

**2017 REPORT OF THE NEBRASKA JUSTICE SYSTEM  
SPECIAL OVERSIGHT COMMITTEE OF THE LEGISLATURE**

Prepared in accordance with Legislative Resolution 127 (2017)

Submitted to the Judiciary Committee and to the Appropriations Committee  
of the 105<sup>th</sup> Nebraska Legislature on December 15, 2017

Committee Members:

Sen. Laura Ebke, Chair  
Sen. Kate Bolz  
Sen. Tom Brewer  
Sen. Suzanne Geist  
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## INTRODUCTION

Over the last several years, concerns related to incidents involving current and former inmates and repeated disturbances taking place in Nebraska prison facilities led legislators to consider the need for closer legislative oversight of the Nebraska Department of Correctional Services.<sup>1</sup> These concerns and the incidents giving rise to them were the stated bases for adoption by the Nebraska Legislature of Legislative Resolution 424 in 2014<sup>2</sup> and Legislative Resolution 34 in 2015.<sup>3</sup> LR 424 established the special committee of the Legislature known as the “Department of Correctional Services Special Investigative Committee of the Nebraska Legislature.” LR 34 built on that foundation by broadening the Committee’s focus and considering various challenges faced by the Department in managing Nebraska’s prison system, as well as those facing other state agencies whose work furthers the mission of the Nebraska criminal justice system. In furtherance of each legislative resolution, the LR 424 and LR 34 Committees undertook investigative action and conducted a number of public hearings to review and identify the challenges and needs of the Nebraska criminal justice system. And while certain hearings focused on the various state agencies that handle aspects of the criminal justice system, the work of each Committee has primarily focused on the challenges faced by the Department in an effort to better address and rectify past issues, and to avoid future incidents and potential liabilities.

The LR 424 and LR 34 Committees each prepared reports that were submitted to the Legislature for consideration. While the LR 424 Committee’s final report<sup>4</sup> addressed a number of issues, the Committee itself was initially convened to focus primarily on the treatment and conditions of incarceration for a specific inmate whose reprehensible conduct after release posed a direct threat to the safety and well-being of the community and resulted in the inmate murdering several people in cold blood.<sup>5</sup> The LR 34 Committee’s scope was much broader in its initial charge, focusing on all aspects of the Nebraska criminal justice system, and built on the

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<sup>1</sup> The Nebraska Department of Correctional Services is referred to on occasion throughout this report as simply “the Department.”

<sup>2</sup> Legislative Resolution 424 (adopted on March 7, 2014), *available online at* <https://nebraskalegislature.gov/FloorDocs/103/PDF/Journal/r2journal.pdf#page=811> (hereinafter “LR 424”).

<sup>3</sup> Legislative Resolution 34 (adopted on February 27, 2015), *available online at* <https://nebraskalegislature.gov/FloorDocs/104/PDF/Enroll/LR34.pdf> (hereinafter “LR 34”).

<sup>4</sup> Department of Correctional Services Special Investigative Committee (LR 424 – 2014) Report to the Legislature (December 15, 2014), *available online at* [http://nebraskalegislature.gov/pdf/reports/committee/select\\_special/lr424\\_2014/lr424\\_report.pdf](http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr424_2014/lr424_report.pdf) (hereinafter the “LR 424 Report”).

<sup>5</sup> *See id.* at pgs. 3-4 (explaining that the LR 424 Committee was established to investigate a series of murders committed by Nikko Jenkins, a former Department of Corrections inmate, and acknowledging that the initial intent of the Committee was to investigate the conditions of Mr. Jenkins’s confinement and release but noting that the circumstances of such led the Committee to conduct a broader examination of the Department of Corrections).

observations and conclusions made by the LR 424 Committee.<sup>6</sup> The LR 34 Committee prepared its final report and submitted it to the Legislature in December of 2016.<sup>7</sup>

The LR 34 Report identified concerns and made recommendations for system-wide adjustments for the Department of Correctional Services to consider implementing.<sup>8</sup> Although those recommendations are only a year old, the Legislature saw cause based on current circumstances<sup>9</sup> to continue its oversight efforts with the adoption of LR 127 in 2017.<sup>10</sup>

Pursuant to the provisions of LR 127,<sup>11</sup> the Executive Board of the Legislative Council appointed a special committee comprised of seven members of the Nebraska Legislature known as the “Nebraska Justice System Special Oversight Committee of the Legislature.”<sup>12</sup> LR 127 charged the members of the LR 127 Committee with the task of studying “programs and policies relating to the adult justice system implemented and followed by the Department of Correctional Services, Office of Parole Administration, Board of Parole, Nebraska Commission on Law Enforcement and Criminal Justice, and Office of Probation Administration” in Nebraska.<sup>13</sup>

In furtherance of this charge, the members of the LR 127 Committee visited all of the Nebraska Department of Correctional Services facilities located across the state, visited facilities operated by the Nebraska Board of Parole and the Office of Probation, met with staff members and inmates at the various facilities, and held a public hearing to discuss issues and obtain

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<sup>6</sup> Indeed, LR 34 specifically referenced the work of the LR 424 Committee and explained that the LR 424 Committee had completed its work but that in doing so had uncovered additional concerns that warranted further study and oversight. *See* LR 34 (2015), *available online at* <https://nebraskalegislature.gov/FloorDocs/104/PDF/Enroll/LR34.pdf>.

<sup>7</sup> Department of Correctional Services Special Investigative Committee LR 34 (2015) Report to the Legislature (December 22, 2016), *available online at* [http://nebraskalegislature.gov/pdf/reports/committee/select\\_special/lr34\\_2015/lr34\\_report.pdf](http://nebraskalegislature.gov/pdf/reports/committee/select_special/lr34_2015/lr34_report.pdf) (hereinafter the “LR 34 Report”).

<sup>8</sup> In preparing its Report, the LR 34 Committee compiled data and information from various sources and conducted ten public hearings, focusing on different topics during each. *See* LR 34 Committee Report, *supra* note 3, at pg. 3. The full Report totals 45 pages, plus a number of Appendices. The findings and recommendations contained therein are a bit too numerous to enumerate fully herein, but those findings and recommendations were considered by the LR 127 Committee and will be discussed in this Report when appropriate.

<sup>9</sup> As the language of LR 127 makes clear, “even though some gains have been made . . . a number of recent issues are cause for ongoing concern by the Legislature,” and because of this, “the Legislature believes that oversight and engagement of the department is necessary in order for the Legislature to remain a partner in reform.” LR 127, *infra* note 11.

<sup>10</sup> Unlike the LR 424 and LR 34 Committees, the LR 127 Committee was established as an oversight committee and not an investigative committee. Indeed, the language of LR 127 was specifically amended from its introduced language to designate the LR 127 Committee as being an “oversight” committee, as opposed to an “investigative” committee. In the context of the powers and duties of the legislative branch, the LR 127 Committee being established to focus on oversight as opposed to investigation implies that the Committee’s task centers on monitoring the implementation of programs and policies of Nebraska correctional agencies, reporting to the legislature its impressions of this implementation, and when appropriate making recommendations to the Department and the Legislature about how things might be improved.

<sup>11</sup> Legislative Resolution 127 (2017), *available online at* <https://nebraskalegislature.gov/FloorDocs/105/PDF/Enroll/LR127.pdf>.

<sup>12</sup> The “Nebraska Justice System Special Oversight Committee of the Legislature” created pursuant to LR 127 is referred to throughout this Report as the “LR 127 Committee” or “the Committee.”

<sup>13</sup> *Id.*

feedback from various stakeholders.<sup>14</sup> This report was prepared as the Committee completed its work during the interim. It is meant to provide a brief overview of the past work of the Legislature in overseeing the various aspects of Nebraska’s criminal justice system, to outline the efforts made by the Committee in furtherance of its mission, and to detail an explanation of the Committee’s observations and impressions while providing some recommendations for consideration moving forward.

## **I. Past Oversight and Investigative Efforts of the Nebraska Legislature**

The LR 127 Committee is the third iteration of the Nebraska Legislature’s special committee established to oversee or investigate various aspects of the state’s criminal justice system. For at least the past three years, the Nebraska Legislature has found continuing need<sup>15</sup> to create special committees charged with determining the effectiveness of various policies and programs within the state’s criminal justice system. That work has resulted in the acknowledgement of some serious challenges and deficits in the system, but has also identified some opportunities for positive change. Through the investigative and oversight process, the three branches of government – the executive, legislative, and judicial – have worked cooperatively to make improvements. The LR 127 Committee believes it important to acknowledge that work in this report and to provide an overview of the efforts made and the work still ongoing.

### **a. The LR 424 Committee**

The most recent efforts on the part of the Legislature to become directly involved in the oversight of Nebraska’s criminal justice system began with the approval of Legislative Resolution 424<sup>16</sup> in 2014. LR 424 was introduced following a spree of murders committed by Nikko Jenkins shortly after his release from the Nebraska Department of Correctional Services in 2013.<sup>17</sup> On its face, LR 424 established the “Department of Correctional Services Special Investigative Committee of the Legislature” and authorized the LR 424 Committee to investigate

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<sup>14</sup> The LR 127 Committee would like to thank the state departments, agencies, and staff for their willingness to accommodate the Committee during visits, and to thank the individuals invited to testify at the public hearing for their gracious acceptance of the invitation and for their open and honest remarks. The Committee sends a sincere thanks to Scott Frakes, Director of the Department of Correctional Services, Rosalyn Cotton, Chair of the Nebraska Board of Parole, Ellen Brokofsky, State Probation Administrator, Doug Koebernick, Inspector General of the Nebraska Correctional System, and Marshall Lux, Ombudsman, for their attendance, feedback, and complete responses to the questions posed by the Committee. The LR 127 Committee further extends its thanks to the two stakeholder groups who reached out and requested an opportunity to address the Committee at the hearing, as well as to the various staff members, inmates, parolees, probationers, and others who have provided feedback to the LR 127 Committee throughout its work during the interim. Without the involvement of those intimately familiar with the system and its strengths and weaknesses, the Committee could not have completed its work.

<sup>15</sup> See *supra* note 9.

<sup>16</sup> LR 424, *supra* note 2.

<sup>17</sup> Nikko Jenkins has since been tried and convicted of murdering of four individuals between the dates of August 11, 2013, and August 21, 2013. See Todd Cooper, *Nikko Jenkins sentenced to death for 'one of the worst killing sprees in the history' of Nebraska*, The Omaha World Herald (May 31, 2017), available online at [http://www.omaha.com/news/crime/nikko-jenkins-sentenced-to-death-for-one-of-the-worst/article\\_3d0b067a-4545-11e7-92a1-8b9317b69244.html](http://www.omaha.com/news/crime/nikko-jenkins-sentenced-to-death-for-one-of-the-worst/article_3d0b067a-4545-11e7-92a1-8b9317b69244.html).

the circumstances of Nikko Jenkins's incarceration and the how deficiencies in certain aspects of the Department may have affected Nikko Jenkins's release and murder spree.<sup>18</sup>

The LR 424 Committee conducted an in-depth investigation of the circumstances of Nikko Jenkins's incarceration and released its report on December 14, 2014.<sup>19</sup> Although the focus of LR 424 was Nikko Jenkins, the language of the resolution provided a broad base for the LR 424 Committee's inquiry.<sup>20</sup> The 62-page report outlined Nikko Jenkins's personal history, his history in confinement with the Department, and concluded that the circumstances of his confinement contributed to serious mental health issues.<sup>21</sup>

The LR 424 Report then went on to examine the Department's historic use of segregated confinement, its provision of mental health treatment services, and the reality of the prison system's being overcrowded.<sup>22</sup> The LR 424 Report concluded with a list of sixteen recommendations, some of which were recommendations for action to be taken directly by the Legislature, and others were recommendations for actions to be taken by the Department.<sup>23</sup>

A number of the recommendations made by the LR 424 Committee have since been implemented. For example, the LR 424 Committee's first recommendation that the Legislature maintain active oversight of the criminal justice system has been employed in the Legislature's establishment of the LR 34 Committee and this LR 127 Committee. Similarly, the LR 424 Committee's recommendation that the Legislature establish the Office of the Inspector General of the Nebraska Correctional System was completed with the passage of LB 598 in 2015.<sup>24</sup> Other recommendations have seen some limited progress, but have not yet been completed.

## **b. Legislative Resolution 34**

The first recommendation made by the LR 424 Committee in its final report was for the Legislature to continue its oversight efforts by reestablishing the special committee. That recommendation was followed with the passage of LR 34 in 2015.<sup>25</sup> The LR 34 Committee built on the work done by the LR 424 Committee, holding ten public hearings to examine specific areas of concern in the operation and management of the Department of Correctional Services.<sup>26</sup> The LR 34 Report addressed each of the ten areas and outlined findings and recommendations for how, in the LR 34 Committee's view, the legislative and executive branches might improve the state's criminal justice and prison systems.

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<sup>18</sup> See LR 424, *supra* note 2.

<sup>19</sup> LR 424 Report, *supra* note 4.

<sup>20</sup> See LR 424, *supra* note 2.

<sup>21</sup> LR 424 Report, *supra* note 4, at pgs. 5-23.

<sup>22</sup> See generally *id.*, at pgs. 23-56.

<sup>23</sup> See *id.*, at pgs. 57-60.

<sup>24</sup> Legislative Bill 598 (2015), available online at

<http://nebraskalegislature.gov/FloorDocs/104/PDF/Slip/LB598.pdf>. The Office of Inspector General of the Nebraska Correctional System is now codified at Neb. Rev. Stat. § 47-901, *et seq.*, and the powers and duties of the Inspector General of the Nebraska Correctional System for monitoring and oversight of the Nebraska Department of Correctional Services as outlined by the Legislature are contained therein.

<sup>25</sup> LR 34, *supra* note 3.

<sup>26</sup> See LR 34 Report, *supra* note 7, at pg. 3.

The LR 34 Committee identified thirty-three recommendations for action to be taken by either the Legislature or the Department. The recommendations addressed findings in the following areas: staffing, overcrowding, mental and behavioral health treatment, programming, and restrictive housing.<sup>27</sup> Most of the recommendations were specific,<sup>28</sup> some were more general,<sup>29</sup> and others were limited in their application.<sup>30</sup>

## **II. Efforts of the LR 127 Committee**

### **a. Review of Correctional Facilities and Meetings with Corrections Employees and Inmates.**

In accordance with the Legislature's expectations as outlined in its resolution, the LR 127 Committee set out to study the programs and policies relating to the adult justice system. To do this, members of the Committee visited ten facilities operated by the Nebraska Department of Correctional Services, visited two facilities operated by the Nebraska Office of Probation Administration, and visited the offices of the Nebraska Board of Parole and Parole Administration. Although not all members of the Committee were able to attend all of the formal tours scheduled, Committee members made individual and small-group efforts to visit facilities.<sup>31</sup> During the formal visits, Committee members<sup>32</sup> reviewed and observed the design and condition of the facilities, and met with staff and inmates in a town hall-style forum to discuss their thoughts and concerns about the state of Nebraska's corrections system.<sup>33</sup> For purposes of providing context for the Committee's impressions, observations, and conclusions provided herein, the following is a brief summary of the formal visits made by Committee members.

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<sup>27</sup> See generally LR 34 Report, *supra* note 7.

<sup>28</sup> Recommendation 1, for example, specifically called for a "comprehensive staffing analysis" to be completed by the Department by July 1, 2017. See LR 34 Report, *supra* note 7.

<sup>29</sup> By way of example, the LR 34 Committee's recommendation 10 asks for a "group of attorneys" convened by the Legislature to conduct a comprehensive review of the state's criminal code. See LR 34 Report, *supra* note 7.

<sup>30</sup> For example, recommendation 8 applied only to the Department's budget request in the fall of 2016, which has since been considered by the Legislature and addressed by the biennial budget set last session. See LR 34 Report, *supra* note 7.

<sup>31</sup> Both members who were able to attend some or all of the formal tours and members who were not made efforts to arrange individual visits to prison facilities. Some members arranged individual or small-group tours of facilities through the Department and committee legal counsel. Others attended or spoke at program graduations, veterans' recognition events, and Native American ceremonies at different facilities. The combined experiences and observations of all Committee members gained through both formal and individual or small-group visits were considered in developing this report.

<sup>32</sup> Committee members attending the formal visits were accompanied by legal counsel, as well as representatives of the Ombudsman's office and the Inspector General for Corrections.

<sup>33</sup> The town hall-style meetings were arranged in a way so that Committee members in attendance had an opportunity to hear from staff and inmates in a more direct setting. Staff from the facilities were invited to attend these forums before or after their shifts began. A cross-section of the inmate population was selected at each facility and was offered similar direct engagement with Committee members. During most of these town hall-style forums, Department administrators were asked to leave the room to allow for free and open discourse between Committee members and staff and inmates.

## **i. Tecumseh State Correctional Institution**

A majority of members of the LR 127 Committee visited the Tecumseh State Correctional Institution (hereinafter “TSCI”) on June 26, 2017, for a formal tour and information gathering session.

The formal tour of TSCI began with a short overview presentation of the facility by TSCI administrators, as well as Director of the Department Scott Frakes. After a brief introductory discussion about the facilities at TSCI, Committee members then began a guided tour of the TSCI campus. The Committee first visited the portion of the prison known as the “Restrictive Housing Unit” to observe the living and operational conditions for staff and inmates in this area. Next, the Committee toured the medical unit of the facility, the education and library areas, and the Cornhusker State Industries area, where some inmates are allowed work opportunities during their term of incarceration. During the visit, Committee members had the opportunity to observe inmates and staff interacting with one another, and to observe the movement of the prison population and staff throughout the campus.

After completing the tour of the facility, Committee members met with TSCI staff. Staff members were invited to meet with the Committee during a shift change between 1<sup>st</sup> and 2<sup>nd</sup> shifts so that the Committee could hear from staff members in different positions with different daily experiences. Staff members were given the opportunity to voice concerns and to ask questions of the Committee members for a little more than an hour. Committee members were also given the opportunity to ask questions of attendees. During this session, administrators from both TSCI and the Department of Correctional Services were asked to leave the room to facilitate a more open and free exchange of ideas and concerns between staff and Committee members.

Following the meeting with staff members, the LR 127 Committee members met with TSCI inmates to listen to their ideas and concerns about the operation of the facility. Committee members spent a little more than an hour with the inmates, during which time Committee members responded to concerns expressed by the inmates, took questions from inmates, and asked questions as well.

## **ii. Nebraska State Penitentiary**

A majority of members of the LR 127 Committee visited the Nebraska State Penitentiary for a formal tour and information gathering session on June 27, 2017.

The Committee members attending the formal visit spent the morning touring the facility. Committee members visited a number of areas on the Penitentiary campus, including the area of the Penitentiary referred to as a Restrictive Housing Unit, the work areas where inmates are employed in different vocations, the substance abuse treatment unit, the veterans housing unit, and other living areas where inmates are housed. During the tour, Committee members had the opportunity to visit with staff members, inmates, and administrators about the facility’s operations.

During the afternoon, Committee members met with prison staff members. They took questions and feedback from staff members for about an hour, and were able to have a discussion with staff members about their ideas and concerns regarding the operation of the facility. After meeting with staff members, the Committee met with inmates. Inmates were given the opportunity to voice their ideas and concerns, and questions were exchanged between the Committee members and inmates.

### **iii. Work Ethic Camp**

On July 31, 2017, a majority of members of the LR 127 Committee travelled to McCook, Nebraska, for a formal visit and informational session at the Work Ethic Camp. The Committee began its visit by meeting with a number of corrections staff, who provided feedback and asked questions of committee members. Following the meeting with staff, the Committee spent a little more than an hour visiting with inmates and hearing their thoughts and concerns. The Committee then toured the Work Ethic Camp facility, visiting classrooms and housing units, and spending some time having informal discussions with inmates on the yard.

### **iv. Nebraska Correctional Center for Women**

A majority of members of the LR 127 Committee visited the Nebraska Correctional Center for Women (hereinafter “NCCW”) on August 1, 2017. The Committee began its visit by meeting with staff members at NCCW. After spending about an hour and a half discussing concerns with members of the NCCW staff, the Committee met with a group of inmates for a little more than an hour. Following the feedback sessions, members of the Committee toured NCCW. The Committee saw a couple of housing units, the intake area for new inmates, the health treatment facility, the Restrictive Housing Unit, and the nursery program area.

### **v. Omaha Correctional Center**

A majority of members of the LR 127 Committee visited the Omaha Correctional Center on August 7, 2017. The Committee began its visit with a tour of the Omaha Correctional Center. During the tour, members saw housing units, visited the canteen, the gymnasium, and the work areas where inmates can be employed. The Committee also visited the medical center and toured the education facility at the Correctional Center.

The Committee spent the afternoon meeting with staff and inmates from the facility. Members spent about an hour and a half hearing from staff members first. During that time, the Committee asked questions of current staff members about their experiences, thoughts, and concerns. After meeting with staff, the Committee met with inmates for a little more than an hour and a half, during which time the inmates presented their thoughts and concerns and asked questions of the senators.

### **vi. Omaha Community Corrections**

A majority of members of the LR 127 Committee toured Omaha Community Corrections on the morning of August 8, 2017. The Committee first met with staff and administrators of the

facility to learn about the types of inmates Omaha Community Corrections serves, and to discuss some of the issues and challenges faced. After the meeting, the Committee toured the Community Corrections facility. During the tour, the Committee saw housing areas, the cafeteria, and the outdoor areas of the facility. Committee members then spent about forty-five minutes visiting informally with inmates about their concerns.

### **vii. Nebraska Correctional Youth Facility**

A majority of members of the LR 127 Committee visited the Nebraska Correctional Youth Facility during the afternoon on August 8, 2017. The Committee began by spending about an hour meeting with staff from the facility and discussing their thoughts and concerns. After meeting with staff, the Committee met with a small group of inmates to hear about their experiences in the system. The Committee then toured the facility, and had the opportunity to visit informally with staff and inmates along the way. The Committee visited the education center, the gymnasium, and the housing units during the tour.

### **viii. Nebraska Board of Parole**

A majority of members of the LR 127 Committee visited the Lincoln office of the Board of Parole on August 25, 2017. Committee members heard from staff members and parole administration about the work that has been done since the Board of Parole officially transitioned to an independent agency, operating separate from the Department of Correctional Services. Following a presentation from staff and discussion about the Board's work, the Committee toured the new facility.

### **ix. Community Corrections Center – Lincoln**

The LR 127 Committee visited the Community Corrections Center – Lincoln on August 28, 2017. The Committee began the visit by meeting with staff members of the Community Corrections Center. After the discussion, the Committee toured the facility and saw inmate living facilities, viewed the area being prepared for the construction of a new housing unit, and toured the newly constructed 100-bed housing unit for inmates authorized for community-level custody.<sup>34</sup>

### **x. Lincoln Correctional Center**

The Committee visited the Lincoln Correctional Center during the afternoon on August 28, 2017. The first hour of the Committee's visit to the Lincoln Correctional Center consisted of a meeting with staff and administration from both the Correctional Center and the Diagnostic and Evaluation Center. Staff from the Diagnostic and Evaluation Center attended because of the close proximity of the two facilities. After the discussion with staff, the Committee began a tour of the facility. The Committee stopped midway through the tour to meet with inmates from the

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<sup>34</sup> At the time the Committee toured Community Corrections Center – Lincoln, the new 100-bed housing unit was not quite completed and ready to house inmates, but was just weeks from opening.

Correctional Center for a little more than an hour. After answering questions and hearing inmate concerns, the Committee continued its tour of the facility.

### **xi. Diagnostic and Evaluation Center**

The Committee visited the Diagnostic and Evaluation Center (“D & E”) on the afternoon of August 28, 2017. As noted above, the Committee met with staff from D & E during their visit to the Lincoln Correctional Center. The visit to D & E, then, consisted only of a tour of the facilities. During the tour, the Committee viewed the intake area where all male inmates are received by the Department of Correctional Services following their being sentenced to a term of prison. The Committee also visited the living areas, the gymnasium, and the counseling area where inmates are evaluated and meet with reentry navigators. The tour concluded with a tour of the facility’s medical treatment area.

### **xii. Nebraska Office of Probation Services**

The LR 127 Committee visited the Offices of Probation Services in both Omaha and Lincoln. The Omaha visit occurred on August 7, 2017, and the Lincoln visit took place on August 29, 2017. During the Omaha visit, Committee members heard presentations from staff and toured the facility. At the Lincoln location, Committee members toured the facility and had the opportunity to discuss a number of program developments with staff, judges, and probationers to hear their feedback and concerns.

## **b. Public Hearing on Issues Relevant to Legislative Resolution 127**

In addition to first-hand observation of Nebraska’s justice facilities, the LR 127 Committee held a public hearing to obtain information and feedback on October 20, 2017. The Committee invited a number of stakeholders to appear and provide information on various topics and subject matter related to the Nebraska justice system. The Committee invited representatives from the Department of Correctional Services, the Board of Parole, the Office of Probation Administration, the Office of the Inspector General, and the Ombudsman to provide information related to their efforts and to assist the Committee in its task. The Committee also received written requests to address the Committee from two stakeholder groups – the American Civil Liberties Union of Nebraska and the Nebraska Association of Public Employees. Because both groups have a vested interest in the state of Nebraska’s criminal justice system, the Committee agreed to accommodate their request and allowed a representative of each group to provide remarks. The public hearing lasted a little more than three hours, and a transcript of the hearing is attached hereto as Exhibit A and is incorporated herein by this reference.

### **III. Findings, Observations, Considerations, and Recommendations Moving Forward**

Nebraska’s criminal justice system faces serious challenges. As found by previous iterations of this Committee, the Department of Correctional Services is working to manage a prison system that is overcrowded and understaffed.<sup>35</sup> With the passage of LB 605 in 2015, the State of Nebraska has sought to address its prison population through a comprehensive, multi-stakeholder effort to reduce the prison population using evidence-based practices. In the wake of efforts made by the Legislature, the Governor, and the Courts, this “justice reinvestment” is underway, and as a result, the prison population has decreased, and more individuals receiving felony convictions are being sentenced with alternatives to incarceration. Although numbers have lagged behind initial projections, progress is being made.

As noted at the outset of this report, the recommendations from the Legislature as provided in the LR 34 Committee Report are less than a year old. While many of those recommendations came with suggested deadlines and benchmarks for completion of certain tasks by the Department, the LR 127 Committee acknowledges that the implementation and impact of widespread systemic improvements takes time. In light of the ongoing work and critical importance of the successful implementation of LB 605, the Committee believes the oversight responsibility of the Nebraska Legislature is important. In furtherance of that objective, the following is an outline of the current state of the criminal justice system, as well as some observations and recommendations endorsed by the LR 127 Committee to ensure continued progress in addressing the serious challenges seen in Nebraska’s criminal justice system.

#### ***a. The Legislative, Executive, and Judicial branches of Nebraska government must continue to work collaboratively to effectively address overcrowding in Nebraska’s prisons.***

One factor that impacts the day-to-day management and operations of a prison system is the size of the prison population. Not only does the number of inmates matter, but the number of inmates must be manageable when compared to the population capacity of prison facilities and of the prison system. More simply put, a prison system’s facilities must be large enough to effectively house and manage the number of inmates in the system.

When considering the optimal ratio of inmates to facility or system capacity, there are a couple of concepts that are generally looked to for analysis. First, prison administrators and policymakers look to the “design capacity” of the facility. The design capacity of the facility is generally considered to be the number of inmates the facility was designed to house as of the date of the facility’s construction.<sup>36</sup> Unless substantial renovations are completed, the design

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<sup>35</sup> See, e.g., LR 34 Report, *supra* note 7, at pg. 4 (concluding that prison overcrowding within the Department gives rise to various challenges in managing the prison population).

<sup>36</sup> For example, the United States Department of Justice has employed a definition of design capacity as “[t]he number of prisoners that planners or architects intended for a facility.” E. Ann Carson & Elizabeth Anderson, *Prisoners in 2015*, United States Department of Justice Bureau of Justice Statistics (Dec. 2016), *available online at* <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

capacity of a facility does not change. Next, administrators and policymakers consider the facility's "operational capacity." This is typically considered the number of inmates a facility can appropriately manage within the facility based on the facility's size, resources, or modifications.<sup>37</sup> Many times, the operational capacity will exceed design capacity. Both standards should be considered and weighed in determining the overall status of a prison system.

In Nebraska, there are statutorily established definitions for design capacity and operational capacity that must be considered. Nebraska's Correctional System Overcrowding Emergency Act defines design capacity as the "total designed bed space in facilities operated by the department, as certified by the director."<sup>38</sup> The Act further defines "operational capacity" as "one hundred twenty-five percent of design capacity."<sup>39</sup> These definitions are important in examining prison overcrowding because under the provisions the Act, when the actual prison population exceeds design capacity by 140 percent, the existence of an overcrowding emergency may be declared.<sup>40</sup>

Overcrowding in Nebraska's prison system has been a concern for some time. According to the Nebraska Inspector General for Corrections, in 2015, Nebraska was situated as the fourth most overcrowded prison system in the nation, lagging behind only Alabama, Illinois, and Hawaii.<sup>41</sup> In early 2017, the Inspector General reported that Nebraska's prison overcrowding rank went up to the second most overcrowded system in the country, trailing only Alabama.<sup>42</sup>

Based on numbers provided by the Department of Correctional Services at the public hearing of the LR 127 Committee on October 20, 2017, the average daily population of Nebraska's prison system in 2017 is 5,343 inmates.<sup>43</sup> Total design capacity of the facilities according to the Department is 3,435 inmates.<sup>44</sup> As such, the average daily inmate population as of October 20, 2017, sat at a little more than 155 percent of the design capacity<sup>45</sup> of the system's prison facilities. When viewed at the facility rather than system-wide level, certain facilities had populations near or below design capacity, such as the Nebraska Correctional Youth Facility with a population to capacity ratio at about 74 percent or Tecumseh State Correctional Institution

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<sup>37</sup> The United States Department of Justice has defined operational capacity as "[t]he number of prisoners that can be accommodated based on a facility's staff, existing programs, and services." E. Ann Carson & Elizabeth Anderson, *Prisoners in 2015*, United States Department of Justice Bureau of Justice Statistics (Dec. 2016), available online at <https://www.bjs.gov/content/pub/pdf/p15.pdf>.

<sup>38</sup> Neb. Rev. Stat. § 83-961(4).

<sup>39</sup> Neb. Rev. Stat. § 83-961(6).

<sup>40</sup> See Neb. Rev. Stat. § 83-962.

<sup>41</sup> 2016/2017 Annual Report, Office of Inspector General of the Nebraska Correctional System, at pg. 19, available online at [http://nebraskalegislature.gov/pdf/reports/public\\_counsel/2017\\_oig-ncs.pdf](http://nebraskalegislature.gov/pdf/reports/public_counsel/2017_oig-ncs.pdf) (hereinafter "2017 OIG Report").

<sup>42</sup> Both Illinois and Hawaii saw double-digit decreases in their prison populations, with their populations falling by 9% and 24% of capacity respectively. 2017 OIG Report, *supra* note 41, at pg. 19.

<sup>43</sup> See Dept. of Correctional Services Handout, *NDCS Capacity and Average Daily Population – FY1982-FY2020*, at pg. 1, a copy of which is attached hereto as Exhibit B and is incorporated herein by this reference.

<sup>44</sup> *Id.*

<sup>45</sup> Doing the simple math, the average population of 5,343 divided by the design capacity of 3,435 multiplied by 100 derives a total percentage of 155.55.

at about 106 percent,<sup>46</sup> while others had population levels much higher than the system-wide number. For example, the Diagnostic & Evaluation Center has a current population at more than 305 percent of design capacity.<sup>47</sup> Other facilities, such as the Nebraska State Penitentiary or the Work Ethic Center, have populations at almost 195 percent and 192 percent, respectively.<sup>48</sup> These numbers are undeniably high. An additional 94 inmates are currently held in county jail facilities.<sup>49</sup>

In addition, state law allowing counties to transfer individuals to state correctional institutions before they have been finally sentenced puts pressure on the prison system and on the state's most overcrowded facility, the Diagnostic and Evaluation Center. Notably, 179 such individuals – referred to as “county safekeepers” or “ninety-day evaluators” – were transferred to state Department of Correctional Services facilities in total in 2016, with a daily average of 38 individuals being housed.<sup>50</sup>

For several years now, Nebraska's leaders have, to their credit, acknowledged the problem. Both the LR 424 Committee's report and the LR 34 Committee's report acknowledged and identified the issue as serious and as having an impact on nearly all of the challenges faced by the Department of Correctional Services in its operation and management of prison facilities.<sup>51</sup> Both of Nebraska's most recent governors have also recognized the concern. Former Governor Dave Heineman acknowledged Nebraska's overcrowding problem, calling it “a very serious and important issue that . . . we all want to handle.”<sup>52</sup> More recently, Governor Pete Ricketts has acknowledged that “Nebraska's prisons have been full for decades” and that “Governors and Legislatures since at least the 1980s have worked to address this challenge.”<sup>53</sup>

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<sup>46</sup> NDCS Quarterly Data Sheet July-September 2017, Population and Demographics, Neb. Dept. of Correctional Services, *available online at*

[https://www.corrections.nebraska.gov/sites/default/files/files/39/datasheet\\_2017\\_3rd\\_qtr.pdf](https://www.corrections.nebraska.gov/sites/default/files/files/39/datasheet_2017_3rd_qtr.pdf).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> Neb. Dept. of Correctional Services, *NDCS Safekeeper Admissions 2013-2017 & NDCS Safekeeper and 90-Day Evaluator Average Daily Population*, a copy of which is attached hereto as Exhibit E and incorporated herein by this reference.

<sup>51</sup> As the LR 34 Committee put it in its report: “For example, overcrowding, which remains an acute problem at the Department, is directly related to the failure of inmates to have completed their programming prior to their parole eligibility date. The failure to have inmates complete programming before their parole eligibility date, in turn, is directly related to insufficient availability of programming, a resource issue. Finally, the failure to have inmates ‘parole ready’ due to lack of programming required by the Parole Board, results in more inmates discharged from the Department without being first placed on parole, commonly referred to as ‘jamming out’ without resources in place to become productive and stable members of society. Those who have not received appropriate programming and who jam out, in turn, are incarcerated longer and are more likely to reoffend, directly affecting public safety, increasing recidivism and exacerbating the overcrowding problem faced by the Department of Corrections. The absence of sufficient and appropriate programming was also identified as a reason for the increase in staff assaults over the last few years.” LR 34 Report, *supra* note 7, at pg. 4.

<sup>52</sup> Paul Hammel, *Act on Nebraska prison overcrowding or pay, state panel is warned, and the estimated price tag? \$499 million*, Omaha World Herald (June 18, 2014), *available online at* [http://www.omaha.com/news/crime/act-on-nebraska-prison-overcrowding-or-pay-state-panel-is/article\\_d21052d0-c622-5ea7-b37e-c70813fa285a.html](http://www.omaha.com/news/crime/act-on-nebraska-prison-overcrowding-or-pay-state-panel-is/article_d21052d0-c622-5ea7-b37e-c70813fa285a.html).

<sup>53</sup> Governor Pete Ricketts, *Continuing Corrections Reform* (March 6, 2017), *available online at* <https://governor.nebraska.gov/press/continuing-corrections-reform>.

The LR 127 Committee reiterates these assessments. In completing its work during the interim, the Committee heard concerns expressed by staff that when the prison population exceeds the capacity of the facility, management of inmates becomes a challenge. Under such conditions, staff explained that dangerous contraband becomes harder to police,<sup>54</sup> giving rise to concerns about both staff and inmate safety. For the best interests of all who serve Nebraska's prison system, and for those who find themselves entangled in it, overcrowding should continue to be addressed.

Nebraska policymakers have made serious recent efforts. In 2015, the Nebraska Legislature approved, and Governor Pete Ricketts signed, LB 605, which implemented a number of criminal justice reforms meant to improve the system. The bill was devised with the help of The Council of State Governments Justice Center (hereinafter "CSG") through its justice reinvestment initiative, and was the product of collaboration among all three branches of Nebraska's government. Implementation of the bill has been underway since its passage, and the state is seeing some positive results.

According to CSG, "Nebraska's prison population has decreased by 142" inmates since the passage of LB 605 in 2015.<sup>55</sup> When LB 605 was first contemplated by the Legislature in 2015, the prison population was expected to see a reduction of approximately 921 inmates by July 2017 following full implementation.<sup>56</sup> Although current numbers are not quite on par with expectations, they are trending modestly downward. And a comparison of the projection line to the actual prison population suggests there is at least a possibility of continuing reductions as a result of full implementation.<sup>57</sup> Figure 1 below contains an overlay of a graph of the projection compared to the actual prison population numbers.

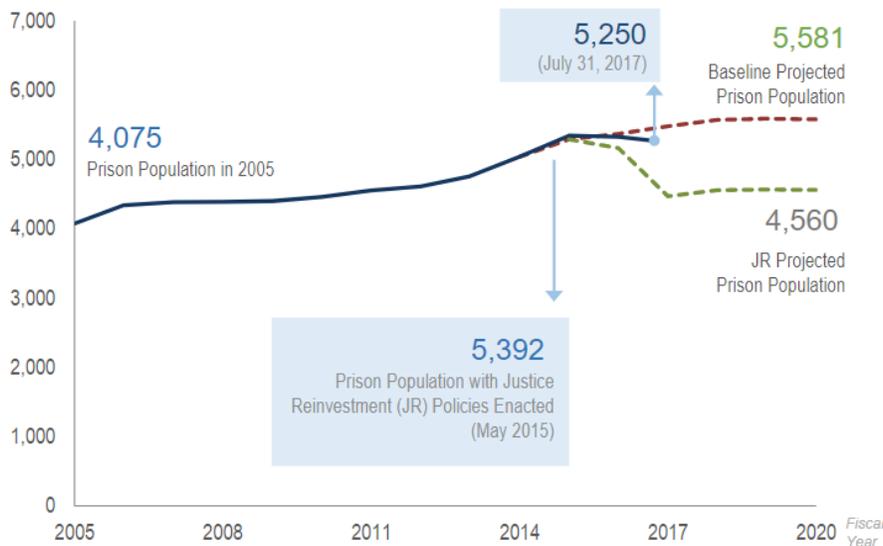
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<sup>54</sup> One form of contraband that has recently been an issue has been seen in recent reports that have detailed issues related to drugs, such as K2, being smuggled into facilities. It is worth noting, however, that the Department has recently made efforts to crack down on these incidents and has seen some success. *See, e.g.,* JoAnne Young, *Inmates who use K2 pose special challenges for state prisons*, Lincoln Journal Star (Oct. 22, 2017), available online at [http://journalstar.com/news/state-and-regional/govt-and-politics/inmates-who-use-k-pose-special-challenges-for-state-prisons/article\\_efc455be-e807-56c1-afd9-3015068338ec.html](http://journalstar.com/news/state-and-regional/govt-and-politics/inmates-who-use-k-pose-special-challenges-for-state-prisons/article_efc455be-e807-56c1-afd9-3015068338ec.html); *see also* Riley Johnson, *State Penitentiary employee accused of taking bribe to bring K2 to prison*, Lincoln Journal Star (Nov. 6, 2017), available online at [http://journalstar.com/news/local/911/state-penitentiary-employee-accused-of-taking-bribe-to-bring-k/article\\_7c312bda-709e-5f4f-aa16-6f54f0ff88c1.html](http://journalstar.com/news/local/911/state-penitentiary-employee-accused-of-taking-bribe-to-bring-k/article_7c312bda-709e-5f4f-aa16-6f54f0ff88c1.html).

<sup>55</sup> Sara Friedman, *Justice Reinvestment Implementation Coordinating Committee Meeting Presentation* (August 22, 2017), at pg. 6, a copy of which is attached hereto as Exhibit C and is incorporated herein by this reference (hereinafter the "CSG Presentation").

<sup>56</sup> *Id.*, at pg. 7.

<sup>57</sup> It is worth noting that due to a number of factors, full implementation of LB 605 and LB 598 provisions took some time. For example, implementation of new parole guidelines was not completed until July 1, 2017. Coordinating a number of agencies across all aspects of the criminal justice system took time, and the lag in getting all phases implemented might have played into the slower-than-expected reduction in prison population numbers.



**Figure 1.** Graph of Nebraska’s Historic Prison Population Compared to Justice Reinvestment Projections<sup>58</sup>

Looking closely at Figure 1 makes clear that at least the first portion of the line depicting the actual prison population since implementation of LB 605 in 2015 mirrors the shape of the projection line. Considering that full implementation occurred more slowly than was initially planned, there may be hope, however slight, that a larger decline is yet to occur, as suggested by projections.

Aside from prison population numbers, however, other benefits from justice reinvestment have been seen. Notably, felony level convictions being sentenced to a term of prison have decreased by 25 percent, and such convictions receiving sentences of probation have increased by 136 percent.<sup>59</sup> Moreover, the implementation of LB 605’s post-release supervision provisions and adjustments to parole guidelines have resulted in fewer people being released from prison unsupervised.<sup>60</sup> “Jam outs” – individuals released from prison because they have served a complete prison sentence and are free for release with no supervision – have decreased by 20 percent since September 2015.<sup>61</sup> All of these improvements have worked to make progress toward a better criminal justice system that produces a better outcome for Nebraska.

Addressing Nebraska’s prison overcrowding situation and improving criminal justice outcomes is valuable for the sake of the corrections workers managing the prison population and for the well-being of the inmates in the system. In the context of these reforms and the work of the Committee, it is important to note that the American Civil Liberties Union recently filed a class action lawsuit in the United States District Court for the District of Nebraska against the Department of Correctional Services and other state actors on behalf of inmates in Nebraska’s

<sup>58</sup> CSG Presentation, *supra* note 55, at pg. 6.

<sup>59</sup> CSG Presentation, *supra* note 55, at pg. 12.

<sup>60</sup> *Id.*, at pgs. 3, 17, & 24.

<sup>61</sup> *Id.*, at pg. 24.

prison system.<sup>62</sup> The lawsuit alleges that as a result of overcrowding, the Department has failed to provide acceptable medical and mental health care and treatment and has failed to comply with the requirements of the Americans with Disabilities Act.<sup>63</sup> Although the case was recently filed and litigation is pending, lawsuits containing allegations such as those in the ACLU’s suit warrant serious consideration.<sup>64</sup>

**Recommendation:** LB 605 has begun to produce positive results and has lowered the prison population, even if only slightly. The Committee recommends that the Legislature continue to actively monitor the progress of LB 605 and be ready and willing to make changes if they become necessary. The Committee further suggests that the Department should continue to review options for utilizing tools such as the county jail program to relieve pressure on overcrowding and should develop appropriate programming in such locations. Furthermore, the Legislature, the Board of Parole, and the Department of Corrections should work collaboratively to promote innovation in the use of parole and to develop alternatives to the pressure placed on the prison system by the “county safekeepers” situation.

***b. The Legislature, the Department of Corrections, and the Board of Parole should develop a framework for a response to a declaration of a Correctional System Overcrowding Emergency pursuant to Neb. Rev. Stat. § 83-960.***

Since the early 2000s, Nebraska statute has set a benchmark for what the state should consider a concerning overpopulation of Nebraska prison facilities. Indeed, under current Nebraska law, the Governor may declare a “correctional system overcrowding emergency” when the inmate population exceeds 140 percent of design capacity.<sup>65</sup> The law further declares that a “correctional system overcrowding emergency” shall exist if the inmate population exceeds 140 percent of design capacity on or after July 1, 2020.<sup>66</sup>

In the event a “correctional system overcrowding emergency” exists – whether by gubernatorial declaration or by virtue of the prison population exceeding 140 percent of capacity on or after July 1, 2020 – statute provides a process for the parole of inmates to reduce the population level. To do this, statute instructs the Board of Parole to immediately consider all parole-eligible inmates for parole and to order the parole of each parole-eligible inmate unless the Board is of the opinion that 1) it is more likely than not that the inmate will not follow conditions of parole, that 2) the inmate’s release would have a very significant and quantifiable effect on institutional discipline, or that 3) there is a very substantial risk that the inmate will commit a violent act against a person.<sup>67</sup> Statute further instructs the Board to “continue granting

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<sup>62</sup> See Class Action Complaint for Injunctive and Declaratory Relief, SABATA, *ET AL.* V. NEB. DEPT. OF CORRECTIONAL SERVICES, CV-03107, U.S. Dist. Ct. Dist. Neb. (filed on Aug. 15, 2017).

<sup>63</sup> See generally, *id.*

<sup>64</sup> See, e.g., *Brown v. Plata*, 563 U.S. 493 (2011).

<sup>65</sup> Neb. Rev. Stat. § 83-962.

<sup>66</sup> *Id.*

<sup>67</sup> Neb. Rev. Stat. § 83-962(3).

parole” until the prison population “is at operational capacity,”<sup>68</sup> which would require reduction of the prison population below 140 percent to 125 percent of design capacity.<sup>69</sup>

This structure effectively creates a statutory presumption favoring the granting of parole once an overcrowding emergency exists. Because the potential parole of inmates could have a drastic impact on the state, it is worthwhile to consider the ramifications of such a situation.

Indeed, both the LR 34 Committee and the Inspector General have opined that implications of an overcrowding emergency and subsequent parole of inmates should be considered, and efforts should be made to better understand the full effects of such a scenario.<sup>70</sup> The LR 127 Committee agrees. As noted in the 2017 Report of the Inspector General, the parole of inmates pursuant to the declaration of an overcrowding emergency could “result in the need for more parole officer and reentry staff, as well as additional supports in the community.”<sup>71</sup> Moreover, the potential parole of inmates pursuant to the statutory scheme raises questions about just who the inmates might be that will reenter the community.

As noted above, the implementation of justice reinvestment through the passage of LB 605 has resulted in some decreases in the prison population, and there is hope that the trend will continue. Even if the trend continues, however, it would be prudent planning for the state to be prepared should a number of inmates be considered for parole under this statutory scheme. To grasp the complete scope of such an occurrence requires planning. State leaders should know the cost of an overcrowding emergency, and should know how the Board of Parole might approach administration of an overcrowding emergency, and how that approach might impact public safety and the corrections system.

**Recommendation:** For these reasons, the LR 127 Committee believes that the Board of Parole and Parole Administration should review the implications of an overcrowding emergency and should work with the Department of Correctional Services to determine the costs of such a situation and determine the type of inmates that might be impacted by such a situation. The Committee has reached out to the Board of Parole about this issue. The Board has assured the Committee that it is aware of the potential for the declaration or occurrence of an overcrowding emergency. The Board of Parole has further assured the Committee that it intends to work to develop a plan, but that to date it has been unable to do so as the Board has prioritized the implementation of improvements to the parole system in the wake of recent legislative reform efforts. The LR 127 Committee further recommends that the Board of Parole, in concert the Department of Corrections Services and other stakeholder, make efforts to prioritize the development of a plan, and once developed provide the LR 127 Committee, the Judiciary Committee of the Legislature, and the Appropriations Committee of the Legislature with a report outlining the expected costs of an overcrowding emergency and the types of inmates, identified

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<sup>68</sup> Neb. Rev. Stat. § 83-962(5).

<sup>69</sup> Neb. Rev. Stat. § 83-961(6).

<sup>70</sup> See LR 34 Report, *supra* note 7, at pgs. 14-15 (noting that the issue of overcrowding is a continuing issue and that the Correctional System Overcrowding Emergency Act declares an emergency if the population trends continue, and recommending that the Board of Parole, Parole Administration, and the Department of Correctional Services develop a plan detailing how such an emergency would be administered); see also 2017 OIG Report, *supra* note 41, at pg. 30-31.

<sup>71</sup> 2017 OIG Report, *supra* note 41, at pg. 30.

by crime and time served, likely to be paroled. This report should include evidence-based criteria that will be used to implement the plan in a manner that evaluates risk and protects the public safety. If such a report cannot be prepared soon, the LR 127 Committee believes the Legislature should revisit this recommendation and determine whether it would be appropriate through legislation to require the Board of Parole to complete this analysis.

***c. The Legislature should work with the Department of Correctional Services to ensure that the Department has all of the tools necessary to address issues related to recruitment and retention of Department staff.***

Over the course of the interim session, members of the LR 127 Committee heard from hundreds of staff members working for the Department of Correctional Services. Committee members heard anecdotal accounts of the day-to-day work experiences of correctional employees, and saw first-hand a clear frustration and, at times, fear on the faces of many as they expressed their concerns. The concerns heard by the Committee ranged from employees' fatigue from working long shifts only to be held for mandatory overtime on a regular basis, to uncertainty about employees' personal safety for numerous reasons. The driving factor underlying these concerns was routinely identified as the sheer number of open positions across the system.

The anecdotal accounts heard by the Committee about open positions and mandatory overtime from those who help ensure the public's safety on a daily basis are supported by available statistics. According to information provided to the Committee at its October 20, 2017, hearing, the Department had almost 150 protective services vacancies as of October 11, 2017.<sup>72</sup> At the time, there were an additional 120 or so protective services staff in training or hired and awaiting training.<sup>73</sup> In total, then, as of October 2017 there were approximately 270 unfilled protective services staff positions in the Department.<sup>74</sup>

Outside of the protective services positions, there were open positions in other areas of staffing as well. For example, the 2017 Annual Report from the Inspector General for Corrections cited a total of 52 staff vacancies in the areas of substance abuse services, mental health services, health services, pharmacy services and dental services.<sup>75</sup> The most recent numbers from the State of Nebraska's quarterly Agency Vacancy Report show that as of September 30, 2017, there were a total of 301 vacant positions across all employee categories in the Department.<sup>76</sup>

Aside from the fact that there are vacant positions, however, the high turnover of employees leaves the overall staffing situation unstable. The Department reported to the

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<sup>72</sup> Dept. of Correctional Services Handout, *Protective Services Vacancies*, at pg. 6, a copy of which is attached hereto as Exhibit B.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> 2017 OIG Report, *supra* note 41, at pg. 18.

<sup>76</sup> State of Nebraska Agency Vacancy Report (September 30, 2017), at pg. 91, available online at [http://nebraskalegislature.gov/pdf/reports/committee/appropriations/vacancy\\_09-17.pdf](http://nebraskalegislature.gov/pdf/reports/committee/appropriations/vacancy_09-17.pdf).

Committee at its October 20, 2017, public hearing that in 2016 there were 424 employee turnovers in the area of protective services.<sup>77</sup> Through September of 2017, the Department has seen 337 protective services employees turnover already this year.<sup>78</sup> That amounts to an average of more than 37 protective services employees leaving employment with the Department each month so far this year.<sup>79</sup>

Because of the number of vacancies and the large turnover rates, staff have been asked to work overtime, costing the state dollars spent on overtime,<sup>80</sup> while impacting employee job satisfaction and morale. The reality of employee frustration has been seen in a couple of surveys conducted over the last few years. Notably, in a 2015 survey of more than 600 corrections employees conducted by the Inspector General, more than 45 percent of respondents “did not look forward to coming to work on most days,” more than 54 percent said they “would not recommend a job at [the Department] to a friend or family member,” and less than 1 percent “agreed that the Legislature supports [Department] employees.”<sup>81</sup> A subsequent survey conducted by the Inspector General in April 2017 asked Department staff to respond to more open-ended questions. More than 200 staff members responded to the survey, and more than 60 percent stated they would not recommend a job at the Department to a friend or family member, while only 44 percent believed they would be working in the Department three years from now.<sup>82</sup> Frankly, these staffing issues have a major detrimental impact on Nebraska’s criminal justice system, and the LR 127 Committee believes addressing them is paramount to future success.

Addressing these issues, however, is undeniably complex. Increasing wages and benefits, or providing employees with better terms and conditions of employment are all issues typically within the purview of the executive branch in negotiating employment contracts with employee-groups represented by an employee union. As with any public employee union negotiation, the statutory structure of the Industrial Relations Act<sup>83</sup> affects not only the negotiations process, but also the results. And because the Industrial Relations Act and the Commission on Industrial Relations process has such a broad impact on all public-employee unions, the Committee is cognizant of the fact that any statutory changes that might impact the structure of the system will require serious political effort and compromise.

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<sup>77</sup> Dept. of Correctional Services Handout, *Monthly Protective Services Turnover*, at pg. 5, a copy of which is attached hereto as Exhibit B.

<sup>78</sup> *Id.*

<sup>79</sup> This number is derived by taking the total number of 337 and dividing it by 9 months, equaling 37.44 employees per month leaving employment with the Department.

<sup>80</sup> According to numbers provided by the Department at the Committee’s October 20<sup>th</sup> public hearing, from September 2016 to September 2017, the Department spent more than \$800,000 per month in overtime during 10 of the 13 months in that time period. The Department spent more than \$1,000,000 in two of the 13 months on overtime expenses. See Dept. of Corrections Handout, *Protective Services Overtime Expenditures*, at pg. 6, a copy of which is attached hereto as Exhibit B.

<sup>81</sup> Office of Inspector General of the Nebraska Correctional System 2015/2016 Annual Report at pg. 23, available online at [https://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector General of the Nebraska Correctional System/600\\_20160915-141014.pdf](https://nebraskalegislature.gov/FloorDocs/104/PDF/Agencies/Inspector%20General%20of%20the%20Nebraska%20Correctional%20System/600_20160915-141014.pdf) (hereinafter the “2016 OIG Report”).

<sup>82</sup> 2017 OIG Report, *supra* note 41, at pg. 24.

<sup>83</sup> Neb. Rev. Stat. § 48-801, *et seq.*

**Recommendation:** The Committee recommends the Department and the employee union address recruitment and retention issues, whether through the negotiations process or by addendum or other mechanism. The Committee believes that all options should be considered, including additional wages, benefits, longevity pay, and other retention-focused incentives.

Specifically, the Committee recommends longevity and performance incentives. Many employees reported to the Committee during visits that the lack of incentives for maintaining employment with the Department spurs turnover and provides little incentive for a long and loyal career. The LR 127 Committee believes these sort of negotiable items might go a long way toward reassuring those who place themselves in the dangerous prison environment daily their work is appreciated, and would provide some reward for their continued commitment to the Department's mission.<sup>84</sup> To the extent the Department and the employee union find that certain legislative changes would assist in negotiating or providing for such incentives, the Committee asks the parties to bring these changes forward, and further urges the Legislature to fully consider any such changes and to be supportive of the same if at all possible.

It is worth noting that even without legislative changes to the bargaining process, collaboration between branches has helped in at least some way to improve employment conditions and assist in recruiting and retaining corrections workers. In April 2016, the Legislature appropriated \$1.5 million to the Department for the specific purpose of funding recruitment and retention initiatives.<sup>85</sup> This money was spent by the Department on a number of efforts. In an attempt to address concerns about wages and remaining competitive in the market, the Department spent \$477,500 on a retention bonus program for protective services staff members in the fall of 2016.<sup>86</sup> Of the 951 eligible employees who received the one-time retention bonus, 783, or 82.3 percent, of them were still employed almost ten months later.<sup>87</sup> Moreover, 121 of those receiving bonuses were promoted, transferred positions, or otherwise changed job classifications.<sup>88</sup> Unfortunately, 168 of the 951, or 17.7 percent, left the department, 150 of which were protective services employees.<sup>89</sup> On average, those who left did so 5.7 months after their receipt of the bonus.<sup>90</sup>

While the bonus program was one effort aimed at unrest regarding wages for Department employees, other efforts that came from the retention funds provided by the Legislature included training and professional development programs and, at some facilities, the installation of staff

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<sup>84</sup> The Committee does believe it important to acknowledge that the Department has made real efforts to address these concerns. Bonus programs and retention initiatives have resulted in some real increases in employee wages and benefits. As Director Scott Frakes explained at the LR 127 Committee's October 20<sup>th</sup> hearing, over about the last 15 months, correctional officers and sergeants have seen wage increases ranging from about 7 to 9 percent. *See* Transcript of Hearing LR 127 Committee Public Hearing (held Oct. 20, 2017), at pg. 9, a copy of which is attached hereto as Exhibit A. The Committee believes this effort should be recognized.

<sup>85</sup> NDCS Report on Use of Retention Funds (Sept. 5, 2017), *available online at* [http://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Correctional\\_Services\\_Department\\_of/595\\_20170905-171026.pdf](http://nebraskalegislature.gov/FloorDocs/105/PDF/Agencies/Correctional_Services_Department_of/595_20170905-171026.pdf) (hereinafter, the "Retention Report").

<sup>86</sup> *Id.*, at pg. 14.

<sup>87</sup> *Id.*, at pg. 6-7.

<sup>88</sup> *Id.*, at pg. 7.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

wellness centers that provide exercise equipment for employees.<sup>91</sup> The overall impact of the spending on these efforts showed some improvement in staff turnover. The Department has established a target monthly turnover rate of 2.33 percent, and following the bonuses, met or exceeded that target for the first six months.<sup>92</sup> The overall trend regarding vacancies, however, remained flat.<sup>93</sup>

It is difficult to assess the ultimate impact of this \$1.5 million investment. At the end of the day, the turnover averages remained about where they had been before the money was spent. Even so, the Department concluded in its report that, “[w]hile the overall turnover situation has not improved significantly during the year the retention funds were provided, the department is confident the programs supported by the retention funds have had a positive effect on employee engagement and retention.”<sup>94</sup> This conclusion appears to suggest that although the numbers were relatively flat, the Department believes that without the retention initiative they might have been worse. It is also worth noting that because of other factors that might impact job prospects for employees, including such things as Nebraska’s low unemployment rate, it is “difficult to isolate the unique impact the retention initiatives are having on overall retention rates.”<sup>95</sup> Nevertheless, this recent effort provides some insight into how additional money invested may make marked improvements, and allows the Department and the Legislature an opportunity to review tangible metrics for consideration moving forward.<sup>96</sup>

As the Department continues to assess its staffing situation, and works toward developing a plan for long-term improvement, the LR 127 Committee believes it important that the Legislature be ready and willing to assist. The efforts made by the Department and the Legislature to increase wages and benefits have shown some progress, but continued work can make further improvements. The Committee is sympathetic to the concerns expressed by the employees met during facility visits, and agrees with Governor Ricketts that our corrections staff are “heroic” for the daily work they do with some of “the most dangerous people we have in our society.”<sup>97</sup> For this reason, the LR 127 Committee finds it imperative to recognize the work of our corrections staff, and to make clear its commitment that any appropriate legislative changes necessary to ensure the recruitment and retention of these important public safety officers will be a priority for the Legislature.

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<sup>91</sup> See generally Retention Report, *supra* note 85.

<sup>92</sup> Retention Report, *supra* note 85, at pg. 10.

<sup>93</sup> *Id.*, at pg. 12 (“The overall [vacancy] trend remains flat, however, and protective services vacancies are still a significant issue, particularly at TSCI and NSP. TSCI saw a small decrease from 69 to 59 vacancies while NSP saw an increase from 23 to 45 vacancies over FY17.”).

<sup>94</sup> *Id.*, at pg. 9.

<sup>95</sup> *Id.*

<sup>96</sup> It is worth noting that the Department recently announced the continuation of a newly-implemented retention bonus effort aimed at addressing staff shortages at certain facilities. See Lincoln Journal Star, *Prisons hiring bonus will continue*, Lincoln Journal Star (Nov. 21, 2017), available online at [http://journalstar.com/news/state-and-regional/govt-and-politics/prisons-hiring-bonus-will-continue/article\\_e7421c82-b42d-5dd8-91d5-4acf3d3c4f2b.html](http://journalstar.com/news/state-and-regional/govt-and-politics/prisons-hiring-bonus-will-continue/article_e7421c82-b42d-5dd8-91d5-4acf3d3c4f2b.html). The Committee applauds this effort and hopes that it will have a positive impact on staffing levels.

<sup>97</sup> Joe Duggan, *Ricketts remains confident in Frakes and Nebraska’s prison reform plan*, Omaha World Herald (Mar. 20, 2017), available online at [http://www.omaha.com/news/nebraska/ricketts-remains-confident-in-frakes-and-nebraska-s-prison-reform/article\\_4fed7bbf-8f7a-5752-b98b-501ff6347afb.html](http://www.omaha.com/news/nebraska/ricketts-remains-confident-in-frakes-and-nebraska-s-prison-reform/article_4fed7bbf-8f7a-5752-b98b-501ff6347afb.html).

***d. The Department of Correctional Services should continue its efforts to ensure complete and adequate staffing levels at all of its facilities.***

During the LR 127 Committee's visits to the ten facilities operated by the Department of Correctional Services, Committee members had the opportunity to hear the candid concerns of staff and administration. At many of the facilities, staff members and administration alike relayed concerns to the Committee about not only the high number of unfilled staff positions, but also the lack of staff positions in other areas of operation and management.

During site visits, LR 127 Committee members heard that even in facilities with no current job openings, staff have difficulty managing the facility because there are not enough employees for certain functions. For example, staff at one facility that had no current openings explained the difficulty in monitoring the yard or transporting prisoners with the requisite number of persons because of high inmate populations. To handle these situations, support or administrative staff are often asked to assist in these areas when their traditional job duties do not encompass these tasks. The concerns expressed appear to not only affect efficiency in the day-to-day operation of facilities, but also have an apparent impact on staff and inmate safety.

The Department of Correctional Services completed an internal staffing analysis in July 2016. That analysis worked to determine the appropriate staffing levels to properly manage the inmate population by assessing the number of security staff – officers, corporals, and others charged with ensuring the security of the prison facility – each facility should employ.<sup>98</sup> Based on the Department's findings, it was recommended that 138 new full-time security staff employees be allocated to adequately staff system facilities.<sup>99</sup>

Since completion of the Department's security staffing analysis, the Department and the Legislature have worked to provide funding for increased staffing. In the 2017 session of the 105<sup>th</sup> Legislature, the Department requested funding for additional full-time employees. The final budget provided the Department an additional 19 new security staff employees,<sup>100</sup> and an additional 32.5 other new staff were funded.<sup>101</sup> Although this did not fully fund the employees

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<sup>98</sup> An excerpt from the security staffing analysis completed by the Department is included in the 2015/2016 Annual Report of the Office of Inspector General of the Nebraska Correctional System as attachment 16 on page 123 of the report. 2016 OIG Report, *supra* note 81, at pg. 123.

<sup>99</sup> 2016 OIG Report, *supra* note 81, at pg. 129.

<sup>100</sup> Paul Hammel, *To 'safely operate' Nebraska prisons, state corrections officials seek OK to hire 29 new security personnel*, Omaha World Herald (Oct. 26, 2017), available online at [http://www.omaha.com/news/crime/to-safely-operate-nebraska-prisons-state-corrections-officials-seek-ok/article\\_a0a3f40c-b9cc-11e7-ae54-b709a6d2c1e5.html](http://www.omaha.com/news/crime/to-safely-operate-nebraska-prisons-state-corrections-officials-seek-ok/article_a0a3f40c-b9cc-11e7-ae54-b709a6d2c1e5.html).

<sup>101</sup> At the time of the writing of this report, of the positions requested and funded in the 2017 session, 8 health care positions were changed and not indicated as filled, 2 sergeant positions were filled, 17 out of 19 corporals were filled, and 8 out of 22.5 other positions were filled. In total, out of 51.5 positions requested and funded, 26.5 were unfilled and 25 were filled. The unfilled positions included some positions identified as priorities, including a Grievance Officer, in the 2017 biennium budget request, while other important positions, such as the training officer, were successfully filled. A request for 96 security positions was not fully funded, but of the positions requested and funded, most were hired and filled by DCS. At the same time, approximately 270 security positions remain unfilled.

identified in the Department's staffing analysis, the Legislature's effort makes progress toward the end goal.

Even though work is being done to address security staffing needs and to fill vacant positions, concerns heard during the LR 127 Committee's visits to corrections facilities compel the Committee to renew the LR 424's first recommendation. In its report, the LR 424 Committee recommended that the Department complete a "comprehensive staffing analysis."<sup>102</sup> This recommendation asked the Department to consider needs beyond merely security staffing needs, urging the Department to analyze adequate staffing levels in all areas of facility operation and management, including programming and assessment, behavioral health, and administrative and support staff.<sup>103</sup> The LR 424 Committee placed a recommended date for completion of such an analysis by July 1, 2017.<sup>104</sup> To date, no such analysis has been completed.

The Department's staffing analysis also made this recommendation. The Department's analysis noted in its Executive Summary that although a security staffing analysis was done at each facility, it was "recommended that further analysis be performed in other job classifications and departments within each facility, Central Office and Staff Training Academy."<sup>105</sup>

During the Committee's public hearing, the Department's director was asked why a complete staffing analysis has not been completed. The Director responded by explaining that such an analysis might be particularly difficult because there is not necessarily a universal set of criteria to determine needs in all areas, and that it would be more appropriate to conduct such an analysis after filling some of the security staffing needs, as that is the first priority.<sup>106</sup> While the Committee is sympathetic to the Director's point, the Committee believes that having a complete picture of the staffing situation is essential to the Legislature's and the Department's long-term planning efforts. It is difficult to make funding priority decisions, especially when the state faces budget challenges, without knowing the full extent of staffing deficits at all levels in the Department.

**Recommendation:** The LR 127 Committee believes the Department should conduct a system-wide staffing analysis of all staff positions, including a specific analysis regarding behavioral health staffing, within the Department in an effort to determine a complete picture of the staffing shortage. As explained above, there is no question that a number of vacancies currently exist. But as the Committee has completed its work, it has become clear that even if all positions were full, a deficit in terms of the Department's staffing needs would likely still exist. Planning for the future cannot be done accurately or effectively without knowing the full extent of the staffing shortage. For this reason, the Committee urges the Department to complete a full staffing analysis to provide the state with a long-term outlook on the financial impacts of addressing issues moving forward, while also allowing the executive and legislative branches of government to make informed decisions about spending priorities. At the same time, we urge the

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<sup>102</sup> LR 424 Report, *supra* note 4, at pg. 9.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> 2016 OIG Report, *supra* note 81, at pg. 125.

<sup>106</sup> Transcript of Hearing LR 127 Committee Public Hearing (held Oct. 20, 2017), at pgs. 10-11, a copy of which is attached hereto as Exhibit A.

Department of Correctional Services to make short term recommendations for needed positions outside of the security positions in order to make the system work more effectively. As needs are identified, they should be requested.

***e. The Department of Correctional Services should continue to prioritize its efforts to provide adequate and timely programming opportunities to inmates to ensure they are appropriately prepared for reentry into the community, and to ensure they are parole-ready to alleviate overcrowding.***

As explained earlier in this report, overcrowding in Nebraska’s prison facilities is a major challenge. One way to address the large inmate population is to provide sufficient opportunities for inmates to rehabilitate themselves and to learn the behavioral skills necessary to return and contribute to the community. Obtaining these skills not only ensures that an inmate’s eventual return to the community is successful, but doing so in a timely manner can help expedite the process and alleviate strain on prison operations due to overcrowding.

This is particularly true for inmates who are considered by statute to have reached parole eligibility based on the amount of time served in incarceration. Generally, inmates who have served half of their sentence become eligible for reentry to the community, subject to supervision on terms and conditions of parole.<sup>107</sup> Before the Board of Parole grants an inmate’s request for parole and reentry to the community, the inmate may be required to complete certain programs or treatment as required by the Board or by statute.<sup>108</sup> If these programs are not completed prior to an inmate’s parole eligibility date, the inmate may be deferred or denied parole,<sup>109</sup> and may remain a member of the prison population beyond the date they become eligible for parole. Practically speaking, this can mean that an inmate who is otherwise eligible for reentry into the community but who needs some programs or skills to ensure success upon reentry is held in prison simply because they have not had the opportunity to receive certain programming. Keeping these inmates in prison only exacerbates the overcrowding situation.

According to the Department, as of September 2017 there were 967 parole eligible inmates in Nebraska’s prison facilities.<sup>110</sup> As of the same date, there were 263 inmates on waitlists for some form of behavioral or mental health programming or treatment whose parole eligibility dates had already come to pass.<sup>111</sup> So long as there are inmates eligible for reentry to

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<sup>107</sup> Neb. Rev. Stat. § 83-1,110.

<sup>108</sup> See, e.g., Neb. Rev. Stat. §§ 83-179, 83-1,107, and 28-416.

<sup>109</sup> According to numbers provided by the Board of Parole at the LR 127 Committee’s October 20<sup>th</sup> hearing, there have been 308 individuals deferred for or denied for parole for “More Time in Institution/Programming” reasons over the past three years. Board of Parole/Division of Parole Supervision, *Reasons for Deferral or Denial*, at pg. 4, a copy of which is attached hereto as Exhibit D and incorporated herein by this reference.

<sup>110</sup> NDCS Quarterly Data Sheet July-September 2017, Neb. Dept. of Correctional Services, at pg. 5, available online at [https://www.corrections.nebraska.gov/sites/default/files/files/39/datasheet\\_2017\\_3rd\\_qtr.pdf](https://www.corrections.nebraska.gov/sites/default/files/files/39/datasheet_2017_3rd_qtr.pdf).

<sup>111</sup> The total of 263 is calculated by adding the reported number of inmates who are past their parole eligibility dates and are on waitlists for the Violence Reduction Program (33), the High Risk/Need Anger Management Program (44), the Residential Substance Abuse Program (28), the Non-Residential Substance Abuse Program (56), the Anger Management Program (44), the Anger Management Therapy Program (1), the Inpatient Sex Offender Program (27),

the community but who are unable to do so because they have not received the requisite programming,<sup>112</sup> the Department will lose opportunities to alleviate overcrowding, and inmates who are held in prison longer than required will lose out on opportunities to reenter and contribute to the community.<sup>113</sup>

For these reasons, the LR 127 Committee urges the Department to continue to prioritize its efforts to provide adequate and timely programming opportunities for inmates. The LR 34 Committee made recommendations related to programming in its report last year, including a recommendation that any staffing analysis include an assessment of needs to provide adequate programming, a recommendation that the Department increase access to programming, a recommendation that the Department accelerate access to programming, and a recommendation that the Department analyze space needs to increase programming capacity.<sup>114</sup> The LR 127 Committee believes these are still worthy considerations for the Department to pursue. Specifically, the LR 127 Committee appreciates and reiterates the recommendation that a staffing analysis should be done and should include a review of programming needs, as well as the recommendation that the Department complete a facilities space analysis to assess how existing facilities might be utilized to maximize programming opportunities.

The LR 127 Committee does appreciate the work of the Department to increase its efforts to provide programming over the last few years. But because of the important impact programming has on the success of the criminal justice system, the Committee finds it important to reiterate the need for programming to remain a priority moving forward. Nearly all inmates serving a term of incarceration will ultimately reenter the community. The state must ensure that those who spend time in incarceration are provided the tools necessary to secure their success upon release for the benefit and safety of not only the inmates themselves, but for the community as well.

**Recommendation:** The Legislature, the Department, and the Board of Parole should work together to explore options for the provision of more community-based domestic violence

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and the Outpatient Sex Offender Program (30) as reported by the Department. *See* NDCS Quarterly Data Sheet July-September 2017, Neb. Dept. of Correctional Services, at pg. 2, *available online at* [https://www.corrections.nebraska.gov/sites/default/files/files/39/datasheet\\_2017\\_3rd\\_qtr.pdf](https://www.corrections.nebraska.gov/sites/default/files/files/39/datasheet_2017_3rd_qtr.pdf).

<sup>112</sup> It should be noted that the number of inmates waiting for program whose parole eligibility dates have passed does not include a number of inmates waiting to participate in non-clinical programs offered by the Department. Programs such as Thinking for a Change, Moral Reconciliation Therapy, or GED/High School/ESL education programs are also offered by the Department but are not reported because they have both recommended participants and volunteer participants. The Department reports that at this time it is unable to distinguish between those recommended for participation and those who volunteer to participate. To the extent that some inmates are denied parole or are ineligible for parole because they have not completed a recommended non-clinical program, the LR 127 Committee recommends the Department track these numbers and find a way to distinguish between the two types of participants so that a complete picture of the situation can be seen.

<sup>113</sup> It should be noted that there are times that an inmate's failure to complete programming cannot be controlled by the Department. In some cases, the opportunity for programming is made available, but an inmate fails or refuses to take advantage of it in a timely manner. As Director Frakes testified to the LR 127 Committee at its October 20<sup>th</sup> hearing, there are times when an inmate eligible for parole "was offered an opportunity at some point" to receive programming and refused, but "suddenly they realize [they] have a parole eligibility date . . . and it becomes an urgent need." Transcript of Hearing LR 127 Committee Public Hearing (held Oct. 20, 2017), at pg. 20, a copy of which is attached hereto as Exhibit A. The Committee believes the Department's effort should be recognized.

<sup>114</sup> *See* LR 34 Report, *supra* note 7.

and substance abuse programming and determine the resources needed to do so to ensure individuals in need of programming receive it.

***f. Nebraska should continue efforts to review Nebraska’s criminal code and should work to ensure that crimes and sentencing statutes are appropriately defined and applied.***

Addressing Nebraska’s issues related to overcrowding and ensuring both staff and inmate safety in Nebraska prisons has effectively two possible solutions. First, the state can choose to construct new prison facilities to reduce strain on the system. This approach not only requires the investment of money to construct facilities, but also requires an investment in staff to operate and manage those new facilities on a daily basis. The second approach would seek to reduce the prison population by ensuring that the state releases more inmates – whether on parole or because sentences have been served – than it imprisons. This approach likely requires a reassessment of the criminal justice system in a way that considers how the state defines and classifies crimes, and considers the appropriate punishment for crimes.

Although some work has been done to expand facilities,<sup>115</sup> more work can be done to address overcrowding by considering changes to the criminal code. To date, the three branches of government have made efforts to adjust Nebraska’s criminal code and provide alternatives to incarceration for certain types of offense. For example, with the passage of LB 605, Nebraska statute was amended to re-classify a number of low-level, non-violent felony offenses and mandated a default sentence of probation for class IV felonies.<sup>116</sup> These efforts have paid off to some extent, with more offenders being sentenced to a term of jail or probation, rather than receiving a prison sentence.<sup>117</sup> Even so, further efforts can be made.

**Recommendation:** The LR 34 Committee recommended in its report that the state convene a working group of attorneys and other stakeholders to conduct a comprehensive review of Nebraska’s criminal code and determine if there might be ways to streamline it and ensure better outcomes.<sup>118</sup> The LR 127 Committee reiterates that recommendation, and further urges the legislative, executive, and judicial branches of Nebraska government to work together to find those areas where criminal code reform can have a positive impact on Nebraska’s criminal justice system, not only in addressing prison overcrowding, but also in ensuring public safety, ensuring the safety of corrections staff who manage the prison population, and ensuring good outcomes for those citizens who find themselves working through the system and back into society.

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<sup>115</sup> The Department of Corrections recently opened a new 100-bed facility at the Community Correctional Center – Lincoln at a cost of \$1.5 million. JoAnne Young, *Prison director calls 50 bunk beds for 100 prisoners ‘flawless’ project*, Lincoln Journal Star (Sept. 28, 2016) available online at [http://journalstar.com/news/state-and-regional/govt-and-politics/prison-director-calls-bunk-beds-for-prisoners-flawless-project/article\\_05b1d2ba-1326-5e0e-b1d3-60c38c9acc0e.html](http://journalstar.com/news/state-and-regional/govt-and-politics/prison-director-calls-bunk-beds-for-prisoners-flawless-project/article_05b1d2ba-1326-5e0e-b1d3-60c38c9acc0e.html). Work has begun on the construction of another 160-bed facility at CCC-L at a cost of \$26 million, and completion is expected in the next few years. *Id.*

<sup>116</sup> See Neb. Rev. Stat. § 29-2204.02(2); see also Neb. Rev. Stat. § 29-2308(2).

<sup>117</sup> CSG Presentation, *supra* note 55, at pg. 12.

<sup>118</sup> LR 34 Report, *supra* note 7, at pgs. 20-21.

***g. The Department of Correctional Services should continue to look for opportunities to provide meaningful work and vocational skills training for inmates during incarceration to increase institutional morale, establish a sense of purpose for inmates, and prepare them for reentry to the community.***

During the Committee's visits to Department facilities, Committee members saw firsthand the opportunities provided to inmates to find employment during incarceration. Each of Nebraska's prison facilities offers some form of employment, whether through the State of Nebraska, or through partnerships with private companies. For example, inmates at the Nebraska State Penitentiary may find employment manufacturing the state's license plates, or they may have the opportunity to work for a private company located at the facility, such as Cornhusker State Industries. These types of opportunities seem invaluable to both the stability of the system, and to the well-being of the inmates.

At each facility, the Committee heard from inmates that they would like more opportunities for work. According to many inmates, having employment while in prison provides them not only something to do with their time, but it also provides them an opportunity to establish some savings so that they have some money when they return to the community.<sup>119</sup> Both of these outcomes can be beneficial to the mission of the criminal justice system.

As has been noted, Nebraska's prison system is faced with the serious challenges that come from being overcrowded and understaffed. Most people familiar with life in prison would acknowledge the fact that inmates in such a setting struggle for a number of reasons. If, however, inmates are given meaningful employment to help pass time, inmates have told Committee members that some of their struggles can be alleviated, and a sense of purpose can be achieved.

When inmates have work to help pass the time, they not only have purpose during incarceration, but they also can develop skills that are valuable to them upon release. According to the Council of State Governments Justice Center, at least 95 percent of people incarcerated in state prisons will be released back to their communities at some point.<sup>120</sup> Many enter the prison system without a high school or college education.<sup>121</sup> Because inmates will ultimately return to their community, there is value in ensuring that they obtain the skills necessary to be a contributing member of the community when they are released from incarceration. Skills that can assist them with finding employment, and savings that they may have acquired while working in prison, can go a long way toward helping inmates establish stability upon release.

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<sup>119</sup> The Inspector General for Corrections acknowledged the comments expressed by inmates about employment during incarceration in a section of the OIG's annual report. See 2017 OIG Report, *supra* note 41, at pg. 56.

<sup>120</sup> NRRC Facts & Trends, National Reentry Resource Center, Council of State Governments Justice Center website, available online at <https://csgjusticecenter.org/nrrc/facts-and-trends/>.

<sup>121</sup> While the Committee does not adopt nor endorse the report in its entirety, for a fairly comprehensive overview of the educational challenges faced by the Department and the inmate population it serves, see Nebraska Appleseed's *Education for Adults in Nebraska Corrections: Decreasing Recidivism and Investing in Our Workforce*, a copy of which is available online at <http://www.workingpoorfamilies.org/wp-content/uploads/2015/12/Education-and-Corrections-FINAL.pdf>.

**Recommendation:** The LR 127 Committee believes that the desire expressed by inmates for more work and vocational skills opportunities should be pursued. There is reason to believe that increasing such opportunities will assist in both managing the inmate population, and in preparing inmates for a successful return to the community. Both of these outcomes are essential to the success of Nebraska's justice system.

## **CONCLUSION**

The LR 127 Committee has pursued its charge with the aim of assessing the current state of the criminal justice system in light of the recent changes made by LB 605 and LB 598. As outlined in this Report, the Committee observed and identified a number of positive improvements and a number of challenges and opportunities that can still be addressed. These include the following:

- While justice reform has now been fully implemented and some progress has been made, the Committee believes the legislative, executive, and judicial branches of Nebraska government must continue to work collaboratively to address overcrowding in Nebraska's prison system.
- While there is hope that the prison population will continue to decline, the Committee believes the state should be prepared in the event a prison overcrowding emergency occurs, and therefore recommends that a plan for the administration of such an emergency be prepared.
- Because challenges related to staffing levels have an impact on the effective management of prison facilities, the Committee believes the Legislature should commit itself to assisting the Department in the recruitment and retention of staff and further urges the Department to work with staff during contract negotiations to improve recruitment and retention, including through the negotiation of increased wages and benefits, step raises, or merit raises or bonuses.
- The Committee recognizes that ensuring an adequate number of staff positions for operation of prison facilities is important, and recommends that a complete staffing analysis for the Department of Correctional Services be completed to provide benchmarks and guidance in establishing funding and budgetary priorities into the future.
- Because a vast majority of inmates will return to their communities, the Committee recommends the Department and the Legislature continue to work cooperatively to increase programming opportunities to ensure that inmates have opportunities to be productive and successful members of their communities upon completion of their sentence.
- The Committee encourages all three branches of government, in conjunction with stakeholder groups, to continue to review criminal statutes and sentencing guidelines and find areas where reforms might have a positive impact on function and outcomes of the criminal justice system.

- The Department and the Legislature should work together to increase opportunities for inmates to acquire vocational or other skills during incarceration that will help ensure their success upon reentry to the community.

With these observations and recommendations in mind, the LR 127 Committee will continue its work over the next year, with the terms of the resolution requiring a second report in December 2018. At this time, the Committee has included in this report recommendations it believes can make a difference. As the Committee continues its work, it hopes to continue to observe improvements in the system and will work to identify those areas where opportunities for further improvement exist.

The LR 127 Committee agrees with Governor Ricketts's assessment that for years "our corrections system had been underinvested [in]," and that fixing the current situation will require "building a prison system that's actually effective" at maintaining public safety and preparing inmates for their transition back to "life outside the prison walls."<sup>122</sup> The Committee believes this can only be done if the legislative, executive, and judicial branches maintain a consistent commitment to addressing the issue and make a concerted effort to work together. In the wake of LB 605 and its full implementation, there is no doubt that efforts to do this have been made. But there is also no denying that, as Governor Ricketts has said, "[w]e have much more work to do."<sup>123</sup>

*(Signature page to follow)*

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<sup>122</sup> Joe Duggan, *Ricketts remains confident in Frakes and Nebraska's prison reform plan*, Omaha World Herald (Mar. 20, 2017), available online at [http://www.omaha.com/news/nebraska/ricketts-remains-confident-in-frakes-and-nebraska-s-prison-reform/article\\_4fcd7bbf-8f7a-5752-b98b-501ff6347afb.html](http://www.omaha.com/news/nebraska/ricketts-remains-confident-in-frakes-and-nebraska-s-prison-reform/article_4fcd7bbf-8f7a-5752-b98b-501ff6347afb.html).

<sup>123</sup> World-Herald News Service, *Reforms meant to ease prison overcrowding are a bit behind, but don't worry yet, Nebraska officials are told*, News Channel Nebraska (Oct. 21, 2016), available online at <http://kwbe.com/state-news/reforms-meant-to-ease-prison-overcrowding-are-a-bit-behind-but-dont-worry-yet-nebraska-officials-are-told/>.

The Members of the LR 127 Committee hereby submit this report to the Appropriations Committee of the 105<sup>th</sup> Nebraska Legislature and the Judiciary Committee of the 105<sup>th</sup> Nebraska Legislature on this 15<sup>th</sup> day of December, 2017, in accordance with the requirements of Legislative Resolution 127.



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Sen. Laura Ebke, Chair



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Sen. Kate Bolz



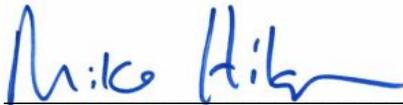
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Sen. Tom Brewer



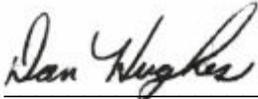
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Sen. Suzanne Geist



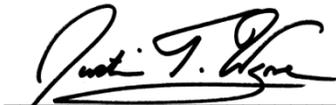
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Sen. Mike Hilgers



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Sen. Dan Hughes



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Sen. Justin Wayne