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Appropriations Committee
March 10, 2015

[AGENCY 5 AGENCY 11 AGENCY 94]

The Committee on Appropriations met at 1:30 p.m. on Tuesday, March 10, 2015, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on state agency budgets and LB229, LB237, and LB654. Senators present: Heath Mello, Chairperson; Robert Hilkemann, Vice Chairperson; Kate Bolz; Ken Haar; Bill Kintner; John Kuehn; Jeremy Nordquist; John Stinner; and Dan Watermeier. Senators absent: None.

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

SENATOR KINTNER: Bill Kintner, Legislative District 2, which is south Sarpy and Cass County.

SENATOR NORDQUIST: Jeremy Nordquist from District 7, downtown and south Omaha.

SENATOR KUEHN: John Kuehn, District 38, seven counties in south-central Nebraska.

SENATOR HILKEMANN: Robert Hilkemann, District 4, west Omaha.

SENATOR STINNER: John Stinner, 48th District, Scottsbluff.

SENATOR BOLZ: Senator Kate Bolz. I'm proud to represent south-central Lincoln, District 29.

SENATOR HAAR: Ken Haar, Legislative District 21, which is northwest Lincoln and part

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of northwest Lancaster County.

SENATOR WATERMEIER: Dan Watermeier, District 1, Syracuse.

SENATOR MELLO: Assisting the committee today is Rachel Meier, our committee clerk; and our committee pages for the day are Julia and Rachel. On the tables in the back of the room you will find some testifier sheets. If you're planning on testifying today, please fill out one of the yellow sheets and hand it to Rachel when you come up. It helps us keep an accurate record of today's public hearing. There's also a sign-in sheet on the back table that if you do not wish to testify but would like to record your position on a specific bill or an agency budget item. If you do have any handouts, please bring at least 11 copies and give them to one of the pages when you come up. If you do not have enough copies, the pages will help make more for us. During the portion of the day that is the public hearing on legislative bills, we will begin bill testimony with the introducer's opening statement. Following the opening statement, we will hear from supporters of the bill, then those in opposition, followed by those speaking in a neutral capacity. We will finish by having a closing statement by the bill introducer, if they wish to give one. We ask that everyone begin their testimony by giving us their first and last name and spelling it for the public record. When we hear testimony regarding state agencies, we will first hear from a representative of that state agency. We will then hear testimony from anyone who wishes to speak on that agency's budget request. We will be using a five-minute light system today for all testifiers other than the introducer of a bill or the agency representative. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up with your final thoughts. As a matter of committee policy, I'd like to remind senators that the use of cell phones and other electronic devices is not allowed during public hearings. At this time, I'd ask all of us, including senators, to please check our cell phones and make sure that they are on the silent or the vibrate mode. And with that, at this time we'll begin today's public hearing with Agency 5, the Nebraska Supreme Court. Welcome, Chief. [AGENCY 5]

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MIKE HEAVICAN: (Exhibit 1) Thank you, Senator Mello. Good afternoon to you and all of the members of the Appropriations Committee. My name is Mike Heavican, Heavican is spelled H-e-a-v-i-c-a-n. I am the Chief Justice of the Nebraska Supreme Court here to testify on the committee's preliminary recommendation for both the next biennium and for deficit appropriations. Let me begin by noting that recent legislative initiatives have resulted in the budget request before you, specifically the addition of the Office of Public Guardian, major changes reforming juvenile justice, and additional services for adult offenders. To illustrate this growth, services to adults and juveniles now make up over 30 percent of the total judicial branch General Fund budget. Two years ago none of it was in our budget. However, our budget and deficit requests were submitted at levels sufficient to meet the challenges of implementing these legislative initiatives. You will hear me say several times today that it is imperative that the judicial branch have adequate resources to take on the responsibilities we have recently been given by the Legislature. This includes having a work force that is compensated fairly for all it has been asked to do. The packet you received begins with a list of budget issues that I am requesting be fully funded by the committee. I will highlight the top five requests but will speak to each item on the list. The first two issues on the list and our top priorities are entitled, "Base Appropriation Adjustment," and "National Center for State Courts Salary Survey." Please note that these issues do not include salary increases for judges. They only involve judicial branch employees. The base appropriation adjustment is for approximately \$4.5 million each year of the next biennium. The National Center for State Courts salary survey request is for \$1,660,573 in fiscal year '15-16, and \$1,702,087 in fiscal year '16-17. As you know, for several years the Appropriations Committee has heard testimony about low salaries in the judicial branch as well as examples, such as employees moving from court positions to county jobs because of higher salaries. Based upon your suggestion, the Supreme Court conducted a salary survey, which was completed by the National Center for State Courts in December 2013. Last year's LB905 increased our personal services limitation this fiscal year to start implementing the survey recommendations. This resulted in the Supreme Court

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being able to put into effect approximately 75 percent of the salary survey recommendations. The base adjustment issue is intended to sustain the salary increases given last August. The National Center for State Courts salary survey issue is intended to fully implement the remaining recommendations of the now outdated survey. The salary increases given last year, although significant...although a significant step forward, did not solve all the problems. The salary survey made comparisons between Nebraska and most surrounding states, as well as comparisons between the state and several Nebraska counties. Disparities between Nebraska and surrounding states still exist when a beginning probation officer's salary of \$33,209 per year is still about 20 percent lower than states such as Wyoming's \$41,448 and Iowa's \$40,810 starting salaries. Likewise, disparity between county and state positions still exist, especially in urban areas where, depending on the position, a Supreme Court employee's salary can be from 15 to 30 percent lower than comparable county employee positions. For example, the starting salary for the Judicial Administrator position in Douglas County, which oversees the county court and supervises 75 employees, is 69,040, compared to the \$100,955 salary for the Douglas County Clerk of the District Court, a comparable county position that supervises approximately 50 employees. The duties and responsibilities for court and Probation employees have increased in recent years, and those employees should receive fair compensation as a consequence. In addition, the salary survey has shown us that it is essential to have salaries that are competitive, not only to enhance recruitment but also to increase employee retention and productivity. Therefore, we request these issues be fully funded to prevent falling even further behind. The next request is adult voucher funding, which you have asked us to discuss. Probation currently uses the Probation Program Cash Fund to provide substance abuse treatment and other programs to adult offenders. Revenue to the cash fund comes primarily from a supervision fee paid by probationers in problem-solving court participants, as well as payments from the Department of Correctional Services. Payments come from Corrections because, in the spirit of cooperation, we've allowed parolees to use Probation services and programs, such as reporting centers. The problem is that parolee expenditures have far exceeded the

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revenue from Corrections. As a result, the balance in the cash fund is declining rapidly and is estimated to no longer be viable as early as fiscal year '16-17. It has been a goal of this fund to provide services and programs to as many convicted criminals as possible. This goal grew from the guidance of the Community Corrections Council, a group consisting of representatives of all three branches of government, in an effort to build programs to reduce the number of people going or returning to prison. It has been noted by the Auditor's Office that the balance of this cash fund has been too high. Probation has intentionally been reducing the fund balance over several years. Allowing parolees to use Probation services was one way to accomplish that. Finally, it has only been within the last two fiscal years that parolee expenses significantly increased, up to six times more than revenue we were receiving from the Department of Corrections. Previously, although expenses were greater than revenue, the difference was within manageable limits. However, the trend cannot continue. If the Appropriations Committee does not fund this budget issue, services will no longer be available for parolees. We also request an increase in PSL of approximately \$360,000 for each fiscal year for our Court Improvement Project. This project is a federally funded program intended to improve the outcomes of children affected by the court system. Every state in the country receives this federal money. We have received funding for this program for close to 20 years. Until this fiscal year, the Supreme Court contracted with the University of Nebraska-Lincoln Center on Children, Families, and the Law to implement this program. Please note that Nebraska is the only state that contracts with another entity to perform federally funded court improvement projects. Virtually every other state houses this program within the court system. There are at least two reasons to bring the program directly under the oversight of the court...of the State Court Administrator at this time. First, the longtime director of the project has moved to another state, which provided an opportunity to evaluate the effectiveness of the program. That evaluation showed several areas where efficiency could be improved if the project moved to the judicial branch. Most importantly, there will be opportunities to redirect or reduce expenditures. For example, the university currently charges 10 percent as an overhead cost, or approximately \$110,000 over the course of the next biennium. However, the

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project will not incur this expense if it is under the judicial branch. Again, this request is to increase PSL only. No additional appropriation is requested or required. Our next request is approximately \$1.2 million each year of the biennium for Probation information technology. Probation and probation-based problem solving courts have done a wonderful job of developing computer systems, primarily from the Crime Commission's Uniform Data Fund and a mix of other funding. However, because of reduced funding from the Crime Commission and recent legislation increasing the duties and responsibilities of Probation, this funding method is no longer sustainable. In addition, the Justice Reinvestment Initiative, led by the Council of State Governments, which intends to reduce the need for new prison facilities, will increase the technology needs of Probation. It will be essential to have computer systems that full support Probation officers in the field, for example, mobile technology that would allow Probation officers to record field notes on a tablet rather than returning to the office to input data. Even more important to Justice Reinvestment is our goal to fully integrate or full integration of Probation's computer systems with the court case management system known as JUSTICE. This will allow more information to be shared between judges and court and Probation staff, ultimately improving supervision of offenders. Therefore, we again request full funding of this issue. This ends the funding requests I particularly wanted to highlight. I would like to now turn to our additional requests starting with the Crossover Youth Project. First, the Crossover Youth Project request for \$100,000 each year is intended to reduce the number of youth who are involved in both the child welfare and juvenile justice systems. It uses a model developed by Georgetown University's Center for Juvenile Justice Reform that has shown positive results in Douglas County. The project is also starting its second year in Dodge, Gage, and Lancaster Counties. Funding this request will help us continue that progress which has been made and would expand the program into Sarpy County for next year. Second, as I've mentioned in past State of the Judiciary Addresses, interpreter services continue to be a challenge for the courts, and increasingly so for Probation. Overall there has been a 5 percent increase in the number of interpreter assignments from last year, and a more than 100 percent increase in Probation usage of interpreters. Our request of

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\$350,000 each year of the biennium would fund a much needed administrative position to coordinate interpreter activities. Funds would also be provided to enhance interpreter education and meet the growing demand for non-Spanish language interpreters. The additional \$150,000 request would provide a small increase in the hourly rates paid to interpreters used by the courts in Probation. Interpreters are, for the most part, independent contractors and this increase can only be given to interpreters contingent upon full funding by the Legislature of this separate request. Our last request concerns judicial branch education, or JBE, and is for \$250,000 of General Funds. JBE is primarily funded through a court fee that is deposited in a cash fund. However, revenue to the cash fund has been declining and JBE's use of grants to fund education is not a long-term funding strategy. The demand for training in the judicial branch has expanded tremendously due to the additional responsibilities that have been given to the judicial branch, most especially the addition of nearly 200 Probation officers and the public guardian staff mandated by the Legislature. I would also note that in the last biennium, court fees for this fund were diverted by this committee to pay for deficits in the judges' retirement fund. In conclusion of this portion of my remarks, I do have one technical request. The preliminary recommendation related to health insurance is too low. Estimated health insurance expenditures for the current fiscal year are used by the Fiscal Office to calculate this increase. However, in several budget programs using the current fiscal year was not an accurate means of calculating the increase, and that's primarily because we have more employees. The result is a preliminary recommendation that is short in those programs. Therefore, I am requesting an additional \$565,760 for fiscal year '15-16, and \$741,191 for fiscal year '16-17 to fund the health insurance increase. Now I would like to address our deficit request for juvenile services. A letter dated February 19, 2015, was sent to each of you requesting that \$11 million be added to this fiscal year's appropriation for juvenile services. Let me review with you the reasons for this request. The most significant factor is lack of access to federal funds, such as Medicaid and Title IV-E, which accounts for an estimated \$7,269,200 of the total \$11 million request. When supervision of juveniles transferred from the Department of Health and Human Services to Probation through LB561, we

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were informed by DHHS that the federal funds juveniles were already receiving would be available just as it had been for DHHS. We were informed we would not have to rely solely on General Funds. However, that information was apparently incorrect. Federal funds have not been made available to Probation in the same manner as funds had been available to the Department of Health and Human Services. Although many juveniles are Medicaid eligible, Magellan Health care, the company with whom DHHS contracts to administer Medicaid benefits, is approving payments for less than half, approximately 45 percent, of those eligible, and those were formerly 100 percent funded through Medicaid. Note that Probation is now serving juveniles that are not only denied Medicaid access but have high service needs, needs that tend to be more costly. This is a population of juveniles that was not part or was not under Probation supervision during the pilot project that eventually resulted in the transfer from the Department of Health and Human Services. Cost data on which to build projections for this population were not available when the transfer occurred. Rate increases in increased expenditures resulting from broadening Probation's statutory obligations totaling an estimated \$3,195,200 are the second largest factor. Initial funding was meant to enhance...or to finance services at the same rate that DHHS paid. However, Probation is paying higher rates for some services, such as the foster care rate increases determined by the Legislature and authorized by the Legislature last year, and in particular for use of county detention facilities. For example, \$236 per youth per day was the projected detention rate for county facilities. Actual rates charged by Nebraska's counties, which used the opportunity to adjust upward their rates, have averaged \$272 per youth per day. With over \$4.2 million paid for detention in just the first half of this fiscal year, despite our significant reduction in the number of youth incarcerated. The remaining \$535,600 deficit amount is due to other factors, such as unanticipated expenses for youth using the Hastings Juvenile Chemical Dependency Program--which the Department of Health and Human Services was not charged for and we are--and terms of probation for many juveniles that are longer than estimated. In addition, some of the largest counties have accelerated implementation of LB464, that would be Lancaster, Douglas, and Sarpy, which was intended to be phased in over

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several years. The objective of LB464 is to have juveniles brought to juvenile court where they can receive age-appropriate services and supervision by Probation rather than being brought to adult court. However, implementation ahead of schedule has put additional pressure on the juvenile justice budget for services, making it all the more necessary to have adequate funding for the next biennium. It should also be noted that Probation is serving more juveniles than originally projected. As stated in the letter I referred to earlier, after only half of this fiscal year, Probation has served almost 500 young people, or 32 percent more than it projected for the entire fiscal year. All of these factors have combined to produce expenditures higher than projections. Nearly all of the factors are beyond Probation's control, such as the lack of federal funds. Despite these challenges, Probation has made progress. For example, the number of youth at YRTCs has decreased significantly, and the number of youth in out-of-home care has been reduced from 69 percent to 22 percent. All of this makes funding this deficit request essential to achieving the Legislature's long-term goals for juvenile justice reform. How does this affect juvenile service funding for the next biennium? At this point, we cannot assume that the factors that caused the deficit will change in the next biennium, that is largely access to federal funds. Therefore, I am requesting that the committee's final recommendation for Program 436 included an additional \$11.5 million for fiscal year '15-16 and \$12.1 million for fiscal year '16-17. The increase each year is based on the assumption that rates for services will further increase. As I stated in my opening, the responsibilities of the judicial branch have grown tremendously in recent years due to legislation affecting vulnerable adults, adult probationers, and juveniles. The growth will continue as a result of the Justice Reinvestment Initiative. Nobody wants to see any of these initiatives fail, but moving problems of underfunding from the Department of Corrections and the Department of Health and Human Services to Probation and the courts will do just that. It is vital that the judicial branch be adequately funded and given sufficient resources to fulfill these new duties, both now and in the future. I thank the committee for the support given to the judicial branch in recent years and I look forward to continued collaboration and support from the committee. Thank you for this opportunity to present our requests. I will try to answer any questions you may have.

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Thank you. [AGENCY 5]

SENATOR MELLO: Thank you for your testimony today, Mr. Chief Justice. Are there any questions from the committee? Senator Kintner. [AGENCY 5]

SENATOR KINTNER: Well, good afternoon, Chief Justice. Always good to have you... [AGENCY 5]

MIKE HEAVICAN: Good afternoon, Senator. [AGENCY 5]

SENATOR KINTNER: ...in our little chamber of horrors here. If I added up all your requests right, and I could be off a couple hundred thousand here or there, it looks like \$20.6 million just for this next fiscal year, and then a little bit more beyond that for the year after that. We've got about \$41 million right now left for floor spending and tax relief. If we put \$20 million toward tax relief, that leaves us \$21 million. If we fully funded this, that would leave us \$400,000 after we funded your entire request. I am generally sympathetic to what you're doing because public safety is probably the most important thing that we do here. Is there anything in this that...I'm looking here, there might be one-time spending on the information technology that maybe we could put that off to the...fund that through the Cash Reserve. Is there anything else on here that's one-time that can be put off to Cash Reserve? Is there anything else we could switch over to some of your cash funds? Is there anything you can work with us on here that would lessen the impact on the budget? [AGENCY 5]

MIKE HEAVICAN: Well, I would love to work with you. As you can see, most of the \$20 million you're talking about is for juvenile services, which really has come in with a much higher price tag than we anticipated. And I tried to outline where that comes from. If we are able to significantly access Medicaid in the next biennium, we can't help the deficit request that we've got right now, we could cut that down significantly. And when we're talking about things like Justice Reinvestment, the whole idea behind Justice

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Reinvestment is that some of the money that you might have to spend on Corrections would ultimately be spent in community corrections, which in Nebraska means Probation. So that's where we can help you. We've got to be...we've got to have access to those funds. And frankly, it has just been very difficult for us to figure out with the Department of Health and Human Services and to get access when clearly when these kids, and some of these kids are very high-end need kids, they were being funded through Medicaid before they were shifted to us and now the door has been closed.

[AGENCY 5]

SENATOR KINTNER: Okay. All right. Well, thank you very much. Appreciate it.

[AGENCY 5]

MIKE HEAVICAN: Uh-huh. Thank you. [AGENCY 5]

SENATOR MELLO: Senator Bolz. [AGENCY 5]

SENATOR BOLZ: Thank you, Chief Justice. Could you provide me with a little bit more detail about what you were just explaining relating to the loss of Medicaid funds? Can you just explain what their justification is and whether or not there's any potential for drawing down more of those dollars? [AGENCY 5]

MIKE HEAVICAN: Well, it largely comes down to individual cases where Magellan is now turning down, individual case by individual case, kids that are qualified but they're not allowing the spending. That's primarily what is going on. And as far as I can tell, before we took it over, the Department of Health and Human Services funded all of these kids simply because they were state wards and that was their trigger to fund this. Now they are saying, well, we should never have done that; that was wrong all along. But conveniently, they've now discovered that just when these kids were taken out from under their control and put under our control. [AGENCY 5]

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SENATOR BOLZ: Okay. Well, I may have a follow-up conversation with you or your staff about that issue. [AGENCY 5]

MIKE HEAVICAN: Certainly. Yeah. [AGENCY 5]

SENATOR BOLZ: One more question while I've got the mike. Can you just help me, just for clarity, related to the adult voucher funding? [AGENCY 5]

MIKE HEAVICAN: Uh-huh. [AGENCY 5]

SENATOR BOLZ: Your notes reference that DCS makes payments and that those payments have been insufficient. What is the current basis for the payments that they make? Why do they make the payments in the amount that they're making currently? [AGENCY 5]

MIKE HEAVICAN: We were just being good people. As you're aware, I think there has been a process to work on prison overcrowding and community corrections for 10 or 15 years, and there was a Community Corrections Council that was looking for ways to help do probation better, help do parole better. One of the recommendations of that was to allow parolees to share our resource centers in various counties where parolees can get GED training, they can get job application training, they can get various other assistance kinds of things. And so we graciously allowed Corrections and Parole to take part of that and they have been giving us the funding they giving. It's just not enough now so we can't continue to do that. [AGENCY 5]

SENATOR BOLZ: Yeah. Maybe I wasn't clear enough in my question. What I'm trying to get to is the amount that DCS is paid. Is the amount that DCS pays to you, is that per person? Is it just a lump sum? How do they... [AGENCY 5]

MIKE HEAVICAN: I believe it's just a lump sum, but I can be corrected. [AGENCY 5]

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SENATOR BOLZ: Okay. [AGENCY 5]

MIKE HEAVICAN: It's a lump sum. [AGENCY 5]

SENATOR BOLZ: A lump sum, based on what they have available? [AGENCY 5]

_____: (Inaudible) want to. [AGENCY 5]

SENATOR BOLZ: What they want to. [AGENCY 5]

MIKE HEAVICAN: What they want to. There you go. [AGENCY 5]

SENATOR BOLZ: Okay. That's helpful. Thank you, Chief. [AGENCY 5]

MIKE HEAVICAN: Uh-huh. [AGENCY 5]

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

SENATOR HILKEMANN: I want to talk to you a little bit about the salary survey that
you... [AGENCY 5]

MIKE HEAVICAN: Uh-huh. [AGENCY 5]

SENATOR HILKEMANN: Now this involves the judicial branch employees. Is that
correct? [AGENCY 5]

MIKE HEAVICAN: Yes. [AGENCY 5]

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SENATOR HILKEMANN: And they are behind other state employees? Is that correct?
[AGENCY 5]

MIKE HEAVICAN: The judicial branch employees are not necessarily behind other state employees but most of our judicial branch employees are in our local county courthouses. And we have our biggest competition in those courthouses in Douglas, Lancaster, and Sarpy Counties, but also we have a tough time competing in other counties too. But what happens, for example, with our judicial branch employees and the county court clerk's offices, we can bring them in at a starting salary that is significantly less than what the county is paying, for example, for employees in the clerk of the district court's offices, which because of historical reasons are still county employees. We train them on how to work in the judicial branch and especially we train them on how to use the computer system, the same computer system that the clerk of the district court uses. Then if there are openings in the clerk of the district court offices, they can go upstairs for 2 or 3 bucks more an hour. [AGENCY 5]

SENATOR HILKEMANN: So this is something that's happened over a period of time.
[AGENCY 5]

MIKE HEAVICAN: Absolutely. Absolutely. [AGENCY 5]

SENATOR HILKEMANN: Okay. And then on your...on the juvenile services here, you talk about the access to Medicaid. You mentioned the Magellan. Is also part of this the fact that our state has not embraced Medicaid expansion? [AGENCY 5]

MIKE HEAVICAN: We're not talking about any of the Medicaid expansion discussions,...
[AGENCY 5]

SENATOR HILKEMANN: Okay. [AGENCY 5]

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MIKE HEAVICAN: ...discussions that you are having. These folks or these young people are people who were previously funded through the existing Medicaid programs. [AGENCY 5]

SENATOR HILKEMANN: Okay. Thank you. [AGENCY 5]

SENATOR MELLO: Senator Stinner. [AGENCY 5]

SENATOR STINNER: Thank you, Senator Mello. I'm scratching my head over here, trying to figure out how we lost the Medicaid thing. This \$11 million is a real surprise, I think, to me anyhow. It's a real budget... [AGENCY 5]

MIKE HEAVICAN: It was a surprise to me too. [AGENCY 5]

SENATOR STINNER: It's a budget buster. [AGENCY 5]

MIKE HEAVICAN: It's a budget buster, yep. [AGENCY 5]

SENATOR STINNER: You were talking about 32 percent of something. Would you go through that again? It was about Probation and overprojections and how do... [AGENCY 5]

MIKE HEAVICAN: I think the comment was that we are handling 32 percent more. The number is 32 percent higher than the number we projected when we put in our salary or our budget estimates in the last biennium. [AGENCY 5]

SENATOR STINNER: And that comes from more people on probation? [AGENCY 5]

MIKE HEAVICAN: More people using juvenile probation supervision, yes. [AGENCY 5]

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SENATOR STINNER: I thought probation was kind of a least-cost solution to a lot of the problems that we had. [AGENCY 5]

MIKE HEAVICAN: It is. It is designed to be that and certainly the estimate on getting these kids out of Corrections or out of the YRTC's and getting them out of the local jails is part of that. There's been a significant reduction, for example, in young people in the YRTC's. I assume that that has been a cost saving to the Department of Health and Human Services. Ideally, that money would be put into probation supervision. I don't know if those cost savings have been realized by the Department of Health and Human Services. I do know that none of that money has been put in our budget. [AGENCY 5]

SENATOR STINNER: Have we taken anything out of the budget of Health and Human Services? [AGENCY 5]

MIKE HEAVICAN: I'd be surprised. [AGENCY 5]

SENATOR STINNER: Thank you. [AGENCY 5]

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

SENATOR HILKEMANN: I want to understand this on the judicial branch education. You said that...you mentioned that our cash funds are going down. [AGENCY 5]

MIKE HEAVICAN: Uh-huh. [AGENCY 5]

SENATOR HILKEMANN: And then you said that was because these cash funds were switched. Is that why they're going down? Or are they going down even with this one? [AGENCY 5]

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MIKE HEAVICAN: The cash funds are going down a little bit because they're based on the number of cases filed in courts, and our volume cases there are traffic kinds of cases. Over the years where all of budget...all state budgets and county budgets and so forth were taxed heavily, as you know, during the recession years, there were fewer police officers writing tickets and so forth. So I don't know if that trend is going to continue, but that's the volume of cases that these cash funds come from. So they've reduced, not a great deal but they've been less than they previously were. [AGENCY 5]

SENATOR HILKEMANN: Thank you. [AGENCY 5]

MIKE HEAVICAN: Uh-huh. [AGENCY 5]

SENATOR MELLO: Any other questions from the committee? Mr. Chief Justice, I've only got kind of one follow-up question which is, what happens if we don't fund your deficit request for juvenile services and we don't fund your \$23 million new request for the biennium? What happens? [AGENCY 5]

MIKE HEAVICAN: Well, the only thing I think we can do is request that you put all this back into the Department of Health and Human Services. We have no control over this, over these services whatsoever. I know of no way to start denying services to these kids. And as you are aware, we never correctly projected what this was going to cost because the Department of Health and Human Services either couldn't or wouldn't tell us what it cost to them. I do not think that there has been a significant increase of what this is actually costing the state of Nebraska if you throw in the federal funds. It has simply been shifted to us and we didn't...we didn't get the money that was previously used to do this. [AGENCY 5]

SENATOR MELLO: Thank you, Chief. Any other questions from the committee?
Senator Kuehn. [AGENCY 5]

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SENATOR KUEHN: Thank you, Chairman Mello. Just to follow up on that comment, so with that shift, I know it's early to tell, but, costs aside, do you feel that shift is providing better services for those juveniles? [AGENCY 5]

MIKE HEAVICAN: I absolutely...I absolutely do. Now this is a...now it's a long-range kind of thing and sometimes difficult to measure how many adults do you keep out of prison because you did a good job with juvenile justice. Well, that's really hard to tell. But just keeping kids out of detention I think is a significant step in the right direction. And we really are doing our best to make sure that the services we provide are appropriate and that as much of this as possible can happen in the home, in the family where these kids come from. [AGENCY 5]

SENATOR KUEHN: So, regardless of the price tag, you feel that this is and are committed to this being the best option and committed to seeing this through as a successful program? [AGENCY 5]

MIKE HEAVICAN: Absolutely. I would not have been involved with it if I didn't think that was the case. [AGENCY 5]

SENATOR KUEHN: Thank you. [AGENCY 5]

SENATOR NORDQUIST: I have one quick one. [AGENCY 5]

SENATOR MELLO: Senator Nordquist. [AGENCY 5]

SENATOR NORDQUIST: Thank you. On the adult voucher funding, just so I'm clear, is the \$1.5 million the total amount or is that on top of some other amount? [AGENCY 5]

MIKE HEAVICAN: We haven't signed a contract apparently yet. [AGENCY 5]

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SENATOR NORDQUIST: Okay. [AGENCY 5]

MIKE HEAVICAN: Yeah. [AGENCY 5]

SENATOR NORDQUIST: Okay. And these are offenders who are on probation, is that correct, or are paroled? [AGENCY 5]

MIKE HEAVICAN: These are offenders that are on parole. [AGENCY 5]

SENATOR NORDQUIST: Okay. [AGENCY 5]

MIKE HEAVICAN: So what we would...we do have some control over that. We would simply tell the Department of Corrections that we're not going to let your parolees into our day and evening reporting centers and we would not let you take advantage of the programs we're running that are mostly for probationers. Yeah. [AGENCY 5]

SENATOR NORDQUIST: Okay. And the services are for substance abuse, mental health treatment. Is that the... [AGENCY 5]

MIKE HEAVICAN: All kinds of services, yes, some of those are, yes. [AGENCY 5]

SENATOR NORDQUIST: Okay. Thank you. [AGENCY 5]

MIKE HEAVICAN: Yep. [AGENCY 5]

SENATOR MELLO: Senator Stinner. [AGENCY 5]

SENATOR STINNER: I just have a quick question. [AGENCY 5]

MIKE HEAVICAN: Uh-huh. [AGENCY 5]

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SENATOR STINNER: What is the governing body we can go to, to protest this, to make sure that we get coverage again? This just sounds like...unbelievable nightmare.
[AGENCY 5]

MIKE HEAVICAN: You need to go to the Department of Health and Human Services and... [AGENCY 5]

SENATOR STINNER: At the state level or at the national level? [AGENCY 5]

MIKE HEAVICAN: At the state level. [AGENCY 5]

SENATOR STINNER: Oh great. Okay. That makes me feel good. (Laughter) [AGENCY 5]

SENATOR KINTNER: They'll come to us. [AGENCY 5]

SENATOR MELLO: Any other questions from the committee? Seeing none, thanks again, Chief. [AGENCY 5]

MIKE HEAVICAN: Thank you very much for your time. [AGENCY 5]

SENATOR MELLO: We'll next hear testifiers on Agency 5, the Supreme Court.
[AGENCY 5]

SENATOR KRIST: Good afternoon, Senator Mello and members of the Appropriations Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I come to you in support of many things but not in terms of the dollars and cents but in the programs, and I'd like to boil down about six years of information into about five minutes, if I could. I don't intend to take a lot of your time. Those of you who know me, know that I spent a

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lot of time on the Health and Human Services Committee, and now I'm on Judiciary. I'm the cochair of the Juvenile Detention Alternative Initiative in the state and coauthor of many pieces of legislation in the past four years that have brought juvenile justice reform in the state of Nebraska. With the help of the Chief Justice, we've gone a long way. We haven't done this in a dark room. We're looked at the programs that are out there: the MacArthur Foundation Models for Change, the JDAI program actually comes out of Annie Casey Foundation. And I'm also part of a group that I think you need to know about. They're called the Salt Lake City Group, because the first time we met was in Salt Lake City. It is a group of people that are chaired by the Chief Justice. The Lieutenant Governor is in attendance at all the meetings; several senators, Senator Campbell, myself, and Senator Seiler, then-Senator Ashford when he was the Chair of Judiciary; the CEO of Health and Human Services; the Medicaid director; legal counsels from different committees; not to mention Foster Care Review Office, Kim Hawekotte; and Education Department. If I've missed anybody, I'm sure somebody will come up here and fill in the blanks. But it is the consensus of this group that is able to look on a macro level, from the top down, and say we had a juvenile justice system that was broken. The services were moved and some of them from the OJS and Department of Health and Human Services into Probation. To answer your question, absolutely better service across the board. Here's the problem: The money didn't transfer. The money didn't transfer because there was a sign up in the Medicaid director's office in the past few years that said, "Find every way you can to cut Medicaid." So we're not talking about Medicaid expansion, Senators. We're talking about providing the services that were being provided to these kids. On Tuesday, everybody was getting funded out of a certain funding mix, if you will. On Wednesday, all of a sudden, we can't pay for them that way. That's wrong. That's where the \$11 million deficit comes from. And part of the problem is that we have allowed the Department of Health and Human Services to create large program codes, where they have put money into, and God knows where it goes once it goes in. The accountability and transparency of that money as it goes into those codes, let me give you an example. When the Department of Health and Human Services were being fined by the federal government, they found couch change to pay

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that \$22 million bill, and I don't think I'm exaggerating. I think it's happened quite a few times. Those of you who have been on this committee have seen it happen. I have no doubt that the judiciary has an accountability system, because I've seen it and I can watch where every dollar has gone. And I have tried to follow it through. That macro level group I'm talking to you about for the first time included the new director of Medicaid. And there was puzzlement when we talked about the Magellan money not flowing, and certifications not flowing to those children. He shook his head. I think we have to give him the same time we're giving the new director of Corrections to turn things around. But I think, besides passing a budget, we need to establish the accountability and transparency for every dollar that you give to anyone. And my money is on the judiciary that they're spending that money wisely and we can account for where those dollars are going. One very small little issue, \$100,000 the Chief Justice talked about, that's the Crossover Youth. We have reduced the size, the population in YRTC, the youth correctional facilities in both Geneva and Kearney by about 60 percent in the last few years. That one program, that Crossover Program, that costs us less than \$200,000 a year, when they're asking for a \$100,000, is a key. It is a fundamental building block on how we keep kids out of the detention facilities and out of trouble in the system. I thank you for your time and I stand for any questions. [AGENCY 5]

SENATOR MELLO: Thank you for your testimony, Senator Krist. Are there any questions from the committee? Senator Bolz. [AGENCY 5]

SENATOR BOLZ: Thank you, Senator Krist, and thanks for your work over the years on these issues. Can you provide any additional sunlight on the Magellan denials? What's the basis of the denials? What's the reasoning for that dramatic change? [AGENCY 5]

SENATOR KRIST: I will say that for those of you who have not been in that world, Magellan doesn't do anything that the state of Nebraska doesn't tell them to do. So when you're looking at why there's denials in Magellan, you have to look back to the department to tell them--and particularly in the department of Medicaid: What have you

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told them to authorize by category? And you know the answer to that. Thank you.
[AGENCY 5]

SENATOR BOLZ: Thank you. [AGENCY 5]

SENATOR MELLO: Any other questions from the committee? Seeing none, thank you, Senator. [AGENCY 5]

SENATOR KRIST: Thank you. Thanks for your time. [AGENCY 5]

SENATOR MELLO: Are there any other testifiers today on Agency 5, the Nebraska Supreme Court? [AGENCY 5]

WILLIAM MUELLER: Chairman Mello, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association and the Nebraska District Court Judges Association. I want to go on record for the bar and for the judges in strong support of two items of the Supreme Court budget, the first being salaries for county court employees and probation officers. I don't need to tell you how important good, competent employees are in any entity. That certainly holds true with the courts and certainly holds true for probation officers. And that's where lawyers come in contact with these folks every day and it is critical that they be paid fairly. As for compensation, I also appear before you, even though it's not part of the Supreme Court budget, and that is concerning judges' compensation. As many of you know, judges' salaries are set by statute. That bill historically has gone through the Judiciary Committee. There is a bill in that committee. We are working with the Governor's Office, with Chairman Mello on a judges' salary increase. Historically, this committee and the Legislature has been, I think, fair with judges and has kept up with fair compensation. It is critical that we keep judicial compensation to a point where we can attract lawyers who are willing to become judges and we can retain the judges that we have. We have a great judiciary in Nebraska, due in no small part to the fact that we

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do compensate judges fairly. I'm sorry that Senator Nordquist is not here right now. But we're also working with the Retirement Committee on retirement issues. That's where the judicial retirement legislation goes. As you heard from the Chief, not only do court costs fund court automation and judicial branch education, but they also fund the judges' retirement plan. That is the state's contribution to judges' retirement, unless on an annual basis there is an actuarial shortfall, in which case the state will appropriate General Fund appropriations. As court filings go down, we generate fewer dollars in court costs that go into the judicial retirement fund. So we are working with Senator Nordquist at looking at retirement benefits for future appointed judges, as well as how we can look at what the state contributes for judges and how judges themselves can contribute. As Senator Mello knows--I'm looking at him straight ahead, he's been here throughout this--over the years judges' retirement rates have increased to their retirement plan. We've had a commensurate salary increase as part of that so that we don't get into constitutional problems changing an employee's retirement benefit. But I just wanted to come here and thank you for the work that the Legislature has done, particularly this committee, on judicial compensation. It is very important. Lastly, you heard the Chief talk about interpreter services. Every lawyer and judge I talk to who practices in the courts of our state talk about the growing number of persons who come in contact with a court who do not speak English, and the growing numbers of languages that are spoken throughout our state. One of the requests that the court has in front of you, I understand, is more coordination of these interpreter services. If you can imagine, today, as we sit here, there are courts operating in...well, we have 93 counties. I will tell you the courts are not taking place in each of those counties now. But we have the district courts, we have the county courts throughout this state, and coordinating interpreters is no small issue, as you can imagine. We would ask that you fund the request for interpreter services. I'd be happy to answer any questions that the committee may have. [AGENCY 5]

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

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WILLIAM MUELLER: Thank you. [AGENCY 5]

SENATOR MELLO: Are there any other testifiers in Agency 5? Seeing none, that will close today's public hearing on Agency 5, the Nebraska Supreme Court, and take us to our next public hearing of the day, Agency 11, the Attorney General's Office. Good afternoon. [AGENCY 5 AGENCY 11]

DOUG PETERSON: (Exhibits 1, 2, and 3) Good afternoon, Senator Mello. Thank you, members of the Appropriations Committee, for the opportunity to discuss the budget for Department (sic) 11, which for this moment is the first time I ever knew that I am Department (sic) 11. But I just want to touch on some of the significant points in our budget, and those are mostly in the General Fund. First of all, we are requesting that the roll-over appropriation apply to the Attorney General's Office. We've tried to put together a budget, as you can see from the budget we proposed. We've already had the opportunity to talk about the water issue, so, as I said, I'll focus on the general budget primarily. And probably the most significant element of that budget to look at is the request that we made with regard to salaries for staff and attorneys. One of the things I know is a question is that there were some fairly high-paid attorneys within the Attorney General's Office and the reason their pay was fairly high in comparison was that they had been there for a lot of years. They were bureau chief heads or chief deputies, and that those people had now left in the last year and a half. And one of the things I think is significant to understand with that is from someone who comes from the private sector, I don't fully understand all the nomenclature with state budgets, but I've been introduced to the concept of roll over. Roll over is good but roll over can be bad. So one of the things I have learned from this budget process is that the Department of Justice, our budget was funding a lot of salaries with roll over. And I just want to kind of give you a little bit of a visual here and hopefully you can still hear me okay. But we, in fiscal year 2013 and 2014, were appropriated \$5.6 and then \$5.4 million, but as a result of roll over, we were able to fund a six point...just under \$6.2 budget and a \$5.9 fiscal year

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2014. And the problem with that is if you look at that, we're running, for fiscal year 2013, we were running \$578,000 over budget, and depending upon roll over. And for fiscal year '14, we were running over \$535,000 in roll-over money. And I know, speaking with the people in our accounting office, that basically that's not the way to run an operation. So what we're trying to do is develop our payroll based upon General Funds and to keep it under those terms. Some of the other costs that were a little high, as I look at those fiscal year '13 and '14, was the travel ran about, on average, \$222,000 a year. If we were just to look at what we've done so far, we would be probably more than half...cut that in more than half as far as our travel expenses. It happens that my chief deputy is afraid to fly and so we feel like it will save some money there. The other thing that comes with this then is...so that's the past, and as we go forward, though, I do see some real issues that are important with regards to the budget going forward. The Attorney General's Office has, for the last couple of years, when it's hired attorneys, it started them out at a salary of \$43,000. And I know that there should be no expectation if you work for the Attorney General's Office that you would be competing with private sector dollars. But we did go look at some public sector dollars for starting pay because, as you know, the Attorney General's Office is defending some of the most important criminal matters, some of the most important child abuse, murder cases across the state but also civil matters, representing the state in some really significant cases. So what we did is a little survey of starting salaries for other governmental attorneys. Right here is the \$43,000 that we start assistant attorney generals at. The Nebraska Legislature with legal counsel positions, committee counsel positions, it's my understanding starts those positions just above \$55,000. The assistant AGs on a national average are at \$56,000. We did a ten-state Midwest surrounding area of assistant state attorney generals, what they start out at, and they're starting out at just under \$58,000. The Lancaster County Attorney's Office starts its attorneys at \$58,835. And then the Lincoln City Attorney's Office starts out at \$65,000. Now one of the things, coming from the private sector and looking at that, one of the things I do know is if you look at the...and I understand every public budget is different, but as far as responsibility, if you're working in the city attorney's office, you're handling

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misdemeanors. If you're doing civil defense, if you're doing civil litigation defending the city, the max exposure is \$1 million. So I mean, the degree of responsibility in comparison to the rate of pay is significant and it does make it a little bit difficult sometimes to bring in attorneys to help do such important work when you start them at \$43,000. And in this budget, I would like to start assistant attorney generals at \$52,000, so that's a number that I've been trying to propose within our budget. The other thing, that because of budget constraints in the office in the last two years, they've stopped paying for law clerks. And at the time, that was about an \$80,000 appropriation for law clerks. The AG's Office is probably about the third largest law firm in the state, as far as number of attorneys, with 65,000 (sic). It's pretty critical in the work that you do, particularly when you're in a trial setting, that you have law clerks available when an issue comes up, an evidentiary issue or things of that nature. So you want law clerks to work with. And historically, they were up to about eight law clerks in the office. In this budget, we're proposing adding four law clerks at a cost of \$35,000 a year. The one other thing on that \$250,000 as far as going towards payroll increases with attorneys in the AG's Office, that addresses both start-up attorneys. But I've got to tell you one of the brightest things that has occurred in the two months I've been in the Attorney General's Office is...the best thing that's occurred for me is what I've seen is that we have dedicated...so many dedicated attorneys who have been working on really significant cases. And I heard that going into the office, that there are people saying, for example in the Criminal Division, you've got great prosecutors and investigators. You guys have done very helpful work to us out in the counties but also some significant civil cases against federal agencies. And these lawyers are topnotch. I've been so impressed. But the fact of the matter is I think we do need to bump up some of their salaries or I'll always be running against the problem of losing them to the private sector. And coming in as a new lawyer and sitting down with a group of lawyers to talk about some of these significant litigation matters, I'm so impressed how sharp they are and I would hate to lose them. And I'd hate to see the state's position without the quality of lawyers that we do have. The final...well, thank you, "Vanna" here. The final thing I want to show you is just the workload that's going on within the Attorney General's Office. This caught my

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attention. In 2009, we opened up 1,800 cases or managed about 1,800 cases per year. That number now is up to 2,951. We've had a 38 percent increase in caseload with a 3 percent decrease in attorneys. We've been operating, back in 2009, we had 66 lawyers; that dropped down, 2010, to 60. In 2014, we had 66 attorneys and currently we have 64. One of the attorneys we had in 2014 was a clerk and then...or first-year lawyer and then she went to the city attorney's office and received a \$15,000 increase in pay. So we have lawyers who are very busy doing very important work and I just think, as I looked at the numbers of the 60-some lawyers and what they were receiving in pay, I said, you know, for the quality of people we have and the responsibilities they're dealing with, I think we have to look at making some serious adjustments to those numbers. I would...my modus operandi is not to say that we have the lowest-paid attorney generals in the country. I don't think that speaks well for what is so important about this state. Along with the \$250,000 towards salary and the \$35,000 towards four new law clerks, we also have some equipment. We are seeking \$25,000 to upgrade our software system for important record management. That's particularly important in the Attorney General's Office when you're defending the state, as far as managing statute of limitations and other deadlines. And I think we've learned the lesson of important...the importance of good data management. And so we have not updated that system in a while, so that's an additional \$25,000 cost. There is the, as you know, over the years each year the Attorney General's Office receives \$50,000 to go towards the Autopsy Fund for Children. Fortunately, there's been very little demand upon that. And that currently, with rolling over amounts, is at \$260,000. So there's plenty of funds in that fund to be allocated for any children, child autopsies. But we would ask that this committee consider reclassifying that for also use for our Child Protective Unit. We have two attorneys who are designated going around the state of Nebraska doing child abuse cases, and in those child abuse cases there are some costs associated with lab results and other things, travel expenses. And it would help to reclassify some of that in the Child Protective Unit budget area. And also we hope that human trafficking will also be an area in which we could use some of those funds for services to people who are victims of human trafficking. We also have, and I believe Carol Stitt is here to talk about

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that if necessary, but we've been approached by Carol, who is working in conjunction with the League of Municipalities, about the possibility of the Attorney General's Office overseeing some statewide training of law enforcement officers, particularly in child abuse, child sexual assault type cases. And I would say that that's a priority for our office. Those are the most vulnerable. And so we welcome the opportunity to do that. I also have learned from the different sources that law enforcement are important first contact. We know that the Child Advocacy Service provides a really critical role in that area. Been very impressed with them and they said that they would be willing to work with us closely in training. But we're asked that...we're asking that, based upon the budget that we've put together, that \$257,000 be allocated for that. We're looking at eight locations across the state and I'm going to personally try to be at each one of those, just to emphasize the importance of it. We also are having a video program to those who can't attend. They could watch the video or on-line streaming, potentially. But I'm glad that Carol proposed this to us and I think it's an important service. Of that \$257,000, our thought would be that \$85,000 would be designated as PSL. I would highlight to the committee that the Attorney General's Office has been able, in some significant Consumer Fraud type cases and other cases, been able to bring in revenue to the state of Nebraska. In 2012 Nebraska was awarded \$9.4 million from the National Mortgage Settlement; 2013, there was \$2.5 million transferred from our consumer fund that went to help build the new State Patrol Crime Lab. And the Medicaid Fraud Unit just in 2013 recovered \$5.2 million of...for HHS from Medicaid fraud. And I want to continue to enhance that type of work and the Consumer Protection work. And just finally there's just a few cash funds. As you know, with our Medicaid Fraud we...75 percent of that is funded through the feds and we have to match 25 percent. So that would be an additional \$85,000 this year. And then we are, from the cash funds, we're going to...we recently had the former bureau chief, Lynne Fritz, who retired in January, and we have Abbie (phonetic). Abbie will be replacing her. And we're asking, I'd like to kind of up the game, if you will, within our Consumer Fraud. I think we're seeing more methods of consumer fraud and I think there's more activity that we can be doing in that office, so we're asking for \$300,000 for that. Comes from the cash fund. That is basically "eat

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what you kill," to a certain extent. We think we can kill more things. So that's where that comes from. And then also there is both in the Consumer Fraud there's a lot of data that has to be managed, statutorily obligated to manage, and it's a significant task that right now is done in somewhat of an archaic method. And we have the opportunity to look at a certain system that would make that data entry much more convenient. But it's about a \$75,000 expenditure but, again, it comes from the Consumer Protection area is where we would be seeking to do that. And if we generate enough money in our activity in Consumer Protection, we should be able to cover that cash item. So I think that covers the primary points in the General Fund that we wanted to address with the committee. If you have any questions, I'd be glad to take them. [AGENCY 11]

SENATOR MELLO: Thank you for your testimony this afternoon, Mr. Attorney General. Are there any questions from the committee? Senator Kintner. [AGENCY 11]

SENATOR KINTNER: Welcome, I think. (Laughter) Okay, how much does all that add up to? Did you total all that money that you want then? [AGENCY 11]

DOUG PETERSON: Yeah, for the... [AGENCY 11]

SENATOR KINTNER: For the whole shebang there. [AGENCY 11]

DOUG PETERSON: Well, if you did the whole shebang of bringing in General Fund, cash accounts, federal grants... [AGENCY 11]

SENATOR KINTNER: Well, just General. [AGENCY 11]

DOUG PETERSON: Just General. [AGENCY 11]

SENATOR KINTNER: General. [AGENCY 11]

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DOUG PETERSON: Just General the whole shebang would be, for fiscal year 2016, would be \$6,058,586; and then for fiscal year 2017 it would be \$6,033,560. [AGENCY 11]

SENATOR KINTNER: Okay. Wow. You probably have heard me talk earlier... [AGENCY 11]

DOUG PETERSON: Uh-huh. [AGENCY 11]

SENATOR KINTNER: ...that we probably have \$130 million worth of requests for \$41 million in money. So you can kind of see where the dilemma. Did you look at all your cash funds and everything else you could get money? And have you cut anything? When you came in, did you cut anything as you arrived at this? Did you inflict a little pain before you inflicted pain...tried inflicting pain on the taxpayers? Was there a little pain on your office before you hurt the taxpayer? [AGENCY 11]

DOUG PETERSON: What I would say, Senator, is when I got into office, I think there was so much on the plate litigationwise that that's been 100 percent of where my brain has been at. But fortunately, the people in...who do the accounting elements of our work have been keeping me posted. But I've got to say that the first thing I identified in that budget is to go and look at some of these salaries and it concerned me. I did not look at a cut other than we have, as I said, we looked at that travel expense and thought to myself, you know, we don't need to be traveling like that. [AGENCY 11]

SENATOR KINTNER: Okay. [AGENCY 11]

DOUG PETERSON: So that's going to be, my guess, is going to be about \$120,000 savings in travel. Other than that, where we obviously do the biggest expansion is in the Consumer (Protection), and that's because we think we can generate that much at no cost to the state. The funds have been sitting there. But the one that probably is the

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biggest punch to the taxpayer is the \$250,000 in salary. But again, the cost-benefit analysis of good, quality lawyers and what they can do in analyzing and developing the case and representing the state well makes a difference. And I want to be competitive with those lawyers staying. A lot of them love the work they do. But frankly, you know, if you're a young lawyer and you have a young family and you could go out and make another \$15,000 working for the city as an attorney or maybe another \$25,000, they may love the work but there comes a time that they...and they may love the good health insurance, but there may come a time where they think it's time to go. I just felt that it's necessary to do something to recognize, particularly that start out salary of \$43,000 for new attorneys, and important responsibilities that they have. I thought \$52,000 would be more appropriate. [AGENCY 11]

SENATOR KINTNER: See, you ought to walk down the hall and get Charlie Janssen, bring him down, get him to sniff around. He'd probably cut something for you. (Laugh)
[AGENCY 11]

DOUG PETERSON: Find some ways to cut? Well, I will say this. You know, I've been treading water with the litigation stuff. I think when I'm in office a little bit longer I'll have an opportunity to understand the numbers a little bit better and see where we can cut, because I do understand that it's a fiduciary responsibility to be a good steward with the state's money. And in balancing those values, I say to myself that you got to have...you've got to reward the lawyers who are doing hard work, putting...one of our lawyers puts in 150 days a year on the road trying cases, criminal cases across the state. That type of dedication I don't want to take lightly. So I'll have to look at other places where I can cut, but I want to properly recognize the importance of the work the lawyers do and the staff. [AGENCY 11]

SENATOR KINTNER: Well, thank you. Appreciate it. [AGENCY 11]

DOUG PETERSON: Uh-huh. [AGENCY 11]

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SENATOR HILKEMANN: Senator Kuehn. [AGENCY 11]

SENATOR KUEHN: Thank you, Senator Hilkemann. Do you have an idea approximately of what you estimate your roll-over balances, that you've requested to be reappropriated, will be? [AGENCY 11]

DOUG PETERSON: That number fluctuates, as I understand, quite a bit. I would say in the 300 range. Well, that was a good guess. Around 310. (Laugh) [AGENCY 11]

SENATOR KUEHN: Okay. I appreciate your willingness to acknowledge that that's problematic. As you noted on your chart, about 10 percent of your budget is somehow or another not going through an appropriations process and without oversight, based on last year's budgeted amount of \$5.6 (million) and spending an additional \$600,000 on top of that. So I think you can see, based on that, our concern or my concern in particular, as a member of this committee, of how these roll-over funds go outside of the appropriations process and the budgeting process... [AGENCY 11]

DOUG PETERSON: Uh-huh. [AGENCY 11]

SENATOR KUEHN: ...and create problems for us. So I appreciate your willingness to address that and look towards moving away from an agency dependent upon those types of roll-over funds, so. [AGENCY 11]

DOUG PETERSON: You know, one of the things where I see roll overs that could be helpful is the operations cost. Sometimes in litigation you don't foresee where some of those big litigation costs may come from, whether it's experts. You know, you could spend \$50,000 to \$75,000 on a well-trained expert in a case that you never foresaw, and that's where I would see that, somewhat the unexpected as an appropriate place to look at those funds as opposed to doing a dependency in someone's salary, which I

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think is dangerous. [AGENCY 11]

SENATOR KUEHN: My concern is that you had a \$5.6 million budget approved by the Legislature and somewhere you found an additional half a million bucks. [AGENCY 11]

DOUG PETERSON: Uh-huh. [AGENCY 11]

SENATOR KUEHN: And we have projects and proposals which won't be funded that have a price tag less than that and we just have unsupervised spending authority somehow floating around out there that agencies are able to come up with that kind of money. So certainly recognize and appreciate that, that budget discipline going forward. So thank you. [AGENCY 11]

SENATOR HILKEMANN: Senator Stinner. [AGENCY 11]

SENATOR STINNER: Thank you. I just want to explore the employee side of things. What is your turnover rate? Have you had an opportunity to...how many attorneys leave out of...is it 66 the number that you said,... [AGENCY 11]

DOUG PETERSON: Yeah. [AGENCY 11]

SENATOR STINNER: ...if you're fully staffed? [AGENCY 11]

DOUG PETERSON: Yeah, I...you know, that would be hard, Senator. It's kind of funny because when I was in the late '80s, there's still a few from around there. So the turnover has not been as high as maybe I would expect. I don't know if you have any data on that. But maybe the better number to consider is what is the average longevity of the lawyers that are there. [AGENCY 11]

SENATOR STINNER: Okay. [AGENCY 11]

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DOUG PETERSON: And I think it's fairly high, as I try to look at the faces that we have. But I can't give you a precise number. [AGENCY 11]

SENATOR STINNER: You say your starting salary is \$43,000; industry is in the \$50,000s, maybe even \$60,000s. What's the quality of applicant that you're getting? Is it high quality? [AGENCY 11]

DOUG PETERSON: I'll tell you what. When I...we had to fill a couple of positions and I was amazed at the quality. One was a former deputy county attorney in Lancaster County and then in Colorado, and I called both those county attorneys and said one of the best prosecutors I've ever had. Another one was a law professor on the East Coast who he and his wife wanted to come back here and he was very interested in Consumer Protection. He also had an offer to go back. He was...his wife was from the Lincoln area. They were starting a family. He was from Las Vegas. I tried to give him the best offer I could, because I thought in Consumer Protection he could do great work. And when I gave him the number he said, my wife and I really wanted to do a situation where my wife could stay home with these young kids, and I just have to take the private sector offer. And I know I will probably never be able to compete with some of those, but I was very impressed with the quality of those two lawyers. And that, you know, I've only been here 60-some days. Is that about right? So I can't really... [AGENCY 11]

SENATOR STINNER: Goes fast, doesn't it? [AGENCY 11]

DOUG PETERSON: Yeah, it does go fast. (Laugh) I can't really say that I've seen a broad spectrum of them. But the thing that impresses me the most is we've had some of these cases where I've had to be brought up to speed on things and have been so impressed with the team of lawyers that they do have. And they run the ages of 30 to 60. [AGENCY 11]

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SENATOR STINNER: That's an interesting situation because the studies I've seen is the younger group of people, that are coming in to business anyhow, are turning...that turnover rate is faster than the next group out and the next group out. [AGENCY 11]

DOUG PETERSON: Uh-huh. [AGENCY 11]

SENATOR STINNER: So it's something for you to watch. I'm interested also, you were talking about clerks and hiring clerks. How many clerks does...what's the ratio of clerks to attorneys? [AGENCY 11]

DOUG PETERSON: Well, it used to be...I think they ran about 8 clerks to around 64 attorneys. So now we have zero paid clerks. We have four who are doing it...or two or three who are doing it at no pay. They're doing it as internships. With four, that would put the ratio of 1 law clerk to, what, 14 lawyers. [AGENCY 11]

SENATOR STINNER: Right. Your caseload has gone from...refresh my memory. I was trying to write at the same time you were talking but... [AGENCY 11]

DOUG PETERSON: It's gone up from...it's gone up 38 percent and it's now, real quickly...in new cases or cases managed per year: in 2013 we were managing 2,143 cases in the AG's Office; for 2014 we were managing 2,951. [AGENCY 11]

SENATOR STINNER: Has the type...has the type of cases stayed consistent? And what I'm trying to get to is how many attorneys shall we have per case? I mean is there a ratio there as well? And I know that the type of case that you handle will...it will vary. [AGENCY 11]

DOUG PETERSON: You know, there's a big jump in criminal appeals. For the most part, we're looking at civil litigation. Well, to give you an idea, civil litigation, in 2013 we

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had 383 cases opened; in 2014, 648 cases in the civil litigation. [AGENCY 11]

SENATOR STINNER: Are those the most time-consuming cases of the cases that you handle? [AGENCY 11]

DOUG PETERSON: Yeah, the civil litigation ones seem to have the longest life. You're not under some of the criminal deadlines, constitutional deadlines to prosecute. They are the cases that can involve some of the most cost associated with it, whether it's defending the state on a tort case accident on the highway. That number is the one that jumps out the most to me. The criminal ones went from 1,400 to 1,800. And then criminal appeals have continued to increase, which has put pressure. But I will tell you that one of the top senior attorneys I was working with and I recently had to go up to the federal court for a hearing and he, as we drove up there together, he was starting to tell me what his workload is. And he's got to be 62 years old and I thought to myself, this is like a new associate of a new downtown Los Angeles firm, the type of hours he's putting in. And I was impressed with his service. He's been doing it for a long time. [AGENCY 11]

SENATOR STINNER: Okay. Thank you. Those are the type of ratios that I'd like to see, though, in making some kind of conclusion about where we need to go with your department. We certainly don't want to limit your abilities to hire people. We don't want to limit your abilities to have the right-sized amount of attorneys per caseload. I think that we've seen some results that are pretty spectacular, really. [AGENCY 11]

DOUG PETERSON: Yeah, what I will do, if it helps for the committee, I will have these reduced down to 8.5 by 11's and circulate those to you just for reference points. [AGENCY 11]

SENATOR STINNER: Okay. And then if you could provide any matrix that the industry has that we could relate to this, I would appreciate it. [AGENCY 11]

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DOUG PETERSON: Okay. [AGENCY 11]

SENATOR MELLO: Any other questions from the committee? Seeing none, thank you, Mr. Attorney General. [AGENCY 11]

DOUG PETERSON: All right. Thank you. [AGENCY 11]

SENATOR MELLO: Testifiers on Agency 11, the Attorney General's Office? Seeing none, that will close today's public hearing on Agency 11, the Nebraska Attorney General's Office, and take us to Agency 94, the Commission on Public Advocacy. [AGENCY 11 AGENCY 94]

JAMES MOWBRAY: Good afternoon, Senator Mello, members of the committee. My name is Jim Mowbray, J-i-m M-o-w-b-r-a-y. I'm chief counsel for the Nebraska Commission on Public Advocacy. I would like to thank the committee for the support you've given my office since its inception in 1996. And I've run the agency since it began so we just celebrated our 19th birthday in February. And I, again, ask for your continued support in the future. In looking at the preliminary recommendations, I certainly have no problems with those at all. As you can see as I go through each program, we're essentially not asking for our main operations budget for any additional funds that we used last year. The only increases are those that we don't have any control over, such as health insurance increases, the salary increases. There were some rent increases. Those are the types of...the only increases that we're asking. We're asking for the same amount of money that we've had in the past. And I remind the new members of the committee that all of my programs are cash funded. There's no General Funds involved. I mean I realize cash funds are still tax funds, but at least it's not coming out of General Fund revenue. One additional expense that we are asking for is that this will be the last time I will testify before this committee. I'm retiring August 31 and so there is a payout for my leave that needs to be expended for one year, so that's

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one of the increases in the PSL, is a one-time only. The second program, Program 426, a little background again for the newer members. The Legal Aid and Services Fund is a fund that's...we're simply a pass-through agency. The fees for this fund, as well as our fund, come from filing fees, as has been talked about by the Chief Justice. And so we don't get any of this money. And we, of course, as you can see, we don't ask for any money in our operational expenses to carry out the Legal Aid and Services Fund. We just simply absorb it within the agency. So we basically pass through whatever we do receive from that filing fee. The spending authority of \$3 million, we're not even close to that. In fact, this year, this calendar year, we'll...the grants total \$1.9 million because, as the Chief Justice has mentioned, filings are decreasing. And in fact, I've seen in the last five years they're down approximately 15 percent and I don't see that changing. As I've looked at this year, this is going to continue to. These filings are going to go down. And I think there's a number of reasons for that. Since most of these filings come from either misdemeanors or traffic violations, the decreases obviously, majority, are coming from those two areas. And I think that it's predicted because of basically the baby boom population is declining. And the bubble of our population has basically hit and now we have fewer and fewer people basically to go out and commit law violations. When I was a youth, I certainly generated a lot of filing fees for my driving. So anyway, that's going to continue and I think that's something that we'll have to look at in the future for, for example, judges' retirement, for the Legal Aid and Services Fund for my office. But for now, we have cash in the bank, so to speak. We are now starting to draw down on that from our operational expenses from Program 425. But essentially, as I say, with Program 426, whatever we get from that filing fee, that goes directly to civil indigent service providers through grants that we operate. The Program 429 is a small fund, again, coming from a filing fee of \$1. That goes to Legal Aid of Nebraska. They are the only ones that qualify to receive these funds. They're...at least there's not been any other civil indigent provider that qualifies under the statute. So right now that money again directly goes through to Legal Aid of Nebraska but, again, they're not receiving \$290,000. We're taking in far less than that. But we keep this spending authority just in case we do have the money so that if it does for some reason come in, we can actually

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make sure that it passes through. The new program we started just this year was Program 430, which I think is going to be a very successful program that Senator Conrad got passed last year and it's called the Rural Practice Loan Repayment Assistance. Again, that's cash funded but that comes from a UCC cash fund, not from filing fees. What that essentially does is for lawyers that are practicing in rural Nebraska, counties of 15,000 or less, or in public interest practice can apply for money to be given them to pay down on their student loans. This year when we started this, we had 32 applicants. The average loan balance was \$90,000 in student loans and that's just law school loans. And the average salary was \$48,500. So you can see there certainly is a need for it. The 28 attorneys in rural Nebraska and public interest lawyers got an average of \$4,600 to pay towards their student loans. Right now that's funded for three years, and we'll be back or somebody will be here in my stead encouraging you to keep that program going. Program 455 again is just some spending authority that actually comes out of our cash fund. That's the DNA Act. When that was passed there was concern by counties that they would...it would be another state unfunded mandate. And so again, my office is mandated to not only represent an individual who has a DNA issue but also to pay for the costs of the testing of the DNA samples so that there again is no cost to the counties. The whole purpose of my office is to save counties property tax dollars so that they can be spent for other purposes than indigent defense. We've had a very busy year this year. As Attorney General Peterson mentioned their criminal caseload goes up; so has ours. But I've tried to keep our actual spending again to...at a level the same as we've spent the last two years. If you have any questions, I'd be happy to answer them. [AGENCY 94]

SENATOR MELLO: Thank you for your testimony today, Director Mowbray. Are there any questions from the committee? Seeing no questions, I would like to thank you for your state service and we will be missing you in future Appropriations hearings, but thank you for... [AGENCY 94]

JAMES MOWBRAY: You may see me in other aspects but not as an employee.

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[AGENCY 94]

SENATOR MELLO: I imagine we will. (Laugh) [AGENCY 94]

JAMES MOWBRAY: Thank you very much. [AGENCY 94]

SENATOR MELLO: Thank you, Director. Is there anyone else here wishing to testify on Agency 94, the Commission on Public Advocacy? Seeing none, that will close today's public hearing on Agency 94, Commission on Public Advocacy, and take us to our next agency hearing, Agency 15, the Nebraska Board of Parole. Good afternoon. [AGENCY 94 AGENCY 15]

ROSALYN COTTON: (Exhibit 1) Good afternoon, Senators and members of Appropriations Committee. My name is Rosalyn Cotton, C-o-t-t-o-n, chairperson of the Nebraska Board of Parole. Three members of the Parole Board retired in fiscal year 2015 to 2016: in September 2014, December of 2014, and January of 2015. Approximately \$58,000 was paid out in vacation and sick leave to these three retirees from Program 320. We now have a PSL shortage of \$15,002, so I'm asking for additional PSL authority in that program for fiscal year 2014-2015. Program 358's operation carryover money from fiscal year 2014 into the current fiscal year was \$77,180. The carryover money will be used for six new laptops at the cost of \$18,000, four new cell phones for approximately \$1,632. Additional new costs will include \$780 per year for VNP computer service and cell phone service of at least \$2,568 per year. If spending for the next four months remains consistent as it was in the last eight months, the available carryover into fiscal year 2016 will be \$96,577. Additionally, I will be working with UNL, Dr. Wiener, who will assist the Board of Parole with empirical data-driven research relating to parole violations, revocation practices, and risk assessments to improve the outcome of recidivism and public safety. The board proposes to spend approximately \$60,000 of the fiscal year 2015 to 2016 carryover money for these services over the next 15 months. Thank you. I will answer any

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questions at this time. [AGENCY 15]

SENATOR MELLO: Thank you for your testimony today, Chairperson Cotton. Is there any questions from the committee? Senator Nordquist. [AGENCY 15]

SENATOR NORDQUIST: So just to clarify, right now you look like you think if spending is consistent you would have \$96,000 in carryover, of which you would like to save...keep \$60,000 for the purposes that you've laid out. [AGENCY 15]

ROSALYN COTTON: That's correct, Senator. [AGENCY 15]

SENATOR NORDQUIST: Okay. Thank you. [AGENCY 15]

SENATOR MELLO: Any other questions from the committee? Senator Hilkemann. [AGENCY 15]

SENATOR HILKEMANN: Six laptops, \$18,000? [AGENCY 15]

ROSALYN COTTON: Yes, sir. [AGENCY 15]

SENATOR HILKEMANN: What's special about these laptops? [AGENCY 15]

ROSALYN COTTON: Well, let me give you some history. We've had 5 laptops, actually we have 12 laptops. Five of them have been consistently used over the last five years and the new laptops basically have a bigger version of the screen and the actual new software that we will be using and over the number of years. [AGENCY 15]

SENATOR HILKEMANN: Okay. [AGENCY 15]

SENATOR MELLO: Any other questions from the committee? Seeing none, thank you.

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[AGENCY 15]

ROSALYN COTTON: Thank you. [AGENCY 15]

SENATOR MELLO: Are there any other testifiers in here on Agency 15, the Nebraska Board of Parole? Seeing none, that will close today's public hearing on Agency 15, the Nebraska Board of Parole, and take us to our last public hearing of the day for state agencies, Agency 46, the Department of Correctional Services. [AGENCY 15 AGENCY 46]

SCOTT FRAKES: (Exhibit 1) Good afternoon, Chairman Mello, members of the Appropriations Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services. I'm here to testify on both the deficit and the agency's biennium budget request. Inmate admissions have continued to increase, resulting in an average daily population of 5,340 inmates. As of March 8, 2015, 168 inmates were housed in county jails in Nebraska helping to reduce the NDCS facility population. The previous appropriation did not include staffing for this program, and the deficit and biennium budget request include funding for staff to operate the program. NDCS is requesting funding to expand this program by 50 additional inmates in its biennium budget request. The use of jail beds to house state inmates provides temporary relief to our overcrowding issues, but it is not a permanent solution. At this time I'm asking for funding through the next biennium. This will provide a transition period for the reforms under consideration to take effect. In addition to the proposed reforms, more work needs to be done to establish the true capacity of our system, including space utilization, program needs, and inmate classification levels. I'm reviewing a plan to repurpose some existing beds and consolidate residential, inpatient mental health treatment for male inmates. The proposal increases the number of high-security, residential mental health treatment beds at LCC, moves us towards greater transitional services for mentally ill inmates, and eliminates the need for residential mental health services at TSCI, Tecumseh. Repurposing of beds will allow

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consolidation of protective custody housing at TSCI and LCC, freeing up higher security general population beds at NSP, the penitentiary. These changes will help reduce crowding at the Diagnostic and Evaluation Center, DEC, and facilitate the transitional use of jail beds. NDSC is asking the Appropriations Committee to fund the county jail program for the upcoming biennium, as indicated below. Moving down, there are not enough authorized FTE to fill all custody and unit posts that must be staffed to meet minimum staffing requirements. The recommended FTE increase in the coming biennium will help address this issue. From January 1, 2014, to December 31, 2014, a total of 244,386 overtime hours were worked by prison security staff, typically paid, usually paid at time and a half. Overtime eligible custody and unit staff comprise 56 percent of all NDCS staff, and overtime is primarily driven by vacant custody/unit positions that must be staffed to maintain safe and secure operations. Roster vacancies are a combination of permanent vacancies that are caused by promotions, transfers, resignations, and terminations, and temporary vacancies caused by a variety of factors. In either case, with a 24/7, 365-day operation, some overtime is inevitable. Positions may be listed as filled, but overtime will occur until these employees complete required training and actually report to their post at their assigned facility. I have directed the human resources staff to become more proactive in our hiring practices, including the use of nonpermanent employees. Staff retention is a factor in the vacancy rate at some facilities, with mandatory overtime contributing to staff dissatisfaction. I am confident that successful implementation of these approaches will reduce overtime costs and improve employee morale. I have submitted a technical assistance request to the National Institute of Corrections, NIC, to provide staffing analysis training, which will help provide our staff with the knowledge and skills to complete an agencywide staffing analysis and provide additional insight into our staffing needs. Facility Essential Services: In response to your request, I will discuss the facility essential services in our budget submission. While the need may exist for these positions, it's too soon for me to ascertain the department's resources, including...if the department's resources, including staffing, are being optimally utilized and support the core mission. Over the next few months, I will continue to look at the overall priorities of NDCS and determine if

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our resources are properly aligned, to include identifying if staffing deficits exist.

Behavioral Health Services: I'm in the process of evaluating NDCS's behavioral health system to include the organizational structure and where we house the offenders needing mental health services and treatment. Housing of inmates should be mission specific. It's not an efficient or effective use of limited resources to have all mental health services available at all facilities. We need to house offenders based on their programming and treatment needs to ensure they obtain the needed services. We are also faced with the challenge, like the rest of Nebraska, of filling mental health treatment positions outside of the Omaha and Lincoln areas. Funding was requested for an additional 14 FTE dedicated to behavioral health. Until we can complete a review of our needs related to mental health services and programming, it's premature to add additional positions. The exception would be the creation of a Chief of Psychiatry position to serve in a lead role within behavioral health services.

Personal Services Limitation: NDCS is requesting an increase in PSL of \$1.3 million. Due to increased overtime costs, NDCS's PSL allocation will not be sufficient for estimated fiscal year 2016 and fiscal year 2017 salary costs. NDCS is asking the Appropriations Committee for funding, as indicated below.

Appropriation short...2014 Appropriation Shortfall: The fiscal year 2014 deficit appropriation was intended to cover an unforeseen shortfall. However, based on the increased expenses for medical services and hepatitis C treatment and increased utility costs, an additional shortfall is expected for this fiscal year. This assumes NDCS receives the Governor's recommended deficit funding. NDCS is asking the Appropriations Committee to fund this request, as indicated below.

I'm closely reviewing the department's expenditures and identifying ways to reduce costs. Data analysis will help identify strategies to reduce food service costs. Overtime expenditures are being analyzed to determine how these expenses can be reduced, which will also...which also benefits those staff required to work mandatory overtime. I expect other savings can be realized by ensuring all of our resources are being used in the most effective and efficient manner. We will work diligently to align NDCS's expenditures to its appropriation, with the understanding that adjustments to our base are needed in some areas.

Remaining Deficit and Biennium Budget Requests,

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Vocational and Life Skills Program, Programs 214, 200: Funding for this program was appropriated based on an entire fiscal year. However, due to program start-up and development, there are savings associated with vacancies and the grants were awarded in February 1, 2015, creating a one-time savings of \$2.2 million. Additionally, your recommendation reduced funding by \$17,025, which was allocated through LB907 to ensure all inmates have a reentry plan by the time they complete 80 percent of their sentence. If this funding is removed, the \$17,000, we will not be able to fill one FTE, leaving two reentry specialists to review and coordinate reentry plans for 1,000 inmates. To ensure the success of this program, it needs to be fully staffed.

Capital Outlay and Equipment: NDCS is appropriated \$1.25 million for its equipment needs for the entire agency, which has not increased since 2002. Using a conservative replacement schedule for security cameras, computers, servers, kitchen equipment, perimeter vehicles, medical and dental equipment, etcetera, NDCS is requesting \$400,742 in additional funds.

Mainframe Offender Management and Inmate Accounting Systems: NDCS currently operates its offender management system from a mainframe platform developed over 35 years ago. There's a shortage of programmers knowledgeable with mainframes, and the system lacks the ability...the agility and flexibility needed to keep pace with ever-growing demands for data. A Web-based system provides low-cost adaptability, utilizing in-house programmers, and can better meet the changing data analysis needs of the correctional environment. Many legislative bills brought forward this session have included requirements for accurate electronic data. The \$100,000 funding for the consultant is a critical first step to address this need. Last summer, NDCS automated the calculation of offenders' sentences. In the process of doing this, we identified other manual processes and gaps where potential errors or error could occur. The estimated cost to complete this project is \$478,470. NDCS asks the Appropriations Committee to fund this request in addition to the Governor's recommendations. The NDCS asks the Appropriations Committee to fund the following, as indicated below. In summary, NDCS is asking the Appropriations Committee to increase its funding from its preliminary recommendations, and those numbers are listed for fiscal years '15, '16, '17. Finally, before I close my formal remarks, I want to

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note that my schedule will not allow me to be here for your consideration of LB237 and LB654, both of which propose to add new facility space within my agency. I want to thank both Senators Coash and Seiler for introducing these bills; however, I'm still in the process of evaluating the department's capital facility needs. I would like more time to present a thorough business case to you on what is needed. Also, the reforms proposed by the Council of State Governments have the potential to dramatically affect the entire criminal justice system, including the size of the prison system that will be needed and the level of offenders that the system should be designed to house. In closing, I'm actively immersing myself in NDCS's operations at all levels, which will allow me to assess where policies, procedures, and practices need to be improved; identify where we can continue to build in existing strengths and opportunities; and make needed changes to enhance accountability and transparency. As my knowledge of the department increases, I will know if existing resources are being used in the most efficient and effective manner. And if additional resources are needed to ensure NDCS serves and protects the public...read that one more time. I will know if existing resources are being used in the most efficient and effective manner and if additional resources are needed to ensure NDCS serves and protects the public, staff, inmates, and parolees. I would be pleased to answer any questions you have at this time. [AGENCY 46]

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

SENATOR KINTNER: Well, hi. [AGENCY 46]

SCOTT FRAKES: Hello. [AGENCY 46]

SENATOR KINTNER: Welcome to Appropriations. What's the total amount? I mean at the end you give us a number: \$4.1, \$6.1, and \$5.5 million. What's the total number? If I go to the front page request, then on the third page it looks like you've got more requests, and then a few more requests on the last page. I added all those up and it's a

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little more than you, in summary, asked for. So what's the actual number? Just...I want a number for fiscal year '15-16 that you're requesting, the total amount of General Funds.
[AGENCY 46]

SCOTT FRAKES: Well, the number listed on the last page is the total needed for fiscal year 2016. [AGENCY 46]

SENATOR KINTNER: So I'm guessing that starts July '15-16,... [AGENCY 46]

SCOTT FRAKES: Yes. [AGENCY 46]

SENATOR KINTNER: ...starting this July. [AGENCY 46]

SCOTT FRAKES: Yes. [AGENCY 46]

SENATOR KINTNER: Okay, so we're on the same page. [AGENCY 46]

SCOTT FRAKES: And... [AGENCY 46]

SENATOR KINTNER: Well, let me tell you what I did. You have a request on the first page. I added that up. The request on the second page in PSL. I didn't add that. So I went to the third page. I added all those numbers, \$4.1 million. And then I went to the fourth page and I added up all those number for '16: the \$17,000, \$400,000, \$100,000, \$478,000. And I got \$11.4 million. Now that would be adding all those numbers up. Or we can just take your number, which I like a lot better, (laugh) right here at \$6.1 million. So what's...what are we looking at here? [AGENCY 46]

SCOTT FRAKES: Well, I know that part of this...part of the answer to your question is that we were trying to tell more than one...speak to this in more than one way.
[AGENCY 46]

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SENATOR KINTNER: Okay. (Laugh) [AGENCY 46]

SENATOR MELLO: Senator Kintner, I may be able...I think, Director, I may be able to try to provide a little clarification. I believe on page 2 of your testimony, it appears that there's a request from the department to reduce appropriations the committee made for the Violence Reduction Program and behavioral health sciences (sic--services) that equates to about \$1.5 million the first year and, give or take, about \$1.35 the second year, which helps balance out the numbers that you see, I believe, on page 4 in regards to the current year, which would be the deficit year, and then fiscal years '15-16 and '16-17. [AGENCY 46]

SCOTT FRAKES: That's correct. [AGENCY 46]

SENATOR MELLO: Am I correct in reading your testimony on this page? [AGENCY 46]

SCOTT FRAKES: Yes. [AGENCY 46]

SENATOR MELLO: Senator Kintner, you... [AGENCY 46]

SENATOR KINTNER: Yep. Yep. [AGENCY 46]

SCOTT FRAKES: That is a piece of it. [AGENCY 46]

SENATOR KINTNER: Okay. All right. I wasn't trying to put you on a spot. I was just trying to... [AGENCY 46]

SCOTT FRAKES: It's okay. [AGENCY 46]

SENATOR KINTNER: Okay. [AGENCY 46]

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SCOTT FRAKES: I expect to be in... [AGENCY 46]

SENATOR KINTNER: No, that...okay, that makes a little more sense. So we're talking just the number on the last page then. [AGENCY 46]

SCOTT FRAKES: The number on the last page... [AGENCY 46]

SENATOR KINTNER: Okay. [AGENCY 46]

SCOTT FRAKES: ...is the request. [AGENCY 46]

SENATOR KINTNER: All right. That answered my question. Okay. [AGENCY 46]

SCOTT FRAKES: And I should be able to sit here and do a better job of explaining each piece of this. [AGENCY 46]

SENATOR KINTNER: (Laugh) Well, I didn't get it either. I'm supposed to know this stuff, too, so. [AGENCY 46]

SCOTT FRAKES: So I have a note. Even that tells me above the recommendation. Okay. So I guess that is the final piece of the numbers on the final page are above... [AGENCY 46]

SENATOR KINTNER: That is after we net the money out. [AGENCY 46]

SCOTT FRAKES: ...above their recommendation. [AGENCY 46]

SENATOR KINTNER: Okay. Fine. That's my...you answered my questions. Thank you. [AGENCY 46]

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SCOTT FRAKES: Well, she did, but... [AGENCY 46]

SENATOR MELLO: Senator Bolz. [AGENCY 46]

SENATOR BOLZ: Good afternoon, Director, and thanks for being here with us.
[AGENCY 46]

SCOTT FRAKES: Senator Bolz. [AGENCY 46]

SENATOR BOLZ: You sent some information to my office earlier today and I do appreciate that. I know pulling together numbers can be hard work. But your requests and the numbers that you gave me, I'm having a hard time kind of matching up your vision. So you know, I see the statistics you've given me where we've got some very significant challenges in our mental health staff to inmate ratio; you know, 76 to 1, 113 to 1. And you've pulled back on your behavioral health services request. And I understand that there are some vacant positions, but I'm having a hard time understanding the vision for how we're going to address what I see to be some pretty significant mental health needs. And I don't understand why a request was made previously and now is being pulled back. [AGENCY 46]

SCOTT FRAKES: Okay. Well, I would have liked to have had an opportunity to review that material and have some more conversation around it before we sent it forward, but we knew we needed to get it to you. And with all of the other pressing demands, didn't get it until really too late. Specific to the...a good example I think specific ratio number that's listed there, as I did look at that, so that's a ratio of mental health or behavioral health staff to the entire population. Well, there's still a strong question on my mind about what percentage of the population actually has a need for mental health services. Traditionally or in conversation with people across the country, we typically talk about 20 percent of the population having some need for mental health services. We appear

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to have a higher standard here or we have a population that has higher needs. I haven't figured out which that is. But even if I were to agree that my population of inmates, that there's 30 percent that need some level of service, now we're talking about 1,600-1,700 rather than that, you know, divider of about 5,000 that they used for that ratio. So then the question becomes, is the existing staffing ratio adequate in relation to a population that has a need? It's still a question for me as well. Another piece of that, too, is whether we say that it's 20 percent of the population or 30 percent of the population, it is a continuum from people that need an occasional conversation with a provider to people at the far end that need deep psychiatric work. And it spreads across that. So that's part of how we need to review and figure out what are the real resources that we need and at what level are those resources. So that's a piece of it. On the programming end, right now it feels like we have invested much, if not most, of our resources into good quality, therapeutic programming. So can't find any fault with that. I think our recidivism numbers are something to show to others and go, we're doing some things right in this department. There's also though a point of diminishing returns and that's another question I don't have a good answer to. While what we're currently doing has led us to a good place and obviously we can do better, do we spend the same amount of money again and only see 1 percent reduction in recidivism. And I'm just putting numbers out there just to illustrate the point. So I just need time. I met with the leads of the different sections of behavioral health last Friday; talked about their programs; got a sense of what they're doing; heard about some of the challenges in maintaining, keeping positions filled; saw some initial assessments of waiting lists; tried to get a good sense of whether or not our programs are adequately staffed and adequately attended. But I end up still today with more questions than I have answers. So I don't know if I got close, but that's where I'm at today. What I don't want to do is tell you, yep, I need a bunch more positions and then, first of all, struggle to fill them or to create additional programming that doesn't have the value that we intend it to, because it's a serious commitment. And I'm going to lose my voice, I fear. [AGENCY 46]

SENATOR BOLZ: (Laugh) I guess I would like to believe that we could solve these

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problems without additional dollars, but I'm afraid that that's contrary to what we heard hour after hour on the LR424 Committee. I mean we had some very tense testimony in terms of the lack of adequacy in behavioral health, not just programming but basic support, crisis response. That was serious and real. And so, you know, it's difficult for me to have faith in the idea that we just need a different plan. You know, we've had years and years to develop a different plan. And I understand we have new leadership. But you can perhaps empathize with my hesitation here. I think the related question is, you know, the statistics you share illustrate that we have 195 parole-eligible inmates who are awaiting treatment and but for that treatment might be able to be parole eligible. And so when you're asking for 200 jail beds with a pretty high price tag but for some additional programming we could be letting some other folks out, I'm having a hard time matching up the numbers. Can you help me understand? [AGENCY 46]

SCOTT FRAKES: To some degree. Again, there's another number that if we'd had some more time to dissect it and have some more conversation, what I was able to glean fairly quickly was that is a population that represents people that have been denied parole but not just specifically because of programming. Often, it's other issues as well--the level of crime or the criminal history. There's other factors that contribute to that. Still not...removing that barrier of completing program only makes good sense, so that is a piece of what we've got to get a better handle on. Okay. There was another thought that I was going to add to that. There was kind of two parts to your question, wasn't there? You asked about that group and you also said... [AGENCY 46]

SENATOR BOLZ: I'm trying to balance kind of your request for the additional jail beds with maybe some other strategies that could help free-up space. [AGENCY 46]

SCOTT FRAKES: Okay. Right. So the other piece of it kind of really goes back to what I kind of tried to stumble through a few minutes ago. One of the numbers I heard last week that raised my eyebrows was that about 25 percent of our population is receiving some kind of medication for mental health needs. I find that to be significantly higher

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than the system that I come out of. So that for me is an example of an area where either we have a very different approach in how we're dealing with mental health needs in Nebraska or there may be an opportunity to provide a different approach. And again, that's from a low-level antianxiety med to true psychotropics and other things that deal with the highest level of offenders that have mental health needs. So I just say that to say, until I can get a better sense of what we really are doing with behavioral health and mental health, I'm just not ready to commit and say throwing more FTEs at it and moving forward in that direction is the right answer. [AGENCY 46]

SENATOR BOLZ: Uh-huh. So a slightly different question, you know, I think that we've heard in this committee previously, we heard through the LR424 Committee the value of community beds and community placements and how that can ease some pressure on the system as a whole, but I don't really see any plans or ideas or recommendations around community beds. And I'm just wondering what your vision, if any at this point in time, is related to community beds versus some of the other space that you're looking at. [AGENCY 46]

SCOTT FRAKES: Yeah. It is always my desire to house people, while incarcerated, at the lowest, least-restrictive level. Those are the places where there should be the best opportunities for programming. If we can get them to the community level, they'll have better opportunities for work and for other activities as opposed to keeping people at higher custody levels, so. But what I can't get a good handle on today is my classification system really telling me what I need to know? I don't feel like it is. We have about 35 percent of our population that's classified as max custody. That's probably about double of what I'm used to. So I have...I'm trying to get a good sense of why that is. I say classification system, but I'm using the word "system" pretty loosely, because we have a lot of overrides, so that the more overrides you do, the less like a system your classification process is. So until I can really figure out what I'm dealing with, what the real needs are, I'm just not ready to say we need to build community beds or we need to build minimum custody beds. What I consider to be true minimum custody

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beds, they look a little different than what Nebraska has used in the past. I'm pretty...I'm not thinking we need to build more at the other end of the high-security level, although if there's a decision...I mean if through a process we determine that we really do need a different location than anything that exists to really effectively deliver behavioral health, mental health services, you know, that's a conversation I'd come back to. I'm not even close to saying that though today. Just I don't... [AGENCY 46]

SENATOR BOLZ: I can appreciate that it's a complex system with a lot of pressures, and I can appreciate that you're new. I guess what I will share in terms of the perspective of myself serving on this committee is that I actually pulled our testimony from the agency hearing on DCS from two years ago and we had a very similar conversation. And we had a conversation about how there was lack of clarity and there was lack of a plan, and we should be patient and wait for the master plan. And so there's a point in which, you know, representing the public safety and the people who are serving time in those correctional facilities, you know, there's a point at which you become inpatient. So I look forward to working with you. I'll let other committee members ask question. [AGENCY 46]

SCOTT FRAKES: Thank you. [AGENCY 46]

SENATOR MELLO: Senator Stinner. [AGENCY 46]

SENATOR STINNER: Thank you, Senator Mello. One of the comments that you have in here kind of drew my attention, because I had a different understanding, and it was on page 1. It says: There's not enough authorized FTEs to fill all the custody and unit posts that must be staffed. I thought there was a lot of openings, according to what I've read. And you're saying that there isn't enough? [AGENCY 46]

SCOTT FRAKES: There's not enough authorized FTEs. We do have some issues in at least two facilities with filling vacancies, but that's a different issue. A bigger issue is that

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our authorization, FTE authorization, doesn't line up with the need. As the population has grown, as we have increased the size of living units, as we have filled different spaces, it has driven the need for additional posts just to maintain safe and secure operations. And so we have been behind the curve in getting authorization to actually formally recognize those FTEs. The numbers in both Appropriations' and in the Governor's budgets head us in the right direction, the additional 59 FTEs. So that will make a good dent in addressing that issue. Doesn't completely fix it, but it heads us the right way. [AGENCY 46]

SENATOR STINNER: It does not fix it? [AGENCY 46]

SCOTT FRAKES: No. [AGENCY 46]

SENATOR STINNER: What number does fix it? Do you know? You probably don't know yet. [AGENCY 46]

SCOTT FRAKES: Well, I did actually review some stuff so,... [AGENCY 46]

SENATOR STINNER: And we're going to provide you some flexibility. [AGENCY 46]

SCOTT FRAKES: ...you know, I think it's, yeah, I don't want to say a number and then you come back and say, but you said... [AGENCY 46]

SENATOR STINNER: And I understand. Then 244,000 overtime hours, that equates to a pretty high turnover level, I believe. Or is it salary or is it number of hours or is it both that causes the turnover? [AGENCY 46]

SCOTT FRAKES: All right. So it is...that is just a number piece. It doesn't reflect the actual cost, which was we mentioned generally time and a half, so. [AGENCY 46]

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SENATOR STINNER: I actually computed the time and a half out at an average salary at \$30, as about \$73 million...or \$7,300,000. If I put a fringe benefit on that of 10 to 15 percent, we're over \$8 million, which gives you the opportunity to save money over. But anyhow, go back to the turnover thing. [AGENCY 46]

SCOTT FRAKES: Okay. Definitely the turnover at the facilities that are experiencing the most mandatory overtime, at the penitentiary and Tecumseh, is probably the biggest, easily identified issue around driving overtime. But there is a long list of things that also contribute to overtime and that's...I mention all these different things. Some of them are good things. When people promote to new opportunities, there's a gap that's created. And in prisons, in corrections systems across America, a good part of how people move up within these departments is they start as officers, case managers, case workers, and then take promotional opportunities. Not...because of the hiring, recruitment, five weeks of training, you could easily run 60-70-90 days of vacancy, so that can...that's a piece. But you don't want people to not promote. The people that are leaving because they're unhappy, that's a piece we've got to address as quickly as possible. There's...I think Tecumseh is probably still a challenge, but what we have agreed is that the strategies we haven't done well are being proactive. We've just been reactive. So we have met and I met twice with the head of HR. I'm going to be meeting again hopefully next week. And if we can get a good proactive strategy going, because we already know the trends. We know that turnover at Tecumseh last year was between nine and ten custody security positions a month, so high. Penitentiary is probably closer to four, four or five. But the missed opportunity there is if you know that's the trend and you've got some good data to support it, start planning your hiring in anticipation of vacancies; don't wait for the vacancy knowing that you're going to create 90 days of overtime while you fill it. And we'll probably use a couple different strategies so that we can have people in class and as they're coming out of academy, they're available to fill vacancies. That's an important strategy that's going to help move us in the right direction. You get a handle on...we get a handle on mandatory overtime, that not only increases just general staff satisfaction but there's no question that you get into a trend, and we've got some people

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that are working several mandatory overtimes a month, at some point then they have to call in sick. They're either too tired, they need that day off for personal needs, whatever it is. And it creates a cycle. So I was mandatory today, I call in tomorrow, and now someone else is mandatory to fill behind me, and it just builds. So that's another piece that we're going to work very hard and fast on to try and eliminate the mandatory piece. [AGENCY 46]

SENATOR STINNER: Just a quick question. On page 2 you talk about behavioral health, 14 FTEs dedicated to behavioral health. Do you want to hire those or are you going to outsource them or is it going to be a little of both? [AGENCY 46]

SCOTT FRAKES: Actually at this point I want an opportunity to review our services and be able to come back and say I need 14 or I need 6 or I need 27, because this population, for whatever reason, has got higher needs than the population that I was dealing with before. And it is possible. It is definitely a compacted population. I think Nebraska has done a wonderful job of keeping the rate of incarceration down for the most part. I would say pretty much across the board, the people that are coming into prison are people that need that piece as part of the interdiction to criminal behavior. And it could be that because of that compactness and that low rate of incarceration that there's a higher rate of mental illness among the population. But I don't have it. I still don't know. So the short answer is I want to come back to this committee and say, this is what the need is and based on this review, this data, this information. [AGENCY 46]

SENATOR STINNER: And this chief of psychiatry, are you going to try to get that filled right away so that... [AGENCY 46]

SCOTT FRAKES: I am. [AGENCY 46]

SENATOR STINNER: ...that would be a part of that? [AGENCY 46]

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SCOTT FRAKES: Yes. [AGENCY 46]

SENATOR STINNER: What's in place right now, by the way? [AGENCY 46]

SCOTT FRAKES: There is a director of mental health that...hopefully that's the right term. I believe that is the job title. So there is a person that is over behavioral health and they supervise all of the components. That includes the psychiatric services; the sex offender treatment; the substance abuse treatment; the violence, anger management components; and outpatient services and inpatient services. So I value having a behavioral health specialist, but I also highly value having someone that has the psychiatric background and can bring that component into the system. I phrase it carefully. I say to serve in a lead role. I'm also looking for recommendations. Should it be that...I come from a model where chief of psychiatry and behavioral health or mental health directors work side by side in partnership. They don't supervise each other. So that's a model I'm used to. I don't know that that's the right model either for Nebraska. So I have someone that I trust and have worked with for a number of years. He is the chief of psychiatry in Washington. He'll be coming out next month. He's going to spend some time talking to people and I will have sent him a lot of information before then. He's going to review our practices. I know he's already very interested in the medication question, but he's going to basically look at all of it. And other than the cost of bringing him out, flying him out here and putting him in a hotel, he's going to provide I think not a consultant level of overview but I think he's going to give me enough information to help me really shape my ideas as well as continuing to find the data I need to really analyze what we have. [AGENCY 46]

SENATOR STINNER: So this is...are you going to eliminate a position or are you going to create this new position and new structure? That's your idea? [AGENCY 46]

SCOTT FRAKES: New position and new structure. [AGENCY 46]

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SENATOR STINNER: Okay. Your page 3 you have medical services, hepatitis C. I was the one that commented to the folks here on the committee when we first looked at it, that \$161,000 to address, per patient, to address the hepatitis C. And I know that Gilead Sciences, their treatment cost \$84,000, \$1,000 a day for one pill. They've now cut their cost in some situations by 46 percent. So I'm just a little hesitant to say, yeah, this is a good number. It's... [AGENCY 46]

SCOTT FRAKES: So since the... [AGENCY 46]

SENATOR STINNER: ...fluid right now, so. But I think it's a lot less than we think. [AGENCY 46]

SCOTT FRAKES: It is definitely fluid daily it feels like right now. The latest estimate we have for the treatment that will meet many of the offenders' protocol, \$87,000 was the number that I was given. [AGENCY 46]

SENATOR STINNER: Okay. [AGENCY 46]

SCOTT FRAKES: So we're kind of in that same ball park. There are still some offenders that require a different regime and there will a higher cost. I don't have a good sense of...I don't have a good sense of what the numbers are. But I think in general our estimates definitely have come down on the overall cost of medication. There is concerns though that as the treatment improves that there are now more...a broader number of patients that could be responsive to treatment. So that may have...drive some different numbers. But we're still trying to analyze what that means as the information continues to come in. [AGENCY 46]

SENATOR STINNER: Okay. Thank you. [AGENCY 46]

SCOTT FRAKES: So at this point, the deficit request was to address what we've spent

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in excess of what we were funded for. [AGENCY 46]

SENATOR STINNER: My last question: LB237 and LB654, which is Coash and Seiler's, I heard you say that it's a good program but give me the flexibility as we move out to assess what our needs are. So how do I, as a senator, look at these two bills?
[AGENCY 46]

SCOTT FRAKES: Hmm. [AGENCY 46]

SENATOR STINNER: I'm just asking for some guidance. [AGENCY 46]

SCOTT FRAKES: Yeah. (Laugh) Well, I think that is what my answer to everyone here is, is that until I can tell you really what the department's needs are, I can't tell you that those are the right answers. They may be, but I can't tell you that today. [AGENCY 46]

SENATOR STINNER: Thank you. [AGENCY 46]

SENATOR MELLO: Senator Kuehn. [AGENCY 46]

SENATOR KUEHN: Thank you, Chairman Mello. Appreciate again you visiting with us for another afternoon. Just kind of a 30,000-foot question here, since I'm new both to this committee and to the body, as you are new to your department. Certainly my colleagues and several of them who serve on this committee have invested a lot of time and years and feel that they have thoroughly investigated, researched this situation and have put together a number of very deliberate and thoughtful and well-informed proposals. So kind of following with Senator Stinner's question, they feel they're up to date, up to speed, and ready to act, and you're asking for more time. Specifically, what kind of a time frame do you feel you need? And when you ask for our patience, how long does that need to be? [AGENCY 46]

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SCOTT FRAKES: I'm confident that by the time to begin the process to address the deficit budget, which would be September of this coming...this year actually,...
[AGENCY 46]

SENATOR KUEHN: Uh-huh. [AGENCY 46]

SCOTT FRAKES: ...the next fiscal year but this year, that I should have the answers and the recommendations that are needed. I am definitely hampered by the challenge that it takes to get data. That's...so I'm spoiled. Come out of a system that's data rich. In fact, there's another term, can't remember what it is right now, but anyway it's...so the...I actually, you know, come from a system where I could turn to my computer and get a lot of the answers I needed with my own skill set. And if not, pick up the phone and four people would be in my office with all kinds of information. Don't have those resources and do not have the systems to provide those kind of resources, so that's a big piece of this. But again, I believe as we come into the fall that I'm going to have the answers I need and then be able to look at you and say, based on this data, based on this assessment of the population and the current space, the programs that are in place, these are the things we need to do differently. [AGENCY 46]

SENATOR KUEHN: So my colleagues and myself and I think as well as a number of advocacy groups feel an extreme sense of urgency with this issue. Do you feel an answer by fall is in that same vein of urgency or just simply the only constraints that you have? [AGENCY 46]

SCOTT FRAKES: I think that's a very fair question. So, no, there's some things that need attention now, so that's why I'm working on this piece to pull the...what I would refer, I often refer to the deep-end mentally ill, the people that I think need inpatient mental health treatment. I do not believe Tecumseh is the right place. We don't have the resources. So we're going to get those people back to LCC. We've got protective custody in three locations now. Think we could do that more effectively in two locations.

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That then frees up true general population, higher security beds at the penitentiary, which would allow us to start pushing people out of DEC, also some of the people that have sat in jail beds longer than they should because they're not the right beds. So that's a piece that is a move that's moving based on less...more of this and less of truly data driven, although I've gotten enough answers to feel pretty comfortable about it and brought the right people in the room as well. That's one example. As each day goes by, I'm continuing to look at things and say we can't wait on this; we need to do something differently and figure it out. [AGENCY 46]

SENATOR KUEHN: Thank you. [AGENCY 46]

SENATOR MELLO: Any other questions from the committee? Well, I've saved my questions for last, Director. And I would be remiss not to thank you for being here today and thank you for taking the time to meet with both with the Appropriations Committee during the preliminary process as well as some post-follow-up meetings. And I think all of us know in this room the responsibilities that you have to bear as the director of a very troubled state agency. And to some extent, Senator Kuehn almost used the exact words I was going to use in my initial question, so I don't want to repeat it. But I have to admit, after the last year and a half of being involved with these investigations, I'm a bit disappointed that for the first time in my entire time in the Legislature that there was a request for additional programming dollars or mental health dollars that the department now doesn't want those after this committee appropriated them in the preliminary budget. I understand, I think Senator Kuehn's question was exactly what I wanted to ask, which is I'm willing to give you more time, I think the Legislature is willing to give you more time, but we've never seen a request come forward regarding what we have come to know through extensive research and investigation by the Ombudsman's Office, with the LR424 Committee investigation that we have a deficiency in these two areas and waiting an additional fiscal year before we request anything, I just don't see what benefit the state gets out of delaying the inevitable. And I think the greater sense of urgency right now, there's no bill in the Legislature in the Judiciary Committee, I

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believe, that is directly appropriating any new money for new programs. And that is something that we've heard over the last two years, is the single, most deficient component of Corrections in respects to speeding up the parole process as well as assisting those preparing for reentry. I want to give you ample time, in the sense that I don't want you to have to repeat your response, but if we reduce these requests per your request today, how will we ever guarantee or how will you ever guarantee you'll come back in a future year or future budget years to actually request additional funding for programming? Because I've been here long enough and there's a cynical side of me that you and I have talked about that, unfortunately, sometimes issues like income tax cuts become a bigger priority than fixing the problems of the past. And I'm afraid if we don't do anything on it this year, come next year, when a lot of us may leave this Legislature and other priorities may come up, everything that we've been working on over the last two years to fix this troubled agency starts to go away. I'll give you plenty of time to be able to give me your feedback on it. [AGENCY 46]

SCOTT FRAKES: And I don't want to be redundant. If I were sitting in your chairs, I would be asking me that same exact question. You've had a long, great opportunity to look at a lot of issues within the department to see some of the horrible outcomes that have come, and to make some, what I believe are, recommendations that you feel are solid and based on a good assessment of the needs of the department. And I want to say this in a way that doesn't take anything away from that. I come with a different set of eyes. I come with 32 years of working in this business. I come with 25 years plus of, you know, approaching it from a management level. What I don't see in my department are some of the low-cost alternatives that can be very effective to providing meaningful opportunities for offenders, so that's a piece. I don't have a good feel for the needs of the population and we don't have tools to really assess what they are. We can assess sex offender treatment need; we have a tool to assess substance abuse treatment--key pieces. But what we're not doing is bringing people in the door and doing a good, thoughtful, risk-needs assessment for everyone that comes, because needs cover a spectrum and it isn't just about high-level, expensive treatment. It's about a wide variety

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of things that we could address, so. And I do think that some of the structures that are in place--the social workers, the reentry pieces, the reentry specialists--are headed in the right direction. Definitely can support that. So what I don't want to do, though, is simply say, okay, give me those resources. And then come back to you and have to answer, why didn't you use them the way we intended; or, how come they're sitting there and yet the participation numbers aren't up, the waiting lists haven't changed or haven't changed adequately. Or all that occurs and yet we still run the final numbers and go, you know, we did all this but recidivism didn't change; you didn't really seem to have the outcome that we should be expecting from this investment. So those are the things that I'm thinking about, trying to wrap my head around, trying to get good data to support my decisions and to be able to come back to you and say, these are the needs of the department, whether it's this, less than this, a different version of this. Yeah. [AGENCY 46]

SENATOR MELLO: The only other question I had, and Senator Bolz asked I think a majority of it so I don't want to rehash it, is the appropriation request regarding the county jail program. That last year was appropriated as a one-time appropriation from this committee to serve as essentially a one-year, band-aid approach to figure out how we, as a state, were going to address our chronic prison overcrowding. You've requested it for the biennium, and your testimony was clear that it was only for this biennium, it's not an ongoing program. The one concern that I've heard from pretty much every returning member of the Judiciary Committee, as well as returning members of the LR424 Investigative Committee, was the county jail program, as it's established, provides no programming to county inmates or inmates that are being served in county jails. And so as we have one conversation about the lack of programming in Department of Corrections, we're having another conversation about providing almost \$13 million in appropriations to essentially warehouse state inmates in county jails where they receive no treatment, no programming. And I think Senator Bolz's question was what we've talked about, is if there's a better way to utilize that roughly \$13 million appropriation on something that is a better long-term use of that

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funding instead of one-time payment to counties. I know the counties appreciate the per diem costs. And don't get me wrong, it's been a mutual beneficial relationship to this point in time. But some would make the argument that it's not really served a lot of our bigger intent and focus of wanting to find ways to rehabilitate some of these inmates, obviously. And putting them in county jails just for another two-year process doesn't further that process, at least in the Justice Reinvestment model, that you're well aware of, as well as what we're going to hear, likely, from Senator Seiler and possibly Senator Coash and other options that we've got to consider to deal with our prison capacity. So if there's anything you can shed on that. I know that it's a question that members of the Judiciary Committee have consistently been asking me and we, as a committee, have been working on our preliminary, I told them I would make sure I'd ask it today to you in the sense of how do we address that one major issue of no programming being available to these inmates if we were to continue this appropriation? [AGENCY 46]

SCOTT FRAKES: I've had experience with at least three different models of using jail beds. One model would be to try and just treat it as a mini-prison and create and allocate the resources, including programming. And I've seen it done sort of effectively using a substance abuse model, sort of effectively, not nearly as cost-effective as it can be done in a larger prison. There's always an economics of scale, and so, what is it, it's Hall County I think is our biggest population but it's still not that big of a population. So that's one model. Another model that can be pretty effective in a determinant sentencing state is where you look at people that have a set release date and then you, and if the numbers are big enough, stage them so that they're going to be near their community of release or county of release. And you get them there, you know, 90 days before, whatever. You connect them to their community supervisors, their community corrections supervisors, and you can do a transition piece. It can be effective. Got to have the numbers, though, and again, I don't think that I have those kind of numbers. Then there's a model that I believe is what the department set out to do, kind of stumbled, kind of still struggling to get it all figured out. But when I met yesterday with staff, I was encouraged that we're headed the right direction, especially if by

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repurposing and creating some movement within our system, where we stage people that have got some, you know, significant amount of time to do, typically more than five years left. Stage them there 60-90 days would be kind of the goal that we're looking for, and then get them into the appropriate security bed and then have them in a position so that when the time is right they're moving into programs and then moving towards release. So that's the model that I want to perfect or at least get to be pretty clean. And I think with the things that I talked about, in the next probably, let's see, it is still March, so by July I think we will be a lot closer to where we should be. And then my hope would be that we continue to look at efficiencies within the department. The CSG work begins, is able to gain momentum and begins to change the population numbers and we, in essence, wean ourselves off those beds so...and not that on June 30 of whatever the right year would be, 2017, that we're grabbing 200 people and putting them on buses but that in the spring of 2017 we're...or even sooner, that we're done with those beds.
[AGENCY 46]

SENATOR MELLO: Okay. Well, I still have some healthy skepticism, Scott, a little bit in regards to your testimony today and I'd be remiss not to say that. But I do appreciate, you've been a breath of fresh air in regards to at least the candidness of conversations you've been able to have with the committee and with members privately. And I think a lot of the Department of Corrections' staff as well has been very helpful in being candid in regards to a lot of the conversations that no doubt our branches of government will have to have moving forward to fix the Department of Corrections. So I appreciate it.
[AGENCY 46]

SCOTT FRAKES: Thank you. [AGENCY 46]

SENATOR MELLO: Any further questions from the committee? Seeing none, thank you.
[AGENCY 46]

SCOTT FRAKES: Senators, thank you very much. [AGENCY 46]

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SENATOR MELLO: We'll next take testifiers on Agency 46, the Department of Correctional Services. [AGENCY 46]

MIKE MARVIN: Good afternoon, Chairman Mello, members of the Appropriations Committee. My name is Mike Marvin, that's M-i-k-e M-a-r-v-i-n. I'm the executive director of the Nebraska Association of Public Employees. We're the union representing the vast majority of correctional employees. I have no prepared testimony today. I came in to listen to what was said and respond to some of it. I am pleased to hear the director acknowledge that there is a problem with retention. We believe that's where most of our problems come from in corrections with our officers and the mandatory overtimes, although I think he underestimated the number of overtimes where he said a couple a month, and it's more like a couple a week. The system that we have in place does not reward people for longevity. We have no means to advance through the pay line. We have a starting wage and a maximum wage. An employee today that was hired in 2002 still makes the starting wage. He makes the same money as a new employee coming in. The previous two Governors have shown no interest in negotiating a means to allow people to move through the pay line. That has created a lot of people saying what's...why should I stay here? I'm an experienced employee and there's no reason for me to stay here; I have no way to advance. And as the Chief Justice and the AG talked about, but it is not acceptable to the CIR when we go in, Lancaster County, Douglas County, Sarpy County all compete for us...with us for correctional employees, because the vast majority of our correctional facilities sit within that area that we draw from, including Tecumseh draws from Lancaster, Sarpy, and Omaha. And they can start at those correctional facilities from \$3 to \$5 an hour more than they can working for the state of Nebraska. We can only compare to states that have half as many state employees to twice as many state employees. In our most recent negotiations, we compared to Minnesota, Iowa, Indiana, Wyoming, Kansas, Arkansas, New Mexico, and the state put Mississippi their array of states. The wage for those states, for most of them, is very low. Right now a correctional employee for the state of Nebraska starts at

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\$15.15 an hour as a correctional officer. That's \$30,000 a year roughly. They have a very difficult job that they need to do for that kind of money. And with no means to move from that beginning wage through the pay line, they do have no incentive to stay. We lose a great many of our correctional officers to the places that will pay them higher. With that experience, you know, you go in and you have to retrain somebody. But let's talk about that a little bit. The vacancy rate, I don't know what the vacancy rate is and, quite frankly, it's because I've never trusted the answers we've gotten out of the Department of Corrections. We have a new director now. From what I've seen, he's pretty open. And I think as he gets a handle on things, I expect to be able to ask questions and get better answers out of him. But we hire employees. We do employee orientations between 40 to 100 employees a month at the staff training academy, so they're hiring people. They're coming in on a regular basis. I would say probably 70 percent of those are security and housing staff. So we're hiring them at a rate. The problem is we're not retaining employees and that's where all of our issues come from. We need to acknowledge the fact that there needs to be a means for the employees to advance through the pay line. And it creates a problem not only in Corrections but it creates a problem in HHS. It creates a problem in Department of Roads. It creates a problem Department of Environmental Quality. People are leaving constantly because they have no way to advance through a pay line. I'm hoping that this Governor, he was part of this negotiation but with no experience coming in, he knew nothing. And I'm hoping that in the next negotiation within two years he'll do something with that. But I see my red light is on. I would be happy to answer any questions that any of you have. Feel free to call me at any time if any of you have any questions about Corrections or any other state agency. [AGENCY 46]

SENATOR MELLO: Thank you for your testimony today. Mr. Marvin. Are there any questions from the committee? Senator Hilkemann. [AGENCY 46]

SENATOR HILKEMANN: Mr. Marvin, you said that the base rate of pay has not changed in... [AGENCY 46]

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MIKE MARVIN: Excuse me. No, the base rate changes. Okay? The base rate has gone up every year since 2002 and so that a person hired in 2002 just moves up to the base rate. They never move any higher than the base rate. [AGENCY 46]

SENATOR HILKEMANN: Okay. [AGENCY 46]

MIKE MARVIN: Now, you know, for example, I suppose in Corrections we have for a corrections officer currently we have a starting salary of \$15.15 and it shows a maximum rate of \$20.41. But there is no way, no means for that person to move through that pay line to that rate. We even have language in the contract that allows the agencies to give merit raises, bonuses, and the Governors in the past have said, no, we're not going to do that, so. [AGENCY 46]

SENATOR HILKEMANN: So if I get this right, if it...that the present starting rate is \$15.50 (sic), a person who started in 2002 is still at \$15.50? [AGENCY 46]

MIKE MARVIN: Yes. Yes. [AGENCY 46]

SENATOR HILKEMANN: Okay. [AGENCY 46]

SENATOR MELLO: Any other questions from the committee? Seeing none, thank you, Mike. [AGENCY 46]

MIKE MARVIN: Well, thank you for your time. And again, if I can ever do anything or answer any questions, feel free to contact me. [AGENCY 46]

SENATOR MELLO: Thank you, Mike. [AGENCY 46]

A.J. SANTOS: (Exhibit 2) Good afternoon. My name is A.J. Santos, A.J. S-a-n-t-o-s, of

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the Destination Dad Program. I will be brief and easy here. I am the director of the family outreach team for Christian Heritage, and I oversee the inmate parenting program, Destination Dad, for Nebraska Department of Correctional Services. I would like to thank all of you, the committee, for funding this program and I am submitting a report which details the work we have done over the last 15 months and beyond. And then I would also just like to say a couple of objectives or goals we have moving forward for our programming. One is we would like to start more programming in the Diagnostic and Evaluation Center. We'd like to facilitate classes in the restrictive housing units and we actually started that from the 1st of March of this year. We'd like to expand that. Incorporate Work Ethic Camp into our research, and then lastly we really want to be intentional about compiling data that we have collected since we began this program in 2009 so that we can submit it for evidence-based review. If you have any further questions, I am more than happy to answer. [AGENCY 46]

SENATOR MELLO: Thank you for your testimony today, Mr. Santos. Are there any questions from the committee? Senator Kintner. [AGENCY 46]

SENATOR KINTNER: Hi. [AGENCY 46]

A.J. SANTOS: Hello. [AGENCY 46]

SENATOR KINTNER: And thanks for coming out today. Yeah, I didn't get to ask Senator Bolz this last year when we debated this bill when it was passed, but you know most Christian organizations run from state money, run from government money. They don't want to have anything to do with government money because, obviously, it infringes on evangelism, which is our main task as Christians. And as we help people, we do it in the name of Jesus because it's evangelism. Why do you all seek government money and how do you square that with your Christian faith? [AGENCY 46]

A.J. SANTOS: Sure. Thank you. We...all of our programming is non-Christian based.

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We provide programming for anybody in the department. There are no restrictions. Anybody who wants to take the programming can take the programming. We'll provide programming for them. How we square it, we're not really...we don't go into prophesize or to convert anybody or to try to do anything. We simply...our whole goal is to help families and children in the state of Nebraska and we want to walk alongside those people, those participants in our program, and help strengthen families, regardless of what faith you are a part of or not a part of or...our goal is to help strengthen families in Nebraska. [AGENCY 46]

SENATOR KINTNER: Well, as a believer, that sounds ridiculous, absolutely ridiculous. Why? I mean there's plenty of organizations that help people, but the Christian organizations do something very unique. We try to go to the heart of the matter and we try to heal hearts and we do it with the healing power of Jesus. And you're not doing that. I mean why? Why not just drop the Christian part and say, we're just an organization to help people? [AGENCY 46]

A.J. SANTOS: Well, what we would say is, you know, we believe in helping family in the state of Nebraska, children and family, and we don't want to alienate anybody. Why are we in the Department of Corrections? That's maybe a better question. Because this was a very intentional problem that we found within our organization, a foster care organization. Back in 2007 we did kind of an internal review and we found that 90-some percent of the children who were in foster care did not have an involved father, so this kind of started this whole thing. That was an internal review. We did it again. We went out into the community looking for any way possible to help fathers and families in the community. We looked at faith-based. We look every possible sector. And the Department of Corrections reached out and asked us several times to come help with their...they didn't have an inmate parenting program for the Department of Corrections. They asked us and we eventually said...felt called to do this work, to help fathers, to help children. We feel like we can't help a three-year-old very well unless you work with the parents, and we're going to work with whoever those parents are to help the children

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in the state of Nebraska. [AGENCY 46]

SENATOR KINTNER: Wouldn't you agree that the root cause of our problems is sin?
[AGENCY 46]

A.J. SANTOS: Well, there's lots of problems. [AGENCY 46]

SENATOR KINTNER: Okay. Well, thank you. I don't...let me... [AGENCY 46]

A.J. SANTOS: Sure. [AGENCY 46]

SENATOR KINTNER: ...apologize for being a little tough on you. [AGENCY 46]

A.J. SANTOS: No. No. [AGENCY 46]

SENATOR KINTNER: And I don't mean to beat you up. I appreciate all the good that
you do. [AGENCY 46]

A.J. SANTOS: Thank you. [AGENCY 46]

SENATOR KINTNER: I just am a little bit puzzled of where Christ fits into the whole
thing. [AGENCY 46]

A.J. SANTOS: Sure. [AGENCY 46]

SENATOR KINTNER: So thank you for coming out. Appreciate it. [AGENCY 46]

A.J. SANTOS: You bet. [AGENCY 46]

SENATOR MELLO: Senator Bolz. [AGENCY 46]

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SENATOR BOLZ: Just for clarity, Mr. Santos, your organization applied for funds through the Department of Correctional Services and was chosen to administer this program based on your ability to address recidivism rates and otherwise accurately run the program. Is that correct? You were an application and you won the award.
[AGENCY 46]

A.J. SANTOS: Correct. [AGENCY 46]

SENATOR BOLZ: Thank you. [AGENCY 46]

SENATOR MELLO: Any other questions from the committee? Seeing none, thank you, Mr. Santos. [AGENCY 46]

A.J. SANTOS: Thank you. [AGENCY 46]

SENATOR MELLO: Next testifier on Agency 46, Department of Correctional Services.
[AGENCY 46]

JAMES JONES: (Exhibits 3 and 4) Good afternoon, Senator Mello and Senators. My name is James Jones. I'm the executive director of the Community Justice Center here in Lincoln. Name is J-a-m-e-s J-o-n-e-s, and it's a pleasure to be with you, Senators, today. I'd like to just briefly talk to you about a program that I've been doing for 16 years here in Nebraska. We're the number one rated program that, by Probation, and we have done...we have conducted the program all over the state, from Scottsbluff to South Sioux City; rated one by staff and by the probation population that we've been working with. So basically, I wanted to share with the Appropriations Committee the powerful work that we've been doing throughout the state and what we can be doing inside the correctional institutions. We've been in Corrections since 2001 doing programming with good results. So that first sheet I'm handing you, that's coming out, is dealing with "The

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10 Musts" the inmates should have. Basically, what I would like to talk to you about is we want to hold offenders accountable. We want offenders to know their victims and know how they are harmed. We want to show offenders how to repair that harm, understand anger and its true sources, stop making excuses. That's what we want inmates to come out of prison with, deal with their emotions, better decision making, know their stressors and their triggers, as well as be motivated. Every single reporting center coordinator across the state says, Jim, when offenders take your program they are much, much more motivated to go to treatment, to go to mental health. They get better results over and over and over again. So we have an insane engagement rate. When you have offenders motivated, you get better results. And that last one, it says "The 10 Musts," we want to help offenders seek and secure and retain employment. These ten items, Senators, we are accomplishing and we've been doing this for over 16 years. I'm a former inmate. I've been through the system in '89. I'm convicted for robberies. I'm a former crack addict. No, no, no, excuse me. I am a crack addict and I've done tremendous amount of harm to my communities because I refused to deal with these ten issues. But we have accomplished those and we can help millions and millions more, I mean in general. That's a big, big number. But these are the benefits to the taxpayers: We have safer communities; we save tax dollars; we have reduced recidivism rates. More offenders are paying taxes. They're not taking away from society but they're giving to society, paying taxes, like they should. And habilitated and contributing members to our society. I don't use the word "rehabilitation" because it's wrong. We need to make offenders capable. Rehabilitation implies that they were okay before they broke the law. That is not true. This is a health and wellness issue. We really need to define it as it truly is, Senators, and when we do, we get better results. I'd like to show you the next page. It deals with Department of Corrections and probation population. We've served over 3,316 offenders since we started in 2001. We house almost 4,800 inmates. I've gone over half the population in inmates when you look at the whole number. And then that last document I gave you, Senators, this was an evidence-based study done by UNL. They looked at the probationary individuals who have taken our class. Individuals who take our program are half as less likely to

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recidivate. We cut the numbers in half. And when they saw this last number on the last page of the study, it says, among the individuals who will take the program, 60 percent walk away with understanding empathy and insight to the damage they caused their victims. Ninety-five percent of the victims who take my class...I mean offenders who take my class, how many victims you have? Me, my family. What harm did you do them? They don't have a clue about the harm that they cause. But when they walk away, after my daylong program, they clearly understand the damage that they cause and they have a responsibility to repair that harm. We can do so much more, but I can't secure funding and that's why I'm here. I know this is not particularly for funding programs, but people say, Jim, your numbers will speak for themselves. That's not the case so I'm here to speak for my program and the great work, no, the fantastic work. We've been talked to by the Justice Department in D.C. We're authorized to do this program in the state of Virginia, California, state of Maryland. We just launched...we launched a pilot program in Washington, D.C., with the hardest of the hardest kids in that area. And we retain. The retention rate, we went 95 percent. They usually have a 50 percent dropout rate. They enter this program called Youth Challenge programs. Fifty percent would drop out. It goes up to 95 percent that they stay. The engagement rate is proven and is solid. I'm open for any questions. Thank you. [AGENCY 46]

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

SENATOR HILKEMANN: How are you...you said you don't receive any state funding. How are you funded now? [AGENCY 46]

JAMES JONES: I'm ashamed to say it, Senator. The Woods Foundation in town, the Lincoln Foundation, the Cooper Foundation, they have funded me year after year after year. And this is the year they came back to me and said, Jim, you told me Corrections was going to pay for your program. I said, yeah. Harold Clarke and others, this was way back: Jim, here's a letter to take to the funders; when we get funding we will pay for your

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program. But as you know, over the years, Senator, everything has to go to bricks and mortar and medical. Jim, well, there is no...there is no programming in prisons. You got Domesti-PUPS, you have Released and Restored, all that's funded from outside, not Department of Corrections' money. What other programs are they funding? All the money has to go to mental health and drug and alcohol, which is critically needed. But the three years that I spent in prison in my time here, it took me five minutes to do my job and the rest of the time on the weight yard or gambling or doing other not positive things inside prison. So right now the Woods Foundation and Goodwill Industries pays for the program. That pays for the program now in prisons. And again, I'm ashamed to say it, but it's sad that we have to...I have to keep going back to those individuals to fund the program in prisons, in prison. [AGENCY 46]

SENATOR HILKEMANN: What's your budget right now? [AGENCY 46]

JAMES JONES: It's \$100,000, and that's paying for me and a trainer in Omaha and a trainer in Scottsbluff. That's funded through...that's Probation, not prison. That's Probation. That's funded through Probation. [AGENCY 46]

SENATOR MELLO: Any other questions from the committee? Seeing none, thank you, Mr. Jones. [AGENCY 46]

JAMES JONES: Thank you. [AGENCY 46]

SENATOR HILKEMANN: I would just comment that I'm going to applaud you for your efforts in that. Keep up the good work and... [AGENCY 46]

JAMES JONES: I will try. I will try. [AGENCY 46]

SENATOR HILKEMANN: You bet. [AGENCY 46]

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JAMES JONES: We can do a better job. [AGENCY 46]

SENATOR MELLO: Any other testifiers on Agency 46, the Department of Correctional Services? Seeing none, that will close today's public hearing on Agency 46, Department of Correctional Services, and take us to our first of three bills for the night, LB229 from Senator Watermeier. [AGENCY 46]