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Appropriations Committee  
February 10, 2016

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[LB733]

The Committee on Appropriations met at 1:30 p.m. on Monday, January 25, 2016, in Room 1003 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB733 and agency budgets. Senators present: Heath Mello, Chairperson; Robert Hilkemann, Vice Chairperson; Kate Bolz; Tanya Cook; Ken Haar; Bill Kintner; John Kuehn; 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, representing 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 first with Senator Kintner.

SENATOR KINTNER: Thank you, Mr. Chairman. I'm Bill Kintner from Legislative District 2, which is rural Sarpy County, Cass County, a little bit of Otoe County.

SENATOR COOK: I'm Senator Tanya Cook from Legislative District 13, northeast Omaha and Douglas County.

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

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

SENATOR STINNER: John Stinner, District 48, Scotts Bluff County.

SENATOR BOLZ: State Senator Kate Bolz, District 29, south-central Lincoln.

SENATOR MELLO: Sitting next to Senator Bolz is Senator Ken Haar from District 21 in northwest Lancaster County who will be joining us shortly.

SENATOR WATERMEIER: Senator Dan Watermeier, keeper of Senator Kintner, District 1, from Syracuse. (Laughter)

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SENATOR MELLO: Assisting the committee today is Laurie Vollertsen, our committee clerk. Our committee page for the afternoon is Alex, and our fiscal analyst for the afternoon is Doug Nichols. On the cabinet up here to your right you'll find some yellow testifier sheets. If you're planning on testifying today, please fill out one of the sheets and hand it to Alex, our page, when you come up. It helps us keep an accurate record of today's public hearing. There's also a white sheet on the cabinet if you do not wish to testify but would like to record your position on a specific bill or agency request. 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 the agency's budget request. When we hear testimony on legislative bills, we will begin bill testimony with the introducer's opening statements. We will then hear from supporters of the bill, followed by those in opposition, and then those speaking in a neutral capacity. We will finish with a closing statement by the introducer of the bill if they so wish to give one. We ask that you please begin your testimony by giving us your first and last name and spelling it for the public record. If you do have any handouts, please bring at least 11 copies of them up and give them to Alex, our page. If you do not have enough copies, please let him know so that he can make additional copies for the committee. We will be using a strict five-minute light system today for all testifiers, other than the introducer or an 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. At this time I would ask all of us, including senators, to please look at our cell phones and make sure that they are on the silent and/or vibrate mode. And with that, at this time we will begin today's public hearing on Agency 78, the Commission on Law Enforcement and Criminal Justice. (Exhibit 1) The committee did receive a letter from the Commission on Law Enforcement and Criminal Justice in support of the committee's preliminary budget recommendations. Are there any other testifiers this afternoon on Agency 78, the Nebraska Commission on Law Enforcement and Criminal Justice? Seeing none, that will close today's public hearing on Agency 78 and take us to our next agency hearing, Agency 46, the Nebraska Department of Correctional Services.

SCOTT FRAKES: (Exhibits 1, 2 and 3) Good afternoon, Chairman Mello, members of the Appropriations Committee. My name is Scott Frakes, S-c-o-t-t F-r-a-k-e-s, and I'm the director of the Nebraska Department of Correctional Services. Thank you for the opportunity to present

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on the department's strategic plan and our midbiennium request. The process to create and launch an effective strategic plan is lengthy and rarely accomplished with a single effort. When I arrived in February 2015, I committed to delivering a strategic plan by fall. A copy of the plan released in October 2015 is in your packet. It's a living document that will continue to evolve in the years ahead. I'm not going to go through it in great detail but I do want to highlight some items for you. Typically, I do this with a PowerPoint so I can stand up and move, and normally 45 minutes is a good marker. I'm going to try to do a much higher level review and do that much more quickly. Has everyone gotten their packet (recorder malfunction)? The document that I'm referring to, it starts on page 1 where we talk about the framework for transforming our agency. We start with capacity, an issue that we certainly need to address; the risk/needs/responsivity process and the tool that we're now in the process of developing for the agency; using a validated classification process; increasing our use of evidence-based practices; building a agency that uses performance and data to drive the work that we do; increasing our leadership development both in terms of today's needs and for succession planning in the years ahead; increasing the number of community partnerships that we have; and greatly increasing our staff and inmate engagement. In terms of staff, what I'm talking about is making sure that staff at all levels of the agency have a voice in the work that they do, in the work that we do. We'll do that through a variety of ways and one of those is creating employee councils where we bring people together representing different levels of the agency and talked with management, collected ideas, help move the agency forward. The other piece that we do with staff is training and we will be working on a major initiative in 2017-2018 to change our academy for our employees as well as our in-service training, what we need to bring in is the work called core correctional practices, which is the introduction to evidence-based practices so that staff understand what their role is and how, when they work with inmates day to day, they greatly impact inmates' ability to change. And that's the business we're in, providing opportunities for change. Another component that we're going to give staff is motivational interviewing so that they have better tools for those conversations/interactions. And then we also want to increase the training that we provide for working with the mentally ill, the behaviorally challenged, and all the cognitively impaired people that are part of our system. The other component is inmates. We've got 5,300 that we incarcerate. We've got over 1,000 that we have on parole. There's an incredible amount of collective wisdom in that group of people and we're not tapping into it. So part of how we do that is we get them in the room together with us and we talk, collect their ideas, see what kind of

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thoughts they have. They live in our prisons 24/7. They're on parole sometimes for a significant amount of time. There's insight that they can give us that will help us run this department, as well as we want inmates to have an active role in developing and moving towards release. We want...the whole concept of reentry begins at intake. If we're going to get people to buy into that, we've got to engage them in a different way than we do today. The second page is just...it's us, it's about this department. It has our mission statement, the vision points, our commitment to inclusion and diversity, describes the agency and the law that created us. And at the bottom it talks about why we do strategic planning and how strategic planning should be, must be directly connected to our biennial budget process. I shouldn't be coming forward to ask in this next biennium for anything that isn't captured in part of the strategic plan for the agency. The third page is what I call "the heart" and sometimes I call it "the meat" of this document. It's busy, I'll acknowledge that. There's an incredible amount of information on page 3, but there's actually a purpose and a flow to it. It captures our five leading goals. These are not all of the goals that this department has but they're the five leading goals that we're going to focus on: one team one vision, transforming corrections, being transparent and accountable, developing collaborative community relationships, and growing this culture of reentry and rehabilitation. And you'll see there's an arrow that points up to the top of the page. At the very top of the page, the initiative, Grow Nebraska, this is a commitment we have is to grow this state. We know one of the ways to do that, one of the strategies to grow Nebraska is to improve public safety. People aren't going to come here if they don't think it's safe. And I'll tell you, coming from somewhere else, I think Nebraska is safe. But it can be safer. We can help with that. Our mission to serve and protect the public directly supports improving public safety which contributes then to the initiative to grow Nebraska. Five leading goals, if we accomplish those we're well on our way of our mission to serve and protect the public. To get to those goals, we've identified outcomes. There are three outcomes tied to each of the goals. Again, these are not all the outcomes that we're looking for in the year ahead or the years ahead, but these are three specific to each of these goals that if we accomplish we know we're moving in the right direction. So for one team one vision there are the outcomes of retaining employees, engaged employees, and safe employees. So how do you get to the outcomes? Well, you've got to have strategies. This document identifies six strategies tied to each of the outcomes in the five different goals. For the one team one vision goal, on the outcomes, some of the strategies include reducing overtime--that's an easy one in terms of staff fatigue and staff satisfaction; creating the employee councils that I mentioned before, getting

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staff engaged; making sure that staff have reliable and effective technology is an important piece, whether that's security equipment or the PC that sits on someone's desk; and a huge one, reducing inmate idleness, directly contributing to safe employees. How do we know that the strategies are working? How do we know that we've reached the outcomes we're looking for? We use measurements, have metrics. We've identified six measurements for the plan. Again, these are not all the measurements that we'll use either but these are good ones that if we pay attention to and determine what the baseline is, we set a target for improvement, we'll be able to use data and use the information that we have to know if we're moving in the right direction. So these measurements include things like vacancy rates; internal promotions; our employee evaluations, first phase of that is get them done on time, then the next phase will be let's put more value into what those employee evaluations look like; we can easily...we have been measuring staff assaults for a long time; unscheduled leave, which is a huge indicator of staff satisfaction, engaged employees--when people aren't happy, they don't come to work; and workplace injuries, a critical measurement that often gets overlooked. There's an assumption that the greatest risk in prison systems and in the work that we do is from inmates but, in fact, workplace injuries contribute just as many bad outcomes for staff. Some of the worst outcomes that I've seen for staff in my history have been from slip and fall accidents. People have fallen off loading docks, fallen through false ceilings, and been permanently disabled and not able to return to work. So we'll have measurements. Those measurements will tell us whether or not our strategies are working. We can use them for course corrections as we go along. We can set targets. We achieve the targets. We look at it again. We'll set a new target, continue to raise the bar. The measurements will also help us know that we've definitively reached the outcomes we're looking for with retaining employees. Turnover would be an easy one, looking have we improved turnover in the way that we expect to. So that's how this works. That is the flow. You can do the same thing with each of the goals. Ultimately, at the end of the year, we're going to be able to assess, see what our progress is, identify new goals, identify new strategies, and continue to move forward. Of course, that's one layer. That's pretty high level in terms of page 3. Inside there, inside your handout is...there it is. Okay. So this is the next level of work that happens. These are the outcome documents. There will be 15 of these documents specifically tied to the outcomes that are in this plan. We already have other outcome documents that are tied to other outcomes that we're working on in different areas. These documents on the front side give us just some good overall assessment of where we're at. We're tracking our overtime. We're watching our inmate costs, cost

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for food per inmate. We're looking at our medical expenditures, which is a huge part of our budget. So this is just an information piece on the front side. On the back side is where we identify the strategies, we identify the specific measures that we're going to use. And as it says, as you'll note, not yet calibrated. Well, often a challenge is figuring out the baseline. While we have a lot of electronic data collection, our system isn't nearly as user friendly as someday the help that it is. So it takes some experts to pull information out and...which we have on our staff but it's a much more laborious, much more labor-intensive process than I would want it to be. We will be able to soon establish what the baselines are. We've already set some targets based on assumptions. This is a draft document but I wanted you to just get an idea of what the next layer looks like. There's yet another layer that I'm not going to do a lot of time with but it's important to know that with strategies that have complexity to them, then those require work plans or action plans. So there's another set of documents that go down into that because there will be staff that are responsible for carrying out the strategies and bringing them to life. That's the flow of using data to measure and to drive performance. And it is a learning process for my agency. I came out of an agency that has used these kind of processes for over 15 years. We've got a ways to go here but we're on the right path. We're making good headway. On page 4, the...it just outlines a number of initiatives that we were able to move on during 2015. As I said in probably several different settings, it just seemed like an opportunity to capture that. Even though we're running a large system, taking care of business, we're building a strategic plan for the work in the years ahead, there's just a lot of things that are happening in addition to that and I wanted staff to be recognized for it and to kind of publicly say these are just many of the things that we're doing. So, as it says at the top of page 4, transformation comes through a combination of strategic thinking, strategic planning, and being prepared to take advantage of the opportunities that arise. As we pursue excellence, we must consider the organizational capacity for change while conducting the daily operations at each of our ten prisons and adult parole. It would be great if we could just close the doors, pull down the blinds, get everybody in a room and work on all of this, and that was all that we had to do. But we don't. We have ten prisons to run and 1,000 people on parole and there's a lot of work that has to be accomplished every single day. So I'm proud of where we're headed and I'm proud of the work that's been done so far, but it...just don't want to lose sight of the fact that it is in addition to a lot of other work that happens every single day. On page 5, those are just three very broad areas that I'm taking this agency towards. Evidence-based practices, we have evidence-based practices we need to make better use of and

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more use of, and we need to ensure that the work we do today that we describe as evidence-based truly meets the standard. One of the areas that we've had the Justice Program Assessment that is going on right now through Council of State Governments. Really happy that we were able to put that together and they're doing that at no cost for the agency. They're going to give us a lot of insight in the programming we have, areas they think that we should focus on improving, additional programming that we might bring into the agency. And one of the areas that was identified--kind of already knew it--was quality assurance. We don't have a good quality assurance component as part of it. Without quality assurance, you can't really know you're doing evidence-based practices. You can assume you are, you can think you are, but you've got to have a check and balance. I talk a lot about operational capacity versus design. It is an important concept. I'll talk more here in just a little while about how applying that...well, and I'm not going to go into the details of that right now, but that is an important piece. So I think I'll save that for the next part. And then the last piece is our focus on behavioral health. We have been successful in creating the chief of psychiatry position, bringing in Dr. Martin Wetzel as our Chief of Psychiatry. We've hired Lisa Jones, Dr. Lisa Jones as our head of Behavioral Health. We have good fortune to have hired Dr. Natalie Baker as one of our psychiatrists and she has come on staff. We still have one vacant psychiatrist position that we're working hard to fill, a number of psychologist positions that we are still working hard to fill. Between Dr. Jones and Dr. Wetzel, they are working hard to roll out a plan for our department with Behavioral Health. What we know is that we've got a large population with a wide spectrum of needs. About 80 percent of them have something that falls under that umbrella of behavioral health, most common, substance abuse, but then there is just a litany of diagnoses that come below that. So to do the work that we need to accomplish, creating an effective, meaningful, well-run behavioral health system is foundational to the department, so we're working on it. Pages 6 and 7 outline potential capital construction projects over the next six years which align with the agency's master plan. The first step in the capital construction plan is the expansion of the Community Corrections Center-Lincoln, and is detailed in our midbiennium request. The CCC-L expansion will construct a 160-bed female unit, a multipurpose building for food service, program space, and a warehouse. The estimated additional cost to revise the existing CCC-L program statement is \$53,000. The total construction cost is estimated at \$26.1 million. The CCC-L expansion is the first step in my long-term strategy to address operational capacity. The proposal incorporates the projected reduction in prison admissions as a result of LB605, which will be realized over the

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next several years. Many of our facilities were constructed at a time when sufficient programming and treatment space were considered to be less important. We must expand capacity and update current facilities to include program and treatment space to address inmate needs. Adding an 11th facility, such as Air Park, will not improve the quality of operations in existing facilities but will drive up our operational cost. Improving core support services in existing facilities increases operational capacity to address our population needs. There are good reasons to invest in CCC-L instead of leasing Air Park. Air Park's floor plan is linear and broken into small spaces which create poor sight lines and require increased staffing and/or technology for security. The structure requires rebuilding from the ground up. The building doesn't meet energy codes, electrical codes, plumbing codes, or life safety codes. The roof is failing. The HVAC system is pieced together and at the end of its life expectancy. It's been suggested that Air Park could house 200 inmates with prison sentences of up to three years. Lancaster County Corrections used this building as a work release program, managing a maximum of 134 inmates with short jail sentences. When it's all said and done, we will have invested a substantial amount of money in a property we don't own. We need to invest in existing facilities, all of which need varying degrees of improvements to achieve the correct operating capacities. CCC-L has a design capacity of 200 beds and currently houses nearly 400 inmates. The kitchen, visiting room, and program space were designed for a population of 200. This \$26 million investment turns a crowded facility into a functional community custody facility with an operational capacity of 560. The project increases female bed capacity by 48 for the entire system and opens up an additional 100 beds for men in community corrections. The practice of coed correctional facilities in Nebraska needs to end. Female inmates have a higher rate of mental illness and past sexual, physical, and mental abuse, which can and does create anxiety and resistance to treatment in a coed setting. This proposal provides our female population with a community-based living environment that supports delivery of trauma-informed care. It's a living unit designed to meet the needs of women transitioning to the community. There are several reasons I've elected to increase capacity in Lincoln instead of Omaha. We must invest our construction dollars strategically. As I've said before, CCC-L was designed for 200 people. It currently houses 400. The proposal expands core support services to meet the needs of the population housed there. The resources needed to support the construction and the operations of this expanded facility are also located here in Lincoln. CCC-O is located in a 100-year floodplain next to a levee with documented flooding less than five years ago. Build out of this site in Omaha requires

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the use of two-story construction, which creates issues with accessibility and security. That facility is operating above design capacity but has less than half the number of inmates housed at CCC-L. The expansion of the Community Corrections Center-Lincoln is the best first step in rebuilding the prison system in Nebraska. The next step is to complete a revised program statement for the Reception and Treatment Center at a cost of \$69,000. This project addresses operational needs at the Diagnostic and Evaluation Center and the Lincoln Correctional Center, and healthcare/behavioral health needs for the agency. This project consists of four components: facility consolidation, medical and mental health, intake, and food service. Placing inmates in county jails has significantly reduced the population at our most crowded facility, the Diagnostic and Evaluation Center. The agency's population is at 157 percent of design capacity and that does not include the individuals assigned to county jails. If these individuals were in NDCS facilities, our population would be at 164 percent of design capacity. While we begin the CCC-L expansion and admissions decrease as a result of LB605, there is still a need to rent county jail beds. Approximately \$480,000 is requested for fiscal year 2016 and \$4.6 million for fiscal year 2017. As the population decreases based on the impacts from LB605, I plan to house all inmates in NDCS facilities by the end of fiscal year 2017. In addition to requests addressing capacity, the midbiennium request include other estimated budget shortfalls projected for fiscal year-end. Historically, NDCS has used vacancy savings to address overexpenditures in these operational accounts and one-time infrastructure and security needs. The level of vacancy savings is not sufficient to fund the entire shortage. In order to provide a complete and accurate picture of NDCS's entire budget, we included the estimated vacancy savings when submitting our midbiennium request. Vacancy savings are estimated at \$4.4 million in fiscal year 2016 and just over \$2.2 million in fiscal year 2017. There are other specific areas of the midbiennium request which I have included in my written testimony. I won't go through each of these individually but I would be happy to answer any questions you have. [AGENCY 46]

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

SENATOR KUEHN: Thank you, Chairman Mello. Thank you, Director Frakes, for coming with us today and also spending some time walking through the strategic plan. And I appreciate the additional time you've spent with me individually as a senator answering and addressing

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questions and providing me data for those questions that I've had. A couple things that I would like to...and I wasn't not paying attention when we visited before, but there are a few things I think it's important for the committee to hear and also to have on the record. With regard to the strategic plan you presented today, how does that fit, not fit, extend from, not extend from the 2014 master plan? [AGENCY 46]

SCOTT FRAKES: If you were to open up the 2014, which I did not provide you a copy of, but if you were to open up the master plan, the 2014 master plan, you would find the roots of every one of the proposals on page 6 and 7 within the plan. There are modifications to, adjustments of, but in essence every one of these can be identified as part of what's recommended. The plan had a two-phase approach, actually a three-phase approach, and the first phase included expanding community custody beds, both here in Lincoln and in Omaha, and then phase two they looked at a variety of additional proposals. So one of the things that we know is the plan was put together prior to LB605 so the projections for population growth and the different classifications of that population did not take into account LB605, so we need to step back now and see how those adjustments may come. I've also brought in...I put an internal team together to re...I won't say redesign but to update our classification tool. Then we've contracted with UNO to validate that tool. Then we will train our staff and apply that to our population so that we can get a much cleaner assessment of the makeup. As today, actually, seems like the time to hand this out.

(Exhibit 3) This is not to scale. That's a disclaimer. It's just a nice visual representation. So based on our current classification tool today, 31 percent of our population lands at max custody, about 30 percent at medium custody, about 28 percent at minimum, and 11 percent at community. Part of what we know is that the community population is very much driven by bed space. You can't get community custody until a bed is available for you to go into it. After we apply, after we get the tool validated and apply it, my hope is that we land in a distribution that's much closer to the pyramid triangle on the right-hand side. About 15 percent of the population should fall at maximum custody, about 35 percent in medium, 35 percent in minimum, and at least 15 percent in community. Without that information, today I know, based on the data we have, that we can support another 160 community custody beds, so I felt very comfortable asking for that funding. But until I get a better assessment and get a true understanding of the makeup, I can't tell you today what additional beds should or shouldn't be built without doing this. And I said I'm not going to do that. Did I answer your question? [AGENCY 46]

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SENATOR KUEHN: Yeah, that's helpful. Also one of the questions I've had continually throughout this process over the last two years has been the county inmate program and the utilization of those beds. And in full disclosure, two counties in my district, Buffalo County and Phelps County, house inmates for Department of Corrections. And I was under a completely inaccurate perception of what those inmates were prior to having a discussion with you. So that other misconceptions don't exist on the committee, would you explain who is currently being housed in the county jail program and the criteria and how long they are there? [AGENCY 46]

SCOTT FRAKES: I will. Thank you. So we look at that, when I first came there was a lot of conversation about that population, and I think at that time it was not working the way it should. We were putting people out in those beds and leaving them there for far too long. So we began to really pay much closer attention to who we were putting in the beds, making sure that their length of sentence, their programming needs, and other factors were addressed so that we didn't miss an opportunity to get them into programming and provide other services before they release. Primarily, we're sending people out of Diagnostic and Evaluation Center that have enough time to do that they can go out to one of those jail beds for approximately 90 days or less and then transition into one of the ten prisons at the appropriate custody level and get access to the programming that they may need. We're at about...I'm going to say it's about 80 percent compliance with that goal, and actually the average stay, just in terms of an average class of people there, is about 70 days right now. But we've got some outliers. We've got a handful of people that are much higher than that for reasons that, you know, are typical to prison systems. If there's only one living unit in one prison in the entire system that you can safely be housed in, then it's a matter of when does that bed open up so we can get them there. We also have a small collection of people, probably it's less than 20 I think, that have requested to go to one of the jail beds because it's closer to home or maybe it is even home and their programming needs have already been met. They're nearing release. So they've asked for that. And I think that pretty much captures it. So it is being used in the way that I intended for it to be used in terms of rather than having sit in D&E and have a population of 545 inmates that we had less than a year ago, we were able to actually get D&E down below 400. We're at 411 today, so we've bumped up a little bit, but brought it down to a more reasonable level. It's a short-term, transitional housing, and then they're off to the place that they need to be. [AGENCY 46]

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SENATOR KUEHN: So by comparison, what's the average time that an individual would spend in a county jail presentencing compared to where they are now? [AGENCY 46]

SCOTT FRAKES: If they don't...if they're not able to bond out, they could easily spend anywhere from a few months if they took a plea deal to up to a year or even longer sometimes if they went to trial, went through the sentencing process. So we see...routinely see sentencing orders that include credits for jail time of 250 to 300 days. So that is the other component is, yeah, a lot of people do spend a lot of time in jail before they end up with us. [AGENCY 46]

SENATOR KUEHN: And so then just to again be clear, based on your testimony, it is your intention that once LB605 and the accommodations from LB605 passed last year, that the jail...county jail program beyond fiscal year 2017 will not be needed. [AGENCY 46]

SCOTT FRAKES: That is exactly what I'm expecting to achieve. I think I've...and I've gone with a conservative estimate trying not to...trying to make sure that we don't overestimate what LB605 can do for us. But I think those numbers are pretty easy to achieve by that June of 2017. [AGENCY 46]

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

SENATOR MELLO: Thank you, Senator Kuehn. Senator Stinner. [AGENCY 46]

SENATOR STINNER: Thank you. Thank you for being here. I kind of enjoyed your strategic plan, because there's a lot of moving parts and a lot of things that you have to execute. One of the things that has caught my attention is trying to fit and trying to get your arms around who the prisoners are, what that population looks like, and casting some kind of estimate forward on what that population is going to look like in light of LB605. One of the things that really kind of popped up to me is this validation tool that you have now that's being recertified. Is that what I understand? [AGENCY 46]

SCOTT FRAKES: Correct. [AGENCY 46]

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SENATOR STINNER: Do you have a date on when you're going to get that tool and be able to implement it? [AGENCY 46]

SCOTT FRAKES: They believe May, we'll have it in May. [AGENCY 46]

SENATOR STINNER: Okay. [AGENCY 46]

SCOTT FRAKES: Training shouldn't take very long. It's not a significant change in the tool, so the training should go fairly quickly and then we can move forward. [AGENCY 46]

SENATOR STINNER: Do you administer it or does an independent body go through and kind of evaluate the population? And how long does that take? [AGENCY 46]

SCOTT FRAKES: No, my department staff do it and I'm going to say it's probably about a 90-minute process, maybe less than that even. [AGENCY 46]

SENATOR STINNER: Okay. How long will it take you to have a really good idea of where that population is at? [AGENCY 46]

SCOTT FRAKES: Well, I'm not ready to give you a day today. My goal is I need to be able to inform my biennial budget request, so my goal would be to have it done before August or in August. I need to make sure that the tool is ready and we can schedule the training and then we figure out how can we strategically get the resources together and go out and do it. But I really do need that information for my biennial request. [AGENCY 46]

SENATOR STINNER: Okay. Thank you. I kind of looked at this a little bit different maybe than most people do simply because I don't have the deep understanding Senator Mello, Senator Bolz, Senator Krist have. I just looked at the fact that there is an overcrowding situation. We have ACLU hanging over top of us and there's a sense of urgency to get something done as it relates to short term. Now the bad part of the short term is many times it generates decisions that don't fit into the long term. But what I'm trying to do is to say, okay, can we alleviate this 1,000--I'm just using 1,000 as a number because it's 20 percent of your population. It's about 1,000. How

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can I reduce that population as quickly as possible and still fit into a long-term plan? And I guess I come back to the community bed situation that we're talking about. And I asked the Fiscal staff to put together and overlay LB605 on what the master plan said. And it appears like in 2019, I'll just read you what some of the results were. By just holding that 1,000 folks as a stagnant number, we could reduce our population in 2019 to 134 percent, which gets me below that 140. And I that 140 is kind of a target, So then we come back to what can we do short term? How quickly can we do it? Does it fit into putting 1,000 people into beds on the community side? And I guess I did kind of put together some numbers and some way of looking at this. And by the way, that's probably the cheapest beds that you have is the community custody beds. [AGENCY 46]

SCOTT FRAKES: Right. [AGENCY 46]

SENATOR STINNER: But based on community custody, we now have 535, probably varies from time to time; work release is 296; 239 is in work detail. And apparently we have 200 beds available and 160, or 360 in total, in Lincoln and Omaha. So we're short about 175 right now. If we take that to 1,000 beds that we'd like to do, one has to figure out where do you want to locate those beds and what that should look like. And I guess when I started to look through your plan, look at the cost associated with what we're trying to do and what my experience is in construction, I'm kind of scratching my head, \$275 per square foot caught my eye quickly. And I will tell you that I compared and contrasted that. That's...and just breaking it out, it was \$84,403 per room just for the rooms, and that includes security. When I step back and look at it, what is our need? What level of security do you need to have? I can finance a fairly decent motel/hotel, if I don't have land costs, for about \$40,000 a room with an FF&E package that's superior to what your...the room, the furnishings, that kind of stuff, that's superior to what happens in the prison. So I'm saying if you give me the land and give me a lease for a period of time, I can build this a whole lot cheaper than you can and I'll have it done in a year. Is that ever in the possibility or in the calculus for this? [AGENCY 46]

SCOTT FRAKES: I'm going to try to answer that but I'll have to say I'm not sure if I clearly understand your question. So I'll answer it this way. [AGENCY 46]

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SENATOR STINNER: Well, it's an observation as well as a question. I mean I'm just stumbling over the numbers that you have for construction. What you get done over the short term, and it actually takes a longer term than a plan that I think makes a little bit more sense and that's really just putting the beds in place and trying to provide a short-term fix and a long-term strategy with it. [AGENCY 46]

SCOTT FRAKES: Okay. So there are significant differences in the cost of and the expectations for and the codes around residential construction, hotel construction, prison construction. So that's one of the things that you have to look at. I hope that the \$275 a square foot is high. But I prefer to under promise and over deliver whenever possible. So once we get back our program statement and then we go forward to go out to design, I'm hopeful that those numbers are high and that we would be able to do it for less money. I haven't built anything in Nebraska though so I don't know. I don't have...and we haven't built any prison space since 2001 so we don't have any track record either. We know it's a highly competitive market and we know there's difficulties finding employees and we're seeing that just in trying to get bids for small jobs, like replacing the walls at Tecumseh, and only having one bidder and a very inflated price. So there's all those factors that will contribute to it. The other part of this story is, yes, we could simply just take it from a design capacity standpoint and try to get our number of beds up to reduce and bring down that overall design number, get it down to the 134 percent number that you put out, but that doesn't do anything then to address all the core support service problems that we have. So we still need to address the fact that our dining halls are too small, we don't have space for visiting, that in some cases in some of the facilities the programming space that was built at the time for the number of beds designed is not adequate for, in my mind, for today's standards. So if we don't make those improvements as well, then we're still just warehousing people and I don't want to warehouse people. I want to create environments where people are interested in change, where people...where it's conducive to engage in the programming that we want to offer them, that we create some environments where people see their time in prison differently than they do today. So simply adding more sleeping space doesn't get us there. In most of our cases, it isn't so much that there's inadequate sleeping space, even though it was originally a room built for one and now it houses two. It's the lack of all of the other spaces around that that make it a less-than-desirable prison. So I'm saying that in some cases we need to address design capacity and put some, you know, attention towards that but that really the best value that we could put into our

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prison system is to improve all of these core support service areas, make our prisons more effective. So that's where I am headed, in that direction. So that's why the proposal only adds 160 beds. But it changes that facility, the Community Center in Lincoln, completely from what it is today in terms of its ability to provide quality of living and effective delivery of programming to the population. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Stinner. Director Frakes, I'm going to...because it was a question to some extent that I had on my list and Senator Stinner asked it and I'll ask it another way. Am I correct that the federal courts rule and base their decisions, when it comes to overcrowded cases, based on design capacity and not operational capacity? [AGENCY 46]

SCOTT FRAKES: I don't know. [AGENCY 46]

SENATOR MELLO: I fairly...I believe I'm fairly correct in that assumption, based on the Special Investigative Committee's work over the last couple of years. And that's probably the one issue that I think Senator Stinner was getting at a little bit is while there is a focus, it appears, from the department on enhancing the operational capacity, nothing in the operational capacity mind-set or strategic vision addresses what we know the federal courts rule and base overcrowded cases on, which is on design capacity. Which raises a bigger question which is with this existing request, it does build more operational capacity and more design capacity in three years. I think maybe my colleague was getting at is what are we going to do between now and those three years when we will see a very small increase in design capacity and still possibly be at risk for a federal lawsuit that would require us then to release inmates against our will? [AGENCY 46]

SCOTT FRAKES: So again I can't speak to what the courts have said specifically around design capacity. When we met with the ACLU some seven, eight months ago, the focus that they talked about and that I have seen from court cases has been around deliberate indifference. And so that, more than anything, has typically led to the rulings where courts have intervened and created special masters and things like that. And during that conversation I was told they did not believe we had met that standard yet but they were going to continue to pay close attention, as we do as well. So now going to your question, it is, allowing LB605 to do the work that it's going to do to bring down our population, it's planning for the future by adding a little bit additional capacity,

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it's doing further planning and deciding do we add yet more beds in the years ahead once we know what the right beds are to build, and it's changing the makeup of the prison so that you can effectively house the number of people in the space that we have dedicated. So I'm...I wish I had a more clear, specific answer around how the courts have ruled on design capacity, but I don't have that piece today. [AGENCY 46]

SENATOR MELLO: Okay. One general follow-up in regards to the short term issue that's been raised in regards to the lack of design capacity for the short term, as this request, if approved, would move forward. Has there been any discussions internally within the agency in regard to looking at short-term alternatives, such as maybe modular housing or other short-term community custody facilities that we could build onto or on a DCS campus is...obviously, modular housing, other states, cities use this in regard to be able to house community custody work release inmates, having a much more cost-effective dollar per square foot, dollar per bed. But it also can be utilized, it can be sold afterwards if that community custody population changes. Has there been any discussions at all in light of this request, knowing that we're going to have to wait three years before we get that first new bed? Has there been any internal discussions about looking at other short-term options to help mitigate the overcrowding?  
[AGENCY 46]

SCOTT FRAKES: I think the short answer would be no. But we have talked about, if we were to continue to expand community beds, how might we pursue looking at a different approach.  
[AGENCY 46]

SENATOR MELLO: Uh-huh. [AGENCY 46]

SCOTT FRAKES: The Washington model has been brought forward as a good example of using...rehabbing apartment buildings and other spaces and turning them into small community work release centers. I think that is something that we should explore in the future, recognizing that the experience in Washington was most of those were sited in the '70s and '80s. And when they went to site one in the late '90s, it was a two-year process and it ended up in an industrial park because of the "not in my backyard" syndrome that, you know, became part of at least the West Coast. The idea of the modular component, no, we haven't really explored it at this point. I

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was looking for an investment that has the length of life that we would expect to get out of it, you know, state construction. And if I thought that the real urgent issue was around people who don't have enough room to sleep, I think that might be something I'd be more urgent about exploring. It raises the question in my mind about whether or not we might do something with programming space on a modular basis, but I haven't explored it yet, haven't gone down that path. But that's an interesting concept, especially at a community corrections level where you don't have the same security needs. [AGENCY 46]

SENATOR MELLO: Senator Bolz. [AGENCY 46]

SENATOR BOLZ: First, Director Frakes, I think I want to say that in comparison to the conversation about the Department of Correctional Services I had in my first year on this committee, this is a vast improvement. You know, you've got more information (inaudible) and I just wanted to thank you (inaudible). [AGENCY 46]

SCOTT FRAKES: Thank you. [AGENCY 46]

SENATOR BOLZ: I have a couple questions. I'll try to be as concise as I can. I am struggling a little bit with the timing of the new classification system. Do you have any initial first sense of how dramatic of a change you'll see with the new classification tool? Do you think the new classification tool will lead us to a 10 percent change or a 20 percent change or a 40 percent change? May is after our session is over so it's hard to know that the population we're working with is not...we don't have a clear picture of it. [AGENCY 46]

SCOTT FRAKES: So this chart, the numbers on this side where we hope to come close to are a reflection of averages across the nation. So those are kind of typical breakdowns of prison populations across America, knowing that it's a spectrum, like anything else. People use a variety of tools and have different standards. But in general, those are kind of how populations break down. My hope is that we are going to come close to those numbers. The biggest difference that we've made is we've gone from a tool that was just very much based on static risk, crimes committed, length of sentence, age, to a tool that also takes into account behavior in prison. So while their initial classification, which is going to, if they're first time in the system, is going to

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be pretty much based on length of sentence and age and those factors, at their next review we'll now have an opportunity to see are they programming, are they behaving, are they earning less-restrictive custody levels. And we can actually do some analysis around that to help us target not just how many beds do we need to meet that immediate need when they're coming out of reception or intake, but realistically how soon will they transition. And that's part of how you get to the bulk of the beds should be in the medium and minimum custody levels and with as many at community custody as we can support. [AGENCY 46]

SENATOR BOLZ: So maybe to ask the same question in a different way, is this chart aspirational or is it where you think the new tool will land us? [AGENCY 46]

SCOTT FRAKES: It's a reflection of the world across the America, so aspirational is probably a good word, yeah, because I try really hard to not guess too much about it. That's why we have a tool, and we validate it, and then we apply it, and then we see what we get. Because I think an important component in any of these tools is that people not have expectations when they apply them, that they be as objective as possible so that they're not looking for an outcome and not basing scoring and those kind of things. [AGENCY 46]

SENATOR BOLZ: So at this point in time, we have the classification chart that you shared with me and we really just have to wait and let the tool work to see where we'll land. We don't have any interim information to know how close we'll get to your aspiration. [AGENCY 46]

SCOTT FRAKES: No. [AGENCY 46]

SENATOR BOLZ: That's helpful, just (inaudible) to understand. My next question is maybe a little bit more philosophical, but I think as we've learned in the LR34 Committee, we've learned that the ideal vision of a correctional system is one where folks are continually stepping down. And I'm just wondering, I know that in the community corrections is the place where we've got a bottleneck in terms of stepping down. Are there other places that you can articulate with clarity that are bottlenecks in terms of the stepping down idea? [AGENCY 46]

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SCOTT FRAKES: Well, our minimum beds, the only minimum beds I have in my system that fit what I think minimum beds should look like are in McCook at the WEC. And even there, it lacks core support. Has no recreation space and very little programming space. But just in terms of general layout and philosophy, that's kind of what minimum should look like. I have 600 minimum beds at NSP but they're in a perimeter connected to a medium-max facility. It's not a population that I can do too many innovative things with, like community work crews, because then there's a contraband introduction dilemma that comes from that. So I think there is a bottleneck in terms of there's little incentive for people to want to promote to minimum custody because you go from a two-man room or a four-man room to a dorm. For most people, that's not an improvement in quality of life. And then, unless you're in the residential substance abuse treatment at NSP, there's limited other opportunities for programming to work, so that creates kind of an internal bottleneck. And then we have a significant amount of overrides in our current classification system, but most of those are up as opposed to, you know, putting them in less-restrictive beds, just because even though they might score as minimum, the empty bed is at medium or max and that's where we put them. [AGENCY 46]

SENATOR BOLZ: And one more question and then I'll let other committee members ask questions. But my last question is about community corrections and (inaudible) two-part question so I'm cheating. But two questions. The first is I think from a policy perspective the female correction approach, female-only corrections approach, there's some real research and logic behind that. Is there any other place that we could create a female-only unit? If we want to do a female-only unit, is Lincoln the only option? [AGENCY 46]

SCOTT FRAKES: No, it's not our only option. I think it's the best option and that's because, again, of...there's the other component. The resources to do the construction and to oversee the construction are all centered out of Lincoln. Because there's not this wealth of knowledge and this collective group that knows how to do the work, I'll have a more active role in that project than I normally would because I do have an extensive background in prison construction. And then more importantly what Lincoln provides is, for prisons, a significant amount of staff resources around medical, health services, behavioral health, other programming opportunities. And I want that economy of scale. I want to be able to have that psychologist, who does most of their work at D&E, you know, drive two blocks over to the Community Center and deliver a

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class twice a week for an hour. And that's just a huge resource that is centered here in Lincoln.  
[AGENCY 46]

SENATOR BOLZ: And that's helpful. That maybe addresses part of my last (inaudible). I asked Legislative Research to just get me some research-based information about what best practices are in community corrections. And I'm very much oversimplifying the good work of Legislative Research, but what they reported back to me was essentially that the community characteristics are the most important factor in driving the success of community corrections. So everything from accessing a bus line to nonprofit organizations, to the access to mental health and substance abuse treatment. Is it your perspective that Lincoln is the best place for those things? Is Omaha comparable? What's your perspective about the community standards for community corrections? [AGENCY 46]

SCOTT FRAKES: Lincoln is best today because we've just put...we've developed so much more here in Lincoln. We've had so many more resources here. The central office is here; again, four different prisons and all the staff connected to that, NSP being here since, what, 1869 I think it is. So you have all of that history, the reentry work seems to have gotten more legs here in Lincoln. Again, I bet a lot of that is just because of the work is easier to do because it's closer to the leadership that sits here in Lincoln. There's no question Omaha has the potential to deliver all those things. The behavioral mental health component might be the most challenging piece, just because again we've got so many resources that are working out of NSP, out of D&E, out of LCC, and in particular now LCC as it's becoming our residential mental health center is the direction we're headed. So that will be a bigger challenge. I don't...I can only commit so many resources and currently there is three facilities, total of, what is it, it's just over 1,000 beds as compared to some 2,500 beds that are here in this...Lincoln. [AGENCY 46]

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

SENATOR MELLO: Thank you, Senator Bolz. Senator Cook. [AGENCY 46]

SENATOR COOK: Thank you, Senator Mello. And thank you, Director Frakes. We also had some conversations about my overarching question, being new to the committee but being here

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now for my eighth season, our conversation around transitioning people back to the community has been around that provision of services. And you touched on it in your testimony today but I'd like you to help us understand better and for the record to describe why this proposed investment, which is in physical plant, how does that get us to the delivery of the services that we have been talking about, particularly behavioral health services and everything that a person needs to make the transition successfully back to the community? [AGENCY 46]

SCOTT FRAKES: Okay. So if you have a facility where you've got bed space and very little else then it's difficult to accomplish much else besides giving people a place to sleep and take a shower, in the case of work release, ideally get them to their job. We want to do much more than that. We want to deliver meaningful programming. We want to do that in ways that people are receptive to, because that's an important component. We can offer all the programming in the world, we can do all the...offer all the opportunities for change that we want to, but if people aren't receptive, if people aren't responsive, we're not going to get anywhere. So creating an environment where people are actually engaged in their living space, actually to the degree possible, I don't want people to be real excited about people in prison but if they have to be in prison I'd like for them to recognize that there's value from that experience. It's on us to create that value. So whether it is, first of all, ensuring that there's enough room to sit down and have a meal, enough room to have a meaningful visit with your family members, enough room for some recreation that allows you to get off a little steam and take care of yourself, and then enough room for the different kind of programming pieces. Some of those could be done in multipurpose spaces. In this case, that's part of what we would design our dining halls to do. It wouldn't just be used three times a day to feed. They're great programming, meeting spaces as well when they're designed correctly. But then you also need some individual classrooms. You need space for providers if we're going to do any kind of one on one mental health, behavioral health work. You need space for small groups as well. In terms of the women, what we'll do is I've got some fairly good connections in the business and some very talented architects that I've worked with over the years and still interact with even today. I'm going to reach out to people across the country that are doing these designs for mental health, behavioral health, female living spaces that look a lot different than typical prison spaces. And I'm not sure even in my mind what that might look like. I know, though, that it's going to include the furnishings and the coverings and the different components of it as well. But how we configure the rooms together, the number of spaces, will it

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be some kind of multiple-person rooms, is it better to have single-person rooms, those are questions that I don't have answers yet today. I've done some work around designing space for mentally ill but I have not specifically built a living unit for female populations. So this is a great opportunity to go out, find the best talent. And I don't necessarily...I'm not talking about paying money either. Actually have people I just had dinner with two weeks ago that said, give me a call, I'll help you figure it out. And then of course in the end we have to design and we do pay for that piece. But I'll reach out, find the best minds I can, and get the best ideas around what should that living unit look like. Did I get close to what you were looking for? [AGENCY 46]

SENATOR COOK: Yes. More, it helped me in my understanding that we weren't simply back to bricks and mortar, that the object of the game, given our limited resources, is to create space where the services can be successfully delivered. And based on what you just told me, create an environment where people are more inclined to participate in the services, whether those be provided by our own state and state-contracted psychiatrists and psychologists or, as we discussed in my office, through volunteer groups such as Alcoholics Anonymous, Al-Anon, Narcotics Anonymous, making that not...make the building not be a barrier to offering those resources to the people who are inmates and parolees. [AGENCY 46]

SCOTT FRAKES: That was very well said. [AGENCY 46]

SENATOR COOK: Oh, why, thank you. [AGENCY 46]

SCOTT FRAKES: I want to expand on it because I can help. [AGENCY 46]

SENATOR COOK: Please do. [AGENCY 46]

SCOTT FRAKES: You know, one of our challenges is we have not tapped into the volunteer resources that are available, whether it's here or Omaha or anyplace else we have a facility located. I know they're out there but it comes back again to you have to have space for them. And in a more secure prison then you also have to have the staffing to facilitate the access. The lovely thing about community corrections is the access is pretty simple. They come, they sign a book, they've been cleared, they walk to where the space is. You don't need escorting staff. You don't

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have those kind of security components that make it more challenging. There's people that are lined up in my e-mail box and knocking on my door to say we want to come in, we want to help. This is an opportunity to greatly change the dynamic. And then there's another component too. Because our system has not utilized to a great degree, not to the degree that I'm used to and would expect to develop, volunteer programs and these resources, there's a lack of understanding of the value it brings. And so I've got to build a culture in my other facilities. So what a great way to model that and then carry that out to other places as well, so. [AGENCY 46]

SENATOR COOK: Thank you. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Cook. Senator Watermeier. [AGENCY 46]

SENATOR WATERMEIER: Thank you, Chairman Mello. Appreciate that, Director Frakes. I guess I have two things. One would be maybe a comment and a follow-up from what Senator Bolz had asked about, is there other bottlenecks and where they are. And let me just ask the question. You can say, yeah, that's kind of...generally, roughly, that would be accurate. I'd like to make sure that I'm thinking about this almost like an exit plan. Whatever money we spend today, if all things worked really well--and I have a lot of faith that LB605 will be working, we're going to change how we do business, the sentencing and all these things--we almost have to be ready about how our population is going to be reduced. And it looks to me like is it not sensible to think that the investment in the corrections beds will be the last ones where they'll always be full? So that probably is the best investment of our time and money, right in that spot, because the other beds, if things work out as they should, we should take Tecumseh from a maximum and that population should eventually go down, but the community beds will be the last thing to actually empty out, if that were, in theory. [AGENCY 46]

SCOTT FRAKES: As long as we have the right number. [AGENCY 46]

SENATOR WATERMEIER: The number. [AGENCY 46]

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SCOTT FRAKES: Yeah. You know because it would be easy to build too many community custody beds and then not have the right custody level of inmate to put in those beds. [AGENCY 46]

SENATOR WATERMEIER: That's my question then. So it would be easy, I mean unless you didn't have that planned out properly, to build the wrong type of correction bed. [AGENCY 46]

SCOTT FRAKES: Absolutely. [AGENCY 46]

SENATOR WATERMEIER: So to me to defend this, I want to make sure that that right there is accurate. [AGENCY 46]

SCOTT FRAKES: So, as an example, if we were told today by courts, you must reduce...you must build more beds. Let's just be real simple. We want you to build more beds. Then the safest bet would be to build maximum or maybe medium beds, because you can put almost anybody in them. You build maximum beds, you can put anybody in them. Is it effective? Is it the right thing to do? Is it a smart use of money? It's none of those things. But that would be the safety valve because anybody can go in a max bed. Only a certain slice of the population can be put in a community custody bed safely. [AGENCY 46]

SENATOR WATERMEIER: Right. So my...kind of my big picture goal would be it would be accurate to think that as the population reduces, not from being forced to do it but as we work the system better, that community beds will be the last to probably empty out or to get closer to the 100 percent capacity as we reduce from 165 down to 100. I'm just thinking in terms of I got to justify this myself and that's why I'm coming to grips with the fact of where is the best investment to do it. And I think I'm there with that so...that the idea it's in community custody beds and not anywhere else. [AGENCY 46]

SCOTT FRAKES: It is because we know that we...I know we can fill the number of beds between what we have today and what I'm proposing to build. [AGENCY 46]

SENATOR WATERMEIER: Right. [AGENCY 46]

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SCOTT FRAKES: And I believe that through the processes, both changing the classification system, delivering meaningful programming, creating environments for change, giving people incentive to behave and work their way through the system, that ultimately I want to be coming back to say we need more community beds. Hey, we need even more community beds.

[AGENCY 46]

SENATOR WATERMEIER: Kind of leads me in the next question. Today you have 200 beds and you're housing 400. If we add 160 to that, and I realize there's a women/men split on that, is that a...means we jumped it to 360. Does that mean if you double the person capacity that we're going to jump that 720 the first day it's opened up for business? [AGENCY 46]

SCOTT FRAKES: No. [AGENCY 46]

SENATOR WATERMEIER: Okay. All right. Unrelated question, can I continue? You know, Tecumseh is in my district, and it's always been a big concern for me. And I appreciate what I hear you talking about, employee councils, motivational interviews. You really haven't expanded on that other than what you first had in your opening testimony. Is there...well, you want to talk about that a little bit more? I mean my district is screaming for that and we want to know, you know, what we're looking forward to, so. [AGENCY 46]

SCOTT FRAKES: Well, it's still a conversation right now. That's why I said 2017-2018. So I'd like to start getting some folks together. Maybe we'll do it this spring. It will probably happen more likely, though, July, August, group together to look at our existing academy, staff academy that we have, as well as the in-service training we do. We can't afford to...we probably can't afford to add significantly more time to our academy, although we're not going to rule that out, but I think there is an opportunity to really rethink what we're training our staff in today. Is everything that we're giving them today the tools they really need to do this work in 2016? And I know what's missing is that understanding of what evidence-based practices mean, the understanding of how their role and how they interact with the inmates has everything to do with the inmates' responsivity to what we want to offer them, so changing those dynamics. We still train and it's the same way in the state I left behind, we still train our staff coming in the door: I'm here to contain and control, keep your distance, I have to maintain these boundaries and

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we're not going to have any kind of an interaction. That doesn't work. That will not work to carry out the mission we need to carry out. So I've got to get people just walking into this business to see the work much differently than they do today. So redoing the academy is one component and I don't think it will take that long to figure that piece out and then implement those changes. And if there's a budget impact, we'll have to figure that out down the road. Like to think we can accomplish that without a budget impact. The other component is how do I train the existing 2,400 staff, the 1,600-1,700 staff, 1,800 staff that are in the prisons and get them up to speed as well. So that's a whole nother strategy that we need to figure out. I don't have an answer yet for that today because we've got a lot of moving pieces going right now: getting the classification tool done, getting staff trained in that; getting the risk/needs/responsivity tool out and staff trained in that; doing the training that needs to occur for parole, of which we hope to get some of it happening and then the transitional occurrence, and then that will be under the Parole Board but it's a team effort; the leadership training that I talked about as well, which I'm going to start with the top of the agency and work. We've got three days, three Fridays committed starting at the end of the month, and then we're going to use that, start cascading that out through the agency. So I'd love to tell you that I had this great work plan that had all of the details related to the staff training issues. We're not there yet. [AGENCY 46]

SENATOR WATERMEIER: Okay. I appreciate that. And maybe one more follow-up? You know, you talked about a goal of the end of 2017 to have all of them in your own facilities and outside of the counties. And then you said June of '17 and that's like coming right up. We're talking about 15 months. [AGENCY 46]

SCOTT FRAKES: Yeah. Right. [AGENCY 46]

SENATOR WATERMEIER: That...is that really... [AGENCY 46]

SCOTT FRAKES: Yes, so end of fiscal year. Yes. [AGENCY 46]

SENATOR WATERMEIER: That's realistic? [AGENCY 46]

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SCOTT FRAKES: Based on the projections from LB605, I should be in even better shape than that, but we're talking about 160 inmates or 160 beds, so that's the goal. I'm pretty confident, I am confident that the results of LB605 will produce at least that much more reduction.

[AGENCY 46]

SENATOR WATERMEIER: Okay. That's great if we can get there. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Watermeier. I'm going to inject a couple questions, Director. And I'm going to give you another opportunity to explain a little bit more in regards to what I'm still struggling in regards to my recollection in regards to the significant difference in regards to operational capacity versus design capacity when it comes to the overall operations of the correctional facility and how the courts judge whether or not they can intervene in regards to what they see as cruel and unusual punishment. If I'm not mistaken, it was fairly detailed I believe in the Dewberry report in regards to that was the strategy in the Dewberry report, was to encourage the department to move towards...away from design capacity in regards to viewing overcrowding to transition to an operational capacity. The courts...I'll give you another opportunity just to correct the previous statement you may have said. I'm fairly certain the courts don't view operational capacity in any which way, shape, or form; design capacity, is my understanding that it's still how they would judge a decision whether or not to rule us in regards to cruel, unusual punishment. And I know that the master plan is written in that operational capacity mind-set. Is there anything else you want to share or provide perspective on that?

[AGENCY 46]

SCOTT FRAKES: Just that I'm not specifically aware of decisions that were based just on design capacity, but again I'm not saying that I know, just I'm not aware of decisions; that it is the entire package that's assessed. Is there deliberate indifference? But if you are providing recreation and out-of-cell time, if you're providing three good meals a day, if you're meeting the healthcare needs, you're providing for mental health, behavioral health, some level of programming, then design capacity alone and in and of itself is not a reason to say that a prison is...should be assigned a special master. [AGENCY 46]

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SENATOR MELLO: Okay. Maybe this is a bigger, broader question, but do you see us still right now, in light of what we've gone through as a state prior to your arrival last year, are we still in kind of a code red mentality in regards to our overcrowding crisis in regards to what you no doubt had heard? We had long wait lists or waiting lists for programming, mental health needs. Prison capacity you mentioned today is at 164 percent, if you include the county jail population. Do you still see us at that code red mentality right now in regards to a all hands on deck, we've got...the lights are blaring right now, things are still at that high level of risk in regards to what we're dealing with as a state? Or do you see us at a much lower risk now than where we were maybe a year ago or two years ago in light of your year here being in the state? [AGENCY 46]

SCOTT FRAKES: We're at a lower risk in terms of what we're paying attention to, so I'm really very comfortable that we are focused on people at release that present high risk and doing some things very differently than we were with our discharge review team. And we're not just looking at people with significant mental health issues but we're looking at people with violence issues, people that are just demonstrating high-risk behavior. So we're using a process that was very...that didn't exist today. So in that term, in terms of that specific component, I feel very confident that we are addressing, making assessments for, making recommendations for civil commitment. When there is not justification for civil commitment, we're doing notification to law enforcement and identifying that there are people releasing, you know, the risk. We're also doing much better release planning. We've got our social workers in place that are doing some literal hand holding with some offenders, including delivering them, as they walk out the door, putting them in a car, taking them to, you know, whatever it is, their residence, the halfway...well, they don't have halfway houses, the community transition housing that might be out there, so doing those kind of direct delivery of services that didn't exist before. Okay, the bigger picture, though, we're still trying to get our head wrapped around what our needs are. We've got 5,400 inmates and 4,400 of them, roughly, with some kind of a diagnosis, most with a substance abuse diagnosis but many with one or two or three other mental health diagnoses as well. We've got waiting lists for all of our programs. We're just starting to scratch the surface in terms of addressing programming related to violence. I'm happy that we've made some good moves around domestic violence but we've got a ways to go, a long ways to go. Our substance abuse work, we're doing really, really good work, but we're not getting to all the people that need

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it. And then we've got that challenge of the significant population that doesn't stay with us very long. So, what is it, it's about two-thirds that are leaving in less than three years. [AGENCY 46]

SENATOR MELLO: Uh-huh. [AGENCY 46]

SCOTT FRAKES: So now we've got to do...I've talked about right bed, right time, right inmate. That's where doing the reentry planning at intake is so critical. And so we are moving forward, making good progress. Typically our reentry specialists are meeting with people within 14 days of arrival at D&E, starting that. It will be called the Life Plan is what it's going to be called. It's a plan that is developed with the inmate, stays with him all the way until they discharge. Ideally, that discharge includes a component of community supervision or parole and as much transition through the system as makes sense and is the best hand-off possible in terms of the community resources. So I'd love to say that all the other pieces were a lot closer to where I want them to be. We're not. What I'm happy about is that we've got good assessment tools that are being developed. We've got a plan to get those rolled out and staff trained. And I've got some excellent leadership in Behavioral Health... [AGENCY 46]

SENATOR MELLO: Uh-huh. [AGENCY 46]

SCOTT FRAKES: ...so that's a big change as well. [AGENCY 46]

SENATOR MELLO: That kind of leads me. It's good. I appreciate, I think, the candid assessment. I think on behalf of the whole committee, I think we appreciate hearing that candid assessment, and kind of leads me to a couple of the other budget items that are noncapital construction related. And you just pressed upon one, that it was just more of an understanding in light of, while I won't be in this chair or in this body in a year from now, this will be the second year, essentially, the department has not requested any additional funding for programming. In light of knowing that there are assessments going on, there are obviously reviews going on, can you give us a perspective in regards to what maybe the Appropriations Committee in 2017, the Legislature in 2017 may be having to see in regards to programming requests? Knowing that as we've been coming out of a very long, cold winter, from a previous administration where this was not a priority, it's now become a spotlight of needing to become a priority, can you give us

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an estimate? Will that probably be a much bigger request we will see maybe not this year but next biennium or bienniums after or...? [AGENCY 46]

SCOTT FRAKES: You will see a biennial request around programming, whether it's additional clinical level services. I'm hoping that we can put more focus on cognitive behavioral interventions that don't have to be delivered by clinicians. Moral Reconciliation Therapy is a great example of one. If the staff is interested and their job allows for them and they complete the facilitator training and are certified then they can deliver the training...the programming, use the right word. But we know that we still do have need for therapy...sorry, treatment-related substance abuse, you know, clinical. So it requires people with licensure and with certifications. How much additional, I don't know. I'm not...we're just really starting to try and figure out what's the best bang for the buck. What I've got Deputy Director Mike Rothwell exploring is additional options around substance abuse treatment. There are certainly programs out there for a certain part of the population that don't require clinicians to facilitate the work, because there a part of the population that have substance abuse issues that, properly engaged with AA or NA and some other support networks, could address their issues. So that's one end of the spectrum. And then there's that other end that needs the nine-month residential treatment program that we run that's thorough but expensive. So again, I'd really like to expand those programming opportunities that don't require clinicians and that's...I highly value the clinical work we do, but we need to address a much broader spectrum of our population so we've got to find the balance. Vocational training, definitely exploring options for vocational training; turning correctional...sorry, Cornhusker State Industries--I get yelled at every time I do that--CSI. [AGENCY 46]

SENATOR MELLO: CSI. [AGENCY 46]

SCOTT FRAKES: CSI, Cornhusker State Industries. It is evolving right now into a program for offender change, which is exactly what it needs to be. So they're looking at what might they bring in. Could they bring in some cognitive behavioral interventions, like Thinking for a Change, and have that be part of the work day? They've got staff that are actually excited about the idea of becoming facilitators rather than just supervisors of work crews. So those are some of the things we're going to move towards. Short answer is, yes, you're going to see requests for programming dollars in the next biennium. [AGENCY 46]

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SENATOR MELLO: The healthcare inmate health services was one of your larger deficit requests and ongoing requests, and it's something that this committee had an awful lot of discussion last year on in light of what we know are some challenges with the hepatitis C medication issue. The broader question I've got is has the department does any evaluations, any planning, any research documents that looks at what we can do maybe differently in regards to whether privatizing our health services, whether entering into a partnership with UNMC being the state's only public medical center and public hospital to try to come up with maybe a more cost-effective model in delivering health services to inmates in comparison to what we currently have right now? [AGENCY 46]

SCOTT FRAKES: Yes. So we're working actively on creating an offender health...inmate healthcare plan. We're, I don't know where we're at in that process. I'd say we're somewhere close to 60 or 70 percent of reaching out now to some other sources to get ideas around how that should look. We have statutory direction that says we have to meet the community standard of care and one of the challenges is coming to agreement on what does that really mean. What is the community standard of care? I think we're well down that path. So if we have a well-defined inmate healthcare plan just like we have healthcare plans that says these are the benefits we get, these are the services we get, that will help. It will help give our providers a better sense of how they should be acting or the services they should be providing. We continue to review our formulary to make sure that we're being thoughtful and judicious in the prescription of drugs. Want to meet healthcare needs, but at the same time it's easy to try the latest, greatest thing if it's available and there's no formulary around that. We are working very actively with UNMC and we have been exploring a variety of different programs. We've got Dr. Wetzel, who's leading a forensic...I'm going to say it wrong, want to say forensic intern and that's not what it is, but a program that would allow students that are currently in psychiatric programs to come in and work with our population, gain the experience they need. And ideally, whether it contributes to meeting the overall need of the state of Nebraska or, in some cases, helping to meet the needs of our department or HHS for that matter, we all win. We're looking at...working on actually a contract with UNMC to do the...our lab services. Then we're exploring some other partnerships and options. But we've been meeting fairly regularly since last summer and they're great. That's the nice thing about it is they're excited about it as well. I like the process that we have currently

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with Blue Cross Blue Shield, but as the audit identified, clearly what we lacked was a check and balance. [AGENCY 46]

SENATOR MELLO: Yes. [AGENCY 46]

SCOTT FRAKES: We are on the right path. We are not where I want to be yet in terms of that but we are on the right path to ensure that we're paying for the services that were delivered, we're not getting duplicate billings. And then I think the whole utilization process is another component as well, making sure that we've got a thorough level of reviews and that the services that we're sending people out for are truly needed, so a work in progress. It is very challenging. What we have is, and the chart in there shows, not only is our overall cost, you know, escalating significantly, but the costs per inmate is escalating as well. It is a reflection of medical cost inflation. It is a reflection of a population that we believe across the country is coming to us sicker. They are in poorer and poorer physical health, whether that's driven by drug trauma, and there's a lot of that, or just all of the other lifestyle choices they make. And then we have an aging population. I was surprised to find out our average age of our inmates is now 37. That means we've got a lot of elderly inmates within our system. One of the things we say is that for inmates, 50 is the new 70, because by the time they've made it to that 50 to 60, the lives that they've often led, they are in very dire shape. And so we're seeing lots of \$20,000, \$30,000, \$40,000 hospital stays for different issues, so. [AGENCY 46]

SENATOR MELLO: I've got 1 last...I've got probably another 20 questions but I'll only ask 1 more right now to let committee members ask others. Senator Watermeier asked a question that revolved around Tecumseh, and the issue that I did notice in your request, operational request, is there's nothing to address what we've learned through other legislative committees in regards to the understaffing issues at facilities, the mandatory overtime issues at facilities. And I understand it's part of your plan in regards to dealing with employee councils, employee training. There's still nothing in there that directly deals with paying employees more to retain them in positions and/or to keep them from leaving their position which creates a vacancy and that vacancy, we all know, costs more money to send someone through a training program to have them work for a year and then leave to go work for Cass County or Douglas County or Lancaster County. Can you speak at all in regard to is that simply not a strategy the department believes it needs to

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consider, is looking at additional staffing costs in regards to keeping your work force healthy and keeping your work force employed? [AGENCY 46]

SCOTT FRAKES: Compensation is most certainly an issue for state workers. It's not just my staff. It's not just Tecumseh but it's true across state workers in Nebraska. So I say that to say that it's not just my problem; it is a problem for most of the agencies. It's a problem that we need to figure out how to collectively solve as best as possible. So...and one of the issues that has been said to me loud and clear, it's found in the survey that was conducted by the Inspector General, is while entry level wages aren't what they should be but we still manage to hire staff with those entry level wages, it's the lack of a step raise or progression pay or some kind of movement within those pay ranges that is the most troubling issue that staff bring forward around compensation, and that is really what I've tried to focus on. But that is an issue that has to be negotiated with the unions for all those that are represented staff. So that's one of the components that we have to deal with. There's the question of whether or not I have the authority to actually provide bonuses or incentives. The advice that I've been given up to this date is that it's not within my authority. But at this point, the legal resources are taking a hard look at that to see really what the right answer is around that. The challenge of course is if you do a hiring bonus, can make the other people mad because they didn't get it. I have had experience with geographical pay, as it's called. The experiences didn't produce the results expected and it did create...what it led to was some staff transferring from other facilities, so you shift the vacancy, and a disparate wage level then that just made the rest of the staff mad. And so ultimately it got bargained away in Washington and went back to a flat wage across the state. So it's a big issue, it's an important issue, and it is very much on my radar. But at this point, my focus is on the negotiations process that starts this summer and seeing how we can address this in a way that's effective and meaningful for all of Nebraska. [AGENCY 46]

SENATOR MELLO: Thank you, Director. Senator Haar. [AGENCY 46]

SENATOR HAAR: Well, thank you very much. I'm going to talk about staffing a little bit more as well. It's kind of interesting to me, being on the Appropriations Committee a couple years, that even people get elected at the highest...who get elected at the highest offices campaign on cutting expenses and so on, and then they come before us and say, other people are taking my

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staff because we don't pay them enough and so on and so forth. So the thing...well, in Nebraska we have two things: one, people seem to be underpaid; and the other, we just don't have enough people to fill positions. Could you address that a little bit? [AGENCY 46]

SCOTT FRAKES: I've said this many times. I was surprised at some of the wage levels, especially for areas like nursing, was one in particular that jumped out at me. Our correctional officer wages are competitive for state systems in this general area. [AGENCY 46]

SENATOR HAAR: Okay. [AGENCY 46]

SCOTT FRAKES: I still think they're low, but they are competitive. But the unemployment rate just defies the world I came out of. I came from the belief that anything below 4.5 percent was the remainder of the population that didn't want to work, couldn't work, wouldn't work. And yet somehow here we manage to employ almost every single person that wants a job and I've got to imagine a bunch of people who do two jobs. So...and I don't have the solution. We continue to talk about how do you break through that component when there are more jobs than there are people and I have not found the answer yet. Wages certainly could be a part of it and then the question becomes what is more important. We know the best way to impact turnover is retention. So that's where I go again to some kind of progression or step pay system so that people have an incentive to remain and feel that...because what I hear time and time again is, so I've been here ten years. That guy arrived yesterday from academy. He's been on the job now for six weeks. I'm expected to train him on how to do the job. I'm expected to share all the wisdom and knowledge that I've accrued over ten years and his paycheck looks just like mine. How could that be right? I see that as an issue that we definitely have to find a better solution to. But this how you find enough workers in an economy where there's more jobs than people, that one is tough. [AGENCY 46]

SENATOR HAAR: So you must track people when they leave, at least to some extent. Where do they go if they leave? And their wages must be one of the issues, just not having any idea what the job is going to be like and so on. But where do people go after they leave? [AGENCY 46]

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SCOTT FRAKES: Well, the bad news is we weren't doing exit surveys as an agency. We weren't. We are now. So now we're starting to get a better sense of it and actually asking people what is the issues. So we know though, anecdotally, that county corrections in the big county systems typically pay better and that is attractive to some staff, so that's one of the issues. It's not as big as people like to think. There's not that many county jobs and there's not...they don't have that many, you know, people coming and going either. But we lose some people to some of the bigger county jails. The railroad, at different times when it decides it's going to go in an expansion phase, attracts people. Had the same thing happening in Washington State. Interesting though, the flip side is they also have their economic downturns or their changes. And we've had some people that have gone to them and then come back because they didn't like the work. They found out it wasn't what they thought it would be. So there's that component. We see people that do exactly what you said, it just wasn't a good fit. You really can't know until you go to work in a prison whether or not you're going to like working in a prison. There's just no other way to gain that experience. So we see that as well. So those are the anecdotal issues that I'm looking at. I can't right now point to any one big draw that's pulling people away. Even though people are dissatisfied with wages, we do have a pretty significant number of long-term staff that still stay with it. What I hear time and time again is they're unhappy about a number of things but they still love the work and still love the agency, which gives me hope because I think now if we can address some of these other problems then we can build a greater level of retention. [AGENCY 46]

SENATOR HAAR: Now one of the fads right now in education is technical training in welding and things like this. But are you engaged at all with the school system when they're doing this to talk about employment in the prison setting? [AGENCY 46]

SCOTT FRAKES: We are. We're going to college job fairs and we even have some high schools that we're interacting with, very closely with the military and people that are coming out of the military. We're looking for every opportunity where we can get in front of people and talk about the work. And that's where the military, in particular, is a great source to turn to because there's some affinity, some connection to, and we do hire a lot of people that are mustering out. But we've hired a full-time recruiter last summer and she has done phenomenal work already. So we're seeing some really great results from her efforts. And one of the coolest results was the e-

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mails I got just this week from a couple different people that said...the one I got yesterday: I've been with this department 17 years and she's reinvigorated me; she's made me excited about the work I do again. So that's kind of an unintended consequence that came from hiring a recruiter. And she's been working very hard on sending messages to staff about, if you like what you do, tell others about it. Because we do know, we're doing analysis on our advertising and our other recruitment efforts, not scientific but we're trying to just get an assessment of what are we getting the results from. So as we hire people, we ask them, what brought you to the door? The number one thing is somebody that works in the department said, well, come check it out; it's not a bad job. So we know our best recruiters are our employees. [AGENCY 46]

SENATOR HAAR: Well, I hope you'll realize your role to...in advocating like for higher wages. If I asked for that, it probably has less (inaudible) than somebody in your position. So going to county jails for just a minute, you...I think you went around and talked to a lot of those people. Do...I mean what do you hear back from them when we stop using their jails? It would seem to me that probably a lot of those folks were counting on state inmates to keep making the payments on their bond issues and so on. [AGENCY 46]

SCOTT FRAKES: One way or the other, if they have beds to rent, I'm sure as that resource and that funding dries up, that will be a concern for them. And so far, because we haven't moved in that direction, we haven't had those conversations yet. I'd like to think, though, there was some awareness. It's been pretty clear, at least from when I arrived here, that this was not intended to be the way of doing business for eternity. So having gone through it before, you could probably expect, as well as I will expect, to get some communication about, you know, this is a cost-effective way to managing it, why would you step away from funding these beds and, so. [AGENCY 46]

SENATOR HAAR: Uh-huh. We just see in California that they...the courts have ordered quite a few inmates released and so on. Should that happen in Nebraska, would you be part of deciding who gets let out or how does that get determined? [AGENCY 46]

SCOTT FRAKES: That's a good question. I would be part of it but I'm not sure who else would be...ultimately have a decision. Well, I suspect that I would probably make an assessment and

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then I'd have some conversation with the Governor as well and my other advisers. And because of the way our system works, we would have to work hand in hand with parole. We'd want to look for every opportunity to see if we could use parole as opposed to just simply releasing people right out of facilities, but not in the terms of past experiences. More like is there an opportunity to take a look at them and see. And if the Parole Board feels somebody is not eligible for parole and the court has said they have to go, then the next step is you try to release those that present the lowest level of risk, knowing that they all present some level of risk. [AGENCY 46]

SENATOR HAAR: Sure. And then my final question, this is just totally philosophical, but you have to deal with the people that basically we hand to you. So do you ever think if I could just tell the Legislature where to go with sentencing and so on? [AGENCY 46]

SCOTT FRAKES: That's an interesting question. I've got my exec team reading a book called Healing Corrections. We're in chapter two yesterday which talked very much around the whole issues of sentencing and our criminal justice system and the fact that correction systems for many years, and I was part of one, thought that their role was drop them off at reception. We'll own them until their sentence is done. We'll do what we think we need to do. Leave us alone, we know what we're doing, we're the experts. And when we're done we'll hand them back out and that's where our goal ends. There is a very loud, strong voice in corrections right now across America that says, that's not true. If we're going to have a criminal justice system then the criminal justice partners have to come together and figure this out collectively. JRI, LB605 a great example of how you do that. So I'm really happy and proud to be part of a movement in corrections that really sees things differently than we used to. Now where that goes I'm still not even clear. I've still got a lot of learn, both about political processes and about what's...I've got...I've only got so much of me to go around. So what should be the most important focuses for me? Is it around reductions in sentencing? Is it around sentencing disparity? Is it this whole issue of where should the best mental health and behavioral health programming occur? It should occur in the community and ideally it's occurring before people end up in the criminal justice system. [AGENCY 46]

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

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

SENATOR KINTNER: Well, thank you, Director. Appreciate you coming, sitting in the hot seat for a couple hours. I got to tell you I find this pretty impressive. This is pretty good stuff. I mean you and I have met and you've given me some, in writings, some points of things you're trying to do. This brings it out in a lot more detail and kind of puts a little...like to have the outcomes, the strategies, the measurements, that really helps a lot. I appreciate the effort you went to, your staff went to, to write this. I appreciate what you're doing. A couple questions: I don't particularly like being threatened by the ACLU and other people and trying to do policy around their threats of lawsuits. Are you working with the Attorney General? Is he advising you on kind of, okay, this is what we think we can do in the court so we can (inaudible). Is there those conversations going on with the Attorney General's Office? [AGENCY 46]

SCOTT FRAKES: Not at this point... [AGENCY 46]

SENATOR KINTNER: Okay. [AGENCY 46]

SCOTT FRAKES: ...because, again, I'm meeting with the ACLU. I came away from those conversations with the belief that if we continue down the path that we're headed down and do the work I've said and we've said we're going to do that we won't have to get into that arena. I recognize that it's always something that's got to be in the front of my mind. At the point that I thought there was a more imminent issue then I certainly would be talking to the Attorney General. [AGENCY 46]

SENATOR KINTNER: Good. That's good to hear. I'm glad that we're working with him. Don't want to have so much adversarial. I appreciate you doing that. [AGENCY 46]

SCOTT FRAKES: No. And if that's the reason question, I think our relationship with the Attorney General's Office is excellent. [AGENCY 46]

SENATOR KINTNER: Okay. [AGENCY 46]

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SCOTT FRAKES: Been really helpful in the sentence calculation issues and some of the other things we've worked on this year. [AGENCY 46]

SENATOR KINTNER: To piggyback a little bit on what Mr. Chairman said and Senator Haar about employee retention and pay, how are you...what are you doing to design a step program? Do you have any...I mean I'm sure you're in an association of prison officials or something that may have some best practices. Do you work with DAS? Where are you going when you set that up? Who do you work with? How do you go about setting up a pay scale that's appropriate for this region of the country and our market and everything? [AGENCY 46]

SCOTT FRAKES: Right now it's just a conversation. It does include DAS. It includes labor relations as well. So we're not as far along in the conversation as I thought we might be, but we do still have a few months until the negotiations process starts. But that's how it would come to be. We've got to get some agency heads together and we've got to get DAS, labor relations, and figure out what would be an approach that makes sense, that would be meaningful, and that we can afford, all right, another component. [AGENCY 46]

SENATOR KINTNER: You talked about that you're not even sure if you can give bonuses. Bonuses, I think, are a great thing to do, reward good behavior. What's the problem there? Is it the union contract? Is that a... [AGENCY 46]

SCOTT FRAKES: Actually, the union contract has a provision that says if I'm allowed to I can. [AGENCY 46]

SENATOR KINTNER: Okay. [AGENCY 46]

SCOTT FRAKES: So it's not the union contract. No, here it's been whether or not it's constitutionally allowed. There's a question about compensation for work not performed, so that's one of the issues that's being explored. And then there's been prior executive orders as well around it. So that's why at this point clearly we need to get clear legal direction on that issue and pin it down, instead of me just saying I can't do it. [AGENCY 46]

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SENATOR KINTNER: It's probably legal until someone says it's illegal, I would (inaudible).  
(Laugh) [AGENCY 46]

SCOTT FRAKES: I don't want to go...I really don't want to go down that path. [AGENCY 46]

SENATOR KINTNER: What percent of your work force is in the union? [AGENCY 46]

SCOTT FRAKES: Actual membership I think is about 17 percent. But of course, they're all...everyone that falls within the represented category, so that's some I think at least 1,600 or 1,800 staff, so something along that line. [AGENCY 46]

SENATOR KINTNER: Well, thank you. Appreciate it. [AGENCY 46]

SENATOR MELLO: Real quick, Director, you just said something I want to get a clarification. Did you say that because of prior executive orders, which I know under state law they can be rescinded, prior executive orders. That is a reason of concern of why you're not considering potential bonus payments or retention bonuses per Senator Kintner's question was...? [AGENCY 46]

SCOTT FRAKES: So in trying to pin down what is it that prevents me from being able to offer bonuses, I've been given answers that say that it is...goes right back to a constitutional issue. You can't provide compensation for work not performed. And then there's then also the question that there was executive...or the belief there was executive orders in place or had been in place that also impacted this. So that's why I say today I'm looking for legal, I'm looking for the true legal answer. [AGENCY 46]

SENATOR MELLO: Can we get some verification or...I'm looking at one of your legal...your researchers over there, Mr. Beaty, who's an attorney. Can we get any clarification to the committee in regards to a prior executive order? I believe the Governor has the ability to rescind any previous executive order under their watch if they so choose to. But we will no doubt discuss the constitutional related issues probably in another committee, but. Senator Cook. [AGENCY 46]

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SENATOR COOK: Thank you, Senator Mello. Here's a straightforward question that seems like everybody should know the answer to. But I don't necessarily know so I'll ask. What is "a bed"? When you say "a bed," do you mean the bunk or mat, as the case may be? Does this cost per bed include bunk or your mat and your sink and your toilet? What...because we were having this conversation kind of around that cost per bed, and I said, I wonder what a bed is? [AGENCY 46]

SCOTT FRAKES: When you're talking about construction, you can measure it at least a couple ways. [AGENCY 46]

SENATOR COOK: Okay. [AGENCY 46]

SCOTT FRAKES: One would be literally first a bed is the space that someone sleeps in. [AGENCY 46]

SENATOR COOK: Okay. [AGENCY 46]

SCOTT FRAKES: Okay. So that's that measurement. There is the cost to build the living unit and there will be a breakout. It will come from the program statement. But as an example of this project for Lincoln, of the \$26 million the basic number tied to the living unit is around \$8 (million) or \$8.5 million. So you could divide the 160 by that number and you would come up with that cost per bed. But then there are design fees and contingency fees... [AGENCY 46]

SENATOR COOK: Okay. [AGENCY 46]

SCOTT FRAKES: ...and other overhead that's associated with it. And then there's the site work that has to be accomplished so that drives yet another cost. And next thing you know you can actually be looking at more like \$15 million in the total cost associated with the design, civil work, construction of the building, permitting, and all the other pieces. [AGENCY 46]

SENATOR COOK: Okay. [AGENCY 46]

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SCOTT FRAKES: So now you divide the \$15 million by 160 and you come up with a different number. And then it's not unusual for people to look at the total project cost and simply just do a down and dirty, well, it's \$26 million, that's 160 beds, so that's the cost. But in the example of this project, well, no, that's the cost also of the food service that will be adequate to feed the inmates, the dining hall space that will be adequate for them to sit down and have a meal, the additional programming space, and all the other components that come with it, so. [AGENCY 46]

SENATOR COOK: Okay. All right, so it wasn't as straightforward as just... [AGENCY 46]

SCOTT FRAKES: Wasn't quite as. [AGENCY 46]

SENATOR COOK: Thank you. [AGENCY 46]

SENATOR HILKEMANN: Senator Bolz. [AGENCY 46]

SENATOR BOLZ: Thank you. I know it's getting to be a long hearing but... [AGENCY 46]

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

SENATOR BOLZ: ...I think it's important that we talk about the Reception and Treatment Center request that is the most expensive of the requests. And I just think in terms of adding a long-term discussion to our short-term discussion it would be helpful maybe just to have you say a few words about your vision and how it relates not just to capacity and overcrowding but also the circumstances of confinement. I think that's something else that the ACLU and others look towards in terms of what their expectations are. So I just want us to have some of that discussion on the record, please. [AGENCY 46]

SCOTT FRAKES: Okay. The original...there was a program statement done as part of the master plan. So the original program statement for the Reception and Treatment Center start...as I'm told, it started first to be an incorporation or a consolidation of D&E and LCC. It added more bed space, just more beds for the D&E side, more beds I believe for the LCC side, so they would

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be general population beds, and then it had a large behavioral health unit, very large, as well as some other components. That was a...I cannot remember the number associated but it was big, very big, expensive program. I looked at that, said realistically there's some components that we need to accomplish to address some high-level needs, and so the program statement that we want to put together for this revised Reception and Treatment Center would go back to the idea of consolidating LCC and D&E into one prison, so we'd have some overhead reduction. You know, we'd only need one warden and the staffing that goes with that. It's not significant but it is, it's still an efficiency, and it's a more effective way to run that facility. The improvements that it includes would be some core support spaces, much like the other project we talked about today, and then the addition of new skilled nursing beds as our skilled nursing beds for our agency at NSP and at D&E are old. They are past their life span. While typical living unit beds or living unit spaces, when built correctly, you can expect to get 30 to 35 years of life span out of them and then often systems run them even longer than that before you do a really significant remodel or you build something new and tear it down. With healthcare space the life span is more typically about 20 years. And often in prison systems you end up running them for more like 30 years before you get the funding and do the replacement. Well, the beds at NSP were built and opened in 1982. The beds at D&E were built and opened in 1979. So they're well, well past their life span. Here's an opportunity or could be an opportunity to build a new skilled nursing facility that was consolidated. It would allow us to take the healthcare resources that are dedicated at NSP to those skilled nursing beds and the resources dedicated to D&E and put them all in this new hospital for the agency, in essence. We would still operate a few beds at Tecumseh just because it makes sense, but consolidating those other beds and the resources tied to it are another efficiency and an improvement of our ability to deliver services. It then frees up those existing skilled nursing beds that could be utilized to provide services to the geriatric population that doesn't need a skilled nursing level of care but needs a different kind of care than you can provide in a typical living unit. It might allow us to do some other work with some of our other populations that have special needs. So we can still use those spaces but we won't need all of the clinical staffing tied to it. The biggest need that we meet with this project would be the creation of 24, I'm sorry, we are now looking at 24 to 32 behavioral health, high-level beds, secure mental health as we call them in the system today. Our existing space that we call secure mental health for our most sick, our most ill, severely troubled, mentally ill, behaviorally challenged inmates is in a space that was built as a general population living unit. It's the best thing that we have in our

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system and they're doing excellent work, but there's nothing about the design or the layout that is conducive to the work that needs to be done. We took the day room and turned it into a classroom. We put high security programming chairs in the day room and it's working, and it's working well. It's working well in the sense of we weren't doing anything before. So now we've actually moved in the right direction. But here's an opportunity to build some space for the most difficult, most troubled part of our population and manage them in ways that are much healthier for them and for our staff as well. It's expensive. You talk about expensive beds, whether it's the design for those secure mental health beds or the skilled nursing beds or the fact that the rest of the components, you know, and it doesn't create a lot of additional bed space for our system. But what it does create is beds for our most vulnerable population that will allow us to deliver the services we need to deliver. It would allow us to turn...truly turn LCC into a residential mental health facility. You'd have a few general population beds to meet some of the maintenance and needs, but also we would have lower custody residential mental health inmates, which we're currently housing there, that could probably do those things as well, work in the kitchen and provide some of the other services. [AGENCY 46]

SENATOR BOLZ: Thank you. I just wanted to make sure that I got it included in the discussion. [AGENCY 46]

SCOTT FRAKES: Thank you. [AGENCY 46]

SENATOR BOLZ: And I think what you're articulating is trying to increase efficiency (inaudible) space but also trying to increase the quality of the services that we're providing to the most intense folks, which I think is something else that the ACLU and other advocates might be looking at. And I just briefly want to say I think something else we heard in the LR34 Committee was the tension between the Department of Correctional Services and the Lincoln Regional Center. And so I think efforts to increase the quality and increase the capacity of both of those facilities is important when we're talking about our most vulnerable and our, frankly, our most dangerous. So thank you for helping me put that on the record. [AGENCY 46]

SENATOR HILKEMANN: Senator Watermeier. [AGENCY 46]

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SENATOR WATERMEIER: Thank you, Chairman Hilkemann. I appreciate it, Director. I just was kind of going through the list here after Senator Bolz brought that up about the Reception area. And 8A-11, and this might be for our fiscal analyst as well, there was talk about Energy Corporation issue. And it just seems like the utilities are just skyrocketing on the facility. But the first statement here says the current infrastructure at the CCC-Lincoln would not be able to handle any additional. And you can get back to me on this. But it's just confusing to me about what the...and I realize you're waiting for a plan to come forward, too, from the DEC, so you might just be able to answer that in the future for me as well. It's just confusing about what it's actually going to cost us in that regard, who's going to own the building. [AGENCY 46]

SCOTT FRAKES: Okay. So we're looking at two options in terms of providing for our heat/cooling needs for these facilities. One option would be to simply use standalone units or small boiler units, the same approach that we currently use. [AGENCY 46]

SENATOR WATERMEIER: Let me just interrupt you too. I serve on the Building and Maintenance Committee and that's why I had toured these areas and I just (inaudible) like to follow up. If you want to get back to me on that, on the details, that's fine. Otherwise, go ahead. [AGENCY 46]

SCOTT FRAKES: Okay. I'd gladly do that. [AGENCY 46]

SENATOR WATERMEIER: Okay. I'm sorry. [AGENCY 46]

SENATOR HILKEMANN: Senator Kintner. [AGENCY 46]

SENATOR KINTNER: Just one more question. Are you going to stay and testify on this bill coming up, LB733? [AGENCY 46]

SCOTT FRAKES: I will testify on that bill. [AGENCY 46]

SENATOR KINTNER: I will see what you have to say. I won't ask you anything. Thank you. [AGENCY 46]

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SENATOR HILKEMANN: Are there other questions? Senator Haar. [AGENCY 46]

SENATOR HAAR: Just a quick one again and just a number off the top of your head that if we as society were doing a proper job of dealing with mental illness, what percent of your population do you think is there because we've sort of (inaudible) that issue over to the criminal justice system? [AGENCY 46]

SCOTT FRAKES: I think that there's 3 to 5 percent that I have to question, did they have all the faculties needed to really fully understand the actions they were taking, but that's my opinion. I'm not the courts. [AGENCY 46]

SENATOR HAAR: Well, that's what I was asking. [AGENCY 46]

SCOTT FRAKES: Yeah. And then there is another significant part of our population that struggles with mental health issues that struggles to find...those that have mental health issues that could be treated through medication, that struggle to find the medication that works right, that struggle with the side effects of medication, that bring all the other trauma that's part of our population. And so they choose to self-medicate, which pulls them into the illegal drug world. [AGENCY 46]

SENATOR HAAR: Yeah. [AGENCY 46]

SCOTT FRAKES: And/or, you know, alcohol abuse being another one. And then so they'd get them for DUI or some other piece. So the substance abuse component really clouds that as well. If there were...I'd like to think if there were better community resources that were more readily available for people in terms of counseling services and medication management that we could reduce the number of people that turn to self-medicating. [AGENCY 46]

SENATOR HAAR: And probably cheaper than sending them to prison. [AGENCY 46]

SCOTT FRAKES: I believe so in the end, plus the cost of the crime and the victims. [AGENCY 46]

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SENATOR HAAR: Good. Thank you. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Haar. Are there any other questions from the committee? Senator Hilkemann. [AGENCY 46]

SENATOR HILKEMANN: Yeah, not a question. I am just going to make a comment and I agree with many of the comments that were made here by our...the other members of the committee. But I wish to personally thank you. For I came into this, knew this was a big issue that we had to deal with, and I have appreciated that at least in my case you've been very open, you've been available, you've been keeping us apprised of what's going on in this situation. And I can tell you that as a member of this committee, I appreciate that. I know that you and I have discussed some of the areas that are important to me. I'm glad that you're saying that this new facility will have those (inaudible) so we can tap into the community resources that are there. You know I've talked to you about the PEP program, how I think that would be vital to us to get that started here in Nebraska. And I think that this...so thank you very much for your efforts. [AGENCY 46]

SCOTT FRAKES: Can I share something since...even though you didn't ask a question? [AGENCY 46]

SENATOR MELLO: By all means. [AGENCY 46]

SCOTT FRAKES: Because you mentioned PEP. That's the Prison Entrepreneurial Program. [AGENCY 46]

SENATOR HILKEMANN: Yes. [AGENCY 46]

SCOTT FRAKES: And I need to go back and see if there's any connection, but there's another program called Defy Ventures. Defy Ventures did some work in Texas and then now they're actively working in the California system and at Rikers. And I'm hosting a meeting with them and some community folks in Omaha next Monday, all day. We will be going to two different prisons. We'll have a luncheon to see if we can't get funding for that program through donations.

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It would be a great opportunity to get that entrepreneurial piece going because I think you and I both know it works. [AGENCY 46]

SENATOR HILKEMANN: Perfect. Thank you. Appreciate that. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Hilkemann. Any other questions from the committee? I've got a couple left, Director, and it's more on some understanding on your operational requests. Something that caught me off guard was your utility increase request, your utility cost increase. I know that's something that's somewhere down the line in the capital facilities plan of considering maybe a new energy generation facility at the DSC facilities. Can you give...I mean is this something that has caught us off guard due to our own generation capacity at DCS or is this an LES, since we're getting most...are we getting most of our energy from LES and it's simply cost increases due to the local power district? I mean that's a pretty sizable increase that was requested so... [AGENCY 46]

SCOTT FRAKES: It is. It's not a reflection of just a year. It's a reflection of numerous years of underfunding. And instead of getting a clear case made and adjusting the base to reflect the true cost of utilities for the agency, we've covered it through vacancy savings. We shifted one pile one place and (inaudible) a different way. I'd like to be able to come before you in the biennial process and say this is our real base budget. This is what it costs to run the agency. Fund this and then here are the additional initiatives that we need to move forward, and let me try to convince you that that's how we should do business. [AGENCY 46]

SENATOR MELLO: And the last question is regarding Tecumseh, in regard to the Tecumseh State Correctional Institute. Pretty sizable request on some capital facility changes in light of what we were told, I know the Legislature and the Special Investigative Committee, last May in regards we thought most of everything was going to be covered by insurance. You've got about a \$3.1 million request for Tecumseh. Can you give...I get one of the issues is in relation to a project that you say was identified prior to the riot that you want funding for. But the other two, to some extent, are directly related to the riot. Can you give a little bit more background on those other two items? [AGENCY 46]

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SCOTT FRAKES: I can. Could I speak to the first one as well... [AGENCY 46]

SENATOR MELLO: Yes, of course. [AGENCY 46]

SCOTT FRAKES: ...because it is important? [AGENCY 46]

SENATOR MELLO: Of course. [AGENCY 46]

SCOTT FRAKES: Because about \$2 million of that request... [AGENCY 46]

SENATOR MELLO: Yeah. [AGENCY 46]

SCOTT FRAKES: ...is a project that was identified prior to the disturbance and it is a classic challenge of modern prisons. We build modern prisons with integrated systems. They use touch screens. The door controls, the camera controls, the camera systems are all integrated. They are built on an operating platform with proprietary software and they have a shelf life of seven to ten years. Usually what happens is about the seven-year mark you start to have challenges and the people that designed the system no longer are around. Proprietary software can't be...you can't do anything with it. And in some cases it had systems that were built on a Microsoft platform that was no longer supported, like XP. (Laughter) So you have those kind of issues and that's just the reality of modern technology, and that's where we're at. [AGENCY 46]

SENATOR MELLO: Okay. [AGENCY 46]

SCOTT FRAKES: We're at the 15-year mark and, unfortunately, we've got to do it, because without it, you can't run a modern prison on keys very well. The other components, though, are the money that we identified through the critical incident review and the action plan that was done. It's a combination of some interior improvements that wouldn't be covered by insurance, so replacement of some of the glazing. We had an awful lot of windows that were just pure Lexan. I would never do that, but that was how it was designed and installed. Lexan burns, as we learned. So especially in control booths, you need some kind of a clad material, more bars, more secure door frames and some of those things. So there's a number associated with that. I have to dig in

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deep to tell you specifically what it was. The cost of feeding inmates sack lunches for about five months, I think it was, four and a half months, as we worked through that transition, very expensive, a very expensive way to feed a population. So that drove some very measurable costs. Staff overtime is a huge component of this. This is staff overtime in addition to what would normally be expected and budgeted to run the facility. We were running specialty teams for several months full time. Even today we have high overtime costs just because we're still on the 12-hour staffing pattern, working towards transitioning away from that I hope fairly soon. We need some additional training for our emergency teams. We've probably got about \$60,000 invested in improvements to our specialty team tools, so whether it's use of less lethal options, we definitely could do some improvements there, and just making sure that those teams have the right tools to do the work that we want them to carry out. And it is replacement of plastics because that was another issue we identified. We had way too much plastic furniture and plastic wastebaskets and they burn also. (Laugh) So we're trying to remove that, not...you know, probably the biggest single cost, fortunately, covered by the insurance process, was not the repair of the damage and the painting. It was the cleaning of the HVAC system that was polluted by the burning plastic. It created a black soot that had to be...you know, soot that was throughout the system that had to be cleaned--very expensive process. So we want to get flammables out of there. So that's it. It is a lot of money and it's more than I expected in terms of...not in terms of the damage, although the cost again, the cost of cleaning the HVAC system I think probably approached a half a million dollars, covered by insurance. But in terms of making sure that we've taken care of all of the issues, done our due diligence, I anticipate that we won't ever have another issue like that. But we're in a business where things happen. [AGENCY 46]

SENATOR MELLO: Last two items, and it's maybe just requests. One, as I expressed to you before the strategic, this document was not as much exciting to me as more of this document in regards to actually giving the Appropriations Committee and the Legislature as a whole a process to actually measure outcomes from the agency in regards to specific programs, specific goals of the agency which was part of why this committee and the Legislature passed LB33 last year that required the agency to start doing strategic planning documents like this. Do you have other documents like this that you can share with the committee moving forward? I know this is in a draft form now, but are there other documents, even if they're in draft form, that we can get to be able to, just in regards as we have our discussions posthearing in regards to the department

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as well as discussions moving forward for the next biennial budget, at least for those members who will be here coming back, to give them some more background and more material as they start considering potential challenges that lie await in the next biennium? [AGENCY 46]

SCOTT FRAKES: Right. I believe I do. [AGENCY 46]

SENATOR MELLO: Okay. [AGENCY 46]

SCOTT FRAKES: So let me go back and look where we're at on some things. As I talked about at the beginning, this has been a learning process from the top down. It's fun to watch as people begin to see things differently and begin to grasp that it isn't as complicated as it seems at first but a lot of teaching. [AGENCY 46]

SENATOR MELLO: And then one is just a request that likely will probably come from another committee you'll probably be talking to, the LR34 Committee or Judiciary Committee. And I mentioned it earlier in regards to if the department has any materials, any reports, research that's been collected in regards to looking at other short-term housing possibilities or opportunities for us, in light of sticking with your request of the changes in regards to the community custody beds, of still looking at what else may be available for us to address this three-year lag time, so to speak, of community custody beds. Obviously, I mentioned modular housing based on what other states have done, other communities have done. If there's anything else that could provide us a little bit more material for us to continue dialogue and feedback, that would be appreciated. As I said, I know likely you'll hear about it a little bit in the LR34 or the Judiciary Committee as well. [AGENCY 46]

SCOTT FRAKES: Okay. [AGENCY 46]

SENATOR MELLO: With that, any other questions from the committee? Seeing none, thank you, Director. [AGENCY 46]

SCOTT FRAKES: Thank you. [AGENCY 46]

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SENATOR MELLO: We will next hear testifiers on Agency 46, the Department of Correctional Services. [AGENCY 46]

SENATOR KRIST: (Exhibits 4 and 5) Thank you, Senator Mello, members of the Appropriations Committee. My name is Bob Krist, B-o-b K-r-i-s-t, and I represent District 10. I'm here today at the request of the LR34 Committee and also as the Chairman of the Exec Board representing some concerns issued by the Ombudsman's Office and also at the invitation of the Chair. The first thing I'll bring to your attention is on the front of it, just so you have a baseline of where we are. It's always been my effort to communicate where we've been and where we're going to. Some people in this room have been a part of this process since the very beginning. So it's important for you when you're making these decisions now and in the future to understand where we've been so we know where we're going. In 2009, LR171 created a Sentencing and Recidivism task force. That task force led to the discussion of some growing awareness and the increasing issues, problems in funding and overcrowding as well as the mismanagement or the miscalculation of sentencing, including the execution of good time. In 2010-13, those awarenesses became more increasing with overcrowding and it wasn't just a threat. It was a realization that in other states both the DOJ and the ACLU had taken action for different purposes in reducing overcrowding. And as such, the state would, by direction of DOJ, have no...little or no option to participate in the release of prisoners as they saw fit. I think you can verify that with the Department of Justice and their procedures once they walk in. And I would invite you to do that yourself. You can get it on-line. You can see what happens. If the DOJ walks in and for whatever reason takes authority, we'll have very little input into how the prison overcrowding situation will happen. In 2014, we formed at the...because of the concerns, we formed the LR424 Committee which started out, as you know, to be just an investigation into the unfortunate happenings around Nikko Jenkins and developed into a study of one person and how the Corrections system actually served it. That turned into a plethora of subpoenas that were required in most cases to piece together the state Corrections system which was failing miserably. So we put that information together. And by the way, those subpoenas went all the way from identification and miscalculation of good times all the way to the director at the time, the past director who was Bob Houston, and then the Governor of the state of Nebraska was also subpoenaed in to testify. So what I've done in terms of preparing you for a package is I've given you some reading material. The first one is the Department of Correctional Services Facility

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Master Plan. It is not in toto. I would ask you to pull it down because it's quite a few pages. It will give you the direction in the master plan. And by the way, let me stop there and just say this: When I was given this direction, I solicited questions from all of the LR34 and from all of the members of the Judiciary Committee and went back to prior members of LR424 as well as the CSG phase one. I then had a round-table discussion with Director Frakes who, I have to echo most of the comments that were made here today, is a wonderful person who his attention to detail is right there; his professionalism is to be commended. And we sat down around a round table and said, I'm going to prepare a list of questions, but I'm not going to short-sheet you with that effort; I'm going to give you those questions before I ever come in front of the committee. So he has had advanced distribution on my questions himself that I'll hand out here in a minute. This is just to give you a background on how we got to the point of being able to ask questions intelligently as a legislative branch of the issues that we're having in Corrections. The next document I've provided for you is in toto the Department of Correctional Services Special Investigative Committee LR424, and you'll notice that Senator Bolz, Mello, and Krist were on that committee. The next one I'm giving you is the Justice Reinvestment in Nebraska. In 2014, the Speaker, Governor, and Chief Justice invited in the Council of State Governments to conduct a Justice Reinvestment effort, coined phase one. That's what this is. It's a report on what we found to be identified problems within the Corrections system. Those identified problems were CSG, who had done this in 24 other states, coming in and telling us what we're doing wrong, what we're doing right. Out of this Justice Reinvestment, or JRI as it's called now, came the LB605 bill that we passed, which gave us positive action in terms of reducing the prison population by looking at sentencing, looking at the kind of sentences that were given out and how we treat our inmates. There is an implementation plan of LB605 I've provided for you that shows you the high marks and the watermarks of what we should be doing. LB605 initiative resulted in many actions. One of them I am providing to you is from Mr. Frakes to Gerry Oligmueller about...the state budget administrator, in terms of a plan and some notations of how that plan should be carried out. I've also provided to you a response to LB605 and the action and the proposed budget from Marshall Lux, who is our Ombudsman, as all of you know. I've also given to you a Department of Corrections Washington State work release program that is one of those out-of-the-box ways of putting people into the community in terms of community beds and the step down, if you will, in terms of incarceration to release. I've also given to you a...from the Office of Inspector General Doug Koebernick, his response to that round-table discussion. And

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by the way, Mr. Koebernick and my staff have been looking at modular housing available on a moment's notice, actually within an eight-month period, which I had proposed to provide to this committee in terms of deliberation. And then, of course, in 2016 there's LR413 which looks...it creates a Task Force on Behavioral and Mental Health which I think is a great follow-up. You can hand that out for me, please, now. And I'd like a copy of that, too, because I gave you my copy. So in a compilation of the questions that come about from the experiences, the studies, the...and by the way, we're in phase two of the JRI right now, where CSG is back. In phase one, they told us what we were doing wrong and what we were doing right. In phase two, they are giving us the kind of guidance we need to fix those problems internally. And there are many subcommittees. And again, I commend Director Frakes and his folks for being part of those problem-solving committees and moving forward. So as a compilation of those questions that came from LR34 and from senators who have been involved with it and from analysts and from the Ombudsman's Office, I refer you to the handouts you're getting. Regarding the issues surrounding construction: If the state is going to spend \$26.1 million on Corrections over the next few years and...then that money needs to be used for trying to resolve, mitigate the system's most important and pressing problems, which are--and these were identified in phase one of CSG--the system's acute shortage of beds for male inmates; the system's shortage of work release beds for inmates of both genders; and the serious instability of system's security employee-base, those employees from Corrections officers up to including sergeant, most of it due to the fact of salary scale for most positions...and I won't read this word for word. Let me just say on that item one that I believe that the overall arching question here is we're spending \$26.1 million and we're seeing the first bed in three years. That doesn't go to the question of solving our bed problem. Now you heard testimony from the director and I think you need to weigh those--the question against what you feel the direction is in terms of the appropriations value. Overarching item two, the DCS proposal for CCC-L indicates the department would need to have \$1,895,185 for construction costs. And then the purpose of this paragraph is also to warn you and warn future Legislatures that this is the tip of the iceberg. And I think we need to see a plan that says we're going to spend \$60 million this year, \$80 million next year, project \$150 million this year, and LB605 results need to be weighed in and factored in that plan as we go out. As the requirements for beds comes down, what kind of beds are those? We talked about...you talked about that in your questioning. And what do we need long term in sustainability? Do we need to build brick and mortar or do we need to lease or rent brick and mortar based upon the

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supply and demand that we will have? Third bullet, if permanent community corrections beds are to be added to the system at the cost of millions of dollars, are those beds probably best suited in other parts of the state? I'm not here trying to build real estate in Omaha. I'm not here trying to build real estate in Chadron. I'm just saying where should those beds be placed if the population base is in one part of the state or the other? If the Department of Corrections needs to spend large amounts of money repairing/improving its core support services and infrastructure, then the need would be systemwide, probably including all the system's facilities. That should be considered in terms of where the money would be spent. Next bullet: Before the state makes a commitment of this magnitude with regard to state's community corrections component needs, what it should look like, far more research needs to be done by the state to determine whether it would be (1) build more community corrections beds; (2) address part of Nebraska's bed shortage; (3) transform our community corrections system. You also heard testimony about that, and I think you need to weigh out those questions as put to you by these senators and then weigh out where to go. The next part of it is almost line for line from one of our members and it is right on in terms of, I believe, in terms of what those core concepts need to look like. And I will not go through them item by item for you, but I will note for you that this is well done in the fact that if you look at item 3 the question is posed and then the reference is given that you can look up and explore. The same with the next one, Corrections Facility Master Plan on the next page with a reference to the master plan and how it applies. The LB605 process is moving forward. The state expects to see a reduction in recidivism and bring the prison population down to 139 percent of capacity over the next five years. And that is referenced in the Justice Center report. And then it lists some population numbers that I think that were quoted to Mr. Beaty...by Mr. Beaty, February 3 of 2016. On the last page, again, some great references and some great questions. I'm here not to cause or to cast disparaging words on the Corrections Department or Mr. Frakes. I'm here to remind you that there's been an incredible amount of study and work done over the last...since 2009 that have identified problems with the Corrections system and to remind you there's been an incredible amount of lack of investment in Corrections that is going to cost us millions, if not a billion dollars, in the next few years. We need to see the plan as we go forward, and maybe it's not all concrete now. But certainly there should be more definition in terms of how we're going to project the next few years. And those critical questions that I heard asked here today are very much the same questions that have been asked here by the LR34, the remainder of the LR424 Committee, and currently being asked and answered in some respects

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by phase two of the JRI that CSG is leading us towards. I'd be happy to answer any questions for you, but I hope this information is helpful, if not this information, the references that I've given you so that you can look and find more facts and figures. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Krist. Are there any questions from the committee?  
Senator Kuehn. [AGENCY 46]

SENATOR KUEHN: Thank you, Mr. Chairman. Thank you, Senator Krist. I do have a couple of questions just as I'm looking through some of these initial questions and trying to reconcile it with what we heard earlier from Director Frakes. So speaking on behalf of the LR34 Committee, as their appointed representative, going forward is it the recommendation of the LR34 Committee that coed corrections, community corrections continue? There hasn't been any discussion in these questions that I've seen yet about addressing coed community corrections. So... [AGENCY 46]

SENATOR KRIST: Yeah, I think it's in the first paragraph, but I would answer it this way. There are priorities and they're probably listed from 1 to 1,000. Where does the division of male and female fit in? I think it's right under add a number of beds. And Senator Mello is absolutely correct on the operational versus design aspect. Where is the number of beds question being answered? I think that has to rise to the level of priority one, two, or three. [AGENCY 46]

SENATOR KUEHN: So by maintaining the county jail program, extending that for another year, and then while LB605 reduces, by the phase one report which you provided showed that we'll see a 10 percent reduction in inmates as a result of LB605. So that 10 percent decrease in population in conjunction with another 190-bed space available in county jails for another year, isn't that buying us that time? You know, because if we look at the difference in time line between Air Park and the CCC-L facility, looking at 18 months, so 3 years for one option, 18 months for another. So even with the Air Park, we're still not putting...we still don't have beds open tomorrow. Earliest case estimate is 18 months. We still haven't addressed a coed Corrections issue. We also still have invested \$18 million, so \$8 million short of what the department has proposed, in a facility that we don't own. So when we talk about the priority in

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that 18-month time frame, how long do you expect LB605 as passed and how much time do we give LB605? Is it an immediate issue? [AGENCY 46]

SENATOR KRIST: Five years. [AGENCY 46]

SENATOR KUEHN: Is it 18? Okay, so five years for LB605. [AGENCY 46]

SENATOR KRIST: Five years. Five years is when we should see, by CSG projections, and those aren't just projections. Those are numbers that are collated from the other 20-some states that they have helped get to this point. And I think you heard the same number from the director. It's going to take five years to realize a total reduction. But in the next five years, we'll see a reduction. So to answer your question from my perspective, when I walked in to the round-table discussion with Mr. Frakes, I was hard core, dead set, we needed something right now and Air Park was the answer. I've come out of that meeting thinking Air Park still needs to be an option. But if you look at the total investment and the fact that you're dividing up the population and doing something else and all of the reasons that he has given you, that's why you get paid the big bucks, Senator, because you're going to weigh out whether we're going to spend \$26 million and solve two problems maybe and take three years to do it. My issue with that is there needs to be clear definition because it's not a threat. DOJ will come in here and cause chaos and havoc that the state of Nebraska cannot afford nor does it want the safety hazards that will exist. And the ACLU threat is the catalyst that starts the DOJ process. So in that whole process, how are we solving this? And if we go back through the AG or we go back to DOJ and we say, is this an acceptable plan, are you going to stay off of our back for that period of time, then we should continue doing what the director says we should do. If the answer is no, then we have to find some other alternatives. And that's what the folks in LR34 are wrestling with in terms of what we've heard over the last...since 2009. [AGENCY 46]

SENATOR KUEHN: And I think it's what we're wrestling with too. But as an appropriator where we're balancing investments, I'm looking at an 18-month difference in an appropriation. So one \$26 million for 36 months; \$18 million for 18 months, which for a facility we don't own, we're basically saying it's worth a million dollars a month essentially to get that facility on-line 18 months earlier. Again, now that I know more and understand more about the county jail program

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and how that works and is functioning, you know, I've been concerned about the \$4.2 million deficit request to maintain those 190 beds for an additional year. Again, if we were...when we're looking at what the cost-benefit ratio of those is, knowing that we have all of these unknowns, I'm looking for guidance from the LR34 Committee with regard to what the actual urgency of that is so that I can weigh the cost-benefit analysis. And so as I look through these questions, that's fundamentally my question for you is, in the list of priorities, how do those priorities from the committee match up with the priorities that the director has provided to us? I don't think we've had a whole lot of time yet to see how well those integrate because, in some respects, this is the first time in a public hearing where we have seen these openly from the director and our colleagues as a whole have had an opportunity to understand them and begin to digest them. Yet we have to act and advance a budget to the floor in a relatively quick fashion from this point on. So I'm just looking for, as a member of this committee, from LR34's position, do they have a position? Are they advocating one or the other? Or is it a question of here are these questions, we're going to continue to ask these questions and move forward? [AGENCY 46]

SENATOR KRIST: LR34 has not issued a final report. The report is in draft form right now. I think this committee could probably see a copy of that within the next two weeks with no problem. I think we're going to have some recommendations about things that you should consider. But at the same time, I'll say the same thing. If our projection is that we're going to do this \$26 million at a time, there is a telltale in here that we're doing what we need to do to stay out of harm's way with DOJ along with the rest of it. So we need to ask a couple of those questions before we put our report together. This is intended for you. I would say, to answer your question more specifically about the options, I would digest the Ombudsman's report because that report and his comments is 30-plus years of experience and gives a great deal of insight into options that might be available. [AGENCY 46]

SENATOR KUEHN: I guess I would also just for the record like to point out we're talking about \$26.1 million. This committee, rightfully so, unanimously built...appropriated \$25 million to UNMC for a new facility, a new technology with less hearing time and public deliberation than we are this \$26.1 (million). So while it's not a small investment, it's not at all out of line with recent history that we've made in investment in long-term facilities of importance to the state of

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Nebraska, so just to compare apples to apples with recent history in this current budget.

[AGENCY 46]

SENATOR KRIST: And I would also suggest to you that the lack of investment over the last 20 years in Corrections facility is going to cost us much, much more. And strategically, as you say, balancing the books and making sure the investments are there will be yours next year and years after. So I would say this investment has been carefully calculated by Mr. Frakes. And you'll see a final report from LR34, but that doesn't mean that we're going to tell you what to do.

[AGENCY 46]

SENATOR KUEHN: Appreciate that. Thank you. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Kuehn. Any other questions from the committee? Senator Kintner. [AGENCY 46]

SENATOR KINTNER: Well, thank you, Senator Krist, for coming and providing quite a bit of information. I guess it will be a late night tonight as I read through this. When I asked Director Frakes about the ACLU, I was a little worried about us being bullied into doing something. He goes, no, we're working with them, we seem to be on the right track. Would you concur with that? Do you have other information or...? [AGENCY 46]

SENATOR KRIST: No, I do not, Senator. [AGENCY 46]

SENATOR KINTNER: Okay. [AGENCY 46]

SENATOR KRIST: I think that we are communicating with them. And if you understand what has happened in other states, it's been the watchdog, so to speak, the ACLU or others, who have triggered the lawsuits and forced DOJ to step in. So if we're communicating and those stakeholders, if you will, in that watchdog mode are satisfied that we're moving in the right direction and we're constantly moving in the right direction, then I think we're in good stead. I do believe we're in good stead. But I don't think we should take our eye off the ball because we

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don't want somebody coming in and telling us what to do with our Corrections system.

[AGENCY 46]

SENATOR KINTNER: And, of course, a year from now we'd be sitting here with an entirely new Department of Justice with an entirely different focus, entirely different people running it which may be far more favorable to where we sit than the current DOJ. So there...we...there's a lot of moving parts here, but I agree--keep our eye on the ball, keep moving forward, keep talking I think will be the best. [AGENCY 46]

SENATOR KRIST: If you have the answer to those questions, you can tell me what to do with my 401(k). (Laughter) [AGENCY 46]

SENATOR KINTNER: All right. Thanks. [AGENCY 46]

SENATOR MELLO: Any other questions from the committee? Senator Bolz. [AGENCY 46]

SENATOR BOLZ: I guess maybe not so much a question as a comment and you can add your reflections as well. I think as a member of both the Appropriations and the LR34 Committee there are two sets information. And the LR34 Committee I think is getting more policy-based information--what are best practices in terms of justice, while this committee is getting more information on (inaudible) in terms of cost (inaudible) projections, which is good and right as it should be. But I think the LR34 Committee, as I've heard in conversations (inaudible) feels a greater sense of urgency because of the history that we have with the riots, of Nikko Jenkins, with some of the issues that we saw in terms of the audits (inaudible), all of that context. So I don't think there's any magic time frame, but I think there's a greater sense of urgency coming from LR34 that is worth noting. And I guess the other thing I would add in terms of the LR34 perspective is that I think from a policy creation perspective what I think that committee might be most interested in is both and strategies. I don't want us to fall into an either/or kind of dialogue because what I heard from Director Frakes, for example, today is that we can do female-only corrections, community corrections in multiple ways. So I just...I put that out there as a member of both committees, and you're welcome to add a few comments (inaudible).

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SENATOR KRIST: Well, I appreciate that. And to add to that discussion, if it was up to LR34 we would end solitary confinement yesterday; and we would say at any cost we would do this or that or these or those. But there are financial constraints and measuring out those...the sense of urgency that we feel after seeing what we have seen. And also I have to add maintaining that oversight that is our responsibility as a legislative branch to make sure that we are continuing to hold up the results and say we don't want to be here again. That's our job with LR34. Your job is translating that into a finite amount of money that has to be spent in different areas. So I will make sure that this committee, actually the Chair of this committee can make sure that the draft version of the LR34 gets to this committee as soon as humanly possible. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Bolz. Any other questions from the committee? Senator Krist, there's one point on here that...on your first page here regarding issues surrounding construction. My understanding is, Senator Kuehn just mentioned that, correctional construction in comparison to education construction, the last time the state built or appropriated money for major construction was in 1999 to the tune of \$73 million that built 960 beds. We're asking for \$26.1 million and we're getting 150 beds. The question, reading here, is in the sense of what other options. And you're asking, you threw out the issue, and I'm glad you mentioned it, modular housing. That's actually appreciative in the sense of something that I've been researching. Is the issue more in the sense of not whether we build beds, because I think the reality is everyone knows we need to, is the question more of how do we get the most number of beds we can for the appropriations that are being requested? Or is it simply a matter of deferring to the executive branch and saying let them make the case for what they think they need beds for? [AGENCY 46]

SENATOR KRIST: I don't think the decision can be left up to the Department of Corrections solely in terms of the number of beds that are built. Now the purpose of the bed, the expert needs to tell us and I think you heard that testimony in question today. But the number of beds will be driven by an answer to a very specific question: How much in jeopardy are we of being taken down the rabbit hole from one way or another? So I think it's a combination of decisions that need to be made. [AGENCY 46]

SENATOR MELLO: Okay. [AGENCY 46]

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SENATOR KRIST: And I think the reality is we're going to see a projection of what we're going to look like in the next few years here at the end of February, and that's going to have a lot to do with what we spend. Here's my final point on that, who should do what. If the department had made requests to this committee last year in certain areas, they would have funding to move forward that they are not possible...that funding is not possible to give them this year. It's kind of like not building a road. In five years, it's going to cost you five times as much, right? So at the beginning of the biennium, the LR34 Committee, the Judiciary Committee which I also sit on, and this committee said, what do you need? The availability of resources has diminished in that period of time since last year. So it's not a slam on Director Frakes. He's been drinking from a fire hose. But it's reality. We cannot keep pushing back decisions on infrastructure, repairs, preventive maintenance, number of beds. We, as I have been coined to say, it's time to start tactically moving instead of strategically planning; and the two of them have to kind of share a load there. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Krist. Are there any other questions from the committee? Seeing none, thank you, Senator. [AGENCY 46]

SENATOR KRIST: One more comment. Again, thank you to Director Frakes. It was a spirit of cooperation that he understood what I was going to say when I came here, and I appreciate the time that he has spent and truly treasure the relationship that we have with this executive branch in moving forward. Thank you. [AGENCY 46]

SENATOR MELLO: Thank you, Senator Krist. Are there any other testifiers on Agency 46, the Nebraska Department of Correctional Services? Seeing none, that will close today's public hearing on Agency 46 and take us to our only legislative bill of the day, LB733 from Senator Watermeier. [AGENCY 46]