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# SUMMARY OF THE OIG REPORT ON “WALKAWAYS” IN COMMUNITY CORRECTIONS AND OTHER RELATED ISSUES

**February 22, 2022**

## INTRODUCTION

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In 2015, the Nebraska Legislature adopted the Office of Inspector General of the Nebraska Correctional System Act.<sup>1</sup> 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*

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<sup>1</sup> Neb. Rev. Stat. §§ 47-901 - 47-920.

*(d) Provide a process for investigation and review in order to improve policies and procedures of the correctional system.”*

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 the Nebraska Department of Correctional Services (Department, or NDCS), and the Director has 15 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 Office of Inspector General (OIG) may publicly release a summary of the report after consultation with the Chair of the Judiciary Committee of the Nebraska Legislature. A summary will be included in the OIG’s annual report.

*This summary report is largely similar to the OIG's official report. However, specific identifying incarcerated individual information that would be considered confidential under §83-178 or NDCS policy that is considered confidential or sensitive was either taken out or redacted. It also includes a response from NDCS as well as additional information from the OIG. It was determined that it was appropriate for the OIG to finalize this summary under §47-912.*

## EXECUTIVE SUMMARY

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NDCS operates two community corrections facilities: the Community Correctional Center-Lincoln (CCC-L) at 2720 West Van Dorn Street in Lincoln, and the smaller Community Correctional Center-Omaha (CCC-O) at 2320 Avenue J in Omaha. These facilities house individuals who are transitioning from imprisonment to relative freedom, including many on work release who are allowed/expected to obtain private employment in the community.

In May 2021, the OIG opened an investigation into a series of escapes, also known as “walkaways,” from these community correctional centers. The investigation followed eight reports of walkaways from NDCS community facilities in the month of April, the most in a single month in at least five years. The intent of the OIG investigation was to seek to identify trends among the walkaway incidents and identify opportunities for the Department to improve its prevention and response. This investigation focused mainly on CCC-L, which is significantly

larger (housing roughly 600 inmates, compared with about 170 at CCC-O), and is where a substantial majority of the cases originated.

Over the course of several months, the OIG examined the April walkaways as well as dozens of similar events from the first 11 months of 2021. This included 36 incidents which were labeled as escapes or walkaways from community correctional centers in the Department’s internal supervisor incident reporting system, as well as other cases involving similar issues. Of these 36 reported walkaways/escapes, all but one person would have been eligible for parole or mandatory release within the next year. Seven were already parole-eligible, and several were within a few weeks or months of discharge. This is not surprising considering the population in community corrections. According to NDCS policy, individuals must be within two years of a parole hearing or three years of mandatory release to be eligible for community-level custody, and must be within one year of parole or mandatory release to be eligible for “work release.”<sup>2</sup> As stated by NDCS Director Scott Frakes in an April 29, 2021, news release:

*“It is literally an environment where people have one foot in a controlled setting and another foot in the community. It is a period of transition, during which we hope inmates use to the best of their ability (sic). This is the step-off point for complete reentry into the community. Unfortunately, it is also a time when some people make impulsive decisions that can land them right back where they started.”<sup>3</sup>*

At the conclusion of this investigation, the OIG found examples where conditions or systems at NDCS contributed to these unfortunate decisions, or where the Department could have improved its response. These include:

- A lack of meaningful access to mental health treatment for the general population;
- Significant shortcomings in the use of electronic monitoring to track CCC-L inmates and promptly intervene before issues escalate;
- A lack of clarity about the role of community corrections staff when interacting with these inmates in public;

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<sup>2</sup> NDCS Policy 201.01, “Inmate Classification,” 2021.

<sup>3</sup> “Inmates missing from community correctional facility,” NDCS news release. April 29, 2021. <https://www.corrections.nebraska.gov/inmates-missing-community-correctional-facility-0>.

- Disparities in punishments for men and women found guilty of escape from these facilities.

Most significantly, however, staff and incarcerated people described stress as the root of problems among the population at CCC-L. The inherent pressure of transitioning out of prison is compounded by crowding, rampant substance abuse and other issues. CCC-L houses nearly twice the number of men for which it was designed, and recently underwent two significant expansions which further increased the number of people living there. Despite their efforts, staff find it exceedingly difficult to police contraband inside the facility or keep up with these prisoners' needs. Concentrating this many people and problems in one place, particularly without adequate supports, creates an environment that is not always ideal for successful reentry.

NDCS should establish alternative work release options in communities outside Lincoln and Omaha. Additionally, the Department should reexamine CCC-L's role in the system and take steps to "right-size" the population at this facility.

## BACKGROUND AND SCOPE

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In addition to what was stated previously regarding the role of the OIG, the OIG was also established "for the purpose of conducting investigations, audits, inspections, and other reviews of the Nebraska correctional system."<sup>4</sup> It is tasked with providing independent oversight as well as recommendations for "systemic reform or case-specific action" to the agency director.<sup>5</sup>

As part of this investigation, the OIG interviewed individuals who had returned to prison after being reported missing from community corrections. The OIG compiled information about these individuals' experiences in the correctional system, their histories and the details of their specific incidents. As the investigation continued, the list of walkways and similar incidents grew – as did the variety of issues raised by their cases. The OIG also interviewed other stakeholders within the correctional system to gain additional insight and knowledge.

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<sup>4</sup> Neb. Rev. Stat. § 47-904.

<sup>5</sup> Neb. Rev. Stat. § 47-914.

## Walkaway Data

As part of this investigation, the OIG requested historical walkaway numbers from the Department for as far back as they were available. On Dec. 6, Deputy Director for Programs Dawn-Renee Smith, who oversees the community corrections facilities, shared a table with monthly figures dating back to 2016. However, data attributed to the Department from previous years was included in a Lincoln Journal Star article from 2020, and we utilize those numbers as well. These years are marked with an asterisk (\*) in the table below (Fig. 1).

The OIG reviewed 36 walkaway incidents from January 2021 through November 2021 as part of this investigation. The 2021 number in Fig. 1 does not perfectly match the number of cases the OIG reviewed due to the method with which these data sets were captured. The numbers in Fig. 1 include instances when community corrections inmates had their locations changed to “ESCP” (escape) in the Nebraska Inmate Case Management System (NICaMS) database maintained by the Department. The 36 cases reviewed as part of this investigation were reported through the Department’s supervisor incident reporting system, which is also in NICaMS. Each of these 36 incidents was considered a walkway or escape for long enough that the wardens or other administrators of those facilities decided to initiate the emergency response process. By either measure, walkaways were happening in 2021 at a rate that was somewhat higher, but not completely out of the ordinary, than recent years. April 2021 saw an unusually high number of walkaways compared to any single month in at least five years, which may have been related to COVID-19 restrictions at the time.

Of the 36 cases reviewed by the OIG:

Year	Walkaways	CCC-L	CCC-O
<b>2011*</b>	34	21	13
<b>2012*</b>	47	37	10
<b>2013*</b>	27	24	3
<b>2014*</b>	16	8	8
<b>2015*</b>	16	10	6
<b>2016</b>	13	6	7
<b>2017</b>	33	17	16
<b>2018</b>	28	19	9
<b>2019</b>	26	18	8
<b>2020</b>	25	17	8
<b>'21 YTD</b>	33	31	2

*Fig 1, Source: NDCS Central Administration*

- The number of men who walked away (29) was greater than the number of women (7). However, women walked away at a slightly higher rate than men (5.6 per 100 versus 4.4 per 100) when considering the average daily population of inmates by gender at these facilities.<sup>6</sup>
- A majority of those who walked away returned to custody voluntarily or were apprehended within three days. All were eventually located. The longest anyone remained at large was 118 days.
- All but one would have been eligible for parole or mandatory release within the next year.
- Most (26) were on work release, but the people who walked away while on work detail<sup>7</sup> tended to be gone slightly longer than those on work release.
- Five have since been released, including four who mandatorily discharged and another who was paroled and has since absconded.

### Defining “Walkaway”

One incident that isn’t included in these 36 cases or the 33 counted by NDCS administration involved an inmate from CCC-L who allegedly punched a corrections sergeant outside a west Lincoln grocery store and ran off before being located and apprehended by facility staff in a nearby neighborhood. That man received a misconduct report for escape and lost 180 days of “good time” as a result of the incident. His case does not appear in the escape data sets mentioned above because it was labeled as a use of force in the supervisor incident reporting system, and because he presumably was not missing long enough to have his location changed to “ESCP” in the NICaMS database.

This helps illustrate a further challenge in measuring the scope of the walkaways issue.

Escape from a secure prison is relatively easy to describe: a person who is supposed to be on one side of a razor-wire fence somehow finds themselves on the other side, without permission and without a staff escort. In community corrections, however, a person might be listed as “escaped”

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<sup>6</sup> NDCS Quarterly Population Summary, July-September 2021.

<sup>7</sup> Work detail is the initial step for inmates at community corrections. These inmates live at the same facility as work-release inmates but have more supervision and are not allowed to obtain private employment.

because they left work without permission, failed to return to the center in time, or otherwise couldn't be found when facility staff went looking for them. (Others might avoid being considered an escapee at all, by returning to the facility before anyone notices they are missing.)

State statute and the NDCS Code of Offenses both account for the distinct nature of community corrections by referencing the "extended limits" of correctional facilities as well as a person's *failure to return* to the facility.

Neb. Rev. Stat. § 28-912 states, "A person commits escape if he or she unlawfully removes himself or herself from official detention or *fails to return* to official detention following temporary leave granted for a specific purpose or limited period." Additionally, under Neb. Rev. Stat. § 83-184, "The willful failure of a person to remain within the *extended limits* of his or her confinement or to return within the time prescribed to a facility designated by the director may be deemed an escape from custody punishable as provided in section 28-912."

NDCS Code defines Escape as, "Unauthorized departure from any part of a facility; departure from any work assignment or any extended limits of a facility *with the intent to remain away*; or failure to return from a pass or furlough *with the intent to remain away*."<sup>8</sup> From January through November of 2021, 41 people from CCC-L were charged with this offense by NDCS, and 27 were found guilty.

The Code of Offenses also includes the lower-level offenses of "Unauthorized Areas" and "Violation of Passes or Furloughs." Unauthorized Areas is defined as, "Being in or reporting to any area without proper authorization; loitering; or failing to report to a work assignment, program assignment, or other designated area without permission." Violation of Passes or Furloughs is defined as, "Failure to return to a community facility within the time prescribed, or going anywhere while on pass or furlough without authorization. Failure to remain within the extended limits of confinement, or unauthorized absence from an approved location." Over the 11 months covered by this investigation, 535 inmates at CCC-L were charged with unauthorized areas (304 convicted) and 57 were charged with violation of passes or furloughs (13 convicted).

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<sup>8</sup> Title 68, Nebraska Administrative Code, Chapter 5.

The term “walkaway” is used operationally by NDCS, with varying definitions, to describe when people from community correctional centers escape or cannot be located by staff.

## EXAMINATION OF ISSUES

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### COVID-19 protocols and restrictions

Given the widespread effects of the COVID-19 pandemic during this period, one of the first things the OIG sought to determine was whether virus-related quarantines or related restrictions may have contributed to the swell in walkaways in spring 2021. In addition to interviews with many of these individuals, the OIG compared a timeline of CCC-L’s COVID-19 response with a monthly breakdown (Fig. 2) of walkaways since spring 2019.

Twenty of the 36 reported walkaways reviewed took place at that facility between January 1, 2021, and June 28, 2021, when the Governor declared the end of Nebraska’s coronavirus state of emergency and the Department proceeded to announce that operations at its prison facilities had returned to normal.<sup>9</sup> However, just one person was living in a unit under active quarantine at the time he escaped.

When the OIG interviewed this individual, he said the quarantine contributed to his decision to flee CCC-L. The Parole Board had ordered him to be released on parole before he escaped, but NDCS did not release him because his unit was placed on quarantine after the parole hearing. (Whether this was a lawful act by the Department is beyond the scope of this investigation. The parole order did not provide for the possibility of him being held in quarantine beyond the date on the order, and the issue was not discussed during his parole hearing, according to a recording of that hearing. The OIG inquired about this with the Board of Parole but received no additional documentation that supported his continued confinement.) Two days after he was supposed to be released on parole, he scaled the fence at CCC-L and ran after staff caught him with a cellphone. He later told the OIG that he borrowed the cellphone because he lost access to his accounts and

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<sup>9</sup> Exhibit 4, “NDCS Frequently Asked Questions,” <https://corrections.nebraska.gov/ndcs-frequently-asked-questions>, visited 1/13/2022.



approved communication devices at the time when his parole order was supposed to take effect. Still, he said, fleeing the facility was a mistake he regretted. He was arrested after about two weeks, his parole was revoked, he lost 180 days of “good time” and received an additional 12-month sentence for criminal escape.

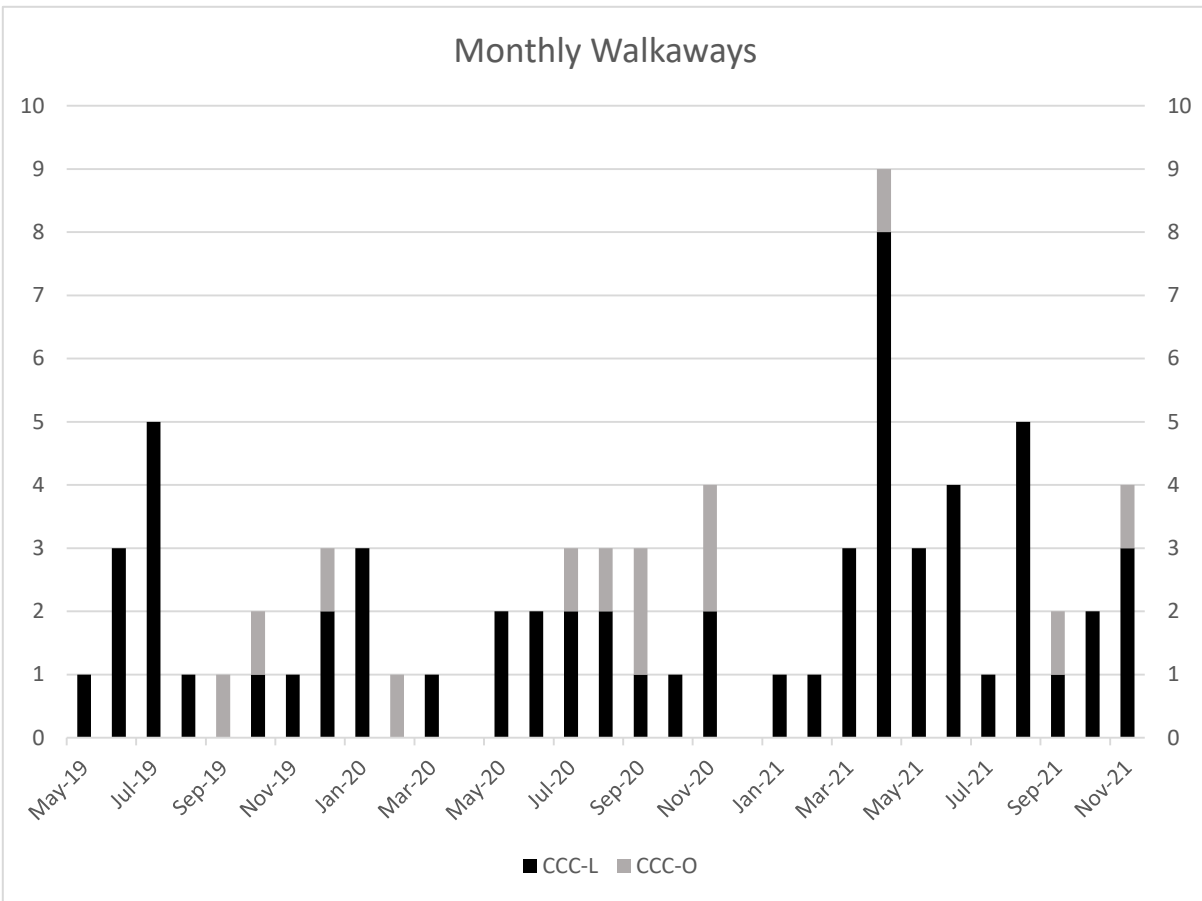


Fig. 2. Source: OIG review of NICaMS Supervisor Incident Reports for “Escape/Attempted Escape” and “Walk-away from Community Corrections”

By March 2021, after several months of virus outbreaks, all quarantines at the facility had been lifted. However, community passes and furloughs were still prohibited. This restricted a range of activities, from shopping for work clothes to attending family funerals, which work release inmates can typically receive permission to do.<sup>10</sup> These activities resumed a few months later.

<sup>10</sup> Neb. Rev. Stat. § 83-184.

One person told the OIG that these restrictions on passes and furloughs contributed to his decision to flee. He said someone close to him had died in a motorcycle accident but that he was unable to attend the funeral because of the restrictions. This inmate also called the facility after he walked away and told staff he was dealing with mental health, family and work issues and that he was contemplating suicide. He later told the OIG that he had requested mental health assistance while at CCC-L but was unable to obtain treatment. The issue of mental health treatment at community corrections is addressed in greater detail later in this report.

### **Criminal and administrative penalties for escape**

Escape can be a Class IV, III or IIA felony, depending on the circumstances. It is a Class III felony (punishable by up to four years in prison) if the person was in custody due to a felony conviction or charge. It is a Class IIA felony (up to 20 years in prison) if the person “employs force, threat, deadly weapon, or other dangerous instrumentality to effect the escape.” Otherwise, it is a Class IV felony (up to 20 years in prison).

Departmental sanctions for escape can result in the loss of up to six months of “good time,” a form of sentence reduction which inmates earn by maintaining good behavior.<sup>11</sup> This maximum penalty is the same regardless of the individual’s custody level, including community custody.

As of late November 2021, of the 36 people whose cases were reviewed for this investigation, 28 had been charged with criminal escape as a result of walking away.<sup>12</sup> While many of these cases were still pending, those whose cases were adjudicated received penalties ranging from an additional 20 days to two years in prison. Those charges were filed as part of the process for obtaining an arrest warrant immediately after the Department determined a person had walked away. Generally, those who did not face criminal charges had generally returned to the community center before an arrest warrant was issued.

People also typically faced an administrative sanction by NDCS. As of late November, 24 of the 36 had been found guilty of the administrative charge of escape, four were found guilty of a lesser charge, another four had their administrative escape charges dismissed or reduced, three

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<sup>11</sup> Title 68, Nebraska Administrative Code, Chapter 6.

<sup>12</sup> Based on OIG review of records in Nebraska court system’s JUSTICE database.

had charges pending, and one died before facing charges. Of the 24 who were found guilty of escape, 18 were men and six were women. All 18 men lost good time (generally the full six months), while just one woman lost good time (30 days) and five did not.

Administrative sanctions are determined by the institutional disciplinary committee (IDC) or hearing officer at the facility where the inmate ends up after being apprehended. The IDC hearing officer is appointed by the warden and holds hearings and imposes sanctions on inmates who violate more serious departmental rules. Lower-level violations are handled by a unit disciplinary committee, or UDC.

Women's escape cases are typically heard at the Nebraska Correctional Center for Women (NCCW) in York, and men's cases are typically heard at the Reception and Treatment Center (RTC, formerly the Diagnostic and Evaluation Center) in Lincoln, as these are the Department's primary intake facilities. IDC hearings at RTC are conducted by a full-time hearing officer, while those at NCCW are generally conducted by a lieutenant with other duties.

### **Additional criminal offenses committed by those who walked away**

No one who walked away was charged with committing a violent crime in Nebraska during the time they were on escape status, according to the JUSTICE database.

Four of the 36 individuals whose cases were reviewed were convicted of or face charges for other offenses:

- One was convicted of criminal impersonation for pretending to be her sister when stopped by Omaha police following her escape from CCC-L.
- One was charged with driving on a revoked license after firefighters found him unconscious and not breathing behind the wheel of his girlfriend's car at a gas station in Omaha. He was supposed to be at work at a business in Lincoln at the time, and staff at CCC-L had not yet realized he was missing.
- One was convicted of possessing methamphetamine.
- The fourth person was fined for trespassing and stealing a girl's bicycle from a nearby porch after jumping the fence at CCC-L.

## Institutional behavior and illegal substance abuse

Virtually everyone who spoke with the OIG for this investigation acknowledged that drug use is widespread among the community corrections population, particularly at CCC-L. People living there are routinely caught using or under the influence of synthetic marijuana (also known as K2), methamphetamine and other drugs.

In most cases reviewed, the people who walked away had previously been sanctioned for drug abuse or other misbehavior while at community corrections, in secure prisons, or both. On the other hand, in six cases, the individuals who walked away had received no administrative charges while on community custody, and several had received no write-ups at all during their time with NDCS.

One woman, who has a serious mental illness and is serving time for a violent offense, had been found guilty of approximately two dozen administrative charges in the year prior to coming to community corrections. Six of these, including one for fighting, came in the final six months before she transferred. Her reclassification for community corrections was recommended by the facility and approved by central administration in order to provide her with a transition prior to her parole hearing, which was scheduled for approximately seven months later. According to inmate contact notes from staff, she repeatedly asked about work release and expressed a desire to go to community corrections. She ran off from her work detail job within one week of arriving at CCC-L. Staff later found a recorded phone call from the day before the escape in which this inmate talked about missing her girlfriend (an inmate at NCCW), complained about community corrections and said, “I’m about to see what I can do to, um, go back there (to prison).” Her sanction for the escape was 14 days of lobby restriction, with credit for time she served on quarantine. She also pleaded guilty to a misdemeanor in her criminal case, but had yet to be sentenced as of this report.

As noted in NDCS policy, “Custody classification is not based on one single factor. A holistic look at the individual is necessary to identify the appropriate custody level to which he/she should be assigned.”<sup>13</sup> This “holistic look” includes a scored risk assessment – which includes the person’s recent and overall misconduct history – as well as specific institutional behavior,

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<sup>13</sup> NDCS Policy 201.01, “Inmate Classification,” 2021.

sentence structure and special circumstances such as disability. According to the policy, the only categorical requirements for placement in community custody are: 1) no escapes/walkaways in the previous six months; 2) a parole board hearing within two years or mandatory release within three years; and 3) that the person’s specific medical and mental health needs can be met at that custody level. All placements in community corrections must be approved by the Board of Parole, and the NDCS Deputy Director for Programs (Smith) is the Department’s “classification authority” for decisions involving who to approve to community custody.

Ultimately, the issue of classification falls outside the scope of this report. The Nebraska Center for Justice Research, a nationally recognized research center based at the College of Public Affairs and Community Service at the University of Nebraska Omaha, is currently conducting an extensive study of the NDCS classification process and related issues. This includes an examination of the Department’s risk assessment tool. Funding for the study was appropriated by the Legislature during the 2021 legislative session, and initial findings are expected in the coming months.

Once people arrive in community corrections, CCC-L Warden James Jansen told the OIG, administrators take a hard line against those suspected of trafficking drugs, while attempting to help users stay clean and avoid imperiling their reentry. People who are dealing, who relapse repeatedly, or who walk away or engage in other serious misconduct while under the influence are regularly sent back to secure prison facilities as punishment or for further treatment, the warden said. For example, Warden Jansen reported transferring 17 people for “continuing to

Offense	Found Guilty
Escape	3
Interference with or Refusal to Submit to a Search	16
Drug or Intoxicant Abuse	36
Escape Paraphernalia	1
Sexual Activities	2
Disobeying an Order	18
Theft	2
Use of Threatening Language or Gestures/Fighting	3
Unauthorized Areas	26
Improperly Handling Funds	6
Failure to Work	15
False Reporting	1
Violation of Passes or Furloughs	2
Possession of Unauthorized Electronic Communication Devices	7

Fig 3 (continued on next page), CCC-L guilty misconduct reports for month of November, 2021

use drug/intoxicants during the month of November.” This compares with 36 people who were found guilty of drug or intoxicant abuse at during this time (see Fig. 3).

Several staff and some inmates expressed the opinion that CCC-L should take drugs more seriously and be more willing to return people to secure prisons if they relapse. Some staff suggested they are discouraged from conducting targeted searches of people they believe are abusing drugs.

Additionally, a lack of accurate testing for K2 makes those drug abuse allegations more difficult to prove. “I have no control in this facility,” one staff member said. “They know there is no retribution for going off the rails.”

On the other hand, returning people to prison as punishment for drug relapses, or restricting them to the community center for lengthy periods, has the potential to negatively impact their reentry or even deprive them of a chance at supervised released on parole. Many of these individuals have completed their recommended clinical programming, and are working in the community and arranging housing for when they are released. NDCS has said it is committed to “ensuring individuals have the opportunity to transition more smoothly to the community,” ideally for a period of continued supervision.<sup>14</sup> Returning people to prison near the end of their sentence interrupts that transition.

During this investigation, NDCS took some steps to update its process for returning certain people to secure facilities when they relapse, and they regularly return individuals to secure facilities for their involvement with illegal drugs. Instead of “starting over” at the Department’s

Offense	Found Guilty
<b>Flare of Tempers/Minor Physical Contact</b>	1
<b>Possession or Receiving Unauthorized Articles</b>	13
<b>Swearing, Cursing, or Use of Abusive Language or Gestures</b>	8
<b>Tobacco Products</b>	89
<b>Violation of Sanctions</b>	1
<b>Violation of Any Signed Program Agreement</b>	7
<b>Sanitation</b>	3
<b>Disruption</b>	8
<b>Violation of Regulations</b>	27
<b>Misuse of a Computer</b>	1

*Fig 3 (continued), CCC-L guilty misconduct reports for month of November, 2021*

<sup>14</sup> 2021 Mandatory Discharge Report, NDCS and Nebraska Board of Parole, [https://corrections.nebraska.gov/sites/default/files/files/1183/mandatory\\_discharge\\_report\\_2021.pdf](https://corrections.nebraska.gov/sites/default/files/files/1183/mandatory_discharge_report_2021.pdf).

main intake facility, RTC, individuals can be returned to specific facilities, such as the Nebraska State Penitentiary, for additional treatment and reclassification.

### **Crowding, staffing and scale of facilities**

Both community corrections centers within NDCS have overcrowding. CCC-O has been retrofitted to house approximately twice the number of inmates that it was designed to hold — as many as 179 men in a space built for 90. Generally, this means there are four men living in rooms intended for two people.

At CCC-L, a Women’s Housing Unit (WHU) which opened in 2019 has a significant number of unfilled beds. However, the men’s side of the facility generally has eight men sleeping in rooms intended for four people. (The main exception is a 100-bed men’s Transitional Housing Unit, or THU, which opened in 2017.)

Staff at these facilities told the OIG that having so many men sharing rooms and common areas makes it difficult to police their behavior, track their whereabouts, identify who is responsible for contraband, and assist with their reentry process. In an internal review of one incident, staff noted that they could be more proactive with catching inmates who were not at work when they’re supposed to be, stating, “before the population got so big staff were able to do job checks more often but with the population minimum staffing is 8 making it hard to do job checks,” according to that report.

In 2016, a four-person review team of staff and administrators from other facilities conducted a staffing analysis of CCC-L. This was part of a broader staffing analysis conducted of all NDCS facilities. It is important to note that the CCC-L staffing analysis predates the addition of the THU and WHU, which greatly expanded the facility’s size and population. The OIG reviewed an early draft of the staffing analysis team’s report, before it was vetted by NDCS Central Administration. The draft included a recommendation to add two new community resource positions, which would be assigned specific duties such as job checks, pass and furlough checks,

sponsor reviews and auditing GPS-enabled electronic ankle monitors (EMs) worn by inmates.<sup>15</sup> (The issue of EMs is addressed in detail later in this report.) “By having two staff responsible for community supervision (much like a parole officer), there would be much more accountability for the inmates and that would increase public safety,” that report noted. This recommendation was changed in a later version of the staffing analysis report to place responsibility for these duties on unit staff, provided their caseloads were limited to approximately 40 inmates.<sup>16</sup>

Since that time, the number of inmates and case managers assigned to the four original living units at CCC-L has remained the same – a ratio of approximately 100 to 1. The facility also has two case managers in WHU, one case manager in the 100-bed THU, and four case managers who are primarily assigned to duties that do not include case management. Meanwhile, the number of corporal positions has grown from 19 in 2016 to 51 as of early 2022.

At the time the OIG was completing its investigation, CCC-L had seven vacant staff positions, although only one of these positions was for custody or casework staff (a corporal post). The others were for substance abuse counselors (2 positions), a food service worker, an administrative programs officer, a nurse and a human resources officer.

In addition to making accountability difficult, staff and inmates said crowding places added stress on men who are already struggling to prepare for life outside of prison. For example, the eight men sharing each room in CCC-L’s main housing unit might have three or more different work and sleep schedules.

Due to its location in Omaha and the smaller size of the facility, CCC-O is often viewed as the more desirable of the two community correctional centers. As a result, CCC-L is perceived as housing a greater share of more troubled individuals. While the men’s sleeping rooms are technically at double their design capacity at both facilities, staff and inmates say the size of CCC-L and the nature of the population makes the Lincoln center’s crowding feel more extreme.

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<sup>15</sup> NDCS Prison Staffing Analysis, Custody Staff, August 2015 – March 2016, draft shared with administrators in March/April, [https://nebraskalegislature.gov/pdf/reports/committee/select\\_special/lr34\\_2015/lr34\\_appendixC-01.pdf](https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr34_2015/lr34_appendixC-01.pdf) (begins on page 228 of PDF).

<sup>16</sup> NDCS Prison Staffing Analysis, Custody Staff, August 2015 – July 2016, draft shared with administrators in July, [https://nebraskalegislature.gov/pdf/reports/committee/select\\_special/lr34\\_2015/lr34\\_appendixC-01.pdf](https://nebraskalegislature.gov/pdf/reports/committee/select_special/lr34_2015/lr34_appendixC-01.pdf) (begins on page 682 of PDF).



One security staff member at CCC-L described low morale and stress as the “root” of issues among the inmate population, and that reducing crowding in the facility would significantly improve the situation. Another staff person who has worked in several NDCS facilities, including CCC-L, said she had spoken with men who refused to go to work release because they don’t want to share a room with seven other men, particularly when they must pay \$12 per day (or roughly \$360/month) for room and board after they are placed on work release status. “They’re just packed full,” she said. “There’s so much stress over there.”

CCC-L, which houses approximately 600 men and women, is significantly larger than comparable facilities in Nebraska’s surrounding states. Many of these states have several centers across their state – more than two locations – for work release inmates to live.

For example, Iowa lists 20 residential community based correctional facilities throughout the state, which housed a total of 2,421 work release inmates during the past fiscal year.<sup>17</sup> These facilities also house parole and probation clients, federal offenders, people on pretrial release, and others. The OIG spoke with the manager at one of these facilities, which houses approximately 80 people. She said she could not imagine trying to manage 600 work release and work detail inmates in one place.

The Wyoming Department of Corrections contracts with facilities in three different communities to house people on work release, according to the person who manages that program. Each of these facilities is significantly smaller than CCC-L.

South Dakota Department of Corrections policy allows work release inmates to be housed at community work centers operated by the department, as well as county jails, contract facilities or other state agency facilities.<sup>18</sup> As of Dec. 31, 2021, the community work center in Sioux Falls housed 225 inmates, the Rapid City center housed 250, the Yankton center housed 212, and the Pierre center housed 138. An additional 35 inmates were placed elsewhere in the community.<sup>19</sup>

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<sup>17</sup> [https://doc.iowa.gov/sites/default/files/documents/2021/01/fy2020\\_iowa\\_doc\\_annual\\_report.pdf](https://doc.iowa.gov/sites/default/files/documents/2021/01/fy2020_iowa_doc_annual_report.pdf) .

<sup>18</sup> <https://doc.sd.gov/documents/WorkRelease8232021.pdf> .

<sup>19</sup> <https://doc.sd.gov/documents/AdultPopulationDecember2021B.pdf> .

## Supports for the incarcerated population

Several staff and incarcerated people we interviewed for this investigation suggested that having better supports for the population, particularly at CCC-L, might reduce the number of walkaways and improve overall outcomes. Among the supports mentioned were mental health treatment, family, and preparation for the workforce and the work release environment.

### *MENTAL HEALTH TREATMENT*

At CCC-L, aside from drug and alcohol counseling, mental health services are provided by staff from other facilities, including the nearby Reception and Treatment Center and the Nebraska State Penitentiary. The Department also employs social workers based out of central administration who provide discharge planning (not quality therapy sessions) for individuals with a history of mental illness, including those at community correctional centers.

Departmental policy says each institution shall ensure that qualified mental health practitioners (QMHPs) are available to provide mental health services. As of 2017, those services included, “*at a minimum ... Elective therapy services and preventative treatment where resources permit*” (OIG emphasis added).<sup>20</sup> However, in July 2021, that policy was amended to state that mental health services “*may include ... Elective therapy services based on QMHP determination of level of care (LOC).*”<sup>21</sup>

In other words, therapy services are targeted to individuals with specific “levels of care” defined by the Department, not to the numerous day-to-day mental health issues that emerge among the population at CCC-L. Even with these limitations, CCC-L staff and inmates who spoke with the OIG described waiting days or weeks for responses to their requests for help from mental health staff, if they are seen at all. This is somewhat understandable, considering these same staff are tasked with treating maximum- and medium-security inmates with serious mental illnesses, including those who are in long-term restrictive housing, on suicide watch, or otherwise experiencing severe mental health issues.

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<sup>20</sup> NDCS Policy 115.23, “Mental Health Services,” 2017.

<sup>21</sup> NDCS Policy 115.23, “Mental Health Services,” 2021.

During visits to correctional facilities, the OIG regularly observes case management and security staff serving in roles that many would consider the jobs of qualified mental health practitioners.

NDCS previously allowed people in community correctional centers or their families to pay for mental health services from community-based providers, but this is no longer the case. This practice, which was consistent with state statute,<sup>22</sup> not only expanded the treatment options available to these individuals, but also enabled them to continue care with the same provider after they were released. The OIG contacted NDCS central administration on multiple occasions with questions about this change, including the reasons behind it and when it took effect, but received no specific response to the questions asked.

### *CLINICAL PROGRAMMING*

While other clinical programs are available at CCC-L, substance abuse counselors comprise the entirety of the facility's designated mental health staff. As mentioned previously, two of these four positions were vacant as of this report.

The substance abuse treatment staff at CCC-L provides both outpatient (OP) and intensive outpatient (IOP) programming. Some facility staff expressed concern that individuals with recommendations for IOP were being allowed on work release prior to completing this program, and that this was putting them at greater risk of relapse.

Most of the people with IOP recommendations who were involved in the 36 incidents the OIG reviewed had already completed the program prior to their escape. However, one who was on work release had been enrolled in IOP for a week when she walked away. After police located her and brought her back to CCC-L, staff searched her and reported finding a baggie containing a white powdery substance. Later that day, after she had been transferred to NCCW, staff reported that she refused a urine test. She was found guilty of drug or intoxicant abuse for both incidents and sanctioned to two weeks of room and canteen restriction.

The broader issue of programming within NDCS falls outside the scope of this report. However, the Department offers residential substance treatment elsewhere. The OIG is concerned that requiring individuals to complete IOP prior to work release, without expanding programming in

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<sup>22</sup> Neb. Rev. Stat. § 83-184.

other facilities, would create backlogs in the system. (For example, the Omaha Correctional Center, which houses minimum and medium custody prisoners, has been identified by NDCS treatment staff as needing additional IOP classes to address a backlog, but this has not taken place.) One alternative for community corrections, which was also suggested by facility staff, would be to establish one or more dedicated substance abuse units within CCC-L. Individuals living in such units could potentially participate in work release while submitting to more intensive treatment, supervision and intervention.

#### *EMPLOYMENT/WORK RELEASE READINESS*

In March 2021, a major employer in Lincoln laid off approximately 115 CCC-L inmates who had been working there, a substantial percentage of the facility's work release population at the time. One walkaway incident reviewed by the OIG involved an individual who was part of this mass layoff, and had just started working a different job when he escaped. This person has monthly child support obligations, and shortly before his escape, he made several calls to a woman believed to be the mother of his child. They spoke about how little his new employer paid compared to what he was making before. These calls were recorded by NDCS and reviewed by the OIG. The inmate involved declined an interview for this investigation.

This provides an example of how employment disruptions that are due to factors outside inmates' control can contribute to the "impulsive decisions" mentioned by Director Frakes, and complicate reentry for people in community corrections. The management team for this employer ultimately acknowledged that after finding success with a much smaller group of workers from CCC-L, they ended up expanding the program to include more individuals than they could effectively manage. The OIG believes this incident provided a learning experience for CCC-L, as well.

Fortunately, Warden James Jansen reported that facility staff were able to work with employment agencies and others to find new jobs for approximately 95 percent of the inmates involved within a short period of time.

CCC-L is also taking steps to better prepare inmates for work release and to streamline the job seeking process.

Case managers from CCC-L have begun hosting regular community corrections preparation sessions for minimum security inmates at the Nebraska State Penitentiary and the Nebraska Correctional Center for Women, and expect to grow that program to include the Work Ethic Camp and the Omaha Correctional Center, which also house minimum security inmates. The sessions are targeted at people who are being reclassified or have been approved for community corrections.

In addition, CCC-L administrators have been working with the American Job Center in downtown Lincoln on improving the job seeking process. The process generally takes place during the first two weeks after a person is promoted from work detail to work release. Facility staff who spoke with the OIG expressed concern that job-seeking inmates might be more inclined to walk away, given their newfound freedom, limited supervision and access to computers and phones at the job center.

The OIG was told that CCC-L administrators have been trying to establish computer access (and more importantly Internet access) for job seeking purposes inside the facility. The OIG supports this effort.<sup>23</sup>

#### *OUTSIDE SUPPORTS/FAMILY*

NDCS maintains a list of known family members for each person incarcerated in its facilities. These lists include the names of immediate family as well as significant others and extended family who are known to the Department, as well as their relationship with the incarcerated person, their age, their address, and other information.

Of the 36 people whose cases the OIG included in this investigation, 16 had family members in the same city as the community center where they were living, while 20 did not. Those with nearby family were missing for an average of about two and a half days after walking away, and a median of just one day. Those without nearby family were gone an average of 21 days, and a median of four days. None of the four people who committed additional crimes while on walkaway status had any known family in the area where they were incarcerated.

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<sup>23</sup> OIG 2018 Annual Report, [https://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Inspector General of the Nebraska Correctional System/600\\_20180911-222502.pdf](https://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Inspector%20General%20of%20the%20Nebraska%20Correctional%20System/600_20180911-222502.pdf).

Numerous academic studies have noted that strong family ties are mutually beneficial for incarcerated people, their families and communities, and can assist with the reentry process. Many of these studies were highlighted in a recent report by the Hatch Foundation.<sup>24</sup>

In order for the Department to place work-release inmates closer to their home communities<sup>25</sup>, efforts could utilize county jails or establish a model utilizing Nebraska State Probation and the Division of Parole Supervision.

In November 2021, at the request of the OIG, the Nebraska Association of County Officials conducted a survey of jail administrators from throughout the state. Twenty-eight counties responded, with 13 from various parts of the state saying they would be interested in working with NDCS to house work-release inmates nearing the end of their incarceration. One, Logan County, responded with the following:

*“The local contractors and shops would like to have some reliable help. As you know it is hard to find people that are willing to work. In addition it has always been an ambition of mine to get some inmates with potential enrolled in the North Platte Voch Tech. If we could get something worked out I could designate a full pod to work release and college. We could coop with you and the college to have our full time security at the college. If we took this route I could easily have 30 beds available for work release/college. There would be some financial burden that we would have to get worked out. We have 50 new beds coming available in less than 2 weeks. I would be very excited to work with you on this. We need to teach these folks a different career than crime.”*

NDCS has active contracts with at least six county jails to house state prisoners, so there is precedent in place for this type of arrangement.

### **Electronic monitoring of inmates**

NDCS staff are generally not present when work release inmates are at their jobs or on passes/furloughs in the community. In fall 2021, CCC-L’s eight case managers were instructed to perform at least two job site visits each per month, which several staff described as a positive development because job site visits were basically nonexistent before that point. However, staff

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<sup>24</sup> “Hatch Center Policy Review: A Family-Centered Approach to Criminal Justice Reform,” December 2021, <https://static1.squarespace.com/static/5e2072f645f53f254017e846/t/61b8e2dcdd54c03409a4b217/1639506654849/021+Hatch+Policy+Review.CJR.web+only.pdf> .

<sup>25</sup> Noted in each OIG Annual Report since 2016. [https://nebraskalegislature.gov/reports/public\\_counsel.php](https://nebraskalegislature.gov/reports/public_counsel.php)

who spoke with the OIG expressed concerns about the limited nature of this effort – essentially 16 job site visits per month – and for the personal safety of staff who confront inmates out in the community. The subject of staff safety and expectations in the community is addressed in more detail in the next section of this report.

In the absence of in-person supervision when people are away from the facilities, NDCS uses GPS-enabled electronic ankle monitors (EMs) to keep tabs on those in its custody. According to NDCS policy, the warden or designee is responsible for determining criteria for placement and duration of electronic monitoring.<sup>26</sup>

All inmates at CCC-O are assigned EMs. This began early in the pandemic, when passes and furloughs were canceled, leaving the facility with extra EMs that would have been used for those inmates now available to issue to more of its work release population. It subsequently was further expanded to include all inmates at the facility.

At CCC-L, EMs are assigned to less than half of the population (268 people as of December 16, 2021). According to the facility security administrator, this includes all sex offenders, security threat group members and parole violators when they are scheduled to leave the facility. People on work release are all assigned EMs for at least 30 days, potentially longer depending on their institutional behavior, work location or conviction.

In interviews with the OIG, several staff and supervisors said they believe all community corrections inmates should be assigned EMs. This recommendation also emerged in several internal critical incident reviews conducted by NDCS staff following the walkaways. These staff argue that fully deploying EMs would not only improve accountability, but also alleviate conflict with inmates who are seeking permission to have theirs removed.

The EMs and monitoring services are provided through a contract between the State of Nebraska and a company called Satellite Tracking of People, LLC. The contract covers electronic monitoring for CCC-L, CCC-O, and the Division of Parole Supervision. This contract has totaled \$7.56 million since 2014, according to the state contracts database. The state pays \$3, plus

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<sup>26</sup> NDCS Policy 201.04, “Community Reintegration Opportunities” (2020).

additional monitoring fees of up to .55 cents, per device per day, and installation and removal fees of \$3 per device. The state recently renewed the contract through May 31, 2023.

Under the contract, staff at the community centers and parole can log into a Web-based application called VeriTracks to view a person's current and recent whereabouts. Staff can also establish customized "inclusion zones" (places where an inmate is required to be at certain times) and "exclusion zones" (places where an inmate is not supposed to be). Additionally, if an inmate or parolee tampers with their EM or it loses signal, the company provides a 24/7 call center service that will attempt to contact the individual and will alert the facility or parole if they cannot reach them.

Twenty-one of the 36 individuals whose cases the OIG reviewed were assigned EMs at the time of their incident. Of these, 13 cut their EMs off, three were able to slip them off, one had a dead battery, one had an EM that had not been working for nearly a month, and three were still wearing their EMs when they were located. In one case, VeriTracks phoned CCC-L to notify them of a cut EM, or "master tamper," around 4 a.m. However, the staff person who took the call did not relay the information to a supervisor. Five hours later, a lieutenant noticed an email about the master tamper, contacted the inmate's employer, and learned staff at the restaurant where he worked had found a damaged EM and a steak knife in the men's restroom around 7:40 a.m. In another case, an anonymous caller notified CCC-L about a resident who had escaped. Staff checked the man's EM records and learned it had not been transmitting messages properly for nearly a month.

As the OIG investigation continued, staff at CCC-L discovered that a significant number — at least 130 — EMs assigned to inmates from the facility were malfunctioning. This included some inmates whose EMs had no GPS signal for approximately two months. When asked how it was possible that an EM could be nonfunctional for this length of time without being noticed, staff responded that there was no established process for conducting random checks of EM records to ensure ankle monitors were working and that people with EMs were going where they were supposed to go. (While post orders for some security positions require "proactive" checks of VeriTracks, these posts do not cover all living units.) Essentially, VeriTracks records were rarely



being reviewed unless staff already suspected someone that was involved in unauthorized activity in the community.

One recent and alarming example of this took place on Jan. 2, 2022. A corporal at CCC-L became concerned about an inmate who checked out of the facility with enough time so he could ride his bicycle to work, despite frigid temperatures over the New Year's holiday weekend. Upon checking the inmate's VeriTracks records, staff determined that he had been making unauthorized stops every day he worked for the past six months, including one afternoon where he was in the playground of an elementary school for 20 minutes around the time students were being released for the day. This inmate is serving a 30- to 35-year sentence for first-degree sexual assault of a minor.

On the other hand, staff at CCC-O and with the Division of Parole Supervision told the OIG they are expected to check EM on a regular basis, even daily, and that this generally takes place.

### **Staff safety and responsibilities in public settings**

As mentioned earlier in this report, the OIG found no examples where individuals from the cases reviewed committed violent crimes in the community following a walkaway. (One was involved in a domestic violence incident *prior* to running from CCC-O, for which he lost 18 months of good time but received no criminal sentence.) In all 36 cases, the individuals had been deemed suitable by the Department for more regular interaction with the public, or to seek or obtain work in the community without direct staff supervision.<sup>27</sup>

However, some staff who were interviewed described a lack of clear guidance for when they confront inmates in the community, including those they locate following an escape. There is no certain way to predict how a person will react if confronted by staff while intoxicated or in possession of contraband. Staff perform these tasks with little more than handcuffs and pepper spray, and with much less control over their surrounding environment than they would have in a secure prison.

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<sup>27</sup> NDCS Policy 201.01, "Inmate Classification" (2020).

In the event of an escape, NDCS policy states: [REDACTED]  
[REDACTED]  
[REDACTED]

According to CCC-L procedure, [REDACTED]  
[REDACTED]  
[REDACTED]

Nonetheless, there are several documented examples of staff being sent into neighborhoods around CCC-L to search for (and potentially apprehend) inmates who cannot be located. In one instance, three staff joined the then-assistant warden (now warden at CCC-O) in pursuing an inmate through a busy neighborhood in Lincoln that is near an elementary school. In another case, a half-dozen staff members chased an inmate across the state-owned field separating CCC-L and the Diagnostic and Evaluation Center/Lincoln Correctional Center.

For the most part, the Department’s policy on use of force makes no distinction between force in secure institutions and force in the community. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] CCC-L procedure instructs staff to follow departmental use of force policy, [REDACTED]  
[REDACTED]

The state statutes which provide for use of force by correctional officers do not limit that force to correctional facilities. One statute allows correctional wardens or authorized officials to use force “for the purpose of enforcing the lawful rules or procedures of the institution.”<sup>28</sup> Another statute, last updated in 1969, states staff “shall use all reasonable means” to prevent violence and enforce discipline if an offender becomes violent toward staff, other offenders or any other person.<sup>29</sup>

Because parole and probation officers are in a similar situation as community corrections staff when interacting with offenders in the community, the OIG inquired with the Division of Parole Supervision about its protocols for these scenarios. Parole officers are told to obtain law

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<sup>28</sup> Neb. Rev. Stat. § 28-1413

<sup>29</sup> Neb. Rev. Stat. § 83-415

enforcement assistance if they are going to make an arrest. Unlike corrections officers, parole officers are required to wear ballistic vests whenever they are working in the field.

## FINDINGS AND RECOMMENDATIONS

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### FINDING 1

**NDCS concentrates too many of its community corrections inmates in one place.** The Community Corrections Center-Lincoln is too big and too overcrowded for its current purpose. This makes the reentry process more stressful for the people living there, and makes it harder for staff to assist and supervise them. This is more applicable to the male portion of the facility. Also, a lack of housing options outside of Lincoln and Omaha deprives work-release inmates of the ability to transition closer to family and to help address labor shortages elsewhere in the state. Additionally, women in community corrections are all concentrated in the city of Lincoln.

*Recommendation 1:* **NDCS should pursue work release housing opportunities outside of Lincoln and Omaha, reduce the population at CCC-L so all units are operating at or below design capacity, and reexamine this facility's role in the system.** New opportunities could include housing work-release inmates in county jails or supervised community-based placements. The Department should also work with the Legislature as necessary to make this possible. This change would relieve pressure at CCC-L, and would allow portions of the facility to be repurposed for mission-specific housing, such as substance abuse treatment units.

**Director Frakes response:** *Reject. Community custody serves as a transition process for people returning to the community. It is not intended to help address labor shortages in the community. CCCL is large, but it is an effective and efficient approach to offering incarcerated people access to community custody. We have invested over \$22 million into CCCL, creating a healthy environment for the people who live and work there. At an average annual operating cost of \$12,000 per bed, we are meeting the needs of those we house there as well as demonstrating a wise investment of taxpayer dollars. Contracting services or operating smaller facilities in multiple locations will significantly increase annual costs without measurable improvement in*

*outcomes. As an example, Washington State both operates and contracts for work release beds in multiple locations. The average cost per bed is over \$19,000 a year, the average length of stay on work release is less than six months, and a smaller percentage of incarcerated people are given the opportunity to access community custody. I do not agree with the implication that escapes are tied to the size or location of either community custody center.*

## FINDING 2

**NDCS does not provide the general population in community corrections with meaningful access to basic mental health treatment.** Not only are the Department's mental health resources and policies insufficient to serve this population, but individuals in community corrections are actively prevented from obtaining treatment for themselves.

*Recommendation 2: **The Department should provide all community corrections inmates with appropriate and beneficial mental health treatment.*** In order to achieve this, the Department should develop a plan that includes an analysis of community corrections inmates' mental health needs, a mental health staffing analysis, ways inmates may access mental health services in the community, and timelines for implementation.

**Director Frakes response:** *Modify. Inmates at community custody have access to mental health care that is consistent with the community standard of care. NDCS is invested in helping all people succeed and would agree that a review of access to mental health services at community custody is warranted. The review will be completed by June 1, 2022. I do not agree with the implication that escapes are tied to access to mental health care.*

**OIG reply:** *This investigation did not examine or make any conclusions as to whether or not NDCS is meeting the community standard of care as required by Neb. Rev. Stat. § 83-4,155. The OIG appreciates the Director's attention to this issue, but without more information about what this review will entail, the OIG will not modify the original recommendation. The OIG would be open to assisting with the review in order to discuss specific findings, as well as concerns shared with the OIG.*

### FINDING 3

**The electronic monitoring program at NDCS is insufficient given the significant cost of EM devices.** GPS ankle monitors can help alert facility staff when an inmate is escaping and are useful in investigating concerns about specific individuals. However, the Department does not use these devices to their full potential, and a lack of routine, random checks of individual EMs allows technical issues and inmate misbehavior to go unnoticed for lengthy periods of time. This diminishes the use of EMs as accountability tools.

*Recommendation 3: Devote sufficient staff resources to electronic ankle monitors in order to justify their cost, particularly at CCC-L.* This could include one or more full-time positions to facilitate the electronic monitoring programs at CCC-L and possibly CCC-O, and to provide feedback to those facilities as well as to Central Administration. EM staff would work in conjunction with unit staff to input/update personalized inclusion and exclusion zones, identify and diagnose technical issues, and conduct routine checks of individual EM records. Establishing this as a separate position would reduce the impact on existing staff, while not eliminating their EM-related responsibilities.

**Director Frakes response:** *Modify. Providing 24/7 dedicated staff coverage of electronic monitoring at CCCL would require at least five full-time employees, at a cost of over \$300,000 a year. As the report notes, the majority of those wearing an EM device when they escaped either cut it off or disabled it. The report mentions EM issues of which NDCS is aware and has already taken steps to address. A review of the use of EM devices at community custody will be completed by April 30, 2022.*

**OIG reply:** *The OIG did not recommend 24/7 dedicated staff coverage of EMs at CCCL and will not modify the original recommendation.*

### FINDING 4

**A lack of clarity regarding the roles of community corrections staff while investigating potential walkaways or otherwise interacting with inmates in public creates uncertainty for staff and raises other concerns.** This problem is somewhat unavoidable given the “extended limits” of community corrections facilities. However, it is in the best interests of staff, inmates,

the Department and the public to provide community corrections workers with as much consistency and clarity as possible regarding use of force, security and control, interactions with inmates and investigations in public spaces. The Department must also ensure these individuals are equipped to protect themselves and public safety.

*Recommendation 4:* The Department should review the policies and procedures related to these issues and provide more specific guidance for situations involving community custody inmates and staff. This process should include direct input from staff at these facilities, as well as local law enforcement.

***Director Frakes response:*** *Modify. After reviewing Policy 203.01, and CCCL Procedure 203.01.13 there is language in the Procedure that could confuse staff. The Policy language and intent is clear, and the Procedures at both community custody facilities will be revised to reflect Policy language. Policy 203.01 and the revised Procedures will be reviewed with staff assigned to community custody facilities to ensure there is clear understanding at all levels.*

***OIG reply:*** *The OIG appreciates the Director's acknowledgement of this issue. As nothing in the Director's response conflicts with the original recommendation, the OIG will consider this recommendation to have been accepted.*

## FINDING 5

**There are disparities in administrative sanctions for men and women found guilty of escape.** This is likely due to differences in who handles these cases at the Nebraska Correctional Center for Women in York, and the Reception and Treatment Center for men in Lincoln.

*Recommendation 5:* The NDCS Appeals Board should conduct a review of the Department's disciplinary records, including but not limited to escapes, and use this information to help improve equity in administrative sanctions.

***Director Frakes response:*** *Reject. The disciplinary process allows hearings officers the discretion to issue appropriate sanctions based on their assessment of the case. The hearings process and appeals process gives the incarcerated person their due process rights.*

## CONCLUSION

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The OIG sincerely appreciates the ongoing efforts of community corrections staff to create the best environment possible for reentry, even when there is not always agreement on how that should be done. NDCS deserves credit for its commitment to providing a large share of its population with a transition through community custody.

People who walk away from community corrections are ultimately responsible for that decision. Nonetheless, as this report makes clear, aspects of community corrections in Nebraska could improve – some significantly. The goal of this investigation was to identify and recommend reasonable areas of improvement for the Department.



February 14, 2022

Doug Koebernick, Inspector General  
P.O. Box 90604  
Lincoln, NE 68509-4604

Dear Mr. Koebernick,

I received your report on escapes from community custody facilities on February 1, 2022. I appreciate the opportunity to respond to your findings, in accordance with Nebraska Statute §47-915.

- **Finding #1: Reject.** Community custody serves as a transition process for people returning to the community. It is not intended to help address labor shortages in the community. CCCL is large, but it is an effective and efficient approach to offering incarcerated people access to community custody. We have invested over \$22 million into CCCL, creating a healthy environment for the people who live and work there. At an average annual operating cost of \$12,000 per bed, we are meeting the needs of those we house there as well as demonstrating a wise investment of taxpayer dollars. Contracting services or operating smaller facilities in multiple locations will significantly increase annual costs without measurable improvement in outcomes. As an example, Washington State both operates and contracts for work release beds in multiple locations. The average cost per bed is over \$19,000 a year, the average length of stay on work release is less than six months, and a smaller percentage of incarcerated people are given the opportunity to access community custody. I do not agree with the implication that escapes are tied to the size or location of either community custody center.
- **Finding #2: Modify.** Inmates at community custody have access to mental health care that is consistent with the community standard of care. NDCS is invested in helping all people succeed and would agree that a review of access to mental health services at

Scott R. Frakes, Director

**Dept of Correctional Services**

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community custody is warranted. The review will be completed by June 1, 2022. I do not agree with the implication that escapes are tied to access to mental health care.

- Finding #3: Modify. Providing 24/7 dedicated staff coverage of electronic monitoring at CCCL would require at least five full-time employees, at a cost of over \$300,000 a year. As the report notes, the majority of those wearing an EM device when they escaped either cut it off or disabled it. The report mentions EM issues of which NDCS is aware and has already taken steps to address. A review of the use of EM devices at community custody will be completed by April 30, 2022.
- Finding #4: Modify. After reviewing Policy 203.01, and CCCL Procedure 203.01.13 there is language in the Procedure that could confuse staff. The Policy language and intent is clear, and the Procedures at both community custody facilities will be revised to reflect Policy language. Policy 203.01 and the revised Procedures will be reviewed with staff assigned to community custody facilities to ensure there is clear understanding at all levels.
- Finding #5: Reject. The disciplinary process allows hearings officers the discretion to issue appropriate sanctions based on their assessment of the case. The hearings process and appeals process gives the incarcerated person their due process rights.

Escapes from community custody facilities are always treated as a serious concern, and each escape is subject to review. Reducing the number of escapes from community custody will always be a goal for the agency. Community custody facilities are not secure prisons, lacking both physical barriers and the level of staff oversight found in secure prisons. Community custody facilities are designed and operated to provide community transition. As the report makes clear, "People who walk away from community corrections are ultimately responsible for that decision." On average, 1950 people transition each year through community custody beds within NDCS. Almost all of them do not make the decision to leave community custody facilities without proper authorization.

In its current draft, the report includes information that would be considered confidential under §83-178 which should be redacted or removed prior to publication.

Respectfully,

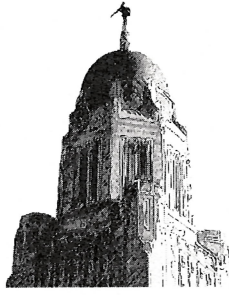


Scott Frakes, Director NDCS

cc: file

DOUG KOEBERNICK  
Inspector General

ZACH PLUHACEK  
Assistant Inspector General



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

February 18, 2022

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

Dear Director Frakes:

Thank you for your letter responding to the OIG report on community corrections. You stated that "Reducing the number of escapes from community custody will always be a goal for the agency." I would be interested in receiving more information on how NDCS seeks to accomplish that goal, as this mirrors the overall intent of the report.

The specific findings and recommendations found in the report are intended to help NDCS improve conditions at the community custody facilities and provide staff and incarcerated individuals with better opportunities to have successful transitions. This would potentially result in a decrease in walkaways. While I was encouraged by an acceptance of the underlying intent of some of the recommendations, I am hopeful that the issues raised in the report are not minimized by NDCS. Like you, our office believes escapes from community custody facilities are a serious concern, and the report found that conditions in the facilities may indeed impact the number of walkaways.

I stand by the recommendations and choose not to accept your requested modifications. Some of the specific reasons for this will be noted in the summary report should that be released. If you would like to discuss this further I am open to meeting with you in the near future.

Sincerely,

A handwritten signature in blue ink, appearing to read "DK" followed by a stylized surname.

Doug Koebnick