctional Services

Overcrowding leads to challenges that extend to concerns related to the safe and effective management of the prison population. As noted in this Committee’s report last year, dangerous contraband can become more difficult to police, and management of the inmate population can be a challenge. Indeed, as reported by the Inspector General in his annual report, the introduction of contraband into the system poses a number of challenges, such as population management, inmate and staff safety, and inmate drug use.³³

With overcrowding being a pervasive and persistent challenge, this Committee is compelled to urge future legislatures to prioritize addressing it. Specifically, the LR 127 Committee would implore future legislatures to consider the following policy options as this Committee is convinced such policies might make an impact on the system’s overcrowding.

2. Establish a Statutory Framework for the Continued Use of the County Jail Program as a Means of Relieving the Pressure of Overcrowding

The Department of Correctional Services has been using county jails to house certain inmates for various reasons for a few years now. As reported in the Inspector General’s most recent report, the Department had 105 inmates housed in county jails this fall.³⁴

As this Committee recommended in its last report, the Department’s use of county jails to house certain inmates can be an appropriate option to relieve the pressure from overcrowding.³⁵ Indeed, inmates whose circumstances of incarceration would be amenable to the inmate serving time in a county jail setting can benefit from such placement, while the Department sees benefits

³³ 2018 OIG Report, pgs. 73–77, available online at https://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/600_20180911-222502.pdf.

³⁴ *Id.* at pg. 27, footnote 27.

³⁵ LB 127 Report (2017), *supra* note 3, pg. 16.

from reducing institutional populations in places. However, it is important that those inmates selected for placement in a county jail truly benefit from such placement. The committee recommends legislation that establishes a county jail program only for those within one year of parole release eligibility, are transferred into state custody for safekeeping, have been sentenced to a term of incarceration for a nonviolent offense, require only community based or minimum security supervision, or are an inmate identified by the department as benefitting from and being reasonably safe for temporary placement in a county jail facility. The Department of Correctional Services may develop specific contracts with specific jails. While we appreciate that the Department of Correctional Services may want flexibility in administration of this program, appropriate guidelines that ensure safety, fairness, equality and quality outcomes for the use of public dollars is essential in allowing utilization of funding for this purpose. With clear statutory parameters, this program can meet needs and address overcrowding in a fair and transparent manner.

First, the time left on the inmate's sentence is important. While many county jails across the state are equipped to safely manage those serving time, the county jail setting is quite different from a state prison. Most county jails are designed and operated to house inmates for short periods of time of less than one year. State prison inmates typically have sentences that span many years or even decades.

Next, a statutory framework should consider that most county jails do not offer much in the way of rehabilitative programming or social or vocational skills training. In similar fashion to the distinction between county and state prison inmates regarding their length of sentence, many county jails are not set up to offer programming or skills development because county inmates are held for a shorter period of time. If state inmates are to be housed in county jails, any program framework should include requirements that the inmates be offered an opportunity for the type of programming or social or vocational training they would otherwise receive if placed in a state facility.

Finally, any plan for continued use of county jails to relieve overcrowding and inmate management issues should contemplate costs. Currently, the Department of Correctional Services utilizes vacancy savings for this purpose. The purpose of the county jail program is to alleviate overcrowding and understaffing. Excess funds may continue to be used for this purpose and the Department of Correctional Services should develop fair and transparent contracts based on individual jail capacities and offerings. If additional resources are needed in the future, the Department of Correctional Services should ask for appropriate funds through the budget process. Not only does housing inmates in county jails cost the state money, but it also requires counties to provide some infrastructure in the way of employees and facilities. If the state continues to utilize the county jail program, it must make financial sense for both the state and the counties involved.

- 3. Allow for Competency Restoration to take Place outside of the Lincoln Regional Center to ease pressure on the Department of Correctional Services to serve County Safekeepers and require the Department of Correctional Services to Develop a Framework for the Effective Management of County Safekeepers Between Counties, the Department of Corrections, and the Department of Health and Human Services***

One challenge faced by the Department's most overcrowded facility is the placement of county jail safekeepers at the Diagnostic and Evaluation Center. Under current practices, when county jails across the state house a county inmate who poses challenges for the jail to manage, the county jail can transfer the inmate to the state system for safekeeping. This typically occurs when an inmate poses a threat to their own health or safety, or when the county jail does not feel it has the resources to handle the inmate, often as a result of a inmate's mental health condition. A "county safekeeper" placed in the state system is transferred from a county jail to the Department's Diagnostic and Evaluation Center. When this happens, it leaves the Department with the obligation to house and manage a county inmate that would not otherwise be located in the system. And oftentimes, that county inmate placed in the state system requires certain mental health treatment or who can be difficult to manage for various other reasons.

As noted in last year's report, 179 county safekeepers came through the state system in 2016.³⁶ Because of the unique challenges posed by county safekeepers when they are placed in the system, and because of the sheer number of safekeepers continuing to be transferred to the state system, the Committee recommends that future legislatures consider policy change to address management of safekeepers into the future. This policy change has two parts: (1) Statutory change to allow for competency restoration to take place outside of the institutional setting of the Lincoln Regional Center, with assurances that trained professionals can provide this service in other settings. This will allow individuals whose competency needs to be restored to stand trial to move through the system more quickly. (2.) The Department of Correctional Services should establish a work group and provide a report and plan within one calendar year to the Nebraska Legislature regarding how they will partner with County Officials, the Lincoln Regional Center, and the Department of Health and Human Services to better serve county safekeepers and ease pressure on the Diagnostic and Evaluation Center.

4. Fund Expansion of Transitional Housing Programs

Although new inmates will always make their way into the system as the result of new crimes being committed, as inmates are released on parole, the result should generally be a reduction in the prison population. Unfortunately, not all inmates released on parole will successfully complete their conditions of parole and remain outside the system. Indeed, as much as the Office of Parole Administration works to assist parolees, violations of parole will occur and inmates will be returned to the system.

Any efforts the state can make to set parolees up for success upon their parole are beneficial because it reduces the likelihood that parolees return to the prison system. For this reason, the efforts made by the Department of Corrections and the Office of Parole Administration to ensure successful reentry are extremely valuable. The Committee believes that these efforts should continue to be prioritized, and would urge future legislatures to contemplate further statutory and budgetary action to expand them.

³⁶ LR 127 Report (2017), *supra* note 3, pg. 13.

Specifically, the Committee urges the Board of Parole and the office of Parole Administration to ensure the continued use of the Navigators program and expand the Parole’s transitional housing program. We encourage continued collaboration with community stakeholders through public-private partnerships that can strengthen and broaden efforts to provide transitional housing. It is the Committee’s belief that ensuring parolees have transitional housing when they are paroled will reduce the likelihood of parole violations and will reduce the number of parole violations that result in parolees being returned to the system. The Nebraska Legislature should provide additional dollars for the purpose of funding transitional housing including peer support housing, mental health and substance use treatment centers, and other supportive housing options for parolees. Specifically, housing opportunities need to be developed to match the needs of individuals’ re-entry plans.

5. Fund Additional Problem Solving Courts

Funding for additional mental health and drug courts could create more targeted diversions from the Nebraska Department of Correctional Services. The judicial branch already has successful mental health and veterans courts in place. Providing funding to establish more problems solving courts can, in a targeted manner, divert mentally ill individuals and individuals suffering from post-traumatic stress disorder or facing other service related challenges from the Department of Correctional Services and into community based treatment and support.

6. Address Recruitment and Retention of Staff through Fair Pay and Benefits

As noted above and in last year’s report, staffing concerns continue to be a major challenge for the Department of Correctional Services. Working toward lower turnover of staff and toward filling all necessary positions must be a priority for the Legislature and the Department to ensure the safe and effective operation of the state’s prison facilities.

As of June 20, 2018, the Department had nearly 120 vacancies in the area protective services.³⁷ The Department reported another 29 behavioral health clinical vacancies in its July quarterly report.³⁸ The Department reported a turnover rate for 2017 of 34.02 percent agency-wide, with some facilities reaching into the 40 percent range.³⁹ These numbers are too high.

To its credit, the Department has made staffing and turnover a priority. The Department’s most recent strategic plan establishes the goal of reducing turnover to 18 percent agency-wide by 2023.⁴⁰ Practical strategies identified by the Department to work toward this goal include reducing

³⁷ NDCS Presentation to LR 127 Committee (Sept. 6, 2018), attached hereto as Exhibit A.

³⁸ NDCS Quarterly Data Sheet April – June 2018, available online at https://corrections.nebraska.gov/sites/default/files/files/39/ndcs_quarterly_data_sheet_april_-_june_2018_revised.pdf.

³⁹ NDCS Presentation to LR 127 Committee (Sept. 6, 2018), attached hereto as Exhibit A.

⁴⁰ NDCS 2019–2023 Strategic Plan, available online at https://corrections.nebraska.gov/sites/default/files/files/41/2019-2023_strategic_plan_final.pdf.

mandatory overtime, providing opportunities for professional growth, enhancing training, increasing engagement, and reducing staff assaults, among other things.⁴¹

And while these strategies are all valuable and should be pursued by the Department, this Committee believes more action should be taken. In last year's report, this Committee recommended considering employment incentives, such as step raises, longevity pay, and merit bonuses. Unfortunately, staff recruitment and retention remains a core challenge and risks the safety and stability of staff members and the system as a whole. The Committee recommends rewarding long-time employees committed to the success of the Department and its important public safety mission. First and foremost, significant raises and longevity pay must be incorporated into the public employees' contract. The Department of Correctional Services should ensure adequate pay and benefits through the union contract. Legislation to change employment classification options will be necessary if the Department of Correctional Services does not take action to provide the pay and benefits that are necessary to reduce turnover and fill vacancies as quickly as possible. The Legislature should legislate a tiered staff wage process to impact retention by increasing opportunities for advancement within NDCS as needed. Additionally, DCS should provide merit pay to staff who speak and utilize a foreign language during their employment and those who participate in extra duties that require additional training.

7. Fund Priorities Appropriately to Address Overcrowding, Staffing and other Proven Needs and to Support the Criminal Justice System as a Whole

Discussions related to funding are a repeated topic with respect to any area of the Legislature's work. This is true in the corrections arena as well. Nebraska's prison system must be efficient, but it also must be funded at a level that allows the system to operate effectively to ensure the safety of the community outside the system, and the staff and inmates inside it.

To that end, the LR 127 Committee believes it important to emphasize to future legislatures that funding for the Department must be a priority in order to provide the resources necessary to manage the system..

As Governor Pete Ricketts has expressed, "our corrections system had been underinvested for a long time," and the focus moving forward must be "building a prison system that's actually effective."⁴² Prioritizing our financial investment in the system is the best way to make up for the past underinvestment that has contributed to the challenges faced in the system today.

The Department of Correctional services has made recommendations regarding staffing and capitol construction in their agency budget requests. These recommendations should be well-vetted to insure that they will make the greatest impact on system safety and functioning. Other policy recommendations, such as funding wages, transitional housing, and other needs should also be considered. Funding justified needs in the Department of Correctional Services should be a

⁴¹ *Id.*

⁴² Joe Duggan, Ricketts remains confident in Frakes and Nebraska's prison reform plan, Omaha World Herald (Mar. 20, 2017), available online at https://www.omaha.com/news/nebraska/ricketts-remains-confident-in-frakes-and-nebraska-s-prison-reform/article_4fcd7bbf-8f7a-5752-b98b-501ff6347afb.html.

priority in the budget as a whole. Support for increases in infrastructure and capacity should strategically consider staffing patterns to avoid placing additional burden on facilities that are already dangerously understaffed.

In the future, the Nebraska Legislature should specifically fund the needs articulate in the statutorily required staffing adequacy report due in 2020. Additionally, the Legislature should require the Department of Correctional Services to submit a plan for how to address the identified \$60 million dollars in deferred maintenance within the system and facilities.

Further, we must fully and adequately fund the needs of the justice system. Funding needs for the Board of Parole, the Administrative Office of Probation, the Crime Commission, and the effective functioning of the court system are necessary parts of addressing the functioning of our state's criminal justice system.

8. Support the Well-Being of Staff Members by Requiring the Clear and Regular Reporting of Data Related to Staff Assaults and Supporting Well-Being Initiatives

The frequency and severity of assaults on staff at correctional facilities has a direct impact on the recruitment and retention of staff in the Department. As the Department put it in its strategic plan, keeping people safe is vital to ensuring an engaged and committed staff.⁴³ For this reason, the Department has set a goal to reduce workplace injuries, including staff assaults, by 50 percent over the next few years.⁴⁴ And while this goal is important and laudable, the Committee believes that future legislatures would benefit from a statutory requirement that the Department uniformly track and report staff assaults to maintain a clear picture of their frequency and severity.

This committee believes that the Legislature should require an annual report of the number of assaults and their type. The report must include a classification system for the type of assault based on the extent of the injury suffered by the staff member, and might also provide a breakdown of the type of staff member assaulted. NDCS should also allow for victims of assaults at prisons, the regional centers, and youth residential treatment centers to be informed of disciplinary actions completed against offenders, and any charges being filed against them. If the victim is an employee at a secure state institution, information could also be sent to a union representative. This information would not only be valuable to the legislature in oversight of the Department and the progress its making, but might also be valuable to the Department in tracking its progress and ensuring the public that progress is being made.

The Department reported to the Committee that from July 2017 to June 2018 there were 177 total inmate-on-staff assaults.⁴⁵ That number is down from the previous fiscal year, which saw a total of 211 inmate-on-staff assaults.⁴⁶ This trend is promising, and the Committee believes a

⁴³ See NDCS 2019–2023 Strategic Plan, available online at https://corrections.nebraska.gov/sites/default/files/files/41/2019-2023_strategic_plan_final.pdf.

⁴⁴ *Id.*

⁴⁵ NDCS Presentation to the LR 127 Committee (Sept. 6, 2018), attached hereto as Exhibit A.

⁴⁶ *Id.*

policy requiring that such information is made regularly available would be valuable to future legislatures in monitoring assaults to ensure all is being done to protect the safety of corrections staff.

Additionally, staff must have access to mental health support to address the unique challenges they face. Nebraska develop a correctional officer's well-being initiative including twenty-four hour support services provided by trained peer professionals and should ensure flexibility for staff working all shifts. The initiative should also include the hiring of a wellness officer to promote strategic and system-wide mental health and well-being efforts.

CONCLUSION

Over the past year, progress has been made to improve the state's adult justice system. Action by the Legislature during the 2018 session saw a number of policy objectives advance, and the Department of Corrections has worked diligently to make internal improvements. And although good things have happened, more work can be done.

As future legislatures consider the best way to approach continued improvement of the system, the LR 127 Committee urges legislators to prioritize the following recommendations as more fully outlined hereinabove:

- Continue to diligently pursue reducing the system's overcrowding challenges by passing legislation that sets parameters on the use of the county jail programming, works to better coordinate management of county safekeepers between the Department of Corrections and the Department of Health and Human Services when appropriate, and that prioritizes transitional housing for parolees to help ensure they do not return to the system on a parole or other law violation;
- Prioritizing staff recruitment and retention through incentives by providing the Department with management tools such as more variable employee classifications, longevity pay or step raises, and merit pay;
- Prioritizing funding for the Department to meet its needs by working with the Director to ensure that all budget requests include the full extent of staffing, equipment, and infrastructure needs to promote safety and effective functioning of the Department of Correctional Services and the criminal justice system; and
- Ensuring the continued progress made in protecting correctional staff by requiring the uniform and consistent tracking and reporting of staff assaults.
- Funding additional problem solving courts to divert individuals from incarceration where safe and appropriate.

If the Legislature continues to work with the Department and continues to pursue these important policy changes, this Committee feels confident that progress will continue to be made. Our final

recommendation is that a new special committee be commissioned to continue the work done by this committee on into the future.

The Members of the LR 127 Committee hereby submit this report to the Appropriations Committee of the 105th Nebraska Legislature and the Judiciary Committee of the 105th Nebraska Legislature on this 14th day of December, 2018, in accordance with the requirements of Legislative Resolution 127.



Senator Laura Ebke, Chair