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Appropriations Committee
March 06, 2013

[AGENCY 46]

SENATOR HARMS: We will open up the Agency 46, Department of Correctional Services. Welcome. [AGENCY 46]

BOB HOUSTON: (Exhibit 6) Welcome. Thank you. Good afternoon. Good afternoon, Chairman Mello and members of the Appropriations Committee. My name is Bob Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services. Two years ago the department's budget was reduced by 2.4 percent or approximately \$4.2 million. The savings was to be achieved through the Parole Recommendation Plan by placing additional inmates on parole or in the reentry furlough program, hence lowering the inmate population in our facilities, which would allow our department to reduce staff and lower per diem costs. The population reduction required close cooperation with the Board of Parole, and ultimately realized an increase of 448 parolees from fiscal year '10 to fiscal year '12. However, increased admissions and longer sentences significantly hindered the population reduction. Specifically, the actual inmate population for fiscal year '12 was 4,609, nearly 600 more than the projected decrease. Due to the net increase in the inmate population, the scheduled closing of housing units in fiscal year '13 could not fully occur. With reduced funding in the fiscal year '13 budget, costs associated with operating staff in these housing units as well as the inmate per diem expenses necessitated our deficit request. The agency's deficit request of \$5.1 million was included in the Governor's and the committee's preliminary recommendations so thank you very much. This deficit request of \$5.1 million is comprised primarily of restoring positions, including treatment staff for the higher population and per diem cuts made in the fiscal year '11-13 biennium budget process. Inmate per diem costs include medical, food, and clothing expenses. Excluding salary adjustments, the Governor's recommendations on the department's biennium budget request reflect an increase of \$7.82 million in General Funds for fiscal year '14, an increase of \$9.05 million in General Funds for fiscal year '15. The committee's preliminary recommendations are materially similar. As evidenced by our budget detail,

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the bulk of the request is to restore funding to staff the housing units at Nebraska State Penitentiary that were not closed as well as reopen the unit at the Omaha Correctional Center that closed in 2011. Further, it restores treatment and facility staff associated with previous projected decreases in the inmate population. These staff positions are needed as the increased inmate populations put a strain on providing necessary services. Inmates typically require more medical, substance abuse, and mental health care than individuals in the community. For those inmates over 50 years of age, expenses are double those under the age of 50. Our department has over 800 inmates or 17 percent of the population over age 50, which has doubled in the last ten years. Similar to what is occurring nationally, our department is experiencing higher food costs. This is expected to continue into the coming years. Actually, the higher than anticipated population impacts the food budget, despite our cost per inmate meal being 97 cents. Our department heavily utilizes facility garden produce and opportunity buys to manage food costs. Included in your packet are two graphs illustrating the department's actual expenditures since FY '02, and those are attachments A and B. Admissions have outpaced facility releases over the past two years. The graph in your packet, the department's Design Capacity and Average Daily Population from 1982 to fiscal year...to that on attachment C provides a summary of the many key issues that impact crowding within our facilities: inmate incarcerated population, parolees, and design capacity. As the inmate population is expected to continue to increase, the department's capital construction budget includes the request to update our facilities master plan, develop program statements for capacity considerations. I have also included graphs to provide you with overall admissions, which is attachment D; institutional releases and how this impacts our capacity (Attachment E), as well as the offenses for which the inmates have been convicted (Attachment F). Our budget request provides the department with a solid, feasible base budget that funds our ongoing operations. The increase reflects a net of \$5.4 million over fiscal year '13 after the deficit funding is considered. [AGENCY 46]

SENATOR MELLO: Thank you, Director Houston. Are there any questions from the

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committee? I can't let you get off that easy, Bob. [AGENCY 46]

BOB HOUSTON: Oh, I mean I was ready to go, Heath. I'm sorry. [AGENCY 46]

SENATOR MELLO: Senator Bolz. [AGENCY 46]

SENATOR BOLZ: Well, I have two since these other folks are quiet this afternoon. I have some information here that says that there are currently over 1,000 inmates are parole eligible but are still occupying Department of Correctional Services beds. Can you just tell me a little bit about folks who are parole eligible that remain in Correctional Services and what we could do to more quickly move those folks into the community? [AGENCY 46]

BOB HOUSTON: Yes. And that's why we're working with our partners at the Parole Board. And, you know, under the best of circumstances we're going to have people that are eligible for parole that are still inside the institutions. What happens is a lot of those individuals, some of them, come in and they'll have a 3-50 year sentence so be eligible for parole after 18 months. But their sentence expiration date is 25 years out. So you're going to have those individuals in. The inmates that get those kind of spreads are often in on sex offenses or violent offenses, and so they become very difficult to parole. Also the time that they would serve on parole would be a considerable amount of time, even with the parole reductions in time. But then we have a number of individuals who we collaborate with the Parole Board on. Two of the Parole Board members, Ms. Roz Cotton, is doing an outstanding job with Esther Casmer, who was up here, empowering her to do this. She's looking at the front end options. And so when people come into our Diagnostic and Evaluation Center, we're fast tracking their evaluations so that the person that's doing the 3-50 gets slowed down a little bit. But we get the other individuals and we get them out on the reentry furlough program, get them out on parole, get them into a community setting as quickly as possible. The second part of it is, is that another board member, Rex Richard, is working with the board and with Ms.

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Casmer so that we can take a look at those individuals that fall, which is a considerable number of those individuals, that maybe have program things that need to be completed, can we move those program recommendations, can we move those into a community setting so that they can be paroled and complete the programs? Or are they of such a nature that they need to complete some programs before they are considered for parole? So those are the types of things that we collaborate with the board on.
[AGENCY 46]

SENATOR BOLZ: Well, perhaps in follow-up you can provide us with some more information about those programs that could most usefully help move folks into community corrections. I was noting in particular the violence reduction program has a very small capacity but sounds to me to be very useful. [AGENCY 46]

BOB HOUSTON: Yes. [AGENCY 46]

SENATOR BOLZ: So I'd be curious to hear more. I also have a question about the Diagnostic Center. [AGENCY 46]

BOB HOUSTON: Yes. [AGENCY 46]

SENATOR BOLZ: The information I have is that that's significantly overcapacity...
[AGENCY 46]

BOB HOUSTON: Yes. [AGENCY 46]

SENATOR BOLZ: ...and that that's a little bit of a bottleneck. So we're not getting folks moved into community corrections or other places that might have lower costs because of the time that's spent in processing them through that facility. Could you just tell me more about what's going on there and how we might be of help? [AGENCY 46]

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BOB HOUSTON: Oh, the processing there is not what holds...which is not why our capacity builds. Our capacity builds because they have to have someplace to move them to and we're crowded. We don't have places to move them to. We have housing unit J-1 which is being opened up very shortly. That will take 160 and we'll literally be able to move the equivalent of 160 people into that unit in very short order. We also have the Work Ethic Camp where we have LB313 in, and that will give us greater capacity. So those will directly impact the 517 inmates we had there yesterday in a facility that is rated for 160 inmates. In fact, if you survey the staff at DOC, they don't even know what the rate of capacity is. It's been so many years since we've been past it. But the reason that we...that load there is, and we don't like doing it, is that it's short term. So the inmates are very much inconvenienced, but it's for a shorter period of time.
[AGENCY 46]

SENATOR BOLZ: One last question if I may is I've heard some information about the Lancaster County facility that might be an opportunity opening up now that our prison is moving forward. I'm just curious if you've looked at that facility or see any potential in it.
[AGENCY 46]

BOB HOUSTON: Yes. We work...of course, I sit on the Jail Standards Board as well and also before I came to this job I was director of the Douglas County Department of Correctional Services. And so we have good partnership with Mike Thurber, with other jails. And there may be an opportunity two years from now for us to come back to you with plans surrounding that. We don't have funds available for that now. We know that when we open up housing unit J-1 and should LB313 go through that we're going to have some good opportunities there. Our average growth is a little bit over 100 inmates. In other words, the ones that come and go we grow by 100. And looking at this chart here, you can see that goes back to 1982; and so it's just been a steady climb of our inmate population. Well, that will be about two years of growth that we'll be able to accommodate at no further strain on the system. So that gets us two years out. When we come back in two years, you know, we're going to be looking at whether or not that

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growth has continued. Hopefully we see a downturn or a flattening out of this line because we think there's more parole possibilities and so that's why we're collaborating with the Parole Board. But thank you and that's something we'll keep in mind for the next time you see me. Well, I'll see you before then. [AGENCY 46]

SENATOR BOLZ: Very good. Thank you. Thanks for your information. [AGENCY 46]

BOB HOUSTON: Okay. Thank you. [AGENCY 46]

SENATOR MELLO: Director Houston, a couple points of and maybe it's one opportunity to clarify something that...it feels like it's been widely reported over the last couple of weeks from after a hearing in Judiciary Committee where a colleague of ours introduced a bill that discussed the overcapacity of Corrections...Department of Corrections. And I saw it again today in an editorial in the newspaper that said our state's current prison population is about 145 percent of capacity with more than 4,600 prisoners held in space intended for 3,175. When the prison population hits 140 percent of capacity, state law calls for a report to go to the Governor who can declare an emergency. Can you clarify that information? Are we at 145 percent of capacity? And if we are, is there a report that your department has given the Governor so far in regards to providing options for the state to reduce our capacity or the Governor would be able to declare an emergency? [AGENCY 46]

BOB HOUSTON: Yes, I submitted two letters to the Governor over the years, one in 2006 and one a few years later. We dipped...after 2006 we dipped down below and then when we came back up and stayed for 30 days, then I sent a second letter. In both of those letters I indicated, as I would indicate to the committee today, that our prisons are operating safely. And the reason that I say they're operating safely is based not only on my observations, you know, having been with the department for 38 years and watching safety, we're actually safer now than we were in 1982. And I expect that to continue. And the reason I indicated to the Governor that it was safe is that we've crowded as a

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strategy. Now we have the Diagnostic and Evaluation Center, which is maximum but it's short term. We have people, you know, sleeping on the floor there, but we're managing that as best we can. We have beds that are going to be opening up. But more specifically, over the years we've crowded as a strategy. We started with our community centers because that encourages paroles so we doubled the population of our community center in Omaha and our community center in Lincoln. The one in Omaha is built for 90; it has 180. The one in Lincoln was built for 200; that has 400. The next level up is the Omaha Correctional Center and housing units 6, 7, and 8 at the State Penitentiary. Those are minimum custody so those have been doubled in capacity. And so as our population creeps up, it will start moving into our medium and maximum security areas. Tecumseh, for example, you'll see is 100 percent. It's not beyond its capacity. The reason we did it that way is not only does it encourage paroles, but also inmates at lower custody levels are enticed by freedom. Inmates at higher custody levels are enticed by amenities. So if we can keep the amenities well in our high-security facilities and the community opportunities rich at the lower custody levels, we can ensure safety in our institutions. We recently had a situation where we had predatory and retaliatory gang situations, retaliatory behavior. We went to scheduled yards at our four highest security facilities. Where we did that the first was at the Lincoln Correctional Center. And since we've done that, we've cut in half the number of assaults at that facility over the last year and a half. We expect very similar results may come into fruition at the State Penitentiary that went to it in August of 2012 and at Tecumseh that went to it in September of 2012. And so there are things that we've done administratively and strategically to make sure to ensure that our prisons are safe, not just for the public but also for the inmates and our staff. [AGENCY 46]

SENATOR MELLO: Thank you for that clarification and that update, Director. One thing and it's something that I've spoken with a number of the members of the committee and I'm appreciative of your department working with the Supreme Court as well as Senator Ashford and others in regards to exploring the issue of what we can do policywise this session to reduce our overcapacity right now in the Department of Corrections. A

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question though I have and to some extent I know Senator Ashford and the Judiciary Committee is looking at an interim study at reforming Nebraska sentencing laws. A question that has come up and no doubt I know part of your leadership in regards to the Douglas County Reentry Initiatives Council is in our conversations on the council, where is reentry services I mean in the sense of...is that something that this committee and the Legislature should be evaluating further in regards to trying to assist on the back end, so to speak, of the overcapacity issue of trying to find or appropriating more funds to help ensure that ex-offenders don't reoffend and come back into the system? I know it's a conversation that's being had also in the Supreme Court and the Probation Office. But as it relates to the state budget and relates to trying to ensure that we don't continually have people coming through that revolving door, could you share some of your professional experience and insight in regards to if that's something that this committee and the Legislature should be taking a stronger look at moving forward on this issue?
[AGENCY 46]

BOB HOUSTON: Good. Well, thank you, Senator. If you don't mind, I'll speak more specifically about our department, which is kind of an example maybe that might be tutorial in other areas of reentry. There's three ways to reduce crowding inside institutions. One is front-end options, which would be the sentencing and so forth, who comes to prison. The second one is in process to make certain we have efficient processes inside of our institutions to move people towards the third; and that is back-end options. On the front-end options, I talk about parole board member, Ms. Cotton, and the work that she's doing, the work of my staff, collaboratively working towards moving those people through the system as quickly as possible. There are things before they come to prison, but that's out of my realm of discussion and expertise. The second part or the third part, and I'll come back to the second, are things at the end. Right now about 13 percent of our prison population is in community beds, 580 community beds. And that's about right size for departments that operate such as ours. The...we do have about 200 people waiting to get into those community centers. And so we're working with the Parole Board to start, you know, to continue to parole

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people so that those beds open up. And so we've...also our parolees are able to get into the day reporting center, the voucher programs. We've also resourced our parole officers, both in Omaha at the State Office Building and in Lincoln, Trabert Hall, so we have duly certified treatment providers, substance abuse. We've even taken some parole positions and upgraded those to social work positions, and we hire MSWs as parole officers so they have caseload plus they also can help with those transitions back into the community. We...and so I think any agency head that comes up here and says that they have all the resources that they possibly need probably check their mental health. And so I'm sure that I can say, you know, if you give me more resources here or resources there, but that would be an academic conversation. We really have what we need we think to carry out the mission of our department, to reduce our numbers, to position ourselves to see if this keeps climbing with the study that we have in the programs statement to see what we come back to you with two years from now. So, you know, do we have everything we want? Probably not, but who does, you know? But I think we have everything we need. [AGENCY 46]

SENATOR MELLO: Okay. Thank you, Director. Are there any further questions from the committee? Senator Nelson. [AGENCY 46]

SENATOR NELSON: Thank you. Director Houston, our Chair asked questions and got some of the answers that I had. And I'm sorry for getting in late. [AGENCY 46]

BOB HOUSTON: No, that's quite all right. [AGENCY 46]

SENATOR NELSON: I didn't get all of your testimony. I'm looking at attachment C here and you go on out to 2020 here at 188 percent, right? [AGENCY 46]

BOB HOUSTON: Yes, right. [AGENCY 46]

SENATOR NELSON: Okay. Where are you up against the wall here as far as getting in

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trouble for being too far above capacity? Is it 145, 146 or is there a number where you have to be careful? [AGENCY 46]

BOB HOUSTON: Well, what the courts look at when they look at us and we're one of a few departments, we have no court mandates to change our operations. We have no court mandates on crowding. We were the tenth agency in the nation out of a few hundred to achieve the Golden Eagle Award from the American Correctional Association, so we're 100 percent accredited. And the reason I give that as a baseline to indicate that the courts look at the totality of the circumstances of incarceration. And in all the cylinders, we look very, very good. We get high marks when auditors come in. The safety in our institutions is very good, not that violence doesn't happen and it's really unfortunate when it does. But for a correctional institution, we incarcerate...we're doing very well in all those levels. I would like to give you a number, but there's not a number out there. [AGENCY 46]

SENATOR NELSON: Yeah, okay. [AGENCY 46]

BOB HOUSTON: Now there's, you know, inmates of course, you know, they have opportunities to bring litigation and they do. And so we deal with those issues when they come along. But we think we're safe and we think that we're on track with the program statement that we have in, with the housing units that would open, with our partnership with the Parole Board. We think going into the future we're about where we should be. [AGENCY 46]

SENATOR NELSON: Okay, that's good. At the bottom of your first page here, testimony, if you have that there. [AGENCY 46]

BOB HOUSTON: Yes. [AGENCY 46]

SENATOR NELSON: The last paragraph, request to restore funding to staff the housing

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units at the State Pen that were not closed. [AGENCY 46]

BOB HOUSTON: Right. [AGENCY 46]

SENATOR NELSON: They were not closed physically but there was no staff in there. I mean what do you mean by that? [AGENCY 46]

BOB HOUSTON: That's a good question. I should clarify that. [AGENCY 46]

SENATOR NELSON: All right. [AGENCY 46]

BOB HOUSTON: Our biennium budget plan was to close 2.5 housing units, one at the Omaha Correctional Center because we had to close it for construction anyhow; one at the Penitentiary; and another half at the Penitentiary. We were not able to get our population down to the point where I felt that we could safely close those housing units.
[]

SENATOR NELSON: Oh, I see. [AGENCY 46]

BOB HOUSTON: And so we had to leave them open. So what we did was we had to vacate a similar number of positions and realize vacancy savings even though we knew our overtime was going to go up a bit and that's what we had to do to make up for keeping those housing units open. [AGENCY 46]

SENATOR NELSON: Okay. So I understand now. And then finds "Further it restores treatment and facility staff associated with the previous projected decrease." [AGENCY 46]

BOB HOUSTON: Yes. [AGENCY 46]

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SENATOR NELSON: So you cut back on staff but the decrease didn't happen. Was that... [AGENCY 46]

BOB HOUSTON: That's exactly right. [AGENCY 46]

SENATOR NELSON: Okay. [AGENCY 46]

BOB HOUSTON: We anticipated that as our population dropped the number of treatment providers that we had could drop also, but we didn't realize that. [AGENCY 46]

SENATOR NELSON: And so it didn't drop because of legislation we passed that increased penalties and kept people in longer and brought more people in. Is that about right? [AGENCY 46]

BOB HOUSTON: Well, you know, I can't say that. All I can say is there's really a lot of smart people we've had around since 1982. In fact, I'd been with the department eight years when 1982 started. And there's a lot of really smart people, a lot of very smart legislators that passed laws and did things to try to reduce our prison population, cause construction to happen. So it's really...it would be difficult to put your finger. We've been trying. We hired Dr. Robinson to put his finger on something. Hank, you haven't yet, have you? (Laughter) So we've really tried to see if there's something we could put our finger on and it's just not. It's a combination of a lot of things. [AGENCY 46]

SENATOR NELSON: Okay, a combination of a lot of things and it just...you weren't able to decrease, yeah. [AGENCY 46]

BOB HOUSTON: Right. [AGENCY 46]

SENATOR NELSON: Well, it's comforting to know that you planned far enough ahead

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that you can shift things and keep things where you feel that things are safe so.
[AGENCY 46]

BOB HOUSTON: Yes. [AGENCY 46]

SENATOR NELSON: Thank you very much. [AGENCY 46]

BOB HOUSTON: Thank you. [AGENCY 46]

SENATOR MELLO: Senator Wightman. [AGENCY 46]

SENATOR WIGHTMAN: Thank you, Senator Mello. Thank you for being here, Director Houston. [AGENCY 46]

BOB HOUSTON: You bet, thank you. [AGENCY 46]

SENATOR WIGHTMAN: I thought I heard some figures recently or maybe in the last few years that maybe our prison population as a percentage of our total population has been higher than some of the surrounding, most of the surrounding states. Is that correct or? [AGENCY 46]

BOB HOUSTON: Actually, not really. We have one of the lowest, one of the lower...I shouldn't say lowest, one of the lower incarceration rates in the nation. And our incarcerated population as a percentage to our population is quite low compared to larger states with larger metropolitan areas. It's really the deterioration of the inner cities that causes a lot of increase in prison populations and in crime. We have our challenges obviously that you know as well as I do in Omaha and Lincoln, but we're not...you know, we don't have the big city issues that other states have. And I think that along with very credible criminal justice system and very smart people that are politicians and legislators has kept that rate low. [AGENCY 46]

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SENATOR WIGHTMAN: Has our increase been fairly high over the last...of course you have the figures that show what the increase in prison population has been, but has it been higher than normal over the last several years? [AGENCY 46]

BOB HOUSTON: Well, you know, the more bills the faster it climbs. But it's been a steady increase as the chart will show and it just continues to rise. [AGENCY 46]

SENATOR WIGHTMAN: More so than, say, if we took the last five years would it be comparable to say the previous five years as far as growth in prison population? [AGENCY 46]

BOB HOUSTON: Well, one of the things...one of the figures I gave was is that we had, in the second paragraph, we realized an increase of 448 parolees. And so really the Parole Board has helped bump down that increase. It's steadies...you know, the steady climb is more attributable to us getting more and more inmate numbers into the system. More time...not a big, but it's more the number of people that we get in than the time they serve that is causing that increase in the population. But our partners with the Parole Board have helped us by paroling more people. We think there's more groundwork that can be done in collaboration with the Parole Board to help level that out. And with our program statement in there, and Doug Hanson is here who helped author that, we clearly indicate in there that we still want to do everything we possibly can to flatten this line out so that if we do have to come back to you for capacity increases it's just at the amount we need, not more. [AGENCY 46]

SENATOR WIGHTMAN: Thank you, Director. [AGENCY 46]

SENATOR MELLO: Are there any further questions? Seeing none, thank you, Director Houston. [AGENCY 46]

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BOB HOUSTON: Okay, you bet. Thank you very much. [AGENCY 46]

SENATOR MELLO: Are there any other testifiers on behalf of the Nebraska Department of Corrections, Agency 46? Seeing none, that ends the hearing then on Agency 46 and ends the committee hearing for the day. [AGENCY 46]