

Dear Inspector General Koebernick,

My father sent me a copy of your latest annual report and I've found it very informative as usual. I even let the librarian here make a copy for the rest of the population at TSCI to read.

I am preparing a speech for our new Toastmasters club and an article for the next issue of the Neb. Criminal Justice Review on the Overcrowding Emergency Act and there is a vital statistic I can't find in your report or the NDCS Quarterly Datasheets. As you say in your report, if it were declared today they would have to parole over 1000 people to reach the "operational capacity" (125% of design capacity) but are there currently even 1000 people who are parole eligible? If the percent of the population who are parole eligible is less than approximately 20% then, even if an emergency were declared right now, NDCS would not be able to reach the mandatory 125% mark. Do you have access to the number of people who are currently parole eligible and are you able to share it with me? I would like to use it in my speech and article.

I would also like to share my analysis of how NDCS plans on avoiding the declaration of an emergency. It seems to be commonly accepted that one will inevitable occur in 2020. Even the legislature seems to assume that with their requirement that NDCS and Parole produce a plan for it by Dec. 1st. However, I am fairly confident that NDCS will be able to avoid it with actuarial "tricks." The Director would use the NDCS Quarterly Datasheet to "certify" the overcrowding percentage and NDCS is making several miscalculations in it.

First off, NDCS's "operational capacity" in the Datasheet is not the legal definition of 125%. NSP is listed at 718 design but 1,139 operational; that's 158.6%. Assuming the planning "in-filling" of 100 more beds at NSP is added to NDCS's operational number (as it won't expand core support facilities and services) that would make it 172.5%. At least the 160 bed expansion of CCCL will include core support facilities, and thus justifies increasing the design capacity of that facility.

That, however, brings me to my second point. NDCS is grossly miscalculating (undercalculating) the amount of overcrowding in 2 ways. First, as I've said for years and you highlight in your report, the total system population should include any state people in NDCS custody who are in county jails. I was very happy to see you included a footnote every time you showed the percentage of overcrowding explaining that you included those in the county jails. Those people will have to go back to a regular prison at some point to do any required programming and currently are denied even simple access to a case manager, as you point out and I know from personal experience having been in Platte county for 6 months. I would pause to point out that if NDCS contracts with county jails to do work-release programs, then I believe that would justify actually counting as increasing the overall system capacity (as opposed to just not counting them at all as NDCS currently does). I want to thank you for promoting the proper calculation, including those in county jails.

There is an even bigger flaw in how NDCS miscalculates the system's overcrowding though. They count the men's, women's and youth facilities as one system. This is flawed because the beds in the different facilities are not fungible; you can't move men into beds at a women's facility to alleviate overcrowding at, say, NSP. The women's and youth systems are 2 of the 3 least overcrowded facilities so including them in the "total" overcrowding stat falsely lowers it.

For example, if you remove NCCW and NCYF and include those in county jails for the calculations in the June '18 Datasheet (the most recent I have) you would get a design capacity of 3,032 (not 3,375), an adult male population of 4,977 (not 5,263), and a total overcrowding of 164.2% instead of the 155.98% NDCS calculates. This discrepancy will get worse after the 160 bed expansion at CCCL because that will only add 104 male beds (your report, pg 99). If those beds were available today, NDCS would show the design capacity at 3,535 (I assume they won't add the 100 beds at NSP to "design capacity) when the adult male capacity would actually only be 3,136. NDCS would claim the overcrowding would be down to 148.9% while in truth it would only have dropped to 158.7%, increasing the discrepancy between the NDCS number and the real number from 8.22% to 9.8%.

Structurally, the men's, women's and youth systems are separate systems and the only one at risk of an overcrowding emergency is the men's. NDCS, the legislature, and you should calculate their overcrowding independently otherwise the two lesser crowded system hide the extent of the overcrowding in the one in crisis. It appears, to me at least, that between the grouping of the systems and the discounting of any number of people NDCS cares to warehouse in county jails, they will be able to rig the numbers to avoid an emergency declaration and avoid addressing the issue in any meaningful way.

I appologize that this is such a lengthy email but I hope the detail made the actuarial "tricks" clear. I hope you are able to convince the legislature to calculate overcrowding appropriately, though it will be up to the Director to "certify" the emergency in 2020 and I don't hold out much hope that they will change their methodology. Mabe you can convince them that rigging the numbers doesn't actually solve the problem.

Thank you for your time and attention,

Robert J. Heist II