



**OFFICE OF INSPECTOR GENERAL
OF THE NEBRASKA CORRECTIONAL SYSTEM
2015/2016 ANNUAL REPORT**

Abstract

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

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Hearing
Other
People's
Experiences
gives me
HOPE.

--Lawrence Posey

Contents

INTRODUCTION.....	4
EXECUTIVE SUMMARY	6
POTENTIAL NEEDS.....	8
BACKGROUND	10
STAFFING	14
Recruitment.....	14
Overtime	14
Turnover.....	15
Vacancies	15
Health Services Staffing	16
Other Staff.....	17
Staffing Analysis.....	18
Overcrowding	19
New Normal?	19
The Staffing Future	20
STAFF SURVEYS	23
December 2015 NDCS Survey	23
December 2015 Parole Survey.....	24
August 2016 Survey.....	24
Culture Survey	25
INMATE POPULATION	27
ASSAULTS.....	30
Lincoln Correctional Center Assault.....	31
OIG Changes.....	32
RESTRICTIVE HOUSING	33
Legislative Bill 598.....	33
Legislative Work Group	34
Restrictive Housing Changes	34
NDCS Report.....	36
Changes and Misconceptions.....	36
PROGRAMS	38
COMMUNITY CORRECTIONS	40

New Construction	40
Other Options.....	40
New County Jail Program.....	41
Work Release vs. Work Detail.....	41
Post CCC Checks.....	42
Reentry.....	42
MEDICAL	44
Inmate Health Plan.....	44
Technology	44
Consult Requests.....	45
Staffing.....	46
Planning for the Future	47
SUICIDE.....	48
DEATHS	49
ESCAPE FROM THE LINCOLN CORRECTIONAL CENTER.....	50
TSCI UPDATE.....	51
NEW ASSESSMENT TOOLS.....	53
STRONG-R.....	53
Classification Tool.....	54
DIVERSITY OF NDCS WORKFORCE.....	55
AUDITOR’S REPORT	56
INMATE LETTERS.....	57
OTHER LETTERS AND MEMORANDUMS	58
PAROLE ADMINISTRATION TRANSITION	59
NDCS REPORTS.....	61
RECOMMENDATIONS.....	62
Report Recommendations.....	62
Possible Innovative Ideas to Consider	64
OIG RESOURCES AND YEAR TWO GOALS.....	66

INTRODUCTION

This is the first report of the Office of Inspector General of the Nebraska Correctional System (OIG). The first year of the office has been challenging, as the Nebraska Department of Correctional Services (NDCS) and the Adult Parole Administration (Parole) continue to undergo a variety of significant changes in their operation. There is a strong effort underway to change the way both of these state agencies operate, as a number of stakeholders are incredibly engaged in their progress.

The stakeholders include NDSC and Parole employees, inmates, parolees, members of the Nebraska Legislature, the Ombudsman's office, the Ricketts Administration, families of inmates, the American Civil Liberties Union, churches, reentry organizations, justice advocates, law enforcement, media and former inmates.

The OIG was established in 2015 by the Legislature in order to provide for increased accountability and oversight of the Nebraska correctional system. It was based on a recommendation of the Department of Correctional Services Special Investigative Committee, which was established by the adoption of Legislative Resolution 424 during the 2014 legislative session.¹ The OIG identifies and examines systemic issues of the NDCS and Parole and also investigates incidents resulting in death or serious injury that occur within the Nebraska correctional system. The OIG is affiliated with the Legislature's Office of Public Counsel.

The Office of Inspector General of the Nebraska Correctional System Act is found in Neb. Rev. Stat. §§ 47-901 – 47-919. On September 16, 2015, Doug Koebernick was appointed as the first Inspector General of Corrections.

The OIG is charged with issuing an annual report with its findings and recommendations to the members of the Judiciary Committee, the Clerk of the Legislature and the Governor by September 15th of each year. It is the intent of the OIG to provide additional reports on specific topics during the course of the next year that build on the efforts of this first report. The majority of the issues found in this report have already been brought forward to the Department of Correctional Services Special Investigative Committee or LR 34 Committee, the Appropriations Committee and the Judiciary Committee of the Legislature, the Board of Parole, the Parole, and NDCS.

The OIG has spent considerable time the past year visiting facilities, attending meetings related to correctional issues, visiting with senators and staff, gaining a better understanding of correctional facilities and related programs, and reaching out to members of the community. The first year has been an effort to learn as much as possible about the two systems.

¹ “4. The Committee recommends that the Legislature establish the “Office of Inspector General of the Nebraska Correctional System.” The Office should conduct audits, inspections, reviews and other activities as necessary to aid the Legislature in its oversight of the Nebraska correctional system.”

Nebraska law (Neb. Rev. Stat. § 47-902) charges the OIG with “*assisting in improving operations of NDCS and the Nebraska correctional system.*” In some ways this has become the primary focus of the OIG due to the many challenges facing NDCS as it attempts to make changes in its operation.

NDCS and its Director, Scott Frakes, face numerous challenges in the months and years ahead. One way of looking at it was expressed by John Krecji, a longtime advocate for correctional change, who wrote a letter to the editor in the *Lincoln Journal Star* on April 10, 2016 that said: “*The bureaucracy is trying to change the course of the battleship. Legislators circle in their pontoon boats shouting for Captain Frakes to hurry up and change course. Inmates, like immigrants, splash around in their rubber rafts, voicing their frustrations. While at a distance, the ACLU lurks in its submarine, threatening to launch its lawsuit torpedoes.*”²

The OIG highly recommends that those interested in these issues and challenges first read the report of the Department of Correctional Services Special Investigative Committee that was published on December 15, 2014.³ The report laid the groundwork for the creation of the OIG and many of the reforms that NDCS is moving forward on today.

The OIG would like to thank Kristina Hall, who served as the OIG’s first intern during the summer. Thank you to the Nebraska Legislature, staff of the Ombudsman’s office, and staff of the Office of Inspector General of Child Welfare, who have assisted the OIG’s efforts during the last year. The OIG would finally like to thank the inmates, parolees, staff and administration of NDCS and Parole who assisted with the OIG’s efforts and shared their opinions, insights and suggestions.

A sincere thank you is extended to NDCS Director Frakes, Board of Parole Chair Rosalyn Cotton, and Director Julie Micek of Parole for their expressed commitment to transparency and for their genuine willingness to assist the OIG in carrying out its statutory duties.

² http://journalstar.com/news/opinion/mailbag/letter-inmates-suffering-through-debate/article_bd1b3b2a-9e02-5519-8d4c-0a7231ab778f.html#comments

³ http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf

EXECUTIVE SUMMARY

During the past year, the OIG has communicated on a regular basis with not only the Nebraska Department of Correctional Services (NDCS), the Adult Parole Administration (Parole), and the Board of Parole, but also with the Legislature's Department of Correctional Services Special Investigative Committee or LR 34 Committee.

Highlights of the report include:

- As of June 30, 2016 there were 252 vacant positions in NDCS;
- 201 protective services employees have ceased their employment with NDCS in 2016;
- The recent \$500 retention bonus plan announced by NDCS has the potential of splitting the staff into two categories: the haves and the have nots;
- Failure to have inmates prepared for parole may cost the State of Nebraska \$35,000 to \$40,000 per inmate per year;
- NDCS should consider taking additional steps to increase recruitment and employment of minority staff, including staff who speak Spanish and other languages that are prominent in the NDCS facilities;
- When the NDCS staffing analysis is taken into account, there are over 300 protective services employee vacancies in the system;
- The OIG staff survey and the Nebraska Department of Administrative Services' Culture Survey had many comparable results and findings;
- In 2014, the U.S. Department of Justice found that Nebraska had the fourth most overcrowded state correctional system;
- The August 24, 2016 staff assaults at the Lincoln Correctional Center need further examination to understand the role of understaffing and other concerns that may have contributed to the assaults;
- Inmate-on-staff assaults have grown while inmate-on-inmate assaults have decreased during 2016;
- Restrictive housing changes that went into effect on July 1, 2016 were negatively impacted by a lack of sufficient communication;
- A suicide at the Tecumseh State Correctional Institution resulted in many recommendations from a Critical Incident Review Team, including the areas of mental health, training, the use of interpreters, and emergency response;
- The preliminary finding of the OIG on the June 9, 2016 escape of two prisoners from the Lincoln Correctional Center is that it was a result of a systemic failure related to security and oversight;
- The transition of Parole from NDCS to the Board of Parole was hamstrung by a lack of clear direction to the first consultant and an overall lack of communication and understanding of the Legislature's expectations. However, NDCS and the Board of Parole adapted and the successful transition took place on July 1, 2016;
- The Adult Parole Administration will need approximately \$230,000 to increase the salaries of staff to comply with state law;

- At least six counties are interested in working with NDCS to house work release inmates in their home counties;
- The Vocation and Life Skills Program is succeeding but could use a significant funding;
- The use of peer supports is growing inside and outside of correctional facilities;
- NDCS is unable to keep up with travel orders related to medical consult requests despite the efforts of a work group on this issue in 2015 and 2016;
- NDCS continues to face significant medical and behavioral health staffing issues and needs to address this challenge in a creative and meaningful way; and,
- The OIG will provide an update of the situation at the Tecumseh State Correctional Institution no later than December 1, 2016.

POTENTIAL NEEDS

In February 2016, the OIG completed an early assessment regarding the needs of NDCS. These were presented to the Legislature and NDCS. Much of the following report is based on this assessment. Below is the information that was presented at that time:

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

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

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

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

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

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

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

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

At the same time, the OIG also discussed the need to fund modular housing and classrooms at several facilities and the need for additional funding for the reentry grant program. The reentry grant program is funded by NDCS and directs funds to groups that assist inmates who are leaving NDCS facilities;

Seven months later, the assessment is standing the test of time.

BACKGROUND

As mentioned in the introduction to this report, the OIG was established as a result of the work of the Department of Correctional Services Special Investigative Committee in 2014. The Committee started its work by looking at the situation involving inmate Nikko Jenkins' history in segregation while in prison, his leaving the correctional system direct from segregation and having no transitional programming, and his murdering four people in Omaha. The work of the Committee expanded as more issues came to light regarding "*the full extent of the dysfunction at the Department of Correctional Services.*"⁴ It is important to note that the 2014 criticisms focused on the leaders of NDCS. However, many staff throughout the agency have told the OIG that they felt like their efforts were being criticized during that process. Those concerns continue today.

It is necessary to look at the past actions of NDCS in order to understand how the department arrived at its current dilemma and where it needs to go in the future. The NDCS is an agency that clearly does not have the necessary resources needed to fulfill its mission. This could be viewed as a failure of past NDCS leaders, as well as the Executive and Legislative branches of state government.

In 2014, the Committee's report provided a solid analysis and history of some of the resource issues that have plagued NDCS. It found the following:

*It is also the judgment of the Committee that the resources available to inmates within NDCS are wholly inadequate. These resources include programming and mental health treatment. The NDCS must not only punish the incarcerated but provide some measure of rehabilitation. This rehabilitation cannot happen within NDCS until adequate programming is available and mental illnesses are appropriately treated. The failure to devote adequate resources to programming and mental health treatment will result in the compromise of public safety and additional expense as the unrehabilitated reoffend and return to NDCS.*⁵

*It is the Committee's judgment that overcrowding in the institutions of the Department of Correctional Services and the lack of adequate resources were central to most, if not all, of the remaining scandals that plagued this agency of the Executive Branch of the state government.*⁶

The recommendations of the Carter Goble Lee report were presented to the Governor's office in 2006. The Governor elected to not follow the recommendations of the report. In

⁴ http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf, page 33

⁵ http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf, page 33

⁶ http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf, page 34

fact, since the report was presented to the Governor, the Executive Branch never sought an appropriation to develop the additional capacity recommended in the report. The consequences of this decision were predictable.

While the 2006 Master Plan was never implemented in the years that followed it is clear that overcapacity led the Governor's office to reconsider the recommendations in the Carter Goble Lee report on a number of occasions. Talking points from a November 7, 2007, meeting, between Director Bob Houston and the Governor's Chief of Staff Larry Bare show that severe overcrowding was discussed and that an attachment to the talking points was the 2006 Master Plan.

In May 2009 Robert Bell from the Governor's Policy Research Office sought "realistic cost estimates related to prison construction" from Director Houston. In the email Bell wrote, "I also think that you have said in the past that your need is at the lower custody levels, so I would like an estimate of a new minimum/medium facility." He also asked for the costs of adding beds at TSCI and any other facility construction costs. As a result, a May 7, 2009, memorandum from Houston to Bell was submitted and was "partly based on the 2006 Strategic Capital Facilities Plan, as prepared by Carter Goble Lee." The memorandum provided the costs of adding 256 beds to TSCI, adding a 250 bed housing unit at the Community Corrections Center-Lincoln (CCC-Lincoln), and a new 900 bed multiple custody facility. The total costs were approximately \$150 million.

In the fall of 2009 through 2010, there was activity by the Department of Correctional Services to prepare a proposal to present to the Governor for additional capital construction based upon the 2006 Carter Goble Lee report. Like all of the previous attempts, this discussion concerning the need for capital construction to address capacity issues did not culminate in an appropriation request by the Governor's office. Nor did the Department of Correctional Services or the Governor ever advocate for resources to build additional capacity.

Finally, on March 14, 2012, a meeting between Bob Houston and Governor Heineman took place that addressed prison capacity and, once again, updated figures on building the additional capacity recommended in the 2006 Carter Goble Lee report. Director Houston prepared an outline for the meeting which included the obvious, but important observation: "NDCS must reduce its population or increase its capacity." The outline proposed three different options for the Governor's consideration. The options were labeled "No Cost Options," "Low Cost Options," and "Build Capacity." The "Build Capacity" option presented the Governor with the updated cost figures on adding 1,300 beds to the capacity of NDCS. This "Build Capacity" option involved capital construction proposed in the 2006 Master Plan by Carter Goble Lee. The "No Cost Options" were a variety of strategies intended to move inmates out of the Department of Correctional Services institutions in a shorter time span. The "Low Cost Options" involved minimal expenditures and band-aid approaches to deal with overcrowding.

In his testimony before the Committee, Governor Heineman acknowledged that all three options were presented and he elected to go with the “No Cost Options.” In reality, the administration had already begun implementing many of the “No Cost Options.” It is important, nevertheless, to recognize that a deliberate decision was made by the administration to not build additional capacity and, instead, pursue “No Cost Options.”

It is the implementation of the various “No Cost Options” that became the subject of the various scandals investigated by this Committee. At no time did the administration propose building more capacity. No appropriation request was ever made to the legislature by the Department of Correctional Services nor the Governor’s office. What’s more, the Director insisted in meetings with Senators that the numbers were manageable. Clearly that was not the case. In short, the decision to not follow the recommendations of the Carter Goble Lee report was the Governor’s alone and it follows that the resulting overcrowding and its related consequences were of his own making.”⁷

When Director Houston was asked whether he had ever presented the report to Governor Heineman, he told the Committee “I did not present it to him,” never advocated for the findings in the report and that he never had a conversation with the Governor about the findings. When the Governor appeared before the Committee, he stated that he remembered having a number of conversations with Houston regarding the recommendations of the Carter Goble Lee report.⁸

The Committee also recommends that additional resources be devoted to mental health care and adequate programming. Mental health services and programming should be made appropriately available across facilities and to individuals in protective custody. Mental health care and programming should be evidence based. Specifically, the availability of violence reduction programming should be expanded. Clearly, these are two areas that have been sacrificed to cost-saving measures. It is the Committee’s opinion that providing rehabilitation for inmates through programming and mental health treatment is critical to public safety inasmuch as 97 percent of the inmates will be returned to the community upon completion of their sentence. Additional resources should be invested in community based mental health both in terms of access to mental health treatment that can prevent entry into the correctional system and in terms of the availability of community based mental health for inmates upon re-entry.⁹

During the past year, the OIG has had numerous conversations with past and current employees of NDCS. In many cases, they describe a “starving” agency that has not been able to ask for the

⁷ http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf, pages 36-37

⁸ http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf, page 34 footnote

⁹ http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf, page 59

resources it needed during prior administrations because of political pressure from above to not spend any additional money. They described the changes in the agency that resulted from it not having the resources needed to fulfill its mission. During the past year there have been many expressions of hope from staff that the new NDCS administration will begin to address these concerns. Many believe that more oversight of NDCS will present an opportunity to educate policymakers about the impact of previous funding choices.

STAFFING

The staffing issues facing NDCS have long been obvious. While the Tecumseh State Correctional Institution (TSCI) was receiving the most attention due to the riot that took place on Mother's Day in 2015, other facilities and parts of the system were also facing significant staffing challenges. Such staffing challenges impact the entire system, including safety and security, treatment and programs for inmates, reentry efforts, and even the ability to carry out a travel order.

In short: NDCS is in a staffing crisis.

Recruitment

The data shows that the number of people recruited by NDCS has risen over the past three years. During fiscal year 2013-14, 462 individuals started their pre-service training program. This increased to 526 individuals in fiscal year 2014-15 and 587 in fiscal year 2015-16.¹⁰ NDCS put a renewed effort into recruiting through a number of methods, including the hiring of a full-time recruiter and increased advertising.

A work group on staffing vacancies was convened by NDCS during 2015 and 2016 and focused primarily on recruitment efforts. Concerns regarding this effort include that it lacked a focus on retention of employees and the membership of the work group did not include anyone from outside the central office (with the exception of TSCI Warden Brian Gage).

Overtime

In 2014, the average amount of overtime throughout NDCS was 22,056 hours a month. The average during the first half of 2016 was 28,958 hours.¹¹ This is an increase of more than 31 percent (2015 data was not used in this comparison due to the Tecumseh riot and the impact that it had on overtime).

According to NDCS, the top 30 employees who worked the most overtime ranged from working an extra 994 hours in one year to working an extra 2,839 hours in one year.¹² This means that one employee worked over 90 hours per week for the entire year. When correctional employees work high amounts of overtime, morale, burnout, and fatigue can take place and mistakes or errors on the job can be made.¹³ Another way to measure the increase in overtime is found in a chart that shows that agency weekly overtime rates per full-time employee have grown over the past few years at a significant rate.¹⁴

The amount of money spent on overtime for protective services employees has increased each of the past five fiscal years. In fiscal year 2010-2011 \$3.3 million was spent on overtime for these

¹⁰ Attachment 1: Email from Erinn Criner to Doug Koebernick on August 1, 2016

¹¹ Attachment 2: Total Overtime Spreadsheet

¹² Attachment 3: Top 30 Overtime Staff

¹³ Attachment 4: July 7, 2014 article in *Alabama Real Time News*

¹⁴ Attachment 5: Staff Retention Statistics

workers. It jumped to \$7.7 million in fiscal year 2014-2015.¹⁵ This is nearly a 129 percent increase in spending during that period on overtime for solely protective services employees.

Turnover

Turnover rates for protective services employees increased for at least five straight years before 2016 and are projected to increase again this year. In fact, through the first six months of 2016, 201 protective services employees have left NDCS. As a comparison, the total number of protective services employees who left NDCS in all of 2010 was 233.¹⁶ Turnover is the real problem for NDCS as Director Frakes shared recently before the LR 34 Committee when he said that they were “treading water” when it came to filling vacancies.

The OIG completed a review of staff turnover rates at TSCI in April 2016 and shared those results with the Legislature and NDCS.¹⁷ The review examined who was working in all positions on January 1, 2015 and how it compared to who was working in those positions on January 1, 2016. It found that there was no turnover or only slight turnover in the positions of Captain, Lieutenant, Unit Administrator, and Unit Case Manager during that time. The Sergeant position had a turnover rate of nearly 32 percent. The Corporal position had a turnover rate of nearly 30 percent. Unit Caseworkers had a turnover rate of nearly 60 percent and Correctional Officers had a turnover rate of nearly 70 percent.

NDCS measures turnover when someone actually leaves the Department so their turnover rates would be different than what this review determined. For example, if someone is promoted within the facility, that would not be considered turnover by NDCS but it would have been in this review. It is important to note that of the Correctional Officers who were working at the facility on January 1, 2015 nearly 46 percent were not working at TSCI one year later in any capacity. Approximately 49 percent of Unit Caseworkers were not working at TSCI one year later.

Vacancies

Vacancy data for protective services staff is somewhat more difficult to track due to changes in the way NDCS defined the actual number of vacancies. Prior to June 4, 2015, it wasn't considered a vacancy if an individual was in training for a position.¹⁸ In looking at the data during the past year, it would appear as though vacancies have gone down since last August.¹⁹ However, the Legislature funded an additional 59 positions in 2015 so this temporarily increased the number of vacancies. As the chart in Attachment 8 shows, there was a slight downward turn in vacancies (most likely when NDCS made the renewed recruiting commitment and had extra classes in training) but it eventually increased again and NDCS is in a very similar situation as it was a year ago. An additional attachment is being included with this report that has vacancy data

¹⁵ Attachment 1: Email from Erinn Criner to Doug Koebernick on August 1, 2016

¹⁶ Attachment 6: Monthly Protective Services Turnover

¹⁷ Attachment 7: April 19, 2016 OIG Memo

¹⁸ Attachment 5: Staff Retention Statistics

¹⁹ Attachment 8: Protective Services Vacancies, Agency-wide

from the rest of the state correctional facilities.²⁰ In addition, a regular State of Nebraska Vacancy Report is also compiled and published. The latest version of this report is dated June 30, 2016.²¹ This report shows every current vacancy, the date the vacancy took place, and salary information. It demonstrates that vacancies are in many, if not all, areas of the correctional facilities and the total in this report was 252 positions listed as vacant.

Health Services Staffing

On June 14, 2016 Senator Kate Bolz received information from NDCS regarding behavioral and mental health staffing levels.²² At that point in time, there were 34 vacancies out of 161 positions. Since that time five psychologists have left or have announced that they will be leaving NDCS. While some of those positions or other psychologist positions have been filled, these vacancies impact a number of key functions of NDCS. These include, but are not limited to, the providing of programming and treatment, services such as membership on the Discharge Review Team and other groups, and the fulfilling of new requirements related to changes to restrictive housing.

As of August 1, 2016, NDCS had at least 19 medical positions vacant.²³ These included dentists, nurses, and other medical providers. The position of Medical Director for NDCS will soon be open due to the retirement of Dr. Randy Kohl. It is clear that NDCS faces challenges in attracting staff for health services positions. One of the challenges that they face is that the private sector and other state agencies may pay more for comparable positions. In May 2016 the OIG learned that the Division of Behavioral Health within the Nebraska Department of Health and Human Services worked with the Department of Administrative Services to reclassify nurses who are employed at the regional centers. The Division of Behavioral Health was able to demonstrate to the Department of Administrative Services that nurses who work in these facilities face different challenges than a nurse in other setting and they received a raise. The OIG sent a letter to Director Frakes that indicated that NDCS could make a similar case to the Department of Administrative Services due to the unique challenges faced by the nurses who work for NDCS. As a result, the OIG made the following recommendation to Director Frakes on this issue:

...I would recommend that the Department of Correctional Services contact the Department of Administrative Services in the near future and begin the process of seeking a reclassification of correctional nurses (including Registered Nurses and Licensed Practical Nurses). In addition, I would suggest that the Department consider putting forth a proposal where they would set up a tiered system of advancement which would reward a nurse (or other health professionals for that matter) for obtaining a certification from an organization like the National Commission on Correctional Health

²⁰ Attachment 9: Protective Services Vacancies, All Facilities

²¹ Attachment 10: Excerpts from June 30, 2016 State of Nebraska Agency Vacancy Report

²² Attachment 11: Information Prepared for Senator Bolz 6-14-16

²³ Attachment 12: Health Services Staffing Breakdown by Facility

Care. The Commission currently provides a Health Professional Certification for mental health staff, nurses and physicians.²⁴

As of September 15, 2016 NDCS had not yet acted upon this recommendation.

These same recommendations could be applied to positions throughout NDCS.

During a visit to the Nebraska State Penitentiary to meet with behavioral health staff, a document was shared with the OIG that provided data on the treatment provider to inmate ratios as of May 9, 2016. It identified all of the treatment provider positions at each facility or in a specific unit within a facility and the number of inmates in the facility or in a specific unit within that facility. It then calculated the number of inmates per treatment provider. It showed a wide discrepancy in these rates, ranging from a ratio of 4.29 inmates per one treatment provider in the Lincoln Correctional Center Secure Mental Health Unit to a ratio of 156.63 inmates per one treatment provider at the Nebraska State Penitentiary.²⁵ While some of these discrepancies are needed due to the type of population involved in that facility or unit, the significant discrepancies may impact staff who already feel stretched thin.

There will be an attempt by NDCS to use a contracted provider for behavioral health services at TSCI in the near future. Some of the parts of the \$1.5 million retention plan that resulted from the passage of Legislative Bill 733 that was introduced by Senator Dan Watermeier are aimed at some of these employees. Additional steps need to be taken, including better communication between the administration and staff.

Other Staff

There are a number of other staff positions that are vacant throughout the system. Many staff, such as the newly created positions of reentry specialists, are spread thin and working long hours. Other staff provide security coverage in addition to their regular positions due to the lack of protective services staff. For example, the OIG has received numerous reports of maintenance or recreational staff having to work on a yard. Kitchen, recreational and even educational staff are often left without a Correctional Officer or a Corporal assigned to their area despite that being the policy of NDCS. Some staff are used to assist with travel orders even though they are not considered protective services staff. There should be a concern that many individuals in these positions will leave for other positions in the private sector or even other agencies in state government. Probation currently is filling positions that could be easily filled by reentry specialists and other correctional staff. In other words, it is important to pay attention to all staff.

Director Frakes announced in August that certain classifications of employees would receive a one-time \$500 bonus. This proposal has the potential of splitting the staff into two categories: the haves and the have nots. There were a large number of staff who did not receive the bonus despite their commitment to NDCS and their being impacted to a great degree by the number of

²⁴ Attachment 13: May 20, 2016 letter to Director Frakes

²⁵ Attachment 14: NDCS Behavioral Health Treatment Provider Ratios Memo

protective services vacancies. The OIG heard from numerous individuals who didn't feel they were valued by NDCS due to their not receiving the bonus.

While the OIG applauds this effort, it does not go nearly far enough. The Department's motto is "One Team, One Vision." Many employees who are part of that team but were disappointed to be left out of this program contacted the OIG. Even before the bonus program was announced, staff who worked in the kitchens, maintenance areas, recreational areas, and other support areas contacted the OIG due to their concerns that they were not being valued by NDCS or the Governor because only a certain class of workers was being discussed when it came to increasing salaries. Many of these same staff did not receive the \$500 bonuses. As a result, the OIG made a recommendation to Director Frakes that he end the original \$250 bonus program for staff who completed certain training courses that was part of the \$1.5 million retention plan. This program has not been well received by staff and only \$3,750 of the \$450,000 budgeted to it has been spent. The OIG suggested that NDCS take the remainder of this money and establish a bonus program similar to the \$500 bonus program for other facility staff. The reason this was proposed is best expressed in a letter received by the OIG from a Recreational Specialist which said in part:

I am utterly disappointed in the Nebraska Department of Correctional Services regarding these bonuses. Only select positions are going to receive bonuses which are not okay. My fellow Recreation Specialists and I come to work every day and put our life on the lines for this department and we will not receive a retention bonus. This is not acceptable and utterly a disgrace for the department....This bonus is also discriminating against maintenance, laundry and CSI. We all come to this correctional facility and risk being assaulted every day. What happened to "One Team One Vision," this retention bonus is not treating staff like the "one team one vision."...Five hundred dollars may not be a big deal to you, but to staff that is underpaid 500 dollars is the difference between having a late car payment and groceries...

One positive about the new bonus plan is that it does show that NDCS agrees that they can actually provide bonuses to their employees. During the past year, despite the work of the OIG, NDCS maintained for a long period of time that they could not legally provide bonuses to their employees.²⁶

Staffing Analysis

At the LR 34 Committee hearing on August 31, 2016 there was considerable discussion about a recent staffing analysis that was conducted by NDCS, with training provided by the National Institute of Corrections. The analysis is a 311 page document that provides details on the needs related to protective services positions at each facility. The final report found that there was a need for an additional 138 protective services positions within NDCS, including 44 at the

²⁶ Attachment 15: February 11, 2016 OIG Memo to Senators Mello and Watermeier

Lincoln Correctional Center.²⁷ When this is combined with about 200 protective services vacancies, NDCS is actually operating at more than 300 protective services positions less than what they actually need. In addition, this is solely a staffing analysis for those positions. It does not include an analysis of the staffing needs for the rest of the facilities and central office.

Overcrowding

At the end of June 2016, NDCS was operating at approximately 158 percent of design capacity. This does not account for the 141 individuals who were state inmates but were residing in county jails. Including them would increase the operating level of NDCS to approximately 160 percent of design capacity.²⁸ As a result, NDCS is operating at about one percent less of capacity than last year.

While the population has held steady or decreased slightly during the past year, it is still anticipated that there will be a decrease in population on the front end of the system as a result of recent legislative changes. Another way to decrease the population would be to parole more individuals but when there is a lack of programs and treatment, many individuals are not considered good candidates for parole in the eyes of the Board of Parole.

The OIG recently spent an afternoon in the minimum custody unit at the Nebraska State Penitentiary in order to listen to inmates. Nearly every one of them had the same concern: *“I’m past my parole eligibility date and have done what has been asked for me. However there is one more program that I have to take in order to have the Board parole me and I’m not scheduled to get into it for months or longer.”* To say they were frustrated is an understatement. The key part of this is that if someone doesn’t get their programming or treatment and are not paroled for that reason this could cost the state \$35,000 to \$40,000 per inmate per year because they may stay in a correctional facility for another year while they await their next opportunity at being paroled.

New Normal?

In many ways, the situation that NDCS faces is similar to a past situation involving the Beatrice State Developmental Center (BSDC). They had significant staffing concerns. These staffing issues ultimately led to a lack of quality care, increased instances of abuse and neglect, and injuries and deaths of individuals whose welfare was the responsibility of the State of Nebraska. As things spiraled out of control at BSDC, each year became a new normal and the view became for many that it really wasn’t that much worse than last year though if they had compared it to five or even ten years before they would have understood the dramatic change in their circumstance.

The gradual worsening of these problems highlighted previously is something that needs to be remembered and focused on as change takes place in NDCS. It is important that people throughout NDCS take a step back and have a full understanding of the changes that have taken

²⁷ Attachment 16: Executive Summary of the NDCS Prison Staffing Analysis

²⁸ Attachment 17: NDCS Quarterly Data Sheet, April – June 2016

place over a period of five, 10 and even 20 years. This applies to vacancy rates, overtime rates, overcrowding, and turnover rates. NDCS, the Legislature, and other interested parties must look at change over a period of more than one or two years in order to accurately assess actual differences within NDCS.

In addition, it is important to look at a number of other factors and how they possibly relate to increases in overtime and staff vacancies. For example, have there been increases or decreases in such items as workplace injuries, inmate injuries, worker compensation claims, sick leave, employee disciplinary actions or employee grievances? The OIG will examine this later this fall.

The Staffing Future

In a recent guest editorial in the *Lincoln Journal Star*, Senators Kate Bolz, Colby Coash, Adam Morfeld and Patty Pansing Brooks laid out the options available to the Executive Branch to begin to address staffing issues and challenges. Some of these options were short-term and others were long-term.

NDCS provided the details of their plan for the use of the \$1.5 million for retention in June and there were several components of that plan.²⁹ The Legislature provided NDCS with this funding in Legislative Bill 956 to assist with the retention of staff and it included the following language:

There is included in the appropriation to this program for FY2015-16 \$1,500,000 General Funds, which shall only be used for strategies to retain quality staff in workforce shortage areas at institutions operated by NDCS. At least \$150,000 of this appropriation shall be used in the retention of staff within the Division of Health Services. NDCS shall provide quarterly reports to the Governor and the Legislature regarding use of the appropriation that include how the funds are being utilized, the impact of the use of the funds on retention of quality staff, staff vacancy and turnover data, and plans for the future use of the funds. The second quarterly report shall include a plan by NDCS for the use of a similar appropriation in future fiscal years. The reports submitted to the Legislature shall be submitted electronically. It is the intent of the Legislature that if NDCS of Correctional Services has behavioral and mental health treatment staff positions that are vacant for ninety days that NDCS use these funds to contract with private providers so that inmates are able to promptly receive behavioral and mental health treatment.

It remains to be seen how effective the elements of this plan will be as well as any changes made as a result of the implementation of the Strategic Plan from last fall. NDCS should continue to be transparent regarding the implementation of all of these attempts to address the working and living conditions of those employed by NDCS and those who reside with NDCS.

²⁹ Attachment 18: June 15, 2016 article in the *Lincoln Journal Star*

One way for an organization to assist with changing a culture is to hire people in various leadership positions from outside an organization. NDCS has had little luck with this. During communications with Director Frakes about leadership salaries, he explained that warden salaries are actually competitive with other states. However, it is not clear if the positions under the wardens (Deputy Warden, Associate Warden and Assistant Warden) are as competitive. When NDCS advertised for the Deputy Warden position at TSCI this past year the entry level salary was not much above \$60,000. Director Frakes shared that the last time NDCS brought someone from outside into the system at the warden level it was Karen Shortridge in 1984. Recently, NDCS interviewed candidates for the Associate Warden position at TSCI. The position was only open to internal candidates. This showed little interest by NDCS in bringing in new people to a key position that could assist with turning around the culture, especially at a facility that has had more than its share of issues. However, as of July 1, 2016 there will no longer be an internal-only application process in NDCS. Going forward, the challenge for NDCS will be whether or not they have the ability, the resources, and the desire to bring in people from outside the system.

This fall negotiations begin between the state employees union and the State of Nebraska on a new labor contract. Correctional employees hope that changes will be made to starting pay and that some action will be taken on longevity pay. Director Frakes has told his staff in various town halls that he believes action needs to be taken on both of those issues. He also indicated as much at the August 31, 2016 LR 34 Committee hearing.

On September 15th, Director Frakes will provide his budget recommendations for the next biennium to Governor Pete Ricketts. His recommendations will lay out his plan and vision for NDCS and highlight the needs of NDCS.

It is likely that the labor negotiations will result in changes to the labor contract beginning July 1, 2017 and the budget request by Director Frakes, if adopted by the Nebraska Legislature, will go into effect on the same date. As a result, three-fourths of a year may pass before these new proposals can begin to impact NDCS' ability to attract and retain employees. Should the current trends continue on overtime, vacancies, and departures, NDCS will only find itself in even more of a staffing crisis and may witness what took place at the BSDC, only on a much larger scale.

It will behoove the Governor and the Legislature to work with NDCS and explore any options that are available to address the crisis sooner rather than later. One of the changes that was undertaken at BSDC to improve their situation was the drastic reduction in their population. This adjusted their staff-client ratios and allowed staff to be more focused on a smaller population. One option that will mandatorily go into effect in 2020 is the ability for the Governor to declare a correctional system overcrowding emergency when the inmate population at NDCS is over 140 percent of design capacity. Currently, the Governor has discretion to make this declaration that is found in Neb. Rev. Stat. 83-962. On July 1, 2020 the discretion for that decision will no longer exist. If the emergency was declared today, approximately 700 inmates would have to be released to reach 140 percent of design capacity. To put that into context, there are currently 561 inmates in the two community correction centers. In order to fully understand the impact of using

this option now or in the future, NDCS, the Adult Parole Administration and the Board of Parole should jointly present a plan to the Governor and the Legislature detailing how a correctional system overcrowding emergency would be administered and who would be impacted by such a declaration.

Finally, during numerous conversations and communication with inmates and staff throughout NDCS, the overriding concern that the OIG has heard is safety. The staff want to be safe. The inmates want to be safe. Appropriate levels of staffing, as well as an appropriate quality of staffing, are needed in order to begin to address those two safety concerns. In the end, it is also a public safety issue since it is vital that the State of Nebraska do what it can to have safe and successful transitions of inmates back into our communities.

STAFF SURVEYS

The OIG has completed three different staff surveys using a Google survey format. The first two were completed in December 2015. One was directed to NDCS employees and the second was directed to employees of the Adult Parole Administration. A third survey was sent in August 2016 to NDCS employees.

December 2015 NDCS Survey

In order to gain insight from the employees of NDCS and to introduce them to the OIG, a Google survey was provided to the staff during the month of December.³⁰

The first group of staff that the survey was distributed to was anyone with an email address that was listed as working for a correctional facility. There were 1035 individuals who received an email with the survey. Over 51 percent of those individuals responded to the survey.

The second group of staff that the survey was distributed to was anyone with an email address that was listed as working for “Correctional Services Administration.” The survey was sent to 404 individuals who were listed under this category. Over 35 percent of those individuals responded to the survey.

Not everyone at NDCS has an email address so in the message to the staff they were asked to share the survey with those who did not have email. Some mailed in a completed survey and others utilized the link to the survey that was provided by their co-worker via a personal device. There was nothing that limited staff from responding more than once so it is possible that some people may have responded more than one time.

Nearly all of the questions included the option of selecting “other” for an answer. In those cases, staff provided their own answer. This provided a great deal of additional insight regarding their experiences.

Among its many results, the survey found the following:

- 61.1 percent did not believe the starting salary for their position was appropriate;
- 45.2 percent did not look forward to coming to work on most days;
- 54.4 percent would not recommend a job at NDCS to a friend or family member;
- 55.4 percent felt they could approach a supervisor with a concern regarding their work environment;
- 68 percent said that salary advancement each year above the hiring wage would be the primary change that could take place to retain employees;
- 45.4 percent of employees stated that additional programming is needed for inmates;
- 50.7 percent of respondents didn’t know which direction NDCS was headed; and,
- 0.8 percent of respondents agreed that the Legislature supports the employees of NDCS.³¹

³⁰ Attachment 19: January 11 Memo to LR 34 Committee with Survey Results

³¹ Attachment 19: January 11, 2016 OIG Memo on Staff Survey Results

The responses were also broken down by facility and shared with the Legislature, NDCS and the wardens at each facility. The survey met the goals of gaining valuable insight from NDCS staff and introducing the OIG to the staff.

December 2015 Parole Survey

A similar survey was emailed to the 57 employees of the Adult Parole Administration and 41 of the employees responded to it.³² It was more focused on the transition of the Adult Parole Administration from NDCS to the Board of Parole.

Highlights of the survey included:

- Most staff said the favorite part of their position was having the opportunity to help parolees to move forward in their lives;
- Primary challenges to staff were the increasing workload, the need for more and improved training, and the lack of programming and services for parolees;
- 74.4 percent had not seen the transition plan; and,
- 53.8 percent of respondents were not sure how the transition would impact the ability to do their job.

The results were shared with the Board of Parole and the Parole Administrator. A new survey will be sent to the parole staff later this fall to obtain their views on the transition.

August 2016 Survey

On August 29, 2016, an email with a Google survey was sent to every staff member in NDCS from the OIG. The survey included one question: *“If you could make one change (or process improvement) to improve your work area, shift or facility within the Nebraska Department of Correctional Services, what would it be?”*

Within a few days nearly 300 responses were received by the OIG. Many of the responses focused on beginning pay and step pay. Other issues raised included enhancing communication between layers of NDCS, eliminating the “good old boy club,” ending the practice of retaliation, the impact of restrictive housing changes, the need to hire quality staff, and the overall need for resources throughout NDCS. A good example of this is in the medical area where various staff wrote about the need to have electronic medical records and telehealth opportunities in order to provide better and timelier care for their patients. A handout was provided to the LR 34 Committee on August 31, 2016 that included excerpts from the numerous responses.³³ This handout was also provided to NDCS.

³² Attachment 20: December 14 Memo on Parole Survey Results

³³ Attachment 21: August 29 Survey Question and Excerpts from Responses

Culture Survey

NDCS worked with the Nebraska Department of Administrative Services to conduct a Culture Survey.³⁴ It was begun in the summer of 2015 and completed in May 2016. More than 470 employees were a part of the survey and it focused on such topics as communication, leadership, safety, inmate culture, training, compensation and facilities. The survey was viewed as a valuable tool in moving NDCS forward. Director Frakes promised to “*prioritize and address the issues*” found in the survey.³⁵ The survey found that there were perceptions of inequity and favoritism, wages were not satisfactory, morale was suffering, staff were dissatisfied with those in positions of leadership, and staff did not appreciate how they are perceived by the public.

On July 19, 2016 NDCS issued a release that was “*aimed at addressing recruitment and retention challenges identified by agency staff in the NDCS Staff Culture Survey.*”³⁶ The four initiatives were:

- Implementing a 12-hour Shift Pilot Program at TSCI;
- Establishing a 1st-Level Supervisors Pilot Program at the Nebraska State Penitentiary;
- Facility Security/Procedure Audits; and,
- Constructing a 100-bed temporary housing unit Community Corrections Center-Lincoln.

While these may be positive steps to take by NDCS it is difficult to see how they actually relate to the findings of the Culture Survey. The 12 hour shifts is a change that needs to be addressed with the state employees union and in the Culture Survey there were arguably more negative remarks about the 12 hour shifts than positive remarks. The supervisor program at the Nebraska State Penitentiary is a good step but it impacts a very small number of individuals. The Facility Security/Procedure Audits came about as a result of the escapes at the Lincoln Correctional Center and do address some safety concerns that may have been a part of the Culture Survey but it remains to be seen what changes will take place as a result of these audits and how they will impact the culture of NDCS. The construction of the temporary housing was an idea that was promoted by the OIG and the Nebraska Legislature and was not initially supported by NDCS. It will ease some pressure of the system but it is unclear how that is related to the Culture Survey other than indirect safety or overcrowding effects.

One issue that was discussed in both the OIG survey and the Culture Survey was the fear of retaliation. According to NDCS, despite a desire to address this, no one has been disciplined for retaliation within NDCS in the last year.

The Culture Survey was a notable effort by NDCS to understand the views of their staff. It gave the staff another avenue of sharing their views. The challenge now exists regarding how NDCS uses the input to make changes that will positively impact their employees. Arguably, there will

³⁴ [http://www.corrections.nebraska.gov/pdf/NDCS percent20Culture percent20Study percent20percent20Part percent201.pdf](http://www.corrections.nebraska.gov/pdf/NDCS%20Culture%20Study%20Part%201.pdf)

³⁵ http://journalstar.com/legislature/prisons-culture-study-shows-worker-concerns-about-pay-safety-and/article_28c82bca-3e61-5447-9060-fff773a33f37.html

³⁶ Attachment 22: July 19, 2016 NDCS Press Release

be a direct correlation between the extent to which the findings of the Culture Survey are put into practice and the credibility of the NDCS Administration with its line staff.

INMATE POPULATION

As mentioned previously in this report, overcrowding of NDCS correctional facilities has changed little during the past year. Last September, NDCS had 5,311 inmates in their custody, including 198 state inmates in county jails. This September NDCS has 5,289 inmates in their custody, including 151 state inmates in county jails.³⁷

Last September, NDCS facilities were operating at 156 percent of their design capacity.³⁸ If the inmates at county jails are included as part of the NDCS system, then it was operating at 162 percent of design capacity. This September those figures are at 157 percent and 161 percent of design capacity. County inmates should be included in this assessment due to the fact that the program that houses them in county jails will end by June 30, 2017.

According to the U.S. Department of Justice, 19 jurisdictions were operating their correctional facilities at more than 100 percent of their capacity in 2014.³⁹ Nebraska was the fourth highest state as far as operating facilities above design capacity. Alabama, Delaware and Illinois were the states operating facilities at a higher percentage of their design capacity.

Nebraska began a process with the Council of State Governments (CSG) in 2014 that was intended to slow the population growth in the correctional system. It was projected that Nebraska's correctional system would reach 170 percent of design capacity by 2020. As a result of the work of CSG, Legislative Bill 605 was passed by the Legislature. This legislation was intended to direct more individuals who were convicted of low-level offenses to probation, enhance supervision of parolees, and require post-release supervision for many inmates upon their release. It was "*expected to reduce Nebraska's prison population by 1,000 people per year and ensure supervision for an additional 300 people released from prison per year.*"⁴⁰ At this point, data is still being collected and analyzed by CSG but the prison population has only slightly decreased. There is a CSG work group that is meeting on this issue and more information on this will be provided to the Legislature by the end of the year.

In addition to controlling who enters the correctional system on the front end, there are also two other factors that influence the population of the facilities in NDCS. The first is the ability for inmates to move quickly through the system. They can do this by taking classes or programs, becoming good candidates for parole, and then actually being paroled near their parole eligibility date. The second is the ability to assist those who leave the correctional system from returning to it.

In a June 21, 2016 report the CSG Justice Center found that:

³⁷ Attachment 23: NDCS Population Spreadsheet

³⁸ According to the Bureau of Justice Statistics, Design Capacity is defined as "The number of inmates that planners or architects intended for the facility."

³⁹ Attachment 24: Excerpts from *Prisoners in 2014* by E. Ann Carson and the Bureau of Justice Statistics

⁴⁰ <https://www.bja.gov/programs/justicereinvestment/nebraska.html>

Current approaches to program delivery at NDCS silo program assignment and unnecessarily stretch program delivery out over time, leading to inefficiencies that increase costs to the state by delaying parole readiness. One-third of people within a year of their parole eligibility date are denied a parole hearing due to lack of programming, leading to numerous people jamming out of prison without supervision.

This has resulted in little change in the number of inmates being paroled. More information on parole and programming will be shared later in the report but it is important to know that parole is a key part of managing population.

It is also important to provide appropriate services to individuals when they reenter society. If the correct services are in place then fewer people are likely to return to the correctional system. NDCS has begun programs in recent years focused on reentry that will be discussed later in the report. Adult Parole Administration also has a role in this and their efforts will also be discussed later in the report.

NDCS has contracted with seven county jails to house state inmates. The number of inmates housed in the jails has fluctuated between approximately 130 and 200. They are held there for up to 90 days in order to ease overcrowding of the state correctional facilities. This past legislative session Director Frakes announced that he would be ending the program at the end of this fiscal year (June 30, 2017) due to his belief that there would be room for those inmates in state facilities as the population declined in the state system. A visit to the Hall County Jail by the OIG resulted in concerns being expressed by inmates about the quality of the food, their inability to go outside, the lack of programs, medical care, and how they were placed there. These were shared with NDCS. The OIG will visit all seven county jails before the end of 2016.

Another concern that emerged in April was the movement of some inmates from TSCI to the Hall County Jail. In an email to NDCS leaders, the OIG wrote:

Second, in yesterday's log there are some individuals who were moved from SMU West (and one from SMU B) to the Hall County Jail who do not appear to fit the criteria for the plan laid out before the Legislature regarding the use of the county jail program. One example is [REDACTED] who was written up on March 22 for the "use of threatening language or gestures/fighting." Since October he lost 4.5 months of good time and received 157 days of disciplinary segregation. His TRD is 12/6/2038. Another example is [REDACTED] who was moved from SMU B (restrictive housing) to Hall County Jail and since February he has had four MRs that resulted in being placed on a total of 72 days of disciplinary segregation. In his case his TRD is 10/7/2016 but it does not appear that he has a connection to Hall County. In addition, he has been approved for Domestic Violence programming but will now be going to a location that offers no programming at all which means he is likely to jam out without receiving the programming recommended for him.

In a later letter to Director Frakes, the OIG wrote in response to a statement that despite those concerns the inmates did actually meet the established criteria for placement in the jail program:

In addition, in the criteria provided to me regarding who is eligible to participate in the county jail program, it stated that no inmates convicted of certain Part One Offenses are eligible, including Assault 1st Degree. [REDACTED] was convicted of Assault of an Officer 1st Degree. A quick spot check of inmates in the county jail program also found another inmate who was convicted of Assault 1st Degree [REDACTED]

The OIG recommended that “*the Department review the inmates currently in the county jail program to determine whether or not there are inmates who do not meet the criteria established by the Department or are not good candidates for the program based on other criteria.*”⁴¹

A different use for some of the soon to be empty jail beds will be discussed later in the report.

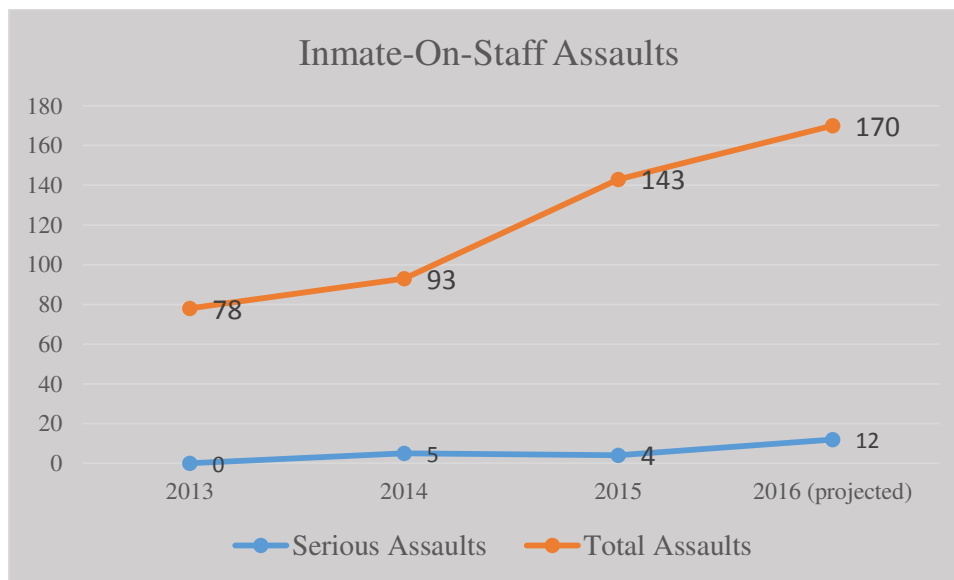
⁴¹ Attachment 25: May 5, 2016 Letter to Director Frakes from the OIG

ASSAULTS

The issue of inmate-on-staff assaults emerged as a significant concern in early 2016 as more assaults reached the public eye. The OIG provided the LR 34 Committee with a memorandum on March 30, 2016 regarding staff assaults that contained preliminary assault data. The OIG shared the following with the LR 34 Committee:

My conclusion would be that it is unclear based on the data that I currently have whether or not the number of assaults that have occurred in the past few weeks is unusual. As you can see, the numbers during November, December and January fluctuated although none of the injuries were classified as serious injuries. While staff have been hospitalized during the recent rash of assaults it is unclear whether or not their injuries will be classified as serious until the investigations are complete. It would also appear, based on the information that I have reviewed, that the assaults are random incidents and are not connected. I will be asking the Department for additional data and information to help fill in the blanks and will provide an update to you in the near future.

Data provided since by NDCS does show that there has been a consistent growth in staff assaults, including ones that result in serious injuries since 2013.



Data Source: Nebraska Department of Correctional Services

NDCS provided the following definition regarding serious injury to the OIG:

A serious injury is defined as an injury which requires urgent and immediate medical treatment and restricts the inmate's usual activity. Medical treatment should be more extensive than mere first aid (e.g. application of bandages to wounds or taking an x-ray). Examples of serious injury include stitches, setting of broken bones, treatment of concussion, partial/full loss of consciousness so as to cause person inability to defend oneself, being checked into the hospital, etc. Keep in mind that a trip to the hospital

doesn't necessarily mean that there was serious injury. It depends on the treatment received after they were taken there that determines seriousness.

The OIG issued a memorandum on April 15, 2016 that was completed after the additional data was provided by the NDCS. It was unable to draw any conclusions as far as why the increase in assaults was taking place.⁴² However, it did state that the OIG would continue to track this data, review the assault investigations, and ask questions of the Department. This has been done on a regular basis by the OIG but there is a need to do more.

As shown in the above chart, new data shows that there have been 85 total assaults during the first six months. Of these six have resulted in a serious injury. From 2013 to 2015 there were a total of 9 assaults that resulted in a serious injury.⁴³ This projection does not include any serious injuries that occurred since June 30, 2016 and there have been an increasing number of assaults in the past few months.

The newest data on inmate-on-inmate assaults found that those assaults are actually projected to decline compared to last year. Last year there were 233 assaults, of which 40 resulted in a serious injury. Through the first six months of this year there are 101 total assaults, with nine resulting in a serious injury.⁴⁴

As a result of the increase of staff assaults, and specifically the incident where nine staff at the Lincoln Correctional Center were assaulted on August 24, 2016, Director Frakes sent memorandums to both the staff and the inmates regarding assaults and restrictive housing changes.⁴⁵ The memorandum to the inmates stated that *"The physical attacks against NDCS staff must stop now"* and it stated that the positive things that the inmate population want can't happen unless the attacks cease. He also attempted to clear up any confusion about the new changes to restrictive housing in order to make it clear to inmates that if they assault staff they will have a longer stay in restrictive housing. The letter to staff stressed his concerns regarding their safety and he also attempted to clear up misconceptions regarding the use of restrictive housing. These changes and misconceptions will be addressed later in this report.

Lincoln Correctional Center Assault

The OIG has value as an independent and objective evaluator of correctional and parole issues. The recent assaults at the Lincoln Correctional Center of nine staff members is a good example of how having a different set of eyes on a situation can benefit the system and outside entities interested in the correctional system.

The OIG's preliminary findings regarding these assaults is that despite statements to the contrary by NDCS, staffing may have played a part in the incident. Although the facility was at or slightly

⁴² Attachment 26: April 15, 2016 OIG Memo on Staff Assaults

⁴³ Attachment 27: NDCS Inmate-on-Staff Assault Data

⁴⁴ Attachment 28: NDCS Inmate-on-Inmate Assault Data

⁴⁵ Attachment 29: September 1, 2016 Memos by Director Frakes

above its minimum staffing levels that day, it was actually understaffed when compared to the recommendations of the recent staffing analysis. In addition, staffing issues that result in delays in programming for inmates need to be understood. The OIG reviewed the programming needs and progress of all of the inmates involved in the assault. From what the OIG was able to view all of the inmates had programming needs identified, yet with only a couple of minor exceptions none of them have received any programming. Included in their programming needs were Anger Management and Aggression Replacement Training. Several had pending Clinical Violent Offender Review Team screenings or had a referral pending. Some of the inmates had other identified needs. Three of the individuals were past their parole eligibility date and one had their parole eligibility date two weeks after the incident. Two of the inmates identified by the OIG as being primarily involved with the assault were past their parole eligibility date and had been identified as needing a minimum of Anger Management programming.

In addition, while initial reports focused on the assaults possibly being related to an inmate who did not want to follow directions, a review of the video of the incident showed that there was action prior to the initial assault that needs to be more closely examined before any conclusions can be reached about the reason for the assault. Before issuing a final report to the Public Counsel and NDCS, the OIG intends to interview individuals involved with the assault. Under state law, the OIG has to wait until the Nebraska State Patrol has finished their investigation before the OIG can interview witnesses that also were interviewed by the Nebraska State Patrol.

It is important to examine the entire picture and dig deeper when possible. The OIG isn't saying that the inmates would not have committed those assaults if they had received the recommended programs and it clearly doesn't excuse what they did. However, if the system knows someone needs assistance with violence or anger and nothing is done than the system must also be held accountable.

OIG Changes

The OIG will continue to closely monitor assault information and data in the future. One significant change that the OIG will make is to establish a better tracking mechanism for the assaults that are reported by NDCS to the OIG. The current process established by the OIG is flawed and needs to be altered no later than October 1, 2016. The new tracking mechanism will include fields that can be used to look for trends such as location, time, strategic threat group affiliation, day of the week, and past assault history.

RESTRICTIVE HOUSING

Legislative Bill 598

The Legislature passed LB 598 in 2015 which required NDCS to do the following regarding the issue of restrictive housing:

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

The changes found in Legislative Bill 598 were primarily driven by the work of the Department of Correctional Services Special Investigative Committee in 2014 although NDCS had also been working on changes to their segregation system at that same time.

Legislative Work Group

The Work Group was created last fall and has been led by Director Frakes. It is the observation of the OIG that the Work Group has not had the impact that the Legislature hoped for when it came to advising NDCS on policies and procedures related to the proper treatment and care of offenders in long-term segregation or isolation.

The structure of the Work Group, as set out in Legislative Bill 598, was primarily made up of Department employees and there were only four members who were from outside NDCS (and two of them used to work for NDCS). This provided for an interesting dynamic in the group and there was not as much input from Department employees as the OIG would have liked to have seen.

The Ombudsman's office and the OIG participated in the meetings at the invitation of the Director even though we were not official members of the group. We provided input at the meetings and in the drafting of the rules and regulations but it was unclear whether any other individuals provided input outside of the meeting on the rules and regulations.

Despite these concerns, the OIG recognizes that the Work Group has an important role and as the changes for restrictive housing are made by NDCS they will likely become more involved, educated and active.⁴⁶ After discussing some of these concerns with Director Frakes, he shared that the wardens would attend the September 7, 2016 meeting and would be there to share their thoughts and experiences with the new changes. However, the agenda was changed and the wardens did not participate in the meeting. The meeting was productive despite this change due to productive contributions from many members of the work group.

NDCS also has an internal restrictive housing work group and has also been working with the VERA Institute on the issue. The VERA Institute was supposed to provide a report earlier this year but at the time of this report the VERA findings had not yet been delivered. The activities or membership of the internal restrictive housing work group have not been shared with the OIG or any of the outside members of the external work group.

Restrictive Housing Changes

After the rules and regulations regarding restrictive housing were drafted, a public hearing was held for them on May 9, 2016. There was a considerable amount of input provided at the hearing. As the process moved forward and the rules and regulations were adopted, Director Frakes agreed to review them again next year and amend them if necessary.

The new changes have been promised to alter the manner in which restrictive housing operates by having it be a means of managing risk and not acting like a punishment. Starting July 1, 2016 two categories of restrictive housing were instituted. Immediate Segregation is the short-term housing of inmates (no more than 30 days) who have exhibited behavior that creates a risk to themselves or others. Longer Term Restrictive Housing is an intervention intended to change

⁴⁶ At the September 7, 2016 meeting there was much more interaction between the members of the group. It is key that NDCS make sure that the four non-NDCS members are able to attend each meeting before scheduling the meetings since their participation is crucial.

behavior of inmates whose own behavior results, or may result, in a risk to the safety of themselves or others.

The internal and external regulations provide for a process of tracking those in restrictive housing and reviewing and continuing or discontinuing their stay there.

In order to be authorized for placement in longer term restrictive housing the central office multidisciplinary review team (MRDT) has to approve the placement. NDCS developed an outline that showed the parts of the process involved with continuing an inmate on Longer Term Restrictive Housing.⁴⁷ After one year, the Director of NDCS officially becomes involved in the decision-making though he is likely to be involved in some cases prior to that time.

At the September 7, 2016 Work Group meeting, it was shared that MRDT reviewed 254 cases in July and August (these were inmates who were in restrictive housing under the previous rules). 154 were approved for longer term restrictive housing, 90 were removed from restrictive housing, and ten were continued on longer term restrictive housing.

In order to be placed in restrictive housing, an inmate's placement must be based on one of six categories. According to NDCS the six categories are:

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

NDCS will be implementing a peer mentor pilot project in a restrictive housing unit no later than July 1, 2018. Inmates trained as peer mentors will provide support and guidance for restrictive housing inmates during the classification review process and assist those inmates in accomplishing their behavior and programming plan. This was an idea proposed to NDCS by members of the Work Group.

In addition to the restrictive housing changes, disciplinary segregation was also ended on August 11, 2016. This change means inmates will no longer be placed in restrictive housing as a form of discipline. The focus will be on providing more immediate and effective interventions for inmates who previously would have been placed in restrictive housing as a result of their behavior.

⁴⁷ Attachment 30: NDCS Longer Term Restrictive Housing Flow Chart

NDCS Report

The September 15, 2016 report on restrictive housing by NDCS will include a variety of data and insight on the use of restrictive housing in Nebraska. It will discuss direct releases of inmates from restrictive housing into the community, the relationship between mental illness and the use of restrictive housing, data comparisons with other states, restrictive housing demographics, and changes that took place on July 1, 2016. Earlier this year NDCS did provide another report to the Legislature that shared their long-term plan for restrictive housing.⁴⁸

Changes and Misconceptions

An observation of the OIG regarding the changes to restrictive housing in NDCS is that there is a perception within NDCS that this effort has been primarily driven by the Nebraska Legislature. In fact, there have been many times when the OIG observed leaders of NDCS state that the Legislature was requiring them to do this.

These statements seemed to send the message to staff that this was being forced upon NDCS. In fact, NDCS started changes to restrictive housing practices prior to Director Frakes arriving in Nebraska. In addition, Director Frakes came to Nebraska with a reputation for implementing restrictive housing changes in the State of Washington. National reforms have demonstrated that Nebraska's restrictive housing practices were outdated and not especially successful.

NDCS has also had significant difficulties in tracking who was in restrictive housing and for how long they were there. In May, the OIG asked for specific information about inmates in a restrictive housing setting. A report was eventually developed by NDCS but when the OIG spot-checked two inmates their actual information did not match up with the information in the report. The purpose of requesting this data was to make sure that as the new changes were implemented that NDCS would actually know who was in restrictive housing for 90, 180 and 365 days. NDCS eventually cobbled together a system using spreadsheets, random checks and other methods that is tracking those who are in restrictive housing. Director Frakes shared that it will likely take at least two years to complete the information technology project that's needed for this purpose.

NDCS has been tracking those who release directly into the community from restrictive housing since 2015. However, prior to July 1, 2016, it did this only for those that spent the last 60 days or more of their sentence in restrictive housing. Prior to July 1, 2016, if someone was released from restrictive housing a few days before they discharged, it did not count as a direct release.

A situation was reviewed by the OIG regarding the practice of moving individuals from restrictive housing to general population for less than a day prior to their release. While these inmates all would not have been counted as direct releases due to their relatively short stay in restrictive housing, staff were told that there were individuals who were being moved into general population to avoid being considered a direct release. While no rules or regulations were

48

http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services__Department_of/591_20160630-181951.pdf

violated in those cases, it does raise a concern that this data could have been manipulated by short term moves to general population from restrictive housing of soon to be released inmates.

Since the changes to restrictive housing were enacted on July 1, 2016, the Ombudsman's office has seen a significant increase in contacts from inmates with concerns about the use of restrictive housing. The OIG will communicate with the Ombudsman's office in order to monitor and more fully understand the concerns of the inmates.

Another concern that has been expressed to the OIG is the impact of the restrictive housing changes on staff and their workload. Medical staff have to spend more time doing assessments and medical checks. Behavioral health staff have to spend more time making additional contacts with inmates. Protective services staff have extra responsibilities as well. While this extra work is intended to result in better outcomes and reviews of those placed in restrictive housing it does place an additional strain on an already stretched staff. As a result, the mantra of "do more with less" that has existed in NDCS for the last twenty years continues.

The final observation of the OIG regarding restrictive housing is that many barriers to a successful transition to a new restrictive housing program were actually set in place by NDCS.

Communication with the inmates and the staff was not sufficient. This resulted in an information vacuum in which staff and inmates both speculated about the coming changes and what their impact would be on both groups. While letters were sent to staff and inmates in June, they apparently did not result in appropriately informing each group.⁴⁹ Along with these letters, Director Frakes wrote an email to all of the wardens that explained the purpose of the letters. At the end he wrote, "*Please distribute these memos throughout your facilities, and ensure this information is effectively communicated with all staff. If your staff have questions that you cannot answer, please reach out to Deputy Director Sabatka-Rine.*"⁵⁰

Starting the next week, meetings with staff at each facility were held to discuss the changes to restrictive housing. These meetings were led by Deputy Director Diane Sabatka-Rine and Warden Robert Madsen. The OIG attended three of the town halls and it was apparent that there were concerns about the impact on staff, including the need for additional resources. They also had many questions about the changes. Meeting with staff to discuss these significant changes less than two weeks before the changes took place did not assist with the transition. Even Director Frakes acknowledged that there had been a lack of adequate communication in his September 1, 2016 letter to inmates when he wrote, "*There may be some confusion about the recent changes in Restrictive Housing (segregation).*"⁵¹ While the OIG is cautiously optimistic about the possibility for positive improvements to the use of restrictive housing by NDCS, the three keys to success appear to be communication, consistency and programming.

⁴⁹ Attachment 31: June 8, 2016 and June 9, 2016 Letters to Staff and Inmates from Director Frakes

⁵⁰ Attachment 32: June 9, 2016 Email from Director Frakes to All Wardens

⁵¹ Attachment 33: September 1, 2016 Letter to Inmates from Director Frakes

PROGRAMS

One of the most important issues in NDCS is programming. Programming is vital in the rehabilitation of the inmates, the management of a facility and the reduction in recidivism rates.

The OIG has identified some key areas of concern and need.

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

There have been two recent reports regarding programming in NDCS as well as a program statement completed by Michael Rothwell, the NDCS Deputy Director of Programs and Community Services. These three documents provide detailed information about current programs and future needs and plans.

The CSG Justice Center issued their report on June 21, 2016.⁵² The report was the culmination of a six month assessment of correctional programs in Nebraska. It recommended the adoption of a more evidence-based program assignment and sequencing strategy and a continuum of care in the community that is connected to programs found in NDCS. They found that NDCS delays the start of most programming until just prior to parole eligibility, or even later, and that many times inmates are not even aware that they need specific programs until they receive a case review from the Board of Parole. They laid out a strategy for the effective use of programming, including the directing of programming to high risk individuals, the use of a risk and needs assessment to determine programming, and shortening the length of time it takes to complete assessments and enter programming.⁵³ They also analyzed the programs currently in use and made recommendations for the use of additional programs in the future. In summary, they presented a new programming model to NDCS and laid out an implementation plan in order to accomplish all of their proposed recommendations.

Deputy Director Rothwell presented a Program Statement to Director Frakes that builds on the work of the CSG Justice Center on June 28, 2016. In the Program Statement he wrote, “*Current approaches to program delivery at NDCS silo program assignment and unnecessarily stretch*

⁵² Attachment 34: Findings of the Justice Program Assessment of Nebraska’s Prisons, CSG Justice Center, June 21, 2016

⁵³ NDCS recently began the use of the Strong-R tool to assess inmates in order to identify their programming needs.

program delivery out over time, leading to inefficiencies that increase costs to the state by delaying parole readiness.”⁵⁴

He presented his solution to the identified problems and discussed core programs that are needed, program staff needs, program management, funding and training.

On July 20, 2016 Ada Alvarez, Program Analyst for NDCS, issued a report that provided a qualitative analysis of the Violence Reduction Program, Sex Offender Programming iHeLP and oHeLP, and the Residential Treatment Community.⁵⁵ This was completed over a six month period and is the first of a three phrase report. The report is an internal work tool that works well with the CSG report by diving a little deeper than the CSG report. In the Executive Summary, the report stated:

This report encompasses the voice of inmates, clinical staff, and administration on the current status of the clinical programs and aims to identify why the programs are in their current situation and what their goals are. The key recommendations presented in this report include improving the environment for the inpatient programs, decreasing programming waitlist for screening and entering programs, implement strategies to overcome educational barriers, and addressing communication gaps within the behavioral health team.

These three documents are excellent resources that can be used to gain a better understanding of the current status of programming in NDCS as well as their future needs.

An observation that was shared by many with the OIG during the past year was that NDCS didn't provide much in the way of programming for their inmates. As a result, the OIG worked with Dr. Lisa Jones and her staff to create a spreadsheet that contained information about all of the programs offered at NDCS.⁵⁶ It is document that was designed to change over time and to fill in the blanks as time allowed. It was a significant step forward for the OIG in that it was the first step in gaining a better understanding of what programs were actually being administered. The OIG intends to work with Dr. Jones' replacement to continually update the spreadsheet.

One other issue that was briefly reviewed by the OIG this past year was the number of individuals with a developmental disability in a correctional facility and the services available to them. The OIG was told facilities make “accommodations” for inmates with a developmental disability but they do not actually provide habilitative services for them.

⁵⁴ Attachment 35: June 28, 2016 Memo from Mike Rothwell to Scott Frakes

⁵⁵ Attachment 36: Clinical Programs Evaluation – Phase 1; Ada Alvarez, July 20, 2016

⁵⁶ Attachment 37: NDCS Program Spreadsheet

COMMUNITY CORRECTIONS

New Construction

At the request of the Governor and NDCS, the Legislature appropriated funds to construct a 160-bed female unit at the Community Corrections Center-Lincoln. Included in this project is a separate building for the Center's food service, a new canteen and additional classroom/program space. The unit will result in a net gain of 148 community custody beds due to changes at the Community Corrections Center-Omaha that will result in females no longer residing at that facility.

When this was proposed, many questions were raised by the OIG and others regarding the necessity of this project. The questions specifically were focused on why the facility would be located in Lincoln rather than Omaha and why would NDCS eliminate community corrections opportunities for women in Omaha.

Currently, there are 380 inmates at the Community Corrections Center-Lincoln and 167 at the Community Corrections Center-Omaha. However, more individuals in the state correctional system are from Omaha and not from Lincoln. In addition, women from the metro Omaha area are already treated differently because they go to the correctional facility York and it is harder for their families to visit. In the future they will transition to the Lincoln facility where they will eventually find a work release position in Lincoln. When they are discharged they will then have to restart the employment process when they move to Omaha. If they are able to serve the end of their sentence in Omaha they will be able to rebuild relationships with children who many are expected to parent once they are released, and find other supports such as housing, treatment options, employment and education.

Other Options

The OIG presented information to Director Frakes and the Legislature regarding other options to expanding the Community Corrections Center-Lincoln. These included using modular buildings to house inmates on a short-term basis in Omaha or following a model from the State of Washington that utilized smaller reentry facilities. Such facilities could be located statewide so that inmates could return to their home community for the final part of their transition from being incarcerated. The Legislature eventually provided NDCS with \$1.8 million to be used for modular housing or classrooms. NDCS is using the funds to construct a 100-bed facility at the Community Corrections Center-Lincoln that will eventually be used as classroom/program space. After this was announced the OIG once again expressed a concern about not adding capacity in the Omaha metro area.

Related to this issue, the OIG asked for any materials that had been accumulated by NDCS regarding the building of modular classrooms and living units and the developing of smaller work release centers on February 17, 2016.⁵⁷ NDCS responded on April 21, 2016 that there had been a binder with information about modular options that had been assembled by Jeff Laabs

⁵⁷ Attachment 38: February 17, 2016 OIG Letter to Director Frakes

who worked in the purchasing area. Mr. Laabs gave it to his supervisor, Mary Carmichael, in 2015. Ms. Carmichael confirmed that she provided it to Director Frakes, who does not recall receiving it. Copies of what were in the binder were eventually provided to the OIG for review. The materials were quite informative and useful to the work of the OIG. To this date, no one interviewed by the OIG knows what ultimately happened to the binder while it was in the central office.

New County Jail Program

Previously in the report, the county jail program was discussed. This program consists of current inmates who are housed in local jails and NDCS pays a per diem rate to the county jail. This program is scheduled to end on June 30, 2017.

One suggestion that was provided to the OIG and has now been shared with NDCS is that NDCS explore the option of using local jails to house state inmates who are classified as a community custody inmate and are eligible for work release. If a local jail has beds that are free and can be used for work release, this could continue to relieve pressure on the state correctional system while also providing enhanced opportunities for inmates to transition into their home communities. For example, Hall County Jail has two actual work release units. When the OIG visited the facility earlier this year, only five beds out of over 30 were being utilized. If there are inmates from Hall County or neighboring counties that are eligible for work release, having them find employment in the community they are returning to makes much more sense and will usually result in a more successful transition.

The OIG worked with the Nebraska Association of County Officials to survey jail administrators and county sheriffs and six counties responded that they would be interested in working with NDCS on this proposal.

Work Release vs. Work Detail

At each community corrections center, inmates are assigned to either a work detail position or are on work release where they obtain a job in the community. Work detail positions are ones in which NDCS has a contract to fill either internally or with another state agency. The daily pay for these positions is \$1.21, \$2.25 or \$3.78. Work release positions are actual jobs working in the community for a business. These positions pay regular wages.

In order to be housed at a community corrections center, an inmate has to be classified as community custody. Most inmates qualify for work detail positions before qualifying for work release positions. In recent correspondence with an official at a center, they said that the goal is to have all inmates employed in work release positions 30 days or more before their final Board of Parole hearing or their tentative release date (mandatory discharge date). If an inmate has a work release position they are able to save more money for their eventual transition to the community.

Currently, NDCS has a significant number of contracts for work release jobs. In fact, more than half of the inmates in the community corrections centers are needed to satisfy the terms of the

contracts. During a tour of a center, a corrections official shared how the work detail contracts were such a benefit because they saved money for the State of Nebraska. However, the purpose of the community corrections centers are not to save money for the state but to better prepare inmates for a successful reentry into the community. The priority should not be the fulfilling of contracts. If inmates are successfully transitioned into the community that would actually save much more tax dollars in the future for the State of Nebraska.

The OIG has been contacted by many inmates or former inmates who would like to see more work release opportunities. They believe that due to the number of contracts many inmates who are on work detail are kept there and not moved to work release. Several inmates had jobs lined up in the community but then were told that they had to wait because the work detail positions needed to be filled. Some of these individuals then lost those job opportunities. If an inmate is qualified and ready to be employed in work release positions, NDCS should do all that they can to make that happen.

Post CCC Checks

Individuals have contacted the OIG with other concerns related to the community corrections centers and the reentry process.

One such concern is the practice of withholding paychecks of those who recently left the centers. When someone leaves the center they still owe NDCS the \$12 per day rent for when they resided there and also a payment to Victims Compensation. As a result, their next one or two paychecks are withheld by NDCS and the money for one or both of those two items are taken out and a new check is then provided to the former inmate. The OIG was asked to look into this practice because some individuals were experiencing significant delays in receiving a check back from NDCS. This delay impacted their ability to pay rent, buy groceries or pay other bills associated with their reentry into their community. After being contacted about this by the OIG, NDCS agreed to revise their process so that instead of issuing checks only on the 5th of the month and the 12th work day of the month, they will now issue checks every Wednesday.

Reentry

The Vocational and Life Skills Program was established by the Legislature in 2014 and the accompanying grant program for community groups has shown great promise for NDCS and those who reenter society from correctional facilities. The first grant cycle began in early 2015 and ended in June 2016. The second grant cycle began July 1, 2016. The programs that were funded in the second grant cycle include: Associated Builders and Contractors, Hope of Glory Ministries, Mental Health Association, Metropolitan Community College, ReConnect, ResCare, TRADE – Center for People in Need, and Western Alternative Corrections.

The funding for those eight groups during the next two years total nearly \$7.4 million.⁵⁸ NDCS has contracted with the Nebraska Center for Justice Research at the University of Nebraska at Omaha to evaluate the program. The final reports for the first grant cycle will be provided to NDCS later this fall.

⁵⁸ Attachment 39: NDCS Handout on Grantees and Their Funding

The grant recipients are providing services in areas throughout Nebraska and they include a combination of programs, including housing, employment services, education, and vocational training.

There was an emphasis this year to provide more services inside facilities that would assist with the transition of people to the outside of the facilities. For example, the Mental Health Association of Nebraska is about to start WRAP (Wellness Recovery Action Program) at their third facility this fall. NDCS also focused on providing programs in several parts of the state including a special emphasis on north Omaha.

There were a number of other quality grant proposals submitted to NDCS that would undoubtedly benefit many others who are reentering society. If the funding was doubled then most of those proposals could be funded in the future.

The OIG was invited to view the grant process and was able to visit with most of the groups that submitted proposals. The OIG plans to visit all of the groups that were awarded grant dollars during the next year to learn more about their activities and those who participate in them. Several of the programs use peers (former inmates or other people who have participated in the criminal justice system), which they found to be an effective tool in assisting their participants. The OIG attended a federal conference on reentry in June 2016 and learned about reentry activities in other states and shared that information with NDCS. It appears as though the federal government is emphasizing the importance of peer support programs across the country.

Another part of the reentry effort by NDCS is to have reentry specialists meet with inmates at least three times during their incarceration. They meet with new inmates within their first 10 ten days of being taken into custody at NDCS, then about halfway through their sentence, and then in the last 120 days of their sentence. During these visits they discuss their need to have a reentry plan that includes where they are going to live, the relationships in their home community, their plans for a job, and the need to save any funds that they earn during their incarceration. Each inmate is provided a Reentry Workbook that is a combination of a guide and a planning document. If the OIG has any concern about this program, it is that there may be a need for additional reentry specialists as their current workload is quite high.

MEDICAL

The Vision of the Health Services Department is to strive to “*continually improve the health of the individual placed in our custody by developing integrated delivery systems that efficiently provide a continuum of needed, accessible and quality health services.*”⁵⁹ In order to carry out this vision, NDCS has several challenges to overcome, including staffing levels, structure and layout of their medical facilities, antiquated record systems, dated medical equipment, and barriers to providing specialized care to inmates.

Inmate Health Plan

On July 1, 2016, NDCS released the Inmate Health Plan. The intent of the Plan is to demonstrate how NDCS complies with the provisions of the Nebraska Correctional Health Care Services Act, the law that defines the health care that NDCS needs to provide to the inmate population.

The plan is highly detailed and provides guidelines on the medical and behavioral health care provided to individuals while they are incarcerated. The Plan “*defines which services are medically necessary, but is not a contract or a guarantee of services to inmates.*”⁶⁰ It will be important for the OIG to follow the progress of the Plan and its impact on inmates over the next year.

Technology

Experiences in other states have shown that health information technology can assist correctional agencies and facilities by increasing communication among providers, enhancing coordination of health care, and leading to cost savings. NDCS is severely limited by a lack of this technology, whether through the lack of electronic health records, connections to health information exchanges, the limited use of telemedicine, or even the dispensing of medication.

A project of the Substance Abuse and Mental Health Program at the Vera Institute of Justice called Justice and Health Connect is an excellent resource for learning how systems such as NDCS can fully utilize health information technology.⁶¹

A 2013 report by Justice and Health Connect showed the many benefits of moving into the technology age.⁶² According to this report and many other articles, podcasts and resources on their web site, there are numerous examples of how utilizing this technology leads to better health outcomes, better connections to resources in the community, more cost-effective treatment options, improved medical decision making, better reentry planning, the reduction or elimination of duplicative procedures, and the development of a continuum of care between correctional facilities and community providers.

⁵⁹ <http://www.corrections.nebraska.gov/health.html>

⁶⁰ Attachment 40: Health Services Inmate Health Plan, July 1, 2016

⁶¹ <http://www.jhconnect.org/>

⁶² Attachment 41: “Health Information Technology and the Criminal Justice System”; Justice and Health Connect

Some examples of the benefits of telehealth or telemedicine include a reduction in consult requests, increased access to medical and mental health specialists, the treating of more inmates each day, the willingness of more doctors to participate, diagnosing more quickly a medical issue which then prevents a patient crisis and the potential use of an hospital emergency room, and improving inmates' health.⁶³

Some possible innovative uses of such practices could include the ability for improved hospice or palliative care and access to emergency room doctors after hours. It is vital that NDCS move forward in the pursuit of health information technology.

Consult Requests

Consult requests are a significant problem for the medical staff in correctional facilities. These are generated when it is determined by a medical provider that an inmate needs a medical assessment or procedure outside of a correctional facility. When these are done that means a travel order at a facility must take place. Due to staffing issues the number of travel orders that a facility can do in one day are quite small. However, the number of consult requests climbs each day which creates a significant backlog that may be impacting the health of the inmates. Information was recently shared with the Ombudsman's office that there were over 300 pending consult requests at the Nebraska State Penitentiary. However, they only carry out four travel orders a day. At that rate it will take 75 days to get to zero but at the same time more consult requests are being generated. This is just data from one facility and does not include emergency travel orders.

In addition to increasing the number of travel orders done each day, consideration may need to be given to taking a longer look at whether or not the procedures being authorized are medically necessary. The Department should review what other states do regarding this. One suggestion shared with the OIG is that a medical panel be established to review consult requests. The Department may want to consider reviewing how this is determined in Nebraska's Medicaid Program. If the process is changed there still must be an avenue for a speedy appeal by an inmate in order to guarantee that their right to appropriate health treatment is not restrained.

A work group was formed by NDCS on travel orders in July 2015. The purpose of the group was to "*Explore options and identify short-term and long-term improvements/efficiencies*" and "*Provide recommendations to Diane Sabatka-Rine.*" It appears they met three times in July and August 2015 and discussed short term and long term solutions.⁶⁴ They submitted their recommendations to Deputy Director Sabatka-Rine on August 12, 2015. The group next met in February 2016.

⁶³ Attachment 42: State Prisons Turn to Telemedicine to Improve Health and Save Money; Michael Ollove, January 21, 2016

⁶⁴ Attachment 43: Medical Travel Orders – Workgroup meeting minutes from August 12, 2015

The Chair of the group, Deputy Warden Matt Heckman of the Lincoln Correctional Center, delivered the group's recommendations to Deputy Director Sabatka-Rine on March 4, 2016. The recommendations were focused on the short term and none of the long term suggestions from the first meetings were mentioned. In a March 4, 2016 email from Sabatka-Rine to Heckman she said to proceed with the first recommendation. The first recommendation was the establishing of a travel order scheduling team at three facilities. She asked if the group would continue to meet and explore additional recommendations and in his response Heckman indicated that they would. However, NDCS has not provided any other documentation to show that the group did indeed meet after February.⁶⁵

Long term solutions that were discussed at the first set of meetings by the group in 2015 and were included in their meeting summary included:

- UNMC Partnership
 - Electronic Health Records
 - Omaha Pilot Project for Specialists
 - Build surgery centers behind walls
- Telehealth
 - Needs eMAR and E.H.R. software systems as foundation
- Federal/State/County Safekeeper
 - Acuity Travel Order drivers⁶⁶

The OIG supports the group continuing to meet to further discuss short term and long term solutions and to develop short term and long term plans of action to address this issue. As evidence that this issue still needs to be resolved, a picture was taken of approved consult requests at one facility that were yet to be carried out. It measured two inches high.⁶⁷

Staffing

As stated previously in the report, medical faces staffing challenges. One way to address this issue is to continue to work with medical education institutes to provide opportunities for health care and medical students to complete a part of their education inside a correctional facility.

NDCS may want to consider creating new positions to assist in their facilities such as medical assistants or medication aides. This could free up valuable time of other health care professionals and allow them to use their expertise and training in the most efficient manner.

Opportunities for additional training can be provided to staff in a number of ways including a certification process through organizations such as the American Correctional Association or

⁶⁵ Attachment 44: Emails Related to Activities of the Travel Order Work Group

⁶⁶ Attachment 43: Medical Travel Orders – Workgroup meeting minutes from August 12, 2015

⁶⁷ Attachment 45: Photo of Approved Consult Requests at the Nebraska State Penitentiary

online training through groups such as Swank Healthcare⁶⁸ or Medscape. These opportunities not only lead to a more professional workforce but one that is more invested in their future with NDCS.

As stated previously, NDCS also needs to become more competitive when competing for new employees through the offering of comparable salaries and touting the benefits of working in a correctional setting. To some, the challenges faced from working in such a setting can actually be seen as a selling point.

Planning for the Future

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

⁶⁸ Attachment 47: Swank Course Catalog (Swank recently provided information to NDCS that the cost per year for unlimited access to their online education program would cost \$5,217 per year but NDCS did not commit to this agreement)

SUICIDE

On May 9, 2016 ██████████ committed suicide at TSCI. The OIG participated in a Critical Incident Review that was done by NDCS regarding the suicide. The Critical Incident Review Team issued a report to NDCS that focused on every aspect of Mr. ██████████ incarceration. The report reviewed the efforts of NDCS and the facility related to his incarceration and suicide and closely examined all practices related to suicide prevention, detection and emergency response. The OIG concurred with the findings of the Critical Incident Review and was impressed by the thoroughness and the professionalism of the members of the Critical Incident Review Team.

In the case of Mr. ██████████ it is the observation of the OIG that Mr. ██████████ was kept in restrictive housing too long, was not provided the care or treatment that he required, and his cries for help were not heard or were ignored. The Critical Incident Review included a number of recommendations for improvement related to those and other issues, including:

- The need for Medical/Contract Psychiatry/NDCS Mental Health to develop a better process of communicating information regarding an inmate, as well as coordinated care of that inmate;
- Enhanced access to NICaMS (NDCS's information system) for medical staff at the facility;
- Better triaging of inmate Interview Request forms that are received by medical or mental health, including both groups reviewing the forms;
- Enhanced training for all staff regarding the need to recognize requests for assistance. In this case Mr. ██████████ said a number of things such as "the medicine is not helping" or "I can't stand it longer; nobody helps," and no referrals were made as a result of his requests or statements;
- Enhanced and better use of interpreters, including their use during face-to-face contacts with inmates in need of interpretative services; and,
- Several recommendations related to the emergency response.

NDCS and the facility have begun efforts to review the work and the recommendations of the Critical Incident Review. The OIG will review these efforts and make any future recommendations as needed.

DEATHS

One of the requirements under state law for the OIG is to conduct investigations into deaths that take place of those incarcerated by the State of Nebraska. The OIG reviewed all of the deaths that took place in the Department since September 15, 2015 and have had grand juries convene on those deaths. The OIG concurred with the findings of the grand juries and have no specific recommendations to make to the Department as the result of those deaths. One exception is the death of [REDACTED]. As stated elsewhere in the report, Mr. [REDACTED] committed suicide. A grand jury has not been convened on Mr. [REDACTED] death but further thoughts on what can be learned from his death and changes that should be considered by NDCS related to his death are found in this report.

A memorandum regarding the death investigations and findings was provided to Director Frakes on September 2, 2016.

The OIG will establish a new mechanism for tracking inmate deaths beginning no later than October 1, 2016.

ESCAPE FROM THE LINCOLN CORRECTIONAL CENTER

Two inmates escaped from the Lincoln Correctional Center on June 9, 2016. NDCS, with assistance from individuals who work for the Department of Corrections in Virginia, completed a Critical Incident Review of the escape. The Review was a detailed and comprehensive examination of the escape. It made numerous findings and recommendations with which the OIG concurs. However, the OIG is continuing its investigation and will issue a report to NDCS no later than October 1, 2016. Preliminary concerns of the OIG include the impact of staff shortages on the facility's ability to operate in a secure manner, the impact of overcrowding on the facility, complacency of the staff at the facility (and possibly at other facilities) that led to security practices that did not meet the expectations of NDCS or the public, and the lack of security audits and additional oversight or accountability audits related to these security practices. In other words, the OIG has found that security practices did not meet the policies established by NDCS and that there few procedures in place or administered that made sure that certain security practices followed the prescribed procedures. The preliminary finding of the OIG is that the escapes were a result of a systemic failure related to the security and oversight of the Lincoln Correctional Center facility and possibly other facilities in the correctional system.

At this time, no staff or administrators have been disciplined by NDCS related to the escapes although some are pending discipline. The Warden of the Lincoln Correctional Center at the time of the escapes, Mario Peart, was not disciplined despite having failed to safely manage his facility, and retired on July 1, 2016. Upon his retirement, Director Frakes "*extended his, and the entire agency's, appreciation for his many years of dedicated service to the citizens of Nebraska.*"⁶⁹ The ultimate question that needs to be answered by NDCS is where does accountability start and end regarding what took place at the Lincoln Correctional Center? Does NDCS believe that there were those in positions that reported to Warden Peart that did not correctly do their job and need to be held accountable? Are there those above Warden Peart who did not correctly supervise him, knew about his shortcomings as a facility leader, and need to be held accountable? These are questions that need to be addressed by NDCS in the near future.

⁶⁹ [http://www.corrections.nebraska.gov/pdf/archivednews/Peart percent20Announces percent20Retirement.pdf](http://www.corrections.nebraska.gov/pdf/archivednews/Peart%20Announces%20Retirement.pdf)

TSCI UPDATE

In May 2015, a riot took place at TSCI. Since that time there have been many attempted changes to the facility and the way it operates. Due to the complexity of the situation at TSCI and since conditions are continually changing at the facility, the OIG plans to submit a TSCI update to the Public Counsel, the LR 34 Committee, and the NDCS Director no later than December 1, 2016.

However, there have been a number of events that have taken place at TSCI during the past year that should be brought forward in this report but will be expanded upon in the later update.

Staffing throughout the facility remains precarious. As of September 6, 2016 there were 72 current vacancies just of correctional officers and corporals. TSCI knew of eight upcoming resignations and two upcoming transfers on that date. There were three people recently hired. This will result in an increase to 79 vacancies for those positions. There are currently two unit case worker vacancies with one upcoming resignation and one new hire. In addition, there are two recreation specialist positions vacant, three facility maintenance specialist positions vacant, and one canteen operator position vacant. This brings the number of known upcoming vacancies to a total of 87.⁷⁰ As of August 1, 2016 eight out of 12 behavioral health staff positions were vacant.⁷¹

The facility still remains in a type of emergency situation due to the number of staff vacancies. As a result protective services employees work 12 hour shifts. This practice has been in place since the riot.

An attempt was made to turn a previous restrictive housing unit (SMU West) into a maximum custody general population unit last fall. The cells were double bunked and inmates were moved into the unit. It was an attempt to increase the capacity at TSCI and provide some sort of population relief for the system. However, the change did not succeed for a number of reasons. The primary reason was that inmates were told that they were in a general population setting yet it was known to them as a restrictive housing unit. There were significant differences between SMU West and other general population areas, including day room space, yard space, access to such items as ice machines, and other definite differences. This upset the inmates who were residing there which resulted in continuous difficulties between inmates and staff.

The population was eventually decreased but it was still a restrictive housing unit that was housing general population inmates. After many months and many staff assaults, the unit was converted back to restrictive housing on April 19, 2016.⁷² Director Frakes acknowledged the lack of success of their plan in an April 21, 2016 letter to Senator Les Seiler and stated that *“I will not risk any further injuries to staff by continuing to manage a maximum custody population at*

⁷⁰ Attachment 47: Email exchange between James Davis and Scott Busboom

⁷¹ Attachment 12: Health Services Staffing Breakdown by Facility

⁷² Attachment 48: April 18, 2016 Memorandum by Brad Hansen on SMU West

SMU-W."⁷³ While Warden Hansen and Director Frakes announced in April that they were open to proposals to better utilize SMU West, it remains a restrictive housing setting today.

In March, Warden Brian Gage resigned and was replaced by Warden Brad Hansen. Warden Hansen had worked in the central office in the security area and previously had been a Unit Administrator at the Nebraska State Penitentiary. Warden Gage never indicated in a public manner why he resigned.

Out of cell times at TSCI have increased and there are attempts being made to have more programming in the facility, including substance abuse treatment in the protective management unit and a WRAP (Wellness Recovery Action Program) group in the restrictive housing unit. Despite continual efforts by NDCS, Violence Reduction Program is not available at TSCI due to the inability to fill the positions needed to provide the program to inmates. A psychologist was hired to work in the restrictive housing unit but the facility psychologist position is still open.

As found elsewhere in this report, the suicide of Mr. ██████ raised a number of issues that need to be addressed in the facility.

In summary, over the past several months there have been continuous issues at TSCI including numerous inmate-on-staff assaults and constant stress and tension throughout the facility. Staffing is still a significant problem. The facility was recently in a lockdown for several days and even during this time there were two inmate-on-staff assaults that took place. These are just some of the issues that have taken place at TSCI which is why it is key that the OIG spend additional time at TSCI over the next few months. The OIG will visit with staff, inmates and administration and then issue a much more complete update regarding the facility.

⁷³ Attachment 49: April 21, 2016 Letter from Director Frakes to Senator Les Seiler

NEW ASSESSMENT TOOLS

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

STRONG-R

Legislative Bill 598 required NDCS to implement a risk assessment instrument. As a result, NDCS went through the contract process and selected the Static Risk and Offender Needs Guide for Recidivism (STRONG-R) and is contracting with Assessments.com in order to validate and customize the tool, as well as provide training on the instrument. The STRONG-R is an actuarial risk assessment that is used to predict recidivism, determine custody levels, and determine the needs of inmates coming into the correctional system. An article by Dr. Zach Hamilton, the developer of STRONG-R, and others, was recently published in *Criminal Justice and Behavior* that provides much greater detail about the tool.⁷⁴

The STRONG-R is being phased in throughout NDCS, including new inmates being assessed with the tool when they enter the system. At an April 18, 2016 legislative hearing, Dr. Lisa Jones, former Director of NDCS Behavioral Health, testified that *“The STRONG-R will allow us to focus more clinical resources on inmates identified with higher risks and needs and facilitate completing screening and making treatment recommendations up-front while the inmates are at our Diagnostic and Evaluation Center.”* At the same hearing, Director Frakes testified that *“The STRONG-R will serve as the foundation for the adoption of many evidence-based practices across NDCS and parole, including the parole supervision matrix and the Parole Board guidelines.”*⁷⁵

Legislative Bill 605 required the Board of Parole to use a validated risk and need assessment from NDCS to determine the risk of parolees to reoffend. As a result, they are also using the STRONG-R. It will be used at the beginning of the supervision period and every six months thereafter until the parolee is released from supervision. The phase in of the instrument has proven time consuming for parole staff as they have had to manually enter some of the instrument's 92 variables in addition to other manual steps that need to be completed in order for the STRONG-R to be completed. The Nebraska Parole Transition Implementation Plan's found that *“in the future, the instrument will be incorporated into the Department of Correctional Services automated case management system and there will be minimal data collection required for parole officers.”*⁷⁶ However, it is unclear what NDCS' plans are for reassessing their over 5000 inmates and how that will impact parole staff.

⁷⁴ CRIMINAL JUSTICE AND BEHAVIOR, 2016, Vol. 43, No. 2, February 2016, 230–263. The Development and Validation of the STRONG-R Recidivism Risk Assessment Zachary Hamilton, et al.

⁷⁵ [http://www.legislature.ne.gov/FloorDocs/104/PDF/Transcripts/SpecialCommittees/Department percent20of percent20Correctional percent20Services percent20Special percent20Investigative percent20Committee percent20hearing percent20April percent2018, percent202016.pdf](http://www.legislature.ne.gov/FloorDocs/104/PDF/Transcripts/SpecialCommittees/Department%20of%20Correctional%20Services%20Special%20Investigative%20Committee%20hearing%20April%202018,%202016.pdf)

⁷⁶ http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Parole_Board/585_20160603-101354.pdf

A concern that was initially raised regarding the STRONG-R was the fact that it had not been validated for the population at NDCS. The OIG contacted Dr. Hamilton and he indicated that this would be true of other instruments such as the YLS/CMI. Dr. Hamilton stressed that one of the strengths of the STRONG-R is that it designed to be tailored for each jurisdiction in which it is implemented. The goal of the STRONG-R is to be a more accurate predictor than other tools and in order for that to be the case it needs to be customized for that specific population. As data is collected over the next few years, the tool will be validated and evaluated using only Nebraska's data. It can then be modified to improve its accuracy. At the end of the contract period, NDCS will be able to determine whether or not the STRONG-R did meet the needs of the system.

Classification Tool

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

A review of the NDCS current classification system was completed in August 2016 by Dr. Zach Hamilton and Dr. Alex Kigerl as the result of a contract between The Nebraska Center for Justice Research at the University of Nebraska Omaha and NDCS. The review found that the classification system for NDCS was established in the 1970's and it was updated and modified in 2005. However, they found that there were two significant issues with the tool. First, inmates' scores were routinely over-classified. In other words, a minimum custody inmate could be classified as a medium custody or maximum custody inmate. Second, overrides took place approximately 40 percent of the time.

The contract also included the development and validation of a new classification tool for NDCS.⁷⁷ As a result, a new tool has been developed and will begin to be implemented later this year. In addition to the more accurate custody classification of inmates, the belief is that the tool will provide *“staff the flexibility to assign offenders to a lower/higher custody designation when agency or offender need requires”* and inform *“staff of an offender's likely infraction type and risk following a transfer to a new facility, providing the opportunity to differentiate supervision strategies once an offender is residing in their new facility.”*⁷⁸ The developers also stated that the new tool is quite a change from the current tool and made several recommendations to successfully implement it.

One other benefit of this new tool is that it should allow NDCS to better forecast their facility needs in the future. For instance, once every inmate is classified NDCS might see a shift in their custody levels. If there is an increase in minimum classifications and a decrease in maximum classifications this could impact their future priorities.

⁷⁷ [http://www.unomaha.edu/college-of-public-affairs-and-community-service/nebraska-center-for-justice-research/documents/Hamilton.Kigerl percent20NDCS percent20Classification percent20Final percent20Report_2016-08-18.pdf](http://www.unomaha.edu/college-of-public-affairs-and-community-service/nebraska-center-for-justice-research/documents/Hamilton.Kigerl%20NDCS%20Classification%20Final%20Report_2016-08-18.pdf)

⁷⁸ Attachment 50: Excerpt from 2016 Nebraska Center for Justice Research Annual Report

DIVERSITY OF NDCS WORKFORCE

NDCS faces challenges regarding the diversity of their workforce. The latest report by the Nebraska Department of Administrative Services found that in 2014 only 231 employees of NDCS, or 10.4 percent, were minorities.⁷⁹ This percentage has been relatively steady during the previous ten years with a high of 11.5 percent in 2004 and a low of 9.3 percent in 2011. There were 100 African American employees, 75 Hispanic or Latino employees, seven American Indian or Alaskan Native employees, and 24 Asian or Pacific Islander employees in 2014. The latest quarterly data sheet by NDCS showed that nearly 45 percent of all inmates were minorities.⁸⁰

In the past, NDCS has stated that due to the lack of a minority population in Nebraska it has been difficult to attract and retain minority employees. In fact, in 2015 slightly more than 10 percent of the state population was a minority population which is roughly the equivalent of the NDCS staff minority population.⁸¹ However, Omaha's minority population consists of 27 percent of their total population and there are three correctional facilities in Omaha.

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

⁷⁹ Attachment 51: Excerpt from the State Personnel Division's 2015 Almanac

⁸⁰ Attachment 52: April-June 2016 NDCS Quarterly Data Sheet

⁸¹ Attachment 53: United States Census Quick Facts for Nebraska

AUDITOR'S REPORT

In November 2015, the Nebraska State Auditor released an audit of NDCS. The audit was focused on the financial activity of NDCS. The report found a number of significant shortcomings, including communication issues, the overuse of manual processes, and a lack of accountability. It was the report's contention that this resulted in overpayments and excessive expenditures.⁸²

The OIG has had several issues brought to him regarding the financial and business practices of NDCS, including inaccurate balances of inmate club accounts and delayed payments of bill. As a result, the OIG will ask the Legislative Performance Audit Committee to consider a performance audit of certain business practices of NDCS and to follow-up on the concerns raised in the report by the Nebraska State Auditor.

⁸² http://mediaassets.kmtv.com/cms/docs/corrections-audit-11022015.pdf?_ga=1.30158588.29216941.1473309533

INMATE LETTERS

During the past year, the OIG has received numerous letters from inmates in the state correctional system. Keeping up with these letters has proven to be a challenge due to other demands of the position. However, these letters have played a significant part in educating the OIG about the correctional system. While many of the inmates shared personal circumstances or concerns that were more applicable to the work of the Ombudsman's office, they did present an idea of what was happening across the system. Many times the OIG would refer the individual to the Ombudsman's office but ask that person to keep them updated on their situation. Other letters did express concerns or raise issues surrounding the correctional system and fell under the domain of the OIG.

Currently, the OIG uses the Ombudsman's case management system for correspondence. In the fall, the OIG will be working with the Inspector General of Child Welfare to determine whether a case management system specifically designed for the two offices would be more efficient and appropriate for the OIG.

OTHER LETTERS AND MEMORANDUMS

During the course of the past year, the OIG issued several memorandums, emails, or letters to a number of people, including individual senators, legislative committees, and NDCS. Below are summaries of a sample of some of those letters, emails, or memorandums that were not included in other parts of this report:

- The OIG provided a memorandum to the LR 34 Committee on January 27, 2016 that included additional information on work release efforts in the State of Washington and data on inmates in Nebraska. The memorandum was a follow-up to a briefing by the Committee on January 26, 2016;⁸³
- The OIG sent a letter to Senator Heath Mello on February 5, 2016 supporting additional funding for grant funding for the Vocational and Life Skills Program;⁸⁴
- The OIG sent a letter to Senator Heath Mello on February 9, 2016 supporting Legislative Bill 733. LB 733 was a bill introduced by Senator Dan Watermeier that would have originally provided \$2.5 million to NDCS for retention efforts;⁸⁵
- The OIG sent a letter to Director Frakes on February 11, 2016 regarding a finding that the Nebraska Inmate Case Management System did not have data regarding the inmates assigned to the county jail program;⁸⁶
- The OIG sent an email to Senator Seiler and members of the Appropriations Committee and the Judiciary Committee on February 25, 2016 providing additional data on turnover rates for certain correctional positions. This information was provided after a hearing on February 24, 2016;⁸⁷
- The OIG provided a memorandum to Senator Schumacher and members of the Appropriations Committee and the Judiciary Committee on February 29, 2016 regarding information on the American Correctional Association;⁸⁸
- The OIG wrote a letter to Director Frakes on March 17, 2016 expressing concerns related to the lack of action by Director Frakes in moving the central office outside smoking area off of state property as was required in their own administrative regulations;⁸⁹
- The OIG provided a memorandum to the LR 34 Committee on April 14, 2016 with information that was requested for their upcoming hearing. Topics included assaults, staff retention, restrictive housing and mandatory discharges;⁹⁰ and,
- The OIG sent a letter to Director Frakes on June 11, 2016 requesting information on the escapes from the Lincoln Correctional Center. This was the first in a series of requests.⁹¹

⁸³ Exhibit 54: January 27, 2016 Memorandum

⁸⁴ Exhibit 55: February 5, 2016 Letter

⁸⁵ Exhibit 56: February 9, 2016 Letter

⁸⁶ Exhibit 57: February 11, 2016 Letter

⁸⁷ Exhibit 58: February 25, 2016 Email

⁸⁸ Exhibit 59: February 29, 2016 Memorandum

⁸⁹ Exhibit 60: March 17, 2016 Letter

⁹⁰ Exhibit 61: April 14, 2016 Memorandum

⁹¹ Exhibit 62: June 11, 2016 Letter

PAROLE ADMINISTRATION TRANSITION

The Legislature passed Legislative Bill 598 to transfer the administration of the Adult Parole Administration from NDCS to the Board of Parole effective July 1, 2016. This resulted from the work of the Department of Correctional Services Special Investigative Committee in 2014.

The bill directed the Board of Parole and NDCS to develop and implement a strategic plan to make this transition. A transition plan director and other staff named in the bill were to be hired on or before January 1, 2016. The bill also required that parole officers be compensated substantially equal to other state employees who have similar responsibilities (probation staff).

The Board of Parole and NDCS contracted with Dr. Richard Wiener to lead this effort. His first report followed the directions he was provided by the two entities but members of the Legislature shared reservations about the initial effort.⁹² In addition, the positions that the Board of Parole were to hire were not filled by January 1, 2016. After many meetings and discussion, the Board of Parole changed their plan and ended their contract with Dr. Wiener. They then contracted with William Burrell to finish the plan.

Mr. Burrell submitted the Nebraska Parole Transition Implementation Plan to the Board of Parole and NDCS on June 1, 2016. The intent of the Plan was to assist with a smooth and orderly transition, provide continuity of the parole function, assist with developing the management capacity to take on the additional responsibilities, make recommendations for additional needs and best practices in the future, and to develop a strategic plan for the Adult Parole Administration. Some highlights of the Plan were the following:

- A Transition Working Group was formed and assisted with the transition;
- Statutory changes were identified that need to be made during the 2017 legislative session;
- The budget of the Board of Parole will need to be adjusted;
- The Board of Parole is finishing its work with CSG on developing parole guidelines;
- Staff under the Board of Parole will increase from ten to 70 staff; and,
- Consideration should be given to reviewing the workload of the Board of Parole, especially the Chair.⁹³

Earlier this year, the first two positions were filled by the Board of Parole. Julie Micek was hired as the Director of Supervision and Services and Nicole Miller was hired as the Staff Attorney.

Prior to the transition taking place, Director Micek reached out to her future staff in a number of ways, including town halls in Grand Island, Omaha, and Lincoln. The OIG attended the town halls in Grand Island and Lincoln. The staff voiced their concerns about the transition and asked many questions related to it. By the end of each of the town halls, it appeared as though many of

⁹² http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Parole_Board/550_20151201-060228.pdf

⁹³ http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Parole_Board/585_20160603-101354.pdf

their concerns had been addressed or at least listened to by Director Micek. The most significant observation of the OIG at the town halls was that the upcoming changes had not been appropriately communicated with staff by NDCS. Among the questions the staff had were whether or not their salaries would increase as promised and what impact the new educational requirements for their jobs would have on them.⁹⁴ According to the Adult Parole Administration, the cost of adjusting their salaries to comply with Nebraska state statute is approximately \$230,000 per year.

After a rocky start to the transition last fall, the Board of Parole and NDCS made significant strides and have worked well together. This coordinated effort resulted in the transition taking place by the statutory deadline of July 1, 2016 with a solid plan for the future.

⁹⁴ Attachment 63: APA/BOP Town Hall Meeting FAQ's

NDCS REPORTS

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

- NDCS Strategic Plan - <http://www.corrections.nebraska.gov/pdf/NDCSpercent20Strategicpercent20Plan.pdf>;
- Retention Funds - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services_Department_of/595_20160728-173008.pdf
- Vocational and Life Skills Report - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services_Department_of/490_20160402-172157.pdf
- Mandatory Discharge Report - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services_Department_of/577_20160328-174322.pdf
- Long Term Plan for Restrictive Housing - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services_Department_of/591_20160630-181951.pdf
- Airpark Feasibility Study - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services_Department_of/516_20151231-152413.pdf
- Mandatory Overtime Reduction Report - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services_Department_of/559_20151231-152325.pdf
- Behavioral Health Assessment - http://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Correctional_Services_Department_of/558_20151231-152218.pdf
- Culture Study, Part One - <http://www.corrections.nebraska.gov/pdf/NDCSpercent20Culturepercent20Studypercent20-percent20Partpercent201.pdf>
- Culture Study, Part Two - <http://www.corrections.nebraska.gov/pdf/NDCSpercent20Culturepercent20Studypercent20-percent20Partpercent202.pdf>
- CSG Justice Program Assessment - <http://www.corrections.nebraska.gov/pdf/2016percent20Nebraskapercent20Councilpercent20ofpercent20Statepercent20Governmentspercent20Justicepercent20Programpercent20Assessment.pdf>
- 2014 Master Plan Report - <http://www.corrections.nebraska.gov/pdf/NDCSpercent20Masterpercent20Planpercent20Finalpercent20Report.pdf>

RECOMMENDATIONS

Report Recommendations

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

- 1) Convene a work group on staff retention that includes people in positions throughout NDCS and individuals from outside NDCS;
- 2) Present salary proposals to the Department of Administrative Services that would either result in longevity pay or the establishment of a tiered plan system where an employee can be rewarded for reaching certain work goals, achievements or certifications. For example, positions of Corporal I, Corporal II, and Corporal III could be created. To move from one tier to the other the individual would have to be in their position for a certain period of time, take outside classes, gain a special certification or accomplish goals established by NDCS. Health services staff could achieve something similar if they receive a form of health professional certification.
- 3) Provide additional pay for employees who participate in extra duties that require additional training;
- 4) Contact the Department of Administrative Services and begin the process of seeking a reclassification of correctional nurses (including Registered Nurses and Licensed Practical Nurses);
- 5) End the \$250 bonus program that is part of the \$1.5 million retention plan and use the remaining funds to provide bonuses to employees who did not receive the \$500 bonus that was announced in August 2016;
- 6) Place limits on the amount of overtime that an employee can work in one week;
- 7) Consider the banning of back to back 16 hour shifts by employees;
- 8) Provide quarterly updates to the Legislature and the Inspector General for Corrections on turnover rates, vacancy rates, and overtime data for all classifications of positions;
- 9) Place a renewed focus on improving communication between behavioral health administration and staff;
- 10) Review attempts in other correctional agencies to bring “new blood” into their agencies and develop short-term and long-term plans to do that for NDCS;
- 11) Continue to develop more program options for inmates that would assist them in being paroled, including the development of programs provided in foreign languages;
- 12) Complete a staffing analysis for the entire Department of Correctional Services;
- 13) Provide regular updates to the Legislature and the Inspector General of Corrections regarding any changes that are made as a result of the Culture Survey;
- 14) Continually review placements of inmates in the county jail program to check that the inmates who are placed there actually are qualified to participate in the program;
- 15) Establish a goal to implement the restrictive housing peer support pilot program no later than October 1, 2017;
- 16) Convene a work group on communication that includes people in positions throughout NDCS and individuals from outside NDCS including former inmates. The focus would be to address how NDCS administration can communicate more efficiently and effectively with staff and inmates;

- 17) Provide the Inspector General of Corrections and the members of the [REDACTED] suicide Critical Incident Review Team with regular updates on the progress of the recommendations made in the Critical Incident Review. NDCS should also do this for all Critical Incident Reviews that are done in the future;
- 18) Provide additional transparency regarding accountability for the conditions that led to the escapes from the Lincoln Correctional Center on June 9, 2016;
- 19) Develop a plan that would allow female inmates to be able to utilize community custody beds in the Omaha area after the female beds at the Community Corrections Center-Omaha cease to exist;
- 20) Review options pertaining to using county jails as work release placements for people who will be transitioning to areas near those county jails;
- 21) Review the necessity and the effectiveness of all work detail contracts;
- 22) Review how inmates in community corrections are determined to be eligible for work detail versus work release in order to determine whether or not changes could be made to make more inmates eligible for work release;
- 23) Propose an increase in funding to the Vocational and Life Skills grant program;
- 24) Expand the use of peer support programs by using inmates and people from outside NDCS. For example, consider using trained peers in restrictive housing settings or with individuals who turn down programming opportunities;
- 25) Reconvene the work group on travel orders and present a plan that has short-term and long-term solutions and related plans of action to the NDCS Director and the Medical Director no later than January 1, 2017;
- 26) Work with the Inspector General to update the programming spreadsheet on a quarterly basis;
- 27) Examine the benefits of establishing new positions in medical areas, such as medication aides or medical assistants, that would then allow other health services staff to focus on their more immediate responsibilities;
- 28) Work jointly with the Adult Parole Administration and the Board of Parole to present a plan to the Governor and the Legislature detailing how a correctional system overcrowding emergency would be administered;
- 29) Work with peer facilities in other states to establish video conferences or other communication opportunities for staff from those facilities to interact with comparable NDCS staff. The emphasis would be on communicating with staff who have gone through changes or situations similar to what is taking place in that particular NDCS facility; and
- 30) Establish a two-year pilot program in order to provide “a specialized program to provide services for individuals with a developmental disability as defined by the Division of Developmental Disabilities.” The program would require that the Department contract with a provider certified by the Division and that they track data related to the program and report it to the Governor and Legislature. An emphasis of the program would be to assist with the successful re-entry of this population into the community.

Possible Innovative Ideas to Consider

During the course of the last year, numerous ideas for innovations or other changes in NDCS have also been brought to the attention of the OIG. Even though the OIG has not been able to closely review or assess them, it is important that they be shared in case there are others who would like to explore them further. Some may be studied more closely by the OIG in the coming year. Some of the ideas are described below:

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

- Change the requirements for NDCS to receive county safekeepers. It is perceived by staff that some counties “dump” their problem inmates on NDCS and this only adds to the overcrowding issue at the Diagnostic and Evaluation Center;
- As NDCS moves forward on inmate councils, consider looking at more formalized examples from other states, such as New York;⁹⁵ and,
- Consider having an outside entity complete a study of the costs and benefits of maintaining significant overtime versus hiring additional staff.

⁹⁵ Attachment 64: 2015 New York State Inmate Liaison Committee Directive

OIG RESOURCES AND YEAR TWO GOALS

When the OIG was established in 2015, the one position that was funded was the Inspector General position. As a result, there are a lot of demands of the position. As a result, the OIG will have to improve how it prioritizes issues and understand that there will be issues or parts of the correctional and parole systems that will not be able to be closely examined due to a lack of time or resources. As this report lays out, there are a significant number of moving parts of the systems.

The goals for year two of the OIG are to:

- Build upon the infrastructure developed in year one;
- Spend a series of days, covering all three shifts, at each facility and provide specific assessments of each facility;
- Establish better tracking and review systems for serious injuries, deaths and assaults;
- Establish a better case management system for letters, emails and telephone calls that are received by the OIG as well as improve the response rate to those contacts;
- Provide detailed special reports or updates on specific issues, such as the situation at the Tecumseh State Correctional Institution;
- Learn more about issues impacting inmates and parolees by spending more time with those populations;
- Gain a better understanding of NDCS behavioral health and programming;
- Work to connect community behavioral health providers with NDCS behavioral health leaders;
- Visit the seven county jails that house state inmates;
- Visit parole offices throughout the state;
- Visit each program that receives funding from the Vocational and Life Skills Program;
- Establish a thriving internship program within the OIG by working with the Legislature to allow for additional resources for interns to utilize;
- Conduct follow-up surveys of NDCS employees and employees of the Adult Parole Administration;
- Complete the national Inspector General certification in March 2017;
- Conduct at least one survey of inmates at a facility;
- Review state statutes that established the Office of Inspector General and make recommendations to the Legislature regarding any need to amend the statutes based on the first year's operation; and,
- Always be open to suggestions for improvements.



The Office of Inspector General of Corrections would like to acknowledge the 15 years of service to the State of Nebraska and the Nebraska Department of Correctional Services by Deputy Director of Health Services, Dr. Randy Kohl. Dr. Kohl has been the Medical Director since 2001 for the Department and has shown an incredible dedication to his profession and the people who work and reside in the Department. Dr. Kohl will be retiring in October and will be sorely missed by all.

Congratulations Dr. Kohl and best wishes for a wonderful retirement!