

STATE OF NEBRASKA

DEPARTMENT OF CORRECTIONAL SERVICES

Scott R. Frakes

Director



Pete Ricketts
Governor

June 30, 2016

Patrick O'Donnell
Clerk of the Legislature
2018 State Capitol
Lincoln, NE 68509

Dear Mr. O'Donnell:

Nebraska Revised Statutes § 83-173.02 requires the Department of Correctional Services to report in writing to the Governor and the Legislature on the Department's current efforts to reduce the use of restrictive housing. In accordance with this law, I am submitting the attached report.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Frakes".

Scott R. Frakes, Director

CC: Governor Pete Ricketts
File

NDCS Long-Term Plan for the Use of Restrictive Housing

LB 598, adopted by the legislature in 2015, provides the following: The director shall issue a report to the Governor and the Legislature no later than July 1, 2016. The report to the Legislature shall be issued electronically. The report shall contain a long-term plan for the use of restrictive housing with the explicit goal of reducing the use of restrictive housing. (Nebraska Revised Statutes §83-173.02). This report will provide a brief background for context and then present the Department's current efforts to reduce the use of restrictive housing. This includes changes to how restrictive housing units operate, and the plan to continue developing alternatives to the use of restrictive housing moving forward.

Background

NDCS has historically used restrictive housing as both punishment and to remove individuals from the general population due to threats to safety and security. There have been efforts in the last several years to reduce the time spent in restrictive housing, but it has not been enough. We have held people in restrictive housing as punishment in response to their behavior as opposed to utilizing it solely as a risk management tool. In recent years, the use of restrictive housing in corrections has become a topic of discussion nationally, led by organizations such as the Yale Law School, the ACLU, the VERA institute and the Association of State Correctional Administrators. This discussion has focused on the impacts of restrictive housing, alternatives to restrictive housing and the need to limit the frequency and duration of restrictive housing to only that which is absolutely necessary to protect inmates, staff and the security of the institution.

Director Frakes arrived in Nebraska in February of 2015, with the intent to reform the use of restrictive housing. Having had experience in implementing restrictive housing reform in Washington and familiarity with the Vera Institute of Justice: Safe Alternatives to Segregation initiative, Frakes requested, prior to his arrival in Nebraska, NDCS apply to participate in this project. Through 34 years of correctional experience Director Frakes formed the following beliefs which, in combination with LB 598, are the basis for the reform currently underway in Nebraska:

1. Restrictive housing should be used to manage risk, not as punishment;
2. The seriously mental ill that present a high risk need secure residential mental health treatment, not restrictive housing;
3. Additional mental health resources must be dedicated to all restrictive housing locations;

4. The review process for restrictive housing placements must confirm that: (A) the initial placement was justified, (B) continued placement is necessary, and (C) decisions on next steps must occur as quickly as possible;
5. The expectation for the use of restrictive housing is to avoid placement whenever it is safe to do so, and return the inmate to the appropriate least restrictive housing assignment as quickly as possible;
6. Assignment to longer term restrictive housing is done best through a multi-disciplinary team process, managed at the Central Office level – and based on a documented level of risk that precludes a less restrictive housing assignment ;
7. Effective interventions are utilized to help inmates change their behavior and reduce their risk;
8. The use of congregate activities is a critical component of delivering interventions;
9. Transitional housing options are available for those inmates needing a “step-down” approach prior to assignment to general population; and
10. The best reform of restrictive housing is reducing the need for restrictive housing through improving the quality of life within prisons and reducing inmate idleness.

Current Efforts to Reduce the Use of Restrictive Housing

The reforms currently underway within NDCS and the long-term plan to reduce the use of restrictive housing are based upon these principles in combination with input from NDCS staff, the Legislature through LB 598 and a number of different stakeholders, including ACLU Nebraska, the Mental Health Association, the Ombudsman’s office and the Inspector General for Corrections. Two groups in particular have had a major role in helping shape the Department’s current restrictive housing reforms:

Vera Institute of Justice

Nebraska was fortunate to be selected by the Vera Institute of Justice in the spring of 2015 to be one of five states participating in the current round of the Safe Alternatives to Segregation Initiative. The work with Vera will be beneficial in implementing the needed changes. The final report will be available at the end of July and the Vera team will work closely with NDCS over the next 12 months to successfully implement our reforms.

Long-Term Restrictive Housing Work Group

Formed by the Legislature in LB 598, the Long-Term Restrictive Housing Work Group is an advisory body comprised of NDCS staff and stakeholders and has been meeting regularly to develop the policies for the use of restrictive housing. The Title 72, Chapter 1 Rules and Regulations for the use of Restrictive

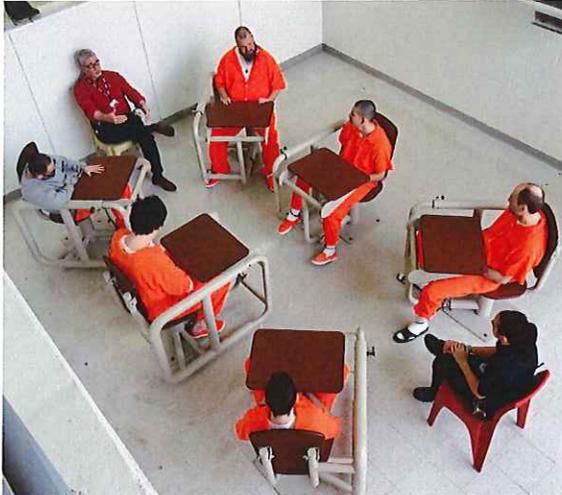
Housing were developed in collaboration with the work group. The discussion of alternatives to restrictive housing starts with asking the question “what is the level of risk presented that supports removing the inmate from general population?” The Title 72, Chapter 1 rules and regulations require the facility warden to review all placements in restrictive housing within 24 hours (compared to 72 hours previously), to allow an independent evaluation of the need to retain the inmate in restrictive housing. Mandatory time frames for additional reviews, and limiting the facilities’ use of restrictive housing to 30 days ensures the facility will seek the least-restrictive placement as soon as possible. The use of targeted sanctions and a system of incentives and restrictions to change behavior is also a key component to limiting the use of restrictive housing. Mission specific housing, effective mental health services, and improving overall prison safety will all help to reduce the need for restrictive housing.

NDCS is making significant changes to how restrictive housing operates, recognizing there is a lot of work yet to be done. The Governor approved the Title 72, Chapter 1 Rules and Regulations on June 15, 2016. The internal agency policy implementing these rules is effective July 1, 2016, and was published to staff on June 24, 2016. Training on the policy changes was conducted with restrictive housing staff during June, 2016.

Below is a summary of restrictive housing reform initiatives that are currently in development or in process. These initiatives will continue to evolve over time as the department implements, monitors and revises the strategies in response to the data and feedback received.

1. **Implement LB 598 - Least Restrictive Environment Standard.** The provisions in LB 598 require restrictive housing be used only when it is the least restrictive environment in which an inmate can be safely housed. This standard is consistent with the philosophy that restrictive housing is a risk management tool to help safely identify the causes of violent behavior and develop strategies to manage and mitigate that behavior so inmates may return to GP as soon as possible. LB 598 also requires specific consideration for special needs inmates and those with behavioral health issues.
2. **Eliminate the use of restrictive housing as a disciplinary sanction.** As indicated above, the purpose of restrictive housing is risk management, not for punishment. Effective July 11, 2016, disciplinary segregation will no longer be authorized as a sanction for rule violations. Inmates serving disciplinary segregation sanctions as of July 11, 2016, will complete sanctions of up to 30 additional days under the rules for Immediate Segregation. Existing sanctions of greater than 30 days will be reduced to 30 days, and the inmate will be reviewed for appropriate housing assignment. Assignment to Longer-Term Restrictive Housing will be considered for those inmates who present significant risk.
3. **Continue to develop Mission-Specific Housing units for various inmate populations.** The concept of mission-specific housing is to identify populations of inmates with special needs or similar characteristics and allow them to be housed together in a safe environment that

operates similarly to general population. This started with improving the residential mental health housing continuum at the Lincoln Correctional Center (LCC) in the spring of 2015. The secure mental health unit was expanded to 30 beds, and a classroom was created to provide congregate programming opportunities. In October of 2015 the mental illness review team (MIRT) reviewed all inmates in the secure mental health unit at the Tecumseh State Correctional Institution (TSCI) and transferred those with serious mental illness to the residential mental health unit at LCC.



Secure Mental Health Unit programming chairs provide the opportunity for individuals to be out of their cells and participate in treatment groups with the goal of moving to a less restrictive environment.

The TSCI Protective Management Unit, which opened in the fall of 2015, is another success story in our efforts to focus on meeting the needs of different parts of the population. More than 90 percent of the inmates previously held in restrictive housing on protective custody are now safely housed in general population conditions. In February of 2016, behavioral health staff began offering substance abuse programming to individuals housed in the protective management unit. The next mission specific housing being developed is for inmates with prior military service. The use of mission specific housing is an effective opportunity to engage inmates in prosocial activities, and improves the quality of life within our prisons – leading to less tension and violence, and a reduced need for restrictive housing.

4. **Central Office Multi-Disciplinary Review Team.** The new rules provide that all Longer-Term Restrictive Housing placements shall be reviewed by a multi-disciplinary team at Central Office to ensure consistency in making decisions across institutions, and involve higher level decision-makers earlier in the process.
5. **Research and Best Practices:** NDCS will continue to research and reform how restrictive housing units operate in line with evolving research in the field and identified best practices. NDCS staff recently visited New Mexico to learn about their restrictive housing reform and attended the “Managing Restrictive Housing Populations” with the National Institute of

Corrections. Below are some examples of areas on which NDCS is gathering information and researching best practices:

- a. Timeframes for RH placements/reviews/appeals
 - b. Increased training for staff working in RH
 - c. More out-of-cell time,
 - d. Programming for individuals in RH
 - e. Congregate activities
 - f. Transitional housing for Longer-Term RH inmates
6. **Transition planning for return to less-restrictive housing assignment.** Involving the inmate in the development of his or her transition plan from restrictive housing is key to engaging the inmate in behavior change. All inmates in Longer-Term Restrictive Housing will have a behavior/programming plan, which will outline to staff and the inmate, the steps and criteria for he/she to return to general population or transition to another form of non-restrictive housing. Inmates will participate in discussions and planning of criteria and next steps for each transition opportunity and will help craft individualized goals and areas for improvement.
7. **Eliminate direct releases from Longer-Term restrictive housing to the community.** NDCS has established a multi-disciplinary Discharge Review Team to review inmates with serious mental illness nearing mandatory discharge. One of the team's responsibilities will be to review inmates who may mandatorily discharge from secure mental health housing and identify options for transitioning them out of secure mental health or restrictive housing prior to discharge. The newly adopted rules and regulations also provide that the Central Office Multi-Disciplinary Team will be notified when an inmate is placed in restrictive housing 60 days prior to their scheduled release to ensure appropriate steps to assess risk and conduct release planning consistent with safety within the facility and in the community.
8. **Improve data collection.** NDCS has developed baseline measurements and track progress over time in reducing the use and duration of restrictive housing to measure the impacts of restrictive housing reforms. Efforts are also underway to improve data entry for restrictive housing placements to ensure the accuracy of data moving forward. Methods to track efforts to divert individuals from entering restrictive housing and their effectiveness are also under development.
9. **Continue to revise and reform restrictive housing rules and regulations.** NDCS will review the restrictive housing rules and regulations during the summer of 2017 and make changes based upon feedback from the Legislature, the LB 598 workgroup, inmates, other stakeholders, outside research, and lessons learned during implementation of these reforms.

Long-Term Plan for the Use Restrictive Housing

The long-term plan is to use restrictive housing only when necessary to assess risk, and develop an individualized plan to manage that risk in a less-restrictive environment. It will no longer be punishment for violation of institutional rules. Participating in the development of behavior/programming plan will engage inmates in their own transition back to general population or other less-restrictive environment. Additional training will be provided for staff working in restrictive housing units. The July 2016 implementation of the risk-needs-responsivity tool, the STRONG-R, will assist in identifying programming needs of inmates in longer-term restrictive housing.

As of June 24, 2016 there were 336 inmates on restrictive housing status. Since January 2015, the Department has moved over 300 protective custody status inmates out of restrictive housing and into the newly established protective management unit. An additional 14 beds have been established at LCC for inmates with serious mental illness who also require a secure housing environment.

There is a tremendous amount of work underway to reform the use of restrictive housing and to limit its use. These efforts take time and will require diligence in both monitoring implementation and data collection. We must accurately measure the impact of these reforms to help guide us in making additional improvements as we move forward. NDCS is committed to the success of these efforts and will continue to work with the Governor and the Legislature to ensure we achieve the desired results.