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Rough Draft

Department of Correctional Services Special Investigative Committee  
October 28, 2016

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[LR34]

The Department of Correctional Services Special Investigative Committee met at 9:00 a.m. Friday, October 28, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR34. Senators present: Patty Pansing Brooks, Vice Chairperson; Kate Bolz; Colby Coash; Laura Ebke; Heath Mello; Adam Morfeld; Paul Schumacher; and Matt Williams. Senators absent: Les Seiler, Chairperson; Ernie Chambers; and Bob Krist.

SENATOR PANSING BROOKS: Okay, good afternoon...or good morning, sorry, and welcome to the LR34 Department of Correctional Services Special Investigative Committee. My name is Senator Patty Pansing Brooks and I represent District 28, legislative district right here in the heart of Lincoln. We'll start off with having the members all introduce themselves. Let's start with Senator Williams on my right. [LR34]

SENATOR WILLIAMS: Matt Williams, Legislative District 36. [LR34]

SENATOR COASH: Colby Coash, District 27 here in Lincoln. [LR34]

SENATOR MORFELD: Adam Morfeld, District 46. [LR34]

STEVE LATHROP: Steve Lathrop, committee counsel. [LR34]

OLIVER VanDERVOORT: Oliver VanDervoort, committee clerk. [LR34]

SENATOR SCHUMACHER: Paul Schumacher, District 22. [LR34]

SENATOR EBKE: Laura Ebke, District 32. [LR34]

SENATOR BOLZ: Senator Kate Bolz, District 29. [LR34]

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SENATOR PANSING BROOKS: Thank you all. Today we will be hearing testimony as it relates to programming in the correctional system. We will begin today with testimony from Deputy Director Mike Rothwell and he is deputy director for programming...for programs and community services. And following Deputy Director Rothwell we will have Director Frakes testifying. We would ask if you have any handouts, either of you, that you please have at least 12 copies and hand them to the clerk. And if you need additional copies, the pages, who will be here at some point I think, can help you make more. Each testifier is invited to give an opening statement and then we will go into questions and answers first from our Legal Counsel Steve Lathrop and then from the rest of the committee. We ask everybody to start by giving your name and spelling it for the record, and also please remind everybody in the audience to turn off their cell phones. And with that, we'll begin LR34 hearing. I'd like to invite Deputy Director Mike Rothwell from the Nebraska Department of Correctional Services to come. Thank you. Thank you for being here. [LR34]

MIKE ROTHWELL: Thank you. [LR34]

SENATOR PANSING BROOKS: And we now have Senator Mello with us as well. [LR34]

MIKE ROTHWELL: Feel I'm at the little kids' table for Thanksgiving (laughter). Good morning, Senator Pansing Brooks and members of the LR34 Committee. My name is Michael Rothwell, R-o-t-h-w-e-l-l, and I am the deputy director for programs with the Nebraska Department of Correctional Services. Thank you for the opportunity to discuss NDCS correctional programs. A systems approach to managing inmates throughout their incarceration is important to create a safe correctional environment and enhance the likelihood inmates will succeed in the community. The process begins at reception where the risk assessment is administered and reentry planning begins. I've provided a flow chart outlining the steps in the process from intake to participation in vocational and life skills programs after release. The STRONG-R is an actuarial risk assessment tool that is utilized to identify an offender's programming needs and assign them to programming based on their risk to reoffend. High-risk inmates will be referred to clinical core risk-reducing programs; medium-risk inmates will be referred to nonclinical programs; low-risk inmates will be able to participate in programs as space is available. An individualized case plan will be developed from the information obtained from the STRONG-R

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and other assessments performed at intake. At intake the STRONG-R risk assessment, adult basic education testing--which is the Test for Adult Basic Education, the TABE test--case plan classification, and all related assessments will be completed within 90 days. The current classification tool is also being revised to more appropriately identify an inmate security risk while incarcerated. The instrument will be beta tested on 500 inmates to determine accuracy and effectiveness before going systemwide in early 2017. It is critical that inmates have the right custody level and are assigned to the right facility for program participation. The case plan will utilize the information from the STRONG-R and other assessments to provide the inmate with specific programming recommendations. The goal is to have inmates placed in appropriate risk-reducing programs earlier in their sentence rather than later. NDCS recently participated in the Justice Program Assessment, a six-month review by the Council of State Governments Justice Center staff which reviewed NDCS programming options and made recommendations to improve the process utilized to identify programming needs and complete programming prior to parole eligibility. The JPA included recommendations related to who should receive programming, how program assignments are made, capacity for risk-reduction programs, and tracking outcomes over time. NDCS has been working closely with CSG on implementation since the report was issued in June. This collaboration will continue for the foreseeable future while NDCS continues to implement the JPA recommendations and improve the capacity to analyze and evaluate the quality of programs provided to inmates. I will briefly discuss the JPA recommendations and how the department is implementing them. Under assessment they said streamline the assessment process to direct people into programs more quickly and make program assignments based on an individual's risk, needs, and time to parole eligibility. We have selected a risk assessment--the STRONG-R--trained staff, and are beginning to utilize it at intake facilities to make programming recommendations based upon the inmate's risk to reoffend. The STRONG-R is also helping to streamline the assessment process by identifying criminogenic risk and needs. This helps determine what other assessments are necessary rather than having every inmate receive assessments up-front. Programming: modify programs to allow multiple need areas to be addressed simultaneously and extend capacity by adding to the array of core risk-reducing programs--example, cognitive behavioral interventions that address criminal thinking--and increase how often they are provided. NDCS is revising its case plan to move people into programs earlier in their sentence and allow multiple criminogenic needs to be targeted. Training on the new case plan is scheduled for November 7 and 8. The capacity for

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cognitive behavioral interventions has been increased with the introduction of Thinking for a Change at WEC and NCCW. NDCS has also identified two new cognitive programs--Beyond Anger and Living in Balance--which will be delivered by nonclinicians to medium- and low-risk inmates. We expect to begin program delivery at the Lincoln Correctional Center and the Work Ethic Camp in the near future. Quality assurance: develop a system to monitor program delivery and outcomes over time. A position of program manager for nonclinical programs has been requested to oversee this function. NDCS also has a data analyst working to improve data collection and integrity for both clinical and nonclinical programs, assist with the development of outcome measures, and perform data analysis so that we can continue to improve program delivery and quality. I have provided a handout which provides a description of nonclinical programs currently available or soon to be available within the department. These core programs will be offered by nonclinical staff which includes case managers, caseworkers at some facilities. During rollout, we will have clinicians work with the new staff to ensure fidelity to program models. These cofacilitated groups will last long enough to enable the respective staff to develop confidence and proficiency. A small cadre of potential trainers will be identified for future training and expansion. To assist in the development of our case management system, CSG is helping NDCS create a case management academy. This will provide staff the foundation in evidence-based practices and skills necessary to succeed. The academy will offer intensive training in the complexities of case management, including such topics as motivational interviewing, case management principles, cognitive behavioral interventions, and core correctional practices. I also need to mention our reentry unit which helps inmates prepare for release by identifying the needs and challenges inmates face at discharge and connecting them with community resources. Reentry planning is fluid based on an individual's needs and risks. Reentry specialists meet with inmates at intake to provide orientation and interact with them periodically throughout their incarceration. At 120 days prior to release, they meet with each inmate to provide support in a variety of areas including housing, mental health, employment, education, transportation, recreation, and spiritual needs. Reentry specialists also assist inmates in establishing prosocial connections, family reunification, and personal well-being. The reentry process is essential to long-term recidivism reduction, as it gives the inmate an opportunity to have a say in their release plan and prepare for successful reentry to society. July 1 was the beginning of a new grant cycle for the Vocational and Life Skills Program. Five grantees from the previous grant cycle were awarded new grants: the Center for People in Need; Mental Health

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Association; Metropolitan Community College; ResCare; and Western Alternative Corrections. In addition, three new grantees were awarded: Associated Builders and Contractors; Williams Prepared Place, also known as Hope of Glory Ministries; and ReConnect. In addition to providing service to probationers, parolees, and former inmates, the Vocational and Life Skills Programs will be serving participants in all ten NDCS institutions--which is a significant increase from the four facilities where services were previously available. I have provided a handout describing the services offered through the Vocational and Life Skills Program. By taking a systems approach to develop sound correctional programming we incrementally add components over time, much like the building blocks used in the foundation of a home. The process starts with assessment, case planning, program referral, holistic programming, program monitoring, reentry planning, and discharge into the community. We must be deliberate in the planning and implementation of correctional programs so that we reduce idleness with valuable prosocial activities that keep people safe and reduce the likelihood that the inmate will return to prison. Thank you for the opportunity to testify, and I would be happy to answer any questions that you may have. [LR34]

SENATOR PANSING BROOKS: Thank you, Deputy Director Rothwell; appreciate it. And we have Steve Lathrop as our attorney, so thank you. [LR34]

STEVE LATHROP: Good morning. [LR34]

MIKE ROTHWELL: Good morning. [LR34]

STEVE LATHROP: Thanks for being here. Can you give me some background on your background? Are you...were you recently... [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: ...hired for this post? [LR34]

MIKE ROTHWELL: I started my career in probation and parole on June 1, 1974, in Tennessee, rural east Tennessee. I worked there for several years and then moved into our institutions. I was

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a warden at Tennessee's maximum security prison Brushy Mountain for a period of time. I've been a warden in Texas, North Carolina. In 2003, Governor Blagojevich hired me to reopen Sheridan Correctional Center in Illinois, which had been closed, and make it a national model for substance abuse programming for offenders. All 1,300 beds were dedicated to treatment and offenders were engaged six hours a day in constructive programming. I've also had the opportunity prior to coming here last September to spend 20 months in Afghanistan as part of the Bureau of International Narcotics and Law Enforcement Affairs working with the embassy and trying to make the prison system in Afghanistan more humane and safer. [LR34]

STEVE LATHROP: Okay. So most of your background in programming, well, of course, coming from probation and parole in Tennessee but also working on substance abuse in Illinois, trying to make that a model, that's where you got your background in programming. [LR34]

MIKE ROTHWELL: Well, actually, in 1991 Governor...I was in Texas and Governor Richards put forth a plan to convert 2,000 in-prison beds to chemical dependency treatment facilities and another 10,000 what they were calling substance abuse felony punishment facilities. And I was working for Wackenhut at the time, GEO it's now called, and I was in charge of developing the RFP response to convert a prerelease, 500-bed prerelease facility into a totally dedicated substance abuse facility. So I did that in Texas and then in North Carolina I converted a 300-bed community corrections facility into a totally dedicated programming facility. [LR34]

STEVE LATHROP: Okay. And when we talk about programming, that can be everything from violence reduction programming... [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: ...teaching inmates a different way to not engage in violence, to teaching them culinary skills. [LR34]

MIKE ROTHWELL: That's a vocational program, yes. [LR34]

STEVE LATHROP: Right. So that's sort of the array. [LR34]

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MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Some of them are more important in terms of trying to rehabilitate them and make them parole ready than others. Would you agree with that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. I want to talk to you. And I know I'm rehashing this but I think as a matter of a beginning point, the role in programs in the Department of Corrections, the first thing that they do is they provide the inmate with some rehabilitation while they're there. Would you agree with that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: So we may take somebody who has domestic violence problems, put them through a program, and the idea is that if they take to heart the skills, that they learn the lessons and the programming, that they're less likely to engage in domestic violence once released. [LR34]

MIKE ROTHWELL: Theoretically, yes. [LR34]

STEVE LATHROP: Okay. Well, these programs, if they're done correctly, they're going to work most of the time. [LR34]

MIKE ROTHWELL: Yes, but there's also a key component that is more effective and that's having a period of 90 days of aftercare in the community where offenders continue working on the...what they began inside so you have this seamless continuum to the community that builds on that. [LR34]

STEVE LATHROP: And maybe you make a good point because programming starts inside the Department of Corrections while they're inmates but the idea is that once released, if we have any control over them at all, as in they've been released on parole or we have some follow-up

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leverage with the inmate, they're going to engage in this programming or some version of it once they're released. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: That's the plan or that's the idea. And with that rehabilitation that comes from the programming we're also going to put these people in a position to be paroled. Is that true? [LR34]

MIKE ROTHWELL: That's the idea, yes. [LR34]

STEVE LATHROP: And we had a hearing I think two hearings ago where we had folks from the Parole Board here and what we learned from that hearing and maybe understood even before those folks testified is that when people present to the Parole Board, they have to have had their assessments and they have to have had a certain amount of programming complete. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: So programming is what we want done, besides behaving themselves and demonstrating some ability to follow the rules inside the Department of Corrections? We also want them to go through these programs so that we have confidence--"we" in this case the Parole Board serving as a gatekeeper for public safety--that these folks are going to not present a risk or present the least amount of risk that we can accept in releasing them early. [LR34]

MIKE ROTHWELL: Yes, sir. [LR34]

STEVE LATHROP: And Parole Board, as I understand it, is looking through the folder of these inmates to see if the boxes are checked for programming. [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: So programming serves an important function not just for rehabilitation but when they get over to the gatekeeper, the Parole Board, they have to have had a certain amount of programming completed. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And you would also agree with me that the use of parole is important for two reasons. One is it allows the Department of Corrections...or, rather, that Parole Board to have some follow-up with the inmate once they're released. [LR34]

MIKE ROTHWELL: Yes, sir. [LR34]

STEVE LATHROP: Is that true? And we also know that when that happens we lower recidivism. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Okay. So in the perfect world people aren't jamming out, leaving with no programming, going straight into the community where they're more likely to reoffend; but in the perfect world we'll have more people who parole out where we can follow them after they've been released and make sure that they're on the right path. [LR34]

MIKE ROTHWELL: Yes, sir. [LR34]

STEVE LATHROP: Okay. So we can agree on that. It's also important, parole, in terms of trying to reduce overcrowding at the Department of Corrections. Would you agree with that? [LR34]

MIKE ROTHWELL: That is the release mechanism for that purpose, yes. [LR34]

STEVE LATHROP: Yeah. Yeah. So when we have inmates, and I think we have about a third of them right now who are past their parole eligibility date who are still incarcerated, many of whom are waiting on programming, would you agree with that? [LR34]

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MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: That's a troubling statistic. [LR34]

MIKE ROTHWELL: It is. [LR34]

STEVE LATHROP: Okay. And when we talk about the reforms that you're going to undertake or that you were brought here to implement at the Department of Corrections, those are the goals. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: One more, and that is the director testified when we were talking about overcrowding and assaults on staff that part of the problem with respect to the assaults on staff and I...every...it seems like every day I open the paper, I'm reading another in the World-Herald on like the second page of the Midlands. It's like the Department of Corrections update for me. And by the way, I see they got a new medical director today--that's great. But about every other day I'm reading about a new assault. Right? We're having frequent assaults on staff at the Department of Corrections. [LR34]

MIKE ROTHWELL: I don't know if I'd characterize it as frequent but we have...we do have assaults. [LR34]

STEVE LATHROP: Well, it seems like I'm reading about two a week in the paper anyway. And the director indicated that the absence or the lack of sufficient programming is a contributing circumstance to the assaults on staff. [LR34]

MIKE ROTHWELL: That is one of many contributing circumstances. [LR34]

STEVE LATHROP: Certainly there's a lot of things that go into that, including people exercising their own free will, but being idle and not having programming is a contributing circumstance. [LR34]

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MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: So to put programming in context, it is the solution to paroling more people which is the goal; it is the solution to alleviating overcrowding; and it is also part of the solution to alleviating or reducing assaults on staff. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: You can agree with all of that. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. So I want to talk to you about the programming that's available. And you provided us with a sheet which I think is important. This demonstrates sort of the steps from the time you walk in the place until the time you leave. [LR34]

MIKE ROTHWELL: Yes, sir. [LR34]

STEVE LATHROP: And the first thing that happens is intake and then a case plan is developed, then there's case management. We try to figure out what programming they need, then we try to line it up so that they get it done before they're released. And then there's the reentry and some parole postrelease things that take place. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: With respect to the programming, when an individual comes into the Department of Corrections currently, like as of this summer, they begin with an assessment that's called the STRONG-R. Is that right? [LR34]

MIKE ROTHWELL: Actually we started implementing the STRONG-R July 5 at DEC. [LR34]

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STEVE LATHROP: Okay. And the idea is that an individual needs...the department needs to know what their risk is to the recidivate, right? [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: That true? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. I'm a lawyer and so I'm going to make sure your responses are audible so that the record...it's my habit. Okay? So it's not meant to be rude or condescending. When you have an individual that comes in now, since July 1 they're getting the STRONG-R. Are you able to implement that plan? And are folks coming in since July 1, is every single one of them getting the STRONG-R or you're running behind? [LR34]

MIKE ROTHWELL: They're getting the STRONG-R. Our most recent admittees, I think we're at like 40 days, 35 to 40 days, so we are a little behind with our most recent admissions. But throughout that period as we were ramping up, we were getting everybody coming in. [LR34]

STEVE LATHROP: Okay. How many people do you have dedicated to that task? [LR34]

MIKE ROTHWELL: We've trained 120 staff and I did not bring my numbers. I think we have nine at DEC that are dedicated to doing STRONG-R assessments (inaudible). [LR34]

STEVE LATHROP: Is that...are those people dedicated just to doing the STRONG-R assessment? [LR34]

MIKE ROTHWELL: No, sir. No, they do...they have other job responsibilities. [LR34]

STEVE LATHROP: Okay. And we're going to talk about some of the evaluations of programming. And I get that you're here to make changes, but I want to talk about some of the things that are going on as you arrived, or may be still going on, and one of them, one of the

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critiques that I read, and it may have been in the JPA, was that we need people dedicated to the process of doing the STRONG-R assessments and not folks that have a variety of responsibilities. Would you agree that that's part of the criticism? [LR34]

MIKE ROTHWELL: I don't recall seeing that in the JPA. [LR34]

STEVE LATHROP: Okay. [LR34]

MIKE ROTHWELL: I remember they addressed the importance of having a risk assessment. [LR34]

STEVE LATHROP: And dedicated staff to do it. [LR34]

MIKE ROTHWELL: Okay. [LR34]

STEVE LATHROP: So you said you have nine people? [LR34]

MIKE ROTHWELL: I believe so. I'd have to... [LR34]

STEVE LATHROP: At D&E? And does that permit you to get them, get people the STRONG-R assessment as of July 1, within 90 days? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: That's your goal. [LR34]

MIKE ROTHWELL: Well, actually the goal for the STRONG-R is to get that completed within 30 days and then any follow-up assessments--mental health assessments, substance abuse assessments, whatever--have that completed within a total of 90 days. [LR34]

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STEVE LATHROP: Okay. What was going on before July 1? What was...how were we assessing the risk to reoffend before we started this process of implementing the STRONG-R assessment? [LR34]

MIKE ROTHWELL: Sort of two things were going on. The system was a back end-loaded system basically. And clinicians and others were waiting closer to somebody's TRD or parole eligibility date to begin the assessment process and refer them to clinical programs. And what we observed through that process is a lot of times somebody would be assessed as needing a particular program and they didn't have time to complete it. So we're flipping to a front end-loaded system so that everybody is assessed and screened in the first 90 days. And then what we're going to do is take their parole eligibility date, walk it back to their date of admission and divide it into thirds so that the first third you might get more reconnection therapy; the second third Beyond Anger, you know, InsideOut (Dad); in the final third you get Living in Balance, Thinking for a Change, so that... [LR34]

STEVE LATHROP: Okay. [LR34]

MIKE ROTHWELL: ...we're getting people before their parole eligibility date. [LR34]

STEVE LATHROP: So my question though had to do with what were we doing before the STRONG-R and I get...it sounded like your answer was telling me that a lot of these people weren't getting assessed until we saw them getting closer to their either parole eligibility date or their jam out date. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Okay. And so one of the things we're going to try to do differently is do the STRONG-R within 30 days. [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: Now you're telling me that your...you started out on schedule to get them completed within 30 days and now you may be to 40 days, so a little bit of a lag in terms of how quickly you can get those done. Tell us why that is. [LR34]

MIKE ROTHWELL: Just staffing issues, staffing concerns. [LR34]

STEVE LATHROP: What are they? [LR34]

MIKE ROTHWELL: Well, case managers often are called to work the floor. They do MRT classes; there's other demands. We're working closely with the staff at DEC to look at what are some of the competing events that are causing the delay. And we're working with the associate warden there to come up with ways to help. One of the things that we've done is we have an education teacher who is doing MRT so that frees up the case manager that was doing MRT to focus more on the STRONG-R. [LR34]

STEVE LATHROP: So you've identified a staffing issue and let me ask you a question. What you have described is the people that do the STRONG-R assessment have other responsibilities. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: And the goal is to have them complete the STRONG-R within 30 days, gives us a picture of their likelihood to reoffend. And now we're up to 40 days and that's because these people are getting pulled off of the STRONG-R assessments to do other responsibilities. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Have you identified how many more of those people we need to hire so that we can get to a place where we're getting these done within 30 days? [LR34]

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MIKE ROTHWELL: Well, I think as we move forward and add more custody positions to the department over the next couple years, that will allow us to repurpose some of the case managers to not only do the STRONG-R but to deliver programming. [LR34]

STEVE LATHROP: So some of the case managers are doing corrections officer tasks, is that what you're saying? [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: And as we hire more corrections officers, assuming we can, then we'll have more case managers available. We'll just shift them over to doing things like the STRONG-R. [LR34]

MIKE ROTHWELL: And also, of the 120 folks that we have trained, we're going to be putting together what I call circuit riders. Those are case managers from other facilities who will be identified to then, if we get a call from DEC saying, hey, we're getting backed up, we need help, we can send them in and help them do the STRONG-Rs. [LR34]

STEVE LATHROP: Okay. Once you get the STRONG-R done, it's been done properly, it's been done by somebody...and this is like a two-hour deal, isn't it? [LR34]

MIKE ROTHWELL: It's about an hour and a half to two hours. [LR34]

STEVE LATHROP: Okay. [LR34]

MIKE ROTHWELL: As they become more proficient, it should be able to be done in an hour. [LR34]

STEVE LATHROP: But these are questions the inmate is being asked. The assessment then tells you the way they answer the questions. The assessment then tells a trained person whether they are high risk to reoffend. [LR34]

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MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: And the high risk to reoffend are the people we need to pay attention to. [LR34]

MIKE ROTHWELL: They're the most important. You want to address the high risk and the medium risks both. [LR34]

STEVE LATHROP: Okay. Okay. What else are we going to learn from the STRONG-R besides their risk to reoffend? [LR34]

MIKE ROTHWELL: I think we'll learn in terms of percentages. If you look at where the department was in assessing people coming into the system, mental health and substance abuse folks were assessing everybody. So now we can look at the STRONG-R and, for example, say, okay, only 21 percent show a high risk for violence, so we're going to focus on that 21 percent rather than 100 percent. And so that will allow them to be more strategic in how they assess those particular individuals for further programming. [LR34]

STEVE LATHROP: Does the STRONG-R tell you what their programming needs are going to be or just... [LR34]

MIKE ROTHWELL: It makes recommend...I'm sorry. [LR34]

STEVE LATHROP: ...or just that we need to pay attention to this person because they're a high likelihood to reoffend? [LR34]

MIKE ROTHWELL: It makes recommendations in terms of the highest risks to reoffend that need to be addressed. And then part of the case management process would be looking at their length of sentence and time and then making sure that we refer them to the appropriate risk-reducing programs. [LR34]

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STEVE LATHROP: But there's another assessment that happens that's some kind of a clinical assessment... [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: ...where they sit down with a person and ask them questions and go through their circumstances and find out does this person need to be in domestic violence reduction, do they need to be in violence reduction, do they need to be in substance abuse. And that happens in a clinical assessment. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Does the STRONG-R tip the Department of Corrections office...the Department of Corrections off as to whether or not somebody has a substance abuse problem? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. So we're going to get a picture but not a complete picture on what programming they need. [LR34]

MIKE ROTHWELL: That's correct. [LR34]

STEVE LATHROP: And then we're going to ship them off to, or their next stop in this process would be a clinical assessment by the appropriate outfit. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: That might be substance abuse, it might be violence, it might be you name it,... [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: ...okay, sex offenders. So you started the STRONG-R in July. Before that you were waiting until people got closer to their release date. And I mean...when I say "we," I mean the department and not you. You weren't doing it because you weren't here. Right? But the process was that we weren't doing the equivalent of a STRONG-R assessment until people were getting closer to their release date. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: So I can only assume that we have a whole bunch of people that haven't had any kind of an assessment for risk because we weren't doing it until they were getting closer to their release date and now we're trying to do it at the front end. Right? And so do we have a bunch of people that are down there incarcerated for whom we've yet to do an assessment for their risk to reoffend? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. Can you give us an idea what that number looks like? [LR34]

MIKE ROTHWELL: No, sir, I don't have that number. But what I can tell you is that the ones who have been most recently trained in the STRONG-R, I held a meeting with the unit administrators this week to talk about starting work from the back end so that we're moving from the back end and the front end and we'll catch them in the middle. So we're looking at folks who are within one year of release and those closest to release so we can do a STRONG-R and try and make appropriate program recommendations. [LR34]

STEVE LATHROP: Okay. And I'm going to repeat this. I appreciate that you just got here. Right? You didn't create the problem yourself. But the difficulty with that is, and we'll talk about it in a little bit, is if somebody isn't getting their assessment to determine whether they're going to reoffend or they're likely to until a year before their parole eligibility date, the difficulty with that is we may identify that they are high risk, they need substance abuse, and they need violence reduction programming--none of which they can get in before their parole eligibility date and may not be able to get it in before their jam out date. [LR34]

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MIKE ROTHWELL: Well, we may be able to address, and it's within a year, not over a year, we may be able to address some of their criminogenic risks, looking at the most, the highest risk and referring them to a program that would meet that particular need. [LR34]

STEVE LATHROP: Right. But the...we're here to talk about needs ultimately and the only way we can address that is to understand the problem. And as I read the report done by Ms. Alvarez and the JPA, both of those suggest that the difficulty with where we're at today with respect to assessments is we have maybe it was a cost-cutting measure, maybe somebody thought this was the way to do it, but we were keeping an eye on people's parole eligibility date and then doing an assessment for their risk, whatever the predecessor was of STRONG-R, then perhaps a clinical assessment and we discovered this person needs to be in one of the sex offender treatment programs. Right? [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: And it's a problem for two reasons: 33 percent of people at the department were coming up on...within a year of their parole eligibility date, didn't have the programming done they needed to be released on their parole eligibility date. True? [LR34]

MIKE ROTHWELL: True. [LR34]

STEVE LATHROP: And the other problem was, and I have the statistics here, at the outpatient/inpatient sex offender program, 0 percent of the people who were assigned to the inpatient sex offender program had completed their programming before their parole eligibility date. That was a finding of Alvarez in her study. Is that true? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. And with respect to the outpatient folks going into the sex offender program, 1 percent completed the outpatient sex offender program before their parole eligibility date. That sound right to you? [LR34]

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MIKE ROTHWELL: That's an accurate...yes. [LR34]

STEVE LATHROP: Okay. And it is a function of the assessments being done late,... [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: ...not being done in a timely manner. In fact, I think they said the waiting line for the sex offender assessment was like 1,096 days, something like that. [LR34]

MIKE ROTHWELL: I'm not sure. I don't know that. [LR34]

STEVE LATHROP: That was in Alvarez's report. And for the folks that are waiting for violence reduction programming, which is kind of an important program, right, they were waiting 715 days for an assessment? [LR34]

MIKE ROTHWELL: And I think those figures are accurate as to that point in time, but the behavioral health staff have implemented new processes to speed up the assessments and work on reducing the waiting list. So they're now looking at assessing people closer to the front end rather than the back end. And they're aggressively looking at how they can reduce the wait list to get people into violence reduction... [LR34]

STEVE LATHROP: Sure. [LR34]

MIKE ROTHWELL: ...and the clinical anger management programs. [LR34]

STEVE LATHROP: I'm sure. And you and I had a short conversation beforehand. I shared with you that I felt it was important today to talk about the problems. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: And then we'll...I'm not going to shut it down after we talk about the problems. We'll talk about what you're doing to try to fix them and what resources you're going

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to need. But that is a problem, right? So if the goal from the JPA and the goal from the Council of State Governments that we've signed onto and the goal at the Department of the Corrections and the policy of the state of Nebraska is everybody should be...shall have completed their programming before their parole eligibility date, these are problems. Right? [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: So the folks that need the sex offender treatment, the folks that need the violence reduction programming, they're not getting it before their parole eligibility date. [LR34]

MIKE ROTHWELL: In some instances that's true, yes. [LR34]

STEVE LATHROP: And so they remain in custody instead of being released. And many of them then, you'll agree with me, many of them then choose to not go through any programming at all. [LR34]

MIKE ROTHWELL: Some jam out. Some the board release on parole with the stipulation they complete the programming in the community. [LR34]

STEVE LATHROP: Right. That kind of depends on the treatment they need. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Right, because we watched that happen a couple years ago and the Parole Board was just like, "we got to get the numbers down in here," and they start waving people through and then giving them a business card for somebody--not the way to run parole or programming. [LR34]

MIKE ROTHWELL: No. [LR34]

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STEVE LATHROP: All right. Tell me, or tell us, if you would, which of these programs are the kind that the Department of Parole is looking to see that box checked, like they're not going to be so worried if I don't have in my list of completed programming culinary arts or horticulture. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Those may be useful things and they may help me get a job when I get outside of the walls, but there are certain things that they will not parole somebody unless they've completed. [LR34]

MIKE ROTHWELL: I think they're looking at violence reduction programs, MRT, Thinking for a Change, substance abuse, those kinds of core risk-reducing programs. [LR34]

STEVE LATHROP: So those violence reduction, substance abuse, Thinking for a Change, and sex offender stuff too? [LR34]

MIKE ROTHWELL: Correct, and... [LR34]

STEVE LATHROP: Okay, so the iHeLP or the oHeLP. [LR34]

MIKE ROTHWELL: Correct, and then also MR...moral reconnection therapy, MRT, is considered one of the core cognitive... [LR34]

STEVE LATHROP: Tell us what that is. [LR34]

MIKE ROTHWELL: That's a cognitive behavioral intervention. [LR34]

STEVE LATHROP: What's that mean? [LR34]

MIKE ROTHWELL: Inmates have stinking thinking and so they come in with a set of values and the thought process that, you know, is somewhat skewed. And through the group process and

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role playing and modeling appropriate behavior they learn how to change some of their thought processes. For example, MRT is different than Thinking for a Change. MRT...we make decisions because we're afraid to get caught. MRT teaches you to make a decision because it's the morally right thing to do. Thinking for a Change is an intense group where you do thinking reports, you do role playing, you do modeling, you simulate situations where you challenge people's beliefs and character flaws so that they begin to be sort of introspective and look at ways that they can start behaving and acting differently. [LR34]

STEVE LATHROP: Are each of these programs you've just identified evidence based? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Tell us about that. I know that there has been some...I've read e-mails back and forth on this, what programs are evidence based and which ones aren't. It is a recommendation of the JPA that the programming be evidence based, particularly those that are sort of core to getting somebody ready for parole and having them reduce the likelihood that they'll reoffend. So what's it mean to be evidence based and how do we know or trust that these actually are and somebody isn't selling them to us and slapping that label on them? [LR34]

MIKE ROTHWELL: MRT has been around since the mid-'70s. It's in wide use throughout the country; it's been researched. The research shows that it's an evidence-based program. It meets...it can be replicated at other states. It's a very good program. Thinking for a Change has also been researched. It's in use in many states. The feds, the federal prisons use it. It's recognized universally as an evidence-based program. [LR34]

STEVE LATHROP: Okay. Who recognizes these things universally? [LR34]

MIKE ROTHWELL: Those folks that do research on cognitive behavioral interventions. [LR34]

STEVE LATHROP: And do they slap some gold seal on them? Is there a place where we can look, some resource where we can look that says this program has the seal of approval of some corrections place as evidence based? [LR34]

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MIKE ROTHWELL: There is one place I know of if I can refer... [LR34]

STEVE LATHROP: Tell us where that is so we can maybe have a look and see how our programming compares to some certification or some recognition. [LR34]

MIKE ROTHWELL: I'll have to get you that. I apologize, I had it in my earlier notes; it's not there now. [LR34]

STEVE LATHROP: That's all right. Maybe you can share that with the committee, because I know that there is an interest among members of the committee; at least I've been told that they'd like to be able to satisfy themselves that if there is someplace where these things are recognized as evidence based or given some kind of certification or seal of approval, that we know where that is and then we can compare that to our programs, because I know you gave us a list and we have that. On pages 21 through 25 in the book, that's a list of clinical programs available at the Department and you've designated those with an asterisk which are evidence based. [LR34]

MIKE ROTHWELL: Okay, I found it. It's...there's a National Registry of Evidence-based Programs and Practices, NREPP, they...that is one clearinghouse that gives a stamp of approval. [LR34]

STEVE LATHROP: Who runs that? Is that like the ACA or who? [LR34]

MIKE ROTHWELL: I'm not sure who runs that. [LR34]

STEVE LATHROP: Okay. Do you consider them to be a reliable resource when determining whether or not the particular program is evidence based? [LR34]

MIKE ROTHWELL: It's not an entity. I think it's a group of practitioners that do peer reviews on programs and then they'll certify that, yes, this is evidence based or this is best practices or this is a promising practice. [LR34]

STEVE LATHROP: Do you belong to that group? [LR34]

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MIKE ROTHWELL: No, I do not. [LR34]

STEVE LATHROP: You don't participate in the peer review process? [LR34]

MIKE ROTHWELL: No, I do not. [LR34]

STEVE LATHROP: Can you...that book in front of you, that red book, there are page numbers at the bottom. Can you see those? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Can you turn to page 21. [LR34]

MIKE ROTHWELL: Okay. [LR34]

STEVE LATHROP: You see that? This is something you provided to the committee I think in response to a request for information regarding what programming is available and which programs are evidence based. Would you agree with that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. And at the top it says, "Clinical Programs Available at NDCS." Do you see that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And immediately below that it says programs marked with an asterisk are evidence based. [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: And the asterisk would be next to the name of the program which we find in the column under "Program." [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: So, for example, anger management is offered at OCC and NSP and it has an asterisk next to it indicating it's peer reviewed... [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: ...or, pardon me, evidence based. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Is it accepted by this NREPP? [LR34]

MIKE ROTHWELL: I'm not sure if it is, but it is accepted by the Substance Abuse and Mental Health Services Association, SAMHSA, so that body recognizes the anger management program that they're doing. [LR34]

STEVE LATHROP: Okay. The substance abuse folks have certified your anger management program? [LR34]

MIKE ROTHWELL: Well, the mental health people are doing it. [LR34]

STEVE LATHROP: Okay. Are there any other places where we would look for some certification as we go down this list? And an awful lot of these you've represented are evidenced based. [LR34]

MIKE ROTHWELL: You could go to the SAMHSA Web site and they will have a listing of programs that they endorse. There's also the National Institute of Drug Abuse, NIDA, they also recognize certain substance abuse programs as being evidence based. [LR34]

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STEVE LATHROP: Okay. [LR34]

MIKE ROTHWELL: For example, the substance abuse unit uses A New Direction, which is a Hazelden program, and that's been recognized by SAMHSA as an evidence-based program. [LR34]

STEVE LATHROP: Are any of the programs on this list that you have in front of you, page 21 to 25, where you've designated them as evidence based, are any of them not recognized by one of these three or four places you've just described? [LR34]

MIKE ROTHWELL: I don't know. [LR34]

STEVE LATHROP: Before you put the asterisk here, did you check to see if somebody is giving them the seal of approval or were you just like pretty sure that one is evidence based? [LR34]

MIKE ROTHWELL: No, no, I didn't use the (inaudible)... [LR34]

STEVE LATHROP: You follow me? [LR34]

MIKE ROTHWELL: The substance abuse folks, behavioral health unit researched that particular list and they designated the asterisk in terms of what they used as evidence based. [LR34]

STEVE LATHROP: Okay, but we should be able to find these programs with an asterisk somewhere on one of these four resources. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. I want to talk about a couple of the...a few of the findings in the JPA. They...so the Council of State Governments came in and did the assessment of the programming, and then you had this Alvarez come in and also do a clinical programs evaluation, Phase One, and then write a report. Is that true? [LR34]

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MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. And those have been done since you've been here? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. And did you participate in these studies or at least... [LR34]

MIKE ROTHWELL: I worked with both JPA and Ms. Alvarez. [LR34]

STEVE LATHROP: Okay. I want to talk about a couple of the findings and then maybe talk about some of the recommendations and the goals. [LR34]

MIKE ROTHWELL: Okay. [LR34]

STEVE LATHROP: Okay. In the JPA they said...they made a note. One of their findings was that the Parole Board declined to set hearings for 33 percent of inmates who were within one year of their parole eligibility date because of incomplete programming. Do you agree with that? [LR34]

MIKE ROTHWELL: That's what they observed at that time, yes. [LR34]

STEVE LATHROP: Okay. It was true at the time? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Is it still true that one-third are not getting their...having a hearing set because they haven't completed their programming within a year of their parole eligibility date? [LR34]

MIKE ROTHWELL: I haven't looked at the latest figures on that. [LR34]

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STEVE LATHROP: Okay. So as far as we know, that's still true. We hope it changes but it may still be true. [LR34]

MIKE ROTHWELL: We've been working with the Parole Board. I think that those numbers are probably lower now since that report came out in June. So I think in the last several months there's been a lot of work with getting people into programs and reducing the wait lists and getting people better prepared for parole hearings. [LR34]

STEVE LATHROP: But you don't have any statistics for that. [LR34]

MIKE ROTHWELL: No, I do not. [LR34]

STEVE LATHROP: Okay. And so one of their conclusions was that very fact that 33 percent of the people weren't even getting a hearing date because they hadn't completed their programming. Their conclusion was that that contributed to people electing to jam out. Other words, when the individual...this is old, before the STRONG-R and the things that you've talked about a little bit. But the idea that someone was going to get an assessment and all of those needs determined at one year prior to parole eligibility date necessarily meant that they'd be on a waiting list for the assessment; the assessment would be complete maybe a year out, but the programming wasn't available to them and many of these inmates simply gave up on the idea of getting paroled. [LR34]

MIKE ROTHWELL: That happened in some instances, yes. [LR34]

STEVE LATHROP: Yeah. Alvarez noted that it happens quite frequently. They basically say, well, you've done the assessment. I have nine months before my parole eligibility date and maybe I'm two years from jamming out and there's no way I can complete all of the programs because we put them end to end. Right? [LR34]

MIKE ROTHWELL: Well, there's other factors, too, to consider is we cannot compel people to participate in the programs. [LR34]

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STEVE LATHROP: No, I get that. [LR34]

MIKE ROTHWELL: Okay. [LR34]

STEVE LATHROP: I get that and I don't want to imply that everybody in the Department of Corrections that's confined there is a willing participant in programming. But both the JPA and Alvarez, who did a study, concluded that the fact that people aren't getting their programming done in a timely manner, and when they look at their circumstance many of them say, what's the point, because I'm not going to get out any sooner on parole. If I jam out, no one is going to be following me around town. Right? And so many of them are electing to simply forgo any programming and jam out. [LR34]

MIKE ROTHWELL: That's correct. [LR34]

STEVE LATHROP: And both of them---the JPA and Alvarez--found that to be the case. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: In Alvarez's report she noted--and for those of you trying to follow along, it would be on page 71--that only 50 percent...in the violence reduction program, only 50 percent of the people who needed it started it before their parole eligibility date and only 9 percent successfully completed the violence reduction program before their parole eligibility date. Is that true? [LR34]

MIKE ROTHWELL: Yes, at that time, yes. [LR34]

STEVE LATHROP: Okay. I understand there may be some improvement, okay? But we don't have a report on the improvement. [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: And they also express some concern about fidelity to the programming. Tell us what that means. [LR34]

MIKE ROTHWELL: If you're at...if you're in an MRT program at OCC, are you getting the same treatment as somebody who is in a program at WEC? [LR34]

STEVE LATHROP: Okay. [LR34]

MIKE ROTHWELL: So from site to site are they following the lesson plans, are they delivering the programs the same? You know, so we refer to that as fidelity to the model and we do not have quality assured...didn't...quality assurance process in place at the time to monitor that. [LR34]

STEVE LATHROP: Okay. And that's not just from institution to institution, because some of these programs are offered in more than one facility. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: So that, it has two components. One is, are they doing it the same at the State Penitentiary as they are at Tecumseh? That would be a consistency. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: The other is whether they're faithful to the program itself... [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: ...and they're not ad-libbing and trying to go off script. [LR34]

MIKE ROTHWELL: Absolutely. [LR34]

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STEVE LATHROP: Okay. And at least at the time of this report, which I think was a couple months ago, in July maybe, we have no way of knowing whether...no way of monitoring that. [LR34]

MIKE ROTHWELL: Correct, and that's one of the functions that Ms. Alvarez is serving right now is sort of working with us to develop a quality assurance team. I've requested a program manager position that has been sent to DAS. The responsibility of the program manager will be to head up quality assurance efforts for all the nonclinical programs. The clinical services have their own quality assurance process separate from what I do. [LR34]

STEVE LATHROP: Does this quality assurance person, is he already--or she--already employed? [LR34]

MIKE ROTHWELL: No. [LR34]

STEVE LATHROP: Or we're just... [LR34]

MIKE ROTHWELL: I've just made the request within the last two months. [LR34]

STEVE LATHROP: Okay, was that included in the budget request in September? [LR34]

MIKE ROTHWELL: No, sir. We're converting an existing position. [LR34]

STEVE LATHROP: Well, that's something about budgeting I hadn't even thought about before you just said it. But I guess there's people here that can talk about converting positions when we talk about the budget in a little bit. But you intend to have somebody that will be on board to ensure quality assurance and fidelity to these programs when? [LR34]

MIKE ROTHWELL: As soon as we get approval from DAS on the position. It's still sitting over there. [LR34]

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STEVE LATHROP: Okay. Both of the JPA and Alvarez expressed concerns about space as an issue for programming. In other words, in terms of a sort of a critique at 30,000 feet, we don't have enough programming for these people. It's not offered frequently enough and the assessments aren't happening soon enough. That would be an overall assessment, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And part of the problems or the problems for those concerns are in part space: Do you have the space for the programming? So as it relates to space, do you have enough? Or you're offering as many programmings as you can fit in the spaces that you have? Tell us about space as a consideration for the want of sufficient programming. [LR34]

MIKE ROTHWELL: Some facilities, for example, WEC has more space than others for offering program and it's a difficult process. We're looking at utilizing day rooms in some instances for programming, and other spaces. A lot of times prisons are built without, particularly these older facilities have been constructed without the advantage of having enough treatment space to provide programs. So we're constantly looking at ways to offer programs outside the traditional work hours. When we have an education classroom that's tied up during the day, we could use that on, say, second shift to offer programming in that particular space. So we're working with the institutional staff to look at how we can expand the treatment day from 8:00 to 8:00 rather than 8:00 to 5:00 and offer more programs on second shift in space that's free from those that were using it in the morning. So we're trying to be creative in identifying space to offer programs. [LR34]

STEVE LATHROP: But that idea that you're going to use some of that space on the second shift is a problem when you don't have enough corrections officers to walk these people over or to get them from point A to space. Is that true? [LR34]

MIKE ROTHWELL: Well, most facilities' movement is not escorted, so they would be discharged from wherever to go to that particular area for their... [LR34]

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STEVE LATHROP: Okay, so let me ask the question a little bit differently as it relates to space. If you had enough money to hire all the people for the programming you need to do to meet the goals of the JPA, would space limit you or not? [LR34]

MIKE ROTHWELL: No. [LR34]

STEVE LATHROP: Okay. So space isn't an issue from your point of view. [LR34]

MIKE ROTHWELL: It's an issue in some facilities but not systemwide. [LR34]

STEVE LATHROP: Okay. They both I think were...I want to say critical, because I think that's a fair statement, of the frequency with which these programs are offered. Would you agree with that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. So if some of these programs...and the sex offender treatment programs are a perfect example because they take a long time. Right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: The inpatient is, what, two years? [LR34]

MIKE ROTHWELL: I believe that's correct. [LR34]

STEVE LATHROP: And is the outpatient one year? [LR34]

MIKE ROTHWELL: Close to that. [LR34]

STEVE LATHROP: How many people do they put in the inpatient at a time? [LR34]

MIKE ROTHWELL: I don't know that answer. [LR34]

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STEVE LATHROP: How many different classes are offered at any given time for the inpatient treatment program? [LR34]

MIKE ROTHWELL: The substance abuse treatment program or the sex offender treatment? [LR34]

STEVE LATHROP: No, the sex offender. [LR34]

MIKE ROTHWELL: I don't have that. [LR34]

STEVE LATHROP: They just have one block of people going through that two-year program... [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: ...at a given time. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: What have they got, eight people in there, something like that? [LR34]

MIKE ROTHWELL: I think they try to limit 8 to 12 a group. [LR34]

STEVE LATHROP: Okay. So eight people are going to take up all the resources for inpatient sex offender treatment over a two-year period and if I'm an inmate and I need that, I'm on a waiting list for...that's going to move eight people every two years currently. [LR34]

MIKE ROTHWELL: Yes, sir. [LR34]

STEVE LATHROP: Okay. And so when we talk about the frequency of the availability of a program, they're talking about doing something like that. For example, it could be substance abuse, it could be violence reduction programming, any one of these important programs, having

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them, offering them at more than one facility and offering more than one or two at a time. So we're moving more people through that programming to get them to satisfactory completion before their parole eligibility date. [LR34]

MIKE ROTHWELL: And we're offering the substance abuse at more than one facility. [LR34]

STEVE LATHROP: I got that, but your bigger problem is probably in violence reduction and the sex offender treatment, would you agree? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. So those people are, all of them except for 1 percent of the outpatient people with respect to the sexual...sex offender treatment, none of them are getting the program completed before their parole eligibility date. So you need to offer it more, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And they also had a concern about the intensity of the program. So some of these programs people might be enrolled in the program and they meet twice a week for one hour; otherwise, they're not engaged in the programming. They may be learning stuff, they may be reading something in their cell, they might have some homework to do, but they're not getting in classes and in groups any more than a couple times a week. [LR34]

MIKE ROTHWELL: That's a fair assessment. [LR34]

STEVE LATHROP: And that was a criticism, too, that the programs need to be more intense, have more meetings, and they need to have more offerings if we're ever going to get to a place, which is our goal, where programming is complete before parole eligibility date. [LR34]

MIKE ROTHWELL: And behavioral health staff are already working on reducing the wait lists, increasing the frequency and duration of the programs so that they can get more people engaged. [LR34]

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STEVE LATHROP: Okay. I want to talk about a couple more things, then we're going to talk about what you are doing. Okay? I want to give you a fair opportunity to tell us, but I want to have a good sense of what these two recognized as the problem. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Right? And so frequency of the offer...they also had concerns about the people who are running these programs and having them, not dedicated staff that do nothing but these programs. Would you agree with that? [LR34]

MIKE ROTHWELL: Well, they do other...they do clinical assessments and they do case reviews and... [LR34]

STEVE LATHROP: And that was a concern for these people who assessed your programming. Am I right? They thought that there should be people dedicated to, for example, the sex offender treatment, instead of being hauled off to do or pulled away to do a STRONG-R or some other work. [LR34]

MIKE ROTHWELL: Well, those folks aren't doing STRONG-Rs. [LR34]

STEVE LATHROP: Okay, a poor example perhaps but you get the point. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: All right. We're asking the people that are involved in these programs to do many different things. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: And because they're pulled off to do other things besides run these programs, it makes it difficult to have the programs be more intense, have more offerings. Would you agree with that? [LR34]

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MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: All right. Alvarez in particular noted that there are morale problems with these programs or the people in behavioral health that are providing these programs. Do you remember seeing that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And I think she called it a...described it two ways: an "us versus them" mentality and a culture of retaliation. Did you read that in the Alvarez report? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. Tell us what she meant by that, if you know. [LR34]

MIKE ROTHWELL: Well, I think there is among the behavioral health staff, they're down 30-some positions; you know, there is an issue with them on salaries, you know, that concern is contributing to morale issues. The fact that they're pulled in different directions contributes to that. But those are probably the key areas. But they're still doing great work with what they have. [LR34]

STEVE LATHROP: Believe me, and you weren't here last time we met, I said that three times last time. [LR34]

MIKE ROTHWELL: Yeah. [LR34]

STEVE LATHROP: Nothing of what we're saying is a criticism of the people who are trying to do so much with so little,... [LR34]

MIKE ROTHWELL: Right. [LR34]

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STEVE LATHROP: ...including the people over at behavioral health. But part of what I heard or read in these two assessments and in Alvarez's report in particular is when they go up the food chain to explain something, they don't feel like the communication is good up and down the ladder. And so they conclude, or Alvarez concludes, it's an "us versus them" and a culture of retaliation over in behavioral health. And you're telling me, yeah, that's true and, by the way, being down 34 people is contributing to it and so are salaries. Is that true? [LR34]

MIKE ROTHWELL: I wouldn't say that fear of retaliation is accurate. [LR34]

STEVE LATHROP: Okay, so you might disagree with Alvarez. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And just for people that haven't read it or don't know what Alvarez's report is, this is somebody that was hired by the department to come in and look at programming. True? [LR34]

MIKE ROTHWELL: That's one of her job duties, yes. [LR34]

STEVE LATHROP: Okay. And she came in and she's going to do it in three phases, and one of them was going to be look at data. And this is another criticism. Our data is nonexistent. No one can pull up information on...I know we asked for things. Well, we don't have any. And I know when Senator Harms's Performance Audit Committee looked at the Department of Corrections and their programming two years ago, 2014, one of the conclusions of the Performance Audit Committee was we can't really look at the data because there isn't anything reliable. Right? And so the JPA, Senator Harms, Section 24 of LB598, all of these things are saying we need to have stuff put on a computer. Right? [LR34]

MIKE ROTHWELL: And she's working on that. She's...we've been going over some of the screens that will track enrollment, program participation, if they drop out, was it voluntary or involuntary, what are the completion rates. So she's putting together the database that we're going

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to start using to track program engagement and participation and look at just what you're talking about. [LR34]

STEVE LATHROP: Okay, but we can agree it's a huge problem right now. [LR34]

MIKE ROTHWELL: It's not huge but it is problematic at times. [LR34]

STEVE LATHROP: I think it'll look huge when you look back and you have your information and data so that you can track what programs are effective, which ones aren't effective, how soon are you getting people out, the timing of their assessments, the timing of their participation in programs, and whether you're putting the programs end to end, all of which is happening right now. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: Okay. So Alvarez starts in Phase One by going out and interviewing a bunch of people. Right? She interviews some inmates, she interviews some administration, and she interviews some front-line people. Right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And then after she talks to the folks over at behavioral health, they tell her, and you may not agree with it but they tell her that it is...there is a culture of retaliation. True? [LR34]

MIKE ROTHWELL: I don't know that she said that. If you say it's in the report I'll take your word for it, but I disagree with that finding. [LR34]

STEVE LATHROP: Okay. [LR34]

MIKE ROTHWELL: I don't think there's a culture of retaliation with the behavioral health staff. I have not seen that in my year here. [LR34]

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STEVE LATHROP: Okay. You would agree morale is suffering and it is a function of the "us versus them" which she found, the understaffing, and the fact that there...they may have some concerns about their pay. [LR34]

MIKE ROTHWELL: And I think that's a fair characterization, you know, that they're asked to do more than they would if they had...were fully staffed. But again, I have not seen an "us versus them" mentality with the behavioral health staff. They've engaged in programs. They, you know, they recognize the need to provide quality programming and they're doing the best they can under the circumstances to do that. [LR34]

STEVE LATHROP: Okay. So Alvarez makes some recommendations as she goes through and talks about her findings after talking to these folks, and the JPA does their study, or the Council of State Governments does their study and they issue a report. And besides talking about the concerns they have with respect to the programming that was going on when they did their assessment at the department, they spell all that out in the report. And for people who are following along with this book, it would be page 34 is the JPA. In the JPA they then make some recommendations, things that need to be done. Do you see that on page 34, Mr. Rothwell? Do you see that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And you're familiar with these recommendations. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: So one of them was to...that the Department needs to streamline assessments to direct people into programs more quickly. We talked about that. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: That's the idea that you're going to do the STRONG-R assessment within 30 days? [LR34]

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MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: We're slipping a little bit if we're at 40 days, but you want to get to 30 days. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: How quickly after someone has the STRONG-R or after they arrive at the department are they having their clinical assessment? [LR34]

MIKE ROTHWELL: The goal for the clinical folks is to have that done within 30 days of the STRONG-R completion. [LR34]

STEVE LATHROP: So our time table would be within the first 30 days. And everybody shows up at D&E. Is that true? [LR34]

MIKE ROTHWELL: Yes,... [LR34]

STEVE LATHROP: Okay. So we show up at D&E... [LR34]

MIKE ROTHWELL: ...other than the women. [LR34]

STEVE LATHROP: Yeah, other than the women. So but the vast majority, and if I can I'll just talk about it with respect to the men, they show up at D&E and within 30 days we'll have them get...the goal is to have them have the STRONG-R and within 30 days after that, in that 30 days we're alerting people like the folks that are concerned about violence reduction and the folks that are concerned about substance abuse or sex offenders that they need a clinical assessment... [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: ...and that that needs to be done within 30 days of the STRONG-R. [LR34]

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MIKE ROTHWELL: Actually it's 60 days. [LR34]

STEVE LATHROP: Sixty? So within 90, both assessments. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: How we doing on that right now? [LR34]

MIKE ROTHWELL: We're doing well with regard to the STRONG-R. I'm not sure about how well the behavioral health staff are doing. I think they're hitting that mark. [LR34]

STEVE LATHROP: Okay. And we talked about this with respect to the STRONG-R. I don't want to belabor the point. But would it be fair to assume that the people that needed clinical assessments are also being triaged except for the new folks? In other words, the old-fashioned way was we're going to wait until they're about a year out from their parole eligibility date. We'll do some kind of a risk assessment and then we'll do a clinical assessment to decide what programming they need. And then, I don't know, six months from their parole eligibility date we're going to tell them they need two-year programming for sex offenders. [LR34]

MIKE ROTHWELL: And we're moving away from that model. [LR34]

STEVE LATHROP: That's the plan. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: But we still have a whole bunch of people that haven't had that assessment done. [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: Okay. And we're going to talk about waiting lists perhaps in a little bit. But one of the problems with the information you've given the committee on waiting lists is it can't be accurate if not everybody has had an assessment. Right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: So we may have a whole bunch of people over at the Department of Corrections that are sitting there, doing time, and waiting for their risk assessment or waiting for their clinical assessment before they know what programs they're going to need before they can go out the door on parole. And so if we haven't done the assessments on a lot of these people, we really don't know what the true waiting list is for, for example, violence reduction programming. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: You got to get caught up. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Another recommendation was to allow multiple needs to be addressed simultaneously. And the report of the JPA indicates that what is currently happening in Nebraska is once all these assessments are done they'll say, okay, well, you need this program, call it violence reduction. Now you've got to wait until a slot opens up. Then when they complete that they go, okay, he just completed the violence reduction program, is there anything else on the list? Yes. He needs Thinking for a Change, for example. Well, the waiting list for that is a year and we were putting them back to back with waits in between. Right? That was their finding? [LR34]

MIKE ROTHWELL: Yes. [LR34]

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STEVE LATHROP: And what they're suggesting is we should be offering multiple things at the same time, or at least overlapping them so that an individual can pass through the programming they need in a shorter period of time. [LR34]

MIKE ROTHWELL: Right. [LR34]

STEVE LATHROP: That's one of the recommendations. True? [LR34]

MIKE ROTHWELL: True. [LR34]

STEVE LATHROP: Okay. How we doing on that? [LR34]

MIKE ROTHWELL: We've implemented two sections of Thinking for a Change at the women's facility. We have one section kicking off at WEC. We're identifying people to go into programs sooner rather than later. We're increasing the capacity by one of the things we've implemented is we're doing the TABE test when they come to DEC so that we can determine their intellectual functioning and if they are, say, fourth grade or below, do we need to do an IQ test, you know, because you don't want to put somebody in a program if they don't have the intellectual capacity to grasp the concepts. So that's something new we've added. We weren't doing the TABE test before. So that allows us to...excuse me, at DEC--we're doing at the receiving facilities. So that allows us to be more strategic in where we place people earlier in their sentences. So they could go to GED and they could be in substance abuse. They could be in MRT if we have a section going on at the same time. So we can now address either simultaneous program participation or linear throughout the one-third, two-thirds, and the final third of getting them into appropriate programming. [LR34]

STEVE LATHROP: Okay. I get that you could. Right? If somebody is in a place that offers both programs that I need to get out, then it is possible for me to do both at the same time. There are no barriers except for capacity and capacity has become the issue, isn't it? [LR34]

MIKE ROTHWELL: In some instances, yes. [LR34]

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STEVE LATHROP: Well, most of the time, isn't it? These people...in here...Senator Bolz sent a request to the department for a waiting list, you know, how long are people waiting, and we got a response that's found on page 96...pardon me, 97. And it talks about the substance abuse program and sex offender services and violent offender services. Do you see that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: All of these have waiting lists. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: All of them take time and all of them have more people on the waiting list than they have available places for the next time it's offered. So it's a capacity issue. In other words, you don't have any trouble...you won't have any trouble meeting the goal of having people do things simultaneously if you have the capacity and you offer the programming frequently enough that people can get into two of the programs or three of the programs at once. [LR34]

MIKE ROTHWELL: Correct. And I think they're working on resolving that because now with the STRONG-R, which was not in place at the time this was done, they were looking at 5,000 inmates and who do we provide programming for and how do we get them in program. Now we can be more strategic. We can narrow it down so that if we have only 21 percent are high risk for violence, that's our target to get into programming and we don't have to do clinical assessments that take staff time away on the low-risk offenders. So that...so we can shift resources to address the capacity issue by only targeting those high-risk individuals for the clinical programs. [LR34]

STEVE LATHROP: That sounds like you're going to make a decision about which guys...make a judgment about which guys to put into the programming that's currently available versus their recommendation that you expand capacity, which would mean, or as I read it, it meant to me that you need to offer the programs more frequently. [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: So that means you've got to have violence reduction program offered more often, and the substance abuse and the sex offender, those things offered more often so you can move people through those programs at a faster rate. [LR34]

MIKE ROTHWELL: And one of the ways that behavioral health is addressing that is they were...they had a process where several psychologists would review a case together on an individual, which takes staff time away. Now they're going to an individual clinician reviewing a case and making recommendations. So that allows those folks that were, you know, together as part of the review team to operate independently and that increases the capacity for programming for the violence reduction program, the sex offender programming. Does that make sense? [LR34]

STEVE LATHROP: Well,... [LR34]

MIKE ROTHWELL: And we're reducing the number through the STRONG-R of actual assessments that they need to do. So rather than task a clinician to come over and do an assessment on somebody who is low risk, they can now focus on the high-risk folks. [LR34]

STEVE LATHROP: It kind of sounds like an explanation from somebody who doesn't want to increase the number of staff and the number of programs offered but, rather, is going to be more selective about who they put into the programs. That's what I'm hearing you say. [LR34]

MIKE ROTHWELL: Well, we are being more selective. [LR34]

STEVE LATHROP: Nothing wrong with being more selective because if I don't have a substance abuse problem, I don't need to be taking up a bed. Okay. We can agree on that. But if I need it, I need it. And if I need it to get parole, I got to have it. And if you can't get a number of people through those programs so that they're...and we signed on. Right? We signed on. One of the goals is that we're going to get to a place where as the Department of Corrections people will complete all the programming they need before their parole eligibility date. You would agree with that? [LR34]

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MIKE ROTHWELL: Yes, absolutely. [LR34]

STEVE LATHROP: That's our goal. That's what the Legislature wants. That's what the Governor wants. That's what department wants. Everybody wants everybody to have their programming completed and they're telling us we got to increase capacity. And when I ask you about it, I hear you telling me we're going to move some people around, we're going to be more selective in our assessments, it'll free up some of the time of the clinical staff from doing assessments, and everything will be fine. Am I missing something? [LR34]

MIKE ROTHWELL: It'll increase their capacity. [LR34]

STEVE LATHROP: Pardon me? [LR34]

MIKE ROTHWELL: It will increase their ability to offer more programs. They're also looking at ways to streamline their programs so that they can increase the frequency that they're offered. [LR34]

STEVE LATHROP: Well, we're going to talk about what you need to make all this happen in a second but you kind of...I'm there with this question. If we are...if you do the things that you've described, the STRONG-R and we don't have to do as many clinical assessments, are you going to offer the inpatient sex offender treatment more frequently? In a two-year period are you going to put more people successfully through that program after you do the things you've just described or not? [LR34]

MIKE ROTHWELL: Behavioral health is looking at the programs that they offer and is there a way to streamline the programs to increase the frequency and opportunity for folks to get into the appropriate clinical program. So they are doing their own review right now of ways that they could offer more programming to, you know, the inmates. [LR34]

STEVE LATHROP: Okay. One of the things that we ask for...so the JPA has...they have like what do you need to do in this report. It's a road map, as clear as can be, and it has the first year

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you need to do this, the second year you need to do that, and the third year is when we clean up all the details and finally we're where we want to be. Right? [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: They're found in this, in the report that I've referred to. And they have a time line for completing all these things and including increasing capacity and that sort of thing. My question for you, Mr. Rothwell, is, what do you need for additional resources to be able to meet the goal, because when I look at the goal...give me a second to find it. So there's a lot of detail in here about the things that need to be different and I'm not going to read the report or make you go through it line by line. But they do come up with a time table, and I'm getting to it, on page 55. [LR34]

MIKE ROTHWELL: Okay. [LR34]

STEVE LATHROP: First of all, the report is dated June 21, 2016. Right? And this is the time line that they've laid out for "How does Nebraska take action to improve programs?" And they have a time line. Would you agree with that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. And it says, "In Progress--Implementing risk assessment..." That's the idea that you're coming up with this STRONG-R and getting it off the ground? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And you've trained some paraprofessionals for some of the programs? Have you done that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

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STEVE LATHROP: And increased staff training and created quality assurance measures, we haven't really created the quality assurance measures yet but we're asking somebody in the executive branch to approve hiring a person that will help you do that. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. Then it says, "2017 Fiscal Year." Give me the dates for...what's it mean to be 2017 fiscal year? Is that July 1... [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: ...of this year through June 30 of next year? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. So what you need to do starting at the end of the next legislative session is increase program capacity, streamline assessments and program recommendations, standardize the curricula delivery, deploy quality assurance checks, and improve programming and fiscal data collection. That's what needs to happen on the time line to get you to where we want to be. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. Tell us what you need to do that because, I'm just going to say, I was around long enough to hear we're moving some people around. Okay? Moving some people around doesn't get all this done... [LR34]

MIKE ROTHWELL: Right. [LR34]

STEVE LATHROP: ...because when 33 percent of the people haven't even completed their programming before their parole eligibility date and about a third of our inmates have passed their parole eligibility date, it sounds to me like you've got to have a lot more versions of many

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of these programs to get people to a place where they've completed the necessary programming before their parole eligibility date. And my question is, have you done a study? Have you figured out at all, you or anybody at the department or any of the people that have been involved in the study, how many more of these programs we need and how many people we need to hire to make that all happen? [LR34]

MIKE ROTHWELL: We've been training existing staff. We've trained 20 staff in Living in Balance. We've trained seven staff in Thinking for a Change. We're working on a...which will increase the capacity for the cognitive and behavioral interventions they recommended. We've implemented that at WEC and at NCCW. We're sending a request to NIC to train more staff in Thinking for a Change and we've also sending a request to ask them to come in and do a training for about 18 staff at different facilities for Thinking for a Change so that we can expand that capacity for cognitive and behavioral intervention which is one of the more critical core programs. Living in Balance will address substance abuse, not addiction. It's a psychoeducational program. We're hoping to get that off the ground in January. We've got an implementation team we're putting together from those that have been trained so that we can increase that capacity to offer more programs for that medium-risk population. [LR34]

STEVE LATHROP: Okay. When you say that though, it sounds like all I need is to train a few more people like they got the time for this, and then we'll be expanding the capacity once they go through the training. But they're already busy doing something else, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: So what...how do we increase...maybe we're not communicating on what it means to increase capacity. So let's stop for a second and talk about that. If somebody says we need to increase capacity for the sex offender program. I'll just use the outpatient sex offender program. If we need to increase capacity, that suggests to me as I read that that we need to be able to get more people through that program in a one-year period than we're doing right now. [LR34]

MIKE ROTHWELL: That's correct. [LR34]

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STEVE LATHROP: And that means to me that we need to offer it... [LR34]

MIKE ROTHWELL: More often. [LR34]

STEVE LATHROP: If it's a...we accept--I'm going to make a number up--12 people for the outpatient program a year, whatever the number is, we accept 12, we need to accept 50. The only way you're going to get them through there is to increase capacity which is to say offer the program more often. Maybe have it going on five times a year instead of just one group a year, okay? Are we talking about the same thing when we talk about increasing capacity? [LR34]

MIKE ROTHWELL: Yes, we are. [LR34]

STEVE LATHROP: Okay. So in order to increase capacity that, I would think, means somebody is going to have to facilitate that program. [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: The inmates show up in a room and maybe it's on the second shift, maybe it's on the first shift, but now they're going to show up in a room and somebody has got to be there to teach them the material or go through it with them, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Some of it's clinical staff, some of it's nonclinical staff. I get that. But all of them are busy right now, right? We're down an incredible number of people in the front-line workers and in behavioral health. Would you agree with that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. So in order to increase capacity, we've got to put some more people on to facilitate these programs... [LR34]

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MIKE ROTHWELL: And that's... [LR34]

STEVE LATHROP: ...and we have to have more space and we have to have more, I suppose, books and DVDs or whatever they're using for these programs. Is that true? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. And so when I ask you this question, Mr. Rothwell, and I don't mean to be argumentative but I don't feel like my answer...I've gotten an answer to the question which is, how are you going to increase capacity if your answer is, we're going to train some more people who are already understaffed and really, really busy? So are you going to hire some more people to run these programs; and if you are, how many and what's it going to cost? [LR34]

MIKE ROTHWELL: Well, currently there's over 30 positions that are vacant that they have not been able to fill. So it would not be prudent to request more clinical staff. We need to fill what we have. The other issue is with the STRONG-R, that will target fewer offenders that need a full-blown assessment. So those staff that would be tasked to doing an assessment could offer a group. Behavioral health is looking at ways to increase the frequency and duration of the programs that they offer currently. [LR34]

STEVE LATHROP: So how many of these 34 people that you...that are understaffed in behavioral health, that's from psychiatrists down to... [LR34]

MIKE ROTHWELL: Licensed mental health practitioners, psychologists, chemical dependency counselors. [LR34]

STEVE LATHROP: And I don't want to say down to--in the array--the licensed mental health professional all the way up to a psychiatrist, right? [LR34]

MIKE ROTHWELL: Correct. [LR34]

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STEVE LATHROP: And so are you telling us then that...well, first of all, have you made a study of this? Like have you looked at what you actually need to be offering, how many times you need to be offering it in order to meet the goal? Do you know that? [LR34]

MIKE ROTHWELL: They've looked internally. We haven't...other than the JPA and what Ms. Alvarez did, those are the only two studies we've done recently. [LR34]

STEVE LATHROP: Yeah, now I'm talking about...because they didn't drill down and say you need to offer violence reduction programming twice as many times as you are right now, did they? [LR34]

MIKE ROTHWELL: No. [LR34]

STEVE LATHROP: And Alvarez didn't conclude that you need to offer violence reduction programming twice as often as you are right now. Is that true? [LR34]

MIKE ROTHWELL: That's true. [LR34]

STEVE LATHROP: Beyond the scope of both studies, true? [LR34]

MIKE ROTHWELL: True. [LR34]

STEVE LATHROP: Okay. But it remains the goal, that we're going to get all this programming done. So have you, Deputy Director, done a study to determine how often these programs should be offered for us to meet the goal of having everybody complete the programming before their parole eligibility date? [LR34]

MIKE ROTHWELL: No, I have not. [LR34]

STEVE LATHROP: Okay. Do you think that would be important? [LR34]

MIKE ROTHWELL: Yes. [LR34]

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STEVE LATHROP: And would that tell you how much resources you need from the state to make that happen? [LR34]

MIKE ROTHWELL: It would be a good indicator, yes. [LR34]

STEVE LATHROP: I think it would be a direct correlation between that study, your conclusions from that study, and what you need to ask the Appropriations Committee for later on. Wouldn't you agree? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: I mean, I know you're down 34 people and having them hired would be helpful. But we did a study on corrections officers, right? And this study indicated that we're down, we knew, we had 200 vacancies at any given time, but we still needed 138 to 254 more people, right? That's a staffing study. [LR34]

MIKE ROTHWELL: Correct. [LR34]

STEVE LATHROP: We haven't done anything like that to determine how often we need to offer the programs, how many people will that take to do it on top of the 34 vacancies we already have. [LR34]

MIKE ROTHWELL: That's correct. [LR34]

STEVE LATHROP: Do you have any plans to do that study? [LR34]

MIKE ROTHWELL: No, I have not made any plans to do that study. [LR34]

STEVE LATHROP: When we asked--and I say we, the committee, and it may have come from Senator Pansing Brooks's Office--we asked the department some questions and we get an answer back from Jeff Beaty. And the question was, have you prepared an implementation plan for the JPA? And the answer that we got back was, no, but we're working on it. Are you working on

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such a study? And is capacity one of the issues you continue to study in preparation for preparing the implementation plan? [LR34]

MIKE ROTHWELL: Well, we've addressed several of the components already immediately in the JPA finding with the risk needs and increasing the capacity for the nonclinical programs. The clinical staff are working together to increase their capacity to sort of repurpose how they're doing, you know, their jobs. So we do have...you know, we are working towards implementing those particular recommendations. Some have already been implemented. [LR34]

STEVE LATHROP: I want to say something. I realize that you came into this problem and you're here to try to fix it, okay? I don't want my questions to make it sound like I'm blaming you for this, okay? I'm not. [LR34]

MIKE ROTHWELL: Oh, I know that. [LR34]

STEVE LATHROP: But I'm trying to get to the bottom of it because that's what they asked me to do. And when I'm listening to this, I am concerned that we've started this, we know what we need to do. Knowing how often to offer these classes is something that's going to lead us to spending money, right? We need to hire some people to run these programs, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: And if we don't know how frequently you need to offer them and how many people you need to hire to staff them, then how are you ever going to meet the goals, the fiscal year increase program capacity? That's one of the things that they've said. Apparently you're working on an implementation plan, but it does or doesn't include trying to figure out how many times you need to offer these programs to get everybody through them before their parole eligibility date. [LR34]

MIKE ROTHWELL: Well, we've increased the capacity for the cognitive and behavioral intervention that they recommended by adding two new sections of Thinking for a Change. We're going to add more sections of that offering. So that particular recommendation is being

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met in terms of increasing capacity. The behavioral health staff are looking at violence reduction and anger management programs, looking at wait lists on ways to streamline that process as we speak. So they're looking at identifying those particular gaps in services so that they can meet that expanded capacity. [LR34]

STEVE LATHROP: When this committee started, this particular committee, LR34 Committee, their goal was to try to determine as best that could be done through these types of hearings what the problems were or the needs were over at the department and what resources they needed to make that happen, to meet the objectives. We brought in the Council of State Governments; they're doing this kind of stuff. As I prepared for this hearing, I got to tell you I was very impressed with how important programming is to this whole solution, like, we don't get programming right, we don't figure out programming and it will remain the bottleneck over at the Parole Board, right? And if it remains a bottleneck over at Parole Board and they're not putting more people out on parole which is a goal versus put them...jamming out, then we're not going to get ahead of the overcrowding. And if we don't get ahead of the overcrowding, then we're going to have 160 percent of capacity or 157 percent or 158 percent or whatever and we're not going to meet our goal. We're going to hope that the judges stop sending Class IVs down there and jamming the place up with Class IV felonies and that's about all we'll get done if we don't do something with programming. And so now we're here today to ask you--and you've been looking at this for, what, a year?--... [LR34]

MIKE ROTHWELL: Yes, sir. [LR34]

STEVE LATHROP: ...what you need to meet the goals. And this goal or the idea that we need to increase capacity, everybody in this room knows what that means and everybody in this room knows what you need to do. And I'm going to tell you, I have some concern myself about whether you can do that by moving people around inside the place and alleviating some of their responsibilities. And what I'm hearing you say is I don't know what I need but I could sure use those 34 people we're down in the vacancies; and after that, I don't know, that may or may not fix it but we don't know without some kind of study. So can this, can the Legislature, these folks up here sitting on the committee and the folks that will be here through the next session, expect some kind of a study on how many more people you need over and above the vacancies, if any,

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to get capacity where it needs to be which is basically the one thing you need to accomplish during the next fiscal year? [LR34]

MIKE ROTHWELL: Yes, sir. [LR34]

STEVE LATHROP: Okay. When can they expect that? I'm not going to be here, so talk to Senator Morfeld here (Laughter) or Senator Bolz or Senator Schumacher or Pansing Brooks because they're going to be here and they're going to want to know the answer to this because the staffing study told us it can be done. When somebody studies this issue and tries to figure out what needs to be done to meet the goal and we got one...and we got to streamline some stuff, but really what we need to do is increase capacity and streamline things. So when can we expect some kind of a staffing study so that you could accomplish those things? And when you come before whatever the Appropriations Committee looks like next year you can tell them? [LR34]

MIKE ROTHWELL: Well, I'll have to get with the director and determine what kinds of funds are required to... [LR34]

STEVE LATHROP: Oh, wait a minute. We don't want to work backwards from this about how much funds you're going to get and then have you tell the Appropriations Committee how many people you need because that's how we got in the mess in the first place. What we're looking for is how many people do you need and what's it going to cost? That's sort of a question you can answer, if you can. [LR34]

MIKE ROTHWELL: First of June. Is that too late? [LR34]

STEVE LATHROP: Yeah. I don't think it does any good. I mean, I see the Appropriations Committee people over there kind of smirking or giggling about it. Now, do you have any...I mean, so the first of June, just for people that might be watching on television because everybody else in the room already knows that that means the Legislature has adjourned sine die in the next session, right? [LR34]

MIKE ROTHWELL: Okay. [LR34]

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STEVE LATHROP: And so that won't really be helpful for the Appropriations Committee if they're trying to give you the resources you need to meet the goals of the JPA and get the programming where we want it to be and where we've had as a stated goal. [LR34]

MIKE ROTHWELL: Would February 1 work? [LR34]

STEVE LATHROP: Well, we've got to give you time. I'll let these guys ask that question because I'm not on...I was never on Appropriations Committee and I'm not going to be on the Appropriations Committee. So they can tell you whether that's soon enough or not. Maybe I got one more point to make or one...and it's a little bit of a question. But I don't think, Mr. Deputy Director, that the problems that have been identified in these studies in which this panel has heard about through four hearings in programming got there because people were not trying, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: We have a lot of people at behavioral health and a lot of people at the Department of Corrections that were trying to do a good job with programming, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: But what ended up happening is they didn't have the resources they needed to do programming correctly. Either we didn't expand programming. We, state government, didn't expand programming as the population grew or we cut some of the programming during difficult times and never restored it when the budget improved. But it's a resource issue and not a people trying issue, would you agree with that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

STEVE LATHROP: Okay. And ultimately these folks here are going to need to know what you need for resources, okay? You're shaking your head yes. [LR34]

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MIKE ROTHWELL: Yes, sir. I'm sorry. [LR34]

STEVE LATHROP: Okay, good. It's my habit...it's my habit... [LR34]

MIKE ROTHWELL: You can't hear anything rattle when I shake my head, I'm sorry. (Laugh)  
[LR34]

STEVE LATHROP: I know, and I say that sometimes to people in a deposition. I can't...the court reporter can't take that down. That's all the questions I have. I do appreciate your courtesy and your answers to the questions. [LR34]

SENATOR PANSING BROOKS: Thank you, Mr. Lathrop. Questions from the committee?  
Okay, go ahead, Senator Mello. [LR34]

SENATOR MELLO: Thank you, Chairwoman Pansing Brooks, and thank you, Deputy Director. I know the questions a lot were focusing on programming in respects to prior to parole eligibility date. I wanted to raise a couple questions with you regarding the vocational and life skills program, reentry programming. I know we're only in, in theory, year two of the program. The question, the first question I have is, has there been a waiting list essentially developed with reentry programming as it is now with those funds? [LR34]

MIKE ROTHWELL: Not that I'm aware of. [LR34]

SENATOR MELLO: So there's... [LR34]

MIKE ROTHWELL: In terms of accessing the programs? [LR34]

SENATOR MELLO: Because you've got multiple providers who are...community providers who are providing services. [LR34]

MIKE ROTHWELL: Yes. [LR34]

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SENATOR MELLO: The question I have is much...is that enough? Essentially, you get roughly \$3.5 million a year in appropriation for aid to carry out the reentry program services. And the question I had was, is there a waiting list being developed now or is there a waiting list being generated for inmates trying to get reentry services but the providers just can't provide any more services? They're at their capacity. [LR34]

MIKE ROTHWELL: No, there's not. [LR34]

SENATOR MELLO: So there's not a waiting list for reentry services? [LR34]

MIKE ROTHWELL: No, no. [LR34]

SENATOR MELLO: Okay. That was the question I had. [LR34]

SENATOR PANSING BROOKS: Senator Bolz. [LR34]

SENATOR BOLZ: A couple questions. I'd like to start by reading you some language from our budget bill in 2015. This is LB657 from 2015 and it states: It is the intent of the Legislature that the Department of Correctional Services implement a needs assessment regarding behavioral and mental health treatment and staffing. The needs assessment shall be completed by appropriately trained mental health professionals. The assessment shall include: review and summary of relevant existing data sources; a detailed review of need factors in the Department of Correctional Services population including risk behaviors, mental health needs, behavioral health needs, and diagnosis; a detailed review of existing treatment and analysis of the adequacy of that treatment based on professional standards of care, best practices, availability of programming aligned with mental health needs and diagnosis, availability in different facilities and levels of custody; analysis of needs, based on data gathered (regarding) staffing needs to meet professional standards of care, needs related to developing new or different treatment based on needs analysis, needs related to achieving an appropriate level of service that meets the goals of institutional and community safety and community integration. Given that intent language, I'm confused as to why there's such confusion about the staffing- and treatment-related needs. Can you shed any light on the process that was followed in terms of following the intent language and

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why we're still processing what the staffing needs and adequacy of staffing to meet programming needs might be? [LR34]

MIKE ROTHWELL: No, ma'am, I can't. To be honest with you, I'm not responsible for the behavioral health unit. That falls under a different deputy director. I work closely with them and we communicate on process improvement kinds of issues. But that's not my area of responsibility. I don't want to throw them under the bus or look like I'm trying to abdicate what I'm doing, but... [LR34]

SENATOR BOLZ: I believe that some version of this report was created. Was that shared with you? [LR34]

MIKE ROTHWELL: I don't recall. [LR34]

SENATOR BOLZ: Okay. A couple of other questions and if these should be directed at someone else, you can let me know as well. But I was reviewing the evidence-based practice report that was submitted with the Department of Correctional Services' budget and we appreciate that work. I think it's a great change in the way that we're doing our budgeting. There were three programs that were not identified as evidence based and two that were listed in the materials provided to the committee but were not on the evidence-based list. So the three that were not identified as evidence based were the Victims Impact Program, the Dog Handler Program, and the Healthy Sexual Relationships Program. And then the two that were not indicated as evidence based in the report and were not included in the evidence-based list for the Appropriations Committee were METEOR and Released and Restored. And I was just curious what is the plan for figuring out what to do with those programs? Or is it that we've identified that those programs, in spite of not being evidence based, have some sort of other value? [LR34]

MIKE ROTHWELL: They do. What we're looking at establishing are certain core risk-reducing programs such as the cognitive behavioral interventions, substance abuse, violence reduction program. Those are designed more for the medium- and high-risk folks. We're looking at ancillary programs which support those initiatives that may or may not be evidence-based programs. For example, Prison Fellowship is looking to establish a marriage encounter weekend

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for some of our offenders. You know, that's not particularly well researched, it's not an evidence-based program. But it's an important component to assist inmates in connecting with their families and moving back into the community. So we look at certain programs like Distance for Dads or InsideOut Dads as sort of a parent reunification kind of program which has pro-social value but is not deemed an evidence based because there's not a lot of research. [LR34]

SENATOR BOLZ: I'm sorry to interrupt you there, but there's actually a distinction there because those three programs that you listed, InsideOut Dads and the other two, are identified on the chart as having the potential for being evidence based... [LR34]

MIKE ROTHWELL: Yes. [LR34]

SENATOR BOLZ: ...whereas the Victim Impact, Dog Handler, and Healthy Sexual Relationships say not indicated. And so I just don't want to conflate all those programs because I think there is a difference between those that have the potential to be evidence based... [LR34]

MIKE ROTHWELL: Right. [LR34]

SENATOR BOLZ: ...and those who are not identified to be evidence based. [LR34]

MIKE ROTHWELL: Okay. [LR34]

SENATOR BOLZ: So go ahead. Sorry to interrupt. I just think that's an important distinction. [LR34]

MIKE ROTHWELL: All right. So anyway, we will have, for example, Beyond Anger, InsideOut is an anger management program that we're going to offer as a prison management kind of program for guys that are overly aggressive or we see a lot of misconduct reports and we want to put them in a program that's going to reduce the likelihood that they'll continue to engage in those activities. That's not an evidence-based program, but it's an ancillary program to the clinical anger management or the violence reduction program for guys that they identify as having anger issues but they don't rise to that particular level. [LR34]

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SENATOR BOLZ: Okay. That's helpful. Thank you. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Bolz. Senator Ebke. [LR34]

SENATOR EBKE: We just move down the line. [LR34]

SENATOR PANSING BROOKS: I guess we will. [LR34]

SENATOR EBKE: Thank you, Deputy Director, for being here. And, you know, I think some of the frustration you find in this committee is that we all recognize that this is just a tremendous task that you've got ahead of you and we're trying to figure out ways to help you. So if we sound a little edgy sometimes, please accept that in the spirit. Something that Mr. Lathrop mentioned early on in his questioning talked about assaults on staff. And I don't know if you're the appropriate person to ask about this, or I think certainly given your experiences as warden in other institutions maybe you can answer this. When we hear about assaults on staff, what does that mean? Does that mean physical bloodied contact or does it mean throwing food at staff or does it mean...? What's the scope? [LR34]

MIKE ROTHWELL: Well, the scope is, you know, any time you lay hands on a staff person that's an assault. If you spit on a staff person, that's an assault. If you injure them in any way, as it escalates up, is an assault. [LR34]

SENATOR EBKE: Okay, so in the dining hall, could you have the beginnings of a food fight with staff? [LR34]

MIKE ROTHWELL: Sure. [LR34]

SENATOR EBKE: Is that considered...is that...I mean you aren't technically laying hands but you throw a piece of chicken at them. Is that an assault? [LR34]

MIKE ROTHWELL: Yes. [LR34]

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SENATOR EBKE: Okay. So it may not be quite as bad or as serious as perhaps we've...and it may be just part of living in close quarters with lots of...and that sort of thing. The other question I have is that we talk a lot about, you know, how many do you need, how much money do you need, and that sort of stuff but yet we know that you are already understaffed in a lot of areas. Does that complicate or make more difficult the answering of the question how many more do you need because you don't have what you...what your current allocated staffing levels are already so you don't know when you need additionally? [LR34]

MIKE ROTHWELL: Well, I think the staffing levels is a complication. The implementation of the STRONG-R will give us, as we've moved down this path, will give us an idea of rather than looking at 5,000 inmates, maybe we only need 1,100 now for violence reduction programs. So it allows us to then look at how we can reallocate resources to increase the capacity for those high-risk inmates whereas before we were looking at everybody. [LR34]

SENATOR EBKE: Would you be more comfortable giving us numbers? Let's say...I don't know how many you're short in the programming. I know you used the number 30 for something at one point. If you had all those 30 positions filled, would that make it easier for you to say, yes, we need X number of people or we need to have more space because we've got enough people and enough time but we don't have...I mean, is that part of the complication of answering these questions on that? [LR34]

MIKE ROTHWELL: Well, I think part of the complication is probably we don't have enough data on the STRONG-R results to know exactly who needs to be targeted. We're just getting into that. That will drive a lot of our requests in terms of capacity issues. If we say we've got 700 people that need a cognitive behavioral intervention program but we can only provide services for 200, then that's a resource issue that we'll be able to identify. We know, for example, there's around 38 staff that are trained in MRT right now currently. And we have 189 or so engaged in the MRT program systemwide. If each of those 38 had a group of 10, that would increase that capacity. And if they offered it more frequently, then you can double that, say, if you offer it twice a year or three times a year. So we know what we have with regard to some of the cognitive programs. And in that instance, it's a matter of getting them engaged and offering those programs so that we can expand that capacity. [LR34]

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SENATOR EBKE: But part of the problem, if I'm extrapolating correctly, is that we, because we're short on staff in a lot of different areas, people are having to be tasked to nonprogramming areas. And so people who may be perfectly trained in MRT or whatever, they can't offer...

[LR34]

MIKE ROTHWELL: Correct. [LR34]

SENATOR EBKE: ...more of those programs because they're off doing case management or whatever else they're doing, right? [LR34]

MIKE ROTHWELL: Correct. Yeah, that it is a part of the problem. [LR34]

SENATOR EBKE: Okay, thank you. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. Do you have something, Senator Schumacher? [LR34]

SENATOR SCHUMACHER: Thank you, Senator Pansing Brooks, and thank you for your testimony. When you commented earlier you've been around since 1974 I thought to myself, my gosh, this guy has been around since Nixon was president. And if Director Frakes hired you, you're probably not an ideologue and you're probably a pretty bright, commonsense guy. [LR34]

MIKE ROTHWELL: Well, thank you. [LR34]

SENATOR SCHUMACHER: So I'm going to ask you to help us out because as a Legislature we've got kind of a big job and access to people's tax books...pocketbooks. You probably have more experience in the criminal justice system than everybody on this side of the table will have a chance to have and that's an important thing. We...so I've got two basic kind of questionings for you. One is, we're sitting here and there's a lot of expensive problems in the system. The end of the pipe of an expensive system often ends up in Corrections and with a lot of the bigger headaches of the system. We start out with low-paying jobs, some of which we've incentivized because we have economic development programs that call \$11.30 an hour a high-paying job.

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We have a social trend toward single family...single-parent families. We have a definition of poverty which essentially is more kids than income in a family household. And that seems to compound itself into a situation where we have kids hitting the school system which don't know the difference between Cinderella's shoe and the Old Lady Who Lived in a Shoe and aren't ready for the educational system which puts them in an increasing interlocking behavioral schedule where they fall farther and farther behind and thus the inclination is to get into a less socially desirable behavior, which then puts us into an expensive juvenile system where we have guardians ad litem and county attorneys and court appointed attorneys and social workers and parole or probation officers, all expensive, trying to fix it. And then when they turn 18 or 16, somewhere in that area, the Legislature says there's certain behaviors we can't put up with. We're going to criminalize them. And when we do that, then we institute a criminal (inaudible) and a criminal justice system which is inherently cumbersome, protective, expensive with hearings and appeals and right to confrontation and all those kind of things. And we get the prosecutor saying, gee, we can't afford this system so we need the hammer to hammer out quick convictions and guilty pleas, be that habitual criminal statutes, mandatory minimums, death penalties, whatever. Let's cut through the system, get a guilty plea, and move on. And that system is encumbered with judges and court-appointed attorneys and parole officers and probation officers and Legislatures studying how do we get a system that we can afford. And then finally we plug it into the Corrections system, those that we are not able to divert out, and we face the questions that Senator Lathrop has been raising. How do we do the programming? How do we not have people go round and round and round in the system or guards get beat up...corrections officers get beat up? So from your perspective in that big system, where should we best put our attention, or money seeing as how we...politicians tell us we're just too high tax the way it is? [LR34]

MIKE ROTHWELL: Well, certainly staffing drives a lot of the issues that we're facing. So money...and that's money for increased correctional officers is crucial to moving from a bed-driven system to a program-driven system because then you can take the case managers and caseworkers and use them as true case managers rather than having them sort of double over and serve a security function. So I think if we could get the positions that we've asked for that's a start down that road to help us. Because if we offer more programming, the research shows that when you reduce idleness you have safer prisons because people are engaged in more pro-social

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activities. So that's sort of the first step in the process down that road to improving the kind of programming and safe facilities that we want to achieve. [LR34]

SENATOR SCHUMACHER: Well, that leads to the practical line of questioning that Senator Lathrop was involved in and that is we've kind of gotten a sense on this committee over the last two, three, four years that staffing and space is a real big problem. [LR34]

MIKE ROTHWELL: Correct. [LR34]

SENATOR SCHUMACHER: And we also got, I think, kind of the impression that comparative to other professions and even other correctional institutions, our pay scale is on the low side and that we need more people, we need to make those jobs attractive and that's in a context of safety and also in the context of pay. [LR34]

MIKE ROTHWELL: Correct. [LR34]

SENATOR SCHUMACHER: And over the last decade or so apparently, it's been the habit to really, when the requests come in to the Appropriations Committee in the Legislature who has actually got to parse out the money from all these other things I listed before, that those requests are really pared down and really fail to bite the bullet of how much we have to increase the pay, how much we have to increase staff and we're not making a whole lot of progress. So how do we get the message from your level not shaded by, golly gee whiz, there isn't the money there because, you know, we promised to cut taxes, to a real realistic number and a fast timetable? We've been at this for...I think ten years ago there was a study that said we needed more prison space, for example, and that was kind of blown off. But how do we get that from your level, Director Frakes, into the Appropriations Committee and get politics out of it so that we can get this problem solved? What's... [LR34]

MIKE ROTHWELL: Well, I think we've prepared a very reasonable budget request that begins the process of addressing some of the staffing concerns. And so I think supporting that going forward is a step in that direction that you're looking at. [LR34]

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SENATOR SCHUMACHER: But that doesn't call for even the...or provide a mechanism for even getting the shortage of staff that we already have on our existing authorization, let alone the additional 130 to 250 people or doing anything to really increase the wages. A \$500 wage increase isn't going to mean anything to anybody. It's going...you may be looking in the, you know, 20s, 30s, maybe 40 percents in some of these areas to get the right people, am I kind of right in thinking that? [LR34]

MIKE ROTHWELL: In some areas you would be, yes. And again, in this state and others where I've been, usually that's a collective bargaining issue that the union puts forward in terms of starting salary, step and grade increases. And I would suggest an open dialogue with them on how can we move forward to attract people. That's a huge problem. [LR34]

SENATOR SCHUMACHER: And I'm not much of an expert in union negotiations or collective bargaining or something like that. There may be other people at this table who are much better versed, but we can't afford to put this into a unionized thing before we know for sure what we need and what we really honestly need to offer the unions. They, of course, have got to juggle their own problems with how is this in respect to some other state employees that they have. But we need to have solid numbers and we need to be...to be able to do this. We don't have all the time in the world to screw around, four or five years muddling along. We burned up that time six, seven years ago when we blew this off and so I think there's a sense of urgency here. And that being said, let's move on then to I want to make a little bit of a case study in what we're doing wrong, what we can do. We've criminalized drugs. We've criminalized the transfer, the sale, the distribution of low levels of drugs. And I had a constituent, a relative contact me with regard to a case of a gentleman who was just recently released from your institution. And he'd been in there like three or four times--every time for low-grade drug delivery. The guy has got skills. I think he can weld. I think he can hang drywall. He was on parole, but he flunked a urine test and apparently got in and must have jammed out, was released back in February. He can't find a job. Did find kind of a halfway lightweight job for something in the summer. No transportation. Riding his bike to--52 years old, riding a bicycle--to this job. Hits a curb, flips over, busts his shoulder, no money for medicine, and he's got a screwed-up, messed-up healed shoulder. And can't get on food stamps because he's got no food except what he can get from the food bank or whatever. And basically we all know where he's going to end back up, that some judge or

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prosecutor is going to be fed up with him and hit him with a habitual criminal and he's going to be a guest with you guys for 10, 20 years. So what can we do for him before he trips that lever again and comes back through and just contributes to our problems? And I think there's more than just one of them out there. [LR34]

MIKE ROTHWELL: Well, in the case of having jammed out, there are, if he's within 18 months, he would be eligible to participate in some of the vocational life skills programming. So if he would...and I know we've had this conversation with ReConnect in Omaha and they're willing to work with folks who would fall into that category. And they help people with bus passes and they help them with work tools. And so if he would reach out to one of those...one of our agencies that we work with, he could probably get some help. [LR34]

SENATOR SCHUMACHER: He knows how to weld. Supposedly there's a demand for welders. He knows how to hang drywall. Supposedly there's a demand for construction workers. He needs food. He needs some type of medical care. Maybe it's too late for his shoulder, who knows? And he needs some kind of transportation and he's in a town which doesn't have a bus service. And so I'm afraid we're going to spend whatever it is, \$30,000, \$40,000 a year on this guy for the next 10 or 20 years and it's just a matter of time until he says I need some money. And so if you can get to me the name of somebody, but he doesn't live in Omaha and that's a long bicycle ride from where I live. We need to figure out a way to systemically address those problems because it isn't working and it's part of the same problem we're seeing here with overtaxing the system. [LR34]

MIKE ROTHWELL: Well, if you could send me a note with his name and contact information, I could have our reentry folks kind of look into it and see... [LR34]

SENATOR SCHUMACHER: I'll do that. [LR34]

MIKE ROTHWELL: ...what services might be available in his area. [LR34]

SENATOR SCHUMACHER: And whatever you find didn't work that he didn't know where those services are, we need to develop a program so other folks in similar situations know where to go because he doesn't know where to go. Okay, thank you. [LR34]

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SENATOR PANSING BROOKS: Thank you, Senator Schumacher. I think Senator Mello had a question. [LR34]

SENATOR MELLO: You can go around. I can come back around. They've been waiting. [LR34]

SENATOR PANSING BROOKS: Okay. Do you have anything, either? Senator Williams. [LR34]

SENATOR WILLIAMS: Thank you, Senator Pansing Brooks, and thank you for being...and just a couple of quick questions. You talked about the reentry services and those starting at 120 days before and you used the term in your testimony "reentry specialists." Can you tell me what a reentry specialist is and what training and education they have. [LR34]

MIKE ROTHWELL: Those are staff members that we've had that have worked their way up through the system. And they...actually they work when they come...as soon as they come to the reception centers they give them a workbook and start discussing plans for release. What are you sort of thinking about? And then throughout their incarceration, certain benchmarks they'll meet with them to ensure that they're on track to complete their programming and participate in whatever is available. And then... [LR34]

SENATOR WILLIAMS: But the reentry specialists themselves, that's what I wanted to focus on. What training do they have to be a reentry specialist? [LR34]

MIKE ROTHWELL: They've gone through pre-service and in-service trainings that the department offers. They have specialized trainings with UNO and others that they attend on, you know, how you do case management kinds of planning and assistance and referrals. [LR34]

SENATOR WILLIAMS: My final question about that is the target is 120 days prior to release. Historically is that the right number if you are dealing with one person that may have been incarcerated for a lengthy period of time versus someone that's been there for a year or something? Or do you try to build that into the program? [LR34]

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MIKE ROTHWELL: Yeah, they would touch base with that individual at times during their incarceration other than the 120 days. You know, at 50 percent there will be a formal meeting, and then the 120. And then we're looking at adding another step 30 days prior to release where we'll bring in the provider that will be working with them in the community, the parole officer, and anybody else that will be involved in the transitional process to have a final check-in so that everybody knows, all right, when you get out you have this appointment that Wednesday, you have this appointment over here so that they have a clear understanding and everybody has bought into, yes, this is what's going to happen when that individual is released. So it's a very formal type process. [LR34]

SENATOR WILLIAMS: (Inaudible)...sir. And this may be something that you can't quite answer, but when we're looking at the big picture and the success rate of those that have gone through the reentry program and that versus those that have jammed out, do we have any kind of a percentage that would say this is the number of people that are walking out our front doors that have gone through the reentry program, and this is the number that are going out based on just jamming out? [LR34]

MIKE ROTHWELL: I don't have that information. [LR34]

SENATOR WILLIAMS: Anybody recall hearing that at any point in time? [LR34]

\_\_\_\_\_: I don't. [LR34]

SENATOR WILLIAMS: I do not either. [LR34]

SENATOR BOLZ: Can I? Just to answer your question, the recidivism data is a part of the performance-based budget indicators. And I just checked it this morning. And that data isn't included despite the fact that it's an indicator. So it might be something you can follow up on for the committee as a whole. [LR34]

SENATOR WILLIAMS: I think that would be helpful information. Thank you. [LR34]

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MIKE ROTHWELL: Okay. [LR34]

SENATOR PANSING BROOKS: I have a number of questions. Do you have a quick question, Senator Mello? [LR34]

SENATOR MELLO: Two quick ones. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SENATOR MELLO: Thank you, Chairwoman Pansing Brooks and Director Rothwell. And if you think this question is better left for Director Frakes, by all means, you can shift this question to him when he comes up and testifies. In the budget request that was released last month, specifically to programming staff there were 8.5 new programming staff that were requested in the budget; 1.5 staff requested for educational services at OCC and at Tecumseh and there were 7 full-time staff to support cognitive behavioral programming and it's on page 116 not so you have to memorize everything, if people want to look in regards to what the department put out. And I was just looking at those seven staff in light of some of the questioning that went on this morning in regards to whether or not there's enough resources surrounding about building capacity for our programming within the department. And looking at those seven staff positions, it looks to me at least, and I'll give you the opportunity, or like I say, you can direct it to Director Frakes, that a significant number of those positions were more administrative positions in nature, not so much programming, I mean direct program front-line staff positions: clinical program manager, clinical program support, classification administrator, volunteer programs administrator, grant and technical writer, and two quality assurance coordinators. So in light of some of the questioning that you and Mr. Lathrop had in regards to whether or not there's enough resources to build the needed capacity to provide the violence reduction programming, to provide more of the cognitive behavior programming, can you share a little perspective in regards to those new positions that have been requested? And to some extent, are those positions going to truly build more capacity on the front-line end that we had roughly about a two-hour conversation about this morning? [LR34]

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MIKE ROTHWELL: They will. It will allow us, particularly with the quality assurance folks, to identify gaps in services or problem issues that might need to be addressed through training and program expansion. That's sort of the core group that's starting out that was recommended by CSG in order to improve our quality assurance efforts. The classification coordinator...the STRONG-R in a lot of these new programs are being implemented that need oversight and monitoring and we also need quality assurance with regard to the STRONG-R to make sure that we're doing the instrument correctly as it was intended to be used. That person will head up the quality assurance effort along with two or three folks who have been trained in the STRONG-R as trainers to go out and sit with staff as they're doing the interviews and asking...making sure they're asking the correct questions, they're asking probative questions, that they're scoring against them correctly, and so forth. So, yes, that will increase capacity. [LR34]

SENATOR MELLO: And so the classification administrator is more of another quality assurance position for the STRONG-R. [LR34]

MIKE ROTHWELL: Correct. [LR34]

SENATOR MELLO: Correct. And then the two quality assurance coordinators are mostly a derivative from the JPA, to say. [LR34]

MIKE ROTHWELL: Correct. [LR34]

SENATOR MELLO: So three out of the seven are connected mostly to quality assurance in regards to our existing programs, yet what about the other four? I know obviously grant technical writer is for grants and that's...the position speaks for itself in regards to trying to identify new resources for the department. The volunteer program administrator, the clinical program support, and the clinical program manager, where do those three positions then build more capacity? As you heard Mr. Lathrop asking I think a very easy-to-understand question for not just us but anyone else who's watching, which is, how do you create more violence reduction programs, not just the one that's got eight people in it now? But how do you create five more programs that then are serving 40 people instead of one program serving 8? How do those three positions do that? [LR34]

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MIKE ROTHWELL: One of the things that we're looking at doing as part of the reentry initiative is establishing what are called inner circles for inmates within the last 120 days who are going to be released. The inner circle is sort of cofacilitated by a professional staff and volunteers so that inmates are really kind of focusing on what they can expect when they're released. And it would involve bringing some ex-offenders in as volunteers to talk to them about some of the barriers that they faced and they overcame when they were released to the community. We'll expand that once they're released in the community to what we call winner circles and these guys will meet on the outside so that they sit down and, amongst themselves, talk about, you know, I'm having trouble finding a job. Does anybody know where a job is? Yeah, we can go over here. So that will be coordinated through citizen volunteers in the different communities. And we're also looking to expand what we call community support advisory councils to start in Omaha and Lincoln that would be faith-based groups, citizens, and others who have a vested interest in seeing people successfully transition back into the community. So it's part of that initiative to provide more opportunities for supervision and hands-on work in the communities. Your concept of the employer councils, for example, we're moving forward with that and that would be something that the volunteer coordinator would work with reentry folks on in trying to get employers together to look at what kinds of demand occupations are being developed for the future and how we can train a work force to come out and move into those different occupations. [LR34]

SENATOR MELLO: And, Mike, obviously I think obviously these, the positions that you're asking for, it's not really for me to say obviously whether or not you need those specific positions. And obviously I think the volunteer program administrator can provide I think added capacity for reentry program which you just described which is great. The question I just maybe want you to drill down a little bit is these are needed positions in regards to maybe building more quality assurance building, more capacity on the reentry end, and providing maybe a little bit more strategic guidance in some of the direct cognitive behavioral programming. The question I just have is based on the budget request still, there appears to be no new staff positions requested for front-line programs and that's the question I guess as much as anything else which is based off some of the questions I heard today from Mr. Lathrop. Do you see that...do you see any of these positions filling front line...filling that front-line gap that appears to be...that appears to exist right now? I'm not saying that these aren't needed positions... [LR34]

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MIKE ROTHWELL: Right. [LR34]

SENATOR MELLO: ...because I would say obviously the quality assurance we know is needed. The volunteer component I think speaks for itself. And people I talk to in Omaha are very excited to see that there is movement to move your reentry mindset in programming to that volunteer focus. It's more of that front-line instructor that we know where it needed to be able to expand the existing four or five programs to help people not only qualify for parole but arguably help provide that rehabilitative process that we know, in our community, people are really wanting to see come from the Department of Corrections. Any of those positions help do any of that or is that something that would need to be considered on top of the budget request? [LR34]

MIKE ROTHWELL: No, I think we have the capacity to begin the process of offering more programs right now. [LR34]

SENATOR MELLO: Okay. [LR34]

MIKE ROTHWELL: We've trained 20 staff in Living in Balance and we're waiting to kick that off. We've trained seven in Thinking for a Change and expanded that at two facilities. We want to send some folks through training the trainer so that we can then train our own and grow that capacity. So we have enough right now to begin the process. It's not an overnight fix and it's going to take time to move down that path, but we have the pieces in place right now to start that growth. [LR34]

SENATOR MELLO: All right. Thanks, Mike. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you, Senator Mello. Thank you for being here and answering all the questions that we have. Obviously as Senator Schumacher said, we're fortunate to have you here with your experience. And I think you must be sort of a moth to flame because you seem attracted to things that are major issues. So I'm hopeful because I think you are a kind and caring person, that you will be able to fix this. I guess I have a number of different questions. Just to start off, we purposefully put programming at the end of these hearings and that was because we felt that programming had so much to do with the overcrowding issue

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which was the...one of the previous hearings, the understaffing issue. It all relates to programming and the ability to properly provide the programming necessary to move people out to help this overcrowding issue with our system. And I think a lot of what you've said today just confirms that concern of ours. I guess first I'd like to start with what do you believe is the greatest fear or concern you have regarding programming and what you can or can't do? [LR34]

MIKE ROTHWELL: Well, I think long term is the economy changes. And I've been in systems where departments of corrections have been compelled to make budget cuts. And they couldn't cut security so what ended up being cut were programs. So I guess if you ask what my greatest fear is, is if we continue with a revenue decline that at some point in time the strides that we've made so far and where we're going and I think we're going in the right direction. I think we've got a lot of the pieces in place. I think we're really starting to see some progress in where we want to head programmatically. But if there is a serious downturn in the economy, is that effort going to be jeopardized? [LR34]

SENATOR PANSING BROOKS: And it has been jeopardized. We've cut programming all along previously. So you're right, hopefully we are not switching with that. I wanted to jump back. My goal as part of what I was hoping, Senator Ebke and I were sort of assigned to look at programming for the Judiciary Committee. So we have done some work, not enough. But we have tried to look at the programming inside the prisons and outside the prisons. I think you're aware that we have those meetings, full-day meetings where we have people come in from the community and from within the Corrections Department to explain what is going on and what opportunities are available. Then we had CSG's report and we, Senator Ebke and I met with CSG a number of times. My goal and what I stated to CSG was that I really hoped that we would have the numbers, the numbers of. And that's what I wanted from this hearing as well: the numbers of how many people are getting programming; how many are on the waiting list; what kind of...at what time are those programs given to the inmates; what triggers the fact that they get that programming, is that just the 120 days? Because we know that there are inmates, yes, choosing not to take the programming but also choosing not to take the programming because they don't want to be followed around by Parole Board officers or...after release. So I guess Senator Lathrop...now Attorney Lathrop, but former Senator Lathrop did mention a request for a report. I would like to follow that up. I think our whole committee would like to have a report. I hope it

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will be by January 1. So that's what I would ask. That gives you a little bit more than two months but I would like to have a report about who's getting the programming, what type of programming they're getting, how many programs they're getting within their time in prison. It seems to me that if we're keeping track of people in a cell, surely we're keeping track of where they go to another room and I hear...I mean you said today that we are not worried about space. That's not what I've heard from many corrections staff officers. I continue to hear that part of the problem of programming is that we are not...we do not have the space to place them all in the various spots they need. So I guess when I hear all of this I'm confused. It sounds like things are going pretty well, but I don't have a strong feel that when I look at these programs there's a lot of programs at a lot of different places. But again, I see ten sessions. I don't know how long ten sessions last. It's one to four participants. So when you look at the entire prison population, that's not very much programming. And so are those ten sessions back to back to back? And so again, and I know that part of the issue is that we don't have the numbers; but it seems like nobody is more perfectly suited to numbers than the Corrections Department to look at where the inmates are at what time for what purpose. And if we aren't keeping track of that, is that part of the problem with escapes and assaults and...? It just doesn't make sense to me that you all don't know where your inmates are at any given point. So if you do know where they are, you know that they're in a class. I've also talked to other people that have given classes within the prisons, and it's my understanding that they have to write a full report about who was there. So that information is coming, it's my understanding, to all of you. So why is that information not able to be placed into a computer program and say X inmate was in this room taking this class for this amount of time. They did or did not graduate. And I do see that you did talk about that you've got somebody creating...taking...let's see, tracking enrollment and tracking completion rates and the dropouts and why they dropped out. But clearly another part of the information is, because I don't believe that we can understand what the problem is until we understand or how to fix the problem if we don't even understand what the problem is. So to me, the numbers are so significant to this issue. And again, we've gone through CSG and didn't get the numbers. We've gone through this hearing. We do not have the numbers of when...who is on a waiting list, how long, when they get the...when do they get the classes. If people have...we certainly know if somebody has committed a burglary and they were under the influence, they've got a couple issues there that need to be dealt with to be able to get them to the point of releasing them as a safe individual into our community and not having them recidivate. So to me, again we've spent

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a whole year. And when I talk to CSG, their response was...and they've done a great report. I think it's at the 25,000-foot level: enhance programming, enhance criminogenic factors. Those are all to me like, we believe in goodness and apple pie. These are the big...we want these things done. But we also need to know the numbers. We need to know what is happening to the inmates, why it's happening. If we have X percent of inmates who are sitting there or we only know that X percent are taking them, that leaves a huge range that aren't. So I've gone on on this. Do you have a reason why we can't get those numbers because I've asked you for those numbers as well? [LR34]

MIKE ROTHWELL: Traditionally, the department did not track those numbers. We're just now getting to the point where we're putting in the data field so that we can begin to measure that. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

MIKE ROTHWELL: So that's been a gap within the department for years. [LR34]

SENATOR PANSING BROOKS: Okay. So it's just starting in July, or when is this starting? When are we starting this? [LR34]

MIKE ROTHWELL: Well, we've been starting...we've been tracking numbers since long before July. We haven't been tracking all the numbers. We've just been...we've had other...we had the sentence calculation issue with...which was the top priority. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

MIKE ROTHWELL: And so now we have programmers and others that we can retask to start developing this database so we can measure program completions and dropout rates and who's participating and when and why and all that. So we're just now putting that in place. [LR34]

SENATOR PANSING BROOKS: Okay. Is that a goal then... [LR34]

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MIKE ROTHWELL: Yes, absolutely. [LR34]

SENATOR PANSING BROOKS: ...to have...okay. Okay. And so will you be able to give us information...I mean you'll be keeping this information. Will it extend to information about who's getting it and why? Will you be able to look at what kind of waiting lists we have, especially for the core programming? [LR34]

MIKE ROTHWELL: And I don't know if we can address the why, but we'll be able to look at how many people are referred, how many refused, you know, if they participated what was the average length of stay, did they fully complete, you know if they dropped out was it involuntary or voluntary. What are the reasons? So we're just now getting that system in place. [LR34]

SENATOR PANSING BROOKS: Okay. So you're saying that we can't see the why, but we could try to keep track of... [LR34]

MIKE ROTHWELL: The who and the how and... [LR34]

SENATOR PANSING BROOKS: Yeah, who and how and why there are a massive quantity that are not getting that programming. [LR34]

MIKE ROTHWELL: I don't know if we'll have a why they're not getting the programming but... [LR34]

SENATOR PANSING BROOKS: Well, if we have... [LR34]

MIKE ROTHWELL: ...we'll be able to produce the numbers that show those that have been referred for programming but did not go. [LR34]

SENATOR PANSING BROOKS: Do you have a feel for what percent of your population is getting programming? [LR34]

MIKE ROTHWELL: No. [LR34]

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SENATOR PANSING BROOKS: Okay. That would be helpful information it seems. And then also if it's 20 percent, what are the 80 percent doing? Are they sitting alone in their cells? I just am interested. So what are they doing? And I'm not...again, this isn't about you. We know it's funding. It's space. It's all sorts of things. I guess I'm concerned when I hear there's no space. As you look at trying to get more programming for people in the future, are we planning ahead for space needs because I continue to hear space is an issue? [LR34]

MIKE ROTHWELL: In some facilities it is. In others it's not. It's not uniform across every facility. [LR34]

SENATOR PANSING BROOKS: Okay. I guess it's a matter of determining what is a space need. [LR34]

MIKE ROTHWELL: Correct. [LR34]

SENATOR PANSING BROOKS: If we think that 80 percent of prisoners should be getting some sort of programming, do you have the capability to do that across your systems? [LR34]

MIKE ROTHWELL: At 80 percent, probably not. [LR34]

SENATOR PANSING BROOKS: What percent do you have the space to do? [LR34]

MIKE ROTHWELL: That I would have to look into. [LR34]

SENATOR PANSING BROOKS: Do you feel there are two rooms available at the facility...at especially the...whatever facilities you're talking about I'm presuming (inaudible)? [LR34]

MIKE ROTHWELL: NCCW, WEC has program space, NCYF has adequate program... [LR34]

SENATOR PANSING BROOKS: One or two rooms, or what are we talking about, space? [LR34]

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MIKE ROTHWELL: They're different. I don't...I'd have to go out and do a site study to see exactly how many rooms they're using. [LR34]

SENATOR PANSING BROOKS: Okay. I guess that's part of the issue to me is there are rooms available, for what amount of programming and what type, for what percentage of the inmates? Again, we have all these recommendations that, boy, we believe in programming. We need to do more programming. Well, we need to find out who isn't getting it, why not, what is...what are the numbers and what are the space requirements for what we really want as our goal. So I would request that as a part of that January 1 report, or if it has to be February 1. But I think that...I think from what we're talking about that we will have to compel those answers if we don't get them. I'm not trying to be threatening, but I've asked numerous times for this information. I've asked CSG to go get it, I've asked you, and we cannot get this information. So I don't...it seems like we can't even make a decision about this until we have the information of what's happening to whom at what points in their inmate...in their terms in the prison system. And I just feel like...I'm sorry if I'm sounding aggravated and it's not you. I know you're working really hard to work on all these programs. We're lucky to have you. But we have got to get these answers to be able to help you. And we have got to get these answers to be able to look at how many more staff do you really need? We're hearing these numbers just sort of floating out there and it sounds good if we get up to speed on all the staff. But I don't know. In order to really do programming, to really create a system to let people get out who are safer and more prepared to be contributing members of our community, we have...it's falling on you in a way. And I think you can do it. I just am requesting, I think on behalf of the committee, that that information come to us about how long it is, what are the opportunities, and what seems to be the problem with getting...I think we all agree that having inmates sit there for 90 percent of their time in prison doing nothing is not creating a safer community after they are released. So we've got to deal with that. And yes, it costs money. So the other thing I'm concerned about a little bit and want to talk to you about, you talked about streamlining and more classes versus streamlining. And I guess I don't know again, we don't know how many classes you need. When I hear about streamlining it worries me. It worries me from a clinician standpoint because it seems to me that, you know, I think licenses could be at risk if you're starting to streamline what is considered a best practice in any kind of programming whether it's a behavioral health program, whether it's treatment or abuse. It's...I just think that that's something that concerns me. So how do you deal with that

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thought of streamlining and keep best practices and make sure that we are following what needs to be done for the clinicians who are providing these clinical services? [LR34]

MIKE ROTHWELL: Well, one of the examples was Anger Management with review. That was generally could be five or six clinicians sitting around discussing a case and making a determination what program that person needs. You don't find that in private practice. So they've streamlined the process that one clinician reviews the case and makes recommendations. So now you've got five people that can be tasked doing other things. And so it's streamlining but it's also being more efficient and effective with the resources you have so that you don't take a lot of staff time doing one task that one person could do. So that's just one example of looking at how you can be more effective. [LR34]

SENATOR PANSING BROOKS: Well, that sounds like a good idea, to not have five people looking at that. [LR34]

MIKE ROTHWELL: Correct. [LR34]

SENATOR PANSING BROOKS: I like that kind of streamlining. When I hear streamlining, it worries me because I think we're talking about cutting down the classes and making it not as effective or, you know, just saying... [LR34]

MIKE ROTHWELL: No, we're talking about expanding and we've done that with Thinking for a Change at WEC and NCCW. So it's not cutting corners and it's not putting anybody's license at risk because these are offered by nonclinical staff and these programs were designed to be offered by nonclinical staff. So the clinical folks are still going to look at ways to be more effective with the violence reduction program and the anger management, the sex offender programming so that they're getting the right people in the right program. [LR34]

SENATOR PANSING BROOKS: Okay. In a perfect world and knowing what you know since 1974 about programming in corrections, what is the goal regarding programming as far as what...in a perfect world if we weren't worried about money, is the goal to have prisoners in programming all the time? What is the goal? Or do we...is the goal to wait until 80 percent of

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their sentence is passed and then we put them into programming? What is the ultimate utopic goal? [LR34]

MIKE ROTHWELL: Well, the ultimate, if you're talking about a utopic goal, it would be facilities totally dedicated to providing programs where somebody is engaged in programmatic activity six hours a day, five days a week. That's the perfect world. In our system, it would be to get people identified within the first 90 days and get them into some programmatic activity in the first third of their sentence so that they can address that top risk immediately. That helps with their prison management issues. It helps get them sort of walking down this path towards getting involved in more programs and having safer facilities. So that's the goal for us right now is to get everybody assessed within 90 days and then get into at least one core risk-reducing program within the first third of their sentence so that they can then start down that track towards reentry. [LR34]

SENATOR PANSING BROOKS: Okay. Thank you. So when somebody is placed in a program after the...within the first third of their sentence, is that something like once a month that they go to a class? What do those classes look like? Again, that is information that I've been wanting that we haven't been able to get. [LR34]

MIKE ROTHWELL: Well, for example, right now MRT is offered once a week for 12, 13 weeks. [LR34]

SENATOR PANSING BROOKS: So are those hour classes? [LR34]

MIKE ROTHWELL: Yes. So if you, say, doubled up and did it twice a week, you could run people through in six weeks. And so that's kind of looking at, you know, now how can we allocate the staff time to increase that capacity so that now you're increasing the frequency of which the course is offered? [LR34]

SENATOR PANSING BROOKS: So it's my understanding that MRT is one of the ones that a lot of people need, is that correct, because I continue to hear so much about it? [LR34]

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MIKE ROTHWELL: Yes. [LR34]

SENATOR PANSING BROOKS: So one...so it seems like we need that class way more frequently. Would you agree to that? [LR34]

MIKE ROTHWELL: Oh, I agree. Yes. [LR34]

SENATOR PANSING BROOKS: And again, that's based on staff, right? [LR34]

MIKE ROTHWELL: Yes. [LR34]

SENATOR PANSING BROOKS: But not based on space? [LR34]

MIKE ROTHWELL: There are some space concerns. But if we look at nontraditional hours for offering that program, evening hours, say, from 6 to 8 or things like that, you know, and having staff on second shift who have been trained that can offer that program, academic...when the classrooms are open, then that sort of solves that space issue. [LR34]

SENATOR PANSING BROOKS: Okay. Do you have a feeling...at least an estimate on how many people take two classes at once or two programs? [LR34]

MIKE ROTHWELL: No, I do not. [LR34]

SENATOR PANSING BROOKS: Do people do that? [LR34]

MIKE ROTHWELL: Yes. [LR34]

SENATOR PANSING BROOKS: Okay. Again, I think we need to have numbers like that to know what the true issue is so...to try to understand what the problems are and...I mean, having people going to a class for one hour and then not doing anything, I mean that speaks to the budget, that speaks to the fact that if we're willing to accept that as the norm then it's no wonder we have the budget requests that we have. It seems to me that it's, again, crisis management a

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little bit because obviously you've said that the ultimate goal would be to get everybody in programming and now we're just hopeful to have one hour of programming at some point within a third of their sentence in the last 12 weeks--so that's 12 hours--in all their time that they're in prison. [LR34]

MIKE ROTHWELL: The goal is to get more people engaged in multiple programs, not just one program. And in many instances we do that. They may be in an education class working on their GED and then they may also be taking MRT. Or they might be in a substance abuse unit and then they're going to ResCare or they're going to one of our vocational life skills programs. So we have a number of inmates who are involved in multiple programs. [LR34]

SENATOR PANSING BROOKS: Okay. That's great. So that would be something else to know in the statistics that we're asking for is which of the...if you say one is going to MRT and then one is going to...I don't know, whatever the workout--health sciences, is that what you said, sorry? Anyway... [LR34]

MIKE ROTHWELL: GED. [LR34]

SENATOR PANSING BROOKS: Yeah, or GED. Anyway, if they're the same person we need to know that because then the numbers don't...if they look like two different people, the numbers aren't good for us. We want to know how many of the numbers of people are in separate courses. And I'm sorry to go on on this, but since we've asked for this a number of times it does feel like we need to officially ask for it at a hearing. And again, we're grateful for your work. There's no question. Let's see. Oh, I know. I recently, just recently heard, and I'm sorry because I would have asked...sent information asking about this. I just recently heard from some people of the reentry groups that...is it Nebraska Industries that's the work group where people work for contracts for the prison, is that correct? [LR34]

MIKE ROTHWELL: Cornhusker State Industries, yes. [LR34]

SENATOR PANSING BROOKS: Okay. Is that something you're...oh, sorry. You're right. Okay, so is that something you're in charge of? [LR34]

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MIKE ROTHWELL: No, ma'am. [LR34]

SENATOR PANSING BROOKS: Okay. So who's in charge of that? [LR34]

MIKE ROTHWELL: Jeremy Elder. [LR34]

SENATOR PANSING BROOKS: Jeremy, pardon me? [LR34]

MIKE ROTHWELL: Elder. [LR34]

SENATOR PANSING BROOKS: Okay, so I heard that, just recently, that jobs under Cornhusker Industries--Cornhusker State Industries, is that right?--... [LR34]

MIKE ROTHWELL: Yes. [LR34]

SENATOR PANSING BROOKS: Okay...get prioritized over programming. So there are instances where somebody is supposed to go to programming but if they have a job and that job is requiring them to be there for certain hours, that those jobs are prioritized over programming. So it could affect an inmate from being able to complete their programming which then leads to not getting their parole requirements done. So I'd like you...have you heard that happening? [LR34]

MIKE ROTHWELL: I know inmates, because of pay issues, have declined to participate in programs that have been recommended so that they can work. We had a discussion just this morning on looking at that and saying that if you have a program recommendation, you complete that program prior to going to Cornhusker State Industries job. [LR34]

SENATOR PANSING BROOKS: Okay. So are you...you're going to let people know in the prisons that they're to prioritize programming over that job? [LR34]

MIKE ROTHWELL: Yes, ma'am. [LR34]

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SENATOR PANSING BROOKS: That's good. Thank you. Sorry. I just wrote down a lot of questions while you were talking. When is the STRONG-R going to be available across all the institutions? [LR34]

MIKE ROTHWELL: It's available now. [LR34]

SENATOR PANSING BROOKS: Across all of them? Okay. And it's my understanding that the STRONG-R takes two hours to test somebody and to get that information. Is that about right? [LR34]

MIKE ROTHWELL: It could take that long, yes. [LR34]

SENATOR PANSING BROOKS: Okay. So again, you talked about pulling some officers. I guess I'm interested in if you're taking officers, are they caseworkers or case managers or who's being taken to do the STRONG-R testing or evaluation? [LR34]

MIKE ROTHWELL: We've trained a cross-section of caseworkers, case managers, unit managers, unit administrators who are able to do the STRONG-R. Not every unit administrator has been trained, not every unit manager is. The goal is to...you know, we've got enough trained. We've got 120 people trained so that we can start. And then we've trained 15 people as trained for trainers. And then now we'll be able to, as we move down this path, look at how many more staff do we need to train and we can do our own training. So it's kind of we're just taking steps to implement that. [LR34]

SENATOR PANSING BROOKS: Okay. So you purposely expanded the training among a lot of different employees so that you aren't just taking them from one area, is that what you're looking at? [LR34]

MIKE ROTHWELL: Right, right. [LR34]

SENATOR PANSING BROOKS: And so that then whoever is pulled to do that evaluation then somebody else can fill in for that that person's job, is that sort of how it goes? [LR34]

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MIKE ROTHWELL: Yes, ma'am. [LR34]

SENATOR PANSING BROOKS: Okay. And then again, on that report our goal is January 1. If you could add recidivism, Senator Williams talked about the recidivism rates and I think that's something good to look at. Obviously you can't have immediate numbers now, but hopefully if that's...if we keep track of that we'll know whether these programs are working or not in the future. So in this digital world, I think it's...there is some good and bad. And the good is being able to follow this and figure out what is working and what isn't. So anyway, I think that's the bulk of my questions. I really appreciate your time here. I know we all do. Do you have another question, Senator Schumacher? [LR34]

SENATOR SCHUMACHER: Just one clarification, Senator. Thank you. You mentioned I think in response to Senator Williams' question that there was some concern about a tax or economic downturn and how that would affect sustainability of something. Do you remember that response to question? [LR34]

MIKE ROTHWELL: No, that was Senator Pansing Brooks asked a question about what would be my greatest fear. [LR34]

SENATOR SCHUMACHER: Okay, and let's assume that we aren't going to see \$8 corn again-- probably a good assumption, at least for a long time--that \$3 corn is a good normal, that we probably aren't going to see \$600 million in federal stimulus for a long time, we probably are not going to see \$125 million in accelerated tax payments because people afraid the federal government was going to fall off a fiscal cliff and their tax rates would go up so they sold things quicker to trigger the tax. And that added up to about \$725 million, give or take, which happened to be where we were almost with our reserve. And now that's...it looks like we could be going through that like a drunken sailor. So let's assume that what we have now is not a low dip but normal. How does that impact how we should be thinking? I mean, are we in a lot more trouble than we think? [LR34]

MIKE ROTHWELL: Well, I can't answer that particular point. But I think from a correctional standpoint, we constantly look at what internal resources we have and where we have staff and

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how we can operate more efficiently in economic downturns. So, you know, we're having those conversations now on if there's a budget reduction, what do we need to do in order to pony up our fair share without impacting the safety of staff and the public? [LR34]

SENATOR SCHUMACHER: Do you see where we're at now as an economic downturn or as normal? [LR34]

MIKE ROTHWELL: Well, from what I...I have no historical basis in Nebraska, but from what I've been told it's an economic downturn. [LR34]

SENATOR SCHUMACHER: What if it's just normal? What if we just came off of an economic spike due to these three things that I just mentioned? What if we're normal? How does that...should that impact us? I mean are we really talking pie in the sky if this is the normal world that we've now entered into? And if we are talking pie in the sky, what's going to stop us from getting a federal court order saying set my people free? I mean this could get real serious if in the thinking of the budget process we're hoping that miraculously this is just some normal little blip in the atmosphere. [LR34]

MIKE ROTHWELL: Well, in terms of the new positions we requested for programs, if we did not get those positions it would be a serious impact and we'd have to adjust internally with staff taking on more...my administrative staff taking on and myself taking on more responsibilities to do those kinds of programs. I think we have staff in place who can sustain the programming that we're currently offering and allow us to do some modest increases in program offerings because we've not yet implemented Living in Balance. We've got 20 folks trained for that. So we can move forward with a moderate increase in capacity for programs. [LR34]

SENATOR SCHUMACHER: But far short of what we've been talking what we needed if assuming where we're at now is the new normal, or the old normal restored. [LR34]

MIKE ROTHWELL: Right. [LR34]

SENATOR SCHUMACHER: Okay. Thank you. [LR34]

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SENATOR PANSING BROOKS: Thank you very much, Deputy Director. We appreciate your time today. And I think the committee will be adjourned for an hour until 1:00, I think, if that's okay, Director. I don't know. Unless everybody wants to take a 15-minute break and move forward? Any thoughts from the committee? [LR34]

SENATOR MELLO: How long are we going to go? [LR34]

SENATOR PANSING BROOKS: How...pardon me? [LR34]

SENATOR MELLO: How long are we going to go this afternoon? [LR34]

SENATOR PANSING BROOKS: Well, it's...we have 1:00-3:00 down, but... [LR34]

SENATOR MELLO: Okay. [LR34]

SENATOR PANSING BROOKS: I don't know if you'd like to take a 15-minute break and reconvene. Would you like to do that? Also, we want to meet as a committee after for just a little bit if possible. Are people okay with taking a 15-minute break? [LR34]

SENATOR COASH: Sure. [LR34]

SENATOR PANSING BROOKS: Is there a problem because of the public...do we have a problem because it's been listed with the public? [LR34]

SENATOR COASH: What did we list? [LR34]

SENATOR PANSING BROOKS: It was 9:00 to 12:00, 1:00 to 3:00. [LR34]

SENATOR COASH: We should probably stay with 1:00 to 3:00 then. [LR34]

SENATOR PANSING BROOKS: Okay. I'm sorry, Director Frakes, we will reconvene at 1:00. Thank you. [LR34]

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SENATOR PANSING BROOKS: I'd like to call the meeting of the LR34 Committee to order and we have Director Frakes. Please come forward and give us any opening statement that you might have. Thank you very much for waiting. I know it's been an arduous process and we're very grateful to you for following up on all of this. Thank you. [LR34]

SCOTT FRAKES: Well, thank you. [LR34]

SENATOR PANSING BROOKS: And thank you for your leadership as well. [LR34]

SCOTT FRAKES: Thank you for that. Well, I'm going to modify. So good afternoon, Senator Pansing Brooks. Members of the LR34 Committee, my name is Scott Frakes, F-r-a-k-e-s. I am the director of the Nebraska Department of Correctional Services. I'll speak to the biennial budget requests related to programming and provide the committee a brief overview of work currently underway in the department. I'm going to go through a laundry list of things, so just bear with me. In the last year we published our strategic plan; created a new vision, mission and values statement for the agency; began significant restrictive housing reform including the elimination of disciplinary segregation; we partnered with the Parole Board to smoothly transition parole administration from NDCS to the Parole Board; rolled out recruitment and retention initiatives; implemented the use of a risk-needs assessment tool; updated our classification tool; started two large capital construction projects and proposed a third; published the inmate healthcare plan; created protective management and other mission-specific housing units; took part in the Justice Program Assessment process; conducted training for supervisors, case managers and behavioral health staff in evidence-based approaches; successfully launched the electronic sentence calculation software project; rolled out a new entrepreneurial program for inmates funded completely by private donors; completed the protective services staffing model and analysis, and submitted a significant budget request to address the needs of NDCS. And all of this was accomplished while performing the day-to-day work to keep inmates, staff, and the public safe, in a business that is challenging on the best of days. So this list highlights many of the current changes that are underway in the department, affecting every division, facility, and employee. I am continuously impressed by the efforts of NDCS staff to implement multiple new initiatives while also meeting their daily responsibilities. So implemented separately, these projects each take time to develop and carry out effectively. Doing all of this work

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simultaneously increases the complexity, the demands on staff, and the time to complete each project as many components are interrelated and cannot be done independently. I am not suggesting that we have solved our problems or that our work is anywhere close to being done. There is a tremendous amount of work yet to be done. We are making steady progress. I was asked to be prepared to respond to questions regarding programming and my budget request for the upcoming biennium. Deputy Director Rothwell spoke to the systems approach we are implementing. We are using scientific approaches to identify who needs programs; what programs they need; when they should receive those programs; and how those programs will be delivered. We are working with CSG to implement the recommendations in the Justice Program Assessment. They have staff dedicated to program evaluation and data integrity so that we will be able to document the progress being made--and be able to answer a lot of the questions that you asked this morning that we struggle to answer today. So with the exception of a 1.5 FTE increase in the number of full-time education teachers, I didn't make requests for new staff to deliver programming in my current budget request for the next biennial budget. We have significant resources allocated for the delivery of clinical programming. We struggle to fill positions. That remains our big challenge today. Our work with JPA will help ensure we get the full benefit from our clinical programming resources, and help us determine if there is a need for future resources. While it's possible that the need for future additional clinical program resources will be identified, we are adequately resourced through the next biennium. Using nonclinical staff to deliver programs as recommended by the JPA is allowing us to increase delivery of cognitive interventions and programs without adding additional staff. The reduction of the inmate population through JRI, creation of a case management system, and building an evidence-based corrections culture are central to engaging our staff in the delivery of cognitive behavioral interventions and other programming. What I have asked for are positions that are foundational to achieving our programming goals. I've asked for a...requested a classification administrator for the agency to ensure that we get inmates to the right locations to access needed programming, and the staff needed to operate an agencywide transportation system. So those two pieces are critical, very foundational to all of what we've talked about and what Mr. Rothwell talked about. I've asked for two positions to lead our quality assurance process, ensuring assessment and program fidelity, and a clinical programs manager position to coordinate those critical services across the agency, as well as a support person for that position. I want clinicians to deliver clinical services. I want clinicians to provide clinical mental health services and

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clinical programming. I don't want them to do data work and data entry work and other paperwork-related things, managing wait lists, etcetera. I want them delivering the services that their licensure qualifies them to do. To address one of our most underutilized resources, I've requested a position that will direct volunteer services statewide. Our communities are ready to come help us achieve our mission. We need and want their help. In closing, I truly appreciated Senator Krist's comment at the Justice Reinvestment Implementation Coordinating Committee meeting last week. I heard him suggest that we may be ready to move away from the investigative committee format and towards a collaborative process similar to what we are achieving with JRI. I have not enjoyed the stress associated with preparing to testify, but there is...and I'm going to say it, I'm not going to say it formally, it's good for me. It helps me focus. It helps me identify issues that I may not have focused on. So that has been the value of this process and I do appreciate that. I recognize the time and the effort invested by members of this committee over the last two years and appreciate that the Legislature is interested in helping the department address the many issues we face. NDCS needs your support to address our challenges, to keep people safe. If there is a venue that would lead to collaborative outcomes, I want to be at the table. Thank you for your opportunity to testify today and I'd be happy to answer any questions. [LR34]

SENATOR PANSING BROOKS: Thank you very much, Director Frakes. And we know that we have placed you under a lot of additional stress with all the information that we've required. And we appreciate you and your staff for working hard to comply with our requests and doing so in a timely fashion. This started back in August and we've kept it at a rather brisk clip. And so we appreciate that fact and we do appreciate the fact that you see some value in being forced to accumulate that information. We appreciate that acknowledgement and again we admire your efforts for our state and we are not here to fight with you but to help you as much as possible. So thank you. [LR34]

SCOTT FRAKES: Thank you. [LR34]

SENATOR PANSING BROOKS: And now our Attorney Steve Lathrop will conduct the questions that we have remaining. [LR34]

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STEVE LATHROP: Okay. Thank you. Director Frakes, just so the record reflects the fact that you were here all morning during the testimony of Mr. Rothwell, your deputy director, is that right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Okay. So he testified and his questions...or the questions of the committee for Deputy Director Rothwell related to programming. [LR34]

SCOTT FRAKES: Yeah. [LR34]

STEVE LATHROP: And so you were here and listened to all those. I just don't want to have to go through some of that stuff just for the record, so we can assume that you heard the questions and the concerns of the committee. [LR34]

SCOTT FRAKES: I did. [LR34]

STEVE LATHROP: As it relates to programming, I do have a few questions about that. I think you could see from the questions that were asked by the committee the concern about if the JPA, if our...to meet the goals of the JPA, which basically is to have everybody complete their programming before their parole eligibility date, if that's the goal and if we've been given a time line, a time line that this year requires that we have sufficient programming, my understanding from the testimony of Deputy Director Rothwell is no one has done a study to find out how much more programming or additional programming you need so that when the inmates come up to their parole eligibility date everybody has their...each of them have their programming complete. You heard that. [LR34]

SCOTT FRAKES: I heard Doctor... [LR34]

STEVE LATHROP: There were several exchanges. [LR34]

SCOTT FRAKES: ...sorry, Director Rothwell talk about that, yes. [LR34]

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STEVE LATHROP: Yeah, and there were a lot of people trying it from one angle or another, but the question...and I want to contrast that, because you did, when you arrived, do a needs study when it came to the correctional officers. Right? [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: We went through that I think in the first hearing... [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: ...where you used the NIC model and you had people trained and they came in and said, so how many corrections...now this is with about 200 vacancies at any given time. But you still, even with those vacancies unfilled, you still did a study to see how many more people do I need over and above the vacant positions, which I appreciate and we've had a long conversation about that. And I think the committee was looking for the same kind of information when it comes to programming. If the goal is to have everybody complete their programming by their parole eligibility date, how do we know what it's going to take in terms of resources to get to that place? [LR34]

SCOTT FRAKES: Okay. So I did have a chance to talk to Director Rothwell briefly before during the break. And the word "study" led him down the path of the JPA study, audit study, the variety of...so he was thinking in terms of have we initiated a formal study, have we hired a consultant, or have we tasked an employee. So what we are doing is we are assessing. We have finally put together a pretty robust policy and analysis...policy research office is the name of it. Really it's a collection of data folks--data analysis folks and other...and so Ms. Alvarez is one of those. It's led by Abby Carbaugh and that is our team that is now beginning to give us what we're going to need because, as I heard Senator Pansing Brooks express her frustration, I have the same frustration. It is so difficult to retrieve the answers I want. It is a reflection of data systems that are inadequate, systems that don't exist yet at this point, and paper-driven systems in many cases relying on clinicians to do data entry that they really shouldn't be doing because they should be doing clinical services, so all those excuses that lead to the challenges of trying to get what we need. But we have information and we have now the right people that are both pulling

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information out the system because they know how to do it, and we also have more resources now to start reaching out to people to say we don't have any entries, why are there no entries in this system, in NICaMS that would tell us the number of people currently enrolled in a program or things like that, so. But we're a long ways away from a robust, automated data system for programming. It is on the list along with several other things. I did ask for some funding to move us in that direction. I won't come out of the next biennium with what kind of tools that I had in the place that I worked before. So we have staff that are assessing wait list, including myself. We've got staff that are running data to see what the graduation rates are and what the success rates are. So we are looking at things. What we're not doing is a formal study that's going to produce yet another document, another set of recommendations, not at this point. [LR34]

STEVE LATHROP: Okay. Let me break it down just a little bit and see if you agree with this statement that you began the process of providing or assessing inmates on their way in with the STRONG-R. Right? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Before that what was taking place for the risk assessment is we waited until they were a certain period out from their release date and did that assessment. [LR34]

SCOTT FRAKES: Didn't actually do a risk assessment, all we did was clinical assessments. [LR34]

STEVE LATHROP: Okay. We weren't even doing the risk assessment. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: So we didn't know who the ones who were most likely to reoffend? [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Which is now our target population and... [LR34]

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SCOTT FRAKES: Yes, which I'll qualify to say we do...we did have some information that was gathered from presentence investigations in the initial risk assessment that was done for those that had it but not every offender (inaudible). [LR34]

STEVE LATHROP: But you didn't use the presentence investigation risk assessment to put somebody on a waiting list. [LR34]

SCOTT FRAKES: No. No. [LR34]

STEVE LATHROP: Okay. And so we're going to talk about the waiting list and what the demand is for additional programming. So before we started this STRONG-R process followed by a clinical assessment within 60 more days, we were waiting for people to be a particular point. We call this apparently over at Corrections "triage," and we've talked about this before. We're going to look at the people who are getting...with the resources we have, we're going to choose to evaluate the people who are closest to their release date to see what we can do for them or what they need. Right? And so when we started this new process this summer with the STRONG-R and the clinical assessment, we have a bunch of people who just came that have been assessed...right? [LR34]

SCOTT FRAKES: Right, that's correct. [LR34]

STEVE LATHROP: ...for risk and for need. But we also have an awful lot of people that are sitting around because they didn't get close enough. They're not those folks that are close enough to their release date to get an assessment so we have this population of people among your 5,300 or so who have not had an assessment so we don't know what they need. That's true. [LR34]

SCOTT FRAKES: Well, if... [LR34]

STEVE LATHROP: You might have an idea but they don't have any... [LR34]

SCOTT FRAKES: They don't have a risk-needs assessment completed. [LR34]

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STEVE LATHROP: Right. And they don't have a plan that says before you can be paroled you need to go through the sex offender treatment program. [LR34]

SCOTT FRAKES: Well, many of them get their clinical assessments at different points along the way, but I'm not going to...I won't argue with you that we don't have what we need yet. [LR34]

STEVE LATHROP: Yeah. We do have a bunch people that have not had that assessment and we don't know what programming they need. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Okay, for that very reason. Not your fault--you came into this situation with a bunch of people that hadn't had an assessment. So when we look at what...so I'm going back to the JPA on page 55. That's the time line for completing the process. With the ultimate goal being that everyone will have all the programming they need to have done before their parole eligibility date, this is the time line that's supposed to get us to that place. And in the next year, the next fiscal year which starts July 1, 2017, we're supposed to increase program capacity. And what we were struggling with this morning and I get...whether it's a study or somebody has just looked at it, the idea that we're going to increase capacity, if we don't know how many people need what programming but we know what programming we have, if somebody doesn't look at, boy, we need to assess all these people and then we need to figure out how much programming they need and then we need to look at all that demand for programming and make sure it all gets done before the parole eligibility date, and that's sort of the step in the time line that needs to get accomplished in 2017. And so here's the concern. If you don't know all the people that need the programming or what programming they need and you know what you got and you know that if you have some corrections officers do some things you'll...the new corrections officers, you'll free up some people's time. But you don't know if that will get you enough programming yet. And so if you don't know that, how do we check the box for 2017 and say, yep, we got all the programming we need, that piece is complete and we'll know that we have the capacity to get everybody through programming they need by the time their parole eligibility date comes up? [LR34]

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SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: That's what I think the committee is struggling with. I think that's the questions we had for Deputy Director Rothwell. And whether somebody launches another study, hires another consultant, or somebody down there at the Department of Corrections just figures out that we need...for example, the sex offenders, 0 percent of them complete the inpatient program before their parole eligibility date. How much more capacity do you need then so that 100 percent of them complete the inpatient sex offender program before their parole eligibility date? Big, long question but I think you get it. So do you have an answer for us? Or is it we really don't know, we just hope that when we fill those 34 positions that we'll have the capacity to get everybody through the programming they need? [LR34]

SCOTT FRAKES: Today we really don't know. We're moving in the right direction to gather all the information we need to get it to the granular level that you would want, that I would want, recognizing that today we're so far on the other end of the spectrum that I am confident...let's...I'm going to kind of bring us around. I'm confident that we have resources allocated, positions and funding, that if we fully utilize will allow us to meet all the needs that we can create from now through the next biennium. That gives us time to do the level of study and really figure out do we have enough resources if we are fully staffed or do we need, in fact, even more resources to deliver programming. So that's why it's...on the list of priorities, it's something that does need to be taken care of but it's...there's other pieces right now that we need to get on top of. [LR34]

STEVE LATHROP: Sure, and believe me, I'm not trying to be argumentative. [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: But here's the point perhaps and that is, if we've signed on to this goal that in three years we're going to have everybody through the programming they need to be...completed their programming before their parole eligibility date, then we work back from there, don't we? Don't we say, what's it going to take to make that happen? As you've described what the process is, or the approach, it is: we need to hire 34 people; I think I got enough people

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but we'll know at the end of the biennium if I'm right or not. And two problems with that: (1) if you needed more people and the Appropriations Committee doesn't give them to you, then you're never going to be able to get it done. [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: And they can't give you something you don't ask for. [LR34]

SCOTT FRAKES: Yeah. But if I ask for it and I can't use it, then I've done nobody any good. I've taken resources that could have been used somewhere else in state government to meet needs and I may have asked for resources that I don't need. So I'm telling you, even if I had a beautiful report in front of me that said this is how many clinicians and this is how many paraprofessionals that it takes so that we can meet the need, I can't get there in these time frames. These are a set of recommendations and they're good. This is what we're going to work for and work towards. And if everything works well and we address...as we talked about at the last hearing, addressing that fundamental protective services staffing issue is foundational to everything. I could have all the clinical positions filled right now. I could figure out the space issues, as Mike talked about. We're stuck in a lot of very traditional modes. And one of the ways...and it talks about it in the JPA report. You don't just look at programming space as Monday through Friday, 8:30 to 4:00. You do evening program; you do weekend programming. You use your space. You also look at spaces that my agency has never seen as potential programming spaces: dining halls, visiting rooms, day rooms can be very effective. So you address the space issue and then after all that if we still...we've gotten so robust that we still need more, we also within the projects that I've asked for will be creating opportunities to expand programming spaces and facilities. Coming back around: If I've got the space, if I've got the clinicians and the other trained people to deliver programming and I don't have correctional officers, corporals, and unit caseworkers to provide the supervision both within the living units...which is part of the challenge now because now my case managers end up providing a lot of coverage within the living units. That's where their workload is. It shouldn't be their workload but that's where they're being pulled to. So I not only need to cover that, but I've got to have staff to supervise program areas, so... [LR34]

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STEVE LATHROP: Let me ask the question again. I'm not trying to be argumentative but...  
[LR34]

SCOTT FRAKES: Yeah. [LR34]

STEVE LATHROP: ...because it sounds like we're going to hire the...this is what I'm hearing you saying. You can correct me if I'm wrong. We're going to hire the corrections workers. I need to fill the 200 vacancies and I need to get another... [LR34]

SCOTT FRAKES: Remember, it's 130 vacancies and 70 in training. [LR34]

STEVE LATHROP: That may or may not get through the training but they're not working. They're not working right now. They're in training. [LR34]

SCOTT FRAKES: I need to fill the rosters. I need to fill 200 holes in the roster. [LR34]

STEVE LATHROP: You need to fill 200 holes in the rosters and you need to hire...it looks like you're going to hire 96 people instead of 138 the next biennium. Is that right? [LR34]

SCOTT FRAKES: Additional. [LR34]

STEVE LATHROP: Forty-eight and 48? [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: Okay. So I get that you need those people. I understand that. Let me take the inpatient sex offender program. Okay? Just as...just to maybe illustrate the point, you're getting...that program takes two or three years. How many people are in it at any given time? You only offer it once at a time. Right? [LR34]

SCOTT FRAKES: Right now we do...yeah, I don't want to make up what...it's a small number.  
[LR34]

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STEVE LATHROP: So when they fire up inpatient sex offender...what is it, eight? [LR34]

SCOTT FRAKES: It's more than that but it's not 12 maybe. I don't... [LR34]

STEVE LATHROP: Okay. Let's call it 10 or 12. So if you...if it takes two or three years for those people to start at the beginning of that program and complete it, and do you know how many people? It looks like you have...I'm just going to take this number from...you have 550 inmates waiting to be screened for that program. Is that right? [LR34]

SCOTT FRAKES: I don't know. [LR34]

STEVE LATHROP: That was what I got from the Alvarez report. [LR34]

SCOTT FRAKES: (Inaudible.) [LR34]

STEVE LATHROP: Do you know how many people that are waiting for that program? [LR34]

SCOTT FRAKES: No, not off the top of my head. [LR34]

STEVE LATHROP: Okay. Well, let's see if somebody reported that to Senator Bolz when she asked. [LR34]

SCOTT FRAKES: That might be...okay. [LR34]

STEVE LATHROP: This thing says...the response you got to Senator Bolz which is on page 97: Sex offender services, iHeLP, which is the inpatient program, 52 in treatment and 28 waiting. How can that be if you're only offering it through...it's only going on one time with 12 people in it? [LR34]

SCOTT FRAKES: Well, that's why I said I wasn't going to give you a number because I didn't know one off the top of my head. So this would be the information provided by the people that manage the program, so let's go with it as being accurate. [LR34]

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STEVE LATHROP: Okay. Well, I guess the point I was trying to make is if you need to double the capacity of that, then don't you have to come to somebody and say, I need another person to facilitate the inpatient sex offender group? [LR34]

SCOTT FRAKES: If it's determined that we needed to and we didn't have those resources within the things that are already allocated, yes. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: That's part of what this process is going to lead us to. There is a question about do we need an inpatient sex offender treatment program that lasts more than two years. That's a question that hasn't been answered. That's part of what the JPA talks about is assessing clinical programs. [LR34]

STEVE LATHROP: Okay, now we're getting to the place where I wanted to make a point which is, if we are supposed to in 2017...2017 is we're going to have adequate programming,... [LR34]

SCOTT FRAKES: No, we're going to get everything figured out and then the next... [LR34]

STEVE LATHROP: ...increase program capacity. [LR34]

SCOTT FRAKES: Right, and then in '18-19 meet the need. Isn't that what it says? [LR34]

STEVE LATHROP: Oh, so you don't think you're going to increase program capacity in 2017? [LR34]

SCOTT FRAKES: Oh, I am, yeah, we're doing it right now. Absolutely. But I'm not going to tell you that by June 30 we'll have everything done. [LR34]

STEVE LATHROP: Okay. Well, you're going in front of the Appropriations Committee this next session, right, which will take care of the next two years? [LR34]

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SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: All right. How do you know if you have enough of a request in there so that you increase the capacity, whether you do it in the first year of the biennium or the second year of the biennium, if you don't know what your needs are? [LR34]

SCOTT FRAKES: And I again will say we have more resources than we've been able to use now. If everything falls together perfectly, we address the compensation issues and some other challenges, figure out what else it's going to take to bring people in to fill positions, we should be able to utilize all of the resources we currently have allocated to their full value through the next biennium and at the same time then assess what additional resources, if any, are needed to take us...to either meet unmet need or to take us to a higher level. [LR34]

STEVE LATHROP: So as far as the staff necessary to provide programming, other than pulling them off of something else as you get more corrections officers, you're not asking for more people or more resources to provide more programming for the inmates in the next biennium. [LR34]

SCOTT FRAKES: I am not asking for more staff to just deliver programming. I am asking for staffing that will facilitate programming structure and I am asking for a bunch of staff that will allow us to use our case managers, 76 of them, as full-time case managers instead of being used to cover the floor living units on a regular basis. [LR34]

STEVE LATHROP: Okay. So for the next two years over the next biennium...so for six months nothing is going to change because we're not...you don't have any money from anywhere else, right, for the next six months? Until you get to 2017 you can't even hire the new people. [LR34]

SCOTT FRAKES: Well, we're using, as Mr. Rothwell talked about, you know, we identified a position and made a request to reallocate it to get some clinical or some...not clinical, but program management oversight. We are continuing to look at workloads and make sure that we're getting the right people in the right places to do the work. Again, if we can address the hiring issue on our line-level staff, that's a huge piece that moves us forward. But there are...we

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know that sometimes it's helping people to see the world a little bit differently. I walked into a system that had very little classification organization. That's why I've asked for a classification administrator. That was quite a surprise. No statewide transportation system, so everybody just moved inmates when they thought it was time to move them. No program oversight and there was one other component of that, so. [LR34]

STEVE LATHROP: Well, that's okay if you can't remember the last piece but... [LR34]

SCOTT FRAKES: Okay, so those...but those structures, you know, lacking those structures that are just...to me are just foundational to a correctional system, it's like we've got to build infrastructure in every direction that I look. [LR34]

STEVE LATHROP: Okay, and I get it and you'll appreciate that... [LR34]

SCOTT FRAKES: Oh, I know what it was. [LR34]

STEVE LATHROP: Go ahead. [LR34]

SCOTT FRAKES: I'm sorry. The fact that we had no case management academy and really no structure or training for case managers, those are critical roles, one of the most critical positions in this entire evidence-based practices and evidence-based corrections. And for the most part we use them to make sure that they get inmates moved at some point along the way... [LR34]

STEVE LATHROP: Sure. [LR34]

SCOTT FRAKES: ...and they work the floors of the living units. That's... [LR34]

STEVE LATHROP: Okay. I appreciate the things that you have done, the foundation that you're laying. But we signed on to this idea that we had a three-year time line to get to a place where we'd have all the programming done. It sounds like for the next two years we're going to try to take the staff that we have, move some people around when we get more corrections officers, and your hope or expectation is that that will be sufficient and we'll know in two years. My question

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is, do you have confidence that you'll meet the goal of having everyone ready and their programming complete in the time line provided by the JPA so that they're ready, that they have all their programming done by their parole eligibility date? Or are we just kind of going to wait and see and in year three or four we might be scrambling to try to meet that goal? [LR34]

SCOTT FRAKES: So it is important to remind everyone that JPA was not part of the Justice Reinvestment Program. I asked for the Justice Program Assessment and that was provided through grant money. It wasn't...no cost to the state. So it was something that I asked for. Important to also... [LR34]

STEVE LATHROP: I think we all appreciate that. [LR34]

SCOTT FRAKES: Okay. So also important to remember that they came in, they did a great assessment, and they're working with us now to make sure that we're as effective as possible moving forward through next summer so that we're as strategic and thoughtful and do everything we can to achieve exactly what you talked about and what they recommended. But in any assessment like this, you have a set of recommendations, the goal is to try to achieve them if we agree that they're the right recommendations for the agency--and I do. But I don't see them as...I would not see it as a failure if at the end of the next biennium that I've identified that we can use more resources in the biennium after and I'm making that budget request for those resources and I'm in a position and we are in a position to actually use the resources. I won't see it as a failure if we've got significant movement in the right direction. I'm not going to stick a number is at, you know, 90 percent already (inaudible). [LR34]

STEVE LATHROP: No, no, no, that's okay. [LR34]

SCOTT FRAKES: So but my goal remains that we will have people...well, we're going to have people assessed and we're going to have program opportunities prior to PED. The other part we've got to work on is that part of the population that's not interested in engaging in programs and how we can get them involved and how we can get them out of the antisocial behavior that keeps them from being able to program and so... [LR34]

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STEVE LATHROP: And keeps them returning. [LR34]

SCOTT FRAKES: Absolutely. [LR34]

STEVE LATHROP: So that's all good except that do you feel like you got to meet the JPA standard of having everybody ready in three years in order to get the population below 140 percent by 2020, because that's kind of looming over our heads too. [LR34]

SCOTT FRAKES: Yeah. Well, it contributes. You're really...getting them out by PED I think...now you're going to ask me to work off the top of my head. The first issue is making sure that people don't jam out, so that would be the first goal. So to me that's much more low-hanging fruit. You know, we can do a much better job of getting people assessed and into programming well in advance of their maximum release date. And then we move towards that goal of them being eligible on the first PED, recognizing...and my other piece that I didn't say, but there is a parole process and the Parole Board has to decide whether or not somebody is ready to parole. And just based on their prison behavior and the programming they've taken will not be the only decision-making factors. Criminal history is an important part of how parole decisions are made, so. [LR34]

STEVE LATHROP: Right. [LR34]

SCOTT FRAKES: So my commitment is to get my department in a place where it does everything to get ready for people on their parole eligibility date. [LR34]

STEVE LATHROP: Okay, let me go back to the question however, and that is, in 2020 the Governor has got to be at 140 percent or he's going to have to declare an emergency. Is the JPA time line for your plan to get there...in other words, you have a plan to get to below 140 percent by 2020 so the Governor doesn't have to just start releasing people. Does the JPA time line, is that assumed in your plan? [LR34]

SCOTT FRAKES: Yes, it contributes to the numbers. [LR34]

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STEVE LATHROP: Okay. So if you don't meet the JPA standard, are we at risk for having more than 140 percent of capacity in 2020 when that deadline reaches, or when we reach that deadline? [LR34]

SCOTT FRAKES: So fortunately I would have a year. I would have an opportunity for a new budget request and I'd have one more year to clean up whatever might be left if we hadn't achieved full compliance, so. But I'll come back again to the real core issue here. This agency only has so much capacity and you can't fix that by just throwing money at it. It's...the agency can only move forward so quickly. We are making monumental changes to this agency. We're trying to change practices, procedures, a staff culture and an inmate culture. And we've seen how the inmate culture is in some cases reacting to change, not in a good way, so. [LR34]

STEVE LATHROP: No, no, we've seen the assaults on staff go up and serious assaults on staff go up which is, I'm sure, concerning to everybody here. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: But that 2020 deadline is a big deal. [LR34]

SCOTT FRAKES: Absolutely. [LR34]

STEVE LATHROP: And we have to be at 140 percent or less or we're letting people loose. [LR34]

SCOTT FRAKES: Yep, I agree. The other factor that impacts that, too, is we do have construction requests so that will change the math to some degree, so. [LR34]

STEVE LATHROP: Increasing capacity. [LR34]

SCOTT FRAKES: Yeah, none of that capacity was figured into the JRI numbers but I don't want to bank on that either. I want to see us...I'd rather see us...at 130 percent would be a much healthier system. [LR34]

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STEVE LATHROP: I want to turn to your budget request. And that's in that book in front of you. Maybe you brought it, but I'm going to be looking off of page 115. It's 115 through it looks like 118. First of all, is that the right document? [LR34]

SCOTT FRAKES: Looks like it to me, yes. [LR34]

STEVE LATHROP: Okay. Okay. So this is what you're going to request of the Legislature or what you plan to request. Do you have any intention at this time to modify this request either by adding more people or more appropriations or taking away any? [LR34]

SCOTT FRAKES: No. [LR34]

STEVE LATHROP: Okay. So your expectation is at least at this point in time something that reflects this appropriation outline is going to be what you present to the Appropriations Committee? [LR34]

SCOTT FRAKES: Well, the process is...all of our budgets are presented to the Governor and there is another process that then leads to the Governor making the final state budget presentation. [LR34]

STEVE LATHROP: I got that. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: I mean I understand that. [LR34]

SCOTT FRAKES: Yes, but this is what I presented and it's still... [LR34]

STEVE LATHROP: Before this was... [LR34]

SCOTT FRAKES: It's the budget I put forward. [LR34]

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STEVE LATHROP: Director Frakes, and I don't know the answer to this, I'm not trying to make a point even, but before you put this preliminary...do they call it a preliminary budget outline... [LR34]

SENATOR BOLZ: Agency request. [LR34]

SENATOR MELLO: Agency request. [LR34]

SCOTT FRAKES: Agency request, thank you. [LR34]

STEVE LATHROP: Agency request. Before you put this out, does the Governor look at it and okay it? [LR34]

SCOTT FRAKES: We talk about it. [LR34]

STEVE LATHROP: Okay. So he had some involvement in this document. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And what you're saying is by the time I get in front of the Appropriations Committee something may change. Right now you don't have any intention of changing these numbers but the Governor could do something different between now and then. [LR34]

SCOTT FRAKES: If I understand the process correctly, at least that's how it was, the system I left behind that, yes, definitely the Governor... [LR34]

STEVE LATHROP: Okay. Okay. [LR34]

SCOTT FRAKES: It's the Governor's budget in the end, so. [LR34]

STEVE LATHROP: So I want to go through it. We have, it looks like, an outline from a press release, and then we have the document that looks like an actual budget summary. [LR34]

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SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: And I'm particularly interested in the people. Like I'm...you have in here some construction projects and those are what they are as far as I'm concerned. We've been talking about the resources you need like corrections officers and mental health staff and all of that. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Okay. With the corrections officers I think you had 200 or 200 openings or what was the term you used instead of vacancies? [LR34]

SCOTT FRAKES: We need to hire another 130 protective services staff. And these are rounded numbers. And there were 70 in training. And so that means out of the facilities, spread across the ten facilities there would be 200 vacant positions. But it's 130 yet to be hired, 70 being trained. [LR34]

STEVE LATHROP: Okay. There's 200 vacancies right now,... [LR34]

SCOTT FRAKES: In the facilities. [LR34]

STEVE LATHROP: ...70 people in training. [LR34]

SCOTT FRAKES: Yeah. It's just an important distinction because if people get in their idea that we need to hire 200 more people, then that would be 70 more than I'm authorized to have, so that's not good business. [LR34]

STEVE LATHROP: Okay. And then on top of that your studies showed you need 138 and you're asking for 96... [LR34]

SCOTT FRAKES: Across the biennium, yes. [LR34]

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STEVE LATHROP: ...of that 138? And you've staggered that out so that you're hiring them over the two-year period. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: What is going to happen, Director Frakes, to make that work? When we had the hearing on staffing and turnover and hiring, it sounds like you're struggling--struggling to hire the corrections officers at the \$15.15 or whatever they make an hour. What's going to be different? [LR34]

SCOTT FRAKES: Well, union negotiations should lead to...I have to say "should" lead to compensation adjustments that will help. And I'm counting on that piece then. Part of our struggle in terms of improving conditions for our staff is filling vacancies and reducing the mandatory overtime. That will do a lot to improve quality of life for my staff and then that will allow them to feel better about the job, be more engaged in the job, be more interested in staying on the job. So there's a cause and effect. [LR34]

STEVE LATHROP: Okay. When you calculate these people...and I think this is in number 1, am I right, where it says "Protective Services"? [LR34]

SCOTT FRAKES: Under... [LR34]

STEVE LATHROP: On page 117. [LR34]

SCOTT FRAKES: Oh, one...I'm sorry, oh, that number 1. Yes. [LR34]

STEVE LATHROP: You see that? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: That's the protective...the 96 people you want to hire on top of filling the 200 vacancies. [LR34]

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SCOTT FRAKES: Plus some other positions as well, yes. [LR34]

STEVE LATHROP: Okay. Are you assuming in that figure the cost of these corrections officers to be what they are currently? In other words, does that number reflect like these people are going to get paid better than the ones that are there now? Or is it assumed that the cost in that line, if you will, reflects the current compensation for the officers you want to hire? [LR34]

SCOTT FRAKES: No, there was an additional computation to serve as a placeholder, you know, because we don't know where we're going to land and I can't remember off the top of my head what number we used. So those salaries are greater but they may not reflect what the final outcome is because of the negotiations. [LR34]

STEVE LATHROP: Okay, that would be line number 6, wouldn't it, the "Enterprise Issues"? It says, "Placeholder estimate for salary increases." [LR34]

SCOTT FRAKES: That is for existing staff across the agency. So all the new positions reflect a higher cost because we anticipate that there will be...traditionally there has been the 2.4 percent, 2.2 percent, but I just don't know off the top of my head what number we used. So we...for all new positions we included an assumption of some additional cost. And then on line 6 we're talking about what it would cost based on a placeholder number, an assumption number, to bring the existing staff that were impacted by salary increases. [LR34]

STEVE LATHROP: Okay, so line number 1 reflects adding these corrections officers and assumes that they'll have a traditional pay increase of 2.4 (percent) or something like that. [LR34]

SCOTT FRAKES: Some number. [LR34]

STEVE LATHROP: Okay. And then line number 6 is if we give everybody a raise. [LR34]

SCOTT FRAKES: Yes, or give...whatever staff, yeah, it's a placeholder. [LR34]

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STEVE LATHROP: So tell me, because I don't know the math but I'm curious, if you...this, what is this, \$15,675,000 for the next biennium? [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: Okay. If you spend every bit of that giving people raises, what percent of an increase would they get? [LR34]

SCOTT FRAKES: I can't do that off the top of my head. [LR34]

STEVE LATHROP: Do you know what your... [LR34]

SCOTT FRAKES: Well, you could...if you want to divide it by 2,300. I can't divide that in my head though. [LR34]

STEVE LATHROP: (Holds up calculator.) Figured we'd be doing math today, so. [LR34]

SCOTT FRAKES: There you go. I'm pretty good with math but I can't do that one off the top of my head. [LR34]

SENATOR BOLZ: It includes the health insurance premiums. [LR34]

SCOTT FRAKES: It does. [LR34]

STEVE LATHROP: That's \$681...divided by 23, did you...2,300? [LR34]

SCOTT FRAKES: Twenty-three hundred positions. [LR34]

STEVE LATHROP: That comes to \$681. [LR34]

SCOTT FRAKES: Okay. So again, this wasn't an assumption that all staff across the board might get a pay raise; this is part of the negotiations process. It has to be figured out. [LR34]

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STEVE LATHROP: Okay. And now I'm going into an area that I'm not entirely familiar with and I hope that some of the people that have done some work on Appropriations or pay more attention to the budget than I have to this point in time with respect to this stuff can maybe drill down on this. But when we were listening to the struggles you have for hiring... [LR34]

SCOTT FRAKES: Wouldn't it be \$6,800, 2,300 divided into \$15 million? Sorry to interrupt you, but it just kind of clicked it didn't get to the...because \$1,000 would be \$2.3 million. [LR34]

STEVE LATHROP: Well, I'm dividing \$15 million...oh, I'm sorry. Yeah. [LR34]

SCOTT FRAKES: I'm sorry. [LR34]

STEVE LATHROP: I thought...no, I thought that was a period and it's not. [LR34]

SCOTT FRAKES: It's kind of a Rain Man thing I have (laughter). People make fun of me. [LR34]

STEVE LATHROP: So it's \$6,800 would be what you expect to spend over and above what they're making over the next two years. [LR34]

SCOTT FRAKES: If that was divided across the agency staff and that was the number that was landed on. But again, these are...these numbers are placeholders. This is a good example of where these numbers are not likely to look the same when the final budget comes out... [LR34]

STEVE LATHROP: Right. Right. [LR34]

SCOTT FRAKES: ...because negotiations will determine... [LR34]

STEVE LATHROP: But they are...that also includes or that number will also include the 8 percent in health insurance premiums. True? [LR34]

SCOTT FRAKES: Right. Right. [LR34]

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STEVE LATHROP: So the health insurance premiums go up and then whatever that does to the \$6,800. Right? Which would be \$2,400 a year, \$3,400 a year. [LR34]

SCOTT FRAKES: Yeah. Yeah, the part of the...yeah, that is part of the benefit package. That's...you know, we look at that for state workers. Compensation includes benefits. [LR34]

STEVE LATHROP: Okay. So is that going to get you back to hiring all these positions? [LR34]

SCOTT FRAKES: So again, I gave you a number for every employee. It was decided that...this is a conversation that's really not comfortable because we're in negotiations. And so I don't want to...I really don't want to say things that people then will believe are my position or the position of management and that could influence the negotiations process. So I'm going to stop there. [LR34]

STEVE LATHROP: Okay. Well, I guess we're trying to...the committee is trying to determine whether you have a strategy that involves resources that is sufficient to attract and retain not only the 200 vacancies that you need to fill, or 130 percent and keep the 70 that are in training plus another 96 over the next two years, or not. [LR34]

SCOTT FRAKES: So the negotiations, there is I believe adequate funding to address the issue. It just depends on how the negotiations go and what decisions we made. And this is again where the labor union has as strong a voice as management in terms of the final decisions around who gets what amount, recognizing that management at some point says this is as much as we're going to put on the table. So until I see the end of it... [LR34]

STEVE LATHROP: I'm a little nervous about the other way around though, to be honest with you, and that is what if you negotiate with the labor union and they go, well, I guess we can't do any better than \$15.50 an hour down at CIR, we'll take it. And everybody in the room knows that that won't get you the people you need. [LR34]

SCOTT FRAKES: I hope that's not the outcome. [LR34]

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STEVE LATHROP: Can you tell us when that's going to...that those negotiations will be complete? [LR34]

SCOTT FRAKES: I believe they wrap up by the end of November, early December. They need...if possible, I think they need to be done as part of the Governor pushing...being able to take his budget forward. So I'm not directly involved in the negotiations process. We have a master agreement system here. It's unlike where I came from where Corrections was its own bargaining unit and negotiated its own contract independently. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: So here everybody comes together. [LR34]

STEVE LATHROP: Feel like I'm going to leave the rest of these appropriations questions to some of these guys that have spent a little more time there. I do want to ask you a couple...maybe one more question and that is we had asked Vera to come in. Is it Vera or Vera issues a... [LR34]

SCOTT FRAKES: It's the Vera Institute. [LR34]

STEVE LATHROP: ...Vera Institute to come in and tell us and do some kind of study on restrictive housing. [LR34]

SCOTT FRAKES: Correct. [LR34]

STEVE LATHROP: And I understand that they've issued some kind of a rough draft or a draft of their study. [LR34]

SCOTT FRAKES: They've shared a draft with me. [LR34]

STEVE LATHROP: Okay, can you tell us when that happened or how long you've had the draft from the Vera Institute? [LR34]

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SCOTT FRAKES: Maybe seven days. [LR34]

STEVE LATHROP: Seven days? [LR34]

SCOTT FRAKES: Yeah. [LR34]

STEVE LATHROP: So you didn't have it when we were talking about the restrictive housing. [LR34]

SCOTT FRAKES: I did not. [LR34]

STEVE LATHROP: Okay. What is the purpose in having a draft of the study results from the Vera Institute? Why don't they just come up with something and say, you know, we've studied it, here's what you need? [LR34]

SCOTT FRAKES: Well,... [LR34]

STEVE LATHROP: Why is it in a rough draft form I guess? [LR34]

SCOTT FRAKES: Okay. I'd say it's more...it's pretty polished draft but the process is collaborative. That is part of how Vera works, having worked with them in Washington State. And I'm still actually connected to the people that I worked with in Washington State from Vera...that were with Vera at that time. So it's a collaborative process. It's their desire to make sure that they produce something that is accurate, that clearly reflects, because they come in and they come in for two or three days and they'll spend some time at a facility and they'll do some assessments. They ask for data. We know our data challenges so that's been one of the challenges for them, like for everybody else we deal with, struggling to get data just clean and easy to understand. But in the end it's very normal for these kind of processes to be collaborative including reviewing the report. It's their report until they issue it. It's not my report. It belongs to them. They have their own vetting process as well, just like any (inaudible) agency. And so in the end they will issue a report that has their--Vera Institute's--signature on it. It will reflect their beliefs, their recommendations, so it's...you know, it's an agency's opportunity to go, well, wait a

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minute, you're reflecting that there were 600 people in restrictive housing on this date but we've got a report that shows there was 400. Not saying that's what it did but that's... [LR34]

STEVE LATHROP: So there's an opportunity for you to respond to the draft. [LR34]

SCOTT FRAKES: Yes. [LR34]

STEVE LATHROP: How much time do you have to respond to it? [LR34]

SCOTT FRAKES: I don't remember what she gave me...until...I think I had seven days. [LR34]

STEVE LATHROP: You see anything in it that's not right? [LR34]

SCOTT FRAKES: Uh, anything that wasn't right, hmm... [LR34]

STEVE LATHROP: Or that you disagreed with? [LR34]

SCOTT FRAKES: Yeah, I did. There was one piece that I disagreed with and I gave my input on that. And then there was a couple other areas where I wasn't...I was looking for clarification and expressing my own opinion. [LR34]

STEVE LATHROP: Okay. You said you had seven days to respond and you've had it for a week? [LR34]

SCOTT FRAKES: I think that's what it was, yeah. [LR34]

STEVE LATHROP: Yeah? So have you responded? [LR34]

SCOTT FRAKES: I have. [LR34]

STEVE LATHROP: Okay. When can we expect the final report? [LR34]

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SCOTT FRAKES: I'm pretty sure I'm going to get it by the end of this next week but, you know, they own it and I can't... [LR34]

STEVE LATHROP: Okay. It's something you'll share with... [LR34]

SCOTT FRAKES: I expected...oh, absolutely. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: I expected it in May. The reason I called the external work group meeting for the 15th or 16th of November was because I was confident that I was going to have the report, and so that will be the focus of that work group meeting. That's the external work group that comes out of LB598. [LR34]

STEVE LATHROP: Okay. You have hired a new medical director? [LR34]

SCOTT FRAKES: Yes, I have. [LR34]

STEVE LATHROP: And when does that person start? [LR34]

SCOTT FRAKES: January 1...well, January 3, I think, actually, because the designated holiday is Monday the 2nd, so. [LR34]

STEVE LATHROP: You want to tell...you want to take a minute to tell the committee who you hired or... [LR34]

SCOTT FRAKES: His name is Harbans Deol, D-e-o-l. He is internationally known. He has been the medical director of the Iowa system for a number of years. But unless I have his resume and CV in front of me...but he's very extensive CV, very extensive history. He's a licensed MD, which of course is required by statute as well, and he's taking the steps necessary to get his Nebraska license. And so that's part of why we...it's kind of worked out well for him not to come quite as quickly, and it takes a little bit of time to get that processed, so that way he will be licensed in

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Nebraska when he comes and actually reports. He's someone that Dr. Kohl knew professionally through the national body that they are on. I can't think of the name of that for the world of me. So Dr. Kohl went to...actually it's ACA funds an annual event every year and pays for medical directors to go to it. Dr. Kohl went in September because they won't let anybody else go. And so I said, you might as well go. Paid off huge dividends because he came back and said, I've got somebody that wants to talk to you. [LR34]

STEVE LATHROP: Okay. Before I get off the Vera...I want to go back to where I was on the Vera report. When you get the Vera report you're going to share it with the committee. Are you going to share the draft too? [LR34]

SCOTT FRAKES: No, that belongs to Vera. [LR34]

STEVE LATHROP: You can't or... [LR34]

SCOTT FRAKES: I don't...it's their document. It's not my document. That would be a disservice to them. The committee... [LR34]

STEVE LATHROP: Do you have an agreement with them or is there some legal reason you're constrained about sharing that? [LR34]

SCOTT FRAKES: I think professional courtesy. I would ask the committee to reach out to Vera and see if they want to share it. [LR34]

STEVE LATHROP: All right. When we had our hearing on behavioral health, Dr. Mit-su-ree-choo (phonetically)...am I saying that right? [LR34]

SENATOR PANSING BROOKS: Mit-wah-roo-shu (phonetically). [LR34]

SCOTT FRAKES: That's pretty close, yeah. [LR34]

STEVE LATHROP: Okay, maybe as close as I'm going to get. [LR34]

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SCOTT FRAKES: It took me two weeks. [LR34]

STEVE LATHROP: And I don't mean any disrespect by mispronouncing her name. [LR34]

SCOTT FRAKES: It's why we call her "Dr. Alice." [LR34]

STEVE LATHROP: We inquired, we talked about the vacancies, and I think we've seen responses from your office that suggest that there's 34 vacancies. And in that response from your office I think you said we need two psychiatrists. We have one, Dr. Baker, and the other one just quit or has left us. When we had Dr. Mitwaruciu here, she suggested that she needs six more psychiatrists and ten additional psychologists over and above the vacancies in those two areas. So are you going to make a request for additional funds to hire those people or you disagree with Dr. Mitwaruciu? [LR34]

SCOTT FRAKES: I don't recall her saying six more psychiatrists but if she did, no, at this point I'm not going to. We need to see...part of what Dr. Gage talked about in his report that we've yet to do is clearly define what our mental health service needs are to the department and that would help us then figure out what resources we need. But again, because we have over a 50 percent vacancy rate in those providers, it's not an issue right now to try to address. I'm not...I have no optimism that we're going to fill every vacancy we currently have within this next biennium given the challenges across the country. [LR34]

STEVE LATHROP: Well, I wrote down what the doctor recommended or said, and it made...she didn't just say that. She said these people are getting asked to do more and more and more, psychologists. They're doing more and more assessments and they're involved in more and more of the care. Right? [LR34]

SCOTT FRAKES: Right. [LR34]

STEVE LATHROP: And doing the counseling and all the things that they're called upon to do. And as I recall you have how many vacancies in psychology? Like 11? [LR34]

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SCOTT FRAKES: I believe it's 11. We may have hired one but yes. [LR34]

STEVE LATHROP: And her testimony was because they are giving them more and more to do as we make these reforms, which is a good problem to have, that she thought she needed ten more over and above filling the vacancies and a total of six psychiatrists. [LR34]

SCOTT FRAKES: Okay. [LR34]

STEVE LATHROP: Okay. [LR34]

SCOTT FRAKES: At this given time she's in an acting role, just stepped in, overwhelmed by the fact that we have so many vacancies and that the workload is coming from 20 different directions. She's not really able to perform the behavioral health administrator role to the degree necessary because she's got to provide patient care because we're struggling and she's capable and licensed. So I could understand at this moment in time why she would think that but it's not based on... [LR34]

STEVE LATHROP: Well, has somebody told you that's not the case? I mean who's saying that's... [LR34]

SCOTT FRAKES: That was based on... [LR34]

STEVE LATHROP: I hear what you're saying, which is, well, she really isn't...I mean she's new at the job and she missed the mark on that one. And I guess my question is, who is telling you that she's missed the mark? Is there...because you don't have a director of psychiatry right now, do you? [LR34]

SCOTT FRAKES: No, this is the last day. [LR34]

STEVE LATHROP: Right? [LR34]

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SCOTT FRAKES: Yes. So the Dr. Gage report didn't recommend six more psychologists...I'm sorry, six more psychiatrists. It did recommend... [LR34]

STEVE LATHROP: And I didn't bring that with me but it recommended more people than you have, didn't it? I know it made recommend...I wish I had brought it with me but... [LR34]

SCOTT FRAKES: Yeah, well, I'm sorry, too, so, no, let's just keep it simple. You brought somebody in for the first time before this committee, never testified before a committee, someone who is an immigrant to this country, who's incredibly brilliant, well studied, well educated, just been thrust into a new role and again in a role that where in the best and the correct circumstances she would be able to just focus on being the administrator. And then she comes and she does the best job she can... [LR34]

STEVE LATHROP: Okay. No, she did fine. She did fine. [LR34]

SCOTT FRAKES: Yeah, she did a great job. [LR34]

STEVE LATHROP: I think that six psychiatrists came out of Brian (sic) Gage's report. I don't have it with me today because that was... [LR34]

SCOTT FRAKES: That would be Bruce Gage. Okay. [LR34]

STEVE LATHROP: But I think he went through it and he didn't talk about much in terms of staffing. But I thought he went through the psychiatrists that you needed and that was in the...in his recommendations as he calculated it out. [LR34]

SCOTT FRAKES: Okay. It's possible. [LR34]

STEVE LATHROP: You don't think you need it? [LR34]

SCOTT FRAKES: Not at this time here again when we can't fill existing positions. To ask for additional allocations that we can't fill is just not good business for the state. [LR34]

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STEVE LATHROP: Well, then I'll just...I'll maybe make this comment because I truly don't want to be argumentative with you and I appreciate the candor and your answers to questions over the last four or five hearings, whatever it's been. But if there is a need and Corrections needs something to operate the way it need...that everybody in the room wants it to operate, and that's six psychiatrists, the fact that you have trouble keeping them doesn't mean you don't need six people or that you shouldn't hire six people. It means that we need to find a way to hire more people and if that's paying them more or recruiting better, whatever it might be. But that seems to be approaching it from a "this is how many we can get, since we still have vacancies we're not going to hire more" and I don't know how we ever get to...heck, if we used the same philosophy, you wouldn't be hiring more corrections officers. That's all I have. [LR34]

SCOTT FRAKES: All right. [LR34]

SENATOR PANSING BROOKS: Thank you, Mr. Lathrop. Anybody have any questions? Yes, Senator Bolz. [LR34]

SENATOR BOLZ: I thought maybe I would pick up where Mr. Lathrop kind of left off on the questions about the budget and maybe some comments to clarify some of the way that I'm thinking about it. And the first is just addressing the placeholder estimates for salary increases. I appreciate what you've done in the budget here because you've put in placeholders. Right? And our conversation when you first released the budget was that you put in an 8 percent placeholder for health insurance increase. And if memory serves, it was a 2.4 (percent) across-the-board salary increase. [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR BOLZ: I think what Mr. Lathrop was trying to get at is that we as a committee know that the practicality of that is going to be higher because we know that the preliminary information from the unions is that different categories of people are going to request higher raises. We have different bargaining units that are going to bargain for different kinds of things. And if I were to hazard a guess I would say that we're going to see a push for an increased contribution to health insurance because of the pressure that folks have received. And so you

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don't have to comment on that. I know it's sort of an awkward position for you. But I think it's more context for the committee that this doesn't reflect the whole need that I expect to see in the budget committee. And there may be a couple of other things that are not clear and apparent in terms of other needs. One is that of course there are always additional facilities costs and that's on page 118. So we're also talking about the reception and treatment center. We've got the ongoing CCL expansion. Point of the story is that there are additional costs that are beyond what any one year's budget request might be. My questions for you and then one more comment if I could. My first question is when we previously had the budget briefing you said that you didn't think that there would be a deficit request at that point in time, that you didn't have any plans for it at that point in time. Is that still the case or has something changed in terms of the deficit request? [LR34]

SCOTT FRAKES: That's still the case at this time. [LR34]

SENATOR BOLZ: Okay. Okay, that's helpful. And then my other question, and it's truly a question, it was actually the first thing that I asked Senator Mello when I came in this morning was I'm still trying to get my head around the projected cost savings related to "Critical Under Resourced Issues," line 4 in the budget request. And I understand that...or at least as I was perceiving it, that savings was coming because of the removal of the county jail program. But the county jail program was always, as I recall, a time-limited program. So if we didn't make the county jail program a part of the base, I'm not sure how you're capturing the savings. Can you help me understand? [LR34]

SCOTT FRAKES: And...explained to me that it did end up as part of the base. I can't...I don't do that piece of it so...but that's why it's listed there, so if it's seen as part of the base, then we give most of it back and we're asking to use some of those funds to address these issues. I don't... [LR34]

SENATOR BOLZ: Okay. [LR34]

SCOTT FRAKES: You know, that's... [LR34]

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SENATOR BOLZ: Okay. I suppose it is what it is. That's not how I recall the conversations in committee. Is that your recollection as well was that the agreement was that it was not a forever program? [LR34]

SCOTT FRAKES: What I recall is committing that I would work our way out of the jail program by June of 2017. But whether it was part of our base or a, you know, sunsetted two-year allotment, I didn't know that. I didn't make assumptions one direction or the other. [LR34]

SENATOR BOLZ: Okay. Well, that helps me a little bit. My last piece, just a brief comment, is that I understand what you're telling us in terms of behavioral health staffing and, you know, not wanting to request dollars for staff positions that you don't think you can fill. I appreciate that. What I struggle with is I do think that having an analysis and something that's on paper gives us a touchstone and it helps us build strategies. And so lacking any sort of, you know, analysis that we have agreement on makes it difficult for me to know whether we're hitting targets, moving closer to targets, moving further away from targets. So I'll just say that as my opinion and give it back to the Chair of the committee. [LR34]

SCOTT FRAKES: And if I could just respond, as I listen to you read the language in the appropriations bill, I'm going to go back and read it again, but I wouldn't say that we hit the mark completely on that, so that would be I think the opportunity to address what you just said, so. [LR34]

SENATOR BOLZ: You do or you don't think you... [LR34]

SCOTT FRAKES: I don't think that we've...there was a lot of language and a lot of expectations there and I was trying to tick things off and I don't think cleanly I could say we did all that well. [LR34]

SENATOR BOLZ: And I think the ultimate goal is just being able to understand what the needs are and how...and every year that helps the committee get closer and closer to filling the needs. Thank you. [LR34]

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SENATOR PANSING BROOKS: Okay. Anybody else? Thank you, Senator Bolz. Yes, Senator Mello. [LR34]

SENATOR MELLO: Thank you, Chairwoman Pansing Brooks. And thank you, Director Frakes. I won't reiterate what I think my Appropriations colleague had just mentioned. The one thing I would ask though, I think, in light of the challenges that appear to be still confronting the agency in regards to the front-line program staff, knowing that correctional employees overall, the salary studies, the staffing study that's gone in, the work that's gone into filling the corporal positions, the sergeant positions, is the department starting to realize they're going to have to do a similar thing with behavioral and mental health staff knowing that that arguably right now is the linchpin to what I would say the LR605 justice reinvestment model...we had meeting last week I thought was very helpful, it was very...a good briefing, a good update across the board, but knowing that they even acknowledge that a lack of programming is holding up...I mean is holding up essentially our goals for justice reinvestment. And so I think of hearing what Deputy Director Rothwell said today and what you said in your beginning testimony that you acknowledge it's not part of this budget, is it easy for us to assume though that even with negotiations going on right now with AFSCME, that you are...that the department is considering doing a salary study for the licensed mental health practitioners, the psychologists, the psychiatrists, whatever we're going to have to do to be competitive in the mental health staffing arena, not just the correction officers' arena? [LR34]

SCOTT FRAKES: There's that considering and studying. We're having conversations. We meet regularly with HHS, behavioral health. Got another meeting this month in early November. So there are conversations and we're trying to figure out what are the next best steps. You know, there are the positions that I control within my budget, the discretionary positions, so I have some ability to make adjustments. There are those positions that are covered under the bargaining unit, and so that's a different piece. And then there are those that are just the rules and regulations adjust, those that fall under rules and regulations. That's the piece that we need to come together and figure out what is the right solution, so conversations at this point. [LR34]

SENATOR MELLO: Do you envision any action at all being considered next legislative session on this or is it just...is it that, at the preliminary stages right now truly just in the sense

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of...because you do have a considerable amount of discretion as the director per even the collective bargaining agreement to give bonuses, to give different wage increases to certain employees depending upon the determination from the director. And it feels to me at least that we're coming to that crisis point again of if we can't find action on hiring mental health staff, we can't have more programming, we can't have more capacity, and my fear is that we're following the same old rules of we've got to go through the very long collective bargaining process two years from now which that means we won't have any real action until 2019, which is a bit...if it's not done now in the current collective bargaining process,... [LR34]

SCOTT FRAKES: I...oh, okay. Thank you. [LR34]

SENATOR MELLO: ...you don't get to go do it again until 2019. [LR34]

SCOTT FRAKES: Right. Yeah. [LR34]

SENATOR MELLO: And my fear is you've got some flexibility as the director to kind of bypass that in certain instances and I'm wondering if this is one of those instances that the department may be considering or at least evaluating whether or not you should try to do to help speed up that programming shortfall we've got. [LR34]

SCOTT FRAKES: I explore and continue to explore every option and push back when I don't think I'm getting the correct answer. I don't believe that there's quite as much latitude as people think. We'll be able to talk about that when we...we're working on the next update on the retention funds and we'll talk about some of the challenges that we encountered just in terms of how you can...how I have authority to allocate funds. So, yes, it's important that the negotiations go well and that it addresses some of our issues. We will look for solutions. And it's again whether there are positions that are shared among agencies and it has to be a multiple agency conversation and that's where we're at today. [LR34]

SENATOR MELLO: All right. Thank you. [LR34]

SENATOR PANSING BROOKS: Yes, Senator Schumacher. [LR34]

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SENATOR SCHUMACHER: Thank you, Chairwoman Pansing Brooks. Just a couple questions. Are the psychiatrist positions, how much leeway do you have on salary there? Are they controlled by the collective bargaining thing? [LR34]

SCOTT FRAKES: No. They're discretionary, so. [LR34]

SENATOR SCHUMACHER: Okay. So when you say that, you know, we can't fill the existing openings we have, therefore, no use even go hunting for any shrinks, that's not quite right because if you've got discretion on that you can go pretty actively into the market and try and find three, four, five, six psychiatrists. It's not like you're trying to get the corrections officers and keep that staff. That's a different market, different wage scale, everything else. So if we need those kind of professionals that you have discretion in, why not just go get them? [LR34]

SCOTT FRAKES: I'm working on that but discretion doesn't mean unlimited funding. [LR34]

SENATOR SCHUMACHER: Well, but it's pretty important funding in this whole area and it's kind of, as Senator Mello indicated, a bit of a linchpin for a lot of other things that have to happen. So if some case were brought by an inmate whether through the ACLU or some other organization, it would be really uncomfortable if a federal court said, look it, you aren't doing what you're supposed to do. And so...and probably a great deal more expense than what additional increments you'd have on a psychiatrist's salary. [LR34]

SCOTT FRAKES: Agreed. [LR34]

SENATOR SCHUMACHER: And so...and I think we've repeatedly indicated we realize the financial pickle the state is in, but this is one that probably the state, at least the Legislature, would be inclined to shuffle around some money to try to put this fire out. The other thing is, with regard to the Vera study, will you share your response to Vera with us? [LR34]

SCOTT FRAKES: Well, if I'm subpoenaed I suppose I'll have to, but I would prefer not to because it's, again, a professional courtesy. [LR34]

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SENATOR SCHUMACHER: Isn't that public record? Aren't all of those documents public records? [LR34]

SCOTT FRAKES: It will be, so. [LR34]

SENATOR SCHUMACHER: And so the newspapers or anybody else could make a thing and there's no professional courtesy exception to the public records thing. [LR34]

SCOTT FRAKES: You're correct. [LR34]

SENATOR SCHUMACHER: Okay. Thank you. [LR34]

SENATOR PANSING BROOKS: Okay. Anybody else? Yes, Senator Williams. [LR34]

SENATOR WILLIAMS: Thank you, Senator Pansing Brooks. And thank you, Director Frakes, for your time again today. I find it interesting that whether we're in the Legislature, the executive branch, or the head of an agency, we're all after the same thing at the end of the day, yet the way we get there sometimes becomes adversarial. And I applaud you over the 19, 20 months, whatever it is, that you have been here that you have been here as often as you could be, responsive as well as you can be, and appreciate that. I also want to thank you for making what I think have been...at least what appear to be excellent hires at some of the upper-level positions that will be taking us the right way. Senator Schumacher this morning made the comment about is...are the place we at now the new norm or whatever. And one of the things that I would remind all of us in is that we have an extremely unusual economic situation going on in our state right now. It doesn't have anything to do with the fact that we have a revenue shortfall. It has everything to do with the fact that we have slightly over 3 percent unemployment. In the last ten days I've had a chance to visit with nursing home in Gothenburg, nursing home in Broken Bow, hospital, three hospitals, Children's and UNMC in Omaha, and the Broken Bow hospital, and then had an extensive discussion with the Omaha Chamber. And it doesn't matter whether you're the Corrections Department or UNMC or the nursing home that just opened in Broken Bow yesterday, employment is a horrible struggle right now, finding these people, and especially when we're saddled with a collective bargaining agreement on some of those. And I recognize

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that some of them aren't there, but these people are in high demand right now. My question comes back to not just the hiring but the fact...or are we finding creative ways to address the turnover situation in a shorter term manner than what I consider to be, what seem to be, the longer term solutions? Have you got some comments about that? [LR34]

SCOTT FRAKES: Well, we know that employee engagement is a problem. It's true across the board. There are dissatisfied, frustrated staff at all levels of the agency. And that came out in a culture survey; it came out in Doug Koebernick's work; it comes out in the interactions and e-mails that I have with many, many employees. So it is getting supervisory training going. That's another piece in our agency. We don't have a supervisor academy. But we will have one. Don't know why we don't, but we will have one. So giving our supervisors tools so they can be more effective in how they interact and that's anyone that works in a supervisory role because we see some challenges in the custody or protective services staff on those issues, we see it in the behavioral health staff, nursing staff, staff that work in my building, so that's an important piece. It is really trying to find what other things motivate people and excite them about the work. So we are exploring this concept of correctional mental health, correctional healthcare, seeing, you know, kind of looking around to see what could we do with that, is there some opportunities that will allow us to create some new job classes, which kind of along the concept that HHS recently implemented for some of their nursing staff that work in their hospital situations. We don't have true hospitals so we can't use that model. But there are some other things that I think we can do; we've just got to do the legwork. Current budget situation doesn't make that easier for anyone either. Trying to, you know, move new ideas during a hiring freeze presents another set of challenges. But we're going to keep working on it because we have to. So figuring out the engagement issues, being very thoughtful in our hiring of our professionals is particular, and getting the leadership in place. Now unfortunately we thought we had someone that was a good choice for leadership of behavioral health and seemed to demonstrate that and that was not true, did a good job of fooling pretty much everyone across the agency. And that was unfortunate because we really lost a year's worth of movement in that, with that group of staff. Having Dr. Wetzel leave at this time: huge gap, huge loss. He's just to the point where he was finding enough time to start to focus more on the administrative components that would help us move forward. So it's all of those pieces. So I'm excited about Dr. Deol coming in, a new set of eyes. He'll come in fresh. He will be able to really...we've already had some good conversations. He's got practice

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of systems in place that he used in Iowa that I think would fit well here. He can come in, make some assessments, move some things around, help with efficiencies. And most importantly: What else can we do to meet the needs of staff? But as long as we continue to have shortages of staff and high workloads and for our protective services staff the mandatory overtime--just a huge impact on morale and health and family life and all those other pieces--those are going to be big challenges to get past. It's really that chicken and egg argument. [LR34]

SENATOR WILLIAMS: Thank you. [LR34]

SENATOR PANSING BROOKS: Thank you, Senator Williams. Anything else? I just wanted to add just a couple more things. I did find the Dr. Gage report and I'm going to quote: "This totals up to 5.25 FTE of psychiatric time at a bare minimum. In my opinion, the residential need is more likely to be closer to 200 than 100. I recommend that NDCS provide a minimum of 6 FTE psychiatrists. In addition, at least 0.2 FTE should be dedicated to central office functions such as monitoring prescribing practices, committees (e.g. pharmacy and therapeutics), developing protocols, and assisting in program development." So just to clarify, that did come from the Gage report. [LR34]

SCOTT FRAKES: Okay. All right. So it sounds like there's a small gap,... [LR34]

SENATOR PANSING BROOKS: Yeah. [LR34]

SCOTT FRAKES: ...maybe an FTE or a little less worth. [LR34]

SENATOR PANSING BROOKS: Okay. The other thing is I'm not trying to beat the dead horse, but I'm just trying to make sure we understand, so the Vera report comes...you have the Vera report, the initial draft. Is that correct? [LR34]

SCOTT FRAKES: I have a draft, yes. [LR34]

SENATOR PANSING BROOKS: And so is it...do they send it to you to make tweaks to it and changes? Why is that not the end game? [LR34]

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SCOTT FRAKES: It's just how these work. It's a collaborative process so, you know, so they want to make sure that the data that they report is accurate, they want to make sure that the assessments that they made were accurate. A lot of times they come out, and this is true whether it's...doesn't matter who it is, you know, the time between when they're on the ground talking to somebody or looking at something and the time that they're actually writing the report and then the report goes through their own vetting process, because it's not like the person who came to Nebraska and walked through Tecumseh gets to write the report and sign it. That's not true in any of these agencies. They all have their own vetting process because they're grant-funded, you know, agencies. So the time between when they see something, when they write the report, when it's reviewed, when it comes back, there is an opportunity for the recipient of it to look at it and go, wait a minute, I think you missed the point here or, no, that we don't think the data is correct or we don't...you know, it was an opportunity to say I don't agree with your conclusion, help me understand, you know, more. So in the end though, I'll say it again, it's their report, you know, whether it's Dr. Gage's... [LR34]

SENATOR PANSING BROOKS: But it's now in your hands, publicly, it's in your hands.  
[LR34]

SCOTT FRAKES: It is, yeah. I've received it and I gave some comments and sent them back and that's how these processes work. So again I would...professional courtesy. It would be nice if they were allowed to have the opportunity to produce the document that they intend to put forward. It will be their document. I have no control over them and I have no authority over them, my influence only in the sense of have you thought about it this way. And they might go, oh, I see what you're saying, you know, we could either phrase this differently or you're right, we didn't accurately capture it. But in terms of me saying, no, don't say that because, you know, there's no way that we can manage not using restrictive housing for pregnant females, if that was a recommendation that was in the final report, then now it's on us to decide what we do with the recommendation. [LR34]

SENATOR PANSING BROOKS: Okay, thank you. Also I think you were kindly and patiently waiting here. I don't know about patiently, but you were kindly waiting here this morning so you heard the testimony of Director Rothwell. And I guess I'm just interested in your thoughts on the

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questions that were asked regarding the numbers: the numbers of people waiting, the numbers of when people can get into programming and when they can't, what are the triggers. I think you heard all of that. Is that something that you agree would be necessary to have? Before we try to fix the problem we have to know what the problem is. [LR34]

SCOTT FRAKES: If I were going forward to request additional programming resources, specifically people to deliver programming, absolutely I would expect you to ask me that. But I'm not doing that at this time because I've got resources that I still need to utilize and I've got systems that still need to be reviewed and probably can be improved. And that's part of what JPA is going to help us do. So again, I believe if we make good use of everything that we currently have, fill all those vacancies, use all of our allocated FTEs and funding, bring the additional programming to life across the agency, we've got everything sitting in the bank that will last us through the next biennium. It would do me no good to say give me more when I can't utilize it. [LR34]

SENATOR PANSING BROOKS: I'm not just saying give more but how do we even know...if you don't know the needs, like if you don't know what's being used and how it's being used, then how do we even address if there isn't... [LR34]

SCOTT FRAKES: Well, we don't...we have enough information today to know we've got waiting lists, and that helps drive determination. So it's not like we can build the capacity overnight. So at the same time we're building capacity, continuing to improve on how we address the needs, improving our assessment processes, we're going to gather the information that allows us to get smarter about what the true needs are. And ultimately we'll have all the pieces in place, everyone assessed, a timely assessment process, the right capacity to deliver programming, a system that allows us to identify when inmates are qualified to go to less restrictive custody levels, and a transportation system to get them to those prisons, because you can't replicate all of the programming in every prison. That's really inefficient, very, very, inefficient way. So you've got to have a system where you get--I've talked about this enough times--you know, right inmate, right time, right bed. We're putting all those pieces together and we can't make it happen any quicker than we are, so there again I've got... [LR34]

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SENATOR PANSING BROOKS: You can't provide programming any quicker than you are?  
[LR34]

SCOTT FRAKES: No. [LR34]

SENATOR PANSING BROOKS: And why is that? [LR34]

SCOTT FRAKES: Well, as Mike talked about, as Director Rothwell talk about, we are expanding. We're training people in cognitive interventions and we'll expand. So within existing resources we'll continue to expand those as we can free up more time, as we fill vacancies and have the right people doing the right work so that the case managers can actually be case managers. So it's a moving, progressing process, but I don't have, you know, 50 people waiting for the jobs to fill that I could fill, and I don't have 200...say I did yours--130 more staff, you know, ready to come in, and as we move into the next biennium there's a significant jump in custody, so why don't we say 200 coming in the next June. So it's getting all those other pieces in place as well so we can move forward as quickly as we possibly can while still keeping the wheels on the bus. If this was a healthy, robust prison system, I'd be ashamed to sit here and say that we're not doing more and we're not moving quicker and we haven't, you know, achieved some of these things. It's not a healthy, robust correctional system. You know, it's filled with really good staff and a bunch of men and women that need help and need opportunities to change so that they can get out and not come back. We're moving the right direction to get us there. And I'll tell you again, I've got a lot of resources sitting and waiting to be utilized. It's a matter of doing the pieces, doing the things that it'll take so we can utilize them. When we've fully utilized all of those, if it's determined there's still more need, I'll have my hand out and I'll be able to identify what the need is. And it's like the question...oh, Senator Mello left, but the question about the LB907. Unfortunately in the first year we didn't get the level of data that I was hoping for, but it was a learning curve. Now we've got some good, robust data collection going. UNL is...UNO is leading that project. So when we come into the next biennium I'll either know that we could legitimately use more funds there, and I suspect we could. Or are we going to say, you know, we are meeting the needs of everybody as they leave the system and get the reentry components they need? But I'm not sure that that's, you know, true. [LR34]

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SENATOR PANSING BROOKS: So you're talking about the next biennium meaning the very next, meaning 20... [LR34]

SCOTT FRAKES: No, I mean the one after. [LR34]

SENATOR PANSING BROOKS: 2018? [LR34]

SCOTT FRAKES: Because I...because today I don't have data. It would be like me coming in to say give me money to run the Defy program that I just brought in. I have no data. I have no evidence to show...there's very limited evidence at this point to show that it, you know, does what we think it can do. Two years from now we'll have the data, we'll have the evidence, and we'll be able to make supportable requests. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: So if I was sitting here with no resources to do anything in the next biennium, it would be a very different story. But I've got a lot of resources waiting to be utilized, over 200 vacant positions when you include all of the positions plus the 130 protective services, so behavioral health and secretarial positions and all the other things that are across the agency. So all that's sitting there waiting to be utilized. And when those pieces are put in place and then we are freeing up the case managers, they will have time to do what case managers should do, and that's help prepare people for release, facilitate some cognitive behavioral intervention work, so. [LR34]

SENATOR PANSING BROOKS: Well, you can understand our angst as we worry about the state of emergency that we feel the prisons are in. We know that arbitrarily we're waiting until 2020 for some magical thing to happen and then we're going to start just releasing people, which I know nobody wants. [LR34]

SCOTT FRAKES: No. [LR34]

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SENATOR PANSING BROOKS: But these questions have been directed at that immediate concern and the worry that, you know, I'm hearing about the chicken and the egg with Senator Williams within that same circle. Programming is clearly...it's necessary to be in that whole mix. And programming relates to understaffing, it relates to overcrowding, it relates to space issues and so...and it relates to the fact that there aren't enough providers. So again, if our ultimate goal is to rehabilitate people and have safer people go out into our communities, I know I'm talking to the choir because I know that's what you want. [LR34]

SCOTT FRAKES: Yes. [LR34]

SENATOR PANSING BROOKS: But we really are on high alert that hearing that we don't really need anything more for programming, well, we don't know how much space we have, and, no, we don't know exactly how many inmates are doing X, Y, or Z but we have a good feel that it's probably okay, that's what I heard this morning. That doesn't seem like if we just accept that as legislators, that that is okay; we're doing everything possible to make our communities as safe as possible because we're releasing the most prepared inmates who are now ready to participate in our communities in a safe and productive manner. It just doesn't sound like that. [LR34]

SCOTT FRAKES: Right. [LR34]

SENATOR PANSING BROOKS: So I understand that you don't want to ask for more programming money and you feel that asking for the money for the employees is sufficient. But again, I have a concern that we are not addressing some of the true needs that you have. And I know you've got a...you've done a ton. You made that list at the beginning. That was a wonderful list of the things that have been going on in this very short time that you've been here. But I would ask you to reprioritize programming, keep it at the top of that list, and that's what I'm concerned about, so. [LR34]

SCOTT FRAKES: Okay. [LR34]

SENATOR PANSING BROOKS: And we're hoping to get some sort of report on numbers. And maybe that will help the system know what numbers we all think are important, too, so. And

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we're grateful for that. And, you know, maybe in the past nobody took...kept track of those numbers because the prisoners are basically throw-away people. But then we forget that 98 percent of them come back into our communities. [LR34]

SCOTT FRAKES: Right. [LR34]

SENATOR PANSING BROOKS: And we need them to become effective, good producers. And they can be employees for us all and, you know, there might be really good use if we can make them more safe when we bring them out. And I appreciate your efforts because I know that's your ultimate goal. Thank you. [LR34]

SCOTT FRAKES: Well, I'd share this. So I have five performance goals. It's...all good employees have performance goals. One of my performance goals was to increase programming just...you know, even though we didn't have structure and a lot of, you know, the information that we need, we knew...there's so much low-hanging fruit, so set a goal of increasing programming by 20 percent and just in terms of number of inmates participating and we are on track to hit that number. And I'm not going to throw numbers off the top of my head, but...so, and we did that without really a lot of complexity. And much of what Mr. Rothwell talked about this morning will move us a long ways in the next year. [LR34]

SENATOR PANSING BROOKS: Okay. [LR34]

SCOTT FRAKES: And then again, we'll get the...we get all of our assessment pieces working correctly, we gather all the information we need, we will be in a position to make good, thoughtful decisions moving forward. And I do understand the angst, so. We had a very short opportunity to talk with a couple people before I came back and we want to give you the information that you requested and we'd like to, if it's possible, if there would be maybe a format where we could not only provide it but actually go through it and do something and walk through it so we could have a... [LR34]

SENATOR PANSING BROOKS: That would be great. [LR34]

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SCOTT FRAKES: ...a collaborative piece, I'd like to do that. [LR34]

SENATOR PANSING BROOKS: We'd love it. Thank you. That would be wonderful. Thank you for your time today and for the time in all these hearings. It's been a slog to get through this but it's been good too. It's important work. So thank you very much. We all... [LR34]

SCOTT FRAKES: I always learn something. [LR34]

SENATOR PANSING BROOKS: We all wish you well and I think that concludes the LR34 Investigative Committee hearing. And I am hoping that all of you can stay and Exec for just a little bit right now. [LR34]