

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

LATHROP: Good afternoon, everyone. Good afternoon. Today we are here, and welcome Director Frakes, we are here today to have a briefing from the director of the Department of Corrections, Director Frakes, relative to his proposal for an additional 1,500 or so bed facility at an estimated cost of \$230 million. As a consequence, we are having a joint briefing today. We are on television, by the way. We're having a joint briefing today with the Judiciary Committee, which has a significant interest in the overcrowding in the Department of Corrections. We are charged with oversight of that agency as well as Appropriations Committee given the significant number attached to or associated with this expansion. We have here today, Director Frakes, who's going to go through his presentation. The committee members will have an opportunity to ask questions after Director Frakes completes his presentation. But before we go any further, we'll have the members introduce themselves. I'm Steve Lathrop, Chair of Judiciary Committee, Legislative District 12. And why don't we start with Senator Pansing Brooks and work our way around.

PANSING BROOKS: Patty Pansing Brooks, Legislative District 28, Vice Chair of Judiciary, and from the heart of Lincoln.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

DORN: Myron Dorn, District 30.

DeBOER: I'm Wendy DeBoer on the Judiciary Committee from District 10 in Omaha and Bennington.

KOLTERMAN: Mark Kolterman. I'm on Appropriations from District 24: Seward, York, and Polk Counties.

STINNER: John Stinner, District 48, all of Scotts Bluff County, and I am on the Appropriations Committee as well.

WISHART: Anna Wishart, District 27 in Lincoln, and I'm also on the Appropriations Committee.

HILKEMANN: Robert Hilkemann, District 4, west Omaha, on the Appropriations Committee.

VARGAS: It's Tony Vargas, District 7, downtown and south Omaha and I serve on Appropriations Committee.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

McKINNEY: Terrell McKinney. I represent District 11, which is in north Omaha, and I'm on the Judiciary Committee.

GEIST: Suzanne Geist, District 25, which is here in Lincoln, the east part of Lincoln and Lancaster County, and I'm on the Judiciary Committee.

CLEMENTS: Rob Clements, District 2, Cass County, parts of Sarpy and Otoe, from the Appropriations Committee.

ERDMAN: Steve Erdman, District 47.

MORFELD: Adam Morfeld, District 46, and on the Judiciary Committee.

LATHROP: All right. With those introductions complete, Director Frakes, you may take a seat or stand if you're more comfortable and, and you can begin your presentation.

SCOTT FRAKES: Thank you, Senator. I will try my best to-- I'd like to stand for this part of the presentation. And I'll sit down for the question and answer piece.

LATHROP: Can you hear OK?

SCOTT FRAKES: If I'm not speaking loud enough, will you please give me some kind of sign whether my voice starts to tail off or the mask, of course, adds a little challenge to it.

LATHROP: Just so that we get the volume or what you're saying, if you can be a little bit closer to the chair or the mike that would be great.

SCOTT FRAKES: Does that work? OK, excellent. Thank you. And I'll just find the right balance. Senators, thank you for giving me this opportunity and the time to present what I've been talking about and then to have a chance to answer your questions and go through in whatever detail and likes and then come away with a better sense of what it is I'm proposing. I'll try to make this piece of the presentation not too long, but long enough that you get some information that you can work with. You have a copy of the PowerPoint slides and you also a narrative document that we prepared and have been using to help explain the story, as well as another document that I provided in a hearing back in October to the Judiciary Committee that shows where we've gone from 2015 to 2020 in terms of our efforts to provide clinical treatment and meaningful program to the populat--

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

programming to the population that we're responsible for. And I'll talk a little bit more about that at some point. And so, yes, again, I'm Scott Frakes, I'm the director of NDCS. [INAUDIBLE]. And I have to say that in the sense of my department story, not our story, but Nebraska's story. We have data that shows that Nebraska has been under built when it comes to prison space for at least 40 years. I have reason to believe it goes back farther than that. But I can produce the data that shows 40 years, with the exception in 1994 where we had fewer beds than we had inmates at an operational capacity level, not a design capacity level. And that's an important part of the story. We have continued to always be behind. We have invested in the system. We have built new spaces. We have remodeled spaces. We have built new prisons and torn down old ones. But we were always chasing the number that we really needed to be at in terms of being in that operational capacity is part of the healthy prison system. Last year, or actually in 2019, we commissioned JFA to do an updated population forecast that was shared last February, broadly. And it showed kind of what I expected, that based on current law, based on sentencing practices, and based on the fact that as Nebraska grows, there's a mathematical equation both with the prison population growing, that we were going to grow, give or take, 2 percent a year. A little less some years more, maybe a little more some years. And what that means is as of June 2022, and that's what our last beds that are currently under construction will be finished and online and ready to occupy. In June of 2022, we'll be at design capacity of 4,051 beds. We'll be at an operational capacity, and that's a statutory operational capacity, 125 percent of design, 5,064 beds-- but I'm going to keep turning and you won't be able to hear me on the mike, but 5,064 beds operational capacity, statutory level. And JFA says we're probably going to be close to 6,000 inmates. Very close. By the end of 2025, the forecast says that we're going to be at 6,438 inmates. At this point in time, no additional beds are planned. So we can see once again that we are continuing to make efforts to address our system needs, our population needs, our housing needs, but we're still chasing where we need to be. In the third phase of the master plan, which doesn't have a lot of details because the plan really focused on 10 years, 2014 to 2024, but there some notes that talk about the potential need for building a new facility in the future. So what I'm talking about today actually takes us to where the master plan in 2014 suggested we may need to be. One of the things that we look at, I talked about the math, if nothing changes today, if there are no changes in laws that either bring more people to prison or bring fewer people to prison-- that's right, if there are no changes in those laws and absent some other modifications

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

that will reduce that population number, the one given is the rate of incarceration. Ours in 2018 was 283 for 100,000 Nebraskans. It's down a little bit right now because we have seen a drop in our population this last year, which we primarily believe is tied to COVID and I know there's backlog. I talked to Douglas County, who told me 95 percent of the people in the Douglas County Jail are pretrial detainees. So there is a backlog of folks that, unfortunately, will catch up with us at some point. So, you know, that rate of incarceration, 283 for 100,000 Nebraskans, at that point in time that put us 39th in the nation. It's not that we, as Nebraskans, are on that other side of the coin, we have an unreasonably high rate of incarceration. Is there opportunities for improvement? There always is. It's kind of our baseline [INAUDIBLE]. As Nebraska grows and it is growing and we want it to grow, that will statistically bring more people to prison. And there is this belief, still I believe it's fairly strong out there in different areas, different circumstances that we incarcerate a lot of first-time, low-level drug offenders in our prison system. And it's just not true. Yes, we have a significant number of people that are in our system with drug offenses, but when we look at that spectrum, on average, they've got 20 prior convictions for drug-related offenses. And what the judges have told me repeatedly is I have tried, I have tried diversion. I have tried probation. I have tried, you know, you can't mandate people take treatment, but you can make some structures to make treatment highly recommended. And yet still they continue to be in my court. And ultimately prison, unfortunately, becomes, you know, the next option. So that is all part of our reality. And that's why I'm here to tell you today, it's time to invest in a new prison. I think [INAUDIBLE] Nebraska in 2015 with their thought that this would be part of what I was going to propose, I was very hopeful that we would be able to both do the work, LB605, and other work that we would do that would help bring our population down. While LB605 did bring it down, I do still believe that it helps slow down our rate of growth and as well doing some other significantly important things. But the fact is our population continued to grow. Right before COVID took over, we were at 5,675 inmates. That was February of 2020. So-- and the trend for the previous 12-plus months has been this steady trend line upward. You know, I hope we don't quickly return to that level of growth. But, again, I do believe as the criminal justice system completely gets back on its feet, we will see that climb return. Why a new facility? I will get into more detail about why, but at the simplest level, there are situations where it becomes the most cost-effective approach and it becomes the best answer for what it is we want to accomplish in terms of safely incarcerating our population,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

providing safe working conditions for our staff, and looking for our ability to get the best outcomes for that population. As I say many times, 93 percent of the people with us are coming back to live with us. About two-thirds of our population turns in three years. So not only do we need a good program, and good treatment, good safe spaces and the ability to manage our population effectively, but we've got to be able to do that quick. We've got to be nimble. We've got to be flexible. So investing in a new facility gives us the best construction value and it gives us the best opportunity to address large-system needs, which is more than just population. It's more than just bed space. It is a variety, it is a variety of things. And the question, of course, it was on my mind, it would be on I would expect all of your minds is why can't we rehab existing facilities? Why can't we get to where we need to be? In fact, the master plan talked about changes and additions to existing facilities to help address issues. We have used that master plan to guide our decision making. That's why CCC-L, the Community Corrections Center here in Lincoln looks like it does today. It's on the very last stages of a rehab project, a restoration rehab and expansion projects that have turned it into an exceptionally nice facility. It wasn't a bad place before. It's a whole lot better today. So it is over design capacity. I'll acknowledge that. But with this last work that's just getting wrapped up, they have all the infrastructure, the service space, the support space, and they have decent, from somewhere between decent and really nice places for the people to sleep and use as their personal living space. LCC, D&E, the Diagnostic and Evaluation Center, there was a project in the master plan referred to as the reception and treatment center. We used that-- actually there was a program statement. We used that information and that program statement to drive the decisions that have brought us to where we're at today. And we are-- that's the last beds I talked about in June of '22 will be in-- preferably '22, into the middle of 1920-- 19-- 2022, we will bring on the new behavioral health unit and the behavioral health housing that we have, a brand new 32-bed skilled nursing unit, and a consolidation of our healthcare resources, and a brand new modern space, new dining, new food craft, new visiting room, new programming space, new space for staff, a staff wellness center, which is a very important trend in [INAUDIBLE] Corrections, providing staff opportunity in the job site to take care of themselves, and 384 high-security beds. A great example of where it all made sense to invest the kind of money of \$125 million into those two older facilities, bring them up to current standards, and even make them better. So that works well. Some of the other things, though, as we looked around, you know, it doesn't make

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

sense to put an extensive, a large amount of money into as an example, the State Penitentiary. At this point, I'm estimating \$170 million. I think it's probably going to end up being-- pretty sure it's going to be even higher than that. I'll have numbers here just any day now, but at least \$170 million to bring that facility up to modern standards. And before I go down that road, I'm going to hold off because I have some other-- couple more slides, but I want to to back to that. I propose we build a new modern, multi-custody facility. We find a good site for it, ideally a nice level site, at least 100 acres, preferably 160 acres, so that we've got room for 100 years of use of that land, at least, in that facility to be part of our goal. That, as I-- as it says up there, it's a combination of max custody beds, medium custody beds, and minimum custody beds. And I'll talk more in a couple of slides about how we get to those numbers. We want to add that expandable footprint, not just in terms of the site, but also in the original design for the first phases-- phase or phases of it, to actually footprint out and say, here's where the next living unit would go or here's how we could expand the program's building if we put more people in this facility and do a lot of good planning for future use. We want to make sure that wherever it's sited that we can staff it. That's critical. It's got to be in a location where we can draw from a big enough population base and people interested in the work we do and they're out there. They're just not as interested in traveling 60 to 75 miles each way to get to the place. So that would be an important consideration. Equally important, though, is the population we serve. We want to put our facilities as close to the majority of the people that we serve in our prison system so that families have access, so that our release planning can be more real-life, real-time connected to where we're returning to so we can just do a better job. Again, doing the things that we want to accomplish. A new facility is one of the things, pretty obvious, much more energy efficient that we could have, good energy savings, but also using good sight lines and good modern technology, not the esoteric stuff, just good, fine tested things. With camera systems, control systems, and a variety of other just good technology tools, we can bring our staffing level down significantly. And that is the biggest cost of any prison. About 70 percent of the cost of operating prison is staff. So every FTE that we can reduce and still meet the needs of our population and keep everyone safe is a significant savings for us and for Nebraska. And last of all, coming right back around again, this is our opportunity then to repurpose existing space. Most importantly, the State Penitentiary and get-- continue to get good value from that facility without a big investment of money.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

Because absent a big investment of money, we're not going to be able to continue to use that facility under its current purpose as a high-security prison for very much longer. I already talked about the rate of incarceration. In terms of America, we have a low rate, but it's just one of the factors. But it is going to continue to be part of why people come to prison as long as Nebraska continues to grow. It isn't that we haven't invested well in our system over the last, now, six years, \$170 million in major projects. Talked about CCC-L, talked about the LCC, D&E project. Big investments, things that needed to happen. Projects that needed to be done. I think there's sometimes kind of a loss of the curve. [INAUDIBLE]. I don't want to say this. We built prisons and we build them to identify needs at the time. Typically, it has to do with space, the number of inmates we need house. It can also deal with delivering other, you know, parts of the work that we do. But the fact is, is like everything else, they have a lifespan. And it isn't just the initial cost plus the ongoing cost of operation, but it's an acknowledgment that at some point every state that has prisons, and some of them right now are in very difficult situations because of the high-level of building that they did from the late 80s through the very early 2000s. All of those facilities are trying to reach that point of where they need significant investments. And that's a cost that often just doesn't get thought about, doesn't get planned for because it seems so far in the future. Well, in 1981, I doubt there was a lot of conversation about when are we going to have to put a lot of money back into the Penitentiary? We're there, without a doubt. You know, we're in year 39. Well, it's 2021, so technically we're in year 40 of operation and it is time to invest in that facility. Now, in a moment, I'm going to talk about the best way to do that. In addition to our capital investments, we have invested it in staff and we haven't been able to-- we've invested in staffing and we've invested in our staff. So we've added 225.5-- 222.5 FTEs to this agency since 2015. Pretty substantial. It's almost-- I think it's just short of a 10 percent growth in the size of the agency. And at the same time, we continue to identify compensation issues. And Governor, the labor unions, all of, all of you cooperated and significantly raised wages for our staff. So there again, we've invested \$7 million in the current biennium, \$3.2 million in the previous biennium, and started midway through the biennium, in this upcoming biennium. We're, I think, at least \$8 million in growth in terms of compensation for our staff. So it isn't that we're not investing in our staff and doing the right things. We do have a robust parole and probation system in this state. And it's nice that we have both options. And we've got one of those systems that's somewhat of a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

hybrid in terms of-- and a lot of states, probation focuses only on the [INAUDIBLE] side of the house. But here, because of LB605, we have probation that also deals with people that come to prison or in some cases if it doesn't work get sent to prison [INAUDIBLE] to be successful on post-release supervision. One of the-- to me, one of the biggest successes of LB605 was what it did for community supervision with reduced jam outs of people that do their mandatory time by 35 percent. And correspondingly, we raised the number of people to go out under community supervision by 35 percent. And that's a good thing. And the last piece on this slide is-- and that's why I gave you the big sheet, we're on a mission to help people be successful. If you look at the numbers, if you look at where we were in 2015 and where we're at today in terms of clinical treatment, in terms of program delivery, the one area where we didn't see the growth that we should have seen was our basic education. And that is a focus for this coming year. There's already a committee that's working on figuring out how do we get more people through the GED process, how do we get more people into those basic education skills, because it's not on the sheet. But the other thing that we've done fairly well with is increasing significantly the number of people who are getting access to college-level education. So we have programs at the women's prison, at OCC. At the community centers, we've-- we're continuing to work on expanding the use of education. We have a name for it, education release. I think it is. So you don't just have to go to work release and go get a job. If you can get into a college program, we'll also support you being in community custody and accessing. So we work with Metro, we work with SCC. And now with the Second Chance Pell Grants, with actually access to Pell Grants now returning, we're going to be able to really expand on that piece of it, so. Which makes it all the more important that our basic ed program is working well, so we get people prepped so they can take advantage of it. There's a lot of numbers on these sheets. I'm not going to belabor it too much, these are the numbers that we continue to look at and we update every three or four months. This is the most current numbers just around two weeks ago. But at that point, at that moment in time, these are moment-in-time measurements, there were 742 people that were at or past their parole eligibility date. Sounds like a lot of people that ought to be out on parole. But as we continue to dissect it, one of the good things if you look down the right or left side of the screen, if you want to call it, are numbers past their PED have come down well a little bit with this measurement, but there's a lot of variables that contribute to that. Most notable, though, is a year ago at 898, and then ending-- beginning this year, it's 742, about 13 months. Of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

the 742 people that could be on parole by sentence structure, 39 percent of them, 293 have a hearing already scheduled. That's out a ways. So we're out in December of 2022. But that's-- the Parole Board makes those decisions, sets hearing dates. And so they looked at the case and determined this is when people should be seen by the Board for that potential-- for consideration for parole. The other bullet-- the other bubble says 293. And I have no idea why I tried to fix that three times. It's actually supposed to be 291, but 291 people have already been out on parole and unfortunately violated, violated and were revoked and brought back to us. Some of those people have been out more than once under their current sentence structure. That drug offender population of the people past their parole eligibility, it's 12.7 percent or 94 people. And then, well, here again, potentially low-level drug offenders, why are they still in when they have a parole date? Ninety-three out of ninety-four got parole, violated-- in most cases, violated several different things, or they picked up a new felony and now they're back with us. So almost every one of those people did get parole and they came back. Here is the map that helps us figure out what it is that we need to determine the best is. But back in 2015, we had little statutory language. And I walked in the door with the same expectation that we were going to adapt-- adopt evidence-based practices, that we were going to have a risk needs assessment tool, and that we were going to-- as soon as I looked at our classification tool and looked at the level of what, what we call overrides, so we don't have a tool. You know, we can flip a coin and do as good a job for classification process so let's get an updated tool. So we did that, STRONG-R is our risk needs assessment tool. We've got an updated classification tool that was built by a contractor who works with these-- [INAUDIBLE] is the name of the company that does the risk needs assessment tool. Dr. Zach Hamilton, [INAUDIBLE] and then a few years later in 2017, 2018 came to work here in Nebraska and is now a professor at UNO. And so fortunately, we've got the guy who designed our tool just up the road and we continue to work directly with him. We haven't used it long enough for validation. Typically, we want to get about five years of data before we do a validation. But at this point now, we're at least a good solid three years into it. Last year he took a look at it and ran numbers and the initial assessment says it's providing us about an 85 percent effectiveness in terms of assessing where-- what custody level we should house people at. It's as good as any classification-- prison classification tool that I've ever seen. And we feel like it's doing just that. It's telling-- it's helping us make the decision about where we can house people. And based on that tool, based on the makeup

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

of the population today, you can see we're just under 5,300 inmates this morning and roughly 1,100 or 21 percent are max. And on the other end of the spectrum, 17 percent, or about 900 people, at least on paper, qualified for community custody. Any good classification system is more than just a tool. Tool is the beginning place. Then you do file reviews and more thorough assessments and you look at all the other factors. Do they have clinical treatment needs? Do they have mental health needs to be addressed? Do they have high-level medical care needs that we need to address? Do they have conflicts with other inmates? You know, that's how we ultimately put people in the right beds, keep them safe, keep us safe, keep everyone safe that's in the prison. So using that same statistical information, if we look at our projected population in June of 2025, we need about 1,350 maximum custody beds. We need 2,060 medium custody. This number, 1,900 minimum custody and about 1,100 community custody beds. The last thing I want to say about this slide, it's really important as a system we look at our bed space needs, that we don't underbuild the classification. If you have-- if you want to-- if there's going to be tension around bed space in the system, you want it to be at the lowest custody level because you can put any inmate in a maximum custody bed. Every single inmate in the system is safe in a maximum custody bed. Roughly 17 percent of the population is safe in a community custody bed. So if you've got significantly more beds at minimum or community custody than you have people that appropriately belong there, then you're making some hard choices. You're either shoving-- we're either shoving more people into bed space that's not there in max or medium or we're making an even worse decision and we're pushing people out to those low custody beds that shouldn't be there. We can't do that. It's not safe. It's not safe for the system and it's not safe for Nebraska to do that. Do we look at the other alternatives? Absolutely. And the master plan talks about some of those and addresses them and we continue to look at it. Despite the challenges in Tecumseh, specifically around staffing, unfortunately, it just-- it's in an area where there's not going to be the size of the community to attract the homes, the apartments, the things that provide people, you know, living space and the urban areas that feed it. Most of the staff are just too far away when there's other job alternatives so much closer. So-- but outside that, it's a good layout, it's a well-designed facility. There's a few things I would have done different if I was the decision maker. But it is a good facility. It had footprint for one living unit. It wasn't built and really there is space you could do two. So if we didn't have these challenges that have existed across the whole 20, almost 20 years in Tecumseh of not being able to attract

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

and retain staff, that would be part of the proposal. I'd be saying, let's build more beds in that facility. It's ready for it to happen, but we can't staff what we have. If we're going to add more beds and more inmates only compounds the problem, so I can't make that recommendation. We looked at OCC and CCC-O, the Community Center in Omaha. There's two specific challenges. There's not a lot of land going to look at, and can you really effectively add the kind of space that we talked about needing and do it within that very small footprint of those two facilities? Even if we expand the perimeter out to the little bit of land that's around it, there's not much. It's, it's-- I don't know if it's exactly at water level, but as we know if the Missouri goes up, we have challenges and we've had challenges. In 2011, I have a plan sitting on a shelf that was the evacuation plan for CCC-O and OCC because of the fear that the levee was going to be breached. We see when there's high water, we start to see some hydraulics and water comes up out of the ground. Not a huge problem, but an indication, another indication of why investing in yet more prison space in that location isn't our best move. So NSP, one challenge, even though there's a lot of land over there, it's carved up, there's railroad right of ways, there's a slough that goes through it. And I think there might have been an opportunity back in the 70s when they did the last major remodel and redesign, where they could have put a little bit more land inside the perimeter or less-- at least left it there so that [INAUDIBLE]. But that opportunity is gone at this point, absent some getting the railroad to give up the space. And then again, just-- there's just not the space that we need to do significant expansion. Within the walls and the fence, yes, there is some room to do some reconfiguring, but as I'll talk a little bit more about it shortly, it's not a good investment. It's not our best or smartest investment. So we'll be at 40 years of use, prisons have life spans, some parts of the prisons have 10 to 15 to 20-year lifespan, HVAC systems, roofs, other components. Other parts, you can go 30. And if you're really fortunate, you might even go 40. Part of the advantage of some of the old-school technology we have is that it lasts a long time. Equally disadvantaged-- the disadvantage is, they don't make the parts anymore. So there is a secondary market as they tear down old prisons and you can still find parts in most cases to fix what we have. But unfortunately, the people that know how to do it are also disappearing. We got that double-edged sword. And I'm going to show you a couple of pictures in a few minutes. At this point, estimating about \$170 million to bring it back up again to the standards that it needs to be at to house a high-security population as it does today and be good for another, you know, 20, 30, 40 years

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

before a huge investment is needed. But again, recognizing the prisons have high, ongoing maintenance costs. In today's world, one of the big ones that drives me nuts is touch screen technology. That's how all the door controls and all the cameras and everything else are done off touch screens. Best case scenario, you get ten years of life out of that because you know that IT world just continues to progress, progress, progress. The software is proprietary. The company that built it got bought by another company and bought by another company, the operating system that it runs on no longer supported by Microsoft. And the only answer is you go in and you invest \$2 to \$3 million for a simple-- what should be a simple upgrade. So just one example of modern-day challenges. But what we can do again is repurpose the State Penitentiary. We can turn it into a full minimum custody facility and we can-- so it would be about 950 beds and we can do that with very little capital investment other than the ongoing maintenance. There is already maintenance scheduled for that facility, this still needs to happen, new roofs, HVAC systems, and those kind of things. But in terms of we don't need to, don't need to immediately tear down any buildings. We don't need to go in and do remodeling that requires gutting, replacement, and rebuilding. Because with minimum custody, you don't need control centers. You don't need security like we have in high-security prisons. Use of cameras, those are of value. But for the most part, it's a minimum custody inmate and those are our most open campuses, except for the community custody centers where people are truly in the communities. Things are smaller now on this screen, so I don't know if you can really tell, the one with the colored lights, that's our master control for that Penitentiary. It's got the fire alarm systems and camera systems and some door control indicators. And they stopped using that technology for the most part around 1985, maybe 1990 in some cases. And so, again, we're able to maintain it because we can find stuff on the secondary market to repair it. And we still seem to have some expertise that we can get our hands on that knows what they're doing to go in and repair it. But today's technology is so much different. So that's one challenge. On the other side is the only dining hall for that medium, max custody facility. Because it was originally designed to be 400 people, 5 units each with 80 high-security inmates, the dining hall and the kitchen were built to feed 400 people. And then you can see that's-- there's a few more tables who can't see behind the ice machine. But that's about all there is. And because we don't have storage space, we end up stacking stuff all over the place, which is bad. Not a good practice, but we just don't have anywhere to put things. And this year, we've had to use a lot of paper products and a lot of other products to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

address, you know, safe delivery of food with COVID. And so that's created even more storage challenges for us. Down below is a booth in one of the high-security living units. You can see much smaller panel, [INAUDIBLE] technology, electric switches, electric hardwired technology. So it isn't just that the control panels are becoming difficult to maintain and keep operational, then unfortunately the things that they're connected to are also problematic. The pathways corrode, wires fail, the electrical switches at each of the doors or other control points fail and the issue is just the same. They're not-- you can't find new ones. You've got to go and try and find them somewhere, and then you have to have somebody that can understand them and install them. Top one over here with the bars, pretty hard to see even at this size. Not thinking, should have gone with a big picture, but what you see there is a view of a living unit trying to see through the booth to where the inmates live. And it's just a great example of how poor the sight lines are in that prison. In addition to that, you can't see him, but there's a guy standing on the stairways. So we have units that have stairs going up and down, no ADA accessibility, poor sight lines, antique technology. You can see this other-- well, you can see it because you have the handout. That's right. You'll see the picture of the door, that's disturbing to me. And that's probably something that as I looked at it and I said, you know, we can figure out how to address that. It's probably a \$6 or \$7,000 repair, but it's one of many across the facility. So between the combination of settling and corrosion and locking hardware that just dies because a door that doesn't close well and it's secured with a padlock. That's not consistent with good, you know, high-security prison technology, what we're dealing with. And then down below because of the population increase, we had to provide more opportunities for restrooms, for sinks, for showers. So that led to some kind of Band-Aid approaches. And that's a really good example of, of a "Band-Aided" sinks and some other pieces. It meets, meets the basic need, but it doesn't meet the need in the way that we should be needing it. And then here again-- so this is a maximum, medium custody facility built to hold-- that part of it built to hold 400. We're currently housing just under 800 people in it on that side of the facility I should say. We have the minimum side with 700-- 650, and the max, medium size with just under 800, probably 750 most days. So that is our restrictive housing unit. And the first problem is, it wasn't a restricted housing unit when it was built. It's a living unit because of lack of space and the only existing restrictive housing unit being built in 1955 and needing to close. And we were finally able to get it closed. This is the restrictive housing space for the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

Penitentiary, and it's woefully inadequate for a high-security containment setting. Worse yet, because there are double, roughly double the number of people in that housing unit that it was originally designed to hold, there's no place for storage. We ended up bringing in a conex and sticking razor wire on top of it so that we could have reasonable access to the bedding and all the clothing and all the other supplies that were needed. So rehabilitation, rehab, renovation of the Penitentiary is an option. Again, at this point, estimating \$170 million to get to where we need to be. So as one of the big challenges, of course, is how do you do that work when it's full of people and we have nowhere else to send people. We have no, we have no other beds. We can't empty out the Penitentiary and do the rehab. In 1979, when they started the rehab at the Penitentiary at that time, they had just opened LCC, and some other bed spaces, they were able to move the population out of the old. I don't know how old those units were. Eighty years old probably units, tear them down, build the new housing units, build the other structures, do whatever other work they did, restore the perimeter, and then bring the inmates back. That's not an option for us. And so when you can't move inmates out of space, it drives up construction cost at least 25 percent and prison construction is already expensive to begin with. So that's just, you know, that whole value of what you can get when you build new opposed to trying to rehab an existing facility full of inmates. Worse yet, because we would-- when we go in and do a rehab, now we have to [INAUDIBLE]. That didn't sound right because I like ADA. But the bottom line is, if you do a significant renovation and rehab of the building, you've got to meet ADA standards. There's a little flexibility, but not a great amount. So we have these five living units that are in no way ADA compliant. And we're not sure at this point, we're kind of still going back and forth about is it even feasible to do a renovation, bring them up to ADA standards, or is the better answer to simply knock them to the ground and build new living units. But under the model where we would go in and gut those units, put in all new systems, and restore them and meet applicable ADA standards, we can only house 80 people in them because that's the design. And under accreditation, while I'm able to have 160 people in those living units today because we're grandfathered in because that happened before the standards that set that, after that work happens, then each of those units can only hold 80 people, which is nice in terms of manageability. But the staffing level really doesn't change. There still max, medium custody people and we still have to have control booths. You still have to have the people on the floor [INAUDIBLE], double the cost of operating those units, but I say it'll

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

add 60 percent probably to the staffing costs. So pretty significant. The place that we would build the additional units to get our capacity to where it needs to be since we've now taken effectively 400 beds offline to, to meet design standards would be two new living units. When you think of the 384 that we're building right now over at LCC, that's the concept of two high-security units. And there's only one place really to put those, and that's right where the ball field is. So that would be the last of the grassy area inside the Penitentiary and there would really not be any good outdoor recreation after that project is done. And then we build, you know, we need a programs building. We need a new kitchen. We need new dining halls. We also need to go in the-- one of the minimum security units was built in the late 50s. It's in, it's in good shape and it serves its purpose. But if we're going to invest in a project like renovating the facility, then that's the time to go in and address a lot of other issues as well. It's not my recommendation. I don't think it's a good way to spend our money. If we repurpose it and make it minimum custody, again, we don't need to put any more money into it than we've already planned to put in it to make sure plumbing works, roofs continue to be, you know, keep the water outside and those kind of things. So we actually increase the capacity in our system for minimum beds because currently we technically have 700 minimum beds. But I-- I'm trying not to get the population [INAUDIBLE], I'm trying to keep NSP at 1,350 or lower. Thirteen hundred is really a good number for that facility. It's just-- it's difficult when you get above that. So it'll add 200 minimum beds to the agency and then there's a huge cost savings in terms of operation of that facility because it is our most staff intense location. And so over half of the staff currently there would no longer need to be in that facility, those FTEs, and hopefully a lot of the staff would be transferred to the proposed new facility. And then that would be the offset that I talk about. It's still going to cost more money. It-- that offsets part of the operating cost of the new facility, but not all of it. And, and how you get [INAUDIBLE]. Medium and maximum custody living units, staff intensity, there's two booths, two people on the floor on each side. Minimum custody, nobody in the booth, two officers running the unit. That's-- there's a staffing model that we use to support that. It's pretty consistent practice across the country. There are ten towers around the Penitentiary. That's old school. That's really old school in today's world. I don't know anybody that still builds towers, maybe somebody out there. But one of the main reasons is, a tower takes 5, 5 people to keep it operating 24 hours a day, 7 days a week. And when you figure in salaries, benefits and associated costs, you're \$300,000

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

annual operating cost per tower, maybe even a little higher than that. So there's \$3 million in operating cost just tied to our towers. Under a modern prison facility, depending on the size, there's one or two roving patrols. So you have five or ten FTEs by the perimeter security and the rest of it is dependent on electronic technology. The significant operating cost reduction could be used to offset the cost of bringing a new facility online. The other thing we've talked about, but that's a-- it's really a different conversation and that's the potential at least to have the conversation about converting the Work Ethic Camp to a community custody facility. That would require some statutory change in terms of who would be able to be housed there. The one-- there's two big benefits that I see to that is 200 more community custody beds, which, as I showed, as we move to 2022 and to 2025, we will need those beds. And it's an opportunity to put some community custody on the west side of the state. There's, there's no good answer to trying to get all of the people to come into our system from across Nebraska to a community custody center by their home. This is not, this is not feasible, but we do have a fair number of people that come from the west side of Nebraska. And this would allow for access to family prior to-- much greater access to family prior to release, to release. It would give them that community custody experience. If it's closer to home, there might be work opportunities that are more consistent with what they would find if they intend to go back to the west side of the state. And because it takes significantly less staff to operate a community custody center, I estimate about a \$2.5 million reduction in operating costs. Well, based on the earlier map that I've showed you on classification and how our population will break out, how it breaks out today in terms of custody levels and where we anticipate it'll be in 2025, here's the proposal. This is kind of the last piece of it, and that is we would have-- continue to operate a little bit lower than we do now at LCC. We're typically running 750, 760 people, 700 is a really good operating capacity for that facility and we would run at medium. Kind of a like medium population and half of minimum custody, more of a long-term minimum custody. At NSP, 950 minimum beds, most likely a combination of people who have treatment needs and other needs, as well as people that could be eligible to do what we do at the Work Ethic Camp, where we take people out in crews of eight to ten supervised directly and do different community work and activities. So it would be a great opportunity to expand on that program. I'm hoping that Tecumseh is already medium custody absent this conversation. That is my plan, that the-- when we bring the 384-bed max units online in the summer of 19-- 19-- I'm stuck on that, 2022, we will be able to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

remove the remaining max custody inmates from Tecumseh, bring it down to medium. There's a little bit of staffing, not very much, there's a little bit of staffing savings. But much more important, that's the next step in changing that overall culture of that facility and making it even a, a more pleasant place to work. And then I think that is part of our work on getting to where we need to be in terms of our retention and attracting staff at this facility. So the new-- what is now LCC, DEC becomes the Reception and Treatment Center, and then in 2022, there will be 800 maximum custody beds, 300 medium custody beds, total of 1,100 beds. And again, as I talked about, all the infrastructure should support that population and do that really well. NCCW, we'll bring it down to a very clean and defined 180 max, 180 medium. Don't know that typically we need that many max, but as I talked about, better to have a bed that you can put any person into, in this case, any female into, then to have beds where you shouldn't be putting them there because of their custody classification. We would bring CCC-L down from its current 660 to 600. That's still above design capacity, the design capacity for the facility is 460 beds. But with all of the work that we've done there, 600 is a really good number for that facility, and it's working and running really well with 660 people in there. The Work Ethic Camp, again, I propose-- sorry, CCC-O, at this point, still proposing to run at 180 beds, recognizing that it's twice of design capacity. But it works well. It's small. It's a small place. People get in there, they're either going out for work release, or now we have more and more people who going for education release. It's a good setting and it's working well. So I see no reason to change that. At Work Ethic Camp, consideration of converting to community custody as well. And then our new facility [INAUDIBLE], 400 max, 512 medium, and 600 minimum. That would give us a total of 6,562 beds, and our operational capacity at that point, the agency would be 6,954 beds. So as an agency, we would be finally significantly under operational capacity. Is that forever? No, absolutely not. If-- as I talked about in the very beginning, if nothing changes in terms of the sentencing that brings people to prison or doesn't bring them into prison and Nebraska keeps growing, there will continue to be a need for additional beds. Funding costs, the estimate is \$230 million for this 1,512-bed complex. And that's everything, that is the siting, that is the land, that is design, that is construction. That is all of the other pieces that go into building a brand new facility. There's always the potential that we would have to invest in some community infrastructure work depending on what their resources are and where, you know, where we would ultimately site the prison. So \$230 million, I feel very comfortable with that

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

number, hoping it's even a little bit high. But that's the number at, at this point. The \$34 million in annual operating costs, that's a-- that is a base cost, that is the base staff that it takes to operate the facility. There are other staffing components that are paid out of the Central Office budget because part of this is the proposal that we would repurpose the Penitentiary. Those resources as well would be pushed to the new facility. So there's other costs on top of it. But that's that base operating cost for the security staff, the maintenance staff, the food service staff, the clerical administration staff and that's their decisions to add significant programming in that location or rather have more than what we might be doing today just as our our base, there will be additional costs. Talked about the potential reductions, as much as, you know, \$19.5 million, things could move from an operating budgets to other locations that'll offset this cost. All of this is 2020 dollars, inflation being what it is, but based on that math, it would take at least another \$14.5 million to operate the new facility. So that's a starting point in terms of the-- both the cost to build it and the initial cost to run it. What'd you do? OK, two slides left. The big priorities. We've got to meet workforce needs. We're challenged even here in Lincoln, such a competitive market and we are paying good money, especially the wage increases that we provided for protective services staff. We're absolutely competitive in the market. There's just so many opportunities for people. A 3 percent, 3 percent unemployment rate is a wonderful thing, but it's tough on prison systems in terms of attracting and retaining staff. So we've got to make sure that we locate in a place where we can fill all of our positions. And while it could be-- well, I know I don't want to have the conversation about where is that? We kind of know it's somewhere between the Lincoln, Omaha greater metro area. It could be a little north, it could be a little south. But that's where the people are in mass. And that's where our best shot is attracting that workforce. Just as important, we want to locate in a place that helps contribute to our mission to get people ready for release and have them be successful when they do release. So access to family, access to ultimately other community-based programs, jobs, things like that. We've got-- no matter what, it's 2021, and we will have challenges in keeping NSP operating the way it should operate with max and medium custody inmates till 2025. We'll do it as we figure everything out. But it's not-- it's going to be tough. It is going to definitely be difficult to continue to address these ongoing issues that I talked about. So here's an opportunity to instead of investing a huge amount of money in a facility that originally opened in 1869, we can invest that money

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

in brand new-- it's the new modern, and, in fact, some states do that. They turn the old Penitentiary into a museum and they build what they call their new Penitentiary. And so conceptually, think of it that way. It's time, it's time for a new location. It's time for an opportunity to start on fresh ground and do it right. And it, it addresses bed space we need now, it addresses-- well, not-- it addresses bed space, it addresses bed space needs we've identified now. It puts us in a good position in 2025 and it gives us a little bit of time. Just based on JFA, we should have another at least two or three years before we're back up again to operating capacity. And between now and then, there will need to be more conversations about what should be the next step. Well, fortunately, if we do this right, the next step will be, all right, there's unit six, its "footprinted," it'll cost \$17 million, let's bring it out of the ground. There's unit eight, let's bring it out of the ground so we will have a canvas and already have a plan that gives us that potential that we're going to need and allow us to address needs well in the future. Our next steps, we are in the process of completing a program statement. I understand that that's not the normal way, but we've had a lot of variations that we think about. I was funded to build a 100-bed unit in 2015 without a program statement. We spent a lot of time in 2020 with due diligence. I went out and I looked at the private-public partnership aspect. I really explored that to see if it made sense. It doesn't make sense for us. We don't borrow money, we don't pay to borrow. We're not in a situation where we could close a bunch of old beds and replace it with new, more efficient beds. And so we did that. We have a lot of conversation about, what's the right approach? What do we really want to accomplish? Is it, you know, is the best investment to rebuild the Penitentiary? So here we are today. I don't have a program statement in hand. I've given you numbers that are based on some reasonably good assumptions. We are in the programming statement process. And the deliverable should be available no later than the end of April. I understand it's pushing. I understand that we're going to work hard to get it sooner. But if I say to you a day sooner than that, I just know my own luck. So I'm going to say we'll have it in your hands before April 30. And I'm very comfortable that there won't be any surprises in terms of what's identified. Then if we reach a point where there's appropriation, we'll immediately begin the siting process, there's some statutory language. Oh, there's a little language and it is a stakeholder collaborative process so we'll go out and solicit interest and have conversations and ultimately land on the right side for the facility and then immediately move back to the point funding is approved, we will start the signing process and the design process

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

simultaneously because we can do that. That'll help the goal to be getting things moving sequentially as quickly as possible so that we can hit the dates that I talked about of being able to occupy. One of the advantages of the 600-bed minimum custody part of this project is, it will be co-located, but it will have its own low-security perimeter, which you put around a minimum facility. It's much simpler and faster to build. We have the potential to bring those 600 beds online. I would say in 2024 with the rest of the project being in the mid to late 2025. So it gets us closer to having beds that we need to meet our needs. Lastly, sometimes it, you know, picture says a thousand words, size of prototypical facility in today's world, Tecumseh, though, is, is not that far out of line in terms of a prototypical prison either. I shared this one for two reasons. First of all, I had a major role in bringing it to life. So I know the process intimately. And it's an award winning facility, so I'm really proud of that in terms of its construction and value under budget and ahead of schedule, goal LEED certified for being environmentally friendly, incredibly energy efficient, incredibly the site lines, the right kind of technology. There's only one tower you see, it's way back to the back top of the picture, and that's for the recreation yards. That's not for perimeter security. So when there's people in the yard, they put somebody up-- at least they used to [INAUDIBLE]. And it's been six years, they might not even use it. And a footprint that allows for additional expansion with the point that the state of Washington needs for more bed space. You can see the two big cutoff corners are the-- those are the living units on the two sides. The fence can be brought out and with a new building you could add a thousand or more people to that. There's little dotted lines on the paper to show how you would expand the program building and how you would expand the food service area. So it's that kind of concept I talked about of where you don't just build a box that you're not going to change, you build a campus that's already got plans for future needs if and when they're needed. And if they're not needed, well, that's a really good thing too.

LATHROP: All right, well, thank you, Director, and I appreciate that PowerPoint. I'm sure everybody else does. I think what we're going to do is provide the senators with an opportunity to ask questions. So anybody with questions for Director Frakes? Senator Geist.

GEIST: Yes, Director, thank you for your time. And this is a what if question. So I was just looking-- following along with you on the McCook facility and if that were potentially made a prerelease or work

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

release environment, are there jobs there enough that could support that type of environment?

SCOTT FRAKES: You know, that's part of the conversation and the aspiration we need to do if, if there's a kind of a consensus that it's a smart direction to go. I believe there are some level of jobs. I also believe that with the Pell Grants, that would be another location where the education-release component could be brought to life. We worked with the college, Mid-- Mid-Plains, I think it is, that's there in McCook. We have been partners with them for some time. So it'd be a great opportunity to see if we couldn't expand and go that direction. And what we don't have in our-- in today's system is a really good prerelease component. We kind of-- we bring people into work release. We put them on what we call detail. So then we take them out under supervision and do things like cleaning the-- I don't think they work here. Maybe they do. I know the State Office Building and other locations. My vision of what prerelease could and should be includes a lot more. It's yet another opportunity for interaction with community programming resources that are out there with building on life skills and things like that. And then the work release component being that final piece of both being able to get a job and meet the conditions of being employed, earn money and have a safety net instead of walking out of a secure facility and right into the community. You know, you've got that, you go out in the community and then you got to come back home where you're under some really close supervision. So long answer to the short question. I do think that there's community resources that would allow us to use that as a community custody based center.

GEIST: And I have one more follow-up, and that is, has-- have you given any thought to transitional housing?

SCOTT FRAKES: Well, I do support efforts to create transition. Pardon me, efforts to create good, safe and sober transitional housing for people that are on community supervision and maybe just as importantly for people that are no longer on community supervision or didn't get community supervision, but simply need a place to go as opposed to being homeless. But it's not my mission. And so I think that I support it. But I do see that as being the next phase in the process. I'm the incarceration kind of side of the house.

GEIST: Thank you.

LATHROP: Senator Clements.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

CLEMENTS: Thank you, Mr. Chairman. Thank you, Director Frakes. I have a question of how are you addressing programming, additional space for programming, additional programming, especially adult education? Is that part of this plan?

SCOTT FRAKES: It would be. So this is, again, where, you know, we were able to do that as part of our restoration of the two facilities, Lincoln Community Center, the LCC, D&E. And so that's one approach. As part of that overall package, we made sure that we included additional programming space and related improvements. If the ultimate decision is that the rehabilitation renovation of the Penitentiary is the right answer, then part of that package would be new programming space. And then in the in between, it's what we have been doing since 2015. And that's really thinking outside the box and looking at the spaces that we do have and making sure that we're not missing opportunities. Because when I got here we weren't using visiting rooms for anything but visiting or very rarely. There was no thought that you could actually bring people in a dining hall and do programming, but you can. You know, we only use them for a few hours a day. The rest of the time, it's a great big space. It sits empty. So making sure that we really are thoughtful about all the space we have. And one other piece that's always a challenge, there's kind of this desire to try to deliver programming and other services Monday through Friday, 8:00 to 4:30. Well, whereas normally when things are working the way they're supposed to be, we're kind of a 14 hour a day operation. So if you have evening programming, if you do things on the weekends, now your space is growing. Without adding any new space, you're utilizing that space significantly more.

CLEMENTS: Well, just seeing this backlog of parole, we keep hearing about people eligible for parole that haven't done their programming and it seems like it would help reduce the population also, wouldn't it?

SCOTT FRAKES: Well, we keep tearing apart those numbers. And what we found is the people that are back with us are still with us because they haven't completed that programming that gets in the way of parole is because they've either tried it and failed, they refused to do it, and we can't force people to do clinical treatment or, unfortunately, we have a small group, but I think it's a measurable group that is coming in from revocation from violation. And now they get a new assessment. And so now they have a clinical treatment, often for substance abuse that has to be addressed so they're past their parole

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

eligibility date. But that clinical recommendation came after their parole eligibility because of their behavior after that.

CLEMENTS: All right, thank you. Thank you.

SCOTT FRAKES: Always room for-- I know there's always room for us to get better.

LATHROP: Just a second. Senator Wishart.

WISHART: Thank you, Chairman. And thank you so much, Director, for being here today. That was very thorough and very helpful to kind of picture your plans. I did some quick math just off of the numbers you gave us. So by 2025, are-- we are forecasted to have a prison population of 600-- excuse me, 6,438 people. And by 2025, you would have 6,945 beds created out of this plan that you have laid out for us. So crunching those numbers, it appears our prison population is increasing every year by about 150 people.

SCOTT FRAKES: Yes.

WISHART: And that's as you said, if we do nothing in this Legislature or state to increase or decrease incarceration. So that means that in three years after we would have built this new prison, we would be at capacity again--

SCOTT FRAKES: We would be.

WISHART: --and having to look at building more beds again.

SCOTT FRAKES: Yes.

WISHART: Yes.

SCOTT FRAKES: Yeah.

WISHART: So my question to you, and I recognize that your job is within Corrections and there's so much else outside of that that has to do with that incarceration rate. But you had said that as Nebraska's population grows, the prison population grows. Are there any communities that you're aware of that have figured out a way to disconnect population increase of their community with increase of incarceration? And what should we be looking at to do that? Because what I'm seeing here, is that we will just continue and continue to

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

spend money and grow Corrections if we don't figure out ways to, to change that trend.

SCOTT FRAKES: I'm not aware of anybody that has ended up with a zero incarceration rate. They've done things to address options to incarceration that have lowered their incarceration rate. And the best states in America now are down in the 160, 170 level, small systems. But, you know, so we'd have to look at in, in depth we-- in depth, you know, what did they do and what did they do differently. The states that-- the ones that I've looked at that had significant reductions in their rate of incarceration often were tied to the fact that they were over incarcerating to begin with. So you look at California as an example, you look at Louisiana as an example, and there are more. And so if you're, if you're significantly over incarcerating and then you make some decisions to change that, you can make your math look a lot better fairly quickly. And we're not, we're not that part of the equation. You know, at 39th in the nation, is there room? We're not, we're not 50th in the nation. So certainly we could bring down our rate of incarceration. But I think right now the best in America is 160 per 100,000. So, you know, people come in, people leave. You can also, of course, do things to ensure that people get out at the earliest possible date if you have a system like ours that allows for community supervision. So that's an important part of the equation. And that's that breakdown I provide where we just continue to look at what are we doing and what are we not doing to ensure that people are both good pro-candidates, because that's the one thing we control. The post-release supervision population, they have a date, you know, and absent them behaving really poorly, they're going to hit that date. But with parole eligibility, it's giving them everything, getting them engaged, getting them to take advantage of what they need, somehow convincing them that completing the treatment is a good thing, not a bad thing. And then the piece that we know that we can have more influence on, and it's an area we're going to certainly work on and that's the violation of revocation piece. But that's definitely a partnership with parole administration. So, you know, what are we missing in terms of giving people the best tools we can when they leave? And then what is it while they're on supervision that's leading to them having to ultimately come back to prison?

WISHART: I have one more follow-up question in terms of the State Penitentiary needing repairs. I went through the department's strategic plans that we've had for the last few years, and, and we have had many interactions with you in, in committee. And there's never been any mention of the State Penitentiary being in sort of a

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

dire need of repair or kind of at, at its last legs in terms of its lifespan. So do you have engineering reports we can look at, more detailed reports into sort of the lifespan of this facility? And the reason I say that is and I guess another question I have is what is going to be the lifespan of this new facility? Because we don't build things to last like we used to build things to last. And so just wondering will this next facility have a 40-, 50-year lifespan like this Penitentiary has had?

SCOTT FRAKES: OK, the answer to the first question is yes, and I'm-- I'll fall on my sword that I don't have it to hand out today. I've got what I think is going to be the final product. I got that at the beginning of the week. And it was not a good week for me in terms of being able to focus on, on some things. And I need to sit down with the Governor and go over it. And I have a meeting with him next Wednesday. And as soon as we have that conversation, then I'll provide that program statement for the renovation of the Penitentiary. So should be able to get that in people's hands by the end of next week. The other question, I'm sorry, now went out of my head was--

WISHART: The other question is what is the lifespan of this new facility?

SCOTT FRAKES: Yeah.

WISHART: My concern being that we don't tend to build things--

SCOTT FRAKES: Right.

WISHART: --the way they used to be built.

SCOTT FRAKES: Yeah.

WISHART: --with it lasting.

SCOTT FRAKES: OK. So we use-- what I look for when we do design a prison, higher security prison buildings, medium, max custody buildings, a 50-year lifespan for the shell. And hopefully it's longer than that. We use a lot more stainless steel than we used to use. And in the picture I showed you, we went with stainless steel for doorframes, for window frames, and for a variety of other things. And, yeah, there was probably a 50 percent additional front-end cost, but you don't have the problems of corrosion and things falling apart and windows falling out of buildings. They'll last as long as the tilt-up panels. We use lots of concrete tilt-up construction. In today's world

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

done correctly, long, long lifespan. But, you know, plumbing systems wear out, electrical systems wear out, certainly all the infrastructure around the technology wears out. And in some cases, you can do upgrades reasonably for millions instead of multiple millions. And in other situations, you're looking at gutting a building to go in and then you have to make that decision. Does it make sense to tear it down and rebuild or do you gut it and, and build within the shell?

LATHROP: Senator McKinney.

McKINNEY: How are you doing?

SCOTT FRAKES: Good, sir. I guess.

McKINNEY: My question is, during your time as director, how proactive have you been working with the Governor and other senators to introduce legislation to decrease our prison population?

SCOTT FRAKES: OK, so the one thing that I have said since I got here is my role is to manage and run my agency and so I don't get into the sentencing side of the house or other pieces. Where I have focused energy is around programming and the infrastructure we need to support being able to best and the most healthy, safe, secure, and thoughtful way house the population that I'm responsible for so we can prepare people? So people live in an area, live in a, a space that they feel safe in, that they feel like they can engage in what we have to offer and then we make sure that we, in fact, have things to offer. But if you're talking specifically about changing a sentencing or things like that, that I don't involve myself in that.

McKINNEY: I guess my follow-up would be in your role as director, you kind of have inside information on what's needed to decrease the prison population in our state. And I'm just wondering why not be proactive instead of coming to the body and asking for \$230 million?

SCOTT FRAKES: Well, I've, I've got nothing to hide. Our data is widely shared and, and easily-- well, it's not easily accessible, unfortunately, because we have a complex database, but it's accessible. We have the Inspector General's Office that has access to everything in the agency and we try to be responsive to other requests. We try, I promise, we try. But, you know, Senator, I come to hearings, I answer questions, I interact with people, I work with stakeholders across the communities. Within my role as the head of the Corrections agency in Nebraska, I feel that I do what you described,

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

but I'm not going to be the guy out in front of suggesting specific sentencing reform.

McKINNEY: Would you say your role is to protect the individuals inside and staff?

SCOTT FRAKES: That's part of it, yes.

McKINNEY: If that's part of it, why not be proactive and introduce-- help, help in, in assisting to introduce legislation to decrease the population to increase the safety of staff and other inmates inside of our prisons?

SCOTT FRAKES: Because there are others that have that role within state government.

McKINNEY: OK.

LATHROP: Senator Vargas.

VARGAS: Thank you very much, Director Frakes, for being here. A, a couple questions here. And this is kind of getting to what Senator Wishart was, was mentioning. I'm trying to wrap my head around part of the strategic planning role that you, you play as director, and I'm putting myself-- so your line of thinking here, and to clarify is, we're preparing our prison systems based off of projected number of individuals within the system. Is that correct?

SCOTT FRAKES: And addressing the current need. If-- the conversation would be so different, if we were sitting at somewhere between design and operating capacity, but we're not. This morning we were 147 percent of design capacity. So it's about addressing that as well as projected needs.

VARGAS: And part of the reason I'm asking the question is it's not a causal connection where you're just looking at what you expect based off of expected growth to then figure out how many beds you need. Is that correct?

SCOTT FRAKES: We try to take into account the best of our ability, sentencing issues, crime patterns, and those kind of trends as well. That's why we get a professional to come in and do our projections for us.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

VARGAS: The reason I ask is because it does concern me and I, and I kind of shared this with you on different legislative bills I've introduced. But if we approach, let's say, the education system that way, we would look at we need to solely prepare for the educational gaps we have rather than trying to reduce them. And it's kind, kind of answering Senator Wishart's question. In 2019, just looking at that year, we're one of 11 states, according to the Vera Institute, that had a prison population increase. And in 2020, you said-- so in 2020-- so now look at 2019, we were one of the 11 states of the 50 that had a prison population increase. Now in 2022 [SIC], what has been the change in our prison population in the era of COVID-19 this last year in 2020?

SCOTT FRAKES: We dropped from a high point of 5,675 last February to just under 5,300 people this morning.

VARGAS: But where are we at now, 5,300?

SCOTT FRAKES: Five thousand three hundred, five thousand ninety-two or something like that. I, I looked at it and then I didn't lock it in my head. So a, a nice reduction. It's, it's been 5 percent-plus reduction in that short of time. Definitely helped in terms of our managing COVID.

VARGAS: And I, and I-- it's good to see a reduction. Most states in our region-- actually it looks like nearly all of our states, except North Dakota in our region had a reduction. I've been trying to get a sense of is, are we proactively, strategically planning to find ways to reduce our population? And if we're not, why are other states finding reductions in their population in the last three years, four years, even states that have a relatively lower prison population?

SCOTT FRAKES: I think that's an excellent question. I think you've got to first start with trying to find the apples and apples comparison. You know, we are a small system in terms of the number of people we incarcerate, North Dakota is smaller. So that's a factor. You don't-- as I talked about before if we're 39th in the nation in terms of rate of incarceration, we don't have the kind of low-hanging fruit that a system that has a 500 or 600 per 100,000 rate of incarceration does. Clearly, they're putting a lot of people in prison that there might be better alternatives to that the risk to keep them in the community makes more sense than incarceration. Doesn't-- like I said, doesn't mean that we don't have the ability to continue to look at that and

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

sharpen it, but we don't have the same kind of gap that some other systems do.

VARGAS: This is my, this is my last question and I'll let it back. And I, I know you made the reference to California and New York. But just for the record here, I'm really referencing mostly the Midwest. When we're looking at the Midwest in the last two years alone, we're one of the three states of the 16 in our region that have had an increase. All the other states have had a decrease of anywhere between up to negative 15 percent over that time, some of which are comparable in terms of our prison population, at least relative per every 100,000. I don't want it to be painted as other big states, just at bigger prison populations. There are other states like ours that are having significant decreases. And I'm trying to figure out why, which is why I ask that question.

SCOTT FRAKES: OK.

VARGAS: Do you have an answer to why they're doing better, even relative prison system?

SCOTT FRAKES: No. Can you point to a state that has similar numbers and a lower or close, you know, close to our rate of incarceration?

VARGAS: I'm looking at either Kansas or Iowa or even right now-- Kansas and Iowa had a significant decrease in the last two years.

SCOTT FRAKES: OK, the rate of incarceration is?

VARGAS: I'm not looking at the rate of incarceration, I'm looking at over the last two to four years [INAUDIBLE].

SCOTT FRAKES: Right, but that's the math, you know. If your rate of incarceration is 400, you can identify some things that will drop it to 350 that are, you know, within the risk that the society is ready to accept. If your rate of incarceration is 200 per 100,000, there's not much left there that people look at each other and go, yeah, we think there's alternatives. There's probably-- there's always still some. But, you know, the lower your rate of incarceration becomes, the less likely it is that there are people in the prison system that shouldn't be in the prison system. And then there's length of sentencing and that's the other component.

VARGAS: Well, I appreciate your answers. I'm, I'm bringing this up because if we continue on this route, the only solution over the next

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

ten years, to Senator Wishart's point, is that we are going to have to build new prisons pretty quickly at a rate where we can't keep up with it. And it seems like other states, even in a short amount of time, are reducing their populations and will be doing it over amount of time. So that number on where we rank per capita, is going to get-- we're not going to be there in five years.

VARGAS: Thank you.

SCOTT FRAKES: There is that potential.

LATHROP: Senator Kolterman.

KOLTERMAN: Thank you, Senator Lathrop. Senator-- thank you, Director Frakes, for being here. Question I have deals with this page that you passed out. I'm a firm believer and, and it kind of dovetails off of what Senator Clements was talking about, it kind of dovetails off what Senator Clements was talking about as far as programming. It looks to me like our clinical treatments and programming are up significantly since you've arrived. I appreciate that. But as I look-- one, one that just glaringly stands out at me is the high school and adult education completions. And it says that you're giving some sort of an incentive. But my question would deal with to start with how many people don't have the high school-- I mean, what are we comparing that to? What-- you know, if we're-- is this a percentage or is this, this the number of people that are, that are participating?

SCOTT FRAKES: It's just participants. Yeah, it's just participant numbers is all it is.

KOLTERMAN: So--

SCOTT FRAKES: And I can't answer your question as far as--

KOLTERMAN: So we don't have-- you know, I've been out there to the school and at least here in Lincoln, we don't have many part-- people participating, nor do we have really a lot of apprentices or, or journeyman completions. And our industries at one time were very strong. And I don't know where they're at today, but I, I believe that if we educate people and we, and we get them into a job creation type of a program, we can help prepare them for when they do get out, they can become better productive members of society. And I believe the people of this state would hire them with the workforce challenges that we have if they were educated. So how are you addressing that?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

Explain to me the CSI, how you started offering incentives for that because obviously to me, we're failing big time in that arena.

SCOTT FRAKES: Why do you say that? Why do you think we're failing big time?

KOLTERMAN: Well, look, look where we were when-- in 2015, we had 74 people participating in GED, 91 were participating--

SCOTT FRAKES: Oh, so you went back-- I'm sorry. So education and CSI are two different worlds. So I agree. As I said when I was standing up that-- that's-- our education components are one area where we have fallen off and we have a committee that's working on figuring out, what aren't we doing? Why are we not meeting the need that I know is there-- that we know is there? And what are we going to do differently so we get our numbers back up? And I can't-- I don't have a number off the top of my head about how many people today are coming in without GED or high school diploma or at least basic education needs. It is data that we can retrieve. So I'll have-- my chief of staff is making a note so we can circle back and give you a number.

KOLTERMAN: The reality is these could be really good numbers if most of the people coming in are educated.

SCOTT FRAKES: Yeah, but what we have seen--

KOLTERMAN: But the reality is I have a feeling most of them aren't as educated as they could be.

SCOTT FRAKES: What we've seen in Corrections over the last 20 years is, well, that was a huge need once upon a time. It's not nearly as big as it was, but it's still a need. There's no question about it. The Cornhusker State Industries, I'm, I'm really pleased with how we brought that program along and where my program, where the CSI director is headed in terms of continuing to look for opportunities to not only get more in-house apprenticeship programs going, but partnering with now the Home Builders Institute. We've got a program that we're going to get off the ground. In fact, it should have started that will create yet additional apprenticeship opportunities. And then we have another \$500,000 that came into the vocational life skills program this year. And we have just signed contracts with a variety of partners in Omaha and Lincoln and maybe somewhere else to do apprenticeship work as well tied to federal apprenticeship programs. So we're going to continue to grow that component because

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

you're right, there's a part of our population that this is the answer. Education is the right answer. It's not the panacea. There is no panacea. There is no golden-- you know, silver bullet. There is people that need treatment. There are people that need more education. There are people that need life skills and work skills. There are people that need every bit of that. And even then, they still have challenges just because of how terrible their life was before they ever came to prison. So it's figuring out using the tools we have, what are the best strategies and solutions for each individual and then making sure we've got the right number of beds or seats that is a better term, you know, so that we can get people in and do that in a timely way. When it comes to clinical treatment, it's making sure that that's delivered both consistent with the science, which we work very hard to do. And also in relation to potential release, because there is pretty good science that shows, especially with residential clinical treatment, if you do it too early in a prison sentence, it loses most of its effectiveness. So we're looking for that magic window between two and three years from parole eligibility or whatever potential release date they have. So we can get them in, they complete clinical treatment, then we can get them to community custody and then they head out and, and along the way, if we can, working with partners that we have like RISE, which is-- they-- that has become the most amazing group of people in terms of building that link between preparing in prison, preparing in transition, and then having wrap-- almost wraparound services as people enter the community and building all of those connections to services, education, jobs. It's, it's a monster, but when I look at the numbers, you know, when I take my eyes away from education and we're going to get, and we're going to get-- even the numbers we had in 2015 when I arrived, I think we can do better based on the information I had. Well, we're not. But when I look across the board at the improvements in general and that last one, the promising practices, that's where the RISE program, that's where the Prison Fellowship Academy lies. The work we do with Christian Fellowship-- Christian Heritage, excuse me. Those are great opportunities, both in terms of we have these kind of a, a private-public partnership. You know, RISE being a great example, Prison Fellowship, another great example of where we didn't invest funds, we provided staff for supervision, we provided space for them, and they did all the heavy lifting to bring these programs to life. We just supported making them happen. That's-- that pleases me every bit as much as our improvements in clinical treatment and some of the other work.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

LATHROP: Very good. Thank you. Senator DeBoer.

DeBOER: Thank you, Director Frakes, for being here today. I want to take you back to slide 5, the parole eligible incarcerated. And I just-- I don't know if I understand one of the, the numbers that you have here. You said that 93 of the 94 drug offenders have been paroled at least once in their current sentence. That's of the parole eligible drug offenders?

SCOTT FRAKES: Yes.

DeBOER: OK, so do we know-- because that seems like a very bad statistic.

SCOTT FRAKES: Yeah, I agree.

DeBOER: That seems very, very bad.

SCOTT FRAKES: But unfortunately a reflection of drug addiction.

DeBOER: What is it that we are-- I mean, is this-- does this give you pause and make you say, OK, we need to look at the, the drug programming that we have because it doesn't seem to be successful? Or what is it that that's saying to you? Because that number gives me a little pause. A lot of pause.

SCOTT FRAKES: Well, I don't like the number, you know, and yeah, I could suggest that is there that potential? Then we need to look at the total number of people that are receiving substance abuse completion, substance abuse treatment, and we can see how many more there are than just the 94. And then we'd have to also dig into what are the broad success rates. But where I start from is the stats that-- I've been connected to doing substance abuse related work for 30-some years. And in the community about one in six find treatment and about one in six that have treatment build some level of successful recovery. And unfortunately, recovery doesn't look like this. Recovery looks like this, and especially for people that have a combination of extensive drug history and criminal behavior. And it would be nice if we had a system where relapse didn't bring people back to prison or even back to jail for custodial sanctions. But when I talk to Parole Administration and the Probation, it's not low-level stuff. They're either engaging in other close to or potentially felony behavior or felony behavior or it is the ninth drug test failure. It is the, you know, the sixth time they were caught with small amounts of stuff. And that's part of the challenge of community supervision.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

They are also in the business of measuring risk and figuring out what is the right answer. And I have seen several situations in my career where the community supervision entities were vilified because they let somebody stay out and then that person did a heinous crime. Often it's just-- not just, but it's vehicular homicide is often what happens with our substance abuse population. And then they look and they go, wait a minute, this person, you know, had six dirty UAs. Why didn't you put them back in prison? It's trying to find that balance. And I suspect if we were to take apart who is this group of 93 people that came back, that that's what we'd find. Lots of efforts on the part of the community supervisors, the parole officers, the probation officers to do every intervention they could before they stuck people back in.

DeBOER: So what concrete action are you going to take in the next two months to try to get-- to do a better job with these drug offenders? Like is there-- you're going to do an investigation. Any-- I want to know what we're going to do to work on that number?

SCOTT FRAKES: No, I can't give you any commitment right at this moment in time. There's way too much going on, you know. So what I'd say on the broader scale, we continue to look at our substance abuse program to figure out what are the most effective ways to ensure delivery of the treatment, that it stays consistent with the science, that our assessment process works-- processes work correctly, and that we're working to get people engaged because we do have a lot that-- we have a lot that just say, no, not so much with substance abuse, but there's a measurable number, and we have a lot that say, sure, and then they sit in the class and they don't really do anything. But as I tried-- as I was going through the kind of the path of treatment, recovery, relapse, it's part of the-- it's just part of the world. And when you add in trauma and criminal history and other factors, I don't have a magic answer for that piece. We have created-- there you go-- what we have created is a relapse reentry program. So for people that leave with residential substance abuse, having completed it, and then they go out, and that's some part of this group of people right here. But not only, because other people-- not just drug offenders, unfortunately relapse. We have a, a three-month program that we're putting people into, and I don't think those numbers are in here yet because it just-- it's about six months now, seven months now off the ground. But we have that at OCC, NSP, I think a third place, but those are the two. So that's, that's probably the best answer to your question.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

DeBOER: Yeah.

SCOTT FRAKES: Instead of just bringing them back-- what we used to do was we would bring them back and we would give them another assessment and say, OK, you get to do another six-month residential treatment program. And people would say, the heck with that, I'll just jam out. I'm not doing that again. So this shorter-term program then with the potential successfully complete the relapse prevention program, the Board will see you and you may get your second shot.

DeBOER: I might contact you because I'm interested in how we might do better there and see if I can follow up with you on that.

SCOTT FRAKES: Fair enough.

LATHROP: I'll get to you. I got to get down there.

DeBOER: And then you said that-- I can't even remember now how many of these people have parole eligi-- they have parole hearing dates that are basically two years out in, in December of '22.

SCOTT FRAKES: That would be the far-- farthest point out, yes.

DeBOER: Why, why are there-- why are they so far out? Is that something that's a programming issue?

SCOTT FRAKES: It may be. The Board sets hearings. So I don't, you know, I don't weigh in on that. I don't influence the Board one direction or the other. I just do everything we can to make sure people are seen as potentially parolable. So it could be that they have a programming need. It could be that they have demonstrated some significantly bad behavior and it could be that they have come back. They're in that-- they're in both groups. So it could have been they've already been out on parole once and they've come back. And now the Board just said, well, OK, we think you've done the relapse prevention or you've done whatever it is. And so we're going to set you a date, but it's going to be a year from now or up to two years from now. But that's really a question you'd have to take to the Parole Board to get, you know, find that answer about why up to two years out.

DeBOER: I'll talk--

SCOTT FRAKES: They set hearings-- the other piece is, we went from-- they, not we, they made the great decision to go from setting hearings

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

a year, only a year out to up to two years out as an incentive. So certainly if we have people that have programming needs that they have refused to do or refused to engage in. Well, maybe that acts as an incentive then to get that programming-- that treatment done. It's not programming, it's treatment.

DeBOER: All right. I will follow up with Parole on that. What, what percentage of staffing are you now at in the department?

SCOTT FRAKES: Across the whole department, our vacancy rate is about 15 percent. And I think in protective services, it's probably closer to 18 or 19 percent. That's-- I'm just pulling it off the top of my head, but about 300 vacancies out of the 2,500 allocated FTEs.

DeBOER: So, I mean, that's a lot of vacancies.

SCOTT FRAKES: Yes, it is.

DeBOER: And--

SCOTT FRAKES: Better than it was, though.

DeBOER: I'm sure. Yes. And, and good.

SCOTT FRAKES: Our turnover's down third year in a row.

DeBOER: How do we think we're going to be able to staff a new prison? I mean, my first, my first year here, I asked you at the hearing that was the equivalent of this one. Can we build our way out of this? And you said no. And part of the way you said no-- or part of the reasoning you gave me was that we can't staff it even if we could build it. So I, I am reasonably concerned about how we are going to staff a new facility if we can't even staff the ones that we have.

SCOTT FRAKES: Well, what we have seen is that the area where we have the lowest number of vacancies and, again, smaller sample, so that skews it. But really overall the lower number of vacancies and the ease in recruiting is the Omaha area, the greater Omaha area. So there again, making sure--

DeBOER: But that's not max-- those aren't max, max--

SCOTT FRAKES: No. Well, the youth facility has max beds, about a handful. So medium custody, minimum custody and community custody and then the youth facility.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

DeBOER: I guess I should ask you, that's an assumption I'm making. Is it easier to staff max or minimum custody security?

SCOTT FRAKES: It's a complex answer. New facilities built in the right location can be easier to staff than old prisons because they are new, they are clean and they are well-designed and they have good technology and they have the right kind of structure and tools and processes to really safely manage the population we house there. So in some ways, new high-security beds can be easier to staff if you don't put it so far away from the urban areas. In general, just as a-- just a real generic level, the lower the custody, the easier it becomes for us, you know, to maintain. You'll have fewer vacancies and maintain staffing just because the working conditions are more pleasant. The people you work with are easier to deal with. The level of threats, violence or perceived violence and other activities goes down. That's why we have very few vacancies in our community custody centers. Pretty pleasant place to work.

DeBOER: So that, that adds to my concern that even if we did site a new facility near the greater Omaha area, that it might not be so easy to staff, particularly if you have a large number. I mean, I have the numbers somewhere of maximum custody. I mean, you have 600 minimum, but you have a large number of max and medium custody beds there. So--

SCOTT FRAKES: One of our challenges that we have today is that we house maximum custody inmates in a space that's not designed to hold maximum custody inmates, especially today's maximum custody. In 1981 in Nebraska, I don't think there was a lot of conversation about gangs. I don't think there was much conversation going on about security threat groups. We did not have the level of violence in the community or in our prison systems that we saw grow. And so that is certainly a factor. And when you house a population in, in the physical plant, in the physical space that's not built and well-designed for the problems, the behaviors that they bring, that makes the job just that much more difficult. I talk about sliding doors, sliding doors versus what we call swing doors or pop doors. Almost all of our construction in our system is a pop door. You hit a button, you turn a key, the door swings open. At the moment that you-- the control booth pushes the button and the inmate opens the door, the inmate controls the door, not us. In max custody, we design them and have been designing that way for really forever in the world I came out of the door slides. We open it, we close it. And the person inside the cell or outside the cell or inside the dayroom or wherever it is can't control that. So that's just one of the many examples of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

challenges we have in our existing system, where we've got a high-security population and physical plant that's not adequate.

DeBOER: I think--

SCOTT FRAKES: It's not-- got to do-- because what it leads to then is more challenges, more problems, tougher working conditions for staff, more incidents, less time out of cell, because we're dealing with the problems. People within those living units have the ability to intimidate others and cause other behavioral problems that then drives people to not want to come out of their cells, to not want to engage in programming, to not do these things. I talk about the 10 percent of the population and then the next 10 percent of the population that, that does the bidding of that, maybe it's even the top 5 percent of the population. They direct the violence. The next 10 to 15 percent carries it out for the most part. And there's about 65 or 70 percent of the population that really would like to just do their time. They would like to be able to do programming, they would like to be able to get out and enjoy whatever it is that we're able to offer to them.

LATHROP: Senator DeBoer, can I have some other people jump in and ask some questions and I'll come back to you?

DeBOER: Yeah, I just-- I was just trying to get to the--

LATHROP: No, that's fine.

DeBOER: Yep.

LATHROP: I, I know that there are other people that are-- that have their hands up and before we find out he has to leave. But I'll come back to you in just a second. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. And thank you, Director Frakes. This is about the fifth or sixth time I've had the opportunity to listen to this. It was a very good presentation. Earlier this week, Chief Justice Heavican reported to the Legislature that it costs \$41,000 a year to house an inmate and it costs about \$4,000 a year for probation and parole. And so basically, it's about a ten to one ratio that everybody we can get out of your system and into some kind of parole, probation training outside of your walls would be a, a great cost benefit to the state of Nebraska if it's possible. The new prison at \$230 million is going to cost every man, woman and child in the state over \$118. And it's a very nice. I mean, it's what you've got

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

here is state of the art. You came from Washington. I don't know if you served in some other states prior to that.

SCOTT FRAKES: No, 32 years with Washington DOC.

BRANDT: But you have a lot of experience nationally. I know you're well-respected. Is there such a thing that-- and, and constitutionally maybe we can't do this. But could states band together to, to form a regional prison? So, for example, I've heard Texas has closed, like, eight facilities down there. So if there is excess capacity in another state, is there some way that a state that has needs capacity can lease that from another state?

SCOTT FRAKES: At the very least in statutory, but I'm told that it's-- there's language in our constitution that also gets in the way of us. So we operate under the belief that the only people we can send out of state are the people that raise their hand and say, can I, you know, do-- we have the interstate compact. So we have the ability, but we don't force anybody out because of, again, combination of statutory language and constitutional language. And I've asked the question more than once because that was a thing that I had access to when I was in Washington, was the ability to rent beds. And, and at times we rented beds in Minnesota, Colorado, someplace else as well. But the downside of that, of course, is that's expensive in terms of operational cost. So when you talk about \$41,000 a year, that is the most simple math. The Department of Corrections in Nebraska cost \$230 million dollars a year and you divide that by the 5,300 inmates and that's cost per inmate. If we get five less inmates in this next year, we will save maybe \$15,000, cost of food, the cost of their clothing, and some incidentals. We still-- all the other costs are fixed and they don't go away. If you're not a, a packed system, you know, we're pretty packed so that you actually have the luxury of you bring your population down, say, 200 inmates, then you can close a living unit and then that allows you to eliminate 30 FTEs and some other stuff. And now you're probably saving \$15,000 per inmate.

BRANDT: So--

SCOTT FRAKES: If you get way, way down and you close the whole prison, now you start to get around to the \$25 or \$30,000 per inmate. But the only way you ever get to \$41,000 is if we don't have a Department of Corrections.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

BRANDT: So let me flip the question around, let's say we get so efficient with our new prison and everything and you've got some empty spaces, would Nebraska under current statute have the ability to lease those spaces to Minnesota or Kansas or another state?

SCOTT FRAKES: I haven't seen anything that says we couldn't do that. I think it's just never been the reality. So I don't know that anybody's ever explored it. But everything that I did in my research for private-public partnership, because we even have statutory language that says that we could have private entities that came in and, you know, ran facilities. But I've said for a long, long time, I'm not a supporter of, of having private prisons.

BRANDT: All right.

SCOTT FRAKES: But potentially, yeah, at least in theory it exists.

BRANDT: All right. Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you for being here, Director. So basically, it's been seven years to get this train running, this runaway train running down the tracks, in my opinion. We've been here working on this together with Senator Morfeld. I do appreciate seeing this-- these list of programs. Again, they're effective. And Senator Ebke and I actually were asked by the former chair to, to ask for this, to find out what the programming waiting list was. So these are numbers that are in a bubble because they, they don't relate to numbers on waiting lists. They don't relate to when these programs are available at what point in a, in a prisoner's time at-- in Corrections. So I appreciate this. We need more information, this is not sufficient to really-- I mean, yeah, it looks good that the numbers are going up, but in relation to what? So that's, that's one of my concerns. I also find that it's poignant and not, in my opinion, coincidental that we're hearing this 22 days after Senator Chambers has left. I find that very interesting. And we have been talking about this and talking about this. And then all of a sudden we're hearing it today. I think that it is-- we have continued to meet barriers on, on programming, we've met barriers on sentencing reform. Senator McKinney rightly pointed out, why hasn't there been an effort by you or someone in the administration to help us? For seven years, we could have been working on programming. We could have been working on sentencing reform. I had a bill two years ago that cut us down to 124 percent of capacity, but

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

we didn't want to do that. We wanted to build and build and build. And that's pretty clear now that I understand that you built a state-of-the-art prison. I, I don't know why I missed that one over these seven years, but that was the intention of this fire. I do appreciate you and you know that I respect you, but it's clear that your fire was to build this prison. So I, I sit there and look, we had the Chief Justice talking to us last, last week or this week. And, you know, he talked about the fact that the work that has been done in juvenile justice by the Legislature in the past few years has helped to reduce recidivism. It has helped to lower juvenile detention. All of these things. And you even have said today yourself, if nothing is done on sentencing, then the numbers are going to keep coming up and we will have to continue to build prisons. And this is exactly what this committee has brought to the Legislature time and again is sentencing reduction. But again, we continue to meet these barriers. Senator Lathrop has brought bills. I've brought bills. Senator Morfeld. And I just want the committee to understand the fact that we are our own barrier because we listen to oh, no, if we keep this up, you know, just trust us that this is going to work. It hasn't worked. We've continued to trust and here we are at this point where the taxpayers now are going to have to pay for something because we wouldn't do anything. And the executive branch didn't want us to do anything because we're going to build a giant prison. And if I'm sounding aggravated, I am. We've worked on this the whole time you've been here. The whole time I've been here. And opening a museum rather than fixing this by sentencing reform, by diversion, by programming early in the, in the, in the prisoners' time in prison, you know, that, that's just beyond belief to me. The fact that, you know, we've had again and again questions about staffing and that we-- we're going to have to pay more people. Is that staffing number included in the \$260 million, all the extra staff that's going to be required?

SCOTT FRAKES: Two hundred thirty. No.

PANSING BROOKS: Two hundred thirty.

SCOTT FRAKES: Yeah, I talked about the operating--

PANSING BROOKS: So--

SCOTT FRAKES: --state's operating budget, \$34 million a year.

PANSING BROOKS: OK, so that's not-- OK. And I guess the other thing I wanted to point out is that we had the working group, the 605-- LB605

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

working group, and that was disbanded over the objections over a number of us who said, no, we have to keep working. We have to be discussing the various options, whether it's a new prison, whether it's, it's reform, whether it is renovation of prisons. We, we already asked for all of this. And the answer was, oh, no, this isn't necessary. Just let us move on and do what we need to do. So, again, I just-- it is frustrating. I hope the taxpayers sort of realize what's been going on and how this, this has been a plan of-- a plan that has not brought the, the, the legislative branch along with. And you come and been very open to questions, but I agree or but I think that we have not seen this, this runaway train gathering as much steam as it has. So I'm, I'm frustrated. I hope the Appropriations Committee will respond appropriately. I don't think this-- when you look at Texas, when you look at what all the conservative groups that are saying sentencing reform, that we don't need to build more prisons. This is happening internationally as well. We have to look at this and say, no, we're stopping that old, that old form of building to bring more people in. That's not what we need to be doing for our Nebraska citizens, in my opinion. Thank you.

SCOTT FRAKES: So I know you didn't specifically ask a question.

PANSING BROOKS: I would love to have your spot.

SCOTT FRAKES: I, I appreciate the opportunity. I was going to try my best to get that opportunity. So I'll start with your comment that you think that I came here with a mission to build a prison. That's not true. It's simply not true. I came here having studied the master plan extensively. Probably more than any document I looked at in a long time, because I really tried to understand the system that I was trying to become a part of and then came here boots on the ground, try to figure out really what we had. And that's why we invested in OCC and D&E, that's why we invested in the Community Center here in Lincoln. And that's why I continue to look at, you know, what are some of the underlying core issues that we need to address, because it was not, you know, adding-- it started actually, if you'll think back, those of you-- you were here, you and I, the conversations about Air Park that we needed to really take a hard look at Air Park. I told the body at that time, no, it's a loser. You said, no, we want you to do a program statement. So I went out and we did a program statement. It is a loser. There's no question about it. It would have been pouring good money down a rat hole. I'm being really blunt. But more importantly, I don't want an eleventh prison because as soon as you add another prison, the overhead, the administrative costs and everything else. So

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

if we can work within our existing prisons and do that effectively, that's absolutely where I want to be and still want to be today. But in looking at the Penitentiary and trying to make the best decisions, and soon as I'm able to give you more information, I think you'll be able to even better see, do we invest 170 or more million dollars in, in really an ancient complex or do we take that same money and take, you know, in terms of capital construction a little bit more and build something new and continue to use that complex with very little investment. So that's the argument I'm trying to make. One way or the other, we've got a facility that's going to need a huge investment of money at some point, and we can keep pushing that down the road. But it's going to get to be more and more problematic and there could be some very bad outcomes.

PANSING BROOKS: Why don't you--

SCOTT FRAKES: Because there if you build--

PANSING BROOKS: --just, just add on to that? It would be nice to have some sort of proposal that has been, you know, the experts have gone through that. I, I co-chaired the LPS bond issue for \$250 million. We looked at tearing down Lincoln High School and Southeast High School and instead determined that it was much more efficient and better to spend the millions of dollars to renovate that-- those schools. So you're telling me that and I understand that. But there are cost savings by completely renovating an institution.

SCOTT FRAKES: Yeah, and there can be. And that's exactly what we did in two facilities. And it was a smart decision. It's my hope that when you see the program statement for NSP, you'll see the other side of it and go, you know, this isn't the right direction the [INAUDIBLE] wants.

PANSING BROOKS: Thank you.

SCOTT FRAKES: Yes.

LATHROP: Do you have a question? OK. Senator DeBoer, do you have more questions?

DeBOER: No, I was actually done.

LATHROP: OK. Senator McKinney.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

McKINNEY: When you talk about, you know, security threat groups and gangs, it kind of triggers me a little bit, honestly. What is the racial breakdown of our prison population?

SCOTT FRAKES: I'm not going to quote off the top of my head and get it wrong. I will make sure that we get you those stats. It's-- I believe it's in our data stuff that's available, but I'll just make sure we send it directly to you.

McKINNEY: I'm not sure I'm wrong, but the majority of our prison population, those individuals look like me. And my district is one of the most neglected districts in this state economically. And to sit here and listen to you propose building a prison that would cost the state \$230 million instead of the state investing in people and communities. I, I, I really don't understand it. Do you think it's better to invest in a prison than invest in people and communities, especially communities where the majority of your population is coming from?

SCOTT FRAKES: Senator, I believe that we should incarcerate people because of the risk they present to society and not simply as punishment. Punishment serves its purpose, but really it should be about risk. And that's a big part of the decision making. That's why some people get probation, some people get diversion, some people get jail, and some people get prison. If you and I were having just a one-on-one conversation, I think you would acknowledge there are some people from all of our communities that have presented a level of risk that warrants, you know, confinement.

McKINNEY: So are you, are you familiar with the school-to-prison pipeline?

SCOTT FRAKES: Oh, yes, yes, I am.

McKINNEY: Would this new prison decrease that, that prison-- school-to-prison pipeline?

SCOTT FRAKES: I think that's solving the problem on the wrong end in terms of-- I'm not proposing to build space to bring more people to prison. That's not the motivation here. I'm proposing that we need to invest in our Corrections system to keep it safe and secure and healthy and meet a need that already exists and a need that no matter how good we get-- is there anyone that really believes that there is no need for prison, that every person that's currently incarcerated in

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

the Nebraska prison system could safely be in our community? If you really believe that, then please come and walk with me and meet some of the people that we're responsible for. Come look at their records, come look at their behaviors. And I'm not saying I want to lock up more people. I'm not saying I want to lock up people of any color, race, persuasion, religious belief, whatever that factor might be. But I am saying there is a certain part of our population in this state, in this nation, in this world that are too dangerous to live among us.

McKINNEY: I know a lot--

SCOTT FRAKES: [INAUDIBLE] have the right place to house them and do that in a way that's safe for them, safe for the people that are around them, safe for my staff, and then ultimately safe for the community.

McKINNEY: I know a lot of individuals in our prison population. I visited family, including my father in our State Penitentiary. And my question to you is, if, if you cared about safety of staff and individuals that are in that population and protecting the public, why not be proactive before today during your time as director of our, of, of our prison system and working with the Governor to push him to push legislation and work with other senators to reduce our prison population?

SCOTT FRAKES: Because that's, as I said before, I have a specific role in state government and it's defined and there are parameters that I work within, and my role is to make sure that we run a safe Correction system and that we do all we can to prepare people for release, since almost all of them are coming back to live with us. I have lots of personal beliefs about a whole lot of things in this world, but when it comes specific to my duties and the job that I was hired to do and to carry out and that I'm paid to do. You know, what I just described you, that's my role in the criminal justice system. Just like I wouldn't want Judge Heavican to, you know, come and tell me how to run the prison system. I'm not going to tell them how to run the judicial system, so.

McKINNEY: That's all the questions I got. Thank you.

SCOTT FRAKES: Yeah. But we will make sure we get you the break down. I can say this very clearly, yes, there is disparity incarceration in Nebraska. There is disparity incarceration in America. No two ways about it. So I won't-- we won't have any argument about that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

LATHROP: Senator Stinner.

STINNER: Yeah, I need to ask a couple of questions and make a little bit of a statement. I did not catch how many-- additional people we're going to hire with this expansion program.

SCOTT FRAKES: You know, a facility of that size, it's going to be in the 400 to 450 FTEs. The program statement will identify specific numbers.

STINNER: You know, a little bit along the lines of Senator DeBoer, some of the things that I've looked at from staffing is obviously the vacancies. I had 211. Fiscal gave me that coming in. You said 300. So we have a problem.

SCOTT FRAKES: Two hundred eleven is the protective services numbers.

STINNER: That's protective service. Thank you for that.

SCOTT FRAKES: Yeah, I think. It's right around that.

STINNER: I also looked at your turnover record over the last five, six, seven years. It varies between 25 and 35 percent. I did a look back 20 years ago and it varied between 8 and 10.

SCOTT FRAKES: Where it should--

STINNER: Tell me, tell me the difference between--

SCOTT FRAKES: Yeah, well--

STINNER: --what-- where we were at then and where we're at today.

SCOTT FRAKES: You know, well, I don't know what the economy in Nebraska was, so that would be a factor. What was the unemployment rate or the employment rate? Also, there was a time when Corrections was just seen as a good, viable blue collar, you know, Corrections employment option. And so there was, I think, a bigger group of people that were interested in the work. There was a time when working nights, working weekends, doing shift work was just part of the, you know, accepted culture. Values have changed. People want to work daylight hours and they'd like to have weekends off or at least days off consistent with their spouse. They want to be there in the evening for their kids', you know, plays and basketball games and whatever it might be. And they're on the weekends to do family activities, which I

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

can only praise people for that. But we're a 24/7 operation and it has become more and more challenging to find and retain people that are willing to put up with the off-shift hours. And then compounded by this ongoing vacancy rate that drives the overtime, the mandatory overtime. And that's, you know, so you have all of these different things that feed into why we're at where we're at. We are down to, I think it's 21 percent for 2020 for overall agency turnover and 26 percent for protective services. So again, three years in a row, the right direction. Are we where we need to be? No.

STINNER: OK, turnover tells me a lot about working conditions. You explained some of those. Mandatory overtime obviously is something we've discussed before, so. But again, it comes down to wage as well because we did give a substantial increase. The question is, did we give it to everybody? Did everybody get an increase or was it just a classification?

SCOTT FRAKES: Protective services has right now got the best overall compensation increase. But this labor agreements that have just been signed, it'll go into effect next year, move all the other represented staff in the right direction. I don't know at this point what the plan is for the rules and regulations staff that make up some for us. I don't know what it is, 20 percent or something, 30 percent, probably 20 percent of our staffing. But typically what happens is ultimately their compensation falls in line with the general agreements. But we have two-- we now have two different agreements with the two unions and other and I don't know what other unions as well that have that progression pay, step pay, whatever you want to call it with a merit, you know, performance-based component. So I, I see, you know, the potential for all of those state government positions to fall in line with that. And that's definitely helpful. The sad thing is, is we saw a substantial increase that went into effect in January of-- or I guess that actually the money started coming to staff in July of 2020 from the agreement we reached in January of 2020. But COVID, COVID affected everything. And I'm not going to, you know, claim that everything, that COVID didn't have an impact on turnover in a positive way for us as well. I think there was less movement between jobs and a little bit of increase in unemployment. Not much, though. Nebraska seems to have weathered that as well so far.

STINNER: But one of the things that I think our committee wants to see is detail relative to this \$34 million. Wage, salaries, personnel costs drive a lot of that. I think you indicated 70 percent of that. So we're going to be interested in really kind of unpacking all of

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

that to take a look at it. I'm going to be interested in the cost savings that you put down simply because I've been there before as a business person. This is how much we're going to save if we do this. They never seem to quite happen that way. So I'll be interested in, in digging that up.

SCOTT FRAKES: OK.

STINNER: I just want to say I was-- this is me personally. I was surprised to see this come out in December. I wasn't expecting a large, a large project because we've been, as Patty-- as Senator Pansing Brooks has indicated, we've been after you for a long time about the prison overcrowding, we went by some emergency dates and the like of that. We just passed a tax package that's going to be about \$375 million at the top. We got Medicaid expansion. We got a host of other initiatives that we've got to address within the state. And so when I look at this and I look at my cash reserve and the, and the, the, the importance of having a robust cash reserve I think has, has bode well for us over the past and will in the future. So building that back up is, is critical. And \$235 million, lots of money. So we're going to, we're going to take our time. We're going to take a look at alternatives. Why does Texas have these kinds of trends? What did they do? And that's really what Judiciary will be tasked with, is to take a look at some of those other things. And I'll be interested in looking at that. I, I get the fact we've got to do something, but I'm just not sure what pathway we need to take. So that was the statement I wanted to make.

SCOTT FRAKES: So I hope--

STINNER: And we'll, we'll have another shot or two when you come to Appropriations.

SCOTT FRAKES: The impact of COVID is, is so across the board in terms of making 2020 seem like it was five years long and, and realizing that we actually started a session last year and then stopped it and then, you know, picked it up in the summer. But I think it was public with the request for information for the private-public partnership, like I want to say in February. So I-- maybe it wasn't getting communicated in a way that was as widespread as I thought. But I, you know, had identified in the fall of 2019 and told my boss, we've got to do something, I've, you know, I tried all the other options.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

STINNER: It's probably a function. I don't get the Omaha and Lincoln paper in Scottsbluff. So I could--

SCOTT FRAKES: It could be that, yeah. But and honestly I went at that private-public partnership seeing that as a very viable option based on conversations with, you know, other directors that are using it right now and not fully understanding how you make the math work and have it make sense and in the end just doesn't work for us at all, we would spend significantly more money. We'd spend smaller amounts up front. But over the course of over the 30 years of paying it off, it was whatever, it's in the documents, you know, \$300 million or \$400 million difference.

STINNER: Thank you.

LATHROP: Senator Dorn.

DORN: Thank you. Thank you, Chairman Lathrop. Thank you for being here. Wasn't going to ask questions, but some of the questions have been brought up by-- the \$170 approximately, I understand the \$230 to build, the \$170 million that you look at-- are looking at as a-- I call it retrofit or whatever for a [INAUDIBLE]. Explain a little bit how you're looking at those numbers. Is that a cost over a period of years or-- I mean, if we did not build and your only other option was then to refurbish that. How is that going to come about? Is that in a smaller increments or is that more into your budget or is that more of a capital outlay like this is going to be?

SCOTT FRAKES: It's a great question. It's, it is very much a capital outlay because of the complexities of doing it inside an occupied prison. It's probably at least a six-year project. So it would go over three biennium and maybe even into a fourth biennium. So the chunks per biennium would get smaller. But overall, you know, we'd still get to that again. And I'm estimating at least \$170 million. And like a lot of things, there could be decisions made to fund certain pieces and then, you know, push it out even more like fixing this building, you know, over five biennium, but push it back to the fact that we are already housing more inmates than we, you know, were built for and I mean even in excess of what would be good operating capacity in some situations. We're not going to get to zero incarceration rate, that just isn't going to happen, so at least that's my belief. Like I said, the best in the country right now, maybe 160 per 100,000. And I think Nebraska is going to grow. And I don't know what the current rate is. It was 20,000 a year at one point. But it feels like-- I predict it's

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

actually going to tick up. I think there's a move back to the center of the country and we're going to benefit from that. So that need is there, continuing to do our work better and better in terms of preparing people for parole, but recognizing that parole-- not everybody in our system is eligible for parole because of either post-release supervision, which is a good program and a good option, but it's different than parole or flat sentences or just incredibly long sentences that we often see. So we have that stacking effect that I've talked about in other hearings. So, yeah, it's a, it's a challenge of trying to address both our capacity needs, aging infrastructure needs, and then looking out to the future, because that's the other thing that I'll talk, I'll talk more about it I'm sure in other hearings. And without a doubt, I'll have Appropriations testimony, I'll have Judiciary Committee testimony. And at that point we'll have the NSP document. And then hopefully not long after that, we'll have the program statement for what I'm proposing to build. The significant investment in NSP shrinks our capacity. It doesn't grow it. We're not-- we will go from being able to house 1,350 people there safely but compactly to 1,200 people. So that's just one more factor that weighs into why I'm going to continue to tell you that's not where we should spend our money. You know, we should maintain it and keep it functional operational and use it for minimum custody and get some good life out of it. And who knows, ten years from now or-- that really wouldn't come to life until 2025. And I'm saying there's probably another ten years of operational life in the Penitentiary at minimum security. And at that point, really, the decision will have to be made. Do-- you know, does Nebraska close it like they did the reformatory back in 1981 or '80, whenever it was. Or do you turn around and decide, OK, we're going to rehab it and find its new life yet again. Both of those are possibilities.

DORN: Thank you.

LATHROP: I got just a couple of questions for you. And first of all, thanks for being here. The-- you said that you-- to retrofit the NSP, it would cost \$170 million. Do you have an engineer study that's telling you that or is that just you ballparking it?

SCOTT FRAKES: No, that number that I've been using was, you know, a ballpark looking at projects and other things. But the program statement that nails that down is this close to being in your hands.

LATHROP: All right. So let me ask you, you've seen that, you have an idea what's in it. So here's a question. Of the \$170 million, if we

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

built the new facility that you proposed and you're here to talk about today, how much of that \$170 million are we still going to have to spend on things like HVAC and deferred maintenance and--

SCOTT FRAKES: Yeah.

LATHROP: --those kind of things? I, I notice that you suggested you can do it. You can make the conversion of NSP from what it is today to lower security level at nominal or minimal cost. But this \$170 million includes some HVAC and some deferred maintenance.

SCOTT FRAKES: It would--

LATHROP: What's the number that you're going to spend, regardless of what we do at NSP? How much of that \$170 million are we going to see show up even, even if we build the new prison?

SCOTT FRAKES: OK, I wouldn't try to tie it to the \$170. I'd more just say we have a deferred-- we call it the deferred maintenance list. It is no maintenance projects that haven't reached the emergency crisis place. And so between our budget, the 309 money, the 914 money that is accessible through DAS, \$15 million, roughly I think, between now and 2025. And that is every year we spend on this agency, I would guess \$5, \$6 million, \$7 million on--

LATHROP: So for--

SCOTT FRAKES: --maintenance projects.

LATHROP: Yeah. And I'm trying to, trying to get people out of here. So I'm-- and I don't mean to be-- to interrupt or, or to be rude to you, but the, the \$230 doesn't avoid the \$170. There's still some things that need to be done there. And you're telling us that's probably \$15 million worth of--

SCOTT FRAKES: Right.

LATHROP: --things in addition to the conversion to a lower security level, whatever that might involve.

SCOTT FRAKES: Yeah, so--

LATHROP: Is that true?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

SCOTT FRAKES: So what I am saying is the conversion to minimum custody doesn't drive any new capital funding request. Maintenance of the existing structures that's already known about is a cost that still remains and will have to be addressed and--

LATHROP: OK.

SCOTT FRAKES: --there'll be new cost. And that's true for every one of our existing prisons.

LATHROP: So you've talked about what this might do to our capacity, but it doesn't help Diagnostic and Evaluation Center that sits at 300 percent of capacity. In other words, this new facility is not going to have a new entry point into the Department of Corrections. Is that true?

SCOTT FRAKES: No. Sorry, I cut you off. I believe that with the addition of the 384-bed complex and the other work at over there that we're going to be able to bring our D&E population back down to that 350, 345 level somewhere in there. There's a number where everyone has a bed in a cell. I think that it's going to give us that flexibility to address that issue.

LATHROP: Even that would be double the design capacity, wouldn't it?

SCOTT FRAKES: It's double the design capacity. But, you know, we've talked about that before. That's a very fast turnaround. It's-- it runs more like a jail than it does like a prison. And if everyone has a, has a bed in a cell, it works really well. We got down to 350 last year for a while and it was wonderful.

LATHROP: OK. And I think I have one more question. When you were asked about the cost of the new facility, you, you showed us the math and you said, I think it's going to be a net \$34 million. Do I remember that right?

SCOTT FRAKES: Not-- so we have a base, base operating cost of about estimated at \$34 million--

LATHROP: OK.

SCOTT FRAKES: --and then reductions in staffing and other costs in NSP or potentially could help offset that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee and Appropriations Committee January 22, 2021
Rough Draft

LATHROP: So is the base, is that are we taking care of the kitchen and the security and but we haven't addressed, you know, vocation, we haven't addressed putting more psychologists, psychologists and professional staff, medical nurses, mental health professionals?

SCOTT FRAKES: Yes. Although there will be offsets specifically from the Penitentiary, because much of the staffing you describe there are centered in our high-security facilities, not in minimum custody. So those would be FTEs that would move as well.

LATHROP: OK. I think that's all the questions I have. Anyone else? Doesn't look like it. Once again, thank you for being here today. We appreciate it.

SCOTT FRAKES: Thank you for this opportunity. I really appreciate it.

DORN: Thank you.