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**SUMMARY OF THE REPORT ON ARREST OF STAFF
MEMBER AT THE NEBRASKA STATE PENITENTIARY**

August 30, 2021

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INTRODUCTION

In 2015, the Nebraska Legislature adopted the Office of Inspector General of the Nebraska Correctional System Act.¹ Nebraska State Statute §47-902 provides that the intent of the Act is to:

- “(a) Establish a full-time program of investigation and performance review to provide increased accountability and oversight of the Nebraska correctional system;
- (b) Assist in improving operations of the department and the Nebraska correctional system;
- (c) Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the supervision and release of persons in the Nebraska correctional system. A lack of responsibility and accountability between individuals and private agencies in the current system make it difficult to monitor and oversee the Nebraska correctional system; and
- (d) Provide a process for investigation and review in order to improve policies and procedures of the correctional system.”

The Act provides that the Office of Inspector General (OIG) is to investigate misconduct, misfeasance, malfeasance, or a violation of a statute or of the rules and regulations of the Nebraska Department of Correctional Services (NDCS). After a report of an investigation is completed, pursuant to the Act, it shall be first provided to the Public Counsel and may recommend systemic reform or case-specific action as part of its recommendations. The report is then provided to the Director of NDCS, and the Director has fifteen days to determine whether or not to accept, reject or request modifications of the recommendations in the report. After any modifications, the report becomes final. The OIG may publicly release a summary of the report after consultation with the Chair of the Judiciary Committee of the Nebraska Legislature.

This summary report is largely similar to the OIG's official, final report of the incident at issue. However, many names of specific individuals have been taken out of this report and in many cases positions or job titles were used. Individuals in upper leadership roles within the Department are still identified by name. This report was written in 2020 and submitted to NDCS in 2020. It is being released in August 2021 due to the OIG waiting for other investigations related to this report to come to a conclusion. It was determined that it was appropriate for the OIG to finalize this summary under §47-912.

¹ Neb. Rev. Stat. §§47-901 - 47-920.

The OIG began an investigation into the case of an employee of NDCS who was alleged to have committed a violation of Nebraska State Statute §83-417 in March 2020. The fact that there had been multiple arrests and referrals for criminal charges involving several NDCS employees in a short period of time, along with the fact that this has been, and continues to be, an ongoing challenge for the Nebraska correctional system, resulted in a more in-depth investigation of this specific case.

The investigation resulted in a number of findings and recommendations related to the employee's case, as well as related issues that were unearthed during the course of the investigation by the OIG.

During this investigation, the OIG interviewed numerous NDCS staff. The OIG found the staff to be professional and generous with their time. Due to COVID-19, all of these interviews took place via the telephone but those contacted for interviews were very accommodating and responsive. Their assistance was quite helpful and appreciated.

This report is the summary of that report. It is a version of the report with some specific details left out for a variety of reasons, including a number of names of those involved in this investigation. Only high ranking positions within the Department are named in this report.

INITIAL INCIDENT

On March 4, 2020 an employee of the Nebraska State Penitentiary was arrested by the Nebraska State Patrol and it was recommended that she be charged with unauthorized communication with a prisoner, which is a Class IV felony. This was the third arrest of an employee of the Nebraska Department of Correctional Services in a week.² On February 25, 2020, a chemical dependency counselor at the Omaha Correctional Center (OCC) was arrested for unauthorized communication with a prisoner. She had worked at OCC since July 2018.³ On February 28, 2020 a corporal at the Nebraska Correctional Youth Facility in Omaha was arrested and charged with the unauthorized communication with a prisoner.⁴ In addition, NDCS made a recommendation to the Lancaster County Attorney on February 25, 2020 to charge another NSP employee with unlawful acts by a corrections employee, also a Class IV felony.

The NSP employee was arrested on March 4, 2020 after an NDCS investigator visited her at NSP and began to ask questions about recent activities related to her potential inappropriate relationship with an incarcerated individual at the Nebraska State Penitentiary, Inmate X, and her possibly unlawful action of bringing illegal contraband into the facility.

The Office of the Inspector General of Corrections conducted a number of interviews with NDCS staff and reviewed numerous documents as a part of this investigation. The Lancaster County Attorney reviewed the case on more than one occasion but the charges filed against the employee were not pursued. As a result, this individual is not named in the report.

² <https://nebraska.tv/news/local/ndcs-employee-arrested-for-unauthorized-communication-with-a-prisoner>

³ <https://nebraska.tv/news/local/ndcs-employee-arrested-for-unauthorized-communication-with-a-prisoner>

⁴ <https://nebraska.tv/news/local/nebraska-correctional-youth-facility-staffer-arrested>

In further reviewing her case, the OIG and the Nebraska State Patrol began to raise separate, but apparently simultaneous concerns about the methods employed by internal investigators at NDCS – specifically, the apparent use of a hidden listening device to eavesdrop on the food service worker and the inmate. Over the course of several months, the OIG and the Nebraska State Patrol conducted independent investigations into the use of listening device(s) by NDCS. The OIG’s investigation was folded into the employee investigation. The Nebraska State Patrol provided the results of their investigation to the Lancaster County Attorney when it was completed.

The OIG, as described later in this report, found that the use of these listening devices occurred in an environment that was utterly lacking in accountability. NDCS had no formal system for tracking the listening devices, and no written policy or procedure outlining the circumstances in which they could be used. As for the overall investigation, some witnesses and people directly involved in the probe appeared to have no clear understanding of the chain of command. As a result, key information wasn’t relayed in a timely fashion, and confusion reigned.

BACKGROUND ON THE EMPLOYEE AND INMATE X

The food service worker was employed at the Nebraska State Penitentiary as a Food Service Worker. She began her employment with NDCS in 2018 and stayed in that position until her resignation in May 2020. She was suspended without pay for the final two months of her employment. She resigned from NDCS on May 14, 2020.⁵

Inmate X entered the custody of NDCS on January 23, 2015. He served a previous sentence in 2012 in which he only served three days in the custody of NDCS since his sentence was a one year sentence and he had jail credit. He has a lengthy misconduct report history and has been placed in restrictive housing on two occasions. The first was in November 2019 after a significant amount of illegal contraband was found in his possession. He spent 17 days in immediate segregation on that occasion. He was placed in immediate segregation on March 4, 2020 as a result of this incident with the food service worker. The reasoning given for his placement was that he was there pending investigation. He was released to a general population setting after 30 days. He worked in the kitchen alongside the food service worker from April 2019 until his placement in restrictive housing in November 2019. Upon his release from restrictive housing, he regained his position in the kitchen and worked there until February 27, 2020.⁶

NDCS REPORTS/EVENTS LEADING UP TO THE ARREST OF STAFF MEMBER

The NSP Intelligence Office first began to monitor the actions of the food service worker in June 2019. Between June 2019 and February 2020 various information was gathered or reported that enhanced concerns about the food service worker being compromised by inmates at the facility. A timeline of these reports was included in a March 3, 2020 memorandum from an Intelligence

⁵ Due to her being involved in a criminal investigation at the time of the OIG investigation, the OIG did not interview the food service worker for this report.

⁶ The reason for his termination was tied to the suspicion of being involved with the illegal introduction of contraband into the facility according to NSP.

Captain (assigned to the NDCS Central Office) to the Intelligence Administrator at the NDCS Central Office.⁷

There were events in June and July 2019 that caused concerns including an inmate email expressing how the inmate had plans to start a relationship with the food service worker upon his release due to her choosing him and flirting with him. Also, NDCS staff were told that two inmates who worked in the kitchen, including Inmate X, were trying to manipulate the food service worker, and that another inmate witnessed Inmate X “smack the buttocks” of the food service worker and her smiling in response to it. There are no reports available that indicate that any of these concerns were addressed by NDCS staff.

There are no reports again until January 2020 when NDCS staff learned that it was likely that the food service worker had been compromised by the inmate population and that she was introducing K2 and marijuana into the facility for Inmate X. The day that it was told that she introduced this contraband there was a report that staff smelled strong odors of marijuana in the facility.

There were a series of events in February 2020 that continued to raise concerns. One staff member witnessed the food service worker “sitting in a secluded area of the kitchen” with Inmate X and that they drank out of the same soda can. In addition, the two were observed multiple times going into the dry storage area and coming out with nothing in their possession. This was documented in a report by that staff member. There were two memorandums on February 14, 2020 regarding concerns about the food service worker. One detailed that the food service worker was bringing in contraband, including K2, into the kitchen on a regular basis. It was disclosed that the food service worker placed the “contraband in her vagina or rectum.” It was specifically shared that Inmate X was the inmate who worked in the kitchen who picked up the contraband packages from the food service worker. The second memorandum was from the Central Office Intelligence Captain to the Central Office Intelligence Administrator that shared similar, yet even more detailed information regarding the food service worker and the introduction of contraband. It was also alleged that there was a sexual relationship between the food service worker and Inmate X.

On February 18, 2020 the Intelligence Captain gained additional information that indicated that the food service worker was likely smuggling in contraband and concealing it in her body cavity. On February 23, 2020 a corporal reported that the food service worker and Inmate X were spending time together in the dry storage area and that upon exiting the area she noticed three hickeys on the neck of Inmate X. Another staff member also noticed the hickeys on his neck. On February 25, 2020 another staff member submitted a report that the food service worker exited the inmate restroom and that he then saw that the same inmate was also inside the same restroom.

On either February 23 or 24, 2020⁸ a contraband cell phone was recovered that eventually had information extracted from it several days later. The information extracted confirmed that the

⁷ March 3, 2020 memorandum from the Intelligence Captain to the Intelligence Administrator

⁸ There are conflicting reports referring to the date of the finding of this cell phone.

food service worker was involved with Inmate X. This will be discussed in greater detail later in this summary of the report.

As these events unfolded discussions and information were shared between a number of people within NDCS, including NSP leadership and Central Office investigative and intelligence staff. For example, two emails were sent from the Intelligence Captain to the Central Office Investigation Coordinator, and the NDCS Intelligence Administrator on February 26, 2020 with more information on the food service worker. Included in those emails was one that said:

“Things keep looking worse for this food service specialist. I don’t have a compilation report yet, but I think we need to move on her soon.”

Eventually someone decided that something had to actually be done regarding the food service worker. It is unclear what exactly happened as the OIG was unable to interview the Intelligence Captain and the NDCS Intelligence Administrator.⁹ In addition there were some interviews that conflicted with each other.¹⁰ The OIG presumed that the extraction of the data from the contraband cell phone was what proved to be the tipping point regarding the action being taken on the food service worker. However, as will be discussed later in the summary of the report, the cell phone information was not extracted until the day after Deputy Director Robert Madsen was approached by both the Central Office Investigation Coordinator and the NDCS Intelligence Administrator.

As concerns mounted regarding the food service worker, there were apparently two tracks being pursued.

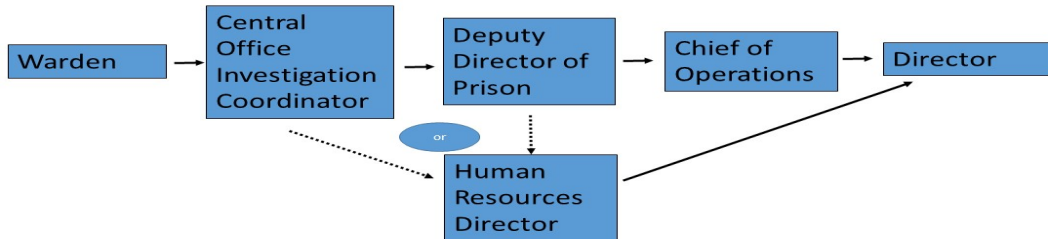
The first track (see graphic below) will be referred to as the Investigative Track. The Central Office Investigation Coordinator indicated that this track results in facilities forwarding information to him and that he then presents that information to the appropriate Deputy Director (depending on the correctional facility). The Deputy Director reviews the information and decides if there is enough information to proceed further to activate an investigation using the investigators under the Central Office Investigation Coordinator. If so, then either the Central Office Investigation Coordinator or the Deputy Director provides information to Human Resources Director Erinn Criner or a subordinate. Only the Human Resources Director or the Director of NDCS have the authority to suspend someone.¹¹ Each situation is likely unique and there are different ways of proceeding at that point. It was stressed a few times by those

⁹ The Intelligence Captain declined to interview with the OIG upon the advice of his attorney due to a possibly related open criminal investigation. The OIG did not contact the NDCS Intelligence Administrator for an interview due to a related matter.

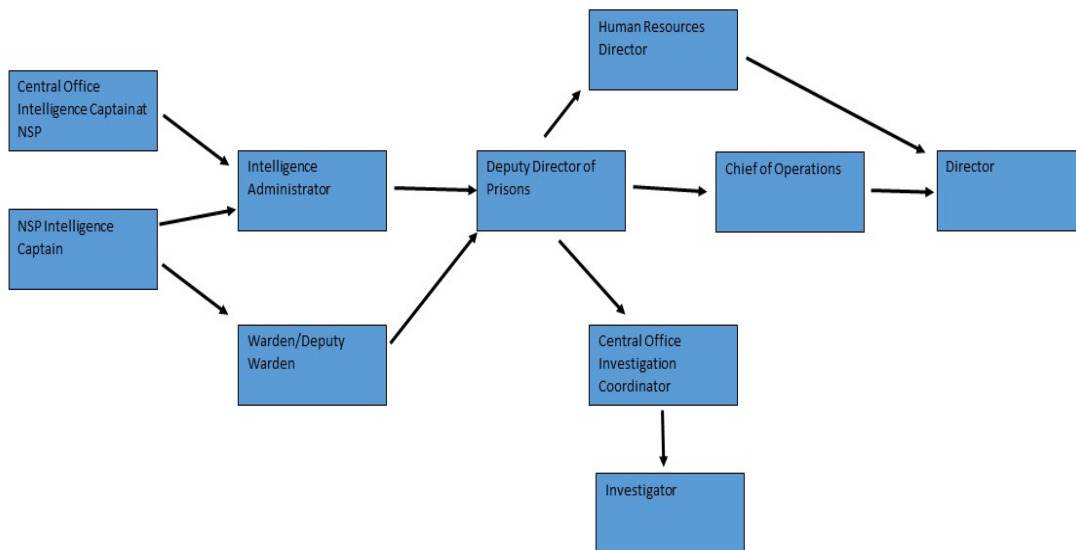
¹⁰ It should also be noted that time could have been a factor as well since most of the interviews took place at least a month after the arrest of the food service worker.

¹¹ There were some NDCS staff interviewed who believed that Chief of Operations Diane Sabatka-Rine also could suspend employees but the OIG confirmed that it was only the other two positions that can suspend NDCS employees.

interviewed that an administrative investigation is different from a criminal investigation.



The second track (see graphic below) will be referred to as the Intelligence Track. In this track Intelligence is the entity involved with analyzing the situation and they then provide information to the Deputy Director. The Warden also can provide information to the Deputy Director. At that point, according to Deputy Director Madsen, the Deputy Director reviews the information (must be a written report) and if he or she decides that an investigation must be done he or she then brings in the Central Office Investigation Coordinator. He or she also presents the information to Human Resources (either Ms. Criner or a subordinate).



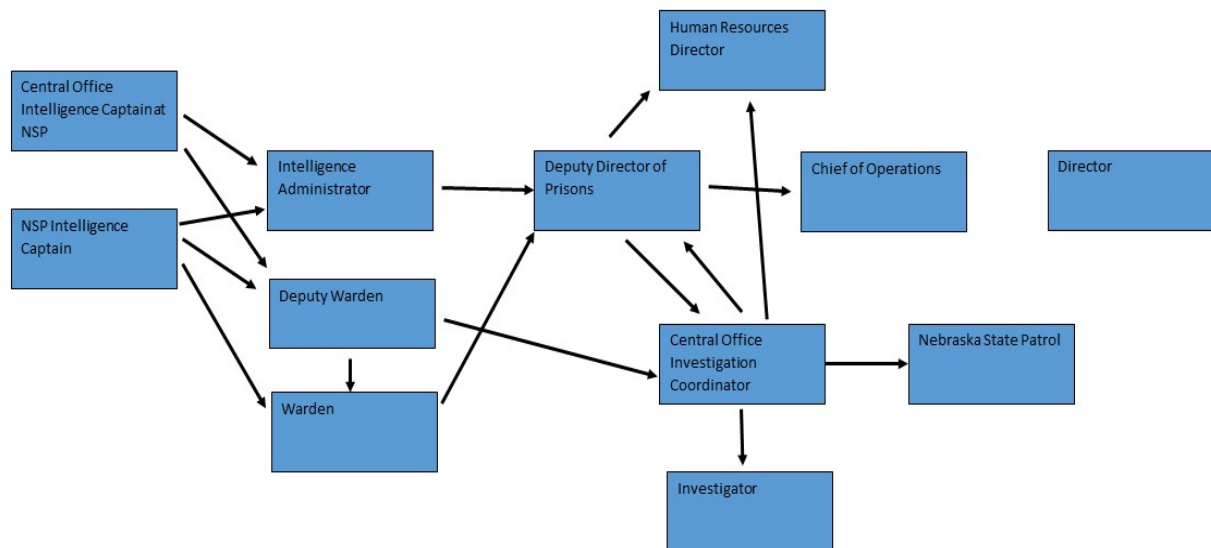
Some NDCS staff members believed that they were following the first track and that information along the way was being provided to the Central Office Investigation Coordinator and even to Deputy Director Madsen. They were frustrated by the lack of action being taken because they thought it was important to remove the food service worker from her position due to the alleged inappropriate relationship and the belief that she was bringing drugs into the facility. The Central Office Investigation Coordinator indicated that after the memos from the Intelligence Captain were received in late February and the discovery of the text messages on the contraband phone that there was then enough information to move forward. He indicated that he then approached Deputy Director Madsen, likely on March 3, 2020, and that either he or Deputy Director Madsen informed Ms. Criner (Human Resources) on March 4, 2020. It was stated that she needed to be involved in order to understand the different scenarios available for dealing with the employment of the food service worker, including a possible suspension. Deputy Director Madsen, as explained in the next track, indicated that he went to the Central Office Investigation Coordinator after receiving information from the NDCS Intelligence Administrator on either March 2 or 3, 2020. Ms. Criner indicated that she did not know anything about the food service worker matter until after the food service worker was arrested on March 4, 2020. It was on this day that the Central Office Investigation Coordinator started an official investigation by sending an investigator to NSP to interview the food service worker. He also notified the Nebraska State Patrol on that date regarding the allegations. The investigator went to NSP and interviewed the food service worker. The interview led to the Nebraska State Patrol arriving at NSP and arresting the food service worker. There are conflicting accounts regarding the flow of information from NSP to Central Office during February.

The second track (Intelligence Track) was also being followed by some. In January and February, the intelligence team members met more than once and discussed the food service worker situation. As a result, the NDCS Intelligence Administrator directed that a listening device be placed in the kitchen to gain additional information. This will be examined in greater detail later in this report. Memos were also being provided from the intelligence team to the NDCS Intelligence Administrator and others about the food service worker in February. As shared previously a contraband cell phone provided key information about inappropriate contact between the food service worker and Inmate X. As a result, when this information was gathered and compared to the previous information, the NDCS Intelligence Administrator, according to Deputy Director Madsen, came to him on either March 2 or 3, 2020 and told him about the situation. Deputy Director Madsen directed him to provide him with a written report so that he could initiate the investigation. As a result, it appears that the Intelligence Captain prepared his March 3, 2020 memo that was provided to the NDCS Intelligence Administrator and then this was presented to Deputy Director Madsen.¹² Deputy Director Madsen then went over the report with the Central Office Investigation Coordinator. Deputy Director Madsen said that he talked with either Ms. Criner or someone else in Human Resources on March 4, 2020 and he believes that was also the day that he briefed Chief of Operations Sabatka-Rine regarding the case. Deputy Director Madsen initiated the investigation which resulted in the results discussed at the end of the summary of the Investigative Track. Again, as shared above, Ms. Criner indicated that she was not contacted until after the arrest of the food service worker. There are no emails or any type of documentation found by the OIG that indicates whose recollection is the most accurate.

¹² As will be noted later the information obtained from the contraband cell phone was not included in this memorandum.

While all of this was going on, evidence from the contraband cell phone was not extracted until 2:37pm on March 4, 2020 according to the extraction report and none of this information was included in the report provided to the NDCS Intelligence Administrator and then to Deputy Director Madsen. This would indicate that the perception by some that the extrication of the cell phone messages triggered the further investigation was not accurate.

If one were to combine all of the tracks that may have been followed as described in interviews between NDCS staff and the OIG, it shows that neither track was actually followed (see graphic on next page).



However, there was also an underlying criminal versus administrative conflict taking place as the events unfolded. Several individuals shared that they viewed removing the food service worker from her position as an administrative action but if that had been done it may have impacted a criminal investigation because there were concerns that she was involved in the criminal activity of introducing illegal contraband into the facility. There was a definite hesitancy to take action that might have impeded the criminal investigation. However, it should be noted that the criminal investigators of NDCS were not actually involved until early March 2020 so there was no actual criminal investigation taking place during the months of January and February 2020. Instead, the NDCS Intelligence staff were the ones that appeared to be taking the lead on the criminal aspect of the food service worker case. This conflict not only has caused confusion for the OIG in the writing of this investigative report but it also caused confusion among key NDCS staff involved in this situation. During an interview with Human Resources Director Criner, she indicated that one problem in this case may have been that if there was a thought that if something happening

may be criminal then no action could be taken because the criminal investigation needed to run its course. Others involved in this situation shared similar concerns. As a result, this may have impacted activity, or maybe more accurately a lack of activity, by the appropriate NDCS staff in handling this serious situation.

WHO WAS IN CHARGE?

An integral question that is part of this case is this: Who was actually in charge of this case? In this case, it was not clear and there were several layers of this case.

At the kitchen level, two food service leaders oversaw what happened in that area. They both appeared to be engaged with the food service worker and tried to work with her to address any concerns. One of these individuals submitted the incident report regarding the bathroom to Intelligence but never heard anything further although he was aware that other reports had been submitted regarding the food service worker.

At the Intelligence level, two captains were the point people. However, one reported directly to the NDCS Intelligence Administrator and interviews and emails indicate that he was the one in charge of their efforts at the facility level. He did not report to Warden Wilhelm at NSP so information about what they were doing was not necessarily flowing through the chain of command at NSP. This captain was the direct line to the NDCS Intelligence Administrator but the OIG was unable to interview either one of these individuals so it is unclear what was happening on that front. The other captain was the NSP Intelligence Captain and he reported to leadership within the facility, though there was also an indirect connection with the NDCS Intelligence Administrator.

At the facility level, the Major is the highest ranked security officer but she shared that she was not privy to all of the efforts of Intelligence. Rather, they shared information with her only when they wanted to share it. The same was true of those above her, including Deputy Warden Heminger and Warden Wilhelm. They had concerns about the food service worker and they felt that sharing it with Intelligence and the Central Office Investigation Coordinator in Central Office was their way of getting information to the Central Office so that action could be taken regarding the food service worker. However, as has been pointed out, the two people who could begin to initiate action on the food service worker, Human Resources Director Criner and Deputy Director Madsen, indicated that they were not aware of the situation until early March 2020. In February, the Central Office Investigation Coordinator received information on the food service worker but he does not recall whether he provided it to others prior to March 2020.

Regardless, it still remains unclear who was in charge of this situation or how a situation like this should have been handled.

POST-ARREST ACTIONS

After the food service worker was arrested, the investigator conducted additional interviews and prepared a report on the matter. This was provided to the Central Office Investigation Coordinator. He also spoke with the County Attorney's Office and the Nebraska State Patrol about the matter.

On March 5, 2020 a NDCS Human Resources employee visited the Lancaster County Jail to present the appropriate paperwork to the food service worker regarding her suspension.

On May 14, 2020 the food service worker resigned from her position with NDCS.

CONTRABAND INTERVENTION EFFORTS

As was shared earlier in this report, as more was learned about the alleged inappropriate actions of the food service worker NDCS intelligence staff learned that she was also possibly bringing in illegal drugs. They learned through different sources when she was allegedly bringing in illegal drugs. Searches were conducted of her when she entered the facility but since it was thought that the illegal drugs were being placed in her body cavity, pat searches would have had no ability to find those drugs. During this investigation the OIG was told that if NDCS believes contraband is coming in via one's body cavity NDCS can involve law enforcement. At one point there was a plan to conduct a targeted search of her as she entered the facility in February but other events within the facility disrupted that plan. As a result, law enforcement intervention or a thorough search of the food service worker apparently never took place.

Multiple individuals discussed the difficulty of intercepting contraband that comes into the facility by being placed in a body cavity. The use of a body scanner was brought up multiple times and it was shared that this has been discussed for at least three or four years within NSP and NDCS. There are some at NSP who believe that one will be purchased for their facility but the OIG was unable to confirm that this was accurate. Deputy Director Madsen confirmed that they have looked at body scanners and have had a lot of discussion on that topic. Deputy Director Jeremy Elder shared that they have researched body scanners but there is no plan to purchase one at this time.

In the past there has been discussion about the use of drug dogs that could locate K2. Director Frakes indicated last year that this was something they were exploring.¹³ According to those interviewed by the OIG there are not currently any drug dogs owned by NDCS that can detect K2. However, this is certainly an option that NDCS should continue to pursue it so that efforts to introduce contraband into the facilities can be impacted.

Each correctional facility has numerous security cameras that continuously record the events taking place at each facility. Some are fixed and others can be remotely controlled and adjusted. An overall camera plan is developed for each facility and the plans are able to evolve. Numerous staff interviewed discussed the need for not only additional video cameras but also for higher quality cameras. They discussed the need for these cameras in the kitchen and in other areas of the facility in which it was difficult in this case to monitor individuals. In the past, the OIG has raised the issue of the need for additional and better video surveillance and there are ongoing requests by facilities for additional cameras and surveillance enhancements.¹⁴

¹³ https://www.kearneyhub.com/news/state/unprecedented-nebraska-penitentiary-lockdown-meant-to-quash-escalating-problems-director/article_cd416ed0-b633-5c8d-80a8-d4f6692a6228.html

¹⁴ A 2018 OIG Report on NSP recommended the following: "Place cameras in identified "blind spots" in the Internal housing units and review security camera needs throughout the facility.: The report can be found at https://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Inspector_General_of_the_Nebraska_Correctional_System/679_20181011-082108.pdf.

NDCS has also previously shared with the public the many other tactics that they utilize to deter contraband from entering their facilities.¹⁵

HUMAN RESOURCES INVOLVEMENT

Another of the questions that kept arising during the course of this investigation was why wasn't something done regarding the employment of the food service worker. As more evidence emerged, there were options that could have been considered by NDCS. One option would be to move her to another job location to disrupt the alleged flow of contraband while it was investigated. Another option would be to actually begin to initiate some type of action such as a counseling log or statement of charges regarding her being in a restroom with a male inmate, drinking out of the same pop can as an inmate, or for one of the other incidents observed and reported by other staff, even the "smacking of the buttocks" documented in 2019. NDCS could have suspended her with or without pay prior to March 4, 2020 and initiated an investigation. None of these actions, nor any other employment steps, were taken by NDCS despite the mounting evidence of inappropriate and possibly illegal activity by the food service worker.

Of course, it should be clear that the food service worker had rights as an employee and NDCS needs to follow proper protocols when responding to a situation like this. It was shared with the OIG that NDCS can't take such action based on one incident. However, in this case, there were multiple incidents that raised serious concerns and resulted in at least three staff approaching the food service worker and discussing boundaries as well as NSP staff contacting staff in the Central Office regarding their concerns and their wishes to take action on the food service worker.

During this investigation, the only mention of the role of Human Resources was that the Human Resources Director is the one who makes decisions regarding the suspension of an employee (along with Director Frakes). There were no reports of any action by Human Resources staff at NSP or even any sharing of this information with Human Resources staff at NSP. If it is accurate that Human Resources was not notified about this employment situation until after the arrest of the food service worker then neither of the tracks discussed previously were followed. In both the Investigative and Intelligence Tracks, it was shared with the OIG that Human Resources needed to be involved with this process. In this case, Human Resources was not contacted until after the fact. In addition, it was also learned that any reports provided to Human Resources from either Investigations or the Deputy Director regarding concerns of an employee who should be considered for suspension or termination are not kept by Human Resources. It was shared that placing these reports in an employee's personnel file is not appropriate but that there is no other location where these reports, which may result in an employee being suspended or terminated, are kept by Human Resources.

ROLE OF CONTRABAND CELL PHONE

On either February 23, 2020 or February 24, 2020¹⁶ a contraband cell phone was found in NSP. At some point after the discovery of the cell phone, staff downloaded the contents of the cell phone and found evidence of Inmate X and the food service worker allegedly texting each other in February. This alleged unauthorized communication between an NDCS staff member and an

¹⁵ <https://corrections.nebraska.gov/director-frakes-outlines-contraband-control-and-detection-tactics>

¹⁶ Internal NDCS reports document this taking place on both of those days

NDCS inmate is a criminal offense.¹⁷ The data was extracted, according to the extraction report provided to the OIG, at 2:37pm on March 4, 2020. There were multiple text messages that included descriptive language and photos. These text messages were also copied and detailed in a March 5, 2020 memorandum from a NDCS Criminal Investigator to the Central Office Investigation Coordinator.

As stated above, the cell phone was found on either February 23 or 24 but the information was not extracted from the cell phone until March 4. The OIG learned that the original plan for the cell phone may have been for NSP or Intelligence staff to send it to Securus Technologies for the extraction of information/data.¹⁸ Instead, NDCS staff were able to access the cell phone through other means and it was then provided to the NDCS Intelligence Administrator upon his orders so that he could conduct the extraction. The OIG was informed that the NDCS Intelligence Administrator was the only person responsible for this extraction. The information was provided to the investigator on March 4, 2020 and then it was included in his March 5, 2020 memorandum.

The evidence obtained from the contraband cell phone then proved to be key when the investigator interviewed the food service worker on March 4, 2020. The food service worker's personal cell phone was obtained by the NDCS investigator on that date and that phone was accessed to confirm the communication between Inmate X and the food service worker.

LISTENING DEVICE UTILIZATION

At some point NDCS staff decided that they needed to take additional action to determine whether or not the food service worker was involved in either illegal activities or activities which were against NDCS policy. Emails between staff involved in the food service worker situation indicate that on February 10, 2020 a staff member would be placing a listening device in the dry storage room in the NSP kitchen where the food service worker worked and where she had been seen going into with Inmate X. As part of those emails, the Intelligence Captain sent the following to the NDCS Intelligence Administrator:

"...Just wanted to make sure one last time that everyone at CO is on board with it."

"CO," in this case, stands for Central Office, and "it" is referring to a listening device. The NDCS Intelligence Administrator responded by asking where it was to be located and the Intelligence Captain indicated that it would be in the dry storage area. The NDCS Intelligence

¹⁷ Nebraska State Statute 83-417: Any person who purposely or knowingly allows any committed offender to escape or, without the approval of the chief executive officer of the facility, allows any offender to be visited, conversed with, comforted, or relieved or conveys to or from any committed offender any communication or article shall be guilty of a Class IV felony.

¹⁸ NDCS currently has a contract with Securus for this cell extraction process. In 2018, the Judiciary Committee of the Nebraska Legislature learned during an interim hearing that the Department was involved with a pilot project with this company to extract cell phone data from contraband cell phones. During testimony from Dan Pacholke, former Deputy Secretary of the Washington Department of Corrections and then consultant who was under contract with Securus, the Committee learned about this arrangement in which NDCS was not being charged by Securus for this service. Since that time, Securus and NDCS have entered into a three-year contract for over \$650,000 that includes "cellular assessment services." As part of this contract, Securus provides monthly statistical reports to NDCS that identify the number of calls that they monitor, the number of contraband cell phones that they analyze and process and other information.

Administrator responded by saying, “Ok, don’t burn it” and the Intelligence Captain responded by saying “10/4.” The NDCS Intelligence Administrator never confirmed to the Intelligence Captain that “everyone at CO is on board with it.”¹⁹ It was confirmed that the listening device was placed in the dry storage area by a corporal on February 10, 2020.²⁰

As a result of interviews and emails requested by the OIG, below is a reconstructed timeline of the events related to the listening device:

February 10: The Intelligence Captain and Intelligence Administrator email about the placement of the device. It is placed in the dry storage area by a corporal.

February 12: It is removed from the dry storage area by a corporal.

February 12: The Intelligence Captain forwards the February 10th email exchange with the NDCS Intelligence Administrator to Deputy Warden Doug Heminger. On either February 12th or 13th Deputy Warden Heminger shared this information with Warden Michele Wilhelm verbally.

February 13: Warden Wilhelm sends an email to Deputy Director Robert Madsen asking if he knows anything about a listening device being placed in the NSP kitchen. Deputy Director Madsen responds that same day by emailing, “There is no listening device in your kitchen.”

February 13: The NDCS Intelligence Administrator emailed the Intelligence Captain and wrote “Before you confront Doug I do not know what he said to Madsen” and the Intelligence Captain replied with “Ok.”

February 14: Deputy Warden Heminger forwards the February 10th email exchange that he received from the Intelligence Captain to Warden Wilhelm.

February 15: Warden Wilhelm emails Deputy Director Madsen and shared her concerns about the placement of the listening device and the impact that this could have on her staff. She also wrote that she “...was told that there is audio and it has been downloaded.”²¹

February 15: Deputy Director Madsen emailed Warden Wilhelm back and said that he had “absolutely no knowledge of this until you sent the e-mail the other day and if I had any

¹⁹ The Intelligence Captain, upon the advice of Legal Counsel, declined to be interviewed by the OIG due to a criminal investigation being conducted by the Nebraska State Patrol. As a result, the OIG was unable to confirm whether or not the Intelligence Captain had a verbal conversation with the NDCS Intelligence Administrator regarding the authorized use of the listening device. The Intelligence Captain also would have the ability to confirm or deny additional details regarding this investigation as he was intimately involved with the situation regarding the food service worker. As a result, there are gaps in this investigation that will need to be reviewed in the future once the criminal investigation is complete by the Patrol and the Intelligence Captain is available to discuss the food service worker matter.

²⁰ This corporal reported to the Intelligence Captain who reported to the NDCS Intelligence Administrator. She worked at NSP but was outside the normal NSP chain of command.

²¹ The OIG was told by more than one individual, including Warden Wilhelm, that the device actually turned out to be faulty and did not record anything. In fact, the listening device itself was apparently a “loaner” device from the company because of alleged problems with the two devices owned by NDCS.

advanced knowledge you would have been informed.” He also states that he talked to the NDCS Intelligence Administrator the day before and was told by him that the device was actually a battery and this was the second time he had asked the NDCS Intelligence Administrator about the device.

February 18: Emails were exchanged between Warden Wilhelm and the Intelligence Captain as they sought a time to talk about this issue. They were able to talk and Warden Wilhelm emailed Deputy Director Madsen and shared that she had talked to the Intelligence Captain but that she still had some concerns.

February 18: Email from the Intelligence Captain to Warden Wilhelm and Deputy Warden Heminger that said “Some more [name of employee] info” and it had an attachment with information on the food service worker situation.

February 21: Email from the Intelligence Captain to Warden Wilhelm that said he would like to talk to her in person about the listening device incident due to the corporal and himself having “a strange conversation with [NDCS Intelligence Administrator] that did not sit well with either of us.” They tried to meet that day at NSP but the Intelligence Captain had to go to the Lincoln Correctional Center so he shared the information with Warden Wilhelm via email. He wrote that the NDCS Intelligence Administrator told the corporal and him that the device that they planted was not a listening device but was a battery. The Intelligence Captain stated that they both know it was a listening device and that it was not a battery. Warden Wilhelm responded by writing that she was told (apparently by Deputy Director Madsen) that the device and the battery looked the same and she asked a question about the device. The Intelligence Captain replied and shared how he and the corporal had brought the device to the NDCS Intelligence Administrator after it was retrieved so that he could show them how to download the audio. The Intelligence Captain stated that he was confronted by the NDCS Intelligence Administrator at that time for sharing the information with NSP administration. They then entered his office and the NDCS Intelligence Administrator connected the device to his computer. He shared that the NDCS Intelligence Administrator got upset when it didn’t work. On February 18 the NDCS Intelligence Administrator called the corporal and told her it was a battery and on the morning of February 19 he called the Intelligence Captain and said they planted a battery. The Intelligence Captain then wrote:

“I’ve planted the device before and so has [a named corporal]. We both know exactly what the device looks like. Unless [Intelligence Administrator] has been having us plant batteries this whole time, what she placed in dry storage was not a battery.”²²

February 21: After the exchange between Warden Wilhelm and the Intelligence Captain, Warden Wilhelm and Deputy Director Madsen exchanged emails. In this exchange, Deputy Director Madsen continues to say that he wants to know the truth behind what was placed in the dry storage area. Warden Wilhelm ably points out that since the Intelligence Captain and the corporal watched the NDCS Intelligence Administrator connect it to a computer then it probably was not a battery. As part of this exchange Warden Wilhelm forwarded the exchange she had

²² This is important to note due to the fact that these listening devices had been deployed before this occurrence at NSP which appears contrary to information shared by some NDCS staff with the OIG.

with the Intelligence Captain to Deputy Director Madsen, which included information that they had utilized this device in the past.

March 2: Deputy Director Madsen met with the NDCS Intelligence Administrator and the NDCS Intelligence Administrator admitted that he had ordered the planting of a listening device in the dry storage area at NSP.

March 4: Deputy Director Madsen sent out an email to a number of NDCS staff that stated:

“[Intelligence Administrator] will be unavailable to perform the duties of the Agency Intelligence Administrator position for an undetermined period of time.”

The use of the listening device raised the question of what the policy is of the Department regarding the use of such listening devices. NDCS purchased two listening devices in December 2016. One device cost \$2100 and the other one cost \$1050. The Material Request for Purchase was signed by the Intelligence Administrator and Diane Sabatka-Rine. It is unclear what the difference is between the two or if there was a difference. The more expensive of the two items on the request for purchase indicated that it may have been part of a kit. At the time of this purchase Diane Sabatka-Rine was the Deputy Director of Prisons. Diane Sabatka-Rine is now the Chief of Operations for NDCS.

Chief of Operations Sabatka-Rine and Deputy Director Madsen both confirmed that there is no written policy regarding the use of listening devices. The OIG was informed that policies are written when something applies to multiple areas and individuals and that an established protocol is determined when it only applies to a very limited circumstance and limited individuals. In the case of the listening devices only five individuals are part of the process in determining their use - Director, Chief of Operations, Deputy Director of Prisons, General Counsel and Agency Intelligence Administrator. The original established protocol was determined by Director Frakes, then Deputy Director Sabatka-Rine and the NDCS Intelligence Administrator. At that time the protocol was that they would not be used to gain intelligence on NDCS staff and that each time it was deployed the area in which it was being used and the purpose for its use needed to be approved by the Deputy Director and the Director. If necessary, the General Counsel would be involved in the decision.²³ The established protocol is not written or documented, rather it is a verbal agreement between those specific individuals. The established protocol does not include any type of tracking or monitoring of the use of the listening device nor does it include any type of documentation of the results of the use of the device. The original intent for the use of the device was to gather specific intelligence information on inmate conversations.

Chief of Operations Sabatka-Rine recalled that she had only authorized the use of the listening device a “couple” of times that she could recall while she was overseeing the Agency Intelligence Administrator as the Deputy Director of Prisons. This would have been the time period from December 2016 to June 2018. Deputy Director Madsen was appointed to the position in June 2018 and in the nearly two years since his appointment he said that he never authorized the use of the listening device nor was he ever asked to authorize the use of the device. Neither individual indicated that they were aware of other uses of the listening device.

²³ After this report was finished, it was learned through other means that the General Counsel at the time of these events did not know about the devices nor was she informed during her tenure about the verbal protocol.

The OIG learned in other conversations that it had been used in at least two facilities during the past two years. Earlier, an email was shared in the report in which the Intelligence Captain wrote:

“I’ve planted the device before and so has [named corporal]. We both know exactly what the device looks like. Unless [Intelligence Administrator] has been having us plant batteries this whole time, what she placed in dry storage was not a battery.”

Deputy Director Madsen said that he had not heard of any other use of these devices except one instance that took place at the Tecumseh prison prior to him being promoted to the position of Deputy Director. However, the above email was shared with him in February 2020 yet he indicated in his interview with the OIG that he has not asked about other uses of the device even though he was provided information that indicates the NDCS Intelligence Administrator and others violated the established protocol. He also interviewed the NDCS Intelligence Administrator multiple times about the use of the device and apparently never asked if he had used them in other locations despite having information from those who reported to the NDCS Intelligence Administrator that this had taken place. It is not clear why he would not ask this obvious question of those who report to him.

One staff member who did not report to the NDCS Intelligence Administrator shared that the NDCS Intelligence Administrator showed him the device once and told him that they don’t tell anyone about it and don’t talk about it, including to this person’s chain of command.

The established protocol is only a verbal agreement on how to proceed regarding the use of listening devices. It is not a written agreement or policy. It also does not include any type of tracking or monitoring of the use of the listening device nor does it include any type of documentation of the results of the use of the device. Those interviewed were unable to say how many times the devices had been used in the past or what the results of the uses of those devices were. Deputy Director Madsen was asked in June where the devices were currently located and the OIG was informed that they were in the possession of the Nebraska State Patrol. However, the Patrol only has the two devices bought by NDCS. The one used at NSP was a “loaner” device that had been provided to the NDCS Intelligence Administrator by the company who sold the devices to NDCS. He had sent a device to the company because he wasn’t able to retrieve a sound file from a device. When he sent that one in they then sent him the “loaner” device. It was learned that there was nothing actually wrong with the original device and the company was able to retrieve that audio file. When asked where the “loaner” device was Deputy Director Madsen said he believed that it had been sent back by the NDCS Intelligence Administrator but no one at NDCS could verify whether or not it had actually been sent back to the company.²⁴

INTELLIGENCE VS INTELLIGENCE

As the investigation was being conducted, the OIG requested and received the NDCS Intelligence Unit Reporting Structure (essentially an organizational chart). The chart indicated,

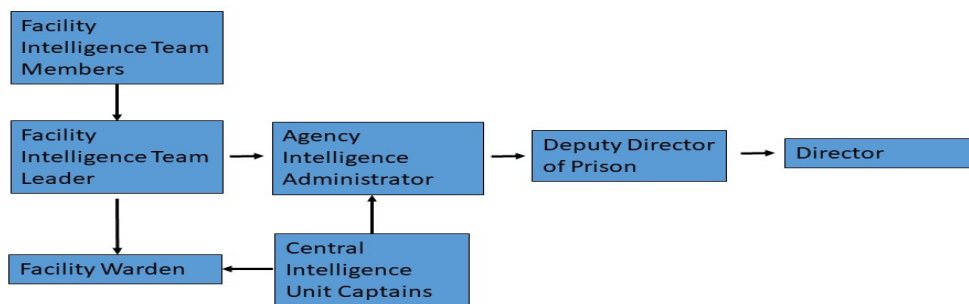
²⁴ Information shared after the writing of the initial report from Director Frakes indicated that they apparently know that it was not returned to the company and that they will continue to search for the device which is contrary to Deputy Director Madsen’s statement that he believed it had been sent back to the company by the NDCS Intelligence Administrator.

and following interviews confirmed, that there are really two intelligence operations within the Department.

One operation reports to the Intelligence Administrator and has staff at various facilities. In this case, the Agency Intelligence Administrator reports to the Deputy Director of Prisons and this has been the case since the position was created. The Deputy Director reports to the Director. Within this operation there are a number of Central Intelligence Unit Captains and K-9 corporals who report to the Agency Intelligence Administrator.

Another operation has intelligence staff at each facility who report to the Warden at each facility. Within each facility there are Facility Intelligence Team Members who report to the Facility Intelligence Team Leader. The Facility Intelligence Team Leader reports to the Warden.

However, there is a crossing over of the two operations as the Facility Intelligence Team Leader at each facility also reports to the Agency Intelligence Administrator and the Central Intelligence Unit Captains also appear in the reporting structure as also reporting to the Wardens (see graphic below).



In interviews with NDCS staff the reality of how Intelligence operates does not appear to match the reporting structure in two ways. First, it is clear that the Central Intelligence Unit Captain at NSP did not report to the Warden or anyone else at NSP and they reported only to the Agency Intelligence Administrator. Second, the Facility Intelligence Team Leader dual reports but there is more of a loyalty to the facility and the Warden at that facility. However, that person and those that report to that person may have mixed loyalties and receive mixed signals on how they are to operate at their facility. For instance, a February 15, 2020 email shared that a captain at NSP (who is the Facility Intelligence Team Leader) knew about the listening device but was told not to tell anyone at NSP about the device, including the Warden. Emails also indicate that the Intelligence Captain was upset with the Deputy Warden and Warden regarding the listening device. Interviews uncovered that while the two operations basically share the same mission and even work together there was confusion about their roles and who they reported to as part of

their work. Interviews also found that there is a desire for these two operations to not be split and that there should only be one chain of command.

FOOD SERVICE WORKER SUSPENSION/JOB STATUS

On March 4, 2020, a letter from Erinn Criner, NDCS Human Resources Director, was prepared for the food service worker notifying her that she was being placed on investigatory suspension pending an investigation into possible allegations of rule violations. The letter was actually dated February 4, 2020 but that was an error. This was prepared after Ms. Criner was notified of the arrest of the food service worker.

As a result, the letter was hand delivered to the Lancaster County Jail by another employee of NDCS who works in Human Resources. This individual called out to the jail to make sure that the food service worker was still in custody and visited with her and presented the letter to her. The food service worker signed the letter but refused to resign at that time. The food service worker was still employed by NDCS but was suspended pending the outcome of an investigation.

There are two items that come into play when an employee is suspended in this instance. Since the food service worker was covered by the NAPE/AFSCME Labor Contract, the language in that contract applies. It states:

“...in cases where the employee has been charged in court with a felony, which is directly related to the workplace or which has been the potential for significant impact on, or disruption of, the workplace, the Employer may suspend the employee from work or without pay until the charges are resolved.”²⁵

NDCS has their own internal policies regarding investigatory suspensions and it lays out the steps that must be taken should a suspension pending investigation is being contemplated. These steps are:

- “1) The Director/designee and Human Talent Director will be contacted for approval prior to imposing the suspension.*
- 2) If possible, the supervisor is expected to meet with the team member, to explain the suspension. The team member will have the opportunity to present his/her side of the incident and why he/she should not be suspended.*
- 3) A letter imposing the suspension and reasons for suspension will be given to the team member (Attachment D). If this is not possible, the letter shall be sent certified, return receipt requested, in addition to the certified, return receipt mailing, send the notice by regular mail.”²⁶*

The letter referred to in step three was the one presented to the food service worker at the Lancaster County Jail.

²⁵ 2019-2021 NAPE/AFSCME Labor Contract Section 10.3

²⁶ NDCS Policy 112.06

The OIG contacted NDCS on May 13, 2020 and requested more information about the job status of the food service worker and whether or not NDCS was waiting for the criminal case to be completed or an internal NDCS investigation prior to making the decision to terminate her employment with NDCS. NDCS informed the OIG that the food service worker was issued a statement of charges as a result of the internal investigation (discussed in the next section of the report) via regular mail and certified mail on May 4, 2020. Attempts to contact her via telephone were also unsuccessful. According to the May 4, 2020 letter her pre-disciplinary hearing was scheduled for May 14, 2020 but NDCS was notified that she resigned her position on that date and would not be attending the hearing.

NSP INTERNAL REPORT

On April 21, 2020 Warden Wilhelm assigned an administrative investigation regarding the food service worker case to the Associate Warden. The Associate Warden interviewed multiple staff and inmates regarding the food service worker case and verified much of what was discussed previously in this report. The exceptions were a March 3, 2020 report from a different corporal at NSP in which he shared that the food service worker looked scared and nervous when he was near her on that same date. In addition, there was also a March 5, 2020 report from a corporal that she found a Wal-Mart gift card in the food service worker's glove pouch and shared it with the NDCS investigator. With each individual he learned more about specific incidents that they witnessed and things that they may have learned since the arrest of the food service worker. For instance, staff reported that when she first started she was very strict with inmates and kept boundaries but this changed over time, specifically noticeable in December 2019.

The Associate Warden reached the following conclusions:

“After conducting interviews with the staff and inmates involved, it is clear that FSS [name of food service worker] has crossed the boundaries with inmates and violated the Department’s policy. [Name of food service worker] also failed to report as directed as part of an administrative investigation.

The allegation against FSS [name of food service worker] of having inappropriate actions with inmates is sustained. FSS [name of food service worker] also failed to fully comply with a departmental investigation and would not return my phone calls pertaining to this investigation to answer my questions. [Name of food service worker] had her attorney contact me instead and her attorney told me he was advising [name of food service worker] not to comply with my investigation.”

The intent of the internal NSP report was not to make conclusions on whether or not the actions involved with the food service worker case were appropriate or timely or needed to be improved but rather to conduct a type of fact-finding regarding the actual actions of the food service worker that may have violated NDCS policy.

NDCS EFFORTS ON BOUNDARY CROSSING

The OIG spent time reviewing the work of NDCS to address the serious issue of boundary crossing and inappropriate relationships. The OIG found that there are two courses provided

during the Staff Training Academy (STA) on this issue that seek to provide staff with the tools needed to maintain professional boundaries.²⁷

In addition to this initial staff training, this has been a point of emphasis by NDCS for existing staff as witnessed by at least two “Frakes File” that covered this subject. Other actions related to this area were also shared with the OIG by NDCS.

This is all important because during this investigation three separate staff at NSP shared with the OIG that they had personally visited with the food service worker about her boundary issues. They all expressed that they were concerned about her and the possibility that she may be near the point of crossing the inappropriate relationship line. It was shared that they did this due to the training that they were provided and the ongoing awareness efforts of NDCS regarding this subject. One thing that was lacking regarding this contact with the food service worker was documentation that they had concerns and had taken those steps. The fact that these individuals took these steps is an encouraging and positive action.

OTHER RELEVANT INFORMATION

The Food Service Director had conversations with the food service worker about boundaries and relationships. He said she was a good employee who did her job. He also was unaware of any allegations about the introduction of illegal contraband during her employment.

The Food Service Manager supervised the food service worker. He wrote the report on the bathroom incident and never heard back from anyone regarding that report. It was submitted to Intelligence and he believed that it was one of several incident reports compiled by him and others. Nothing made him “super suspicious” of her but he saw that inmate workers in the kitchen attempted to flirt with her and she shut them down. He talked about the importance of working with staff to be vigilant about the inmate workers trying to connect with them. He also said she was a good employee. He also indicated that he attempted to get Inmate X removed from his position in the kitchen due to him being “super flirty” with the food service worker. He also had conversations with Inmate X about his behavior and told him to leave the food service worker alone.

The Major at NSP stated anytime they had situations with possible inappropriate action by an employee in regard to their relationship with inmates incident reports would be written and submitted to her. She would then share these with the supervisors of those employees. Concerns about the food service worker came across her desk and since she is not in the security area she forwarded the information to the Intelligence office. She was not sure if any supervisor or Intelligence met with her to discuss the concerns. As the Major of NSP, she sits in on weekly Intelligence meetings at the facility. She described these as “very generic” meetings without

²⁷ The first course is “Professional Boundaries” and it is a three-hour class. It covers a variety of topics including defining manipulation, identifying manipulation and deception of staff, approaches to avoiding manipulation and understanding how staff are probed for weakness by inmates. The session includes lecture and discussion and it is a very in-depth training and it provides staff with many of the tools needed to identify and resist manipulation. The second course is “Correctional Boundaries In-Service” and it is a two-hour class. It is all about maintaining professional boundaries and it identifies the challenges that staff face and provides them with specific measures to avoid boundary issues. It includes lecture, group discussion and video material. As part of the group activities, they have small group discussions and exercises on inmate manipulation that are then presented to the entire class.

much detail on any pending situations or cases. In most cases, Intelligence does not provide information to the Major about emerging cases even though they impact the security of the facility.

Chief of Operations Diane Sabatka-Rine shared that she asked in April 2020 why didn't the multiple reports of boundary issues get addressed and what could have been done differently. She stated the bathroom incident should have been an opportunity to intervene, although it is separate from the criminal investigation and she indicated that they would not want to impact that track. As a former warden at NSP, she shared that her intent would be to intervene and stop behavior that is inappropriate and she said that NDCS does not "get bonus points for arrests." She stated that staff must take advantage of opportunities to counsel employees and coach them but in some cases it is tough to counsel their way back.

RECOMMENDATIONS FOR PROCESS/POLICY IMPROVEMENTS

As a result of the information gained through this investigation and the findings documented in this report, the following recommendations were provided to NDCS for their consideration with the submission of this report to Director Frakes:

1. Create one intelligence system with a clear chain of command and mission, but also one that maintains constant and transparent communication with the leaders of each correctional facility. As part of this process all Intelligence staff plus facility leaders should be involved in a review of the current system.
2. Establish a written policy for the use of recording devices as well as establish a tracking system for their location and utilization.
3. Verify who has the “loaner” listening device and provide this information to the Inspector General of Corrections and the Nebraska State Patrol as soon as possible.
4. Conduct an immediate NDCS investigation into the use of listening devices in the past and provide a written report regarding this review to the OIG and the Nebraska State Patrol.
5. Establish a more centralized and coordinated system of tracking when staff attempt to intercede with other staff who they believe may be targets for manipulation, deception or inappropriate relationships. Having a central reporting of these contacts at each facility will allow leadership at the facility to identify a growing concern about various individuals. This will allow for additional interventions that may be positive for the staff member and ultimately the facility. This investigation learned in the interview with the NSP Major that incident reports related to inappropriate activity by a staff member go to her and then she shares those with the Intelligence staff. What happens after that depends on the location of that employee. The NSP Major also shared that NSP and other facilities have a “Team Member Information Sheet/ Contact Log” that is filled out. This could be the form that is coordinated in a more formal system.
6. Review how cases involving employees who have been identified as needing administrative or criminal intervention are handled throughout the system and determine whether or not this needs to be amended to create a better system for handling employee concerns and provide a written report regarding the results of this review to the OIG. As shared in this report, there were two tracks that were followed and this caused confusion and a lack of definitive action. As part of this effort, NDCS should clarify to facility administration and Central Office staff what the process is for suspending and terminating staff.
7. Review how criminal investigations, or a belief that a criminal investigation of an employee is needed, impacts possible administrative actions that may need to be taken against an employee and provide a written report regarding the results of this review to the OIG.
8. Implement a pilot program involving the use of a body scanner at NSP. Should NDCS move forward with this pilot program, there are challenges associated with their use. These challenges include proper training and use of the scanners, privacy concerns, any

potential health concerns and several others.²⁸ As part of this investigation, the OIG discussed the use of body scanners with the Fraternal Order of Police (FOP) and they discussed these challenges and concerns. If body scanners are utilized by NDCS they should incorporate the FOP and other staff into this process so that it can be accomplished in a manner that works for all of those impacted by this decision.

9. Update the NSP camera plan by the end of the year to include the need for additional video cameras in the kitchen area, including the possibility of higher resolution cameras.
10. Establish a system for tracking criminal cases referred to the Nebraska State Patrol and the local County Attorney, including the outcome of those cases. While it does not relate to this specific case it should also provide NDCS staff who are impacted by criminal cases (for example, a staff assault) with information on the outcomes of those referrals and cases.
11. Require Human Resources to maintain all documentation provided to them regarding requests to suspend or terminate an employee.
12. Provide data on an annual basis to the Governor, Legislature and the Inspector General of Corrections on the number of NDCS staff who are arrested and/or prosecuted for their activities within NDCS. In addition, data should also be provided to these entities regarding the number of NDCS staff who are asked to leave due to alleged inappropriate or illegal actions.

CONCLUSION

The case of the food service worker is not unique. In fact, similar cases happen frequently both within NDCS and within other correctional systems. NDCS has taken steps to work on this issue and continues to do so. The recommendations of this report would only strengthen those areas of work and the intent is to positively impact the safety and security of the Nebraska correctional system.

²⁸ For example see <https://www.wric.com/news/taking-action/doc-body-scanners-called-an-invasion-of-privacy-and-health-risk/> and <https://www.king5.com/article/news/local/washington-senator-shocked-by-prison-body-scanner-policy/281-624c3e2d-9fe3-4116-9635-930049610b58> and <https://www.heraldnet.com/news/body-scanner-could-replace-strip-searches-in-monroe-prison/>

ADDITIONS SINCE THE ORIGINAL REPORT

According to state law, the OIG provides the report and the recommendations to the NDCS Director and the Director has 15 days to respond to the report. In this case, the Director responded via letter to the recommendations made by the OIG on November 30, 2020. The letter included those initial responses but to put it into context the recommendations and the response to those recommendations from Director Frakes are below. In addition, the OIG has added any reactions from the OIG to the response by Director Frakes and NDCS. It should also be noted that the OIG provided Director Frakes with an opportunity for additional information related to the responses that said “request modification” but he indicated he was comfortable with those responses.

1. Create one intelligence system with a clear chain of command and mission, but also one that maintains constant and transparent communication with the leaders of each correctional facility. As part of this process all Intelligence staff plus facility leaders should be involved in a review of the current system.

NDCS Response: Reject: The current Intelligence Unit organization structure is already under review by the newly appointed head of the unit.

OIG Response: The OIG is encouraged by the choice of the individual to lead the unit and anticipates significant changes and improvements in its performance as a result of new leadership.

2. Establish a written policy for the use of recording devices as well as establish a tracking system for their location and utilization.

NDCS Response: Accept

OIG Response: The OIG will request a copy of the new tracking system later in 2021 in order to review it.²⁹

3. Verify who has the “loaner” listening device and provide this information to the Inspector General of Corrections and the Nebraska State Patrol as soon as possible.

NDCS Response: Accept: Sincere efforts to date have failed to turn up the device. The search will continue.

OIG Response: As mentioned in the report, this information is not consistent with what resulted from the interview with the Deputy Director regarding this location of this device. Even though the Deputy Director and others knew the OIG was asking about the location of this device they never volunteered that there had been “sincere efforts” to locate it or that “the search will continue.”

²⁹ Director Frakes later informed the OIG that they were no longer going to use such devices.

4. Conduct an immediate NDCS investigation into the use of listening devices in the past and provide a written report regarding this review to the OIG and the Nebraska State Patrol.

NDCS Response: Reject

OIG Response: The report lays out that these devices were undoubtedly used outside of the protocol on numerous occasions and were not authorized for use except for a “couple” of times during 2016-2018. NDCS should want to know where they were used, how they were used, and even whether they were used in a lawful manner. The initial report provides NDCS with two individuals that could be easily interviewed to learn more about their use during the past few years.

5. Establish a more centralized and coordinated system of tracking when staff attempt to intercede with other staff who they believe may be targets for manipulation, deception or inappropriate relationships. Having a central reporting of these contacts at each facility will allow leadership at the facility to identify a growing concern about various individuals. This will allow for additional interventions that may be positive for the staff member and ultimately the facility. This investigation learned in the interview with the NSP Major that incident reports related to inappropriate activity by a staff member go to her and then she shares those with the Intelligence staff. What happens after that depends on the location of that employee. The NSP Major also shared that NSP and other facilities have a “Team Member Information Sheet/ Contact Log” that is filled out. This could be the form that is coordinated in a more formal system.

NDCS Response: Request modification: We are reviewing our practices to determine needed improvements, and changes will be captured in policy. Policy will be provided to the OIG as published.

OIG Response: The OIG will follow up with NDCS later this year to learn the results of the review.

6. Review how cases involving employees who have been identified as needing administrative or criminal intervention are handled throughout the system and determine whether or not this needs to be amended to create a better system for handling employee concerns and provide a written report regarding the results of this review to the OIG. As shared in this report, there were two tracks that were followed and this caused confusion and a lack of definitive action. As part of this effort, NDCS should clarify to facility administration and Central Office staff what the process is for suspending and terminating staff.

NDCS Response: Request modification: We are reviewing our practices to determine needed improvements, and changes will be captured in policy. Policy will be provided to the OIG as published.

OIG Response: The OIG will follow up with NDCS later this year to learn the results of the review.

7. Review how criminal investigations, or a belief that a criminal investigation of an employee is needed, impacts possible administrative actions that may need to be taken against an employee and provide a written report regarding the results of this review to the OIG.

NDCS Response: Request modification: We are reviewing our practices to determine needed improvements, and changes will be captured in policy. Policy will be provided to the OIG as published.

OIG Response: The OIG will follow up with NDCS later this year to learn the results of the review.

8. Implement a pilot program involving the use of a body scanner at NSP. Should NDCS move forward with this pilot program, there are challenges associated with their use. These challenges include proper training and use of the scanners, privacy concerns, any potential health concerns and several others.³⁰ As part of this investigation, the OIG discussed the use of body scanners with the Fraternal Order of Police (FOP) and they discussed these challenges and concerns. If body scanners are utilized by NDCS they should incorporate the FOP and other staff into this process so that it can be accomplished in a manner that works for all of those impacted by this decision.

NDCS Response: Reject

OIG Response: Contraband is a significant issue at NSP and this would be one way to attempt to deter the flow. This is also supported by leadership and staff within the facility.

9. Update the NSP camera plan by the end of the year to include the need for additional video cameras in the kitchen area, including the possibility of higher resolution cameras.

NDCS Response: Reject

OIG Response: This recommendation is supported by many staff and would result in better security for the facility.

10. Establish a system for tracking criminal cases referred to the Nebraska State Patrol and the local County Attorney, including the outcome of those cases. While it does not relate to this specific case it should also provide NDCS staff who are impacted by criminal

³⁰ For example see <https://www.wric.com/news/taking-action/doc-body-scanners-called-an-invasion-of-privacy-and-health-risk/> and <https://www.king5.com/article/news/local/washington-senator-shocked-by-prison-body-scanner-policy/281-624c3e2d-9fe3-4116-9635-930049610b58> and <https://www.heraldnet.com/news/body-scanner-could-replace-strip-searches-in-monroe-prison/>

cases (for example, a staff assault) with information on the outcomes of those referrals and cases.

NDCS Response: Reject: A tracking system for referrals already exists.

OIG Response: The current tracking system is limited and does not track the outcomes of cases referred to the County Attorney which could prove valuable for NDCS. The OIG followed up with Director Frakes at a later date about the perceived value of this recommendation but he indicated that they would not make such changes to it.

11. Require Human Resources to maintain all documentation provided to them regarding requests to suspend or terminate an employee.

NDCS Response: Request modification: We are reviewing our practices to determine needed improvements, and changes will be captured in policy. Policy will be provided to the OIG as published.

OIG Response: The OIG will follow up with NDCS later this year to learn about the progress of this review.

12. Provide data on an annual basis to the Governor, Legislature and the Inspector General of Corrections on the number of NDCS staff who are arrested and/or prosecuted for their activities within NDCS. In addition, data should also be provided to these entities regarding the number of NDCS staff who are asked to leave due to alleged inappropriate or illegal actions.

NDCS Response: Reject

OIG Response: The OIG believes that this data would be valuable to NDCS and other entities to gain a more complete understanding of the apparent problems associated with staff who commit illegal activities or alleged illegal activities within the correctional facilities and the extent of the problem. As the response to Recommendation #10 indicated, NDCS currently does not track this data as thoroughly as they could.