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Appropriations Committee
February 11, 2014

[AGENCY 5 AGENCY 46 AGENCY 64 AGENCY 78]

The Committee on Appropriations met at 1:30 p.m. on Tuesday, February 11, 2014, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on Agency 5, Agency 46, Agency 64, and Agency 78. Senators present: Heath Mello, Chairperson; John Harms, Vice Chairperson; Kate Bolz; Danielle Conrad; Bill Kintner; Tyson Larson; John Nelson; Jeremy Nordquist; and John Wightman. Senators absent: None.

SENATOR MELLO: Good afternoon and welcome to the Appropriations Committee. My name is Heath Mello. I'm from south Omaha, representing the 5th Legislative District, and serve as Chair of the Appropriations Committee. I'd like to start off today by having members do self-introductions, starting with my far left with Senator Kintner.

SENATOR KINTNER: Thank you, Mr. Chairman. I'm Bill Kintner from Legislative District 2, which is about half of Sarpy County, all of Cass County, and a little bit of Nebraska City.

SENATOR MELLO: Sitting next to Senator Kintner, who will be joining us shortly is Jeremy Nordquist, from District 7 from south Omaha.

SENATOR NELSON: I'm John Nelson from District 6, central Omaha.

SENATOR MELLO: Sitting next to Senator Nelson is Senator John Harms who will be joining us shortly from District 48, who represents Scotts Bluff County.

SENATOR WIGHTMAN: Senator John Wightman from District 36, all of Dawson and Custer County and a small part of Buffalo County.

SENATOR CONRAD: Hi. I'm Danielle Conrad from north Lincoln.

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SENATOR MELLO: Sitting next to Senator Conrad is Senator Kate Bolz who will be joining us shortly. Senator Bolz represents the 29th Legislative District in south Lincoln.

SENATOR LARSON: Tyson Larson, District 40, six counties in northeast and north-central Nebraska: Dixon, Cedar, Knox, Holt, Boyd, and Rock.

SENATOR MELLO: Assisting the committee today is Anthony Circo, our committee clerk, and Matthew Ruiz, who is a senior studying international business at the University of Nebraska-Lincoln, and is our committee page. Our fiscal analyst for today is sitting at my right, Doug Nichols. On the tables in the back of the room you will find some yellow testifier sheets. If you're planning on testifying today, please fill out one of the sheets and hand it to Anthony when you are coming up to testify. It helps us keep an accurate record of today's public hearing. There is also some white sheets on the back table if you do not wish to testify but would like to record your position on a specific budget item or agency. When we hear testimony regarding state agencies today, we will first hear from a representative of the agency; we will then hear testimony from anyone who wishes to speak on behalf of the agency's budget request. If you have any handouts, please bring up 11 copies and give them to Matthew, our page. If you do not have enough copies, he can help make more for you. We ask at the beginning of your testimony that you give us your full first and last name, and please spell them for the public record. We will be using a five-minute light system today. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning; and when the red light comes on we ask that you wrap up with your final thoughts. At this time I would ask all of us, including all of the senators, to look at our cell phones, make them...be sure to put them on vibrate and put them away for the hearing today. At this time we will begin with today's public hearing with Agency 5, the Supreme Court. Mr. Chief Justice.

MIKE HEAVICAN: (Exhibit 1) Chairman Mello, thank you very much. Good afternoon to

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all the members of the Appropriations Committee. My name is Mike Heavican; that's spelled H-e-a-v-i-c-a-n, and I am the Chief Justice of the Nebraska Supreme Court. With me is Janice Walker, the State Court Administrator who gets a lot of publicity these days by threatening to resign; and Ellen Brokofsky, the State Probation Administrator; and we've also got Eric Asboe who is our financial guy. I'm here to address your preliminary recommendations and to make a request concerning the Supreme Court's personal services limit for fiscal year '14-15. First, I request that the committee reconsider its preliminary recommendation and fund the probation officer reclassification deficit request. This request provides the funds to increase the salaries of specialized probation officers in recognition of the high level of expertise needed to supervise probationers with a greater risk to recidivate. It comes as a result of probation's successful transformation in recent years to increase public safety by concentrating resources on high-risk probationers, such as chronic substance abusers, repeat drunk drivers, and gang members. This is an attempt to properly classify and compensate those officer positions that require greater skill and decision-making ability. As I'm sure you are aware, this request was included in the mainline budget bill last session, and then vetoed by the Governor, but no override was attempted. Again I request that the committee reconsider and fund this request. Second, the Supreme Court opposes the recommendation of funding judges retirement from court cash funds, although I recognize that discussions need to begin and have already started concerning the sustainability of judges retirement funding. These cash funds are used for specific purposes; namely, judicial branch education and court computer systems, not retirement. In addition, to our knowledge, shortfalls in funding any retirement system, not just judges, have always been made as a straight General Fund appropriation to the Nebraska Public Employees Retirement System, and never by reducing the operating funds of any entity of state government. However, if the committee chooses to stay with its recommendation, I request that the flexibility to let the Supreme Court determine the cash funds that would be used in the amount that would be transferred from each one. Our last request is a significant increase in fiscal year '14-15 PSL for all nonconstitutional officer budget programs. This request is the result of this committee's

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interest last session in increasing judicial branch salaries. At our budget hearing last year I presented material that showed Nebraska probation officers' salaries lagging behind other states. In addition, LB569 was introduced by Senator Burke Harr. It proposed a salary increase for county court employees. Testimony from judges and staff at that hearing spoke of employees struggling under low salaries compared to jobs in county government, including some that paid higher wages but required far less skill than court positions. Although LB569 did not pass, a small appropriation was added in the mainline budget bill to increase county court salaries. At the same time there was interest expressed by this committee in having the Supreme Court complete a salary survey to compare judicial branch salaries to market conditions. The Supreme Court responded by doing just that, and I have copies with me to provide to you, and I'll give those to you in a minute. The salary survey was conducted by the National Center for State Courts, consultants with expertise in analyzing both court and probation salaries. It found that over 80 percent of all Supreme Court employees when compared to most surrounding states and several Nebraska counties have salaries from 5 to 25 percent below market rates. Unfortunately, the survey was not completed until after the deadline for submitting deficit requests. However, it is the Supreme Court's goal to implement the findings of this survey during the fiscal year '14-15 by increasing employees' salaries. We have the funds to pay for these increases but we do not have the necessary PSL. Therefore, we are requesting PSL to achieve this much needed goal. As I stated, we have the funds this biennium to pay for the salary increases. Let me explain where these funds came from. During the last budget crisis the Supreme Court cut spending in many ways, including delaying in hiring many positions. This committee allowed the Supreme Court to carry over unspent General Funds into the next biennium not only as an incentive to continue saving but also as a reserve that could be used if additional cuts in spending became necessary. Now our first priority for use of these carryover funds is implementation of the salary survey. I can't think of a more fitting use for them than to compensate our employees for the sacrifices they made during the recent budget problems, and at the same time solve some of the problems you heard about last year by bringing their salaries up to market rates. I realize that this request to

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increase PSL did not come through the normal deficit request process, but this is a unique opportunity I believe we should take full advantage of. Thank you for this chance to speak with you today and I would be happy to take any questions that any of you have. [AGENCY 5]

SENATOR MELLO: Thank you, Mr. Chief Justice. Are there any questions from the committee? Senator Larson. [AGENCY 5]

SENATOR LARSON: Thank you, Chief, for coming in. I have a few questions. I guess I'll start on a broad basis. Do you think it's the local judge's responsibility to do clerical work while they're presiding over their courtroom proceedings? [AGENCY 5]

MIKE HEAVICAN: Well, it all depends on what you mean by clerical work. We have implemented a lot of technology changes that allow judges who want and can do it, to make certain kind of entries while they're on the bench. [AGENCY 5]

SENATOR LARSON: That's not necessarily what I'm asking. Do you think it's their responsibility? I ask this because I'm guessing you can know why...or have a hint of why I'm asking it. In rural Nebraska, as I talk to my judges, they seem very frustrated that they have the one clerk that has to stay outside the courtroom to handle the court proceedings as they end, but they don't have the budget from the Supreme Court to have that second clerical person in the courtroom that those in Omaha and Lincoln necessarily have. So the judges in rural Nebraska, as it seems to me, are doing much of the clerical responsibility in terms of entering evidence, taking down a lot of those other things that not necessarily are happening in rural Nebraska, not only slowing down the proceedings but, you know, is it their responsibility to do that? [AGENCY 5]

MIKE HEAVICAN: We try to provide adequate clerical help for all of our judges. Ultimately the amount of clerical work and the employees and what they get paid is up to what we get from you in our budget. [AGENCY 5]

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SENATOR LARSON: Well, I talked to them about that as well, and they said that your solution to their clerical problems that they're facing in rural Nebraska, especially on court days in certain counties, is pulling a clerk magistrate or someone from another county to come help them do the clerical work in the county in which they're presiding; therefore, closing that county clerk court...or that, you know, that county for the day just to offer them clerical work in the county in which the court is presiding. Is that the kind of solution that you're offering to these counties? [AGENCY 5]

MIKE HEAVICAN: I can't help you with the details but... [AGENCY 5]

SENATOR LARSON: Closing counties? But that's what they're telling me that is your suggestion from the court. [AGENCY 5]

MIKE HEAVICAN: We have to deal with the budget, the amounts that you give us. We are... [AGENCY 5]

SENATOR LARSON: And I appreciate you bringing the concept of the budget that we give you, and at the same time I hear from those same counties that when you guys are hiring...and we've had personal conversations about this, is that there are job openings that are occurring within the court system, and that most of those job openings...and you've talked about the move of technology and being able to let rural Nebraska, with this move in technology, you know, take some of the caseloads or some of the clerical work away from Omaha and Lincoln. Yet most of the jobs that are coming open...and excuse my urban colleagues, but most of the jobs that are expanding opportunities are coming from Omaha and Lincoln. So yes, you do have to work within a budget, but it does seem like an abnormal amount of jobs that you are adding to the court system are in Omaha and Lincoln, instead of places where they should...or, you know, it's necessary to keep the courts open in rural Nebraska while at the same time with the technology that you've so touted, allowed them to take, you know, some of the

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casework from...the clerical work from Omaha and Lincoln. You know, what's the answer? I understand that you're trying to put it back on us as a committee, that we haven't given you adequate funding, but the new jobs you are adding are in Omaha and Lincoln. [AGENCY 5]

MIKE HEAVICAN: Well, I would welcome you to attend court sessions in either the county court of Lancaster County or the county court in Douglas County. [AGENCY 5]

SENATOR LARSON: When was the last time you attended a court session in rural Nebraska? [AGENCY 5]

MIKE HEAVICAN: I try to visit our courts. Mostly in the summertime I go around and visit as many courts as I can. And like I said, we do the very best job... [AGENCY 5]

SENATOR LARSON: In rural Nebraska, were you in any of the courts that the judge was doing his own clerical work? [AGENCY 5]

MIKE HEAVICAN: I can't say that I was, no. [AGENCY 5]

SENATOR LARSON: All right. Thank you. [AGENCY 5]

SENATOR MELLO: Senator Wightman. [AGENCY 5]

SENATOR WIGHTMAN: Thank you, Chief Justice. We talked about--and maybe you gave this--what type of salary increase were you looking at? Or I guess we approved it, you said, a year ago. Is that right? And then there wasn't funding for it, is that right, on county court employees? [AGENCY 5]

MIKE HEAVICAN: You didn't approve funding for county court employees that I recall a year ago. What you it did was approve some funding for probation employees that didn't

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get through the budget...or it didn't get through the veto process. [AGENCY 5]

SENATOR WIGHTMAN: Okay. Did you give us a percent that you were thinking those should be? Oh, you've got those there. [AGENCY 5]

MIKE HEAVICAN: I've got the salary surveys for you here, and what they show is largely some jobs are 5 percent under, some jobs are as much as 25 percent under. And we would like to fund these recommendations based on how far under market the positions are. So some people would be getting a 25 percent raise; some people would be getting a 5 percent; and a few people would be getting nothing at all. [AGENCY 5]

SENATOR WIGHTMAN: It wouldn't be uniform all over. [AGENCY 5]

MIKE HEAVICAN: It would not be uniform, no. [AGENCY 5]

SENATOR WIGHTMAN: A lot of that depends on assuming on what normal pay is in that particular county or... [AGENCY 5]

MIKE HEAVICAN: Well, it would be based on this salary survey, and the survey utilized a number of counties and also utilized neighboring states, because obviously some of our jobs are comparable to what goes on in other states. [AGENCY 5]

SENATOR WIGHTMAN: So basically 5-25 percent. Thank you. [AGENCY 5]

MIKE HEAVICAN: Um-hum, right. And we have the money available largely to do that. We need the PSL, your cap on... [AGENCY 5]

SENATOR WIGHTMAN: Will that money be available in future years, or? [AGENCY 5]

MIKE HEAVICAN: In future years you'll have to come up with an increase to that budget

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base. Obviously we don't have the money to pay for it into perpetuity. [AGENCY 5]

SENATOR WIGHTMAN: Thank you. [AGENCY 5]

MIKE HEAVICAN: Yes. [AGENCY 5]

SENATOR MELLO: Senator Conrad. [AGENCY 5]

SENATOR CONRAD: Thank you so much, Mr. Chief Justice. Just a point of clarification from Senator Wightman's questioning. We did provide some resources, I thought, for employee pay last year. [AGENCY 5]

MIKE HEAVICAN: Well, there were... [AGENCY 5]

SENATOR CONRAD: Maybe not the required amount, but some. [AGENCY 5]

MIKE HEAVICAN: There was the normal kind of inflationary. [AGENCY 5]

SENATOR CONRAD: Okay. [AGENCY 5]

MIKE HEAVICAN: And then there was a very small amount for county court employees; maybe 1 percent, I think. [AGENCY 5]

SENATOR CONRAD: Yes. I think that sounds exactly right. And in relation to those resources in particular, I know my office has received some inquiry as to how those were distributed, and there's some concern about whether or not that resource was meted out in equitable fashion. So I just want to give you a chance to respond to that issue if you'd like. [AGENCY 5]

MIKE HEAVICAN: I'm not familiar with all the details of that. What we...the plan we used

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is not a large amount of money. The plan we used gave a little bit more money to the people on the very lowest salary scales and a little less to the folks on top. [AGENCY 5]

SENATOR CONRAD: Okay. And just the policy reason behind that being it's harder to recruit and retain the entry level... [AGENCY 5]

MIKE HEAVICAN: Because the people on the lowest scale are the most needy. [AGENCY 5]

SENATOR CONRAD: Right. It's harder to recruit and retain the folks at the lowest rung. [AGENCY 5]

MIKE HEAVICAN: Again, you know, this is not a large amount of money. [AGENCY 5]

SENATOR CONRAD: I agree. Yes. Okay. But I do hope that if we are able to make some headway in the future in providing additional resources for that purpose, that we can continue having a dialogue about ensuring that they are meted out in an equitable fashion. [AGENCY 5]

MIKE HEAVICAN: If you give us the PSL for this, this arguably puts everybody at their market level. [AGENCY 5]

SENATOR CONRAD: Very good. That's helpful. Thank you. And I know a lot of us are interested in reviewing the results of that study, and we appreciate that hard work. The other question that I wanted to just give you an opportunity to visit about a little bit, not directly related to a budget request in this cycle but as we look forward. In the wake of the Supreme Court decision related to how the Nebraska State Bar Association is governed and funded, there had been a very nice partnership for many years for a variety of functions between the judicial branch and the bar association. Have there been conversations from a budgetary perspective back and forth about how those

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changes will impact the needs of the court or the needs of the legal profession?
[AGENCY 5]

MIKE HEAVICAN: Well, we have constant conversations with the bar association leadership and members of the bar association about various kinds of things. There's a transition period... [AGENCY 5]

SENATOR CONRAD: Yes. [AGENCY 5]

MIKE HEAVICAN: ...obviously going on right now. But in the long run I do not anticipate that the relationship between the Supreme Court and the bar association will be changed dramatically. Issues such as pro se representation, which are hugely important to the court and to judges and, of course, to lawyers too, English language interpreter kinds of things. All of those support kinds of things that the bar association does, I anticipate that we will be working with them to continue those. [AGENCY 5]

SENATOR CONRAD: Okay, that's helpful. Thank you. [AGENCY 5]

SENATOR MELLO: Thank you, Senator Conrad. Joining the committee, for the public record, is Senator John Harms and Senator Kate Bolz. Real quick, Mr. Chief Justice, what's the PSL amount associated with this study? [AGENCY 5]

MIKE HEAVICAN: What's the PSL amount? I want to get this right, so if I screw it up you have to tell me. But I think it's \$4.5 million. [AGENCY 5]

SENATOR MELLO: \$4.5 million? [AGENCY 5]

MIKE HEAVICAN: Yeah. [AGENCY 5]

SENATOR MELLO: Senator Larson. [AGENCY 5]

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SENATOR LARSON: Thank you, Chief. And I should have followed up on these questions. I thought of them after your first questions to me...or my first questions to you and your answers. And they're going to piggyback off the questioning that I had, and I made reference to it in the sense that much of what I'm hearing from a lot of my constituents, workers of the court and judges, as well, are most...and I'll pose it as a question. Are most of the jobs that you've added within the court system--and I know you've talked about the budget and having to work within the budget that you've given us, and I talked about, you know, why not in rural Nebraska? But, in your estimation, are most of the jobs that you've added within the court been in Omaha and Lincoln?
[AGENCY 5]

MIKE HEAVICAN: I don't think we've added any employees in Omaha, Lincoln, or anywhere else in the court system. We've added probation employees because this Legislature has given us responsibilities that used to belong to the Department of Health and Human Services. [AGENCY 5]

SENATOR LARSON: And we gave you the funding for that. [AGENCY 5]

MIKE HEAVICAN: Yes. [AGENCY 5]

SENATOR LARSON: And I'll have to talk to them about that concept. And in terms of...and I guess I'll give you another chance to respond to the lack of clerical staff in rural Nebraska. Were those staff that just were cut and not put into...you know, that were just cut out of the court system? Because they used to have someone that did that job, and now they don't. Or is the court...essentially what I'm asking, are court employees as a total down from what they used to be or have those employees...were those jobs cut and added somewhere else? Or what exactly...where are they?
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MIKE HEAVICAN: Well, I'm not sure what jobs you're referring to, and I'd have to...
[AGENCY 5]

SENATOR LARSON: Well, as I said, the judges that I talked to used to have a clerical employee, or, you know, one person that could be in the courtroom with them, and then, like the clerk magistrate, would be out of the courtroom taking people as their case finished; the court magistrate would be outside dealing with them. So there would be one in the courtroom and one outside the courtroom. Now it's my understanding that actually in all of my...actually I don't know about one whole county I haven't had the chance to talk to Judge Brodbeck about the issue. But in the rest of my counties, that it's...the judges are handling it by themselves within the courtrooms, and they have the court magistrate... [AGENCY 5]

MIKE HEAVICAN: How about we do this? How about you have your judges call me?
[AGENCY 5]

SENATOR LARSON: Because I am their representative. I understand that you have...and they are retained by the people, and I'm there to represent them. So they can talk to me anytime they wish about any specific issue. [AGENCY 5]

MIKE HEAVICAN: Well, they can talk to you anytime they wish, but there's no point in circuiting...or circling...sending their questions through you. They can call me anytime they wish. [AGENCY 5]

SENATOR LARSON: They've actually, from my understanding, they...one judge has written you a letter about this over a year ago and has yet to receive a reply. So I'd call that on you and the effort of trying to contact you and asking you about the issue. Because I did talk to him today and he still hasn't received a reply. So if you talk about asking you, they have. And they feel that that resource is gone so they've come to me.
[AGENCY 5]

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MIKE HEAVICAN: My apologies to that judge. I certainly will get back to him. [AGENCY 5]

SENATOR LARSON: Thank you. [AGENCY 5]

SENATOR MELLO: Senator Harms. [AGENCY 5]

SENATOR HARMS: Thank you, Senator Mello. Thank you very much for coming and I'm sorry that I missed most of your presentation, but I did want to tell you that I think the Supreme Court has done an excellent job and particularly I want to bring to my colleagues' attention is how much the court system has had to change and how you've had to orchestrate all of this in regard to non-English speaking people. I don't think any of us really realized, until I had a chance to go to a conference, what really has taken place, and the fact that your judges had to place into their system people who are trying to determine, you know, the language, the dialects you're getting from Africa, all over the world, that are coming to this state of Nebraska. And I want to tell you, I think you've done a great job in making that transition. I know we have a long ways to go, but Nebraska is a lot further ahead than most states, and that's because of the leadership you're providing and what you're doing. And so I wanted you to know that and I wanted it a matter of record to show that you have made a lot of progress in this particular area. Thank you. [AGENCY 5]

MIKE HEAVICAN: I appreciate that very much, Senator Harms. And as you are aware, that's one of the really huge problems that many of our judges have to face. Lots of foreign languages, many of them it is very, very difficult to get qualified people to translate and interpret in the court system. And we've employed a lot of technology in that area and we've had a lot of cooperation with the National Center for State Courts, and we have a lot of pressure from the Justice Department to make sure that we do that right. So we try very hard in that area. [AGENCY 5]

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SENATOR HARMS: I know when visiting with some of the judges, just to find interpreters and how they have to interpret for that judge and they have to stop the proceedings to say, wait, time out here, we've got to...because I don't think you're really...or I'm having difficulty trying to put these two things together. I just think it's been a phenomenal change and you're going to have a lot more pressure put on you because more and more people are going to come to this great state, and I think where you're headed is the right direction. And I just wanted the public to know that and appreciate what you've done. [AGENCY 5]

MIKE HEAVICAN: Thank you very much. The other huge problem that our courts have now, and courts are facing all over the country, is self-represented parties, parties who do not have lawyers, and this is especially big in domestic relations, divorce cases, and so forth. But it is very difficult to process those cases because obviously folks without lawyers do not understand the procedures going on. Judges have to be neutral in their approach to those cases, and they have to have an awful lot of patience. [AGENCY 5]

SENATOR MELLO: Senator Kintner. [AGENCY 5]

SENATOR KINTNER: Thank you for coming, Mr. Chief Justice. Can you give me an example of the \$4.5 million, are we talking about a court employee that, let's say, makes \$35,000, and they will take them up to \$37,000? Or can you kind of put it in some perspective of what kind of salaries we're talking about and what kind of increases you can give us? [AGENCY 5]

MIKE HEAVICAN: Well, generally, our employees are very poorly paid, so anybody who is making \$35,000 in our system is getting up toward the top of the pay scale. Now I don't know what our base is for court magistrates...clerk magistrates. It's in the thirties. And those are sort of the top of the line for the court employees. Now the probation employees might be starting a little bit higher than that, but the (inaudible) one is going

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to... [AGENCY 5]

_____ : (Inaudible.) [AGENCY 5]

MIKE HEAVICAN: Thirty-one. But they have a college degree and they obviously have... [AGENCY 5]

SENATOR KINTNER: So this increase would be from, let's say, \$31,000 to \$33,000, or what...can you give me a...? [AGENCY 5]

MIKE HEAVICAN: For some people, sure. [AGENCY 5]

SENATOR KINTNER: Are we talking a couple thousand dollars? I'm just trying to get a... [AGENCY 5]

MIKE HEAVICAN: Yeah, sure, for some people, you know. [AGENCY 5]

SENATOR KINTNER: ...a sense of perspective. [AGENCY 5]

MIKE HEAVICAN: Right. Well, there's your sense of perspective. Yeah, and I'll get these to you in a second. [AGENCY 5]

SENATOR KINTNER: Okay. All right, thank you very much. Appreciate it. [AGENCY 5]

MIKE HEAVICAN: Sure. Thank you. [AGENCY 5]

SENATOR MELLO: Any other questions from the committee? Senator Nelson.
[AGENCY 5]

SENATOR NELSON: Thank you, Senator Mello. This is a little far afield, but I read

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recently there's talk about doing away with the bar examination. Would that be a saving to the Supreme Court in any way? Or is that pretty much a self-sustaining? [AGENCY 5]

MIKE HEAVICAN: That's a self-sustaining program. The admissions now, which is the operation of the test and so forth, all of that is paid for by applicants. So none of that comes out of tax dollars or any of that sort of thing. So that savings actually...if the bar exam was done away with, the big savings would be for the individuals who want to be lawyers. [AGENCY 5]

SENATOR NELSON: All right. Thank you. [AGENCY 5]

MIKE HEAVICAN: Yes. [AGENCY 5]

SENATOR MELLO: Senator Wightman. You don't have any? Okay. Any other questions from the committee? Seeing none, thank you, Mr. Chief Justice. [AGENCY 5]

MIKE HEAVICAN: Okay. I'm going to hand these out to you. [AGENCY 5]

SENATOR MELLO: (Exhibit 2) And is it possible I could request the State Probation Administrator Brokofsky come up and explain the letter that we received from the court per request? [AGENCY 5]

MIKE HEAVICAN: It is indeed. She can't wait. [AGENCY 5]

ELLEN BROKOFSKY: Good afternoon. Senator Mello just told me about this, and so I am trying to refresh my memory. Following the State of the Judiciary speech that the Chief Justice delivered in January, the Chief Justice mentioned in his speech that our specialized substance abuse supervision program, our SSAS program, was over capacity. And that is absolutely true. That is a program that's intended to be a sentencing alternative. It's a prison alternative. While folks were skeptical, our

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stakeholders, maybe even our judiciary in the beginning, we've had really good outcomes and seen significant progress; and so there's a lot of confidence in this program now, and the judges have been sentencing to it. Senator Mello came up to me after the speech and said, well, what does that mean, 20 percent over capacity? And we looked at it. In reality, it's about three officers--unfortunately, three officers in different places. I mean, we really sort of need three and a half officers. You don't want to split up people. But that...so I submitted a letter. I told him exactly what it would cost to at least get us in a position where we're not...you know, we have some reasonable caseloads. [AGENCY 5]

SENATOR MELLO: Thank you for giving us a little bit more background on that. Are there any questions from the committee? Senator Conrad. [AGENCY 5]

ELLEN BROKOFSKY: Senator Conrad. [AGENCY 5]

SENATOR CONRAD: Thank you so much for your testimony. And just on that point, because I think that this program is so critical to issues before this body in regards to corrections, reform, prison reform, etcetera. And I see this program as so results oriented in terms of costs and quality outcomes. What is a...just what is a typical caseload for a SSAS officer? [AGENCY 5]

ELLEN BROKOFSKY: Twenty-four to 30. [AGENCY 5]

SENATOR CONRAD: Twenty-four to 30. [AGENCY 5]

ELLEN BROKOFSKY: But 24 is what we set it up for. [AGENCY 5]

SENATOR CONRAD: Okay. [AGENCY 5]

ELLEN BROKOFSKY: Yes. Really individualized attention, long time on probation. It's

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really valuable in connection with the reporting center where we provide very close supervision. And the most astounding statistics from the SSAS program that I have seen is the fact that we have a higher employment rate than we do with our DUI sort of pro-social folks, folks who go to work everyday. And so we've been able to keep them employed, and that's pretty exciting. [AGENCY 5]

SENATOR CONRAD: Great. And then just finally, in terms of qualifications to serve in that capacity as a SSAS officer, what exactly are... [AGENCY 5]

ELLEN BROKOFISKY: That's that higher level CVI that I'm talking about. When we first started this transformation, as the Chief Justice mentioned, in probation, the new officers, unfortunately, in 2004--I became administrator in 2005--but the practice was the new one out of college got the high-risk cases because you had to work nights and, you know, it was nothing that anybody wanted to do. So what we've done over the years is tried to switch it so that only the most seasoned, highly skilled people, whether we're hiring them new or whether they're being promoted up, can work in these positions. And what we've really worked hard on is trying to get them compensated so that not only is it comparable pay but that there are people in our system and outside of our system that are striving to do this work. It's sort of a penny saved. [AGENCY 5]

SENATOR CONRAD: Right. And the numbers are something in round terms, I don't want to put you on the spot, but something like the cost to the taxpayer of over \$30,000 a year to house an inmate, and a person who is a part of the SSAS program is \$3,000 or \$5,000 or something like that? [AGENCY 5]

ELLEN BROKOFISKY: Yeah, you would ask me. (Laugh) But it is... [AGENCY 5]

SENATOR CONRAD: No. Sorry. [AGENCY 5]

ELLEN BROKOFISKY: It's a daily cost that's...it's something like \$7 a day, less than \$10

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a day, compared to \$77 a day, something on that order. [AGENCY 5]

SENATOR CONRAD: That's very helpful. Yes, thank you. [AGENCY 5]

ELLEN BROKOFSKY: Yes. [AGENCY 5]

SENATOR MELLO: Any other questions from the committee? Seeing none, I just...one question, Ellen, was the additional growth. You mentioned in the letter, you said that that was only to deal with essentially kind of the waiting list right now. Where do you see, you think the additional growth? I mean, can you give us just a ballpark or kind of your perspective of moving into the future of where that...? [AGENCY 5]

ELLEN BROKOFSKY: Oh, yes. [AGENCY 5]

SENATOR MELLO: For maybe planning purposes for us, knowing that we're looking at prison reform and a variety of other issues this year of where SSAS could, we know, is a potential policy option for the Legislature to consider? [AGENCY 5]

ELLEN BROKOFSKY: Well, that...great question. Originally we looked at those areas of the state where they had the highest sentencing rate for felony drug offenses. That was our first target population, and that was the Community Corrections Council. So it was the Department of Corrections, the Crime Commission, ourselves, executive branch, and local sheriffs. It was quite a makeup of people. In 2010, when the Crime Commission put together a report that was required by the Legislature, saying where should the SSAS offices, or reporting centers go, where should SSAS go; the overall recommendation was every judicial district should have it. The sentencing judge should have that opportunity to access this alternative sentencing and not have to rely on prison solely. Certainly prison is appropriate for certain individuals. But if there's an alternative, this would be it. In that 2010 report--that's on-line with the Crime Commission and anyone can access it--we did look at high-end areas that don't have

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the availability of SSAS or reporting center, and that was North Platte, Grand Island--Grand Island was sort of number one. Grand Island, North Plate, Columbus, Scottsbluff at the time. Scottsbluff, we've been able to put in a little reporting center but no SSAS. That is...and that was something that we just tried to squeak with some of the money that we had. Let's see, it's already in Lincoln and Omaha. Columbus--I mentioned Columbus, I think. I can't give you all of them, but every judicial district should have access to a reporting center and to SSAS, in my opinion. The great results that we've seen, we think that that would really make a difference. [AGENCY 5]

SENATOR MELLO: Okay. Thank you, Ellen. Are there any other questions from the committee? Seeing none, thank you. [AGENCY 5]

ELLEN BROKOFISKY: Thank you. Thank you. [AGENCY 5]

SENATOR MELLO: Is there anyone else here wishing to testify on Agency 5, the Supreme Court? [AGENCY 5]

TOM HAWES: (Exhibit 3) Good afternoon, Chairman Mello and members of the Appropriations Committee. My name is Tom Hawes, H-a-w-e-s, and I am the immediate past-president of the Nebraska County Court Association, a voluntary association of county court employees throughout the state, ranging from folks like myself, a clerk magistrate, to clerks in the individual courthouses. I appear before you today for two purposes. First, to thank you for your efforts last session to increase the salaries of the court employees throughout the state. As you are aware, there is \$250,000 in the current budget for next year to provide the salary increase for court employees. We truly appreciate everything you did, including your efforts to override the Governor's veto of those dollars last year. But I appear before you for a second reason. I am asking on behalf of our members that you appropriate an additional \$8,273 to make the amount of money equal to 1 percent. It is currently just over .96 percent; and to increase the personal services limitation by \$6,293. Last year, when the court implemented and

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announced what the increases would be, there were employees who saw smaller increases and those who saw larger increases. I know that this committee is interested in the result of the salary study that you requested of the court last year. The Chief Justice has already addressed that, and we as an association look forward to following the recommendations of those salary increases. Thank you, Mr. Chairman and members of this committee for considering this request. I will try to answer any questions that you may have. [AGENCY 5]

SENATOR MELLO: Thank you for your testimony, Tom. Are there any questions from the committee? Seeing none, thank you, Tom. [AGENCY 5]

TOM HAWES: Thank you. [AGENCY 5]

SENATOR MELLO: Is there anyone else here wishing to testify on Agency 5, the Supreme Court? Seeing none, that will close today's public hearing on Agency 5 and lead us to our next hearing on Agency 46, the Nebraska Department of Correctional Services. [AGENCY 5]

MICHAEL KENNEY: (Exhibit 4) Good afternoon, Chairman Mello and members of the Appropriations Committee. My name is Michael Kenney, K-e-n-n-e-y. I'm the director of the Nebraska Department of Correctional Services. Before I begin talking about our individual deficit items related to capacity, I want to provide some background to the committee as to how we got to this point and what we are doing to address this issue. The early part of the 2000s saw some fluctuations in the design capacity of the Department of Correctional Services' facilities. Initially, this was the department's and Legislature's reaction to a marked increase in the inmate population in the 1990s. In March of 2001, the Work Ethic Camp opened with 100 beds for probationers, and in August 2001, the Tecumseh State Correctional Institution opened, which provided the department with 960 new beds for inmates. Two thousand three saw the closing of the Nebraska Community Treatment Center and the Hastings Correctional Center and the

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loss of 292 beds. Around the same time, the Legislature passed LB46, which was the Community Corrections Act. The act formed a council to oversee the formation of community-based services for offenders in the community. This initiative was meant to divert offenders into the community through intensive community supervision, both via probation on the front end of a sentence and parole on the back end. Day and evening reporting centers, specialized substance abuse supervision by Probation, and community treatment vouchers were all products of the work done by community corrections. The courts and Probation diverted offenders who could be safely supervised in the community and the Board of Parole could now parole offenders to treatment in the community. These efforts and others, such as allowing inmates at the underutilized Work Ethic Camp, had a stabilizing effect on the inmate population for the latter half of the last decade. However, beginning in 2010 the inmate population began to increase again. Since 2009, the Legislature has passed, and the Governor has signed into law, a number of legislative bills that have significantly increased the penalties on offenders or created mandatory minimum penalties. Crimes related to assault, firearms, sex offenses, child abuse, and driving under the influence have all been addressed and the penalties strengthened. At the same time, the community corrections programs reached capacity. As a result, the department, in cooperation with the Board of Parole, worked to increase the parolee population to stabilize the inmate population. These efforts have nearly doubled the number of inmates on parole in the last four years. Despite these significant efforts, the average inmate population has continued to increase to the point where the inmate population is nearly 155 percent of capacity. Because of this trend, the department took proactive steps in its biennial budget request last year to address capacity. First, \$5,113,211 was requested to bring closed housing units back on-line to maximize existing space within the facilities. Second, the department requested \$585,000 for a facilities master plan. This plan, which will be completed this summer, will provide the department and policymakers options to address capacity issues in the future. Finally, though not a part of the department's budget, additional day and evening reporting centers were recommended in the Governor's submitted budget. I want to thank this committee for placing these

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items in your 2013 budget. With this background, I'd like to now talk about our deficit request. As I mentioned, currently the inmate population is nearly 155 percent of capacity. All the budget requests I have submitted are specifically targeted to address immediate inmate capacity needs of our department while we await the completion of our facilities master plan and other actions, such as a review of the state's criminal justice system by the Council of State Governments. Included in your packet are two charts that outline the current capacity issues. The first, Attachment A, references population, paroles, and design capacity. The second, Attachment B, identifies admissions and releases. Due to the current capacity of the department's facilities, bed space contractually provided to the U.S. Marshal Service is recommended to be discontinued. The return of these approximately 20 prisoners to federal custody will free up slots for inmates housed at the Diagnostic and Evaluation Center, which is one of the most crowded facilities. Since the costs of prisoners are covered by federal funding, an increase in general appropriation of \$127,020 in FY '14 and \$762,122 in FY '15 is necessary. In order to temporarily ease current capacity issues, the department is requesting funding to contract with counties to house up to 150 Nebraska inmates in county jails. The counties would meet federal and state regulation standards and have available bed space: the cost estimate at \$723,604 for FY 2014, for approximately two months, and \$4,226,625 for fiscal year '15. Currently, the department houses approximately 144 inmates and 4 probationers at WEC, but we can increase the capacity to 200. This increase, 40 beds, would be available to house inmates, with the balance of 12 for a potential increase in probationers. The cost would be three additional staff at \$30,348 for two months in FY '14 and \$150,410 in fiscal year 2015. To maintain safe and secure prisons, the department is increasing an increase in security and inmate-contact staffing of 59 FTEs. The 59 FTEs were individually chosen to address specific needs in our facilities caused by the increased number of inmates. These positions include officers, corporals, sergeants, caseworkers, and case managers. The cost is \$528,652 in fiscal year '14 and \$2,569,992 in fiscal year 2015. Inmates typically require more medical, substance abuse, and mental healthcare than individuals in the community. Currently, there are 749 inmates over the age of 50, an 89

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percent increase in the last ten years. Further, the increase in inmate population contributes to higher medical cost. Attachment C provides a summary of medical expenditures, including medical cost per inmate. Other inmate per diem includes food, household items, etcetera. NDCS is experiencing continued increase in cost in food prices, as is occurring nationally. As with medical costs, the increase in the inmate population also contributes to increased food costs. Attachment D illustrates NDCS operating expenses over time. Also, I would like to thank you for your support in the preliminary recommendation of the infrastructure and maintenance issue. I'd be pleased to answer any questions you might have at this time. [AGENCY 46]

SENATOR MELLO: Thank you for your testimony, Director. Are there any questions from the committee? Senator Conrad. [AGENCY 46]

SENATOR CONRAD: Thank you so much, Director, for coming in this afternoon. A couple of pieces that I just want to tease out a little bit from your testimony, because obviously corrections reform, prison reform is such a big issue for us during this legislative session and you are right at the heart of that debate and dialogue in terms of implementation of those policy goals. I notice in your testimony that you indicate that the department's perspective is basically to take a wait-and-see approach on long-term reforms until we get back a report from the Council of State Governments. Is that a fair assessment or...? [AGENCY 46]

MICHAEL KENNEY: Well, I think we're considering the advice or consultation we get from the...we're leaving the door open. Our master plan concerning our capacity issues, we are waiting for the completion of the master plan. We're actually midstream in that process now. It won't be completed until late spring, early summer. So I don't know if that answered your question. We want the door open. The lines of communication are very open. We're very interested in information we can get and new ideas that people have. We have a very...I have a very open mind about that and I would be cooperating with anyone who has ideas. [AGENCY 46]

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SENATOR CONRAD: That is helpful, because I was trying to decipher exactly where we were in that process and how that fit within our legislative calendar. And what concerns me about that approach is, obviously, we don't want to rush to judgment or move too quickly, but what that approach will entail is essentially waiting at least a year or so until the Legislature then reconvenes and would be able to take up some of those, those reforms then in the 2015 Session before addressing some of these issues in the time before us. So that's something I'm a bit concerned about. And I see that, you know, the other pieces put forward by the Governor's budget and as part of your testimony here today are important, but are really band-aids in terms of dealing with these capacity issues and long-term strategies. So, while better than nothing, I guess I'm disappointed that there isn't a longer term view in terms of how we can address that starting right now. [AGENCY 46]

MICHAEL KENNEY: Well, I agree that this is a short-term solution. This deficit request was intended to sustain us through the planning period and it's not a...this isn't a biennial budget year. We are in the middle of our master plan and so that's the way... [AGENCY 46]

SENATOR CONRAD: And you're brand new. I appreciate that. (Laugh) [AGENCY 46]

MICHAEL KENNEY: Well, but... [AGENCY 46]

SENATOR CONRAD: Yeah. [AGENCY 46]

MICHAEL KENNEY: ...beyond that, the delay, I guess in my mind, the...in my mind, it's premature to have these overarching long-range plans while we're in the middle of our strategic planning process right now. And so I agree with you completely. This deficit request is intended to sustain us safely and create public safety through the time until we can have a more succinct, formatted plan in front of us. That's the best way I can

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answer that. [AGENCY 46]

SENATOR CONRAD: No, I appreciate that. And I'll tell you that I always appreciated the candor of your predecessor when he came before this committee. And it seems that you're continuing in that tradition, so I'm thankful for that. [AGENCY 46]

MICHAEL KENNEY: Thank you [AGENCY 46]

SENATOR CONRAD: But on that very line of testimony, an issue that is a big part of some recent public safety and crisis concerns is the mental health services that are available in the Department of Corrections. And all the information that you've provided here today is very helpful and I see that you noted mental health issues on the last page of your testimony, but there's not a lot of specifics there. So again, I'm wondering exactly what are the specific needs, what are the specific costs related to that. And these are some of the things that I just don't think that we can wait on to complete some long-range strategic planning, because we know there's a need. We know folks are going to be exiting the prison system before some of these other plans are completed, and recent events demonstrate that a lack of mental health services is a public safety issue that we need to be concerned about. So if you want a chance to address that specifically, I'm just...I'm worried there's not a lot of substance on that topic. [AGENCY 46]

MICHAEL KENNEY: Sure. Sure. Even this morning I broke down that the mental health needs, one of the concerns that's been most consistently expressed to us is that there are people being delayed from parole or eligibility for parole because they're on waiting lists. And while that does occur, it's about 15 percent of our population. I think we estimated about...I'll try to remember the exact figures. Actually, I do have them here. We have about 1,125 inmates that are currently parole-eligible that...that are currently parole-eligible. Of those, 206 are actually past their parole eligibility date, and that represents about 15 percent. And what isn't reflected in those is, for example, I just

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looked this morning and there are 41, 41 of those 206 who, for various reasons, have either tried, have been refused the programming, have been terminated from programming, have been out into the community and have been revoked from the programming. Some of them have...one of them has a life sentence that I looked at. Central monitoring issues and certain sequestering within the facility for safety reasons also impacts that. So I do acknowledge that there is a small percentage of people that are being held up on...because of that. But I want to put it into a very clear perspective in terms of numbers that it may not be as large a problem as one might be led to believe. [AGENCY 46]

SENATOR CONRAD: I definitely appreciate that response and thank you for clarifying. But I think that the concern from the legislative perspective, and I know you share this concern in terms of public safety goals, is that it's not only just the numbers. It's also the severity of the case and that one individual left untreated can, of course, wreak great havoc in our society. So beyond just the overall numbers there, we have to kind of drill down as the what-ifs and do all that we can from a preventative perspective. So I know that you share those goals and those kinds of things probably keep you up at night as much as they do folks in the legislative body. But I am worried about it and I'm worried that the Governor's plan and the Department of Corrections' plan is woefully inadequate in regards to that topic for the short and the long term. [AGENCY 46]

MICHAEL KENNEY: Well, I don't think our mental health services are inadequate. [AGENCY 46]

SENATOR CONRAD: Okay. [AGENCY 46]

MICHAEL KENNEY: And so I...again, this deficit bill is intended to not augment mental health specifically but to prioritize where we need the most help in managing our prisons until the long-term plan gets in. So it's not really meant to be a long-term solution. [AGENCY 46]

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SENATOR CONRAD: Okay. And I guess we'll agree to disagree at this point in time on that topic. [AGENCY 46]

MICHAEL KENNEY: (Laugh) Okay. [AGENCY 46]

SENATOR CONRAD: And then just the final note is, and I know this was before your tenure in this role, but during recent economic downturn, the state of Nebraska, like all states, utilized federal assistance to help meet state obligations during that time period, and a significant amount of federal stimulus funds went into the Department of Corrections, something like \$50 million. And I know that there are great needs there and there are significant obligations there, but you know I have a lot of constituents asking what became of that. We put a lot of money in during that time period and we're not seeing, I think, some good outcomes with those investments. So if you'd like a chance to respond to that, I'd give you the opportunity. Or if you want to dig in on it a little bit more and get back to us, that would be okay too. [AGENCY 46]

MICHAEL KENNEY: I think I would prefer to get back to you because I'm not fluent in exactly where those federal earmark dollars went. [AGENCY 46]

SENATOR CONRAD: Yes. [AGENCY 46]

MICHAEL KENNEY: So I better not... [AGENCY 46]

SENATOR CONRAD: Absolutely. [AGENCY 46]

MICHAEL KENNEY: ...speculate... [AGENCY 46]

SENATOR CONRAD: No. [AGENCY 46]

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MICHAEL KENNEY: ...at this time. [AGENCY 46]

SENATOR CONRAD: Absolutely, and I didn't want to... [AGENCY 46]

MICHAEL KENNEY: Sure. [AGENCY 46]

SENATOR CONRAD: ...catch you off guard on that, because I know that you're new to the position. But I know that's something that is definitely a sore spot for many folks who are concerned about how those dollars were utilized. [AGENCY 46]

MICHAEL KENNEY: Sure. [AGENCY 46]

SENATOR CONRAD: Thanks. [AGENCY 46]

SENATOR MELLO: Senator Larson. [AGENCY 46]

SENATOR LARSON: Thank you, Director. You mentioned and I've heard a little bit of concern. How many counties would meet all the guidelines to house prisoners across the state? [AGENCY 46]

MICHAEL KENNEY: Senator, I don't have a specific number of counties, that we have a work group that is looking into that and I can...I'm better at telling you the criteria. They have to be PREA compliant. They have to be constitutional. They have to meet all jail standards. And of all the counties in Nebraska, I can't tell you which one of those counties, which ones... [AGENCY 46]

SENATOR LARSON: So how many prisoners were you looking to move into the counties roughly? [AGENCY 46]

MICHAEL KENNEY: A hundred and fifty inmates total, and they could be distributed

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as... [AGENCY 46]

SENATOR LARSON: As many... [AGENCY 46]

MICHAEL KENNEY: Now we don't suspect that they would all go to one county jail.
[AGENCY 46]

SENATOR LARSON: And there are...and there are, you're confident, there are enough counties within the state that meet all the guidelines to house the 150 prisoners, but you don't...so you're confident they are there, but you don't know if they're there yet?
[AGENCY 46]

MICHAEL KENNEY: Well, I'm sorry, I misunderstood you. I thought you were asking me to identify the specific counties. [AGENCY 46]

SENATOR LARSON: Yeah. Well, to...well, I was asking how many counties there were, but then you... [AGENCY 46]

MICHAEL KENNEY: Okay. [AGENCY 46]

SENATOR LARSON: ...dovetailed on that... [AGENCY 46]

MICHAEL KENNEY: Okay. [AGENCY 46]

SENATOR LARSON: ...you didn't know which counties because...you did the guidelines but... [AGENCY 46]

MICHAEL KENNEY: Right. [AGENCY 46]

SENATOR LARSON: ...that you do know or there are counties that you know

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specifically that there are enough beds essentially to house these. [AGENCY 46]

MICHAEL KENNEY: Yes. [AGENCY 46]

SENATOR LARSON: You've worked that out. [AGENCY 46]

MICHAEL KENNEY: Yes. Yes, there are. As we looked at the county beds available, and a lot of the information was received from the counties themselves, there are sufficient county beds, as we say, for rent, for lack of a better way of describing it, more than enough to accommodate the hundred and... [AGENCY 46]

SENATOR LARSON: And all those counties meet the federal guidelines, not just Holt County saying, we have five extra beds, but you don't know if they meet the federal guidelines yet. [AGENCY 46]

MICHAEL KENNEY: We're...the work group is still fleshing this out, but we're confident, based on the preliminary information, we're very confident of that. [AGENCY 46]

SENATOR LARSON: Okay. And that leads me to the next issue, in terms of the money I saw that you requested was a significant sum. Is that enough to compensate the counties for all of the costs that will be bore by the counties to house those prisoners? Or...I mean as I talk to counties, whether it's county sheriffs that are running the prisons or county commissioners that are worried about taking on these prisoners, and I can understand these concerns, they're not...they're worried that they're not going to get enough money from the state to not only...I mean they understand they'll get some. But they still think it will cost more to house the prisoners than what you guys are offering them. [AGENCY 46]

MICHAEL KENNEY: Well, no county will be required to agree to a price that they don't...it will be a contractual arrangement. [AGENCY 46]

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SENATOR LARSON: Okay, so... [AGENCY 46]

MICHAEL KENNEY: So if they don't feel as the compensation is sufficient, they don't have to enter into the agreement. [AGENCY 46]

SENATOR LARSON: So does that worry, moving on that aspect, does that worry you, that you're confident that there's enough beds but are you confident that you're offering enough money to ensure that these counties are taking it? And do they understand that...I mean it comes back to one of my issues, and I fought hard in this committee, and I think this committee would recognize our property taxes. That's a huge issue in my district. And the concept of pushing these prisoners on to these counties and what that does to property tax, especially in my area, it's concerning. And you're saying, well, your counties don't have to take prisoners if they don't want, but are there going to be enough counties to actually take the prisoners now if you're not offering enough money? You get where I'm circling all the way through on that? [AGENCY 46]

MICHAEL KENNEY: I will do this. The counties have been fairly revealing about what they're presently charging other jurisdictions to house inmates there. So unless they increase...unless they see some opportunity here to (laugh) prosper in an inordinate way, maybe is the best way to say it, I believe our calculations are comfortably within the budget that we're asking for. [AGENCY 46]

SENATOR LARSON: Okay. I appreciate that. Thank you. [AGENCY 46]

SENATOR MELLO: Senator Bolz. [AGENCY 46]

SENATOR BOLZ: Good afternoon. [AGENCY 46]

MICHAEL KENNEY: Good afternoon. [AGENCY 46]

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SENATOR BOLZ: Two issues, two topics I'd like to ask you about today. I can appreciate that you want to be thoughtful and develop a strategic plan. I appreciate that very much. However, I have a particular concern about the Diagnostic and Evaluation Center. The statistics I have in front of me say that it's at 251 percent of capacity. I have some notes here from the State Ombudsman's Office referencing cots under stairwells, overcrowded housing units, ventilation concerns. To me, that seems to be a pretty immediate need, a place where we have a bottleneck and a place where we have some potential for safety issues. The only reference I see in your remarks to D&E is freeing up 20 slots for prisoners to federal custody. Can you tell me in greater detail what your plans are to address the problems at D&E? [AGENCY 46]

MICHAEL KENNEY: Sure. The other things mentioned in there, the 150 beds, the 20 federal beds, the 40 additional in WEC, totals 210 altogether. And so by our calculations, should those beds become available, D&E would enjoy the first fruits of those efforts. We would...we like to have people there between 30 and 45 days to classify them and then move them on to their permanent facility. The bottleneck at D&E is not that we can't get them classified. The bottleneck at D&E is, once they're classified, we don't have capacity beds elsewhere in the system to distribute them away from D&E. So that becomes the holding place. So...and maybe that answers your question. If we did this and developed those 210 beds, that would...they would very quickly migrate away from other facilities and the D&E count would then drop correspondingly. Does that make sense? [AGENCY 46]

SENATOR BOLZ: Not entirely, to be frank. The numbers I have in front of me say that there are 402 individuals at D&E now and there's a capacity of 160. So even if all 210 beds went to D&E, we still wouldn't...we still wouldn't be there. So I guess I retain that concern. But my other question relates to programming. I was able to tour several of the facilities this summer and I think there's a fairly dramatic demonstrated need for programming. I know that's a challenge and I appreciate even more what a challenge

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that is, having at least seen you in action. But I guess I have some ongoing concerns particularly about the violence reduction programming and the anger management programming and the substance abuse programming. What I heard from the mental health staff at several facilities was that somewhere above 80 percent of the inmates have an issue with substance abuse, they couldn't quantify those who might have an issue with anger management, and yet the programming available doesn't seem adequate. The question I have, where the real question comes to you, I guess, is, how much of that is an internal policy challenge with who gets what, when, where, why, and how because of behavior or other challenges, and how much does that have to do with a lack of resources to provide the programming that you know the inmates need?
[AGENCY 46]

MICHAEL KENNEY: Well, I'm looking at something that was just put in my hands this morning. I think the data may come from mid-January. And it says with our...in terms of residential substance abuse, it was from January 24, there are 7 people that were waiting that will start on February 14, which is Friday, and 15 already in the substance abuse unit, one time paroled and have violated parole and then absconded or escaped from that. In the nonresidential, we have...the waiting list I have in front of me says six are signed up for group, two have February hearings, three have January hearings. Two of those with hearing dates are rostered before those with reviews. One is already in treatment, one is scheduled to start treatment next week. So I guess I'm just looking at the data provided to me by our behavioral health administrator and I guess I can't speak to the folks you talked to. Are they saying that there are long waiting lists to get into substance abuse? [AGENCY 46]

SENATOR BOLZ: They are saying they're waiting more than a year for the violence reduction program... [AGENCY 46]

MICHAEL KENNEY: Oh, okay, for violence...okay. [AGENCY 46]

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SENATOR BOLZ: ...and significant amounts of time for the anger management program. And the statistics I saw said 87 percent of the inmates have a substance abuse problem. So I don't think the numbers are matching up in terms of what we're providing services and the need that we can see demonstrated from the statistics.
[AGENCY 46]

MICHAEL KENNEY: Let me...I'd like to respond. I think it's true, and the number I hear about inmates who come into our system with substance abuse problems, I certainly won't quibble with that. I've heard everywhere from 70 to 90 percent. So if it's 87 percent, I wouldn't doubt that one bit. We have a lot of substance abuse going on in the community, in the prisons, and I guess I'm more interested if the people with substance abuse needs are not getting the programming. But I didn't hear you say that exactly, and that's what I was trying to show here is that I don't believe we have long waiting lists to get into substance abuse. In terms of the violence reduction program, we just doubled the capacity in that. And I understand that there still are a lot of inmates that want to get into that program and need that program. I talked to Dr. White about this and the best analogy I can give you is there's certain kinds of therapy that can't be rushed. In other words, I asked him, point blank, this program that takes X number...I think it was taking a year, I think we moved it back to eight or nine months--again, I'd have to consult--in an effort to get more people through the program. And I said, can we do it faster? And he said, not without sacrificing the quality of the program. It's...and again, I'm given to analogies. It's a certain concentration of therapy and if we water it down, it will be less-effective therapy. And so I don't know if that gets to your issue or not, but we are trying to get people through that program more quickly. And he says if we do that, we're going to compromise the integrity of the therapy that they're providing. Now we did double it just in the last six months. We have twice as many seats. We're not doing nothing, but I don't know if that helps. [AGENCY 46]

SENATOR BOLZ: I don't want to monopolize the hearing this afternoon. I know my colleagues have questions. So I appreciate your attempts at responding, but I think

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even doubling a small program doesn't necessarily mean that you've met the need. So I would appreciate further conversations about programming and hope that there's an opportunity to have a conversation about what resources are needed to address those needs in your system. [AGENCY 46]

MICHAEL KENNEY: Absolutely, and I would welcome that. I would look forward to future dialogue about it, yes. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Bolz. And, Director Kenney, I appreciate I think the...I appreciate the politeness Senator Bolz just gave you on that dodge of the question. But the reality is your deficit request did not request a single dollar for any programming. And Senator Bolz is referencing data that this Legislature has seen from our Ombudsman in the report showing that there is a considerable long waiting list for programming in your department, yet you requested no additional funding. And I think the question that Senator Bolz was asking, which was on my list to ask, is why haven't you asked for more funding to deal with these ongoing waiting lists, which your numbers said there are 1,110 people eligible for parole, which that is similar to a waiting list we saw from the Ombudsman's report, which shows that these people could be out of our correction system if they were getting the necessary programming they needed to become parole eligible or to go through the parole process. I'm just going to ask you directly. Why didn't you request more funding? [AGENCY 46]

MICHAEL KENNEY: Let me review what you just...there are 1,125 inmates that have achieved their parole eligibility. Only 206 of those need programming. Only 206 of those inmates would not be considered for parole because they've missed a programming opportunity. Of those 206, 41 of them are...have either left the program, have been discharged, or for other reasons cannot participate in the program, which leaves us with 165 actual inmates. So...and I'll own that. It's just important for me that you understand there are not 1,125 people who are not being able to be paroled because they can't get into programs. That, I need to refute that idea. There are 165, and we will work very,

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very hard. I'm very interested in being efficient, streamlined, getting those people into treatment seats. And then I want to answer your question, because I didn't lose sight of it. So with that clarification made, the 165 people who are on waiting lists that may have been paroled had they been able to get into that, the candid truth about this deficit request is we're trying to do the safety and security within the facility and public safety. So admittedly, you know, if someone wanted to give us additional mental health or substance abuse programs, we would like that. It's not a part of this request because...and, again, I'll probably disagree with more than one of you, but I think the mental health services that we're providing are adequate for our needs right now. And the deficit request is intended specifically to curtail the capacity needs we have in overcrowded housing units with a 100-to-1 ratio of staff to inmates on third shift in dormitories where there are no doors locked. So for me, it's a triage of where can we apply the most amount of water to the hottest fire. And so you can fault me for not asking for enough, but I have asked for what I think we need to get through this time until our plan, until our more formal strategy kicks in, and that's the best I can answer your question. [AGENCY 46]

SENATOR MELLO: In respects to the deficit request, the agency requested for inmate medical expenses \$4.2 million and then roughly \$4.7 million. The Governor's budget proposal gave you \$3.2 million, \$3.4 million. And in the Governor's recommendation it says the Governor's recommendation funded this item at a lesser amount. The agency says they will be able to use other operating cost savings to make up this difference. It was a somewhat similar issue in regard to the inmate per diem expenses, where the agency requested more, the Governor gave you less, and you said that you can make up that lower appropriation by utilizing other operating cost savings. That equates to about \$2.5 million that you're saying you'll find cost savings in the Department of Corrections for this lower dollar amount. Where is that going to come from? [AGENCY 46]

MICHAEL KENNEY: That comes from extremely focused efficiencies, looking

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for...frankly, medical costs are extremely volatile. When I talked to Dr. Kohl, one or two inmates that come in with a certain unusual disease can drive costs up very high. If we have what we call a good year where we don't have a lot of those cases, the savings realized can be substantial. The same thing goes with food service and operational utilities and stuff. "Stuff," that's not a very professional word. But my answer to you, Senator, is that we're just committed to being as efficient as we possibly can and to try to do, with our resources presently, the very best we can. And I think in all government budgets there is probably some amount of cushion, and we're just...we're very committed to being very efficient about that. [AGENCY 46]

SENATOR MELLO: I can appreciate that response, Director, as I would expect every director of a code agency to give that response. I think it begs the question, and I have a little bit of concern in the sense that Senator Bolz and myself just asked you that you have a waiting list for programming, yet you didn't request money for programming. Yet, you requested more money for inmate per diems and inmate healthcare costs, and you're taking a lower dollar amount because you're going to find savings somewhere else in Department of Corrections to cover that. That's concerning in regards to whether or not you're getting the appropriations, knowing this Legislature, and frankly, the state of Nebraska, now knows that there's serious concerns within your agency in regards to the administration of good time, obviously, the capabilities that Senator Conrad mentioned about adequate access to mental healthcare and other programming within your departments. This simple budget request and this conversation or questioning raises more concerns for me that I thought were going to be solved with finding out how we were going to do this in regards to what the Governor requested. But that's something that we may have to address at a later date. Senator Conrad. [AGENCY 46]

SENATOR CONRAD: Thank you, Director Kenney. I appreciate this is a arduous first visit to the Appropriations Committee. [AGENCY 46]

MICHAEL KENNEY: No, it's fine. [AGENCY 46]

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SENATOR CONRAD: And again, we appreciate your responses and hanging with us. But on the last topic, it just piqued my interest. There's no doubt that medical costs are a significant piece of the obligations that you must attend to in your department. And, you know, it also is, I think, an opportunity to be mindful that if the state were to move forward with Medicaid expansion, for example, where we'd be able to share some of those costs with the federal government in a very meaningful way, that could provide considerable savings to your department and the taxpayer. I know that there is a political dynamic that prevents you from being engaged in that topic specifically, but you have to recognize that in our work, to try and ensure you have the resources you need to meet constitutional obligations of the inmates and public safety objectives that you're required to attend to, I mean, that's a piece that I implore you to include in your strategic planning. [AGENCY 46]

MICHAEL KENNEY: I'm sure it will be and I appreciate your comments. [AGENCY 46]

SENATOR CONRAD: Very good. Thank you. [AGENCY 46]

SENATOR MELLO: Director, I have a couple more questions. I just wanted to make sure I gave the committee a little bit more time to ask some questions before I got into them. Senator Larson asked a little about the county jail deficit request. First off, is that a one-time request for this deficit biennium, or is that an ongoing, give or take, \$4.3 million every year to fund county jail cells that we would like to purchase, essentially, or rent? [AGENCY 46]

MICHAEL KENNEY: At this time, this is a one-time request. As the pages turn and we find out what the long-term strategic plan is and what happens to our overall census, I would imagine that, should we be able to address our...successfully address our capacity issues that that would evaporate, for lack of a better word, in the future. I would like to hold open that should we continue to struggle and should it turn out to be as

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successful as we hope it will be, I would like to retain the right to hold that out as an option, but it is not our intent at this point that that be a permanent arrangement.

[AGENCY 46]

SENATOR MELLO: Okay. And I appreciate your candid feedback with Senator Larson in regards to the issue. I know Senator Ashford and myself had looked into this issue over the interim in the sense that it's not mandated upon county governments. They can work out a specific arrangement with you and the department if this was an item the Legislature so chose to appropriate money for. But one issue was raised to me which is what kind of criteria are you looking at for inmates to be eligible for this one-time kind of county jail...county jail process, so to speak, in comparison going through, through DCS? And how does that impact their specific programming? How does that impact their specific access to mental health services? How does that impact their reentry programming, moving out of DCS, so to speak, into the county jail process, if we were to appropriate the money? [AGENCY 46]

MICHAEL KENNEY: We're looking at the less-problematic inmates. We're not looking at inmates with substantial medical issues or substantial programming needs. We believe, and our cursory review of our almost 5,000 people in our population gives us a pretty good sample, and we believe that there are 150 inmates who would qualify as low-management, low-risk people, who some might even be able to take advantage of the geographical setting. For example, depending on where these locations might be, they may receive family visits more often, etcetera. And while I don't have a fine point on all the details. Again, I'll stress that those facilities have to be up to snuff with all jail standards and other legal requirements. And we have identified in our population a number of inmates that are basically going to prison, doing their time successfully, and don't have high program needs. And that would be the target audience for that.

[AGENCY 46]

SENATOR MELLO: Something you could provide the committee, which I know our

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colleagues in the Judiciary Committee would no doubt appreciate seeing with this specific deficit request, is how you'll meet their reentry programming needs, I think as much as anything else. If they're not, I'd say, programmatically or healthcarewise a high-need or a high-risk population, they are going to have some kind of exit plan or reentry plan, which the more we've come to discover with some of the work through CSG is that we have a problem in our state in regards to recidivism and people who are leaving Corrections and, unfortunately, coming back in for one reason or another. So if you could provide this committee, as well as the Judiciary Committee, more background on how you see a reentry plan. If they're just going to follow the same process that everyone else does, I think that would be very helpful specifically to that request. One of your other deficit requests was dealing with security and staffing operations. [AGENCY 46]

MICHAEL KENNEY: Yes. [AGENCY 46]

SENATOR MELLO: Can you provide this committee how many current vacant positions there are within the Department of Correctional Services? [AGENCY 46]

MICHAEL KENNEY: Yes, I had that with me. Currently, it appears that there are about 127 positions open at this time. [AGENCY 46]

SENATOR MELLO: How many positions...I assumed that there was roughly around that number, even though unfortunately this committee, nor has the Legislature, received the recent vacant position report that's required under the budget from DAS. But it's my understanding we should be getting that report, hopefully, shortly. Is that number fairly consistent on a regular basis within the department, of, give or take, about 125 vacant positions within the agency? [AGENCY 46]

MICHAEL KENNEY: I'm going to speculate yes. Being new, I haven't always tracked that for the agency as a whole, but I think it is. Actually, it's been far higher than that in

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the past. We have had recruiting and retention issues specifically at the Tecumseh facility, and the penitentiary has also lagged behind in its ability to keep staff on board there. And I am trying to pull some of my notes here. We have...the average over the last two years, the average vacancies is 153. Now that's 7 percent of our total employees that are allotted to us. And I don't think that that is a particularly high percentage given (a) the toughness (laugh) of this job is sometimes not very employee-friendly, to be very candid with you. So some people come to work for us and they find it's not their cup of tea and I cannot blame them. I wish them well. I love the ones that stay and stick it out. But more to my point, a 7 percent...and that includes Tecumseh, by the way. The 7 percent includes Tecumseh. Given that this is a pretty tough job to want to go to every day and given that the unemployment rate in our state is very favorable comparatively also influences that. So while I wish every one of those vacant positions was filled, I don't see 7 percent as being excessively high and I think it's pretty consistent with what we've had. [AGENCY 46]

SENATOR MELLO: I would say 7 percent is not extremely high, I think, for an agency of your size with the number of employees you have. But it does raise the question, which is, if you have 120-something vacancies now currently, why would we appropriate money for an additional 60 positions, knowing you have an ongoing average of 150 vacant positions? Wouldn't it be better policy...we just heard from the Supreme Court, which you were here during that testimony, which the challenge that they have, which no doubt I would say a significant aspect of your employee base in Department of Corrections problem they have, is regards to their current pay and their salary for the positions and the tasks that we're asking these correction officers to do. Wouldn't it be a better policy for us to allow and give you the PSL authority to pay people more if you're able to reduce that 7 percent vacant position maybe down to 2 percent instead of providing roughly...the dollar amounts, roughly \$3.5 million for 60 new positions where you have, you know, twice as many of those positions vacant now? [AGENCY 46]

MICHAEL KENNEY: Well, maybe, but I don't know if that would address our needs.

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Forty-two of those positions are in Tecumseh and I've acknowledged that that's kind of a tough geographical location to have. The rest, because of the size of our agency, are typical turnover. We've had, as the baby boom is, we've had a higher number of retirements lately than we typically have had. We have...if the positions we're requesting were applied, and they will be, not to the places where we have 42 vacant openings but they'll be applied to the facilities that are already fairly well staffed and are keeping their staff numbers up pretty high, places like the penitentiary, the Lincoln Correctional Center, the D&E. We don't have the recruitment and retention problems in those facilities, and that's where most of these positions would go. And so that's why I'm saying what it's causing in those facilities is overtime and some staff stress, because when we don't have adequate staff, while they enjoy the time and a half of overtime, when your days off get cancelled and this, that can be stress in your employment too. So some of that is going on. The 59 positions would go primarily to the facilities that don't have all these vacancies. I don't know if I'm making sense or not. [AGENCY 46]

SENATOR MELLO: I think I kind of understand, Director, but I guess the underlying policy issue is you, as the director of Department of Corrections, in theory, have complete management over if you want to not fill a position in Tecumseh and, instead, add a position at the State Penitentiary with that vacant position. You have that authority to do that, correct? [AGENCY 46]

MICHAEL KENNEY: You're right. [AGENCY 46]

SENATOR MELLO: So my question is, why would we appropriate \$3.5 million for more staff when you have a significant amount of staff that's not being filled now and you're still keeping those appropriations that we've previously appropriated money for those vacant staff; that you can use that money for other purposes? Why would we appropriate more money to staff when you have more than enough adequate funding now for 125 vacant staff positions? You simply need to change where they may be at any given time, based upon the needs of the department. [AGENCY 46]

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MICHAEL KENNEY: That, everything you said is true. What we do have, though, is a substantial overtime bill that is generated by not having enough employees and I hold...I do hold forth hope that we will be able to recruit people. And at some point if we are able to improve our recruiting and retention in the Tecumseh facility, we would have shifted that over. And then if...so that's my thinking on it, is we would rather not give up the FTEs because we're really...we really need them to be adequately staffed in all of the places. [AGENCY 46]

SENATOR MELLO: Real quick, this kind of goes along the lines of the reentry aspect, which is can you share with this committee a little bit more background in regards to your current appropriations for vocational training, educational programming for inmates as they're in the system and as they're getting ready to leave corrections for trying to find gainful employment? [AGENCY 46]

MICHAEL KENNEY: I don't have a dollar figure for you. I didn't come prepared with how many dollars we're spending on vocational training. That is part of the personalized plan and we do have educational and vocational facilities or programs in all of our facilities. It's an accreditation requirement. And, for example, 13 percent of our employee...or 13 percent of our inmates are involved in Cornhusker State Industries, which is one of the...really our showcase vocational program. And so I guess I'm...I don't think I'm addressing the question you really asked, but I want to if I can. [AGENCY 46]

SENATOR MELLO: If you could provide the committee then...and I understand if you don't...if you don't have some of that information in front of you, I'm sure your staff can work with our staff to get that information. If you could provide this committee more background and historical perspective on your historical spending as an agency on your vocational training components within the Department of Corrections, that would be helpful. I know this committee, as well as Judiciary Committee, has heard at length about the concerns of people, inmates, who are leaving the correction system in

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regards to finding gainful employment afterwards. It's going to be an issue that no doubt we'll hear more about later this session, probably from legislation from another committee. But the more this committee can understand where has the department prioritized that spending in regards to those personalized plans, that would be helpful, I think, in the broader conversation. [AGENCY 46]

MICHAEL KENNEY: I would. And if I can offer you just this much, in terms of prioritization, it is very important to us. Like everything else in the ladder of triage, though, it wouldn't supersede medical. It wouldn't supersede the ability to pay our utilities and fix the roof and things like that. And so I think there have been times in the past when, just because of budget shortfalls, we've not been able to provide. And this...I've been...this is...I'm in my 37th year, so I've seen quite a bit of the evolution of our agency over time, and it is a priority and, yet, there is a finite amount of ability to pay for those. So in the past, and I mean in the distant past, we have, at times during budget shortfalls, had to relinquish a vocational program in order to make our budget last, just like when I mentioned earlier we had to close the NCYF and the Hastings Correctional Center in the '90s. That was unfortunate too. So I, yes, I would very much...we will get a breakout of what our vocational programs are, itemize them per facility, and get dollar amounts attached to that and get that to you. We are...we strongly recognize the need for inmates to have workable job skills to make them employable when they leave. We're very much in sync with that. [AGENCY 46]

SENATOR MELLO: I'll look around to see if the committee...anyone else on the committee has other questions. Senator Nelson. [AGENCY 46]

SENATOR NELSON: Thank you, Senator Mello, at last. (Laugh) Thank you, Director Kenney, for coming. When did you assume the directorship? [AGENCY 46]

MICHAEL KENNEY: Last September of 2013. [AGENCY 46]

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SENATOR NELSON: Okay. And how many years have you had in the system?
Thirty-seven? [AGENCY 46]

MICHAEL KENNEY: I started in 1977, so I've done... [AGENCY 46]

SENATOR NELSON: Yeah. Okay. Well, I want to commend you on your career and
your grasp of things... [AGENCY 46]

MICHAEL KENNEY: Thank you. [AGENCY 46]

SENATOR NELSON: ...because you were the associate director, were you, or...?
[AGENCY 46]

MICHAEL KENNEY: No, actually prior to coming here, I was warden at the Omaha
Correctional Center. [AGENCY 46]

SENATOR NELSON: Okay. [AGENCY 46]

MICHAEL KENNEY: I've been warden, I've been warden a lot. I've been warden of
about six different facilities and I was a regional...what they call a regional commander...
[AGENCY 46]

SENATOR NELSON: Okay. [AGENCY 46]

MICHAEL KENNEY: ...up in Washington State for about two and a half years, and that
was a central office position, before I returned to Nebraska. [AGENCY 46]

SENATOR NELSON: I want to ask you a little bit about the Work Ethic Camp out at
McCook, which is a distance away. [AGENCY 46]

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MICHAEL KENNEY: Yes. [AGENCY 46]

SENATOR NELSON: According to what we have here, there's a capacity there or could be a capacity for 50 more beds, approximately. [AGENCY 46]

MICHAEL KENNEY: Yes. [AGENCY 46]

SENATOR NELSON: Is that going to entail some construction or anything? Do you have the space out there right now? [AGENCY 46]

MICHAEL KENNEY: No, those are just...I think we asked for three staff members to do that. We would add some beds. That is a light-security facility. It does have a perimeter fence and we would spend a little bit of money on that but mostly staffing for that facility. [AGENCY 46]

SENATOR NELSON: Okay. How's the medical handled out there? I mean assuming there are some medical needs, do you have someone on staff or do they go into the community? [AGENCY 46]

MICHAEL KENNEY: The medical out there is handled in the community and we don't have full-time medical staff out there. And so if an inmate is presenting significant medical issues, they probably won't...we have similar programs in Lincoln and Omaha for minimum-custody inmates,... [AGENCY 46]

SENATOR NELSON: Uh-huh. [AGENCY 46]

MICHAEL KENNEY: ...and so we can...we would not send people out to the Work Ethic Camp in McCook if they had...if they were presenting medical demands like that. They wouldn't go there. [AGENCY 46]

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SENATOR NELSON: If you could send 150 inmates out to the various county jails, would it work the same way as far as getting their medical in the community to the extent that they could? [AGENCY 46]

MICHAEL KENNEY: Yes, sir, we would, because we're still...those counties would not absorb those medical costs. That would be part of the agreement with them. And so again, we would not be sending the high-demand, medically needy inmates out there. [AGENCY 46]

SENATOR NELSON: And they're not high demand out at McCook either there. [AGENCY 46]

MICHAEL KENNEY: No. That's correct, they're not. [AGENCY 46]

SENATOR NELSON: Okay. So that's the perspective that you have to concern yourself with when you assign people out there for... [AGENCY 46]

MICHAEL KENNEY: Yes. [AGENCY 46]

SENATOR NELSON: Okay. All right. Thank you. [AGENCY 46]

MICHAEL KENNEY: Thank you. [AGENCY 46]

SENATOR MELLO: Senator Kintner. [AGENCY 46]

SENATOR KINTNER: Hi. [AGENCY 46]

MICHAEL KENNEY: Good afternoon. [AGENCY 46]

SENATOR KINTNER: Afternoon. Someone said earlier that we had a problem with the

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recidivism rate here and I wanted to ask you about that, because one of my county attorneys said that our state does very well, that we're one of the states with the lowest recidivism rate. What is the recidivism rate and how does it rank compared with other states? [AGENCY 46]

MICHAEL KENNEY: I'm thankful you asked because our recidivism rate is enviable by most states' standards. We have a 27 percent recidivism rate and we rank 8th in country in terms of best. We do better than 42 other states. So while every process can be improved and we want to target and improve our recidivism rate, we do well with recidivism. [AGENCY 46]

SENATOR KINTNER: Good. That...I guess my information was correct. Thank you. [AGENCY 46]

MICHAEL KENNEY: Okay. Thank you. [AGENCY 46]

SENATOR MELLO: Senator Nordquist. [AGENCY 46]

SENATOR NORDQUIST: Thank you. Just...and I don't know if before I came in if anyone asked about the growth in health costs. What, out of the \$23.5 million now, what are the main components of that, just staffing or is it prescriptions or acute services or...? [AGENCY 46]

MICHAEL KENNEY: It really is the, what I'm going to call, the accelerated deterioration of inmates above 50. We have...you can see the spike there and I've (laugh) I've lost my notes, but the number of inmates, when an inmate goes past his 50th year, his or her 50th year, the number of symptoms and the amount of medical attention, it spikes. It goes up. And keep in mind inmates, in general, require more healthcare. It, at the risk of stereotyping, I'll just say it's generalizing, criminalistic lifestyles are...we already talked about the amount of drugs and the number of substance abuse addiction habits that

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they have, high-octane lifestyles: motorcycles crashes, car crashes, intravenous drug use, indiscriminate sexual activity. Again, I don't mean to generalize all inmates and it would be unfair for me to do that, but from a statistical point of view, we do see a lot of that kind of... [AGENCY 46]

SENATOR NORDQUIST: Right. [AGENCY 46]

MICHAEL KENNEY: ...symptom and disease. And then, you know, livers breakdown earlier, bones and arthritis occurs earlier. It's just more prevalent in our population than it is in the standard population walking down the streets of Nebraska. [AGENCY 46]

SENATOR NORDQUIST: Right. Do you have any sense, and if not, maybe we can get it from you later, what percent out of that \$20 million is in services inside the correctional facility versus services that are performed at some outside medical facility? [AGENCY 46]

MICHAEL KENNEY: I don't, but I can get it for you. [AGENCY 46]

SENATOR NORDQUIST: Okay. That would be great. [AGENCY 46]

MICHAEL KENNEY: I know we break that down. [AGENCY 46]

SENATOR NORDQUIST: Okay. [AGENCY 46]

MICHAEL KENNEY: We treat as much as we can inside the facility because it's expensive for us, but again, we can't...we wouldn't want to hire a cardiologist full-time (laugh), you know. So we would, when specialties... [AGENCY 46]

SENATOR NORDQUIST: Right. [AGENCY 46]

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MICHAEL KENNEY: ...like that are needed, we do use outpatient services into the community. But we would be happy to break that down for you, you bet. [AGENCY 46]

SENATOR NORDQUIST: Thank you. [AGENCY 46]

SENATOR MELLO: Senator Wightman. [AGENCY 46]

SENATOR WIGHTMAN: Thank you, Director Kenney. Tell us...tell me a little bit about, you said you have 127 current vacancies, I think, and that over the past two years you've had as many as 153 or I'm not sure whether that last...I think the figure is correct but I'm not sure that's what you were talking about on the 153. [AGENCY 46]

MICHAEL KENNEY: We've averaged 153 vacancies over the last couple of years, so that's where I gave that figure. [AGENCY 46]

SENATOR WIGHTMAN: How many do you employ in a given year? Say we took this 123 that are current, if I'm right on that, 127. How many would you intend to employ or would you likely employ in the next six months out of those 127? [AGENCY 46]

MICHAEL KENNEY: Well, we believe we could employ, of the 127... [AGENCY 46]

SENATOR WIGHTMAN: That are current vacancies. [AGENCY 46]

MICHAEL KENNEY: That's a great question because it's never, it's never static. [AGENCY 46]

SENATOR WIGHTMAN: No, I'm sure that's correct. [AGENCY 46]

MICHAEL KENNEY: And so I would say if we averaged 153 as an average, then as we...I'm having a hard time. I want to answer your question but the...if we boost the

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number of employees by 59 and we keep about 7 percent of our employees are in that gap all the time, we will still have a net gain of the 59 employees. I don't think I'm answering your question but I'm trying to. There's no way we will ever be able to keep 100 percent of our employees on the docket at all times, employed. [AGENCY 46]

SENATOR WIGHTMAN: I'm certain that's true. [AGENCY 46]

MICHAEL KENNEY: So I don't...I think I did a poor job of answering your question. [AGENCY 46]

SENATOR WIGHTMAN: Well, do you know how many you employed, for example, in the last year? [AGENCY 46]

MICHAEL KENNEY: Oh, how many new. [AGENCY 46]

SENATOR WIGHTMAN: New employees. [AGENCY 46]

MICHAEL KENNEY: How many, our turnover rate, how many came in. I don't. I can tell you that we have staff training classes that are going on perpetually, sometimes twice a month. New hire classes, I just talked to one Monday, I guess that was the day before...no, anyway, and there were about 13 people in the room. The class before that there were about 27 people in the room. So we are consistently training new hires at our academy and, as I mentioned before, we...unfortunately, we find people who, for one reason or another, want to be employed elsewhere or they've retired or have gone away. [AGENCY 46]

SENATOR WIGHTMAN: And I think you indicated that sometimes it's the person that's been employed just is not able to do that kind of work, I think. How many of your employees that leave, in your opinion, would be for lack of...or for too little wages, too little compensation? [AGENCY 46]

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MICHAEL KENNEY: You know, I rarely hear people say this job just doesn't pay well enough. I think people leave because it's a tough business. If I can say so, we hold the performance bar very high. An inmate can call us anything but a human being and they'll be disciplined for it. But if we say something, we call them a profane name or something like that, there's discipline and it's swift in that we have to maintain that professional edge, like any other profession would. And so I don't think there are very many people leave just for compensation reasons. I think maybe the job wears on them and they think they find a greener pasture somewhere. And we wish them well and thank them for their service. We wish they'd stay. [AGENCY 46]

SENATOR WIGHTMAN: Do you have any idea how our compensation compares with, say, surrounding states for the type of work that they're doing? [AGENCY 46]

MICHAEL KENNEY: I think it's... [AGENCY 46]

SENATOR WIGHTMAN: Comparable? [AGENCY 46]

MICHAEL KENNEY: ...and I can't give you a figure, but I will say I'm certain it's comparable. I think we pay a livable wage and we pay overtime. We supply uniforms for a great number of the staff. We have the same benefits package that state employees have in terms of sick time and earned time and 401(k) plans and retirement plans. So there are a lot of advantages to working for us too. [AGENCY 46]

SENATOR WIGHTMAN: Thank you. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Wightman. Director, you just mentioned that if an inmate were to use some kind of derogatory language or expletives in respects to an officer, you guys would use discipline or there would be discipline on that particular inmate. Would that be...would that fall under the Administrative Procedure rule and

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regulations regarding the loss of good time then? Is that something that they would lose good time for that behavior? [AGENCY 46]

MICHAEL KENNEY: I think that would be a very rare case. Usually...a threat might be different from an insult. Calling somebody a name, I don't like to use the word "thick skin," but we've tried to develop the same professional demeanor so that...in fact, we've...one of the more exciting things we're talking about is doing motivational interviewing with inmates, getting more into a dialogical. I just walked by a class on the way here in our central office on CICR, crisis intervention and conflict resolution. Every single employee with inmate contact this year is going to go through that three- or four-day course. And so we're very much invested into the face time we spend with inmates. Now having gone a long way around the barn, I would just say that I don't think we would take good time for just an insult, because of what I just said. Now if somebody threatens a person or their family, and we think that that might be a viable thing, that's a little different animal and I...again, it's up to the decision of the disciplinary committee coordinator and they balance that against past precedent and our rule book and what other practices and what other people have done. But...and I don't know if that gets to your answer or not. Usually, they wouldn't lose good time for that. [AGENCY 46]

SENATOR MELLO: I think it kind of answers my question. But more to a bigger issue, if you could provide this committee a little bit, I would say, historical perspective or an historical analysis, I'll give you the last five years in regards to the administration's utilization of those Administrative Procedure Act rules and regulations regarding the loss of good time for inmates. I think that would be very helpful in respects to the ongoing policy dialogue as well as the fiscal dialogue this committee and the Legislature will have to have in regards to the department's utilization of those rules and regulations to be able to take away good time for an inmate's behavior. One last question and it dovetails, I think, off Senator Kintner's question regarding recidivism rates. I know that you had a staff member available in the presentation the Council of State Governments did and presented to Senator Ashford and other members of the Legislature's kind of

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working group, Justice Reinvestment working group. And the Council of State Governments gave us a completely different perspective on recidivism rates in which they said and their data showed that we actually had a very high recidivism rate, where we actually have a lower incarceration rate from people who are found guilty and go through the incarceration process. You just answered Senator Kintner's question saying we have one of the lowest recidivism rates in the country and a very enviable rate. If you could provide this committee, as well as the Judiciary Committee, your analysis and your data of how you guys have calculated our state's considerable low recidivism rate, that would be helpful in respects to, I think, the short- and long-term policy solutions. Because, and I'm more than willing to give you the benefit of the doubt in comparison to the Council of State Governments, but they provided, I thought, a much different perspective in regards to how we are currently dealing with recidivism in our state in comparison to other states in the country. So that question and dialogue was completely 180 degrees opposite what we heard from the Council of State Governments, and I want to give you the opportunity to share data with us to correct our record and, more than anything else, correct the public record, I would say, in regards to that issue. The only last question I had is, has the Governor sent a letter back to the Legislature or the Supreme Court in regards to the administration supporting a joint application to the Council of State Governments in regards to bringing them in for a Justice Reinvestment Working Team? [AGENCY 46]

MICHAEL KENNEY: I don't know. (Laugh) I don't know the answer to that. I might mention one thing. I'm very eager and curious to get to this disparity between the council and ourselves. Recidivism is supposed to be measured in a consistent standardized definition, which is the commission of a felony within three years after leaving department supervision. So I'm as curious as you are. I didn't realize...what I've understood is those folks have helped people go from recidivism, they've cut them in half,... [AGENCY 46]

SENATOR MELLO: Yeah. [AGENCY 46]

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MICHAEL KENNEY: ...you know, from 60 down to 30 and which is remarkable. And that's why we want to...we want to hear everything they have to say. But I didn't realize and so I'm caught off guard a little bit. I didn't realize that they were critical of our recidivism rate because these definitions are supposed to be applicable across the board and so that we're on the same definition. So I'm very interested in peeling that onion and finding that out. [AGENCY 46]

SENATOR MELLO: And if you could, since you do report directly to the Governor, if you could follow up with the Governor in respects to that request that I know the Legislature's Executive Board and the Chief Justice and Supreme Court made in respects to the executive branch, primarily through the Governor and the Department of Corrections, signing a joint application to Council of State Governments. I know Senator Ashford, myself, and others would look forward to receiving that letter so we can move forward with our joint application as a state to try to bring in the Council of State Governments' Justice Center to help work for a long-term solution. [AGENCY 46]

MICHAEL KENNEY: Right. Would you literally give me one second to turn around and consult because there are a lot of things that go on that I don't know. I don't know everything. Do we know? Okay. Well, that's fair enough. [AGENCY 46]

SENATOR MELLO: Okay. [AGENCY 46]

MICHAEL KENNEY: Sometimes other staff are aware of this and I just...so we will definitely find out... [AGENCY 46]

SENATOR MELLO: Okay. [AGENCY 46]

MICHAEL KENNEY: ...and we will definitely get back with you on that. [AGENCY 46]

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SENATOR MELLO: Thank you for your testimony today, Director. [AGENCY 46]

MICHAEL KENNEY: Okay. Thank you. [AGENCY 46]

SENATOR MELLO: Thank you. Is there anyone else here wishing to testify on Agency 46, the Nebraska Department of Corrections? [AGENCY 46]

MIKE MARVIN: (Exhibit 5) Good afternoon, Senator Mello, members of the committee. My name is Mike Marvin, M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees. We are the labor group representing most of the employees in the executive branch, including those at Department of Corrections. I really don't have prepared testimony for you today, but I want to do a couple things. I did give you a handout that talks about how things are going in the Chicago jails. This is not Nebraska jails, but I will get to how I feel that applies here very shortly. First things we do, and I understand your question, Senator Mello, about having the vacancies but yet why should you give them 59 new FTEs. We would support the 59 new FTE positions. On the 127 vacancies, I would ask you to maybe look at that through some different eyes. No dispersion cast on Director Kenney, but in the past we have found that when we asked about the number of vacant positions, they count the people who are in training as already being there and people who have been hired but not yet through training. So we don't get a truly accurate view of the number of vacancies. Now that may have changed in the few years that I was gone and they may be doing things differently, but that was my experience with it in the past. I don't have the director's data. What I have is state employees coming to me, telling me what their fears are, what their problems are, what we're seeing. We are hearing from our members, our employees that they are concerned that they are becoming a state mental care facility rather than a correctional facility. The director's numbers don't seem to bear that out but what we're hearing from our people are. And we also don't have the same standards of care that these state hospitals and mental facilities would have, and we have concerns about that. As to whether we have enough mental healthcare staff on duty there providing the

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programming that is necessary, our people are telling us that programs...the duration of programs are being cut down so that we can get people into the programs faster, which is exactly what the director said he doesn't want to do because the integrity of the program isn't there. But we are hearing that is what is happening. We were concerned that there was no money asked for in the mental health field. We wish you would look at that. With that being said, I really don't want to keep you any longer, but I would be happy to answer any questions that you have. [AGENCY 46]

SENATOR MELLO: Thank you for your testimony, Mike. Are there any questions from the committee? Senator Conrad. [AGENCY 46]

SENATOR CONRAD: Mike, and I know that you and the director can't probably comment on pending litigation, but from the employee perspective there has been some headlines recently in regards to some professional issues in relation of the Department of Corrections, and, in particular, I think there was a suit recently revived by the federal courts related to discrimination. And I'm wondering, have you had an opportunity to work with management to maybe address things from a proactive standpoint or is that case just pending and making its way through and separate and distinct from other issues? [AGENCY 46]

MIKE MARVIN: We have not had the chance to work with management on that. Now that...keep in mind the director, Kenney, is new. [AGENCY 46]

SENATOR CONRAD: Yes. [AGENCY 46]

MIKE MARVIN: And I am back new. [AGENCY 46]

SENATOR CONRAD: Yes. Yes. That's right. [AGENCY 46]

MIKE MARVIN: So, you know, Director Kenney and I have not actually met face to face.

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[AGENCY 46]

SENATOR CONRAD: Okay. [AGENCY 46]

MIKE MARVIN: We've talked on the phone several times over things. But, yes, and I imagine there is...we are willing to, you know, if the department is willing to, and we believe, just as like everywhere else in every department of state government, that our front-line people have a lot that could be shared that may address issues that could come up. We don't think they're utilized enough either here or by management.

[AGENCY 46]

SENATOR CONRAD: Yes. Very good. Thank you. [AGENCY 46]

SENATOR MELLO: Senator Bolz. [AGENCY 46]

SENATOR BOLZ: Thank you. You referenced your members sharing fears with you at times, and I was curious if any of those fears were related to the staff-to-inmate ratio given our overcapacity issues? [AGENCY 46]

MIKE MARVIN: Absolutely, they are, in particular at the Tecumseh facility. We've just added beds there recently. We don't think that the staff...and I don't have the numbers, wish I did, we don't have the numbers but we do feel that there are too many inmates and too few of our staff there. As you heard the director say, I think he said out of these 127 there are approximately 40 vacancies at Tecumseh. And with that, I also don't know how many of that hundred...the people that are in training now are being counted as Tecumseh employees. So, yes, we have...there is a great fear of that, and not only for our own safety but for our people care about the other inmates that are there, too, and the inmates' safety. [AGENCY 46]

SENATOR BOLZ: Thank you. [AGENCY 46]

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SENATOR MELLO: Is there any other questions from the committee? I've got one, Mike, and it was a question I think Senator Wightman was asking the director in respects to the actual front-line workers, the job responsibilities they have in respects to the salary that they're being compensated. Is that an issue you hear from front-line corrections employees that they would stay longer but the salary is, for what the arduous work that they do, the salary just doesn't compensate them? Is that something you hear? [AGENCY 46]

MIKE MARVIN: I'm going to echo the director's sentiment here. We don't hear that often. We do hear it some. We don't hear that often. As the director said, this job is not for everybody. Out of the people that are in these classes over here right now, I don't have those figures but I would be surprised if one year from now half of them are still employed, because a lot of them wash out during the training. Then, when they get into the facility, it's not their...what it is. So the problems are more...we'll always take more money. If you're willing to give us more money, we'll take it. (Laugh) But, yeah, I think the problems are more safety, security-related on the job. The mandatory overtime because of staff shortages has been a real issue at Tecumseh for many, many years and people just get fed up and leave. Those issues are probably the primary that chase us away. Now as to our wage and comparability, I have not seen a new comparability study yet. We're looking at it right now. The last one I saw had us right where we should have been on comparability for our negotiation purposes. [AGENCY 46]

SENATOR MELLO: Okay. That's very helpful. Thank you. Seeing no further questions, thank you, Mike. [AGENCY 46]

MIKE MARVIN: Thank you for your time. [AGENCY 46]

SENATOR MELLO: (See also Exhibit ___) Is there anyone else here to testify on Agency 46, the Nebraska Department of Corrections? Seeing none, that will close

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today's public hearing on Agency 46 and take us to our next agency, Agency 64, the Nebraska State Patrol. (Exhibit 6) The committee should have received a letter from Colonel Sankey in regards to the committee's preliminary budget for Agency 64, the Nebraska State Patrol. Is there anyone else here wishing to testify then on Agency 64, the Nebraska State Patrol? Seeing no one, that will close today's public hearing on Agency 64 and take us to our last agency of the day, Agency 78, the Nebraska Commission on Law Enforcement and Criminal Justice. (Exhibit 7) The committee should have received a letter from the Crime Commission in respects to the committee's preliminary recommendation. Is there anyone else here willing to testify on Agency 78, the Nebraska Commission on Law Enforcement and Criminal Justice? Seeing none, that will close today's public hearing on Agency 78 and that will end today's public hearings for the day. [AGENCY 46 AGENCY 64 AGENCY 78]