

Nebraska Department of Correctional Services Classification & Crowding Project

Research Brief

Due to recent concerns of prison crowding, in August of 2021, with funding provided from the Legislative Bill 380 (LB380), the Nebraska Department of Correctional Services (NDCS) contracted with the Nebraska Center for Justice Research (NCJR) to assess how individuals are classified and progress through the prison system. Overall, the project sought to examine efficiencies within the NDCS system as they pertain to classification and crowding, and to identify areas of improvement. The project was completed in phases. Phase I consisted of a process evaluation that provided a comprehensive review of the NDCS prison system, as well as individual issues and impacts of crowding on specific facilities. Subsequently, in Phase II NDCS and NCJR selected three areas for further investigation. The current brief describes the results of the project to date.

Background

Issues of crowding in NDCS facilities are well documented (Bischof, 2021; Lundak, 2021). Prior examinations of NDCS prison crowding found that system intakes have remained consistent during periods of crowding, suggesting two sources – limited bed space and progression delays, or promotion from higher to lower custody facilities over time. Given current crowding concerns, it has been suggested that the NDCS system may need to expand facility space to accommodate the current population (Ozaki, 2022). However, national trends demonstrate the positive effects of ‘decarceration’ or reducing the overall prison population to fit current, available system space.

Summary

In response to growing concerns among stakeholders and policy makers regarding prison crowding, the Nebraska Department of Correctional Services (NDCS) partnered with the Nebraska Center for Justice Research (NCJR) to examine causes and solutions to this issue. Findings provide recommended changes needed to ease growth and help maintain safety within facilities.

After an evaluation of current facilities and issues described by staff, three areas of classification and system progression were identified as potential causes requiring further examination. Specifically, NCJR examined 1) prison growth and its impact on classification and promotion of incarcerated individuals, 2) safety and prison management concerns regarding mixed custody facilities, and 3) the impact of individuals with short sentences on crowding and system flow.

Findings revealed a growing crowding issue and while expanded bed space in existing facilities provides temporary relief, the underlying causes (e.g., longer sentences) continue to grow the prison population. Further, as crowding persists, mixed custody housing units have been used to increase limited space, contributing to higher rates of serious/violent misconducts. Finally, ‘short timers’ or those with less than a year to serve, receive little rehabilitative programming and may be better served in alternative housing. NCJR recommends new prison construction be limited to ‘infrastructure replacement’, while the legislature considers strategic sentence reductions and alternatives to prison incarceration.

Preceding NCJR’s evaluation, in 2015 the Council of State Governments (CSG) undertook a Justice Reinvestment Initiative (JRI) in an effort to reform Nebraska policies and reduce prison crowding. At the time, the NDCS inmate population was found to be at 159% of operational capacity, with an average population of just over 5,000 individuals (Council of State Governments, 2015). In addition, it was found that, despite declines in crime/arrests in Nebraska, prison admissions outpaced releases.

Further, CSG suggested that ‘immediate and impactful’ system changes were needed to stem the increasing crowding problem. This recommendation signaled the need for a deeper understanding of the causes of prison crowding. Thus, the current brief sought to understand said causes and impacts of NDCS crowding in three areas 1) classification and custody alignment, 2) the use of mixed custody facilities, and 3) the effects of ‘short timers’, or those serving a term of less than a year in an NDCS facility.

Classification & Custody Alignment

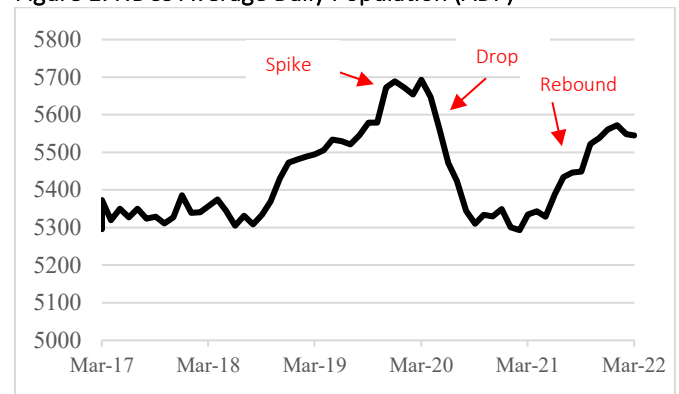
We first sought to describe the prison population’s growth and its impacts on bed space of individuals’ current and recommended security level. First, it was necessary to describe NDCS population growth. Next, we described changes in the NDCS population, using individuals’ security classifications as a barometer for change over time.

Population Growth

Figure 1. displays the NDCS average daily population (ADP) between March of 2017 through March of 2022. Notably, there is a 7% ‘spike’ of growth starting in September 2018, prior to a drop off in March of 2020 due to the COVID-19 pandemic, and an ADP

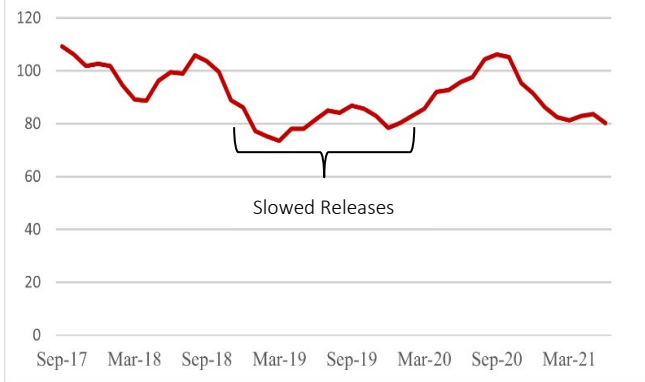
rebound in March of 2021. Although the study period ended in March of 2022, findings from the recent Master Plan Report (Dewberry, 2023) indicate that the ADP has nearly returned to pre-COVID-19 levels. Using an interrupted time series (ITSA) model we identified that these three trends (i.e., spike, drop, & rebound), represented statistically significant ($p < .001$) changes in the NDCS ADP over the study period. Notably, admissions to NDCS custody remained relatively stable through March of 2020 (see Hamilton et al., 2023).

Figure 1. NDCS Average Daily Population (ADP)



Next, we examined the slowing rate of parole releases. Figure 2 provides a line chart of releases over the study period. Notably, parole releases prior to September of 2018 averaged 115 individuals each month. Attributed, in part, to parole board member turnover between August 2018 and March 2020, the average releases slowed to 80 individuals per month. *This decrease in releases created a cumulative effect over time, retaining the additional 400 additional individuals observed in the ADP ‘spike’* (see Figure 1).

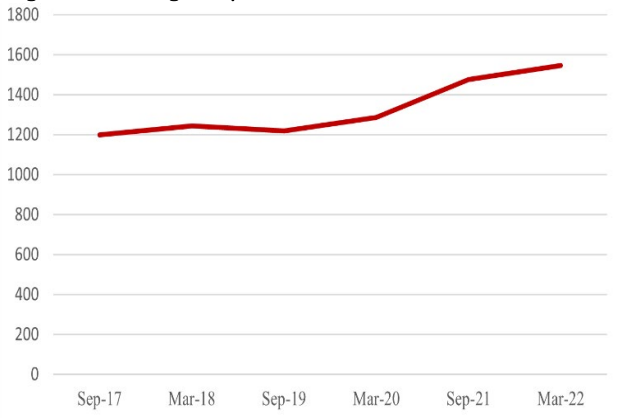
Figure 2. NDCS Parole Releases by Month



Notably, at the end of the ADP drop, following COVID-19, parole release rates returned and were observed to exceed 100 per month, before again dropping to 80 per month (March 2021). This trend mirrors the timing of the post-COVID rebound identified to follow the spike (see Figure 1).

To further explore prison crowding and ADP growth, we examined the NDCS prison population’s average number of days to release from 2017 through 2022. Findings are provided in Figure 3. As indicated, a slow growth of incarcerated individuals’ *average days to release* is observed, 1,200 days (3.3 years), to 1,600 (4.3 years). Driven by longer sentence lengths, *extending the average time to release has substantially contributed to prison crowding via the greater retention of individuals over time.*

Figure 3. Average Days to Release

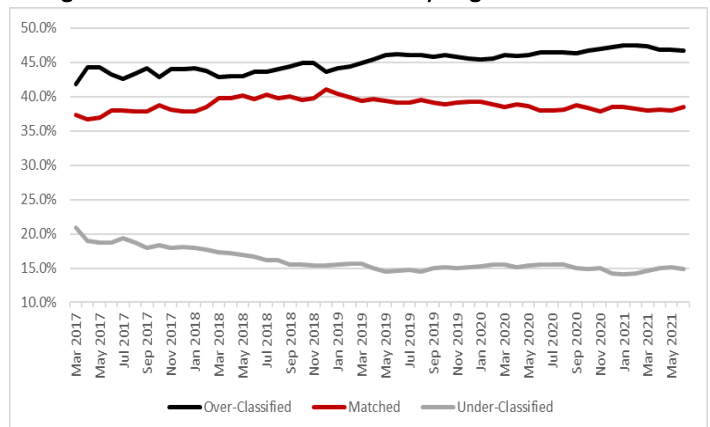


Population Changes

Next, we used the NDCS classification tool – the Institutional Risk Assessment (IRA) – to examine facility risk of misconduct. First, we established the predictive ability of the IRA and found it was a strong predictor of infractions, creating a *barometer for risk of serious and violent behavior*. Unfortunately, misalignment (i.e., being housed in a security custody level not recommended by the IRA) increased over the study period, with greater than 40% of the population housed outside of their recommended security designations.

Most misalignments were the result of overclassification, where individuals were retained at a higher level of custody than recommended. Specifically, overclassifications grew by 5% over the last five years. Figure 4 displays classification alignment for males by month. We further note that the rise in *overclassification is a forced consequence of crowding*, where NDCS has few degrees of freedom in which to provide timely promotions and optimal custody alignment. Our findings indicate that inmates increasingly wait longer for promotion to lower custody as crowding grows.

Figure 4. Male Classification-Custody Alignment



Collectively, these findings indicate the need to relieve bottlenecks at lower custody levels. The results show that, as the ADP increases, so too does overclassification, which may be exacerbated



by reduced parole releases.

Therefore, we find that *as sentence lengths increase, incarceration durations are extended, where fewer individuals are eligible and released via parole, causing crowding and the inability to promote eligible individuals to lower custody levels, which, in turn, creates overclassification.*

Mixed Custody Units

The second set of analyses focuses on understanding the issues created by mixing custody units. In Phase I, staff described issues with serious misconduct and difficulties managing mixed custody facilities. These misconducts are classified as Class 1 Violent (bodily harm caused), Class 1 Any (serious, non-violent infractions that can lead to violence if not addressed), Class 2 (moderate severity and unlikely to be violent), and Class 3 (low severity). Mixed custody security level facilities exist where individuals classified as maximum or medium security are housed together, or where individuals classified as medium or minimum security are housed together. This housing complexity was described as a solution used to quell crowding issues in years prior, requiring a need to merge security levels and expand bed capacity in specific custody units.

Thus, we compared types and rates of misconduct between true custody (non-mixed) facilities and mixed custody facilities. Individuals in mixed custody units were compared to true custody units that were statistically balanced on key characteristics. Table 1 displays the odds of committing each type of infraction by security custody housing, where a value greater than 1 indicates an increase in the odds of infraction.

Table 1. True vs. Mixed Custody Infraction Odds

	Class 1 Violent	Class 1 Any	Class 2	Class 3
	OR	OR	OR	OR
Max vs. Max/Med	0.18*	0.40*	0.41	0.75
Med vs. Max/Med	0.23*	0.26*	0.36*	0.63*

*p<.001

Generally, mixed custody units possessed greater rates of infraction behavior compared to those in mixed custody. Overall, True Maximum and Medium Custody facilities have less occurrence of the most serious types of infraction. While not all infraction types differed significantly by custody type, all significant effects indicated that *True Custody facilities reduced serious and violent misconduct, confirming the state’s need to update current facilities and eliminate ineffective mixed custody housing units.*

Short Timers

The final set of analyses focuses on the effects of individuals with short sentences. These ‘Short Timers’ were admitted to NDCS with less than a year until release. Because of their short stays, these individuals have little opportunity for rehabilitation or work interventions. Further, they serve as a system ‘bottleneck’, blocking individuals from promotion to lower security classifications. To examine the extent and magnitude of the issue, we describe Short Timers and their impact on crowding.

Notably, Short Timers represent 10% of the NDCS ADP, but due to their quicker churn through the system, they represent 48% of new admissions. Further, Short Timers were more likely to have committed a drug offense (30% vs. 18%) and less likely to have committed a violent offense (45% vs. 58%) than non- Short Timers (See Table 2).

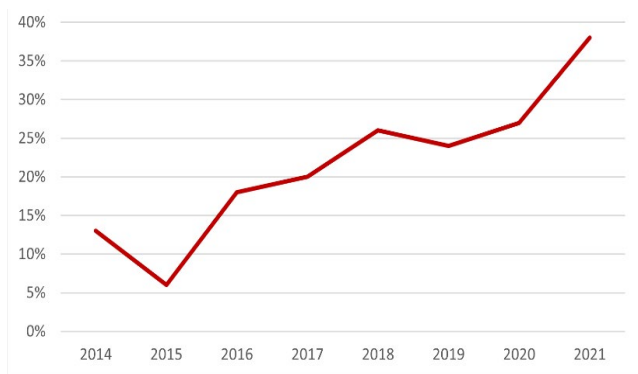
We found that a substantial proportion of Short Timers (6% to 38%) remain at reception (DEC/RTC) for the entirety of their incarceration. Table 3 shows the proportion of individuals that stay in reception by year. It was found that roughly a quarter of the population is retained at reception, unable to receive work release and with limited access to programming.

Table 2. Descriptive Statistics of the Population

Measure	Short Timers (n=9,325)	Non-Short Timers (n=10,403)
Male	82%	90%
White	59%	55%
Violent Offense	45%	58%
Drug Offense	30%	18%

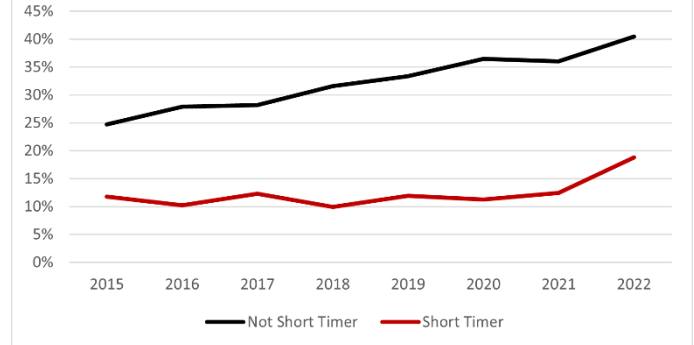
Figure 5 provides a chart of Short Timers compared to Non-Short Timers. As shown, roughly 10% of the Short Timers population receives programming.

Table 3. Percent of Short Timers Remaining in DEC/REC



While the rate of programming for both groups has grown recently (2022), programming for Short-Timers is 15-20% lower than that of Non-Short Timers.

Figure 5. Programming by Short Timer Status



Overall, the proportion of yearly Short Timers admissions represents a functional issue for NDCS in terms of providing adequate housing and rehabilitative services. With limited bed space, housing solutions are restricted for Short Timers, where many are retained at intake facilities for the duration of their term. Further, many spend a substantial portion of this time idling, with insufficient time to receive programming.

Recommendations and Conclusion

Based on the described study findings, we make several recommendations.

First, recent legislative changes have extended the average sentence duration and represent a root cause of crowding and overclassification. To reduce crowding, legislative solutions are needed to limit or reduce the average time to release.

While new admissions have remained consistent over the last decade (CSG, 2015; Hamilton et al., 2023), individuals are staying longer. Longer stays are a result of sentencing enhancements, stacking of consecutive sentence durations, and other forms of incarceration extensions described by prior evaluators (Nebraska Criminal Justice Reinvestment Work Group, 2022). Our findings indicate inmates' average days to release grew by a full year between 2019 and 2022. This creates a *cascading system effect*, where fewer

individuals are eligible for parole, reducing releases, causing crowding and bottlenecks, preventing promotion of individuals to lower custody levels, which causes overclassification, and a greater potential for serious and violent infraction behavior.

The NDCS system has experienced crowding issues and waves of crisis, which were temporarily relieved via facility expansions and court processing slowdowns resulting from the COVID-19 pandemic. We note there is a national consensus, where studies across four decades of prison growth in the US demonstrate that building new facilities and expanding prisons capacity only provide a short-term fix (Pitts et al., 2014). Yet, without legislative solutions addressing the root causes of crowding (time incarcerated), additional, expensive prison expansions will be required routinely, as indicated in the recent Master Plan (Dewberry, 2023).

Second, updates to the NDCS facilities and classification assessment have the potential to more accurately identify and separate individuals based on risk and create a system of transfers and promotion that will improve the provision of programming and outline those suited for alternatives to prison incarceration.

The current plan to build a replacement facility for the Nebraska State Penitentiary will go a long way toward removing the use of mixed custody housing units and other related security risks. However, adjustments to assessment classification tools can create additional efficiencies with the ability to categorize those with minimal risk to the community, *identifying a population of individuals best served via alternatives to incarceration* (i.e., home confinement & electronic home monitoring). Borrowing from effective strategies observed

in other jurisdictions (Bales et al., 2010), a greater use of alternatives to incarceration can reduce crowding and population growth.

Second, we recommend developing strategic solutions to serve short timers outside NDCS facilities in alternative housing.

Short Timers and similar populations (i.e., parole violators) pose a strain on the NDCS system and are not optimally served via a prison environment (Duwe, 2017). Further, this population inhibits the designed flow of transfers and promotion, preventing the effective transitions of those with longer terms and greater needs for services. Many states use local jails and other alternatives for individuals that are lower risk, allowing them to serve a portion of their incarceration near their home, with the potential for work release and programming alternatives that take advantage of community-based resources (Duwe, 2017). While we acknowledge that such a solution would have a fiscal impact on local jails and correctional agencies, legislative funding for these prison alternatives would likely reduce costs of incarceration incurred by the state over time and prevent further strain on an overburdened prison system. Further, we estimate that removing this population will allow the ADP to near 5,000, or the suggested functional capacity outlined by the Council of State Governments in 2015.

Third, we recommend planning and resources be provided to monitor and track ADP with the ability to forecast correctional trends and provide important guidance to governmental bodies.

Recent changes in Nebraska statutes have resulted in notable system changes to the NDCS and parole populations, creating unforeseen effects on crowding and prison safety. In the last eight years, the Nebraska Legislature, Governor, and NDCS have commissioned

reports from five separate external agencies, each tasked to provide a ‘snapshot’, documenting issues of crowding and their sources. Yet, these reports have been in response to immediate crises, with little consideration for sustainable tacking of population trends that may be used to proactively ‘head off’ the next crisis.

As demonstrated via the recent ADP ‘spike’, small changes to prison admissions, sentence lengths, and the pace of releases can have a substantial and sustained impact on prison crowding specifically, and correctional resources generally. The proposed system has the potential to ‘flag’ prison growth and other concerning trends, preventing future crises. Further, a well-maintained forecasting model will communicate proposed effects of recently implemented policies and statutes to ensure that system improvements have the desired intent.

A monitoring and forecasting project of this magnitude requires mandated data sharing and a collaboration of Nebraska’s law enforcement, courts, and correctional agencies. While many states have incorporated similar justice system monitoring programs, a central authority with access to crime statistics is needed to create dashboards, host agency workgroups, facilitate communication, and direct strategic legislative and policy change. We recommended that the Nebraska Crime Commission, working with a collection of state agencies and researchers, provide a central hub for this data driven solution.

Collectively, these recommendations have the potential to greatly reduce issues of overcrowding experienced in NDCS facilities, ensure safer housing units, and increase the rehabilitative capacity of NDCS.

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