

2020 Mandatory Discharge Report

February 27, 2020

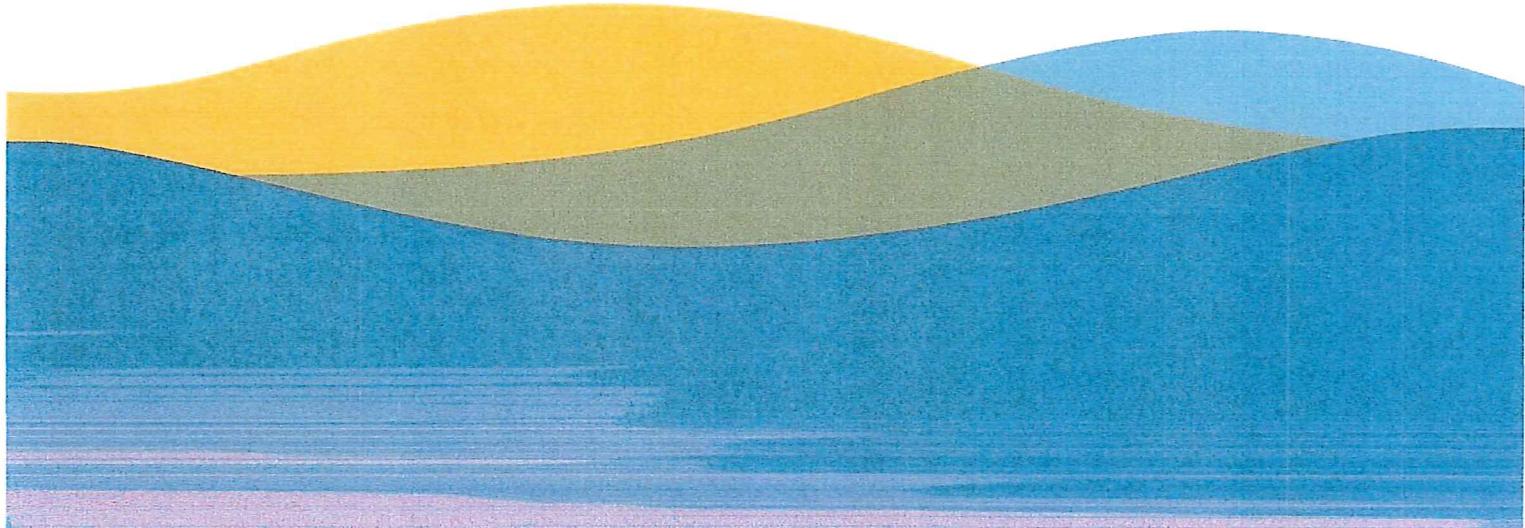
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SCOPE AND INTRODUCTION

In accordance with N.R.S. §83-1,100.03, this joint report by the Board of Parole (Board) and the Nebraska Department of Correctional Services (NDCS) describes the percentage of offenders sentenced to the custody of NDCS who complete their entire sentence and are released with no supervision following that release. This report also documents the characteristics of these individuals, including their highest felony class of conviction, offense type of conviction, most recent risk assessment, status of the individualized release or reentry plan, and the reasons why parole was denied or deferred at their most recent Board appearance. Finally, this report provides recommendations from both the Board and NDCS with regard to policy and practice changes that will meet the goal of reducing the number of individuals under the custody of NDCS who serve their entire sentence in a correctional facility and mandatorily discharge.

The Board and NDCS have collaborated on this annual discharge report, which provides information about discharges during Calendar Year (CY) 2019. We are committed to working together to continue to reduce the number of discharges without community supervision.

NUMBER OF OFFENDERS DISCHARGED DIRECTLY FROM NDCS

Between January 1, 2019 and December 31, 2019, 387 individuals eligible for community supervision were discharged directly from an NDCS facility (or contracted county jail).¹ This group represents 14.0% of all NDCS discharges during CY2019. Table 1 provides a comparison of discharges from CY2016 through CY2019. The number of mandatory discharges in CY2019 increased by 4 people, relative to CY2018, but showed an overall decrease of 37.3% (n=230) from CY2016. The number of individuals who discharged with community supervision increased by 3.5% from CY2018, which translates to 54 additional people. Compared to CY2016, individuals releasing with community supervision has increased by nearly 35%, for an additional 411 people. Of the 387 people who discharged directly from NDCS, 147 had a prior history of parole, which indicates they were provided an opportunity to transition to the community during their sentence but did not successfully complete the requirements of parole. Similarly, 43 people discharged from a community corrections center. Although these individuals did not discharge from a period of full community supervision on parole or post-release supervision, they were actively transitioning back into society on either work detail or work release. It should also be noted that there were 97 individuals who had 30 days or fewer between either their PED and TRD or their most recent Board appearance and TRD. The Board would not have considered these individuals for release, given their short potential parole term, in accordance with N.R.S. §83-1,111(1).

¹ Persons were excluded from consideration in this report if: they discharged from NDCS custody to serve terms or post-release supervision (PRS) under the jurisdiction of the Administrative Office of Probation (AOP; n=923), their sentence structure did not allow for the possibility of parole supervision (n=195), they were released to another jurisdiction (n=5), or if they discharged their sentence while on parole (n=663). Individuals who were released due to death (n=16) were also excluded.

TABLE 1 - 2016-2019 Discharge Comparison

<u>Release Type</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2016-2019 Net Change</u>	<u>2016-2019 Percentage Change</u>
Mandatory Discharge	617	485	383	387	-230	-37.3%
Mandatory Discharge - No history of parole	406	267	221	240	-166	-40.9%
Mandatory Discharge - Prior Parole	211	218	162	147	-64	-30.3%
Discharge with Community Supervision (Parole or PRS)	1181	1467	1538	1592	411	34.8%

CHARACTERISTICS OF INDIVIDUALS DISCHARGED DIRECTLY FROM NDCS

Most Serious Felony Class and Offense

This section provides details about the offenses committed by the 387 individuals discharged directly from NDCS during CY2019. Specifically, Table 3 illustrates the highest felony levels for these individuals, while Table 4 details the most serious offense categories.

TABLE 2 - Most Serious Felony Level

<u>Felony Class</u>	<u>#</u>	<u>%</u>
Class 1	17	4.4%
Class 2	110	28.4%
Class 2A	127	32.8%
Class 3	82	21.2%
Class 3A	22	5.7%
Class 4	29	7.5%
Total	387	100.0%

"Class 1" encompasses Class 1A, 1B, 1C, and 1D level felonies. During CY2019, no one who mandatorily discharged from an NDCS facility had a 1A felony as their most serious convictions. One person had a Class 1B felony, 1 person had a Class 1C felony, and 14 individuals had Class 1D felonies.

As shown in Table 2, about one-third (34.4%) of the individuals discharged directly from NDCS were convicted of Class 3, 3A, or 4 felonies. This is a significant decline from the 51.1% who discharged in CY2018. This likely demonstrates that individuals sentenced to prior to the adoption of LB605 are making their way out of the system, as they should now be releasing to required periods of post-release supervision under AOP. Just under two-thirds (65.6%) of the prison's mandatory discharge population were convicted of Class 1, 2, and 2A offenses. These felony classes carry longer potential sentence ranges, including some with mandatory minimums, creating a lower churn rate within this group. As the pre-LB605 population with lower-level felony convictions continues to work its way out of the system, NDCS should expect to see fewer people discharging from prison in future years, regardless of felony level.

Table 3 shows the distribution of mandatorily discharged individuals by their most serious offense type. Just under half of the 387 individuals mandatorily discharged from an NDCS facility had a most serious conviction in a non-violent offense category (47.6% had a most serious offense category of drugs, theft, burglary, fraud, arson, or other). Although the other offense categories include violent crimes, not all convictions are exclusively violent. For example, the majority of convictions for a “Weapons” offense (43 of 56) were the result of possession of a stolen firearm or possession of a firearm/deadly weapon by a felon. Only eight convictions were for the actual use of a firearm/deadly weapon to commit a felony or the unlawful discharge of a firearm. Even the 12.4% with sex-related offenses includes those with violent crimes, such as first degree sexual assault and sexual assault of a child, as well as those whose crimes did not have a direct interpersonal component, such as failure to register as a sex offender and enticement by an electronic device. Recall from above that people with Class 3, 3A, and 4 felonies are expected to work their way out of the mandatory discharge population in the future due to their post-release supervision requirements. Given that a greater proportion of non-violent crimes are classified into these felony levels, the composition of the mandatory discharge population in future years should be expected to contain more individuals with offenses that are either inherently violent (e.g., homicide, sexual assault) or may be precursors to violent interpersonal conflicts (e.g., possession of a firearm; terroristic threats).

TABLE 3 - Most Serious Offense Category

Felony Class	#	%
Assault	30	7.8%
Drugs	78	20.2%
Theft	46	11.9%
Sex Offenses	48	12.4%
Motor Vehicle	31	8.0%
Burglary	41	10.6%
Weapons	56	14.5%
Robbery	32	8.3%
Fraud	9	2.3%
Other	9	2.3%
Homicide	2	0.5%
Restraint	2	0.5%
Morals	2	0.5%
Arson	1	0.3%
Total	387	100.0%

Status of the Individualized Release or Reentry Plan

Reentry planning for inmates begins at the time of arrival and continues until a person discharges. Members of the Reentry Division hold orientation sessions for newly admitted inmates at the three NDCS intake facilities (Diagnostic and Evaluation Center

for adult males, Nebraska Correctional Center for Women for females, and Nebraska Youth Correctional Facility for males under the age of 19) to introduce them to the concept of reentry and get them thinking about their futures. Reentry specialists continue meeting with individuals at set points throughout their sentences (at 50% of their sentence, 80% of their sentence, 180 days prior to release, 120 days prior to release, and 30 days prior to release), as well as on an as-needed basis, to assist in developing plans for a successful transition to the community. Table 4 shows the reentry 120-day prior to discharge meeting status for people who discharged directly from NDCS.

TABLE 4 – Reentry 120-Day Meeting Status

Meeting Status	#	%
Attended	336	86.8%
Did not Attend	51	13.2%
Sentence Structure	15	
<i>Admitted and Discharged on Same Day</i>	15	
<i>Discharged within Two Weeks of Admission</i>	0	
Not in NDCS Facility	11	
<i>Out to Court</i>	11	
Inmate Choice	4	
<i>Inmate Refused Services</i>	2	
<i>Inmate Did not Attend</i>	2	
Gaps in Service	21	
<i>Reentry Meetings occurred Outside of 120-day window</i>	18	
<i>Inmate's Meeting Status is "Unseen"</i>	2	
<i>No Meeting Records Exist</i>	1	
Total	387	100.0%

Of the 387 people who mandatorily discharged during Calendar Year 2019, 336 (86.8%) met with a reentry specialist within 120 days prior to release to develop and finalize their reentry plans. Among the 51 people (13.2%) who did not have meetings in this timeframe, about 30% (n=15) were admitted and discharged on the same day. Another 11 people were not in an NDCS facility in the months prior to discharge because they were in the custody of a county court. In 4 cases, inmates refused reentry services (n=2), or were invited to multiple meetings and never showed up (n=2). Of the remaining individuals, reentry specialists met with 18 people outside of the 120-day window, two people had status of “Unseen” on their meeting records, and one person had no official meeting records documented.

Most Recent Risk Assessment

NDCS uses the Static Risk and Offender Needs Guide – Revised (STRONG-R) as its risk, needs, and responsivity assessment instrument. The STRONG-R not only

assesses a person's risk to reoffend, but also identifies the criminogenic needs driving those risks. This aids NDCS staff in helping to ensure a person's needs are met through a variety of appropriate treatment and programming options designed to reduce risk and prepare them to be good candidates for parole and their eventual release into the community. Table 5 provides information about the risk levels of the 387 individuals who mandatorily discharged during CY2019.

TABLE 5 - RISK ASSESSMENT INFORMATION

STRONG-R Status at Discharge	#	%
Completed Assessment	310	80.1%
High Risk - Violence, Property, Drugs	82	21.2%
High Risk - Violence	88	22.7%
High Risk - Property	29	7.5%
High Risk - Drugs	26	6.7%
Moderate Risk	65	16.8%
Low Risk	20	5.2%
Refused Assessment	11	2.8%
Subject Refused to Answer	11	2.8%
Subject was Unavailable for Interview	0	0.0%
No Assessment Recorded	66	17.1%
Length of Stay between 0 and 7 Days	16	4.1%
Length of Stay between 8 and 45 Days	22	5.7%
Length of Stay 46 Days or More	28	7.2%
Total Discharges	387	100.0%

Approximately 80% of inmates who discharged from an NDCS facility (n=310) had a STRONG-R completed. Just under 45% were assessed to be criminally diverse (i.e., have a high risk for committing violent, property, and drug offenses in the community) or had a high risk of violent crime. An additional 14.2% had a high risk of committing property or drug offenses. In total, over half of the mandatory discharge inmates (58.1%) were at a high risk of further criminal behavior when released from NDCS custody. These individuals would have been more challenging candidates to release onto parole supervision, given the high level of potential threat they posed to the community. Slightly fewer than 17% of mandatory discharges were assessed to have a moderate risk of committing a felony after release, while only 5.2% of those released scored out to be low risk.

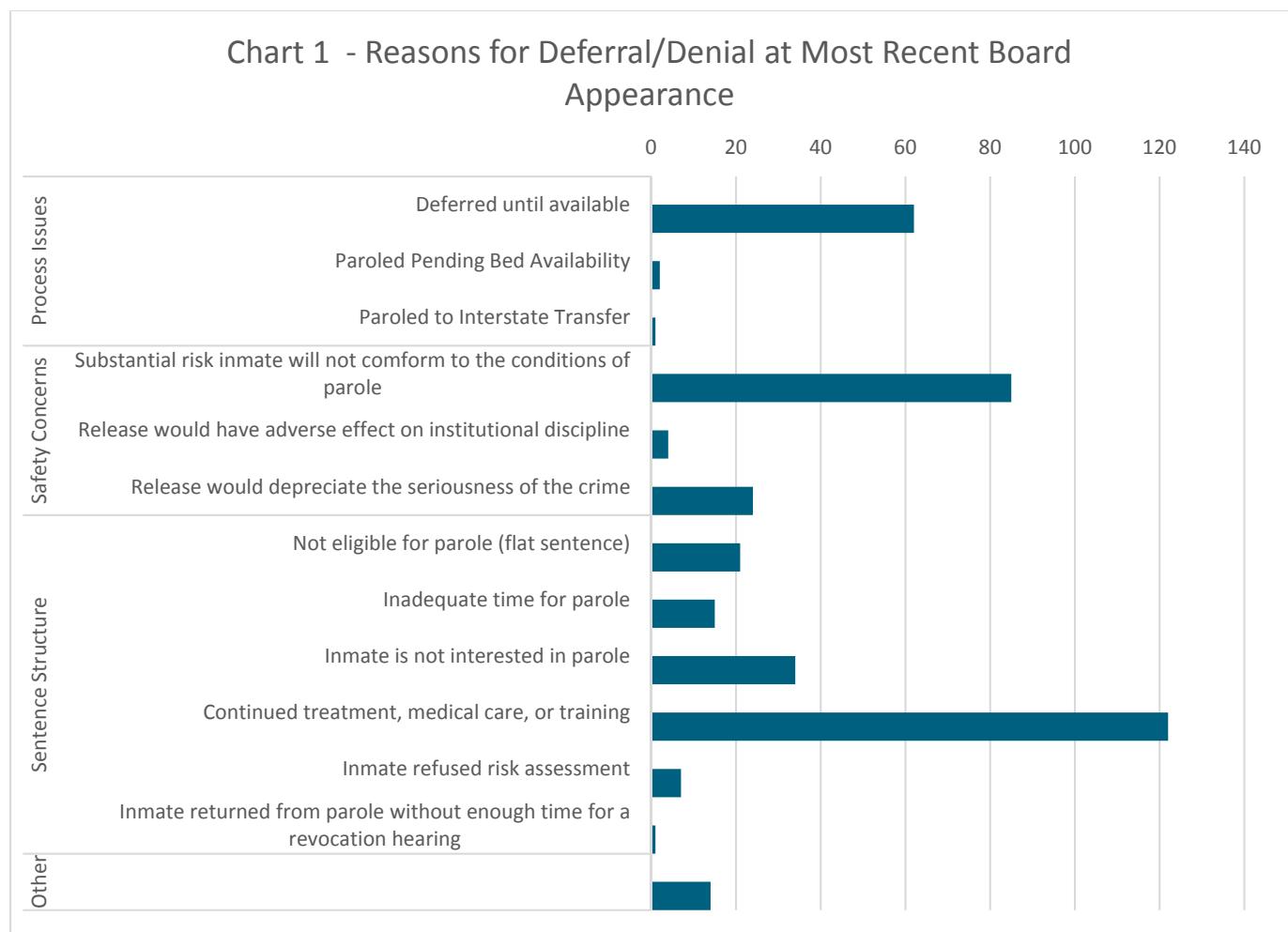
Among those not assessed prior to release, Table 5 shows that 11 people (2.8%) refused to participate in their STRONG-R interview. About 17% (n=66) of individuals have no assessment information on file. Thirty-eight people (9.8%) were in NDCS custody for 45 days or less, which does not allow NDCS staff enough time to gather the necessary documentation and conduct a thorough assessment in accordance with best

practices and departmental policy. The remaining 28 were incarcerated for 46 days or more, but were not assessed for a variety of individual circumstances.

REASONS FOR DISCHARGE FROM AN NDCS FACILITY

Of the 387 people who discharged during CY2019, 125 most recently appeared in front of the Board at an offender review, 108 appeared at a parole hearing (including three rescissions), and 78 appeared at a review of parole hearing, all of which resulted in revocation. Seventy-six individuals had no record of any parole review entered into the electronic Parolee Information Management System. These were likely those with a sentence structure that did not allow for a period of parole supervision, had a length of stay at NDCS of 90 days or less, transferred out of state or to another jurisdiction, or were otherwise unavailable for review. Chart 1 provides a distribution of the reasons given by the Board at those appearances for why individuals may have been released without parole.²

Chart 1 - Reasons for Deferral/Denial at Most Recent Board Appearance



² The Board of Parole may have reported multiple reasons for why they deferred or denied a person's parole at their review or hearing. Because of this, the number of reasons will exceed 387.

There are four general categories for why people may have had their parole deferred or denied: process issues, safety concerns, sentence structure, and individual inmate characteristics. Process issues account for approximately 17% of reasons why individuals were not paroled (n=65, 16.6%). Process-related reasons for a person not paroling prior to discharge include cases where a person was deferred until a later date, either until they are available in the institution (e.g., someone who was out to court on the date of their scheduled hearing/review, n=62), as well as cases where individuals are paroled but whose release is dependent on other factors or entities (e.g., paroled to an interstate transfer (n=1), or waiting for a bed to become available in a community treatment center (n=2)).

Safety concerns accounted for 28.8% (n=113) of the reasons people did not parole. Such concerns encompass both institutional safety and public safety. For example, in 85 reviews, the Board did not parole someone due to the substantial risk that they would not conform to the conditions of their parole. This reason is commonly issued when people either have a lengthy and/or serious history of misconduct within NDCS facilities, or if they have been revoked from parole in the past. Other safety concerns include the belief that a person's release would have an adverse effect on institutional discipline (n=4) or that it would depreciate the seriousness of their offense (n=24).

Sentence structure was a reason listed by the Board for 9.2% of the mandatory discharge decisions issued. Thirty-six people were unable to parole due to the structure of their sentence and had an inadequate amount of time for community supervision.

Deferrals or denials due to inmate characteristics are related to individual factors that prevent them from being suitable parole candidates. Close to 42% of all deferrals and denials (n=164) were related to inmate characteristics. The largest reason within this group (n=122) was that a person's continued treatment, medical care, or training would make them better prepared for returning to the community at a later date. In 34 cases, the inmate stated that she or he was not interested in parole, and in 7 cases, the individual refused to participate in his/her STRONG-R risk assessment, which predicts a person's risk of reoffending in the community.

Finally, there were 14 cases in which the reasons given by the board could not be compiled into a comprehensive category. Such reasons include removal from community corrections centers, a person's criminal history, an outstanding detainer, and lack of Board support.

RECOMMENDATIONS TO REDUCE NUMBER OF INDIVIDUALS DISCHARGED DIRECTLY FROM NDCS

NDCS and the Board of Parole are committed to working together to minimize the number of people who discharge directly from an NDCS facility. The strategies and recommendations outlined below illustrate the efforts these agencies will continue to implement, as well as strides to be taken forward in CY2020. These strategies and

recommendations address the general categories for parole deferrals and denials described in the previous section, to illustrate how these efforts meet existing needs.

Process Issues

As described in the last section, people who did not parole due to process issues included things such as inmate availability, deferrals to later dates, and people who were paroled but unable to have an appropriate residence verified or be placed in a community treatment bed prior to their release. In order to minimize these issues, NDCS and the Board of Parole will continue to collaborate in the sharing of information, scheduling parole hearings earlier in a person's sentence, and targeting key reviews.

Interagency Collaboration and Information Sharing

NDCS and the Board meet on a monthly basis to keep clear lines of communication and collaboration open between the agencies, and to keep the leadership of both agencies informed about efforts that may affect the other. Such efforts may include the adoption of new initiatives or changes in supervision strategies or programming prioritization. They also work together to review specific problems and develop solutions to overcome issues. NDCS and the Board also meet to review individuals whose parole was denied or deferred. By being aware of these issues, the NDCS reentry, treatment, and case management staff can better understand the factors that may make individuals less likely to parole so they can be targeted prior to discharge. As a result of the continued communication, each agency has developed better strategies and information-sharing capabilities in order to ease offenders' transitions into the community and increase their chances for success.

Earlier and More Frequent Board of Parole Appearances

In January 2018, the Board of Parole began setting parole hearings for inmates up to two years prior to their parole eligibility date (PED). In addition, the Board continued to use additional reviews approximately one year prior to each inmate's PED to ensure the inmate is making sufficient progress on obtaining the necessary programming to reduce his/her risk. These strategies have allowed for more effective prioritization of inmates who are nearing their parole eligibility date as far as programming access and placement on wait lists. They also aid NDCS staff in long-range planning for all inmates to ensure parole readiness at the earliest point possible.

Parole Guidelines

The Board of Parole continues to utilize the parole guidelines developed in 2016 for all inmates who have a key review (any review occurring at or after two years prior to the inmate's parole eligibility date) or a parole hearing appearance before the Board. The parole guidelines are being used to identify inmates who are parole-ready and take into consideration programming that is needed prior to release into the community. Critical programming that must be obtained prior to release includes anger management for high-risk inmates, residential substance abuse treatment, sex offender programming, and violence reduction programming.

Safety Concerns

Some individuals were not granted parole due to the safety risks they posed to themselves, other inmates, or the community. Although such risks can never be fully eliminated nor prevented, NDCS and the Board of Parole are working to ensure these risks are mitigated to the fullest extent possible, through effective evidence-based practices, and prioritizing access to clinical treatment.

Continue Evidence-Based Practices

Both the Board and NDCS use risk assessment instruments to identify the risk and needs levels of their population, and use those results as the foundation for making supervision and programming/treatment recommendations. The Board and NDCS will continue their existing evidence-based supervision strategies and cognitive interventions with the goal of increasing the number of people released on parole prior to discharge and reducing the number of parole revocations. In addition, both agencies will explore new advancements in programming and supervision and adopt evidence-based practices that are suited to their organization, when appropriate.

Prioritize Access to Clinical Treatment

It remains the goal of NDCS to get all parole-eligible individuals into treatment in advance of their PEDs. To aid in reaching this outcome, NDCS will continue to prioritize the placement of individuals into clinical programs according to PED. The most common program recommendation encountered by the Board of Parole is for residential substance use treatment. In an effort to make it possible to release more inmates as close to their PEDs as possible, the Board of Parole and Division of Parole Supervision have partnered with Valley Hope residential treatment center of O'Neill. This community-based treatment option increases the ability of the Board to release inmates who have completed everything but their substance abuse programming by the time of their release. Release to Valley Hope includes a structured release plan with 30 days at the residential treatment center coupled with intensive parole supervision. NDCS also began offering the Violence Reduction Program (VRP) to offenders in restrictive housing during CY2019. This has increased capacity for the program, overall, as well as ensuring those who are unable to be safely managed in general population are able to take this clinical program to reduce their risk.

Inmate Characteristics

Just over 40% of the 387 people who mandatorily discharged in CY2019 did so because of their individual circumstances. In the majority of these cases, the Board noted that they would benefit from continued treatment, medical care or training. NDCS is working to ensure people have the programming they need prior to their parole eligibility dates, and implementing other strategies to help engage inmates and decrease the number of people who simply refuse the opportunity for supervised release.

Provide Required Programming by Parole Eligibility Date

NDCS has made a number of changes to ensure inmates have the opportunity to complete required programming prior to their parole eligibility date so they may parole at their earliest opportunity. Examples of this include completing the Test of Adult Basic Education for all inmates at intake. This test assesses the educational needs of inmates and identifies whether any school courses should be required prior to participation in cognitive-behavioral or clinical programs. NDCS has also increased the number and frequency of clinical programs offered throughout its facilities, and has added programming opportunities for inmates in protective management and restrictive housing. These programs provide individuals with the skills they need to be successful both inside and outside of prison. As mentioned in previous sections, individuals are prioritized for placement in these programs according to their parole eligibility date or, for those past PED, their next parole hearing or tentative release date.

Reduce the Number of People Declining or Waiving Parole Hearings

Oftentimes, people decline the opportunity for parole because they do not want to be monitored after release and/or complete certain obligations (such as treatment or fees) that necessarily come with parole supervision. In addition, some individuals choose to discharge from community corrections centers because they want the additional time to save their money and delay rent payments as long as possible. A long-term strategy to address this issue is currently utilized by the NDCS Reentry Division, which begins working with inmates at intake to develop concrete reentry plans and provide people with information about resources available to them in the community. This process of readying inmates for their return to the outside world can reduce the number of people who decline parole. They will have the skills they need to be successful upon their release and will be less fearful of the unknown. As an immediate strategy, the Board is continuing to schedule individuals for hearings, even if the individual waives. This creates an opportunity for the inmate and Board to have a dialogue about what parole entails and what attitudes or fears the person may have about his or her release. This may help clarify the expectations that each party has of the other and allow the Board and the individual to make the most appropriate decision, given the entire set of circumstances.

Case Management Academy

During CY2018, NDCS began its Case Management Academy, a 40-hour training developed by the Crime & Justice Institute. This academy is designed to provide case management staff with the knowledge, tools, and strategies needed to assist their clients throughout their prison sentence. From a practical standpoint, staff learn what evidence-based practices are and how to refer people to programs, given their individualized needs. To aid in the application of this work, staff also gain the ability to engage and motivate individuals to work toward their specific goals. The development of an individualized plan provides staff and inmates with a shared set of expectations, and staff can hold inmates accountable for their progress in a professional way. Staff members can have a more positive influence on their clients by developing a

professional rapport with them and helping them see the value in participating in their recommended programs.

RECOMMENDATIONS TO MITIGATE RISK OF INDIVIDUALS DISCHARGED DIRECTLY FROM NDCS

Recall from earlier that around 10% of the 387 mandatory discharges in CY2019 were not paroled due to issues regarding their sentence structure. NDCS works to mitigate the risk these individuals may pose to the community after their release. This includes focused reentry planning, providing access to clinical treatment, and making the appropriate referrals when someone may pose a threat to public safety.

Focused Reentry Planning throughout One's Entire Sentence

During CY2018, the NDCS Reentry Administration created a revised version of the Reentry Workbook³ and a new Reentry Guide⁴ that all inmates receive upon their arrival to prison. This workbook contains information about programming and opportunities available to them while they are incarcerated, as well as a variety of materials preparing them to think about their eventual return to society from the moment they are processed through intake. The Reentry Guide provides information on community resources that people can access after release from prison. NDCS reentry specialists meet with all people as they enter the NDCS intake centers, and meet with inmates 120 days from release to help them prepare to return to the community. By engaging inmates early, and continuing to reinforce the concept of reentry throughout their sentences, reentry specialists help individuals develop concrete plans to meet their goals for returning to the community. Even if they are not released to parole supervision, they are able to leave prison with a variety of resources at their disposal and the first steps toward reintegrating into society.

Provide Recommended Clinical Treatment

NDCS strives to provide clinical treatment to all individuals in advance of their PED, but inmates with flat sentences present unique challenges. Because they have no opportunity to obtain this treatment in the community while under parole supervision, it is important to prioritize these individuals, along with the parole-eligible inmates, for placement into these programs prior to their Tentative Release Date. This helps ensure that people have the opportunity to participate in evidence-based sex offender treatment, substance abuse treatment and violence reduction programming to mitigate their changes of reoffending after release.

Discharge Review Team (DRT)

The NDCS Discharge Review Team (DRT) is a multidisciplinary team consisting of behavioral health, social work, and security and case management staff. This team is charged with developing transition plans for individuals with behavioral health issues who may potentially release into the community directly from an NDCS facility. The DRT also provides notice to local law enforcement for individuals with sex offenses who

³ https://corrections.nebraska.gov/system/files/rules_reg_files/2018_reentry_workbook_0.pdf

⁴ https://corrections.nebraska.gov/system/files/rules_reg_files/ndcs_reentry_guide_for_inmates_0.pdf

will be discharging, and makes referrals to county attorneys for inmates who may require civil commitment following their incarceration. By closely reviewing high-risk inmates and working with the appropriate community agencies, NDCS works to keep all people safe.

CONCLUSION

The 37% decrease in discharges from NDCS facilities from 2016 to 2019, along with a 35% increase in the portion of people transitioning to the community on parole or post-release supervision over that same time period is an indication of progress toward reducing the number of mandatory discharges from NDCS facilities. Of the 387 people whose sentences allowed for the possibility of parole discharged from an NDCS facility in CY2019, 147 had a prior history of parole supervision and 43 discharged from a community corrections center. As the number of individuals sentenced to NDCS with Class 3, 3A, and 4 felonies requiring post-release supervision continues to increase, the proportion of individuals with parole eligibility will decrease accordingly. Both parole and post-release supervision provide a period of monitoring as individuals acclimate to life outside of prison. The recent 160-bed female addition to the Community Corrections Center – Lincoln, as well as the 100-bed addition that came online during CY2018, increases NDCS's commitment to ensuring individuals have the opportunity to transition more smoothly to the community, with or without a period of supervised release. The Parole Board and NDCS will continue to work to identify new strategies to maximize the number of individuals discharging to community supervision, as well as continue their ongoing efforts in this endeavor.