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# The Safe Alternatives to Segregation Initiative: Findings and Recommendations for the Nebraska Department of Correctional Services

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## Executive Summary

In recent years, a wide range of advocates, policymakers, national and international bodies, and corrections practitioners have called for prisons and jails to reexamine their use of segregation, also known as solitary confinement or restrictive housing. Whether citing the potentially devastating psychological and physiological impacts of spending 23 hours per day alone in a cell as small as a parking space, the cost of operating such highly restrictive environments, or the lack of conclusive evidence that segregation makes correctional facilities safer, these voices agree that reform is essential.

In 2015, with funding from the U.S. Department of Justice, Bureau of Justice Assistance, the Vera Institute of Justice (Vera) partnered with the Nebraska Department of Correctional Services (NDCS) to help the department reduce its use of segregation. Vera's assistance included conducting a yearlong assessment of how Nebraska uses segregation and identifying opportunities for change and innovation. While the assessment was still ongoing, NDCS began instituting dramatic reforms. In particular, the department developed and released a comprehensive new rule on restrictive housing in July 2016, in response to the requirements of a 2015 Nebraska law (LB 598).<sup>1</sup> The rule aims to ensure that segregation is used only as a management tool of last resort, in the least restrictive manner possible, and for the least amount of time consistent with the safety and security of staff, inmates, and the facility. NDCS also recently ended the use of segregation as a disciplinary sanction for rule violations.

This report presents the findings of Vera's assessment, which come from a period prior to the enactment of these reforms but provide a useful baseline against which NDCS can measure the impact of recent and future changes. Informed by this assessment, and by a review of the new restrictive housing rule, this report provides recommendations of additional strategies for safely reducing the department's use of segregation.<sup>2</sup> It is Vera's hope that these recommendations will provide helpful guidance for NDCS to successfully build upon the promising steps it has already taken.

### Key Findings

NDCS faces numerous, interrelated challenges that have contributed to the overuse of segregation, including severe overcrowding, a shortage of corrections and mental health staff, and insufficient educational, vocational, and therapeutic programming and mental health treatment for incarcerated people. In recent years, these challenges have attracted significant attention, and NDCS and the Nebraska legislature have been working hard to address them through a series of legislative and regulatory changes, including the new restrictive housing rule.

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<sup>1</sup> NDCS, "Administrative Regulation 210.01: Restrictive Housing" (effective July 1, 2016). See Appendix III for the full text of the rule.

<sup>2</sup> For a summary of Vera's recommendations, see Appendix II.

Vera assessed the department's use of segregation before many of these recent reforms and found that during a two-year period ending June 30, 2015, the average daily population in any type of restrictive housing was 13.9 percent of the total NDCS population. To dig deeper, Vera's assessment examined the various types of segregation in use at the time and looked at differences between genders, age groups, and racial and ethnic groups.

**Disciplinary Segregation was overused, often for low-level violations, and was characterized by isolating conditions.**

Vera found that incarcerated people were often sanctioned to Disciplinary Segregation (DS) for minor rule violations. Individuals found guilty of lower-level rule violations (i.e., Class 2 and 3 violations) accounted for 91 percent of all DS sanctions given over the study period. Some of the violations that resulted in the most DS sanctions included “disobeying an order” (Class 2), “swearing, cursing, or use of abusive language or gestures” (Class 3), and “disruption” (Class 3). Nearly half of people incarcerated in NDCS facilities had experienced at least one day in either Disciplinary or Immediate Segregation.<sup>3</sup> People in these types of segregation experienced conditions of extreme isolation, idleness, and sensory deprivation.

**Administrative forms of segregation were characterized by long stays and restrictive conditions.**

Fewer incarcerated people experienced other forms of restrictive housing, including Protective Custody (PC), Administrative Confinement (AC), and Intensive Management (IM). However, those who did often spent long periods of time there. The average length of stay in AC was almost six months, in IM it was almost nine months, and in PC it was about ten months. People in AC or IM experienced conditions of extreme isolation, with little access to recreation, programming, or congregate activities. Living conditions in different Protective Custody units varied somewhat, but were generally overly restrictive and also lacked adequate access to constructive programming, recreation, and congregate activity. However, at the time of Vera's assessment, NDCS had begun reforming PC to make conditions more like general population.

**Certain groups were overrepresented in restrictive housing.**

Men were exposed to all types of segregation at higher rates than women and tended to stay in these conditions for longer durations. On an average day during the study period, almost 15 percent of men were in restrictive housing, compared to an average of 4.8 percent of women.

Echoing the fact that racial and ethnic minorities are generally overrepresented throughout the criminal justice system in the U.S., racial and ethnic minorities were disproportionately exposed to restrictive housing in Nebraska. For example, over 50 percent of Black, Hispanic,

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<sup>3</sup> See Section IV for a description of the types of segregation used by NDCS during the assessment. See p. 39 for an explanation of why DS and Immediate Segregation (IS) were counted together in this measurement.

and Native American individuals in NDCS custody had at least one day of contact with DS, IS, AC, or IM, compared to 39 percent of white people.

Additionally, younger males were overrepresented in segregation. On average about 13 percent of males under age 25 in NDCS custody were in the most restrictive types of segregation (not including PC) on any given day, compared to around 6 percent of men 25 and older.

## **Key Recommendations**

Vera recognizes the many reforms NDCS has begun implementing and offers recommendations that would further the department's efforts to safely reduce the use of segregation. The full report details numerous specific recommendations for NDCS, including:

- Support staff as they adjust to a disciplinary process that no longer includes Disciplinary Segregation as a sanction, and ensure that they have adequate alternative tools to respond to misbehavior and incentivize positive behavior;
- Identify potential unintended consequences that may arise from the elimination of Disciplinary Segregation—such as the overuse of Immediate Segregation in its place—and implement strong safeguards to protect against them;
- Enact firm policies that prohibit placing youth, pregnant women, and people with serious mental illness in any form of restrictive housing that limits meaningful access to social interaction, exercise, environmental stimulation, and therapeutic programming;
- Further strengthen procedural safeguards for placement in Longer-term Restrictive Housing (a segregation category established by the new rule), to ensure that it is truly used as a last resort, only when necessary, and for as short a time as possible;
- Improve the conditions of confinement in restrictive housing units to reduce the negative effects of segregation, including by increasing out-of-cell time and recreation, minimizing isolation and idleness, and providing opportunities for rehabilitative programming;
- Create a step-down program to encourage and facilitate successful transitions from restrictive housing to general population;
- Expand the capacity of mental health care services and ensure a therapeutic environment within Secure Mental Health Units;
- Continue to explore strategies to address staff vacancies, turnover, and burnout; and
- Expand vocational, educational, and therapeutic programming and activities for the entire population, including those in restrictive housing.

As the Nebraska Department of Correctional Services continues to move forward with its implementation of current and future reform efforts, Vera has every confidence that the department will capitalize on its own strengths, learn from its peers in the field, and use the recommendations in this report as a springboard for continuing to reduce its use of segregation and improving the lives of the men and women who live and work in Nebraska's prisons.

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# I. Introduction

Over the past several decades, U.S. corrections agencies have increasingly relied on the use of segregation—the most extreme form of confinement, also called restrictive housing or solitary confinement—as a routine strategy to manage difficult, violent, or vulnerable populations.<sup>4</sup> Recent reports estimate that between 80,000 and 100,000 people are held in such housing nationwide.<sup>5</sup> Segregation remains a mainstay of prison management despite mounting evidence pointing to the potentially devastating psychological effects on individuals placed there, the harmful safety outcomes within institutions and in the communities to which those who have been held under such severe conditions will return, and the increased expense accrued by keeping people in restrictive housing compared to the general prison population.<sup>6</sup>

As these negative impacts have come to light, concern about the overuse of segregation has grown. In response, policymakers and corrections officials have begun to examine correctional segregation practices and call for reform. In 2013 and 2016 respectively, the Association of State Correctional Administrators (ASCA) and the American Correctional Association (ACA) passed new standards and guidelines placing limits on the use of segregation.<sup>7</sup> A number of additional developments in 2016 indicate further support for reform:

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<sup>4</sup> **Note on terminology:** This report will employ interchangeably the commonly used terms segregation, solitary confinement, and restrictive housing. Though Nebraska law and regulations assert that NDCS does not utilize “solitary confinement,” its definition of the term—the confinement of someone “in an individual cell with solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons” (Neb. Rev. Stat. 83-170(14))—is not consistent with common usage, case law, or academic scholarship on solitary confinement. Generally, the term is used to mean confinement in an isolated cell (alone or with a cellmate) for an average of 22 or more hours per day, with limited human interaction or constructive activity and in an environment that ensures maximum control.

<sup>5</sup> Association of State Correctional Administrators and The Liman Program, Yale Law School, *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison* (New Haven, CT: Yale Law School, August 2015). These numbers do not include people in local jails, juvenile facilities, or immigration detention.

<sup>6</sup> For psychological effects, see Stuart Grassian, “Psychiatric effects of solitary confinement,” *Washington University Journal of Law & Policy* 22 (2006): 325; and Craig Haney, “Mental health issues in long-term solitary and ‘supermax’ confinement,” *Crime & Delinquency* 49, no. 1 (2003): 124-156. For lack of evidence of increased safety, see Natasha Frost and Carlos E. Monteiro, “Administrative Segregation in U.S. Prisons” (Washington, DC: U.S. Department of Justice, National Institute of Justice, March 2016, NCJ 249749R.M), citing Ryan Labrecque, “The Effect of Solitary Confinement on Institutional Misconduct: A Longitudinal Evaluation” (PhD diss., University of Cincinnati, 2015). About increased expense, see Daniel P. Mears and William D. Bales, “Supermax Incarceration and Recidivism,” *Criminology* 47, no. 4 (2009): 1135.

<sup>7</sup> In August 2016, the Standards Committee of the ACA voted to pass its new standards, “Restrictive Housing Performance Based Standards.” In 2012, ASCA teamed up with the Arthur Liman Public Interest Program at Yale Law School to survey directors of federal and state correctional systems on their policies regarding administrative segregation. The results of that survey were published in 2013 in the report *Administrative Segregation, Degrees of Isolation, and Incarceration: A National Overview of State and Federal Correctional Policies* (New Haven, CT: Yale Law School) and updated in 2015 with *Time-in-Cell: The Liman-ASCA 2014 National Survey of Administrative Segregation in Prison*. Additionally, in 2013, ASCA issued its “Restrictive Housing Status Policy Guidelines.”

- The U.S. Department of Justice (DOJ) published a report that called for widespread reform of restrictive housing practices in the Federal Bureau of Prisons and included guiding principles for reform that are applicable to state and local correctional systems;<sup>8</sup>
- The National Commission on Correctional Health Care issued a strong position statement calling for the elimination of isolation greater than 15 consecutive days;<sup>9</sup>
- The National Institute of Justice (NIJ) issued a meta-analysis of empirical research on administrative segregation that seriously questions whether segregation achieves any stated or intended penological goals, and whether it is a worthwhile correctional policy.<sup>10</sup>

On the international level, in 2015, the United Nations General Assembly unanimously adopted the revised Standard Minimum Rules for the Treatment of Prisoners (known as the “Mandela Rules”), which prohibit indefinite solitary confinement and prolonged solitary confinement, and support restrictions on the use of solitary confinement for juveniles, pregnant women, and people with mental or physical disabilities.<sup>11</sup> Although non-binding, the Mandela Rules represent widely accepted international principles on the treatment of incarcerated people.<sup>12</sup>

Against this backdrop, several jurisdictions have begun implementing policy changes to reduce the number of adults or juveniles held in restrictive housing, improve the conditions in restrictive housing units, and facilitate the return of segregated people to a prison’s general population. These reforms have come through agency-driven changes, by state legislation, and through legal settlements.<sup>13</sup> For example, Washington State implemented an innovative step-down program to get people out of long-term segregation, Colorado passed a law to keep people

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<sup>8</sup> U.S. Department of Justice (DOJ), *Report and Recommendations Concerning the Use of Restrictive Housing: Final Report* (Washington, DC: U.S. Department of Justice, January 2016).

<sup>9</sup> National Commission on Correctional Health Care, “Position Statement: Solitary Confinement (Isolation),” <http://www.ncchc.org/filebin/Positions/Solitary-Confinement-Isolation.pdf> (accessed June 28, 2016).

<sup>10</sup> Natasha Frost and Carlos E. Monteiro, “Administrative Segregation in U.S. Prisons” (Washington, DC: U.S. Department of Justice, National Institute of Justice, March 2016, NCJ 249749R.M).

<sup>11</sup> “Prolonged solitary confinement” is defined as confinement for over 22 hours per day without meaningful human contact for more than 15 consecutive days. United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), General Assembly Resolution 70/175, U.N. Doc. A/Res/70/175 (2015). Two U.S. corrections officials were involved in the rules’ drafting.

<sup>12</sup> These international human rights norms regarding the use of solitary confinement have been further supported by the UN Committee Against Torture, the UN Special Rapporteur on Torture, and the UN General Assembly.

<sup>13</sup> For examples of agency-led change, see Dan Pacholke and Sandy Felkey Mullins, *More than Emptying Beds: A Systems Approach to Segregation Reform* (Washington DC: Bureau of Justice Assistance, 2016); Rick Raemisch and Kellie Wasco, *Open the Door: Segregation Reforms in Colorado* (Colorado Department of Corrections, 2015); and Barbara Pierce Parker and Michael Kane, *Reshaping Restrictive Housing at the South Dakota State Penitentiary* (Boston, MA: Crime and Justice Institute, December 2015). For examples of legislative reform, see New Jersey S 2003 (2015); New York Correction Law § 137 (6)(d)(i); Colorado SB 11-176 (2011), SB 14-064 (2014), and H1328 (2016); Nebraska LB 598 (2015); Connecticut SB 75 (2016); and Texas HB 1083 (2015). For legal settlements, see *Ashker v. Governor of California*, Settlement Agreement C 09-05796 CW (N.D. California, 2015); and *Peoples v. Annucci*, 2016 U.S. Dist. LEXIS 43556 (S.D.N.Y., Mar. 31, 2016).



with serious mental illness from being placed in long-term segregation, and California entered into a landmark settlement that ended indeterminate segregation.<sup>14</sup>

Building upon the growing interest in segregation reform, the Vera Institute of Justice (Vera) developed the Segregation Reduction Project in 2010 and, in 2015, expanded this work with the Safe Alternatives to Segregation (SAS) Initiative. Through this initiative, Vera partnered with the Nebraska Department of Correctional Services (NDCS) in 2015 to assess the department's use of restrictive housing and provide recommendations to safely reduce its use.<sup>15</sup>

## Impetus for Reform in Nebraska

### The Nikko Jenkins Case

In 2013, Nikko Jenkins—a troubled individual with mental illness, a history of self-harm, and significant exposure to incarceration, including solitary confinement—was released directly from a restrictive housing unit into the community, despite his requests for mental health treatment and transfer to a civil psychiatric facility. Shortly after his release, Jenkins killed four people.<sup>16</sup> This tragedy has had a dramatic and lasting impact on NDCS and the politics of criminal justice in Nebraska. The case garnered intensive media coverage, leading to scrutiny by the general public and the Nebraska legislature. As a result, significant legislation was passed addressing prison reform and the use of restrictive housing in Nebraska, and NDCS has begun reforming their use of restrictive housing. (For more on these reforms, see Section VI below.)

### Legislation

Prison reform has been in the public spotlight and an area of focus for Nebraska lawmakers over the past few years. Following the release of major reports from the Department of Correctional Services Special Investigative Committee and the Justice Reinvestment Working Group, the Nebraska legislature enacted multiple bills in 2015 aimed at reducing prison overcrowding, addressing issues sparked by the Jenkins tragedy, and limiting the use of restrictive housing.<sup>17</sup>

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<sup>14</sup> Pacholke and Felkey Mullins, *More than Emptying Beds*, 2016; Colorado SB 14-064 (2014); *Ashker v. Governor of California* (this settlement also prevents affiliated gang members from being held in segregation based on affiliation alone).

<sup>15</sup> Vera is also working with North Carolina, Oregon, New York City, NY, and Middlesex County, NJ.

<sup>16</sup> For more information on this case, see "Nikko Jenkins' pleas for help stymied," *Omaha World-Herald*, September 15, 2013; and Paul Hammel, "Nikko Jenkins case raises red flag on use of solitary as punishment," *Omaha World-Herald*, November 10, 2014.

<sup>17</sup> Five bills (LR 34, LB 606, LB 592, LB 598, and LB 605) make up the core of the solutions enacted in 2015. Other bills (LB 172, LB 173 and LB 237) add to them. The bills seek to update the state's prison code, create an inspector general for corrections, and address mental health treatment, Parole Board independence, mandatory minimum and habitual criminal sentences, and solitary confinement practices. LB 605 was passed as part of Nebraska's Justice Reinvestment Initiative, and is expected to reduce the projected increase in the prison population (though not eliminate overcrowding).

Importantly, one of the bills passed in 2015 was LB 598, which was intended to significantly reduce the use of segregation by NDCS. The law mandates that no person “shall be held in restrictive housing unless done in the least restrictive manner consistent with maintaining order in the facility and pursuant to rules and regulations adopted and promulgated by the department.”<sup>18</sup> It explicitly required NDCS to develop new rules and regulations detailing a plan to reduce the use of segregation (by requiring the use of the least restrictive form of segregation consistent with institutional security, establishing levels of confinement, creating individualized transition plans, and putting limits on placing mentally ill inmates in restrictive housing). The law also created new reporting requirements and mechanisms for oversight of the department.

## Reforms by the Department

In 2014, NDCS created an internal restrictive housing work group and began a wholesale reconsideration of its use of restrictive housing and access to mental health treatment for individuals in segregation. In February 2015, Scott Frakes was appointed as the new NDCS director to “chart a new course for the department.”<sup>19</sup> Under Director Frakes’ leadership, the department has designed and begun implementation of significant reforms to the use of restrictive housing, amidst many challenging circumstances.<sup>20</sup>

In response to the requirements of LB 598, Director Frakes oversaw the development of a comprehensive new rule overhauling the use of restrictive housing, which was finalized in July 2016.<sup>21</sup> Among other things, the rule allows “Longer-term Restrictive Housing” only for people

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<sup>18</sup> Nebraska LB 598 (2015), p. 29. For more information and the text of LB 598, see [http://www.nebraskalegislature.gov/bills/view\\_bill.php?DocumentID=25416](http://www.nebraskalegislature.gov/bills/view_bill.php?DocumentID=25416) (accessed October 6, 2016).

<sup>19</sup> JoAnne Young, “Ricketts names Washington man as prisons director,” *Lincoln Journal Star*, January 20, 2015. Director Frakes has experience in, and is committed to, the concept of restrictive housing reform, having partnered with Vera and Disability Rights Washington to oversee restrictive housing reform in the Washington Department of Corrections, where he previously served. The goals of this initiative were very similar to Nebraska’s objectives for the SAS Initiative: to reduce the use of restrictive housing, to reduce the release of inmates from restrictive housing directly to the community, and to develop alternatives to restrictive housing for mentally ill individuals. This partnership ultimately reduced the restrictive housing population in Washington by 35 percent and created safe classrooms for the delivery of programming in maximum custody.

<sup>20</sup> The Jenkins case also prompted NDCS to improve discharge planning for everyone preparing to transition back to the community, especially for those who recently spent time in restrictive housing. NDCS reentry specialists now work closely with social work staff to line up transportation, transitional living, and medical appointments. Nebraska currently has a shortage of community resources available to individuals leaving correctional facilities. It is nevertheless promising that NDCS is increasingly thinking about what happens to these individuals after they leave prison. Additionally, currently about 40 percent of people in Nebraska prisons “max out” their sentence, meaning they return to the community without any post-prison supervision. Some of the recent legislation noted above aims to increase the number of people released on parole or under mandatory post-release supervision, to better monitor and support their transition to the community.

<sup>21</sup> NDCS, “Administrative Regulation 210.01: Restrictive Housing” (effective July 1, 2016), <http://www.corrections.nebraska.gov/pdf/ar/classification/AR%20210.01.pdf> (accessed September 16, 2016).

who cannot be safely housed in the general population, establishes protocols for diverting people with serious mental illness to alternative placements, and eliminates the use of Disciplinary Segregation as a sanction for infractions. More details of the new rule are discussed in Section VI below.

## II. The Assessment Process

Between May 2015 and July 2016, the Vera Institute of Justice (Vera), in partnership with the Nebraska Department of Correctional Services (NDCS), conducted an assessment of the use of various types of segregation in the state’s prison facilities. The assessment included three components:

- 1) Analysis of all relevant policies and procedures;
- 2) Site visits to key facilities, including in-depth meetings with staff and leadership, focus groups, and tours; and
- 3) Detailed analysis of administrative data provided by NDCS.

The Vera team visited Lincoln Correctional Center (LCC), Nebraska Correctional Center for Women (NCCW), Nebraska Correctional Youth Facility (NCYF), Nebraska State Penitentiary (NSP), Omaha Correctional Center (OCC), and Tecumseh State Correctional Institution (TSCI).<sup>22</sup> At each facility, Vera conducted an informational meeting with the facility warden and a variety of administrative officials, corrections officers, other security personnel, medical and mental health staff, and program staff. These meetings allowed the assessment team to learn how segregation is used at each facility—including disciplinary practices, decision points for placement in segregation, use of alternatives to segregation, procedures for administrative segregation, use of protective custody and other types of special housing, services provided for segregated populations, and practices for release from segregation to the general prison population or the community. The assessment team also gained an understanding of each facility’s overall population, day-to-day operations, and challenges related to the use of segregation. Vera also conducted a series of focus groups at NSP and TSCI on topics related to restrictive housing—with security staff, with program staff, and with incarcerated people.

### Analyzing Administrative Data

Vera researchers aimed to understand the facility-level, unit-level, and personal impact of the use of restrictive housing. To do so, Vera research staff analyzed data on all people in NDCS custody during the study period of July 1, 2013 to June 30, 2015 (FY 2014 and FY 2015). Some analyses cover all people that were in NDCS custody at any point during the entire 24-month period, and others present results showing contact with restrictive housing for the average month, or the average daily population in segregation for the entire period. The study cohort included 3,054 people in NDCS custody for the entire two years, plus 7,400 other people that

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<sup>22</sup> See Appendix I for an overview of all NDCS facilities. The team consulted with staff from the Diagnostic and Evaluation Center (DEC) but did not tour that facility, as it does not have any restrictive housing and instead uses the segregation cells at LCC. Vera staff did not visit the Work Ethic Camp or the two community corrections facilities, which do not have restrictive housing.

were in NDCS custody for only part of the time period, who filled the remaining 2,300 beds. Where available, Vera also received historical information predating FY 2014 and 2015 for each of these people, enabling researchers to estimate prior experiences in restrictive housing even for people who did not spend time in such housing during the study period.

The administrative data tables used for Vera’s analysis included the following:

- Misconduct Report Reporting System
- Segregation History
- Location History or Movement Files
- Demographic, Offense, and Sentence Information
- Grievances
- Central Monitoring
- Transition Confinement (obsolete category, not currently used)

## Addressing Data Limitations

While the data provided was informative and allowed Vera to reach the findings included in this report, it did not allow us to answer all of our research questions about the use of restrictive housing. Some important information was not included in the NDCS data, and some important information that was collected has known errors that could not be fixed with any certainty.

For example, the data did not provide the reasons why people were placed in Administrative Confinement or Protective Custody (two specific types of restrictive housing). Nor was there information on mental health treatment or status or Security Threat Group (gang) status. While Vera researchers found some information about mental health in certain review notes, it was only mentioned sporadically and was not monitored in a consistent way that would allow researchers to draw conclusions about the prevalence of mental illness or treatment provided. Also, in part due to overcrowding in NDCS facilities, 750 people spent part of their prison sentence in local county jails during the two-year study period. We have no data on whether these people were placed in restrictive housing while in county jails.

It also appears that there were errors in data on the disciplinary process. For example, one individual had an initial misconduct report coded as having only resulted in the sanction of a verbal warning, but a second misconduct report showed a disciplinary hearing that referenced extra duty as a sanction for the *first* misconduct. These kinds of data entry or recording errors leave some measure of uncertainty in our analysis of the disciplinary process and use of Disciplinary Segregation. Furthermore, sentences to Disciplinary Segregation from misconduct hearings cannot be linked to actual time served in DS with 100 percent confidence.

Another known error in the data is that the segregation history database—which was designed for operational purposes only—was not updated in a consistent way at every facility and in every housing unit. In some cases, unit staff directly updated computerized records, and in other cases, records staff updated computer records after paper forms were filed. Vera

researchers noticed that some records were not updated consistently as a person’s status changed from one form of segregation to another (such as going from Immediate Segregation to Disciplinary Segregation (DS), or DS to Administrative Confinement). In 2015, a Research Administrator with NDCS also noted inconsistencies in the data that were shared with Vera; for example, records showed some incarcerated people having been held on a certain status for longer than protocols allowed because:

- Records were never closed out;
- Some individuals possessed incompatible overlapping records, such as Administrative Confinement and Intensive Management;<sup>23</sup> or
- Incarcerated people had multiple records for the same status at the same time.<sup>24</sup>

In order to address some of the problems with the quality of segregation status data and make estimates more internally consistent and reliable, Vera researchers clustered the various types of segregation statuses into just two types of segregation: “highly restrictive housing” and “less restrictive housing.”

- The “highly restrictive” category includes Administrative Confinement (AC), Disciplinary Segregation (DS), Immediate Segregation (IS), Intensive Management (IM), and Transition Confinement (TC, although this status was no longer used). During the study period, these types of highly restrictive housing were operated in ways that resemble what is commonly called solitary confinement, with people confined in-cell for around 23 hours per day, often in specialized units built for maximum control.
- The “less restrictive” category includes Protective Custody (PC) and Death Row (DR), restrictive housing types that limited movement and out-of-cell time but did not generally keep individuals in-cell for 23 hours per day.

From an operational standpoint, records would likely have been more consistently updated when someone was moved from a “highly restrictive” segregation status like Disciplinary Segregation to a “less restrictive” housing status like Protective Custody, or to the general population. These kinds of changes were more likely to be updated because they were almost always moves between different housing units. In contrast, it appears that a person could technically move from statuses like Immediate Segregation to Disciplinary Segregation to Administrative Confinement but stay in the same cell, on the same unit—making it less likely that these changes were always properly recorded; therefore, they may not always be reflected in the data. Dividing the data between highly restrictive and less restrictive housing also allowed us to group together segregation types with substantially similar conditions. The differences in

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<sup>23</sup> Administrative Confinement and Intensive Management are two different types of administrative segregation. For information on the various types of segregation in NDCS, see Section IV.

<sup>24</sup> Email correspondence between Vera and NDCS research staff. NDCS researchers have worked with records staff and housing unit staff to begin addressing these problems. Further efforts to standardize data entry and upkeep consistent policy across all units and facilities would improve future data analysis.

living conditions between general population housing and highly restrictive housing were very large; the differences among the various highly restrictive statuses were relatively small.

Finally, it is important to reiterate that the data analyzed were collected between July 1, 2013 and June 30, 2015. NDCS has made significant policy and practice changes regarding segregation in recent years; some of these changes began during the study period but were still in their infancy, while others did not occur until after June 30, 2015. The findings presented in this report do not reflect any impacts these reforms have had since the end of the study period (June 30, 2015). They do, however, provide a useful baseline against which NDCS can measure the effects of recent and future reforms.

### III. Background and System-wide Findings

A range of problems currently plague the prison system in Nebraska and jeopardize the health and safety of incarcerated people and correctional staff. In recent years, these challenges have attracted significant attention from media outlets and advocacy organizations, prompting lawmakers and NDCS to pursue a series of legislative and regulatory changes that seek to reduce overcrowding, address staffing challenges, and remedy poor living and working conditions in the state's correctional facilities—all problems which have contributed to the overuse of solitary confinement. Ending the excessive use of segregation is therefore a major element of these reforms.

#### **Overcrowding and Living Conditions**

Over the last few years, the Nebraska prison system has been on the brink of litigation over conditions of confinement due to overcrowding.<sup>25</sup> Many of the problems with living conditions, access to programming and treatment, and overuse of segregation stem from overcrowding. Nebraska has one of the most severely overcrowded prison systems in the United States.<sup>26</sup> Problems arise when the size of a prison population spikes without commensurate increases in physical infrastructure, staffing, programming, and medical and mental health resources. A vast body of research has documented the various ways that prison overcrowding adversely affects the health, behavior, and morale of incarcerated people and creates managerial problems and occupational health hazards for correctional staff. For instance, overcrowded prison conditions

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<sup>25</sup> In 2014, the Nebraska chapter of the American Civil Liberties Union (ACLU) released a report articulating a legal rationale for how severe overcrowding, substandard healthcare, violence, idleness, lack of opportunities for physical exercise, incessant exposure to cacophonous noise in housing units, poor ventilation, and the placement of people with mental illness in solitary confinement violate the constitutional prohibition against cruel and unusual punishment and other federal laws. A year later, the ACLU formed a litigation advisory committee responsible for finding legal remedies for harmful conditions of confinement for individuals and classes of prisoners in Nebraska. This team of litigators began compiling grievances of people who reported being denied access to healthcare or rehabilitative programming, being assaulted, or being unfairly placed in solitary confinement. Another legal advocacy organization, Disability Rights Nebraska, also released a report in 2014 outlining similar problems within NDCS, including the impacts of solitary confinement practices on people with disabilities, inadequate mental health treatment, insufficient reentry and discharge planning, and lack of healthcare and other community supports upon returning to society. See Joel Donahue, Amy Miller, and Alan Peterson, *The Tipping Point: Have Nebraska's Prisons Crossed into Unconstitutional Territory?* (American Civil Liberties Union of Nebraska, March 2014); American Civil Liberties Union of Nebraska, "ACLU of Nebraska Announces Prison Litigation Advisory Panel," press release (ACLU of Nebraska, February 12, 2015); and Brad Meurrens and Jesse Hochheiser, *Selected Issues in Mental Health and Corrections: A Collection and Summary of Research* (Disability Rights Nebraska, 2014).

<sup>26</sup> Overcrowding in prisons is measured by the extent to which a facility or prison system houses more prisoners than its infrastructure can humanely accommodate. The custody population in Nebraska was at 127.7 percent of its highest capacity rating—and 159.6 percent of its lowest capacity rating—on December 31, 2014. Both scores ranked fourth highest among U.S. states. See E. Ann Carson, "Prisoners in 2014" (Washington, DC: U.S. Department of Justice, Bureau of Justice Statistics, September 2015, NCJ 248955), p. 12, Table 8.



are associated with measurable increases in the blood pressure of incarcerated people, greater frequencies of medical encounters, psychological stress, increased risk of self-injurious behavior and suicide, and incidents of violence.<sup>27</sup>

NDCS has been operating at almost 160 percent capacity in recent years.<sup>28</sup> Except for the Nebraska Correctional Youth Facility (NCYF), every NDCS facility is operating above its design capacity, including the facilities with the highest concentrations of people confined in restrictive housing settings.<sup>29</sup> The lack of adequate bed space limits the ability of NDCS to appropriately place people according to their individual risks and needs, and it stretches thin staff time and programmatic resources.

For example, the Vera team heard about many overcrowding-related challenges during our visits to the Nebraska State Penitentiary (NSP). Although people in NDCS custody are classified into three categories—minimum, medium, or maximum custody—and are then meant to be housed in correlating units with appropriate levels of security, Vera heard that there is no functional difference in living conditions and privileges between medium and maximum custody status, perhaps due to lack of bed space and staffing shortages. Furthermore, Vera learned that people sometimes view being classified to minimum security as disadvantageous, because minimum security housing units are large, dorm-style rooms with numerous bunk beds, and are extremely crowded and loud, while maximum/medium units typically consist of two-person cells. Staff reported that this can decrease the incentive for incarcerated people to behave in order to be classified to minimum custody, and people will sometimes even commit disciplinary violations to escape the overcrowded minimum-security areas. Additionally, due to staffing and space availability, NSP has had to override classifications for many individuals, so that some

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<sup>27</sup> Craig Haney, "The Wages of Prison Overcrowding: Harmful Psychological Consequences and Dysfunctional Correctional Reactions," *Washington University Journal of Law & Policy* 22 (2006): 265; Paul B. Paulus, Garvin McCain, and Verne C. Cox, "Death rates, psychiatric commitments, blood pressure, and perceived crowding as a function of institutional crowding," *Environmental Psychology and Nonverbal Behavior* 3, no. 2 (1978): 107-116; and Garvin McCain, Verne C. Cox, and Paul B. Paulus, "The Relationship between Illness Complaints and Degree of Crowding in a Prison Environment," *Environment and Behavior* 8, no. 2 (1976): 283-290.

<sup>28</sup> NDCS operates 10 prisons with a design capacity of 3,275 people. In April-June 2015, NDCS was at 159.32 percent capacity (with 5,186 incarcerated people), and in April-June 2016 it was at 158.35 percent capacity (with 5,217 people). Nebraska Department of Correctional Services, "NDCS Quarterly Data Sheet, April-June 2016," <http://www.corrections.nebraska.gov/pdf/datasheets/2016/Datasheet%202016%202nd%20Qtr.pdf> (accessed September 16, 2016).

<sup>29</sup> The population of the Nebraska State Penitentiary (NSP), the second-largest prison in the state, is at nearly double its design capacity of 718 beds. This facility has multiple restrictive housing units, including a 36-bed control unit and 60 beds for Administrative Confinement and Disciplinary Segregation. The Tecumseh State Correctional Institution (TSCI) has a design capacity of 960 beds, but it houses over 1,040 people. Most of Nebraska's restrictive housing beds, including a 192-bed Special Management Unit (SMU), are located at TSCI. The Lincoln Correctional Center (LCC), a facility that is increasingly becoming a focal point for housing people with serious mental illnesses, has a design capacity of 308 beds but holds over 500 people. The Nebraska Correctional Center for Women (NCCW) is also overcrowded, at 125 percent of capacity. Nebraska Department of Correctional Services, "Datashet: August 31, 2015," <http://www.corrections.nebraska.gov/pdf/datasheets/2015/datasheetAug15.pdf> (accessed September 16, 2016). See Appendix I for more information on each facility and their levels of overcrowding.

minimum custody individuals are housed in medium-custody environments.

Overcrowding has also led to some restrictive housing units being double-celled, meaning two people are confined together in a very small cell for upwards of 22 hours per day. While there is little research on the effects of this practice, some journalists and advocates have noted that double-celling in segregation can have dangerous consequences.<sup>30</sup>

In addition to having adverse effects on the living conditions of incarcerated people, severe overcrowding negatively impacts the work environment for staff, creating additional work, stress, and occupational health hazards. In focus groups and meetings, for example, we heard that some staff at NSP reportedly want to avoid working posts in the minimum security housing units due to the crowding, noise, and constant activity.

Thus severe overcrowding underpins many of the harmful living and working conditions in Nebraska's prisons, contributing to the excessive use of segregation.

## **Staffing and Workforce Challenges**

In recent years, NDCS has experienced serious challenges in sufficiently recruiting, training, and retaining correctional officers, mental health providers, and other staff. Coupled with overcrowding, staffing challenges impede the ability of the NDCS workforce to manage and meet the needs of the population, and therefore contribute to an overreliance on restrictive housing.

### *Staff Shortages*

Understaffing and frequent staff turnover at NDCS are likely due to a number of factors, including the location of some facilities far from population centers, a pay structure that is uncompetitive and does not reward longevity, and stressful and perilous work environments due to overcrowding and lack of resources.<sup>31</sup> This results in an increased workload, even for newer, less experienced staff. It has also led to the frequent use of mandatory overtime, which correctional officers told Vera can negatively affect staff morale and lead to increased attrition. Employees become frustrated with overtime, which increases workplace stress and interferes with their personal lives, and often seek occupations with more set schedules elsewhere.

In addition to frustration from custody staff, Vera also heard that people hired as caseworkers were often surprised to find that their actual job duties were similar to custody

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<sup>30</sup> For example, see Christie Thompson and Joe Shapiro, "The Deadly Consequences of Solitary with a Cellmate," *The Marshall Project*, March 24, 2016, <https://www.themarshallproject.org/2016/03/24/the-deadly-consequences-of-solitary-with-a-cellmate> (accessed September 16, 2016).

<sup>31</sup> These observations are based on statements made by staff during site visit meetings and focus groups. See also JoAnne Young, "Prisons Will Begin Staffing Pilot Projects at Tecumseh, Nebraska State Penitentiary," *Lincoln Journal Star*, July 19, 2016; and Nebraska Administrative Services, "Memorandum: NDCS Culture Study Qualitative Responses" (June 1, 2016), <http://www.corrections.nebraska.gov/pdf/NDCS%20Culture%20Study%20-%20Part%202.pdf> (accessed September 16, 2016).

staff, partly due to custody staff shortages. They reported dissatisfaction with their inability to run therapeutic programs, provide social services, and proactively engage people in programming and productive activities; instead, they spend much of their time escorting incarcerated people, managing counts, and responding to grievances. This likely contributes to high turnover of caseworkers as well, which negatively impacts facility functioning, staff morale, and institutional knowledge. Incarcerated people also told Vera that they feel that correctional staff are treated poorly and that they wish case managers had more opportunities to facilitate programs and build rapport with the population.

Staffing vacancies have been particularly problematic in facilities that use restrictive housing the most. At the time of Vera's site visit to TSCI, for example, there were approximately 40 vacant positions. Challenges recruiting staff at this facility are partially attributable to its remote location. It is common for staff to start out at TSCI and then transfer to a facility in Omaha or Lincoln, closer to where they reside. Still, at NSP at the time of Vera's site visit, there were more than 30 vacancies for custody staff and 11 vacancies for case management positions; there were around 12 custody vacancies at LCC (NSP and LCC are both located in Lincoln).

Several facilities also lack an adequate mental health workforce, and correctional officers without proper training are often left to respond to people with mental health needs. For example, at the time of Vera's visit, TSCI had only one licensed mental health practitioner and two provisional practitioners, with one in training. There have been instances where only one mental health staffer was available to be on-call at TSCI. Vera learned that it was common for recently hired mental health staff to leave the department for higher paying positions once they are fully licensed. Understaffing and high turnover reduce the department's ability to provide needed mental health services, heighten the risk of disruptions to treatment or failure to meet the needs of individuals, and add stress to staff that may have multiple competing responsibilities.

Finally, Vera heard from NDCS staff and administration that morale has been negatively affected by the perception that the department is being heavily scrutinized and criticized in the current political environment. This is likely a result of several recent high-profile incidents involving prisoners that were under NDCS control, which triggered ongoing media attention, public scrutiny, and legislative action to reform the prison system.<sup>32</sup> Lower morale may contribute to workplace stress and the eventual attrition of staff.

### *Training Challenges*

Another challenge Vera heard of is that newly hired corrections officers often start the job without adequate knowledge and skills to respond to the complex needs and challenges of the prison population. Currently, new recruits spend only five weeks of training at the academy, followed by an additional week in a facility under a field training officer. Vera heard from staff

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<sup>32</sup> One such incident is the case of Nikko Jenkins, described in Section I, above. Another is the disturbance at TSCI, explained below.

on site visits and in focus groups that the academy does not provide enough training on critical topics, including crisis de-escalation and mental health. Managers and staff both expressed a desire for staff to receive more training in the academy and in the field before starting their jobs.

Furthermore, staff shortages also make it very difficult for current staff to attend or lead much-needed trainings on top of completing their job duties. For example, at LCC, the recent shift to house more individuals with mental health needs at that institution has led to new challenges for custody staff. Mental health staff there created a daylong training module on mental health issues for correctional officers, but they found it difficult to find time to train everyone due to the low staffing levels. Vera also heard that staff are reluctant to work in the restrictive housing Control Unit at LCC, due to unpleasant conditions and worries over assaults by individuals with severe mental health needs. This often results in temporary staff fill-ins on that unit, which leads to inconsistency of supervision and treatment, and therefore a more hostile environment within one of the most difficult housing units.

NDCS leadership, staff, and incarcerated people all expressed serious concerns about these staffing challenges, and the department has been working hard to address them. NDCS commissioned a study of the department's organizational culture to better understand staff's views and to develop solutions. The study's results were derived from responses from 471 of the total 2,200 department employees. Its findings are consistent with Vera's observations during site visits and focus groups: compensation, occupational safety, and communication from leaders were cited as major problems within the agency's culture.<sup>33</sup> This year, NDCS secured \$1.5 million in funding to develop strategies for retaining quality correctional officers and other staff, of which \$150,000 was intended for healthcare personnel.<sup>34</sup> This is a promising step, but more will be needed to address these staffing challenges.

### **Lack of Adequate Programming**

There is a lack of sufficient educational, vocational, and therapeutic programming available to individuals in NDCS custody, which can lead to idleness and tension between incarcerated people and staff and therefore contribute to the use of segregation. Nearly everyone that we interviewed—correctional officers, mental health staff, and incarcerated people—noted a significant dearth of constructive programming in most facilities and expressed a strong desire for additional education, vocational training, and therapeutic programs to combat idleness, productively engage incarcerated people, and improve relationships between the incarcerated population and correctional officers. According to caseworkers, a lack of resources and limited space due to overcrowding create significant barriers to providing additional programs.

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<sup>33</sup> Nebraska Administrative Services, "Memorandum: NDCS Culture Study Qualitative Responses," (June 1, 2016).

<sup>34</sup> JoAnne Young, "Prisons will use \$1.5 million for professional staff development," *Lincoln Journal-Star*, June 15, 2016.

Incarcerated individuals expressed a strong desire to earn educational credentials and receive basic life skills training, such as technology and computer courses. Case managers and custody officers viewed additional programming as potential positive reinforcements to incentivize good behavior. Mental health program staff voiced an interest in implementing additional dialectical behavioral therapy (DBT), which requires resources to support a staff-intensive, clinical team of professionals in order to be effective.

The information Vera collected during interviews and site visits is corroborated in a report released in 2016 by the Council of State Governments Justice Center. In part, this report found that the department offers positive rehabilitative programming but lacks a sufficient workforce and overall capacity to deliver it in a timely manner, and it does not have established protocols for conducting assessments commonly used to link people to services tailored to their needs.<sup>35</sup>

## **Disturbance at Tecumseh State Correctional Institution**

In May 2015, the Tecumseh State Correctional Institution (TSCI) experienced a large riot that resulted in the deaths of two incarcerated people and hundreds of thousands of dollars worth of damage to the facility.<sup>36</sup> The Nebraska Ombudsman's office issued a report on the disturbance, which noted that a list of grievances written by people incarcerated at TSCI included segregation at the top of the list.<sup>37</sup> These individuals also expressed frustration with pernicious overcrowding, lack of access to vocational training and recreational activities, and the growing number of inexperienced corrections officers that had been hired to fill staffing vacancies.<sup>38</sup> A Critical Incident Report was also produced by an external expert in prison security, supported by a team of Nebraska corrections officials from facilities other than TSCI. The report acknowledged problems with idleness and other living conditions as contributing factors to the disturbance; in contrast to the Ombudsman's report, however, the Critical Incident Report did not explicitly identify excessive use of segregation as a factor.<sup>39</sup>

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<sup>35</sup> Bree Derrick, Sara Friedman, and Jennifer Kisela, *Findings of the Justice Program Assessment of Nebraska's Prisons* (Council of State Governments Justice Center, June 21, 2016).

<sup>36</sup> See Paul Hammel and Joe Duggan, "After deadly prison riot in Tecumseh, some blame understaffing, others overcrowding," *Omaha World-Herald*, May 11, 2015; Paul Hammel and Joe Duggan, "Tecumseh prison riot damage exceeds early estimates, pegged at \$350,000 to \$500,000," *Omaha World-Herald*, May 15, 2015.

<sup>37</sup> The grievance stated that "administration and staff are intentionally and arbitrarily" placing people in segregation, which results in them losing their jobs, housing assignments, and recreation privileges on the yard. See Nebraska Ombudsman's Office, *Ombudsman's Report: The Mother's Day Riot at the Tecumseh State Correctional Institution, May 10, 2015* (October 20, 2015); see also JoAnne Young, "Ombudsman: Tecumseh riot had reasons," *Lincoln Journal Star*, November 3, 2015.

<sup>38</sup> Nebraska Ombudsman's Office, 2015, p. 5.

<sup>39</sup> Critical Incident Review Team, "Nebraska Department of Correctional Services Tecumseh State Correctional Institution: Critical Incident Review of the Events Surrounding the Inmate Disturbance on May 10-11, 2015" (June 2015), <http://media.jrn.com/documents/Tecumseh-critical-incident-review.pdf> (accessed October 28, 2016).

The disturbance at TSCI underscored inadequacies in conditions, programming, staffing, and training, further emphasizing the need for improvements and reform in these areas.

## **Mental Health Care**

Like many states, Nebraska is experiencing the deleterious effects that often result from having an under-resourced or inaccessible community mental health system, overcrowded prisons, and a dearth of diversion programs along the justice continuum to steer people with behavioral health needs to community-based care and social services instead of imprisonment. During Vera's site visits and focus groups, numerous stakeholders lamented how Nebraska's prisons must operate as an ill-equipped provider of psychiatric services. While Vera was unable to access data on the prevalence of mental health needs in Nebraska, various national estimates show that the rates of serious mental illnesses are at least two to four times higher among people in state prisons than in the general community.<sup>40</sup>

Vera heard staff and incarcerated people express dissatisfaction with the quality of counseling and other behavioral health services offered in NDCS facilities. When correctional facilities lack access to a sufficient number of psychiatrists, nurses, and other mental health professionals, people with profound mental health needs are often medicated and secluded, with minimal opportunities for counseling and treatment.<sup>41</sup> Some NDCS corrections officers, mental health providers, and incarcerated people described how people with serious psychiatric health issues frequently end up in restrictive housing, where they often decompensate. The narratives Vera heard on our visits comport with themes found in public testimonies during legislative sessions and prior reports from other organizations.

The shortage of mental health treatment is partly due to the department's ongoing challenges with hiring and retaining mental health professionals, resulting from uncompetitive compensation, a stressful work environment, and a lack of resources to deliver appropriate levels of care to meet the needs of patients. Furthermore, at the Nebraska Correctional Center for Women, mental health staff expressed a strong need for treatment tailored to the needs of incarcerated women; much of the existing treatment is based on programming delivered at the men's correctional facilities, and may not be appropriate for the female population.

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<sup>40</sup> Theodore Hammett, Cheryl Roberts, and Sofia Kennedy, "Health-Related Issues in Prisoner Reentry," *Crime & Delinquency* 47, no. 3 (2001): 390-409.

<sup>41</sup> See, for example, Michael K. Champion, "Commentary: Seclusion and Restraint in Corrections—A Time for Change," *Journal of the American Academy of Psychiatry and the Law Online* 35, no. 4 (2007): 426-430; Paul S. Appelbaum, "Law & Psychiatry: Lost in the Crowd: Prison Mental Health Care, Overcrowding, and the Courts," *Psychiatric Services* 62, no. 10 (2011): 1121-1123.



## IV. Segregation in NDCS at the Time of the Assessment

As noted above, NDCS developed a comprehensive new rule overhauling its use of restrictive housing, which went into effect in July 2016.<sup>42</sup> More details of the new rule are discussed in Section VI below. This section briefly describes the various types of segregation used by NDCS at the time of Vera's assessment.<sup>43</sup>

**Immediate Segregation (IS):** IS was the “immediate confinement of an inmate to protect staff, other inmate(s), or the inmate being confined, or to maintain the security, management, and control of the institution pending a classification or disciplinary action and/or investigation.” A warden or designee could order an incarcerated person placed in IS, and a review then had to be completed by a Unit Classification Committee (UCC) within 72 hours. IS could not last longer than 30 continuous days after this 72-hour review.

**Disciplinary Segregation (DS):** DS was the “temporary confinement of an inmate after being found guilty of a violation of the Code of Offenses by a disciplinary committee.” An individual found guilty of a major infraction could be sentenced to DS after a disciplinary hearing in front of an Institutional Disciplinary Committee (IDC). DS could be imposed up to 30 days for a Class 3 offense (the lowest level of infraction), up to 45 days for a Class 2 offense, and up to 60 days for a Class 1 offense. The maximum DS sanction for any one disciplinary incident was 60 days.<sup>44</sup>

There were multiple types of restrictive housing used to remove an incarcerated individual from the general population for an indefinite period of time, in order to “maintain order and security within the institution.” These included:

- **Administrative Confinement (AC):** “The confinement of an inmate to maintain the safety, security, and good order of the institution.”
- **Intensive Management (IM):** “The confinement of an inmate when the inmate's behavior presents a high risk of physical danger to anyone with whom the inmate comes into contact.” IM cells, located at TSCI, were NDCS's most secure and restrictive cells.

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<sup>42</sup> NDCS, “Administrative Regulation 210.01: Restrictive Housing” (effective July 1, 2016).

<sup>43</sup> Vera performed the assessment from May 2015 to May 2016. Analysis was performed on data dating from July 1, 2013 to June 30, 2015. All information on NDCS policy in this section, except where otherwise noted, is from NDCS, “Administrative Regulation 201.05: Inmate Classification and Assignment – Special Management Inmates” (effective March 1, 1980), <http://www.corrections.nebraska.gov/pdf/ar/classification/AR%20201.05.pdf> (accessed September 16, 2016).

<sup>44</sup> See NDCS, “Administrative Regulation 217.01: Inmate Rules and Discipline” (effective March 1, 1989), <http://www.corrections.nebraska.gov/pdf/ar/rights/AR%20217.01.pdf> (accessed September 16, 2016); and Nebraska Administrative Code, Title 68 – Department of Correctional Services, Chapters 5 and 6, [http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Correctional\\_Services\\_Dept\\_of/Title-68\\_Inmate\\_Rules\\_and\\_Regulations.pdf](http://www.sos.ne.gov/rules-and-regs/regsearch/Rules/Correctional_Services_Dept_of/Title-68_Inmate_Rules_and_Regulations.pdf) (accessed September 16, 2016).

- **Protective Custody (PC):** “The confinement of an inmate for an indefinite period of time to protect the inmate from real or perceived threat of harm by others.” Placement in PC could be voluntary or involuntary on the part of the incarcerated person.<sup>45</sup>

Placement in Administrative Confinement, Intensive Management, and involuntary Protective Custody required a classification action, which was initiated by a Unit Classification Committee (UCC) at the unit level, reviewed by an Institutional Classification Committee at the facility level, and approved by the facility warden. The UCC would review an individual’s continuation in restrictive housing at least every 6 months. In addition, a Restrictive Housing Review Board heard any appeals of wardens’ decisions to place individuals in restrictive housing and also reviewed individuals in AC, IM, or involuntary PC after 45 days.

Other types of segregation were limited to specific, relatively rare circumstances:

- **Death Row (DR):** “The confinement of inmates sentenced to the death penalty.” There were 11 individuals on Death Row at the time of Vera’s assessment.
- **Court Imposed Segregation (CI):** “The temporary confinement of an inmate for the period of time ordered by the sentencing court.”

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<sup>45</sup> Policy also included Transition Confinement (TC), the “[c]onfinement of an inmate in a structured transition program.” However, this type of segregation was no longer used during the time of Vera’s assessment.



## V. Findings on the Use of Segregation

As outlined in Section II, Vera’s assessment included not only site visits and discussions with staff and incarcerated people, but also detailed analysis of NDCS’s administrative data.<sup>46</sup> This section presents our findings, based on this assessment, about the overall use of segregation; the use of Disciplinary Segregation, Administrative Confinement, and Protective Custody; and issues related to mental health.

### Findings: Overall Use of Segregation

Our analysis of the data found that an alarming number of people in the Nebraska prison system were housed in various types of segregation, where they were generally deprived of sufficient out-of-cell time, meaningful social interaction, adequate recreation, and pro-social programming.

**Finding 1: Overall, across the two-year period studied, the average daily population in any type of restrictive housing was 13.9 percent of the total NDCS population.**

This proportion is significantly greater than the estimated national average of 5 to 6 percent.<sup>47</sup> Looking at it by gender, on an average day, 14.5 percent of the male population and 4.8 percent of the female population were in some form of restrictive housing.

**Finding 2: Overall, 7.2 percent of the total NDCS population were in “highly restrictive housing,” and 7.4 percent were in “less restrictive housing.”<sup>48</sup>**

As noted in Section II, for purposes of data analysis and to address limitations in the data, we grouped the various housing types into three categories: highly restrictive, less restrictive, and not restrictive forms of housing.

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<sup>46</sup> Vera research staff analyzed data on all people in NDCS custody during the selected study period of July 1, 2013 to June 30, 2015 (FY 2014 and FY 2015). Some analyses cover all people that were in NDCS at some point during the 24-month period, and others present results showing contact with restrictive housing for the average month, or the average daily population in restrictive housing for the entire period.

<sup>47</sup> The Liman Program at Yale Law School and the Association of State Correctional Administrators (ASCA) estimated that 80,000 to 100,000 people in state prisons were in any form of restrictive housing on an average day in 2014. According to the U.S. Bureau of Justice Statistics, the total number of people in state prison in 2014 was 1,516,500. Thus, the overall percentage of incarcerated people in restrictive housing is somewhere around 5.1 to 6.4 percent nationally. See ASCA and The Liman Program at Yale Law School, *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison* (August 2015).

<sup>48</sup> Note: Because some people had multiple statuses (i.e., a person in Protective Custody who was moved to Immediate Segregation), these totals surpass the overall average number in restrictive housing of 13.9 percent.

- The “highly restrictive housing” category includes Administrative Confinement (AC), Disciplinary Segregation (DS), Immediate Segregation (IS), Intensive Management (IM), and Transition Confinement (TC, although this is no longer used). During the study period, these types of highly restrictive housing were operated in ways that resembled what is commonly called solitary confinement, with people confined in cells for around 23 hours per day, often in specialized units built for maximum control and security.
- The “less restrictive housing” category includes Protective Custody (PC) and Death Row (DR), housing types that had restrictions on out-of-cell time but did not generally keep individuals in-cell for 23 hours per day.
- The “not restrictive” category includes general population units.<sup>49</sup>

Using this categorization, 7.2 percent of the total NDCS population were in “highly restrictive housing,” and 7.4 percent were in “less restrictive housing.” For men, 7.4 percent were in highly restrictive housing and 7.8 percent were in less restrictive housing. The numbers were much lower for women—4 percent in highly restrictive housing and only 1 percent in less restrictive housing.

**Finding 3: Nearly half of people incarcerated in Nebraska’s prison system had experienced at least one day in either Disciplinary or Immediate Segregation. Smaller numbers had spent time in other types of segregation.<sup>50</sup>**

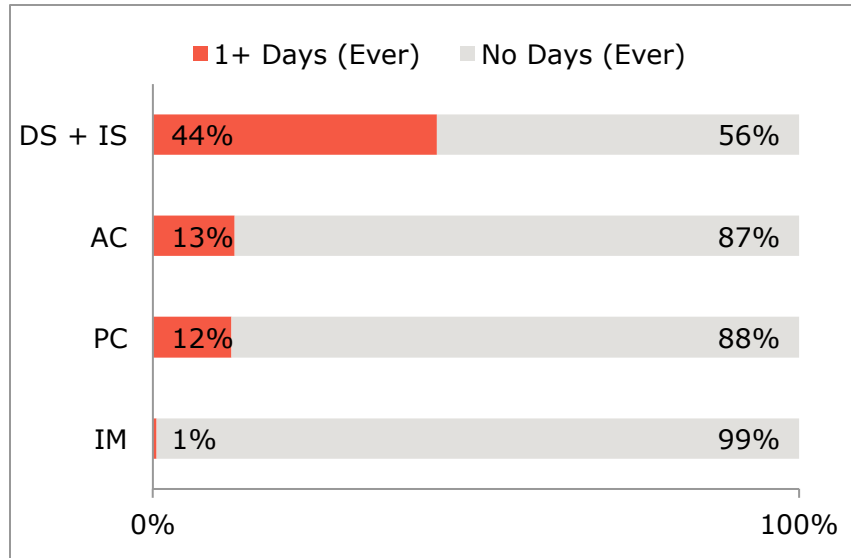
As shown in Figure 1 below, 44 percent of people in NDCS custody spent time (at least one day) in either DS or IS over the course of their incarceration. Additionally, 13 percent spent time in Administrative Confinement, 12 percent spent time in Protective Custody, and only 1 percent spent time in Intensive Management.

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<sup>49</sup> As noted in Section II above, this method of categorization addresses problems of under-counting that could occur when we used individual categories of segregation that were not always updated accurately. According to case review notes, it appears that the database was not always updated when someone completed IS and was transferred to DS or AC, for example, because that individual may not even have moved cells and usually stayed in the same housing unit. By using only “highly restrictive” and “less restrictive” categories, we correct for this problem, because one had to move to a different housing unit when transferring from a highly restrictive to a less restrictive housing assignment. For more on data limitations, see Section II, above.

<sup>50</sup> Vera examined statistics for Immediate and Disciplinary Segregation together, because though they are different types of restrictive housing status, the data did not always accurately distinguish between them. Moreover, many people were given DS sanctions after first having been placed in IS.

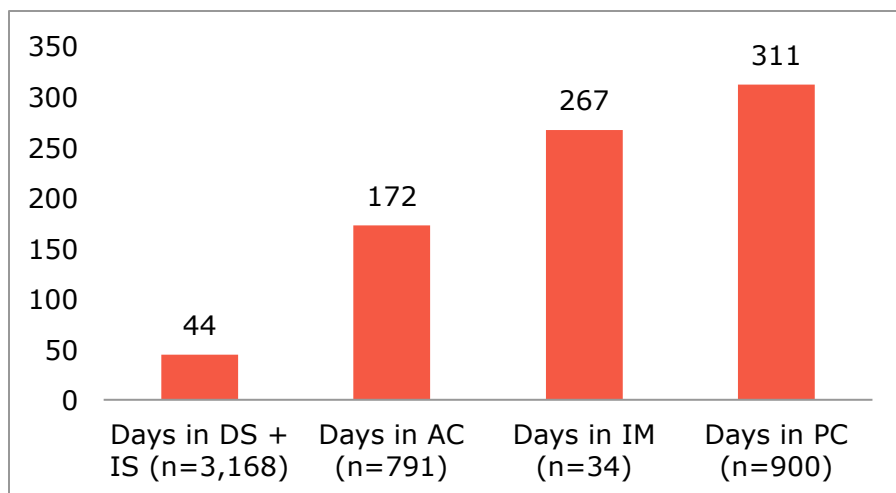
**Figure 1: Percent of Prison Population with Segregation History, by Type**



**Finding 4: Many people spent long periods in restrictive housing, especially those in Protective Custody, Administrative Confinement, and Intensive Management.**

Figure 2 below shows the average total days spent in segregation for all individuals released from different types of restrictive housing over the two-year period. The 791 people exposed to any duration of AC spent an average of 172 days (almost six months) in that setting. The 900 people in Protective Custody stayed in those units for a total of about ten months (311 days), on average. The 3,168 people who were placed in segregation for disciplinary reasons spent an average of 44 days there over the study period. Significantly fewer people were placed in Intensive Management over this span (n=34 people), but these individuals stayed on those units for an average of 267 days (almost nine months).

**Figure 2: Average Total Days in Segregation, by Type (FY14-15)**

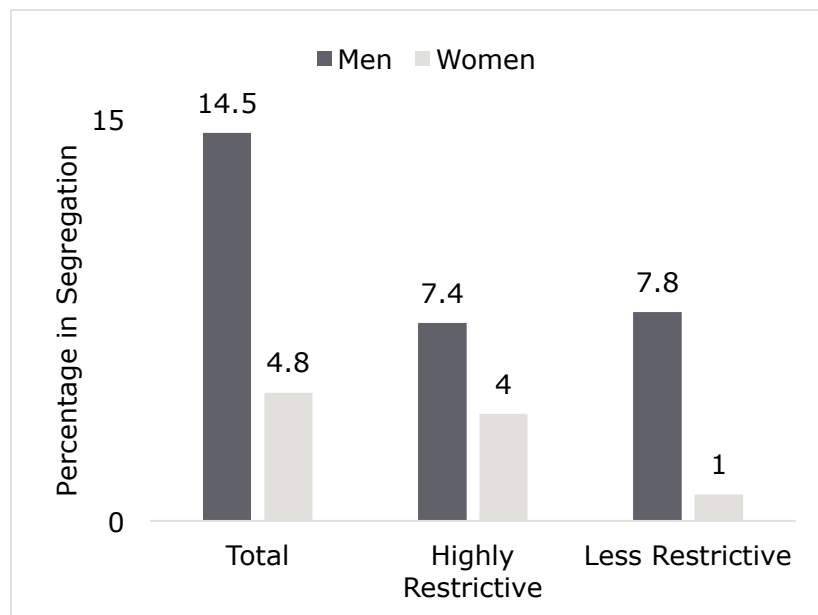


**Finding 5: Men were exposed to all types of segregation at higher rates than women. However, of the women in any type of segregation, the vast majority were in highly restrictive housing.**

In total, significantly more men than women were housed in all forms of segregation in Nebraska. As shown in Figure 3 below, on an average day during the study period, almost 15 percent of men were in some form of segregated housing; more specifically, an average of 7.4 percent of men were in a highly restrictive form of segregation, while an average of 7.8 percent were in PC or Death Row (discussed above as a “less restrictive” form of segregation).

By contrast, an average of only 4.8 percent of women in Nebraska prisons were in any form of segregation; most of these women (80 percent) were in a form of highly restrictive housing.

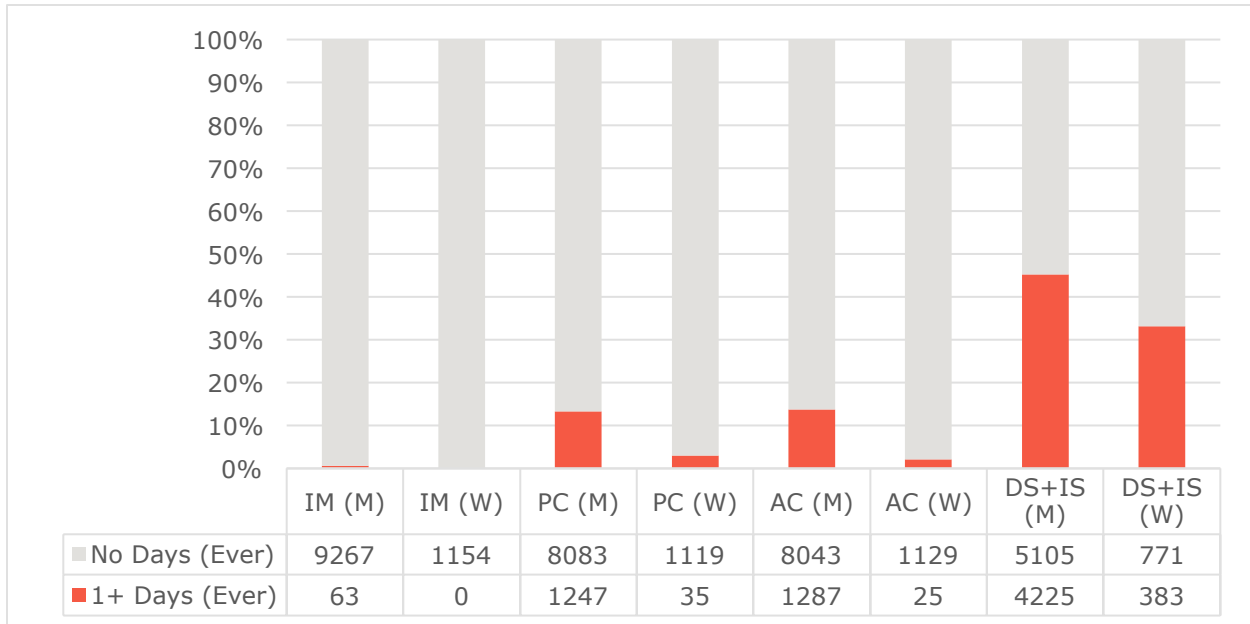
**Figure 3: Average Daily Population in Segregation: Men and Women**



Looking at specific types of segregation, compared to women, men were 1.4 times more likely to experience one or more days of DS or IS, 6.4 times more likely to experience AC, and 4.4 times more likely to experience PC.

As Figure 4 below shows, 4,225 men were exposed to IS and DS during their prison stay (almost 50 percent of men who were in Nebraska prisons during this study period). Sixteen percent had contact with AC (1,287 men) and 15.5 percent with PC (1,247 men) over this same time period. Figure 4 also shows that over a third of women (n=383) spent at least one day in DS or IS over the study period. Compared to men, significantly fewer women were held in AC or PC.

**Figure 4: Exposure to Different Types of Segregation: Men and Women**

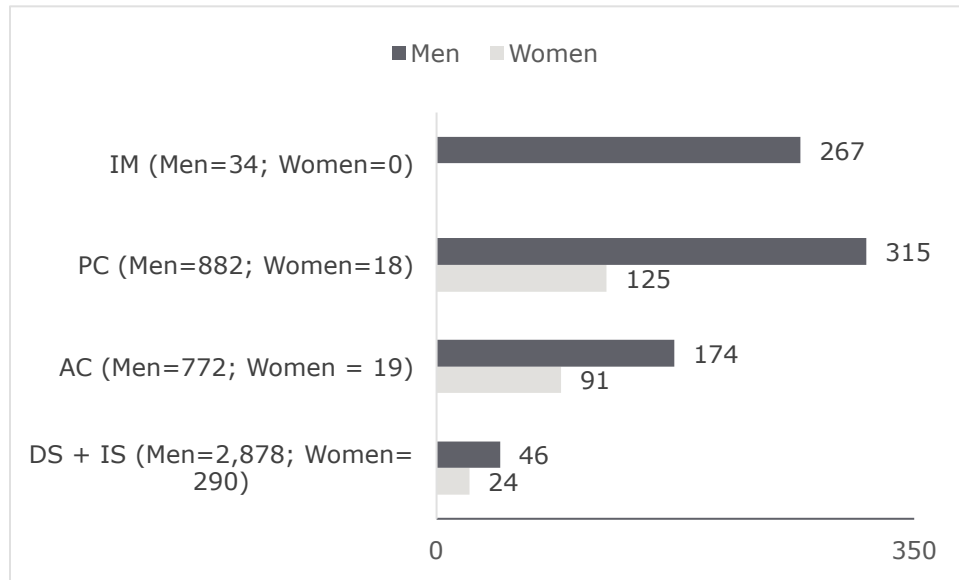


**Finding 6: Men spent longer durations than women in all forms of restrictive housing.**

Overall, men in NDCS custody spent significantly longer periods of time in segregation than women. For instance, as shown in Figure 5 below, the average stay for the 34 men in IM was 267 days (almost nine months); no women were held in IM during the course of the study period. And not only were 16 percent of men exposed to AC (compared to about 5 percent of women), but, as shown in Figure 5 below, over the two-year study period men who had contact with AC spent nearly twice as many days in AC than women who had contact with AC (an average of 174 versus 91 days).

Figure 5 also shows that the difference in average lengths of stay between men and women was even wider for people in Protective Custody: 315 days for men versus 125 days for women. By policy and practice, lengths of stay in IS and DS were generally much shorter than in AC and PC. Here too, however, men also had longer average stays compared to women: 46 days for men compared to 24 days for women.

**Figure 5: Average Total Days in Segregation, by Gender (FY14-15)**



**Finding 7: Racial and ethnic minorities were disproportionately exposed to restrictive housing in Nebraska prisons.**

Racial disparities are common in the criminal justice system and often appear at earlier decision points like arrest, prosecution, and sentencing.<sup>51</sup> Similarly, prison systems may have racial disparities in their use of segregation. Our assessment of the data showed evidence of some disproportionate contact with restrictive housing among racial and ethnic minorities in Nebraska.

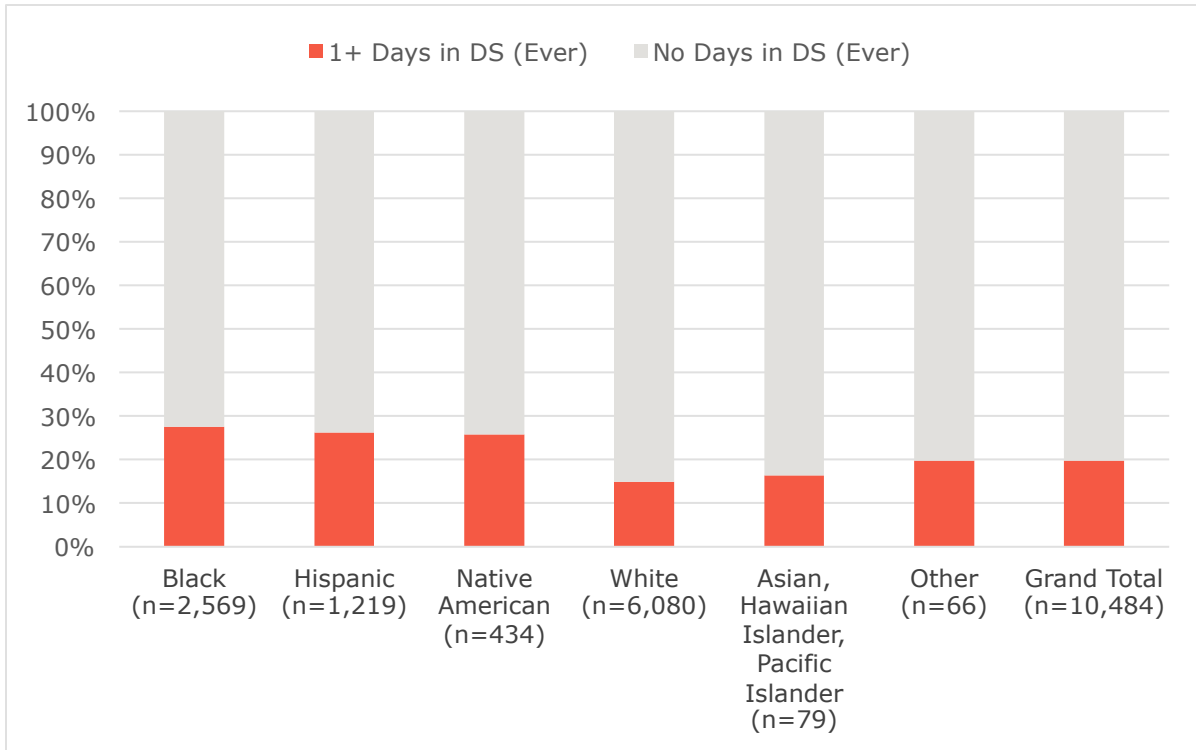
**(a) Over 50 percent of Black, Hispanic, and Native American individuals in NDCS custody had at least one day of contact with forms of highly restrictive housing (IS, DS, AC, or IM), compared to 39 percent of white people.**

**(b) Looking at Disciplinary Segregation alone, white individuals had the lowest rate of contact with DS, at 15 percent.**

As shown in Figure 6 below, the rate was higher for Black, Hispanic, and Native American individuals, with rates of 28 percent, 26 percent, and 26 percent, respectively.

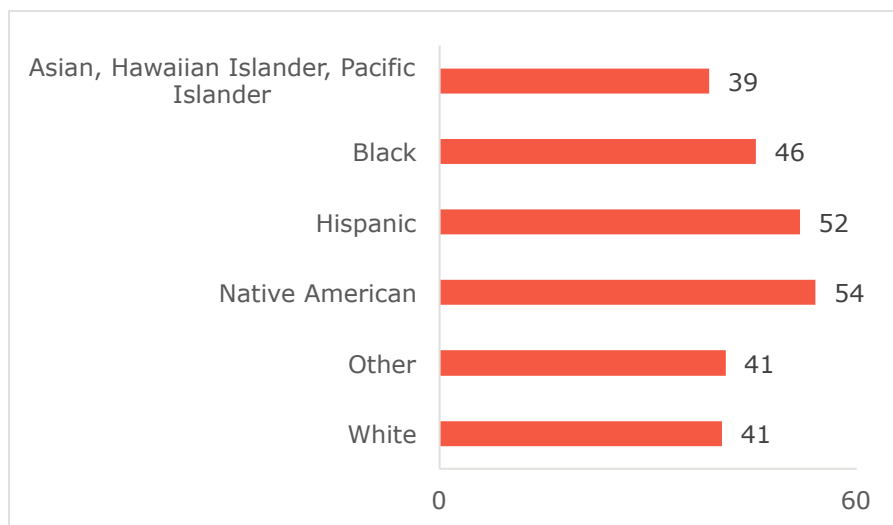
<sup>51</sup> For a discussion of racial disparities and remedies, see The Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers* (Washington, DC: The Sentencing Project, 2008).

**Figure 6: Use of Disciplinary Segregation, by Race and Ethnicity**



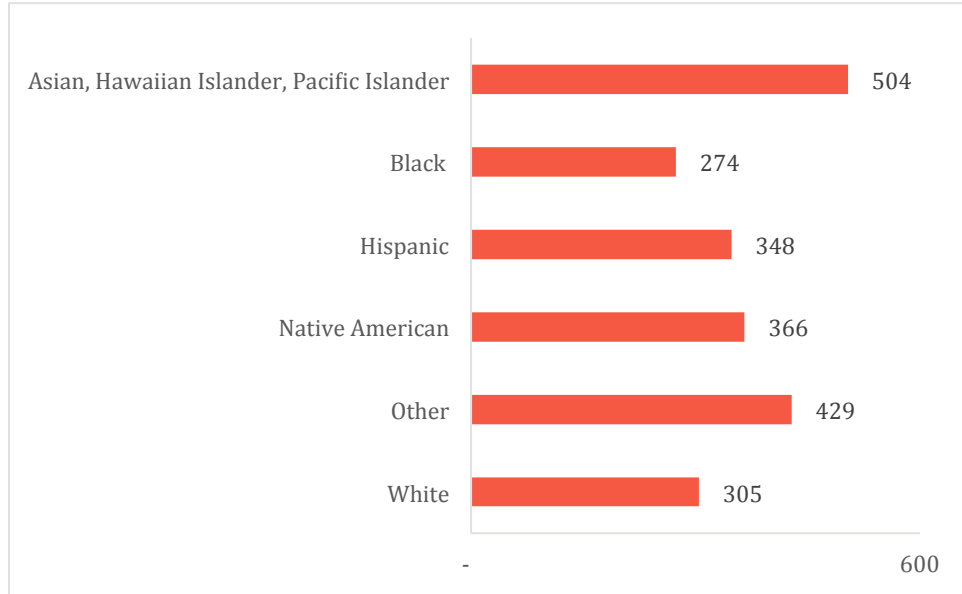
**(c) There were also differences between races in length of time spent in segregation.** Figure 7 below shows that Native Americans had the highest average number of days spent in DS or IS during the two-year study period (54 days), with Hispanic people having the second-highest number (52 days) and Black people the third-highest (46 days).

**Figure 7: Average Total Days in DS or IS, by Race**



In contrast, Figure 8 below shows that, on average, Black individuals had the shortest average length of stay in Protective Custody (274 days).

**Figure 8: Average Total Days in PC, by Race**



**(d) While women in general had less contact with segregation, racial and ethnic disparities existed among women as well.**

In particular, Hispanic women were 2.5 times more likely than white women, and Black women were 2.3 times more likely than white women, to have spent at least one day in Disciplinary Segregation.

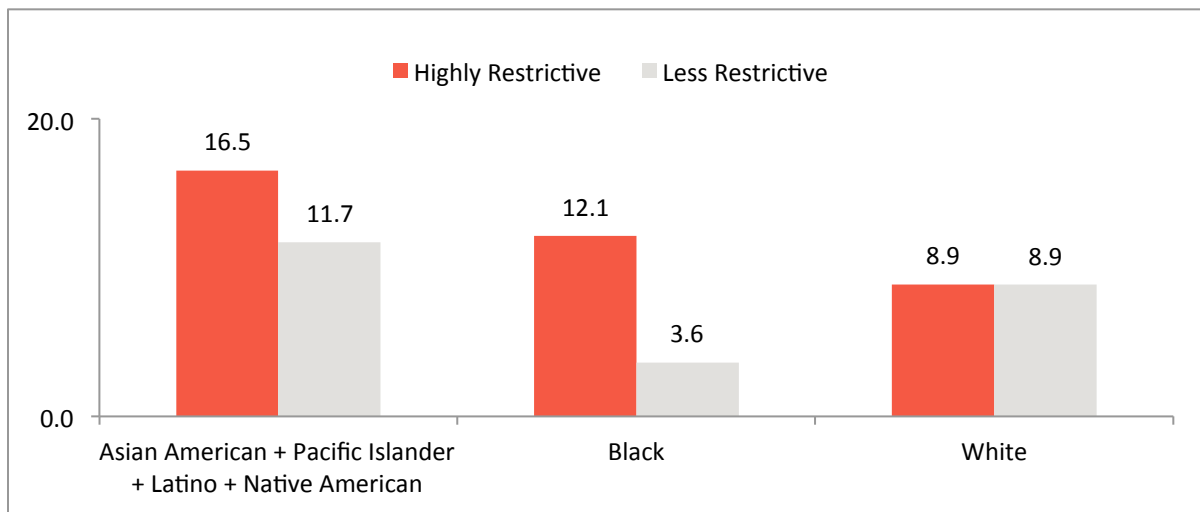
**(e) Disparities in contact with highly restrictive and less restrictive housing also appeared when looking at data for an average month.**

Some restrictive housing stays are very short, lasting only a few days until a disciplinary hearing. Others are long, stretching over months and even years. In order to better understand the impact on incarcerated people and to check for differences by racial categories, Vera analyzed the percent of each racial group that had contact with restrictive housing in an average month. In general, about 1 in 6 Black people and 1 in 6 white people had contact with any kind of restrictive housing during an average month.



However, when looking at specific types of restrictive housing, there were differences. As Figure 9 below shows, in an average month, 12.1 percent of Black people and 8.9 percent of white people had contact with forms of highly restrictive housing. For the forms of less restrictive housing (like Protective Custody) the disparity is reversed—only 3.6 percent for Black individuals, and 8.9 percent for white individuals. In contrast, for a combined group of Asian Americans/Pacific Islanders, Latinos, and Native Americans, there are elevated rates of contact with both highly restrictive and less restrictive housing.

**Figure 9: Percentage of Group with Restrictive Housing Contact in Average Month (FY14-15)**



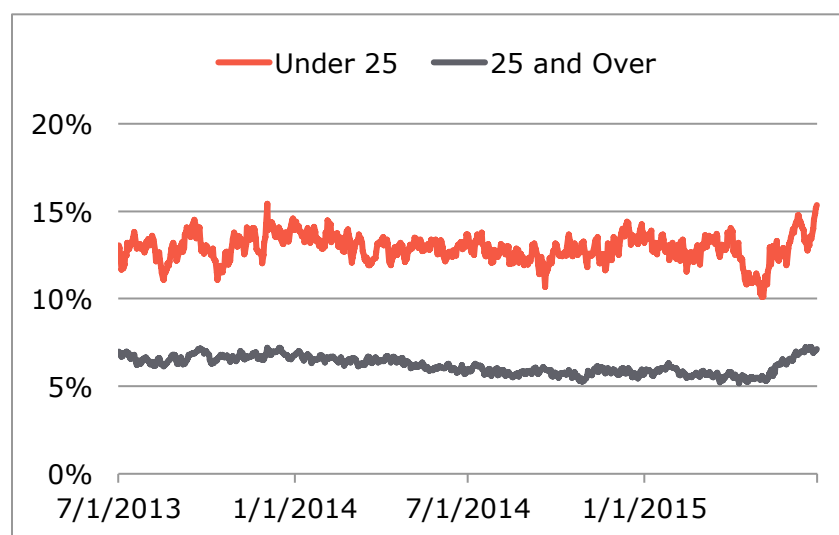
We do not have sufficient information to offer conclusive interpretations of these patterns, but it appears that race does matter in restrictive housing in Nebraska. Some of the differences could be due to disparate treatment, or some could be due to population and behavior variations. More study is needed to better understand and address these disparities and their causes. As reforms are implemented, NDCS should continue to monitor racial disparities to ensure any disparate treatment or impact is identified and addressed.

**Finding 8: Younger males were disproportionately exposed to restrictive housing.**

**(a) Over the study period, on average, about 13 percent of males in NDCS custody under age 25 were in highly restrictive housing on any given day, compared to around 6 percent of men 25 and older.<sup>52</sup>**

Figure 10 below illustrates this disparity. Note that the upward trend towards the right of the graph may be related to the May 2015 disturbance at TSCI.

**Figure 10: Use of Highly Restrictive Housing, by Age**



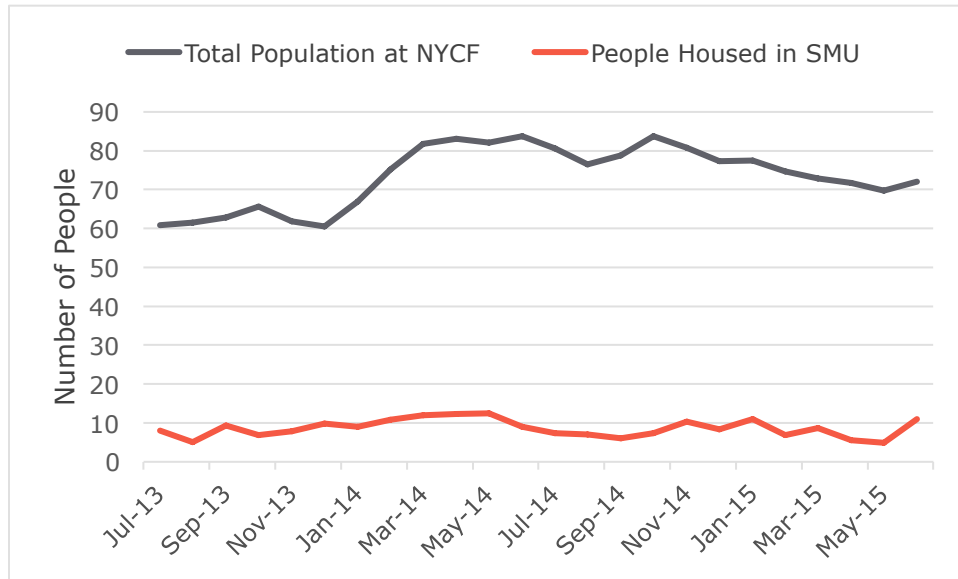
**(b) At any given time, between 7 to 15 percent of youthful males held at the Nebraska Correctional Youth Facility (NCYF) were in any type of restrictive housing.**

NCYF is a facility designed for juveniles and young men, from early adolescence to age 21 years and 10 months, who have been adjudicated through the adult court system.<sup>53</sup> The Special Management Unit (SMU) at NCYF is a restrictive housing unit where these youth are typically held in their cells for 23 hours per day. As shown in Figure 11 below, over the study period, the monthly average population in the SMU fluctuated between 7 and 15 percent of the total population. However, this variation is most likely primarily due to changes in the total population of NCYF and the fact that the total population is rather small (less than 100 people), rather than significant changes in the number of youth in the SMU. When Vera visited NCYF, there was only one person housed in the SMU. However, data show that over the two-year period, the average population of the SMU was nine people.

<sup>52</sup> The under-25 number includes the relatively small number of youth under the age of 18 who were sentenced to NDCS custody in adult criminal court.

<sup>53</sup> The state of Nebraska does not set a minimum age boundary for juvenile delinquency proceedings or for transfer to criminal court.

**Figure 11: Populations of NCYF and SMU**



**Finding 9: Rates of admissions to a hospital or skilled nursing facility were significantly greater for people held in segregation units, compared to those residing in the general population. Generally, the segregation units that were most restrictive in nature had the highest rates of hospitalizations.**

As noted above, NDCS was not able to provide data about the prevalence of mental health needs among incarcerated people or the proportion of those in segregation that were mentally ill. Yet research has shown that mentally ill or medically vulnerable individuals often end up in segregation, and that restrictive conditions can create or exacerbate health or mental health problems and lead to self-injurious behavior.<sup>54</sup> Vera did have access to data on admissions to hospitals and skilled nursing facilities from each housing unit, which was used to calculate and compare rates of admissions to hospitals or skilled nursing facilities from various restrictive housing units and from general population housing. Using movement file data, we documented each time a person was recorded as having been moved from a restrictive housing unit to “HOSP,” a code for skilled nursing facilities as well as, more rarely, for hospitals.<sup>55</sup>

In order to understand the pattern of hospitalizations from restrictive housing units with more detail, and to compare across different facilities, we present the following tables. The restrictive housing units used in the tables below are not exhaustive, but are the most control-oriented units in each facility assessed. In order to compare trends in hospital admissions across

<sup>54</sup> See, for example, Grassian, “Psychiatric effects of solitary confinement”; Haney, “Mental health issues in long-term solitary and ‘supermax’ confinement”; Fatos Kaba et al., “Solitary confinement and risk of self-harm among jail inmates,” *American Journal of Public Health* 104, no. 3 (2014): 442-447; and Lars Moller et al., eds., *Health in prisons: A WHO guide to the essentials in prison health* (Copenhagen: World Health Organization, 2007), p. 36.

<sup>55</sup> For example, restrictive housing units were coded “SMU” (Special Management Unit) or “SEG” (segregation) in the movement file data. Medical units were coded “HOSP.”

different units and facilities, we calculated the rate of hospital admissions from each unit and constructed relative risk ratios, comparing rates of hospital admission in segregation units to rates in the entire facility, rates in other facilities, and an estimated hospitalization rate for the general U.S. male population.<sup>56</sup>

In other words, each table compares the relative risk of hospitalization of individuals from a certain housing unit with 1) the rate of hospitalization for people in Omaha Correctional Center (OCC), 2) the rate of hospitalization for the total population in the housing unit’s facility, and 3) the rate of hospitalization for non-institutionalized U.S. males. OCC is used as a comparison because it has a lower-risk population, many of whom are approaching release. Among other things, proximity to release and security classification appear to be related to lower hospital admissions. Thus, OCC provides a baseline that allows a standard comparison across facilities.

Tables 1-4 below cover all hospitalizations over the two-year study period. Relative risk compares two numbers; for example, if a risk of hospitalization in one unit was 50 per 100 residents in a year, and risk in the facility as a whole was 10 per 100, the relative risk would be 5.0 (five times higher) in the unit compared to the facility.

**Table 1: Rate of Hospitalizations at Omaha Correctional Center**

Omaha Correctional Center (ADP in parentheses) <sup>57</sup>	Risk Relative to In-Facility Total	Risk Relative to U.S. Male Population Hospitalization Risk
Total Population (753)	1.0	0.5
Population in Segregation Unit (17)	5.3	2.6
Population in Non-Seg. Units (736)	0.9	0.4

OCC in general has less frequent hospitalizations, as it is a lower-security facility with many people closer to their release dates. Table 1 above shows that the rate of hospitalization for the segregation unit is more than 5 times higher than the overall rate in the facility (the “risk relative to in-facility total” is 5.3).

<sup>56</sup> The general U.S. male population hospitalization rate was calculated using the 2012 estimate of 15,400,000 hospital stays for the population of 151,175,000 non-institutionalized males in the United States. See Audrey J. Weiss and Anne Elixhauser, *Overview of Hospital Stays in the United States*, Healthcare Cost and Utilization Project: Statistical Brief #180 (October 2014), p. 2; and U.S. Census Bureau, Current Population Survey, “Age and Sex Composition in the United States: 2012,” “Table 1: Population by Age and Sex.”

<sup>57</sup> ADP means average daily population.

As shown in Table 2 below, TSCI has much higher rates of hospitalization overall compared to OCC. The overall hospitalization rate is 5.6 times higher, and for those in the Special Management Unit (SMU) it is 8 times higher. People in the SMU have a risk of hospitalization that is 1.5 times higher than the overall total risk at TSCI. Some particular wings on the SMU have higher rates than others, notably SMU D and SMU E.

**Table 2: Rate of Hospitalizations at Tecumseh State Correctional Institution**

Tecumseh State Correctional Institution (ADP in parentheses)	Risk of Hospitalization Relative to OCC Hospitalization Rate	Risk Relative to In-Facility Total	Risk Relative to U.S. Male Population Hospitalization Risk
Total Population (1,011)	5.6	1.0	2.8
Population not in SMU (830)	5.0	0.9	2.5
Population in SMU (181)	8.2	1.5	4.1
SMU A (39)	7.8	1.4	3.9
SMU B (36)	5.6	1.0	2.8
SMU C (13)	8.7	1.6	4.3
SMU D (13)	14.0	2.5	6.9
SMU E (41)	13.1	2.3	6.5
SMU F (40)	4.9	0.9	2.4

As shown in Table 3 below, NSP also has an overall rate of hospitalization 5 times higher than OCC, with the Control Unit's rate 12.8 times higher.

**Table 3: Rate of Hospitalizations at Nebraska State Penitentiary**

Nebraska State Penitentiary (ADP in parentheses)	Risk of Hospitalization Relative to OCC Hospitalization Rate	Risk Relative to In-Facility Total	Risk Relative to U.S. Male Population Hospitalization Risk
Total Population (1,312)	5.0	1.0	2.5
Pop. Not in Segregation (1,196)	4.7	0.9	2.3
All Seg. (Control, Unit 4) (116)	8.4	1.7	4.2
Control Unit (32)	12.8	2.5	6.4
Unit 4A (19)	3.2	0.6	1.6
Unit 4B (19)	6.8	1.3	3.4
Unit 4C (18)	7.0	1.4	3.5
Unit 4D (27)	9.0	1.8	4.5

**Table 4: Rate of Hospitalizations at Lincoln Correctional Center / Diagnostic and Evaluation Center**

Diagnostic and Evaluation Center/ Lincoln Correctional Center (ADP in parentheses)	Risk of Hospitalization Relative to OCC Hospitalization Rate	Risk Relative to In-Facility Total	Risk Relative to U.S. Male Population Hospitalization
Total at DEC / LCC Combined (954)	11.5	1.0	5.7
Pop. Not in Segregation (881)	10.4	0.9	5.1
All Seg. (Control Unit, C Unit) (74)	25.7	2.2	12.7
LCC Control Unit (15)	60.8	5.3	30.1
LCC C1 (30)	18.5	1.6	9.2
LCC C2 (29)	15.3	1.3	7.6

Table 4 above combines data for DEC and LCC, because DEC does not have restrictive housing and therefore uses the segregation units at LCC. This joint facility has the highest overall rate of hospitalization, at 11.5 times the OCC rate. LCC houses a significant number of people with serious mental illness. The Control Unit in this facility has some of the most restrictive living conditions and often houses people with serious mental health needs who are difficult to manage in a prison environment. It is striking that this unit had 89 hospitalizations during the study period—far more per capita than any other housing unit in the Nebraska prison system—with a risk of hospitalization 60.8 times higher than that of OCC and more than 30 times higher than the U.S. population hospitalization rate for men.

The higher rates of hospital admissions from restrictive housing units are troubling. In the two-year period, over one-third of hospital admissions (38.5 percent) involved people being transferred from a restrictive housing unit, such as the SMU at TSCI or the Control Units at LCC or NSP. For instance, about one-third of hospital admissions at DEC/LCC, and one-quarter at TSCI, involved people sent from restrictive housing units—even though these particular segregation units only accounted for 7.8 percent of the total population of DEC/LCC and 17.9 percent of TSCI.

From the available data, Vera was unable to determine the reason each person was admitted to the hospital, and therefore cannot say definitively why rates of hospital admissions among people held in restrictive housing were strikingly elevated compared to the general population. It was not within the scope of this analysis, but going forward, collecting additional data and regularly monitoring the reasons that people in restrictive housing units are admitted to skilled nursing facilities and prison infirmaries will be important. For instance, NDCS should document whether such admissions are due to symptoms of a pre-existing physical ailment or chronic disease (e.g., diabetes or hypertension), self-injurious behavior or suicide attempts, or injuries that result from altercations with a third party, including other incarcerated people and correctional staff.

## Findings: Disciplinary Segregation

Vera analyzed the department’s misconduct reports to document patterns of sanctioning for different types of disciplinary violations and determine the most frequent charges that correctional officers filed, the infractions most commonly resulting in sanctions of Disciplinary Segregation (DS), and how long people spent confined in these settings. Furthermore, we analyzed how the use of DS varied by race and gender. Some of the findings below examine Immediate and Disciplinary Segregation together because, though they are separate types of restrictive housing status, the data did not always accurately distinguish between them. Incarcerated people were often placed in IS while awaiting a disciplinary hearing after an alleged infraction, and then placed in DS if they received a DS sanction for that infraction; yet sometimes their entire segregation stays appear to have only been coded as IS.

The recorded misconduct reports provide evidence that Disciplinary Segregation was used excessively in Nebraska prisons. As noted above, nearly half (44 percent) of all people who spent time in Nebraska prisons during the two-year study period spent at least one day in either DS or IS. Cumulatively, 3,168 people spent a total of 140,799 days (or 386 years) of time living in these restrictive conditions. Among this total, 326 individuals spent more than 100 days in DS, and 38 people spent more than a year. As noted in Section II above, there are some limitations to this analysis—it appears that in some cases, not all sanctions given for a misconduct report were recorded.

### **Finding 10: Incarcerated people were often sanctioned to DS for low-level violations that could have instead been resolved on the unit or deescalated without using the formal disciplinary process, or given alternatives to segregation sanctions.**

Vera calculated the most common disciplinary charges filed by correctional officers system-wide, and the rate at which different charges resulted in a guilty verdict and in a segregation sentence at disciplinary hearings.

#### **(a) The five most common charges filed were “violation of regulations,” “possessing or receiving unauthorized articles,” “disobeying an order,” “unauthorized areas,” and “disruption.”**

These are all categorized as Class 2 or 3 offenses (Class 1 offenses are the most serious). Notably, “violation of regulations” accounted for more than one-quarter of all charges filed in the entire Nebraska prison system during the study period.<sup>58</sup> Many misconduct reports included multiple charges of rule violations. An estimated 43 percent of top charges (the first listed) were dismissed, and many sanctions were applied to lesser, secondary charges.

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<sup>58</sup> “Violation of Regulations” is a Class 3 offense defined as “[f]ailing to adhere to any written or posted order or regulation.” Nebraska Administrative Code, Title 68 – Department of Correctional Services, Chapter 5, “Code of Offenses.”

**Table 5: Frequency of Charges of Disciplinary Violations**

<b>Charge</b>	<b>Total</b>	<b>% of all Charges</b>	<b>Guilty</b>	<b>Dismissed</b>
Violation of Regulations	34,482	29%	40%	60%
Possessing or Receiving Unauthorized Articles	12,784	11%	64%	36%
Disobeying an Order	11,556	10%	39%	61%
Unauthorized Areas	10,675	9%	27%	73%
Disruption	10,144	8%	22%	78%
Swearing, Cursing, or Use of Abusive Language or Gestures	7,054	6%	54%	46%
Flare of Tempers / Minor Physical Contact	5,446	5%	27%	73%
Use Of Threatening Language or Gestures / Fighting	3,807	3%	49%	51%
Violation of Sanctions	3,331	3%	78%	22%
Failure to Work	1,872	2%	53%	47%
Drug or Intoxicant Abuse	1,813	2%	56%	44%
Theft	1,783	1%	13%	87%
Selling, Loaning, or Giving Items to Others	1,640	1%	56%	44%
Tattoo Activities	1,475	1%	77%	23%
Assault	1,356	1%	39%	61%

**(b) Across all facilities, more than half of all charges that correctional officers filed (and 43 percent of the top charges, or the first charges listed) were ultimately dismissed following a disciplinary hearing.**

However, some types of charges had considerably higher rates of guilty findings than others, as shown in Table 5 above. For instance, less than 30 percent of charges brought for “unauthorized areas,” “disruption,” “flare of tempers/minor physical contact,” and “theft” were found guilty. In contrast, more than 78 percent of people charged with “violation of sanctions”—not following the conditions of a prior disciplinary sanction—were found guilty.

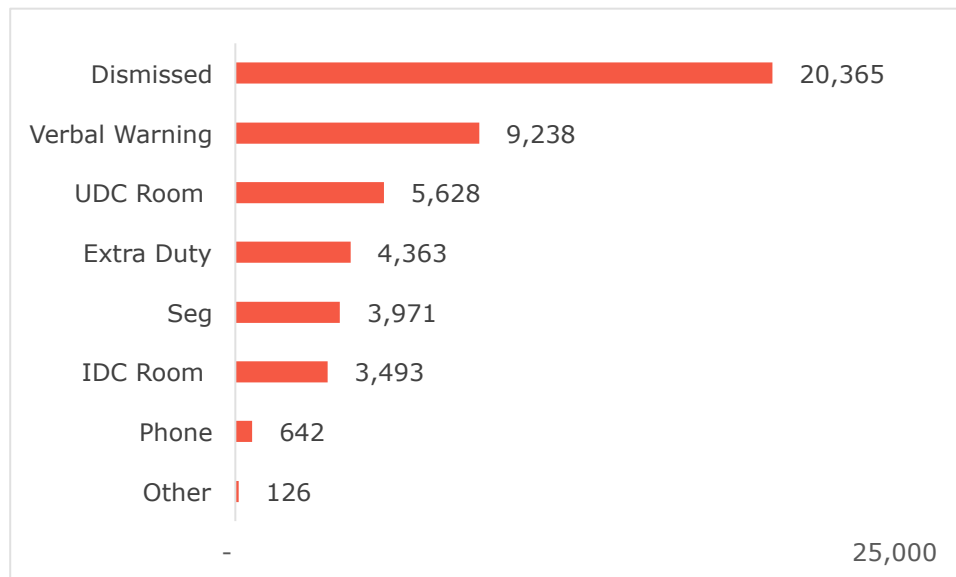


**(c) Available alternative sanctions were underutilized.**

NDCS policies provide a variety of permissible sanctions, other than segregation, to discipline people found guilty of lower level offenses—including verbal warnings, temporary suspension of privileges (such as gym, canteen, and television), and brief room restrictions.<sup>59</sup> However, the data show that many alternative sanctions are underutilized.

Figure 12 below shows the frequency of various outcomes for each top charge (the first charge listed on a misconduct report). Table 6 shows the frequency of different sanctions given in response to disciplinary violations with guilty findings (not including those that were dismissed). While verbal warnings were the most common response (35 percent of all charges), Disciplinary Segregation was also a common sanction, given for 13 percent of all charges (and 14 percent of top charges). The table also shows that a sanction of loss of privileges, such as yard, TV, gym, or canteen, was rarely given.

**Figure 12: Frequency of Outcome for Top Charge**



<sup>59</sup> NDCS, "Administrative Regulation 217.01: Inmate Rules and Discipline."

**Table 6: Frequency of Outcomes for Disciplinary Violations with Guilty Findings**

	Times Given (Top Charge)	Percent of All <i>Top</i> Charges	Times Given (All Charges)	Percent of <i>All</i> Charges
Verbal Warning	9,238	34%	17,810	35%
UDC Room Restriction	5,628	20%	9,411	18%
Extra Duty	4,363	16%	9,301	18%
Segregation	3,971	14%	6,769	13%
IDC Room Restriction	3,493	13%	6,807	13%
Phone	642	2%	807	2%
Visiting	48	<1%	96	<1%
Yard	45	<1%	112	<1%
Yard and Gym	21	<1%	52	<1%
TV	4	<1%	4	<1%
Gym	3	<1%	27	<1%
Weight Pile	2	<1%	3	<1%
A&R	1	<1%	7	<1%
Canteen	1	<1%	7	<1%
Radio	1	<1%	2	<1%
Curfew	0	<1%	1	<1%
TOTAL	27,461		51,216	

During focus groups, incarcerated individuals expressed frustration, saying the department quickly and routinely turned to segregation in response to nuisance behaviors that incarcerated people perceived as trivial. They believed these behaviors could effectively be deterred with fairer, more proportional sanctions (such as loss of privileges) or resolved informally without using the formal disciplinary process at all. Their observations and concerns were supported by the data.

**(d) Incarcerated people found guilty of lower-level rule violations (i.e., Class 2 and 3 violations) accounted for 91 percent of all DS sanctions over the two-year study period.**

Over the two years, NDCS meted out 5,744 terms of Disciplinary Segregation in response to rule violations. Table 7 below shows in more detail the types of charges that accounted for the most DS sanctions, as well as their class, or level of severity. For example, there were 1,846 instances where an individual was charged with “disobeying an order,” found guilty, and sanctioned to DS. This charge alone accounted for nearly one-third (28 percent) of all DS sanctions meted out over the study period. Another 25 percent of all DS sanctions (1,686) involved people found guilty of “use of threatening language or gestures/fighting.”

**Table 7: Disciplinary Segregation Sanctions, by Charge and Class of Charge**

Charge		DS Sanctions	% of Total DS Sanctions	Number	Guilty	Guilty Findings Given DS
Disobeying an Order	2	1,846	28%	11,556	39%	41%
Use Of Threatening Language or Gestures/Fighting	2	1,686	25%	3,807	49%	91%
Assault	1	521	8%	1,356	40%	98%
Swearing, Cursing, or Use Of Abusive Language or Gestures	3	454	7%	7,054	55%	12%
Disruption	3	434	6%	10,144	23%	19%
Flare Of Tempers/Minor Physical Contact	3	385	6%	5,446	28%	26%
Violation Of Regulations	3	206	3%	34,482	40%	1%
Unauthorized Areas	2	191	3%	10,675	27%	7%
Possessing or Receiving Unauthorized Articles	3	182	3%	12,784	64%	2%
Violation Of Sanctions	3	75	1%	3,331	78%	3%
Tattoo Activities	2	59	1%	1,475	79%	5%
Drug or Intoxicant Abuse	1	46	1%	1,813	59%	5%
Theft	2	13	0%	1,783	13%	6%
Selling, Loaning, or Giving Items To Others	3	9	0%	1,640	57%	1%
Failure To Work	2	3	0%	1,872	54%	0%

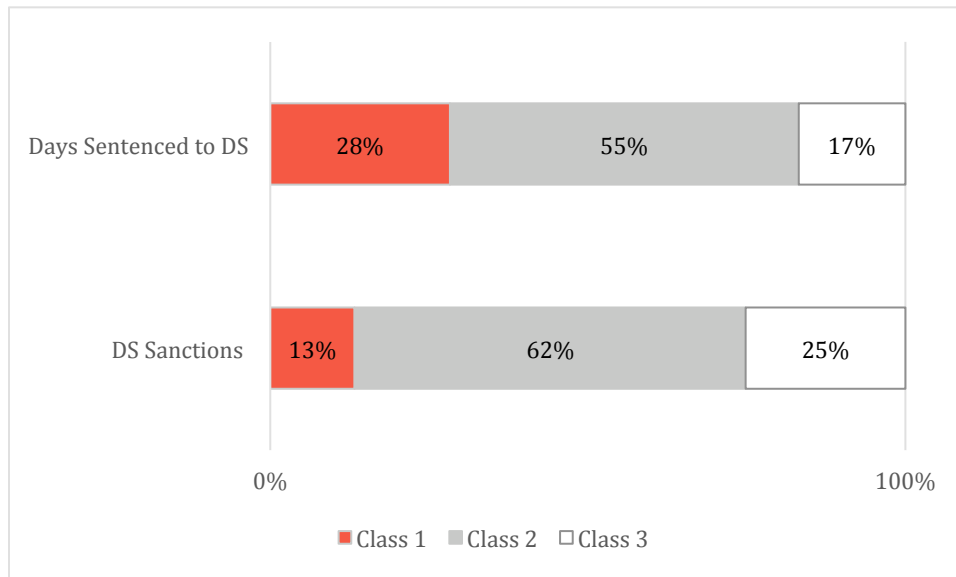
Note: Charges are Class 1 (most serious), Class 2, or Class 3 (least serious).

**Finding 11: The average sentence to Disciplinary Segregation was 17.9 days.**

Vera also calculated the average DS sentence length per sanction for different classes of rule violations, across all facilities. The average sentence per sanction for *all* types of charges was 17.9 days. The average sentence for Class 1 violations was longer, at 38 days per sanction (n=758 sanctions); it was 16 days for Class 2 offenses (n=3,503 sanctions) and 12 days for Class 3 offenses. Thus lower classes of offenses tended to receive shorter DS sanctions.

As shown in Figure 13 below, Class 1 violations accounted for only 13 percent of all sanctions resulting in DS; but because Class 1 DS sanctions tended to be longer, Class 1 sanctions accounted for approximately one-third (28 percent) of total days in DS over the two-year period. People found guilty of Class 2 violations accounted for the greatest proportion of DS sanctions (62 percent) and the greatest proportion of DS days given as a sentence (55 percent).

**Figure 13: Days Sentenced to DS and DS Sanctions Given, by Class of Charge**



**Finding 12: The use of Disciplinary Segregation varied by facility; the NDCS facilities housing youth and those housing the highest concentration of people with serious mental illnesses also had the highest rates of DS.**

In order to better understand the use of Disciplinary Segregation in each facility, we calculated a rate of DS sanctions per 100 people, per year. This allowed us to account for differences in population and compare relative frequency of DS sanctions across facilities.

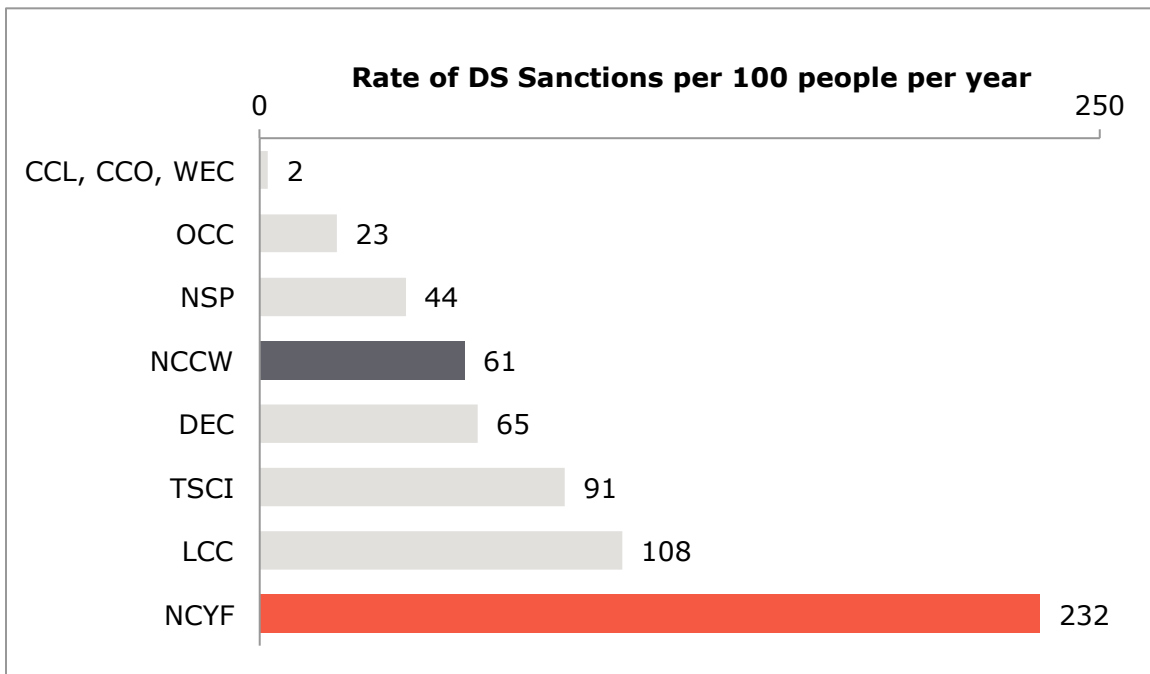
**(a) There was considerable variability across facilities in their rates of DS, as shown in Table 8 and Figure 14 below.**

The highest rates were at the youth facility, NCYF (232 DS sentences per 100 people per year), as well as LCC (108) and TSCI (91), facilities that had large populations of individuals with serious mental illness. It is worth noting that at NCYF, DS sanctions were used at a high rate, but the average DS sentence length was lower than at many other facilities (see Figure 15 below). The facilities with the lowest rates of DS were the two community corrections facilities (CCC-L and CCC-O) and the Work Ethic Camp. These facilities do not have segregation units, and thus anyone with a serious misconduct hearing would likely be transferred to another facility.

**Table 8: Disciplinary Segregation Rates, by Facility**

Facility	2 Year ADP (average daily population)	2 Year Count of Misconducts with DS Sentence	Rate of DS Sentences, per 100 people per year
DEC	457	592	<b>65</b>
CCC-L	403	17	<b>2</b>
CCC-O	160	6	<b>2</b>
LCC	498	1,074	<b>108</b>
NCCW	308	376	<b>61</b>
NCYF	73	341	<b>232</b>
NSP	1,312	1,142	<b>44</b>
OCC	753	346	<b>23</b>
TSCI	1,012	1,837	<b>91</b>
WEC	164	13	<b>4</b>
<b>Total</b>	<b>5,140</b>	<b>5,744</b>	<b>56</b>

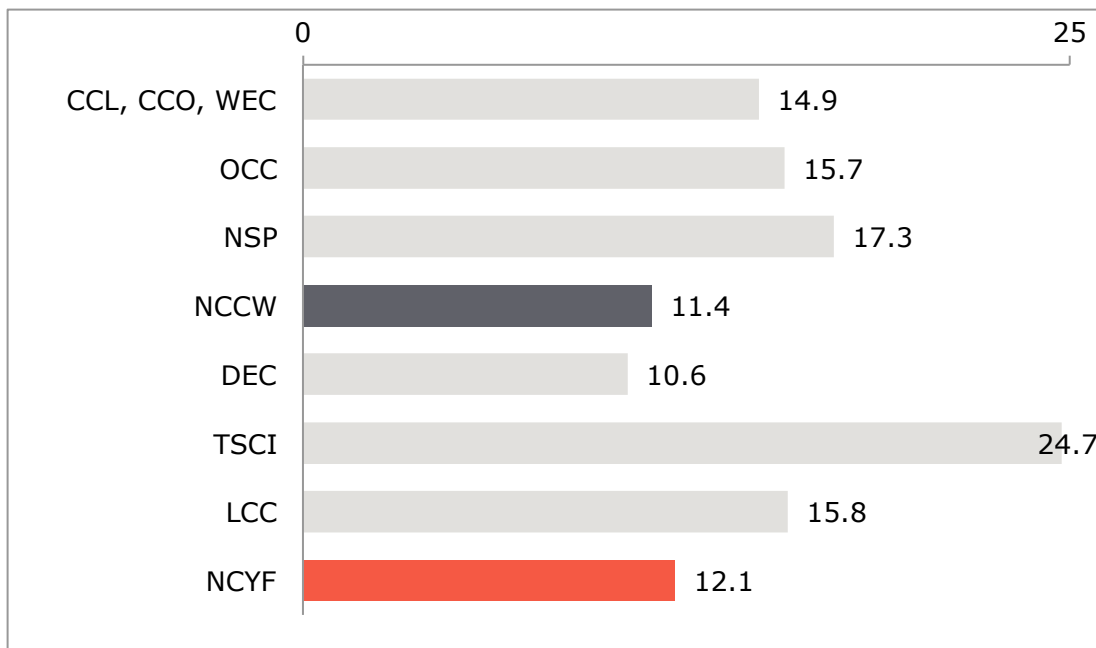
**Figure 14: Disciplinary Segregation Rates, by Facility**



**(b) The average length of DS sentences imposed also varied by facility.**

Vera calculated the average days of DS imposed per misconduct report, by prison facility. While *rates* of DS sanctions given at the youth facility were significantly higher than other prisons (as shown above), the average *length* of DS time imposed (12 days) was comparatively shorter. As Figure 15 below shows, TSCI had the longest average DS sanction length (24.7 days), followed by NSP, then LCC and OCC.

**Figure 15: Average DS Sentence Length per Infraction, by Facility**



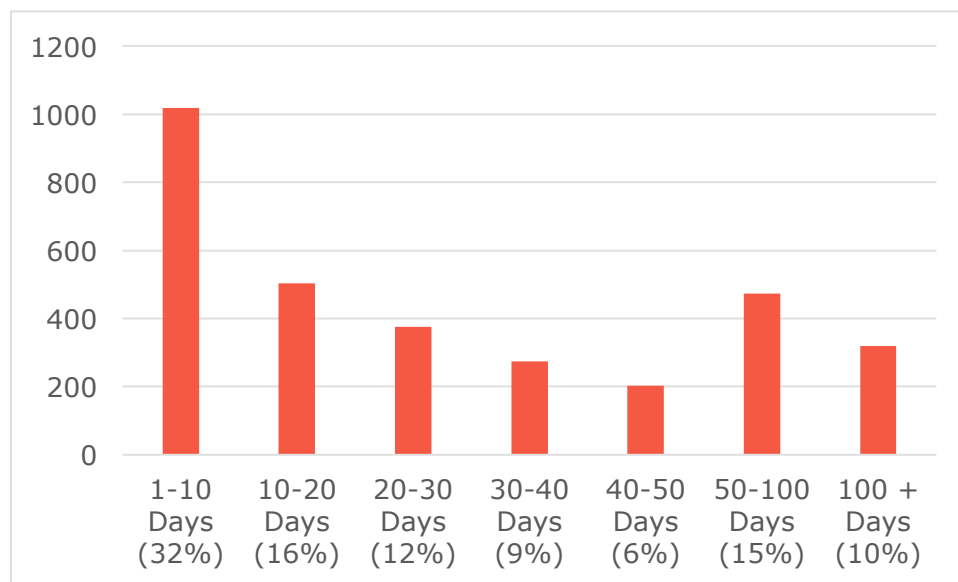
It is worth noting that most people who entered DS served their entire sentence. However, while we cannot say for sure due to data limitations, there is evidence in the data that more than a third of people were housed in DS for durations that exceeded their DS sanction length, based on the dates marked in the movement file for their entries and exits. Moreover, using this same data—a movement file that has entry and exit dates—only 6 percent of people seem to have exited DS early (i.e., they did not stay for the full length of their sentence). This suggests that there were not incentives or policy mechanisms in place that afforded people an opportunity to earn time off their DS sentence and be released to general population early.

**Finding 13: Lengths of stay in Disciplinary Segregation varied, with some individuals spending short amounts of time in DS, while others spent 50 to 100 days or more.**

Looking at time served in DS, there was variation. As noted above, in order to make the most of the available data, we combined DS and IS terms for this analysis, because many segregation stays in response to misconducts were only coded as IS in the data. Vera found that 3,168 people spent at least one day in DS and/or IS during the two-year study period. These people combined spent 140,799 days in IS and DS, or 386 years of time in very restrictive housing.

Figure 16 below shows that around one-third of people with DS or IS contact spent only 1-10 days there. About one-quarter had a stay of over 50 days, 326 people spent more than 100 days, and 38 individuals spent more than a year in these conditions.

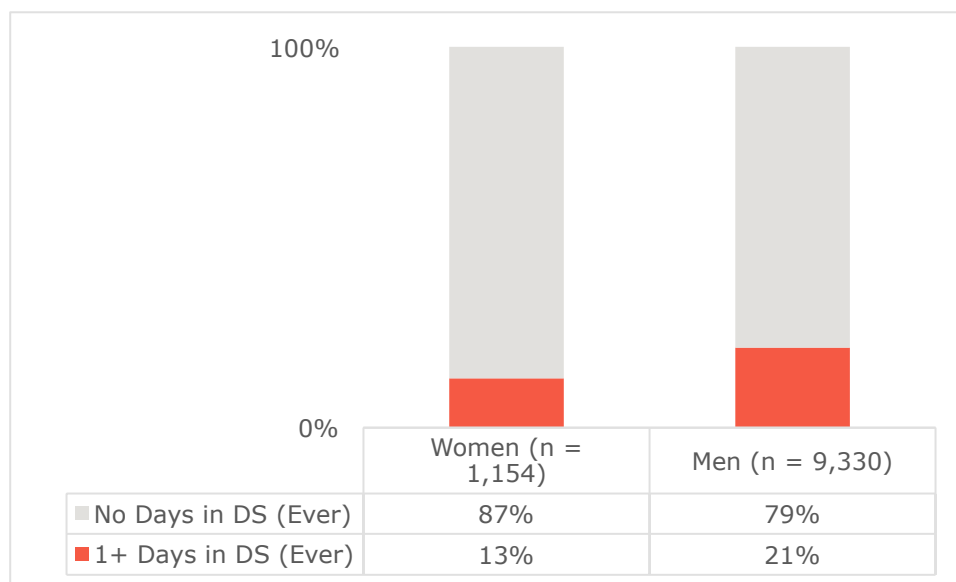
**Figure 16: Lengths of Stay in Immediate and Disciplinary Segregation**



**Finding 14: Disciplinary Segregation was used more commonly for men than for women.**

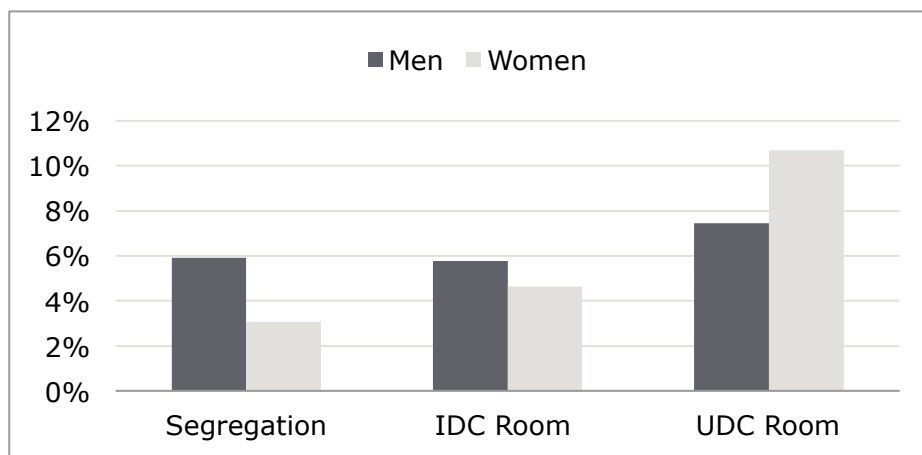
The data show that men were 1.6 times more likely than women to spend one or more days in DS over the study period. As shown in Figure 17 below, about 21 percent of men and 13 percent of women incarcerated in Nebraska prisons experienced at least one day in DS. Additionally, data from misconduct reports revealed that DS was used less frequently and for shorter average sentences in the women’s facility compared to most men’s facilities (see Figure 14, Table 8, and Figure 15, above).

**Figure 17: Disciplinary Segregation, by Gender**



As shown in Figure 18 below, men were more likely than women to receive sanctions of Disciplinary Segregation or IDC room restriction, while women were more likely to receive UDC room restriction.<sup>60</sup> In fact, more women received UDC room restriction than received DS and IDC room restriction combined.

**Figure 18: Disciplinary Segregation and Room Restriction, by Gender**



<sup>60</sup> Room restriction is “the status of being restricted from certain privileges normally afforded members of the general inmate population. It does not consist of total separation from the general population.” UDC room restriction can be imposed by the Unit Disciplinary Committee for more minor infractions; an individual on UDC room restriction can still attend their work assignment. IDC room restriction can be imposed by the Institutional Disciplinary Committee, and an individual on IDC room restriction *cannot* attend their work assignment. Both types of room restriction can be imposed for a maximum of 21 days. Nebraska Administrative Code, Title 68 – Department of Correctional Services, Chapter 6; and NDCS, “Administrative Regulation 217.01: Inmate Rules and Discipline.”



**Finding 15: A small number of “heavy users” accounted for the majority of days spent in segregation for disciplinary reasons.**

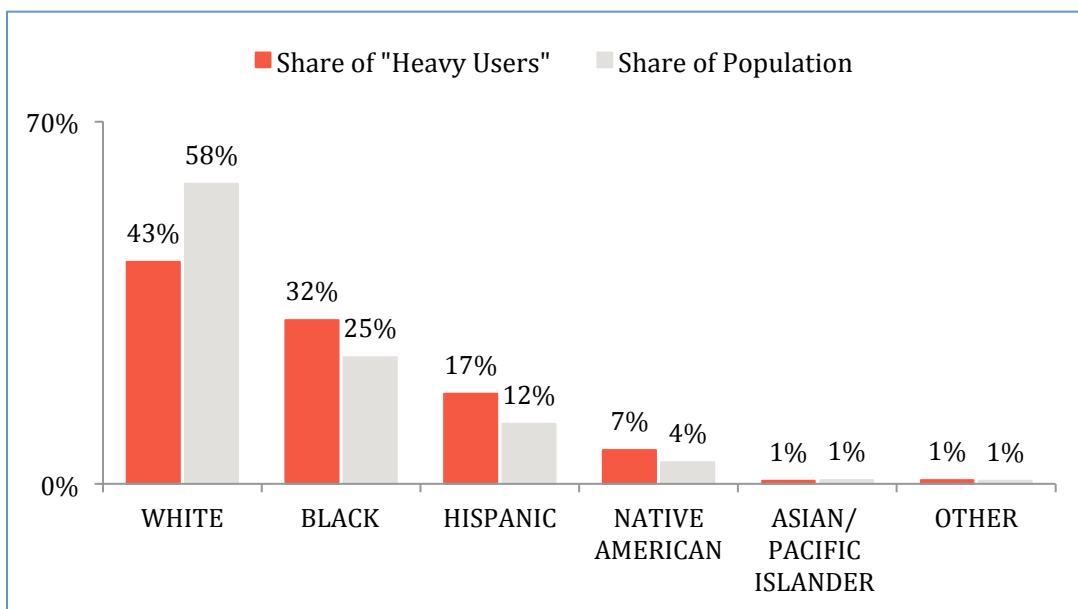
**(a) About 8 percent of the Nebraska prison population accounted for 71 percent of all days spent in DS and IS, meaning that a very small group of individuals were repeatedly charged with rule violations and sanctioned to Disciplinary Segregation.**

A total of 3,168 people (30 percent of the total prison population during the two-year period) had spent one or more recent days in IS or DS (“recent days” refers to days during the two-year study period; a higher number of people, 44 percent, had contact with IS or DS at *any* point during their entire stay in NDCS custody). Among this group, the average number of recent days in IS or DS was 44. But a group of 810 people (only 8 percent of the total population during the two-year period) had 50 or more recent days of IS or DS and spent a total of 100,559 days in IS and DS (71 percent of total IS and DS days). Moreover, just 326 people (3 percent of the total population) had 100 or more recent days of IS or DS, and thus accounted for 47 percent of all days of IS and DS (66,480 days).

**(b) Racial and ethnic minorities accounted for a disproportionate share of this group of “heavy users.”**

As Figure 19 below shows, white people made up 58 percent of the total NDCS population but only 43 percent of the heavy users, whereas Black people were 25 percent of the population but 32 percent of heavy users, and Hispanic individuals were only 12 percent of the population but 17 percent of heavy users.

**Figure 19: Racial and Ethnic Disparities among “Heavy Users” and the Total Pop.**



**Finding 16: People in Immediate Segregation and Disciplinary Segregation were locked in their cells for around 23 hours per day, with minimal to no access to programming, recreation, and congregate activities.**

Per policy, individuals in IS and DS were allowed to shower at least three times per week and to exercise outside their cells for a minimum of only one hour per day, five days per week.<sup>61</sup> They had almost no opportunity to engage in productive activities or programming.

**Finding 17: The excessive use of Disciplinary Segregation likely contributed to dissatisfaction and conflict between corrections staff and incarcerated people.**

During focus groups, several corrections officers said that people who spent long periods in DS would often come back seeming as aggressive, if not more hostile, than they were before their sanction. And, as noted above, excessive use of segregation and its consequences for those who were placed there were two major grievances cited by individuals who participated in the May 2015 disturbance at TSCI.<sup>62</sup>

## Findings: Administrative Confinement and Protective Custody

Several data limitations made it difficult to accurately quantify total stays in Administrative Confinement (AC), compare rates of AC contact by race and gender, and approximate how often people were placed in AC for different reasons. This is because AC as a status was almost always an extension of a stay in Immediate or Disciplinary Segregation, and because databases were not consistently updated to reflect when people were moved from one status to another (such as from DS to AC), as indicated by case note reviews and length of DS sentences. However, some data analysis and findings are included here.

**Finding 18: People were often housed in Administrative Confinement for very long periods of time.**

According to the data, about 13 percent of people incarcerated in Nebraska experienced at least one day in Administrative Confinement at any point during their incarceration. While fewer people experienced AC compared to DS, longer stays were more common in this form of segregation.

The average stay in AC was 172 days. However, Figure 20 below shows that about 10 percent of individuals who had contact with AC during the two-year study period were there for only 1 to 25 days, and 18 percent were there for between 25 and 50 days. Far more people spent longer times in AC; 60 percent spent over 100 days in AC, and 16 percent spent at least 300 days there.

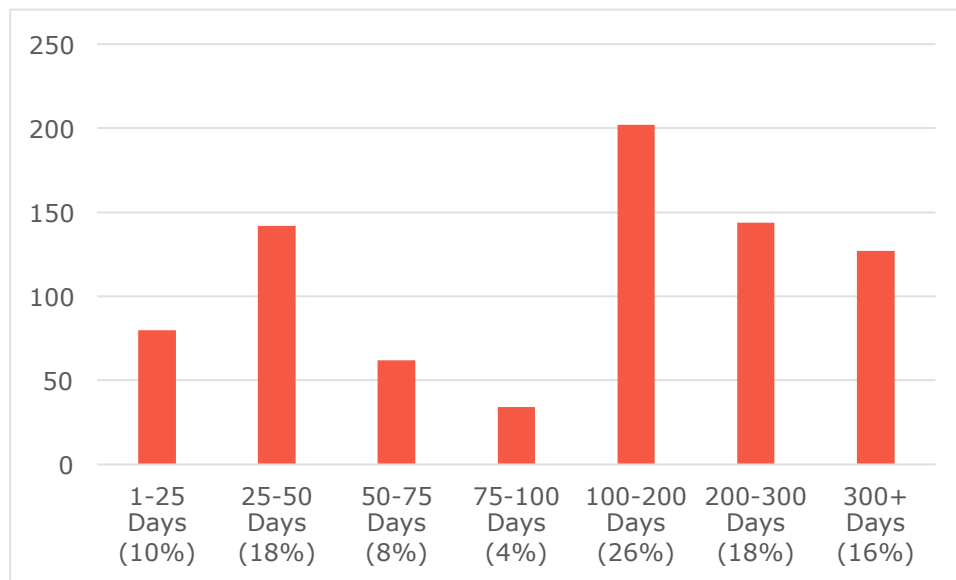
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<sup>61</sup> NDCS, “Administrative Regulation 210.01: Conditions of Segregated Confinement” (replaced by “Administrative Regulation 210.01: Restrictive Housing” on July 1, 2016).

<sup>62</sup> See Nebraska Ombudsman’s Office, *Ombudsman’s Report: The Mother’s Day Riot at the Tecumseh State Correctional Institution, May 10, 2015*.

Again, these numbers are estimates, as there are likely some people who served time in Administrative Confinement without the database being updated to show that their status had changed from DS.

**Figure 20: Total Days Spent in Administrative Confinement**



**Finding 19: People in Administrative Confinement were locked in their cells for around 23 hours per day, without adequate access to recreation, constructive programming, congregate activities, or meaningful opportunities to transition back to general population.**

Per policy, individuals in AC were allowed to shower at least three times per week and to exercise outside their cells for a minimum of only one hour per day, five days per week.<sup>63</sup> They had very little opportunity to engage in productive activities or programming. There was a Segregation Levels Program for people in AC, administered by a committee of unit and mental health staff who promoted or demoted individuals to the next level based on their behavior and completion of modules of the Transformation Project (a primarily packet-based program). Incarcerated people on higher levels would receive perks, such as the ability to purchase additional canteen items, an extra visit per month, or a job on the unit. However, individuals were required to spend a minimum amount of time (between four to eight weeks) on each level, meaning progression through the levels, even without any setbacks, would take a significant amount of time.

<sup>63</sup> NDCS, "Administrative Regulation 210.01: Conditions of Segregated Confinement."

**Finding 20: Correctional officers sometimes placed people in Administrative Confinement for reasons related to mental health.**

NDCS did not provide Vera with data that allowed us to estimate the percentage of people with psychiatric illnesses in AC, and the department did not record and report on the specific reasons that people were placed on AC status. However, in the movement files, correctional officers sometimes entered a reason into a text field, which provided some indication as to why individuals were moved into restrictive housing. After carefully reviewing these text fields, Vera found some instances where correctional officers noted “mental health stabilization” or simply “mental health” as the basis for moving a person into a restrictive housing unit such as AC. This is a troubling finding that suggests that solitary confinement was being used to respond to individuals with symptoms of mental illness.

**Finding 21: People were housed in Protective Custody for very long periods of time.**

Among people in Protective Custody during the study period, about one-third had spent fewer than 100 days in PC, but nearly one-quarter had spent more than 500 days. The average amount of time spent in PC was 311 days (about 10 months), as shown in Figure 2 earlier in this section.

**Finding 22: Living conditions in Protective Custody varied somewhat between units and facilities, but were generally overly restrictive and lacked adequate access to constructive programming, recreation, and congregate activity; however, at the time of Vera’s assessment, NDCS had begun reforming these conditions.**

Per policy, Protective Custody was not required to look very different from other forms of segregation. Individuals in PC could receive meals outside of their cells “if security permit[ted]” and were allowed to shower and shave once each weekday. However, they were still only guaranteed out-of-cell exercise for one hour, five days per week (on each weekday).<sup>64</sup>

During site visits Vera heard that in practice, conditions in PC units varied somewhat by facility. Some individuals assigned PC status were held in living conditions more similar to the general population, but most lived in very restrictive environments (including PC beds in the Special Management Unit at TSCI), despite the fact that they did not pose a security threat and PC is not intended to be punitive. They were locked in their cells for most of each day and had minimal access to recreational opportunities and jobs. Moreover, Vera heard that programming and services were less available in PC than in general population. Individuals in PC units had inadequate access to constructive programming and no access to substance use treatment or programming tailored to people convicted of sex crimes, which are available in general population. Moreover, the restrictive environment may have hindered access to necessary treatment and services for people with mental illness in PC.

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<sup>64</sup> Ibid.

However, Vera also heard that NDCS was in the process of trying to decrease the restrictiveness of PC environments to make them more closely resemble general population. For instance, during our site visit to TSCI, Vera was told that individuals in Protective Custody in Unit 2C had much less out-of-cell time than general population; they were provided only one hour per day in the yard, daily showers, 45 minutes per day in the dayroom, and GED programming, and could perform some jobs on-unit. However, TSCI was piloting additional out-of-cell time and privileges, and exploring converting an open space into a classroom to provide education and programming as well as renovating an outside yard to increase recreation opportunities. The administration at LCC has also reportedly enacted changes in PC units to increase out-of-cell time, with more access to the dayroom, exercise yards, and the gym.

## Findings: Mental Health

Vera was unable to acquire systematic data that indicated mental health needs or treatment provided for people in NDCS prisons. As a result, Vera's assessment is based on discussions with NDCS staff during site visits and focus groups, and on analysis of the minimal, anecdotal mental health information that was available in administrative data on misconduct report hearings and segregation review hearings. Thus, the findings below do not cover the full scope of the issues related to the treatment of people with mental health needs in NDCS custody.<sup>65</sup>

### **Finding 23: People who need regular mental health care often do not receive sufficient contact with or access to mental health staff.**

Correctional officers and other NDCS staff spoke very highly of the commitment and effectiveness of mental health staff, but lamented that there are simply not enough of them to serve the needs of their patients. Mental health care providers expressed a desire for more staff members to meet their patients' needs and to be readily accessible 24 hours per day, given the high needs of the incarcerated population. During focus groups, incarcerated people also expressed similar concerns and frustration with the lack of access to treatment services.

#### **(a) Tecumseh State Correctional Institution faces challenges in meeting the mental health needs of its population.**

During site visits and focus groups, Vera learned of several challenges hampering TSCI in meeting the behavioral health needs of its population. TSCI has a large population of individuals with mental health needs, but is geographically distant from the two large population centers of Lincoln and Omaha and their attendant medical and mental health resources. People with mental health needs also require more staff attention and time, things already at a premium at TSCI.

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<sup>65</sup> For an additional finding related to mental health, see Finding 20 in the previous section ("Correctional officers sometimes placed people in Administrative Confinement for reasons related to mental health.")

Vera also heard that the Secure Mental Health Unit (SMHU) at TSCI was in the Special Management Unit but operated differently due to its nature as a mental health facility. TSCI staff in the SMHU were there full-time in permanent positions (including a full-time caseworker) for increased consistency. SMHU security staff also received an additional four days of training, including mental health training, crisis intervention training, and one-and-a-half days of on-site training. Staff reported that custody and unit staff would work together with medical and mental health staff to better manage individuals in the SMHU.

However, medical services at TSCI are provided by an independent contractor, Correct Care Solutions, which means that the contractor handles medical and psychiatric diagnostics and medication prescribing, while TSCI staff are responsible for mental health needs (such as counseling and therapeutic programming). While the contract with Correct Care Solutions has helped to keep medical staffing levels up, Vera learned that the separation of medical and mental health services creates additional communication barriers; mental health staff may not be aware of concurrent medical conditions, or whether incarcerated people are taking their psychiatric medications, for example.

**(b) Lincoln Correctional Center is facing challenges with staffing and mental health service capacity as it is repurposed to serve as the main facility for individuals with high mental health needs.**

NDCS has been repurposing LCC to serve as the main facility for individuals with mental health needs. A Secure Mental Health Unit (SMHU) was created at LCC last year and provides mental health treatment in a secure, fairly restrictive environment, with a levels program that allows individuals to have progressively more privileges and out-of-cell time. The aim is to transition individuals out of restrictive housing to other units with more programming and out-of-cell time, including Mental Health Units (MHU) and the general population. When Vera visited LCC, staff reported that they had been able to transition around 30 people out of the SMHU in the past year (the SMHU can house 30 people at a time). However, Vera also heard that correctional staff at LCC were having difficulties responding to the growing number of people with mental illness housed there, and that they could use additional training and support to more successfully manage this population.

**Finding 24: Correctional officers lack sufficient awareness and training around identifying and responding to mental health problems among incarcerated people.**

Some staff reported that some correctional officers lack an adequate understanding of how to deal with people with psychiatric conditions; staff in SMHUs reportedly tend to treat individuals housed there the same way that they treat those housed in Intensive Management or Administrative Confinement units. Additional training on recognizing signs of mental illness, communicating with people with mental illness, and deescalating crisis situations would be helpful for all staff, particularly those working in restrictive housing and mental health units but also for staff working in the general population.

**Finding 25: Living conditions in the Control Unit at Lincoln Correctional Center (LCC) imperil the health and safety of incarcerated people and staff.**

The Control Unit at LCC is a small, 16-cell restrictive housing unit, with four cells designated as part of the Secure Mental Health Unit (SMHU). During our site visit, Vera observed that the unit is dark and has low ceilings, cell windows are covered by metal sheets with only small holes, and the recreation area has very high, solid cinderblock walls and no exercise equipment. In addition to these conditions being particularly isolating and harmful for people incarcerated there, Vera was told that staff generally do not want to work in the Control Unit due to the stark environment and the risk of assaults; this can lead to a reliance on temporary “fill-in” staff, which reduces consistency and experience among Control Unit staff.

NDCS leadership, correctional staff, and clinicians all seemed to agree that living conditions in the Control Unit are harmful to the health and well-being of incarcerated people and staff. In particular, the use of some cells for the SMHU means that vulnerable people with mental illness, who need a therapeutic environment, are instead subjected to isolation and idleness, which can cause them to decompensate. Moreover, correctional officers on the unit may not be properly trained to respond to the needs of these individuals.

## VI. Reforms

As noted in the introduction, the Nebraska Department of Correctional Services has recently begun instituting dramatic reforms to its use of segregation. In July 2016, in response to requirements of the 2015 state law LB 598, NDCS developed and released a comprehensive new rule overhauling restrictive housing in the department. The stated purpose of the new rule is to establish policy on restrictive housing

to ensure that it is an alternative of last resort and will be utilized in the least restrictive manner possible for the least amount of time consistent with the safety and security of staff, inmates, and the facility. Alternatives to restrictive housing shall be used in every case possible rather than placing an inmate in restrictive housing as a standard response to rule breaking, disruption, and vulnerability. Behavior shall be managed primarily through programming, behavioral plans, incentives, and mission-specific housing instead of relying primarily on sanctions.<sup>66</sup>

The rule replaces the multiple categories of segregation used previously by NDCS with just two types: Immediate Segregation and Longer-term Restrictive Housing.

**Immediate Segregation (IS):** Immediate Segregation is, similar to before the reforms, a short-term assignment to restrictive housing “in response to behavior that creates a risk to the inmate, others, or the security of the institution.” It is used “to maintain safety and security while investigations are completed, risk and needs assessments are conducted, and appropriate housing is identified.” The rule specifies that placements in IS can *only* result from:

- Serious acts of violence,
- Escapes or escape attempts,
- Threats or act of violence “that are likely to destabilize the institutional environment to such a degree that the order and security of the facility is significantly threatened,”
- Active security threat group (prison gang) membership, accompanied by a finding that the individual “has engaged in dangerous or threatening behavior directed by the security threat group or directs the dangerous or threatening behavior of others,” or
- “The incitement or threats to incite group disturbances.”

The rule establishes some safeguards by requiring reviews of placements in IS. A facility’s warden must review and approve IS placement within 24 hours, and again after 15 days if the individual is still in IS. Extensions of IS past 30 days must be approved by the NDCS Deputy

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<sup>66</sup> NDCS, “Administrative Regulation 210.01: Restrictive Housing” (effective July 1, 2016), <http://www.corrections.nebraska.gov/pdf/ar/classification/AR%20210.01.pdf> (accessed September 16, 2016). All information in this section comes from this rule, unless otherwise noted. See Appendix III for the full text of the rule.



Director – Operations, and stays in IS longer than 45 days must be approved by the Director. The maximum time that can be spent in Immediate Segregation is 60 days.

**Longer-term Restrictive Housing (LTRH):** Longer-term Restrictive Housing is a classification-based assignment to segregation, “used as a behavior management intervention for inmates whose behavior continues to pose a risk to the safety of themselves or others.” Thus it is to be used only for people who cannot safely be housed in the general population. Furthermore, LTRH is intended to be more than simply a way to securely house incarcerated people; the rule states that it is “a targeted individualized intervention with a primary emphasis on pro-social behavior, interactions with others, life-view change, incentives for positive change, and successful transition to lower levels of security,” and its guiding focus should be on “individualized goal planning, behavior change, and treatment that will facilitate the inmate’s capacity to live successfully in general population and return successfully to the community.”

Moreover, in LTRH, programming will be used to reduce risk and address individuals’ needs, providing opportunities to learn and practice pro-social behaviors and “to progress through incentivized step-down programs to lower security classifications.” Programming will be delivered in ways that ensure safety, including the use of “security programming chairs” in congregate classroom space, where possible.

The rule provides safeguards for placement and continuation in Longer-term Restrictive Housing. All assignments are initiated by a facility’s classification team and reviewed by the warden, and then must be reviewed and authorized by the newly-created Central Office Multi-Disciplinary Review Team (MDRT). The administration is required to create individualized plans for each person placed in restrictive housing to provide clarity on the reasons for placement and what they must do to earn release back to the general population. The MDRT is required to review all individuals in LTRH at least every three months, in a classification hearing, to assess compliance with current treatment plans and whether they can be promoted to a less restrictive setting. Incarcerated people may appeal MDRT decisions to the NDCS Director. The approval of the Director is required to hold any person in restrictive housing for longer than 12 consecutive months; the Director and the MDRT must then review these cases at least monthly.

**Disciplinary Segregation:** Disciplinary Segregation is not mentioned anywhere in the new rule, because the department eliminated its use in July 2016. Director Scott Frakes issued a memorandum to staff and incarcerated people announcing that, effective July 11, 2016, “Disciplinary Segregation will no longer be authorized as a sanction for rule violations.”<sup>67</sup> The memo noted that Longer-term Restrictive Housing may be used for individuals that present “significant risk,” but that the department is “stepping away from the use of restrictive housing

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<sup>67</sup> Letter to NDCS staff from Scott Frakes, Director, NDCS, June 9, 2016.

as a punishment.” This is a dramatic change that was not required by LB 598 and goes further than other jurisdictions’ recent reforms to disciplinary segregation.<sup>68</sup>

### Other Aspects of the New Rule

The new rule also establishes:

- **Mission-specific housing units**, to provide specialized living conditions and programming for specific populations, such as those needing residential treatment and those with common interests and challenges. The aim “is to reduce behaviors that otherwise might lead to restrictive housing, provide risk- and needs-responsive options to facilitate transitions between restrictive housing and the general population, and concentrate services and program availability” to certain populations.
- **Protective Management Units**, to house individuals with Protective Custody status (who are not safe in the general population), with out-of-cell time and access to programming, jobs, and recreation as similar as possible to general population.
- Protocols for diverting people with serious mental illness from restrictive housing to alternative placements, such as **Secure Mental Health Units**.
- Requirements regarding the provision of **mental health treatment and reviews** for people in Immediate Segregation and Longer-term Restrictive Housing.

Full implementation of these new policies is the next challenge ahead for the department. Notably, some stakeholders suggest that the new rule does not go far enough and is missing specific details on when and how some of the plans will be carried out. Others question whether the state will appropriate sufficient funding to achieve Director Frakes’ bold and commendable goals that underpin the reforms.

Vera’s findings, presented in the previous sections, come from a period prior to the enactment of the new rule, but they are a baseline with which NDCS can measure the impact of these reforms. In the next section, Vera presents recommendations that are informed by our findings as well as our review of the new rule. It is our hope that these recommendations will provide useful guidance on how the department can successfully build upon the promising steps it has already taken.

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<sup>68</sup> Over the last several years, some corrections systems have reduced their use of disciplinary segregation by decreasing the number of infractions eligible for a segregation sanction and/or lowering the maximum length of such sanctions. For example, Washington State, Colorado, and New Mexico have established 30-day maximums for disciplinary segregation sanctions. In eliminating DS, however, NDCS has gone even further.

## VII. Recommendations

### Recommendations for NDCS

The following section provides recommendations specifically for the Nebraska Department of Correctional Services (NDCS) in response to the findings of Vera’s assessment and our examination of the new rule on restrictive housing, and guided by legal, policy, and practice reforms from other jurisdictions as well as policy statements from professional associations in corrections, medicine, and public health. Broadly, it includes recommendations for:

1) improving the disciplinary process; 2) ensuring that people are not isolated for extended durations with nominal access to congregate activity, programming, and services geared toward rehabilitation; 3) excluding vulnerable populations from segregation and creating housing units tailored to their unique needs; 4) improving access to mental health services; 5) deescalating violence; and 6) recruiting, training, and retaining correctional staff by promoting a healthier work environment and adequate compensation. The recommendations address the new rule, where applicable, by endorsing specific ideas, identifying potential challenges, and highlighting ways to build on the intended goals of NDCS and Nebraska’s legislature.

The final section provides broader recommendations that will entail action from government actors and key stakeholders in addition to NDCS. These recommendations recognize that the overuse of restrictive housing is symptomatic of—and in many ways inseparable from—larger issues surrounding Nebraska’s criminal justice system, including overcrowded prisons, staffing shortages, and challenges providing adequate mental health services in the community. Successfully reducing the use of solitary confinement and improving living and working conditions in NDCS facilities will inevitably require action among all branches of government, at the state and local level.

### Recommendations Regarding the Disciplinary Process

Vera commends NDCS for taking the significant step of eliminating segregation as a punishment for rule violations. As discussed above, Vera’s analysis found that the department was using Disciplinary Segregation excessively, especially for lower-severity infractions. Therefore, removing segregation as a disciplinary sanction could considerably reduce the use of segregation across the Nebraska prison system, and it provides the opportunity to replace segregation with less harmful and more effective alternative sanctions. Vera provides the following recommendations to NDCS as it implements this dramatic reform.

**Recommendation 1: Support staff as they adjust to a disciplinary process that does not include Disciplinary Segregation, and ensure that they have adequate alternative tools to sanction misbehavior and incentivize positive behavior.**

**In particular:**

**(a) Train and encourage correctional officers to use communication and informally resolve minor offenses, avoiding the formal disciplinary process altogether when appropriate.**

As the department strives to cease using segregation in response to disciplinary infractions, it will be important to ensure that correctional officers have the tools, training, and supports to respond more effectively to behaviors that may have previously escalated to the disciplinary process and even resulted in segregation. Current policy already encourages staff to resolve issues informally.<sup>69</sup> Leadership should develop and implement trainings for officers on skills in crisis intervention, de-escalation, communication, and building rapport with incarcerated people. The administration should also create incentives and positive reinforcements for correctional officers to resolve conflicts without the disciplinary process, especially for minor infractions.

**(b) Consider the swift, certain, and fair sanction model as an alternative to the formal disciplinary process.**

NDCS could also explore the possibility of using a swift, certain, and fair sanction disciplinary model as an alternative to the traditional, formal disciplinary process for certain infractions. Many decades of research on human behavior indicate that an immediate response to behavior is more effective than a delayed response.<sup>70</sup> The department could consider employing a model that allows correctional officers and supervisors to swiftly respond to certain non-serious infractions on the unit, through the immediate use of fair and proportionate sanctions. Types of responses, such as a reprimand and warning or loss of privileges, could be less restrictive than those given in the disciplinary process, and there must be a review system to ensure that sanctions are used appropriately and consistently. State Correctional Institution Somerset, an adult prison facility in Pennsylvania, has piloted a program where officers on the unit impose swift and certain sanctions—such as loss of dayroom time or restriction to cell except for meals, programming, etc.—for specified misbehaviors. The facility has seen promising results after the first preliminary review, and Pennsylvania is planning to expand the program to more facilities.<sup>71</sup>

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<sup>69</sup> NDCS, "Administrative Regulation 217.01: Inmate Rules and Discipline," p. 3.

<sup>70</sup> See, for example, Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty vs. Severity of Punishment* (Washington, DC: The Sentencing Project, November 2010); and "Swift Certain & Fair," <http://swiftcertainfair.com/> (accessed September 16, 2016). Most of this research has focused on community corrections, but its principles of behavioral modification are relevant to institutional corrections as well.

<sup>71</sup> Presentation by Trevor Wingard, Superintendent, SCI-Somerset, on September 27, 2016.

**(c) Clarify the alternative sanctions that can be used to respond to rule violations, and consider creating a graduated response matrix.**

The new rule states that alternatives to restrictive housing should be used in every case possible as a response to rule-breaking and disruptive behavior. Even prior to the elimination of Disciplinary Segregation, NDCS policy allowed for a variety of disciplinary sanctions, ranging from verbal reprimands and written warnings to extra duty without pay, room restriction, and restrictions on activities and privileges (except for certain protected activities, such as religious worship, dining hall, therapy, and education).<sup>72</sup> However, as noted above, Vera’s data analysis found that while extra duty and room restriction were sometimes used as sanctions, restrictions on activities and privileges such as the gym, TV, and canteen were rarely used. Going forward, these sanctions could be used more frequently in response to some rule violations, and the department could come up with additional alternative sanctions. For example, expanding activities and incentives in general population would create additional privileges that could potentially be limited as sanctions. The department should provide guidance and training to staff on the range of available sanctions and clarify how they are to be used.

To provide more specific guidance, NDCS should consider creating a graduated response matrix that provides a menu of eligible sanctions for each infraction, with more severe sanctions for more serious infractions and possibly graduated responses for a second or third infraction. This matrix should also include clear guidance on offering additional privileges and positive reinforcements to reward good behavior. Furthermore, NDCS leadership should implement protocols for routinely monitoring sanctioning activity to track how facilities, units, and officers are responding to behaviors. Such a monitoring system will permit leadership to recognize and reward correctional officers who are managing behavior successfully and to respond to instances where officers are using sanctions inappropriately.

**(d) Train and support staff in positive behavioral management strategies.**

As the new rule notes, staff should manage behavior “through programming, initiatives, incentives, and mission-specific housing, rather than relying primarily on sanctions.”<sup>73</sup> The department should support staff in understanding how this can be done and developing incentive-based behavioral management tools, which involve rewarding individuals for positive behavior. It will be necessary to expand the programming, activities, and other incentives available, in order to promote and reward positive behavior. To help create effective incentives, each facility should conduct surveys or focus groups with incarcerated people to determine the types of activities, programming, and privileges that they view as rewarding. Incorporating their perspectives will likely improve the effectiveness of any new incentive structure.

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<sup>72</sup> NDCS, “Administrative Regulation 217.01: Inmate Rules and Discipline,” p. 3.

<sup>73</sup> NDCS, “Administrative Regulation 210.01: Restrictive Housing,” p. 2.

**Recommendation 2: Create a process to identify potential pitfalls or unintended consequences that may arise from the elimination of Disciplinary Segregation, and enact safeguards to protect against them. In particular:**

**(a) Enact clear limitations on the use of Immediate Segregation.**

As noted above, the new rule establishes Immediate Segregation (IS) as a temporary restrictive housing assignment, pending the completion of internal investigations, risk and needs assessments, and administrative decisions on appropriate housing.<sup>74</sup> The rule does include some safeguards to prevent IS from being overused or abused, such as required reviews by wardens. However, there is still some risk that Immediate Segregation may be overused or become a de facto sanction for disciplinary infractions. Depending on the clarity and extent of restrictions on 1) the use of IS and 2) the factors warranting placement in Longer-term Restrictive Housing—as well as the extent to which staff culture is changed to accept the absence of Disciplinary Segregation—there is a material risk that people who would have previously been sanctioned to DS may still end up in segregation, in IS or even eventually Longer-term Restrictive Housing. In particular, with DS no longer an option, there may be some motivation for staff to place individuals who have committed an infraction into IS as a de facto, immediate punishment, even if the misconduct was not serious and/or the individual does not pose a true threat to institutional safety. Wardens and department officials will need to carefully monitor how the rule is interpreted and how correctional officers utilize Immediate Segregation, to ensure that it is not used in inappropriate ways, such as in response to lower-level misbehaviors (like Class 2 and 3 rule violations). As the U.S. Department of Justice guiding principles on restrictive housing state, investigative (or immediate) segregation should only be used if an individual’s “presence in general population would pose a danger to the inmate, staff, other inmates, or the public”; furthermore, “policy and training should be crafted carefully to ensure that this principle is not interpreted overly broadly to permit the imposition of restrictive housing for infrequent, lower-level misconduct.”<sup>75</sup>

**(b) Ensure that the end of Disciplinary Segregation does not lead to increased placements in Longer-term Restrictive Housing.**

The department should ensure that Longer-term Restrictive Housing (essentially, administrative segregation) is truly used only when an individual poses a serious risk, and not simply as a response to misbehavior. NDCS should monitor whether its policy changes result in a large number of placements in Longer-term Restrictive Housing. There is some chance that people who would have received Disciplinary Segregation for a maximum of 60 days under the old rule will instead end up in Longer-term Restrictive Housing for an indeterminate amount of time as a result of the same misbehavior. This could potentially have the effect of someone being

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<sup>74</sup> Ibid.

<sup>75</sup> U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Final Report*, p. 96.

placed in indefinite segregation essentially in response to misbehavior, but as the result of an administrative hearing rather than a formal disciplinary hearing; it could result in people spending significantly longer durations in restrictive housing due to misbehavior. (For more recommendations on Longer-term Restrictive Housing, see below.)

**Recommendation 3: Remove “self-mutilation” (i.e., self harm or suicide attempts) as a disciplinary offense; ensure that instances of such behavior trigger an immediate clinical assessment and triage to appropriate medical and mental health services.**

Current policy includes “self-mutilation” as a punishable rule violation.<sup>76</sup> Vera recommends changing this policy, so any individual who commits an act of self-harm or a suicide attempt cannot be subjected to the disciplinary process for this action. The department should ensure that self-harm and suicidal behaviors are treated as clinical issues that trigger a rapid response from a psychiatrist and medical staff. People in restrictive housing are more likely to engage in self-harm and suicidal behavior; social isolation and enforced idleness are significant risk factors for suicidality.<sup>77</sup> Too often, however, correctional officers may misperceive acts of self-harm or other signs of mental illness as malingering or manipulation, and current rules permit officers to respond punitively to displays of psychological anguish that may be created and exacerbated by isolation.

## Recommendations Regarding Restrictive Housing

This section provides recommendations regarding the two types of restrictive housing under the new rule: Immediate Segregation and Longer-term Restrictive Housing.

**Recommendation 4: Enact firm policies that prohibit placing youth, pregnant women, and people with serious mental illness, developmental disabilities, or neurodegenerative diseases in any form of restrictive housing that limits meaningful access to social interaction, physical exercise, environmental stimulation, and therapeutic programming.**

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<sup>76</sup> Title 68 includes as a Class 2 offense “Mutilation of Self or Others,” which is defined as “Intentionally piercing, branding, or cutting any portion of one’s body or another’s body; or causing injury to one’s self.” Note: This is a separate offense from “Tattoo Activities,” which is defined as “Performing tattoo services; possessing tattoo paraphernalia; or receiving a tattoo.” Nebraska Administrative Code, Title 68 – Department of Correctional Services, Chapter 5.

<sup>77</sup> Fatos Kaba et al., “Solitary confinement and risk of self-harm among jail inmates,” *American Journal of Public Health* 104, no. 3 (2014): 442-447; Rusty Reeves and Anthony Tamburello, “Single cells, segregated housing, and suicide in the New Jersey Department of Corrections,” *Journal of the American Academy of Psychiatry and the Law Online* 42, no. 4 (2014): 484-488; Bruce B. Way, Donald A. Sawyer, Sharen Barboza, and Robin Nash, “Inmate suicide and time spent in special disciplinary housing in New York State prison,” *Psychiatric Services* 58, no. 4 (2007): 558-560.



An extensive body of over 150 years of research in psychiatry, neuroscience, epidemiology, and anthropology has documented the detrimental impacts of solitary confinement on health. This body of evidence confirms what we know intuitively—that depriving human beings of social interaction and meaningful sensory stimulation results in undue suffering. The combination of social isolation, sensory deprivation, and enforced idleness is a toxic exposure that results in distinctive psychiatric symptoms, including anxiety, depression, anger, difficulties with impulse control, paranoia, visual and auditory hallucinations, cognitive disturbances, obsessive thoughts, hypersensitivity to stimuli, posttraumatic stress disorder, self-harm, suicide, and/or psychosis.<sup>78</sup> Solitary confinement is also harmful to physical health. The World Health Organization has noted that its effects can include “gastrointestinal and genitourinary problems, diaphoresis, insomnia, deterioration of eyesight, profound fatigue, heart palpitations, migraines, back and joint pain, weight loss, diarrhea, and aggravation of preexisting medical problems.”<sup>79</sup> Such effects can persist even after release from solitary confinement, making it difficult to transition to life in the general prison population or the community.

While these harmful effects can occur in otherwise healthy individuals, isolating youth, people with psychiatric disabilities, developmental disabilities, or neurodegenerative diseases, or other medically vulnerable groups (such as pregnant women) is especially perilous and can result in otherwise preventable injury, illness, and death.

Litigation challenging the practice of long-term isolation on Eighth Amendment grounds has asserted that solitary confinement deprives people of essential human needs, including, among others, social interaction, environmental stimulation, and mental and physical health. Some federal and state courts have ruled that subjecting youth and people with serious mental illness to these conditions violates the Eighth Amendment prohibition against cruel and unusual punishment.<sup>80</sup> Several state and local jurisdictions have adopted legislation or regulations designed to severely restrict or ban the use of segregation for people with serious mental illness and for youth.<sup>81</sup> In addition, international human rights law and norms increasingly support the

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<sup>78</sup> See Stuart Grassian, “Psychiatric effects of solitary confinement,” *Washington University Journal of Law & Policy* 22 (2006): 325; Craig Haney, “Mental health issues in long-term solitary and ‘supermax’ confinement,” *Crime & Delinquency* 49, no. 1 (2003): 124-156; Peter Scharff Smith, “The effects of solitary confinement on prison inmates: A brief history and review of the literature,” *Crime and Justice* 34, no. 1 (2006): 441-528; Stuart Grassian and Nancy Friedman, “Effects of sensory deprivation in psychiatric seclusion and solitary confinement,” *International Journal of Law and Psychiatry* 8 (1986): 49-65; Paul Gendreau, N.L. Freedman, G.J. Wilde, and G.D. Scott, “Changes in EEG alpha frequency and evoked response latency during solitary confinement,” *Journal of Abnormal Psychology* 79, no. 1 (1972): 54; Fatos Kaba et al., “Solitary confinement and risk of self-harm among jail inmates.”

<sup>79</sup> Lars Moller et al., eds., *Health in prisons: A WHO Guide to the Essentials in Prison Health* (Copenhagen: World Health Organization, 2007), p. 36.

<sup>80</sup> See *Madrid*, 889 F. Supp. at 1265-66; *Ruiz v. Johnson*, 37 F.Supp.2d 855, 915 (S.D. Tex. 1999), 243 F.3d 941 (5th Cir. 2001), adhered to on remand, 154 F.Supp.2d 975 (S.D. Tex. 2001).

<sup>81</sup> See Eli Hager and Gerald Rich, “Shifting Away from Solitary,” *The Marshall Project*, December 23, 2014; National Conference of State Legislatures, “States that Prohibit Juvenile Shackling and Solitary Confinement,” <http://www.ncsl.org/research/civil-and-criminal-justice/states-that-limit-or-prohibit-juvenile-shackling-and-solitary-confinement635572628.aspx> (accessed September 16, 2016); and Natalie J. Kraner et al., “51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems” (New York: Lowenstein Center for the Public Interest, October 2015).



prohibition of solitary confinement for vulnerable populations, including youth and those with serious mental illness.<sup>82</sup>

Moreover, prominent medical authorities and professional associations in psychiatry, medicine, correctional health, and public health are calling for strict laws and policies that forbid placing people with serious mental illness and other clinically vulnerable groups in solitary confinement, citing the vast body of empirical work coupled with foundational principles of medical ethics. The American Academy of Child and Adolescent Psychiatry has concluded that, due to their “developmental vulnerability,” adolescents are in particular danger of adverse reactions to prolonged isolation.<sup>83</sup> More recently, the National Commission on Correctional Health Care (NCCHC), an independent organization that sets accreditation standards for healthcare providers in jails and prisons, issued a policy statement taking a firm stance against the use of solitary confinement. NCCHC believes that youth, mentally ill individuals, and pregnant women should be excluded from solitary confinement for any duration.<sup>84</sup> Furthermore, they warn against the violation of medical ethics that arises when medical and mental health professionals are asked to medically “clear” individuals and determine them to be healthy enough to endure isolation for extended periods.

NDCS is pursuing changes intended to reduce the placement of vulnerable groups in restrictive housing units. A vital component of this change will involve creating “mission-specific housing” that aims to provide residential treatment and services tailored to the needs of specific populations. The department’s new policy commits to creating mission-specific housing for people with serious mental illness, individuals on protective custody status, and “other special needs populations,” as an alternative to restrictive housing. For instance, NDCS plans to create additional “secure mental health housing” units for people with serious mental illness.<sup>85</sup>

To complement this effort, Vera recommends that NDCS enact firmer, more explicit policies that exclude youth, pregnant women, and people with serious psychiatric illnesses, developmental and intellectual disabilities, and neurodegenerative diseases from placement in restrictive housing settings, particularly Longer-term Restrictive Housing. The department’s intention to create mission-specific housing for these groups that provides additional programming, increased out-of-cell time, and opportunities for recreation is a critical first step.

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<sup>82</sup> See United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), U.N. Doc. A/Res/70/175 (2015); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, U.N. Doc. A/RES/45/113 (December 14, 1990), Rule 67; United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), U.N. Doc. A/RES/65/229 (March 16, 2011), Rule 22.

<sup>83</sup> American Academy of Child and Adolescent Psychiatry, “Solitary Confinement of Juvenile Offenders,” April 2012.

<sup>84</sup> National Commission on Correctional Health Care, “Position Statement: Solitary Confinement (Isolation).”

<sup>85</sup> Serious mental illness is defined in Nebraska law as: Any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes (i) schizophrenia, (ii) schizoaffective disorder, (iii) delusional disorder; (iv) bipolar affective disorder, (v) major depression, and (vi) obsessive compulsive disorder. Neb. Rev. Stat. 44-792.

It is more likely to succeed if implemented in conjunction with commensurate increases in resources and staffing to deliver the quantity and quality of services necessary. (See below for more recommendations related to special populations and mental health care.)

**Recommendation 5: Further strengthen procedural safeguards for placement in Longer-term Restrictive Housing, to ensure that it is truly used as a last resort, only when necessary, and for as short a time as possible.**

As outlined in the previous section, under the new rule, NDCS is authorized to place individuals into Longer-term Restrictive Housing (LTRH) if they “need more intensive supervision and intervention before promotion to an appropriate non-restrictive housing assignment.” The stated mission of Longer-term Restrictive Housing is to promote pro-social behavior and help people transition to general population or mission-specific housing units.

The new rule includes several procedural safeguards intended to ensure that LTRH is used as a last resort. It creates a Central Office Multi-Disciplinary Review Team (MDRT) to review all individuals referred for LTRH. All assignments to LTRH are appealable to the Director, and any placement beyond 365 days requires the Director’s approval and must then be reviewed every 30 days. As of the time of this report, there were 21 people that have been in restrictive housing for longer than 365 days. The majority of those individuals are housed in the SMHU at LCC.<sup>86</sup>

These procedural safeguards are a good step in the right direction. NDCS should further strengthen the safeguards around placement and continuation in LTRH, to ensure that individuals are only placed in restrictive housing when absolutely necessary and that they are released to less restrictive environments as soon as possible. It is crucial to have procedures to review placement in restrictive housing often and thoroughly, and for incarcerated individuals to be able to meaningfully challenge their placement or continuation in restrictive housing.

**In particular, the department should:**

**(a) Provide explicit guidance on how staff should assess and determine whether an individual should be recommended for, or placed in, restrictive housing. Specific clarification should be given regarding:**

**1) What comprises “reliable information” about STG membership.**

The new rule states that Immediate Segregation, which can be a pre-cursor to Longer-term Restrictive Housing, should be used only for certain situations. One of the situations is “active membership in a ‘security threat group’ (prison gang), accompanied by a finding, based on specific and reliable information, that the inmate either has engaged in dangerous or threatening behavior directed by the security threat group or directs the dangerous or threatening behavior of others.” In order to avoid people ending up in segregation due simply to STG membership or tenuous ties to STG activity, NDCS

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<sup>86</sup> Email to Vera staff from Scott Frakes, Director, NDCS, October 22, 2016.

should provide detailed guidance in this area and monitor IS and LTRH placements to ensure the rule is being appropriately followed and not interpreted overly broadly.

**2) What indicates “significant risk” of harm.**

In addition, incarcerated individuals can be placed in restrictive housing if their “presence in the general population would create a significant risk of physical harm to staff, themselves and/or other inmates”; however, the rule does not clearly define “significant risk” or describe the factors that would warrant placement based on this justification. Of particular concern, this language implies that people who engage in self-harm or display suicidal behavior (posing a risk to “themselves”) may be placed in restrictive housing.

Moreover, NDCS does not currently utilize a validated risk-needs assessment when making housing assignments. Lack of assessment tools or a clear definition of risk will likely increase the chances of unintended results when implementing the new rule. For instance, not having a risk-needs assessment in place increases reliance on the subjective decision-making of correctional staff, who may not have adequate knowledge or training to accurately assess a person’s true risk or align services with their individualized needs. Without a clear definition or further guidance on what constitutes “significant risk,” some people may end up in segregation when their level of risk is actually nominal.

**(b) Ensure that the classification hearing process provides ample review, by a variety of staff, of each individual’s situation and whether referral for placement in Longer-term Restrictive Housing is appropriate.**

The new rule states that a facility’s Unit Classification Committee (UCC) shall hold classification hearings for individuals being considered for assignment to Longer-term Restrictive Housing. The UCC then makes a recommendation to the Institutional Classification Committee and the warden, who can recommend LTRH placement to the Central Office MDRT, which makes the final decision. The rule specifies that a UCC “shall include, but not be limited to, a unit manager, case manager, and unit sergeant.” However, in order to get a fuller picture of each individual and whether or not restrictive housing is appropriate, NDCS should ensure that mental health and program staff are also consistently represented on Unit Classification Committees.

**(c) Consider having the Central Office MDRT review everyone in Longer-term Restrictive Housing more frequently.**

The rule requires the MDRT to hold classification hearings for individuals in LTRH “at least every 90 days.” More frequent reviews would help ensure that people are released from restrictive housing as soon it is as possible to do so.

**Recommendation 6: Ensure that restrictive housing policy and practice reflect the principle that separation is different from isolation; segregating people from the general population does not require that they be held in extremely isolating conditions.**

There is widespread acknowledgement that there are some scenarios when correctional agencies need to be able to “separate” people in a segregated housing unit for legitimate reasons.<sup>87</sup> However, as the American Bar Association standards on the treatment of prisoners note, these individuals can and should still be afforded “items and services” that are “necessary for the maintenance of psychological and physical well-being”; they should not be held in conditions of “extreme isolation,” which is defined as a combination of sensory deprivation, lack of contact with other persons, enforced idleness, minimal out-of-cell time, and lack of outdoor recreation.<sup>88</sup>

**In keeping with this principle, NDCS should improve the conditions of confinement in restrictive housing units to respect the human dignity of all individuals, and in particular to minimize isolation and reduce the negative effects of segregation. NDCS should:**

**(a) Provide people in restrictive housing units with meaningful opportunities for recreation, congregate activity, and effective rehabilitation. Maximize out-of-cell time to the extent possible.**

The new rule requires only one hour per day, five days per week of out-of-cell exercise in restrictive housing, which still allows the confinement of people in their cells for around 23 hours per day and does not afford meaningful opportunities for recreation, congregate activity, or effective rehabilitation. As discussed above, having such minimal time outside of a cell is not healthy for the body or mind. Daily outdoor recreation should be provided—for longer than one hour, in spaces adequate for physical activity and with equipment for exercising—and NDCS should consider assessing individuals in restrictive

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<sup>87</sup> See American Bar Association, *Standards on Treatment of Prisoners* (2010), standard 23-3.8; and U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Final Report*.

<sup>88</sup> American Bar Association, *Standards on Treatment of Prisoners* (2010), standard 23-3.8. Additionally, the U.S. Department of Justice’s guiding principles on restrictive housing state that “[c]orrectional systems should seek ways to increase the minimum amount of time that inmates in restrictive housing spend outside their cells and to offer enhanced in-cell opportunities. Out-of-cell time should include opportunities for recreation, education, clinically appropriate treatment therapies, skill-building, and social interaction with staff and other inmates.” Moreover, as the number of people in restrictive housing is reduced, systems “should devote resources towards improving the conditions of those remaining in segregation. In particular, correctional systems should take advantage of lower staff-to-inmate ratios within restrictive housing units by providing the remaining inmates with increased out-of-cell time.” U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Final Report*, p. 99.

housing for compatibility and allowing some to have congregate recreation time, when safely possible.

**(b) Implement strategies to reduce idleness, sensory deprivation, and isolation.**

In addition to increased out-of-cell time and programming, NDCS should create more opportunities for productive in-cell activities. Consider delivering programming and activities via written materials, televisions, MP3 players, or tablets. However, this should not be a substitute for the provision of out-of-cell individualized or group counseling and other programming.

**(c) Provide daily, face-to-face interactions with mental health and program staff.**

Frequent interaction with caseworkers, behavioral health staff, and others can help reduce isolation. NDCS could also develop a portfolio of faith-based and community volunteer organizations who might be willing to work specifically with people who require longer-term separation; this could include gang denouncement programs, trauma-informed counseling, and other types of pro-social activities.

**(d) Develop strategies to positively engage prisoners who refuse to eat, shower, recreate, or participate in programming.**

For example, Colorado sometimes uses therapy dogs to encourage individuals to leave their cells and engage in treatment and provides art therapy to allow people to express their feelings without having to talk.<sup>89</sup>

**(e) Examine the impact of double-celling on the safety and well-being of individuals in double-celled restrictive housing units.**

Particularly if the assessment reveals negative impacts (such as more assaults or hospital admissions), develop a plan to reform double-celling practices. If double-celling is used, always ensure that individuals are carefully matched to minimize the risk of dangerous situations.

**Recommendation 7: Create a step-down program designed to effectively incentivize and facilitate successful transition out of restrictive housing as soon as possible.**

The new rule states that all inmates in Longer-term Restrictive Housing shall have Behavior/Programming Plans, which “will outline to staff and inmates the steps and criteria for inmates to return to the general population or transition to another form of non-restrictive housing. It will include an incentive-based system that encourages pro-social behavior and program engagement.”

NDCS is moving in the right direction. Step-down programs are an essential strategy for getting people out of solitary confinement and helping them successfully transition into less restrictive settings. The department should fully design and implement a step-down program to

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<sup>89</sup> Rick Raemisch and Kellie Wasco, *Open the Door: Segregation Reforms in Colorado* (Colorado Department of Corrections, 2015).

incentivize good behavior and assist in safely and effectively transitioning individuals out of restrictive housing as soon as possible. Step-down programs should include levels of progressively increasing privileges, out-of-cell time, and congregate activity, as a result of positive behavior and participation in programming. Progressing through the levels should be realistically possible and not take a prohibitively long time. NDCS should create performance metrics and monitor whether step-down programs successfully help people transition out of restrictive housing and into the general population, and then modify the programs to be more effective, if necessary.

**Recommendation 8: Eliminate the practice of releasing people directly from restrictive housing to the community.**

Exposure to solitary confinement can impose traumatic psychological and emotional harms that make adjusting to life in the community particularly difficult. In the worst-case scenarios, releasing people who have been exposed to long periods of segregation directly into the community has resulted in tragedy. Nebraska’s new restrictive housing rule states that a “targeted outcome” for NDCS is “having no one transition from restrictive housing to the community.” It further provides for “strategic reentry and discharge protocols” and special, ongoing coordination between staff to develop specialized reentry plans for people being released directly from restrictive housing or having recently been in restrictive housing.

Because of the enormous challenges that reentry to the community directly from restrictive housing poses, it will be very important for the department to fully implement these measures to ensure successful transitions. NDCS should provide targeted step-down programming and reentry planning for those in restrictive housing who are approaching their release date. Ultimately, the department should strive to completely eliminate the practice of releasing anyone directly from Longer-term Restrictive Housing to the community, without any form of step-down process. Both Colorado and New Mexico, for example, have made reforms so that they no longer release anyone directly to the community from segregation. NDCS should also enhance its methods for preparing all incarcerated people for return to the community, by adopting a department-wide “reentry upon entry” philosophy of focusing on reentry from day one, as well as providing additional, specific reentry programming and planning to all individuals for at least six months prior to their release.

**Recommendation 9: Close the Control Unit at LCC.**

Due to its particularly harsh, isolating conditions, which negatively impact the health, safety, and well-being of incarcerated people and staff, the Control Unit should be permanently closed as a housing unit and repurposed into non-housing space.



## Recommendations Regarding Special Populations & Protective Custody

**Recommendation 10: Ensure that women in NDCS custody benefit from the same reforms and alternatives to restrictive housing that the department implements for incarcerated men; establish specific plans to implement relevant recommendations in this report at the Nebraska Correctional Center for Women.**

Though our data analysis found a smaller proportion of women than men spend time in restrictive housing, the department should nevertheless explore strategies that could improve outcomes for women in general population (to reduce the flow into restrictive housing) and in restrictive housing (to improve conditions, shorten stays, and improve outcomes). Such strategies could also include reviewing all department policies and procedures (including disciplinary procedures) to ensure they account for gender differences, providing additional programming that is gender-responsive and trauma-informed, and increasing NCCW staff training and education on gender-specific and trauma-informed responses.<sup>90</sup>

**Recommendation 11: Provide clarity on staffing, programming, and privileges in all mission-specific housing units; ensure that these units have adequate resources and that staff are given any specialized training necessary to work with these particular populations.**

One of the department's strategies for reducing the use of solitary confinement entails creating mission-specific housing to meet the needs of groups that tend to be overrepresented in segregation settings.<sup>91</sup> NDCS plans to create mission-specific housing for certain groups, including people in need of residential mental health treatment, people convicted of sex crimes, individuals with developmental or intellectual disabilities and traumatic brain injuries, people in need of residential substance use treatment, veterans, and seniors. Furthermore, enacting strict prohibitions against placing youth and medically vulnerable individuals in restrictive housing will require NDCS to establish a range of housing units that provide humane alternatives to isolation for these populations.

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<sup>90</sup> Vera recommends consulting policy guides and tip sheets available through the National Resource Center for Justice Involved Women (NRCJIW). In particular, NRCJIW has a policy guide that provides a step-by-step process for helping agencies think through how gender-responsive and trauma-informed their policies are. NRCJIW also has a shorter tip sheet adapted from this guide for jails that provides a quick roadmap for reviewing and revising policies. See Alyssa Benedict, Becki Ney, and Rachel Ramirez, *Gender Responsive Discipline and Sanctions Policy Guide for Women's Facilities* (Silver Spring, MD: NRCJIW, 2014), <http://cjinvolvedwomen.org/discipline-guide/>; and Alyssa Benedict, "Jail Tip #3: Review Discipline Policies and Practices" (2016), <http://cjinvolvedwomen.org/wp-content/uploads/2016/03/Jail-Tip-Sheet-3.pdf> (both accessed October 24, 2016).

<sup>91</sup> The new NDCS rule defines mission-specific housing as "[h]ousing focused on individual needs and demographics to provide effective living conditions and programming for specific populations. Mission-Specific Housing includes residential treatment and responses to cognitive disabilities as well as prosocial options for inmates with common interests and challenges. The goal is to reduce behaviors that otherwise might lead to restrictive housing, provide risk- and needs-responsive options to facilitate transitions from restrictive housing to the general population, and concentrate services and program availability to this population."

Because of the unique needs of each of these groups, Vera recommends creating additional guidance that describes the mission and components of each of these housing units. This might include outlining the specific mission and objectives of each unit; the composition, competencies, and responsibilities of staff working on each unit, as well as any special training for such staff; out-of-cell time, activities, and privileges; and types of programming offered. Since mission-specific housing units are not restrictive housing, NDCS should ensure that they resemble general population units as much as possible in terms of out-of-cell time and access to programming, services, and activities.

**Recommendation 12: Create safe living units for people requesting or requiring Protective Custody, which offer programs tailored to their individual needs and provide privileges and out-of-cell time as similar as possible to those provided in general population.**

People who require voluntary or involuntary Protective Custody should receive similar privileges, work opportunities, and access to programming as those housed in the general population. Unfortunately, in Nebraska, until recent reforms, most people in PC received minimal out-of-cell time, access to programming, job opportunities, and recreational activities.

The department is starting to implement policy changes that aim to create safe havens for people assigned to Protective Custody status that provide specialized programming and privileges similar to those in the general population. The new restrictive housing rule provides for protective management units that, whenever possible, “are operated similarly to general population units in out-of-cell time, access to programming, work, and recreation.”

This is a welcome reform, and NDCS should ensure that in practice, protective management units are truly as similar to general population as possible. NDCS should collect data and report on the specific reasons why individuals are housed in protective custody (e.g., cooperation with law enforcement, conviction for a sex offense, gang affiliation, sex or gender identification, etc.), in order to better understand the drivers of this population and help develop further strategies to safely house these groups. Additionally, some of the new mission-specific housing units may provide a safer situation for certain vulnerable groups, which may reduce the demand for Protective Custody. The department should examine this interaction and determine whether additional mission-specific housing units could help decrease the need for beds in protective management units.

**Recommendation 13: People requesting Protective Custody should not be housed in Immediate Segregation pending an investigation.**

The new rule does allow holding an individual who requests Protective Custody in Immediate Segregation (IS) pending the completion of an investigation. It may be appropriate and necessary to separate individuals requesting PC pending an investigation for their own safety. However, the department should not place these individuals in an environment that significantly restricts their privileges (e.g., phone calls, visitation, and commissary),



automatically prevents participation in programming, or results in them involuntarily losing a job placement. Every effort should be made to avoid placing people who request Protective Custody in IS. If they are placed there, it should be for the shortest time possible, the investigation should be expedited, and the individual should be allowed as much out-of-cell time, access to programming, and other privileges as possible. (For more on addressing violence in general population, which likely contributes to PC requests, see system-wide recommendations, below.)

## Recommendations Regarding Mental Health

**Recommendation 14: Ensure that no one with serious mental illness is placed in any form of restrictive housing that limits meaningful access to social interaction, physical exercise, environmental stimulation, and therapeutic programming; in particular, do not place these individuals in Longer-term Restrictive Housing.**

The department is establishing Secure Mental Health Housing—secure units meant to house individuals with serious mental illness (SMI) who present a high risk to others or themselves (i.e., who might otherwise be placed in restrictive housing) and who also “require residential mental health treatment.” The new rule states that assignment to these units is “a clinical decision and requires the approval of the Mental Illness Review Team.” However, under the rule’s language, people with SMI technically *could* still be placed in Immediate Segregation and even Longer-term Restrictive Housing, if they present a high risk to self or others but do *not* require residential treatment.<sup>92</sup>

Vera commends the department’s plans to divert people with serious mental health needs who cannot be safely housed in general population out of restrictive housing units and into more therapeutic secure mental health units. However, the department should ensure that a person diagnosed with SMI is under no circumstances housed in segregation, particularly Longer-term Restrictive Housing, where an individual is deprived of meaningful access to social interaction, physical exercise, environmental stimulation, and therapeutic programming. Individuals with SMI, even if they present a risk of violence, should be housed in a therapeutic environment, as exposing these individuals to long-term segregation increases their risks of psychiatric decompensation, self-harm, suicide, and violence.

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<sup>92</sup> The rule notes: “Inmates with a serious mental illness diagnosis whose current level of functionality does *not* require residential treatment shall be seen for a one-on-one out of cell consult with a mental health provider every seven days while on Immediate Segregation status.” It also states: “A. Mental health services for Longer-term Restrictive Housing inmates shall be managed through a combination of requests for consultation made by the inmate or facility staff (in accordance with established procedures and protocols), and weekly cell-front visits by mental health providers. B. In addition, if the inmate agrees to the consult, monthly one-on-one out-of-cell therapeutic assessments will be provided for *Longer-term Restrictive Housing inmates with a diagnosis of serious mental illness*” (emphasis added).

**Recommendation 15: Expand the capacity of mental health care services and ensure a therapeutic environment within Secure Mental Health Units (SMHUs) by increasing mental health staffing, therapeutic programming, out-of-cell time, and recreational activities.**

NDCS should significantly expand the quantity and quality of mental health services for people housed in SMHUs. It may be beneficial to independently consult experts in psychiatry and hospital administrators with experience running secure forensic facilities, to develop the appropriate standard of care within these units and design effective treatment regimens and activities. NDCS could collaborate with the Division of Behavioral Health within the Nebraska Department of Health and Human Services in planning and implementing standards of care for these units. SMHUs should also be appropriately staffed with an adequate number of mental health nurses, social workers, and caseworkers, as well as custody staff with appropriate mental health, communication, and de-escalation training.

Furthermore, while the SMHUs are aimed at providing a residential level of mental health treatment, the new rule states that:

All Immediate Segregation and Longer-term Restrictive Housing rules and regulations apply to individuals assigned to Secure Mental Health Housing. Exceptions will be permitted based on the clinical recommendations of Mental Health staff or as specified in the inmates' Behavior/Programming Plan and/or Individual Treatment Plan as approved by the Warden.

**(a) Ensure that “exceptions” to restrictive housing rules and regulations are widespread and common for all individuals in SMHUs, and that conditions in SMHUs are truly and consistently distinct from those of restrictive housing.**

SMHUs should be particularly program-enriched environments that adhere to recommendations from leading experts in forensic psychiatry who suggest that people in correctional psychiatric units should be afforded the option to participate in a *minimum* of 10 to 15 hours per week of constructive out-of-cell programming and an additional 10 hours of unstructured out-of-cell activity (such as recreation, dayroom, or library time). Structured programming could include dialectical behavioral therapy, group therapy, mindfulness exercises, art therapy, medication management, and other promising practices that are available to psychiatric patients in hospitals and community care settings. As in other restrictive housing, adequate out-of-cell recreation should be provided.

**(b) Strongly consider creating an independent oversight mechanism and adopting a continuous quality monitoring (CQM) system in SMHUs.**

Such a system would establish performance metrics and could be used to regularly evaluate and improve the quality of care in these units. Any facility with an SMHU should also seek full accreditation from the National Commission on Correctional Health Care.

**(c) Conduct a prevalence study to better understand the rates of different types of mental illness and the demand for SMHU beds across NDCS facilities.**

This is an important component of identifying staffing and programming needs at different facilities, and for monitoring over time how changes in laws, policies, and practices influence mental health needs. It is also important for measuring mental health outcomes at the outset of making significant reductions in restrictive housing. As part of this process, the administration should also conduct a survey with patients to gain their perspective on how to improve services.

**Recommendation 16: Empower mental health professionals in restrictive housing review processes.**

The new rule notes that, with regards to Longer-term Restrictive Housing, “consideration at all levels of review must be given to the mental health needs of the individual.” This is a crucial principle, and the department should ensure that it is consistently respected in practice.

According to the rule, the Central Office Multi-Disciplinary Review Team—which makes the decision about placement on Longer-term Restrictive Housing—does include the Behavioral Health Administrator. However, there is no requirement that a mental health staff representative be included on the Unit Classification Committee, which conducts hearings and can recommend an individual be placed on Longer-term Restrictive Housing. NDCS should ensure that mental health staff are represented on this committee so they have a voice in such important decision-making.

In addition, the rule states that wardens “shall consult with mental health staff before removing an inmate from Immediate Segregation status or recommending placement, continuation or removal from Longer-term Restrictive Housing status.” NDCS should work to ensure that such consultations take place and are meaningful, and that the opinions of mental health staff are given due weight in these decisions.

**Recommendation 17: Improve discharge planning and continuity of care for people with mental illness being released to the community.**

Discharge planning to ensure continuity of care is particularly important for individuals with mental illness who have spent time in any form of restrictive housing. NDCS should continuously work to improve its reentry planning and coordination with community providers to better facilitate successful transitions for individuals with mental illness who are released into the community. The department should continue to develop relationships with service providers in the community. NDCS should also follow best practices to ensure that everyone with a mental illness is released with an adequate supply of any necessary medications, a confirmed appointment with a clinician in the community, and their medical and mental healthcare records.

**Recommendation 18: Explore investing in an electronic health record system.**

An electronic health record system (EHR) would help NDCS increase efficiency and accuracy of record-keeping, reduce clerical errors, and facilitate more seamless medical and mental healthcare of individuals, both during incarceration and upon release. In addition, EHR systems would provide an invaluable tool for increasing transparency and for monitoring the health needs of people in various housing settings within NDCS. For instance, EHRs could be used to monitor, collect, and report data on the incidence of self-harm, psychiatric decompensation, or other behaviors in restrictive housing and other settings. Many EHRs are customizable and could be adapted to the workflow of clinicians working in the new treatment-based housing units. An EHR could also help the department document and analyze the reasons for higher rates of hospitalizations among people in segregation, and tailor solutions to those problems.<sup>93</sup>

## System-wide Recommendations

**Recommendation 19: Explore strategies to address vacancies, turnover, and burnout among correctional officers and mental health staff; create opportunities for professional development and additional training for correctional officers and other staff.**

As noted previously, staffing challenges are a key contributor to the overuse of segregation, and they must be addressed. Overcrowding coupled with understaffing has created a toxic environment inside facilities, where caseworkers and correctional officers often feel overworked, unable to meet the needs of the population, and unsafe in their daily work environment. This environment breeds hostility, idleness, decompensation, and a spike in disruptive behavior among incarcerated people—which can escalate into violence. It also results in correctional officers frequently responding to problems reactively, with force and discipline, rather than proactively, with counseling and compassion.

Since Vera began this project, Director Frakes and Nebraska lawmakers have been actively pursuing strategies to address the workforce challenges of the department. Director Frakes has strived to reduce the use of mandatory overtime and established councils that provide staff an open forum to voice their concerns. He initiated the first study of staffing capacity since 2008, when the prison system housed nearly 800 fewer people. In 2016, in his testimony before the Nebraska legislature, Director Frakes announced that the department had secured \$1.5 million to be allocated to strategies for retaining quality correctional officers and medical staff.<sup>94</sup> Acknowledging that this one-time funding allocation was not enough, he also outlined a set of preliminary recommendations that the agency is exploring, including bonuses and resiliency

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<sup>93</sup> See, for example, Richard Stazesky, Jennifer Hughes, and Homer Venters, "Implementation of an Electronic Health Record in the New York City Jail System," issue paper (April 2012), <http://www.cochs.org/files/hieconf/implementation-ecw-new-york.pdf> (accessed October 17, 2016).

<sup>94</sup> See JoAnne Young, "Prisons will use \$1.5 million for professional staff development," *Lincoln Journal-Star*, June 15, 2016.

training for staff. Furthermore, this year the department plans to provide one-time, \$500 bonuses to staff in high-turnover positions, and in September 2016, the administration of Governor Pete Ricketts opened contract negotiations with the Nebraska Association of Public Employees with a proposal to raise the salaries of many NDCS staff, some by as much as 11.8 percent.<sup>95</sup>

Undeniably, significant financial resources are needed to build a better workforce. NDCS should consult the American Correctional Association and other correctional administrators to ensure that compensation packages in Nebraska are competitive and provide incentives for professional growth and advancement.

There is also a need to better retain staff by developing a system that incentivizes staff to pursue education and professional training and rewards staff for experience with the department and good job performance. There could be opportunities to reward correctional officers devoted to safely reducing the use of restrictive housing, who could serve as leaders in gaining buy-in from their peers. Caseworkers also need incentives and professional recognition for developing and running effective programs, preventing violence, and helping ensure segregation is not abused.

Similarly, recruiting and retaining highly credentialed and effective mental health professionals—including psychiatrists, psychologists, nurses, and social workers—to work in such a challenging environment will likely demand more competitive compensation. Vera recommends building relationships with local mental health advocacy organizations to develop concrete plans for addressing the workforce challenges in filling mental health staff positions.

**Recommendation 20: Expand vocational, educational, and therapeutic programming—as well as other constructive, pro-social activities and recreation—for the entire population, including those in restrictive housing.**

As Director Frakes testified earlier this year, idleness caused by “the lack of out-of-cell time and pro-social activities” is a likely contributor to violence in Nebraska prisons;<sup>96</sup> it therefore also likely contributes to the use of restrictive housing. Creating more meaningful opportunities for incarcerated people to earn educational credentials, acquire vocational training, and participate in recreation and therapeutic programming is essential for addressing this idleness and helping individuals prepare to live productive, law-abiding lives after release.

As noted above, a recent Council of State Governments Justice Center report found that NDCS offers positive rehabilitative programming but lacks a sufficient workforce and overall

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<sup>95</sup> JoAnne Young, “Corrections director announces \$500 retention bonuses,” *Lincoln Journal-Star*, August 30, 2016; and Martha Stoddard, “Nebraska corrections staff could get raises of up to 11.8% under Ricketts plan,” *Omaha World-Herald*, September 15, 2016.

<sup>96</sup> Testimony by Scott Frakes, Director, NDCS, at a meeting of the Department of Correctional Services Special Investigative Committee, April 18, 2016, <http://www.nebraskalegislature.gov/FloorDocs/Current/PDF/Transcripts/SpecialCommittees/Department%20of%20Correctional%20Services%20Special%20Investigative%20Committee%20hearing%20.April%2018,%202016.pdf> (accessed October 28), p. 54.

capacity to deliver it in a timely manner.<sup>97</sup> Vera supports implementing the recommendations in the Justice Center’s report and emphasizes the importance of providing additional opportunities for educational, vocational, and life skills training.

In addition to increasing programming, NDCS should improve access to recreational activities in all prison facilities, through restoring fuller access to yards and outdoor activities, installing additional exercise equipment, and expanding opportunities to participate in organized sports leagues that promote congregative activity and pro-social behavior. NDCS leadership could give correctional officers an active role in developing partnerships with community organizations, volunteers, and faith-based groups to increase the available programming and constructive activities in the prison system. These strategies could help NDCS improve living conditions, reduce idleness, decrease tensions within facilities, and better facilitate rehabilitation. They could also create additional privileges and activities that could be used as incentives for good behavior or be temporarily limited as disciplinary sanctions.

**Recommendation 21: Explore and develop violence prevention strategies.**

NDCS should consider strategies to address violence related to security threat groups and other violence in facilities, particularly NSP, LCC, and TSCI. This could help reduce not only violent incidents, but also the use of restrictive housing—by reducing the number of individuals who commit violent acts and also decreasing demand for Protective Custody from those fearing violence.

In an overcrowded prison system, there are no simple solutions to prevent and deter violence. However, one group violence reduction strategy that has shown promise, and which NDCS could explore, is a violence intervention model based on the “Operation Ceasefire” deterrence model. This approach has been effective in community settings and has only recently been adapted to institutional settings, but it appears to be effective in correctional jurisdictions that have piloted it.<sup>98</sup> For example, in 2012 the Washington Department of Corrections began piloting Operation Place Safety in its highest security facilities. It targeted three particularly serious rule violations to be met with group enforcement. In the model’s first year of implementation at a pilot facility, assaults against staff, the use of weapons, and multi-man fights were reduced by 50 percent.<sup>99</sup> Furthermore, in 2014, administrators at a prison in Pennsylvania developed their own version of this program called Operation Stop Violence.

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<sup>97</sup> Bree Derrick, Sara Friedman, and Jennifer Kisela, *Findings of the Justice Program Assessment of Nebraska’s Prisons* (Council of State Governments Justice Center, June 21, 2016).

<sup>98</sup> Communities have experimented with group violence intervention strategies dating back to Operation Ceasefire, a gun violence reduction effort launched in the 1990s in Boston. This approach has since been replicated in other communities and has been shown to reduce violence significantly. Unlike suppression and containment models—traditionally used by both law enforcement and correctional agencies to punish individuals for singular offenses—the Ceasefire model is based on principles of deterrence and recognizes that many serious offenses are motivated by group dynamics. See Bernie Warner, Dan Pacholke, and Carly Kujath, *Operation Place Safety: First Year in Review* (June 1, 2014).

<sup>99</sup> *Ibid.*, p. 2. The Vera project team also heard about this program directly from former Washington Department of Corrections Secretary Dan Pacholke in a call on March 8, 2016.



Though their program is still relatively new, they have also reported a reduction in violence in the first few months.<sup>100</sup>

Additionally, in 2016 Director Frakes sent a delegation of staff to New Mexico to observe a specialized housing unit that was designed to reduce the use of restrictive housing while proactively addressing violence attributed to prison gangs. The New Mexico Corrections Department has established a Restoration to Population Program (RPP), in which inactive gang members live in a separate general population setting where they can receive programming; participants in the program seem to appreciate the ability to safely renounce their gang affiliations. The department also has a Predatory Behavior Management Program, which addresses incarcerated people with predatory behavior to prepare them for successful return to general population.<sup>101</sup> NDCS could further study this and similar models and develop strategies to try in Nebraska.<sup>102</sup>

**Recommendation 22: Develop strategies for increasing and enhancing family visitation, both in general population and in restrictive housing.**

Vera’s Family Justice Program has produced several reports on the importance of maintaining family engagement for both incarcerated people and their loved ones and the critical role of correctional policies and practices in supporting these positive relationships. Research shows that family visits can lead to better outcomes, including a lower risk for recidivism, for incarcerated individuals.<sup>103</sup> Restricting visits from family and other support people can be devastating for incarcerated people and their loved ones, and counterproductive from a facility management perspective. Current policy does permit contact visits for most people in restrictive housing, except for those in TSCI. NDCS should reinstate contact visits as an option for people incarcerated at TSCI, unless an individualized determination is made that it is not safe for a specific person to have contact visits. NDCS should also ensure that department policies and procedures at all prisons encourage and facilitate visitation as well as phone calls, and that individuals in protective management units and mission-specific housing are afforded the same access to visitation and telephones as people in general population.

**Recommendation 23: Adopt a robust system for collecting and reporting data on the department’s use of restrictive housing.**

Such a system should establish core metrics that measure the number of people in different forms of restrictive housing and their lengths of stay. These numbers should be regularly reviewed by age, race and ethnicity, and gender as part of a larger effort to support equitable,

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<sup>100</sup> Michael Overmyer, Warden, State Correctional Institution Forest, phone call with Vera team, February 25, 2016.

<sup>101</sup> U.S. Department of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Final Report*, p. 76.

<sup>102</sup> It may also be helpful to explore resources in the Violence Reduction Network’s “Violence Reduction Clearinghouse,” <https://www.vrnetwork.org/Clearinghouse> (accessed October 17, 2016).

<sup>103</sup> Margaret diZerega, *Why Ask About Family? A Guide for Corrections* (New York: Vera Institute of Justice, 2011).

unbiased decision-making. This analysis will support reform planning and evaluation and will allow the department to assess its segregation practices and outcomes according to its policy.

In particular, it is imperative to accurately track each individual's various status changes from one type of restrictive housing to another and to develop measures of the overall length of stay as someone remains in restrictive housing but is transferred to another status (from Immediate Segregation to Longer-term Restrictive Housing, e.g.). NDCS should strive to further standardize data entry and collect data consistently across all units and all facilities. Staff in restrictive housing units, especially, should be given refresher trainings in how to update and maintain accurate records consistent with department policy.

In addition, NDCS should collect data and report on the specific reasons why individuals are housed in protective management units (such as cooperation with law enforcement, conviction for a sex offense, gang affiliation, or sex or gender identification), in order to better understand the drivers of this population and develop additional strategies to safely house these groups.

Finally, the department has said that it aims to reduce or eliminate the use of local jails to house people serving time in NDCS custody. Nevertheless, any current or future contracts with jails should be negotiated to include provisions on tracking the use of restrictive housing for such people. Similar provisions should be in place to track segregation use for people that that are sent to other states to serve time while under NDCS jurisdiction.

## Recommendations for NDCS and Other Stakeholders

As detailed above, there are a variety of policy and practice solutions that the Nebraska Department of Correctional Services can proactively pursue to help reduce the use of restrictive housing in the near term. However, solving this problem in the long term will require structural changes to the state's criminal justice system that are beyond the power and responsibility of NDCS alone. As discussed at the beginning of this report, the Nebraska prison system is severely overpopulated and under-resourced. Addressing these issues will entail bold, unwavering political leadership focused on addressing the causes of mass incarceration and changing the philosophy and culture of corrections to put human dignity at the core of its mission.

A political vision must be coupled with legislative strategies and financial investments to steer vital resources—such as mental health services, education, and job training—to people inside *and* outside prison walls. It will require state lawmakers to continue pursuing sentencing reforms and other solutions, so that fewer people are sent to prison for shorter periods of time and are more expediently and safely transitioned out of prisons and into the community. To facilitate these transitions, it will be vital to expand educational, vocational, and recreational programming for incarcerated people and to empower caseworkers to run effective programs that provide the knowledge, skills, and autonomy necessary for successful reentry.

NDCS and state mental health agencies must also work together to create concrete strategies to increase the quantity and quality of psychiatric and healthcare services in NDCS facilities. This should include a plan for recruiting, training, and retaining highly qualified mental health



counselors and correctional professionals. These tasks will require resources and coordination from all branches of state and local government, including collaboration with state agencies responsible for health and social welfare services.

The following recommendations will entail action from government actors and key stakeholders, in addition to NDCS.

**Recommendation 24: Nebraska should continue to pursue sentencing reforms and implement programs designed to yield significant reductions in the prison population, to relieve overcrowding in NDCS facilities.**

Shrinking the prison population, improving living conditions, and reducing the use of segregation in NDCS facilities hinge on legislative, judicial, and executive strategies to reduce reliance on incarceration as a response to crime in Nebraska. Many of the problems facing the Nebraska prison system—including institutional violence, staffing challenges, and insufficient availability of programming—are rooted in systemic overcrowding. Sentencing reforms, creating community-based alternatives to incarceration, and increasing the use of parole and other early release mechanisms are some of the steps necessary to stem this severe overcrowding. Vera supports current efforts to shrink the prison population, improve reentry services, and curb the use of solitary confinement. In conjunction with such reforms, we encourage NDCS to work closely with the legislature, local police departments, prosecutors, and other key stakeholders to implement initiatives—such as diversion programs, shorter prison sentences, and parole reforms—similar to those that have helped states like New York, California, and New Jersey make sizable reductions in their state prison populations, while experiencing concomitant drops in crime that exceeded the national average.<sup>104</sup>

**Recommendation 25: Nebraska should identify short- and long-term strategies to improve the capacity of behavioral health services in community settings, and to create front-end diversion solutions designed to steer people with mental health needs away from prison and into less restrictive, community-based alternatives.**

The overrepresentation of people with mental health needs in the Nebraska prison system, and in restrictive housing units, is intricately tied to insufficient capacity in the community to provide quality care and social services to people suffering from psychiatric disabilities and/or substance use disorders. Nebraska should work to develop comprehensive, interagency-driven approaches to address the overrepresentation of people with psychiatric health needs across the criminal justice continuum. Several states and localities facing similar problems have created multi-disciplinary task forces charged with creating comprehensive action plans to reduce the

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<sup>104</sup> Marc Mauer and Nazgol Ghandnoosh, "Policy Brief: Fewer Prisoners, Less Crime: A Tale of Three States," (Washington, DC: The Sentencing Project, 2014).

number of people with behavioral health needs who enter correctional facilities, improve quality of care inside jails and prisons, and facilitate continuity of care at reentry.<sup>105</sup>

Having a strong social service and treatment safety net is essential for building effective diversion programs and for increasing the odds that people will have access to health services upon reentry from prison. It will be imperative to invest significant resources to remedy the shortage of mental health services in community settings and the lack of other less restrictive, clinical environments that provide safe and humane alternatives to incarceration for people with serious mental illness. Implementing recovery-oriented diversion programs that focus on linking people to health services, stable housing, and employment are essential to shifting the responsibilities of caring for people with chronic psychiatric, developmental, and cognitive disabilities from the prison system to more appropriate providers.

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<sup>105</sup> For example, see the New York City Mayor's Office on Criminal Justice, "Mayor's Task Force on Behavioral Health and the Criminal Justice System, Action Plan 2014," <http://www1.nyc.gov/nyc-resources/service/4640/task-force-on-behavioral-health-and-the-criminal-justice-system> (accessed September 16, 2016).

## VIII. Conclusion

In recent years, a diverse range of national and international organizations, policymakers, corrections practitioners, and advocates have called for reform of restrictive housing in correctional systems. Whether citing the potentially devastating psychological and physiological effects of spending 23 hours per day alone in a cell the size of a parking space, the costs of operating such highly restrictive environments, or the lack of conclusive evidence demonstrating that segregation makes correctional facilities or our communities safer, these voices agree that reform and innovation are vital endeavors. In 2016, many segregation reform efforts are still in their infancy. Still, as the examples discussed in this report make clear, there is much to learn from ongoing work in states like Colorado, New Mexico, Pennsylvania, Washington, and more.

As the Nebraska Department of Correctional Services continues to move forward with implementation of current and future reform efforts, Vera has every confidence that the department will capitalize on its own strengths, learn from its peers in the field, and use the recommendations in this report as a springboard for improving the lives of the men and women who live and work in Nebraska's prisons.

## Appendix I: Overview of NDCS Facilities

**Diagnostic and Evaluation Center (DEC):** The Diagnostic and Evaluation Center (DEC) was opened in August of 1979 as a 176-bed, maximum custody, reception, diagnostic, evaluation, assessment, classification and assignment facility. All adult males sentenced to the Department of Correctional Services by the County and District courts of the State of Nebraska are received into the correctional system at the Diagnostic and Evaluation Center. In addition, the institution houses people sentenced by the court for a ninety-day evaluation, Safekeepers (people under jurisdiction of a county but being held by NDCS), interstate transfers, and returned parolees and escapees. As the intake center, DEC is the most crowded facility in NDCS with a design capacity of 160 and a population of 492 as of December 31, 2014.

**Lincoln Correctional Center (LCC):** Located in Lincoln, Nebraska, LCC is a medium/maximum security facility for adult males. The Lincoln Correctional Center opened in August of 1979 as is connected to the Diagnostic and Evaluation Center. While the facilities are separate, they continue to employ the extensive use of shared services including food service, maintenance, inmate records, training, safety and sanitation, mail and perimeter security. This facility has become a focal point for behavioral health treatment in the department as it houses the in-patient sex offender treatment program and several other housing units designated to serve inmates with serious mental illnesses. LCC has a design capacity of 308 beds and as of the end of 2014 housed 506 male inmates.

**Nebraska Correctional Center for Women (NCCW):** NCCW is the only secure correctional facility for adult women in the Nebraska Department of Correctional Services. The facility houses maximum, medium and minimum custody inmates as well as those held for court-ordered evaluation and Safekeeper inmates from county jails. The design capacity for the facility is 275 beds and as of the end of 2014 the population at NCCW was 341 inmates. NCCW serves as the diagnostic and evaluation center for all newly committed female inmates in the system. During intake, inmates receive medical and mental health evaluations and also learn about the various programming opportunities available to them during their term of incarceration.

**Nebraska Correctional Youth Facility (NCYF):** NCYF is a maximum, medium, and minimum-security facility designed for male youth from early adolescence to age 21 years and 10 months. All youth housed at NCYF have been adjudicated through the adult court system; no one processed through the juvenile justice system is housed here. Upon initial entry at NCYF, all individuals complete personal data regarding their education and complete the Test of Adult Basic Education (TABE) or the BEST Plus test for ESL students. Residents of the facility may apply to participate in community custody programs to include work detail, work release or education release. The application is reviewed by the unit classification committee and by the Institution's warden. NCYF has a design capacity of 76 beds and as of December 31, 2014 housed 79 male inmates.

**Nebraska State Penitentiary (NSP):** Located in Lincoln, Nebraska, NSP is the oldest state correctional facility in Nebraska, opening in 1869. NSP houses maximum, medium, and minimum custody inmates and is the second largest institution in the system with a design capacity of 718 beds. NSP houses an in-patient substance abuse treatment program for minimum custody inmates. NSP also has several restrictive housing units, a 36 bed control unit and 60 beds dedicated to Administrative Confinement and Disciplinary Segregation. NSP's population as of December 31, 2014 was 1,317.

**Omaha Correctional Center (OCC):** OCC is a medium/minimum security facility located in Omaha with a design capacity of 396 beds. OCC hosts the Substance Abuse Unit for Residential Substance Abuse Treatment Services as well as a Non-Residential Services program. Treatment programming is always at capacity due to the sizable number of people with substance use disorders and those convicted of sex crimes. The population at OCC as of December 31, 2014 was 759 male inmates.

**Tecumseh State Correctional Institution (TSCI):** TSCI is a maximum/medium custody facility for adult males that was established by LB 150 in 1997. TSCI has a design capacity of 960 and housed 1028 inmates on December 31, 2014. TSCI houses most of the department's restrictive housing beds, and a 192-bed Special Management Unit (SMU) is located there. Beds in this unit are used to house inmates who are on a restrictive housing status, such as Administrative Confinement or Intensive Management. In 2014, a wing of the SMU was transitioned into a dedicated secure mental health unit to provide additional treatment opportunities for inmates in restrictive housing. TSCI also has a ten-bed skilled nursing facility, clinic exam rooms, on-site x-ray, medical laboratory, optometry, and dental. Behavioral health services include psychiatric services, crisis intervention, and residential and non-residential substance abuse treatment.

**Community Corrections Center – Lincoln (CCC-L):** Opened in July 1993, the Community Corrections Center – Lincoln serves as one of the department's two community centers, whose mission is to support the reentry of inmates back into the community through work release and other programming for inmates nearing the end of their sentence. CCC-L has four housing units (three male and one female) and is designed to house 44 women and 156 men. The population on December 31, 2014 was 77 women and 280 men. Individuals confined at CCC-L are given the opportunity to prepare for release through a systematic decrease in supervision and a corresponding increase in responsibility. Those who are nearing release on parole or discharge from sentence are eligible through the classification system to be promoted to community custody status. Inmates housed at CCC-L are classified at the Community A (work detail) or Community B (work release) levels.

**Community Corrections Center – Omaha (CCC-O):** The Community Corrections Center – Omaha is a community based correctional facility that supports the Department of Correctional Services mission of maintaining public safety and providing program opportunities that facilitate the return of incarcerated people back into their communities as responsible persons. Although the facility is a self-contained structure, it shares mutually utilized services with the Omaha Correctional Center. The center houses both

male and female inmates and serves as the primary re-entry portal for inmates returning to Douglas County. Normally, these inmates are near the discharge of their sentence or parole hearing. The facility has 60 beds designated for male inmates assigned to the work detail program and 96 beds available for male inmates participating in the work release program. There are 24 beds designated for female inmates. The population at CCC-O as of December 31, 2014 was 143 men and 23 women.

**Work Ethic Camp (WEC):** The Mission of the Work Ethic Camp is to provide an integrated program in partnership with the Probation and Parole Administrations that combine evidence-based practices within a structured treatment environment. The overall goal is to reduce the risk of recidivism through behavioral change and assisting with transitions back into the community. The Work Ethic Camp (WEC) provides an individualized program in a time frame appropriate for the individual’s needs and sentence structure. For probationers and parole violators, the program cannot exceed 180 days. The 200-bed facility is designed for males approaching release on Probation and Parole or progressing to community custody and housed a total of 181 inmates and probationers at the end of 2014. Individuals convicted of a sex offense or part I violent crime are not eligible for WEC.

**Overcrowding in NDCS Facilities  
(NDCS Population, April–June 2016)<sup>106</sup>**

Facility	Design Capacity	Average Daily Population	Percent of Capacity
CCC-L	200	384	192%
CCC-O	90	170	189%
DEC	160	401	251%
LCC	308	502	163%
NCCW	275	343	125%
NCYF	68	61	90%
NSP	718	1,348	193%
OCC	396	768	194%
TSCI	960	1,024	107%
WEC	100	180	172%
<b>TOTAL</b>	<b>3,275</b>	<b>5,186</b>	<b>158%</b>

<sup>106</sup> Nebraska Department of Correctional Services, “NDCS Quarterly Data Sheet, April–June 2016,” <http://www.corrections.nebraska.gov/pdf/datasheets/2016/Datasheet%202016%202nd%20Qtr.pdf> (accessed September 16, 2016).

# Appendix II: Summary of Recommendations

## Recommendations Regarding the Disciplinary Process

**Recommendation 1:** Support staff as they adjust to a disciplinary process that does not include Disciplinary Segregation, and ensure that they have adequate alternative tools to sanction misbehavior and incentivize positive behavior. In particular:

- (a) Train and encourage correctional officers to use communication and informally resolve minor offenses, avoiding the formal disciplinary process altogether when appropriate
- (b) Consider the swift, certain, and fair sanction model as an alternative to the formal disciplinary process.
- (c) Clarify the alternative sanctions that can be used to respond to rule violations, and consider creating a graduated response matrix.
- (d) Train and support staff in positive behavioral management strategies.

**Recommendation 2:** Create a process to identify potential pitfalls or unintended consequences that may arise from the elimination of Disciplinary Segregation, and enact safeguards to protect against them. In particular:

- (a) Enact clear limitations on the use of Immediate Segregation.
- (b) Ensure that the end of Disciplinary Segregation does not lead to increased placements in Longer-term Restrictive Housing.

**Recommendation 3:** Remove “self-mutilation” (i.e., self harm or suicide attempts) as a disciplinary offense; ensure that instances of such behavior trigger an immediate clinical assessment and triage to appropriate medical and mental health services.

## Recommendations Regarding Restrictive Housing

**Recommendation 4:** Enact firm policies that prohibit placing youth, pregnant women, and people with serious mental illness, developmental disabilities, or neurodegenerative diseases in any form of restrictive housing that limits meaningful access to social interaction, physical exercise, environmental stimulation, and therapeutic programming.

**Recommendation 5:** Further strengthen procedural safeguards for placement in Longer-term Restrictive Housing, to ensure that it is truly used as a last resort, only when necessary, and for as short a time as possible. In particular, the department should:

- (a) Provide explicit guidance on how staff should assess and determine whether an individual should be recommended for, or placed in, restrictive housing. Specific clarification should be given regarding:

1. What comprises “reliable information” about STG membership.
  2. What indicates “significant risk” of harm.
- (b) Ensure that the classification hearing process provides ample review, by a variety of staff, of each individual’s situation and whether referral for placement in Longer-term Restrictive Housing is appropriate.
- (c) Consider having the Central Office MDRT review everyone in Longer-term Restrictive Housing more frequently.

**Recommendation 6:** Ensure that restrictive housing policy and practice reflect the principle that separation is different from isolation; segregating people from the general population does not require that they be held in extremely isolating conditions. NDCS should improve the conditions of confinement in restrictive housing units to respect the human dignity of all individuals, and in particular to minimize isolation and reduce the negative effects of segregation. NDCS should:

- (a) Provide people in restrictive housing units with meaningful opportunities for recreation, congregate activity, and effective rehabilitation. Maximize out-of-cell time to the extent possible.
- (b) Implement strategies to reduce idleness, sensory deprivation, and isolation.
- (c) Provide daily, face-to-face interactions with mental health and program staff.
- (d) Develop strategies to positively engage prisoners who refuse to eat, shower, recreate, or participate in programming.
- (e) Examine the impact of double-celling on the safety and well-being of individuals in double-celled restrictive housing units.

**Recommendation 7:** Create a step-down program designed to effectively incentivize and facilitate successful transition out of restrictive housing as soon as possible.

**Recommendation 8:** Eliminate the practice of releasing people directly from restrictive housing to the community.

**Recommendation 9:** Close the Control Unit at LCC.

### Recommendations Regarding Special Populations & Protective Custody

**Recommendation 10:** Ensure that women in NDCS custody benefit from the same reforms and alternatives to restrictive housing that the department implements for incarcerated men; establish specific plans to implement relevant recommendations in this report at the Nebraska Correctional Center for Women.



**Recommendation 11:** Provide clarity on staffing, programming, and privileges in all mission-specific housing units; ensure that these units have adequate resources and that staff are given any specialized training necessary to work with these particular populations.

**Recommendation 12:** Create safe living units for people requesting or requiring Protective Custody, which offer programs tailored to their individual needs and provide privileges and out-of-cell time as similar as possible to those provided in general population.

**Recommendation 13:** People requesting Protective Custody should not be housed in Immediate Segregation pending an investigation.

### Recommendations Regarding Mental Health

**Recommendation 14:** Ensure that no one with serious mental illness is placed in any form of restrictive housing that limits meaningful access to social interaction, physical exercise, environmental stimulation, and therapeutic programming; in particular, do not place these individuals in Longer-term Restrictive Housing.

**Recommendation 15:** Expand the capacity of mental health care services and ensure a therapeutic environment within Secure Mental Health Units (SMHUs) by increasing mental health staffing, therapeutic programming, out-of-cell time, and recreational activities.

- (a) Ensure that “exceptions” to restrictive housing rules and regulations are widespread and common for all individuals in SMHUs, and that conditions in SMHUs are truly and consistently distinct from those of restrictive housing.
- (b) Strongly consider creating an independent oversight mechanism and adopting a continuous quality monitoring (CQM) system in SMHUs.
- (c) Conduct a prevalence study to better understand the rates of different types of mental illness and the demand for SMHU beds across NDCS facilities.

**Recommendation 16:** Empower mental health professionals in restrictive housing review processes.

**Recommendation 17:** Improve discharge planning and continuity of care for people with mental illness being released to the community.

**Recommendation 18:** Explore investing in an electronic health record system.

## System-wide Recommendations

**Recommendation 19:** Explore strategies to address vacancies, turnover, and burnout among correctional officers and mental health staff; create opportunities for professional development and additional training for correctional officers and other staff.

**Recommendation 20:** Expand vocational, educational, and therapeutic programming—as well as other constructive, pro-social activities and recreation—for the entire population, including those in restrictive housing.

**Recommendation 21:** Explore and develop violence prevention strategies.

**Recommendation 22:** Develop strategies for increasing and enhancing family visitation, both in general population and in restrictive housing.

**Recommendation 23:** Adopt a robust system for collecting and reporting data on the department's use of restrictive housing.

## Recommendations for NDCS and Other Stakeholders

**Recommendation 24:** Nebraska should continue to pursue sentencing reforms and implement programs designed to yield significant reductions in the prison population, to relieve overcrowding in NDCS facilities.

**Recommendation 25:** Nebraska should identify short- and long-term strategies to improve the capacity of behavioral health services in community settings, and to create front-end diversion solutions designed to steer people with mental health needs away from prison and into less restrictive, community-based alternatives.

## Appendix III: Administrative Regulation 210.01 – Restrictive Housing

(See the following pages for the text of the new restrictive housing rule developed by the Nebraska Department of Correctional Services, which went into effect on July 1, 2016.)

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This Administrative Regulation is to be made available in law libraries, other inmate resource centers.

EFFECTIVE: July 1, 2016  
 REVISED: July 14, 2016

This regulation was retitled and extensively revised to incorporate Nebraska Administrative Code Title 72, Chapter 1, other applicable statutes and restrictive housing provisions previously included in Administrative Regulation 201.05, Inmate Classification and Assignment – Special Management Inmates on July 1, 2016. Revisions include minor word changing, organization and formatting throughout with no changes to policy content. Section XIII. Has been added and remaining sections re-numbered. Attachments have been added and/or revised and re-lettered for process efficiency.

APPROVED:




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Scott R. Frakes, Director  
 Nebraska Department of Correctional Services

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PURPOSE

To provide policy, in compliance with state statute and the Nebraska Administrative Code, Title 72, for the use of restrictive housing to ensure that it is an alternative of last resort and will be utilized in the least restrictive manner possible for the least amount of time consistent with the safety and security of staff, inmates, and the facility. Alternatives to restrictive housing shall be used in every case possible rather than placing an inmate in restrictive housing as a standard response to rule breaking, disruption, and vulnerability. Behavior shall be managed primarily through programming, behavioral plans, incentives, and mission-specific housing instead of relying primarily on sanctions.

This policy establishes specific levels of confinement outside of general population, including Immediate Segregation housing, Longer-Term Restrictive Housing, and provisions for Secure Mental Health housing; defines behaviors, conditions, and mental/behavioral health statuses whereby an inmate may be placed in each confinement level; defines and mandates processes and procedures for making these determinations for each level of confinement; and describes and mandates individualized transition plans for promotion to less restrictive housing assignments at the earliest opportunity that maintains safety and security.

GENERAL

Each institution, consistent with its function and the nature of its inmate population and programs, shall develop its own version of this Administrative Regulation (AR) within the limits and guidelines that follow.

TERMS

**Behavior/Programming Plan.** A document with a standard format used to identify desired behavior changes, programming opportunities offered and approaches to facilitate those behavioral changes.

**Individual Treatment Plan.** A clinical document used by mental health professionals to establish a patient’s mental health treatment plan.

**Central Office Multidisciplinary Review Team (MDRT).** A team comprised of the Deputy Director of Operations (Chair), the Behavioral Health Administrator, the Intelligence Team Leader, a representative from the classification unit and a representative of the research division. Others may be added at the discretion of the Chair or the Director. Any delegation of representation on the MDRT must be approved, in advance, by the Chair. The MDRT shall meet weekly.

**General Population.** All inmate housing areas that allow out-of-cell movement without the use of restraints, a minimum of six hours per day of out-of-cell time, and regular access to programming areas outside of the living unit.

**Restrictive Housing.** Conditions of confinement that provide limited contact with other inmates, strictly controlled movement, and out-of-cell time less than 24 hours per week. (Neb. Rev. Stat. 83-170)

**Immediate Segregation.** A short-term restrictive housing assignment of not more than 30 days in response to behavior that creates a risk to the inmate, others, or the security of the institution. Immediate Segregation is used to maintain safety and security while investigations are completed, risk and needs assessments are conducted, and appropriate housing is identified. Exceptions to this timeframe require the prior approval of the Deputy Director and/or Director.

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**Longer-Term Restrictive Housing.** A classification-based restrictive housing assignment of over 30 days. Longer-Term Restrictive Housing (LTRH) is used as a behavior management intervention for inmates whose behavior continues to pose a risk to the safety of themselves or others and includes inmate participation in the development of a plan for transition back to general population or mission-based housing.

**Mental Illness / Mentally Ill.** Presence of a psychiatric disorder that involves a severe or substantial impairment of a person's thought processes, sensory input, mood balance, memory, or ability to reason which substantially interferes with such person's ability to meet the ordinary demands of living or interferes with the safety or well-being of others. (Neb. Rev. Stat. 71-907)

**Mission-Specific Housing.** Housing focused on individual needs and demographics to provide effective living conditions and programming for specific populations. Mission-Specific Housing includes residential treatment and responses to cognitive disabilities as well as prosocial options for inmates with common interests and challenges. The goal is to reduce behaviors that otherwise might lead to restrictive housing, provide risk- and needs-responsive options to facilitate transitions from restrictive housing to the general population, and concentrate services and program availability to this population.

**Protective Custody (PC).** The status of an inmate who is housed in a safe location to reduce the risk of harm by others while having privileges similar to general population housing. Protective Custody is used to meet the needs of inmates who cannot be safely housed in other general population units, with the goal of helping reduce the use of restrictive housing.

**Protective Management Unit (PM).** Units used to house inmates who cannot be safely housed in other general population units. Whenever possible, protective management units are operated similarly to general population units in out-of-cell time, access to programming, work, and recreation, etc.

**Secure Mental Health Housing (SMH).** Units used to house inmates with serious mental illness who present a high risk to others or to self and who require residential mental health treatment.

**Serious Mental Illness.** Any mental health condition that current medical science affirms is caused by a biological disorder of the brain and that substantially limits the life activities of the person with the serious mental illness. Serious mental illness includes, but is not limited to (1) schizophrenia, (2) schizoaffective disorder, (3) delusional disorder, (4) bipolar affective disorder, (5) major depression, and (6) obsessive compulsive disorder. (Neb. Rev. Stat. 44-792)

**Solitary Confinement.** The status of confinement of an inmate in an individual cell with solid, soundproof doors and which deprives the inmate of all visual and auditory contact with other persons (Neb. Rev. Stat. 83-170(14)). NDCS does not utilize solitary confinement.

PROCEDURE

**I. ALTERNATIVES TO RESTRICTIVE HOUSING**

- A. Alternatives to restrictive housing shall be used in every case possible – including but not limited to: short-term cell restrictions, loss of other privileges, restitution, changes to work, housing and/or programming assignments – rather than placing an inmate in restrictive housing as a standard response to rule breaking, disruption, and vulnerability.

**As these alternatives are developed and approved, Policy Directives will be issued.**

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- B. Mission Specific Housing shall be used to: (1) reduce the use of restrictive housing by providing a range of alternatives that address needs and reduce the behaviors that previously led to the use of restrictive housing, and (2) provide risk- and needs-responsive options for individuals transitioning from restrictive housing, thus reducing lengths of stay for inmates not ready to return successfully and safely to the general prison population.
1. Mission Specific Housing focuses on individual needs and demographics to provide effective living conditions and programming for specific populations. Mission specific housing includes residential treatment and responses to cognitive disabilities, as well as prosocial housing options for inmates with common interests and challenges.
  2. Mission Specific Housing Units shall operate as general population units and shall, whenever possible, have out-of-cell programming and opportunities for individuals to interact with other inmates and staff during meals, recreation, dayroom, and work activities. Mission specific housing may include, but shall not be limited to:
    - a. Protective Management Units to house inmates who cannot be safely housed in other general population units. Whenever possible protective management units are operated similarly to general population units in out-of-cell time, access to programming, work, and recreation, etc.
    - b. Residential Mental Health Unit to house inmates determined by the Mental Illness Review Team (MIRT) to be in need of residential mental health treatment due to a mental illness and/or developmental/intellectual disabilities and/or traumatic brain injuries that interfere with their safety and/or ability to function effectively in general population, who otherwise might be in restrictive housing for their protection or for risk-intervention.
    - c. Residential Sex Offender Treatment to house inmates in need of programming or treatment for sex abuse crimes as determined by the Clinical Sex Offender Review Team (CSORT).
    - d. Residential Substance Abuse Treatment to house inmates in need of programming or treatment for substance use disorders as determined by the Clinical Substance Abuse Review Team (CSART).
    - e. Veteran Housing for inmates who served in the U.S. Armed Forces and would benefit from being housed with other veterans in a supportive environment.
    - f. Active Senior Units house inmates primarily 50 and older whose behavior is stable and who may or may not have physical limitations to provide an effective living environment that addresses common interests and challenges.



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## II. USE OF RESTRICTIVE HOUSING

- A. Restrictive housing shall be used in the least restrictive manner possible, consistent with institutional safety and security. When restrictive housing is used, the purpose shall be two-fold: short-term risk assessment and longer-term risk/needs intervention. Short-term restrictive housing, or Immediate Segregation, provides time to assess the risk the individual poses to safety and security. The guiding focus of Longer-Term Restrictive Housing shall be on individualized goal planning, behavior change, and treatment that will facilitate the inmate's capacity to live successfully in general population and return successfully to the community.
- B. Inmates with a serious mental illness shall be diverted to the least restrictive environment and provided with risk- and needs-responsive therapeutic settings that are interactive, constructive, and based on individualized interventions balanced with safety and security.
- C. The use of restrictive housing for pregnant inmates, and inmates under the age of 19 requires approval of the Warden within eight hours of placement.
- D. Refer to Attachment A for a general overview of the restrictive housing process.
- E. As described in this policy, the duties of the Director, Deputy Director and Warden are not to be permanently assigned to a designee, but may be performed by an Acting Director, Acting Deputy Director or Acting Warden.

## III. IMMEDIATE SEGREGATION

- A. Any time an inmate is placed in a holding cell for non-routine purposes (III.B.1-6 below), every attempt will be made to ensure alternatives to Immediate Segregation are used.
- B. Incidents that could result in placement on Immediate Segregation status are limited to the following:
  - 1. A serious act of violent behavior (i.e., assaults or attempted assaults) directed at correctional staff and/or at other inmates.
  - 2. A recent escape or attempted escape from secure custody.
  - 3. Threats or actions of violence that are likely to destabilize the institutional environment to such a degree that the order and security of the facility is significantly threatened.
  - 4. Active membership in a "security threat group" (prison gang), accompanied by a finding, based on specific and reliable information, that the inmate either has engaged in dangerous or threatening behavior directed by the security threat group or directs the dangerous or threatening behavior of others.
  - 5. The incitement or threats to incite group disturbances in a correctional facility.



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6. Inmates whose presence in the general population would create a significant risk of physical harm to staff, themselves and/or other inmates (a WRITTEN EXPLANATION OF THE EVENT AND DECISION MUST BE INCLUDED).
  - C. The shift supervisor will review all relevant reports and information to determine if the inmate's actions warrant placement on Immediate Segregation status. A Notice of Immediate Segregation Review form will be completed (Attachment B-1), to include the date, time, and summary of the incident.
  - D. The shift supervisor will note the disposition of the review of Immediate Segregation on the form. The disposition may include, but is not limited to, return to current housing assignment, placement in mission-specific housing, or other approved alternatives (Procedure I.A.), transfer to another facility, or placement on Immediate Segregation status.
    1. If placement on Immediate Segregation status is determined to be necessary, the shift supervisor shall provide the inmate the opportunity to provide a statement relative to this placement on the Immediate Segregation Inmate Statement Form (Attachment C). If the inmate refuses to provide a statement, staff shall attempt to obtain a verbal statement and document these comments on an Incident Report. If the inmate refuses to make a statement, such shall also be documented on an Incident Report.
    2. The completed Notice of Immediate Segregation Review form shall be distributed (paper copy or electronic copy as noted on form) as follows:
      - a. Inmate
      - b. Housing Unit staff (original unit and the receiving restrictive housing unit)
      - c. Unit Administrator
      - d. Warden (to include copy of the completed Immediate Segregation Inmate Statement Form or Incident Report documenting the verbal statement or refusal to make statement)
      - e. Inmate File (original documents to include copy of inmate statement or incident report documenting refusal to make statement)
      - f. NDCS Planning, Research and Accreditation contact
    3. The shift supervisor must provide notification of Immediate Segregation placement to the facility warden. The Warden must review and approve continued placement on IS status within 24 hours.
      - a. An Immediate Segregation Review form (Attachment B-2) shall be completed.
        - (1) During normal business hours, this review form shall be signed by the Warden within 24 hours of the initial Notice of Immediate Segregation

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- (2) On weekends/holidays, this review form must be approved by the Warden within 24 hours of the initial Notice of Immediate Segregation; however, the approval may be completed electronically or verbally and documented accordingly by the shift supervisor.
- b. If the Warden approves continued Immediate Segregation status, the inmate will be advised that his/her status will again be reviewed by the Warden within 15 days and that he/she may appeal this decision by submitting an Inmate Interview Request form to the Warden.
- c. The completed Notice of Immediate Segregation Review form shall be distributed as follows:
  - (1) Inmate
  - (2) Housing Unit staff (original unit and the receiving restrictive housing unit)
  - (3) Unit Administrator
  - (4) Warden
  - (5) Inmate File (original)
  - (6) Planning, Research and Accreditation
- E. Prior to placing the inmate in his/her assigned cell, the shift supervisor will initiate the medical assessment process. Health Services staff must conduct a face-to-face assessment of the inmate to identify any physical injuries, urgent mental health needs, or other urgent conditions.
  1. Health Services staff will consult the inmate's medical and mental health file prior to beginning the assessment.
  2. Health Services staff will complete the Restrictive Housing Admission Self-Report Suicide Screening form (Attachment D) with the inmate.
  3. If, during the initial screening by health services staff, concerns about mental health status are noted, the inmate shall be seen by mental health staff for a one-on-one, out-of-cell assessment within 24 hours.
    - a. 24 hours is calculated from the time of placement on Immediate Segregation status as noted by the shift supervisor.
    - b. If the mental health needs are deemed to be emergent, the inmate shall be held in a location other than restrictive housing until a mental health screening can be completed.
  4. Inmates placed on Immediate Segregation status will be housed in restrictive housing, secure mental health housing, or a skilled nursing facility in response to the medical/mental health assessment.

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- F. All inmates on Immediate Segregation status shall receive a mental health screening within 14 days. This screening will take place in a location outside of the inmate's cell. An inmate may decline to talk with a provider. Force shall not be used to bring an inmate to the consult with the provider unless there is a clear life-threatening issue or serious decompensation is noted.

Inmates with a serious mental illness diagnosis whose current level of functionality does not require residential treatment shall be seen for a one-on-one out of cell consult with a mental health provider every seven days while on Immediate Segregation status.

- G. Continuation on Immediate Segregation status must be approved by the Warden within 15 calendar days (Attachment B-3). The review will include initial placement form, the Inmate Statement (or refusal), and any additional information gathered since the placement on Immediate Segregation status. It is the expectation that the Warden has enough information at this time to determine whether the inmate should be placed in alternative housing, returned to general population or referred for assignment to Longer-Term Restrictive Housing.
1. Requests for extensions of Immediate Segregation past 30 days shall require approval by the Deputy Director – Operations and must be submitted via e-mail within 21 calendar days of initial placement (Attachment E-1).
  2. Requests for extensions of Immediate Segregation past 45 days shall require approval by the Director and must be submitted through the Deputy Director – Operations via e-mail within 38 calendar days (Attachment E-2).
  3. The maximum length of stay on Immediate Segregation is 60 days.

#### **IV. LONGER-TERM RESTRICTIVE HOUSING (LTRH)**

- A. Longer-Term Restrictive Housing shall be used when inmates need more intensive supervision and intervention before promotion to an appropriate non-restrictive housing assignment. Longer-Term Restrictive Housing is a targeted individualized intervention with a primary emphasis on pro-social behavior, interactions with others, life-view change, incentives for positive change, and successful transition to lower levels of security. Consideration at all levels of review must be given to the mental health needs of the individual.
- B. All assignments to Longer-Term Restrictive Housing shall require a classification hearing. For restrictive housing actions, the Unit Classification Committees shall include, but not be limited to, a unit manager, case manager, and unit sergeant. The Longer-Term Restrictive Housing classification action will include: the Longer-Term Restrictive Housing Referral Form (Attachment F), the most recent custody classification action form, the most recent STRONG-R scores, a Behavior/Programming Plan (Attachment G) and, if applicable, a Confidential Intelligence Memo (Attachment H).
1. Unit Staff shall give the inmate the Notice/Waiver of Classification Hearing (Attachment F) at least 48 hours in advance of the hearing. This notice shall include the following:
    - a. The date, time and place of the classification hearing;

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- b. The reason for Longer-Term Restrictive Housing status is being considered, to include copies of the Longer-Term Restrictive Housing Referral form, his/her Behavior/Programming Plan and, if applicable, his/her Individual Treatment Plan (Attachment I).
    - c. The inmate will be advised that he or she may present a written appeal of the recommendation action at the time of his/her classification hearing to be considered by the Warden and the Central Office Multi-Disciplinary Review Team in the review of his/her status.
  2. The Unit Classification Committee hearing shall be impartial. The Unit Classification Committee may recommend that the inmate be removed from Immediate Segregation status or assigned to or continued on Longer-Term Restrictive Housing status.
    - a. The inmate may request a continuance of the hearing by making a written request for additional time to prepare a response.
    - b. If an inmate's English reading and writing skills don't support preparing a written request, or the issues are so complex that the inmate may not be able to present a response, the inmate will be provided a staff representative or staff assistance in preparing a request.
    - c. If an inmate is unable to speak or understand English, the inmate may be provided a staff or other interpreter.
    - d. During the hearing, the Unit Classification Committee shall inform the inmate of any relevant information being considered.
    - e. The inmate shall have the opportunity to refute the information presented, submit a written appeal of the recommendation and/or any other pertinent information. If an inmate's English reading and writing skills don't support preparing a written appeal, the inmate shall be provided assistance in preparing an appeal.
    - f. The inmate's scheduled date of reentry to the community will be reviewed. If the date is under one year, a referral to the NDCS Reentry Services Unit will be made.
    - g. The identity of any confidential informants or the content of psychiatric, psychological and mental health reports will not be disclosed to the inmate.
    - h. After the hearing, the inmate (and interpreter and staff representative, if applicable) may be asked to leave the hearing room while the Unit Classification Committee deliberates.
    - i. At the conclusion of the hearing, the inmate will be advised of the Unit Classification Committee's recommendation.

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- j. The Unit Classification Committee shall forward all documents reviewed at the hearing to the Institutional Classification Committee/Warden.
3. The Institutional Classification Committee and the Warden shall review the Unit Classification Committee's recommendation. The Warden will make a recommendation to the Central Office Multi-Disciplinary Review Team (MDRT), who will make the final decision.
4. The Central Office Multi-Disciplinary Review Team shall review all Longer-Term Restrictive Housing classifications. This review shall include, but not be limited to, an assessment of compliance with individualized transition and treatment plans and recommendations from the Warden/Institutional Classification Committee.
  - a. The Central Office Multi-Disciplinary Review Team will meet at least weekly.
  - b. Inmates in Longer-Term Restrictive Housing shall have a classification hearing at least every 90 days to assess demonstrated compliance with individualized transition and treatment plans and assess the potential for promotion to a less restrictive setting based on compatibility with the safety of the inmate, others, and security of the facility. The process identified in IV.B.1-3 shall be used at each 90-day review.
  - c. The Central Office MDRT shall document the decision and rationale for promotion to a less restrictive environment or to continue the inmate in Longer-Term Restrictive Housing at each review (Attachment J). Staff will provide the inmate with written notice of the disposition of the review shall be provided to the inmate (Attachment K).
    - (1) The completed classification packet will be forwarded to the NDCS Programs Administrator who will notify the facility Warden and Unit Administrator of the decision.
    - (2) The NDCS Programs Administrator will copy and distribute the Disposition of Longer-Term Restrictive Housing Review form.
    - (3) A scanned copy of the completed Longer-Term Classification packet will be maintained electronically.
    - (4) The original completed Longer-Term Classification Packet will be returned to the facility Unit Administrator for filing in the inmate's institutional file.
  - d. The Central Office MDRT will notify the Director and Inspector General when an inmate has been in restrictive housing for 180 consecutive days.

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5. The inmate may appeal the decision of the Central Office Multi-Disciplinary Review Team to the Director.
  - a. The appeal shall be submitted via inter-office mail on an Inmate Interview Request form.
  - b. Only one appeal to the Director per classification action will be considered.
6. When an inmate has been assigned to restrictive housing for 365 days, the Director must approve continued assignment to Longer-Term Restrictive Housing status.

Inmates in restrictive housing for 365 consecutive days shall be reviewed at least every 30 days thereafter by the Central Office Multi-Disciplinary Review Team and the Director. This review shall include, but not be limited to, an assessment of compliance with individualized Behavior/Programming Plans and Individual Treatment Plans and recommendations from the Central Office MDRT for changes to the individual plans to allow the inmate to safely transition to a less-restrictive housing setting.

**V. BEHAVIOR/PROGRAMMING PLAN**

Each inmate in Longer-Term Restrictive Housing shall have a Behavior/ Programming Plan that shall be reviewed during scheduled Restrictive Housing Status reviews. The Behavior/Programming Plan will outline to staff and inmates the steps and criteria for inmates to return to the general population or transition to another form of non-restrictive housing. It will include an incentive-based system that encourages pro-social behavior and program engagement.

- A. Inmates will participate in discussions and planning of criteria and next steps for each transition opportunity and will help craft individualized goals and areas for improvement.
- B. Unit staff will monitor behavior using a standard Behavior Baseline Report (Attachment L) and note the progress towards goals and behavior on the Restrictive Housing Status Review form (Attachment M). The Warden will review the information and recommend promotion to a less restrictive custody level as appropriate through the established Central Office Multi-Disciplinary Review Team review process.

**VI. MENTAL HEALTH SERVICES**

- A. Mental health services for Longer-Term Restrictive Housing inmates shall be managed through a combination of requests for consultation made by the inmate or facility staff (in accordance with established procedures and protocols), and weekly cell-front visits by mental health providers.
- B. In addition, if the inmate agrees to the consult, monthly one-on-one out-of-cell therapeutic assessments will be provided for Longer-Term Restrictive Housing inmates with a diagnosis of serious mental illness.
- C. Force shall not be used to bring an inmate out to see a mental health provider unless there is a clear life-threatening issue or serious decompensation is noted.



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- D. Dependent on the individual's mental health diagnosis and needs, a Restrictive Housing Individual Treatment Plan may be developed for individuals in Longer-Term Restrictive Housing.
1. The Restrictive Housing Individual Treatment Plan shall be developed by clinical staff and is intended to work in conjunction with the Behavior/Programming Plan.
  2. Inmates will participate in the development of the Restrictive Housing Individual Treatment Plan.
  3. At a minimum, the Restrictive Housing Individual Treatment Plan shall identify problem areas, goals, interventions and coping strategies.
  4. The Restrictive Housing Individual Treatment Plan shall be reviewed on a regular basis determined by clinical staff to determine progress and effectiveness.
  5. The Restrictive Housing Individual Treatment Plan is considered a clinical and confidential document and shall not routinely be shared with non-clinical staff unless deemed necessary by the clinician.

## **VII. SECURE MENTAL HEALTH HOUSING**

- A. Individuals on Immediate Segregation or Longer-Term Restrictive Housing status with a serious mental illness who present a high risk to others or to self and require residential mental health treatment shall be housed in the designated Secure Mental Health Unit at the Lincoln Correctional Center. The assignment to SMHU is a clinical decision and requires the approval of the Mental Illness Review Team (MIRT). The Mental Illness Review Team (MIRT) may conduct electronic reviews for emergent cases to ensure expedient transfer. The Mental Illness Review Team (MIRT) shall consider the following criteria:
1. Evidence of functional impairment related to a diagnosed Serious Mental Illness or need for evaluation to determine the impact of mental illness on presenting behavior.
  2. Need for evaluation to determine the impact of mental illness on presenting behavior.
  3. Mental Health Unit inmates who require a more secure setting based upon clinical and/or administrative review.
  4. Mental Health Unit inmates who discharge from Skilled Nursing Facility and continue to require increased monitoring of behavior.
- B. All inmates assigned to the SMHU must be able to ambulate sufficiently on a multi-tiered housing unit. Alternative placement options (to include the Skilled Nursing Facility, Lincoln Regional Center or other identified restrictive housing unit) will be considered for inmates on Longer-Term Restrictive Housing status with a serious mental illness who present a high risk to other or self and are unable to ambulate sufficiently.

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- C. Procedures specific to the SMHU shall be established in facility operational memorandums consistent with the provisions of this policy. All Immediate Segregation and Longer-Term Restrictive Housing rules and regulations apply to individuals assigned to Secure Mental Health Housing. Exceptions will be permitted based on the clinical recommendations of Mental Health staff or as specified in the inmates Behavior/Programming Plan and/or Individual Treatment Plan as approved by the Warden
- D. In addition to a Behavior/Programming Plan, mental health staff shall complete an Individual Treatment Plan for all inmates assigned to Longer-Term Restrictive Housing status on the SMHU.
- E. The Warden shall consult with mental health staff before removing an inmate from Immediate Segregation status or recommending placement, continuation or removal from Longer-Term Restrictive Housing status.

#### **VIII. ASSIGNMENT OF LIVING LOCATION**

- A. Using the criteria defined below, inmates on Immediate Segregation status may have a cellmate. Inmates assigned to Longer-Term Restrictive Housing will be in single cells, moving to a double cell according to the Behavior/Programming plan and/or Individual Treatment Plan.
- B. Prior to the assignment to a cell in restrictive housing in which an inmate will have a cellmate, the Unit Manager/designee of the respective restrictive housing unit will confer with the Unit Manager from the housing unit to which that the inmate was previously assigned. In the absence of the respective Unit Managers, Unit Case Managers from the respective housing units and/or the shift supervisor will confer. Prior to conferring, the classification study, initial classification/reclassification action form, PREA documents, Security Threat Group (STG) documents, and institutional files of the inmates whom are being considered for the same cell in restrictive housing will be reviewed. Items that will be reviewed and considered include, but are not limited to:
  - 1. History of assaultive behavior (includes behavior in the institution and/or community)
  - 2. Reason for Segregation/Restrictive Housing status
  - 3. Central Monitoring
  - 4. PREA Score (aggression/vulnerability)
  - 5. Security Threat Group affiliation
- C. Based on the above noted review, the above mentioned staff will determine the most appropriate housing location for inmates assigned to a restrictive housing status and then complete the Restrictive Housing Assignment of Living Location form (Attachment N).
- D. Inmates on Immediate Segregation status pending a review for possible placement on Protective Custody may only be assigned to a cell with another inmate on the same status. Such assignments will be determined based on a review of the reason



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each inmate has been referred to restrictive housing, their prior behaviors in NDCS, their PREA Score for aggression and vulnerability, their level of general functioning, and gang affiliation to protect against predatory behavior.

- E. The words “most appropriate housing location for inmates assigned to a restrictive housing status” shall mean a housing placement, as of the time of the cell assignment is made, which provides each cellmate with reasonable safety from assault, taking into consideration all data available to the decision-makers regarding each proposed cellmate.
- F. Reasonable safety is not a guarantee of absolute safety, and the words “most appropriate housing location for inmates assigned to a restrictive housing status” shall not be understood to require a guarantee of absolute safety.
- G. The decision-makers may consider other valid goals in making cell assignments so long as the cell assignment provides each cellmate with reasonable safety from assault. If a decision is made to assign more than one person to a cell, the persons making such assignment shall state in writing why, at the time of the cell assignment, the cell assignment provides each cellmate with reasonable safety from assault.

The statement of reasons may be a short and concise summary of the reasons for the conclusion that the cell assignment provides each inmate with reasonable safety from assault. Such a statement shall be made on the Restrictive Housing Assignment of Living Location form and the decision shall be recorded under the heading “Comments”.

- H. There will be a minimum of two persons that confer to determine the most appropriate housing location for inmates assigned to a restrictive housing status when said assignment involves being assigned to a cell with another inmate. This assignment is made pursuant to the procedures noted above.

**IX. RESTRICTIVE HOUSING STATUS REVIEWS**

Review of inmates’ restrictive housing status shall occur regularly.

- A. The Unit Classification Committee shall conduct formal reviews of the status of each Restrictive Housing inmate every seven days until 60 days after the inmate has been placed in Restrictive Housing.
- B. The Unit Classification Committee shall conduct formal reviews of the status of each Restrictive Housing inmate every two weeks after 60 continuous days of Restrictive Housing.
- C. Restrictive Housing inmates shall be given notice of the Restrictive Housing Status Review and have an opportunity to appear before the Unit Classification Committee once a month at the Restrictive Housing Status Review.
- D. Staff will evaluate each Longer-Term Restrictive Housing inmate’s compliance with their Behavior/Programming Plan at all scheduled restrictive housing status reviews.
- E. The Unit Classification Committee shall make a written record of the Restrictive Housing Status Review (Attachment M).

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- F. The written record of the Restrictive Housing Status Review shall be submitted to the Warden/designee.
- G. The Warden/designee shall review the record of the Restrictive Housing Status Review for final approval or return it to the Unit Classification Committee for further action.

**X. PROGRAMMING AND TREATMENT**

- A. Programming refers to non-clinical, organized activities or curriculum that addresses thinking and behavior as well as pro-social interaction.
- B. Treatment must be delivered by licensed clinicians and is directly related to a person's behavioral health diagnosis and recovery.
- C. Risk assessments, and the results of mental health testing, when appropriate, shall be used to guide coordinated interventions, assignments to programming, and other applicable resources. Programming and behavioral health resources will be used to reduce risk and address needs.
- D. Program delivery formats for high security environments shall be created that allow program participation while ensuring the safety of participants and staff. This shall include the development of congregate classroom space where possible, use of security programming chairs and in-cell programming.
- E. Opportunities for inmates to learn and practice pro-social behaviors through cognitive programming shall be provided, with the opportunity to progress through incentivized step-down programs to lower security classifications, based on goal development and attainment, completion of required tasks and activities, and demonstrated positive behavior.

**XI. GENERAL CONDITIONS OF RESTRICTIVE HOUSING**

- A. Inmates are placed in restrictive housing in response to behavior that creates a risk to the inmate, others, or the security of the institution or as a result of a classification action. Restrictive housing inmate shall receive the following services and programs unless documented security and safety considerations dictate otherwise.
  - 1. Prescribed medication and access to health care by a qualified health care official.
  - 2. Clothing that is not degrading.
  - 3. Access to authorized personal items for use in their cells.
  - 4. Substantially the same meals served to the general population.
  - 5. The opportunity to shave and shower at least three times per week.
  - 6. The issue and exchange of clothing, bedding and linen on the same basis as inmates in the general inmate population.

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7. Access to laundry services on the same basis as inmates in the general inmate population.
  8. Access to hair care services on substantially the same basis as inmates in the general inmate population.
  9. The same opportunity to write and receive letters as is available to the general inmate population.
  10. Opportunities to visit.
  11. Telephone privileges as defined in A.R. 205.03, *Inmate Telephone Regulations*.
  12. Access to legal\reading materials.
  13. A minimum of one hour per day, five days per week, of exercise outside their cells.
- B. It is in the best interest of all to provide restrictive housing inmates with resources that will enable them to be better citizens within the institution and upon their return to the community. Inmates assigned to restrictive housing for more than 30 days, shall have access to programs and services that include, but are not limited to educational services, canteen services, library services, social services, counseling services, religious guidance, and recreational programs as established by the Operational Memorandum of each facility based upon the services provided at the facility.
- C. Deviations from the Conditions of Restrictive Housing (Attachment O) must be approved by the Director/designee.
- D. Inmates housed in restrictive housing shall be permitted to possess property as described below. Restrictions shall be imposed only for cause and with the approval of the Warden/designee.
1. Each inmate in restrictive housing will be provided the following:
    - a. Earbuds (one per inmate)
    - b. Television (one per cell)
    - c. Hygiene/stationary items
  2. Immediate Segregation
    - a. All inmates placed in restrictive housing are authorized to possess the following property. The property may be kept in storage until needed.
      - (1) One state-issued sweatshirt
      - (2) One state-issued stocking cap
      - (3) One pair of state-issued pants
      - (4) One state-issued shirt.
      - (5) One set of state-issued underwear

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- (6) One pair of state-issued socks
- (7) One pair of state-issued boots
- (8) One pair of state-issued tennis shoes
- (9) One pair of shower shoes
- (10) One state-issued coat (winter only)
- (11) One pair of state issued Jersey gloves (winter only)
- (12) One pair of prescription eyeglasses and one eyeglass case
- (13) One wedding ring
- (14) One religious necklace/medallion
- (15) One religious book
- (16) One address book
- (17) One telephone list
- (18) Legal papers (consistent with property restrictions for restrictive housing)
- (19) Stamped envelopes (in quantity permitted by institutional procedure)
- (20) One wristwatch
- (21) One drinking cup
- (22) One Comb/pick

b. Inmates may purchase hygiene/legal materials and up to \$5.00 of non-hygiene canteen items consistent with the facility canteen schedule. The total weekly canteen order must not exceed \$10.00.

3. Longer-Term Restrictive Housing

Once assigned to Longer-Term Restrictive Housing inmates may be permitted to possess additional personal property items based on compliance with behavior and/or treatment plans. Plans shall specifically identify incentives that will be provided for complying with the expectations of the plan. Incentives may include, but are not limited to, the following:

- a. Additional cell cleanings
- b. Job assignment consideration
- c. Extra shower (4 total)
- d. Extra yard sessions (6 total)
- e. Extra personal phone calls
- f. Extra visit (2 total per week)
- g. Additional canteen (Up to \$20)
- h. Authorized congregate activities
- i. Personal MP4 player
  - (1) MP4 messaging
  - (2) Kiosk access to purchase music

E. General Provisions Regarding Limitations on Services and Programs

- 1. Exceptions to the services and programs for restrictive housing inmates must be made by the shift supervisor or the Unit Manager/designee and be based on a finding that the exceptions are necessary for the safety and security of the inmate, other inmates, staff or the unit.

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2. The restrictive housing unit staff shall record the exception and the reason for the exception in the permanent unit log.
3. When an inmate in restrictive housing is deprived of any right or privilege, the restrictive housing unit staff shall prepare a written report. This report shall be sent to the Security Administrator of the facility and shall be kept in the inmate's institutional file.

**F. Provisions and Limitations on Showers and Exercise**

1. Except in emergencies, the Director/designee will not curtail shower and exercise periods to fewer than three times per week for restrictive housing inmates.
2. Exceptions shall be granted for a definite time period and shall be in response to institution or unit special needs and contingencies.
3. In facilities where restrictive housing exercise yards exist outside and where cover is not provided to mitigate the inclement weather, appropriate weather-related equipment and attire should be made available to the inmates who want to take advantage of their authorized exercise time.

**G. Refusal to Shower or Exercise**

1. The refusal to shower and exercise shall be documented in the Restrictive Housing Unit permanent log.
2. An inmate will be deemed to have refused to shower or exercise by not complying with security procedures, or threatening actions that present an immediate danger to the safety of staff or other inmates.
3. After consultation with the medical department, the inmate may be required to shower.

**H. Non-Contact Visitation Provisions**

1. Visiting schedules for inmates designated for non-contact visits shall be on an appointment basis according to the visiting schedule authorized by the Warden.
2. Non-contact visits shall not last longer than one hour per visit.
3. The shift supervisor may alter the visitation time and number of visitors to insure proper order and security.

**I. Health Care**

1. All medical or health care visits shall be recorded in the inmate's health record and in the Restrictive Housing Unit permanent log.
2. An inmate's refusal of medical care shall be documented in the inmate health record and in the Restrictive Housing Unit permanent log.

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J. Alternative Meal Service

Food should not be withheld, nor the standard menu varied, as a disciplinary sanction for an individual inmate. If an inmate uses food or food service equipment in a manner hazardous to self, staff or inmates or, which creates a health/sanitation hazard, alternative meal service equipment may be utilized. Alternative meal service equipment shall consist of a silicone meal tray and a paperboard eating utensil (no drinking cups). The food served to the inmate(s) shall consist of the same food items served to the remainder of the population including applicable medical and religious diet orders. Authorization for use of the alternative meal service equipment shall be approved by the Deputy Warden or higher authority, shall be on an individual basis and shall be based on health and safety considerations only. A Restriction of Privileges/Rights form will be completed accordance with established procedures. This restriction will be reviewed at a minimum of once a week by staff designated by the Warden but may be reviewed more frequently. The restriction may only be removed by the authority of the Deputy Warden or higher authority and shall be based on the assessment of safety and health risks. Refer to Attachment [NP](#) regarding the protocol to be followed in the event the inmate refuses to return the alternative meal service equipment and/or misuses food items.

K. Disruptive Hygiene Behavior

Disruptive hygiene behavior is the intentional smearing of any bodily fluid/substance, including but not limited to feces and urine, on one's person or anywhere in the cell. See Attachment Q for Disruptive Hygiene Behavior Response Protocol.

L. Management of Restrictive Housing Units

1. A shift supervisor shall visit the restrictive housing unit(s) at least once every day.
2. A qualified health care official shall visit the restrictive housing unit at least once every day.
3. Program staff members shall visit the restrictive housing unit(s) upon request.
4. Each facility shall establish policies on the selection criteria, supervision and rotation of the staff members who work on a regular and daily contact basis with inmates in the restrictive housing unit(s)
5. In facilities with small, short-term restrictive housing units and no specified restrictive housing posts, designated unit and custody staff will receive special training prior to providing coverage in the unit.
6. All restrictive housing inmates shall be personally observed by a correctional officer twice per hour, but no more than 40 minutes apart, on an irregular schedule. Inmates who are violent or mentally disordered or who demonstrate unusual or bizarre behavior receive more frequent observation; suicidal inmates are under continuing observation.
7. A qualified mental health professional shall conduct a personal interview of any inmate who is in restrictive housing for more than 30 days and prepare a



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written report. If restrictive housing continues for an extended period, a mental health assessment of the restrictive housing inmate must be done at least every three months.

8. In addition to any other provisions provided in this policy, the Institutional Classification Committee or facility Multi-Disciplinary Team (MDT) will review the restrictive housing status of inmates who are pregnant, are 17 years or younger or are diagnosed with a major mental illness a minimum of once per month to assess the potential for promotion to a less restrictive setting based on compatibility with the safety of the inmate, others, and security of the facility.
- M. Space availability in restrictive housing may necessitate the early release of inmates. In such cases, the Warden/designee shall determine which inmates on Immediate Segregation status or Longer-Term Restrictive Housing status will be released by giving priority to those inmates who present the lowest risk to safety and security. Release of Longer-Term Restrictive Housing inmates requires the approval of the Central Office Multi-Disciplinary Review Team in accordance with this policy. Nothing in this policy precludes the early review of an inmate's restrictive housing status.

## **XII. PROTECTIVE MANAGEMENT**

- A. Protective Management is not a restrictive housing unit. A Protective Management unit is a designated mission specific gallery/unit that provides a placement option for inmates who cannot be safely housed in other general population units with the goal of helping to reduce the use of restricting housing and concentrating services and program availability to this population.
- B. Protective management units/galleries provide an environment of reduced risk of harm from other inmates while having privileges similar to general population housing in terms of out-of-cell time, access to programming, access to work and recreation, etc.
- C. Protective Custody is a classification status. Classification to Protective Custody status may occur only after it has been determined that there is no other viable general population placement or other mission-specific housing assignment available to meet the safety needs of the inmate.

In every case possible, inmates classified to Protective Custody status will generally be housed in a Protective Management Unit/Gallery.

Only after it is determined that there is no other viable general population, Protective Management Unit, or other mission-specific housing option that will maintain the safety and security of the inmate, other inmates, staff, and the facility will inmates assigned to Protective Custody status may be housed in a restrictive housing unit. In these circumstances, policies for longer-term restrictive housing shall apply.

- D. Appropriate residential mental health treatment housing for protective custody status inmates will be provided when needed.

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### **XIII. DISCHARGE AND REENTRY PLANNING**

- A. Having no one transition from restrictive housing to the community is a targeted outcome for the agency.
- B. If an inmates is already assigned to or placed in restrictive housing at 120 days prior to their scheduled release date, the Central Office MDRT shall be notified by the facility Warden. The MDRT Chair shall then initiate contact with the facility Warden to discuss appropriate steps to assess risk and conduct release planning consistent with safety within the facility and in the community.
  - 1. This notification shall be sent by the Warden via e-mail to MDRT Chair (Deputy Director-Operations) with both the Reentry Program Manager and Director of Social Worker copied on the notification.
  - 2. Strategic reentry and discharge protocols shall be implemented prior to release to the community.
    - a. Whenever possible, inmates will be transition from restrictive housing to general population, mission-specific housing and/or treatment-based/behavioral focused housing prior to release.
    - b. Transition general population housing, designed to help inmates transition from restrictive housing, based on individualized risk and needs assessments shall be used to prepare individuals for return to a less restrictive and more interactive security level.
      - 1) Transfer to transition housing will depend on the individual's level of readiness, safety and security considerations and assessments, reviews and decisions by the MDRT.
      - 2) The standard for risk shall be measured against the fact that the inmate shall be returning to the community.
- C. All discharges from restrictive housing shall involve ongoing coordinated effort from facility staff, behavioral health staff, social workers, parole administration and reentry staff to develop specialized reentry plans for any inmate with a stay over 60 days in restrictive housing 150 days prior to release.
- D. Restrictive housing inmates in the security mental health unit in the 180 day period before their release and will be housing in the secure mental health unit at the time of their discharge, will also be reviewed by the NDCS Discharge Review Team.
- E. The facility Warden shall designate staff to ensure monitoring and reporting of discharge and reentry planning is being done consistent with this policy. This process shall be clearly articulated in written facility procedures.

### **XIV. DATA ENTRY/ELECTRONIC RECORD KEEPING**

- A. To ensure accurate and real-time data entry of restrictive housing placements and removals as well as accurate data regarding the status of individuals placed in restrictive housing, the following process shall be used at all NDCS facilities with restrictive housing units:



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1. When an inmate is placed on Immediate Segregation status, the restrictive housing unit staff shall notify the facility Central Control Center staff of the inmate's restrictive housing unit cell assignment. Central Control staff shall update the cell assignment in the Corrections Tracking System (CTS/C-1) and restrictive housing unit staff shall update the segregated status in Nicams. Both updates shall be made within two hours or prior to the next scheduled facility count, whichever comes first.
  2. When an inmate is removed from a restrictive housing status, the restrictive housing unit staff shall notify the facility Central Control Center staff of the inmate's restrictive housing unit cell assignment. Central Control staff shall update the cell assignment in the Corrections Tracking System (CTS/C-1) and restrictive housing unit staff shall update the segregated status in Nicams. Both updates shall be made within two hours or prior to the next scheduled facility count, whichever comes first.
- B. When the Central Office Multi-Disciplinary Review Team approves an inmate's placement on or removes an inmate from Longer-Term Restrictive Housing, the Deputy Director/designee shall update the inmate's status in Nicams with the review date and hearing summary. When the inmate is moved from restrictive housing, the restrictive housing unit staff shall update the inmate's segregation status in Nicams.
  - C. The facility Warden will identify a person to serve as his/her designee and point of contact for restrictive housing data collection. The Warden/designee will be responsible for auditing Corrections Tracking System (CTS/C-1) and Nicams data entry, to include comparing a list of individuals in restrictive housing with CTS and Nicams data entries a minimum of once per month. Completion of the monthly audit, findings and corrective action taken shall be electronically forwarded to the NDCS Research Administrator. The Research Administrator will notify the appropriate Deputy Director of any concerns or need for additional corrective action.

#### **XV. DATA COLLECTION AND REPORTING**

NDCS shall provide regular reporting on the use of restrictive housing, and shall issue an annual report to the Governor and the Clerk of the Legislature. (Neb. Rev. Stat. 83-4,114) This report shall include:

- A. The number of inmates who were held in restrictive housing during the prior year.
- B. The mean and median length of time for all inmates who were held in restrictive housing during the prior year.
- C. The race, gender, age, and length of time each inmate has continuously been held in restrictive housing for all inmates who were held in restrictive housing during the prior year.
- D. The reason or reasons each inmate was held in restrictive housing during the prior year.
- E. The number of protective custody inmates who were placed in restrictive rather than alternative housing for their own safety, and the underlying circumstances for each.
- F. The number of inmates held in restrictive housing who were diagnosed with a mental

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illness (as defined in Neb. Rev. Stat. 71-907) and the type of mental illness by inmate during the prior year.

- G. The number of inmates who were released from restrictive housing directly to parole or the general public, and the reasons for those releases during the prior year.
- H. Comparable statistics for the nation and each state bordering Nebraska pertaining to subdivisions (4) (a) through (e) of section Neb. Rev. Stat. Stat. 83-4,114, to the extent ascertainable.

**XVI. STAFF TRAINING**

- A. All NDCS facilities with Restrictive Housing and/or Secure Mental Health Housing, shall ensure that all regularly assigned unit staff shall receive special training in working with the population housed in the unit. At a minimum, refresher training will be required on an annual basis.
  - 1. Facilities will provide unit specific on-the-job training for staff assigned to work in Restrictive Housing and/or Secure Mental Health units
  - 2. The NDCS Internal Restrictive Housing Workgroup will be responsible for developing a standard training curriculum for staff assigned to work in Restrictive Housing and/or Secure Mental Health Housing Units. This training shall be implemented no later than January 1, 2017, and include: an overview of restrictive housing policies, basic communication techniques, crisis de-escalation and intervention techniques, and an overview of work with mentally ill and other special needs populations.
- B. Starting in July 2018, NDCS Pre-Service staff training shall include, but not be limited to: basic communication techniques, Motivational Interviewing, working with mentally ill and other special needs populations, working with inmates with behavioral disorders, cognitive behavioral interventions, and trauma training, as well as core correctional practices, crisis de-escalation, and intervention. These types of trainings will help prevent incidents that may result in injuries, use of force, and use of restrictive housing. This training shall be required for all staff interacting directly with inmates.

**XVII. LB 598 WORKGROUP**

- A. Workgroup members are:
  - 1. Director
  - 2. All Deputy Directors
  - 3. Behavioral Health Administrator
  - 4. Director of Health Services
  - 5. Two employees of the department who currently work with inmates held in restrictive housing
  - 6. Additional department staff , as designated by the director

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7. Two representatives from a nonprofit prisoners' rights advocacy group, including at least one former inmate
  8. Two mental health professionals independent from the department with particular knowledge of prisons and conditions of confinement
- B. The Director shall provide the work group with quarterly updates on the department's policies related to the work group's subject matter.
  - C. The workgroup will meet at least semi-annually to review the use of restrictive housing and to provide input on ways to reduce and improve the use of restrictive housing.

### **REFERENCE**

- I Nebraska Administrative Code, Title 72, Chapter 1. Nebraska Revised State Statute 44-792, 71-907, 83-170, 83-173.03, 83-180, 83-1,107(4), 83-1,107 (5)(c),. 83-4,114

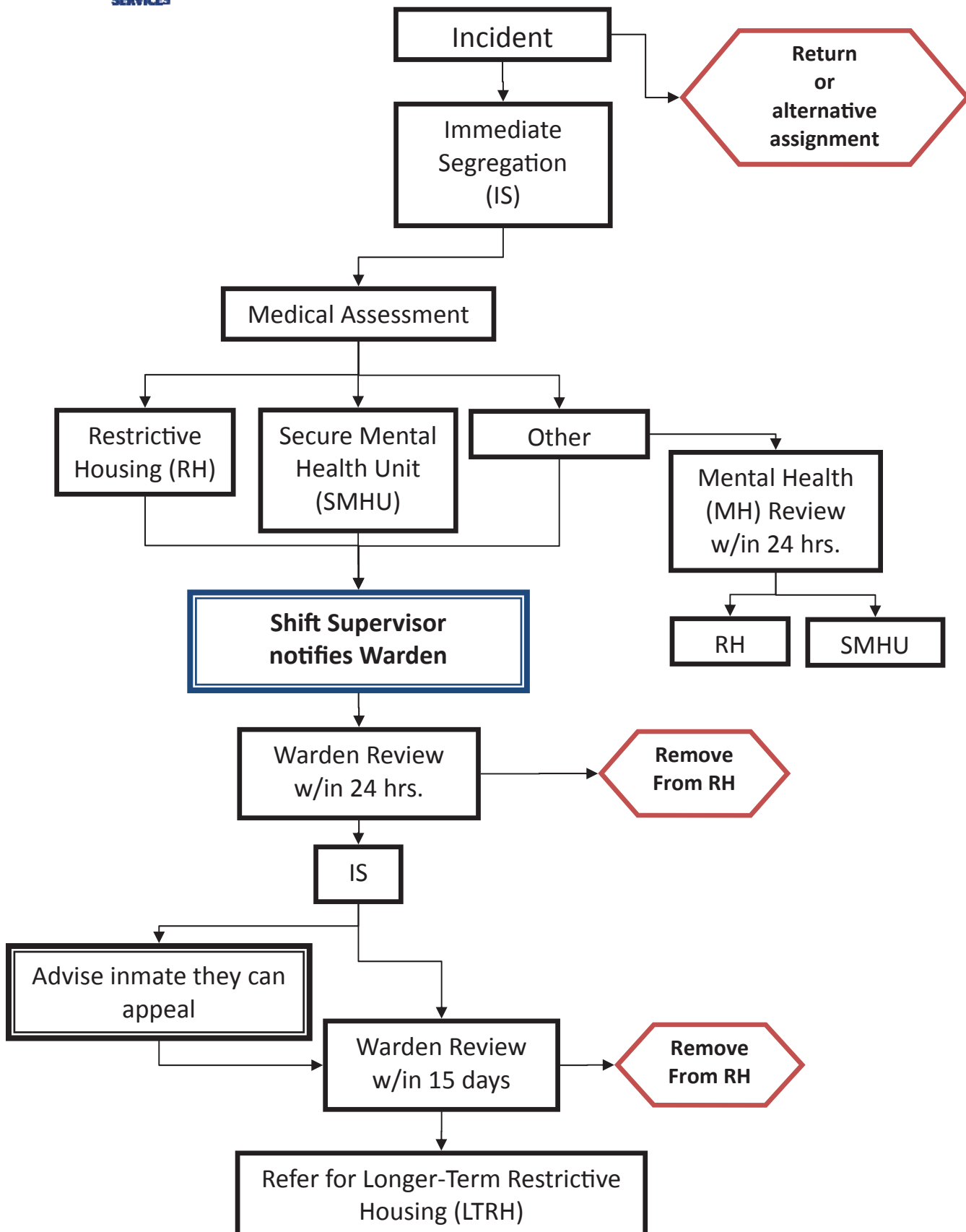
### **II ATTACHMENTS:**

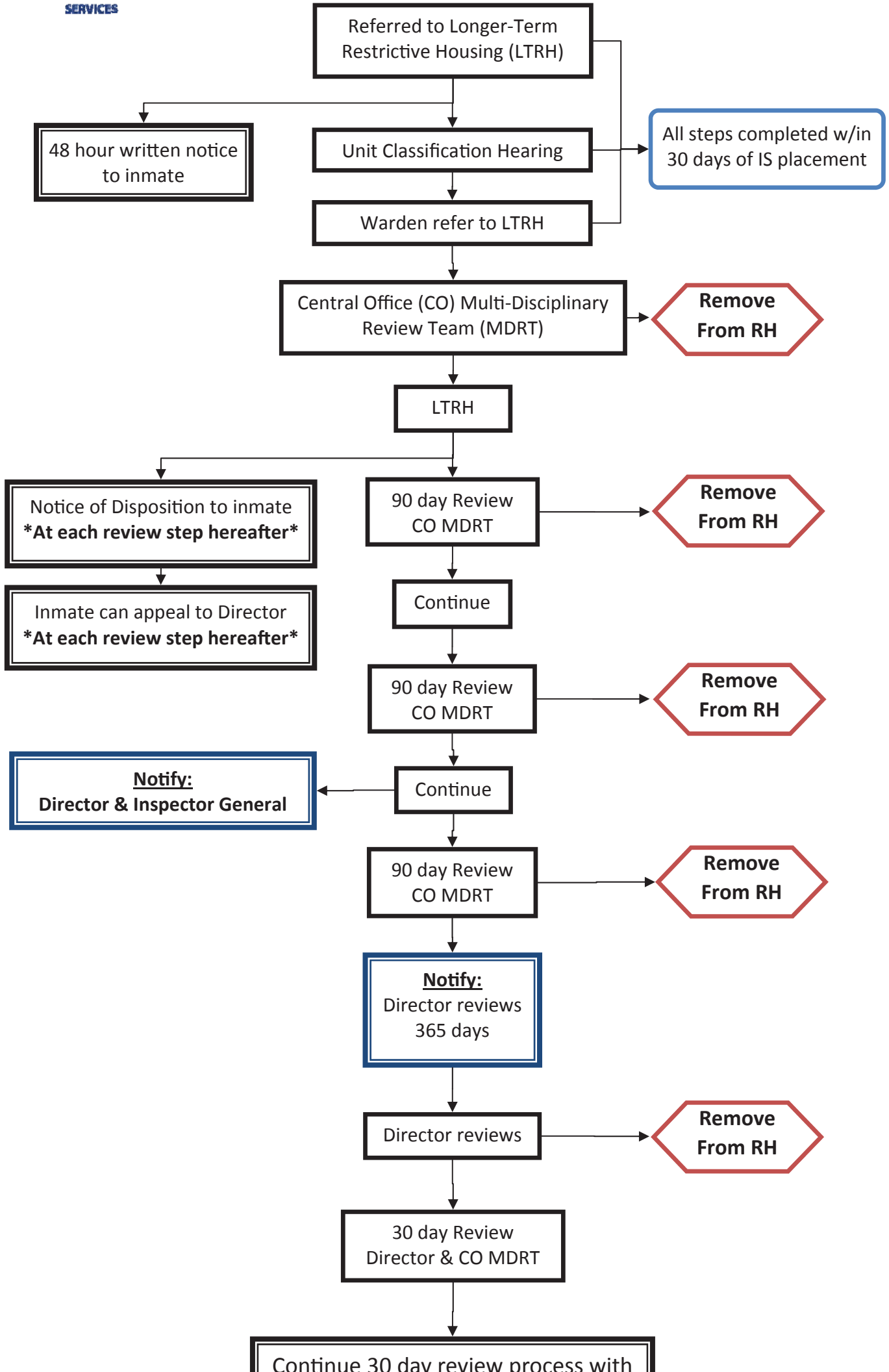
- A. Restrictive Housing Process Flowchart
- B. Immediate Segregation Review Form (Standard PDF fillable form used at each review)
  - B-1. Depicts Initial Review
  - B-2. Depicts 24-Hour Warden Review
  - B-3. Depicts 15-Day Warden Review
- C. Immediate Segregation Inmate Statement
- D. Restrictive Housing Admission of Self-Report Suicide Screening
- E. Immediate Segregation Extension Request (Standard PDF fillable form used for extension requests)
  - E-1. Depicts Initial 15 Day Deputy Director Immediate Segregation Extension Request
  - E-1. Depicts Additional 15 Day Director Immediate Segregation Extension Request
- F. Longer-Term Restrictive Housing Referral Form
- G. Restrictive Housing Behavior/Programming Plan
- H. Restrictive Housing Confidential Intelligence Memo Form
- I. Restrictive Housing Individual Treatment Plan
- J. Longer-Term Restrictive Housing Review Form
- K. Disposition of Longer-Term Restrictive Housing Review Notice
- L. Restrictive Housing Behavior/Programming Plan Baseline
- M. Restrictive Housing Status Review Form
- N. Restrictive Housing Assignment of Living Location Form
- O. Conditions of Restrictive Housing
- P. Refusal to Return Alternative Meal Service Equipment Protocol
- Q. Disruptive Hygiene Behavior Response Protocol

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		<b>RESTRICTIVE HOUSING</b>	

- III. ACA STANDARDS – Standards for Adult Correctional Institutions, (ACI) (4<sup>th</sup> edition): 4-4155, 4-4249, 4-4250, 4-4251, 4-4253, 4-4254, 4-4255, 4-4256, 4-4257, 4-4258, 4-4259, 4-4260, 4-4261, 4-4262, 4-4263, 4-4264, 4-4265, 4-4266, 4-4267, 4-4268, 4-4269, 4-4270, 4-4271, 4-4272, 4-4273, 4-4320 and 4-4435.

## RESTRICTIVE HOUSING—Immediate Segregation







## IMMEDIATE SEGREGATION (IS) REVIEW

Date: \_\_\_\_\_ Inmate Name: \_\_\_\_\_ Inmate Number: \_\_\_\_\_ Institution: \_\_\_\_\_

IS Placement Date/Time: \_\_\_\_\_ Document Prepared By: \_\_\_\_\_

Summary of Incident:

Alternative Placement:

Review Type:

Disposition:

Reason for Placement/Continuation on IS Status:

Description Abbreviated, see AR 210.01 for details

Attachments:

Initial placement is reviewed by the facility warden within 24 hours. Notice will be provided following this review. You may appeal placement on IS status by submitting an Inmate Interview Request form to the warden within 5 days of initial placement. Continued placement will be reviewed by the facility warden within 15 days.

Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Inmate Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Distribution: Inmate, Housing Unit (From), Housing Unit (To), Unit Administrator, Warden, Inmate File, PRA Research



## IMMEDIATE SEGREGATION (IS) REVIEW

Date: \_\_\_\_\_ Inmate Name: \_\_\_\_\_ Inmate Number: \_\_\_\_\_ Institution: \_\_\_\_\_

IS Placement Date/Time: \_\_\_\_\_ Document Prepared By: \_\_\_\_\_

Summary of Incident:

Alternative Placement:

Review Type:

Disposition:

Reason for Placement/Continuation on IS Status:

Description Abbreviated, see AR 210.01 for details

Attachments:

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Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Inmate Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Distribution: Inmate, Housing Unit (From), Housing Unit (To), Unit Administrator, Warden, Inmate File, PRA Research





## IMMEDIATE SEGREGATION (IS) REVIEW

Date: \_\_\_\_\_ Inmate Name: \_\_\_\_\_ Inmate Number: \_\_\_\_\_ Institution: \_\_\_\_\_

IS Placement Date/Time: \_\_\_\_\_ Document Prepared By: \_\_\_\_\_

Summary of Incident:

Alternative Placement:

Review Type:

Disposition:

Reason for Placement/Continuation on IS Status:

Description Abbreviated, see AR 210.01 for details

Attachments:

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Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Inmate Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Distribution: Inmate, Housing Unit (From), Housing Unit (To), Unit Administrator, Warden, Inmate File, PRA Research



## IMMEDIATE SEGREGATION (IS) REVIEW

Date: \_\_\_\_\_ Inmate Name: \_\_\_\_\_ Inmate Number: \_\_\_\_\_ Institution: \_\_\_\_\_

IS Placement Date/Time: \_\_\_\_\_ Document Prepared By: \_\_\_\_\_

Summary of Incident:

Alternative Placement:

Review Type:

Disposition:

Reason for Placement/Continuation on IS Status:

Description Abbreviated, see AR 210.01 for details

Attachments:

Initial placement is reviewed by the facility warden within 24 hours. Notice will be provided following this review. You may appeal placement on IS status by submitting an Inmate Interview Request form to the warden within 5 days of initial placement. Continued placement will be reviewed by the facility warden within 15 days.

Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Inmate Signature: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Staff Witness: \_\_\_\_\_ Date/Time: \_\_\_\_\_

Distribution: Inmate, Housing Unit (From), Housing Unit (To), Unit Administrator, Warden, Inmate File, PRA Research





# Restrictive Housing Admission Self-Report Suicide Screening

Date: \_\_\_\_\_ Inmate Name: \_\_\_\_\_ Inmate Number: \_\_\_\_\_ Institution: \_\_\_\_\_  
IS Placement Date/Time: \_\_\_\_\_ Document Prepared By: \_\_\_\_\_

If known, brief description of reason inmate was placed in restrictive housing:

Ask the inmate the following questions. Check either YES, NO or REFUSE TO RESPOND.

- | Yes                      | No                       | Refuse to Respond        |   |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 1. Do you anticipate any emotional difficulties that will require Mental Health contact while in restrictive housing? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2. Have you recently experienced a significant loss (death of family member/close friend, divorce or separation)?     |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 3. Are you feeling sad, hopeless or depressed?  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 4. Have you intentionally hurt yourself or attempted suicide?   |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 5. Do you currently see someone in mental health on a regular basis?  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6. Are you currently on psychiatric medications, or were you recently on them?  |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 7. <u>At this time, do you feel suicidal or feel like hurting yourself?</u>   |

If "Yes" to question #7, initiate CONSTANT OBSERVATION and notify your Supervisor.

Comments:

*If you have concerns related to this inmate's risk of harm to self or emotional state contact Mental Health at your facility. After hours – request your shift supervisor contact the Mental Health Officer of the Day. Any responses of "Yes" or "Refused to Respond" to any question should result in a general mental health referral at a minimum.*

Yes  No  Routinely Mental Health assesses inmates entering restrictive housing within 14 days. Based on the inmate self-report and your observations, should Mental Health further evaluate this inmate within the first 24 hours?

Yes  No  Check here once you have notified the MHOD that this inmate was placed on IS status.



# IMMEDIATE SEGREGATION (IS) EXTENSION REQUEST

Date: Inmate Name: Inmate Number: Institution:

IS Placement Date: Document Prepared By:

Reason for Extension: Extension Type:

Requested By:

Disposition:

Comments:

---

---

Inmate Signature

---

Staff Signature

Distribution: Inmate, Housing Unit (From), Housing Unit (To), Unit Administrator, Warden, Inmate File



# IMMEDIATE SEGREGATION (IS) EXTENSION REQUEST

**Date:**                      **Inmate Name:**    **Inmate Number:**    **Institution:**

**IS Placement Date:**    **Document Prepared By:**

**Reason for Extension:**    **Extension Type:**

**Requested By:**

**Disposition:**

**Comments:**

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**Inmate Signature**

---

**Staff Signature**

**Distribution:**                      **Inmate, Housing Unit (From), Housing Unit (To), Unit Administrator, Warden, Inmate File**



# IMMEDIATE SEGREGATION (IS) EXTENSION REQUEST

**Date:**                      **Inmate Name:**                                      **Inmate Number:**                                      **Institution:**

**IS Placement Date:**                                      **Document Prepared By:**

**Reason for Extension:**                                      **Extension Type:**

**Requested By:**

**Disposition:**

**Comments:**

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**Inmate Signature**

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**Staff Signature**

**Distribution:**                      **Inmate, Housing Unit (From), Housing Unit (To), Unit Administrator, Warden, Inmate File**



# Longer-Term Restrictive Housing (LTRH) Referral

Date: Inmate Name: Inmate Number: Institution:

IS Placement Date: Document Prepared By:

**Review**

**Reason for placement (abbreviated Description, see AR 210.01 for details)**

**Narrative of facts justifying placement on LTRH:**

Distribution:  
UCC  
ICC  
Warden  
PRA Research  
CO MDRT  
Director





## Longer-Term Restrictive Housing (LTRH) Referral

Inmate Name:

Inmate Number:

Institution:

Compliant with Restrictive Housing Individual Treatment Plan: Yes  No  NA   
(SMHU & as determined by Mental Health Services)

**Attachments:**

Most recent custody classification action form

Most recent STRONG-R scores

Behavior/Programming Plan

Confidential Intelligence Memo

---

Unit Classification Committee

---

Institutional Classification Committee

---

Warden



# Restrictive Housing Notice/Waiver for Longer-Term Restrictive Housing (LTRH) Hearing

Inmate Name:

Inmate Number:

Institution:

Date/Time of Notice:

Document Prepared By:

Your presence is required at a Unit Classification Hearing on (Date/Time):

**\*Inmate acknowledgement: I have been notified of my right to appeal; I acknowledge receipt of a copy of the referral for Longer-Term Restrictive Housing. I waive my right to 48 hour notice \_\_\_\_\_ (initials). I hereby waive my presence \_\_\_\_\_ (initials).**

I have been advised that I am being recommended for Longer-Term Restrictive Housing \_\_\_\_\_

I understand that participation in my behavior/programming plan will affect the committee's decision. \_\_\_\_\_

Narrative form received by inmate \_\_\_\_\_ (inmate initials)

Serving employee date and time \_\_\_\_\_ Signature of inmate/date \_\_\_\_\_

Staff use only

Interpreter provided

Staff counsel provided



# Restrictive Housing Behavior/Programming Plan

Date:                      Inmate Name:    Inmate Number:    Institution:

**STRONG-R Score**

The purpose of this plan is to provide you the opportunity to transition from Longer-Term Restrictive Housing to a less restrictive environment at the earliest possible time. The goals you set and the recommendations staff make cannot be accomplished without your full participation.

**My goals are:**

**Actions or behaviors that will help me accomplish my goals are:**

**Staff recommendations are:**

**Actions or behaviors that will help me meet these recommendations are:**

Certain behaviors can be a barrier to accomplishing my goals and meeting staff recommendations. Success includes acknowledging these behaviors and identifying positive behaviors to replace them.

	Behavior to Change	Replacement Behavior
<b>My Challenges</b>		
<b>Staff Recommendations</b>		

Sometimes, certain things can trigger the behaviors we want to change. Knowing what those triggers are can help us change the behavior before we engage in it. Below are things I think or staff have observed that may contribute to these behaviors AND ways to respond to those things.

	Behavior to Change	Replacement Behavior
My Challenges		
Staff Recommendations		

When I achieve the following, I may receive an incentive listed below:

ACHIEVE:

RECEIVE:

I have participated in the development of this Behavior/Programming Plan, and accept it as a part of my treatment. I am making a commitment to follow this plan.

\_\_\_\_\_  
Inmate Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Date



## CONFIDENTIAL INTELLIGENCE MEMO

Date: Inmate Name: Inmate Number: Institution:

Document Prepared By:

Security Threat Group affiliation:

Current level of STG involvement:

Current threat to security:

History of STG activity (within 1 year):

History of STG activity (past 5 years):

Supporting documentation attached

Distribution:  
Records - Original  
Inmate - Photocopy  
Housing Unit, Unit Administrator, Warden, PRA Research

Effective 7-1-2016, Revised:7-14-2016

AR 210.01  
Attachment H



# Restrictive Housing Mental Health Individual Treatment Plan

Date: Inmate Name: Inmate Number: Institution:

IS Placement Date/Time: Document Prepared By:

Diagnosis:

Initial Date: Review Date: Completion Date:

<u>Problem</u>	
<u>Goal</u>	
<u>Related Coping Skills/Strengths</u>	
<u>Incentives</u>	
<u>Consequences</u>	

I have participated in the development of this treatment plan, and accept it as a part of my treatment. I am making a commitment to follow this plan. I understand this treatment plan may be revised on my treatment/therapeutic needs.

\_\_\_\_\_  
Inmate Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mental Health Staff Signature

\_\_\_\_\_  
Date

Distribution:  
Records - Original  
Inmate - Photocopy  
Housing Unit, Unit Administrator, Warden, PRA Research



# Longer-Term Restrictive Housing (LTRH) Review

Date: Inmate Name: Inmate Number: Institution:

IS Placement Date: Document Prepared By:

LTRH Referral Date:

**Review**

**Reason for placement:** (Abbreviated Description, see AR 210.01 for details)

**Disposition:**

\_\_\_\_\_  
Chair – Deputy Director – Operations

\_\_\_\_\_  
Mental Health Representative

\_\_\_\_\_  
Classification Representative

\_\_\_\_\_  
Intelligence Representative

\_\_\_\_\_  
Research Representative

**If placement exceeds 365 days**

\_\_\_\_\_  
**Director**

Distribution:  
Records - Original  
Inmate - Photocopy  
Housing Unit, Unit Administrator, Warden, PRA Research - Electronic



## DISPOSITION OF LONGER-TERM RESTRICTIVE HOUSING REVIEW

**TO:**

**FROM:** Central Office Multi-Disciplinary Review Team

**DATE:**

**INSTITUTION:**

**FACILITY ADMINISTRATOR:**

Your classification action for \_\_\_\_\_ longer-term restrictive housing status was reviewed by the Central Office Multi-Disciplinary Review Team on \_\_\_\_\_

This memo is to advise you that you have been \_\_\_\_\_ Longer-Term Restrictive Housing status.

If you disagree with this decision, you may appeal this action via Inmate Interview Request form to the Director. In accordance with policy, only one appeal to the Director per classification action will be considered.

Distribution:  
Records - Original  
Inmate - Photocopy  
Housing Unit, Unit Administrator, Warden, PRA Research - Electronic





## Restrictive Housing Levels Behavioral Baseline

Day	Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday			Monday			
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	
<b>Appropriate behavior</b>																						
1. Compliance																						
2. Effective communication																						
3. Healthy boundaries																						
4. Using coping strategies																						
5. Other:																						

Key: X= acceptable Behavior (For each X write an explanation and initial in comments below.)

**Level:** \_\_\_\_\_ **Start Date:** \_\_\_\_\_  
**Comments:** \_\_\_\_\_

Day	Tuesday			Wednesday			Thursday			Friday			Saturday			Sunday			Monday			
	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	1st	2nd	3rd	
<b>Problem behaviors</b>																						
1. Non-compliance																						
2. Inciting/manipulation																						
3. Sanitation/hygiene																						
4. Aggression (to self, others, or																						
5: Other																						

Key: X= Unacceptable Behavior (For each X write an explanation and initial in comments below.)

**Level:** \_\_\_\_\_ **Start Date:** \_\_\_\_\_  
**Comments:** \_\_\_\_\_

Inmate Name	Number	Room	Status	AC/PC	
				TRD Date	SMU Date



CONDITIONS OF CONFINEMENT		APPLICATIONS		
		IS	LTRH	SMH
A. PRESCRIBED MEDICATION				
	Inmates shall receive prescription medications.	X	X	X
B. CLOTHING				
	Inmates shall receive state-issued clothing that is not degrading.	X	X	X
C. PERSONAL PROPERTY				
	Inmates shall have access to authorized property in accordance with policy	X	X	X
	Inmates shall have access to additional authorized personal items for use in their cells in accordance with their Behavior/Programming Plan and/or Individual Treatment Plan (as applicable).	X	X	X
D. MEALS				
	Inmates shall receive substantially the same meals served to the general population.	X	X	X
	Inmates shall receive meals in their cells.	X	X	X
	Inmates may be permitted to receive meals outside their cells if proper security can be maintained and in accordance with the Behavior/Programming Plan and/or Individual Treatment Plan (if applicable).		X	X
E. SHOWERS AND SHAVING				
	Inmates shall have an opportunity to shave and shower three times per week	X	X	X
	Inmates shall have the opportunity to shave and shower more than three times per week in accordance with the Behavior/Programming Plan and/or Individual Treatment Plan		X	X

CONDITIONS OF CONFINEMENT		APPLICATIONS		
		IS	LTRH	SMH
	Inmates shall be issued clothing, bedding and linen on the same basis as inmates in the general population.	X	X	X
	Clothing, bedding and linen shall be exchanged on the same basis as inmates in the general population.	X	X	X
G. ACCESS TO LAUNDRY SERVICES				
	Inmates shall have access to laundry services for state issue clothing on the same basis as inmates in general population.	X	X	X
H. HAIR CARE SERVICES				
	Inmates shall have substantially the same access to hair care services on the same basis as inmates in the general population.	X	X	X
I. MAIL AND LETTERS				
	Inmates shall have the same personal and legal mail privileges as inmates in the general population.	X	X	X
J. VISITS				
	Inmates assigned to facilities/units without tele-visiting (LCC, NCCW, NCYF, NSP, OCC) may have contact visits.	X	X	X
	Inmates assigned to facilities/units with tele visiting (TSCI) will not have contact visits.	X	X	
K. TELEPHONE PRIVILEGES				
	Inmates shall have telephone privileges as set forth in AR 205.03 <i>Inmate Telephone Regulations</i> and in accordance with the Behavior/Programming Plan and/or Individual Treatment Plan (if applicable).	X	X	X

	CONDITIONS OF CONFINEMENT	APPLICATIONS		
		IS	LTRH	SMH
L. LEGAL MATERIALS				
	Inmates will have access to legal materials and services.	X	X	X
M. READING MATERIALS				
	Inmates may possess books and magazines within the property limitations imposed, as long as the accumulated materials do not constitute a health, fire or security hazard.	X	X	X
N. EXERCISE PERIODS				
	Inmates shall have the opportunity to exercise for one hour five days per week and in accordance with the Behavior/Programming Plan and/or Individual Treatment Plan (if applicable).	X	X	X
O. ACCESS TO PROGRAMS AND SERVICES				
	Inmates shall have access to programs and services, including educational services, social services, counseling services and religious guidance as established by the Operational Memorandum of each facility and based upon the services provided at that facility.	X	X	X
P. SANITATION				
	Inmates shall keep their cells neat and clean. Correctional staff will provide the necessary cleaning materials.	X	X	X
Q. PERSONAL HYGIENE				
	Inmates shall maintain acceptable standards of personal hygiene. Indigent inmates will be issued the necessary personal hygiene items.	X	X	X

CONDITIONS OF CONFINEMENT		APPLICATIONS		
		IS	LTRH	SMH
R. TRUST FUND WITHDRAWALS/CANTEEN				
	Inmates may purchase hygiene/legal materials and up to \$5.00 of non-hygiene items not to exceed \$10.00 per week.	X	X	X
	Inmates may draw up to the amount allowed for canteen purchases by general population inmates from their inmate trust account in accordance with the Behavior/Programming Plan and/or Individual Treatment Plan (if applicable).		X	X
	Inmates can have canteen orders filled at least one time per week.	X	X	X
S. RADIO/TELEVISION PRIVILEGES				
	Inmates will be issued earbuds, one television (IS) per cell and hygiene/stationary items.	X	X	X
	Inmates may use personal radio, MP players with headsets or earphones in accordance with the Behavior/Programming Plan and/or Individual Treatment Plan,(if applicable).	X	X	X
T. USE OF RESTRAINTS – INTERNAL MOVEMENT				
	Inmates may be restrained for internal movement and proper management	X	X	X
U. ACCESS TO HEALTH CARE				
	Inmates shall have access to health care by health care officials on a daily basis, unless medical attention is required more frequently.	X	X	X
V. WORK ASSIGNMENTS				
	Inmates may be allowed to have work assignments in accordance with the Behavior/Programming Plan or Individual Treatment Plan (if applicable).		X	X

## **REFUSAL TO RETURN ALTERNATIVE MEAL SERVICE EQUIPMENT PROTOCOL:**

Alternative Meal Service: If an inmate uses food or food service equipment in a manner hazardous to self, staff or inmates or which creates a health/sanitation hazard, alternative meal service equipment may be utilized. Alternative meal service equipment shall consist of a silicone meal tray and a paperboard eating utensil (no drinking cups). Authorization for use of the alternative meal service equipment shall be approved by the Deputy Warden or higher authority and shall be on an individual basis and shall be based on health and safety considerations only. A Restriction of Privileges/Rights form will be completed in accordance with established procedures. This restriction will be reviewed at a minimum of once a week by staff designated by the Warden but may be reviewed more frequently. The restriction may only be removed by the authority of the Deputy Warden or higher authority and shall be based on the assessment of safety and health risks.

If an inmate refuses to return the alternative meal service equipment (silicone meal tray and/or paperboard eating utensil) or creates a health/sanitation hazard by smearing food within the cell, the following protocol will be followed:

1. The incident will be reported to the shift supervisor and documented as appropriate.
2. If no safety concerns exist (covering of windows, covering of cameras, self-harm activities, etc.), the inmate will be notified that he must return the items and/or be directed to clean the cell prior to the next meal. Appropriate cleaning supplies will be offered. A review of the current Restriction of Privileges/Rights form will be completed to determine if modifications are necessary based on the current behavior.
3. The inmate will be checked during normal gallery checks to ensure no safety concerns exist.
4. If the inmate has not returned the items and/or cleaned the cell prior to the time the next meal is served, the inmate will not receive a meal.
5. The inmate will be told that if he does not return the items prior to the next meal being served, he/she will be removed from the cell.
6. The inmate can only miss one meal. If the inmate misses the first meal period and then voluntarily complies, he/she will receive a meal as soon as possible.
7. If the inmate does not return the items and/or clean the cell by the second meal, the Shift Supervisor will be contacted. The Shift Supervisor will be responsible for authorizing a use of force to retrieve the items. The use of force will be conducted per established procedure.
8. Once the inmate is returned to the cell, he/she will be offered a meal. (If the inmate remains on Alternative Meal Service status, the alternative meal service equipment will be used. If the inmate is no longer on Alternative Meal Service status, regular food service equipment will be used.) If the regular meal is no longer available, a sack lunch will be provided.

## DISRUPTIVE HYGIENE BEHAVIOR RESPONSE PROTOCOL

**Disruptive Hygiene Behavior** (DHB) is the intentional smearing of any bodily fluid/substance, including but not limited to feces and urine, on one's person or anywhere in the cell. This protocol is for use in Restrictive Housing Units only, and will not be utilized in Skilled Nursing Units.

- A. When an inmate engages in DHB, the incident will be reported to the shift supervisor and documented as appropriate
- B. Mental Health will be notified but they do not need to immediately report to the area. MH staff will review the MH records to determine if the inmate has active mental health issues that are driving the behavior or if the inmate is seeking attention.
- C. If the cell was smeared and no safety concerns exist (e.g.; covered windows, self-harm activities, visible open wounds, etc.) the inmate will be directed to clean the cell and appropriate cleaning supplies will be offered, including gloves.
- D. If the inmate cleans the cell or if the inmate only had feces smeared on him/herself: the inmate will be given the opportunity to take a shower.

The inmate will be given clean clothing to replace any soiled clothing. The inmate will then be returned to the same cell, if possible.

**E. If the inmate refuses to clean the cell, the inmate will be asked if he/she has any open wounds.**

- 1. If the inmate indicates he/she does, the inmate will be asked to show staff the wounds.
- 2. If the inmate has open wounds the inmate will be given directives to be restrained so he/she can be showered and the cell cleaned.
- 3. If the inmate refuses to be restrained, follow steps F.6. a through e below.

**F. If the inmate refuses to clean his/her cell:**

- 1. The refusal will be documented and the shift supervisor will be notified.
  - a. Medical Staff will be contacted to determine if the inmate has a medical condition that would be exacerbated if one meal is withheld from the inmate.
  - b. If the inmate has a medical condition that will not allow one meal to be withheld from the inmate and the inmate refuses to be restrained so he/she can be showered and the cell can be cleaned, follow steps F.6. a through e below.
- 2. The inmate will be notified that before he/she receives his/her next meal, the cell must be cleaned and the inmate must take a shower.
- 3. A water restriction device will be placed at the base of the cell door to help control the odor and deodorizer will be sprayed around the door.
- 4. The inmate will be checked for compliance during normal gallery checks. The inmate will be offered cleaning supplies at each gallery check. There should be minimal conversation with the inmate. Refrain from comments about the odor.



5. If the inmate has not cleaned the cell by the time the first meal is served following the behavior, the inmate will not receive a meal. The inmate will be told the meal is not being served because of the potential health hazards that may exist. The inmate will be told that if he/she does not clean the cell by the time the next meal is served, he/she will be removed from the cell. (The inmate can only miss one meal. If the inmate misses the first meal period and then voluntarily complies, he/she will get a meal as soon as possible).
6. If the inmate does not clean the cell by the second meal, the Shift Supervisor and mental health will be contacted. Mental health will determine if there is need for further dialogue with the inmate.
  - a. The Shift Supervisor will notify the warden during business hours or the OD after hours and receive authorization to conduct a use of force to remove the inmate from the cell.
  - b. The use of force will be video recorded per procedure and the normal use of force protocol will be initiated.
  - c. Following the use of force, normal OC decontamination protocol will be followed.
  - d. If the inmate refuses to comply with the OC decontamination or refuses to wash the feces from his/her body, the inmate should be placed in a holding cell.
  - e. If the inmate continues to refuse to wash the feces from his/her body, staff will conduct an involuntary shower to clean the inmate.
7. If the inmate cooperated during the use of force and allows staff to place him/her in restraints, the inmate will be allowed to shower.
8. Staff will clean the inmate's cell while the inmate is being showered/decontaminated.
9. Once the shower is completed, the inmate will be provided clean clothing and returned to the same cell, if appropriate.
10. Once the inmate is returned to the cell, he/she will be offered a sacked meal. If the hot meal is still available, the inmate may be offered the hot meal.

**\*Note\*** Inmates who only need OC decontamination and refuse to cooperate with the same, will be observed continuously for two hours and every 15 minutes after that for the next 24 hours.

**\*Note\*** Any time the cell hatch is opened during the above process, the inmate must be away from the door behind the red line, where applicable, and must show their open hands before the hatch is opened. The staff must use the shield in front of the open hatch.

**\*Note\*** Incidents of the DHB that occur in a skilled nursing facility (SNF) should be addressed immediately.