

Nebraska Department of Correctional Services
Department of Correctional Services Special Investigative Committee Hearing
April 18, 2016

Good afternoon Senator Seiler and members of the LR 34 Special Investigative Committee, my name is Scott Frakes F-R-A-K-E-S, and I am the Director of the Nebraska Department of Correctional Services. I appreciate the opportunity to appear before you today and update you on the work we have been engaged in over the last several months. I appreciate you accommodating Dr. Jones' schedule by allowing her to speak to you first.

I believe people can change. If I didn't, I wouldn't have dedicated my career to paving the way for that change. I also believe that by using evidence-based approaches to provide opportunities for people in prison to change, our communities are safer and the potential for new victims is greatly reduced.

Staff Assaults

Staff safety is a priority for me and staff safety is foundational to everything we do. I made the decision at the beginning of the year to be more transparent in sharing information about staff assaults with the public. I know you are interested in what I'm doing to reduce staff assaults. Prison work is inherently dangerous. We house 5,400 men and women that are incarcerated due to their risk to society; people who have committed violent crimes and who have been to prison for violent crimes multiple times – 50% of our population is serving time for a violent crime. It is not the entire population, of course, but it's also not the entire population who are committing these crimes against my staff. That said, there are things we are doing and can do to reduce the number of assaults.

We have recently revised our internal critical incident review process to include formal reviews of all serious staff assaults in addition to larger-scale incidents, which is similar to approaches used by military, law enforcement and medical professions when serious incidents occur. The key is to identify and implement recommendations for improvement. The inmate is always

responsible for his or her actions, but we learn from each incident and make changes to help keep staff safe.

ATTACHMENT 1 documents the number of staff assaults within NDCS from 2010 to the first three months of 2016 and ATTACHMENT 2 provides a breakdown by facility for 2013, 2014, and 2015. We have seen an increase in overall staff assaults, including the number of staff assaults resulting in serious injury. In 2012, NDCS changed from an open yard to a scheduled yard, resulting in a tightly controlled movement system, which also increased the amount of idle time. The number of staff assaults dropped in half in 2013. This strategy was seen as necessary at the time, but was not a long-term solution. By 2015, the number of staff assaults had nearly reached the 2012 level. The lack of out-of-cell time and pro-social activities may have been a contributing factor to the increase in violence. At the same time, as we increase movement and pro-social activities, we also are seeing an increase in staff assaults. We should not draw cause and effect conclusions at this point. We will continue to dissect each incident, and implement changes to reduce violence and risk to staff.

In November I created an intelligence team at the agency level that is dedicated to identifying organized activity contributing to assaults and other disruptive behavior. This allows us to target interventions that will ultimately reduce violence. The focus of the intelligence team can be seen more clearly in ATTACHMENT 3. We are also expanding the use of cognitive-behavioral interventions that specifically address criminal thinking. There are no simple solutions to this problem.

I have three staff touring the New Mexico DOC to look at the changes they've made to reduce the use of restrictive housing, and the unit they created to reduce gang violence. We're partnering with the Nebraska State Patrol, who have expressed their willingness to assist NDCS in any way they can, including training with our special teams. Our investigators work closely with the county attorneys to ensure the criminal prosecution of assaults.

Retention Funds

I have been meeting with my team on our plans to utilize the \$1.5 million in one-time funding provided for strategies to retain quality staff in workforce shortage areas, with at least \$150,000 to be allocated for retention of health services employees. I have established a work group to address the recommendations, identify other options and determine what we can do immediately. Preliminary recommendations from both my team and conversations with the Inspector General (italicized) include the following:

- One-time longevity bonus and other types of bonuses
- Resiliency training for correctional staff (Corrections Fatigue to Fulfillment)
- Reimbursement of licensure/continuing education expenses for health services staff
- Research-based employee engagement training to develop a better work environment leading to retention

SUGGESTIONS FROM IG

- *Enhanced supervisory training*
- *Staff mentoring program*
- *Staff advocate at each facility*
- *Wellness programs, such as peer support or on-site fitness equipment or gym membership reimbursement*

The legislation requires quarterly reports. I will submit the first report July 15, 2016.

We are working to meet or exceed the goals identified in the mandatory overtime report. Protective Services turnover for FY2015 was 33.16%. Turnover for FY2016 is projected to be 25.68%, well below the established target of 28% and vacancies are projected to be at 91, below the target of 95. Overtime hours per employee were much higher at the beginning of the fiscal year, but are currently 12.8 hours per employee per week. Projections show us

ending the year with an annualized overtime rate of 14.71 hours per week. We will continue efforts to reduce overtime usage. We set attainable targets, achieve them and then continue to set higher expectations for performance.

I have met with the state's Collective Bargaining team and we've begun the conversation on compensation. I can't discuss negotiation strategies, but I am actively engaged in the collective bargaining process.

I have not received the results of the culture study. Once received, I will review the recommendations and determine what we can do moving forward. I regularly solicit feedback from staff and believe that the culture is already changing. Employees are sharing their concerns with me and are willing to come together and talk about how we can make NDCS safer and better. We've implemented employee councils at each facility to increase two way communication and identify solutions to perceived, potential or current issues. Wardens are aware of the expectation for them and their executive teams to spend more time meeting staff and being visible in their facilities. Between the recommendations of the culture study and the availability of the retention funds, we will be able to make even greater strides towards a workforce that is truly engaged and fully represents the agency's leading goal One Team – One Vision.

Restrictive Housing

ATTACHMENT 4 is a copy of the proposed restrictive housing rules and regulations. These rules were developed over the last nine months in collaboration with the Long-Term Restrictive Housing Work Group established in LB 598. In addition to NDCS staff, the work group includes two representatives from a nonprofit prisoners' rights advocacy group, including at least one former inmate, two mental health professionals independent from the department with particular knowledge of prisons and conditions of confinement, and the Deputy Ombudsman for Corrections. In addition, representatives from ACLU Nebraska, Disability Rights Nebraska, the Inspector General and other stakeholders have participated in the work group and the rulemaking process.

ATTACHMENT 5 is a timeline showing the progression of work to promulgate the rules and regulations. The rules and regulations establish the least restrictive environment standard created in LB 598 and address the following:

- Mandates the use of restrictive housing as “an alternative of last resort”;
- Define criteria for placement in restrictive housing;
- Establish clear time limits for the use of immediate segregation;
- Create a process for assignment to, and frequent review of longer-term restrictive housing placements by a Central Office multidisciplinary review team;
- Ensure review outside of the agency, conducted by the Inspector General, of assignment to restrictive housing for a period of six months or longer;
- Require individualized transition plans to facilitate promotion to less restrictive housing assignments;
- Establish a process to screen and divert individuals with serious mental health needs to alternative placements, such as secure mental health housing; and

- Create a specialized discharge and reentry planning process for individuals that are returning to the community after recent stays in restrictive housing.

The public hearing on these rules and regulations is scheduled on May 9th, 2016 at 9am at the NDCS Central Office in Lincoln. The long-term restrictive housing work group will meet again on May 11th to review the feedback from the public hearing and finalize the document. The rules and regulations will be submitted to the Attorney General and Governor before June 1st, allowing for approval before July 1st, 2016.

The recommendations from the Vera project should be provided by the end of May. We have kept the Vera team apprised of the rules and regulations work. I expect the recommendations will line up well with the work already completed, and will give us additional ideas to reduce the use of restrictive housing.

Tecumseh Update

ATTACHMENT 6 is the corrective action plan with a cover sheet identifying the items still in process. Five of the items relate to the agency staffing analysis, which is scheduled to be completed this summer. The remaining item is rebuilding/repairing the walls in Units 2 & 3, and installing the roof access hatches in the unit control booths. The wall project is approximately 70% completed, and will be done by the end of May. The roof access project is scheduled to be completed by the end of September.

The report by the Ombudsman provided observations regarding staffing, custody levels at TSCI, the grievance procedure, and a method for enhanced communication between staff and inmates. A number of these were also addressed in the TSCI corrective action plan. I have identified improvements to the grievance process which will be addressed in the biennial budget process. The staffing analysis will be complete this summer, and addressed in the biennial budget process. We have inmate councils meeting at every facility, which has greatly improved communication between staff and inmates.

Warden Hansen recently provided a response to questions from the Ombudsman's office which provides a snapshot of the many of the current activities at TSCI. I have included it as ATTACHMENT 7.

Audit Update

ATTACHMENT 8 is the audit corrective action plan, which includes a full listing of the 78 action items with responses as well as a separate document of the 21 items that remain in-process. My staff are working hard to address the remaining items by the target dates.

Update on Reclassification and Overcrowding Issues

Development and validation of our classification tool remains on track for completion before the end of August. This project is being completed in conjunction with the new risk-needs-responsivity tool targeted for roll-out by July 1st. The review of the data used to develop these tools will provide an initial assessment of the custody classification of our inmate population, and will inform future decisions around bed space needs.

I have assigned one of our facility engineers to research modular housing options and provide me with a written proposal of options for utilizing the \$1.8M provided in LB 956 before May 10th. I want to create dormitory space that can be converted to program space when the beds are no longer needed. This project requires a program statement to address all of the state construction requirements. An initial estimate indicates the soonest we would see beds ready to occupy is the fall of 2017.

The program statement for the CCCL expansion project funded in LB 956 has been completed, and the RFP for facility design work has been issued. The program statement for CCCL that was completed in 2014 was based on the vision of the previous administration, and was not suitable for our current needs. The need for additional community custody beds was identified in the 2014 Master Plan, and the waiting lists for community custody beds supported our ability to fill the beds, without completing the reclassification project. The CCCL expansion takes into account the projected reduction in prison admissions as a result of LB605, which will be realized over the next several years. CCCL currently houses nearly 400 inmates. The kitchen, visiting room and program space were designed for a population of 200. This \$26 million investment turns a crowded facility into a functional community custody facility with an operational capacity of 560. The project increases female bed capacity by 48 and opens up an additional 100 beds for men in community corrections.

The practice of co-ed correctional facilities in Nebraska needs to end. Female inmates have higher rates of mental illness and past sexual, physical and mental abuse, which can and does

create anxiety and resistance to treatment in a co-ed setting. This proposal provides our female population with a community based living environment that supports delivery of trauma-informed care. It is a living unit designed to meet the needs of women transitioning to the community.

The Strategic Plan was shared publically in October, 2015, and included the proposal to expand CCCL and establish a single location for females at the community custody level. This information has been shared in public forums, the media, and legislative hearings. The proposal was approved by the legislature, and authorized by the Governor. A small number of concerns have been expressed about eliminating the option for 24 females to access work release in Omaha, and I have been responsive to people expressing concerns. The value of consolidating and greatly improving services to our female population far outweighs our current approach.

Justice Reinvestment Initiative and Parole Administration Transition

I believe Sara Friedman provided this committee with minutes from the Legislature's Justice Reinvestment Oversight Committee, which met on April 6th. NDCS staff have been active participants in all the justice reinvestment issue specific teams working to implement LB 605. We have developed a closer partnership with the Office of Probation Administration to coordinate reentry planning for people leaving prison for the newly-created Post-Release Supervision. There have been unprecedented levels of information sharing between NDCS and Probation staff, including a new procedure for NDCS to receive Pre-Sentence Investigations from Probation for people entering prison within 3-5 business days. This helps the clinicians and case managers at the Diagnostic and Evaluation Center understand who's coming in the door and what their needs are.

We have been working at full-speed to implement a validated risk/needs/responsivity tool, with staff training targeted for June. 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.

The Parole Administration has been working closely with CSG to implement the evidence-based practices and trainings required by LB 605. The parole staff training plan includes the STRONG-R, incentive and sanction matrix, and Effective Practices in a Community Setting (EPICS), a nationally recognized training by the University of Cincinnati.

A work group of parole staff and a parole board member is collaborating with CSG to develop the matrix of sanctions and incentives as required by LB 605. Use of a matrix is a nationally-recognized evidence based practice in supervising offenders. It will standardize officers' responses to both positive behavior and violations by parolees in a way that decreases the parolee's likelihood to commit new crimes. The matrix group meets regularly and expects to complete its work by the end of summer.

We are working with the courts and other stakeholders to streamline restitution collection practices and automatically withdraw restitution payment from inmate accounts as required by LB 605. Rules and regulations have been drafted and reviewed by the restitution issue specific team. We will have a public hearing by June 1st on the rules, with the rules and regulations going into effect no later than July 1, 2016.

We have worked with CSG and the data issue specific team to create a large list of data metrics to track the implementation of LB 605 and its progress meeting CSG's projections. DCS has begun to submit data to CSG monthly. Due to LB 605, DCS expects to see fewer Felony IV admissions to prison in coming months. As we implement the changes facilitated by LB605 we will see the number of mandatory discharges decrease, and restitution collections increase.

The JR Steering Committee has applied to the Department of Justice for a "Justice Reinvestment Initiative: Maximizing State Reforms" grant. The proposal was submitted last Monday, April 11 and would provide \$1.6 million over 36-months to support Project Integrate, a new initiative to provide supportive housing to inmates with substance use and mental health issues reentering the community. NDCS, the Office of Probation, Adult Parole Administration, and Douglas County Department of Corrections will collaborate with the Metro Area Continuum of Care for the Homeless and other local service providers target high risk offenders returning to Douglas County who have behavioral health issues and are homeless or near homeless. Project Integrate is expected to serve as a model for transitional housing to be implemented statewide.

I share your concern with the 47.2% rate of mandatory discharges from October through December of 2015. These numbers represent the rate of mandatory discharge prior to implementation of LB 605 and do not reflect efforts currently underway by NDCS and the Board of Parole. As indicated in the materials provided by CSG, 86% of the individuals who have committed offenses since LB 605 passed have yet to be sentenced. Of the 257 individuals who mandatorily discharged during this time period, 74 had sentences which did not allow for

parole (“flat sentences”), and another 64 who were granted parole and revoked. There are efforts underway now that are reducing mandatory discharges, and we know the full implementation of LB 605 will have a significant impact on reducing “jam outs”, including:

- Reentry planning as established in LB 907;
- Discharge Review Team review of inmates who will potentially discharge from restrictive housing;
- NDCS and Parole Board have identified key reviews one year in advance of parole eligibility to prepare inmates for release;
- Implementation of the STRONG-R needs assessment and parole guidelines.

At my request, CSG is conducting an in-depth analysis of prison programming – the Justice Program Assessment project or JPA. We asked CSG to evaluate our programs for prisoners and parolees that will reduce recidivism by adhering to evidence-based principles. CSG staff have observed programming; met with clinical review team staff for sex offender, violence and substance abuse programming; and reviewed the curricula used to facilitate programs. They are currently reviewing data collected by our programs.

We anticipate CSG will release the JPA findings and recommendations in May or June. We expect to see recommendations on how we can improve our assessment process, increase program capacity, use evidence-based program curricula, and implement quality assurance measures to ensure programming is delivered with fidelity. The final component of the JPA project is the guidance CSG will provide us as we implement the recommendations.

I have provided ATTACHMENT 9 that give details on the transition of Adult Parole Administration from NDCS to the Parole Board. We are on schedule to complete the transition July 1, 2016.

ATTACHMENTS:

1. Staff Assault Data – 2010 – March 2016
2. Staff Assault Data by facility – 2013, 2014, 2015
3. Security Threat Group/Assault Data
4. Proposed Rules & Regulations
5. Restrictive Housing Rules Development Timeline
6. TSCI Corrective Action Plan
7. Hansen's Response to Ombudsman
8. Audit Corrective Action Plan
9. Parole Transition Updates