

2023 Mandatory Discharge Report

February 1, 2023

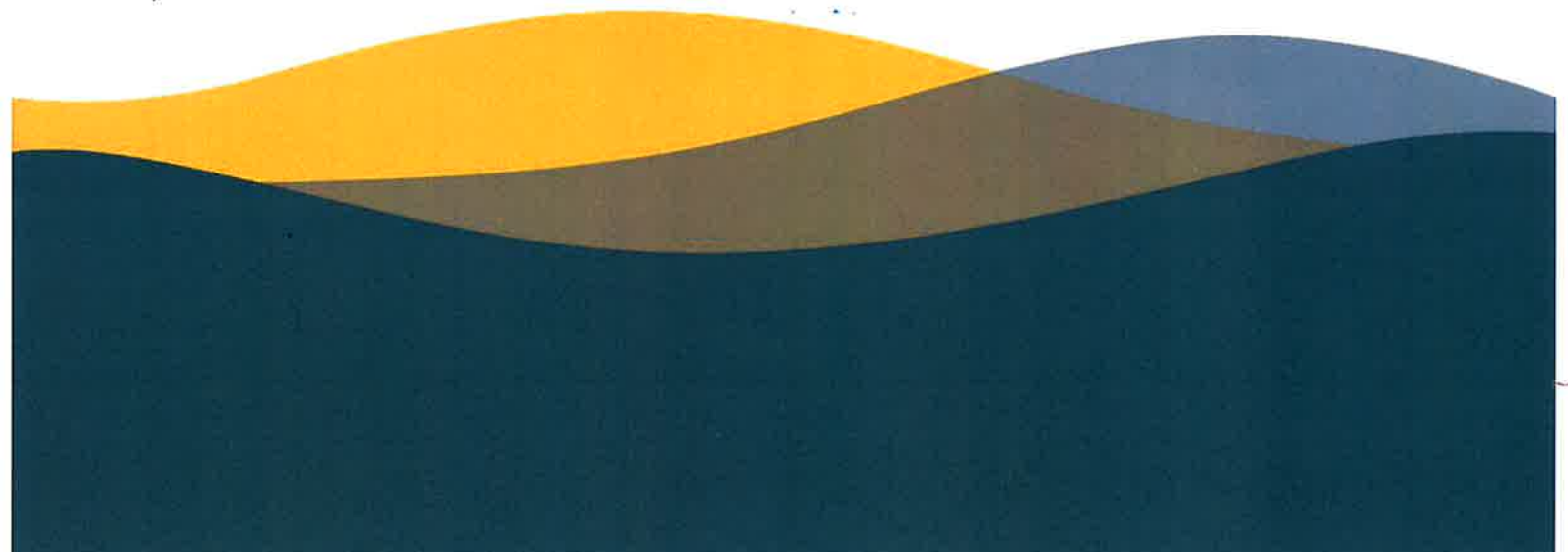
Submitted by:



Diane Sabatka-Rine, Interim Director
Nebraska Department of Correctional Services



Rosalyn Cotton, Chair
Nebraska Board of Parole



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 individuals 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) 2022. We are committed to working together to continue to reduce the number of discharges without community supervision.

NUMBER OF INDIVIDUALS DISCHARGED DIRECTLY FROM NDCS

Between January 1, 2022, and December 31, 2022, 362 individuals eligible for community supervision were discharged directly from an NDCS facility (or contracted county jail).¹ This group represents 17% of all NDCS discharges during CY2022. Table 1 provides a comparison of discharges from CY2019 through CY2022. The number of mandatory discharges in CY2022 decreased by 25 people. The number of individuals who discharged with community supervision decreased by 31.4% from CY2019, which translates to 500 fewer people. Compared to CY2021, individuals releasing with community supervision has decreased by 10.1%, with 122 fewer people. Of the 362 people who discharged directly from NDCS, 160 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, 59 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 81 individuals who had 30 days or fewer between either their parole eligibility (PED) and tentative release date (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 of post-release supervision (PRS) under the jurisdiction of the Administrative Office of the Courts and Probation (AOC; n=545), their sentence structure did not allow for the possibility of parole supervision (n=468), they were released to another jurisdiction (n=6), or if they discharged their sentence while on parole (n=544). Individuals who were released due to death (n=20) were also excluded.

TABLE 1 - 2019-2022 Discharge Comparison

<u>Release Type</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2019-2022 Net Change</u>	<u>2019-2022 Percentage Change</u>
Mandatory Discharge	387	317	307	362	-25	-6.5%
Mandatory Discharge - No history of parole	240	196	191	202	-38	-15.8%
Mandatory Discharge - Prior parole	147	121	116	160	+13	+8.8%
Discharge with Community Supervision (Parole or PRS)	1592	1399	1214	1092	-500	-31.4%

CHARACTERISTICS OF INDIVIDUALS DISCHARGED DIRECTLY FROM NDCS

Most Serious Felony Class and Offense

This section provides details about the offenses committed by the 362 individuals discharged directly from NDCS during CY2022. Specifically, Table 2 illustrates the highest felony levels for these individuals, while Table 3 details the most serious offense categories.

TABLE 2 - Most Serious Felony Level

<u>Felony Class</u>	<u>#</u>	<u>%</u>
Class 1	46	12.7%
Class 2	107	29.6%
Class 2A	156	43.1%
Class 3	33	9.1%
Class 3A	7	1.9%
Class 4	13	3.6%
Total	362	100.0%

"Class 1" encompasses Class 1A, 1B, 1C, and 1D level felonies. During CY2022, one individual mandatorily discharged from an NDCS facility having a 1A or 1B felony as their most serious conviction. This individual was released to a civil commitment order. Three individuals had a Class 1C felony, and 42 individuals had Class 1D felonies.

As shown in Table 2, 14.6% of the individuals discharged directly from NDCS were convicted of Class 3, 3A, or 4 felonies. This is a significant decline from the 34.4% who discharged in CY2019 and the 51.2% discharged in CY2018. This likely demonstrates that individuals sentenced 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 ACOP. The majority (85.4%) 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 without community supervision in future years, regardless of felony level.

Table 3 shows the distribution of mandatorily discharged individuals by their most serious offense type. Of the 362 individuals mandatorily discharged from an NDCS facility, 45% had a most serious conviction in a non-violent offense category (i.e., 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, most convictions for a “Weapons” offense (71 of 79) 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. Sex-related offenses also include both 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). Note that an individual may have multiple convictions within their most serious offense category, therefore, totals of offense convictions exceed the 1:1 totals of their most serious offense category.

TABLE 3 - Most Serious Offense Category

<u>Felony Class</u>	<u>#</u>	<u>%</u>
Assault	28	7.7%
Drugs	67	18.5%
Theft	37	10.2%
Sex Offenses	42	11.6%
Motor Vehicle	18	5.0%
Burglary	40	11.0%
Weapons	75	20.7%
Robbery	30	8.3%
Fraud	13	3.6%
Other	5	1.4%
Homicide	5	1.4%
Restraint	0	0.0%
Morals	1	0.3%
Arson	1	0.3%
Total	307	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 team hold orientation sessions for newly admitted inmates at the three NDCS intake facilities (Reception and Treatment Center for adult males, Nebraska Correctional Center for Women for females, and Nebraska Correctional Youth Facility for males under the age of 18) 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, relative to their sentence structure and release type), 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	328	90.6%
Did not Attend	34	9.4%
Sentence Structure	14	
<i>Admitted and Discharged on Same Day</i>	12	
<i>Discharged within Two Weeks of Admission</i>	2	
Not in NDCS Facility	7	
<i>Out to Court</i>	7	
<i>County Jail</i>	0	
Inmate Choice	7	
<i>Inmate Refused Services</i>	5	
<i>Inmate Did not Attend</i>	2	
Gaps in Service	6	
<i>Reentry Meetings occurred Outside of 120-day window</i>	2	
<i>Inmate’s Meeting Status is “Unseen”</i>	3	
<i>No Meeting Records Exist</i>	1	
Total	362	100.0%

Of the 362 people who mandatorily discharged during Calendar Year 2022, 328 (90.6%) met with a reentry specialist within 120 days prior to release to develop and finalize their reentry plans. Among the 34 people (9.4%) who did not have meetings in this timeframe, 41.2% (n=14) were admitted and discharged on the same day or discharged within two weeks of admission. Another seven people were not in an NDCS facility in the months prior to discharge because they were in the custody of a county court. In five cases, inmates refused reentry services, and two individuals did not attend their scheduled meeting. Of the remaining six individuals, reentry specialists met with two of them, but outside of the 120-day window. Three of the remaining four individuals had

prior contact with reentry specialists. The one individual that did not have reentry specialist contact was resentenced and removed from NDCS custody.

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 362 individuals who mandatorily discharged during CY2022.

TABLE 5 - RISK ASSESSMENT INFORMATION

STRONG-R Status at Discharge	#	%
Completed Assessment	293	80.9%
High Risk - Violence, Property, Drugs	93	25.7%
High Risk - Violence	120	33.1%
High Risk - Property	14	3.9%
High Risk - Drugs	24	6.6%
Moderate Risk	28	7.7%
Low Risk	14	3.9%
Refused Assessment	2	0.6%
Subject Refused to Answer	2	0.6%
Offender Qualified for an Exemption	0	0.0%
Subject was Unavailable for Interview	0	0.0%
Available Information is Incomplete or Inadequate	0	0.0%
No Assessment Recorded	67	18.5%
Length of Stay between 0 and 7 Days	15	4.1%
Length of Stay between 8 and 45 Days	10	2.8%
Length of Stay 46 Days or More	42	11.6%
Total Discharges	362	100.0%

Of inmates who discharged from an NDCS facility 80.9% (n=293) had a STRONG-R completed. Over half (58.8%) 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 10.5% had a high risk of committing property or drug offenses. In total, over two-thirds of the mandatory discharge inmates (69.3%) 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 8% of mandatory discharges were assessed to have a moderate risk

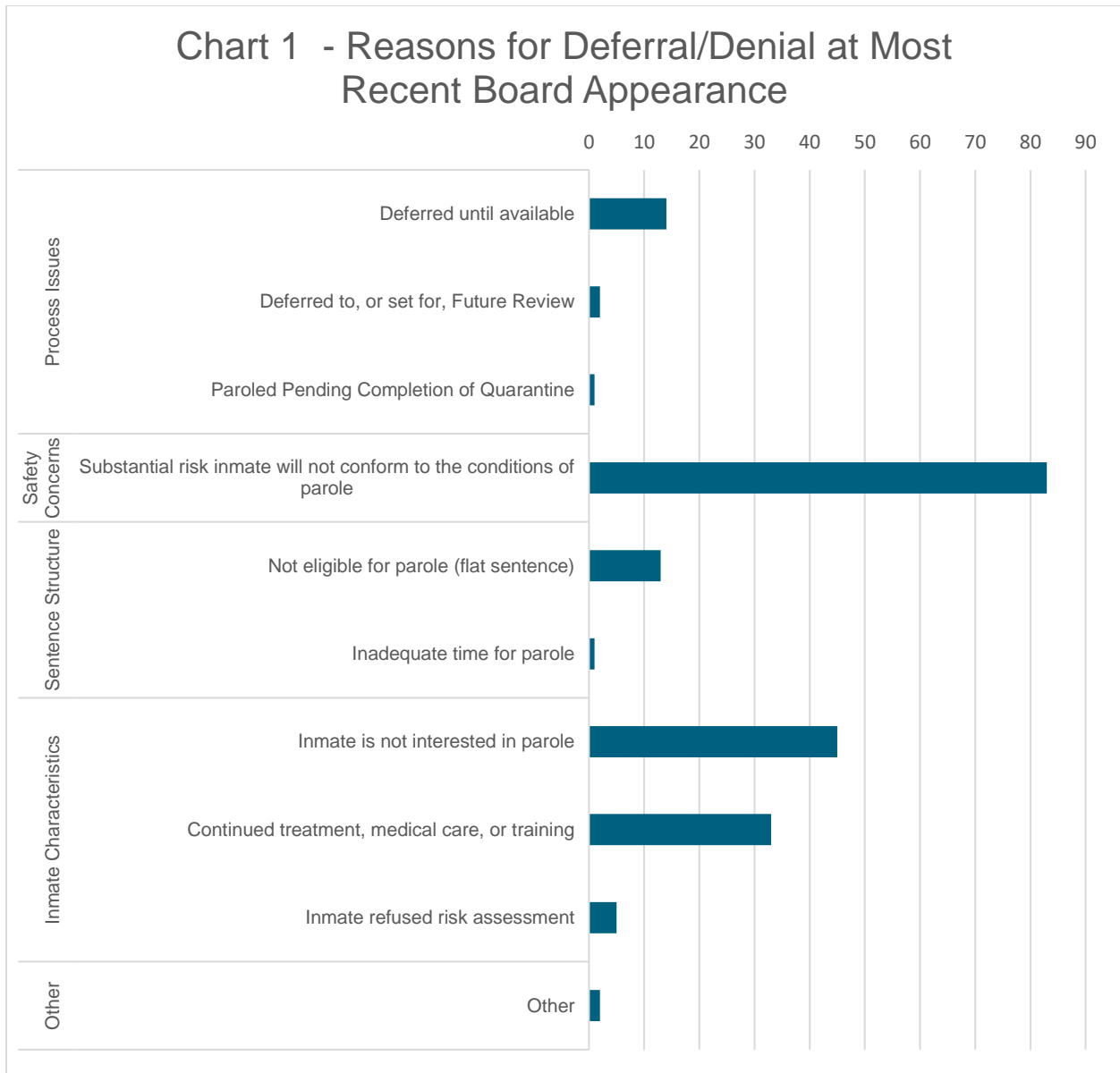
of committing a felony after release, while only 3.9% of those released scored out to be low risk.

Among those not assessed prior to release, Table 5 shows that 2 people (0.6%) refused to participate in their STRONG-R interview. About 18.5% (n=67) of individuals do not have a completed assessment. Twenty-five people (37% of those without an assessment) 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 42 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 362 people who discharged during CY2022, 133 most recently appeared in front of the Board at an offender review, 56 appeared at a parole hearing (including two rescissions), and 87 appeared at a review of parole hearing, all of which resulted in revocation. Eighty-six individuals had no record of any parole review entered in 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

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 the number of appearances.



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 8.5% of reasons why individuals were not paroled (n=17). Process-related reasons for a person not paroling prior to discharge include cases where a person was deferred until a later date until they are available in the institution (e.g., someone who was out to court on the date of their scheduled hearing/review).

Safety concerns accounted for 41.7% of the reasons people did not parole. Such concerns encompass both institutional safety and public safety. For example, the board cited past parole violations in 33 reviews that ended in deferral.

Sentence structure was a reason listed by the Board for 7% of the mandatory discharge decisions issued. Fourteen people were unable to parole due to the structure of their sentence and/or 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. In 41.7% of all deferrals and denials (n=83) reasons relating to inmate characteristics were cited. The largest reason within this group (n=45) was that the individual was not interested in parole. In 33 cases, the Board indicated that a person's continued treatment, medical care, or training would make them better prepared for returning to the community at a later date.

Finally, there were two cases in which the reasons given by the board could not be compiled into a comprehensive category. Such reasons include an individual being out of state at the time of review, and two Board members being recused.

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 CY2023. 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 addressed 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 has 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 programming priority lists. They also aid NDCS staff in long-range planning for all inmates to ensure parole readiness at the earliest point possible. During CY2020 and the Covid-19 pandemic, the Board worked with NDCS and the Division of Parole Supervision to ensure that scheduled Board appearances at both reviews and hearings were maintained to the greatest extent possible while also ensuring the safety of inmates and staff.

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 clinical treatment that must be obtained prior to release includes anger management for high-risk inmates, residential substance use 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 this population, and use those results as the foundation for making supervision and clinical 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 use treatment 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 individuals in restrictive housing during CY2019. This has increased capacity into the program, as well as ensured those who are unable to be safely managed in general population are able to take this clinical program to reduce their risk.

Inmate Characteristics

Over one-third (41.7%) of the 362 people who mandatorily discharged in CY2022 did so because of their individual circumstances. In many of these cases (n=33), the Board noted that they would benefit from continued treatment, medical care or training. NDCS is working to ensure people have the treatment 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 treatment prior to their parole eligibility date so they may parole at their earliest opportunity. Examples of this include completing education assessments for all individuals at intake. This assessment identifies the educational needs of the individual and indicates whether or not 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 incarcerated individuals 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

Since CY2018, NDCS has provided a Case Management Academy. The 40-hour 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 14 of the 362 mandatory discharges in CY2022 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

Since 2018, NDCS has provided all incarcerated individuals with a Reentry Planner³ and a Reentry Guide⁴. The planner 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 individuals as they enter the NDCS intake centers, and meet with them again 120 days from release to help them prepare to return to the community. By engaging incarcerated individuals early, and continuing to reinforce the concept of reentry throughout their incarceration, reentry specialists help them 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. Individuals with flat sentences present unique challenges however, because they have no opportunity to obtain this treatment in the community while under parole supervision. Therefore, it is important to prioritize these individuals, along with those that are parole-eligible, for placement into treatment programs prior to their tentative release date. This helps ensure that people have the opportunity to participate in evidence-based sex offender treatment, substance use treatment, and violence reduction programming, to mitigate their chances 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 reviewing 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 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.

³ https://corrections.nebraska.gov/sites/default/files/file_attach/reentry_planner_new_comp.pdf

⁴ https://corrections.nebraska.gov/sites/default/files/ndcs_reentry_guide_2.pdf

CONCLUSION

While the ratio of individuals that mandatorily discharged compared to those that discharged from community supervision has stayed relatively stable over the past few years, the actual number of individuals completing their sentence while on community supervision has steadily decreased since 2019. In the same timeframe we have seen an increase in the number of individuals discharging from NDCS with flat sentences and no PRS order (e.g., 195 in CY2019 and 468 in CY2022). These individuals are not eligible for parole and therefore decreases the overall pool of individuals for the Board to consider for community supervision.

Of the 362 people whose sentences allowed for the possibility of parole that discharged from an NDCS facility in CY2022, 160 (44.2%) had a prior history of parole supervision and 59 discharged from a community corrections center. This is indicative of the commitment shared by NDCS and the Board to offer opportunities to incarcerated individuals to succeed in their communities. The Board and NDCS will continue this commitment to the incarcerated population and work together to identify new strategies to ensure that the maximum number of people leaving NDCS are doing so under community supervision.