

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

STINNER: [RECORDER MALFUNCTION] Appropriations Committee hearing. My name is John Stinner. I'm from Gering and I represent the 48th Legislative District. I serve as Chair of this committee and I'd like to start off by having members do self-introductions, starting with Senator Erdman.

ERDMAN: Steve Erdman, I represent District 47, which is nine counties in the Panhandle.

STINNER: John Stinner, District 48: all of Scotts Bluff, Banner, and Kimball Counties.

KOLTERMAN: Mark Kolterman, District 24, which is Seward, York, Polk, and a little bit of Butler County.

DORN: Senator Myron Dorn, District 30, which is Gage County and part of Lancaster.

STINNER: Assisting the committee today is Tamara Hunt, and to my left is Liz Hruska. Our page today is Jason Wendling. On the cabinet to your right, you will find green testifier sheets. If you're planning to testify today, please fill out the sign-in sheets and hand it to the page when you come up to testify. If you will not be testifying at the microphone, but will want to go on record as having positions on the bill being heard today, there are white sign-in sheets on the cabinet, where you may leave your name and other pertinent information. These sign-in sheets will become exhibits in the permanent record at the end of today's hearings. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please silence or turn off cell phone-- your cell phones. Order of testimony will be introducer, proponents, opponents, neutral, and closing. When we hear testimony regarding agencies, we will first hear from the representative of the agency. We will then hear testimony for anyone who wishes to speak on the agency's budget request. When you come up to testify, we ask that you spell your first and last name for the record before you testify. We ask that you be concise. It is my request that you limit your testimony to five minutes. Written materials must be distributed to committee members as exhibits only while testimony is being offered. Hand them to the page for distribution to the committee and staff when you come up to testify. We need 12 copies. If you have written testimony but don't have 12 copies, please raise your hand now so the page can make copies for

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

you. With that, we will begin today's hearing with Agency 5, Supreme Court. The Supreme Court would like to thank the Appropriations Committee for the opportunity to appear. However, they have sent a letter that they are satisfied with our preliminary recommendations. Is there any proponents that would like to speak on the Supreme Court? Seeing none, is there any opponents of the Supreme Court? Seeing none, anybody in the neutral capacity? Seeing none, that concludes our hearing of Agency 5. We will go to Agency 46, Department of Corrections.

SCOTT FRAKES: Good afternoon, Chairman Stinner, members of the Appropriations Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. NDCS appreciates Governor Ricketts and Appropriations Committee support of its mid-biennium budget request. I'm happy to answer questions about any of the items pertaining to our agency, but I'm first going to focus my testimony on the appropriations for the state penitentiary replacement project. Last year, the Legislature commissioned an engineering study of the buildings and support structures on that campus. The study identified more than \$220 million in issues that would need to be remediated for that campus to remain viable into the foreseeable future. The problems are many: buildings and structures that require total or partial-- partial replacement; electrical, heating, water and sewer system failures; technological upgrades; lack of access for people with disabilities; site contamination and more. Due to the many deficiencies identified in the engineering study, we have decided to decommission the state penitentiary once construction of the replacement facility is completed. Simply put, we've determined that it will take considerable resources to bring NSP up to a usable level to house inmates at this site in the future. Some have suggested that if we'd have addressed those problems or these problems years ago, the smaller investment then would have saved us from the decision we face now. Would not be the case. Prisons wear out quickly. Unlike other types of businesses or even our own homes, the ability to make repairs is complicated tenfold by the need to always maintain a secure environment. As such, identifying contractors willing to work inside a secure perimeter is challenging, and those fixes take longer than repairs that would be undertaken in other work sites. Also, consider that prioritizing repairs must be weighed across not one, but eight other facilities. They also require constant upkeep. Issues like a broken water pipe or a leaky roof cannot be anticipated. And yet, when they happen, they move to the top of the list. During my tenure, we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

spent significantly but wisely on maintenance projects, but there's no way to stem the march of time. Eventually, the issues outpace the ability to keep up with them, especially on a campus that is 150 years old. Replacement of the State Penitentiary is something that cannot wait. Based on the engineering evaluation, we may have five more years of housing the same classification of inmates living there now, of which half are maximum and medium custody. Each year that we wait to build, we risk increased cost associated with construction inflation, as well as operational challenges that will impact the safety and security of the facility. The NSP replacement project will increase safety, security, program engagement, and staff wellness, along with lowering operating cost, recidivism, and turnover. To achieve the outcomes we all want, we must invest in the quality of life of those in our custody, as well as those that work with that population. I've handed out an executive summary that provides an update on where things stand with the design and site selection for the replacement penitentiary. And this is just hot off the presses yesterday. While the design process is ongoing, contact is being made with property owners to secure options on identified parcels of land. And at this time, I'd be happy to try and answer your questions.

STINNER: I'm going to ask the committee to stand at ease a second or two. I want these passed out to Director Frakes, as well as the members of the committee. But I thought this might be a good time for-- for myself because I've been involved with this issue for quite some time. And maybe-- maybe I can use a little bit of a chronology to kind of give you some insight into what we're trying to do, what we need to have in order to make prudent decisions. But I think you remember when we started this process, there was considerable concern about overcrowding. We were over 150 percent, second in the country when I started here seven or almost eight years ago. The-- there was a specific timeline, and the specific timeline was July 1, 2020, and it really addressed prison overcrowding as a primary focus of this Legislature. So what we did on appropriations side of things is we did pass and I'll go through that a little bit, passed several pieces of requested legislation to build beds to improve things. I think, and I'll go through that again later on, but we never hit that 140 percent that we had our sights on. The other thing that we also received at that time is a Dewberry report that really gave us a timeline and a blueprint of how we move forward to get to the 140 percent by that specific time. Programming was a major league emphasis at that time; programming, moving people through, get the programming, and-- and

obviously then go on to probation. LB605 was passed at that time, which was major-- major league legislation for this Legislature that dealt with a lot of the issues that we're talking about, some of it-- some of it reforms and a lot of it being reforms. So I'm just going to go through just a little bit of an analysis for the committee's purpose. General Funds appropriation at the time that I have started was \$209 million in General Funds. We dropped down to 207. That was during the budget crisis. And I think that's when I took over as Chair. Well, interestingly, right now we've passed a budget at \$260 million in General Funds and I have some adjustments to make. But during that time, just to remind some people, behavioral health staffing, we put another \$1.1 million, \$1.2 million in that. There were some other changes that we made. I think that first year we also had hepatitis C. We put over \$8 million. It ended up being \$11 million into hep-- hepatitis C. So we were accommodative in that. Critical under-resourced issues, we put nine, almost a million dollars into critical resource allocations. I can go through the whole list, but every time it's programming and trying to address all the problems that we have. Obviously, we've also accommodated in our budget a salary increase and that salary increase, if I can find my pages that I have everything written on, will bring up your General Fund budget to around \$305 million at the end of this-- this biennium we're in. So if I just do the quick math, that's \$100 million of operating costs that we have passed, that's a 50 percent increase. Hundred million divided by 207 is about a 50 percent increase in cost associated with Corrections, 50 percent. There isn't anything in my budget other than property tax relief or our budget, excuse me, that even compares to that. And let me go through this, too, because we have-- we have made an effort to cure our problem. We had a new \$14.9 million we just allocated to look at the design and location of a new-- new prison. Eighteen million new-- new Correction facility was appropriated last session to expand number of beds, trying to address overcrowding. Seventy-five million dollars was allocated back, well, over a period of time, '16 on through '20 for the RTC treatment, another \$48 million. So we've added 888 beds was the number that I think we calculated. So we've tried to address it. We've given Corrections as much as we can, over \$100 million of increases, 50 percent. And we're not even there. We haven't moved the numbers, and we're at 150 percent still. We got a COVID relief during this particular point in time, but I have passed out where the trajectory is going to be. So let's just talk about what we asked out of the Corrections Department. We asked that we get an updated master plan from the Dewberry study, kind of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

essential ingredient in trying to look at, is this an-- is this an answer to our problem or isn't it? And that's supposed to be out, I think, in August.

SCOTT FRAKES: Correct.

STINNER: In preparation of a program statement for site selection of a new halfway back house, there was \$500,000. I haven't seen that yet.

SCOTT FRAKES: Getting very close.

STINNER: OK. So then we have design and planning of all these new beds. I don't-- I don't know where we're at with the design and plan of the new beds, the 96 beds that we asked to be built additionally to address overcrowding. And I don't know where we're at on that, but also we have a recertification process in process with UNO. That's not coming out till-- and that basically certifies your classifications of inmates. Is that correct?

SCOTT FRAKES: It's first-- it's reviewing the current status of how we use it. It is looking for efficiencies or improvements that might be made. I'm not sure that that specifically was a validation study. That's-- that piece I'm not clear. That contract was last summer, so I can't remember for sure. That was the last part of it. But in essence, while it may not be a true full validation study, it will tell us whether or not it's currently doing what it's supposed to do and if there's improvements that would make it work even better.

STINNER: But-- but the key ingredient here is you've got to get the classifications right in order to project what type of beds you have, and the type of beds, maximum security beds cost a whole lot more than community custody beds and minimum and maximum. I think that's-- that's the point of it. So it gives-- gives us the opportunity to kind of, I guess, build something that suits our needs over a period of time. And we have, we've-- in our preliminary budget, we've allocated \$275 million now for a replacement prison. And I think that's where we deviate. I think everybody from the administration is looking at this Pen is outdated and needs to be replaced. And I don't think anybody's going to fight you on that particular issue. It is old and it is probably at the end of its useful life, but you're not addressing the overcrowding problem. I just want to take you through what our report is that you had prepared, which is this graph here. So if I just look at this graph and it was JFA, I don't know who they are, but I think

it's an authoritative source. They've been pretty accurate. So we're going to spend \$275 million of taxpayer money and at the end of eight years, we're going to need another 1,300 beds. That means I need to allocate, if I'm going to plan for 20 years like we should be doing, we probably need a billion dollars. Is that what we want to do with taxpayer money? Something has to happen here. OK? Somebody has to stand up and say this is nonsensical. I'm not saying that the replacement of the prison's nonsensical. We'll pick up a few beds. Maybe we'll have better operational facilities and efficiencies derived there. I'm not saying that, but we're not addressing the problem. And for us to stand up and say, jeez, we just threw another \$275 million to replace an aging prison and haven't addressed the overcrowding problem, it isn't going to go any further until we do that. That's what I hear. And you know, we're on a different track and our track is looking at overcrowding. What do you-- we put-- we put aside for reforms I think 10 or 15 million dollars to address reforms because we need to come up with better solutions. Throwing taxpayer dollars at prison cells isn't an efficient way or a good way to use tax dollars. We've got to come up with programming ideas. We've got-- I think there is a bill coming out of Judiciary and I'm sure you sat on that committee all-- all summer long with CJI. We got to look at those reforms and see what happens to the trajectory. We cannot continue to build. We've already tried that. I mean, I tried it over the last seven years, 880 beds and we're still in the same place we are now. And of course, the CJI report, if I'm mistaken is, it isn't our incarceration problem that we have. It's how long the inmates have to stay in there. And maybe that's a programming issue. Maybe it's a sentencing issue. I don't know. That's-- that's out of my lane. But this is a math problem for me and the math doesn't work. And as a steward of the taxpayer dollars and all of these folks around here are, I'm not going to throw money at something until we take a look at this right here and cure this right here and have a strategic plan to correct some of this, these problems. And if you saw we were probably the worst in the country right now as far as prison population expansion. Everybody else is going down. Why? Because they've adopted reforms. And I may be picking on you, but I'm trying to give you a sense of our decision-making process. We have to have the data. The data has to support the dollars that we're spending. If it doesn't, then that's not a good solution. And that's-- that's where I'm at. And anyhow, I-- I will open it up for you to make your comments and then I can open it up for questions from the committee.

SCOTT FRAKES: Senator Stinner, you put an awful lot on the table, so I'm not sure how much of it I'll be able to circle back to and you may want to come back and ask me more specific questions. So let's start with the fact that Nebraska has been underbuilt in terms of prison space for over 40 years. So that's kind of the starting point. Wasn't that we had all this capacity and then we worked to fill it up. It's that we have always not had enough beds consistent with the number of people incarcerated. So whether you look at our population of less than 3,000 in 1980 or the 5,500 that are with me today, our design capacity has always been well below that, which is why we have that stat of being one of the most overcrowded in the nation. How we work to address that is you talked about all those things. LB605, LB605 did some really good things for our state. It significantly increased the number of people that are going out with community supervision and correspondingly reduce the number of people that jam out of prison without supervision. It's not clear how much LB605 contributed to where we are today in terms of prison capacity. What we know is it didn't produce the results that they believed in 2015 that we would drop to 4,500 inmates. We saw a slight drop. We saw a flattening. And starting around 2018, 2019, a fairly rapid increase. And then that stopped in early 2020 when the pandemic kicked off. And the good news is, is while we have seen some increase again, it has not been at the same rate that we were seeing in 2019. So we had 5,250 inmates in our system in 2015, and we have 5,500 inmates in the system today in 2022. So we have not seen the increase that JFA predicted in the previous forecast. But working off the best science they have, they produced a new forecast in 2020. And theirs-- their belief at that point was that we were going to see about 200 people a year come into the system. We know Nebraska's still got a low rate of incarceration compared to most of America. We're sitting at about no fifth-- 35th in the nation. It would be great if we were 50th in the nation, but being 35th in the nation does not suggest that we are overincarcerating or putting lots of low-level felons in our prison system. The-- I want to speak quickly to the RTC piece because I think there is some confusion there. That total project now with what's proposed with the 96 beds is going to be about \$145 million, I think, total investment over the last five years. The majority of that investment was not around increasing capacity. It was around addressing needs for the system and addressing needs for what was LCC/DEC. So there is a facility, two old facilities, actually a little bit older than the last remodel of the penitentiary, but that was a brand new greenfield in 1977-1978. So it doesn't have all of that 150 years' worth of stuff under the ground

that we don't know what it looks like it has. None of the systems are more than about 50 years old, so it was a great example of a facility that could be rehabbed, modernized, and brought up to standards, much like we did with the penitentiary in 1980. The only capac-- true capacity increase was the 384 maximum security beds. And not in the sense of building more beds to put more people in prison, it was building more beds to address this underbuild issue. It added 384 beds to our design capacity. It didn't raise our overall capacity to house people in the system, going back to that issue of our design capacity being so far out of whack with the number that we house. Much like this project, which I appreciate that you're acknowledging that we have a problem, that we have a facility that needs to be replaced. So that's kind of foundational to this conversation. Connected to that, there again, that's not to add 1,500 beds to our system. Currently, we house 1,300. I think it was 1,301 1,302 this morning at the Penitentiary. We've been as high as 1,350. Operationally by our measurement of operational capacity, we could put 1,400 people in beds in that facility. It doesn't operate well and I don't want to do that. But if that's what I need to do because of if there was an increase in the population, that's what I would need to do. So there again, what this new replacement facility does is increase the design capacity from what is today just over 800 beds at the penitentiary to 1,500 beds. So now the math changes again. With the construction of that facility and the closure of the old penitentiary, the whole issue of our design capacity and our statutory operational capacity becomes very different. Absent some significant increase in today's population, we would be under the statutory operational capacity so the Emergency Overcrowding Act would implement subsection five where I would tell everyone we're no longer over 125 percent of design capacity. With the opening of new beds at the RTC, we'll be at a design capacity of I believe it's 4,079 beds and that gives us a statutory operational capacity of just over 5,000 beds or 125 percent of 4,000. With the opening of the replacement facility, our design capacity would increase to about 4,700 beds and actually with this other 96 bed project, 4,800 beds. So that would put our operat-- statutory operational capacity to over 6,000 beds, which would put us in a very strong position, even if there was some increase in the population. So the solution to this problem isn't just about just building beds to address capacity when we talk about our population management. It's building beds to make the math work correctly. It's building beds so that our design and statutory operational capacity are consistent with the number of people that we house. Everything you

talked about in terms of continuing to look at work, the CJI work, other things that we can do, things that my system, the Department of Corrections, can do to prepare people for release and get them out as soon as possible, that's all part of the solution as well. But that brings us back again then to the issue at hand, and that's a facility that we've already waited one year. We knew there was a-- I knew there was a problem over two years ago. That's when I started the conversation. So we waited this year. But I appreciate that we had the funds to go out and at least get the process in motion. We have one option on a piece of land that's-- there may be one more signature needed, but we have one piece of land under option and we're probably at about 45 percent in the design work. We can go to about 65 percent of the design and then we have to have a site. You can't finish the design if you don't know the piece of land that you're building it on. But we already have good conceptual models for the living units and for the different buildings. We've got some different ideas about how they would be laid out in terms of connectivity and all those things. So-- and there's a little bit of information in the summary that I provided, a very conceptual drawing of what it could look like. So that's moving forward like it's supposed to. I'm going to stop after one more point, and that would be, yes, we requested, we were given the funds and told we'll get a new master plan and then work with UNO on our classification process. So both of those we moved as quickly as we could. We move-- we were able to move very quickly on both of them because we didn't have to go out for RFPs and go through that process that would have probably pushed us out into later into the fall before the work could even start. I don't know if there was a misunderstanding or some other belief that a master plan can be done rapidly. If you go back to the 2014 master plan that is still valid and still very much alive, that was a product that began with work by Bob Houston in 2013, and it was published in the mid fall of 2014. They are complicated. They require site visits at every location. They require lots of research and study, and the process is going well. Fortunately, we were able to go back to Dewberry again. I, you know, I spent a lot of time with the 2014 plan. I know it's a good product, and I believe we're going to get a great product. UNO, that work is going well. There's supposed to be some preliminary information I think in the next few weeks. I talked to Dr. Hamilton a few weeks ago and he's pushing hard to get some stuff so there could be some interim information and then ultimately get all the conclusions. It's very possible that there could be some recommendations, adjustments to our classification tool or a classification process that could lead to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

some shifting of how we classify people. I do not anticipate there will be any significant changes that would really change the math in terms of what kind of beds we would build. But, you know, we'll see what comes forward from it. I also don't expect that the master plan is going to produce some radically different idea. But here's the good news. We are at the right place. If we have the funding and we can continue to move the project forward, if it turns out that the collective wisdom of the classification work and the master plan says no, don't build more medium security beds, build more high security beds. I hope that's not what it would say. Or don't build more high security beds, build more medium and minimum custody beds. We have all the flexibility. We're not-- by that point in time, we would not be locked into a position of where we can't move the project in the right direction. I remain very comfortable, though, that we've identified the right bed space, the right numbers, and that it is the right project and that delaying another year is only going to put us in a worse position, as I talked about, in terms of inflation and all the other pieces that go with that. And I know I probably only touched on half of what you said, but.

STINNER: That's fine. I just want to draw your attention that you're contest-- you're contesting this line that the JFA has put together that in eight years we'll have, under the current situation, 7,327 versus 6,000, which is-- which is what you said, 6,000. Everything you said reconciles with what this plan is. I get that.

SCOTT FRAKES: And that wasn't even thought out and intentional. The, well, yeah, actually, I take that back. There was some "intentionality" two years ago when I was looking at these things. If there are no changes in current practices and if there are no, you know, things that would address the number of people coming into our system and the flow of people out of our system, that's JFA's projection. And that was done in 2020. And so at this point in time, yes, I still consider those numbers valid.

STINNER: OK. Questions? Senator Wishart.

WISHART: Thank you for being here, Director, and I apologize for-- for being late. I hope I'm not being redundant here. So is it your plan to close the Penitentiary?

SCOTT FRAKES: Yes.

WISHART: So what has changed? I remember when originally this was pitched as a private-public partnership. And then we were briefed on there being a new facility and the Penitentiary staying open to address overcrowding. And then most recently, now it's closing the Pen and building a new facility. Walk me through how in the span of from 2020 to now it could have changed that drastically.

SCOTT FRAKES: So for me, it actually started in 2019 as I was doing, probably in the-- I think it was in the summer, August of 2019, when I first had the conversation with someone about the private-public partnership approach. At that point in time, I honestly believed that the facility, the existing Penitentiary, was still in good enough shape that if we dropped it to minimum custody where we no longer need the security electronics, we don't need the towers, we don't need all of those hard physical security piece-- pieces that we would be able to operate it as a minimum custody facility. And even after the first program statement that we did, then initial more of a high-level review of the condition of the facility that was done by DLR, I still was somewhat optimistic. But then as we went through the process and this engineering study was done and they came back, I no longer think that's true. I think at this point, the condition of the facility is such that even a minimum security population, isn't that they couldn't be housed there from a security standpoint, but I wouldn't be able to meet their basic life safety needs and all the other things that come with it. I got to have a facility where the water comes on and the sewers work and those things. And so my dream that we could turn that into like a vocational training school unfortunately has fallen apart.

WISHART: So my understanding with the water system issues in piping is that that can be fully replaced for about \$2 million. Why is that not a reasonable investment to do?

SCOTT FRAKES: If there was a decision at some point that it still needed to be used in some capacity, it could be. That would hardly scratch the surface though in terms of fixing the issues that would make it safe to continue to house high-security inmates in that facility or even there not any inmates, because it isn't just the water system that has issues. There's electrical system problems, sewer problems, steam pipe problems. So there's a collection of things so.

WISHART: So will it be reflected in the master plan that's due in August? It's my understanding it'll be [INAUDIBLE]

SCOTT FRAKES: That's the target date, yes.

WISHART: Will it be reflected that that Penitentiary should be closed?

SCOTT FRAKES: Hmm. That's an excellent question. I haven't had any interaction with Dewberry around that issue, so I don't know at this point what the recommendation's going to be.

WISHART: OK. And in terms of the new facility, I'm hearing rumors about a Fremont location.

SCOTT FRAKES: Can't confirm or deny.

WISHART: I'll let other colleagues ask.

STINNER: Senator Vargas.

VARGAS: I have a few questions. Thank you for being here. How many medium and maximum security beds are now at NSP?

SCOTT FRAKES: It's a total-- it was originally designed to be 400. We house about 800. And it's a mixed population. We're not able to provide separation.

VARGAS: How many security, medium and high security beds would you say we were using? If it's designed to 400 out of the 800, were we utilizing the full 400?

SCOTT FRAKES: We keep-- we keep the-- we keep 800 people in those 400 cells.

VARGAS: Yes. But how many of them would have been in a medium or high security bed like that needed to have that bed?

SCOTT FRAKES: Every one of them. I mean, there could be a few people that have been classified for minimum custody and you're just waiting for transfer. But--

VARGAS: OK.

SCOTT FRAKES: Yeah.

VARGAS: And the reason I'm asking is [INAUDIBLE] we've had this conversation. I don't think this is a good use of taxpayer funds. And what I'm trying to understand is now evaluating your project. If it

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

was originally 50 percent occupancy for medium and high security beds at NSP and this proposal looking at what you sent us is 70 percent medium and high security, that 912 medium high security beds, we're increasing the medium high security beds to 25 additional percent. Why?

SCOTT FRAKES: Well, living unit sizes, so we're going from a unit that was designed originally for 80 people that we house 160 in. Either way, they're highly staff inefficient. So now we're going to a larger sized living unit where you get much better staffing efficiencies along with the improved technology, sightlines, and other things. And so the bigger your living units, the more the math becomes, the less flexible the math becomes. If you're building 80-person units, then you can build in small increments. But when you're building a 256-bed medium unit or a 196-, 194-bed high-security unit, then-- then it would either be 700-and-some beds or 900-and-some beds.

VARGAS: I mean, the concern I have is it's sort of along Senator Wishart and Senator Stinner's, specifically Senator Wishart saying, you know, we've had a lot of conversations in here. You even just said you wished it would be a low security. You know, we can-- we can make improvements and use NSP. But now you're talking about creating a facility that is 70 percent medium high security. That's the concern in terms of the narrative changing so rapidly from 2020 to now that things are in such disarray. Here's my question because I was listening to the Chief Justice State of the Judiciary, and he reminded us that about 80 percent of individuals involved in the criminal justice system have some substance abuse or mental health issues or both. Why would we spend the money on a prison if we know 80 percent of the individuals right now in our criminal justice system need substance abuse or mental health support? Why not put money into that instead?

SCOTT FRAKES: Well, in the meantime, what will you do with that part of the population that with those mental health issues and with those substance abuse issues commit serious crime and not because of those issues, but in connection with? That's-- that's why we have prison systems. We use the prisons hopefully to house those people that we feel present too great a risk to our community. Should there be resources in the community to address mental health needs and substance abuse needs and other clinical treatment? Absolutely. Absolutely.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

VARGAS: In the past, you've come in front of us or at least a joint, you know, with us and Judiciary. Many senators have asked you to take positions on reforms that are going to try to address some of these issues. And I think the CJI report has also shared many of those policy reforms that have been out in the public. Have you changed your position on engaging in more reforms? Because at this rate, and this is to Senator Stinner's point, we're just going to keep building prisons every three to five years. We are-- we dramatically have to change something about our prison system. Have you changed your opinions on the reforms that we can and should take or that Department of Corrections should weigh in on?

SCOTT FRAKES: No, not as an official. I'm responsible to make sure that the Department of Correctional Services operates safely and effectively and humanely. And I know Senator Stinner is going to probably snap back his head when I say efficiently. That's where my work is, and that consumes almost every one of my waking hours. So that's where I do my best work. That's how I contribute to the good of the public.

VARGAS: Just one last question if-- good with this. Many of us have been in this room since 2017, and it gets to Senator Stinner's point. We have consistently funded what you have asked of us. From my recollection, most of what you have asked of us has been to fund people. At some-- many-- few times has it been and more recently, beds, but mostly resources for mental health; for, you know, entry-level or sergeant-level staff and corporals. Because we had seen year after year you couldn't find the people for these positions and we were getting up to \$20 million, \$22 million in reappropriations every year due to nonstaffing. But you said one of the reasons that we're having this-- these problems and overpopulation is because Nebraska has been underbuilt. I don't remember and I don't remember hearing you say that when we were in appropriations, largely what you've requested and asked of us is we don't have enough people and we need more money to be able to [INAUDIBLE] I commend you for one thing in particular. I appreciate your work on increasing the pay and addressing those needs in negotiation because it's long overdue. But hearing you say that it's because we've been underbuilt when that's not what's been communicated to us in this committee is extremely disconcerting because it's in opposition to what we've had these conversations. It's always been about we need more people and we just can't get enough people. I don't know if you want to respond to that.

SCOTT FRAKES: Oh, yeah, I do, please. So perhaps not in Appropriations, but I have said in testimony that we have been underbuilt for 40 years. And that it was pointed out in the '80s, there's an article from the 1980s that lays on my table in my office that talks about the overcrowding in the Nebraska prison system. And so when we got the data to show that we've always been well above our design capacity. So when I say that we're underbuilt, we're well above our design capacity. We found different ways to work around that and, in fact, above statutory operational capacity as well. So we found all kinds of workarounds. But the majority, or [INAUDIBLE] majority, a significant part of our system was built as single-person cells, and none of those are single person cells. They are-- if they were built as single, they have two. If they were built as two-person cells, they have four and you work your way across. We tried our best to figure out how to make sure that we have all the other pieces that will keep a prison safe and secure and operate in a healthy way. But here again, the Penitentiary is a good example of not having all the other amenities that make for a good, healthy prison in terms of day room space and recreation space and programming space and dining space, just along that list. So that's the underbuilt component. I got an agency that was handed to me that was underfunded, that was struggling to get-- in 2015, that was struggling to get the funding it needed to do the evidence-based practices that we were told that we should do and that I came saying I wanted to do. You've been incredibly generous in helping us do that. It was understaffed. We did a staffing model, did a staffing audit, brought it to Appropriations, got general buy-off that it was acceptable. Got questioned by another committee that thought I'd cut it too short, that I had actually tried to underestimate the number of additional staff that were needed, but we managed to get through that piece. Here again, my request for those staff funded and funded. Then we added new spaces that drove new staffing needs. This year, what is it, 55 or 60 this year, then moving to 125 new positions that are fully funded July 1 for the new prison now named RTC, the new remodeled rehab prison known as the Reception and Treatment Center. Again, thank you very much. And then the pay increases and the need to address pay. We were in a serious position. We were on the lower end of pay for our staff, and it was evident in terms of our ability to retract, to retract, to attract and retain staff. And even efforts where we thought we found the right number and got the support, got the funding, things continued in the right direction, wrong direction. And then, of course, last year we were part of that national issue of just a mass exodus of staff. So we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

appear to have finally landed on numbers that work. In the last two months, we have hired 283 staff. We have and we continue to hire. We've had almost 700, well over 600, I think it's almost 700 applications for correctional corporals and caseworkers, the protective services staff. At the same time, our total turnover for the agency in December and January was 50 people. January's number was 17, 17 people left the agency in January. We haven't seen a number like that since we think around 2010 during the economic downturn. So, you know, that's the magic that we need. We need a low turnover and we need this high recruitment and then, of course, build that retention. So-- but it's, as we see, the numbers are big and unfortunately, the bigger any agency gets, the higher the wages go. Then each, you know, increase of 1 percent in wages drives significant millions of dollars. I'd like to think that we are at a place right now where I won't need to come to you in the next biennium asking for yet more significant increases. Got to see what the economy does though. But at this point, I'm feeling very confident about what has been enacted and the success we're seeing.

STINNER: Are we still an emergency declaration stage?

SCOTT FRAKES: No, we reviewed that just this morning.

STINNER: OK.

SCOTT FRAKES: I think we're sitting at one hundred and, oh, 146, 148 percent of design capacity, somewhere in there, maybe a little bit lower. And we're at about a-- don't hold me to this, 130 percent of operation. We would have to be below 125 percent of op-- of operational capacity, or we would have to be below 125 percent of design capacity to meet that threshold where we would stop the emergency.

STINNER: Numbers actually came down due mostly to COVID, did they not?

SCOTT FRAKES: COVID seemed to be a big contributor. And you know, and then where do some of the other reforms that have been affected, enacted fit into that? Because if you were to look at the JFA forecast from 2012 I think it is, I think we should be at higher numbers based on their estimate at that time.

STINNER: We're in a lockdown on four facilities?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

SCOTT FRAKES: We have two facilities that are operating on a four-day schedule, four 12-hour days. And we have one facility, the Penitentiary, that's operating on a 7-day, 12-hour schedule. Based on the staffing numbers that I'm seeing, I'm expecting that we're going to be able to make some changes to those schedules relatively soon. We've hired all these people, but now they have to go through the six-week academy. They have to be deployed, get a couple of weeks of on-the-job training. And then-- so it'll be about April 1 is where we should really feel the impact of all these staff that have come in.

STINNER: So that should mitigate the lockdown. But we still are in emergency. We have what, short-term plan. We've got beds coming on. How many beds are coming on in May?

SCOTT FRAKES: There's 416 beds total capacity. So that will add-- that will bring our design capacity up, I think again, 4,079--

STINNER: OK.

SCOTT FRAKES: --which would put our operational 125 percent of that is 5,000--and--something, 70 or something like that.

STINNER: And in the State Pen that you're going to tear down, I think when I read the plan that was given to us on the useful life, there was a minimum security pod that they thought was usable. I believe that I was actually on Appropriations when we gave approval to build that. So it's almost brand new, is it not?

SCOTT FRAKES: It is. That's the money that we were, I mean, we've had-- I'm proud of this actually. We have consistently come in ahead of schedule and under budget on our different projects. And that money came from the CCCL expansion and rehab project where we added 160 beds for women and went through and refurbished the facility. And that was on the heels of the 100-bed temporary unit that was built there that was from appropriations. So we had savings, and we asked if we could use those savings to build a similar 100-bed unit at NSP. It was a little more expensive because it was inside a security perimeter when we built it. But so, yes.

STINNER: And you've looked at the plan for \$220 million to build back as if it's new is, I think, what they said in that plan. I find that interesting.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

SCOTT FRAKES: To the degree possible, absent going in and digging, you know, everything out of the ground and tearing down every building, you can't really build to what I would call new. You can refurbish, you can rehab, you can certainly replace all of those mechanical systems. We could go underground and provide new water, sewer, electrical. But--

STINNER: I thought the plan actually included all of that infrastructure.

SCOTT FRAKES: Right, it does.

STINNER: So.

SCOTT FRAKES: It does. But it--

STINNER: \$50 million difference isn't chump change. So just asking.

SCOTT FRAKES: It's not chump change, but we won't end up with the same quality that we'll end up with in starting fresh and building a new facility. We won't end up with it's not the better investment. And as we know, how often have we gone in to do a major project and then find out, oh, didn't realize that was there. Oh, didn't realize, you know, that that hidden tank was in the ground, and so.

STINNER: Well, I've rehabbed a lot of buildings in my lifetime. And I know what you're saying. There's always surprises so I can build in a 10, 20 percent contingency. But I think they have that in there, too, for unknowns. So it's something for discussion. I'm not going to throw that out as something the committee has agreed to. I think the committee, by what they-- their actions are, have demonstrated that something needs to be done.

SCOTT FRAKES: Yeah.

STINNER: I think just to put it into context for me, and what I'm told, when I'm trying to get to as an explanation for this thing, we've-- in seven years we've spent \$400 million if we do this, we've increased our operating budget by \$100 million and I'm still in an emergency declaration stage, and that's just a head scratcher for me.

SCOTT FRAKES: But with this investment, that would definitely end absent--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

STINNER: Au contraire. Because according to this report, we're going to have 6,000 beds; and in eight years, we'll be right back to 150.

SCOTT FRAKES: Absent no change in the math.

STINNER: With absent no changes.

SCOTT FRAKES: Right.

STINNER: Agreed.

SCOTT FRAKES: Yep.

STINNER: So wouldn't it be--

SCOTT FRAKES: And we know that if Nebraska grows--

STINNER: Wouldn't it be prudent for us to start looking seriously at reforms and what we can do with this?

SCOTT FRAKES: Well, we are.

STINNER: We are?

SCOTT FRAKES: We just spent nine months with CJI.

STINNER: OK.

SCOTT FRAKES: And there are recommendations and there is legislation that's in place.

STINNER: By God, maybe we'll make some progress. And then maybe we can make a decision on what we should do here.

SCOTT FRAKES: But don't ever lose sight of the fact, folks, that as Nebraska folks, sorry, Senators, as Nebraska grows, you know, for every 100,000 new Nebraskans, in today's math, about 278 people end up in prison, you know. So if we can change that math and make it 250, which would be a significant improvement, but that's still for every 100,000 new that's 250. That's one living unit.

STINNER: And that's 10 years we've grown 100,000. So every 10 years we're going to have 270 more people.

SCOTT FRAKES: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

STINNER: I can do that math.

SCOTT FRAKES: I think Nebraska is going to grow faster.

STINNER: In 20 years when I'm building out,--

SCOTT FRAKES: Yeah.

STINNER: --then I can probably build it for [INAUDIBLE]

SCOTT FRAKES: That would be good. So one last piece of--

STINNER: My other recommendation to the committee is let's put a billion dollars out there because it looks like that's what we're going to have to build. Does that get everybody's attention? Does that make you feel uncomfortable? It makes me feel really uncomfortable.

SCOTT FRAKES: I hope that's not the future for Nebraska. Yeah.

STINNER: Well, we're headed down that road, and I think we've done as much as we can do as a state to build beds, to accommodate operations, and all the rest of that. And I think it's time to really kind of pause and really take a hard look strategically at what we're doing on all corners as it relates to Corrections. And that's-- that's my-- my position today on it. But I appreciate you coming in. I appreciate what you're doing. I got more questions. Sorry. Senator Clements, go ahead.

CLEMENTS: Thank you, Mr. Chairman. Thank you, Director Frakes. There was a discussion about the high percentage of maximum security beds in the new facility. Is part of that from transferring maximum inmates from Tecumseh? Or what's the plan?

SCOTT FRAKES: I'm actually hoping to address that with the 384 beds that we brought on an RTC. So no, it's-- it really comes just back to the math. If you're building living units in-- in size of 256 beds for medium or roughly 200 beds for maximum custody, you're either going to be a little low or a little bit high. If you're building small little living units like those originally were built as, you can get a little, you can get much closer to what you think the number is today. But those are really inefficient and expensive to operate.

CLEMENTS: The new RTC is going to take on some of the Tecumseh maximum?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

SCOTT FRAKES: It will ultimately, when we get all these staffing issues sorted out.

CLEMENTS: Oh, you need staff to staff it first.

SCOTT FRAKES: Right.

CLEMENTS: I see. In the proposed new site, we're talking about potentially needing more even in the future. Are you planning to buy enough land and space to expand after this project is done?

SCOTT FRAKES: The design is such we're trying to build-- trying to buy no less than 100 and actually closer, as close to 160 as we can get so a quarter section so that it would allow to meet future needs. Again, not to [INAUDIBLE] I'VE told different committees anyway, I have no desire to grow the number of people incarcerated. That's never-- I've talked for years about I'd love to work myself out of a job. But the people that need to be incarcerated and are incarcerated, I want them to have good, safe, healthy places for that to occur. And at some point 20 years from now, 30 years from now, 50 years from now, there will be other facilities that people will look at and say, well, would it make more sense to create new space at a different location and close that facility? Because that's just the evolution of corrections systems. Fortunately, nationally, we are moving the other direction and we're not building new additional prisons. But systems are building replacement prisons. We're not the only ones doing it. Prisons wear out, and sometimes it just makes more sense to build new and fresh than to try to rehab.

CLEMENTS: And do you plan to have the Tecumseh population decreased or just transfer some other ones down there?

SCOTT FRAKES: My goal has been to move it to a full medium custody population. That's been the first goal for it because it is not overcrowded. I'm not sure where it's at this morning, but it runs at about 104 to 106 percent of design capacity. It's never really been what I would consider to be in any way overcrowded. In fact, it only runs over that because we house-- we used the secure-- secure management unit, SMU. It is the long-term restrictive housing building for our whole system. That's where almost all of our people that have long-term restrictive housing, about 200 and-- 200 people give or take right now that are on that status. So if it were not for that purpose, we'd actually be running that facility below design capacity. So I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

don't need to reduce the number of people there, but I would like to bring it down to an easier to manage general population medium custody.

CLEMENTS: Thank you.

STINNER: Senator Dorn.

DORN: Thank you, Chairman Stinner. Thank you for being here today and answering a lot of these questions. I want to know if you-- you know the facilities as good as anybody here. I see this project supposed to be done design date, move in '25, end of '25, three years. What happens, walk us through what happened-- when will you be back for more funding for other structures? Walk us through what happens if we as a legislative body don't approve any facility?

SCOTT FRAKES: Well, we'll continue to deal with the emergency issues that arise at NSP. Hopefully, they'll be such that we can respond to them quickly and not create issues that lead to disturbances within the facility. And I'm not the-- the sky is falling guy, never have been. We were without water for about 36 hours and managing a high-security population. It was challenging, but we made it work. There was plenty of unhappy people, but we made it work. If that had gone on for four or five or six days, it would have become very, very difficult to manage that population in a way that was safe for all of us because we couldn't provide showers. They only had-- we only had port-a-potties, don't have running water in the cells so you're trying to deliver water so people have drinking water. And so my concern around the Penitentiary is going to be not so much that we can't respond to and fix each new problem that comes along. But at some point, a high-security population reacts to and causes problems that then we have difficulty managing. So that's always a risk. There's, you know, probably the outlier risk that there could be some other event, an escape or some other issue but really today I'm just more concerned about. And at some point I've got, you know, a constitutional duty. I cannot be deliberately indifferent to people and have no desire to be. And it becomes harder and harder to defend when you've got repeated breakdowns of systems that lead to things like forcing people to use Porta-Potties, to not have access to running water, and those kind of things. So that's just one more factor that I have to think about.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

DORN: I guess what, maybe a little bit different answer I was looking for was if this structure doesn't go forward, this facility, what does that do to our State Pen and the other structures we have? I mean, they just won't sit there. Will you be in or whoever in for more funding and that type of thing for rebuilding or building new?

SCOTT FRAKES: Well, I'll be in for the funding it takes to keep it operational, keep the Band-Aids and baling wire and whatever it takes to, you know, keep it running. I can't in good conscience make the claim that investing the \$220 million is the right decision for Nebraska. Because on top of everything else, I'm very concerned about how difficult it would be to do that work inside of that facility because I can't take the inmates out. It was challenging at RTC, but the first phase of the work was in an area where we had fairly limited movement and containment, and the second phase, the high-security unit, we actually redid the fence and built it outside of the prison. When you talk about going in the middle of a high-security prison, tearing down a living unit, building a new living unit, I'm sorry. First, building a new living unit where the ball field is so now there's no recreation space, moving one group of inmates into that living unit, tearing down their unit, and all at the same time we're supposed to somehow allow for programming and feeding and recreation and all of those components and not have people access tools, access building materials or, worst case of all, escape from the facility over a project that I could see going on for five to seven years. I don't--I can't sign on for that. That's bad business for me, as well as a bad investment for the state.

STINNER: Additional questions? Senator Kolterman.

KOLTERMAN: Thank you, Senator Stinner. Director, you've been here for eight years now.

SCOTT FRAKES: I'm in my eighth year now.

KOLTERMAN: Yeah, you came in and I think Stinner and Hilkemann and I get to help appoint you or elect [INAUDIBLE] job.

SCOTT FRAKES: Thank you.

KOLTERMAN: We-- And we're also going to be looking for new jobs when we get done [INAUDIBLE]

SCOTT FRAKES: I'm hiring.

KOLTERMAN: That's what it sounds like. I wonder what you pay. The Governor, the Chief Justice, Lathrop, whole committee has been working on this project. And I think there's some legislation that's going to be coming forward from that. We haven't seen that yet or really know what that looks like. But I in good conscience can't really support the idea of building or appropriating the kind of money we're looking at here without having more concrete answers. And I think that's probably what you're hearing today. You know, we've got, in August, we've got another big report coming out, which is going to be key because it gives us a-- I think it gives us a better road map. I don't think anybody here is not willing to put the dollars into having a good prison system. It's just how do we do it? And I have to go back to LB605. That was right when you got here we passed that legislation. And I think if you talk to the body that was here then, there was a bunch of us that wanted to go farther with LB605, but we backed off simply because it's-- it's as good as we could get. I think the reforms have to come if we're going-- if we're going to really make a difference. The other thing that, and this is just a pract-- I'm just a practical sort of guy. And so the thing that bothers me is if we were to build a new prison, and I'm old enough to remember when we built Tecumseh and the challenges that that brought and the challenges that it still brings with the workforce and all those things and housing. I hate to see us do that again, and I don't know how much land-- do we have a lot of land where we're at now that we could build in phases and gradually move into a new prison where we're at at the present time?

SCOTT FRAKES: It depends. At the NSP site, no, we don't. It's carved up.

KOLTERMAN: How much excess land do we have out there?

SCOTT FRAKES: I'm sorry, Senator. I don't have a good number for that.

KOLTERMAN: The only reason I ask that and I ask this question is if we were to build a new prison in Lincoln, Nebraska, or in the proximity to Lincoln, Nebraska, isn't it more prudent to keep the people that we have that are here that can work in that facility than build something in Fremont or Omaha or whatever and then have to go out and-- because how many of these people are going to want to move to Omaha or Fremont or wherever it's going to be to keep their jobs? We've invested a lot of money in new jobs, so it wouldn't make a lot of sense for me. The

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

workforce is already in place. Why wouldn't we build in the same community or in the same area where the workforce is?

SCOTT FRAKES: That's [INAUDIBLE]

KOLTERMAN: I'm just curious to know what you-- what your thoughts are about that.

SCOTT FRAKES: We identified kind of an oval that encompasses a little bit, can't really say east of Omaha because it would be in the river, but north of Omaha and a little bit south of Omaha and along the I-80 corridor and west of Lincoln. So potential sites will be considered in any of those areas. And if there is a site that's viable and makes sense in the general Lincoln area, there's no reason that it couldn't be the site that we land on.

KOLTERMAN: And-- and again, and this is just a question because I come from a small town and by the way, we have probably one of the best prisons in the state in my district, that'd be York. You do it right in York I can tell you that. But are you going to go where you want it? If you have a community says to you, we don't want you, are you going to build it there anyway?

SCOTT FRAKES: I hope that that's not where we end up.

KOLTERMAN: Because I'm hearing rumors of that and I'm just--

SCOTT FRAKES: That's the difficult part of this. And in fact, it's been complicated somewhat by the fact that we had to go out with this option approach instead of actually just going out and soliciting, you know, who wants to sell property when we're ready to buy property. So that and I have to, both for the seller and for us, that part needs to stay confidential. But it would absolutely be my desire that we land in a location where the majority of everyone involved agrees that it's a good thing. Let's be realistic. There's not going to be a site in Nebraska where every single citizen is happy and thinks that's a great thing. The last thing I want is to try and force myself into an area or a community where the general consensus is, we don't want you there.

KOLTERMAN: Thank you. Thanks for being here.

STINNER: Senator Wishart.

WISHART: Thank you, Director Frakes. You spoke about the CJI process and also your-- your needing to stay neutral on criminal justice reform. Across the country, are there directors of corrections who engage in pushing for policies that find alternatives to corrections?

SCOTT FRAKES: There are some.

WISHART: So what is it that is keeping you as part of this CJI process from being involved in that?

SCOTT FRAKES: Well, because I operate within how things are done in Nebraska and this is, you know, I know what my expectations are and what my role is within state government and that's what I work within.

WISHART: OK.

STINNER: Any additional questions? Seeing none, thank you.

SCOTT FRAKES: Thank you.

STINNER: Any additional proponents? Any proponents? OK, here's opponents. Any opponents, please come up and testify.

FRAN KAYE: Thank you, Senator Stinner and members of the committee.

STINNER: Good afternoon.

FRAN KAYE: My name is Fran Kaye, F-r-a-n K-a-y-e, and I am testifying for myself and the Racial Justice Policy Committee of Reentry Alliance of Nebraska. We oppose including funding for a new prison in our state budget. I realize I only have about three minutes, so we just tried to make our-- our points as quickly as we could [INAUDIBLE] And I realize that I'm repeating a lot of what Senator Stinner has already said, but this is what we came up with. A new prison would add to the overall cost of Nebraska Corrections for decades ahead. As Senator Steve Lathrop has pointed out and as Senator Stinner just pointed out, at our current prison growth rate, by the time a new building was constructed, we would already need a new, new prison. We can't build ourselves out of this mess. We now have the results of the CJI study, testimony from the current NDCS staff, which went on for hours and hours, and the proposals generated by the Justice Reinvestment Working Group. We can avoid committing to a huge, inflexible expenditure by actually cutting sentences. And we've talked a lot about LB605. I was involved in working on LB605. That included cutting sentences and

paroling things but we've gone around them by things like stacking sentences, which was not included at all in LB605, which is why LB605 hasn't worked as well as it should have, because it didn't do the things it was intended to do because people chose to work around it. I don't know how we get around that, but it's a problem. But we could avoid committing to a huge, inflexible expenditure-- expenditure by actually cutting sentences, increasing programming, including relapse prevention at work release-- and that's something that's been in the news a lot about drugs and escapes at CCCL-- expediting parole. And that was definitely something that LB605 was supposed to do and the Parole Board has absolutely not followed anything in LB605 that way. And reducing recidivism with intensive parole and postrelease programming and support; investing in and implementing infrastructure such as more mental health and addiction treatment facilities and housing for those on probation supervision. We are one of the very few states that has no, zip, zero housing state provided for people on parole or probation or other postprison release. That's crazy. How are you going to succeed if you don't have any place to live? What are you supposed to do? Climb up in a tree and build a nest? It doesn't work that way, and that's something we desperately need to do, and we don't even talk about. These sorts of things have shown data-driven success in other states. Result: We don't need a new prison, but we do have big cost savings to our state. Both the absolute number and the proportion of persons incarcerated in Nebraska continue to increase while they have decreased in almost all other states. We cannot continue this costly and unnecessary growth, which comes not from more admissions, but from longer sentences and shorter paroles, because we're slower to let people out. Scope and rationale for a new prison keep changing. This is something that Professor or that-- you can tell what I did for my living all my life-- Senator Wishart has said before, are we addressing overcrowding and short staffing or something else? What is to be done with the current NSP? The institution is old, but the individual buildings are mostly middle aged or new. Some buildings have problems, but I noticed they're not falling down around my head when I'm volunteering there. It is hard to plan for future costs when the end posts keep moving, and the different things we've said about NSP are really interesting. With the St. Francis debacle, we have seen how sloppy bidding works. We need to be meticulous in our bid process and avoid conflicts of interest. Who is doing the engineering study on NSP? Who said that it has to be rebuilt? How was it bid? DLR is a nationally respected firm, but they're in the business of building prisons. What is their incentive to suggest we do

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

not build a new prison? We have no recent polling data on a new prison, but during the past year I have personally passed out thousands of informational leaflets on it, I think about 4,800 for me personally. I have seen that many Nebraskans are apathetic, a good proportion firmly reject a new prison, and only few believe that we need such a thing. We would spend less money for more public safety by following suggestions from CJI and the working group. Increased incarceration with lengthier sentences increases both crime and cost. Thank you very much.

STINNER: Thank you. Questions? Seeing none, thank you.

FRAN KAYE: Thank you.

ANTHONY CONNER: Senator, [INAUDIBLE] the hallway can hear. Is it OK if we testify too?

STINNER: Yeah. If you're a proponent, I've asked for proponents. Are you a proponent?

ANTHONY CONNER: Yes. Out in the hallway we didn't hear--

STINNER: OK.

ANTHONY CONNER: [INAUDIBLE]

STINNER: That would be fine. Because--

ANTHONY CONNER: I'm sorry.

STINNER: --of the restrictions that we have, I'll definitely make an exception.

ANTHONY CONNER: Thank you, sir.

STINNER: I don't know, how many people do we have in the hallway?

ANTHONY CONNER: There is at least one more. I don't know if he's the last--

STINNER: OK.

ANTHONY CONNER: --but Mr. Chipman from.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

STINNER: You may want to yell out there and tell them-- how many proponents right now?

ANTHONY CONNER: There was-- there was at least maybe five or six people were where I was at. Yes, sir.

STINNER: This isn't the best situation in the world in this garage.

ANTHONY CONNER: Yes, sir. Obviously understand.

_____ : Problem.

ANTHONY CONNER: I appreciate it. Well, thanks for accommodating me. I appreciate it. Well, good afternoon, Chairman Stinner and members of the Revenue [SIC] Committee. My name is Anthony Conner. A-n-t-h-o-n-y C-o-n-n-e-r. I'm president of the Omaha Police Officers Association. I'm here today to share my view that construction of a new prison in Nebraska is an urgent and essential need to address overcrowding and maintaining public safety. In 2019, our organization compared Nebraska Corrections data with available data from Colorado, Iowa, Kansas, Missouri, South Dakota, and Wyoming. The data showed that Nebraska is 23.5 percent below the regional average in inmates per 1,000-- 100,000 citizens, meaning we incarcerate at a lower percentage than our neighbors. However, the data also showed that Nebraska's overcrowding rate was 49 percent higher than the regional average and that we were 80 percent below the regional average in beds per 100,000 citizens. The data we compared is included in the infographic I've given you today. In short, the-- in short, Nebraska has the second lowest incarceration rate in the region, but the lowest number of prison beds per capita, contributing to a capacity rate of 155-- 155 percent. While the 2020 NDLC budget contains funding for 385 new prison beds, Nebraska would need an additional 700 beds just to match the per capita rate of Iowa, the next lowest state in the region according to the data. And just to match the regional average of beds per capita, Nebraska would need an additional 3,100 beds, almost doubling our state's current capacity. Ultimately, the data reinforces our views that we clearly have a capacity problem, not an incarceration problem, and that infrastructure simply must be addressed. The need for a new prison to ensure and enhance public safety is recognized beyond law enforcement. Voters also seem to understand that Nebraska has a capacity issue, not an incarceration issue, and a survey conducted by the OPOA in September of 2020 indicated broad and bipartisan support for a new prison. Our statewide survey results show 62 percent of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

registered voters showed initial support for construction of a new prison. When informed of the positive impact a new prison would have on rehabilitation programs and increased safety for inmates and staff, overall support increased to 72 percent. The survey also demonstrated bipartisan support for a new prison, with 65 percent of Democrats, 69 percent of Independents, and 79 percent of Republicans responding favorably. Additionally, a majority of voters, 53 percent, support building a new prison to increase capacity and expand rehabilitation programs instead of sentencing reform, which only got 37 percent support. I believe voters share our views that we cannot reform our way out of overcrowding. And I am happy to share our documents and results with the committee as needed. At the end of the day, our prisons are in an overcrowding emergency because we simply have not built prison bed space at the same rate as our neighbors. The lack of space and lack of beds have also jeopardized the safety of correctional officers, staff, and inmates and have severely impaired our ability to provide proper rehabilitation and mental health services to the incarcerated population. I urge this committee to make the tough choices and address the dire need for infrastructure at this time. If we choose to and stay at reducing sentencing reform our way out of the problem, we will permanently put criminals back on the street at a greater risk to our citizens, which ultimately cost taxpayers more than the funding needed for a new prison. Thank you for your time. I'm certainly available for any questions.

STINNER: Thank you. Questions? Seeing none, thank you very much.

ANTHONY CONNER: Thank you for-- thank you.

STINNER: Good afternoon.

MICHAEL CHIPMAN: Good afternoon.

STINNER: We're still in a proponent status.

MICHAEL CHIPMAN: Yes, correct. Yep.

STINNER: I just wanted to check.

MICHAEL CHIPMAN: Yeah. I am Michael Chipman, M-i-c-h-a-e-k C-h-i-p-m-a-n. I'm the president of FOP 88. We are the organization that represents correctional officers, correctional, excuse me, correctional corporals, correctional sergeants, correctional caseworkers. And we also represent protective services members and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

DHHS. We are for you supporting this budget proposal. We need to build a new facility. We need that infrastructure. It's important for our safety. You know, specifically when you look at like NSP and how dated the infrastructure is, it has a lot of blind spots within the facility just because the design is from the '80s, some-- some older than that. Also, you know, it's just with overcrowding, we're not able to do our job safely. It's that simple. We need this infrastructure. We haven't built a new facility, I believe, since '01 was Tecumseh. We-- we have to add on to this. We're, I believe, 36th in the state per capita incarceration. We have a infrastructure problem in our opinion. We do not have an incarceration problem. So we would ask that you guys support this.

STINNER: OK. Questions? Senator Wishart.

WISHART: I have a question about salary increases.

MICHAEL CHIPMAN: Um-hum.

WISHART: So first of all, kudo CFOP for-- for getting significant increases that are long overdue. Just want to hear from you what you're seeing and hearing from correctional officers in terms of the pay increases and what more this Legislature can do to help with that.

MICHAEL CHIPMAN: So right now, we're seeing a really good turnout with people applying. You know, it's still a little slow at Tecumseh with our application. We're getting a lot from the Omaha detail that go down to Tecumseh. But the other facilities we're seeing really well. The last number I got is we're only down about 30 or 40 staff at RTC, which used to be LCCDC. I don't know if that was ever officially approved. And then NSP is only down around 100. You know, we've had, like I said, over-- we had over 600 applications in December alone. We only-- in January, only had 13 people leave. It's-- it's been really good. It's going to take a while to get all these vacancies filled. It's six weeks' worth of training. You can't do them all at the same time. There's only-- you got to get an infrastructure of your STA. You only have so much room to get so many people in at a time. And so they're working on that. But I'm optimistic. Like RTC will start feeling some relief from our numbers March, Aprilish. And then NSP a few months after that, they will definitely feel it. Tecumseh with the detail, it may take a little longer, but that's kind of a when we'll really start feeling. We're definitely moving in the right direction

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

compared to [INAUDIBLE] August of last year, we lost 65 staff. I mean, so it's just a huge difference.

STINNER: Thank you. Additional questions? Seeing none, thank you.

MICHAEL CHIPMAN: Thank you.

STINNER: We're still in the proponent.

_____: Do you want me to go out in the hall again
[INAUDIBLE]

STINNER: Yeah, yeah.

HILKEMANN: Any proponents out in the hallway.

_____: I'm going to go check.

STINNER: We'll check with the hallway police.

_____: Anybody proponents? Are there any proponents? There's
[INAUDIBLE] Senator.

STINNER: OK. Seeing none, we'll move to opponents. Afternoon.

TEELA MICKLES: Good afternoon, everyone. Thank you so much for allowing us to come and speak. My name is Teela Mickles, T-e-e-l-a, Mickles, M as in Mary-i-c-k-l-e-s. I'm the founder and CEO for Compassion In Action. I've been working with the prison population since 1984. And my summary for what I want to share with you, the information we're passing around, we're talking about residents. We're talking about people. We're talking about sons. We're talking about daughters, mothers, fathers, sisters, brothers, husbands and wives. And we currently, Compassion In Action, what we do is we help people understand where did they start the behavior that ended them up in prison so we can revalidate them because validation is motivation for education. God didn't create drug addicts, he didn't create gangbangers. He just made babies. Everybody came out talking about waah, waah, expecting to be treated and to be loved a certain kind of way. And then life happens. So I've been working with this population long enough to see what happens in the cycles of life because I have 40 grandchildren and 26 great-grandchildren. I've seen things happen. I'm old enough to do that, and I'm really thankful for being able to see the things that have been going on. Not what I have observed over

three generations is that when the community is involved with assisting our residents, I don't like the word inmates, when community is involved in assisting our residents to come out, then our residents succeed. When the community is not involved, then our residents have a bigger struggle. So we want the money to be in the community because we have right now a collaboration of agencies in Omaha, Nebraska, Lincoln, Nebraska, that have been working extremely well. Finally, the-- the-- the fact of-- of reentry I was working with the Nebraska Department of Corrections when they had the Serious and Violent Offender Reentry initiative, which failed miserably, but it was at least an introduction to the fact that we need to be involved in the process. People are not coming to prison from the State Capitol, from the Senate. They're coming to prison from a neighborhood, from a family, from a community. They go back to a neighborhood, a family, and a community. The Department of Parole and Probation have indicated that after three years in the community, three years, 40 percent of individuals who have been paroled or on probation recidivate or reoffend after they come back into the community for three years. We are failing in the community because we need money. These are our people. These are our people that are coming from us to you when they go into the comm-- into the Corrections, I don't know what happens in Corrections. You know what happens in Corrections? I-- I've been going back and forth to prison for, what, 35 years; but I never spent one night there. So I have no idea how these amazing individuals adjust to some type of hope, some type of dream, some type of I'm going to keep going even if they have a life sentence. That is an amazing person that can adjust to an environment like that. And we're talking about them in the-- the gaze of percentages and data. And these are human beings. And however, they are going in there and making things happen and they come out successfully is a miracle to me. However, with the community engage, we have ReConnect, we have RISE, we have Metropolitan Community College. We have this gentleman standing back here who is amazing. I can't think of his name because I have a senior moment right now-- James, Jim Jones. We have these amazing programs going on; and if we were adequately funded, we could break those cycles. I'm talking three generations of cycles. You have individuals, kids who are waiting to join the ranks. I work with Omaha Police Department. I'm on the mayor's citizen complaint review board. And right now, our kids, 12 and 13, are committing crimes, 12 and 13. The Omaha Police Department will pick them up and take them back home. Home may or may not be the place that they need to be. But if we had the funding that we needed in the community, we could break those

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

cycles so that our children don't go from cradle to crime. Give me a break. We have to break those cycles someplace, and building bigger prisons is not the answer. But giving the funds to the people who are working with the people, there are people. Some of us have made mistakes and so some of us have gone to prison. And it's up to the rest of us to go in there and help us get us out and keep us out to the best of our ability. And we all know we need funding for that. And I believe within those years that they're talking about for building a bigger prison, I believe we can break those cycles because Nebraska, Omaha, Nebraska, is in the strategic position right now where communities are working together with the mayor, with the police department, with the neighborhood associations like we have never done before. I watched it happen for the past 16 years because I was right in the part in the-- in the middle of it. I have to be so we can serve our people appropriately. So I believe we just need to get our people funded. We need to remember these are people. Look at those babies, the face of an inmate, it's a baby. They all start out the same way. We all start out the same way. And then we have to consider, where are we going to break that cycle so that those residents' babies aren't waiting to go back into the same cycle over and over? These are human beings. And I appreciate, Senator Stinner, what you said about we have to look at everything else rather than the bigger prison, because we definitely do. Thank you.

STINNER: Thank you. Any additional questions? Seeing none, thank you for your time.

TEELA MICKLES: Thank you.

STINNER: Additional opponents?

CAROL DENNISON: It's hard to go after that.

STINNER: It is hard to go after that.

CAROL DENNISON: Yes, she is very hard act to follow. Good afternoon, Senator Stinner, members of the committee. I'm Carol Dennison from the League of Women Voters of Nebraska.

STINNER: Would you spell your name, please?

CAROL DENNISON: Sorry. C-a-r-o-l D-e-n-n-i-s-o-n. The League of Women Voters supports the humane treatment of those incarcerated. We support both Nebraska's current effort to study the state of corrections and

to find alternat-- alternatives to imprisonment. We oppose continued efforts to build a 1,500 bed prison and do not believe it is a solution to Nebraska's prison, excuse me, overcrowding. A new prison is not Nebraska's first attempt to cure overcrowded prisons. Recently, Nebraska has been pouring money into the prison system, yet the number of those incarcerated keeps growing due to increased admissions, extended lengths of stay, and reduced parole grants. We have also spent money on capital improvements. I'm not going to belabor this because Senator Stinner did a wonderful job going over this and far more that has been spent in supporting the prison infrastructure. In September 2020, 70 percent of surveyed Nebraskans opposed building a new prison. Given that Nebraska has one of the highest rates of incarceration in the nation without much evidence of successful outcome, we are frustrated to be footing the bill for a failing system that is in urgent need of comprehensive reform. In November 2021, Scott Frakes, director of the Department of Corrections, spoke at a North Omaha town hall meeting about the new prison. Some in the audience had family members who were or had been in prison. They wondered why not take that money and put it into the community where you create job programs? Yes. Why not? Why not address the root causes of incarceration and at the community level? Mr. Frakes spoke frankly when he-- when he said his hands were tied. He could not control who or how many individuals entered his doors. His job was to provide for the needs of those sent to him by state laws and the courts. If there was to be a change, it was up to all of us in this room and in Nebraska to decide who entered our prisons. Last year with wise stewardship, Senator Stinner and the Legislat-- Legislature set aside \$115 million, with \$15 million designated for the Prison Overcrowding Contingency Fund. A prison study developed by the Crime and Justice Institute, the Nebraska Criminal Justice Reinvestment Working Group identified factors contributing to our burgeoning prison population. Senator Lathrop has proposed LB920, a comprehensive bill to put the recommendations of the CJRWG into action. We encourage the Appropriations Committee to redirect necessary dollars to community-based facilities for diversion, education, and workforce development, behavioral and mental health, and to investment and economic development in low-income areas. Thank you for your leadership in this area.

STINNER: Thank you. Questions? Seeing none, thank you.

ABBI SWATSWORTH: Thank you, Senator Stinner and senators of the Appropriations Committee, for the opportunity today. My name is Abbi

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

Swatsworth, A-b-b-i S-w-a-t-s-w-o-r-t-h. I'm the executive director of Out Nebraska, a statewide nonprofit working to celebrate and empower lesbian, gay, bisexual, transgender and questioning Nebraskans, LGBTQ. According to prisonpolicy.org, Nebraska has an incarceration rate of 601 people per 100,000 if we include prisons, jails, immigration detention, and juvenile justice facilities. That means Nebraska locks up a higher percentage of people than almost any other democracy on Earth. We do have an incarceration problem. We may be underbuilt. I don't know. I'm not an engineer, but we definitely have an incarceration problem. LGBTQ people are overrepresented in prison, especially those who are black or from other systemically oppressed populations. As a part of our mission to uplift LGBTQ+ people, we are opposed to the Governor's \$270-plus million request for new prison spending. The plans for the proposed new prison are not clearly articulated. We don't know what's going to happen to NSP, especially given the additional people the Nebraska Department of Corrections estimates will be incarcerated within the next decade. It is clear that Nebraska must reform our criminal justice system and invest more in our people. We respectfully urge this committee not to appropriate additional funds for prison construction. Rather, we encourage funding for smart justice reforms to help alleviate our system's overcrowding. Thank you.

STINNER: Thank you. Questions? Seeing none, thank you. Good afternoon.

JUDY KING: Hi. Thank you, Senator Stinner. My name is Judy King, and I oppose the money for this prison spending.

STINNER: Have to spell your name.

JUDY KING: Oh, J-u-d-y K-i-n-g. And I'm in opposition to the funding for this prison. Governor Ricketts has proposed two failed strategies to address two critical issues facing Nebraska's prison system. First, he wants to build a gigantic prison. That's not the answer. We cannot staff our current facilities, and only an idiot would propose building a prison. Look at Texas in the '90s. They were building prisons continuously. And when finally the Republican-led government sought and found other alternatives. We must be smarter and look at who we are incarcerating and what else we can do besides building and staffing more prisons. Texas and other states have found the answer. So can Nebraska. Secondly, the Governor wants to give bonuses as a fix and a limited one-time at best. And this may be outdated, but we must pay comparable pay to what staff are receiving in bordering states and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

in and out-of-county jails. You cannot expect staff to work in high-security settings for less money. Our prisons have become dangerous places to work due to the lack of staff. Inmates who are locked down and not receiving program-- programming. You must choose to do the right thing and more prisons or bonus pay won't push the problem on to someone else. You can't build another prison without passing Senator McKinney's bill or Senator Lathrop's bill to change all the social issues in the justice system. They need to go together. So that's all I have to say.

STINNER: Questions? Additional opponents? How many more testifiers do we have just raise a hand? OK, very good.

BILLIE JO DUNHAM: Hi. My name is Billie Jo Dunham, B-i-l-l-i-e J-o D-u-n-h-a-m. I'm coming to speak to you guys. My husband is a prisoner right now at RTC, and he-- we have spoken many times. And the papers that I have given you is actual emails from him explaining to me things he wanted me to talk about today to you guys about how they are treated there, about how they are locked down 72 hours straight without a shower, without a hot meal due to staffing shortage. But yet they want to build a new prison, and they can't staff the one that they have. The programming there is little or nothing right now. It really is. The men there, there's men there that have been there, lifers, that don't even get education at all right now due to people not being able to come in because of COVID and then people not-- just not coming there because they have to volunteer their time instead of get paid to go there. A lot of people spend to teach these men, they spend eight hours a day there out of their own time volunteering there to teach these men. There should be people that are paid to come in here and teach these men what they need to learn. They need skills to be able when they get out of prison. By the time my husband gets out of prison, he will be 62 years old. He's been there since he was 16. Who is going to hire a 62-year-old man with no skills when he gets out? How is he supposed to live out here when he gets out, when he's been in there since he was 16 years old? The GED classes there are so limited right now that they barely exist. The Pell Grants, they have eliminated. All the vocational training programs that they have really don't exist anymore. He wrote this to me. He said, please ask them to restore prisoner Pell Grant funding. Education, Nebraska eliminated the college classes and vocational training programs. The irony is that so as long as prisoner education has been studied, it has been shown to be most effective and reliable rehabilitation programs in terms of education-- of reducing recidivism. 2018 study poll taken by

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

Justice Action Network, an Ohio-based prison reform organization, found 92 percent of Democrats and 79 percent of Republicans agreed that education is the most effective reform and rehabilitation. We need to restore Pell Grant eligibility for the incarcerated. Programming, we need to begin investing in the expansion of the work release center and expanding programming, allowing lifers and clients incarcerated for 10 or more years to participate and develop positive support from the community and cognitive reconstruction programs to adjust to the free society and reduce recidivism. Plus, we need more diversion and-- and probation. We need for Pardons/Parole Board to be eliminated or rotated with impartial members willing to fairly review each case independently and pardon or parole clients when eligible or worthy. I know I don't have time to read all this that he sent me, so I will just read the last part he sent me. He says, please ask the senators to vote for prison reform. No new prison. There is no programming here. Guys sit around all day wasting away. These men are still locked down 72 hours straight, locked in their cells more than they are even out of their cells during the week. They can't staff the prisons that they have. Plus, the new construction at RTC, formerly known as LCC, 354 beds, supermax unit, big construction, all kinds of new stuff, why all the lockdowns still? Why can't the guys get out on parole? The prison system is, as he put it, I'm not going to say it, but it's a joke. They don't help or warehouse or even care. I know those who know me will say, we need this to be fixed. This is a huge issue.

STINNER: Thank you. Senator Hilkemann.

HILKEMANN: Yeah, I want to follow up on one of the things that you mentioned is you said that they don't offer any college level courses now. I thought that--

BILLIE JO DUNHAM: They-- they don't offer correspondence courses. Right now, people can really only take a college course like due to the-- the like so much of the computer system and stuff, they can't get to that in prison. They can't get to the Internet. They can't get to anything like that. So how can they do college courses if nobody's going in there to teach them these things? They can't-- correspondence courses, you have to mail everything back and forth. There's deadlines to things.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

HILKEMANN: OK, OK, I just-- I-- I was aware of an individual who was providing those programs, at least through UNO. I thought that was going on.

BILLIE JO DUNHAM: On the Lincoln--

HILKEMANN: So thank you for that information. I will certainly be checking into that.

BILLIE JO DUNHAM: Yes, because LCC right now, the only kind of education that they have right now that is going on there is the RISE program, which is a great program--

HILKEMANN: Very familiar with--

BILLIE JO DUNHAM: --but it has limited seating. My husband has been trying for many-- a long, long time to get into this program. It has limited seating. There is another program where for entrepreneurship. And he is in that class. He's in that class. But the only time-- he has to choose between that class and visitations because that class runs every time of his two visitations a week. So he has to choose between his family or his class. They have no schedule around that. There's programs that-- that-- that people, I guess there was South-- I don't know the name of the college that he told me that was coming in and teaching all these college courses, but they're no longer doing that. That's all being done by the prison system now. And half of these, the materials that these prison teachers have are way outdated, way outdated. It's not even stuff that they learn-- that they teach our kids in school right now.

STINNER: Senator Wishart.

WISHART: Thank you for being here today. So you said your husband's been in since he was 16.

BILLIE JO DUNHAM: Yes, he has.

WISHART: And he's going to be in there till he's 62.

BILLIE JO DUNHAM: He has his-- yeah, he'll be 62 by the time he jams his time.

WISHART: So 46 years--

BILLIE JO DUNHAM: Right.

WISHART: --in incarcerated.

BILLIE JO DUNHAM: Yes.

WISHART: Would there-- if-- if given the opportunity, would your husband be the type of person because he's in there for a long time--

BILLIE JO DUNHAM: Right.

WISHART: --where he could get a advanced college degree and actually be able to provide teaching to other inmates--

BILLIE JO DUNHAM: Yes.

WISHART: --who are in Corrections?

BILLIE JO DUNHAM: Yes. And this is what he wants to do. You know, right now he is trying so hard to get into even a class at Metro right now. They don't have too many correspondence classes that he can get into to mail stuff back to them. He's trying to get into school. He wants to learn things. He wants to learn, but he's also a hands-on learner. And without these programs being in there, it's hard for him to, you know, being a hands-on learner, it's hard for him to learn things. So what he-- what we are trying to do right now is get him in classes at Metro. And we have asked and talked to his case manager at RTC about getting in classes at Metro, getting moved down to OCC because OCC has a lot more programs than RTC does. But he has to be five years out from his jam date to go to OCC or he has to be a registered sex offender or he has to be in a drug program because they won't accept him down there because he has too long of a time still on his sentence, which they have lifers down there. I don't understand that. There's been people transferred from RTC to OCC that have a lot more time, that have life. My husband don't have life.

WISHART: Thank you.

BILLIE JO DUNHAM: You're welcome.

STINNER: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

EULICE WASHINGTON: Good afternoon. I don't have any fancy handouts, but my name is Eulice, E-u-l-i-c-e, Washington. And I came here for a different reason. But I'm going to come and give a testimony

STINNER: You do have to spell your name by the way.

EULICE WASHINGTON: --why I'm against it. What'd you say?

DORN: Spell your last name.

STINNER: Spell your last name.

EULICE WASHINGTON: Washington, W-a-s-h-i-n-g-t-o-n. So I'm for the reform bill. I have a son who's been incar-- he's 30 years old, be 31 April 8. He has been incarcerated since he's been 16, back and forth. Before he got incarcerated, I was knocking on every door for help because I saw the road he was going into. Every door I knocked on, it was slammed in my face. OK. They don't have any hope or help in incarceration. They may learn more on how to beat the system versus being educated. A lot of families that are-- a lot of inmates, individuals, excuse me, who are incarcerated don't have a great support system. He just happened to have a great support system to where I refused to let him fail. OK. He's now at OCC. However, instead of building a new prison, we need to be building trade schools, something more to where we can educate, give them a trade. Once we have a trade, you never go broke. When they come out, they need housing. There's no housing that will give them housing because they are-- felons on the record. We have to do better in preparing them. We want to set them up for success. But when we let them out into the community, those first 90 days are crucial because they don't have that platform to succeed. We're setting them back up for failure to go back to reoffend. That's why Nebraska's recidivism rate is so high because we don't have the tools to set our individuals up for success. Testimony.

STINNER: Thank you.

EULICE WASHINGTON: Thank you.

STINNER: Questions? Seeing none, thank you.

Y'SHALL DAVIS: Hello. I am Y'Shall Davis, Y'Shall is spelled Y-s-h-a-l-l, Davis, D-a-v-i-s. I'm in opposition of the new prison because it's confusing. I'm uncertain at this point if this new

Penitentiary will replace Tecumseh or NSP or if you're simply emulating California by building more penitentiaries than universities. I believe that the money you'll use to build new penitentiaries would be better spent on preventive methods. I have a degree in chemical dependency counseling, and I work at the Nebraska Urban Indian Health Coalition for five years, which is an inpatient drug treatment center. And when troubled clients came in, one of their first assignments was to write an autobiography, and I learned that the majority of the clients have dealt with a lifelong cycle of trauma, mental illness, and missed opportunities. So sending them to the Penitentiary simply adds to their hopelessness and misfortunes. We all know where there is poverty, there is crime, North Omaha and other underrepresented areas in Omaha, they need the opportunities that have been afforded to represented areas. We need access to affordable mental health therapists to address our mental illness and grief. We need high-paying jobs that we could walk to because, you know, there's a transportation issue as well. When all the jobs are way west and you have to wonder how do I even get way west. So we need jobs we can walk to. We need mothers and fathers in the homes to break the cycle of incarceration. Right now, women of color are going into the prisons like never before, and this raises the likelihood of both parents missing in the household, which would create more foster kids; and Nebraska's already struggling with their foster care system. So where restorative justice has been practiced, there is evidence of-- of the recidivism rate going down for adult and juvenile offenders. So every time we hear from proponents on building new prisons, we also hear that you guys are understaffed. So-- and when we hear from prisoners, we hear that their release dates are being prolonged because they don't have staff for them to get their programming. And this isn't their fault. Have you guys ever considered that people don't want to be correctional officers because they don't support humans being locked up like animals? We need housing for returning citizens. We need navigators for returning citizens. Penitentiaries are the enemies of progress. There's too much intelligence rotting in those penitentiaries. And then you wonder why there's no real progress. That's because it's the enemy of progress. And also, I say the slavery 2.0. Any questions?

STINNER: Questions? Seeing none, thank you. Additional testifiers?
Good afternoon.

SYNIA CARTER: Hi. Good afternoon. My name is Synia, S-y-n-i-a. My name is Synia Carter. I'm with Black Leaders Movement. I'm here to testify

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

in opposition of the new prison. I have tons of personal thoughts on the issue, having experienced the effect of mass incarceration on black and brown families. I could go on and on the inequalities about black people that they face within the system. However, it is evident in data and state reports all the way to the FBI reports. If you say you are unaware at this point, you're intentionally choosing to be ignorant. Instead, today-- instead, today I would like to keep it short and sweet. We will look at short glimpses of some numbers relating to the prison. Then I will give one of many solutions to implement instead of a prison. The Omaha World-Herald reports only two other states have increased spending on corrections, more on a percentage base than Nebraska in the last decade. Our budget is up to 60 percent since a decade ago. We should, as many people have mentioned here today, invest in our communities. This can look like allocating sitting fundings towards healthcare, including mental healthcare, wellness resources, neighborhood-based trauma centers, drug and alcohol treatment programming, peer support networks, and training for healthcare professionals. Make these services available for free or to low-income residents. Numbers-wise, mental health is estimated at 3K a year per person. This compared to 40K a year per person it costs for incarceration. NDCS' own projections show our prison population growing by 2,000 people over the next decade, and our prisons are already among the most overcrowded in the nation. We do not want to spend money under a false allegation that mass incarceration is absolute solution to lower crime. As Nebraskans, we don't want to spend millions on a failed method and spend even more millions undoing the damage we could have prevented by not listening to document numbers and statistics. I will end this with this quote. Those that fail to learn from history are doomed to repeat it.-- Winston Churchill.

STINNER: I need you to spell your last name.

SYNIA CARTER: Carter, C-a-r-t-e-r.

STINNER: Yeah, we have transcribers that use those so.

SYNIA CARTER: Thank you.

STINNER: Thank you. [INAUDIBLE]

SYNIA CARTER: Thank you.

ANGIE PHILIPS: Hello.

STINNER: Good afternoon.

ANGIE PHILIPS: My name is Angie Philips, A-n-g-i-e P-h-i-l-i-p-s. I wanted to make a quick note here at the beginning that this room is pretty small and there's a lot of people out in the hallway. It was kind of hard to be able to hear a lot of what's going on. I have auditory processing disorder so that makes it even harder. So I just wanted to note maybe in the future we could look at accessibility to these public hearings.

STINNER: And I apologize for that. I didn't set this up, believe me.

ANGIE PHILIPS: No, yeah. And I just felt obligated to to bring it up.

STINNER: Yeah.

ANGIE PHILIPS: So a lot of folks here have shared a lot of expertise and stuff, which I appreciate. I wanted to share a little bit of a personal experience and my thoughts as a taxpayer. I did have a close family member that was incarcerated. They were incarcerated for about five years. It was obviously a hardship on my family. I was a single mom at the time. My mother was ill. So this person wasn't around to be able to help through some of that. He had struggled. He's bipolar with mania, and he had struggled for a long time with his mental health. We tried everything we could think of and all the resources we could find because we saw him spiraling down here-- hill and we knew that there was going to be problems if we couldn't get him the mental health help that he needed. We were unable to do so. We, as a low-income family, weren't able to just kind of purchase the mental health things that he needed on our own. So he did end up being incarcerated. And one of the times that it hit me just how bad it was for him, and I apologize in advance if I get a little emotional, I had went to visit him and I had noticed what appeared to be cigarette burns on his arms. At the time, I had asked him, I'm like, what is that about? Like, what's going on? He didn't want to talk about it. Since he's been out of prison, him and I have been able to have some more of these conversations. And he shared with me that on that particular day, he had been stopped in the shower room, held down, burned with cigarette butts and assaulted. This was over 10 years ago. So we have been dealing with a staffing shortage for a long time. I'm opposed to the new prison because I just don't see how building a new prison helps any of the families that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

spoke here today. I don't see how it would have helped my family member. If we have \$270 million to go out, we need to put that in mental health. We need to put that in preventative resources and we need to put that in getting those that are incarcerated the resources that they need while they're in jail, so that when they get out, they have an opportunity to succeed. To this day, this family member is still untreated, bipolar with mania. We still don't have access to the resources because to be honest, not only are these resources not available to those that are incarcerated, these resources are a pretty big shortage to low-income families who are incarcerated too. So as a taxpayer, I mostly just want to say if we got \$270 million to spend, we got it-- we need to spend it on those things, those things that are actually going to reduce the prison population, that are going to get people in and out of prison mental healthcare, that are going to raise income levels of low-income families so that they don't become so desperate that they're doing some of these actions in the first place. So thank you for your time.

STINNER: Thank you. Senator Hilkemann.

HILKEMANN: Thank you for being here and thank you for sharing. I just ask you, I'm going to ask you several personal questions regarding your family member there. So in this, the-- so he ends up in prison, right?

ANGIE PHILIPS: Correct, for a nonviolent crime.

HILKEMANN: Through the early, early on teen years, so forth, the bipolar, did he have early scrapes with the law?

ANGIE PHILIPS: He actually didn't through high school. He was diagnosed as bipolar with mania in high school. At that time, just kind of day and age and stigmas on it, there was also preexisting conditions on healthcare and stuff. So my parents wanted to try to get him help, but their doctors literally advised them that it would kind of put a mark on his record, you know, and he wouldn't be able to get health insurance. They were kind of scared out of initially trying to get that help. As he-- [RECORDER MALFUNCTION] we did start looking at different resources to try to get him help because we realized, stigma or no stigma, he needed help. He ran into minor things like-- and I don't want to say minor and, you know, act like it's not serious, but like DUIs. A few things like minor thefts because his bipolar would make it hard for him to maintain a job, so then he would get desperate

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

for money, he would get desperate for food. He would also go through kind of those mania stages where he felt like he could take on the world and, you know, get everything right. Struggled to--

HILKEMANN: So he wasn't really a frequent flier of the, of the judicial system then?

ANGIE PHILIPS: No, that's correct. He wasn't. And I honestly believe that if we would have been able to get him the mental health that he needed, we could have avoided that prison sentence altogether.

HILKEMANN: OK. Thank you.

STINNER: Any additional questions? Seeing none, thank you.

ANGIE PHILIPS: Thank you.

STINNER: Additional testifiers, opponents? Afternoon.

DIANE AMDOR: Good afternoon. Chairperson Stinner, members of the Appropriations Committee, my name is Diane Amdor, D-i-a-n-e A-m-d-o-r, and I'm a staff attorney for the Economic Justice Program at Nebraska Appleseed. Nebraska Appleseed opposes the proposal to appropriate funds for a new prison construction. As co-counsel with the ACLU of Nebraska on the recently concluded prison litigation, Nebraska Appleseed gained valuable insight into the challenges within our state prison system. From touring prison facilities, deposing department staff, reviewing thousands of pages of documents, and most importantly, from talking with our clients and other incarcerated individuals, we learned, among other things, that NSP does indeed have ADA compliance issues. But we question the urgency of the decision to demolish NSP. It is interesting, to say the least, that these systemic deficiencies that apparently call for the entire demolition of NSP were not acknowledged at all when we were suing to ensure, ensure humane and ADA-compliant conditions just a few years ago. On top of that, the ADA compliance issues had at least as much to do with the lack of staffing and accountability for staff as they did with the physical plan issues itself, and building a new prison will do nothing to address those issues. Another thing we know from our tours as NSP is that most of the housing and administrative space was built in the 80s, and it's just disingenuous to frame this as a prison from the 19 or from the 1800s. It's not a hundred-year-old prison. I think just accuracy on that is important on such an important issue. On top of

that, the department just built a hundred new beds at NSP, and it just calls into question the sense of urgency around NSP needing to be closed immediately. On top of that, the main argument for building a new prison is it is necessary for public safety, so we just have to do it, even though it's expensive. And we testified against this funding last year with the same points. Public safety, of course, is a vital importance to all of our communities. But building a new prison facility is not an effective or humane way to ensure public safety. That notion rests on a narrow view of what public safety is and how it is achieved. We really need to have a shift in our way that we think about public safety funding. I think Senator McKinney has made this point on some people that come in to testify on Judiciary Committee bills that, instead of limiting the realm of public safety to things like police and prisons, it's essential and more cost-effective to fund the programs that make sure that all Nebraskans have access to things like housing, food, health care, including mental health care, work opportunities, education and support for our children. Research has shown that supports in these areas help prevent people from ending up in prison in the first place and help people stay out of prison once they return home. We urge this committee and the full Legislature to fund public safety by meeting people's basic needs. We will not achieve public safety without providing our communities with real opportunities, which require investments in those areas. Another argument we hear from supporters, I believe you heard earlier today, is that Nebraska's prison system is underbuilt. I think that's just inaccurate. We just overincarcerate to a lesser degree than other states in our country. This chart demonstrates that we do have one of the lowest rates of incarceration in the U.S., but still a higher incarceration rate than any country in the world. And that's actually worse than last year when I came and testified. We have two count-- two countries that were ahead of us in that ranking last year. We've now bumped up above both of them. Clearly, we need sentencing reform and changes to the parole and pardons process that are not the purview of the Appropriations Committee. But if we build this, we will fill it. If we don't build it, we can put those resources toward sending fewer people to prison in the first place and bringing more people home and bringing people home to safe, supportive communities that can increase their chances of success. That requires a significant investment in a broad range of public safety issues like economic justice, health care access, immigrants and communities issues, and child welfare issues. Things that Nebraska Appleseed has been advocating for over the past two decades, and we'll continue to fight

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

for every chance that we get. Thank you for your time this long afternoon that's not over for you yet, and for all of your hard work on all of these issues. It's not an easy job that you have, and we urge you to not fund a new prison in this year's budget and think about the bigger picture when you think about public safety.

STINNER: Thank you. Questions? Seeing none, thank you very much.

DIANE AMDOR: Thank you.

STINNER: Additional testifiers. Anyone? Afternoon.

PAUL FEILMANN: Afternoon. I'll just wait for those fliers to kind of get passed around there. My name is Paul Feilmann, F as in Frank-e-i-l-m-a-n-n, P-a-u-l. Licensed mental health therapist and here to testify today around issues related to the roots of the cause of the problems that we're facing with the criminal justice situation that we've got now. The, the handout that I've got shows a map of Douglas County. There's a yellow highlighted area there that basically is-- covers the eastern tract of Douglas County, and the poverty rate there is fairly significant. It's very high. It's been-- the poverty patterns in that community, part of the community have been there forever. The impact of poverty is extreme in terms of mental health, physical health. The life expectancy difference between living in, in some of those areas is actually 20 years, which, to be honest, is worse than in, like Philadelphia. Some of the high-poverty areas like Chicago and stuff, you don't get 20-year life expectancy difference. If you live in some of these areas that are marked there in a high-poverty area, your life expectancy is 67.3 years. If you live in west Omaha, your life expectancy is 87 years. And the, the issues that are driving overcrowding all stem from that poverty community. The, the disproportionate racial impact is all from those communities in north and south and east Omaha. And what I wanted to do today was just briefly talk about Senator McKinney's bill-- you already talked about it? There was a five-hour hearing the other day. No one opposed this bill. Senator McKinney and Senator Wayne have put together a massive economic investment plan to rebuild the economy of these poverty communities. They have major investors. One woman is building a \$30 million company at 24th and Lake. Another is a retired admiral general from the Navy. He's going to build a high-tech business and wants to train employees in east Omaha. And then it's all kinds of folks spoke at this meeting for LB1024. And this is where you get into the criminal justice piece. I attached testimony from the chief of police,

and I'm going to plagiarize because he's really good and I don't, I don't lose any points. But this is what he had to say about this plan: My name is Todd Schmaderer. He said the American Rescue Plan provides a unique opportunity to address significant needs, particularly in the city of Omaha and particularly in the north Omaha community. As I am a proponent of LB1024, the city of Omaha priorities are closely aligned with LB1024, especially with violence prevention, intervention, job training, youth programming, affordable housing and assistance to unemployed workers. The north Omaha community has worked closely with the Omaha Police Department to reach some of our lowest violent crime records in the history of the city. However, they are still disproportional and have a spike during the pandemic. There are three steps that I see in order to reduce violent crime further in the city of Omaha. And as the city of Omaha crime goes down, the state of Nebraska's does too. That's the impact and imprint we have in the state. First one is mental health. Douglas County has stepped up in front. Commissioner Rodgers touched on that during some of his testimony. Number two is recidivism. We have too many repeat offenders and there are a number of bills that you'll see throughout the legislative session attempting to address that. Probably the biggest area that I see is that a root-- of root causes. This is the key part. Root causes: employment, poverty, affordable housing and education. The greatest opportunity to adjust quality of life and for disproportionate crime reduction is to address root causes. Arguably, north Omaha community, one of the greatest poverty areas, has suffered the most during the pandemic. We have a dual opportunity here. We can assist with coming out of the pandemic, but we can also address the root causes that have forced an unequal starting point. I was asked one time, Chief, if you had a thousand more officers, how much would you be able to bring crime down? My response was I'd rather have a thousand jobs strategically placed in the right parts of our city to affect poverty. That would reduce violent crime for more than a thousand more-- violent crime, more than a thousand more police officers. I close with I am in support of LB1024. I view it as transformational. I view it as rare opportunity. I concur with two senators that have brought this forward. I also concur with the Douglas County Commissioner Rodgers on his previous comments. I'd be happy to answer your questions, and I've attached a summary of that on the last page.

STINNER: Thank you.

PAUL FEILMANN: Actually it was on the front page.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

STINNER: Questions? Seeing none, thank you very much for your testimony.

PAUL FEILMANN: Thank you.

STINNER: Additional testifiers? Yeah, you better check. We're going to check the hall for any additional testifiers as opponents.

DANIELLE CONRAD: Hi, Senator.

STINNER: Hi.

DANIELLE CONRAD: Sorry, I will make sure to get my green sheet or yellow sheet. Whatever--

STINNER: We just missed you so much, we wanted to have you back.

DANIELLE CONRAD: You know, absence makes the heart grow fonder. So there's that. Hello, good afternoon. My name is Danielle Conrad, it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, I'm here today on behalf of the ACLU of Nebraska. I was trying to listen the whole way through, but I know we have a lot of interest in this hearing today, so I wanted to just leave you with a couple of key points here. We talked about some of this during the Governor's introduction in his budget earlier in the year, but you know, I just want to kind of frame some things up in simple terms. I think it's really disrespectful and quite shocking to hear the Director of Corrections talk about how they're already putting options on land and out looking to, to start inking contracts. I mean, in layman's terms, they're picking out drapes before you've approved their mortgage, and that's disrespectful to the legislative process. And you have specifically asked the executive branch to complete some very basic steps requisite to sound decision making: a master plan, a classification study. You need to have that information so that you could do your due diligence as sound stewards of the taxpayer dollars. And it's important to note I know you take that to heart with every dollar and every decision you make, but it bears repeating that this proposal, this misguided proposal from the Governor's Office, is the largest and most complex earmark in Nebraska state history. So with the gravity of this decision before you, it is critical that you have the information so that you can do your-- do your due diligence and so that all Nebraskans can weigh in on this. I think it's additionally quite shocking that now all of a sudden, the story has changed again. Now the narrative has changed again. And we

hear just this week in the Governor's column in the World-Herald and Director Frakes' testimony today that their plan is to close NSP. So not only while committing to this course and this incredible price tag have rippling effects on Nebraska's budget and Nebraska's population for generations to come, it does nothing to address overcrowding. It does nothing to address overcrowding. And we have yet to know whether or not we'll be able to staff this prison moving forward. And to hear ideas about siting, perhaps in Dodge County, I think that's really strange. It fails to learn the lessons of the past. It's about the same distance from Lincoln to Fremont and Omaha to Fremont as it is from here to Tecumseh. And we already know how that story turned out, and we already know the challenges we have there. Additionally, building a maximum security prison makes almost no sense when you look at the data. The data shows us that the majority of people are having very short prison stays, about 30 months or so. So it just doesn't really back up to the data, and I think that's incredibly shocking. Nebraska has not underbuilt. You can look at the data, you can look at the charts from the Department of Corrections website and your own Legislative Research Office, which shows almost without question, when Corrections has asked you for beds, you funded them. I funded them. When Nebraskans asked you for staff, you funded it, I funded it. You have built and built and built and built and built. And if you continue down that same direction, it will bankrupt us from a moral and fiscal perspective, period. Other states have charted a different course without sacrificing public safety. And Nebraska can do the same. We just have to have the political will. In fact, the status quo does not keep us safer. The status quo is failing to advance our public-- shared public safety goals. When we know that 80 percent of Nebraskans who are system-impacted have behavioral health and mental health issues, throwing them, throwing them in prison and locking them up and throwing away. The key doesn't address any of those root causes. This committee has been so thoughtful in their leadership to build up public health responses, mental health responses to our community challenges, and imagine the transformational investment we can make in that endeavor together with the funds that you had before us instead of-- instead of squabbling over a new prison, which is literally the most expensive and least effective way to address the challenges before us and does very little, if anything, to keep our communities safer. The World-Herald report, CJI notes other national statistics demonstrate we're number one in overcrowding, we're the eighth worst in the country when it comes to racial disparities. We can and we must do better, and we owe it to Nebraska taxpayers to ask

Transcript Prepared by Clerk of the Legislature Transcribers Office
Appropriations Committee February 3, 2022
Agency 46
Rough Draft

the hard questions, to have a clear plan, to be able to answer basic questions and to have a thoughtful approach to a freer, fairer, more just, more full-of-opportunity future for Nebraska. This proposal doesn't cut the mustard on any level. It's a political proposal and it deserves your quick and swift no. Thank you for your thoughtful approach to allocating funds for prison reform and criminal justice reform last year, and I hope that you continue down that path. We pledge to work with all stakeholders to provide any additional information. Thank you.

STINNER: Questions? Seeing none, thank you.

DANIELLE CONRAD: OK, I'll make sure I fill out my sheet. Thank you for your time. Oh, thank you so much.

STINNER: Any additional testifiers? Seeing none, anyone in the neutral capacity? Seeing none, that concludes our hearing on Corrections, and I believe that's-- oh, let me see. That's Agency 46.